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Thursday
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM151; Special Conditions No. 25–142–SC]

Special Conditions: Boeing Model 757–300 Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 757–300 airplane. This airplane will have a novel or unusual design feature associated with sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: January 14, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Jacobsen, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2011; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1996, Boeing applied for an amendment to Type Certificate No. A2NM to include the new Model 757–300 airplane, a derivative of the Model 757–200 currently approved under Type Certificate No. A2NM. The Model 757–300 airplane is a swept wing, conventional tail, twin engine, turbofan powered transport. Each engine will be capable of delivering 43,100 pounds of thrust. The airframe has been strengthened to accommodate the increased design loads and weights. The airplane has a seating capacity of up to 295, and a maximum takeoff weight of 270,000 pounds (122,470 Kg).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 757–300 airplane meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change to the Model 757–300. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A2NM include part 25, as amended by Amendments 25–1 through 25–45, and certain other later amended sections of part 25 that are not relevant to these special conditions. In addition, Boeing has chosen to comply with the applicable regulations in effect on February 21, 1996; specifically part 25 as amended by Amendments 25–1 through 25–85 and certain other earlier amended sections of part 25 that are not relevant to these special conditions. Three exemptions have been granted. These special conditions form an additional part of the type certification basis.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 757–300 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 757–300 airplane must comply with the fuel vent and exhaust emission requirements of part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and the noise certification requirements of part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect at the time of certification.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The engine proposed for the Boeing Model 757–300 airplane is a high-bypass ratio fan jet engine that will not seize and produce transient torque loads in the same manner that is envisioned by current § 25.361(b)(1) related to "sudden engine stoppage."

Discussion

For the engine proposed for the Model 757–300 airplanes, the limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure (such as compressor jamming) has been a specific requirement for transport category airplanes since 1957. The size, configuration, and failure modes of jet engines has changed considerably from those envisioned in 14 CFR 25.361(b) when the engine seizure requirement was first adopted. Engines have grown much larger and are now designed with large bypass fans capable of producing much higher torque loads if they become jammed.

Relative to the engine configuration that existed when the rule was developed in 1957, the present generation of engines are sufficiently different and novel to justify issuance of a special condition to establish appropriate design standards. The latest generation of jet engines are capable of producing engine seizure torque loads that are significantly higher than previous generations of engines.

The FAA is developing a new regulation and a new advisory circular that will provide more comprehensive criteria for treating engine torque loads resulting from sudden engine stoppage. In the meantime, a special condition is needed to establish appropriate criteria for the Boeing Model 757–300 airplane.

Limit Engine Torque Loads for Sudden Engine Stoppage

In order to maintain the level of safety envisioned by § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. These special conditions distinguish between the more common seizure events and those rare seizure events resulting from structural failures in the engine. For these more rare but severe seizure events, the criteria would allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by applying a higher factor of safety to the maximum torque load imposed by sudden engine stoppage due to a structural failure.

Discussion of Comments

Notice of proposed special conditions No. 25–98–04–SC for the Boeing Model 757–300 airplanes was published in the **Federal Register** on December 10, 1998 (63 FR 68211). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 757–300. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Under standard practice, the effective date of final special conditions is 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Boeing Model 757–300 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 757–300 airplanes.

1. *Engine Torque Loads.* In lieu of compliance with § 25.361(b), compliance with the following special condition is proposed:

(a) For turbine engine installations, the mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load, considered as limit, imposed by:

(i) sudden deceleration of the engine due to a malfunction that could result in a temporary loss of power or thrust capability, and that could cause a shutdown due to vibrations; and

(ii) the maximum acceleration of the engine.

(2) The maximum torque load, considered as ultimate, imposed by sudden engine stoppage due to a structural failure, including fan blade failure.

(3) The load condition defined in paragraph (a)(2) of this section is also assumed to act on adjacent airframe structure, such as the wing and fuselage. This load condition is multiplied by a factor of 1.25 to obtain ultimate loads when the load is applied to the adjacent wing and fuselage supporting structure.

Issued in Renton, Washington, on January 14, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–1352 Filed 1–20–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–276–AD; Amendment 39–11004; AD 99–02–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes, that requires a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the main landing gear (MLG), and repair or replacement of any discrepant component with a new or serviceable component. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent heavy vibration and possible damage to the components of the MLG, and consequent reduced controllability of the airplane during takeoff and landing.

DATES: Effective February 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes was published in the **Federal Register** on November 13, 1998 (63 FR 63423). That action proposed to require a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the main landing gear (MLG), and repair or replacement of any discrepant component with a new or serviceable component.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters state that they are not affected by the proposed rule and, therefore, have no technical comments regarding the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 131 Model F.28 Mark 0070 and 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,720, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–02–12 Fokker Services B.V.: Amendment 39–11004. Docket 98–NM–276–AD.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–32–113, dated May 28, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent heavy vibration and possible damage to the components of the main landing gear (MLG), and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the MLG, in accordance with Fokker Service Bulletin SBF100–32–113, dated May 28, 1998. If any discrepancy is detected, prior to further flight, repair or replace any discrepant component with a new or serviceable component, in accordance with the service bulletin.

Note 2: In paragraph 2.F.(10) of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–113, dated May 28, 1998, the parenthetical phrase that recommends the size of torque wrench to use, should read "* * * (0 to 75 lbf ft)," rather than "* * * (0 to 75 lbf in)".

(b) Submit a report of the inspection findings (positive or negative) to Fokker Services B.V., Technical Services, Attn.: Manager Airline Support, P.O. Box 75047, 1117 ZN Schiphol-Oost, the Netherlands; Fax No. 3120605200; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit a report within 10 days after accomplishing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit a report within 30 days after the effective date of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a Menasco MLG having part number (P/N) 41050–5, –6, –7, or –8; or P/N 41060–1 or –2; unless it has been inspected in accordance with paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF100–32–113, dated May 28, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive BLA 1998–058 (A), dated May 29, 1998.

(g) This amendment becomes effective on February 25, 1999.

Issued in Renton, Washington, on January 12, 1999.

Darrell M. Pederson,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1184 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–140–AD; Amendment 39–11003; AD 99–02–11]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes. This amendment requires repetitive tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, and corrective action, if necessary; installation of additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system; and replacement of the valve block of the ground spoiler system with a new part. This amendment also requires eventual replacement of the relief restrictor valves of the ground spoiler system with redesigned parts, which constitutes terminating action for the repetitive tests. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the ground spoilers from unlocking and deploying during takeoff or in flight, and consequent reduced controllability of the airplane.

DATES: Effective February 25, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on July 22, 1998 (63 FR 39252). That action proposed to require repetitive tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, and corrective action, if necessary; installation of additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system; and replacement of the valve block of the ground spoiler system with a new part. That action also proposed to require eventual replacement of the relief restrictor valves of the ground spoiler system with redesigned parts, which would constitute terminating action for the repetitive tests.

Comment Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter, the manufacturer, expresses no objection to the proposed AD, but submits comments to inform the FAA that a new technical solution has been developed in the form of Dornier Service Bulletin SB–328–29–269, dated July 16, 1998 [which is referenced in the proposed AD as the appropriate source of service information for installation of additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system]. The commenter states that it has classified this service bulletin as optional, and that the service bulletin can be incorporated as an alternate means of compliance to the actions described in Dornier Service Bulletin SB–328–29–237. The commenter further advises that the Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, is considering amendment of related German airworthiness directive 1998–031 to include Dornier Service Bulletin SB–328–29–269 as an alternate means of compliance.

The FAA infers that the commenter is suggesting that Dornier Service Bulletin SB–328–29–269, dated July 16, 1998, be added to the AD as an alternative method of compliance. The FAA has reviewed the service bulletin, and concurs that accomplishment of Dornier Service Bulletin SB–328–29–269 is an acceptable alternative method of compliance for the actions required by paragraph (b) of this AD. The FAA has added a new **Note 2** to include this provision in the final rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD.

It will take approximately 3 work hours per airplane to accomplish the required tests, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the tests required by this AD on U.S. operators is estimated to be $180 per airplane, per test cycle.

It will take approximately 16 work hours per airplane to accomplish the required installation, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $960 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required replacement of the relief restrictor valves, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $120 per airplane.

It will take approximately 2 work hours per airplane to accomplish the required replacement of the valve block, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the cost impact of this replacement required by this AD on U.S. operators is estimated to be $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–02–11 Dornier Luftfahrt GMBH: Amendment 39–11003. Docket 98–NM–140–AD.

Applicability: Model 328–100 series airplanes, certificated in any category, equipped with active ground spoiler option 040–001; as listed in the following service bulletins:

- Dornier Service Bulletin SB–328–29–220, Revision 1, dated May 4, 1998;
- Dornier Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997;
- Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997; and
- Dornier Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the ground spoilers from unlocking and deploying during takeoff or in flight, and consequent reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 3,000 total flight hours, or within 300 flight hours after the effective date of this AD, whichever occurs later: Perform tests to detect internal leakage of hydraulic fluid within the hydraulic components of the ground spoiler system and to detect a buildup of pressure in the return line of the bypass valve, in accordance with Dornier Service Bulletin SB–328–29–220, dated May 20, 1997, or Dornier Service Bulletin SB–328–29–220, Revision 1, dated May 4, 1998.

(1) If no discrepancy is detected, repeat the tests thereafter at intervals not to exceed 3,000 flight hours, until accomplishment of the replacement required by paragraph (c) of this AD.

(2) If any discrepancy is detected, prior to further flight, accomplish the replacement required by paragraph (c) of this AD.

(b) Install additional hydraulic lines and an additional hydraulic shutoff valve in the ground spoiler system, in accordance with Dornier Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997, at the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) For airplanes having serial numbers up to and including 3086, equipped with ground spoiler actuator, part number 1059A0000–02: Install within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3086, and equipped with ground spoiler actuator, part number 1059A0000–03: Install within 7 days after the effective date of this AD.

Note 2: Replacement of hydraulic lines and removal of the hydraulic shutoff valve in accordance with Dornier Service Bulletin SB–328–29–269, dated July 16, 1998, is an acceptable alternative method of compliance for the actions required by paragraph (b) of this AD.

(c) Replace the relief restrictor valves of the ground spoiler system, part number ZRV87–2, with a redesigned valve having part number ZRV87–3, in accordance with Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997, at the applicable time specified in either paragraph (c)(1) or (c)(2) of this AD. Accomplishment of this replacement constitutes terminating action for the repetitive tests required by paragraph (a) of this AD.

(1) For airplanes having serial numbers up to and including 3098, equipped with ground spoiler actuator, part number 1059A0000–02: Replace within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3098, equipped with ground spoiler actuator, part number 1059A0000–03: Replace within 7 days after the effective date of this AD.

(d) Replace the valve block of the ground spoiler system with a new part, in accordance with Dornier Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997, at the applicable time specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) For airplanes having serial numbers up to and including 3095, equipped with ground spoiler actuator, part number 1059A0000–02: Replace within 12 months after the effective date of this AD.

(2) For airplanes having serial numbers up to and including 3095, equipped with ground spoiler actuator, part number 1059A0000–03: Replace within 7 days after the effective date of this AD.

(e) As of the effective date of this AD, no person shall install on the ground spoiler system of any airplane, a valve block, part number 1060A0000–05, or a relief restrictor valve, part number ZRV87–2.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Dornier Service Bulletin SB–328–29–220, dated May 20, 1997; Dornier Service Bulletin SB–328–29–220, Revision 1, dated May 4, 1998; Dornier Service Bulletin SB–328–29–237, Revision 1, dated December 17, 1997; Dornier Service Bulletin SB–328–27–243, Revision 1, dated December 18, 1997; and Dornier Service Bulletin SB–328–27–228, Revision 1, dated December 18, 1997, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER

Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directives 97–189, dated June 19, 1997; 1998–031, dated January 15, 1998; 1998–046, dated January 29, 1998; and 1997–331/2, dated March 12, 1998.

(i) This amendment becomes effective on February 25, 1999.

Issued in Renton, Washington, on January 12, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1183 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–34]

Revocation of Class E Airspace, Revision of Class D Airspace; Torrance, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action will revoke the Class E airspace arrival extensions and revise the Class D airspace area for Torrance Municipal Airport, CA.

DATES: *Effective Date:* 0901 UTC March 25, 1999. *Comment date:* Comments for inclusion in the Rules Docket must be received on or before February 22, 1999.

ADDRESSES: Send comments on the direct final rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–34, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Specialist, AWP–520.10, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to incorporate the Class E airspace arrival extensions (E4) into the Class D airspace area associated with Torrance Municipal Airport and lower the ceiling of the reconfigured Class D airspace area to 2,400 feet Mean Sea Level (MSL). An airspace review and analysis of Torrance has made this action necessary. In accordance with FAA Order 7400.2D, Procedures for Handling Airspace Matters, if the length of an arrival extension is less than 2 miles from the surface area, it shall remain a part of the basic surface area. This is the case at Torrance Municipal Airport. The existing Class E airspace for Torrance was published and charted in error as an arrival extension and should be a part of the Class D surface area. The revised altitude of 2,400 feet MSL will provide aircraft the opportunity to operate over Torrance Class D airspace at 2,500 feet MSL and above without having to obtain permission from Torrance Airport Traffic Control Tower. This is a commonly used altitude in this area for aircraft flying off shore to avoid the Los Angeles Class B airspace. Class D airspace areas are published in Paragraph 5000 and Class E4 airspace areas are published in Paragraph 6004 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be subsequently removed from this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on essentially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–AWP–34." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and

unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AWP CA E4 Torrance, CA [Removed]

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AWP CA D Torrance, CA [Revised]

Torrance Municipal Airport, CA
(Lat. 33°48′12″ N, long. 118°20′22″ W)
Los Angeles VORTAC
(Lat. 33°55′59″ N, long. 118°25′55″ W)

That airspace extending upward from the surface to and including 2,400 feet MSL within a 2.6 mile radius of the Torrance Municipal Airport including that airspace within 2 miles each side of the Los Angeles VORTAC 149° radial, extending from the 2.6 mile radius of the Torrance Municipal Airport to 4 miles northwest of the airport and within 2 miles of each side of the 304° bearing from the airport, extending from the 2.6 mile radius of the airport to 4 miles northwest of the airport and within 1.8 miles each side of the Torrance localizer course extending from the 2.6 mile radius of the airport to 4.4 miles southeast of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on January 4, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–1355 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–55]

Revision of Class E Airspace; Monroe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at Monroe, LA. The development of very high frequency omnidirectional range/distance measuring equipment (VOR/DME) and nondirectional radio beacon (NDB) standard instrument approach procedures (SIAP's) to Monroe Regional Airport, Monroe, LA, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to Monroe Regional Airport, Monroe, LA.

DATES: *Effective:* 0901 UTC, May 20, 1999. Comments must be received on or before March 8, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–55, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Monroe, LA. The development of VOR/DME and NDB SIAP's to Monroe Regional Airport, Monroe, LA, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to Monroe Regional Airport, Monroe, LA.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking,

comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing data for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ASW–55." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Monroe, LA [Revised]

Monroe Regional Airport, LA
(Lat. 32°30'39" N., long. 92°02'16" W.)
Monroe VORTAC
(Lat. 32°31'01" N., long 92°02'10" W.)
Rayville, John H. Hooks Jr. Memorial Airport, LA
(Lat. 32°29'11" N., long. 91°46'15" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Monroe Regional Airport and within 2.7 miles north and 4.3 miles south of the 217° radial of the Monroe VORTAC extending from the 7-mile radius to 11.8 miles southwest of the airport and within 3 miles north and 2.5 miles south of the 60° radial of the Monroe VORTAC extending from the 7-mile radius to 7.7 miles northeast of the airport and within a 6.4-mile radius of John H. Hooks Jr. Memorial Airport and within 1.7 miles each side of the 098° radial of the Monroe VORTAC extending from the 6.4-mile radius to 12.7 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on January 8, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–1357 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–54]

Revision of Class E Airspace; San Antonio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises Class E airspace at San Antonio, TX. The development of global positioning system (GPS) standard instrument approach procedures (SIAP's) to runways (RWY's) 31 and 35 and a nondirectional radio beacon (NDB) SIAP to New Braunfels Municipal Airport, TX has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to New Braunfels Municipal Airport, TX.

DATES: *Effective:* 0901 UTC, May 20, 1999. Comments must be received on or before March 8, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 98–ASW–54, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: .

This amendment to 14 CFR part 71 revises the Class E airspace at San Antonio, TX. The development of GPS SIAP's to RWY's 31 and 35 and a NDB SIAP at New Braunfels Municipal Airport, TX has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for instrument flight rules (IFR) operations to New Braunfels Municipal Airport, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in any adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing data for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ASW–54." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 San Antonio, TX [Revised]

San Antonio International Airport, TX
(Lat. 29°32′01″ N., long. 98°28′11″ W.)
New Braunfels Municipal Airport, TX
(Lat. 29°42′16″ N., long. 98°02′32″ W.)
San Antonio VORTAC
(Lat. 29°38′39″ N., long. 98°27′41″ W.)
Randolph VOR
(Lat. 29°31′09″ N., long. 98°17′06″ W.)
Stinson VOR
(Lat. 29°15′30″ N., long. 98°26′37″ W.)
Castroville Municipal Airport, TX
(Lat. 29°20′33″ N., long. 98°51′04″ W.)
Castroville NDB
(Lat. 29°20′46″ N., long. 98°50′57″ W.)

That airspace extending upward from 700 feet above the surface within a 20-mile radius of San Antonio International Airport and within 6.9-mile radius of New Braunfels Municipal Airport and within 4 miles each side of the 080° radial of the San Antonio VORTAC extending from the 6.9-mile radius to 11.2 miles east of the airport and within 4 miles north and 6.5 miles south of the 331° bearing from New Braunfels Municipal Airport extending from the 6.9-mile radius to 9.7 miles northwest of the airport and within 2 miles each side of the 181° bearing from the New Braunfels Municipal Airport extending from the 6.9-mile radius to 9 miles south of the airport and within 2 miles each side of the 136° bearing from the New Braunfels Municipal Airport extending from the 6.9-mile radius to 7.6 miles southeast of the airport and within 8 miles east and 4 miles west of the 144° radial of the Randolph VOR extending from the 20-mile radius to 20.6 miles southeast of the VOR and within 8 miles east and 4 miles west of the 152° radial of the Stinson VOR extending from the 20-mile radius to 16 miles southeast of the VOR and within a 6.5-mile radius of Castroville

Municipal Airport and within 8 miles west and 4 miles east of the 170° bearing from the Castroville NDB extending from the NDB to 16 miles south of the NDB.

* * * * *

Issued in Fort Worth, TX, on January 8, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–1356 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–30]

Realignment of Federal Airways and Jet Routes; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns six jet routes and eight Federal airways in the Amarillo, TX, area due to the decommissioning of the Amarillo, TX, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the commissioning of the Panhandle, TX, VORTAC which is located approximately 4.3 nautical miles (NM) southwest of the former location of the Amarillo VORTAC. Specifically, this rule realigns the affected jet routes and Federal airways from the Amarillo VORTAC to the Panhandle VORTAC. The FAA is taking this action to more effectively manage air traffic in the Amarillo, TX, area.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1998, the FAA proposed to amend 14 CFR part 71 to realign six jet routes and eight Federal airways located in the Amarillo, TX, area (63 FR 44413). The FAA proposed this action as a result of an FAA Airspace Study to enhance the flow of air traffic in the Amarillo, TX, area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, and the correction to the "Panhandle, TX, 250°" radial to the "Panhandle, TX, 255° radial" in the description for V–402, this amendment is the same as that proposed in the notice.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) realigns six jet routes and eight Federal airways. This realignment is due to the decommissioning of the Amarillo VORTAC, and the commissioning of the Panhandle VORTAC. The Panhandle VORTAC is located approximately 4.3 NM southwest of the former location of the Amarillo VORTAC. Specifically, J–6, J–14, J–17, J–26, J–58, J–78, V–12, V–81, V–114, V–140, V–280, V–304, V–402, and V–440 have been realigned from the Amarillo VORTAC to the Panhandle VORTAC.

Jet routes and VOR Federal airways are published in Sections 2004 and 6010(a), respectively, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The jet routes and Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–6 [Revised]

From Salinas, CA, via INT Salinas 145° and Avenal, CA, 292° radials; Avenal; INT Avenal 119° and Palmdale, CA, 310° radials; Palmdale; Hector, CA; Needles, CA; Drake, AZ; Zuni, AZ; Albuquerque, NM; Tucumcari, NM; Panhandle, TX; Will Rogers, OK; Little Rock, AR; Bowling Green, KY; Charleston, WV; INT Charleston 076° and Martinsburg, WV, 243° radials; Martinsburg; Lancaster, PA; Broadway, NJ; Sparta, NJ; Albany, NY; to Plattsburg, NY.

* * * * *

J–14 [Revised]

From Panhandle, TX; via Will Rogers, OK; Little Rock, AR; Vulcan, AL; to Atlanta, GA; INT Atlanta 087° and Spartanburg, SC, 234° radials; Spartanburg; Greensboro, NC; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; to Patuxent.

* * * * *

J–17 [Revised]

From San Antonio, TX; via Abilene, TX; Panhandle, TX; Tobe, CO; Pueblo, CO; Falcon, CO; Cheyenne, WY; to Rapid City, SD.

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J–26 [Revised]

From Ciudad Juarez, Mexico, via El Paso, TX; INT of El Paso 070° and Chisum, NM, 215° radials; Chisum; Panhandle, TX; Gage, OK; Wichita, KS; Kansas City, MO; Kirksville, MO; Bradford, IL; to Joliet, IL. The airspace within Mexico is excluded.

* * * * *

J–58 [Revised]

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Farmington, NM; Las Vegas, NM; Panhandle, TX; Wichita Falls, TX; Ranger, TX; Alexandria, LA; Harvey, LA; INT of Grand Isle, LA, 105° and Crestview, FL, 201° radials; INT of Grand Isle 105° and Sarasota, FL, 286° radials; Sarasota; Lee County, FL; to

the INT Lee County 120° and Dolphin, FL, 293° radials; Dolphin.

* * * * *

J–78 [Revised]

From Los Angeles, CA, via Seal Beach, CA; Thermal, CA; Parker, CA; Drake, AZ; Zuni, AZ; Albuquerque, NM; Tucumcari, NM; Panhandle, TX; Will Rogers, OK; Tulsa, OK; Farmington, MO; Louisville, KY; Charleston, WV; Philipsburg, PA; to Milton, PA.

* * * * *

Paragraph 6010—VOR Federal Airways

* * * * *

V–12 [Revised]

From Gaviota, CA, via San Marcus, CA; Palmdale, CA; 38 miles, 6 miles wide, Hector, CA; 12 miles, 38 miles, 85 MSL, 14 miles, 75 MSL, Needles, CA; 45 miles, 34 miles, 95 MSL, Drake, AZ; Winslow, AZ; 30 miles 85 MSL, Zuni, NM; Albuquerque, NM; Otto, NM; Anton Chico, NM; Tucumcari, NM; Panhandle, TX; Gage, OK; Anthony, KS; Wichita, KS; Emporia, KS; Napoleon, MO; INT Napoleon 095° and Columbia, MO, 292° radials; Columbia; Foristell, MO; Troy, IL; Bible Grove, IL; Shelbyville, IN; Richmond, IN; Dayton, OH; Appleton, OH, Newcomerstown, OH; Allegheny, PA; Johnstown, PA; Harrisburg, PA; INT Harrisburg 092° and Pottstown, PA, 278° radials; to Pottstown.

* * * * *

V–81 [Revised]

From Chihuahua, Mexico, via Marfa, TX; Fort Stockton, TX; Midland, TX; Lubbock, TX; Plainview, TX; Panhandle, TX; Dalhart, TX; Tobe, CO; Pueblo, CO; Black Forest, CO; Jeffco, CO; Cheyenne, WY; Scottsbluff, NE; to Chadron, NE. The airspace outside the United States is excluded.

* * * * *

V–114 [Revised]

From Panhandle, TX, via Childress, TX; Wichita Falls, TX; INT Wichita Falls 117° and Blue Ridge, TX, 285° radials; Blue Ridge; Quitman, TX; Gregg County, TX; Alexandria, LA; INT Baton Rouge, LA, 307° and Lafayette, LA, 042° radials; 7 miles wide (3 miles north and 4 miles south of centerline); Baton Rouge; INT Baton Rouge 112° and Reserve, LA, 323° radials; Reserve; INT Reserve 084° and Gulfport, MS, 247° radials; Gulfport; INT Gulfport 344° and Eaton, MS, 171° radials; to Eaton, excluding the portion within R–3801B and R–3801C.

* * * * *

V–140 [Revised]

From Panhandle, TX, via Sayre, OK; Kingfisher, OK; INT Kingfisher 072° and Tulsa, OK, 261° radials; Tulsa; Razorback, AR; Harrison, AR, Walnut Ridge, AR; Dyersburg, TN; Nashville, TN; to Livingston, TN; London, KY; Hazard, KY; Bluefield, WV; INT of Bluefield 071° and Montebello, VA, 250° radials; Montebello; to Casanova, VA.

* * * * *

V–280 [Revised]

From Ciudad Juarez, Mexico, via El Paso, TX; INT El Paso 070° and Pinon, NM, 219° radials; Pinon; Chisum, NM; INT Chisum 063° and Texico, NM, 218° radials; Texico; Panhandle, TX; Gage, OK; INT Gage 025° and Hutchinson, KS, 234° radials; Hutchinson; INT Hutchinson 061° and Topeka, KS, 236° radials; to Topeka. The airspace within Mexico is excluded.

* * * * *

V–304 [Revised]

From Panhandle, TX, via Borger, TX; Liberal, KS; 15 miles, 79 miles 55 MSL, Lamar, CO.

* * * * *

V–402 [Revised]

From Tucumcari, NM, via INT Tucumcari 101° and Panhandle, TX 255° radials; Panhandle; INT Panhandle 070° and Gage, OK, 215° radials; to Gage.

* * * * *

V–440 [Revised]

From Panhandle, TX, via INT Panhandle 070° and Sayre, OK, 288° radials; Sayre; INT Sayre 104° and Will Rogers, OK, 248° radials; to Will Rogers.

* * * * *

Issued in Washington, DC, on January 14, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–1353 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 201

Filing of Commuter Air Carrier Fitness Applications

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is revising 14 CFR Part 201 by changing the location within the Department for the filing of commuter air carrier fitness applications. These applications will now be filed with Department of Transportation Dockets, 400 7th Street, SW., Washington, DC 20590–0002, instead of with the Air Carrier Fitness Division of the Office of Aviation Analysis.

DATES: This regulation is effective on February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia L. Thomas, Chief, Air Carrier Fitness Division, Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–9721.

SUPPLEMENTARY INFORMATION: The Department's regulations require that commuter air carriers must file applications for a determination of initial fitness before receiving authority to operate. These applications are now filed with the Air Carrier Fitness Division in the Office of the Secretary. This office now maintains its own "docket" for these applications, which is available to the public.

When the decision about the filing location for commuter applications was initially adopted, processing of such applications, including maintaining a "docket" for such filings, was done by the analysts handling each application. However, over time, the workload of maintaining the public record of such cases has become more burdensome to the staff and less convenient to the public. Recently, the Department has consolidated all of the docket offices for all of its modes into one central location and has automated the process of maintaining the public dockets. Filings in DOT Dockets are now easily available to the public and staff on the Internet and are saved in unalterable form electronically, whereas public access to commuter filings in the Air Carrier Fitness Division is more difficult because of the physical location of that office within the Department's building and because such filings are only available in hard copy form. Thus, we believe that the public interest would be better served if commuter applications were filed with DOT Dockets and made part of a public docket. Applicants for commuter authority will continue to file an original and two copies of their applications and supporting information. As is the case now, commuter registration forms and amendments (OST Form 4507) and evidence of insurance coverage (OST Form 6410) will be filed directly with the Air Carrier Fitness Division. Commuter applicants seeking confidential treatment of specific documents submitted as part of their applications should follow the procedures in 14 CFR 302.39. Information granted confidential treatment by the Department is not scanned into the automated system and is not available to the public, except as may be determined by the Department under the procedures in Rule 39.

Analysis of Regulatory Impacts

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), in part because it does not involve any change in important Departmental policies. Because the economic impact should be

minimal, further regulatory evaluation is not necessary.

Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities, since the rule only changes the filing location. Because of the very limited procedural effect of this rule, notice and comment on this rulemaking is unnecessary.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment. This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995. Finally, this rule does not impose any collection of information requirements requiring review under the Paperwork Reduction Act of 1995.

This rule is not subject to Congressional review provisions of 5 U.S.C. 801(a)(1) because it is limited to a change in agency procedure and practice and does not substantially affect the rights or obligations of non-agency parties. This rule only addresses the location for filing commuter air carrier fitness applications.

List of Subjects in 14 CFR Part 201

Air carriers, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth above, 14 CFR Part 201 is amended as follows:

PART 201—AIR CARRIER AUTHORITY UNDER SUBTITLE VII OF TITLE 49 OF THE UNITED STATES

1. The authority citation for part 201 continues to read as follows:

Authority: 5 U.S.C. 1008; 49 U.S.C. Chapters 401, 411, 413, 415, 417.

2. Paragraph (b) of section 201.1 is amended by revising the last sentence to read as follows:

§ 201.1. Formal requirements.

* * * * *

(b) * * * An executed original plus two (2) true copies of the fitness data shall be filed with DOT Dockets, PL–401, 400 7th Street, SW., Washington, DC 20590–0002. Requests for confidential treatment of documents should be filed in accordance with the requirements of part 302 of this chapter.

Issued in Washington, DC on January 12, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–1275 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 212

Filing of Airline Codesharing Agreements and Statements of Authorization for Codesharing

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is changing the location specified in 14 CFR Part 212 for the filing of applications for statements of authorization to operate codeshare services between U.S. and foreign air carriers, and between foreign air carriers, including the accompanying codeshare agreements between U.S. and foreign air carriers. These applications will now be filed with DOT Dockets, 400 7th Street, SW., Washington, DC 20590–0002, instead of with the Office of International Aviation.

DATES: This regulation is effective on February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Terri Bingham or George Wellington, Office of the Secretary, Office of International Aviation, X–40, Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–2390 or 366–2391.

SUPPLEMENTARY INFORMATION: The Department's regulations require that airlines file applications for statements of authorization to engage in defined "long-term" wet leases between U.S. and foreign air carriers, and between foreign air carriers. The rules (14 CFR 212.10) establish the detailed filing requirements for these applications. The Department has previously determined that codeshare services constitute a form of "wet lease" applications, and that, therefore, codeshare applications should be considered under the same procedural and decisional rules applicable to wet-lease operations. The Department also requires that underlying codeshare agreements and other agreements, if any, accompany the application. These applications are now filed with the Director, Office of International Aviation. This office maintains its own "docket" for these applications, which is available to the public for review in that Office.

In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to "eliminate or revise those that are outdated or otherwise in need of reform." In response to that directive, the Department has undertaken a review of its aviation economic regulations contained in 14 CFR Chapter II to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. Among the regulations reviewed are those governing the filing of these applications.

When the rule about the filing location for wet leases was initially adopted, few codeshare applications were filed with the Department, and those that were filed resulted in generally limited public comments and few significant public interest issues. With the growing popularity of codeshare operations, the volume of applications has markedly increased, as has the number of comments received and the scope of the public interest issues presented. Indeed, with many of these applications, significant public interest issues are now likely to be faced by the Department, such as those relating to exclusivity arrangements between the applicant codeshare partners. These issues in turn have lengthened the review process involved, and resulted in more extensive public comment and interest. This change thereby has heightened the need for filing procedures that maximize transparency and public awareness. Public access to these codeshare filings in the Office of International Aviation is more difficult than if the filings had been made part of a public docket in DOT Dockets. Filings in DOT Dockets are also now easily available to public and staff on the internet and are saved in unalterable form electronically. We believe that the public interest would thus be better served if these filings were made to DOT Dockets and made part of a public docket. No other changes to the requirements for these filings are being made. Since this rule only involves a change of filing location, public comment on this rule would be impracticable, unnecessary, and contrary to the public interest.

Analysis of Regulatory Impacts

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866. It is also not significant within the definition in

DOT's Regulatory Policies and Procedures, 49 FR 11034 (1979), because it does not involve any change in important Departmental policies. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Moreover, I certify that this rule will not have a significant economic impact on a substantial number of small entities, since it only changes the filing location.

This rule does not significantly affect the environment, and therefore an environmental impact statement is not required under the National Environmental Policy Act of 1969. It has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment. This rule does not impose any unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995. Finally, this rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995.

This rule is not subject to congressional review provisions of 5 U.S.C. 801(a)(1) because it is limited to a change in agency procedure and practice and does not substantially affect the rights or obligations of non-agency parties. This rule only addresses the location for filing applications for statements of authorization to operate codeshare services.

List of Subjects for 14 CFR Part 212

Air Carriers, Charter flights, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, for the reasons set forth above, 14 CFR Part 212 is amended as follows:

PART 212—CHARTER RULES FOR U.S. AND FOREIGN DIRECT AIR CARRIERS

1. The authority citation for part 212 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41504, 41702, 41708, 41712, 46101.

2. Paragraph (a) of section 212.10 is amended by revising the third sentence, and paragraph (f)(1) of section 212.10 is amended by adding a new sentence after the first sentence to read as follows:

§ 212.10 Application for statement of authorization.

(a) * * * Except for an application for a long-term wet lease involving a codeshare agreement, an original and two copies of an application shall be submitted to the Department of Transportation, Office of International Aviation, U.S. Air Carrier Licensing Division, X–44 (for an application by a certificated air carrier), or Foreign Air Carrier Licensing Division, X–45 (for an application by a foreign air carrier), 400 7th Street, SW., Washington, DC 20590; an original and two copies of an application for a long-term wet lease involving a codeshare agreement shall be submitted to DOT Dockets, PL–401, 400 7th Street, SW., Washington, DC 20590, or by electronic submission to DOT Dockets according to procedures at the DOT Dockets website. * * *

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(f)(1) * * * Such information with respect to codeshare applications and responsive pleadings will be available for public inspection at DOT Dockets or at the DOT Dockets website. * * *

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Issued in Washington, D.C. on January 12, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–1276 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 743

[Docket No. 980911233–9007–03]

RIN 0694–AB80

Correction to Encryption Items

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: On December 31, 1998 (63 FR 72156), the Bureau of Export Administration published an interim rule revising the Export Administration Regulations (EAR) to streamline U.S. controls for exports and reexports of encryption commodities and software. This revision implemented the Administration's September 1998 policy initiative for exports and reexports of encryption commodities and software to U.S. subsidiaries, insurance companies, health and medical end-users, on-line merchants and foreign commercial firms.

This regulation amends the EAR by correcting three inadvertent typographic errors in the Encryption Items regulation which appeared in the **Federal Register** on December 31, 1998.

EFFECTIVE DATE: This rule is effective January 21, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Ruggiero, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

On December 31, 1998, the Bureau of Export Administration published a regulation updating its encryption policy. This regulation corrects three typographical errors in that notice.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629) and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

1. This interim rule has been determined to not be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule contains collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 52.5 minutes per submission; and 0694–0104, "Commercial Encryption Items Transferred from the Department of State to the Department of Commerce." The Department has submitted to OMB an emergency request for approval of the changes to the collection of information under OMB control number 0694–0104. Comments on collection 0694–0104 will be accepted until March 1, 1999.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United

States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Part 742

Exports, Foreign trade, Terrorism.

15 CFR Part 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742 and 743 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1997, 3 CFR, 1997 Comp., p. 306; Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. The authority citation for 15 CFR part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 17, 1998 (63 FR 55121, August 17, 1998).

PART 742—[CORRECTED]

§ 742.15 [Corrected]

3. Section 742.15 is amended by revising the second "v" paragraph designation in paragraph (b)(6) to read "vi".

4. Supplement No. 4 to Part 742 is amended by revising the title of the supplement to read "Key Escrow or Key Recovery Products Criteria".

PART 743—[CORRECTED]

§ 743.1 [Corrected]

5. Section 743.1 is amended by revising the phrase "ENC" in the first sentence of paragraph (b) to read "and GOV".

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–1344 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0117a FRL–6213–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern the recission of rules for a market incentive program for the Antelope Valley Air Pollution Control District (AVAPCD). The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these recissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on March 22, 1999 without further notice, unless EPA receives adverse comments by February 22, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office, AIR–4, at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved for recission from the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California SIP include: AVAPCD Regulation XX, Regional Clean Air Incentives Market—RECLAIM: Rule 2000, General; Rule 2001, Applicability; Rule 2002, Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X); Rule 2004, Requirements; Rule 2005, New Source Review for RECLAIM; Rule 2006, Permits; Rule 2007, Trading Requirements; Rule 2008, Mobile Source Credits; Rule 2010, Administrative Remedies and Sanctions; Rule 2011, Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions; Rule 2011, Appendix A—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions; Rule 2012, Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions; Rule 2012, Appendix A—Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions; and Rule 2015, Backstop Provisions. These rules are currently a part of the federally enforceable SIP. The rule recissions were submitted by the California Air Resources Board to EPA on June 28, 1998.

II. Background

The AVAPCD was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all air pollution control responsibilities of the South Coast Air Quality Management District (SCAQMD) in the Antelope Valley region of Los Angeles County,[1] effective July 1, 1997. AVAPCD is the successor agency to SCAQMD in the Antelope Valley portion of the Southeast Desert Modified Air Quality Maintenance Area.

The rules being approved for recission for AVAPCD were adopted by the SCAQMD for the purpose of establishing a market incentive program designed to allow facilities flexibility in achieving emission reduction requirements under SCAQMD's Air

[1] The Antelope Valley region of Los Angeles County is contained within the Federal area known as the Southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

Quality Management Plan. RECLAIM was not applicable to the Antelope Valley portion of the SCAQMD because RECLAIM only applies in the South Coast Air Basin and Antelope Valley is part of the Mojave Desert Air Basin.

EPA has determined that the recission of Regulation XX as it applies to the AVAPCD is approvable because it is not currently being implemented at any large source in the Antelope Valley area, and major sources in the District have expressed a lack of desire to participate in RECLAIM. Further, all sources within the Antelope Valley area are required to comply with existing NO_X and SO_X regulations in the AVAPCD Rulebook. Since EPA has determined that Regulation XX is an inapplicable and unnecessary regulation for AVAPCD, EPA is approving the recission.

The State of California submitted many revised rules for incorporation into its SIP on June 23, 1998, including the rule recissions being acted on in this document. This document addresses EPA's direct final action for approving the recission of AVAPCD's Regulation XX, which includes Rules 2000 to 2002, 2004 to 2008, 2010, 2011, 2011-Appendix A, 2012, 2012-Appendix A, and 2015. The revision was adopted on January 20, 1998 by the Governing Board of the AVAPCD. These revisions were found to be complete on August 25, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[2] and are being approved for recission from the SIP.

III. EPA Evaluation and Action

EPA has evaluated the submitted rule recissions and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the recission of AVAPCD Regulation XX, Rules 2000 to 2002, 2004 to 2008, 2010, 2011, 2011-Appendix A, 2012, 2012-Appendix A, and 2015 is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 22, 1999 without further notice unless the Agency receives adverse comments by February 22, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 22, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 10, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(232)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(232) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on November 8, 1996 now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District, Regulation XX.

* * * * *

[FR Doc. 99–1261 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[UT–001–0002a; FRL–6201–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake City Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 24, 1995, the Governor of Utah submitted a request to redesignate the Salt Lake City (SLC) "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan and revisions to Utah Administrative Code Rule (UACR) R307–1–3.3 to ensure that rules applicable to the SLC CO nonattainment area remain in effect after SLC is redesignated to attainment. On December 9, 1996, the Governor submitted a revised SLC CO maintenance plan that incorporated revised contingency measures, updated air quality monitoring data, and other minor revisions to the maintenance plan. In this action, EPA is approving the SLC redesignation request, the revised maintenance plan, and the changes to UACR R307–1–3.3.

DATES: This direct final rule is effective on March 22, 1999 without further notice, unless EPA receives adverse comments by February 22, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and,
United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Utah Division of Air Quality, Department of Environmental Quality, 150 North 1950 West, Salt Lake City Utah, 84114–4820.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION:

I. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), EPA designated the SLC area as nonattainment for CO because the area had been previously designated as nonattainment before November 15, 1990. The SLC area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 and 1989.[1]

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and;

(v) The State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Thus, before EPA can approve the redesignation request, EPA must find, among other things, that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur prior to final approval of the redesignation request or simultaneously with final approval of the redesignation request. EPA notes there are no outstanding SIP elements necessary for the redesignation. However, the Governor has requested approval of revisions to R307–1–3.3 to ensure that new source review rules applicable to the SLC nonattainment area remain in effect after SLC is redesignated to attainment. Therefore, EPA is approving the revisions to R307–1–3.3 at the same time it approves the redesignation.

EPA has reviewed the State's redesignation request, maintenance plan, and related SIP revisions and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). Descriptions of how the section 107(d)(3)(E) requirements are being addressed are provided below.

Section 1. Brief Administrative History of the SLC CO Redesignation Request, Maintenance Plan, and Related SIP Submittal

On November 24, 1995, the Governor of Utah submitted a CO redesignation request and maintenance plan for the SLC area along with revisions to the Utah Administrative Code Rule (UACR) R307–1–3.3 to ensure that new source review rules applicable to the SLC nonattainment area remain in effect after SLC is redesignated to attainment. On December 9, 1996, the Governor submitted a revised maintenance plan. The purpose of the December 9, 1996, submittal was to provide revised contingency measures, updated air quality monitoring data, and other minor revisions to the maintenance plan.

Section 2. Redesignation Criterion: The Area Must Have Attained the Carbon Monoxide (CO) NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Rather, for an area to be considered attainment, each of the CO ambient air quality monitors in the area are allowed to record no more than one exceedance of the CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, Appendix C. If a single monitor in the CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, EPA's interpretation of the CAA and EPA national policy[2] has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for a continuous two-year calendar period and, additionally, at least through the date that EPA promulgates the redesignation to attainment in the **Federal Register**.

Utah's CO redesignation request for the SLC area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. Ambient air quality monitoring data for consecutive calendar years 1992 through 1997 show a measured exceedance rate of 1.0 or less per year, per monitor, of the CO NAAQS in the SLC nonattainment area. These data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been archived by the State in EPA's Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in section IX.C.7.c of the State's maintenance plan and in the State's TSD. Since 1988, only one exceedance of the 9.0 ppm CO standard has been measured and this occurred in 1994. EPA notes, however, that the SLC area has not violated the CO standard and continues to demonstrate attainment.

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[1] The EPA describes areas as "not classified" if they were designated nonattainment both prior to enactment and (pursuant to CAA section 107(d)(1)(C)) at enactment, and if the area did not violate the primary CO NAAQS in either year for the 2-year period of 1988 through 1989. Refer to the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990", 57 FR 13498, April 16, 1992. See specifically 57 FR 13535, April 16, 1992.

[2] Refer to EPA's September 4, 1992, John Calcagni policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment."

Because the SLC nonattainment area has quality-assured data showing no violations of the CO NAAQS for 1993 and 1994, the years the State used to support the redesignation request, and additionally, over the most recent consecutive two-calendar-year period, the SLC area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. EPA notes that the State of Utah has also committed in the maintenance plan to the necessary continued operation of the CO monitoring network in compliance with all applicable federal regulations and guidelines.

Section 3. Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

Section 107(d)(3)(E)(v) requires that, to be redesignated to attainment, an area must meet all applicable requirements under section 110 and part D of the CAA. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the CAA due after the submission of a complete redesignation request need not be considered in evaluating the request.

A. CAA Section 110 Requirements

On August 15, 1984, EPA approved revisions to Utah's SIP (45 FR 32575) as meeting the requirements of section 110(a)(2) of the CAA. Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. The only additional CAA requirement assigned to the SLC area was the preparation and submittal of a 1990 base year CO emission inventory. The Governor submitted this base year inventory on July 11, 1994. EPA approved this inventory on June 29, 1995 (60 FR 33745). Thus, EPA has determined that the SIP revisions approved in 1984 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 45 FR 32575.

B. Part D Requirements

Before the SLC not classified CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The General Preamble (57 FR 13498, April 16, 1992) provides EPA's interpretations of the CAA requirements for not classified CO areas (see 57 FR 13535):

"Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO "not classified" areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply."

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694). In the case of the SLC area, the due date was November 15, 1993. As the SLC CO redesignation request and maintenance plan were not submitted by the Governor until November 24, 1995, the General Preamble (57 FR 13535) provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5) (new source review permitting program), and 172(c)(7) (the section 110(a)(2) air quality monitoring requirements)). EPA has determined that Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to not classified CO areas. See 57 FR 13535, April 16, 1992. It is also worth noting that EPA has interpreted the requirements of sections 172(c)(1) (reasonable available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), 172(c)(6) (other measures), and 172(c)(9) (contingency measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See EPA's September 4, 1992, John Calcagni memorandum entitled, "Procedures for Processing Requests to Redesignate Areas to Attainment", and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) (identification of certain emissions increases) and 172(c)(8) (equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR § 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, EPA has decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

In that action, EPA explained that its decision was based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment. Therefore, the State remains obligated to adopt the transportation conformity rules even after redesignation and would risk sanctions for failure to do so. Unlike most requirements of section 110 and part D, which are linked to the nonattainment status of an area, and are not required after redesignation of an area to attainment, the conformity requirements apply to both nonattainment and maintenance areas. Second, EPA's federal conformity rules require the performance of conformity analyses in the absence of State-adopted rules. Therefore, a delay in adopting State rules does not relieve an area from the obligation to implement conformity requirements.

Because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet adopted, EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluating a redesignation request. Further information regarding transportation conformity and mobile source emission budgets are found below in section II "Transportation Conformity".

The applicable requirements of CAA section 172 are discussed below.

(1.) Section 172(c)(3)—Emissions Inventory. Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the SLC nonattainment area. EPA's interpretation of the emission inventory requirement for "not classified" CO nonattainment areas is detailed in the General Preamble (57 FR 13535, April 16, 1992). EPA determined that an emissions inventory is specifically

required under CAA section 172(c)(3) and is not tied to an area's proximity to attainment. EPA concluded that an emissions inventory must be included as a revision to the SIP and was due 3 years from the time of the area's designation. For "not classified" CO areas, this date became November 15, 1993. To address the section 172(c)(3) requirement for a "current" inventory, EPA interpreted "current" to mean calendar year 1990 (See 57 FR 13502, April 16, 1992).

On July 11, 1994, the Governor submitted the 1990 base year inventory for the SLC CO nonattainment area. EPA approved this 1990 base year CO inventory on June 29, 1995 (60 FR 33745).

(2.) Section 172(c)(5) New Source Review (NSR). The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Utah has a fully-approved NSR program (60 FR 22277, May 5, 1995) that meets the requirements of CAA section 172(c)(5).

(3.) Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements. According to EPA's interpretations presented in the General Preamble (57 FR 13535), "not classified" CO nonattainment areas should meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172 (b) and (c) of the CAA. With respect to this requirement, the State indicates in section IX, Part C.7.c. ("Carbon Monoxide Monitoring") of the maintenance plan, that ambient CO monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) since 1986 for the SLC area. Air quality data through 1994 are included in section IX, Part C.7.c. of the maintenance plan and Volume 1 of the State's TSD. EPA has more recently polled the AIRS database and has verified that the State has also uploaded additional ambient CO data through 1997. The data in AIRS indicate that the SLC area has shown, and continues to show, attainment of the CO NAAQS. The State also notes (section IX, Part C.7.c.(1)) that information concerning CO monitoring in Utah is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Since the early 1980's, the MNR has been updated annually and submitted to EPA for approval. EPA personnel have concurred with Utah's annual network reviews and have agreed that the SLC network remains adequate. Finally, in section IX, Part C.7.c.(5) of the maintenance plan, the State commits to the continued operation of the existing CO monitors, according to all applicable Federal regulations and guidelines, even after the SLC area is redesignated to attainment for CO. The State also notes that it will reevaluate monitoring site locations annually to determine whether new monitoring sites are needed or if the existing monitors should be relocated or removed.

Section 4. Redesignation Criterion: The Area Must Have A Fully Approved SIP Under Section 110(k) Of The CAA. Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA and EPA's prior approval of SIP revisions required under the 1990 amendments to the CAA, EPA has determined that Utah has a fully approved CO SIP under section 110(k) for the SLC CO nonattainment area.

Section 5. Redesignation Criterion: The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions. Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan (SLC CO revision as approved on August 15, 1984, 49 FR 32575), implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions that were derived from the August 15, 1984, SIP revision, and as further described in section IX.C.7.b of the December 9, 1996, SLC maintenance plan, were achieved primarily through a Federal emission control measure and CAA-required improvements to the basic vehicle inspection and maintenance (I/M) program. The Federal measure involved CO emission reductions from fleet turnover, which is regulated by the Federal Motor Vehicle Control Program (FMVCP).

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as SLC. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

As stated in section IX.C.7.b.(4) of the maintenance plan, additional emission reductions from Salt Lake County's basic I/M program resulted from a major revision that was fully implemented prior to September 1, 1991. This revision was made in response to a 1990 State legislative mandate that Utah Counties administering the basic I/M program use computerized analyzers, standardize their programs, and provide reciprocity. These improvements involved the use of BAR90 technology emissions analyzers, the inclusion of vehicles owned by federal agencies, federal employees, university and college employees and students, an increased fail rate, the exclusive issuance of waivers by I/M technical center staff, an increase in the dollar amount spent on emission-related repairs to qualify for a waiver, automated data management and audit functions, and coverage of more emission control devices by the Salt Lake County anti-tampering program. Also, as a result of separate State legislation, the number of vehicles qualifying for exemption from the I/M program because of the "farm truck" classification was reduced.

EPA has evaluated the various State and Federal control measures, the 1990 base year emission inventory, the 1993 attainment year emission inventory, and the projected emissions described below, and has concluded that the improvement in air quality in the SLC nonattainment area has resulted from emission reductions that are permanent and enforceable.

Section 6. Redesignation Criterion: The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A. Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, EPA issued further maintenance plan interpretations in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental" (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992. In this **Federal Register** action, EPA is approving the State of Utah's maintenance plan for the SLC nonattainment area because EPA has determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. EPA's analysis of the pertinent maintenance plan requirements, with reference to the Governor's December 9, 1996, submittal, is provided as follows:

A. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble and the September 4, 1992, policy memorandum referenced above. Under EPA's interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the SLC area, the State selected the emissions inventory approach for demonstrating maintenance of the CO NAAQS.

The maintenance plan that the Governor submitted on December 9, 1996, included comprehensive inventories of CO emissions for the SLC area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1993 as the year from which to develop the attainment year inventory and included year-by-year projections out to 2006. More detailed descriptions of the 1993 attainment year inventory and the projected inventories are documented in the maintenance plan, sections IX.C.7.e and IX.C.7.f, and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1993 attainment year and a sampling of the projected years are provided in the Table I.–1 below.

TABLE I.–1—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR SLC

	1993	1997	2000	2003	2006
Point Sources	0.55	1.57	1.63	1.71	1.79
Area Sources	14.65	14.93	15.12	15.32	15.53
Non-Road Mobile Sources	8.29	9.37	10.10	10.91	11.79
On-Road Mobile Sources	202.24	169.56	154.66	145.64	145.37
Total	225.73	195.43	181.51	173.58	174.48

B. Demonstration of Maintenance—Projected Inventories

As noted above, total CO emissions were projected by the State year-by-year from 1994 through 2006. These projected inventories were prepared in accordance with EPA guidance (further information is provided in section IX.C.7.f of the maintenance plan). EPA notes, however, that CAA section 175A(a) requires that the maintenance demonstration "* * * provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation." Therefore, based on this CAA provision, the maintenance demonstration needed to project emissions to at least 2008, not just 2006. To address this issue, EPA consulted with the State to identify the specific materials that were provided at the SLC CO redesignation public hearing and which were subsequently adopted by the Utah Air Quality Board (UAQB). In a letter dated February 19, 1998, from Ursula Trueman, Director, Utah Division of Air Quality, to Richard Long, Director, Air Program, EPA Region VIII, the State provided an excerpt from the SLC CO redesignation Technical Support Document (TSD) that provided additional projected CO daily emissions for all years from 1993 through 2016. As indicated in the State's February 19, 1998, letter, these additional projected CO emissions were part of the TSD that was provided with the public hearing for the SLC CO redesignation and that was also adopted, along with the redesignation request and maintenance plan, by the UAQB. The projected inventories show that CO emissions are not estimated to exceed the 1993 attainment level during the time period 1993 through 2008 and, therefore, the SLC area has satisfactorily demonstrated maintenance. EPA has also extracted daily projected CO emissions for 2009 in the event that publication of this action in the **Federal Register** is delayed until early 1999. The additional projected CO daily emissions for 2007, 2008, and 2009 are provided in the Table I.–2 below:

TABLE I.–2—SUMMARY OF 1993 AND PROJECTED CO EMISSIONS IN TONS PER DAY FOR SLC

	1993	2007	2008	2009
Point Sources	0.55	1.81	1.84	1.87

TABLE I.–2—SUMMARY OF 1993 AND PROJECTED CO EMISSIONS IN TONS PER DAY FOR SLC—Continued

	1993	2007	2008	2009
Area Sources	14.65	15.60	15.67	15.74
Non-Road Mobile Sources	8.29	12.10	12.43	12.76
On-Road Mobile Sources	202.24	147.24	150.05	152.35
Total	225.73	176.75	179.99	182.72

C. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the SLC area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the SLC maintenance plan. In section IX.C.7.c.(5) and section IX.C.7.i.(3), the State commits to continue the operation of the CO monitors in the SLC area and to annually review this monitoring network and make changes as appropriate. Also, in section IX.C.7.i.(1), the State commits to prepare a comprehensive emission inventory of CO emissions every three years after the maintenance plan is approved by EPA. These inventories will be based on the most current Vehicle Miles Traveled (VMT) data, actual point source emissions, and area source emissions based on the most current population and industry growth information. The above commitments by the State, which will be enforceable by EPA following the final approval of the SLC maintenance plan SIP revision, are deemed adequate by EPA.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in Section IX.C.7.h of the maintenance plan, the contingency measures for the SLC area will be triggered by any of the following situations: (a) a future year verification emission inventory (see section IX.C.7.i.(1)) of *actual* emissions indicates a level greater than the 1993 attainment emissions (225.73 tons of CO/peak season day), (b) a second non-overlapping 8-hour average ambient CO measurement exceeds 9 ppm at a single monitoring site during a calendar year (i.e., a violation of the 8-hour CO standard), or (c) a second one-hour average ambient CO measurement exceeds 35 ppm at a single monitoring site during a calendar year (i.e., a violation of the 1-hour CO standard). The primary contingency measure is Alternative Commuting Options (ACO) and the secondary is an enhanced motor vehicle inspection and maintenance program (EI/M) or an equivalent I/M program. A more complete description of the triggering mechanisms and these contingency measures can be found in section IX.C.7.h of the maintenance plan.

EPA notes that both contingency measures have been partially implemented as of the beginning of 1998. The ACO contingency measure (UACR R307–11) was previously adopted by the State and was implemented in 1995 for Federal, State, and local government agencies with 100 or more employees at a worksite. The State has identified in the maintenance plan that R307–11 could be expanded to include *all* employers with 100 or more employees at a worksite. As a result of the Salt Lake and Davis Counties' ozone maintenance plan, Salt Lake County began implementing an improved I/M program for all of Salt Lake County in early 1998. This improved I/M program is not the equivalent of an enhanced I/M program, but it achieves greater reductions of CO emissions than the basic I/M program identified in the SLC CO maintenance plan. EPA notes that the additional CO emission reductions realized from the partial pre-implementation of the ACO regulation and the implementation of the improved I/M program were not included in the December 9, 1996, maintenance plan's projected emissions to demonstrate maintenance of the CO standard. The partial pre-implementation of contingency measures is consistent with EPA's August 13, 1993, guidance memorandum entitled "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas."

Based on the above, EPA finds that the contingency measures provided in the State's maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State of Utah has committed to submit a revised maintenance plan SIP revision eight years after redesignation. This provision and other State-triggered mechanisms (such as in response to revisions to the CO NAAQS or to take advantage of improved or more expeditious methods of maintaining the CO standard) for revising the maintenance plan are contained in section IX.C.7.i.(4) of the SLC maintenance plan.

II. Transportation Conformity

One key provision of EPA's conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budgets in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment area. The rule's requirements and EPA's policy on emissions budgets are found in the preambles to the November 24, 1993, and August 15, 1997, transportation conformity rules (58 FR 62193–96 and 62 FR 43780 et seq.) and in the sections of the rule referenced above.

The maintenance plan defines emissions budgets for each year between 1994 and 2006 (see Table IX.C.35 of the maintenance plan) and for 2016 (see Section IX, Part C.7.f.(2), page 110, of the maintenance plan) that the metropolitan planning organization (Wasatch Front Regional Council—WFRC) will use to demonstrate conformity. These year-by-year emissions budgets are presented below in Table II and EPA is approving them in this action. The plan also describes a safety margin (called the "emissions credit") for each year (1994 through 2006), which is the difference between total emissions from all sources in the attainment year and in each of those future years.

The State discusses the potential allocation of these identified year-by-year emission credits for the 1994 through 2006 time period in section (3), "Emissions Credit Allocation", on page 110, Section IX, Part C.7, of the

maintenance plan. Section (3) states that "The emissions credit or any portion of it may be allocated to any source category contributing to the inventory; i.e., area sources, non-road sources, or on-road sources mobile sources. The allocation of emission credits shall be made by order of the Utah Air Quality Board and shall not be inconsistent with this plan."

This language is inconsistent with EPA's requirements for allocating the safety margin, and, thus, is not sufficient to allow the safety margin to be used for transportation conformity determinations or for other purposes. For example, EPA's longstanding interpretation is that the SIP itself must include some or all of the safety margin in the motor vehicle emissions budget before the safety margin may be used in transportation conformity determinations. *See* 58 FR 62195, November 24, 1993. Similarly, EPA has taken the position that conformity determinations may not trade emissions among SIP budgets for highway/transit versus other sources unless a SIP revision for the specific trade is submitted and approved by EPA or the SIP establishes appropriate mechanisms for such trading. *Id.* EPA's transportation conformity rule reflects these concepts at 40 CFR 93.124(a), (b), and (c).

The maintenance plan does not explicitly include the safety margin in the motor vehicle emissions budget or any other budget. (The one exception is for the year 2016. The 2016 budget is described in detail below.) Instead, the maintenance plan attempts to allow the Utah Air Quality Board to make an allocation of the safety margin to one or more of the budgets at some future date. This is not the explicit SIP allocation contemplated by EPA's conformity rule. Nor does this approach constitute an appropriate trading mechanism. Thus, under the language of the maintenance plan as it now stands, the safety margin may not be used for conformity determinations or any other purpose. All conformity determinations must demonstrate conformity with the emissions budgets in the maintenance plan as cited above and summarized in Table II below. The State may seek EPA approval of a SIP revision to allocate some or all of the available safety margin for transportation conformity, general conformity, or other purposes.

Consistent with the foregoing, and to avoid confusion, EPA is taking no action on Section IX, Part C.7.f.(3) of the maintenance plan.

For 2016, the State specifically included the safety margin in the on-road mobile source CO emissions budget, and thus, for 2016, the safety margin may be used for transportation conformity purposes. However, in calculating the emission budget for the year 2016, the State made mathematical errors. Section IX, Part C.7.f.(2) of the maintenance plan indicates the emission budget is 192.22 tons of CO per winter week day. The correct value is 192.06 tons of CO. To arrive at the 2016 budget value, the State subtracted the 2016 emissions projections for all source categories other than on-road mobile from the 1993 CO attainment year emissions inventory for all sources. For the 1993 CO total inventory value, the State used 225.42 tons of CO per winter week day, when it should have used 225.73 tons per day as reflected in Table IX.C.35 of the maintenance plan. For the 2016 emissions projections for all source categories other than on-road mobile, the State used 33.20 tons per day, when it should have used 33.67 tons per day as reflected in Section 3 of Volume 3 of the State's TSD. The Utah Division Air Quality corrected these mathematical errors by making a non-substantive change to the maintenance plan on July 14, 1998. These corrections became effective on July 27, 1998, and were received by EPA on August 12, 1998. As reflected in Table II below, EPA hereby approves the State's corrected emission budget for 2016 of 192.06 tons of CO per day. This budget, which, as noted above, specifically allocates the safety margin available in 2016 for transportation conformity purposes, may be used for transportation conformity determinations for the year 2016 and beyond.

The maintenance plan also states that, "[a]n emission budget for the period extending from 2007 to 2016 has been established. (See TSD)." As noted above, the maintenance plan clearly identifies emission budgets for years 1994 through 2006 and 2016. However, the maintenance plan does not clearly identify an emission budget for the period 2007 to 2015. The reference to the TSD is not helpful for two reasons. First, EPA's Transportation Conformity Rule requires that budgets be established by the SIP (see 40 CFR 93.118(a), (b), and (e)(4); 62 FR 43781, August 15, 1997), and EPA does not consider the TSD to be part of the SIP. Second, the TSD does not contain language that explicitly identifies an emission budget. It is not appropriate to infer an emission budget beyond the maintenance year unless the SIP explicitly identifies such an emission budget. See 58 FR 62195, November 24, 1993. Therefore, EPA is not approving any emission budget for the period 2007 through 2015, and any transportation conformity determinations for such years must be based on the 2006 emission budget. If the State wishes to establish an emission budget or budgets for the years 2007 through 2015, it may revise the maintenance plan and seek EPA's approval.

TABLE II.—ON-ROAD MOBILE SOURCE CO EMISSIONS BUDGETS FOR SLC

[In tons of CO per day]

Year	1993	1994	1995	1996	1997	1998	1999	2000
Budget	202.24	193.95	184.84	175.30	169.56	163.90	158.80	154.66
Year	2001	2002	2003	2004	2005	2006	.....	2016
Budget	149.13	148.45	145.64	143.79	144.66	145.37	.....	192.06

III. UACR R307–1–3.3

In his November 24, 1995, submittal of the redesignation request and maintenance plan for SLC, the Governor also included minor revisions to UACR R307–1–3.3, which contains requirements for new source review. These revisions made the rule's requirements applicable in both nonattainment and maintenance areas instead of just nonattainment areas. These revisions are acceptable to EPA and should help foster continued attainment of the CO standard in the SLC area. The above changes to UACR R307–1–3.3 were adopted by the UAQB October 4, 1995, and, with changes, December 6, 1995, and became State effective January 31, 1996.

IV. Final Action

In this action, EPA is approving the SLC carbon monoxide redesignation

request, maintenance plan, and the revisions to UACR R307–1–3.3. However, as noted above, EPA is not taking any action on Section IX, Part C.7.f.(3) of the maintenance plan, "Emissions Credit Allocation."

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 22, 1999 without further notice unless the Agency receives adverse comments by February 22, 1999.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 22, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the status of a geographical area and does not impose any regulatory requirements on state, local, or tribal governments. Thus, the rule does not impose any enforceable duties on state, local, or tribal governments. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E. O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health and safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E. O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084: Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the status of a geographical area and does not impose any regulatory requirements. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation to attainment is an action that affects the status of a geographical area and does

not impose any regulatory requirements on sources. Therefore, I certify that the approval of the redesignation request will not affect a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. This Federal action approves a redesignation to attainment and pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: November 23, 1998.

Jack W. McGraw,

Acting Regional Administrator Region VIII.

Chapter I, title 40, parts 52 and 81 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart TT—UTAH

2. Section 52.2320 is amended by adding paragraph (c)(39) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(39) Revisions to the Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide as submitted by the Governor on December 6, 1996 (with minor mathematical corrections submitted by the Utah Division of Air Quality on August 12, 1998), excluding Section IX, Part C.7.f.(3) of the plan, "Emissions Credit Allocation," as EPA is not taking any action on that section of the plan. UACR R307–1–3.3 Requirements for Nonattainment and Maintenance Areas—New and Modified Sources; as submitted by the Governor on November 24, 1995.

(i) Incorporation by reference.

(A) UACR R307–2–12, adopted by the Utah Air Quality Board on August 7, 1996 and September 4, 1996, effective November 1, 1996, as modified through a notice of nonsubstantive rule change dated July 14, 1998, effective July 27, 1998, to correct minor mathematical errors in Section IX, Part C.7.f.(2) of the Utah State Implementation Plan (SIP). UACR R307–2–12 incorporates by reference a number of provisions of the Utah SIP, only some of which are relevant to this rulemaking action. EPA's incorporation by reference of UACR R307–2–12 only extends to the following Utah SIP provisions and excludes any other provisions that UACR R307–2–12 incorporates by reference:

Section IX, Part C.7 (except for Section IX, Part C.7.f.(3)), Carbon Monoxide Maintenance Provisions for Salt Lake City, adopted by Utah Air Quality Board on August 7, 1996, and September 4, 1996, effective November 1, 1996, as modified by the nonsubstantive rule change noted above.

(B) UACR R307–1–3.3, a portion of Requirements for Nonattainment and Maintenance Areas—New and Modified Sources, as adopted by the Utah Air Quality Board on October 4, 1995, December 6, 1995, effective January 31, 1996.

(ii) Additional material.

(A) February 19, 1998, letter from Ursula Trueman, Director, Utah Division of Air Quality, Department of Environmental Quality to Richard R. Long, Director, Air and Radiation Program, EPA Region VIII, entitled "DAQS–0188–98; Technical Support Documents—Ogden City and Salt Lake City CO Maintenance Plans." This letter confirmed that all the emission projections, contained in the technical support documents for both the Salt Lake City and Ogden City redesignation requests, were properly adopted by the Utah Air Quality Board in accordance with the Utah Air Quality Rules.

(B) Materials from Jan Miller, Utah Division of Air Quality, Department of Environmental Quality, received by Tim Russ, Air and Radiation Program, EPA Region VIII, displaying the minor mathematical corrections to the on-road mobile source emission budgets in Section IX, Part C. 7.f.(2) of the Salt Lake City CO Maintenance Plan. These nonsubstantive changes were made in accordance with the Utah Air Quality Rules and were effective July 27, 1998.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. In § 81.345, the table entitled "Utah-Carbon Monoxide" is amended by revising the entry for "Salt Lake City Area" to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Salt Lake City Area: Salt Lake County (part), Salt Lake City.	3–22–99	Attainment.		
* * *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 99–1259 Filed 1–20–99; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 64, No. 13
Thursday, January 21, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–247–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200 and –300 Series Airplanes Equipped With General Electric CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–200 and –300 series airplanes, that currently requires various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This action would reduce the repetitive interval for one certain functional test. This proposal is prompted by reports indicating that several center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. The actions specified by the proposed AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by March 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1357; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–247–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–247–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 3, 1995, the FAA issued AD 95–06–01, amendment 39–9171 (60 FR 13623, March 14, 1995), applicable to certain Boeing Model 747–200 and –300 series airplanes, to require various inspections and functional tests of the thrust reverser control and indication system, and correction of any discrepancy found. That action was prompted by an investigation to determine the controllability of Model 747 series airplanes following an in-flight thrust reverser deployment, which revealed that, in the event of thrust reverser deployment during high-speed climb or during cruise, these airplanes could experience control problems. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports indicating that several thrust reverser center drive units (CDU) were returned to the manufacturer of the CDU's because of low holding torque of the CDU cone brake. This possible failure condition was not included in any previous safety assessment of the thrust reverser by the manufacturer. The returned CDU's had accumulated between 3,400 and 3,600 total flight hours. The cause of the low holding torque is a combination of cone brake wear, overrunning clutch wear, and grease contamination of the cone brake. Such a low torque condition could result in failure of the cone brake of the CDU, which could disable one of the fail safe features of the thrust reverser system that prevent deployment of a thrust reverser during flight.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, which describes procedures for a functional test of the CDU cone brake on each thrust reverser. The procedures for the functional test of the cone brake are substantially similar to those described

in Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994 (which was referenced as the appropriate source of service information in AD 95–06–01). However, Boeing Service Bulletin 747–78A2166, Revision 1, specifies a shorter repetitive interval for the functional test (650 flight hours) than was specified in Boeing Alert Service Bulletin 747–78A2130 (1,300 flight hours).

The FAA previously reviewed and approved Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994, which describes procedures for various inspections and functional tests of the thrust reverser control and indication system (including a functional test of the CDU cone brake), and correction of any discrepancy found.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–06–01 to continue to require various inspections and functional tests to detect discrepancies of the thrust reverser control and indication system, and correction of any discrepancy found. This proposed AD would reduce the repetitive interval for the functional test of the CDU cone brake. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Difference Between Latest Service Bulletin and This Proposed AD

Operators should note that Boeing Service Bulletin 747–78A2166, Revision 1, specifies that the functional test of the CDU cone brake described in that service bulletin is not necessary for Model 747–200 and –300 series airplanes that are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144 (or production equivalent). Boeing Model 747–200 and –300 series airplanes having line numbers 1061 and higher are equipped with such modified thrust reversers; therefore, the effectivity listing of Boeing Service Bulletin 747–78A2166, Revision 1, includes only Model 747 series airplanes equipped with General Electric Model CF6–80C2 engines having line numbers 679 through 1060 inclusive.

This AD, however, would require that the cone brake functional test be performed on Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 engines regardless of whether they are equipped with thrust reversers modified in accordance with Boeing Service Bulletin 747–78–2144. The FAA has determined that an inspection interval of 1,000 hours time-in-service (which was required by AD 95–06–01) does not provide a sufficient level of safety for either the modified or unmodified thrust reversers, given the low holding torque condition that has been identified for the CDU cone brake.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

There are approximately 9 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

The actions proposed by this AD would not add any additional economic burden on affected operators, other than the costs that are associated with repeating the functional test of the cone brake at reduced intervals (at intervals not to exceed 650 hours time-in-service rather than at intervals not to exceed 1,000 hours time-in-service). The current costs associated with AD 95–06–01 are reiterated in their entirety (as follows) for the convenience of affected operators.

The actions that are currently required by AD 95–06–01, and retained in this AD, take approximately 33 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,960, or $1,980 per airplane, per inspection/test cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9171 (60 FR 13623, March 14, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–247–AD. Supersedes AD 95–06–01, Amendment 39–9171.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines with Power Management Control engine controls, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the

effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the integrity of the fail safe features of the thrust reverser system by preventing possible failure modes in the thrust reverser control system that can result in inadvertent deployment of a thrust reverser during flight, accomplish the following:

Restatement of Requirements of AD 95–06–01

(a) Within 90 days after April 13, 1995 (the effective date AD 95–06–01, amendment 39–9171), perform tests of the position switch module and the cone brake of the center drive unit (CDU) on each thrust reverser, and perform an inspection to detect damage to the bullnose seal on the translating sleeve on each thrust reverser, in accordance with paragraphs III.A. through III.C. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the tests and inspection thereafter at intervals not to exceed 1,000 hours time-in-service until the functional test required by paragraph (d) of this AD is accomplished.

(b) Within 9 months after April 13, 1995, perform inspections and functional tests of the thrust reverser control and indication system in accordance with paragraphs III.D. through III.F., III.H., and III.I. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat these inspections and functional tests thereafter at intervals not to exceed 18 months.

(c) If any of the inspections and/or functional tests required by paragraphs (a) and (b) of this AD cannot be successfully performed, or if any discrepancy is found during those inspections and/or functional tests, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved Minimum Equipment List (MEL), provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

(d) Within 1,000 hours time-in-service after the most recent test of the CDU cone brake performed in accordance with paragraph (a) of this AD, or within 650 hours time-in-service after the effective date of this AD, whichever occurs first: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Repeat the functional test thereafter at intervals not to exceed 650 hours time-in-service. Accomplishment of such functional test constitutes terminating action for the repetitive test of the CDU cone brake required by paragraph (a) of this AD.

(e) If any functional test required by paragraph (d) of this AD cannot be successfully performed, or if any discrepancy is found during any functional test required by paragraph (d) of this AD, accomplish either paragraph (e)(1) or (e)(2) of this AD.

(1) Prior to further flight, correct the discrepancy found, in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997, or paragraph III.B. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2130, dated May 26, 1994. Or

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MEL, provided that no more than one thrust reverser on the airplane is inoperative.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 14, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1307 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–80]

Proposed Modification of Class E Airspace; Shelbyville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Shelbyville, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 01, and a GPS SIAP to Rwy 19, have been developed for Shelbyville Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to modify the existing surface area by increasing the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–80, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–80." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained

in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Shelbyville, IN, to accommodate aircraft executing the proposed GPS Rwy 01 SIAP, and the GPS Rwy 19 SIAP, at Shelbyville Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Shelbyville, IN [Revised]

Shelbyville Municipal Airport, IN,
(Lat. 39°34'41" N., long. 85°48'12" W.)
Shelbyville VORTAC,
(Lat. 39°37'57" N., long. 85°49'28" W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Shelbyville Municipal Airport and within 1.8 miles each side of the Shelbyville VORTAC 340° radial extending from the 6.7-mile radius to 9.6 miles north of the VORTAC, excluding the airspace within the Mount Comfort, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on December 31, 1998.

Michelle M. Behm,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1100 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 389

[Docket No. OST–99–5003; Notice No. 99–1]

RIN 2105–AC47

Fees and Charges for Special Services

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to revise 14 CFR Part 389 to bring the fees we charge to beneficiaries of certain economic, aviation-related licensing services in line with the costs incurred to provide those services. We also are proposing to remove or update obsolete provisions and organizational references included in the existing regulations.

DATES: Comments should be received no later than March 22, 1999.

ADDRESSES: Five (5) copies of any comments should be sent to Department of Transportation Dockets, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0002, and should refer to this docket. Acknowledgment of comments requires you to include a stamped, self-addressed postcard that the Docket clerk will time and date-stamp, and return.

FOR FURTHER INFORMATION CONTACT: Mr. James H. New or Mr. John D. Miller, Office of Planning and Special Projects, X–60, Department of Transportation, at the address above. Telephone (202) 366–4868.

SUPPLEMENTARY INFORMATION: Part 389 of Title 14 of the Code of Federal Regulations—Fees and Charges for Special Services—describes certain special services related to aviation economic proceedings that the Department provides to the public, and sets forth the fees and charges applicable to those services. This regulation has not been comprehensively updated since January 1983, when economic regulation of interstate and foreign air transportation was overseen by the Civil Aeronautics Board. Congress "sunset" the Board in January 1985, at which time the Board's residual functions were transferred to the Office of the Secretary, DOT. Today, some of the services identified in Part 389 are no longer provided, while several other services are provided but are not included. Further, most of the service processing fees prescribed in section 389.25(a) are not sufficient to recover our processing costs, while the prescribed fee in a few instances is too high. Because of these conditions, the General Accounting Office has

recommended that the Department update the rule to reflect the services that we currently provide and to ensure that our fees are commensurate with the actual costs of providing those services. (GAO/RCED–96–8.)

Consequently, we have undertaken an analysis of the special services the Department provides in aviation economic proceedings, the fees currently in force for those services, and revisions that are needed for us to continue to provide services to the extent commensurate with our actual costs. A revised schedule of fees based on the results of our analysis is set forth in this proposed rule. Additionally, the rule would remove or update obsolete provisions and organizational references sprinkled throughout Part 389 and replace references to the Federal Aviation Act with references to Subtitle VII of Title 49 of the United States Code (Transportation).

Major Changes

The Department is proposing a major reorganization of the processing fee schedule contained in existing section 389.25(a). Of the 50 fee items listed in the schedule, we are proposing to eliminate 10 and to retain or revise the remaining 40. We also are proposing various new items, resulting in a net change from 50 to 76 schedule items. All items considered, there are 55 fee increases, 6 fee decreases, 9 instances in which the fee is unchanged and 6 instances in which an item is reserved for future use.

Under the proposed fee schedule, prospective or incumbent U.S. air carriers that apply for new or modified interstate certificate authority involving the use of "small" aircraft, defined as aircraft with 60 seats or less or with a maximum payload capacity of 18,000 pounds or less, are grouped with U.S. commuter air carriers with regard to the processing of initial applications for economic operating authority, amendments to initial applications, and/or applications for various exemptions or waivers from our regulations. Under the current schedule, the fees levied for these special services to U.S. certificated air carriers operating small aircraft are the same as the fees for U.S. certificated air carriers operating aircraft with more than 60 seats. Our analysis has determined that the costs to process applications involving the former are substantially lower than the costs for the latter, yet are similar to the processing costs for U.S. commuter air carrier authorizations.

We are also proposing a new, incremental fee in the case of applications for various international air service rights when the Department must conduct a comparative proceeding to distribute those rights among multiple applicants. This comparative process entails significantly higher costs to the Department than those incurred when a comparative proceeding is not necessary.

Additionally, except in the case of a treaty or an agreement, we are proposing to eliminate existing section 389.24, which authorizes the waiver of processing fees for foreign air carriers under certain circumstances. Currently, 235 foreign air carriers that have been granted U.S. economic operating authority qualify for this waiver, and the annual costs we incur to process service applications from such carriers amount to $248,000. We have concluded that it is neither necessary nor appropriate for the U.S. government to continue to absorb these costs.

User Fee Authority and Implementation

Our revised user charges are proposed under the authority of Title V of the Independent Offices Appropriations Act of 1952 ("IOAA"; 31 U.S.C. 9701). The IOAA provides that the head of a government agency may prescribe regulations, subject to policies prescribed by the President, establishing the charge for a service or "thing of value" provided by the agency. The statute states that each service or thing of value provided by an agency should be self-sustaining to the extent possible, and that each charge imposed to that end shall be fair and shall be based on (1) the costs to the government, (2) the value of the service or thing to the recipient, (3) public policy or interest served, and (4) and other relevant factors.

During the 1970's and early 1980's the IOAA was subjected to a series of judicial rulings to resolve issues of interpretation. Consequently, the principles of user charge implementation under the statute are well settled, and are embodied in the current version of Office of Management and Budget Circular A–25 ("User Charges," July 8, 1993). This Circular prescribes federal policy and guidelines for executive-branch and independent agencies to assess fees for government services and sets forth the procedures by which those agencies are to implement user fees. The principles and procedures enunciated in OMB Circular A–25 and relevant to this proposed rule are as follows (emphasis supplied by DOT):

1. It is the policy of the federal government to assess a user charge against each *identifiable recipient* for *special benefits* derived from federal activities *beyond those received by the general public.* When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the *full cost* to the federal government for providing the special benefit.

2. A *special benefit* will be considered to accrue and a user charge will be imposed when, for example, a government service (a) enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); (b) provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or (c) is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

3. User charges will be sufficient to recover the *full cost* to the federal government of providing the service, resource, or good when the government is acting in its capacity as sovereign. Full cost includes all *direct and indirect costs* to any part of the federal government of providing a good, resource, or service. These costs include, but are not limited to, an appropriate share of direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement; physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment; management and supervisory costs; and the costs of enforcement, collection, research, establishment of standards, and regulation.

4. *No charge* should be made for a service when the identification of the specific beneficiary is *obscure,* and the service can be considered *primarily* as benefiting broadly the general public. However, when the public obtains benefits *as a necessary consequence* of an agency's provision of special benefits to an identifiable recipient (*i.e., the public benefits are not independent of, but merely incidental to, the special benefits*), an agency *need not allocate any costs to the public* and should seek to recover from the identifiable recipient

the full cost to the federal government of providing the special benefit.

5. Each agency will identify the services and activities covered by this Circular, determine the extent of the special benefits provided, and apply the principles specified [herein] in determining cost. Full cost shall be determined or estimated from the best available records of the agency, and new cost accounting systems need not be established solely for this purpose.

Special Services Provided

The Secretary of Transportation is responsible, under Title 49 of the United States Code ("Transportation"), Subtitle VII ("Aviation Programs"), for the economic regulation of interstate and foreign air transportation. The Department's rules and regulations implementing the requirements of Subtitle VII are contained in Title 14 of the Code of Federal Regulations, Parts 200–399. In general, nearly all of the special services provided by the Department in the course of economic regulation involve the authority of a U.S. or a foreign air carrier to conduct revenue-producing interstate or foreign air transportation under the requirements of Subtitle VII and our implementing regulations.

Within the Office of the Secretary, the provision of special services is carried out under delegated authority by the Office of the Assistant Secretary for Aviation and International Affairs and the Office of the General Counsel. Both offices in turn are organized by sub-office and/or division, where the day-to-day processing of applications for special services takes place. The touchstone of the user charges set forth in this proposed rule is the direct labor time expended by these offices to process applications for aviation services on behalf of specific, identifiable recipients accorded a special benefit as a consequence of those services. Staff of both offices also spend time on policy development, analyses and other aspects of economic regulation that are not directly related to the provision of special benefits to identifiable recipients. That labor time is excluded from the scope of this rulemaking.

With respect to processing of applications for special services, the principal offices under the Assistant Secretary are the Office of International Aviation and the Office of Aviation Analysis. A third office, the Office of Aviation and International Economics, although primarily engaged in policy analysis, occasionally provides direct analytical support for applications requesting special services.

The Office of International Aviation receives, processes, and acts on or recommends the disposition of U.S. and foreign air carrier applications for economic authority to operate between the United States and foreign points. It also determines the disposition of all tariff filings by U.S. and foreign airlines. Within this office, the Pricing and Multilateral Affairs division reviews international fares and rates filed by U.S. and foreign air carriers to determine whether the proposed prices are consistent with public interest standards, Department rules and policy, and applicable international agreements. This division also reviews inter-carrier agreements, primarily fare and rate agreements filed by the International Air Transport Association, to determine whether they should be approved and given antitrust immunity. Division analysts also support licensing services provided by the U.S. Air Carrier Licensing division and the Foreign Air Carrier Licensing division. The former processes requests by U.S. airlines for authority to serve specific foreign markets and applications for transfer of international authority among U.S. air carriers. The latter handles all foreign air carrier applications (excepting Canadian air taxi registrations) for the authority to operate to the United States, including applications for foreign air carrier permits, exemptions, statements of authorization for charter, code-share and wet-lease operations, and related matters. In addition to these divisions, geographic aviation specialists for Europe, Asia-Pacific-Africa, and Western Hemisphere occasionally provide direct labor support for applications requesting special services.

Within the Office of Aviation Analysis, the provision of special services primarily involves the Air Carrier Fitness division and the Special Authorities division. Air Carrier Fitness evaluates the fitness of applicants for U.S. certificated and U.S. commuter air carrier operating authority, monitors the continuing fitness of certificated and commuter air carriers, evaluates requests for transfer of certificate or commuter authority, and processes applications for name changes or trade names, as well as applications for various exemptions and waivers from the Department's regulations. The Special Authorities division reviews charter prospectuses filed by tour operators, requests for waivers from charter regulations, and applications for operating authority from Canadian air taxi operators, foreign air freight forwarders, and overseas military personnel charter operators. On occasion, the Essential Air Service and Domestic Analysis division or the Economic and Financial Analysis division also expend direct labor time on processing applications for certain special services, such as requests for a change in mail rates or an exemption from the airport slot restrictions imposed by the High Density Rule.

Four offices of the Department's General Counsel are involved in the provision of special aviation services: Environmental, Civil Rights and General Law; International Law; Litigation; and Aviation Enforcement and Proceedings. Their chief responsibility is to ensure that proposed decisions on applications for special services are in compliance with applicable laws, regulations and international agreements. These offices also expend direct labor time when issues such as citizenship, bankruptcy, confidentiality or potential litigation arise in the course of processing applications.

Development of Fees

The following procedures were used to develop the user fees proposed in revised section 389.24(a) of the rule:

In accordance with the principles and procedures of OMB Circular A–25, we first examined the activities conducted by the Department to carry out economic regulation of interstate and foreign air transportation in order to identify those services that provide a special benefit to a specific, identifiable recipient. Where the beneficiary is obscure, or the nature of the benefit is indeterminate, or the beneficiary is primarily the public generally, the activity was excluded from further consideration. An example is an action by the Department to suspend or revoke an air carrier's economic authority to conduct interstate or foreign air transportation. Such action is taken primarily for the benefit of the public generally.

For those services identified as providing a special benefit to a specific identifiable recipient, the smallest practical unit for assigning a fee was determined in nearly all cases to be the application document submitted to the Department requesting a special service (a license, an exemption, a waiver, etc.). There are two exceptions: for certain substantive changes to an initial application for economic operating authority, the smallest practical unit is an "amendment," and for certain requests involving antitrust immunity, the smallest practical unit is a "resolution."

We then analyzed the work flows and direct labor hours to process applications for special services. This

analysis was based on (1) the knowledge and expertise of office and division supervisors, all of whom have many years of experience overseeing the processing of aviation service requests, and (2) data on the actual direct labor hours incurred to process a sample of 611 service applications completed during the period March 1997 through July 1998.

The results of the work-flow cost analysis were then applied to calculate direct labor costs, which are based on pay rates in effect as of February 1998 and include a standard allowance for fringe benefits (personal and sick leave, medical insurance, etc.) that is based on a government-wide average published by OMB (Circular A–76, Handbook, March 1996).

In addition to direct labor, indirect (overhead) costs of the Office of the Assistant Secretary were distributed to service applications based on rates applied at three levels: office-level supervision, office-level general and administrative, and general management and support. The overhead rates are based on actual costs for the fiscal year ending September 30, 1997, and exclude overhead items unrelated to the delivery of special services. In making overhead distributions, the rates were applied to actual direct labor costs. For certain overhead costs, such as office space, it was necessary to make a per capita allocation in order to derive a distribution rate. For the Office of the General Counsel, a single overhead rate was applied to the direct labor hours incurred.

Finally, fee amounts were assigned to individual special service items in accordance with these criteria:

If direct labor time data were available for a particular service, the fee was determined by dividing total direct and indirect costs by the number of applications completed. For administrative convenience and ease of payment, values below $100 are rounded to the nearest dollar and those above $100 are rounded to the nearest ten dollars.

If direct labor data were not available (i.e., no applications for the special service were completed during the cost-collection period), the fee was assigned based on the staff's analysis of the work flow to process an application for the special service.

If no direct labor data were available and the work-flow analysis identified no reason to assume costs have changed, the existing fee was retained.

If no cost data were available, the work-flow analysis identified no other basis to assign a fee, and no extant fee pertained, the service item was reserved in expectation of a future fee determination.

Appendix A of this Notice contains a summary of our fee calculations and an item-by-item justification of our proposed fee amounts, including the legal basis for the services provided to specific identifiable recipients, the nature of the special benefits accorded to those recipients, and the basis for the fee amounts proposed. In addition, we are placing in the docket a Supplement ("Service Job Costs") to this Notice that (1) illustrates in detail how direct labor time was reported, how job costs were calculated, and how overhead rates were derived; and (2) lists the 611 applications for special services and their costs included in our work-flow cost analysis. The Department would like to have comment on whether any fee items have been overlooked or whether others should be deleted, in view of the methods used to calculate fees, as explained in this Notice and its Supplement.

U.S. Air Carriers Operating Small Aircraft

As noted earlier, our proposed fee schedule makes a distinction between the processing fees applicable to U.S. certificated air carriers (or applicants for certificate authority) that operate small as compared to large aircraft in interstate air transportation, and groups the former with the processing fees applicable to authorizations involving commuter air carrier operations. Our basis for making this distinction is the significantly lower processing costs associated with applications involving small aircraft, as explained in detail in Appendix A, items 9 through 12 and items 24 through 34. The Department would like to receive comments on the reasonableness and fairness of grouping small-aircraft certificated air carriers with commuter air carriers for purposes of processing fees.

Additional Fee for Comparative Proceedings

We also invite comments on the reasonableness and fairness of our proposed incremental user charge for applications for international air service rights when a comparative proceeding is required to distribute those rights among multiple applicants. Again, the basis for this proposed fee is the additional cost incurred to conduct a comparative proceeding, as explained in detail in Appendix A, items 52 through 57.

Elimination of Waiver of Foreign Air Carrier Processing Fees

Current section 389.24 provides that a foreign air carrier, or such carriers, if from the same country, acting jointly, may apply for a waiver of the requirements to pay processing fees, based on reciprocity for U.S. air carriers contained in the requirement of their home governments, or as provided in a treaty or agreement with the United States. Further, once a waiver has been granted for a specific country, no further waiver applications need be filed for that country.

To date, 76 countries and the 12-nation Air Afrique Consortium have been granted interim or final waivers from the requirement to pay all or some of the processing fees contained in current section 389.25. These waivers in all cases are based on reciprocity: a foreign carrier is relieved from the Department's processing fees only if the aviation authority of its home country does likewise for U.S. carriers. However, none of the waivers we have granted are required by treaty or other formal agreement with the U.S. government and all are revocable at the Department's discretion. Eliminating the waiver provision and revoking existing waivers means that once this proposed rule takes effect, all foreign air carriers would be required to pay the applicable fee contained in revised section 389.24. We recognize that this action could spur the governments of foreign nations whose carriers have benefitted from U.S. fee waivers to reciprocate by revoking the fee relief they have granted to U.S. carriers and requiring U.S. carriers to pay processing fees in the future. The Department would like to receive comments on its proposed elimination of the foreign air carrier waiver provision.

Our reason for proposing to eliminate the foreign air carrier waiver provision is its cost to the Department. In fiscal year 1997, the Foreign Air Carrier Licensing Division received 1,163 applications from foreign carriers requesting various forms of operating authority. Of the total received, 710 applications, or 61 percent, were covered by fee waivers. We estimate that the processing of these applications entails approximately 2,300 labor hours at a total cost to the Department of $248,000.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the proposed revisions and has determined

that they are not "significant" within the meaning of Executive Order 12866. The revisions will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The revisions will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor do they raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

DOT Regulatory Policies and Procedures

The proposed revisions are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies; rather, they are being made solely for the purposes of updating the fees charged to the beneficiaries of special aviation-related services provided by the Department to help offset the costs of providing the services, and of eliminating obsolete requirements and correcting out-of-date references in the rule.

Executive Order 12612 (Federalism)

This proposal has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"), and the Department has determined the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Analysis

I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed changes would result in a net increase in the processing fees applicable to small entities. The new fee schedule, however, would not have a significant economic impact on small entities and would not affect a substantial number of small entities.

The Small Business Administration suggests that, for aircraft services, "small" represents impacted businesses with 1,500 or fewer employees. For purposes of this rulemaking, small entities are defined as certificated air carriers, commuter air carriers, air taxis, and air charter operators that (1) have 1,500 or fewer employees and/or (2) operate aircraft with 60 seats or less or 18,000 pounds maximum payload or less. Departmental records show that 106 certificated air carriers, 49 commuter air carriers, approximately 2,800 active air taxis operators, and approximately 250 charter operators meet this definition of a small entity.

Many of these small entities would be unaffected by the changes to the fee schedule. The actual economic impact on any individual small entity, however, would depend on the number and type of filings submitted to implement particular operational decisions. The survey of applications from March 1997 to July 1998 used to calculate the new fees indicated that only a small portion of small entities filed applications for aviation economic proceedings. Moreover, air taxis, the single largest class of small entities, are exempt from certain regulatory requirements, including the requirement to obtain certificated authority. Several of the fees that we propose to increase are related to certificated authority. Thus, unless they choose to obtain certificates, the largest class of small entities would not be affected by most of the proposed fee increases.

Of those small entities that would be affected, most would experience only modest fee increases because most items for which the survey of applications suggest that relatively large numbers of applications are filed would have only modest fee increases. For instance, the fee for Schedule Item 34, Application for approval of amendment to commuter air carrier registration under 14 CFR Part 298, would increase from $0 to $5.

National Environmental Policy Act

The Department has also assessed the proposed revisions for the purpose of the National Environmental Policy Act. The revisions will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

This rule does not impose any collection of information requirements requiring review under the Paperwork Reduction Act of 1995. The proposed rule contains no new reporting, recordkeeping, or compliance requirements, but only sets forth the processing fees applicable to existing regulatory requirements.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Lists of Subjects in 14 CFR Part 389

Administrative practice and procedure, Reporting and recordkeeping requirements.

Proposed Rule

For the reasons set forth above, it is proposed that Title 14, Chapter II of the Code of Federal Regulations be amended as follows:

PART 389—[REVISED]

1. Part 389 is revised to read as follows:

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

Subpart A—General Provisions

Sec.
389.1 Policy and scope.

Subpart B—Fees Related to the Availability of Public Records and Documents

389.10 Public disclosure of information.

Subpart C—Filing and Processing License Fees

389.20 Applicability of subpart.
389.21 Payment of fees.
389.22 Failure to make proper payment.
389.23 Application for waiver or modification of fees.
389.24 Schedule of processing fees.
389.25 Special rules for tariff page filings.
389.26 Refund of fees.

Authority: 31 U.S.C. 9701, 49 U.S.C. Chapters 401, 461.

Subpart A—General Provisions

§ 389.1 Policy and scope.

Pursuant to the provisions of 31 U.S.C. 9701 as implemented by Office of Management and Budget Circular A–25, revised July 8, 1993, the Department sets forth in this part the special aviation-related services made available by the Department and prescribes the fees to be paid for these and various other services.

Subpart B—Fees Related to the Availability of Public Records and Documents

§ 389.10 Public disclosure of information.

Part 7 of the Office of Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR part 7)

Subpart C—Filing and Processing License Fees

§ 389.20 Applicability of subpart.

(a) This subpart applies to the filing of certain documents and records with the Department by non-government parties, and prescribes fees for their processing.

(b) For the purpose of this subpart, record means those electronic tariff records submitted to the Department under subpart W of part 221 of this chapter, and contains that set of information which describes one (1) tariff fare, or that set of information which describes one (1) related element associated with such tariff fare. For purposes of this subpart, the term document and record also includes those filings made electronically under process set at the DOT Dockets website.

(c) For the purpose of this subpart, small aircraft means aircraft with 60 seats or less or with a maximum payload capacity of 18,000 pounds or less.

§ 389.21 Payment of fees.

(a) Any paper document or record for which a filing fee is required by § 389.24 shall be accompanied by either:

(1) A check, draft, or postal money order, payable to the Department of Transportation, in the amount prescribed in this part, or

(2) A request for waiver or modification of the filing fee.

(b) The filing fee required by § 389.24, Item 57, concerning carrier/gateway selection from among multiple applicants, shall be payable upon submission of an applicant's first filing subsequent to the Department's notice that a comparative proceeding is necessary.

(c) Except for tariff records filed under § 221.500 of this title, documents and records filed electronically under process set at the DOT Dockets website shall be accompanied by a certification that the filing fee for that document has been or will be paid in accordance with procedures set at the DOT Dockets website.

(d) Where a document relating to a single transaction or matter seeks multiple authorities or relief and therefore would otherwise be subject to more than one filing fee, only the highest fee shall be required. Where a document relating to more than one transaction or matter seeks multiple authorities or relief, the required filing fee shall be determined by combining the highest fees for each transaction or matter. For purposes of this paragraph, a specific number of charters or inclusive tours described in one application will be regarded as a single transaction or matter.

(e) No fee shall be returned after the document has been filed with the Department, except as provided in §§ 389.23 and 389.26.

§ 389.22 Failure to make proper payment.

(a)(1) Except as provided in § 389.23, documents (except tariff publications) which are not accompanied by filing fees shall be returned to the filing party, and such documents shall not be considered as filed by the Department.

(2) Except as provided in § 389.23, records which are not accompanied by the appropriate filing fees shall be retained and considered filed with the Department. The Department will notify the filer concerning the nonpayment or underpayment of the filing fees, and will also notify the filer that the records will not be processed until the fees are paid.

(3) Except as provided in § 389.23, documents and records filed electronically not accompanied by the required certification in § 389.21(b) shall not be processed. In addition, electronic filers not making payment in accordance with the procedures set at the DOT Dockets website shall be notified that unless payment is made within 10 days from such notification, the document or record shall be deemed to have been dismissed or withdrawn.

(b) The filing fee tendered by a filing party shall be accepted by the Department office to which payment is made, subject to post audit by the Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration, and notification to the filing party within 30 days of any additional amount due. Not more than 5 days after receipt of the notification, the determination of the Chief, Accounting Division, may be appealed to the Chief Financial Officer, who has been delegated authority by the Department to decide such appeals. The filing party may submit to the Department a petition for review of the Chief Financial Officer's decision pursuant to § 385.30 of this chapter, and proceedings thereon will be governed by subpart C of part 385 of this chapter.

(c)(1) The amount found due by the Chief, Accounting Division, shall be paid within 10 days of notification except that:

(i) If that decision is appealed to the Chief Financial Officer, the amount due shall be paid within 10 days after the Chief Financial Officer notifies the filing party that he has affirmed or modified the decision of the Chief, Accounting Division; and

(ii) If the decision of the Chief Financial Officer is appealed to the Department, the amount due shall be paid within 10 days after the Department notifies the filing party that it has affirmed or modified the staff decision.

(2) If the amount due is not paid, the document (except a tariff publication) shall be returned to the filing party along with the fee tendered, and such document shall be deemed to have been dismissed or withdrawn.

§ 389.23 Application for waiver or modification of fees.

(a) Applications may be filed asking for waiver or modification of any fee paid under this subpart. Each applicant shall set forth the reasons why a waiver or modification should be granted, and by what legal authority.

(b) Applications asking for a waiver or modification of fees shall be sent to the Director, Office of International Aviation, or Director, Office of Aviation Analysis, as appropriate, and shall accompany the document filed. Applicants may appeal the decision of the appropriate Director to the Assistant Secretary for Aviation and International Affairs under § 385.30 of this chapter. When no petition for review is filed with the Assistant Secretary, or when the Assistant Secretary reviews the appropriate Director's decision, if the amount found due is not paid within 10 days after receipt of notification of the final determination, the document shall be returned to the filing party.

(Approved by the Office of Management and Budget under control number 3024–0071)

§ 389.24 Schedule of processing fees.

(a) Application—filing fees.

Code and application document	$Fee [1]
Initial Authority—U.S. Certificated Air Carriers (large aircraft):	
1 Interstate scheduled only	7,030
2 Interstate charter only	7,030
3 All-cargo only	7,030
4 Foreign scheduled only	7,200

Code and application document	$Fee [1]
5 Foreign charter only	7,100
6 Interstate and foreign scheduled	7,360
7 Interstate and foreign charter	7,270
8 Amendment to initial application, items 1–7 inclusive	[2] 1,760
Initial Authority—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (small aircraft):	
9 Interstate scheduled only	3,050
10 Foreign scheduled only	3,150
11 Interstate and foreign scheduled	3,310
12 Amendment to initial application, items 9–11 inclusive	[2] 760
Exemptions, Waivers, Transfers—U.S. Certificated Air Carriers (large aircraft):	
13 Pendente Lite Exemption	1,900
14 Waiver to advertise, take reservations, issue tickets or receive payments before effective authority is issued	1,900
15 Waiver of revocation-for-dormancy rule	1,370
16 Notice of intent to resume service when resumption is 30 days or more after cessation of service	4,750
17 Notice of intent to resume service when resumption is less than 30 days after cessation of service	1,370
18 Removal of restriction on authority not involving a change from small to large aircraft	1,650
19 Removal of restriction on authority when a change from small to large aircraft is involved	4,750
20 Change name/trade name with reissuance of certificate	500
21 Trade name registration	240
22 Transfer of certificate: New ownership and/or management	7,730
23 Certificate transfer: Intra-corporate reorganization	650
Exemptions, Waivers, Transfers, Amendments—U.S. Commuter Air Carriers and U.S. Certificated Carriers (small aircraft):	
24 Pendente Lite Exemption	280
25 Waiver to advertise, take reservations, issue tickets or receive payments before effective authority is issued	280
26 Waiver of revocation-for-dormancy rule	280
27 [RESERVED.]	.....
28 Notice of intent to resume service	280
29 [RESERVED.]	.....
30 Change name/trade name with reissuance of certificate	250
31 Trade name registration	65
32 Transfer of certificate or commuter authority: New ownership and/or management	4,070
33 [RESERVED.]	.....
34 Amendment to commuter registration	5
Authority for Charter, Air Taxis, Foreign Tour and Foreign Freight Forwarder Operations:	
35 Public charter prospectus	15
36 Waiver of public charter regulations	15
37 Foreign tour operator registration	16
38 U.S. air taxi registration	15
39 Canadian charter air taxi registration	15
40 Foreign air freight forwarder authority	19
41 Amendment to authorization, items 35–40 inclusive	5
Authorizations, Amendments, Exemptions, Waivers—Foreign Air Carriers:	
42 Foreign air carrier permit, initial or renewal	1,550
43 Exemption—More than 10 flights	400
44 Amendment to application, item 42 or 43	215
45 Exemption—10 or fewer flights	120
46 Special authorization, part 375	110
47 Foreign aircraft permit, part 375	180
48 Charter statement of authorization	350
49 Special authority, part 216	410
50 Emergency cabotage	330
51 Approval of foreign carrier schedule change per bilateral agreement	90
International Route Authority, Exemptions, Frequencies, Charter Allocations:	
52 New, renewal or amendment of certificate authority, carrier selection not required	650
53 New, renewal or amendment of exemption authority, carrier selection not required	480
54 New allocation of frequencies in limited-entry markets, carrier selection not required	630
55 Renewal or frequency allocation in limited-entry markets, carrier selection not required	230
56 Charter allocations for aviation operations into foreign countries, carrier selection not required	180
57 Additional charge if carrier/gateway selection is required, items 52–56 inclusive	[3] 3,490
58 Route or frequency transfer	4,990
Code-Share, Wet-Lease, Transborder and Intermodal Authorizations:	
59 Statement of code-share authorization	1,100
60 Statement of wet-lease authorization	300
61 [RESERVED.]	
62 Approval under Part 222 for foreign carriers to transport international cargo from a U.S. gateway point to an interior U.S. point via trucking, per bilateral agreement	290
Regulation of Tariffs and Rates:	
63 IATA Resolutions, To and/or from U.S.	[4] 84
64 IATA Resolutions, Foreign-to-foreign	[4] 5
65 IATA Resolutions, Technical change	15
66 Exemption to carry traffic not otherwise authorized under tariff in effect	53
67 Permission to file tariffs on less than statutory notice	40
68 Approval of waiver/modification of tariff regulations	12
69 Provide certified copies of tariffs upon request	240

Code and application document	$Fee [1]
Other Exemptions and Authorizations:	
70 Slot exemption at slot-controlled airport	4,340
71 Confidential treatment of documents	380
72 Approval of agreements/antitrust immunity	1,080
73 [RESERVED.]	
74 [RESERVED.]	
75 Service mail rate petition	420
76 Overseas military personnel charter authority	665

[1] Fee is per application except as noted. If application involves multiple items, highest fee applies.
[2] Per amendment.
[3] Payable upon submission of first filing subsequent to DOT notice that a comparative proceeding is necessary.
[4] Per resolution.

(b) Electronic tariff filing fees. The filing fee for one (1) or more transactions proposed in any existing record, or for any new or canceled records, shall be 5 cents per record; *Provided:* That no fee shall be assessed for those records submitted to the Department pursuant to § 221.500(b)(1) of this chapter.

§ 389.25 Special rules for tariff page filings.

(a) Tariffs issued by carriers. The filing fee for tariff pages filed by U.S. air carriers will be charged even if the tariff includes matters involving participating foreign air carriers. It will also be charged if the tariff is issued by a foreign air carrier and includes matters involving participating U.S. air carriers. The fee will not be charged for a blank loose-leaf page unless it cancels matters in the preceding issue of the page.

(b) Tariffs issued by publishing agents. (1) If the tariff is issued for one or more air carriers exclusively, the fee will be charged for each page.

(2) If the tariff is issued for one or more air carriers and one or more foreign air carriers, the fee will be charged for each page, except for those pages that the issuing agent states contain only:

(i) Matters pertaining exclusively to foreign air carriers that have been granted a waiver, or

(ii) Changes in matters pertaining to foreign air carriers that have been granted a waiver and that are included on the same page with other matters that are reissued without change.

(3) The fee will not be charged for a blank loose-leaf page unless it cancels matters in the preceding page.

(4) No fee will be charged when two pages are published back-to-back, one page is not subject to the fee under paragraph (b)(2) of this section, and the page on the reverse is issued without substantive change.

(5) The fee will be charged for two loose-leaf pages containing a correction number check sheet unless all other pages of the tariff are exempt from the fee.

§ 389.26 Refund of fee.

(a) Any fee charged under this part may be refunded in full or in part upon request if the document for which it is charged is withdrawn before final action is taken. Such requests shall be filed in accordance with § 389.23.

(b) Any person may file an application for refund of a fee paid since April 28, 1977, on the grounds that such fee exceeded the Department's cost in providing the service. The application shall be filed with the Chief, Accounting Division, Office of Budget and Policy, Federal Transit Administration, and shall contain: the amount paid, the date paid, and the category of service.

(Approved by the Office of Management and Budget under control number 3024–0071)
Issued in Washington DC, on January 13, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

Note: The following appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910–62–P

Appendix A

FEE COMPUTATION SUMMARY

Item	Current Fee	APPLICATION (JOB) PROCESSING COSTS											PROPOSED FEE [2]
		DIRECT LABOR					OVERHEAD				TOTAL COSTS	COST PER JOB	
		Apps [1]	Hours	Wages	Fringes	Total	Office Operating	Office G & A	General Mngmt.	Total			
1	850												7,030
2	850	5	398.4	15,342	7,264	22,606	2,445	5,812	4,273	12,530	35,136	7,027	7,030
3	670												7,030
4	900	Item 5 + 1.06 hrs. additional processing time @ $90.28 per hr.										7,197	7,200
5	600	4	325.7	12,403	5,873	18,275	1,976	4,698	3,454	10,128	28,404	7,101	7,100
6	1,750	Item 4 + 2.0 hrs. additional processing time @ $83.25 per hr.										7,363	7,360
7	1,450	Item 5 + 2.0 hrs. additional processing time @ $83.25 per hr.										7,267	7,270
8	425/200 [3]	25% of "basic" fee (see Items 1-3).										1,757	1,760 [4]
9	670/850	8	301.0	10,679	5,057	15,736	1,690	4,033	2,953	8,676	24,412	3,051	3,050
10	900	Items 9 + 1.06 hrs. additional processing time @ $90.28 per hr.										3,147	3,150
11	1,750	Item 10 + 2.0 hrs. additional processing time @ $83.25 per hr.										3,314	3,310
12	425	25% of "basic" fee (see Item 9).										763	760 [4]
13	280/360 [5]	4	96.8	3,343	1,583	4,927	521	1,255	910	2,686	7,613	1,903	1,900
14	280/360 [5]												1,900
15	280/360 [5]	4	68.0	2,410	1,141	3,551	375	90548	65567	1,935	5,4862	1,371	1,370
16	280 [6]	3	172.9	6,258	2,963	9,221	977	3,347	1,707	5,031	14,252	4,751	4,750
17	280 [6]	Same as Item 15.											1,370
18	None	2	41.5	1,450	686	2,136	227	545	398	1,170	3,306	1,653	1,650
19	None	Same as Item 16.											4,750
20	56	2	13.0	446	211	657	67	165	118	350	1,007	503	500
21	56	3	9.4	322	152	474	48	120	85	253	727	242	240
22	290/255 [5]	2	195.3	6,769	3,205	9,973	1,070	2,550	1,862	5,483	15,456	7,728	7,730
23	290/255 [5]	3	24.3	857	406	1,262	130	320	227	676	1,939	646	650
24	280	Current fee retained.											280
25	280	Current fee retained.											280
26	280	Current fee retained.											280
27	280 [6]	Reserved.											
28	280 [6]	Same as Item 26.											280
29	None	Reserved.											
30	56	2	6.4	228	108	336	32	82	56	169	505	253	250
31	56	4	3.2	117	55	172	17	42	30	89	261	65	65
32	None	3	157.3	5,372	2,544	7,916	830	2,006	1,451	4,288	12,204	4,068	4,070
33	None	Reserved.											
34	None	25	2.5	59	28	87	9	22	17	48	135	5	5
35	39	52	16.9	334	158	492	73	133	97	304	796	15	15
36	39	Same as Item 35.											15
37	10	3	1.5	21	10	31	3	8	60	17	48	16	16
38	8	Same as Item 39.											15
39	30	14	6.7	93	44	137	15	35	26	77	214	15	15
40	11	1	0.6	8	4	12	1	3	2	7	19	19	19
41	None	30	4.8	67	32	99	11	26	19	55	155	5	5
42	760	1	14.0	584	277	861	232	267	190	689	1,549	1,549	1,550
43	360	3	11.5	448	212	661	178	205	146	529	1,190	397	400

FEE COMPUTATION SUMMARY

Item	Current Fee	APPLICATION (JOB) PROCESSING COSTS											PROPOSED FEE [2]
		DIRECT LABOR					OVERHEAD				TOTAL COSTS	COST PER JOB	
		Apps [1]	Hours	Wages	Fringes	Total	Office Operating	Office G & A	General Mngmt.	Total			
44	215	Current fee retained.											215
45	77	1	1.2	47	22	69	19	21	15	55	124	124	120
46	12	1	1.0	42	20	62	17	19	14	50	112	112	110
47	25	6	9.5	414	196	610	165	189	135	488	1,098	183	180
48	8	19	63.8	2,535	1,200	3,735	979	1,139	800	2,918	5,653	350	350
49	37	2	8.7	324	153	477	116	140	95	350	827	414	410
50	360	4	13.8	509	241	749	196	228	160	584	1,333	333	330
51	None	24	19.0	850	403	1,253	338	389	276	1,003	2,256	942	94
52	900	17	122.6	4,280	2,026	6,306	1,575	1,876	1,294	4,745	11,051	650	650
53	360	87	416.3	16,034	7,592	23,626	6,011	7,095	4,930	18,036	41,663	479	480
54	None	6	38.1	1,479	700	2,79	527	639	435	1,600	3,779	630	630
55	None	8	20.4	711	337	1,048	255	307	208	770	1,818	227	230
56	None	6	10.8	405	192	596	152	180	126	458	1,055	176	180
57	None	24	924.0	36,429	17,249	53,678	13,743	16,313	11,532	41,588	95,266	3,490	3,490
		Marginal Cost: Select (item 57, $3,969 Avg.) - (No Select, items 52-56, $479 Avg.) =											
58	None	1	52.4	1,991	943	2,933	676	833	552	2,061	4,995	4,994	4,990
59	8	25	248.1	10,737	5,084	15,821	3,846	4,615	3,134	11,594	27,415	1,097	1,100
60	8	16	53.9	1,818	861	2,679	699	815	571	2,084	4,763	298	300
61	None	Reserved.											
62	10	3	10.3	331	157	488	132	151	108	391	879	293	290
63	61	20	174.3	7,128	3,375	10,502	2,557	3.075	2,090	7,722	18,225		84 [7]
		Adjustment to per resolution basis: $18,225 total cost / 216 total resolutions =											
64	61	33	21.3	733	347	1,080	291	335	238	864	1,944	59	5 [7]
		Adjustment to per resolution basis: $1,944 total cost / 417 total resolutions =											
65	None	23	4.8	133	63	195	53	61	43	156	352	15	15
66	53	Current fee retained.											53
67	12	95	65.3	1,442	682	2,124	573	659	468	1,700	3,824	40	40
68	12	Current fee retained.											12
69	2+0.15/pg	6	20.8	548	260	808	218	250	178	646	1,454	242	240
70	None	4	207.3	7,571	3,585	11,156	1,251	2,868	2,093	6,212	17,368	4,342	4,340
71	None	2	9.5	339	161	500	48	121	846	253	753	376	380
72	1,080	Current fee retained.											1,080
73	None	Reserved.											
74	None	Reserved.											
75	420	Current fee retained.											420
76	665	Current fee retained.											665

[1] Apps = Applications (jobs) completed.
[2] Proposed fee is per application unless noted otherwise. For administrative convenience, computed fees below $100 are rounded to the nearest $1 and those above $100 are rounded to the nearest $10 in setting proposed amounts.
[3] If foreign scheduled or charter, respectively.
[4] Proposed fee is per amendment.
[5] If foreign air transportation, latter figure applies.
[6] Assumes request for waiver of 45-day advance notice requirement (14 CFR 204.7).
[7] Proposed fee is per resolution.

BILLING CODE 4910-62-C

Justifications of Proposed User Fees

The following sections set forth the legal authority for the special services included in our proposed fee schedule, the nature of the special benefits those services provide to identifiable private recipients, and our rationale for the fee amounts we propose. As described earlier, proposed amounts are based on our analysis of the work processes and costs required to deliver special services to specific identifiable recipients, direct-labor time and cost data on special services for a sample of more than 600 applications that we completed during the period March 1997–July 1998, and the related indirect (overhead) costs distributable to the processing of those applications. When available, applications cost data are applied to compute the proposed fee, defined as the total cost incurred for a specific service divided by the total number of applications completed. If no cost data are available for a particular service (i.e., no applications for that service were completed during the cost-collection period), and we have no other analytic basis to justify a change, the current fee is retained. If a particular type of service has neither current cost data nor an extant fee, no fee is proposed and a schedule item is reserved. In accordance with federal user-charge policy (OMB Circular A–25, par. 8), we intend to continue cost collection and analysis as needed to revisit the fee schedule at least biennially and to revise or update fee items as warranted by changes in our costs or the special services we provide.

Initial Authority—U.S. Certificated Air Carriers (Large Aircraft): Schedule Items 1–8

Our analysis of the processes involved to perform certification services determined that there is a significant difference in processing costs between those prospective air carriers whose applications entail the operation of "large" aircraft (more than 60 seats or more than 18,000 pounds maximum payload) and those whose applications involve "small" aircraft (60 seats or less or 18,000 pounds maximum payload or less). Accordingly, although the statutory basis and nature of special benefits are identical in both instances, we are proposing separate certification categories and fees based on aircraft size, with schedule items 1–8 applied to applications involving large aircraft.

Schedule Item 1. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1). Section 41101(a)(1) of Title 49 of the United States Code ("the Statute") provides that an air carrier may engage in interstate scheduled air transportation of persons, property, or mail only if it has been issued a certificate by the Department of Transportation. Section 41102(b)(1) of the Statute requires the Department to find such an air carrier "fit, willing, and able" to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15) of the Statute. A fee for processing an application for this authority is warranted because the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing interstate scheduled air transportation.

Schedule Item 2. Initial application for certificate authorizing interstate charter air transportation under 49 U.S.C. 41102(a)(3). Section 41101(a)(2) of the Statute provides that an air carrier may engage in interstate charter air transportation of persons, property, or mail only if it has been issued a certificate by the Department. Section 41102(b)(2) requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15). A fee for processing an application for this authority is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing interstate charter air transportation.

Schedule Item 3. Initial application for certificate authorizing interstate all-cargo transportation under 49 U.S.C. 41103. Section 41103 of the Statute provides that the Department may issue to a U.S. citizen an all-cargo air transportation certificate authorizing it to engage in [interstate] all-cargo air transportation. This section requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized. A fee for processing an application for all-cargo authority is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing all-cargo air transportation.

Our analysis of the work flow and time required to process the foregoing applications determined that the resources expended are essentially the same for each type of initial application. For this reason, we are proposing the identical fee for each type, based on the following cost data:

Direct Labor	$22,650.80
Overhead	15,530.44
Total Cost	35,136.24
Applications processed	5
Cost per application	7,027.25
Proposed fee, Items 1–3: per application	$7,030.00

Our analysis also found that there are measurable differences in processing costs depending on whether an applicant requests initial authority to provide (1) Foreign scheduled compared with interstate scheduled service; (2) foreign charter compared with interstate charter service; (3) both interstate and foreign scheduled service; and (4) both interstate and foreign charter service. Accordingly, we are proposing a different fee for each type as explained below.

Schedule Item 4. Initial application for certificate authorizing foreign scheduled air transportation under 49 U.S.C. 41102(a)(1). Section 41101(a)(1) of the Statute provides that an air carrier may engage in foreign scheduled air transportation of persons, property, or mail only if it has been issued a certificate by the Department. Section 41102(b)(1) of the Statute requires the Department to find the carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15) of the Statute. Further, under section 41102(b)(2), the Department is required to find that the proposed foreign air transportation is consistent with the public convenience and necessity and, under section 41102(d), to submit each decision authorizing an application to engage in foreign air transportation to the President for approval in accordance with section 41307. A fee for processing an application under these provisions of the Statute is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing foreign scheduled air transportation.

We did not process any applications under this schedule item during the cost-collection period. However, our analysis determined that foreign scheduled requires greater processing time than foreign charter (see cost data below) because of the need to evaluate compliance with extant bilateral agreements and to prepare the requisite implementing language for the Department's final order authorizing the requested operations. The proposed fee is therefore derived as follows:

Cost per application, Foreign Charter, Item 5 (see below) ..	$7,100.89
Additional processing cost (1.06 hrs. at $90.28 per hr)	95.70

Cost per application	7,196.59
Proposed fee, Item 4: per application	7,200.00

Schedule Item 5. Initial application for certificate authorizing foreign charter air transportation under 49 U.S.C. 41102. Section 41101(a)(2) of the Statute provides that an air carrier may engage in foreign charter air transportation only if it has been issued a certificate by the Department, while section 41102(b)(2) requires the Department to find such an air carrier fit, willing, and able to provide the air transportation to be authorized by the certificate, and to find that the carrier is a U.S. citizen as defined in section 40102(a)(15). Further, under section 41102(b)(2), the Department is required to find that the proposed foreign air transportation is consistent with the public convenience and necessity and, under section 41102(d), to submit each decision authorizing an application to engage in foreign air transportation to the President for approval in accordance with section 41307. A fee for processing an application under these provisions of the Statute is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing foreign charter air transportation.

The proposed fee for this service is determined as follows:

Direct Labor	$18,275.10
Overhead	10,128.44
Total Cost	28,403.54
Applications processed	4
Cost per application	7,100.89
Proposed fee, Item 5: per application	7,100.00

Schedule Item 6. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1) AND foreign scheduled air transportation under 49 U.S.C. 41102(a)(1). Although the basic evaluation process is the same for dual and single-authority applications, the former entails a marginally greater amount of time (2 hours) to analyze the additional service proposal and to process a second authorization. Thus, the proposed fee for this schedule item is derived as follows:

Cost per application, Foreign Scheduled only, Item 4	$7,196.59
Additional processing cost (2 hrs. at $83.25 per hr.)	166.50
Cost per application	7,363.09
Proposed fee, Item 6: per application	7,360.00

Schedule Item 7. Initial application for certificate authorizing interstate charter air transportation under 49 U.S.C. 41102(a)(3) AND foreign charter air transportation under 49 U.S.C. 41102. As with item 6, item 7 involves marginally greater time for processing a second authority. The proposed fee is derived in a similar fashion thusly:

Cost per application, Foreign Charter only, Item 5	$7,100.89
Additional processing cost (2 hrs. at $83.25 per hr.)	166.50
Cost per application	7,267.39
Proposed fee, Item 7: per application	7,270.00

Schedule Item 8. Amendment to initial application, schedule items 1–7 inclusive. Under section 302.5 of its procedural regulations, the Department requires that if an applicant for certificate authority or for all-cargo authority modifies its application substantially, it must file an amendment to the application. An amendment may involve a substantial change to one of the four major elements—ownership/citizenship, management, finances, or compliance disposition—examined by the Department as predicates to approval of the requested authorization, and necessitates significant additional processing effort. A fee for processing such amendments is warranted since the applicant is seeking the special benefit of the Department's consideration of a major change to one or more of the basic elements affecting the applicant's qualifications to conduct revenue-producing air transportation.

Our work-flow analysis determined that each of the four basic elements of a fitness evaluation entails a comparable amount of processing time. Accordingly, the proposed fee for an amendment [1] to an initial application is set at 25 percent of the basic application fee, as follows:

Initial application cost, Items 1–3	$7,027.25
× 25% additional cost =	1,756.81
Proposed fee, Item 8: per amendment	1,760.00

[1] We traditionally have made a distinction between amendments and "supplements." As noted above, an amendment involves a substantive change by the applicant to one of the four basic elements of its initial application—ownership/citizenship, management, finances, or compliance disposition. A supplement, by contrast, involves additional details or elaborative material on the basic elements rather than a substantive change, and is normally submitted at the Department's request rather than the applicant's initiative. We have never imposed a fee for supplements and do not propose to begin doing so now.

Initial Authority—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (Small Aircraft): Schedule Items 9–13

As discussed earlier, we are proposing a separate certification category for applications involving aircraft of 60 seats or less or a maximum payload of 18,000 pounds or less because those applications entail significantly lower processing costs. We also have determined that the time to process applications for commuter authority is essentially the same as that for interstate scheduled service involving small aircraft, and therefore are proposing to combine the two authorities under a single schedule item. The statutory basis and nature of special benefit for commuter authority are presented below. Those for certificated authority involving small aircraft are the same as presented earlier for authorizations involving large aircraft.

Schedule Item 9. Initial application for (1) scheduled passenger air service ("commuter") authority under 49 U.S.C. 41738, or (2) certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1); small aircraft.

Commuter authority. Section 40109(c) authorizes the Department to exempt any person or class of persons from certain provisions of the Statute, such as the requirement to obtain a certificate under section 41101(a). In addition, section 40109(f) provides that an air carrier is exempt from the requirement to obtain a certificate under section 41101(a) if it operates small aircraft and complies with the Department's liability insurance regulations and other requirements. Further, section 41738 of the Statute provides that before an air carrier may provide scheduled air transportation to an eligible place (as defined in section 41736), it must be found to be a U.S. citizen and to be fit, willing, and able to perform the service. A fee for processing an application for this commuter air carrier authority is warranted since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing scheduled air transportation to an eligible place.

Certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. See justification of schedule item 1, supra. Our proposed fee for schedule item 9 is based on the following cost data:

Direct Labor	$15,735.90
Overhead	8,675.60
Total Cost	24,411.50
Applications processed	8

Cost per application	3,051.44
Proposed fee, Items 9, 10: per application	3,050.00

Schedule Item 10. Initial application for certificate authorizing foreign scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. See justification of schedule item 4, supra.

As in the case of foreign scheduled certificated authority involving large aircraft, there is an incremental cost arising from the need to evaluate compliance with bilateral agreements and to prepare implementing language. Our proposed fee is calculated as follows:

Cost per application, Interstate Scheduled only, Item 9	$3,051.44
Additional processing cost (1.06 hrs. at $90.28 per hr.)	95.70
Cost per application	3,147.14
Proposed fee, Item 10: per application	3,150.00

Schedule Item 11. Initial application for certificate authorizing interstate scheduled air transportation under 49 U.S.C. 41102(a)(1) AND foreign scheduled air transportation under 49 U.S.C. 41102(a)(1), small aircraft. An application seeking both interstate and foreign scheduled authority likewise requires marginally greater cost to process dual authorizations. Our proposed fee:

Cost per application, Foreign Scheduled only, Item 10	$3,147.14
Additional processing cost (2 hrs. at $83.25 per hr.)	166.50
Cost per application	3,313.64
Proposed fee, Item 11: per application	3,310.00

Schedule Item 12. Amendment to initial application, schedule items 9–12 inclusive. Finally, as with applications involving large aircraft, an amendment to an initial application for commuter authority or certificated authority involving small aircraft typically entails a substantial change in one of the basic elements evaluated by the Department (ownership/citizenship, management, finances or compliance disposition), and requires approximately one-fourth as much time to process as the initial submission. Our proposed fee is therefore:

Initial application cost, Item 9	$3,051.44
× 25% additional cost =	762.86
Proposed fee, Item 12: per amendment	760.00

Exemptions, Waivers, Transfers—U.S. Certificated Air Carriers, Large Aircraft: Schedule Items 13–23

Schedule Item 13. Application for an exemption from the provisions of 49 U.S.C. 41102 or 41103 in order to conduct air transportation operations before the authority for such operations has been granted (pendente lite exemption). Section 40109(c) of the Statute provides that the Department may grant an air carrier applicant an exemption to engage in air transportation operations without first having obtained a certificate in accordance with section 41102 or section 41103. The Department must determine that a grant of such authority is in the public interest, analyze the qualifications of the applicant, and assess certain consumer protection actions the applicant is required to take in order to be granted a pendente lite exemption. A processing fee for this exemption is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the required certificate authority.

Schedule Item 14. Application for a waiver of the provisions of 14 CFR 201.5 in order to advertise, take reservations, issue tickets, or receive payments before the underlying operating authority is granted. Section 201.5 of Title 14 of the Code of Federal Regulations ("the regulations") provides that an applicant for air carrier certificate authority may not advertise or take reservations for its proposed air service until its application has been approved by the Department, and that the applicant may not issue tickets or receive payments for its proposed air service until its authority has become effective. Section 40109(c) of the Statute, however, authorizes the Department to grant exemptions or waivers from the regulations. Before granting a waiver, the Department must determine that a grant of such authority is in the public interest, analyze the applicant's qualifications, and assess certain consumer protection actions the applicant is required to take. A fee for processing this application for a waiver is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the underlying authority for those operations.

Our analysis of the services of schedule items 13 and 14 determined that both entail essentially the same amount of processing time. Our proposed fee is therefore the same for each item and is based on the following cost data:

Direct Labor	$4,926.53
Overhead	2,686.07
Total Cost	7,612.60
Applications processed	4
Cost per application	1,903.15
Proposed fee, Items 13, 14: per application	1,900.00

Schedule Item 15. Application by a certificated air carrier for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7. Section 204.7 of the Department's regulations provides that if a carrier has been awarded a certificate under section 41102 or 41103 of the Statute, but does not institute the air transportation operations for which it was found fit within one year of the date of its fitness determination, the carrier's authority may be revoked for reasons of dormancy. Similarly, if the carrier institutes air transportation operations but subsequently ceases conducting all of the operations for which it was found fit, its authority is automatically suspended and subject to revocation if the carrier does not recommence operations within one year. If the carrier requires additional time beyond the one-year period, it must file an application for a waiver of the revocation-for-dormancy provisions of section 204.7, together with updated fitness information. A fee for processing an application for a waiver of the revocation for dormancy rule is warranted because the Department must assess the carrier's progress in becoming operational and because the carrier is seeking the special benefit of Departmental action to avert revocation of its authority to conduct revenue-producing air transportation operations.

Our proposed fee for this item is determined as follows:

Direct Labor	$3,550.50
Overhead	1,935.46
Total Cost	5,485.90
Applications processed	4
Cost per application	1,371.48
Proposed fee, Item 15: per application	1,370.00

Schedule Item 16. Notice by a certificated air carrier pursuant to 14 CFR 204.7 of its intent to resume air transportation operations following a cessation of those operations *more than 30 days* after the cessation. Section 204.7 of the regulations provides that if a carrier holding a certificate under section 41102 or 41103 of the Statute ceases conducting all of the air transportation operations for which it was found fit, willing, and able, it may

not resume those operations until its fitness is redetermined by the Department. Under our rules, if the carrier desires to re-institute air transportation operations, it must file a notice of intent to do so along with updated fitness information. A fee for processing a notice of intent to resume service is justified because the Department must re-evaluate the carrier's fitness, including any changes (which often are substantial) that have been made by the carrier since it ceased operations, and because the carrier is seeking the special benefit of the Department's authorization to re-engage in revenue-producing air transportation operations.

Our proposed fee for this item is based on the following:

Direct Labor	$9,220.69
Overhead	5,030.99
Total Cost	14,251.58
Applications processed	3
Cost per application	4,750.56
Proposed fee, Item 16: per application	4,750.00

Schedule Item 17. Application of notice by a certificated air carrier pursuant to 14 CFR 204.7 of its intent to resume air transportation operations following a cessation of those operations *less than 30 days* after the cessation. The regulatory basis and nature of special benefit warranting a user charge for this item are the same as those for item 16 above. However, the fitness issues associated with an applicant that has only recently ceased operations normally are less complex and require less analysis and processing effort because fewer changes are likely to have been made in the areas requiring a fitness review. Our work-flow analysis determined that the time required to process a notice to resume service in less than 30 days is essentially the same as that for a waiver-of-dormancy application, item 15 above. We therefore are proposing the same fee for this item, $1,370 per application.

Schedule Item 18. Application by an air carrier holding a certificate under 49 U.S.C. 41102 or 41103 for the removal of a restriction on its certificate authority when the removal does *not* involve a change from small to large aircraft. An air carrier may apply to have the Department lift a restriction contained in the Terms, Conditions, and Limitations attached to its certificate. Such an application requires the Department to conduct a continuing fitness review under section 41110(e) of the Statute to determine that the carrier will remain fit, willing, and able if the restriction is removed. Since the applicant is seeking the special benefit of being granted broader revenue-producing authority by the Department, a processing fee is warranted. Our proposed fee is determined as follows:

Direct Labor	$2,136.26
Overhead	1,169.68
Total Cost	3,305.94
Applications processed	2
Cost per application	1,652.97
Proposed fee, Item 18: per application	1,650.00

Schedule Item 19. Application by an air carrier holding a certificate under 49 U.S.C. 41102 or 41103 for the removal of a restriction on its certificate authority when the removal *does* involve a change from small to large aircraft. The statutory basis and nature of special benefit warranting a user charge for this schedule item are the same as for item 18 above. Application processing costs, however, are substantially higher because a change from small to large aircraft has a major impact on the air carrier's management and financial fitness. Although we did not complete any applications for this schedule item during the cost-collection period, our work-flow analysis determined that the process for evaluating a removal of a restriction involving a change from small to large aircraft is essentially the same as the evaluation process for a notice to resume service more than 30 days after cessation (item 16, *supra*). As in the latter case, the applicant under this schedule item typically undergoes substantial changes in its management team and financial structure that necessitate the Department's scrutiny. Thus, the proposed fee for item 19 is the same as for item 16, $4,750 per application.

Schedule Item 20. Application by a certificated air carrier under 14 CFR Part 215 to register a name or trade name involving the reissuance of its certificate. Part 215 of the Department's regulations provides that a carrier holding a certificate under section 41102 or 41103 of the Statute may not hold itself out as a provider of air transportation service in any name that has not been registered with the Department. A name-change application requires the Department to (1) search its records for any other air carriers with the same or a similar name, (2) advise the applicant accordingly so that it may, in turn, notify any such similarly named carriers of its intent to register the name, and (3) reissue the carrier's certificate in the new name. A fee for this service is warranted since the carrier is seeking the special benefit of being authorized to engage in revenue-producing air transportation operations under a different name or trade name than previously authorized.

Our proposed fee for this schedule item is as follows:

Direct Labor	$656.52
Overhead	350.23
Total Cost	1,006.75
Applications processed	2
Cost per application	503.38
Proposed fee, Item 20: per application	500.00

Schedule Item 21. Application for trade name registration (certificate reissuance not required). While the legal basis and nature of special benefit for this item are the same as for item 20 above, the proposed fee is substantially lower because only a notice of the registration must be issued, resulting in materially lower processing costs:

Direct Labor	$473.95
Overhead	252.98
Total Cost	726.93
Applications processed	3
Cost per application	242.31
Proposed fee, Item 21: per application	240.00

Schedule Item 22. Joint application under 49 U.S.C. 41105 for the transfer of interstate certificate authority. Section 41105 of the Statute provides that a certificate issued under section 41102 or 41103 of the Statute may be transferred only upon the Department's finding that the transfer is in the public interest.[2] Moreover, the Department must certify to the Congressional committees having jurisdiction over matters of commerce that the transfer will not have an adverse effect on the viability of the carriers involved, competition in the domestic airline industry, or the U.S. trade position in international air transportation. A fee is warranted for approval of a certificate transfer because, in addition to these findings, the Department must determine that the transferee is fit to conduct the operations authorized by the certificate to be transferred and, further, because the applicants are seeking the special benefit of the Department's approval of an action needed by (1) the certificate transferee to engage in the revenue-producing air transportation authorized by the certificate and (2) the transferor so that it may realize any compensation provided for in the transfer agreement.

[2] This transfer of interstate certificate authority is distinct from the transfer of foreign route/frequency authority. See item 58, below, for the latter.

Our proposed fee for this item is based on the following:

Direct Labor	$9,973.37
Overhead	5,482.51
Total Cost	15,455.88
Applications processed	2
Cost per application	7,727.94
Proposed fee, Item 22: per application	7,730.00

Schedule Item 23. Application to 49 U.S.C. 41105 involving an intra-corporate reorganization only (e.g., reincorporation in a different state with no changes of ownership or management). In contrast to item 22 above, an air carrier in this instance is seeking the special benefit of the Department's approval of a comparatively minor change to the certificated authority that enables revenue-producing air transportation, and the certificate transfer triggered by the carrier's intra-corporate reorganization entails a less extensive fitness review. The proposed fee for item 23 is therefore substantially lower than for item 22, and is based on the following cost data:

Direct Labor	$1,262.38
Overhead	676.29
Total Cost	1,938.67
Applications processed	3
Cost per application	646.22
Proposed fee, Item 23: per application	650.00

Exemptions, Waivers, Transfers—U.S. Commuter Air Carriers and U.S. Certificated Air Carriers (Small Aircraft): Schedule Items 24–34

As in the case of initial applications, we are proposing to group commuter air carriers and certificated air carriers using small aircraft into a separate category for exemptions, waivers and transfers. The structure of this category is similar to that of items 13–23 above regarding authorizations involving large aircraft.

Schedule Item 24. Application for an exemption from the provisions of 49 U.S.C. 41738 or 41102 to conduct scheduled air transportation operations before the authority for such operations has been granted (pendente lite exemption). Section 40109(c) of the Statute authorizes the Department to grant an air carrier applicant an exemption to engage in air transportation operations without first having obtained a certificate or commuter authorization. The Department must determine that a grant of such authority is in the public interest, analyze the qualifications of the applicant, and assess certain consumer protection actions the applicant is required to take in order to be granted a pendente lite exemption. A processing fee for this exemption is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the required certificate or commuter authority.

Schedule Item 25. Application for a waiver of the provisions of 14 CFR 201.5 in order to advertise, take reservations, issue tickets, or receive payments before the underlying operating authority is granted. Section 201.5 of the Department's regulations provides that an applicant for commuter air carrier or certificate authority may not advertise or take reservations for its proposed air service until its application has been approved by the Department, and that the applicant may not issue tickets or receive payments for its proposed air service until its authority has become effective. Section 40109(c) of the Statute, however, authorizes the Department to grant exemptions or waivers from the regulations. Before granting a waiver, the Department must determine that a grant of such authority is in the public interest, analyze the applicant's qualifications, and assess certain consumer protection actions the applicant is required to take. A fee for processing this application for waiver is justified since the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation before it has obtained the underlying authority for those operations.

Schedule Item 26. Application for a waiver of the revocation-for-dormancy provisions of 14 CFR 204.7 Section 204.7 of the Department's regulations provides that if a carrier has been awarded commuter authority under section 41738 of the Statute, or certificate authority under section 41102, but does not institute the air transportation operations for which it was found fit within one year of the date of its fitness determination, the carrier's authority may be revoked for reasons of dormancy. Similarly, if the carrier institutes air transportation operations but subsequently ceases conducting all of the operations for which it was found fit, its authority is automatically suspended and subject to revocation if the carrier does not recommence operations within one year. If the carrier requires additional time beyond the one-year period, it must file an application for a waiver of the revocation-for-dormancy provisions of section 204.7, together with updated fitness information. A fee for processing an application for a waiver of the revocation-for-dormancy rule is warranted because the Department must assess the carrier's progress in becoming operational and because the carrier is seeking the special benefit of Departmental action to avert revocation of its authority to conduct revenue-producing air transportation operations.

No applications under schedule items 25, 26 or 27 were processed during our cost-collection period, and we have no other basis on which to propose a change to the fees currently in force or to assume that fee costs have changed. Accordingly, the current fee of $280 per Application is retained for each item.

Schedule Item 27. [Reserved.]

Schedule Item 28. Application of notice pursuant to 14 CFR 204.7 of the intent to resume air transportation operations following a cessation of those operations. Section 204.7 of the regulations provides that if a carrier holding commuter authority under section 41738 of the Statute, or a carrier holding certificate authority under section 41102, ceases conducting all of the air transportation operations for which it was found fit, willing, and able, it may not resume those operations until its fitness is redetermined by the Department. Under our rules, if the carrier desires to re-institute air transportation operations, it must file a notice of intent to do so along with updated fitness information. A fee for processing a notice of intent to resume service is justified because the Department must re-evaluate the carrier's fitness, including any changes (which often are substantial) that have been made by the carrier since it ceased operations, and because the carrier is seeking the special benefit of the Department's authorization to re-engage in revenue-producing air transportation operations.

No applications from commuter air carriers or certificated air carriers operating small aircraft were processed under this item during our cost-collection period. However, our analysis determined that the time required to process a notice to resume service is essentially the same as that for a waiver-of-dormancy application, item 26 above. We therefore are proposing the same fee for item 28, $280 per Application.

Schedule Item 29. [Reserved.]

Schedule Item 30. Application under 14 CFR Part 215 to register a name or trade name involving the reissuance of a certificate or commuter authorization. Part 215 of the Department's regulations provides that a carrier holding commuter authority under section 41738 of the Statute, or certificate authority under section 41102, may not hold itself out to the public as a provider of air transportation service in any name that has not been registered with the Department. A processing fee

for a name or trade name registration application requires the Department to (1) search its records for any other air carriers with the same or a similar name, (2) advise the applicant accordingly so that it may, in turn, notify any such similarly named carriers of its intent to register the name, and (3) reissue the carrier's authority in the new name. A fee for this service is warranted since the carrier is seeking the special benefit of being authorized to engage in revenue-producing commuter or certificated air carrier operations under a different name or trade name than previously authorized.

Our proposed fee for this item is based on the following:

Direct Labor	$335.72
Overhead	169.31
Total Cost	505.03
Applications processed	2
Cost per application	252.52
Proposed fee, Item 30: per application	250.00

Schedule Item 31. Application under 14 CFR Part 215 and section 298.36 requesting the Department to accept a registration of a name. This schedule item is akin to item 30 above in terms of its regulatory basis and nature of special benefit, but is significantly less costly to process because only a notice of the registration must be issued. Our proposed fee therefore is lower, and is based on:

Direct Labor	$171.86
Overhead	88.65
Total Cost	260.51
Applications processed	4
Cost per application	65.13
Proposed fee, Item 31: per application	65.00

Schedule Item 32. Joint application under 49 U.S.C. 41105 for the transfer of certificate or commuter air carrier authority. Section 41105 of the Statute provides that a certificate authority issued under section 41102 of the Statute or a commuter authority issued under section 41738 may be transferred only upon the Department's approval that the transfer is in the public interest.[3] Moreover, the Department must certify to the Congressional committees having jurisdiction over matters of commerce that the transfer will not have an adverse effect on the viability of the carriers involved, competition in the domestic airline industry, or the U.S. trade position in international air transportation. A fee is warranted for approval of a certificate or commuter authorization transfer because, in addition to these findings, the Department must determine that the transferee is fit to conduct the operations authorized by the certificate or commuter authority to be transferred and the applicants are seeking the special benefit of the Department's approval of an action needed by (1) the transferee to engage in the revenue-producing air transportation authorized and (2) the transferor so that it may realize any compensation provided for in the transfer agreement.

Our proposed fee for this item is based on the following:

Direct Labor	$7,916.28
Overhead	4,287.70
Total Cost	12,203.98
Applications processed	3
Cost per application	4,067.99
Proposed fee, Item 32: per application	4,070.00

Schedule Item 33. [Reserved.]

Schedule Item 34. Application for approval of amendment to commuter air carrier registration under 14 CFR Part 298. Section 298.23 of the Department's regulations requires a commuter air carrier to submit an amendment to its registration form (OST Form 4507) within 30 days of undergoing any change (*e.g.*, in location, operations conducted, or aircraft fleet) that would make obsolete the information currently on file with the Department. A processing fee for the filing of an amended OST Form 4507 is warranted since the carrier is seeking the special benefit of the Department's approval of changes it has undergone to continue to engage in revenue-producing commuter operations.

Our proposed fee for this schedule item is based on:

Direct Labor	$87.25
Overhead	48.75
Total Cost	136.00
Applications processed	25
Cost per application	5.44
Proposed fee, Item 34: per application	5.00

Authority for Charter, Air Taxi, Foreign Tour and Foreign Freight Forwarder Operations: Schedule Items 35–41

Schedule Item 35. Application for acceptance of a public charter prospectus. Section 41104 of the Statute provides that the Department may prescribe a regulation restricting the marketability, flexibility, accessibility or variety of charter air transportation provided under a certificate or order issued under section 41102 of the Statute, but only to the extent required by the public interest. Parts 380, 207, 208 and 212 of the Department's regulations require the filing of a prospectus describing the economic and consumer protections that the applicant must provide to members of the public purchasing its charter transportation. A processing fee for a public charter prospectus is warranted since the applicant, a direct air carrier or indirect air carrier, is seeking the special benefit of the Department's authorization to conduct revenue-producing air charter service.

The proposed fee for this item is as follows:

Direct Labor	$491.81
Overhead	304.17
Total Cost	795.98
Applications processed	52
Cost per application	15.31
Proposed fee, Item 35: per application	15.00

Schedule Item 36. Application for waiver of charter regulations. Under section 380.3(e) of the public charter regulations, the Department can approve an application submitted by a public charter operator or a direct air carrier for a waiver of the provisions of the charter regulations, provided that a waiver is found to be in the public interest. A fee for processing an application for this waiver is justified since the applicant is seeking the special benefit of the Department's consent to be relieved of certain filing or other requirements in the conduct of revenue-producing charter operations.

No applications under this schedule item were processed during the cost-collection period. However, we have concluded that the current fee of $39 is too high in light of our proposed fees for charter-type authorizations generally (items 35, 37–40). For this reason, we are proposing to reduce the fee from $39 to $15 per application.

Schedule Item 37. Application for approval of foreign charter operator registration. Under section 380.60 of the public charter regulations, foreign charter operators desiring to organize public charter group transportation originating in the United States must register with, and obtain approval of, the Department, including a determination by the Department whether effective reciprocity exists with the homeland of the applicant. The registration application, which must describe the ownership of the company, is held for 28 days, during which time any person may file an objection. A processing fee is warranted since the

[3] This transfer of interstate certificate or commuter authority is distinct from the transfer of foreign route/frequency authority. See item 58, below, for the latter.

applicant is seeking the special benefit of the Department's approval to advertise, organize, provide, sell and/or offer U.S.-originating public charters.

The proposed fee for this item is as follows:

Direct Labor	$30.90
Overhead	17.25
Total Cost	48.15
Applications processed	3
Cost per application	16.05
Proposed fee, Item 37: per application	16.00

Schedule Item 38. Application for U.S. air taxi registration. Under part 298 of the Department's regulations, any company proposing to operate small aircraft (60 seats or less than or 18,000-pounds payload or less) in on-demand air service must first register with the Department and file evidence of effective liability insurance coverage meeting the requirements of Part 205. Acceptance of the registration relieves theses operators from certain provisions and requirements of Subtitle VII of the Statute, including the requirement to obtain a certificate under section 41102. Since the applicant seeks the special benefit of the Department's approval to conduct revenue-producing air taxi operations, a processing fee is warranted.

In October 1997, the responsibility for processing applications for air taxi registrations was transferred from the Office of the Secretary to the Federal Aviation Administration. As a consequence, no data on the cost to process applications under this schedule item were collected. Nevertheless, we are proposing that the same fee established below for Canadian charter air taxi registrations—$15 per Application—also apply to applications for U.S. air taxi registration. The registration requirements and process involved in both types of applications are quite similar, with the exception that applications for U.S. air taxi registration, unlike those for Canadian charter air taxis, are not required to be held by the Department for a public-comment period of 28 days. The cost to the Department of this "holding" requirement is not material, however, since few, if any, objections are filed.

Schedule Item 39. Application for Canadian charter air taxi registration. Under Part 294 of the Department's regulations, a Canadian charter air taxi operator seeking authority to operate between Canada and the United States must file a registration request with the Department accompanied by evidence of effective liability insurance coverage. The regulation exempts these operators from certain provisions of Subtitle VII of the Statute and establishes rules applicable to their operations in the United States. Because the applicant seeks the special benefit of the Department's authorization to operate small aircraft across the Canadian border into the United States for revenue-generating purposes, a processing fee is justified.

Our proposed fee for this item:

Direct Labor	$137.20
Overhead	76.59
Total Cost	213.79
Applications processed	14
Cost per application	15.27
Proposed fee, Item 39: per application	15.00

Schedule Item 40. Application for approval of foreign air freight forwarder registration. Under Part 297 of the Department's regulations, a foreign air freight forwarder must file and receive approval to engage indirectly in interstate or foreign air transportation of property. Acceptance of the application also relieves carriers from certain provisions of Subtitle VII of the Statute. If the registration is approved, the applicant is permitted to arrange for the transportation of property from the point of origin to the point of destination using the services of direct air carriers. The processing fee is warranted since the applicant is seeking the special benefit of the Department's approval of its registration to engage in revenue-producing activity.

Our proposed fee for this schedule item is as follows:

Direct Labor	$11.95
Overhead	6.67
Total Cost	28.62
Applications processed	1
Cost per application	18.62
Proposed fee, Item 40: per application	19.00

Schedule Item 41. Application for amendment to registration, items 36–40 inclusive. Under section 380.25 (c) and (d) of the Department's regulations, a public charter operator may request that an amendment be made to its original prospectus to add or cancel flights, or to change flight dates, origin or destination points, or the direct air carrier, securer or depository bank. Further, under section 380.65, a foreign charter operator must notify the Department of any change in its operations or ownership and amend its registration accordingly. Likewise, under sections 294.22 and 298.23, a Canadian charter air taxi and U:S. air tax operator, respectively, must notify the Department of changes in the information contained in its registration and, under section 297.94, a foreign air freight forwarder must file and have approved changes to its registration. A processing fee for these various types of amendments is warranted since, in each instance, the operator is seeking the special benefit of the Department's approval of changes to the authority enabling the operator to continue to engage in revenue-producing operations.

Our analysis of these various types of amendment applications determined that they entail essentially the same processes. Accordingly, we are proposing that the same fee be applied to each type based on the following cost data:

Direct Labor	$99.21
Overhead	55.37
Total Cost	154.58
Applications processed	30
Cost per amendment	5.15
Proposed fee, Item 41: per application	5.00

Authorizations, Amendments, Exemptions—Foreign Air Carriers: Schedule Items 42–51

Schedule Item 42. Application for an initial, or for renewal of a previously authorized, foreign air carrier permit under 49 U.S.C. 41301. Section 41301 of the Statute requires a foreign air carrier to have a permit from the Department to engage in air transportation operations to a point or points in the United States or its possessions. Section 41302 of the Statute requires the Department to find such a foreign air carrier fit, willing, and able to provide the foreign air transportation to be authorized by the permit, and to find that it has been designated by the government of its country to provide the foreign air transportation under an agreement with the United States Government, or that the foreign air transportation to be provided under the permit will be in the public interest. A fee for processing an application permit is warranted since the foreign air carrier is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation service to a U.S. point.

A foreign air carrier permit may be issued for a specified term that will require renewal, which normally involves a re-determination of carrier fitness and a processing effort comparable to that for an initial authorization. Because an applicant for renewal seeks the special benefit of continuing its authority to conduct

revenue operations in foreign air transportation, a processing fee is warranted.

Our proposed fee for an initial permit or for renewal of a previously authorized permit is based on the following:

Direct Labor	$860.56
Overhead	688.71
Total Cost	1,549.27
Applications processed	1
Cost per application	1,549.27
Proposed fee, Item 42: per application	1,550.00

Schedule Item 43. Application by foreign air carrier for exemption from the provisions of 49 U.S.C. 41301. Section 40109(c) of the Statute provides that the Department may grant a foreign air carrier applicant an exemption to conduct (more than 10) flights to a U.S. point or points without its first having obtained a foreign air carrier permit as required by section 41301. A processing fee for an application for this exemption is justified because the foreign air carrier is seeking the special benefit of the Department's temporary authorization to conduct revenue-producing air transportation to a U.S. point in circumstances where obtaining a foreign air carrier permit would take too long or otherwise be inappropriate.

Our proposed fee for this item is based on the following:

Direct Labor	$660.85
Overhead	528.86
Total Cost	1,189.71
Applications processed	3
Cost per application	396.57
Proposed fee, Item 43: per Application	400.00

Schedule Item 44. Amendment by a foreign air carrier of either its application for a permit or its application for an exemption to conduct more than 10 flights. If an applicant for a foreign air carrier permit under section 41301 or for an exemption under section 40109(c) of the Statute modifies its application substantially, it must file an amendment to such application. Such amendments trigger significant additional processing time, and a fee to cover processing costs is warranted since the applicant receives the special benefit of additional or different authority for revenue-producing operations, while saving the time and expense that a new application would entail.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of $215 per Application is retained.

Schedule Item 45. Application by foreign air carrier for an exemption from the provisions of 49 U.S.C. 41301 to conduct ten or fewer flights. Section 40109(c) of the Statute provides that the Department may grant a foreign air carrier an exemption from the need to obtain a foreign air carrier permit as required by section 41301 of the Statute in order to conduct flights to a U.S. point or points. Department rules (14 CFR 302.401 *et seq.*) provide for simplified application procedures for certain exemptions of 10 or fewer flights. A fee for processing such an exemption application is justified because the foreign air carrier is seeking the special benefit of the Department's authorization to temporarily conduct revenue-producing air transportation to a U.S. point and to defer the time and financial expenditures required to obtain a foreign air carrier permit.

Our proposed fee for this item is based on the following:

Direct Labor	$69.09
Overhead	55.29
Total Cost	124.38
Applications processed	1
Cost per application	124.38
Proposed fee, Item 45: per Application	120.00

Schedule Item 46. Application for a special authorization under 14 CFR Part 375. Section 41703 of the Statute and section 375.70 of the regulations provide that the Department may authorize particular flights that are not within an applicant's other authority and not appropriately the subject of an exemption under 49 U.S.C. 40109. The Department must determine that the proposed operations are fully consistent with the applicable law, that the applicant's homeland grants a similar privilege with respect to U.S. operators, and that the proposed operation is in the U.S. public interest. A fee in connection with an application for such a special authorization is warranted because the applicant is seeking the special benefit of permission to engage in an air operation of value that is not otherwise authorized.

Our proposed fee for this item is based on the following:

Direct Labor	$62.34
Overhead	48.89
Total Cost	112.23
Applications processed	1
Cost per application	112.23
Proposed fee, Item 46: per Application	110.00

Schedule Item 47. Application for a foreign aircraft permit under 14 CFR Part 375. Section 41703 of the Statute and section 375.40 of the Department's regulations state that commercial air operations utilizing foreign civil aircraft may be undertaken in the U.S. only if a permit issued by the Department is carried aboard the aircraft. A fee to offset the costs of processing a permit application is warranted since the applicant is seeking the special benefit of the Department's authorization to operate a foreign aircraft in air commerce in the United States.

Our proposed fee for this item is based on the following:

Direct Labor	$609.84
Overhead	488.06
Total Cost	1,097.90
Applications processed	6
Cost per application	182.98
Proposed fee, Item 47: per Application	180.00

Schedule Item 48. Application for foreign carrier charter statement of authorization under 14 CFR Part 212. Foreign air carrier permits issued under 49 U.S.C. 41302 require that charter flights must be conducted in accordance with 14 C.F.R. Part 212. Part 212 provides that certain charters require prior approval in the form of a Statement of Authorization, which the Department grants if it finds that the charters will be in the public interest. A fee to defray processing costs is warranted since the applicant is seeking the special benefit of authority to conduct revenue-producing operations in foreign air transportation.

Our proposed fee for this item is based on the following:

Direct Labor	$3,735.21
Overhead	1,917.79
Total Cost	6,653.00
Applications processed	19
Cost per application	350.16
Proposed fee, Item 48: per Application	350.00

Schedule Item 49. Application for special authorization under 14 CFR Part 216. Unless specifically authorized by its section 41302 permit, a foreign air carrier may not commingle traffic moving in foreign air transportation with traffic not moving in foreign air transportation unless it has a Special Authorization under Part 216. This situation arises when a foreign carrier serves between a U.S. point and a homeland point via an intermediate point. The intermediate-homeland leg of the flight is called a "blind sector" with respect to U.S. air transportation,

because local traffic on that segment is not carried to or from the United States and is not in air transportation as defined in the Statute. Without the ability to commingle traffic on all flight segments, a carrier would lose valuable revenue. Thus the applicant for a Special Authorization to commingle blind-sector traffic seeks a special benefit, justifying a processing fee.

Our proposed fee for this item is based on the following:

Direct Labor	$477.27
Overhead	350.05
Total Cost	827.32
Applications processed	2
Cost per application	413.66
Proposed fee, Item 49: per application	410.00

Schedule Item 50. Application for emergency cabotage exemption under 49 U.S.C. 40109(g). Section 41701 of the Statute prohibits foreign civil aircraft from carrying revenue traffic between two U.S. points ("cabotage" traffic) unless an exemption is granted under section 40109(g), which deals specifically with emergency cabotage. These applications are addressed separately from other exemptions, because on the one hand, the authority at issue in a given application usually is narrower, but on the other hand, the statutory criteria for a grant are more detailed and specialized, and the compressed timeframe for consideration requires more intense application of staff resources than do most exemptions in foreign air transportation. A processing fee is warranted since applicants for this authority are seeking the special benefit of performing otherwise prohibited air transportation.

Our proposed fee for this item is based on the following:

Direct Labor	$749.35
Overhead	583.50
Total Cost	1,332.85
Applications processed	4
Cost per application	333.21
Proposed fee, Item 50: per application	330.00

Schedule Item 51. Filing by a foreign air carrier of its proposed schedule for which approval is required under an international agreement. Section 40105(b) of the Statute provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements provide that the air carriers of each country file their proposed schedules for the approval of the other country's aviation authorities. Air carriers required to file schedules in this way may not perform air transportation without submitting their schedules for review. A processing fee for schedule filings is warranted since the air carrier is seeking the special benefit of the Department's approval of its proposed schedule for engaging in revenue-producing air transportation.

Our proposed fee for this item is calculated as follows:

Direct Labor	$1,253.03
Overhead	1,002.61
Total Cost	2,255.64
Filings processed	24
Cost per filing	93.99
Proposed fee, Item 51: per filing application	94.00

U.S. Air Carrier International Route Authority, Exemptions, Frequencies, and Charter Allocations: Schedule Items 52–58

The various items in this schedule category involve the authorization of international air service rights. Under the United States' pro-competitive international aviation policy (60 FR 21841), the Department routinely grants such rights to all qualified applicants, except in circumstances when the availability of rights is artificially constrained. In the absence of constraints, the Department requires only a simple application and acts to confer authority expeditiously. When limits apply, however, as in the case of restrictive bilateral agreements, and when applicants seek more authority than can be granted, we must conduct a comparative proceeding to select carriers (and in some cases gateways) for distribution of the limited rights available. Compared with a non-contested proceeding, a comparative proceeding typically entails substantially higher processing costs because each applicant submits a detailed service proposal with supporting data, which in turn are analyzed by the Department and by competing applicants. Thereafter, the Department issues a tentative decision; applicants respond to that decision and to one another's arguments; and following consideration and analysis of all pleadings, the Department issues its final decision.

In the interest of cost recovery, we are proposing that each applicant initially pay the processing fee in effect for the relevant non-contested air service rights (see items 52–56 below) and, if a comparative proceeding proves necessary, remit an additional fee to cover the additional cost (see item 57).

Schedule Item 52. Application for new, amended or renewed certificate authority, comparative proceeding not required. Section 41101 of the Statute provides that an air carrier may perform air transportation only if it holds a certificate of public convenience and necessity authorizing the transportation. A processing fee for applications under this item is warranted because in each instance of new certificate authority, amendment to an extant authority, or certificate renewal, the applicant is seeking the special benefit of the Department's authorization to commence, change or continue revenue-producing air transportation service.

The processing cost data collected under this schedule item do not indicate a need for distinct processing fees among applications for new, amended or renewed certificate authority. Therefore, we are proposing a single fee as follows:

Direct Labor	$6,306.10
Overhead	4,774.50
Total Cost	11,050.60
Applications processed	17
Cost per application	650.04
Proposed fee, Item 52: per application	650.00

Schedule Item 53. Application for new, renewal or amendment of exemption authority, comparative proceeding not required. Section 40109(c) of the Statute provides that an air carrier may obtain an exemption from section 41101 authorizing it to perform air transportation without a certificate of public convenience and necessity. A processing fee for this exemption authority is warranted since, in each instance of new exemption authority, amended authority, or exemption renewal, the applicant is seeking the special benefit of the Department's authorization to commence, change or continue revenue-producing air transportation without having a certificate of public convenience and necessity.

As with applications for certificate authority (item 52, *supra*), our processing cost data do not indicate a need for distinct fees among new, amended and renewed exemption authority, and we are proposing the following single fee:

Direct Labor	$23,626.46
Overhead	18,036.22
Total Cost	41,662.68
Applications processed	87
Cost per application	478.88
Proposed fee, Item 52: per application	480.00

Schedule Item 54. Application for initial allocation of scheduled-service

frequencies in limited-entry market, comparative proceeding not required. Section 40105(b) of the Statute provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements limit the capacity of service, usually expressed in terms of number of weekly flights or "frequencies" of various-sized aircraft that U.S. air carriers may fly on the authorized routes. The Department must allocate the available frequencies among applicant U.S. carriers and establish the extent and duration of those allocations, taking public interest considerations into account. Because the applicant for scheduled-service frequencies is seeking the special benefit of the Department's authorization to conduct revenue-producing air transportation, a processing fee is warranted.

Our proposed fee for this schedule item is a follows:

Direct Labor	$2,178.93
Overhead	1,600.09
Total Cost	3,779.02
Applications processed	6
Cost per application	629.84
Proposed fee, Item 54: per application	630.00

Schedule Item 55. Application for renewal of allocation of scheduled-service frequencies in limited-entry market, comparative proceeding not required. Initial allocations of limited scheduled-service frequencies (item 54, *supra*) are made for finite terms, typically one or two years, because of the need to weigh the effects of any changes in market conditions. When the need for allocation persists, limited-term allocations are renewed. Since the applicant for frequency renewal seeks the special benefit of the Department's approval to continue revenue-producing air transportation, a processing fee is warranted. In contrast to the case of certificate or exemption authority (items 52 and 53, *supra*), the cost of processing an application for renewal of a frequency allocation is materially lower than that for the initial frequency award. Accordingly, the proposed fee for a renewal application is substantially lower:

Direct Labor	$1,047.80
Overhead	769.95
Total Cost	1,817.75
Applications processed	8
Cost per application	227.22
Proposed fee, Item 55: per application	230.00

Schedule Item 56. Application for allocation of limited charter flights, comparative proceeding not required. Section 40105(b) provides that the Department shall, in carrying out Part A of the Statute, act consistently with applicable international agreements. Some bilateral aviation agreements limit, usually on a seasonal or annual basis, the number of charter flights that may be operated. The Department must allocate the available charters among applicant U.S. carriers before each charter allocation period, balancing the applicants' expectations against their historical performance and the need to reserve a portion of the periodic allocation for emergencies or other unforeseen demand. During the charter period, carriers must relinquish unused allocations, and others may apply for additional flights. Since the applicant seeks the special benefit of the Department's authorization to conduct revenue-producing charter air transportation, a processing fee is justified.

Our proposed fee for this schedule item is a follows:

Direct Labor	$596.41
Overhead	458.14
Total Cost	1,054.55
Applications processed	6
Cost per application	175.76
Proposed fee, Item 56: per application	180.00

Schedule Item 57. Additional charge for an application for limited authorities (Items 52–56 inclusive) when a comparative proceeding *is* required. Schedule items 52–56 above apply to various forms of U.S. carrier authority to serve foreign markets. As we describe earlier, when applications exceed available rights, it falls to the Department to conduct a comparative proceeding to determine the distribution of those rights among applicants, resulting in significant additional processing costs. It often is not known at the time of initial application whether selection procedures will be required, because even when rights are limited, the applications in aggregate may not exceed the available rights. Therefore, we are proposing that each applicant initially pay the fee applicable per items 52–56 above, and then remit an additional fee with its first filing subsequent to the Department's notice that a comparative proceeding is necessary.

Our proposed additional fee in the event of a comparative proceeding is established as follows:

	Applications	Total cost	Cost per application
Carrier/gateway selection required	24	$95,266.01	$3,969.42
Selection not required (items 52–56)	124	59,364.60	478.75
Incremental cost			$3,490.67
Proposed fee, Item 57: $3,490 per application			

Schedule Item 58. Application to transfer foreign route/frequency authority. Foreign route authority granted to a U.S. air carrier under 49 U.S.C. 41102 or 40109, along with any frequency allocation required for its exercise, may not be transferred to another air carrier without the Department's approval. A fee for processing an application for transfer is warranted since the applicant is seeking the special benefit of the Department's approval of an action needed by (1) the transferee to engage in the revenue-producing air transportation under the authority and (2) the transferor so that it may receive any compensation provided for in the transfer agreement.

Our proposed fee for this item is calculated as follows:

Direct Labor	$2,993.01
Overhead	2,061.49
Total Cost	4,994.50
Applications processed	1
Cost per application	4,994.50
Proposed fee, Item 58: per application	4,990.00

Code-Share, Wet-Lease, Transborder and Intermodal Authorizations: Schedule Items 59–62

Schedule Item 59. Application for code-share Statement of Authorization.

Schedule Item 60. Application for wet-lease Statement of Authorization.

U.S. air carrier certificates issued under 49 U.S.C. 41102 and foreign air carrier permits issued under 49 U.S.C. 41302 require that code-share/wet-lease flights must be conducted in accordance with Part 212 of our rules. Part 212 provides that certain such arrangements require specific prior approval in the form of a Statement of Authorization, which the Department grants if it finds that approval will be in the public interest. A processing fee is warranted because the applicant is seeking the special benefit of the Department's authorization to conduct an additional type of revenue-producing operations in foreign air transportation.

While code shares and wet leases require the same form of authorization and involve a similar special benefit, their application processing costs differ materially. We therefore are proposing different fees for schedule items 59 and 60, as follows:

Code Share	
Direct Labor	$15,820.70
Overhead	11,594.31
Total Cost	27,415.01
Applications processed	25
Cost per resolution	1,096.60
Proposed fee, Item 59: per application	1,100.00
Wet Lease	
Direct Labor	2,679.05
Overhead	2,084.40
Total Cost	4,763.45
Applications processed	16
Cost per application	297.72
Proposed fee, Item 60: per application	300.00

Schedule Item 61. [Reserved.]

Schedule Item 62. Application for Statement of Authorization to conduct intermodal services provided for in bilateral agreement. Part 222 of the Department's regulations provides that a foreign air carrier, whose homeland government has executed an agreement with the United States exchanging air freight intermodal rights, may obtain authorization to perform such services in the United States by applying to the Office of International Aviation. (Part 222 also provides that a foreign air carrier seeking such authority *not* covered by a bilateral agreement must apply for an exemption under 49 U.S.C. 40109, in which instance the application is processed under schedule item 53, exemption authority, above.) The Department grants an intermodal statement of authorization if it will be in the public interest. An application processing fee is warranted because the applicant is seeking the special benefit of the Department's authorization to conduct revenue-producing operations in foreign air transportation.

Our proposed fee for this item is calculated as follows:

Direct Labor	$488.35
Overhead	390.82
Total Cost	879.17
Applications processed	3
Cost per application	293.06
Proposed fee, Item 62: per application	290.00

Regulation of Tariffs and Rates: Schedule Items 63–69

Schedule Item 63. Approval of inter-carrier agreement(s), agreement type To and/or from the U.S.

Schedule Item 64. Approval of inter-carrier agreement(s), agreement type Foreign-to-foreign.

Schedule Item 65. Approval of inter-carrier agreement(s), Technical correction. Section 41309 of the Statute provides for the filing of inter-carrier agreements with the Department for approval and consequent grant of antitrust immunity. The Department's implementing regulations (14 CFR Part 303) require carriers seeking approval of an inter-carrier agreement to submit and have approved by the Department an application in the manner prescribed by the regulation. A processing fee for such applications is justified since the applicant is seeking the special benefit of the Department's approval of immunity from the antitrust laws of the United States.

Our proposed fees for schedule items 63, 64 and 65, shown below, reflect differences in their respective processing costs. The fee for item 63 and 64 is per resolution while that for item 65 is per application.

To/from U.S.	
Direct Labor	$10,502.46
Overhead	7,722.49
Total Cost	18,224.95
Resolutions processed	216
Cost per resolution	84.37
Proposed fee, Item 63: per resolution	84.00
Foreign-to-foreign	
Direct Labor	1,080.05
Overhead	864.35
Total Cost	1,944.40
Resolutions processed	417
Cost per resolution	4.66
Proposed fee, Item 64: per resolution	5.00
Technical correction	
Direct Labor	195.36
Overhead	156.34
Total Cost	$351.70
Applications processed	23
Cost per application	15.29
Proposed fee, Item 65: per application	15.00

Schedule Item 66. Application for an exemption under 49 U.S.C. 40109 to carry traffic not otherwise authorized under tariffs in effect. Under section 41504 of the Statute and section 221.3 of the Department's regulations, air carriers and foreign air carriers are required to file tariffs for scheduled foreign air transportation of persons, and may carry such traffic only for the prices stated in those tariffs. When a carrier wishes to carry revenue traffic for which it does not have an effective tariff on file, or wishes to carry such traffic at a price other than that in its applicable tariff, it must obtain an exemption from the Department under section 40109 of the Statute. A processing fee is warranted since the applicant for this exemption seeks the special benefit of the Department's authorization to conduct revenue-producing foreign air transportation not otherwise authorized by a tariff in effect.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a modification of the current fee or to assume that fee costs have changed. Accordingly, the current fee of $53 per Application is retained.

Schedule Item 67. Application for permission to file tariffs on less than statutory notice. Section 41504 of the Statute and section 221.160 of the regulations provide that required tariffs are to be filed a certain number of days before those tariffs can take effect. Under Subpart P of the regulations, however, carriers may request permission to have their tariffs take effect in less than the statutorily required notice period. A processing fee is warranted since the applicant for this Special Tariff Permission seeks the special benefit of the Department's authorization to implement tariffs on shorter notice than statutorily required.

The basis of our proposed fee for this item is as follows:

Direct Labor	$2,124.07
Overhead	1,700.04
Total Cost	3,824.11
Applications processed	95
Cost per application	40.25
Proposed fee, Item 67: per application	40.00

Schedule Item 68. Application for approval of waiver/modification of tariff regulations. Section 221.200 of the regulations provides that air carriers and

foreign air carriers may apply to the Department for a waiver or modification of the requirements contained in part 221 (Tariffs). An application processing fee for such waiver or modification is warranted since the applicant seeks the special benefit of the Department's approval for relief from provisions of the requirements regulating tariffs.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of $12 per Application is retained.

Schedule Item 69. Application for provision of certified copies of tariff material upon request (with DOT seal). Section 389.15 of the regulations provides that certified copies of tariffs filed with the Department will be provided upon request. Certification of these data are required in civil cases in order for parties to formally submit air carrier tariff provisions involving charges and conditions of carriage in international air transportation officially filed with the Department. A fee for providing this service is warranted because of the special benefit to the applicant of having certified copies of officially filed tariff material for use in legal proceedings.

The basis of our proposed fee is as follows:

Direct Labor	$807.58
Overhead	646.30
Total Cost	1,453.88
Applications processed	6
Cost per application	242.31
Proposed fee, Item 69: per application	240.00

Other Exemptions and Authorizations: Schedule Items 70–76

Schedule Item 70. Application for an exemption for slots at a slot-controlled airport. Under section 41714 of the Statute, an air carrier may apply to the Department for an exemption from 14 CFR Part 93, Subparts K and S (the High Density Rule), in order for the carrier to increase its number of operations (takeoff or landing "slots") at JFK, La Guardia, and/or O'Hare airports (Reagan National also is slot controlled, but is excluded from the exemption). Recognizing that air carriers may be restrained from entering markets as consequence of slot restrictions, the Congress provided the exemption mechanism as a way to increase air carrier access at three of the four slot-controlled airports. A processing fee for a slot exemption application is justified since the applicant is seeking the special benefit of the Department's authorization enabling access to takeoff and landing rights that otherwise would not be available.

Our proposed fee for this item is based on the following:

Direct Labor	$11,155.93
Overhead	6,211.62
Total Cost	17,367.55
Applications processed	4
Cost per application	4,341.89
Proposed fee, Item 70: per application	4,340.00

Schedule Item 71. Motion for confidential treatment of documents. Section 302.39 of the Department's Procedural Regulations sets forth the procedures that an applicant or other party must follow in seeking the Department's concurrence to withhold certain information from public disclosure in the context of a Departmental proceeding. A processing fee for this item is justified since the applicant is seeking the special benefit of the Department's approval to withhold sensitive information.

Our proposed fee for this item is determined as follows:

Direct Labor	$499.57
Overhead	253.37
Total Cost	752.94
Applications processed	2
Cost per application	376.47
Proposed fee, Item 71: per application	380.00

Schedule Item 72. Application for approval of and antitrust immunity for inter-carrier agreements. Under sections 41308 and 41309 of the Statute, air carriers and foreign air carriers may seek approval of antitrust immunity for agreements and activities with common business objectives. Applicants seek the benefit of this immunity in order to protect themselves from lawsuits alleging behavior normally not permitted under the antitrust laws. A processing fee is warranted since the applicant is seeking the special benefit of the Department's approval of immunity from antitrust enforcement.

No applications under this schedule item were concluded during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of $1,080 per Application is retained.

Schedule Item 73. [Reserved.]

Schedule Item 74. [Reserved.]

Schedule Item 75. Petition for a change in mail rates. Section 41901 of the Statute provides that the United States Postal Service or a certificated air carrier may file a petition with the Department to change the mail rates set by the Department to be paid by the Postal Service to U.S. air carriers for the carriage of U.S. mail between the United States and foreign countries and/or within the State of Alaska. A fee for processing a petition is warranted since the petitioner is seeking the special benefit of the Department's approval to change existing mail rates.

No applications under this schedule item were processed during the cost-collection period, and we have no other basis to propose a change in the current fee or to assume that fee costs have changed. Accordingly, the current fee of $420 per Application is retained.

Schedule Item 76. Application for overseas military personnel charter operator authority. Under Part 372 of the Department's regulations, any U.S. citizen desiring to operate as an overseas military personnel charter operator may apply to the Department for operating authority. If granted this authority, the operator is relieved from provisions of section 41102 of the Statute for the purpose of enabling the operator to provide overseas military personnel charters utilizing aircraft chartered from direct air carriers or foreign air carriers. A processing fee is warranted since the applicant is seeking the special benefit of the Department's permission to advertise, organize, provide, sell and/or offer to sell overseas military personnel charters.

No applications under this schedule item were processed during the cost-collection period, nor has the Department had occasion to process any such applications for several years. Absent evidence of a cost change, the current fee of $665 per Application is retained.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98N–0826]

Food Labeling: Use on Dietary Supplements of Health Claims Based on Authoritative Statements

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to permit the use on dietary supplements

of health claims based on authoritative statements under the notification procedures in the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDAMA permits nutrient content claims based on authoritative statements for both conventional foods and dietary supplements. FDAMA also permits health claims based on authoritative statements for conventional foods; however, FDAMA does not provide for the use of health claims based on authoritative statements for dietary supplements. FDA believes that, for health claims, conventional foods and dietary supplements should be subject to the same standards and procedures, including the notification procedure provided by FDAMA.

DATES: Submit written comments on the proposed rule by April 6, 1999. Submit written comments on the information collection provisions by February 22, 1999.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Constance B. Henry, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. The FDA Modernization Act of 1997

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115), which amended the Federal Food, Drug, and Cosmetic Act (the act). Sections 303 and 304 of FDAMA amended section 403(r)(3) and (r)(2) of the act (21 U.S.C. 343(r)(3) and (r)(2)). Specifically, FDAMA added new section 403(r)(2)(G), (r)(2)(H), (r)(3)(C), and (r)(3)(D), which provides for the use in food labeling of nutrient content claims and health claims based on authoritative statements. FDAMA requires that a notification of a prospective nutrient content claim or a prospective health claim be submitted to FDA at least 120 days before a food bearing the claim may be introduced into interstate commerce.

The notification must include specific information including: (1) The exact wording of the prospective nutrient content claim or health claim; (2) a concise description of the basis upon which the petitioner relied for determining that the requirements of section 403(r)(2)(G)(i) of the act for nutrient content claims or section 403(r)(3)(C)(i) of the act for health claims have been satisfied; (3) a copy of the authoritative statement upon which the person relied in making the claim; and (4) a balanced representation of the scientific literature relating to the nutrient level for a prospective nutrient content claim or relating to the relationship between the nutrient and the disease or health-related condition for a prospective health claim. For a prospective nutrient content claim, the authoritative statement must identify the nutrient level to which the claim refers. For a prospective health claim, the authoritative statement must be a statement about the relationship between a nutrient and a disease or health-related condition to which the claim refers. For both types of claims, the authoritative statement must be currently in effect and it must have been published either by a scientific body of the U.S. Government that has official responsibility for public health protection or research directly relating to human nutrition (e.g., the National Institutes of Health or the Centers for Disease Control and Prevention) or by the National Academy of Sciences or any of its subdivisions (hereinafter referred to as a "scientific body").

Under new section 403(r)(2)(H) and (r)(3)(D) of the act, such a claim may be made until: (1) FDA has issued an effective regulation that prohibits or modifies the claim; (2) FDA has issued a regulation finding that the requirements under section 403(r)(2)(G) of the act for a prospective nutrient content claim or under section 403(r)(3)(C) of the act for a prospective health claim have not been met; or (3) a District Court of the United States in an enforcement proceeding under chapter III of the act has determined that the requirements under section 403(r)(2)(G) of the act for a prospective nutrient content claim or under section 403(r)(3)(C) of the act for a prospective health claim have not been met. During the 120 days following submission of a notification and before the claim may appear on a food, the agency may notify any person who is making the claim that the notification did not include all of the required information.

Section 304 of FDAMA permits nutrient content claims based on authoritative statements for both conventional foods and dietary supplements because section 304 amended section 403(r)(2) of the act, which provides for nutrient content claims on both conventional foods and dietary supplements. Section 303 of FDAMA, however, does not provide for health claims for dietary supplements based on authoritative statements. In particular, section 403(r)(5)(D) of the act specifies that health claims for dietary supplements shall not be subject to section 403(r)(3) of the act, but rather to a procedure and standard that FDA establishes by regulation. In section 303 of FDAMA, Congress amended section 403(r)(3) of the act, which provides for procedures and standards for health claims for conventional foods, to allow for health claims based on authoritative statements for conventional foods, but Congress did not amend section 403(r)(5)(D) of the act. Therefore, FDA believes that section 403(r)(3)(C) of the act provides only for use of a health claim based on an authoritative statement on any conventional food that provides an appropriate level of the nutrient that is the subject of the health claim, but that does not exceed the disqualifying nutrient levels identified in § 101.14(a)(5) (21 CFR 101.14(a)(5)), provided that the food and the claim otherwise comply with section 403(r)(3)(C) of the act and all other provisions of the act.

II. The Proposal

FDA believes that, for health claims, conventional foods and dietary supplements should be subject to the same standards and procedures, including the notification procedure provided by FDAMA. This approach is consistent with the agency's final rule that makes dietary supplements subject to the same general requirements that apply to conventional foods with respect to health claims (59 FR 395, January 4, 1994). This approach is also consistent with the guidance of the Commission on Dietary Supplement Labels. Although the commission did not discuss the provisions of FDAMA as enacted, it did state in its 1997 report (Ref. 1) that the process for the approval of health claims should remain the same for dietary supplements and conventional foods.

Therefore, FDA is proposing to add a new section to subpart E of part 101 (21 CFR part 101) to provide for the use of health claims based on authoritative statements on dietary supplements. The agency intends this rule to provide for the same process and standard for the use on dietary supplements of health claims based on authoritative statements as provided by section 403(r)(3)(C) of the act for conventional foods.

This proposed regulation tracks the language of FDAMA section 303 and it

would place dietary supplements on equal footing with conventional foods with respect to health claims. The agency notes that it has issued a document entitled "Guidance for Industry—Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body" ((Internet) "http://www.cfsan.fda.gov/~dms/guidance.html") (Ref. 2), as well as nine interim final rules in response to notifications of health claims based on authoritative statements (63 FR 34084, 34092, 34097, 34101, 34104, 34107, 34110, 34112, and 34115, June 22, 1998). FDA has received comments on the nine interim final rules, several of which take issue with the process and principles outlined in sections I.A and I.B of the "Food Labeling: Health Claims; Antioxidant Vitamins C and E and the Risk in Adults of Atherosclerosis, Coronary Heart Disease, Certain Cancers, and Cataracts" interim final rule (63 FR 34084 at 34085 through 34087). FDA will respond to those comments in proposing implementing regulations for sections 303 and 304 of FDAMA, and when it completes those nine rulemakings. At this time, however, FDA advises that the process and principles in the guidance and the nine interim final rules reflect the agency's current thinking with respect to implementation of sections 303 and 304 of FDAMA. The agency also advises that, in proposing regulations to implement sections 303 and 304 of FDAMA, it will provide further detail on how the notification procedures will be implemented with respect to the use of health claims based on authoritative statements on all foods. The agency expects that those implementing regulations would maintain the equal treatment intended by this proposal. Therefore, the agency expects to withdraw this regulation, if finalized, when that implementing regulation is issued because this regulation would then no longer be necessary.

III. Analysis of Economic Impacts

A. Benefit-Cost Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. The administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), requiring cost-benefit and other analyses, in section 1531(a) defines a significant rule as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year." FDA has determined that this rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, OMB has determined that this proposed rule is not a major rule for the purpose of congressional review.

In this rule, FDA is proposing to permit the use on dietary supplements of health claims based on authoritative statements under the notification procedures in FDAMA. The proposed rule potentially affects the entire dietary supplement industry.

There are several types of products that may be considered to be dietary supplements. These products include, but are not limited to, vitamin and mineral supplements, herbal products, and products that contain other similar nutritional substances. Estimates of the number of dietary supplements are approximate because no one source collects information on all types of dietary supplements. Some sources include only dietary supplements of vitamins and minerals, others include herbals or botanicals, and still others include types of products that may or may not be dietary supplements, such as sports nutrition products and "functional foods," a term for which there is no definition. FDA tentatively estimates the number of dietary supplement products to be 29,000. FDA estimates the number of stockkeeping units, a count of the number of labels, to be approximately 75,000.

In its analysis of the proposed rule to establish regulations on statements made for dietary supplements concerning the effect of the product on the structure or function of the body (63 FR 23624 at 23628 and 23629, April 29, 1998), FDA estimated that approximately 850 firms manufacture dietary supplements. For purposes of determining the benefits and costs of this regulation, FDA will use 850 as an estimate of the number of dietary supplement firms.

Because the notification procedure established by FDAMA is voluntary, the only dietary supplement firms likely to take advantage of this procedure will be those firms who anticipate that private benefits will exceed private costs. Consequently, FDA will not attempt to estimate the internal benefits and costs for individual dietary supplement firms. Those firms who anticipate that the benefits will exceed the costs will make health claims based on authoritative statements. The number of health claim notifications submitted can, therefore, measure the effects of the proposed rule. Since the notification procedures for statements on dietary supplements were established in October 1997, FDA has received more than 3,000 notifications of nutritional support statements (structure-function claims). FDA believes that dietary supplement firms will continue to rely mainly on structure-function rather than health claims. FDA expects the number of health claim notifications to be a small fraction of the number of nutritional support statement notifications. Based on FDA's experience with health claims and with other similar notification procedures that fall under its jurisdiction, FDA has estimated that 12 firms per year may submit an average of 5 health claim notifications each, for a total of 60 notifications. The agency specifically invites comments on this estimate.

In addition to the benefits and costs internal to dietary supplement firms, FDA expects this proposed rule to generate benefits and costs to society. Most of the benefits from this proposed rule will come from the increased availability of the information provided by health claims. FDA cannot quantify those benefits. To the extent that the

lack of these claims has caused consumers to seek out the information from other sources, this rule will benefit consumers by reducing the cost of searching for information and by ensuring that the information provided to consumers is appropriate. The proposed rule will also impose additional costs on FDA and on the scientific bodies of the U.S. Government whose authoritative statements form the basis for the claims. FDA is unable to quantify those costs at this time, however.

B. Small Entity Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA finds that this proposed rule would have a significant economic impact on a substantial number of small businesses.

According to the Regulatory Flexibility Act, the definition of a small entity is a business independently owned and operated and not dominant in its field. The Small Business Administration (SBA) has set size standards for most business categories through use of four-digit Standard Industrial Classification (SIC) codes. Dietary supplements fall into several codes, including Food Preparations Not Elsewhere Classified (SIC 2099), Industrial Inorganic Chemicals Not Elsewhere Classified (SIC 2819), Medicinal Chemicals and Botanical Products (SIC 2833), Pharmaceutical Preparations (SIC 2834), and Industrial Organic Chemicals Not Elsewhere Classified (SIC 2869). According to SBA size standards, dietary supplement firms are small entities if they have fewer than 500 employees in SIC codes 2099 and 2899, fewer than 750 employees in SIC codes 2833 and 2834, and fewer than 1,000 employees in SIC codes 2819 and 2969. Based on these standards, FDA has previously estimated that approximately 95 percent of dietary supplement manufacturers could be considered small under SBA size standards (63 FR 23624 at 23631).

As discussed earlier, FDA estimates that about 12 firms per year will submit health claims notifications based on authoritative statements. Because most businesses in the dietary supplement industry would be classified as small under SBA standards, FDA assumes that many businesses potentially affected by this proposed rule will be small. FDA, therefore, concludes that the proposed rule will affect a substantial number of small entities. The proposed rule would, however, impose no involuntary costs and would benefit small businesses wishing to make health claims based on authoritative statements.

The Regulatory Flexibility Act requires agencies to examine regulatory alternatives that would minimize the impact on small entities. FDA believes that the proposed rule will impose no involuntary burdens on small entities. Other regulatory options were nevertheless considered, including taking no new regulatory action and waiting until the implementing regulation for section 303 of FDAMA to propose that health claims based on authoritative statements be permitted for dietary supplements. FDA rejected the option of taking no new regulatory action because it would make conventional foods and dietary supplements subject to different standards for health claims. As stated previously in this document, the agency expects to withdraw this rule, if finalized, when the implementing regulation for section 303 of FDAMA is issued.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Effective Date

FDA is proposing that any final rule that may be issued based upon this proposal become effective upon publication in the **Federal Register**. Under section 553(e) of the Administrative Procedure Act (5 U.S.C. 553(e)) and FDA's procedural regulations at 21 CFR 10.40(c)(4)(i), the agency may make a final substantive rule effective immediately upon publication if the rule "grants or recognizes an exemption or relieves a restriction." If it becomes final, this rule would not place an affirmative requirement on anyone but rather would relieve a restriction on the dietary supplement industry. As more fully discussed previously, FDAMA makes the streamlined notification procedures for health claims available only to the conventional food industry. The agency is proposing to relieve this restriction in FDAMA to make health claims based on authoritative statements also available for use by the dietary supplement industry.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Notification Procedures for Dietary Supplement Health Claims Based on Authoritative Statements.

Description: This proposed rule would permit producers of dietary supplements to market a product whose label or labeling bears a health claim based on authoritative statements of certain scientific bodies of the Federal Government or the National Academy of Sciences, or any of its subdivisions, using the same process and standard established for conventional foods by the provisions of section 403(r)(3)(C) of the act. Under this proposed rule, a dietary supplement producer may use such a health claim in the labeling of an appropriate product 120 days after a complete notification of the claim is submitted to FDA, unless: (1) The agency has issued an effective regulation that prohibits or modifies the claim, (2) the agency has issued a regulation finding that the requirements of proposed § 101.90(a) have not been met, or (3) a Federal District Court in an enforcement proceeding under chapter III of the act (21 U.S.C. 301–310) has determined that the requirements of proposed § 101.90(a) have not been met. This proposed rule would prescribe the type of information that a dietary supplement producer must include in a notification that it would submit to the agency.

As noted previously, FDA recently announced the availability of a guidance on the submission of a notification of a nutrient content claim or health claim based on an authoritative statement of a scientific body under the provisions of section 403(r)(2)(G) or (r)(3)(C) of the act. In estimating the annual reporting burden under this proposed rule, FDA has assumed that submitters of notifications will follow that guidance.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Annual Hours
101.90	12	5	60	40	2,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with health claims and with other similar notification procedures that fall under its jurisdiction. Because the claims are based on authoritative statements of certain scientific bodies of the Federal Government or the National Academy of Sciences, or any of its subdivisions, FDA believes that the information submitted with a notification will be either provided as part of the authoritative statement or readily available to anyone wishing to submit a notification.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send written comments regarding information collection by February 22, 1999, to the Office of Information and Regulatory Affairs, OMB (address above), Attn: Desk Officer for FDA.

VII. Comments

Interested persons may, on or before April 6, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Commission on Dietary Supplement Labels, "Report of the Commission on Dietary Supplement Labels," p. vii, November 1997.

2. "Guidance for Industry—Notification of a Health Claim or Nutrient Content Claim Based on an Authoritative Statement of a Scientific Body," FDA, DHHS, June 11, 1998.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.90 is added to subpart F to read as follows:

§ 101.90 Notifications for health claims based on authoritative statements.

(a) A claim of the type described in § 101.14(a)(1) which is not authorized by the Food and Drug Administration (FDA) in a regulation found in this part shall be authorized and may be made with respect to a dietary supplement if:

(1) A scientific body of the U.S. Government with official responsibility for public health protection or research directly relating to human nutrition (such as the National Institutes of Health or the Centers for Disease Control and Prevention) or the National Academy of Sciences or any of its subdivisions has published an authoritative statement, which is currently in effect, about the relationship between a nutrient and a disease or health-related condition to which the claim refers;

(2) A person has submitted to FDA, at least 120 days (during which FDA may notify any person who is making a claim as authorized by paragraph (a) of this section that such person has not submitted all the information required by this paragraph) before the first introduction into interstate commerce of the dietary supplement with a label containing the claim:

(i) A notice of the claim, which shall include the exact words used in the claim and shall include a concise description of the basis upon which such person relied for determining that the requirements of paragraph (a)(1) of this section have been satisfied;

(ii) A copy of the statement referred to in paragraph (a)(1) of this section upon which such person relied in making the claim; and

(iii) A balanced representation of the scientific literature relating to the relationship between a nutrient and a disease or health-related condition to which the claim refers;

(3) The claim and the dietary supplement for which the claim is made are in compliance with § 101.14(a)(5) and (e)(3) and are otherwise in compliance with sections 403(a) and 201(n) of the act (21 U.S.C. 343(a) and 21 U.S.C. 321(n)); and

(4) The claim is stated in a manner so that the claim is an accurate representation of the authoritative statement referred to in paragraph (a)(1) of this section and so that the claim enables the public to comprehend the information provided in the claim and to understand the relative significance of such information in the context of a total daily diet. For purposes of this paragraph, a statement shall be regarded as an authoritative statement of a scientific body described in paragraph (a)(1) of this section only if the statement is published by the scientific body and shall not include a statement of an employee of the scientific body made in the individual capacity of the employee.

(b) A claim submitted under the requirements of paragraph (a) of this section may be made until:

(1) Such time as FDA issues a regulation under the standard in § 101.14(c):

(i) Prohibiting or modifying the claim and the regulation has become effective; or

(ii) Finding that the requirements of paragraph (a) of this section have not

been met, including finding that the petitioner has not submitted all the information required by such clause; or

(2) A District Court of the United States in an enforcement proceeding under chapter III of the act (21 U.S.C. 301–310) has determined that the requirements of paragraph (a) of this section have not been met.

Dated: October 7, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 99–1365 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 98N–0970]

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its menstrual tampon labeling regulation to provide an absorbency term for tampons that absorb 15 to 18 grams (g) of fluid. The purpose of this proposed rule is to enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles. FDA is issuing this proposed rule under the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Written comments on the proposed rule should be submitted by April 21, 1999. See section II of this document for the proposed effective date of a final rule based on this document. Written comments on the information collection requirements should be submitted by February 22, 1999.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments regarding the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 26, 1989 (54 FR 43766), FDA published a final rule which, among other things, amended its menstrual tampon labeling regulation to standardize the existing absorbency terms (junior, regular, super, and super plus) corresponding to the following four absorbency ranges: Less than 6, 6 to 9, 9 to 12, and 12 to 15 g of fluid. The final rule did not include corresponding terms of absorbency for 15 to 18 g nor the range above 18 g of fluid. Tampon manufacturers have asserted that many women with heavy menstrual flow need higher absorbency tampons to manage their heavy menstrual flow (see 54 FR 43766 at 43769).

FDA has consulted with the Center for Disease Control on this proposed rule. Tampons with absorbency up to 18 g have been marketed in other countries with very low Toxic Shock Syndrome (TSS) rates. FDA believes that the proposed rule will not materially increase the risk of TSS for women using tampons in accordance with the labeling.

Tampons are currently classified into class II (special controls) (see 21 CFR 884.5460 and 884.5470). Any person who is required to register under section 510 of the act (21 U.S.C. 360) and part 807 (21 CFR part 807) and who intends to begin the introduction or delivery for introduction into interstate commerce of a tampon for commercial distribution is required to submit a premarket notification to FDA at least 90 days before making such introduction or delivery in accordance with section 510(k) of the act and subpart E of part 807. Under § 807.87(e), a premarket notification for a device is to contain, among other things, labeling for the device. Because there is no uniform labeling term for tampons that absorb 15 to 18 g of fluid, the agency is now proposing that tampons that absorb 15 to 18 g of fluid be labeled as" ultra absorbency". The agency is specifically seeking comment on the term "ultra" for this absorbency range, and it invites suggestions of any alternative terms. At this time, FDA is not proposing a term describing tampons with absorbency above 18 g of fluid, and does not anticipate that tampons in the above 18 g absorbency range will be considered for premarket clearance based on this proposed rule.

II. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after the date of publication of the final rule in the **Federal Register**.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because manufacturers already are required to identify the absorbency ranges of their tampons, establishing a standardized term for tampons that absorb 15 to 18 g of fluid will impose no significant economic impact on any small entities. The agency therefore certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

V. Request for Comments

Interested persons may, on or before April 21, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing each collection of information.

At this time, FDA is seeking clearance only for the information collections that would be imposed by this proposed rule. FDA intends to seek clearance for other information collections in § 801.430 (21 CFR 801.430) in the immediate future.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency of 15 to 18 grams.

Description: These information collection requirements in this proposed rule apply to tampon manufacturers. This proposed rule would establish a standardized term of absorbency, "ultra," for 15 to 18 g of fluid. Standardized terms already have been established for lower ranges of absorbency. Manufacturers of "ultra" absorbency tampons would be required to label the product in accordance with § 801.430. The labeling would have to be supported by design and performance specifications, as well as certain test results, including dimensions, pledget weight, absorbency by Syngyna method, adequate string attachment, and microbiological testing. The purpose of the proposed rule is to enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles and choose the least absorbent tampon needed to control menstrual flow and, thus, reduce their risk of TSS.

Description of Respondents: Businesses or other for profit organizations.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Annual Hours	Total Operating Costs
801.430(e)(1)	2	1	2	40	80	3,200

[1] There are no capital or maintenance costs associated with this collection of information.

These estimates are based on agency communications with industry and FDA's knowledge and experience with tampon labeling. FDA expects that only two manufacturers would revise the labels of their products to incorporate the "ultra" absorbency range of 15 to 18 g. FDA estimates that the operating costs for changes in labeling would require a one-time cost of $1,600 per manufacturer.

FDA tentatively concludes that the labeling requirements found in § 801.430(c) and (d) are not subject to review by OMB because they do not constitute a "collection of information" under the PRA (44 U.S.C. 3501 *et seq.*). Rather, the warning statements are "public disclosure[s] of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

In compliance with the PRA (44 U.S.C 3507(d)), the agency has submitted the collection of information provisions of the proposed rule to OMB for review. Interested persons wishing to submit comments regarding the information collection requirements should do so by February 22, 1999, and should direct them to the Office of Information and Regulatory Affairs, OMB, address above.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 801 be amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

2. Section 801.430 is amended in paragraph (e)(1) by revising the table to read as follows:

§ 801.430 User labeling for menstrual tampons.

* * * * *

(e) * * *

(1) * * *

Ranges of absorbency in grams[1]	Corresponding term of absorbency
6 and under	Junior absorbency.
6 to 9	Regular absorbency.
9 to 12	Super absorbency.

Ranges of absorbency in grams[1]	Corresponding term of absorbency
12 to 15	Super plus absorbency.
15 to 18	Ultra absorbency.
Above 18	No term.

[1]These ranges are defined, respectively, as follows: Less than or equal to 6 grams; greater than 6 grams up to and including 9 grams; greater than 9 grams up to and including 12 grams; greater than 12 grams up to an including 15 grams; greater than 15 grams up to and including 18 grams; and greater than 18 grams.

* * * * *

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1362 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116826–97]

RIN 1545–AW01

Deduction for Interest on Qualified Education Loans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and requests to videoconference the public hearing.

SUMMARY: This document contains proposed regulations relating to the deduction for interest paid on qualified education loans. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. The proposed regulations affect taxpayers who pay interest on qualified education loans. This document also provides notice that a public hearing will be held on the proposed regulations and that persons outside the Washington, DC, area who wish to testify at the hearing may request that the IRS videoconference the hearing to their sites.

DATES: Written or electronically generated comments must be received by April 21, 1999. Requests to videoconference the hearing to other sites must be received by March 22, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–116826–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–116826–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments. html. The IRS will publish the time and date of the public hearing and the locations of any videoconferencing sites in an announcement in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, contact John P. Moriarty, (202) 622–4950 (not a toll-free number); concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Michael L. Slaughter (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1). Section 202 of the Taxpayer Relief Act of 1997 (Pub. L. 105–34 (111 Stat. 778) (TRA 97)) added section 221 of the Internal Revenue Code to allow a deduction from gross income for certain interest paid on qualified education loans. On November 17, 1997, the IRS published Notice 97–60 (1997–46 I.R.B. 8) to provide guidance on the higher education tax incentives enacted by TRA 97, including the deduction for interest paid on qualified education loans. Section 6004(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206 (112 Stat. 685)) (RRA 98) and section 4003(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277 (112 Stat. 2681)) (Omnibus Act 99) made technical amendments to section 221. TRA 97 also added section 6050S to the Internal Revenue Code, which requires the filing of information returns by certain persons who receive payments of interest that may be deductible as interest on a qualified education loan. In 1998, the IRS published two notices describing the information returns that are required under section 6050S for 1998 and 1999. On January 20, 1998, the IRS published Notice 98–7 (1998–3 I.R.B. 54), which describes the information reporting required under section 6050S for 1998. On November 16, 1998, the IRS published Notice 98–54 (1998–46 I.R.B. 25), which modified Notice 98–7 to reflect a technical amendment made by RRA 98 and extended the application of Notice 98–7, as so modified, to information reporting required under section 6050S for 1999.

Explanation of Provisions

Section 221 allows taxpayers who are legally obligated to pay interest on qualified education loans a federal income tax deduction for their interest payments. The deduction is an adjustment to gross income and, therefore, is available to eligible taxpayers regardless of whether they itemize deductions.

The deduction is limited to $2,500 for taxable years beginning after 2000. For taxable years 1998, 1999 and 2000, the limits are $1,000, $1,500 and $2,000, respectively. Consistent with the income limitations in section 221(b)(2), the proposed regulations provide that the deduction is phased-out for taxpayers with modified adjusted gross income between $40,000 and $55,000 ($60,000 and $75,000 for taxpayers filing a joint return) for the taxable year. For taxable years beginning after 2002, these amounts will be adjusted for inflation.

No deduction under section 221 is allowed in a taxable year to an individual who is properly claimed as a dependent on another taxpayer's federal income tax return for the taxable year. In addition, a taxpayer who is married as of the end of a taxable year is allowed a deduction under section 221 only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

Consistent with section 221(e)(1), the proposed regulations define a *qualified*

education loan to mean any indebtedness incurred by the taxpayer solely to pay qualified higher education expenses on behalf of a student enrolled at least half-time in a program leading to a degree, certificate, or other recognized educational credential. The student must be the taxpayer, the taxpayer's spouse, or the taxpayer's dependent at the time the indebtedness is incurred. In addition, the qualified higher education expenses must be incurred within a reasonable period of time before or after the indebtedness is incurred. The requirement that the indebtedness be incurred solely to pay qualified higher education expenses was added by RRA '98. Accordingly, *mixed use* loans are not qualified education loans. Similarly, revolving lines of credit (e.g., credit card debt) generally are not qualified education loans, unless the borrower uses the line of credit solely to pay qualified higher education expenses.

Consistent with section 221(e)(1), the proposed regulations provide that a loan made by an individual who is related to the borrower, within the meaning of section 267(b) or 707(b)(1), is not a qualified education loan. For example, a loan from a parent or grandparent of the borrower is not a qualified education loan. In addition, consistent with a technical amendment to section 221(e) contained in the Omnibus Act '99, the proposed regulations provide that loans made under any qualified employer plan (within the meaning of section 72(p)(4)) or made pursuant to any contract referred to in section 72(p)(5) are not qualified education loans. The proposed regulations also provide that loans that are not issued or guaranteed as part of a federal postsecondary education loan program nonetheless may be qualified education loans.

The proposed regulations provide that whether or not qualified higher education expenses are paid within a reasonable period of time before or after the indebtedness is incurred depends on all the facts and circumstances. However, the proposed regulations provide two safe harbors. The first safe harbor treats any education loan that is issued as part of a federal postsecondary education loan program as meeting the reasonable period requirement. The second safe harbor treats qualified higher education expenses as paid or incurred within a reasonable period of time before or after the indebtedness is incurred if the expenses relate to a particular academic period and the proceeds of the loan are disbursed within a period that begins 60 days prior to the start of that academic period and ends 60 days after the end of that academic period. The proposed regulations do not require actual tracing of loan proceeds to the payment of qualified higher education expenses.

The proposed regulations define an *eligible educational institution* by reference to section 25A to mean any college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on August 5, 1997, and certified by the U.S. Department of Education to be eligible to participate in a student aid program administered by that department. This category includes generally all accredited public, nonprofit, and proprietary postsecondary institutions. Consistent with section 221(e)(2), the proposed regulations provide that, for purposes of the qualified education loan interest deduction, eligible educational institutions also include institutions that conduct an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

Qualified higher education expenses are generally the same as the cost of attendance as determined by the eligible educational institution for purposes of calculating a student's financial need, in accordance with section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on August 4, 1997. Such expenses generally include tuition, fees, room, board, books, equipment, and other necessary expenses, such as transportation. However, for purposes of calculating qualified higher education expenses, the amount of such expenses must be reduced by educational assistance that the student receives and excludes from gross income under section 117 (qualified scholarships), section 127 (employer-provided educational assistance), section 135 (redemption of U.S. savings bonds), and section 530 (distributions from education IRAs). In addition, such expenses must be reduced by a veterans' or member of the armed forces' educational assistance allowance under chapter 30, 31, 32, 34 or 35 of title 38 United States Code, or under chapter 1606 of title 10, United States Code, and any other educational assistance that is excludable from the student's gross income (other than as a gift, bequest, devise or inheritance within the meaning of section 102(a)).

The qualified education loan interest deduction generally is available only for interest payments made during the first 60 months in which interest payments are required on the qualified education loan. The proposed regulations provide that the 60-month period commences with the month in which a loan first enters mandatory repayment status and continues to elapse regardless of whether payments are actually made, unless the repayment period is suspended for a period of deferment or forbearance. The 60-month period may expire at different times for different loans of the same borrower.

The date on which a qualified education loan enters repayment status is determined by reference to the loan agreement or the federal regulations governing the applicable federal postsecondary education loan program.

The proposed regulations provide that a deduction is allowed for a payment of interest that was required to be made in one month but that actually is made in a subsequent month prior to the expiration of the 60-month period. A deduction is not allowed for a payment of interest that was required to be made in one month but that actually is made in a subsequent month after the expiration of the 60-month period.

The proposed regulations provide that a qualified education loan and all refinancings of that loan are treated as a single loan for purposes of calculating the 60-month period.

Consistent with section 221(d), as amended by RRA '98, the proposed regulations provide special rules for calculating the 60-month period for consolidated loans or collapsed loans. These rules generally mirror the guidance contained in Notice 98–7 and provide that the 60-month period begins on the most recent date on which any of the underlying loans entered repayment status. See Conf. Rep. No. 599, 105th Cong., 2d Sess., at 339 (1998).

If a qualified education loan entered repayment status prior to January 1, 1998 (the effective date of section 221), the taxpayer is not entitled to deduct any interest paid during that portion of the 60-month period occurring prior to January 1, 1998. A deduction is allowed only for interest due and paid during that portion, if any, of the 60-month period remaining after December 31, 1997.

General tax principles apply in determining what is deductible interest for purposes of section 221. However, to assist taxpayers, the proposed regulations specifically provide that loan origination fees and capitalized interest are *interest* and are deductible under section 221 as the stated principal amount of the qualified education loan is repaid.

Proposed Effective Date

These regulations are proposed to be effective for interest paid after the date they are published in the **Federal Register** as final regulations. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and on how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The IRS recognizes that persons outside the Washington, DC, area may also wish to testify at the public hearing through videoconferencing. Requests to include videoconferencing sites must be received by March 22, 1999. If the IRS receives sufficient indications of interest to warrant videoconferencing to a particular city, and if the IRS has videoconferencing facilities available in that city on the date the public hearing is to be scheduled, the IRS will try to accommodate the requests.

The IRS will publish the time and date of the public hearing and the locations of any videoconferencing sites in an announcement in the **Federal Register**.

Drafting Information.

The principal author of these regulations is John P. Moriarty of the Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.221–1 also issued under 26 U.S.C. 221(d). * * *

Par. 2. Section 1.221–1 is added under the undesignated centerheading "Additional Itemized Deductions For Individuals" to read as follows:

§ 1.221–1 Deduction for interest on qualified education loans.

(a) *In general.* An individual taxpayer is allowed a deduction under section 221 from gross income for certain interest paid during the taxable year on a qualified education loan. The deduction is allowed only with respect to interest paid on a qualified education loan during the first 60 months that interest payments are required under the terms of the loan. See paragraph (e) of this section for rules relating to the 60-month rule.

(b) *Eligibility*—(1) *Taxpayer must be legally obligated to make interest payments.* A taxpayer is allowed a deduction under section 221 only if the taxpayer is legally obligated to make interest payments under the terms of the qualified education loan.

(2) *Claimed dependents not eligible*—(i) *In general.* An individual is not allowed a deduction under section 221 for a taxable year if the individual is a dependent (as defined in section 152) for whom a deduction under section 151 is claimed on another taxpayer's federal income tax return for the same taxable year (or, in the case of a fiscal year taxpayer, the taxable year beginning in the same calendar year as the individual's taxable year).

(ii) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. Student not claimed as dependent. Student A pays $750 of interest on qualified education loans during 1998. Student A's parents do not claim her as a dependent for 1998. Assuming all other relevant requirements are met, Student A may deduct the $750 of interest paid in 1998 under section 221.

Example 2. Student claimed as dependent. Student B pays $750 of interest on qualified education loans during 1998. Only Student B is legally obligated to make the payments. Student B's parent claims him as a dependent and a deduction under section 151 is allowed with respect to Student B in computing the parent's 1998 federal income tax. Neither Student B nor Student B's parent may deduct the $750 of interest paid in 1998 under section 221.

(3) *Married taxpayers.* If a taxpayer is married as of the close of the taxable year, a deduction under this section is allowed only if the taxpayer and the taxpayer's spouse file a joint return for that taxable year.

(c) *Maximum deduction.* In any taxable year, the amount allowed as a deduction under section 221 may not exceed the amount determined in accordance with the following table:

Taxable year beginning in:	Maximum deduction
1998	$1,000
1999	1,500
2000	2,000
2001 and thereafter	2,500

(d) *Limitation based on modified adjusted gross income*—(1) *In general.* The deduction allowed under section 221 is phased out ratably for taxpayers with modified adjusted gross income between $40,000 and $55,000 ($60,000 and $75,000 for married individuals who file a joint return). Taxpayers with modified adjusted gross income of $55,000 or above (or $75,000 or above for joint filers) are not allowed a deduction under section 221.

(2) *Modified adjusted gross income defined.* The term *modified adjusted gross income* means the adjusted gross income (as defined in section 62) of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933 (relating to income earned abroad or from certain U.S. possessions or Puerto Rico). Adjusted gross income must be determined under this section after taking into account the exclusions, deductions and limitations provided for by sections 86 (social security and tier 1 railroad retirement benefits), 135 (redemption of qualified U.S. savings bonds), 137 (adoption assistance programs), 219 (deductible IRA contributions) and 469 (limitation on passive activity losses and credits).

(3) *Inflation adjustment.* For taxable years beginning after 2002, the amounts in paragraph (d)(1) of this section will

be increased for inflation occurring after 2001 in accordance with section 1(f)(3). If any amount adjusted under this paragraph (d)(8) is not a multiple of $5,000, the amount will be rounded to the next lowest multiple of $5,000.

(e) *60-month rule*—(1) *General rule.* A deduction for interest paid on a qualified education loan is allowed only for payments made during the first 60 months that interest payments are required on the loan. The 60-month period begins on the date the qualified education loan first enters repayment status and ends 60 months later, unless the period is suspended for periods of deferment or forbearance within the meaning of paragraph (e)(3) of this section. The 60-month period continues to elapse regardless of whether the required interest payments are actually made. The date on which the qualified education loan first enters repayment status is determined under the terms of the loan agreement or, in the case of a loan issued or guaranteed under a federal postsecondary education loan program, under applicable federal regulations. For special rules relating to loan refinancings, consolidated loans, and collapsed loans, see paragraph (h)(1) of this section.

(2) *Loans that entered repayment status prior to January 1, 1998.* In the case of any qualified education loan that entered repayment status prior to January 1, 1998, no deduction is allowed under section 221 for interest paid during the portion of the 60-month period described in paragraph (e)(1) of this section that occurred prior to January 1, 1998. A deduction is allowed only for interest due and paid during that portion, if any, of the 60-month period remaining after December 31, 1997.

(3) *Periods of deferment or forbearance.* The 60-month period described in paragraph (e)(1) of this section is suspended for any period when interest payments are not required on a qualified education loan because the borrower has been granted deferment or forbearance (including postponement in anticipation of cancellation). However, in the case of a qualified education loan that is not issued or guaranteed under a federal postsecondary education loan program, the 60-month period will be suspended under this paragraph (e)(3) only if the borrower satisfies one of the conditions for deferment or forbearance established by the U.S. Department of Education for federal student loan programs under Title IV of the Higher Education Act of 1965, such as half-time study at a postsecondary educational institution, study in an approved graduate fellowship program or in an approved rehabilitation program for the disabled, inability to find full-time employment, economic hardship, or the performance of services in certain occupations or federal programs. The 60-month period is not suspended if, under the terms of the loan—

(i) Interest continues to accrue while the loan is in deferment or forbearance; and

(ii) The taxpayer has the option of paying the interest currently or requesting that the interest be capitalized, and the taxpayer elects to make current interest payments.

(4) *Late payments.* A deduction is allowed for a payment of interest that was required to be made in one month but that actually is made in a subsequent month prior to the expiration of the 60-month period. A deduction is not allowed for a payment of interest that was required to be made in one month but that actually is made in a subsequent month after the expiration of the 60-month period.

(5) *Examples.* The following examples illustrate the rules of this paragraph (e). In the examples, assume that the institution is an eligible educational institution, the loan is a qualified education loan, and the student is legally obligated to make interest payments under the terms of the loan:

Example 1. Payment prior to 60-month period. Student C obtains a loan to attend College V. The terms of the loan provide that interest accrues on the loan while C earns his undergraduate degree but that C is not required to begin making payments of interest until six full calendar months after he graduates. Nevertheless, C voluntarily pays interest on the loan while attending College V. C is not allowed a deduction for interest paid while attending College V because the payments were made during a month prior to the start of the 60-month period.

Example 2. Deferment option not exercised. The facts are the same as *Example 1*, except that Student C makes no payments on the loan while C is enrolled at College V. C graduates in June, 1999 and is required to begin making monthly payments of principal and interest on the loan in January, 2000. The 60-month period described in paragraph (e)(1) of this section begins in January, 2000. In August, 2000, C enrolls in graduate school on a full-time basis. Under the terms of the loan, C may apply for deferment of the loan payments while C is enrolled in graduate school. However, C elects not to apply for deferment and continues to make monthly payments on the loan during graduate school. Assuming all other relevant requirements are met, C may deduct interest paid on the loan during the 60-month period beginning in January, 2000, including interest paid while C was enrolled in graduate school, but elected not to defer payment.

Example 3. Late payment, within 60-month period. The facts are the same as *Example 2*, except that, after the loan enters repayment status in January, 2000, Student C makes no interest payments until March, 2000. In March, 2000, C pays interest required to be paid for the months of January, February, and March, 2000. Assuming all other relevant requirements are met, C is allowed a deduction for the interest paid in March for the months of January, February, and March because the interest payments were required under the terms of the loan and were paid within the 60-month period, even though the January and February interest payments may be late.

Example 4. Late payment during deferment but within 60-month period. The terms of Student D's qualified education loan require her to begin making monthly payments of interest on the loan in January, 2000. The 60-month period described in paragraph (e)(1) of this section begins in January, 2000. D fails to make the required interest payments for the months of November and December, 2000. In January, 2001, D enrolls in graduate school on a half-time basis. Under the terms of the loan, D is eligible for deferment of the loan payments due while D is enrolled in graduate school. The deferment is granted effective January 1, 2001. In March, 2001, while the loan is in deferment, D pays the interest due for the months of November and December, 2000. Assuming all other relevant requirements are met, D is allowed a deduction for interest paid in March, 2001 for the months of November and December, 2000 because the interest payments were made paid prior to the expiration of the 60-month period, even though the November and December interest payments were late and were made while the loan was in deferment.

Example 5. 60-month period. The facts are the same as *Example 4* except that Student D graduates from graduate school in December, 2004 and is required to begin making monthly payments of interest on the loan in June, 2005. As of January, 2001, when the loan entered deferment status, 12 months of the 60-month period had elapsed (January–December, 2000). As of June, 2005, when the loan re-enters repayment status, there are 48 months remaining in the 60-month period for that loan.

Example 6. 60-month period. The terms of Student E's qualified education loan require him to begin making monthly payments of interest on the loan in November, 1999. The 60-month period described in paragraph (e)(1) of this section begins in November, 1999. In January, 2000, E enrolls in graduate school on a half-time basis. As permitted under the terms of the loan, E applies for deferment of the loan payments due while E is enrolled in graduate school. While awaiting formal notification from the lender that his request for deferment has been granted, E pays interest due for the month of January, 2000. In February, 2000, E receives notification from the lender that deferment has been granted, effective as of January 1, 2000. Assuming all other requirements are met, E is allowed a deduction for interest paid in January, 2000, prior to his receipt of the notification, even though the deferment

was granted retroactive to January 1, 2000. As of February, 2000, there are 57 months remaining in the 60-month period for that loan.

Example 7. Reduction of 60-month period for months prior to January 1, 1998. The first payment on a qualified education loan is due on January 1, 1997. Thereafter, interest is required to be paid on a monthly basis. The 60-month period for this loan begins on January 1, 1997. However, no deduction is allowed for interest paid by the borrower prior to January 1, 1998, the effective date of section 221. Assuming all other relevant requirements are met, the borrower may deduct interest due and paid on the loan during the 48 months beginning on January 1, 1998 (unless such period is extended for periods of deferment or forbearance under paragraph (e)(3) of this section).

(f) *Definitions*—(1) *Eligible educational institution.* In general, an *eligible educational institution* means any college, university, vocational school or other post-secondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on August 5, 1997, and is certified by the U.S. Department of Education to be eligible to participate in student aid programs administered by the Department, as described in section 25A(f)(2). In addition, for purposes of this section, an eligible educational institution also includes an institution that conducts an internship or residency program leading to a degree or certificate awarded by an institution, a hospital, or a health care facility that offers postgraduate training.

(2) *Qualified higher education expenses*—(i) *In general. Qualified higher education expenses* means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on August 4, 1997), at an eligible educational institution, reduced by the amounts described in paragraph (f)(2)(ii) of this section. Consistent with section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, the cost of attendance is determined by the eligible educational institution and includes tuition and fees normally assessed a student carrying the same academic workload, an allowance for room and board, and an allowance for books, supplies, transportation and miscellaneous expenses of the student.

(ii) *Reductions.* Qualified higher education expenses must be reduced by any amount paid to or on behalf of a student with respect to such expenses that is—

(A) A qualified scholarship that is excludable from income under section 117;

(B) A veterans' or member of the armed forces' educational assistance allowance under chapter 30, 31, 32, 34 or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code;

(C) Employer-provided educational assistance that is excludable from income under section 127;

(D) Any other educational assistance that is excludable from gross income (other than as a gift, bequest, devise, or inheritance within the meaning of section 102(a));

(E) Any amount excluded from gross income under section 135 (relating to the redemption of United States savings bonds); or

(F) Any amount distributed from an education individual retirement account described in section 530 and excluded from gross income.

(3) *Qualified education loan*—(i) *In general. Qualified education loan* means indebtedness incurred by a taxpayer solely to pay qualified higher education expenses that are—

(A) Incurred on behalf of a student who is the taxpayer, the taxpayer's spouse, or a dependent (as defined in section 151) of the taxpayer at the time the indebtedness is incurred;

(B) Paid or incurred within a reasonable period of time before or after the indebtedness is incurred. Qualified higher education expenses that are paid with the proceeds of education loans that are part of a federal postsecondary education loan program are deemed to meet this requirement. For other loans, except as provided in paragraph (f)(3)(ii) of this section, what constitutes a reasonable period of time is determined based on all the relevant facts and circumstances; and

(C) Attributable to education provided during an academic period, as described in section 25A and the regulations thereunder, when the student is an eligible student as defined in section 25A(b)(3) (requiring that the student be a degree candidate carrying at least one-half the normal full-time workload).

(ii) *Reasonable period safe harbor.* For purposes of paragraph (f)(3)(i)(B) of this section, qualified higher education expenses are treated as paid or incurred within a reasonable period of time before or after the indebtedness is incurred if the expenses relate to a particular academic period and the loan proceeds are disbursed within a period that begins 60 days prior to the start of that academic period and ends 60 days after the end of that academic period.

(iii) *Related party.* A loan made by a person who is related to the borrower, within the meaning of section 267(b) or 707(b)(1), is not a qualified education loan. For example, a parent or grandparent of the borrower is a related person. In addition, a loan made under any qualified employer plan as defined in section 72(p)(4) or under any contract referred to in section 72(p)(5) is not a qualified education loan.

(iv) *Not federally issued or guaranteed.* A loan does not have to be issued or guaranteed under a federal postsecondary education loan program to be a qualified education loan.

(4) *Examples.* The following examples illustrate the rules in this paragraph (f):

Example 1. Eligible educational institution. University Z is a postsecondary educational institution described in section 481 of the Higher Education Act of 1965. University Z has completed the necessary paperwork and has been certified by the U.S. Department of Education as eligible to participate in federal financial aid programs administered by the Department, although University Z chooses not to participate. University Z is an eligible educational institution.

Example 2. Qualified education loan. Student F borrows money from a commercial bank to pay qualified higher education expenses related to his enrollment on a half-time basis in a graduate program at an eligible educational institution. All the loan proceeds are used to pay qualified higher education expenses incurred within a reasonable period of time after the indebtedness is incurred. The loan is not federally guaranteed. The commercial bank is not related to Student F within the meaning of section 267(b) or 707(b)(1). The fact that Student F's loan is not federally issued or guaranteed does not prevent the loan from being a qualified education loan within the meaning of section 221.

Example 3. Qualified higher education expenses. Student G receives a $3,000 qualified scholarship for the 1999 Fall semester, that is excludable from F's gross income under section 117. Student G receives no other forms of financial assistance with respect to the 1999 Fall semester. Student G's cost of attendance for the Fall semester, as determined by Student G's eligible educational institution for purposes of calculating a student's financial need in accordance with section 472 of the Higher Education Act, is $16,000. For the 1999 Fall semester, Student G has qualified higher education expenses of $13,000 (the cost of attendance as determined by the institution ($16,000) reduced by the qualified scholarship proceeds excludable from gross income ($3,000)).

Example 4. Qualified education loan. Student H signs a promissory note for a loan on August 15, 1999, to pay for qualified higher education expenses for the 1999 Fall and 2000 Spring semesters. On August 20, 1999, loan proceeds are disbursed by the lender to Student H's college and credited to H's account to pay qualified higher education expenses for the 1999 Fall semester, that begins on August 23, 1999. On January 25, 2000, additional loan proceeds are disbursed by the lender to Student H's college and credited to H's account to pay qualified higher education expenses for the 2000 Spring semester, that began on January 10,

2000. Student H's qualified higher education expenses for the two semesters are paid within a reasonable period of time, as the first loan disbursement was made within 60 days prior to the start of the Fall 1999 semester and the second loan disbursement was made during the Spring 2000 semester.

Example 5. Mixed-use loans. Student I signs a promissory note for a loan which is secured by I's personal residence. Part of the loan proceeds will be used to pay for certain improvements to I's residence and part of the loan proceeds will be used to pay qualified higher education expenses of I's spouse. Because the loan is not incurred by I solely to pay qualified higher education expenses, the loan is not a qualified education loan.

(g) *Denial of double benefit.* No deduction is allowed under this section for any amount for which a deduction is allowed under another provision of Chapter 1 of the Internal Revenue Code.

(h) *Special rules*—(1) *60-month limitation*—(i) *Refinancing.* A qualified education loan and all refinancings of that loan are treated as a single loan for purposes of calculating the 60-month period described in paragraph (e)(1) of this section.

(ii) *Consolidated loans.* A consolidated loan is a single loan that refinances more than one qualified education loan of a borrower. For consolidated loans, the 60-month period described in paragraph (e)(1) of this section begins on the most recent date on which any of the underlying loans entered repayment status and includes any subsequent month in which the consolidated loan is in repayment status.

(iii) *Collapsed loans.* A collapsed loan is two or more qualified education loans of a single borrower that are treated as a single qualified education loan for loan servicing purposes and are not separately accounted for by the lender or servicer. For a collapsed loan, the 60-month period described in paragraph (e)(1) of this section begins on the most recent date on which any of the underlying loans entered repayment status and includes any subsequent month in which any of the underlying loans is in repayment status.

(2) *Loan origination fees and capitalized interest*—(i) *In general.* Loan origination fees (other than any fees for services) and capitalized interest are interest and are deductible under this section.

(ii) *Capitalized interest defined. Capitalized interest* means any accrued and unpaid interest on a qualified education loan that is capitalized by the lender (in accordance with the terms of the loan) and added to the outstanding principal balance of the qualified education loan.

(iii) *Allocation of payments.* Loan origination fees and capitalized interest are deemed to be paid by the taxpayer when principal is repaid on the qualified education loan. Accordingly, the taxpayer may deduct the portion of a stated principal payment that is treated as the payment of any loan origination fees or capitalized interest on the loan. See §§ 1.446–2(e) and 1.1275–2(a) for rules on how to allocate payments between interest and principal. In general, under these rules, a payment (regardless of its label) is treated first as a payment of interest to the extent of the interest that has accrued and remains unpaid as of the date the payment is due, second as a payment of any loan origination fees or capitalized interest, until such amounts have been reduced to zero, and third as a payment of principal.

(3) *Examples.* The following examples illustrate the rules of this paragraph (h):

Example 1. Refinancing. Student J obtains a qualified education loan to pay for an undergraduate degree at an eligible educational institution. After graduation, Student J is required to make monthly interest payments on the loan beginning in January 2000. Student J makes the required interest payments for 15 months. In April 2001, Student J borrows money from another lender to be used exclusively to repay the first qualified education loan. The new loan requires interest payments to start immediately. At the time Student J is required to make interest payments on the new loan there are forty five months remaining of the original 60-month period referred to in paragraph (e)(1) of this section.

Example 2. Collapsed loans. To finance his education, Student K obtains four separate qualified education loans from Lender B. The loans enter repayment status on different dates. After all of Student K's loans have entered repayment status, Lender B informs Student K that all four loans will be transferred to Lender C. Following the transfer, Lender C treats the loans as a single loan for loan servicing purposes; Lender C sends Student K a single statement that shows the total principal and interest, and does not keep separate records with respect to each loan. The 60-month period described in paragraph (e)(1) of this section begins on the most recent date on which any of Student K's four loans entered repayment status.

Example 3. Capitalized interest. Interest on Student L's qualified education loan accrues while Student L is in school, but Student L is not required to make any payments on the loan until six months after he graduates. At that time, all accrued but unpaid interest is capitalized by the lender and is added to the outstanding principal amount of the loan. Thereafter, Student L is required to make monthly payments of interest and principal on the loan. For purposes of section 221, interest includes both stated interest and capitalized interest. Therefore, in determining the total amount of interest paid on the qualified education loan during the 60-month period described in paragraph (e)(1) of this section, Student L may deduct any principal payments that are treated as payments of capitalized interest under paragraph (h)(4) of this section.

(i) *Effective date.* This section applies to interest due and paid after December 31, 1997, on a qualified education loan.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–986 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

Minerals Management Service

30 CFR Parts 208, 241, 242, 243, 250, and 290

43 CFR Part 4

RIN 1010–AC21

Meeting on Proposed Rule—Appeals of MMS Orders

AGENCY: Office of Hearings and Appeals and Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Office of Hearings and Appeals (OHA), the Bureau of Indian Affairs and the Minerals Management Service (MMS) published a proposed rule in the **Federal Register** on January 12, 1999 (64 FR 1930), to amend the procedures for appeals of MMS orders and other related matters.

OHA and MMS will hold a public meeting to discuss the proposed rule and receive public comments. We invite interested parties to attend and participate in this meeting.

DATES: The meeting will be held on Tuesday, February 16, 1999, from 9:00 a.m. until 4:00 p.m.; Central Standard Time.

ADDRESSES: The meeting will be held at MMS's Houston Compliance Division Office, in Room 104, at 4141 North Sam Houston Parkway East, Houston, TX 77032.

FOR FURTHER INFORMATION CONTACT: Ms. Dixie Lee Pritchard, Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, TX 77032; telephone (713) 546–4419; fax numbers (713) 546–6011; e-Mail Dixie.Lee.Pritchard@mms.gov or David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, CO 80225–

0165; telephone (303) 231–3432; fax number (303) 231–3385; e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public to discuss the proposed rule for appeals of MMS orders. The comment period for this proposed rule closes on March 15, 1999. The intent of the meeting is to provide information to, and receive comments from oil, gas, solid mineral and geothermal companies, trade associations, States, Indian mineral owners (tribes and individuals), and any other interested parties concerning the variety of issues contained in the proposed rule.

Space is limited. Attendees should reserve slots with Ms. Dixie Lee Pritchard at the telephone number in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than February 5, 1999. For building security measures, each person will be required to sign in and may be required to present a picture identification to gain entry to the meeting.

Dated: January 13, 1999.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99–1266 Filed 1–20–99; 8:45 am]

BILLING CODE 4310–MR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 009–FIP FRL–6221–3]

RIN 2060–A122

Revision to Promulgation of Federal Implementation Plan for Arizona—Maricopa Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA or "the Act"), EPA is proposing amendments to the moderate area federal implementation plan (FIP) for the Phoenix PM–10 nonattainment area (63 FR 41326, August 3, 1998). These amendments would modify the fugitive dust rule to add or replace certain test methods, include coverage of unpaved roads neither owned nor maintained by a public entity and allow alternative control measures (ACMs) to be implemented without prior EPA approval.

EPA recently established a new standard for PM–2.5 and also revised the PM–10 standards; however, today's action does not address those standards.

DATES: Written comments will be accepted until March 8, 1999. EPA does not currently plan on holding a public hearing. If EPA receives a significant number of requests for a public hearing on the contents of today's proposal, EPA will schedule and notify the public of the hearing in a separate notice.

ADDRESSES: Written comments on EPA's proposed FIP amendments must be received by EPA at the address below. Comments should be submitted (in duplicate if possible) to: EPA Region 9, 75 Hawthorne Street (AIR4), San Francisco, CA 94105, Attn. Karen Irwin.

A copy of docket No. A–98–42 containing material relevant to EPA's proposed action is available for review at: EPA Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. Interested persons may make an appointment with Eleanor Kaplan (415) 744–1159 to inspect the docket at EPA's San Francisco office on weekdays between 9 a.m. and 4 p.m.

A copy of the docket No. A–98–42 is also available to review at the Arizona Department of Environmental Quality, Library, 3033 N. Central Avenue, Phoenix, Arizona 85012. (602) 207–2217.

Electronic Availability: This document is also available as an electronic file on EPA's Region 9 Air Web Page at http://www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Karen Irwin (415) 744–1903.

SUPPLEMENTARY INFORMATION:

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I. Purpose of Today's Proposal

On August 3, 1998 (63 FR 41326), EPA finalized a FIP for the Phoenix PM–10 nonattainment area (the "final FIP"). Readers should refer to 63 FR 41326 for details of the history and contents of the final FIP.

The final FIP includes a fugitive dust rule to control PM–10 emissions from vacant lots, unpaved parking lots and unpaved roads codified at 40 CFR § 52.128 (63 FR 41326, 41350), hereafter referred to as "the final FIP rule".[1] Today's proposal addresses only the specific provisions related to the test methods, the alternative control measures (ACMs) and the unpaved road requirements of the final FIP rule as discussed below. EPA will accept comments only on the proposed amendments to these FIP rule provisions and not on any other aspects of the final FIP.

As promulgated on August 3, 1998 (63 FR 41326), the final FIP rule contains test methods for ascertaining compliance with the FIP's emission requirements. EPA has conducted additional technical field work in Phoenix on these test methods. While the test methods in the final FIP were the best available methods known to EPA at the time of promulgation, additional analysis has indicated others may be more accurate and comprehensive. In today's proposal, EPA is proposing and accepting comment on additional, new test methods for the FIP rule.

EPA is also proposing to eliminate the requirement to submit ACMs to EPA for approval in order to remove an unnecessary administrative burden on the regulated community. Finally, EPA is proposing to require privately owned and privately maintained unpaved roads to meet the same RACM requirements as roads that are owned or maintained by a public entity.

II. Summary of Proposed Amendments

A. Test Methods

1. Adding a Silt Content Test Method for Unpaved Roads and Unpaved Parking Lots

The final FIP rule contains an opacity standard of twenty (20) percent, or Ringlemann 1, for unpaved roads and unpaved parking lots. Compliance with this standard is to be tested using visible emissions test methods included in the final Phoenix FIP rule.[2] Field testing has identified certain circumstances where

[1] EPA promulgated the fugitive dust rule as part of its court-ordered obligation to provide for the implementation of Reasonably Available Control Measures (RACM) (required by section 189(a)(1)(C) of the Clean Air Act) in the Phoenix PM–10 nonattainment area.

[2] Reference Method 9 (40 CFR part 60, appendix A) and Methods 203A and 203C. Appendix A.I. to § 52.128 (63 FR 41326, 41353–41355).

this test method may be difficult to use. Consequently, EPA is proposing an additional, new test method that the Agency believes may be more appropriate and accurate for testing compliance of fugitive dust sources covered under the final FIP rule.

The new test method involves measuring silt content on unpaved roads and unpaved parking lots according to a sieve field procedure. The emission rate of fine particles is proportional to silt content (amount of fine particles in any given soil sample), such that the higher the silt content the higher the propensity for a source to release fine particles. The proposed sieve field procedure to measure silt content on unpaved roads and unpaved parking lots involves collecting a sample from the source in an area the size of one square foot using a brush and dustpan. The sample is weighed, placed into a stack of sieves with various mesh openings and shaken vigorously for one minute. Material that collects in the bottom of the unit is weighed and its silt content estimated using simple calculations provided in the proposed test method. EPA successfully conducted the proposed silt content test method in the Phoenix nonattainment area. The proposed silt content standards associated with the sieve test method are six (6) percent or less for unpaved roads and eight (8) percent or less for unpaved parking lots. These standards are based on laboratory analysis of samples taken from unpaved sources in the Phoenix nonattainment area during EPA's field tests.[3]

EPA is also proposing an alternative to conducting the silt content test method. Samples collected from sources may be taken to an independent testing laboratory for silt content analysis according to an EPA AP–42 test method.[4] This option would provide additional flexibility to owners and operators of unpaved roads and unpaved parking lots.

EPA is taking comment on this proposed additional test method, which is expected to provide greater compliance certainty under all circumstances. A source in violation of either the rule's existing opacity standard or the proposed silt content standard would not be in compliance with the rule. Since this additional test method may alleviate the need for the existing opacity test method, EPA is also accepting comment on whether or not to retain the opacity test method in the final FIP rule.

2. Adding a New Visible Crust Test Method or Replacing the Visible Crust Test Method for Vacant Lots

The final FIP rule's test method for measuring visible crust thickness on vacant lots involves breaking off a piece of crust, checking whether the crust crumbles easily and measuring its thickness with a ruler.[5] EPA received public comments suggesting that this test method would not always confirm the existence of a stabilizing crust. During field testing in Arizona, EPA attempted both the current test method and an alternative test method that was suggested by EPA's contractor.[6] EPA believes the alternative test method would accomplish the same objective as the current test method, be similarly easy to use, more accurately repeatable by various parties, and more indicative of whether a sufficiently stabilizing crust exists. The alternative test method involves dropping a small steel ball from a height of one foot in select areas and checking to see whether the ball penetrates the surface or causes loose grains to appear. If so, this indicates that the crust is too thin to resist wind. A source in violation of either the existing or proposed visible crust standard would not be in compliance with the rule. EPA is accepting public comment on whether this alternative visible crust test method should be used in addition to or in place of the existing visible crust test method.

3. Adding a Procedure to the Standing Vegetation Test Method for Vacant Lots

The final FIP rule contains a test method for standing vegetation.[7] In this method, the vegetation is counted within a survey area and its average dimensions measured. During field tests conducted in Arizona,[8] EPA noted that some vegetation was less dense than others. Density affects vegetation's ability to protect against wind erosion. Without providing additional guidance on how to measure a plant or weed's dimensions taking density into account, EPA is concerned that the existing standing vegetation test methods would not necessarily be accurately conducted and repeated by different individuals to achieve the same results. Therefore, EPA is proposing to add a procedure involving the use of a grid with one inch or half-inch squares to help ensure that various vegetative structures can be assessed accurately and consistently.[9] This procedure would apply only when open air space exists within a plant or weed's perimeter. The proposed changes include minor clarifications to the standing vegetation test method.

B. Unpaved Roads

In the final FIP rule, EPA finalized requirements for unpaved roads that are publicly owned and/or operated (i.e. maintained). This includes privately owned roads that are publicly maintained. EPA is proposing to include in the FIP rule unpaved privately owned roads that are privately maintained or not maintained. However, roads on which public access is not allowed or that have fewer than 250 average daily trips (ADT) would remain exempt. The purpose of this proposed modification is to ensure that all *public access* roads with ADT levels of 250 or greater are controlled, regardless of whether a public entity owns or maintains them.[10] Roads which would be covered under this proposal that are not currently covered under the final rule include:

Privately owned roads that are privately maintained; and

Privately owned roads that are not maintained.

EPA is also proposing to clarify the definition of an unpaved road as that used by motor vehicles or off-road motor vehicles.

While EPA does not generally expect the newly added types of roads to meet or exceed 250 ADT, EPA is proposing that the FIP rule cover any such potential sources. It is EPA's intention

[3] Field tests were conducted on May 27–28, 1998. Results from the field tests can be found in the document titled "Analysis of Results from Field Tests in the Phoenix Nonattainment Area" by Chatten Cowherd, MRI Research Institute, 425 Volker Blvd., Kansas City, Missouri, June 12, 1998.

[4] "Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples", (Fifth Edition, Volume I, Appendix C.2, 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

[5] 63 FR 41326, 41355.

[6] Chatten Cowherd, MRI Research Institute, 425 Volker Blvd., Kansas City, Missouri.

[7] 63 FR 41326, 41356. Testing for standing vegetation is not necessary where a visible crust exists. However, if a disturbed surface area fails the visible crust test and standing vegetation is present, the lot may actually be stabilized depending on the extent to which the vegetation protects against wind erosion. The inclusion of more than one test method for vacant lots in the FIP rule adds compliance flexibility to sources by acknowledging that a disturbed surface does not necessarily need to be crusted in order to be stabilized if it contains sufficient vegetation or its soil has a high wind-resistance threshold. In fact, the FIP rule allows a disturbed vacant lot surface to be deemed stabilized if it meets just one out of a total of five criteria for stability.

[8] May 27–28, 1998.

[9] The procedure was provided to EPA by Larry Hagen, Agricultural Engineer, United States Department of Agriculture, Wind Erosion Research Unit, 2004 Throckmortion Hall, Kansas State University, Manhatten, Kansas 66506.

[10] Note: haul roads are permitted sources under Maricopa County Environmental Services Division's rule 310. A haul road would only be subject to the FIP rule requirements if it is not a permitted source under Rule 310, has an ADT level of 250 or greater and is publicly accessible.

to eliminate the public or private classification of the owner/operator as a factor in whether the road is controlled. As discussed above, EPA does not expect that there will be many roads which will be newly covered under the FIP rule as a result of this change because most unpaved roads which are not publicly accessible nor publicly maintained are not likely to have a high level of ADT. It should also be noted that the classification of the owner/operator as public or private is not a factor in the other two source categories covered under the FIP rule—namely unpaved parking lots and vacant lots. The RACM implementation deadline for all existing unpaved roads would remain consistent with the current deadline for publicly owned or operated roads (June 10, 2000).

EPA requests comment on the potential effects of extending control requirements to privately owned public access roads that are also privately maintained. EPA anticipates receiving additional information on the extended coverage of roads due to this proposal by the end of this year.[11] When available, EPA will disseminate this information to the public and take it into consideration along with any comments received on this proposal before finalizing requirements on privately owned/maintained public access roads.

C. Alternative Control Measures

In the final FIP rule, ACMs are allowed provided that they are submitted to EPA and receive EPA approval.[12] ACMs are any RACM not specifically listed in the rule that can meet the rule's stabilization standards for each source category.[13] EPA is proposing to amend the final FIP rule such that ACMs will not require prior EPA approval. EPA believes that since the FIP rule contains test methods which indicate whether a surface is stabilized, owners/operators can be allowed flexibility as to the type of RACM applied as long as the control measure results in a stabilized surface.[14] Elimination of prior EPA approval for ACMs will decrease the FIP rule's implementation cost insofar as regulated parties will not need to commit time and resources in preparing ACMs and submitting them to EPA.

The elimination of the requirement to submit ACMs for prior EPA approval will not affect the owners'/operators' responsibility to implement RACM. In fact, by emphasizing the intended result, as opposed to the type of control, EPA hopes to increase owners'/operators' understanding that their responsibility under the FIP rule will remain until a source is controlled even if the owner/operator attempts a control measure that fails to stabilize the surface.

III. Administrative Requirements

A. Executive Order (E.O. 12866)

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Due to potential novel policy issues this action is considered a significant regulatory action and therefore must be reviewed by OMB. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition,

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[11] EPA has entered into a contract with Pacific Environmental Services to collect information on the number, location and owners/operators of unpaved roads, unpaved parking lots and disturbed vacant lots potentially covered under the FIP rule requirements.

[12] 63 FR 41326, 41352.

[13] The ACM provisions of the rule do not otherwise authorize any modification of the FIP rule's requirements.

[14] Owners/operators may not, however, use dust suppressants that are prohibited by local, state or federal laws or regulations.

Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Analysis

1. Regulatory Flexibility Act Requirements

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), whenever EPA is required to publish notice of general rulemaking, EPA must prepare an initial regulatory flexibility analysis (IRFA) describing the economic impact of the proposal on small entities, unless the Administrator certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities." Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

For the purposes of this inquiry, as it applies to the proposed amendments to the federal fugitive dust rule (40 CFR § 52.128), EPA is assuming that the affected or potentially affected sources constitute "small entities" as defined by the RFA.

A detailed discussion of the RFA analysis for the final FIP is found in section V.B. at 63 FR 41326. In general, the proposed amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods as they currently exist in the rule. Thus, EPA believes that the amendments will not change the final FIP RFA analysis, except possibly to have a lesser impact on small entities.

2. RFA Analysis

a. *Proposed Amendments to Federal Rule for Unpaved Roads, Unpaved Parking Lots and Vacant Lots.* EPA believes that the proposed test method amendments will provide either more flexibility or an improved procedure for determining compliance with the FIP fugitive dust rule. The proposed silt content test method would allow persons who are not certified in visible emissions training to test the stability of an unpaved road or unpaved parking lot by using an alternative method to the opacity test method. EPA plans to ensure that the necessary sieve units are available for loan by local entities to regulated sources. Also, the proposed visible crust test method accomplishes the same objective as the current visible crust test method yet is more practical and can be accurately repeated by various parties. Finally, the proposed additional procedure to assist parties in measuring frontal silhouette area of various vegetative structures are merely intended to address circumstances that may arise in the field which are not addressed in the final FIP rule.

For unpaved roads, EPA is proposing to include unpaved roads that are not owned or operated by public entities. However, roads on which public access is not allowed or that have fewer than 250 ADT would remain exempt. EPA intends to simply eliminate the public or private classification of the owner/operator as a factor in whether the road is controlled. As discussed earlier, EPA does not expect that there will be many roads which will be newly covered under the FIP rule as a result of this change because most unpaved roads which are not publicly accessible or publicly maintained are not likely to have a high level of ADT.

Finally, EPA is today proposing to amend the final FIP rule such that ACMs will not require prior EPA approval. This proposed change would add to the rule's flexibility for source owners/operators and reduce the paperwork burden of the rule.

b. *Certification.* For reasons discussed above, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the proposed rule amendments. After consideration of the economic impacts of today's proposed rule amendments on small entities, I hereby certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

A detailed discussion of the UMRA requirements and how they are addressed can be found in section V.C. of the final FIP rulemaking (63 FR 41326). As explained above, today's proposed amendments to the final FIP fugitive dust rule are intended to provide more flexibility in complying with the FIP rule and to improve the test methods currently in the rule. Thus, EPA believes that the amendments will not change the final FIP UMRA analysis, except possibly to have a lesser impact on the regulated entities.

G. Paperwork Reduction Act

The proposed test method and ACM amendments do not impact the information collection request analysis for the final FIP (EPA ICR 1855.02). For the proposed unpaved roads amendment, EPA does not generally expect the newly added types of roads for inclusion in the FIP rule to exceed the ADT de minimis level. Thus, in general, EPA believes that the proposed amendments to the final FIP rule do not affect the information collection requirements (EPA ICR 1855.02). The final FIP (63 FR 41326) provides more information on the information collection request requirements.

H. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, Sec. 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In this action, EPA has incorporated voluntary consensus standards where feasible (See proposed language for Appendix A to § 52.128, I.B(iv)). However, in most cases there are no applicable technical standards or field procedures specifically designed for the source categories at hand. OMB has reviewed and concurred on the applicable technical standards proposed in this revision.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: January 12, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.128 is proposed to be amended as follows:

a. Revise paragraph (b)(16)(i).

b. Revise paragraph (b)(16)(ii)(A).

c. Revise paragraph (b)(18).

d. Add paragraph (d)(1)(i)(D) and remove the period at the end of paragraph (d)(1)(i)(C) and replace it with "; or".

e. Add paragraph (d)(2)(iv) and remove the period at the end of paragraph (d)(2)(iii) and replace it with "; or".

f. Add paragraph (d)(3)(ii)(E) and remove the period at the end of paragraph (d)(3)(ii)(D) and replace it with "; or".

g. Remove paragraph (d)(4) and redesignate paragraph (d)(5) as paragraph (d)(4).

h. Remove paragraph (e) and redesignate paragraph (f) as paragraph (e).

§ 52.128 Rule for unpaved parking lots, unpaved roads and vacant lots.

* * * * *

(b) * * *

(16) *Stabilized Surface*—

(i) Any unpaved road or unpaved parking lot surface where:

(A) Any fugitive dust plume emanating from vehicular movement does not exceed 20 percent opacity as determined in section I.A of appendix A of this section; AND

(B) Silt content does not exceed six (6) percent for unpaved road surfaces or eight (8) percent for unpaved parking lot surfaces as determined by the test method in section I.B of appendix A of this section.

(ii) * * *

(A) A visible crust which is greater than 0.6 centimeters (cm) thick and is not easily crumbled between the fingers as determined in section II.1(i) of appendix A of this section AND is sufficient as determined in section II.1(ii) of appendix A of this section;

* * * * *

(18) *Unpaved Road*—Any road, equipment path or driveway used by motor vehicles or off-road motor vehicles that is not paved which is open to public access and owned/operated by any federal, state, county, municipal or other governmental or quasi-governmental agencies or any private entity or individual(s).

* * * * *

(d) * * *

(1) * * *

(i) * * *

(D) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

* * * * *

(2) * * *

(iv) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

(3) * * *

(ii) * * *

(E) Apply and maintain an alternative control measure such that the surface is stabilized, provided that the alternative measure is not prohibited under paragraph (b)(2) or (b)(4) of this section.

* * * * *

3. Appendix A to § 52.128 is proposed to be amended as follows:

a. In section I. by designating the text under Section I as A. and adding a heading.

b. Add section I.B.

c. Revise the heading of section II.1.

d. Designate the existing text of II.1 as II.1(i) and add II.1(ii).

e. Revise section II.4(ii).

f. Redesignate section II.4(iii) as section II.4(iv).

g. Redesignate section II.4(iv) as section II.4(v).

h. Add section II.4(iii).

Appendix A to § 52.128—Test Methods To Determine Whether a Surface Is Stabilized

I. Unpaved Roads and Unpaved Parking Lots

A. Opacity Observations

* * * * *

B. Silt Content

Conduct the following test method to achieve the silt content of unpaved road and unpaved parking lot surfaces.

(i) Collect a sample of loose surface material from an area 30 cm by 30 cm (1 foot by 1 foot) in size to a depth of approximately 1 cm using a brush and dustpan or other similar device. Collect the sample from a routinely-traveled portion of the surface which receives a preponderance of vehicle traffic, i.e. as commonly evidenced by tire tracks. Conduct sweeping slowly so that fine surface material is not released into the air. Only collect samples from surfaces that are not wet or damp due to precipitation or dew.

(ii) Obtain a shallow, lightweight container and a scale with readings in half ounce increments or less. Place the scale on a level surface and zero it with the weight of the empty container. Transfer the entire sample collected to the container, minimizing escape of particles into the air. Weigh the sample and record its weight.

(iii) Obtain and stack a set of sieves with the following openings: 4 mm, 2 mm, 1 mm, 0.5 mm, and 0.25 mm. Place the sieves in order according to size openings beginning with the largest size opening at the top. Place a collector pan underneath the bottom (0.25 mm) sieve. Pour the entire sample into the top sieve, minimizing escape of particles into the air by positioning the sieve/collector pan unit in an enclosed or wind barricaded area. Cover the sieve/collector pan unit with a lid. Shake the covered sieve/collector pan unit vigorously for a period of at least one (1) minute in both the horizontal and vertical planes. Remove the lid from the sieve/collector pan unit and disassemble each sieve separately beginning with the largest sieve. As each sieve is removed, examine it for a complete separation of material in order to ensure that all material has been sifted to the finest sieve through which it can pass. If not, reassemble and cover the sieve/collector pan unit and shake it for period of at least one (1) minute. After disassembling the sieve/collector pan unit, transfer the material which is captured in the collector pan (silt fraction) into the lightweight container originally used to collect and weigh the sample. Minimize escape of particles into the air when transferring the material into the container. Weigh the container with the material from the collector pan and record its weight. Multiply the resulting weight by 0.38 if the source is an unpaved road or by 0.55 if the source is an unpaved parking lot, divide by the total sample weight and multiply by 100 to arrive at the percent silt content.

(iv) As an alternative to conducting the procedure described above in section I.B.(ii) and section I.B.(iii) of this appendix, the sample (collected according to section I.B.(i) of this appendix) may be taken to an independent testing laboratory or engineering facility for silt content analysis according to the following test method from "Procedures For Laboratory Analysis Of Surface/Bulk Dust Loading Samples", (Fifth Edition, Volume I, Appendix C.2.3 "Silt Analysis", 1995), AP–42, Office of Air Quality Planning & Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina.

1. Objective—Several open dust emission factors have been found to be correlated with the silt content (<200 mesh) of the material being disturbed. The basic procedure for silt content determination is mechanical, dry sieving. For sources other than paved roads, the same sample which was oven-dried to determine moisture content is then mechanically sieved.

2.1 Procedure—Select the appropriate 20-cm (8-in.) diameter, 5-cm (2-in.) deep sieve sizes.

Recommended U. S. Standard Series sizes are ⅜ in., No. 4, No. 40, No. 100, No. 140, No. 200, and a pan. Comparable Tyler Series sizes can also be used. The No. 20 and the No. 200 are mandatory.

The others can be varied if the recommended sieves are not available, or if buildup on 1 particulate sieve during sieving indicates that an intermediate sieve should be inserted.

2.2 Obtain a mechanical sieving device, such as a vibratory shaker or a Roto-Tap® [1] without the tapping function.

2.3 Clean the sieves with compressed air and/or a soft brush. Any material lodged in the sieve openings or adhering to the sides of the sieve should be removed, without handling the screen roughly, if possible.

2.4 Obtain a scale (capacity of at least 1600 grams [g] or 3.5 lb) and record make, capacity, smallest division, date of last calibration, and accuracy. (See Figure A of this appendix)

2.5 Weigh the sieves and pan to determine tare weights. Check the zero before every weighing. Record the weights.

2.6 After nesting the sieves in decreasing order of size, and with pan at the bottom, dump dried laboratory sample (preferably immediately after moisture analysis) into the top sieve. The sample should weigh between ~400 and 1600 g (~0.9 and 3.5 lb). This amount will vary for finely textured materials, and 100 to 300 g may be sufficient when 90% of the sample passes a No. 8 (2.36 mm) sieve. Brush any fine material adhering to the sides of the container into the top sieve and cover the top sieve with a special lid normally purchased with the pan.

2.7 Place nested sieves into the mechanical sieving device and sieve for 10 minutes (min). Remove pan containing minus No. 200 and weigh. Repeat the sieving at 10-min intervals until the difference between 2 successive pan sample weighings (with the pan tare weight subtracted) is less than 3.0%. Do not sieve longer than 40 min.

2.8 Weigh each sieve and its contents and record the weight. Check the zero before every weighing.

2.9 Collect the laboratory sample. Place the sample in a separate container if further analysis is expected.

2.10 Calculate the percent of mass less than the 200 mesh screen (75 micrometers [μm]). This is the silt content.

Figure A. Example Silt Analysis Form

Silt Analysis

Date: _____
By: _____
Sample No: _____
Sample Weight (after drying) _____
Material: _____
Pan + Sample: _____
Pan: _____
Split Sample Balance: _____
Dry Sample: _____
Make _____
Capacity: _____
Smallest Division _____
Final Weight _____

Net Weight <200 Mesh

% Silt = Total Net Weight × 100 = ____%

SIEVING

	Time: Start:	Weight (pan only)
Initial (Tare):		
10 min:		
20 min:		
30 min:		
40 min:		

Screen	Tare weight (screen)	Final weight (screen + sample)	Net weight (sample)	%
⅜ in.				
4 mesh				
10 mesh				
20 mesh				
40 mesh				
100 mesh				
140 mesh				
200 mesh				
Pan				

(v) The percent silt content for any given unpaved road surface or unpaved parking lot surface shall be based on the average of at least three (3) samples that are representative of routinely-traveled portions of the road or parking lot surface. In order to simplify the sieve test procedures in section I.B.(ii) and section I.B.(iii) of this appendix, the three samples may be combined as long as all material is sifted to the finest sieve through which it can pass and the combined weight of the samples is calculated and recorded accurately.

II. * * *

1. Visible Crust Determination

(i) Thickness

* * * * *

(ii) Sufficiency

(A) Where a visible crust exists, drop a steel ball with a diameter of 15.9 millimeters (0.625 inches) and a mass of 16.33 grams from a distance of 30 centimeters (one foot) directly above (at a 90 degree angle perpendicular to) the soil surface. If blowsand is present, clear the blowsand from the surfaces on which the visible crust test method is conducted. Blowsand is defined as thin deposits of loose uncombined grains covering less than 50 percent of a vacant lot which have not originated from the representative vacant lot surface being tested. If material covers a visible crust which is not blowsand, apply the test method in section II.2 of this appendix to the loose material to determine whether the surface is stabilized.

(B) A sufficient crust is defined under the following conditions: once a ball has been dropped according to section II.1.(ii)(A) of this appendix, the ball does not sink into the surface so that it is partially or fully surrounded by loose grains and, upon removing the ball, the surface upon which it fell has not been pulverized so that loose grains are visible.

(C) Conduct three tests, dropping the ball once per test, within a survey area the size of one foot by one foot. The survey area shall be considered sufficiently crusted if at least two out of three tests meet the definition in section II.1.(ii)(B) of this appendix. Select at least two other survey areas that represent the disturbed surface area and repeat this procedure. Whether a sufficient crust covers the disturbed surface area shall be based on a determination that all of the survey areas tested are sufficiently crusted.

(D) At any given site, the existence of a sufficient crust covering one portion of a disturbed surface may not represent the existence or protectiveness of a crust on another disturbed surface(s). Repeat the visible crust test as often as necessary on

[1] CFR 60, App. A, Meth. 5, 2.1.2, footnote 2.

each representative disturbed surface area for an accurate assessment of all disturbed surfaces at a given site.

* * * * *

4. * * *

(ii) Count the number of standing vegetative structures within the survey area. Count vegetation which grows in clumps as a single unit. Where different types of vegetation exists and/or vegetation of different height and width exists, separate the vegetative structures with similar dimensions into groups. Count the number of vegetative structures in each group within the survey area. Select an individual structure within each group that represents the average height and width of the vegetation in the group. If the structure is dense (i.e. when looking at it vertically from base to top there is little or zero open air space within its perimeter), calculate and record its frontal silhouette area according to Equation 6 of this appendix. Also use Equation 6 if the survey area is larger than three square feet, estimating the average height and width of the vegetation. Otherwise, use the procedure in section II.4.(iii) of this appendix to calculate the Frontal Silhouette Area. Then calculate the percent cover of standing vegetation according to Equations 7, 8 and 9 of this appendix. (Ensure consistent units of measurement, e.g. square feet or square inches when calculating percent cover.)

(iii) Vegetative Density Factor. Cut a single, representative piece of vegetation (or consolidated vegetative structure) to within 1 cm of surface soil. Using a white paper grid or transparent grid over white paper, lay the vegetation flat on top of the grid (but do not apply pressure to flatten the structure). Grid boxes of one inch or one-half inch squares are sufficient for most vegetation when conducting this procedure. Using a marker or pencil, outline the shape of the vegetation along its outer perimeter according to Figure B, C or D of this appendix, as appropriate.

Note: Figure C differs from Figure D primarily in that the width of vegetation in Figure C is narrow at its base and gradually broadens to its tallest height. In Figure D, the width of the vegetation generally becomes narrower from its midpoint to its tallest height.) Remove the vegetation and count and record the total number of gridline intersections within the outlined area, but do not count gridline intersections that connect with the outlined shape. There must be at least 10 gridline intersections within the outlined area and preferably more than 20, otherwise, use smaller grid boxes. Draw small circles (no greater than a 3/32 inch diameter) at each gridline intersection counted within the outlined area. Replace the vegetation on the grid within its outlined shape. From a distance of approximately two feet directly above the grid, observe each circled gridline intersection. Count and record the number of circled gridline intersections that are not covered by any piece of the vegetation. To calculate percent vegetative density, use Equations 10 and 11 of this appendix. If percent vegetative density is equal to or greater than 30, use the equation below that matches the outline used to trace the vegetation (Figure B, C or D) to calculate its Frontal Silhouette Area. If percent vegetative density is less than 30, use Equations 12 and 13 of this appendix to calculate the Frontal Silhouette Area.

Height × Width = Frontal Silhouette Area *Eq. 6*

(Frontal Silhouette Area of Individual Vegetative Structure) × Number of Vegetation Per Group = Frontal Silhouette Area of Group *Eq. 7*

Frontal Silhouette Area of Group 1 + Frontal Silhouette Area of Group 2 (etc..) = Total Frontal Silhouette Area *Eq. 8*

(Total Frontal Silhouette Area/Survey Area) × 100 = Percent Cover of Standing Vegetation *Eq. 9*

[(Number of circled gridlines within the outlined area counted that are not covered by vegetation/Total number of gridline intersections within the outlined area) × 100] = Percent Open Space *Eq. 10*

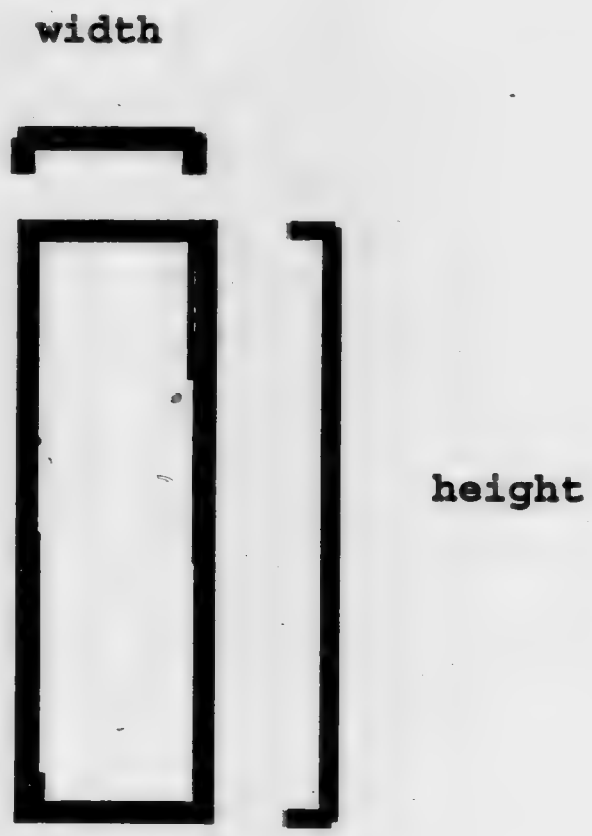
100 − Percent Open Space = Percent Vegetative Density *Eq. 11*

Percent Vegetative Density/100 = Vegetative Density *Eq. 12*

$$[\text{Max. Height} * \text{Max. Width}] * \left[\frac{\text{Vegetative Density}}{0.4}\right]^{0.5} = \text{Frontal Silhouette} \quad \textit{Eq. 13}$$

BILLING CODE 6560-50-P

FIGURE B



Cylinder:

Frontal Silhouette Area = maximum (max.) height × max. width *Eq. 16*

FIGURE C

Inverted Cone:

Frontal Silhouette Area = max. height × ½ max. width *Eq. 17*

FIGURE D

Upper Sphere:

Frontal Silhouette Area = (3.14 × max. height × ½ max. width)/2 *Eq. 18*

[FR Doc. 99–1124 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 211–0117b; FRL–6213–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the rescission of rules for the Antelope Valley Air Pollution Control District (AVAPCD). These rules concern the rescission of rules for a market incentive program for the AVAPCD. The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these rescissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by February 22, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule rescissions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule rescissions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184.

SUPPLEMENTARY INFORMATION: This document concerns the rescission of Antelope Valley Air Pollution Control District, Regulation XX, Regional Clean Air Incentives Market (RECLAIM), submitted to EPA on June 23, 1998 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: December 10, 1998.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–1262 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[UT–001–0002b; FRL–6201–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake City Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the Salt Lake City carbon monoxide redesignation request, maintenance plan, and revised language in the Utah Administrative Code Rule (UACR) R307–1–3.3, "Requirements for Nonattainment and Maintenance Areas—New and Modified Sources". The redesignation request, maintenance plan, and changes to R307–1–3.3 were originally submitted by the Governor on November 25, 1995. Revisions to the maintenance plan were submitted by the Governor on December 9, 1996. In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revisions as a direct final rule without prior proposal because the Agency views the request and revisions as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 22, 1999.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Telephone number (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules Section of this **Federal Register**.

Dated: November 23, 1998.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–1260 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6222–6]

RIN 2060–AG12

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of denial of petition.

SUMMARY: This action notifies the public that the Agency received a petition pursuant to section 612(d) of the Clean Air Act, under the Significant New Alternatives Policy (SNAP) Program, and that EPA is denying the petition. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for ozone-depleting substances (ODS) and to regulate the use of substitutes where other alternatives exist that reduce overall risk to human health and the environment. Through these evaluations, EPA generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors that use ODS, including the refrigeration and air-conditioning sector.

OZ Technology, Inc. submitted Hydrocarbon Blend B, or HC–12a®, as a CFC–12 substitute in a variety of end-uses on July 19, 1994. In a June 13, 1995 final SNAP rulemaking (60 FR 31092), EPA found the use of Hydrocarbon Blend B unacceptable as a substitute for CFC–12 in all end-uses other than industrial process refrigeration. This determination was based on a lack of adequate data demonstrating that Hydrocarbon Blend B could be used safely in these end-uses. In addition, numerous other acceptable alternatives to ODS exist in these end-uses.

ADDRESSES: Information relevant to this Notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Agency, 401 M Street, SW, Washington, DC 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jeffrey Levy by telephone at (202) 564–9727, by fax at (202) 565–2096, by e-mail at levy.jeffrey@epa.gov, or by mail at U.S. EPA, Stratospheric Protection Division, 401 M Street, SW, Mail Code 6205J, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Since the publication of this unacceptability determination, OZ Technology has petitioned EPA three times. The following table provides information about each of the previous petitions and EPA's denials.

Item	Date	Docket location (within docket A–91–42)	FR notice
OZ Petition 1	November 4, 1994	VI–D–75	n/a.
EPA Denial of Petition 1	July 25, 1995	VI–C–7	60 FR 49407.
OZ Petition 2	December 5, 1995	VI–D–135	n/a.
EPA Denial of Petition 2	August 30, 1996	VI–C–20	61 FR 51018.

On May 1, 1998, OZ Technology, Inc. petitioned EPA for the third time. In this instance, OZ again requested that EPA remove Hydrocarbon Blend B from the unacceptable list and add it to the acceptable list as a substitute used in all

new refrigeration and air-conditioning equipment. The petition is in Air Docket A–91–42, file number VI–D–229. On November 13, 1998, EPA denied the petition on the basis that the information included in the petition did not adequately address safety issues regarding the use of Hydrocarbon Blend B as a CFC–12 substitute in new equipment. The denial and the accompanying documentation are in Air Docket A–91–42, file number VI–C–28. This Notice publicizes EPA's denial of the third petition.

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (Eastern Time) weekdays. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice may also be obtained on the world wide web at http://www.epa.gov/docs/ozone/title6/snap/.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 14, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–1336 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229, 231, and 232

[FRA Docket No. PB–9; Notice No. 15]

RIN 2130–AB16

Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Extension of comment period.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 9, 1998 (63 FR 48294), FRA proposed revisions to the regulations governing the power braking systems and equipment used in freight and other non-passenger railroad train operations. In that notice, FRA established a deadline for the submission of written comments of January 15, 1999. Due to the need to ensure that all interested parties have a sufficient amount of time to fully develop their comments and because several requests for additional time to submit written comments have been received by FRA, this document announces an extension of the deadline for the submission of written comments.

DATES: Written comments must be received by March 1, 1999. Comments received after that date will be considered to the extent possible without incurring additional expenses or delay.

ADDRESSES: Address written comments to the Docket Clerk, Office of Chief Counsel, RCC–10, Federal Railroad Administration, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590. Comments should identify the docket and notice number, and five copies should be submitted. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. The dockets are housed in the Seventh Floor of 1120 Vermont Avenue, N.W., Washington D.C. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Leon Smith, Deputy Regional Administrator—Region 3, FRA Office of Safety, RRS–14, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20950 (telephone 404–562–3800), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–10, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20950 (telephone 202–493–6053).

SUPPLEMENTARY INFORMATION: FRA held two public hearings and one technical conference in October and November of 1998 in regard to this NPRM. During the hearings and technical conference, a vast amount of oral information was presented, and a considerable number of issues were raised and discussed in detail. Subsequent to these meetings, interested parties began the preparation of written comments, which were to be submitted to FRA no later than January 15, 1999. Recently, a few interested parties notified FRA of the need for additional time in which to prepare their written comments. Due to the complexity and importance of this rulemaking, especially to the railroads and rail labor, FRA does not wish to inhibit the ability of any party to fully develop its comments and seeks to provide sufficient time for all interested parties to gather necessary information. Therefore, as FRA is inclined to extend the period for the submission of written comments for certain interested parties, FRA is compelled to provide the same extension to all commenters. Consequently, FRA believes it is in the best interest of all parties involved to extend the period for the submission of written comments in this proceeding to March 1, 1999. It should be noted that FRA does not expect anyone to seek any further extension of the comment period in this proceeding and will consider comments submitted after March 1, 1999, only to the extent possible without causing additional expense or delay.

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 99–1377 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register
Vol. 64, No. 13
Thursday, January 21, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Buena Biosystems, Inc., of Ventura, California, and Oregon Freeze Dry, Inc., of Albany, Oregon, co-exclusive licenses to U.S. Patent No. 5,834,177 issued on November 10, 1998, and the Continuation-In-Part to this Application, Serial No. 09/094,158 filed June 8, 1998, both entitled "Artificial Media for Rearing Entomophages." Notice of Availability was published in the **Federal Register** on August 7, 1997, for U.S. Patent No. 5,834,177.

DATES: Comments must be received on or before March 22, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Buena Biosystems, Inc., and Oregon Freeze Dry, Inc., have each submitted a complete and sufficient application for a license. The prospective co-exclusive licenses will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusives license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 99–1306 Filed 1–20–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Evaluation of Asset Accumulation Initiatives

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Food and Nutrition Service to request Office of Management and Budget (OMB) approval of data collection for the study, Evaluation of Asset Accumulation Initiatives.

DATES: Comments on this notice must be received by March 22, 1999.

ADDRESSES: Send comments and requests for copies of this information collection to: Alberta Frost, Director, Office of Analysis, Nutrition, and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alberta Frost, (703) 305–2017.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of Asset Accumulation Initiatives.

OMB Number: Not yet assigned.

Expiration Date: Not applicable.

Type of Request: New collection of information.

Abstract: Special-purpose savings accounts are an increasingly common policy tool to encourage personal savings and asset accumulation by low-income individuals. Such savings accounts, established in the name of an individual or family and earmarked for expenditures to promote economic self-sufficiency, are excluded from consideration as countable assets for the purposes of determining eligibility for public benefits. One category of special-purpose accounts, known as Individual Development Accounts (IDAs), are established jointly between the participant and a sponsoring organization that matches the participant's deposits as an additional saving incentive.

A growing number of state and local special-purpose savings programs exist in the United States for low-income savers, with new programs developing rapidly. This growth has been spurred in large part by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193 (PRWORA). Section 103(a)(1) of that legislation, 42 U.S.C. 604(g), allows states to establish IDA programs using Transitional Assistance to Needy Families (TANF) funds. Other national legislation has been introduced to support special-purpose savings accounts, including the Assets for Independence Act of 1998 (Pub. L. 105–285).

The Food and Nutrition Service (FNS) is conducting a study, Evaluation of Asset Accumulation Initiatives. The purpose of this project is to assess the degree to which state and local programs have been implemented to encourage low-income families (especially food stamp households) to save through special-purpose accounts.

Originally, this study was to involve a series of state demonstrations, as

specified in the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66), that were designed to promote the economic self-sufficiency of food stamp recipients through program changes to encourage asset accumulation. These demonstrations were not undertaken, however, as no state submitted an acceptable plan. Through the data collection described here, FNS will address the agency's congressional mandate to study asset accumulation policy.

Data collection will be conducted through the collection of program documents and a single round of telephone interviews in each of 20 states where special-purpose savings initiatives have been implemented. Interviews will be held with three types of respondents in each state: individuals knowledgeable of the specific provisions of the policy, individuals familiar with the administrative operations of the program, and persons who can provide empirical data, if available, about outcomes.

Estimate of Burden: The estimated public reporting burden associated with the telephone interviews is as follows: individuals knowledgeable with specific provisions of the policy (one hour), individuals familiar with the administrative operations of the program (two hours), and systems/evaluation staff (two hours). For each of the latter two categories, the indicated time may include interviews with multiple respondents.

Respondents: The respondents associated with the telephone interviews are listed above.

Estimated Number of Respondents: Telephone interviews will be conducted with a total of up to 100 respondents (up to five respondents from each of 20 states).

Estimated Number of Responses per Respondent: Telephone interviews will be conducted once with each respondent.

Estimated Total Burden on Respondents: The total burden on respondents will be up to 200 hours.

Dated: December 28, 1998.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–1345 Filed 1–20–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: Bureau of the Census.

Title: Census 2000—Puerto Rico.

Form Number(s): D–1(UL)(PR), D–1(UL)(PR)(S), D–1(E)(PR), D–1(E)(PR)(S), D–1(E)SUPP(PR), D–1(E)SUPP(PR)(S), D–1(HF)(PR), D–1 (HF)(PR)(S), D–2(UL)(PR),D–2(UL)(PR)(S), D–2(E)(PR), D–2(E)(PR)(S), D–2(E)SUPP(PR), D–2(E)SUPP(PR)(S), D–2(HF)(PR), D–2 (HF)(PR)(S), D–10(PR), D–10(PR)(S), D–15A(PR), D–15A(PR)(S), D–15B(PR), D–15B(PR)(S), D–20A(PR), D–20A(PR)(S), D–20B(PR), D–20B(PR)(S), D–21(PR), D–23(PR), D–806(PR), D–806(PR)(S), D–1(F)(PR), D–5(L)(UL)(PR), D–9(UL)(PR), D–16A(L)(UL)(PR), D–16B(L)(UL)(PR), D–19A(L)(PR), D–19A(L)(PR)(S), D–19B(L)(PR), D–19B(L) (PR)(S), D–19C(L)(PR), D–19C(L)(PR)(S), D–26(PR), D–31(PR), D–(UL)(PR), D–6(PR), D–6(UL)(PR), D–7(PR), D–7(UL)(PR), D–8(PR), D–8A(PR), D–8B(PR), D–12(PR), D–14(PR), D–40(PR), D–40(SCR)(PR).

Agency Approval Number: Not available.

Type of Request: New collection.

Burden: Short form—251,767 hours, Long form—190,400 hours, Reinterview—1,582 hours.

Number of Respondents: 1,400,000.

Avg Hours Per Response: Short form—13 minutes, Long form—48 minutes, Reinterview—6 minutes.

Needs and Uses: The United States Constitution mandates that a census of the Nation's population and housing be taken every 10 years. Title 13 of the United States Code specifies that in addition to the 50 states and the District of Columbia, the census should include Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. This OMB submission covers Puerto Rico only. The other areas mentioned will be submitted separately. The Census Bureau's goal in Census 2000 is to take the most accurate and cost-effective census possible. The importance of an accurate decennial census cannot be overstated. Puerto Rico census data are used to redraw legislative district boundaries to ensure that political representation is distributed accurately and to determine funding allocations for the distribution of Federal and Puerto Rico funds each year. Census data will tell us what we know about Puerto Rico; they are a definitive benchmark for virtually all demographic information used by the Federal, Puerto Rico and local governments, policy makers, educators, journalists, and community and nonprofit organizations.

Affected Public: Individuals and households.

Frequency: One time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S.C, Sections 141, 193, 191.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–1371 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1999 Survey of Program Dynamics.

Form Number(s): Automated Survey Instrument, SPD–19105(Letter), SPD–19113(Letter).

Agency Approval Number: 0607–0838.

Type of Request: Revision of a currently approved collection.

Burden: 25,150 hours.

Number of Respondents: 42,000.

Avg Hours Per Response: 36 minutes.

Needs and Uses: The Census Bureau seeks OMB approval to conduct the 1999 Survey of Program Dynamics (SPD). The SPD provides the basis for an overall evaluation of how well welfare reforms are achieving the aims of the Administration and the Congress and meeting the needs of the American people. This survey simultaneously measures the important features of the full range of welfare programs, including programs that are being reformed and those that are unchanged, and the full range of other important social, economic, demographic, and

family changes that will facilitate or limit the effectiveness of the reforms.

The SPD is a longitudinal study that follows a subset of the respondents from the 1992 and 1993 panels of the Survey of Income and Program Participation (SIPP). The SPD was first implemented in the Spring of 1997 with a bridge survey which provided a link to baseline data for the period prior to the implementation of welfare reforms. The first full-scale SPD was conducted in 1998. Annual surveys will be conducted through 2002. The data gathered for the 10-year period (1992–2002) will aid in assessing short- to medium-term consequences of outcomes of the welfare legislation.

The majority of questions used in the 1999 SPD will remain the same as those from 1998. New questions for 1999 have been requested by policymakers. These include questions on household expenditures, substance abuse, and extended measures of child well-being. A self-administered questionnaire for adolescents collected in 1998 will not be implemented in the 1999 SPD. Like the 1997 Bridge Survey and 1998 SPD, the 1999 SPD uses an automated questionnaire on laptops for personal visits and telephone interviews.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42 USC, Section 614 (P.L. 104–193, Section 414).

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–1372 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Boundary and Annexation Survey.

Form Number(s): BAS–1, 1A, 2, 2A, 3, 3A, 4, 5, 5A, 26 letters, 2 postcards, and 10 inserts.

Agency Approval Number: 0607–0151.

Type of Request: Reinstatement, with change, of an expired collection.

Burden: 118,041 hours.

Number of Respondents: 39,347.

Avg Hours Per Response: 3 hours.

Needs and Uses: The Census Bureau conducts the Boundary and Annexation Survey (BAS) annually to collect information on the creation of newly incorporated municipalities, minor civil divisions (MCDs), counties, Federally recognized American Indian areas (AIAs) which include reservations and/or off-reservation trust lands, and Alaska Native Regional Corporations (ANRCs), the dissolution of incorporated municipalities and MCDs, and changes to the boundaries of counties, incorporated municipalities, MCDs, AIAs, and ANRCs. The survey provides accurate identification of geographic areas for the decennial and economic censuses and support for the annual population estimates program. It is also used to update the municipal, MCD, county, AIA, and ANRC inventory for the Federal Information Processing Standards (FIPS) program managed by the U.S. Geological Survey (USGS) for the National Institute of Standards and Technology and to update the Geographic Names Information System (GNIS) maintained by the USGS.

During 1999 and 2000, in preparation of Census 2000, the Census Bureau needs information from all areas to confirm or update existing boundary information. Additionally, we need information about street addresses along boundary lines. This request for reinstatement includes an increase in burden hours to cover the more detailed information we will collect.

Affected Public: State, local, or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 6.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–1375 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation (SIPP) Wave 11 of the 1996 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 22, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, Bureau of the Census, FOB 3, Room 3379, Washington, DC 20233–0001, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels each lasting four years. Respondents are interviewed once every four months in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction

between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information on taxes, the ownership and contributions made to IRA, Keogh, 401K plans, examining patterns in respondent work schedules, and child care arrangements. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 1996 Panel Wave 11 collect information about:

- Child Support Agreements.
- Support for Nonhouseholders.
- Adult Disability.
- Child Disability.

Wave 11 interviews will be conducted from August through November 1999.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every four years with each panel having a duration of four years in the survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Persons 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

III. Data

OMB Number: 0607–0813.
Form Number: SIPP/CAPI Automated Instrument.
Type of Review: Regular.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 77,700.
Estimated Time Per Response: 30 minutes per person.
Estimated Total Annual Burden Hours: 117,800.
Estimated Total Annual Cost: The only cost to respondents is their time.
Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 15, 1999.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 99–1370 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Fresh Kiwifruit From New Zealand: Postponement of Preliminary Results of Antidumping Duty Administrative Review (A–614–801)

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the antidumping duty administrative review of the antidumping finding on fresh kiwifruit from New Zealand covering the period June 1, 1997, through May 31, 1998, since it is not practicable to complete the review within the time limit mandated by Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: January 21, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Stoltz or Jim Terpstra, Antidumping Duty and Countervailing Duty Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–4474 and 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

Background

On July 28, 1998 (63 FR 40258) the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on fresh kiwifruit from New Zealand covering the period June 1, 1997, through May 31, 1998. In our notice of initiation, we stated that we intended to issue the final results of this review no later than June 30, 1999. The current deadline for the preliminary results is March 2, 1999.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results of this review within the original time frame because of the numerous novel and complex legal and methodological issues in this review (*see* Decision Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary, to Robert S. LaRussa, Assistant Secretary).

Accordingly, the deadline for issuing the preliminary results of this review is now due no later than June 30, 1999.

The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: January 14, 1999.

Holly Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–1369 Filed 1–20–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMODITY FUTURES TRADING COMMISSION

Application of the Chicago Mercantile Exchange for Designation as a Contract Market in Cash Settled Butter Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contract.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in cash settled butter futures and options. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before February 22, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the CME cash settled butter futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Martin Murray of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5276. Facsimile number: (202) 418–5527. Electronic mail: mmurray@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's Headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 14, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–1376 Filed 1–20–99; 8:45 am]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public, project sponsors, and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Corporation is soliciting comments concerning its request for renewal of the National Senior Service Corps' Project Profile and Volunteer Activity (PPVA) Survey data collection instruments with the proposed revisions listed below.

Copies of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice. This document will be made available in alternate format upon request—TDD (202) 606–5000 ext. 164.

The Corporation for National and Community Service is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by March 22, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, National Senior Service Corps (NSSC), Attn: Janice Forney Fisher, 1201 New York Avenue, N.W., 9th floor, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Janice Forney Fisher by calling (202) 606–5000 ext. 275 or by e-mailing Jfisher@cns.gov.

SUPPLEMENTARY INFORMATION:

Background

PPVA instruments are used to collect project and aggregate volunteer demographic and activity data from project sponsors funded under the Retired and Senior Volunteer Program

(RSVP), Foster Grandparent Program (FGP), and Senior Companion Program (SCP). Data collection instruments have been in use for this purpose at least 2 decades in each of the programs. OMB approves data collection instruments for a maximum of 3 years at a time. Current 3-year approval ends in June 1999.

Current Action

The Corporation has initiated review and 3-year OMB approval on the PPVA instruments through 2002. As proposed revisions are minor, no change will result in the per-response burden of the data collection. However, the proposed reduction in frequency of reporting from annually to every two years will halve the average annual hour burden on individual respondents.

Proposed changes to all three existing instruments include the following:

- Reduce the frequency of submission from annually to every two years starting in 1999.
- Sponsor Type—Allow sponsors to check multiple types if applicable. Add "Indian Tribes" and "Volunteer Management Organization" to options.
- Add question on availability of access to the Internet.
- Question 1—Budgeted Volunteers/VSYs—Delete.

Modifications to the RSVP instrument include the following:

- Stations—Add "Museums" and "Other Public Agencies Not Elsewhere" to the list of options. Split Schools into "Schools-Elementary" and "Schools-Secondary".
- Shorten service hour category names consistent with OMB-approved Accomplishment Survey.
- Category 201—Move Senior Center group programs not providing adult day care services to new category 213.
- Category 305—Move programs for dropouts to category 334 with GED programs.
- Category 312—Incorporate child literacy programs from category 336.
- Category 336—Delete; contents will be split between categories 312 and 338 by age.
- Category 338—Incorporate adult literacy activities from category 336.

Modifications to the FGP and SCP instruments include the following:

- Question 3—Revise age groupings for better consistency with RSVP and Census groupings. New groups are 60–64, 65–74, 75–84, 85+.
- Add a question on how many potential volunteers were ineligible due to over-income status.
- SCP Stations—Delete "Nutrition Sites" and add "Public Health Agencies".

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Project Profile and Volunteer Activity Survey.

OMB Number: 3045–0029

Agency Number: 1021–FGP, 1021–RSVP, 1021–SCP.

Affected Public: Organizations that receive grants under the Retired and Senior Volunteer Program, Foster Grandparent Program, and Senior Companion Program.

Total Respondents: 1,300.

Frequency: Every two years.

Average Time Per Response: 8.1 hours RSVP; 5.1 hours FGP; and 3.7 hours SCP.

Estimated Total Burden Hours: 4,338 hours annualized.

Total Burden Cost (capital/startup): $11,100.

Total Burden Cost (operating/maintenance): $650.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 14, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–1331 Filed 1–20–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Inspection and Request for Public Comment—Accreditation Visit

The United States Air Force Academy is seeking public comments about the Academy in preparation for its periodic evaluation by its accrediting agency. The Academy will undergo a comprehensive evaluation visit May 3–7, 1999 by a team representing the commission on Institutions of Higher Education of the North Central Association of Colleges and Schools. The visit is a 10-year reassessment of the Academy's success in meeting the Commission's Criteria for Accreditation and General Institutional Requirements as a degree-granting institution of higher education. The Academy has been fully accredited by the Commission since 1959.

The public is invited to submit comments regarding the Academy to: Public Comment on the USAF Academy, Commission on Institutions of Higher Education, North Central Association of Colleges and Schools, 30 North LaSalle Street, Suite 2400, Chicago, IL 60602.

Comments must address substantive matters related to the quality of the institution or its academic programs. Comments must be in writing and signed. Comments cannot be treated as confidential. All comments must be received by April 1, 1999.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–1282 Filed 1–20–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision for the Final Environmental Impact Statement (FEIS) for the Proposed Upgrade of Training Areas and Facilities, Camp Atterbury, Indiana, by the Indiana Army National Guard (INARNG)

AGENCY: National Guard Bureau, Department of the Army, DoD.

ACTION: Record of decision.

SUMMARY: The Record of Decision (ROD) was signed on October 14, 1998. The decision made in the ROD was to implement the proposed action and a series of mitigation measures to minimize the environmental impacts of this action. The proposed action is to construct and operate at Multi-Purpose Training Range (MPTR) that would support tanks, attack helicopters, Infantry Fighting Vehicles, and a dismounted infantry platoon battle course. Equipment would also be upgraded commensurate with troop training doctrine.

The purpose of the project is to maximize training opportunities for military units that use Camp Atterbury. Military units need to be able to maintain a high level of training and state of readiness to support national defense and state mission in times of natural disaster, civil unrest, and other emergencies. Adequate training opportunities, with up-to-date equipment, must be available to allow them to train for their assigned mission.

ADDRESSES: A copy of the FEIS can be obtained by writing to Major Rick Jones, EIS Project Officer, Indiana Army National Guard, 2002 S. Holt Road, Indianapolis, Indiana 46241–4839.

FOR FURTHER INFORMATION CONTACT: Major Rick Jones at (317) 247–3105, facsimile extension 3414.

SUPPLEMENTARY INFORMATION: The INARNG proposes to upgrade training areas and facilities at Camp Atterbury, Indiana. The proposed action includes the construction of an MPTR. The proposed action does not include

development of maneuver corridors. These corridors, if proposed for addition in the future, will be the subject of a supplemental National Environmental Policy Act document. The MPTR will be located in the southwest sector of the installation and will be used for training by armor, attack helicopter, Infantry Fighting Vehicles, and dismounted infantry units. The MPTR would include a support area, firing area and a target area. The firing area would include stationary, moving and defilade firing positions. The target area would contain stationary and moving targets. Firing points would be oriented to provide northeasterly trajectories into the existing impact area. The MPTR itself would occupy approximately 80 hectares (200 acres) and, including the safety fan, the area involved would total 4,550 hectares (11,250 acres).

Three alternatives in addition to the proposed action were considered—the first (Alternative 2A) includes the construction of the MPTR and two maneuver corridors, another alternative with less development (Alternative 2B), and the no action alternative. Alternative 2B involves the MPTR being located in the northwest sector of Camp Atterbury, with firing points oriented to provide southeasterly trajectories into the impact area, and would involve the development of only the eastern maneuver corridor. The no action alternative considers the continued use of Camp Atterbury without the proposed upgrade.

Two public meetings were conducted near Camp Atterbury, Indiana, on the DEIS after the Notice of Availability was published. After all the comments were compiled and reviewed, responses were prepared to all relevant environmental issues that were raised. These responses to comments and/or any new pertinent information were incorporated into the DEIS to constitute the FEIS.

The ROD was published after the 30-day waiting period on the FEIS that was completed on October 13, 1998.

Copies of the ROD will be mailed to individuals who participated in the public scoping process. Copies will also be sent to Federal, state, regional, and local agencies; interested organizations and agencies; and public libraries. Individuals not currently on the mailing list may obtain a copy by request.

Dated: January 14, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 99–1343 Filed 1–20–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)

Date of Meeting: 19 & 20 January 1999

Time of Meeting: 0830–1600

Place: 2425 Wilson Blvd., Arlington, VA 22201

Agenda: The Army Science Board's (ASB) Summer Study Panel on "Enabling Rapid and Decisive Strategic Maneuver for the Army After 2010" will meet for discussions. These meetings will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call Jacqueline Ladd at (703) 604–7479.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 99–1283 Filed 1–20–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Shock Testing the Seawolf Submarine

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; the regulations implementing NEPA issued by the Council on Environmental Quality (CEQ), 40 Code of Federal Regulations (CFR) Parts 1500–1508; Navy regulations implementing NEPA procedures (31 CFR 775); and Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions"; hereby announces its selection of the area of the Atlantic Ocean offshore of Mayport Naval Station, Jacksonville, Florida for the SEAWOLF submarine shock test. NEPA sets out the procedures Federal agencies must follow in analyzing environmental impacts of major Federal actions within U.S. territory. Executive Order 12114 sets out the procedures Federal agencies must follow in analyzing environmental impacts of major Federal actions occurring outside U.S. territory in the global commons or within the territory of another nation. The Department of the Navy was the lead agency and the National Marine Fisheries Service (NMFS) was a cooperating agency for the Environmental Impact Statement (EIS).

The SEAWOLF submarine would be shock tested in a manner consistent with the alternative "Shock Testing The SEAWOLF At An Offshore Location", described in the Final Environmental Impact Statement (FEIS) as the proposed action. The FEIS analyzed in detail two alternative areas offshore of Mayport, Florida and Norfolk, Virginia. The submarine would be subjected to a series of five 10,000 pound explosive charge detonations sometime between April 1, 2000 and September 30, 2000. Testing offshore of Mayport would be conducted between May 1 and September 30, 2000 to minimize the risk to sea turtles which may be more abundant in the Mayport area during April. The series of five detonations would be conducted at a rate of one detonation per week to allow time to perform detailed inspections of the submarine's systems prior to the next detonation.

The two areas were evaluated with respect to operational criteria and environmental impacts. Both were determined to meet all of the Navy's operational requirements. In choosing the Mayport area, Navy determined that while most environmental impacts of shock testing would be similar at both locations, the risk of mortality and injury to marine mammals is about five to seven times lower at Mayport.

The Navy has determined that shock testing in the Mayport area will have the least environmental impact. This Record of Decision leaves the selection of a single primary and two secondary test sites within the Mayport test area to be made based on aerial surveys of marine mammals and turtles done three weeks prior to the shock test. One of these three sites will be selected as the final test site based on marine mammal and turtle surveys performed two to three days before each detonation.

Background

The USS SEAWOLF is the first of a new class of submarines being acquired by the Navy. The class consists of three submarines, with the second and third currently under construction. SEAWOLF class submarines are the largest and most capable fast attack submarines in the fleet. Features include reduced acoustic and electromagnetic signatures, improved speed, greater maximum operating depth, greater ordnance capacity, and other technological improvements reflecting the state-of-the-art in submarine design.

Section 2366, Title 10, United States Code (10 U.S.C. 2366), provides that a covered system, such as a submarine, cannot proceed beyond initial production until realistic survivability testing for the system is complete. Realistic survivability testing means testing of the vulnerability of the system in combat by firing munitions likely to be encountered in combat with the system configured for combat. This testing is commonly referred to as "Live Fire Test & Evaluation" (LFT&E). Consistent with 10 U.S.C. 2366, the Navy has established a LFT&E program to complete the survivability testing of SEAWOLF Class submarines. The SEAWOLF LFT&E program includes a ship shock test. A ship shock test is a series of underwater detonations that propagate a shock wave through a ship's hull under deliberate and controlled conditions. Shock tests simulate near misses from underwater explosions similar to those encountered in combat.

The purpose of the project is to shock test the SEAWOLF so that the resultant data can be used to assess the survivability of the submarine. Computer modeling and component testing on machines or in surrogates does not provide adequate information to fully assess the survivability of the submarine. Testing the manned submarine with the appropriate systems operating provides the best information to support an assessment of the survivability of the ship. Shock tests have proven their value as recently as the Persian Gulf War when ships were able to survive battle damage and continue their mission because of ship design, crew training, and survivability lessons learned during previous shock tests.

The SEAWOLF was christened in June 1995 and delivered to the Navy in the summer of 1997. Because of the long series of at-sea testing that must be completed by the lead ship of a class, shock testing did not occur in 1997 as originally planned. Therefore, the Navy rescheduled the shock test for the spring/summer of 2000.

The delay of the SEAWOLF shock test from 1997 to 2000 is addressed in the environmental analysis provided in the FEIS. The impacts identified and the mitigation developed were based on the time of year that the test is conducted, and no impacts were identified that were variable other than seasonally each year. Therefore, the methodology for determining impacts remained valid and the Navy decided to issue the FEIS even though the planned year of the test had changed. During 1997, the Navy conducted additional aerial surveys of the Mayport area to further confirm and validate the marine mammal and sea turtle population density data obtained during the 1995 aerial surveys. These additional data were incorporated into the FEIS.

To begin the NEPA process, Navy published a Notice of Intent in March 1995 in the **Federal Register** (60 FR 12748) and five newspapers (Washington Post, Virginian Pilot, Florida Times Union, Beaches Leader, and Southeast Georgian), announcing that Navy would prepare an EIS. A 30-day public scoping period was established for identifying issues to be addressed in the Draft Environmental Impact Statement (DEIS). Navy held scoping meetings jointly with NMFS on March 23, 1995 in Silver Spring, Maryland; on March 28, 1995 in Norfolk, Virginia; and on March 29, 1995 in Atlantic Beach, Florida. Written and oral comments were received during the public meetings. All comments were reviewed to ensure that all issues were addressed in the DEIS.

The notice of availability for the DEIS was published in the **Federal Register** (61 FR 30232) on June 14, 1996. Navy distributed the DEIS to Federal, State, and local agencies, elected officials, special interest groups, and interested persons. Navy held public hearings jointly with NMFS to receive written and oral comments on the DEIS on August 19, 1996 in Silver Spring, Maryland; August 20, 1996 in Norfolk, Virginia; and August 21, 1996 in Atlantic Beach, Florida. The public comment period on the DEIS ended on September 17, 1996. Federal, State, and local agencies, and the general public commented on the DEIS. These comments and Navy's responses were incorporated in the FEIS, which was distributed to the public on June 5, 1998, for a review period that concluded on July 6, 1998.

Coordination and Consultation With the NMFS

The NMFS has two regulatory roles in the SEAWOLF project. First, the NMFS is responsible for administering the Endangered Species Act as it applies to sea turtles and most marine mammals. The DEIS served as the Biological Assessment which the Navy submitted to the NMFS, requesting formal consultation under Section 7 of the Endangered Species Act (ESA), (16 U.S.C. 1531 *et seq.*). The NMFS subsequently issued a Biological Opinion, dated December 12, 1996, which completed the consultation process under ESA.

The NMFS also has a regulatory role under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*). When the DEIS was published, the Navy submitted a separate application to the NMFS for an "incidental take authorization" under section 101(a) (5) (A) of the MMPA. The NMFS published a Proposed Rule in the **Federal Register** on August 2, 1996 (61 FR 40377) and participated in joint public hearings with the Navy (see dates above) to receive comments. The Proposed Rule specified mitigation, monitoring, and reporting requirements for the shock test. A Final Rule must be issued by NMFS before shock testing can proceed.

The NMFS was also a cooperating agency with the Navy in preparing the EIS. Because of its regulatory responsibilities under the ESA and the MMPA, the NMFS limited its role in preparation of the EIS to providing review and comment.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for implementing a proposed Federal Action. The alternatives evaluated in the FEIS were no-action and shock testing the SEAWOLF at an offshore location. Alternative offshore areas for shock testing were compared from operational and environmental perspectives. A preferred alternative was identified based on these comparisons.

Under the "No Action" alternative, no new activities affecting the physical environment would be conducted to predict the response of SEAWOLF class submarines to underwater detonations. This alternative would avoid all environmental impacts of shock testing. Navy has established an LFT&E program to demonstrate the survivability of SEAWOLF class submarines. The program consists of three major areas that together provide the data necessary to assess the SEAWOLF's survivability: computer modeling and analysis, component and surrogate testing, and a shock test of the entire ship. The SEAWOLF LFT&E program already includes the maximum reasonable amount of computer modeling and component testing. Testing the manned submarine with the appropriate systems operating provides the best information to support an assessment of the survivability of the ship. The "No Action" alternative would prevent the Navy from being able to make the best survivability assessment.

The remaining alternative discussed in the FEIS was the proposed action, to shock test the SEAWOLF at an offshore location. The submarine would be subjected to a series of five 10,000-pound explosive charge detonations. The series of five detonations would be

conducted at a rate of one detonation per week to allow time to perform detailed inspections of the submarine's systems prior to the next detonation. The series of detonations would occur sometime between April 1, and September 30, based on the Navy's operational requirements.

A location on the east coast best meets operational needs as that is where the SEAWOLF will be homeported and where all sea trials will occur. Scheduling the test on the West Coast or in the Gulf of Mexico would increase the time the ship is away from the homeport, complicate or prolong repairs, and further delay deployment. Under Navy Personnel Tempo (PERSTEMPO) regulations, a ship is required to spend a day in homeport for every day it is away from homeport for purposes of crew quality of life and efficiency (OPNAVINST 3000.13A, 21 December 1990). A shock test conducted away from the homeport is typically a 3.5 to 4 month deployment, including time spent having special equipment installed at the shore support facility, completing test runs and training, and conducting the actual shock testing. Scheduling the test away from the East Coast would maximize time spent away from the homeport and minimize the SEAWOLF's availability for deployment as part of fleet resources.

The Navy screened possible East Coast shock testing areas according to operational criteria. Potential areas were first defined as locations having a water depth of 152 m (500 ft) that are within 185 km (100 nmi) of a naval station support facility and a submarine repair facility. This water depth is sufficient to minimize the effect of a bottom reflected pressure wave on the submarine and shallow enough to allow mooring of the operational vessel with the test array. This depth would also permit recovery of the crew and submarine in the unlikely event of a control failure. Other criteria include proximity to an ordnance storage/loading facility and Navy assets (ships and aircraft) necessary to support test needs. There must also be little or no shipping traffic in the area. Finally, calm seas and good visibility are needed for the test.

Five east coast areas were identified that could potentially meet the Navy's operational requirements: Mayport, Florida; Norfolk, Virginia; Groton, Connecticut; Charleston, South Carolina; and Key West, Florida. Charleston was eliminated because of the closure of the Charleston Naval Base under the Base Closure and Realignment (BRAC) process (i.e., facilities and vessels to support the test would not be available). The water depth of 275 m (900 ft) at the Key West area is too great for the planned shock testing. In addition, the Key West area lacks the industrial base to support submarine repairs or drydocking, and there is no surface vessel homeport nearby that could provide Navy assets (ships and planes) to support the test. Key West was, therefore, eliminated from further consideration.

The FEIS further analyzed Mayport, Norfolk, and Groton according to the operational criteria. The areas were scored against the operational criterion, with Mayport and Norfolk having nearly identical scores, whereas Groton scored substantially lower. Groton scored poorly on criteria for incidence of fog, visibility, and proximity to Navy assets. Mayport, Florida and Norfolk, Virginia were the areas determined to meet all of the Navy's operational criteria and therefore were the focus of detailed environmental analysis in the FEIS.

The FEIS evaluated the Mayport and Norfolk areas with respect to environmental considerations. Possible test sites were first defined as any point along the 152 m (500 ft depth contour within 185 km (100 nmi) of a naval station support facility and a submarine repair facility. Environmental features near each area were mapped, including marine sancturaries, artificial reefs, hard-bottom areas, shipwrecks, ocean disposal sites, and critical habitat for endangered or threatened species. Buffer zones were then developed to avoid impacts to these areas and associated biota, excluding portions of the 152 m depth contour. Features such as several shipwrecks, potential hard bottom, and the proposed Norfolk Canyon Marine Sanctuary were excluded from the area of consideration at Norfolk. All points along the 152 m depth contour off Mayport were considered potential shock testing sites.

To supplement historical information and better understand the potential impacts the SEAWOLF shock test might have on marine mammals and turtles, Navy conducted monthly aerial surveys during the six-month period from April through September 1995. These surveys, for both Mayport and Norfolk, were done to assist in determining density and distribution of marine mammals and turtles. Significantly higher numbers of marine mammals were sited off Norfolk. A total of 4,438 individuals representing at least 14 species of marine mammals were seen at the Norfolk area during the 1995 aerial surveys while a total of 1,303 individuals representing at least seven species were seen at Mayport. The total number of sea turtles seen in the two areas was 48 at Norfolk and 138 at Mayport. During the month of April, 61 turtles were seen at Mayport while 0 were seen at Norfolk, accounting for a large portion of the difference between the two areas. Additional aerial surveys were conducted at Mayport during the five-month period May through September 1997. During the 1997 surveys 1,485 individuals representing at least eight species of marine mammals and 240 sea turtles were seen.

Most environmental impacts of shock testing were determined to be similar at Mayport or Norfolk. However, the two areas differ significantly with respect to potential impacts on marine mammals and sea turtles. The most significant environmental difference between the areas is the much lower risk of impacts to marine mammals at the Mayport area. Using the 1995 survey data from both areas as the most appropriate basis for comparison, the risk of mortality and injury of marine mammals is about 5 to 7 times lower at Mayport than at Norfolk, whereas the risk to sea turtles is about the same at the two areas. This comparison strongly favors Mayport as the preferred alternative. If the 1997 Mayport survey data are compared with the Norfolk 1995 data, the risk of marine mammal mortality and injury would be 3.5 to 5 times lower at Mayport, but the risk to sea turtles would be 2 times lower at Norfolk. This comparison also indicates that Mayport has the lowest overall risk of significant environmental impacts. Considering all components of the physical, biological, and socioeconomic environment, potential impacts would be less at the Mayport area.

Based on the evaluation of criteria, the preferred alternative is to shock test the SEAWOLF submarine offshore of Mayport, Florida. Testing will not occur during the month of April when turtle densities may be higher. This alternative meets the project purpose and need, satisfies operational criteria, and minimizes environmental impacts. The Norfolk area also meets the project purpose and need and satisfies operational criteria; however the density of marine mammals in the area could increase the risk of impacts.

Environmental Impacts

In the FEIS Navy analyzed the potential impacts of shock testing the SEAWOLF at the Mayport, Florida offshore area. Impact discussion was separated into separate subsections to distinguish between those aspects of the proposed action evaluated under NEPA and those evaluated under Executive Order (EO) 12114. NEPA applies to activities and impacts within U.S. territory, whereas EO 12114 applies to

impacts outside territorial seas. The proposed action includes operations that will occur both within and outside U.S. territory. Shock testing and associated mitigation will occur at least 87 km (47 nmi) offshore at the Mayport area, well outside U.S. territorial seas.

No impacts from the actual test (detonation of explosives) will occur in U.S. territory. The only operations that will occur within territorial limits are shore support activities and vessel and aircraft movements in territorial waters (i.e., transits between the shore base and the offshore shock-testing site). These shore support activities and vessel and aircraft movements are not unusual or extraordinary and are part of the routine operations associated with the existing shore bases. This Record of Decision focuses on the impacts that will likely result from implementing the proposed action, detonation of explosives outside of U.S. territorial seas.

Shore support operations and movement of vessels and aircraft within territorial limits are not unusual or extraordinary and are part of the routine operations associated with the existing shore bases. Under NEPA, impacts of these existing operations on the physical environment, specifically geology and sediments, air quality, and water quality are minimal. Impacts of these existing operations on the biological environment, marine biota, including plankton, pelagic fish, marine mammals, sea turtles, benthic organisms, and seabirds are minimal. Impacts of these existing operations on the socioeconomic environment, commercial and recreational fisheries and ship traffic, are also minimal.

The impacts of detonation of the explosive charge on the physical environment are evaluated under EO 12114. Calculations based on the size of the explosive (4,536 kg or 10,000 lb), the depth of burst (30 m or 100 ft), and the total water depth (152 m or 500 ft) indicate there will be no cratering of the seafloor. The shock wave will reach the seafloor and be reflected from it, but will have no significant impact on bottom structure or form.

The test area is well offshore in an area not classified for priority pollutants under the Clean Air Act. It is estimated that 90% of the gaseous explosion products will become airborne. These products include carbon dioxide, carbon monoxide, ammonia, ethane, propane, hydrogen cyanide, methane, methyl alcohol, formaldehyde, acetylene, and phosphine. Because of the low initial concentrations and rapid dispersion of the explosion products, there will not be any risk to human health or marine life at the test site. 100% of the solid explosion products and 10% of the gases will remain in the water. All products have predicted concentration levels well below permissible concentrations, indicating no hazard to marine life.

The impacts of detonation of the explosive charge on the biological environment are also evaluated under EO 12114. The impacts are evaluated for several categories of marine life. Plankton would be affected mainly by the physical force of the shock wave from the detonations. No lasting impacts on plankton communities due to cavitation or chemical products are expected. The detonations could have two main effects on pelagic fish. First, fish within a certain radius will be killed or injured by the resulting shock waves. The predicted 10% mortality range for fish (i.e., a distance beyond which at least 90% of fish would survive) ranges from 22 m (73 ft) for non-swimbladder fish to over 914 m (3,000 ft) for some of the small swim-bladder fish. A large fish kill is not expected because detonation would be postponed if large schools are observed within 1.85 km (1 nmi) of the detonation point. Secondly, fish at greater distances may react behaviorally to sound impulses from the blast. It is expected that any behavioral responses to low-frequency sounds from the underwater explosions would be short term and reversible.

The detonation of the explosive charge on marine mammals may have two types of potential impacts. First, marine mammals, if they are present and are not detected during pre-test monitoring within about 1.85 km (1 nmi) of the detonation point, may be killed or injured. Second, marine mammals at greater distances [up to 15.7 km (8.5 nmi) for odontocetes and 23.5 km (12.7 nmi) for mysticetes] may experience auditory effects such as temporary threshold shift (TTS). At still greater distances, some marine mammals may hear the detonations and exhibit a momentary, minor behavioral response. Criteria for marine mammal lethality, injury, and harassment were developed through extensive literature review and modeling and were fully discussed in the FEIS.

Because the proposed action may result in mortality, injury, or harassment of marine mammals, the Navy submitted a request for "incidental take" authorization from the NMFS concurrently with the release of the DEIS. The MMPA allows the incidental (but not intentional) taking of marine mammals upon request if the taking will (1) have a negligible impact on the species or stock(s); and (2) not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In response to the Navy's incidental take request, the NMFS published a Proposed Rule in the **Federal Register** on August 2, 1996 (61 FR 40377). A Final Rule must be issued before shock testing can proceed. In addition, because listed (endangered and threatened) species of marine mammals and sea turtles may occur at the Mayport area, formal consultation with the NMFS was required under the ESA. The DEIS served as the Biological Opinion submitted to the NMFS. The NMFS issued a Biological Opinion taking into account the cumulative impacts of all activities potentially affecting listed marine mammal and turtle populations which concluded that, with mitigation included in the proposed action, shock testing is not likely to jeopardize the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitat.

To provide numbers for the incidental take request submitted to the NMFS, it was necessary for Navy to estimate numbers of potentially affected animals. The analysis performed by the Navy deliberately overestimated numbers of affected animals in order to provide an upper bound on potential impacts. The number of marine mammals potentially killed, injured, or harassed as a result of the proposed detonations was estimated using a series of steps and assumptions described in the FEIS. Maximum ranges for mortality, injury, and harassment were defined using criteria developed in the FEIS. The mortality and injury criteria were based on tests conducted with terrestrial mammals, the harassment criterion was based on temporary threshold shift (TTS) in bottlenose dolphins. Mean densities of each species were multiplied by the area of the mortality, injury, and harassment ranges to estimate the number of mammals and turtles affected "without mitigation". The mitigation effectiveness was then estimated for each species, taking into account the probability of detection by aerial and surface observers and passive acoustic monitoring. For mortality and injury, the "without mitigation" numbers for each species were then multiplied by (1 minus mitigation effectiveness), which is the probability of not detecting that species during pre-detonation monitoring. The resulting values are the expected number of undetected animals of each species within the mortality and injury range. For harassment, the "with mitigation" numbers were assumed to

be equal to the "without mitigation" numbers, because only a small proportion of the harassment radius is within the Safety Range.

The criterion by which the mortality range was defined in the FEIS was onset of extensive lung hemorrhage. The range varies depending on mammal weight, with the smallest mammals having the greatest range. The maximum predicted range for a small marine mammal (a calf dolphin) was 1.1 km (0.6 nmi). The FEIS analysis assumed that 100% of the marine mammals within this radius would be killed, even though the probability of mortality from the onset of extensive lung hemorrhage was estimated to be only 1% at the outer edge of this range.

The measure of non-lethal injury used in the FEIS to define the injury range was 50% probability of eardrum rupture. The greatest range, calculated for a mammal at the bottom, was 1.85 km (1 nmi). The FEIS assumed that 100% of marine mammals within this radius would be injured even though the probability of eardrum rupture at the outer edge of this range is only 50% (and less in near-surface waters).

The 1994 amendments to the MMPA defined harassment, but do not define threshold sound levels sufficient to cause it. The NMFS has not formally defined a threshold for harassment, but has cited temporary threshold shift (TTS) as an example (FR 60(104):28379–28386, 31 May 1995). TTS is a change in the threshold of hearing (the quietest sound that an animal can hear), which could temporarily affect an animal's ability to hear calls, echolocation sounds, and other ambient sounds. In the FEIS, TTS was used as the criterion for acoustic harassment of marine mammals. Based on the results of TTS experiments in bottlenose dolphins, an energy density TTS criterion of 182 dB re $1\mu Pa^2$.sec was used. Separate ranges were calculated for odontocetes and mysticetes based on their differing sensitivity to low frequencies. For odontocetes, which are "high frequency specialists," all frequencies greater than or equal to 10 Hz were included. The harassment range is predicted to be 15.7 km (8.5 nmi) for odontocetes and 23.5 km (12.7 nmi) for mysticetes.

Detailed calculations of range distances, estimates of marine mammal densities, and mitigation effectiveness can be found in the FEIS. While the Navy does not anticipate any lethal or injurious takes will result from the five-detonation shock test, the theoretical calculations based on the previously described criteria indicate the potential for 1 lethal take, 5 injurious takes, and 1,788 harassment takes of marine mammals. These numbers have several levels of conservatism built into them. Calculations were done using data from both the 1995 and 1997 surveys with the largest resulting numbers being chosen. The numbers were then compared to the results from the DEIS method of calculation, with the largest numbers again being selected.

There is comparatively little experimental or theoretical data upon which to base mortality and injury ranges for sea turtles. Therefore, the FEIS used the corresponding ranges for marine mammals. While these ranges were based on experiments with mammals, it is reasonable to assume sea turtle lungs and other gas-containing organs would be similarly affected by shock waves. Calculations indicate the maximum potential for 8 mortalities, 30 injuries, and 1,679 harassments. Calculations in the FEIS were done using data from both the 1995 and 1997 surveys with the largest resulting numbers (1997) being chosen. The numbers were then compared to the results from the DEIS method of calculation, with the largest numbers again being selected. Loggerheads and leatherbacks, listed as threatened and endangered respectively, are the two species that may potentially be killed or injured. Loggerheads make up most of the population and are the species most likely to be killed or injured. The three other sea turtle species (green, hawksbill, and Kemp's ridley) are also endangered or threatened, but are primarily inshore species which were not seen during the 1995 or 1997 aerial surveys. Therefore, no mortalities or injuries of these species are expected.

Navy also analyzed the impacts on minority and low-income populations pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. 4321. The proposed action would not have any adverse impacts on the human population and would not have a disproportionately high effect on any minority or low-income group.

Mitigation

Mitigation, as defined by the Council on Environmental Quality, includes measures to minimize impacts by limiting the degree or magnitude of a proposed action and its implementation. The shock test at Mayport includes the following mitigation measures: (1) A schedule shift to avoid high densities of sea turtles; (2) a vessel exclusion zone for operational security; (3) measures to deal with unexploded ordnance in the unlikely event of a misfire, and (4) a marine mammal and sea turtle mitigation plan to minimize the risk of impacts to these animals.

The schedule shift will allow testing at Mayport only between May 1 and September 30. No testing will occur in April when turtle densities are highest. This mitigation measure is based on the results of aerial surveys conducted between April and September 1995. Based on the 1995 data and the likely concentration of loggerhead turtles in offshore waters prior to nesting season, exclusion of April from the test schedule is considered a reasonable precaution.

An exclusion zone of 9.3 km (5 nmi) radius will be established around the detonation point to exclude all non-test ship, submarine, and aircraft traffic. Any traffic within an 18.5 km (10 nmi) radius will be warned to alter course or will be escorted from the site. Notices to Airmen and Mariners will be published in advance of each test. An immediate HOLD on the test will be ordered if any unauthorized craft enters the exclusion zone and cannot be contacted. The HOLD will continue until the exclusion zone was clear of unauthorized vessels. The size of the exclusion zone is necessary to ensure that commercial ships have no impact on operational security and to allow large vessels sufficient time to change course.

The probability of a charge not detonating during a test is remote. Should a charge fail to explode, the Navy will attempt to identify the problem and detonate the charge (with all marine mammal and sea turtle mitigation measures in place as described below). If these attempts fail, the Navy will recover the explosive and disarm it. Only in case of an extreme emergency or to safeguard human life, will the Navy dispose of the charge at sea. The possibility of disposing the explosive charge at sea is very remote. However, if disposal at sea is necessary, the charge will be disposed in a manner that will not pose a hazard to the public.

A detailed marine mammal and sea turtle mitigation plan has been developed to reduce or eliminate the effects of shock testing on these animals. The plan includes the same type of monitoring and mitigation efforts successfully used during the shock trial of the USS JOHN PAUL JONES in 1994 off the coast of southern California where marine mammal densities are about 25 times higher than at Mayport. The mitigation plan would build upon previous efforts to avoid or reduce potential environmental impacts (i.e., choice of Mayport based on the lower density of marine mammals). The mitigation plan is designed to address

mitigation requirements specified by the NMFS.

The NMFS Biological Opinion included reasonable and prudent measures and terms and conditions to minimize the impact of the take on listed species as a result of the proposed action. The measures include: (1) aerial surveys must be conducted in sea states having conditions no greater than 33–50% whitecaps on the surface and wave height of 2–3 feet; (2) the charge shall not be detonated if visibility is less than 3 nmi; (3) detonations must not occur within 2 nmi of large sargassum rafts or aggregations of jellyfish. If sargassum rafts persist within the safety zone and cannot be avoided, the Navy should attempt to collect hatchlings from observed rafts; (4) the Navy must use satellite telemetry images of sea surface temperature and aerial survey indicators to identify the western wall of the Gulf Stream. Detonations must be confined to waters within the Gulf Stream, no closer than 2 nmi of the western boundary; (5) detonation would be postponed if a Northern Right Whale is sighted within the safety or buffer zone; (6) if listed marine mammals (other than the Northern Right Whale) are detected within the buffer zone and subsequently cannot be detected, sighting and acoustic teams will search the area for 2½ hours before assuming the animal has left the buffer zone; and (7) if during post-detonation monitoring any sea turtles or marine mammals are observed in the safety area immediately after detonation, the Navy must review its pre-detonation monitoring procedures with NMFS prior to the next detonation. To minimize impacts to endangered marine mammals, the Navy should implement all mitigation, monitoring and reporting requirements outlined in the final rule to authorize the taking of a small number of marine mammals incidental to the underwater detonation of conventional explosives in the waters off Mayport (50 CFR 216.161–216.166), in compliance with section 101(a)(5) of the MMPA. Additional requirements may also be specified in a Letter of Authorization issued under these regulations.

Integral to the mitigation plan is the concept of a Safety Range. For the SEAWOLF shock test, a 3.7 km (2 nmi) radius Safety Range will be established around the detonation point. The Safety Range takes into consideration the estimated ranges for various levels of injury and/or mortality associated with detonation of a 4,536 kg (10,000 lb) explosive. Based on analyses presented in the FEIS, the maximum distance for injury (50% probability of eardrum rupture) to a marine mammal or turtle is 1.85 km or about 1 nmi from the detonation. The 50% eardrum rupture range has been doubled to established a 3.7 km (2 nmi) Safety Range. The probability of eardrum rupture is believed to be less than 10%.

For mitigation monitoring purposes, a 1.85 km (1 nmi) Buffer Zone will be added to the 3.7 km (2 nmi) Safety Range to accommodate the possible movement of marine mammals and turtles toward the Safety Range. Specifically, the area encompassed within a 5.6 km (3 nmi) radius from the detonation point would be monitored in an effort to detect any marine mammals or turtles approaching the 3.7 km (2 nmi) Safety Range.

The mitigation plan includes three components: (1) aerial surveys and monitoring; (2) shipboard monitoring from the operations vessel and the Marine Animal Recovery Team (MART) vessel; and (3) passive acoustic monitoring using the Marine Mammal Acoustic Tracking System (MMATS). Aerial and shipboard monitoring teams would identify and locate cetaceans and turtles on the surface, whereas the acoustic monitoring team would detect and locate calls from surfaced and submerged cetaceans. All mitigation team members will be qualified, experienced professionals. Specific minimum qualifications were outlined in the FEIS.

The mitigation plan consists of three phases: specific test site selection surveys, pre-detonation monitoring, and post-detonation monitoring. The specific test site selection surveys begin three weeks prior to detonation, when an aerial survey will be flown to select one primary and two secondary test sites, based primarily on the lowest relative abundance of marine mammals and turtles. An aerial survey will be conducted at the three sites two to three days prior to each detonation in order to rank the sites by scarcity of marine mammals. Through the comparison of data collected during this survey, the selection of the primary and two secondary sites will be confirmed.

The pre-detonation monitoring will ensure the site is free of visually or acoustically detectable marine mammals, as well as visible sea turtles, large sargassum rafts, large jellyfish concentrations, large schools of fish, and large flocks of seabirds. The morning of a test day, a mitigation team comprised of 12–15 observers, experienced in marine mammal survey or acoustic detection will assist the Lead Scientist in evaluating test site conditions. The Lead Scientist will have the flexibility to move the test site should the mitigation team find unacceptable levels of marine life in the area. Beginning two and one half hours prior to and up to detonation, the mitigation team will monitor the safety range for the presence of marine mammals and sea turtles or large concentrations of sargassum, jellyfish, fish, or seabirds. The Lead Scientist will have the authority to hold the detonation or recommend moving to one of the secondary sites if the presence of marine life persists within the safety range.

Post-detonation monitoring will be conducted by the MART vessel for 48 hours after each detonation where a subsequent detonation is planned. Aerial and shipboard monitoring are intended to locate and identify any dead or injured animals. The MART vessel will be assisted by the aerial mitigation team for up to three hours per day during the 48-hour period. After the last detonation, monitoring by the aerial team and the MART will continue for seven days to detect any potentially injured or dead animals moving in the predominant direction and speed of the Gulf Stream. Coordination with stranding networks and necropsy specialists will be maintained through the SEAWOLF test period as well as after.

Comment Received on the FEIS

After the Final Environmental Impact Statement (FEIS) was distributed to the public for a 30-day review period ending on July 6, 1998, the Navy received seven comment letters. One letter came from a regulatory agency, and six from individual citizens. The comments did not raise any new issues concerning the environmental analysis or discuss any mitigation measures other than those addressed in the FEIS. Generally, concern centered on the perception that a better way to accomplish the objectives of this test must exist. However, all alternatives offered had been previously considered.

The U.S. Environmental Protection (EPA) Region Four letter commented on the extensive efforts that will be employed by the Navy to reduce risk to mammals and turtles as well as significant concentrations of other marine biota. EPA further commented that while the mitigation appeared impressive, its efficacy will become apparent only after the first detonation has been evaluated. For that reason, they continue to have some environmental concerns and await with interest the outcome of the test.

Six letters from individuals were also received. All six individuals expressed opposition to the test as currently planned. The letters recommended that

alternative methods, location, or time be chosen for the test. Concerns were also expressed about the impacts to marine life that might occur. These concerns focused on stress, loss of hearing, and loss of life, particularly among endangered species. Each of these concerns is considered and evaluated in the FEIS.

Regulations Governing the Testing Decision

The proposed action, shock testing the SEAWOLF submarine at an offshore site is consistent with Section 2366, Title 10, United States Code (10 U.S.C. 2366), which states that a covered system, such as a submarine, cannot proceed beyond initial production until realistic survivability testing of the system is completed. Realistic survivability testing means testing for the vulnerability of the system in combat by firing munitions likely to be encountered in combat with the test system configured for combat.

The National Environmental Policy Act (NEPA) of 1969 and Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions" require full evaluation of the impacts resulting from major federal actions. NEPA applies to federal actions within U.S. territory while Executive Order 12114 applies to activities and impacts outside territorial seas. The FEIS was prepared in accordance with NEPA and Executive Order 12114.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" is intended to identify and address disproportionately high and adverse human health or environmental effects on members of minority or low-income populations. Shock testing and associated mitigation operations will occur well offshore and would result in minor and/or temporary impacts to the test site with no significant direct or indirect impacts on the human population.

The Endangered Species Act (ESA) of 1973 prohibits jeopardizing endangered and threatened species or adversely modifying critical habitats essential to their survival. Section 7 of the Act requires consultation with the NMFS and the U.S. Fish and Wildlife Service (USFWS) to determine whether any endangered or threatened species under their jurisdiction may be affected by the proposed action. No formal consultation with USFWS was required because USFWS determined that there are no species or critical habitat under their jurisdiction that could be affected. Formal consultation with NMFS was completed when the NMFS issued a Biological Opinion on December 12, 1996.

The Marine Mammal Protection Act (MMPA) of 1972 establishes a national policy designed to protect and conserve marine mammals and their habitat. Section 101(a)(5) of the MMPA allows, upon request, the incidental (but not intentional) taking of marine mammals if certain findings are made and regulations issued. Permission may be granted if the taking will have a negligible impact on the species or stock and not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. Concurrent with the release of the DEIS, the Navy submitted an incidental small take application to the NMFS. Based on this application, the NMFA published a Proposed Rule on August 2, 1996 (61 FR 40377) and participated in joint public hearings. The Proposed Rule specified take limits as well as mitigation, monitoring and reporting requirements. A Final Rule must be issued before the shock test can proceed.

The Marine Protection, Research and Sanctuaries Act (Ocean Dumping Act) of 1972 makes it illegal for any person to transport material from the U.S. for the purpose of dumping it into ocean waters. The term "dumping" as defined under the Act does not include intentional placement of any device in ocean waters for a purpose other than disposal.

Conclusion

Shock testing the SEAWOLF submarine in an area offshore of Mayport, Florida is the alternative that best meets the project purpose and need, satisfies operational criteria, and minimizes environmental impacts. Potentially significant direct impacts resulting from the test include mortality, injury, and acoustic harassment of marine mammals and sea turtles. While numbers have been calculated to define the potential lethal, injurious, and harassment take that might occur, it is expected that the mitigation and monitoring program will minimize the risk to marine mammals and sea turtles. Therefore, while the Navy has submitted an application for incidental take as previously discussed, no mortalities or injuries are expected to occur.

The alternative to performing the shock test at an area offshore of Mayport, Florida is to perform the test at an area offshore of Norfolk, Virginia. Most environmental impacts of shock testing were determined to be similar at Mayport or Norfolk. However, the two areas differ significantly with respect to potential impacts on marine mammals and sea turtles. The most significant environmental difference between the areas is the much lower risk of impacts to marine mammals at the Mayport area. This comparison also indicates that Mayport has the lowest overall risk of significant environmental impacts. Considering all components of the physical, biological, and socioeconomic environment, potential impacts would be less at the Mayport area.

The "No Action" alternative would avoid all environmental impacts of shock testing. It does not, however, support the development of the best assessment of the survivability characteristics of the submarine. For that reason, it was dropped from further consideration.

Accordingly, the Navy selects the area off Mayport, Florida for the shock test of the SEAWOLF submarine. The SEAWOLF submarine would be shock tested in a manner consistent with the requirements stated by the NMFS and the description of the test in the FEIS. However, the Department of Defense Appropriations Act, 1999 (H.R. 4103) deletes the funding necessary to support shock testing in FY00. In light of this development, the Navy must reassess when, if ever, the shock test can be budgeted and conducted.

Dated: January 11, 1999.

H. Lee Buchanan,

Assistant Secretary of the Navy (RD&A).

[FR Doc. 99–1308 Filed 1–20–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 22, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 14, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of the Under Secretary

Type of Review: Revision.

Title: Third National Even Start Evaluation: Performance Information Reporting System and Experimental Study.

Frequency: Annually.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 1,350. Burden hours: 63,503.

Abstract: The third national Even Start evaluation calls for two data collection activities: (1) The Even Start Performance Information Reporting System involves the refinement and maintenance of a data collection system, collection and analysis of descriptive and outcome data from all Even Start grantees, and training of local Even Start project directors in data collection and technical assistance to them. (2) The Even Start Experimental Study involves recruiting 20 projects to participate in an experimental evaluation of the effectiveness of Even Start, random assignment of new families to Even Start or control groups, and measurement of child, adult, and family outcomes in fall 1999 and spring 2000.

[FR Doc. 99–1305 Filed 1–20–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of proposed information collection requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by January 29, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before March 22, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W. , Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this

collection on respondents, including through the use of information technology.

Dated: January 15, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application Package for Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP).

Abstract: Partnerships and states proposing to conduct early intervention and scholarship components under GEAR UP need to respond to this collection of information. Applications submitted will be reviewed to access the quality of the proposed GEAR UP projects.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Additional Information: The application package requests programmatic and budgetary information needed to evaluate new applications and make funding decisions based on the authorizing legislation, program regulations, and EDGAR. The package will also be used to collect the information necessary to determine if it is in the best interest of the government to make new and continuing awards under GEAR UP.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 2,000; Burden hours: 120,000.

[FR Doc. 99–1381 Filed 1–20–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–11; Fundamental Research in Carbon Management

AGENCY: U.S. Department of Energy (DOE)

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES), of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research grants in the area of fundamental research underlying potential strategies to reduce or limit gaseous carbon production from fossil fuel use. Research areas of particular interest include: Geosciences research related to understanding the geophysics and geochemistry of potential reservoirs appropriate for subsurface sequestration of carbon dioxide; Energy Biosciences research related to chemical and cellular mechanisms of carbon fixation in plants; Chemical Sciences research related to enhancing our molecular level understanding of CO_2 production and utilization chemistry relevant to managing our carbon resources including, but not limited to, such areas as combustion and chemical dynamics, photochemical conversion, electrochemical energy storage and conversion, catalysis, and membrane separation science; and Materials Science research related to ceramics, metals, polymers and other materials needed for higher efficiency power systems. Carbon Management is a cooperative activity within DOE between the Office of Science and the Office of Fossil Energy. Participants within the Office of Science include both the Office of Basic Energy Sciences and the Office of Biological and Environmental Research.

DATES: Applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–11, should be received by DOE by 4:30 P.M., E.S.T., February 16, 1999. A response to the preapplications discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated to the applicant within 14 days of receipt.

The deadline for receipt of formal applications is 4:30 P.M., E.S.T., April 1, 1999, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1999.

ADDRESSES: All preapplications, referencing Program Notice 99–11, should be sent to Dr. Nicholas B. Woodward, Division of Engineering and Geosciences, SC–15, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 99–11, must be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–11. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For questions concerning research topics in specific technical areas, contact the following individuals in the appropriate division of interest: Dr. Nicholas B. Woodward (301–903–4061; e-mail: nick.woodward@oer.doe.gov), Division of Engineering and Geosciences, SC–15, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, division telephone (301) 903–5822, fax (301) 903–0271.

Dr. Gregory L. Dilworth, Division of Energy Biosciences, SC–17, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, division telephone (301) 903–2873, fax (301) 903–1003, e-mail: greg.dilworth@oer.doe.gov.

Dr. William Millman, Division of Chemical Sciences, SC–14, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, division telephone (301) 903–5804, fax (301) 903–4110; e-mail: william.millman@oer.doe.gov.

Dr. Craig Hartley, Division of Material Sciences, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, division telephone (301) 903–3427, fax (301) 903–9513, e-mail: craig.hartley@oer.doe.gov.

The full text of Program Notice 99–11 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The production of fuels and chemicals by plants and microorganisms and the interconversion of greenhouse gases requires a better understanding of plant biochemistry, physiology, molecular biology, and the structure and function of sub-cellular components, and of enzymes. Improvements in combustion to reduce carbon emissions requires a molecular mechanistic fundamental understanding in chemical dynamics and theoretical chemistry and physics. Conversion of sunlight to energy requires an understanding in many areas of science, including solid state physics, photochemistry, photosynthesis, photosynthetic and nonphotosynthetic carbon fixation, plant and microbial carbon biochemistry, regulatory control of plant assimilate allocation and transport, and molecular regulatory mechanisms controlling carbon metabolism.

Fundamental, molecular level insights into cross-cutting chemical and physical processes, for example catalysis, chemical and membrane separations, and electrochemical energy storage and conversion, are expected to significantly impact carbon management. The search for increased efficiency in energy production and use requires fundamental knowledge in ceramics, metals, polymers, solid state chemistry, and condensed matter physics for materials that can withstand higher temperatures, have lower coefficients of friction, and are stronger and lighter. Disposal of carbon dioxide into geological formations requires a fundamental understanding of geometric, structural, and hydrologic properties of reservoirs and of multiphase, nonlinear transport of fluids in porous and fractured media during sequestration time-scales of greater than 100 years.

Additional information on the BES Research Program, including those elements which are not a part of this solicitation, is available at the following web site: http://www.er.doe.gov/production/bes/bes.html. For researchers who do not have access to the world wide web, please contact Dr. Nicholas B. Woodward, Geosciences Research Program, SC–15; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; phone (301) 903–5822; fax (301) 903–0271; nick.woodward@oer.doe.gov; for this information.

Investigators may also wish to obtain information about related funding opportunities in the Office of Science, Office of Biological and Environmental Research whose programs are described at web site address; http://www.er.doe.gov/production/ober/ober_top.html and in the Office of Fossil Energy whose programs are described at web site address: http://www.fe.doe.gov.

Program Funding

It is anticipated that up to $4 million will be available for multiple grant awards to be made in FY 1999, contingent on the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent on the availability of appropriated funds, progress of the research, and continuing program need. Applications received by the Office of Science under its normal competitive application mechanisms may also be deemed appropriate for consideration under this announcement and may be funded under this program.

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel announcement with a similar potential total amount of funds will be issued to DOE Federally Funded Research and Development Centers. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and e-mail address. The research description must be 20 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research (to include the hypotheses being tested, the proposed experimental design, and the names of all investigators and their affiliations). Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

(The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.)

Issued in Washington, DC on January 7, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–1340 Filed 1–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 4, 1999, 6:00 p.m.–9:30 p.m.

ADDRESSES: College Hill Library (Front Range Community College), 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Present and discuss building rubble disposition;
2. Review and approve the Actinide Migration Studies Technical Review Group's Request for Proposals for a technical advisor; and
3. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Ken Korkia at the address or telephone number listed above. You must make your request for an oral statement at least 5 days before the meeting. We will try to include the presentation in the agenda. The

Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. If you wish to make a public comment, you will be provided up to 5 minutes to present your comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m., Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on January 14, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–1338 Filed 1–20–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 98–93–NG, et al.]

Engage Energy Canada, L.P., et al.; Orders Granting, Amending, and Vacating Authorizations To Import and/or Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending, and vacating various natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on January 14, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

APPENDIX.—ORDERS GRANTING, AMENDING, AND VACATING IMPORT/EXPORT AUTHORIZATION

[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1441	12/01/98	Engage Energy Canada, L.P., 98–93–NG	1,000 Bcf	1,000 Bcf	Import natural gas, including liquefied natural gas, from Canada and export natural gas over a two-year term beginning on January 1, 1999, and ending on December 31, 2000.
1442	12/03/98	Aquila Canada Corp., 98–94–NG		200 Bcf	Export to Canada over a two-year term beginning on the date of first delivery.
1356–A	12/03/98	PG&E Energy Trading-Gas Corporation (Formerly PG&E Trading Corporation), 98–04–NG.			Name Change.
836–D	12/03/98	PG&E Energy Trading-Gas Corporation (Formerly PG&E Trading Corporation), 93–82–NG.			Name Change.
1443	12/08/98	Northeast Gas Markets LLC, 98–97–NG	400 Bcf		Import and export up to a combined total from and to Canada over a two-year term beginning on the date of first delivery.
1444	12/17/98	Union Pacific Fuels, Inc., 98–92–NG	200 Bcf		Import and export up to a combined total from and to Canada and Mexico over a two-year term beginning on January 1, 1999, and ending on December 31, 2000.
1446	12/17/98	KN Marketing, L.P., 98–96–NG	1 Tcf	1 Tcf	Import up to combined total from Canada and Mexico, and export up to a combined total to Canada and Mexico, beginning on the date of first import or export.
1438–A	12/17/98	Idaho Power Co., 98–91–NG	730 Bcf		Amended two-year Canadian import and export authority to increase combined volumes from 1 Bcf to 730 Bcf.
552–A	12/22/98	Boston Gas Company, 89–38–NG			Vacate long-term import authority.
1447	12/22/98	The Montana Power Company, 98–99–NG	10 Bcf		Import from Canada over a two-year term beginning on February 7, 1999, and ending on February 6, 2001.
398–A	12/23/98	Empire Natural Gas Corporation, 90–12–NG.			Vacate import/export authority.

APPENDIX.—ORDERS GRANTING, AMENDING, AND VACATING IMPORT/EXPORT AUTHORIZATION—Continued
[DOE/FE Authority]

Order No.	Date issued	Importer/Exporter FE docket No.	Two-year maximum		Comments
			Import volume	Export volume	
1448	12/24/98	Aquila Energy Marketing Corporation, 98–100–NG.	200 Bcf	.....	Import from Canada over a two-year term beginning on September 1, 1998, and ending on August 31, 2000.
1449	12/28/98	St. Lawrence Gas Company, Inc., 98–102–NG.	16.3 Bcf ...	.....	Import from Canada over a two-year term beginning on July 26, 1998, and ending on July 25, 2000.
1450	12–29–98	Amoco Energy Trading Corporation, 98–101–NG.	300 Bcf	.....	Import from Canada over a two-year term beginning on January 21, 1999, and ending on January 20, 2001.
1451	12/31/98	Sprague Energy Corp., 98–103–NG	50 Bcf	.....	Import from Canada over a two-year term beginning on the date of first delivery.

[FR Doc. 99–1339 Filed 1–20–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Pub. L. No. 92–463; 86 Stat. 770), requires that public notice of these meetings be announced in the **Federal Register**.

DATES: February 11, 1999, 9:00 a.m. to 5:00 p.m., and February 12, 1999, 9:00 a.m. to 12:00 noon.

ADDRESSES: The Madison Hotel, 15th and M Streets NW, Washington, DC 20005. 202–862–1600.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy, Washington, DC 20585, Telephone 202–586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- present and future emissions trading opportunities in energy efficiency and renewable energy;
- how to more effectively deploy energy efficient technologies from DOE Laboratories; and
- Federal efforts to market energy efficiency and renewable energy technologies.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 15, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–1337 Filed 1–20–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–20–001]

Algonquin Gas Transmission Company; Notice of Compliance Filing

January 14, 1999.

Take notice that on January 8, 1999, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become effective January 1, 1999:

Sub Thirteenth Revised Sheet No. 23

Algonquin asserts that the above listed tariff sheet is being filed to comply with the Commission's Letter Order issued on December 30, 1998, in Docket No. TM99–2–20–000 (December 30 Order).

Algonquin states that Sub Thirteenth Revised Sheet No. 23 is being filed herewith with a proposed effective date of January 1, 1999, in compliance with the December 30 Order.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1300 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–020]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 14, 1999.

Take notice that on January 12, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Attachment A to its transmittal letter. CNG requests various effective dates (ranging from January 1, 1998 to February 1, 1999) for these proposed tariff sheets.

CNG states that the purpose of this filing is to adopt certain tariff revisions as necessary to implement the August 31, 1998 Stipulation and Agreement filed by CNG in Docket Nos. RP97–406–000, et al. (August 31 Stipulation). The basis of CNG's rate revisions and tariff changes are established in the August 31 Stipulation and its Appendices, specifically Appendices A, B, and E. CNG's states that its filing is made to comply with Article XI, Paragraph A of the August 31 Stipulation.

CNG requests waiver of Section 154.201(b), so that CNG may rely on the materials contained in its August 31 Stipulation as the basis of its implementation filing tariff sheets. The August 31 Stipulation was approved by Commission order dated November 24, 1998. 85 FERC ¶ 61,261. As no party has sought rehearing, this order has become "final," in accordance with Article I, Paragraph E of the August 31 Stipulation. Thus, the "Effective Date" of the August 31 Stipulation is February 1, 1999. CNG requests waiver of Section 154.207 of the regulations, so that these tariff revisions may be implemented on the August 31 Stipulation's Effective Date.

CNG states that copies of this letter of transmittal and enclosures are being mailed to CNG's customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1301 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–666–000]

EME Homer City Generation, L.P.; Notice of Issuance of Order

January 14, 1999.

EME Homer City Generation, L.P. (Homer City), a subsidiary of Edison Mission Energy and an affiliate of Southern California Edison Company, filed an application requesting that the Commission authorize it to sell power at market-based rates, and for certain waivers and authorizations. In particular, Homer City requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Homer City. On January 13, 1999, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Power Sales Rates And Granting Waiver Of Notice (Order), in the above-docketed proceeding.

The Commission's January 13, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Homer City should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Homer City is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Homer City, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Homer City's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 12, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–1302 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–421–003]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 14, 1999.

Take notice that on January 11, 1999, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following tariff sheets proposed to become effective November 2, 1998:

Second Substitute First Revised Sheet No. 60D

Iroquois states that this sheet was submitted in compliance with the Commission's letter order issued on December 8, 1998 in Docket No. RP98–421–000, and replaces the tariff sheet which was submitted on December 23, 1998 in Docket No. RP98–421–002. The tariff sheet included herewith reflects changes in Iroquois notification to shippers of intra-day bumping.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1297 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Jerry B. Buckley and Brooke Buckley (Executrix); Project No. 8118–021]

Notice of Intent To Conduct Public Meeting for the Jerry B. Buckley Hydro Project on Clear Creek in Colorado

January 11, 1999.

The Federal Energy Regulatory Commission (Commission) is proposing revocation of license for the Buckley Project located on Clear Creek, near the Town of Georgetown, Clear Creek County, Colorado. The Commission will hold a public meeting on February 3, 1999, in preparation for completing the Final Environmental Assessment (FEA).

The Commission staff will hold the public meeting in the vicinity of the Buckley Project in the Town of Georgetown. The purpose of the public meeting is to entertain further comments on the Draft Environmental Assessment (DEA), issued December 23, 1998, and to ensure that any outstanding environmental issues are included in the FEA. We invite all interested resource agencies, non-governmental organizations (NGO's), and individuals to attend the meeting. The time and location of the public meeting is shown below:

Date: Wednesday, February 3, 1999
Time: 10:00 am until 12:00 pm
Place: Georgetown Town Hall, 404 6th Street, Georgetown, Colorado 80444

At the public meeting, the Commission staff will: (1) summarize the status of the revocation proceeding(s) and the environmental issues identified in the DEA; (2) receive any statements or comments on environmental issues that should be analyzed in the FEA; (3) receive any requests by the licensee, agencies, NGO's and general public on any specific proposals to transfer the license to a qualified third party; and (4) to answer any questions asked of the Commission.

Before the meeting starts, all individuals who attend, will be asked to identify themselves by signing in. Individuals that intend to make statements during the meeting will be asked to clearly identify themselves prior to speaking. Interested parties who choose not to speak, or who are unable to attend the public meeting, may provide written comments to the Commission within 15 days after the public meeting or until the *February 18, 1999* deadline. Written comments should be submitted to Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426. Please affix the caption "Jerry B. Buckley Project, FERC No. 8118–021" to the top of all comments. For further information, please contact the environmental coordinator, CarLisa Linton at (202) 219–2802.

David P. Boergers,

Secretary.

[FR Doc. 99–1311 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

January 14, 1999.

Take notice that on January 12, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Substitute Sixth Revised Sheet No. 203, to be effective January 1, 1999.

Natural states that Substitute Sixth Revised Sheet No. 203 was filed in compliance with the Federal Energy Regulatory Commission's (Commission) order issued December 30, 1998, in Docket No. RP99–176–000 (December 30th Order).

Natural requested waiver of the Commission's Regulations to the extent necessary to permit Substitute Sixth Revised Sheet No. 203 to become effective January 1, 1999, pursuant to the December 30th Order.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1298 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–201–000]

Northern Border Pipeline Company; Notice of Petition for Limited Waiver of Tariff Provisions

January 14, 1999.

Take notice that on January 11, 1999, Northern Border Pipeline Company (Northern Border) petitioned the Federal Energy Regulatory Commission (Commission) for a limited waiver of Northern Border's FERC Gas Tariff, to the extent necessary, to allow Northern Border to waive certain billing adjustment provisions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 20, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1299 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–603–001]

Northwest Alaskan Pipeline Company; Notice of Changes in FERC Gas Tariff

January 14, 1999.

Take notice that on January 6, 1999, in compliance with the Commission's Order On Settlement and Authorizing Abandonments, Acquisition of Facilities, Waiving Tariff Provisions, and Granting Motion For Consolidation, issued December 17, 1998, Northwest Alaskan Pipeline Company (Northwest Alaskan), filed to become part of its FERC Gas Tariff Original Volume No. 2, the following tariff sheets, effective on the dates indicated:

Forty-Fourth Revised Sheet No. 5 January 1, 1999
First Revised Sheet Nos. 124DN–124DQ December 22, 1998
Second Revised Sheet No. 219 December 22, 1998
First Revised Sheet Nos. 220–223 December 22, 1998
Second Revised Sheet No. 317 December 22, 1998
First Revised Sheet Nos. 318–321 December 22, 1998
Sixth Revised Sheet No. 400 December 22, 1998

Northwest Alaskan states that this tariff filing is being made to terminate Rate Schedule X–4, and the revise Rate Schedules X–1, X–2 and X–3 to reflect the impact of the termination of Rate Schedule X–4. Northwest Alaskan says that this filing conforms to the provisions of the Commission's December 17 Order which approved a transaction that restructured the arrangements among Northwest Alaskan; its supplier, Pan-Alberta Gas Ltd.; its purchaser, Pacific Interstate Transmission Company (PITCO), and others with respect to the purchase, sale and transportation of Canadian gas. In the December 17 Order the Commission approved Northwest Alaskan's abandonment of Northwest Alaskan's sale of natural gas to PITCO under Rate Schedule X–4.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve-to make Protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1292 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ98–3–002]

Salt River Project Agricultural Improvement and Power District; Notice of Filing

January 11, 1999.

Take notice that on December 18, 1998, Salt River Project Agricultural Improvement and Power District (Salt River) submitted revised standards of conduct in response to the Commission's Order issued September 18, 1998 (84 FERC ¶ 61,257 (1998)).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before January 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1303 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–141–000]

Tennessee Gas Pipeline Company; Notice of Application

January 14, 1999.

Take notice that on January 7, 1999, Tennessee Gas Pipeline Company (Tennessee), filed in Docket No. CP99–141–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon service to New Jersey Natural Gas Company (NJNG) under Rate Schedule T–143, all as more fully set forth in the application on file with the Commission and open to public inspection.

Tennessee states that NJNG has recently requested that it be allowed to convert its Part 157 transportation service to open-access service under Part 284 of the Regulations. Tennessee states that this conversion, to which Tennessee has agreed, would be accomplished by the cancellation of the existing Rate Schedule T–143 contract and the effectuation of a new contract pursuant to Tennessee's Rate Schedule FT–A. Tennessee states that NJNG has agreed to a rate structure under the new contract that is acceptable to Tennessee and that will be in effect through the primary term of the original contract, which will expire on the same date Rate Schedule T–143 would have expired. Tennessee states that to effectuate this conversion, Tennessee herein seeks authority to abandon service under Rate Schedule T–143 effective February 15, 1999.

Tennessee states that the transportation quantity under the conversion contract shall be 10,894 dekatherms as opposed to the 11,092 dekatherms currently provided under the Rate Schedule T–143 contract. Tennessee also states that while the stated transportation quantity under the proposed conversion contract is lower than the stated transportation quantity in the Rate Schedule T–143 contract, the decrease simply replicates the service under the Rate Schedule T–143 contract by providing for a delivered transportation quantity which is net of fuel as opposed to a received transportation quantity which is inclusive of fuel, and thus, Tennessee's service to NJNG is not being reduced.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 4, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1293 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER91–195–035]

Western Systems Power Pool; Notice of Filing

January 14, 1999.

Take notice that on December 7, 1998, the Western Systems Power Pool (WSPP) filed a motion on behalf of its members that requests the Commission to eliminate its requirement that WSPP public utility members file margin data associated with their WSPP sales.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before January 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1304 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters

January 14, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 1494–171.

c. *Date Filed:* December 21, 1998.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Pensacola.

f. *Location:* The Pensacola Project is located on the Grand (Neosho) River in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mary E. Von Drehle, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301, (918) 256–5545.

i. *FERC Contact:* Jon Cofrancesco, (202) 219–0079.

j. *Comment Date:* February 22, 1999.

k. *Description of Project:* Grand River Dam Authority, licensee for the Pensacola Project, requests Commission authorization to issue a permit to Dennis Blakemore, d/b/a Honey Creek Landing (permittee), to make certain modifications to an existing commercial marina (Honey Creek Landing), located on the Honey Creek arm of Grand Lake adjacent to the Honey Creek Bridge (U.S. Highway 59). The proposed modifications include the relocation of a fuel dock and the installation of a 30′ x 57′ building containing a business office, bathhouse, and laundromat on an existing, covered boat dock. The proposed building would be located underneath the existing roof and would replace four existing boat slips.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1294 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Replacement Proposal

January 14, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Replacement Proposal.

b. *Project No.:* 2569–037.

c. *Date Filed:* January 6, 1999.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Black River Project.

f. *Location:* Black River in the Town of Deferiet, Jefferson County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. *Applicant Contact:* Mr. Sam S. Hirschey, P.E., Manager, Hydro Licensing and Regulatory Compliance, Niagara Mohawk Power Corporation, 300 Erie Boulevard, Syracuse, NY 13202, (315) 428–5564.

i. *FERC Contact:* Anum Purchiaroni, (202) 219–3297.

j. *Comment Date:* February 24, 1999.

k. *Description of Project:* Niagara Mohawk Power Corporation (NIMO), licensee for the Black River Project, filed a proposal to replace the existing 3-foot-high wooden flashboards with a pneumatic system (trade name "rubber dam") of a similar height, at its Deferiet Hydro Development. NIMO indicates in its filing, the replacement system will not change the maximum operating level of the impoundment, or require any operational changes. The level of the impoundment will be more constant throughout the year.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1295 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

January 14, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 2966–099.

c. *Date filed:* December 28, 1998.

d. *Applicants:* James C. Katsekas, Zoes J. Dimos, Clement Dam Development, Inc., and Clement Dam Hydroelectric, LLC.

e. *Name of Project:* Clement Dam.

f. *Location:* On the Winnepesaukee River in Belknap and Merrimack Counties, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Zoes J. Dimos, 27 Pimlico Ct., Bedford NH 03110–6503, (603) 669–7082.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Comment Date:* February 25, 1999.

k. *Description of Transfer:* Transfer of the license for this project is being sought in connection with the sale of the project interests of Clement Dam Development, Inc., a co-licensee, to Clement Dam Hydroelectric, LLC, which is owned by Katsekas and Dimos, the other current co-licensees.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1296 Filed 1–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6222–4]

Prospective Purchaser Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act; In the Matter of: NL Industries, Inc., Superfund Site, Pedricktown, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation, and Liability

Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.* A document is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of the Delaware River Land Company, LLC, for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the NL Industries, Inc., Superfund Site in Pedricktown, New Jersey.

DATES: Comments must be provided by February 22, 1999.

ADDRESSES: Comments should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, NY 10007–1866 and should refer to: 201 Route 130, the NL Industries, Inc., Superfund Site, U.S. EPA Docket No. II—CECLA–98–0119.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, notification is hereby given of a proposed prospective purchaser agreement concerning the NL Industries, Inc., Superfund Site in Pedricktown, NJ. This settlement was approved by EPA Region II, subject to review by the public pursuant to this document. The Delaware River Land Company, LLC, has executed a signature page committing it to participate in the settlement. Under the proposed agreement, the Delaware River Land Company, LLC, will pay $2,500 to the Hazardous Substance Superfund. In addition, the Delaware River Land Company, LLC, has agreed to abide by institutional controls and to provide access to the property. EPA believes this settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA section 101 *et seq.*, which provides EPA authority to consider, compromise, and settle a claim under sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not already been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has also signed this agreement. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this document.

A copy of the proposed administrative settlement may be obtained in person or by mail from Joseph Gowers, U.S. Environmental Protection Agency, 290 Broadway—19th Floor, New York, New York 10007–1866, (212) 637–4413.

The Agency's response to any comments received will be available for public inspection with U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866. Telephone: (212) 637–3111.

Dated: November 3, 1998.

William Muszynski,

Acting Regional Administrator, Region II.

[FR Doc. 99–1334 Filed 1–20–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

January 12, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 22, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0010.

Title: Ownership Report.

Form Number: FCC 323.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,020.

Estimated Hours Per Response: 0.5 to 1.0 hours.

Frequency of Response: Annually; On occasion reporting requirements.

Total Annual Burden: 9,106 hours.

Total Annual Costs: $10,258,410.

Needs and Uses: Each permittee of a commercial AM, FM, TV, and international broadcast station shall file an Ownership Report (FCC Form 323) within 30 days of the date of grant by the FCC of an application for an original construction permit or the consummation, pursuant to Commission consent, of a transfer of control or an assignment of license. A permittee is also required to file another report or to certify that it has reviewed its current Report on file and that it is accurate, in lieu of filing a new report, when the permittee applies for a station license. Each licensee of a commercial AM, FM, and TV broadcast station shall file an Ownership Report (FCC Form 323) annually. Each licensee with a current and unamended Report on file at the Commission may certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. The data is used by FCC staff to determine whether the licensee/permittee is abiding by the multiple ownership requirements as set down by the Commission's Rules and is in compliance with the Communications Act. In addition, the data will allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities.

OMB Control Number: 3060–0754.

Title: Children's Television Programming Report.

Form Number: FCC 398.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,215.

Estimated hours per response: 4.5 hours.

Frequency of Response: Quarterly recordkeeping; Annual reporting requirements.

Total Annual Burden: 21,870 hours.

Total Annual Costs: $480,800.

Needs and Uses: The FCC 398 is required to be filed by commercial television broadcast stations. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990 (CTA). This form also requests information on educational and informational programs that the station plans to air in the next quarter. Each licensee is required to place in its public inspection file quarterly a Children's Television Programming Report and to file the quarterly forms annually with the Commission. Commercial television broadcast station licensees will be required to file the FCC 398 electronically with the January 10, 1999 annual filing. The FCC 398 will assist in efforts by the public and the Commission to monitor station compliance with the CTA.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1274 Filed 1–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2312]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 14, 1999.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 5, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010 (WT Docket No. 96–86) Establishments of Rules and Requirements For Access Service.

Number of Petitions Filed: 17.

Subject: Amendment of Section 73.202(b) FM Broadcast Stations (East Brewton, Alabama and Navarre, Florida) (MM Docket No. 97–233, RM–9162).

Number of Petitions Filed: 1.

Subject: Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service (PR Docket No. 89–552).

Implementation of Sections 3(n) and 332 of the Communications Act (GN Docket No. 93–252).

Regulatory Treatment of Mobile Services

Geographic Partitioning and Spectrum Disaggregation for the 220–222 MHz Service.

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1273 Filed 1–20–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, January 26, 1999 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, January 28, 1999 at 10 a.m.

PLACE: 999 E Street, NW Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1998–27: Thomas Alan Linzey, on behalf of the Hawaii Green Party Coordinating Committee

Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc.

Report of the Audit Division on Clinton/Gore '96 General Committee, Inc., and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund.

Report of the Audit Division on the Dole for President Committee, Inc. (Primary).

Report of the Audit Division on the Dole/Kemp '96 and Dole/Kemp Compliance Committee, Inc. (General).

Ross Perot and Perot '96, Inc.-Statement of Reasons (LRS #507)

Petition for Rulemaking Filed by James Bopp, Jr., on Behalf of the Virginia Society for Human Life; Notice of Availability.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–1512 Filed 1–19–99; 2:57 pm]

BILLING CODE 6715–01–M

FEDERAL ELECTION COMMISSION

[Notice 1999–1]

Filing Dates for the Georgia Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Georgia has scheduled a special election on February 23, 1999, to fill the U.S. House seat in the Sixth Congressional District vacated by Congressman Newt Gingrich. Should no candidate achieve a majority vote, a Special Runoff Election will be held on March 16, 1999, between the top two vote-getters.

Committees required to file reports in connection with the Special General Election on February 23 should file a 12-day Pre-General Election Report on February 11, 1999. Committees required to file reports in connection with both the Special General and Special Runoff Election must file a 12-day Pre-General Election Report on February 11, a Pre-Runoff Report on March 4, and a Post-Runoff Report on April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Zarin, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the Georgia Special General and Special Runoff Elections and all other political

committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on February 11, 1999, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through February 3, 1999; a Pre-Runoff Report on March 4, 1999, with coverage dates from February 4 through February 24, 1999; and a Post-Runoff Report on April 15, 1999, with coverage dates from February 25 through April 5, 1999.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on February 11, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through February 3, and a Post-General Report on March 25, with coverage dates from February 4 through March 15, 1999.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on March 4, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through February 24, and a Post-Runoff Report on April 15, with coverage dates from February 25 through April 5, 1999.

CALENDAR OF REPORTING DATES FOR GEORGIA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. mailing date [2]	Filing date
If Only the Special General Is Held (02/23/99), Committees Must File:			
Pre-General	02/03/99	02/08/99	02/11/99
Post-General	03/15/99	03/25/99	03/25/99
If Two Elections Are Held, But a Committee Is Involved Only in the Special General (02/23/99)			
Pre-General	02/03/99	02/08/99	02/11/99
Mid-Year	06/30/99	07/31/99	07/31/99
Committees Involved in the Special General (02/23/99) and Special Runoff (03/16/99) Must File:			
Pre-General	02/03/99	02/08/99	02/11/99
Pre-Runoff	02/24/99	03/01/99	03/04/99
Post-Runoff	04/05/99	04/15/99	04/15/99
Committees Involved Only in the Special Runoff (03/16/99) Must File:			
Pre-Runoff	02/24/99	03/01/99	03/04/99
Post-Runoff	04/05/99	04/15/99	04/15/99

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

Dated: January 14, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–1270 Filed 1–20–99; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Rae Valley Financial, Inc., Petersburg, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Petersburg State Bank, Petersburg, Nebraska.

Board of Governors of the Federal Reserve System, January 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1319 Filed 1–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the

Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 12, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Great Southern Bancorp, Inc., Springfield, Missouri; to acquire Guaranty Federal Bancshares, Inc., Springfield, Missouri, and thereby indirectly acquire Guaranty Federal Savings Bank, Springfield, Missouri, and thereby engage in the activity of operation of a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 14, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1318 Filed 1–20–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0504]

Performance Standard for Vibrio Vulnificus; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has received a petition from the Center for Science in the Public Interest (CSPI) requesting that the agency establish a performance standard of "nondetectable" for the marine bacterium *Vibrio vulnificus* in raw molluscan shellfish harvested from waters that have been linked to illnesses from this organism. FDA is requesting information and views from the general public on CSPI's request and on several specific questions relating to the petition.

DATES: Submit written comments by April 21, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Patricia S. Schwartz, Center for Food Safety and Applied Nutrition (HFS–401), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3133.

SUPPLEMENTARY INFORMATION:

I. Background

V. vulnificus is a marine bacterium that can cause infection in humans as a result of contact through cuts or wounds and consumption of food containing the organism. The association of foodborne illness with *V. vulnificus* is relatively recent; the first reported cases occurred in the 1970's. To date, the food almost exclusively associated with illness from *V. vulnificus* is raw oysters harvested from States bordering on the Gulf of Mexico. However, the bacterium is also found in marine waters and in shellfish outside the Gulf region, although raw oysters from waters outside the Gulf region have not been definitively implicated in any cases of illness.

While *V. vulnificus* can infrequently cause gastroenteritis in healthy individuals, it can cause much more serious, sometimes deadly, septicemia in certain compromised individuals. The conditions that FDA believes put consumers at risk for septicemia from *V. vulnificus* include alcoholic liver disease, diabetes, hemochromatosis, chronic hepatitis B and C, and depressed immune system function. However, the majority of cases of septicemia have occurred in consumers with alcoholic liver disease. FDA estimates that the at-risk population in the United States falls within a range of 12 to 30 million. The number of septicemia cases reported from *V. vulnificus* each year range from a low of 9 in 1990 and 1991 to a high of 33 in 1996. Septicemia in medically compromised individuals has proven fatal in about 50 percent of reported cases. The agency's policy since 1993 has been that at-risk individuals should only consume molluscan shellfish that have been adequately cooked, as thorough cooking kills *V. vulnificus*.

FDA is supporting ongoing research directed toward answering several questions about *V. vulnificus*, including research: (1) To identify the characteristics of those strains of *V. vulnificus* that are pathogenic to humans, (2) to describe the effect of environmental conditions on the occurrence of these strains in water and in shellfish, (3) to determine whether there is an infectious dose or doses of the organism in susceptible humans, (4) to determine whether there are other factors or conditions that may put consumers at risk of septicemia; and (5) research on other matters. To date, FDA has cosponsored two national scientific workshops on *V. vulnificus* to determine what is known and what needs to be learned about this organism.

In addition, since 1993, the agency has expended considerable effort on education directed toward at-risk populations to warn them to avoid raw shellfish. Recently, the agency has supported point-of-purchase advisories directed toward at-risk individuals.

FDA has also worked with the Interstate Shellfish Sanitation Conference (ISSC), a cooperative entity (whose members include FDA, the States, and the shellfish industry) dedicated to the production of safe and sanitary molluscan shellfish, to address issues related to *V. vulnificus*. The agency participated with the ISSC in developing the post-harvest refrigeration requirements that were established by the ISSC for *V. vulnificus* in oysters. Together with the ISSC, FDA is currently studying the levels of these organisms in oysters to which consumers are exposed at retail.

FDA recognizes that innovative post-harvest technologies may also reduce or eliminate *V. vulnificus* from raw oysters. To foster this approach, the agency has provided labeling advice to a company that is marketing oysters that have been subject to a post-harvest treatment involving low temperature pasteurization (see the following paragraphs). The agency hopes that companies pursuing other potential post-harvest technologies will also seek FDA's labeling assistance.

II. The Citizen's Petition

On June 29, 1998, CSPI filed a citizen petition that requests that FDA issue regulations under the Federal Food, Drug, and Cosmetic Act or Public Health Service Act requiring nondetectable levels of *V. vulnificus* in raw molluscan shellfish harvested from waters that have been linked to illnesses or deaths

from this bacterium. *V. vulnificus* may be detected in virtually all oysters from such waters, at least during warm weather months. Thus, the practical effect of mandating a performance standard of "nondetectable" would be to impose post-harvest treatment requirements on all oysters from these waters.

The petition cites one such post-harvest treatment, that of the AmeriPure Co., which involves a mild heat treatment of in-shell oysters that is capable of killing *V. vulnificus*. FDA has reviewed data submitted by the AmeriPure Co. and those data do indicate that its process is capable of reducing *V. vulnificus* in oysters to nondetectable levels.

III. Request for Information and Views

Under FDA's administrative regulations (21 CFR 10.30(h)(3)), the agency, when reviewing a petition, may employ various procedures, including publishing a **Federal Register** notice asking for information and views. Accordingly, FDA is hereby soliciting comment on the issues raised by the CSPI petition. However, FDA is especially interested in comments, with supporting data where appropriate, on the following questions:

1. Is the AmeriPure Co. technology readily employable by the shellfish industry; if not, what barriers exist, and what steps could be taken to reduce or eliminate those barriers?

2. Other than the AmeriPure Co. process, what technologies, both present and anticipated, could significantly reduce the number of *V. vulnificus* in oysters while retaining the sensory qualities of a raw oyster? What is known about the ability of such technologies to reduce the number of *V. vulnificus* to nondetectable levels?

3. How reliable are such technologies? May they practically be required for an entire industry or a significant portion of that industry?

4. Would a performance standard have to be as low as "nondetectable?" Do data exist that would permit the setting of a performance standard above "nondetectable?" If so, at what level? Should the fact that *V. vulnificus* is found at low levels (less than 100 Most Probable Number/gram) in oysters in months (January and February) in which there have been no reported illnesses be taken into account when establishing a performance standard or level?

5. Should a performance standard apply to all raw molluscan shellfish or only to oysters?

6. What would be the quantifiable and nonquantifiable costs of a performance standard? Who would bear the costs? What would be the effect on costs, and the distribution of costs, if there was only one, patented process that could be used to meet the performance standard? What would the effect on costs be if a standard of "nondetectable" were put in place for all pathogens or for all raw molluscan shellfish?

7. What would be the quantifiable and nonquantifiable benefits of a performance standard? Who would enjoy the benefits?

8. Another marine pathogen, *V. parahaemolyticus*, has caused over 700 reported cases of illness (gastroenteritis) during 1997 and 1998. There has been one death reported to the Centers for Disease Control and Prevention and several hospitalizations. Illnesses from *V. parahaemolyticus* have occurred from oysters harvested outside of the Gulf of Mexico region.

Should a performance standard apply only to *V. vulnificus* or should it apply to other Vibrio species that post-harvest treatment might be able to reduce to nondetectable levels?

IV. Request for Comments

Interested persons may, on or before April 21, 1999, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1361 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1265]

Federal/State Memorandum of Understanding on Interstate Distribution of Compounded Drug Products; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft standard memorandum of understanding (MOU) that States may enter into with FDA. The draft standard MOU entitled "Memorandum of Understanding on Interstate Distribution of Compounded Drug Products" describes the responsibilities of the States and FDA in investigating and responding to complaints related to compounded drug products distributed interstate and addresses the interstate distribution of inordinate amounts of compounded drug products. FDA has developed this MOU in consultation with the National Association of Boards of Pharmacy (NABP), under provisions of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act).

DATES: Written comments may be submitted on the draft standard MOU by March 22, 1999.

ADDRESSES: Copies of the draft standard MOU are available on the Internet at "http://www.fda.gov/cder/pharmcomp/default.htm". Submit written requests for single copies of the draft standard MOU entitled "Memorandum of Understanding on Interstate Distribution of Compounded Drug Products" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5649.

SUPPLEMENTARY INFORMATION: On November 21, 1997, the President signed into law the Modernization Act (Pub. L. 105–115). Section 127 of the Modernization Act added section 503A to the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 353a), which exempts compounded drug products from the requirements in sections 501(a)(2)(B) (current good manufacturing practices), 502(f)(1) (adequate directions for use), and 505 (new drug provisions) of the act (21 U.S.C. 351(a)(2)(B), 352(f)(1), and 355), provided that the compounding is conducted in accordance with, and the drug products meet, the requirements in section 503A of the act.

Section 503A(b)(3)(B)(i) and (b)(3)(B)(ii) of the act states that a

compounded drug product may be eligible for the previously noted exemptions if it is compounded under either of two conditions. These conditions are as follows: (1) The State in which the drug is compounded has entered into an MOU with FDA "which addresses the distribution of inordinate amounts of compounded drug products interstate and provides for appropriate investigation by a State agency of complaints relating to compounded drug products distributed outside such State"; or (2) the State in which the drug is compounded has not entered into such an MOU and a licensed pharmacist, pharmacy, or physician "distributes (or causes to be distributed) compounded drug products out of the State in which they are compounded in quantities that do not exceed 5 percent of the total prescription orders dispensed or distributed by such pharmacy or physician." Section 503A(b)(3)(B) of the act directs FDA to develop, in consultation with the NABP, a standard MOU for use by the States in complying with section 503A(b)(3)(B)(i) of the act.

FDA consulted with the NABP concerning this standard MOU, and the agency is now making available for public comment a draft standard MOU regarding the interstate distribution of compounded drug products. The draft standard MOU sets forth the responsibilities of State agencies and FDA with respect to the following: (1) Investigating and responding to complaints relating to compounded drug products distributed outside of a State, and (2) responding to the distribution of inordinate amounts of compounded drug products in interstate commerce.

FDA invites comments from interested persons on the draft standard MOU on the interstate distribution of compounded drug products. The agency is providing a 60-day comment period and is establishing a docket for the receipt of comments. As stated in its guidance for industry entitled "Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act" (see 63 FR 64723, November 23, 1998), after considering any comments on the draft standard MOU submitted to this docket, FDA will finalize the standard MOU and make it available for signature by individual State agencies. Until at least 90 days after the standard MOU is finalized and made available to the States for their consideration and signature, the agency intends to exercise its enforcement discretion and normally will not take regulatory action regarding the requirement in section 503A(b)(3)(B)(ii) of the act, which states that a licensed pharmacist, pharmacy, or physician may not distribute or cause to be distributed in interstate commerce compounded drug products constituting more than 5 percent of the total prescription orders dispensed or distributed.

Interested persons may, on or before March 22, 1999, submit to the Dockets Management Branch (address above) written comments on the draft standard MOU. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft standard MOU and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1366 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1169]

Draft Guidance for Industry on Content and Format for Geriatric Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Content and Format for Geriatric Labeling." FDA established the "Geriatric use" subsection in the labeling for human prescription drug products in a final rule. The Geriatric use subsection includes biological drug products in order to provide for the inclusion of information pertinent to the appropriate use of drugs in the elderly (persons aged 65 and over). This draft guidance is intended to provide industry with information on submitting geriatric labeling for human prescription drug and biological products, including who should submit revised labeling, the implementation schedule, a description of the regulation and optional standard language in proposed labeling, the content and format for geriatric labeling, and the applicability of user fees to geriatric labeling supplements.

DATES: Written comments may be submitted on the draft guidance by March 22, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of "Content and Format for Geriatric Labeling" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Diana M. Hernandez, Center for Drug Evaluation and Research (HFD–006), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), 1401 Rockville Pike, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Content and Format for Geriatric Labeling." This draft guidance has been developed in response to a final rule that published in the **Federal Register** of August 27, 1997 (62 FR 45313), establishing, in the "Precautions" section of prescription drug labeling, a subsection on the use of drugs in elderly or geriatric patients (aged 65 years or over) (§ 201.57(f)(10) (21 CFR 201.57(f)(10))). The geriatric labeling regulation recognizes the special concerns associated with the geriatric use of prescription drugs and acknowledges the need to communicate important information so that drugs can be used safely and effectively in older patients. The medical community has become increasingly aware that prescription drugs can produce effects in the elderly that are significantly different from those produced in younger patients. Geriatric labeling information is of increasing importance because of the growing proportion of the population that is over 65 years of age

and the significant use of medications by this age group.

This draft guidance discusses which application holders are responsible for submitting revised labeling and summarizes the implementation schedule for submitting geriatric labeling. The geriatric labeling regulation includes six paragraphs (§ 201.57(f)(10)(i) through (f)(10)(vi)) that outline various options for statements in the "Geriatric use" subsection, based on the type of information available and the interpretation of that information. The draft guidance summarizes the requirements of § 201.57(f)(10)(i) through (f)(10)(vi), and it provides detailed guidance on the submission of this information. In addition, the content and format for geriatric labeling, as well as the applicability of user fees to geriatric labeling supplements, are discussed in detail in the draft guidance document.

This draft guidance is a level 1 draft guidance document consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the content and format of geriatric labeling. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1363 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1267]

Draft Guidance for Industry on NDA's: Impurities in Drug Substances; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "NDA's: Impurities in Drug Substances." This draft document recommends that applicants submitting new drug applications (NDA's) and holders of supporting Type II drug master files (DMF's) for drug substances not considered new drug substances refer to the guidance for industry on reporting drug substance impurities in the International Conference on Harmonisation (ICH) guidance document entitled "Q3A Impurities in New Drug Substances."

DATES: Written comments on the draft guidance document may be submitted by April 21, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance for industry to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Eric P. Duffy, Office of New Drug Chemistry, Office of Pharmaceutical Science, Center for Drug Evaluation and Research (HFD–180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7310.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "NDA's: Impurities in Drug Substances." Although ICH guidance document entitled "Q3A Impurities in New Drug Substances," which was published in the **Federal Register** on January 4, 1996 (61 FR 371), provided guidance to industry on the reporting, identification, and qualification of impurities in new drug substances produced by chemical syntheses, FDA believes that the guidance provided in ICH Q3A also applies to drug substances produced by chemical syntheses that are not considered new drug substances. FDA recommends that applicants preparing NDA's and holders preparing Type II DMF's refer to the reporting information contained in that document.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on reporting impurities in drug substances for certain NDA's and DMF's. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1364 Filed 1–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–263]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any

of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: On Site Inspection for Durable Medical Equipment (DME) Supplier Location & Supporting Regulations in 42 CFR, Section 424.57.

Form Nos.: HCFA–R–263 (OMB# 0938–0749).

Use: To identify and implement measures to prevent fraud and abuse in the Medicare program. Controlling the entry of suppliers of durable medical equipment, prosthetics, orthotics, or supplies (DMEPOS) to Medicare has been identified as one of the most effective ways to prevent fraud and abuse. To meet this challenge, HCFA is moving forward with a plan to improve the quality of the process for enrolling and reenrolling DMEPOS suppliers into the Medicare program by enhancing procedures for verifying supplier information collected on the Form HCFA 855S (DMEPOS Supplier Enrollment Application, OMB Approval No. 0938–0685). This form will be used to complete information on DMEPOS suppliers' compliance with regulations found in 42 CFR 424.57.

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Number of Respondents: 40,000.

Total Annual Responses: 40,000.

Total Annual Hours: 20,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room: N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 11, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards

[FR Doc. 99–1328 Filed 1–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–180]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title of Information Collection: Field Testing of the Uniform Needs Assessment Instrument (UNAI): Small-Scale Trial—Phase 2.

Form No.: HCFA–R–180 (OMB# 0938–0680).

Use: In testing, the Uniform Needs Assessment Instrument (UNAI) will be used to assess the needs of all patients being discharged from Medicare-certified hospitals who are identified, through use of a screener, as needing extensive hospital discharge planning and post-care. Dual assessments will be performed to assess inter-rater reliability. The UNAI is intended to help ensure appropriate post acute care and continuity of care between acute, post-acute and long-term care by transmitting key information to patients, families, and post acute care providers on the status and care needs of patients at the time of acute care discharge. The debriefing of discharge planners will examine the feasibility, burden, and utility of UNAI items and their view of the likely impact on the quality of discharge planning and continuity of care. The goal is to help HCFA determine whether such a system would improve quality of care for Medicare beneficiaries.

Frequency: On occasion.

Affected Public: Business or other for-profit, Individuals or Households, and Not-for-profit institutions.

Number of Respondents: 500.

Total Annual Responses: 720.

Total Annual Hours: 847.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 11, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–1329 Filed 1–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0270]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because of an unanticipated event and the fact that the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. In order to assess and renovate internal systems and interfaces with business partners for Y2K, the Agency cannot reasonably comply with the normal clearance procedures. Without this information, HCFA will be unable to assess the millennium readiness status of the business partners and will be unable to make operational and contracting decisions to assure the safety and continuity of health care services provided to Medicare beneficiaries, and payments to providers of services. This request complies with the procedures for emergency clearance of Y2K surveys as outlined in the OMB memo dated 5/26/98.

HCFA is requesting OMB review and approval of this collection within 11 working days with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below, within 10 working days. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Managed Care organization Year 2000 Continuity and Contingency Planning (BCCP) Status Report.

Form Number: HCFA–R–0270.

Use: This information is needed to determine the status of HCFA's business partners millennium readiness.

Frequency: Monthly.

Affected Public: Federal Government, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 350.

Total Annual Responses: 4,200.

Total Annual Hours Requested: 44,450.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. ADD WEB SITE ADDRESS to access S.S.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 10 working days:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–1415 Attn: Dawn Willinghan and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: January 12, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–1330 Filed 1–20–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection, Comment Request; American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Strength of Tobacco Control Research Evaluation"

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH), the National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION: *Title:* American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Strength of Tobacco Control Research Evaluation". *Type of Information Request:* New. *Need and Use of Information Collection:* "The Strength of Tobacco Control Research Evaluation" will collect data on financial resources, capacity, and specific efforts to control tobacco use. The data will be collected from professionals working in the field, in project management, and in senior agency administration within major state-level organizations concerned with tobacco control, in all 50 states and the District of Columbia. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large-scale, 17-state demonstration project. Data will be used to develop a "strength of tobacco control" construct for use in evaluation of the overall ASSIST intervention. This study will also provide valuable information to Government agencies and to the general public necessary for tobacco control research. Data will be collected from September to November 1999, from approximately 1,428 individuals in 357 organizations in the 50 states and the District of Columbia. *Frequency of Response:* One-time study. *Affected*

Public: Individuals. *Type of Respondents:* Professionals in tobacco control organizations. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1,428; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* .54; and *Estimated Total Annual Burden Hours Requested:* 773. The annualized cost to the respondents is estimated at $31,833. There are no Operating or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Frances Stillman, Ed.D., Public Health Advisor, National Cancer Institute, Executive Plaza North, Room 241, 6130 Executive Boulevard MSC 7337, Bethesda, Maryland 20892–7337, or call non-toll free number (301) 496–8584, or FAX your request to (301) 496–8675.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 12, 1999.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 99–1422 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: March 11, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard S. Fisher, PhD Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Room 400C, MSC–7180, Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 13, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1269 Filed 1–20–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Immunological Sciences Initial Review Group, Immunobiology Study Section.

Date: January 21–22, 1999.

Time: 9:00 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 2 Portola Plaza, Monterey, CA 93940.

Contact Person: Betty Hayden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 21, 1999.

Time: 1:00 PM to 1:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joe Marwah, PHD Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 21, 1999.

Time: 2:00 PM to 2:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joe Marwah, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93–878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 13, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–1268 Filed 1–20–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–08–1020–00, 1613P]

Notice of Meeting

AGENCY: Bureau of Land Management, Lewistown Field Office.

SUMMARY: The Lewistown Resource Advisory Council will meet February 9 and 10, 1999, at the Montana Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana.

The February 9 portion of this meeting will begin at 7:45 a.m. Throughout the day the council will elect officers for the coming year; hear two presentations concerning cottonwood regeneration along the Upper Missouri River; discuss increased visitor use along the Upper Missouri River; discuss U.S. Forest Service involvement with the Resource Advisory Councils; and hear presentations concerning grazing permit renewals and two areas of critical environmental concern. The session will adjourn at 4:30 p.m.

The February 10 portion of this meeting will begin at 7:45 a.m. The council will hear presentations concerning off-highway vehicle use on public lands; land exchanges; prairie dogs; range improvement projects; and the Sun River Project. There will be a public comment period at 11:30 a.m. This session will adjourn at 3:30 p.m.

DATES: February 9 and 10, 1999.

LOCATION: Montana Fish, Wildlife and Parks Region 4 Office, 4600 Giant Springs Road, Great Falls, Montana.

FOR FURTHER INFORMATION: Contact Lewistown Field Manager, Bureau of Land Management, Box 1160, Airport Road, Lewistown, MT 59457.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a public comment period at 11:30 a.m. on February 10.

Dated: January 7, 1999.
David L. Mari,
Field Manager.
[FR Doc. 99–1281 Filed 1–20–99; 8:45 am]
BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–00–NPRA]

Notice of Availability of Proposed Notice of Sale—National Petroleum Reserve—Alaska Proposed Oil and Gas Lease Sale 991; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice of Availability of the Proposed Notice of Sale for the proposed Oil and Gas Lease Sale 991 in the National Petroleum Reserve-Alaska (NPR–A) is published as a matter of information to the public.

With regard to oil and gas leasing in the NPR–A, the Secretary of the Interior is providing the State of Alaska the opportunity to review the proposed Notice of Sale in regard to, among other things, Coastal Zone Management review.

The proposed Notice of Sale for proposed Sale 991 may be obtained by written request to the Public Information Center, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599 or by telephone at 907–271–5960.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is tentatively scheduled for May 1999.

EFFECTIVE DATE: January 21, 1999.

FOR FURTHER INFORMATION CONTACT: Gene Terland or Robert Merrill, BLM Alaska State Office, 907–271–3833.

Dated: January 15, 1999.
Sally Wisely,
Acting State Director.
[FR Doc. 99–1437 Filed 1–20–99; 8:45 am]
BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–99–1430–00; CAAZCA 37434, CAAZCA 6637]

California: Notice of Realty Action (NORA)

AGENCY: Bureau of Land Management, Interior.

ACTION: Conversion and renewal of concession lease and future expansion of concession.

SUMMARY: Walter's Camp, Inc., Frank Dokter, President, concessioner at the Bureau of Land Management's (BLM) Walter's Camp concession on the Colorado River near Palo Verde, California, has submitted an application to renew the Walter's Camp concession contract. The application includes extending the term of the land use authorization and requests authorization for future expansion.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Yuma Field Office, BLM, address below. Objections will be reviewed by the Field Manager, BLM, who may sustain, vacate, or modify this realty action and issue a final determination. In the absence of any action by the Field Manager, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Debbie DeBock, Realty Specialist, or Joy Gilbert, Senior Technical Specialist, BLM, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, AZ 85365, (520) 317–3200.

SUPPLEMENTARY INFORMATION: The Walter's Camp concession is currently authorized under a BLM contract, which expires on April 14, 2000 (issued under the authority of the Reclamation Act). The new lease would be issued under the Federal Land Policy and Management Act (43 U.S.C. 1701, 1732). The current concessioner has performed its obligations to the satisfaction of the BLM under the existing contract. Pursuant to the provisions of the existing concession contract, the current concessioner may be granted an extension for an additional period of years if the concessioner has substantially mitigated deterioration of improvements due to use and age. The land is not needed for a Federal purpose at this time. The proposal is in accordance with the Yuma District Resource Management Plan (March 1987), and the Ehrenberg-Cibola Recreation Area Management Plan (May 1994) which state that the BLM will continue to lease recreation areas for concessioner operation to ensure that recreation opportunities are provided for all publics. The plans also state that additional Federal lands will be available for expansion of existing concessions.

Walter's Camp, Inc., provides camping and recreational opportunities along the Colorado River. Renewal of the concession lease would allow for continued use and the proposed expansion would fulfill the increasing public demands for recreational opportunities.

Dated: January 8, 1999.

Maureen A. Merrell,

Assistant Field Manager, Business and Fiscal Services/Acting Field Manager.

[FR Doc. 99–1280 Filed 1–20–99; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–403]

Certain Acesulfame Potassium and Blends and Products Containing Same; Notice of Commission Determinations Not To Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930 and Not To Review an Order Denying a Motion for Sanctions

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has made a final determination of no violation of section 337 of the Tariff Act of 1930, as amended, in the above-captioned investigation. The Commission determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) finding no violation of section 337 and not to review ALJ Order No. 23 which denied a motion for sanctions.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3098. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 14, 1997, based on a complaint filed by Nutrinova Nutrition Specialties and Food Ingredients GmbH of Frankfurt am Main, Federal Republic of Germany, and Nutrinova Inc., of Somerset, New Jersey (collectively referred to as "complainants"). 62 FR 62070 (1997). The complaint named four respondents—Hangzhou Sanhe Food Company Ltd., of Zheijiang, People's Republic of China; JRS International, Inc., of Garfield, New Jersey; Dingsheng, Inc., of Temple City, California; and WYZ Tech., of Chino, California. Hangzhou Sanhe Food Additives Factory, of Hangzhou, Zheijiang, Peoples Republic of China was subsequently added as a respondent.

Complainants alleged that respondents had violated section 337 by importing into the United States, selling for importation, and/or selling within the United States after importation certain acesulfame potassium or blends or products containing same by reason of infringement of claims 1, 2, 3, 4 or 5 of U.S. Letters Patent 4,695,629 ("the '629 patent") or claims 1 or 2 of U.S. Letters Patent 4,158,068 ("the '068 patent"). Acesulfame potassium is an artificial sweetener.

The ALJ held a tutorial on the technology of artificial sweeteners and the processes for their manufacture on June 5, 1998. The evidentiary hearing was held from June 29, 1998, to July 10, 1998.

On May 12, 1998, complainants filed a motion seeking the imposition of monetary and non-monetary sanctions against respondents for respondents' failure to provide timely discovery. The motion was supported in part and opposed in part by the Commission investigative attorney (IA) and opposed by respondents. On August 14, 1998, the ALJ issued Order No. 23, denying complainants' motion for sanctions, but offering complainants an opportunity to seek reopening of the record for the purpose of presenting additional facts and arguments relevant to respondents' belatedly-produced discovery. Complainants declined to seek reopening of the record.

On November 20, 1998, the ALJ issued his final ID, in which he concluded that there was no violation of section 337, based on the following findings: (a) claims 1–5 of the '629 patent are not infringed by respondents" accused process; (b) claims 1–2 of the '068 patent are invalid as obvious over the prior art; (c) claims 1–2 of the '068 patent are not infringed by respondents accused product.

On December 3, 1998, complainants filed a petition for review of the ID and Order No. 23, arguing that the ALJ erred in all of his adverse findings relating to failure to impose sanctions and in his infringement analysis of the '629 patent. Complainants did not petition for review of the findings in the ID with respect to the '068 patent. The IA also petitioned for review of the ID and Order No. 23 on policy grounds. On December 10, 1998, respondents filed a response to the petitions for review. The IA also filed a response to complainants' petition for review.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR § 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.

Issued: January 15, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1341 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–149 (Review)]

Barium Chloride From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on barium chloride from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on barium chloride from China would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1999, the Commission determined that the domestic interested party response to its notice of institution (63 F.R. 52750, Oct. 1, 1998) of the subject five-year review was adequate. The Commission also determined that the respondent interested party response was inadequate because no respondent interested party responded to the Commission's notice. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 4, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 9, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 9, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 13, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1347 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the response submitted by Chemical Products Corp. to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–409]

Certain CD–ROM Controllers, and Products Containing Same-II; Notice of Commission Decision To Extend the Deadline for Determining Whether To Review an Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by seven (7) days, or until February 3, 1999, the deadline for determining whether to review an initial determination (ID)(Order No. 9) issued by the presiding administrative law judge ("ALJ") in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094.

SUPPLEMENTAL INFORMATION: This investigation was instituted on May 7, 1998, based on a complaint filed by Oak Technology Inc ("Oak"). 63 Fed. Reg. 26625. Among the respondents is United Microelectronics Corp. ("UMC"). The complaint alleges, inter alia, that UMC engaged in unlawful activities in violation of section 337 through the unlicensed importation and sale for importation of goods infringing claims 1–5 and 8–10 of U.S. Letters Patent 5,581,715. Oak seeks the imposition of a cease and desist order and an exclusion order.

Complainant Oak filed a previous complaint before the Commission based on the same products and the same patent, naming UMC as a proposed respondent. Prior to institution of an investigation, Oak entered into a settlement/licensing agreement with UMC, and withdrew its complaint as to UMC. Prior to institution of the present investigation, UMC filed a letter with the Commission alleging that all its activities were authorized by the settlement agreement. Oak alleges that the sales and importation activities complained of are outside the provisions of the settlement agreement.

On August 28, 1998, the ALJ issued Order No. 7 terminating the investigation as to UMC for failure to state a section 337 claim. Complainant Oak and OUII filed petitions for review of the ID and UMC responded to those petitions. On October 7, 1998, the Commission reviewed and reversed Order No. 7.

In its opinion, the Commission noted that a motion for summary determination was pending, and stated that if the disposition of that motion came before the Commission, the Commission would "address the matter as necessary and appropriate." On December 23, 1998, the ALJ issued Order No. 9 granting UMC's motion for summary determination. On December 31, 1998, complainant Oak filed a timely petition for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42(h)(3) of the Commission's Rules of Practice and Procedure (19 CFR § 210.42(h)(3).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: January 12, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1348 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–402]

Advice Concerning the Addition of Certain Pharmaceutical Products and Chemical Intermediates to the Pharmaceutical Appendix to the HTS

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on December 23, 1998, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–402, Advice Concerning the Addition of Certain Pharmaceutical Products and Chemical Intermediates to the Pharmaceutical Appendix to the Harmonized Tariff Schedule of the United States, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

At the request of USTR, the Commission will provide: (1) A summary description of the products contained in the existing Pharmaceutical Appendix and the modifications to be made to that Appendix; (2) an explanation of the relationship of the various elements in the Appendix to the HTS; and (3) estimates of current U.S. imports, and where possible, U.S. exports of the products included in the Pharmaceutical Appendix and the proposed additions to the Appendix, based on product groupings as necessary. The Commission will submit its report to the USTR no later than April 1, 1999.

EFFECTIVE DATE: January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Information on general aspects of the study may be obtained from Elizabeth Howlett, Office of Industries (202–205–3365), or, on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091).

Background

As one part of the Uruguay Round Agreements, the United States and 21 other countries agreed to the reciprocal elimination of duties, effective January 1, 1995, on approximately 7,000 pharmaceutical products and chemical intermediates used primarily for the production of pharmaceuticals. Commitments to eliminate duties on these products are reflected in each participant's market access schedule.

These countries also agreed to conduct a review, at least once every three years, to identify further products that could be covered by the pharmaceutical duty elimination initiative. The first review concluded with the addition of approximately 470 products, implemented on April 1, 1997. Participants, including the United States, are undertaking a second review, focusing on the addition of approximately 750 pharmaceutical products and chemical intermediates used primarily for the production of pharmaceuticals (a list of covered products is attached). According to USTR, these additional products represent products recommended by the U.S. private sector in response to a notice published by USTR in the **Federal Register** of December 29, 1997, as well as products proposed by the Governments of other participating countries. According to USTR, the Industry Sectoral Advisory Committee on Chemicals (ISAC–3) was consulted throughout the negotiations and this ISAC has endorsed the final list of products under consideration.

In section 111(b) of the URAA, Congress explicitly authorized the President to proclaim further modification of any duty for articles contained in a tariff category that was part of the U.S. "zero-for-zero" initiative. The Statement of Administrative Action which Congress approved in the URAA notes that the President would use section 111(b) authority to grant duty-free treatment for new pharmaceutical products such as those now under consideration. This authority is subject only to the conditions set forth in section 111 which include compliance with the consultation and layover provisions of section 115 of the URAA. One of the requirements set out in section 115 is that the President "obtain advice regarding the proposed action" from the Commission. Pursuant to section 115 and section 332(g) of the Tariff Act of 1930, USTR has requested that the Commission provide advice in the form of additional information on the pharmaceutical products and chemical intermediates currently under consideration.

Written Submissions

Interested persons are invited to submit written statements concerning the investigation. Written submissions should focus on the levels of exports and imports for the items included in this investigation. Written statements should be received by the close of business on February 17, 1999. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: January 14, 1999.

Donna R. Koehnke,

Secretary.

Additional Prefixes and Suffixes for Salts, Esters and Hydrates of INNS

Benzoate
Difumarate
Dipivoxil
Monobenzoate
Tetraisopropyl

INTERNATIONAL NONPROPRIETARY NAMES (INN) PROPOSED FOR DUTY ELIMINATION

INN	CAS RN
Abacavir	136470–78–5
Abafungin	129639–79–8
Abarelix	183552–38–7
Abiraterone	154229–19–3
Acreozast	123548–56–1
Agomelatine	138112–76–2
Alatrofloxacin	157182–32–6
Alinastine	154541–72–7
Almotriptan	154323–57–6
Almurtide	61136–12–7
Amelometasone	123013–22–9
Amlintide	122384–88–7
Apadoline	135003–30–4
Arcitumomab	154361–48–5
Aripiprazole	129722–12–9
Arofylline	136145–07–8
Aseripide	153242–02–5
Asimadoline	153205–46–0
Atiprimod	123018–47–3
Atizoram	135637–46–6
Atliprofen	108912–17–0
Atreleuton	154355–76–7

INTERNATIONAL NONPROPRIETARY NAMES (INN) PROPOSED FOR DUTY ELIMINATION—Continued

INN	CAS RN
Aviptadil	40077–57–4
Avitriptan	151140–96–4
Avorelin	140703–49–7
Avotermin	182212–66–4
Bamaquimast	135779–82–7
Basiliximab	179045–86–4
Becaplermin	165101–51–9
Bectumomab	158318–63–9
Belaperidone	156862–51–0
Beloxepin	135928–30–2
Bepotastine	125602–71–3
Bibapcitide	153507–46–1
Biricodar	159997–94–1
Blonanserin	132810–10–7
Brasofensine	171655–91–7
Brinzolamide	138890–62–7
Carafiban	177563–40–5
Cariporide	159138–80–4
Cedelizumab	156586–90–2
Ceftizoxime alapivoxil	135821–54–4
Celgosivir	121104–96–9
Cemadotin	159776–69–9
Cerivastatin	145599–86–6
Cetermin	157238–32–9
Cevimeline	107233–08–9
Choriogonadotropin alfa	177073–44–8
Cizolirtine	142155–43–9
Clenoliximab	182912–58–9
Clevidipine	166432–28–6
Clevudine	163252–36–6
Colesevelam	182815–43–6
Dabelotine	118976–38–8
Dalcotidine	120958–90–9
Danaparoid sodium	83513–48–8
Daniplestim	161753–30–6
Dapitant	153438–49–4
Declopramide	891–60–1
Deltibant	140661–97–8
Dexefaroxan	143249–88–1
Dexsotalol	30236–32–9
Donepezil	120014–06–4
Dronedarone	141626–36–0
Droxinavir	159910–86–8
Dutasteride	164656–23–9
Ecenofloxacin	162301–05–5
Edrecolomab	156586–89–9
Efavirenz	154598–52–4
Elacridar	143664–11–3
Eldacimibe	141993–70–6
Eletriptan	143322–58–1
Elinafide	162706–37–8
Embusartan	156001–18–2
Emoctakin	142298–00–8
Eniluracil	59989–18–3
Enlimomab pegol	169802–84–0
Ensaculin	155773–59–4
Eperezolid	165800–04–4
Eplerenone	107724–20–9
Eptifibatide	148031–34–9
Fabesetron	129300–27–2
Fandofloxacin	164150–99–6
Faralimomab	167816–91–3
Fasidotril	135038–57–2
Fasoracetam	110958–19–5
Felvizumab	167747–20–8
Fexofenadine	83799–24–0
Fidarestat	136087–85–9
Filaminast	141184–34–1
Flibanserin	167933–07–5
Follitropin beta	150490–84–9
Fornivirsen	144245–52–3
Forasartan	145216–43–9
Foropafant	136468–36–5
Frovatriptan	158747–02–5
Fudosteine	13189–98–5
Fulvestrant	129453–61–8
Furomine	142996–66–5
Gacyclidine	68134–81–6
Ganaxolone	38398–32–2
Gatifloxacin	160738–57–8
Gavestinel	153436–22–7
Glaspimod	134143–28–5
Glufosfamide	132682–98–5
Hemoglobin crosfumaril	142261–03–8
Ibutamoren	159634–47–6
Icopezil	145508–78–7
Igovomab	171656–50–1
Indinavir	150378–17–9
Indisetron	141549–75–9
Infliximab	170277–31–3
Insulin aspart	116094–23–6
Insulin glargine	160337–95–1
Interferon alfacon-1	118390–30–0
Iocanlidic acid (123 I)	74855–17–7
Ioflupane (123 I)	155798–07–5
Iometopane (123 I)	136794–86–0
Ipamorelin	170851–70–4
Iroplact	154248–96–1
Israpafant	117279–73–9
Ivabradine	155974–00–8
Keliximab	174722–30–6
Lagatide	157476–77–2
Landiolol	133242–30–5
Lanepitant	170566–84–4
Lasinavir	175385–62–3
Ledoxantrone	113457–05–9
Lefradafiban	149503–79–7
Levocetirizine	130018–77–8
Levosalbutamol	34391–04–3
Licostinel	153504–81–5
Linetastine	159776–68–8
Linezolid	165800–03–3
Lintitript	136381–85–6
Lintuzumab	166089–32–3
Lirexapride	145414–12–6
Lodenosine	110143–10–7
Lotrafiban	171049–14–2
Lumefantrine	82186–77–4
Lurtotecan	149882–10–0
Mazokalim	164178–54–5
Melagatran	159776–70–2
Meluadrine	134865–33–1
Mespiperone (11 C)	94153–50–1
Metesind	138384–68–6
Milacainide	141725–10–2
Milameline	139886–32–1
Milfasartan	148564–47–0
Milodistim	137463–76–4
Minalrestat	129688–50–2
Minodronic acid	127657–42–5
Miproxifene	129612–87–9
Mitiglinide	145375–43–5
Mivobulin	122332–18–7
Moxifloxacin	151096–09–2
Moxilubant	146978–48–5
Nagrestipen	166089–33–4
Nateglinide	105816–04–4
Nelfinavir	159989–64–7
Nelzarabine	121032–29–9
Nepadutant	183747–35–5
Nepafenac	78281–72–8
Nepaprazole	156601–79–5
Nepicastat	173997–05–2
Nerelimomab	162774–06–3
Nifekalant	130636–43–0
Nolatrexed	147149–76–6
Nolpitantium besilate	155418–06–7
Nonacog alfa	113478–33–4
Oberadilol	114856–44–9
Omapatrilat	167305–00–2
Omiloxetine	176894–09–0
Opanixil	152939–42–9
Opratonium iodide	146919–78–0
Oprelvekin	145941–26–0
Orazipone	137109–78–5
Orbofiban	163250–90–6
Osanetant	160492–56–8
Osutidine	140695–21–2
Pagoclone	133737–32–3
Palinavir	154612–39–2
Palonosetron	135729–56–5
Pamaqueside	150332–35–7
Pamiteplase	151912–42–4
Paricalcitol	131918–61–1
Pegmusirudin	186638–10–8
Peldesine	133432–71–0
Pelubiprofen	69956–77–0
Pemetrexed	137281–23–3
Perifosine	157716–52–4
Pexiganan	172820–23–4
Pibutidine	103922–33–4
Pifonakin	112721–39–8
Pleconaril	153168–05–9
Pralmorelin	158861–67–7
Pramlintide	151126–32–8
Pranazepide	150408–73–4
Pregabalin	148553–50–8
Prucalopride	179474–81–8
Pumaprazole	158364–59–1
Quetiapine	111974–69–7
Quilostigmine	139314–01–5
Raltitrexed	112887–68–0
Ranelic acid	135459–90–4
Rapacuronium bromide	156137–99–4
Resocortol	76675–97–3
Retigabine	150812–12–7
Revatropate	149926–91–0
Rifalazil	129791–92–0
Rismorelin	146706–68–5
Ritonavir	155213–67–5
Rituximab	174722–31–7
Rivastigmine	123441–03–2
Rizatriptan	144034–80–0
Robalzotan	169758–66–1
Roflumilast	162401–32–3
Rosiglitazone	122320–73–4
Roxifiban	170902–47–3
Rupatadine	158876–82–5
Sabcomeline	159912–53–5
Samarium (153 Sm) lexidronam	154427–83–5
Sampatrilat	129981–36–8
Saredutant	142001–63–6
Scopinast	145574–90–9
Seocalcitol	134404–52–7
Sevelamer	52757–95–6
Sibrafiban	172927–65–0
Sildenafil	139755–83–2
Silperisone	140944–31–6

INTERNATIONAL NONPROPRIETARY NAMES (INN) PROPOSED FOR DUTY ELIMINATION—Continued

INN	CAS RN
Sinapultide	138531–07–4
Sinitrodil	143248–63–9
Sipatrigine	130800–90–7
Sitafloxacin	127254–12–0
Sivelestat	127373–66–4
Soretolide	130403–08–6
Sulesomab	167747–19–5
Sunepitron	148408–65–5
Taltirelin	103300–74–9
Talviraline	169312–27–0
Targinine	17035–90–4
Tasonermin	94948–59–1
Tazomeline	131987–54–7
Technetium (99m Tc) nofetumomab merpentan	165942–79–0
Technetium (99m Tc) pintumomab	157476–76–1
Technetium (99mTc) apcitide	178959–14–3
Temiverine	173324–94–2
Temocaprilat	110221–53–9
Terbogrel	149979–74–8
Tererstigmine	147650–57–5
Ticolubant	154413–61–3
Tifacogin	148883–56–1
Tilnoprofen arbamel	159098–79–0
Tivirapine	137332–54–8
Tobicillin	151287–22–8
Trafermin	131094–16–1
Trastuzumab	180288–69–1
Trecovirsen	148998–94–1
Tresperimus	160677–67–8
Upenazime	95268–62–5
Urokinase alfa	99821–47–3
Valganciclovir	175865–60–8
Valnemulin	101312–92–9
Valspodar	121584–18–7
Vatanidipine	116308–65–5
Vedaclidine	141575–50–0
Vinflunine	162652–95–1
Xaliproden	135354–02–8
Xemilofiban	149820–74–6
Ziconotide	107452–89–1
Zinostatin stimalamer	123760–07–6
Zolmitriptan	139264–17–8

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION

IUPAC Name	CAS No.
(S)-but-3-yn-2-ol	2914–69–4
2-(4-fluorobenzyl)thiophene	63877–96–3
5-amino-N,N′-bis[2-acetoxy-1-(acetoxymethyl)ethyl]-2,4,6-triiodoisophthalamide	148051–08–5
5-amino-N,N′-bis(2,3-dihydroxypropyl)-2,4,6-triiodoisophthalamide	76801–93–9
(S)-alpha-chloroformylethyl acetate	36394–75–9
Diethyl dipropylmalonate	6065–63–0
5-methyl-N-[4-(sulfamoyl)phenethyl]pyrazine-2-carboxamide	33288–71–0
(5aR,11bS)-9,10-dimethoxy-2-propyl-4,5,5a,6,7,11b-hexahydrobenzo[f]thieno[2,3-c] quinoline hydrochloride	178357–37–4
Methyl N-(phenoxycarbonyl)-L-valinate	153441–77–1
(+-)-6-fluoro-1-methyl-4-oxo-7-(piperazin-1-yl)-4H-[1,3]thiazeto-[3,2-a]quinoline-3 -carboxylic acid	112984–60–8
Methyl 3-amino-4,6-dibromo-o-toluate	119916–05–1
4,6-dibromo-3-fluoro-o-toluic acid	119916–27–7
7-bromo-1-cyclopropyl-6-fluoro-5-methyl-4-oxo-1,4-dihydroquinoline-3-carboxylic acid	119916–34–6
2-mercapto-5-(trifluoromethyl)anilinium chloride	4274–38–8
2-(3-bromophenoxy)tetrahydropyran	57998–49–2
6-chloro-5-(2-chloroethyl)indol-2(3H)-one	118289–55–7
6-chloroindol-2(3H)-one	56341–37–8
6-methoxy-1,2,3,4-tetrahydro-1-naphthone	1078–19–9
N-[N-(tert-butoxycarbonyl)-L-alanyl]-L-alanine hydrate	90303–36–9
2,2′-dithiodibenzonitrile	33174–74–2
2-ethoxy-5-[(4-methylpiperazin-1-yl)sulfonyl]benzoic acid	194602–23–8
1-methyl-4-nitro-3-propylpyrazole-5-carboxamide	139756–01–7
(S)-2-(4-fluorophenyl)-3-methylbutyric acid	55332–37–1
[3-(benzimidazol-2-yl)propyl]methylamine	64137–52–6
7-chloro-5-(2-fluorophenyl)-1H-1,4-benzodiazepin-2(3H)-one	2886–65–9
2-bromo-4′-chloro-2′-(2-fluorobenzoyl)acetanilide	1584–62–9
2′-benzoyl-2-bromo-4′-chloroacetanilide	41526–21–0
(RS)-serinohydrazide hydrochloride	55819–71–1
2,3,4-trihydroxybenzaldehyde	2144–08–3
Dimethyl chloromalonate	28868–76–0
4,6-dichloro-5-(2-methoxyphenoxy)-2,2′-bipyrimidinyl	150728–13–5
4-tert-butylbenzenesulfonamide	6292–59–7
Methyl 3-[(methoxycarbonylmethyl)sulfamoyl]thiophene-2-carboxylate	106820–63–7
Methyl 4-hydroxy-2-methyl-2H-thieno[2,3-e][1,2]thiazine-3-carboxylate 1,1-dioxide	59804–25–0
Tert-butyl(1S,9S)-6,10-dioxo-9-phthalimidooctahydropyridazo[1,2-a][1,2]diazepine-1-carboxylate	106928–72–7
Ethyl (R)-2-hydroxy-4-phenylbutyrate	90315–82–5
1-benzyl hydrogen (S)-4-phthalimidoglutarate	88784–33–2
(S)-1-(benzyloxycarbonyl)hexahydropyridazine-3-carboxylic acid	65632–62–4
Methyl {(1S,2R)-1-benzyl-3-[(3S,4aS,8aS)-3-(tert-butylcarbamoyl)decahydro -2-isoquinolyl]-2-hydroxypropyl}carbamate	178680–13–2
(3S,4aS,8aS)-2-[(2R,3S)-3-amino-2-hydroxy-4-phenylbutyl]-N-tert-butyldecahydroisoquinoline-3-carb oxamide	136522–17–3
4-[(S)-3-amino-2-oxopyrrolidin-1-yl)benzonitrile hydrochloride	175873–08–2
Ethyl3-(3-{(S)-1-[4-(N′2-hydroxyamidino)phenyl]-2-oxopyrrolidin-3-yl}ureido)propionate	175873–10–6
4-[5-(p-tolyl)-3-(trifluoromethyl)-1H-pyrazol-1-yl]benzenesulfonamide	169590–42–5
4-hydrazonobenzenesulfonamide hydrocholoride	17852–52–7
4′-amidinosuccinanilic acid hydrochloride	149177–92–4
Ethyl (S)-3-aminopent-4-ynoate hydrochloride	154772–45–9
11-alpha-hydroxy-7-alpha-(methoxycarbonyl)-3-oxopregn-4-ene-21,17-alpha-carbolactone	192704–56–6
11-alpha-hydroxy-3-oxopregna-4,6-diene-21,17-alpha-carbolactone	73726–56–4
4-(5-methyl-3-phenylisoxazol-4-yl)benzenesulfonamide	181695–72–7
5-methyl-3,4-diphenyl-4,5-dihydroisoxazol-5-ol	181696–73–1

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
N-[4-(5-methyl-3-phenylisoxazol-4-yl)phenylsulfonyl]propionamide, sodium salt	198470–85–8
Pivaloyloxymethyl 7-{(Z)-2-[2-(tert-butoxycarbonylamino)thiazol 4-yl]pent-2-enamido}-3-(carbamoyloxymethyl)-3-cephem-4-carboxylate	105889–80–3
Benzhydryl 6-(4-methylbenzamido)penicillanic acid 4-oxide	77887–68–4
Benzhydryl 7-{(Z)-2-[2-(tert-butoxycarbonylamino)thiazol-4-yl]-4-(3-methylbut-2-enyloxycarbonyl)but-2-enamido}-3-cephem-4-carboxylate	174761–17–2
N-(2-quinolylcarbonyl)-L-asparagine	136465–98–0
Methyl N-(methoxycarbonyl)-L-phenylalaninate	41844–71–7
N-[(2,6-diisopropylphenoxy)sulfonyl]-2-(2,4,6-triisopropylphenyl)acetamide	166518–60–1
(2S,3S)-3-methyl-2-(3-oxo-2,3-dihydro-1,2-benzisothiazol-2-yl)valeric acid	177785–47–6
(1S,4R)-1-azabicyclo[2.2.1]heptan-3-one O-[(Z)-(3-methoxyphenyl)ethynyl]oxime—maleic acid (1:1)	180050–34–4
N-[(R)-9-methyl-4-oxo-1-phenyl-3,4,6,7-tetrahydro[1,4]diazepino[6,7,1-hi]indol-3-yl]isonicotinamide	179024–48–7
4-acetamido-2′-aminobenzanilide	112522–64–2
N,N′-bis[3-(ethylamino)propyl]propane-1,3-diamine tetrahydrochloride	156886–85–0
Ethyl 5-(but-3-enyl)thiophene-2-carboxylate	208337–82–0
Ethyl 5-[(3R)-3,4-dihydroxybutyl]thiophene-2-carboxylate	208337–83–1
Ethyl 5-[(3R)-4-amino-3-hydroxybutyl]thiophene-2-carboxylate	208337–84–2
Ethyl 5-[(3R)-4-(tert-butoxycarbonylamino)-3-hydroxybutyl]thiophene-2-carboxylate	186521–38–0
Ethyl 5-[(3R)-4-(tert-butoxycarbonylamino)-3-(mesyloxy)butyl]thiophene-2-carboxylate	186521–39–1
Ethyl 5-[(3S)-3-(acetylthio)-4-(tert-butoxycarbonylamino)butyl]thiophene-2-carboxylate	186521–40–4
Dimethyl 2-[(S)-1-(tert-butoxycarbonylaminomethyl)-2-(5-ethoxycarbonyl-2-thienyl)propylthio] malonate	186521–41–5
Methyl (S)-6-{2-[5-ethoxycarbonyl)-2-thienyl]ethyl}-3-oxo-1,4-thiazinane-2-carboxylate	186521–42–6
Ethyl (6S)-5-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl] thiophene-2-carboxylate	186521–44–8
(6S)-5-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl]thiophene-2-carboxylic acid	186521–45–9
Diethyl N-{5-[2-((6S)-2-amino-4-oxo-4,6,7,8-tetrahydro-3H-pyrimido[5,4-b][1,4]thiazin-6-yl) ethyl]-2-thenoyl}-L-glutamate	177575–19–8
4-chloropyridine hydrochloride	7379–35–3
4-phenoxypyridine	4783–86–2
4-(4-pyridyloxy)benzenesulfonic acid	192329–80–9
4-(4-pyridyloxy)benzenesulfonyl chloride hydrochloride	192330–49–7
(3S)-2,2-dimethyl-1,4-thiazinane-3-carboxylic acid	84915–43–5
(3S)-2,2-dimethyl-4-[4-(4-pyridyloxy)phenylsulfonyl]-1,4-thiazinane-3-carboxylic acid	192329–83–2
2-amino-5-bromo-6-methylquinazolin-4(1H)-one	147149–89–1
3-acetoxy-o-toluic acid	168899–58–9
(4R,5R)-4,5-bis(mesyloxymethyl)-1,3,2-dioxathiolane 2,2-dioxide	208338–09–4
(2R,3R)-1,4-bis(mesyloxy)butane-2,3-diol	1947–62–2
3,7,11-trimethyldodeca-1,6,10-trien-3-ol	7212–44–4
(6E,10E,14E)-3,7,11,15-tetramethylhexadeca-1,6,10,14-tetraen-3-ol	1113–21–9
Methyl 4-amino-5-nitro-o-anisate	59338–84–0
Methyl 5-(ethylsulfonyl)-o-anisate	62140–67–4
Methyl 5-sulfamoyl-o-anisate	33045–52–2
3-methoxy-5-sulfamoyl-o-anisic acid	66644–80–2
1-benzylpiperidine-4-carbaldehyde	22065–85–6
{(E)-3-[(6R,7R)-7-amino-2-carboxylato-8-oxo-5-thia-1-azabicyclo[4.2.0]oct-2-en-3-yl]allyl} (carbamoylmethyl)(ethyl)methylammonium	160115–08–2
[4-(3-methoxypropoxy)-3-methyl-2-pyridyl]methanol	118175–10–3
(Z)-2-(5-amino-1,2,4-thiadiazol-3-yl)-2-[(fluoromethoxy)imino]acetic acid	116833–10–4
2-(ethylmethylamino)acetamide	116833–20–6
4-chloro-2-[(Z)-(methoxycarbonyl)methoxyimino]-3-oxobutyric acid	84080–70–6
2-(5-ethyl-2-pyridyl)ethanol	5223–06–3
2-(4-aminophenoxymethyl)-2,5,7,8-tetramethyl-4-oxochroman-6-yl acetate	107188–37–4
Chloromethyl pivalate	18997–19–8
7-ethyl-3-[2-(trimethylsilyloxy)ethyl]indole	185453–89–8
5-amino-2,4,6-triiodoisophthalic acid	35453–19–1
4-hydroxyindole	2380–94–1
Thiazolidine-2,4-dione	2295–31–0
2-bromo-3-methylthiophene	14282–76–9
5-methyluracil	65–71–4
Thymidine	50–89–5
3-methyl-4-(2,2,2-trifluoroethoxy)-2-pyridylmethanol	103577–66–8
3-(cyanoimino)-3-piperidinopropiononitrile	56488–00–7
N-acetyl-3-(3,4-dimethoxyphenyl)-DL-alanine	27313–65–1
2,5,7,8-tetramethyl-2-(4-nitrophenoxymethyl)-4-oxochroman-6-yl acetate	107188–34–1
Methyl 4-(bromomethyl)-m-anisate	70264–94–7
9-bromononyl 4,4,5,5,5-pentafluoropentyl sulfide	148757–89–5
2-(phenylthio)aniline	1134–94–7
4,4,5,5,5-pentafluoropentan-1-ol	148043–73–6
Methyl (S)-2-amino-4-(1H-tetrazol-5-yl)butyrate	127105–49–1
(3-chloro-4-fluorophenyl)[7-methoxy-6-(3-morpholinopropoxy)quinazolin-4-yl]amine	184475–35–2
5-hydroxy-1,2,3,4-tetrahydro-1-naphthone	28315–93–7
(R)-1-chloro-2,3-epoxypropane	51594–55–9
Methyl 4-acetamido-o-anisate	4093–29–2
4-acetamido-5-chloro-o-anisic acid	24201–13–6

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
Methyl (1S,2S)-1-benzyl-3-chloro-2-hydroxypropylcarbamate	176972–62–6
Ethyl 2-chloronicotinate	1452–94–4
Ethyl 6-chloronicotinate	49608–01–7
6-hydroxynicotinic acid	5006–66–6
6-chloronicotinic acid	5326–23–8
1-acetylpiperazine	13889–98–0
8-azaspiro[4.5]decane-7,9-dione	1075–89–4
(S)-2-(4-{[(2,7-dimethyl-4-oxo-1,4-dihydroquinazolin-6-yl)methyl](prop-2-ynyl)amino}-2-fluorobenzamido)-4-(1H-tetrazol-5-yl)butyric acid	153537–73–6
SC–59735	116638–33–6
SC–70935	193700–51–5
6,7-dichloro-2,3-dimethoxyquinoxalin-5-ylamine	178619–89–1
4-(2-methyl-1H-imidazo[4,5-c]pyridin-1-yl)benzoic acid	132026–12–1
Methyl(4′-nitrophenethyl)amine hydrochloride	166943–39–1
2-chloroethyl 4-nitrophenyl ether	3383–72–0
(2RS,3SR)-2-(2,4-difluorophenyl)-3-(5-fluoropyrimidin-4-yl)-1-(1H–1,2,4-triazol-1-yl)butan-2-ol—(1R,4S)-2-oxobornane-10-sulfonic acid (1:1)	188416–34–4
6-ethyl-5-fluoropyrimidin-4(1H)-one	137234–87–8
Diphenyl[(S)-pyrrolidin-3-yl]acetonitrile hydrobromide	194602–27–2
(2,3-dihydrobenzofuran-5-yl)acetic acid	69999–16–2
Cyclohexylammonium 1-[(S)-2-(tert-butoxycarbonyl)-3-(2-methoxyethoxy)propyl]cyclopentanecarboxylate	167944–94–7
Cis-4-(benzyloxycarbonyl)cyclohexylammonium tosylate	67299–45–0
5-bromo-3-[(R)-1-methylpyrrolidin-2-ylmethyl]indole	143322–57–0
Meso-3-benzyl-6-nitro-3-azabicyclo[3.1.0]hexane	151860–16–1
Diethyl (6-chloro-9H-carbazol-2-yl)methylmalonate	71208–55–4
Beta-cyclodextrin sulfobutyl ethers, sodium salts	182410–00–0
N-(2-chloroethyl)pyrrolidine hydrochloride	7250–67–1
6,7-bis(2-methoxyethoxy)quinazolin-4(1H)-one	179688–29–0
Ethyl 3,4-dihydroxybenzoate	3943–89–3
3-{(Z)-1-[4-(2-dimethylaminoethoxy)phenyl]-2-phenylbut-1-enyl}phenol	83647–29–4
2-[1-(tert-butoxycarbonyl)-4-piperidyl]acetic acid	157688–46–5
4-pyridylacetic acid hydrochloride	6622–91–9
a,a,a-trifluoro-4-nitro-m-toluidine	393–11–3
Methyl 1-(2,3,5-tri-O-acetyl-beta-D-ribofuranosyl)-1H-1,2,4-triazole-3-carboxylate	39925–10–5
N′a-(tert-butoxycarbonyl)-N′w-nitro-L-arginine	2188–18–3
N′a-(tert-butoxycarbonyl)-N-methoxy-N-methyl-N′w-nitro-L-argininamide	139976–34–4
(2S,3S)-3-amino-2-ethoxy-N-nitropiperidine-1-carboxamidine hydrochloride	180250–77–5
(S)-O-benzyllactaldehyde-N-(tert-butoxycarbonyl)hydrazone	192802–28–1
Phenyl {4-[4-(4-hydroxyphenyl)piperazin-1-yl]phenyl}carbamate	184177–81–9
[(3S,5S)-5-(2,4-difluorophenyl)-5-(1H-1,2,4-triazol-1-ylmethyl)tetrahydrofuran-3-yl]methyl 4-chlorobenzenesulfonate	175712–02–4
8-chloro-11-(4-piperidylidene)-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridine	100643–71–8
2-hydroxy-2-methyl-4′-nitro-3′-(trifluoromethyl)propionanilide	52806–53–8
5-acetylsalicylamide	40187–51–7
8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-one	31251–41–9
1-nitro-4-(1,2,2,2-tetrachloroethyl)benzene	4714–32–3
3-chloropropyldimethylammonium chloride	5407–04–5
3-(trichlorovinyl)aniline hydrochloride	81972–27–2
2-[1-(mercaptomethyl)cyclopropyl]acetic acid	162515–68–6
3-(4-bromobenzyl)-2-butyl-4-chloro-1H-imidazol-5-ylmethanol	151015–31–6
4-chloro-1-methylpiperidine hydrochloride	5382–23–0
Methyl2-[(S)-3-{(E)-3-[2-(7-chloro-2-quinolyl)vinyl]phenyl}-3-hydroxypropyl]benzoate	181139–72–0
Methyl 2-(3-{(E)-3-[2-(7-chloro-2-quinolyl)vinyl]phenyl}-3-oxopropyl)benzoate	149968–11–6
2-(2-trityl-2H-tetrazol-5-yl)phenylboronic acid	143722–25–2
(3aS,8aR)-3-[(2R,4S)-2-benzyl-4,5-epoxyvaleryl]-2,2-dimethyl-3,3a,8,8a-tetrahydro-2H -indeno[1,2-d]oxazole	158512–24–4
N-[(4S,6S)-6-methyl-7,7-dioxo-5,6-dihydro-4H-thieno[2,3-b]thiopyran-4-yl]acetamide	147086–83–7
N-[(4S,6S)-6-methyl-7,7-dioxo-2-sulfamoyl-5,6-dihydro-4H-thieno[2,3-b]thiopyran-4-yl] acetamide	147200–03–1
5-iodouracil	696–07–1
N′1-methyl-1H-pyrazole-1-carboxamidine hydrochloride	59194–35–3
(S)-tetrahydrofuran-3-ol	86087–23–2
Ethyl 4,6-dichloro-3-formylindole-2-carboxylate	153435–96–2
3-oxoandrost-4-ene-17-beta-carboxylic acid	302–97–6
alpha,alpha,alpha,alpha′,alpha′,alpha′-hexafluoro-2,5-xylidine	328–93–8
(±)-2-azabicyclo[2.2.1]hept-5-en-3-one	61865–48–3
(1R,4S)-2-azabicyclo[2.2.1]hept-5-en-3-one	79200–56–9
[(1S,4R)-4-(2-amino-6-chloro-9H-purin-9-yl)cyclopent-2-enyl]methanol hydrochloride	172015–79–1
N-(2-amino-4,6-dichloropyrimidin-5-yl)formamide	171887–03–9
4-fluorobenzyl 4-(methylthio)phenyl ketone	87483–29–2
2-amino-3-pyridyl methyl ketone	65326–33–2
6-methoxy-1H-purin-2-ylamine	20535–83–5
1-(beta-D-arabinofuranosyl)pyrimidine-2,4(1H,3H)-dione	3083–77–0
(2R)-4-methyl-2-[(S)-2,2-dimethyl-5-oxo-1,3-dioxolan-4-yl]valeric acid	157518–70–2
(S)-2-amino-3,3-dimethyl-N–2-pyridylbutyramide	171764–07–1

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
3-nitro-4-pyridone	5435–54–1
2,6-difluorobenzylamine	69385–30–4
L-ribose	24259–59–4
(5,6-dichloro-1H-benzimidazol-2-yl)isopropylamine	176161–55–0
(R)-2-amino-2-ethylhexan-1-ol	151851–75–1
3-methylenecyclobutanecarbonitrile	15760–35–7
4-tert-butylbenzyl 2-{(2R,3S)-3-[(R)-1-(tert-butyldimethylsilyloxy)ethyl]-2-[(1R,3S)-3-methoxy-2-oxocyclohexyl]-4-oxoazetidin-1-yl}-2-oxoacetate	159593–17–6
methyl (3aR,4R,7aR)-2-methyl-4-[(1S,2R)-1,2,3-triacetoxypropyl]-3a,7a-dihydro-4H-pyrano [3,4-d]oxazole-6-carboxylate	78850–37–0
(4S,5R,6R)-5-acetamido-4-amino-6-[(1R,2R)-1,2,3-trihydroxypropyl]-5,6-dihydropyran-2 -carboxylic acid	130525–62–1
Pyrazole-1-carboxamidine hydrochloride	4023–02–3
2-acetoxy-5-acetylbenzyl acetate	24085–06–1
(R)-1,2,3,4-tetrahydropapaverine hydrochloride	54417–53–7
Trans-2-chloro-3-[4-(4-chlorophenyl)cyclohexyl]-1,4-naphthoquinone	153977–22–1
1,3-dichloroacetone	534–07–6
3,5-dimethylpiperidine	35794–11–7
2,6-diaminopyrimidin-4-ol	56–06–4
1-(2-chloroethyl)piperidinium chloride	2008–75–5
Diethyl L-glutamate hydrochloride	1118–89–4
Tert-butyl (1R,4S)-4-(hydroxymethyl)cyclopent-2-enylcarbamate	168960–18–7
2-butyl-1,3-diazaspiro[4.4]non-1-en-4-one hydrochloride	151257–01–1
Tert-butyl 2-{[1-(2-aminothiazol-4-yl)-2-(benzisothiazol-2-ylthio)-2-oxoethylidene] aminooxy}-2-methylpropionate	89604–92–2
Bis[(isopropyloxycarbonyloxy)methyl [(R)-2-(6-amino-9H-purin-9-yl) -1-methylethoxy]methyl phosphonate—fumaric acid (1:1)	202138–50–9
(R)-[2-(6-amino-9H-purin-9-yl)-1-methylethoxy]methylphosphonic acid	147127–20–6
(R)-propylene carbonate	16606–55–6
6-amino-9H-purin-9-ylethanol	707–99–3
(R)-2-(6-amino-9H-purin-9-yl)-1-methylethanol	14047–28–0
Chloromethyl isopropyl carbonate	35180–01–9
Diethyl (tosyloxy)methylphosphonate	31618–90–3
(R)-3-chloropropane-1,2-diol	57090–45–6
(S)-[(trityloxy)methyl]oxirane	129940–50–7
(S)-2-(2-amino-5-chlorophenyl)-4-cyclopropyl-1,1,1-trifluorobut-3-yn-2-ol	154598–58–0
10,10-bis[(2-fluoro-4-pyridyl)methyl]anthrone	160588–45–4
(S)-N-{(1S,2R)-3-[(1,3-benzodioxol-5-ylsulfonyl)(isobutyl)amino]-1-benzyl-2-hydroxypropyl}-3,3-dimethyl-2-(sarcosylamino)butyramide	183556–68–5
(4R,5S,6S,7R)-1-[(3-amino-1H-indazol-5-yl)methyl]-4,7-dibenzyl-3-butyl-5,6-dihydroxyhexahydro-2H-1,3-diazepin-2-one	188978–02–1
(2S)-N-[(R)-1-(1,3-benzodioxol-5-yl)butyl]-3,3-diethyl-2-{4-[(4-methylpiperazin-1-yl) carbonyl]phenoxy}-4-oxoazetidine-1-carboxamide	157341–41–8
2-(piperazin-1-yl)pyrimidine	20980–22–7
4-bromo-2,2-diphenylbutanenitrile	39186–58–8
Bromomethylcyclopropane	7051–34–5
Cyclobutanecarboxylic acid	3721–95–7
2-phenyl-2-pyridylacetonitrile	5005–36–7
5-methyl-2,3,4,5-tetrahydro-1H-pyrido[4,3-b]indol-1-one	122852–75–9
4-(2-methyl-2-phenylhydrazino)-5,6-dihydro-2-pyridone	139122–76–2
4,5,6,7-tetrahydrothieno[3,2-c]pyridine hydrochloride	28783–41–7
Methyl 2-(2-chlorophenyl)-2-(4,5,6,7-tetrahydrothieno[3,2-c]pyridin-5-yl)acetate hydrochloride	130209–90–4
2-bromo-2-(2-chlorophenyl)acetic acid	141109–25–3
Disodium (2S,3R)-2-hydroxy-3-isobutylsuccinate	157604–22–3
7-amino-3-(2-furoylthiomethyl)-3-cephem-4-carboxylic acid	80370–59–8
Methyl 5-chloro-o-anisate	33924–48–0
4-[(4-mesylamino)phenyl]-4-oxobutyric acid	100632–57–3
Benzyl (3-fluoro-4-morpholinophenyl)carbamate	168828–81–7
(3R)-3-[(S)-1-(methylamino)ethyl]pyrrolidine	155322–92–2
(4-carboxybutyl)triphenylphosphonium bromide	17814–85–6
(3aS,9aS,9bR)-3a-methyl-6-[2-(2,5,5-trimethyl-1,3-dioxan-2-yl)ethyl]-1,2,4,5,8,9,9a,9b-octahydro-3aH-cyclopenta[a]naphthalene-3,7-dione	88128–61–4
2-amino-2′,5-dichlorobenzophenone	2958–36–3
21-chloro-16-alpha-methylpregna-1,4,9(11)-triene-3,20-dione	151265–34–8
3,20-dioxopregna-1,4,9(11),16-tetraen-21-yl acetate	37413–91–5
Uracil	66–22–8
Tetrabutylammonium (6-iodo-1H-purin-2-yl)amide	156126–48–6
(1S,2S,3S)-2,3-bis(benzoyloxymethyl)cyclobutanol	132294–17–8
5-methyluridine	1463–10–1
Benzyl (1-carbamoyl-2-hydroxypropyl)carbamate	91558–42–8
5,8-dihydro-1-naphthol	27673–48–9
Potassium (R)-N-(3-ethoxy-1-methyl-3-oxoprop-1-enyl)-2-phenylglycine	961–69–3
Triethylaniline	33881–72–0
1-[4-(2-dimethylaminoethoxy)[14C]phenyl)]-1,2-diphenylbutan-1-ol	82407–94–1
o-chlorothiophenol	6320–03–2
Cytidine 5′-(dihydrogen phosphate)	63–37–6
2-[benzyl(methyl)amino]ethyl acetoacetate	54527–65–0

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
2-methyl-1-nitrosoindoline	85440–79–5
Inosine 5′-disodium phosphate	4691–65–0
4-[1-hydroxy-2-(methylamino)ethyl]phenol—L-tartaric acid (2:1)	16589–24–5
4-phenylpiperidin-4-ol	40807–61–2
1-(4-benzyloxyphenyl)-2-(4-hydroxy-4-phenyl-1-piperidyl)propan-1-one	188591–61–9
7-chloro-2-(4-methoxy-2-methylphenyl)-2,3-dihydro-5H-pyridazino[4,5-b]quinoline-1,4,10-trione, sodium salt	170142–29–7
N′-[N-methoxycarbonyl-L-valyl]-N-[(S)-3,3,3-trifluoro-1-isopropyl-2-oxopropyl]-L-prolinamide	182073–77–4
3-methyl hydrogen 7-chloro-1,4-dihydro-4-oxoquinoline-2,3-dicarboxylate	170143–39–2
(S)-N-{5-[2-(2-amino-4-oxo-4,6,7,8-tetrahydro-1H-pyrimido[5,4-b][1,4]thiazin-6-yl)ethyl} -2-thenoyl]-L-glutamic acid	177575–17–6
(S)-2,2-dimethyl-N-hydroxy-4-[4-(4-pyridyloxy)phenylsulfonyl]-1,4-thiazinane-3 -carboxamide	192329–42–3
urate oxidase	9002–12–4
(Z)-1-[3-(3-chloro-4-cyclohexylphenyl)prop-2-enyl]hexahydro-1H-azepine hydrochloride	139592–99–7
(Z)-N-[3-(3-chloro-4-cyclohexylphenyl)prop-2-enyl]-N-ethylcyclohexylamine hydrochloride	132173–07–0
Trans-2′-fluoro-4-hydroxychalcone O-[(Z)-2-(dimethylamino)ethyl]oxime—fumaric acid (2:1)	130580–02–8
N′,N′-diethyl-2-methyl-N-(6-phenyl-5-propylpyridazin-3-yl)propane-1,2-diamine—fumaric acid (2:3)	137733–33–6
2-{[1-(7-chloro-4-quinolyl)-5-(2,6-dimethoxyphenyl)-1H-pyrazol-3-yl]carbonylamino} adamantane-2-carboxylic acid	146362–70–1
(S)-N-[4-(4-acetamido-4-phenyl-1-piperidyl)-2-(3,4-dichlorophenyl)butyl]-N-methylbenzamide—fumaric acid (1:1)	176381–97–8
N′-{(2R,3S)-5-chloro-3-(2-chlorophenyl)-1-[(3,4-dimethoxyphenyl)sulfonyl]-3-hydroxy-2,3-dihydro-1H-indol-2-ylcarbonyl}-L-prolinamide	150375–75–0
1-(6-chloro-2-pyridyl)-4-piperidylamine hydrochloride	77145–61–0
Ethyl ((7S)-7-{[(2R)-2-(3-chlorophenyl)-2-hydroxyethyl]amino}-5,6,7,8-tetrahydro-2 -naphthyloxy)acetate hydrochloride	121524–09–2
Methyl O–2-deoxy-6-O-sulfo-2-(sulfoamino)-alpha-D-glucopyranosyl-(1,4)-O-beta-D -glucopyranuronosyl-(1,4)-O–2-deoxy-3,6-di-O-sulfo-2-(sulfoamino)-alpha-D -glucopyranosyl-(1,4)-O–2-O-sulfo-alpha-L-idopyranuronosyl-(1,4)-2-deoxy -2-(sulfoamino)-6-(hydrogen sulfate)-alpha-D-glucopyranoside, decasodium salt	114870–03–0
3-{[4-(4-amidinophenyl)thiazol-2-yl][1-(carboxymethyl)-4-piperidyl]amino}propionic acid	180144–61–0
Ethyl 3-({4-[4-(N-ethoxycarbonylamidino)phenyl]thiazol-2-yl}[1-(ethoxycarbonylmethyl)-4 -piperidyl]amino)propionate	190841–79–3
(S)-1-{2-[3-(3,4-dichlorophenyl)-1-(3-isopropoxyphenacyl)-3-piperidyl]ethyl}-4-phenyl-1 -azoniabicyclo[2.2.2]octane chloride	153050–21–6
5-(4-chlorophenyl)-1-(2,4-dichlorophenyl)-4-methyl-N-piperidino-1H-pyrazole-3 -carboxamide	168273–06–1
(R)-N-(1-{3-[1-benzoyl-3-(3,4-dichlorophenyl)-3-piperidyl]propyl}-4-phenyl-4-piperidyl)-N-methylace tamide hydrochloride	173050–51–6
Dibenzyl 1-(2,4-difluorophenyl)-2-(1H–1,2,4-triazol-1-yl)-1-(1H–1,2,4-triazol-1-ylmethyl)ethyl phosphate	194602–25–0
(S)-2-{3-[(2-fluorobenzyl)sulfonylamino]-2-oxo-2,3-dihydro-1-pyridyl}-N-(1-formyl-4 -guanidinobutyl)acetamide	179524–67–5
4-[4-(4-{4-[(3R,5R)-5-(2,4-difluorophenyl)-5-(1H–1,2,4-triazol-1-ylmethyl)tetrahydrofuran-3-ylmethyl oxy]phenyl}piperazin-1-yl)phenyl]-1-[(1S,2S)-1-ethyl-2-hydroxypropyl]-1,2,4-triazol-5(4H)-one	171228–49–2
4-{4-[(11R)-3,10-dibromo-8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-yl]piperidinocarbonylmethyl}piperidine-1-carboxamide	193275–84–2
4-{4-[(11S)-3,10-dibromo-8-chloro-5,6-dihydro-11H-benzo[5,6]cyclohepta[1,2-b]pyridin-11-yl]piperidinocarbonylmethyl}piperidine-1-carboxamide	193275–85–3
N-(1-ethyl-1,4-diphenylbut-3-enyl)cyclopropanecarboxamide	137246–21–0
(±)-1-azabicyclo[2.2.1]heptan-3-ol	142034–92–2
(Gr Bark)-1-azabicyclo[2.2.1]heptan-3-one	21472–89–9
Ethyl[3-(4-bromo-2-fluorobenzyl)-7-chloro-2,4-dioxo-1,2,3,4-tetrahydroquinazolin-1-yl] acetate	112733–28–5
2,6-diisopropylphenyl sulfamate	92050–02–7
Diethyl (1-cyano-3-methylbutyl)malonate	186038–82–4
2-imino-1,3-thiazol-4-one	556–90–1
3,5-di-tert-butyl-4-hydroxybenzaldehyde	1620–98–0
N-(biphenyl-2-yl)-4-[(2-methyl-4,5-dihydro-1H-imidazo[4,5-d][1]benzazepin-6-yl)carbonyl]benzamide	179528–39–3
3-(aminomethyl)-5-methylhexanoic acid	128013–69–4
2-(2,4,6-triisopropylphenyl)acetic acid	4276–85–1
N,N′-[dithiobis(o-phenylenecarbonyl)]bis-L-isoleucine	182149–25–3
(1R,4S)-1-azabicyclo[2.2.1]heptan-3-one	142034–97–7
3-amino-7-methyl-5-phenyl-1H–1,4-benzodiazepin-2(3H)-one	70890–50–5
1-ethyl-1,4-diphenylbut-3-enylamine	129140–12–1
Sodium 1,2,3-triazole-5-thiolate	59032–27–8
(3-ethynylphenyl)[6,7-bis(2-methoxyethoxy)quinazolin-4-yl]amine hydrochloride	183319–69–9
1-[(1S,2S)-2-hydroxy-2-(4-hydroxyphenyl)-1-methylethyl]-4-phenylpiperidin-4-ol methanesulfonate trihydrate	189894–57–3
(5R,6S)-6-phenyl-5-[4-(2-pyrrolidinoethoxy)phenyl]-5,6,7,8-tetrahydro-2-naphthol—(−)-tartaric acid (1:1)	190791–29–8
1-[(S)-3-(acetylthio)-2-methylpropionyl]-L-proline	64838–55–7
4′-benzyloxy-2-[(1-methyl-2-phenoxyethyl)amino]propiophenone hydrochloride	35205–50–6
5-(3-dimethylaminopropyl)-10,11-dihydrodibenzo[a,d]cyclohepten-5-ol	1159–03–1
2-aminoethyldiethylamine	100–36–7
Isopropyl (Z)-7-[(1R,2R,3R,5S)-3,5-dihydroxy-2-{(E)-(3R)-3-hydroxy-4-[3-(trifluoromethyl)phenoxy] but-1-enyl}cyclopentyl]hept-5-enoate	157283–68–6
21-benzyloxy-9-alpha-fluoro-11-beta,17-alpha-dihydroxy-16-alpha-methylpregna-1,4-diene-3,20-dione	150587–07–8
Pilocarpine	92–13–7
Atropine	51–55–8
4-nitrobenzyl (4R,5R,6S)-3-(diphenoxyphosphoryloxy)-6-[(R)-1-hydroxyethyl]-4-methyl-7-oxo-1-azabicyclo[3.2.0]hept-2-ene-2-carboxylate	90776–59–3
2-aminopropane-1,3-diol	534–03–2
Methyl 4-(bromomethyl)benzoate	2417–72–3
2-butylimidazole-5-carbaldehyde	68282–49–5
Ethyl hydrogen (2-thienylmethyl)malonate	143468–96–6
4-(2-butyl-5-formylimidazol-1-ylmethyl)benzoic acid	152146–59–3

PHARMACEUTICAL INTERMEDIATES PROPOSED FOR DUTY ELIMINATION—Continued

IUPAC Name	CAS No.
2,6-dichloro-4-methylnicotinonitrile	875–35–4
3,5-diacetamido-2,4,6-triiodobenzoic acid dihydrate	50978–11–5
2,2,2-trifluoroethanol	75–89–8
13-ethyl-17-alpha-hydroxy-18,19-dinorpregn-4-en-20-yn-3-one oxime	53016–31–2
Estropipate	7280–37–7
4-(4-cyclohexyl-2-methyloxazol-5-yl)-2-fluorobenzenesulfonamide	180200–68–4
17-alpha-hydroxy-3,20-dioxopregna-4,9(11)-diene-21-yl acetate	7753–60–8
Hemocyanins, megathura crenulata, reaction products with 1-O-[O–2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)-O-(N-acetyl-alpha-neuraminosyl)-(2,3)]-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranose	195993–11–4
1-(28-{O-D-apio-beta-D-furanosyl-(1,3)-O-beta-D-xylopyranosyl-(1,4)O-6-deoxy-alpha-L-mannopyranosyl)-(1,2)-4-O-[5-(5-alpha-L-arabinofuranosyloxy-3-hydroxy-6-methyloctanoyloxy)-3-hydroxy-6-methyloctanoyl]-6-deoxy-beta-D-galactopyranosyloxy}-16-alpha-hydr ox	141256–04–4
1-O-[O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-[O-beta-D-galactopyranosyl-(1,3)-2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)]-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyra nosyl]ceramide	104443–62–1
1-O-[O–2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)-O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranosyl]ceramide	104443–57–4
N-{[(1R,2R)-1-[O-(N-acetyl-alpha-neuraminosyl)-(2,3)-O-2-acetamido-2-deoxy-beta-D-galactopyranosyl-(1,4)-O-beta-D-galactopyranosyl-(1,4)-beta-D-glucopyranosyloxymethyl]-2-hydroxy-3-formylpropyl}stearamide	196085–62–8
Ferristene	155773–56–1
Codeine phosphate hemihydrate	41444–62–6
Trans-1-benzoyl-4-phenyl-L-proline	120851–71–0
5-methyluridine hemihydrate	25954–21–6
5′-benzoyl-2′,3′-didehydro-3′-deoxythymidine	122567–97–9
3′,5′-anhydrothymidine	38313–48–3
4′-(benzyloxycarbonyl)-4′-demethylepipodophyllotoxin	23363–33–9
2,3,4,6-tetra-O-benzyl-1-O-(trimethylsilyl)-b-D-glucose	80312–55–6
2,3,4,6-tetra-O-benzyl-D-glucose	4132–28–9
6-iodo-1H-purin-2-ylamine	19690–23–4
(1R,2R,3S)-2-amino-9-[2,3-bis(benzoyloxymethyl)cyclobutyl]-9H-purin-6-one	156126–53–3
(1RS,2RS,3SR)-2,3-bis(benzoyloxymethyl)cyclobutylamine	151807–53–3
(1RS,2RS,3RS)-2,3-bis(benzoyloxymethyl)cyclobutanol	127759–90–4
(1R,2R,3S)-9-[2,3-bis(benzoyloxymethyl)cyclobutyl]-6-iodo-9H-purin-2-ylamine	156126–89–3
(2S,3S)-2,3-bis(benzoyloxymethyl)cyclobutanone	132294–16–7
(S)-5-(1,3-dioxolan-4-yl)-2-aminovaleric acid	170242–34–9
N,N′-bis(trifluoroacetyl)-DL-homocystine	105996–54–1
(S)-2-(acetylthio)-3-phenylpropionic acid—dicyclohexylamine (1:1)	157521–26–1
Methyl (4S,7S,10aS)-4-amino-5-oxooctahydro-7H-pyrido[2,1-b][1,3]thiazepine-7-carboxylate	167304–98–5
4′-(2-butyl-4-oxo-1,3-diazaspiro[4.4]non-1-en-3-ylmethyl)biphenyl-2-carbonitrile	138401–24–6
DL-5-(1,2-dithiolan-3-yl)valeramide	3206–73–3
4-(4-methoxyphenyl)butan-2-one	104–20–1
Tetraisopropyl methylenediphosphonate	1660–95–3
(S)-1,2,3,4-tetrahydroisoquinoline-3-carboxylic acid	74163–81–8
(S)-N-tert-butyl-1,2,3,4-tetrahydroisoquinoline-3-carboxamide hydrochloride	149057–17–0
(S)-N-tert-butyl-1,2,3,4-tetrahydroisoquinoline-3-carboxamide sulfate	186537–30–4
(3S)-tetrahydrofuran-3-yl (1S,2R)-3-[(4-aminophenylsulfonyl)(isobutyl)amino]-1-benzyl-2-hydroxypropylcarbamate	161814–49–9
6-benzyl-1-(ethoxymethyl)-5-isopropylpyrimidine-2,4(1H,3H)-dione	149950–60–7
(2R,5S)-4-amino-5-fluoro-1-[2-(hydroxymethyl)-1,3-oxathiolan-5-yl]pyrimidin-2(1H)-one	143491–57–0
3′-azido-2′,3′-dideoxy-5-methylcytidine hydrochloride	108895–45–0
(2R,4R)-4-(2,6-diamino-9H-purin-9-yl)-1,3-dioxolan-2-ylmethanol	145514–04–1
(4R,5S,6S,7R)-1,3-bis(3-aminobenzyl)-4,7-dibenzyl-5,6-dihydroxyhexahydro-2H–1,3-diazepin-2-one dimethanesulfonate	177932–89–7

[FR Doc. 99–1342 Filed 1–20–99; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–413]

Certain Rare Earth Magnets and Materials and Articles Containing Same; Notice of Commission Determination Not To Review an Initial Determination Amending the Complaint and the Commission's Notice of Investigation To Add Four Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation. The ALJ granted the motion of complainants Magnequench International, Inc. (Magnequench) and Sumitomo Special Metals Co. Ltd. (SSMC) to add four respondents to the investigation.

ADDRESSES: Copies of the nonconfidential version of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official

business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 4, 1998, the Commission instituted an investigation based on a complaint filed by Magnequench International, Inc. (Magnequench) and Sumitomo Special Metals Co. (Sumitomo) of Japan alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain rare-earth magnets and magnetic materials and articles containing the same by reason of infringement of several claims of six U.S. patents, three of which are held by Magnequench and three of which are held by Sumitomo. 63 FR 47319. Eight firms were named as respondents.

On November 18, 1998, Magnequench and Sumitomo filed a motion to amend the complaint and the notice of investigation to add (1) A.R.E., Inc. of 777 Linden St. or 782 Pearl St., Sharon, PA 16146; (2) NEOCO, L.C. of 777 Linden St., Sharon, PA or 3128 Walton Blvd., Suite 197, Rochester Hills, MI 48309; (3) Beijing Jing Ma Permanent Magnetic Factory West Building Number 8, Chaoyang District, Beijing, China; and (4) Xin Huan Technology Development Co., Ltd., No. 8 South 3rd St., Zhong Guan Cun Road, Beijing, China as respondents to the investigation. On December 10, 1998, the ALJ granted complainants' motion, finding that the complainants had demonstrated good cause for adding the named respondents at this time. No petitions for review were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and section 210.42(h) of the Commission's Rules of Practice and Procedure (19 C.F.R. § 210.42(h)).

Issued: January 11, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 99–1349 Filed 1–20–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–01; Exemption Application No. D–10535, et al.]

Grant of Individual Exemptions; Moody-Day, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Moody-Day, Inc. Profit Sharing Plan (the Plan); Located in Carrollton, Texas; Exemption

[Prohibited Transaction Exemption 99–01; Exemption Application No. D–10535]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale (the Sale) by the Plan of an unimproved three-acre tract of real property located in Austin, Texas (the Property) to Metroport Realty Corporation, an affiliate of Moody-Day, Inc., the Plan sponsor and a party in interest with respect to the Plan, provided the following conditions were satisfied:

(A) the Sale was a one-time transaction for cash;

(B) the Plan received the fair market value of the Property on the date of the Sale;

(C) the Property was appraised by qualified, independent real estate appraisers;

(D) a qualified, independent fiduciary determined that the Sale was in the best interests of the Plan; and

(E) the Plan paid no commissions or other expenses relating to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on November 9, 1998 at 63 FR 60386.

EFFECTIVE DATE: This exemption has an effective date of May 24, 1995.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Toledo Clinic, Inc. Employees 401(k) and Profit Sharing Plan (the T/C Plan); Hart Associates, Inc. Profit Sharing Plan (the H/A Plan); and Midwest Fluid Power Company, Inc. Savings and Profit Sharing Plan and Trust (the M/F Plan, Collectively; the Plans) Located in Toledo, Ohio; Exemption

[Prohibited Transaction Exemption 99–02; Exemption Application Nos. D–10633, D–10634 and D–10635, respectively]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of

the Code, shall not apply, effective December 1, 1998, to: (1) the cash sale of certain shares of preferred stock (the Preferred Stock) issued by TTC Holdings Inc. (TTC), by the individually-directed account of Dr. Edward Orrechio in the T/C Plan, by the individually-directed account of Michael Hart in the H/A Plan, and by the individually-directed account of Larry Peterson in the M/F Plan (collectively, the Accounts) to TTC, a party in interest with respect to the H/A Plan and M/F Plan; and (2) the arrangement for the subsequent purchase of certain shares of common Stock (the Common Stock) issued by TTC by Messrs. Orecchio, Hart and Peterson (collectively; the Participants), in their own name, from TTC pursuant to an agreement with TTC that the purchase was to occur immediately after the sale of the Preferred Stock by the Plans to TTC; provided that the following conditions were met:

1. The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, in their individual capacity, were one-time transactions for cash;

2. The transactions described in (1) above took place on the same business day;

3. The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

4. The Participants, in their individual capacity, purchased from TTC shares of the Common Stock which were equal in number to the shares of Preferred Stock sold by the Accounts to TTC;

5. A qualified independent fiduciary (the Independent Fiduciary) determined that the transactions described herein were in the best interest and protective of the Accounts at the time of the transactions; and

6. The Independent Fiduciary supervised the transactions; assured that the conditions of this exemption were met; and took whatever actions were necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

EFFECTIVE DATE: This exemption is effective as of December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Sprinx Inc. Retirement Plan (the Plan) Located in Grand Prairie, Texas; Exemption

[Prohibited Transaction Exemption 99–03; Exemption Application No. D–10660]

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the proposed loan of $90,000 (the Loan) by the Plan to Sprinx, Inc. (the Employer), the sponsor of the Plan; and (2) the guarantee of repayment of the Loan by Harry D. Spring, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

1. The Loan does not exceed 25% of the total assets of the Plan at any time;

2. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;

3. The Loan is secured by common stock issued by the Employer, which has a fair market value, as determined by an independent qualified appraiser, which will remain at least 200% of the outstanding principal balance of the Loan throughout its duration;

4. The Plan has a first priority perfected security interest in the Stock, which is properly filed and perfected under applicable state law;

5. The independent fiduciary reviews the terms and conditions of the Loan and determines that the Loan is in the best interest and protective of the Plan and its participants and beneficiaries;

6. The independent fiduciary monitors the Loan throughout its duration and takes whatever action is necessary to protect the interests of the Plan; and

7. The independent fiduciary monitors the parties' compliance with the terms and conditions of this exemption.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, D.C., this 14th day of January, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–1272 Filed 1–20–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Submission for OMB Review; Comment Request

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for expedited review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by

calling the National Endowment for the Humanities, Assistant Director, Grants Office, Susan G. Daisey (202–606–8494) or may be requested by email to sdaisey@neh.fed.us. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316), within 30 days from the date of this publication in the **Federal Register**. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed above as soon as possible.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond.

Agency: National Endowment for the Humanities.

Title of Proposal: My History is America's History Website.

OMB Number: To be assigned.

Frequency of Collection: Continual.

Affected Public: General Public.

Number of Respondents: Approximately 100,000 per year.

Estimated Time per Respondent: Approximately one hour per response.

Estimated Total Burden Hours: 350,000.

Total Annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: This submission requests expedited clearance from OMB in thirty days.

FOR FURTHER INFORMATION CONTACT: Ms. Susan G. Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Room 311, Washington, D.C. 20506, or by email to: sdaisey@neh.fed.us. Telephone: 202–606–8494.

Juan Mestas,

Deputy Chairman.

[FR Doc. 99–1314 Filed 1–20–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m., local time on Wednesday, February 17, 1999, at the Hyatt Regency Hotel, 400 SE 2nd Avenue, Miami, Florida 33131–2197 concerning the Fire Aboard Cruise Ship *Ecstasy* on July 20, 1998. For more information, contact Donald Tyrrell, NTSB Office of Marine Safety at (202) 314–6455 or Ted Lopatkiewicz, NTSB Office of Public Affairs at (202) 314–6100.

Dated: January 14, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–1290 Filed 1–20–99; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–295/304–LA]

Commonwealth Edison Company (Zion Nuclear Power Station, Units 1 and 2); Notice of Appointment of Adjudicatory Employee

Pursuant to 10 CFR 2.4, notice is hereby given that Mr. Ronald A. Burrows, a Commission employee in the Office of Nuclear Reactor Regulation, Division of Reactor Program Management, has been appointed as a Commission adjudicatory employee within the meaning of section 2.4, to advise the Commission regarding issues related to the pending appeal of LBP–98–27. Mr. Burrows has not previously performed any investigative or litigating function in connection with this or any factually-related proceeding. Until such time as a final decision is issued in this matter, interested persons outside the agency and agency employees performing investigative or litigating functions in this proceeding are required to observe the restrictions of 10 CFR 2.780 and 2.781 in their communications with Mr. Burrows.

It is so *Ordered.*

Dated at Rockville, Maryland, this 14th day of January 1999.

For the Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–1358 Filed 1–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Informal 10 CFR 2.206 Public Hearing

[Docket No. 50–458; License No. NPF–47]
Entergy Operations, Inc.
[Docket No. 50–440; License No. NPF–58]
FirstEnergy Nuclear Operating Company

The U. S. Nuclear Regulatory Commission (NRC) will hold an informal public hearing regarding two petitions submitted pursuant to 10 CFR 2.206 involving the River Bend Station (RBS), operated by Entergy Operations, Incorporated, (the RBS licensee), and Perry Nuclear Power Plant (PNPP), Unit 1, operated by FirstEnergy Nuclear Operating Company (the PNPP licensee). The hearing will be held on February 22, 1999. The location for the hearing will be at the NRC, room T–2B3. The NRC is located at 11545 Rockville Pike, Rockville, Maryland. The hearing will be open to public attendance and will be transcribed.

The structure of the hearing shall be as follows: Monday, February 22, 1999:

1:00 p.m.—NRC opening remarks
1:15 p.m.—Petitioner's presentation
2:00 p.m.—NRC questions
2:15 p.m.—RBS licensee's presentation
2:45 p.m.—NRC questions
3:00 p.m.—PNPP licensee's presentation
3:30 p.m.—NRC questions
3:45 p.m.—Public comments
4:30 p.m.—Licensees/Petitioner's final statements
4:45 p.m.—Meeting concludes

Note: All times are Eastern Standard Time (EST)

By letter dated September 25, 1998, the Union of Concerned Scientists (UCS or Petitioner) submitted a Petition pursuant to 10 CFR 2.206 requesting that the River Bend Station be immediately shut down and its operating license suspended or modified until the facility's design and licensing basis were updated to permit operation with failed fuel assemblies, or until all failed fuel assemblies were removed from the reactor core. The Petitioner also requested that a public hearing be held to discuss this matter in the Washington, D.C. area.

By letter dated November 9, 1998, the UCS also submitted a Petition pursuant to 10 CFR 2.206 requesting that the Perry Nuclear Power Plant be immediately shut down and its

operating license suspended or modified until the facility's design and licensing basis were updated to permit operation with failed fuel assemblies, or until all failed fuel assemblies were removed from the reactor core. The Petitioner also requested a public hearing in the Washington, D.C. area.

The purpose of this informal public hearing is to obtain additional information from the Petitioner, the licensees, and the public for NRC staff use in evaluating the Petitions. Therefore, this informal public hearing will be limited to information relevant to issues raised in the two Petitions. The staff will not offer any preliminary views on its evaluation of the Petitions. The informal public hearing will be chaired by a senior NRC official who will limit presentations to the above subject.

The format of the informal public hearing will be as follows: opening remarks by the NRC regarding the general 10 CFR 2.206 process, the purpose of informal public hearing, and a brief summary of the Petitions (15 minutes); time for the Petitioner to explain the basis of the Petitions (45 minutes); time for the NRC to ask the Petitioner questions for the purposes of clarification (15 minutes); time for the licensees to address the issues raised in the petition (30 minutes for each licensee); time for the NRC to ask the licensees questions for the purposes of clarification (15 minutes each, following licensees' presentations); time for public comments relative to the Petition (45 minutes); and time for the licensees' and Petitioner's final statements (15 minutes).

Members of the public who are interested in presenting information relative to the Petitions should notify the NRC official named below, 5 working days prior to the hearing. A brief summary of the information to be presented and the time requested should be provided in order to make appropriate arrangements. Time allotted for presentations by members of the public will be determined based upon the number of requests received and will be announced at the beginning of the hearing. The order for public presentations will be determined on a first received—first to speak basis. Written statements should be mailed to the U.S. Nuclear Regulatory Commission, Mailstop O–13H03, Attention: Robert Fretz, Washington, D.C. 20555.

Requests for the opportunity to present information can be made by contacting Robert Fretz, Project Manager, Division of Reactor Projects—III/IV (telephone 301–415–1324) between 7:00 a.m. to 3:30 p.m. (EST), Monday–Friday. Persons planning to attend this informal public hearing are urged to contact the above NRC representative 1 or 2 working days prior to the informal public hearing to be advised of any changes that may have occurred.

In order to assist participation in the informal hearing by interested members of the public, the NRC may also provide video teleconferencing services at a public location in the vicinity of the River Bend and Perry facilities. A subsequent notice in the **Federal Register** will be published at least 10 days prior to the date of the informal public hearing to announce the location of the video conferencing site, if made available.

Dated at Rockville, Maryland, this 14th day of January 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1359 Filed 1–20–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Energy Company (Big Rock Point Nuclear Plant); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. DPR–6, issued to Consumers Energy Company (Consumers or the licensee) for the possession of the Big Rock Point Nuclear Plant (BRP) located in Charlevoix County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed exemption would reduce or remove selected physical security requirements of 10 CFR part 73.

The proposed action is in accordance with the licensee's application dated November 12, 1998.

Need for the Proposed Action

On June 26, 1997, Consumers certified that it would permanently cease reactor power operations at its BRP facility. On August 30, 1997, the reactor was shut down. By letter dated September 23, 1997, the licensee certified the permanent removal of all fuel from the reactor vessel. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications, Facility Operating License No. DPR–6 no longer authorizes operation of the reactor or emplacement or retention of the fuel in the reactor vessel. In this permanently shutdown and defueled condition, the facility poses a reduced risk to public health and safety.

The proposed action is required to allow the licensee to implement physical security plans appropriate to the permanently shutdown and defueled condition of the BRP facility.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the granting of the exemption from selected portions of 10 CFR part 73 is acceptable, as described in the safety evaluation accompanying issuance of the exemption.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. Further, the "no-action" alternative would require Consumers to maintain and implement physical security plans required of an operating reactor plant. Such a plan would represent a burden on the licensee and not enhance the protection of the environment. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in BRP's Environmental Report for Decommissioning, dated February 27, 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on December 29, 1998, the staff consulted with the Michigan State official, Robert D. Skowronek, Acting Chief Radiological Protection Section, Drinking Water and Radiological Protection Division, Michigan Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed exemption, see the licensee's letter dated November 12, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room, North Central Michigan College Library, 1515 Howard Street, Petoskey, MI 49770.

Dated at Rockville, Maryland, this 13th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1360 Filed 1–20–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23652; File No. 812–11396]

Hartford Life and Annuity Insurance Company, et al.; Notice of Application

January 13, 1999.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities, and pursuant to Section 17(b) of the Act exempting related transactions from Section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of Bond Fund of One Group Investment Trust ("One Group Trust") for shares of Pegasus Variable Fund ("Pegasus Trust") Bond Fund, shares of One Group Trust's Value Growth Fund for shares of Pegasus Variable Fund's Growth and Value Fund, shares of One Group Trust's Mid Cap Opportunities Fund for shares of Pegasus Trust's Mid Cap Opportunity Fund, shares of One Group Trust's Large Company Growth Fund for shares of Pegasus Trust's Growth Fund and shares of One Group Trust's Mid Cap Value Fund for shares of Pegasus Trust's Intrinsic Value Fund currently held by those unit investment trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.

Applicants: Hartford Life and Annuity Insurance Company ("Hartford"), ICMG Registered Variable Life Separate Account One ("ICMG Account") and Hartford Life and Annuity Insurance Company Separate Account Six ("Annuity Account," together with the ICMG Account, the "Accounts").

Filing date: The application was filed on November 10, 1998.

Hearing or notification of hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 8, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Marianne O'Doherty, Esq., Counsel, Hartford Life and Annuity Insurance Company, 200 Hopmeadow Street, Simsbury, Connecticut 06089. Copies to Stephen E. Roth, Esq. and David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Hartford is a stock life insurance company incorporated in Connecticut. Hartford is engaged in the business of writing individual and group life insurance and annuity contracts in the District of Columbia and all states but New York. Hartford is the depositor and sponsor of the Accounts.

2. The ICMG Account, a segregated investment account established under Connecticut law, is registered with the Commission as a unit investment trust. The ICMG Account is currently divided into fourteen subaccounts, each of which invests exclusively in shares representing an interest in a separate corresponding investment portfolio ("Fund") of one of three management investment companies of the series type ("Management Companies"), including Pegasus Trust. The assets of the ICMG Account support flexible premium group variable life insurance contracts ("ICMG Contracts"), and interests in the Account offered through the ICMG Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form S–6.

3. The Annuity Account is currently divided into thirteen subaccounts. Each subaccount invests exclusively in a corresponding Fund of one of the same three Management Companies in which the ICMG Account invests. The assets of the Annuity Account support individual and group flexible premium deferred variable annuity contracts ("Annuity Contracts," together with the ICMG Contracts, "Contracts"), and interests in the Account offered through the Annuity Contracts have been registered under the 1933 Act on Form N–4 (File No. 33–86330).

4. Pegasus Trust, a Delaware business trust, is registered under the Act as an open-end management investment company (File No. 811–8854). Pegasus Trust currently comprises five Funds, all of which would be involved in the proposed substitutions. Pegasus Trust issues a separate series of shares of beneficial interest in connection with each Fund. Those shares are registered under the 1933 Act on Form N–1A (File

No. 33–86186). First Chicago NBD Investment Management Company serves as the investment adviser to Pegasus Trust.

5. One Group Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company (File No. 811–7874). One Group Trust currently comprises nine Funds. One Group Trust issues a separate series of shares of beneficial interest in connection with each Fund and has registered these shares under the 1933 Act on Form N–1A (File No. 33–66080). Banc One Investment Advisors Corporation serves as investment adviser to One Group Trust.

6. Pegasus Trust's Bond Fund ("Pegasus Bond Fund") seeks to maximize its total rate of return by investing predominantly in intermediate and long-term debt securities denominated in U.S. dollars. During normal market conditions, the Fund's average weighted portfolio maturity is generally 6 to 12 years. Debt securities in which the Pegasus Bond Fund normally invests include: (a) obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities; (b) corporate, bank and commercial obligations; (c) securities issued or guaranteed by foreign governments and their agencies or instrumentalities; (d) securities issued by supranational banks; (e) mortgage-backed and other asset-backed securities; and (f) variable rate bonds, zero coupon bonds, debentures and various types of demand instruments. Up to 15% of the Pegasus Bond Fund's total assets may be invested in dollar-denominated debt securities of foreign issuers.

7. One Group Trust's Bond Fund ("One Group Bond Fund") seeks to earn a high level of current income and total return by investing primarily in a diversified portfolio of debt securities of various maturities. At least 65% of the One Group Bond Fund's total assets is invested in bonds and at least 80% in debt securities of all types with varying maturities. Generally debt securities acquired by the One Group Bond Fund are rated investment grade but it may invest up to 5% of its net assets in debt securities rated below investment grade. It also may invest in convertible securities, preferred stock and loan participations. The One Group Bond Fund normally maintains a weighted average maturity of between six to twelve years, although it may shorten this maturity for temporary defensive purposes.

8. Pegasus Trust's Growth and Value Fund ("Pegasus Growth and Value Fund") seeks long-term capital growth, with income a secondary consideration. It invests primarily in equity securities of larger companies believed by its investment adviser to represent a value or potential worth that is not fully recognized by prevailing market prices. It invests in equity securities of companies that its investment adviser believes have earnings growth expectations that exceed those implied by the market's current valuation or whose earnings it expects to increase at a rate in excess of those within the general equity market.

9. One Group Trust's Value Growth Fund ("One Group Value Growth Fund") seeks long-term capital growth and growth of income and secondarily, a moderate level of current income, by investing primarily in equity securities. It invests in securities of overlooked or undervalued companies that have the potential to produce above-average earnings growth over time. It follows a multi-style strategy in that it invests in securities of both value and growth oriented companies of varying levels of capitalization.

10. Pegasus Trust's Mid Cap Opportunity Fund ("Pegasus Mid Cap Opportunity Fund") seeks long-term capital appreciation. It seeks to achieve its objective by investing primarily in equity securities of companies with market capitalizations of $500 million to $3 billion.

11. One Group Trust's Mid Cap Opportunities Fund ("One Group Mid Cap Opportunities Fund") seeks long term capital growth by investing primarily in equity securities of companies with market capitalizations of between $500 million and $5 billion. Normally the One Group Mid Cap Opportunities Fund invests at least 80% of its total assets in common and preferred stock, rights, warrants, securities convertible into common stock, and other equity securities. The One Group Mid Cap Opportunities Fund may invest up to 25% of its total assets in equity securities of foreign issuers and up to 20% of its total assets in investment grade debt securities, U.S. government securities, cash and cash equivalents. It may hold up to 5% of its total assets in convertible debt securities rated lower than investment grade.

12. Pegasus Trust's Growth Fund ("Pegasus Growth Fund") seeks long-term capital appreciation. It seeks to achieve its objective by investing primarily in equity securities of domestic issuers believed by its investment adviser to have above-average growth characteristics. The investment adviser often considers the following factors in evaluating growth characteristics: development of new or improved products, a favorable growth outlook for the issuer's industry, patterns of increasing sales and earnings, the probability of increased operating efficiencies, and cyclical conditions.

13. One Group Trust's Large Company Growth Fund ("One Group Large Company Growth Fund") seeks long-term capital appreciation and growth of income by investing primarily in equity securities of large well-established companies. The weighted average market capitalization of such companies normally exceeds the median market capitalization of the Standard & Poor's 500 Composite Stock Price Index. The One Group Large Company Growth Fund normally invests at least 65% of its total assets in such equity securities. The remainder of the One Group Large Company Growth Fund's total assets are invested in nonconvertible fixed-income securities, options and futures contracts, repurchase agreements, and securities issued by the U.S. government and its agencies and instrumentalities.

14. Pegasus Trust's Intrinsic Value Fund ("Pegasus Intrinsic Value Fund") seeks long-term capital appreciation. It seeks to achieve its objective by investing primarily in equity securities of companies that its investment adviser believes represent a value or potential worth that is not recognized by prevailing market prices. In selecting securities, the Fund's investment adviser employs screening techniques to isolate issues that it believes are attractively priced and then evaluates the underlying earning power and dividend paying ability of the issuer. The Fund's holdings are usually characterized by lower price/earnings, price/cash flow and price/book value ratios and by above-average current dividend yields relative to the equity market'.

15. One Group Trust's Mid Cap Value Fund ("One Group Mid Cap Value Fund") seeks capital appreciation with a secondary goal of obtaining income by investing primarily in equity securities. Under normal market conditions, at least 80% of the One Group Mid Cap Value Fund's total assets are invested in equity securities having market capitalizations of $500 million to $5 billion. Generally, the One Group Mid Cap Value Fund invests in equity securities of companies with below-average price/earnings and price/book value ratios. The One Group Mid Cap Value Fund also considers a company's financial soundness and earnings prospects. It generally will sell a security if its investment adviser considers that the issuer's fundamental

business prospects are declining or its ability to pay dividends is impaired.

16. Banc One Investment Advisors Corporation, investment adviser to One Group Trust, is an indirect wholly-owned subsidiary of Bank One Corporation. Until recently, First Chicago NBD Investment Management, investment adviser to Pegasus Trust, was an indirect wholly-owned subsidiary of First Chicago NBD Corporation. As of October 2, 1998, Bank One Corporation and First Chicago NBD Corporation underwent a merger and have decided to consolidate the mutual fund operations of First Chicago NBD Investment Management with those of Banc One Investment Advisors. Applicants assert that in connection with this consolidation, it has been determined that the organization needs only one Management Company as an investment vehicle for variable life insurance and variable annuity contracts and that One Group Trust rather than Pegasus Trust should be that vehicle. As a result, Pegasus Trust will be closed down and will therefore be unable to continue to offer its shares to the Accounts.

17. Under the Contracts, Hartford reserves the right to substitute shares of one Fund for shares of another, including a Fund of a different Management Company.

18. Hartford proposes to substitute shares of the One Group Bond Fund for shares of the Pegasus Bond Fund, shares of the One Group Value Growth Fund for shares of the Pegasus Growth and Value Fund, shares of the One Group Mid Cap Opportunities Fund for shares of the Pegasus Mid Cap Opportunity Fund, shares of the One Group Large Company Growth Fund for shares of the Pegasus Growth Fund and shares of the One Group Mid Cap Value Fund for shares of the Pegasus Intrinsic Value Fund (collectively, "Substitutions"). Hartford proposes to carry out certain substitutions by redeeming shares issued by Pegasus Trust in kind and using the redemption proceeds to purchase shares issued by One Group Trust.

19. With respect to the proposed substitution of shares of One Group Bond Fund for shares of Pegasus Bond Fund, shares of One Group Mid Cap Opportunities Fund for shares of Pegasus Mid Cap Opportunity Fund, shares of One Group Value Growth Fund for shares of Pegasus Growth and Value Fund and shares of One Group Mid Cap Value Fund for shares of Pegasus Intrinsic Value Fund, Applicants assert that in anticipation of Pegasus Trust's discontinuation, One Group Trust is in the process of creating new investment portfolios including the Bond Fund, Mid Cap Opportunities Fund, Value Growth Fund and Mid Cap Value Fund. Each of these Funds has been designed as a replacement for its Pegasus Trust counterpart. As such, each has an investment objective (or objectives) that is virtually or substantially identical to that of its Pegasus Trust counterpart and pursues such objective(s) using similar investment polices. The effect of the foregoing four proposed substitutions would be to "transfer" these Pegasus Trust Funds intact to the One Group Trust. Banc One Investment Advisors has indicated to Hartford that it has undertaken to waive the management fee of these four One Group Trust Funds during their first year of operation to the extent necessary to limit each Fund's expense ratio as follows: Bond Fund, 0.75%; Mid Cap Opportunities Fund, 0.95%; Value Growth Fund, 0.95%; and Mid Cap Value Fund, 0.95%.

20. With respect to the proposed substitution of shares of One Group Large Company Growth Fund for shares of Pegasus Growth Fund, Applicants assert that One Group Large Company Growth Fund has substantially the same investment objective as the Pegasus Growth Fund. If the proposed substitution of One Group Large Company Growth Fund shares for those of Pegasus Growth Fund occurs, Large Company Growth Fund would increase in size by approximately 15% and be more than seven times the size of the Growth Fund. This proposed substitution would move Contract owners currently invested in Pegasus Trust Growth Fund to a much larger fund with substantially the same risk and reward characteristics. Applicants assert that although Pegasus Growth Fund has had somewhat lower expense ratios than One Group Trust Large Company Growth Fund during the last three years, the immediate increase in size of the later after the proposed substitution would result in a lower ratio in fiscal 1999 and that One Group Large Company Growth Fund has had better cumulative performance over the past three fiscal years than has Pegasus Growth Fund.

21. The following charts show the approximate year-end net asset level, ratio of operating expenses as a percentage of average net assets, and annual total returns for each of the past three years for the Pegasus Growth Fund and the One Group Large Company Growth Fund:

	Net assets at year-end	Expense ratio (percent)	Total return (percent)
Pegasus Growth Fund:			
1995	$6,434,936	[2].85	[2]18.82
1996	11,542,021	.85	17.52
1997	15,839,911	.91	24.48
One Group Large Company Growth Fund:			
1995	16,119,036	[1].90	24.13
1996	42,893,346	[1].98	16.67
1997	99,627,641	[1]1.00	31.93

[1] The One Group Trust Large Company Growth Fund's investment adviser voluntarily waived part of its investment management fee during 1995 and 1996 in order to limit the Fund's expense ratios to the amounts shown for those years. Absent such waivers, the expense ratios for 1995 and 1996 would have been 1.64% and 1.16%, respectively.
[2] Annualized.

22. By supplements to the various prospectuses for the Contracts and the Accounts, Hartford will notify all owners of the Contracts of its intention to effect the Substitutions. The supplements for the Accounts advise Contract owners that from the date of the supplement until the date of the Substitutions, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected subaccounts on the date of the supplement to another subaccount available under a Contract other than one of the other affected subaccounts without that transfer counting as a "free" transfer permitted under a Contract. The supplements also inform Contract owners that Hartford will not exercise any rights reserved under any Contract to impose additional

restrictions on transfers until at least 30 days after the proposed substitution.

23. The Substitutions will take place at relative net asset value with no change in the amount of any Contract owner's Contract value, cash value or death benefit or in the dollar value of his or her investment in either of the Accounts. Contract owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or Hartford's obligations under the Contracts be altered in any way. All expenses incurred in connection with the Substitutions, including legal, accounting and other fees and expenses, will be paid by Hartford. In addition, the Substitutions will not impose any tax liability on Contract owners. The Substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the Substitutions than before the Substitutions. The Substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. Hartford will not exercise any right it may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the Substitutions.

24. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the Substitutions, any Contract owners who were affected by the Substitutions will be sent a written notice informing them that the Substitutions were carried out and that they may make one transfer of all Contract value or cash value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount or separate account available under their Contract without that transfer counting as one of any limited number of transfers permitted in a Contract year or as one of a limited number of transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that Hartford will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers until at least 30 days after the Substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contract owners who are affected by the Substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by Hartford (or one of its affiliates) during the 60 days following the Substitutions. The notices will be accompanied by current prospectuses for One Group Trust.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states:

It shall be unlawful for any depositor or trustee or a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the Substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act and request that the Commission issue an order pursuant to Section 26(b) of the Act approving the Substitutions.

3. The Contracts expressly reserve for Hartford the right, subject to Commission approval, to substitute shares of another Management Company for shares of a Management Company held by a subaccount of the Accounts. Applicants assert that the prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

4. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by Hartford. Applicants assert that the Substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants assert that in the cases of the proposed substitution of shares of One Group Bond Fund for shares of Pegasus Bond Fund, shares of One Group Mid Cap Opportunities Fund for shares of Pegasus Mid Cap Opportunity Fund, shares of One Group Value Growth Fund for shares of Pegasus Growth and Value Fund and shares of One Group Mid Cap Value Fund for shares of Pegasus Intrinsic Value Fund, the Pegasus Trust Funds would be replaced by essentially the same Fund under a different name. Although these Funds, in their One Group Trust incarnation, may not be managed by the same individuals as managed them for Pegasus Trust, each Fund will maintain its essential character along with its investment objective(s) and policies. Moreover, applicants assert that these Funds' prospects for significant future growth are greater as part of the One Group Trust than they would have been as part of Pegasus Trust.

6. Applicants assert that in the case of the proposed substitution of shares of One Group Trust Large Company Growth Fund for shares of Pegasus Trust Growth Fund, Pegasus Trust Growth Fund would be replaced by a Fund with very similar investment objectives and policies, but of much larger size. Although expense ratios over the most recent three fiscal years have been somewhat lower for Pegasus Growth Fund than for One Group Trust Large Company Growth Fund, cumulative investment performance for the later has been better than for the former over the same periods and investors in Large Company Growth Fund can reasonably expect a decline in expense ratios as result of the increase in assets following the proposed substitution. For these reasons, Applicants assert that Contract owners would benefit from the proposed substitution.

7. Applicants assert that they anticipate that Contract owners will be at least as well off with the array of subaccounts offered after the proposed substitutions as they have been with the array of subaccounts offered prior to the substitutions. Applicants assert that the Substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the Substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer Contract values and cash values between and among the same number of subaccounts as they could before the Substitutions.

8. Applicants assert that each of the Substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer Contract or cash values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants assert that the Substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

9. Section 17(a)(1) of the Act prohibits any affiliated person or an affiliate of an

affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

10. Section 17(b) of the Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

11. Applicants request an order pursuant to Section 17(b) of the Act exempting them, Pegasus Trust and One Group Trust from the provisions of Section 17(a) to the extent necessary to permit Hartford to carry out the Substitutions.

12. Applicants assert that the terms of the Substitutions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Applicants also assert that the proposed substitutions by Hartford are consistent with the policies of: (a) Pegasus Trust and of its Bond Fund, Growth and Value Fund, Mid Cap Opportunity Fund, Growth Fund and Intrinsic Value Fund; and (b) One Group Trust and of its Bond Fund, Value Growth Fund, Mid Cap Opportunities Fund, Large Company Growth Fund and Mid Cap Value Fund, as recited in the current registration statements and reports filed by each under the Act. Finally, Applicants assert that the proposed substitutions are consistent with the general purposes of the Act.

13. The proposed transactions will be effected at the respective net asset value. The proposed transactions will not change the amount of any Contract owner's Contract or cash value or death benefit or in the dollar value of his or her investment in either of the Accounts. Applicants also state that the transactions will conform substantially with the conditions enumerated in Rule 17a–7. Applicants assert that to the extent that the proposed transactions do not comply fully with all of the conditions of Rule 17a–7 and each Trust's procedures thereunder, the circumstances surrounding the proposed substitutions will be such as to offer the same degree of protection to each Fund of Pegasus Trust and the affected Funds of One Group Trust from overreaching that Rule 17a–7 provides to them generally in connection with their purchase and sale of securities under that Rule in the ordinary course of their business.

14. Applicants assert that because of the circumstances surrounding the proposed Hartford substitutions, Pegasus Trust could not "dump" undesirable securities on One Group Trust or have their desirable securities transferred to other advisory clients of Banc One Investment Advisers or to Funds other than those in One Group Trust supporting the Accounts. Nor can Hartford (or any of its affiliates) effect the proposed transactions at a price that is disadvantageous to any Pegasus Trust Fund or One Group Trust Fund. Although the transactions may not be entirely for cash, each will be effected based upon: (a) the independent market price of the portfolio securities valued as specified in paragraph (b) of Rule 17a–7; and (b) the net asset value per share of each Fund involved valued in accordance with the procedures disclosed in the respective Trust's registration statement and as required by Rule 22c–1 under the Act. Applicants assert that no brokerage commission, fee, or other remuneration will be paid to any party in connection with the proposed transactions. In addition, Applicants assert that the boards of trustees of each Trust will subsequently review the Substitutions and make the determinations required by paragraph (e)(3) of Rule 17a–7.

15. Applicants assert that the proposed transactions are consistent with the general purposes of the Act and that the proposed transactions do not present any of the conditions or abuses that the Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the Substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division Of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1322 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23849; 812–11342]

Templeton Dragon Fund, Inc.; Notice of Application

January 13, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicant, Templeton Dragon Fund, Inc. (the "Fund"), a registered closed-end management investment company, requests an order to permit it to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy with respect to its common stock calling for quarterly distributions of a fixed percentage of its net asset value ("NAV").

FILING DATES: The application was filed on October 7, 1998, and amended on January 11, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 8, 1999 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Applicant, 500 East Broward Boulevard, Suite 2100, Fort Lauderdale, Florida 33394–3091.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the

Commission's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. The Fund is registered under the Act as a closed-end management investment company and organized as a Maryland corporation. The Fund's investment objective is to seek long-term capital appreciation by investing at least 45% of its total assets in "China companies," as defined in the Fund's prospectus. Shares of the Fund are listed on the New York Stock Exchange and the Osaka Stock Exchange. Templeton Asset Management Ltd.—Hong Kong branch is the fund's investment adviser and is registered under the Investment Advisers Act of 1940.

2. On July 22, 1998, the fund's board of directors ("Board"), including a majority of the independent directors, adopted a distribution plan with respect to applicant's common stock under which the Fund will make quarterly distributions to its shareholders in an amount equal to 2.5% of the Fund's NAV, determined as the Friday prior to the declaration date ("Distribution Policy"). The Board concluded that adoption of the Distribution Policy would be in the best interests of the Fund's shareholders and could help reduce the discount from NAV at which applicant's shares generally have traded. Applicant requests relief to permit it to make up to four distributions of net long-term capital gains in one taxable year, so long as the Fund maintains in effect the Distribution Policy.

Applicant's Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicant asserts that rule 19b–1, by limiting the number of net long-term capital gains distributions that the Fund may make with respect to any one year, would prevent the normal operation of its Distribution Policy whenever applicant's realized net long-term gains in any year exceed the total of the fixed quarterly distributions that under rule 19b–1 may include such capital gains. As a result, applicant states that it must fund these quarterly distributions with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to cover quarterly distributions). Applicant further asserts that the long-term capital gains in excess of the fixed quarterly distributions permitted by rule 19b–1 then must either be added to one of the permitted capital gains distributions, thus exceeding the total minimum amount called for by the Distribution Policy, or be retained by the applicant, with the applicant paying taxes on the amount retained. Applicant believes that the application of rule 19b–1 to its Distribution Policy may create pressure to limit the realization of long-term capital gains to the total amount of the fixed quarterly distributions that under the rule may include such gains.

3. Applicant believes that the concerns underlying section 19(b) and rule 19b–1 are not present in applicant's situation. One of the concerns leading to the adoption of the rule was that shareholders might not be able to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicant states that it will fully describe the Distribution Policy, including that quarterly distributions called for by the Distribution Policy will include returns of capital to the extent that applicant's net investment income and net long-term realized capital gains are insufficient to meet the fixed dividends, in periodic communications. The Fund has described to shareholders the Distribution Policy in the Fund's most recent proxy material and shareholder report. In accordance with rule 19a–1 under the Act, a separate statement showing the source of the distribution (net investment company taxable income, net long-term realized capital gain or return of capital) will accompany each distribution (or the confirmation of the reinvestment thereof under applicant's dividend reinvestment plan). In addition, a statement showing the amount and source of each distribution during the year will be included with the applicant's annual tax information reporting distributions for that year and sent to each shareholder who received distributions during the year, including shareholders who have sold shares during the year.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper sales practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming dividend ("selling the dividend"), when the dividend would result in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicant submits that this concern does not apply to closed-end investment companies, such as applicant, that do not continuously distribute shares. Applicant further asserts that if it makes a rights offering to its shareholders, the rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the six week period immediately following the record date for the declaration of a dividend. Thus, the abuse of selling the dividend could not occur as a matter of timing. Applicant further states that any offering by applicant of transferable rights will comply with all Commission and staff guidelines concerning such offering. In determining compliance with these guidelines, the Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any such offering by applicant of transferable rights will also comply with any applicable NASD rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of the Act, or any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicant believes that the requested exemption meets the standards set forth in section 6(c) of the Act.

Applicant's Condition

The Fund agrees that the order granting the requested relief shall terminate upon the effective date of a registration statement under the Securities Act of 1933 for any future public offering by the Fund of its shares other than:

(i) a rights offering with respect to the Fund's common stock to holders of the Fund's common stock, in which (a) shares are issued only within the six-week period immediately following the

record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising the rights will not be entitled to receive such dividend, and (c) the Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) an offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Fund, unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1326 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40946; File No. SR–NSCC–98–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Testing

January 14, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 29, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on January 8, 1999, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, NSCC will require certain NSCC members to participate in the Security Industry Association's (SIA) Year 2000 test beginning in March 1999.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's Rule 15 provides, "The Corporation shall establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership." In connection with this standard, NSCC has determined that members who utilize Equity, Fixed Income, or Mutual Funds services and who settle transactions through NSCC must validate their Year 2000 readiness through participation in the SIA Year 2000 test beginning in March 1999. NSCC considers the SIA test appropriate to confirm Year 2000 readiness of its critical members because NSCC's products and services will be represented in this industry-wide effort.

As a prerequisite to participation in the SIA test, members are required to perform connectivity and point-to-point testing with NSCC. NSCC members are required to contact NSCC by January 15, 1999, to establish a date to perform such prerequisite testing.

On an exception basis, NSCC members subject to this testing mandate may be represented in the SIA test by their service bureau. To qualify for this exception (on a per service basis), the member must obtain prior approval from NSCC and meet all of the following three conditions: (1) the member cannot rely upon a direct connection into NSCC (specifically, their input and output must be handled by a service bureau); (2) the member's volume must not be in the top 90% of the volume of all firms who utilize the service by either dollar or transaction count measurements; and (3) the member cannot represent a processing arrangement with the service bureau that is unique to that member. Members subject to the testing mandate who may be represented in the SIA test by their service bureau will be notified by NSCC by January 29, 1999, that they fall within this exception category.

At the conclusion of the SIA test, all members subject to the testing mandate will be required to provide NSCC with written confirmation, in a format proscribed by NSCC, that test files have been received from NSCC and successfully processed in a Year 2000 compliant manner.[3]

Members who fail to complete prerequisite testing with NSCC prior to the March 1999 SIA test as well as members who are required to participate in the SIA test but fail to do so will be subject to appropriate disciplinary action in accordance with NSCC's rules. Such disciplinary action permits NSCC to limit or restrict a member's access to NSCC. In addition, NSCC could require a member to clear trades through another entity.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[4], which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC advised members of its Year 2000 testing requirements in presentations and in an Important Notice, dated September 1, 1998. No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[5] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the required prerequisite and SIA Year 2000 testing should allow NSCC to address potential problems associated with its critical members' Year 2000 readiness. As a result, NSCC should be able to continue

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] NSCC will inform members by Important Notice as to the form in which they must provide written confirmation to NSCC regarding test results.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78q–1(b)(3)(F).

to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

NSCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow NSCC to implement its mandatory Year 2000 testing program in a timely manner.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–98–15 and should be submitted by February 11, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–NSCC–98–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1325 Filed 1–20–99; 8:45 am]

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[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40944; File No. SR–NYSE–98–35]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Specifications and Content Outline for the Trading Assistant Qualification Examination (Series 25)

January 13, 1999.

I. Introduction

On November 10, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of the specifications of the new trading assistant exam and the Content Outline for the Trading Assistant Qualification Examination ("Series 25 Content Outline"). The proposed rule change was published for comment in the **Federal Register** on December 9, 1998.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

In a companion release, the Exchange has proposed to amend Rule 35 which dictates the terms under which an employee of a member or member organization may be admitted to the Exchange trading floor.[4] The Rule 35 Proposal requires floor employees *i.e.*, post clerks and booth clerks, also known as trading assistants ("Trading Assistants") to take and pass an appropriate qualification examination ("Series 25 Examination") and to meet appropriate training requirements. Currently, Rule 35 only requires trading assistants to submit a completed Form U–4 ("Uniform Application for Securities Industry Registration or Transfer") and fingerprints. The current requirements will continue to be effective.

Under the Rule 35 Proposal, all current and prospective Trading Assistants will be required to pass the Series 25 Examination. Moreover, new Trading Assistants will be required to attend a 3-month training session (including on-the-job and classroom training) before taking the exam. New Trading Assistants will not be permitted to perform their functions without supervision until they pass the exam. Current Trading Assistants will have one year from implementation of the new requirements to pass the exam and will not be required to attend the 3-month training unless they twice fail the Series 25 Examination.

The Exchange, in conjunction with the amendments to Rule 35, filed this proposal to submit its Series 25 Content Outline. The Series 25 and the Series 25 Content Outline were developed by the Exchange along with a committee of Exchange members and Trading Assistants. The Exchange believes the Series 25 will ensure that Trading Assistants will have the basic knowledge, skills, and abilities necessary to perform the functions and carry out the responsibilities of their position. The Series 25 Content Outline details the coverage of the examination. According to the Series 25 Content Outline, it is intended to familiarize examination candidates with the range of subjects covered, as well as the depth of knowledge required.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[6]

Section 6(c)(3)(B) of the Act provides, among other things, that a national securities exchange may examine and verify the qualifications of applicants who desire to become associated with a member and may require any person associated with a member to be registered with the exchange in accordance with established procedures. This section also provides that an exchange may bar a person from becoming a member if such person does not meet standards of training, experience, and competence as are prescribed by the rules of the exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40721 (November 30, 1998), 63 FR 67965 (December 9, 1998.

[4] Securities Exchange Act Release No. 40720 (November 30, 1998), 63 FR 67969 (December 9, 1998) ("Rule 35 Proposal").

[5] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(c)(3)(B).

Having reviewed the Series 25 Examination itself in its entirety,[7] the Commission finds that the Series 25 Examination satisfies the requirements of Section 6(c)(3)(B).[8] The Commission believes that the nature and the scope of the examination is appropriate for ensuring that Trading Assistants admitted to the Exchange's trading floor are duly trained and qualified to competently perform their duties and functions.

The Commission also finds that the Series 25 Content Outline satisfies the requirements of Section 6(c)(3)(B) of the Act.[9] The Commission believes that the Series 25 Content Outline provides notice to all members and persons associated with members of the requirements to be satisfied by floor employees before they can be admitted to the Exchange trading floor. Moreover, the series 25 Content Outline also provides Trading Assistants with notice of the topics and materials tested as well as sample test questions to help them prepare.

The proposed rule change should help ensure that floor employees, working on the Exchange trading floor, are qualified and competent. It is therefore consistent with Section 6(c)(3)(B) because it establishes procedures of the Exchange that ensure that the standards regarding training, experience, and competence are satisfied.

Moreover, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[10] which provides, among other things, that the rules of the Exchange be designed, in general, to protect investors and the public interest. The new exam should ensure that the Trading Assistants admitted to the Exchange trading floor are qualified to effectively perform in their positions. By ensuring the qualifications and abilities of trading assistants, the Commission believes that the integrity of the Exchange is maintained, which should protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–98–35) is approved.

[7] The Series 25 Examination was subject to confidential treatment by the Commission.

[8] Securities Exchange Act Release No. 40943 (January 13, 1999).

[9] 15 U.S.C. 78f(c)(3)(B).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1323 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40943; File No. SR–NYSE–98–36]

Self-Regulatory Organizations; New York Stock Exchange, Inc. Order Approving Proposed Rule Change To Amend Rule 35 ("Floor Employees To Be Registered") and Adopt a New Interpretation to Rule 35

January 13, 1999.

I. Introduction

On October 22, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 35 and add a new interpretation with respect to the administration of proposed Rule 35. The proposed rule change was published for comment in the **Federal Register** on December 9, 1998.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange is proposing to amend Rule 35 to require floor employees of members and member organizations to satisfy prescribed training and successfully complete a qualification examination before being admitted to the Exchange trading floor. The proposed rule change also provides a new interpretation to Rule 35 to implement the qualification examination requirements for floor employees.

Currently, floor employees *i.e.,* post clerks and booth clerks, also known as trading assistants ("Trading Assistants") are only required to submit a completed Form U–4 ("Uniform Application for Securities Industry Registration or Transfer") along with their fingerprints to the Exchange before being admitted to the trading floor. Under proposed Rule 35, Trading Assistants will be required, in addition to the current requirements, to be qualified by taking and passing an appropriate qualification examination and by meeting prescribed training requirements.

The Exchange has been working with a committee of Exchange members and Trading Assistants to develop a new qualification exam, the Trading Assistant Qualification Examination ("Series 25 Examination").[4] The Exchange believes the Series 25 Examination will ensure that trading assistants have the basic knowledge, skills and abilities necessary to perform the functions and carry out the responsibilities of a trading assistant.

The requirement to take and pass the Series 25 Examination will apply to all current and prospective Trading Assistants. The new interpretation to Rule 35, as proposed, shall require new Trading Assistants to attend three-months of training (including on-the-job and prescribed classroom instruction provided by the Exchange) before taking the exam. New Trading Assistants will not be permitted to perform functions until passing the examination. Current Trading Assistants will have one year to pass the examination[5] and will not be required to complete classroom training. If, however, a current Trading Assistant fails the Series 25 Examination twice, he or she will be required to attend the classroom training before retaking the exam. The NYSE states that it intends to publish this new interpretation as an Interpretation Memorandum for inclusion in the Exchange's *Interpretation Handbook.*

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(c)(3)(B) of the Act.[7]

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 40720 (November 30, 1998), 63 FR 67969 (December 9, 1998).

[4] The Series 25 Examination itself is the subject of a separate filing. *See* Securities Exchange Act Release No. 40944 (January 13, 1999).

[5] The Exchange plans to implement this proposed rule change on March 15, 1999. Therefore, current Trading Assistants will have until March 15, 2000 to pass the examination. Telephone call between Mary Anne Furlong, Director, Rule and Interpretative Standards, NYSE and Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated January 13, 1999.

[6] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(c)(3)(B).

Section 6(c)(3)(B) of the Act[8] provides, among other things, that a national securities exchange may examine and verify the qualifications of applicants who desire to become associated with a member and may require any person associated with a member to be registered with the exchange in accordance with established procedures. This section also provides that the exchange may bar a person from becoming a member if such person does not meet standards of training, experience, and competence as are prescribed by the rules of the exchange.

The Commission finds that the Series 25 Examination satisfies Section 6(c)(3)(B) because it provides the Exchange with a means to measure a Trading Assistant's ability and qualifications. The Exchange has the responsibility to ensure that its members and persons associated with members meet standards of training, experience, and competence. By requiring all current and potential Trading Assistants to pass the Series 25 Examination, the Exchange ensure that the Trading Assistants admitted to the Exchange's trading floor are duly trained and qualified to competently perform their duties and functions.

Moreover, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[9] which provides, among other things, that the rules of the Exchange be designed, in general, to protect investors and the public interest. The proposed rule change ensures that the Trading Assistants admitted to the Exchange trading floor are qualified to effectively perform in their positions. By ensuring the qualifications and abilities of trading assistants, the Commission believes that the integrity of the Exchange is maintained, which should protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–98–36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1324 Filed 1–20–99; 8:45 am]

BILLING CODE 8010–01–M

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3151]

State of Florida

Palm Beach and Pasco Counties and the contiguous Counties of Broward, Hendry, Hernando, Hillsborough, Martin, Pinellas, Polk, and Sumter in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on January 2 and 3, 1999. Applications for loans for physical damages from this disaster may be filed until the close of business on March 15, 1999 and for economic injury until the close of business on October 12, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 315106 and for economic injury the number is 9A7200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 12, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–1368 Filed 1–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9A70]

Commonwealth of Massachusetts (and a Contiguous County in the State of New Hampshire)

Middlesex County and the contiguous counties of Essex, Norfolk, Suffolk, and Worcester in the Commonwealth of Massachusetts, and Hillsborough County in the State of New Hampshire constitute an economic injury disaster loan area as a result of a fire that occurred on January 2, 1999 at the Mill Village Shopping Center in Sudbury, Massachusetts. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on Oct. 12, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned for economic injury for this disaster are 9A7000 for Massachusetts and 9A7100 for New Hampshire.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 11, 1999.

Fred Hochberg,

Acting Administrator.

[FR Doc. 99–1367 Filed 1–20–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #2956]

United States International Telecommunication Advisory Committee—Telecommunication Standardization Sector (ITAC–T) National Committee & Study Groups B & D; Notice of Meeting

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee—Telecommunication Standardization Sector (ITAC–T). The purpose of the Committee and its Study Groups is to advise the Department on policy and technical issues with respect to international telecommunication standardization. All meetings will be held at the Department of State, 2201 "C" Street, NW, Washington, DC from 9:30 AM to 4:30 PM. The ITAC–T National Committee will meet January 13, 1999. ITAC–T Study Group D will meet on January 14, 1999. ITAC–T Study Group B will meet January 27, 1999.

The National Committee will receive a debrief of the recently completed ITU Plenipotiary Convention and begin preparations for the ITU Telecommunication Sector Advisory Group (TSAG) of the International Telecommunication Union in April 1999.

Study Group D will receive a debrief of the Plenipotiary Convention and Study Group 16 meeting and make preparations for meeting and make preparations for meetings of ITU Study Group 8. Study Group B will receive a debrief of the Plenipotentiary Convention and make preparations for Study Groups 11 and 13.

Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend the meeting should send a fax to (202) 647–5957 not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC T and date of meeting), your name, social security number, date of birth, and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license, U.S. passport, U.S. Government identification card. Enter from the "C" Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: December 23, 1998.

Marian R. Gordon,

Director, Information Telecommunication Standardization.

[FR Doc. 99–1472 Filed 1–19–99; 3:51 pm]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 11, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No.____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM__CMTS@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., January 14, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29350.

Petitioner: American Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.391(a).

Description of Relief Sought/ Disposition: To allow American to reduce the minimum required complement of flight attendants by one during boarding for the purposes of communicating with company personnel.

Dispositions of Petitions

Docket No: 29042.

Petitioner: Schwartz Engineering Company.

Sections of the FAR Affected: 14 CFR 21.183(f) and 25.2(b).

Description of Relief Sought/ Disposition: To permit type and airworthiness certification of a Boeing Model 757–200 airplane with adjacent exits further than 60′ apart.

Partial Grant, December 14, 1998, Exemption No. 6710A.

Docket No: 26734.

Petitioner: Sierra Industries, Inc.

Sections of the FAR Affected: 14 CFR 91.9(a) and 91.531(a) (1) and (2).

Description of Relief Sought/ Disposition: To permit certain qualified pilots of its Cessna Citation Model 500 series airplanes equipped with supplemental type certificate to operate those aircraft without a pilot who is designated as second in command.

Grant, January 13, 1999, Exemption No. 5517E.

Docket No: 29156.

Petitioner: Firelands Museum of Military History.

Sections of the FAR Affected: 14 CFR 91.319, 119.5(g), and 119.25(b).

Description of Relief Sought/ Disposition: To permit Firelands Museum of Military History to operate its former military UH–1H helicopters, which are certificated in the experimental category, for the purpose of carrying passengers on local flights for compensation or hire.

Partial Grant, January 13, 1999, Exemption No. 6792A.

Docket No: 28807.

Petitioner: Yankee Air Force, Inc.

Sections of the FAR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).

Description of Relief Sought/ Disposition: .To permit Yankee Air Force to operate its former military Boeing B–17G aircraft, which has a limited category airworthiness certificate, for the purpose of carrying passengers on local flights in return for receiving donations, subject to certain conditions and limitations.

Grant, January 11, 1999, Exemption No. 6631A.

Docket No: 29342.

Petitioner: Airbus Industrie.

Sections of the FAR Affected: 14 CFR 61.77(a).

Description of Relief Sought/ Disposition: To permit pilots employed by Airbus to be eligible for special purpose pilot authorizations to ferry newly manufactured U.S.-registered aircraft from France and Germany to the United States for delivery to US Airways, Inc.

Grant, January 13, 1999, Exemption No. 6850.

[FR Doc. 99–1354 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4452 Notice 6]

Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for comments and OMB approval.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA published a notice in the **Federal Register** on October 15, 1998, that announced the Research and Special Programs Administration's (RSPA) intention to request renewal of an information collection in support of the Office of Pipeline Safety's (OPS) Recordkeeping for Liquid Natural Gas (LNG) Facilities. No comments were received. RSPA is publishing this additional notice to give the public an additional 30 days to provide comments.

DATES: Comments on this notice must be received on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW Washington, DC 20950, (202) 366–1640 or e-mail marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping for Liquid Natural Gas (LNG) Facilities.

OMB Number: 2137–0048.

Abstract: 49 U.S.C. 60103, standards for liquefied natural gas pipeline facilities delegates the responsibility for ensuring safe operation of LNG facilities to the Secretary of Transportation. Enforcement regulations are found in 33 CFR 193, Liquefied Natural Gas Facilities: Federal Safety Standards. These regulations require recordkeeping to allow Federal and State inspectors to ensure safe operations and maintenance of LNG facilities.

Estimate of Burden: The average burden hours per response is 120.

Respondents: LNG facility operators.

Estimated Number of Respondents: 95.

Estimated Number of Responses per Respondent: 400.

Estimated Total Annual Burden on Respondents: 11,400 hours.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW Washington, DC. Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Send comments directly to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503 ATTN: Desk Officer for the Department of Transportation.

Issued in Washington, DC on January 14, 1999.

Diane Litman,

Director for Information Resource Management, Office of the Secretary.

[FR Doc. 99–1277 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–98–4452, Notice 4]

Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for comments and OMB approval.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA published a notice in the **Federal Register** on October 15, 1998 that announced the Research and Special Program Administration's (RSPA) intention to request a renewal of a currently approved information collection in support of the Office of Pipeline Safety's (OPS) certification and agreement forms for the gas and hazardous liquid pipeline safety program. No comments were received. RSPA is publishing this notice to provide the public an additional 30 days to comment.

DATES: Comments to this notice must be received on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice, or write by e-mail to marvin.fell@rspa.dot.gov.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Certification and Agreement Forms for the Gas and Hazardous Liquid Pipeline Safety Program.

OMB Approval Number: 2137–0584.

Frequency: Annually.

Use: This collection is used by RSPA to ensure that state agencies with regulatory jurisdiction over pipeline safety have adopted and are complying with minimum Federal safety standards. This information is used to calculate grants to states. These grants are used by states to help fund a significant portion of their state pipeline safety programs.

Estimated Number of Respondents: 62.

Respondents: State Agencies.

Total Annual Hours Requested: 3,678.

Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Comments should be sent to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503.

Issued in Washington, DC on January 14, 1999.

Diane Litman,

Director Information Resource Management, Office of the Secretary.

[FR Doc. 99–1278 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number RSPA–98–4452 Notice 5]

Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for comments and OMB approval.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA published a notice in the **Federal Register** on October 15, 1998, that announced the Research and Special

Programs Administration's (RSPA) intention to request a renewal of a currently approved information collection in support of the Office of Pipeline Safety's (OPS) Recordkeeping for Gas Pipeline Operators. RSPA received no comments on that notice. RSPA is publishing an additional notice giving the public an additional 30 days to provide comments.

DATES: Comments on this notice must be received on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–6205, or by e-mail at marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping for Gas Pipeline Operators.

OMB Number: 2137–0049.

Type of Request: Renewal of a currently approved information collection.

Abstract: 49 U.S.C. 60117 requires the Secretary of Transportation to determine whether a person transporting gas is complying with Federal safety standards. This statue requires the maintenance of records and reports and the provision of requested information to the Department of Transportation upon request. These records help ascertain compliance and provide information for incident investigation.

Estimate of Burden: The average burden hours per operator is 41.5.

Respondents: Gas pipeline operators.

Estimated Number of Respondents: 22,700.

Estimated Total Annual Burden on Respondents: 940,991.

Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC.

Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Send comments directly to Office of Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, ATTN: Desk Officer for the Department of Transportation.

Issued in Washington, DC on January 14, 1999.

Diane Litman,

Director of Information Resource Management, Office of the Secretary.

[FR Doc. 99–1279 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before (30 days after publication).

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 14, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12195–N	RSPA–1998–4938	Custom Metalcraft, Inc., Springfield, MO.	49 CFR 172.203(a), 172.302(c), 173.240–243, 178.705(c) (iv)(A).	To authorize the manufacture, mark and sale, of metal intermediate bulk containers meeting design type UN31A, except for minimum thickness requirements and marking requirements for use in the transportation of certain hazardous materials. (Modes 1, 2, 3.)
12196–N	RSPA–1998–4939	HR Textron Inc., Pacoima, CA.	49 CFR 173.302(a), 178.35, 178.37.	To authorize the manufacture, mark and sale of non-DOT specification stainless steel alloy cylinders to be used for the transportation in commerce of nitrogen or nitrogen mixtures classed as Division 2.2 materials. (Modes 1, 2, 3, 5.)
12197–N	RSPA–1998–4948	Arteva Specialties S.á.r.l./d/b/a/KoSa Spartanburg, SC.	49 CFR 174.67(i)&(j)	To authorize rail cars to remain attached to connectors without the physical presence of an unloader. (Mode 2.)
12198–N	RSPA–1998–4947	Mazda Motor Corporation, Fuchu-Cho, Aki-Gun, Hiroshima, JA.	49 CFR 171–180	To authorize the manufacture, mark, and sale of certain shock absorbers and struts, containing Division 2.2 material for transportation in commerce as accumulators. (Modes 1, 2, 3, 4, 5.)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12199–N	RSPA–1998–4949	Flight International, Newport News, VA.	49 CFR 171.11, 172.101, 172.204(c)(3), 173.27, 175.30(a)(1), 175.320(b).	To authorize the transportation in commerce of Division 1 explosives that are not permitted for shipment by air or are in quantities greater than those prescribed. (Mode 4.)
12203–N	RSPA–1999–4965	Celanese Ltd., Dallas, TX.	49 CFR 177.834(i)(1)(2)(3).	To authorize MC–330 or MC–331 cargo tanks to remain connected when unloading has been temporarily suspended without the physical presence of an unloader. (Mode 1.)

[FR Doc. 99–1320 Filed 1–20–99; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before (15 days after publication).

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC.

Application No.	Docket No.	Applicant	Modification of exemption
8009–M		CP Industries, Inc., McKeesport, PA (See Footnote 1)	8009
10407–M		TN Technologies, Inc., Round Rock, TX (See Footnote 2)	10407
10977–M		Federal Industries Corporation, Plymouth, MN (See Footnote 3)	10977
11380–M		Baker Atlas (a division of Baker Hughes, Inc.), Houston, TX (See Footnote 4)	11380
11381–M		Eco-Pak Specialty Packaging, Elizabethton, TN (See Footnote 5)	11381
11613–M		Solutia, Inc., St. Louis, MO (See Footnote 6)	11613
11916–M	RSPA–1997–2740	CP Industries, Inc., McKeesport, PA (See Footnote 7)	11916
12150–M	RSPA–1998–4529	Midland Manufacturing Corporation, Skokie, IL (See Footnote 8)	12150
12162–M	RSPA–1998–4613	U.S. Department of Defense, Falls Church, VA (See Footnote 9)	12162

(1) To modify the exemption to authorize increased ultrasonic scanning speeds on DOT–3AAX cylinders (trailer tubes) made of 4130X steel, for CNG service, at the time of manufacturing.

(2) To modify the exemption to increase the water capacity of the non-DOT specification, stainless steel, radiation detection device, filled with a Division 2.2, nontoxic gas, from 30 cubic inches to 1000 cubic inches.

(3) To modify the exemption to include polypropylene blankets as a cushioning and absorbent, and a fibre tube to protect the closure for limited quantities of hazardous materials required to be labeled poison, KEEP AWAY FROM FOOD, flammable liquid, flammable solid, corrosive, oxidizer or DANGEROUS WHEN WET.

(4) To modify the exemption to allow for several design changes of the non-DOT specification cylinder for the transportation of certain compressed hydrocarbon gases.

(5) To modify the exemption to allow for a design change to the phenolic foam insulation for DOT Specification 20PF–1, 20PF–2 and 20PF–3 overpacks manufactured in variance with the specification in 49 CFR 178.356 for transportation in commerce when containing uranium hexafluoride, fissile in Type A cylinders.

(6) To modify the exemption to provide for Class 3 as an additional class of material for rail cars that remain connected during entire unloading process without the physical presence of an unloader.

(7) To modify the exemption to alter the Rejection Criteria for isolated pits and line corrosion for DOT–3AX and DOT–3AAX cylinders for the transportation in commerce of 2.1, 2.2 and 2.3 compressed gases.

(8) To reissue the exemption originally issued on an emergency basis to authorize the transportation of DOT specification tank cars meeting all specifications except that they are equipped with combination pressure relief devices that contain a frangible disk constructed of a non-authorized material.

(9) To reissue the exemption originally issued on an emergency basis to use non-DOT specification containers for certain compressed gases.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on January 14, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 99–1321 Filed 1–20–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33699]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's rail line, between (1) Kern Junction, CA, in the vicinity of UP's milepost 313.6 (Fresno Subdivision), and Calwa, CA, in the vicinity of UP's milepost 209.1 (Fresno Subdivision); and (2) Los Angeles, CA, in the vicinity of UP's milepost 485.0 (Wilmington Subdivision), and San Jose, CA, in the vicinity of UP's milepost 45.7 (Coast Subdivision). BNSF will operate its own trains with its own crews over UP's line under the trackage rights agreement.[1]

The transaction was scheduled to be consummated on January 12, 1999.

The purpose of the trackage rights is to allow BNSF to operate over an alternate line while BNSF's lines are undergoing maintenance and repair.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33699, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Yolanda M. Grimes, Esq., The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 13, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–1317 Filed 1–20–99; 8:45 am]

BILLING CODE 4915–00–P

[1] On January 5, 1999, BNSF and UP filed a petition for exemption in STB Finance Docket No. 33699 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, wherein BNSF and UP request that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on February 12, 1999. That petition will be addressed by the Board in a separate decision.

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–22]

Delegation of Authority With Respect to the Purchase of Law Enforcement Vehicles

1. By virtue of the authority vested in the Secretary of the Treasury by section 116 of the Treasury Department Appropriations Act, 1999, as included in Pub. L. 105–277, section 101(h), I hereby delegate to the Assistant Secretary for Management and Chief Financial Officer authority to certify, in consultation with the Under Secretary for Enforcement, that the purchase of law enforcement vehicles by a Treasury bureau is consistent with "the vehicle management principles."

2. *Redelegation.* This authority may not be redelegated.

3. *Sunset Review.* This Order shall be reviewed five years from the date of issuance unless superseded or canceled prior to that date.

Dated: January 12, 1999.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99–1291 Filed 1–20–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds Change in State of Incorporation: American Alternative Insurance Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: *American Alternative Insurance Corporation* has redomesticated from the state of New York to the state of Delaware effective July 31, 1998. The Company was last listed as an acceptable surety on Federal bonds at 63 FR 36082, July 1, 1998.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 revision, on page 36082 to reflect this change.

The Circular may be viewed and downloaded through the Internet http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00516–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: January 13, 1999.

Judith R. Tillman,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–1310 Filed 1–20–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: ICI Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 5 to the Treasury Department Circular 570; 1998 Revision, published July 1, 1998, at 63 FR 36080.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1998 Revision, on page 36095 to reflect this addition:

ICI MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 102 South Winooski Avenue, Burlington, VT 05402 PHONE: (802) 863–0096. UNDERWRITING LIMITATION b/: $10,249,000. SURETY LICENSES c/: VT. INCORPORATED IN: Vermont.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00516–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Service Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: January 13, 1999.

Judith R. Tillman,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 99–1309 Filed 1–20–99; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2553

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2553, Election by a Small Business Corporation.

DATES: Written comments should be received on or before March 22, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election by a Small Business Corporation.

OMB Number: 1545–0146.

Form Number: 2553.

Abstract: Form 2553 is filed by a qualifying corporation to elect to be an "S" Corporation as defined in Internal Revenue Code section 1361. The information obtained is necessary to determine if the election should be accepted by the IRS. When the election is accepted, the qualifying corporation is classified as an "S" Corporation and the corporation's income is taxed to the shareholders of the corporation.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of OMB approval.

Affected Public: Businesses and Farms.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 14 hrs., 5 mins.

Estimated Total Annual Burden Hours: 7,040,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1287 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8849

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8849, Claim for Refund of Excise Taxes.

DATES: Written comments should be received on or before March 22, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund of Excise Taxes.

OMB Number: 1545–1420.

Form Number: 8849.

Abstract: Internal Revenue Code sections 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Current Actions: Form 8849 is being extensively revised. The revised form will contain six schedules—five for fuel tax claims and one for other claims. Fuel tax claims that have similar requirements are on the same schedule. In addition the revised form will:

- Allow the claimant to use only the applicable schedules. All claimants must complete the cover page. Only the schedules needed for their claim need to be attached to the cover page.
- Reduce the number of separate statements and attachments required to be prepared by the claimant.
- Reduce the amount of correspondence with the IRS because of incomplete claims.
- Provide entry boxes on the form and schedules to enter the required information. By using the boxes for entries, claimants will have no problem entering the information required, and the IRS will have a greater ability to read the information.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 125,292.

Estimated Time Per Respondent: 14 hr., 45 min.

Estimated Total Annual Burden Hours: 1,847,489.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1288 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–SF

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–SF, U.S. Income Tax Return for Settlement Funds (Under Section 468B).

DATES: Written comments should be received on or before March 22, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5577, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Settlement Funds (Under Section 468B).

OMB Number: 1545–1394.

Form Number: 1120–SF.

Abstract: Form 1120–SF is used by settlement funds to report income and taxes on earnings of the fund. The fund may be established by court order, a breach of contract, a violation of law, an arbitration panel, or the Environmental Protection Agency. The IRS uses Form 1120–SF to determine if income and taxes are correctly computed.

Current Actions: There are no changes being made to Form 1120–SF at this time.

Type of Review: OMB extension of a currently approved collection.

Affected Public: Business or other for profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 28 hrs., and 8 mins.

Estimated Total Annual Burden Hours: 28,140.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 13, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1289 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 1998.

Last name	First name	Middle name
Arnvig	Kristine	Bourke
Attard	Christopher	Dornnick.
Ballou	Robert	Vanhoy.
Barit	Hugh	Edward.
Beracci	Benedetta.	
Bettohja	Emanuella	Myriam.
Brunnstrom	Ulf	Gosta.
Camilleri	Christine	Victoria.
Carr-Harris	Margaret	Weisser.
Chad	Stanley	Robert.
Christensen	Michael	Gordon.
De Sena	Ida.	
Fleming	Carol	Diane.
Groat	Kristian	Rudolph.
Guilloteau	Marie	Therese.
Heem-Li	John	Kwok.
Ho	Victor	Sai-Dai.
Kent	Ida	R.
Knox	Jacqueline	Cariveau.
Knudsen	Walter	Trygve.
Laoughlin	John	Joseph.
Nichols	Peter	Royall.
Parr	Mark	Dennis.
Parr	Mathew	William.
Pillonel	Marc	Christian.
Rinehart	Carol	Ann.
Schmid-Scangas.	Joyce.	
Sijthoff	Margaretha	Johanna-Maria.
Sing Li	Aubrey	Kwokthonm.
Toker	Hidir	Orhan.
Toyama	Takeo.	
Vareedayah	Lawrence.	
Venigalla	Vijaya	Lakshmi.
Vourecas-Petalas.	Atalanta.	
Watari	Kensaku	Pao.
Weiner	Gary	David.

Approved: January 5, 1999.

Doug Rogers,

Chief, Special Projects & Support Branch, International District.

[FR Doc. 99–1286 Filed 1–20–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee on Minority Veterans has been renewed for a period beginning January 8, 1999, through December 31, 1999.

Dated: January 11, 1999.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–1313 Filed 1–20–99; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), authorized by Public Law 96–466, section 1521, will be held on February 2nd through 4th, 1999. The meeting will be held at the Washington Office of the American Legion, 1608 K Street NW, Washington, DC 20006. On February 2nd and 3rd, the meeting will convene at 9:00 a.m. and adjourn at 4:00 p.m. On February 4th, the meeting will convene at 9:00 a.m. and adjourn at 12:00 noon. The purpose of the meeting is to review the quality of the services which the Department of Veterans Affairs provides to disabled veterans who participate in VA sponsored programs of rehabilitation. In addition, the Committee will conduct an internal business meeting focusing on past activities and future initiatives.

On February 2nd, the meeting will begin with opening remarks and an overview by Mr. Ronald W. Drach, Committee Chairman. Mindy Aisen, M.D., Director, Rehabilitation Research and Development Service, will present a progress report on selected rehabilitation research projects, as well as comment on the overall state of rehabilitation research within the Department. Alfonso Batres, Ph.D., Chief Officer, Readjustment Counseling Service, will address the Committee on the history of VA community-based vet centers and their role in the process of veterans' post-war rehabilitation. The afternoon portion will consist of a rehabilitation over-view by Mr. Frederick Downs, Chief Consultant, Prosthetics and Sensory Aids Service. The meeting will conclude with two Committee task-force reviews on the nature of outside service contracting by the Vocational Rehabilitation and Counseling Service and the operative goals which guide the behaviors of that program.

On February 3rd, Mr. Dennis Duffy, Assistant Secretary for Policy and Planning, will provide a presentation on veteran rehabilitation in a "One-VA" Environment. Later, Mr. Hershel W. Gober, Deputy Secretary, will give a historical overview of VA's veterans rehabilitation programs. The afternoon session will be devoted in its entirety to a panel discussion conducted by spokespersons from veterans service organizations on the quality of constituent experiences with the Vocational Rehabilitation Program and recommendations for program change.

The February 4th meeting will encompass a review of past unfinished business, recommendations for program changes, and a discussion of future meeting sites and future agenda topics.

All meetings will be open to the general public and statements may be submitted by the general public at the February 4th morning meeting. If additional information is needed, please contact Frank J. Donlan, Counseling Psychologist, Department of Veterans Affairs, at (202) 273–7436.

Dated: January 12, 1999.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–1312 Filed 1–20–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 13

Thursday, January 21, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 50, 77 and 91

[Docket No. 92-076-2]

RIN 0579-AA53

Tuberculosis in Captive Cervids

Correction

In rule document 98–34726 beginning on page 72104 in the issue of December 31, 1998, make the following corrections:

1. On page 72104, in the first column, the CFR heading is corrected to read as set forth above.

2. On the same page, in the same column, in the first line after **EFFECTIVE DATE:**, add "February 1, 1999.".

[FR Doc. C8–34726 Filed 1–20–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

Agriculture Marketing Service

7 CFR Part 59

9 CFR Chapter III

[Docket No. 97-045F]

Agency Responsibilities, Organization, and Terminology

Correction

In rule document 98–34358, beginning on page 72352, in the issue of Thursday, December 31, 1998, make the following correction:

On page 72352, in the first column, after the heading **DATES:** insert "*Effective Date:*".

[FR Doc. C8–34358 Filed 1-20-99; 8:45 am]

BILLING CODE 1505–01–D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees

Correction

In rule document 98–34516, beginning on page 16, in the issue of Monday, January 4, 1999, make the following corrections:

1. On page 16, in the first column, under the heading **I. Introduction**, in the second line, "5a(1)(17)" should read "5a(a)(17)".

§ 1.69 [Corrected]

2. On page 23, in the second column, in § 1.69(a)(8), in the first line, "8 *(Significant action)*" should read "(8) *Significant action*".

[FR Doc. C8–34516 Filed 1–20–99; 8:45 am]

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federal register

Thursday
January 21, 1999

Part II

Department of Labor

Pension and Welfare Benefits Administration

Proposed Exemptions; Genito Urinary Surgeons, Inc., et al.; Notice

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10630 thru D–10632, et al.]

Proposed Exemptions; Genito Urinary Surgeons, Inc. Profit Sharing Plan (GUS Plan); Michael J. Rosenberg Money Purchase Pension Plan (Rosenberg Plan); Robert Savage Qualified Retirement Plan (Savage Plan) (Collectively, the Plans)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Genito-Urinary Surgeons, Inc. Profit Sharing Plan (GUS Plan); Michael J. Rosenberg Money Purchase Pension Plan (Rosenberg Plan); Robert Savage Qualified Retirement Plan (Savage Plan) (collectively, the Plans) Located in Toledo, Ohio

[Application Nos. D–10630, D–10631 and D–10632, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the cash sale of certain shares of preferred stock (the Preferred Stock) issued by TTC Holdings Inc. (TTC) to TTC, by the individually-directed account of Dr. Gregor Emmert in the GUS Plan (the Emmert Account), by the individually-directed account of Mr. Michael J. Rosenberg in the Rosenberg Plan (the Rosenberg Account), and by the individually-directed account of Mr. Robert Savage in the Savage Plan (the Savage Account) (collectively, the Accounts); and (2) the subsequent purchase of certain shares of common stock (the Common Stock) issued by TTC by Messrs. Emmert, Rosenberg and Savage (collectively; the Participants), in their own name, from TTC pursuant to an agreement with TTC that the purchase of the Common Stock was to occur immediately after the sale of the Preferred Stock by the Plans; provided that the following conditions were met:

(a) The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, acting in their individual capacity, were one-time transactions for cash;

(b) The transactions described in (a) above took place on the same business day;

(c) The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

(d) The Participants, in their individual capacity, purchased from TTC shares of the Common Stock which were equal in number and value to the shares of Preferred Stock sold by the Accounts to TTC;

(e) A qualified independent fiduciary (the Independent Fiduciary) determined that the transactions described herein were in the best interests and protective of the Accounts at the time of the transactions; and

(f) The Independent Fiduciary supervised the transactions; assured that the conditions of this proposed exemption were met; and took whatever actions necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 1, 1998.

Summary of Facts and Representations

1. The applicants describe the Plans and the Accounts as follows:

a. The GUS Plan is an individual account, defined contribution plan sponsored by Genito-Urinary Surgeons, Inc., a medical practice located in Toledo, Ohio. The trustee of the GUS Plan is the Fifth-Third Bank. Currently, the GUS Plan has 45 participants and holds assets valued at approximately $19,900,000. As of August 12, 1998 the Emmert Account held assets valued at $1,480,734.07.

b. The Rosenberg Plan is an individual account, defined contribution plan sponsored and trusteed by Michael J. Rosenberg. Currently, the Rosenberg Plan has two participants and holds assets valued at approximately $266,000. As of December 31, 1997, the Rosenberg Account held assets valued at $231,380.

c. The Savage Plan is an individual account, defined contribution plan sponsored and trusteed by Robert Savage. Currently, the Savage Plan has 45 participants and holds assets valued at $2,200,000. As of December 31, 1997, the Savage Account held assets valued at $1,174,488.15.

2. TTC, the issuer of the Preferred Stock, is an Ohio corporation that was incorporated in April 1990. The Trust Company of Toledo (TTCOT) is a wholly-owned subsidiary of TTC. The applicant represents that TTCOT is a "Bank" as that term is defined in Section 202(a)(2) of the Investment Advisers Act of 1940.[1]

3. TTC was capitalized with one class of common stock (the Common Stock), one class of Preferred Stock and $1,000,000 of 9% debentures (the Debentures). Originally, 3,531 shares of Common Stock were outstanding prior to the subject transactions. These shares were owned in equal amounts by Theodore T. Hahn, Julie B. Higgins and David A. Snavely. These individuals are the three founders, principals and partners of TTC.

Prior to the subject transactions, there were 20,000 shares of the Preferred Stock outstanding that were held by 65 different shareholders. The Preferred Stock was issued by TTC through a private offering that took place in 1990. The offering provided investors with the opportunity to acquire units comprised of 200 shares of Preferred Stock and one $10,000 Debenture, which had a maturity date of December 31, 2000.[2] The price for each unit was $30,000. Of this amount, $20,000 was allocated to the Preferred Stock and $10,000 was allocated to the Debenture.[3]

The following table outlines the percentage of each Participant's Account assets invested in the units of Preferred Stock and Debentures at the time of acquisition and at the time of the subject trans action:[4]

Plan	Shares of preferred stock	Cost	Debenture	% Assets then	% Assets now
Emmert	200	$20,000	$10,000	7.5	5.3
Rosenberg	200	20,000	10,000	48	23.4
Savage	200	20,000	10,000	16.5	6.5

4. While owning shares of the Preferred Stock, each Account had been a minority shareholder of TTC. However, the applicants represent that the Participants did not, in their individual capacity, own shares of the Preferred Stock prior to the subject transactions. As such, the applicants state that the purchase of shares of the Common Stock by the Participants pursuant to the subject transaction did not cause any of the Participants to become majority shareholders of TTC. The applicants further represent that none of the Participants was, or currently is, an officer, director, principal or employee of TTC or TTCOT. Finally, the applicants represent that, at the time of original acquisition of the Preferred Stock by the Accounts, neither TTC nor TTCOT was a party in interest with respect to the Plans.

5. TTC recently obtained authority from its shareholders to amend, by total restatement, its Amended and Restated Articles of Incorporation. Due to business and income tax considerations, TTC adopted the Second Amended and Restated Articles of Incorporation to change its corporate tax status, in accordance with section 1362 of the Code,[5] from a Subchapter C corporation to a Subchapter S corporation for the taxable years commencing January 1, 1999. As part of the change, the amendment called for the full conversion of the Preferred Stock into Common Stock.

6. On May 1, 1998, TTC sent certain documents to its shareholders, including the Participants. These documents stated that TTC planned to redeem, via cancellation, all of the shares of the Preferred Stock held by those shareholders who would have adverse tax consequences from continued ownership of shares in a Subchapter S corporation or who were ineligible to hold shares in a Subchapter S corporation pursuant to the Code.

TTC provided a mechanism whereby eligible shareholders, including employee benefit plans, could designate a related party to purchase shares of TTC Common Stock equal to the number of shares sold by the Accounts. Such purchase was to be for a cash amount equal to the price paid per share by TTC for redemption of the Preferred Stock.

7. The applicants request exemptive relief for the sale of the Preferred Stock by each Account to its respective Participant. The applicants represent that the Accounts benefitted from significant appreciation since purchasing the Preferred Stock as demonstrated by the fact that the value of the Preferred Stock increased from $100 per share in 1990 to $291.70 as of December 31, 1997.[6] The applicants believe that at the time of the subject transactions, price levels were such that an excellent opportunity for the sale of the Preferred Stock existed. Accordingly, they wished to sell the

[1] The applicant represents that under Section 202(a)(2) of the Investment Advisers Act of 1940, a "Bank" means (A) banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other institution or trust company, whether incorporated or not, doing business under the laws of any State of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the U.S. Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

[2] The outstanding principal amount of the Debentures held by the Accounts and other investors was prepaid by TTC in December 1998, prior to the subject transactions, in accordance with terms of the Debentures.

[3] Pursuant to the Memorandum, dividends were not expected to be paid on the Preferred Stock, and no dividends were paid on such shares.

[4] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. *See, e.g.* Rev. Rul. 73–5332, 1973–2 C.B. 126. However, it is not within the purview of the Department's jurisdiction to express an opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent retention of the Stock by Mr. Rosenberg.

[5] Section 1362 of the Code contains provisions which allow a small business corporation to elect and terminate Subchapter-S corporate status.

[6] As for the Debentures, which were redeemed in annual installments of $200,000, the outstanding principal amount was $400,000 as of March 31, 1998.

Preferred Stock from their respective Accounts to ensure that each Account realized a substantial profit.

In addition, the applicants represented that the continued holding of the newly issued Common Stock would have caused the Accounts to incur unrelated business income tax pursuant to section 512 of the Code.

Due to the aforementioned reasons, the applicants seek relief for the following transactions: (1) the cash sale of shares of the Preferred Stock to TTC by the Emmert Account, the Rosenberg Account, and the Savage Account; and (2) the subsequent purchase under the above described agreement with TTC of an equal number and value of shares of the Common Stock by Messrs. Emmert, Rosenberg and Savage, in their own name, from TTC immediately after the sale by the Accounts.

8. The sales price for the Preferred Stock was obtained through a written valuation of the shares dated May 6, 1998 prepared by Austin Financial Services, Inc. (Austin), a qualified, independent consulting firm with substantial experience in the financial services industry. Austin was retained by the TTC Board of Directors for the purpose of valuing TTC and its shares of Preferred Stock and Common Stock. In determining fair market value of the Preferred and Common Stock, Austin relied on the discounted cash flow method and the capitalization of earnings method. After weighing the two methods, Austin determined that the fair market value of all the outstanding shares of the Preferred and Common Stock was approximately $7,263,035, or $308.66 per share for each outstanding share of Preferred and Common Stock. Austin updated this valuation at the time of the transaction, and reached the same conclusion regarding the fair market value. Accordingly, each Account received a total of $61,732 for its shares of Preferred Stock, as of the date of Conversion.

9. TTC also engaged the law firm of Callister Nebeker & McCullough of Salt Lake City, Utah (CNM) to serve as the Independent Fiduciary for the Plans. CNM, which represented that it had experience serving as independent fiduciary for employee benefit plans, was hired to review the offer of redemption of the Preferred Stock, to render an opinion as to the prudence of the investment decisions relating thereto, and to direct the sale of shares as appropriate. In a report dated April 29, 1998 (the Report), CNM acknowledged its appointment as the Independent Fiduciary for the Accounts regarding the subject transactions.

As the Independent Fiduciary, CNM determined whether the subject transactions, and the actions taken by the Accounts in connection therewith, were in the best interests of such Accounts and in accordance with the requirements of the Act. Before doing so, each Participant made a separate determination that the proposed transactions would be in the best interests of their Accounts. Subsequent to arriving at this conclusion, a determination was made to retain CNM as Independent Fiduciary for the Accounts to ensure that the terms of such transactions, including the appraisal made of the fair market value of the Preferred Stock, would be protective of the Accounts.

In a letter dated August 25, 1998 that was submitted to the Department, CNM acknowledged that, as an independent fiduciary, it understood the duties and responsibilities imposed by the Act. Further, CNM concluded that the subject transactions would be prudent and in the best interest of each of the Accounts. Finally, CNM stated that it would ensure, among other things, that the fair market value of the Preferred Stock would be updated on the date of the transactions, and that each Account would receive the correct amount of cash for the Preferred Stock.

10. The Independent Fiduciary appointed Houlihan Valuation Advisors (HVA), an independent appraisal firm maintaining offices in Salt Lake City, Utah, to provide an opinion as to the fairness (the Fairness Opinion) of the proposed sale transaction from a financial standpoint. In the Fairness Opinion, HVA stated that the Preferred Stock was essentially equivalent to the Common Stock because the Preferred Stock: (a) was convertible at the option of the holder into Common Stock; (b) had voting privileges identical to the Common Stock; and (c) paid no preferred dividends. The Preferred Stock did have a $100 per share liquidation presence; however, according to HVA, the fair market value of TTC is significantly higher than its liquidation value, rendering this liquidation preference virtually meaningless.

Based on the foregoing, HVA concluded that the sale of the Preferred Stock by the Accounts to TTC would be fair to the Accounts because the Accounts would receive adequate consideration for their shares.

11. In summary, the applicant represents that the subject transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, in their individual capacity, were one-time transactions for cash;

(b) The transactions described in (a) above took place on the same business day;

(c) The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

(d) The Participants, in their individual capacity, purchased from TTC shares of the Common Stock which were equal in number and value to the shares of Preferred Stock sold by the Accounts to TTC;

(e) The Independent Fiduciary determined that the transactions described herein were in the best interests and protective of the Accounts at the time of the transactions; and

(f) The Independent Fiduciary supervised the transactions; assured that the conditions of this proposed exemption were met; and took whatever actions necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

Notice to Interested Persons: Because the only assets of the Plans involved in the subject transactions are those held in the Accounts, and no other participants in the Plans are affected by the transactions, it has been determined that there is no need to distribute this notice of proposed exemption to any interested persons other than the Participants. Comments and requests for a hearing on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James Scott Frazier of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Mellon Financial Markets, Inc. (Mellon) Located in Pittsburgh, Pennsylvania

[Application No. D–10695]

Proposed Exemption

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between

the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[7]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[8] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1)(i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

C. The restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust, provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in, the prospectus or private placement memorandum provided to investing plans before they purchase certificates issued by the trust.[9]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. The restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under Part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating from a rating agency (as defined in section III.W.) at the time of such acquisition that is in one of the three highest generic rating categories;

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and

[7] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[8] For purposes of this proposed exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[9] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund a trust have not all been transferred to the trust on the closing date, additional obligations as specified in subsection III.B.(1) may be transferred to the trust during the pre-funding period (as defined in section III.BB.) in exchange for amounts credited to the pre-funding account (as defined in section III.Z.), provided that:

(a) The pre-funding limit (as defined in section III.AA.) is not exceeded;

(b) All such additional obligations meet the same terms and conditions for eligibility as those of the original obligations used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority of the outstanding certificateholders or by a rating agency;

(c) The transfer of such additional obligations to the trust during the pre-funding period does not result in the certificates receiving a lower credit rating from a rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to those which were acquired as of the closing date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the sponsor, or an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, the underwriter and the trustees) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date;

(f) The pre-funding period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The trustee of the trust (or any agent with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, nor any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this proposed exemption:

A. "Certificate" means:

(1) a certificate—

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Internal Revenue Code of 1986; and

(b) That is issued by, and is an obligation of, a trust; with respect to certificates defined in (1) and (2) above for which Mellon or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this proposed exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) (a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commercial real property (including obligations secured by leasehold interests on commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U); and/or

(e) "Guaranteed governmental mortgage pool certificates," as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) (a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to certificateholders pursuant to any yield supplement agreement or similar yield maintenance arrangement to supplement the interest rates otherwise payable on obligations described in

subsection III.B.(1) held in the trust, provided that such arrangements do not involve swap agreements or other notional principal contracts; and/or

(c) Cash transferred to the trust on the closing date and permitted investments made therewith which:

(i) Are credited to a pre-funding account established to purchase additional obligations with respect to which the conditions set forth in clauses (a)–(g) of subsection II.A.(7) are met and/or;

(ii) Are credited to a capitalized interest account (as defined in section III.X.); and

(iii) Are held in the trust for a period ending no later than the first distribution date to certificateholders occurring after the end of the pre-funding period.

For purposes of this clause (c) of subsection III.B.(3), the term "permitted investments" means investments which are either: (i) Direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by the United States, or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency; are described in the pooling and servicing agreement; and are permitted by the rating agency; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, yield supplement agreements described in clause (b) of subsection III.B.(3) and other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type described in clauses (a) through (f) of subsection III.B.(1) which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by a rating agency for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this proposed exemption.

C. "Underwriter" means:

(1) Mellon;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Mellon; or

(3) Any member of an underwriting syndicate or selling group of which Mellon or a person described in (2) is a manager or co-manager with respect to the certificates.

D. "Sponsor" means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means an entity which, under the supervision of and on behalf of the master servicer, services loans contained in the trust, but is not a party to the pooling and servicing agreement.

G. "Servicer" means any entity which services loans contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this proposed exemption (if granted) applicable to sales are met.

Q. "Forward delivery commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Equipment Note Secured By A Lease" means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as would be the case if the equipment note were secured only by the equipment and not the lease.

U. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust holds a security interest in the leased motor vehicle; and

(3) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as would be the case if the trust consisted of motor vehicle installment loan contracts.

V. "Pooling and Servicing Agreement" means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

W. "Rating Agency" means Standard & Poor's Structured Rating Group (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Credit Rating Co. (D & P) or Fitch IBCA, Inc. (Fitch), or their successors.

X. "Capitalized Interest Account" means a trust account: (i) which is established to compensate certificateholders for shortfalls, if any, between investment earnings on the pre-funding account and the pass-through rate payable under the certificates; and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

Y. "Closing Date" means the date the trust is formed, the certificates are first issued and the trust's assets (other than those additional obligations which are to be funded from the pre-funding account pursuant to subsection II.A.(7)) are transferred to the trust.

Z. "Pre-Funding Account" means a trust account: (i) which is established to purchase additional obligations, which obligations meet the conditions set forth in clauses (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of clause (c) of subsection III.B.(3).

AA. "Pre-Funding Limit" means a percentage or ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered which is less than or equal to 25 percent.

BB. "Pre-Funding Period" means the period commencing on the closing date and ending no later than the earliest to occur of: (i) the date the amount on deposit in the pre-funding account is less than the minimum dollar amount specified in the pooling and servicing agreement; (ii) the date on which an event of default occurs under the pooling and servicing agreement; or (iii) the date which is the later of three months or 90 days after the closing date.

CC. "Mellon" means Mellon Financial Markets, Inc. and its affiliates.

The Department notes that this proposed exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in section V(h) of Prohibited Transaction Exemption 95–60 (60 FR 35925, July 12, 1995), the Class Exemption for Certain Transactions Involving Insurance Company General Accounts (see 60 FR at 35932).

Summary of Facts and Representations

1. Mellon is a broker-dealer registered with the Securities and Exchange Commission and is a member of the National Association of Securities Dealers, Inc. As of December 31, 1997, it had total assets of $78.8 million.

Mellon is a wholly-owned subsidiary of Mellon Bank Corporation (MBC), a bank holding with its principal offices located in Pittsburgh, Pennsylvania. Mellon was established as a broker-dealer subsidiary of MBC pursuant to an order of the U.S. Federal Reserve Board effective April 17, 1995, as modified by a release adopted December 20, 1996 (as modified, the Order). The Federal Reserve Board regulates MBC as a bank holding company and restricts non-banking activities of MBC and its affiliates under the Glass-Steagall Act.

Under the Order, Mellon is authorized to engage, to a limited extent, in underwriting and dealing in certain mortgage-related securities, municipal revenue bonds, commercial paper and consumer receivables-related securities. In addition, Mellon is authorized to act as agent in the private placement of all types of securities, including providing related advisory services, and to buy and sell securities on the order of investors. The Order is subject to the condition that Mellon does not derive more than a limited percentage of its total gross revenues over any two-year period from underwriting and dealing in certain categories of securities, including asset-backed securities of the type described herein.

Several other broker-dealer subsidiaries of bank holding companies have been authorized by the Federal Reserve Board to engage in so-called "Tier 2" activities (in addition to the "Tier 1" activities described in the Order), including the ability to underwrite and deal in all types of debt and equity securities. Mellon intends to apply for the additional authorization and hopes to obtain an approving order from the Federal Reserve Board in the near future.

Mellon has been involved in the structuring and placement of asset-backed securities transactions since November 1995. Mellon has served as co-lead underwriter in public offerings of certificates backed by insurance premium finance loans, home equity revolving line of credit loans, residential mortgage loans and credit card receivables, involving amounts ranging from $200 million up to $869 million. In March, 1997, Mellon instituted a program to securitize mortgage-related assets.

MBC, the parent of Mellon, is one of the largest commercial banking organizations in the United States, with total assets of approximately $45 billion as of the end of 1997 (and approximately $1.5 trillion in assets under management and administration). MBC's subsidiaries include Mellon Bank, N.A., a leading national bank that provides a full range of corporate and consumer banking, trust, custody and investment management services, and The Dreyfus Corporation, a sponsor of investment companies (i.e., mutual funds) registered under the Investment Company Act of 1940.

Trust Assets

2. Mellon seeks exemptive relief to permit plans to invest in pass-through certificates representing undivided interests in the following categories of trusts: (1) single and multi-family

residential or commercial mortgage investment trusts; [10] (2) motor vehicle receivable investment trusts; (3) consumer or commercial receivables investment trusts; and (4) guaranteed governmental mortgage pool certificate investment trusts.[11]

3. Commercial mortgage investment trusts may include mortgages on ground leases of real property. Commercial mortgages are frequently secured by ground leases on the underlying property, rather than by fee simple interests. The separation of the fee simple interest and the ground lease interest is generally done for tax reasons. Properly structured, the pledge of the ground lease to secure a mortgage provides a lender with the same level of security as would be provided by a pledge of the related fee simple interest. The terms of the ground leases pledged to secure leasehold mortgages will in all cases be at least ten years longer than the term of such mortgages.[12]

Trust Structure

4. Each trust is established under a pooling and servicing agreement between a sponsor, a servicer and a trustee.[13] The sponsor or servicer of a trust selects assets to be included in the trust.[14] These assets are receivables which may have been originated by a sponsor or servicer of the trust, an affiliate of the sponsor or servicer, or by an unrelated lender and subsequently acquired by the trust sponsor or servicer.[15]

Typically, on or prior to the closing date, the sponsor acquires legal title to all assets selected for the trust, establishes the trust and designates an independent entity as trustee. On the closing date, the sponsor conveys to the trust legal title to the assets, and the trustee issues certificates representing fractional undivided interests in the trust assets. Typically, all receivables to be held in the trust are transferred as of the closing date, but in some transactions, as described more fully below, a limited percentage of the receivables to be held in the trust may be transferred during a limited period of time following the closing date, through the use of a pre-funding account.

Mellon, alone or together with other broker-dealers, acts as underwriter or placement agent with respect to the sale of the certificates. All of the public offerings of certificates presently contemplated are to be underwritten by Mellon on a firm commitment basis. In addition, Mellon anticipates that it may privately place certificates on both a firm commitment and an agency basis. Mellon may also act as the lead underwriter for a syndicate of securities underwriters.

Certificateholders will be entitled to receive distributions of principal and/or interest, or lease payments due on the receivables, adjusted, in the case of payments of interest, to a specified rate—the pass-through rate—which may be fixed or variable. These distributions will be made monthly, quarterly, semi-annually, or at such other intervals and dates as specified in the related prospectus or private placement memorandum.

When installments or payments are made on a semi-annual basis, funds are not permitted to be commingled with the servicer's assets for longer than would be permitted for a monthly-pay security. A segregated account is established in the name of the trustee (on behalf of certificateholders) to hold funds received between distribution dates. The account is under the sole control of the trustee, who invests the account's assets in short-term securities which have received a rating comparable to the rating assigned to the certificates. In some cases, the servicer may be permitted to make a single deposit into the account once a month. When the servicer makes such monthly deposits, payments received from obligors by the servicer may be commingled with the servicer's assets during the month prior to deposit. Usually, the period of time between receipt of funds by the servicer and deposit of these funds in a segregated account does not exceed one month. Furthermore, in those cases where distributions are made semi-annually, the servicer will furnish a report on the operation of the trust to the trustee on a monthly basis. At or about the time this report is delivered to the trustee, it will be made available to certificateholders and delivered to or made available to each rating agency that has rated the certificates.

5. Some of the certificates will be multi-class certificates. Mellon requests exemptive relief for two types of multi-class certificates: "strip" certificates and "fast-pay/slow-pay" certificates. Strip certificates are a type of security in which the stream of interest payments on receivables is split from the flow of principal payments and separate classes of certificates are established, each representing rights to disproportionate payments of principal and interest.[16]

"Fast-pay/slow-pay" certificates involve the issuance of classes of certificates having different stated maturities or the same maturities with

[10] The Department notes that PTE 83–1 [48 FR 895, January 7, 1983], a class exemption for mortgage pool investment trusts, would generally apply to trusts containing single-family residential mortgages, provided that the applicable conditions of PTE 83–1 are met. Mellon requests relief for single-family residential mortgages in this exemption because it would prefer one exemption for all trusts of similar structure. However, Mellon has stated that it may still avail itself of the exemptive relief provided by PTE 83–1.

[11] Guaranteed governmental mortgage pool certificates are mortgage-backed securities with respect to which interest and principal payable is guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or the Federal National Mortgage Association (FNMA). The Department's regulation relating to the definition of "plan assets" (29 CFR 2510.3–101(i)) provides that where a plan acquires a guaranteed governmental mortgage pool certificate, the plan's assets include the certificate and all of its rights with respect to such certificate under applicable law, but do not, solely by reason of the plan's holding of such certificate, include any of the mortgages underlying such certificate. The applicant is requesting exemptive relief for trusts containing guaranteed governmental mortgage pool certificates because the certificates in the trusts may be plan assets.

[12] Trust assets may also include obligations that are secured by leasehold interests on residential real property. See PTE 90–32 involving Prudential-Bache Securities, Inc. (55 FR 23147, June 6, 1990 at 23150).

[13] The Department is of the view that the term "trust" includes a trust: (a) the assets of which, although all specifically identified by the sponsor or the originator as of the closing date, are not all transferred to the trust on the closing date for administrative or other reasons but will be transferred to the trust shortly after the closing date, or (b) with respect to which certificates are not purchased by plans until after the end of the pre-funding period at which time all receivables are contained in the trust.

[14] It is the Department's view that the definition of "trust" contained in section III.B. includes a two-tier structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues securities that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[15] It is the view of the Department that section III.B.(4) includes within the definition of the term "trust" rights under any yield supplement or similar arrangement which obligates the sponsor or master servicer, or another party specified in the relevant pooling and servicing agreement, to supplement the interest rates otherwise payable on the obligations described in section III.B.(1), in accordance with the terms of a yield supplement arrangement described in the pooling and servicing agreement, provided that such arrangements do not involve swap agreements or other notional principal contracts.

[16] It is the Department's understanding that where a plan invests in REMIC "residual" interest certificates to which this exemption applies, some of the income received by the plan as a result of such investment may be considered unrelated business taxable income to the plan, which is subject to income tax under the Code. The Department emphasizes that the prudence requirement of section 404(a)(1)(B) of the Act would require plan fiduciaries to carefully consider this and other tax consequences prior to causing plan assets to be invested in certificates pursuant to this proposed exemption.

different payment schedules. Interest and/or principal payments received on the underlying receivables are distributed first to the class of certificates having the earliest stated maturity of principal, and/or earlier payment schedule, and only when that class of certificates has been paid in full (or has received a specified amount) will distributions be made with respect to the second class of certificates. Distributions on certificates having later stated maturities will proceed in like manner until all the certificateholders have been paid in full. The only difference between this multi-class pass-through arrangement and a single-class pass-through arrangement is the order in which distributions are made to certificateholders. In each case, certificateholders will have a beneficial ownership interest in the underlying assets. In neither case will the rights of a plan purchasing a certificate be subordinated to the rights of another certificateholder in the event of default on any of the underlying obligations. In particular, if the amount available for distribution to certificateholders is less than the amount required to be so distributed, all senior certificateholders then entitled to receive distributions will share in the amount distributed on a pro rata basis.[17]

6. The trust will be maintained as an essentially passive entity. Therefore, both the sponsor's discretion and the servicer's discretion with respect to assets included in a trust are severely limited. Pooling and servicing agreements provide for the substitution of receivables by the sponsor only in the event of defects in documentation discovered within a short time after the issuance of trust certificates (within 120 days, except in the case of obligations having an original term of 30 years, in which case the period will not exceed two years). Any receivable so substituted is required to have characteristics substantially similar to the replaced receivable and will be at least as creditworthy as the replaced receivable.

In some cases, the affected receivable would be repurchased, with the purchase price applied as a payment on the affected receivable and passed through to certificateholders.

In some cases the trust will be maintained as a Financial Asset Securitization Investment Trust ("FASIT"), a statutory entity created by the Small Business Job Protection Act of 1996, adding sections 860H, 860J, 860K and 860L to the Code. In general, a FASIT is designed to facilitate the securitization of debt obligations, such as credit card receivables, home equity loans, and auto loans, and thus, allows certain features such as revolving pools of assets, trusts containing unsecured receivables and certain hedging types of investments. A FASIT is not a taxable entity and debt instruments issued by such trusts, which might otherwise be recharacterized as equity, will be treated as debt in the hands of the holder for tax purposes. However, a trust which is the subject of the proposed exemption will be maintained as a FASIT only where the assets held by the FASIT will be comprised of secured debt; revolving pools of assets or hedging investments will not be allowed unless specifically authorized by the exemption, if granted, so that a trust maintained as a FASIT will be maintained as an essentially passive entity.

Trust Structure With Pre-Funding Account

Pre-Funding Accounts

7. As described briefly above, some transactions may be structured using a pre-funding account or a capitalized interest account. If pre-funding is used, cash sufficient to purchase the receivables to be transferred after the closing date will be transferred to the trust by the sponsor or originator on the closing date. During the pre-funding period, such cash and temporary investments, if any, made therewith will be held in a pre-funding account and used to purchase the additional receivables, the characteristics of which will be substantially similar to the characteristics of the receivables transferred to the trust on the closing date. The pre-funding period for any trust will be defined as the period beginning on the closing date and ending on the earliest to occur of (i) the date on which the amount on deposit in the pre-funding account is less than a specified dollar amount, (ii) the date on which an event of default occurs under the related pooling and servicing agreement or (iii) the date which is the later of three months or ninety (90) days after the closing date. Certain specificity and monitoring requirements described below will be met and will be disclosed in the pooling and servicing agreement and/or the prospectus or private placement memorandum.

For transactions involving a trust using pre-funding, on the closing date, a portion of the offering proceeds will be allocated to the pre-funding account generally in an amount equal to the excess of (i) the principal amount of certificates being issued over (ii) the principal balance of the receivables being transferred to the trust on such closing date. In certain transactions, the aggregate principal balance of the receivables intended to be transferred to the trust may be larger than the total principal balance of the certificates being issued. In these cases, the cash deposited in the pre-funding account will equal the excess of the principal balance of the total receivables intended to be transferred to the trust over the principal balance of the receivables being transferred on the closing date.

On the closing date, the sponsor transfers the assets to the trust in exchange for the certificates. The certificates are then sold to an underwriter for cash or to the certificateholders directly if the certificates are sold through a placement agent. The cash received by the sponsor from the certificateholders (or the underwriter) from the sale of the certificates issued by the trust in excess of the purchase price for the receivables and certain other trust expenses, such as underwriting or placement agent fees and legal and accounting fees, constitutes the cash to be deposited in the pre-funding account. Such funds are either held in the trust and accounted for separately, or are held in a sub-trust. In either event, these funds are not part of assets of the sponsor.

Generally, the receivables are transferred at par value, unless the interest rate payable on the receivables is not sufficient to service both the interest rates to be paid on the certificates and the transaction fees (i.e., servicing fees, trustee fees and fees to credit support providers). In such cases, the receivables are sold to the trust at a discount, based on an objective, written, mechanical formula which is set forth in the pooling and servicing agreement and agreed upon in advance between the sponsor, the rating agency and any credit support provider or other insurer. The proceeds payable to the sponsor from the sale of the receivables transferred to the trust may also be reduced to the extent they are used to pay transaction costs (which typically include underwriting or placement agent fees and legal and accounting fees). In addition, in certain cases, the sponsor may be required by the rating agencies or credit support providers to set up trust reserve accounts to protect the certificateholders against credit losses.

The pre-funding account of any trust will be limited so that the percentage or

[17] If a trust issues subordinated certificates, holders of such subordinated certificates may not share in the amount distributed on a pro rata basis with the senior certificateholders. The Department notes that the proposed exemption does not provide relief for plan investment in such subordinated certificates.

ratio of the amount allocated to the pre-funding account, as compared to the total principal amount of the certificates being offered (the pre-funding limit) will not exceed 25%. The pre-funding limit (which may be expressed as a ratio or as a stated percentage or a combination thereof) will be specified in the prospectus or the private placement memorandum.

Any amounts paid out of the pre-funding account are used solely to purchase receivables and to support the certificate pass-through rate (as explained below). Amounts used to support the pass-through rate are payable only from investment earnings and are not payable from principal. However, in the event that, after all of the requisite receivables have been transferred into the trust, any funds remain in the pre-funding account, such funds will be paid to the certificateholders as principal prepayments. Upon termination of the trust, if no receivables remain in the trust and all amounts payable to certificateholders have been distributed, any amounts remaining in the trust would be returned to the sponsor.

A dramatic change in interest rates on the receivables held in a trust using a pre-funding account would be handled as follows. If the receivables (other than those with adjustable or variable rates) had already been originated prior to the closing date, no action would be required as the fluctuations in the market interest rates would not affect the receivables transferred to the trust after the closing date. In contrast, if interest rates fall after the closing date, loans originated after the closing date will tend to be originated at lower rates, with the possible result that the receivables will not support the certificate pass-through rate. In such situations, the sponsor could sell the receivables into the trust at a discount, and more receivables would be used to fund the trust in order to support the pass-through rate. In a situation where interest rates drop dramatically and the sponsor is unable to provide sufficient receivables at the requisite interest rates, the pool of receivables would be closed. In this latter event, under the terms of the pooling and servicing agreement, the certificateholders would receive a repayment of principal from the unused cash held in the pre-funding account. In transactions where the certificate pass-through rates are variable or adjustable, the effects of market interest rate fluctuations are mitigated. In no event will fluctuations in interest rates payable on the receivable affect the pass-through rate for fixed rate certificates.

The cash deposited into the trust and allocated to the pre-funding account is invested in certain permitted investments (see below), which may be commingled with other accounts of the trust. The allocation of investment earnings to each trust account is made periodically as earned in proportion to each account's allocable share of the investment returns. As pre-funding account investment earnings are required to be used to support (to the extent authorized in the particular transaction) the pass-through amounts payable to the certificateholders with respect to a periodic distribution date, the trustee is necessarily required to make periodic, separate allocations of the trust's earning to each trust account, thus ensuring that all allocable commingled investment earnings are properly credited to the pre-funding account on a timely basis.

The Capitalized Interest Account

8. In certain transactions where a pre-funding account is used, the sponsor and/or originator may also transfer to the trust additional cash on the closing date, which is deposited in a capitalized interest account and used during the pre-funding period to compensate the certificateholders for any shortfall between the investment earnings on the pre-funding account and the pass-through interest rate payable under the certificates.

The capitalized interest account is needed in certain transactions since the certificates are supported by the receivables and the earnings on the pre-funding account, and it is unlikely that the investment earnings on the pre-funding account will equal the interest rates on the certificates (although such investment earnings will be available to pay interest on the certificates). The capitalized interest account funds are paid out periodically to the certificateholders as needed on distribution dates to support the pass-through rate. In addition, a portion of such funds may be returned to the sponsor from time to time as the receivables are transferred into the trust and the need for the capitalized interest account diminishes. Any amounts held in the capitalized interest account generally will be returned to the sponsor and/or originator either at the end of the pre-funding period or periodically as receivables are transferred and the proportionate amount of funds in the capitalized interest account can be reduced. Generally, the capitalized interest account terminates no later than the end of the pre-funding period. However, there may be some cases where the capitalized interest account remains open until the first date distributions are made to certificateholders following the end of the pre-funding period.

In other transactions, a capitalized interest account is not necessary because the interest paid on the receivables exceeds the interest payable on the certificates at the applicable pass-through rate and the fees of the trust. Such excess is sufficient to make up any shortfall resulting from the pre-funding account earning less than the certificate pass-through rate. In certain of these transactions, this occurs because the aggregate principal amount of receivables exceeds the aggregate principal amount of certificates.

Pre-Funding Account and Capitalized Interest Account Payments and Investments

9. Pending the acquisition of additional receivables during the pre-funding period, it is expected that amounts in the pre-funding account and the capitalized interest account will be invested in certain permitted investments or will be held uninvested. Pursuant to the pooling and servicing agreement, all permitted investments must mature prior to the date the actual funds are needed. The permitted types of investments in the pre-funding account and capitalized interest account are investments which are either: (i) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a rating agency, as set forth in the pooling and servicing agreement and as required by the rating agencies. The credit grade quality of the permitted investments is generally no lower than that of the certificates. The types of permitted investments will be described in the pooling and servicing agreement.

The ordering of interest payments to be made from the pre-funding and capitalized interest accounts is pre-established and set forth in the pooling and servicing agreement. The only principal payments which will be made from the pre-funding account are those made to acquire the receivables during the pre-funding period and those distributed to the certificateholders in the event that the entire amount in the pre-funding account is not used to acquire receivables. The only principal payments which will be made from the capitalized interest account are those made to certificateholders if necessary

to support the certificate pass-through rate or those made to the sponsor either periodically as they are no longer needed or at the end of the pre-funding period when the capitalized interest account is no longer necessary.

The Characteristics of the Receivables Transferred During the Pre-Funding Period

10. In order to ensure that there is sufficient specificity as to the representations and warranties of the sponsor regarding the characteristics of the receivables to be transferred after the closing date:

(i) All such receivables will meet the same terms and conditions for eligibility as those of the original receivables used to create the trust corpus (as described in the prospectus or private placement memorandum and/or pooling and servicing agreement for such certificates), which terms and conditions have been approved by a rating agency. However, the terms and conditions for determining the eligibility of a receivable may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by a rating agency;

(ii) The transfer to the trust of the receivables acquired during the pre-funding period will not result in the certificates receiving a lower credit rating from the rating agency upon termination of the pre-funding period than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(iii) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations in the trust at the end of the pre-funding period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the trust on the closing date;

(iv) The trustee of the trust (or any agency with which the trustee contracts to provide trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, will enforce all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act.

In order to ensure that the characteristics of the receivables actually acquired during the pre-funding period are substantially similar to receivables that were acquired as of the closing date, the characteristics of the additional obligations subsequently acquired will either be: (i) monitored by a credit support provider or other insurance provider which is independent of the sponsor; or (ii) an independent accountant retained by the sponsor will provide the sponsor with a letter (with copies provided to the rating agency, Mellon and the trustee) stating whether or not the characteristics of the additional obligations acquired after the closing date conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or pooling and servicing agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the closing date.

Each prospectus, private placement memorandum and/or pooling and servicing agreement will set forth the terms and conditions for eligibility of the receivables to be included in the trust as of the related closing date, as well as those to be acquired during the pre-funding period, which terms and conditions will have been agreed to by the rating agencies which are rating the applicable certificates as of the closing date. Also included among these conditions is the requirement that the trustee be given prior notice of the receivables to be transferred, along with such information concerning those receivables as may be requested. Each prospectus or private placement memorandum will describe the amount to be deposited in, and the mechanics of, the pre-funding account and will describe the pre-funding period for the trust.

Parties to Transactions

11. The *originator* of a receivable is the entity that initially lends money to a borrower (obligor), such as a home-owner or automobile purchaser, or leases property to a lessee. The originator may either retain a receivable in its portfolio or sell it to a purchaser, such as a trust sponsor.

Originators of receivables included in the trusts will be entities that originate receivables in the ordinary course of their businesses, including finance companies for whom such origination constitutes the bulk of their operations, financial institutions for whom such origination constitutes a substantial part of their operations, and any kind of manufacturer, merchant, or service enterprise for whom such origination is an incidental part of its operations. Each trust may contain assets of one or more originators. The originator of the receivables may also function as the trust sponsor or servicer.

12. The *sponsor* will be one of three entities: (i) a special-purpose or other corporation unaffiliated with the servicer, (ii) a special-purpose or other corporation affiliated with the servicer, or (iii) the servicer itself. Where the sponsor is not also the servicer, the sponsor's role will generally be limited to acquiring the receivables to be included in the trust, establishing the trust, designating the trustee, and assigning the receivables to the trust.

13. The *trustee* of a trust is the legal owner of the obligations in the trust. The trustee is also a party to or beneficiary of all the documents and instruments deposited in the trust, and as such is responsible for enforcing all the rights created thereby in favor of certificateholders.

The trustee will be an independent entity, and therefore will be unrelated to Mellon, the trust sponsor, the servicer or any other member of the Restricted Group (as defined in section III.L.). Mellon represents that the trustee will be a substantial financial institution or trust company experienced in trust activities. The trustee receives a fee for its services, which will be paid by the servicer or sponsor or out of the trust assets. The method of compensating the trustee which is specified in the pooling and servicing agreement will be disclosed in the prospectus or private placement memorandum relating to the offering of the certificates.

14. The *servicer* of a trust administers the receivables on behalf of the certificateholders. The servicer's functions typically involve, among other things, notifying borrowers of amounts due on receivables, maintaining records of payments received on receivables and instituting foreclosure or similar proceedings in the event of default. In cases where a pool of receivables has been purchased from a number of different originators and deposited in a trust, the receivables may be "subserviced" by their respective originators and a single entity may "master service" the pool of receivables on behalf of the owners of the related series of certificates. Where this arrangement is adopted, a receivable continues to be serviced from the perspective of the borrower by the local subservicer, while the investor's perspective is that the entire pool of receivables is serviced by a single, central master servicer who collects payments from the local subservicers and passes them through to certificateholders.

Receivables of the type suitable for inclusion in a trust invariably are serviced with the assistance of a computer. After the sale, the servicer

keeps the sold receivables on the computer system in order to continue monitoring the accounts. Although the records relating to sold receivables are kept in the same master file as receivables retained by the originator, the sold receivables are flagged as having been sold. To protect the investor's interest, the servicer ordinarily covenants that this "sold flag" will be included in all records relating to the sold receivables, including the master file, archives, tape extracts and printouts.

The sold flags are invisible to the obligor and do not affect the manner in which the servicer performs the billing, posting and collection procedures related to the sold receivables. However, the servicer uses the sold flag to identify the receivables for the purpose of reporting all activity on those receivables after their sale to investors.

Depending on the type of receivable and the details of the servicer's computer system, in some cases the servicer's internal reports can be adapted for investor reporting with little or no modification. In other cases, the servicer may have to perform special calculations to fulfill the investor reporting responsibilities. These calculations can be performed on the servicer's main computer, or on a small computer with data supplied by the main system. In all cases, the numbers produced for the investors are reconciled to the servicer's books and reviewed by public accountants.

The *underwriter* (i e., Mellon, its affiliate, or a member of an underwriting syndicate or selling group of which Mellon or its affiliate is a manager or co-manager) will be a registered broker-dealer that acts as underwriter or placement agent with respect to the sale of the certificates. Public offerings of certificates are generally made on a firm commitment basis. Private placement of certificates may be made on a firm commitment or agency basis. It is anticipated that the lead and co-managing underwriters will make a market in certificates offered to the public.

In some cases, the originator and servicer of receivables to be included in a trust and the sponsor of the trust (although they may themselves be related) will be unrelated to Mellon. In other cases, however, affiliates of Mellon may originate or service receivables included in a trust or may sponsor a trust.

Certificate Price, Pass-Through Rate and Fees

15. In some cases, the sponsor will obtain the receivables from various originators pursuant to existing contracts with such originators under which the sponsor continually buys receivables. In other cases, the sponsor will purchase the receivables at fair market value from the originator or a third party pursuant to a purchase and sale agreement related to the specific offering of certificates. In other cases, the sponsor will originate the receivables itself.

As compensation for the receivables transferred to the trust, the sponsor receives certificates representing the entire beneficial interest in the trust, or the cash proceeds of the sale of such certificates. If the sponsor receives certificates from the trust, the sponsor sells all or a portion of these certificates for cash to investors or securities underwriters.

16. The price of the certificates, both in the initial offering and in the secondary market, is affected by market forces, including investor demand, the pass-through interest rate on the certificates in relation to the rate payable on investments of similar types and quality, expectations as to the effect on yield resulting from prepayment of underlying receivables, and expectations as to the likelihood of timely payment.

The pass-through rate for certificates is equal to the interest rate on receivables included in the trust minus a specified servicing fee.[18] This rate is generally determined by the same market forces that determine the price of a certificate. The price of a certificate and its pass-through, or coupon, rate together determine the yield to investors. If an investor purchases a certificate at less than par, that discount augments the stated pass-through rate; conversely, a certificate purchased at a premium yields less than the stated coupon.

17. As compensation for performing its servicing duties, the servicer (who may also be the sponsor or an affiliate thereof, and receive fees for acting in that capacity) will retain the difference between payments received on the receivables in the trust and payments payable (at the pass-through rate) to certificateholders, except that in some cases a portion of the payments on receivables may be paid to a third party, such as a fee paid to a provider of credit support. The servicer may receive additional compensation by having the use of the amounts paid on the receivables between the time they are received by the servicer and the time they are due to the trust (which time is set forth in the pooling and servicing agreement). The servicer typically will be required to pay the administrative expenses of servicing the trust, including in some cases the trustee's fee, out of its servicing compensation.

The servicer is also compensated to the extent it may provide credit enhancement to the trust or otherwise arrange to obtain credit support from another party. This "credit support fee" may be aggregated with other servicing fees, and is either paid out of the interest income received on the receivables in excess of the pass-through rate or paid in a lump sum at the time the trust is established.

18. The servicer may be entitled to retain certain administrative fees paid by a third party, usually the obligor. These administrative fees fall into three categories: (a) prepayment fees; (b) late payment and payment extension fees; and (c) expenses, fees and charges associated with foreclosure or repossession, or other conversion of a secured position into cash proceeds, upon default of an obligation.

Compensation payable to the servicer will be set forth or referred to in the pooling and servicing agreement and described in reasonable detail in the prospectus or private placement memorandum relating to the certificates.

19. Payments on receivables may be made by obligors to the servicer at various times during the period preceding any date on which pass-through payments to the trust are due. In some cases, the pooling and servicing agreement may permit the servicer to place these payments in non-interest bearing accounts maintained with itself or to commingle such payments with its own funds prior to the distribution dates. In these cases, the servicer would be entitled to the benefit derived from the use of the funds between the date of payment on a receivable and the pass-through date. Commingled payments may not be protected from the creditors of the servicer in the event of the servicer's bankruptcy or receivership. In those instances when payments on receivables are held in non-interest bearing accounts or are commingled with the servicer's own funds, the servicer is required to deposit these payments by a date specified in the pooling and servicing agreement into an account from which the trustee makes payments to certificateholders.

20. The underwriter will receive a fee in connection with the securities underwriting or private placement of certificates. In a firm commitment underwriting, this fee would consist of

[18] The pass-through rate on certificates representing interests in trusts holding leases is determined by breaking down lease payments into "principal" and "interest" components based on an implicit interest rate.

the difference between what the underwriter receives for the certificates that it distributes and what it pays the sponsor for those certificates. In a private placement, the fee normally takes the form of an agency commission paid by the sponsor. In a best efforts underwriting in which the underwriter would sell certificates in a public offering on an agency basis, the underwriter would receive an agency commission rather than a fee based on the difference between the price at which the certificates are sold to the public and what it pays the sponsor. In some private placements, the underwriter may buy certificates as principal, in which case its compensation would be the difference between what it receives for the certificates that it sells and what it pays the sponsor for these certificates.

Purchase of Receivables by the Servicer

21. The applicant represents that as the principal amount of the receivables in a trust is reduced by payments, the cost of administering the trust generally increases, making the servicing of the trust prohibitively expensive at some point. Consequently, the pooling and servicing agreement generally provides that the servicer may purchase the receivables remaining in the trust when the aggregate unpaid balance payable on the receivables is reduced to a specified percentage (usually 5 to 10 percent) of the initial aggregate unpaid balance.

The purchase price of a receivable is specified in the pooling and servicing agreement and will be at least equal to: (1) the unpaid principal balance on the receivable plus accrued interest, less any unreimbursed advances of principal made by the servicer; or (2) the greater of (a) the amount in (1) or (b) the fair market value of such obligations in the case of a REMIC, or the fair market value of the receivables in the case of a trust that is not a REMIC.

Certificate Ratings

22. The certificates will have received one of the three highest ratings available from a rating agency. Insurance or other credit support (such as surety bonds, letters of credit, guarantees, or overcollateralization) will be obtained by the trust sponsor to the extent necessary for the certificates to attain the desired rating. The amount of this credit support is set by the rating agencies at a level that is a multiple of the worst historical net credit loss experience for the type of obligations included in the issuing trust.

Provision of Credit Support

23. In some cases, the master servicer, or an affiliate of the master servicer, may provide credit support to the trust (i.e. act as an insurer). In these cases, the master servicer, in its capacity as servicer, will first advance funds to the full extent that it determines that such advances will be recoverable (a) out of late payments by the obligors, (b) from the credit support provider (which may be the master servicer or an affiliate thereof) or, (c) in the case of a trust that issues subordinated certificates, from amounts otherwise distributable to holders of subordinated certificates, and the master servicer will advance such funds in a timely manner. When the servicer is the provider of the credit support and provides its own funds to cover defaulted payments, it will do so either on the initiative of the trustee, or on its own initiative on behalf of the trustee, but in either event it will provide such funds to cover payments to the full extent of its obligations under the credit support mechanism. In some cases, however, the master servicer may not be obligated to advance funds but instead would be called upon to provide funds to cover defaulted payments to the full extent of its obligations as insurer. Moreover, a master servicer typically can recover advances either from the provider of credit support or from future payments on the affected assets.

If the master servicer fails to advance funds, fails to call upon the credit support mechanism to provide funds to cover delinquent payments, or otherwise fails in its duties, the trustee would be required and would be able to enforce the certificateholders' rights, as both a party to the pooling and servicing agreement and the owner of the trust estate, including rights under the credit support mechanism. Therefore, the trustee, who is independent of the servicer, will have the ultimate right to enforce the credit support arrangement.

When a master servicer advances funds, the amount so advanced is recoverable by the master servicer out of future payments on receivables held by the trust to the extent not covered by credit support. However, where the master servicer provides credit support to the trust, there are protections in place to guard against a delay in calling upon the credit support to take advantage of the fact that the credit support declines proportionally with the decrease in the principal amount of the obligations in the trust as payments on receivables are passed through to investors. These safeguards include:

(a) There is often a disincentive to postponing credit losses because the sooner repossession or foreclosure activities are commenced, the more value that can be realized on the security for the obligation;

(b) The master servicer has servicing guidelines which include a general policy as to the allowable delinquency period after which an obligation ordinarily will be deemed uncollectible. The pooling and servicing agreement will require the master servicer to follow its normal servicing guidelines and will set forth the master servicer's general policy as to the period of time after which delinquent obligations ordinarily will be considered uncollectible;

(c) As frequently as payments are due on the receivables included in the trust (monthly, quarterly or semi-annually, as set forth in the pooling and servicing agreement), the master servicer is required to report to the independent trustee the amount of all past-due payments and the amount of all servicer advances, along with other current information as to collections on the receivables and draws upon the credit support. Further, the master servicer is required to deliver to the trustee annually a certificate of an executive officer of the master servicer stating that a review of the servicing activities has been made under such officer's supervision, and either stating that the master servicer has fulfilled all of its obligations under the pooling and servicing agreement or, if the master servicer has defaulted under any of its obligations, specifying any such default. The master servicer's reports are reviewed at least annually by independent accountants to ensure that the master servicer is following its normal servicing standards and that the master servicer's reports conform to the master servicer's internal accounting records. The results of the independent accountants' review are delivered to the trustee; and

(d) The credit support has a "floor" dollar amount that protects investors against the possibility that a large number of credit losses might occur towards the end of the life of the trust, whether due to servicer advances or any other cause. Once the floor amount has been reached, the servicer lacks an incentive to postpone the recognition of credit losses because the credit support amount thereafter is subject to reduction only for actual draws. From the time that the floor amount is effective until the end of the life of the trust, there are no proportionate reductions in the credit support amount caused by reductions in the pool principal

balance. Indeed, since the floor is a fixed dollar amount, the amount of credit support ordinarily increases as a percentage of the pool principal balance during the period that the floor is in effect.

Disclosure

24. In connection with the original issuance of certificates, the prospectus or private placement memorandum will be furnished to investing plans. The prospectus or private placement memorandum will contain information material to a fiduciary's decision to invest in the certificates, including:

(a) Information concerning the payment terms of the certificates, the rating of the certificates, and any material risk factors with respect to the certificates;

(b) A description of the trust as a legal entity and a description of how the trust was formed by the seller/servicer or other sponsor of the transaction;

(c) Identification of the independent trustee for the trust;

(d) A description of the receivables contained in the trust, including the types of receivables, the diversification of the receivables, their principal terms, and their material legal aspects;

(e) A description of the sponsor and servicer;

(f) A description of the pooling and servicing agreement, including a description of the seller's principal representations and warranties as to the trust assets, including the terms and conditions for eligibility of any receivables transferred during the pre-funding period and the trustee's remedy for any breach thereof; a description of the procedures for collection of payments on receivables and for making distributions to investors, and a description of the accounts into which such payments are deposited and from which such distributions are made; a description of permitted investments for any pre-funding account or capitalized interest account; identification of the servicing compensation and any fees for credit enhancement that are deducted from payments on receivables before distributions are made to investors; a description of periodic statements provided to the trustee, and provided to or made available to investors by the trustee; and a description of the events that constitute events of default under the pooling and servicing contract and a description of the trustee's and the investors' remedies incident thereto;

(g) A description of the credit support;

(h) A general discussion of the principal federal income tax consequences of the purchase, ownership and disposition of the pass-through securities by a typical investor;

(i) A description of the underwriters' plan for distributing the pass-through securities to investors;

(j) Information about the scope and nature of the secondary market, if any, for the certificates; and

(k) A statement as to the duration of any pre-funding period and the pre-funding limit for the trust.

25. Reports indicating the amount of payments of principal and interest are provided to certificateholders at least as frequently as distributions are made to certificateholders. Certificateholders will also be provided with periodic information statements setting forth material information concerning the underlying assets, including, where applicable, information as to the amount and number of delinquent and defaulted loans or receivables.

26. In the case of a trust that offers and sells certificates in a registered public offering, the trustee, the servicer or the sponsor will file such periodic reports as may be required to be filed under the Securities Exchange Act of 1934. Although some trusts that offer certificates in a public offering will file quarterly reports on Form 10–Q and Annual Reports on Form 10–K, many trusts obtain, by application to the Securities and Exchange Commission (SEC), a complete exemption from the requirement to file quarterly reports on Form 10–Q and a modification of the disclosure requirements for annual reports on Form 10–K. If such an exemption is obtained, these trusts normally would continue to have the obligation to file current reports on Form 8–K to report material developments concerning the trust and the certificates and copies of the statements sent to certificateholders. While the SEC's interpretation of the periodic reporting requirements is subject to change, periodic reports concerning a trust will be filed to the extent required under the Securities Exchange Act of 1934.

27. At or about the time distributions are made to certificateholders, a report will be delivered to the trustee as to the status of the trust and its assets, including underlying obligations. Such report will typically contain information regarding the trust's assets (including those purchased by the trust from any pre-funding account), payments received or collected by the servicer, the amount of prepayments, delinquencies, servicer advances, defaults and foreclosures, the amount of any payments made pursuant to any credit support, and the amount of compensation payable to the servicer. Such report also will be delivered to or made available to the rating agency or agencies that have rated the trust's certificates.

In addition, promptly after each distribution date, certificateholders will receive a statement prepared by the servicer or trustee summarizing information regarding the trust and its assets. Such statement will include information regarding the trust and its assets, including underlying receivables. Such statement will typically contain information regarding payments and prepayments, delinquencies, the remaining amount of the guaranty or other credit support and a breakdown of payments between principal and interest.

Forward Delivery Commitments

28. Mellon may contemplate entering into forward delivery commitments in connection with the offering of pass-through certificates. The utility of forward delivery commitments has been recognized with respect to offering similar certificates backed by pools of residential mortgages, and Mellon may find it desirable in the future to enter into such commitments for the purchase of certificates.

Secondary Market Transactions

29. Mellon's normal policy would be to attempt to make a market for securities for which it is lead or co-managing underwriter, and it is Mellon's intention to make a market for any certificates for which it is lead or co-managing underwriter, although it is under no obligation to do so. At times, Mellon will facilitate sales by investors who purchase certificates if Mellon has acted as agent or principal in the original private placement of the certificates and if such investors request Mellon's assistance.

Summary

30. In summary, the applicant represents that the transactions for which exemptive relief is requested satisfy the statutory criteria of section 408(a) of the Act due to the following:

(a) The trusts contain "fixed pools" of assets. There is little discretion on the part of the trust sponsor to substitute receivables contained in the trust once the trust has been formed;

(b) In the case where a pre-funding account is used, the characteristics of the receivables to be transferred to the trust during the pre-funding period will be substantially similar to the characteristics of those transferred to the trust on the closing date, thereby giving the sponsor and/or originator little discretion over the selection process,

and compliance with this requirement will be assured by the specificity of the characteristics and the monitoring mechanisms contemplated under the proposed exemption. In addition, certain cash accounts will be established to support the certificate pass-through rate and such cash accounts will be invested in short-term, conservative investments; the pre-funding period will be of a reasonably short duration; a pre-funding period limit will be imposed; and any Internal Revenue Service requirements with respect to pre-funding intended to preserve the passive income character of the trust will be met. The fiduciary of the plans making the decision to invest in certificates is thus fully apprised of the nature of the receivables which will be held in the trust and has sufficient information to make a prudent investment decision.

(c) Certificates in which plans invest will have been rated in one of the three highest rating categories by a rating agency. Credit support will be obtained to the extent necessary to attain the desired rating;

(d) All transactions for which Mellon seeks exemptive relief will be governed by the pooling and servicing agreement, which is made available to plan fiduciaries for their review prior to the plan's investment in certificates;

(e) Exemptive relief from sections 406(b) and 407 for sales to plans is substantially limited; and

(f) Mellon anticipates that it will make a secondary market in certificates (although it is under no obligation to do so).

Notice to Interested Persons

The applicant represents that because those potentially interested participants and beneficiaries cannot all be identified, the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 30 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Operating Engineers Local 324 Journeyman and Apprentice Training Fund (the Plan), located in Howell, Michigan (Application No. L–10645).

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b) (1) and (2) of the Act shall not apply to: (1) The proposed loan of $1,500,000 (the Loan) to the Plan by the International Union of Operating Engineers Local 324, AFL–CIO (the Union), a party in interest with respect to the Plan, for the repayment of certain outstanding loans (the Original Loans) made to the Plan by the Michigan National Bank (the Bank), an unrelated party; and (2) as of March 12, 1998, the pledging of certificates of deposit by the Union as security for the Original Loans; provided that the following conditions are met:

(a) The terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could have obtained in an arm's-length transaction with an unrelated party;

(b) The Plan's trustees determine that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) An independent fiduciary acting on behalf of the Plan (the Independent Fiduciary) reviews the terms of the Loan and determines that the Loan is protective of and in the best interests of the Plan;

(d) The Independent Fiduciary monitors the Loan, as well as the conditions of this proposed exemption (if granted), and takes whatever actions are necessary to safeguard the interests of the Plan under the Loan;

(e) The Loan is repaid by the Plan solely with funds the Plan retains after paying all of its operational expenses; and

(f) The terms and conditions relating to the pledging of the certificates of deposit by the Union as security for the Original Loans were in the best interest of the Plan and its participants and beneficiaries.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of March 12, 1998.

Summary of Facts and Representations

1. The Union is located in Livonia, Michigan and represents workers who are engaged primarily in heavy construction projects throughout the state of Michigan. The Plan was established by the Union in 1964 as a training program for individuals who are members of the Union and are employed by contributing employers with regard to the Plan. The purpose of the Plan is to provide eligible participants (the Participants) with the skills necessary to operate and repair construction equipment. The Plan had approximately 11,500 participants and $12,664,604 in total assets, as of August 31, 1998.

2. Among the Plan's assets is an indoor training facility (the Facility) located in Howell, Michigan. The Facility is comprised mainly of classrooms and an indoor work area, and is used by the Participants to acquire additional construction training. The Facility is situated on 365 acres of real property (the Property) which is also owned by the Plan. The Property is used by the Participants as an outdoor construction training area.

3. The trustees of the Plan (the Trustees) represent that, in the spring of 1997, they anticipated a significant increase in the amount of training hours the Participants would be spending in the Facility during the upcoming years. The Trustees state that this potential increase was due to a growing demand for construction workers throughout Michigan, stricter training requirements for workers who handle hazardous waste, and increasingly sophisticated construction equipment. In this regard, the Participants trained a total of approximately 32,000 hours in the Facility in 1997, and will train a total of approximately 43,200 hours in the Facility in 1998. The Trustees believe that there will be additional increases in Participant usage of the Facility in future years.

4. The Trustees determined that the Facility was inadequate to handle the anticipated increase in use by the Participants. As a result, in March 1998, the Trustees decided to expand the Facility (the Expansion) at a projected cost of $1,500,000. The Expansion consisted of the addition of three classrooms to the Facility and an enlargement of the Facility's indoor repair area. The Expansion also included maintenance repairs on the Facility. The Expansion was completed on September 26, 1998.

5. To finance the Expansion, the Trustees caused the Plan to receive two loans (i.e. the Original Loans) from the Bank. The first loan (the First Loan) was entered into on May 12, 1998 for $1,000,000 and was secured with a certificate of deposit (CD) pledged by the Union in the amount of $1,000,000. The second loan (the Second Loan) was entered into on July 28, 1998 for $500,000 and was secured with a CD pledged by the Union in the amount of $500,000.

6. The Original Loans each had a term of 12 months and required that the Plan pay a fixed rate of interest. At the time the First Loan and the Second Loan

were made, the interest rates for each were set at two percentage points above the interest rate the Bank currently paid on its 12 month CDs. At the time the First Loan was made, the Bank was paying 5.25% on its 12 month CDs. As a result, the interest rate the Plan pays on the First Loan is 7.25%. At the time the Second Loan was made, the Bank was paying 5.17% on its 12 month CDs. As a result, the interest rate the Plan pays on the Second Loan is 7.17%.

7. The Union proposes to lend the Plan, under the terms of the Loan, an amount equal to the entire principal amount of the Original Loans (i.e. $1,500,000). The Union represents that the Loan will be used by the Plan to repay the Original Loans. The Union also represents that the Plan will not pay any fees associated with the Loan. The Loan will have a term of seven years and will be unsecured. Additionally, the Loan will have a seven year amortization schedule (the Schedule) and monthly payments of principal and interest until maturity.

The Trustees of the Plan represent that the Schedule is beneficial to the Plan since it allows the Plan to gradually pay down the principal amount of the Loan. The Trustees represent that the terms of the Original Loans do not provide for amortization of the Original Loans' principal amounts. Thus, absent any renewals of the Original Loans by the Bank, the Plan must repay the entire principal amount of the Original Loans at maturity. In this regard, the Trustees represent that the terms of the Original Loans cause a liquidity problem for the Plan in that the Plan is required to reserve funds for the repayment of the principal amounts of the Original Loans. The Trustees represent that the Schedule allows for a more efficient allocation of Plan resources.

8. The Union represents that the terms of the Loan are more favorable to the Plan than the terms of the Original Loans. The Union represents that the Plan will repay the Loan solely with funds retained by the Plan after paying for all of its operational expenses (the Excess Funds).[19] In the event that the Plan has no Excess Funds at the time a payment by the Plan is due, the Union represents that the Loan will be suspended (the Suspension Period).[20] The Union represents that during any Suspension Period, the Plan will not be required to make any principal or interest payments on the Loan.[21] In addition, the Union represents that no interest on the Loan will accrue during the Suspension Period.

The Trustees represent that the interest rate paid by the Plan to the Union on the Loan will be less than the interest rates paid by the Plan on the Original Loans. The interest rate the Plan will pay on the Loan (the New Rate) will be a floating rate based on the Wall Street Journal Jumbo CD Rate (the WSJ CD Rate) for CDs with a duration of 12 months. The New Rate will be initially set at the lesser of (i) 6.02% (the WSJ CD Rate as of November 9, 1998, plus 1%), or (ii) a rate which is 1% above the WSJ CD Rate at the time the Loan is consummated. The New Rate will be reset on the first day of January, April, July, and October to equal the rate which is 1% above the WSJ CD Rate at that time. However, in no event will the New Rate exceed 7.25% per annum, the rate the Plan currently pays the Bank under the First Loan.

In addition, the New Rate will be more favorable to the Plan than the interest rate the Plan would have paid on a renewal of the Original Loans from the Bank. The New Rate will only be 1% above the WSJ CD Rate for 12-month CDs which will be significantly less than a rate which is 2% above the Bank's 12-month CD rate. The Trustees estimate that setting the interest rate on the Loan at the New Rate will result in a savings to the Plan in excess of $61,000 during the term of the Loan.

9. The terms of the Loan will be monitored by Richard Czapski (Mr. Czapski) of Plante and Moran, LLP (Plante and Moran), who will act as the Plan's Independent Fiduciary. Plante and Moran is a public accounting firm having offices in Michigan and Ohio. Mr. Czapski is a partner with Plante and Moran. Mr. Czapski represents that he is qualified to act as the Independent Fiduciary because he is experienced in matters concerning pension plans and bank loans. Mr. Czapski states that he will rely on the advice of an experienced ERISA counsel, if necessary, to determine what actions are appropriate to safeguard the interests of the Plan throughout the duration of the Loan.

Mr. Czapski represents that he has evaluated the terms of the Loan and has determined that the Loan would be in the best interests and protective of the Plan and its participants and beneficiaries. Mr. Czapski states that he will monitor the Plan's repayment of the Loan. Mr. Czapski will represent the Plan, as the Independent Fiduciary, to enforce the Plan's rights under the terms and conditions of the Loan and will take whatever actions are necessary to protect the interests of the Plan.

10. In summary, the applicant represents that the transactions satisfy the statutory criteria contained in section 408(a) of the Act for the following reasons:

(a) The terms of the Loan are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party;

(b) The Trustees have determined that the Loan is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries;

(c) Mr. Czapski, as the Plan's Independent Fiduciary, has reviewed the terms and conditions of the Loan and determined that the Loan would be appropriate for, and in the best interests of, the Plan;

(d) Mr. Czapski, as the Plan's Independent Fiduciary, will monitor the Loan, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary to safeguard the interests of the Plan;

(e) The New Rate initially will be the lesser of 6.02% or 1% above the WSJ CD Rate as of the date of the Loan, an interest rate which will be significantly less than the rates currently paid by the Plan under the Original Loans (i.e. 7.25% and 7.17%, respectively); and

(f) The Loan will be repaid by the Plan solely with funds retained by the Plan after paying for all of its operational expenses.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8883 (this is not a toll free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction

[19] The Union represents that the Plan's operational expenses are funded by contributions made to the Plan by contributing employers. These contributions are based on a portion of each Participant's hourly wage that is paid by such employers. The Union represents that the Participants' hourly wage rate is negotiated between the Union and the contributing employers each year. Thus, the Union represents that the Particicants' wage deduction amount for contributions made by the employers to the Plan is determined by the parties each year.

[20] The Union represents that computation of the amount of Excess Funds available for the repayment on the Loan will be done according to generally accepted accounting principles by a certified public accountant representing the Plan.

[21] The Union represents that if the Suspension Period causes there to be an outstanding principal balance on the Loan at the end of the seven-year term, the duration of the Loan will be extended and the Plan will be obligated to continue making monthly payments of principal and interest until the Loan is paid in full. In this regard, the Plan will not be required to make any lump-sum payment for the outstanding principal balance at any time.

provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 14th day of January 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

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Part III

Department of the Interior

Minerals Management Service

30 CFR Part 204

Accounting Relief for Marginal Properties; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 204

RIN 1010–AC30

Accounting Relief for Marginal Properties

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) is proposing new regulations implementing recently enacted legislation for Federal oil and gas leases. The new regulations would explain to lessees and their designees how to obtain royalty prepayment and accounting and auditing relief for Federal marginal properties.

DATES: MMS must receive all comments on or before March 22, 1999. We will begin reviewing comments then and may not fully consider comments we receive after March 22, 1999.

ADDRESSES: Submit your written comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, telephone (303) 231–3432; fax (303) 231–3385; e-mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are Nick E. Fadely of the Royalty Management Program, MMS, and Sarah L. Inderbitzin of the Office of the Solicitor, Department of the Interior.

I. Introduction

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA), Pub. L. 104–185, as corrected by Pub. L. 104–200. RSFA amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1711 *et seq.*, in many respects. Section 7 of RSFA allows MMS and the State concerned (defined under RSFA as "a State which receives a portion of royalties or other payments under the mineral leasing laws from [a Federal onshore or OCS oil and gas lease]," 30 U.S.C. 1701(31)) to provide royalty prepayment and regulatory relief for marginal properties for Federal onshore and Outer Continental Shelf (OCS) oil and gas leases. 30 U.S.C. 1727. The stated purpose of granting relief to marginal properties under RSFA is to promote production, reduce administrative costs, and increase net receipts to the United States and the States. 30 U.S.C. 1727(a).

Under RSFA, the State concerned must consent to any prepayment or auditing relief. 30 U.S.C. 1727(a). In addition, MMS and the State concerned must jointly determine, on a case-by-case basis, the amount of marginal production that may be subject to either a prepayment of royalty or accounting and auditing relief. *Id.* Although RSFA does not define marginal properties for purposes of Section 7, it does define marginal properties under section 6(d)(4), 30 U.S.C. 1726(d)(4), as a "lease that produces on average the combined equivalent of less than 15 barrels of oil equivalents per well per day or 90 thousand cubic feet of gas per well per day, or a combination thereof." In addition, under section 6(d)(4), the production level is calculated "by dividing the average daily production of crude oil and natural gas from producing wells on such leases by the number of such wells, unless the Secretary, together with the State concerned, determine that a different production is more appropriate."

RSFA also requires MMS and the States to "provide accounting, reporting and auditing relief" for marginal properties. 30 U.S.C. 1727(c). However, such relief may only be granted in a State that concurs with this relief. *Id.*

In response to the RSFA section 7 amendments, MMS conducted three workshops to receive input from a wide variety of constituent groups to develop the proposed rule. The workshops were held at MMS offices in Denver, Colorado, on October 31, 1996, January 23, 1997, and November 5, 1997. Representatives from several Federal and State government organizations participated along with industry trade organizations representing both small and large Federal oil and gas lessees. The input received during these workshops was instrumental in developing the proposed rule.

The proposed rule implements sections 7(a) and 7(c) of RSFA. 30 U.S.C. 1727(a) and 1727(c). Although section 7 of RSFA provides two alternatives for marginal properties, one for prepayment of royalty under section 7(b), and another for accounting and auditing relief under section 7(c), this proposed rule only implements the general provisions for marginal properties and the accounting and auditing relief provisions. MMS will publish a proposed rule covering prepayment of royalty under section 7(b) of RSFA at a later date.

The Department of the Interior's (Department) practice is to give the public an opportunity to participate in the rulemaking process. You may send written comments to the location cited in the **ADDRESSES** section of this preamble. We will post public comments after the comment period closes on the Internet at http://www.rmp.mms.gov or you may contact David S. Guzy, Chief, Rules and Publications Staff, MMS, telephone (303) 231–3432; fax (303) 231–3385; e-mail David__Guzy@mms.gov.

II. Section-by-Section Analysis

30 CFR Part 204—Alternatives For Marginal Properties

MMS proposes to include a new part 204 in its regulations. This part would implement the new requirements of section 7 of RSFA. However, as noted above, the substantive rules for prepayment of royalty are not included in this proposed rule. We would reserve subpart B for a later rulemaking.

Part 204, Subpart A—General Provisions

This subpart would provide general requirements for both prepayment of royalty under section 7(b) of RSFA and accounting and auditing relief under section 7(c) of RSFA. However, as noted above, the substantive rules for prepayment of royalty are not included in this proposed rule. We would reserve subpart B for a later rulemaking.

Section 204.1 What is the Purpose of this Part?

This part would explain how a lessee or its designee, of a Federal onshore or OCS lease may obtain prepayment or accounting and auditing relief for certain marginal properties. The prepayment portions of this rule would be proposed in a later rulemaking. Under RSFA, the lessee's "designee" is a person the lessee designates in writing to MMS to report and pay royalties on its behalf. RSFA section 6(g) (codified as corrected at 30 U.S.C. 1712(a)). MMS has addressed the procedure to designate a designee in another rulemaking. 62 FR 42062 (1997) (Codified at 30 CFR 218.52).

Section 204.2 Definitions

This section would define terms applicable to this part.

"Agreement" would mean a federally approved communitization agreement or unit participating area.

"Barrels of oil equivalents" would mean the "combined equivalent production" of oil and gas stated in barrels of oil. Under this definition, each barrel of oil production would be equal to one barrel of oil equivalents. Each six thousand cubic feet of gas production at standard temperature and pressure also would be equal to one barrel of oil equivalents. This definition also is consistent with the use of this term in the definition of "marginal properties" under section 6(d)(4) of RSFA.

"Base period" would mean the 12-month period from October 1 through September 30 immediately preceding the applicable calendar year in which you take or request marginal property relief. The term "base period" is used throughout the rule to calculate whether a property qualifies for certain relief during the current calendar year. For example, if you want to qualify for relief beginning in calendar year 2000, the base period for that calendar year would be from October 1, 1998, through September 30, 1999.

"Combined equivalent production" would mean the total of all oil and gas production for the marginal property, stated in barrels of oil equivalents. This definition is consistent with the use of that term in the definition of "marginal properties" under section 6(d)(4) of RSFA discussed in the introduction.

"Designee" would mean the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf. This definition is essentially the same as that under RSFA § 2(1), FOGRMA, 30 U.S.C. 1702(24). Accordingly, the definition would cite the rule implementing the requirements of RSFA § 6(g), FOGRMA § 102(a), 30 U.S.C. 1712(a), which allows lessees to designate another person to pay royalties on their behalf by written notice filed with MMS.

"Producing wells" would mean only those producing oil or gas wells that contribute to the sum of barrels of oil equivalents used in the calculation under § 204.004(c) of this part. This definition would not include injection and water wells.

"State concerned" (State) would mean the State which receives a statutorily prescribed portion of the royalties from a Federal onshore or OCS lease. For example, this includes States that receive revenues from onshore leasing under the Mineral Leasing Act, 30 U.S.C. 191, or from the OCS under 43 U.S.C. 1337(g). This definition is the same as that under RSFA, 30 U.S.C. 1701(31).

Section 204.3 What Alternatives Are Available for Marginal Properties?

This section would explain what alternatives are available to a lessee or its designee if they have production from a marginal property.

Paragraph (a) would explain the prepayment of royalty alternative. For this alternative, MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term. Although MMS is not including the RSFA section 7(b) prepayment of royalty requirements in this proposed rulemaking, it will do so at a later date under subpart B. However, the general requirements in subpart A would apply to the prepayment of royalty alternative under subpart B when that subpart is published.

Paragraph (b) would explain the accounting and auditing relief alternative. For this alternative, MMS and the State may allow various accounting and auditing relief options intended to encourage you to continue to produce and develop your marginal property. The requirements for taking accounting and auditing relief would be under subpart C.

Section 204.4 What Is a Marginal Property Under This Part?

This section would explain what properties qualify as "marginal" under this part. As explained further below, property does not just mean a lease for purposes of this rule.

Only properties that qualify under this section could obtain royalty prepayment or accounting and auditing relief under this part. However, you must meet additional qualifications under §§ 204.203, 204.204, and 204.205 to obtain some of the accounting and auditing relief options.

Paragraph (a) would explain what kinds of properties may qualify as "marginal" under this part. To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, your production must be from, or attributable to, a Federal onshore or OCS lease. Indian leases would not be eligible for the marginal property alternatives under this part even though production from a qualifying marginal property may be attributable to an Indian lease.

Under paragraph (a)(1), if your lease is not in an Agreement, then your entire lease is a property that must qualify as a marginal property under paragraph (b) of this section. In other words, these are "stand alone" Federal leases and the entire lease would have to qualify under this part.

Under paragraph (a)(2), if all or a portion of your lease is in one Agreement, then the entire Agreement must qualify as a marginal property under paragraph (b) of this section. For example, even if other leases in the participating area are not Federal leases, you must use the production attributable to those leases, as well as your lease, in order to make the calculation under paragraphs (b) and (c) of this section to determine whether the Agreement meets the production level limits under paragraph (b) of this section. If your Agreement does qualify, then only the production attributable to your lease may be separately eligible for relief under this part. However, any production from your lease that is not in the Agreement also may be eligible for relief under paragraph (a)(4) of this section.

Under paragraph (a)(3), if all or a portion of your lease is in more than one Agreement, then each Agreement must qualify separately as a marginal property under paragraph (b) of this section. In addition, for each Agreement that qualifies, only the production attributable to your lease would be eligible for relief under this part. For example, if 50 percent of your lease is included in Agreement "A", and 50 percent of your lease is included in Agreement "B", then Agreement "A" must qualify as marginal in order for the 50 percent of your lease included in Agreement "A" to be eligible for relief. Likewise, in order for the 50 percent of your lease included in Agreement "B" to be eligible for relief, Agreement "B" must qualify as marginal.

Under paragraph (a)(4), if a portion of your lease is in an Agreement and you have production from the portion of the lease that is not in the Agreement, then the portion of the lease that is not in the Agreement must qualify separately as a marginal property under paragraph (b) of this section. For example, if 50 percent of your lease is included in an Agreement and 50 percent is not, if the 50 percent that is not included in the Agreement qualifies as marginal under paragraph (b) of this section, then that 50 percent may be eligible for relief under this part. This would be true even if the 50 percent that is included in the Agreement does not qualify as marginal under this part.

Paragraph (b) would provide that to qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels

of oil equivalents per well per day calculated under paragraph (c) of this section.

As stated above, section 7 of RSFA provides for two alternatives without specifically defining a marginal property under that section. However, subsection 6(d)(4) of RSFA defines a marginal property as a lease which produces on average the combined equivalent of less than 15 barrels of oil per well per day or 90 thousand cubic feet of gas per well per day.

Several participants at the October 31, 1996, workshop for marginal properties stated that MMS should use State incentive program production levels to qualify as a marginal property. However, upon review of the various State incentive programs and the unique nature of each, MMS determined that using State incentive program production levels would require MMS to develop different production levels for each State with incentive programs, for States without incentive programs, and for offshore production if it adopted this approach. Therefore, MMS determined that using State incentive program production levels would be too onerous for use under this part.

At the January 23, 1997, workshop for marginal properties, several participants stated that MMS should consider using the RSFA production levels for marginal properties under section 6(d)(4) to determine marginal properties under this part. Other participants stated that using RSFA section 6(d)(4) production levels would qualify too many properties as marginal, and result in an unmanageable workload for MMS and States. However, MMS considers using the production levels set forth in RSFA less onerous than varying production levels based on where a lease is located as would result if MMS used State incentive program production for qualification purposes. Moreover, the States and industry participated in the legislative process which culminated in the production levels under section 6(d)(4) of RSFA.

Thus, in order to be consistent with other sections of RSFA, as well as to apply a consistent standard nationwide, MMS proposes to use the production levels in the definition of "marginal properties" in section 6(d)(4), together with other requirements, as a basis for what amount of marginal production qualifies a property as "marginal" under this part. MMS shares the concerns expressed in the workshop about the administrative burden for it and States under these proposed production levels and invites specific comments concerning those levels. Because RSFA section 7(a) requires that MMS and the State "jointly determine, on a case-by-case basis, the amount of what marginal production from a lease or leases or well or wells, or parts thereof" may obtain royalty prepayment or accounting and auditing relief, MMS specifically requests that States comment on these production levels. Any State that does not concur with the production levels MMS ultimately adopts under a final rule may decline to offer alternatives under § 204.214 of this part. MMS also invites comments on whether separate levels should be established for offshore leases.

Paragraph (c) would explain how to calculate the production levels for your property to determine whether it qualifies as "marginal" under paragraph (b). This calculation would also be based, in part, on the definition of marginal properties under RSFA section (6)(d)(4). To determine the average daily well production for a property, you would divide the sum of the barrels of oil equivalents for all producing wells on the property by the sum of the number of days each of those wells actually produced during the base period. If the result obtained is less than 15 barrels of oil equivalents per well per day, your property would qualify as a marginal property under this part. Paragraph (c) also would provide that if the property is an Agreement, this calculation would have to include all wells in the Agreement even if they are not on a Federal onshore or OCS lease.

Only producing oil and/or gas wells that contribute to the sum of barrels of oil equivalents are used in the calculation. Injection and water wells are not used in the calculation. For example, assume the marginal property has 5 wells. Well #1 produced 250 days in the base period, Well #2 produced 300 days, Well #3 produced 275 days, Well #4 produced 325 days, and Well #5 produced 350 days in the base period. This equals 1,500 production days. Assume also that 15,000 barrels of oil equivalents were produced from these five wells in the base period. This equals 10 barrels per well per day (15,000 barrels/1,500 days), and the property would qualify as a marginal property.

Section 204.5 What Statutory Requirements Must I Meet To Obtain Royalty Prepayment or Accounting and Auditing Relief?

Paragraph (a) would state the three statutory conditions under RSFA that MMS and the State concerned will consider prior to approving any marginal property alternative under this part. Thus, the rule would provide that MMS and the State may allow royalty prepayment or accounting and auditing relief for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief is in the best interests of the Federal Government and the State to: (1) promote production; (2) reduce administrative costs; and (3) increase net receipts to the United States and the State. 30 U.S.C. 1726(a).

Paragraph (b) would state that MMS and the State may discontinue any royalty prepayment or accounting and auditing relief options granted for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief option is no longer in the best interests of the Federal Government and the State to accomplish the objectives identified in paragraph (a).

Section 204.6 May I Appeal if MMS Denies My Request for Prepayment or Accounting and Auditing Relief?

This section would explain how you may appeal if MMS denies your request for prepayment or accounting and auditing relief. If MMS denies your request for prepayment or accounting and auditing relief under this part because the State denied your request, you could not appeal MMS's decision under 30 CFR part 290 or 43 CFR part 4, subpart J. This is because RSFA section 7(a) provides the State with unconditional veto authority over such requests. Accordingly, MMS believes that it does not have authority, and Congress did not intend for it, to change a State's decision through the administrative appeal process. Thus, you only could challenge a State's denial of your request directly in Federal district court. However, under paragraph (b), you could appeal any other MMS action on your request under 30 CFR part 290 or 43 CFR part 4, subpart J.

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

Section 204.200 What Is the Purpose of This Subpart?

This subpart would explain how a lessee or its designee may obtain the accounting and auditing relief required under section 117(c) of FOGRMA for production from a marginal property.

Section 204.201 Who May Obtain Accounting and Auditing Relief Under This Subpart?

Paragraph (a) would explain that you may obtain accounting and auditing relief under this subpart if you are a

lessee or its designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4 of this part.

For some relief options, greater forms of relief would be available for marginal properties that produce less than other marginal properties. Therefore, paragraph (b) would explain that you also must meet any additional requirements for specific types of relief under this subpart. In addition, all options would be subject to a State disallowing that relief option under § 204.214 of this subpart.

Under paragraph (c), you could only request and obtain accounting and auditing relief for your individual fractional interest in a marginal property. However, the rule would not require all lessees or designees in a marginal property to seek relief. It also would not require all lessees or designees in a marginal property to seek the same form of relief.

MMS believes that this approach implements Congress' intent under RSFA section 7(c) of providing accounting and auditing relief for marginal properties to encourage lessees or their designees to produce and develop properties. Moreover, requiring all interest owners of a marginal property to unanimously seek one agreed-upon form of relief would be an unnecessary burden.

Section 204.202 What Accounting and Auditing Relief Options Are Available to Me?

This section would show you the six accounting and auditing relief options you may take for properties that qualify as marginal under § 204.4 and where in this subpart you can obtain more information.

Section 204.203 What Is the Cumulative Royalty Reports and Payments Relief Option?

This section would explain the "cumulative royalty reports and payments relief option." Under this relief option, you would be allowed to submit royalty reports and payments less often than monthly. This relief option would reduce administrative costs by decreasing the total number of reports and payments you must submit and MMS must process.

Paragraph (a) would explain how to determine whether you may submit royalty reports and payments less often than monthly based on the production levels from your lease during the base period. Less production would allow you to report and pay your royalties to MMS less often. Thus, for a qualifying marginal property, you could submit your royalty reports and payments as follows:

(1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or allocable to each lease during the base period;

(2) You would total the volumes calculated under subparagraph (a)(1) of this section; and

(3) You would determine your level of relief according to the following table:

If the total volume calculated under paragraph (a)(2) of this section is	Then you may report and pay your royalties
(i) 125 or fewer barrels of oil equivalents	Annually, Semi-annually, or Quarterly.
(ii) More than 125, but not more than 250 barrels of oil equivalents	Semi-annually or Quarterly.
(iii) More than 250, but not more than 500 barrels of oil equivalents	Quarterly.

For example, assume the qualifying marginal property was an Agreement consisting of three leases each with combined equivalent production of 1,000 barrels of oil during the base period, and your lease "A" was Federal with a ⅛ royalty rate, and lease "B" was Federal with a ⅛ royalty rate, and lease "C" was a fee lease. Under paragraph (a)(1), if you wanted relief under this option, you would multiply 1,000 times ⅛ for leases "A" and "B", which equals 125 barrels each. Under paragraph (a)(2), you would add 125 plus 125 for a total of 250 barrels of oil. The 250 barrels is the number you would then use to determine what level of relief you could take under paragraph (a)(3). In this example, you would be eligible to report and pay your royalties semi-annually or quarterly.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Paragraph (c) would explain that you must submit your report and payment by the end of the month following the end of the applicable quarterly, semi-annual, or annual reporting period. This paragraph would also explain that you must report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS–2014, for the reporting period, the same as you would on a monthly basis. In addition, you would be required to use the last sales month of the reporting period to report the royalty information for that entire period.

Paragraph (d) would explain that if you do not pay your royalty by the date due in paragraph (c)(1) of this section, you would owe late payment interest determined under part 218 of this title from the date your payment was due under this section until the date MMS receives it. For example, if you notify MMS under § 204.210(a) that you qualify to report and pay royalties quarterly, and MMS receives your payment on May 15 for the first calendar quarter, instead of April 30, as required under paragraph (c) of this section, you will owe late payment interest from May 1 through May 15 on that late payment.

Under paragraph (e), if you qualify for relief under paragraph (a) of this section, but you take more relief than you are entitled to under that paragraph, you would owe late payment interest determined under part 218 of this title from the date your payment was due under this section until the date MMS receives it. For example, if you qualify to report and pay royalties quarterly, and, instead you report and pay semi-annually, you would owe late payment interest from the date your quarterly payment was due until MMS receives your semi-annual payment. MMS also will require you to amend your Form MMS–2014 to reflect the proper reporting frequency. MMS will then assess you for any resulting late payment interest.

Paragraph (f) would provide that you must report allowances on the same quarterly, semi-annual, or annual basis as the royalties for your marginal property on Form MMS–2014. This is necessary for MMS to properly associate the allowances you are deducting on Form MMS–2014 with the royalties that you pay.

Paragraph (g) would explain when during the calendar year you must report and pay royalties. Thus, under this relief option:

(1) Quarterly reporting periods would begin on the first day of January, April, July, or October;

(2) Semi-annual reporting periods would begin on the first day of January or July;

(3) Annual reporting periods would begin on the first day of January.

Paragraph (h) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option. These guidelines are being developed.

Section 204.204 What is the Net Adjustment Reporting Relief Option?

This section would explain the "net adjustment reporting relief option." Under this relief option, you could adjust previously reported royalty lines to MMS as a one-line net entry on the Form MMS–2014, instead of the required two-line adjustment process. Under the two-line adjustment process, you must reverse the original report line and report a corrected line on Form MMS–2014. MMS proposes to allow this relief option based on the volume of production from the marginal property. This relief option would reduce administrative costs by decreasing the total number of lines you must report and MMS must process.

Paragraph (a) would explain how to determine whether your qualifying marginal property is eligible for relief under this option as follows:

(1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or attributable to each lease during the base period;

(2) You would total the volumes calculated under subparagraph (a)(1) of this section;

(3) If the total volume you calculated under paragraph (a)(2) is equal to or less than 2,500 barrels of oil equivalents, then your property would be eligible for relief under this option. Using the same example as that under § 204.203(a), where the total volume calculated for the qualifying marginal property was 250 barrels of oil equivalents, your property would be eligible for this relief option.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Under paragraph (c), you could not net adjustments for royalties due with adjustments for allowances on Form MMS–2014. Thus, you would have to report an adjustment to a previously reported royalty due line as a one-line net entry and report any corresponding adjustment to your previously reported allowance line as a separate one-line net entry. For example, if you originally reported $1,000 royalty due with an allowance of $100 and needed to adjust them to $1,200 and $120, respectively, you would report two separate adjustment lines—one line reporting additional royalty due of $200 and another line claiming an additional allowance of $20.

Paragraph (d) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

Section 204.205 What Is the Rolled-up Reporting Relief Option?

This section would explain the "rolled-up reporting relief option." Under this relief option, you could report all selling arrangements for a revenue source to MMS under a single selling arrangement line on Form MMS–2014. MMS proposes to allow this relief option based on the volume of production from the marginal property. This relief option would reduce administrative costs by decreasing the total number of lines you must report and MMS must process. For example, if you currently report royalties under 3 separate selling arrangement lines for a lease and revenue source, you could combine them into a single report line under any one of your existing selling arrangements.

Paragraph (a) would explain how to determine whether your qualifying marginal property is eligible for relief under this option as follows:

(1) First, you would multiply the current royalty rate for each Federal lease in the marginal property by the combined equivalent production of oil and gas from or attributable to each lease during the base period;

(2) You would total the volumes calculated under paragraph (a)(1) of this section;

(3) If the total volume you calculated under paragraph (a)(2) is equal to or less than 1,000 barrels of oil equivalents, then your property would be eligible for relief under this option. Using the same example as that under § 204.203(a), where the total volume calculated for the qualifying marginal property was 250 barrels of oil equivalents, your property would be eligible for this relief option.

Paragraph (b) would explain that you must notify MMS under § 204.210(a) before taking relief under this option. However, you would not be required to submit a processing fee under this option.

Paragraph (c) would refer you to MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

Section 204.206 What Is the Alternate Valuation Relief Option?

This section would explain the "alternate valuation relief option." Under this relief option, you could request to report and pay royalties using a valuation method other than that required under 30 CFR part 206. MMS anticipates that you would propose a simplified valuation method because it would reduce administrative costs.

Paragraph (a) would state that any alternate valuation method that you propose:

(1) Must be readily determinable and certain; and

(2) Must approximate royalties payable under the valuation regulations in 30 CFR part 206.

An example that MMS and the State might find acceptable is when the marginal property is located in an area with an active spot market that has reliable, published index prices. The use of the index price along with a reasonably based location differential could be acceptable based on the particular circumstances of the property if MMS's economic analysis showed that royalties paid using the location-adjusted index price would remain relatively unchanged from those paid under 30 CFR part 206.

Paragraph (b) would explain that you must obtain approval from MMS and the State under § 204.210(b) before taking alternate valuation relief. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you may not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (c) would explain that if MMS and the State approve your request, the valuation method you requested would be the value for royalty purposes for production from or attributable to your lease interest in the marginal property. Thus, you would no longer value your production under 30 CFR part 206 and any underpayment would be determined based on the approved alternative valuation method.

Paragraph (d) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.207 What Is the Audit Relief Option?

This section would explain the "audit relief option." Under this relief option, you could request a reduced royalty audit burden. However, MMS would not consider any request that eliminates

MMS's or the State's right to audit. The reduced audit burden would reduce the administrative costs associated with audits.

(a) Audit relief may include:

(1) Audits of limited scope. For example, MMS and the State may accept, under certain conditions, that an audit of a particular marginal property would not occur more frequently than once in every 6-year period unless previous audits have resulted in royalty underpayments;

(2) Coordinated royalty and severance tax audits. For example, MMS and the State may accept, under certain conditions, that the State will perform audits of royalty records for a marginal property at the same time as the State's audit of severance taxes;

(3) Reliance by MMS on independent certified audits. For example, the MMS and the State, under certain conditions may accept an affirmative statement in the audit report of the company's independent certified auditors that they have reviewed the company's royalty accounting practices with respect to marginal properties and found them to be in compliance with Federal lease terms, laws, and regulations. MMS may retain the right to review the support for such certification;

(4) Any other audit relief which may be appropriate. MMS and the State will determine on a case by case basis whether the audit relief you request is appropriate.

Paragraph (b) would explain that you must obtain prior approval from MMS and the State under § 204.210(b) before receiving audit relief. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you could not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (c) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.208 What Is the Other Relief Option?

This section would explain the "other relief option." Under this relief option, you could request any type of accounting and auditing relief that is appropriate for your marginal property, provided it is not specifically prohibited under § 204.209 of this subpart. MMS proposes this "other relief option" because it recognizes that no one kind of relief is appropriate for every marginal property. MMS and the State would determine on a case by case basis whether the other relief option you request is appropriate.

Paragraph (a) would explain that you must obtain prior approval from MMS and the State under § 204.210(b) before taking relief under this option. Thus, unlike relief options provided in §§ 204.203, 204.204, and 204.205 above, you could not merely notify MMS that you are taking this relief option. This paragraph would also explain that you must submit a processing fee under this option as provided for in § 204.210(b)(3).

Paragraph (b) would refer you to MMS's Marginal Property Guidelines for reporting instructions for this relief option.

Section 204.209 What Accounting and Auditing Relief Will MMS Not Allow?

This section would explain that MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit. MMS developed an audit strategy to assure compliance with laws, regulations, and lease terms. To administer this strategy, MMS and the States must audit a sample of leases consisting of a wide range of conditions. Therefore, MMS proposes to deny any relief requested under this subpart that prevents it or a State from conducting an audit of a marginal property. However, as provided in § 204.207, we would consider applications that provide for reduced or streamlined audit coverage under appropriate circumstances;

(b) Permanently relieves you from making future royalty reports or payments. MMS believes that RSFA's requirement that any relief option must increase net receipts to the United States and the States prohibits this as a relief option. Applicants who wish to alter their monthly royalty payments should explore the cumulative royalty report and payment relief option under § 204.203 or the prepayment of royalty alternative under subpart B of this part;

(c) Provides for less frequent royalty reports and payments than annually. Annual royalty information is necessary to monitor the continuing eligibility of marginal properties;

(d) Provides for you to submit royalty reports and payments at separate times. MMS must disburse the royalty revenues it receives on a timely basis. Therefore, the royalty payment and the royalty report must be submitted together under any relief proposal;

(e) Impairs MMS's ability to properly or efficiently account for or disburse royalties. MMS must have sufficient royalty information to effect disbursement to the States and other revenue recipients. Thus, it would reject any proposal that lacks that information;

(f) Requests relief for a lease under which the Federal Government takes its royalties in-kind. Because the royalty obligation is satisfied by the Federal Government taking its royalty in-kind, accounting or auditing relief to the lessee or its designee is not necessary;

(g) Alters production reporting requirements. Although MMS proposes to allow fractional interest owners of qualifying marginal properties to seek individual relief under this subpart, we believe production information must be submitted on a monthly basis for the entire marginal property. This is necessary so that MMS and other agencies can continue to monitor production from the property;

(h) Alters lease operation or safety requirements. MMS does not believe RSFA contemplated relief of this nature;

(i) Conflicts with rent, minimum royalty, or lease requirements. The lessee or its designee must satisfy the rent, minimum royalty, and other lease obligations regardless of any marginal property relief. Therefore, any relief option which would reduce or eliminate the lease obligations will not be allowed;

(j) Requests relief for a marginal property located in a State that has determined in advance that it will not allow such relief under § 204.214 of this subpart.

Section 204.210 How Do I Obtain Accounting and Auditing Relief?

This section would explain how to notify MMS that you are taking, or request from MMS authorization to take, the relief options under this subpart.

Paragraph (a) would explain that to take accounting relief under §§ 204.203, 204.204, and 204.205, you must notify MMS in writing prior to the first day of the sales month for which you begin taking your relief. MMS believes that the notification required under paragraph (a) of this section allows MMS and the State to jointly determine whether to grant relief on a "case-by-case" basis, as required under RSFA section 7(a), for three reasons.

First, the rule itself would set forth which "cases" are eligible for relief under §§ 204.203, 204.204, and 204.205. Second, States have the opportunity to comment on the proposed eligibility requirements in this proposed rulemaking, and MMS will work with the States to develop the eligibility requirements in the final rule. Finally, States who disagree with the eligibility requirements may decide not to grant

any relief under § 204.214 of this subpart.

MMS requires notification prior to taking relief under paragraph (a) of this section in order to enter the information into MMS's accounting system. This will prevent MMS's automated systems from generating spurious exceptions on marginal properties for which relief is being taken.

MMS would like comments on whether the relief options under §§ 204.203, 204.204, and 204.205 should be automatic, *i.e.* not require prior approval based on production levels, as proposed in the notification requirement under paragraph (a) of this section.

Paragraph (a)(1) would list the information that must be supplied in the notification.

Paragraph (a)(2) would explain that you may file a single notification for multiple marginal properties if you are taking the same relief option with the same effective date for all the properties. As an example, assume that a lessee or its designee's marginal property "A" qualifies under the § 204.203 "cumulative royalty reports and payments option" for semi-annual reporting and payment, and its marginal property "B" qualifies under the § 204.203 "cumulative royalty reports and payments option" for annual reporting and payment as well as the "net adjustment reporting relief option" under § 204.204. The lessee or its designee could submit a single notice to MMS that it is taking the "cumulative royalty reports and payments option" for both properties "A" and "B" if the effective date for the relief were the same for both properties. However, the lessee or its designee would have to submit a separate notice to MMS that it is taking the "net adjustment reporting relief option" for property "B".

Paragraph (b) would explain that if you wish to obtain accounting or auditing relief under §§ 204.206, 204.207, and 204.208, you must file a written request for relief with MMS. Accordingly, you must obtain MMS's prior approval before taking relief under these sections. MMS believes that the requests required under § 204.210(b) allow MMS and the State to jointly determine whether to grant relief on a "case-by-case" basis, as required under RSFA, for four reasons.

First, MMS and the State, if applicable, would consider each request to determine whether you are eligible for the relief options under §§ 204.206, 204.207, and 204.208. Second, States have the opportunity to comment on the proposed request requirements in this proposed rulemaking, and MMS will work with the States to develop the request requirements in the final rule. Third, under the proposed rulemaking, MMS and the State, if applicable, would jointly determine whether a property is eligible for the relief options under §§ 204.206, 204.207, and 204.208. Finally, States who disagree with the request requirements or relief option(s) may decide not to grant any relief under § 204.214 of this subpart.

Paragraph (b)(1) would list the information that must be supplied in your request.

Under paragraph (b)(2) you could file a single request for multiple marginal properties if you are requesting the same relief for all properties. As an example, assume that a lessee or its designee's marginal property "A" qualifies for the "alternate valuation relief option" under § 204.206, and marginal property "B" qualifies for the "alternate valuation relief option" under § 204.206 as well as the "audit relief option" under § 204.207. The lessee or its designee could submit a single request to MMS asking to take the "alternate valuation relief option" for both properties "A" and "B". However, the lessee or its designee would have to submit a separate request to MMS to ask to take the "audit relief option" for property "B".

Paragraph (b)(3) would explain that you must remit a processing fee in the amount of $50 for requests for accounting or auditing relief under §§ 204.206, 204.207, and 204.208. MMS is recovering its costs under the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701 *et seq.* (IOAA), for Federal offshore leases, and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 (FLPMA), for Federal onshore leases. Thus, as part of this proposed rulemaking, we analyzed the proposed marginal property relief's cost recovery fees for reasonableness according to the factors in FLPMA Section 304(b). Although the IOAA does not contain the same "reasonableness factors" as FLPMA Section 304(b), the factors MMS considered under the IOAA to determine reasonable fees led it to conclude that the fees for offshore leases should be the same as that for onshore leases.

The "reasonableness factors" which FLPMA requires to be considered are: (a) actual costs (exclusive of management overhead); (b) the monetary value of the rights or privileges sought by the applicant; (c) the efficiency to the Government processing involved; (d) that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant; (e) the public service provided; and (f) other factors relevant to determining the reasonableness of the costs.

For marginal property relief taken or requested under § 204.210, the method used to evaluate the factors is twofold. First, actual costs are estimated and each of the remaining FLPMA reasonableness factors (b) through (f) is evaluated individually to decide whether the factor might reasonably lead to an adjustment in actual costs. If so, that factor is then weighed against the remaining factors to determine whether another factor might reasonably increase, decrease, or eliminate the contemplated reduction. On the basis of this twofold analysis, MMS determined what final fee is reasonable for the marginal property relief sought. MMS cannot recover an amount greater than its actual costs, so any final adjustment cannot result in a fee greater than actual costs.

For processing a notice that a lessee or its designee is taking marginal property relief under § 204.210(a), we concluded that we would not charge fees because it is exempted from cost recovery under the Department of the Interior Manual (DM). Under the Departmental Manual, agencies may exempt activities from cost recovery if "[t]he incremental cost of collecting the charges would be an unduly large part of the receipts from the activity." 346 DM 1.2 C (2). Based on our analysis, we estimated that our actual costs for processing these notices would be less than $5.00. However, the increased cost to MMS for billing and collecting a processing fee would be $8.00 (estimated by the Department of the Interior Director of Financial Management in 1991). Therefore, for processing a lessee's or its designee's notice to take marginal property relief under § 204.210(a), we concluded that this is an activity exempt from cost recovery under the Departmental Manual. 346 DM 1.2 C(2). Because we do not propose to recover costs to process notifications under § 204.210(a), the balance of the discussion on cost recovery will focus on processing fees for requests under § 204.210(b).

Factor (a)—Actual Costs. Actual costs means the financial measure of resources expended or used by MMS in processing a notice that a lessee or its designee is requesting to take marginal property relief under § 204.210(b), including, but not limited to, the costs of special studies, monitoring compliance with this part, termination of relief authorized under this part, or any other relevant action. Actual costs include both direct and indirect costs,

exclusive of management overhead. Management overhead costs means costs associated with the MMS directorate, which means the entire Washington office staff, except where a member of such staff is required to perform work on a specific case. Section 304(b) of FLPMA requires that we exclude management overhead from chargeable costs.

Direct costs include agency expenditures for labor, material, stores, and equipment usage connected with the performance of processing responsibilities. MMS's indirect costs include program support such as systems, appeals, enforcement, and rulemaking. Indirect costs are allocated to specific projects on a pro rata basis. MMS calculated its indirect cost rate of 18.5 percent by dividing the support costs described above by the total program costs. This method of calculating costs is a generally accepted practice in both the private and public sectors.

MMS's method of establishing actual costs involved measuring the cost of an individual transaction within a relief category. MMS concluded that measuring the cost of an individual transaction within a relief category is reasonable because the actual costs will not vary substantially from one individual transaction to another within the same relief category, making the average cost of an individual transaction a reliable measure. In this proposed rulemaking, MMS determined that the above characteristic is exhibited by all relief categories. Each of these is discussed below.

The costs to process a lessee or its designee's request to take the "alternative valuation relief option," the "audit relief option," and the "other relief option," under § 204.210(b), would include the cost to process the request. This consists of several phases. The first phase is the review and analysis of the proposed relief by MMS personnel and our preliminary approval, modification, or denial of the proposed relief. The second phase involves the coordination with the affected State. The third phase consists of communicating the decision to the lessee or its designee. MMS has determined that the average burden hour estimate to the Federal Government for these phases is 40 hours per request. This estimate is based on current MMS time requirements for completing similar tasks. Using an estimate of $50 per hour based on an average of MMS's personnel costs, we estimate the average direct cost burden for these requests is $2,000 ($50/hour x 40 hours). MMS's indirect costs for the requests is $370 per request (18.5 percent indirect cost rate x $2,000) resulting in total estimated actual costs of $2,370 per average request.

If a request is approved, additional phases are necessary. In the data entry phase, MMS personnel enter the approval information the lessee or its designee submits with its request into MMS's automated systems. MMS personnel then file the original request for future reference. In the monitoring phase, MMS would monitor the marginal property annually to ensure that it continues to qualify for the relief granted. MMS estimates that the time necessary to complete both of these phases is negligible. Therefore, we have not included any additional costs from these phases into our actual cost estimate.

Factor (b)—Monetary Value of the Rights and Privileges Sought. The monetary value of rights and privileges sought means the objective worth of the marginal property relief sought or taken, in financial terms, to the lessee or its designee. MMS rejected the idea of trying to calculate monetary value on a case-by-case basis as too time-consuming, wasteful of resources, and subject to endless disputes. Instead, MMS has attempted to calculate an actual figure to represent the monetary value of rights for transactions in this rulemaking. In addition, MMS took into account equitable considerations involving the costs to process relative to the monetary value of the relief sought.

MMS determined that the "alternative valuation relief option" and "audit relief option" would benefit lessees and their designees by decreasing the total number of hours they must devote to calculating royalty payments and responding to MMS audits. MMS estimated the maximum average monetary benefit of these relief options could be as high as $1,200 annually (2 hours per month savings x 12 months x $50/hour labor cost). However, MMS did not upwardly adjust its actual costs for this factor. As discussed under factor (f) below, if MMS increased its costs due to this factor, it would frustrate Congress' intent under RSFA to promote continued production. This is because lessees and their designees would not request relief if MMS's recovery costs are excessive.

Second, the lessee or its designee receives the value of continued production and the resultant continued income from the property. However, any MMS estimate of the average life of a marginal property and the average monetary benefit from continued production to the lessee or its designee would be purely speculative. In addition, this equitable factor would be offset by the increased royalties the public would receive as discussed under factor (e) below. Therefore, MMS did not upwardly adjust its actual costs based on this factor.

MMS has reviewed the request-based relief options proposed in this rulemaking and found them to have significantly higher processing costs/fees than the monetary value of the right being provided to the customer. MMS has determined that consideration of this factor should also include an examination of equitable considerations related to monetary value, rather than precise figures, which would be very difficult or impossible to calculate. A major equitable consideration is whether the level of cost reimbursement could, as a result of the expense required to process the fee itself for example, burden the applicant to such an extent that the proposed relief would actually grant no relief at all. Relief with a small value to the applicant, but which triggers higher processing costs, would be an example of an instance where the fee might reasonably be set at a figure less than the actual cost of processing due to this factor.

Factor (c)—Efficiency to the Government Processing Involved. Efficiency to the Government processing means the ability of the United States to process a request to take marginal property relief under § 204.210(b) with a minimum of waste, expense, and effort. Implicit in this factor is the establishment of a cost recovery process that does not cost more to operate than MMS would collect and does not unduly increase the costs to be recovered. As noted in the above section on actual costs, MMS has determined that for the relief options proposed in this rulemaking, it would be inefficient to determine actual cost data on a case-by-case basis. Estimates based on MMS experience indicate that the cost of maintaining actual cost data on specific cases is unreasonably high where the amount potentially collectible is relatively small. This is principally because MMS's automated accounting system would have to be extensively reprogrammed to add a relatively few items of information. MMS has thus used cost estimates derived from collected data.

Because RSFA requires that any relief granted be in the best interests of the United States and the State concerned, MMS must perform sufficient review of the unique circumstances involving each individual marginal property for which relief is being requested. MMS believes the 40-hour actual cost estimate from factor (a) above anticipates an

efficient process that provides for the necessary technical review and State coordination functions. The procedures that MMS will use in processing the data would be based on standardized steps for similar MMS transactions in order to eliminate duplication and extraneous procedures. Therefore, MMS believes this would be the most efficient processing method. Accordingly, because this is an efficient processing method, MMS has made no adjustment to actual costs as a result of this factor.

Factor (d)—Cost Incurred for the Benefit of the General Public Interest. The cost incurred for the benefit of the general public interest (public benefit) means funds the United States expends in connection with the processing of a request to take marginal property relief under § 204.210(b), for studies and/or data collection determined to have value or utility to the United States or the general public separate and apart from the document processing. It is important to note that this definition addresses funds expended in connection with a request. There is another level of public benefit that includes studies which MMS is required, by statute or regulation, to perform regardless of whether a request is received. The costs of such studies are excluded from any cost recovery calculations from the outset. Therefore, no additional reduction from costs recovered is necessary in relation to these studies.

MMS analysts concluded that the processing of requests for relief included in this proposed rulemaking did not as a rule produce studies or data collection that might benefit the public to any appreciable degree. Therefore, any possible benefits of such studies to the public are balanced by their possible benefits to the applicant. Accordingly, MMS made no adjustment to the fee recovered based on this factor.

Factor (e)—Public Service Provided. Public service provided means tangible improvements or other direct benefits, such as increased royalty and prolonged production, and reduced administrative costs, with significant public value that are expected in connection with the granting of marginal property relief. Data collection that MMS needs to monitor marginal property relief granted or taken does not constitute a public service. The definition specifically notes that negative factors, such as an adverse impact on royalty or MMS's audit ability, may preclude considering an improvement as a public service and that data collection MMS needs to monitor a relief option does not constitute a public service. This definition distinguishes the factor of "public service provided" (a benefit resulting from activities associated with the underlying relief) from the factor of "costs incurred for the benefit of the general public interest" (which relates to benefits of the document processing itself). MMS has determined that the relief options under this rule provide several public services.

First, for the "alternative valuation relief option" and "audit relief option," MMS receives the benefit of reducing its costs by decreasing the total number of hours it must devote to auditing. MMS anticipates approving simpler valuation and audit methods under this rule. Therefore, MMS has determined that the Government would benefit under this factor to some extent.

Most audits of marginal properties performed by MMS or State auditors are conducted in conjunction with audits of larger producing leases that the lessee or designee reports and pays royalties on. MMS and State auditors do not spend significant resources on conducting audits of the marginal properties, instead concentrating the audit effort on the larger leases. Therefore, MMS has determined that the audit savings would be relatively minor along with the resulting public benefit. Because the following reasonableness factor already reduces the fee charged well below MMS's actual costs, MMS has not further reduced actual costs as a result of these minor audit savings.

Second, it is possible that the granting of marginal property relief may extend the life of a lease, and thereby extend the United States' receipt of royalties from those properties. As discussed below, that was one of Congress' goals when enacting RSFA. However, any increased receipts are purely speculative. Moreover, any such continued royalty payments from such a property would most likely be nominal, and thus outweighed by the costs of processing and auditing such payments. Therefore, MMS concluded that the benefit to the Government would be too remote and speculative to warrant any reduction in the fee charged.

Factor (f)—Other Factors. The final reasonableness factor is other factors relevant to determining the reasonableness of the costs. MMS examined the relief options to determine whether other factors warranted a reduction in the proposed fee.

MMS's primary consideration under this factor was RSFA's purpose with respect to marginal properties. Congress enacted RSFA to "promote production," RSFA section 7(a), by "encourag[ing] lessees to continue to produce and develop marginal properties." S. Rep. 260, 104th Cong., 2d Sess. 20 (1996); H.R. 667, 104th Cong., 2d Sess. 20 (1996). Congress stated that "certain regulatory * * * obligations should be waived if it can be demonstrated such a waiver could aid in maintaining production that might otherwise be abandoned." H.R. 667, 104th Cong., 2d Sess. 20 (1996). However, RSFA also mandated that any relief should "reduce administrative costs, and increase net receipts to the United States and the States." RSFA section 7(a). Congress stated that granting relief for marginal properties should "result in additional receipts from oil and gas production that would otherwise be abandoned, and would * * * increase oil and gas production on Federal lands by creating economic efficiencies to make Federal leases more competitive with private leases." *Id.* at 20–21. Thus, as part of its FLPMA reasonableness analysis, MMS was required to consider whether the benefit from the increase in royalties to be gained from continued production from marginal properties and the decreased administrative burden to MMS from granting such relief merited a reduction in fee charges.

The relief options proposed in this rulemaking were therefore reviewed by MMS personnel with expertise and program management responsibilities in the particular area of the transaction, who weighed the proposed processing fee against their knowledge of the value of similar transactions. In the case of the relief options proposed in this rulemaking, the MMS analysts concluded that the value of the rights was clearly so far below the expected processing cost that a fee set at actual costs would preclude lessees or their designees from seeking those relief options. In fact, at MMS's marginal property workshops, industry representatives indicated that significant processing fees would likely result in requests for relief not being submitted. Representatives of independent oil and gas producers stated that processing fees would likely discriminate against the small producers because larger oil and gas producers often sell properties that approach marginal status to the smaller producers. Thus, setting a fee at actual costs would frustrate Congress' stated purpose under RSFA to promote continued production and increase administrative efficiency because lessees and their designees would decline to request such relief. Accordingly, MMS placed the greatest weight on this factor when considering the reasonableness of charging actual costs. As a result, MMS has determined

that a processing cost of $50 would meet the reasonableness factors of FLPMA for onshore leases and further Congressional intent to provide marginal property relief for requests under §§ 204.206, 204.207, and 204.208.

MMS invites specific comments concerning the proposed processing fees. MMS further requests input concerning the value to marginal property lessees and designees of the relief options under §§ 204.206, 204.207, and 204.208 of this subpart.

Paragraph (b)(3) would require you to remit a processing fee in the amount of $50 for each request for marginal property relief. If you file a single request for multiple marginal properties as provided in paragraph (b)(2), your processing fee is $50 for the entire request. Thus, under the example in paragraph (b)(2) of this section, for the single request filed to request the "alternate valuation relief option" for both properties "A" and "B", you must remit a total of $50.

Paragraph (b)(3)(i) would explain that if you do not remit the processing fee with your request for relief, MMS will return your request for relief unprocessed. If MMS returns your request unprocessed it is not considered an appealable denial of your request.

Paragraph (b)(3)(ii) would explain that if you remit a partial processing fee, your request for relief will not be processed until you pay the processing fee in full. Thus, under the example in paragraph (b)(3) of this section, if you remit $30 with your request for both properties "A" and "B", rather than the $50 required under that section, MMS will not process your request until you remit the additional $20. This paragraph would also provide that MMS will notify you in writing that your processing fee is insufficient. You would have 30 days from your receipt of MMS's notice to remit the balance. If you did not remit the balance within the 30-day period, MMS would return your request for relief unprocessed. If MMS returned your request unprocessed, it would not be considered an appealable denial of your request.

Paragraph (b)(3)(iii) would provide that processing fees, including partial processing fees, are not refundable for any reason. Accordingly, under the example in paragraph (b)(3)(ii), if you did not remit the additional $20 within the 30-day period, MMS would not refund the $30 partial payment you remitted.

Paragraph (b)(3)(iv) would refer you to MMS's Marginal Property Guidelines for additional instructions on submitting processing fees.

Paragraph (c) would provide that you must submit notifications, requests, or processing fees required under this section to the address specified in MMS's Marginal Properties Guidelines.

Section 204.211 What Will MMS Do When It Receives My Request for Accounting and Auditing Relief?

The section would explain that when MMS receives your request for accounting and auditing relief under § 204.210(b), it will notify you as follows:

Paragraph (a) would provide that if your request for relief is complete, MMS and the State may either approve, deny, or modify your request. MMS would notify you of the decision in writing under § 204.215 of this subpart.

Paragraph (b) would provide that if your request for relief is not complete, MMS would notify you in writing that your request is incomplete and identify any missing information. You would have to submit the missing information within 30 days of your receipt of MMS's notice that your request is incomplete.

Under paragraph (1), if you submit the missing information within 30 days of MMS's notification, MMS and the State could either approve, deny, or modify your request for relief under § 204.213 of this subpart.

Under paragraph (2), if you do not submit the missing information within 30 days, MMS would return your request for relief as incomplete. If MMS returns your request because it is incomplete, MMS would not return any processing fee you submitted with your request. You could submit a new request for relief under this subpart, including another processing fee, at any time following MMS return of your incomplete request. If MMS returns your request unprocessed, it would not be considered an appealable denial of your request.

Section 204.212 Who Will Decide Whether To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

Because RSFA requires MMS to determine whether to approve relief for marginal properties jointly with a State concerned, the section would explain who will decide your request for relief depending on whether there is a State concerned.

Paragraph (a) would provide that if there is not a State concerned for your marginal property, only MMS would decide whether to approve, deny, or modify your relief request.

Paragraph (b) would provide that if there is a State concerned for your marginal property, the highest State official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated would have to jointly determine with MMS whether to approve, deny, or modify your relief request. Also, the State would be required to provide MMS with the identity of the State official with this authority.

Paragraph (c) would provide that MMS will not approve your request to use an alternate valuation method until the Assistant Secretary for Land and Minerals Management approves the request.

Section 204.213 How Will MMS and the State Jointly Determine Whether To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

This section would explain the process MMS and the State will use to jointly decide whether to approve, deny, or modify your request for relief under § 204.210(b).

If a State determines in advance that it may grant one or more of your relief options under this subpart:

Paragraph (a) would provide that MMS will preliminarily determine whether to approve, deny, or modify your relief request and send its preliminary determination to the State. RSFA provides that the State must consent to accounting and auditing relief granted under section 117(c) of FOGRMA. Thus, RSFA requires the involvement of the State in the approval process for a marginal property relief alternative under this subpart. Accordingly, MMS proposes that after its preliminary approval, denial, or modification(s) of a relief request, it would forward the request and its preliminary determination to the appropriate State for concurrence;

Paragraph (b) would provide that after the State receives MMS's preliminary determination, it must notify MMS in writing within 30 days, or such longer period as MMS may allow, of its recommendation to approve, deny, or modify your relief request under § 204.210(b);

Under paragraph (1), if the State approved your relief request:

(i) MMS would approve your relief request if its preliminary determination was to approve your request;

(ii) MMS could either approve or deny your relief request if its preliminary determination was to deny your request. This would give MMS the flexibility to revise its preliminary determination to deny your request if, after consultation with the State, it agreed with the State that your request should be approved;

Under paragraph (2), if the State denied your relief request, then MMS would deny your relief request because RSFA provides that States must consent to any relief;

Under paragraph (3), if the State approved MMS's modification(s) to your relief request, MMS would modify your relief request;

Under paragraph (4), if the State denied MMS's modification(s) to your relief request, MMS would deny your relief request, because RSFA provides that States must consent to any relief;

Under paragraph (5), if the State modified your relief request, MMS would consider the modification(s) and would:

(i) Modify your request if it approves the State's modification(s); or

(ii) Deny your request if it disagrees with the State's modification(s);

Paragraph (c) would provide that if the State does not notify MMS of its decision within the time period allowed under paragraph (b) of this section, then the State would be deemed to have agreed with MMS's preliminary determination. Because MMS could allow States additional time to decide whether to approve, deny, or modify your request under paragraph (b) of this section, MMS believes that this provision is reasonable and necessary in order to assure timely processing of requests.

Section 204.214 May a State Decide in Advance That It Will Not Allow Certain Relief Options Under This Subpart?

Paragraph (a) would provide that a State may decide in advance that it will not allow any one or more of the relief options specified in this subpart. MMS proposes to allow States to deny some or all of the relief options under this subpart in advance because RSFA provides that States must consent to any relief requested. MMS is also allowing States to deny relief in advance because some State government organizations who participated in the meetings of October 31, 1996, and January 23, 1997, regarding this proposed rule expressed concerns about granting relief for marginal properties. Finally, MMS believes this is the most efficient means to prevent you from submitting requests, and MMS and the State from processing requests, which States will automatically deny.

If a State decides it wants to deny relief in advance, the highest State official having royalty collection authority would be required to:

(1) Notify MMS in writing no later than 90 days prior to the beginning of the applicable calendar year of the State's intent to disallow one or more of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will not allow.

Paragraph (b) would provide that a State that had previously decided to not allow some or all relief under this subpart, may later allow such relief. The State would have to:

(1) Notify MMS in writing no later than 90 days prior to the beginning of the applicable calendar year of its intent to allow one or more of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

Paragraph (c) would provide that MMS would publish the State's notice of intent to disallow or to allow certain relief options under this section in the **Federal Register** no later than 60 days prior to the beginning of the applicable calendar year. This would notify lessees or their designees whether or not they should submit the notices or requests required under § 204.210 for relief the State has denied in advance.

Section 204.215 How Will MMS Notify Me of the Decision To Approve, Deny, or Modify My Request for Accounting and Auditing Relief?

This section would explain that MMS will notify you in writing of the decision on your request for accounting and auditing relief under § 204.210(b).

Under paragraph (a), if MMS and the State approve your request for relief, MMS would notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

Under paragraph (b), if MMS and the State deny your relief request, MMS would state the reasons for denial in its notice informing you of its decision and explain your appeal rights under § 204.6.

Under paragraph (c), if MMS and the State modify your relief request, you would have 30 days from your receipt of MMS's modification notice to either accept or reject any modification(s) in writing. If you reject the modification(s) or fail to respond to MMS's notice, MMS and the State would deny your relief request. MMS would state the reasons for denial in its notice informing you of its decision and explain your appeal rights under § 204.6.

Section 204.216 What Other Guidance Is Available for Accounting and Auditing Relief Obtained Under This Subpart?

This section would explain that MMS will provide additional guidance for accounting and auditing relief in MMS's Marginal Property Guidelines. MMS anticipates using these Marginal Property Guidelines to provide detailed reporting instructions, such as unique adjustment reason codes and transaction codes, for marginal property reporting on Form MMS–2014. The Marginal Property Guidelines would also provide addresses for submitting notifications, requests, processing fees, reports, and payments for marginal properties.

Section 204.217 What If My Property Ceases To Qualify for Relief Obtained Under This Subpart?

This section would explain what happens if your property no longer qualifies for relief under this subpart because your production increased during the base period.

Paragraph (a) would provide that you must qualify for relief under this subpart for each calendar year based on production during the base period. The notice or request you provided to MMS under § 204.210 for the first calendar year that you qualified for relief will remain effective for successive calendar years if you continue to qualify. For example, if you qualified for relief beginning in calendar year 2000, and if you continue to qualify in calendar year 2001, based on the period from October 1, 1999, through September 30, 2000, you need not submit a new notice or request for calendar year 2001.

Paragraph (b) would provide that if you find you are no longer eligible for relief because your production increased in the most recent base period, your relief terminates as of December 31 of that calendar year. By December 31, you would have to notify MMS in writing at the address provided in MMS's Marginal Property Guidelines that your relief has terminated. For example, if you qualified for relief beginning in calendar year 2000, but no longer continue to qualify in calendar year 2001 because your production increased during the base period, you must notify MMS by December 31, 2000, that your relief has terminated.

Paragraph (c) would provide that MMS may retroactively rescind your relief, if MMS determines that your lease was not eligible for the relief you obtained under this subpart because:

(1) You did not submit a notice or request for relief under § 204.210;

(2) You submitted erroneous information in the notice or request for

relief you provided to MMS under § 204.210 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under paragraph (b) of this section.

Paragraph (d) would provide that you may owe additional royalties and will owe late payment interest determined under part 218 of this title from the date your payment was due until the date MMS receives it.

Section 204.218 May I Obtain Accounting and Auditing Relief for a Marginal Property That Benefits From Other Federal or State Incentive Programs?

This section would provide that you may obtain accounting and auditing relief for your marginal property under this subpart even if the property benefits from other Federal or State production incentive programs. There is no evidence in RSFA or the legislative history that Congress intended for the marginal property relief provisions of FOGRMA section 117(c) to subrogate other relief programs.

III. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this proposed rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule implements the alternatives for marginal properties as required under sections 117(a) and 117(c) of the Federal Oil and Gas Royalty Management Act of 1982, as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

This proposed rule provides significant potential savings to all Federal oil and gas lessees and designees, regardless of size, by providing optional accounting and auditing relief. If a small entity does not wish to avail itself of the optional relief, it will incur no expense or burden under the proposed rule. If a small entity does seek to avail itself of accounting or auditing relief provided for in the proposed rule, it will incur nominal expenses. The benefit that would be obtained by the small entity would outweigh these nominal expenses. The analysis of both savings and expenses is provided in the Paperwork Reduction Act section below.

Small entities are encouraged to comment on this proposed rule.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rule will not impose a cost of $100 million or more in any given year on local, Tribal, or State governments, or the private sector. MMS has determined that first year impacts to all States under this proposed rule would be $52,600 with subsequent year impacts of $2,800 per year. MMS anticipates that these impacts will be at least partially offset by administrative savings and/or increased revenues realized by the relief granted under this proposed rule.

Executive Order 12630

The Department certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights."

Executive Order 12988

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this proposed rule is not a significant rule under this Executive Order 12866. The Department's analysis indicates this proposed regulation will result in a net benefit for industry, the Federal government, and the State and local royalty recipients through reduced administrative burden and enhanced revenues.

Paperwork Reduction Act

This proposed rule contains new information collection requirements and revises information collection requirements that are approved by the Office of Management and Budget (OMB) for Form MMS–2014 (OMB Control Number 1010–0022). Therefore, we have submitted information collection requests to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB Control Number 1010–NEW), Washington, D.C. 20503. Send copies of your comments to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado, 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; e-Mail address is RMP.comments@mms.gov. We will consider all comments received during the comment period for this notice of proposed rulemaking.

OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

RSFA requires that MMS provide accounting and auditing relief for marginal properties on a case-by-case basis when in the best interests of the Federal Government and the State concerned.

We require that a lessee or designee submit either a notification or a request to obtain marginal property relief. This will allow us to determine what relief is being taken or is being sought.

Notifications or requests are only required of lessees or designees who wish to obtain accounting or auditing relief under RSFA. Therefore, your submission is strictly voluntary. RSFA provides that both MMS and the State concerned must consent to the relief before it can be taken.

Industry applicants, the States concerned, and the Federal Government will have information collection costs. An applicant must submit its company name, address, phone number, contact name, MMS-assigned Payor Code Number, Accounting Identification Number for the marginal property, and a detailed description of the specific accounting or auditing relief sought. In addition, depending on the relief sought, the lessee or designee must provide the single selling arrangement it will report royalties under or the new reporting frequency. The information is readily available to the lessee or designee taking the specific relief option being sought.

We anticipate that applicants may file as many as 10,500 notifications under § 204.210(a) and 143 requests under § 204.210(b) in the first year of implementation. We estimate that each request on average may contain about

five qualifying marginal properties. Because the relief for a marginal property is for the life of the property, as long as the property remains marginal, a lessee or designee need only file an application one time. Thereafter, we expect approximately 1,050 notifications and 14 requests filed each year. Each notification is expected to take approximately one-half hour to complete, and each request is expected to take 4 hours to complete.

We determined that the burden hour estimate to industry in the first year for preparing and filing the marginal property applications is 5,822 burden hours (10,500 notifications × ½ hour per notification) + (143 requests × 4 hours per request). Using an estimate of $50 per hour for industry cost, we estimate the cost burden is $291,100 (5,822 burden hours × $50 per hour). This burden is offset by 514,000 fewer royalty lines of information per year that are no longer required. We project that the total hour burden reduction for manual and electronic reporting is 25,700 hours, resulting in an estimated dollar savings to industry of $1,285,000 (25,700 hours × $50 per hour). In subsequent years, the annual burden hour estimate is 581 burden hours ((1,050 notifications × ½ hour per notification) + (14 requests × 4 hours per request), and the annual cost burden estimate is $29,050 (581 burden hours × $50 per hour). This annual cost burden is offset by $1,285,000. This is the dollar amount in cost savings to industry associated with a reduction of 514,000 fewer royalty lines of data that are no longer required.

In addition, lessees and designees must submit a processing fee of $50 per request for marginal property relief. This fee is required under the Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, and the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701. The fee is not required for notifications because the cost of collection of the fee is a significant portion of the total costs of processing. Therefore, the additional cost burden to industry is $7,150 ($50 fee × 143 requests) in the first year and $700 ($50 fee × 14 requests) for subsequent years.

We determined that the burden hour estimate to the Federal Government in the first year, for processing, input, review, approval, and handling is 5,720 burden hours (143 requests × 40 hours per request). Using an estimate of $50 per hour for direct labor cost, we estimate the cost burden is $286,000 (5,720 burden hours × $50 per hour). This burden is partially offset by $7,150 ($50 fee × 143 requests) in processing fee collections. In addition, we estimate that annually 514,000 fewer lines of royalty information will be processed for an administrative savings of $303,260 (514,000 × $.59 per line). In subsequent years, the annual burden hour estimate is 560 burden hours (14 requests × 40 hours per request). The annual cost burden estimate is $28,000 (560 burden hours × $50 per hour). This burden is offset by $700 ($50 fee × 14 requests) in processing fees and $303,260 in administrative savings from processing fewer royalty lines.

The State concerned will also have information collection and processing costs. We estimate that the first year burden is 1,052 hours. RSFA requires State approval for all marginal property relief granted under RSFA. Therefore, State burden is unavoidable. First year burden hour estimates for review and development of a State-blanket acceptance policy for the three notification-based relief options under § 204.210 (a) is 40 hours per relief option × 3 relief options × 4 primary States = 480 hours. In addition, first year burden hour estimates for property-by-property review and determination for the three request-based relief options is 4 hours per individual property relief request × 143 first year requests = 572 hours. We anticipate that the State's review is significantly more limited than MMS's review of each request and that, in most cases, the State will rely on the review effort and recommendation by MMS. Therefore, the total estimate for first year State burden is 480 hours + 572 hours = 1,052 hours × $50 cost per hour = $52,600.

We estimate that the combined annual burden to all States is 56 hours after the first year. The burden to the States for the review and development of a State-blanket acceptance policy for the three notification-based relief options is a one-time effort accomplished during the first year. Subsequent year burden hours for property-by-property review and determination for the three request-based relief options is estimated at no more than 10 percent of the first year's request level. Relief approval for a property is granted for as long as the property qualifies as marginal. By nature, production from a marginal property will tend to decline over time. Therefore, most marginal properties will continue to qualify as marginal. We estimate an additional 10 percent of requests for subsequent years based on newly-qualifying marginal properties—properties which previously qualified but for which no relief had been sought and resubmitted requests which had been previously denied. Therefore, the subsequent years' burden to the States is estimated as 4 hours per individual property relief request × 14 annual requests × $50 per hour = $2,800.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, we are providing notice and consulting with members of the public and affected agencies to solicit comment to (a) evaluate whether this expanded collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this proposed rule, call 1–888–734–3247.

National Environmental Policy Act of 1969

We have determined that this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects in 30 CFR Part 204

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: January 6, 1999.

Sylvia V. Baca,

Assistant Secretary—Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to add part

204 to title 30 of the Code of Federal Regulations, as follows:

PART 204—ALTERNATIVES FOR MARGINAL PROPERTIES

Subpart A—General Provisions

Sec.
204.1 What is the purpose of this part?
204.2 Definitions.
204.3 What alternatives are available for marginal properties?
204.4 What is a marginal property under this part?
204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?
204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

204.200 What is the purpose of this subpart?
204.201 Who may obtain accounting and auditing relief under this subpart?
204.202 What accounting and auditing relief options are available to me?
204.203 What is the cumulative royalty reports and payments relief option?
204.204 What is the net adjustment reporting relief option?
204.205 What is the rolled-up reporting relief option?
204.206 What is the alternate valuation relief option?
204.207 What is the audit relief option?
204.208 What is the other relief option?
204.209 What accounting and auditing relief will MMS not allow?
204.210 How do I obtain accounting and auditing relief?
204.211 What will MMS do when it receives my request for accounting and auditing relief?
206.212 Who will decide whether to approve, deny, or modify my request for accounting and auditing relief?
204.213 How will MMS and the State jointly determine whether to approve, deny, or modify my request for accounting and auditing relief?
204.214 May a State decide in advance that it will not allow certain relief options under this subpart?
204.215 How will MMS notify me of the decision to approve, deny, or modify my request for accounting and auditing relief?
204.216 What other guidance is available for accounting and auditing relief obtained under this subpart?
204.217 What if my property ceases to qualify for relief obtained under this subpart?
204.218 May I obtain accounting and auditing relief for a marginal property that benefits from other Federal or State incentive programs?

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*, 1721 *et seq.*, 1726 *et seq.*; 31 U.S.C. 9701 *et seq.*; 43 U.S.C. 1701 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart A—General Provisions

§ 204.1 What is the purpose of this part?

This part explains how a lessee or its designee of a Federal onshore or Outer Continental Shelf (OCS) oil and gas lease may obtain prepayment or accounting and auditing relief for certain marginal properties.

§ 204.2 Definitions.

Agreement means a federally approved communitization agreement or unit participating area.

Barrels of oil equivalents means the combined equivalent production of oil and gas stated in barrels of oil. Each barrel of oil production is equal to one barrel of oil equivalents. Also, each six thousand cubic feet of gas production is equal to one barrel of oil equivalents.

Base period means the 12-month period from October 1 through September 30 immediately preceding the calendar year in which you take or request marginal property relief.

Combined equivalent production means the total of all oil and gas production for the marginal property, stated in barrels of oil equivalents.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Producing wells means only those producing oil or gas wells that contribute to the sum of barrels of oil equivalents used in the calculation under § 204.4(c). Producing wells do not include injection and water wells.

State concerned (State) means the State which receives a statutorily prescribed portion of the royalties from a Federal onshore or OCS lease.

§ 204.3 What alternatives are available for marginal properties?

If you have production from a marginal property you may:

(a) *Prepay royalty.* MMS and the State may allow you to make a lump-sum advance payment of royalties instead of monthly royalty payments for the remainder of the lease term.

(b) *Take accounting and auditing relief.* MMS and the State may allow various accounting and auditing relief options to encourage you to continue to produce and develop your marginal property. See subpart C for accounting and auditing relief requirements.

§ 204.4 What is a marginal property under this part?

To qualify as a marginal property eligible for royalty prepayment or accounting and auditing relief under this part, your property must meet the following requirements:

(a) Production must be from, or attributable to, a Federal onshore or OCS lease. Indian leases are not eligible for the marginal property alternatives under this part, even though production from a qualifying marginal property may be attributable to an Indian lease. You must also meet the criteria shown in the following table:

If your lease is . . .	Then . . .	And . . .
(1) Not in an Agreement	The entire lease must qualify as a marginal property under paragraph (b) of this section.	
(2) Entirely or partly in one Agreement	The entire Agreement must qualify as a marginal property under paragraph (b) of this section.	Agreement production allocable to your lease may be eligible for relief under this part. Any production from your lease that is not in the Agreement also separately may be eligible for relief under (a)(4) of this table.
(3) Entirely or partly in more than one Agreement.	Each Agreement must qualify separately as a marginal property under paragraph (b) of this section.	Only the qualifying Agreement's production allocable to your lease may be eligible for separate relief under this part.
(4) Partly in an Agreement and you have production from the part of the lease that is not in the Agreement.	The part of the lease that is not in the Agreement must qualify separately as a marginal property under paragraph (b) of this section.	

(b) To qualify as a marginal property for a calendar year, the combined equivalent production of the property during the base period must equal an average daily well production of less than 15 barrels of oil equivalents per well per day calculated under paragraph (c) of this section.

(c) To determine the average daily well production on or attributable to your property, divide the sum of the barrels of oil equivalents for all producing wells on the property by the sum of the number of days each of those wells actually produced during the base period. If your property is in an Agreement, your calculation under this section must include all wells included in the Agreement, even if they are not on a Federal onshore or OCS lease.

§ 204.5 What statutory requirements must I meet to obtain royalty prepayment or accounting and auditing relief?

(a) MMS and the State may allow royalty prepayment or accounting and auditing relief for your marginal property under this part if MMS and the State jointly determine that the prepayment or relief is in the best interests of the Federal Government and the State to:

(1) Promote production;

(2) Reduce the administrative costs of MMS and the State; and

(3) Increase net receipts to the Federal Government and the State.

(b) MMS and the State may discontinue to allow any royalty prepayment or accounting and auditing relief options granted for your marginal property if MMS and the State jointly determine that the prepayment or relief option is no longer in the best interests of the Federal Government and the State under the standards in paragraph (a) of this section.

§ 204.6 May I appeal if MMS denies my request for prepayment or accounting and auditing relief?

(a) If MMS denies your request for prepayment or accounting and auditing relief under this part because the State denied your request, MMS's decision is the final decision for the Department of the Interior and is not subject to administrative appeal.

(b) You may appeal any other MMS action on your request under 30 CFR parts 243 or 290.

Subpart B—Prepayment of Royalty [Reserved]

Subpart C—Accounting and Auditing Relief

§ 204.200 What is the purpose of this subpart?

This subpart explains how a lessee or its designee may obtain accounting and auditing relief for production from a marginal property.

§ 204.201 Who may obtain accounting and auditing relief under this subpart?

You may obtain accounting and auditing relief under this subpart:

(a) If you are a lessee or its designee for a Federal lease with production from a property that qualifies as a marginal property under § 204.4;

(b) If you meet any additional requirements for specific types of relief under this subpart; and

(c) Only for your fractional interest in the marginal property.

§ 204.202 What accounting and auditing relief options are available to me?

The following table shows the six relief options that you may take for properties that qualify as marginal under § 202.4 and tells you where in this subpart you can obtain more information:

For . . .	See . . .
Cumulative royalty reports and payments relief	§ 204.203
Net adjustment reporting relief	204.204
Rolled-up reporting relief	204.205
Alternate valuation relief	204.206
Audit relief	204.207
Other relief	204.208

§ 204.203 What is the cumulative royalty reports and payments relief option?

Under this relief option, you may submit royalty reports and payments less frequently than monthly.

(a) To determine whether your marginal property is eligible for relief under this relief option, you must:

(1) Multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or allocable to that lease during the base period;

(2) Total the volumes calculated under paragraph (a)(1) of this section; and

(3) Report your royalties as shown in the following table:

If the total volume calculated for the marginal property under paragraph (a)(2) of this section is	Then you may report and pay royalties for your lease
(i) 125 or fewer barrels of oil equivalents	Annually, semi-annually, or quarterly.
(ii) More than 125, but not more than 250 barrels of oil equivalents	Semi-annually or quarterly.
(iii) More than 250, but not more than 500 barrels of oil equivalents	Quarterly.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) You must:

(1) Submit your royalty report and payment in accordance with § 218.51(g) of this chapter by the end of the month following the end of the applicable quarterly, semi-annual, or annual reporting period;

(2) Report one line of cumulative royalty information on the Report of Sales and Royalty Remittance, Form MMS–2014, for the reporting period, the same as if it were a monthly report; and

(3) Use the last sales month of the reporting period to report the royalty information for the entire period.

(d) If you do not pay your royalty by the date due in paragraph (c)(1) of this section, you will owe late payment interest determined under part 218 of this chapter from the date your payment was due under this section until the date MMS receives it.

(e) If you qualify for relief under paragraph (a) of this section, but you take more relief than you are entitled to under that paragraph, you will owe late payment interest determined under part 218 of this title from the date your payment was due under this section until the date MMS receives it. You must also amend your Form MMS–2014 to reflect the allowable reporting frequency.

(f) You must report allowances on Form MMS–2014 on the same quarterly, semi-annual, or annual basis as the royalties for your marginal property.

(g) Under this relief option:

(1) Quarterly reporting periods begin on the first day of January, April, July, or October;

(2) Semi-annual reporting periods begin on the first day of January or July; and

(3) Annual reporting periods begin on the first day of January.

(h) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.204 What is the net adjustment reporting relief option?

Under this relief option, you may adjust previously reported royalty lines to MMS as a one-line net entry on Form MMS–2014, instead of the two-line adjustment process.

(a) To determine your eligibility for relief under this option, you must:

(1) First, multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or attributable to that lease during the base period;

(2) Total the volumes that you calculated under paragraph (a)(1) of this section;

(3) If the total volume calculated under paragraph (a)(2) of this section is less than or equal to 2,500 barrels of oil equivalents, then your property is eligible for relief under this option.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) You may not net your adjustments for royalties due with adjustments for allowances on Form MMS–2014.

(1) You must report your adjustment to a previously reported royalty due line as a one-line net entry; and

(2) You must report any corresponding adjustment to your previously reported allowance line as a separate one-line net entry.

(d) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.205 What is the rolled-up reporting relief option?

Under this relief option, you may report all selling arrangements for a revenue source to MMS under a single selling arrangement on Form MMS–2014.

(a) To determine your eligibility for relief under this option, you must:

(1) First, multiply the current royalty rate for each Federal lease (your leases as well as others' leases) in the marginal property by the combined equivalent production of oil and gas from or attributable to that lease during the base period;

(2) Total the volumes that you calculated under paragraph (a)(1) of this section;

(3) If the total volume calculated under paragraph (a)(2) of this section is less than or equal to 1,000 barrels of oil equivalents, then your property is eligible for relief under this option.

(b) You must notify MMS under § 204.210(a) before taking relief under this option. You are not required to remit a processing fee for this option.

(c) See MMS's Marginal Property Guidelines for additional reporting instructions for this relief option.

§ 204.206 What is the alternate valuation relief option?

Under this relief option, you may request to report and pay royalties using a valuation method other than that required under part 206 of this chapter.

(a) Any alternate valuation method that you propose:

(1) Must be readily determinable and certain; and

(2) Must approximate royalties payable under the valuation regulations in part 206 of this chapter.

(b) You must obtain approval from MMS and the State under § 204.210(b) before taking alternate valuation relief. You must also submit a processing fee under § 204.210(b)(3).

(c) If MMS and the State approve your request, the valuation method you requested will be the value for royalty purposes for production from or attributable to your lease interest in the marginal property.

(d) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.207 What is the audit relief option?

Under this relief option, you may request a reduced royalty audit burden. However, MMS will not consider any request that eliminates MMS's or the State's right to audit.

(a) Audit relief may include:

(1) Audits of limited scope, including audits based on a statistical sampling of leases;

(2) Coordinated royalty and severance tax audits;

(3) Reliance by MMS on independent certified audits; and

(4) Any other audit relief that may be appropriate.

(b) You must obtain approval from MMS and the State under § 204.210(b) before receiving audit relief. You must also submit a processing fee under § 204.210(b)(3).

(c) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.208 What is the other relief option?

Under this relief option, you may request any type of accounting and auditing relief that is appropriate for your marginal property, provided it is not specifically prohibited under § 204.209.

(a) You must obtain approval from MMS and the State under § 204.210(b) before taking relief under this option. You must also submit a processing fee under § 204.210(b)(3).

(b) See MMS's Marginal Property Guidelines for reporting instructions for this relief option.

§ 204.209 What accounting and auditing relief will MMS not allow?

MMS will not approve your request for accounting and auditing relief under this subpart if your request:

(a) Prohibits MMS or the State from conducting any form of audit;

(b) Permanently relieves you from making future royalty reports or payments;

(c) Provides for less frequent royalty reports and payments than annually;

(d) Provides for you to submit royalty reports and payments at separate times;

(e) Impairs MMS's ability to properly or efficiently account for or distribute royalties;

(f) Requests relief for a lease under which the Federal Government takes its royalties in-kind;

(g) Alters production reporting requirements;

(h) Alters lease operation or safety requirements;

(i) Conflicts with rent, minimum royalty, or lease requirements; or

(j) Requests relief for a marginal property located in a State that has determined in advance that it will not allow such relief under § 204.214.

§ 204.210 How do I obtain accounting and auditing relief?

(a) To take accounting relief under §§ 204.203, 204.204, and 204.205, you must notify MMS in writing before the first day of the sales month for which you begin taking your relief.

(1) Your notification must contain:

(i) Your company name, MMS-assigned Payor Code, address, phone number, and contact name;

(ii) The specific Accounting Identification Number(s) (MMS lease number and revenue source);

(iii) The specific relief option under §§ 204.203, 204.204, and 204.205 that you are taking;

(iv) The first sales month that your relief is effective for;

(v) The frequency of your cumulative reports and payments if you are taking relief under § 204.203; and

(vi) The single selling arrangement you will use to report royalties and allowances for your marginal property if you are taking relief under § 204.205.

(2) You may file a single notification for multiple marginal properties if you are taking the same relief with the same effective date for all the properties.

(3) You do not need to remit a processing fee with your notification.

(b) To obtain accounting or auditing relief under §§ 204.206, 204.207, and 204.208, you must file a written request for relief with MMS.

(1) Your request must contain:

(i) Your company name, MMS-assigned Payor Code, address, phone number, and contact name;

(ii) The specific Accounting Identification Number(s) (MMS lease number and Revenue Source); and

(iii) A complete and detailed description of the specific accounting or auditing relief you seek under §§ 204.206, 204.207, and 204.208.

(2) You may file a single request for multiple marginal properties if you are requesting the same relief for all properties.

(3) You must remit a processing fee in the amount of $50 for each request for marginal property relief under §§ 204.206, 204.207, and 204.208. If you file a single request for multiple marginal properties as provided in paragraph (b)(2) of this section, your processing fee is $50 for the entire request.

(i) If you do not remit the processing fee with your request for relief, MMS will return your request for relief unprocessed.

(ii) If you remit a partial processing fee, your request for relief will not be processed until you pay the processing fee in full. MMS will notify you in writing that your processing fee is insufficient. You will have 30 days to remit the balance. If you do not remit the balance within the 30-day period, MMS will return your request for relief unprocessed.

(iii) Processing fees, including partial processing fees, are not refundable for any reason.

(iv) See MMS's Marginal Property Guidelines for additional instructions on submitting processing fees.

(c) You must submit notifications, requests, or processing fees required under this section to the address specified in MMS's Marginal Properties Guidelines.

§ 204.211 What will MMS do when it receives my request for accounting and auditing relief?

When MMS receives your request for accounting and auditing relief under § 204.210(b), it will notify you as follows:

(a) If your request for relief is complete, MMS and the State may either approve, deny, or modify your request in writing.

(b) If your request for relief is not complete, MMS will notify you in writing that your request is incomplete and identify any missing information. You must submit the missing information within 30 days of your receipt of MMS's notice that your request is incomplete.

(1) If you submit all required information, MMS and the State may approve, deny, or modify your request for relief;

(2) If you do not submit the missing information within 30 days, MMS will return your request for relief as incomplete.

(i) If MMS returns your request because it is incomplete, MMS will not return any processing fee you submitted with your request.

(ii) You may submit a new request for relief under this subpart at any time after MMS returns your incomplete request. You must also submit another processing fee.

§ 204.212 Who will decide whether to approve, deny, or modify my request for accounting and auditing relief?

(a) If there is not a State concerned for your marginal property, only MMS will decide whether to approve, deny, or modify your relief request.

(b) If there is a State concerned for your marginal property, the highest State official having ultimate authority over the collection of royalties or the State official to whom that authority has been delegated must jointly determine with MMS whether to approve, deny, or modify your relief request. States must submit the following minimum information to MMS in writing within 30 days of the effective date of this rule:

(1) The name and title of the State official authorized to jointly determine with MMS whether to approve, deny, or modify relief requests; and

(2) The name, address, and telephone number of the State contact for processing relief requests.

(c) MMS will not approve your request to use an alternate valuation method until the Assistant Secretary for Land and Minerals Management approves the request.

§ 204.213 How will MMS and the State jointly determine whether to approve, deny, or modify my request for accounting and auditing relief?

If a State determines in advance that it may grant one or more of the relief options under this subpart:

(a) MMS will preliminarily determine whether to approve, deny, or modify your relief request and send its preliminary determination to the State;

(b) After the State receives MMS's preliminary determination, it must notify MMS in writing within 30 days, or such longer period as MMS may allow, of its recommendation to approve, deny, or modify your relief request.

(1) If the State approves your relief request:

(i) MMS will approve your relief request if MMS's preliminary determination was to approve your request;

(ii) MMS may either approve or deny your relief request if MMS's preliminary determination was to deny your request.

(2) If the State denies your relief request, then MMS will deny your relief request.

(3) If the State approves MMS's modification(s) to your relief request, MMS will modify your relief request.

(4) If the State denies MMS's modification(s) to your relief request, MMS will deny your relief request.

(5) If the State modifies your relief request, MMS will consider the modification(s) and will either:

(i) Modify your request if it approves the State's modification(s); or

(ii) Deny your request if it denies the State's modification(s).

(c) If the State does not notify MMS of its decision within the time period allowed under paragraph (b) of this section, then the State is deemed to have agreed with MMS's preliminary determination.

§ 204.214 May a State decide in advance that it will not allow certain relief options under this subpart?

(a) A State may decide in advance that it will not allow some or all of the relief options specified in this subpart. If it so decides, the State must:

(1) Notify the Associate Director for Royalty Management, MMS, in writing, no later than 90 days before the beginning of the applicable calendar year, of its intent to disallow one or more of the relief options under this subpart; and

(2) Specify in its notice of intent to MMS which relief option(s) it will not allow.

(b) If a State decides in advance under paragraph (a) of this section that it will not allow some or all of the relief options specified in this subpart, it may later decide that it will allow some or all of the relief options in this subpart. If it so decides, the State must:

(1) Notify the Associate Director for Royalty Management, MMS, in writing, no later than 90 days before the beginning of the applicable calendar year, of its intent to allow one or more of the relief options under § 204.202; and

(2) Specify in its notice of intent to MMS which relief option(s) it will allow.

(c) MMS will publish a notice of the State's intent to disallow or to allow

certain relief options under this section in the **Federal Register** no later than 60 days before the beginning of the applicable calendar year.

§ 204.215 How will MMS notify me of the decision to approve, deny, or modify my request for accounting and auditing relief?

MMS will notify you in writing of the decision on your request for accounting and auditing relief.

(a) If MMS and the State approve your request for relief, MMS will notify you of the effective date of your accounting or auditing relief and other specifics of the relief approved.

(b) If MMS and the State deny your relief request, MMS will notify you of the reasons for denial and your appeal rights under § 204.6.

(c) If MMS and the State modify your relief request, MMS will notify you of the modifications.

(1) You have 30 days from your receipt of MMS's notice to either accept or reject any modification(s) in writing.

(2) If you reject the modification(s) or fail to respond to MMS's notice, MMS and the State will deny your relief request. MMS will notify you in writing of the reasons for denial and your appeal rights under § 204.6.

§ 204.216 What other guidance is available for accounting and auditing relief obtained under this subpart?

MMS will provide additional guidance for accounting and auditing relief in MMS's Marginal Property Guidelines.

§ 204.217 What if my property ceases to qualify for relief obtained under this subpart?

(a) Your property must qualify for relief under this subpart for each calendar year based on production during the base period. The notice or request you provided to MMS under § 204.210 for the first calendar year that your property qualified for relief remains effective for successive calendar years if you continue to qualify.

(b) If you find your property is no longer eligible for relief because production increased in the most recent Base Period, the relief for your property terminates as of December 31 of that calendar year. By December 31, you must notify MMS in writing at the address provided in MMS's Marginal Property Guidelines that the relief for your property has terminated.

(c) MMS may retroactively rescind the relief for your property if MMS determines that your property was not eligible for the relief obtained under this subpart because:

(1) You did not submit a notice or request for relief under § 204.210;

(2) You submitted erroneous information in the notice or request for relief you provided to MMS under § 204.210 or in your royalty or production reports; or

(3) Your property is no longer eligible for relief because production increased, but you failed to provide the notice required under paragraph (b) of this section.

(d) If you took relief under this subpart for a period for which you were not eligible, you may owe additional royalties and late payment interest determined under part 218 of this title from the date your payment was due until the date MMS receives it.

§ 204.218 May I obtain accounting and auditing relief for a marginal property that benefits from other Federal or State incentive programs?

You may obtain accounting and auditing relief for your marginal property under this subpart even if the property benefits from other Federal or State production incentive programs.

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Business Class Airfare; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 97–040]

RIN 9000–AH98

Federal Acquisition Regulation; Business Class Airfare

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Withdrawal of proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have decided to withdraw FAR Case 97–040, Business Class Airfare, published in the **Federal Register** at 63 FR 43239, August 12, 1998. The rule proposed to amend the Federal Acquisition Regulation (FAR) to revise the "travel costs" cost principle to allow, in certain situations, business class airfare costs for flights lasting more than 14 hours.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 97–040, withdrawal.

SUPPLEMENTARY INFORMATION:

Background

The proposed rule revised paragraph (d) of FAR 31.205–46, Travel costs, to allow, under certain conditions, contractor costs for business class airfare on flights lasting more than 14 hours. The rule designated the current coverage at (d) as (d)(1) and added a new subparagraph (d)(2) to deal specifically with business class airfare.

Some of the respondents to the **Federal Register** notice expressed concern that the rule would result in inconsistent treatment of the costs for business class and first class airfares (e.g., the allowability requirements for business class airfare are more restrictive than those for first class airfare); confusion (*e.g.*, differing interpretations of the words "stopovers," "rest stop in route," and "rest period upon arrival"); and an administrative burden (*e.g.*, documentation showing no rest period for business class airfare). After review of the public comments, DoD, GSA, and NASA have decided to withdraw the proposed rule, and retain the current cost principle which adequately addresses the allowability of first class and business class airfare costs.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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Part V

Environmental Protection Agency

40 CFR Parts 262, 264, and 265
Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 262, 264, and 265

[IL–64–2–5807; FRL–6221–9]

RIN 2060–AG44

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification and technical amendment.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA has promulgated standards (59 FR 62896, December 6, 1994) to reduce organic air emissions from certain hazardous waste management activities to levels that are protective of human health and the environment. (The standards are known colloquially as the "subpart CC" standards due to their inclusion in subpart CC of parts 264 and 265 of the RCRA subtitle C regulations). These air standards control organic emissions from certain tanks, containers, and surface impoundments (including tanks and containers at generators' facilities) used to manage hazardous waste capable of releasing organic waste constituents at levels which can harm human health and the environment.

Since publication of the final standards on December 6, 1994, the EPA has given public notice and taken comment on several proposed revisions to the final rule, and has made corresponding amendments. In response to public comments and inquiries, today's action makes clarifying amendments to certain regulatory text and reestablishes certain regulatory provisions that were previously contained in the rules and later inadvertently removed.

DATES: These amendments are effective January 21, 1999.

ADDRESSES: *Docket.* The supporting information used for the subpart CC rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F–91–CESP–FFFFF, F–92–CESA–FFFFF, F–94–CESF–FFFFF, F–94–CE2A–FFFFF, F–95–CE3A–FFFFF, F–96–CE3F–FFFFF, and F–96–CE4A–FFFFF. The RCRA docket is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia.

Review of docket materials is conducted at the Virginia address; the public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA docket office is RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information about the RCRA Air Rules, or specific rule requirements of RCRA rules, please contact the RCRA Hotline, toll-free at (800) 424–9346. Contacts for specific information are listed in the "Supplementary Information" section of this preamble.

SUPPLEMENTARY INFORMATION:

Regulated Entities

The entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Businesses that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).
Federal Government	Federal agencies that treat, store, or dispose of hazardous waste and are subject to RCRA subtitle C permitting requirements, or that accumulate hazardous waste on-site in RCRA permit-exempt tanks or containers pursuant to 40 CFR 262.34(a).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in the amendments to the regulation affected by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 264.1030 and § 265.1030 of the RCRA subpart AA rules, § 264.1050 and § 265.1050 of the RCRA subpart BB rules, and § 264.1080 and § 265.1080 of the RCRA subpart CC air rules.

Informational Contacts

If you have questions regarding the applicability of this action to a particular situation, or questions about compliance approaches, permitting, enforcement and rule determinations, please contact the appropriate regional representative in the table below:

Region I:
Stephen Yee, (617) 565–3550
Jim Gaffey, 565–3437
U.S. EPA, Region I
JFK Federal Building
Boston, MA 02203–0001

Region II:
Abdool Jabar, (212) 637–4131
John Brogard, 637–4162
Jim Sullivan, 637–4138
U.S. EPA, Region II
290 Broadway
New York, NY 10007–1866

Region III:
Linda Matyskiela, (215) 566–3420
Andrew Clibanoff, 566–3391
U.S. EPA, Region III
841 Chestnut Building
Philadelphia, PA 19107

Region IV:
Denise Housley, (404) 562–8495
Rick Gillam, 562–8498
Jan Martin, 562–8593
Anita Shipley, 562–8466
Donna Wilkinson, 562–8490
Judy Sophianolpoulos, 562–8604
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U.S. EPA, Region IV
61 Forsyth Street
Atlanta, GA 30303

Region V:
Jae Lee, (312) 886–3781
Uylaine McMahan, 886–4454
Mike Mikulka, 886–6760
Ivonne Vicente, 886–4449
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U.S. EPA, Region V
77 West Jackson Street
Chicago, IL 60604

Region VI:
Michelle Peace, (214) 665–7430
Teena Wooten, 665–2279
U.S. EPA, Region VI
1445 Ross Avenue, Suite 1200
Dallas, TX 75202–2733

Region VII:
Ed Buckner, (913) 551–7621
Ken Herstowski, 551–7631
U.S. EPA, Region VII
726 Minnesota Avenue
Kansas City, KS 66101

Region VIII:
Mindy Mohr, (303) 312–6525
Janice Pearson, 312–6354
U.S. EPA, Region VIII
999 18th Street, Suite 500
Denver, CO 80202–2466

Region IX:
Stacy Braye, (415) 774–2056
Jean Daniel, 774–2128
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105

Region X:
Linda Liu, (206) 553–1447
David Bartus, 553–2804
U.S. EPA, Region X

1200 Sixth Avenue
Seattle, WA 98101

For questions about testing or analytical methods mentioned in this document, please contact Ms. Rima Dishakjian, Emission Measurement Center (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0443. For information concerning the analyses performed in developing this rule, contact Ms. Michele Aston, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2363, electronic mail address, aston.michele@epa.gov.

Background

Section 3004(n) of RCRA requires EPA to develop standards to control air emissions from hazardous waste treatment, storage, and disposal facilities (TSDF) as may be necessary to protect human health and the environment. This requirement echoes the general requirement in RCRA section 3004(a) and section 3002(a)(3) to develop standards to control hazardous waste management activities as may be necessary to protect human health and the environment. The Agency has issued a series of regulations to implement the section 3004(n) mandate; these regulations control air emissions from certain process vents and equipment leaks (part 264 and part 265, subparts AA and BB), and emissions from certain tanks, containers, and surface impoundments (the subpart CC standards, which are the primary subject of today's action).

The EPA today is making technical amendments to the final subpart AA and CC standards, and providing interpretations for certain provisions of those rules. Since the publication of the final subpart CC rule (59 FR 69826, December 4, 1994), the EPA has published four **Federal Register** documents that delayed the effective date of that rule, i.e., 60 FR 26828, May 19, 1995; 60 FR 56952, November 13, 1995; 61 FR 28508, June 5, 1996; 61 FR 59931, November 25, 1996). The November 1996 notice established the ultimate effective date of December 6, 1996. The EPA has also issued an indefinite stay of the standards specific to units managing wastes produced by certain organic peroxide manufacturing processes (60 FR 50426, September 29, 1995).

On August 14, 1995, the EPA published a **Federal Register** document entitled, "Proposed rule; data availability" (60 FR 41870) and opened RCRA docket F–95–CE3A–FFFFF to accept comments on revisions that the EPA was considering for the final subpart CC standards. The EPA accepted public comments on the appropriateness of these revisions through October 13, 1995. Throughout 1996 and 1997, the EPA engaged in repeated discussions with representatives of the groups filing petitions for review challenging the subpart CC standards.

To further inform the affected public of the major clarifications, compliance options, and technical amendments being considered, the EPA conducted a series of seminars during August and September of 1995. At that time, a total of six seminars were held nationally. An updated series of six seminars was held in September through December 1996 and two additional seminars were held March and April of 1997 in conjunction with an industry trade association. (Refer to EPA RCRA Docket No. F–95–CE3A–FFFFF.) During these seminars, additional comments were received on the RCRA air rules for tanks, surface impoundments, and containers.

On February 9, 1996, the EPA published a **Federal Register** document (61 FR 4903), "Final rule; technical amendment," which made clarifying amendments in the regulatory text of the final standards, corrected typographical and grammatical errors, and clarified certain language in the preamble to the final rule to better convey the EPA's original intent.

On November 25, 1996, the EPA published a **Federal Register** document (61 FR 59932), "Final rule" that amended provisions of the final subparts AA, BB, CC rules to better convey the EPA's original intent, to provide additional flexibility to owners and operators who must comply with the rules, and to change the effective date of the requirements contained in the subpart CC rules to be December 6, 1996.

On December 8, 1997, the EPA published a **Federal Register** document (62 FR 64636), "Final rule; clarification and technical amendment" that amended provisions of the final subparts AA, BB, CC rules to clarify the regulatory text of the final standards; interpret those standards; correct typographical, printing, and grammatical errors; and clarify certain language published in the preambles of previous **Federal Register** documents.

Today's action makes technical amendments to the final subpart AA and CC rules in order to further clarify the regulatory text of the final standards; interpret those standards; and correct typographical, printing, and grammatical errors.

Outline.

The information presented in this preamble is organized as follows:

I. Part 262—Standards Applicable to Generators of Hazardous Waste
II. Subpart AA: Air Emission Standards for Process Vents
III. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers
A. Applicability
B. Waste Determination Procedures
C. Standards: Tanks
D. Standards: Containers
IV. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility
E. Unfunded Mandates Reform Act
F. Executive Order 13045
G. National Technology Transfer and Advancement Act
H. Enhancing the Intergovernmental Partnership Under Executive Order 12875
I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
J. Submission to Congress and the General Accounting Office
K. Pollution Prevention Act
L. Immediate Effective Date
V. Legal Authority

I. Subpart B—General Facility Standards

Today's action replaces the references to the subpart AA, BB, and CC standards in §§ 262.34(a)(1)(i) and 262.34(a)(1)(ii) as standards that must be met as conditions where a generator may accumulate hazardous waste on-site for 90 days or less without a RCRA permit or without having interim status. The references to subparts AA, BB, and CC were removed mistakenly by the November 25, 1996, **Federal Register** notice (61 FR 59950). At the time, it was thought that, since the subparts were also referenced in Subpart I—Use and Management of Containers at § 264.179 and in Subpart J—Tank Systems at § 264.200, the references in § 262.34, Accumulation time, were redundant. It was later determined that the references to subparts AA, BB, and CC are needed for clarity and the permit exemption criteria are being replaced by today's notice.

II. Subpart AA: Air Emission Standards for Process Vents

The definition of "equipment" contained in subpart AA at § 254.1031 is being revised to include "other connectors" in the list of components that are considered equipment under the subpart BB Air Emission Standards

for Equipment Leaks. The applicability section of the subpart BB rules states that the "subpart applies to equipment that contains or contacts hazardous waste * * *" However, when the subpart BB rules were originally promulgated in June of 1990 (55 FR 25495) the term "other connectors" was inadvertently left out of the equipment definition; this has caused some uncertainty regarding applicability of the rule to other connectors. Nonetheless, it is clear that the EPA intended other connectors to be included in the list of equipment covered by the rule. This is demonstrated by the fact that the term "other connectors" is used throughout § 264.1058 and § 265.1058 of the subpart BB standards whenever the equipment that is covered by this section of the rule is listed. Also, the preamble to the final subpart BB rules in Section V.C (i.e., Applicability and Requirements of Today's Final Standards) clearly states in discussing affected equipment at 55 FR 25465 (June 21, 1990) that "* * * flanges and *other connectors* must be monitored within 5 days by Reference Method 21 if evidence of a potential leak is found * * *" In addition, the original Clean Air Act equipment leak rules (i.e., subpart VV in 40 CFR 60.481) that served as the technical basis for the RCRA subpart BB equipment leak standards do include the term "other connector" in the definition of equipment subject to the rule. To correct this oversight, the definition of "equipment" contained in subpart AA at § 254.1031 is being revised to include "other connectors" in the list of components that are considered equipment under subpart BB.

The definition for "open-ended valve or line" is being amended to replace the term "process fluid" with the words "hazardous waste." The definition has included the term "process fluid" to characterize an open-ended valve or line since the rule was originally published on June 21, 1990 (55 FR 25495); i.e., "* * * one side of the valve seat in contact with process fluid and one side open to the atmosphere * * *" It was recently brought to the EPA's attention that the definition should use the term "hazardous waste" rather than "process fluid", since the subpart BB rules only apply to equipment (e.g., an open-ended valve or line) that contains or contacts hazardous waste as stated in the applicability sections at § 264.1050(b) and § 265.1050(b). In addition, the RCRA air rules for open-ended valves or lines (at § 264.1056 and § 265.1056) clearly refer to the material or fluid in the valve or line as being hazardous waste. Therefore, as a part of today's action the definition is being revised to avoid any confusion regarding what constitutes an open-ended line or valve.

Also within subpart AA, a definition is being added for "sampling connection system." This is being done in order to clarify the difference between a "sampling connection" and an "open-ended line" which have significantly different technical requirements under the subpart BB rules. There has been some confusion regarding open-ended lines being considered as sampling connections and the new definition should eliminate any potential for overlap.

III. Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

A. Applicability

In today's action, the EPA is amending paragraph (b)(5) of § 264.1080 and § 265.1080 to clarify that waste management units that are used solely for on-site treatment or storage of hazardous waste that is "placed in the unit" as a result of implementing Federally required remedial activities are exempt from the requirements of subpart CC. The language originally used in this paragraph stated that the hazardous waste must be "generated" as a result of implementing Federally required remedial activities. The word "generated" does carry a certain programmatic connotation; therefore, the word "generated" is being replaced because of the potential confusion caused by some of the regulated community taking a strictly regulatory interpretation of the term "generated" (i.e. viewing it as a term of art) rather than a more literal, plain English interpretation as was intended by the EPA in this context. For example, under the RCRA regulations, section 260.10, the term "generate" carries a particular legal context which was not intended to be strictly applied in this paragraph. Therefore, the word "generated" is being replaced to avoid any misinterpretation.

B. Waste Determination Procedures

Paragraph (a)(1)(i) of § 264.1083 and § 265.1084 is being amended to add new paragraphs (i) and (ii) that affect the requirements for when an owner or operator must make a determination of the volatile organic (VO) concentration of the waste stream. These new paragraphs effectively reestablish the previously contained requirements for determining VO concentration for hazardous wastes placed in a waste management unit exempted from using subpart CC air emission controls because the waste has an average VO concentration at the point of waste origination less than the action level of 500 ppmw.

As originally published, the subpart CC rules required that an initial determination of the average VO concentration of the hazardous waste stream be made before the first time any portion of the waste is placed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. (See § 264.1083(a)(1), § 265.1084(a)(1), § 265.1084(a)(2)(i)(A), § 265.1084(a)(2)(ii)(A), § 265.1084(a)(3)(i)(A), and § 265.1084(a)(3)(ii) in 59 FR 62938 through 62939, December 6, 1994.) Thereafter, a determination of the VO concentration was required for each averaging period that a hazardous waste is managed in the unit. (See § 265.1084(a)(5)(ii) in 59 FR 62939, December 6, 1994.) In addition, the owner or operator was required to perform a new determination of the hazardous waste's VO concentration whenever changes to the source generating the waste stream were reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration action level or concentration limits. (See § 265.1084(a)(2)(i)(B), § 265.1084(a)(2)(ii)(B), and § 265.1084(a)(3)(i)(B) in 59 FR 62939, December 6, 1994.)

In November 1996, the EPA expanded and reorganized the waste determination procedures in § 264.1083 and § 265.1084 to allow various test methods other than Method 25D to be used as direct measurement in a waste determination. At this time, the EPA also revised the waste determination procedures such that, for both point of waste origination and point of waste treatment, no distinction was made for batch or continuous processes or for whether the owner or operator is the generator or receives the waste from off-site. In making these changes, the EPA inadvertently removed the requirements, in paragraphs (2) and (3) of § 265.1084(a) and in paragraph § 265.1084(a)(5)(ii), for when a determination of VO concentration is required. Today's amendments reestablish those requirements specifying when an owner or operator must determine the VO concentration of a hazardous waste stream.

Under the restored language in today's amendments, the owner or operator must perform an initial

determination of the average VO concentration of the hazardous waste stream before the first time any portion of the waste is placed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. Following the initial VO concentration determination, a determination of the VO concentration is required for each averaging period that a hazardous waste is managed in the unit. This means that the owner or operator must have a current and up-to-date VO concentration determination on record for each hazardous waste stream managed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. This VO concentration determination must reflect the VO concentration of the waste currently managed in the unit over the time frame covered by the specified averaging period.

In addition, the owner or operator is required to perform a new determination of the hazardous waste's VO concentration whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration action level or concentration limits.

The following example illustrates the requirement that the owner or operator have an initial as well as a current and up-to-date VO concentration determination on record for each hazardous waste stream managed in a waste management unit exempted from subpart CC air emission controls under the action level criteria. Assume that a TSDF owner has a production process that continuously generates a hazardous waste. Just prior to December 6, 1996, the effective date of the rule, the TSDF owner determines by direct measurement using Method 25D that, using a 6-month averaging period, the particular hazardous waste stream had an average VO concentration of 250 ppmw at the point of waste origination. The owner then records that for the 6-month period beginning with December 6, 1996, this particular generated waste stream has an average VO concentration of 250 ppmw; this serves as the initial determination of VO concentration as required under § 265.1084(a)(1)(i) in today's amendments.

Because the example waste stream has a VO concentration less than the action level of 500 ppmw, the owner manages the hazardous waste in a unit that is not equipped with subpart CC air emission controls. Under the requirements being reestablished in today's amendments, by June 6, 1997 (i.e., the end of the first 6-month averaging period) the owner must perform a new waste VO concentration determination for the next 6-month averaging period that would run from June 6 to December 6, 1997. In this example, the owner now elects to perform the new VO concentration determination using knowledge of the waste rather than using direct measurement as was done previously using Method 25D. The owner however does use the results of the first direct measurement, together with process engineering knowledge and experience (e.g., no change has been made to the raw materials or process technology for the steady-state production operation generating the waste) as the basis for the "knowledge" based VO concentration determination. Therefore, the owner records that for the 6-month averaging from June 6 to December 6, 1997, this particular waste stream has an average VO concentration of 250 ppmw. This waste VO concentration determination meets the requirements in § 265.1084(a)(1)(i) of today's amendments that a VO concentration determination be made for *each* averaging period that a hazardous waste is managed in a unit exempt from air emission controls under the action level criteria.

To continue the example, the owner repeats this same process for the averaging period that runs from December 6, 1997, to June 6, 1998. However, in April 1998, the owner modifies the production process and determines that this modification has the potential to cause the average VO concentration of the hazardous waste generated to increase to a level that is equal to or greater than the 500 pppmw action level. In this situation, under the requirements reestablished by today's action, the owner would be required to perform a new determination of the average VO concentration because of the changes to the source generating the waste. (See § 265.1084(a)(1)(ii) in today's amendments.)

Without today's amendments to the waste determination requirements of subpart CC, there is effectively no requirement (or guidance) provided within the rules as to when an owner or operator must determine the VO concentration of a hazardous waste stream. This was not EPA's intent. We intended that the owner or operator maintain a current VO concentration determination for each averaging period. This is clearly illustrated by the preamble discussion in the December 6, 1994 **Federal Register** notice, which states (at 59 FR 62916): "If an average volatile organic concentration is used, an initial waste determination must be performed for *each* averaging period." Today's amendments reestablish requirements specifying when an owner or operator must determine the VO concentration of a hazardous waste stream.

In other changes to the waste determination provisions of subpart CC, the EPA is amending the waste sampling provisions of the rule to clarify requirements related to the sampling period. In November 1996, the EPA expanded and reorganized the waste determination procedures in § 264.1083 and § 265.1084; the requirements regarding sampling of the hazardous waste stream for a direct measurement of the VO concentration were also revised and reformatted. In doing so, provisions previously in the rule at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) (see 59 FR 62939 and 59 FR 62941, December 6, 1994), requiring that all waste samples for a particular waste determination be collected within a 1-hour period and that information on waste quantity and operating conditions relative to the waste samples be prepared and recorded, were inadvertently left out of the rule language. This language is being restored in today's amendments.

On December 8, 1997 (see 62 FR 64664), the EPA amended the language regarding sampling for a waste determination in § 265.1084(a)(3)(ii)(B) and § 265.1084(b)(3)(ii)(B) to clarify the EPA's intent regarding the number of samples required for a waste determination. The amended paragraph stated (as did the published rule language at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) [see 59 FR 62939, December 6, 1994]), that the average of four or more sample results constitutes a waste determination for the waste stream. This amended paragraph further clarified that one or more waste determinations may be needed to represent the average VO concentration over the complete range of waste compositions and quantities that occur during the entire averaging period (due to normal variations in the operating conditions for the source or process generating the hazardous waste stream). Thus, to determine the average VO concentration of a waste stream generated by a process with large seasonal variations in waste quantity, or fluctuations in ambient temperature, several waste determinations (consisting of four or more samples each) will be required. In making the change in December of 1997, the amendment failed to include the language previously contained at § 265.1084(a)(5)(iv)(A) and § 265.1084(b)(4)(iv)(A) (see 59 FR 62939

and 59 FR 62941, December 6, 1994) that the four samples needed for a waste determination are required to be collected within a 1-hour time period and that certain information relative to the waste samples must be recorded. Today's amendments to § 265.1084(a)(3)(ii) and § 265.1084(b)(3)(ii) add language in paragraph (B) that clearly states that "all samples for a given waste determination shall be collected within a 1-hour period;" and add a new paragraph (D) that reestablishes the requirement that "sufficient information shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating [or treating] the hazardous waste represented by the samples." The information on waste quantity and operating conditions is needed to properly calculate the mass-weighted average VO concentration over the averaging period and to assess that the averaging period used adequately characterizes the source or process over the time period selected for the averaging period. The type of information and data needed to meet this requirement should be clearly specified in the "site sampling plan" required under paragraph (C) of § 265.1084(a)(3)(ii) and § 265.1084(b)(3)(ii).

Also in the waste determination section of the rule, a portion of sections § 265.1084(a)(3)(iii) and § 265.1084(b)(3)(iii) is amended by today's action in order to clarify that, if the owner or operator elects to adjust the individual test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D, the adjustment must be made to *all* individual chemical constituents that comprise the average VO concentration. The constituent adjustment cannot be made on a selective constituent basis. Because some of the constituent-specific adjustment factors are greater than 1.0, selective use of the constituent adjustment may not provide an accurate representation of the average VO concentration as measured by Method 25D. The existing rule language at § 265.1084(a)(3)(iii) and § 265.1084(b)(3)(iii) states that "the concentration of each individual chemical constituent measured in the waste" may be corrected by multiplying the measured concentration by the constituent-specific adjustment factor. The same point is made in § 265.1084(a)(4)(iii) which specifies the procure to be used to adjust the data. This paragraph states that "the measured concentration for each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor." The EPA's use of the phrase "each individual chemical constituent contained in the wastes" is intended to convey the meaning that *all* constituents in the waste must be adjusted using the appropriate individual adjustment factor, if the owner or operator elects to adjust the data. The EPA has in no way stated or otherwise implied that constituent-specific concentration test data can be adjusted on a selective constituent basis to characterize the VO concentration.

C. Standards: Tanks

Paragraph (h)(3) of the tank standards in § 264.1084 and § 265.1085 is being amended to allow owners or operators that elect to use a pressure tank, to control air emissions under the subpart CC rule, to purge the inert materials from the pressure tank as is required by normal operation (i.e., good engineering practices) for this type of tank system. The rule requires that, whenever hazardous waste is in a pressure tank, the tank must operate as a closed system that does not vent to the atmosphere. With today's changes, the owner or operator is allowed to purge the tank as long as the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the subpart CC rule requirements for closed-vent systems and control devices. A tank operating in this manner is technically meeting the alternative requirements for tanks using Tank Level 2 controls as specified in § 264.1084(d)(3) and § 265.1085(d)(3) which applies tanks vented through a closed-vent system to a control device. Therefore, venting of a pressure tank under controlled conditions complies with the subpart CC standards for Tank Level 2 controls and is allowed under the rules.

D. Standards: Containers

Transfer requirements are being added to the Level 3 container standards as a part of today's action. These requirements are essentially the same as those for the (less stringent) Level 2 container standards. These transfer requirements for Level 3 containers were inadvertently left out of the subpart CC requirements when they were published in November 1996, 61 FR 59962. The EPA had intended that the Level 3 container standards incorporate these transfer requirements and today's amendments rectify that oversight.

VI Administrative Requirements

A. Docket

Six RCRA dockets contain information pertaining to today's rulemaking: (1) RCRA docket number F–91–CESP–FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal; (2) RCRA docket number F–92–CESA–FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation; (3) RCRA docket number F–94–CESF–FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal; (4) RCRA docket number F–94–CE2A–FFFFF, which contains information pertaining to waste stabilization operations performed in tanks; (5) RCRA docket number F–95–CE3A–FFFFF, which contains information about potential final rule revisions made available for public comment; and (6) RCRA docket number F–96–CE4A–FFFFF, which contains a copy of each of the comment letters submitted in regard to the revisions that the EPA was considering for the final subpart CC standards. The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

B. Paperwork Reduction Act

The information collection requirements of the previously promulgated RCRA air rules were submitted to and approved by the Office of Management and Budget (OMB). A copy of this Information Collection Request (ICR) document (OMB control number 1593.02) may be obtained from Sandy Farmer, Information Policy Branch (2136); U.S. Environmental Protection Agency; 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Today's amendments to the RCRA air rules should have only a minor impact on the information collection burden estimates made previously, and that impact is expected to be a reduction. The changes consist of new definitions, alternative test procedures, clarifications of requirements, and additional compliance options. The changes are not additional requirements, but rather, are reductions in previously published requirements. In a number of instances, the changes simply restore inadvertently deleted provisions, and all information collection requirements in such provisions were previously approved. The overall information-keeping requirements in the rule are being reduced. Consequently, the ICR has not been revised.

C. Executive Order 12866

Under Executive Order 12866, the EPA must determine whether the proposed regulatory action is "significant" and, therefore, subject to the Office of Management and budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The RCRA subpart CC air rules published on December 6, 1994, were considered significant under Executive Order 12866, and EPA accordingly prepared a regulatory impact analysis (RIA). The amendments published today make technical changes to the rule and correct structural problems with the drafting of some sections. This action is not a "significant regulatory action" within the meaning of Executive Order 12866; thus, OMB review of the action is not required.

D. Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities such as small businesses, small organization and small governments. However, no regulatory flexibility analysis is required if the agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities. For the reasons discussed in the December 6, 1994 **Federal Register** (59 FR 62923), the subpart CC rules themselves do not have a significant impact on a substantial number of small entities. The present rule only makes technical changes to the subpart AA and CC rules, and does not add new control requirements to the December 1994 rule. The amendments in fact reduce the already-existing requirements. Therefore, I certify that this rule will not have a significant adverse economic impact on a substantial number of small entities and therefore does not require a regulatory flexibility analysis.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

F. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

These final amendments are not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because they are not economically significant regulatory actions as defined by E.O. 12866.

G. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards. Today's action does not put forth any technical standards as part of the clarifying amendments. Therefore, consideration of voluntary consensus standards was not required.

H. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition,

Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's amendments to the final rule do not significantly or uniquely affect the communities of Indian tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. § 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of January 21, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

K. Pollution Prevention Act

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. As originally published, the final subpart AA, BB, and CC emission standards for units managing hazardous wastes contain an applicability threshold or action level formatted in terms of either a total or volatile organic concentration of the hazardous waste that must be exceeded in order for a particular standard to apply. By formulating the standard in this way, flexibility is allowed for facility owners or operators to initiate process modifications or incorporate treatment technologies that will accomplish the same environmental results at lower costs; this encourages pollution prevention alternatives that reduce the organic content of the hazardous waste generated. Today's amendments to the RCRA air rules in no way affect the pollution prevention alternatives and measures previously incorporated into the final rules.

L. Immediate Effective Date

The EPA has determined to issue this rule without first proposing it and to make today's action effective immediately. The EPA believes that the corrections being made in today's action are either interpretations of existing regulations which do not require prior notice and opportunity for comment, or are technical corrections of obvious errors in the published rules (for example, corrections to regulations inconsistent with or not carrying out statements in the preamble or Background Information Document, or restoration of provisions which were deleted inadvertently). Comment on such changes is unnecessary, within the meaning of 5 USC 553(b)(3)(B). For the same reason, there is good cause for the rules to be made effective immediately, within the meaning of 5 U.S.C. 553(d)(3).

VII. Legal Authority

These regulations are amended under the authority of sections 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921–6927, 6930, and 6974).

List of Subjects

40 CFR part 262

Environmental protection, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Container, Control device, Hazardous waste, Inspection, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, Tank, TSDF, Waste determination.

Dated: January 8, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, parts 262, 264, and 265 of the Code of Federal Regulations are amended as follows:

PART 262—STANDARD APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6299, 6925, 6937, and 6938, unless otherwise noted.

2. Section 262.34 is amended by revising paragraphs (a)(1)(i) and (a)(1)(ii) to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(1) * * *

(i) In containers and the generator complies with the applicable requirements of subparts I, AA, BB, and CC of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with the applicable requirements of subparts J, AA, BB, and CC of 40 CFR part 265 except §§ 265.197(c) and 265.200; and/or

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart AA—Air Emission Standards for Process Vents

4. Section 264.1031 is amended by revising the definitions of "Equipment" and "Open-ended valve or line" and adding a new definition for the term "Sampling connection system" in alphabetical order to read as follows:

§ 264.1031 Definitions.

* * * * *

Equipment means each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by this subpart.

* * * * *

Open-ended valve or line means any valve, except pressure relief valves, having one side of the valve seat in contact with hazardous waste and one side open to the atmosphere, either directly or through open piping.

* * * * *

Sampling connection system means an assembly of equipment within a process or waste management unit used during periods of representative operation to take samples of the process or waste fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

5. Section 264.1080 is amended by revising paragraph (b)(5) to read as follows:

§ 264.1080 Applicability.

* * * * *

(b) * * *

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

* * * * *

6. Section 264.1083 is amended by adding new paragraphs (a)(1)(i), (a)(1)(ii), (b)(1)(i), and (b)(1)(ii) to read as follows:

§ 264.1083 Waste determination procedures.

(a) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of § 264.1082(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in § 264.1082 of this subpart.

* * * * *

(b) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in the exempt waste management unit, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in § 264.1082 (c)(2) of this subpart are not achieved.

* * * * *

7. Section 264.1084 is amended by revising paragraph (h)(3) to read as follows:

§ 264.1084 Standards: Tanks.

* * * * *

(h) * * *

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 264.1087 of this subpart.

* * * * *

8. Section 264.1086 is amended by adding new paragraph (e)(6) to read as follows:

§ 264.1086 Standards: Containers.

* * * * *

(e) * * *

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

9. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912(a), 6924, 6925, 6912, 6922, 6923, 6935, 6936, and 6937.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

10. Section 265.1080 is amended by revising paragraph (b)(5) to read as follows:

§ 265.1080 Applicability.

* * * * *

(b) * * *

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is placed in the unit as a result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v), or 3008(h); CERCLA authorities; or similar Federal or State authorities.

* * * * *

11. Section 265.1084 is amended by adding new paragraphs (a)(1)(i), (a)(1)(ii), (a)(3)(ii)(D), (b)(1)(i), (b)(1)(ii) and (b)(3)(ii)(D) and by revising paragraphs (a)(3)(ii)(B), (a)(3)(iii) introductory text, (b)(3)(ii)(B), and (b)(3)(iii) introductory text, to read as follows:

§ 265.1084 Waste determination procedures.

(a) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the hazardous waste stream is placed in a waste management unit exempted under the provisions of § 265.1083(c)(1) of this subpart from using air emission controls, and thereafter an initial determination of the average VO concentration of the waste stream shall be made for each averaging period that a hazardous waste is managed in the unit; and

(ii) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the VO concentration limit specified in § 265.1083(c)(1) of this subpart.

* * * * *

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(D) Sufficient information, as specified in the "site sampling plan" required under paragraph (a)(3)(ii)(C) of this section, shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (a)(3)(iii)(A) through (a)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m^3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (a)(3)(iii)(B) through (a)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (a)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant value greater than or equal to 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

* * * * *

(b) * * *

(1) * * *

(i) An initial determination of the average VO concentration of the waste stream shall be made before the first time any portion of the material in the treated waste stream is placed in a waste management unit exempted under the provisions of § 265.1083(c)(2), § 265.1083(c)(3), or § 265.1083(c)(4) of this subpart from using air emission controls, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(ii) Perform a new waste determination whenever changes to the process generating or treating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level such that the applicable treatment conditions specified in § 265.1083(c)(2), § 265.1083(c)(3), or § 265.1083(c)(4) of this subpart are not achieved.

* * * * *

(3) * * *

(ii) * * *

(B) A sufficient number of samples, but no less than four samples, shall be collected and analyzed for a hazardous waste determination. All of the samples for a given waste determination shall be collected within a one-hour period. The average of the four or more sample results constitutes a waste determination for the waste stream. One or more waste determinations may be required to represent the complete range of waste compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for the process generating or treating the hazardous waste stream. Examples of such normal variations are seasonal variations in waste quantity or fluctuations in ambient temperature.

* * * * *

(D) Sufficient information, as specified in the "site sampling plan" required under paragraph (C) of (b)(3)(ii)this section, § 265.1084(b)(3)(ii), shall be

prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

* * * * *

(iii) Analysis. Each collected sample shall be prepared and analyzed in accordance with one or more of the methods listed in paragraphs (b)(3)(iii)(A) through (b)(3)(iii)(I) of this section, including appropriate quality assurance and quality control (QA/QC) checks and use of target compounds for calibration. When the owner or operator is making a waste determination for a treated hazardous waste that is to be compared to an average VO concentration at the point of waste origination or the point of waste entry to the treatment system to determine if the conditions of § 264.1082(c)(2)(i) through (c)(2)(vi) or § 265.1083(c)(2)(i) through (c)(2)(vi) are met, then the waste samples shall be prepared and analyzed using the same method or methods as were used in making the initial waste determinations at the point of waste origination or at the point of entry to the treatment system. If Method 25D in 40 CFR part 60, appendix A is not used, then one or more methods should be chosen that are appropriate to ensure that the waste determination accounts for and reflects all organic compounds in the waste with Henry's law constant values at least 0.1 mole-fraction-in-the-gas-phase/mole-fraction-in-the-liquid-phase (0.1 Y/X) [which can also be expressed as 1.8×10^{-6} atmospheres/gram-mole/m3] at 25 degrees Celsius. Each of the analytical methods listed in paragraphs (b)(3)(iii)(B) through (b)(3)(iii)(G) of this section has an associated list of approved chemical compounds, for which EPA considers the method appropriate for measurement. If an owner or operator uses EPA Method 624, 625, 1624, or 1625 in 40 CFR part 136, appendix A to analyze one or more compounds that are not on that method's published list, the Alternative Test Procedure contained in 40 CFR 136.4 and 136.5 must be followed. If an owner or operator uses EPA Method 8260 or 8270 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, (incorporated by reference—refer to § 260.11(a) of this chapter) to analyze one or more compounds that are not on that method's published list, the procedures in paragraph (b)(3)(iii)(H) of this section must be followed. At the owner or operator's discretion, the owner or operator may adjust test data measured by a method other than Method 25D to the corresponding average VO concentration value which would have been obtained had the waste samples been analyzed using Method 25D in 40 CFR part 60, appendix A. To adjust these data, the measured concentration of each individual chemical constituent contained in the waste is multiplied by the appropriate constituent-specific adjustment factor (f_{m25D}). If the owner or operator elects to adjust test data, the adjustment must be made to all individual chemical constituents with a Henry's law constant equal to or greater than 0.1 Y/X at 25 degrees Celsius contained in the waste. Constituent-specific adjustment factors (f_{m25D}) can be obtained by contacting the Waste and Chemical Processes Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711.

* * * * *

12. Section 265.1085 is amended by replacing paragraph (h)(3) revising to read as follows:

§ 265.1085 Standards: Tanks.

* * * * *

(h) * * *

(3) Whenever a hazardous waste is in the tank, the tank shall be operated as a closed system that does not vent to the atmosphere except under either or the following conditions as specified in paragraph (h)(3)(i) or (h)(3)(ii) of this section.

(i) At those times when opening of a safety device, as defined in § 265.1081 of this subpart, is required to avoid an unsafe condition.

(ii) At those times when purging of inerts from the tank is required and the purge stream is routed to a closed-vent system and control device designed and operated in accordance with the requirements of § 265.1088 of this subpart.

* * * * *

13. Section 265.1087 is amended by adding new paragraph (e)(6) to read as follows:

§ 265.1087 Standards: Containers.

* * * * *

(e) * * *

(6) Transfer of hazardous waste in or out of a container using Container Level 3 controls shall be conducted in such a manner as to minimize exposure of the hazardous waste to the atmosphere, to the extent practical, considering the physical properties of the hazardous waste and good engineering and safety practices for handling flammable, ignitable, explosive, reactive, or other hazardous materials. Examples of container loading procedures that the EPA considers to meet the requirements of this paragraph include using any one of the following: A submerged-fill pipe or other submerged-fill method to load liquids into the container; a vapor-balancing system or a vapor-recovery system to collect and control the vapors displaced from the container during filling operations; or a fitted opening in the top of a container through which the hazardous waste is filled and subsequently purging the transfer line before removing it from the container opening.

* * * * *

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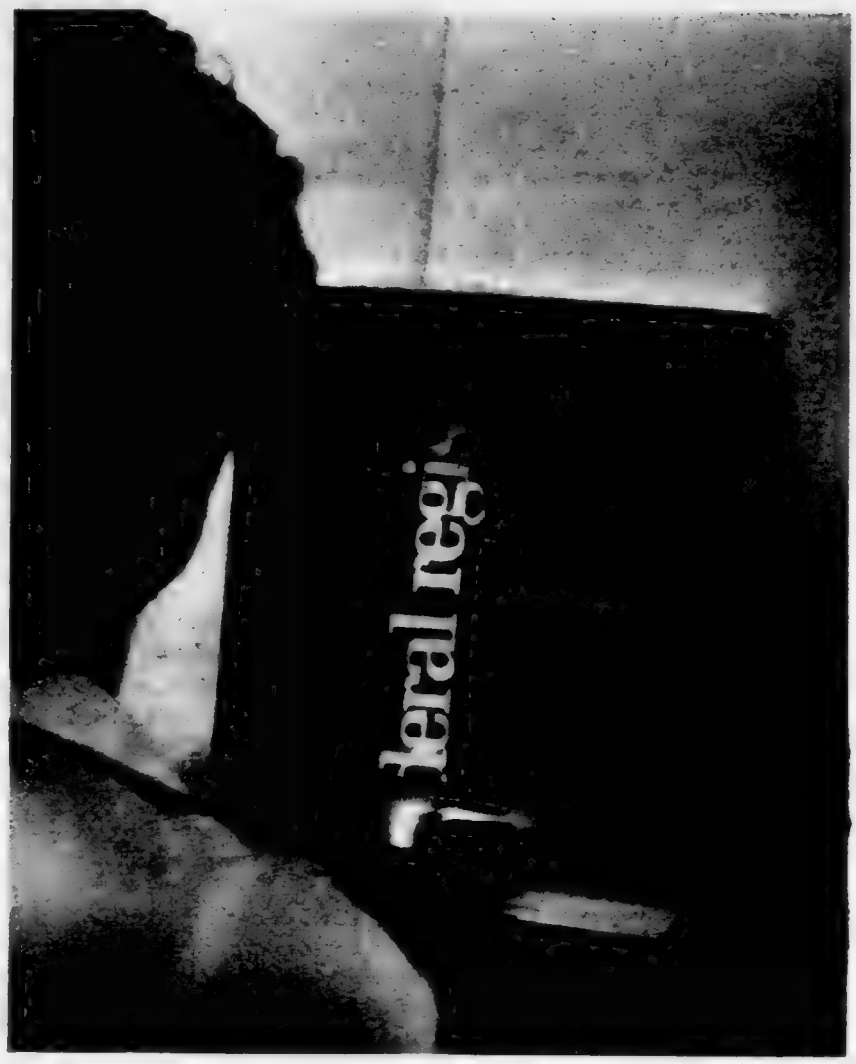

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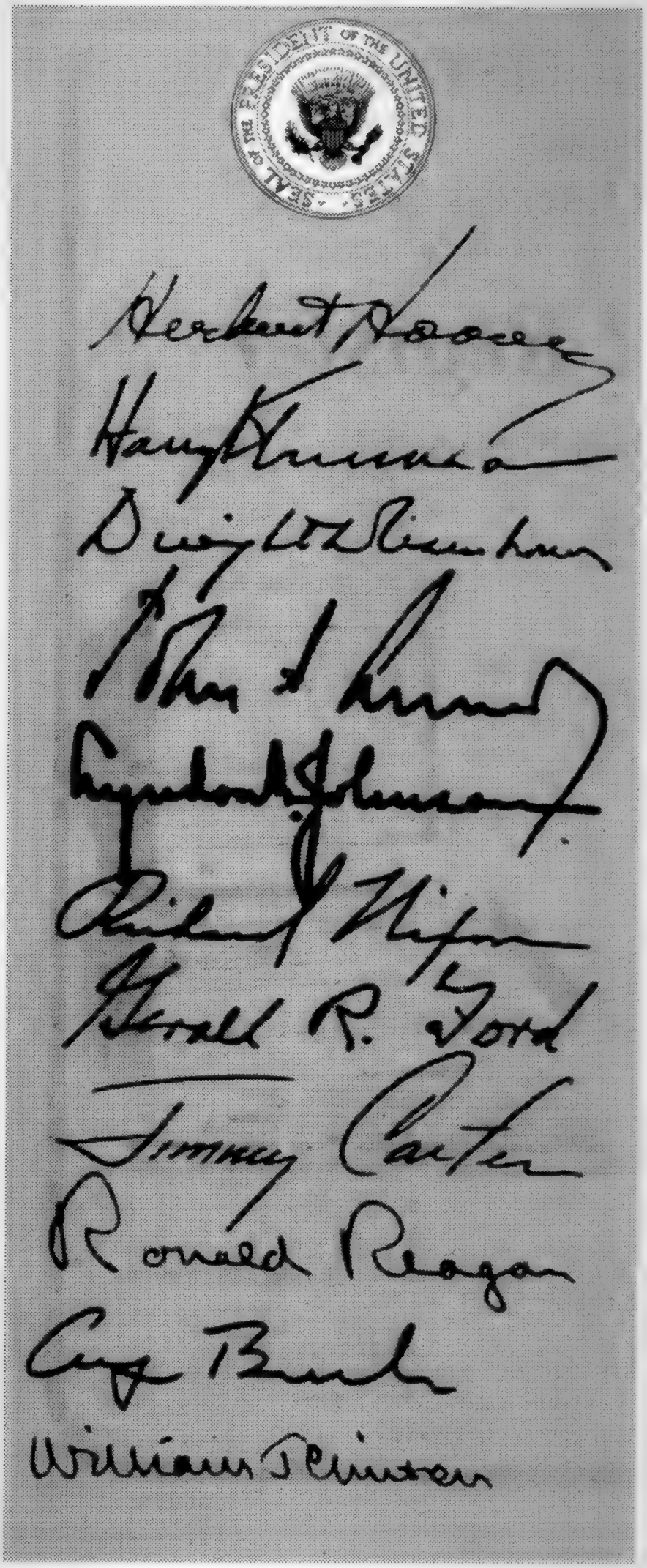

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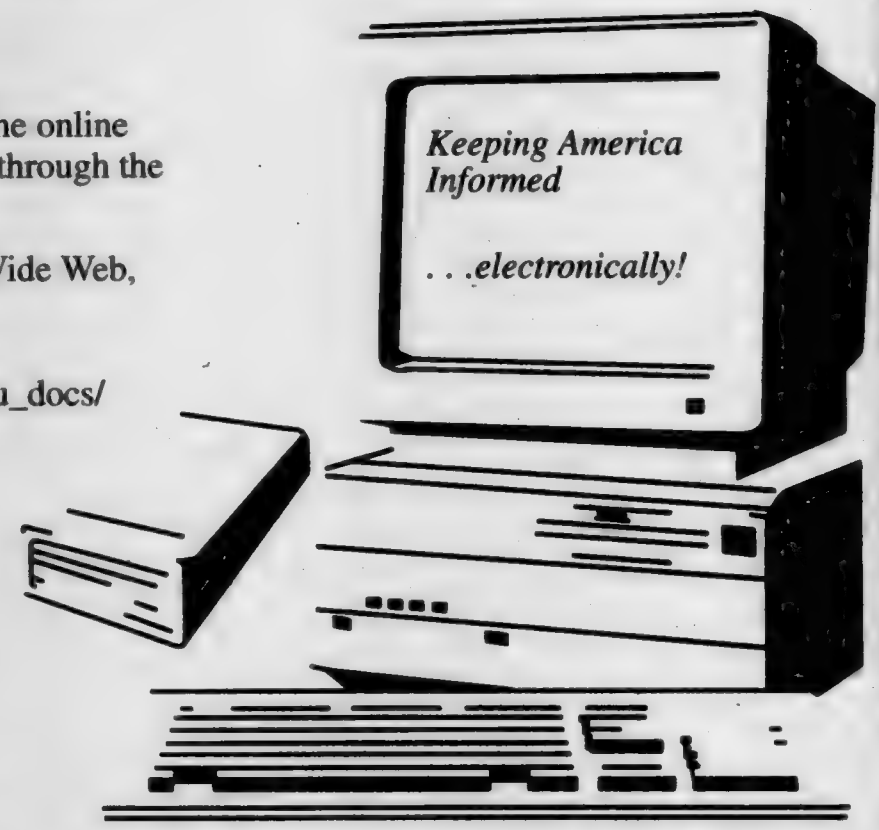

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Federal Register
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Friday, January 22, 1999

Presidential Documents

Title 3—

The President

Notice of January 20, 1999

Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process. By Executive Order 12947 of January 23, 1995, I blocked the assets in the United States, or in the control of United States persons, of foreign terrorists who threaten to disrupt the Middle East peace process. I also prohibited transactions or dealings by United States persons in such property. On August 20, 1998, by Executive Order 13099, I identified four additional persons, including Usama bin Ladin, that threaten to disrupt the Middle East peace process. I have annually transmitted notices of the continuation of this national emergency to the Congress and the **Federal Register**. Last year's notice of continuation was published in the **Federal Register** on January 22, 1998. Because terrorist activities continue to threaten the Middle East peace process and vital interests of the United States in the Middle East, the national emergency declared on January 23, 1995, and the measures that took effect on January 24, 1995, to deal with that emergency must continue in effect beyond January 23, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
January 20, 1999.

[FR Doc. 99–1643
Filed 1–21–99; 8:45 am]
Billing code 3195–01–P

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Rules and Regulations

Federal Register
Vol. 64, No. 14
Friday, January 22, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 0560–AF55

Fee Schedule; Aerial Photographic Reproductions

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture issued a proposed rule and is now issuing a final rule regarding the revision of fees charged for some aerial photographic reproductions in order to reflect changes in the costs for some reproductions and to discontinue some reproductions due to low demand. However, these revisions do not affect accessibility under the Freedom of Information Act.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Linda McDonald, United States Department of Agriculture, Farm Service Agency, Aerial Photography Field Office, 2222 West 2300 South, Salt Lake City, Utah 84119–2020; telephone (801) 975–3500, Ext. 235.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is an administrative action not subject to Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

Executive Order 12988

The rule has been reviewed in accordance with Executive order 12988, Civil Justice Reform.

The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule and does not require administrative proceedings before parties may file in court challenging this rule.

Paperwork Reduction Act

The authority of the United States Department of Agriculture (USDA) FSA Aerial Photography Field Office to coordinate aerial photography and remote sensing programs and for aerial photography is Section 387 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1387).

Reproductions of photographs are available at cost to any customer. All receipts from the sale of aerial photography reproductions and services are deposited and sent to the U.S. Treasury.

Background

A pricing study of all products and services provided by the Aerial Photography Field Office was conducted. The study determined that due to increased costs of photographic reproduction, it would be necessary to increase fees charged for some reproductions. Fees would be reduced or left unchanged for some reproductions. Some reproductions would be discontinued, due to the small number of reproductions ordered. Accordingly, USDA will revise the fees charged for some reproductions, discontinue others and make minor administrative changes regarding Agency names and other clarifications to amend the appendix to 7 CFR part 1, subpart A. While issued as a proposed rule, the USDA Aerial Photography Field Office received one comment regarding this rule. The comment was to add the cost of Black and White 38x38 Film Positive Reproductions to the fee schedule. This item has been added to the fee schedule in this final rule.

List of Subjects in 7 CFR Part 1

Appeals, Fees, Public access and records.

For the reasons set out in the preamble, 7 CFR part 1 subpart A, Appendix A is amended to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Appendix A to Subpart A—Fee Schedule

1. The authority citation for subpart A is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 312a; 31 U.S.C. 9701; 7 U.S.C. 1387; and 7 CFR 2.28 (b)(7)(viii).

2. Section 12 of Appendix A to subpart A is revised and in section 17, paragraph (d) is removed and reserved and (c) is revised to read as follows:

Appendix A to Subpart A—Fee Schedule

* * * * *

§ 12. Agencies which furnish photographic reproductions.

(a) Aerial Photographic reproductions. The following agency of the Department furnishes aerial photographic reproductions:

Farm Service Agency (FSA), Aerial Photography Field Office (APFO), USDA, 2222 West 2300 South, Salt Lake City, Utah 84119–2020.

(b) Other photographic reproductions. Other types of reproductions may be obtained from the following agency of the Department:

National Agricultural Library, Agricultural Research Service, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, MD 20705.

* * * * *

§ 17. Reproduction prices

* * * * *

(c) *General aerial photographic reproductions.* The prices for various types of aerial photographic reproductions are set forth in this paragraph. Size measurements refer to the approximate size in inches of the paper required to produce the reproduction.

Size	Price
Black and White Reproductions	
10×10 Paper	$5.00
10×10 Film Positive	10.00
10×10 Film Positive AT	10.00
10×10 Film Positive Scan	15.00
10×10 Film Duplicate Negative	3.00
10×10 Film Internegative	4.50
12×12 Paper	12.00
17×17 Paper	13.00
17×17 Film Positive	25.00
24×24 Paper	16.00
24×24 Film Positive	40.00
38×38 Paper	50.00
38×38 Film Positive	55.00
20×24 Paper Photo Index	20.00
Paper Line Index	15.00
Mylar Line Index	35.00
Microfilm (Photo Indexes): Aperture Cards	10.00
Microfilm (Photo Indexes): Microfiche	10.00
Color Negative Reproductions	
10×10 Paper Quantities:	
1–50	$7.00
51–1000	5.00
1001 & Over	2.50
10×10 Film Positive	33.00
20×20 Paper	40.00
24×24 Paper	55.00
38×38 Paper	70.00
Color Infrared Positive Reproductions	
10×10 Paper	$12.00
10×10 Film Positive	15.00
10×10 Film Positive AT	15.00
10×10 Film Positive Scan	20.00
20×20 Paper	32.00
24×24 Paper	40.00
38×38 Paper	70.00

* * * * *

Signed at Washington, D.C., on January 15, 1999.

Dan Glickman,

Secretary.

[FR Doc. 99–1451 Filed 1–21–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–44]

Amendment to Class D Airspace and Class E Airspace; Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the legal description of the Class D airspace and Class E airspace extensions at Binghamton Regional/Edwin A. Link Field Airport (BGM), Binghamton, NY. The air traffic control tower at BGM has reduced their operating hours. The need for Class D airspace and the Class E airspace extensions during the specified hours of reduced operation no longer exists. This action will result in the airspace reverting to Class G airspace during those specific hours.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 4, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the legal description of the Class D airspace and associated Class E airspace extensions at Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY, was published in the **Federal Register** (63 FR 67014).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations for airspace extending upward from the surface are published in paragraph 5000 and Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revises Class D airspace and the Class E airspace extensions at Binghamton, NY to accommodate the reduced hours of operation at the airport. These areas will revert to Class G airspace during the specified hours of reduced operation.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[Amended]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AEA NY D Binghamton, NY [Revised]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″ N., long. 75°58′47″ W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 4.1-miles radius of the Binghamton Regional/Edwin A. Link Field Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AEA NY E–4 Binghamton, NY [Revised]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″ N., long. 75°58′47″ W.
Binghamton VORTAC
(Lat. 42°09′27″ N., long. 76°08′11″ W
SMITE LOM
(Lat. 42°06′17″ N., long 75°53′28″ W.
Binghamton Regional/Edwin A. Link Field Airport ILS Runway 34 Localizer (Lat. 42°13′12″ N., long. 75°59′15″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Binghamton VORTAC 067° radial extending from the 4.1-mile radius of the Binghamton Regional/Edwin A. Link Field Airport to the VORTAC and within 1.8 miles each side of the Binghamton Regional/Edwin A. Link Field Airport ILS Localizer SE course extending from the 4.1-mile radius of the airport to 1.8 miles SE of the SMITE LOM. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York on January 12, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–1500 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–43]

Amendment to Class E Airspace; Laurel, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Laurel, DE. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Laurel Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS A SIAP to Laurel Airport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 4, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Milton, WV, was published in the **Federal Register** (63 FR 67016). The development of the GPS A SIAP for Laurel Airport requires the amendment of the Class E airspace at Laurel, DE. The notice proposed to amend controlled airspace extending upward from 700 fee AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Laurel, DE, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS A SIAP to Laurel Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9505, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA DE E5 Laurel, DE [Revised]

Laurel Airport, DE

(Lat. 38°32'28" N., long. 75°35'34" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Laurel Airport, excluding the portion that coincides with the Salisbury, MD, Class E airspace area.

* * * * *

Issued in Jamaica, New York on January 12, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–1501 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8810]

RIN 1545–AW77

Notice and Opportunity for Hearing Upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property and rights to property the IRS files a NFTL. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) that reflect the addition of section 6320 to the Internal Revenue Code made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA).

These temporary regulations implement the provisions of section 6320 and thus set forth the procedures the IRS will follow regarding notice to taxpayers of the filing of a NFTL on or after January 19, 1999, the right to a hearing before the IRS Office of Appeals (Appeals) with respect to the filing of a NFTL, the procedures that will be followed at those hearings, judicial review of the determinations reached at the hearings, and the suspensions of various periods of limitation as a result of a timely request for a hearing. The legislative history accompanying RRA also explains that Congress intended the IRS to grant an equivalent hearing to taxpayers who do not request a hearing under section 6320 within the 30-day period that commences the day after the five business day notification period. H. Conf. Rep. No. 599, 105th Cong., 2d Sess. 266 (1998). These temporary regulations set forth the procedural requirements and rules that will govern the conduct of such an equivalent hearing.

Explanation of Provisions

The temporary regulations provide guidance to taxpayers for purposes of section 6320. Pursuant to section 6320, for NFTLs filed on or after January 19, 1999, the IRS must provide written notification of the filing of the NFTL to the taxpayer named in the NFTL. The notification under section 6320 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail to the taxpayer's last known address not more than five business days after the day the NFTL is filed. The notification must state the amount of unpaid tax, inform the taxpayer of the right to request a hearing during the 30-day period that commences the day after the end of the five business day notification period, inform the taxpayer of the administrative appeals available with respect to such lien and the procedures related to such appeals, and inform the taxpayer of the provisions and procedures relating to the release of liens. Unless the taxpayer withdraws the request that Appeals conduct a hearing when the taxpayer has made a timely request for a hearing, Appeals will hold one collection due process hearing (CDP hearing) with respect to the tax and tax period or periods specified in the CDP hearing notice (CDP Notice). The taxpayer is entitled to have a CDP hearing conducted by an Appeals officer who has had no prior involvement with the unpaid tax that is the subject of the hearing. This requirement, however, can be waived by the taxpayer in writing. The taxpayer may seek judicial review of an Appeals determination issued with respect to a CDP hearing. If a taxpayer timely requests a CDP hearing, the periods of limitation relating to collection after assessment, relating to criminal prosecutions, and relating to suits are suspended. If the taxpayer has a hearing with Appeals, the suspension of the applicable periods of limitation continues until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court. If the taxpayer has withdrawn the request for a hearing with Appeals, the suspension of the applicable periods of limitation ends as a result of that withdrawal.

The temporary regulations discuss the procedures for CDP hearings under section 6320, including the requirement that the Appeals officer obtain verification that all legal and administrative requirements for the filing of the NFTL have been met. The temporary regulations further discuss the types of issues that may or may not be raised at the CDP hearing. The types of issues that may be raised at the CDP hearing include appropriate spousal defenses; challenges to the appropriateness of collection actions; collection alternatives; and challenges to the existence or amount of the liability specified in the CDP Notice. An issue may not be raised at the CDP hearing if the issue was raised and considered at a previous CDP hearing under section 6330 or any other previous administrative or judicial proceeding in which the taxpayer meaningfully participated. Challenges to the existence or amount of the tax liability specified in the CDP Notice may be raised only if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability.

Following the CDP hearing, the Appeals officer will issue a Notice of Determination, which can be appealed to the United States Tax Court or a district court of the United States by filing an appropriate pleading with the court that has jurisdiction over the type of tax involved within 30 days of the date of the determination. The temporary regulations discuss the content of the Notice of Determination and the rules for obtaining judicial review. The temporary regulations also provide guidance as to the extent to which the Appeals officer will retain jurisdiction with respect to the determination.

Lastly, the temporary regulations provide rules and procedures with respect to the administrative hearing (referred to as an "equivalent hearing") the IRS will provide to taxpayers who do not timely request a hearing under section 6320.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805 (f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of the Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6320–1T is added under the undesignated centerheading "Lien for Taxes" to read as follows:

§ 301.6320–1T Notice and opportunity for hearing upon filing of notice of Federal tax lien (temporary).

(a) *Notification*— (1) *In general.* For a notice of federal tax lien (NFTL) filed on or after January 19, 1999, district directors, directors of service centers, and the Assistant Commissioner (International), or their successors, are required to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under this section must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the "person" entitled to notice under section 6320?

A–A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is only required to be given to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q–A2. When will the IRS provide the notice required under section 6320?

A–A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q–A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A–A3. Yes. Under section 6323(f), a NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each tax and tax period listed in the NFTL.

Q–A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A–A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q–A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A–A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods, at any location.

Q–A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A–A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiling of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or filing the NFTL, an administrative hearing before Appeals, or assistance from the National Taxpayer Advocate.

Q–A7. Will the IRS give notification to a known nominee of, or person holding property of, the taxpayer of the filing of the NFTL?

A–A7. No. Such person is not the person described in section 6321 and is, therefore, not entitled to notice, but such persons have other remedies. See A–B5 of paragraph (b) of this section.

Q–A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A–A8. Yes. If the IRS files an additional NFTL with respect to the

same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q–A9. How will notification under section 6320 be accomplished?

A–A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, Request for a Due Process Hearing. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q–A10. What must a CDP Notice given under section 6320 include?

A–A10. These notices must include, in simple and nontechnical terms:

(i) The amount of unpaid tax.

(ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five-day period described in section 6320(a)(2).

(iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.

(iv) The statutory provisions and the procedures relating to the release of liens on property.

Q–A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A–A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period that commences the day after the end of the five business day notification period within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the notice.

Q–A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A–A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and an opportunity to request a CDP hearing.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a Collection Due Process hearing (CDP hearing)*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the amount of unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a tax and tax period previously subject to a CDP Notice in a different location?

A–B1. No. Although the taxpayer will receive notice of each filing of the NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to an amount of unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an amount of unpaid tax, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals's determination as to the NFTL. Under such circumstances, a taxpayer, however, may request an equivalent hearing as described in paragraph (i) of this section.

Q–B2. Is the taxpayer entitled to a CDP hearing where a NFTL for a tax and tax period is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed in another recording office prior to that date?

A–B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an amount of unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same tax and tax period or periods.

Q–B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is he entitled to a CDP hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an amount of unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a second section 6320 CDP hearing?

A–B4. No. The taxpayer is entitled to only one CDP hearing under section 6320 for a tax and tax period set forth in a NFTL with respect to the first filing of a NFTL that occurs on or after January 19, 1999.

Q–B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A–B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However, any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review. Such person may also avail himself of the administrative procedure included in section 6325(b)(4) of the Internal Revenue Code or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. It will give D notification of the NFTL filed in County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing*—(1) *In general.* Where a taxpayer is entitled to a CDP hearing under section 6320, such a hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. Included with the CDP Notice will be a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer in requesting a CDP hearing. The Form 12153 requests the following information: the taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN); the type of tax involved; the tax period at issue; a statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL; and the reason or reasons why the taxpayer disagrees with the filing of the NFTL. Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that such a request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1–800–829–3676.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. First, the filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information, for help in filling out Form 12153, or in an attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help to prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request will also help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A–C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period taxpayers are allowed for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must request a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules under section 7502 and the regulations under that section and section 7503 and the regulations under that section will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center.

Q–C7. What will happen if the taxpayer does not request a section 6320 CDP hearing in writing within the 30-day period that commences the day after

the end of the five business day notification period?

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the tax and tax period or periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period that commences the day after the end of the five business day notification period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1*, except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in (i), individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2*, except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1*, except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing for a tax and tax period set forth in a NFTL under section 6320 with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who has had no involvement with respect to the tax for the tax period or periods covered by the hearing prior to the first CDP hearing under section 6320 or section 6330, unless the taxpayer waives that requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one CDP hearing with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP hearing with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the tax has changed as a result of an additional assessment of tax for that period or an additional accuracy-related or filing delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing if the additional assessment represents accruals of interest or accruals of penalties.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a hearing with respect to one tax period shown on the NFTL will be combined with any and all other hearings to which the taxpayer may be entitled with respect to other tax periods shown on the NFTL.

Q–D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A–D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period or periods shown on the NFTL.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals had no prior involvement with respect to the tax and tax period or periods involved in the CDP hearing?

A–D5. The taxpayer must sign a written waiver.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determinaton, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the

NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing. To claim a spousal defense under section 6015, the taxpayer must do so in writing according to rules prescribed by the Secretary. Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015 and the procedures prescribed by the Secretary thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. No. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed by that section; therefore any limitations under section 6015 will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E4. No. A taxpayer is precluded by limitations under section 6015 from raising a spousal defense under section 6015 in a CDP hearing under these circumstances.

Q–E5. What collection alternatives are available to the taxpayer?

A–E5. Collection alternatives would include, for example, withdrawal of the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E6. What issues may a taxpayer raise in a CDP hearing under section 6320 if he previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E6. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the tax liability.

Q–E7. How will Appeals issue its determination?

A–E7. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals's findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer and/or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of his right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless as a result of these discussions, the taxpayer agrees to withdraw in writing the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals's consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E8. Is there a time limit on the CDP hearings or on when Appeals must issue a Notice of Determination?

A–E8. No. Appeals will, however, attempt to conduct CDP hearings as expeditiously as possible.

Q–E9. Why is the Notice of Determination and its date important?

A–E9. The Notice of Determination will set forth Appeals's findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3).

The date of the Notice of Determination establishes the beginning date of the 30-day period within which the taxpayer is permitted to seek judicial review of Appeals's determination.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the taxable year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is therefore precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court. The taxpayer is not, therefore, precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the opportunity for a conference at which the taxpayer would have the opportunity to dispute the liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing in writing. The taxpayer may appeal such determinations made by Appeals within 30 days after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015(b) or (c), what is the time frame within which a taxpayer may seek Tax Court review of Appeals's determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals's denial of relief under section 6015 (b) or (c), but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals's denial of relief under section 6015 (b) or (c), the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals's determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 (b) or (c) claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability specified in the CDP Notice arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals's determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals's Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon expiration of the time for seeking review or reconsideration.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502

would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals's determination. Once a taxpayer has exhausted his other remedies, Appeals's retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals's original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A–H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one section 6320 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one section 6320 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and will generally follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q–I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals's determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any filing of a NFTL on or after January 19, 1999, and before January 21, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 13, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–1414 Filed 1–19–99; 10:56 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8809]

RIN 1545–AW76

Notice and Opportunity for Hearing Before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the provision of notice to taxpayers of a right to a hearing before levy. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property the IRS intends to levy. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: This regulation is effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) that reflect the addition of section 6330 to the Internal Revenue Code made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA).

Prior to January 1, 1983, the IRS was only required to notify a taxpayer of its intention to levy in the case of proposed levies on salary or wages. Section 6331(d) was amended as a part of the Tax Equity and Fiscal Responsibility

Act of 1982 (TEFRA). The TEFRA amendment required the IRS to give a taxpayer a notice of its intention to levy, in non-jeopardy situations, before any levy was made upon the salary, wages, or other property of the taxpayer. The legislative history of the TEFRA amendment recognized that, although a single notice of intent to levy relating to all property would be sufficient, the IRS was not precluded from sending multiple notices of intention to levy.

Under section 6331(a), the IRS may levy upon a taxpayer's property and rights to property if a taxpayer fails to pay a tax liability. Exemptions from levy are provided for certain property under section 6334(a). The first step toward levy generally occurs when the IRS provides a taxpayer with a written notice and demand for payment. Under section 6303, a notice and demand is a notice which states that the tax has been assessed and demands that payment be made. If, in non-jeopardy situations, the taxpayer fails to pay the tax within 10 days after notice and demand, the IRS may seize a taxpayer's property or rights to property 30 days after sending the taxpayer a notice required under section 6331(d), called a Notice of Intent to Levy. Although the notice and demand and the Notice of Intent to Levy may be combined and sent at the same time under Treas. Reg. § 301.6331–2(a)(1), under current practice these two notices are usually sent separately. Generally, the notice and demand is sent first and, as the second step in the levy process, the Notice of Intent to Levy is sent at a later time. The IRS is permitted to proceed with immediate seizure of a taxpayer's property or rights to property without regard to the 10-day waiting period if it determines that the collection of the tax is in jeopardy.

Under section 6331(d), the Notice of Intent to Levy must contain a brief statement, in simple, nontechnical terms, that sets forth (A) the statutory provisions relating to the levy and sale of property, (B) the procedures applicable to the levy and sale of property, (C) the administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals, (D) the alternatives available to taxpayers that could prevent levy on the property (including installment agreements), (E) the statutory provisions relating to redemption of property and the release of liens on property, and (F) the procedures applicable to the redemption of property and the release of a lien on property. The Notice of Intent to Levy must be given in person, left at the taxpayer's dwelling or usual place of business, or sent by registered or certified mail to the taxpayer's last known address.

Prior to January 19, 1999, the IRS generally complied with the requirements of section 6331(d) by giving the taxpayer a Final Notice of Intent to Levy, and enclosing certain IRS publications which explain the law, IRS levy and redemption procedures, administrative appeal processes and procedures, and various collection alternatives.

Section 6330 provides that, except when the Secretary finds that collection of the tax is in jeopardy or a levy is issued to collect State tax refunds due to the taxpayer, no levy may be made on or after January 19, 1999, unless the Secretary notifies the taxpayer in writing of a right to a hearing before the IRS Office of Appeals (Appeals) with respect to the unpaid tax for the tax period. When the Secretary has found jeopardy exists and in cases where a levy is made on a State tax refund, the taxpayer will be given notice of a right to, and the opportunity for, a hearing within a reasonable time after the levy action has actually occurred.

Except when it determines that collection of the tax is in jeopardy or it levies on State tax refunds, the IRS is prohibited from levying upon the taxpayer's property or rights to property until 30 days after providing the taxpayer with the notice of a right to a hearing before Appeals. If the taxpayer requests such a hearing, the IRS is, in the absence of jeopardy, prohibited from levying upon the taxpayer's property until the determination reached by Appeals becomes final.

In order to implement the provisions of section 6330, the IRS is going to modify the procedures it follows leading up to the issuance of a levy. In the absence of a determination that collection of the taxes is in jeopardy, the IRS will continue to provide a number of notices to a taxpayer before levying upon the taxpayer's property.

Under the procedures the IRS is adopting to implement section 6330, the levy process will continue to begin with issuance to the taxpayer of a written notice and demand for payment. Absent a jeopardy determination, a taxpayer who fails to pay the tax specified in the notice and demand within 10 days after notice and demand may, in addition to other notices such as the annual notice of tax delinquency required under section 7524, be sent an Urgent Notice. The Urgent Notice will inform the taxpayer that the IRS may levy upon a taxpayer's State tax refund after 30 days from the date of that notice. This Urgent Notice will include all information required under section 6331(d) and will constitute the notice required under that section. Accordingly, the Urgent Notice will also begin the ten-day period leading to an increase in the failure to pay penalty prescribed by section 6651(d).

These temporary regulations implement the provisions of section 6330 and thus set forth the procedures the IRS will follow regarding notice to taxpayers of a right to a hearing before Appeals, the procedures that will be followed at those hearings, judicial review of the determinations reached at the hearings, and the suspensions of various periods of limitation as a result of a timely request for a hearing. The legislative history accompanying RRA also explains that Congress intended the IRS to grant an equivalent hearing to taxpayers who do not request a hearing under section 6330 within the 30-day period following the date of notification. H. Conf. Rep. No. 599, 105th Cong., 2d Sess. 266 (1998). These temporary regulations set forth the procedural requirements and rules that will govern the conduct of such an equivalent hearing.

Explanation of Provisions

The temporary regulations provide that, except in the case of jeopardy levies or levies on State tax refunds, the IRS must notify the taxpayer of its intention to levy prior to issuing a levy. The notification under section 6330 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail, return receipt requested, to the taxpayer's last known address at least 30 days prior to the first proposed levy action with respect to the amount of the unpaid tax for the tax period. The temporary regulations also provide procedures to be followed in the event the notification, if mailed, is not mailed to the taxpayer's last known address. In jeopardy situations and in cases where a levy is made on a State tax refund, notification to the taxpayer of a right to a hearing is not required to be given until the levy action has actually occurred. The temporary regulations set forth the procedures to be followed for making the required pre-levy and post-levy notifications.

Both such notifications must (A) set forth the amount of unpaid tax, (B) notify the taxpayer of the right to request a hearing within the 30-day period that commences the day after the date of notification, (C) indicate, as appropriate, that the IRS has levied or plans to levy, and (D) describe the rights of the taxpayer with respect to such action, including a brief statement which explains (1) the provisions of the

Internal Revenue Code (Code) relating to levy and sale of property, (2) the procedures applicable to the levy and sale of property under the Code, (3) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals, (4) the alternatives available to taxpayers which might forestall future levies on property (including installment agreements under section 6159), and (5) the provisions of the Code and procedures relating to redemption of property and release of liens on property.

Unless the taxpayer withdraws the request that Appeals conduct a hearing when the taxpayer has made a timely request for a collection due process hearing, Appeals will hold one section 6330 collection due process hearing (CDP hearing) with respect to the tax and tax period or periods specified in the collection due process notice (CDP Notice). The taxpayer is entitled to have a hearing conducted by an Appeals officer who has had no prior involvement with the unpaid tax that is the subject of the hearing. This requirement, however, can be waived by the taxpayer in writing. A taxpayer may seek judicial review of an Appeals determination issued with respect to a CDP hearing. Hearings with respect to levies may be held in conjunction with hearings under section 6320, involving liens.

If the taxpayer timely requests a CDP hearing, the periods of limitation relating to collection after assessment, relating to criminal prosecution, and relating to suits are suspended until the suspension ends as a result of the taxpayer's withdrawal of the request for a CDP hearing or until the determination reached at the CDP hearing becomes final by the expiration of the time for seeking review or reconsideration before the appropriate court. Prior to issuance of the Appeals determination, the Appeals officer must verify that all legal and administrative requirements pertaining to the proposed levy have been met. The temporary regulations further discuss the types of issues that may or may not be raised at the CDP hearing. The types of issues that may be raised at the hearing include appropriate spousal defenses; challenges to the appropriateness of collection actions; collection alternatives; and challenges to the existence or amount of the liability specified in the CDP Notice. An issue may not be raised at the CDP hearing if the issue was raised and considered at a previous hearing under section 6320 or any other previous administrative or judicial proceeding in which the taxpayer meaningfully participated. Challenges to the existence or amount of the tax liability specified in the CDP Notice may be raised only if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability.

Following the CDP hearing, the Appeals officer will issue a Notice of Determination, which can be appealed to the United States Tax Court or a district court of the United States by filing an appropriate pleading with the court that has jurisdiction over the type of tax involved within 30 days of the date of the determination. The temporary regulations discuss the content of the Notice of Determination and the rules for obtaining judicial review. The temporary regulations also provide guidance as to the extent to which the Appeals officer will retain jurisdiction with respect to the determination.

Lastly, the temporary regulations provides rules and procedures with respect to the administrative hearing (referred to as an "equivalent hearing") the IRS will provide to taxpayers who do not timely request a hearing under section 6330.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805 (f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in its development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

PARAGRAPH 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

PAR. 2. Section 301.6330–1T is added under the undesignated centerheading "Seizure of Property for collection of Taxes" to read as follows:

§ 301.6330–1T Notice and opportunity for hearing prior to levy (temporary).

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the district directors, directors of service centers, and the Assistant Commissioner (International), or their successors, are required to provide persons upon whose property or rights to property the IRS intends to levy on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process hearing (CDP hearing) with the Internal Revenue Service Office of Appeals (Appeals). This Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail, return receipt requested, to such person's last known address.

(2) *Exceptions*—(i) *State tax refunds.* Section 6330 does not require the IRS to provide the taxpayer a notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect State tax refunds owing to the taxpayer. However, the district director, the service center director, and the Assistant Commissioner (International), or their successors, are required to give notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to the tax liability for the tax period for which the levy on the State tax refund was made on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a State tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330 does not require the IRS to provide the taxpayer a notification of the taxpayer's right to

a CDP hearing prior to levy when there has been a determination that collection of the tax is in jeopardy. However, the district director, the service center director, and the Assistant Commissioner (International), or their successors, are required to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy is also referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the "person" to be notified under section 6330?

A–A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is only required to be given to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a State tax refund or in the case of a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a). Pursuant to section 6331(a), notice is to be given to the person liable to pay the tax due after notice and demand who refuses or neglects to pay (hereinafter referred to as the taxpayer).

Q–A2. Will the IRS notify a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to the taxpayer of its intention to issue a levy?

A–A2. No. Such a person is not the person described in section 6331(a), but such persons have other remedies. See A–B5 of this paragraph (a)(3).

Q–A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A–A3. Yes. The notification of intent to levy or of the issuance of a jeopardy or State tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q–A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19, 1999, with respect to the same tax and tax period?

A–A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after January 19, 1999, with respect to a tax and tax period, even though it had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q–A5. When will the IRS provide this notice?

A–A5. Pursuant to section 6330(a)(1), beginning January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of its intent to levy on property or rights to property, other than State tax refunds and in jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a State tax refund or issues a jeopardy levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q–A6. What must the pre-levy CDP Notice include?

A–A6. Pursuant to section 6330(a)(3), the notification must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to a hearing.

(iii) A statement that the IRS intends to levy.

(iv) The taxpayers's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedure applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements);

(E) The statutory provisions relating to redemption of property and the release of liens on property; and

(F) The procedures applicable to the redemption of property and the release of liens on property.

Q–A7. What must the post-levy CDP Notice include?

A–A7. Pursuant to section 6330(a)(3), the notification must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to a hearing.

(iii) A statement that the IRS has levied upon the taxpayer's State tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements);

(E) The statutory provisions relating to redemption of property and the release of liens on property; and

(F) The procedures applicable to the redemption of property and the release of liens on property.

Q–A8. How will this pre-levy or post-levy notification be accomplished?

A–A8. (i) The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate. The additional information IRS is required to provide, together with Form 12153, Request for a Collection Due Process Hearing, will be included with that Notice. The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q–A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A–A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the notice.

Q–A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or

registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A–A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

Example 2. The same facts as in *Example 1*, except the IRS intends to levy upon a taxpayer's bank account on or after January 19, 1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by the pre-levy or post-levy CDP Notice provided the taxpayer. The taxpayer must request such a hearing within the 30-day period commencing on the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is the taxpayer entitled to a CDP hearing where a levy for State tax refunds is served on or after January 19, 1999, even though the IRS had previously served other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A–B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the tax and tax period set forth in such a levy issued on or after January 19, 1999.

Q–B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than 30 days after issuance of a CDP Notice with respect to a tax period, provides subsequent notice to that taxpayer that it intends to levy on property or rights to property of the taxpayer for the same tax and tax period shown on the CDP Notice?

A–B2. No. Under section 6330, only the first pre-levy or post-levy Notice with respect to liabilities for a tax and tax period constitutes a CDP Notice. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals's determination with respect to collection activity relating to that tax and tax period. The IRS generally provides additional notices or reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances a taxpayer, however, may request an equivalent hearing as described in paragraph (i) of this section.

Q–B3. When the IRS provides a taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an amount of unpaid tax for which a section 6330 CDP Notice was previously sent, is the taxpayer entitled to a second section 6330 CDP hearing?

A–B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q–B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A–B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(c) *Requesting a CDP hearing*—(1) *In general.* Where a taxpayer is entitled to a CDP hearing under section 6330, such a hearing must be requested during the 30-day period that commences that day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. Included with the CDP Notice will be a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer in requesting a CDP hearing. The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.

(E) The reason or reasons why the taxpayer disagrees with the proposed collection action.

(ii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that such a request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1–800–829–3676.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. First, the filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section

6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information, for help in filling out Form 12153, or in an attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help to prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request will also help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

A–C3. A taxpayer must submit a written request for a CDP hearing with respect to a CDP Notice issued under section 6330 within the 30-day period commencing the day after the date of the CDP Notice. This period is slightly different from the period allowed taxpayers to submit a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period following the filing of the notice of federal tax lien (NFTL).

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules under section 7502 and the regulations thereunder and section 7503 and the regulations thereunder will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center.

Q–C7. What will happen if the taxpayer does not request a section 6330 CDP hearing in writing within the 30-day period commencing on the day after the date of the CDP Notice?

A–C7. If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the tax and tax period or periods shown on the CDP Notice. In addition, the IRS will be free to pursue collection action at the conclusion of the 30-day period following the date of the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who has had no involvement with respect to the tax for the tax period or periods covered by the hearing prior to the first CDP hearing under section 6320 or section 6330, unless the taxpayer waives that requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one CDP hearing with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP hearing with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the tax has changed as a result of an additional assessment of tax for that period or an additional accuracy-related or filing delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing if the additional assessment represents accruals of interest or accruals of penalties.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other hearings to which the taxpayer may be entitled with respect to other tax periods shown on the CDP Notice.

Q–D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A–D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may

have had with respect to the tax and tax period shown on the CDP Notice.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals had no prior involvement with respect to the tax and tax period or periods?

A–D5. The taxpayer must sign a written waiver.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing. To claim a spousal defense under section 6015, the taxpayer must do so in writing according to rules prescribed by the Secretary. Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015 and the procedures prescribed by the Secretary thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. No. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed by that section; therefore any limitations under section 6015 will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E4. No. A taxpayer is precluded by limitations under section 6015 from raising a spousal defense under section 6015 in a CDP hearing under these circumstances.

Q–E5. What collection alternatives are available to the taxpayer?

A–E5. Collection alternatives would include, for example, a proposal to withhold the proposed or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E6. What issues may a taxpayer raise in a CDP hearing under section 6330 if he previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E6. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the tax liability for the tax for the tax period shown in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q–E7. How will Appeals issue its determination?

A–E7. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals's findings and decisions:

(A) It will state whether the IRS met the requirements of any applicable law or administrative procedure.

(B) It will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax.

(C) It will include a decision on any appropriate spousal defenses raised by the taxpayer.

(D) It will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action.

(E) It will respond to any offers by the taxpayer for collection alternatives.

(F) It will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

(ii) The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer and/or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of his right to seek judicial review within 30 days of the date of the Notice of Determination.

(iii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals

consideration. Unless as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals's consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E8. Is there a time limit on the CDP hearings or on when Appeals must issue a Notice of Determination?

A–E8. No. Appeals will, however, attempt to conduct CDP hearings as expeditiously as possible.

Q–E9. Why is the Notice of Determination and its date important?

A–E9. The Notice of Determination will set forth Appeals's findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3). The date of the Notice of Determination establishes the beginning date of the 30-day period within which the taxpayer is permitted to seek judicial review of Appeals's determination.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is therefore precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court. The taxpayer is not, therefore, precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within 30 days after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal Appeals's determination to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015(b) or (c), what is the time frame within which a taxpayer may seek Tax Court review of Appeals's determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals's denial of relief under section 6015(b) or (c), but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only wants Tax Court review of Appeals's denial of relief under section 6015(b) or (c), the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals's determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015(b) or (c) claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals's determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals's Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the date on which the determination with respect to such hearing becomes final upon expiration of the time for seeking review or reconsideration.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking its review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a

CDP hearing, but his request is not timely?

A–G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1*, except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals's determination. Once a taxpayer has exhausted his other remedies, Appeals's retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals's original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A–H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods to which the unpaid tax relates. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a subsequent hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an "equivalent hearing." The equivalent hearing will be held by Appeals and will generally follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q–I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any levy which occurs on or after January 19, 1999, and before January 21, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 13, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–1412 Filed 1–19–99; 10:56 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–093–FOR]

Illinois Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Illinois abandoned mine land reclamation plan (Illinois plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions and additions to the Illinois plan relating to agency reorganization, legal opinion, definitions, project priorities, utilities and other facilities, eligible coal lands and water, eligible non-coal lands and water, project selection, annual grant process, liens, rights of entry, public participation, bidding requirements and conditions, contracts, and contractor responsibility. The amendment is intended to revise the Illinois plan to be consistent with the corresponding

Federal regulations and SMCRA and improve operational efficiency.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Plan
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Illinois Plan

On June 1, 1982, the Secretary of the Interior approved the Illinois plan. You can find background information on the Illinois plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 1, 1982, **Federal Register** (47 FR 23886). You can find later actions concerning the Illinois plan and amendments to the plan at 30 CFR 913.25.

II. Submission of the Proposed Amendment

By letter dated October 22, 1998 (Administrative Record No. IL–5022), Illinois submitted a proposed amendment to its plan under SMCRA. The amendment consisted of new and revised narrative discussions and implementing regulations. Illinois sent the amendment in response to a letter dated September 26, 1994 (Administrative Record No. IL–700-AML), that we sent to Illinois under 30 CFR 884.15(d). The amendment also includes changes made at Illinois' own initiative.

We announced receipt of the proposed amendment in the November 11, 1998, **Federal Register** (63 FR 63630). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on December 16, 1998.

During our review of the amendment, we identified concerns relating to nonsubstantive editorial errors in Personnel (30 CFR 884.13(d)(2)); Procurement (30 CFR 884.13(d)(3)); 62 IAC 2501.10, Eligible Coal Lands and Water; 62 IAC 2501.11, Eligible Non-coal Lands and Water; 62 IAC 2501.16, Final Selection and Project Deferment; 62 IAC 2501.19, Annual Grant Process; 62 IAC 2501.25, Reclamation on Private Lands; 44 IAC 1150.40, Severability; 44 IAC 1150.200, Bidding Requirements and Conditions; 44 IAC 1150.300, Awards and Execution of Contract; and 44 IAC 1150.1300, Contract Negotiations. We notified Illinois of these concerns by letter dated December 16, 1998 (Administrative Record No. IL–5034). However, because the editorial errors were nonsubstantive, we are proceeding with this final rule.

III. Director's Findings

Set forth below, under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are our findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. General Changes

a. Illinois made the following reference changes throughout its narrative and implementing regulations: all references to the "Abandoned Mined Lands Reclamation Council" and "Council" have been changed to the "Illinois Department of Natural Resources" or "Department"; all references to the "Executive Director" have been changed to the "Director of the Office of Mines and Mineral," "Director of the Department," or "Director," as appropriate; all references to "Soil Conservation Service" have been changed to "Natural Resources Conservation Service"; and all references to "him" have been revised to "him/her" or some other gender neutral reference.

Illinois also made the following statutory reference changes throughout 62 IAC 2501: Ill. Rev. Stat. 1991, ch 96½, pars. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1985, ch. 96½, par. 8001.03(a)(7) was changed to 20 ILCS 1920/1.03(5); Ill. Rev. Stat. 1985, ch. 96½, par. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1991, ch. 127, par. 1001–1 *et seq.* was changed to 5 ILCS 100; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.02(a) was changed to 20 ILCS 1920/1.02; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.03(a) was changed to 20 ILCS 1920/2.03(a); Ill. Rev. Stat. 1985, ch. 96½, par. 8003.05 was changed to 20 ILCS 1920/3.05; Ill. Rev. Stat. 1989, ch. 96½, par. 8002.09(b) was changed to 20 ILCS 1920/2.09; Ill. Rev. Stat. 1983, ch. 96½, par. 800.04(d) was changed to 20 ILCS 1920/2.04(d); and Ill. Rev. Stat. 1985, ch. 127, pars.133b1 *et seq.* was changed to 30 ILCS 605.

Finally, Illinois made the following statutory reference changes throughout 44 IAC 1150: Ill. Rev. Stat. 1985, ch. 96½, pars. 8001.01 *et seq.* and Ill. Rev. Stat. 1991, ch. 127, par. 1005–75 were changed to 20 ILCS 1920 and 5 ILCS 100/5–75, respectively.

We approve the above revisions because they do not alter the substance of the Illinois plan.

b. *62 IAC 2501.1, Scope.* Illinois revised the scope of this section to reflect the creation of the IDNR. We approve the revision because it merely reflects agency reorganization.

c. *62 IAC 2501.4, Definitions.* Illinois removed the definition of "council" and added the definition of "department" to reflect the creation of the IDNR. We approve the removal and addition of these definitions because they merely reflect agency reorganization.

Illinois also expanded the definition of "Federal Office" to refer to "OSM." We approve the revised definition because it merely clarifies the existing approved definition.

2. Plan Narrative: Introduction

Illinois revised this section of its plan narrative to describe the history of the Illinois Abandoned Mined Lands Reclamation Program, the creation of the Department of Natural Resources, and the requirements of Title V of the Surface Mining Control and Reclamation Act of 1977. We approve Illinois' revised narrative because it does not alter the substance of the Illinois plan.

3. Eligible Coal Lands and Water

Eligible Coal Lands and Water, (30 CFR 874.12(e)). Illinois added this new section to its plan narrative to state that the provisions of 62 IAC 2501.10 detail the eligibility of coal lands and waters for reclamation and abatement. We approve the addition of this section to the Illinois plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

Section 2501.10, Eligible Coal Lands and Water. Illinois added new paragraphs (d) through (h) to its implementing regulations at 62 IAC 2501.10 to read as follows:

(d) Notwithstanding subsections (a), (b) and (c) of this section, coal lands and waters damaged and abandoned after August 3, 1997 by coal mining processes are also eligible if the Department, with the concurrence of OSM, finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(A) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and June 1, 1982, and any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not

sufficient to provide for adequate reclamation or abatement at the site, or

(B) The mining occurred between August 4, 1977 and November 5, 1990 and the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and

(2) The site qualifies as a priority 1 or 2 site under Section 2501.7(c) and (e) of this Part.

(e) The Department may expend funds available under subsections 402(g)(1) and (5) of the Surface Mining Control and Reclamation Act for reclamation and abatement of any site eligible under Subsection (d) above, if the Department, with concurrence of OSM, makes the findings required in subsection (d) above and the Department determines that the reclamation priority of the site is the same or more urgent that the reclamation priority for the lands and water eligible pursuant to subsections (a), (b) or (c) above that quality as a priority 1 or 2 site under Section 403(a) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1233(a)).

(f) With respect to lands and waters eligible pursuant to subsection (d) or (e) above, monies available from sources outside the Abandoned Mine Reclamation Federal Trust Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Federal Trust Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the AML program, the permittee of the site shall reimburse the AML Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Department, when performing reclamation under subsection (d) above shall not be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act, or in the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720], nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in those Acts.

(h) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, AML funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if emergency conditions warrant, the Department shall immediately exercise its authority under the Emergency program.

We approve the addition of the above provisions at 62 IAC 2501.10(d) through (h) because they are substantively identical to the counterpart Federal provisions found at 30 CFR 874.12(d) through (h).

4. Exclusion of Certain Non-coal Reclamation Sites

Exclusion of Certain Non-coal Reclamation Sites, (30 CFR 875.16). Illinois added this new section to its plan narrative to state that the provisions of 62 IAC 2501.11 detail the eligibility of non-coal lands and waters for reclamation and abatement. We approve the addition of this section to the Illinois plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

Section 2501.11, Eligible Non-coal Lands and Water. Illinois added this new section to its implementing regulations at 62 IAC 2501.11 to provide reclamation eligibility guidelines for non-coal lands and water. Non-coal lands and water are eligible for reclamation activities if they were mined or affected by mining processes; they were mined before August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; the operator, permittee, or agent of the permittee has no continuing responsibility for reclamation under statutes of the State or Federal Government due to bond forfeiture, and the forfeited bond is insufficient to pay the total cost of reclamation; the Governor agrees that reclamation is necessary and submits a letter of request to the Federal Office; it is necessary for the protection of the public health and safety, general welfare and property; and the lands and water are not designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 or have been listed for remedial action under the Comprehensive Response Compensation and Liability Act of 1980.

We approve the addition of the above provisions at 62 IAC 2501.11 because paragraphs (a) through (e) are substantively identical to the counterpart Federal provisions found at 30 CFR 875.12(a) through (e) and paragraph (f) is substantively identical to the counterpart Federal provision found at 30 CFR 875.16. Paragraph (f) also satisfies a requirement of OSM's September 26, 1994, letter.

5. Authorization by the Governor

Illinois revised this section of its plan narrative to reflect the creation the Illinois Department of Natural Resources (IDNR). Previously, this section consisted of a letter from the Governor designating the Abandoned Mined Lands Reclamation Council as the agency responsible for administering the State Abandoned Mined Lands program. Illinois' revised narrative states that authority for administering the State Abandoned Mined Lands program is established by statute. The Abandoned Mined Lands and Water Reclamation Act, as amended, establishes that IDNR's Office of Mines and Minerals is responsible for administering the State reclamation program and receiving and administering grants under 30 CFR Part 886. We approve Illinois' revised narrative because it meets the requirement of 30 CFR 884.13(a), which requires the State reclamation plan to have a designation by the Governor of the State of the agency authorized to administer the State reclamation program and to receive and administer grants under 30 CFR Part 886.

6. Legal Opinion

Illinois revised this section of its plan narrative by replacing a letter from the chief legal officer of the Abandoned Mined Lands Reclamation Council with a letter from the chief legal officer of IDNR. We approve Illinois' revised narrative because it meets the requirement of 30 CFR 884.13(b), which requires the State reclamation plan to have a legal opinion from the State Attorney General or the chief legal officer of the State agency that the designated agency has the authority under State law to conduct the State reclamation program.

7. Project Selection

Project Selection, (30 CFR 884.13(c)(2))

Illinois revised this section of its plan narrative to state that sections 2501.7, 2501.8, 2501.10, 2501.11, 2501.13, 2501.16, and 2501.34 of the rules entitled "Abandoned Mined Land Reclamation" detail Abandoned Mined Lands project selection. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(c)(2), which requires a State reclamation plan to have a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including the specific criteria for ranking and identifying projects to be funded.

Section 2501.7, Objectives and Priorities

Illinois revised its implementing regulations at 62 IAC 2501.7(c) by removing a priority concerning the expenditure of Abandoned Mined Lands money on research and demonstration projects relating to the development of surface mining reclamation and water quality control program and methods

and techniques. We approve the revision of the above provision because it is substantively identical to the counterpart Federal provision found at Section 403(a) of SMCRA.

Illinois also added new paragraphs (d) and (e) to its implementing regulations at 62 IAC 2501.7. Paragraph (d) concerns the order in which projects are addressed. Paragraph (e) concerns the designation of projects that have an adverse economic impact upon a community. We approve the addition of the above provisions because they are substantively identical to the counterpart Federal provisions found at 30 CFR 874.13(b) and 30 CFR 874.12(d)(3), respectively.

Finally, at section 2501.7(f), Illinois revised the date by which the Department may make expenditure obligations on lands mined for substances other than coal. The date was changed from August 14, 1994, to August 31, 1999. We approve the revision of the above provision because it is not inconsistent with the provisions of 30 CFR 875.12, which detail when non-coal lands and waters are eligible for reclamation.

Section 2501.8, Utilities and Other Facilities

Illinois added this new section to its implementing regulations to provide guidance on use of Abandoned Mined Lands funds for water supplies. Section 2501.8(a) allows the Department to use up to 30 percent of the annual Abandoned Mined Lands funds for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. Section 2501.8(b) provides that adverse effects on water supplies that occurred both before and after August 3, 1977, are eligible for Abandoned Mined Lands funds, in spite of the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominantly by mining processes undertaken and abandoned before August 3, 1977. Section 2501.8(c) provides that adverse effects on water supplies that occurred both before and after the dates (and under the criteria) set forth in Section 2501.10(d) are eligible for Abandoned Mined Lands funds, notwithstanding the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominately by mining processes undertaken and abandoned before those dates. Finally, section 2501.8(d) provides that enhancement of facilities or utilities includes upgrading to meet any local, State, or Federal public health or safety requirement. Enhancement does not include service area expansion not necessary to address a specific abandoned mine land problem.

We approve the addition of the above provisions at 62 IAC 2501.8 because they are substantively identical to the counterpart Federal provisions found at 30 CFR 874.14.

Section 2501.13, Preliminary Project Selection

Illinois revised its implementing regulations at 62 IAC 2501.13(b) to require the Department to select reclamation projects from a database that contains all known abandoned mine sites in the State which are eligible under Sections 2501.10 and 2501.11. Also, at 62 IAC 2501.13(b), Illinois revised the list of problem conditions the Department is to use to determine which sites are in the most need of reclamation. New section 2501.13(b)(9) provides that flooding of roads or improved property caused by sedimentation from Abandoned Mined Lands sites is a problem condition. New section 2501.13(b)(10) provides that hazardous recreational water bodies is a problem condition. Existing sections 2501.13(b)(9) and (10) were redesignated as sections 2501.13(b)(11) and (12). Finally, Illinois added new section 2501.13(b)(13) to provide that coal refuse material or spoilbanks adversely affecting lands or water resources is a problem condition.

We approve the revision and addition of the above provisions at 62 IAC 2501.13(a) and (b) because they meet the requirements of 30 CFR 874.13, which requires States to conduct reclamation projects in a manner that is consistent with OSM's "Final Guidelines for Reclamation Programs and Projects" (61 FR 68777—68785, December 30, 1996), and reflect the priorities of Section 403(a) of SMCRA.

Section 2501.16, Final Selection and Project Deferment

Illinois revised its regulations at 62 IAC 2501.16(a) to further detail the criteria by which the Department will identify and rank Abandoned Mined Lands projects. We approve the revision of the above provision because it provides additional satisfaction of the requirements of 30 CFR 874.13.

8. Coordination of Reclamation Activities

Illinois revised this section of its plan narrative to require that Abandoned Mined Lands staff meet with Natural Resource Conservation Service Rural Abandoned Mine Program coordinators on an annual basis to coordinate reclamation activities. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(c)(3), which requires a State reclamation plan to include a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including the coordination of reclamation work among the State reclamation program and the Rural Abandoned Mine Program administered by the Natural Resource Conservation Service.

9. Reclamation of Private Land

Reclamation of Private Land, (30 CFR 884.13(c)(5))

Illinois revised this section of its plan narrative to include an explanation of language found at 62 IAC 2501.25(b)(2). We find that the addition of this explanatory language merely clarifies the existing provision. Therefore, this section of the plan narrative continues to meet the Federal requirements at 30 CFR 884.13(c)(5) to describe the policies and procedures regarding reclamation on private land under 30 CFR Part 882.

Section 2501.25, Reclamation on Private Lands

Illinois added new paragraph (b)(3) to its implementing regulations at 62 IAC 2501.25 to allow the Department to waive a lien if it finds, before construction, that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit. We approve the addition of the above provision because it is consistent with the provisions of 30 CFR 882.13(a)(3), which allows a state to waive a lien if findings made prior to construction indicate that the reclamation work primarily benefits health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforseen occurrence, and the work will not result in a significant increase in the market value of the land as it existed immediately before the unforseen occurrence.

Illinois also revised its implementing regulations at 62 IAC 2501.25(c)(2) and (3). At 2501.25(c)(2), Illinois added

language to provide that a reclamation lien created under Section 2.09 of the State Act will continue to exist until satisfied, subject only to the 40-year limitation period and the requirements of Sections 13–118 through 13–121 of the Code of Civil Procedure [735 ILCS 5/13–118 *et seq.*]. At 2501.25(c)(3), Illinois revised the language to allow the Department to request appropriate foreclosure action by the Attorney General to satisfy the lien if the reclaimed property is transferred for an actual consideration in excess of the appraised fair market value of the property after reclamation, and the lien is not satisfied at the time of transfer. We approve the addition and revision of the above provisions because they are consistent with the provision at 30 CFR 882.14(b), which requires states to maintain or renew liens from time to time as required under State or local law.

10. Public Participation

Public Participation, (30 CFR 884.13(c)(7))

Illinois revised this section of its plan narrative concerning preparation of the original state plan, promulgation of rules and plan amendments, public participation in the reclamation program, compliance with Executive Order 12372, and the list of regional clearinghouses. Included in the revision to "public participation in the reclamation program" is a reference to the newly proposed provisions at 62 IAC 2501.40.

Section 2501.40, Public Participation

Illinois added this new section to its implementing regulations at 62 IAC 2501.40 to provide for public participation in the Abandoned Mined Lands program and projects. Section 2501.40(a) provides that any interested party may submit information and comments to the Director of the Department, the Director of the Office of Mines and Minerals, or the Manager of the Abandoned Mined Lands Division at any time. Section 2501.40(b) requires that the Department handle verbal and written requests for information as quickly as possible, and that requests made under the Freedom of Information Act (5 ILCS 140) be made and handled in accordance with the generally applicable procedures of the Department of Natural Resources. Section 2501.40(c) requires the Department to have available, upon request, copies of the Illinois State Reclamation Plan for Abandoned Mined Lands, Office of Mines and Minerals Annual and Bi-Annual Reports, specific project reports, and brochures and program materials. However, the availability of such reports, brochures and program materials can not be deemed a waiver of the Department's right to charge fees for its actual cost of reproducing and certifying public records requests under the Freedom of Information Act. Further, the Department may charge fees for its actual cost for providing multiple copies of free publications. Finally, section 2501.40(d) was added to read as follows:

(d) The Department shall hold such public meetings as it determines necessary and appropriate to advise the public of planned or ongoing AML projects, and to solicit input and participation in the AML program. Any interested person may request, in writing, that the Department hold a public meeting in connection with any AML project or program activity. Upon receipt of a written request to hold a public meeting, the Department shall contact the landowners directly involved in the project, as well as the local government bodies that may be interested. The Department shall schedule a public meeting if it determines that sufficient public interest exists to warrant the public meeting.

We approve Illinois' revised plan narrative and the addition of 62 IAC 2501.40 because they meet the requirements of 30 CFR 884.13(c)(7), which requires a State reclamation plan to have a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

11. Administration

Illinois revised this section of its plan narrative to reflect the reorganization of the Division of Abandoned Mined Lands Reclamation, within the Office of Mines and Minerals, Department of Natural Resources. They also updated the list of other State offices and agencies. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(1), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity.

12. Personnel

Illinois revised this section of its plan narrative to reflect changes in its administrative and management structure and its personnel staffing policies. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(2), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the personnel staffing policies which will govern the assignment of personnel to the State reclamation program.

13. Procurement

Procurement, (30 CFR 884.13(d)(3))

Illinois revised this section of its plan narrative by changing all references to the Illinois Purchasing Act to the Illinois Procurement Code. They also removed language about the provisions of Section 5 and Section 9.01 of the Illinois Purchasing Act. Finally, Illinois revised its discussion about the exceptions to the competitive bidding requirements of the Illinois Procurement Code. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(3), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the purchasing and procurement systems to be used by the agency.

44 IAC 1150. Illinois revised the following sections of its implementing regulations at 44 IAC 1150: Section 1150.10, Purpose; Section 1150.20, Scope; Section 1150.30; Applicability; Section 1150.100, Definition of Terms; Section 1150.200, Bidding Requirements and Conditions; Section 1150.300, Award and Execution of Contract; Section 1150.400, Contracts Involving Expenditures of $30,000.00 or Less; Section 1150.500, Emergency Contracting; Section 1150.700, Applicability; Section 1150.800, Prequalification; Section 1150.900, Subcontracting; Section 1150.1000, Requests for Proposals; and Section 1150.1300, Contract Negotiations. In addition, Illinois added the following sections to its implementing regulations at 44 IAC 1150: Section 1150.1100, Evaluation Procedure; Section 1150.1200, Selection Procedure; Section 1150.1325, Exemptions; and Section 1150.1350, Firm Performance Evaluations.

We approve the revisions to and additions of the above provisions because they meet the requirements of 30 CFR 884.13(d)(3), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program,

including the purchasing and procurement systems to be used by the agency.

Section 1150.300(e)

Illinois added paragraph (e) to its implementing regulations at 44 IAC 1150.300 to read as follows:

(1) Under 30 CFR 874.16, every successful bidder for a federally funded AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by the federal Office of Surface Mining, Reclamation and Enforcement's automated Applicant/Violator System (AVS) for each contract to be awarded.

(2) At the time the successful bidder is notified by letter of intent that his/her bid will be accepted, the Department will provide to the bidder an Ownership/Control ("O/C") information package. The bidder shall completely fill out the forms and return the completed forms to the Department. The Department will forward the completed forms to OSM at the Lexington, Kentucky AVS office for data entry and compliance check.

(3) All subcontractors who will receive 10% or more of the total contract funding will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check, prior to receiving the Department's approval of subcontractor.

(4) Any contract inspector, selected through a bidding process, regardless of the percentage of contract funding, will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check.

(5) The Department shall deny a contract and cancel the award upon OSM's recommendation that the successful bidder is not eligible for an AML contract. The Department shall deny approval of a subcontractor upon OSM's recommendation that the subcontractor is not eligible for an AML contract. The Department shall deny an inspection contract upon OSM's recommendation that the contract inspector is not eligible for an AML contract.

(6) Any person denied an AML contract or participation in an AML funded project, shall appeal the decision and recommendation of OSM directly to OSM. Appeal should be made to establish eligibility for future AML projects. The Department will not delay a project pending appeal. The Department's role in the AVS compliance check process is ministerial and does not involve exercise of independent judgement or review of OSM's decision and recommendation. The Department shall not be responsible for any damages sustained by any person by reason of OSM's determination as to eligibility for AML contracts.

(7) After a Contractor, subcontractor, or contract inspector has once submitted an O/C information package and has been entered into the AVS in connection with an AML project, the Department may, in connection with subsequent projects, provide dated AVS printouts reflecting the information submitted and the current AVS recommendation, along with an AML Contractor O/C Data Certification form. The Contractor, subcontractor, or contract inspector shall complete and submit the certification in place of the O/C information package, in the same manner as provided above.

(8) Any potential AML Contractor, subcontractor or contract inspector may submit O/C information directly to OSM and the Lexington AVS Office, to predetermine eligibility for AML contracts.

We approve the addition of the above provisions because they meet the requirements of 30 CFR 874.16 and 30 CFR 875.20 and satisfy a requirement of the September 26, 1994, letter we sent to Illinois under 30 CFR 884.15(d).

14. Reclamation Activity

Illinois revised the amount of acreage in need of reclamation and the amount of acreage funded through the emergency response program in this section of its plan narrative. Illinois also added a new paragraph on the reclamation activity entitled "Reclamation of Mine Subsidence." We approve Illinois revised plan narrative because it meets the requirement of 30 CFR 884.13(e), which requires a State reclamation plan to have a general description, derived from available data, of the reclamation activities to be conducted under the State reclamation plan, including the known or suspected eligible lands and waters within the State which require reclamation.

15. Reports

Illinois added this new section to its plan narrative to state that the Department will submit the OSM–76 Form, or its electronic counterpart in the Abandoned Mine Land Inventory System, at the time of project completion. We approve the addition of this section to Illinois' plan narrative because it satisfies a requirement of the September 26, 1994, letter we sent to Illinois under 30 CFR 884.15(d). It is also consistent with 30 CFR 886.23(b), which requires a State agency to submit a completed Form OSM–76 and any other closeout reports specified by OSM upon completion of a project.

16. Priorities, (20 ILCS 1920/2.03(4))

Illinois added this new section to its plan narrative to state that legislative measures will be taken to ensure compatibility between state statutes and federal regulations. This section recognizes that section 2.03(a) of the Abandoned Mined Lands and Water Reclamation Act is inconsistent with section 403(a) of SMCRA and 62 IAC 2501.7 and ensures that legislative action will be taken to correct this disparity. We approve the addition of this section to the plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

17. 62 IAC 2501.19, Annual Grant Process

Illinois removed the language found in this section and replaced it with language requiring the Department to submit an annual grant application to OSM in accordance with the requirements of 30 CFR Part 886 to cover allowable costs of the Abandoned Mined Lands program. We find that Illinois' definition of allowable costs is substantively the same as the counterpart Federal definition of allowable costs found at 30 CFR 886.21. We further find that Illinois' requirement for an annual submission of a grant application is not inconsistent with the requirements of 30 CFR Part 886. Therefore, we approve Illinois' revision of this section.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois plan (Administrative Record No. IL–5027). No comments were received.

U.S. Environmental Protection Agency (EPA)

Under 30 CFR 884.14(a)(6), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

U.S. Fish and Wildlife Service (FWS)

Under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*), we are required to ask the FWS to determine whether those provisions of the program amendment that relate to fish, wildlife, or plants and their habitat are likely to jeopardize the continued existence of species listed as endangered or threatened (under the authority of section 4 of the Endangered Species Act of 1973) or result in the

destruction or adverse modification of their habitat. None of the revisions that Illinois proposed to make in this amendment pertain to fish, wildlife, or plants and their habitat. Therefore, we did not ask the FWS for its determination under section 7 of the Endangered Species Act of 1973.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 884.14(a)(6), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 6, 1998, we requested comments on Illinois' amendment (Administrative Record No. IL–5027), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the proposed plan amendment as submitted by Illinois on October 22, 1998.

We approve the rules as proposed by Illinois with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 8, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 913.25 Approval of Illinois abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 22, 1998	January 22, 1999	Illinois Plan Narrative; 62 IAC 2501.1, .4, .7, .8, .10, .11, .13, .16, .19, .22, .25, .28, .31, and .40; 44 IAC 1150.10, 20, .30, .100, .200, .300, .400, .500, .700, .800, .900, .1000, .1100, .1200, .1300, .1325, and .1350.

[FR Doc. 99–1444 Filed 1–21–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–024–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Oklahoma regulatory program (from now on referred to as the "Oklahoma program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to and additions of regulations pertaining to definitions; reclamation plan: siltation structures, impoundments, banks, dams, and embankments; permit variances from approximate original contour restoration requirements; small operator assistance; bond release applications; hydrologic balance: siltation structures; impoundments; disposal of excess spoil: preexisting benches; coal mine waste: general requirements; state inspections and monitoring; and request for hearing. Oklahoma intended that the amendment revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430, E-mail mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 936.15 and 936.16.

II. Submission of the Proposed Amendment

By letter dated December 18, 1997 (Administrative Record No. OK–981), Oklahoma sent us an amendment to its program under SMCRA. Oklahoma sent the amendment in response to a June 17, 1997, letter (Administrative Record No. OK–979) that we sent to Oklahoma under 30 CFR 732.17(c). We announced receipt of the amendment in the January 6, 1998, **Federal Register** (63 FR 454). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on February 5, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to definitions (OAC 460:20–3–5); permitting requirements (OAC 460:20–27–14 and 460:–20–31–9); small operator assistance (OAC 460:20–35–1, –6, –7, and –8); hydrologic balance: siltation structures—definitions (OAC 460:20–43–12); impoundments (OAC 460:20–43–14 and 460:20–45–14); coal mine waste: general requirements (OAC 460:20–43–29 and 460:20–45–29); backfilling and grading: thin overburden (OAC 460:20–43–39); disposal of excess spoil: preexisting benches (OAC 460:20–45–27); and state inspections and monitoring (OAC 460:20–57–2). We notified Oklahoma of these concerns by faxes dated June 5 and 30, and October 21, 1998 (Administrative Record Nos. OK–981.13, OK–981.08, and OK–981.11, respectively). By letters dated June 22, August 10, September 24, and November 5, 1998 (Administrative Record Nos. OK–981.06, OK–981.09, OK–981.10, and OK–981.12, respectively), Oklahoma sent us additional explanatory information and revisions to its program amendment.

Based upon Oklahoma's additional explanatory information and revisions to its amendment, we reopened the public comment period in the November 25, 1998, **Federal Register** (63 FR 65149). The public comment period closed on December 10, 1998.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. Any revisions that we do not discuss are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Oklahoma's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation—Oklahoma administrative code (OAC)	Federal counterpart regulation—30 Code of Federal Regulation (CFR)
Definitions: "Other treatment facilities," "Previously mined area," and "Siltation structure."	460:20–3–5	701.5.
Reclamation plan: siltation structures, impoundments, banks, dams, and embankments. (Surface mining activities).	460:20–27–14(a), (a)(2), (a)(3), and (f).	780.25(a), (a)(2), (a)(3), and (f).
Reclamation plan: siltation structures, impoundments, banks, dams, and embankments. (Underground mining activities).	460:20–31–9(a), (a)(2), (a)(3), and (f).	784.16(a), (a)(2), (a)(3), and (f).
Permits incorporating variances from approximate original contour restoration requirements.	460:20–33–6(a)	785.16(a).
Program services and data requirements	460:20–35–6(a), (b)(1), and (b)(3)—(b)(5).	795.9(a), (b)(1), and (b)(4)—(b)(6).
Applicant liability	460:20–35–7(a)	795.12(a).
Assistance funding	460:20–35–8	795.11.
Requirement to release performance bonds	460:20–37–15(a)(3)	800.40(a)(3).
Hydrologic balance: siltation structures. (Surface mining activities)	460:20–43–12(a)—(a)(2)	816.46(a)—(a)(2).

Topic	State regulation—Oklahoma administrative code (OAC)	Federal counterpart regulation—30 Code of Federal Regulation (CFR)
Impoundments: general requirements. (Surface mining activities)	460:20–43–14(a)(1)—(a)(3), (a)(5), (a)(6), and (a)(9)—(a)(12).	816.49(a)(1)—(a)(3), (a)(5), (a)(6), and (a)(9)—(a)(12).
Impoundments: temporary impoundments. (Surface mining activities)	460:20–43–14(c)(2)(A) and (B)	816.49(c)(2)(i) and (ii).
Disposal of excess spoil: preexisting benches. (Surface mining activities).	460:20–43–27(c)	816.74(c).
Coal mine waste: general requirements. (Surface mining activities)	460:20–43–29(a)	816.81(a).
Hydrologic balance: siltation structures. (Underground mining activities).	460:20–45–12(a)—(a)(2)	817.46(a)—(a)(2).
Impoundments: general requirements. (Underground mining activities)	460:20–45–14(a)(1)—(a)(3), (a)(5)—(a)(6), (a)(9)—(a)(12).	817.49(a)(1)—(a)(3), (a)(5)—(a)(6), (a)(9)—(a)(12).
Impoundments: temporary impoundments. (Underground mining activities).	460:20–45–14(c)(2)(A)—(B)	817.49(c)(2)(i)—(ii).
Disposal of excess spoil: preexisting benches. (Underground mining activities).	460:20–45–27(c)	817.74(c).
Coal mine waste: general requirements. (Underground mining activities).	460:20–45–29(a)	817.81(a).
State inspections and monitoring	460:20–57–2(g)(4)(A) and (h)	840.11(g)(4)(i) and (h).
Request for hearing	460:20–61–11(a)	845.19(a) .

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

B. Revisions to Oklahoma's Regulations That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. OAC 460:20–27–14. Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments. (Surface Mining Activities)

a. Oklahoma revised paragraph (b) to require siltation structures to be designed in compliance with the requirements of Section 460:20–43–12. Also, impoundments or earthen structures which permanently remain on the permit area have to be designed to comply with the requirements of Section 460:20–43–14. We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 780.25(b).

b. Oklahoma revised paragraph (c)(3) to allow its Department of Mines to establish, through the State program approval process, engineering design standards for impoundments:

1. That do not meet the size or other criteria of 30 CFR 77.216(a), or

2. That do not meet the Class B or C criteria for dams in TR–60, (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs," or

3. That are located where failure would not be expected to cause loss of life or serious property damage.

The design standards would ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Section 460:20–43–14(a)(3)(B). We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 780.25(c)(3).

2. OAC 460:20–31–9. Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments. (Underground Mining Activities)

a. Oklahoma revised paragraph (b) to require siltation structures to be designed in compliance with the requirements of Section 460:20–45–12. Also, impoundments or earthen structures which permanently remain on the permit area have to be designed to comply with the requirements of Section 460:20–45–24. We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 784.16(b).

b. Oklahoma revised paragraph (c)(2) to allow its Department of Mines to establish, through the State program approval process, engineering design standards for impoundments:

1. That do not meet the size or other criteria of 30 CFR 77.216(a), or

2. That do not meet the Class B or C criteria for dams in TR–60, (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs," or

3. That are located where failure would not be expected to cause loss of life or serious property damage.

The design standards would ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Section 460:20–45–14(a)(3)(B). We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 784.16(c)(3).

3. OAC 460:20–35–6. Program Services and Data Requirements

Oklahoma revised paragraph (b)(6) to read as follows:

The development of cross-section maps and plans required under Section 460:20–25–11, 460:20–29–11, and any other applicable regulation.

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulation at 30 CFR 795.9(b)(3).

4. OAC 460:20–43–12. Hydrologic Balance: Siltation Structures. (Surface Mining Activities) and OAC 460:20–45–12. Hydrologic Balance: Siltation Structures. (Underground Mining Activities)

Oklahoma proposed to delete paragraphs (a)(3) which provide the definition for "other treatment facilities." We are approving these deletions because Oklahoma revised and moved this definition to Section 460:20–3–5. Definitions.

5. OAC 460:20–43–14. Impoundments. (Surface Mining Activities)

Oklahoma revised paragraphs (a)(4)(A) and (B) to read as follows:

(A) An impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall

have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20–27–14(c)(3).

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 816.49(a)(4) (i) and (ii).

6. OAC 460:20–45–14. Impoundments. (Underground Mining Activities)

Oklahoma revised paragraphs (a)(4)(A) and (B) to read as follows:

(A) An impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20–31–9(c)(2).

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 817.49(a)(4) (i) and (ii).

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (Administrative Record Nos. OK–981.03 and OK–981.16). In letters dated January 27, and December 14, 1998, the U.S. Army Corps of Engineers responded that they found the changes to the Oklahoma program satisfactory (Administrative Record Nos. OK–981.05 and OK–981.19).

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree to the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. OK–981.01 and OK–981.14). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to get comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 30, 1997, and November 16, 1998, we requested comments on Oklahoma's amendment (Administrative Record Nos. OK–981.02 and OK–981.15, respectively), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as submitted by Oklahoma on December 18, 1997, and as revised on June 22, August 10, September 24, and November 5, 1998. We approve the regulations that Oklahoma proposed with the provision that they be published in identical form to the regulations sent to and reviewed by OSM and the public. To implement this decision, we are amending the Federal regulations at 30 CFR Part 936, which codify decisions concerning the Oklahoma program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage the State to bring its programs into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 8, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
December 18, 1997	January 22, 1999	460:20–3–5; 20–27–14(a), (a)(2), (a)(3), (b), (c)(3), (f); 20–31–9(a), (a)(2), (a)(3), (b), (c)(2), (f); 20–33–6(a); 20–35–6(a), (b)(1), and (b)(3) through (b)(6); 20–35–7(a); 20–35–8; 20–37–15(a)(3); 20–43–12(a) through (a)(3); 20–43–14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20–43–27(c); 20–43–29(a); 20–45–12(a) through (a)(3); 20–45–14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20–45–27(c); 20–45–29(a); 20–57–2(g)(4)(A) and (h); and 20–61–11(a).

[FR Doc. 99–1443 Filed 1–21–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii) pertaining to the vertical placement of task lights; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Morever, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * * * *		
USS PORTER	DDG 78	1.92 meters.
* * * * * * *		

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * * * *		
USS PORTER	DDG 78	102.00 thru 112.50°.
* * * * * * *		

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I,.sec. 2(f)	Foward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less that ½ ship's length aft of forward masthead light. annex I, sec. 3 (a)	Percentage horizontal separation attained
* * * * * * *					
USS PORTER	DDG 78	X	X	X	13.8
* * * * * * *					

Dated: October 26, 1998.

Approved:

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty).

[FR Doc. 99–1487 Filed 1–21–99; 8:45 am]

BILLING CODE 3910–FF–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDO5–98–114]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Manasquan River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Brielle Railroad Bridge across the New Jersey Intracoastal Waterway, Manasquan River at mile 0.9 in Point Pleasant, New Jersey. Beginning at 8 a.m. on March 1 through March 12, 1999, this deviation allows the bridge to remain closed to navigation between the hours of 8 a.m. and 4 p.m., Monday through Friday. This closure is necessary to facilitate extensive repairs and maintain the bridge's operational integrity while still providing for the reasonable needs of navigation.

DATES: The deviation is effective from 8 a.m. on March 1, 1999 until 4 p.m. on March 12, 1999.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administration, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Brielle Railroad Bridge is owned and operated by New Jersey Transit (NJ Transit. A letter was forwarded to the Coast Guard by NJ Transit requesting a temporary deviation from the normal operation of the bridge to implement extensive structural steel repairs. Presently, the draw is required to open on signal at all times. This requirement is included in the general operating regulations at 33 CFR 117.5. The repairs entail replacement or reinforcement of stringers, floor beams, laterals and bearings. Disassembling parts of the bridge and maintaining the drawbridge span in the closed position is necessary to complete the repairs.

The Coast Guard has informed the known users of the waterway of the bridge closure so that these users can arrange their transits to avoid being negatively impacted by the temporary deviation.

From March 1 until March 12, 1999, this deviation allows the draw of the Brielle Railroad Bridge to remain closed to vessels between the hours of 8 a.m. and 4 p.m., Monday through Friday and open on signal at all other times.

Dated: January 11, 1999.

Roger T. Rufe Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 99–1471 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 061–5039; FRL–6218–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Source Specific VOC RACT for Tuscarora Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision requires Tuscarora Incorporated, a major source of volatile organic compounds (VOCs), to implement reasonably available control technology (RACT). The intended effect of this action is to grant approval of a source-specific Consent Agreement submitted by the Commonwealth of Virginia to impose RACT requirements in accordance with the Clean Air Act.

DATES: This final rule is effective on March 23, 1999, without further notice, unless EPA receives adverse comments by February 22, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Virginia Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at lewis.janice@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 1996, the Commonwealth of Virginia, Department of Environmental Quality (VADEQ) submitted a source-specific VOC RACT determination for Tuscarora Incorporated located in Loudoun County. Loudoun County is in the Northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. Within this nonattainment area, all sources of VOC with the potential to emit 50TPY or more are considered major sources and subject to RACT. Because Tuscarora Incorporated is not subject to RACT under Virginia's category-specific regulations developed for industrial categories covered by Control Technique Guidelines (CTGs), it is termed a non-CTG source. Therefore, VADEQ has determined and imposed RACT via a Consent Agreement (Registration No. 71814) to meet the requirements of section 182 of the Clean Air Act.

II. Summary of the SIP Revision

Tuscarora Incorporated, a manufacturer of custom molded, foam plastic packing, structural components and material handling products, had pre-RACT uncontrolled VOC emissions of 105.2 TPY. These emissions emanate from plant operations using the primary resin expandable polystyrene (EPS) and from the occasional use of a polystyrene/polyethylene copolymer known as ARCEL. The VADEQ determined that RACT for the facility is the use of low and reduced VOC content EPS and ARCEL beads. The Consent Agreement (Registration No.71814) requires, among other things, that the EPS monthly weighted average percentage of VOC shall not exceed 4.5% and that the ARCEL monthly weighted average percentage of VOC shall not exceed 8.5%. The use of low and reduced VOC concentrations in EPS and ARCEL beads reduces potential VOC emissions by 31%. The Consent Agreement requires that Tuscarora Incorporated keep a daily detailed material log which documents the percentage of VOC contained in the EPS and ARCEL material processed at the facility. The log must provide sufficient information to determine compliance with the conditions of the Consent Agreement. The log must be available on site and must be current for the most recent five years. Additional details of the RACT determination may be found in VADEQ's submittal and the technical support document (TSD) prepared to support this rulemaking. Copies of these materials are available, upon request, from the EPA Regional office listed in the **ADDRESSES** section of this document.

EPA is approving Consent Agreement No. 71814 issued by VADEQ to Tuscarora Incorporated to impose RACT for VOCS as a revision to the Virginia SIP.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the

Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity." Thus, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separated document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This SIP revision will be effective March 23, 1999, without further notice unless the Agency receives adverse comments by February 22, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final action and informing the public that the action will not take effect. All public comments received will then be addressed in a subsequent final action based on the proposed rule. EPA will not institute a second comment period on the rule. Parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this SIP revision will be effective on March 23, 1999, and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving the Consent Agreement, Registration Number 71814, submitted by the Commonwealth of Virginia on July 12, 1996 as a SIP revision.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final regulation that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, establishing requirements only for Tuscarora Incorporated in Loudoun County, Virginia.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the VOC RACT determination submitted by VADEQ for Tuscarora Incorporated must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Dated: December 28, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(128) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(128) Revision to the State Implementation Plan submitted on July 12, 1996 by the Virginia Department of Environmental Quality regarding VOC RACT requirements for one VOC source.

(i) Incorporation by reference.

(A) The letter dated July 12, 1996 from the Virginia Department of Environmental Quality submitting one source-specific VOC RACT determination in the form of a Consent Agreement for Tuscarora Incorporated.

(B) Consent Agreement for Tuscarora Incorporated—Sterling, Loudoun County, VA, Consent Agreement, Registration Number 71814, effective on June 5, 1996.

(ii) Additional Material: Remainder of the State submittal pertaining to Tuscarora Incorporated.

[FR Doc. 99–1263 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300735A; FRL–6044–2]

RIN 2070–AB78

Revocation of Tolerances and Exemptions from the Requirement of a Tolerance for Canceled Pesticide Active Ingredients; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of October 26, 1998, a document announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. The amendatory language for one of the sections was incorrect. This document corrects that language.

DATES: This correction becomes effective January 25, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Mall #2,

6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a document on October 26, 1998 (63 FR 57062) (FRL–6035–7), announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. In the final rule, EPA responded to a comment from Rhone-Poulenc AG Company which requested that certain tolerances for phosalone not be revoked, but retained so that those commodities could be legally imported into the United States. One of the tolerances Rhone-Poulenc wanted to retain was for almonds which was covered by the "nuts" crop group tolerance. The Agency revoked the tolerances for phosalone on nuts and should have added an entry for almonds; however, this was inadvertently not done. Therefore, the amendatory language to § 180.263 for phosalone was incorrect. This document will correct that language.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is a technical corection to the **Federal Register** and is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: December 24, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

In FR Doc. 98–28486 published on October 26, 1998 (63 FR 57062), make the following correction:

§ 180.263 [Corrected]

On page 57066, in the third column, the amendatory language for § 180.263 is corrected to read as follows:

e. By removing from § 180.263, the entries for "artichokes"; "cattle, fat"; "cattle, meat"; "cattle, mbyp"; "citrus fruits"; "goats, fat"; "goats, meat"; "goats, mbyp"; "hogs, fat"; "hogs, meat"; "hogs, mbyp"; "horses, fat"; "horses, meat"; "horses, mbyp"; "nectarines"; "Nuts"; "potatoes"; "sheep, fat"; "sheep,meat"; and "sheep, mbyp"; and by adding the entry for "almonds" to read as follows:

§ 180.263 Phosalone; tolerances for residues.

* * * * *

Commodity	Parts per million
Almonds	0.1
* * *	* *

[FR Doc. 99–1480 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300774; FRL–6053–4]

RIN 2070–AB78

Tebufenozide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the insecticide tebufenozide and its metabolites in or on sugarcane at 0.3 part per million (ppm) for an additional 2-year period. This tolerance will expire and is revoked on December 31, 2000. This regulation also amends the tolerance level, due to a typographical error in the original document published by EPA in the **Federal Register** on November 26, 1997. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sugarcane. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective January 22, 1999. Objections and requests for hearings must be received by EPA, on or before March 23, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number OPP–300774, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations

Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300774], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number OPP–300774. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9358, deegan.dave@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of November 26, 1997 (62 FR 62979) (FRL–5751–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of tebufenozide and its metabolites in or on sugarcane at 0.3 ppm, with an expiration date of December 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebufenozide on sugarcane for this year's growing season due to the continuing need to control the pest, sugarcane borer. The applicant, the Louisiana Dept. of Agriculture & Forestry, had for several years used the chemical azinphos-methyl to control this pest. However, use of that product has been eliminated, leaving no registered alternative measures to control the borer. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebufenozide on sugarcane for control of sugarcane borer.

EPA is also, at this time, amending the tolerance value for the time-limited tolerance for residues of tebufenozide on sugarcane resulting from use authorized by EPA under section 18. The regulation published by EPA in the **Federal Register** on November 26, 1997, (FRL–5751–1), contained a typographical error which identified the tolerance level as "0.03 ppm" instead of the correct tolerance level, which is "0.3 ppm." The risk assessment performed by EPA in response to this action in 1997, and discussed in detail in the November 26, 1997 **Federal Register** document, had identified the appropriate tolerance level at "0.3 ppm." EPA is taking this current action on its own initiative.

EPA assessed the potential risks presented by residues of tebufenozide in or on sugarcane. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of November 26, 1997 (62 FR 62979) (FRL–5751–1). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6).

Therefore, the time-limited tolerance is extended for an additional 2-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sugarcane after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 23, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300774] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 29, 1998.

Tina E. Levine,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.482 [Amended]

2. In § 180.482, paragraph (b), in the table, amend the entry "Sugarcane' by revising the tolerance level "0.03" to read "0.3" and the date "12/31/98" to read "12/31/00".

[FR Doc. 99–1479 Filed 1–21–99; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 990104001–9001–01; I.D. 111398D]

RIN 0648–AM05

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Pacific Offshore Cetacean Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This rule will allow acoustic deterrent devices to be deployed farther away from the net in the California/Oregon drift gillnet fishery (CA/OR DGN fishery). The intended effect of this action is to allow acoustic devices to be more safely and efficiently attached to drift gillnets.

DATES: Effective January 22, 1999. NMFS will accept comments until February 22, 1999.

ADDRESSES: Submit comments on the interim final rule to Dr. William T. Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Irma Lagomarsino, NMFS, Southwest Region, 562–980–4016.

SUPPLEMENTARY INFORMATION: On October 3, 1997 (62 FR 51805), NMFS published a final rule requiring training, equipment, and gear modifications for operators and vessels in the CA/OR DGN fishery to reduce the mortality and serious injury of several marine mammal stocks that occurs incidental to fishing operations. The regulatory text was codified in subpart C of 50 CFR part 229. To correct and clarify the meaning of the final rule, NMFS amended the regulations on May 21, 1998 (63 FR 27860).

Section 229.31(c) (1) and (2) require acoustic deterrent devices (pingers) to be used on all vessels in the CA/OR DGN fishery during every set and this section specifies pinger sound characteristics. Under § 229.31(c)(3), pingers must be attached on or near the floatline and on or near the leadline and spaced no more than 300 ft (90.0 m) apart. Pingers attached on extenders (buoy lines) or attached to the floatline with lanyards (lines) must be within 3 ft (0.91 m) of the floatline. Pingers attached with lanyards to the leadline must be within 6 ft (1.82 m) of the leadline. These pinger deployment distances were based on the same lengths of the lanyards used to attach pingers to the net in NMFS' pinger experiments in the CA/OR DGN fishery during 1996 to 1997. Results from these experiments indicated that over time, fishers became proficient at placing and removing pingers from both the floatline and leadline. The final Environmental Assessment of the final rule to implement the Pacific Offshore Cetacean Take Reduction Plan (NMFS, 1997) concluded that deploying pingers on the floatline is easier than the leadline because as the net is payed out the leadline is often buried by slack in the net. For this reason, the net reel may need to be slowed or stopped to safely attach and detach pingers to/from the leadline.

After the final rule became effective and the entire fishery was required to use pingers, NMFS learned that allowing pingers to be deployed farther away from the net could provide greater flexibility for attaching and removing pingers. Representatives of the CA/OR DGN fishery reported to NMFS that allowing pingers to be deployed farther away from the net could facilitate more efficient (faster) attachment of pingers during the "setting" of the net and removal of pingers during net retrieval. Also, at a series of skipper education workshops held in August and September 1998, CA/OR DGN fishers stated that pingers could be more efficiently and safely attached and removed to and from the net with longer pinger lanyards. Specifically, they suggested that allowing pingers to be deployed within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline should allow for more efficient and safe placement of pingers on the net. In particular, for some drift gillnet fishing operations, if longer pinger lanyards were attached permanently to the leadline, pingers may be deployed without slowing down the net reel because direct handling of the leadline to attach and/or remove pingers would not be necessary. For instance, after removing a "leadline" pinger from a permanently attached 36-ft (10.97 m) leadline lanyard during net retrieval, the lanyard could be temporarily tied to the floatline before the net was spun on the net reel. During the next fishing set, the leadline pinger lanyard would be readily accessible near the floatline for attachment of a leadline pinger. This rule allows greater

flexibility for pinger placement and removal from/to the net.

Increasing the length of pinger lanyards should not affect the efficacy of pingers at reducing cetacean bycatch in the fishery. Section 229.31(c)(1) stipulates that only pingers that broadcast a sound frequency of 10 kHz (±2 kHz) at 132 dB (±4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (+ 15 milliseconds) and repeating every 4 seconds (+ .2 seconds) may be used in the CA/OR DGN fishery. Pingers must also be operational to a water depth of at least 100 fathoms (600 ft or 182.88 m). Pingers were originally designed to produce a sound level that is audible at 15 dB above ambient noise levels at a distance of 100 m (328 ft) from the pinger (NMFS, 1996). To conservatively maintain this sound level in all areas of the net, pingers were placed every 300 ft (91.44 m) on the floatline and leadline during NMFS' pinger experiments in the CA/OR DGN fishery. NMFS required pingers to be attached on both the floatline and leadline because drift gillnets, especially when targeting swordfish, are often set with the floatline above the ocean temperature thermocline. Thermoclines may act as a barrier to sound transmission. Allowing pingers to be attached within 30 ft (9.14 m) and 36 ft (10.97 m) from the floatline and leadline, respectively, should maintain the same level of cetacean bycatch reduction as shorter pinger lanyards as long as the vertical distance between pingers on the floatline and leadline is not greater than 300 ft (91.44 m).

Although termed "gillnets", drift gillnets are designed to entangle fish rather than to capture fish by the gills. Drift gillnets are constructed of twisted nylon that is tied to form squares (meshes). Mesh size is measured as the distance between two opposite knots of mesh when stretched apart diagonally. To effectively catch fish, the net meshes must open to form squares. Fish entanglement would be impossible, or substantially reduced, if the net meshes were completely stretched during fishing. The average stretched mesh size in the CA/OR DGN fishery is 19 in (48.26 cm), but ranges from 16–22 in (48.26–55.88 cm). For 22-inch (55.88 cm) mesh (stretched size), the distance between the two opposing knots when the net is in the water is approximately 12 in (30.48 cm). Thus, because the maximum observed net depth (measures in meshes) is 160 meshes, the maximum vertical length of a drift gillnet while it is being fished is approximately 160 ft (48.76 m) (160 meshes × 1 ft (.3048 m) per mesh). Since pingers attached to the floatline with 30-ft (9.14 m) lanyards and pingers attached to the leadline with 36-ft (10.97 m) lanyards would not be more than approximately 226 ft (68.88 m) apart (160 + 30 + 36), the same level of marine mammal bycatch reduction should be maintained with the longer pinger lanyards. NMFS convened the Pacific Offshore Cetacean Take Reduction Team (Team) in February 1996 to prepare a draft plan to reduce cetacean bycatch in the CA/OR DGN fishery. NMFS will continue to reconvene this Team on an annual basis to monitor the effectiveness of the Plan's strategies to reduce marine mammal bycatch. The Team will also evaluate the fishery's progress towards meeting the marine mammal bycatch reduction goals of the MMPA.

At its June 1–2, 1998, meeting, the Team recommended that the final rule should be amended to allow pingers to be attached within 30 ft (9.14 m) and 36 ft (10.97 m) of the floatline and leadline, respectively, in order to increase the safety of pinger deployment.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause under 5 U.S.C. § 553(b)(B) that providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest because allowing pingers to be attached farther away from the net avoids an occupational hazard posed by the existing regulation. An additional **Federal Register** notification with an advance comment period would only prolong a risk to fishermen's safety without countervailing benefits to marine mammals. Setting and retrieving a drift gillnet in the CA/OR DGN fishery is already a dynamic and sometimes dangerous operation. On most vessels, two crew members are actively involved in setting the net: as the net is payed out into the water, one operates the mechanical net reel and the other snaps buoys and light-sticks to the floatline. Because the net is continually moving during this operation, a crew member's clothing, hands, arms, or legs can easily snag on an extender or on the net slack, and the crew member injured or taken overboard with the net. In this fishery, drift gillnet fishermen have been entangled in the net and injured and/or dragged overboard during the routine setting of the net. Requiring additional gear (e.g., pingers) to be attached directly, or nearly directly, to the floatline and leadline increases the hazard of this already dynamic and sometimes dangerous operation. Allowing pingers to be placed a greater distance away from the net decreases the probability that crew members will be accidentally entangled in the net and injured and/or dragged overboard.

The affected public was already involved in the formulation of this rule via mandatory workshops for vessel operators in the drift gillnet fishery in August and September 1998. Seventy percent of the drift gillnet permit holders participated in these workshops; all were informed of the workshops and afforded the opportunity to participate. At the workshops, the fishermen and NMFS discussed the proposal to allow pingers to be attached farther away from the net. Many of the participants confirmed that the proposal would make pinger deployment safer and more efficient. No fishers opposed the modification.

Because this rule prevents injury to fishermen and is not expected to decrease the effectiveness of pingers, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary. Further, because the rule allows pingers to be placed a greater distance away from the net, it relieves a restriction and under 5 U.S.C. 553(d)(1) is not subject to a delay in effectiveness. Accordingly, the AA makes this action effective upon the date it is filed for public inspection with the Office of the Federal Register.

As this rule is not subject to the requirement to provide prior notice and an opportunity for public comment under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This rule has been determined to not be significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.31, paragraphs (c)(2) and (3) are revised, paragraphs (c)(4) and (5) are redesignated as paragraphs (c)(7) and (8), and new paragraphs (c)(4) through (6) are added to read as follows:

§ 229.31 Pacific Offshore Cetacean Take Reduction Plan.

* * * * *

(c) * * *

(2) While at sea, operators of drift gillnet vessels with gillnets onboard must carry enough pingers on the vessel to meet the requirements set forth under paragraphs (c)(3) through(6) of this section.

(3) *Floatline.* Pingers shall be attached within 30 ft (9.14 m) of the floatline and spaced no more than 300 ft (91.44 m) apart.

(4) *Leadline.* Pingers shall be attached within 36 ft (10.97 m) of the leadline and spaced no more than 300 ft (91.44 m) apart.

(5) *Staggered Configuration.* Pingers attached within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft (45.5 m).

(6) Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

* * * * *

3. Figure 1 to part 229 is revised to read as follows:

BILLING CODE 3510–22–P

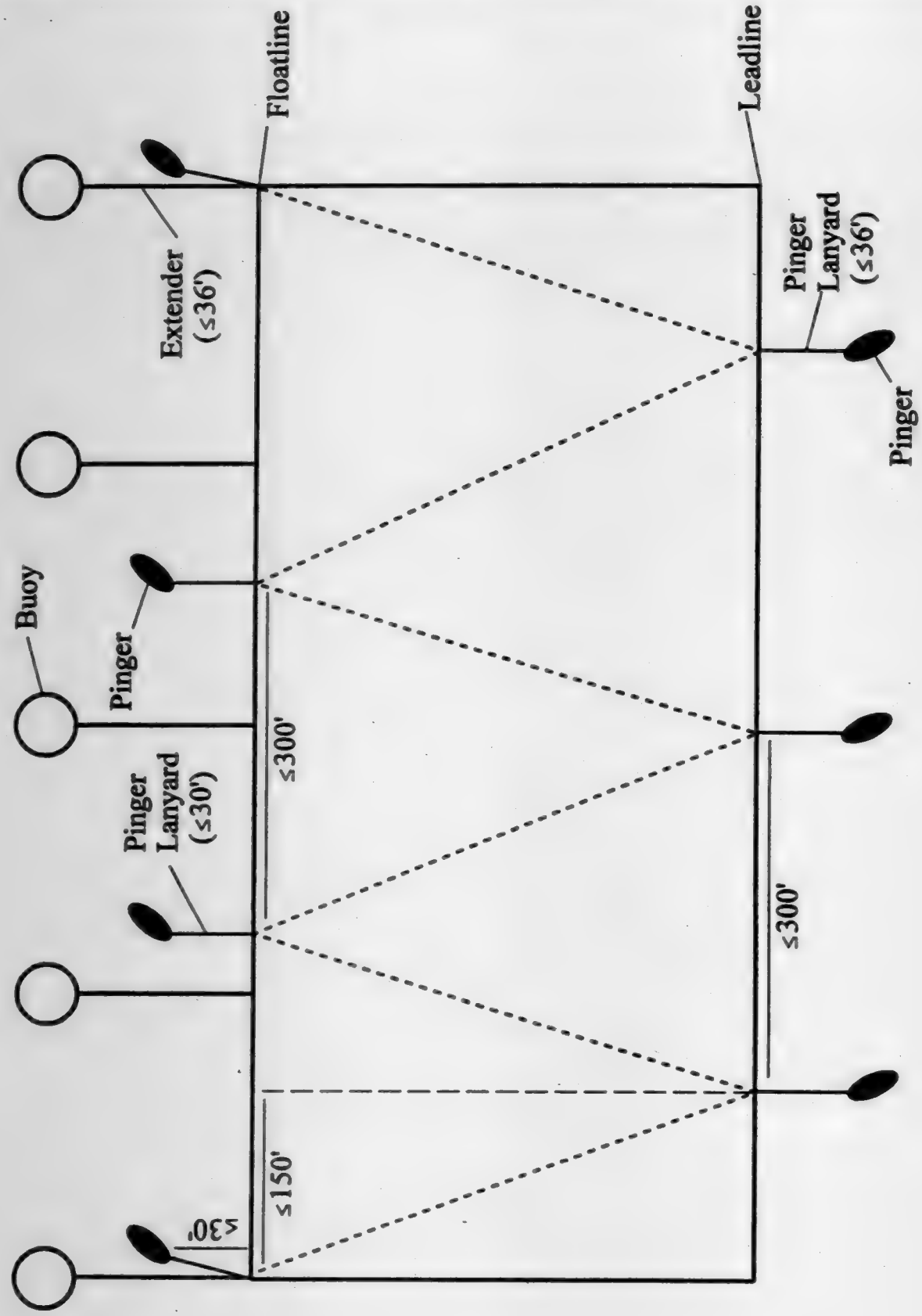

Figure 1. Drift Gillnet Pinger Configuration and Extender Requirements

Dated: January 14, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1382 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990113011–9011–01; I.D. 010699A]

RIN 0648–AM06

Fisheries of the Exclusive Economic Zone Off Alaska; Observer and Inseason Management Requirements for Pollock Catcher/Processors

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues an emergency interim rule to establish additional observer coverage requirements for 20 catcher/processor (C/P) vessels identified in the American Fisheries Act (AFA). NMFS also is establishing inseason authority to manage the non-pollock harvest limitations required under the AFA for these 20 vessels. These actions are necessary to monitor and manage the harvest of the listed C/Ps. Their goal is to comply with the intent of the statutory provisions promulgated under the AFA for these vessels in 1999.

DATES: Effective January 20, 1999, through July 19, 1999. Comments must be received by February 8, 1999.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment prepared for this emergency rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: MFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone (EEZ) pursuant to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant fo the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

On October 20, 1998, the President signed the AFA into law. The AFA specifies the manner in which the BSAI pollock fishery must be managed, as well as measures to limit activity of pollock vessels in non-pollock fisheries. Section 208(e)(1) through (20) of the AFA lists C/Ps that are subject to specific harvest limitations for pollock and non-pollock species starting in 1999 (listed C/Ps). These harvest limitations will be established for 1999 as part of the 1999 groundfish specification process authorized under regulations at 50 CFR § 679.20. NMFS must implement additional observer coverage and inseason management authority necessary to monitor and manage these harvest limitations at the start of the 1999 fishing season. By regulation, the fishing season begins on January 20, 1999. At its November 1998 meeting, the Council recommended that these measures be implemented by emergency rule. The justification for, and a description of, these measures are discussed below.

Observer Coverage for Listed C/Ps

For the 1999 fishing year, section 211(b)(6) of the AFA requires only those listed C/Ps that are approved to participate in the 1999 multispecies groundfish community develop quota (MSCDQ) program to carry two observers and weigh catch on a scale on board approved by NMFS. For the 2000 fishing year, the AFA statutory provisions state that all 20 listed C/Ps shall (1) have two observers aboard at all times while groundfish are being harvested, processed, or received from another vessel in any fishery under the authority of the Council; and (2) weigh their catch on board on a NMFS-approved scale while harvesting groundfish in fisheries under the Council's authority.

CDQ groups have proposed that twelve of the twenty listed C/Ps participate in the 1999 MSCDQ program. The AFA requires that each of these 12 vessels that is approved to participate in the 1999 MSCDQ program have two observers aboard and weigh its catch on NMFS-approved scales at all times the vessel is used to fish for groundfish in 1999. These additional observer coverage requirements under the AFA for listed C/Ps do not change current observer coverage requirements for these vessels during their participation in the 1999 MSCDQ fisheries.

Current regulations at 50 CFR § 679.50 require the remaining eight listed C/Ps to have only one observer aboard at all times the vessel is used to fish in 1999. NMFS does not believe that one observer can adequately monitor the catch and associated harvest limitations specified for the listed C/Ps. Furthermore, a contract implementing a fishery cooperative under section 210 of the AFA among listed C/Ps and catcher vessels eligible to deliver pollock to listed C/Ps was filed with the Council and the Secretary of Commerce on December 20, 1998. NMFS believes that the reliance on observer data for compliance monitoring and on management of pollock catch amounts taken by listed C/Ps in the directed fishery for pollock or as incidental catch in non-pollock fisheries becomes increasingly important under such a fishery cooperative. Under a fishery cooperative, contract agreements would be established that essentially allocate specific amounts of pollock to individual vessels for purposes of directed fishing. Amounts of the non-pollock groundfish harvest limitations specified for the listed C/Ps also would be allocated under the fishery cooperative among individual vessels. Although NMFS does not intend to actively manage individual vessel groundfish harvests under the cooperative, it is challenged to ensure that overall groundfish or prohibited species catch harvest limitations are not exceeded and that the incidental catch of pollock taken in non-pollock groundfish fisheries is not credited against the pollock directed fishing allowance established under section 206(b) of the AFA for vessels harvesting pollock for processing by the listed C/Ps. To meet these management challenges, more than one observer must be aboard to sample and provide information on an increased number of hauls. NMFS, therefore, is implementing by this emergency interim rule a requirement that two NMFS-certified observers be aboard each of the 20 listed C/Ps at all times the vessel is used to fish for groundfish in the EEZ off Alaska.

In addition to the requirement that each listed C/P carry two NMFS-certified observers, NMFS requires that at least one of the observers aboard each listed C/P have successfully completed the additional training necessary to be certified to observe in the MSCDQ fisheries. This requirement for at least one MSCDQ-certified observer is necessary to ensure that the compliance monitoring role of the observers aboard the listed C/Ps can be successfully accomplished. The AFA (section 211(b)) requires that the C/Ps abide by harvest

limitations that apply only to the C/Ps. In order to monitor and enforce these newly imposed limitations, observers with more experience and training must be aboard C/Ps. NMFS-certified MSCDQ observers have that experience and training. MSCDQ observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by MSCDQ-certified observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for listed C/Ps have been reached.

Under this emergency interim rule, only one of the two observers is required to be MSCDQ certified so that the supply of these observers to the MSCDQ program is not jeopardized in 1999. NMFS notes that subsequent rulemaking establishing observer coverage requirements for listed C/Ps after 1999 could require both observers to be MSCDQ certified. Also, the MSCDQ-certified observer required by this emergency rule is not required to be trained as a "lead CDQ observer" as described at 50 CFR § 679.50(h)(1)(i)(E). A detailed discussion on the justification for additional observer training and certification criteria for individual vessel monitoring programs was provided both in the preamble to the proposed rule (62 FR 43866, August 15, 1997) and in the preamble to the final rule (63 FR 30381, June 4, 1998) implementing the MSCDQ program.

Inseason Authority to Manage Listed C/P Harvest Limits

Congress was concerned that, given the ability to form fishery cooperatives in 1999, listed C/Ps may utilize the benefits realized from fishery cooperatives and enter into or increase fishing effort in fisheries other than the pollock fishery. Section 211(b) of the AFA seeks to protect non-pollock fisheries from major and non-traditional redistributed fishing effort by listed C/Ps. To accomplish this, provisions under section 211(b)(2) establish harvest limitations for non-pollock groundfish and prohibited species that apply to listed C/Ps and that are based on historical catch amounts. These harvest limitations will be specified in the 1999 proposed, interim, and final BSAI groundfish specifications under 50 CFR § 679.20. Many of these harvest limitations are small amounts of fish that will not support a directed fishery for those species or species groups.

Current regulations do not clarify the inseason action NMFS will implement to maintain the harvest of non-pollock by listed C/Ps within specified harvest limitations mandated by the AFA under section 211(b). With clarification under this emergency rule, NMFS announces its intent to set a directed fishing allowance and close a groundfish species to directed fishing by the listed C/Ps when a harvest limitation specified for that species has been or will be reached. Additionally, NMFS lacks the regulatory authority to apply a directed fishing closure only to the 20 listed C/Ps when one or more of these non-pollock species may be available to directed fishing by other vessels. Furthermore, NMFS lacks regulatory authority under § 679.21(e)(7) to close directed fishing for all non-pollock groundfish by the listed C/Ps if NMFS determines that these vessels have reached a prohibited species harvest limitation.

This action is necessary to provide NMFS with the inseason management tools necessary to ensure that the management of specified harvest limitations will minimize the potential of a limit being exceeded while optimizing the opportunity to harvest the pollock directed fishing allowance allocated to vessels under section 206(b)(2) of the AFA for processing by the listed C/Ps.

Under this emergency rule, NMFS will establish directed fishing allowances for the non-pollock groundfish harvest limitations when it appears that one or more of these amounts have been or will be reached. The attainment of a non-pollock groundfish or prohibited species harvest limitation established under section 211(b)(2) of the AFA will not prohibit the listed C/Ps from participating in the directed fishery for pollock with pelagic trawl gear. However, the attainment of a non-pollock groundfish species harvest limitation established under section 211(b)(2) of the AFA will prohibit the listed C/Ps from participating in the directed fishery for that species. Also, the attainment of a prohibited species harvest limitation while fishing for non-pollock groundfish species will result in the closure of the applicable area to directed fishing for all non-pollock groundfish species. Bycatch or bycatch mortality of prohibited species taken by the listed C/Ps while participating in the pollock fishery will be credited against the respective prohibited species bycatch allowances specified for the pollock fishery. Consistent with existing regulations, attainment of a bycatch allowance specified for the pollock fishery will result in closure of a specified area to directed fishing for pollock with non-pelagic trawl gear.

NMFS anticipates that this emergency rule will limit the listed C/Ps' opportunity to participate in non-pollock groundfish fisheries. For example, in order for the listed C/Ps to participate in a directed fishery for a non-pollock groundfish species, the specified harvest limit for this species must be sufficiently large to support a directed fishery by the listed C/Ps. If NMFS determines that the amount is not sufficiently large to support a directed fishery by the listed C/Ps, directed fishing for the non-pollock groundfish species will be closed. When directed fishing for a non-pollock groundfish species is closed, the listed C/Ps may continue to retain amounts of that species up to the maximum retainable bycatch amounts established in regulations at § 679.20(e) and (f).

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). This action is necessary to implement the requirements of the AFA as they relate to the pollock fishery. Delaying the start of the pollock fishery beyond its scheduled regulatory start date of January 20, 1999, would conflict with investment-backed expectations of the regulated community and could disrupt supply of seafood products to U.S. markets and consequently would be contrary to the public interest. Likewise, the need to avoid delaying the start of the pollock season constitutes good cause to waive, pursuant to authority set forth at 5 U.S.C. 553(d)(3) the thirty-day delay in effective date otherwise required by 5 U.S.C. 553(d). In addition, the regulated industry has been aware that these new requirements would be necessary since the October 1998 Council meeting and have had ample

time to prepare for coming into compliance making a thirty-day delay in effective date unnecessary.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 15, 1999.

Andrew A. Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

50 CFR CHAPTER VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, a definition of "American Fisheries Act" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

American Fisheries Act (AFA) (applicable through July 19, 1999) means Title II—Fisheries, Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105–277).

* * * * *

3. In § 679.20, paragraph (d)(1)(iv) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(iv) *American Fisheries Act harvest limitations (applicable through July 19, 1999).* (A) If the Regional Administrator determines that any harvest limitation of groundfish other than pollock, established under section 211(b)(2) (A) or (C) of the American Fisheries Act for catcher/processors identified in section 208(e)(1) through (20) of that Act, has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to those identified catcher/processors.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator shall consider the amount of the harvest limitation established under section 211(b)(2) (A) or (C) of the American Fisheries Act that will be taken as incidental catch by those catcher/processors identified in section 208(e) (1) through (20) of that Act in directed fishing for other species.

4. In § 679.21, paragraphs (e)(3)(v) and (e)(7)(ix) are added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(3) * * *

(v) *American Fisheries Act prohibited species catch limitations (applicable through July 19, 1999).* The aggregate amounts of any crab, halibut or herring trawl PSC limit caught by the catcher/processors identified under section 208(e)(1) through (20) of the American Fisheries Act and counted against the bycatch allowances specified for the fishery categories defined under paragraphs (e)(3)(iv)(B) through (E) of this section shall be limited to the amounts established under section 211(b)(2)(B) of that Act and published in the **Federal Register** under paragraph (e)(6) of this section.

* * * * *

(7) * * *

(ix) *Closures under the American Fisheries Act prohibited species catch limitations (applicable through July 19, 1999).* When the Regional Administrator determines that the catcher/processors identified under section 208(e)(1) through (20) of the American Fisheries Act have caught the amount of any crab, halibut, or herring prohibited species catch limitation specified under paragraph (e)(3)(v) of this section, directed fishing for groundfish by those vessels will be prohibited in the applicable area defined under this paragraph (e)(7), except for pollock with pelagic trawl gear.

* * * * *

5. In § 679.50, paragraph (c)(5) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 21, 2000.

* * * * *

(c) * * *

(5) *Observer coverage under the American Fisheries Act (applicable through July 19, 1999).* Any catcher/processor listed under section 208(e)(1) through (20) of the American Fisheries Act is required to have two observers aboard the vessel any day it harvests, receives, or processes groundfish. One of the two observers must meet the qualifications described at paragraph (h)(1)(i)(D) of this section.

* * * * *

[FR Doc. 99–1379 Filed 1–15–99; 5:01 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990115017–9017–01; I.D. 011199A]

RIN 0648–AM08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; revision to 1999 interim harvest specifications; technical amendment to Steller sea lion no-trawl zones; request for comments.

SUMMARY: NMFS issues an emergency interim rule implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. This emergency rule would implement three types of management measures for the pollock fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA): Measures to temporally disperse fishing effort, measures to spatially disperse fishing effort, and pollock trawl exclusion zones around important Steller sea lion rookeries and haulouts. These emergency measures are necessary and must be effective before the start of the BSAI and GOA pollock fisheries on January 20, 1999, or NMFS will be obligated under the Endangered Species Act to close all fishing for pollock until such measures are in place.

DATES: Effective January 20, 1999, through July 19, 1999. Comments must be received by February 22, 1999.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Biological Opinion

(BO) on the pollock fisheries of the BSAI and GOA and the Atka mackerel fishery of the Aleutian Islands Subarea, and the Environmental Assessment/ Regulatory Impact Review (EA/RIR) prepared for the emergency rule may be obtained from the same address. The BO is also available on the Alaska Region home page at http://www.fakr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.*, implemented by regulations appearing at 50 CFR part 679. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679 respectively.

Purpose and Need for Action

NMFS issued a BO dated December 3, 1998, and revised December 16, 1998, on the pollock fisheries of the BSAI and GOA and the Atka mackerel fishery of the Aleutian Islands Subarea. The BO concluded that the BSAI and GOA pollock trawl fisheries, as currently managed, are likely to (1) jeopardize the continued existence of the western population of Steller sea lions and (2) adversely modify its critical habitat. The clause "jeopardize the continued existence of" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species" (50 CFR 402.02). The clause "adversely modify its critical habitat" means "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical" (50 CFR 402.02). The BO also concluded that the Atka mackerel fishery, as modified by recent regulatory changes, is not likely to jeopardize the continued existence of Steller sea lions or their critical habitat.

In 1990, NMFS designated the Steller sea lion as a threatened species under the Endangered Species Act of 1973. The designation followed severe declines throughout much of the GOA and Aleutian Islands region. In 1993, NMFS defined critical habitat for the species to include (among other areas), the marine areas within 20 nautical miles (nm) of major rookeries and haulouts of the species west of 144° W longitude. In 1997, NMFS recognized two separate populations, and reclassified the western population (west of 144° W longitude) as endangered. Counts of adults and juveniles in the western population of Steller sea lions declined from about 110,000 to about 30,500 between the late 1970s and 1990, a decline of 72 percent. The decline has continued, with counts of adults and juveniles declining 27 percent from 1990 to 1996, and an additional 9 percent from 1996 through 1998. Similarly, counts of pups dropped by 19 percent from 1994 through 1998. The absolute magnitude of the decline has been smaller in recent years because the western population is already at a severely reduced level. However, the continued decline remains a serious problem.

Multiple factors have contributed to the decline, but considerable evidence indicates that lack of available prey is a major problem. Foraging studies confirm that Steller sea lions depend on pollock as a major prey source, and sea lions may be particularly sensitive to the availability of prey during the winter. The significance of pollock in the diet of sea lions may have increased since the 1970s due to shifts in the Bering Sea ecosystem related to oceanographic changes. Pollock are also the target of the largest commercial fisheries in Alaska, fisheries that have grown increasingly concentrated in time and space. This concentration of effort occurs largely in areas designated as Steller sea lion critical habitat and may reduce prey availability at critical times in the life history of sea lions. For these reasons, the BO concluded that the pollock fisheries of the BSAI and GOA may compete with sea lions and either contribute to their decline or impede their recovery. Additional information on Steller sea lions and the pollock fisheries of the BSAI and GOA is contained in the BO and in the EA prepared for this action (See **ADDRESSES**).

The BO concluded that, to avoid the likelihood of jeopardizing the continued existence of the western population of Steller sea lions or of adversely modifying its critical habitat, reasonable and prudent alternatives to the existing pollock trawl fisheries in the BSAI and GOA must accomplish three basic principles: (1) Temporal dispersion of fishing effort, (2) spatial dispersion of fishing effort, and (3) pollock trawl exclusion zones around Steller sea lion rookeries and haulouts. The BO also contained examples of specific management measures that would implement the three basic principles.

At its December, 1998 meeting, the Council deliberated on various management measures to implement the principles described in the BO. After significant debate and public comment, the Council voted to adopt a series of emergency measures to protect Steller sea lions. After review, NMFS has determined that the Council's recommended measures, with certain modifications, adhere to the principles identified in the BO. The Council's motion forms the basis for the management measures contained in this emergency rule.

Elements of the Emergency Rule

Aleutian Islands Closure

The emergency rule closes the Aleutian Islands Subarea to directed fishing for pollock. This closure, recommended by the Council as part of its emergency rule recommendation, is consistent with the principles contained within the BO. In light of its recommendation to close the Aleutian Islands Subarea to directed fishing for pollock, the Council also recommended that the pollock total allowable catch (TAC) for the Aleutian Islands Subarea be reduced to 2,000 metric tons (mt) to provide for incidental catch of pollock by vessels participating in other groundfish fisheries. This TAC recommendation, if approved by NMFS, will be published in the final 1999 BSAI harvest specifications.

Pollock Trawl Exclusion Zones

This emergency rule prohibits directed fishing for pollock within either 10 or 20 nm of rookeries and haulouts in the Bering Sea Subarea and GOA. The location, size, and period of each exclusion zone are set out in the Tables 12 and 13 of 50 CFR part 679 of the codified text. The size of the exclusion zones in each area reflects the relative widths of the continental shelf. In the Bering Sea Subarea, the shelf is relatively wide and exclusion zones have radii of 20 nm. In the GOA, the shelf is narrower and exclusion zones have radii of 10 nm.

NMFS approved these sites on the basis of ten Steller sea lion counts

conducted since 1979 during the reproductive season (summer) and non-reproductive season (winter). NMFS used the following criteria to identify and approve sites that require exclusion zones and to determine the period of the closure:

1. Rookeries

All rookery sites have 10 or 20 nm year-round pollock trawl exclusion zones.

2. Summer Haulouts

Haulouts with greater than 200 sea lions in a summer survey since 1979 and less than 75 sea lions in winter surveys since 1979 have 10 or 20 nm pollock trawl exclusion zones effective May 1 through October 31.

3. Winter Haulouts

Haulouts with less than 200 sea lions in summer surveys since 1979 and greater than 75 sea lions in a winter survey since 1979 have 10 or 20 nm pollock trawl exclusion zones effective November 1 through April 31.

4. Year-Round Haulouts

Haulouts with greater than 200 sea lions in a summer survey since 1979 and greater than 75 sea lions in a winter survey since 1979 have year-round 10 or 20 nm pollock trawl exclusion zones.

The Council's emergency rule recommendations contained all of the pollock exclusion zones put forth by NMFS in the BO with one exception in the Bering Sea Subarea and eight exceptions in the GOA.

In the Bering Sea Subarea, the Council recommended no closure for a proposed 20 nm exclusion zone around the Cape Sarichef haulout. The BO states that "some of the principles identified above may be accomplished by an incremental or phased approach if the incremental approach does not jeopardize the continued existence of the western population of Steller sea lions. The phase in of any reasonable and prudent alternative must not be drawn out, and two years is a general guideline with a significant portion occurring in year one."

Consistent with the BO, and based on the above criteria, NMFS has decided to phase in the exclusion zone around this haulout with a 10 nm exclusion zone in 1999 and anticipates extending the exclusion zone to 20 nm for 2000 and beyond.

In the GOA, the Council recommended no closures around Cape Barnabas, Gull Point, Rugged Island, Point Elrington, Cape Ikolik, Needles, Mitrofania, and Sea Lion Rocks. Based on the above criteria, NMFS has decided to implement a 1 year phase-in period for these locations. For 1999, NMFS has decided not to implement exclusion zones at these locations, and anticipates phasing-in 10 nm exclusion zones for 2000 and beyond. The extension of exclusion zones for Cape Sarichef and the eight locations in the GOA would be accomplished through separate rulemaking.

Although the Council's recommended measures included pollock trawl exclusion zones in the Aleutian Islands Subarea, implementation of these exclusion zones becomes unnecessary with the closure of the Subarea to directed fishing for pollock. This emergency rule does not affect existing no-trawl and no-entry zones that apply to all groundfish fisheries. The new exclusion zones established by this emergency rule prohibit directed fishing for pollock only.

Bering Sea Management Measures

1. Fishing Seasons

This emergency rule establishes new fishing seasons for the four sectors of the Bering Sea pollock fishery that are defined in the American Fisheries Act (AFA). These new fishing seasons are summarized in Table 1. This emergency rule also repeals existing fair start provisions that required vessels fishing for pollock in the Bering Sea Subarea to cease fishing for groundfish during the week leading up to each pollock season or face a mandatory stand down period during the first week of the pollock season. The Council has determined that these fair start requirements are no longer necessary given the protections for other fisheries that are contained within the AFA.

TABLE 1.—BSAI POLLOCK FISHING SEASONS BY SECTOR

Fishing season [1]	Industry sector		
	Inshore and catcher/processor	Mothership	Community development quota (CDQ)
A1 Season	Jan. 20–Feb. 15 ...	Feb. 1–April 15	Jan. 20–April 15.
A2 Season	Feb. 20–April 15 ...	Feb. 1–April 15	Jan. 20–April 15.
B Season	Aug. 1–Sept. 15	Aug. 1–Sept. 15	April. 15–Dec. 31.
C Season	Sept. 15–Nov. 1	Sept. 15–Nov. 11 ..	April 15–Dec. 31.

[1] The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, Alaska local time (A.l.t.).

2. Seasonal Apportionment of TAC

The pollock TAC allocated to each industry sector will be apportioned to the fishing seasons previously identified according to the following formula set out in Table 2. Overages and underages may be "rolled over" to subsequent fishing seasons during the same year, except that the combined fishing activities of all sectors during a fishing season may not exceed 30 percent of the annual TAC.

TABLE 2.—BSAI SEASONAL APPORTIONMENTS OF POLLOCK TAC

Fishing Season	Industry Sector (in percent)		
	Inshore and catcher/processor	Mothership	CDQ
A1 Season	27.5	40	45
A2 Season	12.5	40	45
B Season	30	30	55

TABLE 2.—BSAI SEASONAL APPORTIONMENTS OF POLLOCK TAC—Continued

Fishing Season	Industry Sector (in percent)		
	Inshore and Catcher/processor	Mothership	CDQ
C Season	30	30	55

3. Critical Habitat/Catcher Vessel Operational Area (CH/CVOA) Conservation Zone

This emergency rule establishes a combined CH/CVOA conservation zone for the purpose of regulating total removals of pollock. This CH/CVOA conservation zone includes the portion of Bering Sea critical habitat known as the Bogoslof foraging area and the portion of the CVOA that extends eastward from the Bogoslof foraging area. The CH/CVOA conservation zone consists of the area of the Bering Sea Subarea between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed:

55°00′ N lat. 170°00′ W long.;
55°00′ N lat. 168°00′ W long.;
55°30′ N lat. 168°00′ W long.;
55°30′ N lat. 166°00′ W long.;
56°00′ N lat. 166°00′ W long.;
56°00′ N lat. 163°00′ W long.

This emergency rule restricts pollock harvests within the CH/CVOA conservation zone during the A1 and A2 seasons to a percentage of each sector's seasonal TAC apportionment according to the percentages displayed in Table 3.

TABLE 3.—TAC LIMITS WITHIN THE CH/CVOA CONSERVATION ZONE

Fishing season	Industry sector (in percent)			
	Inshore	Catcher/processor	Mothership	CDQ
A1 Season	70	40	50	100
A2 Season	70	40	50	100
B Season		[reserved]		
C Season		[reserved]		

NMFS will monitor catch by each industry sector and close the CH/CVOA conservation zone to directed fishing for pollock by sector when NMFS determines that the specified CH/CVOA limit has been reached. The Council intended that inshore catcher vessels less than or equal to 99 ft (30.2 m) length overall (LOA) would be exempt from CH/CVOA closures from September 1 through March 31 unless the 70 percent cap for the inshore sector has been reached. NMFS will announce the closure of the CH/CVOA conservation zone to catcher vessels over 99 ft (30.2 m) LOA before the inshore sector 70 percent limit is reached. NMFS will implement the closure in a manner intended to leave remaining quota within the CH/CVOA that is sufficient to support directed fishing for pollock by vessels less than or equal to 99 ft (30.2 m) LOA for the duration of the current inshore sector opening.

An emergency rule implemented pursuant to the Magnuson-Stevens Act must not remain in effect for more than 180 days. This emergency rule will expire on July 19, 1999, and does not specify a spatial distribution of pollock TAC for the B and C seasons in the Bering Sea Subarea. NMFS has determined that the spatial dispersion scheme recommended by the Council for the B and C seasons does not adequately meet the principles for reasonable and prudent alternatives outlined in the BO. If the Council submits revised recommendations in a timely manner, NMFS will consider implementing them. In the absence of further recommendations by the Council that provide protections equivalent to or exceeding the principles contained in the BO, NMFS anticipates implementing through subsequent emergency rule the B and C season spatial allocation scheme contained in the BO. Under this scheme, the B and C season TAC allocations would be apportioned among the following three areas based on distribution of exploitable biomass as determined by summer surveys: (1) CH/CVOA conservation zone, (2) east of 170° W long. and outside of the CH/CVOA conservation zone, and (3) west of 170° W long. and north of 56° N lat.

Gulf of Alaska Management Measures

1. Fishing Seasons and TAC Apportionments

This emergency rule establishes new fishing seasons and pollock TAC apportionments in the Western and Central (W/C) Regulatory Areas of the GOA. These new fishing seasons are summarized in Table 4. The TAC for pollock in the combined W/C Regulatory Areas will continue to be apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. The pollock fishing season in the Eastern Regulatory Area will be unchanged.

TABLE 4.—POLLOCK FISHING SEASONS AND SEASONAL TAC APPORTIONMENTS FOR THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA

Fishing season	TAC apportionment (percent)	Dates [1]	
		From	To
A Season	30	January 20	April 1.

TABLE 4.—POLLOCK FISHING SEASONS AND SEASONAL TAC APPORTIONMENTS FOR THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA—Continued

Fishing season	TAC apportionment (percent)	Dates [1]	
		From	To
B Season	20	June 1	July 1.
C Season	25	September 1	The date of closure of a statistical area (610, 620, 630) to directed fishing, or October 1, whichever comes first.
D Season	25	Five days after the date of closure of a statistical area (610, 620, 630) to directed fishing in the C season.	November 1.

[1] The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, A.l.t.

2. Limits on Pollock Catch Within Shelikof Strait

To prevent localized depletions of pollock within Shelikof Strait, an important winter foraging area for Steller sea lions, the emergency rule limits removals from within Shelikof Strait during the A season. For the purpose of this emergency rule, a Shelikof Strait conservation zone is defined as the area bound by straight lines and shoreline connecting the following coordinates in the following order:

58°51′ N lat. 153°15′ W long.;
58°51′ N lat. 152°00′ W long.; and, the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to
57°00′ N lat. 154°00′ W long.;
56°30′ N lat. 154°00′ W long.;
56°30′ N lat. 155°00′ W long.;
56°00′ N lat. 155°00′ W long.;
56°00′ N lat. 157°00′ W long.; and, the intersection of 157°00′ W long. with the Alaska Peninsula.

This area overlaps portions of statistical areas 620 and 630. The Shelikof Strait conservation zone catch limit is not a separate TAC for this area, but a limit on allowable removals from this area. Either one or both of the statistical areas could be closed to directed fishing upon attainment of the specific TACs before the Shelikof Strait catch limit is reached.

NMFS will determine the A season catch limit for the Shelikof Strait conservation zone by calculating a ratio equal to the most recent estimate of pollock biomass in Shelikof Strait divided by the most recent estimate of total pollock biomass in the GOA. NMFS will then multiply by the overall pollock TAC for the GOA and further multiplied by the A season apportionment of 30 percent. For 1999, NMFS has specified an interim Shelikof Strait catch limit of 15,857 mt (see the revised 1999 interim specifications below). When NMFS determines that the A season pollock removals from within the Shelikof Strait conservation zone have reached this specified limit, NMFS will prohibit directed fishing for pollock in Shelikof Strait.

3. W/C GOA Trip Limits

The Council recommended that NMFS establish a 300,000 lb trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the Western or Central Regulatory Areas of the Gulf of Alaska (W/C GOA). However, NMFS' recordkeeping and reporting requirements currently require that catch and landings be reported in metric tons (mt). NMFS is, therefore, rounding the Council's recommended 300,000 lb trip limit to the nearest equivalent in mt and establishing a trip limit of 136 mt. The emergency rule prohibits the operator of a catcher vessel fishing for groundfish in the W/C GOA from retaining on board more than 136 mt of pollock harvested in the W/C GOA. In addition, to prevent the large scale use of tender vessels to avoid the trip limit restriction, this rule also prohibits vessels operating as tenders from retaining on board more than 272 mt (the equivalent of 2 fishing trips) of unprocessed pollock that was harvested in the W/C GOA. This 136 mt trip limit does not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel operator must cease fishing for pollock during a fishing trip before the 136 mt trip limit is reached in order to avoid a violation of either the 136 mt trip limit or the 100 percent retention requirement for pollock.

Revised 1999 Interim Harvest Specifications for Pollock in the BSAI and GOA

The regulatory changes in this emergency rule require revision of the 1999 interim specifications of pollock TAC for the BSAI and GOA. Existing regulations at 50 CFR 679.20(c)(2) do not require that interim harvest specifications for pollock in the BSAI and GOA be temporally or spatially dispersed. However, the BO concluded that the current program for managing the BSAI and GOA pollock fisheries could jeopardize Steller sea lions or their critical habitat. Therefore, to allow the Bering Sea and GOA pollock fisheries to commence on January 20, 1999, this emergency rule also adjusts the 1999 interim specifications for pollock to comport with the reasonable and prudent management measures outlined above.

The specifications for Bering Sea Subarea pollock in Table 1 of the 1999 interim harvest specifications (64 FR 50, January 4, 1999) are replaced by the following Table 6. The interim specifications for pollock were changed for two reasons: (1) To comport with the temporal and spatial dispersions required by the BO, and (2) to incorporate the Council's final 1999 TAC recommendations for pollock, which are reduced from the 1999 proposed specifications.

TABLE 6.—REVISED INTERIM 1999 TAC AMOUNTS FOR POLLOCK IN THE BERING SEA SUBAREA

Species and component	Area	A1 Season[1]		A2 Season	
		Interim TAC	CH/CVOA limit	Interim TAC	CH/CVOA limit
Pollock:					
Inshore	BS	115,394	[2]80,776	52,452	[2]36,716
Offshore catcher/processor and catcher vessel total	BS	92,316	36,926	41,962	16,785
Listed catcher/processors[3]	BS	84,469	33,787	38,395	15,358
Listed catcher vessels[3]	BS	7,847	3,139	3,567	1,427
Mothership	BS	33,569	16,785	n/a	n/a
CDQ	BS	44,640	44,640	n/a	n/a

[1] The mothership and CDQ sectors have a single A season apportionment equal to 40 and 45 percent of their annual TAC allocations, respectively.

[2] Under the emergency rule, NMFS will close the CH/CVOA conservation zone to inshore vessels greater than 99 ft (30.2 m) LOA while maintaining a sufficient CH/CVOA allowance to support fishing activities by inshore catcher vessels under 99 ft (30.2 m) LOA for the duration of the current opening. However, once the specified CH/CVOA limit is reached, all inshore vessels will be prohibited from engaging in directed fishing for pollock inside the CH/CVOA conservation zone.

[3] Section 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

The first seasonal allowances for W/C GOA pollock in Table 1 of the 1999 Interim Harvest Specifications (64 FR 46, January 4, 1999) are replaced by the following Table 7:

TABLE 7.—REVISED FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE WESTERN (W) AND CENTRAL (C) REGULATORY AREAS OF THE GULF OF ALASKA (GOA)

Species and area	Interim TAC
Pollock:	
W (610)	6,936
C (620)	11,652
C (630)	9,156
W/C Subtotal	27,744
Shelikof Strait Subtotal[1]	15,857

[1] The pollock catch limit for the Shelikof Strait conservation zone is determined by calculating the ratio of the most recent estimate of pollock biomass in Shelikof Strait (489,900 mt) divided by the most recent estimate of total pollock biomass in the GOA (933,000 mt). This ratio will then be multiplied by the overall pollock TAC for the GOA (100,920 mt) and multiplied by the A season apportionment of 30 percent.

Technical Amendment to Steller Sea Lion No-Trawl Zones

This emergency interim rule also makes technical changes to the existing no-trawl zones set out in Tables 4 and 6 50 CFR part 679 by suspending them and by adding Tables 13 and 14 to 50 CFR part 679.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

Failure to have the measures contained in this rule in place by January 20, 1999, would force delay of the start of the pollock fisheries of the BSAI and GOA with significant costs to industry. This would occur because without these measures, the December 16, 1998, BO would require that to protect Steller sea lions, no pollock fishing occur. Thus, notice and comment procedures for this rule would prevent NMFS from performing its necessary function of allowing the fishery to be prosecuted while protecting this endangered species. As such, NMFS finds that the immediate need to effect the provisions of this rule by January 20, 1999, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. The need for these measures to be in place by January 20, 1999, as explained above, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in effective date.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

50 CFR CHAPTER VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.7, paragraph (b) is suspended and paragraph (i) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i) *Prohibitions specific to the GOA (applicable through July 19, 1999)*—(1) *Southeast Outside trawl closure (applicable through July 19, 1999).* Use any gear other than non-trawl gear in the GOA east of 140° W long.

(2) *Western/Central GOA Pollock trip limit (applicable through July 19, 1999).* Retain on board a catcher vessel at any time, more than 136 mt of unprocessed pollock, or retain on board a tender vessel at any time, more than 272 mt of unprocessed pollock, harvested in the Western or Central Areas of the GOA.

3. In § 679.20, paragraphs (a)(5)(i)(A) and (a)(5)(ii)(B) are suspended, and new paragraphs (a)(5)(i)(C) and (a)(5)(ii)(C) are added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(C) *BSAI seasonal allowances (applicable through July 19, 1999)—(1) Inshore.* The portion of the Bering Sea Subarea pollock TAC allocated to the inshore component under Section 206(b) of the American Fisheries Act will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(e)(4)(i), as follows: A1 Season, 27.5 percent; A2 Season, 12.5 percent, B Season, 30 percent, C Season, 30 percent. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator provided that overall pollock removals from all sectors during a fishing season do not exceed 30 percent of the combined annual TAC of pollock.

(2) Catcher/processor. The portion of the Bering Sea Subarea pollock TAC allocated to the catcher/processor component under Section 206(b) of the American Fisheries Act will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(e)(4)(ii), as follows: A1 Season, 27.5 percent; A2 Season, 12.5 percent; B Season, 30 percent; C Season, 30 percent. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that overall pollock removals from all sectors during a fishing season do not exceed 30 percent of the combined annual TAC of pollock.

(3) Mothership. The portion of the Bering Sea Subarea pollock TAC allocated to the mothership component under Section 206(b) of the American Fisheries Act will be divided into three seasonal allowances corresponding to the three fishing seasons set out at § 679.23(e)(4)(iii) as follows: A Season, 40 percent; B Season, 30 percent; C Season, 30 percent. Within any fishing year, underage or overage of any seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator provided that overall pollock removals from all sectors during a fishing season do not exceed 30 percent of the combined annual TAC of pollock.

* * * * *

(ii) * * *

(C) *GOA seasonal allowances (applicable through July 19, 1999).* Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(d)(3) as follows: A Season, 30 percent; B Season, 20 percent; C Season, 25 percent; D Season, 25 percent. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment.

* * * * *

4. In § 679.22, paragraphs (a)(7) and (b)(2) are suspended and paragraphs (a)(8)(iv), (a)(11) and (b)(3) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(8) * * *

(iv) *Pollock closure (applicable through July 19, 1999).* Directed fishing for pollock is prohibited at all times within the Aleutian Islands Subarea.

* * * * *

(11) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof District (applicable through July 19, 1999)*—(i) *Year-round trawl closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 12 to this part.

(ii) *Seasonal trawl closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the four Steller sea lion rookeries shown in Table 12 to this part.

(iii) *Pollock closures (applicable through July 19, 1999).* Directed fishing for pollock is prohibited within 10 or 20 nm of each of the 25 Steller sea lion haulout and rookery sites shown in Table 12 to this part. The radius in nm and time period that each closure is in effect are shown in Table 12 to this part.

(iv) *Critical Habitat/Catcher Vessel Operational Area (CH/CVOA) conservation zone (applicable through July 19, 1999)*—(A) *General.* Directed fishing for pollock by vessels catching pollock for processing either by the inshore, offshore catcher processor, or mothership component is prohibited within the CH/CVOA conservation zone for the duration of a fishing season when the Regional Administrator announces by notification in the **Federal Register** that the criteria set out in paragraph (a)(7)(iv)(C) of this section have been met by that industry component.

(B) *Boundaries.* The CH/CVOA conservation zone consists of the area of the Bering Sea Subarea between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed:

55°00′ N lat. 170°00′ W long.;
55°00′ N lat. 168°00′ W long.;
55°30′ N lat. 168°00′ W long.;
55°30′ N lat. 166°00′ W long.;
56°00′ N lat. 166°00′ W long.; and,
56°00′ N lat. 163°00′ W long.

(C) *Criteria for closure—(1) General.* The directed fishing closures identified in paragraph (a)(7)(iv)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of pollock reaches a percentage specified in the following table:

Fishing season	Industry component (in percent)		
	Inshore	Catcher/ processor	Mothership
A1 Season	70	40	50
A2 Season	70	40	50
B Season		[reserved]	
C Season		[reserved]	

(2) Inshore catcher vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will close directed fishing to inshore catcher vessels greater than 99 ft (30.2 m) LOA prior to reaching the inshore CH/CVOA limit to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) LOA inside the CH/CVOA conservation zone for the duration of the inshore seasonal opening. During the A1 and A2 seasons, the Regional Administrator will estimate how much of the inshore A1 and A2 seasonal allowance is likely to be harvested by catcher vessels less than

or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore CH/CVOA allowance to accommodate fishing by such vessels after the closure of the CH/CVOA conservation zone to vessels greater than 99 ft (30.2 m) LOA. The CH/CVOA conservation zone will be closed to directed fishing for all inshore catcher vessels when the inshore limit specified in paragraph (a)(7)(iv)(C)(*1*) of this section has been met.

(b) * * *

(3) *Steller sea lion protection areas—(applicable through July 19, 1999)*—(i) *Year-round trawl closures.* Trawling is prohibited in the GOA within 10 nm of the nine Steller sea lion rookeries shown in Table 13 to this part.

(ii) *Pollock closures (applicable through July 19, 1999).* Directed fishing for pollock is prohibited within 10 nm of each of the 45 Steller sea lion haulout and rookery sites shown in Table 13 to this part. The radius in nm and time period that each closure is in effect are shown in Table 13 to this part.

(iii) *Shelikof Strait conservation zone (applicable through July 19, 1999).*—(A) *General.* Directed fishing for pollock is prohibited within the Shelikof Strait conservation zone during the A season defined at § 679.23(d)(3) when the Regional Administrator announces through notification in the **Federal Register** that the A season catch of pollock from within the Shelikof Strait conservation zone reaches the amount determined by paragraph (b)(2)(iii)(C) of this section.

(B) *Boundaries.* The Shelikof Strait conservation zone consists of the area bound by straight lines and shoreline connecting the following coordinates in the following order:

58°51′ N lat. 153°15′ W long.
58°51′ N lat. 152°00′ W long.

and the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to

57°00′ N lat. 154°00′ W long.
56°30′ N lat. 154°00′ W long.
56°30′ N lat. 155°00′ W long.
56°00′ N lat. 155°00′ W long.
56°00′ N lat. 157°00′ W long.

and the intersection of 157°00′ W long. with the Alaska Peninsula.

(C) *Determination of catch limit.* The pollock catch limit for the Shelikof Strait conservation zone will be published in the annual specifications under § 679.20(c) and is determined by calculating a ratio equal to the most recent estimate of pollock biomass in Shelikof Strait divided by the most recent estimate of total pollock biomass in the GOA. NMFS will then multiply by the overall pollock TAC for the GOA and further multiplied by the A season apportionment of 30 percent.

* * * * *

5. In § 679.23, paragraphs (d)(2) and (e)(2) are suspended, and new paragraphs (d)(3) and (e)(4) are added to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) *Directed fishing for pollock (applicable through July 19, 1999).* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., April 1;

(ii) *B season.* From 1200 hours, A.l.t., June 1, through 1200 hours, A.l.t., July 1;

(iii) *C season.* From 1200 hours, A.l.t., September 1, within a statistical area until the date of closure of the statistical area to directed fishing, or 1200 hours, A.l.t., October 1, whichever comes first.

(iv) *D season.* From 1200 hours, A.l.t., five days after the closure of the C season in a statistical area until 1200 hours, A.l.t., November 1.

(e) * * *

(4) *Directed fishing for pollock in the Bering Sea Subarea (applicable through July 19, 1999).—(i) Inshore and offshore catcher/processor components.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component and by the offshore catcher processor component in the Bering Sea Subarea is authorized only during the following four seasons:

(A) *A1 season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., February 15;

(B) *A2 season.* From 1200 hours, A.l.t., February 20, through 1200 hours, A.l.t., April 15;

(C) *B season.* From 1200 hours, A.l.t., August 1, through 1200 hours, A.l.t., September 15; and,

(D) *C season.* From 1200 hours, A.l.t., September 15, through 1200 hours, A.l.t., November 1.

(ii) *Mothership component.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the offshore mothership component in the Bering Sea Subarea is authorized only during the following three seasons:

(A) *A season.* From 1200 hours, A.l.t., February 1, through 1200 hours, A.l.t., April 15;

(B) *B season.* From 1200 hours, A.l.t., August 1, through 1200 hours, A.l.t., September 15; and,

(C) *C season.* From 1200 hours, A.l.t., September 15, through 1200 hours, A.l.t., November 1.

* * * * *

6. Tables 4 and 6 to 50 CFR part 679 are suspended and Tables 12 and 13 are added to read as follows:

TABLE 12 TO 50 CFR PART 679

[Steller sea lion protection areas [1] in the Bering Sea Subarea [2] are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Bering Sea								
Walrus	57°11.00′	169°56.00′	.....	.....	20	20	.....	10
Uliaga	53°04.00′	169°47.00′	53°05.00′	169°46.00′	.....	20	.....	.....
Chuginadak	52°46.50′	169°42.00′	52°46.50′	169°44.50′	.....	20	.....	.....
Kagamil	53°02.50′	169°41.00′	.....	.....	.....	20	.....	.....
Samalga	52°46.00′	169°15.00′	.....	.....	.....	20		
Adugak	52°55.00′	169°10.50′	.....	.....	20	20	.....	10
Umnak/Cape Aslik	53°25.00′	168°24.50′	.....	.....	20	20	.....	.....

TABLE 12 TO 50 CFR PART 679—Continued

[Steller sea lion protection areas[1] in the Bering Sea Subarea[2] are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Ogchul	53°00.00′	168°24.00′	.....	.....	20	20	.....	10
Bogoslof/Fire Island	53°56.00′	168°02.00′	.....	.....	20	20	.....	10
Emerald	53°17.50′	167°51.50′	.....	.....	.....	20	.....	.....
Unalaska/Cape Izigan	53°13.50′	167°39.00′	.....	.....	20	20	.....	.....
Unalaska/Bishop Pt	53°58.50′	166°57.50′	.....	.....	20	20	.....	.....
Akutan/Reef-lava	54°07.50′	166°06.50′	54°10.50′	166°04.50′	20	20	.....	.....
Old Man Rocks	53°52.00′	166°05.00′	.....	.....	20	20	.....	.....
Akutan/Cape Morgan	54°03.50′	166°00.00′	54°05.50′	166°05.00′	20	20	20	10
Rootok	54°02.50′	165°34.50′	.....	.....	.....	20	.....	.....
Akun/Billings Head	54°18.00′	165°32.50′	54°18.00′	165°31.50′	20	20	20	10
Tanginak	54°12.00′	165°20.00′	.....	.....	20	.....	.....	.....
Tigalda/Rocks NE	54°09.00′	164°57.00′	54°10.00′	164°59.00′	20	20	.....	.....
Unimak/Cape Sarichef	54°34.50′	164°56.50′	.....	.....	10	10	.....	.....
Aiktak	54°11.00′	164°51.00′	.....	.....	20	.....	.....	.....
Ugamak	54°14.00′	164°48.00′	54°13.00′	164°48.00′	20	20	20	10
Round	54°12.00′	164°46.50′	.....	.....	.....	20	.....	.....
Sea Lion Rock (Amak)	55°28.00′	163°12.00′	.....	.....	20	20	20	10
Amak+rocks	55°24.00′	163°07.00′	55°26.00′	163°10.00′	20	20	.....	.....

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.

TABLE 13 TO 50 CFR PART 679 (EFFECTIVE THROUGH JULY 19, 1999)

[Steller sea lion protection areas[1] in the Gulf of Alaska[2] are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Gulf of Alaska								
Bird	54°40.50′	163°18.00′	.....	.....	10	10	.....	.....
South Rocks	54°18.00′	162°41.50′	.....	.....	10	10	.....	.....
Clubbing Rocks	54°42.00′	162°26.50′	54°43.00′	162°26.50′	10	10	.....	10
Pinnacle Rock	54°46.00′	161°46.00′	.....	10	.....	10	.....	10
Sushilnoi Rocks	54°50.00′	161°44.50′	.....	.....	.....	10	.....	.....
Olga Rocks	55°00.50′	161°29.50′	54°59.00′	161°31.00′	10	10	.....	.....
Jude	55°16.00′	161°06.00′	.....	.....	10	10	.....	.....
The Whaleback	55°16.50′	160°06.00′	.....	.....	10	10	.....	.....
Chernabura	54°47.50′	159°31.00′	54°45.50′	159°33.50′	10	10	.....	10
Castle Rock	55°17.00′	159°30.00′	.....	.....	.....	10	.....	.....
Atkins	55°03.50′	159°19.00′	.....	.....	10	10	.....	10
Spitz	55°47.00′	158°54.00′	.....	.....	.....	10	.....	.....
Kak	56°17.00′	157°51.00′	.....	.....	.....	10	.....	.....
Lighthouse Rocks	55°47.50′	157°24.00′	.....	.....	10	10	.....	.....
Sutwik	56°31.00′	157°20.00′	56°32.00′	157°21.00′	.....	10	.....	.....
Chowiet	56°00.50′	156°41.50′	56°00.50′	156°42.00′	10	10	.....	10
Nagai Rocks	55°50.00′	155°46.00′	.....	.....	10	10	.....	.....
Chirikof	55°46.50′	155°39.50′	55°46.50′	155°43.00′	10	10	.....	10
Puale Bay	57°41.00′	155°23.00′	.....	.....	10	10	.....	.....
Takli	58°03.00′	154°27.50′	58°02.00′	154°31.00′	.....	10	.....	.....
Cape Gull	58°13.50′	154°09.50′	58°12.50′	154°10.50′	.....	10	.....	.....
Sitkinak/Cape Sitkinak	56°34.50′	153°51.50′	.....	.....	10	10	.....	.....
Kodiak/Cape Ugat	57°52.00′	153°51.00′	.....	.....	10	10	.....	.....
Shakun Rock	58°32.50′	153°41.50′	.....	.....	10	10	.....	.....
Twoheaded Island	56°54.50′	153°33.00′	56°53.50′	153°35.50′	10	10	.....	.....
Cape Douglas	58°51.50′	153°14.00′	.....	.....	.....	10	.....	.....

TABLE 13 TO 50 CFR PART 679 (EFFECTIVE THROUGH JULY 19, 1999)—Continued

[Steller sea lion protection areas[1] in the Gulf of Alaska[2] are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Latax Rocks	58°42.00′	152°28.50′	58°40.50′	152°30.00′	10	10	.....	.....
Ushagat/SW	58°55.00′	152°22.00′	.....	.....	.....	10	.....	.....
Ugak	57°23.00′	152°15.50′	57°22.00′	152°19.00′	.....	10	.....	.....
Sea Otter Island	58°31.50′	152°13.00′	.....	.....	10	10	.....	.....
Long	57°47.00′	152°13.00′	.....	.....	10	.....	.....	.....
Kodiak/Cape Chiniak	57°37.50′	152°09.00′	.....	.....	10	10	.....	.....
Sugarloaf	58°53.00′	152°02.00′	.....	.....	10	10	.....	10
Sea Lion Rocks (Marmot)	58°21.00′	151°48.50′	.....	.....	10	10	.....	.....
Marmot	58°14.00′	151°47.50′	58°10.00′	151°51.00′	10	10	.....	10
Perl	59°06.00′	151°39.50′	.....	.....	10	10	.....	.....
Outer (Pye) Island	59°20.50′	150°23.00′	59°21.00′	150°24.50′	10	10	.....	10
Steep Point	59°29.00′	150°15.00′	.....	.....	.....	10	.....	.....
Chiswell Islands	59°36.00′	149°34.00′	.....	.....	10	10	.....	.....
Wooded Island (Fish)	59°53.00′	147°20.50′	.....	.....	10	10	.....	.....
Glacier Island	60°51.00′	147°09.00′	.....	.....	10	10	.....	.....
Seal Rocks	60°10.00′	146°50.00′	.....	.....	10	10	.....	.....
Cape Hinchinbrook	60°14.00′	146°38.50′	.....	.....	.....	10	.....	.....
Hook Point	60°20.00′	146°15.50′	.....	.....	.....	10	.....	.....
Cape St. Elias	59°48.00′	144°36.00′	.....	.....	10	10	.....	.....

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Additional closures along the Aleutian Island chain that extend into statistical area 610 of the Gulf of Alaska are displayed in Table 13 to this part.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981021264–9016–02; I.D. 092998A]

RIN 0648–AL29

Fisheries of the Exclusive Economic Zone Off Alaska; Season and Area Apportionment of Atka Mackerel Total Allowable Catch

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; 1999 interim Atka mackerel specifications.

SUMMARY: NMFS issues regulations that divide the Atka mackerel total allowable catch (TAC) specified for the Aleutian Islands Subarea (AI) into two seasonal allowances; reduce the percentage of Atka mackerel TAC harvested from Steller sea lion critical habitat (CH) over a 4-year period in the Western and Central Districts of the AI; and extend the seasonal no-trawl zone around Seguam and Agligadak rookeries in the AI Eastern District into a year-round closure. This action is necessary to avoid potential jeopardy to the continued existence of Steller sea lions due to fishery-induced localized depletions of Atka mackerel, a primary prey species for Steller sea lions. This action is intended to foster the recovery of Steller sea lions and to further the conservation goals of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective January 19, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) pursuant to the FMP. General regulations governing U.S. fisheries appear at 50 CFR part 600. The FMP is implemented by regulations appearing at 50 CFR part 679 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Act. Fishing for Atka mackerel (*Pleurogrammus monopterygius*) is governed by the FMP and its implementing regulations.

Background

The purpose and need for this action were described in the preamble to the proposed rule published on November 9, 1998 (63 FR 60288). That document and the EA/RIR/FRFA describe the conservation and management events leading to this action. In summary, the number of Steller sea lions (*Eumetopias jubatus*) west of 144°W. long. in the Gulf of Alaska (GOA) and the BSAI has declined severely during the last several decades. In 1997, NMFS recognized these animals as a separate and endangered population. NMFS has

defined CH for this population to generally include marine areas within 20 nautical miles (nm) of major Steller sea lion rookeries and haul outs west of 144°W. long. and principal foraging areas. NMFS is the lead agency responsible for the conservation of this marine mammal species and its recovery.

NMFS scientists have found that Atka mackerel are the most common prey species for Steller sea lions in portions of the AI Central and Western Districts, based on the collection of Steller sea lion scats. Further investigation of Atka mackerel fishery data indicates that the fishery has led to localized depletions of Steller sea lion prey, thereby increasing evidence of competition for Atka mackerel between Steller sea lions and the fishery. The single most important feature of CH for the Steller sea lion is its prey base. Areas designated as CH for this species must include sufficient food to meet the energy demands of a stable and healthy sea lion population.

Although the ultimate cause(s) of the population decline of Steller sea lions west of 144°W. long. remain(s) uncertain, NMFS believes that the lack of available prey is an important contributing factor. Atka mackerel is an important part of the mix of species preyed on by Steller sea lions. This rule reduces the proportion of the annual Atka mackerel catch taken from within designated CH to prevent potential jeopardy to the continued existence of the endangered Steller sea lion population and adverse modification of its CH.

At its meeting in June 1998, the Council adopted the fishery management alternative described in the proposed rule. This action implements the management elements described in the proposed rule, with no change. Briefly, these elements include (1) dividing the Atka mackerel TACs specified for each subarea and district of the BSAI into two equal seasonal allowances, (2) progressively reducing the catch of Atka mackerel within areas designated as Steller sea lion CH and (3) extending the seasonal 20 nm no-trawl zones around the Seguam and Agligadak rookeries in the Eastern District of the AI into 20 year-round closures.

Interim Specifications

Regulations at § 679.20(c)(1) require annual publication of proposed specifications of catch limits in the BSAI and GOA groundfish fisheries for the next fishing year. NMFS published the 1999 proposed specifications for the BSAI on December 30, 1998 (63 FR 71867). Interim specifications (§ 679.20(c)(2)) provide for groundfish fisheries that start in early January each year and remain in effect until superceded by publication of the final specifications. NMFS published interim specifications for the BSAI groundfish fisheries on January 4, 1999 (64 FR 50). This final rule changes the regulatory procedures for setting interim specifications at § 679.20(c)(2)(ii)(A), and effectively changes the published interim specifications for Atka mackerel to the A season apportionments that appear in Table 3 of the proposed BSAI specifications. The A season apportionments of Atka mackerel, and catch limits inside CH as specified in Table 3, will remain in effect for 1999, until superceded by publication of the final specifications for 1999. The revised interim TACs (in metric tons) for Atka mackerel are as follows:

Subarea & Component	Inside CH	Total
Western AI (543)	7,459	11,475
Central AI (542)	7,616	9,520
Eastern AI and BS Jig Gear	.....	127
Eastern AI and BS Other Gear	.....	6,269
Total	.....	27,391

Response to Comments

NMFS invited public comments on the proposed rule from November 9, 1998, through December 9, 1998 (63 FR 60288, November 9, 1998). NMFS received three letters of substantive comment and one letter stating that no comment would be made. Ten principal comments from the three comment letters are summarized and responded to here.

Comment 1. The proposed regulations would lessen the jeopardy to the Steller sea lions posed by the Atka mackerel fishery and should be adopted. Enforcement of the regulations will require detailed knowledge of the location of fishing vessels. NMFS should adopt a vessel monitoring system (VMS) for the Atka mackerel fishery as soon as possible.

Response. NMFS notes the support for the regulations. As noted in the preamble to the proposed rule, the Council recommended that NMFS establish a VMS program to monitor the activity of vessels fishing with trawl gear in CH areas. NMFS intends to implement VMS requirements in 1999 before the start of the second Atka mackerel fishing season on September 1.

Comment 2. NMFS should design and implement, in consultation with the fishing industry and other agencies, a program for evaluating the effectiveness of the regulations on the availability of Atka mackerel to Steller sea lions and on Steller sea lion recovery. Such an evaluation program should include efforts to determine whether the catch of 40 percent of the total AI mackerel harvest in the Steller sea lion CH is too high to result in reduced competition between Steller sea lions and the Atka mackerel fishery.

Response. NMFS recognizes that research into the relationship between groundfish fisheries and the Steller sea lion is necessary and advisable. Information from well-designed research studies may better enable NMFS and the Council to craft fishery management measures that ensure sufficient prey availability for sea lion recovery and that minimize, to the extent practicable, burdensome impacts on the fishing industry. NMFS is reviewing a preliminary research plan to investigate the effects of the Atka mackerel fishery on Steller sea lion condition and fitness, and the efficacy of trawl exclusion zones as a sea lion conservation measure. NMFS has initiated planning discussions on how best to undertake the initial steps of this proposal, which include small-scale bottom trawl surveys and tagging of Atka mackerel for movement studies.

Comment 3. Reducing the likely adverse impacts of high-volume, concentrated trawl fishery removals of key prey species from sea lion CH should be the highest priority for sea lion conservation. The proposed regulations fall short in this respect. Additional measures for sea lion conservation should include (1) no trawling for Atka mackerel in all Steller sea lion CH and foraging habitat in the AI, (2) spreading the catch more evenly in time with quarterly allocations, (3)

spreading the catch more evenly in space with smaller spatial allocations, and (4) reducing the overall TAC in response to sharp declines in the estimates of stock biomass.

Response. NMFS believes that the measures contained in this action will reduce the likelihood of fishery-induced localized depletions of Steller sea lion prey within CH. However, if continuing research indicates that this is not the case, NMFS will change the regulations, in consultation with the Council, to reflect the newly acquired understanding of sea lion prey requirements and fishery effects on local prey availability. Although the Atka mackerel biomass decreased from a peak in 1990 and 1991, the TAC-setting process incorporates risk-averse methods that ensure conservative catch levels.

Comment 4. The proposed regulations are inadequate because they do not insure that adverse modification will not occur in sea lion CH, especially in the Eastern District of the AI. No analysis exists to show that a 50-percent reduction in total fishery removals from CH in Districts 542 and 543 is adequate to avoid localized depletions or other adverse modifications of CH. The problem of fleet concentration and locally intense pulse fishing is not addressed by broad spatial allocations because the fishery is likely to remain spatially concentrated in discrete locations under the proposed regulations. Two equal seasonal allowances of Atka mackerel TACs are not sufficient to prevent locally high extraction rates. The proposed measures do not adequately address the need to reduce fishing in the fall and winter months when sea lion prey is believed to be more scarce. Finally, allocating substantial portions of the Atka mackerel TAC outside of the CH, without reductions in TAC levels, will likely result in transferring the problems to these other areas.

Response. See response to Comment 3. A 50-percent reduction in total fishery removals from CH is a reasonable first step that substantially diminishes competition for Atka mackerel between Steller sea lions and the Atka mackerel fishery. For example, based on catch history and the Atka mackerel TAC of 22,400 metric tons (mt) for the Central AI District (542) in 1998, up to 98 percent or 21,952 mt could have been caught by the fishery inside CH. Under the conservation program implemented by this final rule, and assuming the same TAC, the catch of Atka mackerel inside CH would be reduced to 17,920 mt in the first year and to 8,960 mt by the fourth year of the program. Further in this example, the catches made inside CH without the conservation measures normally would be taken at one time of the year, in winter. This action will divide the catch inside CH between winter and summer/fall seasons. Instead of removing 21,952 mt from CH during one winter season (in this example) the fishery would ultimately be allowed to remove only 4,480 mt during a winter season. Hence, disbursement of the fleet by area and season will significantly reduce fishery-induced localized depletions of Atka mackerel inside CH. If new information in the future indicates otherwise, NMFS will re-examine these measures in that light. To this end, the phased-in approach to reducing catch levels inside CH is designed, in part, to avoid transferring the conservation problem to other areas outside CH by allowing time to identify and respond to unanticipated effects of this action.

Comment 5. The Atka mackerel TAC reapportionment plan should be approved for the Eastern and Western AI Districts and modified for the Central AI District where only the temporal reapportionment of Atka mackerel fishing should be implemented. The proposed CH area restrictions for the Central AI District could negatively affect the Atka mackerel stock and, thereby, adversely impact foraging opportunities for sea lions as a greater proportion of fishing is mandated outside of current fishing areas. The Council's Scientific and Statistical Committee (SSC) advised the Council to move forward with seasonal modifications, but not spatial modifications, to the Atka mackerel fishery. The SSC was concerned that disproportionate harvest rates of Atka mackerel in marginal areas for the stock (outside CH) could hurt the mackerel population and possibly impact sea lions. In the Eastern and Western Districts, a reasonable fishery can be conducted under the proposed modifications.

Response. For 1999, the apportionment of Atka mackerel TAC between areas inside and outside Steller sea lion CH in the AI Central District will be 80 percent inside and 20 percent outside. This represents the first year of a four-year phased-in reduction in the proportion caught in CH (to 40 percent inside CH in 2002), but only a 15 percent reduction from the recent 3-year average of 95 percent caught within CH in the Central District. While NMFS recognizes that mandated movements of the fishery may have unforeseen consequences to the fishery, the Atka mackerel stock, and the habitats of other species, NMFS believes that decreased use of CH areas by the fishery will promote the recovery of Steller sea lions. Furthermore, the phased-in reduction of the use of CH areas will enable NMFS and the Council to revisit these actions before 2002. If research, groundfish surveys (to be conducted in both 2000 and 2002), or other information sources indicate that redistribution of the fishery to areas outside CH is having detrimental effects on the Atka mackerel stock or the habitats of other species, NMFS may consider different measures to promote the recovery of the Steller sea lion population and protect the habitats of marine species.

Comment 6. Although industry presented several options to the Council for addressing the potential impact of the Atka mackerel fishery on Steller sea lions, NMFS informed the industry and Council that the only acceptable options were those based on inside-outside CH apportionments of TAC. NMFS stated other options that failed to limit harvest within CH could result in a finding that the fishery jeopardized the recovery of sea lions (under the Endangered Species Act) and could result in fishery closures in 1999. NMFS was acting as both judge and jury, stifling the Council process and affecting the content of options eventually adopted by the Council. The result was approval of measures based on the split of the TAC between inside and outside CH despite the Council's reservations regarding the merits of such an approach.

Response. During the process of developing conservation measures to address the potentially adverse impact of the Atka mackerel fishery on the recovery of the endangered Steller sea lion, NMFS hosted several industry workshops and considered comments by the Council's SSC and Advisory Panel, as well as public testimony, provided at the April and June 1998 Council meetings. The alternative management measures presented to the Council included options such as the step-wise implementation of CH harvest limitations that were suggested by industry and ultimately adopted by the Council. Although both industry and conservation groups presented other options, NMFS did not pursue these options as reasonable alternatives in light of the standards provided by the ESA and other applicable law and due to the limited knowledge on fishery interactions with Steller sea lions. NMFS balanced these concerns with precautionary principles that require immediate and significant action be taken to mitigate activities that pose jeopardy to the recovery of Steller sea lions or adversely impact their CH.

NMFS acknowledges the Council's reservations in adopting the proposed measures given the scarcity of existing information. However, such action is commended, prudent, and subject to change in the future as new information becomes available.

Comment 7. NMFS should not implement the third and fourth year Atka mackerel catch reductions in the CH of the Central AI District if data from the first and second year's fisheries indicate that this district cannot support a fishery for 60 percent of the TAC outside CH. NMFS should reconsider its entire area apportionment plan if research in the next few years concludes that fishing does not affect the density of Atka mackerel in areas inhabited by sea lions. The Council should be required to conduct an annual review of the phased-in modifications to the Atka mackerel fishery. NMFS made several important commitments to research the effect of the fishery on the density of Atka mackerel in areas inhabited by sea lions. NMFS also agreed that a better assessment of the spatial distribution of Atka mackerel was necessary. NMFS should follow through on its commitment so that an adequate review of the action can be conducted.

Response. See responses to Comments 2 and 5. NMFS intends to support research on the effects of fishing on Steller sea lion prey to the extent funding permits. NMFS also supports periodic review of the phased-in catch restrictions inside CH.

Comment 8. NMFS' expressed intent to manage catch limitations inside CH areas by counting all catch from the beginning of a season against the catch limits inside CH, regardless of where the fish were actually caught, will create a "race-for-fish" inside CH contrary to the stated objective of the plan. NMFS should delay implementing CH restrictions until a VMS program is implemented so that the location of catch can be correctly counted against the area in which it is taken. The fishing industry is willing to work with NMFS to establish a reasonable monitoring system.

Response. As noted in the response to Comment 1, NMFS intends to implement VMS requirements by September 1, 1999. The primary purpose of these requirements will be to enforce area closures; not for catch accounting purposes. The resolution of catch location data, even with the use of a VMS, is not sufficient to determine whether any particular catch of fish was taken from inside or outside of the CH area. This is because a VMS does not necessarily match a catch of fish to a particular area. NMFS' presumption that initial catches of Atka mackerel come from within CH is historically based in that significant amounts of the Atka mackerel TAC have been harvested within Steller sea lion CH. As discussed in the EA/RIR/FRFA, only 5 to 15 percent of the Atka mackerel harvest currently occurs outside of CH. Because of this current harvesting practice, NMFS' approach should not stimulate any more of a "race-for-fish" than currently exists without vessel-specific catch quotas. To not follow this approach would undermine the conservation measures implemented by this action to protect Steller sea lions. NMFS may alter this approach as data develops concerning increased harvests of Atka mackerel outside of CH.

Comment 9. NMFS has made no explicit allowances for TAC not taken in the A season to be incorporated into the B season. NMFS should commit to rolling over unharvested A season quota into the B season. Otherwise, fishermen will have an incentive to fish in hazardous weather conditions which creates a safety issue.

Response. The proposed rule, at § 679.20(a)(8)(ii)(B), specifically provided for the addition of unharvested amounts of the A season allowance to the B season allowance. This provision is unchanged in the final rule. NMFS will exercise this reapportionment authority such that the percentage of an Atka mackerel TAC that may be harvested from inside CH during the B season under § 679.22(a)(8)(iii)(B) of the final rule is not exceeded. That is, unharvested amounts of the TAC apportionment specified for the A season would be reapportioned to the B season for harvest outside CH. An overage of the A season TAC apportionment would be deducted from the B season TAC apportionment proportionately between inside and outside CH areas.

Comment 10. In the analysis presented to the Council, NMFS incorrectly determined that there were no small entities (pursuant to the Regulatory Flexibility Act (RFA)) affected by the management measures being developed. In the proposed rule, NMFS attempted to remedy this error by admitting that some impacted entities could be "small entities," as defined by the RFA. NMFS should have made this determination during development of the measures as it may have changed the outcome of the Council decision. Despite a current finding of significant impact on small entities, the analyses of impacts should have been prepared in conjunction with the development of proposed measures instead of in hindsight. NMFS continues to miss the point on impacts on communities in the AI that are by definition "small entities" by maintaining that the issue is impact on Community Development Quota (CDQ) communities. Dutch Harbor and Adak are not CDQ communities but are clearly small entities which depend heavily on income from services provided to vessels participating in the Atka mackerel fishery. Further discrepancy exists between the meaning of "small entity" as used in the analysis of impacts of the pollock inshore-offshore allocations developed at the same time as the analysis of Atka mackerel management measures.

Response. During the development of alternatives, NMFS prepared an analysis of the potential economic impacts of various Steller sea lion conservation measures. This initial analysis indicated that this measure would not result in significant economic impacts on a substantial number of small entities because most of the entities that would be directly affected by the measures were not considered "small entities" under the RFA. For fishing firms, a "small entity" would have receipts of less than $3 million dollars annually. The initial analysis indicated that catcher/processor vessels dominate the Atka mackerel fishery and these vessels did not appear to meet this "small entity" criterion. NMFS presented this analysis to the Council and public. Public testimony presented to the Council included comments on the impacts on small entities and challenged the tentative view that the conservation measures would not have a significant economic impact under the RFA. NMFS later determined that a definite certification of no significant impact on a substantial number of small entities could not be made due to a lack of empirical information. Therefore, NMFS prepared an initial regulatory flexibility analysis (IRFA) that was available for public review and comment at the time the proposed rule was published for public review. A final regulatory flexibility analysis (FRFA) was prepared for the final rule.

The Council process for recommending conservation and management measures is public and iterative, and designed to incorporate new information as it emerges through this process. Compliance with the RFA is primarily an agency responsibility. NMFS is satisfied that the public was adequately notified of the potential small entity impacts, and that the final agency decision to implement this rule has taken these potential impacts into consideration. For example, exemption of small entity jig gear vessels from the rule and the phased-in approach to

reducing Atka mackerel catches within CH serve to mitigate economic impacts of the rule on all directly affected entities.

For purposes of the RFA, NMFS must identify small entities that are expected to comply with the rule, i.e. those that would be directly or indirectly regulated by the rule. For this rule, those small entities include those small businesses, small organizations, and small governmental jurisdictions as described in the FRFA (section 5.2). Although the fishing ports of Alaska are small entities, they are not regulated by this action. CDQ groups, on the other hand, are small entities that are directly regulated by this action. Most of the vessels that have participated in the Atka mackerel fishery recently have had total annual receipts in excess of $3 million, and few are small entities. Similarly, few of the factory trawlers in the BSAI pollock fishery should have been identified as small entities for the purposes of the IRFA for the inshore-offshore allocation (Amendment 51 to the FMP). For this action, a summary of the analysis of entities affected indirectly is presented in the preamble to the proposed rule. Due to public comment indicating that the rule could have adverse economic impacts on small entities, including governmental jurisdictions, and without empirical information to demonstrate conclusively that significant impacts on a substantial number of small entities would not occur, NMFS prepared an IRFA and FRFA for this action.

Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. This rule's primary management measures are time and area closures to directed fishing for Atka mackerel. These closures affect only fishermen who use trawl gear.

What areas does this rule close? This rule prohibits trawling within 10 nm and within 20 nm of the Steller sea lion rookeries identified in this final rule at § 679.22(a)(7) and (8). Most of these areas were already closed to trawling before this final rule. This action makes permanent closures that were seasonal around the two Steller sea lion rookeries shown in Table 5b of this rule. In addition, this rule prohibits trawling for Atka mackerel within areas designated as Steller sea lion CH in the Western and Central Districts of the AI when NMFS announces this area closure in the **Federal Register**. The Alaska Region, NMFS will announce these CH closures in an information bulletin. Contact the Alaska Region, Sustainable Fisheries Division (see **ADDRESSES**) for further information on obtaining closure announcements. Tables 1 and 2, and Figure 4 of rules at 50 CFR part 226 identify the CH area in the Western and Central Districts of the AI The only exception to the CH closure to trawl gear is for harvesting groundfish CDQ. However, a CDQ group must cease fishing with trawl gear inside CH areas in the Western and Central Districts of the AI, when it has taken its specified allocation of Atka mackerel for the fishing year.

When is fishing for Atka mackerel with trawl gear allowed? This final rule authorizes directed fishing for Atka mackerel with trawl gear in the AI Subarea only during two seasons specified in this rule at § 679.23(e)(3). Directed fishing for Atka mackerel during each season will end on the last day of the season or when the Alaska Region Administrator determines that the seasonal allowance for either season has been harvested. NMFS will announce seasonal closures of directed fishing for Atka mackerel in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closure notices.

Classification

This action has been determined to be not significant under E.O. 12866.

Pursuant to the RFA, NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA), which is supplemented by the preamble to this final rule. A summary of significant issues raised in public comments in response to the IRFA and the NMFS response to those comments are provided in Comment 10. No new reporting, recordkeeping or other compliance requirements are imposed by this rule. The FRFA concludes the following regarding the small entities to which this rule applies and measures to mitigate significant economic impacts on small entities.

Business entities affected directly. The actions being considered for the BSAI Atka mackerel fishery would have direct effects on fewer than 15 fishing vessels all of which are expected to be factory trawlers. In 1997, 12 factory trawlers participated in the BSAI Atka mackerel fishery and eight of these vessels accounted for 81 percent of the retained catch in that fishery. All of the factory trawlers in the Atka mackerel fishery are owned by seafood companies with annual receipts that exceed the $3 million small entity threshold by the Small Business Administration for fish harvesting businesses. In 1998, 1 percent of the Atka mackerel TAC in Area 541 (127 mt) was allocated to vessels using jig gear. However, for all of 1998, NMFS did not receive any Atka mackerel catch reports by vessels using jig gear in Area 541 and the entire 127 mt TAC allocation was unharvested. Up to 10 vessels using jig gear had expressed interest in fishing for Atka mackerel in Area 541 and all of these vessels are small entities. However, the final rule would exempt vessels using jig gear from the A-B season split, critical habitat restrictions, and VMS requirements. Therefore, all small entities using jig gear to fish for Atka mackerel would be unaffected by this action.

Small communities and groups affected directly. Because, very little BSAI Atka mackerel is delivered to on-shore processors and because the principal participants in this fishery are not residents of Alaska fishing communities, with the exception of the CDQ communities, few small communities would be affected directly. With the expansion of the CDQ program to include all BSAI groundfish and crab, the 50 plus CDQ communities would be affected by actions that affect the Atka mackerel CDQ. However, the effects on these communities are not expected to be significant because Atka mackerel is expected to account for less than 5% of the value of the CDQs to these communities, none of the actions would eliminate all of the value of the Atka mackerel CDQs, and the CDQs are but one source of income for these communities. To further reduce the potential impacts of this action on CDQ groups, the Council's preferred alternative would exempt CDQ groups from the A-B season split so that CDQ groups are not forced to fish small amounts of Atka mackerel CDQ during two separate time periods.

Business entities affected indirectly. A much larger number of entities would be affected indirectly if the final rules result in the factory trawlers, that have dominated the Atka mackerel fishery, switching effort from the Atka mackerel fishery to other groundfish fisheries. If the fishing capacity of the eight factory trawlers that were the core of the Atka mackerel fleet in 1997 were diverted to other fisheries, these vessels could take substantially larger shares of the catch in the BSAI rock sole, Pacific cod, flathead sole, or other flatfish fishery or the GOA flatfish fisheries. Much of any such increase in catch by the core Atka mackerel fleet would be at the expense of other factory trawlers in the BSAI and both catcher vessels and other factory trawlers in the GOA. In 1996, 67 factory

trawlers participated in BSAI and GOA Pacific cod fisheries and 42 factory trawlers participated in the various BSAI and GOA flatfish fisheries. In 1996, 180 trawl catcher vessels participated in the Pacific cod fisheries of the BSAI and GOA and 62 trawl catcher vessels participated in the various flatfish fisheries of the BSAI and GOA. Due to inshore/offshore TAC allocations for Pacific cod in the GOA and TAC splits between catcher vessels and catcher processors in the BSAI, catcher vessels participating in the Pacific cod fishery will be unaffected if Atka mackerel factory trawlers shift into the Pacific cod fishery. However, catcher vessels fishing for flatfish in the BSAI and GOA could face impacts if effort shifts away from Atka mackerel as a result of this action. The extent to which these shifts may occur is impossible to quantify or predict.

Most of the factory trawlers operating in the BSAI and GOA Pacific cod and flatfish fisheries are owned by or affiliated with "large" entities. In addition, up to half of the catcher vessels fishing in the BSAI are believed to be owned by or affiliated with large entities. However, in a written comment to the Council submitted for this action, an industry representative for flatfish and Pacific cod factory trawlers indicated that more than 30 percent of the factory trawlers in the BSAI flatfish and Pacific cod fisheries expected 1998 annual gross revenues to be less than $3 million. NMFS does not have information to confirm or refute this figure. Furthermore, the ownership characteristics of these vessels has not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company. Because NMFS cannot quantify the number of small entities that may be indirectly affected by this action, or quantify the magnitude of those effects, NMFS concludes that it is possible that this action could have a significant economic impact on a substantial number of small entities.

Measures taken to reduce impacts on small entities. The Council considered and adopted a series of exemptions to reduce the impacts of this action on small entities. The final rule contains the following elements to reduce impacts on small entities: (1) Vessels using jig gear would be exempted from all aspects of the proposed action, (2) CDQ groups would be exempted from the A–B season split to prevent having to fish for small Atka mackerel CDQ amounts during two times of the year, and (3) vessels using hook-and-line gear would be exempt from the closure to fishing inside critical habitat. The critical habitat closures would affect vessels using trawl gear only, (4) both jig and hook and line vessels would be exempted from future VMS requirements for the Atka mackerel fishery.

As stated in the preceding paragraph and in the section entitled, "Business entities affected directly," all small entities in the Atka mackerel fishery (jig boats) are exempt from all aspects of this final rule. NMFS is not aware of additional alternatives that could further mitigate this action's economic impact on small entities.

Pursuant to section 7 of the ESA, NMFS initiated consultation on the effects of fishing under this action on listed species, including the Steller sea lion, and designated CH. The biological opinion prepared for this consultation, dated December 3, 1998, as revised December 16, 1998, concludes that the Atka mackerel fishery in the AI, without this action, would appreciably reduce the likelihood of the survival and recovery of Steller sea lions and adversely modify their designated CH. With the conservation measures in this final rule fully implemented by 2002, the biological opinion further concluded that fishing for Atka mackerel under these measures should not appreciably reduce the likelihood of both the survival and recovery of Steller sea lions. This rule implements the identified conservation measures.

This final rule contains no new collection-of-information requirements subject to the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause under the authority contained in 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness because the immediate effectiveness of this rule is required to prevent the Atka mackerel fishery from exceeding the A season apportionment of the Atka mackerel TAC inside CH when directed fishing for this species opens in January 1999.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.20, paragraphs (a)(8) and (c)(2)(ii)(A) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(8) *BSAI Atka mackerel*—(i) *Jig gear.* Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the following criteria:

(A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;

(B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and

(C) The extent to which the jig-gear allocation will support the development of a jig-gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

(ii) *Other gears.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation and reserves, will be allocated to vessels using other authorized gear types.

(A) *Seasonal allowances.* The Atka mackerel TAC specified for each subarea or district of the BSAI will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) *Overages and underages.* Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) The interim specifications for pollock and Atka mackerel will be equal to the first seasonal allowance for pollock and Atka mackerel that is published in the proposed specifications under paragraph (c)(1) of this section.

* * * * *

3. In § 679.22, paragraphs (a)(7) and (a)(8) are revised to read as follows.

§ 679.22 Closures.

(a) * * *

(7) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof*

District—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 4a of this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the six Steller sea lion rookeries shown in Table 4b of this part.

(8) *Steller sea lion protection areas, Aleutian Islands Subarea*—(i) *10-nm closures.* Trawling is prohibited within 10 nm of each of the 17 Steller sea lion rookeries shown in Table 5a of this part.

(ii) *20-nm closures.* Trawling is prohibited within 20 nm of each of the two Steller sea lion rookeries shown in Table 5b of this part.

(iii) *Western and Central Aleutian Islands critical habitat closures*—(A) *General.* Trawling is prohibited within areas designated as Steller sea lion critical habitat in the Western or Central Districts of the AI (see Table 1, Table 2, and Figure 4 to part 226 of this title) when the Regional Administrator announces by notification in the **Federal Register** that the criteria for a trawl closure in a district set out in paragraph (a)(8)(iii)(B) of this section have been met.

(B) *Criteria for closure.* The trawl closures identified in paragraph (a)(8)(iii)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of Atka mackerel specified under § 679.20(a)(8)(ii)(A) reaches the following percentage identified for each year and district:

Year	Western (543) (percent)	Central (542) (percent)
1999	65	80
2000	57	67
2001	48	46
2002 and after	40	40

(C) *Duration of closure.* A Steller sea lion critical habitat area trawl closure within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

(D) *CDQ fishing.* Harvesting groundfish CDQ with trawl gear is prohibited within areas designated as Steller sea lion critical habitat in the Western and/or Central Districts of the AI (see Table 1, Table 2, and Figure 4 to part 226 of this title) for an eligible vessel listed on an approved CDP after the CDQ group has harvested the percent of the annual Atka mackerel CDQ specified for the year and district at paragraph (a)(8)(iii)(B) of this section.

* * * * *

4. In § 679.23, paragraph (e)(3) is redesignated as paragraph (e)(4) and a new paragraph (e)(3) is added to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, directed fishing for Atka mackerel with trawl gear in the Aleutian Islands Subarea is authorized only during the following two seasons:

(i) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 15;

(ii) *B season.* From 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., November 1.

* * * * *

5. In part 679, Table 5 is revised to read as follows:

TABLE 5.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS

Name of island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 227.12(a)(2) of this title.				
a. Trawling Prohibited Year-Round Within 10 nm:				
Yunaska Island	52° 42.0′ N	170° 38.5′ W	52° 41.0′ N	170° 34.5′ W
Kasatochi Island	52° 10.0′ N	175° 31.0′ W	52° 10.5′ N	175° 29.0′ W
Adak Island	51° 36.5′ N	176° 59.0′ W	51° 38.0′ N	176° 59.5′ W
Gramp Rock	51° 29.0′ N	178° 20.5′ W		
Tag Island	51° 33.5′ N	178° 34.5′ W		
Ulak Island	51° 20.0′ N	178° 57.0′ W	51° 18.5′ N	178° 59.5′ W
Semisopochnoi	51° 58.5′ N	179° 45.5′ E	51° 57.0′ N	179° 46.0′ E
Semisopochnoi	52° 01.5′ N	179° 37.5′ E	52° 01.5′ N	179° 39.0′ E
Amchitka Island	51° 22.5′ N	179° 28.0′ E	51° 21.5′ N	179° 25.0′ E
Amchitka Is/Column Rocks	51° 32.5′ N	178° 49.5′ E		
Ayugadak Point	51° 45.5′ N	178° 24.5′ E		
Kiska Island	51° 57.5′ N	177° 21.0′ E	51° 56.5′ N	177° 20.0′ E
Kiska Island	51° 52.5′ N	177° 13.0′ E	51° 53.5′ N	177° 12.0′ E
Buldir Island	52° 20.5′ N	175° 57.0′ E	52° 23.5′ N	175° 51.0′ E
Agattu Is./Gillion Pt	52° 24.0′ N	173° 21.5′ E		
Agattu Island	52° 23.5′ N	173° 43.5′ E	52° 22.0′ N	173° 41.0′ E
Attu Island	52° 54.5′ N	172° 28.5′ E	52° 57.5′ N	172° 31.5′ E
b. Trawling Prohibited Year-Round Within 20 nm:				
Seguam Island	52° 21.0′ N	172° 35.0′ W	52° 21.0′ N	172° 33.0′ W
Agligadak Island	52° 06.5′ N	172° 54.0′ W		

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

[FR Doc. 99–1432 Filed 1–19–99; 12:48 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska

CFR Correction

In Title 50 of the Code of Federal Regulations, parts 600 to End, revised as of Oct. 1, 1998, on page 440, first column, § 679.2 is corrected by adding paragraph (2) to the definition of *Catcher vessel* to read as follows:

§ 679.2 Definitions.

* * * * *

Catcher vessel means:

(1) * * *

(2) (Applicable through December 31, 1998). With respect to moratorium groundfish, as defined in paragraph (1) of this definition; with respect to moratorium crab species, a vessel that is used to catch, take, or harvest moratorium crab species that are retained on board as fresh fish product at any time.

* * *

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 64, No. 14
Friday, January 22, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 134 and 140

Debt Collection Through Offset

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its regulations on Debt Collection Through Offset. SBA proposes to amend these regulations to conform with the Debt Collection Procedures Act of 1996 and the Debt Collection Improvement Act of 1996. The amendments will allow other Federal agencies to offset debts owed to SBA and will allow SBA to participate in the Government-wide Treasury Offset Program administered by the Department of the Treasury.

SBA is currently publishing the proposed language for its regulations on General Rules and Debt Collection Through Offset. At a later date, SBA will publish the proposed language for its regulations on Debt Collection Through Administrative Wage Garnishment and proposed amendments that define terms used in that future proposal.

DATES: Submit comments on or before February 22, 1999.

ADDRESSES: Address all comments concerning this proposed rule to Arnold S. Rosenthal, Assistant Administrator, Office of Portfolio Management, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Arnold S. Rosenthal, Assistant Administrator, Office of Portfolio Management (202) 205–6481.

SUPPLEMENTARY INFORMATION: 13 CFR Part 140 established procedures for SBA to collect past-due debts through administrative or salary offset. SBA now proposes to amend this rule, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104–134, authorizing the Agency to: participate in the mandatory Government-wide payment offset system known as the Treasury Offset Program administered by the Department of Treasury.

To participate in the Treasury Offset Program, the administrative or salary offset procedures must be available not only to SBA, but to other agencies as well. This proposed rule would make the changes necessary to allow SBA or another Federal agency to collect past-due debts through administrative or salary offset. This proposed rule also amends SBA's offset procedures, and contains plain language revisions and clarifications.

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

- Section 140.1 would be amended to incorporate plain language principles.
- Section 140.2 would be deleted and replaced with a definition section.
- Section 140.3 would be deleted. The offset procedures would now be located in § 140.6.
- Section 140.5 would be added to explain the purpose and scope of the offset procedures.
- Section 140.6 would be added to set forth the offset procedures. The new procedures establish two steps for offset. The first entails the verification of a debt. SBA will send a notice to the debtor and review any response to determine whether the debt is past due and enforceable. The SBA Office of Hearings and Appeals would no longer review administrative offsets, and would only review salary offsets. The second steps involves SBA's implementation of an administrative or salary offset or referral of a debt to the Department of the Treasury or another Federal agency for offset. In addition, SBA would now be able to implement an offset action upon referral from another Federal agency.
- Section 134.202 paragraph (b) would also be amended to refer only to salary offsets.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule only applies to individuals who have outstanding debts to the United States. It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, under the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 134

Administrative practice and procedure.

13 CFR Part 140

Claims, Government employees, Income taxes, Wages.

Accordingly, under the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend 13 CFR parts 134 and 140 as follows:

PART 134—[AMENDED]

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504, 15 U.S.C. 632, 634(b)(6), and 637(a).

2. Revise § 134.202(b) to read as follows:

§ 134.202 Commencement of cases.

* * * * *

(b) In debt collection proceedings under part 140, subpart B, of this chapter, no later than 15 days after you receive of a notice of indebtedness and plan to collect such debt by salary offset;

* * * * *

PART 140—[AMENDED]

3. Amend the heading for part 140 to read as follows:

PART 140—DEBT COLLECTION

4. The authority citation for part 140 is revised to read as follows:

Authority: 31 U.S.C. 3711, Collection and compromise; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 5. U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 3716, Administrative offset; 15 U.S.C. 634(b)(6), Small Business Act; 31 U.S.C. 3720, the Debt Collection Improvement Act of 1996.

5–6. Add a subpart heading for §§ 140.1 through 140.2, to read as follows:

Subpart A—General Rules

7. Revise § 140.1 to read as follows:

§ 140.1 What does this part cover?

This part establishes procedures we may use to collect past-due debts owed to the Government. You cannot use our failure to follow these regulations to defend against a suit to collect a debt.

8. Revise § 140.2 to read as follows:

§ 140.2 Definitions.

Unless otherwise noted, the following definitions apply to subpart B.

(a) Administrative offset. To satisfy a debt, we may withhold money we owe you or another Federal agency owes you. This procedure is an "administrative offset" and is authorized by 31 U.S.C. 3716.

(b) Agency. Agency includes a department, agency, court, or court administrative office, in the executive, judicial, or legislative branch of the Federal Government, including Government corporations. For purposes of this section, agency means either the agency administering the program giving rise to the debt or the agency attempting to recover the debt.

(c) Creditor agency. Creditor agency means any agency owed a debt that seeks to collect that claim through administrative offset.

(d) Day. Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

(e) Debt. Debt means money owed to the United States for any reason, including loans made or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, or forfeitures. A debtor is someone who owes money to the United States from any source.

(f) Debtor/You/Your. Debtor/You/Your means a person, organization, or entity, other than a Federal agency, that owes a debt.

(g) Disposable pay. As used in subpart B of this part (offset), disposable pay means what remains of your pay after any amounts required by law are deducted.

(h) Legally Enforceable. As used in subpart B of this part (offset), a debt is legally enforceable if, on the date of offset, SBA's claim would not be barred in even one forum, including a State or Federal Court or administrative agency. Non-judgment debts are enforceable for ten years; judgment debts are enforceable beyond 10 years.

(i) Non-tax. Non-tax means not related to an obligation under the Internal Revenue Code of 1986, as amended.

(j) Past-Due. As used in subpart B of this part (offset), a debt is past due if it has been reduced to judgment, accelerated, or due for at least 90 days.

(k) Salary offset. If you are an active or retired Federal employee (a civilian employee as defined by 5 U.S.C. 2105, an employee of the U.S. Postal Service or Postal Rate Commission, or a member of the Uniformed Services or Reserve of the Uniformed Services), we may deduct payments owed to the United States from your paycheck. This procedure is a "salary offset" and is authorized by 5 U.S.C. 5514 and 31 U.S.C. 3716.

(1) Any amount deducted from your salary in any one pay period will not exceed 15 percent of your disposable pay, unless you agree in writing to a greater percentage.

(2) A Federal agency also may collect against travel advances, training expenses, disallowed payments, retirement benefits, or any other amount due you, including lump sum payments. These collection efforts are not salary offsets and are not subject to the 15-percent limitation in paragraph (k)(1) of this section.

(l) Tax refund offset. We may request that the Department of the Treasury (Treasury) reduce your tax refund by the amount of the debt as authorized by 31 U.S.C. 3720A. A Federal agency, at the same time, may take additional action against you to collect the debt. Even if SBA refers your debt to other agencies (within 6 months of the initial notice), it needs to review your debt only once under subpart B of this part and its authorizing statutes.

(m) Treasury Offset Program. The Treasury Offset Program is a centralized process which provides for the offset of Federal payments, including Federal tax refunds, Federal salary payments, retirement payments, and other types of payments, to collect debts you owe the Federal Government. The Treasury operates the Treasury Offset Program through the Financial Management Service.

(n) We/Our/Us. We/Our/Us refers to the SBA.

9. Remove § 140.3 and add a subpart heading for §§ 140.5 through 140.6 to read as follows:

Subpart B—Debt Collection Through Offset

10. Add § 140.5 to read as follows:

§ 140.5 What does this subpart cover?

This subpart establishes procedures we may use to collect, through offset, past-due debts you owe to the United States. An offset occurs when we or another Federal agency withhold(s) money to which you may be entitled to satisfy a debt that you owe to the United States. These regulations set forth procedures for how we determine if a debt is past due and legally enforceable, and thus appropriate for offset. These regulations also set forth procedures we follow when implementing an offset action or referring the debt to another agency for offset. You cannot use our failure to follow these regulations to defend against a suit to collect the debt

9. Add 9. § 140.6 to read as follows:

§ 140.6 How does SBA verify whether I owe a debt, or collect a debt from me through offset?

(a) *Verifying a debt.* (1) At least 30 days before starting an offset action or referring a debt to another agency for offset, we must send you a written notice .

(2) Our written notice must state the nature and amount of the debt; that we or another Federal agency may attempt an offset; that you may present evidence that the debt does not exist, is not past due, or is not legally enforceable; that you may inspect and copy, at your expense, Government records relating to the debt; that, to avoid the offset, you may reach an agreement with us on a schedule for repayment; and that, if you do not reach agreement on repayment or seek review of the debt, we or another agency may offset without further notice. If we propose a schedule for repayment of your debt, you may present evidence that you cannot meet this schedule. If a written agreement establishes this schedule, you cannot challenge the schedule.

(3) We also must tell you that, unless you respond to the notice as provided in paragraph (a)(4) or (a)(5) of this section, we or the agency to which we refer your debt may disclose to consumer reporting agencies (also known as credit bureaus or credit agencies) that you are responsible for the debt, and the specific information necessary to establish your identity, including the amount, status, history of

the debt, and agency program under which it arose. If you respond to us within the 15-or 60-day periods set forth in paragraphs (a)(4) and (a)(5) of this section, we will not disclose the information to consumer reporting agencies and will not refer the debt to another Federal agency until we consider your response and determine that you owe a past-due, legally enforceable debt.

(4) If we notify you that we intend to start a salary offset to satisfy your debt, you may request a hearing from SBA's Office of Hearings and Appeals (OHA). Part 134 of this title governs OHA proceedings. To have a hearing before OHA, you must request a hearing within 15 days of receiving the notice. If you file your request in time, we must stop collection proceedings until OHA's Administrative Law Judge (ALJ) decides your case. You must state in your request for an OHA hearing the date you received the notice and present the evidence you believe shows the debt is not past due or legally enforceable. You also must send a copy of your submission to the SBA Associate General Counsel for Litigation, Office of General Counsel, at the Small Business Administration, 409 Third Street, SW., Washington, DC 20416. OHA's ALJ will issue a decision within 60 days after you filed your request for a hearing with OHA.

(5) If we notify you that we intend to start an administrative offset or to refer your debt to another Federal agency for possible offset, you may request review from the SBA official identified in the notice. To obtain review of the debt, you must submit to the designated official, within 60 days of the notice, the evidence showing the debt is not past due or legally enforceable. By failing to request review within this period, you waive any objection to the offset action. If you request review of the debt, the relevant SBA official will notify you in writing of the final decision and whether we will continue with the offset action or refer your debt to another agency for offset.

(6) We need not follow these procedures to verify that a debt is past due and legally enforceable if another Federal agency already has made this determination.

(b) *Actions after SBA verifies a past-due, legally enforceable debt.* (1) After verifying a past-due, legally enforceable debt, we may—

(i) Begin an offset action to recover the debt;

(ii) Refer the debt to another agency for offset;

(iii) Notify consumer reporting agencies of the debt; or

(iv) Begin other appropriate action to attempt collection of the debt.

(2) If you are subject to an offset action, you may be required to pay, in addition to your debt, interest, penalties, and administrative costs, such as the costs of collection. We or another Federal agency will provide notice of any such interest, penalties, and administrative costs.

(3) If another Federal agency asks us to offset a debt, we may rely on the creditor agency's determination that a debt is past due and legally enforceable. We will not begin an offset until the creditor agency has provided written notice that you owe a past-due, legally enforceable debt, and of its amount, and that the agency has fully complied with its regulations concerning administrative offsets. After receiving such notice, we will provide you notice that we will begin an offset. You are not entitled to further review from us that the debt is valid or the offset proper.

(4) If we refer the debt to a consumer reporting agency and the status or amount of your debt substantially changes, we will report that change promptly to each consumer reporting agency we originally contacted. We will obtain satisfactory assurances from each consumer reporting agency that the consumer reporting agency has complied with all Federal laws relating to provision of consumer credit information.

(5) If another agency is beginning an offset of your debt and you make any additional payments to us, we will notify the other agency of these payments and your new balance as soon as reasonably possible.

(c) We or another Federal agency may make an offset prior to completing the procedures described in this part, if failure to make an offset would substantially prejudice the Government's ability to collect the debt; and the time before the Government otherwise would make payment to you does not reasonably permit the completion of the procedures. If we initiate the offset action, we then must provide you with an opportunity to present evidence that the debt is not past due or legally enforceable and take appropriate action in response to this evidence.

(d) If you owe us a past-due, legally enforceable debt that is over 180 days delinquent, including non-tax debt administered by a third party acting as an agent for the Federal Government, we must, as required by 31 U.S.C. 3716(c)(6), notify the Treasury of all such non-tax debts for purposes of administrative offset.

Dated: January 6, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–1240 Filed 1–21–99; 8:45 am]

BILLING CODE 8025–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1213, 1500, and 1513

Bunk Beds; Extension of Time To Issue Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time to issue proposed rule.

SUMMARY: On January 22, 1998, the Consumer Product Safety Commission ("CPSC" or "Commission") issued an advance notice of proposed rulemaking ("ANPR") that began a rulemaking proceeding addressing possibly unreasonable risks of injury and death associated with children's entrapments in bunk beds. 63 FR 3280.

A rule mandating bunk bed performance requirements to reduce this hazard could be issued under either the Federal Hazardous Substances Act ("FHSA") or the Consumer Product Safety Act ("CPSA"), or both. The CPSA provides that a proposed standard under that act must be issued within 12 months of publication of the ANPR, unless the 12-month period is extended by the Commission for good cause. In this notice, the Commission extends the period for issuing any proposed CPSA rule until March 22, 1999.

ADDRESSES: Mail requests for documents concerning this rulemaking should be directed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001. Documents may be obtained or examined at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. The Commission also may be contacted by telefacsimile to (301) 504–0127 or by e-mail to cpsc–os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: John Preston, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1315.

SUPPLEMENTARY INFORMATION: Under Section 9(c) of the CPSA, the Commission must propose a consumer product safety rule within 12 months of the publication of an ANPR, unless the Commission extends that period for

good cause. 15 U.S.C. 2058(c). Since the ANPR for bunk beds was published on January 22, 1998, the 12-month period for proposal of any CPSA rule in that proceeding expires on January 22, 1999.

After publication of the ANPR, the public was given until April 7, 1998, to file written comments with the CPSC. The CPSC's staff then analyzed the comments and other available information and prepared a briefing package that was sent to the Commission on December 16, 1998. The Commission was briefed on this matter on January 7, 1999, and should decide whether to propose a rule in the near future.

However, the Commission is not certain that it will decide whether to issue a proposed rule before the 12-month deadline passes. Accordingly, the Commission extends the date for publishing an ANPR to March 22, 1999.

Dated: January 15, 1999.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 99–1483 Filed 1–21–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110524–98]

RIN 1545–AW85

Capital Gains, Installment Sales, Unrecaptured Section 1250 Gain

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the taxation of capital gains on installment sales of depreciable real property. The proposed regulations interpret changes made by the Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. The proposed regulations affect persons required to report capital gain from an installment sale where a portion of the capital gain is unrecaptured section 1250 gain and a portion is adjusted net capital gain.

DATES: Written comments or requests for a public hearing must be received by April 22, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–110524–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110524–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Susan Kassell, (202) 622–4930; concerning submissions, LaNita VanDyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the taxation of capital gains on installment sales of depreciable real property.

Prior to 1997, the maximum rate on net capital gain for individuals was 28 percent. In the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 831) (1997 Act), Congress amended section 1(h) generally to reduce the maximum capital gain tax rates for individuals. Certain substantive changes and technical corrections to section 1(h) were enacted as part of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685), including the repeal of an 18-month holding period requirement for amounts properly taken into account after December 31, 1997, and by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277 (112 Stat. 2681).

As amended, section 1(h) generally divides net capital gain into three rate groups based on the nature of the property, the nature of the gain, and the holding period of the property.

A maximum marginal rate of 28 percent applies to 28-percent rate gain (28-percent gain), the combination of (1) capital gains and losses from the sale or exchange of collectibles held for more than one year; (2) an amount equal to gain excluded from income on the sale or exchange of certain small business stock under section 1202; (3) capital gains and losses determined under special transition rules in section 1(h)(13) for certain amounts taken into account in 1997; (4) net short-term capital loss for the tax year; and (5) any long-term capital loss carryover to the tax year under section 1212.

A maximum marginal rate of 25 percent applies to unrecaptured section 1250 gain (25-percent gain), which is defined in section 1(h)(7)(A) as the amount of long-term capital gain (not otherwise treated as ordinary income) that would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, reduced by any net loss in the 28-percent rate category. Effectively, the amount of gain taxed at 25 percent is the amount of straight-line depreciation allowed for the property. Thus, the 25-percent rate category partially recaptures such depreciation, but the recapture is limited, inter alia, in that the recapture rate may be less than the marginal rates that applied to the depreciation deductions. Section 1(h)(7)(B) limits the unrecaptured section 1250 gain from section 1231 assets for any tax year to the net section 1231 gain for that year.

A maximum marginal rate of 20 percent generally applies to adjusted net capital gain (20/10-percent gain), defined in section 1(h)(4) as the portion of net capital gain that is not taxed at the 28-percent or 25-percent rates. Under section 1(h)(1)(B), a 10-percent rate applies to any portion of adjusted net capital gain that would otherwise be taxed at a 15-percent rate if capital gains were taxed as ordinary income.

For amounts properly taken into account after July 28, 1997, and before January 1, 1998, an 18-month holding period is required to obtain the maximum 25-percent, 20-percent, or 10-percent rates.

Section 453 provides that, unless taxpayers elect out, gain from an installment sale is recognized as payments on the installment obligation are received. Before the 1997 Act, reporting capital gain under the installment method was relatively straightforward: the capital gain portion of each payment was taxed at the maximum capital gain rate of 28 percent. Section 1(h) provides for multiple rates, but does not address how to treat an installment sale of depreciable real property when the gain to be reported consists of both 25-percent gain and 20/10-percent gain.

Explanation of Provisions

Front-Loaded Allocation of Unrecaptured Section 1250 Gain

Under the proposed regulations, if a portion of the capital gain from an

installment sale is 25-percent gain and a portion is 20/10-percent gain, the taxpayer is required to take the 25-percent gain into account before the 20/10-percent gain, as payments are received. (Because sales that result in 28-percent gain cannot also yield 25-percent gain or 20/10-percent gain, an allocation rule for 28-percent gain is unnecessary.)

A front-loaded allocation method for 25-percent gain is generally consistent with the statute, under which 20/10-percent gain (that is, adjusted net capital gain) is defined as the residual category of capital gain not taxed at maximum rates of 28 percent or 25 percent. The front-loaded method precludes taxpayers from recognizing some 20/10-percent gain from an installment sale even when the amount ultimately recognized proves to be less than the amount subject to recapture at the 25-percent rate. Absent a front-loaded allocation method this inappropriate result could arise, for example, when a taxpayer later disposes of an installment obligation at a discounted price or when the amount to be received is contingent.

The IRS and Treasury Department have previously adopted analogous front-loaded allocation methods with respect to installment sales. For example, before 1984—when Congress enacted section 453(i), which requires immediate recognition of recapture gain at ordinary rates under sections 1245 and 1250— taxpayers were permitted to defer recognition of this ordinary-rate recapture gain under the installment method. Thus, an installment payment could contain both capital gain and gain taxed at ordinary rates. By regulation, a front-loaded allocation of the ordinary-rate recapture gain was required. §§ 1.1245–6(d); 1.1250–1(c)(6). See *Dunn Construction* v. *United States*, 323 F. Supp. 440 (N.D. Ala. 1971) (upholding § 1.1245–6(d) as "reasonable and consistent with the underlying statute" and a valid exercise of the regulatory authority under section 453). See also §§ 1.1251–1(e)(6), 1.1252–1(d)(3), 1.1254–1(d), and 16A.1255–1(c)(3).

Interaction With Section 1231

Section 1(h) also does not address the interaction of the capital gain rates, the installment method, and the rules in section 1231. Section 1231(a) generally provides that, when gains from the sale or exchange of property used in a trade or business exceed losses from such property, the gains and losses are treated as long-term capital gains and losses. Conversely, when section 1231 losses exceed section 1231 gains, the gains and losses are treated as ordinary. The capital nature of net section 1231 gain is subject to an exception: under section 1231(c), net section 1231 gain is treated as ordinary income to the extent of the taxpayer's non-recaptured net section 1231 losses for the preceding five years.

With respect to the interaction of section 1231(c) and the capital gain rates, the IRS and Treasury Department have already provided that section 1231 gain that is recharacterized as ordinary gain under section 1231(c) is deemed to consist first of 28-percent gain, then 25-percent gain, and finally 20/10-percent gain. See Notice 97–59 (1997–45 IRB 7, 8). An example in the proposed regulations illustrates the application of this principle in the installment sale context. Consistent with this treatment and with the general rule that 25-percent gain is front-loaded, another example in the proposed regulations illustrates that—in a year in which installment gain is characterized as ordinary gain under section 1231(a) because there is a net section 1231 loss for the year—the gain is treated as consisting of 25-percent gain first, before 20/10-percent gain, for purposes of determining how much 25-percent gain remains to be taken into account in later payments.

The examples in the proposed regulations—regarding the interaction of sections 1(h), 453, and 1231—are specific applications of the general rule that, for any given installment payment, gain from all previous payments is treated as consisting first of 25-percent gain, rather than 20/10-percent gain, in determining how much of each category of gain remains to be reported with respect to current and subsequent payments. Under the regulations, in making this determination it is generally irrelevant how such prior gain was actually reported and taxed. For example, an installment payment that is taxed at 15 percent because the taxpayer is in a low tax bracket may be treated as consisting of 25-percent gain (that is, unrecaptured section 1250 gain) for allocation purposes, even though the gain is not actually taxed at 25 percent. The proposed regulations focus on examples involving section 1231 since they are the most common.

Treatment of Installment Payments From Sales Prior to the Effective Date of the 1997 Act

The capital gains provisions of the 1997 Act were effective for taxable years ending after May 6, 1997. However, the maximum rate of 28 percent was not reduced for gains properly taken into account before May 7, 1997. Under settled authority, originating in *Snell* v. *Commissioner*, 97 F.2d 891 (5th Cir. 1938), the law in effect when an installment payment is received controls the tax treatment of the payment. Unless otherwise provided, installment payments received after a change in the law are taxed under the new law, whether favorable or unfavorable, looking back to the original transaction for the facts necessary to apply the changed law. In *Snell*, for example, installment payments from what was a capital asset in the sale year were taxed as ordinary income after Congress changed the definition of a *capital asset*. See also *Estate of Kearns* v. *Commissioner*, 73 T.C. 1223 (1980); *Klein* v. *Commissioner*, 42 T.C. 1000 (1964); Rev. Rul. 79–22 (1979–1 CB 275). Congress also implicitly has recognized the *Snell* principle by enacting grandfather exceptions when the application of *Snell* would be unfavorable. For example, when Congress extended the holding period requirement for capital gain in 1976, the legislation specifically excepted from the new, harsher requirements post-1976 installment gain from pre-1976 sales.

The legislative history of the 1997 Act reflects the *Snell* principle, providing that section 1(h) "generally applies to sales and exchanges (and installment payments received) after May 6, 1997." Conf. Rep. 105–220, 105th Cong., 1st Sess. 382, 383 (1997). Thus, under these settled principles, gain on installment payments received after May 6, 1997, from sales on or before that date, is taxed at the new, lower maximum rates of 25 percent, 20 percent, or 10 percent if it qualifies as unrecaptured section 1250 gain or adjusted net capital gain. However, as in the case of gain from post-effective-date sales, section 1(h) does not specify how to allocate the two categories of gain.

The proposed regulations provide that the capital gain rates applicable to installment payments that are received on or after the effective date of the 1997 Act from sales prior to the effective date are determined as if, for all payments received after the date of sale but before the effective date, 25-percent gain had been taken into account before 20/10-percent gain. This approach is consistent with the Snell principle in that it provides for the same method of allocation, whether the sale occurred before or after the effective date of the 1997 Act. For taxpayers who sold property and received installment payments before the effective date of the 1997 Act, this provision is favorable, since it generally reduces or eliminates the amount of 25-percent gain to be reported on installment payments

received after the effective date. The approach is also simple—because it is generally irrelevant how the prior gain was actually reported and taxed, in most cases taxpayers will simply calculate the total amount of 25-percent gain on the sale and subtract from that all gain previously reported, in order to arrive at the amount of 25-percent gain remaining to be reported.

Treatment of Installment Payments Received Between the Effective Date of the Statute and the Effective Date of the Final Regulations

The proposed regulations also address the treatment of gain in installment payments that are received during the period between the effective date of section 1(h) and the effective date of the final regulations. The proposed regulations provide that, in the event the cumulative amount of 25-percent gain actually reported in installment payments received during this period was less than the amount that would have been reported using the front-loaded allocation method of the regulations, the amount of 25-percent gain actually reported, rather than an amount determined under a front-loaded allocation method, must be used in determining the amount of 25-percent gain that remains to be reported. This provision ensures that taxpayers cannot underreport the total amount of 25-percent gain by taking inconsistent positions with respect to payments received before and after the effective date of the regulations. By providing for this rule, no inference is intended that any allocation method other than the method provided for by the regulations was a reasonable interpretation of section 1(h) in this context. However, the IRS will not challenge the use of a pro rata allocation method—that is, a method under which the amounts of 25-percent gain and 20/10-percent gain in each installment payment bear the same relationship as the total amounts of 25-percent and 20/10-percent gain to be reported on the sale—for installment payments received before the effective date of the final regulations, if the taxpayer used the same pro rata method for all installment payments during such period.

Proposed Effective Date

The regulations are proposed to be effective for payments properly taken into account after the date the regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a requirement for the collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal authors of these regulations are Susan Kassell and Rob Laudeman, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, the IRS proposes to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.453–12 is added to read as follows:

§ 1.453–12 Allocation of unrecaptured section 1250 gain reported on the installment method.

(a) *General rule.* Unrecaptured section 1250 gain, as defined in section 1(h)(7), is reported on the installment method if that method otherwise applies under section 453 or 453A and the corresponding regulations. If gain from an installment sale includes unrecaptured section 1250 gain and adjusted net capital gain (as defined in section 1(h)(4)), the unrecaptured section 1250 gain is taken into account before the adjusted net capital gain.

(b) *Installment payments from sales before May 7, 1997.* The amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, from a sale before May 7, 1997, is determined as if, for all payments properly taken into account after the date of sale but before May 7, 1997, unrecaptured section 1250 gain had been taken into account before adjusted net capital gain.

(c) *Installment payments received after May 6, 1997, and before the effective date of the final regulations.* If the amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, and before the effective date of the final regulations, is less than the amount that would have been taken into account under this section, the lesser amount is used to determine the amount of unrecaptured section 1250 gain that remains to be taken into account.

(d) *Examples.* In each example, the taxpayer, an individual whose taxable year is the calendar year, does not elect out of the installment method. The installment obligation bears adequate stated interest, and the property sold is real property held in a trade or business that qualifies as both section 1231 property and section 1250 property. In all taxable years, the taxpayer's marginal tax rate on ordinary income is 28 percent. The following examples illustrate the rules of this section:

Example 1. General rule. This example illustrates the rule of paragraph (a) of this section.

(i) In 1998, A sells property for $10,000, to be paid in ten equal annual installments beginning on December 1, 1998. A originally purchased the property for $5,000, held the property for several years, and took straight-line depreciation deductions in the amount of $3,000. In each of the years 1998–2007, A has no other capital or section 1231 gains or losses.

(ii) A's adjusted basis at the time of the sale is $2,000. Of A's $8,000 of section 1231 gain on the sale of the property, $3,000 is attributable to prior straight-line depreciation

deductions and is unrecaptured section 1250 gain. The gain on each installment payment is $800.

(iii) As illustrated in the following table, A takes into account the unrecaptured section 1250 gain first. Therefore, the gain on A's first three payments, received in 1998, 1999, and 2000, is taxed at 25 percent. Of the $800 of gain on the fourth payment, received in 2001, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1998	1999	2000	2001	2002	2003-2007	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 25%	800	800	800	600	.....	.....	3000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 2. Installment payments from sales prior to May 7, 1997. This example illustrates the rule of paragraph (b) of this section.

(i) The facts are the same as in *Example 1* except that A sold the property in 1994, received the first of the ten annual installment payments on December 1, 1994, and had no other capital or section 1231 gains or losses in the years 1994–2003.

(ii) As in *Example 1*, of A's $8000 of gain on the sale of the property, $3000 was attributable to prior straight-line depreciation deductions and is unrecaptured section 1250 gain.

(iii) As illustrated in the following table, A's first three payments, in 1994, 1995, and 1996, were received before May 7, 1997, and taxed at 28 percent. Under the rule described in paragraph (b) of this section, A determines the allocation of unrecaptured section 1250 gain for each installment payment after May 6, 1997, by taking unrecaptured section 1250 gain into account first, treating the general rule of paragraph (a) of this section as having applied since the time the property was sold, in 1994. Consequently, of the $800 of gain on the fourth payment, received in 1997, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1994	1995	1996	1997	1998	1999–2003	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 28%	800	800	800	.....	.....	.....	2400
Taxed at 25%	.....	.....	.....	600	.....	.....	600
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 3. Effect of section 1231(c) recapture. This example illustrates the rule of paragraph (a) of this section when there are non-recaptured net section 1231 losses, as defined in section 1231(c)(2), from prior years.

(i) The facts are the same as in *Example 1*, except that in 1998 A has non-recaptured net section 1231 losses from the previous four years of $1000.

(ii) As illustrated in the table at the end of this example, in 1998, all of A's $800 installment gain is recaptured as ordinary income under section 1231(c). Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, the $800 recaptured as ordinary income under section 1231(c) is treated as reducing unrecaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has $2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In 1999, A's installment gain is taxed at two rates. First, $200 is recaptured as ordinary income under section 1231(c). Second, the remaining $600 of gain on A's 1999 installment payment is taxed at 25 percent. Because the full $800 of gain reduces unrecaptured section 1250 gain, A has $1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2000 is taxed at 25 percent. Of the $800 of gain on the fourth payment, received in 2001, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1998	1999	2000	2001	2002	2003–2007	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at ordinary rates under section 1231(c)	800	200	.....	.....	.....	.....	1000
Taxed at 25%	.....	600	800	600	.....	.....	2000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining non-recaptured net section 1231 losses	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 4. Effect of a net section 1231 loss. This example illustrates the application of paragraph (a) of this section when there is a net section 1231 loss.

(i) The facts are the same as in *Example 1* except that A has section 1231 losses of $1000 in 1998.

(ii) In 1998, A's section 1231 installment gain of $800 does not exceed A's section 1231 losses of $1000. Therefore, A has a net section 1231 loss of $200. As a result, under section 1231(a) all of A's section 1231 gains and losses are treated as ordinary gains and losses. As illustrated in the table at the end of this example, A's entire $800 of installment gain is ordinary gain. Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, A's $800 of ordinary section 1231 installment gain in 1998 is treated as reducing unrecaptured section 1250 gain. Therefore, A has $2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In 1999, A has $800 of section 1231 installment gain, resulting in a net section 1231 gain of $800. A also has $200 of non-recaptured net section 1231 losses. The $800 gain is taxed at two rates. First, $200 is taxed at ordinary rates under section 1231(c), recapturing the $200 net section 1231 loss sustained in 1998. Second, the remaining $600 of gain on A's 1999 installment payment is taxed at 25 percent. As in

Example 3, the $200 of section 1231(c) gain is treated as reducing unrecaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has $1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2000 is taxed at 25 percent, reducing the remaining unrecaptured section 1250 gain to $600. Of the $800 of gain on the fourth payment, received in 2001, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1998	1999	2000	2001	2002	2003–2007	Total gain
Installment gain	800	800	800	800	800	4000	8000
Ordinary gain under section 1231(a)	800						800
Taxed at ordinary rates under section 1231(c)		200					200
Taxed at 25%		600	800	600			2000
Taxed at 20%				200	800	4000	5000
Net section 1231 loss	200						
Remaining to be taxed at 25%	2200	1400	600				

(e) *Effective date.* This section applies to installment payments properly taken into account after the date these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1148 Filed 1–21–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–116824–98]

RIN 1545–AW91

Notice and Opportunity for Hearing Upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the notification required to be provided to any taxpayer named in a notice of lien under section 6323. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 22, 1999. Outlines of topics to be discussed at the public hearing scheduled for June 15, 1999, at 10 a.m. must be received by June 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–116824–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–116824–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, submission of written comments, and to be placed on the building access list to attend the hearing, Michael L. Slaughter (202) 622–7180; concerning the regulations, Jerome D. Sekula (202) 622–3610 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide rules relating to the notification required to be provided to any taxpayer named in a notice of lien under section 6323. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

A public hearing has been scheduled for June 15, 1999, at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** caption of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit

electronic or written comments by April 22, 1999 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by June 1, 1999.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6320–1 is added to read as follows: *§ 301.6320–1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.*

[The text of this proposed section is the same as the text of § 301.6320–1T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1415 Filed 1–19–99; 10:56 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–117620–98]

RIN 1545–AW90

Notice and Opportunity for Hearing Before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to notice to taxpayers of a right to a hearing before levy. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 22, 1999. Outlines of topics to be discussed at the public hearing scheduled for June 15, 1999, at 10 a.m. must be received by June 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–117620–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–117620–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, submission of written comments, and to be placed on the building access list to attend the hearing, Michael L. Slaughter (202) 622–7180; concerning the regulations, Jerome D. Sekula (202) 622–3610 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide rules relating to notice to taxpayers of a right to a hearing before levy. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

A public hearing has been scheduled for June 15, 1999, at 10 a.m. in room 2615 Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** caption of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 22, 1999 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by June 1, 1999.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS

and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6330–1 is added to read as follows:

§ 301.6330–1 Notice and opportunity for hearing prior to levy.

[The text of this proposed section is the same as the text of § 301.6330–1T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1413 Filed 1–19–99; 10:56 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001–1461 (ERISA). The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are "multiple employer welfare arrangements" (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 a.m. to approximately 5:00 p.m. on each day on Tuesday, February 9 and Wednesday, February 10, 1999.

ADDRESSES: This Committee meeting will be held in Room S–4215, Conference Room A/B, at the offices of the U.S. Department of Labor, 200 Consitution Avenue, NW, Washington, DC 20210. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346), if special accommodations are needed. The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Any written comments on these minutes should be directed to Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

Agenda

The Committee will first adopt the minutes of the previous meeting. The Committee will then continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Tuesday, February 2, 1999 to Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Arzuaga or telephone (202) 219–4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Arzuaga at the address above. Papers will be accepted and included in the record of the meeting if received on or before February 2, 1999.

Signed at Washington, DC, this 15th day of January, 1999.

Leslie Kramerich,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 99–1464 Filed 1–21–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–111]

RIN 2115–AE47

Drawbridge Operation Regulations; Debbies Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the regulations governing the operation of the Monmouth County highway bridge, at mile 0.4, across Debbies Creek, at Manasquan, New Jersey. The proposal would continue to provide the current opening schedule, except that from January 1 through March 31, a 24 hour advance notice would be required. This change is intended to relieve the bridge owner of the burden of having a bridge tender staff the bridge during periods when there are few or no requests for openings, while still providing for the reasonable needs of navigation. In addition, the Coast Guard proposes enumeration and rewording of the current regulation to ensure clarity and consistency.

DATES: Comments must be received on or before March 23, 1999.

ADDRESSES: Comments may be mailed to Commander (Aowb), USCG Atlantic Area, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, USCG Atlantic Area, (757) 398–6222.

SUPPLEMENTARY INFOMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses and should identify this rulemaking (CGD05–98–111). Commenters should identify the specific section of this proposed rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Monmouth County highway bridge is owned and operated by the Board of Chosen Freeholders of the County of Monmouth (BCFCM) in New Jersey. Title 33 Code of Federal Regulations (CFR) Part 117.715 requires the bridge to open on signal, except that, from Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need be opened only on the hour and the half hour if any vessels are waiting to pass.

The BCFCM has requested a change in the regulation to require a 24 hour advance notice for bridge openings from January 1 through March 31. Bridge logs from 1989 through 1997 revealed a total of 496 bridge openings in the months of January, February and March. During this period, bridge tenders received an average of approximately 18 bridge-opening requests per month. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believes that the proposed changes will more fairly balance the competing needs of vehicular and vessel traffic. The Coast Guard also believes that enumeration and rewording would clarify the current regulation.

Discussion of Proposed Amendments

The Coast Guard proposes to amend 33 CFR 117.715 by inserting a new provision requiring a 24 hour advance notice for bridge openings from January 1 through March 31. Additionally, to ensure clarity and consistency of the operating regulation, the text of the current 33 CFR 117.715 would be enumerated and reworded.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to plan their transits and to timely contact the bridge tender to provide the 24 hours advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the U.S. Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small independently owned and operated businesses which are not dominant in their fields and that otherwise, qualify as "small buiness concerns" under Section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3510–3520).

Federalism

The Coast Guard analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposed regulation will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C this proposed rule is categorically excluded from further environmental documentation based on the fact that this is a promulgation of an operating regulation for a drawbridge. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.715 is revised to read as follows:

§ 117.715 Debbies Creek.

(a) The draw of the Monmouth County highway bridge, mile 0.4 at Manasquan, shall open on signal, except as follows:

(1) From January 1 through March 31, the draw need open only if at least 24 hours advance notice is given.

(2) From Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour if any vessels are waiting to pass.

(b) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

Dated: January 11, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–1473 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 061–5039; FRL–6218–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Source-Specific VOC RACT for Tuscarora Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision requires Tuscarora Incorporated, a major source of volatile organic compounds (VOCs), to implement reasonably available control technology (RACT). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 22, 1999.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at lewis.janice@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: December 28, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–1264 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. A98–46, FRL–6222–9]

Promulgation of Federal Implementation Plan for New Jersey; Ozone 15 Percent Rate of Progress Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA), EPA is proposing a federal implementation plan (FIP) that will further New Jersey's progress towards attaining the ozone standard. The intended effect of this FIP is to address the shortfall in the State's 15 Percent Rate of Progress (ROP) Plans for the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. EPA was required to develop a FIP because New Jersey did not meet the condition in it's federally-approved 15 Percent ROP Plans requiring New Jersey to implement an enhanced inspection and maintenance program by November 15, 1997. Pursuant to a court order, EPA's final FIP must be signed by the EPA Administrator no later than August 15, 1999.

EPA's proposed FIP relies on four already-adopted federal air pollution control measures that will result in the required volatile organic compound (VOC) emission reductions. Specifically, the FIP recognizes VOC reductions resulting from the emission standards for new nonroad spark-ignition engines, the emission standards for automobile refinish coatings, and the emission standards for architectural coatings. In addition, for the Philadelphia, Wilmington, Trenton Area, the FIP relies upon emission reductions from the already adopted National Emission Standard for Benzene Waste Operations. In total, these measures will result in sufficient VOC emission reductions to achieve the 15 Percent ROP demonstration required by the CAA. Because these requirements are already adopted they will provide the emission

reductions in the most expeditious time frame.

DATES: Comments must be received on or before March 17, 1999. EPA has scheduled a public hearing on the New Jersey Ozone 15 Percent Shortfall FIP for March 3, 1999 from 1:00 p.m. to 3:00 p.m.

ADDRESSES: Written comments on the EPA's proposed FIP must be received by EPA at the address below on or before March 17, 1999. Comments should be submitted (in duplicate, if possible) to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

The public hearing will be held at the following location: Rutgers University, New Brunswick, Labor Education Center, Labor Center Way, room 102. For directions, please contact Paul Truchan at (212) 637–3711.

A copy of docket No. A98–46, containing material relevant to EPA's proposed action, is available for review at: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Interested persons may make an appointment with Paul Truchan (212) 637–3711 to inspect the docket at EPA's New York City office on weekdays between 9 a.m. and 4 p.m.

A copy of docket No. A98–46 is also available to review at the New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

Electronic availability: This document is also available as an electronic file on EPA's Region 2 Web Page at http://www.epa.gov/region02.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3711.

SUPPLEMENTARY INFORMATION:

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B. FIP Proposal
C. Public Involvement
II. Background
A. Clean Air Act Requirements
B. Chronology of Actions Related to New Jersey's 15 Percent ROP Plans
C. Relation to the 8-hour Average Ozone Standard
III. FIP Development Process
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E. Summary of New Jersey's 15 Percent ROP Plan and FIP
V. Conclusion:
VI. Administrative Requirements

I. Executive Summary

A. Introduction—the Shortfall

Today's action affects two areas of New Jersey which have been designated as nonattainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. The measured levels of ozone in these areas were high enough that these areas were classified as having a "severe" ozone problem. These nonattainment areas are the portion of New Jersey in the New York, Northern New Jersey, Long Island ozone nonattainment area, and the portion of New Jersey in the Philadelphia, Wilmington, Trenton ozone nonattainment area. For the purposes of this action, these areas will be referred to as, respectively, the Northern New Jersey nonattainment area and the Trenton nonattainment area. These two severe nonattainment areas involve 18 of New Jersey's 21 counties and contain approximately 95 percent of the State's population. The counties located within the Northern New Jersey nonattainment area are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within the Trenton nonattainment area are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem.

Ground level ozone, often known as smog, is the air pollution that blankets many urban areas during the summer. When inhaled, even at low levels, ozone can cause temporary respiratory problems and aggravate asthma in children, the elderly, those with respiratory disease, and even otherwise healthy adults who are working or exercising outside on a smoggy day. Children are exposed to ozone more often because they tend to be out doors during summer. Long-term exposures to ozone may lead to premature aging of the lungs and chronic respiratory illnesses. Ozone also damages crops, rubberized materials and fabrics. A more complete description of the health effects of ozone and EPA's 8-hour ozone standard is available at the following EPA web site: http://ttnwww.rtpnc.epa.gov/naaqsfin/. State plans to meet this new standard are not due to EPA until 2003. Today's proposal will bring the State closer to meeting the previously established one-hour ozone standard which remains in effect for areas such as the two New Jersey nonattainment areas. Today's proposal will also, in turn, bring New Jersey closer to meeting the new more stringent 8-hour standard.

Ground-level ozone is formed by the atmospheric reaction of VOCs and nitrogen oxides in the presence of sunlight. The primary source of VOC emissions are: exhaust from automobiles, sport utility vehicles, trucks and other gasoline burning engines, solvent evaporation from paints and coatings, evaporation of petroleum products, and industrial manufacturing and surface coating operations. While nitrogen oxides also contribute to the formation of ozone they are not a part of today's action, as the 15 Percent ROP requirement in the CAA applies only to VOC emissions. There are separate CAA requirements for nitrogen oxides.

The CAA provides a framework that the states must follow in order to attain the ozone NAAQS as expeditiously as possible. This framework requires, at a minimum, the early adoption of specific control measures to achieve Reasonable Further Progress—including a 15 percent reduction in VOC emissions between 1990 and 1996. The CAA also provides that EPA has an obligation to develop a FIP if EPA disapproves a SIP for failing to provide the required VOC emission reduction strategies needed to make progress towards meeting the health-based standard.

New Jersey's federally-approved 15 Percent ROP Plans for the two severe ozone nonattainment areas relied on the emission reductions from several control measures including the implementation of a State enhanced inspection and maintenance (I/M) program. When implementation of this program was delayed, these emission reductions could not be achieved on schedule. Therefore, EPA's conditional approval of the New Jersey 15 Percent ROP Plans converted to a disapproval and EPA is now obligated to develop a FIP that will make up for the VOC emission reduction shortfall. This shortfall is 30.86 tons per day in the Northern New Jersey nonattainment

area and 10.24 tons per day in the Trenton nonattainment area.

In addition, EPA is under court order, as a result of a lawsuit by the American Lung Association of Northern Virginia, *et al.*, to promulgate a FIP which makes up the shortfall in the 15 Percent ROP Plan for the Trenton nonattainment area. Under the Consent Agreement, EPA has until January 15, 1999, to propose and August 15, 1999, to adopt the FIP.

B. FIP Proposal

EPA's FIP proposal for the Northern New Jersey and Trenton nonattainment areas relies on the emission reductions from three EPA-promulgated national air pollution control measures: the emission standards for new nonroad spark-ignition engines, the emission standards for automobile refinish coatings, and the emission standards for architectural coatings. In addition to the above measures, in the Trenton nonattainment area EPA's proposed FIP also includes emission reductions from the already-adopted national emission standard for benzene waste operations. These measures were selected because they are already adopted and will therefore, most expeditiously result in emission reductions.

The CAA and the Consent Agreement require EPA to develop a FIP to make up for shortfalls in New Jersey's 15 Percent ROP Plans. Another consequence of EPA's disapproval of the New Jersey 15 Percent ROP Plans is that a mandatory sanction process was started. The CAA provides for two mandatory sanctions: first, 18 months after notification, a requirement to offset the increased emissions from new or modified major sources of air pollution at a rate of two tons of reduction for every one ton of increased emissions; and second, 24 months after notification, restrictions on the receipt of federal highway funds. This sanctions process is only terminated by EPA approval of a new 15 Percent ROP SIP revision, not by promulgation of this FIP.

EPA is working closely with New Jersey so that the State can develop an approvable 15 Percent ROP Plan which will replace EPA's FIP and avoid these sanctions.

C. Public Involvement

EPA is today announcing a public hearing on this FIP proposal. The public comment period will begin upon publication of the FIP proposal and will remain open for 30 days following the public hearing. EPA encourages everyone who has an interest in this proposal to comment upon it. EPA will consider all comments received during the public comment period in preparing the final FIP.

II. Background

A. Clean Air Act Requirements

Section 182(b)(1) of the CAA requires each ozone nonattainment area with a classification of moderate or above to develop a plan to reduce area-wide VOC emissions by 15 percent from a 1990 adjusted baseline, known as a 15 Percent ROP Plan. These plans were to be submitted by November 15, 1993.

B. Chronology of Actions Related to New Jersey's 15 Percent ROP Plans

New Jersey's original submittal was determined to be incomplete on February 2, 1994, which started a sanction process and a federal obligation to promulgate a FIP within 24 months, unless New Jersey satisfactorily fulfills the CAA requirements. The original submittal was determined to be incomplete because it relied on emission reductions from an enhanced I/M program that New Jersey had not yet adopted. On July 10, 1995, New Jersey submitted a SIP revision containing an adopted enhanced I/M program that EPA subsequently determined to be complete on August 1, 1995. This stopped the sanction process, but EPA's FIP obligation would remain until EPA took final action to approve the 15 Percent ROP Plan. EPA did not act further on the State's submittals because subsequent to the July 10, 1995 enhanced I/M submittal the State decided to revise the enhanced I/M program to make use of the flexibility that Congress provided to states in the National Highway System Designation Act, which was enacted in November 1995.

EPA's FIP obligation continued, and, as a result of a lawsuit by the American Lung Association of Northern Virgina, *et al.*, relating to the Trenton nonattainment area, EPA entered into a consent agreement that contained a schedule for the promulgation of a FIP if New Jersey failed to submit a 15 Percent ROP SIP, or if EPA did not approve it, or if New Jersey failed to implement any conditions of the approved SIP. This consent agreement only applies to the Trenton nonattainment area.

On April 30, 1997 (62 FR 23410), EPA proposed conditional interim approval of New Jersey's 15 Percent ROP Plans and, on June 30, 1997 (62 FR 35100), EPA gave final conditional interim approval to the 15 Percent ROP Plans, as well as approving several other CAA SIP requirements. In this notice EPA found that the control measures included in the plans would achieve 15 Percent ROP by November 15, 1999, which is as soon as practicable. The conditions placed on the 15 Percent ROP Plan approval related only to the enhanced I/M program. No conditions regarding any of the other measures were included in EPA's approval. As a result of a delay in the start up of the conditionally approved enhanced I/M program, which delayed full implementation by more than one year, EPA made a finding that the State failed to implement the enhanced I/M program and disapproved New Jersey's 15 Percent ROP Plans on December 12, 1997.

EPA's FIP obligation with respect to the 15 Percent ROP Plans is limited to adopting control measures which will eliminate the resulting emission reduction shortfall caused by the delay in the enhanced I/M program since the other portions of New Jersey's 15 Percent ROP plan are still approved as part of New Jersey's SIP and are still producing VOC emission reductions that benefit the environment. Under the Consent Agreement, EPA has until January 15, 1999 to propose the FIP and has until August 15, 1999 to adopt a FIP.

C. Relation to the 8-hour Average Ozone Standard

In July 1997, EPA adopted a new, more protective 8-hour ozone standard. However, for the purposes of making progress toward this new eight-hour ozone standard, the requirements for the old one-hour standard remain in effect until areas attain the one-hour standard. The requirement for a 15 Percent ROP Plan in the Northern New Jersey and the Trenton nonattainment areas continues since neither location has yet attained the one-hour ozone standard. Today's action deals only with the implementation of measures to make progress towards attainment of the one-hour ozone standard.

III. FIP Development Process

A. New Jersey's Efforts To Make Up the 15 Percent Shortfall

New Jersey is now in the process of revising its 15 Percent ROP Plans to make up for the shortfall created by the delay in implementing its enhanced I/M program. As part of this effort, New Jersey identified its landfill control program which was State promulgated and SIP-approved but was not included in its original 15 Percent ROP Plans. In addition, New Jersey used more accurate landfill emission estimating techniques which lowered the 1990

emissions from this category. The revised landfill emissions result in lower 1990 baseline emissions and, therefore, lower the amount of reductions needed to show 15 Percent ROP. In a letter dated November 9, 1998, New Jersey provided revised landfill information to be used in the revised 15 Percent ROP Plans. EPA considers this information to be the latest and most accurate assessment of the base year emissions. This correction reduces the shortfall which the FIP needs to account for from 31.41 to 30.86 tons per day in the Northern New Jersey nonattainment area and from 10.55 to 10.24 tons per day in the Trenton nonattainment area. With the exception of the enhanced inspection and maintenance program, all control programs have been adopted, implemented, and approved by EPA in the SIP. The table in section IV.E., provides a summary of New Jersey's previously conditionally approved 15 Percent ROP Plan and the resulting shortfall after consideration of the revised landfill data.

Therefore, EPA is basing its FIP on the need to make up for an emission reduction shortfall of 30.86 tons per day in the Northern New Jersey nonattainment area and 10.24 tons per day in the Trenton nonattainment area by November 15, 1999, the date which EPA previously found to be as soon as possible in New Jersey.

B. Federal Implementation Plan Provisions

Section 110(c) of the CAA provides that:

(1) The Administrator shall promulgate a federal implementation plan at any time within 2 years after the Administrator—

(A) Finds that the state has failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum criteria established under section 110(k)(1)(A),[1] or

(B) Disapproves a State Implementation Plan submission in whole or in part, unless the state corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such federal implementation plan.

EPA has wide-ranging authority under section 110(c) to fill in gaps left by a state failure. EPA's authority to prescribe FIP measures is of three types. First, EPA may promulgate any measure for which it has the authority under CAA provisions. Second, EPA may invoke section 110(c)'s general FIP authority and act to cure a planning inadequacy in any way not clearly prohibited by statute. Third, under section 110(c), the courts have held that EPA may exercise all authority that the state may exercise under the Act. For a more detailed discussion of these authorities and restrictions on EPA's FIP authorities, see 59 FR 23262, 23290–23292 (May 5, 1994).

C. FIP Selection Factors

In selecting proposed control measures to remedy the shortfall, EPA was guided by the following factors in evaluating potential control measures:

1. Existing SIP

EPA removed from further consideration any measure which was already approved as part of the SIP and where the State has credited that measure towards meeting rate of progress requirements.

2. Applicability to New Jersey

Before a measure can be considered as a potential FIP control measure, EPA must first determine if the measure would have any inherent potential to reduce VOC emissions in the affected nonattainment areas.

3. Legal Authority

EPA must have the legal authority under the CAA to promulgate, implement, and enforce a measure, and must not be preempted from promulgating, implementing, or enforcing it by other federal statutes, regulations, or court orders before it considers a measure reasonably available for implementation in a FIP. EPA's FIP authority under CAA section 110(c) is broad (see section II.A.3. above); however, the Agency is constrained in specific instances by the CAA itself. See e.g., CAA section 110(a)(5)(A)(i) (prohibition on indirect source review programs) and section 110(c)(2)(B) (prohibition on parking surcharges).

EPA's authority to promulgate measures in a FIP that require a state to enact legislation or expend state funds is limited. EPA may require a state to enact legislation or expend its funds if the FIP measures affect the pollution-creating activities of the State itself, but may not do so if the effect is to govern the pollution-creating activities of others. For example, EPA could not require a state to regulate buses within the state. EPA could, however, require a state to retrofit state-owned buses to reduce emissions from those buses as part of an EPA strategy to regulate buses in general. For a detailed discussion of this issue, see 52 FR 23263, 23291–23292 (February 5, 1994) (proposed ozone and carbon monoxide FIP for the South Coast Air Basin).

4. Method of Implementation

EPA considered the method of implementing the measure in determining whether a measure was available to EPA for promulgation under the FIP, i.e., (1) by rule requiring the owner/operator of the source to implement the control, (2) by direct action by EPA, or (3) by providing additional funding to the state or local agency to implement the measure.

5. Technological Feasibility

As the term is proposed to be used here, technological feasibility means that the control measure is currently available and being implemented elsewhere and that the measure can achieve VOC emission reductions.

6. Cost of Implementation

In considering the cost of implementing a measure in an area, the General Preamble for EPA action on SIPs under the 1990 amendments to the CAA (57 FR 13541) suggests that in case of public sector sources and control measures, the cost evaluation should consider the impact of the reasonableness of the measures on the governmental entity that must bear the responsibility for their implementation.

In promulgating a FIP, EPA is the primary implementing entity. As such, EPA must evaluate the reasonableness of potential control measures based on its financial and resource capabilities. The Agency notes that its duty to promulgate and implement FIPs is in addition to, rather than a replacement of, its other duties under the Clean Air Act. As such, where implementing a potential FIP measure would require the Agency to expend substantial efforts to acquire needed resources, including financial resources, EPA should take such factors into consideration in determining whether the measure is practicable and, thus, reasonable to implement.

IV. Description of the Measures Included in the Proposed FIP

The following control measures are being proposed to meet the shortfall in New Jersey's 15 Percent ROP Plans. In EPA's assessment, these measures will eliminate the shortfall in the most expeditious manner, with the least inconvenience to the public, and with

[1] Section 110(k)(1)(A) requires the Administrator to promulgate minimum criteria that any plan submission must meet before EPA is required to act on the submission. These completeness criteria are set forth at 40 CFR part 51, Appendix V.

the most effective use of available federal resources.

A. New Nonroad Spark-Ignition Engines

1. Background

Prior to 1990, EPA's regulatory programs for motor vehicles and engines dealt only with on-road vehicles. In the CAA as amended in 1990, section 213(a)(1) directed EPA to study the contributions to air quality from nonroad engines and vehicles. Section 213(a)(2) of the CAA directed the Administrator to determine whether the emissions from nonroad sources are significant contributors to ozone or carbon monoxide in more than one nonattainment area and, if so, directed the Administrator to promulgate regulations for nonroad engines. EPA determined that there are substantial summertime VOC emissions from nonroad sources in many nonattainment areas.

On May 16, 1994, EPA published a notice of proposed rulemaking for small nonroad engines (59 FR 25399). This **Federal Register** notice, "Control of Air Pollution; Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts," proposed emission standards that are expected to result in a 32 percent reduction in VOC emissions and a 14 percent reduction in carbon monoxide emissions nationally by the year 2020 when complete fleet turnover is projected. In a July 3, 1995 **Federal Register** (60 FR 34581), EPA promulgated a first phase of the final regulations to control emissions from new nonroad spark-ignition engines. This regulation is contained in the Code of Federal Regulations (CFR), Title 40, "Part 90—Control of Emissions From Nonroad Spark-Ignition Engines." A second phase will be adopted in the future. The FIP only relies on the emission reductions from this first fully promulgated phase. The reader is referred to these proposed and final **Federal Register** notices for greater detail.

2. Emission Standards

This regulation is applicable to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and is effective for the 1997 model year and beyond. These engines are used principally in lawn and garden equipment and include such equipment as lawn mowers, leaf blowers, trimmers, chainsaws, and generators. Section 90.1(b) of 40 CFR Part 90 specifies those engine applications which are exempt from these emission standards.

Section 90.103 specifies the exhaust emission standards. Such standards are based on both engine displacement and whether the equipment is handheld. There are emission standards for hydrocarbons (VOCs), carbon monoxides, and oxides of nitrogen.

3. Compliance and Recordkeeping

EPA has established certification procedures which engine manufacturers must comply with in order to obtain a "Certificate of Conformity." These procedures include engine testing, data reporting, record keeping, and labeling.

The inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers. There will be no separate testing, record keeping, or reporting requirements under the New Jersey FIP. Compliance with the national rule (40 CFR Part 90) is sufficient to insure compliance and emission reductions in New Jersey or any other state.

4. Emission Reductions

EPA has determined that the new nonroad standards will reduce VOC emissions by 13.1 percent in 1997, 19.5 percent in 1998, and 23.9 percent in 1999 nationally. Applying these percentages to New Jersey's specific engine population, the resulting VOC emission reductions that will be achieved in 1999 will be 16.19 tons per day in the Northern New Jersey nonattainment area and 5.71 tons per day in the Trenton nonattainment area. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

B. Emission Standards for Automobile Refinish Coatings

1. Background

In the Clean Air Act as amended in 1990, section 183(e) directs EPA to study the emissions of VOCs into the ambient air from consumer and commercial products and determine their potential contribution to ozone levels. In this study EPA was to list the categories of consumer or commercial products that account for at least 80 percent of the VOC emissions from these products in ozone nonattainment areas and develop a schedule for regulating these categories over the next eight years.

Based on this study, EPA concluded that VOC emissions from automobile refinish coatings have the potential to contribute to ozone levels that violate the NAAQS for ozone. On April 30, 1996 (61 FR 19005), EPA proposed the "National Volatile Organic Compound (VOC) Emission Standards for Automobile Refinish Coatings (Autobody Refinishing)." A supplemental proposal was published on December 30, 1997 (62 FR 67784). On September 11, 1998 (63 FR 48806), EPA promulgated final regulations at 40 CFR Part 59, Subpart B—"National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings" (Subpart B).

2. Emission Standards

The promulgated rule is applicable to all entities nationally that manufacture or import automobile refinish coating components or complete refinish coatings. Regulated automobile refinish coatings are pretreatment wash primers, primers/primer surfacers, primer sealers, single/two-stage topcoats, topcoats of more than two stages, multi-colored top coats, and specialty coatings. The VOC content standards are dependent on the coating category and specify limitations in grams of VOC per liter of coating.

3. Compliance and Recordkeeping

Automobile refinish coatings and coating components manufactured on or after January 11, 1999 must be in compliance with 40 CFR Part 59, Subpart B. Containers must be labeled with the date of manufacture or a code for the date. An initial report must be filed with EPA by January 11, 1999 or within 180 days after becoming subject to the rule. For purposes of determining compliance, the VOC content of each coating or component may be determined using EPA's Reference Method 24—"Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," found in 40 CFR part 60, appendix A.

It should be noted that the inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers or importers of automobile refinishing components or coatings. There will be no separate testing, record keeping or reporting requirements. Compliance with the national rule will be sufficient to insure compliance and emissions reductions in New Jersey or any other state.

4. Emission Reductions

EPA has determined that the automobile refinish coating standards will result in VOC emission reductions in 1999 of 13.23 tons per day in the Northern New Jersey nonattainment area and 3.44 tons per day in the Trenton nonattainment area using New Jersey specific data on the automobile

refinishing industry. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

C. Emission Standards for Architectural Coatings

1. Background

EPA developed national regulations for architectural coatings as part of a larger requirement to control VOC emissions from certain categories of consumer and commercial products. Based on this study, EPA concluded that VOC emissions from architectural coatings have the potential to contribute to ozone levels that violate the NAAQS for ozone.

EPA proposed the "National Volatile Organic Compound Emission Standards for Architectural Coatings" (Architectural rule) on June 25, 1996 (61 FR 32729) and September 3, 1996 (61 FR 46410), and the comment period was further extended on October 8, 1996 (61 FR 52735). On September 11, 1998 (63 FR 48848), EPA promulgated final regulations at 40 CFR Part 59, Subpart D—"National Volatile Organic Compound Emission Standards For Architectural Coatings." The reader is referred to these **Federal Register** notices for greater detail.

New Jersey developed its own architectural coatings regulation, Subchapter 23 "Prevention of Air Pollution From Architectural Coatings and Consumer Products," which was originally adopted in 1989 and subsequently revised. The regulation took effect in January 1990 for Group 1 products and March 1990 for Group 2 products. The regulation allowed coatings manufactured before 1990 to be sold until 1993. Because of the uncertainty in determining when the emission reductions occurred, New Jersey treated this source category as uncontrolled in the 1990 base year emission inventory. By 1999, Subchapter 23 would have achieved emission reductions of as much as 4.9 tons per day in Northern New Jersey nonattainment area and 0.9 tons per day in the Trenton nonattainment area. However, EPA is not proposing to take credit for the reductions associated with New Jersey's regulation at this time because EPA was unable to verify the quantity of VOC emission reductions which occurred after 1990 and would be creditable towards the 15 Percent ROP Plan. Rather, EPA is taking credit only for the emission reductions associated with those categories of coatings where EPA's national rule goes beyond New Jersey's rule. This decision provides a cushion in the emission reduction estimates that addresses any uncertainty in EPA's proposed FIP.

2. Emission Standards

The national architectural coatings rule is applicable to all entities that manufacture or import for sale or distribution in the United States architectural coatings. Architectural coatings include, but are not limited to, such coatings as: primers and sealers, flat and nonflat paints, stains, enamels, and wood preservatives. A complete list of coatings subject to this rule is contained in 40 CFR part 59, subpart D, Table 1. The VOC content standards are dependent on the coating category and specify limitations expressed as grams of VOC per liter of coating. The rule contains a tonnage exemption for exempting limited quantities of coatings. EPA also included an exceedance fee provision in the national rule. Under this provision, manufacturers or importers would have the option of paying a fee, based on the amount that VOC content levels are exceeded, instead of actually achieving the VOC content limitations. The fee is $0.0028 per gram or $2,500 per ton. EPA believes this will provide an option where the cost of reformulating low volume specialty coatings is high, while still providing an incentive to reformulate. EPA took this option into consideration in calculating the emission reduction potential of this rule as it would be used in the FIP.

3. Compliance and Recordkeeping

Architectural coatings manufactured on or after September 11, 1999 for sale or distribution in the United States must meet the VOC content limitations of 40 CFR part 59, table 1 (the compliance date for coatings subject to the Federal Insecticide, Fungicide, and Rodenticide Act is May 10, 2000). Containers must be labeled with the date of manufacture or a code for the date and the VOC content in the coating. An initial report must be filed with EPA no later than September 13, 1999 or within 180 days after becoming subject to the rule. Manufacturers must maintain records for a period of three years. For purposes of determining compliance, the VOC content of each coating or component may be determined using EPA's Reference Method 24—"Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," found in 40 CFR part 60, appendix A (or an alternate method approved by EPA), formulation data, or other appropriate means. In the event of a discrepancy, however, the results from Method 24 (or the approved alternative method) govern.

It should be noted that the inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers or importers of architectural coatings. There will be no separate testing, recordkeeping or reporting requirements. Compliance with the national rule will be sufficient to ensure emission reductions and compliance in New Jersey or any other state.

4. Emission Reductions

EPA calculated the additional benefit from applying the national architectural coating rule, which has more stringent emission limits than New Jersey's current rule for some categories. The national rule will result in additional VOC emission reductions of 2.31 tons per day in the Northern New Jersey nonattainment area and 0.89 tons per day in the Trenton nonattainment area using New Jersey specific population data. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

D. National Emission Standard for Benzene Waste Operations

1. Background

On March 7, 1990 (55 FR 8292), the EPA promulgated the national emission standards for hazardous air pollutants (NESHAPS) for benzene emissions from benzene waste operations, 40 CFR part 61, Subpart FF (the rule). EPA initially issued a stay of effectiveness for this rule on March 5, 1992. EPA published a final rule on January 7, 1993 (58 FR 3072) that clarified the provisions and lifted the stay. The final benzene waste operations rule became effective on January 7, 1993.

2. Emission Standards

The rule is applicable to owners or operators of chemical manufacturing plants, manufacturing plants, coke by-product recovery plants, and petroleum refineries nationally and includes facilities with waste management units that treat, store or dispose of waste containing benzene. The final amendments clarify points on compliance that give owners and operators increased flexibility in meeting the requirements of the rule while meeting the NESHAPS goals for risk protection.

The rule requires control of benzene emissions from waste that is placed in storage tanks; surface impoundments; containers; individual drain systems; oil-water separators; treatment

processes; and closed vent systems. (See 40 CFR part 61, subpart FF and 58 FR 3071 for more details on these regulations.) For this 15 Percent ROP FIP action, EPA is only claiming credit for wastewater treatment processes at one facility covered by this rule. While the rule has resulted in real additional emission reductions, these emission reductions are not included as part of EPA's emission reduction calculations because they are not needed to fulfill the shortfall in the New Jersey 15 Percent ROP Plan.

Owners and operators of wastewater streams meeting the applicability requirements in sections 61.340 and 61.342 are required to comply with the following wastewater stream and process vent control requirements:

Such operators must install and operate a treatment process that removes benzene from the wastewater stream either to a level less than 10 parts per million by weight (ppmw) on a flow weighted annual average basis; or by at least 99 percent on a mass basis; or, by incinerating the waste in a combustion unit that achieves a destruction efficiency of at least 99 percent.

3. Compliance and Recordkeeping

Owners and operators subject to Subpart FF Sections 61.340 and 61.342 were required to comply with the control requirements outlined in sections 61.348 and 61.349 by April 7, 1993. Provisions under these sections require the owner or operator to report and maintain records which both identify each waste stream at a facility for streams controlled and uncontrolled for benzene emissions and include emission test results, emission measurements, annual waste quantity and other documentation related to wastewater processes. Records must be kept for at least 2 years from the date the information is recorded.

4. Emission Reductions

As mentioned earlier, Subpart FF requires control of benzene emissions from waste placed in storage tanks, surface impoundments, containers, individual drain systems, oil-water separators, treatment processes, and closed vent systems. However, EPA is only crediting emission reductions from the wastewater treatment processes at one of several petroleum refineries in the Trenton nonattainment area although additional reductions could be documented if needed to meet the shortfall. Complying with these provisions has resulted in VOC emission reductions of 2.37 tons per day in the New Jersey portion of the Trenton nonattainment area. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

E. Summary of New Jersey's 15 Percent ROP Plan and FIP

	Northern New Jersey NAA (tons/day)	Trenton NAA (tons/day)
15 Percent ROP Plan Required Reductions		
Originally required reductions	129.82	37.18
Changes to required reductions due to lower landfill emissions in base year inventory	−1.09	−0.49
New required reductions	128.73	36.69
Reductions from New Jersey Control Measures		
Originally approved New Jersey control measure reductions	130.82	38.28
Benefit from landfill controls	0.13	0.08
Removal of enhanced I/M reductions	−33.08	−11.91
Currently achieved reductions	97.87	26.45
Shortfall Calculations		
New required reductions	128.73	36.69
Currently achieved reductions	97.87	26.45
SIP shortfall	30.86	10.24
Proposed FIP Control Measures		
New Nonroad Spark-Ignition Engines	16.19	5.71
Automobile Refinish Coatings	13.23	3.44
Architectural Coatings	2.31	0.89
Benzene Waste NESHAPS	.....	2.37
Total FIP Measures	31.73	12.41
Excess Reductions	0.87	2.17

Additional emissions reductions have been achieved from New Jersey's architectural coatings regulation and the national emission standard for benzene waste operations, but have not been specifically enumerated in this notice since sufficient reductions have already been identified to achieve the 15 Percent ROP requirement.

V. Conclusion

EPA's proposed FIP addresses shortfalls in New Jersey's 15 Percent ROP Plans using measures with real air pollution reductions that are either already fully implemented or are fully adopted and in the process of being achieved. These measures will continue New Jersey's progress toward meeting the federal air quality one-hour ozone standard and will result in cleaner, healthier air for all New Jersey residents.

Specifically, EPA is proposing a FIP for New Jersey to address the shortfall in the 15 Percent ROP Plans for the two severe ozone nonattainment areas—the Northern New Jersey area and the Trenton area. EPA'S FIP relies on

emission reductions from three EPA adopted control measures for the Northern New Jersey and Trenton nonattainment areas, emission standards for new nonroad spark-ignition engines, emission standards for automobile refinish coatings, emission standards for architectural coatings, and one additional EPA promulgated control measure for the Trenton nonattainment area, the national emission standard for benzene waste water operations at refineries. When added to those control measures already included in New Jersey's 15 Percent ROP Plans, these measures will result in sufficient VOC emission reductions to achieve the rate of progress required by the CAA.

VI. Administrative Requirements

In order to meet the requirement of section 182(b)(1) of the Act, the proposed FIP for New Jersey relies on the VOC emission reductions which will result from the implementation of four national control programs, each of which has already been adopted by EPA. The control measures are:

Control of Emissions from Nonroad Spark-ignition Engines, 40 CFR Part 90—adopted, July 3, 1995 (60 FR 34581);

National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, 40 CFR Part 59—adopted, September 11, 1998 (63 FR 48806);

National Volatile Organic Compounds Emission Standards for Architectural Coatings, 40 CFR Part 59—adopted, September 11, 1998 (63 FR 48848), and

National Emission Standard for Benzene Waste Operations, 40 CFR Part 61—adopted January 7, 1993 (58 FR 3072).

With these four control measures, the New Jersey FIP will be able to make up the emission reduction shortfall in the disapproved New Jersey 15 Percent ROP Plans without imposing any new regulatory burdens, since these regulations have already been adopted and are currently applicable nationally. These measures will expeditiously achieve the reductions with the least disruption and cost to the general public without the need for developing, proposing and adopting additional individual regulations for other source categories.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of Executive Order 12866 to prepare a regulatory impact analysis (RIA). The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

Since this FIP rulemaking will not add to or change any of the requirements of the previously promulgated rules, including record keeping or reporting, and will not result in any additional costs, this FIP rulemaking is not "significant" under Executive Order 12866 and it is therefore not subject to the requirements of the Executive Order. Due to potential novel policy issues this action is being sent to OMB for review.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

Since the FIP is not adding any additional economic burden, and since no new requirements are being imposed, this FIP is not economically significant under Executive Order 12866. The FIP also does not impose any new requirements that address any risk which may have a disproportional effect on children, and, as a result Executive Order 13045 is not applicable.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. It does not create a mandate on tribal governments, nor imposes any enforceable duties on

these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis, including consideration of regulatory options for reducing any significant impacts, unless the Agency determines that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and small governmental jurisdictions.

For the purposes of analyzing whether the proposed FIP will have "a significant economic impact," EPA assumes that sources subject to the previously adopted rules are complying with them. The appropriate inquiry then is whether the terms of EPA's proposed FIP would impose a significant economic impact beyond that already imposed by the terms of the existing rules. The proposed FIP does not change the nature of the already applicable rule requirements in any way. There should, therefore, be no additional burden on regulated sources because they are already legally required to comply with the relevant federal rules. When EPA originally promulgated the four federal measures it is relying on in this FIP, EPA fully complied with the applicable provisions of the RFA and SBREFA with respect to small entities. Because today's action neither proposes any additional specific regulatory requirements, nor obligates EPA to propose requirements necessarily applicable to small entities, it will not, by itself have a significant economic impact on a substantial number of small entities.

For these reasons, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed FIP will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

F. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Reform Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent within statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

Since this FIP rulemaking will not add to or change any of the requirements, including record keeping or reporting and will not result in any additional costs, it will not result in expenditures by state, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this FIP is not subject to the requirements of the Unfunded Mandates Reform Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, with explanations when the EPA decides not to use available and applicable voluntary consensus standards.

Since this FIP does not create any new technical standards, no analysis under the NTTAA is required. It should be noted, however, that EPA performed an analysis under the NTTAA when it promulgated the final Architectural Coatings and Automobile Refinish rules which were subject to the NTTAA when promulgated. (See 63 FR 48876 and 63 FR 48814.) EPA determined that the methods proposed by EPA at that time were more appropriate than any of the analyzed alternatives.

H. Paperwork Reduction Act

The individual control measures that make up this FIP have information collection requirements which were submitted to the Office of Management and Budget (OMB) when the underlying measures were published. All Paperwork Reduction Act requirements were complied with at that time. There are no additional information collection requirements in this proposed FIP and therefore, submittal of this action to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is not required.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 15, 1999

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. Subpart FF is proposed to be amended by adding new section 52.1585 to read as follows:

§ 52.1585 Ozone 15 Percent ROP Federal Implementation Plan

(a) The volatile organic compound emission reductions from the following control measures are used towards meeting the rate of progress requirements of the 15 percent plans.

(1) New York, Northern New Jersey, Long Island nonattainment area:

(i) Title 40, "Part 90—Control of Emissions From Nonroad Spark-Ignition Engines,"

(ii) Title 40, Part 59, Subpart B—"National Volatile Organic Compound Emission Standards for Automobile Refinishing Coatings,"

(iii) Title 40, Part 59, Subpart D—"National Volatile Organic Compound Emission Standards For Architectural Coatings," and

(2) Philadelphia, Wilmington, Trenton nonattainment area: Title 40, "Part 90—Control of Emissions From Nonroad Spark-Ignition Engines,"

(i) Title 40, Part 59, Subpart B—"National Volatile Organic Compound

Emission Standards for Automobile Refinishing Coatings,"

(ii) Title 40, Part 59, Subpart D—"National Volatile Organic Compound Emission Standards For Architectural Coatings," and

(iii) Title 40, Part 61, Subpart FF—"National Emission Standard for Benzene Waste Operations."

(b) Pursuant to the federal planning authority in section 110(c) of the Clean Air Act (CAA), the Administrator finds that the applicable implementation plans for the New Jersey portions of the New York, Northern New Jersey, Long Island nonattainment area, and the Philadelphia, Wilmington, Trenton nonattainment area demonstrate the 15 percent VOC rate of progress required under section 182(b)(1)(A)(1) of the CAA.

[FR Doc. 99–1482 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1002–NOI]

RIN 0938–AI72

Medicare Program: Ambulance Fee Schedule; Intent To Form Negotiated Rulemaking Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Intent to form negotiated rulemaking committee and notice of meeting

SUMMARY: Section 4531(b) of the Balanced Budget Act (BBA) of 1997 requires that the Secretary establish a fee schedule for the payment of ambulance services under the Medicare program by negotiated rulemaking. We are required to establish a Negotiated Rulemaking Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose will be to negotiate this fee schedule for ambulance services. The Committee will consist of representatives of interests that are likely to be significantly affected by the proposed rule. The Committee will be assisted by a neutral facilitator.

This notice announces our intent to establish a Negotiated Rulemaking Committee and outlines the scope of issues to be negotiated by the Committee as specified by section 4531(b)(2) of the BBA. We request public comment on whether we have properly identified the key issues to be negotiated by the committee as well as the interests that will be affected by those issues.

DATES: Comments: Comments and requests for representation or for membership on the Committee will be considered if we receive them at the appropriate address provided below, no later than 5 p.m. on February 22, 1999.

Meetings: The first meeting will be held at Turf Valley Hotel in Ellicott City, Maryland at 9 a.m. on February 22, 23, and 24, 1999 (410) 465–1500.

ADDRESSES: Mail written comments and requests for representation or for membership on the Committee, or nominations of another person for membership on the Committee (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1002–NOI, P.O. Box 7517, Baltimore, MD 21207–5187.

If you prefer, you may deliver your written comments, applications, or nominations (1 original and 3 copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201; or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT:

Bob Niemann (410) 786–4569 or Margot Blige (410) 786–4642 for general issues related to ambulance services.

Lynn Sylvester (202) 606–9140 or Elayne Tempel (207) 780–3408, Conveners.

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1002–NOI. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 445–G of the Department's offices at 300 Independence Avenue, SW, Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Document home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

I. Balanced Budget Act of 1997

Section 4531(b)(2) of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act mandates implementation, by January 1, 2000, of a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) also provides that in establishing such fee schedule, the Secretary will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and
- Phase in the fee schedule in an efficient and fair manner.

II. Negotiated Rulemaking Process

Section 1834(l)(1) of the Act provides that these negotiations take place within the framework of the Negotiated Rulemaking Act of 1990 (Public Law 101–648, 5 U.S.C. 561–570). Under the Negotiated Rulemaking Act, the head of an agency generally must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—
- Can adequately represent the interests identified; and
- Are willing to negotiate in good faith to reach a consensus on the proposed rule;
- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

We note that the Congress has determined that the above conditions have been met and has mandated that the negotiated rulemaking process is appropriate.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the agency's proposal. The process does not affect otherwise applicable procedural requirements of the FACA, the Administrative Procedure Act, and other statutes.

The Negotiated Rulemaking Act permits (but does not require) an agency to use the services of an impartial convener to assist the agency in identifying interests that will be significantly affected by the proposed rule, including residents of rural areas, and in conducting discussions with persons representing the identified interests to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking. At the agency's request, the convener also ascertains the names of persons who are willing and qualified to represent interests that will be significantly affected by the rule. The agency may also ask the convener to recommend a process for the negotiations. The convener submits a written report, which is available to the public. Pursuant to this procedure authorized by the Negotiated Rulemaking Act, Lynn Sylvester and Elayne Temple of the Federal Mediation and Conciliation Service (FMCS) will act as conveners for the negotiated rulemaking on the ambulance fee schedule. Over the last several months, they have interviewed a wide range of organizations that were identified as having a possible interest in this negotiated rulemaking. They submitted a report to HCFA based on those convening interviews, which serves as a basis for this notice. The report lists the proposed representatives on the Committee. The convening report is a public document and is available upon request from the HCFA contacts listed above.

III. Interaction With the Proposed Rule Published on June 17, 1997

On June 17, 1997, we published a proposed rule in the **Federal Register** to revise and update the Medicare ambulance regulations at 42 CFR 410.40 (62 FR 32715). Specifically, we proposed to base Medicare payment on the level of service required to treat the beneficiary's condition; to clarify and revise policy on coverage of nonemergency ambulance services; and to set national vehicle, staff, and billing and reporting requirements. As noted above, section 1834(l)(2) of the Act provides, in part, that in establishing the ambulance fee schedule, the Secretary will establish definitions for ambulance services that link payments to the types of services provided. One of the provisions of the June 17, 1997 proposed rule would have defined ambulance services as either advanced life support (ALS) or basic life support (BLS) services and linked Medicare payment to the type of service required by the beneficiary's condition. We received an extremely large number of comments on this issue and, in general, commenters were very concerned about our proposal. In light of that concern, and because service definition is a required element of the negotiated rulemaking, we have decided not to proceed with a final rule on the definition of ALS and BLS services. We will include this issue as a matter for the negotiating committee.

We note that section 1834(1)(3) of the Act provides that, in establishing the fee schedule, the Secretary must ensure that the aggregate payment amount made for ambulance services in calendar year (CY) 2000 does not exceed the aggregate payment amount that would have been made absent the fee schedule. Although we are foregoing final agency action on the ALS/BLS definition proposal and including the issue as a part of the negotiations, we believe that the savings that would have been realized through implementation of that policy should not be lost to the Medicare program. We have estimated that $65 million would have been realized if the ALS/BLS proposal had been published as a final rule. Therefore, we intend to set the spending target for CY 2000 (the first year that the fee schedule will be in effect) $65 million lower than budget neutrality to reflect these savings. We intend to proceed with a final rule for those provisions of the June 17, 1997 proposed rule that are unrelated to the ALS/BLS issue. In addition, that rule will implement the provisions of section 4531(c) of the BBA, which authorizes the Secretary to include, under certain specified conditions, ALS services provided by a paramedic intercept service in a rural area as a covered ambulance service.

IV. Subject and Scope of the Rule

A. General

Currently, the Medicare program pays for ambulance services on a reasonable cost basis when they are provided by a hospital, skilled nursing facility, or home health agency and on a reasonable charge basis when provided by an outside supplier. Section 4531(b)(1) of the BBA requires that ambulance services covered under the Medicare program be paid based on the lower of the actual charge or the fee schedule amount. The fee schedule is limited in that payments may not exceed what would have been paid if the fee schedule were not put into effect. As discussed above, we intend to set spending for the first year at $65 million less than budget neutrality.

The effective date for the fee schedule is January 1, 2000, but the Secretary has the authority under section 1834(l)(2)(E) of the Act to provide for a phase-in period. In addition, section 1834(l)(2) requires that in developing the fee schedule the Secretary:

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences; and
- Consider adjustments to payment rates to account for inflation and other relevant factors.

While we recognize that it is difficult to predict the end product of negotiated rulemaking on the ambulance fee schedule, we anticipate that the proposed rule resulting from negotiations will include a specific recommended schedule of relative values for ambulance services, any adjustments or add-on amounts for particular types of services, and possibly a mechanism for controlling expenditures and a phase-in schedule. While section 1834(l)(2)(D) of the Act requires that we include an inflation adjustment in the considerations, section 1834(l)(3)of the Act prescribes the inflation factor to be used for future years. Therefore, we are not including the inflation factor as part of the negotiation process. Medicare billing data will be available for use in the negotiations and we will share that information with Committee participants.

B. Issues and Questions To Be Resolved

Issues that we anticipate being resolved are outlined below. We also invite public comment on other issues not identified that may be within the scope of this rule.

We believe the issues to be the following:

1. The type of services furnished. That is, how services are grouped for payment purposes and the minimum services that must be furnished in order to meet the definition of each payment group. For example, what is an ALS versus BLS service? How many gradations of service are required? For example, should there be three levels of care: BLS, ALS and critical care transport? What are the relative values of each level of care and what are the projected utilizations of each?

2. Definition(s) of type of provider and how that affects the payment rate. For example, should volunteer, municipal and private ambulance services be treated differently?

3. Definition(s) of appropriate regional differences and how they affect the payment rate. For example, the use of a geographic wage adjustment.

4. Definition(s) of appropriate operational differences and how they affect the payment rate. For example:

—ALS versus BLS;
—Ground versus air;
—Fixed wing versus helicopter;
—Hospital-based versus independent;
—For-profit versus volunteer;
—Rural versus urban; or
—Isolated essential ambuiance source (that is, only one ambulance source in a given geographical area)

5. Whether mileage should be paid separately from the base rate, and if so, what components of the ambulance service should be included in the base rate and what should be included in mileage.

6. Phase-in methodology of the fee schedule from the existing payment method, both method and time period.

7. Mechanism to control expenditures, for example, a volume performance measure such as the number of trips per beneficiary or the ratio of ALS to BLS that is used to adjust the conversion factor for the following year.

C. Issues That Are Outside the Scope of This Negotiation

Based on the convening report, several issues were identified that we have determined are outside the scope of this rule. The following is a list of some, although not necessarily all, of the issues that we have determined are outside the scope of this negotiation.

1. Program policies with respect to the coverage, as distinguished from payment, of ambulance services. For example, the definition of "bed-ridden" and "medically necessary," physician certification for the use of ambulance, coverage of paramedic intercept services, and ambulance waiting time (which is not covered by Medicare).

2. The aggregate amount of Trust Fund dollars available for payment during the first year. This amount will be based on the amount the program would have paid in the year 2000 absent the fee schedule, reduced by the $65 million dollar savings that would have been realized through publication of a final rule on the ALS/BLS definition.

3. The way items and services are grouped in terms of the Billing Codes used to bill Medicare.

4. The base year, which will be the latest year for which complete HCFA ambulance claims data exist.

5. Local or State ordinances requiring certain ambulance staffing or all ALS ambulance.

6. The choice of an appropriate coding system to implement the fee schedule; section 1834(l)(7) of the Act gives HCFA the authority to specify the coding system.

V. Affected Interests and Potential Participants

In addition to our participation on the Committee, the Conveners have proposed and we agree to accept representatives from the following organizations as negotiation participants:

- American Health Care Association (AHCA).
- American Ambulance Association (AAA).
- Association of Air Medical Services (AAMS).
- International Association of Fire Chiefs (IAFC).
- International Association of Fire Fighters (IAFF).
- National Association of State Emergency Medical Services Directors (NASEMSD).
- American Hospital Association (AHA).
- National Volunteer Fire Council (NVFC).

In addition to this list, we note that we have requested that the American College of Emergency Physicians (ACEP) and the National Association of EMS Physicians (NAEMSP) form a coalition and send one representative to be a negotiation participant. We invite public comment on this list of Committee participants.

We note that Medicare contractors, which are those entities that adjudicate claims in local regions, will provide technical information to the negotiator representing HCFA. Since we consider the contractors to be agents of HCFA, we believe that they are most efficiently and effectively utilized in this manner rather than as negotiators in the process.

This document gives notice of this process to other potential participants and affords them the opportunity to request that they be considered for membership on the Committee. Persons who will be significantly affected by this rule may apply for or nominate another person for membership on the Committee to represent such interests by submitting comments on this notice. Any application or nomination must include:

- The name of the applicant or nominee and a description of the interests such person represents;
- Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;
- A written commitment that the applicant or nominee will actively participate in the negotiations in good faith; and
- The reasons that the applicant or nominee believes its interests are sufficiently different from the persons or entities listed above so that those interested would not be adequately represented on the Committee as currently proposed.

Individuals representing the proposed organizations and health industry sectors should have practical experience, be recognized in their particular community, have the ability to engage in negotiations that lead to consensus, and be able to fully represent the views of the interests they represent.

We reserve the right to refuse representatives who do not possess these characteristics. Given the limited time frame for the development of this rule, we expect that the negotiations will be intensive. Representatives must be prepared and committed to fully participate in the negotiations in an attempt to reach consensus on the issues discussed.

The intent in establishing the Committee is that all interests are represented, not necessarily all parties. We believe the proposed list of participants represents all interests associated with adoption of a national fee schedule for ambulance services. In determining whether a party had a significant interest and was represented, we considered groups who have and will continue to actively represent the main interest groups. Lastly, while we are obligated to ensure that all interests that are significantly affected are adequately represented, it is critical to the Committee's success that it be kept to a manageable size, particularly because of the short time frame in which the Committee must complete its task.

Groups or individuals who wish to apply for a seat on the Committee should respond to this notice and provide the detailed information described above.

VI. Schedule for the Negotiations

We have set a deadline of 5–6 months beginning with the date of the first meeting for the negotiated rulemaking Committee to complete work on the proposed rule. We anticipate 4 or 5 additional meetings, to be scheduled by the Committee, with the final meeting no later than the end of June 1999. The first meeting of the Committee is scheduled for February 22, 23, and 24, 1999 at the Turf Valley Hotel in Ellicott City, Maryland beginning at 9 a.m. The purpose of this meeting is to discuss in detail how the negotiations will proceed, the schedule for subsequent meetings, and how the Committee will function. The Committee will agree to ground rules for Committee operations, will determine how best to address the principal issues, and, if time permits, will begin to address those issues.

VII. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal Government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-Federal members as a source of advice. Under FACA, an advisory committee begins negotiations only after it is chartered. This process is underway.

B. Participants

The number of participants in the group is estimated to be 10 and should not exceed 15 participants. A number larger than this could make it difficult to conduct effective negotiations within the time frame required by the statute. One purpose of this notice is to determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, the group as a whole should reflect a proper balance or mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation on the Committee, we will determine, in consultation with the conveners, whether that individual or representative should be added to the Committee. We will make that decision based on whether the individual or interest—

- Would be significantly affected by the rule, and
- Is already adequately represented in the negotiating group.

D. Establishing the Committee

After reviewing any comments on this Notice and any requests, applications or nominations for representation, we will take the final steps to form the Committee.

VIII. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitators

We will use neutral facilitators to conduct the negotiations. The facilitators will not be involved with the substantive development or enforcement of the regulation. The facilitators' role will be to—

- Chair negotiating sessions in an impartial manner;
- Help the negotiation process run smoothly;
- Help participants define issues and reach consensus; and
- Manage the keeping of the Committee's minutes and records.

Lynn Sylvester and Elayne Tempel of the Federal Mediation and Conciliation Service (FMCS) will serve as facilitators.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may best be accomplished by selecting senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoints of their organizations. This applies to us as well, and we are designating Nancy Edwards, Deputy Director of the Division of Acute Care, in our Center for Health Plans and Providers, to represent us.

C. Administrative Support

We will supply logistical, administrative, and management support. We will provide technical support to the Committee in gathering and analyzing additional data or information as needed.

D. Meetings

Meetings will be held in the Baltimore/Washington area. Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitators, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings that they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the term is defined otherwise by the Committee. We expect the participants to fashion their working definition of this term.

G. Failure of Advisory Committee To Reach Consensus

If the Committee fails to reach consensus, the Committee may transmit a report specifying any areas on which consensus was reached and may include in the report any information, recommendations, or other materials that it considers appropriate. Additionally, any Committee member may include such information in an addendum to a report.

If any Committee member withdraws, the remaining Committee members will evaluate whether the Committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, minutes of all committee meetings will be kept. The minutes will be placed in the public rulemaking record and Internet site on our home page.

I. Other Information

In accordance with the provisions of Executive Order 12866 this notice was reviewed by the Office of Management and Budget.

Authority: Section 1834(l)(1) of the Social Security Act (42 U.S.C. 1395m).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 17, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 23, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 99–1615 Filed 1–21–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 98–2631]

Compatibility of Wireless Services With Enhanced 911; Guidelines for Waiver of Phase II Automatic Location Identification Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The Wireless Telecommunications Bureau released a Public Notice announcing guidelines to be followed in filing petitions for waiver of § 20.18(e) of the rules governing wireless Enhanced 911(E911) service. The Public Notice also establishes a schedule for filing such waiver requests. Section 20.18(e) requires that covered wireless carriers deploy Automatic Location Identification (ALI) beginning October 1, 2001. The action is taken to provide interested parties with guidance in filing requests for waiver of this requirement. Filings in response to the Public Notice will be included in the pending wireless E911 docket and may be utilized by the Commission in its further development of policies and rules for wireless E911 deployment.

DATES: Waiver petitions are requested to be filed by February 4, 1999. Comments on the waivers requests are due on February 16, 1999, and reply comments are due on or before February 22, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, 202–418–1310, or Won Kim, 202–418–1310. For additional information concerning the information collection aspects contained in the Public Notice, contact Les Smith at 202–418–0217, or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Public Notice in CC Docket No. 94–102, DA 98–2631, released December 24, 1998. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of the Public Notice

1. The Public Notice sets out guidelines and a filing schedule to assist those interested in filing waivers of 20.18(e) of the E911 regulations which state that covered wireless carriers must deploy Automatic Location Identification (ALI) as part of E911 service beginning October 1, 2001, provided certain conditions are met. This rule was adopted in the First Report and Order (61 FR 40348, August 2, 1996) and provides that subject carriers must provide the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square methodology. The Commission, in the Memorandum Opinion and Order (MO&O) in this proceeding (63 FR 2631, January 16, 1998) responded to concerns that the effect of § 20.18(e) might not be technologically and competitively neutral for some technologies that might be used to provide ALI, in particular handset-based technologies such as those using the GPS satellite system. The MO&O stated that the Commission would be willing to consider such issues either in the E911 rulemaking or in response to requests for waivers.

2. In response to the MO&O, the Wireless Telecommunications Bureau received inquiries regarding the terms of waivers that might be granted and the type of information that should accompany requests for such waivers. Thus, the Public Notice sets out guidelines and a filing schedule to assist those interested in filing such waivers, as well as other interested parties. Parties should be aware that these filings will be included in the pending wireless E911 docket, and may be utilized by the Commission in its further development of policies and rules for wireless E911 deployment in the pending reconsideration proceeding or in other actions in the E911 rulemaking proceeding.

3. The Commission's intention in this proceeding is to adopt general performance criteria, rather than extensive technical standards, to guide the development of wireless E911 services. The Commission's goal in this proceeding is to ensure the rapid, efficient, and effective deployment of ALI as part of E911, in order to promote the public safety and welfare. Because of the significant benefits the ALI requirements established in § 20.18(e) will provide to the public safety, any requests for waiver of the rule should be consistent with that intent and goal. The carriers who would seek waiver of ALI requirements must demonstrate their commitment to, and plans for achieving, the goals of § 20.18(e).

4. There are several aspects to achieving these goals for handset-based approaches to ALI. One of the most critical factors in providing help to 911 callers in emergency situations is the accuracy of the location information. A commitment by a carrier to provide a significantly higher level of accuracy could help justify a phase-in of ALI over time, through upgrading or replacing handsets.

5. Another way in which the goals of the rules might be achieved would be if the carrier began implementation of ALI capabilities before the October 1, 2001, deadline, by offering ALI capable handsets to customers at an earlier date, and offering only ALI capable handsets no later than the date when all conditions for Phase II requirements are met. Early implementation could be especially useful for wireless customers travelling in areas where Public Safety Answering Points (PSAPs) have acted to be able to receive the ALI information.

6. One concern the Commission has regarding carriers employing handset-based ALI technologies is that they might not be able to provide reliable ALI service to "roamer" customers whose home carrier adopts a network-based solution. In light of this concern, it will be important for carriers seeking waiver of the Commission's Phase II requirements to address any factors and steps they will be in a position to take that will minimize this roamer problem to the fullest extent practicable.

Terms and Scope of Waiver Petitions; Information Requested

7. Any carrier seeking a waiver of the Commission's rules and requirements relating to Phase II implementation shall include in its petition for waiver a specific statement and explanation of the scope and terms of the waiver sought by the carrier. Under the general waiver standard set forth in WAIT Radio,[1] the Commission may exercise its discretion to waive a rule where waivers are founded upon an "appropriate general standard," "show special circumstances warranting a deviation from the general rule," and "such deviation will serve the public interest."[2]

8. In order to meet the *WAIT Radio* waiver standard, it is necessary for waiver petitions to provide with sufficient particularity the following information. This information will assist the Commission in assessing whether a particular waiver is likely to meet the Commission's objective of being technologically and competitively neutral with respect to enforcement compliance with its Phase II rules, while promoting the deployment of wireless E911 in an efficient and effective manner:

(1) The level of ALI accuracy and reliability the carrier plans to offer with its ALI technologies. This information should include field test results of such technologies in various geographical environments, such as "urban canyons," suburban and rural locations, mountainous and other similar terrain, and inside buildings.

(2) When the carrier plans to start offering ALI-capable handsets to its customers. This information should include documented timetables and milestones regarding the deployment projections for ALI-capable handsets. In particular, we would find it useful to have information on the expected implementation rate for ALI under the requested waiver, including the likely rate at which non-ALI capable handsets would be replaced or upgraded.

(3) Steps the carrier will take with respect to minimizing problems associated with non-ALI capable handsets. This information should include an analysis of estimated cost of upgrading or replacing existing handsets based on the options explored by the carrier.

(4) Steps the carrier plans to take to address roamer situations, together with any available information regarding the volume of 911 calls made by roamer customers in the carrier's service area.

9. Because the ALI technology issue is one that affects all wireless carriers subject to the E911 requirements, it is possible that a general waiver or set of waiver options may be one way of addressing the handset-based technology issue. The grant of interim waivers pending the adoption of permanent rule changes may also be appropriate. Waiver requests and comments should address any legal or other issues that might be raised by the grant of either individual or general waivers, on an interim or permanent basis.

Filing Schedules and Instructions

10. To assist the Commission in evaluating these issues in a comprehensive manner, we recommend that waiver requests be filed not later than February 4, 1999. Oppositions should be filed not later than February 16, 1999. Replies should be filed not later than February 22, 1999. Waiver requests may be filed before or after the date established in this schedule, but adherence to such filing date should facilitate more efficient and expeditious treatment of pending petitions. The Commission also notes that application for or grant of a waiver does not obligate the carrier to use the waiver; if a carrier wishes, it may decide to comply with the rules in effect rather than employ a granted waiver.

Administrative Information

11. To file formally in this proceeding, participants must file an original and five copies of all petitions, oppositions, and replies. If participants want each Commissioner to receive a personal copy of their comments, an original and ten copies must be filed. All pleadings should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C., 20554, referencing CC Docket No. 94–102. Paper filings will also be received at a designated counter located at TW–A325 in the 12th Street lobby of the Portals II Office Building from 8:30 a.m. to 5:30 p.m., Monday through Friday, except holidays. During the transition period of the Commission's relocation to the Portals II Office Building, the Office of the Secretary will accept paper filings at 1919 M Street, N.W., Room 222, but only from 4:00 p.m. to 5:30 p.m., Monday through Friday, except holidays.

12. Requests for waiver that are formally opposed are generally treated as restricted proceedings, where *ex parte* presentations are prohibited.[3] The Commission may modify its *ex parte* rules, however, if it determines that the public interest would be served.[4] Because these waiver petitions and responsive comments will be included in CC Docket No. 94–402, and may be considered in the context of the ongoing wireless E911 rulemaking, the Commission believes that it is appropriate to treat these as "permit but disclose" proceedings. Pursuant to our delegated authority,[5] we have determined that it is in the public interest to permit *ex parte* presentations relating to petitions for waiver of § 20.18(e), so long as the presentations are disclosed in accordance with § 1.1206 of the Commission's Rules.[6]

Paperwork Reduction Act

13. This Public Notice contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA). The Office of Management and Budget (OMB) has reviewed and approved these collections. The expiration date for this approval is April 30, 1999. Because the Commission sought and OMB granted emergency approval of these collections, and because the Public Notice originated from comments filed in response to the Memorandum Opinion and Order (63 FR 2631, January 16, 1998) for which a comment period was provided and OMB approval was received (OMB No. 3060–0813), the Commission has been granted an exception to the 60-day public comment requirement.

OMB Approval Number: 3060–0878.

Title: Wireless Telecommunications Bureau Outlines Guidelines For Wireless E911 Rule Waivers For Handset-Based Approaches To Phase II Automatic Location Identification (ALI) Requirements, Public Notice, CC Docket No. 94–102.

Type of Review: New Collection.

Respondents: Covered Wireless Carriers Seeking Waiver of § 20.18 (e) of the Commission's E911 Rules Requiring That Covered Carriers Deploy ALI As Part Of E911 Service Beginning October 1, 2001.

Number of Respondents: Approximately 50 carriers will submit a one-time request for waiver of the E911 ALI regulations.

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[1] WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (WAIT Radio).

[2] Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio*, 418 F.2d at 1159.

[3] Section 1.1208 of the Commission's Rules, 47 CFR 1.1208.

[4] Section 1.1200(a) of the Commission's Rules, 47 CFR 1.1200(a).

[5] *See* §§ 0.131 and 1.331 of the Commission's Rules, 47 CFR 0.131, 1.331.

[6] 47 CFR 1.1206.

Burden Per Respondent: 4 hours.
Total Annual Burden Hours: 2,000 hours.
Total Annual Cost: 0.
Frequency of Response: One-time filing requirement.
Needs and Uses: The information filed as part of a petition for waiver will be used to ensure timely compliance with the Commission's E911 regulations, provide the Commission with current information on the status of ALI technology, and thus ensure the dependability and responsiveness of critical E911 services.

Federal Communications Commission.

Kathleen O'Brien Ham,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–1589 Filed 1–20–99; 1:24 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 98–182, PR Docket No. 92–235, DA 98–2651]

1998 Biennial Regulatory Review; Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; extension of time for comments.

SUMMARY: This document extends the time to file comments on the *Notice of Proposed Rulemaking* adopted September 30, 1998. Comments on this notice were due January 4, 1999, and reply comments were due on or before January 22, 1999. Pursuant to a request by Land Mobile Communications Council (LMCC), the Commission is extending the time to file comments to afford interested parties the necessary time to coordinate and file substantive comments for the record.

DATES: Comments must be filed on or before January 19, 1999, and reply comments on or before February 3, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, The Portals II, 445 12th St., SW, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Ghassan Khalek, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–2771 or via E–Mail to gkhalek@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Safety and Private Wireless Division's Order, WT Docket No. 98–182, DA 98–2651, adopted December 30, 1998, and released December 31, 1998. The full text of this Order is available for inspection and copying during normal business hours in the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, N.W., Room 8010, Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Order

1. On September 30, 1998, the Commission adopted A Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding. Comments on the Notice were due on or before January 4, 1999, and Reply Comments were due on or before January 22, 1999. On December 23, 1998, the Commission received a request for Extension of Time to File Comments filed by the Land Mobile Communications Council.

2. LMCC requests an extension until January 18, 1999, to file comments. It states that this would afford interested parties adequate time to prepare full and complete comments in order that the Commission may develop as complete a record as possible. LMCC indicates that it files comments in proceedings before the Commission with the consensus of, and on behalf of, the vast majority of public safety, business, industrial, private, commercial and land transportation radio users. LMCC points out that the comment deadline falls immediately after an extended holiday period making it difficult for LMCC to develop consensus comments because of the unavailability of many of its members due to travel.

3. It is the policy of the Commission that extensions of time are not routinely granted. Upon review, however, we agree that an extension would afford parties the necessary time to coordinate and file substantive comments for the record. We believe, that a 15 day extension of time, until January 19, 1999, within which to file comments on the Notice should be sufficient. This extension should provide an adequate opportunity for all parties to prepare and file responsive and complete comments in this proceeding.

Ordering Clauses

4. Accordingly, *it is hereby ordered* that the Request for Extension of Time to File Comments filed by LMCC on December 23, 1998, is hereby granted. Parties shall file comments on the Notice no later than January 19, 1999. Reply comments are due on or before February 3, 1999.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Communications equipment, Radio.

Federal Communications Commission.

John Clark,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–1458 Filed 1–21–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011399A]

Fisheries of the Northeastern United States; Northeast Multispecies and Monkfish Fisheries; Amendment 1 to the Monkfish Fishery Management Plan (FMP) to Designate Essential Fish Habitat (EFH)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of Amendment 1 to the Monkfish FMP; request for comments.

SUMMARY: NMFS announces that the New England and Mid-Atlantic Fishery Management Councils have submitted for review and approval by the Secretary of Commerce (Secretary) Amendment 1 to the Monkfish FMP prepared jointly by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council. The amendment includes the EFH provisions which implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The amendment describes and identifies EFH for the monkfish fishery, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH. The amendment includes no new fishery management measures, so no regulations are proposed. Amendment 1 to the Monkfish FMP is included in the NEFMC's omnibus EFH amendment, which also includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, Amendment

1 to the Atlantic Salmon FMP, and the EFH components of the pending Atlantic Herring FMP.

DATES: Public comments must be received on or before March 23, 1999.

ADDRESSES: Comments on this amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the outside of the envelope: "Comments on Monkfish Amendment 1."

Copies of the omnibus amendment, which includes Amendment 1 to the Monkfish FMP and the environmental assessment, are available from Paul Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Jonathan M. Kurland, Assistant Habitat Program Coordinator, 978–281–9204.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a notification in the **Federal Register** that the FMP or amendment is available for public review and comment. Therefore, NMFS solicits comments on the approval, disapproval, or partial approval of Amendment 1 to the Monkfish FMP.

Amendment 1 to the Monkfish FMP is included as a part of an omnibus EFH amendment prepared by the NEFMC, which addresses the Magnuson-Stevens Act EFH provisions. The omnibus amendment discusses fishing- and nonfishing-related impacts to NEFMC designated EFH, including monkfish EFH; measures to minimize adverse impacts to EFH; and conservation and enhancement measures for EFH. The monkfish EFH portion of the amendment also addresses research and information needs.

This omnibus amendment also includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Sea Scallop FMP, Amendment 1 to the Atlantic Salmon FMP, and EFH designations and information for Atlantic herring. A Notice of Availability for Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP was published in the **Federal Register** on December 1, 1998 (63 FR 66110) and the comment period ends on February 1, 1999. EFH designations and information for Atlantic herring will be considered for Secretarial approval, disapproval, or partial approval in a future notice of availability, in conjunction with the NEFMC's pending FMP for Atlantic herring.

NMFS solicits comments on the approval, disapproval, or partial approval of Amendment 1 to the Monkfish FMP. To be considered, comments must be received by close of business on March 23, 1999; that does not mean postmarked or otherwise transmitted by that date.

In addition to Amendment 1, the Monkfish FMP is currently under Secretarial review. A Notice of Availability inviting public comment on the FMP was published in the **Federal Register** on December 2, 1998 (63 FR 66524). Comments on the Monkfish FMP must be received by February 1, 1999.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 15, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1419 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 14
Friday, January 22, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–124–1]

Availability of a Supplement to the Horse Protection Strategic Plan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: We are advising the public of the availability of a supplement to the Animal and Plant Health Inspection Service Horse Protection Strategic Plan and are inviting comments on it. The supplement concerns the Horse Protection Act operating plan for the 1999 show season for Tennessee Walking Horses and other gaited horses.

DATES: Consideration will be given only to comments received on or before January 29, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–124–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–124–1. Copies of the supplement to the Animal and Plant Health Inspection Service Horse Protection Strategic Plan may be obtained either by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or electronically at http://www.aphis.gov/ac. A copy of the supplement and comments received on the supplement are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the supplement or comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Watkins, Initiatives Coordinator, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4981; or e-mail: richard.h.watkins@usda.gov.

SUPPLEMENTARY INFORMATION: The practice known as "soring" is the causing of pain in Tennessee Walking Horses and other gaited horses, in order to affect their performance. The Horse Protection Act (HPA) (11 U.S.C. *et seq.*) was enacted for the purpose of eliminating soring by prohibiting the showing, exhibition, transport or sale of sore horses. Exercising its rulemaking and enforcement authority under the HPA, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations regarding horse protection at title 9, chapter I, part 11, of the Code of Federal Regulations.

In 1995, APHIS initiated development of a Horse Protection Strategic Plan, designed to achieve the elimination of soring by strengthening APHIS's relationship with the walking horse industry. A notice of the availability of the final Horse Protection Strategic Plan was published in the **Federal Register** on December 1, 1997 (62 FR 63510, Docket No. 97–105–1). Based on our experience using the Horse Protection Strategic Plan during the 1998 show season for Tennessee Walking Horses and other gaited horses, we determined that a supplement to the Horse Protection Strategic Plan, explaining and clarifying operating procedures, would be useful for the 1999 show season. This notice announces the availability of that supplement and invites comment from the horse industry and other interested members of the public.

Done in Washington, DC, this 14th day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1417 Filed 1–21–99; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposal to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 22, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Insignia, Embroidered
8455–01–388–8485
NPA: Westmoreland County Branch, PAB, Greensburg, Pennsylvania

Services

Administrative/General Support Services, GSA, Federal Supply Service (3FS), Northeast Distribution Center, Burlington, New Jersey
NPA: Bestwork Industries for the Blind, Inc., Westmont, New Jersey
Base Supply Center, Mountain Home Air Force Base, Idaho
NPA: Envision, Inc., Wichita, Kansas
Base Supply Center, Naval Air Station Fallon, Fallon, Nevada
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington
Operation of Individual Equipment Element, Mountain Home Air Force Base, Idaho
NPA: Envision, Inc., Wichita, Kansas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and service have been proposed for deletion from the Procurement List:

Commodities

Easel, Display & Training
7520–00–579–7013
Easel, White Board, Dry Erase
7520–01–127–4192
Reel, Cable
8130–L9–015–3520
8130–L9–015–3420
Box, Filing
7520–00–240–4831
7520–00–139–3743
7520–00–240–4839

Service

Janitorial/Grounds Maintenance, Department of Agriculture, Coshocton, Ohio

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–1470 Filed 1–21–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on February 11, 1999, at the Holiday Inn Hotel and Conference Center, 1070 Main Street, Bridgeport, Connecticut 06604. The Committee will (1) review the draft report, "Civil Rights Issues In Connecticut: A Summary Report of the 1997 Civil Rights Leadership Conference", (2) plan future activities; and (3) hold a briefing with local government officials and advocacy group representatives on civil rights issues in the Bridgeport area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Neil Macy, 860–242–7287, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 14, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–1442 Filed 1–21–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 011399B]

Notice of Availability of Final Environmental Impact Statement/ Environmental Impact Report and Habitat Conservation Plan/ Sustained Yield Plan for the Headwaters Forest Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a joint final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and Habitat Conservation Plan (HCP)/ Sustained Yield Plan (SYP) relating to several proposed actions by the Secretary of the Interior, FWS, NMFS, California Wildlife Conservation Board, the California Department of Forestry and Fire Protection (CDF), and the California Department of Fish and Game (CDFG), and alternatives to those actions intended to achieve the following: to protect, in accordance with the Federal and state Endangered Species Acts (ESAs), species listed as threatened or endangered under one or both of the ESAs; to provide permanent protection for the Headwaters Forest and Elk Head Springs Forest through their transfer into public ownership; to provide for sustained production of timber products, consistent with Federal and state laws, on lands owned by The Pacific Lumber Company and its wholly owned subsidiaries, Scotia Pacific Company, L.L.C., and Salmon Creek Corporation (hereafter collectively referred to as "PALCO"); and to reduce public controversy regarding PALCO's management of its timberlands, particularly the Headwaters Forest.

DATES: Decisions on the above actions will occur no sooner than February 22, 1999.

ADDRESSES: Comments regarding the final EIS/EIR or HCP should be addressed to Mr. Bruce Halstead, Field Supervisor, Fish and Wildlife Service, 1125 16th Street, Room 209, Arcata, CA 95521-5582. Written comments may be sent by facsimile to (707) 822-8411. Comments on the SYP may be mailed to Jon Munn, California Department of

Forestry and Fire Protection, State Headquarters, P.O. Box 944246, Sacramento, California 94244–2460. Please see Additional addresses in the SUPPLEMENTARY INFORMATION section for additional information on the availability of the final EIS/EIR, HCP, and SYP.

FOR FURTHER INFORMATION CONTACT: Bruce Halstead, FWS, (707) 822-7201, Craig Wingert, NMFS, (562) 980-4020, or Allen Robertson, CDF, (916) 657–0300.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior, California Wildlife Conservation Board, FWS, NMFS, CDF, and CDFG propose the following actions: (1) Acquisition by the United States and the State of California from PALCO of the approximately 4,500-acre Headwaters Forest, which includes 2,700 acres of old-growth redwood trees, and the approximately 1,125-acre Elk Head Springs Forest, which includes about 425 acres of old-growth redwood trees; (2) funding by the United States and the State of California of the purchase of approximately 9,600 acres of Elk River Timber Company property, about 7,755 acres of which will be transferred to PALCO as part of the consideration to PALCO for the Headwaters and Elk Head Springs Forests, and 1,845 acres of which will be transferred to the United States and the State of California and preserved as a buffer for the Headwaters Forest. The combined area of the acquired Headwaters and Elk Head Springs Forests, plus the Elk River property to be transferred to the United States and the State of California, is approximately 7,500 acres; (3) payment by the United States and the State of California of $300 million to PALCO as payment for the Headwaters and Elk Head Springs Forest, and up to $80 million to the Elk River Timber Company as payment for the Elk River Property; (4) issuance by FWS and NMFS of Federal incidental take permits under section 10(a) of the Federal ESA covering take of threatened and endangered species on PALCO's timberlands based on an HCP that meets the requirements of the Federal ESA and other applicable laws and regulations; (5) approval by CDF of PALCO's SYP, including measures and plans addressing state-listed and federally listed species; (6) issuance by CDFG of a state incidental take permit that meets the requirements of the California ESA and other applicable laws and regulations; and (7) execution by CDFG of a streambed alteration agreement pursuant to Fish and Game Code, section 1600 to 1607.

On December 27, 1996, a notice was published in the **Federal Register** (61 FR 68285) announcing the intent to prepare a joint EIS/EIR on actions associated with the Headwaters transaction, including issuance of incidental take permits under the Federal ESA, and inviting comments on the scope of the EIS/EIR. Comments were received and considered and were reflected in the draft EIS/EIR. By a **Federal Register** notice dated July 14, 1998 (63 FR 39700), NMFS and FWS (the Services) announced the availability for public review and comment of applications for Federal incidental take permits filed by PALCO under section 10(a) of the Federal ESA. The applications include a proposed HCP and a proposed Implementation Agreement (IA) that addressed species conservation and ecosystem management on approximately 211,700 acres of land, primarily in the coastal redwood zone of Humboldt County, California, currently owned by PALCO or to be acquired as part of the Headwaters transaction. PALCO has requested permits to incidentally take six federally listed species: the northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus*), American peregrine falcon (*Falco peregrinus anatum*), bald eagle (*Haliaeetus leucocephalus*), western snowy plover (*Charadrius alexandrinus nivosus*), and coho salmon (*Oncorhynchus kisutch*) and requested that 30 currently proposed and other unlisted species be included on the permits.

The proposed HCP, among other things, was also intended to satisfy the requirements for a SYP under California state law and the requirements for an incidental take permit under section 2081(b) of the California ESA. In a subsequent September 23, 1998, **Federal Register** notice (63 FR 50883), the Services announced that the public comment period on PALCO's proposed HCP and SYP, scheduled to close on October 13, 1998, had been extended until November 16, 1998, to coincide with the public comment period on the draft EIS/EIR. The notice also advised the public of several additional provisions being considered by FWS, CDFG, and NMFS for inclusion in the incidental take permits as a result of the enactment of Assembly Bill 1986 by the California State Legislature. By a **Federal Register** notice dated October 2, 1998 (63 FR 53089), the Services announced the availability of the draft EIS/EIR for public review and comment.

The Services and CDF received approximately 18,000 comments on the HCP, SYP, and draft EIS/EIR. Changes have been made to the documents in response to public comments, agency concerns, and the enactment of AB 1986. Nineteen species proposed for coverage under the HCP initially submitted by PALCO have been dropped, and additional measures to minimize and mitigate the impacts of take of the 17 remaining covered species and to improve monitoring and enforcement of the permits have been added. The species identified for permit coverage in the final proposed HCP include the 6 federally listed species named above, 3 of which are also listed under the California ESA, 1 species listed solely under the California ESA, and 10 species which are currently not listed under either Federal or California ESAs.

Other changes made to the HCP submitted by PALCO address mitigation for both terrestrial and aquatic covered species. With respect to the marbled murrelet, the final proposed HCP adds 270 acres to the Owl Creek Marbled Murrelet Conservation Area (MMCA) and 350 acres to the Grizzly Creek tract. The HCP also provides for protection of the Owl Creek MMCA for the life of the incidental take permits (ITPs), prohibits all timber harvest activities in the Grizzly Creek tract for a period of 5 years, and provides for protection of the Grizzly Creek tract as an MMCA for the life of the ITPs if necessary to avoid jeopardy to the marbled murrelet. The final proposed HCP also includes additional daily and seasonal restrictions on timber harvest activities to minimize impacts to the murrelet. Additional provisions to minimize impacts to the northern spotted owl and other terrestrial species have been included in the HCP.

With respect to the coho salmon and other covered aquatic species, the final proposed HCP requires measures including a 100–foot (30.5 meter) no cut buffer on all Class I streams and a 30–foot (9.1 meter) no cut buffer on all Class II streams pending completion of watershed analysis and a minimum 30–foot (9.1 meter) no cut buffer on Class I streams and a maximum 170–foot (51.8 meter) no cut buffer on Class I and Class II streams after watershed analysis has been completed. Additional measures designed to minimize impacts from mass wasting, wet weather road use, road construction and other activities, and to address cumulative impacts have also been included in the HCP.

Detailed monitoring plans have been developed and included in the final HCP that will assist FWS, NMFS, and CDFG in evaluating the effectiveness of the HCP's conservation and management measures and PALCO's

compliance with terms and conditions of the HCP. The IA also requires that PALCO fund an independent on-site HCP monitor approved by FWS, NMFS, and CDFG to oversee the company's compliance with the terms and conditions of the HCP.

The final EIS/EIR analyzes the environmental impacts of the HCP submitted by PALCO with the added minimization and mitigation measures summarized above and four alternatives to the HCP, including the "no action" alternative. The final EIS/EIR also analyses the impacts of the SYP submitted by PALCO.

The final EIS/EIR is intended to accomplish the following: (1) Inform the public of the final proposed action and alternatives; (2) address public comments received during the comment period; (3) disclose the direct, indirect, and cumulative environmental effects of the final proposed action and each of the alternatives; and (4) indicate any irreversible commitment of resources that would result from implementation of the final proposed action.

This notice is provided pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508).

Additional Addresses

Copies of the final EIS/EIR, HCP, and SYP or portions thereof, can be obtained at the following copy centers for duplication and mailing charges: Sir Speedy, 601 North Market Boulevard, Room 350, Sacramento, California 95834, (916) 927-7171; Kinko's, 2021 Fifth Street, Eureka, California 95501, (707)-445-3334; Kinko's, Stanyan Street and Geary Boulevard, San Francisco, California 94118, (415) 750-1193; and Kinko's, 835 Wilshire Boulevard, Suite 100, Los Angeles, California 90017, (213) 892-1700. The final EIS/EIR, HCP and SYP will be available at The California Environmental Resources Evaluation System website at http://ceres.ca.gov/ and through the FWS website at http://www.r1.fws.gov/text/species.html. Copies of the final document can be obtained by contacting FWS, 911 NE 11th Avenue, Portland, Oregon 97232, (503) 231-2068. The document will also be available for review at the following Government offices and libraries:

Government Offices

California Department of Forestry and Fire Protection, Humboldt-Del Norte Ranger Unit, 118 South Fortuna Boulevard, Fortuna, California 95540, (707) 725-4413; California Department of Forestry and Fire Protection, Coast-Cascade Region Headquarters, 135 Ridgeway Avenue, P.O. Box 670, Santa Rosa, California 95401, (707) 576-2959; California Department of Forestry and Fire Protection, State Headquarters, P.O. Box 9442446, Sacramento, California 94244-2460, (916) 653- 5843; Fish and Wildlife Service, Coastal California Fish and Wildlife Office, 1125 16th Street, Room 209, Arcata, California 95521-5582, (707) 822-7201; Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 120, Sacramento, California 95821-6310, (916) 979-2710; National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404-6515, (310) 980-4001; and California Department of Fish and Game, 619 Second Street, Eureka, California 95501, (707) 441-5672.

Libraries

Alameda Free Library, 2264 Santa Clara Avenue, Alameda, California 94501-4506, (510) 748-4669; Alameda County Library, 2450 Stevenson Boulevard, Fremont, California 94538-2326, (510) 505-7001; Anaheim Public Library, 500 W. Broadway, Anaheim, California 92805-3699, (714) 765-1810; Berkeley Public Library, 2090 Kittredge Street, Berkeley, California 94704-1491, (510) 644-6100; California State Library, Information and Reference Center, 914 Capitol Mall, Room 301, Sacramento, California 95814, (916) 654-0261; Colusa County Free Library, 738 Market Street, Colusa, California 95932-2398, (530) 458- 7671; Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, California 94523-4497, (510) 646-6423; Del Norte County Library District, 190 Price Mall, Crescent City, California 95531-4395, (707) 464-9793; Humboldt County Library, 1313 Third Street, Eureka, California 95501-1088, (707) 269-1900; Humboldt State University Library, Humboldt State University, Arcata, California 95521, (707) 826-4939; Lake County Library, 1425 N. High Street, Lakeport, California 95453-3800, (707) 263-8816; Long Beach Public Library, 101 Pacific Avenue, Long Beach, California 90822-1097, (562) 570-6291; Los Angeles Public Library, 630 W. Fifth Street, Los Angeles, California 90071-2097, (213) 228-7515; County of Los Angeles Public Library, 7400 E. Imperial Highway, Downey, California 90242-7011, (562) 940-8462; Marin County Free Library, 3501 Civic Center Drive, San Rafael, California 94903-4188, (415) 499-6051; Mendocino County Library, 105 N. Main Street, Ukiah, California 95482-4482, (707) 463-4491; Menlo Park Public Library, 800 Alma Street, Menlo Park, California 94025-3460, (650) 858-3460; Mountain View Public Library, 585 Franklin Street, Mountain View, California 94041-1998, (650) 903-6335; National City Public Library, 200 E. 12th Street, National City, California 91950-3314, (619) 336-4280; Newport Beach Public Library, 1000 Avocado Avenue, Newport Beach, California 92660, (714) 717-3800; Oakland Public Library, 125 14th Street, Oakland, California 94612-4397, (510) 238-3633; Ontario City Library, 215 E. C Street, Ontario, California 91764-4198, (909) 988-8481;Orange Public Library (under renovation), El Modena Branch Library (alternative), 380 S. Hewes, Orange, California 92869, (714) 288-2471; Orange County Public Library, 1501 E. St. Andrew Place, Santa Ana, California 92705, (714) 566-3000; Oxnard Public Library, 251 South A Street, Oxnard, California 93030-5750, (805) 385-7500; Palo Alto City Library, 1213 Newell Road, Palo Alto, California 94303-2999, (650) 329-2516; Pasadena Public Library, 285 E. Walnut Street, Pasadena, California 91101-1598, (626) 744-4033; Redwood City Public Library, 1044 Middlefield Road, Redwood City, California 94063-1868, (650) 780-7061; Sacramento Public Library, 828 In Street, Sacramento, California 95814-2589, (916) 264-2770; San Bruno Public Library, 701 Angus Avenue W., San Bruno, California 94066-3490, (650) 877-8878; San Francisco Public Library, 100 Larkin Street, San Francisco, California 94102-4796, (415) 557-4400; San Jose Public Library, 180 W. San Carlos Street, San Jose, California 95113-2096, (408) 277-4822; San Mateo Public Library, 55 W. Third Avenue, San Mateo, California 94402-1592, (650) 377-4685; San Mateo County Library, 25 Tower Road, San Mateo, California 94402-4000, (650) 312-5258; San Rafael Public Library, 1100 E Street, San Rafael, California 94901-1907, (415) 485-3323; Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, California 93101, (805) 962-7653; Santa Clara Public Library, 2635 Homestead Road, Santa Clara, California 95051-5322, (408) 984-3236; Santa Clara County Library, 1095 N. Seventh Street, San Jose, California 95112-4446, (408) 293-2326; Santa Cruz Public Library, 224 Church Street, Santa Cruz, California 95060-3873, (408) 429-3532; Santa Monica Public Library, 1343 Sixth Street, Santa Monica, California 90401-1610, (310) 458-8608; Shasta County Library, 1855 Shasta Street, Redding, California 96001-0460, (530) 225-5769; Siskiyou County Free Library, 719 Fourth Street, Yreka, California 96097-3381, (530) 842-8175; Sonoma County

Library, Third and E Streets, Santa Rosa, California 95404-4400, (707) 545-0831; South San Francisco Public Library, 840 W. Orange Avenue, South San Francisco, California 94080-3124, (650) 829-3872; Tehama County Library, 645 Madison Street, Red Bluff, California 96080-3383, (530) 527-0607; Trinity County Free Library, 211 N. Main Street, Weaverville, California 96093-1226, (530) 623-1373; Ventura County Library Services, 800 S. Victoria Avenue, Ventura, California 93009, (805) 662-6756; Central Library, 801 SW. 10th Avenue, Portland, Oregon 97205, (503) 248-5123; Houston Public Library, 500 McKinney Street, Houston, Texas 77002, (713) 247-2222; National Clearinghouse Library, 624 Ninth Street, NW, 600, Washington, D.C. 20425, (202) 376-8110; and New York Public Library, 455 Fifth Avenue, New York, New York 10016, (212) 340-0849.

Dated: January 11, 1999.

Michael J. Spear,

Manager, California Nevada Operation Office, Fish and Wildlife Service, Region 1, Sacramento, California.

Dated: January 15, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–1457 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011499C]

Atlantic Tuna Fisheries; Public Hearings; Advisory Panel Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and Advisory Panel meetings; request for comments.

SUMMARY: NMFS will hold 26 public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations to implement the draft Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish Amendment).

NMFS previously published Notices of Availability for the HMS FMP (63 FR 57093) and for the Billfish Amendment (63 FR 54433). NMFS extends the comment period for the HMS FMP and reopens the comment period for the Billfish Amendment to coincide with the comment period on the forthcoming proposed rule.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

NMFS will hold consecutive meetings of the Atlantic Highly Migratory Species (HMS) and Billfish Advisory Panels (APs), with a half-day joint meeting, to discuss comments and advise NMFS on the HMS FMP and Billfish Amendment, respectively.

DATES: The HMS AP meeting will be held from 1:00 p.m. to 6:00 p.m. on Monday, February 22, from 8:00 a.m. to 6:00 p.m. on Tuesday, February 23, and from 8:00 a.m. to 1:00 p.m. on Wednesday, February 24. The Billfish AP meeting will be held from 8:00 a.m. to 6:00 p.m. on Thursday, February 25, and from 8:00 a.m. to 1:00 p.m. on Friday, February 26. A joint session of the HMS and Billfish APs will be held from 2:00 p.m. to 6:00 p.m. on Wednesday, February 24.

See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the public hearings. Written comments on the proposed rule must be received on or before March 4, 1999.

ADDRESSES: The APs will meet at the NOAA Science Center, 1301 East-West Highway, Silver Spring, Maryland 20910. Informational materials related to the AP meetings are available from Alicon Morgan, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, Maryland 20910.

See **SUPPLEMENTARY INFORMATION** for the public hearing locations. Written comments on the proposed rule should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope "FMP comments."

FOR FURTHER INFORMATION CONTACT: Alicon Morgan at 301–713–2347, or Sarah McLaughlin at 978–281–9146.

SUPPLEMENTARY INFORMATION: The proposed regulatory amendments, draft HMS FMP and draft Billfish Amendment that are the subject of the hearings are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act, implement recommendations of the International Commission for the Conservation of Atlantic Tunas as required by the Atlantic Tunas Convention Act, and consolidate existing regulations, organized by species, for the conservation and management of highly migratory species into one part of the Code of Federal Regulations (CFR), organized by theme, as part of the President's Regulatory Reinvention Initiative.

A complete description of the measures, and the purpose and need for the proposed actions, is contained in the proposed rule, to be published February 20, 1999 and is not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling one of the contact persons (see **FOR FURTHER INFORMATION CONTACT**).

Dates, Times, and Locations of Public Hearings

The public hearing schedule is as follows:

Wednesday, February 3, 1999, Charleston, SC, 6:30–9:30 p.m.

Department of Natural Resources
Marine Research Institute Auditorium
217 Fort Johnson Road
Charleston, SC 29412

Wednesday, February 3, 1999, St. Augustine, FL, 6:30–9:30 p.m.

Northeast Florida Marlin Association Clubhouse
30 Harbor Drive
St. Augustine, FL 32095

Wednesday, February 3, 1999, Old San Juan, PR, 6:30–9:30 p.m.

Club Nautico
482 Fernandez Juncos Avenue
Old San Juan, PR 00905
[Note: This public hearing will be conducted in English]

Thursday, February 4, 1999, Red Hook, St. Thomas, USVI, 6:30–9:30 p.m.

U.S.V.I. Game Fishing Club
6501 Red Hook Plaza, Suite 201
Red Hook, St. Thomas, USVI 00802

Friday, February 5, 1999, Brunswick, GA, 7–10 p.m.

Comfort Inn I–95
5308 New Jesup Highway
Brunswick, GA 31523

Monday, February 8, 1999, Miami, FL, 6:30–9:30 p.m.

Sheraton Biscayne Bay Hotel
495 Brickell Avenue
Miami, FL 33131
[Note: This public hearing will cover the Billfish Amendment only.]

Tuesday, February 9, 1999, Key West, FL, 6:30–9:30 p.m.

Holiday Inn Beachside Resort and Convention Center

3841 N. Roosevelt Boulevard
Key West, FL 33040

Tuesday, February 9, 1999, Houma, LA, 6:30–9:30 p.m.

Holiday Inn Holidome
210 S. Hollywood Road
Houma, LA 70360

Wednesday, February 10, 1999, New Orleans, LA, 6:30–9:30 p.m.

Crowne Plaza
333 Poydras Street
New Orleans, LA 70130

Thursday, February 11, 1999, Port Aransas, TX, 6:30–9:30 p.m.

University of Texas at Austin
Marine Science Institute
750 Channel View Drive
Port Aransas, TX 78337

Monday, February 15, 1999, Fairhaven, MA, 7–10 p.m.

Seaport Inn
110 Middle Street
Fairhaven, MA 02719

Monday, February 15, 1999, Madeira Beach, FL, 6:30–9:30 p.m.

City Hall
300 Municipal Drive
Madeira Beach, FL 33708

Tuesday, February 16, 1999, Nags Head, NC, 6:30–9:30 p.m.

Ramada Inn
1701 S. Virginia Dare Trail
Nags Head, NC 27948

Tuesday, February 16, 1999, Panama City, FL, 6:30–9:30 p.m.

Panama City Laboratory
National Marine Fisheries Service
3500 Delwood Beach Road
Panama City, FL 32408

Wednesday, February 17, 1999, Fort Pierce, FL, 6:30–9:30 p.m.

Radisson Resort North Hutchinson Island
2600 North A1A
Fort Pierce, FL 34949

Wednesday, February 17, 1999, Norfolk, VA, 7–10 p.m.

Quality Inn Lake Wright Resort
6280 Northampton Boulevard
Norfolk, VA 23502

Wednesday, February 17, 1999, Orange Beach, AL, 6:30–9:30 p.m.

Hilton Garden Inn
23092 Perdido Beach Boulevard
Orange Beach, AL 36561

Thursday, February 18, 1999, Montauk, NY, 6:30–9:30 p.m.

Montauk Fire Department
12 Flamingo Avenue
Montauk, NY 11954

Thursday, February 18, 1999, Barnegat Light, NJ, 7–10 p.m.

Barnegat Light Firehouse
corner of West 10th Street and Central Avenue
Barnegat Light, NJ 08006

Friday, February 19, 1999, Freeport, NY, 7–10 p.m.

Freeport Recreational Center
130 East Merrick Road
Freeport, NY 11520

Friday, February 19, 1999, Toms River, NJ, 7–10 p.m,

Quality Inn
290 State Highway 37 East
Toms River, NJ 08753

Wednesday, February 24, 1999, Silver Spring, MD, 7–10 p.m. NOAA Science Center

1301 East-West Highway
Silver Spring, MD 20910

Tuesday, March 2, 1999, Gloucester, MA, 6:30–9:30 p.m.

Sawyer Free Library
2 Dale Avenue
Gloucester, MA 01930

Wednesday, March 3, 1999, West Bath, ME, 7–10 p.m.

New Meadows Inn
360 Bath Road
West Bath, ME 04530

Wednesday, March 3, 1999, Ocean City, MD, 7–10 p.m.

City Hall
Third Street and Baltimore Avenue
Ocean City, MD 21842

Thursday, March 4, 1999, Rockport, ME, 7:00–10:00 p.m. Maine Fishermen's Forum

Samoset Resort
220 Warrenton Street
Rockport, ME 04856

Special Accomodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Lent (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

Dated: January 15, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1418 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011299A]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in February, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between February 4 and February 9, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody, MA, Warwick, RI, and New London, CT. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, February 4, 1999, 9:30 a.m.—Joint meeting of the Habitat Oversight Committee and Advisors

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960, telephone: (978) 535–4600; fax: (978) 535–8238

The Habitat Committee and their Advisors will discuss the approach and content of the Habitat Annual Review Report. Council staff will provide an update on the status of the essential fish habitat amendment submission.

Monday, February 8, 1999, 9:30 a.m. - 5:00 p.m.—Scallop Advisory Panel meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000

Recommendations for management options for opening groundfish closed areas to fishing for scallops. The Scallop Plan Development Team will

summarize the available data and give preliminary estimates of stock biomass, yield, and bycatch.

Tuesday, February 9, 1999, 9:30 a.m. - 5:00 p.m.—Scallop Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886, telephone: (401) 739–3000

Initial consideration of management options for re-opening groundfish closed areas to fishing for scallops. The Scallop Plan Development Team and Scallop Advisory Panel will give progress reports.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 13, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1383 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Electronic Transportation Acquisition

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice (Request for Comments).

SUMMARY: The Military Traffic Management Command (MTMC), Product Management Office (PMO), CONUS Freight Management (CFM) System is proposing to migrate its business operating system from an aged DOS-based, batch architecture to a real-time, internet-based software design. Concurrently, the PMO CFM proposes to incorporate streamlined, simplified transportation and payment procedures. These procedures mirror current Department Of Defense (DOD) transportation policy initiatives, i.e., the re-engineering of Defense transportation and payment documentation processes identified within Dr. John Hamre's (Deputy Secretary of Defense) Management Reform Memorandum (MRM) #15.

To replace CFM's current operating system (Field Module), we propose a unique suite of internet-based functionality, referred to as Electronic Transportation Acquisition (ETA). ETA is a DOD electronic commerce resource capable of generating shipment requirements, acquiring carrier rates, and transmitting transportation and payment information for DOD freight shipments. The focus of this **Federal Register** notice applies to the two functional areas currently undergoing testing. The first functional area is CFM's newly developed , web-based transportation acquisition methodology called Spot Bid. Spot Bid provides users with the initial automated support for freight movements allowing participating carriers to bid on freight movements other than Negotiated and Guaranteed Traffic (GT) shipments. The second functional area talks to the CFM interface with Usbank's payment system called Power Track. Power Track is a 3rd party payment system that facilitates the transfer of transportation payment information contained in an electronic bill-of-lading between the shipper, carrier, USbank, and the appropriate Defense Finance and Accounting Service (DFAS) payment center. A description of ETA's suite of functionality and specific details, business procedures, and preliminary results of the tests regarding spot bid and Power Track are identified in the Supplementary Information.

Before the effective date of any proposed procurement policy or procedure, 41 U.S.C. 418b requires an agency to give members of the public up to 60 days to comment on the proposed policy or procedure. Although Electronic Transportation Acquisition is in essence a technical change to an already existing spot bid procurement process and thus **Federal Register** publication may not be required, we believe it is important to provide the transportation industry and members of the public an opportunity to assist us in developing, improving, and streamlining transportation procurements and processes.

DATES: Comments must be submitted on or before March 23, 1999.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–TS, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Lord, e-mail, lords@baileys-emh5.army.mil, Telephone (703) 681–1185, Fax (703) 681–9871.

SUPPLEMENTARY INFORMATION:

Background of ETA

Approximately two years ago, it became apparent that the next logical step in CFM's incremental development strategy was to migrate the CFM architecture from a rapidly aging DOS-based, batch process, fat client-server system to an Internet-based, real-time, on-line transaction process. The rapid advent of Internet technologies, applications, new dynamic software languages (such as Java), coupled with the rapid advancement of interactive databases, and tremendous growth of on-line electronic commerce made it clear that the benefits of an Internet-based CFM far outweighed the potential disadvantages. Moreover, the ETA modernization strategy directly supports DOD objectives. Although this notice will focus on Spot Bid and the use of USbank's Power Track payment system, we believe it is beneficial to provide freight carriers a brief description of what current functions CFM proposes to move to the web.

In summary, ETA's suite of functionality includes three core freight-shipping applications: (1) Tenders (Guaranteed, Negotiated and Voluntary); (2) Spot Bid; (3) and Worldwide Small Package. In addition, it includes a variety of transportation support tools and references such as GT Bid Submission, Transportation Facilities Guide, Transportation Discrepancy Reports, and Carrier Added Value Suite (CAVS). CAVS consists of three sub-components: (1) tender view; (2) completed shipments; (3) and bill-of-lading view.

Spot Bid Procedures

Definition

The PMO CFM is currently developing a spot bid implementation schedule which identifies a proposed phased roll-out to begin in Spring 99. Spot Bid is a single consignment of one or more pieces from one consignor at one time, at one origin address receipted for in one lot and moving to one consignee at one destination address. Included within this definition are; split pickup at origin and destination points and stop in transit to partially load and/or unload.

The Spot Bid function supports the DOD shipper's ability to provide movement requirements for a single shipment on the Internet. Shippers can elect to offer the shipment to one or all modes i.e., Spot Bid supports all modes. Following the posting of the requirement on the web, MTMC-approved freight carriers can access the shipper's movement request, review it, and elect to bid on it.

As part of the shipment movement request, a "closing date and time" is provided which prevents carriers from bidding on shipments after a certain time identified by the shipper. Carriers can submit their bid, cancel the original bid, and resubmit a new bid during the indicated open period. Bids are only accessible by the shipper following the closing date/time. Once the bids have been reviewed, the shipper can elect to award the shipment. The shipper/MTMC then posts the award information on the web and all participating bidding carriers can review their competitors' bids and identify which carrier, if any, was awarded the traffic. The Spot Bid system then provides the shipper/MTMC with the needed tools to generate the bill-of-lading data and hardcopy that accompanies the conveyance. Presently, all bid times are based on Eastern Time. Therefore, it is critical that bidding carriers outside EST account for the time difference(s). It is MTMC's objective to provide our freight shippers/customers with an easy, effective and robust tool that will help them acquire rates and services while providing our industry partners with a simplified rate structure. In meeting those objectives, we will potentially increase new business opportunities and allow carriers to identify and capitalize on back-haul opportunities.

The Spot Bid function can be used for all freight shipments other than Negotiated and GT business. Following the Spot Bid process, the shipper has the discretion to use either Spot Bid or an existing voluntary tender rate—if available. The "bid" serves as the carrier's offered rate; therefore the submission of a 364-R tender is no longer required. Instead, the carrier is required to submit a single factor rate that is inclusive of linehaul, accessorial services, and/or special-permit charges (if applicable). Additionally, Spot Bid does not require the shipper/MTMC to request specific equipment from the carrier. If there is a need to do so, the shipper/MTMC will annotate the equipment requirement in the bid proposal's "Remarks" block. However, the business process is changing somewhat in that we are requiring the transportation providers, in lieu of the shippers, to assess what type of equipment is appropriate and/or available for the shipment.

Technical Requirements

Quite simply, both shippers and carriers only require hardware capable of running the latest generation of web browsers (available freely on the Internet) and access to the Internet. Specifically, a laptop or Personal Computer (PC), a minimum of 486, with modem or network access to the Internet is required. Java-capable Internet browsers, e.g. Netscape Navigator or Communicator 4.0 or Microsoft Internet Explorer 4.0, are required. Versions lower than 4.0 should not be used and browser upgrades are available for free on the Internet. A current and operational e-mail address will be required as a means of communication between MTMC/CFM, the shippers and carriers. E-mail will be utilized to transfer user password information. In that light, the suite of functions within ETA will be accessible through a single login identification and password process. In summary, rights and privileges to access ETA's functions, e.g., Spot Bid, will be granted through the issuance of digital certificates to both Government and industry representatives. Further information and procedures will be provided to all CFM ETA users in the next few months.

Spot Bid Tests

MTMC continues to, test CFM Spot Bid at eight CONUS sites. Specifically, Anniston Army Depot, AL; DCMC Boston, MA; Ft Bragg, NC; Sunnypoint, NC; USPFOs Oklahoma, Kansas, and Texas; and Nellis AFB, NV are currently using Spot Bid. CFM is coordinating test procedures with Navy's Fleet Industrial Supply Center (FISC), Norfolk, VA and Naval Weapons Station (NWS), Yorktown, VA. Eighteen carriers are participating in the test (13 motor, 3 rail, and 2 air carriers) and to date, approximately 100 shipments have moved under Spot Bid while over 300 bid offers have occurred. The balance of offers that did not move under Spot Bid were attributable to either technical or administrative start-up problems, too little time for carriers to prepare a bid, i.e., bid window was too short, or bids were higher than existing tender rates.

Feedback from the test sites has been very positive from both carriers and shippers. Spot bid has been described as a flexible, user-friendly, and effective tool for acquiring rates and services via the Internet. Admittedly, due to the small population of test sites and carriers, it is premature to project cost savings in the form of transportation costs. Many test sites indicated that they believe the overall effectiveness of Spot Bid will increase vastly when we offer the system to all MTMC-approved carriers and expand the Government user base. Consequently, the issues alluded to above, regarding higher costs and lack of bidding carriers, will be offset by greater participation and competition. In addition, test carriers' comments have been very encouraging as well. The reduced administration in providing a bid, the ability to price based on an order versus a forecast, and ease of use, are just a few of the positive descriptions. Test carriers' concerns have focused on the short bid window that is afforded them by the shipper and the lack of notification of a bid. Coordination and training with the shipping community coupled with MTMC management oversight and CFM technology will remedy these problems. The CFM PMO is working closely with the MTMC Deputy Chief of Staff for Operations to coordinate Spot Bid management oversight and customer support issues. MTMC personnel will support both Government and industry users of Spot Bid. In addition, CFM is actively incorporating many of the specific recommendations that both Government and carrier representatives have provided throughout the test period.

In summary, both Government and industry participants have so far fully embraced the migration of this business process to the internet, and most importantly, have validated to us that the internet is the next logical area to conduct freight transportation acquisition business. Clearly, we encourage comments from the entire carrier industry to help us identify all issues associated with our Web-based spot bid process.

USBank PowerTrack Payment System

Background

This system is currently undergoing an evaluation process for implementation. MTMC is continuing to evaluate the test results. Based upon the results of this evaluation, MTMC will determine the implementation parameters in concert with prototype efforts. In Management Reform Memorandum #15, Dr. John Hamre identified a series of initiatives to address perceived shortcomings of the transportation and payment processes. One of the initiatives included developing an improved payment mechanism for surface transportation. The goal is to reduce data requirements that are currently necessary for payment, and increase data accuracy. At the same time, Dr. Hamre envisioned paying commercial carriers for services provided as soon as possible.

Description

Power Track is an automated on-line payment processing and transaction tracking system that supports logistical transactions. Power Track consists of five primary functions: (1) electronic

data transmission; (2)-payment approval process; (3) electronic payment and billing; (4) communication for dispute resolution; (5) and customized data analysis.

Technical Requirements

Power Track software requires a 486 or higher laptop or PC (Pentium and higher is preferred). Internet connectivity is needed. Currently, Power Track supports a single browser only, i.e., Microsoft Internet Explorer 4.0 or higher. USbank is planning to modify their browser requirement to include multiple browser options in the near future. Lastly, the file size that Power Track loads on each user's computer is no more than 4MB. Questions pertaining to Power Track's technical requirements should be addressed to: Everett Doolittle, Vice President, Business Development, USbank, 1010 South Seventh Street, Minneapolis, MN 55415, telephone 612–973–6156, or www.usbank.com/powertrack.

Test Procedures and Business Process

In summary, the Power Track software is resident with the shipper(s), carrier(s), and USbank. How does Power Track integrate with the Defense transportation payment process? The CFM shipper generates a bill-of-lading (BOL) and transmits the data to the CFM Host. The CFM Host transmits a rated BOL to Power Track. Following the delivery of the shipment, the carrier is required to provide Power Track with Notification of Delivery—either electronically or telephonically. The notification elevates the shipment to a specific status level in Power Track. Shipment status are viewed regularly by both Government and carrier personnel. Once the shipment is delivered, the shipper and carrier can review the transportation payment amount that Power Track is preparing to pay the carrier. Again, this amount is based on the original rated BOL from CFM. If either party disagrees with the amount, they can notify the other party and reconcile the dispute on-line *prior* to payment. Early resolutions to payment disputes reduces greatly the number of carrier rebuttals, promotes dialogue between the applicable stakeholders, i.e., shippers and carriers, and results in an accurate payment the first time. Once the shipper certifies the shipment for payment, USbank pays the carriers without the need of an invoice. The carrier's costs associated with processing and managing invoices is dramatically reduced due to this automated payment process. If a change in payment is required following the original payment, the Power Track system generates an Electronic-bill (E-bill) and initiates payment based upon that amount agreed upon between the carrier and shipper. Monthly, USbank summarizes the shipments and payments, stemming from a specific site, and provides the information to the shipper(s)-authorized designee, for review and approval. Upon approval, the shipper forwards the information to the appropriate DFAS payment center, which in turn pays USbank. Therefore, DFAS issues a single payment that reflects numerous shipments. Consequently, carriers are paid in 1–3 days and the carrier and Government resources needed to generate and pay, a number of invoices is greatly reduced.

The PMO CFM has been testing Power Track at SPAWAR, San Diego, CA; DCMC Seattle, and DCMC Cleveland since September 1998. We began testing at Ft Campbell, KY in December 1998. Approximately eleven motor and air carriers are participating in the test. Each participating carrier pays Power Track a percentage of each freight bill. To date, approximately 175 shipments have been generated and on the average, test carriers have successfully received payments between 24–72 hours following delivery. The feedback from both carriers and government users has been very positive. Shippers have indicated that Power Track is extremely user-friendly, and embrace their newly empowered authority to certify payments. Shippers' have requested a larger population of carriers to participate with Power Track. USbank is working the issue. Test carriers' feedback has been very positive as well. They have acknowledged receiving payments between 24–72 hours and, similarly, have found the Power Track system to be very user friendly.

Conclusion

We encourage you to access the CFM website and view the latest information. It is a very functional homepage, i.e.; it is kept up-to-date with the latest CFM News and ETA applications used by Government and industry. The site is accessible through either MTMC homepage www.mtmc.army.mil—click on ETA) or directly to CFM homepage at *www.mtmc.army.mil/transys/cfm*. Under "What's New", we have provided a **Federal Register** Comments Form. Feel free to utilize this form in providing your response to us.

The PMO CFM will host a Carriers Symposium on February 8–10, 1999, in Atlanta, GA. The symposium is intended to provide commercial carriers with the latest status of our web development efforts, provide you with the knowledge and tools needed to use ETA's functions (as applicable), and solicit your feedback to ensure we are moving forward smartly. This educational effort will continue at the 1999 MTMC Symposium to be held at the Adam's Mark hotel in Denver, CO, March 29 through April 1, 1999. Reservations are now being accepted through MTMC's Conference Contractor "Connections" at 404–842–0000. Connections hours are Monday through Friday, 9:00 AM to 5:30 PM EST. Do not call The Adam's Mark Hotel for reservations, as they will refer you directly to Connections.

In addition, we will be posting a "Playground" on our website for both Government and carrier representative's to access and use. The intent of the playground is to familiarize and train users of ETA on the different CFM applications/functions that either are, or will be, available. Most importantly, it provides users with a platform to provide feedback to the CFM PMO so we can ensure we are programming a system that is aligned with your interests and needs.

Regulatory Flexibility Act

Implementation of this proposed procurement procedure concerning the movement of DOD freight involves public contracts and is exempt from the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed procurement procedure is not rule making within the meaning of the Administrative Procedure Act or the Regulatory Flexibility Act."

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.* does not apply because no information collection requirement or records keeping responsibilities are imposed on offerors, contractors, carriers, or other members of the public.

John Piparato,

Deputy, DCSOPS.

[FR Doc. 99–1453 Filed 1–21–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the East St. Louis and Vicinity, Illinois, Interior Flood Control and Ecosystem Restoration Project General Reevaluation Report

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The St. Louis District of the Corps of Engineers is preparing an integrated Draft Environmental Impact Statement and General Reevaluation Report for proposed measures to provide interior food control and ecosystem restoration for East Louis and Vicinity, Madison and St. Clair Counties, Illinois. The interior drainage system currently does not have sufficient capacity to handle local and upland runoff from rainfall events greater than 5-year storms, and sediment from upland tributaries not only reduces the channel capacity of the drainage system but causes environmental degradation. The purpose of the reevaluation study is to investigate measures that blend flood control with ecosystem restoration. Measures to be investigated will be designed to restore and enhance natural habitats, with a focus on wetlands as temporary storage areas for stormwater. The goal will be to develop strategies for the control of various storm events, with emphasis on the 100-year event. Likewise, strategies will be investigated to significantly reduce sedimentation within the drainage system and environmentally sensitive areas.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Ms. Deborah Roush, (314) 331–8033, or Mr. Timothy George, (314) 331–8459; Planning, Programs, and Project Management Division, U.S. Army Corps of Engineers, St. Louis District, 1222 Spruce Street, St. Louis, Missouri 63103–2833.

SUPPLEMENTARY INFORMATION:

1. *Authorization.* The reevaluation study is being conducted under the authorities of Section 204 of the Flood Control Act of 1965 and Section 137 of the Water Resources Development Act of 1976 (Public Law 94–587).

2. *General Information.* a. *Location and Land Use of the Study Area.* The study area is in southwestern Illinois in Madison and St. Clair Counties, and lies within the Metro East St. Louis area along the east bank of the Mississippi River. It encompasses about 106,000 acres (166 square miles). About 55,000 acres are bottomland on the Mississippi River floodplain (locally called the American Bottoms), and upland watersheds that drain into these bottoms comprise the remaining 51,000 acres of the study areas. After New Orleans, the American Bottoms is the second largest concentration of residential, commercial, and industrial land use on the Mississippi River floodplain. Agriculture is also a significant land use in the bottoms. The floodplain is scarred with ox-bow lakes and marshes that are remnants of former meanders of the Mississippi River. An urban design levee protects the bottoms from Mississippi River flooding. Runoff from the upland or hill areas reaches the bottoms through numerous individual streams and ditches, and traverses the relatively flat floodplan through an old agricultural ditch system built at the turn of the century. The American Bottoms was a heartland of the prehistoric Mississippian culture, which today is represented most dramatically by the Cahokia Mounds World Heritage Site.

b. *Interior Flooding.* The floodplain of the Mississippi River in the Metro East St. Louis area has experienced interior flooding from hillside runoff and local rainfall for many years. The interior drainage ditch system is inadequate to handle more than minor rainfall events. Past efforts by the Corps to develop an economically justified project in this area have been unsuccessful. The benefits required to justify improvements could not be achieved because of the low value of flood-damaged housing and business structures within this economically depressed area. Areas of frequent flooding contains a large community of minority citizens and low-income citizens. For four consecutive years (1993 through 1996), the project area received a National Disaster Declaration due to flooding. Flooding during the 1995 and 1996 closed transportation routes, including interstate highway ramps. The Federal Emergency Management Agency is estimated to have expended in excess of $60 million for disaster relief over this four-year period.

c. *Sedimentation.* Upland watersheds adjacent to the bottoms are experiencing rapid residential and commercial development. Land clearing and other factors have led to high rates of soil loss from the uplands, more intense upland runoff, and more frequent overtopping of drainage ditches in the bottoms. High rates of sedimentation have also caused a significant drain on scarce budgets of the local communities to operate and maintain the drainage system. Sedimentation over the years has also extinguished or degraded many existing wetlands and natural water bodies in the bottoms and currently threatens additional harm. Further, the historical loss of swamps, marshes, and wet prairies located in topographic depressions in the bottoms—places that previously acted as temporary storage areas for local rainfall and upland runoff—to drainage improvements, agricultural conversion, and development appears to have been extensive.

3. *Proposed Alternatives.* Alternatives to be considered will address both bottomlands and uplands. Within the bottoms, measures will be investigated to divert and temporarily store stormwater from the interior drainage system for enhancement of existing wetlands and restoration of historic wetlands. These measures will address the 10-, 25-, 50-, 100-, and 500-year rainfall events. Bottomland sediment detention basins will also be investigated to capture sediment from upland runoff and minimize its deposition within the interior drainage system and existing as well as proposed wetlands for temporary storage of stormwater. Typical structures used to achieve these goals are detention basins, dikes, and berms. Upland sediment control measures will also be investigated to reduce erosion at its source.

4. *Significant Issues and Resources.* Significant issues and resources identified to date for discussion in the DEIS are (1) erosion, sedimentation, and interior flooding; (2) natural resources including fisheries, wildlife, vegetation, wetlands, and riparian areas; (3) cultural resources; (4) water quality and groundwater; and (5) social and economic resources. Additional issues and resources of significance may be identified through public and agency meetings.

5. *Environmental Review and Consultation.* Our environmental review will be conducted according to the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act of 1966, Council on Environmental Quality Regulations, Endangered Species Act of 1973, Section 404 of the Clean Water Act, and other applicable laws and regulations.

6. *Scoping Process.* The purpose of this notice is to solicit suggestions and information from Federal, State, and local agencies; the general public; interested private organizations and

parties on the scope of the reevaluation study and the alternatives, issues, and resources to be addressed in the DEIS. Comments and participation in this process are encouraged. An informal scoping workshop will be held on Monday, February 1, 1999, from 1 PM until 8 PM within the project area at the State of Illinois Building (Illinois Department of Transportation) located at 1100 Eastport Plaza Drive in Collinsville, Illinois (telephone 618–346–3100). A notice of this meeting will be provided to interested parties and to the local news media.

7. *Availability* The Draft EIS is scheduled to be available for public review in late 1999.

Dated: January 12, 1999.

Thomas J. Hodgini,

COL, EN, Commanding.

[FR Doc. 99–1452 Filed 1–21–99; 8:45 am]

BILLING CODE 3710–65–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.162A]

Emergency Immigrant Education Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose of Program: This program provides grants to State educational agencies (SEAs) to assist local educational agencies (LEAs) that experience unexpectedly large increases in their student population due to immigration. These grants are to be used to provide high-quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: March 16, 1999.

Deadline for Intergovernmental Review: May 15, 1999.

Applications Available: January 20, 1999.

Available Funds: $150 million.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 17 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, 81, 82, and 85; and (b) 34 CFR Part 299.

SUPPLEMENTARY INFORMATION: An SEA is eligible for a grant if it meets the eligibility requirements specified in sections 7304 and 7305 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the Improving America's School's Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). (20 U.S.C. 7544 and 7545). In order to receive an award under this program, an SEA must provide a count, taken during February 1999, of the number of immigrant children and youth enrolled in public and nonpublic schools in eligible LEAs in accordance with the requirements specified in section 7304 of the Act. An eligible LEA is one in which the number of immigrant children and youth enrolled in the public and nonpublic elementary and secondary schools within the district is at least either 500 or 3 percent of the total number of students enrolled in those public and nonpublic schools. (20 U.S.C. 7544(b)(2)). Under section 7501(7) of the Act, the term "immigrant children and youth" means individuals who are aged 3 through 21, were not born in any State, and have not been attending one or more schools in any one or more States for more than 3 full academic years. (20 U.S.C. 7601(7)).

FOR APPLICATIONS OR INFORMATION CONTACT: Ms. Harpreet Sandhu, U.S. Department of Education, 600 Independence Avenue, SW, Room 5086, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7541–7549.

Dated: January 19, 1999.

Delia Pompa,

Director, Office of Bilingual Education and Minority Language Affairs.

[FR Doc. 99–1484 Filed 1–12–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Availability of Product Energy Efficiency Recommendations

AGENCY: Energy Efficiency and Renewable Energy Office, Federal Energy Management Program, Department of Energy.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of seven new Product Energy Efficiency Recommendations, covering distribution transformers, electric motors, residential windows, clothes washers, fluorescent luminaires, unitary air conditioners, and commercial heat pumps, and the revision of one existing Recommendation on room air conditioners. These Recommendations, along with 21 others previously released, have been published by the Department of Energy's (DOE) Federal Energy Management Program (FEMP) to help agencies comply with Executive Order 12902, which directs each Federal agency to increase, to the extent practicable and cost-effective, the purchase of products that are in the upper 25 percent of energy efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets national standards.

ADDRESSES: The Recommendations are available on the internet at http://www.eren.doe.gov/femp/procurement. Paper copies of the Recommendations may be obtained by calling 1–800–363–

3732 and requesting the Buying Energy Efficient Products binder.

FOR FURTHER INFORMATION CONTACT: Katie Kroehle McGervey, Federal Energy Management Program, U.S. Department of Energy, EE–90, 1000 Independence Avenue SW, Washington, DC 20585–0121, 202–586–4858, katie.mcgervey@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (42 U.S.C. 8262g) directed Federal supply agencies, along with DOE and the Department of Defense, to include energy-efficient products in their procurement and supply functions. On March 8, 1994, Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities (59 FR 11463, 3 CFR 1994 Comp. p 869), defined energy-efficient products as those that are in the upper 25 percent of energy efficiency for all similar products or that are at least 10 percent more efficient than national standards. Executive Order 12902 directed federal agencies to purchase these higher-efficiency products whenever they are cost-effective and meet agencies' functional requirements. The Federal Acquisition Regulations (48 CFR 23.704) mirrors the Executive Order, requiring agencies to implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy efficient products and services, with products that are in the upper 25 percent of energy-efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets Federal standards.

Recommendations currently exist for the following products: room air conditioners, refrigerators, clothes washers, dishwashers, residential central air conditioners, residential air-source heat pumps, residential furnaces, residential electric and gas water heaters, faucets, showerheads, toilets, urinals, exit signs, fluorescent tube lamps, fluorescent ballasts, computer monitors, personal computers, computer printers, copiers, fax machines, commercial ice cube machines, and large electric chillers. Recommendations continue to be developed at the rate of about ten per year and will include other commercial building equipment and construction materials.

Each of the two-page Recommendations describes where to find energy-efficient models through Federal supply sources (General Services Administration and Defense Logistics Agency), includes guidance on cost-effectiveness, and offers other energy-saving tips for selecting and using these products. In all cases the recommended efficiency levels have been set to be consistent with those of the Environmental Protection Agency/DOE Energy Star® labeling program. Purchasing products that carry an Energy Star® label will ensure that Federal purchasers are meeting the requirements of Executive Order 12902.

Issued in Washington, DC, on January 15, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–1455 Filed 1–21–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–5–000]

Argent Energy, Inc.; Notice of Petition for Adjustment

January 15, 1999.

Take notice that on November 5, 1998, Argent Energy, Inc. (Argent) filed a petition for staff adjustment in Docket No. SA99–5–000, pursuant to Section 502(c) of the Natural Gas Policy Act of 1978, in which Argent requests to be relieved from having to pay Kansas ad valorem tax refunds to Northern Natural Gas Company (Northern). Argent seeks to be relieved from having to pay the refunds attributable to leases/wells previously owned by Kiwanda Energy, Inc. (Kiwanda) and Energy Exploration and Production, Inc. (EE&P). Argent purchased the Kiwanda and EE&P leases/wells from Kiwanda in 1993. Northern, in its May 18, 1998 Refund Report, in Docket No. RP98–39–005, reported that Argent owes $258,490.23 with respect to the Kiwanda leases/wells, and $596,657.37 with respect to the EE&P leases/wells. Argent contends that it does not owe either refund, because: 1) Argent only bought the leases/wells that generated Northern's refund claims; 2) Argent is not affiliated with Kiwanda or EE&P; and 3) Argent did not hold an interest in any of the subject leases/wells prior to the 1993 purchase from Kiwanda. Argent's petition is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before 15 days after the date of publication of this notice in the **Federal Register**, file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 99–1410 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–4–000]

Gulf States Transmission Corporation; Notice of Filing

January 15, 1999.

Take notice that on January 12, 1999, Gulf States Transmission Corporation (Gulf States), tendered for filing, FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 35 and Second Revised Sheet No. 57. Gulf States requests that the referenced sheets be made effective February 12, 1999.

Gulf States state that it is making this filing in order to comply with Section 250(b)(1) of the Commission's Regulations and the Commission's Order on Standards of Conduct (Order) issued on December 22, 1998 in Docket No. MG98–12–001. Specifically, Gulf States asserts that the referenced tariff sheets have been changed to affirmatively state that Gulf States shares no operating personnel or facilities with any of its marketing or brokering affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1400 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–10–000]

City of Las Cruces, New Mexico v. El Paso Electric Company; Notice of Filing

January 14, 1999.

Take notice that on December 21, 1998, the City of Las Cruces, New Mexico (City), filed a supplement to its Complaint filed on November 12, 1998, in the above-docketed proceeding seeking a Commission order directing El Paso Electric Company (EPE) to provide wholesale power to the City.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1401 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–142–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

January 15, 1999.

Take notice that on January 7, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–142–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to operate an existing delivery point upgraded pursuant to the emergency provisions of Part 284 Subpart I of the Commission's Regulations; and for authorization to upgrade eight existing delivery points, including the delivery point upgraded pursuant to the emergency provisions, to accommodate incremental natural gas deliveries to UtiliCorp United, Inc. (UCU) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that the upgrade of the Farmington 1B TBS, installed pursuant to emergency regulations, was required due to extreme winter weather conditions and fear of facility failure in order to assure the protection of approximately 2,180 residential customers served by this station.

Northern states that it also requests authorization to further upgrade the Farmington 1B TBS and seven other existing delivery points and appurtenant facilities, all located in Iowa, Nebraska and Minnesota, to accommodate incremental natural gas deliveries to UCU under currently effective throughput service agreement(s). All construction activities will be confined to within the existing TBS yards. Northern states that UCU has requested the proposed upgrades in order to provide incremental natural gas service to the existing delivery points.

The estimated incremental volumes proposed to be delivered to UCU at the upgraded delivery points are: 1,185 Dth on peak day and 142,687 Dth annually at Arnolds Park #1 TBS; 182 Dth on peak day and 20,621 Dth annually at North Bend #1A TBS; 242 Dth on peak day and 26,531 Dth annually at Eagle #1 TBS; 1,632 Dth on peak day and 177,814 Dth annually at Elkhorn #1A TBS; 285 Dth on peak day and 30,601 Dth annually at Valley #1A TBS; 85 Dth on peak day and 8,379 Dth annually at Mead #1 TBS; 184 Dth on peak day and 19,892 Dth annually at Waverly #1 TBS and 408 Dth on peak day and 59,554 Dth annually at Farmington #1B TBS.

The total cost to upgrade facilities at the Farmington #1B TBS under the emergency regulations was approximately $1,150 which will be paid for by UCU in accordance with Section 284.264(a)(6)(ii) of the Commission's Regulations. Northern states that the total estimated cost to further upgrade the Farmington #1B TBS and seven other existing delivery points is $922,000 which will be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Northern's other customers. The total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1403 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–144–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

January 15, 1999.

Take notice that on January 11, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–144–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon and remove the Hugo #1 Town Border Station, including appurtenant facilities and approximately 250 feet of 2-inch upstream pipeline, located in

Washington County, Minnesota. Northern makes such request under its blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Northern states that the facilities that it proposes to abandon and remove were previously used to serve Northern States Power Company, the Local Distribution Company (LDC). Northern indicates that service downstream of the Hugo #1 Town Border Station is served through an alternative Town Border Station and that the shipper does not object to the proposed abandonment. In support of Northern's request, Northern States Power provided Northern with written consent for the proposed abandonment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1404 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–202–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1999.

Take notice that on January 12, 1999, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Forth-Fifth Revised Sheet No. 5, with an effective date of January 1, 1999.

Northwest Alaskan states that it is submitting Forty-Fifth Revised Sheet No. 5 to correct an error in the Forty-Third Revised Sheet No. 5 which was filed November 17, 1998, in Docket No. RP99–151–000 and approved on December 18, 1998 to be effective January 1, 1999. Said Forty-Third Revised Sheet No. 5 was filed pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Pan-Alberta Gas (U.S.), Inc. (APAG–US) and Pacific Interstate Transmission Company (APIT), and pursuant to the Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1999 through January 30, 1999) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that Forty-Third Revised Sheet No. 5 was subsequently replaced by the Forty-Fourth Revised Sheet No. 5 which was filed January 6, 1999, in Docket No. CP98–603–00 in accordance with the direction of the Commission in its Order on Settlement and Authorizing Abandonments, Acquisition of Facilities, Waiving Tariff Provisions, and Granting Motion for Consolidation issued December 17, 1998 (the Order) to reflect the changes caused by the termination of the purchase agreement between Northwest Alaskan and PIT and the related tariff, Rate Schedule X–4.

Subsequent to the November 17, 1998 filing of the Forty-Third Revised Sheet No. 5, Pan-Alberta notified Northwest Alaskan that the schedules provided by Pan-Alberta and included in the November 17, 1998 filing contained an error. The Nova transportation charges listed in the Demand Charge Adjustment as filed included only the Nova charges billed directly to Pan-Alberta by Nova and did not include the Nova charges that were paid to Nova by Pan-Alberta via their producers during the period from November 1996 to August 1998.

Northwest further states that Forty-Fifth Revised Sheet No. 5 reflects the increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta and resold to PAG–US unde rate schedule X–1 which results from the inclusion of the Nova transportation charges previously omitted by Pan-Alberta in its calculations. Rate Schedules X–2 and X–3 are not affected by the error, and therefore those demand charges remain unchanged.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.11 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1411 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–147–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

January 15, 1999.

Take notice that on January 11, 1999, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–147–000, a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point located in Rankin County, Mississippi for service to Pennzoil Exploration and Producing Company (Pennzoil), under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to construct, install and operate a meter station consisting of one two-inch rotary meter, one 2-inch tap, one 2-inch regulator station, indirect waterbath heater, and other appurtenant facilities. Southern states that the estimated proposed volumes delivered through the new delivery points would be approximately 110 Mcf per day and 40,150 Mcf annually. Southern further states that the estimated cost of the facility is $67,900. Southern states that Pennzoil has agreed to reimburse Southern for the construction and installation cost pursuant to the general terms and conditions of Southern's tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1405 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–51–000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

January 11, 1999.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER99–51–000]

Take notice that on January 5, 1999, the Commonwealth Edison Company (ComEd), tendered for filing an amended Service Agreement in compliance with the Federal Energy Regulatory Commission's order in Commonwealth Edison Company, 85 FERC ¶ 61,288 (1998) (the Order). In that Order, the Commission authorized ComEd, pursuant to the amended Service Agreement, to sell power under its existing cost-based rate schedule PSRT–1, to one or more affiliated retail energy services companies and to reassign transmission rights to such companies in accordance with the PSRT–1 rate schedule.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Chesapeake Company, L.L.C.

[Docket No. ER99–415–001]

Take notice that on January 5, 1999, Commonwealth Chesapeake Company, L.L.C., tendered for filing with the Federal Energy Regulatory Commission a revised market-based rate tariff and a Code of Conduct in compliance with Commission's December 21, 1998, Order in this Docket.

Copies of said filing has been served upon the Virginia State Corporation Commission.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Sierra Pacific Power Company

[Docket No. ER99–945–000]

Take notice that on January 6, 1999, Sierra Pacific Power Company (Sierra Pacific), tendered for filing a fully executed Operating and Scheduling Agreement for the Alturas Intertie Project between Bonneville Power Company (Bonneville), PacifiCorp and Sierra Pacific, dated December 22, 1998. The agreement supersedes the partially executed agreement filed with the Commission on December 17, 1998. The present filing reflects only minor changes in the agreement from the December 17th filing.

Sierra Pacific has requested a waiver of the sixty-day prior notice requirement so that the agreement may take effect on January 7, 1999.

Copies of the filing were served on the parties to the agreement and the relevant state commissions.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Public Service Company

[Docket No. ER99–1161–000]

Take notice that on January 5, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (SPS), tendered for filing an electric power sales agreement with Central & South West Services, Inc. (CSW). This service agreement provides for SPS's sale and CSW's purchase of power at market-based rates pursuant to SPS's market-based sales tariff.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER99–1162–000]

Take notice that on January 5, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Oglethorpe Power Corporation requesting an effective date of December 15, 1998 and a Service Agreement for Non-Firm Point-to-Point Transmission Service with American Municipal Power—Ohio, Inc., requesting an effective date of December 22, 1998. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER99–1163–000]

Take notice that on January 5, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), tendered for filing pursuant to Section 205 of the Federal Power Act and § 35.13 of the Commission's Regulations, a rate schedule change for sales of electric power to Princeton Municipal Light Department.

NUSCO states that a copy of this filing has been mailed to Princeton Municipal Light Department and the Massachusetts Department of Public Utilities.

NUSCO requests that the rate schedule change become effective on January 1, 1999.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER99–1164–000]

Take notice that on January 5, 1999, Commonwealth Edison Company (ComEd), tendered for filing a service agreement establishing The Michigan Companies (Consumers Power Company and Detroit Edison Company) (TMC) and New Energy Ventures Inc. (NEVI) as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of January 5, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

ComEd states that a copy of the filing was served on the Illinois Commerce Commission and on the affected customers.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER99–1165–000]

Take notice that on January 5, 1999, Southern Company Services, Inc., acting

on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, filed a revision to lower the existing return on common equity components incorporated in separate Unit Power Sales (UPS) Agreements with Florida Power & Light Company, Florida Power Corporation and Jacksonville Electric Authority from 13.75 percent to 12.50 percent. In accordance with governing procedures set forth in each contract, the revisions are proposed to become effective from the date of filing (January 5, 1999), with the resulting charges being subject to refund from that date forward.

Copies of the filing were sent to each of the UPS customers.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Select Energy, Inc.

[Docket No. ER99–1167–000]

Take notice that on January 6, 1999, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with Cinergy Corp. (Cinergy) under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to the Cinergy.

Select requests that the Service Agreement become effective January 1, 1999.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Select Energy, Inc.

[Docket No. ER99–1168–000]

Take notice that on January 6, 1999, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with Delmarva Power & Light Company under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to the Delmarva Light & Power Company.

Select Energy, Inc., requests that the Service Agreement become effective January 1, 1999.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER99–1169–000]

Take notice that on January 6, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Generation Imbalance Agreement with North Carolina Electric Membership Corporation. This executed agreement replaces the unexecuted agreement filed on December 17, 1998 in Docket No. ER99–902–000.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER99–1170–000]

Take notice that on January 6, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service with Tractebel Energy Marketing, Inc. (Tractebel), and an executed agreement for Firm Point-to-Point Transmission Service with DTE Energy Trading, Inc., (DTE). Both agreements were pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The Tractebel agreement has an effective date of December 17, 1998, and the DTE agreement has an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, Tractebel and DTE.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ER99–1171–000]

Take notice that on January 6, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) with the following transmission customers:

The American Electric Power Service Corporation and various AEP entities
CMS Marketing, Services and Trading
The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc. as their agent
Consumers Energy Company—Transmission Transactions; and Electric Sourcing and Trading
Detroit Edison Merchant Operation
DTE Energy Trading, Inc.
Duke Energy Trading & Marketing, LLC
Duke Power, a Division of Duke Energy Corporation
Entergy Power Marketing Corporation
Griffin Energy Marketing, L.L.C.
Illinois Power Company
Minnesota Power & Light Company
Morgan Stanley Capital Group, Inc.
New York State Electric & Gas Corporation
Northern Indiana Public Service Company
OGE Energy Resources, Inc.
PECO Energy Company
PP&L, Inc.
Public Service Electric and Gas Company
Tennessee Valley Authority
Tenaska Power Services Company
Virginia Electric And Power Company; and Western Resources

The agreements have effective dates of January 1, 1999.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison and the respective transmission customers.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER99–1172–000]

Take notice that on January 6, 1999, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Energy Transfer Group, L.L.C., (2 agreements, dated December 17, 1998 for Non-Firm and Short-Term Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1173–000]

Take notice that on January 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 43, to add Merrill Lynch Capital Services, Inc., Statoil Energy Trading, Inc., and Tennessee Power Company to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date under the Service Agreements is January 5, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania

Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1174–000]

Take notice that on January 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 42 to add Ameren Services Company to Allegheny Power's open Access Transmission Service Tariff which has been submitted for filing with the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date under the Service Agreement is January 5, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Services Company

[Docket No. ER99–1175–000]

Take notice that on January 6, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Otter Tail Power Company (OTP). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to OTP pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER99–1176–000]

Take notice that on January 6, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and PanCanadian Energy Services Inc., (PES). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to PES pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective December 7, 1998.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER99–1177–000]

Take notice that on January 6, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and PanCanadian Energy Services Inc., (PES). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to PES pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective December 7, 1998, the date of said agreement.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Company

[Docket No. ER99–1178–000]

Take notice that on January 6, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with PECO Energy Company—Power Team (PECO), for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of January 8, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on PECO and the Florida Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Delmarva Power & Light Company

[Docket No. ER99–1179–000]

Take notice that on January 6, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Select Energy, Inc., under Delmarva's market rate sales tariff.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Tampa Electric Company

[Docket No. ER99–1180–000]

Take notice that on January 6, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with the Tennessee Valley Authority (TVA) for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of January 8, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on TVA and the Florida Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Tampa Electric Company

[Docket No. ER99–1181–000]

Take notice that on January 6, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with Southern Company Energy Marketing, L.P., (SCEM) for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of January 8, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on SCEM and the Florida Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER99–1182–000]

Take notice that on January 6, 1999, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service and Operating Agreements for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with FPL Energy Services, Incorporated, Green Mountain Energy Resources, L.L.C., NEV East, L.L.C.—New Energy Ventures, PSEG Energy Technologies, Incorporated, Statoil Energy Services, Incorporated, and Strategic Energy Partners Ltd., pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is January 1, 1999.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Rochester Gas and Electric Corporation

[Docket No. ER99–1183–000]

Take notice that on January 6, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Tractebel Energy Marketing, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Tariff, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553 (80 FERC ¶ 61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of December 11, 1998, for Tractebel Energy Marketing, Inc."s Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Minnesota Agri-Power, L.L.C.

[Docket No. ER99–1184–000]

Take notice that on January 6, 1999, Minnesota Agri-Power, L.L.C. (MAP), petitioned the Commission for acceptance of Minnesota Agri-Power's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

MAP intends to engage in the wholesale sale of electric power and energy generated by a biomass power generation facility. Such sales will begin on or about April 30, 2001.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Southwest Power Pool

[Docket No. ER99–1185–000]

Take notice that on January 6, 1999, Southwest Power Pool (SPP), tendered for filing six executed service agreements for short-term firm point-to-point and non-firm point-to-point firm transmission service under the SPP Tariff with British Columbia Power Exchange Corporation (Powerex), Merrill Lynch Capital Services, Inc. (Merrill), and Williams Energy Marketing & Trading Company (Williams).

SPP requests an effective date of December 16, 1998, for the agreements with Powerex, December 17, 1998, for the agreements with Merrill, and January 2, 1999, for the agreements with Williams.

Copies of this filing were served upon each of the parties to these agreements.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. California Independent System Operator Corporation

[Docket No. ER99–1186–000

Take notice that on January 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Aquila Power Corporation (Aquila Power Corp.) for acceptance by the Commission.

The ISO states that this filing has been served on Aquila Power Corp., and the California Public Utilities Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. California Independent System Operator Corporation

[Docket No. ER99–1187–000]

Take notice that on January 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Sunlaw Cogeneration Partners I (Sunlaw Cogeneration) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Sunlaw Cogeneration and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of December 22, 1998.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. California Independent System Operator Corporation

[Docket No. ER99–1188–000]

Take notice that on January 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Sunlaw Cogeneration Partners I (Sunlaw Cogeneration) for acceptance by the Commission.

The ISO states that this filing has been served on Sunlaw Cogeneration and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of December 22, 1998.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. San Gorgonio Westwinds, LLC

[Docket No. QF85–8–001]

Take notice that on January 5, 1999, San Gorgonio Westwinds, LLC (Westwinds), a California Limited Liability Partnership, tendered for filing with the Federal Regulatory Commission an Application for Certification of a facility as a Qualifying Small Power Production Facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a small power production plant consisting of approximately 100 wind turbine generators located in Riverside County, California. The original generators were installed in 1984, many of which are being replaced by new wind turbine generators. The rated capacity of the facility after repowering will be approximately 17.365 Mw. The electric power output of the facility is sold to Southern California Edison Company, Rosemead, California.

Westwinds owns 71.448% of the facility. Westwinds intends to transfer ownership of its interest in the facility to San Gorgonio Westwinds II, LLC (Westwinds II), in March, 1999. No more than 50% of Westwinds or Westwinds II is owned by an affiliate of an electric utility holding company.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. San Gorgonio Westwinds, LLC

[Docket No. QF85–188–001]

Take notice that on January 5, 1999, San Gorgonio Westwinds, LLC (Westwinds), a California Limited Liability Partnership, filed with the Federal Regulatory Commission an Application for Certification of a facility as a Qualifying Small Power Production Facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a small power production plant consisting of approximately 220 wind turbine generators located in Riverside County, California. The original generators were installed in 1984, many of which are being replaced by new wind turbine generators. The rated capacity of the facility after repowering will be approximately 11.2 Mw. The electric power output of the facility is sold to Southern California Edison Company, Rosemead, California.

Westwinds owns 100% of the facility. Westwinds intends to transfer ownership of its interest in the facility to San Gorgonio Westwinds II, LLC (Westwinds II), in March, 1999. No more than 50% of Westwinds or Westwinds II is owned by an affiliate of an electric utility holding company.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. San Gorgonio Westwinds, LLC

[Docket No. QF85–610–001]

Take notice that on January 5, 1999, San Gorgonio Westwinds, LLC (Westwinds), a California Limited Liability Partnership, filed with the Federal Regulatory Commission an Application for Certification of a facility as a Qualifying Small Power Production Facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a small power production plant consisting of approximately 321 wind turbine generators located in Riverside County, California. The original generators were installed in 1984, many of which are being replaced by new wind turbine generators. The rated capacity of the facility after repowering will be approximately 34.94 MW. The electric power output of the facility is sold to Southern California Edison Company, Rosemead, California.

Westwinds owns 28.05% of the facility. Westwinds intends to transfer ownership of its interest in the facility to San Gorgonio Westwinds II, LLC (Westwinds II), in March, 1999. No more than 50% of Westwinds or Westwinds II is owned by an affiliate of an electric utility holding company.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. San Gorgonio Westwinds, LLC

[Docket No. QF89–344–001]

Take notice that on January 5, 1999, San Gorgonio Westwinds, LLC (Westwinds), a California Limited Liability Partnership, tendered for filing with the Federal Regulatory Commission an Application for Certification of a facility as a Qualifying Small Power Production Facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a small power production plant consisting of approximately 141 wind turbine generators located in Riverside County, California. The original generators were installed in 1984, many of which are being replaced by new wind turbine generators. The rated capacity of the facility after repowering will be approximately 9.8 MW. The electric power output of the facility is sold to Southern California Edison Company, Rosemead, California.

Westwinds owns 100% of the facility. Westwinds intends to transfer ownership of its interest in the facility to San Gorgonio Westwinds II, LLC (Westwinds II), in March, 1999. No more than 50% of Westwinds or Westwinds II is owned by an affiliate of an electric utility holding company.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1399 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–25–000, et al.]

NP Energy Inc. and Duke Energy Trading and Marketing, L.L.C.,et al.; Electric Rate and Corporate Regulation Filings

January 13, 1999.

Take notice that the following filings have been made with the Commission:

1. NP Energy Inc. and Duke Energy

[Docket No. EC99–25–000]

Trading and Marketing, L.L.C.)

Take notice that on January 11, 1999, NP Energy Inc. and Duke Energy Trading and Marketing, L.L.C., both brokers and marketers of electric power, filed a request for approval of the sale of all common stock of NP Energy Inc. to Duke Energy Trading and Marketing, L.L.C.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. American Power Exchange, Inc., Bruin Energy, Inc., Eclipse Energy, Inc., and SEMCO Energy Services, Inc.

[Docket Nos. ER94–1578–017, ER98–538–005, ER94–1099–019, ER97–4352–004]

Take notice that on January 6, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. Duquesne Light Company

[Docket No. ER97–1543–000]

Take notice that on January 4, 1999, Duquesne Light Company submitted for filing an Arbitration Award (Award) of $400,000 to replace the Stranded Cost Amendment contained in Duquesne's initial filing in this case.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Constellation Power Source, Inc.

[Docket No. ER97–2261–002]

Take notice that on December 22, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. Quark Power L.L.C.

[Docket No. ER97–2374–007]

Take notice that on January 5, 1999, the above-mentioned power marketer filed quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. Pelican Energy Management, Inc.

[Docket Nos. ER98–3084–001 and ER98–3084–002]

Take notice that on January 4, 1999, the above-mentioned power marketer

filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

7. Commonwealth Edison Company

[Docket No. ER98–4335–000]

Take notice that on January 8, 1999, in response to a December 9, 1998 letter from the Commission's Division of Rate Application, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (ComEd), tendered for filing a revised service agreement under ComEd's open access transmission tariff between ComEd and the Wholesale Marketing Department of Commonwealth Edison Company (WMD).

ComEd requests an effective date of March 1, 1998 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on WMD and the Illinois Commerce Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Solutions, Inc., Phibro Inc., AMVEST Power, Inc., AMVEST Coal Sales, Inc., Energetix, Inc., NICOR Energy Management Services Company, Global Petroleum Corp., Global Energy Services, LLC, Burlington Resources Trading Inc., CHI Power Marketing, Inc., South Jersey Energy Company

[Docket Nos. ER98–3813–002, ER95–430–018, ER97–2045–007, ER97–464–009, ER97–3556–006, ER97–1816–006, ER96–359–014, ER97–1177–007, ER96–3112–009, ER96–2640–009, and ER97–1397–004]

Take notice that on January 7, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

9. Duquesne Light Company

[Docket No. ER99–1146–000]

Take notice that on January 6, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Constellation Energy Source, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of December 30, 1998.

Copies of this filing were served upon Customer.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Energy Company

[Docket No. ER99–1197–000]

Take notice that on January 7, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement with Consumers Energy Company—Electric Sourcing & Trading for Network Integration Transmission Service, pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison), with an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consumers Energy Company

[Docket No. ER99–1198–000]

Take notice that on January 6, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service to the Commonwealth Edison Company pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

The agreement has an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER99–1199–000]

Take notice that on January 7, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service to Commonwealth Edison Company pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

The agreement has an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Lakewood Cogeneration, L.P.

[Docket No. ER99–1213–000]

Take notice that on January 8, 1999, Lakewood Cogeneration, L.P. (Lakewood), tendered for filing pursuant to Rule 205, 18 CFR 385.205, petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

Lakewood intends to engage in electric power and energy purchases and sales. In transactions where Lakewood sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in Lakewood's petition, Lakewood is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER99–1214–000]

Take notice that on January 8, 1999, Cinergy Services, Inc. (Cinergy) and Vastar Power Marketing, Inc. (Vastar), now a predecessor company of Southern Company Energy Marketing L.P., tendered for filing Notice of cancellation of Service Agreement No. 120, under Cinergy Operating Companies, FERC Electric Power Tariff, First Revised Volume No. 4.

Cinergy requests an effective date of one (1) day after the date of this filing.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER99–1215–000]

Take notice that on January 8, 1999, Cinergy Services, Inc. (Cinergy) and NGE Generation, Inc. (NGE), formerly part of New York State Electric & Gas Corporation, tendered for filing a Notice of cancellation of Service Agreement No. 39, under Cinergy Operating Companies, FERC Electric Power Tariff, First Revised Volume No. 4.

Cinergy requests an effective date of one (1) day after the date of this filing.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1216–000]

Take notice that on January 8, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 13 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of January 5, 1999, to Sonat Power Marketing L.P.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Select Energy, Inc.

[Docket No. ER99–1217–000]

Take notice that on January 8, 1999, Select Energy, Inc. (Select), tendered for filing a Service Agreement with the Cinergy Capital & Trading, Inc., under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., requests that the Service Agreement become effective December 31, 1998.

Select Energy, Inc., states that a copy of this filing has been mailed to Cinergy Capital & Trading, Inc.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Select Energy, Inc.

[Docket No. ER99–1218–000]

Take notice that on January 8, 1999, Select Energy, Inc. (Select), tendered for filing a Service Agreement with the Central Maine Power Company (CMP), under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

NUSCO requests an effective date of December 8, 1998.

Select Energy, Inc., states that a copy of this filing has been mailed to CMP.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Select Energy, Inc.

[Docket No. ER99–1219–000]

Take notice that on January 8, 1999, Select Energy, Inc. (Select), tendered for filing a Service Agreement with the Unitil Power Corp. (UPC), under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select requests an effective date of December 22, 1998.

Select Energy, Inc., states that a copy of this filing has been mailed to UPC.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services, Inc.

[Docket No. ER99–1220–000]

Take notice that on January 8, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and British Columbia Power Exchange Corporation.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. New Century Services, Inc.

[Docket No. ER99–1221–000]

Take notice that on January 8, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and British Columbia Power Exchange Corporation.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER99–1222–000]

Take notice that on January 8, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of January 1, 1999, the date of the first transaction under the Service Agreement.

Copies of the filing were served upon PECO Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Minnesota Power, Inc.

[Docket No. ER99–1223–000]

Take notice that on January 8, 1999, Minnesota Power, Inc. tendered for filing signed Non-Firm and Short-term Firm Point-to-Point Transmission Service Agreements with PG&E Energy Trading—Power, L.P., under its Firm and Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Portland General Electric Company

[Docket No. ER99–1224–000]

Take notice that on January 8, 1999, Portland General Electric Company (PGE), tendered for filing a Rate Schedule and Form of Service Agreement for the Sale, Assignment, and Transfer of Transmission Rights pursuant to the Commission's direction in Order Nos. 888 and 888-A.

PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Rate Schedule to become effective January 8, 1999.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Florida Power & Light Company

[Docket No. ER99–1225–000]

Take notice that on January 8, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Georgia Transmission Corporation for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on January 1, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Peco Energy Company

[Docket No. ER99–1226–000]

Take notice that on January 8, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated December 31, 1998 with FPL Energy Power Marketing, Inc. (FPL–EPM) under PECO's FERC Electric Tariff Original Volume No. 1, (Tariff). The Service Agreement adds FPL–EPM as a customer under the Tariff.

PECO requests an effective date of December 31, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to FPL–EPM and to the Pennsylvania Public Utility Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Peco Energy Company

[Docket No. ER99–1227–000]

Take notice that on January 8, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated December 3, 1998 with Allegheny Electric Cooperative, Inc. (Allegheny Electric Cooperative), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Allegheny Electric Cooperative and to the Pennsylvania Public Utility Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Storm Lake Power Partners II LLC

[Docket No. ER99–1228–000]

Take notice that on January 8, 1999, Storm Lake Power Partners II LLC (Storm Lake II), tendered for filing its initial Rate Schedule FERC No. 2, governing sales of electric energy and capacity at market-based rates. Storm Lake II is developing a wind-powered generation facility in Buena Vista County, Iowa. Following construction of the facility, Storm Lake II will make sales of capacity and energy at market-based rates to IES Utilities, Inc. (IES), pursuant to an Alternative Energy Production Electric Service Agreement (the PPA).

The PPA was originally executed by IES and Northern Alternative Energy Allendorf L.L.C. (NAEA) on May 14, 1997. NAEA assigned the PPA to Storm Lake II pursuant to an Agreement dated November 19, 1998.

Copies of the filing were served upon IES, Storm Lake II's jurisdictional customer.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. California Power Exchange Corporation

[Docket No. ER99–1229–000]

Take notice that on January 8, 1999, the California Power Exchange Corporation (PX), tendered for filing Amendment No. 8, to its Operating Agreement and Tariff (PX Tariff) and the accompanying PX Settlement and Billing Protocol (PSABP). Amendment No. 8, proposes discrete changes to implement a December 11, 1998, filing by the California Independent System Operator (ISO) relating to the treatment of "TO Debits" for derated Hour-Ahead transmission capacity.

The PX proposes to make Amendment No. 8, effective on February 9, 1999, concurrently with the ISO's corresponding changes.

The PX states that it has served copies of its filing on the PX Participants and on the California Public Utilities Commission. The filing also has been posted on the PX website at http://www.calpx.com.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. PP&L, Inc.

[Docket No. ER99–1250–000]

Take notice that on January 7, 1999, PP&L, Inc. (PP&L), tendered for filing its proposed accounting for stranded costs and related revenues for payment received from the Borough of Ephrata (Ephrata) in compliance with the Commission's May 29, 1998, order in Docket No. SC97–1–001.

PP&L requests an effective date of December 28, 1998, for the proposed accounting.

PP&L states that copies of this filing have been supplied to Ephrata and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Carr Street Generating Station, L.P.

[Docket No. ER99–1251–000]

Take notice that on January 8, 1999, Car Street Generating Station, L.P. (Carr Street), tendered for filing a long-term service agreement between Carr Street and Constellation Power Source, Inc. Carr Street requests confidential treatment of the agreement pursuant to 18 CFR 388.112.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Carolina Power & Light Company

[Docket No. ER99–1254–000]

Take notice that on January 8, 1999, Carolina Power & Light Company tendered for filing its quarterly report summary of short-term transactions that occurred under its Market-Based Wholesale Power Sales Tariff during the third quarter of 1998.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Maine Public Service Company

[Docket No. ER99–1255–000]

Take notice that on January 12, 1999, Maine Public Service Company submitted a Quarterly Report of Transactions for the period October 1 through December 31, 1998. This filing was made in compliance with Commission orders dated May 31, 1995 (Docket No. ER95–851) and April 30, 1996 (Docket No. ER96–780).

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Idaho Power Company

[Docket Nos. OA97–455–001 and OA97–590–001]

Take notice that on January 6, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a compliance filing regarding the Company's revised OASIS posting of the Company's Corporate Structure.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the

Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1398 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–404–013, et al.]

Questar Energy Trading Company, et al.; Electric Rate and Corporate Regulation Filings

January 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Questar Energy Trading Company, Energy Clearinghouse Corporation Vanpower, Inc., New Jersey Natural Energy Company, and SCANA Energy Marketing, Inc.

[Docket Nos. ER96–404–013, ER98–2020–002, ER96–552–001, ER96–2627–008, and ER96–1086–011]

Take notice that on January 11, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

2. EMC Gas Transmission Company, Edgar Electric Cooperative, d/b/a/ EnerStar Power Corporation), Cleco Energy LLC, CoEnergy Trading Company, Western States Power Providers, Inc., and JMF Power Marketing

[Docket Nos. ER96–2320–010, ER98–2305–002, ER98–1170–002, ER96–1040–013, ER95–1459–013, and ER98–3433–002]

Take notice that on January 8, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. American Electric Power Service Corporation

[Docket Nos. ER99–1256–000 and EL98–52–000]

Take notice that on January 11, 1999, American Electric Power Service Corporation filed a Notice of Adoption of NERC'S TLR Alternative Transmission Tariff Amendment.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. OA97–455–003]

Take notice that on January 6, 1999, Idaho Power Company (Idaho Power) submitted a letter notifying the Commission that it has posted revised organizational charts and job descriptions on its OASIS to comply with the Commission's November 13, 1998 Order on Standards of Conduct.[1]

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1402 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–P

[1] Alliant Services, Inc., *et al.*, 85 FERC ¶61,227 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–064]

Public Utility District No. 2 of Grant County; Notice of Availability of Draft Environmental Assessment and Solicitation of Comments

January 15, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) reviewed the proposal for implementing an Interim Protection Plan (IPP) for steelhead and chinook salmon at the Priest Rapids Project in Grant County, Washington. The Commission prepared a draft environmental assessment (DEA) for the proposed action. In the DEA, the Commission concludes that approval of the IPP will not constitute a major federal action significantly affecting the quality of the human environment.

This DEA was written by staff in the Office of Hydropower Licensing (OHL). As such, the DEA is OHL staff's preliminary analysis of the IPP. No final conclusions have been made by the Commission regarding this matter.

Should you wish to provide comments on the DEA, they should be filed within 30 days from the date of this notice. Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (2114–064) on any comments filed.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–1407 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Establishing Procedural Schedule and Final Amendment Deadline; Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions; Requesting Reply Comments

January 15, 1999.

Take notice that the following hydroelectric application and Applicant Prepared Environmental Assessment (APEA) has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: P–1218–014.

c. Date filed: November 25, 1998.

d. Applicant: Georgia Power Company.

e. Name of Project: Flint River Hydroelectric Project.

f. Location: The project is located on the Flint River near the City of Albany, in Lee and Dougherty Counties, Georgia. The project would not utilize any federal lands or facilities.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Mike Phillips, Georgia Power Company, Bin 10151, 241 Ralph McGill Boulevard, NE, Atlanta, GA 30308–3374, Tel. (404) 506–2392.

i. FERC Contact: Any questions on this notice should be addressed to Allan E. Creamer, E-mail address allan.creamer@ferc.fed.us, or telephone (202) 219–0365.

j. Deadline for filing motions to intervene, protests, comments, final terms and conditions, recommendations, and prescriptions: 60 days from the issuance date of this notice.

Deadline for applicant to file any final amendments to the application: 45 days from the issuance date of this notice.

All documents (original and eight copies should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the that resource agency.

k. Status of environmental analysis: On March 6, 1996, the Director, Office of Hydropower Licensing, waived or amended certain of the Commission's regulations to allow for coordinated preparation of the license application and an APEA. Since then, the Commission has been working cooperatively in advising the applicant and its Consultation Team on studies or other information foreseeable required by the Commission.

Commission staff have reviewed the license application and APEA and have determined that the application is acceptable and no additional information or studies are needed to prepare the Commission's environmental assessment (EA). Comments, as indicated above, are now being requested from interested parties. The applicant will have 45 days following the end of this period to respond to those comments, or may elect to seek a waiver of this deadline. Because the issues in this relicensing have been resolved prior to the final license application being filed, Commission staff do not anticipate issuing a draft EA. Rather, comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in a final EA issued in the Spring of 1999.

l. Description of Project: The project consists of the following facilities: (1) the Muckafoonee Creek diversion dam, having (a) a 67-foot non-overflow section, (b) a 22-foot sluice section with two 6- by 8-foot sluices, and (c) a 133-foot gated spillway section with six 21-by 6-foot vertical lift gates; (2) a 500-foot-long reinforced concrete, free-crested auxiliary spillway and a 2,600-foot-long earthen dike; (3) the Flint River dam, having (a) a concrete intake structure, (b) a powerhouse (integral with the dam) containing three 1.8-megawatt (MW) generating units, for a total installed capacity of 5.4 MW, (c) a 464-foot-long spillway with 16 Taintor gates, and (d) a 1,700-foot-long earthen dike; (4) a 1,250-acre impoundment, impounding 10 miles of the mainstream Flint River and the lower reaches of the Kinchafoonee and Muckalee Creeks, at a water surface elevation of 181.8 feet plant datum, with a total storage capacity of 7,800 acre-feet; and (5) appurtenant facilities. The average annual generation is about 34.428 Gigawatt-hours.

m. Locations of the application and APEA: Copies of the application and APEA are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 first Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application and APEA may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the address in item h above.

n. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 C.F.R. sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application and APEA.

o. Filing and Service of Responsive Documents—The Commission is requesting comments, recommendations, terms and conditions, prescriptions, and reply comments.

The Commission directs, pursuant to 18 CFR section 4.34(b) of the regulations, that all comments, recommendations, terms and conditions, and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

p. All filings must: (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," "PRESCRIPTIONS,"or "REPLY COMMENTS;" (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set

forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application and APEA directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 3.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–1406 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of New Major Licenses and Applicant Prepared Environmental Assessment

January 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of license.

b. Project No: 2307–045.

c. Date Filed: November 2, 1998.

d. Applicant: Alaska Electric Light and Power Company.

e. Name of Project: Salmon Creek Project.

f. Location: City & Borough of Juneau. Within the First Judicial District of the State of Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. Applicant Contact: Tim McLeod, Vice President, Transmission & Distribution, Alaska Electric Light and Power Company, 5601 Tonsgard Court, Juneau, AK 99801, (907) 780–2222.

i. FERC Contact: Anum Purchiaroni, (202) 219–3297.

j. Comment Date: March 1, 1999.

k. Description of Project: Alaska Electric Light Power Company (AELP), license for the Annex Creek and Salmon Project, has filed an application to amend its license. AELP proposes to relocate approximately 1¼ mile of the Annex Creek transmission line from overhead to underground. It has 12 miles of 23-kV overhead transmission line extending from the Annex Powerhouse to the Thane Substation. The Annex Creek transmission line is situated in a remote area of the Tongs National Forest.

l. This notice also consists of the following standard paragraphs: B, C1 and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washngton, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D3. Agent Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–1408 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Tendered for Filing; of Applications and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Establishing Procedural Schedule and Final Amendment Deadline; and Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

January 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New major licenses and Applicant Prepared Environmental Assessment (APEA).

b. Project Nos.: 2901–008 and 2902–009.

c. Date filed: December 29, 1998.

d. Applicant: Nekoosa Packaging Corporation (Nekoosa), a wholly-owned subsidiary of Georgia-Pacific Corporation.

e. Name of Projects: Holcomb Rock Hydroelectric Project, Project No. 2901 and Big Island Hydroelectric Project, Project No. 2902.

f. Location: James River, in Bedford and Amherst Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

h. Applicant Contact: Mr. P.J. Purdy, General Manager, Georgia-Pacific Corporation, Highway 501 North, Big Island, VA 24526, (804) 299–5911.

i. FERC Contact: Any questions on this notice should be addressed to James T. Griffin, E-mail address james.griffin@ferc.fed.us, or telephone (202) 219–2799.

j. Deadline for filing any final amendments to the application: 45 days from the date of this notice.

Deadline for filing interventions: 60 days from the date of this notice.

Deadline for filing any final comments, final recommendations, terms and conditions and prescriptions: 60 days from the date of this notice.

Deadline for applicant's response to final comments, final recommendations, terms and conditions and prescriptions: 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission

to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application is ready for environmental analysis.

l. Description of the Projects: The existing facilities at the Holcomb Rock Hydroelectric Project include: (1) a stone masonry and wood crib diversion dam approximately 21 feet high and 644 feet long; (2) a canal of 2,700 feet in length; (3) a powerhouse containing three generating units, each rated at 625 kilowatts, for a total installed capacity of 1.875 megawatts, also the project's authorized capacity; (4) a reservoir with a surface area of 127 acres at normal pool elevation of 571.7 feet, mean sea level; (5) a 2.4/13.8 kilovolt, Delta-Delta, 3,570 KVA transformer; and (6) appurtenant facilities. The proposed project's average annual generation would be 9.8 gigawatthours.

The existing facilities at the Big Island Hydroelectric Project include: (1) a masonry and timber crib dam with a height of 15 feet, a total length of 657 feet, and a spillway length of 427 feet; (2) a dual purpose intake that also provides process water to the mill; (3) a concrete, steel, and brick powerhouse containing two generating units rated at 240 kilowatts each, for a total installed capacity of 480 kilowatts; (4) a 110-acre reservoir at the normal pool elevation of 604.7 feet, mean sea level; and (5) appurtenant facilities. The proposed project has an authorized capacity of 512 kilowatts, and would have an average annual generation of 1.7 gigawatthours.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. APEA Process and Schedule: The Energy Policy Act of 1992 gives the Commission the authority to allow the filing of an APEA with a license application, and directs the Commission to institute procedures, including pre-application consultations, to advise applicants of studies or other information foreseeable required by the Commission.

On February 25, 1997, the Director, Office of Hydropower Licensing, waived or amended certain of the Commission's regulations to allow for coordinated processing of the license applications and the APEA. Since then, the Commission has been working cooperatively in advising the Collaborative Team of studies or other information foreseeable required by the Commission.

Nekoosa has used a Collaborative Team approach to prepare the APEA for the Holcomb Rock and Big Island Projects. Consisting of members of federal, state, and local agencies, non-governmental organizations, and the public, the Collaborative Team has been meeting since February 1997 to guide the study process and prepare the APEA, and has reached agreement as to the preferred alternative for relicensing these projects.

National Environmental Policy Act scoping was conducted for the projects through scoping documents issued March 12, 1997, and April 27, 1998, and in public scoping meetings on April 16, 1997. Draft license applications and a preliminary DEA were issued by the Collaborative Team for comment on July 24, 1998. The final license applications and APEA were filed with the Commission on December 29, 1998. The APEA includes responses to all comments received on the preliminary DEA.

Commission staff have reviewed the APEA and license applications and have determined that the applications are acceptable and no additional information or studies are needed to prepare the Commission's draft EA. Item j., above provides the deadline for filing any final amendments to the application. Comments, final recommendations, terms and conditions and prescriptions are now being requested from interested parties.

In view of the high level of early involvement of the Collaborative Team, we expect the majority of comments to reflect the agreement presented in the DEA. Any comments received will be addressed in the EA to be issued by early April 1999.

o. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advsiory Council on Historic Preservation, 36 CFR 800.4.

p. This notice also consists of the following standard paragraphs: B and D6.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become to party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendatios, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E.,

Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commssion, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34 (b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–1409 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6223–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units That Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following continuing Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste, OMB Control Number 2050–0152, expiring 4/30/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download from the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1608.02.

SUPPLEMENTARY INFORMATION:

Title: State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste, OMB Control Number 2050–0152, EPA ICR Number 1608.02. This is a request for extension of a currently approved collection.

Abstract: Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) of 1976 requires that EPA revise the landfill criteria promulgated under paragraph (1) of section 4004(a) and section 1008(a)(3). Section 4005(c) of RCRA, as amended by the Hazardous Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that MSWLFs and non-municipal, non-hazardous waste disposal units that receive household hazardous waste or CESQG hazardous waste are in compliance with the revised criteria for the design and operation of non-municipal, non-hazardous waste disposal units under 40 CFR part 257, subpart B and MSWLFs under 40 CFR part 258. (40 CFR part 257, subpart B and 40 CFR part 258 are henceforth referred to as the "revised federal criteria.") Section 4005(c) of RCRA further mandates the EPA Administrator to determine the adequacy of state permit programs to ensure owner and/or operator compliance with the revised federal criteria. A state program that is deemed adequate to ensure compliance may afford flexibility to owners or operators in the approaches they use to meet federal requirements, significantly reducing the burden associated with compliance.

In response to the statutory requirement in section 4005(c), EPA developed 40 CFR part 239, commonly referred to as the State Implementation Rule (SIR). The SIR describes the state application and EPA review procedures and defines the elements of an adequate state permit program.

The purpose of the ICR is to allow EPA to continue its evaluation of state permit program applications to determine whether they satisfy the statutory test reflected in the requirements of 40 CFR part 239. In all cases, the information will be analyzed to determine the adequacy of the state's permit program for ensuring compliance with the federal revised criteria. The analysis will also assist EPA in complying with the Government Performance and Results Act (GPRA) of 1993, by measuring progress toward goals and objectives detailed in the EPA Strategic Plan.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/2/98 (63 FR 58721); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 261 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to enable them to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States that seek approval of permit programs for MSWLFs and for non-municipal, non-hazardous waste disposal units that receive CESQG waste.

Estimated Number of Respondents: 38.

Frequency of Response: One-time only.

Estimated Total Annual Hour Burden: 6,510 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1608.02 and the OMB Control No. 2050–0152 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov);

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 19, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–1477 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6223–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP, Benzene Emissions From Bulk Transfer Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP Benzene Emissions From Bulk Transfer Operations, Subpart BB, ICR Number 1154.05, OMB Control Number 2060–0182 ; expiration date January 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1154.05

SUPPLEMENTARY INFORMATION:

Title: NESHAP, Benzene Emissions From Bulk Transfer Operations, 40 CFR Part 61, Subpart BB, (OMB Control No.2060–0182; EPA ICR No. 1154.05) expiring 01/31/99. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Benzene Emissions from Benzene Transfer Operations were proposed on September 14, 1989 and promulgated on March 7, 1990. The affected facility to which this subpart applies is the total of all loading racks, handling a liquid containing 70 weight-percent or more benzene, at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal. However, specifically exempted from this regulation are loading racks at which only the following are loaded: Benzene-laden waste (covered under subpart FF of part 61), gasoline, crude oil, natural gas liquids, petroleum distillates (e.g., fuel oil, diesel, or kerosene), or benzene-laden liquid from coke by-product recovery plants. In addition, any affected facility which loads only liquid containing less than 70 weight-percent benzene or whose annual benzene loading is less than 1.3 million liters of 70 weight-percent or more benzene is exempt from the control requirements except for the record keeping and reporting requirements in 61.305(i). Marine vessels were given a one year industry wide waiver of compliance, which was later extended to July 23, 1991, in order to allow for concurrent compliance with U.S. Coast Guard regulations.

This information is being collected to assure compliance with 40 CFR part 61, subpart BB. Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to benzene transfer operations provide information on the operation of the emissions control device and compliance with the standards. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NESHAP Subpart BB. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 09/04 /98 (63 FR 47279). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 45 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Benzene Emitters From Bulk Transfer Operations subject to NESHAP 40 CFR part 61, subpart BB.

Estimated Number of Respondents: 81.

Frequency of Response: Quarterly, Semi-Annually.

Estimated Total Annual Hour Burden: 14,685 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1154.05 and OMB Control No. 2060–0182 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 15, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–1481 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed January 11, 1999 Through January 15, 1999

Pursuant to 40 CFR 1506.9

EIS No. 990008, Final EIS, BIA, AZ, Southpoint Power Plant, Fort Mojave Indian Reservation Approval of a Lease for Development Project, Construction and Operation of a 500 Megawatt Natural Gas Fired Power Plant, NPDES Permit and COE Section 404 Permit, Mohave County, AZ, Due: February 22, 1999, Contact: Ms. Amy Heuslein (602) 379–6750.

EIS No. 990009, Draft Supplement, COE, NC, Manteo (Shallowbag) Bay Project, Navigation Channel Deepening from the Altantic Ocean through Oregon Inlet to Wanchee, Due: March 08, 1999, Contact: Williams Adams (910) 251–4748.

EIS No. 990010, Final EIS, FHW, AL, Tuscaloosa East Bypass Corridor, Construction, I–59/I–20 east of Tuscaloosa to US 82 west of Northport, Funding, NPDES Permit, COE Section 10 and 404 Permits, Tuscaloosa County, AL , Due: February 22, 1999, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 990011, Final EIS, FHW, WI, US 10 Highway Improvements, WI–13 and US 10 in Marshfield to WI–54 and US 10 in Waupaca, Funding and COE Section 404 Permit, Wood, Portage and Waupaca Counties, WI , Due: February 22, 1999, Contact: Wesley Shemwell (608) 829–7500.

EIS No. 990012, Final EIS, FHW, NC, US 74 Shelby Bypass Transportation Improvements, Construction, Funding and COE Section 404 Permit, Cleveland County, NC , Due: February 22, 1999, Contact: Nicholas L. Graf, PE. (919) 856–4346.

EIS No. 990013, Second Draft Supple, NOA, CA, OR, WA, Pacific Coast Salmon Plan (1997) for Amendment 14, Fishery Management Plan, Comprehensive Updating, Exclusive Economic Zone (EEZ), Off the Coasts of WA, OR and CA , Due: March 12, 1999, Contact: Mr. William Robinson (206) 526–6142.

EIS No. 990014, Final EIS, SFW, CA, Headwaters Forest Acquisition and the Palco Sustained Yield Plan and Habitat Conservation Plan, Implementation, Humboldt, Del Norte and Mendocino Counties, CA , Due: February 22, 1999, Contact: Ben Harrison (503) 231–2068.

Dated: January 19, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–1508 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 4, 1999 through January 8, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1999 (62 FR 17856).

Draft EISs

ERP No. D–AFS–L65300–ID Rating EC2, Goose Creek Watershed Project, Harvesting Timber and Improve Watershed, Payette National Forest, New Meadows Ranger District, Adams County, ID.

Summary: EPA expressed environmental concerns about the potential adverse impacts on elk habitat, road density, and water quality.

ERP No. D–BLM–J01009–WY Rating EC2, Carbon Basin Coal Project Area, Coal Lease Application for Elk Mountain/Saddleback Hills, Carbon County, WY.

Summary: EPA expressed environmental concerns about adverse impacts to air and water quality. EPA requested additional information for analysis of impacts to air and water.

ERP No. D–FHW–C40144–NY Rating EC2, US 219 between Springville to Salamanca, Improvements from NY 39 to NY 17, PIN 5101.53, Funding and COE Section 404 Permit, Erie and Cattaraugus Counties, NY.

Summary: EPA had environmental concerns (EC) with potential air quality and wetland impacts, the project's purpose and need, and environmental justice issues, and thinks that additional information (2), should be presented in the final EIS.

ERP No. D–NPS–K65211–CA Rating EC2, Whiskeytown Unit General Management Plan, Implementation, Whiskeytown-Shasta-Trinity Natl. Recreation Area, Shasta County, CA.

Summary: EPA expressed environmental concerns regarding the lack of cumulative impact analysis, and recommend changes to the EIS to increase public disclosure of potential impacts.

Final EISs

ERP No. F–BLM–J65247–UT Dixie Land and Resource Management Plan, Implementation, Cedar City Ranger District, Washington County, UT.

Summary: EPA maintains concerns about the proposed water storage projects and recommends a comprehensive EIS prior to approval of any potential reservoir.

ERP No. F–FHW–E40359–SC Carolina Bays Parkway (better known as Grand Strand), Funding, NPDES Permit, COE Section 10 and 404 Permits, Horry and Georgetown Counties, SC.

Summary: EPA's review found that wetland impacts are significant, but a mitigation bank at Sandy Island will be used to offset these losses.

ERP No. F–FHW–E50289–SC Cooper River Bridges Replacement Project, Grace Memorial/Silas N. Pearman Bridges on US 17 over Cooper River and Town Creek, Funding, COE Section 10/404 Permits and CGD Permit, Charleston County, SC.

Summary: EPA's review found that the document adequately discussed concerns raised during the review of the draft document.

ERP No. F–FHW–K40211–HI Kealakehe Parkway Completion, Queen Kaahumanu Highway and Honokohau Harbor Road Intersection to near the Mamalahoa Highway and Old Mamalahoa Highway Intersection, North Kona District, Hawaii County, HI.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–K40226–CA, CA–37 Highway Improvement, Napa River Bridge to the existing Freeway Section of CA–37 that begins near Diablo Street, Funding and US Army COE Section 404 Permit Issuance, Vallejo, Solano County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–K40357–CA, CA–101/Cuesta Grade Highway Improvements, 1.1 Miles north of

Reservoir Canyon Road to the Cuesta Grade Overhead, Funding and Permit Issuance, San Luis Obispo County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–K40223–CA, Mission Valley East Corridor Transit Improvement Project, between I–15 in Mission Valley and the East County community of La Mesa, Funding, COE Section 404 Permit, Metropolitan Transit Development Board (MTDB) and Light Rail Transit (LRT), San Diego County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: January 19, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–1509 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6223–3]

RCRA Hazardous Waste Biennial Reporting: Notice of Intent to Privatize Development of Reporting Software

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency's (EPA's) Office of Solid Waste will hold a public meeting on February 24, 1999, from 8:30 a.m. to 4:00 p.m., to make information available on the EPA's efforts to privatize the development of software required by State and Federal Agencies for biennial reporting to the EPA about the generation, management and final disposition of hazardous waste regulated by the Resource Conservation and Recovery Act (RCRA). This meeting will focus on providing information to potential software vendors to encourage them to provide the reporting software to the State and Federal Agencies for use in meeting their 1999 biennial reporting requirements.

DATES: The public meeting will be held on February 24, 1999 from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held in EPA's Crystal City office; Conference Room A, Second Floor, 2800 Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: For technical information and registration matters, contact Ms. Dina Villari of the EPA's Office of Solid Waste at (703) 308–7912; e-mail: villari.dina@epamail.epa.gov. For general information regarding RCRA biennial reporting requirements, contact the RCRA Hotline at (800) 824–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

SUPPLEMENTARY INFORMATION: The EPA, under the authority of the Resource Conservation and Recovery Act (RCRA) of 1976, and its amendments of 1980 and 1984 called the Hazardous and Solid Waste Amendments (HSWA), is required to collect information on a biennial basis from generators of hazardous waste and treatment, storage and disposal facilities. As part of this effort, EPA and the States collect and maintain information about the generation, management and final disposition of the nation's hazardous waste regulated by RCRA. Analysis of this information serves as a means of: reporting to Congress and the public on the location, quantities, and disposition of hazardous wastes; assessing the effectiveness of existing Agency regulations; and assisting the Agency in measuring nationwide progress in its mission to protect human health and the environment.

The EPA previously developed reporting software, the Biennial Reporting System (BRS), for use by State and Federal Agencies for the 1989 through 1997 Biennial Reporting cycles. The EPA is now preparing for the 1999 biennial reporting cycle. Although the EPA does not require electronic submission of data from the regulated community, recent biennial reporting cycles have become more automated, with both the regulated community and the State/Federal implementers of the biennial reporting requirements using electronic data submissions to prepare the State data files that ultimately comprise the BRS National Oversight Database. Although the EPA has provided BRS implementer software to State/Federal Agencies, private software vendors have recently begun providing software which meets the needs of both the regulated community and State/Federal implementers of the RCRA program.

A total of 35 State/Federal Agencies used either their own State-developed software or one of the electronic software packages provided by private software vendors for the implementation of the 1997 biennial reporting requirements. Consistent with the intent of the Information Technology Management Reform Act (ITMRA) of 1995, also known as the Clinger-Cohen Act, the EPA is encouraging the privatization of the entire implementer component of the biennial reporting process. ITMRA requires that Federal Agencies make the maximum use of commercial, Off-the-Shelf technology if the private sector can efficiently support the function. The EPA has made the determination that the software developed by private vendors, or State-developed software, is an efficient and cost-effective way of implementing the RCRA biennial reporting requirements and, therefore, the EPA will no longer develop and provide the BRS implementer software.

The purpose of this public meeting is to explain to interested private software vendors the biennial reporting process and implementation schedule for the 1999 biennial reporting cycle, with particular emphasis on the output flat file specifications. This is necessary to ensure the data entry software and implementer database are in a standard format for proper data loading into EPA's National Database.

Subsequent to the February 1999 meeting, the EPA intends to sponsor a June 1999 national conference with the State/Federal Agencies who implement the biennial reporting requirements. EPA will provide interested private software vendors with an opportunity for exhibition of their software products during this June 1999 national conference. Additional details will be provided at the February 1999 meeting.

Dated: January 13, 1999.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 99–1478 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30000/60C; FRL–6058–1]

Cyanazine; Notice of Amendment to Terms and Conditions of Registration, Response to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces the Agency's decision to amend the terms and conditions of the cyanazine registrations held by DuPont Agricultural Products ("DuPont") and Griffin Corporation ("Griffin"). The registrations are currently being phased out according to the terms and conditions proposed by DuPont and subsequently agreed to by Griffin and

accepted by EPA. These terms and conditions were the basis for concluding the Special Review of cyanazine. This notice announces EPA's decision to grant the registrants' request to further amend the terms and conditions of their cyanazine registrations and voluntary cancellation orders to allow a maximum use rate of 3.0 lb/acre in 1999, instead of 1.0 lb/acre, as currently required. EPA's decision to grant this request is subject to 40 CFR 154.35 because the agreement to phase out cyanazine usage and ultimately cancel the registrations was the basis for the Agency's conclusion of the Special Review. EPA is granting this request because it is a proper response to special weather conditions, it will not disturb the original cancellation order that phases out cyanazine use by 2002 since there will be no extension of the time for phasing out use, and, because the Agency finds that the balance between risks and benefits of cyanazine will continue to justify allowing use under the terms of the phase-out.

FOR FURTHER INFORMATION CONTACT: By mail: Loan Phan, Office of Pesticide Programs (7508C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 679, Crystal Mall 1B2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8008, phan.loan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Regulatory Background

Cyanazine is the common name for [2-((4-chloro-6-(ethylamino)-s-triazine-2-yl)amino)-2-methylpropionitrile], an herbicide.

A Special Review of cyanazine was initiated in November 1994 (58 FR 60412, November 23, 1994) (FRL–4919–5), based on cancer risk concerns to humans. In August 1995, DuPont voluntarily proposed to amend its cyanazine registrations to effectively phase out all use of cyanazine products by December 31, 2002. DuPont modified the labels of cyanazine formulated end use products released for shipment by the registrant after July 25, 1996, to specify the maximum application rates during the phase out and to inform the public of the existing stocks provisions. After EPA initiated the Special Review of cyanazine, Griffin filed an application to register certain cyanazine pesticide products and subsequently agreed to the same terms and conditions of registration that were proposed by DuPont. In August, 1995, EPA accepted DuPont's proposal, and Griffin's agreement, to amend their cyanazine registrations, including voluntary cancellation effective December 31, 1999. EPA subsequently concluded the Special Review of cyanazine (61 FR 39023, July 25, 1996) (FRL–5385–7) because all registrations were being phased out and ultimately canceled, and because EPA determined that the risks from additional use during the phase-out period did not outweigh the benefits of use during that time.

On September 23, 1998, DuPont requested a change to the terms and conditions of its cyanazine registration (as established in the cancellation order, 61 FR 39023), in order to allow use at a rate of 3.0 lbs/acre during the 1999 growing season. Subsequently, Griffin submitted the same request.

On October 21, 1998, EPA issued a Notice of Receipt of the registrants' requests (63 FR 56178, October 21, 1998) (FRL–6040–2), and also announced the Agency's proposed decision to grant the registrants' request. The Agency explained that it believes that DuPont's request for a change in use rate for the 1999 growing season will not disturb the Agency's conclusion in 61 FR 39023 that risks associated with the voluntary phase out and cancellation are outweighed by its benefits. The Notice also solicited public comment pursuant to 40 CFR 154.35 on its proposed decision.

II. Response to Public Comments

EPA received one set of comments in response to its Notice of Receipt of the registrants' request to amend the terms and conditions of the cyanazine registrations (63 FR 56178), from the Vermont Department of Agriculture ("Vermont").

A. Impact of Agency's Decision on Applicator Training

1. *Comment.* "The publication and distribution of training materials and use recommendations for the 1999 growing season has already begun. The Agency should not permit the distribution of labeling with directions for use that contradicts material provided to commercial applicators and growers through our cooperative training program with the University Extension System and the Natural Resource Conservation Districts."

2. *Response.* EPA recognizes the importance of accurate training and enforcement materials, and is willing to aid any state that needs further clarification on the terms and conditions of this amendment, as well as in dispersing information about the amended terms. Further, the supplemental labels clearly identify the change in the allowable use rate for only the 1999 growing season, and could be added to the training package. If training materials have already been distributed, it may be possible to distribute the supplemental labels as an addendum or through some other communications package. However, because this amendment is increasing, rather than decreasing, the maximum allowable use rate, there will be no additional risk if any growers, such as those in Vermont, do not receive the supplemental labels and continue to use the products at the original 1999 rate of 1 pound per acre.

B. Impact of Agency's Decision on Enforcement Program

Comment. "The determination of appropriate labeled use by the Enforcement Program field staff is complicated by two factors. One is the distinction between original and amended labels as far as rate per acre directions. The second is between labeled rates for sweet corn versus field corn. Having these two discrepancies on labeled products in the field at the same time will make the determination of use in accordance with label directions impossible on a practical basis for the enforcement program."

Response. EPA acknowledges that the supplemental labels may impose difficulties on Vermont's and other states' enforcement efforts. States may choose to address this in various ways, including a restriction under state law against use of cyanazine products labeled with the 3.0 lbs./acre application rate.

However, EPA believes it is likely that not all growers will choose to use the product at the maximum allowable rate and, if they do, they must have in their possession the supplemental label that allows the higher rate. Enforcement officials may require the grower who is found applying cyanazine at the 3.0 lbs/acre rate to produce the supplemental label.

EPA routinely requires re-labeling with supplemental labels as part of its risk management practices and generally, enforcement officials have been able to effectively implement these supplemental labels. However, the Agency is willing to aid any state that needs further clarification of this amendment and is willing to work with enforcement personnel if specific enforcement issues arise.

As for Vermont's second concern, the amended use rate of 3.0 lbs/acre in 1999 applies to all crops previously registered at this use rate on the cyanazine labels, not just sweet corn. If growers find that applying cyanazine at the higher rate is

effective on their crops, then they may use cyanazine at that rate.

C. Impact of Agency's Decision on Applicator Exposure

1. *Comment.* Vermont also asserts that, because "...the original cancellation decision was based in part on concern for applicator exposure,...postponing reductions in the use rate sends a contradictory message that the concern for applicator health and safety may not have been such an important issue in the first place. [Vermont] is fully aware of the argument that cumulative exposure over the entire phase-out period would not be changed. That justification does not serve the objective of encouraging pesticide applicators to change their pesticide use behaviors and crop management practices on a day-to-day basis."

2. *Response.* EPA remains concerned for applicator health and safety. The phase-out required that closed cab application equipment be used by all cyanazine mixer/loaders and applicators beginning in 1998 (61 FR 39023). This requirement remains unchanged, and demonstrates the Agency's commitment to reducing exposure to workers during the phase-out period. Both DuPont and Griffin have ceased production of cyanazine. Therefore, although the allowable maximum application rate will be three times what it would have been under the original terms of the phase-out, no more cyanazine than what was originally anticipated to be applied will actually be applied between 1998 and 2002.

The cyanazine phase-out was intended to reduce exposure to cyanazine and to eliminate cyanazine use by 2002. It was not specifically intended to encourage pesticide applicators to change their pesticide use behaviors and crop management practices on a day-to-day basis. However, this is a valid objective that the State of Vermont can pursue under state law if it chooses.

D. Existing Stocks; Atypical Weather Patterns

1. *Comment.* Although Vermont understands the concerns regarding the level of existing stocks remaining at the end of the cancellation period, it points out that "managing the inventory of cyanazine is not the Agency's responsibility. The issue of existing stocks would be a reasonable consideration if the Agency had any indemnity liability under FIFRA Section 15. As that is not the case with cyanazine, the Agency should not concern itself with the question of existing stocks."

2. *Response.* The Agency disagrees with Vermont that EPA should not concern itself with the question of existing stocks. Existing stocks of pesticides can pose risks which may not be adequately mitigated by hazardous waste regulatory provisions. Hence, the Agency believes that it is proper to consider existing stock concerns when implementing cancellation orders, especially so when the overall risk-benefit balance will not be disturbed.

3. *Comment.* Citing that the amended terms were requested in response to atypical weather patterns during the 1998 growing season (63 FR 56178), Vermont comments that, "managing environmental policy based on the weather is also not the Agency's mandate or responsibility. The weather is far too variable a factor to serve as a valid criteria for setting national environmental policy ..."

4. *Response.* Weather patterns often have significant effects on agriculture and pest control situations which form the basis for national pesticide regulatory policy. The atypical weather patterns of the 1998 growing season are only one factor in EPA's evaluation of the registrants' requested amendment. EPA also takes into consideration the concerns of growers, as well as registrants and applicators, when making decisions. In this case, the Agency received calls from sweet corn growers requesting permission to use cyanazine at the higher rate of 3.0 lbs/acre until the end of the phase-out period and information from the registrants noting that less cyanazine was used than originally anticipated. EPA balanced the growers' and registrants' concerns with the risks posed by allowing the 3.0 lbs/acre use rate to stay in place for one more growing season, and concluded that the overall risk will not be disturbed.

III. References

1. U.S. Environmental Protection Agency. "Notice of Receipt of Request to Amend the Terms and Conditions of Cyanazine Registrations." **Federal Register** Notice (63 FR 56178). October 21, 1998.

2. U.S. Environmental Protection Agency. "Notice of Preliminary Determination to Terminate Special Review; Notice of Receipt of Requests for Voluntary Cancellation." **Federal Register** Notice (61 FR 8185). March 1, 1996.

3. U.S. Environmental Protection Agency. "Cyanazine; Notice of Final Determination to Terminate Special Review of Cyanazine; Notice of Voluntary Cancellation and Cancellation Order of Cyanazine Product Registrations." **Federal Register** Notice (61 FR 39023). July 25, 1996.

4. Communications between DuPont Agricultural Products and USEPA. Confidential Business Information.

5. Communications between Griffin Corporation and USEPA. Confidential Business Information.

List of Subjects

Environmental protection.

Dated: January 15, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–1476 Filed 1–21–99; 8:45 am]
BILLING CODE 0560–60–F

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

Farm Credit Administration Board; Amendment to Sunshine Act Meeting.

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 11, 1999 (64 FR 1623) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 14, 1999. This notice is to amend the agenda by adding an item for the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for January 14, 1999, is amended by adding an item to the open session to read as follows:

OPEN SESSION

B. *New Business*

2. *Policy Statement*

—Temporary Relief for Pork Producers

Date: January 19, 1999.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–1587 Filed 1–20–99; 2:52 pm]
BILLING CODE 6705–01–P

VOL 64 ISS 14 JA 22 1999 UMI

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 98–102, FCC 98–335]

Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Section 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 548(g), requires the Commission to report annually to Congress on the status of competition in markets for the delivery of video programming. On December 23, 1998, the Commission released its fifth annual report ("*1998 Report*"). The *1998 Report* contains data and information that summarize the status of competition in markets for the delivery of video programming and updates the Commission's prior reports. The *1998 Report* is based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a *Notice of Inquiry* in this docket.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman or Nancy Stevenson, Cable Services Bureau (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *1998 Report* in CS Docket No. 98–102, FCC 98–335, adopted December 17, 1998, and released December 23, 1998. The complete text of the *1998 Report* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service ("ITS, Inc."), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. In addition, the complete text of the *1998 Report* is available on the Internet at http://www.fcc.gov/Bureaus/Cable/WWW/csrptpg.html.

Synopsis of the 1998 Report

1. The Commission's *1998 Report* to Congress provides information about the cable television industry and other multichannel video programming distributors ("MVPDs"), including direct broadcast satellite ("DBS") service, home satellite dishes ("HSDs"), multipoint distribution service ("MMDS"), local multipoint distribution service ("LMDS"), satellite master antenna television ("SMATV") systems, and broadcast television service. The Commission also considers several other existing and potential distributors of and distribution technologies for video programming, including the Internet, home video sales and rentals, local exchange telephone carriers ("LECs"), and electric and gas utilities. The report includes as an attachment the results of an inquiry undertaken by the Cable Services Bureau focusing on cable television programming costs and related issues.

2. The Commission further examines market structure and issues affecting competition, such as horizontal concentration, vertical integration and technical advances. The 1998 report addresses competitors serving multiple dwelling unit ("MDU") buildings and evidence of competitive responses by industry players that are beginning to face competition from other MVPDs.

3. In the *1998 Report*, the Commission concludes that competitive alternatives and consumer choices are still developing but that cable television continues to be the primary delivery technology for the distribution of multichannel video programming and continues to occupy a dominant position in the MVPD marketplace. As of June 1998, 85% of all MVPD subscribers received video programming service from local franchised cable operators compared to 87% a year earlier. There has been an increase in the total number of subscribers to noncable MVPDs, most of which is attributable to the continued growth of DBS. However, there have been declines in the number of subscribers and market shares of MVPDs using other distribution technologies. Significant competition from local telephone companies has not generally developed even though the Telecommunications Act of 1996 ("1996 Act") removed some barriers to LEC entry into the video marketplace.

4. *Key Findings*:

• *Industry Growth:* A total of 76.6 million households subscribed to multichannel video programming services as of June 1998, up 4.1% over the 73.6 million households subscribing as of June 1997. This subscriber growth accompanied a 2.3% increase in multichannel video programming's penetration of television households from 75.9% to 78.2% in June 1998. Noncable's share of total MVPD subscribers continued to grow, constituting 15% of all multichannel video subscribers as of June 1998, up from 13% over the June 1997 figure reported last year. The cable television industry has continued to grow in terms of subscribership (up to 65.4 million subscribers as of June 1998, a 2% increase from the 64.2 million cable subscribers in June 1997). The total number of noncable MVPD subscribers grew from 9.5 million as of June 1997 to 11.2 million as of June 1998, an increase of over 18% since last year's report.

• *Convergence of Cable and Telephone Service:* The 1996 Act repealed a statutory prohibition against an entity holding attributable interests in a cable system and a LEC with overlapping service areas. It was expected that local exchange telephone carriers would begin to compete in video delivery markets, and cable television operators would begin providing local telephone exchange service. However, telephone entry into video markets has been slow to develop. Congress developed the Open Video System ("OVS") framework as another means to encourage telephone company entry into the video marketplace. Thus far, however, few telephone companies have sought certification to provide video through OVS.

• *Promotion of Entry and Competition:* The Commission has continued to take steps to eliminate obstacles to competition, including the adoption and enforcement of rules that prohibit governmental and private restrictions that unreasonably interfere with a consumer's right to install the dishes and other antennas to receive programming services from (direct-to-home) DBS, wireless cable, and television broadcast; establish procedures to use internal wiring installed in an MDU building by the incumbent provider, facilitating owners' and residents' choice among providers; and increase the amount of spectrum available for wireless uses and eliminate restrictions on use, for the benefit of wireless providers. In addition, the Commission recently strengthened its enforcement procedures for the program access rules, which are designed to ensure that alternative MVPDs can acquire, on non-discriminatory terms, vertically-integrated satellite delivered programming.

• *Horizontal Concentration:* Nationally, concentration among the top MVPDs has declined since last year. As a result of acquisitions and trades, cable MSOs have continued to increase the extent to which their systems form regional clusters. The number of clusters of systems serving at least 100,000 subscribers is currently 117, down from the 139 reported last year. Although the number of clusters declined, the trend for clusters to increase in subscribership or size appears to be continuing, and these

clustered systems now account for service to approximately 52% of the nation's cable subscribers.

• *Vertical Integration:* The number of satellite-delivered programming networks has increased from 172 in 1997 to 245 in 1998. Vertical integration of national programming services between cable operators and programmers, measured in terms of the total number services in operation, declined from last year's total of 44% to just 39% this year, the continuation of a four year trend. However, in 1998, cable MSOs, either individually or collectively, owned 50% or more of 78 national programming services. A year earlier, cable MSOs owned 50% or more of 50 national networks.

• *Technological advances:* Technological advances are occurring that will permit MVPDs to increase both quantity of service (i.e., an increased number of channels using the same amount of bandwidth or spectrum space) and types of offerings (e.g., interactive services). In particular, cable operators and other MVPDs continue to develop and deploy advanced technologies, especially digital compression, in order to deliver additional video options and other services (e.g., data access, telephony) to their customers. To access these wide ranging services, consumers use "navigation devices." In the last year, the Commission adopted rules and policies to implement Section 629 of the Communications Act, which is intended to ensure commercial availability of these navigation devices.

• *Programming costs:* The report includes as an attachment the results of an inquiry undertaken by the Cable Services Bureau focusing on cable television programming costs and related issues. This inquiry was commenced to follow-up on issues raised in last year's annual competition report and involved a voluntary questionnaire distributed to six multiple system operators. The Bureau found that, other than inflation adjustments, programming cost increases were the most significant factor contributing to rate increases. The rate of increase in programming costs between July 1996 and July 1997 was 20.2%. Programming costs for the responding MSOs (for regulated services) were equal to approximately 24% of regulated revenues for that period. On average, about one-quarter of an operator's regulated revenues was used to pay for programming. Sports programming costs (for the period surveyed) did not increase at a disproportionally higher rate than other types of programming and played a fairly minor role (accounting for only 5.3%) in overall rate increases. The inquiry results do not reflect license fee increases owing to sports distribution rights agreements announced in late 1997 and 1998.

Ordering Clauses

5. This *1998 Report* is issued pursuant to authority contained in sections 4(i), 4(j), 403 and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403 and 548(g).

6. *It is ordered* that the Office of Legislative and Intergovernmental Affairs shall send copies of this *1998 Report* to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

7. *It is further ordered* that the proceeding in CS Docket No. 98–102 *Is terminated.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1388 Filed 1–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, FL, 33178–2193, Vessel: PARADISE

Cunard Line Limited (d/b/a/ Seabourn Cruise Line) and Seabourn Maritime Management A/S, 55 Francisco Street, Suite 710, San Francisco, CA 94133, Vessels: SEABOURN LEGEND, SEABOURN PRIDE AND SEABOURN SPIRIT

Peter Deilmann Reederei GmbH & Co., and Schiffahrtsgesellschaft MS "DEUTSCHLAND" GmbH & Co., and MS "DEUTSCHLAND" Verwaltungsgesellschaft Gmbh, Am Hafensteig 17–19, D–23730 Neustadt in Holstein, Germany, Vessel: DEUTSCHLAND

Compagnie des Iles du Ponant and Compagnie des Iles du Levant, 60 Boulevard du Marechal Juin, 44100 Nantes, France, Vessel: LE LEVANT

Imperial Majesty Cruise Line L.L.C., Ulysses Cruises, Inc. (d/b/a Premier Cruises), International Shipping Partners, Inc., Oceanbreeze Ltd Inc. and Premier Operations Ltd., 871 W. Oakland Park Blvd., Fort Lauderdale, FL 33311, Vessel: OCEANBREEZE

Premier Operations Ltd., Premier Cruise Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises) and International Shipping Partners, Inc., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: ISLANDBREEZE

Premier Operations Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), International Shipping Partners, Inc. and Premier Cruise Lines, Ltd., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: OCEANIC

Premier Operations Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), International Shipping Partners, Inc. and Seabreeze Ltd. Inc., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: SEABREEZE I

Riverbarge Excursion Lines, Inc., 201 Opelousas Avenue, New Orleans, LA 70114, Vessel: RIVER EXPLORER

Silversea Cruises, Ltd. and Silver Cloud Shipping Company S.A., 110 East Broward Blvd., Fort Lauderdale, FL 33301, Vessels: SILVER CLOUD and SILVER WIND

Premier Operations Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), and International Shipping Partners, Inc., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: REMBRANDT

Princess Cruises, Inc., Princess Cruise Lines, Inc. and The Peninsular and Oriental Steam Navigation Company and CP Shipping Corporation, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067–4189, Vessel: SEA PRINCESS

Royal Caribbean Cruises Ltd., Airtours Plc, Rabbit Leasing Limited and Capital Bank Leasing 6 Limited, 1050 Caribbean Way, Miami, FL 33132–2096, Vessel: SONG OF AMERICA

Dated: January 19, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1433 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Compagnie des Iles du Ponant (d/b/a Classical Cruises), 60 Boulevard du Marechal Juin, 44100 Nantes, France, Vessel: LE LEVANT

Cunard Line Limited (d/b/a Seabourn Cruise Line), 55 Francisco Street, Suite 710, San Francisco, CA 94133, Vessels: SEABOURN LEGEND, SEABOURN PRIDE and SEABOURN SPIRIT

Holland America Line-Westours Inc. (d/b/a Holland America Line) and Holland America Line N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: VOLENDAM and ZAANDAM

Cunard Line Limited (d/b/a Cunard), 6100 Blue Lagoon Drive, Suite 400, Miami, FL, 33126, Vessels: QUEEN ELIZABETH 2, ROYAL VIKING SUN, SEA GODDESS I, SEA GODDESS II and VISTAFJORD

Peter Deilmann Reederei GmbH & Co., and Schiffahrtsgesellschaft MS "DEUTSCHLAND" GmbH & Co., Am Hafensteig 17–19, D–23730 Neustadt in Holstein, Germany, Vessel: DEUTSCHLAND

Premier Cruises Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), and Premier Operations Ltd., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: ISLANDBREEZE

Premier Cruises Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), Seabreeze Ltd Inc. and Premier Operations Ltd., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: SEABREEZE I

Radisson Seven Seas Cruises, Inc., 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334, Vessel: SEVEN SEAS NAVIGATOR

Premier Cruises Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), Premier Cruises Lines, Ltd. and Premier Operations Ltd., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: OCEANIC

Princess Cruises, Inc., Princess Cruise Lines, Inc. and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067, Vessel: SEA PRINCESS

Silversea Cruises, Ltd. and Silver Cloud Shipping Company S.A., 110 East Broward Blvd., Fort Lauderdale, FL 33301, Vessel: SILVER CLOUD and SILVER WIND

Dated: January 19, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1434 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Certified Transportation Group, 195 Oval Drive, Islandia, NY 11722, Officers: William McNamara, President, Joseph McNamara, Vice President

Dated: January 15, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc 99–1391 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Safcomar, Inc., One Exchange Place, Suite 402, Jersey City, NJ 07302, Officers: Hugo Roppel, President, Christian Pochon, Vice President

Conex Global Logistics Services, Inc., 550 S. Alameda Street, Compton, CA 90221, Officers: Michael W. Keller, President, Shigehiro Uchida, Exec. Vice President

FTS International, Inc., 145–38A 157th Street, Jamaica, NY 11413, *Officer:* Shlomo Greenberg, President

Dated: January 15, 1999.

Bryant L. VanBrakle

Secretary.

[FR Doc. 99–1390 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 99–01]

Direct Container Line Inc. Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984

Order of Investigation and Hearing

Respondent Direct Container Line Inc. ("DCL") is a tariffed and bonded non-vessel-operating common carrier ("NVOCC") based in Carson, California. DCL holds out to furnish transportation services worldwide, including NVOCC services, *inter alia*, from ports and points in the United States to the Far East. According to DCL's webpage, DCL operates 13 offices and 25 receiving terminals in the United States and Canada, with branches or subsidiaries in 86 countries worldwide. DCL claims to have over 500 employees, with over 350 based in the United States.

Through interviews and on-site examination of shipping records maintained in DCL's offices in Carson, CA and Carteret, NJ, an investigation was commenced into the possible involvement of DCL in equipment substitution malpractices involving OOCL and Maersk Line on consolidated shipments to the Far East. In all, records were reviewed of nearly one hundred shipments in which provisions of the Transpacific Westbound Rate Agreement ("TWRA") equipment substitution rules were invoked for the purpose of providing DCL with 45′ containers while charging DCL those service contract rates applicable to 40′ equipment.

In practice, it appears that DCL met the requirements of TWRA's equipment substitution rules by misdeclaring the cargo measurements at 65 CBM or less, equivalent to the ordinary capacity utilization of a 40 foot high cube container under TWRA rules. It further appears that cargo weights also were misdeclared on the master bill of lading so as to understate the actual weights to a figure less than 21 metric tons (21,000KG), the maximum weight

permitted under TWRA Rule 2(G)(5).[1] The container manifest furnished by DCL to the ocean common carrier on consolidated shipments reflected measurements and weights consistent with those shown on the ocean common carrier's master bill of lading. DCL's charges to its own NVOCC customers, meanwhile, were calculated on the basis of the higher measurements and weights shown only on DCL's internal manifests. The house bills of lading issued by DCL to its shippers likewise reflect DCL's reliance upon the higher measurements and weights.

It is well-established law that a carrier is charged with a responsibility of reasonably diligent inquiry and exercise of care to ensure its compliance with the shipping statutes. *Prince Line* v. *American Paper Exports Inc.*, 55 F.2d 1053 (3d Cir., 1932). In the case of equipment substitution violations, it appears that DCL affirmatively sought the application of the equipment substitution rule to its own freight rate advantage, and did so without regard for the ocean common carrier's equipment substitution rule or the implication of DCL's misdeclaration of shipment weights and measurements.

In the course of its investigation, BOE sought also to examine DCL's rating of cargoes under the provisions of its NVOCC tariff. In examining copies of rated house bills of lading for these same shipments, it appears that DCL has in many instances applied LCL rates which are higher than those on file in DCL's tariff. Pertinent examples are rates for dry cell batteries, machines NOS and textiles, in which the rates charged by DCL exceed the tariff by varying amounts.[2] DCL's actions do not appear to meet the "reasonable diligence" standard required of carriers in satisfying their obligations under the statute.[3] *Rates From Japan to United States*, 2 USMC 426, 434 (1940); *Rates from United States to Philippine Islands*, 2 USMC 535, 542 (1941).

Section 10(a)(1) of the 1984 Act, 46 U.S.C. app. § 1709(a)(1), prohibits any person by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 10 (b)(1) of the 1984 Act, 46 U.S.C. app. § 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations.[4] Section 13 and section 23, 46 U.S.C. app. § 1721, further provide that a common carrier's tariffs may be suspended for violations of sections 10(a)(1) or 10(b)(1) for a period not to exceed one year.

Now therefore, it is ordered, That pursuant to sections 10, 11, 13 and 23 of the 1984 Act, 46 U.S.C. app §§ 1709, 1710, 1712 and 1721, an investigation is instituted to determine:

(1) whether Direct Container Line Inc. Violated Section 10(b)(1) of the 1984 Act by obtaining or attempting obtain transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means;

(2) whether Direct Container Line Inc. violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges shown in its tariff.

(3) whether, in the event violations of sections 10 (a)(1) and 10(b)(1) of the 1984 Act are found, civil penalties should be assessed against Direct Container line and, if so, the amount of penalties to be assessed;

(4) whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Direct Container Line should be suspended;

(5) whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commissions Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Direct Container Line Inc. is designated a Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notices of the time and place of hear or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law judge shall be issued by January 18, 2000 and the final

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[1] Rule 2(G)(5) provides, *inter alia:*

Carrier may, at its option, substitute a type of equipment other than that which was booked or ordered by the shipper or its agent, subject to the following conditions:

* * * * *

2. A 45' container may be substituted for a 40' container, subject to a maximum of 65 CBM and 21KT, at a rate and charges applicable to a 40' container.

When cargo is loaded in excess of the above quantities, the applicable revenue ton or per container rate for a 45' container will apply.

[2] The range of variance in rates appears substantial. On one shipment to Hong Kong, DCL's rate for dry cell batteries was $55 per CBM, while its tariff rate was $50/CBM; for textiles (synthetic fabrics), the rate charged by DCL was $100 per CBM (DCL's tariff rate was $70/CBM); for laundry machines DCL collected $95 per CBM (versus $51/CBM under DCL's tariff).

[3] In 1994, DCL entered into a compromise agreement with the Commission, resolving allegations of violations on section 10(b)(1) for failure to assess the rates set forth in its tariff with respect to shipments in the South American Trades. As part of its agreement, DCL represented that it had implemented measures to eliminate such practices by DCL.

[4] These penalties are increased 10 percent for any violations occurring after November 7, 1996. *See Inflation Adjustment of Civil Penalties*, 61 FR 52704 (October 8, 1996).

decision of the Commission shall be issued by May 17, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1389 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 8, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. The Blanchard Family Group, Russellville, Arkansas; to acquire voting shares of Clement Bancshares, Inc., Plainview, Arkansas, and thereby indirectly acquire voting shares of First State Bank, Plainview, Arkansas.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bert D. Backard, Independence, Kansas; to acquire voting shares of First Howard Bankshares, Inc., Cherryvale, Kansas, and thereby indirectly acquire voting shares of First National Bank of Howard, Howard, Kansas, First Security Bankshares, Inc., Topeka, Kansas, I and B, Inc., Cherryvale, Kansas, and Peoples State Bank, Cherryvale, Kansas.

Board of Governors of the Federal Reserve System, January 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1492 Filed 1–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. M&T Bank Corporation and Olympia Financial Corporation, both of Buffalo, New York; to acquire 100 percent of the voting shares of FNB Rochester Corp., Rochester, New York, and thereby indirectly acquire First National Bank of Rochester, Rochester, New York.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Farmers State Bancshares, Inc., Bangor, Wisconsin; to become a bank holding company by acquiring 100 of the voting shares of Farmers State Bank, Bangor, Wisconsin.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Umpqua Holdings Corporation, Roseburg, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of South Umpgua Bank, Roseburg, Oregon.

Board of Governors of the Federal Reserve System, January 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1420 Filed 1–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Coast Community Bancshares, Inc., Biloxi, Mississippi; to retain 100 percent of the voting shares of Coast Community Bank, Biloxi, Mississippi.

2. Community Bancshares of Mississippi, Inc., Forest, Mississippi; to acquire 100 percent of the voting shares

of Coast Community Bancshares, Inc., Biloxi, Mississippi, and thereby indirectly acquire Coast Community Bank, Biloxi, Mississippi.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Woodforest Bancshares, Inc., Houston, Texas, and Sun Belt Bancshares Corporation, Wilmington, Delaware; to acquire 100 percent of the voting shares of HB Financial Corporation, Highlands, Texas, HB Financial Corporation of Delaware, Wilmington Delaware, and Highlands State Bank, Highlands, Texas, through the merger of Woodforest Bancshares and HB Financial Corporation, Sun Belt Bancshares Corporation, and HB Financial Corporation of Delaware, and Woodforest National Bank, Houston, Texas, and Highlands Bank. These mergers will occur simultaneously.

Board of Governors of the Federal Reserve System, January 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1493 Filed 1–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Wrightsville Bancshares, Inc., Wrightsville, Georgia; to acquire WBS Financial Services, Inc., Wrightsville, Georgia, and thereby engage in insurance agency activities, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1421 Filed 1–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 27, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1549 Filed 1–20–99; 10:47 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Bioethics Advisory Commission (NBAC) Meeting

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) research involving human embryonic stem cells and (2) the use of human biological materials in research. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on February 2, 1999 from 11:30 am to 12 noon.

Dates/times	Location
February 2, 1999, 8:00 am–5:30 pm.	Whig Hall-Senate Chamber, Princeton University, Princeton, New Jersey 08544.
February 3, 1999, 8:00 am–12 noon.	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at

bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: January 15, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–1416 Filed 1–21–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital Statistics (NCVHS).

Times and Dates: 9:00 a.m.–5:30 p.m., February 3, 1999; 9:00 a.m.–5:00 p.m., February 4, 1999.

Place: Conference Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington D.C. 20201.

Status: Open.

Purpose: The meeting will focus on a variety of health data policy and privacy issues. Department officials will update the Committee on recent activities of the HHS Data Council and the status of HHS activities in implementing the administrative simplification provisions of P.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Committee also will be briefed on developments in the national health information infrastructure in Australia and an overview of public health surveillance in the U.S. Panel discussions are planned on data requirements for Medicare risk adjusted payments, and standardizing surveillance data for immunizations. In addition, Subcommittee breakout sessions are planned. All topics are tentative and subject to change. Please check the NCVHS website, where a detailed agenda will be posted prior to the meeting.

Contact Person For More Information: Substantive information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: January 14, 1999.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 99–1385 Filed 1–21–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

The Role of Positive and Negative Emotion in Promoting Hearing Conservation Behaviors Among Coal Miners—New—The mission of the National Institute of Occupational Safety and Health (NIOSH) is to promote "safety and health at work for all people through research and prevention." NIOSH investigates and identifies occupational safety and health hazards and conducts a variety of activities, including educational programs with workers, to help prevent work-related illness and injury.

One of the most widespread, but often overlooked, occupational hazards is noise. As a result, hearing loss is the most common occupational diseases in the United States today. More than 30 million workers are exposed to hazardous noise levels.

The risk of hearing loss is particularly high in certain occupations. Research shows that more than 90 percent of coal miners will experience moderate to significant hearing loss by the time they reach retirement. This level of hearing loss has a number of negative implications for both the affected individual and others: (1) impaired communication with family members, friends, and coworkers can result in social isolation; (2) unrelenting tinnitus (ringing in the ears) can significantly lower one's quality of life; (3) a diminished ability to monitor the work environment (including warning signals, etc.) increases the risk of accidents and further injury at the workplace; and finally, (4) there are economic costs that result from workers compensation and lower productivity.

NIOSH believes that there are two broad strategies for reducing the risk of hearing loss. First, wherever possible, engineering controls have to be implemented at the source of the hazardous noise. Second, workers have to be educated about hazardous levels of noise and what they can do to prevent hearing loss. This study falls into the latter category.

The study is required because past efforts at educating coal miners about hearing loss have had only mixed success. Hearing loss occurs without pain or obvious physical abnormalities, so it has been difficult to create a sense of urgency about this problem among workers. NIOSH has to identify new and more effective ways of promoting hearing conservation behaviors.

In this study, NIOSH proposes working with the United Mine Workers of America, and experts in health communication, to test the effectiveness of several innovative approaches to

communicating risk and promoting safer behaviors. Different messages will be sent to five different groups of coal miners. All participants will receive some beneficial information. The researchers will follow up with these groups at two different points in time to assess the relative effectiveness of the messages.

The central purpose of this study is to promote hearing conservation among coal miners. However, NIOSH believes that the results of this study will help in similar efforts with other worker populations. The total cost to respondents is $0.00.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Coal Miners in Pretest	80	1	.5	40
Coal Miners in Study	300	2	.5	300
Total				340

Evaluation of Public Care Providers' Training, Screening, and Referral Practices for Pregnancy-Related Violence—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). Two questionnaires have been designed to collect information for the project entitled: "Evaluation of Public Care Providers' Training, Screening, and Referral Practices for Pregnancy-Related Violence." The purpose of the project is to develop and implement an evaluation to provide the Centers for Disease Control and Prevention (CDC) with the capacity to investigate the role of clinical guidelines in detecting and intervening in intimate violence in publicly-funded family planning settings. This evaluation will encompass: (1) the administrative level at which guidelines operate; (2) the contents of guidelines; (3) the format of guidelines; (4) the use of guidelines; and (5) barriers to the adoption of guidelines for programs that do not have any in place. The information gathered will be analyzed in conjunction with existing data from other sources. The information obtained from the evaluation will be used by CDC to develop recommendations for guidelines to address screening and referral practices and provider training.

Healthy People 2000 calls for a reduction of physical, sexual and emotional abuse towards women, and for the use of protocols in emergency room settings to identify and treat victims of violence. As the nation's prevention agency, CDC has been charged with finding ways to prevent violence against women. Little is known about how widely guidelines have been instituted in publicly-funded family planning settings. This evaluation will provide the first clear understanding of the barriers to implementing and using appropriate protocols. The total cost to respondents participating in the evaluation is approximately $1,880.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs)
Clinicians & Clinic Administrators	1200	1	.25	300

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1431 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #98045, meeting.

Times and Dates: 8 p.m.–10 p.m., February 21, 1999 (Open). 8 a.m.–6 p.m., February 22, 1999 (Closed). 8 a.m.–5 p.m., February 23, 1999 (Closed).

Place: Commonwealth Hilton Hotel, I–75 and Turfway Road, Florence, Kentucky 45275.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title, 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #98045.

Contact person for more information: Bernadine Kuchinski, Occupational Safety and Health Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, N.E., Atlanta, Georgia 30333. Telephone 404/639–3342, e-mail bbk1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 14, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, CDC.

[FR Doc. 99–1469 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 9 a.m.–5:45 p.m., February 17, 1999, 8 a.m.–3:45 p.m., February 18, 1999.

Place: Atlanta Marriott North Central, 2000 Century Boulevard, N.E., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The agenda will include an update from the Food and Drug Administration; update from the National Immunization Program; update from the Vaccine Injury Compensation Program; update from the National Vaccine Program; update from the pneumococcal working group; report by the polio working group on transition to an all Inactivated Poliovirus schedule; prevention and control of influenza recommendation; world and U.S. influenza surveillance data for the 1999–2000 season; influenza-related morbidity in young children; 1999 influenza vaccine guidelines; prevention of varicella; varicella use in children with HIV/AIDS; update on varicella safety and efficacy; post exposure use of varicella vaccine; ACIP recommendations for vaccination of adults; ACIP recommendations for vaccine requirements for day care and school entry; update on the status of the hepatitis B recommendation; revised recommendation for vaccination of children against hepatitis A; revised recommendation for Lyme disease vaccine; use of rotavirus vaccine in premature children; update on general principles of VFC; consolidating VFC resolutions for pneumococcal, hepatitis A and hepatitis B vaccines; draft recommendation for algorithms for immunization registries; electronic updating of ACIP reports and recommendations; and the anti-vaccine movement in the U.S.A. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Committee Management Specialist, CDC, 1600 Clifton Road, NE, m/s D50, Atlanta, Georgia 30333. Telephone 404/639–7250.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1498 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee.

Times and Dates: 1 p.m.–5 p.m., February 4, 1999; 7 p.m.–9 p.m., February 4, 1999; 8:30 a.m.–12 noon, February 5, 1999.

Place: Hilton Savannah DeSoto, 15 East Liberty Street, Savannah, Georgia 31412–8207. Telephone 912/232–9000, fax 912/232–6018.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) as given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and ATSDR on updates regarding the progress of current studies. On February 4, at 7 p.m., the meeting will continue with a presentation by CDC, and/or its contractor, on the results of the Source Term Project of the Savannah River Site Environmental Dose Reconstruction and to allow more time for public input and comment.

All agenda items are subject to change as priorities dictate.

Due to administrative delays in the program, this notice was not published fifteen (15) days in advance of the meeting.

Contact Persons for Additional Information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724. Telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office has been delegated

the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: January 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1447 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m. February 11, 1999. 8 a.m.–5:30 p.m. February 12, 1999.

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, VA 22314.

Status: Open 8 a.m.–8:30 a.m. February 11, 1999. Closed 8:30 a.m.–5:30 p.m. February 11, 1999. Closed 8 a.m.–5:30 p.m. February 12, 1999.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8–8:30 a.m. on February 11, 1999, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant application. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, DCD, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 14, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services, Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1468 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Form OCSE–396A, Child Support Enforcement Program Financial Report and Form OCSE–34A, Child Support Enforcement Program Quarterly Report of Collections.

OMB No. 0970–0181.

Description: These forms are used by States to report the expenditures and the collections of child support payments made under Title IV–D of the Social Security Act during each fiscal quarter. These forms also report the semiannual budget estimates for the program and the portion of the collected payments to be distributed to the custodial parent or to the Federal or State governments. The information is used to calculate quarterly grant awards, annual incentive payments to the States, annual "hold harmless" payments and is published in an Annual Report to Congress. Respondents are limited to the designated child support enforcement agency in each State.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
396A	54	4	8	1,728
34A	54	4	8	1,728

Estimated Total Annual Burden Hours: 3,456.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 15, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–1459 Filed 1–21–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0038]

Agency Emergency Processing Under OMB Review; Survey of Biomedical Equipment Manufacturers for Year 2000-Compliant Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a survey of manufacturers of Year 2000-vulnerable biomedical devices in order to obtain a list of their products that have been identified as being Year 2000-compliant. The list of the Year 2000-compliant biomedical devices will be made available to the public via the Federal Year 2000 Biomedical Clearinghouse on the World Wide Web. FDA is requesting OMB approval within 9 days of receipt of this submission.

DATES: Submit written comments on the collection of information by February 12, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. The information is needed immediately to allow health care facilities and others to assess their vulnerability to Year 2000 problems and to take corrective actions, if necessary, well in advance of January 1, 2000. The existence of a Year 2000 date problem in biomedical equipment, which includes medical devices and scientific laboratory equipment, could pose potentially serious health and safety consequences. It is vital that there be no Year 2000 failures of biomedical equipment. The use of normal clearance procedures would be likely to result in the prevention or disruption of this collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Biomedical Equipment Manufacturers for Year 2000-Compliant Products

Manufacturers of biomedical equipment that may be Year 2000-vulnerable will be asked to provide a list of their products that have been evaluated and found not to be impacted by the Year 2000 date issue. The information requested will include the specific manufacturer, product type, model and specific serial or version number (when applicable) of each product evaluated by the manufacturer and determined to be compliant. The request will also ask for a single point of contact at the manufacturer to discuss product information, including information on testing protocols.

The manufacturer will be able to provide the information directly to a government web site via the Internet or provide electronic or paper copy of the information to FDA for inclusion in the web site data base. Government agencies, as well as health care facilities and the general public, will have access to the web site and will use the information to assess currently owned equipment as well as to evaluate potential acquisitions. The posting of information on compliant products is designed to provide health care facilities with a positive statement as to the status of compliant products.

Respondents: Manufacturers of Year 2000-vulnerable medical devices and scientific laboratory products.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3,500		1	3,500	12	42,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA mailing lists as well as experience with the data base on noncompliant products were used to estimate the number of manufacturers who would be subject to this collection. Based on experience with submissions to the noncompliant product data base as well as the estimated number of Year 2000-vulnerable biomedical products, FDA estimates that it will take manufacturers an average of 12 hours to collect, prepare, and submit the requested information. These estimates include allowance for variance in the number of compliant products to be reported by a manufacturer.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1507 Filed 1–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: December 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABIR, FEREYDOON KINGS POINT, NY	01/20/1999
AL-CARE, C S W, P C ALBANY, NY	01/20/1999
BAYLISS, COLIN E DOVER, OH	01/20/1999
BOONE, JENNIFER DAVISBORO, GA	01/20/1999
BURKE-BAILEY, SARAH FLINT, MI	01/20/1999
CANASI, MANUEL D MIAMI, FL	01/20/1999
CARLETON, TIMOTHY B HUDSON, NY	01/20/1999
DARMARAJAH, MUTTAIYA PANAMA CITY, FL	01/20/1999
DIXON, ROBIN COLLEGE PARK, GA	01/20/1999
DUDLEY, TAWANDA DENEAN MAYSVILLE, NC	01/20/1999
FULBRIGHT, PAUL JR WILLIAMSTON, SC	01/20/1999
GARRETT, JAMES A AVERILL PARK, NY	01/20/1999
HALL, EDWIN P JR DECATUR, GA	01/20/1999
JAMES, ROBERT E SPRINGFIELD, NJ	01/20/1999
KABAT, DOUGLAS S NISKAYUNA, NY	01/20/1999
LEWIS, RICKIE DECATUR, GA	01/20/1999
LORING, W BRUCE CATSKILL, NY	01/20/1999
MARSHALL, GARY LEWISBURG, PA	01/20/1999
MARTINEZ, ROXANNA SANDERSON, FL	01/20/1999
MATHIS, ALBERT F COLLEGE PARK, GA	01/20/1999
MAYNARD, PATRICIA ATLANTA, GA	01/20/1999
MCGRATH, MARY ANN CLAVERICK, NY	01/20/1999
MEREDITH, ELISA B HUDSON, NY	01/20/1999
MEREDITH, WINDY JO SIOUX CITY, IA	01/20/1999
NHML, INC NEW PHILADELPHIA, OH	01/20/1999
ORLANDO FAMILY PRACTICE ORLANDO, FL	01/20/1999
PINKERTON, RAYMOND H WESTERVILLE, OH	01/20/1999
RECOVERY COUNSELING ASSOC, INC HUDSON, NY	01/20/1999
SAN JUAN, RAFAEL RIVERDALE, NY	01/20/1999
SIMMONS, JENNIFER GLEN ALLEN, VA	01/20/1999
SOLOMON, ROBERT L DECATUR, GA	01/20/1999
STEFFEN, APRIL PHOENIX, AZ	01/20/1999
THOMAS, MARVIN D CLEVES, OH	01/20/1999
USA MEDICAL SYSTEMS, INC CINCINNATI, OH	01/20/1999
VACCA, ALBERTO H SANDERSON, FL	01/20/1999
WOLFE, JANE QUEENS VILLAGE, NY	01/20/1999
PATIENT ABUSE/NEGLECT CONVICTIONS	
ASAY, JAMI GLENDIVE, MT	01/20/1999
BAINES, DAISY L MULLINS, SC	01/20/1999
BARLOW, CARLO PEDRO HARTSVILLE, SC	01/20/1999
BRAGA, DJALMA COLUMBIA, SC	01/20/1999
CHILDS, KAREN I COLUMBUS, OH	01/20/1999
FRIERSON, LATONDRA QUINISE MANNING, SC	01/20/1999
FRIX, MATTHEW ERIC FORT GIBSON, OK	01/20/1999
GOTTO, KATHLEEN C CASTANA, IA	01/20/1999
GRAY, JEANETTE C KINGSTREE, SC	01/20/1999
IVORY, GREGORY N CHARLESTON, SC	01/20/1999
JACKSON, CYNTHIA DIANE TACOMA, WA	01/20/1999
JOHNSON, ROCHELLE ATLANTA, GA	01/20/1999
JOHNSON, GARNETTA AKRON, OH	01/20/1999
KOUSSANDIANOS, PAUL G ROCKY RIVER, OH	01/20/1999
PRESTON, TONYA D FLORENCE, SC	01/20/1999
PRYOR, JOHN H CLEVELAND, OH	01/20/1999
RICHMOND, CHARLENE R SALEM, OH	01/20/1999
ROBERTS, KATIE L DARLINGTON, SC	01/20/1999
ROTHFUSS, MATTHEW MUMFORD, NY	01/20/1999
STEARNS, MICHAEL Q VIENNA, VA	01/20/1999
CONVICTION FOR HEALTH CARE FRAUD	
ELLIS-WHITING, MARGUEARITE PORT GIBSON, MS	01/20/1999
VIDA, ALAIN MARTIN PACIFIC PALISADES, CA	01/20/1999
CONTROLLED SUBSTANCE CONVICTIONS	
KELLER, RODNEY A TIFFIN, OH	01/20/1999
SANO, DAVID P ALLIANCE, OH	01/20/1999
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
AHERN, EDMUND FRANCIS JR SHREWSBURY, MA	01/20/1999
AKIN-FERGUSON, CAROL KNOXVILLE, IL	01/20/1999
ALLISON, BETH SANTA ROSA, CA	01/20/1999
ANDERSON, JOHN POWELL WAYNESBORO, VA	01/20/1999
ANDROES, JACOB JR ESPANOLA, WA	01/20/1999
ASLAM, KHALID S ISLAMABAD, PAKISTAN	01/20/1999
BARTSCHI, LARRY ROGER CHICO, CA	01/20/1999
BENNETT, GINA LIN GLENN ALLEN, MS	01/20/1999
BILLINGS, LORI D NEW ALBANY, MS	01/20/1999
BLACKMON, LOLA MAE JACKSON, MS	01/20/1999
BLUNT, LINDA C GRANITE CITY, IL	01/20/1999
BOURLAND, GINA CARBONDALE, IL	01/20/1999
BOYER, CATHY SPRINGFIELD, IL	01/20/1999
BREAKFIELD, ELIZABETH B COLUMBIA, MS	01/20/1999
BUCK, HARPER J 129010 MOSCOW RUSSIA,	01/20/1999
BURKS, DELLAREE CHICAGO, IL	01/20/1999
BUTLER, PAMELA SUE BOYLE GRAND ISLAND, NE	01/20/1999
CARR, TERESA M DES MOINES, IA	01/20/1999
CHEEK, JOHN C	01/20/1999

Subject, city, state	Effective date
SHAKER HTS, OH	
CHUANG, FRANCIS C	01/20/1999
TAICHUNG, TAIWAN	
COOK, DAVID C	01/20/1999
WHITTIER, CA	
DAGLE, CHARLES L	01/20/1999
FORT DODGE, IA	
DANN, ELIZABETH A	01/20/1999
ELDORADO, IL	
DAVIES, JOSEPH ALAN	01/20/1999
CARSON CITY, NV	
DE LEON, JOSE MANUEL	01/20/1999
APO AA,	
DUNN, JACK III	01/20/1999
LUBBOCK, TX	
EASSA, JOSEPH	01/20/1999
CARSON CITY, NV	
EMBRY, CAROLYN JOYCE	01/20/1999
KILLEEN, TX	
ESTRADA, ENRIQUE REYES JR	01/20/1999
SAN ANTONIO, TX	
FADUL, OSCAR V	01/20/1999
HUNTSVILLE, AL	
FAGBEYIRO, BRIDGET IYABO	01/20/1999
ARLINGTON, TX	
FISHER, MATTHEW E	01/20/1999
COLUMBUS, OH	
GADDY, SARA (SALLY) M	01/20/1999
BILOXI, MS	
GADEK, JAMES E	01/20/1999
COLUMBUS, OH	
GIAMETTE, JILLANA	01/20/1999
NEW HAVEN, CT	
GIARRATANO, SAMUEL	01/20/1999
WESTERN SPRINGS, IL	
GIBBS, JOHNNA G	01/20/1999
ALTON, IL	
GRAVES, JOSEPH P	01/20/1999
SAN DIEGO, CA	
GRAY, JOHN E	01/20/1999
LAS VEGAS, NV	
GREEN, JERRY DALE	01/20/1999
GRAHAM, TX	
GRIFFITH, REBECCA JO	01/20/1999
MARION, IA	
HALABE, STUART	01/20/1999
WOODLAND HILLS, CA	
HARRIS, PATRICIA R	01/20/1999
CHICAGO, IL	
HART, ELIZABETH A	01/20/1999
ANKENY, IA	
HERSKOWITZ, RONALD	01/20/1999
N ANDOVER, MA	
HILLS, WILLIAM T	01/20/1999
WETHERSFIELD, CT	
HOLLINS, MARVIN DEWAYNE	01/20/1999
SEATTLE, WA	
HOOPER, SHELLEY	01/20/1999
LAS VEGAS, NV	
HUGGS, MICHAEL	01/20/1999
MADISON, MS	
HUNTWORTH, RICHARD	01/20/1999
TERRE HAUTE, IN	
HUSS, GREGORY K	01/20/1999
SPRINGFIELD, IL	
JANES, JAMES PAUL	01/20/1999
CAMARILLO, CA	
JOHNSON, BRENDA COLLETTE	01/20/1999
OAKLAND, CA	
JOHNSON, ROSA GOODE	01/20/1999
PROSPECT, VA	
JONES, GWYN	01/20/1999
AURORA, IL	
JOYNER, DEBBIE P	01/20/1999
COLLINSVILLE, MS	
KAMSON, ADETOKUNBO	01/20/1999
MANHATTAN BEACH, CA	
KEYS, ANNA M	01/20/1999
CHICAGO, IL	
KIFFMEYER, RITA A	01/20/1999
STERLING, IL	
KOTT, JOHN R	01/20/1999
LA GRANGE PARK, IL	
KRAFT, RUTH	01/20/1999
CHICAGO, IL	
KRAMER, ANGELA M	01/20/1999
NORRIDGE, IL	
LABROAD, DAVID	01/20/1999
SUFFIELD, CT	
LAWSON, J D	01/20/1999
PARADISE VALLEY, AZ	
LAYCHAK, CORRINE J	01/20/1999
COLORADO SPRGS, CO	
LETH, ROBERT G	01/20/1999
MAY CITY, IA	
LEWIS, KIMBERLY C	01/20/1999
SPRINGFIELD, OH	
LOW, DARREN W	01/20/1999
ELK GROVE VILLAGE, IL	
LUNA, BONNY	01/20/1999
SUNNYVALE, CA	
LYON, BETHANY	01/20/1999
DELTONA, FL	
MAHAFFEY, RACHAEL A	01/20/1999
GRINNELL, IA	
MALONE, TERESAH	01/20/1999
HOUSTON, TX	
MARKHAM, PAMELA JEAN	01/20/1999
AURORA, CO	
MARSHALL, JEANIE JO	01/20/1999
PERRY, IA	
MARSHALL, SEAN K	01/20/1999
IRVINE, CA	
MARTENSEN, KARRI	01/20/1999
SPARKS, NV	
MASON, JEFFREY P	01/20/1999
WESTERVILLE, OH	
MCCAIN, DAN L	01/20/1999
HOLLYWOOD, CA	
MCCARTY, MATTIE L	01/20/1999
MERIDIAN, MS	
MCCAUL, BRAD J	01/20/1999
RED BLUFF, CA	
MEYER, RONALD E	01/20/1999
NORRIDGE, IL	
MILAM, JOAN P	01/20/1999
FRANKLIN, MA	
MIRIZIO, SHARYN	01/20/1999
SOUTHINGTON, CT	
MITCHELL, JERRY III	01/20/1999
LUCEDALE, MS	
MONGOLD, DOROTHY P	01/20/1999
STAFFORD, VA	
MOORE, DANIELLE L	01/20/1999
DUNDAS, VA	
MORALES, PAUL W	01/20/1999
WEST COVINA, CA	
MORO, JOHN D	01/20/1999
CHRISTOPHER, IL	
MUNDT, DONNA E	01/20/1999
DIETERICH, IL	
MYLES, MARY V	01/20/1999
LUMBERTON, MS	
NEWMAN, CASIE CHARLENE	01/20/1999
BILOXI, MS	
NNANJI, JOSHUA E	01/20/1999
CLINTON, IA	
NOVAK, GARY CHARLES	01/20/1999
PARK RIDGE, IL	
O'CONNOR, PATRICK D	01/20/1999
BREA, CA	
OLMSTEAD, BRUCE ALLEN	01/20/1999
APPLE VALLEY, CA	
PASION, EMEDITA	01/20/1999
LAS VEGAS, NV	
PELLES, JUNE	01/20/1999
LAS VEGAS, NV	
PETERSEN, VELMA E	01/20/1999
ENCINITAS, CA	
PETTY, LISA R	01/20/1999
SACRAMENTO, CA	
PHALSAPHIE, MANSOUR	01/20/1999
HENDERSON, KY	
PIERCE, PAMELA S	01/20/1999
WINDSOR, VA	
POSTEN, HOWARD ALAN	01/20/1999
CLOVIS, CA	
RANGASWAMY, AVVARI	01/20/1999
PIKEVILLE, KY	
REPERTINGER, SUSAN K	01/20/1999
CORALVILLE, IA	
RICHARDS, CHARLES A	01/20/1999
MOREHEAD CITY, NC	
RILEY, VIRGIL THOMAS	01/20/1999
W DES MOINES, IA	
RODERICK, MARGARET	01/20/1999
BEVERLY, MA	
SADLER, TONIA E	01/20/1999
BOLINGBROOK, IL	
SALAZAR, GENARO L	01/20/1999
MT PLEASANT, IA	
SANTIZO, SABINA DOROTHY	01/20/1999
NOVATO, CA	
SARNO-KRISTOFITS, DOLORES M	01/20/1999
PERKASIE, PA	
SCHER, STEPHEN BARRY	01/20/1999
LINCOLNTON, NC	
SCHUTZ, DAVID CHARLES	01/20/1999
ATLANTA, GA	
SEGOVIA, RICHARD LAWRENCE	01/20/1999
RIVERSIDE, CA	
SHAHID, SYED IQBAL HUSSAIN	01/20/1999
LOMITA, CA	
SHANNON, CHARLOTTA	01/20/1999
HAZELHURST, MS	
SHEARY, JOHN E	01/20/1999
GOSHEN, IN	
SHORE, JANET	01/20/1999
WINSTON-SALEM, NC	
SMITH, BEVERLEE	01/20/1999
LAS VEGAS, NV	
SNEED, CAMILLE MARIE	01/20/1999
ARLINGTON, TX	
SOSA, RODOLFO JR	01/20/1999
OCEANSIDE, CA	
SPELLMAN, MELISSA B	01/20/1999
NORTHBROOK, IL	
STARR, MARY E	01/20/1999
GAHANNA, OH	
STEWART, JANICE	01/20/1999
OLIVE BRANCH, MS	
STIMAC, JANET L	01/20/1999
DANVILLE, IL	
STRELKA, EUGENE P	01/20/1999
SALEM, VA	
TACKETT, GRANVILLE E	01/20/1999

Subject, city, state	Effective date
NEWPORT NEWS, VA	
TARAVAT, MARY L	01/20/1999
SKOKIE, IL	
TAYLOR, JENNIFER LYNN	01/20/1999
ROANOKE, VA	
THOMPSON, HAROLD C	01/20/1999
MERIDIAN, MS	
TIGUE, PATRICIA L	01/20/1999
HAZEL CREST, IL	
TINDLE, CHRISTINA WILBANKS	01/20/1999
BETHEL SPRINGS, TN	
TOLLIVER, PETRICH	01/20/1999
PORTSMOUTH, VA	
TRAHAN, DALE B	01/20/1999
SCHAUMBURG, IL	
VINEYARD, WALTER	01/20/1999
GALESBURG, IL	
VOEGTLE, DAVID B	01/20/1999
BERNARDSTON, MA	
WADE, NATHANIEL	01/20/1999
CHICAGO, IL	
WARE, DIANA LYNN	01/20/1999
BRYAN, TX	
WATERBURY, TERESA LYNNE	01/20/1999
S SIOUX CITY, NE	
WHITFIELD, ANGELA	01/20/1999
MURPHYSBORO, IL	
WIGTON, RICHARD JR	01/20/1999
SAN RAMON, CA	
WILLIAMS, OTIS A JR	01/20/1999
ENGLEWOOD, NJ	
WOLF, DOROTHY V	01/20/1999
QUINCY, IL	
WOODS, ROBIN ANTIONETTE	01/20/1999
BURLINGTON, NC	
WRIGHT, JOHN MICHAEL	01/20/1999
GLENDORA, CA	
YATES, WILLIAM M	01/20/1999
COLUMBIA, SC	
ZIELINSKI, CAROLE M	01/20/1999
PARK RIDGE, IL	

FEDERAL/STATE EXCLUSION/ SUSPENSION

ALPHA BETA MEDICAL SUPPLY	01/20/1999
PHILADELPHIA, PA	
COANNE PHARMACY, INC	01/20/1999
BRONX, NY	
L & Z TRANSPORTATION	01/20/1999
EDISON, NJ	
QAYYUM, ABDUL	01/20/1999
BRONX, NY	
SCHMAEVICH, BETTA	01/20/1999
BROOKLYN, NY	
SCHMEHL, ROLAND MALCOLM	01/20/1999
WESTBROOK, ME	
T J & E SALES & SERVICES CORP	01/20/1999
NEW YORK, NY	
YIH, JOY	01/20/1999
NEW YORK, NY	
YIH, TEDDY	01/20/1999
NEW YORK, NY	
ZELTSER, LAZAR	01/20/1999
EDISON, NJ	

OWNED/CONTROLLED BY CONVICTED/ EXCLUDED

GARY MARSHALL & ASSOCIATES	01/20/1999
MARIETTA, GA	
GEORGIA COMMUNITY HELP CENTER	01/20/1999
MARIETTA, GA	
P & D SURGICAL, INC	01/20/1999
NEW HAVEN, CT	
PREFERRED MEDICAL EQUIPMENT	01/20/1999
TAMPA, FL	
PREFERRED MEDICAL, INC	01/20/1999
ATLANTA, GA	
PREVENTIVE MEDICENTER, INC	01/20/1999
MIAMI, FL	

DEFAULT ON HEAL LOAN

ALABI, AMOS A	01/20/1999
BRONX, NY	
ATTERSON, ALLEN LEE	01/20/1999
FORTWORTH, TX	
BEATY, BRENDA L	01/20/1999
OLATHE, KS	
BEATY, WILLIAM CHRISTOPHER JR	01/20/1999
OLATHE, KS	
BERRY, SCOTT T	01/20/1999
SANTA BARBARA, CA	
BOILLOTAT, GARY L	01/20/1999
HARVEY, LA	
BROSSARD, IRIS A	01/20/1999
WICHITA, KS	
BURNEY, DAWN W	01/20/1999
JACKSONVILLE, FL	
CONN, RONALD J	01/20/1999
LOVELAND, OH	
CRANDALL, DON R	01/20/1999
HOUSTON, TX	
CREGO, RAYDEL F	01/20/1999
ELIZABETH, NJ	
DOYLE, TIMOTHY P	01/20/1999
BELLEVUE, WA	
DUARTE, DAVID ALLEN	01/20/1999
LOS ANGELES, CA	
DWIGHT, JONATHAN B	01/20/1999
ALBURQUERQUE, NM	
ECHALK, EDWARD E	01/20/1999
STILLWATER, OK	
FAIR, DAVID F	01/20/1999
KNOXVILLE, TN	
FISHER, JACQUELINE	01/20/1999
HO HO KUS, NJ	
FORD, HELEN E	01/20/1999
PHILADELPHIA, PA	
FULTON, DEBRA	12/08/1998
TOLEDO, OH.	
GALLUCCI, DON A	01/20/1999
DEDHAM, MA	
GITTENS, KENNETH ALPHONS	01/20/1999
WACO, TX	
GLASSMAN, CLIFFORD	12/18/1998
PASADENA, CA.	
GRATSON, MICHAEL W JR	01/20/1999
ARLINGTON, TX	
HAINES, STEVEN M	01/20/1999
JACKSON, NJ	
HALL, PATRICIA L	01/20/1999
FORT WORTH, TX	
HANSEN, ROBERT E	01/20/1999
PASADENA, CA	
HOBOWSKY, MARTIN R	12/31/1998
CARSON CITY, MI.	
IRACI, CYNTHIA L	01/20/1999
CANTON, GA	
JUSTICE, MICHAEL W	01/20/1999
BIRMINGHAM, AL	
KEO, DUONGVANNAK	01/20/1999
NORWOOD, MA	
LACKOVIC, MICHELLE F	01/20/1999
CHARLESTOWN, NH	
LACY, JESSE M	01/20/1999
PALM BAY, FL	
LAURENTS, JOHN MARK	01/20/1999
PORT NECHES, TX	
MARTIN, BARBARA L	01/20/1999
BEAUMONT, TX	
MOORE, DOUGLAS B	01/20/1999
BETTENDORF, IA	
MOSES, ROBERT NELSON	01/20/1999
JACKSONVILLE, FL	
POOLE, CHARLES KAVANAUGH	01/20/1999
VIRGINIA BEACH, VA	
RAJA, ABDULRAHMAN A	01/20/1999
KANSAS CITY, MO	
RINKLEIB, KAREN M	01/20/1999
PENN VALLEY, CA	
RODRIGUEZ-FEO, CARLOS JOSE	01/20/1999
MIAMI, FL	
ROSS-MATHIS, JEAN ANN	01/20/1999
MADISON, AL	
SESSIONS, DAVID B	01/20/1999
TAYLORSVILLE, UT	
SHAHRESTANI, SHAHRIAR	01/20/1999
ANAHEIM, CA	
SMITH, HARRY H	01/20/1999
GARY, IN	
STIVALI, ALFRED M III	01/20/1999
DECATUR, GA	
SUGGS, RONNIE E	01/20/1999
ORLANDO, FL	
TUCKER, MICHAEL J	01/20/1999
CHEROKEE, IA	
TUCKER, JONATHAN L	01/20/1999
CHELSEA, MA	
WHIGHAM, GWENDOLYN E	01/20/1999
HOUSTON, TX	
WILSON, PAMELA J	01/20/1999
COLUMBUS, OH	
YOUNG, KAREN L	01/20/1999
NEW HOPE, PA	
ZACCAGLIN, ANTHONY B	01/20/1999
GRAND TERRACE, CA	

Dated: January 11, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–1497 Filed 1–21–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications

Amino-Terminus-Modified Eosinophil-Derived Neurotoxin and Its Selective Toxicity to Kaposi's Sarcoma Cell Line, KS Y–1

Dr. Susanna M. Rybak and Dr. Dianne L. Newton (NCI)
Serial No. 60/106,732 filed 02 Nov 98
Licensing Contact: J.R. Dixon; 301/496–7056 ext. 206; e-mail: jd212g@nih.gov

The invention described in this patent application is related to the field of cancer/HIV therapeutics. More particularly, the invention relates to the creation and identification of a compound which, in *in vitro* assays, is selectively cytotoxic for Kaposi's sarcoma cells and therefore may prove useful for developing a therapeutic treatment for Kaposi's sarcoma. The compound, a derivative of human eosinophil-derived neurotoxin ("EDN"), was obtained by altering the mature EDN protein at its amino terminus. EDN, a ribonuclease, has previously been shown to be cytotoxic when delivered to cells as an immunotoxin. The EDN derivative of this patent application has been constructed by adding to the NH_2 terminus of the mature EDN protein the four (4) naturally-occurring COOH terminal amino acids of the signal sequence of EDN, SLHV. Normall, this signal sequence is cleaved from EDN to obtain the mature, functional protein.

Tissue Microarray For Rapid Molecular Profiling

O Kallioniemi, G. Sauter (NHGRI)
DHHS Reference No. E–007–99/0 filed 28 Oct 98
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rr154z@nih.gov

Recent advances in molecular medicine have provided new opportunities to understand cellular and molecular mechanisms of disease and to select appropriate treatment regimens with the greatest likelihood of success. The clinical application of novel molecular, genetic and genomic discoveries has been impeded by the slow and tedious process of evaluating biomarkets in large numbers of clinical specimens. The present invention provides a method of high-throughput molecular profiling of very large numbers of tissue specimens, such as tumors, with minimal tissue requirements. This procedure provides a target for rapid parrallel analysis of biological and molecular characteristics (such as gene dosage and expression) from hundreds of morphologically controlled tumor specimens. Multiple sections can be obtained from such tissue microarrays ("tissue chips") so that each section contains hundreds or thousands of different tissue specimens that maintain their assigned locations. Different in situ analyses, such as histological, immunological, or molecular, are performed on each section to determine the frequency and significance of multiple molecular markers in a given set of tissues. This method can also be combined with other technologies such as high-throughput genomics surveys using NA microarrays. DNA microarrays enable analysis of thousands of genes from one tissue specimen in a single experiment, whereas the tissue microarrays make it possible to analyze hundreds or thousands of tissue specimens in a single experiment using a single gene or protein probe. Together the DNA and tissue microarray technologies will be very powerful for the rapid analysis of markers associated with disease prognosis or therapy outcome.

Inhibitors of Formation of Protease Resistant Prion Protein

B Chesebro, B Caughey, J Chabry, S Priola (NIAID)
Serial No. 09/128,450, filed 03 Aug 98
Licensing Contact: George Keller; 301/496–7735 ext. 246; e-mail: gk40j@nih.gov.

The current invention provides peptides and pharmaceutical compositions that are useful to inhibit formation of protease resistant prion proteins (PrPres) such as the PrPres associated with transmissible spongiform encephalopathies (TSE). Certain synthetic peptides which incorporate the most amyloidogenic region of the PrP protein can inhibit the formation of PrPres under conditions where it would otherwise be formed. Such specific inhibition of the formation of PrPres may prevent or slow the deposition of amyloid deposits in the tissues of animals that have been exposed to a TSE or are suffering from a neurodegenerative disorder having the characteristics of a spongiform encephalopathy. For more information, see Chabry, Jr. et al. (1998) Specific Inhibition of *in vitro* Formation of Protease-Resistent Prion Protein by Specific Peptides, *J. Biol. Chem. 273,* 13203–13207.

Transcriptional Activation of the C-Mos Oncogene Is Associated With Disease Progression in HIV Infection

DI Cohen (NCI)
Serial No. 60/093,121 filed 15 Jul 98
Licensing Contact: George Keller; 301/496–7735 ext. 246; e-mail: gk40j@nih.gov

the current invention provides methods of diagnosing and staging pathogenic lentivirus infections, specifically HIV, by detecting activation of the *c-mos* gene. The binding of the HIV envelope glycoprotein, during cell-cell infection, to CXC chemokine receptors, leads to transcriptional activation of the c-mos gene. The invention also provides a method for treating a cell proliferative disorder associated with c-mos activity, such as HIV inspection, by treating a subject having the disorder with a composition that regulates *c-mos* activity or expression. In addition, compounds that modify *c-mos* express in specific cells can be identified, using this invention.

The HIV co-culture system can be used to initiate *c-mos* dependent cell death. Death in this system is dependent on the level of *c-mos* induction. Pharmacological agents that either also induce *c-mos,* or stabilize *c-mos* following its induction, would accelerate this death process. Therefore, this technology defines a method of screen for novel anti-proliferative drugs capable of interacting with this unique *c-mos* death pathway.

β_2-Microglobulin Fusion Proteins and High Affinity Variants

RK Ribaudo, M Shields (NCI)
Serial No. 60/088,813 filed 10 Jun 98

Licensing Conact: Peter Soukas; 301/496–7056 ext. 268; e-mail: ps193c@nih.gov

This invention concerns fusion proteins comprising (β_2M), a component of the MHC–1 complex, and immunologically active proteins such as the co-stimulatory molecule B7. The fusion proteins, and nucleic acids encoding them, have broad utility activating Cytotoxic T Lymphocytes (CTLs) against viruses and tumors. The fusion proteins locate to the surface of MHC–1 expressing cells. They may be used as adjuvants to enhance the efficacy of MHC–1 binding peptides, from viruses or cancer antigens, as vaccines. The fusion proteins can be used, *in vivo* or *ex vivo*, to enhance the immunogenicity of cancer cells to cause their destruction by the immune system. B7-β_2M is as effective at co-stimulating T-cells in comparison to anti-CD28 monoclonal antibodies, whereas wild-type β_2M is ineffective at co-stimulating T-cells. In addition, B7-β_2M induces better recognition and killing of tumor cell lines compared to wild-type β_2M. Another aspect of the invention is a mutant human β_2M that binds MHC–1 with higher affinity than wild-type β_2M. It can be used in place of wild-type β_2M, including in the fusion proteins, to greater effect.

Disubstituted Lavendustin a Analogs and Pharmaceutical Compositions Comprising the Analogs

VL Narayanan, EA Sausville, G Kaur, R Varma (NCI)
Serial No. 60/076,330 filed 27 Feb 98
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

The invention discloses lavendustin A analogs that are protein tyrosine kinase (PTK) inhibitors having antiproliferative activity. A preferred compound, based on in vivo biological activity, is 4'-adamantylmethylbenzoate-1'-N-1,4-dihydroxybenzylamine. Pharmaceutical compositions comprising effective amounts of lavendustin are also covered; such compositions also may comprise other active ingredients and other materials typically used in such pharmaceutical formulations.

These compounds and compositions of the invention may be used for treating subjects to, for example, inhibit the proliferation of living cells for treatment of proliferative diseases.

Oligodeoxyribonucleotides Comprising O^6-Benzylguanine and Their Use

R Moschel et al. (NCI)
Serial No. 09/023,726 filed 13 Feb 98
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

The invention provides single-stranded oligodeoxyribonucleotides which are more potent than O6-benzylguanine in inactivating human O^6-alkylguanine-DNA alkyltransferase (AGT). The oligodeoxyribonucleotides comprise from about 5 to 11 bases, at least one of which is a substituted or an unsubstituted O^6-benzylguanine. The oligodeoxyribonucleotides have several advantages over O^6-benzylguanine. They can inactivate mutant human AGTs that are either not inactivated or incompletely inactivated by O^6-benzylguanine. They have greater solubility in water than O^6-benzylguanine, and they react much more rapidly with AGT than does O^6-benzylguanine. The invention also provides compositions comprising such oligodeoxyribonucleotides. In addition, the invention provides a method of enhancing the effect of antineoplastic alkylating agents that alkylate the O^6 position of guanine residues in DNA for the chemotherapeutic treatment of cancer in a mammal.

Shielded Ultrasound Probe

H Wen, E Bennett (NHLBI)
DHHS Reference No. E–017–98/0 filed 12 Nov 97
Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; *e-mail*: jf36z@nih.gov

The invention relates to the recently developed imaging method called Hall Effect Imaging (HEI). HEI involves the use of a magnetic field and electrical or ultrasound pulses applied to an object to generate an image of the object. HEI has the potential to become a novel medical imaging technique, revealing features not seen in existing imaging methods. Performing HEI with conventional ultrasound transducers is difficult due to electrical interference, though. The present invention is a design for an ultrasonic transducer which overcomes these difficulties. This design may be made as a modification of a commercial ultrasound probe, thereby lowering the cost of development and production.

Methods for Use of Interleukin-4 (IL–4) and Tumor Necrosis Factor-Alpha (TNF–α) To Treat Human Immunodeficiency Virus (HIV) Infection

George N. Pavlakis, Antonio Valentin, Barbara K. Felber (NCI)
DHHS Reference No. E–160–96/1 filed 18 Sep 98 (claiming priority of U.S. Provisional 60/059,359 filed 19 September 1997)
Licensing Contact: J. Peter Kim, 301/496–7056 ext. 264; *e-mail*: jk141n@nih.gov

AIDS (acquired immunodeficiency syndrome), first reported in the United States in 1981, has become a worldwide epidemic, crossing al! geographic and demographic boundaries. More than 475,000 cases of AIDS have been reported in the United States since 1981 and more than 295,000 deaths have resulted in the U.S. from AIDS. Over 1.5 million Americans are thought to be infected with HIV (human immunodeficiency virus), the causative agent of AIDS.

The subject invention relates to the interactions of the cytokines, interleukin-4 (IL–4) and tumor necrosis factor alpha (TNF-α), with HIV and HIV targets in the body. The invention provides methods for characterizing isolates of HIV according to susceptibility to the viral replication inhibiting effects of IL–4 and methods for use of TNF-α, IL–4, IL–4 analogs, and/or inhibitors of IL–4 to treat patients infected with specific isolates of HIV. The methods include a method for determining the prognosis of a patient infected with HIV, a method for down-regulating CCR5 expression in a cell, and methods for treating patients infected with CCR5 dependent isolate of HIV or CXCR4 dependent isolate of HIV.

Novel FUSE-Binding Protein and cDNA

DL Levens, RC Duncan, MI Avigan (NCI)
U.S. Patent 5,580,760 issued 03 Dec 96; U.S. Patent 5,734,016 issued 31 Mar 98; PCT/US97/21679 filed 21 Nov 97
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; *e-mail:* rr154z@nih.gov

This invention includes the gene sequence for a novel proto-oncogene binding protein that is valuable for studying the regulation of genes responsible for transforming normal cells to cancer cells. The c-myc proto-oncogene plays a central role in normal cell proliferation and programmed cell death; factors that inhibit its expression thus contribute to the formation of a variety of tumors. This newly isolated gene sequence encodes a protein that binds to the far-upstream element (FUSE) of the c-myc gene, which has been shown to be required to its maximal transcription. The FUSE-binding protein gene sequence may be used to analyze mutations, translocations, and other genetic derangements that are associated with abnormalities of the FUSE protein or c-myc expression. Such DNA probes also may be useful for diagnosing a variety of physiologic and pathologic

conditions, such as the transformation of normal cells to tumor cells. The FUSE-binding protein also may be used for developing mAbs that can be used to detect and quantitate the protein in biologic samples.

Fluorescent Hybridization Probes not Requiring Separation of Products

ME Hawkins, W Pfleiderer, MD Davis, FM Balis (NCI)
U.S. Patent 5,525,711 issued 11 Jun 96; U.S. Patent 5,612,468 issued 18 Mar 97; DHHS Reference No. E–155–96/1; PCT/US97/22448 filed 10 Dec 97
Licensing Contact: L. Manja R. Blazer; 301/496–7056 ext. 224; e-mail: mb379c@nih.gov

Fluorescent guanosine analogs (excitation at 340 nm, emission at 450 nm) are incorporated into oligonucleotides through a native deoxyribose linkage using automated DNA synthesis which allows them to base stack with native bases. As a result, slight changes in DNA structure can cause significant changes in spectral properties. These compounds are highly fluorescent as monomers in solution, but lose intensity in oligonucleotides. The use of these fluorophores as hairpin hybridization probes is based on the dramatic fluorescence increase that occurs upon them being squeezed out of the strand during annealing where the probe has not been provided with a base-pairing partner in the complementary strand. The degree of increase depends on the oligonucleotide sequence and the annealing strands' concentration. It allows the detection of specific DNA sequences in a mixture without separation of annealed and labeled products. These stable probes are treated as normal phosphoramidites during the DNA synthesis and subsequent de-blocking procedures.

This research has been published in Nucleic Acids Research, 23 (1995) 2872–2880 and Analytical Biochemistry, 244 (1997) 86–95.

Dated: January 13, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–1424 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Shared Resources for Scientists Outside NCI Cancer Centers.

Date: February 17, 1999.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, Executive Plaza North, 6130 Executive Boulevard, Bethesda, MD 20892, 301/435–9050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1427 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Acquired Immunodeficiency Syndrome Research Review Committee.

Date: February 18–19, 1999.

Open: February 18, 1999, 8:00 am to 9:00 am.

Agenda: The meeting will be open for discussion of administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters.

Place: Wyndham Washington Hotel, 1400 M Street NW, Washington, DC 20005–2750.

Closed: February 18, 1999, 9:00 am to adjournment on February 19, 1999.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington Hotel, 1400 M Street NW, Washington, DC 20005–2750.

Contact Person: Paula S. Strickland, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C02, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–0643.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 99–1425 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 2–3, 1999.

Closed: February 2, 1999, 2:00 pm to 5:00 pm

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, 45 Center Drive, Bethesda, MD 20892.

Open: February 3, 1999, 9:00 am to Adjournment.

Agenda: This portion of the meeting will be open to the public or announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Natcher Building 45, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Teresa Levitin, Phd, Director, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 10892, (301) 5554–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institute of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[FR Doc. 99–1426 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Violence and Traumatic Stress Review Committee.

Date: February 8–9, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group, Services Research Review Committee.

Date: February 9–10, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group, Clinical Psychopathology Review Committee.

Date: February 11–12, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group, Health Behavior and Prevention Review Committee.

Date: February 17, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW, Washington, DC 20037.

Contact Person: Lawrence E. Chaitkin, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group, Treatment Assessment Review Committee.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20847, 301–443–3367.

Name of Committee: National Institute of Mental Health Initial Review Group, Social and Group Processes Review Committee.

Date: February 18–19, 1999.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sheila O'Malley, MA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Disorders of Aging Review Committee.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: David Chananie, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group, Child Psychopathology and Treatment Review Committee.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group, Child/Adolescent Development, Risk, and Prevention Review Committee.

Date: February 18–19, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600

Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group, Perception and Cognition Review Committee.

Date: February 18–19, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1428 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: February 4–5, 1999.

Closed: February 4, 1999, 10:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Parklawn Building, Conference Room E, 5600 Fishers Lane, Rockville, MD 20857.

Open: February 5, 1999, 8:00 am to 2:45 pm.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Executive Secretary, Acting Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–3367.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1429 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: erbB–2/HER2/*neu* Gene Segments, Probes, Recombinant DNA and Kits for Detection

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial Number 08/475,035, entitled "erbB–2 Gene Segments, Probes, Recombinant DNA and Kits for Detection" filed June 7, 1995, and U.S. Patent Application Serial Number 07/110,791, entitled "Human Gene Related To But Distinct From EGF Receptor", filed October 21, 1987 to Ventana Medical Systems, Inc., Having a place of business in Tucson, AZ. This announcement supersedes the prior Notice of Intent to Grant published on October 19, 1998. The patent rights in this invention have been assigned to the United States America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before March 23, 1999 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan S. Rucker, J.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 245; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: In an effort to identify genes which are associated with cancer, the invention described in these patent applications includes a gene, related to the epidermal growth factor, now known as erbB–2/HER2/*neu*. Research related to this gene has indicated that the gene is implicated in breast and other cancers. While the amplification of this gene has been demonstrated to have prognostic value with respect to breast cancer additional development is needed to determine whether or not the gene has value as a prognostic indicator for other types of cancer or may serve as an indicator which can be sued to select the proper course of treatment for breast and other cancers.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development of nucleotide-based diagnostic and prognostic uses, regulated by the Food and Drug Administration, of the invention for cancers other than breast cancer including, but not necessarily limited to, prostate, ovarian, and bladder cancers.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released

under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 13, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–1423 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1999 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), announces the availability of FY 1999 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated number of awards	Project period
Child Mental Health Initiative	4/21/99	$20–25 Million	20–25	Up to 5 yrs.

Note: SAMHSA will publish additional notices of available funding opportunities for FY 1999 in subsequent issues of the **Federal Register**.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 1999 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 105–277. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity (i.e., the GFA) described in Section 3 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadline for receipt of applications is listed in the table above.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

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1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and

consumers to effectively use that knowledge in everyday practice.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activity in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

2.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's "Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals," peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

2.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 1999 SAMHSA Activities

3.1 Grants

3.1.1. Comprehensive Community Mental Health Services for Children and Their Families (Child Mental Health Initiative)

- Application Deadline: April 21, 1999
- Purpose: Under Sec. 561(a) of the Public Health Service Act grants will be awarded to implement, in one or more communities, a broad array of community-based and family-focused services for children with serious emotional disturbance and their families, including individualized case planning and coordination, and to enable communities to integrate child- and family-serving agencies, including health, mental health, substance abuse treatment, child welfare, education, and juvenile justice into a local comprehensive system of care. The statute further requires that an evaluation of the system(s) of care implemented under the Program be conducted and that it include, among other things, longitudinal studies of the outcomes of services provided by such systems. (Sec. 565(c)(1) of the PHS Act).

The primary goal of the program is to successfully implement systems of care at the grant sites. A second goal after implementing systems of care, is evaluation of the outcomes of services delivered under the system. This will be accomplished through a national multi-site evaluation conducted under a separate contract and grantees will be required to cooperate with the multi-site evaluation contractor. The final goal of the Program is to use the results of both the system development efforts of each service site and the results of the descriptive, process and outcome evaluation to shape future program direction with proven exemplary practices that work best for children and their families.

- Eligible Applicants: Eligibility is limited by statute to "public entities." A public entity is defined for this purpose (in Section 561(a)(2) of the PHS Act) as any State, any political subdivision of a State, and Indian tribe or tribal organization (as defined in Section 4(b) and Section 4(c) of the Indian Self-Determination and Education Assistance Act). The applicant entity must be qualified to deliver services under the State Medicaid Plan and have an agreement to do so, either directly or through a service provider organization. In order for an entity to be eligible, a plan must be in place for the development of a system of care for community-based services for children with a serious emotional disturbance approved by the Secretary of the U.S. Department of Health and Human Services per Sec. 564(b) of the PHS Act. For the purposes of this program, an approved State Mental Health Plan for Children and Adolescents with Serious Emotional Disturbance, submitted under Public Law 102–321, will be accepted as such a plan. This does not apply to Indian tribe or tribal organization applicants.
- Amount: Approximately $20–25 million will be available to support twenty (20) to twenty-five (25) awards under this GFA in FY 1999. Actual funding will depend upon the availability of funds at the time of award. These grants are for a period of 5 years; it is anticipated that an average of approximately $1 million will be available to each grantee in year one; $1.25 million in year two; $2 million in year three, $1.5 million in year four, and $1.5 million in five. An applicant must arrange and demonstrate the availability of matching non-Federal funds in statutorily mandated ratios. [NOTE: Applicants must see full GFA for the specific ratios].
- *Catalog of Federal Domestic Assistance Number:* 93.104.
- Program Contact: For programmatic or technical assistance, contact: Gar De Carolis, Chief, Child, Adolescent, and Family Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services/SAMHSA, Room 18–49, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1333/FAX (301) 443–3693, Internet: gdecarol@samhsa.gov.

For grants management issues, contact: Steve Hudak, Grants Management Officer, Office of Program Services/SAMHSA, Room 15C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4456/FAX (301) 594–2336, Internet: shudak@samhsa.go.

- For application kits, contact: IQ Solutions, Inc., 11300 Rockville Pike Suite 801, Rockville, MD 20852 Voice: (301) 984–1471, FAX: (301) 984–1333, E-mail: PTaylor@IQSolutions.com.
- CMHS intends to sponsor four technical assistance workshops for potential applicants. For more information, potential applicants may contact: Ken Currier, Director, Technical Assistance Operations, National

Resource Network for Child and Family Mental Health Services, Washington Business Group on Health, 777 North Capitol Street, N.E., Suite 800, Washington, D.C. 20002, (202) 408–9320/FAX (202) 408–9332, Internet: currier@wbgh.com.

4. Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

5. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. Executive Order 12372

Applications submitted in response to the FY 1999 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities, Policy and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: January 14, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–1506 Filed 1–21–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–05]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* February 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 13, 1999.

Wayne Eddins,

Reports Management Officer.

Title of Proposal: Letter of Transmittal/Servicing Agreement/ Resolution of Board Director and Certificate of Authorized Signatures.

Office: Government National Mortgage Association.

OMB Approval Number: 2503–0016.

Description of The Need For The Information and its Proposed use: Form HUD–11700, Letter of Transmittal, is used by issuers to transmit to GNMA required materials to request approval of all applications to become a mortgage-backed securities issuer. Form HUD–11702, Resolution of Board of Directors and Certificate of Authorized Signatures, is used to provide GNMA with the names and signatures of the Board of Directors of the issuer's organization. Form HUD–11707, Servicing Agreement, is used by the issuer to provide assurance to GNMA that servicing of the mortgages backing the securities will be performed at an acceptable standard.

Form Number: HUD–11700, 11702 and 11707.

Respondents: Federal Government and Business or Other-For-Profit.

Frequency of Submission:

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11700	399		4		.17		270
HUD–11702	399		1		.17		68

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11707	399		59		.17		4002

Total Estimated Burden Hours: 4340.
Status: Reinstatement with changes.
Contact: Sonya Suarez, HUD, (202) 708–2772; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 13, 1999.

[FR Doc. 99–1386 Filed 1–21–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–04]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, of revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 13, 1999.

Wayne Eddins,

Reports Management Officer.

Title of proposal: Financial Statement.
Office: Office of Housing.
OMB Approval Number: 2502–0098.
Description of the Need for the Information and Its Proposed Use: Credit information manufactured housing property improvement loans authorized by Title I Section 2 of the National Housing Act P.L. 479, 48 Stat. 1246, U.S.C. 17101 et seq. This form is used by HUD in determining factors involved when compromises are reached with borrowers to lighten the financial burdens in given cases of Title I Homes Improvement and Manufactured Home Loans.
Form Number: HUD–56142.
Respondents: Individuals or Households.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	1258		1		1		1258

Total Estimated Burden Hours: 1258.
Status: Reinstatement without changes.
Contact: Lester J. West, HUD, (518) 464–4200 x4206; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 13, 1999.

[FR Doc. 99–1387 Filed 1–21–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–03]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnson, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistant Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist

the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property avaiable for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made avaiable for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maiximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; INTERIOR: Ms. Lola D. Kane, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: January 14, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 1/22/99

Suitable/Available Properties

Buildings (by State)

California

Naval & Marine Corps Readiness
1700 Stadium Way
Los Angeles CO: Los Angeles CA 90012–
Landholding Agency: GSA
Property Number: 54199910005
Status: Excess
Comment: 133,484 sq. ft., suffered seismic damage, presence of asbsetos/lead paint, historic convenants, 45% of property will revert to City
GSA Number: 9–N–CA–1523

Kansas

Bldg. 2703
Forbes Field, Topeka Air Industrial Park
Topeka Co: Shawnee KS
Landholding Agency: GSA
Property Number: 54199840014
Status: Excess
Comment: 192,985 sq. ft., needs repair, most recent use—storage/warehouse
GSA Number: 7–D–KS–422–111

Mississippi

Quarters 163
Natchez Trace Parkway
Ridgeland Co: Madison MS 39157–
Landholding Agency: Interior
Property Number: 61199910003
Status: Excess
Comment: 1121 sq. ft., most recent use—residential, presence of asbestos, off-site use only

Quarters 183
Natchez Trace Parkway
Kosciusko Co: Attala MS 39090–
Landholding Agency: Interior
Property Number: 61199910004
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 190
Natchez Trace Parkway
Port Gibson Co: Claiborne MS 39150–
Landholding Agency: Interior
Property Number: 61199910005
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 194
Natchez Trace Parkway
Ackerman Co: Choctaw MS 39725–
Landholding Agency: Interior
Property Number: 61199910006
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 258
Natchez Trace Parkway
Carlisle Co: Claiborne MS 39049–
Landholding Agency: Interior
Property Number: 61199910007
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Virginia

Bldg. SP–63A
Naval Base Norfolk
Norfollk Co: 23511–
Landholding Agency: Navy
Property Number: 77199910017
Status: Excess
Comment: 480 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. SP–63
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910018
Status: Excess
Comment: 1632 sq. ft., presence of asbestos, off-site use only

Suitable/Available Properties

Land (by State)

California

Lake Sonoma, Tract 1607
Geyserville, CA
Landholding Agency: GSA
Property Number: 54199740020
Status: Excess
Comment: 139 acres, most recent use—recreation
GSA Number: 9–D–CA–1504

Mira Loma Parcel
March Comm. Annex No. 2
Mira Loma Co: Riverside CA
Landholding Agency: GSA
Property Number: 54199910007
Status: Excess
Comment: 0.81 acres, potential utilities
GSA Number: 9–G–CA–1505

Reclamation Unit LC–2, Par. B
Texas Ave/Old Lewiston Rd
Lewiston Co: Trinity CA
Landholding Agency: GSA
Property Number: 54199910008
Status: Excess
Comment: 28.3 acres with old barn in poor condition
GSA Number: 9–I–CA–1509

Massachusetts

.07 acre
Westover Air Reserve Base
Off Rte 33
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 18199840007
Status: Excess
Comment: land, no utilities

Texas

Camp Bullis, Tract 9
Fort Sam Houston (formerly)
San Antonio Co: Bexar TX 57501
Landholding Agency: GSA
Property Number: 21199420462
Status: Surplus
Comment: 1.07 acres of undeveloped land, subject to existing easements
GSA Number: 7–D–TX–0474E

West Virginia

Segments 11–18
Matewan Area
Matewan Co: Mingo WV 25678–
Landholding Agency: GSA
Property Number: 54199910002
Status: Excess
Comment: 13 acres, 18 tracts, subject to convenants/restrictions
GSA Number: 4–D–WV–532

Segment 8
Matewan Redevelopment Site
Matewan Co: Mingo WV
Landholding Agency: GSA
Property Number: 54199910006
Status: Excess
Comment: 3.39 acres, subject to covenants/restrictions
GSA Number: 4–D–WV–533

Suitable/Unavailable Properties

Buildings (by State)

Idaho

Bldg. 224
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840008
Status: Unutilized
Comment: 1890 sq. ft., no plumbing facilities, possible asbestos/lead paint, most recent use—office

Mississippi

Federal Building
236 Sharkey Street
Clarksdale Co: Coahoma MS 38614–
Landholding Agency: GSA
Property Number: 54199910004
Status: Excess
Comment: 15,233 sq. ft., courthouse
GSA Number: 4–G–MS–553

North Carolina

Bodie Island Lighttower
Cape Hatteras
Nags Head Co: Dare NC 27959–
Landholding Agency: GSA
Property Number: 54199910003
Status: Excess
Comment: lighttower, restricted use
GSA Number: 4–U–NC–733

California

Bldg. 4190 & Outbuilding
Yosemite National Park
Wawona Co: Madera CA 95389–
Landholding Agency: Interior
Property Number: 61199910002
Status: Unutilized
Reason: Extensive deterioration

Georgia

Bldg. 3012
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 7719910001
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldg., Minidoka Project
Rupert Co: ID 83350–
Landholding Agency: Interior
Property Number: 61199910001
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Ranger Station
Big South Fork Natl River & Rec Area
Stearns Co: McCreary KY 42647–
Landholding Agency: Interior
Property Number: 61199910008
Status: Excess
Reason: Extensive deterioration

New Hampshire

Parcel #1
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910002
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; secured area

Parcel #2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; secured area

Parcel #3
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; extensive deterioration

New Jersey

Telephone Repeater Site
U.S. Coast Guard
Monmouth Beach Co: Monmouth Beach NJ 07750–
Landholding Agency: GSA
Property Number: 54199910001
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–U–NJ–628

Puerto Rico

Mosquito Pier
Naval Station Roosevelt Roads
Vieques Island Co: PR
Landholding Agency: Navy
Property Number: 77199910005
Status: Unutilized
Reason: Secured area

Bldg. 781
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1740
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1933
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1934
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1976
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2001
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910011
Status: Unutilized
Reason: Extensive deterioration

Texas

Facilities 105 and 105C
Naval Station
Corpus Christi Co: Nueces TX 78419–5021
Landholdin Agency: Navy
Property Number: 77199910012
Status: Unutilized
Reason: Extensive deterioration

Virginia

Bldg. 1256
Naval Amphibious Base Little Creek
Norfolk Co: VA 23521–2616
Landholding Agency: Navy
Property Number: 77199910013
Status: Excess
Reason: Extensive deterioration

Bldg. W219
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910014
Status: Excess
Reason: Secured area

Gym
Naval Air Station, Oceana
Virginia Beach Co: VA 23460–5120
Landholding Agency: Navy
Property Number: 77199910015
Status: Unutilized
Reason: Extensive deterioration

Runway
Naval Air Station, Oceana
Virginia Beach Co: VA 23460–5120
Landholding Agency: Navy
Property Number: 77199910016
Status: Unutilized
Reason: Extensive deterioration

West Virginia

Thomas House, Tract 173–20
New River Gorge National River
Glen Jean Co: Fayette WV 25846–
Landholding Agency: Interior
Property Number: 61199910009
Status: Excess
Reason: Extensive deterioration

Cole House, Tract 153–07
New River Gorge National River
Fayetteville Co: Fayette WV 25840–
Landholding Agency: Interior
Property Number: 61199910010
Status: Excess
Reason: Extensive deterioration

Vento House, Tract 173–17
New River Gorge National River
Glen Jean Co: Fayette WV 25846–
Landholding Agency: Interior
Property Number: 61199910011
Status: Excess
Reason: Extensive deterioration

[FR Doc. 99–1267 Filed 1–21–99; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–704214

Applicant: Jorge and Caro Rosell, Ruskin, FL.

The applicant requests a permit to re-export and re-import captive born leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–005419

Applicant: University of Massachusetts, Department of Biology, Amherst, MA.

The applicant requests a permit to import from Mongolia: hair and tooth samples collected from wild specimens of snow leopards (*Unica unica*), hair samples collected from wild specimens of Gobi brown bear (*Ursus arctos pruinosus*), and one snow leopard skull and complete skeleton to enhance the survival of the species through scientific research and conservation education.

PRT–006037

Applicant: Chicago Zoological Park/ Brookfield Zoo, Brookfield, IL.

The applicant requests a permit to import blood samples from wild Howler monkeys (*Alouatta palliata*) from Veracruz, Mexico, for the purpose of enhancement of the survival of the species through scientific research.

PRT–722075

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to re-export and re-import captive-born Bengal tiger (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–006704

Applicant: Avicultural Breeding and Res. Center, Loxahatche, FL.

The applicant requests a permit to export eight captive-hatched thick-billed parrots (*Rhynochopsitta papchyrhycha*) to Susanne Iten Fischer, Unterageri, Switzerland to enhance the survival of the species through captive propagation.

PRT–006998

Applicant: Jack Sites, Brigham Young University, Provo, UT.

The applicant requests a permit to import tissue samples and voucher specimens of wild giant Amazon river turtles (*Podocnemis expansa*) from Brazil for the purpose of scientific research.

PRT–837068

Applicant: Yerkes Regional Primate Research Center, Atlanta, GA.

The applicant requests a permit to take gibbons (*Hylobates lar*), gorillas (*Gorilla gorilla*), pygmy chimpanzees (*Pan paniscus*), sooty mangabeys (*Cercocebus torquatas atys*), Sumatran orangutans (*Pongo abelii*), Bornean orangutans (*Pongo pygmaeus*), and hybrid orangutans (*Pongo abelii* x *Pongo pygmaeus*) through limited invasive sampling including anesthetizing, collecting blood, skin, and bone marrow tissue samples, and MRI scanning usually, but not always, during routine veterinary examinations for the purpose of scientific research. The applicant has requested authorization to conduct breeding research. However, this activity is covered under the authorization of their Captive-bred Wildlife Registration. The applicant has requested authorization to conduct the aforementioned activities using chimpanzees (*Pan troglodytes*) and stump-tailed macaques (*Macaca arctoides*). We have determined that the chimpanzees and stump-tailed macaques held by this facility meet the requirements of the primate special rule [50 CFR 17.40(c)] and therefore, the prohibitions of the Endangered Species Act do not apply.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

PRT–844696

Applicant: The Alaska Zoo, Anchorage, AK.

Permit Type: Public Display.
Name and Number of Animals: Polar bear (*Ursus maritimus*); one.

Summary of Activity to be Authorized: The applicant has requested a permit to take for the purpose of public display a polar bear cub that was recovered by the U.S. Fish and Wildlife Service as an orphaned animal. Because of its young age at the time it was removed from the wild, the Service has determined that this animal cannot develop the life skills needed to survive in the wild and considers this animal non-releasable. The Zoo is applying for a permit to permanently hold this animal for the purpose of public display.

Source of Marine Mammals: Orphaned cub as described above.

Period of Activity: 5 years from date of issuance of permit, if issued. Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–006116

Applicant: Ina L. Johnson, Immokalee, FL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, by Ernest L. Johnson from the Lancaster Sound polar bear population, Northwest Territories, Canada, for personal use and bequeathed to the applicant.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: January 19, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–1460 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants: Notice of Availability and Opening of Comment Period for an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Delmarva Fox Squirrel in Association With Home Port on Winchester Creek Development Project, Queen Anne's County, Maryland

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application; correction.

In the notice document 98–34673, beginning on page 72321, in the issue of Thursday, December 31, 1998, make the following correction:

On page 72322, the first full paragraph in the third column, under the heading. Background, should be replaced with the paragraph:

The EA considers the environmental consequences of four alternatives, including the proposed action, a no-action alternative, a conservation acquisition alternative, and a reduced impact alternative. The proposed action alternative is the issuance of a permit under Section 10(a) of the Act that would authorize incidental take of the DFS that may occur in the habitats of Home on Winchester Creek Development, and implementation of the HCP and IA as submitted by the Applicant. The proposed action would require the Applicant to implement their HCP. The HCP provides mitigation measures for the proposed incidental taking including habitat enhancement, permanent protection of an off-site parcel, and contribution to a trust fund. The HCP provides a funding mechanism for these mitigation measures. Under the no-action alternative, the Applicant would not develop the proposed development site in Queen Anne's County and thus avoid the take of DFS. No ITP would be deemed necessity or issued. Under the conservation acquisition alternative, the site would be acquired by a government or private conservation entity or land trust organization and would be retained in its natural state. No ITP would be deemed necessary or issued. Under the reduced impact alternative, the Service requested a number of modifications to the applicant's design plan including a shift in the location of the right-of-way entrance road away from the DFS forested edge habitat, a reduction in the number of housing units, and relocation of some of the housing lots outside of the 150 foot conservation easement. These modifications would reduce the likelihood of take of DFS by unavoidable human disturbances as well as reducing the number of DFS killed by vehicles.

Dated: January 13, 1999.

Ronald E. Lambertson,

Regional Director, Region 5.

[FR Doc. 99–1436 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications Under the FGDC National Spatial Data Infrastructure (NSDI) Cooperative Agreements Program for Fiscal Year (FY) 1999

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice inviting applications for the NSDI Cooperative Agreements Program awards for Fiscal Year 1999, with performance to begin in August, 1999.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure (NSDI) Cooperative Agreements Program is to facilitate and foster partnerships and alliances within and among various public and private entities to assist in building the NSDI. The initiative to build the NSDI was launched in 1994 by Executive Order 12906 to advance the nation's capacity to develop, use, share and disseminate geospatial data. The NSDI is the term used to describe the linking together of the array of technologies, spatial data, public policies, people and institutions needed to put current and accurate geographic data into the hands of citizens and decision-makers.

The Cooperative Agreements Program funds projects focused on promoting metadata collection and creating clearinghouses of geographic data linked to the Internet, and advancing the NSDI through education.

Applications may be submitted by Federal agencies, State and local government agencies, educational institutions, private firms, private foundations, non-profit organizations, and Federally acknowledged or state-recognized Native American tribes or groups. Authority for this program is contained in the Organic Act of March

3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The Program Announcement and application forms for this program are expected to be available on or about February 1, 1999. Applications must be received on or before March 2, 1999.

ADDRESSES: Copies of Program Announcement No. 99HQPA0005 for the NSDI Cooperative Agreements Program may be obtained through the Internet at <www.usgs.gov/contracts/index.html>. Copies of the Program Announcement may also be obtained by writing to: Ms. Karen Staubs, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–7372, FAX (703) 648–7901. Requests for paper copy must be in writing. Telephonic requests will not be honored.

FOR FURTHER INFORMATION CONTACT: For the NSDI Cooperative Agreements Program contact Ms. Kathleen Craig, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7357, fax (703) 648–7901.

SUPPLEMENTARY INFORMATION: Under the NSDI Cooperative Agreements Program proposals are to be directed towards either of two types of effort. The first is the creation of descriptions (metadata) of 'framework' digital geospatial data sets and serving those descriptions for search and retrieval through the distributed, electronically connected network of public internet-based clearinghouses—the National Spatial Data Infrastructure National Geospatial Data Clearinghouse. The second type of effort is providing clearinghouse/metadata technical assistance to organizations to enable the documentation and serving of metadata for 'framework' data. The geographic data themes known as 'framework' data are transportation, hydrography, elevation, digital orthoimagery, government boundaries, geodetic control, and cadastral information.

Dated: January 12, 1999.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 99–1488 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1220–00]

Sonoma-Gerlach and Paradise-Denio Management Framework Plan Amendment and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of comment period extension.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement on the management of the West Arm of the Black Rock Desert, located in Humboldt, Pershing and Washoe Counties, Nevada.

DATES AND ADDRESSES: A 30 day extension to the comment period has been granted. Written comments on the Draft Environmental Impact Statement must be postmarked by February 15, 1999.

A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca Field Office, ATTN: Gerald Moritz, Project Manager, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445.

The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, Nevada: Humboldt County Library, Winnemucca, Nevada: Pershing County Public Library, Lovelock, Nevada: Washoe County Public Library, Reno, Nevada: Washoe County Branch Library, Gerlach, Nevada: Susanville Library District, Susanville, California: University of Nevada Library in Reno, Nevada: and the Sacramento City College Library, Sacramento. In addition, the entire document is available on the World Web at the following address: www.nv.blm.gov/Winnemucca/BlackrockEIS.htm

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, Project Manager at the above Winnemucca Field Office Address or telephone (702) 623–1500.

Dated: January 13, 1999.

Les W. Boni,

Acting Field Manager.

[FR Doc. 99–1489 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF AGRICULTURE

Bureau of Land Management and Forest Service

[MT–920–08–1220–00, 1617P]

Notice of Intent To Prepare an Environmental Impact Statement for an Off-Highway Vehicle Amendment to Resource Management Plans and Forest Plans

AGENCY: Bureau of Land Management, Interior and Forest Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and U.S. Forest Service (FS), Region 1, propose to amend their respective resource management plans and forest plans in Montana, North Dakota, and portions of South Dakota. This action is necessary so managing agencies can responsibly manage the land and meet people needs. With an increase of off-highway vehicle (OHV) traffic; i.e., motorcycles, four-wheel drive vehicles, all terrain vehicles, etc., the BLM and the FS have observed the spread of noxious weeds, user conflicts, soil erosion, damage to cultural sites, and disruption of wildlife and wildlife habitat. The BLM and FS propose changing the areas currently open seasonally or yearlong to cross-country OHV use to a designation that allows for travel only on roads and trails. However, this amendment would not change most of the current limited or closed designations, or designated intensive off-road vehicle use areas. Exceptions for off-road travel will be considered in the analysis for game retrieval, camping, or disabled access. Access allowed under the terms and conditions of a federal lease or permit would not be affected by the proposal.

In the future, areas could be identified for intensive use and/or trail development. As joint lead agencies, the BLM and FS will prepare an environmental impact statement (EIS) to analyze the impacts of this proposal and any alternatives. Travel planning currently under consideration at individual FS and BLM offices will continue and those analyses with recent decisions will remain in place under this proposal.

DATES: Comments and recommendations on this notice should be received in writing no later than March 31, 1999.

ADDRESSES: Address all comments concerning this notice to OHV Plan

Amendment, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, 406–538–7461 or Dick Kramer, 406–329–1008.

SUPPLEMENTARY INFORMATION: The Montana/Dakotas BLM administers 8.5 million acres of public land within 10 field offices. Each office manages OHV use under a land use plan. These land use plans allow for three designations of vehicle use; open, limited, and closed. These land use plans vary considerably in OHV designations. More recent plans limit OHV use to existing or designated roads and trails in portions of the area, while older plans were developed prior to the increased use of OHVs and leave most areas open. Currently, 5 million acres are open for unrestricted travel, 3.4 million acres are limited seasonally or yearlong to existing or designated roads and trails, and 99,000 acres are closed.

The FS administers 18.2 million acres of land in Montana and the Dakotas located within nine national forests and the Dakota Prairie Grasslands. Each national forest manages OHV use as part of their forest plans. The OHV use is prohibited in all designated wilderness areas. Forest plans allow for three designations of use in other areas; open, restricted, and closed. Forest plans vary considerably in the amount of area designated for these uses. Some forests have many areas that are open while other forests have few open areas. Some forests restrict OHV use to designated roads and trails only. All forest plans were prepared prior to the recent increase in OHV use and the new development of all terrain vehicle technology.

One of the many opportunities on public land is traveling the backcountry for recreational pursuits, such as sightseeing, wood cutting, fishing, hunting, and other activities as provided by the direction of existing land management and resource plans. Some of this use occurs on public lands where OHV use is currently limited to existing or designated roads and trails. It is the goal of both agencies to provide for a wide spectrum of dispersed recreation activities that will minimize environmental impacts and minimize conflicts between user groups.

However, there are large areas of public land that are open to cross-country travel off roads and trails. This unrestricted use has the potential to continue the spread of noxious weeds, create user conflicts, cause erosion, damage cultural sites, and disrupt wildlife and wildlife habitat. The magnitude of these impacts is not known at this time. With an increase in OHV traffic and changes in OHV technology, the public and land management agencies recognize the need to evaluate the current management decisions for those areas where driving off roads and trails is allowed.

A change in management direction would be accomplished through an EIS and an interagency plan amendment. The plan amendment would address the use of wheeled, motorized vehicles designed for and/or capable of travel off roads and trails.

The BLM and FS propose changing the areas currently open seasonally or yearlong to cross-country OHV use to a designation that allows for travel only on roads and trails. However, this would not change most of the current limited or closed designations, or designated intensive use areas. Travel planning currently under consideration at individual FS and BLM offices will continue and those analyses with recent decisions will remain in place under this proposal. Exceptions for off-road travel will be considered for game retrieval, camping, or disabled access. Access allowed under the terms and conditions of a federal lease or permit would not be affected by the proposal. This broad scale decision as proposed would be an interim decision until revision or completion of travel management plans.

After the plan amendment is completed, the BLM and FS would continue to develop travel plans for geographical areas (i.e., landscape analysis, watershed plans, or activity plans). Through travel planning, roads and trails would be inventoried, mapped, and designated as open or closed. Travel planning may identify areas for trail development or further limit travel off roads and trails. Travel planning may require implementation over a 10 to 15 year period.

Snowmobile use will not be addressed in this particular proposal. The agencies agree that to do so would lengthen the process significantly. In addition, the resource impacts associated with snowmobile use are different enough to warrant a separate analysis. The agencies are currently exploring options for addressing snowmobile use.

The scoping period for the plan amendment and EIS will begin in January 1999, and open houses will be held in February 1999. The dates, times and locations of these open houses will be announced in local newspapers, and other news media, and available from the local offices of the BLM and FS. A draft plan amendment and EIS should be available for review in June 1999, with public meetings in July 1999. The comment period on the draft plan amendment and EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712), Sec. 6, Pub. L. 94–588, 90 Stat. 2949 (16 U.S.C. 1604).

Larry E. Hamilton,

State Director.

Dale N. Bosworth,

Regional Forester.

[FR Doc. 99–1438 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–00]

Powder River Regional Coal Team Activities: Schedule of Public Meeting

AGENCY: Department of the Interior, Wyoming.

ACTION: Notice of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) announces that it has scheduled a public meeting for February 23, 1999, for the following purposes: (1) Review current and proposed activities in the Powder River Coal Region, (2) review new and pending coal lease applications (LBA), and (3) make recommendations on new coal lease applications.

DATES: The RCT meeting will begin at 9 a.m. MDT, on Tuesday, February 23, 1999, in the Centennial South Conference Room of the Radisson Northern Hotel, Broadway & 1st Ave. North, Billings, MT, 406–245–5121. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Radisson Northern Hotel, Broadway & 1st Ave. North, Billings, MT, 406–245–5121. Attendees are responsible for making their own reservations.

FOR FURTHER INFORMATION CONTACT: Mel Schlagel, Wyoming State Office, P.O. Box 1828 (MS–922), Cheyenne, WY 82003, 307–775–6257.

SUPPLEMENTARY INFORMATION: Primary purpose of the meeting is to discuss two new pending coal leases by application (LBA) from Jacobs Ranch Coal Company (Kennecott Energy Company) (WYW146744), filed on October 2, 1998, for an estimated 519 million tons and 4,821 acres, and the Spring Creek Coal Company (Kennecott Energy Company) (MTM88405) filed June 26, 1998, for an estimated 15.4 million tons and 150

acres. This is the initial public notification of the pending applications listed above, in accordance with the "Powder River Operational Guidelines" (1991). Generally, a coal lease application filed under the LBA portion of BLM regulations (43 CFR 3425) takes 2–4 years to be processed to the competitive sale stage, depending on informational and environmental study requirements. The RCT may generate recommendation(s) for any or all of the new and pending LBAs.

The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Basin region. Any party interested in providing comments or data related to the above pending applications may either do so in writing to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, no later than February 12, 1999, or by addressing the RCT with his/her concerns at the meeting on February 23, 1999. The draft agenda for the meeting follows.

1. Introduction of RCT Members and guests.

2. Approval of the Minutes of the April 23, 1997, RCT meeting held in Casper, WY.

3. Regional Coal Activity Status:

a. Current Production and Trend.

b. Activity Since Last RCT Meeting.

c. Status of pending LBAs previously reviewed by RCT:

—North Rochelle LBA—WYW127221
—Powder River—WYW136142
—Thundercloud—WYW136458
—Belle Ayr—WYW141568

d. Status of the Belco/Hay Creek Coal Exchange.

e. Environmental Status Check update.

f. Wetlands Unsuitability Criteria update.

g. Status of Coal Leasing Potential Report.

4. Lease Applicant Presentations:

—Spring Creek Coal Company
—Jacobs Ranch Coal Company

5. RCT Activity Planning Recommendations

—Review and recommendation(s) on pending lease Application(s)

6. Discussion of the next meeting.

7. Adjourn.

Dated: January 12, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–1070 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1310–00]

Notice of Intent for Planning Analyses

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The Jackson Field Office, Eastern States, will prepare a Planning Analyses (PA) for consideration of leasing two scattered tracts of Federal mineral estate for oil and gas exploration and development. The PAs will be prepared in concert with Environmental Analyses (EA).

The notice is issued pursuant to Title 40 Code of Federal Regulations (CFR) 1501.7 and Title 43 CFR 1610.2(c). The planning effort will follow the procedures set forth in 43 CFR Part 1600.

The public is invited to participate in this planning process, beginning with the identification of planning issues and criteria.

DATES: Comments relating to the identification of planning issues and criteria will be accepted through February 17, 1999.

ADDRESSES: Send comments to Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Quazi T. Islam, Physical Scientist, Jackson Field Office, (601) 977–5473.

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider applications to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in preparation of the PA/EAs. Preliminary issues, subject to change as a result of public input, are (1) potential impacts of oil and gas exploration and development on the surface resources and (2) consideration of restrictions on lease rights to protect surface resources.

Due to the scattered nature of the two tracts proposed for leasing, a separate analysis will be prepared for each tract. Tract locations, along with acreages, are listed below.

Alabama, Conecuh County, St. Stephens Meridian,
T 6 N, R 9 E, Section 33; 53 acres more or less.

Mississippi, Lowndes County, Huntsville Meridian,
T 16 S, R 18 W, Sections 31 and 32; T 16 S, R 19 W, Section 36; and T 17 S, R 18 W, Section 5; all within the boundary of the Columbus Air Force Base containing 1381.5 acres more or less.

Due to the limited scope of this PA/EA process, public meetings are not scheduled.

Bruce E. Dawson,

Field Manager, Jackson.

[FR Doc. 99–1495 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–99–1430–01; AZA 29964, AZA 29969–AZA 29975, AZA 2997–AZA 29983, AZA 29985–AZA 29989]

Arizona: Notice of Realty Action; Competitive Sale of Public Land in Quartzsite, La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of notice.

SUMMARY: The following land in La Paz County, Arizona, has been found suitable for disposal under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713). The extension will allow additional time to complete the sale.

Gila and Salt River Meridian, Arizona

T. 4N., R. 19W.,
Sec. 22, NE¼NE¼SE¼;
Sec. 23, N½SW¼, S½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼;
Sec. 29, W½NE¼NE¼NE¼, NW¼NE¼NE¼, NW¼NE¼, W½NE¼NW¼, SE¼NE¼NW¼, NW¼NW¼.

Aggregating 260.00 acres, more or less.

SUPPLEMENTARY INFORMATION: On December 20, 1996, the Yuma Field Office published a notice for this public land sale in the **Federal Register** (61 FR 67342). This notice segregated the subject public land from appropriation under the public land laws, including the mining laws, pending disposition of the action or 270 days from the date of publication of the notice in the **Federal Register**. An Extension of the Notice for segregation was published in the **Federal Register** on September 23, 1997 (62 FR 49701). A second Extension of the Notice for segregation was published in the **Federal Register** on June 1, 1998 (63 FR 29746).

Upon publication of this notice in the **Federal Register** that segregation will be extended pending disposition of the action or for another 270 day period, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Debbie DeBock, Realty Specialist, Uyma Field Office, 2555 East Gila Ridge Road, Yuma, AZ 85365, (520) 317–3208.

Dated: January 11, 1999.

Gail Acheson,

Field Manager.

[FR Doc. 99–1490 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Canyon National Park, Coconino County, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comment.

SUMMARY: Notice is hereby given that a proposal for a cellular communication site at Grand Canyon National Park has been received. The project will be to construct and operate a telecommunications facility at Hopi Point on the South Rim of the park.

DATES: Written comment time has been extended from January 11, 1999 to February 5, 1999.

ADDRESSES: Direct all written comments to Superintendent, Attn.: Barbara Nelson, Telecommunications Specialist, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

FOR FURTHER INFORMATION CONTACT: Barbara Nelson, Telecommunications Specialist at telephone number 520–638–7710.

Dated: January 12, 1999.

Nicky Lindig,

Acting Deputy Superintendent.

[FR Doc. 99–1583 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through December 31, 1998, and contract actions that have been completed or discontinued since the last publication of this notice on October 20, 1998. From the date of this publication, future quarterly notices during this calendar year will be limited to modified, new, completed, or discontinued contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2889.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954*, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in *47 FR 7763*, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1999. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (I) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction

(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(R&B) Rehabilitation and Betterment
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(NEPA) National Environmental Policy Act
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. Irrigation, M&I, and miscellaneous water users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Public Law 97–293).

5. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

6. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

7. U. S. Fish and Wildlife Service and Boise-Kuna ID, Boise Project, Idaho: Memorandum of Agreement for the use of approximately 400 acre-feet of storage space annually in Anderson Ranch Reservoir. Water to be used for wildlife mitigation purposes (ponds and wetlands).

8. North Unit ID and/or city of Madras, Deschutes Project, Oregon: Long-term municipal water service contract for provision of approximately 125 acre-feet annually from the project water supply to the City of Madras.

9. North Unit ID, Deschutes Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wickiup Dam.

10. Five individual contractors, Umatilla Project, Oregon: Repayment agreements for reimbursable cost of dam safety repairs to McKay Dam.

11. North Unit ID, Deschutes Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

12. Baker Valley ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

13. Okanogan ID, Okanogan Project, Washington: SOD contract to repay District's share of cost of dam safety repairs to Salmon Lake Dam.

14. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

15. Milner ID, Minidoka-Palisades Projects, Idaho: Amendment of storage contracts to reduce the District's spaceholding in Palisades Reservoir by up to 5,162 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

16. City of Cle Elum, Yakima Project, Washington: Contract for up to 2,170 acre-feet of water for municipal use.

17. Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wasco Dam.

The following contract actions have been completed or discontinued in the Pacific Northwest Region since this notice was last published on October 20, 1998.

1. (4) West Extension ID, Umatilla Project, Oregon: Contract amendment to conform to the RRA (Public Law 97–293) executed in November 1998.

2. (14) South Boise Mutual Irrigation Company, Ltd. and United Water Idaho, Boise Project, Idaho: Agreement amending contracts to approve the acquisition and municipal use of Anderson Ranch Reservoir water by United Water Idaho, and the transfer of Lucky Peak Reservoir water to the United States. This action is not likely to be pursued.

3. (20) Burley and Southwest IDs, Minidoka Project, Idaho: Warren Act contract with charge to allow for use of project facilities to convey nondistrict water to Southwest ID. This action is not likely to be pursued.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note.* Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the Regional Director at the address shown above.

2. Contractors from the American River Division, Buchanan Unit, Colusa Basin Drain, Cross Valley Canal, Delta Division, East Side Division, Friant Division, Hidden Unit, Sacramento River Division, San Felipe Division, Shasta Division, Trinity River Division, and West San Joaquin Division, CVP, California: Renewal of existing long-term and interim renewal water service contracts with contractors whose contracts expire between 2000 and 2001; water quantities for these contracts total in excess of 5.6M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575.

3. Redwood Valley County WD, SRPA, California: District is considering restructuring the repayment schedule pursuant to Public Law 100–516 or initiating new legislation to prepay the loan at a discounted rate. Prepayment option under Public Law 102–575 has expired.

4. Sacramento River water rights contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

5. Naval Air Station and Truckee Carson ID, Newlands Project, Nevada: Amend water service agreement No. 14–06–400–1024 for the use of project water on Naval Air Station land.

6. El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contracts to supplement

existing water supply; 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Public Law 101–514.

7. U.S. Fish and Wildlife Service, California Department of Fish and Game, Grasslands WD, CVP, California: Water service contracts to provide water supplies for refuges and private wetlands within the CVP pursuant to Public Law 102–575 and Federal Reclamation Laws; quantity to be contracted for is approximately 450,000 acre-feet.

8. Sutter Extension WD, Biggs-West Gridley WD, Buena Vista Water Storage District, and the State of California Department of Water Resources, CVP, California: Pursuant to Public Law 102–575, conveyance agreements for the purpose of wheeling refuge water supplies and funding district facility improvements and exchange agreements to provide water for refuge and private wetlands.

9. Mountain Gate Community Services District, CVP, California: Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Public Law 102–575.

10. Santa Barbara County Water Agency, Cachuma Project, California: Repayment contract for SOD work on Bradbury Dam.

11. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

12. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within their service area.

13. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 15,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

14. Mercy Springs WD, CVP, California: Assignment of District's water service contract to Pajaro Valley Water Management Agency. The assignment will provide for delivery of up to 13,300 acre-feet annually of water to the Agency from the CVP for agricultural purposes.

15. Santa Barbara County Water Agency, Cachuma Project, California: Contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units.

16. Stony Creek WD, Black Butte Dam and Lake, Sacramento River Division, CVP, California: Proposed amendment of Stony Creek WD's water service contract, No. 2–07–20–W0261, to allow the Contractor to change from paying for all project water, whether used or not, to paying only for project water scheduled or delivered and to add another month to the irrigation period.

17. M&T, Inc., Sacramento River Water Rights Contractors, CVP, California: Proposed exchange agreement with M&T, Inc., to take its Butte Creek water rights water from the Sacramento River in exchange for CVP water.

18. East Bay Municipal Utility District, CVP, California: Amendment to the long-term water service contract, No. 14–06–200–5183A, to change the points of diversion.

19. Madera ID, Lindsay-Strathmore ID, and Delta Lands Reclamation District No. 770, CVP, California: Execution of 2- to 3-year Warren Act contracts for conveyance of nonproject water in the Friant-Kern and/or Madera Canals when excess capacity exists.

20. Napa County Flood Control and Water Conservation District, Solano Project, California: Renewal of water service contract, No. 14–06–200–1290A, which expires February 28, 1999.

21. Solano County Water Agency, Solano Project, California: Renewal of water service contract, No. 14–06–200–4090, which expires February 28, 1999.

22. Reno, Sparks, and Washoe County, Washoe and Truckee Storage Projects, Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the Truckee River Water Quality Settlement Agreement.

23. Sierra Pacific Power Company and Washoe County Water Conservation District, Washoe and Truckee Storage Projects, Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the proposed Truckee River Operating Agreement.

24. Casitas Municipal Water District, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

25. Centerville Community Services District, CVP, California: A long-term supplemental repayment contract for reimbursement to the United States for conveyance costs associated with CVP water conveyed to Centerville.

26. El Dorado ID, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the District for use within their service area.

27. Placer County Water Agency, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and reduction in the amount of project water to be delivered from a maximum of 117,000 acre-feet to a maximum of 35,000 acre-feet. The amended contract will conform to current Reclamation law.

28. Langell Valley ID, Horsefly ID, and Tulelake ID, Klamath Project, Oregon: Repayment contract for SOD work on Clear Lake Dam.

29. Widren WD, CVP, California: Assignment of District's water service contract to the City of Tracy. The assignment will require approval of conversion of the District's CVP irrigation water to M&I water.

30. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts with various entities for conveyance of nonproject water in the Delta-Mendota Canal.

31. Solano County Water Agency and Solano ID, Solano Project, California: Contract to transfer responsibility for O&M of Monticello Dam, Putah Diversion Dam, Putah South Canal, Headworks of Putah South Canal, and Parshall Flume at Milepost 0.18 of Putah South Canal to Solano ID and provide that the Solano County Water Agency shall provide the funds necessary for O&M of the facilities.

32. Tuolumme Utility District (formerly Tuolumne Regional WD), CVP, California: Water service contract for up to 9,000 acre-feet from New Melones Reservoir.

33. Reno, Sparks, Washoe County, State of Nevada, State of California, Town of Fernley, Nevada, Truckee-Carson ID, and any other local interest or Native-American Tribal interest, who may have negotiated rights under Public Law 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the proposed Truckee River Operating Agreement.

34. City of Folsom, CVP, California: Contract to amend their water rights settlement contract's point of diversion.

35. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Sunkist Growers, Inc., and Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to 15,557 acre-feet per year total.

2. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,607 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land.

3. Armon Curtis, Arlin Dulin, Jack Rayner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts to exempt each referenced contract from the acreage limitation and full-cost pricing provisions of the RRA.

4. Brooke Water Co., Havasu Water Co., Town of Quartzsite, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 2,610 acre-feet per year as recommended by the Arizona Department of Water Resources.

5. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment PPR for diversion of 500 acre-feet annually and the National Park Service's Federal Establishment PPR pursuant to Executive Order No. 5125 (April 25, 1930).

6. Mohave Valley IDD, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service area, diversion points, RRA exemption, and PPR.

7. Miscellaneous PPR entitlement holders, BCP, Arizona, and California: New contracts for entitlement to Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the Boulder Canyon Project Act. Miscellaneous PPRs holders are listed in the January 9, 1979, Supreme Court Supplemental Decree in *Arizona* v. *California et al.*

8. Miscellaneous PPR No. 11, BCP, Arizona: Assign a portion of the PPR from Holpal to McNulty et al.

9. Federal establishment PPR entitlement holders, BCP: Individual contracts for administration of Colorado River water entitlement of the Colorado River, Fort Mojave, Quechan, Chemehuevi, and Cocopah Indian Tribes.

10. United States facilities, BCP, Arizona and California: Reservation of Colorado River water for use at existing Federal facilities and lands administered by Reclamation.

11. Bureau of Land Management, BCP, Arizona: Contract for 1,176 acre-feet per year, for irrigation use, of Arizona's Colorado River water that is not used by higher-priority Arizona entitlement holders.

12. Curtis Family Trust et al., BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for irrigation.

13. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement for irrigation use.

14. Section 10 Backwater, BCP, Arizona: Contract for 250 acre-feet per year of unused Arizona entitlement for environmental use until a permanent water supply can be obtained.

15. U.S. Fish and Wildlife Service, Lower Colorado River Refuge Complex, BCP, Arizona: Proposed agreement for the administration of existing Colorado River water entitlement of refuge lands located in Arizona, resolving water rights coordination issues, and to provide for additional entitlement for nonconsumptive use of flow through water.

16. Hilander C ID, Colorado River Basin Salinity Control Project, Arizona: Water delivery contract for 4,500 acre-feet.

17. Maricopa-Stanfield IDD, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0047 to reschedule repayment pursuant to June 28, 1996, agreement.

18. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

19. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

20. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30–W0120 to increase the repayment obligation approximately $168,000.

21. Central Arizona Drainage and Irrigation District, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0048 to modify repayment terms pursuant to U.S. Bankruptcy Court, District of Arizona.

22. City of Needles, Lower Colorado Water Supply Project, California: Amend contract No. 2–07–30–W0280 to extend Needles water service subcontracting authority to the Counties of Imperial and Riverside.

23. Imperial ID/Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act dated November 17, 1988.

24. Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

25. United States Navy, BCP, Niland, California: Contract for 23 acre-feet of surplus Colorado River water for domestic use delivered through the Coachella Canal.

26. Southern Nevada Water Authority, Robert B. Griffith Water Project, BCP, Nevada: Amend the repayment contract to provide for the incorporation of the Griffith Project into the expanded southern Nevada Water System, funded and built by Southern Nevada Water Authority, to facilitate the diversion, treatment, and conveyance of additional water out of Lake Mead for which the Authority has an existing entitlement to use.

27. Salt River-Pima Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

28. McMicken ID/Town of Goodyear, CAP, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 507 acre-feet and Goodyears's water/service subcontract to increase its entitlement by 507 acre-feet.

29. Bullhead City, BCP, Arizona: Assignment of 1,800 acre-feet of water and associated service area from Mohave County Water Conservation District to Bullhead City, Arizona.

30. Mr. Robert H. Chesney, BCP, Arizona: Amend contract No. 5–07–30–W0321 to increase the cubic-foot-per-

second diversion and facilitate the installation of a low-lift pump.

31. U.S. Army Proving Ground, BCP, Arizona: Agreement for 1,883 acre-feet of Colorado River water.

32. Arizona State Land Department, BCP, Arizona: Water delivery contract for 1,400 acre-feet of Colorado River water for domestic use.

33. Miscellaneous PPR No. 38, BCP, California: Assign Schroeder's portion of the PPR to Murphy Broadcasting and change the place and type of water use.

34. Berneil Water Co., CAP, Arizona: Subcontracts associated with partial assignment of water service to the Cave Creek Water Company.

35. Tohono O'odham Nation, CAP, Arizona: Repayment contract for construction costs associated with distribution system for Central Arizona IDD.

36. Tohono O'odham Nation, CAP, Arizona: Contracts for Schuk Toak and San Xavier Districts for repayment of Federal expenditures for construction of distribution systems.

37. Arizona State Land Department, BCP, Arizona: Water delivery contract for up to 9,000 acre-feet per year of unused apportionment and surplus Colorado River water for irrigation.

38. Don Schuler, BCP, California: Temporary delivery contract for surplus and/or unused apportionment Colorado River water for domestic and industrial use on 18 lots of recreational homes in California.

39. Bureau of Land Management, BCP, California: Agreement for 1,000 acre-feet of Colorado River water in accordance with Secretarial Reservations.

40. Bureau of Land Management, BCP, Arizona: Agreement for 4,010 acre-feet of Colorado River water in accordance with Secretarial Reservations.

41. Arizona Public Service Company and Imperial ID, BCP, Arizona: Delivery contract for up to 1,500 acre-feet of unused Arizona entitlement and/or surplus water.

42. Canyon Forest Village II Corporation, BCP, Arizona: Water delivery contract for the diversion of up to 400 acre-feet of unused Arizona apportionment or surplus apportionment of Colorado River water for domestic use.

43. Gila Project Works, Gila Project, Arizona: Proposed title transfer of facilities and certain lands in the Wellton-Mohawk Division, Arizona, to be transferred from the United States to the Wellton-Mohawk IDD.

44. McMicken ID, CAP, Arizona: Assignment of 486 acre-feet of M&I water to the City of Peoria.

45. ASARCO Inc., CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

46. BHP Copper, Inc., CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

47. Cyprus Miami Mining Corporation, CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

48. San Carlos-Apache Tribe, CAP, Arizona: Agreement among the United States, Salt River Project Agricultural Improvement and Power District, and Salt River Valley Water Users' Association for exchange of up to 14,000 acre-feet of Black River Water for CAP water.

49. San Carlos-Apache Tribe, Arizona: Agreement among the San Carlos-Apache Tribe, the United States, and Phelps Dodge Corporation for the lease of Black River Water.

50. San Carlos Apache Tribe, CAP, Arizona: Amendatory contract to increase the Tribe's CAP water entitlement pursuant to the San Carlos Apache Tribe Water Rights Settlement Act.

51. Bureau of Reclamation, BCP, Arizona and California: Surplus water entitlements for environmental habitat improvement projects.

52. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply reallocated in 1992 for irrigation entities and up to 640,000 acre-feet per year allocated in 1983 for M&I use.

53. City of Goodyear, CAP, Arizona: Amendment to increase Goodyear's CAP water entitlement by 1,007 acre-feet pursuant to agreement with McMicken ID to transfer its right to this water under subcontract No. 5–07–30–W0100.

54. McMicken ID, CAP, Arizona: Amendment No.1 to terminate subcontract.

55. E&R Water Company, CAP, Arizona: Exchange agreement to transfer 161 acre-feet of CAP water to the Salt River Project.

The following contract action has been completed in the Lower Colorado Region since this notice was last published on October 20, 1998.

1. (43) Bureau of Land Management, Lower Colorado Water Supply Project, California: Agreement for a consumptive use of 1,150 acre-feet of water for use on Bureau of Land Management-administered lands in California adjacent to the Colorado River.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Harrison F. Russell and Patricia E. Russell, Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 97CW39, Water Division Court No. 4, State of Colorado, to provide for a single family residential well, including home lawn and livestock watering (non-commercial).

(b) City of Page, Arizona, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 300 acre-feet of water for municipal purposes.

(c) LeChee Chapter of the Navajo Nation, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 200 acre-feet for municipal purposes.

(d) Stephens, Walter Daniel, Aspinall Unit, CRSP, Colorado: Contract for 2 acre-feet to support an augmentation plan, Case No. 97CW49, Water Division Court No. 4, State of Colorado, to provide for pond evaporative depletions during the non-irrigation season.

(e) Frank M. Colman, Karen Edstrom, William and Lorena Gunn, Emily Vernon, and William E. Williams, Aspinall Unit, CRSP, Colorado: Contract for 3 acre-feet to support augmentation plans, Water Division Court No. 4, State of Colorado, to provide for single family residential use, irrigation, fire protection, and livestock watering.

(f) Daggett County, Utah, Flaming Gorge Unit, CRSP, Utah: M&I water service contract covering payment for and delivery of up to 12,000 acre-feet of untreated water as required by Section 10(k)(2) of Public Law 105–326.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

4. Pine River ID, Pine River Project, Colorado: Contract to allow the District to convert up to 2,000 acre-feet of

project irrigation water to municipal, domestic, and industrial uses.

5. San Juan-Chama Project, New Mexico: San Juan Pueblo repayment contract for up to 2,000 acre-feet of project water for irrigation purposes. Taos Area—The Taos area Acequias, the Town and County of Taos are forming a joint powers agreement to form an organization to enter into a repayment contract for up to 2,990 acre-feet of project water to be used for irrigation and M&I in the Taos, New Mexico area.

6. Carlsbad ID, Carlsbad Project, New Mexico: Multi-year contract to allow the District to lease water to the New Mexico Interstate Stream Commission to fulfill New Mexico's water obligation to Texas under Supreme Court's Amended Decree in *Texas* v. *New Mexico* 485 U.S. 288(1988).

7. The National Park Service, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

8. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Long-term water service contract for municipal, domestic, and irrigation use.

9. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

10. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

11. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

12. Grand Valley Water Users Association, Orchard Mesa ID, and Public Service Company of Colorado, Grand Valley Project, Colorado: Water service contract for the utilization of project water for cooling purposes for a steam electric generation plant.

13. Public Service Company of New Mexico, CRSP, Navajo Unit, New Mexico: Amendatory water service contract for diversion of 16,700 acre-feet, not to exceed a depletion of 16,200 acre-feet of project water for cooling purposes for a steam electric generation plant.

14. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for an SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Savor River (Great Basin).

15. Emery County Water Conservancy District, Emery County Project, Utah: Warren Act contract to allow temporary storage of nonproject water in Joes Valley Reservoir and/or Huntington North Reservoir.

16. Individual irrigators, Dolores Project, Colorado: The United States proposes to carry up to 6,000 acre-feet of nonproject water in project facilities under the authority of the Warren Act of 1911.

17. Various contractors, San Juan-Chama Project, New Mexico: The United States proposes to purchase lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

The following contract actions have been completed or discontinued in the Upper Colorado Region since this notice was last published on October 20, 1998.

1. (18) Town of Taos, San Juan-Chama Project, New Mexico: Contract to purchase water from the Town of Taos to increase native flows in Rio Grande for benefit of the silvery minnow. This action has been discontinued.

2. (19) City of Albuquerque, San Juan-Chama Project, New Mexico: Amend water storage contract No. 3–CS–53–01510 to exempt the City of Albuquerque from acreage limitation and reporting provisions. Contract was executed October 21, 1998.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

1. Individual irrigators, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term up to 1 year.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Negotiation of water service and repayment contracts for approximately 17,000 acre-feet annually for M&I use; contract with Colorado Water Conservation Board for remaining 21,650 acre-feet of marketable yield for interim use by U.S. Fish and Wildlife Service for benefit of endangered fishes in the Upper Colorado River Basin.

4. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

5. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pursuant to section 501 of Public Law 101–434, negotiate amendatory contract to increase irrigable acreage within the project.

6. Lakeview ID, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to section 9(e) of the Reclamation Project Act of 1939 and Public Law 100–516.

7. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

8. North Platte Project, Pathfinder ID: Negotiation of contract regarding SOD program modification of Lake Alice Dam No. 1 Filter/Drain.

9. Northern Cheyenne Indian Reservation, Montana: In accordance with section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act of 1992, the United States and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtail Unit, Lower Bighorn Division, P–SMBP, Montana. The Tribe will pay the United States both capital and O&M costs associated with each acre-foot of water the Tribe sells from this storage for M&I purposes.

10. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of

the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a nonprofit corporation for the planning and construction of a rural water supply system.

11. Angostura ID, Angostura Unit, P–SMBP, South Dakota: The District had a contract for water service which expired on December 31, 1995. An interim 3-year contract provides for a continuing water supply and the District to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the District and the District's continued O&M of the facility.

12. Cities of Loveland and Berthoud, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities pursuant to the Town Sites and Power Development Act of 1906.

13. P–SMBP, Kansas and Nebraska: Initiate negotiations for renewal of long-term water supply contracts with Kansas-Bostwick, Nebraska-Bostwick, Frenchman Valley, Frenchman-Cambridge, and Almena IDs.

14. Northwest Area Water Supply, North Dakota: Long-term contract for water supply from Garrison Diversion Unit facilities. Basis of negotiation has been approved by Commissioner. Negotiations are pending.

15. Fort Shaw and Greenfields IDs, Sun River Project, Montana: Contract for SOD costs for repairs to Willow Creek Dam. Greenfields ID has signed a 1-year repayment contract for its share of the SOD costs. Have received the revised/approved basis of negotiation from the Commissioner. In the process of negotiating a contract with Fort Shaw ID.

16. P–SMBP, Kansas: Water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Public Law 104–326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration.

17. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of contract to renew for an additional term of 5 years. Contract for up to 10,000 acre-feet of storage space for replacement water on a yearly basis in Seminoe Reservoir. A temporary contract has been issued pending negotiation of the long-term contract.

18. Highland-Hanover ID, P–SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction costs.

19. Upper Bluff ID, P–SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction cost.

20. Fort Clark ID, P–SMBP, North Dakota: Negotiate an interim water service contract to continue delivery of project water pending renewal of a long-term water service-repayment contract.

21. Canadian River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a consideration for project land transferred to the National Park Service, and a 3-year deferment of payments.

22. Nueces River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a 5-year deferment of payments.

23. Western Heart River ID, P–SMBP, Heart Butte Unit, North Dakota: Negotiation of water service contract to continue delivery of project water to the District.

24. Lower Marias Unit, P–SMBP, Montana: Water service contract expired June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Received approved basis of negotiation from the Commissioner. Currently developing the contract and consulting with the Tribes regarding the Water Rights Compact.

25. Lower Marias Unit, P–SMBP, Montana: Initiating 25-year water service contract for up to 750 acre-feet of storage from Tiber Reservoir to irrigate 250 acres. A 1-year temporary contract has been issued to allow additional time to complete necessary actions required for the long-term contract.

26. Lower Marias Unit, P–SMBP, Montana: Water service contract expired May 31, 1998. Initiating renewal of the long-term water service contract to provide 4,570 acre-feet of storage from Tiber Reservoir to irrigate 2,285 acres. A 1-year interim contract has been issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract.

27. Glendo Unit, P–SMBP, Wyoming: Initiate amendments to extend the current contracts until December 31, 2000, in accordance with the "Irrigation Project Contract Extension Act of 1998" for Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

28. Glendo Unit, P–SMBP, Nebraska: Initiate amendments to extend the current contracts until December 31, 2000, in accordance with the "Irrigation Project Contract Extension Act of 1998" for Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and Irrigation District.

29. Dickinson Heart River Mutual Aid Corporation, P–SMBP, Dickinson Unit, North Dakota: Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

30. Public Service Company of Colorado: Agreement to furnish surplus water from the historic users pool at Green Mountain Reservoir for the purpose of generating hydroelectric power at the Grand Valley Power Plant, Palisade, Colorado.

31. Canadian River Project, Texas: Amend repayment contract No. 14–06–500–485 to allow for prepayment of construction charge obligation as authorized by Public Law 105–316, signed October 30, 1998.

32. Savage ID, P–SMBP, Montana: Contract with District has expired. Preparing basis of negotiation for the Commissioner's approval prior to issuing a long-term contract.

33. San Angelo Project, Texas: San Angelo Water Supply Corporation, amend contract to reflect increase in irrigable acreage as authorized pursuant to section 501 of Public Law 101–434.

34. City of Fort Collins, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance and storage of nonproject M&I water through Colorado-Big Thompson Project facilities pursuant to the Town Sites and Power Development Act of 1906.

35. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: In compliance with the October 1996 Stipulation and Agreement, Orchard Mesa Check Case No. 91CW247, Colorado Water Division No. 5, Reclamation is currently negotiating a long-term Operating Agreement among Colorado Public Service Company of Colorado, Orchard Mesa ID, and Grand Valley Water Users Association, for delivery of surplus Green Mountain Reservoir water to the Federal Grand Valley Power Plant.

36. Fryingpan-Arkansas Project, Colorado: Proposing to amend contract No. 9–07–70–W0090 for water storage with Busk-Ivanhoe, Inc.

Dated: January 14, 1999.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 99–1439 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 29, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. AA1921–167 (Review) (Pressure Sensitive Plastic Tape from Italy)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 12, 1999)
5. Outstanding action jackets:
   (1) Document No. GC–98–069: APO matters
   (2) Document No. GC–98–071: APO matters

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1603 Filed 1–20–99; 2:46 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Three Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that three proposed consent decrees in *United States* v. *Drum Service Co. of Florida, et al.*, M.D. Fla., Civil No. 98–687–Civ–Orl–18C, were lodged on January 6, 1999, with the United States District Court for the Middle District of Florida. The consent decrees resolve claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against (1) defendants Douglass Fertilizer & Chemical Co., Inc., Spencer G. Douglass, Joseph P. Brooks, the Estate of Irving Feinberg, Mallory Corporation, and Coatings Application & Waterproofing Co.; (2) defendants Zellwin Farms Co., Inc., W.R. Grace & Co.—Conn., Paul Alexander, Julia Alexander, Chemical Systems of Florida, Inc.; and (3) defendant Joseph P. Brooks for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the Zellwood Groundwater Contamination Superfund Site ("Site").

One proposed decree would partially resolve the liability of five former owners and operators of a liquid fertilizer business at the Site and the current owner of the portion of the Site on which the liquid fertilizer business was located. The Decree would release claims against Douglass Fertilizer & Chemical Co., Inc., Spencer G. Douglass, Joseph P. Brooks, the Estate of Irving Feinberg, Mallory Corporation, and Coatings Application & Waterproofing Co. ("Settling Defendants"), for response costs incurred to perform the remedy selected in a Record of Decision for Operable Unit One of the Site. The Settling Defendants collectively would pay $199,980.11 to resolve these claims.

The second proposed decree would resolve the liability of four current owners and one current operator for all past and future response costs at the Site. Zellwin Farms Co., Inc., would pay $18,048.23; W.R. Grace & Co.—Conn. would pay $8,114.94; and Paul Alexander, Julia Alexander and Chemical Systems of Florida, Inc., collectively would pay $8,114.94 to resolve the United States' claims.

The third proposed decree would resolve the liability of Joseph P. Brooks, a former operator at the Site, on the grounds that Mr. Brooks has an inability to pay. Mr. Brooks, who is paying $70,000 as a Settling Defendant in the first proposed Consent Decree, would pay an additional $500 to resolve his remaining liability.

The three proposed consent decrees include a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Drum Service Co. of Florida, et al.*, M.D. Fla., Civil No. 98–687–Civ–Orl–18C, DOJ Ref. #90–11–2–266.

The proposed consent decrees may be examined at the office of the United States Attorney, Middle District of Florida, 201 Federal Building, 80 N. Hughey Avenue, Orlando, FL 32801; the Region IV Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303–8960; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of any of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting copies please refer to the referenced case and enclose a check in the amount of $67.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–1392 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response of the United States; United States v. Enova Corporation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that public comments and the response of the United States thereto have been filed with the United States District Court for the District of Columbia in *United States* v. *Enova Corporation*, Civil No. 98–CV–583 (RWR).

On March 9, 1998, the United States filed a Complaint seeking to enjoin a transaction in which Pacific Enterprises ("Pacific") would merge with Enova Corporation ("Enova"). Pacific is a California gas utility company and Enova is a California electric utility company. Enova sells electricity from plants that use coal, gas, nuclear power, and hydropower. Pacific is virtually the sole provider of natural gas transportation and storage services to plants in southern California that use natural gas to produce electricity. The proposed merger would have created a company with both the incentive and the ability to lessen competition in the market for electricity in California. The

Complaint alleged that the proposed merger would substantially lessen competition in the market for electricity in California, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Public comment was invited within the statutory sixty-day comment period. The two comments received, and the responses thereto, are hereby published in the **Federal Register** and filed with the Court. Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, Competitive Impact Statement, Public Comments, and Plaintiff's Response to Public Comments are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of these materials may be obtained on request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States of America, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, *Plaintiff,* v. Enova Corporation, 101 Ash Street, San Diego, CA 92101, *Defendant.*

[Case Number: 98–CV–583 (RWR); Judge Richard W. Roberts]

Plaintiff's Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h) ("Tunney Act"), the United States hereby responds to the two public comments received regarding the proposed Final Judgment in this case.

I. The Complaint and Proposed Judgment

The United States filed a civil antitrust Complaint on March 9, 1998, alleging that the proposed merger of Pacific Enterprises ("Pacific"), a California natural gas utility, and Enova Corporation ("Enova"), a California electric utility, would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that as a result of the merger, the combined company ("PE/Enova") would have both the incentive and the ability to lessen competition in the market for electricity in California and that consumers would be likely to pay higher prices for electricity.

The Complaint further alleges that prior to the merger, Pacific's wholly owned subsidiary, Southern California Gas Company, was virtually the sole provider of natural gas transmission and storage to natural gas-fueled electric generating plants in Southern California ("gas-fired plants"). As a consequence and without regard to the merger, it had the ability to use that market power to control the supply and thus the price of natural gas available to the gas-fired plants. Prior to the merger, however, Pacific did not own any electric generation plants, so it did not have the incentive to limit its gas transportation, sales or storage or to raise the price of gas to electric utilities in order to increase the price of electricity.

The Complaint alleges that in early 1998, the California electric market experienced significant changes as the result of a legislatively mandated restructuring. In this new competitive electric market, gas-fired plants, which are the most costly electric generating plants to operate, set the price that all sellers receive for electricity in California in peak demand periods. Thus, if a firm could increase the cost of the gas-fired plants by raising their fuel prices, it could raise the price all sellers of electricity in California receive, and increase the profits of owners of lower cost sources of electricity.

Based on these facts, the Complaint alleges that the merger violated Section 7 of the Clayton Act because the acquisition of Enova's low-cost electric generating plants gave Pacific a means to benefit from any increase in electric prices. The Complaint challenges the acquisition of these specific plants:

> Once Pacific's pipeline is combined with Enova's low cost electricity generation facilities, PE/Enova would have the ability to raise the pool price of electricity either by (a) limiting the availability of natural gas to competing gas-fired plants that supply the most expensive units of electricity into the pool, or (b) by limiting gas or gas transportation to gas-fired plants that are more efficient and would otherwise have kept the pool price for electricity down. PE/Enova would have the incentive to raise the pool price after the merger because, through its ownerships of low cost generation facilities, it could profit substantially from any increase in the pool price of electricity and its incremental profits would more than offset any losses of gas transportation sales that would result from withholding gas from competing gas-fired plants. PE/Enova thus will have the incentive and ability to lessen competition substantially and increase the price of electricity in California during periods of high demand.
>
> (Compl. ¶24 (emphasis added).)

The proposed Final Judgment directly remedies this harm by requiring Enova to divest its low-cost generating units to a purchaser or purchasers acceptable to the United States in its sole discretion. These divestiture assets are the Encina and South Bay electricity generation facilities owned by Enova and located at Carlsbad and Chula Vista, California, and include all rights, titles and interests related to the facilities.[1] By requiring this divestiture, the incentive that was created by the merger for PE/Enova to raise electricity prices is removed, providing a full remedy to the harm alleged in the Complaint.[2]

As part of the settlement, the United States also obtained the Defendant's agreement to protection that are beyond those needed to remedy directly the harm created by the acquisition. The proposed decree includes limitations on PE/Enova's ability in the future to acquire other low cost gas-fired generating assets that could give the merged firm the same incentive and opportunity to raise electricity prices that the acquisition of the divested Enova assets would have presented. Recognizing that PE/Enova would have numerous acquisition opportunities over the next few years as a consequence of the State of California's orders that many generating assets be divested (*see* CIS at 13), the proposed decree requires PE/Enova to seek prior approval from the United States before acquiring ownership or ownership-like rights to other low-cost, California generating assets. The United States can, at its sole discretion, disallow any acquisition of such assets, without incurring the costs and risks of litigation.[3] The types of transactions

[1] The Final Judgment provides that the approvals by the United States required by this decree for sale of these assets are in addition to the necessary approvals by the California Public Utilities Commission ("CPUC") or any other governmental authorities for the sale of such assets. Enova must submit required applications to divest the assets no later than ninety days after entry of the Final Judgment, and complete the divestiture as soon as practicable after receipt of all necessary government approvals, in accordance with the proposed Final Judgment.

[2] As explained in the Competitive Impact Statement ("CIS"), the decree does not require the divestiture of the merged company's nuclear assets, as the price of electricity from those assets will be regulated during the cirtical first years of the decree, which means that ownership of those assets will not give the merged firm an incentive to raise prices. In 2001, if the nuclear power prices become deregulated, the decree provides for safeguards to ensure that any incentive to use these assets to raise price is minimized or eliminated.

[3] The Final Judgment does not prevent PE/Enova from building new capacity in California, or from acquiring capacity built in California after January 1, 1998. New capacity will only be built in California if the output is inexpensive enough to be sold in many hours. By increasing the amount of less expensive power available to meet demand, new, low-cost capacity will reduce the number of hours in which the most costly gas-fired capacity is needed. This in turn will limit PE/Enova's ability to raise the pool price since it is more costly and difficult for PE/Enova to restrict gas to more numerous low-cost plants. For the same reasons, the Final Judgment allows the merged company to acquire or gain control of plants that are rebuilt,

subject to this prior approval process include outright acquisition of any existing California Generating Assets (Final Jmt. § V.A.1); any contract that allows PE/Enova to control such assets (Final Jmt. § V.A.2); any contract for the operation and sale of the output from generating facilities owned by the Los Angeles Department of Water and Power ("LADWP"), the second largest generator of electricity in California and an entity owning more generation than Enova even prior to the divestiture (Final Jmt. §§ V.A.2, II.B); power management contracts of California Generating Facilities with the LADWP (Final Jmt. §§ V.C.4,II.C); and future tolling arrangements of the type that would most clearly mimic true ownership of the tolled facilities (Final Jmt. §§ V.A.2, V.C.3).

In addition, the United States has the ability to monitor PE/Enova's entry into many power management contracts not subject to prior approval (Final Jmt. § V.C.5). The United States thus has the opportunity to review these contracts, which are relatively new in the deregulated California market, and determine whether they would give PE/Enova the same incentive to raise electricity prices that ownership of the divested Enova assets would have created. The United States can then challenge any contracts that would do so.

In sum, the decree provides two types of relief for the United States. First, it achieves a direct remedy for the harm caused by Pacific's acquisition of Enova's low-cost generating assets by ordering divestiture of those specific assets. Second, it provides the additional benefits of the prior approval and contract monitoring provisions. These additional provisions are not meant to (nor can they) prevent PE/Enova from entering any transaction or acquiring any asset that could give it the incentive to exploit Pacific's pipeline market power in the electricity market. Instead they provide the United States with a check on potentially anticompetitive transactions, where the acquisition of such assets would again create incentives similar to these created by the assets acquired (and divested) in the transaction before this Court.

The United States and Enova have stipulated that the proposed Final Judgment may be entered after compliance with the APPA.

II. Response to Public Comments

On June 8, 1998, the United States filed the CIS in this docket and on June 18, 1998, the Complaint, Final Judgment and CIS were published in the **Federal Register**. The **Federal Register** notice explained that interested parties could provide comments to the Department for a period of 60 days. Two parties filed comments with the Department: Edison International ("Edison") and the City of Vernon.

A. Edison's Comments

Edison's primary comment is that the decree does not strip PE/Enova of the ability or incentive to increase electricity prices, but only eliminates one opportunity to do so. Despite the decree, Edison argues, PE/Enova still can use Pacific's market power over natural gas transmission and still can enter into transactions that will give it the incentive to exercise that power and raise electricity prices. Edison enumerates and discusses particular transactions that would give Pacific that incentive:

1. Building or acquiring new or repowered generating facilities;
2. Entering into tolling agreements;
3. Entering into power generation management contracts; and
4. Entering into financial contracts (derivatives) tied to prices in the California Electric market.

But Edison's criticism misses the mark, because each of the potential transaction it lists is a transaction that Pacific could engage in whether or not it merges with Enova. Thus, Edison's comments do not focus on the harm caused by the merger, but rather on the harm to competition that might result from Pacific's premerger ownership of a monopoly gas pipeline. In contrast, the United States' Complaint is focused only on the effects that flow from the merger.

Edison's assertion (Edison Comments at 13) that Pacific had no premerger incentive to manipulate electricity prices is simply wrong. As soon as California deregulated retail electricity prices, Pacific had the incentive, among other things, to build or acquire new and/or repower other existing generating assets, purchase derivatives, and make gas tolling agreements in order to exploit its pipeline's market power over gas-fired generators. The ability and incentive of Pacific to exercise its natural gas transmission market power for gain in the electric market in any of these manners does not require acquisition of any of Enova's generating assets or its "electricity expertise."[4]

Nevertheless, Edison argues that the Final Judgment is defective because the United States did not also "understand[ ], anticipat[e], and then prohibit[ ] all the various means by which the merged company could seek to retain or create incentives to earn profits through electricity price manipulations." (Edison Comments at 20.) To the extent that Edison means to suggest that, once any merger transaction is found to violate the Clayton Act, a merger decree should enjoin any and all other means by which the defendant might violate the antitrust laws in the future, the suggestion plainly is incorrect.[5] Contrary to Edison's suggestions, enforcement of the merger laws, Section 7 of the Clayton Act, is aimed at remedying the competitively harmful changes in market structure or other conditions that result from the merger. Here, the merger takes Pacific's ability to profitably raise electric prices and adds the incentive provided by Enova's low cost generating assets. The proposed decree severs those assets from the merged company, remedying the change in incentive and ability from the status quo ante. The Final Judgment requires these assets to be sold to a party that will not own the monopoly pipeline and removes the new incentive provided by the acquired Enova assets for PE/Enova to use the pipeline's already existent market power.[6]

Just as Edison's critical comments do not address the merger-related harms alleged in the Complaint, its comments do not address whether the parties' proposed decree is adequate to remedy the harms alleged in that Complaint. Instead, Edison proposes its own alternative remedies that either do not

repowered, or activated out of dormancy after January 1, 1998. Output from such plants is the equivalent of output from new-build capacity. CIS at 13–14.

[4] Edison's comments, which mention Enova's "electricity expertise" in one sentence, do not define this term, identify where in Enova it resides, or assert that pacific, the pipeline's parent company, did not already have such expertise prior to the merger or have the ability to obtain it by a number of means, including hiring employees with electric experience.

[5] *See Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 133 (1969) (explaining that a court may not enjoin "all future violations of the antitrust laws, however unrelated to the violation found by the court"); *Hartford-Empire Co.* v. *United States*, 323 U.S. 386, 409–10 & n.7 (1945) (citing *NLRB* v. *Express Publ'g Co.*, 312 U.S. 426, 433, 435–36 (1941)).

[6] Edison also makes the same argument from the opposite perspective—that competition is separately harmed because Enova has gained an ability via the merger to raise price. (Edison Comments at 5.) Again, there is no additional pipeline monopoly power created by the merger. The proposed remedy is effective against the harm caused by the combination (the pipeline and Enova's low cost generating assets), whether the Southern California Gas Company pipeline's monopoly power is wielded by Enova or by Pacific.

address the harm caused by the merger, or are not as effective as the decree. Edison suggests that: (1) The merger be rescinded, (2) the pipeline be divested, (3) the pipeline be controlled by an independent system operator, or (4) the merged company be barred from trading in financial instruments for Southern California electricity markets (Edison Comments at 6).[7]

Two of Edison's proposed remedies—the independent system operator and the bar on trading—are aimed at controlling the preexisting market power of the gas pipeline rather than remedying any harm created by the merger. And, ironically, the Edison remedies aimed most closely at the merger—rescission or divestiture of the pipeline—would not place any limits on the pipeline's new owner's ability to raise the price of electricity or limit the pipeline owner from acquiring assets or contracts that would give it the incentive to do so, even though this incentive and ability is purportedly the gravamen of Edison's concern. The Proposed Final Judgment, in contrast, gives this emerging electric market more protection than Edison's suggested remedies through prior notice and market monitoring provisions.[8]

In the end, Edison's preference for a different remedy is not relevant to the Court's inquiry. Under the Tunney Act, the Court may not choose or fashion a remedy that is "better" in someone's opinion than the one negotiated and agreed to by the parties. To the contrary, "a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of the public interest.'"[9] The proposed Final Judgment meets and exceeds this legal standard.

B. City of Vernon's Comments

The City of Vernon recognizes in its comments that the Proposed Final Judgment focuses entirely on the potential of PE/Enova to reduce competition in the electricity market in Southern California. It comments that the proposed judgment "ignores" the effect of the merger on the natural gas transmission market in Southern California. The case brought by the Department, however, involved the electricity market in Southern California, and the relief addressed in the Proposed Final Judgment remedies the competitive harm posed by the proposed acquisition to that market. The Complaint does not allege violations in the natural gas transmission market, and the City of Vernon's proposed relief is thus not relevant to this proceeding.

III. The Legal Standard Governing the Court's Public Interest Determination

Once the United States moves for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e). In making that determination, "the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest." *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.) (emphasis added, internal quotation and citation omitted), *cert. denied*, 114 S. Ct. 487 (1993).

The Court is not "to make de novo determination of facts and issues." *Western Elec.*, 993 F.2d at 1577. Rather, "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *Id.* (internal quotation and citation omitted). In particular, the Court must defer to the Department's assessment of likely competitive consequences, which it may reject "only if it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency." *Id.*[10] The Court may reject a decree simply "because a third party claims it could be better treated," *United States* v. *Microsoft*, 56 F.3d 1448, 1459 (D.C. Cir. 1995), or based on the belief that "other remedies were preferable," *id.* at 1460.

Further, the Tunney Act does not contemplate judicial reevaluation of the wisdom of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case on the facts and law before it, like any other decision not to prosecute, "involves a complicated balancing of a number of factors which are peculiarly within [the government's expertise." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985). Thus, the Court may

[7] Edison compares its preferred options with the proposed Final Judgment, calling the remedy in the proposed Final Judgment "the least attractive option" from Edison's perspective. (Edison Comments at 3 ("The last but least attractive option is to try to lessen the merged firm's incentive to exercise its monopoly power in order to profit from higher electric prices.").) Edison finds this course less attractive because "it requires a complex latticework of provisions * * * [that is] difficult to write and even harder to administer." *Id.* The alternative it suggests, creating an independent system operator for the pipeline system, has never been done anywhere in the United States and, while possible, cannot be assumed to be easy to write and easier to adminster.

[8] For example, Edison argues that the FTC's consent decree in PacificCorp (*PacifiCorp/The EnergyGroup*, FTC File No. 9710091) provides a superior remedy. It mischaracterizes the FTC decree as equivalent to the divestiture of Pacific's gas pipeline assets that constitute virtually all of the assets Pacific contributed to the merger with Enova. Unlike this case, however, the divesture of coal assets in PacifiCorp was not the equivalent of rescission of the merger. PacifiCorp is a large integrated electric utility with coal holdings in the western United States. It was acquiring the Energy Group, an international electric company, the second largest electric distribution company in the United Kingdom, which also held coal reserves in both eastern and western United States. The FTC decree did not requirement the Energy Group to divest its coal business, much less its primary utility business, as Edison would have the decree in the instant case require divestiture of Pacific's utility pipeline business. Instead, the FTC decree required a specific subset of the Energy Group's western coal mines to be divested. The FTC's PacifiCorp decree stopped with divesture of those specific assets and, unlike the Final Judgment proposed here, did not go further to limit the merged company's reacquisition of assets that would create the same vertical problem as the divested assets.

[9] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 153 n.95 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983)(mem.).

[10] The Tunney Act does not give a court authority to impose different terms on the parties. *See e.g.*, *American Tel. & Tel.*, 552 F. Supp. at 153 n. 95; *accord* H.R. Rep. No. 93–1463, at 8 (1974). A court, of course, can condition entry of a decree on the parties' agreement to a different bargain, *see e.g.*, *American Tel. & Tel.*, 552 F. Supp. at 225, but if the parties do not agree to such terms, the court's only choices are to enter the decree the parties proposed or to leave the parties to litigate.

United States v. *Thomson Corp.*, 949 F. Supp. 907 (D.D.C. 1996), cited by Edison (Edison Comments at 9–10), does not support Edison's argument to reject the Proposed Final Judgment. That case involved the Tunney Act review of a proposed final judgment that required one of the merging companies to license a copyright that it claimed but had not licensed prior to the merger. While there was some controversy as to whether the decree's license provisions could have been extracted as the result of a trial, *see Thomson*, 949 F. Supp. at 927, the Court nevertheless considered comments on the specific terms of the license proposal because of the potential anticompetitive harm that could result from "the merger of these two publishing giants in conjunction with" the asserted copyright claim. *Id.* at 928. The *Thomson* Court addressed comments on the license provision on that ground, and not because the decree would remedy preexisting wrongs; nor did the court add or alter any provisions to the Final Judgment that had not been agreed to by the parties. Here, in contrast, Edison is not commenting on a specific remedy agreed to by the parties as a means of addressing the harms related to a merger. Instead, Edison is asking this Court to insert an entirely new mechanism for relief into the decree, in order to address Pacific's preexisting pipeline market power as it could be exercised in relation to the acquisition of any electricity assets, regardless of Pacific's merger with Enova. Edison's proposed approach is completely at odds with Judge Friedman's actions in the *Thomson* case. Judge Friedman, as Edison concedes, was careful not to substitute his judgment for the government's and, further, did not adopt proposed remedies that were unrelated to the merger. (*See* Edison Comments at 10).

not look beyond the Complaint "to evaluate claims that the government did not make and to inquire as to why they were not made." *Microsoft*, 56 F.3d at 1459; *see also United States* v. *Associated Milk Producers, Inc.*, 534 F.2d 113, 117–18 (8th Cir. 1976).

The government has wide discretion within the reaches of the public interest to resolve potential litigation. *See e.g., Western Elec. Co.*, 993 F.2d 1572; *American Tel & Tel.*, 552 F. Supp. at 151. The Supreme Court has recognized that a government antitrust consent decree is a contract between the parties to settle their disputes and differences, *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 235–38 (1975); *United States* v. *Armour & Co.*, 402 U.S. 673, 681–82 (1971), and "normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation." *Armour*, 402 U.S. at 681. As Judge Greene has observed:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

American Tel. & Tel., 552 F. Supp. at 151. This Judgment has the virtue of bringing the public certain benefits and protection without the uncertainty and expense of protracted litigation. *See Armour*, 402 U.S. at 681; *Microsoft*, 56 F. 3d at 1459.

Finally, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining appropriate antitrust remedies. Defendants will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate.

IV. Conclusion

After careful consideration of the public comments, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The United States will therefore ask the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, as 15 U.S.C. 16(d) requires.

Dated: January 11, 1999.

Respectfully submitted,

Jade Alice Eaton
D.C. Bar #939629, Trial Attorney, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, DC 20530. Phone: (202) 307–6316.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Plaintiff's Response to Public Comments, as well as attached copies of the public comments received from the City of Vernon, California, and from Southern California Edison Company, to be served on counsel for defendant and for public commentators in this matter in the manner set forth below:

By first class mail, postage prepaid:
Steven C. Sunshine,
Shearman & Sterling, 801 Pennsylvania Avenue, N.W., Washington, DC 2004.
John W. Jimison,
Brady & Berliner, 1225 Nineteenth Street, N.W., Suite 800, Washington, DC.
J.A. Bouknight, Jr.,
David R. Roll,
James B. Moorhead,
Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington, DC 20036.

Dated: January 11, 1999.

Jade Alice Eaton,
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Brady & Berliner

1225 Nineteenth Street. N.W., Suite 800, Washington, DC 20036

August 17, 1998.

Mr. Roger W. Fones,
Chief Transportation Energy & Agriculture Section Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Re: Comments of the City of Vernon, California, on the Proposed Final Judgement, Stipulation in the Competitive Impact Statement in U.S. v. Enova Corporation, Civil No. 98–CV–583

Dear Mr. Fones: Pursuant to the legal notice issued by the Antitrust Division on June 16, 1998 the City of Vernon, California, ("Vernon") hereby provides these comments in opposition to the approval of the Proposed Final Judgement Stipulation in the Competitive Impact Statement in *U.S.* v. *Enova Corporation*, Civil No. 98–CV–583 ("Proposed Judgement").

Vernon submits that the Proposed Judgement would permit a merger to be consummated that will alter and damage the potential for competition in the California natural gas market. The Proposed Judgement focuses entirely on the potential of the merged entity to reduce competition in the electricity market in southern California, and orders as a remedy the divestiture of certain electricity generating stations owned by the San Diego Gas & Electric Company ("SDG&E"). The Proposed Judgement ignores the fact that the merger will combine the two largest natural gad transmission and distribution companies in southern California. The merger will thus eliminate the potential for competition between them, or for support by either of them for new natural gas transmission pipeline which would compete with the other.

Vernon operates a municipal electricity utility including its own gas-fired power plant and will complete this year a municipal natural gas utility. Vernon and other natural gas distributing entities in southern California have lacked any meaningful alternative to the monopoly natural gas transmission service from the Southern California Gas Company ("SoCalGas"), the parent of which, Pacific Enterprises, is merging with Enova. Although two interstate pipelines were built into California in the first years of this decade, their systems terminate in the Bakersfield, California, region and do not compete with SoCalGas in its service territory in the large Los Angeles metropolitan region, including Vernon.

In order for a competing pipeline to be constructed into Los Angeles, the sponsor must overcome significant hurdles and expenses of locating and obtaining an environmentally suitable right-of-way, and must have agreements with shippers for an adequate volume of natural gas to support the expensive project. Having large prospective shippers under contract to use a new pipeline is a prerequisite to constructing one. Despite these obstacles, there have been a number of potential pipelines discussed and considered that would have competed with SoCalGas' gas transmission service into the Los Angeles area. However, to date, SoCalGas' actions to frustrate and oppose any such competition have been successful. These efforts have included special discounted contracts offered to the most likely customers of a new pipeline and adopting a penalty tariff that effectively forbids any customer of a new pipeline from taking any service at all from SoCalGas—even at different locations—without paying the full SoCalGas system tariff for transmission in addition to the cost of the competing pipeline.

The single largest potential "anchor" customer of a new pipeline to compete with SoCalGas was SDG&E. The merger that would be approved by the Proposed Judgement would eliminate SDG&E's potential role as an anchor shipper on a new pipeline, and cement a permanent alliance between SDG&E and SoCalGas to sustain their joint monopoly on gas transmission services in southern California.

While the divestiture of SDG&E's power plant may have reduced the potential that the merged entity would use that monopoly to favor its own gas-fired generators in a competitive electricity market, that limited divestiture does nothing to reduce the damage to competition created by this merger in the natural gas market.

Across the United States, competition among natural gas transportation companies has benefitted consumers with improved

service at lower tariffs. With the exception of those customers in the Bakersfield area, and those selectively receiving discounts to ensure they will not support competing pipelines, the customers in southern California have not had any benefits of competition among gas transmission providers. The approval of the Proposed Judgement and consummation of the merger it approves will reduce their chances of such benefits.

Vernon submits that approval of the merger should have been conditioned not only on actions to reduce the potential risks to competition in the electricity market, but also to reduce the injury to competition in the natural gas market. Such action could have included a requirement that SoCalGas sell to independent entities a volume of transportation capacity equivalent to that which it had traditionally used to serve SDG&E, or a requirement that SoCalGas offer transportation rights on its system which can be released and brokered to others, creating the potential for a competitive third-party market among gas shippers with defined rights. No such action was taken in the Proposed Judgement.

For this reason, Vernon opposes the approval of the Proposed Judgement.

Respectfully submitted,

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Attorney for The City of Vernon.

Comments of Amicus Curiae Southern California Edison Company on the Proposed Final Judgment

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Dated: August 17, 1998.

Comments of Amicus Curiae Southern California Edison Company on the Proposed Final Judgment

Southern California Edison Company ("SCE") respectfully submits the following comments on the proposed Final Judgment in the above referenced matter.[1]

Introduction and Summary

This is a case about an electric utility. Like any company in our capitalistic system, this utility would like to raise its prices in order to increase profits for its shareholders. Finding that competition constrains its ability to increase electricity prices, the utility decides to buy the only company in the world that will give it that ability to raise electricity prices in the area where the utility competes. Not surprisingly, the Department of Justice ("DOJ") finds the merge to be an obvious violation of the antitrust laws. DOJ then files a complaint and proposes a Final Judgment that permits the merger without eliminating the competitive problem identified in the complaint.

The violation alleged in DOJ's complaint is straight-forward. Enova Corporation ("Enova"), the owner of one of California's three major electric utilities, has acquired Pacific Enterprises ("Pacific"), which owns and operates the intrastate gas pipeline system that provides virtually all of the natural gas consumed in southern California. As DOJ's complaint alleges, control of this pipeline system will provide Enova with monopoly control of natural gas in the southern California market. This in turn will permit Enova to control the price of electricity in southern California much of the time, because natural gas is used to generate electricity "on the margin" during most hours of the year in southern California.

In competitive markets, the cost characteristics of a producer on the margin are likely to set the market-clearing price. In southern California, as of April 1, 1998, this is necessarily true, because California has created a power exchange ("PX")—the first such market in the United States—in which generators of electric power bids for each hour and all successful bidders are paid a price determined by the highest bid that is accepted. Thus, where gas-fueled generation is on the margin, as it is most of the time, an increase in the price of natural gas leads directly to an increase in the price for every kilowatt hour of electricity consumed in southern California.

Prior to the merger, Enova had every incentive to raise electricity prices but it lacked the ability to do so because it has no control over natural gas prices. On the other hand, before the merger, Pacific had the ability to control natural gas prices but had not succeeded in entering the electricity marketing business.[2] Thus, Enova has the incentive but not the ability to manipulate electricity prices; Pacific had the ability but lacked the incentive.

DOJ correctly concluded that a merger of these two firms, which combines the ability and incentive to raise electricity prices in the southern California market, violates the antitrust laws. In the face of this violation, what is the remedy? The most obvious remedy, of course, is to stop the merger from happening. Short of that, the next most effective and logical remedy is to remove the source of the merged firm's *monopoly power*, either by requiring divestiture of the natural gas pipeline system or by creating an independent system operator ("ISO") to operate that system. The last but least attractive option is to try to lessen the merged firm's incentive to exercise its monopoly power in order to profit from higher electricity prices. This is the least attractive option because curbing incentives to profit from higher electricity prices requires a complex latticework of provisions designed to prevent the merged firm from retaining and acquiring contractual rights and other types of economic interests in electric power. Such a remedy is difficult to write and even harder to administer.

Rather than stopping the merger in its tracks or adopting a structural remedy to remove the source of the monopoly power. DOJ asks this Court to approve a remedy that will have little or no impact on the merged company's incentive to raise electricity prices. The proposed Final Judgment should be rejected because the merged entity still has the unfettered ability to enter into a variety of electric power transactions, which will enable it to profit from higher electricity prices. Specifically:

- While the proposed Final Judgment requires Enova to divest two of its gas-fueled electric generating plants, totaling some 1650 megawatts, it allows the merged company to acquire an unlimited amount of generating facilities built after January 1, 1998, or any repowered/rebuilt facilities, whatever the fuel-type. Thus, the 1650 MW divestiture requirement can be undone with a single purchase of a large new facility.
- There is no prohibition on the merged company contracting, the day after divestiture, to purchase the electrical output of those same divested generating facilities (or other facilities).
- The proposed Final Judgment explicitly permits the merged firm to enter into "tolling" arrangements by which it can in essence rent electric generating plants to convert gas into electricity.
- There is no prohibition on the merged company entering into financial contracts (derivatives such as options and futures) that

[1] As a part of these Comments, SCE is attaching the Affidavit of Paul R. Carpenter, an economist who has extensive experience in analyzing energy markets.

[2] Before the merger, Pacific had established a subsidiary for gas and electricity marketing and tried to enter the electricity marketing business. However, as Enova explained to the Federal Energy Regulatory Commission ("FERC"), this subsidiary had not succeeded in securing any contracts to sell electricity at the time of the proposed merger. *See Ensource*, 78 FERC ¶ 61,064, at 61.231 (1997) ("Since Ensource never has engaged in marketing activity* * *").

would enable it to prohibit from changes in southern California electricity prices.

Under the proposed decree, the merged firm can acquire both new and repowered/rebuilt electric generation assets. It can acquire by contract the economic attributes of ownership of electric generation. It can rent generating units to produce electric power. And it can trade in electricity financial contracts for the southern California market. If it can do all this, then it obviously can benefit from increases in the price of electricity just as it could if it still owned the divested electric generating facilities. Consequently, the proposed Final Judgment does not eliminate the merged firm's incentive to exercise market power in order to increase electricity prices. And it does not even purport to address market power. Therefore, the proposed Final Judgment does not even come close to solving the fundamental competitive problem articulated in DOJ's complaint.

One rationale that DOJ has put forward for having accepted the ineffective remedial measures in the proposed Final Judgment is that more effective remedies would involve relief that extends beyond the effect of the merger, as Pacific could theoretically have engaged in theses activities without a merger. But this is an unlawful merger. Without the acquisition, Enova's incentive to raise electricity prices is not backed by any ability to do so. The merger dramatically and unlawfully changes the landscape by immediately coupling Enova's incentive and electricity-expertise with Pacific's natural gas muscle. The argument that a substantial link between the gas pipeline system and electricity markets could easily have been established without the merger ignores the fact that this merger creates that substantial link.

If, for whatever reason, DOJ prefers not to stop the merger and not to address the upstream source of the market power, but instead chooses to focus on the incentives to exercise its market power in the downstream electricity market, then the public interest requires that it craft remedies designed to curb the incentives that are sufficiently effective to cure the antitrust violation. Because DOJ failed in that task, this Court is faced with a proposed Final Judgment that falls far short of being within the reaches of the public interest.[3]

In summary, SCE urges that the proposed Final Judgment be rejected. If DOJ nevertheless concludes that a salvage effort is appropriate, DOJ and Enova can be sent back to the bargaining table to produce a Final Judgment that remedies the competitive problem described in the complaint. Such remedies would include one of the following:

(1) Rescission of the merger;

(2) Divestiture of the gas pipeline system or, alternatively, establishment of an independent system operator to operate it independently of the merged company; or

(3) Adoption of measures that will eliminate the merged company's incentive to participate directly, and indirectly through financial instruments, in the southern California electricity market in any manner that would allow it to profit from increased electricity prices.

Argument

I. The Tunney Act Standard of Review Requires This Court To Determine Whether the Proposed Final Judgment Is in the Public Interest

On March 9, 1998, the Antitrust Division of DOJ filed a complaint against Enova alleging that the merger of Enova and Pacific will violate Section 7 of the Clayton Act. Along with the complaint, DOJ filed a Stipulation and Order pursuant to which the parties consented to entry of a proposed Final Judgment and Enova agreed to abide by its terms pending its entry by the court.

The filing of the proposed Final Judgment triggered a proceeding under the Antitrust Procedures and Penalties Act, commonly known as the Tunney Act.[4] The purpose of the Tunney Act is to provide notice to the public, an opportunity to comment, and judicial scrutiny of consent decrees in antitrust cases to determine whether they are in the "public interest." The Tunney Act requires DOJ to publish the proposed Final Judgment and to file and publish a competitive impact statement ("CIS") explaining the case, the anti-competitive conduct involved, the proposed remedy, and any alternative remedies considered by it. DOJ must also furnish to the Court any comments that it receives from the public during a 60-day period commencing with the noticing of the CIS, its response to these comments, and any documents it "considered determinative in formulating" the decree.

Before a court may approve a proposed Final Judgment, the Tunney Act requires the court to "determine that the entry of such judgment is in the public interest".[5] The Act provides that in making its public interest determination, the court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the pubic generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.[6]

The scope of Tunney Act review was articulated in a 1995 decision of the Court of Appeals for the D.C. Circuit in *Microsoft*.[7] In that case, District Judge Sporkin had declined to enter a proposed consent decree settling an action by DOJ alleging monopolization and various exclusionary practices. Although the Court of Appeals reversed and ordered entry of the proposed decree without revision, it set forth certain guidelines, among others, that are relevant to the Court's public interest determination in this case:

- "[T]he court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest."[8]
- "[I]f third parties contend that they would be positively injured by the decree, a district judge might well hesitate before assuming that the decree is appropriate."[9]

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[3] As a diversionary tactic, Enova can be expected to urge the Court to disregard SCE's comments, no matter how persuasive they may otherwise be, because SCE is merely a self-interested competitor of the merged firm. While it is true that SCE is a competitor for electricity sales, SCE's principal interest in this matter is at the largest purchaser of electricity in the southern California market, one that will be directly and significantly harmed by electricity price increases resulting from this merger. Under the California restructuring legislation, the legislature "froze" electricity rates at levels in effect as of June 1996. *See* Cal. Pub. Util. Code § 368(a). During the rate freeze period which will end December 31, 2001, SCE must purchase all the energy that it sells to its utility service customers from the PX. SCE's rates include separate components for transmission, distribution, etc. The sum of these separate components is less than the frozen rate levels, with that residual difference being used by SCE to recover costs associated with generation-related assets that would not otherwise be recouped if cost recovery were determined solely by selling energy purchased from these assets at the prevailing market price. As a consequence, SCE's shareholders are at risk and will be directly harmed if PX electricity prices rise to a level that would cause SCE's costs to exceed the frozen rate levels.

[4] 15 U.S.C. § 16(b)–(h).

[5] 15 U.S.C. § 16(e).

[6] *Id.*

[7] *United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

[8] *Id.* at 1460 (emphasis in original, internal citations and quotation marks omitted).

[9] *Id.* at 1462.

• "A district judge * * * would and should pay special attention to the decree's clarity [and may] insist on that degree of precision concerning the resolution of known issues as to make this task, in resolving subsequent disputes, reasonably manageable * * *. If the decree is ambiguous, or the district judge can foresee difficulties in implementation, we would expect the court to insist that these matters be attended to."[10]

Under *Microsoft*, it is now clear that a court may not reject a remedy simply because it is not the "best" remedy that could have been selected. On the other hand, it is equally clear under *Microsoft* that a court has discretion to reject a negotiated remedy which is ineffective because it does not seek to address and resolve the core competitive problem identified in DOJ's complaint.

Following *Microsoft*, courts have continued to scrutinize proposed consent decrees to determine whether they effectively address and resolve the fundamental competitive problems articulated by DOJ. For instance, in *Thomson*, District Judge Friedman examined concerns about several aspects of a proposed consent decree as expressed in briefs submitted amicus curiae by two competitors of the merging parties, in public comments submitted to DOJ, and at an extended public hearing.[11] Judge Friedman carefully examined arguments concerning each of the four separate areas of concern, noting proposed supplemental commitments[12] and modifications to the initially filed proposed consent decree to resolve some of these concerns.[13] He was careful not to substitute his own judgment for DOJ's as to what could be the best remedy[14] and he declined to suggest relief for conduct unrelated to the merger.[15] Nonetheless, Judge Friedman refused to enter even the revised decree, because neither the original nor the proposed revision resolved substantial concerns that the decree would maintain, by court order, a dubious copyright claim that DOJ's complaint and commentators had identified as a substantial barrier for new competitors seeking to enter the relevant market.[16] Only after the parties submitted a further amendment addressing these concerns did Judge Friedman order entry of the consent decree.[17]

II. The Proposed Final Judgment is Not in the Public Interest

Under standards laid down in *Microsoft* and implemented in *Thomson*, the proposed Final Judgment is not within the "reaches of the public interest" because it does not remedy the core competitive problem identified in DOJ's complaint—namely, that the merged entity will have the ability and incentive to increase electricity prices. Unless and until DOJ and Enova agree to a remedy which addresses and resolves this problem, the Court must reject the proposed decree.

A. The Complaint Correctly Identifies the Root of the Competitive Problem: Pacific's Control of Natural Gas Transportation and Storage in California

As a result of its monopoly over intrastate transmission and storage of natural gas, Pacific (via its subsidiary, SoCal Gas), has the power and ability to increase the price of natural gas to gas-fired electric generators which in turn will increase the price of electricity in California. In its complaint, DOJ found that, notwithstanding regulatory oversight, Pacific has the ability to use its control over those assets to manipulate the price of gas to consumers, including gas-fueled electric generators:

• Pacific has "a monopoly of transportation of natural gas within southern California [and] a monopoly of all natural gas storage services throughout California."[18]

• "[A]lthough regulated by the California Public Utilities Commission ('CPUC'), Pacific has the ability to restrict the availability of gas transportation and storage to consumers, by limiting their supply or cutting them off entirely, which has the effect of raising the price they pay for natural gas."[19]

The attached Affidavit of Dr. Paul Carpenter describes the numerous means by which Pacific (via SoCalGas) can exercise its monopoly power, as charged by DOJ, to restrict the availability of gas transportation and gas storage capacity in southern California. These means include SoCalGas' ability to (a) control and deny access to its intrastate transmission and storage assets, (b) manipulate the price of intrastate services, such as short-term balancing or emergency supply services, (c) withhold the quantity of interstate capacity it makes available in secondary markets in order to raise price, (d) determine the volume of flowing supplies on a day-to-day basis through its core-related storage injection and withdrawal decisions, and (e) manipulate prices and access through its possession of valuable operational information.[20]

The ability of Pacific to restrict the availability of gas transportation and storage to consumers, including gas-fueled generators, is the key to its power to increase electricity prices in southern California for two related reasons. *First*, as explained by DOJ, most electricity generated in California is bought and sold through the California PX, which is a computerized bidding system that matches electricity supply and demand every hour.[21] The price of electricity for all units sold is determined by the most expensive unit sold in that hour, regardless of the cost or bidding price of less expensive units.[22] Stated differently, all sellers receive the PX's marginal price, regardless of their bid, and all buyers pay the marginal price.[23]

Second, "gas-fired plants are in general the most costly to operate."[24] In other words, gas-fueled plants are usually on the margin. Because of the California PX, an increase in the price of natural gas to these gas-fired plants will translate in an increase in the price of all electricity sold in California through the PX. DOJ made this point in its CIS as follows:

[d]uring these periods [of high electricity demand], the gas-fired plants, as the most costly to operate and thus the highest bidders

[10] *Id.* at 1461–62.

[11] *United States* v. *The Thomson Corp.*, 949 F. Supp. 907, 909, 912 (D.D.C. 1996), *aff'd per curiam* 1998 U.S. App. LEXIS 12921 (May 29, 1998).

[12] *See, e.g., id.* at 916 (noting that "Thomson confirmed in writing that it will continue" a practice that commentators and amicus curiae thought might cease after the merger).

[13] *See, e.g., id.* at 916 (noting adoption of new consent decree provision barring Thomson from taking certain actions to undermine viability of products to be divested under the decree); *id.* at 924 (noting proposal to add language to proposed decree to ensure that licenses to one of the products to be divested may be sublicensed); *id.* at 925 (noting further change to proposed consent decree after Tunney Act hearing to ensure that divestiture will not affect pre-existing rights under a particular contract). *See also id.* at 926 nn. 19–20 (noting changes to initial proposed decree in response to concerns expressed in comments and at the hearing).

[14] *See id.* at 919.

[15] *See, e.g., id.* at 920 (refusing to consider requests to reopen bidding on past contracts, because not related to competition among the parties to the merger).

[16] *See id.* at 927–930 (discussing complaint's allegations and decree's proposed remedy regarding copyright claim).

[17] *See United States* v. *The Thomson Corp.*, 1997–1 Trade Cas. (CCH) ¶ 71,735, 1997 U.S. Dist. LEXIS 1893 (Feb. 27, 1997).

[18] Complaint ¶15.96 percent of gas-fueled generators in southern California buy gas transportation services from Pacific. *Proposed Final Judgment and Competitive Impact Statement; United States* v. *Enova Corp.* ("CIS"), 63 FR 33393, at 33403 (June 18, 1998).

[19] Complaint ¶16; *see also* Complaint ¶20.

[20] Aff. at ¶8.

[21] CIS at 33403. The CIS states that the matches occur every half-hour; in fact, the matches are hourly.

[22] CIS at 33403.

[23] Aff. at ¶9. This is true with one exception involving nuclear-powered generators, which are covered by a different pricing scheme.

[24] CIS at 33403.

into the [PX], are able to set the price for all electricity sold through the [PX].[25]

In short, what this all means is that as a consequence of its monopoly over gas transportation and storage, Pacific has the unquestioned ability to directly and materially affect the price of electricity in southern California. As summarized by DOJ:

> By virtue of its monopoly over natural gas transportation and storage, Pacific currently has the ability to increase the price of electricity, when during high demand periods, electricity from California gas-fired generators is needed to supplement less costly electricity. Pacific can restrict gas-fired generators' access to gas, which has the effect of raising the cost of gas-filed generators in general. Alternatively, Pacific can cut off or impede the more efficient gas generators' access to gas, leaving the higher-cost generators to meet consumer demand for electricity. *In either case, Pacific is able to increase the cost of electricity from gas-fired plants, thereby increasing the prices they bid into the [PX] and ultimately the price of electricity sold through the [PX].*[26]

To be sure, Pacific's ability to increase electricity prices existed absent the merger. Without the merger, however, Pacific had no incentive to use its market power because it was not in the electricity business, and it had no economic interest in electricity sales.[27] It is surely no coincidence that Enova—one of California's "big three" electric utilities and one which every incentive to raise electricity prices—sought out Pacific, the one company in the world that could raise prices in the soon-to-be deregulated California electricity market (the PX). It is also no coincidence that the timing of the merger was to coincide almost precisely with the commencement of operation of that deregulated market.

To take the position, as apparently DOJ does, that Pacific's ability to raise gas prices and hence, electricity prices is not merger related, and therefore should not be subject to any merger-related remedy is to ignore reality. *But for this merger*, Enova would not be able to affect electricity prices. It is the merger that transforms Pacific's previously benign ability to affect electricity prices into a serious, immediate threat to stifle competition in a nascent but vitally important market.

B. The Competitive Problem Attendant to This Merger Calls for a Structural Remedy Directed at the Natural Gas Transportation and Storage Assets

Having identified the source of the competitive problem, and having concluded that the merger was unlawful, DOJ then had to fashion an appropriate remedy. Logic, traditional antitrust policy and precedent, and one of the very terms of the proposed Final Judgment, all point to a structural remedy aimed directly at the source of the market power—Pacific's natural gas transportation and storage assets.[28] Such a remedy would separate Pacific's gas transportation and storage assets from the merged company's other assets, either by divestiture or by creation of an ISO to operate those assets. But, for unexplained reasons, the proposed Final Judgment does no such thing; indeed, this remedy apparently was not even seriously considered. In a section of the CIS entitled "Alternatives to the Proposed Final Judgment", the only alternative DOJ stated that it considered was a full trial on the merits.[29] The remedies that the DOJ did adopt are all aimed at curtailing the *incentive* of the merged company to carry out it proven ability to manipulate gas and, hence, electricity prices. The ineffectiveness of these remedies is discussed in the following section.

Ironically, a provision in the proposed Final Judgment itself makes clear that the only completely effective remedy is a structural remedy aimed at the source of the market power; the same provision undermines the effectiveness of the remedies actually proposed by DOJ and Enova, which focus only on incentives. Article XIII. A of the proposed Final Judgment provides that all of the complex provisions of the decree will abruptly terminate in the event "an Independent System Operator has assumed control of Pacific's gas pipelines within California in a manner satisfactory to the United States.[30] Termination under these circumstances would be appropriate in DOJ's view, because

> [i]n that event, PE/Enova will lose the ability to control access to gas transportation and storage. *Without these tools, the merged company will not be able to raise the price for electricity sold through the [PX] by reducing its gas sales, and the basis for the Final Judgment would be removed.*[31]

Thus, DOJ's own reasoning supports the position that the only way to completely eliminate the merged company's ability to increase electricity prices is to eliminate Pacific's control over its gas transportation and storage assets. This structural remedy serves the public interest because it addresses the core competitive problem and is certain to be effective over the long term. No policing is necessary.

The staff of the Bureau of Economics of the Federal Trade Commission ("FTC") recently expressed its view that structural remedies aimed directly at the source of market power are the most effective remedies because such structural remedies alter incentives (by eliminating the ability to exercise market power) while behavioral remedies do not:

> As a general proposition, we have found that structural remedies, such as divestiture in merger cases, are the most effective and require the least amount of subsequent monitoring by government agencies. The effectiveness of structural remedies lies in the fact that they directly alter incentives. Behavioral remedies, in contrast, leave incentives for discriminatory behavior in place and impose a substantial burden on government agencies to monitor subsequent conduct.

In 1995, with regard to competition in electric generation and transmission, we suggested that FERC [the Federal Energy Regulatory Commission] promote independent system operators (ISOs) to control the regional electric transmission grids, as an alternative to ordering divestiture of transmission lines or relying solely on open access rules to promote competition in electric generation markets.[32]

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[25] *Id.* DOJ is certainly correct in this critical finding. Attachment B to Dr. Carpenter's affidavit depicts the electricity supply curve for all generating resources in the western United States. As shown, actual demand for electricity (which varies by time of day and by season) falls within a certain band (70,500 megawatts to 93,500 megawatts) about two-thirds of the time. Within that band, 90 percent of the megawatts that can be generated come from gas-fired generators. And, 69 percent of those megawatts come from California gas-fired generators. Aff. at Attach. B.

[26] CIS at 33404 (emphasis added).

[27] A Pacific affiliate did have paper authority from the FERC—the federal overseer of wholesale electricity sales—to make electricity sales but it never made any such sales and, in fact, voluntarily terminated its marketing certificate once the Enova-Pacific merger was announced. *See Ensource*, 78 FERC ¶ 61,064 (1997).

[28] Of course the most obvious and most effective remedy—preventing this unlawful merger from being consummated—was apparently rejected by DOJ. No explanation was given for eschewing this proven, simple method of remedying the effects of this unlawful merger.

[29] *See* CIS at 33407.

[30] Proposed Final Judgment at 33402.

[31] CIS at 33406 (emphasis added).

[32] Comments of the Staff of the Bureau of Economics of the Federal Trade Commission Before the Public Utilities Commission of Texas, at 2 (June 19, 1998). *See* Aff. at ¶ 13. Adoption of a structural remedy aimed at the source of the market power would be consistent with traditional antitrust policy and precedent. *See, e.g., California* v. *American Stores Cos.*, 495 U.S. 271, 294 n.28 (1990) (citing 2 P. Areeda & D. Turner, Antitrust Law § 328b (1978) ("[D]ivestiture is the normal and usual remedy against an unlawful merger".); *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983) (citing *Ford Motor Co.* v. *US*, 405 U.S. 562,573 (1972) ("[D]ivestiture is not uncommonly the appropriate relief when a Section 7 violation is proven"). *See also United States* v. *Merc & Co., Inc.*, Proposed Final Judgment and Competitive Impact Statement, 45 F.R. 60044 (1980) (ordering divestiture of assets that would give the defendant the ability to exercise market power in

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Thus, as explained by Dr. Carpenter, in a merger of electricity transmission and generation companies, the FTC would focus its relief on the source of the market power—the transmission facilities—rather than the generation facilities that provide the incentive to engage in the anti-competitive activity.[33]

Earlier this year in an analogous situation, the FTC entered into a consent order settling a challenge to a proposed acquisition by an electric power company of a coal supplier.[34] Like the merger in the present case involving electricity and natural gas pipelines, the FTC found that a merger involving electricity and coal posed a direct threat to competition in western U.S. electricity markets. In so concluding, the FTC made findings remarkably similar to DOJ's findings in this case:

- "PacifiCorp's acquisition of Peabody, which is the exclusive supplier of coal to certain power plants that compete with PacifiCorp's own power plants, raises antitrust concerns." [35]
- During off-peak periods in the western United States, "coal-fired plants frequently are the price-setting, marginal plants." [36]
- PacifiCorp's acquisition "would give PacifiCorp the *power* to raise the price (or otherwise diminish the availability) of coal, a necessary input for any firm seeking to compete with PacifiCorp in electricity generation." [37]
- "PacifiCorp would have an *incentive* to increase fuel costs at Navajo and Mohave in order to drive up the market price of electricity in the western United States." [38]

Prior to the acquisition, the coal supplier (Peabody) had the ability to raise coal prices to competing electric generators, but it had no incentive to do so. On the other hand, before the acquisition, the electricity company (PacifiCorp.) had the incentive to increase electricity prices but lacked the ability. It was the merger of the two, bringing together that ability and that incentive, that gave rise to the FTC's concerns.

In stark contrast to DOJ's remedy in the present proceeding, the FTC in *PacifiCorp/The Energy Group* did not hesitate to adopt a remedy which went to the heart of the market power problem identified in the FTC's complaint. The FTC proposed a remedy that required PacifiCorp to divest Peabody Western Coal Company—the owner of the coal mines that conferred market power on the merged firm and enabled it to increase fuel prices at competing generating facilities (Navajo and Mohave). And, the FTC directly addressed and rejected the proposals of several commenters who had recommended conduct/behavioral remedies to resolve the antitrust problem:

- "Public comments on the consent agreement recommended that we substitute conduct provisions for the order's divestiture requirement, but we were not persuaded that the suggested course of action would be preferable." [39]
- "The divestiture remedy is consistent with longstanding Commission policy which favors the structural approach to remedies, rather than the behavioral approach which seeks to govern conduct through the use of rules." [40]

In both *PacifiCorp* and this case, the fuel supply assets are the source of the competitive problem identified by the federal enforcement authorities. The simple, direct way to remedy that problem is to cut out and divest those assets or require that they be controlled by an independent system operator.

C. The Remedies Adopted in the Proposed Final Judgment Fail To Effectively Curb the Merged Company's Incentive To Manipulate Electricity Prices

As explained above, DOJ made no pretext of selecting a remedy designed to address the gas market power problem. Rather, DOJ focused all of its attention on the electricity side of the merged company's business and proposed a complicated set of conditions that are supposed to curb the incentive of the merged company to manipulate electricity prices. DOJ's theory is that if there is no financial gain to be made from electricity price manipulations, then the merged company likely would not engage in such conduct even if it possessed the power and ability to do so. There is nothing wrong with this theory from an analytical point of view. But having chosen this least attractive remedial approach, DOJ needed to "get it right" by understanding, anticipating, and then prohibiting all the various means by which the merged company could seek to retain or create incentives to earn profits through electricity price manipulations. DOJ, however, did not do so.

The proposed Final Judgment requires and allows the following:

- Enova is required to sell its Encina and South Bay electricity generation facilities, totaling some 1650 megawatts, to a purchaser acceptable to DOJ.[41]
- Enova is enjoined from acquiring "California Generation Facilities" without prior notice and approval of DOJ.[42]
- Enova is enjoined from entering any contracts that allow it to "control any California Generation Facilities" without prior notice and approval of DOJ.[43]
- In general, Enova is allowed to acquire or control up to 500 MW of capacity of California Generation Facilities without prior DOJ approval.[44]
- Enova is allowed to "own, operate, control, or acquire any electricity generation facilities other than California Generation Facilities [and] any cogeneration or renewable generation facilities in California." [45]
- Enova is also allowed to "enter into tolling and reverse tolling agreements with any electricity generation facilities in

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violation of Section 7 of the Clayton Act and Sections 1 and 2 of the Sherman Act).

[33] Aff. at ¶ 13.

[34] *PacifiCorp/The Energy Group*, File No. 971 0091. PacifiCorp, headquartered in Portland, Oregon, makes electricity sales throughout the western United States. The Energy Group PLC ("TEG"), headquartered in London, England, is a diversified energy company that owns, among other things, Peabody Coal Company, which produces roughly 15 percent of the coal mined in the United States. *See FTC Restructures Electric/Coal Combination to Ensure that All Consumers Reap Low Prices From Electricity Deregulation*, FTC News Release, Feb. 18, 1998.

[35] Analysis of Proposed Consent Order to Aid Public Comment ("Analysis") at 4.

[36] Analysis at 3.

[37] Statement of The Federal Trade Commission Upon Withdrawal From Consent Agreement, In the Matter of PacifiCorp, File No. 971 0091, ("Statement") at 1 (emphasis added).

[38] Analysis at 4 (emphasis added).

[39] Statement at 1 n.1.

[40] Analysis at 8. The merger never was consummated because PacifiCorp subsequently withdrew its bid in the face of a competing offer. In closing the investigation, the FTC stated: "Absent this turn of events, the Commission would have been inclined to issue the final order against PacifiCorp without modification." Statement at 1.

[41] Proposed Final Judgment art. IV(A) at 33398 (requiring divestiture) & (D)(3) at 33398 (specifying DOJ's right to prior approval of purchaser) & (I) at 33399 (specifying the criteria for DOJ approval). The divestiture is to occur within eighteen months, subject to extension by DOJ, or a trustee will be appointed. Proposed Final Judgment art. IV(E) at 33399.

[42] Proposed Final Judgment art. V(A)(1). The term "California Generation Facilities" is defined to mean electricity generation facilities in California in existence on January 1, 1998, and any contract to operate and sell output from generating assets of the Los Angeles Department of Water and Power ("LADWP"). Proposed Final Judgment art. II(B) at 33397. "Acquire" is defined to mean "obtaining any interest in any electricity generating facilities or capacity, including but not limited to, all real property * * * capital equipment * * * or contracts related to the generation facility, and including all generation, tolling, reverse tolling, and other contractual rights." Proposed Final Judgment art II(A).

[43] Proposed Final Judgment art. V(A)(2) at 33399. "Control" means to have the ability to set the level of output of an electricity generation facility." Proposed Final Judgment art. II(E) at 33398.

[44] Proposed Final Judgment art. V(B)(1) at 33399. The cap may be increased to 800 MW upon Enova's sale of all of its existing nuclear generating capacity, but only up to 10% of its total retail electricity sales. Proposed Final Judgment art. XIII(D) at 33402.

[45] Proposed Final Judgment art. V(C)(1) and (2) at 33399.

California," provided it does not "control" them.[46]

As explained by Dr. Carpenter, these remedies are ineffective because they are incomplete.[47] While their aim is to curb the merged company's incentives to harm competition by restricting its participation in certain activities, they also allow other activities that can completely undo what DOJ seeks to achieve. It is as if DOJ closed one door to anti-competitive activity but left wide open several other doors.

The rationale underlying DOJ's required divestiture of the 1650 of the 1650 MW of Enova generating facilities is that infra-marginal assets (assets that are low-cost relative to the market price of electricity) create incentives through the price-clearing mechanism in the PX for the merged company to manipulate gas prices. As stated by DOJ:

> The Final Judgment requires Defendant to sell all generation assets that would likely give PE/Enova the inventive to raise electricity prices. [footnote excluded] To that end, the Final Judgment requires Defendant to divest all of its low-cost gas generators * * *. Because these generators operate in almost all hours of the year and are relatively low-cost, if PE/Enova were to own them, it could earn substantial profits (revenues exceeding its costs) by restricting the supply of natural gas which, as explained above, would increase the overall price for electricity in the pool and thus the prive PE/Enova would receive for electricity.[48]

But, what DOJ overlooked is that many other arrangements and transactions that are *not* prohibited by the proposed Final Judgment will allow the merged entity to directly, or indirectly through financial instruments, collect the earnings from infra-marginal generating facilities. Specifically, the proposed Final Judgmebnt has left in place significant anti-competitive incentives by permitting the merged company to:

- Build or acquire new or repowered generating facilities;
- Enter into tolling agreements;
- Enter into power generation management contracts;
- Enter into financial contracts tied to prices in the California electricity market

1. Acquisition of New or Repowered Generating Facilities

While the merged company would generally be prohibited from owning or controlling existing California generating facilities over and above the 500 MW cap, the proposed Final Judgment allows it to build or acquire new generating facilities and to acquire plants that are rebuilt, repowered or activated out of dormancy after January 1, 1998. While adding new facilities is generally procompetitive, here that is not the case. Acquisition of new (or rebuilt/repowered/reactivated) generating facilities will create incentives to manipulate gas prices that the merged company does not have, easily undoing via vertical market power the otherwise positive horizontal effect of adding new generation facilities.[49] DOJ required the divestiture of Enova's two generation plants because, as low-cost facilities, they could "earn substantial profits" under the PX pricing mechanism (*see supra* at p. 22). That same rationale holds equally true for the types of generating facilities that the proposed Final Judgment permits the merged company to acquire.

By way of example, consider two scenarios. In scenario one, the merged company divests 1650 MW of Enova's generating facilities, and then builds a 1650 MW facility to replace the lost output. Because of technology improvements, the new facility can be brought on-line with costs roughly equal to those of the old facilities. In scenario two, the merged company retains its 1650 MW of existing facilities and a disinterested third party builds a 1650 MW facility. In both scenarios, the market has the same amount of megawatts available for consumption and the merged company has roughly the same incentive to raise gas prices.[50] The proposed Final Judgment permits scenario one but prohibits scenario two. A provision such as that can hardly be said to be within the reaches of the public interest.

2. Tolling Agreements

The proposed Final Judgment permits the merged company to enter into tolling or reverse tolling agreements so long as it does not control the level of the plant's output. Under a tolling agreement, a party who owns natural gas enters into a contract with the owner of the generating facility to use ("rent") that facility, thereby allowing the gas-owning party to produce electricity for a set fee. The gas-owning party can then sell the electricity at the market price, which may be higher or lower than the set fee.[51]

The problem is that tolling agreements are akin to virtual ownership because they provide the merged company with the same incentive to increase electricity prices as does physical ownership. And, the agreement need not provide for control of the plant's output for that incentive to exist. For example, the merged company could enter into tolling agreements with the two Enova generating facilities that it has agreed to divest. The facilities' operator, whoever that is, would bid into the PX at the facilities' marginal cost and the facilities would operate whenever the bids are successful. To the extent that the agreement provides the merged company with electricity at a fixed price, the company has an incentive to increase the PX price by increasing gas prices—it will simply pocket the additional revenue.[52]

The failure of the proposed Final Judgment to close this gap is another reason to find it not in the public interest.

3. Power Generation Management Contracts

A further reason to reject the proposed Final Judgment is due to its failure to prohibit the merged company from entering into management contracts under which it would operate a generation facility owned by a third party. Such arrangements are similar to tolling agreements in that they permit a sharing in a facility's profits.[53]

Importantly, the proposed Final Judgment recognizes the potential harm to competition that such contracts can cause. It requires the merged company to notify and/or obtain approval from DOJ for management contracts entered into with the Los Angeles Department of Water and Power and with the California Public Power Providers. These restrictions go part way to reducing incentives but apparently they do not apply to contracts relating to all other California generating facilities.[54] Permitting such contracts for certain but not all California generating facilities is inconsistent and not in the public interest.

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[46] Proposed Final Judgment art. (V)(C)(3) at 33399.

[47] Aff. at ¶¶ 19, 21.

[48] CIS at 33404.

[49] Aff. at ¶ 22.

[50] *See* Aff. at ¶ 23.

[51] Aff at ¶ 24.

[52] Aff. at ¶ 25.

[53] Aff. at ¶ 26. A management contract may be structured to be more complex than a tolling agreement (e.g., clauses with operating cost incentives) but, in essence, both arrangements have a built-in incentive to make the facility as profitable as possible. *Id.*

[54] There is some ambiguity due to the definition of "acquisition" in the proposed Final Judgment. "Acquire" could be interpreted to prohibit any *financial* interest, or it could be interpreted to prohibit any *ownership* interest. The latter interpretation leaves open the possibility of entering into management contracts. *See* proposed Final Judgment at art. II(A); *see also* Aff. at ¶ 28.

4. Financial Market Contracts

Finally, the proposed Final Judgment fails to place any restrictions whatsoever on the merged company's ability to enter into financial contracts (e.g., forwards, futures, options and other derivatives) that provide the same incentive to increase electricity prices.[55] Financial contracts can be used to approximate the same financial position the merged company would have by virtue of owning generation facilities.[56] The merged company, for example, could contract for a one-year call option for 1000 MW of output at a certain "strike price." The higher the electricity market price is above the strike price, the greater the profit when the option is exercised.[57]

As explained by Dr. Carpenter, financial contracts have the potential to foster more anti-competitive creativity than ownership of generation facilities because they are more flexible. While it is difficult to change ownership, it is simple to contract for electricity in varying amounts over differing time horizons and to change positions quickly and frequently. This flexibility allows the merged company to tailor its electricity market position to most advantage itself.[58]

Both individually and collectively, the shortcomings of the proposed Final Judgment are significant because they completely undermine DOJ's effort to curb the merged entity's incentive to increase electricity prices. DOJ's failure to eliminate this incentive renders the proposed Final Judgment ineffective and thus outside the reaches of the public interest. This Court should reject it as presently written.

[55] A forward contract is a non-standardized bilateral contract for future delivery of electricity at a pre-specified price. A futures contracts is a standardized forward contract that is traded on an organized exchange. California-Oregon border and Palo Verde electricity futures contracts, both of which are traded on the New York Mercantile Exchange, are accessible to the California market. Option contracts, which can be either traded on an exchange or done bilaterally, include additional flexibility for the buyer or the seller. For example, a call option gives the buyer the right but not the obligation to purchase electricity in the future at a specified price. Aff. at ¶29 fn.9.

[56] Aff. at ¶29.

[57] Aff. at ¶29.

[58] Aff. at ¶29.

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Dated: August 17, 1998.

1. My name is Paul Carpenter. I am a Principal of The Brattle Group, an economic and management consulting firm with offices at 44 Brattle Street, Cambridge, Massachusetts 02138, in Washington D.C., and London, England.

2. I am an economist specializing in the fields of industrial organization, finance, and regulatory economics. I received a Ph.D. in Applied Economics and an M.S. in Management from the Massachusetts Institute of Technology, and a B.A. in Economics from Stanford University. Since the early 1980s, I have been involved in research and consulting regarding the economics and regulation of the natural gas, oil, and electric power industries in North America, the United Kingdom, and Australia. I have testified frequently before the Federal Energy Regulatory Commission ("FERC"), the Public Utilities Commission of the State of California ("CPUC"), other state and Canadian regulatory commissions, federal courts, the U.S. Congress, the British Monopolies and Mergers Commission, and the Australian Competition Tribunal on issues of pricing, competition and regulatory policy in the natural gas and electric power industries. For at least ten years I have been extensively involved in the evaluation of the economics and structure of the natural gas industry in California, including the interstate pipelines that serve the state, appearing as an expert witness in many CPUC, FERC and Canadian regulatory proceedings regarding the certification and pricing of interstate pipeline capacity to California. Further details of my professional and educational background and a listing of my publications are provided in my curriculum vitae appended as Attachment A.

Introduction and Summary of Opinion

3. I have been asked by Southern California Edison Company ("Edison") to prepare this affidavit. Its purpose is to evaluate whether the U.S. Department of Justice ("DOJ") Final Judgment in this proceeding (as further explained in its accompanying Competitive Impact Statement ("CIS")) remedies the competitive problem identified in DOJ's Complaint—namely, that as a result of their merger, Pacific Enterprises ("Pacific") and Enova Corporation ("Enova") will have the incentive and ability to lessen competition in the market for electricity in California.

4. The DOJ observed correctly in its Complaint and CIS that the merger will give the combined company ("the Merged Entity") both the incentive and the ability to harm competition in the California electricity market by limiting the supply and/or raising the price of natural gas supplied to gas-fired electric generating plants in southern California.

5. In my opinion, the Proposed Final Judgment does not remedy the serious competitive problem identified by the DOJ in its complaint. The bases for my opinion are summarized here and elaborated upon in the remainder of this affidavit:

- The DOJ correctly concluded that the merger will give the Merged Entity both the ability and incentive to raise electricity prices in southern California.
- The DOJ could have remedied this competitive problem by eliminating the ability of the Merged Entity to exercise market power by requiring either:
- The divestiture of Pacific's intrastate natural gas and storage assets to a third party; or
- The creation of an Independent System Operator to hold and operate Pacific's natural gas assets.
- This type of structural remedy is favored by antitrust authorities because it is aimed directly at the source of the competitive problem—market power—and it is clean and easy to enforce, requiring no ongoing administrative involvement in reviewing the conduct and performance of the suspect market.

• The remedy chosen by the DOJ is to leave the Merged Entity's market power intact, and instead to try to curb the Merged Entity's incentives to harm competition by requiring the sale of two generating plants and by restricting its participation in certain activities. This remedy is ineffective. Not only does it leave market power intact, it fails to eliminate significant anticompetitive incentives that are equivalent financially to the ownership of the two power plants.

• The Proposed Final Judgment has left in place significant anti-competitive incentives by permitting the Merged Entity to:

• Build or acquire new or repowered generating capacity.

• Enter into tolling agreements or management contracts.

• Enter into financial contracts (e.g., forwards, futures, options and other derivatives) for electricity.

• These overlooked capabilities are a very real part of the incentives of the Merged Entity, are a standard part of the package of services of any major energy marketer, and they are consistent with the avowed strategic business plans of the Merged Entity.

The Competitive Problem Associated With the Merger

6. Pacific, through its wholly owned subsidiary Southern California Gas Company ("SoCalGas"), is effectively the sole provider of intrastate natural gas transmission and storage services to almost all of the gas-fired electric generating plants in southern California. As a consequence of this market power, SoCalGas has the ability to limit the supply and/or raise the price of natural gas to gas-fired plants. Prior to the merger, however, it had no strong incentive to do so because it had no position in or control over electricity markets.

7. The DOJ has recognized Pacific's ability to restrict the availability of gas transportation and storage to gas-fired generators, and to raise the price of delivered gas to such generators:

Gas-fired power plants cannot and do not switch to other fuels in response to price increases in natural gas transportation or storage services, and in California Pacific controls almost all gas-fired generators' access to gas supply because the state of California has granted Pacific a monopoly on transportation of natural gas within southern California. Consequently, 96% of gas-fired generators in southern California buy gas transportation services from it. Pacific also has a monopoly on all natural gas storage services throughout California. Although regulated by the California Public Utilities Commission ("CPUC"), Pacific has the ability to restrict the availability of gas transportation and storage to consumers, including gas-fired generators, by limiting their supply or cutting them off entirely. Limiting or cutting off gas supply raises the price gas-fired plants pay for delivered natural gas and in turn raises the cost of electricity they produce.[1]

8. The Merged Entity has numerous means to raise prices or limit supply to gas-fired generators in the southern California market. These means are derived primarily from SoCalGas' control of the intrastate transmission, distribution and storage system in southern California, its role as gas buyer for "core" residential and small commercial customers, and its holding of excess interstate pipeline capacity under long-term contract.

• *Intrastate transmission and storage access.* As operator of the intrastate transmission, distribution and storage system. SoCalGas has considerable authority and autonomy to determine which gas will flow and under what conditions. It decides on the amount of intrastate capacity available at each interstate pipeline interconnect, based on subjective procedures that are not articulated in any tariff or internal procedural manual. It also has discretion in determining storage availability.

• *Pricing of intrastate services.* As the provider of hub and storage services, SoCalGas is allowed under California regulation to exercise pricing discretion with regard to certain negotiated services. These services include short-term balancing or emergency supply services.

• *Interstate access and pricing.* SoCalGas has discretion in determining the price and quantity of capacity it makes available in secondary ("capacity release") markets. This discretion presents the Merged Entity with one more means by which to influence the delivered price of gas to its electricity market rivals.

• *Core procurement behavior.* SoCalGas has substantial flexibility in its core-related storage injection and withdrawal decisions that allows it to determine the volume of flowing supplies on a day-to-day basis, notwithstanding customer demand.

• *Use of operational information.* As the operator of the intrastate natural gas transportation and storage system. SoCalGas possesses considerable operational information that is extremely valuable in the restructured natural gas and electricity markets. For example, as system operator. SoCalGas will receive regular nomination information from all of its shippers. Because SoCalGas has considerable discretion in operating its system, it can do so in a manner that can result in the manipulation of prices and access, and thus the cost of rivals of using its system. Such manipulations would be almost impossible to detect, difficult to prove, and not readily subject to cure.

Each one of these advantages is sufficiently potent to enable to the Merged Entity to manipulate the price of gas and/or the quality of service to electricity generators.

9. As of March 31, 1998, California launched the Power Exchange (PX), through which much of the electricity is now bought and sold in California. The PX's price per unit of electricity for any given hour is determined by the bid of the marginal generator—the most expensive generator required to meet load in that hour. All sellers receive the marginal price, regardless of their bid, and all buyers pay the marginal price. As DOJ has acknowledged, because of California's mix of generating capacity, gas-fired generators usually are the marginal suppliers, and the marginal-cost pricing instituted by the PX means that the price bid by gas-fired generators will set electricity prices in the California market the majority of the time.[2] The marginal bid price setting mechanism of the PX means that California gas-fired capacity will have a dominant effect on electricity prices.[3]

10. Enova, through its wholly owned subsidiary, San Diego Gas & Electric (SDG&E), owns gas-fired electric generating stations and controls over 2,600 MW of electric generating capacity. DOJ recognized that SDG&E's control of substantial quantities of electricity sold into the PX gives SDG&E and incentive to raise the PX's electricity price, making sales of its own

[1] Competitive Impact Statement (Case 98–CV–583), at 5–7. See also Complaint, at 6.

[2] To illustrate, Attachment B to this affidavit depicts the electricity supply curve for both utility and non-utility generating resources for the entire Western Systems Coordinating Council (WSCC). This supply curve distinguishes gas-fired capacity and California gas-fired capacity from other generation capacity. As illustrated, actual load (which varies by time of day and seasonally) falls within a band of 70,500 MW to 93,500 MW approximately two-thirds of the time. Within this same band of the supply curve, 90% of the capacity is gas-fired capacity, and 69% is California gas-fired capacity.

[3] While not all California gas-fired capacity is served by SoCalGas, the majority of it is, and it has been found that the prices paid in northern California for gas delivered by Pacific Gas & Electric Co. (PG&E) are determined by the gas supply alternatives available at the southern California border. See CPUC Decision 97–08–055. August 1, 1997, at p.10.

electricity more profitable. To this existing incentive, the merger with Pacific adds the ability to increase the price of electricity. The Merged Entity can accomplish this by increasing the price of natural gas to gas-fired generating plants in southern California, which in turn will raise their cost of producing electricity. Because California gas-fired capacity dominates the electric margin, this will increase the PX's price per unit of electricity to all sellers.[4]

Failure of the Proposed Final Judgment To Impose a Structural Remedy Aimed at Market Power

11. The proposed Final Judgment fails to eliminate the competitive harm caused by the PE/Enova merger because: (1) it does not contain any provisions designed to curb the Merged Entity's *ability* to harm competition through its monopoly over natural gas transportation and supply, and (2) while it requires SDG&E to divest ownership of two gas-fired electric generating plants, it permits the Merged Entity to replicate ownership by entering into contractual arrangements which offer the same *incentives* to engage in anti-competitive activity.

12. The proposed Final Judgment fails to impose the obvious, traditional, and assuredly effective remedy to a market power problem in a merger proceeding. It could have eliminated the ability of the Merged Entity to harm competition by eliminating its ability to exercise market power. It could have done this by requiring the divestiture of Pacific's intrastate natural gas transmission and storage assets, or by requiring the creation of an Independent System Operator ("ISO") for those assets.

13. The staff of the Bureau of Economics of the Federal Trade Commission has recently expressed its view that structural remedies (such as ISOs) aimed directly at the source of market power are the most effective remedies because such structural remedies alter incentives (by eliminating the ability to exercise market power) while behavioral remedies do not:

> As a general proposition, we have found that structural remedies, such as divestiture in merger cases, are the most effective and require the least amount of subsequent monitoring by government agencies. The effectiveness of structural remedies lies in the fact that they directly alter incentives. Behavioral remedies, in contrast, leave incentives for discriminatory behavior in place and impose a substantial burden on government agencies to monitor subsequent conduct.
>
> * * * In 1995, with regard to competition in electric generation and transmission, we suggested that FERC [the Federal Energy Regulatory Commission] promote independent system operators (ISOs) to control the regional electric transmission grids, as an alternative to ordering divestiture of transmission lines or relying solely on open access rules to promote competition in electric generation markets.[5]

I agree with this view. Thus, for example, in a merger of electricity transmission and generation companies, the FTC would focus its relief on the source of the market power—the transmission facilities—rather than the generation facilities that provide the incentive to engage in anti-competitive activity. As stated above, the FTC would place the transmission facilities in the hands of an independent entity, an ISO, and would prevent those facilities, which confer market power, from being controlled by the merged entity.

14. In remedying the anti-competitive effects of vertical mergers like the present one, the antitrust authorities have opted, and should continue to opt, for structural remedies that eliminate the source of the market power. Recently, in addressing the anti-competitive effects of a proposed merger between an electric utility and a coal company, the FTC insisted on divestiture of the coal supply assets that were the source of the market power which in turn led to anti-competitive control over electricity prices. I agree with this approach and this remedy. A copy of the FTC's reasoning in that case is appended as Attachment C.

15. A structural remedy in this case, requiring intrastate gas transmission and storage divestiture or the creation of an ISO, would eliminate cleanly the Merged Entity's ability to control the price of electricity in California, and it would eliminate the enforcement difficulties associated with behavioral remedies that attempt to control anti-competitive incentives after the fact.[6]

The Proposed Final Judgment Does Not Remedy the Competitive Problem Identified by DOJ

16. The proposed Final Judgment does not attempt to eliminate the Merged Entity's market power over natural gas transportation and storage which gives it the *ability* to harm competition and raise prices in electricity markets. Instead, DOJ has chosen to attempt to curb the Merged Entity's incentive to harm competition by requiring Enova to divest itself of 1,644 MW of generation assets, namely, the Encina and South Bay gas-fired electricity generating plants. In addition, the Final Judgment caps the Merged Entity's ownership of California electricity generation assets at 500 MW.[7] The Final Judgment also enjoins the Merged Entity from acquiring electricity generation facilities in California which were in existence on January 1, 1998 (*except* facilities that are rebuilt, repowered, or activated out of dormancy after January 1, 1998) and/or entering into any contract for operation and sale of output from generating assets of Los Angeles Department of Water and Power ("LADWP"), without prior notice to, and approval of, the United States. Finally, the Final Judgment enjoins the Merged Entity from entering into any contracts that allow it to control the output of electricity generation facilities in California in existence on January 1, 1998 without prior notice to and approval of the United States.

17. Importantly, this merger involves much more than an effort to combine SDG&E's electricity generation *assets* with SoCalGas' natural gas transmission and distribution *assets*. The problem with the merger is that it combines SDG&E's *expertise* in profiting through the acquisition and sale of electric power with SoCalGas' *ability* to control the price of natural gas in California through its monopoly over natural gas transportation and storage services in California.[8] As explained further below, this combination of electricity expertise and natural gas control creates a serious competitive problem that is not remedied by the divestiture of assets and other conditions set forth in the Final Judgment. Specifically, such

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[4] Much of the gas-fired generating capacity in California is currently under temporary "must-run" contracts for reliability, which when invoked will prevent these units from setting, or profiting from, the PX price. However, this will have no effect when must-run conditions are not declared, and the arrangement is scheduled to expire in three years.

[5] Comments of the Staff of the Bureau of Economics of the Federal Trade Commission Before the Public Utilities Commission of Texas, at 2 (June 19, 1998).

[6] Nowhere in its CIS does DOJ explain why it has failed to impose a remedy that eliminates the ability of the merged entity to raise prices.

[7] Since nuclear plants in California will remain price regulated (i.e., will not receive the PX price) until 2001, Enova's 20% (430 MW) interest in the San Onofre Nuclear Generating Station ("SONGS") will not be included in the 500 MW cap. If nuclear power prices become deregulated after 2001, SONGS capacity will be included in the cap *and* the period of the final judgment will be extended from five to ten years. A 75 MW contract with Portland General Electric will be included in the cap, unless the contract is terminated or divested. Finally, the capacity of the Encina and South Bay generation facilities will be included in the cap for as long as Enova owns these assets.

[8] The California Commission noted in its merger decision that "* * * each company sees unregulated energy services (particularly electricity marketing) as a way to increase earnings. But each feels that it lacks critical skills and physical assets." See D. 98–03–073, at 24.

electricity expertise could be used to enter into tolling agreements, management contracts and forward and futures contracts that perpetuate the Merged Entity's incentive to manipulate gas prices for anti-competitive ends, notwithstanding the Final Judgment's generation ownership restrictions.

18. As a general matter, it is extremely difficult to eliminate all of the anti-competitive incentives facing a utility in a restructured, partially deregulated wholesale electricity market. Those incentives manifest themselves in many different ways—only one of which is through ownership of existing gas-fired plants. Yet to be confident that the harm is competition is eliminated (when the ability to exercise market power remains), the antitrust authority or regulator must identify *all* of the potential incentives to profit from market manipulation and then design remedies that will curb each and every incentive. As explained below, the Final Judgment fails to curb very significant incentives.

19. The Competitive Impact Statement (CIS) correctly defines the Merged Entity's incentive but misconstrues the relationship between the kinds of transactions the Merged Entity might pursue and the incentives that would be created. As a result, the behavioral remedies put forward in the Final Judgment eliminate only part of the Merged Entity's incentives to raise prices.

20. The CIS recognizes that infra-marginal assets (assets that are low-cost relative to the market price of electricity) create incentives through the price-clearing mechanism in the California PX for the Merged Entity to manipulate gas prices. For example, the CIS states (at page 9):

> The Final Judgment requires Defendant to sell all generation assets that would likely give PE/Enova the incentive to raise electricity prices [footnote excluded] To that end, the Final Judgment requires Defendant to divest all of its low-cost gas generators * * *. Because these generators operate in almost all hours of the year and are relatively low-cost, if PE/Enova were to own them, it could earn substantial profits (revenues exceedings its costs) by restricting the supply of natural gas which, as explained above, would increase the overall price for electricity in the pool [PX] and thus the price PE/Enova would receive for electricity.

21. In making this finding, the DOJ overlooks the fact that many other arrangements and transactions that are *not* prohibited by the proposed Final Judgment create financial positions equivalent to, and potentially even more profitable than, the physical ownership of an infra-marginal generating unit. Any arrangement that allows the Merged Entity to collect or share in the earnings of an infra-marginal generator will give it the incentive to manipulate the spot price of power by increasing gas prices. The Final Judgment does not prohibit, and in fact explicitly allows, several such arrangements. Under the Final Judgment, the Merged Entity is allowed to (1) acquire new, rebuilt or repowered generation, (2) enter into tolling agreements with third-party generation owners, (3) enter into power generation management contracts, and (4) take forward contractual positions in the electricity market. All of these permitted transactions allow the Merged Entity to profit by manipulating the price of electric power, and will risk the abuse of market power as long as the Merged Entity has the continuing ability to influence gas prices that the CIS has acknowledged. As I explain below, in each of these situations the Final Judgment's restrictions simply do not eliminate the Merged Entity's incentives to exercise market power.

New or Repowered Generation Capacity

22. Under the proposed Final Judgment, the Merged Entity would be prohibited from owning or controlling existing generating facilities, but it is permitted to built or acquire new generating capacity and to gain control of plants that are rebuilt, repowered or activated out of dormancy after January 1, 1998. However, the addition of new generation by the Merged Entity is not necessarily benign. All else equal, adding generating capacity is usually procompetitive. However, in this case, all else is decidedly unequal. Allowing the Merged Entity to acquire new generation (or to rebuild, repower or reactivate generation) will give it incentives to manipulate gas prices *which it would not otherwise have*, easily undoing via vertical market power the otherwise positive horizontal effect of adding capacity. By giving the Merged Entity an incentive to raise gas prices, ownership of new or repowered generation could lead to an across-the-board increase in the cost of most of the margin-setting capacity in the market. Thus, the Final Judgment should prohibit the acquisition of new generating capacity for the same reason it requires divestiture of existing capacity. Holding any sort of interest in generating capacity eligible for the PX price gives the Merged Entity an incentive to exercise its market power in the gas market, to the detriment of the electricity market.

23. Another way to view this is by considering two scenarios: (A) the Merged Entity divests its existing generation to a third party, and builds a new generator, or (B) the Merged Entity keeps its existing generation and a disinterested third party builds the new generator. In both scenarios, the market has the same amount of generation, and the Merged Entity has essentially the same incentive to raise gas prices. However, while the CIS correctly recognizes (B) as problematic, the Final Judgment explicitly (though incorrectly) allows (A), the acquisition of new or repowered capacity.

Tolling Agreements

24. In a "tolling" agreement, one party contracts for the use of another party's generating capacity, allowing the first party to convert its own gas into electricity for a set fee. The first party can then sell the electricity at the market price, and will be able to collect the associated profit (or loss) as if it owned the generator. The proposed Final Judgment explicitly allows the Merged Entity to enter into tolling agreements, so long as it does not control the plant's output level in the process.

25. Tolling agreements create virtual ownership positions in power plants, and provide the Merged Entity with the same incentives to increase electricity prices as does physical plant ownership. A tolling agreement would allow the Merged Entity to receive all or most of the generator's infra-marginal net revenues, whether or not it controls the plant's output level. The proposed Final Judgment's restriction against controlling plant output displays a misconception of how the Merged Entity could exercise market power. It is not by withholding generating capacity from the market that the Merged Entity would manipulate electricity prices. Withholding capacity is an issue in *horizontal* market power, but not in the *vertical* market power that is of concern in this instance. Vertical market power arises here because the Merged Entity has the ability to raise the price of electricity by raising the price of gas—the dominant margin-setting fuel, and a vertical input to electricity. The Merged Entity can profit from gas market manipulation if it holds a claim on the net revenues of any infra-marginal plant that is operating when gas-fired generation is setting the PX price, regardless of whether it controls the plant's output. The plant operator, whoever it is, would simply bid into the PX at the plant's marginal cost, so that the plant would dispatch when economical. Thus, for example, if the Merged Entity enters into a tolling agreement with the owners of the two plants it has agreed to divest, its

financial stake will be essentially identical to what it would have been under direct ownership. While physical plant ownership is rightly prohibited, the Final Judgment fails to curb the Merged Entity's incentives because it allows tolling agreements that give the Merged Entity the same profit-making potential.

Management Contracts

26. The same issues arise with "management contracts," under which the Merged Entity would operate a plant owned by a third party, typically for a share of the plant's profits. Such arrangements are similar to tolling agreements in that they allow the Merged Entity to share in a plant's net revenues.

27. The problem with the proposed Final Judgment is that it does not clearly prohibit the Merged Entity from entering into management contracts with existing California generating facilities (e.g. its own divested generators or those of others). Thus, the Merged Entity could sign a management contract for one or more of the plants divested by itself or others and enjoy essentially the same financial incentives it could have had by retaining its own plants. Moreover, these units under management contract need not be gas-fired for them to create price manipulation incentives. To perpetuate such incentives, all that is required is that the plant(s) under contract be infra-marginal (i.e., lower cost than the marginal gas-fired plant that is setting the PX price.) To eliminate the anti-competitive incentives associated with management contracts, the Merged Entity would have to be explicitly prevented from entering into a management contract with any entity owning or building generation in California.

28. The proposed Final Judgement recognizes the problems with management contracts when it requires that the Merged Entity notify and/or obtain approval from DOJ for management contracts with assets owned by California Public Power Providers ("CPPP") and the Los Angeles Department of Water and Power ("LADWP"). These restrictions go part way in reducing the Merged Entity's incentives. But since similar restrictions are *not* applied to management contracts involving *other* assets, the Final Judgment gives the appearance of endorsing such contracts. Relatedly, the Final Judgment prohibits the "acquisition" of California Generation Facilities without prior approval. However, by carving out exceptions for management contracts, the meaning of "acquire" becomes ambiguous, despite being defined as "obtaining any interest in any electricity generating facilities or capacity". "Acquire" could be interpreted to prohibit any *financial* interest (which it must do to be effective), or could it be interpreted more narrowly to prohibit only *ownership* interest—which leaves open the possibility of management contracts. By explicitly restricting management contracts with respect to LADWP and CPPP assets only, the proposed Final Judgment appears to endorse a narrow interpretation of "acquire", and threatens to leave the Merged Entity with significant incentives to exercise its market power. Such debates concerning interpretation mean that at a minimum, in order to enforce the Final Judgment the DOJ will have to put itself in a significant oversight position to ensure consistency of interpretation and compliance. The need for such continuing regulatory activity by the antitrust authority would have been eliminated had the Final Judgment imposed a structural solution to the market power problem.

Financial Markets

29. It is apparent from the proposed Final Judgement that the DOJ fails to recognize that financial market contracts (derivatives such as forwards, futures, and options) which the Merged Entity may acquire could also provide it with incentives to act anti-competitively.[9] In fact, financial contracts can be used to essentially recreate the same financial position one would have by virtue of power plant ownership. For example, holding a one-year call option for 1,000 MW is financially akin to a year's ownership of a 1,000 MW power plant with variable cost equal to the "strike price" of the call (the contract price paid for power if the option is exercised. Such financial market contracts are, in effect, "virtual generation assets." [10] The equivalence between financial and physical assets is such that it is now common for electric industry planners to treat power plant ownership as equivalent to holding a series of call options and/or forward contracts to serve future spot markets for power.

30. Consequently, to the extent power plant ownership creates anti-competitive incentives, so would an equivalent bundle of forward or derivative contracts. While the Final Judgment does attempt to restrict the future acquisition of existing generating capacity in order to prevent anti-competitive behavior, it fails to restrict financial market participation, which creates the same incentives to abuse market power.

Conclusion

31. In its Complaint in this matter, the DOJ found that the proposed merger of Pacific Enterprises and Enova results in the creation of an entity that has the ability and incentive to harm competition in the market for wholesale electric power in California. The proposed Final Judgment, however, fails to rectify the problem because it preserves the ability of the Merged Entity to harm competition while imposing remedies that fail to eliminate the incentives. In particular, the Final Judgment fails entirely to deal with the incentives which the Merged Entity could create through ownership of new or repowered generation or contracting for power via tolling agreements, management contracts or financial contracts. The CIS provides no justification for distinguishing between the acquisition of physical assets and financial assets in creating anti-competitive incentives. The limited restrictions that the proposed Final Judgment does place on the future activities of the Merged Entity in the areas of new capacity, tolling and energy management contracts will not eliminate or even substantially curb the Merged Entity's incentives to harm competition.

32. The proposed Final Judgment does not remedy the serious competitive problem identified by the DOJ in its Complaint.

Attachment A—Paul R. Carpenter, Principal

Dr. Carpenter holds a Ph.D. in applied economics and an M.S. in management from the Massachusetts Institute of Technology, and a B.A. in economics from Stanford University. He specializes in the economics of the natural gas, oil and electric utility

[9] A forward contract for power is simply a non-stardized bilateral contact for future delivery at a pre-specified price. Futures are standardized forward contracts traded on an organized exchange, such as the California-Oregon Border (COB) and Palo Verde (PV) electricity futures contracts which are traded on the New York Mercantile Exchange (NYMEX) and which are accessible to the California market. Options contracts are also derivatives that include additional flexibility for either the buyer or seller. For example, a call option, a common type of derivative, gives the buyer the right but not he obligation to purchase power in the future at a specified price.

[10] Financial contracts can foster even more anti-competitive creativity than power plant ownership, because they are far more flexible. For instance, while it is difficult to change one's ownership of generating capacity, it is simple to contract for power in varying amounts over differing time horizons (a year, a month, a week, a day), and to change one's position quickly and frequently. This would allow the Merged Entity to tailor its electricity market position to make it most advantageous.

industries. Dr. Carpenter was a co-founder of Incentives Research, Inc. in 1983. Prior to that he was employed by the NASA/Caltech Jet Propulsion Laboratory and Putnam, Hayes & Bartlett, and he was a post-doctoral fellow at the MIT Center for Energy Policy Research. He is currently a Principal of *The Brattle Group*.

Areas of Expertise

Dr. Carpenter's areas of expertise include the fields of energy economics, regulation, corporate planning, pricing policy, and antitrust. His recent engagements have involved:

- *Natural Gas and Electric Utility Industries:* consulting and testimony on nearly all of the economic and regulatory issues surrounding the transition of the natural gas and electric power industries from strict regulation to greater competition. These issues have included stranded investments and contracts, design and pricing of unbundled and ancillary services, evaluation of supply, demand and price forecasting models, the competitive effects of pipeline expansions and performance-based ratemaking. He has consulted on the regulatory and competitive structures of the gas and electric power industries in the U.S., Canada, the United Kingdom, Australia and New Zealand.
- *Antiturst:* expert testimony in several of the seminal cases involving the alleged denial of access to regulated facilities; analysis of relevant market and market power issues, business justification defenses, and damages.
- *Regulation:* studies and consultation on alternative rate making methodologies for oil and gas pipelines, on "bypass" of regulated facilities before the U.S. Congress; advice and testimony before several state utility commissions and the National Energy Board of Canada on new facility certification policy.
- *Finance:* research on business and financial risks in the regulated industries and testimony on risk, cost of capital, and capital structure for natural gas pipeline companies in the U.S. and Canada.

Professional Affiliations

International Association of Energy Economists
American Bar Association (Antitrust Section)
American Economic Association.

Academic Honors and Fellowships

Stewart Fellowship, 1983
MIT Fellowships, 1981, 1982, 1983
Brooks Master's Thesis Prize (Runner-up), MIT, 1978.

Publications

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Before the National Energy Board of Canada, Application of Alliance Pipeline Ltd., Hearing Order GH–3–97, December 1997, April 1998.

Before the California Public Utilities Commission, Pacific Enterprises, Enova Corporation, et al. Merger Proceedings, Docket A.96–10–038, on behalf of Southern California Edison, August 1997.

In the Superior Court of the State of California for the County of Los Angeles, Pacific Pipeline System Inc. v. City of Los Angeles, on behalf of Pacific Pipeline System Inc., January 1997.

Before the U.K. Monopolies and Mergers Commission, British Gas Transportation and Storage Price Control Review, on behalf of Enron Capital and Trade Resources Limited, January 1997.

Northern Border Pipeline Company, Federal Energy Regulatory Commission (FERC) Docket No. RP96–45–000, July 1996.

Wisconsin Electric Power Co., Northern States Power Co. Merger Proceedings. FERC Docket No. EC 95–16–000, on behalf of Madison Gas & Electric Co., Wisconsin Citizens Utility Board and the Wisconsin Electric Cooperative Association, May 1996.

Before the California Public Utilities Commission, Application of PG&E for Amortization of Interstate Transition Cost Surcharge, Application 94–06–044, on behalf of El Paso Natural Gas, December 1995.

Tennessee Gas Pipeline Company, FERC Docket No. RP95–112–000, on behalf of JMC Power Projects, September 1995.

Before the National Energy Board of Canada, Drawdown of Balance of Deferred Income Taxes Proceeding, RH–1–95, on behalf of Foothills Pipe Lines Ltd., September 1995.

Pacific Gas Transmission, FERC Docket No. RP94–149–000, on behalf of El Paso Natural Gas, May 1995.

Before the California Public Utilities Commission, Application of Pacific Pipeline System, Inc., A.91–10–013, on behalf of PPSI, April 1995.

Before the National Energy Board of Canada, Multipipeline Cost of Capital Proceeding, RH–2–94, on behalf of Foothills Pipe Lines Ltd., November 1994.

Before the California Public Utilities Commission, Pacific Gas & Electric 1992 Operations Reasonableness Review, Application 93–04–011, on behalf of El Paso Natural Gas, November 1994.
Before the National Energy Board of Canada, Foothills Pipe Lines (Alta.) Ltd., Wild Horse Pipeline Project, Order No. GH–4–94, October 1994.
Iroquois Gas Transmission System, L.P., FERC Docket No. RP94–72–000, on behalf of Masspower and Selkirk Cogen Partners, September 1994.
Tennessee Gas Pipeline Co., FERC Docket No. RP91–203–000, on behalf of JMC Power Projects and New England Power Company, February, May 1994.
Before the California Public Utilities Commission, on the Application of Pacific Gas & Electric Company to Establish Interim Rates for the PG&E Expansion Project, July 1993.
Before the Florida Public Service Commission, Petition of Florida Power Corporation for Order Authorizing A Return on Equity for Florida Power's Investment in the SunShine Intrastate and the SunShine Interstate Pipelines, FPSC Docket No. 930281–EI, June 4, 1993.
Before the Florida Public Service Commission, Application for Determination of Need for an Intrastate Natural Gas Pipeline by SunShine Pipeline Partners, FPSC Docket No. 920807–GP, April–May 1993.
Northwest Pipeline Corp., et al., FERC Docket No. IN90–1–001, February 1993.
City of Long Beach, Calif., vs. Unocal California Pipeline Co., before the California Public Utilities Commission, Case No. 91–12–028, February 1993.
Alberta Energy Resources Conservation Board, on Applications of NOVA Corporation of Canada to Construct Facilities, January 1993.
Before the California Public Utilities Commission, on the Application of Pacific Gas & Electric Co. to guarantee certain financing arrangements of Pacific Gas Transmission Co. not to exceed $751 million, 1992.
Mississippi River Transmission Co., FERC Docket No. RP93–4–000, October 1992, September 1993.
Unocal California Pipeline Co., FERC Docket No. IS92–18–000, August 1992.
Before the California Public Utilities Commission, in the Rulemaking into natural gas procurement and system reliability issues, R.88–08–018, June 1992.
Alberta Energy Resources Conservation Board, Altamont & PGT Pipeline Projects, Proceeding 911586, March 1992.
Before the California Utilities Commission, on the Application of Southern California Gas Company for approval of capital investment in facilities to permit interconnection with the Kern River/Mojave pipeline, A.90–11–035, May 1992.
Northern Natural Gas, FERC Docket No. RP92–1–000, October 1991.
Florida Gas Transmission, FERC Docket No. RP91–1–187–000 and CP91–2448–000, July 1991.
Tarpon Transmission, FERC Docket No. RP84–82–004, January 1991.
Before the California Public Utilities Commission, on the Application of Pacific Gas & Electric Co. to Expand its Natural Gas Pipeline System, A. 89–04–033, May 1990 and October 1991.
CNG Transmission, FERC Docket No. RP88–211, March 1990.
Panhandle Eastern Pipeline, FERC Docket No. RP88–262, March 1990.
Mississippi River Transmission, FERC Docket No. RP89–249, October 1989, September 1990.
Tennessee Gas Pipeline, FERC Docket No. CP89–470, June 1989.
Empire State Pipeline, Case No. 88–T–132 before the New York Public Service Commission, May 1989.
Before the U.S. Congress, House of Representatives, Committee on Energy and Commerce, Subcommittee on Energy and Power, Hearings on "Bypass" Legislation, May 1988.
Tennessee Gas Pipeline, FERC Docket No. RP86–119, 1986–87.
Mojave Pipeline Co., FERC Docket No. CP85–437, 1987–88.
Consolidated Gas Transmission Corp., FERC Docket No. RP88–10, 1988.
Panhandle Eastern, FERC Docket No. RP85–194, 1985.
On behalf of the Natural Gas Supply Association in FERC Rulemaking Docket No. RM85–1, 1985–86.
On behalf of the Panhandle Eastern Pipeline Co. in FERC Rulemaking Docket No. RM85–1, 1985.

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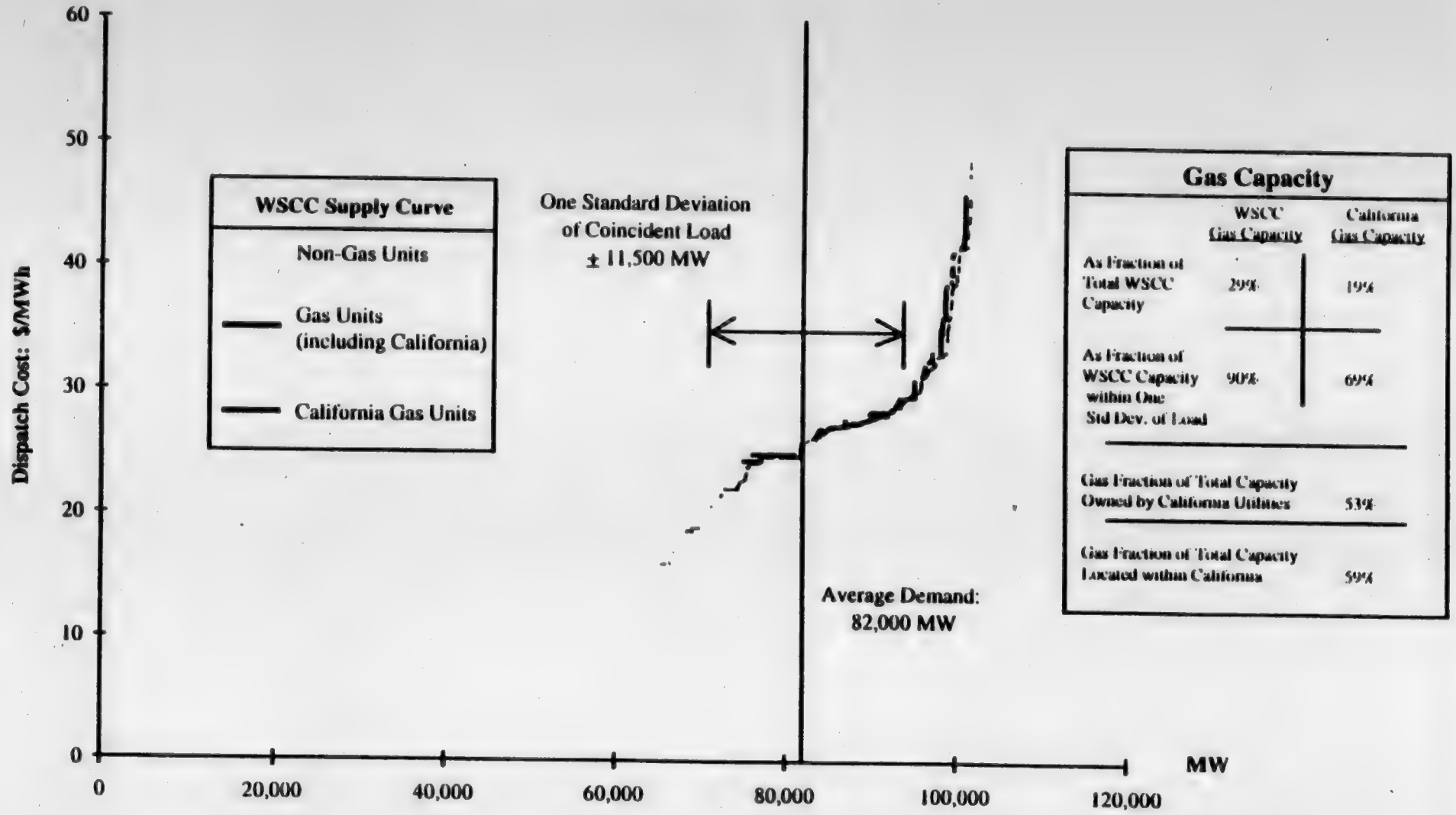
BILLING CODE 4410–11–C

Attachment B

1996 WSCC Electric Supply Curve



Attachment B—1996 WSCC Electric Supply Curve (Notes and Sources)

Sources

Electric Supply and Demand Database (NERC); RDI 1996 Fuel Price Forecast.

Notes

For graphical clarity, units with dispatch cost above $60/MWh are excluded (30 oil-fired turbines, 740 MW total capacity). Nameplate capacity has been derated to reflect approximate average annual availability; hydro derated to reflect available energy.

The WSCC is the electric reliability council consisting of 11 western states and portions of Canada and Mexico; it contains 162,000 MW of generating capacity from over 1,400 generating units.

The annual average WSCC load is approximately 82,000 MW, and one standard deviation of coincident load is approximately 11,500 MW, so a one-standard deviation band around average load encompasses the range from 70,500 MW to 93,500 MW. Actual values fall within one standard-deviation of the average approximately two-thirds of the time.

Note that this is an "average annual" supply curve, in that nameplace capacity of units has been derated to reflect average annual availability (annual energy limits for hydro). Some care must be taken in interpreting this curve, because at any particular point in time, the actual supply curve will differ somewhat, depending on which particular units are actually available at that time. However, it clearly demonstrates that gas, and particularly California gas, is the dominant fuel of the price-setting marginal units in the entire WSCC. Of course, the effect of California gas-fired capacity on just the California market is even greater.

Affidavit of Paul R. Carpenter, Ph.D.

Commonwealth of Massachusetts, County of Middlesex

ss

I, Paul R. Carpenter, being first duly sworn on oath depose and say as follows:

I make this affidavit for the purpose of adopting as my sworn testimony in this proceeding the attached material entitled "Affidavit of Paul R. Carpenter, Ph.D." The statements contained therein were prepared by me or under my direction and are true and correct to the best of my knowledge, information, and belief.

Further affiant saith not.

Paul R. Carpenter

Subscribed and sworn to before me, a notary public in and for the Commonwealth of Massachusetts, County of Middlesex, this 4th day of August, 1998.

[SIGNATURE ILLEGIBLE].

[FR Doc. 99–1393 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences (NCMS): Advanced Embedded Passives Technology

Notice is hereby given that, on October 7, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences ("NCMS"): Advanced Embedded Passives Technology has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Minnesota Mining and Manufacturing Corporation, St. Paul, MN; Compaq Computer Corporation, Houston, TX; Delphi Delco Electronics Systems, Kokomo, IN; E.I. DuPont de Nemours Co., Research Triangle Park, NC; E.I. DuPont de Nemours Co., Inc., Circleville, OH; International Business Machines, Corporation, Endicott, NY; Interconnect Technology Research Institute, Austin, TX; HADCO Corporation, Salem, NH; MacDermid, Incorporated, Waterbury, CT; Merix Corporation, Forest Grove, OR; Northern Telecom, Inc., McLean, VA; Nu Thena Systems, Inc., McLean, VA; Ormet Corporation, Carlsbad, CA; and National Center for Manufacturing Sciences, Inc., Ann Arbor, MI. The nature and objectives of the venture are to develop and demonstrate Advanced Embedded Passives Technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–1394 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. ("NCMS")

Notice is hereby given that, on October 15, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. ("NCMS") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3D Systems, Inc., Valencia, CA; MSE Technology Applications, Inc., Butte, MT; Nonlinear Dynamics, Inc., Ann Arbor, MI; Ramtech Group, Inc., North Highlands, CA; Schafer Corporation, Albuquerque, NM; Star Cutter Company, Farmington Hills, MI; TRW Integrated Supply Chain Solutions, McLean, VA; Cisco Systems, Inc., San Jose, CA; and Laser Imaging Systems, Inc., Punta Gorda, FL have been added as parties to this venture. Also, Applied Science & Technology, Woburn, MA; C.N. Burman Company, Patterson, NJ; Viatec, Inc., Hastings, MI; Cincinnati Milacron, Inc., Cincinnati, OH; and The Center for Optics Manufacturing, University of Rochester, Rochester, NY have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. ("NCMS") intends to file additional written notification disclosing all changes in membership.

On February 20, 1997, National Center for Manufacturing Sciences, Inc. ("NCMS") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on April 10, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on September 29, 1998 (63 FR 51955).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–1395 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Petition for Nonimmigrant Worker.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by February 1, 1999. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until March 23, 1999. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarify of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 1 hour and 55 minutes (1.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 706,904 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 14, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–1384 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Reestablishment; Federal Advisory Committee Act; Federal Committee on Apprenticeship; Federal Committee on Registered Apprenticeship

Notice is hereby given that after consultation with the General Services Administration, it has been determined that the reestablishment of a national advisory committee on apprenticeship is necessary and in the public interest. Accordingly, the Employment and Training Administration has chartered the Federal Committee on Registered Apprenticeship (FCRA) which succeeds the Federal Committee on Apprenticeship (FCA). The charter for the FCA expired on January 26, 1998.

The FCRA will be an effective instrument to provide advice and recommendations to the Secretary.

(1) In the development and implementation of administration policies on legislation and regulations affecting apprenticeship;

(2) On the preparation of the American Workforce for sustained employment through employment and training programs for youth, disadvantaged adults, dislocated workers; and other targeted groups;

(3) Regarding measures that will foster quality workplaces that are safe, healthy, and fair; and

(4) In the implementation of the Bureau of Apprenticeship and Training's Child Care Development Specialist Initiative to promote and develop Child Care Apprenticeship Programs.

The Advisory Committee will also provide advice to the Secretary of Labor on ways to achieve the strategic goals set forth in the Department of Labor's Plans required under the Government Performance and Results Act of 1993 and in how to develop systems to measure the achievement of the Department of Labor's goals and objectives. The Committee will consist of seven representatives of employers, seven representatives of labor, and

seven representatives of the public. The National Association of State and Territorial Apprenticeship Directors and the National Association of Governmental Labor officials will have representation on the public group of the Committee. The Secretary shall appoint one of the public members as Chairperson of the Advisory Committee. A representative of the U.S. Department of Education and a representative of the Department of Commerce will be invited to serve as non-voting "ex-officio" members of the Committee. The Assistant Secretary of Labor for Employment and Training shall be a member ex-officio. The Director of the Bureau of Apprenticeship and Training shall be the designated Federal official for the Advisory Committee.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter is being filed at this time in accordance with approval by the General Services Administration Secretariat pursuant to 41 CFR 101–6.1015a(a)(2).

Signed at Washington, DC this 28th day of December 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–1465 Filed 1–21–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 20 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ990002 (Jan. 22, 1999)
Rhode Island
RI990001 (Jan. 22, 1999)

Volume II

Pennsylvania
PA990029 (Jan. 22, 1999)

Volume III

None

Volume IV

Illinois
IL990018 (Jan. 22, 1999)
Ohio
OH990029 (Jan. 22, 1999)

Volume V

None

Volume VI

None

Volume VII

California
CA990028 (Jan. 22, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the

seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 15th day of January, 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–1327 Filed 1–21–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Tuesday, February 9, 1999, beginning at 9:00 am at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–2508, Washington, DC 20210.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, D.C. 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting
- Report of the Congressional Committee on Servicemembers and Veterans Transition Assistance
- Certification and Licensing Update
- Implementation of Veterans Legislation Passed in 1998
- Other Matters of Interest to the Committee

The meeting will be open to the public.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–219–9116 no later than January 26, 1999.

Signed at Washington, D.C. this January 19, 1999.

Espiridion (Al) Borrego

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 99–1463 Filed 1–21–99; 8:45 am]

BILLING CODE 4510–79–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–1]

Change of Mailing Address for Notices of Intent To Enforce a Restored Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice.

SUMMARY: The Copyright Office is notifying the public of a change of mailing address for the submission of Notices of Intent to Enforce (NIE) a restored copyright and registration claims in restored works under the Uruguay Round Agreements Act (URAA). The number of filings submitted during the first two years of the restoration period necessitated the use of a special post office box, but the number of such filings has dramatically decreased making it unnecessary for the Office to maintain this box. All future NIEs, and GATT registrations should be mailed to the pertinent address specified in this notice.

EFFECTIVE DATE: This notice is effective February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Uruguay Round General Agreement on Tariffs and Trade (GATT) and the Uruguay Round Agreements Act (URAA) (Pub. L. No. 103–465; 108 Stat. 4809 (1994)) provide for the restoration of copyright in certain works that were in the public domain in the United States. Copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries that had entered the public domain for failure to comply with certain requirements prescribed by U.S. copyright law. *See*, 17 U.S.C. 104A (1994).

A copyright owner of any work meeting the requirements of section 104A may register a copyright claim in the restored work during the life of the copyright. The copyright owner may file a Notice of Intent to Enforce (NIE) the restored copyright in the Copyright Office within two years of eligibility. This NIE serves as constructive notice on any reliance party—anyone who is already using the work or acquired copies of the work before the date of enactment of the URAA. Alternatively, the owner may file actual notice on a reliance party at any time.

The URAA also requires the Register of Copyrights to publish lists in the **Federal Register** identifying a restored work and its owner[s] if an NIE has been filed by a party who is eligible to file. Thus, depending on its receipt of filings by eligible parties the Office may continue periodically to publish lists.

During the first two years, because of the large number of expected filings and the special processing they required, the Office established a particular mailing address for the filing of NIEs and registration of copyright claims in GATT restored works. It also created special GATT forms for registration of works and published a format for filing NIEs. The initial two year period for filing with the Office ended, for the overwhelming majority of countries, on December 31, 1997. Consequently, the number of filings has decreased drastically; therefore, the special address is no longer needed.

This notice is to inform all interested parties that the current mailing addresses for filing NIEs and GATT registrations, URAA/GATT, NIEs and Registrations, P.O. Box 72400, Southwest Station, Washington, D.C. 20024, USA *is no longer effective.* The new address for filing NIEs is GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. The new address for GATT registrations is the same as for all other registrations: Library of Congress, Copyright Office, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000.

Dated: January 15, 1999.

Marilyn Kretsinger,

Assistant General Counsel, Copyright Office.

[FR Doc. 99–1396 Filed 1–21–99; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the

Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S. C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of textual materials and Abuse of Governmental Power segments of the Nixon White House tapes from among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning February 25, 1999. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before February 22, 1999.

ADDRESSES: The tape recordings and textual materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on February 25, 1999, consist of 50.1 cubic feet. In addition, the National Archives is proposing to open 124 declassified segments from the Nixon White House tapes related to Abuse of Governmental Power from 110 separate conversations, totaling approximately 54 minutes of listening time.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the fifteenth of a series of openings of Central Files: the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; August 22, 1991; February 19, 1992; July 24, 1992; May 17, 1993; July 15, 1993; January 12, 1995; December 19, 1995; March 26, 1997, and March 18, 1998.

Two files designated for opening on February 25, 1999, are from the White House Central Files, Name Files. The Name Files were used for routine materials filed alphabetically by the name of the correspondent: copies of documents in the Name Files are usually filed by subject in the Subject Files. The Name Files relating to two individuals will be opened on February 25, 1999:

White House Central Files: Alpha Name Files

Warren E. Burger—.1 cubic foot
Henry L. Diamond—less than .1 cubic foot

In accordance with the provisions of Executive Order 12958, several series within the National Security Council files were systematically reviewed and will be made available to the public on February 25, 1999. In addition, a number of documents which were previously withheld from public access have been re-reviewed for release in accordance with 36 CFR 1275.56 (Public Access Regulations) and, in some cases, declassified under the provisions of Executive Order 12958. These documents will be publicly available on February 25, 1999:

National Security Council Files series—12 cubic feet
Other previously restricted materials—38 cubic feet

NARA is also proposing the opening of certain Nixon White House tapes. These 124 segments of previously restricted conversations to be released on February 25, 1999 were withheld from the November 12, 1996 public opening of 201 hours of Abuse of Governmental Power segments. These previously restricted segments were re-reviewed for release and declassified in accordance with the mandatory review provisions of Executive Order 12958 and 36 CFR 1275.56 (Public Access Regulations).

There are no transcripts for these tapes. Tape logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. No copies of the tape recordings will be sold or otherwise provided at this time. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log will be available for purchase.

Public access to some of the items in the files segments and some portions of the White House tape segments will be restricted for reasons other than national security as outlined in 36 CFR 1275.52 (Public Access Regulations).

Dated: January 20, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–1590 Filed 1–21–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

February 5, 1999.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on February 5, 1999, at 12:30 p.m.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to the review of applications for financial support on Technology grants received by the Division of Preservation and Access and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC and by teleconference. This meeting will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential, information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

Further information about this meeting can be obtained from Ms. Nancy E. Weiss, Advisory Committee Management Officer, Washington, DC

20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 99–1435 Filed 1–21–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board

AGENCY: Institue of Museum and Library Services, NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 10:00 pm—12:00 pm—Friday, February 5, 1999.

STATUS: Open.

ADDRESS: the Madison Hotel, Fifteenth and M Streets, NW, Drawing Rooms I and II, Washington, DC 20005, (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Friday, February 5, 1999 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506–(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

74th Meeting of the National Museum Service Board, The Madison Hotel, 15th and M Streets, NW, Drawing Rooms I and II, Washington, DC, February 5, 1999, 10:00 AM—12:30 PM

Agenda

I. Chairman's Welcome and Approval of the Minutes of the 73rd NMSB Meeting—September 28, 1998
II. Director's Report
III Appropriations Report
IV. Legislative/Public Affairs Report
V. Office of Research and Technology Report
VI. Office of Museum Services Program Report
VII. Office of Library Services Reports

Dated: January 14, 1999.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 99–1496 Filed 1–21–99; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Public Comment on Recommended Improvements to the Oversight Processes for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a methodology for grading the regulatory response to performance on the basis of information derived from the performance indicators and inspection findings. The changes are the result of continuing work following public comment and workshops held on a previously noticed concept, the integrated review of the assessment process (IRAP) ["Public Comment on the Integrated Review of the Assessment Process for Commercial Nuclear Power Reactors," August 7, 1998; 63 *FR* 152, 42439]. Public comments are requested on the proposed regulatory framework, baseline inspection program, assessment process, and associated assessment tools. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. The NRC staff will consider comments it receives in developing a final proposal for implementing the new processes.

DATES: The comment period expires February 22, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Copies of SECY–99–007 and its attachments may be obtained from the NRC's Public Document Room at 2120 L St., N.W., Washington, DC 20003–1527, telephone 202–634–3273. Copies also may be obtained from the NRC's Internet web site at: http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html#1999.

FOR FURTHER INFORMATION CONTACT: Timothy J. Frye, Mail Stop: O–5 H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1287.

SUPPLEMENTARY INFORMATION:

Background

Over the years, the NRC has developed and implemented different licensee performance assessment processes to address the specific assessment needs of the agency at the time. The systematic assessment of licensee performance (SALP) process was implemented in 1980 following the accident at Three Mile Island to allow for the systematic, long-term, integrated evaluation of overall licensee performance. The senior management meeting (SMM) process was implemented in 1986, following the loss-of-feedwater event at Davis-Besse, to bring to the attention of the highest levels of NRC management to plan a coordinated agency course of action for those plants the performance of which was of most concern to the agency. The plant performance review (PPR) process was implemented in 1990 to periodically adjust NRC's inspection

focus in response to changes in licensee performance and emerging plant issues.

Integrated Review of the Assessment Process

In September 1997, the NRC began an integrated review of the processes used for assessing performance by commercial nuclear power plant licensees. The NRC staff presented to the Commission a conceptual design for a new integrated assessment process in Commission paper SECY–98–045, dated March 9, 1998, and briefed the Commission on the concept at a public meeting on April 2, 1998. SECY–98–045 requested the Commission's approval to solicit public input on the proposed concepts. On June 30, 1998, the Commission issued a staff requirements memorandum (SRM) in response to SECY–98–045 that approved the staff's request to solicit public comment on the concepts presented in the Commission paper [63 FR 152].

Industry Proposal

In parallel with the staff's work on the IRAP and the development of other assessment tools, the nuclear power industry independently developed a proposal for a new assessment and regulatory oversight process. This proposal took a risk-informed and performance-based approach to the inspection, assessment, and enforcement of licensee activities on the basis of the results of a set of performance indicators. This proposal was developed by the Nuclear Energy Institute (NEI) and is further described in "Minutes of the July 28, 1998, Meeting With the Nuclear Energy Institute to Discuss Performance Indicators and Performance Assessment," dated July 30, 1998.

Public Workshop

The staff set out to develop a single set of recommendations for making improvements to the regulatory oversight processes in response to NEI's proposal, the Commission's comments on the IRAP proposal, and comments made at a Commission meeting on July 17, 1998, with public and industry stakeholders and the hearing before the Senate on July 31, 1998.

The IRAP public comment period, which ended on October 6, 1998, and a series of public meetings were used to facilitate internal and external input into the development of these recommendations. As part of the public comment period, the staff sponsored a 4-day public workshop from September 28 through October 1, 1998, to allow participation by the industry and the public in improving the regulatory oversight processes. During the workshop, the participants reached a consensus on the overall philosophy for regulatory oversight and generally agreed on the defining principles for the oversight processes.

Task Groups

Following the public workshop, the NRC staff formed three task groups to complete the work begun at the workshop and to develop the recommendations for the integrated oversight processes: a technical framework task group, an inspection task group, and an assessment process task group. The technical framework task group was responsible for completing the assessment framework, which included defining the strategic areas and cornerstones of licensee performance that need to be measured to ensure that unacceptable risks are not imposed on the public as a result of the operation of nuclear power reactors, and for identifying the performance indicators (PIs) and appropriate thresholds that could be used to measure performance. The inspection task group was responsible for developing the scope, the depth, and the frequency of a risk-informed baseline inspection program that would be used to supplement and verify the PIs. The assessment process task group developed methods for integrating PI data and inspection data, determining NRC action on the basis of assessment results, and communicating results to licensees and the public. Other staff activities to improve the enforcement process were coordinated with these three task groups to ensure that changes to the enforcement process were properly evaluated in the framework structure and that changes to the inspection and assessment programs were integrated with the changes to the enforcement program. The task groups completed their work between October and December 1998, and developed recommendations to be presented to the Commission.

Scope of the Public Comment Period

The NRC staff's recommendations for an integrated oversight process are presented in SECY–99–007, "Recommendation for Reactor Oversight Process Improvements," dated January 8, 1999, and its attachments. The SECY paper also includes the staff's evaluation of public comments received on IRAP. This public comment period will focus on obtaining industry and public views on how the NRC should implement the processes for overseeing and assessing licensee performance.

The NRC seeks public comment and feedback on the specific topics highlighted in the questions below. Commenters are not limited to and are not obligated to address every issue discussed in the questions. In providing comments, please key your response to the number of the applicable question (e.g., "Response to A.1."). Comments should be as specific as possible. The use of examples is encouraged.

Comments are requested on the following issues.

A. Regulatory Oversight Framework, Performance Indicators, and Thresholds

1. Framework Structure

The oversight framework includes cornerstones of safety that (1) limit the frequency of initiating events; (2) ensure the availability, reliability, and capability of mitigating systems; (3) ensure the integrity of the fuel cladding, the reactor coolant system, and containment boundaries; (4) ensure the adequacy of the emergency preparedness functions; (5) protect the public from exposure to radioactive material releases; (6) protect nuclear plant workers from exposure to radiation; and (7) provide assurance that the physical protection system can protect against the design-basis threat of radiological sabotage. Are there any other significant areas that need to be addressed in order for the NRC to meet its mission of ensuring that commercial nuclear power plants are operated in a manner that provides adequate protection of public health and safety and the environment and protects against radiological sabotage and the theft or diversion of special nuclear materials?

2. Performance Bands

The oversight framework includes thresholds for determining licensee performance within four performance bands: a licensee response band, an increased regulatory response band, a required regulatory response band, and an unacceptable performance band. The thresholds between the bands were selected to identify significant deviations from nominal industry performance and to differentiate between levels of risk significance, as indicated by PIs or inspection findings. Are there alternative means of setting thresholds between the bands that should be considered?

3. Performance Indicators

The NRC staff developed a set of 20 indicators to measure important attributes of the seven areas listed in question 1 above. The PIs, together with

findings from associated baseline inspections in attributes not fully measured or not measured at all by the indicators, should provide a broad sample of data on which to assess licensee performance in those important attributes. One reason these specific indicators were proposed is because they are readily available and can be implemented in a short period of time. Other indicators will be developed and included in the oversight process as their ability to measure licensee performance is determined.

Will these PIs, along with inspection findings, be effective in determining varying levels of licensee performance?

4. Other Comments

Are there any other comments related to the oversight framework, PIs, or thresholds?

B. Risk-Informed Baseline Inspections

1. Inspectable Areas

The proposed baseline inspection program is based on a set of inspectable areas that, in conjunction with the PIs, provides enough information to determine whether the objectives of each cornerstone of safety are being met. Are there any other areas not encompassed by the inspectable areas that need to be reviewed to achieve the same goal?

2. Other Comments

Are there any other comments related to the proposed baseline inspection program?

C. Assessment Process

1. Frequency of Assessments

The proposed assessment process provides four levels of review of licensee performance: continuous, quarterly, semiannual, and annual. Each successive level is performed at a higher organizational level within the NRC. The semiannual and annual periods would coincide with an annual inspection planning process and the NRC's budgeting process. Are the proposed assessment periods sufficient to maintain a current understanding of licensee performance?

2. Action Decision Model

An action matrix was developed to provide guidance for consistently considering those actions that the NRC needs to take in response to the assessed performance of licensees. The actions are categorized into four areas (management meeting, licensee action, NRC inspection, and regulatory action) and are graded across five ranges of licensee performance. The decision to take an action would be determined directly from the threshold assessments of PIs and inspection areas. As changes in performance become more significant, more significant actions would be considered.

The action matrix is not intended to be absolute. It establishes expectations for NRC-licensee interactions, licensee actions, and NRC actions and does not preclude taking less action or additional action, when justified.

Will the use of the action matrix and underlying decision logic reasonably result in timely and effective action?

3. Communicating Assessment Results

The proposed assessment process includes several methods for communicating information to licensees and the public. First, the information being assessed (PIs and inspection results) will be made public as the information becomes available. Second, the NRC will send each licensee a letter every 6 months that describes any changes in the NRC's planned inspections for the upcoming 6 months on the basis of licensee performance. Third, each licensee will receive an annual report that includes the NRC's assessment of the licensee's performance and any associated actions taken because of that performance. In addition to issuing the annual assessment report, the NRC will hold an annual public meeting with each licensee to discuss its performance. Finally, a public meeting with the Commission will be held annually to discuss the performance at all plants. Do these reports and meetings provide sufficient opportunity for licensees and the general public to gain an understanding of performance and to interact with the NRC?

4. Other Comments

Are there any other comments related to the proposed assessment process?

E. Implementation

1. Transition Plan

The Commission paper includes a transition plan that identifies important activities needed to complete and implement the proposed processes. Are there other major activities not identified on the plan that if not accomplished could prevent successful implementation of the proposed processes?

2. Other Comments

Are there any other comments related to implementing the new processes?

F. Additional Comments

In addition to the previously mentioned issues, commenters are invited to give any other views on the NRC assessment process that could assist the NRC in improving its effectiveness.

Correction

One of the performance indicators is incorrectly stated in two places in the attachments to SECY–99–007. On page 3 of attachment 1 and page 11 of attachment 2, the indicator for Occupational Radiation Safety reads "* * * personnel exposures exceeding 10% of the stochastic or 2% of the nonstochastic limits." It should read "* * * personnel exposures exceeding 2% of the stochastic or 10% of the nonstochastic limits."

Dated at Rockville, Maryland, this 15th day of January 1999.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Chief, Inspection Program Branch, Division of Inspection & Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1486 Filed 1–21–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 19, 25, February 1 and 8, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 18

Tuesday, January 19

2:00 p.m. Briefing on Status of Third Party Oversight of Millstone Station's Employee Concerns Program and Safety Conscious Work Environment (Public Meeting) (Contact: Bill Dean, 301–415–7380)

Wednesday, January 20

9:25 a.m. Affirmation Session (Public Meeting) (If Needed)

9:30 a.m. Briefing on Reactor Inspection, Enforcement And Assessment (Public Meeting) (Contact: Frank Gillespie, 301–415–1275)

Week of January 25—Tentative

There are no meetings scheduled for the Week of January 25

Week of February 1—Tentative

Tuesday, February 2

3:30 p.m. Affirmative Session (Public Meeting) (if needed)

Wednesday, February 3

2:00 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of February 8—Tentative

Monday, February 8

2:00 p.m. Briefing on HLW Program Viability Assessment (Public Meeting)

Tuesday, February 9

9:30 a.m. Briefing on Fire Protection (Public Meeting)

11:00 a.m. Affirmation Session (Public Meeting) (if needed)

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 15, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–1586 Filed 1–20–99; 2:43 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of January 1, 1999, of the two deferrals contained in the first special message for FY 1999. The message was transmitted to Congress on October 22, 1998.

Deferrals (Attachments A and B)

As of January 1, 1999, $167.6 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1999.

Information From Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below:

63 FR 63949–50, Tuesday, November 17, 1998

Jacob J. Lew,

Director.

Attachments

ATTACHMENT A—STATUS OF FY 1999 DEFERRALS

[in millions of dollars]

	Budgetary resources
Deferrals proposed by the President	167.6
Routine Executive releases through January 1, 1999 (OMB/Agency releases of $0)	.....
Overturned by the Congress	.....
Currently before the Congress	167.6

BILLING CODE 3110–01–P

VOL 64 ISS 14 JA 22 1999 UMI

ATTACHMENT B
Status of FY 1999 Deferrals - As of January 1, 1999
(AMOUNTS IN THOUSANDS OF DOLLARS)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 1-1-99
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D99-1	82,858		10-22-98					82,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic support fund	D99-2	84,777		10-22-98					84,777
TOTAL, DEFERRALS		**167,635**	**0**		**0**			**0**	**167,635**

[FR Doc. 99-1440 Filed 1-21-99; 8:45 am]
BILLING CODE 3110-01-C

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: RUIA Claims Notification and Verification System. Section 5(b) of the Railroad Unemployment Insurance Act, as amended by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (P.L. 100–647), requires that "when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim." The purpose of the claims notification system is to provide to each unemployment and sickness claimant's base year employer or current employer, notice of each application and claim for benefits under the RUIA and to provide an opportunity for employers to convey information relevant to the proper adjudication of the claim. Railroad employers receive notice of applications and claims by one of two options. The first option, Form Letter ID–4K is a computer generated form letter notice of all unemployment applications, unemployment claims and sickness claims received from employees of a railroad company on a particular day. Form Letters ID–4K are mailed on a daily basis to officials designated by railroad employers. The second option is an Electronic Data Interchange (EDI) version of the Form Letter ID–4K notice. EDI notices of application are transmitted to participating railroads on a daily basis, generally on the same day that applications are received. Railroad employers can respond to RRB notices of applications and claims manually by mailing a completed ID–4K back to the RRB or electronically via EDI. Minor non-burden impacting changes are being proposed to Form ID–4K.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

RRB messages	Annual responses	Time (Min)	Burden (Hrs)
ID–4K (EDI version)	176,400	(1)	377
ID–4K (manual)	75,600	2	2,520
Total	252,000		2,897

[1] The burden for the 9 participating employers who transmit EDI responses is calculated at 10 minutes each per day, 251 workdays a year or 377 total hours of burden.

Additional information or comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–1491 Filed 1–21–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40936; File No. SR–Phlx–98–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Assessment of a Fee on Persons Who Unsuccessfully Contest an Options Ruling Involving a Trading Dispute

January 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. Several amendments were thereafter received.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared primarily by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] By letter dated August 31, 1998, the Exchange revised the effective date of its proposal. *See* letter from Linda S. Christie, Counsel, Phlx, to Mandy Cohen, Special Counsel, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). Next, the Exchange clarified that the fee only applied to frivolous appeals of option floor decisions and made conforming changes to Rule 124 and Options Floor Procedure Advice F–27. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission, dated November 18, 1998 ("Amendment No. 2"). In its December 9, 1998 letter, the Exchange clarified that (a) the Options Committee approved the changes made by Amendment No. 2, and (b) the amendment dated November 18, 1998, is Amendment No. 2. In addition, the Phlx made minor technical changes to the rule language. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission ("Amendment No. 3"). Finally, the Exchange made technical changes to its rule language and further clarified that the proposed rule change amends only Advice F–27 for options and not for equities. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission, dated December 23, 1998 ("Amendment No. 4").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 124 and Options Floor Procedure Advice F–27, Floor Official Rulings ("Advice F–27"), to assess a $250.00 fee on persons who unsuccessfully contest an options ruling imposed under Phlx Rule 124, upon a finding by a Rule 124(d) review panel ("Review Panel"), that the appeal is frivolous.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx Rule 124 and Advice F–27 codify procedures respecting Floor Officials and certain rulings issued by Floor Officials on the trading floor. The Exchange proposes to amend Phlx Rule 124 and Advice F–27 to assess a $250.00 fee on persons who frivoulsy contest an options ruling under Rule 124.[6] The imposition of a fine is proposed due to the increased number of appeals filed by Exchange members who trade on the Phlx options floor. Floor Officials have expressed concern regarding appeals, and the Exchange believes that the possibility of paying a fee might discourage members from making frivolous appeals of floor rulings. The fee will only apply to the options floor, since trading disputes more frequently arise from the options floor than from the equity or foreign currency options floors.[7] It should help Floor Officials resolve non-disciplinary trading situations promptly.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act[9] in general, and in particular, with Section 6(b)(5),[10] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and remove impediments to and perfect the mechanism of a free and open market and a national market system by discouraging unwarranted appeals and thereby providing swifter access to the appeals process. Additionally, the proposal is consistent with Section 6(b)(4)[11] in that it provides for the equitable allocation of a reasonable fee among those persons who unsuccessfully contest an options ruling.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–38 and should be submitted by February 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99–1397 Filed 1–21–99 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Amendment No. 2, *Supra* note 3.

[5] The Commission has modified the text of the summaries prepared by the Exchange.

[6] Pursuant to Rule 124(d), Option Floor Official rulings are reviewable by a minimum of three members of the Sub-Committee on Rules and Rulings, a sub-committee of the standing committee, which shall be empowered to review such rulings, or the Chairperson of the standing committee (or his designee) if three Sub-Committee members cannot be promptly convened. This constitutes a Review Panel for Floor Officials rulings. Floor Official rulings may be sustained, overturned or modified by a majority vote of the Review Panel members present. Decisions of the Review Panel will be considered final decisions of a standing floor committee and may be appealed to the Exchange's Board of Governors pursuant to Exchange By-Law Article XI. *See* Amendment No. 2, *supra* note 3.

[7] *See* Amendment No. 2, *supra* note 3.

[8] This proposal does not affect citations related to floor procedure advices, which are appealable under Rule 970, nor order and decorum violations, which are appealable under Rule 60.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(v)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted within 60 days of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Nomination for the Small Business Prime Contractor of the Year

Award, Nomination for the Small Business Subcontractor of the Year."

Type of Request: Extension of a currently approved collection.

Form No's: 883 and 1375.

Description of Respondents: Small Businesses.

Annual Responses: 369.

Annual Burden: 1,476.

Comments: Send all comments regarding this information collection to, Susan Monge, Procurement Analyst, Office Prime Contracts Assistant, Small Business Administration, 409 3rd Street S.W., Suite 8800, Washington, D.C. 20416. Phone No:202–205–7316.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: "Small Business Investment Company (SBIC) Leverage Application Forms and Documents," Leverage Application Kits-Section 301 (c) and 301(d).

Type of Request: Extension of a currently approved collection.

Form No's: 25, 26, 27, 28, 33, 34, 444C, 444D, 1022, 1022A, 1022B, 1022C, 1065.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 150.

Annual Burden: 600.

Comments: Send all comments regarding this information collection to, Johnny Kits, Financial Analyst, Office of Chief Administrative Officer, Small Business Administration, 409 3rd Street S.W., Suite 6300, Washington, D.C. 20416. Phone No:202–205–7587.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–1450 Filed 1–21–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2931]

Proposed Information Collections: Prior Approval for Brokering Activity; Brokering Activity Reports

AGENCY: Department of State.

ACTION: 60-Day notice of proposed information collection.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposals submitted to OMB pursuant to 22 C.F.R. Part 129:

1. Type of Request: Existing collection without an OMB control number.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Prior Approval for Brokering Activity pursuant to 22 C.F.R. § 129.7.

Frequency: On occasion.

Form Number: None.

Respondents: Business organizations.

Estimated Number of Respondents: 500.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 2,000 hours.

(Total Estimated Burden based on number of forms received per year.)

2. Type of Request: Existing collection without an OMB control number.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Brokering Activity Reports pursuant to 22 C.F.R. § 129.9.

Frequency: Annual.

Form Number: None.

Respondents: Business organizations.

Estimated Number of Respondents: 500.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 4,000 hours.

(Total Estimated Burden based on number of forms received per year.)

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to the Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, SA–6, Room 200, U.S. Department of State, Washington, D.C. 20522–0602 (703) 875–6644.

Dated: December 22, 1998.

John P. Barker,

Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 99–1474 Filed 1–21–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advice the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on February 3, 1999, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Department of Transportation Building (Nassif Bldg.), Room 4342, 400 Seventh Street, SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on February 3, 1998. The agenda for this meeting will include final proposals from the Reserve Duty/Rest Requirements Working Group, and status reports on the Airplane Performance Working Group and the All-Weather Operations Working Group. Attendance is open to the interested public but may be limited by the space available. The Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contracting the person

listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on January 19, 1999.

Quentin J. Smith, Jr.,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–1499 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188; Minimum Aviation System Performance Standard for High Frequency Data Link

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Special Committee 188 meeting to be held February 9–12, 1999, starting at 9 a.m. each day. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington DC 20036.

The agenda will include: February 9–10, (1) Working Group (WG) 2, Minimum Operational Performance Standards; February 10–11 (starting at 1:00 p.m. on February 10); (2) WG–1, Minimum Aviation System Performance Standards; February 12, Plenary Session; (3) Review Summary of October WG–1 Meeting; (4) Review of WG–1 Status; (5) Review of WG–2 Status; (6) Review Activities of the Standards Groups; (7) Open Discussion; (8) Confirm Dates for Future Meetings; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or *http://www.rtca.org* (web site).

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 14, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–1503 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, Connecticut

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 22, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, State of Connecticut, Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT. 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided the State of Connecticut under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 5, 1999, the FAA determined that the application to use the revenue from a PFC submitted by the State of Connecticut was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than April 5, 1999.

The following is a brief overview of the use application.

*PFC Project #:*99–08–U–00–BDL.

Level of the proposed PFC: $3.00.

Charge effective date: September 1, 1997.

Estimated charge expiration date: January 1, 1999.

Estimated total net PFC revenue: $14,360,000.

Brief description of projects: Construction of New Fire Station, Construction of Glycol Recovery Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts on January 8, 1999.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 99–1502 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957; Notice 1]

Notice of Request for Extension of Existing Information Collection

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice, or write by e-mail to marvin.fell@rspa.dot.gov.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for the extension an existing RSPA information collection. RSPA's information collection concerns a pipeline safety regulation that requires gas service line operators who do not maintain certain customer piping to notify the customers of the need to maintain the piping.

DATES: Comments on this notice must be received by March 23, 1999 to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh St., SW, Washington, D.C., 20590. Please identify the docket and notice numbers shown in the heading of this notice.

SUPPLEMENTARY INFORMATION:

Title: Customer-Owned Service Lines.

Type of Request: Existing information collection.

Abstract: RSPA pipeline safety regulation 49 CFR 192.16 requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take this action in response to service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of future accidents.

Each operator must make the following records available for inspection by RSPA or a State agency participating in the Federal pipeline safety program at 49 U.S.C. 60105 or 60106: (1) a copy of the notice currently in use; and (2) evidence that notices have been sent to customers within the previous 3 years.

Estimate of Burden: Minimal.

Respondents: Gas transmission and distribution operators.

Estimated Number of Respondents: 1,590.

Estimated Number of Responses per Respondent: 350.

Estimated Total Annual Burden on Respondents: 9,167 hours.

Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

All timely written comments to this notice will be summarized and included in the request for OMB approval. All comments will also be available to the public in the docket.

Issued in Washington, DC on January 11, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–1454 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury ("Treasury"), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Financial Crimes Enforcement Network ("FinCEN") is soliciting comments concerning a new form, "Designation of Exempt Person," for use by banks and other depository institutions ("banks") in designating their eligible customers as exempt from the requirement that banks report to Treasury customer transactions in currency in excess of $10,000.

DATES: Written comments should be received on or before March 23, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536, *Attention:* PRA Comments—Designation of Exempt Person. Comments also may be submitted by electronic mail to the following Internet address: "regcomments@fincen.treas.gov" with the caption in the body of the text, "*Attention:* PRA Comments—Designation of Exempt Person."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Charles Klingman, Financial Institutions Policy Specialist, FinCEN, at (703) 905–3602, or Eileen Dolan, FinCEN, at (703) 905–3618. A copy of the form may be obtained through the Internet at http://www.treas.gov/fincen.

SUPPLEMENTARY INFORMATION:

Title: Designation of Exempt Person.

OMB Number: 1506–0012.

Form Number: TD F 90–22.53.

Abstract: The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting by financial institutions of transactions in currency in excess of $10,000 has long been a major component of the Department of the Treasury's implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coins and currency transactions.

The Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act (Pub. L. 103–325) amended 31 U.S.C. 5313. The statutory amendments mandate exemptions from currency transaction reporting in the case of customers that

are other banks, certain governmental entities, or businesses for which reporting would serve little or no law enforcement purpose. The amendments also authorize Treasury to exempt certain other businesses.

On September 8, 1997, and September 21, 1998, Treasury issued final rules regarding these statutory amendments (62 FR 47141 and 63 FR 50147, respectively). The final rules reform and simplify the process by which banks may exempt eligible customers.

Under the simplified procedures of the new rules, a key requirement is a "designation" sent to the Treasury indicating that a customer will be treated by the bank as an exempt person, so that no further currency transaction reports will be filed on the customer's cash transactions exceeding $10,000. As part of the simplification process, Treasury is issuing a new form specifically for making that designation. This dedicated-use form will be easier to use than the current procedure, which requires banks to complete certain entries on the currency transaction report itself. The dedicated-use form will also enable Treasury to develop procedures for the magnetic media filing of exemptions.

The information collected on the new form, Designation of Exempt Person, TD F 90–22.53 is required to exempt bank customers from currency transaction reporting. The information is used to help determine whether a bank has properly exempted its customers. The collection of information is mandatory.

Type of Review: New information collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 19,000.

Estimated Total Annual Responses: 250,000.

Estimated Total Annual Burden Hours: Reporting average of 10 minutes per response; recordkeeping average of 1 hour per response. Estimated total annual burden hours: Reporting burden of 41,667 hours; recordkeeping burden of 250,000 hours, for an estimated combined total of 291,667 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 13, 1999.

William F. Baity,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 99–1485 Filed 1–21–99; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement Concerning Y2K Compliance

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: Customs computer systems have been modified to ensure that they are Y2K compliant—meaning that Customs computer program systems will process data entered for the year 2000 as 2000 and not as the year 1900. This notice announces Customs plan to allow members of the trade with electronic filing capabilities that are approved to interface with Customs through Customs automated systems and that can meet certain operational requirements to transmit trial data to establish if their computer software applications will interface properly with Customs Y2K compliant systems. The purpose of these compliance trials is to provide an opportunity for the trade community to assess their computer applications' Y2K readiness and raise the confidence level of the trade community in Customs Y2k renovated systems.

This notice invites comments concerning any aspect of this exercise and informs interested members of the trade community of the operational requirements for voluntary participation in the exercise.

DATES: The compliance trials will commence no earlier than February 1, 1999 and will run for approximately four months. Any electronic filer interested in participating should contact their Customs or Census client representative on or before February 1, 1999.

ADDRESSES: Written comments regarding this notice and/or requests to participate in these trials should be addressed to the Chief, Trade Support Branch, U. S. Customs Service, 7501 Boston Blvd., #211, Springfield, VA 22153.

FOR FURTHER INFORMATION CONTACT: For information in general, contact your Customs or Census client representative. For carriers filing in the Advance Passenger Information System (APIS), contact the APIS Technical coordinator, Charles Fife (703) 921–5816; Fax (703) 921–5901.

SUPPLEMENTARY INFORMATION:

Background

Because of a decision made at the dawn of the computer age to save scarce computer memory by giving all dates a two-digit field in the belief that those early computers would be replaced by the year 2000, computer systems worldwide may malfunction or produce inaccurate information on January 1, 2000. The reason these computer systems may malfunction is that the computers may misinterpret data entered for the year 2000 ("00") as 1900, rather than 2000. This problem is frequently referred to as the Y2K (for Year 2000) problem. Unless corrected, such failures will have a costly widespread impact on federal, state, and local governments, foreign governments, and private sector organizations. All sectors of the economy, many of which provide goods and services that are vital to the nation's health and well being, are at risk, including: telecommunications; public utilities; transportation; banking and finance; commerce and small business; national defense; government revenue collection and benefit payments; and health, safety, and emergency services. Moreover, a Y2K problem in one sector may cascade to others due to the many interdependencies and linkages among them.

The various Customs automated interfaces that may be affected by the Y2K problem include, the Automated Broker Interface, the Automated Manifest System, the Automated Commercial Environment, the Advance

Passenger Information System (APIS) and the Automated Export System.

On February 4, 1998, the President issued Executive Order 13073 (63 FR 6467; 3 CFR 1998 Compilation __; 34 Weekly Comp.Pres.Doc. 198) concerning Year 2000 Conversion. That Order directed, in part, that executive branch agencies:

(1) Assure that no critical Federal program experiences disruption because of the Y2K problem;

(2) Assist and cooperate with State, local, and tribal governments to address the Y2K problem where those governments depend on Federal information or information technology or the Federal Government is dependent on those governments to perform critical missions; and

(3) Cooperate with the private sector operators of critical national and local systems, including the banking and financial, the telecommunications, the public health, the transportation, and the electronic power generation systems, in addressing the Y2K problem.

This notice addresses the third of these concerns and seeks to allow those members of the trade community with electronic filing capabilities that are approved to interface with Customs through Customs automated systems and that can meet the operational requirements specified below to transmit trial data to establish if their computer software applications will interface with Customs computers regarding recognition of the year 2000. These trials should raise the confidence level of the trade community in Customs Year 2000 renovated systems.

Trial Design/Plan

Initially, this exercise will occur in cycles, with one week "on" and one week "off", for a six week period of time. During each cycle, a specific date will be pre-identified as the "systems date". For example, on Monday the system clock would be set to 12/31/99; the following Tuesday the system clock would be set to 01/01/00, etc., until the prescribed dates have been utilized and processed. The plan will simultaneously execute similar applications with similar communication protocols and configurations together.

Participation Requirements

This notice requests volunteers. In order to participate in these Y2K trials, the electronic filer must be currently approved (deemed operational) to interface through Customs automated systems. The filer must also be able to perform the following types of actions:

(1) Advance his computer systems' internal clock to conform to the adjusted systems date in the Customs Y2K test environment;

(2) Utilize preestablished test data that will accommodate futuristic date validations in order to accurately process with Customs test system. The dates within this test data must be modified by the participant on each day of the exercise. In the case of the APIS however, participants will be required to utilize test data with preestablished dates; and

(3) Utilize special "dial-up" phone lines.

It is noted that participants connecting through other mediums such as dedicated lines, Value Added Networks (VANs), etc., will be carefully supported to coordinate connectivity issues. Other unique system requirements may be necessary to support this effort. These will be identified with participants and coordinated accordingly.

It should be noted that participation in these trials will not permit Customs to certify the trading partner's system for Y2K compliancy.

Interested members of the trade community wishing to participate in these Y2K trials or wishing to submit comments before the date of these trials should contact their Customs or Census client representative or APIS coordinator as indicated at the front of this document.

Dated: January 19, 1999.

S.W. Hall,

Assistant Commissioner, Office of Information and Technology.

[FR Doc. 99–1461 Filed 1–21–99; 8:45 am]

BILLING CODE 4820–02–P

INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Diego Rivera: Art and Revolution"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, "Diego Rivera: Art and Revolution," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the Cleveland Museum of Art, Cleveland, Ohio, from on or about February 14, 1999, through on or about May 2, 1999, and the Los Angeles County Museum, Los Angeles, California, from on or about May 30, 1999, through on or about August 16, 1999, and the Museum of Fine Arts, Houston, Texas, from on or about September 19, 1999, through on or about November 28, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 15, 1999

Les Jin,

General Counsel.

[FR Doc. 99–1467 Filed 1–21–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Hubert H. Humphrey Fellowship Program Washington Seminar; Request for Proposals

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition to administer the Hubert H. Humphrey Fellowship Program Washington Seminar. Washington-based public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to assist USIA with the planning and implementation of a seminar lasting up to five days for approximately 132 mid-career professionals from developing countries and selected Eastern European countries. The seminar will take place in the first half of November, 1999 (please see seminar date details below).

Program Information

Overview: The Hubert H. Humphrey Fellowship Program provides a year of non-degree, graduate level study and related professional experiences to mid-level professionals from developing countries and selected Eastern European countries. Fellowships are granted

competitively to public and private sector candidates with a commitment to public service in the fields of natural resources/environmental management, public policy analysis/public administration, economic development, agricultural development/economics, finance/banking, human resource management/personnel, urban and regional planning, public health policy/management, technology policy/management, educational planning, and communications/journalism. Fellows are placed by professional field in groups of seven to 15 at one of 11 participating host universities around the country. Fellows are nominated for the program by USIA overseas posts or Fulbright commissions based on their potential for national leadership, commitment to public service, and professional and academic qualifications. By providing these future leaders with exposure to U.S. society, and to current U.S. approaches to the fields in which they work, the program provides a basis for establishing lasting ties among U.S. citizens and their professional counterparts in other countries.

The objectives of the workshop are to:

• Enhance fellows' leadership skills through understanding of U.S. social, cultural, and political processes and institutions, including the unique political environment of Washington, D.C.

• Emphasize opportunities for regional and professional networking among fellows and with U.S. colleagues.

Guidelines: Non-profit organizations with key program staff based in the Washington, D.C. metropolitan area and available for frequent meetings with USIA staff are invited to submit proposals. Organizations also must have experience in conference management, professional exchanges, and international exchanges. Only organizations with at least four years of experience in international exchange activities are eligible to apply for this award. The grant period should begin on August 1, 1999 and conclude on May 31, 2000. The seminar will accommodate approximately 132 participants, in addition to USIA and other staff.

There are two options for conference dates: October 31–November 5 and November 14–19, 1999. Organizations may choose their preferred set of dates according to cost effectiveness and project feasibility.

The recipient organization will be responsible for most arrangements associated with this seminar. These include organizing a coherent schedule of activities, making lodging and transportation arrangements for participants, preparing all necessary support materials, working with Humphrey Fellowship Coordinators at host universities and IIE staff to achieve maximum workshop effectiveness, conducting a final evaluation, and other details which are outlined in the solicitation package. Drafts of all printed materials developed for the seminar should be submitted to the Agency for review and approval. All official documents should highlight the U.S. Government's role as program director and funding source. Please refer to program guidelines in the solicitation package for further details.

Budget Guidelines: The award for this seminar may not exceed $165,000, and cost sharing is strongly encouraged. Applicants must submit a comprehensive, line-item budget for the entire seminar. There must be a summary budget, as well as separate sub-budgets for administrative and program costs. Applicants may provide additional sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the solicitation package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number E/ASU–99–09.

FOR FURTHER INFORMATION, CONTACT: The Specialized Programs Branch, E/ASU, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–5289 and fax number: 202–401–1433. Applicants may also send a message via Internet to lrieder@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Senior Program Officer Leigh Rieder on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/401–7616. The "Table of Contents" listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on Thursday, February 18, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and six copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–99–09, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the fullest extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange

with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office and then forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings, as well as showing clearly how the seminar's objectives will be met. Agenda and plan should adhere to all program guidelines in the Solicitation Package.

3. Multiplier effect/impact: Proposed program should strengthen long-term mutual understanding, including maximum sharing of information, and encourage continued institutional and individual linkages after the fellowship year.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration an program content.

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the seminar's goals.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successfully administering programs for professional-level participants, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate the seminar's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to link outcomes to original project objectives is recommended. Successful applications will be expected to submit intermediate reports during the planning and preparation process.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: January 11, 1999.

William B. Bader,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–1466 Filed 1–21–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 64, No. 14
Friday, January 22, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Republication of Systems of Records

Correction

In notice document 98–34068, beginning on page 71899, in the issue of Wednesday, December 30, 1998, make the following corrections.

1. On page 71899, in the first column, in the **DATES** section, in the fourth line, "receicved" should read "received".

2. On the same page, in same column, in the last paragraph in the 3rd line, "Ancient" should read "Accident".

3. On page 71900, in the first column, in the last paragraph, in the third line, "revisited" should read "revised".

4. On the same page, in the third column, in the last complete paragraph, in the fifth line, after "with" add "the".

5. On page 71901, in the first column, in the Table of Contents, in the entry for Appendix I, "Address" should read "Addresses".

[FR Doc. C8–34068 Filed 1–21–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2196–98]

RIN 1105–AA56

Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

Correction

In notice document 98–33377 beginning on page 572, republished in the issue of Tuesday, January 5, 1999, make the following corrections:

1. On page 572, in the first column, in the **Editorial Note**, in the fourth line, "69656" should read "69652".

2. On page 574, in the first column, in the last paragraph, in the seventh line, "convicted for" should read "convicted of".

3. On page 575, in the second column, in the last paragraph, in the fourth line, "statue" should read "statute".

4. On page 576, in the third column, in the first full paragraph, three lines from the end, "of if the registrant" should read "or if the registrant".

5. On page 578, in the first column, in the first full paragraph, in the 10th line, after "105th Cong." add a comma.

6. On page 582, in the second column, in the first full paragraph, in the second line, "identify" should read "identity".

7. On page 582, in the third column, in the third paragraph, in the seventh line, "registrations" should read "registration".

8. On page 582, in the third column, in the fourth paragraph, three lines from the end, "person" should read "persons".

9. On page 585, in the third column, in the second full paragraph, in the first line "Subsequent" should read "Subsection".

[FR Doc. C8–33377 Filed 1–21–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-48]

Revision of Class E Airspace; Burnet, TX

Correction

In rule document 98–33602, beginning on page 70325 in the issue of Monday, December 21, 1998 make the following correction:

On page 70325, in the first column, in the **DATES** section, "February 10, 1999" should read "February 4, 1999".

[FR Doc. C8–33602 Filed 1–21–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-49]

Revision of Class E Airspace; Austin, TX

Correction

In rule document 98–33598, beginning on page 70326 in the issue of Monday, December 21, 1998 make the following correction:

On page 70326, in the second column, in the **DATES** section, "February 10, 1999" should read "February 4, 1999".

[FR Doc. C8–33598 Filed 1–21–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-51]

Revision of Class E Airspace; Austin, Horseshoe Bay, TX and Revocation of Class E Airspace, Marble Falls, TX

Correction

In rule document 98–33596 beginning on page 70328 in the issue of Monday, December 21, 1998 make the following correction:

On page 70328, in the third column, in the **DATES** section, "February 10, 1999" should read "February 4, 1999".

[FR Doc. C8–33596 Filed 1–21–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-52]

Revision of Class E Airspace; San Angelo, TX

Correction

In rule document 98–33595 beginning on page 70330 in the issue of Monday, December 21, 1998 make the following correction:

On page 70330, in the first column, in the **DATES** section, "February 10, 1999" should read "February 4, 1999".

[FR Doc. C8–33595 Filed 1–21–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-53]

Revision of Class E Airspace; Roswell, NM

Correction

In rule document 98–33594 beginning on page 70331 in the issue of Monday, December 21, 1998 make the following correction:

On page 70331, in the second column, in the **DATES** section, "February 10, 1999" should read "February 4, 1999".

[FR Doc. C8–33594 Filed 1–21–99; 8:45 am]

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Friday
January 22, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense (DOD) Activities; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–993]

Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense (DOD) Activities

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance to assist eligible applicants address environmental problems and impacts from DOD activities to Indian lands.

SUMMARY: The Congress has recognized that DOD activities may have caused environmental problems for Indian tribes and Alaska Natives. These environmental hazards can negatively impact the health and safety as well as the social and economic welfare of Indian tribes and Alaska Natives. Accordingly, the Congress has taken steps to help those affected begin to mitigate environmental impacts from DOD activities by assisting them in the planning, development and implementation of programs for such mitigation. This environmental mitigation program was begun through a program announcement published on December 29, 1993 as a response to the Department of Defense Appropriations Act, Pub.L. 103–139, which was enacted on November 11, 1993. This program continues under Pub.L. 103–335 (the Act), enacted on September 30, 1994. Section 8094A of the Act states that funds appropriated to the Department of Defense (DOD) for Operations and Maintenance Defense-Wide, not less than $8,000,000 shall be made available until expended to the Administration for Native Americans. Provided that such funds shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritizing of mitigation, on Indian lands resulting from Department of Defense activities.

DATES: The closing dates for submission of applications are March 12, 1999, November 5, 1999 and November 4, 2000.

ADDRESSES: *Application Kit:* Application kits, approved by the OMB under control number 0980–0204, which expires August 31, 1999, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained:

By Mail: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW, Mail Stop HHH 348–F, Washington, DC 20447–0002, Attention: Aaron Sadler/Application Kit.

By Telephone: Call Janean Chambers, Telephone: (202) 690–6547.

By Telefax: Fax: (202) 690–7441.

By World-Wide-Web: Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: http://www.acf.dhhs.gov/programs/ana/index.html

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

SUPPLEMENTARY INFORMATION:

Part I—Additional Information

A. Introduction and Purpose

The program announcement states the availability of any unobligated fiscal year 1995 financial assistance to eligible applicants using funds provided by the DOD through the ANA for the purpose of mitigating environmental impacts on Indian lands related to DOD activities.

Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this announcement.

The Federal government recognizes that substantial environmental problems, resultant from defense activities, exist on Indian lands and will geographically range from border to border and from coast to coast. The nature and magnitude of the problems will most likely be better defined when affected Indian tribes and Alaska Natives have completed environmental assessments called for in Phase I of this four-phase program.

The Federal government has also recognized that Indian tribes, Alaska Natives and their tribal organizations must have the opportunity to develop their own plans and technical capabilities and access the necessary financial and technical resources in order to assess, plan, develop and implement programs to mitigate any impacts caused by DOD activities.

The ANA and the DOD recognize the potential environmental problems created by DOD activities that may affect air, water, soil and human and natural resources (i.e., forests, fish, plants). It is also recognized that potential applicants may have specialized knowledge and capabilities to address specific concerns at various levels within the four phase program.

Under this announcement proposals will be accepted for any and all of the four phases or one specific phase. These phases are:

- Phase I—assessment of Indian lands to develop as complete an inventory as possible of environmental impacts caused by DOD activities;
- Phase II—identification and exploration of alternative means for mitigation of these impacts and determination of the technical merit, feasibility and expected costs and benefits of each approach in order to select one approach;
- Phase III—development of a detailed mitigation plan, and costing and scheduling for implementation of the design, including strategies for meeting statutory or regulatory requirements and for dealing with other appropriate Federal agencies; and,
- Phase IV—implementation of the mitigation plan.

The availability of funds is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

ANA continues its policy that an applicant may only submit one application and no applicant may receive more than one grant including any existing ANA grant.

ANA introduces two new requirements within the review criteria for budget proposals in applications. All applicants must clearly demonstrate a plan for an employee fringe benefit package which includes an employee retirement plan benefit, and the funding of travel for key personnel to attend post-award grant management and administration training sponsored by ANA.

B. Proposed Projects To Be Funded

The purpose of this announcement is to invite single year (twelve to seventeen months) or multi-year (eighteen to thirty-six months) proposals

from eligible applicants to undertake any or all of the Phases.

Applicants may apply for projects of up to 36 months duration. A multi-year project, requiring more than 12 months to develop and complete, affords applicants the opportunity to develop more complex and in-depth projects. Funding after the first 12 month budget period of an approved multi-year project is non-competitive and subject to availability of funds.

The following are some known areas of concern. It is expected that applicants may identify additional areas of concern in their applications:

- Damage to treaty protected spawning habitats caused by artillery practice or other defense activities;
- Damage to Indian lands and improvements (e.g. wells, fences) and facilities caused by bombing practice;
- Damage caused to range and forest lands by gunnery range activities;
- Low-level flights over sacred sites and religious ceremonies which disrupt spiritual activities;
- Movement of soil covering the remains of buried Indian people and artifacts requiring, by tradition, their reburial in traditional rituals;
- Operation of dams by the Army Corps of Engineers which has had adverse impacts on spawning beds and treaty fishing rights and water quality due to problems of siltation; reduced stream flows; increased water temperatures; and, dredge and fill problems;
- Leaking of underground storage tanks on lands taken from Indians for temporary war-time use by the DOD;
- Unexploded ordnance from gunnery and bombing practice on Indian lands resulting in significant damage to rangelands, wildlife habitat, stock water wells, etc.;
- Disposal activities related to removal of unexploded ordnance, nuclear waste materials, toxic materials, and biological warfare materials from Indian lands;
- Transportation of live ordnance, nuclear waste, chemical and biological warfare materials from and across Indian lands;
- Seepage of fluids suspected of containing toxic materials onto Indian lands;
- Chlorofluorocarbons (CFC's) resulting from abandoned containers and/or dumping onto Indian lands;
- Polychlorinated biphenyls (PCB's) from transformers which have been abandoned and/or dumped onto Indian lands;
- Public health concerns regarding electromagnetic fields surrounding Defense-related transmission facilities which cross Indian lands; and
- Reclamation activities required to mitigate any or all of the above stated conditions and other activities as they become known.

Phase I

The purpose of Phase I is to conduct the research and planning needed to identify environmental impacts to Indian lands caused by DOD activities on or near Indian lands and to plan for remedial investigations to determine and carry out a preliminary assessment of these problems. These activities may include, but not be limited to, the following:

- Conduct site inspections to identify problems and causes related to DOD activities;
- Identify and develop approaches to handle raw data that will assist in performing comprehensive environmental assessments of problems and causes related to DOD activities;
- Identify approaches and develop methodologies which will be used to develop the activities to be undertaken in Phases II and III;
- Identify other Federal agency programs, if any, that must be involved in mitigation activities and their requirements;
- Identify potential technical assistance and expertise required to address the activities to be undertaken in Phases II and III; and
- Identify other Federal environmental restoration programs that could be accessed to cooperatively coordinate and mobilize resources in addressing short and long-term activities developed under Phase III.

Phase I should result in adequately detailed documentation of the problems and sources of help in solving them to provide a useful basis for examining alternative mitigation approaches in Phase II.

Phase II

The purpose of Phase II activities is to examine alternative approaches for mitigation of the impacts identified in Phase I and to lead toward the mitigation design to be developed in Phase III. Phase II activities may include, but need not be limited to the following:

- Conduct remedial investigation and/or feasibility studies as necessary;
- Plan for the design of a comprehensive mitigation strategy to address problems identified during Phase I which address areas such as land use restoration, clean-up processes, contracting and liability concerns; regulatory responsibilities; and resources necessary to implement clean up actions;
- Design strategies that coordinate with or are complementary to existing DOD cleanup programs such as the Defense Environmental Restoration Program which promotes and coordinates efforts for the evaluation and cleanup of contamination at DOD installations;
- Review possible interim remedial strategies that address immediate potential hazards to the public health and environment in order to provide alternative measures i.e., providing alternate water supplies, removing concentrated sources of contaminants, or constructing structures to prevent the spread of contamination;
- Identify specific types of technical assistance and management expertise required to assist in developing specific protocols for environmental assessments, remedial investigations, feasibility studies, interim remedial actions and strategic planning for existing and future mitigation activities;
- Review other types of assessments that need to be considered, reviewed and incorporated into the conduct and/or design process such as:
- Estimates of clean-up cost;
- Estimate of impacts of short-term approach;
- Estimate of impacts of long-term approach;
- Cultural impacts;
- Economic impacts;
- Human health-risk impacts; and
- Document approaches and procedures which have been developed in order to negotiate with appropriate Federal agencies for necessary cleanup action and to keep the public informed.

In establishing the basis for a design process, particularly when there are multiple problems, the applicants may want to consider a prioritization process as follows:

- Emergency situations that require immediate clean-up;
- Time-critical sites, i.e. sites where the situation will deteriorate if action is not taken soon;
- Projects with minimum funding requirements;
- Projects with intermediate-level funding requirements;
- Projects with maximum funding requirements.

Achieving compliance with Federal environmental protection legislation is the driving force behind all Federal clean-up activities. The following is a list of major Federal environmental legislation that should be recognized in a regulatory review as all Federal, state and local regulatory requirements which could have major impacts in the design of mitigation strategies:

- Indian Environmental General Assistance Program Act of 1992;

- Clean Air Act (CAA);
- Clean Water Act (CWA);
- Safe Drinking Water Act (SDWA);
- Surface Mining Control and Reclamation Act of 1977 (SMCRA);
- Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA);
- Toxic Substances Control Act (TSCA);
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- Nuclear Waste Policy Act of 1982 (NWPA);
- Comprehensive Environmental Resource Conservation and Liability Act (CERCLA or Superfund);
- Resource Conservation and Recovery Act of 1976 (RCRA);
- Hazardous and Solid Waste Amendments of 1984 (HSWA);
- National Environmental Policy Act of 1969 (NEPA);

Other Federal legislation that should be included in the regulatory review and that should be of assistance are the tribal specific legislative acts, such as:

- American Indian Religious Freedom Act;
- National Historic Preservation Act of 1991;
- Indian Environmental Regulatory Enhancement Act of 1990;

Other regulatory considerations could involve applicable tribal, village, state and local laws, codes, ordinances, standards, etc. which should also be reviewed to assist in planning, the mitigation design, and development of the comprehensive mitigation strategy.

Phase II should result in a carefully documented examination of alternative approaches and the selection of an approach to be used in the Phase III design process.

Phase III

The purpose of Phase III is the completion of activities initiated under Phase II, the initiation of new activities required to implement programs, and the design of on-site actions required to mitigate environmental damage from DOD activities.

The Phase III activities may include but need not be limited to:

- Development and implementation of a detailed management plan to: Guide corrective action; resolve issues rising from overlapping or conflicting jurisdictions; guide a cooperative and collaborative effort among all parties to ensure there are no duplicative or conflicting regulatory requirements governing the cleanup actions; and, establish a tribal or village framework and/or parameter(s) that will guide the negotiations process for one or multiple cleanup actions;
- Establishment of priorities for mitigation programs when there are multiple clean-up sites; consider at a minimum the nature of the hazard involved: such as its physical and chemical characteristics, including concentrations and mobility of contaminants; the pathway indicating potential for contaminant transport via surface water, ground water and air/soil, and any other indicators that are identified during the environmental assessment, including the prioritization process identified under Phase II;
- Program design and implementation of information dissemination strategies prior to start up of on-site implementation of mitigation program activities;
- Development of a legal and jurisdictional strategy that addresses DOD/contractor liability issues to ensure quality, cost-effective mitigation services, and to evaluate any measures providing equitable risk between the DOD and the remediation contractor, as well as to incorporate Tribal Employment Rights Office (TERO) and other policies and procedures, if required;
- Design of an approval process and other processes necessary for the implementation of tribal and village codes and regulations for current and future compliance enforcement of all mitigation actions;
- Development/design of a documentation strategy to ensure all DOD and contractor cleanup activities are conducted and completed in a environmentally clean and safe manner for the social and economic welfare, as well as public health of Indian and Alaska Native people and the surrounding environment;
- Development and conduct of certified training programs that will enable a local work force to become technically capable to participate in the mitigation activities, if they so choose; and
- Conduct of any other activities deemed necessary to carry out Phase I, II and III activities.

Phase III should result in a comprehensive plan for conducting all aspects of mitigation action contemplated.

Phase IV

The Phase IV activities are the implementation of mitigation plans specified in the detailed plan completed in Phase III.

C. Eligible Applicants

The following organizations are eligible to apply:

- Federally recognized Indian tribes;
- Incorporated Non-Federally and State recognized Indian tribes;
- Nonprofit Alaska Native Community entities, including Alaska Native villages, or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs;
- Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.

Applicants must comply with the following administrative policies:

- Current grantees under this program may not be eligible under this announcement:
- Current grantees under this program whose grant project period extends beyond September 30, 1999, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under this March 12, 1999, deadline of this announcement.
- Grantees under this program whose grant project period extends beyond September 30, 2000, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the November 5, 1999, deadline of this announcement.
- Grantees under this program whose grant project period extends beyond September 30, 2001, or who have requested an extention of the grant project beyond that date, are not eligible to apply for a grant under the November 4, 2000, deadline of this announcement.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other

applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.

• Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation identifying the organization as non-profit and bearing the seal of the State in which the corporation or association is domiciled.

• If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

D. Available Funds

Subject to availability of funds, approximately $2.5 million of financial assistance is available under this program announcement for eligible applicants. It is expected that about 10 awards will be made, ranging from $100,000 to $1 million.

Each eligible applicant described above can receive only one grant award under this announcement.

E. Grantee Share of Project

Grantees must provide at least five (5) percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions. The funds for the match must be from a private source, or state source where the funds were not obtained from the Federal government by the state, or a Federal source where legislation or regulation authorizes the use of these funds for matching purposes.

Therefore, a project requesting $300,000 in Federal funds, must include a match of at least $15,789 (5% total project cost). Applicants may request a waiver of the requirement for a 5% non-Federal matching share. Since the matching requirement is low it is not expected that waivers will be necessary. However, the procedure for requesting a waiver can be found in 45 CFR 1336, Subpart E—Financial Assistance Provision.

As per 45 CFR 74.2, In-Kind contributions are defined as "the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program."

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

It is the policy of ANA to apply the waiver of the non-Federal matching share requirement for the purposes of this particular program announcement.

F. Review Process

1. Initial Application Review

Applications submitted by the post-marked date under this program announcement will undergo a pre-review to determine that:

• The applicant is eligible in accordance with the Eligible Applicants Section of this announcement.

• The application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. (All required materials and forms are listed in the Grant Application Checklist.)

Applications subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

A proposed project should reflect the purposes stated and described in the Introduction and Program Purpose (Section A) of this announcement. No additional weight or preference is given to applications because of an increased number of phases proposed. Also, competition is not based on proposals of the same phase or phases but on the merit of the application independent of phase consideration.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants who are excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. Criteria

The evaluation criteria are:

(1) Goals and Available Resources (15 points):

(a) The application presents specific mitigation goals related to the proposed project. It explains how the tribe or village intends to achieve those goals identified in the application and clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The above requirement may be met by submission of a resolution by a tribe or tribal organization stating that community involvement has occurred in the project planning and will occur in the implementation of the project.

(b) The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and

implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: Community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(c) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources may be personnel, facilities, vehicles or financial and may include other Federal and non-Federal resources.

These resources should be documented by letters of commitment of resources, not merely letters of support. "Letters of commitment" are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. "Letters of support" merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources and therefore carry less significance.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of prior or current projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Objective Work Plan and in the proposed budget. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (45 points).

The Objective Work Plan in the application includes project objectives and activities related to the long term goals for each budget period proposed and demonstrates that these objectives and activities:

- Are measurable and/or quantifiable;
- Are based on a fully described and locally determined balanced strategy for mitigation of impacts to the environment;
- Clearly relate to the tribe or village long-range goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective will be accomplished;
- Specify who will conduct the activities under each objective; and
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 points).

The proposed project will result in specific measurable outcomes for each objective that will clearly contribute to the completion of the project and will help the tribe or village meet its goals. The specific information provided in the application on expected results or benefits for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget (10 points).

There is a detailed budget provided for each budget period requested which:

- Fully explains the budget.
- Justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source.
- Explains sufficiently cost and other detail to facilitate the determination of cost allowability and the relevance of these costs to the proposed project.
- Demonstrates that the funds requested are appropriate and necessary for the scope of the project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

- The plan must be "qualified", i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review

and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

H. Contact Information

Georgeline Sparks, Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop HHH 348–F, Washington, DC 20447, tel: (202) 690–6420, e-mail: GSparks@acf.dhhs.gov

I. General Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) Program Guidance:

• The Administration for Native Americans will fund projects that present the strongest prospects for meeting the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.

• In discussing the problems being addressed in the application, relevant historical data should be included so that the appropriateness and potential benefits of the proposed project will be better understood by the reviewers and decision-maker.

• Supporting documentation, if available, should be included to provide the reviewers and decision-maker with other relevant data to better understand the scope and magnitude of the project.

(2) Technical Guidance:

• Applicants are strongly encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of its quality and potential competitiveness in the review process.

• ANA will accept only one application under this program announcement from any one applicant. If an eligible applicant sends two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.

• An application from an Indian tribe, Alaska Native Village or other eligible organization must be submitted by the governing body of the applicant.

• The application's Form 424 must be signed by the applicant's representative (tribal official or designate) who can act with full authority on behalf of the applicant.

• The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page and that a table of contents be provided. The page numbering, along with simple tabbing of the sections, would be helpful and allows easy reference during the review process.

• Two (2) copies of the application plus the original are required.

• The Cover Page should be the first page of an application, followed by the one-page abstract.

• Section B of the Program Narrative should be of sufficient detail as to become a guide in determining and tracking project goals and objectives.

• The applicant should specify the entire length of the project period on the first page of the Form 424, Block 13, not the length of the first budget period. ANA will consider the project period specified on the Form 424 as governing.

• Line 15a of the Form 424 should specify the Federal funds requested for the first Budget period, not the entire project period.

• Applicants proposing multi-year projects need to describe and submit project objective workplans and activities for each budget period. (Separate itemized budgets for the Federal and non-Federal costs should be included).

• Applicants for multi-year projects must justify the entire time-frame of the project and also project the expected results to be achieved in each budget period and for the total project period.

(3) Grant Administrative Guidance:

• The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.

• The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.

• An application with an original signature and two additional copies are required.

• The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.

• The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.

• Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.

• Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.

(4) Projects or activities that generally will not meet the purposes of this announcement.

• Proposals from consortia of tribes or villages that are not specific with regard to support from, and roles of member tribes.

• The purchase of real estate or construction.

J. Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 29.5 hours per response, including the time for reviewing instruction, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections are included in the program announcement Application Kit, OMB control number 0980–0204, expires August 31, 1999.

K. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are March 12, 1999, November 5, 1999 and November 4, 2000.

L. Receipt of Applications

Applications must either be hand delivered or mailed to the address in PART II, Section E, APPLICATION PROCESS.

The Administration for Native Americans will not accept applications submitted electronically nor via facsimile (FAX) equipment.

Deadline

Applications shall be considered as meeting the announced deadline if they are either:

1. received on or before the deadline date at the place specified in the program announcement, or

2. sent on or before the deadline date and received by the granting agency in the time for the independent review under DHHS GAM Chapter 1–62 (Applicants are cautioned to request a legibly dated U.S. Postal Service

postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Part II—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- Indian land is defined as all lands used by American Indian tribes and Alaska Native Villages.
- A *multi-purpose community-based Native American organization* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- *A multi-year project* is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- *Budget Period* is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- *Core administration* is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered "core administration" and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.
- *Real Property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- *Construction* is the term which specifies a project supported through a discretionary grant or a cooperative agreement, to support the initial building of a facility.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

- Projects that operate indefinitely or require ANA funding on a recurring basis.
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA ("third party T/TA"). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund the purchase of real property.
- ANA will not fund construction.
- Objectives or activities for the support of core administration of an organization.
- Costs of fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part I, Section H, General Guidance to Applicants.

C. Multi-Year Projects

This announcement is soliciting applications for project periods up to 36 months. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be as long as 36 months. Funding after the 12 month budget period of an approved multi-year project is non-competitive. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, compliance with the applicable statutory, regulatory and grant requirements, and determination that continued funding is in the best interest of the Government.

D. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

E. Application Process

(1) Application Submission by Mail:

Each application should include one signed original and two (2) copies of the grant application, including all attachments. Assurances and certifications must be completed. Submission of the application constitutes certification by the applicant that it is in compliance with Drug-Free Workplace and Debarment and these forms do not have to be submitted. The application must be hand delivered or mailed by the closing date to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, S.W., Mail Stop HHH 326–F, Washington, D.C. 20447–0002, Attention: Lois B. Hodge—ANA No 93612–993.

(2) Application Submission by Courier:

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, ACYF/Office of Grants Managment, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, Attention: Lois B. Hodge, ANA No. 93612–993.

The application must be signed by an individual authorized: (1) to act for the applicant tribe, village or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award.

(3) Application Consideration:

The Commissioner of the Administration for Native Americans determines the final action to be taken

with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

• Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.

• Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with environmental problems of Indian tribes and Alaska Native villages will evaluate each application against the published criteria in this announcement. The results of this review will assist the Commissioner in making final funding decisions.

• The Commissioner's decision will also take into account the comments of ANA staff, state and Federal agencies having performance related information, and other interested parties.

• As a matter of policy the Commissioner will make grant awards consistent with the stated purpose of the announcement and all relevant statutory and regulatory requirements under 45 CFR Parts 74 and 92 applicable to grants under this announcement.

• After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

(Catalog of Federal Domestic Assistance Program Number 93.612
Native American Programs)

Dated: January 13, 1999.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

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January 22, 1999

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926
Montana Regulatory Program and Abandoned Mine Land Reclamation Plan; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–017–FOR]

Montana Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") and abandoned mine land reclamation plan (hereinafter, the "Montana plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed statutory revisions pertaining to the designation of the Montana State Regulatory Authority and the reclamation agency SMCRA, statutory definitions of "Prospecting" and "Prime farmland," revegetation success criteria for bond release, prospecting under notices of intent, and permit renewal. The amendment was intended to revise the Montana program to be consistent with the corresponding Federal regulations and SMCRA, as amended by the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101–508), to provide additional flexibility afforded by the revised Federal regulations, to provide additional safeguards, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6550; Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program and Plan

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

On November 24, 1980, the Secretary of the Interior conditionally approved the Montana plan as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's finding, the disposition of comments, and conditions of approval of the Montana plan can be found in the October 24, 1980, **Federal Register** (45 FR 70445). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.25.

II. Proposed Amendment

By letter dated May 16, 1995, Montana submitted a proposed amendment to its program and plan (Administrative Record No. MT–14–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the proposed amendment in response to required program amendments at 30 CFR 926.16 (f) and (g), and at its own initiative. The provisions of the Montana Code Annotated (MCA) that Montana proposed to revise were: 82–4–203, MCA (Definitions); 82–4–204, MCA (Rulemaking authority); 82–4–205, MCA (Administration by department); 82–4–221, MCA (Mining permit required); 82–4–223, MCA (Permit fee and surety bond); 82–4–226, MCA (Prospecting permit and the definition of "Prospecting"); 82–4–227, MCA (Refusal of permit); 82–4–231, MCA (Submission of and action on reclamation plan); 82–4–232, MCA (Area mining—bond—alternate plan); 82–4–235, MCA (Inspection of vegetation—final bond release); 82–4–239, MCA (Reclamation); 82–4–240, MCA (reclamation after bond forfeiture); 82–4–242, MCA (funds received by regulatory authority); 82–4–251, MCA (Noncompliance—suspension of permits); and 82–4–254, MCA (Violation—penalty—waiver).

OSM announced receipt of the proposed amendment in the June 5, 1995, **Federal Register** (60 FR 29521), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. MT–14–06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 5, 1995.

During its review of the amendment, OSM identified concerns relating to: 82–4–203, MCA, subsections (6), (10), and (12) (the definitions of "Board", "Commissioner", and "Director"); 82–4–205, MCA (Board rules and Administration by department); 82–4–235, MCA (Inspection of vegetation—final bond release); 82–4–203, MCA, subsection (25) and 82–4–226, MCA, subsection (8) (the definition of "Prospecting", prospecting permit and notices of intent). OSM also addressed outstanding required program amendments at 30 CFR 926.16(h), (i), and (j) as they related to prospecting. OSM notified Montana of the concerns by letter dated December 5, 1996 (Administrative Record No. MT–14–08).

Montana responded in a letter dated November 6, 1997, by submitting a revised amendment and additional explanatory information (Administrative Record No. MT–14–11). The revisions to the amendment consisted of new statutory language enacted by the 1997 Montana Legislature. Montana proposed revisions to, and additional explanatory information concerning: 82–4–203, subsections (6), (10), and (12), 2–15–111, 2–15–121, 2–15–3501, and 2–15–3502, MCA (the definitions of "Board", "Commissioner", and "Director"); 82–4–204 and 82–4–205, MCA (Board rules and Administration by department); 82–4–235, MCA (Inspection of vegetation—final bond release); 82–4–203, MCA, subsection (25) and 82–4–226, MCA, subsection (8) (the definition of "Prospecting", prospecting permit and notices of intent to prospect), and required program amendments at 30 CFR 926.16(h), (i) and (j).

Based upon the revisions to, and additional explanatory information for, the proposed program amendment submitted by Montana, OSM reopened the public comment period in the December 5, 1997, **Federal Register** (62 FR 64327; Administrative Record No. MT–14–12) and provided an opportunity for a public hearing or meeting on its substantive adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 22, 1997.

III. Director's Findings

As discussed below, the Director finds, in accordance with SMCRA, 30 CFR 732.15, 732.17, 884.14, and 884.15, with certain exceptions and additional requirements, that the proposed program and plan amendments submitted by Montana on May 16, 1995, and as revised and supplemented with additional explanatory information on November 6, 1997, is no less effective and the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Montana's Statutes

Montana proposed revisions to the following previously-approved statutes that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding Federal regulations or SMCRA provisions are listed in parentheses):

82–4–203, MCA, subsections (1), (2), (3), (4), (7), (8), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (26), (27), (28), (29), (30), (31), (32), (33), (34), and (35), (SMCRA Section 701, 30 CFR 700.5 and 701.5), Definitions.

82–4–221, MCA, Subsections (2) and (3), (SMCRA Section 506(d)(3)), Mining permit required;

82–4–226, MCA, subsections (1) and (2), (30 CFR 772.12), Prospecting permit;

82–4–227, MCA, subsections (1), (2), (5), (7), (8), (9), (11), and (12), (SMCRA Section 510), Refusal of permit;

82–4–231, MCA, subsections (1) and (6), (SMCRA Sections 508, 510, 513, and 515, and 39 CFR 773), Submission of and action on reclamation plan;

82–4–232, MCA, subsection (6), (SMCRA Sections 508, 509, and 515), Area mining required—bond—alternative; and

82–4–251, MCA, subsections (6) and (7), (SMCRA Section 521), Noncompliance—suspension of permits.

Because the proposed revisions to these previously-approved statutes are nonsubstantive in nature, the Director finds that these proposed Montana statutory revisions are no less effective than the Federal regulations and no less stringent than SMCRA. The Director approves these proposed statutory revisions.

2. MCA 82–4–203(6) and (12) and MCA 2–15–3502, Definitions of "Board" and "Department"; MCA 2–15–3501, Definition of "Director"; and MCA 82–4–204 and 82–4–205, Board Rules and Administration by Department

Montana Senate Bill 234 (SB 234) proposes to revise the environmental and natural resource functions of the state government to, among other things, replace the former Board of Land Commissioners with the new Board of Environmental Review at MCA 82–4–203(6), and transfer the rulemaking powers of the former Board of Land Commissioners to the Board of Environmental Review. All other powers of the former Board of Land Commissioners would go the renamed Department of Environmental Quality.

Montana proposes to limit the Board of Environmental Review at MCA 82–4–204 to adopting general rules pertaining to strip mining and underground mining; and adopting rules relating to the filing of reports, issuance of permits, monitoring, and other administrative and procedural matters.

At MCA 82–4–205, Montana proposes to give the Department of Environmental Quality, three duties previously held by the Board of State Lands, in addition to retaining duties previously assigned to the former Department of State Lands. Those new duties are: (1) The issuance of orders requiring an operator to adopt remedial measures necessary to achieve compliance; (2) the issuance of a final order revoking a permit for failure to comply with a notice of noncompliance, an order suspension, or an order requiring remedial measures; and (3) conducting hearings on the provisions or rules adopted by the board.

The effect is that the newly created Department of Environmental Quality will increase its responsibilities for the Montana coal mining and reclamation program over those previously held by the former Department of State Lands. In contrast, the newly created Board of Environmental Review would retain diminished responsibilities over those previously held by the Board of State Lands.

In revising the Montana statutes to reflect the reorganized duties of the Board of Environmental Review and the Department of Environmental Quality, Montana has changed the terminology in its statutes to delete the reference to "Commissioner" and insert, as appropriate, "Board", "Department", or "Director." Specifically, Montana proposed to delete the definition of "Commissioner" at former MCA 82–4–203(10) and use the term "Director." Montana proposed to change the statutory definition of "Department" at recodified MCA 82–4–203(12) to refer to the Department of Environmental Quality, instead of the former Department of State Lands. The cross-reference to "Article X, section 4, of the constitution of this state" in the definition of "Board" at MCA 82–4–203(6) was changed to "section 21". The cross-reference to "Title 2, chapter 15, part 32" in the definition of "Department" at proposed MCA 82–4–203(12) was changed to "section 20". Statutes which were revised to reflect these changes were: MCA 82–4–223(2) and (3), 82–4–226(8), 82–4–227(3) and (4), 82–4–231(9) and (10), 82–4–232(7), 82–4–240, 82–4–242, 82–4–251(1), (2), (3), (4), (5), and (8), and 82–4–254(1), (2), and (3).

In response to these proposed statutory revisions, OSM sent Montana an issue letter dated December 5, 1996 (Administrative Record No. MT–14–08), which requested: (1) copies of referenced sections 20 and 21; (2) clarification and additional information on the State's reorganization as required by 30 CFR 732.17(b), specifically those items mentioned at 30 CFR 731.14(d), (e), (f), and (g), and 732.15; and (3) a definition of "Director."

In its response to OSM's issue letter, Montana submitted revised statutes at MCA 2–15–3501 defining the "Department of environmental quality", MCA 2–15–3502 defining the "Board of environmental review", MCA 2–15–111 describing the appointment and qualifications of department heads, and MCA 2–15–121 describing the administrative allocation for agencies under the various departments in Montana (Administrative Record No. MT–14–11). With respect to item #1 of the issued letter, Montana deleted the previously referenced sections 20 and 21, and changed the references to MCA 2–15–3501 and 2–15–3502, respectively. Montana also submitted MCA 2–15–111, cross-referenced in MCA 2–15–3501, to further explain the duties of the department heads. MCA 2–15–121, cross-referenced in MCA 2–15–3502, addresses the administrative allocations of agencies under departments in Montana. In response to item #3 in the issue letter, Montana provided MCA 2–15–3501 to define "Director."

Montana stated, in response to item #2 of the December 5, 1996, issue letter, that:

During the reorganization, the Coal and Uranium Bureau was removed from the Reclamation Division, Montana Department of State Lands and transferred intact to the Permitting and Compliance Division, Department of Environmental Quality. The Coal and Uranium Bureau and the Opencut Bureau where then combined to form a new bureau—Industrial and Energy Minerals Bureau (organization chart attached). In the formation of the new bureau, the staff and functions of the coal and uranium mining program remained intact and similar to what existed prior to the reorganization. Since the program was moved intact, the civil penalty assessment and collection authority and provisions for the administrative and judicial review of State program actions were maintained in the Montana Code Annotated and the Administrative Rules of Montana. Therefore, no changes to these provisions were made.

SMCRA and its implementing regulations do not require that a primacy State organize its regulatory agency in any specific manner as long as the State regulatory authority has sufficient authority to implement and enforce the State program. The reconfiguration of the Montana coal mining program under the renamed Department of Environmental Quality is substantially the same as that under the former Department of State Lands, which was in existence when the Montana coal program was approved on April 1, 1980.

OSM finds these statutory revisions, as explained by the cross-referenced statutes subsequently submitted, to adequately clarify the Montana reorganizations of its environmental and natural resource departments in SB 234. Therefore, the Director finds that the revised and recodified statutes are no less effective than the corresponding Federal regulations at 30 CFR Chapter VII and 43 CFR Part 4. The Director approves the proposed amendment, specifically the revised statutes at: MCA 2–15–3501; 2–15–3502; 82–4–203 (6) and (12); 82–4–204; 82–4–205; 82–4–223(2) and (3); 82–4–226 (8); 82–4–227(3) and (4); 82–4–231 (9) and (10); 82–4–232(7); 82–4–240; 82–4–242; 82–4–251 (1), (2), (3), (4), (5), and (8); and 82–4–254 (1), (2), and (3).

3. MCA 82–4–203 (24), Definition of "Prime Farmland"

Montana proposes to revise the definition of "Prime farmland" by deleting the list of criteria to be taken into consideration by the U.S. Secretary of Agriculture in part (a), and instead referencing 7 CFR Part 657 in the **Federal Register** (Vol. 4, No. 21) which defines the same criteria. At part (b), Montana proposes to delete the reference to the aforementioned **Federal Register** notice and to reference land that "historically has been used for intensive agricultural purposes."

The Federal definition of "Prime farmland" at 30 CFR 701.5 and SMCRA Section 701 (20) is similar to the Montana definition in that both consider criteria prescribed by the U.S. Secretary of Agriculture at 7 CFR Part 657 to define "Prime farmland." However, where the proposed Montana definition references land that "historically has been used for intensive agricultural purposes", the Federal definition references lands which have been "Historically used for cropland." The Montana program does not define the phrase "historically has been used for intensive agricultural purposes." When the Montana program was approved with this phrase, part (b) also reference the criteria of 7 CFR Part 657 as contained in the **Federal Register** notice (Vol. 4, No. 21). With the proposed removal of the **Federal Register** criteria in part (b), the interpretation of part (b) of the Montana definition of "Prime farmland" becomes unclear.

The Montana program does define the phrase "Historically used for cropland" at ARM 26.4.301(52), although this phrase is not used in the definition of "Prime farmland." Both ARM 26.4.301(52), the definition of "Historically used for cropland" and 30 CFR 701.5, the Federal definition of "Historically used for cropland" contain the same two "Prime farmland" criteria: (1) Lands used for prime farmland for any 5 of the 10 years immediately preceding acquisition for coal mining; and (2) a regulatory authority determination based on additional cropland history. However, the Montana program does not contain the third part of the Federal definition, which states "lands that would have likely been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land."

Therefore, because the Montana definition of "Prime farmland" proposes to rely exclusively on an undefined phrase in part (b), the Director finds the proposed definition to be less effective than the Federal counterpart at 30 CFR 701.5 and disapproves this revision. In addition, the Director places a required program amendment on the Montana program to revise the definition of "Historically used for cropland" at ARM 26.4.301(52) to include the criteria concerning "lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land."

4. MCA 82–4–203(25) and 82–4–226(8), Definition of "Prospecting"

In response to the required program amendment codified at 30 CFR 926.16(f), Montana submitted both Senate Bill 234 and House Bill 0162 which defined "Prospecting" with different language. OSM, in the issue letter to Montana dated December 5, 1996 (Administrative Record No. MT–14–08), requested that Montana clarify which proposal the State would like OSM to consider.

Montana responded by letter dated November 6, 1997 (Administrative Record No. MT–14–11), with a 1997 revised version of the definition of "Prospecting" at MCA 82–4–203(25). The revised definition responds to OSM's concerns in the required program amendment at 30 CFR 926.16(f) by: (1) Including the activities of gathering surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine the location, quantity, or quality of a mineral deposit (coal or uranium); (2) clarifying that an activity need not involve surface disturbance to be considered "prospecting"; and (3) removing the word "*natural*" to refer to mineral deposit at MCA 82–4–226(8) and 82–4–203(25) so that the definition would include such human-made structures as coal waste piles.

The Director finds that Montana's revised definition of "Prospecting" at MCA 82–4–203(25) to be no less effective than the Federal definition of "Coal exploration" at 30 CFR 701.5 and no less stringent that SMCRA Section 512. The Director approves the proposed amendment and removes the required program amendment at 30 CFR 926.16(f).

5. MCA 82–4–239, Reclamation

In this abandoned mine land reclamation (AMLR) statute, Montana has made revisions to reflect the reorganized duties of the Board of Environmental Review and the Department of Environmental Quality. Montana has changed the wording to delete "Board" and insert "Department" as appropriate. However, Montana has not submitted an organizational chart for its reorganized AMLR plan under the renamed Department of Environmental Quality. The organizational chart submitted in the November 6, 1997, revised amendment with explanatory information (Administrative Record No. MT–14–08) clarifies the current State

organization for the Title V (Regulatory) program, not the Title IV (AMLR) plan.

In the final rule dated July 19, 1995 (60 FR 36998), concerning Montana's AMLR plan, OSM approved a renaming of the former Department of State Lands as the Department of Environmental Quality. However, the organizational chart (Exhibit A) submitted in that amendment (Administrative Record No. MT–AML–01; March 22, 1995) showed no renaming or reorganization of the Divisions and Bureaus below the Departmental level. Supporting documentation from Governor Marc Racicot dated June 15, 1995, and from the Department's Chief Legal Counsel, John North, dated June 9, 1995, only referred to the name change to the Department of Environmental Quality, and did not specify a renaming of Divisions and Bureaus, nor a change in the State organizational chart concerning the AMLR plan (Administrative Record No. MT–AML–18).

At this time, it is unclear what the new reorganization of the Montana AMLR plan consists of, as well as which AMLR rules and statutes have been revised as a result of the 1995 State reorganization. During the Montana reorganization, the regulatory (Title V) and the abandoned mine land reclamation (Title IV) programmatic rules were recodified from ARM 26.4 to ARM 17.24. This new recodification is reflected in the November 6, 1997, Montana submittal (Administrative Record No. MT–14–11). However, OSM has never approved the recodification as Montana removed some of its abandoned mine land reclamation provisions without explanation. Before OSM can approve the recodification, the missing AMLR rules must be explained. The regulatory program (Title V) was recodified intact.

Therefore, the Director is deferring approval on the revision to MCA 82–4–239 until these issues are clarified. The Director is requiring that Montana submit and receive approval on the AMLR reorganization initiated in 1995 and revised by the 1997 Montana legislature, as well as submit and obtained approval on all revised AMLR statutes and rules, subsequent to final rule **Federal Register** notice, 60 FR 36998, dated July 19, 1995.

6. MCA 82–4–221(1), Mining Permit Required

Montana proposes to require that an application for permit renewal be filed at least 240 days, and no more than 300 days, prior to permit expiration. Both the State and Federal statutes provide a procedural time period for the involved parties to file an application for permit renewal prior to the expiration of the valid permit. Section 506(d)(3) of SMCRA and 30 CFR 774.15(b)(1) only require that such filing shall be made *at least* 120 days prior to the expiration of the valid permit. The Federal requirement, unlike the State's proposal, does not set a limit on how far in advance an applicant may submit an application for permit renewal. This State proposal is a procedural requirement which provides involved parties with similar rights and remedies as those provided by SMCRA at Section 506(d)(3) and 30 CFR 774.15(b)(1). Accordingly, the Director finds that the State's proposed revision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.15(b)(1). The Director approves the proposed amendment.

7. MCA 82–4–226(8), Prospecting Permits and Notices of Intent

In the February 1, 1995, final rule **Federal Register** (60 FR 6006), OSM placed three required program amendments on the Montana program concerning a prospecting permit at MCA 82–4–226(8). The required program amendment at 30 CFR 926.16(h) required that Montana prohibit prospecting under notices of intent when more than 250 tons of coal are to be removed. The required program amendment at 30 CFR 926.16(i) required that Montana delete the word "reasonable" in the final sentence of MCA 82–4–226(8). The required program amendment at 30 CFR 926.16(j) required that Montana provide authority for the inspection of monitoring equipment and prospecting methods for prospecting conducted under notices of intent, and access to and copying of any records required by the Montana program on such prospecting operations, at any reasonable time without advance notice upon presentation of appropriate credentials, and to provide for warrant-less right of entry for prospecting operations conducted under notices of intent, to be no less effective in meeting SMCRA's requirements than 30 CFR 840.12(a) and (b).

In the November 6, 1997, submittal (Administrative Record No. MT–14–11), Montana modified its statute at MCA 82–4–226(8), and presented additional explanatory information concerning prospecting, in order to respond to the three required program amendments.

a. Prospecting (Coal Exploration) Under Notices of Intent

Montana proposed to revise MCA 82–4–226(8) to state that prospecting that is not conducted in an area designated unsuitable for coal mining, that is not conducted for the purposes of determining the location, quality, or quantity of a mineral deposit, "and that does not remove more than 250 tons of coal", is not subject to subsections (1) through (7) (the requirements for a prospecting permit). "In addition, prospecting that is conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to subsections (1) through (7)."

The revisions made by Montana in the November 6, 1997, submittal (Administrative Record No. MT–14–11), now restrict prospecting under a notice of intent to those operations which remove less than 250 tons of coal. The revisions meet the federal requirements at SMCRA Section 512(d) and 30 CFR Part 772 which require that coal exploration permits be obtained when an exploration operation will remove more than 250 tons of coal, regardless of the intent of the prospecting (coal or overburden) or the degree of disturbance. With these revisions, the Montana program becomes no less stringent that SMCRA and no less effective than the Federal regulations. The Director approves the proposed amendment and removes the required program amendment at 30 CFR 926.16(h).

In addition to restricting prospecting operations under a notice of intent to those which remove less than 250 tons of coal, the Montana revisions at MCA 82–4–226(8) also restrict prospecting operations under a notice of intent to those lands outside of an area designated as "lands unsuitable." The Montana program now contains the same provisions as the Federal counterpart at 30 CFR 772.11(a) and 772.12(a) which prohibit coal exploration under a notice of intent, and require an exploration permit, for any coal exploration on lands unsuitable, regardless of whether the exploration "substantially disturbs" the natural and surface. The Director finds the Montana revision at MCA 82–4–226(8) to be no less effective than the Federal requirements at 30 CFR 772.11(a) and 772.12(a). The Director approves the revision.

b. Specification of Which Prospecting Activities Are Required To Meet Performance Standards and Specification of Applicable Performance Standards

In the February 1, 1995, **Federal Register** notice (60 FR 6006), finding 5(b) requested that Montana clarify which performance standards are applicable to prospecting operations. At that time, OSM approved the revision to MCA 82–4–226(8) with the proviso that it not be implemented until Montana had promulgated and OSM had approved a definition of "substantially disturb" which was no less effective than 30 CFR Part 772 and 30 CFR 701.5.

In its November 6, 1997, response (Administrative Record No. MT–14–11), Montana stated that:

> Section 82–4–226(8) * * * provides that lands substantially disturbed under a notice of intent, * * * must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. Therefore, any prospecting that "substantially disturbs" the land surface must comply with the same performance standards, regardless of whether the prospecting is done pursuant to a notice of intent or a prospecting permit.

Montana's explanation also lists the performance standards contained in Chapter 10 of the Administrative Rules of Montana (ARM), as those which apply to prospecting (coal exploration) operations. This explanation meets the requirements of SMCRA Section 512(a) which requires that all exploration which substantially disturbs the natural land surface be conducted in accordance with the performance standards of SMCRA Section 515.

Therefore, Montana has complied with the proviso in finding 5(b) in the February 1, 1995, **Federal Register** notice (60 FR 6006). The Director accepts the explanatory information provided by Montana. With this explanation, the Montana program is no less stringent than SMCRA in meeting performance standards for coal exploration operations.

c. Right of Entry To Inspect

At 30 CFR 926.16(i), OSM required that Montana delete the word "reasonable" from MCA 82–4–226(8) so that the State regulatory program would have the authority to right of entry to any coal exploration operation without advance notice, upon presentation of appropriate credentials, and not limited to "reasonable" times. At 30 CFR 926.16(j), OSM required that Montana revise its program to provide authority for the inspection of prospecting operations conducted under notices of intent, and access to the records on such operations at any reasonable time without search warrant.

In the November 6, 1997, response (Administrative Record No. MT–14–11), Montana noted that the required program amendment changes to the statutes had not been made. In lieu of making the statutory revisions, the State argued that two existing rules respond to OSM's concerns. Those rules are: ARM 26.4.1201 and 26.4.1202. ARM 26.4.1201, Frequency of Inspections, requires "such periodic partial or complete inspections of prospecting operations as are necessary to enforce the Act, the rules adopted pursuant thereto, and the permit." ARM 26.4.1202, Method of Inspections, states that "Inspections must occur without prior notice to the permittee, except for necessary on-site meetings, be conducted on an irregular basis, and be scheduled to detect violations on nights, weekends, and holidays." (Montana's response actually references the rules at ARM 17.24.1201 and 17.24.1202, reflecting the State's 1996 rules recodification. Refer to the discussion in Finding No. 5 above concerning the recodification.)

The existing rules at ARM 26.4.1201 and .1202 allow for State inspections to take place at prospecting operations without prior notice to the permittee and to be conducted on an irregular basis. OSM interprets these rules as allowing inspections at other than "reasonable" times. In addition, these same rules would allow for inspections of prospecting operations "as are necessary to enforce the Act, the rules adopted pursuant thereto, and the permit", as well as to "collect evidence of violations and to file inspection reports adequate to determine whether violations exist." OSM, therefore, interprets these rules as providing sufficient "authority for the inspection of monitoring equipment and prospecting methods for prospecting conducted under notices of intent, and access to and copying of any records required by the Montana program on such prospecting operations, at any reasonable time without advance notice upon presentation of appropriate credentials, and to provide for warrantless right of entry for prospecting operations conducted under notices of intent."

OSM believes that these rules address the concerns of the required program amendments at 30 CFR 926.16 (i) and (j), as well as serve to clarify the statute at MCA 82.4.226(8). The Director approves the explanatory information presented by Montana and removes the required program amendments at 30 CFR 926.16 (i) and (j).

8. MCA 82–4–235, Inspection of Vegetation—Final bond Release

In the May 16, 1995, submittal, Montana proposed to revise MCA 82–4–235(1) to provide that final bond release may *not* be withheld on the basis that introduced species compose a major or dominant component of the reclaimed vegetation on lands which were seeded with a seed mix approved to include substantial introduced species (applicable to both pre- and post-SMCRA areas) (Administrative Record No. MT–14–01). This proposal had the effect of allowing, in some circumstances, final bond release when revegetation performance standards are not achieved. However, OSM notified Montana in the December 5, 1996, issue letter (Administrative Record No. MT–14–08) that SMCRA Section 519(c)(3) requires that prior to final bond release, the operator must have successfully completed all reclamation activities, including not only planting the approved seed mix, but also achieving revegetation success standards, OSM could not approve proposed MCA 82–4–235(1).

In the November 6, 1997, response to OSM's issue letter, Montana deleted the sentence in subsection (1) which would have allowed, in some circumstances, final bond release when revegetation performance standards were not achieved (Administrative Record No. MT–14–11). The remaining changes to proposed subsection (1) contain two non-substantive wording changes. The first proposed revision to subsection (1) is to make the timing of the final bond release inspection and evaluation of permanent diverse vegetative cover, dependent upon an application for final bond release, not upon the satisfactory stand, itself, having been established. SMCRA, also, requires that the regulatory authority conduct a performance bond release inspection upon receipt of a notification and request from the permittee. Therefore, the State revision is no less stringent than SMCRA.

The second proposed revision to subsection (1) is to change the February 2, 1978, seeding date to May 3, 1978. This means that any reclamation work such as augmented seeding, fertilizing, or irrigation taking place after May 3, 1978 (previously February 2, 1978) may not receive final bond release until at least 10 years after the last year of such work. May 3, 1978, nine-months after the effective date of SMCRA, is the date upon which, or after, all surface coal mining operations on State-regulated

lands must be in compliance with the provisions of SMCRA, according to SMCRA Section 502(c) and 30 CFR 710.11(a)(3)(ii). Therefore, the Director finds this revision to be no less effective than the Federal regulations and no less stringent than SMCRA. The effect of OSM's approval is that the paragraph labeled "82–4–235 (Effective on occurrence of contingency) Inspection of vegetation—final bond release" in Montana's 1997 legislative amendment (Administrative Record No. MT–14–11) would be approved.

Montana proposes to revise paragraph (2) of MCA 82–4–235 to provide revised bond release criteria on revegetated lands seeded with mixtures of introduced species on which coal was removed prior to May 3, 1978 (the effective date of SMCRA), or lands on which coal was not removed or lands disturbed after May 2, 1978. Montana states the intent of this provision is to provide revegetation success standards for lands which were reclaimed using seed mixes containing introduced species during a period (1970s and 1980s) when native seed mixes were in short supply. Montana's proposed changes concern lands disturbed prior to the effective date of SMCRA (August 3, 1997) and reclamation on those lands. The changes do not conflict with any SMCRA requirement. Therefore, the Director is approving MCA 82–4–235(1) and (2).

9. MCA 82–4–227(10), Coal Conservation Plan

OSM placed a required program amendment (30 CFR 926.16(g)) on Montana in the February 1, 1995, **Federal Register** notice (60 FR 6006) to modify its program to require that no permit or major permit revision be approved unless the coal conservation plan affirmatively demonstrate that failure to conserve coal will be prevented. OSM placed the required program amendment on the Montana program due to a typographic error which unintentionally resulted in a substantive revision to state program amendment dated July 28, 1993, Administrative Record No. MT–11–01.

In the May 16, 1995, submittal (Administrative Record No. MT–14–01), Montana subsequently proposed a statutory revision at MCA 82–4–227(10) which corrected the earlier error and restored the State program to its previous statutory language. Therefore, the Director finds the Montana revised statute to be no less effective than the Federal requirement and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(g).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), 884.15(a), and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Montana program and plan.

The Natural Resources Conservation Service responded on June 6, 1997, with the recommendation that reclaimed areas be fenced under grazing conditions in order to ensure that stands of introduced species and off-site native species become established (Administrative Record No. MT–14–04). OSM responds that this is not required in either the Montana program, or the Federal statutes or regulations. Therefore, to require the fencing of reclaimed areas under grazing conditions would be more stringent than either the Federal statutes or the regulations. However, the requirement to fence reclaimed lands during the vegetation establishment period is often placed on the permit by the State, OSM, or other Regulatory Agency, and potentially even required by lease. This is because protection of the revegetated area is in the operator's best interest, since the operator will eventually be required to meet revegetation success standards. OSM has forwarded the comments from the Natural Resources Conservation Service to Montana for consideration.

The U.S. Army Corps of Engineers and the Bureau of Indian Affairs had no objections to the proposed revisions (Administrative Record Nos. MT–14–07 and MT–14–05).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Purusant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. MT–14–03). The proposed revisions did not relate to air quality or water quality, and the EPA did not submit comments.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendments from the SHPO and ACHP (Administrative Record No. MT–14–03). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, Montana's proposed amendment as submitted on May 16, 1995, and as revised and supplemented with additional explanatory information on November 6, 1997.

The Director approves, as discussed in: Finding No. 1, proposed MCA 82–4–203(1), (2), (3), (4), (7), (8), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (26), (27), (28), (29), (30), (31), (32), (33), (34), and (35), concerning Definitions; proposed MCA 82–4–221 (2) and (3), concerning Mining permit required; proposed MCA 82–4–226 (1) and (2), concerning Prospecting permit; proposed MCA 82–4–227(1), (2), (5), (7), (8), (9), (11), and (12), concerning Refusal of permit; proposed MCA 82–4–231 (1) and (6), concerning Submission of and action on the reclamation plan; proposed MCA 82–4–232(6), concerning Area mining—bond—alternative; proposed MCA 82–4–251 (6) and (7), concerning Noncompliance—suspension of permits; Finding No. 2, proposed MCA 82–4–203 (6) and (12), 82–4–204, 82–4–205, 82–4–223 (2) and (3), 82–4–226 (8), 82–4–227 (3) and (4), 82–4–231 (9) and (10), 82–4–232 (7), 82–4–240, 82–4–242, 82–4–251 (1), (2), (3), (4), (5), and (8), 82–4–254 (1), (2), and (3), 2–15–3501, and 2–15–3502, concerning the definitions of "Board," "Department," and "Director," Board Rules and Administration by department; Finding No. 4, proposed MCA 82–4–203(25) and 82–4–226(8), concerning the definition of "Prospecting;" Finding No. 6, proposed MCA 82–4–221(1), concerning Mining permit required; Finding No. 7, proposed MCA 82–4–226(8), concerning Prospecting permit and notices of intent; Finding No. 8, proposed MCA 82–4–235, concerning Inspection of vegetation—final bond release; and Finding No. 9, proposed MCA 82–4–227(10), concerning the Coal conservation plan.

As discussed in Finding Nos. 3 and 5, the Director is disapproving the proposed revisions to MCA 82–4–203(24) and deferring her decision on the proposed revisions to MCA 82–4–239.

The Federal regulations at 30 CFR Part 926, codifying decisions concerning the Montana program and plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.10(a) is revised to read as follows:

§ 926.10 State regulatory program approval.

* * * * *

(a) Montana Department of Environmental Quality, Industrial and Energy Minerals Bureau, P.O. Box 200901, Helena, Montana 59620–0901, (406) 444–1923.

* * * * *

3. Section 926.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
May 16, 1995	January 22, 1999	MCA 2–15–3501, 2–15–3502, 82–4–203(1) through (35), except (24); MCA 82–4–204; MCA 82–4–205; MCA 82–4–221; MCA 82–4–223; MCA 82–4–226(8); MCA 82–4–227; MCA 82–4–231; MCA 82–4–232(6) and (7); MCA 82–4–235; MCA 82–4–240; MCA 82–4–242; MCA 82–4–251; and MCA 82–4–254(1) through (3). Decision deferred on MCA 82–4–239; MCA 82–4–203(24) disapproved.

4. Section 926.16 is amended by removing and reserving paragraphs (f), (g), (h), (i), and (j); and adding paragraph (k) to read as follows:

§ 926.16 Required program amendments.

* * * * *

(k) By March 23, 1999, Montana shall revise ARM 26.4.301(52), or otherwise modify its program, to require that the definition of "Historically used for cropland" address lands that would have been likely used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

5. Section 926.21 is added to read as follows:

§ 926.21 Required abandoned mine land plan amendments.

Pursuant to 30 CFR 884.15, Montana is required to submit for OSM's approval the following proposed plan amendment by the date specified.

(a) By March 23, 1999, Montana shall submit a copy of the State's reorganization of the abandoned mine land reclamation plan, as well as all statutes and rules relating to the abandoned mine land reclamation plan revised subsequent to the final rule published in the **Federal Register** dates July 19, 1995 (60 FR 36998).

(b) [Reserved].

[FR Doc. 99–1445 Filed 1–21–99; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–018–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with additional requirements, a proposed amendment to the Montana regulatory program (hereinafter, the "Montana program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed revisions to rules pertaining to permit renewals, permit requirements, and notices of intent to prospect. The amendment was intended to revise the Montana program to be consistent with the corresponding Federal regulations and SMCRA, to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6550; Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16 and 926.30.

II. Proposed Amendment

By letter dated March 5, 1996, Montana submitted a proposed amendment to its program (Administrative Record No. MT–15–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the proposed amendment at its own initiative. The provisions of Administrative Rules of Montana (ARM) that Montana proposed to revise were: 26.4.410, ARM (permit renewal); 26.4.1001, ARM (prospecting permit requirement); and 26.4.1001A, ARM (notice of intent to prospect).

OSM announced receipt of the proposed amendment in the April 10, 1996, **Federal Register** (61 FR 15910), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. MT–15–04). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 10, 1996.

During its review of the amendment, OSM identified concerns at ARM 26.4.1001(1)(a) and 26.4.1001A(1) and (1)(b)(ii) relating to the removal of more than 250 tons of coal under a notice of intent. OSM notified Montana of the concerns by letter dated December 6, 1996 (Administrative Record No. MT–15–09).

Montana responded by submitting additional explanatory information in a letter dated November 6, 1997 (Administrative Record No. MT–15–12). The explanatory information consisted of a proposed statutory revision for a separate amendment currently under review by OSM (SPATS No. MT–017–FOR; Administrative Record No. MT–14–01). Instead of revising the proposed rules to address OSM's concerns with prospecting permit requirements and a notice of intent to prospect, Montana explained that proposed statutory revisions made by the 1997 Montana legislature to the Montana Code Annotated at 82.4.226(8), MCA, to require a permit for prospecting when more than 250 tons of coal would be removed, would resolve OSM's concerns.

Based upon the additional explanatory information for the proposed program amendment submitted by Montana, OSM reopened the public comment period in the December 2, 1997, **Federal Register** (62 FR 63685; Administrative Record No. MT–15–13). Because no one requested a public hearing or meeting, none was held. The reopened public comment period ended on December 17, 1997.

Also being considered in this final approval of SPATS No. MT–018–FOR (Administrative Record No. MT–15–01) is language from an earlier submitted amendment, SPATS No. MT–003–FOR (Administrative Record No. MT–12–01; dated February 1, 1995) insofar as it relates to the requirements for prospecting permits and notices of intent to prospect. Montana originally proposed revisions to ARM 26.4 1001 and proposed to add ARM 26.4 1001A in SPATS No. MT–003–FOR.

Before OSM was able to take action on MT–003–FOR, Montana proposed further revisions to ARM 26.4.1001 and 26.4.1001A as part of the SPATS No. MT–018–FOR. Therefore, OSM is considering and taking action on all revisions to ARM 26.4.1001 and 26.4.1001A as part of SPATS No. MT–018–FOR, and is removing the proposed revisions from SPATS NO. MT–003–FOR. Montana agreed to this approach in a telephone conversation on January 23, 1998 (Administrative Record Nos. MT–12–21 and MT–15–14).

The definition of "substantially disturb", which was submitted in the State's February 6, 1996, response (SPATS No. MT–003–FOR; Administrative Record No. MT–12–19) to OSM's issue letter dated October 17, 1995 (Administrative Record No. MT–12–16), is also being considered for approval in SPATS No. MT–018–FOR and is being withdrawn from SPATS No. MT–003–FOR.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with additional requirements, that the proposed program amendments submitted by Montana on March 5, 1996, and as supplemented with additional explanatory information on November 6, 1997, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Montana's Rules

Montana proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, grammatical, or recodification changes (corresponding Federal provisions are listed in parentheses):

26.4.1001, ARM, subsections (1) (codification) and (2) (introductory text and codification), (30 CFR 772.12), prospecting (coal exploration) permits.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director

finds that these proposed Montana rules revisions are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Montana's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Montana proposed to revise its programs by adding the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

26.4.1001, ARM, subsection (1)(b), (30 CFR 772.12(a) (in part)), requirements for prospecting permits;
26.4.1001, ARM, subsection (2)(c), (30 CFR 772.12(b)), requirements for prospecting permits;
26.4.1001, ARM, subsection (2)(g)(iii)(A) and (C), (30 CFR 772.12(b)), requirements for prospecting permits;
26.4.1001, ARM, subsections (4) and (5), (30 CFR 815.13, 772.13, and 815.1), performance standards applicable to prospecting (coal exploration) under prospecting permits and requirements to keep the permit on-site;
26.4.1001A, ARM, subsections (1), (3) (introductory text), (3)(a), (4) (introductory text), and (4)(a), (30 CFR 772.11(a) (in part) and (b)), requirements for notices of intent to prospect (conduct coal exploration); and
26.4.1001A, ARM, subsections (4)(c) (in part), (6), and (7), (30 CFR 772.13 and 815.13), performance standards applicable to prospecting (coal exploration) under notices of intent and requirement to keep documents on-site.

Because these proposed Montana rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. ARM 26.4301(114), Definition of "Substantially Disturb"

On February 6, 1996, Montana proposed a definition of "substantially disturb" which is substantially similar to the Federal definition at 30 CFR 701.5, except that it does not include the removal of more than 250 tons of coal (SPATS No. MT–003–FOR; Administrative Record No. MT–12–19).

The Federal definition of "substantially disturb" at 30 CFR 701.5 provides that anytime an exploration operation removes more than 250 tons of coal, the operation would "substantially disturb" the natural land surface. This would require that performance standards be met, as the Federal regulations at 30 CFR 815.1 and 772.13(a) provide that the performance standards therein apply to coal exploration and reclamation activities which "substantially disturb" the natural land surface.

Montana subsequently proposed a statutory revision at MCA 82–4–226(8) in a response dated November 6, 1997. The revised statute would require that: (1) prospecting which removes less than 250 tons of coal is not subject to the prospecting permit requirements of MCA 82–4–226 (1) through (7) (except if conducted on lands unsuitable); and (2) prospecting conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface, is not subject to the prospecting permit requirements at MCA 82–4–226 (1) through (7) (SPATS No. MT–017–FOR; Administrative Record No. MT–15–12). These revisions now require the operator to obtain a permit when more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining.

The 250 ton limit serves two purposes in the Federal regulations: (1) it determines when a notice of intent to explore (prospect) may be allowed, as opposed to when a permit is required (30 CFR 772.11(a) vs. 772.12(a)); and (2) it determines if the performance standards of 30 CFR Part 815 must be met (30 CFR 772.13 and 815.1). Montana's statutory changes in SPATS No. MT–017, Administrative Record No. Series MT–014–FOR, satisfactorily accomplish purpose #1 above. Purpose #2 above is addressed at proposed ARM 26.4.1001(5) and 1001A(7) which require all prospecting, regardless of extent of disturbance (under permits or notice of intent, respectively), to meet the performance standards of ARM, Chapter 10. ARM 26.4.1001(5) specifically states that prospecting operations under a permit are subject to the performance standards of ARM, Chapter 10. ARM 26.4.1001A(7) states that prospecting operations under a notice of intent are subject to all the performance standards of ARM, Chapter 10, except those which relate to a permit, permit transfer, bonding, and permit renewal. OSM notes that the performance standards of Chapter 10 are currently being revised in connection with the program amendment submitted February 1, 1995, as SPATS No. MT–003–FOR (Administrative Record No. MT–12–01). Based on the above discussion, the Director is approving the definition of "substantially disturb" at ARM 26.4.1001.

4. ARM 26.4.410, Permit Renewal

Montana proposes to require that an application for permit renewal be filed at least 240 days, and no more than 300 days, prior to permit expiration. Both the State and Federal regulations provide a procedural time period for the involved parties to file an application for permit renewal prior to the expiration of the valid permit. Section 506(d)(3) of SMCRA and 30 CFR 774.15(b)(1) only require that such filing shall be made *at least* 120 days prior to the expiration of the valid permit. The Federal requirement, unlike the State's proposal, does not set a limit on how far in advance an applicant may submit an application for permit renewal. The State proposal is a procedural requirement which provides involved parties with similar rights and remedies as those provided by SMCRA at Section 506(d)(3) and 30 CFR 774.15(b)(1).

The Director finds that the State's proposed revision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.15(b)(1). The Director approves the proposed amendment.

Montana has proposed an identical change to its statutes at MCA 82–4–221(1) which is also under consideration by OSM at this time (SPATS No. MT–017–FOR; Administrative Record No. MT–14–01). A final **Federal Register** notice is being published simultaneously on the statutory revision.

5. ARM 26.4.1001 and 26.4.1001A, Prospecting

Montana initiated proposed revisions to ARM 26.4.1001 and the addition of 26.6.1001A in its February 1, 1995, submittal (SPATS No. MT–003–FOR; Administrative Record No. MT–12–01), in order to implement the new statutory provision for prospecting under notices of intent that was approved by OSM on February 1, 1995 (60 FR 6006). On March 5, 1996, Montana submitted further revisions to ARM 26.4.1001 and 26.4.1001A in a new submittal, now the subject of this **Federal Register** action (SPATS No. MT–018–FOR; Administrative Record No. MT–15–01). Many of the proposed revisions or additions are nonsubstantive or are substantively identical to the corresponding Federal counterparts and are addressed in Finding Nos. 1 and 2 above. Montana has also proposed statutory revisions addressing prospecting, which are being considered in a separate rule making action being published concurrently with this one.

a. Proposed Requirements for Prospecting Permits

Montana proposes at ARM 26.4.1001(1) that a prospecting operation must be conducted under a prospecting permit if it will either: (1) be conducted on lands designated unsuitable for mining (no matter what the purpose or scope of the operation); or (2) is intended to collect data on the minerals (rather than on the environment) and will substantially disturb the land surface. A proposed statutory provision being concurrently evaluated (82–4–226(8), MCA; see SPATS No. MT–017–FOR) also requires that any prospecting operation that removes more than 250 tons of coal must be conducted under a prospecting permit. In sum, a prospecting permit would be required for any prospecting operation which: (1) is conducted on lands unsuitable; (2) removes more than 250 tons of coal; or (3) is conducted to collect mineral rather than environmental data and substantially disturbs the land surface.

The Federal regulations at 30 CFR 772.12(a) similarly require a coal exploration permit for operations which will be conducted on lands designated as unsuitable for mining or which will remove more than 250 tons of coal. There is no Federal provision requiring a prospecting permit for the third class of operations proposed by Montana; however, OSM believes that requiring prospecting permits for this class of operations will assist Montana in the effective implementation of its program. Under 30 CFR 730.11(b), no State rule providing for more stringent environmental controls shall be found to be inconsistent with OSM regulations. With the understanding that the proposed statutory provisions at 82–4–226(8), MCA, is being simultaneously approved, the Director finds that the proposed rule revisions at ARM 26.4.1001(1) are no less effective than the Federal requirements at 30 CFR 772.12(a) and is approving the revisions.

b. Proposed Requirements for Prospecting Under Notice of Intent To Prospect

Montana proposes at ARM 26.4.1001A(1) that prospecting operations may be conducted under a notice of intent to prospect (rather than requiring a prospecting permit) if the proposed prospecting operation: (1) will not be conducted on lands designated unsuitable for mining; and either (2), is intended to collect data on the environment (rather than on the minerals); or (3), is intended to collect data on the minerals but will not substantially disturb the land surface. A proposed statutory provision being concurrently evaluated (82–4–226(8), MCA; see SPATS No. MT–017–FOR) also requires that any prospecting operation that removes more than 250 tons of coal must be conducted under a prospecting permit. In sum, a notice of intent to prospect would be allowed only for those prospecting operations which: (1) are not conducted on lands unsuitable; (2) remove less than 250 tons of coal; and (3) are conducted to collect environmental data or, if conducted to collect mineral data, will not substantially disturb the land surface.

The Federal regulations at 30 CFR 772.11(a) similarly allow notices of intent for operations which will not be conducted on lands designated as unsuitable for mining and which will not remove more than 250 tons of coal (summary items #1 and #2 above). The Federal regulations do not address the purpose of exploration and hence, do not address Montana's third class of operations. However, OSM notes that any of that third class of prospecting operations (those conducted to obtain mineral data but do not substantially disturb the land surface and those that collect only environmental data), would be required by proposed ARM 26.4.1001(1) (discussed under Finding No. 5a above) to operate under a prospecting permit if they either: (1) occur on lands unsuitable or, (2) remove more than 250 tons of coal. In the event that these two rule requirements might be interpreted to conflict, the proposed statutory provision at MCA 82–4–226(8) (being concurrently evaluated) clearly limits notices of intent to prospecting that does not occur on lands unsuitable and that does not remove more than 250 tons of coal; see also the discussion under Finding No. 3 above. Therefore, under the Montana proposal taken together with the proposed statutory revision, no prospecting operation could be conducted under a notice of intent that would, under the Federal requirements, require a coal exploration permit.

With the understanding that the proposed statutory provision at 82–4–226(8), MCA, is being simultaneously approved, the Director finds that the proposed rule additions at ARM 26.4.1001A(1) are no less effective than the Federal requirements at 30 CFR 772.11(a) and is approving the revisions.

c. Content Requirements for Notices of Intent to prospect

Montana has proposed several requirements for the contents of notices of intent; most are approved in Finding No. 2 above. But Montana has also proposed requirements for which there is no corresponding Federal provision, particularly at ARM 26.4.1001A(2) and (3)(b) (information needed for Montana to determine the purpose of the prospecting and whether it will substantially disturb the land surface), and ARM 26.4.1001A(4)(b) (reports to be provided to assist investigations).

OSM notes that the Federal program does not address the purpose of exploration activities, but believes that these provisions will assist Montana in the effective implementation of its program. OSM also notes that under Montana's proposal, all prospecting operations would be required to meet prospecting performance standards, regardless of their purpose and whether they substantially disturb the land surface (see proposed ARM 26.4.1001(5) and 26.4.1001(7) which are approved in Finding No. 2 above). Therefore the Director finds that these proposed rule additions do not conflict with any Federal requirements, and approves the proposed rules.

d. Procedural Requirements for Prospecting Permits and Notices of Intent

Montana has proposed several requirements for processing notices of intent and prospecting permits for which there is no corresponding Federal provision, particularly at ARM 26.4.1001(3) (in part) and 26.4.1001A(2) (in part) (expiration of permit and notice of intent after one year); and 26.4.1001A(5) (Departmental response to applicant on notice of intent regarding proposed extent of disturbance).

OSM believes that these provisions will assist Montana in the effective implementation of its program. OSM also notes that under Montana's proposal, all prospecting operations would be required to meet prospecting performance standards, regardless of whether they substantially disturb the land surface (see proposed ARM 26.4.1001(5) and 26.4.1001A(7) which are approved in Finding No. 2 above). Therefore the Director finds that these proposed rule additions do not conflict with any Federal requirements, and approves the proposed rules.

However, in the course of evaluating this submittal, OSM noted that proposed ARM 26.4.1001(3) would provide that prospecting permits are subject to renewal, suspension, and revocation in the same manner as mining permits; but the proposal would not provide for permit issuance procedures, which would include such requirements as public review and

comment, and administrative and judicial appeals. Upon further review, OSM found that under the Montana program only "test pit prospecting permits" are subject to the permit issuance procedures of Subchapter 4 (see ARM 26.4.401(1)).

The Federal regulations at 30 CFR 772.12(c), (d), and (e), and 772.15, provide for public notice and opportunity to comment on prospecting permit applications, regulatory authority decisions on such applications, notice and hearing requirements on the prospecting applications, and for public availability of permit information. These Federal requirements apply to all prospecting permits, not just those that involve surface excavations. Therefore the Director is requiring Montana to amend its program (at ARM 26.4.401, 26.4.1001, or otherwise) to provide for permit issuance procedures, including public comment, administrative and judicial appeal, and public availability of information, for all prospecting permits.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Montana program.

Three agencies responded that they had no comments: the U.S. Army Corps of Engineers (April 15, 1997; Administrative Record No. MT–15–05); the Bureau of Indian Affairs (April 19, 1997; Administrative Record No. MT–15–07); and the Montana Department of Fish, Wildlife and Parks (May 10, 1997; Administrative Record No. MT–15–08).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. MT–15–03). The proposed amendment does not concern air quality or water quality, and EPA did not submit comments.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP (Administrative Record No. MT–15–03). The SHPO responded on April 19, 1997, that they had no comments (Administrative Record No. MT–15–06). The ACHP did not respond.

V. Director's Decision

Based on the above findings, the Director approves, with certain additional requirements, Montana's proposed amendment as submitted on March 5, 1996, and as supplemented with additional explanatory information on November 6, 1997.

The Director approves, as discussed in: Finding No. 3, ARM 26.4.301(114), the definition of substantially disturb; Finding No. 4, ARM 26.4.410, concerning permit renewals; Finding Nos. 1, 2, 5a and 5d, ARM 26.4.1001 (except 26.4.1001(3)); and Finding Nos. 2, 5b, 5c, and 5d, ARM 26.4.1001A, concerning notices of intent to prospect.

With the requirement that Montana further revise its program, the Director approves, as discussed in Finding No. 5d, ARM 26.4.1001(3), concerning the procedural requirements for prospecting permits.

The Federal regulations at 30 CFR Part 926, codifying decisions concerning the Montana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year

on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
March 5, 1996	January 22, 1999	ARM 26.4.301(114); 26.4.410; 26.4.1001; and 26.4.1001A.

3. Section 926.16 is amended by adding paragraph (l) to read as follows:

§ 936.16 Required program amendments.

* * * * *

(l) By March 23, 1999, Montana shall revise ARM 26.4.1001, ARM 26.4.401, or otherwise modify its program, to provide for public notice and opportunity to comment on prospecting permit applications, regulatory authority decisions on such applications, and notice and hearing requirements on prospecting permit applications, to be no less effective than 30 CFR 772.12(c), (d), and (e), and 772.15.

[FR Doc. 99–1462 Filed 1–21–99; 8:45 am]

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Friday
January 22, 1999

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 17 and 52
Federal Acquisition Regulation: Option Clause Consistency; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17 and 52

[FAR Case 98–606]

RIN 9000–AI26

Federal Acquisition Regulation; Option Clause Consistency

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to make the format of the Option to Extend Services clause consistent with the format of other FAR option clauses. The change also permits the time period for providing a preliminary notice of the Government's intent to exercise a contract option to be tailored.

DATES: Comments should be submitted on or before March 23, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–606@gsa.gov.

Please cite FAR case 98–606 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 98–606.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the clause at FAR 52.217–8, Option to Extend Services, to permit the contracting officer to insert, in the clause, a time period for exercise of the option consistent with other option clauses at FAR 52.217–6, –7, and –9. This proposed rule also amends the clause at FAR 52.217–9, Option to Extend the Term of the Contract, to clarify that the time period for providing preliminary notice of option exercise may be tailored. The current prescription for the clause permits the use of a clause "substantially the same as" the clause at FAR 52.217–9. This proposed change emphasizes that 60 days is the standard number of days within which to provide notice, but the contracting officer may specify a different number of days, when appropriate. Finally, an editorial amendment is made at FAR 17.208(g).

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely amends the FAR clause pertaining to option to extend services to permit insertion of an option period within the clause, rather than in the contract schedule. The rule also clarifies existing FAR guidance pertaining to preliminary notice of the Government's intent to exercise a contract option. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98–606), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

List of Subjects in 48 CFR Parts 17 and 52

Government procurement.

Dated: January 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 17 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 17 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 17—SPECIAL CONTRACTING METHODS

2. Section 17.208 is amended by revising paragraph (g) to read as follows:

17.208 Solicitation provisions and contract clauses.

* * * * *

(g) The contracting officer shall insert a clause substantially the same as the clause at 52.217–9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract any or all of the following:

(1) A requirement that the Government shall give the contractor a preliminary written notice of its intent to extend the contract.

(2) A statement that an extension of the contract includes an extension of the option.

(3) A specified limitation on the total duration of the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 52.217–8 is amended by revising the clause date and the clause to read as follows:

52.217–8 Option to Extend Services.

* * * * *

OPTION TO EXTEND SERVICES [DATE]

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within [*insert the period of time within which the Contracting Officer may exercise the option*].

(End of clause)

3. Section 52.217–9 is amended by revising the clause date and paragraph (a) of the clause to read as follows:

52.217–9 Option to Extend the Term of the Contract.

* * * * *

OPTION TO EXTEND THE TERM OF THE CONTRACT [DATE]

(a) The Government may extend the term of this contract by written notice to the Contractor within [*insert the period of time within which the Contracting Officer may*

exercise the option], provided that the Government shall give the Contractor a preliminary written notice of its intent to extend at least _____ days [*60 days unless a different number of days is inserted*] before the contract expires. The preliminary notice does not commit the Government to an extension.

* * * * *

(End of clause)

[FR Doc. 99–1316 Filed 1–21–99; 8:45 am]

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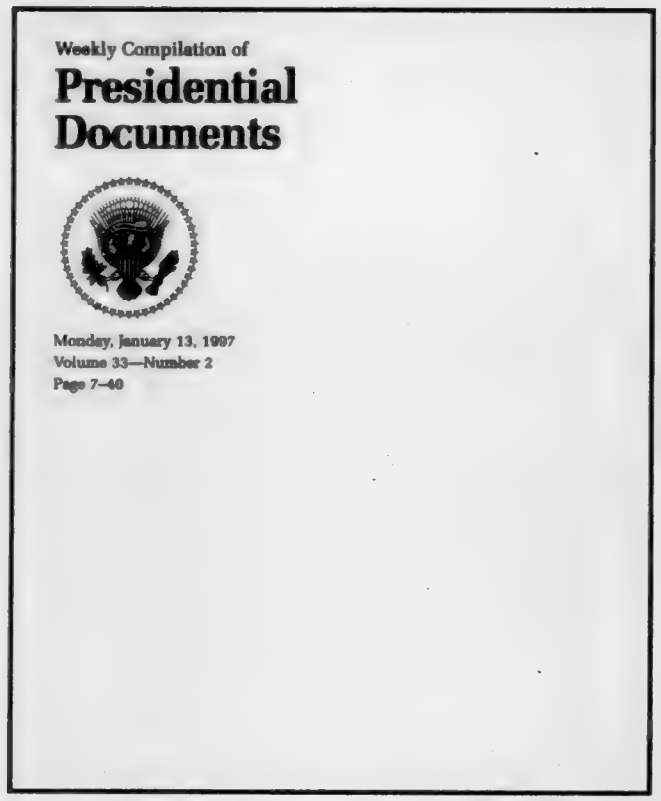

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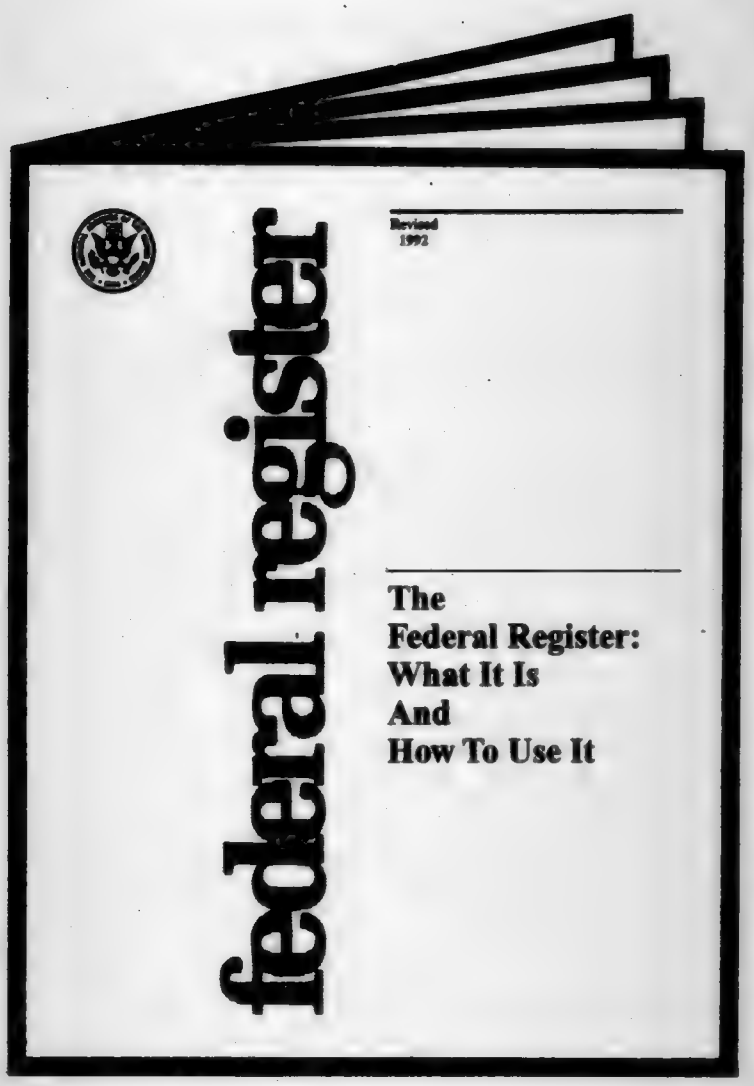

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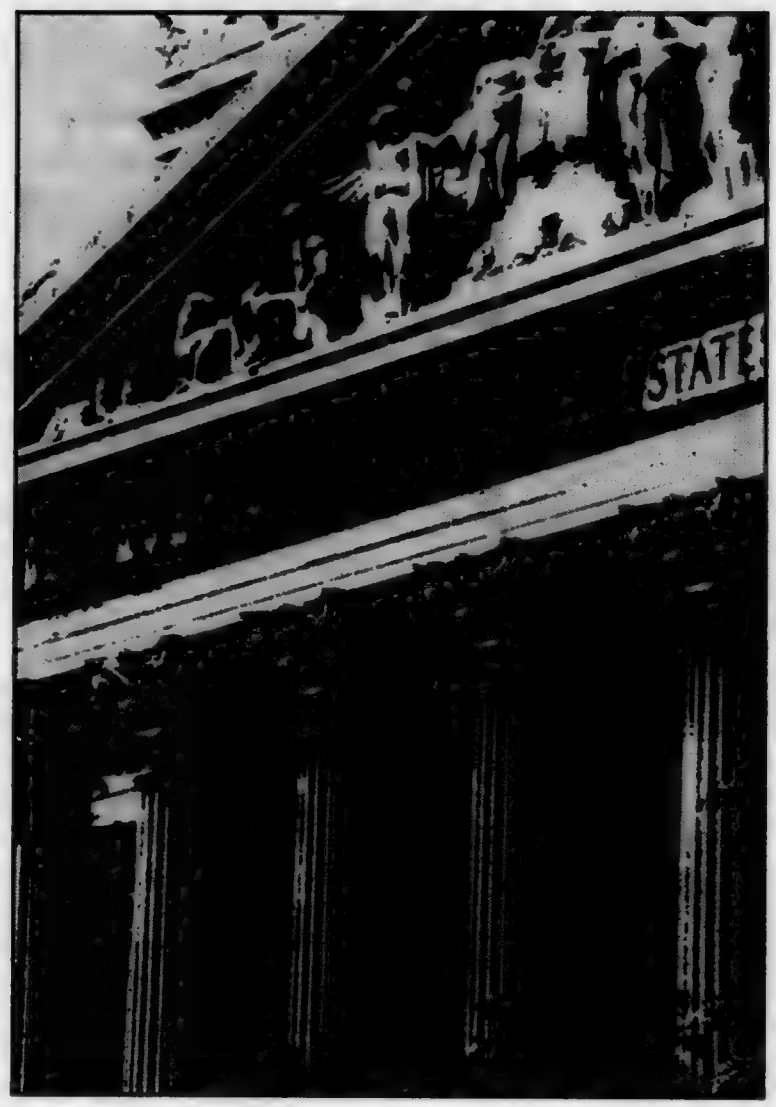

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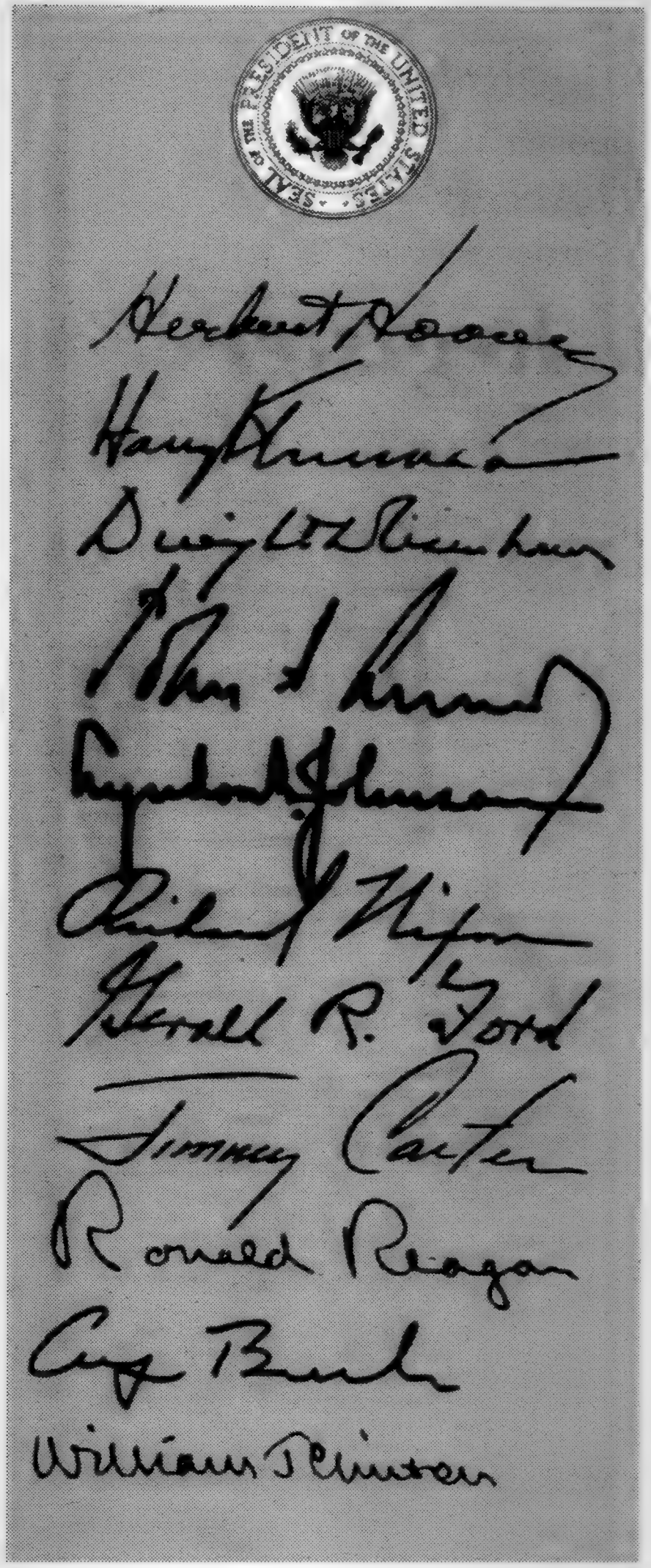

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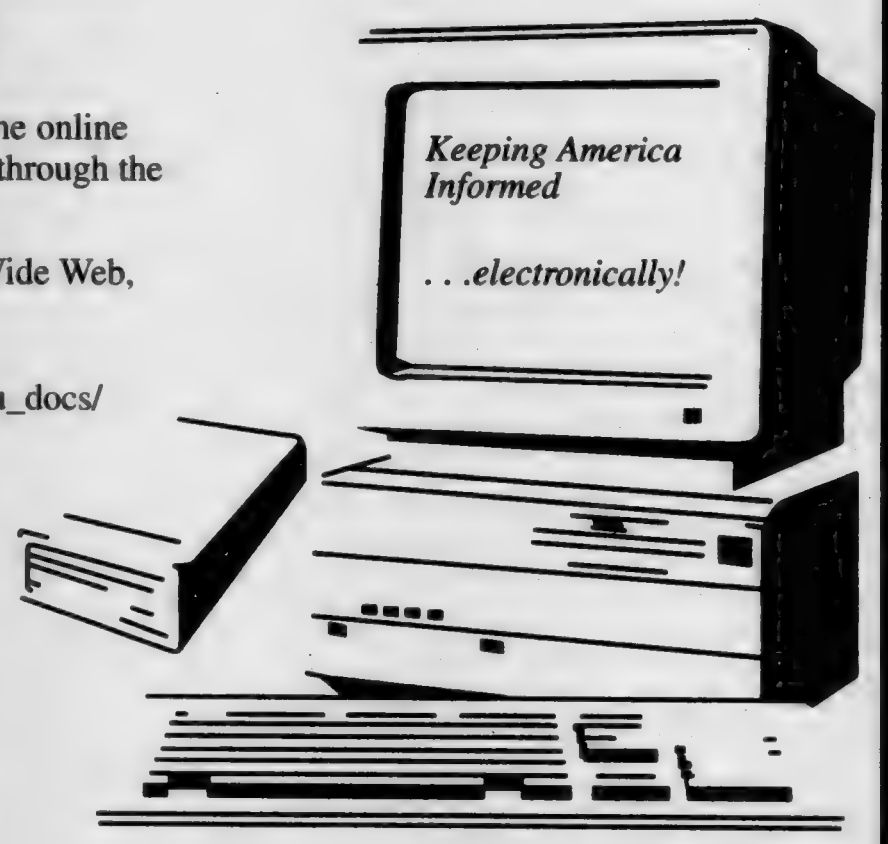

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Rules and Regulations

Federal Register
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Monday, January 25, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV99–993–1 FR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the current assessment rate from $2.16 to $3.28 per ton of salable dried prunes for the Prune Marketing Committee (Committee) under Marketing Order No. 993 for the 1998–99 and subsequent crop years. The Committee is responsible for local administration of the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The increased assessment rate is needed because the assessable tonnage is expected to be 99,750 salable tons, or 38 percent less than the Committee's initial estimate for 1998–99. Increasing the assessment rate to $3.28 per ton of salable dried prunes will allow the Committee to meet its 1998–99 expenses and to operate for the first three months of the 1999–2000 crop year before monies become available from that year's assessments. The higher assessment rate applies to the entire 1998–99 crop year, which began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: January 26, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 1998, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1998–99 and subsequent crop years from $2.16 per ton to $3.28 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California dried prunes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–99 and subsequent crop years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 1, 1998, and unanimously recommended reducing its 1998–99 budget from $348,840 to $327,180 and increasing the current assessment rate from $2.16 to $3.28 per ton of salable dried prunes. The assessment rate of $2.16 per ton was approved by the Department in a final rule published in the **Federal Register** on October 2, 1998 (63 FR

52959). The $1.22 per ton increase in the assessment rate to $3.28 per ton will allow the Committee to meet its 1998–99 expenses and to operate for the first three months of the 1999–2000 crop year before monies become available from next year's assessments. The California Agricultural Statistical Service originally estimated a 170,000 ton crop (161,500 salable tons) for the 1998–99 crop year. Due to unusually cool and wet weather conditions caused by the El Niño this season, the 1998–99 crop harvest is about four weeks late, of poor quality, and approximately 50 percent less than normal size. The Committee now expects the salable prune tonnage to be 99,750 salable tons, or 38 percent less than the Committee's initial estimate for 1998–99.

The following table compares major budget expenditures recommended by the Committee on June 25, 1998, and major budget expenditures in the revised budget recommended on December 1, 1998:

Budget expense categories	($1,000)	
	6/25/98	12/1/98
Salaries, Wages and Benefits	191.5	189.7
Research and Development	30	0
Office Rent	23	23
Travel	21	18.5
Acreage Survey	21	0
Reserve (Contingencies)	9.14	50.93
Equipment Rental	9	9
Data Processing	8	3.85
Stationery and Printing	5.5	5
Office Supplies	5	5
Postage and Messenger	5	5

The assessment rate recommended by the Committee was derived by dividing the reduced expenses by its reduced estimate of salable California dried prunes. Production of dried prunes for the year is estimated at 99,750 salable tons which should provide $327,180 in assessment income. Interest income also will be available to cover anticipated expenses. The Committee is authorized to use excess assessment funds from the 1997–98 crop year (currently estimated at $58,088) for up to five months beyond the end of the crop year to meet 1998–99 crop year expenses. At the end of the five months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Income derived from handler assessments, along with interest income, will be adequate to cover budgeted expenses.

The assessment rate established in this rule will be in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated prune industry profile shows that 8 of the 20 handlers (40 percent) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60 percent) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 90 producers, or about 7 percent of the 1,250 total producers, are considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent crop years from $2.16 per ton to $3.28 per ton of salable dried prunes. The Committee unanimously recommended 1998–99 expenditures of $327,180 and an assessment rate of $3.28 per ton of salable dried prunes. The assessment rate of $3.28 is $1.22 higher than the current 1998–99 rate (63 FR 52959, October 2, 1998). The quantity of assessable dried prunes for the 1998–99 crop year is now estimated at 99,750 salable tons. Thus, the $3.28 rate should provide $327,180 in assessment income and be adequate to meet this year's expenses. Interest income will also be available to cover budgeted expenses if the 1998–99 expected assessment income falls short.

The following table compares major budget expenditures recommended by the Committee on June 25, 1998, with major budget expenditures in the revised budget recommended on December 1, 1998:

Budget expense categories	($1,000)	
	6/25/98	12/1/98
Salaries, Wages and Benefits	191.5	189.7
Research and Development	30	0
Office Rent	23	23
Travel	21	18.5
Acreage Survey	21	0
Reserve (Contingencies)	9.14	50.93
Equipment Rental	9	9
Data Processing	8	3.85
Stationery and Printing	5.5	5
Office Supplies	5	5
Postage and Messenger	5	5

Due to unusually cool and wet weather conditions caused by the El Nino this season, the 1998–99 crop harvest is about four weeks late, of poor quality, and approximately 50 percent less than normal size. At its December 1, 1998, meeting, the Committee reduced the California Agricultural Statistical Service's dried prune crop estimate for 1998–99 from 170,000 tons (161,500 salable tons) to 103,000 tons (99,750 salable tons).

The Committee reviewed and unanimously recommended 1998–99 expenditures of $327,180. The assessment rate of $3.28 per ton of salable dried prunes was then determined by dividing the total recommended budget by the reduced estimate for salable dried prunes. The Committee is authorized to use excess assessment funds from the 1997–98 crop year (currently estimated at $58,088) for up to five months beyond the end of the crop year to fund 1998–99 crop year expenses. At the end of the five months, the Committee refunds or credits excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 1998–99 would be adequate to cover authorized expenses.

Recent price information indicates that the grower price for the 1998–99 season should average about $800 per salable ton of dried prunes. Based on estimated shipments of 99,750 salable tons, assessment revenue during the 1998–99 crop year is expected to be less than 1 percent of the total expected grower revenue.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California dried prune industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 1, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on December 18, 1998 (63 FR 70063). The proposal was made available through the Internet by the Office of the Federal Register. A 10-day comment period ending December 28, 1998, was provided for interested persons to respond to the proposal. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee needs to collect assessments from handlers based on the higher rate as soon as possible to pay its expenses which are incurred on a continuous basis; (2) the 1998-99 crop year began on August 1, 1998, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dried prunes handled during such year. Further, handlers are aware of this rule which was recommended unanimously at a public meeting. Also, no comments were received in response to the proposed rule on the assessment rate increase.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 1998, an assessment rate of $3.28 per ton is established for California dried prunes.

Dated: January 19, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1611 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–ASW–47]

RIN 2120–AA66

Amendments to Restricted Areas 6302C, D and E; Fort Hood, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the internal boundaries of Restricted Areas 6302 (R–6302) Fort Hood, TX. Specifically, this action reduces the dimension of R–6302E, and reconfigures the internal adjoining boundaries of R–6302C and R–6302D. In addition, this action removes the altitude restrictions associated with R–6302C and R–6302D, when R–6302E is activated. The FAA is taking this action in response to a request from the United States Army (USA) to modify the restricted areas to more accurately reflect the actual use of the airspace.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Bill Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a recent review of restricted area activity, the USA requested that the FAA take action to modify the dimensions of R–6302E to accurately reflect the protected airspace required for the operations being conducted therein. As a result of the review, the USA determined that when R–6302E is activated it encompasses the airspace above R–6302C and R–6302D which have not been activated because they are not required for the activity conducted therein. The FAA is granting the request because the total modification of the boundaries of the restricted airspace will provide additional airspace for other users of the National Airspace System. While this action modifies the western boundary of R–6302E, and redefines the internal abutting boundaries of R–6302C and R–6302D, it does not affect the designated altitudes, or activities conducted within R–6302C, R–6302D, and R–6302E.

The Rule

This amendment to 14 CFR part 73 modifies the dimension of R–6302E and the internal boundaries of R–6302C, and R–6302D. The FAA is taking this action in response to a request to modify the restricted areas to more accurately reflect the actual use of the airspace. Because this airspace is restricted, the solicitation of comments would not offer any meaningful right or benefit to any segment of the public, therefore, notice and comment under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action reduces the lateral size of R–6302E, and internal boundaries of R–6302C and R–6302D. In accordance with FAA Order 1050.1D, "Polices and Procedures for Considering Environmental Impacts," this action is not subject to environmental assessments and procedures and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.25 [Amended]

§ 73.25 is amended as follows:

* * * * *

R–6302C Fort Hood, TX [Amended]

By removing the existing boundaries and substituting the following:

Boundaries: Beginning at lat. 31°09′01″ N., long. 97°45′01″ W.; to lat. 31°09′01″ N., long. 97°55′01″ W.; to lat. 31°16′01″ N., long. 97°54′01″ W.; to lat. 31°19′01″ N., long. 97°51′01″ W.; to lat. 31°18′25″ N., long. 97°48′48″ W.; to lat. 31°14′15″ N., long. 97°50′33″ W.; to lat. 31°10′01″ N., long. 97°48′01″ W.; to the point of the beginning.

R–6302D Fort Hood, TX [Amended]

By removing the existing boundaries and substituting the following:

Boundaries: Beginning at lat. 31°18′25″ N., long. 97°48′48″ W.; to lat. 31°19′01″ N., long. 97°51′01″ W.; to lat. 31°24′01″ N., long. 97°48′01″ W.; to lat. 31°23′01″ N., long. 97°43′01″ W.; to lat. 31°22′08″ N., long. 97°41′56″ W.; to lat. 31°22′09″ N., long. 97°43′27″ W.; to lat. 31°20′00″ N., long. 97°45′23″ W.; to lat. 31°18′23″ N., long. 97°45′43″ W.; to the point of the beginning.

R–6302E Fort Hood, TX [Amended]

By removing the existing boundaries and substituting the following:

Boundaries: Beginning at lat. 31°22′08″ N., long. 97°41′56″ W.; to lat. 31°21′01″ N., long. 97°41′01″ W.; to lat. 31°20′01″ N., long. 97°41′01″ W.; to lat. 31°14′01″ N., long. 97°33′01″ W.; to lat. 31°08′01″ N., long. 97°39′01″ W.; to lat. 31°10′01″ N., long. 97°41′01″ W.; to lat. 31°09′01″ N., long. 97°43′01″ W.; to lat. 31°09′01″ N., long. 97°45′01″ W.; to lat. 31°10′01″ N., long. 97°48′01″ W.; to lat. 31°14′15″ N., long. 97°50′33″ W.; to lat. 31°18′25″ N., long. 97°48′48″ W.; to lat. 31°18′23″ N., long. 97°45′43″ W.; to lat. 31°20′00″ N., long. 97°45′23″ W.; to lat. 31°22′09″ N., long. 97°43′27″ W.; to the point of the beginning.

* * * * *

Issued in Washington, DC, January 15, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–1555 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 981006253–9021–03; I.D. 082698D]

RIN 0648–AK05

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 9; OMB Control Numbers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved measures in Amendment 9 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This final rule increases the minimum size for red porgy, black sea bass, gag, and black grouper for all participants in the fishery; increases the minimum size for vermilion snapper for a person subject to the bag limit; establishes bag limits for red porgy and black sea bass; during March and April, prohibits harvest and possession in

excess of the bag limit and prohibits purchase and sale of red porgy, gag grouper, and black grouper; for greater amberjack, reduces the bag limit, establishes a commercial quota, prohibits sale of greater amberjack caught under the bag limit when the commercial fishery is closed, prohibits harvest and possession in excess of the bag limit during April, changes the beginning of the fishing year to May 1, and prohibits coring (i.e., removing the head from the carcass); restricts possession of gag and black grouper within the aggregate grouper bag limit; establishes an aggregate bag limit for all snapper-grouper species currently not under a bag limit (excluding tomtate and blue runner); requires escape vents and escape panels with degradable hinges and fasteners in black sea bass pots; and specifies that a vessel with longline gear on board may only possess certain deep-water species of snapper-grouper (i.e., snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish.) Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this rule, publishes the OMB control number for these collections, and corrects the list of control numbers applicable to title 50 of the Code of Federal Regulations. The intended effect of this rule is to reduce overfishing and to conserve and manage these snapper-grouper species.

DATES: This final rule is effective February 24, 1999.

ADDRESSES: Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On September 8, 1998, NMFS announced the availability of Amendment 9 and requested comments on the amendment (63 FR 47461). On November 12, 1998, NMFS published a proposed rule to implement the measures in Amendment 9 and additional measures proposed by NMFS and requested comments on the rule (63 FR 63276). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here. On December 9, 1998, after considering the comments received on the amendment and proposed rule, NMFS partially approved Amendment 9. The proposed commercial trip limit for greater amberjack was disapproved.

Comments and Responses

Fifteen comments were received during the public comment periods on the amendment and proposed rule. A summary of the comments and NMFS' responses follow.

Comment 1: Seven commenters supported the management measures in Amendment 9. They urged NMFS to implement Amendment 9 as soon as possible, and they are concerned about the delay in implementing this amendment.

Response: NMFS agrees, with the exception of the commercial trip limit for greater amberjack that NMFS disapproved.

Comment 2: Two commenters opposed allowing recreational anglers to fish during the spawning closures because that practice places most of the conservation burden on commercial fishermen.

Response: The Council and NMFS believe that the combined effect of the management measures results in an equitable sharing of the conservation burden on the respective user groups. In particular, the reduction in bag limits, increases in minimum size limits, and spawning closures ensure that recreational anglers share the conservation burden.

Comment 3: One commenter supports the increases in minimum size limit for black sea bass and vermilion snapper.

Response: NMFS agrees.

Comment 4: Two commercial fishermen who fish off northeast Florida and further north oppose the 1,000-lb (454-kg) trip limit for greater amberjack, and another opposes the quota for greater amberjack. They stated that the trip limit would severely impact their fishing operations because their fishing grounds are located approximately 50 miles (80.5 km) offshore. They commented that because of the low price of amberjack, it would not be economically feasible to travel a long distance and restrict trip catches to 1,000 lb (454-kg). They contend that these measures would put them out of business.

Response: Based on current information, it does not appear that the proposed commercial trip limit would provide benefits that would exceed costs. The benefits of a trip limit tend to be high when a restrictive quota creates the classic commercial fishing derby. However, when the quota is not very restrictive, as in the case at hand, the loss of individual trip benefits can easily offset whatever benefits might be accrued due to a lengthening of the fishing season. These individual trip losses stem from the fact that costs per trip do not vary greatly with the catch per trip, and a restrictive trip limit lowers the profitability of each individual trip. In consideration of this, and the concerns expressed by these commenters, NMFS disapproved the trip limit. NMFS believes that the approved greater amberjack measures in Amendment 9, especially the annual commercial quota, are necessary to protect this resource from overfishing.

Comment 5: One fisherman opposes beginning the fishing year for greater amberjack on May 1 because he fishes in the winter and is concerned that the quota would be taken before he could fish.

Response: Landings of greater amberjack have been quite variable in recent years. Thus, it is possible that the quota could be reached and closed in any given fishing year prior to the April spawning closure at the end of that year. However, based on landings in recent years, it appears that such a closure would not occur prior to March. Thus, fishermen should be able to fish most of the winter. The Council and NMFS will monitor the condition of the greater amberjack resource, and adjustments to the annual quota will be made as required.

Comment 6: One fisherman states that peak spawning of black grouper occurs during December, January, and February, not March and April. Thus, he believes that the spawning closure should be December through February rather than March and April. Also, he opposes raising the minimum size limit because it could focus fishing effort on males which could lead to a shortage of males. Finally, he recommends that the Council establish marine reserves because other management measures may not be sufficient to protect black grouper.

Response: The best scientific information available indicates that

major spawning occurs in March and April but that spawning is protracted. The Council and NMFS will monitor the condition of the black grouper resource, and as information becomes available, make adjustments to the spawning closure dates, if necessary. Raising the minimum size limit will increase yield-per-recruit and provide additional protection for spawners. Black grouper appear severely overfished; thus, it is imperative to provide additional protection to the spawning population. The Council is considering the use of marine reserves for management of snapper-grouper species because this approach may be useful in conjunction with traditional management measures.

Comment 7: Three hundred and twenty-two commercial fishermen signed a petition that opposes the March-April spawning closure and the increase in minimum size from 20 to 24 inches (51 to 61 cm) total length for black grouper. They state that the elimination of fish traps and longline gear in their area are all the biological measures that are needed to conserve black grouper. They advise managers to do additional research on the biological impacts of these measures.

Response: Because gag and black grouper are both called black grouper, it has been difficult to document trends in landings in commercial catches, which account for about 80 percent of total landings. Nonetheless, commercial catches declined about 40 percent from 1990 to 1995. Headboat catches declined 90 percent between 1983 and 1990. Also, a retrospective stock assessment, based on data from 1979 through 1995, indicates that black grouper are severely overfished with a spawning potential ratio of approximately 5 percent. The proposed increase in minimum size limit will result in increased yield-per-recruit, which should result in greater landings in the future because the average weight of fish taken will increase. In summary, the declines in recreational and commercial catches and the best available scientific information indicate that black grouper are overfished and, thus, the proposed management measures are necessary to rebuild this resource.

Comment 8: Eighty-two fishermen signed a petition that opposes all measures in Amendment 9. They believe that the limited access program, implemented under FMP Amendment 8, and the current moratorium on king mackerel permits are sufficient to protect snapper-grouper resources. They specifically oppose the spawning season closures and increases in minimum size limits. They advise NMFS to wait until the impacts of past conservation measures have been fully evaluated.

Response: The best available scientific information shows that red porgy, black sea bass, vermilion snapper, black grouper and gag are overfished. These stocks need to be rebuilt to the level where they are capable of producing their respective maximum sustainable yields. In this context, FMP Amendment 8, which limits the number of fishermen to anyone who held a Federal snapper-grouper permit between February 11, 1996 and February 11, 1997, and who reported at least one pound of fish taken between January 1, 1993 and August 20, 1996, does little, if anything, to reduce fishing pressure. Similarly, the moratorium on king mackerel permits established by Amendment 8 to the FMP for Coastal Migratory Pelagics has had little, if any, impact upon the snapper-grouper fishery. Consequently, additional measures are required to rebuild the overfished resources.

The Magnuson-Stevens Act specifies that overfishing should be prevented and overfished stocks should be rebuilt. Specifically, stocks should be rebuilt to a stock size that would result in a long-term average catch approaching maximum sustainable yield under prevailing ecological and environmental conditions. The approved management measures in Amendment 9 are necessary to rebuild overfished stocks in the snapper-grouper fishery. The greater amberjack measures are designed to prevent overfishing. These measures are consistent with the precautionary approach in fishing management required by the Sustainable Fisheries Act of 1996, as it amended the Magnuson-Stevens Act. The Council has indicated that it will take further conservation action should it be required for the full recovery of overfished resources and the prevention of overfishing.

Changes From the Proposed Rule

For the reasons discussed above, NMFS has disapproved the commercial trip limit for greater amberjack. That measure, as contained in § 622.44(c)(4) of the proposed rule, has been removed from this final rule.

Classification

Under NOAA Administrative Order 205–11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, Department of Commerce, has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the AA, determined that the approved measures of Amendment 9 are necessary for the conservation and management of the snapper-grouper fishery off the southern Atlantic states and that, with the exception of the measure that was disapproved, Amendment 9 is consistent with the Magnuson-Stevens Act and other applicable law.

The Council prepared a final supplemental environmental impact statement for this FMP; a notice of availability was published on October 9, 1998 (63 FR 54476).

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a FRFA for the final rule implementing Amendment 9 to the FMP. The FRFA was based on the Initial Regulatory Flexibility Analysis (IRFA) and public comments received on the proposed rule and is summarized below.

Amendment 9 contains 10 management actions (each including one or more measures) that provide additional regulations for red porgy, black sea bass, greater amberjack, vermilion snapper, gag, and black grouper. These actions also provide for escape mechanisms in black sea bass pots, specify allowable species that may be harvested by longlines, establish an aggregate recreational bag limit of 20 fish per person per day inclusive of all snapper grouper species currently not under a bag limit, and further define an aggregate bag limit for all grouper species in combination. These actions are being taken because of fishery problems that include excessive fishing mortality, habitat degradation, and localized depletion of fishery resources. Given these problems, the Council developed Amendment 9 specifically to prevent overfishing, minimize habitat damage, minimize gear and area conflicts among fishermen, evaluate and minimize localized depletion, and minimize bycatch. Significant issues raised during the public comment periods on the amendment and proposed rule, included: Generic support by individuals and institutions of all the conservation measures; opposition to allowing recreational anglers to fish during the spawning closures because that practice places most of the conservation burden on commercial fishermen; opposition to the trip limit for greater amberjack and quota; opposition to the fishing year starting on May 1 for greater amberjack and to the minimum size limit; support for marine reserves as an alternative management policy; opposition to the March-April spawning closure and the

increase in minimum size for black grouper; opposition to all the measures in the amendment and rule; and concern about the length of time NMFS has taken to issue this final rule. This rule will apply to all of the entities that currently hold valid Federal permits in the snapper grouper fishery and recreational fishermen (including headboats, charter boats and private/rental boats). It is estimated that about 2,500 commercial vessels currently hold valid Federal snapper grouper permits. The average investment in 1995 in vessel and equipment ranged from $53,000 for vessels operating with vertical lines to $237,000 for vessels operating with bottom longlines. The estimated cost of new vessels comparably equipped ranges from an average of $113,000 for vessels with vertical lines to $340,000 for vessels with bottom longlines. Data extrapolated from the NMFS catch and value data for 1995 indicate an estimated annual exvessel revenue value of about $6,200 for all vessels in the fishery. One of the measures will entail modifying existing black sea bass pots by requiring escape vents and escape panels with biodegradable fasteners. The total cost to modify all the sea bass pots used in the fishery is estimated at $25,000 or 13.5 percent of the current value of the pots. The Council and NMFS considered several alternatives to the Amendment 9 management actions approved by NMFS and implemented by this final rule and described in the background section of the FRFA. The Council prepared an IRFA which describes the impact the proposed rule, if adopted, would have on small entities. The findings of the IRFA were used as the baseline for the FRFA's discussion of the relative impacts of the preferred versus rejected alternatives. Virtually all the proposed actions are designed to reduce fishing mortality on the species addressed by the amendment, and these measures tend to create short-term economic losses for both commercial and recreational fishermen. The general approach used by the Council to minimize adverse socioeconomic impacts was to consider several alternatives for most of the proposed actions and to choose those which met the overfishing objectives while minimizing economic losses to the fishery. Rejected alternatives were either not capable of reducing fishing mortality by an acceptable level or were able to meet the fishing mortality reduction level but created greater adverse economic impacts than other alternatives that also met the conservation objectives.

Copies of the FRFA are available (see **ADDRESSES**).

This rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA)—namely, the requirement that dealers possessing red porgy, gag, black grouper, or greater amberjack during seasonal closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. This requirement has been approved by OMB under OMB control number 0648–0365. The public reporting burden for this collection of information is estimated at 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspects of the collections of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 19, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902 and 50 CFR part 622 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b) table, under 50 CFR, the following entry is added in numerical order to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
. . . . .	
50 CFR	
. . . . .	
622.45	0365
. . . . .	

50 CFR Chapter VI

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

3. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 622.30, paragraph (d) is added to read as follows:

§ 622.30 Fishing years.

* * * * *

(d) *South Atlantic greater amberjack*—May 1 through April 30.

5. In § 622.36, a heading for paragraph (a) is added and paragraph (b) is revised to read as follows:

§ 622.36 Seasonal harvest limitations.

(a) *Gulf EEZ.* * * *

(b) *South Atlantic EEZ*—(1) *Greater amberjack spawning season.* During April, each year, the possession of greater amberjack in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such greater amberjack are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(6).

(2) *Mutton snapper spawning season.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person per day or 10 per person per trip, whichever is more restrictive.

(3) *Wreckfish spawning-season closure.* From January 15 through April 15, each year, no person may harvest or possess on a fishing vessel wreckfish in

or from the EEZ; offload wreckfish from the EEZ; or sell or purchase wreckfish in or from the EEZ. The prohibition on sale or purchase of wreckfish does not apply to trade in wreckfish that were harvested, offloaded, and sold or purchased prior to January 15 and were held in cold storage by a dealer or processor.

(4) *Black grouper and gag.* During March and April, each year, the possession of black grouper and gag in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such black grouper or gag were harvested, is limited to two black grouper or gag, combined, per person per day or two black grouper or gag, combined, per person per trip, whichever is more restrictive. Such black grouper or gag are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

(5) *Red porgy.* During March and April, each year, the possession of red porgy in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such red porgy were harvested, is limited to five per person per day or five per person per trip, whichever is more restrictive. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

6. In § 622.37, paragraph (e) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(e) *South Atlantic snapper-grouper*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—11 inches (27.9 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (d)(1)(v) and 12 inches (30.5 cm), TL, for a fish taken by a person not subject to the bag limit.

(iii) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers; and schoolmaster—12 inches (30.5 cm), TL.

(iv) Mutton snapper—16 inches (40.6 cm), TL.

(v) Red snapper—20 inches (50.8 cm), TL.

(2) *Grouper.* (i) Red, yellowfin, and yellowmouth grouper; and scamp—20 inches (50.8 cm), TL.

(ii) Black grouper and gag—24 inches (61.0 cm), TL.

(3) *Other snapper-grouper species.* (i) Black sea bass—10 inches (25.4 cm), TL.

(ii) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(iii) Hogfish—12 inches (30.5 cm), fork length.

(iv) Red porgy—14 inches (35.6 cm), TL.

(v) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

* * * * *

7. In § 622.38, paragraph (e) is removed; paragraphs (f) through (i) are redesignated as paragraphs (e) through (h), respectively; and paragraph (a) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: Cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c) and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

8. In § 622.39, a concluding sentence is added to paragraph (a)(1); paragraphs (d)(1)(i) and (d)(1)(ii) are revised; and paragraphs (d)(1)(vi) through (viii) are added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * *

(1) * * * The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in this section are not exceeded.

* * * * *

(d) * * *

(1) * * *

(i) Greater amberjack—1.

(ii) Groupers, combined, excluding jewfish and Nassau grouper, and tilefishes—5. However, within the 5-fish aggregate bag limit, no more than two fish may be gag or black grouper, combined.

* * * * *

(vi) Red porgy—5.

(vii) Black sea bass—20.

(viii) South Atlantic snapper-grouper, combined, excluding tomtate and blue runner and those specified in paragraphs (d)(1)(i) through (vii) of this section—20.

* * * * *

9. In § 622.40, paragraph (b)(3)(i) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(b) * * *

(3) * * *

(i) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.3′ N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1′ N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have—

(A) On at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(*1*) Ungalvanized or uncoated iron wire with a diameter not exceeding 0.041 inches (1.0 mm), that is, 19 gauge wire.

(*2*) Galvanic timed-release mechanisms with a letter grade designation (degradability index) no higher than J.

(B) An unobstructed escape vent opening on at least two opposite vertical sides, excluding top and bottom. The minimum dimensions of an escape vent opening (based on inside measurement) are:

(*1*) 1⅛ by 5¾ inches (2.9 by 14.6 cm) for a rectangular vent.

(*2*) 1.75 by 1.75 inches (4.5 by 4.5 cm) for a square vent.

(*3*) 2.0-inch (5.1-cm) diameter for a round vent.

* * * * *

10. In § 622.41, paragraph (d)(6) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(d) * * *

(6) *Longline species limitation.* A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ on a trip with a longline on board, may possess only the following South Atlantic snapper-grouper: snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler,

a cable of diameter suitable for use in the longline fishery on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

* * * * *

11. In § 622.42, paragraph (e)(3) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(3) *Greater amberjack*—1,169,931 lb (530,672 kg), gutted weight, that is, eviscerated but otherwise whole.

* * * * *

12. In § 622.43, paragraphs (a)(5) and (b)(1) are revised to read as follows:

§ 622.43 Closures.

(a) * * *

(5) *South Atlantic snapper-grouper, excluding wreckfish.—(i) Greater amberjack.* The bag limit specified in § 622.39(d)(1)(i) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of greater amberjack in or from the South Atlantic EEZ, and the sale or purchase of greater amberjack taken from the EEZ is prohibited. In addition, the bag and possession limits for greater amberjack and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested.

(ii) *Golden tilefish and snowy grouper.* Golden tilefish and snowy grouper, for which there are quotas, are managed under the commercial trip limits specified in § 622.44(c) in lieu of the closure provisions of this section.

* * * * *

(b) * * *

(1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, greater amberjack, or wreckfish in paragraphs (a)(1), (a)(3)(iii), (a)(4), (a)(5)(i), or (a)(6) of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

* * * * *

13. In § 622.45, paragraphs (d)(5) and (d)(6) are added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(5) During March and April, no person may sell or purchase a red porgy, gag, or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during March and April does not apply to red porgy, gag, or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy, gag, or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the red porgy, gag, or black grouper;

(iii) The port and date of offloading from the vessel harvesting the red porgy, gag, or black grouper; and

(iv) A statement signed by the dealer attesting that the red porgy, gag, or black grouper was harvested from an area other than the South Atlantic.

(6) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the greater amberjack;

(iii) The port and date of offloading from the vessel harvesting the greater amberjack; and

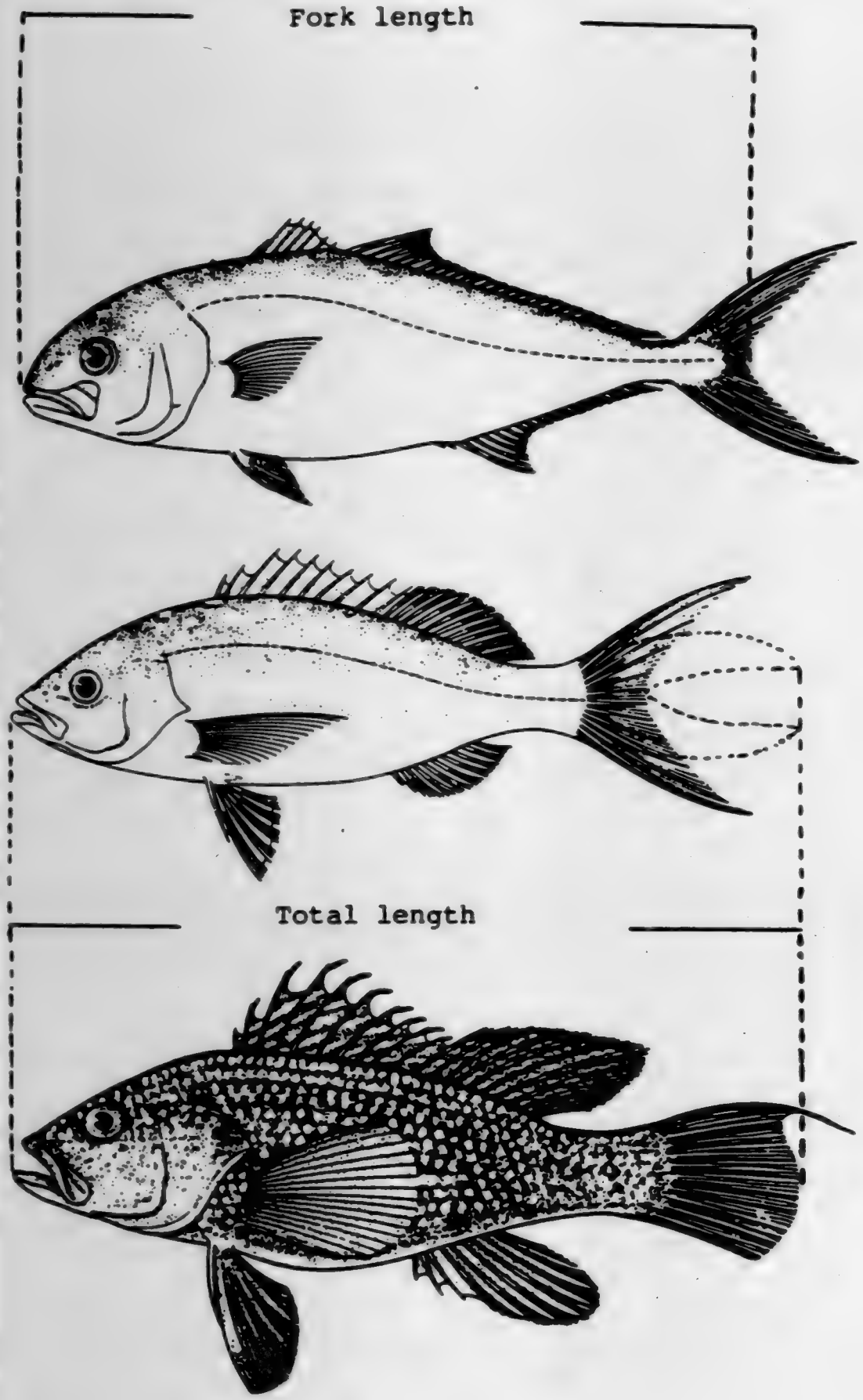
(iv) A statement signed by the dealer attesting that the greater amberjack was harvested from an area other than the South Atlantic.

* * * * *

14. Figure 2 of Appendix C to Part 622 is revised to read as follows:

BILLING CODE 3510-22-P

Figure 2 to Appendix C to Part 622— Illustration of Length Measurements



[FR Doc. 99–1604 Filed 1–21–99; 9:33 am]
BILLING CODE 3510–22–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8811]

RIN 1545–AV83

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to additions to, and deletions from, the list of items of information disclosed to the Bureau of the Census for use in certain statistical programs. These regulations provide guidance to IRS personnel responsible for disclosing the information. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 25, 1999.

Applicability Date: For dates of applicability, see § 301.6103(j)(1)–1T(e) of these regulations.

FOR FURTHER INFORMATION CONTACT: Jamie Bernstein, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1) of the Internal Revenue Code, upon written request from the Secretary of Commerce, the Secretary is to furnish to the Bureau of the Census ("Bureau") tax return information that is prescribed by Treasury regulations for the purpose of structuring censuses and national economic accounts and conducting related statistical activities. Section 301.6103(j)(1)–1 of the regulations provides an itemized description of the return information authorized to be disclosed for this purpose. Periodically, the disclosure regulations are amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document adopts temporary regulations that authorize IRS personnel to disclose the additional items of return information that have been requested by the Secretary of Commerce. The temporary regulations also delete certain items of return information that are enumerated in the existing regulations but that the Secretary of Commerce has indicated are no longer needed.

Except for § 301.6103(j)(1)–1T(b)(3), (b)(6)(i)(A) and (b)(6)(iii), the text of the temporary regulations is the same as 26 CFR 301.6103(j)(1)–1. The changes made by § 301.6103(j)(1)–1T(b)(3), (b)(6)(i)(A) and (b)(6)(iii) are discussed below.

Explanation of Provisions

The request by the Secretary of Commerce for additional items of return information has indicated several areas in which changes to existing Bureau access to tax return information either would improve present statistical programs or are necessary to implement new programs.

To reduce small businesses' direct reporting burden in quinquennial economic censuses and current economic surveys, and to improve the quality of the data received, the Bureau needs certain items of information set forth in tax returns. These items include total expenses or deductions, beginning- and end-of-year inventories, net gain from sales of business property, other income, and total income.

The Secretary of Commerce also has requested identity information of parent corporations as shown on corporate tax returns. This information will enable the Bureau to collect data for various economic surveys at the subsidiary or division level rather than at the establishment level. Restructuring data collection in accordance with such new organizational linkages will reduce the burden on individual business establishments to estimate data relating to their affiliates, enhance the quality of the data collected, and provide the Bureau with an efficient sampling frame for surveys collecting certain data, such as capital expenditures, that are typically not available at the establishment level.

To eliminate the follow-up contact of corporate taxpayers presently required under the Quarterly Financial Report (QFR) program in order to establish S corporation status, the Bureau needs the document code and district office code from corporate returns. Another improvement to the QFR program would be effected by the requested disclosure of parent corporation identity information, because subsidiaries could then be linked before a sample was selected and would be relieved of the separate Census reporting requirements. Finally, the Bureau seeks to enhance the quality and reduce the size of sample frames under the QFR program by identifying inactive corporations so that they can be excluded from the universe subject to sampling. This requires that certain items of corporate employment tax information (employer identification number, tax period, total compensation, and taxable wages and tips), available to the Bureau under the existing regulations for economic census purposes, be available to the Bureau as well for QFR purposes.

The Secretary of Commerce has advised that the Bureau no longer uses certain items of information listed in the existing regulations: sales of livestock and produce raised, Schedule E information filed with the Form 1120 series, and, with respect to the QFR program, net income or loss. Accordingly, the temporary regulations have deleted these items from the enumeration of return information to be disclosed to the Bureau.

The transfer of the Census of Agriculture to the Department of Agriculture under the Census of Agriculture Act of 1997 (Pub. L. 105–113) has also obviated the need for the Secretary of Commerce to receive certain items of information. These items are: Schedule F filed with the Form 1040 series, net farm profits, agricultural activity code, and answers to material participation questions. These items have been deleted in the temporary regulations. For simplification and consistency, the term "loss" is not expressly stated in these regulations as an alternative to "income" or "gain," but it is the intent of the Secretary to interpret "income" or "gain" as including negative or loss figures and to provide any such figures to the Bureau.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) see the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Douglas Giblen, Office of the Associate Chief Counsel

(International) (formerly of the Office of Assistant Chief Counsel (Disclosure Litigation)). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(j)(1)–1T also issued under 26 U.S.C. 6103(j)(1); * * *

Par. 2. Section 301.6103(j)(1)–1 is amended by revising paragraphs (b)(3) and (b)(6)(i)(A) to read as follows:

§ 301.6103(j)(1)–1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b)(3)[Reserved]. For further guidance, see § 301.6103(j)(1)–1T(b)(3).

* * * * *

(b)(6)(i)(A)[Reserved]. For further guidance, see § 301.6103(j)(1)–1T(b)(6)(i)(A).

* * * * *

Par. 3. Section 301.6103(j)(1)–1T is added to read as follows:

§ 301.6103(j)(1)–1T Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).

(a) through (b)(2)[Reserved]. For further guidance, see § 301.6103(j)(1)–1(a) through (b)(2).

(b)(3) Officers or employees of the Internal Revenue Service will disclose the following business related return information reflected on the return of a taxpayer to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, demographic, economic, and agricultural statistics programs, censuses, and surveys. The "return of a taxpayer" includes, but is not limited to, Form 941; Form 990 series; Form 1040 series and Schedules C and SE; Form 1065 and all attending schedules and Form 8825; Form 1120 series and all attending schedules and Form 8825; Form 851; Form 1096; and other business returns, schedules and forms that the Internal Revenue Service may issue—

(i) Taxpayer identity information (as defined in section 6103(b)(6)) including parent corporation, shareholder, partner, and employer identity information;

(ii) Gross income, profits, or receipts;

(iii) Returns and allowances;

(iv) Cost of labor, salaries, and wages;

(v) Total expenses or deductions;

(vi) Total assets;

(vii) Beginning- and end-of-year inventory;

(viii) Royalty income;

(ix) Interest income, including portfolio interest;

(x) Rental income, including gross rents;

(xi) Tax-exempt interest income;

(xii) Net gain from sales of business property;

(xiii) Other income;

(xiv) Total income;

(xv) Percentage of stock owned by each shareholder;

(xvi) Percentage of capital ownership of each partner;

(xvii) End-of-year code;

(xviii) Months actively operated;

(xix) Principal industrial activity code, including the business description;

(xx) Total number of documents and the total amount reported on the Form 1096 transmitting Forms 1099-MISC;

(xxi) Form 941 indicator and business address on Schedule C; and

(xxii) Consolidated return indicator.

(b)(4) and (5)[Reserved]. For further guidance, see § 301.6103(j)(1)–1(b)(4) and (5).

(b)(6)(i) Officers or employees of the Internal Revenue Service will disclose the following return information (but not including return information described in section 6103(o)(2)) reflected on the return of a corporation with respect to the tax imposed by Chapter 1 to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report—

(A) From the business master files of the Internal Revenue Service—

(*1*) Taxpayer identity information (as defined in section 6103(b)(6)), including parent corporation identity information;

(*2*) Document code;

(*3*) District office code;

(*4*) Consolidated return and final return indicators;

(*5*) Principal industrial activity code;

(*6*) Partial year indicator;

(*7*) Annual accounting period;

(*8*) Gross receipts less returns and allowances; and

(9) Total assets.

(b)(6)(i)(B) and (ii)[Reserved]. For further guidance, see § 301.6103(j)(1)–1(b)(6)(i)(B) and (ii).

(iii) Information from an employment tax return disclosed pursuant to § 301.6103(j)(1)–1(b)(2)(iii)(A), (B), (D), (I) and (J) may be used by officers and employees of the Bureau of the Census for the purpose described in and subject to the limitations of this paragraph (b)(6).

(c) and (d) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(c) and (d).

(e) *Effective date.* This section is applicable to the Bureau of the Census on January 25, 1999 through January 22, 2002.

Approved: December 29, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–1284 Filed 1–22–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Department of the Treasury Circular, Public Debt Series No. 1–93]

Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury" or "Department") is issuing in final form an amendment to 31 CFR Part 356 (Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds). This amendment incorporates certain changes in the Department's marketable securities auction program that have been made over the last several months. The amendment defines the term "bid-to-cover ratio" and adds the term to the listing of information that the Department provides in its official auction results announcements. The amendment also updates an example of the proration of auction awards and the sample offering announcements to reflect the change in minimum bid amounts to $1,000 for all marketable

Treasury securities auctions. The amendment replaces the example of a 3-year note with a 5-year note in the sample highlights of the quarterly financing offering announcement. Further, the amendment makes various revisions to reflect the expansion of uniform or single-price auctions to all marketable Treasury securities. Finally, this amendment makes minor, unrelated technical corrections by restating terms in several equations in Appendix B.

EFFECTIVE DATE: January 25, 1999.

ADDRESSES: This final rule is available for downloading from the Bureau of the Public Debt's Internet site at the following address: www.publicdebt.treas.gov. It is also available for public inspection and copying at the Treasury Department Library, FOIA Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Avenue, N.W., Washington, D.C., 20220. Persons wishing to visit the library should call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Kerry Lanham (Acting Director), Chuck Andreatta or Kurt Eidemiller (Senior Financial Advisors), Department of the Treasury, Bureau of the Public Debt, Government Securities Regulations Staff, (202) 219–3632.

SUPPLEMENTARY INFORMATION: 31 CFR Part 356, also referred to as the uniform offering circular, sets out the terms and conditions for the sale and issuance by the Department of the Treasury to the public of marketable Treasury bills, notes, and bonds. The uniform offering circular, in conjunction with offering announcements, represents a comprehensive statement of those terms and conditions.[1] This final amendment provides for several changes to the uniform offering circular. It adds a definition of the term "bid-to-cover ratio" in § 356.2 and revises § 356.23 by incorporating the term in the list of information included in auction results press releases; reflects in § 356.21 and Exhibit A the changes to $1,000 minimum bid amounts for all marketable Treasury securities auctions; replaces in Exhibit A the example of a 3-year note with a 5-year note in the sample highlights of the quarterly financing offering announcement; modifies the definition of "noncompetitive bid" in § 356.2 and revises §§ 356.20 and 356.23 and Exhibit A to reflect the Department's expansion of single-price auctions to all marketable Treasury securities auctions; and makes several minor, unrelated technical corrections in the equations provided in Appendix B.

After the conclusion of a marketable Treasury security auction, the Department makes an official announcement of the auction results through a press release. On June 1, 1998, the Department began providing the "bid-to-cover ratio" in all of its auction results press releases. This is the ratio of the total par amount of competitive and noncompetitive bids by the public divided by the total par amount of the securities awarded to the public. The press and some market participants use this figure as an indicator of the bidding interest and, therefore, the "success" of the auction.

The number is carried to two decimal places, using normal rounding. For example, if the total amount bid by the public[2] is $24.985561 billion, and the amount awarded to the public is $10.013049 billion, the bid-to-cover ratio is 24.985561/10.013049 = 2.495, or 2.50.

By providing the bid-to-cover ratio on the press release, the Department hopes to speed up the dissemination of auction results information to the market. This procedural change, however, should not be viewed as an endorsement by the Department of the bid-to-cover ratio as an analytical method that is superior to other methods for analyzing the results of a marketable Treasury security auction.

Accordingly, § 356.2 of the uniform offering circular is amended by adding the definition of the term "bid-to-cover ratio." In addition, § 356.23 is reformatted and revised by adding the bid-to-cover ratio to the listing of information that the Department provides on the auction results press releases.

This final amendment also revises relevant sections of the uniform offering circular to reflect the Department's decision to reduce the minimum bid amounts (and minimum to hold amounts) to $1,000 for all marketable Treasury securities auctions. All Treasury bills, notes, and bonds are now issued and transferred in increments of $1,000. As announced at the August 1998 quarterly refunding press conference, this reduction in the minimum amounts "puts Treasury bills and short-term notes within the reach of small investors." Prior to this, Treasury bills had minimum bid amounts of $10,000, and Treasury notes with maturities of four years or less required minimum bid amounts of $5,000. Notes with longer maturities and 30-year bonds have for a long time been available in $1,000 minimum purchase amounts. Accordingly, an example describing the Department's proration of certain auction awards in § 356.21 and the highlights of the sample offering announcements listed in Exhibit A are revised to reflect this change.

In addition, the highlights of the sample quarterly financing offering announcement, in Exhibit A, are updated to reflect the Department's decision to issue 5-year notes quarterly, instead of monthly, while discontinuing the issuance of 3-year notes as announced at the quarterly refunding press conference in May 1998.

The Department announced at its November 1998 quarterly refunding press conference on October 28, 1998 that, effective November 2, 1998 all future auctions of marketable Treasury securities will use the uniform or single-price auction method. Previously, Treasury bills and certain Treasury notes and bonds had been auctioned using a multiple-price auction method. As announced at this quarterly refunding press conference, the Department believes "that using uniform-price auctions will promote improved efficiency in the markets, and will reduce the costs of financing the Federal debt." Accordingly, the existing definition of "noncompetitive bid" in § 356.2 is revised and respective 356.20 and 356.23 and the sample offering announcements, in Exhibit A, have been modified to reflect this change. The uniform offering circular, however, will continue to define and describe multiple-price auctions as it has historically done, although this method is not currently used. Finally, this amendment also makes several unrelated and minor technical corrections in the equations of Appendix B.

Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action" pursuant to Executive Order 12866. Because this rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply. There is no new collection of information contained in

[1] The uniform offering circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR Part 356.

[2] For the calculation of the bid-to-cover ratio, the amount bid by and awarded to the public excludes any bids or awards for accounts of foreign and international monetary authorities at Federal Reserve Banks or for the account of the Federal Reserve Banks.

this final rule, and, therefore, the Paperwork Reduction Act does not apply. The collections of information of 31 CFR Part 356 have been previously approved by the Office of Management and Budget under § 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under control number 1535–0112. Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

Dated: January 12, 1999.

Donald V. Hammond,

Fiscal Assistant Secretary.

For the reasons set forth in the preamble, 31 CFR Chapter II, Subchapter B, Part 356, is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102, *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by adding in alphabetical order the definition of "Bid-to-cover ratio" and by revising the definition of "Noncompetitive bid" to read as follows:

§ 356.2 Definitions.

* * * * *

Bid-to-cover ratio means the total par amount of securities bid for by the public divided by the total par amount of securities awarded to the public. The bid-to-cover ratio excludes any bids or awards for accounts of foreign and international monetary authorities at Federal Reserve Banks and for the account of the Federal Reserve Banks.

* * * * *

Noncompetitive bid means, for a single-price auction, a bid to purchase securities at the highest yield or discount rate of awards to competitive bidders. For a multiple-price auction, a noncompetitive bid means a bid to purchase securities at the weighted average yield or discount rate of awards to competitive bidders.

* * * * *

3. Section 356.20 is amended by revising paragraph (b) to read as follows:

§ 356.20 Determination of auction awards.

* * * * *

(b) *Determining the interest rate for new note and bond issues.* The interest rate established as a result of the auction will be set at a 1/8 of one percent increment. For single-price auctions, the interest rate established produces the price closest to, but not above, par when evaluated at the yield awarded to successful competitive bidders. For multiple-price auctions, the interest rate established produces the price closest to, but not above, par when evaluated at the weighted-average yield of awards to successful competitive bidders.

* * * * *

4. Section 356.21 is amended by revising the last three sentences in paragraph (a) to read as follows:

§ 356.21 Proration of awards.

(a) *Awards to submitters.* * * * For example, Treasury bills may be issued with a minimum to hold of $1,000 and multiples of $1,000. Where an $18,000 bid is accepted at the high discount rate, and the percent awarded at the high discount rate is 88%, the award to that bidder will be $16,000, representing an upward adjustment from $15,840 ($18,000 x .88) to an appropriate multiple to hold. If tenders at the highest accepted discount rate are prorated at, for example, a rate of 4%, the award for a $10,000 bid will be $1,000, instead of $400, in order to meet the minimum to hold for a bill issue.

* * * * *

5. Section 356.23 is revised to read as follows:

§ 356.23 Announcing auction results.

(a) After the conclusion of the auction, the Department will make an official announcement of the auction results through a press release.

(b) The press release will include such information as:

(1) The amounts of bids recognized and accepted;

(2) The range of accepted yields or discount rates;

(3) The proration percentage;

(4) The interest rate for a note or bond;

(5) A breakdown of the amounts of noncompetitive and competitive bids recognized and accepted from the public;

(6) The amounts recognized and accepted from the Federal Reserve Banks for their own account and for foreign and international monetary authorities;

(7) The minimum par amount required to strip a note or bond;

(8) The bid-to-cover ratio; and

(9) other information that the Department may decide to include.

Appendix B to Part 356—[Amended]

6. In Appendix B to Part 356, section II, paragraph F is amended by replacing the term v_n (v with subscript n) throughout the paragraph with the term v^n (v with superscript n or, alternatively, v to the nth power).

7. In Appendix B to Part 356, section V, paragraph A is amended by revising the first equation under the resolution to read as follows:

* * * * *

V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills

A. *Conversion of the discount rate to a purchase price for Treasury bills of all maturities:*

* * * * *

Resolution:

$P=100\ [(1-dr)/360]$

* * * * *

8. Exhibit A to Part 356 is amended by revising Sections I through III to read as follows:

Exhibit A to Part 356—Sample Announcements of Treasury Offerings to the Public

* * * * *

I. Treasury Quarterly Financing Announcement

For release when authorized at press conference February 5, 20XX

Contact: Office of Financing, 202/XXX–XXXX

Treasury February Quarterly Financing

The Treasury will auction $16,000 million of 5-year notes, $12,000 million of 10-year notes, and $10,000 million of 30-year bonds to refund $26,996 million of publicly-held securities maturing February 15, 20XX, and to raise about $11,004 million of new cash.

In addition to the public holdings, Government accounts and Federal Reserve Banks, for their own accounts, hold $1,795 million of the maturing securities, which may be refunded by issuing additional amounts of the new securities.

The maturing securities held by the public include $1,654 million held by Federal Reserve Banks as agents for foreign and international monetary authorities. Amounts bid for these accounts by Federal Reserve Banks will be added to the offering.

All of the auctions being announced today will be conducted in the single-price auction format. All competitive and noncompetitive awards will be at the highest yield of accepted competitive tenders.

The 5-year and 10-year notes and the 30-year bond being offered today are eligible for the STRIPS program.

Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. This offering of Treasury securities is governed by the terms and conditions set forth in the Uniform

Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (31 CFR Part 356, as amended).

Details about the notes and bond are given in the attached offering highlights.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC

[February 20XX Quarterly Financing]

Offering Amount	$16,000 million	$12,000 million	$10,000 million.
Description of Offering:			
Term and type of security	5-year notes	10-year notes	30 year bonds.
Series	U–20XX	B–20XX	Bonds of February 20XX.
CUSIP number	912827XX X	912827XX X	912810XX X.
Auction date	February 11, 20XX	February 12, 20XX	February 13, 20XX.
Issue date	February 18, 20XX	February 18, 20XX	February 18, 20XX.
Dated date	February 15, 20XX	February 15, 20XX	February 15, 20XX.
Maturity date	February 15, 20XX	February 15, 20XX	February 15, 20XX.
Interest rate	Determined based on the highest accepted competitive bid.	Determined based on the highest accepted competitive bid.	Determined based on the highest accepted competitive bid.
Yield	Determined at auction	Determined at auction	Determined at auction.
Interest payment dates	August 15 and February 15	August 15 and February 15	August 15 and February 15.
Minimum bid amount and multiples.	$1,000	$1,000	$1,000.
Accrued interest payable by investor.	Determined at auction	Determined at auction	Determined at auction.
Premium or discount	Determined at auction	Determined at auction	Determined at auction.
STRIPS Information:			
Minimum amount required	Determined at auction	Determined at auction	Determined at auction.
Corpus CUSIP number	912820XX X	912820XX X	912803XX X.
Due dates and CUSIP numbers for additional TINTs.	Not applicable	Not applicable	February 15, 20XX—912833 XX X.

The following rules apply to all securities mentioned above:	
Submission of Bids:	
Noncompetitive bids	Accepted in full up to $5,000,000 at the highest accepted yield.
Competitive bids	(1) Must be expressed as a yield with three decimals in increments of .001%, e.g., 7.123%. (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all yields, and the net long position is $2 billion or greater. (3) Net long position must be determined as of one half-hour prior to the closing time for receipt of competitive tenders.
Maximum Recognized Bid at a Single Yield	35% of public offering.
Maximum Award	35% of public offering.
Receipt of Tenders:	
Noncompetitive tenders	Prior to 12:00 noon Eastern Standard time on auction day.
Competitive tenders	Prior to 1:00 p.m. Eastern Standard time on auction day.
Payment Terms	By charge to a funds account at a Federal Reserve Bank on issue date, or payment of full par amount with tender. Treasury Direct customers can use the Pay Direct feature which authorizes a charge to their account of record at their financial institution on issue date.

II. Treasury Weekly Bill Announcement

Embargoed Until 2:30 p.m. April 15, 20XX
Contact: Office of Financing, 20/XXX-XXXX

Treasury Offers 13-Week and 26-Week Bills

The Treasury will auction two series of Treasury bills totaling approximately $16,000 million, to refund $13,469 million of publicly held securities maturing November 19, 1998 and to raise about $2,531 million of new cash.

In addition to the public holdings, Federal Reserve Banks for their own accounts hold $7,442 million of the maturing bills, which may be refunded at the highest discount rate of accepted competitive tenders. Amounts issued to these accounts will be in addition to the offering amount.

The maturing bills held by the public include $1,991 million held by Federal Reserve Banks as agents for foreign and international monetary authorities, which may be refunded within the offering amount at the highest discount rate of accepted competitive tenders. Additional amounts may be issued for such accounts if the aggregate amount of new bids exceeds the aggregate amount of maturing bills.

The 13- and 26-week bill auctions will be conducted in the single-price auction format.

Tenders for the bills will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. This offering of Treasury securities is governed by the terms and conditions set forth in the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (31 CFR Part 356, as amended).

Details about each of the new securities are given in the attached offering highlights.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS OF BILLS TO BE ISSUED APRIL 24, 20XX

Offering Amount	$8,000 million	$8,000 million.
Description of Offering:		
Term and type of security	91-day bill	182-day bill.
CUSIP number	912795 XX X	912795 XX X.

HIGHLIGHTS OF TREASURY OFFERINGS OF BILLS TO BE ISSUED APRIL 24, 20XX—Continued

Auction date	April 21, 20XX	April 21, 20XX.
Issue date	April 24, 20XX	April 24, 20XX.
Maturity date	July 24, 20XX	October 23, 20XX.
Original issue date	July 25, 20XX	April 24, 20XX.
Currently outstanding	$31,725 million	
Minimum bid amount and multiples	$1,000	$1,000

The following rules apply to all securities mentioned above:	
Submission of Bids:	
Noncompetitive bids	Accepted in full up to $1,000,000 at the highest discount rate of accepted competitive bids.
Competitive bids	(1) Must be expressed as a discount rate with three decimals in increments of .005%, e.g., 7.100%, 7.105%. (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all discount rates, and the net long position is $1 billion or greater. (3) Net long position must be determined as of one half-hour prior to the closing time for receipt of competitive tenders.
Maximum Recognized Bid at a Single Yield	35% of public offering.
Maximum Award:	35% of public offering.
Receipt of Tenders:	
Noncompetitive tenders	Prior to 12:00 noon Eastern Daylight Saving time on auction day
Competitive tenders	Prior to 1:00 p.m. Eastern Daylight Saving time on auction day
Payment Terms	By charge to a funds account at a Federal Reserve Bank on issue date, or payment of full par amount with tender. Treasury Direct customers can use the Pay Direct feature which authorizes a charge to their account of record at their financial institution on issue date.

III. Treasury Cash Management Bill Announcement

Embargoed until 2:30 p.m. February 25, 20XX

Contact: Office of Financing 202/XXX-XXXX

Treasury to Auction Cash Management Bills

The Treasury will auction approximately $23,000 million of 45-day Treasury cash management bills to be issued March 3, 20XX.

Competitive and noncompetitive tenders will be received at all Federal Reserve Banks and Branches. Tenders will *not* be accepted for bills to be maintained on the book-entry records of the Department of the Treasury (Treasury Direct). Tenders will *not* be received at the Bureau of the Public Debt, Washington, D.C.

Additional amounts of the bills may be issued to Federal Reserve Banks as agents for foreign and international monetary authorities at the highest discount rate of accepted competitive tenders.

The 45-day cash management bill will be conducted in the single-price auction format. All competitive and noncompetitive awards will be at the highest discount rate of accepted competitive tenders.

This offering of Treasury securities is governed by the terms and conditions set forth in the Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds (31 CFR Part 356, as amended).

Note: Competitive bids in cash management bill auctions must be expressed as a discount rate with *two* decimals, e.g., 7.10%.

Details about the new security are given in the attached offering highlights.

Attachment

HIGHLIGHTS OF TREASURY OFFERING OF 45-DAY CASH MANAGEMENT BILL

Offering Amount	$23,000 million.
Description of Offering:	
Term and type of security	45-day Cash Management Bill.
CUSIP number	912795 XX X.
Auction date	February 27, 20XX.
Issue date	March 3, 20XX.
Maturity date	April 17, 20XX.
Original issue date	October 17, 20XX.
Currently outstanding	$24,724 million.
Minimum bid amount and multiples	$1,000.
Submission of Bids:	
Noncompetitive bids	Accepted in full up to $1,000,000 at the highest accepted discount rate.
Competitive bids	(1) Must be expressed as a discount rate with two decimals in increments of .01%, e.g., 7.12%. (2) Net long position for each bidder must be reported when the sum of the total bid amount, at all discount rates, and the net long position is $1 billion or greater. (3) Net long position must be determined as of one half-hour prior to the closing time for receipt of competitive tenders.
Maximum Recognized Bid at a Single Yield	35% of public offering.
Maximum Award	35% of public offering.

HIGHLIGHTS OF TREASURY OFFERING OF 45-DAY CASH MANAGEMENT BILL—Continued

Receipt of Tenders:	
Noncompetitive tenders	Prior to 11:00 a.m. Eastern Standard time on auction day.
Competitive tenders	Prior to 11:30 a.m. Eastern Standard time on auction day.
Payment Terms	By charge to a funds account at a Federal Reserve Bank on issue date, or payment of full par amount with tender.

* * * * *

[FR Doc. 99–1441 Filed 1–22–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, and 424

[HCFA–1813–FC]

RIN 0938–AH13

Medicare Program; Coverage of Ambulance Services and Vehicle and Staff Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period revises and updates Medicare policy concerning ambulance services. It identifies destinations to which ambulance services are covered, establishes requirements for the vehicles and staff used to furnish ambulance services, and clarifies coverage of nonemergency ambulance services for Medicare beneficiaries. This rule also implements section 4531(c) of the Balanced Budget Act of 1997 concerning Medicare coverage for paramedic interecept services in rural communities.

DATES: *Effective Date:* These regulations are effective on February 24, 1999. *Comment Period:* We will consider comments concerning Medicare coverage for paramedic intercept services in rural areas if we receive the comments at the appropriate address, as provided below, no later than 5 p.m. on March 26, 1999.

ADDRESSES: Mail written comments (an original and three copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1813–FC P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA1813FC@hcfa.gov. For e-mail comment procedures, see the beginning of **SUPPLEMENTARY INFORMATION**. For further information on ordering copies of the **Federal Register** containing this document and on electronic access, see the beginning of **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Robert Niemann, (410) 786–4569 for issues relating to payment for Paramedic Intercept Services. Margot Blige, (410) 786–4642 for all other issues.

SUPPLEMENTARY INFORMATION:

E-mail, Comments, Availability of Copies, and Electronic Access

E-mail comments must include the full name, postal address, and affiliation (if applicable) of the sender and must be submitted to the referenced address to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1813–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. box 371954, Pittsburgh, PA 15250–79454. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

A. Statutory Coverage of Ambulance Services

Under section 1861(s)(7) of the Social Security Act (the Act), Medicare Part B (Supplementary Medical Insurance) covers and pays for ambulance services, to the extent prescribed in regulations, when the use of other methods of transportation would be contraindicated. The House Ways and Means Committee and Senate Finance Committee Reports that accompanied the 1965 Social Security Amendments suggest that the Congress intended that (1) the ambulance benefit cover transportation services only if other means of transportation are contraindicated by the beneficiary's

medical condition, and (2) only ambulance service to local facilities be covered unless necessary services are not available locally, in which case, transportation to the nearest facility furnishing those services is covered (H.R. Rep. No. 213, 89th Cong., 1st Sess. 37, and S. Rep. No. 404, 89th Cong., 1st Sess., Pt I, 43 (1965)). The reports indicate that transportation may also be provided from one hospital to another, to the beneficiary's home, or to an extended care facility.

B. Current Medicare Regulations for Ambulance Services

Our regulations relating to ambulance services are located at 42 CFR Part 410, subpart B. Section 410.10(i) lists ambulance services as one of the covered medical and other health services under Medicare Part B. Ambulance services are subject to basic conditions and limitations set forth at § 410.12 and to specific conditions and limitations included at § 410.40.

II. Provisions of the Proposed Regulations

On June 17, 1997, we published a proposed rule in the **Federal Register** at 62 FR 32715 that would revise and update our ambulance regulations at § 410.40. Specifically, we proposed to provide coverage of ambulance services only if the supplier meets the proposed applicable vehicle, staff, and billing and reporting requirements and proposed medical necessity and origin and destination requirements. We also proposed to cover ambulance services in the United States at either the basic life support (BLS) or advanced life support (ALS) level of services. Under the proposed rule, we would base coverage on a beneficiary's medical condition as described by the International Classification of Diseases, 9th revision, Clinical Modification (ICD–9–CM) diagnosis codes; these codes would be used to bill for ambulance services. In addition, we proposed an exception to the ALS/BLS distinction for certain non-Metropolitan Statistical Areas.

We also proposed to provide for the coverage of nonemergency transportation, including but not limited to transportation for an end-stage renal disease (ESRD) beneficiary, if the ambulance supplier obtains a written physician's order certifying that the beneficiary be transported in an ambulance because other means of transportation are contraindicated.

Finally, we proposed to allow coverage of ambulance services for ESRD beneficiaries to the nearest treatment facility rather than to the nearest hospital-based facility.

III. The Balanced Budget Act of 1997

On August 5, 1997, after we had issued the ambulance services proposed rule, the Balanced Budget Act of 1997 (the BBA), Public Law 105–33, was enacted. Section 4531(b) of the BBA adds a new section 1834(l) to the Act, which provides for the establishment of a fee schedule for payment of ambulance services effective January 1, 2000. In addition, section 1834(l)(1) of the Act requires that the fee schedule be developed through a negotiated rulemaking process. Section 1834(l)(20(B) of the Act provides that, in establishing the fee schedule, the Secretary must establish definitions for ambulance services that link payments to the types of services furnished.

As noted above, one of the provisions of the June 17, 1997 proposed rule would have defined ambulance services as either ALS or BLS services and linked the Medicare payment to the type of service (ALS or BLS) required by the beneficiary's condition. Under section 1834(l) of the Act, this type of service definition and resulting payment is required to be a part of the negotiated rulemaking. Therefore, we are deferring any final action on those provisions of the proposed rule. We will reopen the discussion of the definition of ambulance services and the appropriate payment as a part of the negotiated rulemaking process. We note, however, that our current policy, as stated in section 5116 of the Medicare Carriers Manual (MCM), which provides for the payment of two separate reasonable charge rates for ambulance services, one for BLS level of ambulance service and one for ALS level of service, remains applicable. In general, the ALS reasonable charge may be used as a basis for payment when an ALS level of ambulance service is provided. However, as stated in MCM section 5116.1, there may be instances when the supplier exhibits a pattern of uneconomical care such as repeated use of ALS ambulances in situations in which it should have known that the less expensive BLS ambulance was available and that its use would have been medically appropriate. While we allow higher payments for the ALS services, the carrier is responsible for evaluating the appropriate level of service for each claim.

In addition to providing for a fee schedule for ambulance services, section 4531(c) of the BBA authorizes the Secretary to include coverage of ALS services provided by a paramedic intercept service provider in a rural area if certain conditions are met. We are implementing this provision in this final rule with comment period. We discuss, in detail, this provision and the changes to the regulations necessary to implement it, in section V of this preamble.

IV. Analysis of, and Responses to, Public Comments

In response to our proposed regulation published on June 17, 1997, we received 2,270 comments from ambulance service suppliers, emergency medical service personnel, ambulance associations, health care providers, Medicare contractors, and private citizens. As noted above, because we are not proceeding in this final rule with the proposed provisions related to basing coverage and payment of ambulance service on the level of medically necessary services, we are not responding to the comments we received concerning that proposal, including the use of ICD–9–CM diagnosis codes to determine medical necessity and the proposed exception to this policy for ALS services furnished in areas that are not part of a Metropolitan Statistical Area. We not that the vast majority of the comments concerned the definition of services as ALS or BLS. The remaining comments and our responses are set forth below.

A. Medicare Coverage of Ambulance Services—Basic Rule

In the proposed rule, we clarified in § 410.40(a) the circumstances under which an ambulance service is paid under Medicare Part B as opposed to Medicare Part A. We received one comment on this proposal.

Comment: A supplier commented that the proposed regulations are unclear on two points. First, they do not indicate the point at which Part A begins to cover transportation services and whether those services provided before admission to the hospital are covered under that Part or only those provided during the patient's hospital stay. Second, the proposed regulations seem to indicate that if a patient's stay in the hospital is covered by Part A, the ambulance service provided before admission and at discharge would be part of the Part A payment and could not be billed under Part B. If this is true, the commenter believed that this is a change in policy that would destroy many Part B ambulance services and be detrimental to hospitals.

Response: The proposed revisions to the regulations were made merely to clarify and restate current policy on the scope of benefits under Parts A and B of Medicare, not to make any change in policy. To explain the policy in this area, we must distinguish between

ambulance services, which are covered under Part B, and transportation services, which are covered under Part A. The movement of a beneficiary from his or her home, an accident scene, or any other point of origin to the nearest hospital, critical care access hospital (CAH) (formally known as a rural primary care hospital (RPCH)), or skilled nursing facility (SNF) that is capable of furnishing the required level and type of care for the beneficiary's illness or injury is covered, assuming medical necessity and other coverage criteria are met, only under Part B as an ambulance service. No Part A coverage is available because, at the time the beneficiary is transported, he or she is not an inpatient of any provider paid under Part A of the program. The transfer of a beneficiary from one provider to another (for example, from an acute care hospital to a long-term care hospital or to an SNF) is also not covered as a Part A provider service because, at the time the person is in transit, he or she is not a patient of either provider. This service may be covered under Part B.

However, once a beneficiary has been admitted to a hospital, CAH,or SNF, it may be necessary to transport the beneficiary to another hospital or other site for specialized care. In this instance, the specialized services are furnished under arrangements made by the hospital, CAH, or SNF. Following that treatment, the beneficiary is returned to the hospital, CAH, or SNF to complete the inpatient stay. This movement of the beneficiary is considered "patient transportation" and is covered as an inpatient hospital or CAH service under Part A of the program and as an SNF service when the SNF is furnishing it as a covered SNF service, and Part A payment is made for that service. Because the service is covered and payable as a beneficiary transportation service under Part A; the service cannot be classified and paid for as an ambulance service under Part B. This is not a change from current policy, but has been the policy since the inception of the Medicare program. In order to more clearly indicate that ambulance services are covered under Part A when the beneficiary is an inpatient of a hospital or CAH, we have revised the regulations at § 409.10 to include this service as a covered inpatient hospital or CAH service. We have also revised § 409.20 to include it as a SNF covered service.

We note that, as provided in §§ 412.2(c)(5)(iii)(B) and 413.40(c)(2)(iii)(B), ambulance services are specifically excluded from the preadmission payment window provisions applicable to hospital inpatient services. That is, ambulance services furnished during the 3 days before the day of a beneficiary's admission to a hospital (or 1 day for hospitals excluded from the prospective payment system) may be paid under Part B and are not considered inpatient hospital services.

B. Medical Necessity

Under current regulations, Medicare covers transportation provided by an ambulance if the beneficiary must be transported by an ambulance because other means of transportation are contraindicated. In the June 1997 proposed rule (62 FR 32719), we proposed that if a beneficiary is "bed-confined," other means of transportation would be presumed to be contraindicated. We also proposed that "bed-confined" would be defined as the inability to—

- Get up from bed without assistance;
- Ambulate; and
- Sit in a chair, including a wheelchair.

We noted that we used this term synonymously with the terms "bedridden" or "stretcher-bound." However, it is not synonymous with "bed rest" or "nonambulatory."

In addition, nonemergency transportation would be covered only if, before furnishing the service, the ambulance supplier obtained a physician's written order certifying that the beneficiary must be transported in an ambulance because other means of transportation are contraindicated (§ 410.40(c)(2)). The physician's order must be dated no more than 60 days before the date the service is furnished. We received several comments on these proposed policies.

Comment: A Medicare carrier and a national renal association supported the definition of bed-confined as proposed. They believed that the definition ensures that ambulance services will be provided only to those individuals with the greatest need and the most severe physical limitations.

Response: We agree with the commenters. Our purpose in developing this definition was to identify as eligible for covered ambulance services only those individuals who are not able to be up and out of bed under any condition and cannot tolerate other methods of transportation.

Comment: Three commenters stated that the definition of "bed-confined" as proposed is too restrictive and that the policy eliminates transportation for many individuals who would "in reality have no other way of obtaining medical care."

Response: It is important to note that the Medicare law contains no provisions for "transportation," but rather provides for coverage of ambulance services. Section 1861(s)(7) of the Act allows Medicare coverage of ambulance services only when the use of other methods of transportation is contraindicated by the beneficiary's condition. The regulations reflect the intent expressed in the House Ways and Means Committee and Senate Finance Committee reports on H.R. 6675, the 1965 Social Security Amendments (H. Rep. No. 213 at page 36 and S. Rep. No. 404 at page 43) that ambulance transportation be covered only if "* * * normal transportation would endanger the health of the patient * * *" Therefore, a patient whose condition permits transport in any type of vehicle other than an ambulance would not qualify for ambulance services under Medicare Part B.

Comment: Seven ambulance suppliers stated that all factors relating to the beneficiary's condition should be considered in evaluating if a beneficiary has met the medical necessity criteria for ambulance service. That is, bed-confinement should not be the sole criterion used in determining medical necessity because it is only one factor. The commenters suggested that suppliers should provide documentation on why the beneficiary is bed-confined.

Response: It is always the responsibility of the ambulance supplier to furnish complete and accurate documentation to demonstrate that the ambulance service being furnished meets the medical necessity criteria. The fact that a definition of bed-confined has been adopted does not suggest that bed-confinement is the sole determinant of medical necessity nor does it relieve the supplier of his or her responsibility to submit adequate information supporting the reason for a bed-confinement determination.

Comment: Three ambulance suppliers disagreed that the proposed bed-confined definition should be synonymous with "stretcher-bound." They suggested that "stretcher-bound" refers to the beneficiary being secured to the stretcher and not specifically to the condition of the beneficiary. They asked that we clarify that stretcher-bound is not a synonym for "bed-confined."

Response: We agree with the commenters and will not use the term "stretcher-bound" in describing the medical condition of the beneficiary. We proposed a definition of "bed-confined" as a part of our proposal to use ICD–9–CM medical condition codes. The ICD–9–CM list set forth in the

proposed rule included the diagnosis code V49.8, Other Specified Problems Influencing Health Status. We added a definition of bed-confined which could be used in conjunction with this code. As noted above, we are not including the proposed medical necessity provision based on ICD–9–CM codes in this final rule. However, as a result of comments, as well as past questions, we have specified certain criteria that must be met in order for ambulance services to be covered. In accordance with § 410.40(d), nonemergency ambulance transportation would be covered if the beneficiary is unable to get up from bed without assistance.

Comment: One ambulance supplier commented that the proposed definition will cause undue hardship for the beneficiary, family, physician, and ambulance supplier because some beneficiaries are able to sit in a wheelchair for brief periods of time, but cannot tolerate a wheelchair for the period of time required for transport. Under the proposed definition, ambulance transportation furnished to beneficiaries such as these would not be covered.

Response: If there are circumstances associated with the beneficiary's condition that warrant the need for ambulance transportation, the documentation submitted on behalf of that beneficiary should reflect the condition and support the need for the services. That documentation will then be considered by the carrier in processing the claim.

Comment: Several ambulance suppliers and a national ambulance association commented that the proposed definition of "bed-confined" is too narrow and that most beneficiaries who can "technically sit in a chair or wheelchair momentarily" or be "restrained" to a chair or wheelchair would not meet the definition and would therefore be denied ambulance services. They also expressed the belief that the definition should be based on the condition of the beneficiary at the time of transport rather than any period before or after the transport. One of the commenters suggested that it is not safe to transport someone in a wheelchair who must be restrained in order to travel. To ensure that the definition allows those beneficiaries who are bed-confined to receive ambulance benefits, commenters suggested the following revisions for the definition of "bed-confined":

- Add the phrase "without assistance" to the second and third criteria of the proposed definition.
- Add the phrase "* * * the inability to ride in a moving vehicle without being restrained to that chair" to the last criterion.
- Revise the third criterion to read "* * * the inability to sit for an extended period of time in a chair or wheelchair, without restraint."
- The phrase "without assistance" should be removed from the first criterion and the "and" be replaced with "or" so that if any one of the criteria is met, the beneficiary would be determined to be "bed-confined."

Response: In developing the proposed definition, it was our intent to describe clearly individuals who are completely confined to bed and unable to tolerate any activity out of bed. We recognize that it is standard and accepted medical practice in both hospitals and nursing homes to take steps to ensure that beneficiaries are up and out of bed as often as their condition permits. Such beneficiaries are not bed-confined. It is incumbent upon health care professionals responsible for the care of individual beneficiaries to determine what is safe for those beneficiaries. If it is determined that it is unsafe for a particular beneficiary to be unmonitored during transport, then the documentation submitted for that particular transport should support the need for ambulance transportation. That documentation will be considered by the carrier in processing the claim.

We considered whether it would be appropriate to include a time-frame with respect to the "bed-confined" definition. That is, adding a phrase such as "for more than 10 minutes" to the various criteria. Because of the difficulty associated with obtaining accurate information related to how long an individual may have been out of bed as well as the difficulty associated with efforts to substantiate such information, we determined that it would be inappropriate to employ the use of absolute terms if we did not intend to identify a means by which a time factor could be measured.

We do not believe it is necessary to make the proposed revisions on the basis that the proposed definition encompasses the variations requested by the commenters. We will however, revise the definition to clarify that all three components must be met in order for the patient to meet the requirements of the definition of "bed-confined".

Comment: A national ambulance association stated that because we did not define "emergency" and "nonemergency" in the proposed rule, ambulance suppliers will not know when physician certification is needed. The association does, however, support the need for physician certification, in 60-day intervals, for repetitive transports. They recommended the following definition for repetitive patients:

"Multiple scheduled treatments (for example, dialysis or radiation therapy treatments) for the same diagnosis that requires ambulance transportation over an extended period of time."

Response: The applicable definition that we use to define emergency services is the definition set forth in section 1861(v)(1)(K)(ii) of the act, which defines the term "bona fide emergency services." This definition provides that an emergency service is one that is provided after the sudden onset of a medical condition manifesting itself by acute sysmptoms of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in placing the beneficiary's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part. Any ambulance transportation service that does not meet these criteria would be a nonemergency service. This would include all scheduled transports (regardless of origin and destination), as well as transports to SNFs or to the beneficiary's residence. Medically necessary transports to and from dialysis facilities are scheduled and, therefore, are nonemergency ambulance services.

Comment: Four ambulance suppliers commended that the physician certification requirement should not apply to beneficiaries who reside at home or in facilities where they are not directly under the care of a physician.

Response: We agree that suppliers may often be unable to obtain the appropriate physician certificate for these patients for a unscheduled transport. We will revise the final regulations to provide that the physician certification will be required for these beneficiaries for scheduled, repetitive transports and scheduled, nonrepetitive transports because we can assume that beneficiaries who are scheduled for medical appointments are under a physician's care. In addition, for beneficiaries who reside in a facility and are under a physician's care, there should be little difficulty in obtaining the certificate for unscheduled transports. For nonemergency, unscheduled transportation of beneficiaries residing at home or in facilities were they are not under the direct care of a physician, the physician certification requirement will not apply.

Comment: Several commenters, including an Emergency Medical Services (EMS) Director, stated that nonscheduled, nonemergency transports

should be judged on their medical necessity and therefore exempt from the bed-confined requirement and that, to avoid unnecessary delays, it would be appropriate to obtain the physician certification with 48 hours after the ambulance service was furnished. The commenters do support use of a physician certification for those patients needing repetitive transports to receive specialized services.

Response: After considering the arguments and observations made by commenters, we concluded that we should proceed with our proposal to require physician certification for all nonemergency transports, both scheduled and unscheduled, except for the revisions discussed in the previous response to comments concerning beneficiaries who are not living in a facility directly under a physician's care. Nonemergency ambulance service is a Medicare service furnished to a beneficiary for whom a physician is responsible; therefore, the physician is responsible for the medical necessity determination. The physician certification requirement will help to ensure that the claims submitted for ambulance services are reasonable and necessary, because other methods of transportation are contraindicated. We believe that this requirement will help to avoid Medicare payment for unnecessary ambulance services that are not medically necessary even though they may be desirable to beneficiaries. However, we agree with the commenters that, to avoid unnecessary delays, for unscheduled transports, the required documentation can be obtained within 48 hours after the ambulance transportation service has been furnished. That is, it is not necessary that the ambulance suppliers have the physician certification in hand prior to furnishing the service. While it is reasonable to expect that an ambulance supplier could obtain pretransport physician certification for routine, scheduled trips, it is less reasonable to impose such a requirement on unscheduled transports. Therefore, we have revised the final regulations to reflect this change.

Comment: Two ambulance suppliers commented that physicians are unaware of the coverage requirements for ambulance services and that their decisions to request ambulance services may be based on "family preference or the inability to safely transport the beneficiary by other means rather than on the medical necessity requirement imposed by Medicare."

Response: Section 1861(s)(7) of the Act allows for Medicare coverage of ambulance services only when the use of other methods of transportation is contraindicated by the beneficiary's condition. If the ability to safely transport the beneficiary, given the beneficiary's condition, is at issue, then the supplier may obtain from the physician the necessary documentation supporting the reason for the transportation. If the decision to use ambulance services is based on the convenience of the beneficiary, the beneficiary's family, the beneficiary's physician, or some other element of personal preference, Medicare coverage is not available.

To facilitate awareness of the Medicare rules as they relate to the ambulance service benefit, ambulance suppliers may need to educate the physician (or the physician's staff members) when making arrangements for the ambulance transportation of a beneficiary. Suppliers may wish to furnish an explanation of applicable medical necessity requirements as well as requirements for physician certification and to explain that the certification statement should indicate that the ambulance services being requested by the attending physician are medically necessary.

C. Origins and Destinations

In the proposed rule, we added a provision that allowed coverage of round-trip ambulance transportation for an ESRD beneficiary living at home to the nearest treatment facility capable of furnishing the necessary dialysis service regardless of whether the dialysis facility is located at a hospital. We currently cover the ambulance services only if the beneficiary is transported to a hospital-based facility for dialysis.

Comment: Several commenters, including a consortium of EMS Directors, renal associations, and dialysis facilities, believed that the proposed change concerning transportation to the nearest dialysis facility is not in the best interest of the beneficiary and that it will have an impact on the continuity of beneficiary care. That is, beneficiaries who have been receiving dialysis at the nearest hospital-based treatment facility may now be forced to go to another, closer nonhospital treatment facility. The commenters recommended that we allow for transport to the nearest facility where there is an "existing, established beneficiary care relationship" and the facility has an "available bed."

Response: While we were developing the proposed regulation, concerns were raised by representatives of the renal community that the current policy was detrimental to beneficiaries with ESRD because it forced some of them to travel great distances to a hospital for dialysis when the same services were available closer to their homes. In response to these concerns, we proposed to allow coverage of ambulance services to the nearest appropriate dialysis facility. This policy is consistent with our general ambulance policy, set forth in section 2120.3.F of the MCM, for emergency services which, in general, limits payment for otherwise covered ambulance transportation services to the nearest facility capable of furnishing care.

If the closest dialysis facility is not able to perform the type of treatment the beneficiary requires or is unable to accommodate the beneficiary for another reason, for example, lack of capacity, then Medicare will pay for the beneficiary to be transported to the more distant facility. It is, of course, the prerogative of the beneficiary to choose the facility where he or she wishes to be treated. If the beneficiary decides to be transported to a facility farther away, and it is determined that the nearer facility was capable of providing the required type and level of care, Medicare payment for the ambulance service is limited to the amount that would have been paid to transport the beneficiary to the nearest appropriate dialysis facility.

Comment: Three ambulance suppliers commented that we should consider paying for other forms of transportation for ESRD beneficiaries.

Response: As noted above, the only transportation service covered by Medicare is that set forth at section 1861(s)(7) of the Act. That section allows Medicare coverage for ambulance services only when the use of other methods of transportation are contraindicated by the beneficiary's condition. We believe Congress made a distinction between "transportation by ambulance" and "normal transportation." We believe Congress intended, by this distinction that Medicare coverage be limited to ambulance services for beneficiaries who could not reach care any other way. Thus, a beneficiary whose condition permits transfer in any vehicle other than ambulance would not qualify for Medicare Part B payment.

Comment: A State ambulance association and a hospital-based ambulance provider commented that the proposed change for ESRD beneficiaries will increase the number of transports and the incidence of fraud and abuse.

Response: The proposed change in the policy for ESRD beneficiaries does not expand the coverage of transportation for these beneficiaries; it merely changes the allowable destinations for dialysis

treatment. We concluded the transporting ESRD beneficiaries from their residence to the nearest appropriate dialysis facility to receive medically necessary dialysis services could result in a cost savings to the Medicare program through the substitution of shorter trips for unnecessarily long trips and, in some cases, ambulance trips to distant hospital-based facilities to obtain dialysis. This modification, coupled with the 60-day physician certification requirement for nonemergency, scheduled ambulance transports and the medical necessity determination, provides limitations that should prevent inappropriate coverage of ambulance services furnished to ESRD beneficiaries. Therefore, we anticipate that this revision to the Medicare ambulance services policy will not result in an increased number of transports or an increase in the incidence of fraud and abuse.

Comment: Three ambulance suppliers commented that, in order to decrease the burden on local emergency rooms and to provide most cost-effective service, HCFA should consider expanding the allowable destinations for ambulances transportation to include physician's offices, urgent care facilities, and freestanding radiological facilities. In support of this recommendation, one supplier indicated that the Omnibus Reconciliation Act of 1980 (Public Law 96–499) specifically covered ambulance transportation to freestanding radiological facilities.

Response: Although we proposed to allow ESRD beneficiaries residing at home to receive medically necessary ambulance transportation to the nearest appropriate dialysis facility, even if that facility is not hospital-based, we are not proposing to extend ambulance coverage for transport to other facilities or for other populations of beneficiaries. In making our decision to expand the destination sites for ESRD beneficiaries, we considered the fact that many beneficiaries who are confined to home may have a broader range of needs on a routine basis, such as visits to the physician, for which they might wish to have ambulance transportation could be available. However, an expansion of this type would be difficult to monitor to ensure that the ambulance services benefit was being used only for medically necessary transportation where all other means of transportation were unacceptable. Without built-in limitations (for example, routinely requiring the use of physician certifications) and extensive rules for determining when the need for medical services justifies coverage of ambulance transportation, the ambulance services benefit could easily become a benefit for general transportation services, which would be inconsistent with Congressional intent and program history.

It is also important to note that, generally, Medicare does not provide coverage for ambulance transportation to a physician's office, for example, transportation to a physician's office for a follow-up visit with an attending physician. There are two exceptions to this rule. First, under Medicare Part A, we cover ambulance transportation of hospital or SNF inpatients to the nearest appropriate treatment facility including a physician's office to obtain medically necessary diagnostic or therapeutic services not available at the institution where the beneficiary is an inpatient. This exception may be applied only if the services cannot reasonably be brought to the beneficiary or the cost of transporting the beneficiary is less than the cost of bringing the services to the beneficiary. Second, if while transporting a beneficiary to a hospital, the ambulance stops at a physician's office because of the beneficiary's dire need for professional attention, and, immediately thereafter, the ambulance continues to the hospital, Medicare coverage may be available.

The House Report of the Committee on the Budget that accompanied Public Law 96–499 did recommend that we consider including coverage of round-trip ambulance transportation for beneficiaries in SNFs or confined to their homes to obtain medically necessary radiological services furnished in a nonhospital setting. However, the suggestion to provide coverage for round-trip ambulance transportation services to freestanding radiological facilities was not included in the final provisions of the law.

D. Requirements for Ambulance Suppliers

1. Vehicles

We proposed that any vehicle used as an ambulance must be designed and equipped to respond to medical emergencies and, in nonemergency situations, be capable of transporting beneficiaries with acute medical conditions. The vehicle must also comply with all applicable State and local laws governing the licensing and certification of an emergency medical transportation vehicle. In addition, we proposed that, at a minimum, the ambulance must contain a stretcher, linens, emergency medical supplies, oxygen equipment, and other lifesaving emergency medical equipment and be equipped with emergency warning lights, sirens, and two-way telecommunications.

Comment: Several ambulance suppliers commented that requiring "two-way telecommunications" is unnecessary, cost prohibitive, and not practical for rural areas. One commenter suggested that the requirement be revised to state, "* * * be equipped with telecommunications equipment as required by State or local law, to include, at a minimum, one two-way voice radio or wireless telephone."

Response: We agree that the commenter's alternative will satisfy our needs for safety and efficiency. We have decided, therefore, that we will adopt the commenter's suggestion.

Comment: Three ambulance suppliers commented that the reference to "lifesaving equipment" is vague. One commenter suggested that we specifically enumerate the ALS equipment required.

Response: It is our intent to defer to State or local requirements where vehicle equipment and personnel certification requirements are concerned. In addition, a review of the proposal reflects an inadvertent omission of the phrase "* * * as required by State or local law"; therefore, § 410.41(a) will be revised accordingly.

2. Vehicle Staff

We proposed staffing requirements at both the BLS and ALS level of service. As proposed, a BLS vehicle would have to be staffed by at least two persons, each trained to provide first aid and certified as an emergency medical technician-basic (EMT–B) by the State or local authority where the services are furnished and legally authorized to operate all lifesaving equipment on board the vehicle.

An ALS vehicle would need to include at least two persons: one person trained to provide basic first aid at the EMT–B level and one person trained and certified as a paramedic or emergency medical technician-advance (EMT–A) who is also trained and certified to perform one or more ALS services. The EMT–A or paramedic would have had to be certified by the State in which the services are furnished and legally authorized to operate all lifesaving equipment on board the vehicle.

Comment: Several ambulance suppliers commented that the proposed staffing requirements are contrary to existing State standards and the proposed requirement that a BLS ambulance be staffed with two EMTs

would have a detrimental effect on volunteer companies. The commenters recommended that we revise the staffing requirements to defer to State or local requirements for ambulance staffing. Many comments pointed out that the State EMS offices set the minimum staffing level requirements.

Response: We agree with the commenters that it is sufficient for Medicare purposes if the BLS vehicle staffing meets the State and local laws. Based on a review of the comments, we acknowledge that a requirement for a minimum of two EMTs, as proposed, has the potential of placing considerable burden on volunteer ambulance services and may possibly lead to the elimination of such services, particularly in rural areas. We will revise the regulations accordingly.

Comment: Three suppliers requested that we define the following terms: EMT–A, EMT–B, and paramedic.

Response: Based on comments received in response to the proposed regulation, we acknowledge that the terms EMT–A and EMT–B are no longer used by the EMS industry; thus, we are deleting reference to EMT–A and EMT–B. We will, however, maintain our proposed requirement that if an ALS staff member is authorized, under State or local laws, to operate as an ALS crew member, then the EMT must be certified to perform one or more ALS services. The term "paramedic" is defined by State and local laws.

3. Billing and Reporting Requirements

In the proposed rule, we stated that we would require ambulance suppliers to use the HCFA Common Procedure Coding System (HCPCS) codes to describe the origin and destination of ambulance trips. We also proposed that, at the carrier's request, a supplier would complete and submit an ambulance supplier form established by HCFA and provide the carrier with documentation of the supplier's compliance with State and local emergency vehicle and staff licensure and certification requirements. In addition, suppliers would be required to provide any information requested by the carrier for purposes of documenting the ambulance supplier's compliance with the regulations and to support claims processing.

Comment: A majority of the commenters objected to the proposed billing and reporting requirements on the ground that they are unfunded mandates that are burdensome and in excess of the informational updates required at the State or local level. They also believe that the carriers should not be allowed unlimited access to records, many of which are protected under other Federal laws and regulations.

Response: Current Medicare instructions (section 2120.1 of the MCM) require ambulance suppliers to submit a statement and other documentary evidence that their vehicles and personnel meet all of the requirements set by State or local authorities. The guideline specifies that, in addition to the submission of documentary evidence, the statement should describe the equipment and beneficiary care items with which the vehicles are equipped, the extent of first-aid training acquired by personnel staffing those vehicles and the supplier's agreement to notify the carrier of any changes in operation that would affect the coverage of the supplier's ambulance services. Our intent in proposing that suppliers complete a HCFA-developed Ambulance Supplier Form was to promote consistency in the collection of this already-required information as well as make it easier for suppliers by providing them with a preprinted form to complete.

Current guidelines also specify that when the required information is not submitted or whenever there is a question about the supplier's compliance with the requirements, the carrier should take appropriate action. The appropriate action may include conducting an on-site visit as well as requesting additional information. We disagree with commenters that the proposed requirement allow unlimited access to protected records. This requirement formalizes, in a consistent format, an informational requirement that has been in effect for several years.

Based on comments, we will revise the final regulations to clarify that, upon carriers' request, suppliers will be required to submit additional information and documentation as it relates to vehicle and personnel operations. That is, suppliers will not be required to automatically submit information and documentation for each new vehicle that is purchased or crew member that is hired.

Comment: Several suppliers stated that verification of compliance information should be obtained from State databases and not directly from the ambulance supplier.

Response: To coordinate the transfer of information between various State computer systems and the systems used by our Medicare contractors could present administrative problems for the State as well as the carrier. We would also need to take into consideration system capabilities, compatibility, and the potential cost to the State, carrier, HCFA, and the supplier. We are not requiring the submission of documentation that is inconsistent with information suppliers are already required to report to the State or local authority. This provision requires suppliers to complete the standardized Ambulance Supplier Form and to photocopy documentation already in their possession.

Comment: One ambulance supplier commented that the Ambulance Supplier Form appears to contradict the information provided in the HCFA–855, Medicare Provider/Supplier Enrollment form. The supplier questioned whether the State ambulance license will be acceptable in lieu of vehicle and staffing information required on the HCFA–855 application.

Response: The HCFA–855 is required to be completed by all providers and suppliers who wish to enroll in the Medicare program (except for those who are required to enroll through the survey and certification process). The information being requested on that form is used to determine eligibility and to make proper payments under the Medicare program. Attachment 2 of the HCFA–855 Enrollment Application form indicates that, "If you are licensed by your State as an Ambulance Supply Service, you are not required to submit the information on the supplier form Attachment 2." The information that Attachment 2 requires related to vehicle descriptions for each vehicle including specifying the type of vehicle, license number, and the list of first-aid, ALS equipment, if applicable, safety and other care items. Even in instances where a supplier does complete the Ambulance Supplier Form shown in the attachment, because the service is not licensed by the State, the company would still be required to submit to the carrier evidence of recertification. This is the same requirement imposed on suppliers who are State licensed. The enrollment form instructions specify that evidence of vehicle and personnel recertification must be submitted to the carrier on an ongoing basis and that copies of applicable certificates and licenses should be included. This instruction guideline is applicable to all ambulance service suppliers.

In conclusion, the proposed billing and reporting requirements, which require submission of the Ambulance Supplier Form, are not new requirements. This form is the method by which suppliers will submit evidence of vehicle and crew recertification. The form was developed to provide a consistent format for the collection of verification of compliance

information currently required by Medicare instructional guidelines.

V. Paramedic Intercept Provisions of the BBA

Paramedic intercept services are ALS services delivered by paramedics who operate separately from the agency that provides the ambulance transport. This type of service is most often provided for an emergency ambulance transport in which a local volunteer ambulance that can provide only BLS-level service is dispatched to transport a beneficiary. If the beneficiary needs ALS services, such as EKG monitoring, chest decompression, or IV therapy, another agency, typically a hospital or proprietary emergency medical service, dispatches a paramedic to meet the BLS ambulance at the scene or en route to the hospital. The ALS paramedics then provide their services to the beneficiary.

This tiered approach to life-saving may be cost effective in many areas because most volunteer ambulances do not charge for their service, and one paramedic service can cover many communities. Under current policy, Medicare payment may be made for these services only when the claim is submitted by the ambulance provider (that is, the actual transporting ambulance unit). Payment cannot be made directly to the intercept service supplier because there is no benefit category in the Medicare statute for the intercept service itself. With the limited exception provided in section 4531(c) of the BBA (discussed below), the only statutory basis for covering these services is under section 1861(s)(7) of the Act, as an integral part of the ambulance transportation benefit. In a jurisdiction that prohibits volunteer ambulances from billing Medicare and other health insurance, the intercept service cannot be paid for treating a Medicare beneficiary and is forced to bill the beneficiary for the intercept service.

Section 4531(c) of the BBA provided that the Secretary could include limited coverage of these intercept services provided in a rural area; that is, payment may be made directly to the agency providing the paramedic service. However, the services could be covered only if they are provided under contract with one or more volunteer ambulance services and they are medically necessary based on the condition of the beneficiary receiving the ambulance service. In addition, the volunteer ambulance service involved must meet all of the following requirements:

- Be certified as qualified to provide ambulance services for purposes of this provision.
- Provide only BLS services at the time of the intercept.
- Be prohibited by State law from billing for any service. Finally, the entity providing the ALS paramedic intercept service must meet the following requirements:
- Be certified as qualified to provide the services under the Medicare program.
- Bill all Recipients who receive ALS paramedic intercept services from the entity, regardless of whether or not those recipients are Medicare Beneficiaries.

We are revising § 410.40 to include these provisions. We are defining rural area in the same way it is defined for purposes of the Medicare hospital inpatient prospective payment system under section 1886(d)(2)(D) of the Act and in regulations at § 412.62(f). A rural area is any area outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA) as defined by the Office of Management and Budget. (Please see Tables 4A and 4B in the final rule in the July 31, 1998 **Federal Register** entitled, Health Care Financing Administration, Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates; Final Rule.)

Although it provided the Secretary with the authority to cover ALS paramedic intercept services under certain conditions, section 4531(c) of the BBA did not specify what the payment should be for those services. We considered three different methods of payment for these services.

First, we considered paying the full ALS payment rate. We discussed the issued with several ambulance companies that furnish paramedic intercept services, that believe that the total cost of providing these services is virtually the same as that of providing the full ALS ambulance service. In addition, because these services are furnished in rural areas, there is a low utilization rate that raises their cost per service. That is, the paramedic intercept service has the same fixed costs as ambulance company (i.e., flycar vehicle, life saving equipment, labor and overhead) but these costs are spread over only 2 or 3 calls per day, whereas the typical ALS ambulance company has 30 to 40 calls per day.

A second option would be to pay for intercept services based on the difference between the ALS ambulance service rate and the BLS ambulance service rate. This would Place a value on the intercept service consistent with the fact that the full ALS service is comprised of two components: the intercept service and a transport service. The transport would be valued at the BLS rate and the intercept service would be valued as the difference between the ALS rate and the BLS rate.

Finally, we could pay the average salary of a paramedic multiplied by the average amount of time involved for an intercept service. While this option would cover the costs associated with the paramedic's services during an intercept, it would not recognize other costs such as standby time, the vehicle used by the paramedics, medical equipment carried on that vehicle, and other overhead expenses.

After examining these options, we believe the best option would be the second option; that is, pay the difference between the ALS payment rate and the BLS payment rate. If we were to pay the full ALS rate, we would be recognizing the intercept service as virtually equivalent to the full ALS ambulance service. However, the ALS ambulance service is actually equivalent to a paramedic intercept service plus a transport service. We do not believe that it is appropriate to price a component of the ALS service at the same rate as the total ALS service. However, to pay only the costs of the paramedics' services does not recognize the additional costs associated with furnishing the BLS service.

We believe the second option balances considerations for access to care and consistency with current ambulance payment policy. We would be providing the intercept company with a reasonable payment while not providing the same amount of payment that we would to an ambulance company that provides both the transport and the paramedic service. If we pay the difference between the ALS and BLS rates to the intercept company, we would be acknowledging the BLS rate that would have been paid to the volunteer company had it been permitted to bill the program for the transport.

VI. Provisions of the Final Regulations

Other than the changes made to implement section 4531(c) of the BBA, those provisions of this final rule that differ from the proposed rule are as follows:

- We are revising §§ 409.10 and 409.20 to clarify that ambulance services are covered under Medicare Part A as hospital, CAH, and SNF inpatient services.
- We have revised the medical necessity requirements in § 410.40(d) to specify when a beneficiary can be determined to be bed-confined and,

thus, potentially eligible for ambulance services.

• We have revised the physician certification requirements for nonemergency, unscheduled ambulance services in § 410.40(d). In cases where a beneficiary requires a nonemergency, unscheduled ambulance transport, the written physician certificate can be obtained 48 hours after the ambulance transportation has been furnished. We are also revising the regulations to provide that in situations where nonemergency, unscheduled ambulance transportation is required for beneficiaries residing at home (private residence) or in facilities where they are not under the direct care of a physician, the physician certification will not be required.

• We have revised the provision in § 410.41(a) that identifies the minimum equipment required on a vehicle used as an ambulance, to require that a vehicle used as an ambulance must be equipped with telecommunication equipment as required by State or local law, to include, at a minimum, one two-way voice radio or wireless telephone.

• We have revised § 410.41(b), which established minimum vehicle staffing requirements for both the BLS and ALS level of service. For BLS vehicles, we require that, at a minimum, the staff must meet staffing requirements established by State or local authorities. For ALS vehicles, we have revised this provision to delete reference to EMT–A and EMT–B designations.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act requires that we solicit comment on the following issues:

• Whether the information collection is necessary and useful to carry out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 410.40 Coverage of Ambulance Services

The information collection requirements in § 410.40 require the ambulance supplier to obtain written certification from the beneficiary's attending physician certifying that the medical necessity requirements of paragraph (d)(1) of this section are met, before furnishing non-emergency, scheduled ambulance services. The physician's order must be dated no earlier than 60 days before the date the service is furnished. And, for nonemergency, unscheduled ambulance services for a resident of a facility who is under the care of a physician, the ambulance supplier must obtain the written certification, within 48 hours after the transport, from the beneficiary's attending physician certifying that the medical necessity requirements of paragraph (d)(1) of this section are met.

The requirement for the physician's certification does not require a particular form or format and can be simply a written statement to describe the beneficiary's condition that supports the need for ambulance services. Some suppliers have developed their own physician certification forms. We estimate that a physician's certification could take, on average, 10 minutes of the physician's time per beneficiary and, in cases involving repetitive transports, one certificate could be used by the supplier for a 60-day period. The following chart shows the potential paperwork burden that may be imposed on physicians by this final rule.

ESTIMATED PAPERWORK BURDEN ON PHYSICIANS

CFR Section	Estimated annual number of ambulance trips per supplier (9,000 suppliers) requiring certification statements	Estimated average time in minutes to complete each statement (Minutes)	Estimated total annual burden for all physicians combined (9,000 × 3,000 certificates per supplier × 10 minutes) (Hours)
410.40(d)(2) & (3)(i)	3,000	10	4,500,000

In addition, suppliers will be required to retain all physician certifications on file and make the certifications available upon request by the Medicare carrier or intermediary. The burden associated with this requirement is the time required for the supplier to retain the physician certification. We estimate that this could take, on average, 2 minutes to file each physician certification. Given that we estimate 3,000 certifications per year, the total burden associated with these requirements is 6,000 minutes or 100 annual hours, per supplier. The total burden imposed by the requirements of this section are 4,500,000 hours for all physicians and (9,000 × 100 hours record keeping) 900,000 hours for suppliers. This paperwork burden requirement will impact all physicians. We estimate that there are 500,000 physicians. Total burden hours imposed on physicians times $15 (the estimated hourly cost for an administrative employee to complete the form, less the attending physician's signature) equals an additional cost of $67.5 million for physicians and a cost of $9 million for ambulance suppliers.

Section 410.41 Requirements for ambulance suppliers

This section requires an ambulance supplier to bill for ambulance services using HCFA-designated procedure codes to describe origin and destination and indicate on the claims form that the physician certification is on file and available for review upon request by the Medicare carrier or intermediary. The burden associated with this requirement is captured during the completion of the HCFA 1500/1491 common claim file form, approved under OMB number 0938–0008. Therefore, we are assigning one token-hour of burden for this requirement.

This section also requires, upon a carrier's request, an ambulance supplier to complete and return the attached Ambulance Supplier Form and to submit documentation of emergency vehicle and staff licensure and certification requirements in keeping with State and local laws to the Medicare carrier.

This requires completion of the Ambulance Supplier Form, photocopying documentation already required by State or local laws and in

the possession of the supplier, and sending those copies, along with the completed form to the carrier. We will require ambulance suppliers to complete the Ambulance Supplier Form on an annual basis or in keeping with licensure or certification requirements established by State or local laws. It is our understanding that an overwhelming number of States require ambulance supplier licensure or certification renewal on an annual basis.

Our decision no to state a specific time frame, for example requiring annual submission of the documentation, in which ambulance suppliers will be required to submit the form took into consideration the potential burden on those suppliers operating in areas with renewal requirements other than on an annual basis. It is estimated that the time to complete this form is no more than 32 minutes.

The following chart shows the potential paperwork burden that may be imposed on ambulance suppliers by this final rule.

ESTIMATED ANNUAL SUPPLIER REPORTING BURDEN

CFR Sections	Estimated no. of ambulance suppliers	Estimated average burden per response (Minutes)	Estimated annual burden (Hours)
410.41(c)(2) ambulance supplier form and documentation	9,000	32	4,530

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in §§ 410.40 and 410.41. The information collection requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

If you comment on these information collection and record keeping requirements, or the attached form, please mail copies directly to the following:

Health Care Financing Administration,
Office of Information Services,
Security and Standards Group,
Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke, HCFA–1813–FC, or

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer

VIII. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all suppliers of ambulance services are considered to be small entities. Individuals, carriers, and States are not considered to be "small entities."

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

As illustrated below, the impact of this regulation does not meet the criteria under Executive Order 12866 to require a regulatory impact analysis; however, the following information, together with information provided elsewhere in this preamble, constitutes a voluntary analysis and meets the requirements of the RFA.

First, this final rule was initiated partly because of the concern over the rapid increase in the cost to the Medicare program for furnishing ambulance services to beneficiaries. This rapid increase in expenditures can be attributed to a variety of causes that include the following:

- High costs for equipment, supplies, and trained personnel incurred by all ambulance suppliers are passed on to the public.
- Provision of nonemergency, scheduled ambulance services to ESRD beneficiaries for treatment or therapy to hospital-based facilities that may be farther away from the beneficiary's home than nonhospital-based facilities offering the same service. These transports cost the Medicare program more because of the higher mileage charges.
- Erroneous Medicare payment of claims for ambulance services from suppliers using nonemergency vehicles that transport beneficiaries whose medical condition is such that transportation in an ambulance is unnecessary.

Second, we believe the policies contained in this rule will result in the consequences outlined below:

- The requirement that ambulance services be furnished in a vehicle equipped and staffed to respond to a medical emergency or an acute care situation will improve the overall quality of services furnished to beneficiaries and eliminate payment for transportation services that are furnished in a vehicle not equipped or staffed to provide ambulance services. This particular aspect of the final rule may cause some suppliers to have to upgrade their vehicles, equipment or staff training and certification so that the vehicles meet the definition of an ambulance. There may be some, however, who may not be able to upgrade their vehicles or staff. We do not know how many suppliers this requirement would affect; however, because we believe the entities that may be affected by this final rule primarily provide transportation services, such as wheelchair van transportation, we do not believe the number to be substantial.
- The requirement for physicians to certify the need for scheduled and certain unscheduled, nonemergency ambulance services for beneficiaries to receive therapy or treatment will ensure that those beneficiaries receiving the ambulance services actually require that level of transport.

—This requirement will affect all physicians. We estimate that there are 500,000 physicians. Total burden hours imposed on physicians times $15 (the estimated hourly cost for an administrative employee to complete the form, less the attending physician's signature) equals an additional cost of $67.5 million for physicians and a cost of $9 million for ambulance suppliers.

—The physician certification provision also affects the suppliers:

- The physician certification provision requires, in situations

involving scheduled, nonemergency transportation, suppliers to obtain, from the beneficiary's attending physician, a written physician's order certifying the need for ambulance transportation. The certification is renewable every 60 days. Many suppliers currently provide carriers with similar documentation to certify medical necessity when transporting beneficiaries with ESRD. In cases where a beneficiary requires a nonemergency, unscheduled ambulance transport, the supplier must obtain, from the beneficiary's attending physician, the physician's written certificate 48 hours after the ambulance transportation has been furnished.

• The billing and reporting provision set forth in § 410.41(c)(2) requires ambulance suppliers to verify compliance with State or local licensure and certification requirements. This provision does not require the submission of information that is inconsistent with information suppliers provide to State or local authorities. Suppliers are already required to complete the standardized HCFA-Ambulance Supplier Form and submit the appropriate documentary evidence. This provision will require the photocopying of documentary evidence in the possession of the supplier.

—The provision permitting ESRD beneficiaries to be transported to the nonhospital-based facilities nearest their home will be more convenient, since they will no longer have to be transported to hospital-based facilities that may be farther away. In addition, for those beneficiaries this is a more cost-effective policy since regularly transporting beneficiaries farther from their homes is more costly.

• For the first time, Medicare payment may be made for paramedic intercept services that meet the conditions for coverage. Currently, when these services have been provided to a Medicare beneficiary, the ALS paramedic intercept company has been free to bill the beneficiary for the full charge of the intercept service because it was not a covered service. Now that the service is covered, Medicare payment will be made to the intercept company, and the beneficiary will be responsible for only the applicable deductible and coinsurance. This will benefit both the company and the beneficiary.

The only State that we are aware of in which the conditions described in section 4531(c) of the BBA exist is New York. After consultations with the ambulance industry in New York, and examination of the Medicare program data, we estimate the volume of services that will be covered under this provision in a year will be between 2,000 and 4,000. A payment allowance of $150.00 per service (the difference between the average allowance for ALS and the average allowance for BLS in New York) yields a negligible cost. Because the Medicare Part B coinsurance and deductible provisions apply, the program payment will be between $240,000 and $480,000. The remainder of the cost will be the responsibility of beneficiaries.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any final rule with comment period that may result in an annual expenditure by State, local or tribal government, in the aggregate, or by the private sector of $100 million. The final rule with comment period will not have an effect on the governments mentioned, and private sector costs will be less than the $100 million threshold. The physician certification provision requires, in situations involving scheduled, nonemergency transportation, suppliers to obtain, from the beneficiary's attending physician, a written physician's order certifying the need for ambulance transportation. The certification is renewable every 60 days. Many suppliers currently provide carriers with similar documentation to certify medical necessity when transporting beneficiaries with ESRD. In cases where a beneficiary requires a nonemergency, unscheduled ambulance transport, the supplier must obtain, from the beneficiary's attending physician, the physician's written certificate 48 hours after the ambulance transportation has been furnished.

The billing and reporting provision set forth in § 410.41(c)(2) requires ambulance suppliers to verify compliance with State or local licensure and certification requirements. This provision does not require the submission of information that is inconsistent with information suppliers provide to State or local authorities. Suppliers are already required to complete the standardized HCFA-Ambulance Supplier Form and submit the appropriate documentary evidence. This provision will require the photocopying of documentary evidence in the possession of the supplier.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

IX. Other Required Information

A. Waiver of Notice of Proposed Rulemaking

This final rule contains a provision relating to ambulance services that was not included in the proposed rule published on June 17, 1997. That provision, the limited Medicare coverage of paramedic intercept services in rural areas, was authorized by section 4531(c) of the BBA. We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the final rule take effect. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest.

As explained in detail in section V of this preamble, section 4531(c) of the BBA authorizes us to provide coverage of paramedic intercept services under very limited conditions, which are specifically stated in the law. Because of the specificity of the law, we have little discretion in the manner in which we implement this extension of the ambulance benefit.

This provision was not included in the proposed rule because publication of the proposed rule predated enactment of the BBA. Nonetheless, we have received many letters requesting that we implement the provision as soon as possible. As discussed above, this change will allow suppliers of paramedic intercept services that meet the statutory requirements to receive payment for those services. Because those suppliers are now prohibited from billing Medicare for their services, Medicare beneficiaries are responsible for paying the full charge for the services. We believe that it is appropriate to implement this change as soon as possible to reduce the burden on Medicare beneficiaries who must pay for these services out-of-pocket. Thus, we find that, in this case, prior notice and comment would be impracticable and unnecessary, therefore, we find good cause to waive proposed rulemaking for the revisions set forth at § 410.40(c) and to issue these regulations as final. However, we are providing a 60-day period for public comment, as indicated at the beginning of this rule, on these changes.

B. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. Comments on the

paramedic intercept provision will be considered if we receive them by the date specified in the **DATES** section of this preamble. We will not consider comments concerning the provisions of this final rule that were published in the June 17, 1997 proposed rule, whether those provisions are presented in this final rule as unchanged or have been revised based on public comment.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Chapter IV is amended as set forth below:

Part 409—HOSPITAL INSURANCE BENEFITS

A. Part 409 is amended as set forth below:

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 409.10 [Amended]

2. In § 409.10, the following amendments are made:

a. In paragraphs (a)(1) through (a)(5), the semicolon at the end of each paragraph is removed, and a period is added in its place.

b. In paragraph (a)(6), the words "services; and" are removed, and "services." is added in their place.

c. A new paragraph (a)(8) is added to read as follows:

§ 409.10 Included services.

(a) * * *

(8) Transportation services, including transport by ambulance.

* * * * *

§ 409.20 [Amended]

3. In § 409.20, the following amendments are made:

a. In paragraph (a), the period at the end of the introductory text is removed, and a colon is added in its place.

b. In paragraph (a)(1) through (a)(5), the semicolon at the end of each paragraph is removed, and a period is added in its place.

c. In paragraph (a)(6), "; and" is removed, and a period is added in its place.

d. A new paragraph (a)(8) is added to read as follows:

§ 409.20 Coverage of services.

(a) * * *

(8) Transportation services, including transport by ambulance.

* * * * *

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

B. Part 410 is amended as set forth below:

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 410.40 is revised to read as follows:

§ 410.40 Coverage of ambulance services.

(a). *Basic rules.* Medicare Part B covers ambulance services if the following conditions are met:

(1) The supplier meets the applicable vehicle, staff, and billing and reporting requirements of § 410.41 and the service meets the medical necessity and origin and destination requirements of paragraphs (d) and (e) of this section.

(2) Medicare Part A payment is not made directly or indirectly for the services.

(b) *Levels of services.* Medicare covers ambulance services within the United States at the following levels of services:

(1) Basic life support (BLS) services.

(2) Advanced life support (ALS) services.

(3) Paramedic ALS intercept services described in paragraph (c) of this section.

(c) *Paramedic ALS intercept services.* Paramedic ALS intercept services must meet the following requirements:

(1) Be furnished in a rural area (as defined in § 412.62(f) of this chapter).

(2) Be furnished under contract with one or more volunteer ambulance services that meet the following conditions:

(i) Are certified to furnish ambulance services as required under § 410.41.

(ii) Furnish services only at the BLS level.

(iii) Be prohibited by State law from billing for any service.

(3) Be furnished by a paramedic ALS intercept supplier that meets the following conditions:

(i) Is certified to furnish ALS services as required in § 410.41(b)(2).

(ii) Bills all the recipients who receive ALS intercept services fro the entity, regardless of whether or not those recipients are Medicare beneficiaries.

(d) *Medical necessity requirements*—(1) *General rule.* Medicare covers ambulance services only if they are furnished to a beneficiary whose medical condition is such that other means of transportation would be contraindicated. For nonemergency ambulance transportation, the following criteria must be met to ensure that ambulance transportation is medically necessary:

(i) The beneficiary is unable to get up from bed without assistance.

(ii) The beneficiary is unable to ambulate.

(iii) The beneficiary is unable to sit in a chair or wheelchair.

(2) *Special rule for nonemergency, scheduled ambulance services.* Medicare covers nonemergency, scheduled ambulance services if the ambulance supplier, before furnishing the service to the beneficiary, obtains a written order from the beneficiary's attending physician certifying that the medical necessity requirements of paragraph (d)(1) of this section are met. the physician's order must be dated no earlier than 60 days before the date the service is furnished.

(3) *Special rule for nonemergency, unscheduled ambulance services.* Medicare covers nonemergency, unscheduled ambulance services under the following circumstances:

(i) For a resident of a facility who is under the care of a physician if the ambulance supplier obtains a written order from the beneficiary's attending physician, within 48 hours after the transport, certifying that the medical necessity requirements of paragraph (d)(1) of this section are met.

(ii) For a beneficiary residing at home or in a facility who is not under the direct care of a physician. A physician certification is not required.

(e) *Origin and destination requirements.* Medicare covers the following ambulance transportation:

(1) From any point of origin to the nearest hospital, CAH, or SNF that is capable of furnishing the required level and type of care for the beneficiary's illness or injury. The hospital or CAH must have available the type of physician or physician specialist needed to treat the beneficiary's condition.

(2) From a hospital, CAH, or SNF to the beneficiary's home.

(3) From a SNF to the nearest supplier of medically necessary services not available at the SNF where the beneficiary is a resident, including the return trip.

(4) For a beneficiary who is receiving renal dialysis for treatment of ESRD, from the beneficiary's home to the

nearest facility that furnishes renal dialysis, including the return trip.

(f) *Specific limits on coverage of ambulance services outside the United States.* If services are furnished outside the United States, Medicare Part B covers ambulance transportation to a foreign hospital only in conjunction with the beneficiary's admission for medically necessary inpatient services as specified in subpart H of part 424 of this chapter.

3. A new § 410.41 is added to read as follows:

§ 410.41 Requirements for ambulance suppliers.

(a) *Vehicle.* A vehicle used as an ambulance must meet the following requirements:

(1) Be specially designed to respond to medical emergencies or provide acute medical care to transport the sick and injured and comply with all State and local laws governing an emergency transportation vehicle.

(2) Be equipped with emergency warning lights and sirens, as required by State or local laws

(3) Be equipped with telecommunications equipment as required by State or local law to include, at a minimum, one two-way voice radio or wireless telephone.

(4) Be equipped with a stretcher, linens, emergency medical supplies, oxygen equipment, and other lifesaving emergency medical equipment as required by State or local laws.

(b) *Vehicle staff—(1) BLS vehicles.* A vehicle furnishing ambulance services must be staffed by at least two people, one of whom must meet the following requirements:

(i) Be certified as an emergency medical technician by the State or local authority where the services are furnished.

(ii) Be legally authorized to operate all lifesaving and life-sustaining equipment on board the vehicle.

(2) *ALS vehicles.* In addition to meeting the vehicle staff requirements of paragraph (b)(1) of this section, one of the two staff members must be certified as a paramedic or an emergency medical technician, by the State or local authority where the services are being furnished, to perform one or more ALS services.

(c) *Billing and reporting requirements.* An ambulance supplier must comply with the following requirements:

(1) Bill for ambulance services using HCFA-designated procedure codes to describe origin and destination and indicate on claims form that the physician certification is on file.

(2) Upon a carrier's request, complete and return the ambulance supplier form designated by HCFA and provide the Medicare carrier with documentation of compliance with emergency vehicle and staff licensure and certification requirements in accordance with State and local laws.

(3) Upon a carrier's request, provide additional information and documentation as required.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.124 [Amended]

In § 424.124, paragraph (c)(2) is amended by removing the reference to "§ 410.140" and adding in its place the reference to "§ 410.41".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 10, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: January 13, 1999.

Donna E. Shalala,

Secretary.

Note: Addendum 1 and Addendum 2 will not appear in the Code of Federal Regulations.

Addendum 1

NOTE TO: (INSERT NAME OF MEDICARE SUPPLIER)

FROM: (INSERT NAME OF MEDICARE CARRIER)

SUBJECT: Completion of Attached Ambulance Supplier Form

The attached form must be completed by you whenever your State and Local laws require that you update the licensure of your vehicles and/or staff. We are also requiring that this form be completed at the carrier's discretion so that the latest documentation will be on file with the carrier to make appropriate claims payment determinations.

The form is self explanatory and, therefore, there are no program instructions for its completion. We do not expect that it will take longer than 30 minutes to answer the questions and will require only another minute or two to copy and attach the photocopies supporting the response to some of the questions.

If you have any questions about completing this form please contact us at (fill in the telephone number and or address of the carrier).

Addendum 2—Ambulance Supplier Form

1. Corporate/Business Name of Ambulance Company: _____

_____

Trade Name of Ambulance Company: _____

_____

(Exactly as it appears on the vehicle(s))

2. Medicare Provider Number: _____

Federal Tax Identification Number: _____

3. License Number(s): _____

(A copy of the current license/certificate *must* be submitted with this form. The effective date and expiration must be stated on the license/certificate. Program payment will be based these dates.)

4. Physical Address of Ambulance Company Headquarters: _____

_____

Mailing Address (If different): _____

_____

(Post Office Boxes and Drop Boxes are *not* acceptable as a physical business address.)

Physical address locations of any substations, other than Headquarters, where vehicles are garaged (if applicable):

a. _____

_____

b. _____

_____

(Attach additional sheets if necessary)

What geographic area(s) do you serve? _____

_____

5. Business Telephone Number(s): (____) ____

Fax Machine Number(s): (____) _____

(List telephone numbers for all locations. The business telephone number(s) must be a number where patients or customers can reach you or register complaints.)

Name of Daily Contact Person: _____

_____

(Please print name, title, and provide a telephone number, if different from the business telephone number.)

6. Owner's Name(s) and Social Security Number(s): _____

_____

(Identify all individuals and their Social Security Numbers or entities who have ownership or controlling interest in this company. Attach additional sheets if necessary.)

7. Indicate the number of vehicles providing each type of service. Provide a copy of the license/certification documentation from the State or local regulatory agency for each vehicle:

____ Advanced Life Support

____ Advanced Life Support (Paramedic Intercept Squad Unit)

____ Advanced Life Support (Mobile Intensive Care Unit)

____ Basic Life Support

____ Air Ambulance

Identify all vehicles in your fleet by providing the following information:

(Attach additional sheets if necessary)

Year Make Model VIN#

_____

_____

_____

8. List the name of each crew member and their individual training (e.g., CPR, first aid, ACLS, etc.) A copy of their certificate(s) of training *must* be attached. (Attach additional sheets if necessary.)

Name: _____
Training: _____
Name: _____
Training: _____

9. Name of Medical Director: _____

Medical License Number of Medical Director: _____

Telephone Number (___) _____

10. Has your company or any owner *ever* been excluded from participation in the Medicare or Medicaid program?

Yes _____ No_____

If yes, under what corporate/business name(s), trade name(s) and owner(s), did the exclusion occur?

List prior Medicare Identification Number(s):

Provide name(s) and location(s) of prior Carrier(s):

(If service was provided under the Medicaid program, list the prior Medicaid Identification Number and the State where the service was provided.)

11. You agree to notify this office of any change in operation, ownership, or revocation of licensure. It is also understood that representatives from the Health Care Financing Administration (HCFA) and HCFA Medicare contractors may make on-site inspections at any time.

By signing, I agree to the above statement and verify that I have reviewed all of the information contained herein, or submitted separately in support of this verification of compliance form, and verify that the information is accurate and complete.

Name and Title (please print): _____

Address: _____

Signature: _____
Date: _____

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB number for this information collection is 0938–xxxx. The time required to complete this information collection is estimated to average xx hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: HCFA, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Mail Stop N2–14–26 and to the Office of the Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

[FR Doc. 99–1547 Filed 1–20–99; 4:15 pm]

BILLING CODE 4120–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–318, RM–7311, 7516]

Radio Broadcasting Services; Chillicothe, Forest, Lima, New Washington, Peebles and Reynoldsburg, Ohio

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Petition for Reconsideration.

SUMMARY: At the request of Pearl Broadcasting, Inc., this document dismisses the Petition for Reconsideration filed by Pearl Broadcasting, Inc. of the *Report and Order*, 61 FR 44288 (Aug. 28, 1996) which denied Pearl's request to change the community of license of Station WKKJ(FM), Channel 227B from Chillicothe to Reynoldsburg, Ohio and denied proposed allotments at Peebles, Forest and Lima, Ohio. The Commission determined that the request for dismissal complied with the requirements of § 1.420(j) of the Commission's Rules. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 25, 1999.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 90–318, adopted January 6, 1999 and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St, N.W., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–1640 Filed 1–22–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 011999D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic zone (EEZ) in the Florida west coast subzone. This closure is necessary to protect the overfished Gulf king mackerel resource.

DATES: Effective 12:00 noon, local time, January 20, 1999, through June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on February 19, 1998 (63 FR 8353), NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast subzone of 1.17 million lb (0.53 million kg). That quota was further divided into two equal quotas of 585,000 lb (265,352 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached or is projected to be reached by filing a notification at the Office of the Federal Register. NMFS has determined that the

commercial quota of 585,000 lb (265,352 kg) for Gulf group king mackerel for vessels using run-around gillnets in the Florida west coast subzone was reached on January 19, 1999. Accordingly, the commercial fishery for king mackerel for such vessels in the Florida west coast subzone is closed effective 12:00 noon, local time, January 20, 1999, through June 30, 1999, the end of the fishing year.

The Florida west coast subzone extends from 87°31'06" W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1999; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1999, through October 31, 1999.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 20, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1588 Filed 1–20–99; 1:37 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981016260–9018–02; I.D. 090998B]

RIN 0648–AL20

Fisheries of the Exclusive Economic Zone Off Alaska; Vessel Moratorium Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 59 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendment 57 to the FMP for Groundfish of the Gulf of Alaska, and Amendment 9 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands submitted by the North Pacific Fishery Management Council (Council). These amendments extend the Vessel Moratorium Program (VMP) authorized under the subject FMPs from January 1, 1999, through December 31, 1999. This action is necessary to prevent a 1-year hiatus between the original expiration of the VMP on December 31, 1998, and the start of fishing under the License Limitation Program (LLP) on January 1, 2000. This action is intended to implement approved amendments to, and further the objectives of, the subject FMPs.

DATES: Effective January 19, 1999.

ADDRESSES: Copies of the Regulatory Impact Review for this action can be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802. Comments on the collection of information burden estimate or any other aspects of the data collection of this action can be sent to the preceding address and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the BSAI in the exclusive economic zone pursuant to the FMPs for groundfish in the respective management areas. The State of Alaska manages the commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands with Federal oversight, pursuant to the FMP for those fisheries. The Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

NMFS implemented the VMP through regulations effective January 1, 1996, to impose a temporary moratorium on the entry of new vessels into the commercial groundfish fisheries in the Exclusive Economic Zone of the GOA and the BSAI and the commercial king crab and Tanner crab fisheries in the BSAI (60 FR 40763, August 10, 1995). The purpose of the VMP originally was, and still is, to curtail increases in fishing capacity and provide industry stability while additional measures, such as the LLP, were developed and implemented.

NMFS approved the LLP on September 12, 1997. However, fishing under the LLP will not begin until January 1, 2000. The extension of the VMP through December 31, 1999, under this final rule will eliminate the 1-year hiatus between fishing under the LLP and the expiration of the VMP on December 31, 1998.

NMFS published a Notice of Availability (NOA) for Amendments 59, 57, and 9 in the **Federal Register** on September 18, 1998 (63 FR 49892). The comment period for the NOA ended on November 17, 1998. FMP amendments were required for this extension because the FMPs specified an expiration date of December 31, 1998, for the VMP. NMFS published the proposed rule to implement Amendments 59, 57, and 9 in the **Federal Register** on November 13, 1998 (63 FR 63442). NMFS received no comments on the proposed rule; however, NMFS received one comment from the U.S. Coast Guard during the comment period for the NOA. The U.S. Coast Guard indicated that all its enforcement and safety concerns were addressed by the amendments.

NMFS approved the FMP amendments on December 16, 1998. The amendments include a provision to eliminate the potential for latent capacity entering the affected fisheries through a restriction on the submission of new moratorium permit applications during the extension. Under the original VMP, an applicant could apply for a new moratorium permit at any time during the VMP. To date, approximately 1,900 moratorium permits, out of a potential of approximately 3,350 permits, have been issued. If the VMP were extended without a restriction on applications, up to 1,450 more moratorium permits could be applied for and issued. Therefore, this action extending the VMP through December 31, 1999, provides that no person may apply for a new moratorium permit after the original VMP expiration date of December 31, 1998, unless the application is based on a moratorium qualification that was used as a basis for obtaining a moratorium permit issued on or before that date.

Accordingly, NMFS will deny an application for a moratorium permit received after December 31, 1998, unless the moratorium qualification on which the application is based has been used as a basis for the issuance of a moratorium permit.

To reduce the administrative costs of extending the VMP, this action will extend existing moratorium permits through December 31, 1999, rather than authorizing the reissuance of new permits with the new expiration date. The only new moratorium permits that will be issued are those based on moratorium qualification transfers. These new permits will also expire on December 31, 1999.

Changes From the Proposed Rule to the Final Rule

The final rule includes changes from the proposed rule that NMFS does not consider substantial. These changes concern the expiration date of the purpose and scope of the VMP and its definitions. An expiration date of December 31, 1998, originally was established for these items and inadvertently was left unchanged in the proposed rule. The purpose and scope and definitions are an integral part of the VMP. Therefore, in the final rule, NMFS corrected the expiration date of the purpose and scope and the following definitions to December 31, 1999: Catcher/processor, catcher vessel, directed fishing, maximum LOA, moratorium crab species, moratorium groundfish species, moraterium qualification, moratorium species, original qualifying LOA, original qualifying vessel, person, qualifying period, and reconstruction.

Classification

The Administrator, Alaska Region, NMFS, determined that FMP Amendments 59, 57, and 9 are necessary for the conservation and management of the commercial groundfish fishery off Alaska and the commercial king and Tanner crab fisheries in the BSAI in and off Alaska and that these FMP amendments are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

At the proposed rule stage, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

OMB approved a collection-of-information requirement for this rule subject to the Paperwork Reduction Act (PRA) under control number 0648–0282. Public reporting burden for applications for moratorium permits, or to transfer a moratorium permit, are estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness because (1) this rule does not establish any new requirements with which affected parties must come into compliance, (2) delay in effectiveness would frustrate the Council's intent to eliminate a hiatus in the VMP, and (3) delay in effectiveness may cause confusion to the affected industry concerning VMP requirements.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.1, revise the heading of paragraph (c) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(c) *Moratorium on entry (applicable through December 31, 1999).* * * *

(1) * * *

§ 679.2 [Amended]

3. In § 679.2, remove the date "December 31, 1998" and add in its place the date "December 31, 1999" in the following definitions:

Catcher/processor, paragraph (2)
Catcher vessel, paragraph (2)
Directed fishing, paragraph (2)
Maximum LOA (MLOA), paragraph (1)
Moratorium crab species
Moratorium groundfish species
Moratorium qualification
Moratorium species, paragraph (2)
Original qualifying LOA
Original qualifying vessel
Person, paragraph (3)
Qualifying period
Reconstruction

4. In § 679.4, the heading of paragraph (c), paragraphs (c)(1)(ii), (c)(1)(iii)(E), (c)(6), and (c)(7) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(c) *Moratorium permits (applicable through December 31, 1999)*

(1) * * *

(ii) *Duration.* Notwithstanding the expiration date printed on the permit, a moratorium permit is valid through December 31, 1999, unless otherwise specified.

(iii) * * *

(E) The permit's term indicates an expiration of December 31, 1998, or December 31, 1999.

* * * * *

(6) *Application for permit*—(i) *General.* A moratorium permit will be issued to the owner of a vessel of the United States if he/she submits to the Regional Administrator a complete application that is subsequently accepted and approved and if the vessel's LOA does not exceed the maximum LOA as specified in § 679.2.

(ii) *Contents of application.* A complete application for a moratorium permit must include the following information for each vessel:

(A) Name of the vessel, state registration number of the vessel, and the USCG documentation number of the vessel, if any;

(B) Name(s), business address(es), and telephone and fax numbers of the owner of the vessel;

(C) Name of the managing company;

(D) Valid documentation of the vessel's moratorium qualification, if requested by the Regional Administrator due to an absence of landings records for the vessel from January 1, 1988, through February 9, 1992;

(E) Reliable documentation of the vessel's original qualifying LOA, if requested by the Regional Administrator, such as a vessel survey, builder's plan, state or Federal registration certificate, fishing permit records, or other reliable and probative documents that clearly identify the vessel and its LOA and that are dated before June 24, 1992;

(F) Specifications of the fishing gear(s) used from January 1, 1988, through February 9, 1992, and, if necessary, the fishing gear(s) used from February 10, 1992, through December 11, 1994;

(G) Specification of the vessel as either a catcher vessel or a catcher/processor vessel;

(H) If applicable, transfer authorization if a permit request is based on the transfer of moratorium qualification pursuant to paragraph (c)(9) of this section; and

(I) Signature of the person who is the owner of the vessel or the person who is responsible for representing the vessel owner.

(iii) An application for a moratorium permit received after December 31, 1998, will be denied unless it is based on a moratorium qualification for which a moratorium permit was issued on or before December 31, 1998.

(7) *Moratorium qualification*—(i) *Qualification by landings.* A vessel has moratorium qualification if:

(A) The vessel is an original qualifying vessel based on a legal landing of moratorium species between January 1, 1988, and February 9, 1992;

(B) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

(C) The vessel's moratorium qualification has not been transferred; and

(D) A moratorium permit for the vessel's moratorium qualification has been issued based on an application submitted on or before December 31, 1998.

(ii) *Qualification by transfer.* A vessel has moratorium qualification if:

(A) The vessel receives a valid moratorium qualification by a transfer approved by the Regional Administrator under paragraph (c)(9) of this section;

(B) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

(C) The moratorium qualification received by transfer has not been subsequently transferred; and

(D) A moratorium permit for the vessel's moratorium qualification has been issued based on an application submitted on or before December 31, 1998.

(iii) *Expiration of moratorium qualification.* A vessel's moratorium qualification will expire on December 31, 1998, unless a moratorium permit has been applied for on or before December 31, 1998, and subsequently issued based on that moratorium qualification.

* * * * *

[FR Doc. 99–1456 Filed 1–19–99; 4:22 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981021263–9019–02; I.D. 090898D]

RIN: 0648–AK12

Fisheries of the Exclusive Economic Zone Off Alaska; Inshore-Offshore Allocations of Pollock and Pacific Cod Total Allowable Catch; Inshore-Offshore Allocation of 1999 Interim Groundfish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 51 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 51 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). This action is necessary to implement the approved portions of Amendments 51/51. The rules re-establish the catcher vessel operational area (CVOA) in the Bering Sea and the allocations of total allowable catches (TACs) of pollock and Pacific cod in the GOA between inshore and offshore components of the fisheries through 2001. Accordingly, the 1999 interim groundfish specifications are revised to reflect these allocations. This action is intended to promote the goals and objectives of the FMPs.

DATES: Effective January 20, 1999.

ADDRESSES: Copies of the Environmental Assessment, Regulatory Impact Review and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21688, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries off Alaska under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Federal regulations appearing at 50 CFR parts 600 and 679, respectively contain general regulations governing U.S. fisheries and implement the FMPs.

Background

The TACs for pollock in the BSAI and for pollock and Pacific cod in the GOA have been allocated between inshore and offshore components of the groundfish fisheries since 1992. The Council repeatedly has recommended inshore-offshore allocations of limited duration to allow for periodic review of the performance of these management measures relative to the fishery conservation and management problems they are designed to resolve. The original inshore-offshore allocations were effective from 1992 through 1995. Amendments 38 and 40 to the BSAI and GOA FMPs, respectively, reestablished inshore-offshore allocations that expired at the end of 1998.

At its meeting in June 1998, the Council took final action to adopt Amendments 51/51 to the FMPs. By proposing these FMP amendments, the Council intended to change the inshore-offshore allocations in the BSAI but to continue the existing allocations in the GOA. Some other changes in the inshore-offshore regime also were proposed as part of these amendments. The Council transmitted Amendments 51/51 to NMFS on September 4, 1998, and NMFS published a notice of availability (NOA) of the amendments and supporting analyses on September 16, 1998 (63 FR 49540). The public comment period on the NOA ended on November 16, 1998. NMFS published proposed implementing rules for Amendments 51/51 on October 29, 1998, (63 FR 57996). The comment period on the proposed rules ended on December 14, 1998. Additional background information appears in the NOA and proposed rule notices.

On October 21, 1998, the President signed the American Fisheries Act (AFA) into law (Pub. L. 105–277). The AFA, among other things, allocated the BSAI pollock TACs differently than the Council had recommended. The Council held a special meeting November 10–13, 1998, in part to discuss the effects of AFA on its inshore-offshore proposal and other management programs. In light of the AFA, the Council recommended specific changes to its Amendment 51/51 proposal. Under the Magnuson-Stevens Act (section 304), NMFS has authority only to approve, disapprove, or partially approve an FMP or amendment; NMFS cannot change a proposed FMP or FMP amendment once it has been submitted for review, even if requested to do so by the Council that submitted it. NMFS must base a decision to approve, disapprove, or partially approve an FMP or FMP amendment on inconsistencies between

the disapproved parts and the Magnuson-Stevens Act or other applicable law. On December 15, 1998, the Alaska Regional Administrator, NMFS, (RA) partially approved BSAI Amendment 51, fully approved GOA Amendment 51, and notified the Council of this decision. The RA's decision not to approve parts of BSAI Amendment 51 is consistent with the Council's intent for achieving consistency with the AFA as expressed at its meeting in November 1998.

Elements of Amendments 51/51 Approved and Disapproved

BSAI Amendment 51

As adopted by the Council in June 1998, this amendment contemplated four changes to the current inshore-offshore allocation regime. These changes are discussed below with reasons for approval or disapproval of each change.

1. Pollock allocation–disapproved. This part of the amendment would have changed the proportional allocation of the BSAI pollock TACs, after subtraction of the reserves. The inshore allocation would have increased from its current 35 percent to 39 percent; the offshore allocation would have reciprocally decreased from its current 65 percent to 61 percent. Because Amendment 45 to the BSAI FMP removed the 7.5 percent Community Development Quota (CDQ) program allocation from the inshore-offshore allocations, Amendment 51 did not include a CDQ allocation.

NMFS disapproved the amendment's pollock allocation because it was inconsistent with AFA section 206. This section of the AFA specifically mandates an allocation of 10 percent of the pollock TAC to a directed fishing allowance for the CDQ program plus an additional allocation of pollock for incidental catches in all non-pollock fisheries. Of the remaining pollock TAC, the law stipulates the following allocations: 50 percent to the inshore component, 40 percent to the offshore component (catcher/processors), 10 percent to the offshore component (motherships).

The allocations specified by the AFA will be implemented in 1999 through the annual groundfish specification process. Proposed and interim specifications were published, respectively, on December 30, 1998 (63 FR 71867), and January 4, 1999 (64 FR 50).

2. Small vessel set aside–Disapproved. This part of the amendment would have set aside a portion of the inshore component pollock allocation for use by catcher vessels less than 125 ft (38.1 m) length overall immediately before the pollock B season, starting about August 25. The amount reserved in the set aside would have been equal to 2.5 percent of the BSAI pollock TACs, after subtraction of reserves.

NMFS disapproved this part of Amendment 51 because it was inconsistent with several sections of the AFA and National Standard 7 of the Magnuson-Stevens Act which requires that conservation and management measures shall where practicable minimize cost and avoid unnecessary duplication. Section 206 of the AFA specifically mandates allocations among CDQ and inshore and offshore components of the BSAI pollock fishery. The proposed set aside conflicts with these AFA-specified allocations because it would have been based on the TAC; not simply a sub-allocation of the inshore component allocation. Further, sections 208(a) and 210(b) of the AFA appear to provide the market erosion protections for small vessels that the TAC set aside was designed to provide. Section 208(a) establishes increased restrictions on entry into the inshore catcher vessel fishery, and section 210(b) allows inshore catcher vessels to form an exclusive cooperative. Moreover, the AFA provides the entire inshore component with a substantially increased allocation of the pollock TAC (about 30 percent) relative to its allocation from 1992 through 1998. The small vessels that operate in the inshore component likely will benefit to some degree from this increased allocation. Therefore, in light of the AFA, the proposed small vessel set aside provisions would duplicate existing provisions and impose unnecessary regulatory costs on the pollock fisheries.

3. Catcher vessel operational area (CVOA)–Partially Approved. This part of Amendment 51 will continue the CVOA specified in the existing regulations with respect to the geographic area and its effectiveness during the B season (50 CFR 679.22(a)(5)). Amendment 51, however, would have changed the existing CVOA rules by excluding from the CVOA all catcher vessels that deliver pollock to the offshore component. This would have prevented catcher vessels from conducting directed fishing in the CVOA for pollock for delivery to motherships or catcher/processors (the offshore component) during the B season. Under the current CVOA regulation, all catcher vessels, regardless of whether they deliver to inshore or offshore components, may fish in the CVOA.

The NMFS has approved all of the proposed amendment text pertaining to the CVOA with the exception of the phrases that would have excluded from the CVOA catcher vessels catching pollock for processing by the offshore component. The reason for selectively disapproving such text is its inconsistency with national standard 7. The Council intended the disapproved text to establish parity between the motherships and the catcher/processor vessels within the offshore component. Motherships have been allowed to operate within the CVOA, receiving and processing pollock harvested by catcher vessels. Catcher/processor vessels are not allowed to harvest pollock in the CVOA during the B season. In recommending the CVOA portion of Amendment 51, the Council attempted to create parity between motherships and catcher/processor vessels. As stated in the preamble to the proposed rule (63 FR 58000–58001), the Council noted that the proportion of catch taken by mothership operations increased at the expense of catcher/processors during the period 1991–96, and that motherships may have had a competitive advantage over catcher/processors. The AFA, however, specifies separate allocations of the pollock TACs for the mothership and catcher/processor sectors, thereby achieving the parity intended by the Council. Hence, the exclusion of catcher vessels from the CVOA that deliver to the offshore component was an unnecessary duplication of an AFA provision. As such, it was inconsistent with national standard 7.

Disapproval of the offshore catcher vessel text does not prevent the implementation of the CVOA provision. In fact, it makes the approved CVOA more closely resemble the CVOA provision in effect during 1996–98. In addition, at its meeting in November 1998, the Council indicated its desire to remove this more restrictive provision from its Amendment 51 proposal and return to the previous CVOA rule.

Although the approved CVOA provisions are effectively the same as they were from 1996–98, further restrictions on fishing in the CVOA will be implemented in 1999 to mitigate the effects of pollock fishing on Steller sea lions and their critical habitat, within which much of the CVOA lies. These restrictions will have the effect of dispersing the pollock fishery in time and area and will be made by separate regulatory action.

4. Duration–Disapproved. As proposed, the pollock allocations in Amendment 51 would have been effective for the 3-year period, January

1, 1999, through December 31, 2001. This period is inconsistent with the effective period of the inshore-offshore allocations specified in the AFA of January 1, 1999, through December 31, 2004 (sec. 206 and 213). No duration limit was specified in the proposed amendment text for the CVOA provision. Hence, this provision will continue in effect until changed by action of the Council and NMFS.

GOA Amendment 51

As adopted by the Council in June 1998, this amendment reestablishes, without change, the current inshore-offshore allocation regime in the GOA through December 31, 2001. These provisions are discussed below with reasons for approval of each change.

1. Pollock allocation–Approved. This part of the amendment will maintain the current allocation of the pollock TACs of 100 percent to the inshore component. This allocation is consistent with the Magnuson-Stevens Act and other applicable law.

2. Pacific cod allocation–Approved. This part of the amendment will maintain the current allocation of the Pacific cod TACs of 90 percent to the inshore component and 10 percent to the offshore component. These provisions are consistent with the Magnuson-Stevens Act and other applicable law.

3. Duration—Approved. The effective period for the allocations in Amendment 51 is extended for another 3 years, from January 1, 1999, through December 31, 2001. Section 213 of the AFA does not apply to the GOA allocations proposed by the Council. Therefore, the proposed duration of the amendment is not inconsistent with AFA, the Magnuson-Stevens Act or other applicable law.

Changes From the Proposed Rule

As indicated above, the AFA substantially changed the statutory climate in which the Council was acting when it adopted Amendments 51/51 in June 1998. The proposed implementing rule for Amendments 51/51, published on October 29, 1998 (63 FR 57996), represented the amendments as the Council had submitted them and discussed anticipated AFA provisions in the preamble. Hence, differences between the proposed rule and this final rule are due to the partial approval of the amendments, as discussed earlier above, and result principally from the effect of the AFA. A detailed discussion of these differences follows.

1. Definitions. The terms "inshore component" and "offshore component" are changed to reflect the AFA meaning of these terms in the BSAI as distinct from their meaning in the GOA and to prescribe different duration dates in the BSAI and the GOA. The AFA's definition of "inshore component" for pollock fishing in the BSAI does not include vessels that process pollock or GOA Pacific cod in a single geographic location in Alaska State waters. Rather the AFA considers such vessels to be "shoreside processors" (AFA sec. 208(f)(1)(A)). For the GOA pollock fishery, however, the "inshore component" definition remains as proposed. Also, the duration of the AFA provisions continues through December 31, 2004 (AFA sec. 213(a)), whereas the duration of the GOA inshore-offshore provisions, as recommended by the Council and approved, continue through December 31, 2001. This final rule clarifies these differences between the AFA and approved inshore-offshore provisions for the GOA by prescribing 4 separate definitions for the BSAI and GOA inshore and offshore components.

2. Prohibitions. The inshore-offshore prohibitions paragraph (§ 679.7(a)(7)) is expanded to accommodate the differences between the inshore and offshore component definitions in the BSAI and the GOA, respectively, as explained above. The final rule prohibitions are substantially the same as those in the proposed rule, however, in that they prohibit the operation of a vessel in more than one category of the inshore component or in the inshore and offshore component during the same fishing year.

3. Allocations specified. The specific allocations of the pollock TACs in the BSAI in § 679.20(a)(6)(i) are changed for consistency with the AFA. This final rule references section 206(b) of the AFA as governing these allocations instead of explicitly specifying the AFA inshore and offshore allocations. These allocations will be made effective for 1999 through the annual specifications notices required under § 679.20(c). Likewise, § 679.20(b)(1)(iv) is allowed to expire because non-specific reserve amounts of pollock are superceded by the AFA. The Council may submit another FMP amendment during 1999 to formally integrate the AFA provisions into the FMP for the Groundfish Fishery of the BSAI.

With respect to the GOA allocations, no substantive changes are made in this final rule. Minor changes were made, however, in light of the new defined terms for inshore and offshore components. Similar editorial changes are made in the final rule paragraphs (b)(2) and (c)(4) of § 679.20 to differentiate the duration dates and inshore and offshore component terms defined for the BSAI and GOA, respectively.

The proposed BSAI pollock TAC "set-aside" for vessels less than 125 ft (38.1 m) LOA, is not included in the final rule because NMFS has disapproved this part of Amendment 51 (see above).

4. Area closures. The proposed duration date for the CVOA is omitted in this final rule because the approved BSAI Amendment 51 text does not explicitly state an expiration date for the CVOA. In addition, the proposed exclusion of "vessels catching pollock for processing by the offshore component" from the CVOA (in proposed § 679.22(a)(5)(ii)) is removed from this final rule because this part of the Amendment 51 CVOA proposal was disapproved. In effect, the approved CVOA provision as implemented by this rule is the same as the CVOA provision in effect during 1996 through 1998.

5. Seasons. The effective duration date is changed for the restrictions that apply to the offshore component in the BSAI (at § 679.23(e)(2)(ii)). This change is made to achieve consistency with the AFA. In addition, the proposed season beginning date for vessels less than 125 ft (38.1 m) LOA fishing for the pollock "set-aside" is not included in this final rule because this part of Amendment 51 was disapproved. This provision was proposed at § 679.23(e)(2)(iii) which is removed from this final rule. As a result, proposed § 679.23(e)(2)(iv), the B season fair start provision, is redesignated as § 679.23(e)(2)(iii) and edited to remove reference to the "set-aside" season provision.

NMFS anticipates that the restrictions on season start dates for the offshore component in the BSAI set forth at § 679.23(e)(2)(ii) and (iii) will be subject to change under subsequent rulemaking to implement Steller sea lion mitigation measures.

Response to Comments

The public comment period on Amendments 51/51 ended on November 16, 1998, as announced in the NOA published September 16, 1998 (63 FR 49540). The comment period on the proposed rules to implement the amendments ended on December 14, 1998, as announced in the proposed rule published on October 29, 1998 (63 FR 57996). All comments received on the amendments and the proposed rule are summarized and responded to below. A total of 71 letters of comment were received. Of the total, 65 letters essentially made the same comment and are summarized under Comment 1. One letter responded with no comment and one letter asked for an extension of the comment period which was denied.

Comment 1. The existing allocation of 35 percent inshore and 65 percent offshore has worked well since 1992. Both sectors of the pollock processing industry have been able to prosper under this allocation. Moving more pollock from the offshore to the inshore sector will hurt employment in the offshore sector. Comment writers were fearful of the negative economic effects on their families and their communities of allocating pollock TAC away from the offshore vessels and supported maintaining the 35/65 split of the pollock TACs for inshore-offshore allocation.

Response. NMFS appreciates the economic significance of the pollock fishing and processing industry. Passage of the AFA, however, removed the pollock allocation decision from the Council's and NMFS's authority, and NMFS is not making the BSAI reallocations in this final rule. NMFS expects to implement the APA-mandated allocations through the final specifications and other proposed and final rules. NMFS will analyze the economic impacts of such allocations at the time of those rulemakings.

Comment 2. The small vessel set-aside adversely restricts access to a certain portion of the Bering Sea pollock resource based on the size of catcher vessels. The analyses do not support a decision to approve the set-aside, especially in light of the AFA. The root cause of the market erosion experienced by smaller vessels is not adequately identified. The small vessel set-aside will increase the amount of pollock caught without observers aboard because vessels under 125 ft (38.1 m) LOA have less observer coverage than larger vessels. Increased catches by smaller vessels will increase operating inefficiencies and safety problems.

Response. The partial approval of BSAI Amendment 51 did not include the proposed small vessel set-aside provision. NMFS determined that this provision was unnecessary in light of the AFA. The Council also reached this conclusion at its meeting in November 1998 (see Comment 5).

Comment 3. Concern was expressed about the proposal to prohibit catcher vessels that deliver pollock to the offshore sector from operating in the CVOA. Moving the catcher vessels that deliver to motherships out of the CVOA during the B season may pose an increased safety risk. Accident records of the U.S. Coast Guard for the last 5 years indicate more vessels under 124 ft (37.8 m) were lost outside of the CVOA than were lost inside the CVOA.

Response. NMFS did not approve the offshore catcher vessel prohibition part of the CVOA proposal (see above).

Comment 4. Council discussion of the issue of prohibiting catcher vessels from the CVOA if they deliver to motherships centered on the contention that catcher/processors were disadvantaged by the motherships ability to operate in the CVOA. This contention is wrong because catcher/processors are allowed to operate in the CVOA if they operate in the same manner as motherships (i.e. do not catch pollock but only receive pollock from catcher vessels). Mothership operations have no competitive advantage over catcher/processor inside the CVOA. Catcher/processors normally choose to fish outside of the CVOA for economic, not regulatory, reasons. With the passage of the AFA, the Council's proposal regarding offshore catcher vessels in the CVOA becomes moot because it fixes the allocation of pollock between motherships and catcher/processors.

Response. NMFS agrees and did not approve the offshore catcher vessel prohibition part of the CVOA proposal (see above).

Comment 5. The Council commented on its BSAI Amendment 51 proposal in light of the AFA and based on Council discussions at its special meeting in November 1998. The Council recommended substituting the pollock allocation percentages and duration provisions of the AFA for those proposed in BSAI Amendment 51. The Council also recommended that the TAC set-aside for small vessels and the exclusion of offshore catcher vessels from the CVOA be found unnecessary given the explicit allocations under the AFA that increase the inshore component's share of the TAC and allow the inshore component to form cooperative agreements under the AFA. Although originally submitted as a non-severable FMP amendment proposal, the passage of the AFA represents a unique situation which requires partial disapproval of the Council's earlier recommendations.

Response. NMFS agrees and has disapproved the proposed provisions for a small vessel set-aside and the exclusion of offshore catcher vessels from the CVOA. The Magnuson-Stevens Act does not allow NMFS to substitute new provisions for those recommended by a Regional Council. The Act allows only the approval, disapproval, or partial approval of the Council's recommended provisions. The AFA-mandated allocations of the pollock TACs, however, will be implemented in 1999 through the annual specification process. A letter from NMFS indicating the approved and disapproved portions of Amendments 51/51 was sent to the Council on December 15, 1998.

Interim Specifications

Regulations at § 679.20(c)(1) require annual publication of proposed specifications of catch limits in the BSAI and GOA groundfish fisheries for the next fishing year. The 1999 proposed specifications for the BSAI and the GOA were published on December 30, 1998 (63 FR 71867 and 71876, respectively). Interim specifications (§ 679.20(c)(2)) provide for groundfish fisheries that start in early January each year and remain in effect until superceded by publication of the final specifications. Interim specifications for the BSAI and GOA groundfish fisheries were published on January 4, 1999 (64 FR 50 and 46, respectively). The AFA authorizes the interim specification of inshore and offshore amounts for the BSAI pollock fisheries. This final rule makes effective the interim allocations of inshore and offshore amounts for the GOA pollock and Pacific cod fisheries.

Classification

This action has been determined to be not significant under E.O. 12866, based on the EA/RIR/FRFA prepared for this action (see **ADDRESSES**).

The Council prepared an IRFA on the proposed rule to implement amendments 51/51. However, as explained above, NMFS has disapproved substantial portions of the proposed amendments and is consequently implementing only a portion of the provisions described in the proposed rule. NMFS has prepared an FRFA that considers only those aspects of the proposed rule that are now being implemented.

This final rule would apply to about 1,508 vessels that participated in the GOA groundfish fisheries in 1996, an unknown number of which are small entities. The number is unknown because the data source for this number, i.e., permit records, does not have any data regarding whether the vessel is a small entity. The proportion of these vessels that participate in the inshore sector versus the offshore sector is unknown. However, NMFS believes that most of these vessels are likely inshore small entities because there is virtually no offshore fishery in the GOA; 100 percent of the pollock fishery is allocated to the inshore component, and ninety percent of the Pacific cod fishery is also allocated to the inshore component. The portion of the rule implementing the CVOA would apply only to the independent catcher vessels

that participate in the BSAI pollock fishery. The FRFA estimates those vessels to consist of about 50 independent catcher vessels all of which are small entities.

The final rule imposes no new reporting, record keeping, or other compliance requirements. A description of the need for this action, as well as summaries of and responses to public comments, appear in this preamble, above. The comment most relevant to the IRFA was Comment one. Although the allocations mandated by the AFA may have even more pronounced economic impacts than the proposed rule may have had, those impacts are no longer associated with this rule. NMFS expects to implement these AFA allocations through the final specifications or other proposed and final rules. NMFS will analyze the economic impacts of those allocations for these future rule makings.

The approved portions of the amendments (the CVOA and the GOA allocations) would benefit the inshore component to the detriment of the offshore component. Because most of the small entities affected by this final rule participate in the inshore component, while the offshore component consists mainly of large entities, the main impacts of this final rule are likely to be beneficial to small entities. The allocations in the GOA maintain the status quo, but the CVOA allocations in the BSAI exclude the catcher processors, which has the effect of conveying benefits to small entities. Because NMFS expects actions to be beneficial to small entities, NMFS has taken no steps to minimize the significant economic impacts on small entities.

Pursuant to section 7 of the Endangered Species Act, NMFS initiated consultation on the effects of proposed Amendments 51/51 and the BSAI and GOA pollock fisheries on listed and candidate species, including the Steller sea lion and designated critical habitat. The biological opinion prepared for this consultation, dated December 3, 1998, and revised December 16, 1998, concludes that the BSAI and GOA pollock fisheries jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains reasonable and prudent alternatives (RPAs) to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. Specific measures to implement the RPAs were discussed by the Council at its meeting in December 1998 and will be implemented by NMFS through emergency rulemaking before the start of the BSAI and GOA pollock fisheries in 1999. The effects of Steller sea lion mitigation measures on the pollock allocations created under the AFA and GOA Amendment 51 are uncertain.

This rule contains no new collection-of-information requirements subject to the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause under the authority contained in 5 U.S.C. 553(d) to waive the 30-day delay in effective date because the immediate effectiveness of this rule is required to prevent the offshore component in the GOA from exceeding its statutory allocations of pollock and Pacific cod when directed fisheries for these species open in January 1999.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 19, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 773 *et seq.*, 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of "Inshore component" and "Offshore component" are removed and the definitions of "Inshore component in the BSAI", "Inshore component in the GOA", "Offshore component in the BSAI", and "Offshore component in the GOA" are added, in alphabetical order, to read as follows:

§ 679.2 Definitions.

* * * * *

Inshore component in the BSAI (applicable through December 31, 2004) means the following categories that process groundfish harvested in the BSAI:

(1) Shoreside processors, including those eligible under section 208(f) of the American Fisheries Act; and

(2) Vessels less than 125 ft (38.1 m) LOA that process less than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod.

Inshore component in the GOA (applicable through December 31, 2001) means the following three categories of the U.S. groundfish fishery that process groundfish harvested in the BSAI or GOA:

(1) Shoreside processing operations;

(2) Vessels less than 125 ft (38.1 m) LOA that process no more than 126 mt per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod; and

(3) Vessels that process pollock or Pacific cod, harvested in a directed fishery for those species, at a single geographic location in Alaska State waters during a fishing year.

* * * * *

Offshore component in the BSAI (applicable through December 31, 2004) means all vessels not included in the definition of "inshore component in the BSAI" that process groundfish in the BSAI.

Offshore component in the GOA (applicable through December 31, 2001) means all vessels not included in the definition of "inshore component in the GOA" that process groundfish in the BSAI or GOA.

* * * * *

3. In § 679.7, paragraph (a)(7) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(7) *Inshore-offshore*—(i) (*Applicable through December 31, 2004*). Operate any vessel in the BSAI in more than one of the two categories included in the definition of "inshore component in the BSAI," in § 679.2, during any fishing year.

(ii) (*Applicable through December 31, 2004*). Operate any vessel in the BSAI under both the "inshore component in the BSAI" and the "offshore component in the BSAI" definitions in § 679.2 during the same fishing year.

(iii) (*Applicable through December 31, 2001*). Operate any vessel in the BSAI under both the "inshore component in the GOA" and the "offshore component in the BSAI" or under both the "offshore component in the GOA" and the "inshore component in the BSAI" definitions in § 679.2 during the same fishing year.

(iv) (*Applicable through December 31, 2001*). Operate any vessel in the GOA in more than one of the three categories included in the definition of "inshore component in the GOA," in § 679.2, during any fishing year.

(v) (*Applicable through December 31, 2001*). Operate any vessel in the GOA under both the "inshore component in the GOA" and the "offshore component in the GOA" definitions in § 679.2 during the same fishing year.

(vi) (*Applicable through December 31, 2001*). Operate any vessel in the GOA

under both the "inshore component in the GOA" and the "offshore component in the BSAI" or under both the "offshore component in the GOA" and the "inshore component in the BSAI" definitions in § 679.2 during the same fishing year.

(vii) (*Applicable through December 31, 2001*). Operate any vessel that processes pollock or Pacific cod, harvested in a directed fishery for those species, at a single location in Alaska State waters under the "inshore component in the BSAI" and the "inshore component in the GOA" definitions in § 679.2 during the same fishing year.

* * * * *

4. In § 679.20, paragraphs (a)(6), (b)(2), and (c)(4) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(6) *Inshore-offshore apportionments*—(i) *BSAI pollock (applicable through December 31, 2004).* The apportionment of pollock in each BSAI subarea or district and season between the inshore component in the BSAI and the offshore component in the BSAI will be the same as that specified in section 206(b) of the American Fisheries Act.

(ii) *GOA pollock (applicable through December 31, 2001).* The apportionment of pollock in all GOA regulatory areas and for each season allowance described in paragraph (a)(5)(ii) of this section will be allocated entirely to vessels catching pollock for processing by the inshore component in the GOA after subtraction of an amount that is projected by the Regional Administrator to be caught by, or delivered to, the offshore component in the GOA incidental to directed fishing for other groundfish species.

(iii) *GOA Pacific cod (applicable through December 31, 2001).* The apportionment of Pacific cod in all GOA regulatory areas will be allocated 90 percent to vessels catching Pacific cod for processing by the inshore component in the GOA and 10 percent to vessels catching Pacific cod for processing by the offshore component in the GOA.

* * * * *

(b) * * *

(2) * * *

(i) *Pollock inshore-offshore reapportionment (applicable through December 31, 2001).* Any amounts of the GOA reserve that are reapportioned to pollock as provided by this paragraph (b) must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(ii) of this section.

(ii) *Pacific cod inshore-offshore reapportionment (applicable through December 31, 2001).* Any amounts of the GOA reserve that are reapportioned to Pacific cod as provided by this paragraph (b) must be apportioned between the inshore component in the GOA and the offshore component in the GOA in the same proportion specified in paragraph (a)(6)(iii) of the section.

* * * * *

(c) * * *

(4) *Inshore-offshore allocations*—(i) *BSAI pollock (applicable through December 31, 2004).* The proposed, interim, and final specifications will specify the allocation of pollock for processing by the inshore component in the BSAI and the offshore component in the BSAI, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

(ii) *GOA pollock and Pacific cod (applicable through December 31, 2001).* The proposed, interim, and final specifications will specify the allocation of GOA pollock and GOA Pacific cod for processing by the inshore component in the GOA and the offshore component in the GOA, and any seasonal allowances thereof, as authorized under paragraphs (a)(5) and (a)(6) of this section.

* * * * *

5. In § 679.22, paragraph (a)(5) is revised to read as follows:

§ 679.22 Closures.

(a) * * *

(5) *Catcher Vessel Operational Area (CVOA).* The CVOA is defined as that part of the BSAI that is south of 56°00' N. lat. and between 163°00' W. long. and 167°30' W. long. (Figure 2 to part 679).

(i) *Effective time period.* The CVOA is established annually during the B season, defined at § 679.23(e)(2)(I)(B), from September 1 until the date that NMFS closes the B season allocation for the inshore component in the BSAI to directed fishing.

(ii) *Offshore component in the BSAI restrictions.* A catcher/processor vessel in the offshore component is prohibited from conducting directed fishing for pollock in the CVOA unless it is operating under a CDP approved by NMFS.

(iii) *Fisheries other than pollock.* A vessel that harvests or processes groundfish in directed fisheries for species other than pollock may operate within the CVOA consistent with the other provisions of this part.

* * * * *

6. In § 679.23, paragraph (e)(2) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(2) *Directed fishing for pollock.* (i) Subject to other provisions of this part, and except as provided in paragraphs (e)(2)(ii) and (e)(2)(iii) of this section, directed fishing for pollock is authorized only during the following two seasons:

(A) *A season.* From 0001 hours A.l.t. January 1 through 1200 hours A.l.t. April 15.

(B) *B season.* From 1200 hours A.l.t. September 1 through 1200 hours A.l.t. November 1.

(ii) *Offshore component in the BSAI restrictions (applicable through December 31, 2004)*—(A) *Offshore A season.* Subject to other provisions of this part, directed fishing by the offshore component in the BSAI, or by vessels catching pollock for processing by the offshore component in the BSAI, is authorized from 1200 hours A.l.t. January 26 through 1200 A.l.t. April 15.

(B) *Offshore A season "fair start" requirement.* Directed fishing for pollock by the offshore component in the BSAI, or by vessels catching pollock for processing by the offshore component in the BSAI, is prohibited through 1200 hours A.l.t., February 5, for any vessel that is used to fish in a non-CDQ fishery for groundfish in the BSAI or GOA, or for king or Tanner crab in the BSAI prior to 1200 hours, A.l.t., January 26 of the same year.

(iii) *B season "fair start" requirement.* Directed fishing for pollock is prohibited from 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., September 8, for any vessel that is used to fish for groundfish with trawl gear in a non-CDQ fishery in the BSAI or GOA between 1200 hours, A.l.t., August 25, and 1200 hours, A.l.t., September 1.

* * * * *

[FR Doc. 99–1529 Filed 1–20–99; 12:36 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8321–02; I.D. 012099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod and pollock in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod and pollock by vessels catching these species for processing by the offshore component in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 interim total allowable catch (TAC) of Pacific cod and pollock allocated to vessels catching these species for processing by the offshore component in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 20, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(d), if the Administrator, Alaska Region, NMFS (Regional Administrator), determines that the amount of a target species or "other species" category apportioned to a fishery will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified GOA Regulatory Area or district (§ 697.20(d)(1)(iii)).

NMFS published interim 1999 harvest specifications for the GOA groundfish fisheries (64 FR 46, January 4, 1999). A final rule authorizing the inshore/offshore allocation of GOA Pacific cod and pollock was filed with the Office of the Federal Register, January 20, 1999, and became effective January 20, 1999. The Regional Administrator has determined that the following interim Pacific cod TAC amounts for the GOA offshore component will be reached and are necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications for groundfish are likely to be in effect for the 1999 fishing year:

Pacific cod, offshore component

Western Regulatory Area 436 metric tons

Central Regulatory Area 834 metric tons

Eastern Regulatory Area 23 metric tons

Consequently, in accordance with § 679.20(d)(i), the Regional Administrator establishes these interim TAC amounts as directed fishing allowances. Further, the Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. NMFS is prohibiting directed fishing for Pacific cod by vessels catching these species for processing by the offshore component in the Gulf of Alaska in accordance with § 679.20(d). These closures will be in effect beginning at 1200 hours, A.l.t., January 20, 1999, until superseded by the Final 1999 Initial Harvest Specifications for Groundfish. Under the final rule implementing the GOA inshore/offshore allocations, 0 metric tons of pollock are allocated to the offshore directed fishery for this species. Therefore, in accordance with § 679.20(d), NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the offshore component in the Gulf of Alaska. These closures will be in effect beginning at 1200 hours, A.l.t., January 20, 1999, until superseded by the notice of Final 1999 Initial Harvest Specifications for Groundfish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the interim 1999 TAC of Pacific cod and pollock allocated to vessels catching these species for processing by the offshore component in the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 20, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1644 Filed 1–20–99; 4:27 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 15
Monday, January 25, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV99–993–2 PR]

Dried Prunes Produced in California; Undersized Regulation for the 1999–2000 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on changes to the undersized prune regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 1999–2000 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allow handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule would reduce the excess of dried prunes by approximately 6,700 tons, while leaving sufficient prunes to fulfill foreign and domestic trade demand.

DATES: Comments received by April 15, 1999, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632 or E-mail: moabdocket—clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-Mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on changes to the undersized regulation in § 993.49(c) of the prune marketing order for the 1999–2000 crop year for volume control purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening would be increased from 23/32 to 24/32 of an inch in diameter, and for non-French prunes, the opening would be increased from 28/32 to 30/32 of an inch in diameter. This rule would remove the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule would be in effect from August 1, 1999, through July 31, 2000, and was unanimously recommended by the Committee at a December 1, 1998, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes* * *." Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis

of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes, and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733; September 11, 1974; and 42 FR 49802; September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15, 1975 and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes, particularly small size prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77 and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products, such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, particularly in the smaller sizes. During the 1998–99 crop year, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). At its meeting on December 1, 1998, the Committee recognized that the 1998–99 prune crop is about 50% of the normal size; however, with the large inventories and anticipated large 1999–2000 prune crop, the Committee unanimously recommended continuing with volume controls for the 1999–2000 crop year by proposing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. This regulation would be in effect from August 1, 1999, through July 31, 2000.

The Committee estimated that there will be an excess of about 18,700 natural condition tons of dried prunes as of July 31, 1999. This proposed rule would continue to remove primarily small sized prunes from human consumption channels, consistent with the undersized regulation that was implemented for the 1998–99 crop year. It is estimated that approximately 6,700 natural condition tons of small prunes would be removed from human consumption channels during the 1999–2000 crop year. This would leave sufficient prunes to fill domestic and foreign trade demand during the 1999–2000 crop year, and provide an adequate carryout on July 31, 2000, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop is about 38,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) a worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing into the next century (estimated at 350,845 natural condition tons by the year 2003); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 1997–98 crop years, the yield ranged from 1.5 to 2.8 versus a 10 year average of 2.2 tons per acre); and (4) California's continued excess supply situation. The production of these small sizes ranged from 2,575 to 8,778 natural condition tons during the 1990–91 through the 1997–98 crop years. The Committee concluded that it had to continue utilizing supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. The proposed changes to the undersized regulation for the 1999–2000 crop year are the result of these deliberations, and the Committee's desire to bring supplies more in line with market needs.

The current oversupply situation facing the California prune industry has been caused by four consecutive large crops (1994–95 through 1997–98) of over 180,000 natural condition tons. Further burdening the oversupply situation will be large California prune crops over the next few years caused by new prune plantings in recent years and higher yields per acre. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres, but by 1995–96, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons per acre over a three-year period from the 1995–96 through the 1997–98 crop years, compared to a 10-year average of 2.2 tons to the acre. The 1998–99 prune crop is exceptionally light, about 50% of normal size (103,000 tons), due to the unusually cool and wet weather conditions caused by the weather phenomenon known as El Nino. Even though this year's small dried prune crop and the 1998–99 undersized prune regulation will help reduce the existing oversupply, the prune supply has been outstripping demand over the past nine crop years. Another large crop of about 200,000 natural condition tons is expected for the 1999–2000 crop year, partly because of an anticipated increase in bearing acreage, and this will add to the continuing oversupply.

Because of the oversupply situation during the 1997–98 crop year, producer prices for the 24/32 of an inch in diameter French prunes declined to $40–50 per ton. Consequently, producers lost about $260–270 per ton on every ton they delivered to handlers during 1997–98. The lower pricing of the smaller prunes continued in 1998–99, and is expected to continue as an incentive in future crop years to convince producers to produce the larger sizes needed to help the industry better meet the increasing market demand for larger size prunes used for pitted prunes.

The 1998–99 undersized prune rule of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes has expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 1998, was 88,840 natural condition tons, and only about 2,400 natural condition tons of dried prunes are expected to be removed from the 1998–99 marketable supply by the current undersized regulation. The Committee believes that the same

undersized regulation also should be implemented during the 1999–2000 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 1999–2000 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal would benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings would be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e., increase) in the size of those openings would not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers averaged about 54 percent of parity during the 1993 through 1997 seasons, and is in a downward trend. As discussed later, the average grower price for prunes during the 1999–2000 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation would be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action would not impact the dried prune import regulation because the action would affect volume control, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters would not be applied to imported prunes.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 8 out of 20 handlers (40%) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60%) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 90 producers, or about 7% of the 1,250 total producers, would be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This proposed rule would establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 1999–2000 crop year for volume control purposes. This change in regulation would result in more of the smaller sized prunes being classified as undersized prunes, and is expected to benefit producers, handlers, and consumers. Since prune handlers already use 24/32 and 30/32 grader screens, small and large producers and handlers would not incur extra costs to purchase new screen sizes. Moreover, because the quality related undersized regulation has been in place continuously since the early 1980's, the only additional cost resulting from the increased openings would be the disposal of additional undersized prune tonnage (about 6,700 natural condition tons) to nonhuman consumption outlets as required by the order. With the less restrictive openings, only 5,635 natural condition tons or 3.3 percent of the marketable production has been removed on average over the past eight crop years since 1990–91. The more restrictive openings currently in place for 1998–99 are expected to remove only 2,400 tons of dried prunes from the excess marketable supply. The Committee estimated that there will be an excess of about 18,700 natural condition tons of dried prunes on July 31, 1999. Implementation of the more restrictive openings in 1999–2000 is expected to reduce the surplus by about 6,700 tons.

Because the benefits and costs of the proposed action would be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the proposal. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys, which account for over 99 percent of the State's production, the prunes produced are homogeneous enough that the proposal should not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. The only additional costs on producers and handlers expected from the increased openings would be the disposal of additional tonnage (now estimated to be about 6,700 tons) to nonhuman consumption outlets. These costs are expected to be minimal, and would be offset by the benefits derived by the elimination of some of the excess supply of small sized prunes.

At the December 1, 1998, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for these small sizes is quite bleak with producers losing about $260–270 on every ton they deliver to handlers. The 1998–99 grower field price for 24/32 screen French prunes is ranging between $40 and $50 per ton, just like last crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton,

and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton. The total cost is about $310 per ton which equates to a loss of about $260–270 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, the Department has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories would result in higher season-average prices which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 6,700 tons of small-sized dried prunes during the 1999–2000 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess supply situation facing the industry. California prune handlers reported that they held 126,485 tons of natural condition prunes on July 31, 1998, the end of the 1997–98 crop year. This was the largest year-end inventory reported since the Committee began collecting such statistics in 1949. The desired industry inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 38,000 natural condition tons. This leaves an inventory surplus of over 88,000 tons which will likely take the industry several years to market. The small 1998–99 prune crop and undersized regulation will help reduce the surplus, but the anticipated large 1999–2000 prune crop is expected to bring supplies further out-of-balance with demand.

Further burdening this oversupply situation will be large California prune crops over the next few years caused by the new prune plantings of recent years and higher yields per acre. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres, but by 1995–96, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons per acre over a three-year period from the 1995–96 through the 1997–98 crop year, compared to a 10-year average of 2.2 tons to the acre. The 1998–99 crop is expected to be about 50% of normal size (103,000 natural condition tons). Even though this year's small prune crop and the 1998–99 undersized prune regulation will help reduce the existing oversupply, the prune supply has been outstripping demand over the past nine years. In addition, the 1999–2000 prune crop is expected to be about 200,000 tons, further increasing the industry's oversupply problems.

As the marketable dried prune production and surplus prune inventories are reduced through this proposal, the trade should begin taking a position early in the season for its dried prune needs, which would help firm up market prices and eventually reflect a higher overall price to the producers. In addition, as producers implement improved cultural and thinning practices, the overall size of the prunes will get larger. As a result, producer returns would increase because producers will be producing less tonnage of small sized fruit at a $260–270 per ton loss. Instead producers will be receiving the higher prices paid for the larger sizes.

For the 1993–94 through the 1997–98 crop years, the season average price received by the producers ranged from a high of $1,120 per ton to a low of $827 per ton during the 1997–98 crop year. The season average price received by producers during that 5-year period averaged about 54 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for the 1998–99 season is expected to be about $790 per ton, or about 41 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change was needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead, the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to the proposal.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control.

Therefore, the increased diameters would not be applied to imported prunes.

This action would not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 1, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members, of which seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been reviewing this supply management problem for the second year, and this proposed rule reflects their deliberations completely. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The Committee has requested a comment period through April 15, 1999, to allow interested persons to respond to this proposal. This longer comment period is needed to give the Committee

more time to observe the bloom period during the spring and industry shipment trends during the year and allow sufficient time to comment to the Department concerning any changes deemed appropriate. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. A new § 993.406 is added to read as follows:

§ 993.406 Undersized prune regulation for the 1999–2000 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 1999–2000 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: January 19, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1609 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–54]

Amendment to Class E Airspace; Alliance, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: This notice announces an extension of the comment period of a Notice of Proposed Rulemaking (NPRM), which proposed to amend the Class E airspace at Alliance, NE. This action is being taken due to a delay in publication of the NPRM document.

DATES: Comments must be received on or before February 17, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–54, 601 East 12th Street, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Background

Airspace Docket No. 98–ACE–54, published on January 4, 1999 (64 FR 60) proposed to amend the Class E airspace at Alliance, NE. This action will extend the comment period closing date on that airspace docket from January 15, 1999, to February 17, 1999, to allow for a 45-day comment period instead of the existing 11 day comment period.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Extension of Comment Period

The comment period closing date on Airspace Docket No. 98–ACE–54 is hereby extended to February 17, 1999.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Kansas City, MO, on January 6, 1999.

Bryan H. Burleson,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1557 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–49]

Proposed Realignment of Federal Airway; Columbus, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to realign Federal Airway 220 (V–220) in the vicinity of Columbus, NE. The FAA is proposing this action to enhance the management of air traffic operations and allow for better utilization of navigable airspace in the Columbus, NE, area.

DATES: Comments must be received on or before March 15, 1999.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 98–AGL–49, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue; Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue; Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–49." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

As the result of a recent airspace review, the FAA has determined that a segment of V–220, south of Columbus, NE, was not required for aircraft operations and should be deleted from the National Airspace System.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to terminate V–220 in the vicinity of Columbus, NE. The FAA is proposing this action to enhance the management of air traffic operations and allow for better utilization of the navigable airspace in the Columbus, NE, area.

Domestic VOR Federal airways are published in Section 6010(a) of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6010 VOR Federal Airways

* * * * *

V–220 [Revised]

From Grand Junction, CO; INT Grand Junction 075° and Rifle, CO, 163° radials; Rifle; Meeker, CO; Hayden, CO; Kremmling, CO; INT Kremmling 081° and Gill, CO, 234° radials; Gill; Akron, CO; INT Akron 094° and McCook, NE, 264° radials; McCook; INT McCook 072° and Grand Island, NE, 241° radials; Kearney, NE; Hastings, NE; Columbus, NE.

* * * * *

Issued in Washington, DC, on January 15, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–1554 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–37]

Proposed Realignment of Federal Airway; Rochester, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FAA proposes to realign Federal Airway 411 (V–411) in the vicinity of Rochester, MN. The FAA is proposing this action to support the revision of several standard terminal arrival routes. This action would enhance the management of air traffic operations and allow for better utilization of navigable airspace in the Rochester, MN, area.

DATES: Comments must be received on or before March 11, 1999.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Air Traffic Division, AGL–500, Docket No. 98–AGL–37, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue; Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue; Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–37." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be

considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

As a result of a recent airspace review, the FAA has taken action to revise several standard terminal arrival routes (STAR). This revision of the STARs will require modification of V–411 in the vicinity of Rochester, MN.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign V–411 in the vicinity of Rochester, MN. The FAA is proposing this action due to the realignment of several standard terminal arrival routes, V–411 would be realigned by 4 degrees. The FAA is proposing this action to enhance the management of air traffic operations and allow for better utilization of navigable airspace in the vicinity of the Rochester, MN, area.

Domestic VOR Federal airways are published in Section 6010(a) of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6010 VOR Federal Airways

* * * * *

V–411 [Revised]

From Lone Rock, WI; via Waukon, IA; Rochester, MN; INT Rochester 315(T(310(M) and Farmington, MN, 184° radials; Farmington.

* * * * *

Issued in Washington, DC, on January 15, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–1553 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Airspace Docket No. 97-ASO–21

Proposed Establishment of the San Juan High Offshore Airspace Area, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish the San Juan High Offshore Airspace Area. The proposed action would designate Class A airspace, extending upward from 18,000 feet mean sea level (MSL) to and including flight level (FL) 600, within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport, San Juan, PR. The FAA is proposing this action to provide additional airspace within which domestic air traffic control (ATC) procedures would be used. Establishment of this Class A airspace would enhance the management of air traffic operations and result in more efficient use of that airspace.

DATES: Comments must be received on or before March 11, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 97-ASO–21, Federal Aviation Administration, P. O. Box 20636, Atlanta, GA 30320. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, ASO–500, Federal Aviation Administration, P. O. Box 20636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments providing supporting facts for the views and suggestions presented are particularly helpful in developing

reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97-ASO–21." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking also will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661). Internet users may reach the Federal Register's web page at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice or docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 2, 1993, the FAA published a final rule (58 FR 12128) which, in part, designated the San Juan Low Offshore Airspace Area. This designation was necessary to comply with the Airspace Reclassification final rule (56 FR 65638; December 17, 1991). The San Juan Low Offshore Airspace Area consists of Class E airspace from 5,500 feet MSL up to, but not including, FL 180 within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport, San Juan, PR. The rule, however, did not affect the status of airspace at and above FL 180 within the San Juan domestic control area, which remains international airspace and wherein International Civil Aviation Organization (ICAO) oceanic ATC separation procedures in Annex 11 apply. As a result of the rapid growth of air traffic activity in the Bahamas and Caribbean areas, there is a need to designate additional airspace wherein domestic ATC procedures would be used to provide more efficient control of aircraft operations. This proposed action would designate such a high-altitude strata that would increase system capacity, enhance safety, and enable more efficient use of this airspace.

Additionally, the number of operational ground-based navigation aids (NAVAIDS) in the region has declined due to the loss of facilities caused by unprecedented storm damage, and the difficulty of replacing aging equipment at remote sites. Establishing the San Juan High Offshore Airspace Area would support the development of additional routes, not dependent on ground-based NAVAIDS, to supplement the current airway system.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish the San Juan High Offshore Airspace Area. The proposed area would consist of Class A airspace, extending upward from 18,000 MSL up to and including FL 600, within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport, San Juan, PR. This action would facilitate the application of domestic ATC procedures within that airspace, thereby enhancing the flow of air traffic and increasing system capacity. In addition, this action would enhance safety by providing for the positive control of all aircraft operating in the area. The proposed action would also support the development of a more efficient route system in the Bahamas-Caribbean area and would enable airspace classification and ATC separation procedures to be consistently applied between Florida and Puerto Rico. Finally, the proposed modification would establish the same classification and operating rules that currently apply in adjacent airspace.

Offshore Airspace Area designations are published in paragraph 2003 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area designation listed in this document would be published subsequently in the Order. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. This proposed rule therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the ICAO International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is subject to Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting State accepting this responsibility may apply the International Standards and Recommended Practices that are

consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, State-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting State to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS.

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 2003 Offshore Airspace Areas

* * * * *

San Juan High, PR [New]

Fernando Luis Ribas Dominicci Airport, PR (lat. 18°27′25″ N., long. 66°05′53″ W.)

That airspace extending upward from 18,000 feet MSL to and including FL 600 within a 100-mile radius of the Fernando Luis Ribas Dominicci Airport.

Issued in Washington, DC, on January 14, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–1561 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

Notice of Intent To Request Public Comments on Rules

AGENCY: Federal Trade Commission.

ACTION: Notice of intent to request public comments.

SUMMARY: As part of its systematic review of all current Federal Trade Commission ("Commission") rules and guides, the Commission gives notice that it intends to request public comments on the rules and guides listed below during 1999. The Commission will request comments on, among other things, the economic impact of, and the continuing need for, the rules and guides; possible conflict between the rules and guides and state, local, or other federal laws or regulations; and the effect on the rules and guides of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of a rule or guide should be inferred from the intent to publish requests for comments.

FOR FURTHER INFORMATION CONTACT: Further details may be obtained from the contact person listed for each particular item.

SUPPLEMENTARY INFORMATION: The Commission intends to initiate a review of and solicit public comments on the following rules and guides during 1999:

(1) Guides for Advertising Allowances and Other Merchandising Payments and Services, 16 CFR Part 240.

Agency Contact: Neil Averitt, Federal Trade Commission, Bureau of Competition, Room H394, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–2885.

(2) Guides for the Dog and Cat Food Industry, 16 CFR 241.

Agency Contact: Jock Chung, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S4302, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–2984.

(3) Guides for the Law Book Industry, 16 CFR Part 256.

Agency Contact: Edwin Rodriguez, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S4302, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3147.

(4) Guide Concerning Fuel Economy Advertising for New Automobiles, 16 CFR Part 259.

Agency Contact: Larry Greene, Federal Trade Commission, Cleveland Regional Office, Eaton Center, Suite 200, 1111 Superior Avenue, Cleveland, OH 44114, (216) 263–3406.

(5) Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986, 16 CFR Part 307.

Agency Contact: Nancy Warder, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, Room S4002, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3048.

(6) Funeral Industry Practices Rule, 16 CFR Part 453.

Agency Contact: Mercedes Kelley, Federal Trade Commission, Bureau of Consumer Protection, Division of Marketing Practices, Room H238, 600 Pennsylvania Ave., NW, Washington, DC 20580, (202) 326–3665.

The Commission also has tentatively scheduled reviews of other rules and guides for 2000 through 2008. A copy of this tentative schedule is appended. The Commission may in its discretion modify or reorder the schedule in the future to incorporate new legislative rules, or to respond to external factors (such as changes in the law) or other considerations.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

APPENDIX—REGULATORY REVIEW; MODIFIED REVOLVING TEN-YEAR SCHEDULE

16 CFR part	Topic	Year to review
240	Guides for Advertising Allowances and Other Merchandising Payments and Services.	1999
241	Guides for the Dog and Cat Food Industry.	1999
256	Guides for the Law Book Industry.	1999
259	Guide Concerning Fuel Economy Advertising for New Automobiles.	1999
307	Regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986.	1999
453	Funeral Industry Practices Rule.	1999
233	Guides Against Deceptive Pricing.	2000
238	Guides Against Bait Advertising.	2000
250	Guides for the Household Furniture Industry.	2000

APPENDIX—REGULATORY REVIEW; MODIFIED REVOLVING TEN-YEAR SCHEDULE—Continued

16 CFR part	Topic	Year to review
251	Guide Concerning Use of the Word "Free" and Similar Representations.	2000
310	Telemarketing Sales Rule.	2000
228	Tire Advertising and Labeling Guides.	2001
255	Guides Concerning Use of Endorsements and Testimonials in Advertising.	2001
424	Retail Food Store Advertising and Marketing Practices Rule.	2001
433	Preservation of Consumers' Claims and Defenses Rule.	2001
801	Hart-Scott-Rodino Coverage Rules (Mergers).	2001
802	Hart-Scott-Rodino Exemption Rules (Mergers).	2001
803	Hart-Scott-Rodino Transmittal Rules (Mergers).	2001
306	Automotive Fuel Ratings, Certification and Posting Rule.	2003
435	Mail or Telephone Order Merchandise Rule.	2003
600	Statements of General Policy or Interpretations under the Fair Credit Reporting Act.	2003
18	Guides for the Nursery Industry.	2004
305	Appliance Labeling Rule.	2004
410	TV Picture Tube Size Rule.	2004
500	Regulations under Section 4 of the Fair Packaging and Labeling Act ("FPLA").	2004
501	Exemptions from Part 500 of the FPLA.	2004
502	Regulations under Section 5(c) of the FPLA.	2004
503	Statements of General Policy or Interpretations under the FPLA.	2004
14	Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements.	2005
309	Labeling Requirements for Alternative Fuels and Alternatively Fueled Vehicles.	2005
311	Test Procedures and Labeling Standards for Recycled Oil.	2005
429	Cooling Off Rule	2005
444	Credit Practices Rule	2005
455	Used Car Rule	2005
24	Guides for Select Leather and Imitation Leather Products.	2006
23	Guides for the Jewelry, Precious Metals, and Pewter Industries.	2007
601	Summary of Consumer Rights, Notice of User Responsibilities, and Notice of Furnisher Responsibilities under the Fair Credit Reporting Act.	2007
254	Guides for Private Vocational and Home Study Schools.	2008
260	Guides for the Use of Environmental Marketing Claims.	2008
300	Rules and Regulations under the Wool Products Labeling Act of 1939.	2008
301	Rules and Regulations under the Fur Products Labeling Act.	2008
303	Rules and Regulations under the Textile Fiber Products Identification Act.	2008
304	Rules and Regulations under the Hobby Protection Act.	2008
425	Rule Concerning the Use of Negative Option Plans.	2008

[FR Doc. 99–1619 Filed 1–22–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–121806–97]

RIN 1545–AV84

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of **Federal Register**, the IRS is issuing temporary regulations relating to additions to, and deletions from, the list of items of information disclosed to the Bureau of the Census for use in certain statistical programs. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by February 24, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–121806–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–121806–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax—regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Jamie Bernstein, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1) of the Internal Revenue Code, upon written request from the Secretary of Commerce, the Secretary is to furnish to the Bureau of the Census ("Bureau") tax return information that is prescribed by Treasury regulations for the purpose of structuring censuses and national economic accounts and conducting related statistical activities. Section 301.6103(j)(1)–1 of the regulations provides an itemized description of the return information authorized to be disclosed for this purpose. Periodically,

the disclosure regulations are amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document contains proposed amendments to the regulations authorizing Internal Revenue Service personnel to disclose additional items of return information that have been requested by the Secretary of Commerce, and to delete certain items of return information that are enumerated in the regulations but that the Secretary of Commerce has indicated are no longer needed.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulation and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal author of these regulations is Douglas Giblen, Office of the Associate Chief Counsel (International)(formerly of the Office of Assistant Chief Counsel (Disclosure Litigation)). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(j)(1)–1 also issued under 26 U.S.C. 6103(j)(1);* * *

Par. 2. Section 301.6103(j)(1)–1 is amended by:

1. Revising paragraphs (b)(3) and (b)(6)(i)(A).

2. Adding paragraph (b)(6)(iii).

The revisions and addition read as follows:

§ 301.6103(j)(1)–1 Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) * * *

(3) [The text of this proposed paragraph (b)(3) is the same as the text of § 301.6103(j)(1)–1T (b)(3) published elsewhere in this issue of the **Federal Register**].

* * * * *

(6)(i) * * *

(A) [The text of this proposed paragraph (b)(6)(i)(A) is the same as the text of § 301.6103(j)(1)–T(b)(6)(i)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(iii) [The text of this proposed paragraph (b)(6)(iii) is the same as the text of § 301.6103(j)(1)–1T(b)(6)(iii) published elsewhere in this issue of the **Federal Register**].

* * * * *

Robert E. Wenzel,

Deputy Commissioner of the Internal Revenue.

[FR Doc. 99–1285 Filed 1–22–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–220–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to the Kentucky regulations pertaining to reclamation in lieu of cash payment of civil penalties. The amendment is intended to revise the Kentucky program as required by 30 CFR 917.16(c)(3).

DATES: If you submit written comments, they must be received by 4:00 p.m., [E.S.T.], February 24, 1999. If requested, a public hearing on the proposed amendment will be held on February 19, 1999. Requests to speak at the hearing must be received by 4:00 p.m., [E.S.T.], on February 9, 1999.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to William J. Kovacic, Field Office Director, at the address listed below.

You may review copies of the Kentucky program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. *Telephone:* (606) 233–2894. *E-Mail:* bkovacic@osmre.gov

Department of Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601. *Telephone:* (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone: (606) 233–2894.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 18, 1982, **Federal Register** (47 FR 21404). You can find subsequent actions concerning the conditions of approval and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated December 22, 1998 (Administrative Record No. KY–1449), Kentucky submitted a proposed amendment to its program at 405 KAR 7:097. Specifically, Kentucky proposes to authorize the cabinet to allow a permittee, person, or operator to perform in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution—instead of making cash payment of a civil penalty assessed under KRS 350.990. This regulation also establishes criteria and procedures to implement KRS 350.990(11). A written request must be filed to perform in-kind work. If authorized, the performer of the work must enter into a binding Civil Penalty Reclamation Agreement (Agreement) with the cabinet for work selected by the cabinet. No fees are required for the written request or the Agreement. Those who enter into an Agreement: must obtain legal right of entry to the work site; must maintain liability insurance coverage; will, in some cases, be required to obtain a performance bond; and must perform the work activities specified in the Agreement. If the in-kind work is not completed according to the Agreement, the full amount of the assessed civil penalty must be paid. Certain permittees, persons, or operators, certain civil penalties, and certain sites are ineligible for in-kind activities. Certain kinds of activities and costs are not authorized.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.S.T.] on February 9, 1999. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendment, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that

existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 15, 1999.

Tim L. Dieringer,,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–1631 Filed 1–22–99; 8:45 am]

BILLING CODE 4310–05–P

VOL 64 ISS 15 JA 25 999 UMI

Notices

Federal Register
Vol. 64, No. 15
Monday, January 25, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 20, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured by having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: National Survey on Recreation and the Environment.

OMB Control Number: 0596–0127.

Summary of Collection: The National Survey on Recreation and the Environment (NSRE) 2000, which began in 1960 as the primary source of recreation data from the U.S. population, is the latest in a series of surveys conducted by the Forest Service (FS). This information is vital for federal land managing agencies to obtain an understanding of the outdoor recreation participation levels and preferences of the American people so that effective policy making, planning, and decision-making can occur. Information from the survey is shared with and relied upon by organizations outside the federal government including educational institutions, private sector companies, state agencies, and other governmental organizations as the fundamental source of outdoor recreation trend and demand data on a national scale. The survey will be administered using a statistically valid sampling methodology through computer-assisted telephone interviewing techniques.

Need and Use of the Information: The Forest Service will collect information nationally from the public to assess trends in recreation participation over the years since the survey was last conducted and to estimate demand for outdoor recreation among the U.S. population. In addition, the survey will collect information from the public on people's attitudes and values toward natural resources and their management. The information will be used by the Forest Service and other federal agencies to develop long-range strategic plans, adjust programs and activities to meet customer needs and expectations, and better manage federally owned lands.

Description of Respondents: Individuals or households.

Number of Respondents: 40,000.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours: 13,333.

Forest Service

Title: The Wildland-Urban Interface Series.

OMB Control Number: 0596–NEW.

Summary of Collection: Forest and Rangeland Renewable Resources Research Act of 1978 (Public Law 95–307) directs the Secretary of Agriculture to research the multiple uses and products, including recreation, of forests and rangelands to facilitate their most effective use. Study results will be provided to resource managers in the areas studied, as well as to managers across the United States addressing urban national forest, to enable more effective management of those areas. Results will also inform managers of broader community recreation patterns, interests, and resource concerns. A direct benefit to the public is anticipated through improvements in customer service, more informed recreation management decisions, and increased attention to the diverse customers served by the National Forests. Forest Service (FS) will collect information using a study provided to resource managers and a questionnaire given to potential respondents.

Need and Use of the Information: FS will collect information to assist resource managers in their effective management of recreation activities in the region studied and, in addition, the Wildland Recreation and Urban Culture Project will use the information to further expand its information base on visitor characteristics, communication, and mitigation of depreciative behaviors such as vandalism. Participants will be asked to answer a questionnaire on the following topics (1a) age, gender, and education; (1b) National Forest visitation history and patterns; (2) identification of leisure activities in which visitors participate; (3) how they heard about the area; (4a) how they would rate amenities; (4b) accessibility for a wide-range of individuals, including those with special needs; (5a) knowledge of natural resource and wilderness areas and policies regarding those areas; (5b) how closely visitors identify with the National Forest or recreation area; (6) preference about different management options (limit number of people on trails versus limit access to trails, increase levels of user knowledge by brochures, nature walk, signs versus require users to have taken an educational program; (7a) gain visitor's suggestions on different penalties for depreciative actions; (7b) personal and or group participation in environmentally responsible and

depreciative acts, as well as the extent to which visitors observe them; (8) experience of conflict within and between user groups and managing agency representatives. If the information is not collected resource managers will have to make visitor based decisions on very limited, potentially biased, or non-existent information.

Description of Repondents: Individuals or households.

Number of Respondents: 3,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 750.

National Food and Agriculture Council (NFAC)

Title: Customer Service Information Collections for USDA Service Centers 1999–2001.

OMB Control Number: New.

Summary of Collection: The National Food and Agriculture Council (NFAC), and partner agencies in the USDA Service Center, help the USDA meet the requirements of the President's Executive Order 12862, "Setting Customer Service Standards," which requires agencies to annually "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." Improved customer service is the core mission of the USDA Service Centers and participating partner agencies, according to the Secretary. The Service Center Customer Service Team is requesting a generic clearance for customer service information collection activities. The Customer Service Team will collect information using telephone surveys, comment and complaint cards, structured interviews, focus groups and benchmarking studies.

Need and Use of the Information: The Customer Service Team will collect information to develop and publish customer service standards for USDA Service Centers; develop a feedback system for USDA Service Center customer complaints and comments; establish performance measures consistent with GPRA requirements for the information technology investments and the strategic plans of the USDA Service Center partner agencies; and support evaluations of proposed improvements in service and analyses of service delivery by significant demographic and social characteristics. NFAC and the USDA Service Center partner agencies plan to use this information to help meet their responsibilities under GPRA, to improve operations in the USDA Service Center by preserving helpful activities and implementing needed changes.

Description of Respondents: Individuals or households.

Number of Respondents: 56,970.

Frequency of Responses: Reporting: On occasion; Annually; Other: When need arises as determined by the managing and coordinating group Quality Customer Service Team.

Total Burden Hours: 11,180.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–1616 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV99–997–1 NC]

Notice for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection in support of the Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Marketing Agreement No. 146 based on changes in program requirements.

DATES: Comments on this notice must be received by March 26, 1999.

ADDITIONAL INFORMATION OR COMMENTS: Contact Dawana Johnson, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC, 20090–6456, Telephone: (202) 720–1755 or Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION:

Title: Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Person's Not Subject to the Peanut Marketing Agreement.

OMB Number: 0581–0163.

Expiration Date of Approval: September 30, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Under authority of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), Peanut Marketing Agreement No. 146 and the Peanut Administrative Committee (Committee) were established by the Secretary in 1965 to minimize aflatoxin contamination in peanuts and peanut products. The Agreement was signed by a majority of domestic peanut handlers (signatory handlers). The Committee works with AMS in administering the Agreement.

Pub. L. 101–220, enacted December 12, 1989, amended section 608b of the Act to require that all handlers who have not signed the Agreement (non-signatory handlers) be subject to quality, handling, and inspection requirements to the same extent and manner as are required under the Agreement. Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 (55 FR 49983). It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers and the remainder of the crop is handled by signatory handlers.

The objective of the Agreement and the non-signatory handling regulations (7 CFR part 997) is to ensure that only wholesome peanuts enter edible market channels. Under both regulations, farmers stock peanuts with visible *Aspergillus flavus* mold (the principle source of aflatoxin) are required to be diverted to non-edible uses. Both regulations also provide that shelled peanuts meeting minimum outgoing quality requirements must be chemically analyzed for aflatoxin contamination.

Peanut handlers are business entities that buy raw peanuts from farmers and process them into shelled product (kernels) that is sold to manufacturers who make peanut butter and other peanut products. Under this information collection burden, peanut handlers are respondents and recordkeepers.

A proposed and final rulemaking process, which became effective in January 1997, dramatically reduced the number of information collection burden hours for all domestic peanut handlers. The number of forms required to be filed by non-signatory peanut handlers was reduced from 11 forms to only 2 forms. That action was taken to be consistent with reductions in the reporting requirements made to the Agreement regulations and applied to signatory peanut handlers. The information collection burden for signatory handlers (OMB No. 0581–0067) was revised and approved July 27, 1998. This information collection burden report registers similar reductions in the number of forms and information collection burden for non-signer handlers.

Information formerly needed from the 11 forms has been condensed into 2 forms that must be filed by non-signer

handlers. Some of the information formerly required on the 11 forms is no longer needed because certain non-signer regulations were terminated. That information had to do with restricted and unrestricted peanuts (terms no longer used in the regulations) and disposal of non-edible peanuts to certain outlets (no longer regulated and monitored). Using the 2 forms decreases the estimated total annual burden on handlers by 327 hours, from 591 to 264 hours. Also, the number of total annual responses supplied by handlers for the entire non-signer peanut information collection decreases from 1,500 to 792.

Handlers Monthly Report of Farmers Stock—Form FV–117, deals with each handler's shelled peanuts and what is done with those shelled peanuts to get them ready for sale to manufacturers. This report is filed monthly.

Monthly Report of Dispositions of Peanuts—Form FV–117–1, deals with information on each handler's acquisitions and dispositions of farmers stock peanuts. Farmers stock peanuts are raw, inshell peanuts delivered by farmers to peanut handlers. This report is also filed monthly.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours (15 minutes) per response.

Respondents: Peanut handlers who have not signed the peanut marketing Agreement.

Estimated Number of Respondents: 33.

Estimated Number of Responses per Respondent: 24.

Estimated Total Annual Burden on Respondents: 264 hrs.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, and mechanical or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0163 and the Provisions Regulating The Quality Of Domestically Produced Peanuts Handled By Persons Not Subject To The Peanut Marketing Agreement (7 CFR Part 997) and be sent to USDA in care of Dawana Johnson at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in a final request for OMB approval. All comments will become a matter of public record.

Dated: January 19, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1610 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–99–00–1]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: February 9, 1999, at 9:00 a.m. to 6:00 p.m.; February 10, 1999, from 9:00 a.m. to 6:00 p.m.; and February 11, 1999, from 9:00 a.m. to 6:00 p.m.

PLACE: U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Room 3501 South Building, Washington, D.C. 20250. Phone: (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, Room 2945 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, D.C. 20090–6456 Phone (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) Reqires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects the implementation of OFPA. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing; Labeling and Packaging; Livestock Standards; Accreditation; Materials; and International Issues. In August 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture and since that time has submitted 30 addenda to the recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held October 27–29,1998, in Washington, DC. The Department of Agriculture (USDA) published its proposed rule in the **Federal Register** on December 16, 1997 (62 FR 65849). An extension of the comment period on the proposed rule was published in the **Federal Register** on February 9, 1998 (63 FR 6498–6499). The comment period was extended until April 30, 1998. On October 28, 1998, the USDA published for public comment three issue papers in the **Federal Register** (63 FR 57624–57626) The papers addressed certain issues raised during the National Organic Program's proposed rule comment period. The issue papers were: Issue paper 1. Livestock Confinement in Organic Production Systems; Issue Paper 2. The Use of Antibiotics and Parasiticides in Organic Livestock Production; and Paper 3. Termination of Certification by Private Certifiers. Comments received on these papers will be considered during the development of a revised National Organic Program proposed rule. The comment period for the issue papers closed December 14, 1998.

Purpose and Agenda

The principal purpose of this meeting is to provide an opportunity for the NOSB to receive committee reports from its standing and ad hoc committees and to engage working sessions to address issues resulting from the October 1998 NOSB meeting. These issues include, but are not limited to, the International Committee's proposed recommendation on Fumigation, the Livestock Committee's proposed recommendation on Wild Animals, the Accreditation Committee's proposed recommendation on Enforcement Actions, the Interdisciplinary Taskforce's proposal on processing principles and the NOSB's request for comment on criteria for the acceptance of materials used in processing. Additionally, the Agency will give a status report on the proposed rule and characterize for the NOSB public comment on the option papers. Copies of committee proposals can be requested from Ms. Karen Thomas, Room 2510 South Building, U.S. Department of Agriculture, AMS,

Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, D.C. 20090–6456, by phone at (202) 690–3655 or by accessing the NOP website at http://www.ams.usda.gov/nop after January 19, 1999.

Type of Meeting

All meetings will be open to the public. The NOSB has scheduled time for public input on February 9, 1999, from 1:30 p.m. until 5:00 p.m. Individuals and organizations wishing to make an oral presentation at the meeting should forward the request to Ms. Thomas at the above address or by FAX to (202) 205–7808 by close of business February 5, 1999. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during that allotted time period and will help the NOSB to better manage the meeting and accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing, if possible. Written submissions may supplement the oral presentation with additional material. Attendees who do not wish to make an oral presentation are invited to submit written comments to the NOSB at the meeting or to Ms. Thomas after the meeting at the above address. All persons submitting written comments should provide 20 copies.

Dated: January 20, 1999.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 99–1646 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Dietary Guidelines Advisory Committee Meeting

AGENCIES: U.S. Department of Agriculture and U.S. Department of Health and Human Services.

ACTION: Dietary Guidelines Advisory Committee: Notice of the second meeting; Opportunity for oral testimony at the meeting; and Opportunity to provide written comments.

SUMMARY: The Department of Agriculture (USDA) and the Department of Health and Human Services (HHS) (a) provide notice of the second meeting of the Committee (b) solicit application for oral testimony, and (c) solicit written comments.

DATES: (1) The Committee will meet on March 8 to 10, 1999, from 9:00 a.m. to 6:00 p.m. on the first day, from 9:00 p.m. to 3:30 p.m. on the second day, and from 9:00 a.m to 4:30 p.m. on the third day. (2) Applications for oral testimony, to be presented on the morning of the first day, may be submitted by 5 p.m. e.s.t. February 24, 1999. (3) Written comments on the guidelines may be submitted by 5 p.m. e.s.t. on February 24, 1999, to ensure transmission to the Committee prior to this meeting.

FOR FURTHER INFORMATION CONTACT: Shanthy Bowman, Ph.D., USDA, Agricultural Research Service, Nutrient Data Laboratory, 4700 River Road, Unit 89, Riverdale, MD 20737, (301) 734–5640; Carole Davis, M.S., R.D., USDA Center for Nutrition Policy and Promotion, 1120 20th St., NW, Suite 200 North Lobby, Washington, DC 20036, (202) 418–2312; or Kathryn McMurry, M.S. or Linda Meyers, Ph.D., HHS Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Room 738–G, 200 Independence Ave., SW, Washington, DC 20201, (202) 205–4872.

SUPPLEMENTARY INFORMATION:

Dietary Guidelines Advisory Committee

The eleven-member Committee appointed by the Secretaries of the two Departments is chaired by Cutberto Garza, M.D., Ph.D., Cornell University, Ithaca, New York. Other members are Richard J. Deckelbaum, M.D., Columbia University, New York, New York; Johanna T. Dwyer, D.Sc., R.D., Tufts University, Boston, Massachusetts; Scott M. Grundy, M.D., Ph.D., University of Texas, Dallas, Texas; Rachel K. Johnson, Ph.D., R.D., University of Vermont, Burlington, Vermont; Shiriki K. Kumanyika, Ph.D., M.P.H., R.D., University of Illinois at Chicago, Chicago, Illinois; Alice H. Lichtenstein, D.Sc., Tufts University Center for Aging, Boston, Massachusetts; Suzanne P. Murphy, Ph.D., R.D., University of Hawaii, Honolulu, Hawaii; Meir J. Stampfer, M.D., Dr.P.H., Harvard School of Public Health, Boston, Massachusetts; Lesley Fels Tinker, Ph.D., R.D., University of Washington, Seattle, Washington; Roland L. Weinsier, M.D., Dr.P.H., University of Alabama at Birmingham, Birmingham, Alabama.

Committee's Task

The appointment of the Committee reflects the commitment by the Departments of Agriculture and Health and Human Services to provide sound and current dietary guidance to consumers. The National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. No. 101–445) requires the Secretaries of USDA and HHS to publish the Dietary Guidelines for Americans at least every five years. The Dietary Guidelines Advisory Committee has decided a revision of the 1995 edition of Nutrition and Your Health: Dietary Guidelines for Americans is warranted, and will recommend revisions to the Secretaries for the year 2000 edition.

Announcement of Meeting

The Committee's second meeting will be March 8–10, 1999 from 9:00 a.m. to 6:00 p.m. on the first day, from 9:00 a.m. to 3:30 p.m. on the second day, and from 9:00 a.m to 4:30 p.m. on the third day. The meeting is open to the public. However, space is limited for all sessions. The agenda will include (a) presentations from invited experts, (b) oral testimony from preregistered people or groups, (c) discussion of drafts prepared by members, and (d) formulation of plans for future work of the Committee. Opportunity for oral public testimony will be provided on the morning of the first day. Please call Shanthy Bowman at (301) 734–5640 by 5:00 p.m. e.s.t. February 24, 1999, should you require a sign language interpreter.

Location of Meeting

The meeting will be held at the Waugh Auditorium located on the third floor of USDA's Economic Research Service, 1800 M Street NW, Washington DC, one block from Farragut North metro station and three blocks from the Farragut West metro station. Parking is available at local garages. Entry to the building is through the South Lobby Tower.

Oral Testimony

By this notice, the Committee is soliciting submission of applications for oral testimony from the public. Requests to testify, along with a written outline of the intended testimony not exceeding one page in length, should be submitted by 5:00 p.m. e.s.t. February 24, 1999 to Shanthy Bowman, Ph.D., at Department of Agriculture, Agricultural Research Service, Nutrient Data Laboratory, 4700 River Road, Unit 89, Riverdale, MD 20737. Presenters are required to disclose their affiliation and their source of funding to give oral testimony at the

meeting and limit their comments to three minutes.

Written Comment

By this notice, the Committee is soliciting submission of written comments, views, information and data pertinent to review of the Dietary Guidelines for Americans. Written comments will be accepted throughout the process. To be considered for the second meeting, comments should be submitted by 5:00 p.m. e.s.t. February 24, 1999. Comments should be sent to Shanthy Bowman, at Department of Agriculture, Agricultural Research Service, Nutrient Data Laboratory, 4700 River Road, Unit 89, Riverdale, MD 20737.

Dated: January 12, 1999.

Edward B. Knipling,

Associate Administrator, Agricultural Research Service, Department of Agriculture.

Dated: January 19, 1999.

Rajen Anand,

Executive Director, Center for Nutrition Policy and Promotion, Department of Agriculture.

Dated: January 15, 1999.

Linda Meyers,

Acting Director, Office of Disease Prevention and Health Promotion, U.S. Department of Health and Human Services.

[FR Doc. 99–1612 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

The Emergency Food Assistance Program; Availability of Commodities for Fiscal Year 1999

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased commodities that the Department expects to make available for donation to States for use in providing food assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 1999. The commodities made available under this notice shall, at the discretion of the State, be distributed to organizations for use in preparing meals, and/or for distribution to households for home consumption.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Lillie Ragan, Assistant Branch Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Background and Need for Action

Surplus Commodities

Surplus commodities donated for distribution under TEFAP are Commodity Credit Corporation (CCC) commodities determined to be available for donation by the Secretary of Agriculture under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (hereinafter referred to as section 416) and commodities purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (hereinafter referred to as section 32). The types of commodities typically made available under section 416 include dairy, grains, oils, and peanut products. The types of commodities purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices and fruits. Donations of surplus commodities were initiated in 1981 as part of the Department's efforts to reduce stockpiles of government-owned commodities, such as cheese, flour, butter, and cornmeal, which had been acquired under section 416. These donations responded to concern over the costs to taxpayers of storing large quantities of foods, while at the same time there were persons in need of food assistance. The authority to donate surplus commodities for distribution through TEFAP is currently codified in Section 202 of the Emergency Food Assistance Act (EFAA) of 1983 (7 U.S.C. 7502).

The supply of surplus commodities has been drastically reduced from the levels available in the early 1980s. These reductions are the result of changes in the agricultural price-support programs which have brought supply and demand into better balance, and accelerated donations and sales. However, this trend reversed itself beginning in FY 1997. In FY 1998, the Department purchased $108 million worth of surplus commodities. The large surpluses were the result of the reduction in foreign sales due primarily to the Asian economic downturn. The following surplus commodities were purchased for donation in FY 1998 but will be delivered in the first quarter of FY 1999, because they did not become available for purchase until late in the year: frozen beef roasts, canned salmon, canned applesauce, canned apple slices, canned cherries, frozen apricots, grapefruit juice, apple juice, dried figs, prune puree, dried prunes, raisins, walnut pieces, and instant nonfat dried milk. In addition to delivering these products for distribution in FY 1999, the Department anticipates that there will be sufficient quantities of nonfat dry milk available for donation under section 416, and salmon, pork, fresh apples and fresh grapefruit purchased under section 32, to support the donation of these commodities for distribution through TEFAP in FY 1999. While sufficient quantities of these commodities are anticipated to again be available in FY 1999 to support such donations, the Department would like to point out that commodity acquisitions are based on changing agricultural market conditions; therefore, the above commodities may not be available for donation in FY 1999, and additional types of surplus commodities may become available.

Purchased Commodities

Congress responded to the reduced availability of surplus commodities with section 104 of the Hunger Prevention Act of 1988, Pub. L. 100–435, which added sections 213 and 214 to the EFAA. Those sections require the Secretary to purchase commodities for distribution to States in addition to those surplus commodities which otherwise might be provided to States for distribution under TEFAP. Pursuant to section 871(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, Congress repealed the authorization of funds for food purchases under section 214. In addition, section 871(g) added a new section 27 to the Food Stamp Act of 1977 under which the Secretary is required to use $100 million from the funds made available to carry out the Food Stamp Act for each of FYs 1997 through 2002 to purchase a variety of nutritious and useful commodities and distribute the commodities to States for distribution through TEFAP. However, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277, has limited to $90 million the amount of Food Stamp Program appropriations available in FY 1999 for the purchase of TEFAP commodities, although the $45 million administrative funding appropriation, as divided among the States, may be used, in whole or in part, at the discretion of each State, by USDA for the purchase of additional commodities for TEFAP.

For FY 1999, the Department anticipates purchasing the following commodities for distribution through TEFAP: peanut butter, roasted peanuts, rice, macaroni, spaghetti, grits, fortified cereal, bakery mix, egg mix, dehydrated

potatoes, corn syrup, vegetable oil, dry bagged beans, raisins, the following canned foods: apple juice, applesauce, peaches, pears, vegetarian beans, refried beans, green beans, potatoes, tomatoes, spaghetti sauce, tomato juice, corn, orange juice, grapefruit juice, pineapple juice, pork, tuna, beef, and chicken, as well as the following frozen foods: ground beef, ground turkey, and turkey roasts. The amounts of each item purchased will depend on the prices USDA must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of commodities or the non-availability of one or more types listed above. State officials will be responsible for determining how to allocate the commodities each State receives among eligible organizations. States have full discretion in determining the amount of commodities that will be made available to organizations for distribution to needy households for use in home-prepared meals or for providing prepared meals to the needy at congregate feeding sites.

Dated: January 12, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–1504 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–066N]

In-Distribution Inspection Pilot Test Project; Report

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is making available for comment a draft paper describing a project that will test the feasibility of using FSIS inspectors in food safety activities outside of federally inspected plants. This In-Distribution Inspection Pilot Test Project is part of the FSIS HACCP-Based Inspection Models Project.

DATES: To receive full consideration, comments should be received by February 24, 1999.

ADDRESSES: The document Report on the In-Distribution Inspection Pilot Test Project may be viewed at the FSIS Docket Room, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. An electronic version of the document is available on-line at FSIS's homepage at http://www.fsis.usda.gov. Written comments on the document may be sent in triplicate to FSIS Docket Clerk, DOCKET #98–066N, Room 102 Cotton Annex Building, 300 12th Street, S.W., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Patricia F. Stolfa, Assistant Deputy Administrator, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0699.

SUPPLEMENTARY INFORMATION:

Background

The In-Distribution (ID) Inspection Pilot Test Project discussed in the report being made available is part of the HACCP-based Inspection Models Project. In a June 1997 **Federal Register** Notice, FSIS requested public comments on the design and development of new inspection models for livestock and poultry slaughter and processing in a HACCP environment (62 FR 31553). The notice summarized recommendations by the National Academy of Sciences and the General Accounting Office that FSIS reduce its reliance on organoleptic (sensory) inspection, shift to inspection systems based on risk, and redeploy its resources in a manner that better protects the public from food-borne illnesses. To accomplish these objectives, inspection models must be developed that incorporate inspection procedures consistent with the pathogen reduction and HACCP systems rule. The HACCP-Based Inspection Models Project is designed to develop new approaches to inspection in plants slaughtering young, healthy, and uniform animals.

The In-Distribution part of the Inspection Models Project explores the possibility of redeploying some inspection resources from these plants in ways that will enhance food safety protection all along the farm-to-table continuum. Under provisions of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), FSIS has authority to regulate the production, sale, transportation, and storage of meat and poultry food products. Traditionally, the Agency has assigned the great majority of its resources to inspection activities within livestock and poultry slaughter and processing plants. Consistent with its modernization and farm-to-table initiatives, FSIS intends to redistribute resources to more efficiently and effectively verify that the industry meets its responsibility to produce, store, and distribute safe and wholesome products. The In-Distribution Pilot Test will help the Agency determine the feasibility of significantly increasing the frequency of certain tasks that are now performed outside of federally inspected plants. The in-distribution pilots also will explore how new activities can address food safety hazards and other consumer protection issues, such as economic adulteration or improper labeling, in regard to the distribution of meat and poultry products out of plants into distribution channels, storage, retail food stores, restaurants, commercial kitchens, hotels, and other institutions.

The paper Report on the In-Distribution Inspection Pilot Test Project is intended to inform project participants and the public of the Agency's views on this subject. The paper is available for review at the location indicated above in **ADDRESSES.**

Done at Washington, DC, on: January 14, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–1614 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Cave Rock Management Direction, Lake Tahoe Basin Management Unit (LTBMU), Douglas County, NV

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to establish new management direction for the Cave Rock landform and its environs, a nonsignificant amendment to the Lake Tahoe Basin Management Unit's (LTBMU's) Land and Resource Management Plan (Forest Plan). Cave Rock is an important archaeological and ethnographic site that was first determined eligible to the National Register of Historic Places in August, 1996, as a "traditional cultural property" (TCP) stemming from the long association of the Washoe people with the site. In October, 1998, the Keeper of the National Register formally determined that Cave Rock was not only eligible as a TCP, but also as a historic transportation district and an archaeological site. Some modern uses of the rock may be adversely affecting the setting, feel, and association of the historic districts. The Cave Rock management direction will establish

appropriate uses of the national forest in the Cave Rock vicinity.

DATES: Agencies and the public are invited to participate at any stage of the process; however, the Forest Supervisor requests that individuals concerned with the scope of the analysis comment by March 1, 1999.

ADDRESSES: Written comments concerning the Draft EIS should be sent to the responsible official, Forest Supervisor, attention: Cave Rock, LTBMU, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, California, 96150. Illustration of the Cave Rock area is available online at http://www.FS.FED.US/R5/TAHOE/GRAPHICS/PRES_ACTIONS/COMMITMENTS/CAVE_ROCK

FOR FURTHER INFORMATION CONTACT: Direct questions concerning the proposed action to Lisa O'Daly, Community Planner, at (530) 573–2669 or at the above address.

Decision To Be Made: The decision to be made for this EIS is whether to amend the Lake Tahoe Basin Land and Resource Management Plan to restrict human activity on the National Forest at Cave Rock in order to protect the national Register-eligible heritage resources. If so, to what degree should the property be protected and to what level should use be restricted?

Purpose and Need: The proposal's purpose is protect the Cave rock heritage resource and regulate uses there in a manner that, consistent with mandates and restrictions of law and regulation, preserves the physical and spiritual characteristics that make the property eligible to the National Register of Historic Places. As a property eligible to the National Register, the Forest Service has a responsibility to assess the appropriateness of activities occurring at Cave Rock. Action is needed at this time because some ongoing activities in the area may be adversely affecting the integrity of the National Register-eligible properties. In addition, any long-term continuation of existing use restrictions require a National Environmental Policy Act decision to implement. This EIS will document the Forest Supervisor's planning process for taking into account the effects of ongoing activities on the historic properties/sacred site.

Proposed Action: The proposed action includes the following elements: Amend the management direction found in the Lake Tahoe Basin Management Unit Land and Resource Management Plans' (LTBMU Forest Plan's) Roundhill Management Area. This amendment would be considered "nonsignificant" pursuant to the National Forest Management Act implementating regulations. Add as management area-specific standard and guidelines the following text and clarify the management area map—

Public Access, including rock climbing, is allowed on the National Forest at Cave Rock and will be managed to minimize conflicts and impacts to the TCP and other cultural and natural resources in the vicinity as follows:

—Manage National Forest lands at Cove Rock using the "Maintenance" management prescription (Prescription #9). This prescription applies only minimal management practices to lands that provide the scenic backdrop to Lake Tahoe. There will be almost no management practices designed to induce additional outputs or services.

—Recreation activities, outside the highway easement, will be nonmotorized.

—Allow installation of improvements, such as parking, sanitation, or access facilities, only for resource protection purposes, not for user comfort and convenience. (No such facilities are needed or proposed for development on the National Forest in the Cave Rock area as this time.)

Manage rock climbing in a manner that reduces the level of its effect to the Cave Rock TCP from that identified when the TCP was initially determined eligible to the National Register (1996). Some of the activities proposed below are required to achieve a baseline that will enable the new management direction to be effective.

—All modern graffiti, historic graffiti that does not contribute to historic districts, and rock work within the cave will be removed at the direction of the Forest Service archaeologist, in cooperation with designated representatives of the Washoe Tribe, where doing so does not physically damage Cave Rock.

• Prohibit installation of new climbing routes requiring placement of additional fixed anchors left in the rock. Prohibit climbing using artificial light.

• Eliminate existing routes when they are no longer used and where they may cause a rock to fall on the road. Accept the assistance offered by local climbers at the 1998 collaboration meetings in removing certain routes.

(a) The initial program of route removal includes: (1) all routes to the left (north) of "Bone Crusher," including the route which traverses over the top of southbound Highway 50's tunnel and "Acapulco," (2) "Trash Dog," (3) "Ton of Bricks," and (4) any other bolts to the right of "Asylum" in the friable rock above Highway 50. The rappel anchors at the top of the first pitch of Trash Dog should be retained, as they are used to complete the route "Pipeline." Rappel anchors needed to remove the above-described fixed anchors will also be retained.

(b) Work with the climbing community to camoflage existing brightly-colored slings and shiny carabiners to blend with the natural colors of the rock. Encourage climbers to replace this equipment as routes are used and during voluntary efforts towards this purpose. If brightly colored slings remain after six months following the official adoption of this new management direction, it will be an indicator that the routes are not being used and the routes will be removed.

• Bolts and other fixed anchors may only be removed and replaced as part of route maintenance activities. In the interest of climber safety, the Forest Service will work with the climbing community and Washoe Tribe representatives regarding development of route maintenance guidelines. When climbers notice that a bolt or other fixed anchor has become unsafe, they must submit a written plan to the Forest Service requesting permission to replace the fixed anchor. The request must include a plan for replacement, detailing: the route and location of equipment to be replaced, the type of equipment to be replaced and proposed replacement equipment (e.g., replace existing shiny bolt with a powder-coated bolt), and an explanation of the method of replacement. The Forest Service then assesses whether the proposal uses the appropriate technology to camoflage equipment, and will either accept the proposal as described or make recommendations to the requestor before granting permission to replace it. The agency will not second guess technology related to climber safety.

• Commercial activities will not be authorized within the Cave Rock TCP.

SUPPLEMENTARY INFORMATION: This EIS is being prepared to establish management direction to address effects from recreational and other activities on a traditional cultural property (TCP) known as Cave Rock. Cave Rock was determined eligible to the National Register of Historic Places for its association with the history, beliefs, practices, and traditions of the Washoe Tribe of California and Nevada. The Forest Service came to this determination in 1996, and the Nevada State Historic Preservation Officer (SHPO) and Advisory Council on Historic preservation concurred on the determination. It was formally determined eligible in October 1998 by the Keeper of the National Register, who at that time also determined Cave Rock eligible as a historic transportation district and archaeological site.

A series of short-term closure orders prohibiting damage and defacement of Cave Rock, specifically including in the definition the installation of any new fixed climbing hardware, have been issued since May of 1997 by the Forest Supervisor of the LTBMU to address potential adverse effects to the historic property.

Cave Rock is not only a property eligible to the National Register, but it is also a sacred site to the Washoe Tribe of California and Nevada. Many members of the Washoe Tribe object to human presence at Cave Rock and believe that only special people, Washoe spiritual elders, should be there. It is an area traditionally avoided

by other tribal members. In addition, Cave Rock has become recognized as a unique rock climbing resource, as its southwest exposure, ready access, and magnificent views are valued highly within the climbing community. It offers the only high level sport climbing site in the Lake Tahoe region and its environs, accessible year-round, and it is internationally renown for its overhanging routes of the greatest difficulty.

The LTBMU needs to develop new management direction for that part of the National Forest within the Cave Rock area to protect the TCP and other historic districts and regulate uses there in a manner that, consistent with law and regulation, preserves the physical and spiritual characteristics that make the property eligible to the National Register of Historic Places. The plan would also provide for public access consistent with Federal responsibilities to the Washoe Tribe. As a property eligible to the National Register of Historic Places, the Forest Service has a responsibility to assess the appropriateness of activities occurring at Cave Rock. Section 106 of the National Historic Preservation Act (NHPA) requires agencies to "take into account" the effects of their actions on historic properties, and to allow the Advisory Council on Historic Preservation to comment on those actions.

The "no action" alternative would allow continuation of current management direction following the expiration of the current closure order in December 1998. The types of activities conducted on Cave Rock in recent years would continue without Forest Service interference or regulation. Expiration of the current closure order would enable climbers to install new bolts to create new routes.

Any additional alternatives to be considered, either in detail or eliminated from detailed study, would be created in response to significant issues raised during the public scoping process. The Forest Service conducted six months of collaboration meetings with stakeholders between January and May, 1998. Through these meetings, the following concerns were identified:

Cave Rock is a Washoe sacred site—a church—that should be designated a National Monument and not allowed to be defaced and devalued by rock climbing. Climbers at Cave Rock are an objectionable example of the Washoe Tribe being excluded from the Tahoe Basin and their heritage. Climbers should climb elsewhere. Graffiti and concrete in the cave should be removed. Even further, that all use of Cave Rock should be prohibited in honor of the Washoe tradition of avoidance of the area except by those special Washoe spiritual leaders who are "born to Cave Rock." Any closure should affect all user groups and not single out just one; that all activities desecrate Cave Rock; climbing is equal with these other activities. And finally, that Cave Rock should be returned to the Washoe Tribe to enable their reconnection to the lands that they lost.

Conversely, additional concerns were raised that Cave Rock is public land that should be available to all, to enjoy and learn about other cultures, in a way that accommodates the needs of different groups; a place where users respect the values of others. if a site is designated on the National Register, the Forest Service should ensure that the public can visit. Further, some people expressed that the highway/highway tunnel have impacted Cave Rock so dramatically that it is incorrect to assume that the historic property retains integrity.

Scoping letters have been sent to all those who expressed an interest in the Cave Rock planning process since 1996. The mailing list includes over 140 individuals and agencies. The scoping letter will also be posed in the LTBMU Web Page. Government-to-government consultation is continuing with the Washoe Tribe. A drop-in public workshop, to be announced in the Tahoe Daily Tribune and in the scoping letter, will be held on February 25, 1999, at the Kahle Community Center (236 Kingsbury Grade in Stateline, Nevada) between the hours of 3:00 pm and 7:30 pm. Written comments and suggestions postmarked by March 1, 1999, as well as any oral comments received, will be addressed in the draft EIS.

Implementation of the management proposal would not require any permits or licenses from any other agency. Consultation with the Nevada State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) is required. Preliminary consultation has already occurred with the U.S. Fish and Wildlife Service.

The decision will be made by Lake Tahoe Basin Management Unit Forest Supervisor, as the Forest Service is the lead agency under NEPA. There is no other joint lead agency nor cooperating agencies under NEPA.

The draft EIS is anticipated to be filed with the Environmental Protection Agency and made available to the public for comment in June, 1999. The final EIS and its Record of Decision is expected in October, 1999. The decision will be appealable under Forest Service regulations found at 36 CFR 217.

The comment period for the draft EIS will be at least 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435, U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016; 1022 (9th Circuit, 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: January 13, 1999.

Juan Palma,

Forest Supervisor.

[FR Doc. 99–1583 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Egg, Chicken, and Turkey Surveys.

DATES: Comments on this notice must be received by March 31, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Egg, Chicken, and Turkey Surveys.

OMB Number: 0535–0004.

Expiration Date of Approval: May 31, 1999.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production. The Egg, Chicken, and Turkey Program obtains basic poultry statistics from voluntary cooperators throughout the Nation. The data are used to prepare and issue current State and national estimates. Statistics are published on placement of pullet chicks for hatchery supply flocks, hatching reports for broiler-type, egg-type, and turkey eggs, number of layers on hand, total table egg production, non-federally inspected poultry slaughter, and production, disposition, and income estimates for eggs, chickens, and turkeys. Non-federally inspected poultry slaughter data are obtained from State Departments of Agriculture.

This statistical information issued by producers, processors, feed dealers, and others in the marketing and supply channels as a basis for production and marketing decision. Government agencies use these estimates to evaluate poultry product supplies. The information is an important consideration in government purchases for the school lunch program and in formulation of export-import policy. The Egg, Chicken, and Turkey Surveys have approval from OMB for a 3-year period. NASS intends to request that the surveys be approved for another 3 years.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 9 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 7,100.

Estimated Total Annual Burden on Respondents: 4,145 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

COMMENTS: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., January 11, 1999.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 99–1613 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Mill Creek Watershed, PA

AGENCY: USDA—Natural Resources Conservation Service, DOA.

ACTION: "Notice of a Finding of No Significant Impact".

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR, Part 1500); and the Natural Resources Conservation Service (formerly the Soil Conservation Service) Guidelines (7 CFR, Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Mill Creek Watershed, Clarion and Jefferson Counties, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, USDA-Natural Resources Conservation Service, One Credit Union Place, Suite 340, Harrisburg, Pennsylvania 17110–2993, telephone (717) 237–2202; fax (717) 237–2239.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Janet L. Oertly, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for water quality improvement. The planned works of improvement involve fifty-eight treatment sites that are the source of ground and surface water pollution. Treatment of these sites will involve the installation of waterways, diversions, and passive treatment systems.

The "Notice of a Finding of No Significant Impact" (FONSI) has been forwarded to the U.S. Environmental Protection Agency. A limited number of copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment

and basic data may be reviewed by contacting Janet L. Oertly.

No administrative action on implementation of the proposal will be taken until thirty (30) days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

[FR Doc. 99–1597 Filed 1–22–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates. In accordance with our regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: January 25, 1999.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than December 31, 1999.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Elemental Sulphur A–122–047	12/1/97–11/30/98
Husky Oil Limited	
Petrosul International	
India: Certain Stainless Steel Wire Rod A–533–808	12/1/97–11/30/98
Panchmahal Steel Limited	
Viraji Alloys Ltd.	
Japan: Polychloroprene Rubber A–588–046	12/1/97–11/30/98
Denki Kagaku Kogyo Kabushiki Kaisha	
Tosoh Corporations	
Mexico: Porcelain-On-Steel Cooking Ware A–201–504	12/1/97–11/30/98
Cinsa, S.A. de C.V.	
Esmaltactiones de Norte America, S.A. de C.V.	
Republic of Korea: Welded ASTM A–312 Stainless Steel Pipe A–580–810	12/1/97–11/30/98
SeAH Steel	
Taiwan: Welded ASTM A–312 Stainless Steel Pipe A–583–815	12/1/97–11/30/98
Ta Chen Stainless Steel Pipe	
The People's Republic of China: Silicomanganese [1] A–570–828	12/1/97–11/30/98
Guangxi Bayi Ferroalloy Works	
Sichuan Emei Ferroalloy Import and Export Co., Ltd	
The People's Republic of China: Porcelein-on-Steel Cooking Ware [2] A–570–506	12/1/97–11/30/98
Clover Enamelware Enterprises Ltd./Lucky Enamelware Factory Limited	
Countervailing Duty Proceedings:	
None.	
Suspension Agreements:	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of silicomanganese from the People's Republic of China who have not qualified for a separate rate are deemed to be coverted by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of porcelain-on-steel cooking ware from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: January 19, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–1641 Filed 1–22–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–408–046]

Sugar From the European Community: Extension of Time Limit for Preliminary Results of Five-Year Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of five-year ("sunset") review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset review on the countervailing duty order on sugar from the European Community. Based on adequate responses from domestic and respondent interested parties, the Department is conducting a full sunset review to determine whether revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. As a result of this extension, the Department intends to issue its preliminary results not later than April 19, 1999.

EFFECTIVE DATE: January 25, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–6397, or (202) 482–1560 respectively.

SUPPLEMENTARY INFORMATION:

Extension of Preliminary Results

The Department has determined that the sunset review of the countervailing duty order on sugar from the European Community is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of this review until not later than April 19, 1999, in accordance with section 751(c)(5)(B) of the Act. The final results of this review will, therefore, be due not later than August 27, 1999.

Dated: January 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–1642 Filed 1–22–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Stainless Steel Plate From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 25, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on stainless steel plate from Sweden covering the period June 1, 1997 through May 31, 1998.

FOR FURTHER INFORMATION CONTACT: Jonathon Lyons or Nithya Nagarajan, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–0374 or 482–4243, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of an administrative review if its determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that is not practicable to complete the review within the statutory time limit. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa (January 11, 1999).

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until June 30, 1999.

Dated: January 14, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–1510 Filed 1–22–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–085]

Sugar and Syrups From Canada: Extension of Time Limit for Preliminary Results of Five-Year Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of five-year ("sunset") review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset review on the antidumping duty order on sugar and syrups from Canada. Based on adequate responses from domestic and respondent interested parties, the Department is conducting a full sunset review to determine whether revocation of the order would be likely to lead to continuation or recurrence of dumping. As a result of this extension, the Department intends to issue its preliminary results not later than April 19, 1999.

EFFECTIVE DATE: January 25, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–6397, or (202) 482–1560 respectively.

Extension of Preliminary Results

The Department has determined that the sunset review of the antidumping duty order on sugar and syrups from Canada is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of this review until not later than April 19,

1999, in accordance with section 751(c)(5)(B) of the Act. The final results of this review will, therefore, be due not later than August 27, 1999.

Dated: January 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–1511 Filed 1–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Jessie W. Taylor From an Objection by South Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On December 28, 1998, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of Mr. Jessie W. Taylor (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to fill wetlands to construct a commercial business on the property. In conjunction with the Federal permit application, the Appellant submitted to the Corps a certification that the proposed activity is consistent with the State's federally approved Coastal Management Program (CMP). The State of South Carolina's coastal management agency reviewed the certification pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA) 16 U.S.C. 1456(c)(3)(A).

On March 11, 1996, the State objected to the Appellant's consistency certification for the proposed project on the ground that the proposed project is not consistent with the enforceable policies contained in the State's coastal management program. Under CZMA section 307 (c)(3)(A) and 15 CFR 930.131, the State's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II). The Appellant based his appeal on Ground I.

Upon consideration of the information submitted by the Appellant, the State and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121: First, the proposed project furthers one or more of the competing national objectives or purposes of the CZMA by minimally contributing to the national interest in economic development of the coastal zone. Second, the proposed project, including the Appellant's mitigation measure, will have minimal individual and cumulative adverse effects on coastal wetlands. These minimal adverse coastal effects based on this record are not substantial enough to outweigh the activity's minimal contribution to the national interest in economic development of the coastal zone. Third, the proposed activity will not violate the requirements of the Clean Water Act or the Clean Air Act. Fourth, there is no reasonable alternative available to the Appellant that would permit the activity to be conducted in a manner consistent with the State's coastal management program. Accordingly, the proposed project is consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project satisfied all of the requirements of Ground I, the Secretary overrode the State's objection to the Appellant's consistency certification. Consequently, the proposed project may be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

Karl Gleaves, Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–2967.

Dated: January 12, 1999.

Monica Medina,

General Counsel.

[FR Doc. 99–1598 Filed 1–22–99; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Stamp for Certain Textile Products Produced or Manufactured in the Republic of Maldives

January 19, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Effective on January 27, 1999, a new export visa stamp will be required for shipments of textile products, produced or manufactured in Maldives and exported from Maldives on or after December 10, 1998. The new stamp reflects the name change of "CUSTOMS MALDIVES" to "MALDIVES CUSTOMS SERVICE" but is otherwise unchanged. There will be a grace period from December 10, 1998 through February 28, 1999, during which products exported from Maldives may be accompanied by either the old or new export visa stamp. Products exported from Maldives on or after March 1, 1999 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., room 3104, Washington, DC.

See 47 FR 36879, published on August 24, 1982.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 19, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 18, 1982, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool and man-made fiber apparel, produced or manufactured in Maldives for which the Government of the Republic of Maldives has not issued an appropriate export visa.

Effective on January 27, 1999, you are directed to amend further the directive dated August 18, 1982 to provide for the use of a new export visa stamp issued by the Government of the Republic of Maldives to accompany shipments of textile products, produced or manufactured in Maldives and exported from Maldives on or after December 10, 1998. This new visa stamp reflects the name change of "CUSTOMS MALDIVES" to "MALDIVES CUSTOMS SERVICE" but is otherwise unchanged.

Textile products exported from Maldives during the period December 10, 1998 through February 28, 1999 may be accompanied by either the old or new export visa stamp. Products exported from Maldives on or after

March 1, 1999 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–1532 Filed 1–22–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Cantor Financial Futures Exchange, Inc. for Designation as a Contract Market in Flexible Coupon U.S. Treasury Bond and 10-Year, 5-Year and 2-Year U.S. Treasury Note Futures

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed terms and conditions for applications for contract market designation.

SUMMARY: The Cantor Financial Futures Exchange, Inc. (CFFE or Exchange) has applied for designation as a contract market in flexible coupon U.S. Treasury bond and flexible coupon 10-year, 5-year and 2-year U.S. Treasury note futures. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before February 9, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary @cftc.gov. Reference should be made to the CFFE flexible coupon U.S. Treasury bond and 10-year, 5-year and 2-year U.S. treasury note futures contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Thomas Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5278. Facsimile number: (202) 418–5527. Electronic mail: tleahy@cftc.gov.

SUPPLEMENTARY INFORMATION: The proposed designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on March 1, 1999, 45 days after receipt of the proposals. In view of the limited review period provided under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at 222.cftc.gov under "What's New & Pending".

Other materials submitted by the CFFE in support of the proposals may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposals, or with respect to other materials submitted by the CFFE, should send other comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 19, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–1582 Filed 1–22–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered will include a discussion of an initiative to examine labor relations training, and labor-management partnership affecting the Department's civilian workforce and other topics related to the enhancement of Labor-Management partnerships throughout DoD.

DATES: The meeting is to be held February 23, 1999, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by February 16, 1999, in order to be considered at the February 23 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address show below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd., Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: January 19, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–1564 Filed 1–22–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Panel on Commercialization and Globalization in the U.S. Defense Establishment

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The Defense Policy Board Panel on Commercialization and Globalization in the U.S. Defense Establishment met in closed session at the Pentagon on January 13, 1999, from 0800 to 1600. As a subcommittee of the Defense Policy Board, the Panel will be preparing findings for deliberation by the Defense Policy Board and therefore is exempt from coverage of the Federal Advisory Committee Act, as permitted by DoDD 5105.4(D)(3)(h). Nonetheless, a determination has been made to close this meeting and publish its schedule in the **Federal Register.** The notice for this meeting was delayed due to the need to finalize the panel's schedule and membership, which was not achieved in time to permit prior notification.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Panel will hold classified discussions on national security matters, focusing on assessing commercialization and globalization activities of the Department of Defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. § 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Contact CDR Randy Lovdahl, Defense Policy Board Advisory Committee, on (703) 697–4557.

Dated: January 14, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–1566 Filed 1–22–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Information Technology Advisory Committee (Formerly the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet)

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the President's Information Technology Advisory Committee. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463).

DATES: February 17, 1999.

ADDRESSES: NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

PROPOSED SCHEDULE AND AGENDA: The President's Information Technology Advisory Committee (PITAC) will meet in open session from approximately 8:30 a.m. to 11:30 a.m. and 12:30 p.m. to 4:00 p.m. on February 17, 1999. This meeting will include discussions on PITAC's final report to the President, including reports from PITAC panels on: socio-economic and workforce issues; high-end computing; software; scalable infrastructure; modes of research and funding; and management. Time will also be allocated during the meeting for public comments by individuals and organizations.

FOR FURTHER INFORMATION CONTACT: The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: http://www.ccic.gov; it can also be reached at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: January 12, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–1565 Filed 1–22–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the Real Property Master Plan, Fort Sill, OK

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: This announces the intention of the U.S. Army Field Artillery Center and Fort Sill, Fort Sill, Oklahoma, to prepare an Environmental Impact Statement (EIS) in support of revisions to the installation's Real Property Master Plan (RPMP). The purpose is to evaluate the environmental impacts associated with the RPMP's implementation.

ADDRESSES: Written comments may be forwarded to the U.S. Army Corps of Engineers, ATTN: CESWT–PE–E (J. Randolph), P.O. Box 61, Tulsa, Oklahoma 74121–0061.

FOR FURTHER INFORMATION CONTACT: Mr.Bob Kerr, Directorate of Environmental Quality, U.S. Army Field Artillery Center and Fort Sill, at 580–442–3409.

SUPPLEMENTARY INFORMATION: The Fort Sill RPMP has the potential to significantly impact certain natural, economic, social, and cultural resources of the Fort Sill community. The study area for environmental analysis will be the entire Fort Sill installation. The objective is to provide a comprehensive and programmatic EIS which will serve as a planning tool, a public information source, and a reference for mitigation tracking.

Alternatives may consist of alternate locations for specific projects, partial implementation of the specific project, or other modification of the specific project. The alternatives will be developed during preparation of the draft EIS (DEIS) as a result of public input and of environmental analysis of the proposals within the plan.

Significant Issues: The Fort Sill reservation contains approximately 94,221 acres of land. Some of this land serves as potential habitat for protected species of wildlife. Of the areas within the installation that have been surveyed to date for cultural resources, 832 properties have been identified and recorded. Nearly all of the current and proposed RPMP projects are sited within the 6,015 acre cantonment area, where the majority of the installation's historic buildings are located.

The significant issues the EIS will analyze include the following:

1. Development of a large deployment marshaling area near an existing railhead facility: Whereby, new railroad tracks, loading docks, switching facilities, hardstand areas, and fencing would be developed.

2. Redesignation of land use: Whereby, land use zoning would be redesignated to provide for the construction of new and expansion of existing motor pool areas.

3. Probable construction projects: Whereby, the following projects would be completed: (1) new multiple launch rocket system (MLRS) range firing points in the training areas; (2) a liquid fuel facility; (3) a unit movements facility; and (4) a con-tingency warehouse.

Public scoping meetings will be held in the vicinity of Fort Sill to facilitate input to the EIS process by citizens and organizations. The date and time of these meetings will be announced to the general media and will be at times and locations convenient to the public. To be considered in the Draft EIS, comments and suggestions should be received not later than 15 days following the public scoping meeting.

Dated: January 14, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I,L&E).

[FR Doc. 99–1544 Filed 1–22–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a Computer Matching Program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), as the matching agency under the Privacy Act, is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between the Department of the Treasury and DoD that their records are being matched by computer. The record subjects are delinquent debtors of the Bureau of the Public Debt, Department of the Treasury, who are current or former Federal employees receiving any Federal salary or benefit payments and who are indebted or delinquent in their repayment of debts to the United States Government under certain programs administered by the Public Debt.

DATES: This proposed action will become effective February 24, 1999 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Department of the Treasury and the Defense Manpower Data Center (DMDC) have concluded an agreement to conduct a computer matching program. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal Government so that the Bureau can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the Department of the Treasury and DMDC is available to the public upon request. Requests should be submitted to the address caption above or to the Debt Collection Officer, Bureau of Public Debt, Hintgen Building, Room 114, P.O. Box 1328, Parkersburg, WV 26106–1328.

Set forth below is the notice of the establishment of the computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on January 12, 1999, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 19, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF THE TREASURY/BUREAU OF PUBLIC DEBT, AND THE DEFENSE MANPOWER DATA CENTER AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION.

A. *Participating agencies:* Participants in this computer matching program are the Bureau of Public Debt, Department of the Treasury and the Defense Manpower Data Center (DMDC), Department of Defense (DoD). The Bureau of Public Debt is the source agency, i.e., the agency disclosing the records for the purpose of the match. DMDC is the specific recipient or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The purpose of the match is to identify and locate any matched Federal personnel, employed, serving or retired, who owe delinquent debts to the Federal Government under certain programs administered by the Bureau of Public Debt. The Bureau will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982, as amended, when voluntary payment is not forthcoming. These collection efforts will include requests by the Bureau of the military service/employing agency in the case of military personnel (either active, reserve, or retired) and current non-postal civilian employees, and to the Office of Personnel Management in the case of retired non-postal civilian employees to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *Authority for conducting the match:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Public Law 97–365), as amended by the Debt Collection Improvement Act of 1996 (Public Law 104-134, section

31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 135, Under Secretary of Defense (Comptroller) Section 101(l) of Executive Order 12731; 4 CFR 101.1-105.3, Federal Claims Collection Standards; 5 CFR 550.1101 550.1108 Collection by Offset from Indebted Government Employees (OPM) and 31 CFR Part 5, Subparts B and D (Department of Treasury).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for the purpose of this computer match are as follows:

1. The Bureau of Public Debt will use personal data from the following record systems for the match:

A. Treasury/BPD.001, entitled 'Human Resources and Administrative Records,' last published in the Federal Register at 63 FR 69936, December 17, 1998.

B. Treasury/BPD.002, entitled 'United States Savings Type Securities,' last published in the Federal Register at 63 FR 69938, December 17, 1998.

C. Treasury/BPD.003, entitled 'United States Securities (Other than Savings Type Securities),' last published in the Federal Register at 63 FR 69940, December 17, 1998.

D. Treasury/DO.002, entitled 'Treasury Integrated Management Information System (TIMIS),' last published in the Federal Register at 63 FR 69719, December 17, 1998.

E. Treasury/DO.210, entitled 'Treasury Integrated Financial Management and Revenue System,' last published in the Federal Register at 63 FR 69741, December 17, 1998.

F. Treasury/DO.211, entitled 'Telephone Call Detail Records,' last published in the Federal Register at 63 FR 69743, December 17, 1998.

2. DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Database,' last published in the Federal Register at 61 FR 32779, June 25, 1996.

E. *Description of computer matching program:* The Bureau of Public Debt, as the source agency, will provide DMDC with an electronic file which contains the names of delinquent debtors in programs the Bureau administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the Bureau's file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB and the Treasury Department, consists of employment records of non-postal Federal employees and military members, active and retired. The 'hits' or matches will be furnished to the Bureau. The Bureau is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with the Bureau's source file and for resolving any discrepancies or inconsistencies on an individual basis. The Bureau will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by the Bureau of Public Debt will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 2000 delinquent debtors. The electronic file provided by DMDC will contain an individual's name, SSN, military service or employing agency and current work or home address.

The DMDC computer database file contains approximately 4.8 million records of active duty and retired military members, including Reserve and Guard, and approximately 3.5 million records of active and retired non-postal Federal civilian employees.

F. *Inclusive dates of the matching program:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If the mandatory 30 day period for public comment has expired and if no objections are raised by either Congress of the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange of data at a mutually agreeable time on an annual basis. By agreement between the Department of the Treasury and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

H. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 99–1567 Filed 1–22–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Waukegan Harbor, Lake County, Illinois as Part of the Comprehensive Dredging Management Plan (CDMP)

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Chicago District maintains Waukegan Harbor, a Federally authorized, commercial deep-draft navigation project on Lake Michigan. Maintenance dredging has not been performed on inner portions of the harbor since 1971, due to elevated levels of contaminants in the sediment, particularly polychlorinated biphenyls (PCBs) and lack of an acceptable disposal site for confinement of these sediments. Sediment in the outermost portion of the Federal Channel beyond the breakwater, is clean, does not require confined disposal and has been dredged routinely since completion of the harbor.

The Chicago District has been working closely with the Illinois Environmental Protection Agency (IEPA), the U.S. Environmental Protection Agency (USEPA), The Waukegan Port District, and the Waukegan Citizen's Advisory Group (CAG) to develop a Comprehensive Dredging Management Plan for Waukegan Harbor. The plan has three primary objectives: (1) re-establish a regular maintenance dredging program for the inner harbor area; (2) deepen the navigation channels to accommodate more economical, deeper draft vessels; and (3) clean-up all contaminated unconsolidated sediment within the harbor. Approximately 550,000 cubic yards of sediments need to be removed from the harbor to meet these objectives. The EIS will evaluate sediment removal, transport, and disposal and management alternatives developed as part of the Waukegan Harbor CDMP.

FOR FURTHER INFORMATION CONTACT: Dr. Phil Moy, EIS Coordinator (312) 353–6400 extension 2021 or Ms. Joan Albert, Project Manager, (312) 353–6400 extension 2004; U.S. Army Corps of Engineers, Chicago District; 111 North

Canal Street; Chicago, Illinois 60606–7206.

SUPPLEMENTARY INFORMATION:

1. Background

Prior to 1969, sediment dredged from the Federal Channel was placed at an open-lake location. The discovery of elevated levels of contaminants has prohibited maintenance dredging and authorized expansion and deepening of the Federal Channel. Due to the lack of maintenance dredging, channel depth in some parts of the harbor has been reduced by as much as ten feet.

Due to the presence of PCBs in the sediment, Waukegan Harbor was designated as one of the Great Lake's Areas of Concern in 1981. State are required to prepare a Remedial Action Plan (RAP) for Great Lakes Areas of Concerns. The Waukegan Citizen's Advisory Group has been actively involved in the RAP process with the IEPA.

The PCB contamination originated in discharges primarily attributed to the Outboard Marine Corporation (OMC). Under the Federal Superfund authority, the USEPA and OMC developed a plan to cleanup the most severely PCB-contaminated sediment (>50 parts per million (ppm)); the cleanup was complete in 1993. Prior to completion of the cleanup, the maximum PCB concentration in the Federal Channel was 33.5 ppm. Today the maximum concentration of PCBs in the Federal Channel is 10.9, with an average of about 3.4 ppm.

2. Alternatives

The EIS will consider the potential impacts of alternatives for dredging and disposal of contaminated sediment removed from the inner areas of the harbor. These will include various means of dredging and sediment transport to the proposed disposal sites. Alternatives for deepening and ongoing maintenance of the Federal Channel will also be evaluated. The EIS will evaluate management alternatives for clean sediment dredged from the approach channel.

Current laws and environmental policies require that contaminated dredged material be confined or receive special treatment. Contaminated sediment can be placed at an approved commercial landfill or in a confined disposal facility (CDF) constructed for the harbor. Over 15 potential CDF sites for the Waukegan Harbor sediment were evaluated in a 1984 Study. Though several of the sites met the economic, technical, and environmental standards, lack of a nonFederal project sponsor or public support prevented the plan from moving forward to approval and implementation.

One of the original sites, a 17-acre, in-lake location south of Waukegan Harbor remains under consideration. Through cooperative efforts of the Waukegan CAG, and Federal and State agencies, a new upland site has been identified for consideration: an existing 33-acre industrial lagoon on the Johns-Manville property two miles north of the harbor.

It is anticipated that once the sediment cleanup is complete, new sediment that accumulates in the harbor would not require confined disposal. Therefore, any CDF constructed for the harbor cleanup would be capped and closed upon completion of the project.

3. Scoping Process

As part of the EIS process, a public scoping meeting will be held early in 1999. Public participation is an important part of the environmental analysis by providing assistance in determining the scope of issues to be addressed and identifying the significant issues of the proposed actions. Federal, State, and local resources agencies, Native American groups and concerned interest groups/individuals are encouraged to participate in this process. Time and location of the scoping meeting will be widely publicized through fliers, announcements and news releases. Those wishing to provide information or data they feel should be included or considered in the Environmental Impact Statement should furnish the information by writing to the points of contact indicated above or by attending the scoping meeting.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–1570 Filed 1–22–99; 8:45 am]

BILLING CODE 3710–HN–M

DEPARTMENT OF ENERGY

Golden Field Office; Hydrogen Technology Innovation

AGENCY: Office of Energy Efficiency and Renewable Energy, Golden Field Office, DOE.

ACTION: Notice of Supplemental Announcement (07) to the Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development, and Demonstration for Renewable Energy and Energy Efficiency Technologies, DE–PS36–99GO10383.

SUMMARY: The Hydrogen Program of the Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is issuing a Supplemental Announcement to EERE's Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–99GO10383, dated November 9, 1998. Under this Supplemental Announcement, DOE is seeking Phase I research and development (R&D) proposals that can advance hydrogen production, storage, and utilization technologies. The objective of Phase I is to develop detailed R&D plans to validate the proposed hydrogen concept, along with necessary preliminary R&D and the development of other supporting documentation.

Awards under this Supplemental Announcement will be Cooperative Agreements for Phase I research with a term of up to 12 months. Subject to funding availability, the total DOE funding available under this Supplemental Announcement will be $650,000, with individual awards not to exceed $150,000 of DOE funding.

All information regarding the Supplemental Announcement will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the Supplemental Announcement on January 19, 1999. The closing date of the Supplemental Announcement is February 25, 1999.

ADDRESSES: The Supplemental Announcement will be posted on the DOE Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm. It is DOE's intention not to issue hard copies of the Supplemental Announcement.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Doug Hooker, Project Officer, at 303–275–4780, e-mail doug__hooker@nrel.gov.

Issued in Golden, Colorado, on January 19, 1999.

Dated: January 14, 1999.

Ruth E. Adams,

Contracting Officer, Golden Field Office.

[FR Doc. 99–1600 Filed 1–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–46–000]

Algonquin Gas Transmission Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed EMI-Tiverton Transportation Project and Request for Comments on Environmental Issues

January 19, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed EMI-Tiverton Transportation Project to deliver natural gas to a gas fired electric generating facility to be constructed near Tiverton, Rhode Island.[1] This project would involve uprating the pipeline pressure of Algonquin's mainline pipeline from 750 to 900 Pounds per Square Inch Gauge (PSIG) Maximum Allowable Operating Pressure (MAOP) between Burrillville, Rhode Island and Mendon, Massachusetts. It would include the replacement of approximately 2.3 miles of various diameter pipeline, the construction of a new meter station at Tiverton, Rhode Island, and the uprating of turbine compressors at the Chaplin Compressor Station in Chaplin, Connecticut. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Algonquin Gas Transmission Company (Algonquin) wants to expand the capacity of its facilities in Rhode Island and Massachusetts to provide up to 46,000 Dekatherms per day (Dth/d) of service to Tiverton Power Associates Limited Partnership's (Tiverton) natural gas-fired electric generation facility being constructed in Tiverton, Rhode Island. Algonquin seeks authorization to:

- Uprate pressure of approximately 20 miles of Agonquin's mainline pipeline from 750 to 900 PSIG MAOP.
- Replace 7,710 feet of 30-inch-diameter pipeline beginning east of Albee Road in Uxbridge, Massachusetts, to west of Hill Street in Millville, Massachusetts (between MP 9.85 and MP 11.31);
- Replacement of 1,520 feet of 30-inch-diameter pipeline between Sherman Road in Burrillville, Rhode Island, and Douglas Pike in Uxbridge, Massachusetts (between milepost [MP] 5.19 and MP 5.48);
- Replace 2,211 feet of the 10-inch-diameter G–13 Pipeline west of Thayer Road in Mendon, Massachusetts (between MP 14.86 and MP 15.28);
- Construct a 8-inch tap, new regulator, approximately 545 feet of 10-inch-diameter tie-in, and meter station on the Tiverton power plant site in Tiverton, Rhode Island.

Uprate the horsepower of two Solar Turbines Incorporated Taurus 70S turbines at the Chaplin Compressor Station in Chaplin, Connecticut, from 6,500 horsepower (hp) to 6,950 hp each;

- Replace numerous short lengths of 30-inch diameter pipeline at: Cemetery Road in Uxbridge, Massachusetts (near MP 5.93); at two crossings of King Street in Uxbridge, Massachusetts (near 5.93 and MP 6.35); at Chester Street in Uxbridge, Massachusetts (near MP 7.94); at Albee Road in Uxbridge, Massachusetts (near MP 9.75); at Mendon Street in Blackstone, Massachusetts (near MP 12.25); at Thayer Road in Mendon, Massachusetts (near MP 15.37).
- Install a regulator at Valve 38A–2 (Ocean State Tap) located west of Douglas Pike in Burrillville, Rhode Island (near MP 5.41);
- Remove and replace Mainline Valve 39–2 located east of Kempton Road in Millville, Massachusetts (near MP 10.41);
- Install a new mainline regulator valve upstream of the G–1 Tap along the 30-inch-diameter loop west of Thayer Street in Mendon, Massachusetts (near MP 15.28); and

2. The location of the project facilities is shown in appendix.

Land Requirements for Construction

The proposed pipeline replacement sections would require the use of Algonquin's existing rights-of-way and at some locations require an additional 20-foot-wide temporary work space to facilitate construction. The total lands necessary for the project will be approximately 36 acres.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of the proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and Soils.
- Water Resources, Fisheries, and Wetlands.
- Vegetation and Wildlife.
- Endangered and Threatened Species.
- Public Safety.
- Land Use.
- Cultural Resources.
- Air Quality and Noise.

[1] Algonquin Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currrently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Algonquin. This preliminary list of issues may be changed based on your comments and our analysis.

- Seven waterbodies and thirteen wetlands would be crossed by the project.
- Approximately 4.0 acres of upland forest would be cleared.
- The new meter station would be constructed within the watershed for Stafford Pond, a Special Resource Protection Water for Rhode Island.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2.
- Reference Docket No. CP99–46–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 18, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1536 Filed 1–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–151–000]

ANR Pipeline Company; Notice of Application

January 19, 1999.

Take notice that on January 12, 1999, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP99–151–000 an application pursuant to Section 7(c) of the Commission's Regulations under the Natural Gas Act for authorization associated with a pipeline replacement project in Porter County, Indiana, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to use temporary work space and limited additional right-of-way to perform the replacement of 1.63 mile segments of both its 22-inch main line and 30-inch loop line with heavier wall pipe to continue to meet the DOT safety requirements in the affected area of Porter County, Indiana. ANR states that the replacement will not alter the associated pipeline's capacity, and that there will be no interruptions of service as a result of the replacement project because ANR will be able to flow volumes through parallel facilities. It is also stated that the cost of the project including the replacement performed under Section 2.55(b) of the regulations is about $4,494,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 9, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of

Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ANR to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–1539 Filed 1–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–149–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

January 19, 1999.

Take notice that on January 12, 1999, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed a request with the Commission in Docket No. CP99–149–000, pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon certain inactive delivery facilities authorized in blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon by removal a 2-inch tap, meter station and approximately 21 feet of 2-inch pipeline formerly serving Georgia Pacific Corporation (Georgia Pacific) an end user, in Marion County, Mississippi. Koch Gateway states that these facilities were originally installed to provide natural gas service to Georgia Pacific's chipping mill and dry kiln near Columbia, Mississippi. Koch Gateway further states that Georgia Pacific has converted to propane service as its alternate source of energy and has requested Koch Gateway to permanently disconnect the natural gas service at this location.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–1537 Filed 1–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP99–150–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

January 19, 1999.

Take notice that on January 12, 1999, NorAm Gas Transmission Company (NGT), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. CP99–150–000 a request pursuant to Sections 157.205 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to abandon, construct, and operate certain facilities in Arkansas under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection

NGT specifically requests authority to (1) abandon a 6-inch tap and relocate the existing skid mounted meter station located on Line LM–2 to a new location on Line BT–1; and (2) construct and operate a 2-inch tap on Line BT–1 and 380 feet of 4-inch diameter pipe (line BT–20) to continue to provide reliable service to Reynolds Metals Company (Reynolds). The estimated volumes to be delivered to this tap are approximately 442,000 Dth annually and 1,450 Dth on a peak day. The facilities will be constructed at an estimated cost of $6,700 and Reynolds will reimburse NGT all of the construction costs.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1538 Filed 1–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP92–202–000]

PNM Gas Services, a Division of Public Service Company of New Mexico; Notice Reflecting Change in Name

January 19, 1999.

On January 28, 1997, PNM Gas Services, a Division of Public Service Company of New Mexico (PNM Gas Services) (formerly known as Gas Company of New Mexico) filed an application with the Commission to redesignate the name on the certificates of public convenience and necessity issued in the above-captioned proceeding from Gas Company of New Mexico, a Division of Public Service Company of New Mexico (GCNM) to PNM Gas Services, a Division of Public Service Company of New Mexico. That redesignation will allow the certificates to accurately identify the entity holding them. No substantive changes in ownership, corporate structure or domicile, or jurisdictional operations are involved.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 9,

1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1534 Filed 1–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–248–010 and CP96–249–010]

Portland Natural Gas Transmission System; Notice of Amendment to Initial FERC Gas Tariff

January 19, 1999.

Take notice that on January 13, 1999, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheets:

Substitute Original Sheet No. 3
Substitute Original Sheet No. 301
Substitute Original Sheet No. 303
Substitute Original Sheet No. 323
Substitute Original Sheet No. 349
Substitute Original Sheet No. 351
Substitute Original Sheet No. 352
Substitute Original Sheet No. 366
Substitute Original Sheet No. 380
Substitute Original Sheet No. 600

PNGTS proposes to place the above tariff sheets, amending its December 11, 1998 tariff filing, into effect on the expected in-service date of its pipeline, February 11, 1999. PNGTS states that these amended tariff sheets will more fully implement the Gas Industry Board Standards, provide expiration dates for all contracts listed in the Index of Shippers, and make a correction to the Preliminary Statement.

PNGTS states that copies of this filing were served upon all parties listed on the official service list compiled by the Secretary in these proceedings as well as PNGTS customers and interested state commissions. However, PNGTS states that copies of the redlined tariff sheets in Appendix B will not be included in the mailing. PNGTS states that redlined tariff sheets of this filing will be made available upon request, and complete copies of this filing are on file with the Commission.

Any person desiring to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1535 Filed 1–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–57–000, et al.]

Magellan Cogeneration, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 15, 1999.

Take notice that the following filings have been made with the Commission:

1. Magellan Cogeneration Inc.

[Docket No. EG99–57–000]

On January 11, 1999, Magellan Cogeneration Inc. (MCI) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

MCI will acquire a 63 MW eligible facility located in Rosario, Cavite, the Philippines. MCI states that, following the close of the acquisition, it will be engaged directly and exclusively in the business of owning and/or operating all or part of an eligible facility (as defined in Section 32(a)(1) of the Public Utility Holding Company Act); selling electricity at wholesale to the National Power Corporation of the Philippines and at wholesale Cavite Export Processing Zone Authority, a government corporation operating under the laws of the Philippines; and, possibly, selling electricity at retail to customers none of which will be located within the United States.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. San Diego Gas & Electric Company, Cabrillo Power I LLC, and Cabrillo Power II LLC

[Docket No. EC99–26–000]

Take notice that on January 12, 1999, San Diego Gas & Electric Company (SDG&E), Cabrillo Power I LLC (Cabrillo I) and Cabrillo Power II LLC (Cabrillo II) tendered for filing pursuant to Section 203 of the Federal Power Act, an application for Commission approval to effect assign two jurisdictional Reliability Must-Run Agreements (the RMR Agreements). The RMR Agreements, between SDG&E and the California Independent System Operator Corporation relate to the operation of SDG&E's Encina Generating Station (the Encina station) and SDG&E, Cabrillo I and Cabrillo II have requested that the Commission approve the assignments on or before February 28, 1999.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket Nos. EC96–19–047 and ER96–1663–049]

Take notice that on January 8, 1999, the California Independent System Operator Corporation tendered for filing amendments to its Bylaws in connection with the Commission's November 24, 1998 order, 85 FERC ¶ 61,263 (1998).

Copies of the filing were served upon all the parties in the above-captioned proceedings.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Harbor Cogeneration Company

[Docket No. EG99–58–000]

On January 13, 1999, Harbor Cogeneration Company filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Harbor Cogeneration is a general partnership formed under the laws of the State of California for the primary purpose of owning and operating a cogeneration facility located in the Wilmington Oil Field in Los Angeles County, California, near the city of Long Beach. The business offices of Harbor Cogeneration are located at 1075 Noel Road, Wheeling, Illinois.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Coastal Power Panama Investor, S.A.

[Docket No. EG99–59–000]

Take notice that on January 13, 1999, Coastal Power Panama Investor, S.A. (Applicant), Dresdner Bank Tower, Ninth Floor, 50th Street, Panama City, P.O. Box 8376, Panama 7, Republic of Panama, filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Applicant, a Panamanian sociedad anonima, intends to own beneficial interests in certain power generating facilities in Panama. These facilities will consist of approximately a 300 MW hydroelectric power generating facility in Chiriqui province, Panama.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Long Beach Generation LLC

[Docket No. ER98–2537–001]

Take notice that on January 11, 1999, Long Beach Generation LLC (Long Beach), tendered for filing a supplement to the compliance refund report that it had filed for approval in the above-referenced docket on December 30, 1998.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Storm Lake Power Partners II LLC

[Docket No. ER99–1228–000]

Take notice that on January 11, 1999, Storm Lake Power Partners II LLC (Storm Lake II), tendered for filing its initial Rate Schedule FERC No. 2, governing sales of electric energy and capacity at market-based rates. The filing was made to replace the Application filed on January 8, 1999 in the above-referenced docket. Storm Lake II is developing a wind-powered generation facility in Buena Vista County, Iowa. Following construction of the facility, Storm Lake II will make sales of capacity and energy at market-based rates to IES Utilities, Inc. (IES) pursuant to an Alternative Energy Production Electric Service Agreement (the Power Purchase Agreement or PPA).

The PPA was originally executed by IES and Northern Alternative Energy Allendorf L.L.C. (NAEA) on May 14, 1997. NAEA assigned the PPA to Storm Lake II pursuant to an agreement dated November 19, 1998.

Copies of the filing were served upon IES, Storm Lake II's jurisdictional customer.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Carolina Power & Light Company

[Docket No. ER99–1230–000]

Take notice that on January 11, 1999, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with South Carolina Public Service Authority and GPU Energy under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the unexecuted Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Western Resources, Inc.

[Docket No. ER99–1231–000]

Take notice that on January 11, 1999, Western Resources, Inc., tendered for filing agreements between Western Resources and Aquila Power Corporation, ConAgra Energy Services, Inc., and Wisconsin Electric Power Company. Western Resources states that the purpose of the agreements is to permit the customers to take service under Western Resources' market-based power sales tariff on file with the Commission.

The agreements are proposed to become effective December 17, 1998, January 1, 1999, and December 7, 1998.

Copies of the filing were served upon Aquila Power Corporation, ConAgra Energy Services, Inc., Wisconsin Electric Power Company, and the Kansas Corporation Commission.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER99–1232–000]

Take notice that on January 11, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with New Energy Ventures, Inc.

Wisconsin Electric respectfully requests an effective date of January 8, 1999, to allow for economic transactions.

Copies of the filing have been served on New Energy Ventures, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1233–000]

Take notice that on January 11, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 10–1, to add Allegheny Energy, DTE CoEnergy, DTE Edison America, Enserch Energy Services, Inc., Exelon Energy, First Energy Services, Green Mountain Energy Resources, L.L.C., New Energy Ventures, Nicole Energy Services, Penn Power Energy, Inc., PP&L EnergyPlus Company, PSEG Energy Technologies, Strategic Energy Ltd., West Penn Power Company, and Worley & Obetz, Inc., to Allegheny Power's Open Access Transmission Service Tariff.

The proposed effective date under the agreements is January 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PECO Energy Company

[Docket No. ER99–1234–000]

Take notice that on January 11, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated October 15, 1998 with Consolidated Edison Solutions, Inc. (Con Edison Solutions) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Con Edison Solutions and to the Pennsylvania Public Utility Commission.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PECO Energy Company

[Docket No. ER99–1235–000]

Take notice that on January 11, 1999, PECO Energy Company (PECO) tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated November 20, 1998 with NEV East, L.L.C. (NEV East), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to NEV East and to the Pennsylvania Public Utility Commission.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER99–1236–000]

Take notice that on January 11, 1999, Florida Power Corporation (Florida Power), tendered for filing a service agreement for Network Contract Demand Transmission Service and a Network Operating Agreement between itself and Seminole Electric Cooperative, Inc., pursuant to Florida Power's open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the Service Agreement to become effective on January 1, 1999.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Louisville Gas And Electric Co./ Kentucky Utilities Company

[Docket No. ER99–1237–000]

Take notice that on January 11, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/ KU and Strategic Energy Ltd., under LG&E/KU's Open Access Transmission Tariff.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas And Electric Co. and Kentucky Utilities Company

[Docket No. ER99–1238–000]

Take notice that on January 11, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-To-Point Transmission Service between LG&E/ KU and Strategic Energy Ltd., under LG&E/KU's Open Access Transmission Tariff.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota) and Northern States Power Company and (Wisconsin)

[Docket No. ER99–1239–000]

Take notice that on January 11, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing six Firm Point-to-Point Transmission Service Agreements between NSP and NSP Wholesale Energy Marketing.

NSP requests that the Commission accept the six agreements effective January 1, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Rochester Gas and Electric Corporation

[Docket No. ER99–1240–000]

Take notice that on January 11, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and FPL Energy Services, Inc. (Transmission Customer), for service under RG&E's open access transmission tariff. Specifically dealing with the Retail "Access Program" under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of January 1, 1999, for the FPL Energy Services, Inc., Service Agreement.

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Rochester Gas and Electric Corporation

[Docket No. ER99–1241–000]

Take notice that on January 11, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement between RG&E and FPL Energy Services, Inc. (Transmission Customer), for service under RG&E's open access transmission tariff. Specifically dealing with the "Pilot Retail Access Program" under RG&E's open access transmission tariff.

RG&E requests waiver of the Commission's notice requirements for good cause shown and an effective date of January 1, 1999, for the FPL Energy Services, Inc., Service Agreement.

A copy of this Service Agreement has been served on the Transmission Customer and the New York Public Service Commission.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. NP Energy Inc.

[Docket No. ER99–1242–000]

Take notice that on January 11, 1999, NP Energy Inc. (NP Energy), a broker and marketer of electric power, filed a notice of change in status relating to an agreement for the acquisition by Duke Energy Trading and Marketing, L.L.C. (DETM), of all of the common stock of NP Energy Inc. NP Energy also filed a change in its rate schedule, precluding NP Energy from selling power to, or selling power purchased from, the franchised electric utility affiliates of DETM.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. PECO Energy Company

[Docket No. ER99–1243–000]

Take notice that on January 12, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Transaction Agreement dated November 19, 1998 with Borough of Ephrata, Pennsylvania (Ephrata) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of February 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Middletown and to the Pennsylvania Public Utility Commission.

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. PECO Energy Company

[Docket No. ER99–1244–000]

Take notice that on January 12, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, a Transaction Agreement dated December 22, 1998 with Borough of Middletown, Pennsylvania (Middletown) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Middletown and

to the Pennsylvania Public Utility Commission.

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Allegheny Power Service Corp. on behalf of Monongahela Power Company, Potomac Edison Company and West Penn Power Company

[Docket No. ER99–1245–000]

Take notice that on January 12, 1999, Allegheny Power Service Corporation (Allegheny Power), tendered for filing notice that the Allegheny Power's Pro Forma Open Access Transmission Service Tariff shall be amended as of the date of filing to conform to NERC's generic tariff amendment included as Attachment B in Docket No. EL99–52–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Ameren Services Company

[Docket No. ER99–1246–000]

Take notice that on January 12, 1999, Ameren Services Company (Ameren), tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and American Municipal Power—Ohio, Inc., and El Paso Power Services Company. Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Arizona Public Service Company

[Docket No. ER99–1247–000]

Take notice that on January 12, 1999, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Short-Term Firm Point-to-Point Transmission Service to Aquila Power Corporation and Public Service Company of New Mexico, and Short-Term Firm and Non-Firm Point-to-Point Transmission Service to Merrill Lynch Capital Services, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on Aquila Power Corporation, Public Service Company of New Mexico, Merrill Lynch Capital Services, Inc., the Arizona Corporation Commission and the New Mexico Public Regulation Commission.

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Harbor Cogeneration Company

[Docket No. ER99–1248–000]

Take notice that on January 12, 1999, Harbor Cogeneration Company (Harbor Cogeneration), tendered for filing an initial rate schedule to sell power and certain ancillary services at market-based rates and for certain waivers of the Commission's filing and reporting requirements.

Harbor Cogeneration requests waiver of the 60-day notice requirement to permit the Harbor Cogeneration Rate Schedule to become effective as a rate schedule as of January 13, 1999.

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. NGE Generation, Inc.

[Docket No. ER99–1249–000]

Take notice that on January 11, 1999, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.15, a notice of cancellation (Cancellation) of Rate Schedule FERC No. 35.6 (Rate Schedule) between NGE Gen and El Paso Energy Power Services Company (El Paso).

NGE Gen requests that the Cancellation be deemed effective as of January 12, 1999. To the extent required to give effect to the Cancellation, NGE Gen requests waiver of the notice requirements pursuant to Section 35.15 of the Commission's Regulations, 18 CFR 35.15.

NGE Gen served copies of the filing upon the New York State Public Service Commission and El Paso.

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Storm Lake Power Partners II LLC

[Docket No. ER99–1252–000]

Take notice that on January 12, 1999, Storm Lake Power Partners II LLC (Storm Lake II), tendered for filing proposed changes to its Rate Schedule FERC No. 1. Storm Lake II is developing a wind-powered generation facility in Buena Vista and Cherokeye Counties, Iowa. Following construction of the facility, Storm Lake II will make sales of capacity and energy at market-based rates to IES Utilities, Inc. (IES), pursuant to an Alternative Energy Production Electric Services Agreement (the Power Purchase Agreement or PPA) that the Commission accepted for filing as Rate Schedule FERC No. 1 in Iowa Power Partners I, L.L.C., 81 FERC ¶ 61,058 (1997).

The proposed rate schedule changes amend the PPA to reflect a decrease in the maximum quantity under the PPA from to 84.75 MW to 75.75 MW, contingent upon the Commission's acceptance for filing of Storm Lake II's Rate Schedule FERC No. 2, which is pending in Docket No. ER99–1228 and to increase the rate under the PPA due to increased interconnection costs. Storm Lake II also filed an amendment to its interconnection agreement with IES.

Copies of the filing were served upon IES, Storm Lake II's jurisdictional customer.

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. MidAmerican Energy Company

[Docket No. ER99–1253–000]

Take notice that on January 12, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Ameren Services Company, dated December 14, 1998, and a Non-Firm Transmission Service Agreement with Ameren, dated December 14, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of December 14, 1998, for the Agreements with Ameren, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Ameren, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Nevada Power Company

[Docket No. ER99–1265–000]

Take notice that on January 8, 1998, Nevada Power Company (NPC), as one of the Operating Agents for the Navajo Project Western Transmission System, tendered for filing on behalf of the Navajo Project Participants the following amendments:

1. Amendment No. 5 to the Navajo Project Co-Tenancy Agreement

2. Amendment No. 1 to the Navajo Project Western Transmission System Operating Agreement

These Amendments bring the Navajo Project Agreements up-to-date regarding the current ownership, cost responsibility and configuration of two Navajo Project facilities, namely the McCullough 500 kV Switchyard and the McCullough Substation Common Facilities.

NPC requests an effective date no later than sixty (60) days after the date the Amendments are filed.

A copy of this filing has been served on Arizona Public Service Company, the United States Bureau of Reclamation, Salt River Project Agricultural Improvement and Power District, the Department of Water and Power of the City of Los Angeles, Tucson Electric Power Company, the Arizona Corporation Commission, the Public Utilities Commission of Nevada, and the Bureau of Consumer Protection Utility Consumer's Advocate of Nevada.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1533 Filed 1–22–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–7–000]

Technical Conference on Year 2000 Issues for the Oil and Natural Gas Sector; Notice of Technical Conference

January 19, 1999.

Take notice that the Federal Energy Regulatory Commission (FERC) is sponsoring a technical conference to be held on Thursday, February 18, at 9:00 a.m., in the Commission Meeting Room at 888 First Street, NE, Washington, DC 20426. This conference is being held as an outreach for the President's Council on Year 2000 Conversion (Council), which designated FERC as the lead agency for the oil and gas sector of its Energy Working Group. The conference will be hosted by the Natural Gas Council (NGC) and American Petroleum Institute (API). All interested persons are invited to attend.

The second report in a series of quarterly assessments of Y2K readiness efforts will be presented by the industry associations that are part of the Council's oil and gas sector, from the December survey which was distributed by the industry associations to individual companies. Survey results will be compiled and aggregated by industry associations and umbrella organizations (such as NGC, API, and Gas Industry Standards Board) so that individual company responses remain anonymous. This conference will focus on promoting awareness of Year 2000 issues and coordinating information sharing on testing and solutions among companies in the oil and natural gas industries rather than internal solutions of individual companies.

The oil and gas sector group has developed a Website that is linked to the Council's Website (www.y2k.gov), where the results and other related information will be posted and made available to the public.

A more detailed agenda will be published before the conference. The public may participate during question and answer periods, but no witness panels will be established. Written comments are welcome at any time and should reference Docket No. PL98–7–000. For additional information, please contact Donna La May at (202) 501–2341 or by electronic mail at "donna.lamay@ferc.fed.us."

The Capitol Connection will broadcast the conference live via satellite for a fee. For more information about the broadcast, please contact Shirley Al-Jarani or Julia Morelli at the Capitol Connection at (703) 993–3100 no later than February 15, 1999. In addition, National Narrowcast Network's Hearing-On-the-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call (202) 966–2211 for further details. Videotapes of the conference will be available for a fee by calling VISCOM at (703) 715–7999.

David P. Boergers,

Secretary.

[FR Doc. 99–1595 Filed 1–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

January 20, 1999.

THE FOLLOWING NOTICE OF MEETING IS PUBLISHED PURSUANT TO SECTION 3(A) OF THE GOVERNMENT IN THE SUNSHINE ACT (PUB. L. NO. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: FEDERAL ENERGY REGULATORY COMMISSION.

DATE AND TIME: JANUARY 27, 1999, 10:00 A.M.

PLACE: ROOM 2C, 888 FIRST STREET, N.E., WASHINGTON, D.C. 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: AGENDA.

NOTE—ITEMS LISTED ON THE AGENDA MAY BE DELETED WITHOUT FURTHER NOTICE.

CONTACT PERSON FOR MORE INFORMATION: DAVID P. BOERGERS, SECRETARY, TELEPHONE (202) 208–0400, FOR A RECORDING LISTING ITEMS STRICKEN FROM OR ADDED TO THE MEETING, CALL (202) 208–1627.

THIS IS A LIST OF MATTERS TO BE CONSIDERED BY THE COMMISSION. IT DOES NOT INCLUDE A LISTING OF ALL PAPERS RELEVANT TO THE ITEMS ON THE AGENDA; HOWEVER, ALL PUBLIC DOCUMENTS MAY BE EXAMINED IN THE REFERENCE AND INFORMATION CENTER.

CONSENT AGENDA—HYDRO; 712TH MEETING—JANUARY 27, 1999; REGULAR MEETING (10:00 A.M.)

CAH–1.
DOCKET # P–2016, 037, CITY OF TACOMA, WASHINGTON
CAH–2.

DOCKET # P–2916, 033, EAST BAY MUNICIPAL UTILITY DISTRICT
CAH–3.
DOCKET # HB69–93–7, 004, WISCONSIN ELECTRIC POWER COMPANY
OTHER #S HB69–93–7, 005, REPAP WISCONSIN, INC.
HB69–93–7, 006, KAUKAUNA ELECTRIC & WATER DEPARTMENT
CAH–4.
DOCKET # P–3195, 069, SAYLES HYDRO ASSOCIATES
CAH–5.
DOCKET # P–11286, 008, CITY OF ABBEVILLE, SOUTH CAROLINA
CAH–6.
DOCKET # P–11402, 023, CITY OF CRYSTAL FALLS, MICHIGAN
CAH–7.
DOCKET # P–405, 043, SUSQUEHANNA POWER COMPANY AND PEPCO ENERGY POWER COMPANY

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET # ER99–783, 000, SOUTHWEST POWER POOL, INC.

CAE–2.

DOCKET # ER99–826, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–3.
DOCKET # ER99–897, 000, CENTRAL POWER & LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTH-WESTERN ELECTRIC POWER CO.

CAE–4.

DOCKET # ER99–845, 000, PUGET SOUND ENERGY, INC.

CAE–5.

DOCKET # ER99–854, 000, AUTOMATED POWER EXCHANGE, INC.

CAE–6.

DOCKET # ER99–363, 000, SOUTHERN COMPANY SERVICES, INC.
OTHER #S EL99–27, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–374, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–423, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–424, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–425, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–426, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–427, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–428, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–429, 000, SOUTHERN COMPANY SERVICES, INC.
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ER99–431, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–432, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–433, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–434, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–435, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–447, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–448, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–796, 000, SOUTHERN COMPANY SERVICES, INC.
CAE–7.
DOCKET# ER99–791, 000, GRAYLING GENERATING STATION LIMITED PARTNERSHIP
CAE–8.
DOCKET# ER99–806, 000, GENESEE POWER STATION LIMITED PARTNERSHIP
CAE–9.
OMITTED
CAE–10.
DOCKET# ER99–852, 000, EDISON MISSION MARKETING & TRADING, INC.
CAE–11.
DOCKET# ER98–3921, 001, ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S ER98–3922, 001, ROCHESTER GAS AND ELECTRIC CORPORATION
CAE–12.
DOCKET# ER97–1523, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
OTHER#S ER97–4234, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
OA97–470, 000, CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND LONG ISLAND LIGHTING COMPANY, ET AL.
CAE–13.
DOCKET# ER98–3177, 000, SOUTHWESTERN ELECTRIC POWER COMPANY
OTHER#S EL98–63, 000, SOUTHWESTERN ELECTRIC POWER COMPANY
EL98–63, 001, SOUTHWESTERN ELECTRIC POWER COMPANY
ER98–3177, 001, SOUTHWESTERN ELECTRIC POWER COMPANY
CAE–14.
DOCKET# ER98–4510, 000, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC.
CAE–15.
DOCKET# EC98–62, 000, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND ORANGE AND ROCKLAND UTILITIES, INC.
CAE–16.
DOCKET# EL96–49, 000, CAMBRIDGE ELECTRIC LIGHT COMPANY
OTHER#S EL96–49, 003, CAMBRIDGE ELECTRIC LIGHT COMPANY
EL96–49, 004, CAMBRIDGE ELECTRIC LIGHT COMPANY
OA96–178, 000, CAMBRIDGE ELECTRIC LIGHT COMPANY
CAE–17. OMITTED
CAE–18. OMITTED
CAE–19.
DOCKET# EL99–11, 000, VASTAR POWER MARKETING, INC.
OTHER#S ER99–961, 000, VASTAR POWER MARKETING, INC.
CAE–20.
DOCKET# EL99–10, 000, CITY OF LAS CRUCES, NEW MEXICO V. EL PASO ELECTRIC COMPANY
CAE–21.
DOCKET# EL99–5, 000, THE POTOMAC EDISON COMPANY, WEST PENN POWER COMPANY, MONONGAHELA POWER COMPANY AND CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.
CAE–22.
DOCKET# ER93–413, 002, PACIFIC GAS AND ELECTRIC COMPANY
CAE–23.
DOCKET# RM95–9, 003, OPEN ACCESS SAME-TIME INFORMATION SYSTEM AND STANDARDS OF CONDUCT
CAE–24.
DOCKET# OA97–271, 002, AMEREN SERVICES COMPANY, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND UNION ELECTRIC COMPANY
OTHER#S OA97–196, 002, CENTRAL VERMONT PUBLIC SERVICE CORPORATION AND CONNECTICUT VALLEY ELECTRIC COMPANY, INC.
OA97–308, 002, SOUTHERN INDIANA GAS AND ELECTRIC COMPANY
OA97–398, 002, SOUTHERN COMPANY SERVICES, ALABAMA POWER COMPANY, GEORGIA POWER COMPANY AND GULF POWER COMPANY, ET AL.
OA97–416, 002, SOUTH CAROLINA ELECTRIC AND GAS COMPANY
OA97–416, 003, SOUTH CAROLINA ELECTRIC AND GAS COMPANY
OA97–450, 002, DUKE POWER COMPANY AND NANTAHALA POWER AND LIGHT COMPANY
OA97–450, 003, DUKE POWER COMPANY AND NANTAHALA POWER AND LIGHT COMPANY
OA97–461, 002, TAMPA ELECTRIC COMPANY
OA97–510, 002, AMEREN SERVICES COMPANY, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND UNION ELECTRIC COMPANY

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP96–389, 004, COLUMBIA GULF TRANSMISSION COMPANY
CAG–2.
DOCKET# RP99–184, 000, ANR PIPELINE COMPANY
CAG–3.
DOCKET# RP99–188, 000, EQUITRANS, L.P.
CAG–4.
DOCKET# RP99–195, 000, EQUITRANS, L.P.
CAG–5.
DOCKET# RP99–194, 000, WILLIAMS GAS PIPELINES CENTRAL, INC

OTHER#S RP89–183, 084, WILLIAMS GAS PIPELINES CENTRAL, INC
CAG–6.
OMITTED
CAG–7.
DOCKET# PR98–7, 000, CRANBERRY PIPELINE CORPORATION
OTHER#S PR98–7, 001, CRANBERRY PIPELINE CORPORATION
CAG–8.
DOCKET# RP98–140, 002, TENNESSEE GAS PIPELINE COMPANY
CAG–9.
DOCKET# RP99–159, 000, SOUTHERN NATURAL GAS COMPANY
OTHER#S RP99–159, 001, SOUTHERN NATURAL GAS COMPANY
CAG–10.
DOCKET# RP98–391, 000, COLORADO INTERSTATE GAS COMPANY
OTHER#S RP98–391, 001, COLORADO INTERSTATE GAS COMPANY
CAG–11.
DOCKET# RP99–152, 000, TRAILBLAZER PIPELINE COMPANY
CAG–12.
DOCKET# SA98–2, 001, CLX ENERGY, INC.
CAG–13.
DOCKET# RM96–1, 010, STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES
CAG–14.
DOCKET# RP98–426, 003, COLUMBIA GAS TRANSMISSION CORPORATION
OTHER#S RP98–426, 002, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–15.
DOCKET# RP98–427, 002, COLUMBIA GULF TRANSMISSION COMPANY
OTHER#S RP98–427, 001, COLUMBIA GULF TRANSMISSION COMPANY
CAG–16.
DOCKET# RP97–375, 007, WYOMING INTERSTATE COMPANY, LTD.
CAG–17.
DOCKET# RP98–40, 011, PANHANDLE EASTERN PIPE LINE COMPANY
OTHER#S GP98–6, 002, ANADARKO PETROLEUM CORPORATION
GP98–7, 002, OXY USA, INC.
GP98–9, 002, AMOCO PRODUCTION COMPANY
CAG–18.
DOCKET# RP99–35, 001, NORTHERN NATURAL GAS COMPANY
CAG–19.
DOCKET# RP98–140, 003, TENNESSEE GAS PIPELINE COMPANY
CAG–20.
DOCKET# RS92–12, 014, WILLIAMS NATURAL GAS COMPANY
OTHER#S RP93–171, 002, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–21.
DOCKET# IS98–284, 000, BP TRANSPORTATION (ALASKA) INC.
OTHER#S IS98–285, 000, BP TRANSPORTATION (ALASKA) INC.
CAG–22.
DOCKET# MG99–1, 000, TRUNKLINE GAS COMPANY
OTHER#S MG99–2, 000, TRUNKLINE LNG COMPANY
MG99–3, 000, SOUTHWEST GAS STORAGE COMPANY
MG99–4, 000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–23.
DOCKET# MG98–14, 001, KANSAS PIPELINE COMPANY
CAG–24.
DOCKET# MG99–5, 000, DESTIN PIPELINE COMPANY, L.L.C.
CAG–25.
DOCKET# CP96–153, 005,, SOUTHERN NATURAL GAS COMPANY
CAG–26.
DOCKET# CP96–796, 001, MANTA RAY OFFSHORE GATHERING COMPANY, L.L.C.
CAG–27.
DOCKET# CP97–724, 001, NORAM GAS TRANSMISSION COMPANY
CAG–28.
DOCKET# CP98–159, 001, PHELPS DODGE CORPORATION V. EL PASO NATURAL GAS COMPANY
CAG–29.
DOCKET# CP98–628, 000, SEA ROBIN PIPELINE COMPANY
CAG–30.
DOCKET# CP98–702, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–31.
OMITTED

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
RESERVED

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 99–1719 Filed 1–21–99; 12:37 pm]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 13, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing efforts to reduce paperwork burdens invites the general public and other Federal agencies to take this oppportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 26, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0280.

Title: Section 90.633 (f) & (g) Conventional Systems Loading Requirement.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State or local government; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 15.

Estimated Time per Response: 40 mins. (avg.).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 10 hours.

Total Annual Costs: $2,964.

Needs and Uses: Section 90.633 (f) and (g) provide for the authorization of wide area or ribbon systems upon an appropriate showing of need. The information is used to determine if such systems should be authorized, thus maintaining spectrum efficiency.

OMB Control Number: 3060–0307.

Title: Amendment to Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order,

and Second Further Notice of Proposed Rulemaking.

Form Number: N/A.

Type of Review: Extension to a currently approved collection.

Respondents: Business and other for-profit.

Number of Respondents: 12,195.

Estimated Time per Response: 0.5 to 5.0 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 17,254 hours.

Total Annual Costs: $6,496.

Needs and Uses: The FCC requires certain information from licensees in order to determine whether they should be granted or in the case of 800 MHz Specialized Mobile radio licensees retain authority for additional time to construct their radio facilities. The Commission requires information to determine how licensees' radio facilities have been modified; it also requires a demonstration that licensees have provided notification of intent to relate certain incumbent licensees. Furthermore, the Commission requires information about prospective licensees in order to determine whether such licensees are entitled to special provisions as small businesses.

OMB Control Number: 3060–0475.

Title: Entry Criteria—Section 90–713.

Form Number: N/A.

Type of Review: Extension to a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 33.

Estimated Time per Response: 25 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 842 hours.

Total Annual Costs: $0.

Needs and Uses: Section 90.713 of the Commission's rules requires applicants for nationwide systems in the 220–222 MHz bands to certify that they have an actual presence necessitating internal communications capacity in the 70 or more markets identified in the application. The data will be used to determine the eligibility of the applicant to hold a radio station authorization. Commission licensing personnel will use the data for rulemaking proceedings and field engineers will use the data for enforcement purposes.

OMB Control Number: 3060–0702.

Title: Amendment of Part 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular PCS Cross-Ownership Rule.

Form Number: N/A.

Type of Review: Extension to a currently approved collection.

Respondents: Business or other for-profit; individuals or households; not-for-profit institutions; and state, local and tribal government.

Number of respondents: 6,000.

Estimated Time per Response: 13 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 77,817 hours.

Total Annual Costs: $17,075.

Needs and Uses: The information collected will be used by the Commission to determine whether the applicant is legally, technically, and financially qualified to bid in the broadband PCS auctions and hold a broadband PCS license. Without such information the Commission could not determine whether to issue the license to the successful applicant and therefore fulfill its statutory responsiblities in accordance with the Communications Act of 1934, as amended.

OMB Control Number: 3060–0834.

Title: Reconsideration of Rules and Policies for the 220–222 MHz Radio Service, PR 89–552, GN 93–252, PR 93–253.

Form Numbers: N/A.

Type of Review: Extension to a currently approved collection.

Respondents: Business and other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 3,005.

Estimated Time per Response: 0.5 to 12.0 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third Party disclosure.

Total Annual Burden: 44,850 hours.

Total Annual Costs: $0.

Needs and Uses: The information collected will be used by the Commission to verify licensee compliance with Commission rules and regulations; to ensure the integrity of the 220 MHz service; and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934.

OMB Control Number: 3060–0861.

Title: Goodman/Chan Receivership Licensees.

Form Number: N/A.

Type of Review: Extension to a currently approved collection.

Respondents: Business and other for-profit entities; Individuals or households; Not-for-profit institutions; State, Local, or Tribal Governments.

Number of Respondents: 6,000.

Estimated Time per Response: 3 hours.

Frequency of Response: On occasion reporting requirments.

Total Annual Burden: 18,000 hours.

Total Annual Costs: $0.

Needs and Uses: The information collected will be used by the Commission to distinguish transfers and assignment requests filed by Goodman/Chan Receivership licensees or similiarly situated licensees from other requestors. The information will be used to ensure that only these licensees benefit from this Commission action and to also ensure that the transfer or assignment is in the public interest.

OMB Control Number: 3060–0868.

Title: Construction of Grandfathered Multilateration Locating Monitoring Service (LMS) Sites.

Form Number: N/A.

Type of Review: Extension to a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 10.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 10 hours.

Total Annual Costs: $0.

Needs and Uses: The information collected will be used by the Commission to provide due diligence and valuation data needed by potential bidders in the upcoming LMS auction.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1599 Filed 1–22–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Hearing

January 20, 1999.

AGENCY: Federal Communications Commission

SUNSHINE ACT HEARING: Notice of the First Hearing In A Proposed Series of Hearings about Telephone Service For Indians On Reservations and Request For Comment From the General Public About Issues Relevant To That Subject.

TIME AND DATE: 8:00 a.m. to 12:30 p.m on January 29, 1999.

PLACE: The Indian Pueblo Cultural Center, 2401 12th Street, N.W., Albuquerque, New Mexico.

STATUS: Chairman William Kennard and Commissioner Gloria Tristani of the FCC will hold a hearing in which representatives of Indian Tribes and Pueblos, officials of the state of New

Mexico, and executives from telecommunications service providers will testify and present other evidence concerning the level of telephone service available to Indians on reservations. The hearing will be open to the general public. The Commission requests that all interested parties submit comment on all testimony and evidence received in the hearing, and on all issues arising therein and relevant thereto, including, but not exclusively, the cost of telephone service to remote, low-population areas, the extent and quality of telephone service on reservations, and governmental jurisdiction and sovereignty issues. The Commission requests submission of written comment on all such issues on or before March 31, 1999. See BO Docket No. 99–11.

MATTERS TO BE CONSIDERED. In comparison to other Americans, Indians on reservations have less access even to basic telephone service. The lack of telephone service limits the opportunities available to Indians on reservations. In particular, their access to medical care in emergencies is limited; they cannot reach prospective employers quickly and easily; and they cannot take advantage of commercial, educational, and other information available on the Internet. The FCC seeks to examine the causes for the low level of service and to determine what actions it might take to improve access to telephone service on Indian reservations.

FOR FURTHER INFORMATION CONTACT: Eric Jensen, at (202) 418–0990, e–mail ejensen@fcc.gov, of the Office of Communications Business Opportunities, and Bill Kehoe, at (202) 418–7122, e-mail bkehoe@fcc.gov, in the Common Carrier Bureau.

Federal Communications Commission.

Eric Jensen,

Deputy Director, Office of Communications Business Opportunities.

[FR Doc. 99–1704 Filed 1–21–99; 11:38 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

TIME AND DATE: 1:00 P.M., Wednesday, January 27, 1999.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC: .

- Report: FHLBank's Investments and Mission Character of FHLBanks Balance Sheets.
- Proposed Rule: Allocation of Joint and Several Liability on Consolidated Obligations.
- Expansion of the Affordable Multi-Family Participation Program of the Federal Home Loan Bank of Atlanta.
- Final Rule: Revisions to the Freedom of Information Act Regulation.
- Resolution Appointing FHLBank Directors.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–1690 Filed 1–21–99; 11:45 am]

BILLING CODE 6725–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal(s).

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 26, 1999.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of

the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. Report title: Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation
Agency form number: FR H-5
OMB control number: 7100-0261
Frequency:
Aggregate report: Quarterly
Policy Statement: on occasion
Reporters: State Member Banks
Annual reporting hours: 20,100 hours
Estimated average hours per response:
Aggregate report: 5 hours
Policy statement: 20 hours
Number of respondents:
Aggregate report: 989
Policy Statement: 16
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1828(o)). Since the Federal Reserve does not collect this information, confidentiality under the Freedom of Information Act (FOIA) is generally not an issue.

Abstract: This information collection is a recordkeeping requirement contained in the Board's Regulation H (12 CFR 208.51) that implements section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). It requires state member banks to adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors.

Regulatory Flexibility Act Analysis: Pursuant to section 605(b) of the Regution Flexibility Act (RFA) (5 U.S.C. 605(b)) the Federal Reserve hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Board of Governors of the Federal Reserve System, January 19, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–1550 Filed 1–22–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting:

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: 1:00 p.m.–4:00 p.m., February 2, 1999.

Place: Room 405A. Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: At this meeting the Subcommittee will hear updates from staff on projects involving Medicaid managed care data and the health data needs of the U.S. insular areas; engage in a group discussion on issues relating to the collection of socio-economic status data and implications for analysis; discuss the work plan for the Quality Work Group; and attend to other business as required.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Gail Horlick, M.S.W., J.D., Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of Research and Demonstrations, Health Care Financing Administration, MS–C4–13–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, telephone (410)–786–6620; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NBCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs*, where an agenda for the meeting will be posted when available.

Dated: January 19, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–1525 Filed 1–22–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security, Workgroup on Computer-based Patient Records.

Time and Date: 4:00 p.m. to 6:30 p.m., February 2, 1999.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: At this meeting the Work Group will continue to develop its work plan; plan for hearings on computerized medical records in March and April, and attend to other business as required.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Agency for Health Care Policy and Research, 2101 East Jefferson Street, #602, Rockville, MD 20852, phone: 301–594–1483, x1052; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs*, where an agenda for the meeting will be posted when available.

Dated: January 19, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–1526 Filed 1–22–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 1:00 p.m.–4:00 p.m., February 2, 1999.

Place: Room 405A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: At this meeting the Subcommittee will hear updates from staff on projects involving Medicaid managed care data and the health data needs of the U.S. insular areas; engage in a group discussion on issues relating to the collection on socio-economic status data and implications for analysis; discuss the work plan for the Quality Work Group; and attend to other business as required.

Notice: In the interest of security, the Department has instituted stringent

procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Carolyn Rimes, Lead Staff Person for the NCVHS Subcommittee on Special Populations, Office of Research and Demonstrations, Health Care Financing Administration, MS–C4–13–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, telephone (410)–786–6620; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs*, where an agenda for the meeting will be posted when available.

Dated: January 19, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–1527 Filed 1–22–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0052]

Bayer Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Bayer Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of completely hydrolyzed tetrapolymer of divinyl benzene, ethyl vinyl benzene, acrylonitrile, and 1,7-octadiene for use in treating aqueous sugar solutions and beverage water.

FOR FURTHER INFORMATION CONTACT: Paulette M. Gaynor, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3079.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4640) has been filed by Bayer Corp., c/o ENVIRON Corp., 4350 North Fairfax Dr., suite 300, Arlington, VA 22203. The petition proposes to amend the food additive regulations in § 173.25 *Ion-exchange resins* (21 CFR 173.25) to provide for the safe use of completely hydrolyzed tetrapolymer of divinyl benzene, ethyl vinyl benzene, acrylonitrile, and 1,7-octadiene for use in treating aqueous sugar solutions and beverage water.

The agency has determined under 21 CFR 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 28, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–1523 Filed 1–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

FDA In Vitro Diagnostic Products; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA), Los Angeles District Office, in cooperation with the Orange County Regulatory Affairs Discussion Group (OCRA) is announcing the following public workshop: FDA In Vitro Diagnostic (IVD) Products. The workshop will address issues related to the manufacture of IVD products by Southern California and Arizona IVD manufacturers.

Date and Time: The workshop will be held on Tuesday, February 2, 1999, 8:15 a.m. to 5:30 p.m.

Location: The workshop will be held at the Food and Drug Administration, Los Angeles District Office, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612.

Contact: Michael O. Stokke, Supervisory Consumer Safety Officer, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7790, FAX 949–798–7771, e-mail "mstokke@ora.fda.gov", or Ken Michael, OCRA Programs Chair, 619–487–5676, FAX 619–485–0829.

Registration: Send registration information (including name, title, firm name, address, telephone, fax number, and fee) to OCRA, FDA IVD Products Workshop, 5405 Alton Pkwy., suite 5A–624, Irvine, CA 92604, by Monday, January 25, 1999. There is a $100 registration fee payable to OCRA (address above) for the workshop. The fee will cover actual expenses including refreshments, materials, and speaker expenses. The workshop will continue through lunch, which will be provided. Due to space limitations, attendance is limited to 200 persons, and only 1 person per organization may attend. If space is still available, additional persons from the same organization may be admitted.

If you need special accommodations due to a disability, please contact Michael O. Stokke at least 7 days in advance.

Dated: January 15, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1522 Filed 1–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1999.

Name: National Advisory Council on Migrant Health.

Date and Time: February 19, 1999; 9:00 a.m.–5:00 p.m, February 20, 1999; 9:00 a.m.–5:00 p.m.

Place: St. James Hotel, 950 24th Street, NW, Washington, DC 20037, Phone: (202) 457–0500, FAX: (202) 466–6984.

The meeting is open to the public.

Agenda: This will be a meeting of the Council. The agenda includes an overview of general Council business activities and priorities. Topics of discussion will include the State Children's Health Insurance Program, Worker Protection Standards, the collaboration possibilities with other migrant health advocates organizations, and the 1999 NACMH Recommendations. In addition, the Council will be reviewing nominations for Council membership for terms beginning in November 1999.

Anyone requiring information regarding the subject Council should contact Susan Hagler, Migrant Health Program, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East West-Highway, Bethesda, Maryland 20814, Telephone 301/594–4302.

Agenda items are subject to change as priorities dictate.

Dated: January 19, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–1568 Filed 1–22–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1999.

Name: National Advisory Committee on Rural Health.

Date and Time: February 7, 1999; 6:30 p.m., February 8–9, 1999; 8:30 a.m.–5:00 p.m., February 10, 1999; 8:30 a.m.–11:30 a.m.

Place: The Latham Hotel, Georgetown, 300 M Street, NW, Washington, DC 20007, Phone: (202) 726–5000, FAX: (202) 342–1800.

Agenda: The plenary session on Monday morning February 8, at 8:30 a.m., will include welcoming remarks from the HRSA Administrator and presentations on Medicare wage index. After lunch there will be a presentation on the rural public health infrastructure project. Late afternoon the Committee will begin formulating recommendations.

Tuesday's meeting will begin with regulatory and legislative updates, followed by Rural Research Center and Rural Hospital Flexibility program updates. After lunch, a presentation on rural health care and quality will be followed by remarks from the Director of the Office of Rural Health Policy. Late afternoon the Committee will continue discussion on recommendations.

The final plenary session will be convened on Wednesday, February 10, at 8:30 a.m. During this session the Committee will conclude discussions on recommendations and discuss the next meeting's agenda and future meeting dates and places. The meeting will be adjourned at 11:30 a.m.

Anyone requiring information regarding the subject Committee should contact Wayne W. Myers, M.D., Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, Room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835; FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Sandi Lyles or Lilly Smetana, Office of Rural Health Policy, (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Dated: January 19, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–1569 Filed 1–22–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Survey of Substance Abuse Treatment Providers as Information Customers

New—Clinicians in the field of substance abuse treatment are increasingly turning to information products and services in managing the care of their patients, accessing new knowledge about treatment, and organizing their management systems. This study will help SAMHSA's Center for Substance Abuse Treatment (CSAT) to be better able to synthesize and disseminate knowledge by providing a representative assessment of the information products and services that currently exist in the substance abuse treatment industry.

Program directors and clinicians will be surveyed in a brief telephone interview asking about their perceptions of information products and services that are currently being used, and their perceived need or interest in such new or improved products being developed and made available. The instrument that will be used to survey the providers and clinical staff will include a series of questions around a taxonomy and list of information products and services that are or might be used in the substance abuse treatment provider industry. A nationally representative target sample of 275 facilities will be drawn, and interviews will be completed with program facility directors and clinical staff. The estimated annualized burden for a one-year data collection period is summarized below.

	Number of respondents	Number of responses/ respondent	Average burden/ response (hr.)	Total burden hours
Facility Directors	206	1	.33	68
Clinical Staff	350	1	.25	88
Total	.....	.....	.....	156

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 14, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–1548 Filed 1–22–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplemental Grant Award to the Research Triangle Institute in North Carolina

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Planned supplemental grant award to the Cooperative Agreement for an HIV/AIDS High-Risk Behavior Prevention/Intervention Model for Young Adults/Adolescents and Women Coordinating Center.

SUMMARY: This notice is to provide information to the public concerning a planned supplemental award by CMHS/SAMHSA to an existing grant to the Research Triangle Institute (RTI). This award will provide additional support for the HIV/AIDS High-Risk Coordinating Center in order to assist seven existing study sites to increase the number of eligible individuals who can participate in the intervention studies under way at each site, and to provide each study site with the capacity to include the use of biological markers as an outcome measure in the study protocol as part of the model protocol, and to centrally coordinate data collection and analysis of these measures. Upon receipt of a satisfactory application that is recommended for approval by an Initial Review Group and the CMHS National Advisory Council, up to $750,000 in Federal funds may be awarded to this organization each year over the remaining project period of the existing HIV/AIDS High Risk Coordinating Center grant which is scheduled to end on August 31, 2001.

This is not a formal request for applications. Grant funds may only be provided to the organization named above.

Authority/Justification: This grant will be made under the authority of Section 520A of the Public Health Service Act, as amended (42 U.S.C. 290bb–32).

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.125. The purpose of the HIV/AIDS High-Risk Program is to develop and test, through a series of pilot studies, a single model for a brief/short-term prevention/intervention protocol, based on what is currently known, to encourage and enable adolescents/women who engage in high-risk behaviors associated with HIV/AIDS transmission to change these behaviors. In FY 1997, the Research Triangle Institute (RTI) competed successfully to be the coordinating center to assist the study sites in developing/implementing a single model for a brief/short-term prevention/intervention protocol, using state-of-the-art methodology. However, CMHS subsequently determined that the development/implementation of a state-of-the-art intervention model will require additional participants at the individual sites and the use of biological markers as outcome measures. The purpose of this supplemental award is to fund the additional coordination, personnel, data collection and data management for the increased sample and the inclusion of biological markers as an outcome measure. RTI will build upon the expertise gained by the coordinating center during the first two years of the study, to develop and implement these additionally aspects of the program. The supplemental work is inextricably linked to the current activities that RTI is already performing for the AIDS High-Risk Program.

For the above reasons, only an application from the Research Triangle Institute will be considered for this program.

FOR FURTHER INFORMATION CONTACT: Barbara J. Silver, Ph.D., Director of HIV/AIDS Prevention/Education Program, Office of the Associate Director for Medical Affairs, CMHS, SAMHSA, 5600 Fishers Lane, Room 15–81, Rockville, MD 20857; (301) 443–7817.

Dated: January 18, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–1524 Filed 1–22–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Northwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Northwest Colorado Resource Advisory Council will be held on Wednesday, February 24, 1999, at the Upper Colorado Environmental Plant Center in Meeker, Colorado.

DATE: Wednesday, February 24, 1999.

ADDRESSES: For further information, contact David Atkins, Bureau of Land Management (BLM), Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3074.

SUPPLEMENTARY INFORMATION: The Northwest Resource Advisory Council will meet on February 24, 1999, at the Upper Colorado Environmental Plant Center, 5538 County Road 4, Meeker, Colorado. The meeting will start at 9 a.m. and include discussions of the fire program and the proposed statewide recreation guidelines.

The meeting is open to the public. Interested persons may make oral statements at the meetings or submit written statements following the meeting. Per-person time limits for oral statements may be set to allow all interested persons an opportunity to speak.

Summary minutes of council meetings are maintained in both the Grand Junction and Craig District Offices. They are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: January 15, 1999.

Mark T. Morse,

District Manager, Craig and Grand Junction Districts.

[FR Doc. 99–1546 Filed 1–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–05; N–63021 and N–63022]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a Fire Station and Public Park.

Mount Diablo Meridian, Nevada

Fire Station

T. 19S. R. 60E.
Sec. 21 NE¼ NE¼ SE½ NE¼ 2.5 acres

Park Site

T. 19S. R. 60E.
Sec. 21 NW¼ SE¼ NE¼. W½ NE¼ SE¼ NE¼, SE¼ NE¼ SE¼ NE¼ 17.5 acres.

Containing 20 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

An easement 50 feet in width along the East boundary, 30 feet in width along the West boundary, and 30 feet in width along the North boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Dr., Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a Fire Station and Public Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Fire Station and Public Park.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 15, 1999.

Rex Wells,

Assistant Field Office Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 99–1591 Filed 1–22–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–1430–01; UTU–76672]

Realty Action; Recreation and Public Purposes Act Classification; Utah

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The following public land, located in Washington County, Utah near the community of St. George, has been examined and found suitable for classification for lease or conveyance to Washington County under the provision of the Recreation and Public Purposes Act. As amended (43 U.S.C. 869 *et. seq.*):

Salt Lake Meridian, Utah

T. 42 S., R. 14 W.,
Sec. 4, Lots 6, 7, and 8,
Sec. 9, W½NE¼, E½NW¼, E½SW¼, SE¼SW¼SW¼, SE¼

Containing 512.53 acres, more or less.

SUPPLEMENTARY INFORMATION: Washington County proposes to use the land to construct, operate and maintain a shooting range. The land is not needed for Federal purposes. Leasing or conveying title to the affected public land is consistent with current BLM land use planning and would be in the public interest.

The lease or patent, when issued, would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Those rights for power line purposes granted to PacifiCorp and UAMPS by right-of-ways U–43523, U–71178 and U–72772.

5. Those rights for natural gas line purposes granted to Questar by right-of-way U–62308.

6. Those rights for water line purposes granted to St. George City by right-of-way U–60051.

7. Those rights for fiber optic line purposes granted to U.S. West Communications by right-of-way U–72755.

8. Those rights for highway purposes granted to Utah Department of Transportation by right-of-way U094803.

Detailed information concerning this action is available at the office of the Bureau of Land Management, St. George Field Office, 345 E. Riverside Drive, St. George, Utah 84790. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for leasing or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification, leasing or conveyance of the land to the Field Office Manager, St. George Field Office.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for a shooting range facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the County's application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for shooting range purposes.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: January 8, 1999.

James D. Crisp,

Field Office Manager.

[FR Doc. 99–1596 Filed 1–22–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Eastern Gulf of Mexico, Oil and Gas Lease Sale 181

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Call for Interest and Information (Call) and Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS).

Call for Interest and Information

The MMS is issuing this Call pursuant to the Outer Continental Shelf (OCS) Lands Act as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR Part 256).

Purpose of Call

The purpose of this Call is to ask for an indication of interest by potential bidders and to gather information from all potentially affected parties about possible oil and gas leasing, exploration, development, and production in the area available for leasing consideration for Sale 181 in the Eastern Gulf of Mexico (EGOM). This Call is not a preliminary decision to lease in the Sale 181 area. It is the initial information-gathering step in a 3-year prelease decisionmaking process. The area available for leasing consideration in Sale 181 and the tentative schedule for the steps in the process leading to a final decision on the sale are described below.

Tentative Sale 181 Schedule

The following is a list of planned presale process steps and related tentative dates applicable to proposed Sale 181:

Process step	Tentative completion date
Call/NOI	January 1999.
Comments due on Call/NOI	March 1999.
Area Identification	June 1999
Draft EIS	August 2000.
Public Hearings	September 2000.
Final EIS	June 2001
Proposed Notice of Sale & CZM Consistency Determination	July 2001.
Final Notice of Sale	October 2001.
Bid Opening/Reading	December 2001.

Please note that the MMS is considering changing the proposed Sale 181 bid opening/reading from December 2001 to March 2002, and holding it in conjunction with proposed Central GOM Sale 182. These proposed sales would be planned and held as two separate sales, but holding the sales sequentially on the same day in the same location might be beneficial to MMS and prospective bidders due to the commonality of potential oil and gas plays and related exploration and development issues. All interested parties are requested to consider this proposed Sale 181 schedule change and include any comments on this matter along with the following specific requested information.

Description of Call Area

The area of this Call covers a small portion of the EGOM Planning Area offshore Alabama and the Florida Panhandle. It includes 1,033 blocks covering 5.949 million acres (see attached map). This is the area identified as available for leasing consideration for Sale 181 in the 1997–2002 OCS OIL AND Gas Leasing Program. During development of the 5-Year Program, the MMS consulted with the States of Alabama and Florida and was responsive to their concerns in identifying the Sale 181 area. The MMS considers all of this area to have potential for the discovery of accumulations of hydrocarbons. None of the EGOM outside the Sale 181 area is available for leasing in this 5-year program. In addition, in a June 1998 announcement, the President withdrew from leasing until 2012 numerous areas of the OCS, including all of the EGOM outside the area identified as available for leasing consideration for Sale 181. A "Call for Information Map" depicting the Sale 181 area on a block-by-block basis is available without charge from the MMS Gulf of Mexico Public Information Unit (see last paragraph of this Call).

Currently 39 blocks covering 224,640 acres are under lease (this figure may change before the sale if any of the leases become expired, relinquished, or terminated). Eight wells have been drilled in the Sale 181 area. At this time there are plans to develop two areas: Destin Dome Blocks 1 and 2 (four wells from two surface locations; and DeSoto Canyon Blocks 133 and 177 (two wells in each block). Both of these areas are along the western boundary of the sale area and may be associated with well-developed areas of the Central Gulf of Mexico Planning Area.

The Department of Defense makes use of much of the EGOM, including the proposed sale area. The Navy conducts various training missions for both ships and aircraft, and the Air Force conducts aircraft training missions as well as the testing of various weapons from nearby Eglin Air Force Base and associated facilities in Florida. Coordination between the Department of Defense and the MMS is ongoing to minimize conflicts.

Instructions to Potential Bidders in Responding to Call

Potential bidders are requested to indicate interest in any or all of the acreage within the boundaries of the Call area that they wish to have included in EGOM OCS Lease Sale 181. Respondents should rank areas in which they express interest according to priority of their interest (e.g., priority 1 [high], 2 [medium], or 3 [low]). Respondents should be specific in indicating blocks by priority; blanket nominations (such as nominating the entire Call area as high priority) are not useful and may be ignored in the MMS analysis of industry interest. Also, areas where interest has been indicated but on which respondents have not indicated priorities will be considered priority 3 [low]. Responses may be provided in textual block listings (by Official Protraction Diagram designations) or graphically along block boundaries on the "Call for Information Map" or on Official Protraction Diagrams (which may be purchased from the MMS Gulf of Mexico Public Information Unit). Although individual indications of interest are considered to be privileged and proprietary information, the names of persons or entities indicating interest or submitting comments will be of public record.

Instructions to all Interested Parties in Responding to Call

Comments are sought from all interested parties about particular environmental, geologic, and socioeconomic conditions or conflicts, or other information that might bear upon the potential oil and gas leasing, exploration, development, and production activities from proposed EGOM Sale 181. Comments are also sought on possible conflicts between potential future OCS oil and gas activities that may result from the proposed sale and State Coastal Management Programs (CMPs). If possible, these comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that the MMS could take to avoid or mitigate the potential conflict. Comments may either be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list blocks or outline the subject area on the "Call for Information Map" mentioned above. Please submit responses to this Call in envelopes labeled "Response to the Call for Interest and Information for Proposed Eastern Gulf of Mexico OCS Lease Sale 181," addressed to the Regional Supervisor, Leasing and Environment (MS 5400), Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394. Responses to this Call must be received no later than 60 days following publication of this document in the **Federal Register**.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to assess industry interest and to identify areas of potential for oil and gas development. Second, comments on possible environmental effects and potential use of conflicts will be considered in the analysis of environmental conditions in and near the Call area and to develop alternatives and mitigating measures to lessen potential environmental impacts and ensure safe operations. And, third, comments may be used to assess potential conflicts between offshore oil and gas activities and a State CMP.

Existing EGOM Information

The MMS routinely assesses the status of information acquisition efforts and the quality of the information base for potential decisions on tentatively scheduled lease sales. An extensive environmental studies program has been underway in the Gulf of Mexico since 1973. The emphasis, including continuing studies, has been on environmental characterization of biologically sensitive habitats, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. Two documents are available from the MMS Gulf of Mexico Region Public Information Unit:

- Listing of available EGOM Study Reports (with information for ordering copies).
- Technical Summaries from Selected Environmental Studies of the Northeastern Gulf of Mexico, MMS 96–0025, 1996.

Obtaining EGOM Information

The documents and the large-sized "Call for Information Map" mentioned above are available from:

Gulf of Mexico Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone: (504) 736–2519 or (800) 200–GULF.

In addition, a wealth of information concerning the EGOM, the MMS studies program, and the MMS is available on the Internet at: http://www.mms.gov. Also, many documents may be obtained through the MMS 24-hour Fax-on-Demand service: (202) 219–1703.

Notice of Intent To Prepare an Environmental Impact Statement—Purpose of Notice of Intent

The MMS intends to prepare an EIS on OCS Lease Sale 181. This sale is tentatively scheduled for 2001 and will cover Federal waters offshore the States of Alabama and Florida. The NOI also announces the scoping process we will use for this EIS. Throughout the scoping process, you have the opportunity to help us determine the scope of the Draft EIS, the significant issues to be addressed, and alternatives to be considered.

Our EIS will evaluate the potential environmental effects of leasing, exploration, and development of the blocks identified through the Area Identification procedure. Alternatives to the proposal that we may consider are to delay, cancel, or modify the sale.

What is Scoping?

Scoping is an open and early process for determining the scope of the EIS and for identifying significant issues related to a proposed action. Scoping also provides you an opportunity to identify additional alternatives to the proposed action. As MMS prepares for public scoping meetings on the EIS for OCS Lease Sale 181, we will distribute additional information and will advertise details of the actual dates, times, and facilities for the meetings in local media.

The National Environmental Policy Act process ends with MMS preparing a Final EIS and making a decision on the proposed action and alternatives. There are many opportunities for you to influence the EIS. You may provide comments.

- During the 60-day period after this NOI is published;
- During public scoping meetings;
- While we accept written scoping comments (We will consider comments received during the scoping process in preparing of the Draft EIS.); and
- During a 60-day comment period after publication of the Draft EIS; and
- During public hearings on the Draft EIS (We will address comments received during the public hearing process in the Final EIS.).

We anticipate completing the EIS in about two and one-half years. At the end of this process, the decisionmaker will have a document that assesses the impacts of the lease sale proposal and the alternatives to use in making an informed decision.

How To Submit Comments

Please send your written comments on the scope of the EIS, significant issues to be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment (MS 5400), Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123–2394. The deadline for your submission is 60 days after this NOI is published. Clearly label your comments, "Comments on the NOI to Prepare an EIS on the proposed 2001 Lease Sale in the Eastern Gulf of Mexico."

Dated: January 13, 1999.

Cynthia Quarterman,

Director, Minerals Management Service.

BILLING CODE 4310–MR–M

[FR Doc. 99–1601 Filed 1–22–99; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) is proposing in 1999 and 2000 to conduct social science research related to (1) advancing the Money Generation Model, (2) developing and advancing social carrying capacity methodologies, (3) developing and advancing the Visitor Experience and Resource (VERP) Protection Framework, (4) developing and conducting an NPS national survey of the American Public, and (5) evaluating the effect of the NPS Fee Demonstration Program on backcountry users in selected national parks. Each research project will require a specific combination of mail, phone, and/or on-site surveys of visitors and/or the general public to identify characteristics, use patterns, expectations, preferences and perceptions that are relevant to the individual research projects.

	Estimated number of	
	Responses	Burden hours
1. Advancing the Money Generation Model Survey	500	85
2. Development and Advancement of Social Carrying Capacity Methodologies	500	170
3. Development and Advancement of the Visitor Experience and Resource Protection (VERP) Framework	500	170
4. NPS National Survey of the American Public	1400	470
5. Effect of NPS Fee Demonstration Program on Selected National Parks	600	100
Total	3500	995

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goals in conducting surveys associated with these research projects are to incorporate survey information into the development of state-of-the-art social science tools to be used by NPS managers (Projects 1–3), into the development of NPS policies (Project 4), and into evaluating the impacts of increased and additional fees on national park visitors.

DATES: Public comments will be accepted on or before March 26, 1999.

Send comments to: Jean McKendry, Ph.D., NPS Social Science Program, 1849 C Street, NW (3127) Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jean McKendry. Voice: 202–219–8894, Email: <*jeanm@uidaho.edu*>.

SUPPLEMENTARY INFORMATION:

Titles: 1. Advancing the Money Generation Model.

2. Development and Advancement of Social Carrying Capacity Methodologies.

3. Development and Advancement of the Visitor Experience and Resource Protection (VERP) Framework.

4. NPS National Survey of the American Public.

5. Effect of Fee Demonstration Program on Backcountry Users in Selected National Parks.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of need: The National Park Service needs information to incorporate into the development of state-of-the-art social science tools to be used by NPS managers (Projects 1–3), into the development of NPS policies (Project 4), and into evaluating the impacts of increased and additional fees on national park visitors (Project 5).

Automated data collection: At the present time, there is no automated way to gather this information, since it includes asking visitors and/or the general public to identify characteristics, use patterns, expectations, preferences and perceptions that are relevant to the individual research projects.

Description of respondents: A sample of individuals who visit various units of the National Park System and individuals who do not visit units of the National Park System.

Estimated average number of respondents: 500 (Money Generation Model); 500 (Social Carrying Capacity); 500 (VERP); 1400 (Survey of American Public); 600 (Fees Demo Project and Backcountry Users).

Estimated average number of responses: Each respondent will respond only one time, so the number of respondents will be the same as the number of respondents.

Estimated average burden hours per response: 10 minutes (Money General Model); 20 minutes (Social Carrying Capacity); 20 minutes (VERP); 20 minutes (Survey of American Public); 10 minutes (Fees Demo Project and Backcountry Users).

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 85 hours (Money Generation Model); 17 hours (Social Carrying Capacity); 170 hours (VERP); 470 hours (Survey of American Public); 100 hours (Fees Demo Project and Backcountry Users).

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc 99–1540 Filed 1–22–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Cuyahoga Valley National Recreation Area, OH

AGENCY: National Park Service, Interior.

ACTION: Notice of boundary revision, Cuyahoga Valley National Recreation Area.

SUMMARY: Minor revision to the boundaries of Cuyahoga Valley National Recreation Area. The National Park Service has determined that a boundary revision is necessary for Cuyahoga Valley National Recreation Area as referred to in 16 U.S.C. 460ff–1(a).

FOR FURTHER INFORMATION CONTACT: Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio 44141, or by telephone at 440–546–5903.

SUPPLEMENTARY INFORMATON: The Cuyahoga Valley National Recreation Area was established by the Act of December 27, 1974 (Public Law 93–555, 16 U.S.C. 460ff). This act as amended, authorizes the Secretary of the Interior to make minor revisions to the boundaries of Cuyahoga Valley National Recreation Area. This is accomplished by first advising, in writing, the Senate Committee on Energy and Natural Resources and the House of Representatives Committee on Resources of the United States Congress, and second, by publishing a revised drawing or other boundary description in the **Federal Register**.

This boundary revision adds 327 acres, more or less, of privately owned land to the 33,000-acre park. This revision, in turn, allows for Federal acquisition of the property. Such acquisition is necessary and critical for eliminating the threat of development of a large-scale commercial retail complex on this property.

The National Park Service has prepared a map identified as "Boundary Map, Cuyahoga Valley National Recreation Area," bearing drawing number 80062 and dated April 21, 1998. This map generally depicts the specific real property to be added to the park through this revision. Copies of this map are on file and available for inspection at the following three locations: The Department of the Interior, National Park Service, Lands Resources Divisions, 1849 "C" Street, Washington, D.C. 20240; the Midwest Region (RDO–POE/L), 1709 Jackson Street, Omaha, Nebraska 68102; and Cuyahoga Valley National Recreation Area, at the address given above.

Dated: January 11, 1999.

William W. Schenk,

Regional Director, Midwest Region.

Owner: Richfield Properties Company
Cuyahoga Valley National Recreation Area
Area: 326.68 Acres
Date: July 28, 1998
Revised: January 6, 1999

Tract 108–05

Parcel 1

Situated in the Township of Richfield and Township of Boston, County of Summit, State of Ohio, and known as being parts of Lots 1 and 5, Tract 6, and Lots 4 and 5, Tract 5, in Richfield Township, and Tract 7, Boston Township and more fully bounded and described as follows:

Beginning at a marked stone in the north line of said Lot 1, Tract 6, said point being south 88°33'01" west, a distance of 345.41 feet from the northeast corner of said Lot 1, Tract 6;

Thence, continuing south 88°33'01" west, along the northerly line of said Lot 1, Tract 6, a distance of 1482.54 feet to an iron pin at the southeast corner of lands now or formerly in the name of F. and L. Thalman, as recorded in Volume 1324, Page 209 of the Summit County Record of Deeds;

Thence, north 00°03'01" east, a distance of 943.36 feet to an iron pin set in the southerly limited access right of way line of the Ohio Turnpike;

Thence, southeasterly along the southerly limited access right of way line of the said Ohio Turnpike, and passing over a line common to Richfield Township and Boston Township, the arc of a curve to the left whose central angle is 10°56'25", radius is 11,894.30 feet, tangent is 1,139.03 feet, chord is 2,267.69 feet, chord bearing is south 68°54'16.5" east, a distance of 2,271.14 feet to an iron pin at the intersection of the limited access right of way line of Interstate 271;

Thence, along the limited access right of way line of said Interstate 271, the following described courses:

Thence south 66°36'53" east, a distance of 615.88 feet to an iron pin;

Thence, south 21°56'10" west, a distance of 540.52 feet to an iron pin;

Thence, south 16°42'34" west, a distance of 1679.09 feet to an iron pin;

Thence, south 24°40'46" west, passing over the said line common to Richfield Township and Boston Township, a distance of 316.15 feet to an iron pin in the northerly line of the original alignment of State Route 303, 60 feet wide;

Thence, north 83°29'16" west, along the north line of lands now or formerly owned by the State of Ohio as recorded in Deed Volume 5524, Page 863 of the Summit County Record of Deeds and the north right of way line of State Route 303, a distance of 149.96 feet to an iron pin;

Thence, south 83°14'49" west, along the north line of said State of Ohio lands and the north right of way line of State Route 303, a distance of 181.73 feet to an iron pin.

Thence, north 1°12'07" west, a distance of 2556.57 feet to the place of beginning of the parcel herein described and containing 68.6960 acres of land, more or less, 42.0852 acres in Boston Township, 26.6108 acres in Richfield Township, but subject to all legal highways, easements and restrictions of record, as surveyed by J.J. Knecht, Registered Surveyor No. 4548 in November, 1998.

Parcel 2

Situated in the Township of Richfield and the Township of Boston, County of Summit and State of Ohio and known as being part of original Richfield Township, Tract 5, Lot No. 4 and part of the original Boston Township, Tract 7, and more fully described as follows:

Beginning at a monument at the centerline of Boston Mills Road and the east line of Richfield Township and the west line of Boston Township;

Thence, south 1°29'19" east, along the east line of lands now or formerly owned by L.A. and B.J. Krysinski as recorded in Deed Volume 1555, Page 171 of the Summit County Record of Deeds, a distance of 590.31 feet to an iron pin and to the true place of beginning of the parcel herein described:

Thence, continuing south 1°29'19" east, along the west line of lands now or formerly owned by the United States of America as recorded in O.R. 2372, Page 1020 of the Summit County Record of Deeds a distance of 726.28 feet to an iron pin on the north right of way line of the Ohio Turnpike;

Thence along the north right of way line of the Ohio Turnpike and the arc of a curve to the right whose central angle is 7°37'54", radius is 11,344.30 feet, tangent is 756.63 feet, chord is 1509.90 feet, chord bears north 68°16'33" west, an arc distance of 1511.02 feet to an iron pin on lands now or formerly owned by D. and J. Toronski as recorded in Permanent Parcel No. 4802112 of the Summit County Record of Deeds;

Thence north 74°18'47" east, along the south line of said D. and J. Toronski lands and lands now or formerly owned by J.J. and R.D. Golubski as recorded in Deed Volume 6856, Page 63 of the Summit County Record of Deeds a distance of 529.45 feet to an iron pin;

Thence north 88°25'35" east, along the south line of said J.J. and R.D. Golubski lands and along the south line of lands now or formerly owned by C. and A. Markiewicz as recorded in Deed Volume 1858, page 778 of the Summit County Record of Deeds, and the south line of said L.A. and B.J. Krysinski lands a distance of 874.40 feet to the true place of beginning of the lands herein described and containing 13.4455 acres of land, 13.2628 acres of land in Richfield Township and 0.1827 acres of land in Boston Township, more or less but subject to all legal highways, easements and restrictions of record, as surveyed by John J. Knecht, Registered Surveyor No.4548 in November, 1998.

Parcel 3

Situated in the Township of Richfield, County of Summit, State of Ohio and known as being part of Lot 1 & 5, Tract 6 in Richfield Township and more fully bounded and described as follows:

Beginning at a marked stone in the north line of said Lot 1, Tract 6, said point being south 88°33'01" west, a distance of 345.41 feet from the northeast corner of said Lot 1, Tract 6;

Thence, south 1°12'07" east, a distance of 2514.37 feet to an iron pin on the north right of way line of State Route 303;

Thence, south 85°37'20" west, along the north right of way line of State Route 303 a distance of 105.20 feet to a point;

Thence, along the north right of way line of State Route 303 and the arc of a curve to the left whose central angle is 5°00'00", radius is 2904.79 feet; tangent is 126.83 feet; chord is 253.41 feet; chord bears south 83°07'20" west, an arc distance of 253.49 feet to an iron pin;

Thence, south 80°37'20" west, along the north right of way line of State Route 303 a distance of 95.00 feet to an iron pin;

Thence, south 33°08'25" west, along the north right of way line of State Route 303 a distance of 92.62 feet to an iron pin;

Thence, along the north right of way line of State Route 303 and the arc of a curve to the left whose central angle is 3°29′47″, radius is 3869.72 feet; tangent is 118.11 feet; chord is 236.11 feet, chord bears south 84°11′34″ west an arc distance of 236.15 feet to an iron pin;

Thence, south 84°10′47″ west, along the north right of way line of State Route 303 a distance of 20.50 feet to an iron pin;

Thence, along the north right of way line of State Route 303 and the arc of a curve to the left whose central angle is 4°12′35″; radius is 3869.72 feet; tangent is 142.23 feet; chord is 284.26 feet; chord bears south 81°55′23″ west an arc distance of 284.32 feet to an iron pin;

Thence, south 79°49′05″ west, along the north right of way line of State Route 303 a distance of 732.63 feet to an iron pin on the east line of lands now or formerly owned by D.O. Emmett as recorded in Permanent Parcel No. 4800164 of the Summit County Record; iron pin set 60.90 feet from the center line of State Route 303;

Thence, north 0°03′45″ west along said D.O. Emmett lands a distance of 2797.38 feet to an iron pin on the north line of Lot 1, Tract 6;

Thence, north 88°33′01″ east, along the north line of Lot 1, Tract 6 a distance of 1709.53 feet to the place of beginning of the parcel herein described and containing 105.8847 acres, more or less but subject to all legal highways, easements and restrictions of record, as surveyed by J.J. Knecht, Registered Surveyor No. 4548 in November, 1998.

Excepting from the preceding description the following parcel of land (Exception 1):

Situated in the Township of Richfield, County of Summit, State of Ohio and known as being a part of Lot 1, Tract 6 in Richfield Township, and more fully described as follows:

Beginning at a marked stone in the North line of said Lot 1, Tract 6, said point being South 88°33′01″ West, a distance of 345.4 feet from the Northeast corner of said Lot 1, Tract 6;

Thence, North 90°00′00″ West, a distance of 323.56 feet to a point;

Thence, South 00°00′00″ East, a distance of 423.14 feet to a point and the true place of beginning of the lands herein described:

Thence, continuing South 00°00′00″ East, a distance of 200.00 feet to a point;

Thence, continuing North 90°00′00″ West, a distance of 200.00 feet to a point;

Thence, North 00°00′00″ East, a distance of 200.00 feet to a point;

Thence, North 90°00′00″ East, a distance of 200.00 feet to the true place of beginning, and containing an area of 40,000 square feet 0.9183 acres.

Said Parcel contains 104.9664 acres.

Parcel 4

Situated in the Township of Richfield, County of Summit, State of Ohio and known as being part of Lot 5 in Tract 5 and part of Lot 2 and Lot 6 in Tract 6 and more fully bounded and described as follows:

Beginning at the centerline of Black Road, CH 169 and Streetsboro Rd, State Route 303;

Thence, north 81°16′33″ east, along the center line of Streetsboro Road, State Route 303 a distance of 862.41 feet to a point.

Thence, north 81°14′24″ east, along the centerline of Streetsboro Road, State Route 303 a distance of 862.33 feet to the true place of beginning of the parcel herein described;

Thence, north 5°26′36″ west, along the west line of lands now or formerly owned by Richfield Properties Co. as recorded in Permanent Parcel No. 4800020 of the Summit County Record of Deeds a distance of 367.10 feet to an iron pin; witness an iron pin 30.04 feet from the center line of Streetsboro Rd. State Route 303;

Thence, south 83°18′24″ west, along the north line of said Richfield Properties Co. and lands now or formerly owned by P.L & L. Londrico as recorded in Permanent Parcel No. 4800174 of the Summit County Record of Deeds a distance of 303.00 feet to an iron pin;

Thence, north 1°27′33″ west, along the east line of said P.L. & L. Londrico lands a distance of 2652.18 feet to a point on the tract line between Tract 5 & 6 and a tree;

Thence, north 88°45′21″ east, along the tract line of Tract 5 & 6 a distance of 80.05 feet to the lot corner of Lot 5, Tract 5 and the southeast corner of original Lot 1 of Holeski Subdivision as recorded in Plat Book 107, Page 49 of the Summit County Record of Plats and an iron pin;

Thence, north 0°03′09″ east, along the lot line of Lot 5, Tract 5 and the east line of said Holeski Subdivision a distance of 1100.88 feet to an iron pin on the south line of lands now or formerly owned by Hansen Family Partnership as recorded in Deed Volume 2386, Page 1220 of the Summit County Record of Deeds;

Thence, north 88°39′01″ east, along the south line of said Hansen Family Partnership lands a distance of 1183.55 feet to an iron pin on the south line of the Ohio Turnpike said point being 250.00 feet from the center line of the said Ohio Turnpike at Station 143+93.03;

Thence, along the south line of the Ohio Turnpike 250.00 feet southerly from the center line of the Ohio Turnpike and the arc of a curve to the left whose central angle is 0°30′41″; radius is 17,438.74 feet; tangent is 77.81 feet; chord is 155.62 feet; chord bearing south 62°05′26″ east an arc length of 155.62 feet to an iron pin, a point of compound curvature at Station 145+46.42;

Thence, continuing along the south line of the Ohio Turnpike 250.00 feet south of the center line of the Ohio Turnpike and the arc of a curve to the left whose central angle is 0°01′03″; radius is 11,924.30 feet; tangent is 1.83 feet; chord is 3.66 feet; chord bears south 62°21′08″ east an arc distance of 3.66 feet to an iron pin;

Thence, north 27°38′10″ east, along the Ohio Turnpike right of way a distance of 30.00 feet to an iron pin 220.00 feet south of the centerline of the Ohio Turnpike;

Thence, continuing along the south line of the Ohio Turnpike 220.00 feet from the center line of the Ohio Turnpike and the arc of a curve to the left whose central angle is 1°04′14″ ' radius is 11,894.30 feet; tangent is 111.13 feet; chord is 222.26 feet; chord bears south 62°53′25″ east an arc distance of 222.26 feet to an iron pin;

Thence, south 0°03′01″ west, a distance of 943.36 feet to an iron pin on the lot line between Tract 5 & Tract 6;

Thence, south 88°33′01″ west, along a line between Tract 5 & Tract 6, and the north line of lands now or formerly owned by D.O. Emmett as recorded in Permanent Parcel No. 4800164 of the Summit County Record of Deeds, a distance of 644.15 feet to an iron pin at the northwest corner of Tract 6 Lot 1;

Thence, south 88°45′21″ west, along a line between Tract 5 & Tract 6 along the north line of said D.O. Emmett lands a distance of 593.94 feet to an iron pin;

Thence, south 1°26′46″ east, along the west line of said D.O. Emmett lands a distance of 2719.43 feet to an iron pin;

Thence, north 82°23′01″ east, along the south line of said D.O. Emmett lands a distance of 197.00 feet to an iron pin on the west line of lands now or formerly owned by E. Crushing as recorded in Permanent Parcel No. 4800583 of the Summit County Record of Deeds;

Thence, south 2°30′14″ east, along the west line of said E. Crushing lands a distance of 259.42 feet to a point on the center line of Streetsboro Road State Route 303, witness an iron pin set 30.18 feet from the center line of Streetsboro Road State Route 303;

Thence, south 81°14′24″ west, along the center line of Streetsboro Road State Route 303 a distance of 253.10 feet to the true place of beginning of the parcel herein described and containing 63.0561 acres of land, 38.3491 acres in Lot 5, Tract 5 and 24.7070 acres in Lot 2 and Lot 6, Tract 6, more or less but subject to all legal highways, easements and restrictions of record, as surveyed by J.J. Knecht, Registered Surveyor No. 4548 in November, 1998.

Parcel 5

Situated in the Township of Richfield, County of Summit, State of Ohio and known as being part of Lots 5 and 9, Tract 6 in said Township and more fully bounded and described as follows:

Beginning at the intersection of the original Streetsboro Road (S.R.303) in Richfield Township with the east line of the said Richfield Township, said point also being in the center line of Major Road (T.R.172) extended northerly;

Thence, south 80°58′33″ west, along the original center line of the said S.R. 303 and passing over a State Highway monument at 855.65 feet, a distance of 950.40 feet to a point;

Thence, south 0°54′42″ east, along the west line of lands now or formerly owned by K.F. Farms Limited as recorded in Permanent Parcel No. 4900014 and 4900015 of the Summit County Record of Deeds; a distance of 400.00 feet to a lead monument and the true place of beginning of the parcel herein described:

Thence, continuing south 0°54′42″ east, along the west line of said K.F. Farms Limited lands, a distance of 1632.15 feet to an iron pipe in the northerly limited access right of way line of Interstate 271 as recorded in Plat Book 68, Pages 5–14 of the Summit County Record of Plats;

Thence, southwesterly along the said northerly limited access right of way the following three courses and distances:

South 33°22′27″ west, a distance of 448.75 feet to an iron pipe set at an angle point;

Thence, south 43°54′44″ west, a distance of 475.91 feet to an iron pipe set at an angle point;

Thence, south 52°01′57″ west, a distance of 744.82 feet to an iron pipe set at an angle point; Thence, north 0°51′41″ west, along the easterly line of lands now or formerly in the name of the K.F. Farms by Permanent Parcel No. 4801622, a distance of 1371.10 feet to an iron pipe set in the southwesterly corner of lands now or formerly in the name of J.J. and M.J. Bistricky, as recorded in Deed Volume 5114, Page 567 of the Summit County Record of Deeds;

Thence north 89°08′19″ east, a distance of 242.00 feet to an iron pipe in the southeasterly corner of the said Bistricky lands;

Thence, north 0°51′41″ west, along the east line of said Bistricky lands, a distance of 1684.71 feet to a point in the center line of the said State Route 303 passing over an iron pin set 30.31 feet from the center line of State Route 303;

Thence, north 80°58′33″ east, along the center line of the said State Route 303, a distance of 599.65 feet to a point;

Thence, south 09°01′27″ east, a distance of 30.00 feet to an iron pipe in the south right of way line of the said State Route 303, as recorded in Plat Book 68, Pages 5–14 of the Summit County Record of Plats;

Thence, south 79°02′29″ east, along the southerly right of way line of the said State Route 303, a distance of 58.52 feet to an iron pipe at an angle point;

Thence, north 80°58′33″ east, continuing along the said southerly right of way line of State Route 303, a distance of 65.70 feet to an iron pipe at the northwesterly corner of the lands now or formerly owned by C.R. Mantechi as recorded in Permanent Parcel No. 4800669 of the Summit County Record of Deeds;

Thence, south 0°54′42″ east, along the west line of said C.R. Mantechi lands, a distance of 349.49 feet to an iron pipe;

Thence, north 80°58′33″ east, along the south line of said C.R. Mantechi lands, a distance of 220.00 feet to the true place of beginning of the parcel herein described, and containing 59.359 acres of land, more or less but subject to all legal highways, easements and restrictions of record, as surveyed by J.J. Knecht, Registered Surveyor No. 4548 in November, 1998.

Parcel 6

Situated in the Township of Richfield, County of Summit, State of Ohio and known as being part of the original Tract 5, Lot No. 6, Richfield Township and also being all of Lots 4 & 5 and part of Lot 1 in the Holeski Subdivision as recorded in Plat book 107, Page 49–53 of the Summit County Record of Plats with said part of Lot 1 being more fully bounded and described as follows:

Beginning at a lead monument on the east right of way line of Black Road and the north line of the said Holeski Subdivision;

Thence, north 88°38′09″ east, along the north line of the said Holeski Subdivision and the north line of Lot 1 a distance of 1471.44 feet to an iron pin;

Thence, south 0°03′09″ west, along the east line of said Holeski Subdivision and the east line of Lot 1, a distance of 714.85 feet to an iron pin;

Thence, north 61°15′01″ west, a distance of 45.59 feet to an iron pin;

Thence, south 88°45′21″ west, a distance of 293.70 feet to an iron pin on the northeast corner of Lot 7;

Thence, north 1°35′25″ west, along the east line of Lot 4 a distance of 320.00 feet to a point; thence, continuing north 1°35′25″ west along the east line of Lot 2 a distance of 321.15 feet to an iron pin at the northeast corner of Lot 2;

Thence, south 88°38′09″ west, along the north line of Lot 2 a distance of 1118.08 feet to the east right of way line of Black Road and an iron pin;

Thence, north 1°23′35″ west, along the east right of way line of Black Road a distance of 50.00 feet to a lead monument and the place of beginning of the parcel herein described and containing 15.3619 acres more or less, 6.7498 acres in Lot 1, 4.7560 acres in Lot 4 and 3.8561 acres in Lot 5, more or less but subject to all legal highways, easements and restrictions of record, as surveyed by J.J. Knecht, Registered Surveyor No. 4548 in November, 1998.

Parcel 7

Situated in the Township of Richfield, County of Summit, State of Ohio and known as being part of the original Richfield Township Lot No. 6, Tract 6 and more fully bounded and described as follows:

Beginning at the center line intersection of Black Road and Streetsboro Road, State Route 303;

Thence, north 81°16′33″ east, along the center line of Streetsboro Road, State Route 303 a distance of 862.41 feet to a point;

Thence, north 81°14′24″ east, along the centerline of Streetsboro Road, State Route 303 a distance of 652.33 feet to a point and the true place of beginning of the parcel herein described;

Thence, north 5°26′36″ west, along the east line of lands now or formerly owned by P.L. & L. Londrico as recorded in Permanent Parcel Record No. 4800174 of the Summit County Record of Deeds a distance of 374.67 feet to an iron pin; witness an iron pin set 30.04 feet from the center line of Streetsboro Road, State Route 303;

Thence, north 83°18′24″ east, a distance of 209.73 feet to an iron pin;

Thence, south 5°26′36″ east, a distance of 367.10 feet to a point on the center line of Streetsboro Road, State Route 303; witness an iron pin set 30.04 feet from the center line of Streetsboro Road, State Route 303;

Thence, south 81°14′24″ west, along the center line of Streetsboro Road, State Route 303 a distance of 210.00 feet to the true place of beginning of the parcel herein described and containing 1.7875 acres of land, more or less but subject to all legal highways, easements and restrictions of record, as surveyed by J.J. Knecht, Registered Surveyor No. 4548 in November, 1998.

Owner: Board of Commissioners (Summit County)

Cuyahoga Valley National Recreation Area

Area: 0.92 of an acre

Date: December 23, 1998.

Tract 108–06

Situated in the Township of Richfield, County of Summit, State of Ohio and known being part of Lot 1, Tract 6 in Richfield Township and more fully described as follows:

Beginning at a marked stone in the North line of said Lot 1, Tract 6, said point being South 88 degrees 33 minutes 01 seconds West, a distance of 345.4 feet from the Northeast corner of said Lot 1, Tract 6;

Thence, North 90 degrees 00 minutes, 00 seconds West, a distance of 323.56 feet to a point;

Thence, South 00 degrees 00 minutes 00 seconds East, a distance of 423.14 feet to a point and the true place of beginning of the lands herein described;

Thence, continuing South 00 degrees 00 minutes 00 seconds East, a distance of 200.00 feet to a point;

Thence, North 90 degrees 00 minutes 00 seconds West, a distance of 200.00 feet to a point;

Thence, North 00 degrees 00 minutes 00 seconds East, a distance of 200.00 feet to a point;

Thence North 90 degrees 00 minutes 00 seconds East, a distance of 200.00 feet to the true place of beginning, and containing an area 40,000 square feet (0.9183 acres).

[FR Doc. 99–1541 Filed 1–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the twenty-eighth meeting of the Gettysburg National Military Park Advisory Commission.

DATES: The public meeting will be held on January 21, 1999, from 7:00 p.m. to 9:00 p.m.

LOCATION: The meeting will be held at the Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

AGENDA: Sub-committee Reports, General Management Plan, Federal Consistency Projects Within the Gettysburg Battlefield Historic District, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT:

John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: January 12, 1999.
John A. Latschar,
Superintendent.
[FR Doc. 99–1542 Filed 1–22–99; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Water Enhancement Project, Yakima, WA, INT–FES 99–3

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final programmatic environmental impact statement.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation) has prepared a final programmatic environmental impact statement (PEIS) for implementing provisions of Phase 2 of the Yakima River Basin Water Enhancement Project (Enhancement Project). The purpose of the Enhancement Project is to meet the competing water needs of the Yakima River basin, including the protection, mitigation, and enhancement of fish and wildlife resources and improvement of the reliability of the water supply for irrigation, through improved water conservation and management and other appropriate means.

DATES: A decision will not be made on the proposed action shall at least 30 days after this notice of availability of the final PEIS is published in the **Federal Register**. Soon after the 30-day waiting period, Reclamation will complete a Record of Decision, identifying the action that will be taken and discussing all factors leading to the decision.

ADDRESSES: A copy of the final PEIS may be obtained without charge from the following location:

- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98907

FOR FURTHER INFORMATION CONTACT: John Tiedeman, Environmental Specialist, at the above address or at 509–575–5848.

SUPPLEMENTARY INFORMATION: The final PEIS evaluates the effects of Title XII of the Enhancement Project legislation. The provisions and measures of the Enhancement Project legislation form the parameters and the methods for achieving the protection, mitigation, and enhancement of fish and wildlife through improved water management, instream flows, water quality, the creation and enhancement of wetlands, and improved reliability of irrigation water supplies. Central to this legislation is the Yakima River Basin Water Conservation Program which attempts to balance competing demands on the basin's water supply. This voluntary program will reduce demands on the available water supply by promoting conservation measures to improve the efficiency of water delivery and use, instream flows for fish and wildlife, and the reliability of the irrigation water supply.

Specific measures that will be implemented depend upon proposals contained in the water conservation plans, feasibility investigations of measures selected for consideration, and program criteria. Consequently, the final PEIS is a broad scope document to provide "umbrella" coverage for implementing the Enhancement Project with subsequent tiering for NEPA compliance of specific follow-on actions as appropriate.

Six alternatives, including no action, were evaluated in the final PEIS. The no action alternative is presented as the most likely future condition that could be expected without the implementation of additional Title XII provisions beyond the currently established riverflows, which includes the new operational criteria required by the legislation. This alternative provided the basis for impact comparisons. Five action alternatives presented the implementation of all elements of the Enhancement Project at different levels of implementation of project components. The preferred and environmentally preferred alternative is Alternative 2A, which includes all provisions of Title XII, and which would provide for the implementation of water conservation measures throughout the basin, rather than concentrating in specific areas.

Beneficial impacts of the project are considered to be enhanced water quality, increased streamflow, and overall reinforcement of fish and wildlife habitat, as well as an increase in the reliability of irrigation water supplies.

Dated: January 7, 1999.
Steven R. Clark,
Acting Regional Director, Pacific Northwest Region.
[FR Doc. 99–1602 Filed 1–22–99; 8:45 am]
BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–403]

Assessment of the Economic Effects on the United States of China's Accession to the WTO

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and notice of opportunity to submit comments.

EFFECTIVE DATE: January 19, 1999.

SUMMARY: Following receipt on December 21, 1998, of a request under sec. 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) from the United States Trade Representative (USTR), the U.S. International Trade Commission (the Commission) instituted investigation No. 332–403, Assessment of the Economic Effects on the United States of China's Accession to the WTO. The Commission plans to submit its report to the USTR by June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Arona Butcher, Office of Economics, (202–205–3301) or James Stamps, Office of Economics (202–205–3227). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

As requested by the USTR, the Commission will provide in its report an assessment of the probable economic effects on the United States of China's accession to the World Trade Organization (WTO). As requested, the Commission will conduct a comparative static analysis. The analysis will be based on actual trade and related economic variables from a recent representative, historical period. It will reflect, to the extent possible, how those trade and related economic variables would have appeared in that same period had China been a member of the WTO with all adjustments made that would result from China's lowering and binding its tariffs, accepting the disciplines on non-tariff barriers, and complying with the WTO.

As requested, the Commission will report on standard U.S. economic variables. These will include (1) aggregate exports and imports with

China and the world, employment, average labor productivity, average labor compensation, and gross domestic product, and (2) changes in U.S. trade, investment, output, and employment at the sectoral level and changes in consumer prices of various affected goods and services. The Commission will also provide a profile of China's trade and investment patterns and will estimate or discuss, to the extent possible, the effect of WTO accession on China's pattern of trade, rate of economic growth, and internal economic reform process.

With regard to Chinese tariff reductions, the Commission will make two assessments: it will consider a 25 percent and a 50 percent across-the-board cut in Chinese tariff rates, with each tariff reduction taken in turn from two sets of base rates from China's 1992 tariff rates and from China's 1996 tariff rates (or the most recent feasible year if 1996 data are not available).

As requested, the Commission will seek to assess changes in U.S. trade, U.S. foreign investment, and the U.S. domestic economy resulting from certain non-tariff aspects of a possible accession agreement. The Commission will provide a quantitative assessment of the following to the extent possible, or a qualitative assessment where either data or methodological limitations preclude quantitative estimates:

1. The elimination of China's WTO-inconsistent licensing, quota, and tendering requirements;
2. A comparison of the current trade situation with China to the institution of tariff rate quotas as part of an accession package on the following agricultural products: corn, cotton, oilseeds, rice, sugar, vegetable oils, wheat, wool, and wool tops;
3. The elimination of China's trade-related investment measures such as export performance requirements, local content, and trade and foreign exchange balancing;
4. Market openings in the following Chinese service sectors: distribution (including Commission agents, wholesaling, retailing, and franchising); financial services (including insurance); telecommunications (including basic and value-added services); tourism and travel; land-based air courier services; business services including professional services, consultancy and advertising; and business services auxiliary to distribution such as rental and leasing of equipment, maintenance and repair, packaging, storage, and warehousing;
5. An analysis of the effect of China's compliance with WTO rules on or affecting transparency, national treatment, judicial review, state trading, offset, and protection and transfer of technology;
6. The effect of the removal of U.S. quantitative restrictions on textile and apparel imports on all WTO members relative to the inclusion of China, in the context of the U.S. bilateral agreements on textiles and apparel with China; and
7. Any other change in the conditions of trade with China that is a result of accession and likely to materially affect U.S. trade and investment flows.

Public Hearing

A public hearing in connection with this investigation will be held in the Commission Hearing Room, 500 E Street, SW, Washington, DC 20436, beginning at 9:30 am on February 23, 1999 (and 24th, if needed). All persons will have the right to appear by counsel or in person, to present testimony, and to be heard. Requests to appear at the public hearing should be filed in writing with the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436, on or before noon February 12, 1999. Persons testifying at the hearing are encouraged to file prehearing briefs or statements; the deadline for filing such briefs or statements (a signed original and 14 copies) is noon February 12, 1999. The deadline for filing posthearing briefs or statements is March 9, 1999. Any confidential business information included in such briefs or statements or to be submitted at the hearing must be submitted in accordance with the procedures set forth in section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). In the event that, as of the close of business on February 12, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after February 12, 1999, to determine whether the hearing will be held.

Written Submissions

U.S. firms and other interested persons are invited to submit written statements concerning any of the matters to be addressed in the report. The Commission is especially interested in receiving:

1. Information regarding the likely economic effects of a 25 percent or a 50 percent reduction in current Chinese tariff rates on the interests of specific U.S. firms, industries, investors, consumers, or groups of workers;
2. A list of Chinese non-tariff barriers ranked according to the degree of concern to the interests of specific U.S. firms, industries, investors, consumers, or groups of workers; and
3. Quantitative estimates (in percentage terms, if possible) of the current economic effects of Chinese non-tariff barriers, and estimates of the potential economic effects on U.S. exports, employment, and investment of reducing or eliminating these non-tariff barriers.

Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than March 9, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, D.C. 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

By order of the Commission.

Issued: January 20, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1637 Filed 1–22–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–68]

Lamb Meat

AGENCY: United States International Trade Commission.

ACTION: Determination that investigation is extraordinarily complicated and rescheduling of vote in injury phase of investigation.

SUMMARY: The Commission has determined that investigation No. TA–201–68, Lamb Meat, is "extraordinarily complicated" within the meaning of section 202(b)(2)(B) of the Trade Act of 1974 (19 U.S.C. 2252(b)(2)(B)), and accordingly will make its injury determination in this investigation

before the 150th day of the filing of the petition, as opposed to the 120th day. Having made the determination on January 15, 1999, the Commission met the statutory requirement that it make such determination before the 100th day after the petition was filed. Under the revised schedule, the vote on injury in the investigation will be announced in a separate **Federal Register** notice. The dates for the hearing in the remedy phase, should this phase be necessary, and for filing prehearing and posthearing briefs and other submissions relating to remedy, are the same as previously announced.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Notice of institution of the investigation and scheduling was published in the **Federal Register** of October 23, 1998 (63 FR 56940).

Issued: January 19, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1634 Filed 1–22–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–386 and 731–TA–812–813 (Preliminary)]

Live Cattle From Canada and Mexico

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of live cattle, provided for in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States, with the exception of statistical reporting numbers 0102.90.40.72 and 0102.90.40.74, that are alleged to be subsidized by the Government of Canada, and by imports of live cattle from Canada that are alleged to be sold in the United States at less than fair value (LTFV).[2] The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports of live cattle from Mexico that are alleged to be sold in the United States at LTFV.[3]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of the investigations on Canada. The Commission will issue a final phase notice of scheduling that will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in these investigations under sections 703(b) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these investigations need not enter a separate appearance for the final phase of these investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On November 12, 1998, a petition was filed with the Commission and the Department of Commerce by the Ranchers-Cattlemen Action Legal Foundation ("R-Calf"), Columbus, MT, alleging that an industry in the United States is materially injured by reason of imports from Canada of live cattle that are alleged to be subsidized by the Government of Canada, and imports from Canada and Mexico of live cattle that are alleged to be sold at LTFV. Accordingly, effective November 12, 1998, the Commission instituted countervailing and antidumping investigations Nos. 701–TA–386 and 731–TA–812–813 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 19, 1998 (63 FR 64277). The conference was held in Washington, DC, on December 2, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 19, 1999. The views of the Commission are contained in USITC Publication 3155 (February 1999), entitled Live Cattle from Canada and Mexico: Investigations Nos. 701–TA–386 and 731–TA–812–813 (Preliminary).

Issued: January 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1635 Filed 1–22–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–418]

Certain Rodent Bait Stations and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 23, 1998, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Bell Laboratories, Inc., 3699 Kinsman Blvd., Madison, Wisconsin 53704. A supplement to the complaint was filed on January 11, 1999. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rodent bait stations and components thereof by reason of infringement of claims 19 and 22 of U.S. Letters Patent 5,040,327, and claims 4, 5, 6, 7, and 8 of U.S. Letters Patent 5,448,852. The complaint further alleges that there exists an industry in

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Carol T. Crawford and Thelma J. Askey dissenting.

[3] Chairman Lynn M. Bragg dissenting.

the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplement, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Room 112, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its internet server (http://www.usitc.gov).

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2577.

SUPPLEMENTARY INFORMATION:

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (1998).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 20, 1999, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain rodent bait stations or components thereof by reason of infringement of claims 19 or 22 of U.S. Letters Patent 5,040,327, or claims 4, 5, 6, 7, or 8 of U.S. Letters Patent 5,448,852, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Bell Laboratories, Inc., 3699 Kinsman Blvd., Madison, Wisconsin 53704.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Aegis Research Ltd., U.K., International Headquarters, Unit 2, Cologne Court, Brooklands Close, Windmill Road, Sunbury-On-Thames TW16 7EB, United Kingdom.

Aegis Research Ltd., U.S., Suite 4, 101 Weston Drive, Dover, Delaware 19904–2764.

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, S.W., Room 401–K, Washington, D.C. 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a) of the Commission's Rules, such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: January 20, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1638 Filed 1–22–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–750 (Final) (Remand)]

Vector Supercomputers From Japan; Notice and Scheduling of Remand Proceedings

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The U.S. International Trade Commission (the Commission) hereby gives notice of the court-ordered remand of its final antidumping investigation No. 731–TA–750 (Final).

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk, Office of Investigations, telephone 202–205–3190 or Cynthia P. Johnson, Office of General Counsel, telephone 202–205–3098, U.S. International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION

Background

On December 15, 1998, the United States Court of International Trade ("CIT") issued a remand Order to the Commission in NEC Corporation and HSNX Supercomputers, Inc., and Fujitsu Limited and Fujitsu America, Inc., v. Department of Commerce & U.S. International Trade Commission, Consol. Ct. No. 97–11–01967, Slip. Op. 98–164. That case involved review of the Commission's October 1997 affirmative determination in Vector Supercomputers from Japan, Inv. No. 731–TA–750 (Final). The CIT held that it could not uphold the Supercomputers determination because the Commission "may have adopted" reasoning that "is contradictory to the 'by reason of' standard adopted by the Federal Circuit." NEC, Slip Op. 98–164 at 30. In addition, the CIT held that the Commission "did not apply the analysis mandated by the Federal Circuit" in examining the price effects of future imports. Id. at 31. Accordingly, the CIT remanded the Commission's threat of material injury determination for further explanation or reconsideration.

Participation in the Proceedings

Only those persons who were parties to the original administrative

proceedings (i.e., persons listed on the Commission Secretary's service list) may participate in these remand proceedings.

Written Submissions

Briefs should be concise, limited to the issue on remand, and thoroughly referenced to information on the record in the original investigation. This remand investigation is being conducted on the evidentiary record from the original investigation. Therefore, the submission of new factual information is not permitted. Written briefs shall be limited to twenty-five (25) pages, and must be filed no later than close of business on February 4, 1999. No further submissions will be permitted unless otherwise ordered by the Commission.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: January 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1636 Filed 1–22–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 4, 1998, and published in the **Federal Register** on August 18, 1998, (63 FR 44276), Applied Science Labs, Division of Alltech Associates, Inc., 2701 Carolean Industrial Drive, P.O. Box 440, State College, Pennsylvania 16801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
4-Methylaminorex (cis isomer)	I
Lysergic acid diethlamide (7315)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
1-(1-Phenylcyclohexyl)pyrrolidine (7458).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Benzoylecogonine (9180)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II

The firm plans to manufacture small quantities of the listed controlled substances for reference standards.

No comments or objections were received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Applied Science Labs to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Applied Science Labs on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 12, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–1617 Filed 1–22–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than February 4, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 4, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 4th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX—PETITIONS INSTITUTED ON 01/04/1999

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
35,446	Amphenol Corp (IAMAW)	Sidney, NY	12/14/1998	Electrical & Environmental Connectors
35,447	JPM Co of South Carolina (Wrks)	Winnsboro, SC	12/16/1998	Wire Harness Cable
35,448	Private Line Group, Inc (Comp)	Franklin, GA	12/14/1998	Men's Suits, Sportcoats
35,449	ARCO (Comp)	Plano, TX	12/17/1998	Crude Oil, Natural Gas
35,450	Braeburn Alloy Steel (USWA)	Lower Burrell, PA	12/14/1998	Steel Conversion
35,451	Pillsbury Co (The) (Comp)	Woodbridge, NJ	12/21/1998	Ice Cream
35,452	C.P. Chemicals, Inc (Wrks)	Sewaren, NJ	12/21/1998	Nickel Carbonate
35,453	Pendleton Woolen Mills (Comp)	Fremont, NE	12/21/1998	Ladies' Skirts and Pants
35,454	B.J. Services (Wrks)	Odessa, TX	12/17/1998	Oilwell Services
35,455	Hughes Christensen (Wrks)	Salt Lake City, UT	12/21/1998	Exploration, Drilling Crude Oil
35,456	Hitachi Semiconductor (Wrks)	Irving, TX	12/10/1998	Semiconductor Chips
35,457	Motorola, Inc (Wrks)	Res. Triangle Pk, NC.	12/10/1998	Silicon Wafers for Semiconductors
35,458	Diamond Communication (Comp)	Garwood, NJ	12/11/1998	Drop & Pole Line CATV Hardware
35,459	Baker Oil Tools (Comp)	Houston, TX	12/21/1998	Oilfield Services
35,460	Amerada Hess Corp (Wrks)	Houston, TX	12/18/1998	Oil and Gas

[FR Doc. 99–1629 Filed 1–22–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,073 and 073B]

Camptown Togs, Incorporated, Clanton, AL; New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 15, 1998, applicable to workers of Camptown Togs, Incorporated located in Clanton, Alabama. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The State agency reports that worker separations have occurred at New York, New York location of Camptown Togs, Incorporated. The New York, New York location was the sales office for Camptown Togs' production facilities located in Clanton and Grove Hill, Alabama. The workers were engaged in the production of infants and children's tops and bottoms.

The intent of the Department's certification is to include all workers of Camptown Togs, Incorporated who were adversely affected by increased imports of infants and children's tops and bottoms. Accordingly, the Department is amending the certification to cover the workers of Camptown Togs, Incorporated, New York, New York.

The amended notice applicable to TA–W–35,073 is hereby issued as follows:

All workers of Camptown Togs, Incorporated, Clanton, Alabama (TA–W–35,073) and New York, New York (TVA–W–35,073B) who became totally or partially separated from employment on or after September 24, 1997 through December 15, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 8th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–1623 Filed 1–22–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,955 and 955A]

Caza Drilling, Inc., North Dakota Operations; Headquartered in Williston, ND and Operating at Various Locations in Montana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on September 21, 1998, applicable to workers of Caza Drilling, Inc., North Dakota Operations headquartered in Williston, North Dakota. The notice was published in the **Federal Register** on October 9, 1998 (63 FR 54495).

At the request of petitioners and the State agency, the Department reviewed the certification for workers of the subject firm. Review of the investigation record shows that workers of Caza Drilling, Inc., North Dakota Operations, providing oil field services in Montana on a contractual basis for crude oil producers, were inadvertently excluded from the certification. Accordingly, the Department is amending the certification to expand coverage to workers of Caza Drilling, North Dakota Operations, to those workers operating at various locations in Montana.

The intent of the Department's certification is to provide coverage to all workers of the subject firm adversely affected by increased imports of crude oil.

The amended notice applicable to TA–W–34,955 is hereby issued as follows:

All workers of Caza Drilling, Inc., North Dakota Operations, headquartered in Williston, North Dakota (TA–W–34,955) and operating at various locations in the State of Montana (TA–W–34,955A), who became totally or partially separated from employment on or after August 26, 1997 through September 21, 2000, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 6th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–1622 Filed 1–22–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,391 and TA–W–34,391C]

Forstmann & Company, Inc.; Dublin, GA; Carpini USA-Division New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 22, 1998, applicable to workers of Forstmann & Company, Inc. located in Dublin, Georgia. The notice was published in the **Federal Register** on June 22, 1998 (63 FR 33958).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The State agency reports that worker separations have occurred at Carpini USA-Division of Forstmann & Company, Inc. located in New York, New York. The New York, New York workers provide administrative and marketing services supporting the production of textile products at the Forstmann & Company, Inc. plants.

New findings show that workers at the Carpini USA-Division of Forstmann & Company, Inc., New York, New York were covered under a previous certification, TA–W–32,657, which expired October 15, 1998.

The intent of the Department's certification is to include all workers of Forstmann & Company, Inc. who were adversely affected by increased imports of textile products.

The amended notice applicable to TA–W–34,391 is hereby issued as follows:

All workers of Forstmann & Company, Inc., Dublin, Georgia (TA–W–34,391) who became totally or partially separated from employment on or after March 16, 1997 through May 22, 2000, and all workers of Forstmann & Company, Inc., Carpini USA Division, New York, New York (TA–W–34,391C) who became totally or partially separated from employment on or after October 16, 1998 through May 22, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–1626 Filed 1–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,100]

McCulloch Corporation (Including Corporate Office/Distribution Center), Tucson, AZ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 27, 1997, applicable to all workers of McCulloch Corporation, Tucson, Arizona (excluding corporate office and distribution employees). The notice was published in the **Federal Register** on March 21, 1997 (62 FR 13710).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of chain saws, string trimmers, blowers and other lawn and garden equipment. The company reports that worker separations occurred at the subject firm's corporate office and distribution center, Tucson, Arizona when the company closed in January, 1999.

The intent of the Department's certification is to include all workers of McCulloch Corporation (including corporate office and distribution employees) adversely affected by increased imports.

Accordingly, the Department is amending the certification to cover the workers of McCulloch Corporation, Tucson, Arizona (including corporate office and distribution center).

The amended notice applicable to TA–W–34,143 is hereby issued as follows:

All workers of McCulloch Corporation, Tucson, Arizona who became totally or partially separated from employment on or after January 3, 1996 through February 27, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 13th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–1627 Filed 1–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 1998 and January, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increase of imports of articles like or directly competitive with articles produced by the firm of appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Workers Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the time.

TA–W–35,003; Paramount Headwear, Inc., Dexter, MO
TA–W–34,251; ApparelMark, Inc., El Paso, TX
TA–W–35,228; Crusader Engines, Sterling Heights, MI
TA–W–35,102; Mitchell Manufacturuing, A Lamount Group Co., Clare, MI
TA–W–34,975; Osram Sylvania Products, Inc., Wellsboro Glass Technologies, Wellsboro. PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,107; International Product Options, New York, NY
TA–W–35,328; Revlon, Inc., Holmdel, NJ
TA–W–35,218; Hooper Trucking Co., Odessa, TX

TA–W–35,148; Martin-Decker/Totco, Williston, ND
TA–W–35,341; The Kelly-Springfield Tire Co., Cumberland, MD

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–35,179; Spartan Mills Woven Apparel Fabrics, Chesnee, SC
TA–W–35,057; Connex Pipe Systems, Inc., Trutville, VA
TA–W–35,347; National Fruit Products Co., Inc., Kent City, MI
TA–W–35,116; Davis Clothing, Brockton, MA
TA–W–34,925; Windfall Products, Inc., St. Mary's PA
TA–W–35,084; Mascotech, Inc., Mascotech Forming Technologies Div., Fraser, MI
TA–W–35,099; Creative Expressions Group, Indianapolis, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,273; Bend Door, A Div. Of Jeld-Wen, Bend, OR

This investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–35,156; Pluma, Inc., Eden, NC and A; Martinsville, VA, B; Chatham, VA, C; Altavista, VA, D; Rocky Mt, VA, E; Meadows of Dan, VA

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Workers Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–35,099; Creative Expressions Group, Indianapolis, IN: Invitation Department: October 1, 1997
TA–W–35,105; Thurmond Apparel, State Road, NC: September 29 1997
TA–W–35,392; Magnetek Motor & Generator Group, Prairie Grove, AR: December 4, 1997.
TA–W–35,023; MTD Products, Inc., Cub Cadet Div., Brownsville, TN: September 16, 1997.
TA–W–35,146; Detroit Steel Products, Morristown, IN: October 20, 1997.
TA–W–35,028; Wire-Form, Warren, MI: September 11, 1997.
TA–W–35,337; Cross Creek Apparel, Inc., Floyd, VA: November 25, 1997.
TA–W–35,200; Nabors USA, Inc., East Texas/North Louisiana District, Kilgore, TX & Operating in The Following States: A; TX and B; LA: October 22, 1997.
TA–W–35,120; Biltwell Clothing Co., St. Louis, MO: October 14, 1997.
TA–W–35,173; Jockey International Inc., St. Sterling, KY: October 21, 1997.
TA–W–34,932; Crown Pacific, Bonners Ferry Div., Bonners Ferry, ID: August 15, 1997.
TA–W–35,178; Clar-Mar, Inc., Cherryville, NC: October 27, 1997.
TA–W–35,181; Nortel, Inc., Morrisville, NC: October 20, 1997.
TA–W–35,101; General Electric Co., Meter Business, Somersworth, NH: August 24, 1997.
TA–W–35,207; Saldan Bindery, Inc., Brooklyn, NY: November 3, 1997.
TA–W–35,073 & A; Camptown Togs, Inc., Clanton, AL and Grove Hill, AL: September 24, 1997.
TA–W–35,206; Darby Lumber, Inc., Bob Russell Construction, Darby, MT: October 27, 1997.
TA–W–35,158; Quickie Manufacturing Corp & Assembly Service, Inc., El Paso, TX: October 21, 1997.
TA–W–35,270; TDS, Inc., Oklahoma City, OK: November 16, 1997.
TA–W–35,203; Dan River, Inc., Spindale Plant, Spindale, NC: November 5, 1997.
TA–W–35,123; Hamilton Beach/Proctor-Silex, Inc., Mt. Airy, NC: October 13, 1997.
TA–W–35,217; Technical Logging Systems, Houma, LA: October 27, 1997.
TA–W–35,303; Kehoe Pipeline & Construction Co., Watford City, ND: November 19, 1997.
TA–W–35,292; Sta-Right Fusing Co., Inc., Pittston, PA: November 17, 1997.
TA–W–35,111; Associated Plastics, Inc., Jonesboro, AR: September 28, 1997.
TA–W–35,134; Henson Garment Co., Inc., Athens, GA: October 15, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 1998. And January, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriation subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02688; Lakeshore, Inc., Ontonagon Facility, Octonagon, MI
NAFTA–TAA–02669; Mitchell Manufacturing Group, A Lamont Group Co., Clare, MI
NAFTA–TAA–02761; Bend Door, A Div. F Jeld-Wen, Bend, OR
NAFTA–TAA–02673; Creative Expressions Group, Indianapolis, IN
NAFTA–TAA–02724; Mattel, Inc., Mattel Fort Wayne Operations, Fort Wayne, IN
NAFTA–TAA–02682; Thomaston Mills, Griffin Div., Griffin, GA
NAFTA–TAA–02725; U.S. Steel Mining Co., LLC, Pinnacle System, Pineville, WV

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02763; Automotive Logistics Services, Brownstown, MI

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02671; Associated Plastic, Inc., Jonesboro, AR: October 8, 1997.

NAFTA–TAA–02803; Thomas & Betts Corp., Diamond Communication Products, Inc., Garwood, NJ: December 11, 1997.

NAFTA–TAA–02680; W. Seitchik & Sons, Philadelphia, PA: October 7, 1997.

NAFTA–TAA–02639; MTD Products, Inc., Cub Cadet Div., Brownsville, TN: September 16, 1997.

NAFTA–TAA–02737; ApparelMark, Inc., El Paso, TX: November 9, 1997.

NAFTA–TAA–02697; Standard Manufacturing Co., Orlando, FL: September 25, 1997.

NAFTA–TAA–02681; Biltwell Clothing Co., St. Louis, MO: October 14, 1997.

I hereby certify that the aforementioned determinations were issued during the months of December, 1998 and January, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 11, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–1630 Filed 1–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,922 et al.]

Anitec Image Corporation a/k/a Kodak Polychrome Graphics; Binghamton, NY; Ridgewood, NJ; Arlington Heights, IL; Corona, CA; Duluth, GA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 9, 1998, applicable to all workers of Anitec Image Corporation, located in Binghamton, New York. The notice was published in the **Federal Register** on February 6, 1998 (63 FR 6209).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations have occurred at the Ridgewood, New Jersey, Arlington Heights, Illinois, Corona, California and Duluth, Georgia locations of Anitec Image Corporation. These locations provide sales and administrative support functions for Anitec Image's production facility in Binghamton, New York. The workers are engaged in the production of photographic film, paper and related products.

The intent of the Department's certification is to include all workers of Anitec Image Corporation who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Anitec Image Corporation, also known as Kodak Polychrome Graphics, Ridgewood, New Jersey, Arlington Heights, Illinois, Corona, California and Duluth, Georgia.

The amended notice applicable to TA–W–33,922 is hereby issued as follows:

All workers of Anitec Image Corporation, also known as Kodak Polychrome Graphics, Binghamton, New York (TA–W–33,922), Ridgewood, New Jersey (TA–W–33,922A), Arlington Heights, Illinois (TA–W–33,922B), Corona, California (TA–W–33,922C) and Duluth, Georgia (TA–W–33,922D) who became totally or partially separated from employment on or after December 14, 1997 through January 9, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of January, 1999.

Grant D. Beale

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–1625 Filed 1–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 744 and NAFTA–02482]

Lucas Varity North American Light Vehicle Braking Systems Mount Vernon, OH; Notice of Negative Determination on Reconsideration

On November 19, 1998, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented new evidence that the company shifted production of certain brake systems to Mexico and importing like or directly competitive articles into the U.S. The notice was published in the **Federal Register** on December 10, 1998 (63 FR 68304).

The Department initially denied TAA to workers of Lucas Varity because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met and because the group eligibility requirements of Section 250 of the Act were not met. The workers at the subject firm were engaged in employment related to the production of brakes and brake parts.

On reconsideration, the Department requested that Lucas Varity provide additional information on the production of brakes for KIA. The additional information provided by the company indicated the following: (1) The KIA work, which amounted to less than three percent of the company's sales and labor, was shifted to Mexico during the period August, 1997 through February, 1998; and (2) as of May 18, 1998 all workers at the subject firm had been recalled from various temporary lay-offs.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligibility to apply for worker adjustment assistance and NAFTA-Transitional Adjustment Assistance for workers and former workers of Lucas Varity, North American Light Vehicle Braking System, Mount Vernon, Ohio.

Signed at Washington, DC, this 6th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–1624 Filed 1–22–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02648 and NAFTA—02648A]

McCulloch Corporation Lake Havasu City Warehouse, Lake Havasu City, AZ and Lake Havasu City Operations, Lake Havasu City, AZ; Amendment Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on October 22, 1998, applicable to workers of McCulloch Corporation, Lake Havasu City Warehouse, Lake Havasu City, Arizona. The notice was published in the **Federal Register** on November 10, 1998 (63 FR 63079).

At the request of a State agency, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations occurred at the subject firm's Lake Havasu City Operations, Lake Havasu City, Arizona when it closed in January, 1999. The workers produced the machined parts for lawn and garden equipment, such as leaf blowers, string trimmers and chain saws. The production of machined parts for lawn and garden equipment contributed to the kitting functions (i.e. package machined parts for lawn and garden equipment) performed at McCulloch Corporation's Lake Havasu City Warehouse, Lake Havasu City, Arizona.

Accordingly, the Department is amending the certification to cover workers at McCulloch Corporation, Lake Havasu City Operations, Lake Havasu City, Arizona. The intent of the Department's certification is to include all workers of McCulloch Corporation adversely affected by increased imports from Mexico.

The amended notice applicable to NAFTA—02648 is hereby issued as follows:

All workers of McCulloch Corporation, Lake Havasu City Warehouse, Lake Havasu City, Arizona (NAFTA–2648) Lake Havasu City Operations, Lake Havasu City, Arizona (NAFTA–2648A) who became totally or partially separated from employment on or after February 10, 1998 through October 22, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 13th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–1628 Filed 1–22–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: February 8–9, 1999, 9:00 a.m.–6:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 340 and 375, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. William Gordon, Program Director, Collaborative Research at Undergraduate Institutions Room 615, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the Collaborative Research at Undergraduate Institutions Pre-proposals. Collections program announcement (NSF 99–11).

Reason for Closing: The pre-proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1575 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer and Computation Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting. Special Emphasis Panel in Computer and Computation Research.

Name: Special Emphasis Panel in Computer and Computation Research (1192).

Date: February 15–16, 1999, February 18–19, 1999, February 22, 1999.

Time: 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person(s): S. Kamal Abdali, Program Director, Numeric, Symbolic, and Geometric Program, CISE/CCR, Room 1145, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Telephone: (703) 306–1912.

Purposes of Meeting: To provide advice and recommendations for the Numerical, Symbolic, and Geometric Program (NSG) by providing review of a group of approximately 50 proposals with special attention to changing emphases for that program.

Agenda: To review and evaluate NSG proposals as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1576 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (173).

Date and Time: February 11–12, 1999, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ernest T. Smerdon, Senior Education Associate, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted under the Action Agenda for Systemic Engineering Education Reform Guidelines.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as

salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1573 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel Engineering Education and Centers (173).

Date and Time: February 11–12, 1999, 7:30 a.m.–5:30 p.m.

Place: National Science Foundation, Room 360, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ernest T. Smerdon, Senior Education Associate, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Blvd., Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted under the Action Agenda for Systemic Engineering Education Reform Guidelines.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1581 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the national Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date & Time: February 12, 1999, 8:00 a.m.–5:00 p.m.

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Lawrence E. Brandt, Digital Government, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Digital Government proposals submitted in response to the program announcement (NSF 98–121).

Reason for closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and(6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1572 Filed 1–22–99; 8:45 am]

BILLING CODE 7550–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date & Time: February 2, 1999, 9:00 am.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Alexander N. Shor, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1579.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Shipboard Scientific Support Equipment proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1580 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: February 8–10, 1999; 8:30 A.M. until 5:00 P.M.

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joe Jenkins, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230: Telephone: (703) 306–1879.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Dynamical Systems Ergodic Theory, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1578 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: February 8–10, 1999; 8:30 AM–5:00 PM.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Rm. 1020.

Type of Meeting: Closed.

Contact Person: Dr. Boris Kayser, Program Director for Theoretical Physics, Division of Physics, Rm. 1015, Telephone: (703) 306–1890.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Theoretical Physics Formal Strings Program at NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1571 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: February 8–10, 1999; 8:30AM–5:00PM.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Rm. 770.

Type of Meeting: Closed.

Contact Person: Dr. Winston Roberts, Program Director for Theoretical Physics, Division of Physics, Rm. 1015, Telephone: (703) 306–1890.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Theoretical Physics Nuclear Program at NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1574 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: February 12, 1999 from 8:00 a.m. to 5:00 p.m., Rm. 1060.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Time of Meeting: Closed.

Contact Person: Dr. Barry Schneider, Program Director for Atomic, Molecular and Optical Plasma Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1890.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the NSF Plasma Physics Program.

Agenda: To review and evaluate proposals for the NSF/DOE Coordinated Review of Basic Plasma Physics Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1577 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: February 4–6, 1999; 8:30 AM–5:00 PM.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Rm. 1060.

Type of Meeting: Closed.

Contact Person: Dr. Boris Kayser, Program Director for Theoretical Physics, Davison of Physics, Rm. 1015, Telephone: (703) 306–1890.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Theoretical Astrophysics Program at NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 19, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–1579 Filed 1–22–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–116]

Notice of Application for Decommissioning Amendment, Iowa State University, UTR–10 Research Reactor

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from Iowa State University dated January 6, 1999, for a license amendment approving the decommissioning plan for the Iowa State University Reactor (Facility License No. R–59) located in the Nuclear Engineering Building, which is located on the west edge of the main campus of Iowa State University, in Ames, Iowa.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 14th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1562 Filed 1–22–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23654; 812–11390]

Principal Management Corporation, et al.; Notice of Application

January 15, 1999.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the

"Act") for an exemption from section 17(a) of the Act.

APPLICANTS: Principal Management Corporation (the "Adviser"), Principal Tax-Exempt Cash Management Fund, Inc. (the "Tax-Exempt Fund"), and Principal Cash Management Fund, Inc. (the "Cash Management Fund" and together with the Tax-Exempt Fund, the "Funds").

SUMMARY OF APPLICATION: Applicants request an order to permit the Cash Management Fund to acquire the assets and the liabilities of the Tax-Exempt Fund.

FILING DATES: The application was filed on October 30, 1998, and amended on January 12, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 9, 1999, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, The Principal Financial Group, Des Moines, Iowa 50392–0200.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief,at (202) 942–0564, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. (202) 942–0526).

Applicants' Representations

1. Each of the Funds is a Maryland corporation registered under the Act as an open-end management investment company. Each of the Funds operates as a money market fund and seeks to maintain a stable net asset value ("NAV") per share of $1.00. The Cash Management Fund has three classes of shares outstanding: Classes A, B, and R. The Tax-Exempt Fund has only one class, Class A, shares outstanding. Class A shares of the Funds are not subject to a sales load, redemption fee, exchange fee, contingent deferred sales charge, or a distribution fee under rule 12b–1 under the Act ("rule 12b–1 fee").

2. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, serves as investment adviser for each of the funds. The Adviser is an indirect wholly-owned subsidiary of the Principal Life Insurance Company, an Iowa insurance company ("Principal Life"). At October 31, 1998, Principal Life and it subsidiaries owned approximately 9.5% of all the outstanding shares of the Cash Management Fund.

3. On September 14, 1998, the boards of directors of the Funds ("Boards"), including a majority of the directors who are not "interested persons" of the Funds as defined in section 2(a)(19) of the Act, approved the terms of an Agreement and Plan of Acquisition pursuant to which the Cash Management Fund will acquire all the assets and assume all the liabilities of the Tax-Exempt Fund in exchange for shares of the Cash Management Fund equal in value to the NAV of the Tax-Exempt Fund (the "Acquisition"). The Acquisition is expected to close on April 1, 1999 (the "Closing Date"). Each shareholder of the Tax-Exempt Fund will receive shares of the Cash Management Fund having an aggregate NAV equal to the aggregate NAV of the Tax-Exempt Fund's shares held by that shareholder calculated as of 4:00 p.m. on the Closing Date.

4. The investment objectives of the Funds are substantially similar. The principal investment objective of the Cash Management Fund is to seek as high a level of current income as is consistent with the preservation of principal and maintenance of liquidity by investing in money-market instruments. Similarly, the principal investment objective of the Tax-Exempt Fund is to seek as high a level of current interest income exempt from federal income tax as is consistent with stability of principal and maintenance of liquidity by investing in high quality, short-term municipal obligations.[1]

5. The Boards found that participation in the Acquisition was in the best interests of each Fund and their shareholders and that the interests of the existing shareholders of each Fund would not be diluted as a result of the Acquisition. The Boards considered a number of factors in authorizing the Acquisition including: (i) possible alternatives to the Acquisition, (ii) the terms and conditions of the Acquisition and whether the Acquisition would result in dilution of shareholder interests, (iii) the advantage to the Tax-Exempt Fund shareholders of investing in a larger asset pool with greater diversification, (iv) any direct or indirect costs incurred by the Funds as a result of the Acquisition, (v) expense ratios and available information regarding fees and expenses of the Funds, (vi) the tax consequences of the Acquisition, (vii) the compatibility of the investment objectives of the Funds, and (viii) the likelihood that the shareholders of the Tax-Exempt Fund would prefer the option of selecting between the Cash Management Fund and the Bond Funds to maintaining their interests in the Tax-Exempt Fund. The Adviser will pay all expenses incurred in connection with the Acquisition.

6. The Tax-Exempt Fund intends to hold a shareholders meeting on March 31, 1999 to consider and vote on the Acquisition. Completion of the Acquisition is subject to a number of conditions precedent, in addition to the approval of the Acquisition by the Boards and the shareholders of the Tax-Exempt Fund. The Acquisition will not be considered a tax-free "reorganization," under applicable provision of the Internal Revenue Code. Although the Acquisition will not be considered a tax-free "reorganization," in the opinion of tax counsel to the Funds, no gain or loss will be recognized by either Fund or shareholders, in connection with the Acquisition, and the tax cost basis of the Cash Management Fund shares received by Tax-Exempt Fund shareholders will equal the tax cost basis of their shares in the Tax-Exempt Fund, although their holding period will begin anew with the Acquisition. Applicants agree that no material changes will be made to the Acquisition plan without the prior approval of the Commission staff.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated

[1] In order to permit the shareholders of the Tax-Exempt Fund who wish to maintain an investment in a tax-exempt fund to do so, the Principal Tax-Exempt Bond Fund (the "Bond Fund") intends to offer to exchange its Class A shares at no load for shares of the Tax-Exempt Fund or the shares of the Cash Management Fund issued in exchange for shares of the Tax-Exempt Fund (the "Exchange Offer"). The Exchange Offer is expected to commence the day after the Acquisition is approved by shareholders of the Tax-Exempt Fund and to continue for at least 30 days following the Closing Date. The Bond Fund, a Maryland corporation, is an open-end management investment company registered under the Act. The Adviser serves as the investment adviser to the Bond Fund.

person of such a person, acting as principal, from knowingly selling to or purchasing from such registered company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (i) any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of such other person; (ii) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with the power to vote, by such other person; (iii) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and, (iv) if such other person is an investment company, any investment adviser thereof.

2. Rule 17a–8 under the Act generally exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that they may not rely on rule 17a–8 in connection with the Acquisition because the Funds may be affiliated persons of each other by reasons other than those set forth in the rule. Principal Life may be deemed an affiliated person of an affiliated person of the Funds because its wholly-owned subsidiary serves as the investment adviser to the Funds. Moreover, Principal Life may be deemed an affiliated person of the Cash Management Fund Principal Life owns approximately 9% of the outstanding shares of the Cash Management Fund.

4. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting the Acquisition from section 17(a) of the Act. Applicants submit that the Acquisition satisfies the requirements of section 17(b) of the Act. Applicants note that the Boards of the Funds have determined that the Acquisition is in the best interest of the Funds and of the shareholders of the Funds and that the Acquisition will not result in dilution of the interests of the existing shareholders of the Funds. Applicants state that the Acquisition is consistent with the principal investment objective of each Fund because each Fund operates as a money market fund and seeks to preserve capital and maintain liquidly by investing in short-term investments. Applicants state that neither Fund will incur any expenses in connection with the Acquisition because the Adviser has agreed to pay all these fees. Finally, applicants state that the exchange of the Tax-Exempt Fund's shares for shares of the Cash Management Fund will be based on relative NAVs, and, in the opinion of counsel to the Funds, no gain or loss will be recognized by either the Fund or its shareholders in connection with the Acquisition.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1531 Filed 1–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 25, 1999.

A closed meeting will be held on Thursday, January 28, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, January 28, 1999, at 11:00 a.m., will be:

Institution and settlement of administrative proceedings of an enforcement nature.

Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 21, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–1689 Filed 1–21–99; 11:44 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40955; File No. SR-Amex-98-47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Listing and Trading of Options on the Internet Commerce Index

January 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 21, 1998, the American Stock Exchange LLC ("Amex" on "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list and trade European-style, cash-settled options on the Internet Commerce Index ("Index"), an equal-dollar weighted, A.M.-settled new index developed by the Amex

[1] On December 21, 1998, the Amex replaced the filing's original Exhibit B, which lists the component securities of the Computer Hardware Index, with a new Exhibit B, which lists the component securities of the Internet Commerce Index. *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Yvonne Fraticelli, SEC, dated December 21, 1998. In addition, the Amex replaced the filing's original cover letter with a new cover letter indicating that the Amex is filing the proposal pursuant to Section 19(b)(3)(A) of the Act. *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"). SEC, dated December 18, 1998.

based on the stocks of companies engaged in commerce conducted over the Internet.[2] In addition, the Amex proposes to amend Amex Rule 901C, "Designation of Stock Index Options," Commentary .01, to indicate that 90% of the Index's numerical index value must be accounted for by stocks which meet the current criteria and guidelines set forth in Amex Rule 915, "Criteria for Underlying Securities." In addition, Commentary .01, as amended, indicates that these criteria must also be satisfied immediately following each quarterly rebalancing.

The Amex is filing their proposal pursuant to Amex Rule 901C, Commentary .02, which provides for the commencement of trading of options on the Index 30 days after the date of this filing. The Amex believes that the proposal meets all of the criteria set forth in Amex Rule 901C, Commentary .02, and the Commission's order approving Amex Rule 901C, Commentary .02 ("Generic Index Approval Order").[3]

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Amex proposes to trade options on its newly developed Index, which is based entirely on the shares of companies engaged in commerce conducted over the Internet. The companies in the Index generate all or a significant portion of their revenues from commerce conducted over the Internet or have as a corporate goal the generation of all or a significant portion of their revenues from commerce conducted over the Internet. Often the share prices of companies, similar to those in the Index, that generate all or a significant portion of their revenues from commerce conducted over the Internet have been relatively volatile. Accordingly, options on the Index are designed to provide investors with an investment vehicle to participate in or hedge against this volatility, and decrease the risk involved in selecting individual stocks.

The Amex is filing this proposal pursuant to Amex Rule 901C, Commentary .02, which provides for the commencement of the trading of options on the Index 30 days after the date of this filing. The Amex believes that the proposal meets all of the criteria set forth in Amex Rule 901C, Commentary .02, and in the Generic Index Approval Order.[4]

Eligibility Criteria For Index Components. In accordance with the requirements of Amex Rule 901C, Commentary .02: (1) each of the component securities of the Index has a minimum market capitalization of at least $75 million and has a trading volume in each of the last six months of not less that 1,000,000 shares; (2) at lease 90% of the Index's numerical index value and at least 80% of the total number of component securities meet the current criteria for standardized option trading set forth in Exchange Rule 915 (in fact, all but one of the component securities in the Index currently underlie standardized options); (3) the Index contains no American Depositary Receipts ("ADRs"); (4) all of the component stocks of the Index are listed on the Amex or the New York Stock Exchange ("NYSE"), or are traded through the facilities of the Nasdaq and are reported National Market securities ("Nasdaq/NNM"); and (5) no component security represents more than 25% of the weight of the index, and the five highest weighted component securities in the Index do not in the aggregate account for more than 60% of the weight of the Index.

Index Calculation. The Index will be calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is represented in an approximately "equal" dollar amount in the Index. The following is a description of the methodology. As of the market close on December 1, 1998, a portfolio of stocks were established representing an investment of approximately $10,000 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield a benchmark value of 100.00 at the closing of trading on December 1, 1998.

Maintenance of the Index. The Exchange will maintain the Index in accordance with Amex Rule 901C, Commentary .02 so that: (1) the Index is comprised of not less than 10 underlying stocks, and not more than 20 underlying stocks; (2) component stocks constituting the top 90% of the Index, by weight, will have a minimum market capitalization of $75 million, and the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of $50 million; (3) 90% of the Index's numerical index value and at least 80% of the total number of components will meet the then current criteria for standardized options trading set forth in Amex Rule 915; (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all of the Index's component stocks will either be listed on the Amex, the NYSE, or Nasdaq/NNM; (6) no component security of the Index will represent more than 20% of the weight of the Index, and the five highest weighted components will not in the aggregate account for more than 60% of the Index; and (7) the trading volume of each component security shall be at least 500,000 shares for each of the last six months, or for each of the lowest weighted components that in the aggregate account for more than 10% of the weight of the Index, the monthly trading volume may be at least 400,000 shares for each of the last six months.

The Exchange shall not open for trading any additional option series if the Index fails to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of Index options has been

[2] In accordance with the Generic Index Approval Order, the Amex submitted a pre-filing on December 10, 1998. *See* Generic Index Approval Order, *infra* note 3.

[3] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (order approving File Nos. SR-Amex-92-35; SR-CBOE-93-59; SR-NYSE-94-17; SR-PSE-94-07; and SR-PHLX-94-10). The Generic Index Approval Order established generic listing standards for options on narrow-based indexes and adopted streamlined procedures for introducing trading in options satisfying the generic listing standards.

[4] *See* note 3, *supra*.

approved by the Commission pursuant to Section 19(b)(2) of the Act.

Rebalancing. Following the close of trading on the third Friday of February, May, August and November, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts. If necessary, a divisor adjustment will be made at the rebalancing to ensure the continuity of the Index's value. The newly adjusted portfolio will then become the basis for the Index's value on the first trading day following the adjustment.

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalancings except in the event of certain types of corporate actions such as the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In the case of a merger or the consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In all cases the divisor will be adjusted, if necessary, to ensure Index continuity.

All stock replacements and the handling of non-routine corporate actions will be annouced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.

Dissemination of Index. Similar to other stock index values which underlie exchange-traded products, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Amex and the Options Price Reporting Authority ("OPRA") represent that they have the necessary systems capacity to handle the additional traffic of the Index.[5]

Expiration and Settlement. The proposed Index options will be European-style (*i.e.*, exercises are permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. New York time) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in expiring option series will normally be the second to the last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list options series with expirations in the three near-term calendar months and in two additional calendar months in the February cycle. In addition, the Amex may list flexible exchange options ("FLEX Options") on the Index, and longer term option series having up to thirty-six months to expiration. In lieu of such long-term options on a full value Index, the Exchange may instead list long-term, reduced value put and call options based on one-tenth (1/10th) the Index's full value. In either event, the interval between expiration months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options will be subject to the same rules which govern the trading of all the Exchange's Index options, including sales practice rules, margin requirements and floor trading procedures. Position limits on reduced value long-term Index options will be equivalent to the position limits for regular (full value) Index options and would be aggregated with such options (for example, if the position limit for the full value options is 15,000 contracts on the same side of the market, then the position limit for the reduced value options will be 150,000 contracts on the same side of the market).

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the Index's component stocks. In the case of Nasdaq/NNM listed securities, the first reported regular way sale price will be used. If any component stock of the Index does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options. Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These rules cover issues such as surveillance, exercise prices, and position limits. Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in Index options. The Index is deemed to be a stock index option under paragraph (a) of Amex Rule 901C, "Designation of Stock Index Options," and a stock index industry group under paragraph (b)(1) of Amex Rule 900C, "Applicability and Definitions." With respect to paragraph (b) of Amex Rule 903C, "Series of Stock Index Options," the Exchange proposes to list near-the-money (*i.e.*, within ten points above or below the current index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange expects that the review required by paragraph (c) of Amex Rule 904C, "Position Limits," will result in a position limit of 15,000 contracts for options on the Index.

(b) Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the

[5] *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated December 22, 1998; Letter from Raymond L. Bell, Vice President, Market Data Services, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated January 11, 1999; and Letter from Joe Corrigan, Executive Director, OPRA, to Richard Strasser, Assistant Director, Division, Commission, dated January 15, 1999.

meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e)(1) of Rule 19b–4 thereunder.[7] The Amex may not list options for trading on the Index prior to 30 days after the date the proposed rule change was filed with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–98–47 and should be submitted by February 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1607 Filed 1–22–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40950; File No. SR–CHX–98–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Trading of Select Sector SPDRs®

January 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on December 18, 1998, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to trade, pursuant to unlisted trading privileges ("UTP") and the listing standards of CHX Article XXVIII, Rule 24, nine series of Select Sector SPDRs® by adding a new interpretation and policy .03 to Article XXVIII, Rule 24 and amending interpretation and policy .05 of Article XX, Rule 22.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, he Proposed Rule Change

In its filing with the Commission, The CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these staements may be examined at the places specified in Item III below. The CHX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] "S&P"®, "Standard & Poor's 500"®, "Standard & Poor's Depository Receipts"® and "SPDRs"®, and "Select Sector SPDR"® are trademarks of the McGraw-Hill Companies, Inc.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CHX Article XXVIII, Rule 24 provides for the listing and trading of units representing an interest in a registered investment company ("Units") that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index.[3] The Exchange currently trades, pursuant to unlisted trading privileges, several series of World Equity Benchmark Shares ™ ("WEBS™..)[4] based on Morgan Stanley Capital International foreign stock indices pursuant to the standards set forth in Article XXVIII, Rule 24.[5] WEBS are currently listed and traded on the American Stock Exchange ("AMEX") under AMEX Rules 1000A *et seq.*,[6] which rules are substantially the same as CHX Article XXVIII, Rule 24.

The CHX proposes to trade, pursuant to UTP and the listing standards of CHX Article XXVIII, Rule 24, nine series of Select Sector SPDRs by adding a new interpretation and policy .03 to Article XXVIII, Rule 24 and amending interpretation and policy .05 of Article XX, Rule 22.[7] The Select Sector SPDRs, described below, are issued by an open-end management investment company.[8]

(a) Select Sector SPDRs

The Exchange proposes to trade nine investment series of Select Sector

[3] *See* Securities Exchange Act Release No. 37121 (April 17, 1996), 61 FR 17932 (April 23, 1996) (Order approving SR–CHX–96–12 amending Article XXVIII providing for the listing and trading of units representing an interest in a registered investment company).

[4] "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc.

[5] *See* Securities Exchange Act Release No. 39117 (September 22, 1997), 62 FR 50973 (September 29, 1997) (Order approving SR–CHX–96–14 to commence trading of WEBS pursuant to UTP and CHX Article XXVIII, Rule 24).

[6] AMEX Rules 1000A *et seq.* provide for the listing and trading of Index Fund Shares, which are shares issued by an open-end management investment company that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index.

[7] The AMEX received the Commission's approval to list and trade nine series of Select Sector SPDRs under AMEX Rules 1000A *et seq.* Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998) ("AMEX Select Sector SPDRs Approval Order").

[8] The Selector Sector SPDR Trust (with respect to Select Sector SPDRs) filed with the Commission an Application for Orders under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting Select Sector SPDRs from various provisions of the 1940 Act. *See* Investment Company Act Release No. 23492 (October 20, 1998), 63 FR 57332 (October 27, 1998).

SPDRs to be offered by the Select Sector SPDR Trust, an open-ended investment company and a Massachusetts business trust. The Select Sector SPDRs offered by the Trust are: The Basic Industries Select Sector SPDR; The Consumer Services Select Sector SPDR; The Consumer Staples Select Sector SPDR; The Cyclical/Transportation Select Sector SPDR; The Energy Select Sector SPDR; The Financial Select Sector SPDR; The Industrial Select Sector SPDR; The Technology Select Sector SPDR; and The Utilities Select Sector SPDR.

Each Select Sector SPDR offers and issues Select Sector SPDR shares at their net asset value only in aggregations of a specified number of shares (each, a "Creation Unit"), generally in exchange for a basket of common stocks consisting of some or all of the component securities ("Fund Securities") of a specified market sector index ("Select Sector Index"), together with the deposit of a specified small cash payment known as the "cash component" and reflecting, for example, net accrued dividends. It is anticipated that the deposit of Fund Securities and the specified cash payment in exchange for Select Sector SPDRs will be made primarily by institutional investors, arbitrageurs and the Exchange specialist. Creation Units are separable upon issue into identical shares which are listed and traded on the AMEX and, upon approval of this proposed rule change, will also be traded on the Exchange. Similarly, shares are also redeemable only in Creation Unit size aggregations and usually in exchange for Fund Securities and a specified cash payment. It is anticipated that a Creation Unit will consist of 50,000 shares of the relevant series of Select Sector SPDRs. The Select Sector SPDR Trust reserves the right to off a "cash" option for creations and redemptions of Select Sector SPDRs, although it has no current intention of doing so. For each Select Sector SPDR, the Administrator (State Street Bank and Trust Company) makes available through the National Securities Clearing Corporation ("NSCC"), immediately prior to the opening of business, the list of names and the required number of shares of stocks of each relevant Select Sector Index to be included in the securities deposit required in connection with creation of Select Sector SPDRs in Creation Unit size aggregations.

Each of the nine Select Sector Indices, which is the benchmark for a Select Sector SPDR, is intended to give investors an efficient way to track the movement of baskets of the equity securities of public companies that are components of the Standard & Poor's 500 Composite Stock Index ("S&P 500") and are involved in specified sectors. Each stock included in a Select Sector Index (the "Component Stocks") will be selected from companies represented in the S&P 500. The nine Select Sector Indices together will include all of the companies represented in the S&P 500. Each S&P 500 stock will be allocated to one and only one of the Select Sector Indices. The CHX understands that each Select Sector Index will be calculated by the AMEX's Index Services Group ("AMEX ISG") using the "market capitalization" methodology (the same method used in calculating the S&P 500). This design should ensure that each of the component stocks within a Select Sector Index is represented in a proportion consistent with its percentage with respect to the total market capitalization of the Select Sector Index. Under certain conditions, the number of shares of a component stock may be adjusted to conform to requirements of Subchapter M under the Internal Revenue Code.[9]

The stocks included in a Select Sector Index have been assigned to a Select Sector Index by Merrill Lynch ("the Index Compilation Agent"). The Index Compilation Agent, after consultation with Standard & Poor's assigns stocks to a particular Select Sector Index with the aim of categorizing a company's fundamental business on the basis of the company's sales and earning composition and its predominant source of revenue among the company's business lines. In addition, such assignment is based on the sensitivity of the company's stock price and business results to the common factors that affect other companies in the specific Select Sector Index. Standard & Poor's has sole control over the removal of stocks from the S&P 500 and the selection of replacement stocks to be added to the S&P 500, but only plays a consulting role in the assignment of the S&P 500 component securities to any Select Sector Index. The assignment of component stocks to a Select Sector Index is the sole responsibility of the Index Compilation Agent. If Standard & Poor's removes a stock from the S&P 500, Merrill Lynch will remove the same stock from whichever Select Sector Index it is in. When Standard & Poor's assigns a replacement stock to the S&P 500, Merrill Lynch will assign the same stock to whichever Select Sector Index it deems appropriate.

Each Select Sector Index is weighted based on the market capitalization of each of the Component Stocks, subject to the following asset diversification requirements; (i) the market capitalization-based weighted value of any single Component Stock measured on the last day of calendar quarter may not exceed 24.99% of the total value of its respective Select Sector Index; and (ii) with respect to 50% of the total value of the Select Sector Index, the market capitalization-based weighted value of the Component Stocks must be diversified so that no single Component Stock measured on the last day of a calendar quarter represents more than 4.99% of the total value of its respective Select Sector Index, or in other words, the sum of the weight of all of the component stocks that each represent less than 5% of the Index must be equal to at least 50% of the Index weight.

Rebalancing the Select Sector Indices to meet the asset diversification requirements will be the responsibility of the AMEX ISG. If shortly prior to the last business day of any calendar quarter (a "Quarterly Qualification Date"), a Component Stock(s) approaches the maximum allowable value limits set forth above (the "Asset Diversification Limits"), the percentage that such Component Stock (or Component Stocks) represents in the Select Sector Index will be reduced and the market capitalization-based weighted value of such Component Stock (or Component Stocks) will be redistributed across the Component Stocks that do not closely approach the Asset Diversification Limits in accordance with the methodology set forth in the prospectus and Statement of Additional Information for the Select Sector SPDR Trust. The Select Sector Indices are calculated and disseminated by the AMEX ISG.

The Index Compilation Agency at any time may determine that a Component Stock which has been assigned to one Select Sector Index has undergone such a transformation in the composition of its business that it should be removed from the Select Sector Index and assigned to a different Select Sector Index. In the event that the Index Compilation Agent notifies the AMEX ISG that a Component Stocks Select Sector Index assignment should be changed, the AMEX will disseminate notice of the change by issuing an information circular to its membership within one business day of receipt of such notice and will implement the

[9] Each Select Sector SPDR Fund intends to qualify for and to elect treatment as a separate regulated investment company under Subchapter M. To qualify for such treatment, a company must annually distribute at least 90% of its net investment company taxable income (which includes dividends, interest and net short-term capital gains) and meet several other requirements, including certain diversification tests.

change in the affected Select Sector Indices no less than one week after the initial dissemination of information on the sector change to the extent practicable.

Component Stocks removed from and added to the S&P 500 will be deleted from and added to the appropriate Select Sector Index consistent with the timing of the announcement and effectiveness of additions and deletions from the S&P 500 insofar as practicable. The AMEX will announce a change to a Select Sector Index promptly following an announcement by Standard & Poor's of an addition to and deletion from the S&P 500.[10] Generally, changes in the applicable component stock for the relevant Select Sector SPDR Index will be made concurrently with Standard & Poor's change to the S&P 500.

Standard & Poor's will advise the AMEX ISG regarding the handling of nonroutine corporate actions which may arise from time to time and which may have an impact on the calculation of the S&P 500, and, consequently, on the calculation of the Select Sector Indices. Corporate actions such as a merger or acquisition, stock splits, and routine spin-offs, which require adjustments in the Select Sector Index calculation, will be handled by the AMEX staff. Index Divisor adjustments will be calculated, when necessary, in the same manner they are handled by Standard & Poor's in its maintenance of the S&P 500. In the event a merger or acquisition changes a company's fundamental business and source of revenues, the Select Sector Index assignment of the stock may change. In any event, a new Index Divisor for affected Select Sector Indices will be disseminated to the public promptly by the AMEX ISG.[11] Each Select Sector SPDR will normally invest at least 95% of its total assets in stocks that comprise the relevant Select Sector Index or stock equivalent positions which the Adviser deems appropriate as an alternative to such stocks.[12]

[10] Standard & Poor's generally announces S&P 500 changes five business days before they take effect.

[11] CHX has requested that AMEX forward changes in the Component Stocks of a Select Sector SPDR Index or the Index Divisors to the Exchange as it becomes publicly available. To the extent that the CHX has access to such information, the Exchange will notify its members of these changes. Telephone conversation between David Rusoff, Foley & Lardner, and Marc McKayle, Attorney, Division of Market Regulation, Commission, on January 12, 1999.

[12] Select Sector SPDRs generally will hold all of the securities in the applicable index, subject to certain conditions disclosed in the applicable prospectus.

(b) Trading Issues

The Select Sector SPDR shares will be deemed equity securities subject to all CHX rules governing the trading of equity securities, including, among others, rules governing priority, parity, and precedence of orders, market volatility related trading halt provisions, and responsibilities of specialists. The minimum trading increment under Article XX, Rule 22 for Select Sector SPDRs will be 1/64 of $1.00.

(c) Disclosure

Member firms will be informed by an information circular, prior to the commencement of trading, that investors purchasing Select Sector SPDRs must receive a fund prospectus prior to, or concurrently with, the confirmation of a transaction. The information circular will also address Exchange members' responsibilities under CHX Article VIII, Rule 25 ("know your customer rule") regarding transactions in such shares.[13] The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the characteristics of purchases of Select Sector SPDRs.

(d) Dissemination of Information by the Exchange

The value of the Select Sector Indices will be calculated continuously by AMEX and disseminated every 15 seconds on Network B of the Consolidated Tape Association ("CTA"). The major electronic financial data vendors, including Bloomberg, Quotron, Reuters, and Bridge Information Systems, are expected to publish information on the Select Sector and Technology 100 Indices for their subscribers.

To provide up to date pricing information for the Funds' shares, the AMEX will calculate and disseminate every 15 seconds through CTA Network B an amount representing on a per share basis the sum of the "Dividend Equivalent Payment" effective through and including the previous business day, plus the current value of the "Deposit Securities" (the sum of the Dividend Equivalent Payment plus the current value of the Deposit Securities is the "Value"). The Dividend Equivalent Payment is an amount intended to enable a Fund to make a distribution of dividends on the next payment date as if all the portfolio securities of the Fund had been held for the entire dividend period. The "Deposit Securities" consist of a designated portfolio of securities constituting a substantial replication, or a representation, of the stocks included in the relevant Fund index.

[13] CHX Article VIII, Rule 25 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.

(e) Other Characteristics of Select Sector SPDRs

For each of the nine series of Select Sector SPDRs, it is anticipated that a minimum of the three Creation Units will be outstanding at the commencement of trading on the Exchange. Select Sector SPDRs will pass along dividends and interest, net of expenses, to fund shareholders as "income dividend distributions." Net capital gains will be distributed to shareholders as "capital gain distributions."

The net asset value for the Funds is calculated by the Administrator, State Street Bank and Trust Company ("State Street"), which is also the Adviser and Custodian for the Funds. State Street will also act as the lending agent for the Select Sector SPDRs.[14] ALPS Mutual Funds Services, Inc. will serve as principal underwriter and distributor for the Select Sector SPDRs. Select Sector SPDRs will be registered in book-entry form through The Depository Trust Company.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and

[14] The lending agents for the Funds will cause the delivery of loaned securities from each Fund to borrowers, arrange for the return of loaned securities to the Fund at the termination of the loans, request deposit of collateral when required by the loan arrangements, and provide recordkeeping and accounting services.

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written Communications relating to the prapased rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–31 and should be submitted by February 16, 1999.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[15] Section 6(b)(5) provides that Exchange rules facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Moreover, that section of the Act requires that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[16]

As the Commission noted in greater detail in the order approving Select Sector SPDRs for listing and trading on AMEX.[17] the estimated cost of an individual Select Sector SPDRs [18] should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of stocks representing a particular sector of the marketplace. Under the proposed rule change, the benefits of Select Sector SPDRs will now be available to investors trading on CHX which could benefit investors through intermarket competition.

Although the value of Select SPDRs is based on the value of the securities and cash held in the Fund, Select Sector SPDRs are not leveraged instruments. Select Sector SPDRs are essentially equity securities that represent an interest in a portfolio of stocks designed to reflect substantially the applicable Select Sector SPDRs Index. Accordingly, it is appropriate to regulate Select Sector SPDRs in a manner similar to other equity securities. Nonetheless, the Commission believes that the characteristics of Select Sector SPDRs raise important disclosure, trading, and certain other issues.

(a) Trading of Select Sector SPDRs on CHX

The Commission finds that adequate rules and procedures exist to govern the trading of Select Sector SPDRs on CHX pursuant to UTP.[19] Select Sector SPDRs will be deemed equity securities subject to CHX's rules governing the trading of equity securities. Accordingly, the Exchange's existing general rules that currently apply to the trading of equity securities will also apply to Select Sector SPDRs. In addition, CHX's Article XXVIII, Rule 24,[20] which contains specific listing and delisting criteria to accommodate the trading of Units, will apply to the trading of Select Sector SPDRs.[21] The delisting criteria allow the Exchange to consider the suspension of trading and the delisting of a series of Units, including suspending trading in Select Sector SPDRs traded on the Exchange pursuant to UTP, if an event were to occur that made further dealings in such securities inadvisable. This will give the Exchange flexibility to suspend trading the Select Sector SPDRs if circumstances warrant such action. Accordingly, the Commission believes that CHX's equity rules in general, and CHX's Article XXVIII, Rule 24 in particular, provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest. The Commission also believes that the proposed rule change should help protect investors and the public interest, and help perfect the mechanisms of a national market system, in that it will allow for the trading of Select Sector SPDRs on CHX pursuant to UTP, making Select Sector SPDRs more broadly available to the investing public.

(b) Disclosure

The Commission believes that CHX's proposal should provide for adequate disclosure to investors relating to the terms and characteristics of trading Select Sector SPDRs. All Select Sector SPDRs investors, including those purchasing Select Sector SPDRs on CHX pursuant to UTP, will receive a prospectus regarding the product. Because Select Sector SPDRs trading on CHX pursuant to UTP will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply to both the initial investors and to investors purchasing such securities in the secondary market on CHX. The prospectus addresses the special characteristics of Select Sector SPDRs, including a statement regarding their redeemability and method of creation, and that Select Sector SPDRs are not individually redeemable.

CHX has also drafted an information circular that will be sent to all CHX members prior to the commencement of trading of Select Sector SPDRs. The information circular is intended to explain the characteristics of Select Sector SPDRs. The circular will note, for example, Exchange member responsibilities, including that before an Exchange member undertakes to recommend a transaction in Select Sector SPDRs it should make a determination that it is in compliance with the CHX suitability rules. The circular will also address member's responsibility to deliver a prospectus to all investors purchasing Select Sector SPDRs, as well as highlight the characteristics of Select Sector SPDRs, including that they are only redeemable in Creation Units.

(c) Dissemination of Information

The Commission believes that the Values the Exchange proposes to disseminate for the Funds should help to provide investors with timely and useful information concerning the value of the Select Sector SPDRs Fund shares on a per Fund basis. The Exchange understands that the information will be disseminated through the facilities of

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[15] U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See* AMEX Select Sector SPDRs Approval Order, *supra* note 7.

[18] As noted in the AMEX Select Sector SPDRs Approval Order *supra* note 7, the estimated cost at the time of the approval for trading on AMEX was $21 to $28 per individual Select Sector SPDR.

[19] Pursuant to Rule 12f–5 under the Act, in order to trade a particular class or type of security pursuant to unlisted trading privileges, the Exchange must have rules providing for transactions in such class or type of security. *See* 17 CFR 240.12f–5.

[20] The Commission approved generic rules for the listing and/or trading of investment company units on CHX in 1996. *See* Securities Exchange Act Release No. 37589 (August 21, 1996), 61 FR 44370 (August 28, 1996).

[21] The Commission notes the CHX listing and delisting criteria is similar to those adopted by AMEX to trade Select Sector SPDRs.

the CTA and will reflect currently available information concerning the value of the assets comprising the Deposit Securities. This information will be disseminated every 15 seconds during regular AMEX trading hours of 9:30 a.m. to 4:00 p.m., New York time. In addition, since it is expected that the Value will closely track the applicable Fund, The Commission believes that the Values will provide investors with adequate information to determine the intra-day value of the given Select Sector SPDR. As noted in the AMEX Select Sector SPDRs Approval Order, the Commission expects that the AMEX will monitor the disseminated Value, and if the AMEX were to determine that the Value does not closely track the applicable Fund, it would arrange to disseminate an adequate alternative value.[22]

(d) Surveillance

The Commission notes that CHX has submitted surveillance procedures for Select Sector SPDRs intended to address concerns associated with listing and trading such securities, including any concerns associated with specialists purchasing and redeeming Creation Units. The Exchange has represented that its surveillance procedures should allow it to identify situations where specialists purchase or redeem Creation Units to ensure compliance with CHX Article XXX, Rule 23(a), which requires that such purchases or redemptions facilitate the maintenance of a fair and orderly market in the subject security.[23]

CHX has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission believes that the Exchange's proposal to trade Select Sector SPDRs pursuant to unlisted trading privileges will provide investors with a convenient way of trading a basket of stocks, based upon a specific Select Sector Index as designated by Merrill Lynch, representing a particular sector of the marketplace. The Commission believes that the proposed rule change could produce added benefits to investors through the increased competition between other market centers trading the product. Specifically, the Commission believes that by increasing the availability of Select Sector SPDRs as an investment tool the CHX's proposal should help provide investors with increased flexibility in satisfying their investment needs, by allowing them to purchase and sell at negotiated prices throughout the trading day securities that replicate the performance of several portfolios of stock.[24]

As noted above, the Commission has approved the listing and trading of Select Sector SPDRs at the AMEX,[25] under rules that are substantially similar to CHX Article XXVIII, Rule 24. The trading requirements of Select Sector SPDRs at the CHX will be substantially similar to the trading requirements of Select Sector SPDRs at the AMEX. Additionally, the proposed rule change is analogous to the Commission's approval of the CHX's trading of WEBS pursuant to UTP and CHX Article XXVIII, Rule 24.[26] As a result, the Commission does not believe that trading of this product raises novel regulatory issues that were not addressed in the previous filings. Accordingly, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CHX–98–31) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1530 Filed 1–22–99; 8:45 am]

BILLING CODE 8010–01–M

[22] *See supra,* note 7.

[23] In the AMEX Select Sector SPDRs Approval Order, the Commission discussed the concerns raised when a broker-dealer is involved in the development and maintenance of a stock index upon which a product such as Select Sector SPDRs is based. The Commission noted the importance of the Exchange adopting adequate procedures to prevent the misuse of material, non-public information regarding changes to component stocks in a Select Sector SPDR Index. The CHX surveillance procedures should help to address concerns raised by Merrill Lynch's involvement in the management of the indices.

[24] Unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in Select Sector SPDRs can redeem them in creation unit size aggregations only.

[25] AMEX Select Sector SPDRs Approval Order, *supra* note 7.

[26] *See supra,* note 5.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40953; File No. SR–Phlx–99–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Modify Existing Rules Relating to Trading of the New European Currency, the Euro

January 15, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to change the references to the European Currency Unit ("ECU") to the New European currency ("Euro") in the Phlx rules in response to the European Council's decision to convert the ECU to the Euro on a one-to-one basis as of January 1, 1999.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 11, 1998, the Exchange re-introduced the ECU for trading in the non-customized environment anticipating the advent of the Euro.[3] Subsequently, the European Council agreed in the Maastrict Treaty to have a single European currency, the Euro. On January 1, 1999, the ECU converted to the Euro on a one-to-one basis. Accordingly, Phlx foreign currency options ("FCO") contracts on the ECU converted to the Euro pursuant to Phlx Rule 1009(c).[4] Phlx Rule 1009(c) states, in the event that any of the sovereign governments of the European Economic Community's European Monetary System issuing any of the above mentioned currencies should issue a new currency intended to replace the one of the above mentioned currencies as a standard unit of the official medium of exchange of such government. Such new currency also may be approved as an underlying currency for options transactions by the Exchange, subject to any approval criteria the Exchange may deem necessary or appropriate for the protection of investors.

Pursuant to Phlx Rule 1009(c), the Exchange believes that it is necessary and appropriate for investors that the Exchange recognize the conversion of the ECU to the Euro on a one-to-one basis and implement such changes to its FCO contracts, including options trading pursuant to Phlx Rule 1069. Because the ECU/Euro conversion was on a one-to-one basis, the Euro FCO contract size would be 62,500 Euros. The premium will be $.0044, per unit or $275 for an option contract having a unit of trading of 62,500, pursuant to Phlx Rule 1033. Pursuant to Rule 1014, the bid-ask differential for the Euro options will be $.0005 between the bid and the offer for each option contract for which the bid is $.0050 or less; no more than $.0010 where the bid is more than $.0050 but does not exceed $.0200; and no more than $.0015 where the bid is more than $.0200. The initial margin for the Euro would be 3%, the same margin as the ECU.[5] According to Phlx Rule 1034, the minimum trading increments for the Euro will be the same as the ECU, $.0001.

As a result of the conversion, the Exchange proposes to replace all references to the ECU with the Euro in the text of the various Phlx rules. Therefore, the Phlx is proposing to amend the text of Phlx Rules 1000(b)(15), 1009, 1014, 1033, 1034 and Options Floor Procedure Advice F–6 to reflect the proposed change.

2. Statutory Basis

The Phlx believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Phlx notes that the conversion of the ECU to the Euro was a major event in world financial markets. This conversion was adopted by the Exchange in order to provide investors with a continuous, uninterrupted market to hedge their currency risk using options on the Euro.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received at the time of this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,[7] and subparagraph (e) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–01 and should be submitted by February 16, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1606 Filed 1–22–99; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* Securities Exchange Act Release No. 39940 (April 30, 1998) 63 FR 25258 (May 7, 1998) (File No. SR–Phlx–98–17).

[4] The Commission notes that it was consulted by the Phlx prior to the conversion of the ECU to the Euro. On these facts, the Commission believes that the Euro replaces the previously approved ECU as the standard unit of the official medium of exchange of the European Council as required by Phlx Rule 1009(c). On different facts, however, the Exchange may need to submit a filing to the Commission, pursuant to Section 19(b)(2) of the Act, prior to trading an option on a new foreign currency intended to replace an existing foreign currency option.

[5] The Exchange submitted to the Commission a correlation analysis between the ECU and the Euro, which demonstrated nearly a one-to-one correlation. Thus, the Exchange proposes not to change the customer margin level for the Euro at this time. Subject to Phlx Rule 722, Commentary .15, the Exchange will re-examine the margin levels for the Euro on January 15, 1999.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4.

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2960]

Office of the Legal Adviser; Application of Certain United States Extradition Treaties to Parental Kidnapping

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: On October 31, 1998, President Clinton signed into law the

Extradition Treaties Interpretation Act of 1998 (Title II of Public Law 105–323). That Act authorizes the interpretation of the word "kidnapping" in international extradition treaties of the United States to include parental kidnapping. An earlier **Federal Register** notice issued by the State Department's Legal Adviser reflected a more limited interpretation of the word kidnapping in extradition treaties. This Notice explains the change in U.S. policy in this area, including the context of Public Law 105–323.

EFFECTIVE DATE: October 31, 1998.

FOR FURTHER INFORMATION CONTACT: Samuel M. Witten, Office of the Legal Adviser, Department of State (202–647–7324).

SUPPLEMENTARY INFORMATION: Title II of Public Law 105–323, the "Extradition Treaties Interpretation Act of 1998," addresses a unique issue that has arisen in the last twenty years of U.S. extradition practice. The U.S. Government's international extradition treaties negotiated prior to the late 1970's typically limit extradition to specific listed offenses and include the word "kidnapping" in the negotiated lists of those offenses. About 75 of the U.S. Government's approximately 110 extradition treaty relationships fall in this category of "list" treaties that include the word "kidnapping".

At the time these list extradition treaties were negotiated, the term "kidnapping" was generally understood in U.S. criminal law to exclude abductions or wrongful retentions of minors by their parents. In keeping with this narrow interpretation, on November 24, 1976 the State Department Legal Adviser issued a **Federal Register** Notice with a model "Bilateral Treaty on Mutual Extradition of Fugitives" which included the offense of "kidnapping" in the list of extraditable offenses while simultaneously noting that the model treaty would not reach "domestic relations problems such as custody disputes." *See* **Federal Register**, Vol. 141, No. 228, page 51897. Subsequently, the State Department has not interpreted such "list" treaties to permit extradition requests that would have construed the word "kidnapping" to include parental kidnapping.

U.S. law on this subject has evolved dramatically since most of these list treaties were negotiated. Parental kidnappings are now crimes at the federal level (*see* United States Code, Title 18, Section 1204), in all of the 50 states, and in the District of Columbia. Both in the context of abductions and wrongful retention of children from the United States in violation of these laws and, more generally, in the interest of enhanced international law enforcement cooperation under our extradition treaties, this narrow interpretation became the subject of concern on the part of the U.S. Departments of Justice and State, state and local prosecutors, and parents who would like the greatest possible flexibility in dealing with parental kidnapping situations.

In addition, as U.S. extradition practice evolved, the practice of including lists of extraditable offenses in extradition treaties was gradually abandoned in favor of generally permitting extradition for any crime that is punishable in both the requesting and requested States by more than one year's imprisonment. This advance in treaty practice made the list treaty situation particularly anomalous because parental kidnapping was typically an extraditable offense under the modern extradition treaties that rely on "dual criminality" rather than lists of offenses, so long as the relevant treaty partner has also criminalized the offense and all other conditions of the treaties are met.

Normally, the interpretation of "list" treaty offenses would simply evolve to reflect the evolution of new aspects of crimes that are identified in the list treaties. In this instance, however, the U.S. view had been widely disseminated, including by publication in the **Federal Register** in 1976, as a fixed policy of the U.S. Government. Therefore, in 1997 the State and Justice Departments brought this issue to the attention of the Congress. These consultations led to Public law 105–323, which addresses the matter by clarifying that "kidnapping" in extradition list treaties may include parental kidnapping, thus reflecting the major changes that have occurred in this area of criminal law in the last 20 years. With this clarification, the Executive Branch is now in a stronger position to make and act upon the full range of possible extradition requests dealing with parental kidnapping under list treaties that include the word "kidnapping" on such lists. This will help achieve the goal of enhancing international law enforcement cooperation in this area. The United States would, however, adopt this broader interpretation only once it has confirmed with respect to a given treaty that this would be a shared understanding of the parties regarding the interpretation of the treaty in question.

This change in the interpretation of "kidnapping" for purposes of extradition treaties is entirely unrelated to and would have no effect whatsoever on the use of civil means for the return of children, in particular under the Hague Convention on the Civil Aspects of International Parental Child Abduction. It addresses only countries with which we have "list" extradition treaties and would have no effect with respect to countries with which the United States has no extradition relationship or countries where we have a dual criminality treaty.

The adoption of this expanded interpretation with respect to each specific treaty, however, will depend of course on the views of the other country in question, as the interpretation of terms in a bilateral treaty must depend on a shared understanding between the two parties. The United States recognizes that not all countries have criminalized parental kidnapping, and many continue to treaty custody of children as a civil or family law matter that is not an appropriate subject for criminal action. We also recognize that this is an evolving area of criminal law and that some countries which do not currently criminalize this conduct may decide to do so in future years. For this reason, we will consult with our list treaty partners and will adopt the expanded interpretation only where there is a shared understanding to this effect between the parties.

Dated: January 11, 1999.

David R. Andrews,

The Legal Adviser, U.S. Department of State.

[FR Doc. 99–1585 Filed 1–22–99; 8:45 am]

BILLING CODE 4710–25–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Initiation of a Review To Consider the Designation of Mongolia as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of Mongolia for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of Mongolia as a beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria by April 2, 1999.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, N.W., Room 518, Washington, D.C. 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION: The government of Mongolia has requested that it be granted eligibility for beneficiary status under the GSP program. The Trade Policy Staff Committee (TPSC) has initiated a review to determine if Mongolia should be designated as a beneficiary developing country. A country may not be designated a GSP beneficiary developing country, absent a finding that such designation would be in the economic interests of the United States, if any one of several elements are found, including: the participation by the country in a commodity cartel that causes serious disruption to the world economy; the provision by the country of preferential treatment to products of other developed countries which has a significant adverse effect on U.S. commerce; the expropriation by the country of U.S.-owned property without compensation; a failure by the country to enforce arbitral awards in favor of U.S. persons; the support by the country of international terrorism; or a failure by the country to take steps to protect internationally recognized worker rights. Other factors taken into account in determining whether a country will be designated a beneficiary developing country include: the extent to which the country has assured the United States that it will provide market access for U.S. goods; the extent to which the country has taken action to reduce trade-distorting investment practices and policies; and the extent to which the country is providing adequate and effective protection of intellectual property rights. The criteria for designation are set forth in full in section 502 of the Trade Act of 1974, as amended (19 U.S.C. 2462).

Interested parties are invited to submit comments regarding the eligibility of Mongolia for designation as a GSP beneficiary developing country. Submission of comments must be made in English in 14 copies to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, and be received in Room 518 at 600 17th Street, N.W., Washington, D.C. 20508, no later than 5 p.m. on Friday, April 2, 1999. Except for submissions granted "business confidential" status pursuant to 15 CFR 2003.6 information and comments submitted regarding Mongolia will be subject to public inspection by appointment with the staff of the USTR Public Reading Room. For an appointment, please call Ms. Brenda Webb at 202/395–6186. If the document contains business confidential information, 14 copies of a nonconfidential version of the submission along with 14 copies of the confidential version must be submitted. In addition, the submission should be clearly marked "confidential" at the top and bottom of each page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either "public version" or 'non-confidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–1551 Filed 1–22–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 15, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5002.
Date Filed: January 13, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 10, 1999.
Description: Application of Continental Micronesia, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for renewal of its Guam/Saipan-Osaka authority for a five year period.

Docket Number: OST–99–5008.
Date Filed: January 15, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 12, 1999.
Description: Application of Community Air, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for a certificate of public convenience and necessity authorizing scheduled air transportation of persons, property, and mail within the states of California and Nevada.

Docket Number: OST–99–5010.
Date Filed: January 15, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 12, 1999.
Description: Application of Wrangell Mountain Air, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for a certificate of public convenience and necessity authorizing interstate scheduled passenger, cargo, and mail air transportation between any point in any state in the United States or District of Columbia, or any territory or possession of the United States, and any other point in any state of the United States or the District of Columbia, or any territory or possession of the United States.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–1563 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on February 10, 1999, at 10 a.m.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 3200–3204, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean Cascianofaa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Executive Committee to be held on February 10, 1999, at the U.S. Department of Transportation, 400 Seventh Street, SW., Room 3200–3204, Washington, DC. 10 a.m. The agenda will include:

- "Voting" members on working groups.
- Assessment of working group support.

• Administrative issues.

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by February 1, 1999, to present oral statements at the meeting. The public may present written statements to the executive committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to her at the meeting.

Sign and oral interpretation, as well as an assistive listening device, can be made available if requested 10 calendar days before the meeting by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC. on January 15, 1999.

Ida M. Klepper,

Acting Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–1552 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Implementation of Section 360 of the Omnibus Appropriations Act for Fiscal Year 1999 (Public Law 105–277)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of implementation of Section 360 of the Omnibus Appropriations Act for Fiscal Year 1999.

SUMMARY: Section 360 of the Omnibus Appropriations Act for Fiscal Year 1999 (Public Law 105–277) provides that FTA may allow certain recipients of Urbanized Area Formula Funds (Section 5307 of Title 49 U.S.C.) in areas with populations 200,000 or over that provide service for elderly persons and persons with disabilities, with 20 or fewer vehicles, to use a portion of their Section 5307 funds for operating assistance. Because of changes made by the Transportation Equity Act for the 21st Century (TEA–21), such funds would normally not be available for Federal transit operating assistance.

The chief executive or authorized official of a transit operation who believes his or her operation to be eligible for Federal transit operating assistance under Section 360 may submit a letter of intent to use the provisions of Section 360. The letter of intent should identify the transit property, address the criteria for eligibility listed herein, and identify the amount of funds that will be requested for Federal transit operating assistance for Fiscal Year 1999.

DATES: A letter of intent to apply for funds pursuant to Section 360 must be received by the appropriate FTA Regional Office on or before April 15, 1999. FTA will make a determination of the amount that may be used for Federal transit operating assistance on or before May 14, 1999.

ADDRESSES: Addresses of FTA Regional Offices are as follows:

Region 1—Boston. Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA. 02142–1093
Tel. 617 494–2055
Region 2—New York. I Bowling Green, New York, NY 10274
Tel. No. 212 264–8162
Region 3—Philadelphia. 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124
Tel. 215 656–7100
Region 4—Atlanta. 61 Forsyth Street, S.W. Suite 17T50 Atlanta, GA 30303–8917
Tel. 404 562–3500
Region 5—Chicago. 200 W. Adams Street, Suite 2410, Chicago, IL 60606–5232
Tel. 312 353–2789
Region 6—Ft. Worth. 819 Taylor Street, Room 8A36 Ft. Worth, TX 76102
Tel. 817 978–0550
Region 7—Kansas City, MO. 6301 Rockhill Road, Suite 303 Kansas City, MO 64131–1117
Tel. 816 523–0204
Region 8—Denver. Columbine Place, 216 16th St., Suite 650 Denver, CO 80202–5120
Tel. 303 844–3242
Region 9—San Francisco. 201 Mission Street, Room 2210 San Francisco, CA 94105–1800
Tel. 415 744–3133
Region 10—Seattle. Jackson Federal Building, 915 Second Avenue, Suite 3142 Seattle, WA 98174–1002
Tel. 206 220–7954

FOR FURTHER INFORMATION CONTACT: Mr. Douglas A. Kerr, Director, Office of Program Guidance and Support, Federal Transit Administration (Tel. (202) 366–1656).

SUPPLEMENTARY INFORMATION: In the Omnibus Appropriations Act for Fiscal Year 1999 (Public Law 105–277 dated October 21, 1998, Congress added a provision that allows operating expenses of certain transit operators in areas with populations of 200,000 and over to be an eligible cost category under the Urbanized Area Formula Program, Section 5307 of Title 49 U.S.C. The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178) eliminated the eligibility of Federal transit operating assistance for urbanized areas with populations 200,000 or over. The provision, Section 360 of the Omnibus Act, amends Section 3027 of the TEA–21 by adding the following language:

"(3) Services for Elderly and Persons with Disabilities. In addition to assistance made available under paragraph (1), the Secretary may provide assistance under section 5307 of title 49 United States Code, to a transit provider that operates 20 or fewer vehicles in an urbanized area with a population of at least 200,000 to finance the operating costs of equipment and facilities used by the transit provider in providing mass transportation services to elderly and persons with disabilities, provided that such assistance to all entities shall not exceed $1,000,000 annually."

The intent of Congress is to protect—"hold harmless"—from the loss of Federal transit operating assistance certain small providers in urbanized areas larger than 200,000 that provide demand-responsive service to accommodate elderly persons and/or persons with disabilities in areas in which there is no other transit service. The provision of Section 360 is designed not as a new window of opportunity to use Federal funds for transit operating assistance but as a corrective action to address a need the Congress identified in large urbanized areas in which there is no other transit service provided for elderly persons and persons with disabilities.

Amount Available

Section 5307 funds made eligible for operating assistance by Omnibus Act amount to a total of $1 million per year. Such demand responsive service to elderly persons and/or persons with disabilities will be eligible for FTA operating assistance at the 50/50 Federal/local share ratio.

The $1 million made eligible for Federal transit operating assistance by Section 360 of the Omnibus Act is not additional money; nor is it a set-aside. Rather, this provision establishes an optional additional eligibility for the use of Section 5307 funds by past recipients of Section 5307 funds that qualify to use a portion of the Fiscal Year 1999 funds for operating assistance.

Funds for ADA-Related Paratransit

The funds eligible for operating assistance under Section 360 of the Omnibus Act are not available to operate the paratransit services complementary to fixed route bus services that are required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12143). TEA–21, at Section 3027, amended Section 5302(a) of Federal transit law to expand the

definition of an eligible FTA-assisted capital project to include costs for operating ADA-related complementary paratransit in any sized UZA, for any grant applicant that is in compliance with ADA. Hence, providers of ADA-related paratransit service may apply for funds at the 80/20 Federal/local share ratio in accordance with Section 3027 of TEA–21. Up to 10 percent of the urbanized area's apportionment under Section 5307 of Title 49, Chapter 53, may be used for the ADA-related costs. The option to use and the allocation of the 10 percent is to be made by the local Metropolitan Planning Organization.

Critera

The criteria by which FTA will allow eligibility for Federal transit operating assistance under the provisions of Section 360 of the Omnibus Appropriations Act for Fiscal Year 1999 are as follows:

1. The operator provides demand responsive service exclusively for elderly persons and/or persons with disabilities. Such service does not include service for the general public.
2. The number of demand responsive vehicles, operated in maximum service, is 20 or fewer.
3. The operator provides the demand responsive service in a UZA with a population of 200,000 or over.
4. The demand-responsive service provided is not ADA paratransit service complementary to fixed route service.
5. Neither fixed-route nor ADA-related paratransit service complementary to fixed-route service is provided in the service areas serve by the demand responsible service for which Federal transit operating assistance will be requested.
6. The transit provider, in at least one of Federal Fiscal Years 1996, 1997, or 1998, has received an FTA grant for operating assistance under Section 5307 of Title 49 U.S.C. or has received operating assistance under Section 5307 passed through from another FTA grantee and has reported the assistance in the National Transit Database. An exception to the criteria of reporting the funds received by a pass through arrangement would be the case in which FTA has allowed an exemption to the reporting because the transit operator operated nine or fewer vehicles.
7. The Metropolitan Planning Organization concurs in the use for operating assistance of a portion of the urbanized area's Section 5307 apportionment.

Calculation

After determining a transit provider's eligibility to use Section 5307 funds for operating assistance, and taking into account the total amounts of Federal transit operating assistance being requested, FTA will determine the amount for which the recipient is eligible. Determination will be made on the basis of the recipient's past receipt—either directly or indirectly—of Federal transit operating assistance under Section 5307 of Title 49 U.S.C. The transit operator will not receive more than the maximum the operator has received in any one of the Federal Fiscal Years 1996, 1997, or 1998.

If the total amount requested by all eligible recipients pursuant to Section 360 is greater than $1 million, FTA will calculate the amount eligible to each eligible recipient on the basis of Federal transit operating assistance obligated to or passed through to the particular eligible recipient in the past, as a proportion of the total amount of Federal transit operating assistance obligated to or passed through to all of the eligible recipients requesting eligibility under Section 360.

FTA Grant Application Requirements

All of the normal FTA grant requirements regarding Federal transit operating assistance apply, as described in Appendix D of FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions." dated October 1, 1998. Understanding that amendments to Transportation Improvement Programs (TIP) and to State Transportation Improvement Programs (STIP) will have to be made, FTA will not require that the funds be programmed in a TIP before the letter of intent is received. Use of the funds under Section 360 must be programmed in an approved TIP and an approved STIP, however, before FTA can obligate funds.

Letter of Intent

The letter of intent, which must be received by the appropriate FTA Regional Office on or before April 15, 1999, should address the following:

1. Each criterion of eligibility listed.
2. The amounts of Federal transit operating assistance received, either directly or indirectly, in each of Federal Fiscal Years 1996, 1997, and 1998.
3. The amount of Fiscal Year 1999 funds that will be requested for Federal transit operating assistance. Such amount may not be greater than the maximum amount received in any one of Federal Fiscal Years 1996, 1997, or 1998.

Issued on: January 20, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–1632 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–4973]

Nissan Motors Corporation U.S.A.; Receipt of Application for Decision of Inconsequential Noncompliance

Nissan Motor Corporation U.S.A. (Nissan) has determined that certain 1998 and 1999 Nissan Frontier pickup trucks equipped with automatic transmissions were not in full compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 102, "Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Nissan has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

We are publishing this notice of receipt of an application as required by 49 U.S.C. 30118 and 30120. This action does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Under S3.1.4.1 of FMVSS No. 102, if a vehicle's transmission shift lever sequence includes a park position, identification of the shift lever positions (including the positions in relation to each other and the position selected) shall be displayed in view of the driver under two conditions: if the ignition is in a position where the transmission can be shifted, or the transmission is not in park.

From September 1997 to August 1998, Nissan produced approximately 22,000 U.S. light trucks that use an electronic display in the instrument panel to indicate transmission gear position. In these vehicles, when the ignition key is in the "OFF" or "ACCESSORY" position, the selected gear position is not displayed. "OFF" refers to the range of movement of the ignition key between the "LOCK" and "ACCESSORY" positions. The gear selector lever can be moved while the ignition switch is in "OFF" or "ACCESSORY." There is no detent for "OFF" as the key is rotated nor is "OFF" labeled on the ignition switch.

There is a detent for "ACCESSORY" and it is labeled on the ignition switch. Nissan believes that it is highly unlikely that a driver would actually turn and leave the key in the "OFF" position. Nissan states that the affected vehicles do comply with all other requirements of FMVSS 102.

Nissan supports its application for inconsequential noncompliance with the following statements:

The situation involving the Frontier trucks is essentially the same as that described in an inconsequentiality petition filed by General Motors Corporation in 1993 and granted by NHTSA. See 58 FR 16735, March 30, 1993 and 58 FR 33296, June 16, 1993. The petitioner in that matter stated that, on certain of its vehicles, the PRNDL display would not be illuminated if the transmission was left in a position other than "PARK" when the ignition key was turned "OFF." The petitioner noted that the vehicles in question complied with FMVSS 102 during normal ignition activation and vehicle operation. In that matter, NHTSA concluded that since the noncompliance did not occur during times that the affected vehicles were operated, "the noncompliance presents no discernible threat to safety." See 58 FR 33297.

As NHTSA noted in proposing the current version of the standard (49 FR 3240911, August 25, 1988), the purpose of the display requirement is to "provide the driver with transmission position information for the vehicle conditions where such information can reduce the likelihood of shifting errors." In all but the rarest circumstances, the primary function of the transmission display is to inform the driver of gear selection and relative position of the gears while the engine is running.

In the case of the Nissan trucks, the selected gear position and PRNDL display are always visible when the engine is running. The selected gear position is not shown in the instrument panel electronic display if the engine is turned off. If the ignition key is rotated to the "ON" position, the selected gear position immediately illuminates. If the transmission is in "PARK" and the engine is started, the selected gear position becomes immediately visible.

If the driver seeks to start the truck when the transmission is not in the "PARK" or "NEUTRAL" position, ignition would be impossible, as required under FMVSS 102. As soon as the ignition key is rotated to the "ON" or "START" position, the selected gear would become immediately apparent as the display is illuminated under these conditions. This means that the engine will only start under the condition that the PRNDL and selected gear position are visible to the driver.

Because the movement of the shift lever to place the transmission in "PARK" is the same on all vehicles using a column-mounted shift lever, that is, pulled toward the driver and then moved all the way to the left, most drivers do not rely on the PRNDL display to ensure the transmission is in "PARK." This means that it is highly unlikely a driver attempting to place the transmission in "PARK" would fail to do so even if the gear position was not visible on the PRNDL display.

If the driver were to attempt to remove the key before exiting the vehicle while erroneously believing that the transmission is in "PARK" (with the ignition key being in the "OFF" or "ACCESSORY" position), it would be impossible to remove the key from the ignition. This would alert drivers that the transmission was not in "PARK" and cause them to put it in "PARK" so that they could remove the key. If the driver opens the door before attempting to remove the key, the FMVSS 114 audible warning would sound when the door is opened, providing further indication of the improper gear selection. As stated by NHTSA, exiting the vehicle in these circumstances "would be limited to the rare situation." See 54 FR 29042, 29044 (July 11, 1989).

Nissan believes that the theoretical risk of one of the subject vehicles rolling away after the driver exits the vehicle because they failed to place the transmission in "PARK" and/or to engage the parking brake while leaving the key in the ignition switch in the "OFF" or "ACCESSORY" position so that the selected gear is not displayed in the PRNDL is no higher than in a vehicle in which the PRNDL display is working properly.

Although there may be rare circumstances when it would be useful to know the gear position when the engine is off, this information is provided by the shift lever position. Moreover, the electronic display can be illuminated simply by turning the key to the "ON" position. As noted above and as stated in the final notice granting the General Motors petition, "in all but the rarest circumstances, the primary function of the PRNDL display is to inform the driver of gear selection and relative position of the gears while the engine is running." See 58 FR 33297.

The gear selector lever on these trucks cannot be moved from the "PARK" position if the key is not in the ignition switch. Therefore, the fact that the selected gear is not displayed in the PRNDL with the ignition key in the "OFF" or "ON" position has no relevance when the key is not in the switch.

Nissan has no record of any customer complaint or accident report that could be associated with or attributed to this condition.

We invite you to comment in writing on Nissan's application. Comments should refer to the docket number and be submitted in two copies to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590.

We will consider comments received before the close of business on the closing date indicated below. We will file the application and supporting materials. We will consider, to the extent possible, all comments received after the closing date. When we grant or deny the application, we will publish the notice in the **Federal Register**.

Comment closing date: February 24, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 19, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–1584 Filed 1–22–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 132X)]

Union Pacific Railroad Company—Abandonment Exemption—in Rio Grande and Mineral Counties, CO

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 21.6-mile line of railroad known as the Creede Branch, extending from milepost 299.3 near Derrick to the end of the line at milepost 320.9 at Creede, in Rio Grande and Mineral Counties, CO.[1] The line

[1] The line is located on the former railroad known as The Denver and Rio Grande Western Railroad Company, a company of the former Southern Pacific Transportation Company which merged into UP pursuant to Board authority granted in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760, Decision No. 44 (STB served Aug. 12, 1996). In this filing, UP is seeking to abandon the stub end of the line.

traverses United States Postal Service Zip Codes 81154 and 81130.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Because a formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 6, 1999,[2] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[3] any additional formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 4, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 16, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 29, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by January 25, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 15, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–1620 Filed 1–22–99; 8:45 am]

BILLING CODE 4915–00–P

[2] Under 49 CFR 1152.50(3), the notice would have been scheduled to become effective on February 24, 1999, but a formal expression of intent to file an OFA has been filed by the Denver & Rio Grande Railway Historical Foundation (D&RHF) to purchase or to acquire by donation the entire line. D&RHF's notice of intent automatically will stay the effective date of the exemption until March 6, 1999. *See* 49 CFR 1152.27(c)(2)(i). An OFA is due no later than 30 days after the **Federal Register** publication of the notice of exemption. *See* 49 CFR 1152.27(c)(2)(ii)(B). Thus, an OFA is due no later than February 24, 1999.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C. 2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of International Financial Analysis within the Department of the Treasury is soliciting comments concerning Treasury International Capital Forms CQ–1 and CQ–2, Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

DATES: Written comments should be received on or before March 26, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 622–1276.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form CQ–1, Financial Liabilities to, and Claims on, Unaffiliated Foreigners; and Treasury International Capital Form CQ–2, Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

OMB Number: 1505–0024.

Abstract: Forms CQ–1 and CQ–2 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Forms CQ–1 and CQ–2 are quarterly reports filed by nonbanking enterprises in the U.S. to report their international portfolio transactions with unaffiliated foreigners. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: No changes to reporting requirements for the forms are proposed at this time.

Type of Review: Extension.

Affected Public: Business or other for-profit organizations.

Forms CQ–1 and CQ–2 (1505–0024).

Estimated Number of Respondents: 500.

Estimated Average Time per Respondent: 4 hours per respondent per filing.

Estimated Total Annual Burden Hours: 8,000 hours, based on 4 reporting periods per year.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the requests for OMB approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether Forms CQ–1 and CQ–2 are necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness, and clarity of the information to be collected: ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 99–1521 Filed 1–22–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Submission for OMB review; joint comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the OCC, Board, and FDIC hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of an information collection titled the Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks (FFIEC 004). The OCC's title for this information collection is (MA)—Insider Transactions (12 CFR 31).

The OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before February 24, 1999.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219; Attention: Paperwork Docket No. 1557–0070 (FAX number (202) 874–5274; Internet address: regs.comments@occ.treas.gov). Comments will be available for inspection and photocopying at that address.

Board: Written comments should be addressed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information may be sent to:

OCC: Jessie Gates, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Mary M. McLaughlin, Chief, Financial Reports Section (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: Request for OMB approval to extend without revision, the following currently approved collection of information:

Report Title: Board and FDIC: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks. OCC: (MA)—Insider Transactions (12 CFR 31).

Form Number: FFIEC 004.

Frequency of Response: Annually (for executive officers and principal shareholders), and on occasion (for national, state member, and insured state nonmember banks).

Affected Public: Individuals or households, business or other for-profit.

Type of Review: Extension of currently approved collection.

For OCC

OMB Number: 1557–0070.

Estimated Number of Respondents: 27,500 (25,000 executive officers and principal shareholders fulfilling recordkeeping burden, 2,500 national banks fulfilling recordkeeping and disclosure burden).

Estimated Time per Response: 2.95 hours.

Estimated Total Annual Burden: 81,250 hours.

For Board

OMB Number: 7100–0034.

Estimated Number of Respondents: 4,955 (3,964 executive officers and principal shareholders fulfilling recordkeeping burden, 991 state member banks fulfilling recordkeeping and disclosure burden).

Estimated Time per Response: 1.12 hours.

Estimated Total Annual Burden: 5,551 hours.

For FDIC

OMB Number: 3064–0023.

Estimated Number of Respondents: 29,925 (23,940 executive officers and principal shareholders fulfilling recordkeeping burden, 5,985 insured state nonmember banks fulfilling recordkeeping and disclosure burden).

Estimated Time per Response: 1.8 hours.

Estimated Total Annual Burden: 53,865 hours.

Burden Note for all Agencies: The estimated time per response is an average which varies by agency because of differences in the sizes of banks under each agency's supervision, differences in the number of executive officers and principal shareholders subject to the recordkeeping requirements at banks of different sizes, and differences in the number of correspondent banks for banks of different sizes. Also, the time per response represents an average of (a) the recordkeeping requirements for executive officers and principal shareholders (which is estimated to range from 0.5 to 10 hours depending on individual circumstances); and (b) the recordkeeping and disclosure requirements for banks (which is estimated to range from 0.5 to 25 hours depending on individual circumstances).

General Description of Report: This information collection is mandatory: 12 U.S.C. 1972(2)(G) (all); 12 U.S.C. 93a, 12 U.S.C. 1817(k), and 12 CFR part 31 (OCC); 12 U.S.C. 375(a)(6) and (10), 12 U.S.C. 375(b)(10), and 12 CFR part 215 (Board); 12 CFR 304.5(e), 12 CFR 349.3, and 12 CFR 349.4 (FDIC).

Abstract: Executive officers and principal shareholders of insured banks must file with the bank the information contained in the FFIEC 004 report on their indebtedness and that of their related interests to correspondent banks. Banks must retain these reports or reports containing similar information and fulfill other recordkeeping requirements, such as furnishing annually a list of their correspondent banks to their executive officers and principal shareholders. Banks also have certain disclosure requirements for this information collection. On July 1, 1998, the three agencies jointly published a notice in the **Federal Register** (63 FR 36034) inviting comment on the extension of this collection of information, with no proposed changes.

Current Actions: The agencies received comments from four banking organizations on the extension of this collection of information. Most of the commenters suggested changes to the information that executive officers and principal shareholders must provide in the FFIEC 004 report. However, several of these suggestions are inconsistent with certain requirements of the Board's Regulation O (12 CFR part 215), "Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks," 12 CFR part 349 of the FDIC's regulations, or statutes. The agencies will review their regulations to determine whether any of the suggested changes are consistent with the statute and with safety and soundness and, therefore, should be proposed. If so, corresponding changes to the FFIEC 004 would be proposed. The agencies note that the information required by Regulation O and Part 349 may be submitted in any format and does not have to be completed on this particular form.

One commenter suggested that the term "Maximum Amount of Indebtedness Outstanding" be clarified as it applies to lines of credit. For lines of credit, the "Maximum Amount of Indebtedness Outstanding" includes the full amount of the line of credit granted, not the amount actually borrowed against the line.

Comments: Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections; including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 12, 1999.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, January 19, 1998.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this 22 day of December, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–1528 Filed 1–22–99; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P and 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–7

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–7, Application for IRS Individual Taxpayer Identification Number.

DATES: Written comments should be received on or before March 26, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for IRS Individual Taxpayer Identification Number.

OMB Number: 1545–1483.

Form Number: W–7.

Abstract: Form W–7 is used to apply for an IRS individual taxpayer identification number (ITIN). An ITIN is a nine-digit number issued by the IRS to individuals who are required to have a

U.S. taxpayer identification number but who do not have, and are not eligible to obtain, a social security number. ITINs are intended for tax use only.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 1 hr., 3 min.

Estimated Total Annual Burden Hours: 525,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1516 Filed 1–22–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3115

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3115, Application for Change in Accounting Method.

DATES: Written comments should be received on or before March 26, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Change in Accounting Method.

OMB Number: 1545–0152.

Form Number: 3115.

Abstract: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 6,400.

Estimated Time Per Respondent: 44 hr., 44 min.

Estimated Total Annual Burden Hours: 286,334.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1517 Filed 1–22–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–262–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–262–82 (TD

8600), Definition of an S Corporation. (§ 1.1361–1).

DATES: Written comments should be received on or before March 26, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Definition of an S Corporation.

OMB Number: 1545–0731.

Regulation Project Number: PS–262–82.

Abstract: This regulation provides the procedures and the statements to be filed by certain individuals for making the election under Internal Revenue Code section 1361(d)(2), the refusal to consent to that election, or the revocation of that election. The statements required to be filed are used to verify that taxpayers are complying with requirements imposed by Congress under subchapter S.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 1,005.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,005.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–1518 Filed 1–22–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 64, No. 15

Monday, January 25, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

Correction

In notice document 99–960 appearing on page 2474, in the issue of Thursday, January 14, 1999, make the following correction:

On page 2474, in the third column, under the heading **TIME AND DATE:**,"February 2, 1999" should read "February 12, 1999".

[FR Doc. C9–960 Filed 1-22-99; 8:45 am]

BILLING CODE 1505–01–D

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. 98-3A CARP]

Copyright Arbitration Royalty Panels; Rules and Regulations

Correction

In proposed rule document 99–1239, appearing on page 3055, in the issue of Wednesday, January 20, 1999, in the second column, in the **DATES:** section, in the second line, "March 22, 1999" should read "March 8, 1999".

[FR Doc. C9–1239 Filed 1–22–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Monday
January 25, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 484 and 488

Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set (OASIS) Data as Part of the Conditions of Participation for Home Health Agencies and Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 484 and 488

[HCFA–3006–IFC]

RIN 0938–AJ10

Medicare and Medicaid Programs: Reporting Outcome and Assessment Information Set (OASIS) Data as Part of the Conditions of Participation for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: Section 4602(e) of the Balanced Budget Act of 1997 authorizes the Secretary to require that home health agencies (HHAs) submit any information that the Secretary considers necessary to develop a reliable case mix system. This interim final rule with comment period requires electronic reporting of data from the Outcome and Assessment Information Set (OASIS) as a condition of participation for HHAs. Specifically, this rule provides guidelines for HHAs for the electronic transmission of the OASIS data set as well as responsibilities of the State agency or HCFA OASIS contractor in collecting and transmitting this information to HCFA. This interim final rule also sets forth rules concerning the privacy of patient identifiable information generated by the OASIS. The requirements of this interim final rule with comment period are necessary to establish a prospective payment system for HHAs and to achieve broad-based, measurable improvement in the quality of care furnished through Federal programs.

DATES: *Effective Date:* February 24, 1999. *Applicability Date:* Regulations at § 484.20 are applicable for testing of the HHA's transmission system and encoding of OASIS data on March 26, 1999, and for reporting of the HHA's OASIS data on April 26, 1999.

Comment Period: Comments will be considered if we receive them at the appropriate address no later than 5:00 p.m. on March 26, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3006–IFC, P.O. Box 7517, Baltimore, MD 21244–1850.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201; or

Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on ordering copies of the **Federal Register** containing this document and electronic access, see the beginning of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Tracey Mummert, (410) 786–3398 or Mary Weakland, (410) 786–6835.

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3006–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 445–G of the Department's offices at 200 Independence Avenue SW, Washington, DC, Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of the comments to:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke HCFA–3006–IFC; and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders may also be placed by calling the order desk at (202) 512–1800 or by faxing an order to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

A. General

Home health services are covered for the elderly and disabled under the Hospital Insurance (Part A) and Supplemental Medical Insurance (Part B) benefits of the Medicare program and are described in section 1861(m) of the Social Security Act (the Act). These services must be furnished by, or under arrangement with, an HHA that participates in the Medicare program, and must be provided on a visiting basis in the beneficiary's home.

Section 1861(o) of the Act specifies certain requirements that a home health agency must meet to participate in the Medicare program. (Existing regulations at 42 CFR 440.70(d) specify that HHAs participating in the Medicaid program must also meet the Medicare conditions of participation (COPs)). In particular, section 1861(o)(6) of the Act provides that an HHA must meet the COPs specified in section 1891(a) of the Act and any other COPs that the Secretary finds necessary in the interest of the health and safety of HHA patients. Section 1861(o)(8) of the Act provides that an HHA must meet additional requirements that the Secretary finds necessary for the effective and efficient operation of the home health program.

Section 1891 of the Act sets forth the conditions that HHAs must meet to participate in the Medicare program. Specifically, section 1891(a) of the Act establishes specific requirements for HHAs in several areas, including patient rights, home health aide training and competency, and compliance with applicable Federal, State, and local laws. Under section 1891(b) of the Act,

the Secretary is responsible for assuring that the COPs, and their enforcement, are adequate to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of Medicare funds. In accordance with sections 1864 and 1891(c) of the Act, State agencies generally conduct surveys of HHAs to determine whether they are complying with the COPs.

Under the authority of sections 1861(o), 1871, and 1891 of the Act, the Secretary has established in regulations the requirements that an HHA must meet to participate in Medicare. These requirements are set forth at 42 CFR part 484, Conditions of Participation: Home Health Agencies. The COPs apply to an HHA and the services furnished to each individual under the care of the HHA, unless a condition is specifically limited to Medicare beneficiaries.

Section 1864 of the Act authorizes the use of State agencies to determine providers' compliance with the COPs. Responsibilities of States in ensuring compliance with the COPs are set forth in regulations at 42 CFR part 488, Survey, Certification, and Enforcement Procedures.

B. New Legislation and Related Regulations

Section 4603 of the Balanced Budget Act (Public Law 105–33 (BBA)), enacted on August 5, 1997, amended the Act to require the Secretary to establish a prospective payment system for home health care. Although the implementation of a prospective payment system will be delayed until all related systems achieve year 2000 compliance, we will still need to begin receiving the data to be used for standardizing the payment amounts as soon as possible. The BBA reformed the payment system for Medicare home health services to achieve $21.2 billion in savings by the year 2002. These reductions were undertaken as part of the overall strategy to balance the federal budget and extend solvency of the Medicare trust fund. The payment reform for home health services includes an interim payment system (IPS) with reduced cost limits and eventual implementation of a prospective payment system for HHAs. Details of the IPS can be found in the March 31, 1998 **Federal Register** at 63 FR 15718. The IPS will generally result in overall reduced payments to HHAs. Our objective in implementing the provisions of section 4603 of the BBA is to develop a payment system that promotes HHA efficiency while assuring that providers who serve patients with high care needs are reimbursed within statutory dictates.

In order to implement this prospective payment system, it is necessary that we have data from HHAs to develop a reliable case-mix adjuster system. Section 4602 of the BBA provides that, for cost reporting periods beginning on or after October 1, 1997, the Secretary may require HHAs to submit additional information that the Secretary considers necessary for the development of a reliable case-mix system. We intend for the Outcome and Assessment Information Set (OASIS), a data set comprised of patient care items developed for the purpose of measuring patient health care outcomes in HHAs, to be the vehicle through which information for the case-mix system is collected. Thus, as discussed below, to facilitate the implementation of the prospective payment system and to gather data that can be used to evaluate and develop plans to improve outcomes of care in HHAs, we are publishing two regulations in this issue of the **Federal Register**. Specifically, we are publishing a final rule titled, "Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies," which requires that HHAs complete a comprehensive assessment for each patient and that they incorporate the OASIS into their comprehensive assessment process. In addition, as discussed in detail below, in this interim final rule with comment period, we are requiring that HHAs electronically report data from the OASIS to the State agency or other entity designated by HCFA (HCFA OASIS contractor).

II. Provisions of This Interim Final Rule With Comment Period

In this regulation we are requiring Medicare-approved HHAs and those HHAs that are required to meet Medicare conditions (including Medicaid HHAs and managed care organizations providing home health services to Medicare and Medicaid beneficiaries) to, with certain exceptions, report via electronic transmission their OASIS data to a database established by HCFA within each State. These reporting requirements are consistent with the collection requirements also published today in this issue of the **Federal Register**.

In addition to requirements for HHAs, this interim final rule with comment period includes responsibilities of the State agencies and HCFA OASIS contractors, which have been approved by HCFA to maintain an OASIS database. Finally, to ensure confidentiality of patient identifiable data generated by the OASIS, we are setting forth requirements for State agencies, HCFA OASIS contractors, and HHAs regarding the release of this information.

A. Section 484.20 Condition of Participation: Reporting OASIS Information

We are adding a new § 484.20, Condition of Participation: Reporting OASIS Information, to provide that HHAs must report OASIS data on all patients except those specified in the preamble to the regulation describing collection of OASIS data, that is, "Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies," mentioned previously. This new COP at § 484.20 will consist of four standards, which are discussed in detail below.

In 1988, we entered into a contract with the Center for Health Services and Policy Research at the University of Colorado Health Sciences Center to develop, test, and refine a system of outcome measures that could be used for outcome-based quality improvement in HHAs. The results of subsequent studies have shown that the collection of precise information on the health status of patients at different points in time can be used in a variety of ways. Once reported to a central database, the compiled, aggregate results of the collection of OASIS data can be used by the HHA to determine how it is performing in terms of patient outcomes compared with other HHAs. The term most often linked with the use of OASIS data to improve quality of care is "outcome-based quality improvement" or OBQI. The OASIS data set is but one of several components of OBQI.

Other components of OBQI include using outcome and case mix reports within an agency to improve quality, evaluate effectiveness of practice, and better manage care to enhance outcomes and control costs and utilization. Outcome reports will be generated by the State agency or HCFA OASIS contractor and will contain data related to patient outcome and case mix findings based on the patient-level data submitted by the HHA. For example, outcome reports may provide information relative to hospitalization rates, medication management, and patient functional status within an HHA. These data will be displayed relative to the individual HHA, along with data representing local and national trends. When outcome reports become available, we expect that each

HHA will be able to use them in its own quality assessment and performance improvement program. HHAs will be able to examine specific care domains and case mix of patients, compare current performance to past performance, and compare their aggregate outcomes to national reference values, that is, the aggregate outcomes from all HHAs. The HHA could then compare its performance with other HHAs locally, regionally, and nationally. This information will be advantageous not only to Medicare beneficiaries and other home care clients, but also to the home care industry in demonstrating its effectiveness. For example, as a result of collecting OASIS information and submitting it to a central data base for evaluation, the University of Colorado has data indicating a statistically significant decrease in rate of re-hospitalization among HHA patients when the agency incorporates outcome reports into its OBQI program.

Outcome reports will most likely be available to HHAs from State agencies on a yearly basis, based on OASIS data that HHAs report to the State. These data will be used to establish and maintain a national database, based on the data from outcome reports. To generate outcome reports that are statistically valid, it is necessary that HHAs transmit a sufficient number of data points. Results of the OASIS demonstration project suggest that reports be based on the collection of data over a year's time. We estimate that outcome reports will begin to be made available no less than one year from the date HHAs are required to begin reporting their OASIS data. We expect that the outcome reports will be made available at least annually thereafter.

In addition, we, along with State agencies, will be able to use the outcome reports to identify opportunities for improvement in national or local priority areas, such as a project to improve medication management for beneficiaries generally or to shorten the time necessary to achieve a clinically important patient outcome. Therefore, the benefit of reporting OASIS data is two-fold. We not only meet our statutory requirements for establishing a prospective payment system for home health but also gather data that can be used at a national level to evaluate and develop plans to improve outcomes of care in the Medicare and Medicaid home health benefit. We believe that computerized patient assessment data would be a valuable resource to monitor trends in patient care in the home health industry. In addition, a national data base would provide important insights into the structure of the industry and use of resources to achieve positive patient outcomes.

In our companion regulation concerning collection of OASIS data items, time frames for completing OASIS data sets are described for the comprehensive assessment (5 days from start of care), routine update of the comprehensive assessment (two calendar months from start of care), and discharge from a hospital admission, that is, resumption of care (48 hours). Specific time frames for completion of OASIS data were not described for discharge, including discharge to the community, transfer to an inpatient facility (with or without agency discharge), and death at home, nor were comments received relative to these time frames. For consistency in encoding (entering data into a computer) and reporting data relative to these OASIS data sets, we expect that HHAs would complete the OASIS data set items for these time points within 48 hours of knowledge of their occurrence. We are seeking comment on the expectation that HHAs will complete these assessment updates within 48 hours. The reason for the requirement to complete these other assessment types within two calendar days is that the HHA can more readily assess specific information related to the patient's condition at that point in time and maintain a uniform platform for reporting all assessment types.

1. Section 484.20(a) Standard: Encoding OASIS Data

At § 484.20(a), we require that HHAs encode and finalize data entry (lock) for all patients (except those specified in the preamble to the regulation describing collection of OASIS data, that is, "Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies") in the agency within 7 days of completing an OASIS data set.

Once the OASIS data set has been collected by the authorized clinical staff member at the specified time points described at § 484.55, HHAs may take up to 7 calendar days after collection to enter it into their computer systems. To enter the data, HHAs will operate the Home Assessment Validation Entry (HAVEN) software program and run the OASIS data set through the HCFA-specified edits in order to make it transmission-ready. This process involves using the HAVEN software to review the data for accuracy and consistency, making any necessary changes, and finalizing the data. We specify 7 days to encode, edit, and lock the OASIS data because we believe that this is a reasonable amount of time to expect agencies to complete this task while ensuring accuracy of the data. The agency must enter the OASIS data and identify any information that does not pass the HCFA-specified edits, that is, any missing, incorrect, or inconsistent data. This is a simple process of entering a data set into a computer using software that mirrors the OASIS data items. Editing and locking are functions automatically performed using the HAVEN software. If HAVEN identifies data items in need of clarification or additional information, we believe that 7 days is a reasonable amount of time for staff entering data to contact and seek assistance from the qualified clinician who assessed the patient. It is preferable that the edits and corrections be made as close in time as possible to the assessment activity, since the clinician's recall of the patient assessment and the clinical notes that document the assessment are fresher at that point. Seven days is also consistent with the timeframe currently required by long-term care facilities encoding Minimum Data Set (MDS) information. We believe that keeping OASIS encoding consistent with MDS encoding would be simpler for providers and State agencies to manage than introducing a different set of timeframes. In addition, we expect that, in order to provide quality care, HHAs would assess patients and submit OASIS data in a timely fashion for data entry in order to prepare and maintain a current and viable plan of care. As such, we feel that it is reasonable to expect that HHAs will be able to encode, edit, and ready OASIS data for transmission within 7 days of the data's collection.

HHAs will have flexibility in the method used to encode their data. Once the assessment is completed and OASIS data items are collected by the qualified skilled professional (that is, the nurse or therapist responsible for coordinating or completing the assessment), data can be encoded directly by that skilled professional, by a clerical staff member from a hard copy of a completed OASIS, or by a data entry operator with whom the HHA may contract to enter the data. Non-clinical staff may not assess patients or complete assessment items; however, clerical staff or data entry operators may enter the OASIS data collected by the skilled professional into the computer. We note that in entering the data, HHAs must comply with requirements for safeguarding the confidentiality of patient identifiable

information. These requirements are discussed in detail below.

Once the OASIS information is encoded, HHAs will "lock" the data, that is, use their software to review and edit it to create a file that will be transmitted to the State agency or other entity approved to receive this transmission. The edits will include an electronic safety net to preclude the transmission of erroneous or inconsistent information, and required formatting for the data set items. The locking mechanism is necessary to ensure the accuracy of the patient assessment at the point in time that the assessment took place. The locking mechanism will prevent the override of current assessment information with future information.

2. Section 484.20(b) Standard: Accuracy of Encoded OASIS Data

Section 484.20(b) requires that the encoded OASIS data accurately reflect the patient's status at the time the information is collected. As research has shown that the patient status changes over time, the data must accurately represent a patient's status at selected points in time. Before transmission, the HHA must ensure that data items on its own collection record match the encoded data that are sent to the State. We expect that once the qualified skilled professional completes the OASIS using either a hard copy of the instrument or an electronic method, the HHA will develop a means to ensure that the data put into the computer and transmitted to the State agency or HCFA OASIS contractor reflect the data collected by the skilled professional. The HHA might appoint staff to audit OASIS records after input as part of the HHA's overall quality assurance program. In addition, the State survey process for HHAs may include review of OASIS data collected versus data encoded and transmitted to the State.

3. Section 484.20(c) Standard: Transmittal of OASIS Data

General requirements. At § 484.20(c), we require that the HHA electronically transmit to the State agency or HCFA OASIS contractor, at least monthly, accurate, completed, encoded, and locked OASIS data for each patient. This time frame allows for transmission more frequently as determined by the HHA. We also provide that the data must be transmitted in a format that meets the requirements specified in the data format standard at § 484.20(d). Thus, data collected, encoded and locked in February will need to be transmitted in March. We believe that a monthly time frame for transmitting the data will minimize the burden on the HHA associated with frequency of transmission, maintain uniform assessment reporting time frames, and maintain a clear reporting time frame that eliminates the variation of days in a month. We provide flexibility for the HHA in that we do not specify a date on which HHAs must transmit the data. Therefore HHAs are free to develop monthly schedules for transmitting the data that best suit their needs. In addition, we provide that HHAs may send OASIS data to the State agency or HCFA OASIS contractor more frequently than monthly if they choose to do so.

We note that the HHA must transmit the Clinical Record Items section of the OASIS, which identifies the patient, with each data set. The Clinical Record Items section includes information such as agency identification, patient identification, and start of care date. The Clinical Record Items are a key aspect of an OASIS data set that will allow the HHA, State agency or HCFA OASIS contractor, and HCFA to track all data sets collected on individual patients within the episode of care. Many elements in the Clinical Records Items section may be completed initially by clerical staff as part of the intake/referral process; but should be verified by the clinician doing the assessment.

As we continue to develop our system to maintain the OASIS data base, the items in the Clinical Record Items section may change to accommodate growth. No substantive changes have been made to the clinical data items published in the **Federal Register** on March 10, 1997, although minor changes have been made to the numbering system to accommodate electronic reporting. We refer you to the HCFA webpage (http://www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm) for changes necessary to comply with OASIS reporting requirements. The current version of OASIS is a proposed information collection requirement pending OMB approval. We have summarized the Paperwork Reduction Act process below and have described the timeframes associated with that process. As an alternative to Internet access, which is the most efficient method of obtaining the current version of the OASIS, agencies may contact their State agency or HCFA regional office home health representatives to request a paper copy of the data set for review. Any future changes to OASIS will be submitted to OMB to review pursuant to the Paperwork Reduction Act of 1995, will be available electronically on the HCFA website, and, when approved by OMB, available in hard copy from the National Technical Information Service ((703) 487–4650).

In addition to OASIS data, HHAs will transmit information that identifies the location and description of the HHA sending data and the identity of the person submitting the data to the State agency or HCFA OASIS contractor. This information is referred to as the header record. Header information is not information requested by the OASIS data set. Rather, it is information required to support the transmission process. At the end of the transmission file, a record concerning the number of records being transmitted is required to complete the transmission process. This information is referred to as the trailer record. When the HHA is ready to transmit its data to the State, it will use the HAVEN software to add the selected records to be sent with the header and trailer records to create an export file. The export file is then transmitted to the State by the HHA.

HHAs should use standard communication software to dial-up to the State agency or HCFA OASIS contractor, transmit the export file, and receive validation information. HHAs should have a system that supports dial-up communications for the transmission of OASIS data to the State. The communications capability must meet our specification related to transmission of OASIS data. More detailed instructions on the process for data submission will be made available in the near future. This dial-up link will eventually serve as a means of communicating information such as reports, notices, and documents between HHAs and the State agency without requiring additional hardware or software.

HHAs must transmit the OASIS data using a private dial-up network based on a direct telephone connection from the HHA. The telephone communication provides a secure source of transmission, with interception of information being prohibited by Federal and State law. The information is transmitted via a modem at the HHA and received at the State communications server where the file is validated. The State agency or HCFA OASIS contractor will provide to the HHAs in their State specific instructions and phone numbers of the lines available for transmission.

Once transmitted, the State agency or HCFA OASIS contractor validates the information while the HHA remains on-line to ensure that some basic elements conform to HCFA requirements, such as proper format and HHA information. Once these file checks are complete, a

message indicating whether the file has been accepted or rejected is sent back to the HHA's terminal via the agency's communication link. If the submission passes the initial validation check, the record is checked for errors or exceptions to the data specifications and a Final Validation Report is generated. If the submission is rejected, a message is sent to the HHA along with the rejected submission file for correction in the header or trailer record. A record may be rejected for a variety of reasons, for example, the provider identification name or number submitted may be incorrect or does not match the name or number at the State, or the number of records indicated in the trailer record does not match the actual number of records submitted. The HHA will need to make the corrections and re-submit the submission file to the State.

Initial transmission requirements. In order to initiate transmission of OASIS data to the State agency or HCFA OASIS contractor, we are including the requirement that HHAs make a successful transmission of test data to the State agency or HCFA OASIS contractor during the test transmission period. The initial test should include both 1) a transmission of any start of care or resumption of care OASIS data that passes HCFA edit checks; and 2) a validation report back from the State confirming transmission of data. We require that HHAs successfully transmit test data to the State agency or HCFA OASIS contractor beginning March 26, 1999, and no later than April 26, 1999. This test data will not be included in the national repository.

On or after April 26, 1999 we expect that HHAs will send to the State agency or HCFA OASIS contractor all OASIS data collected on existing patients under the care of the HHA on March 26, 1999. The data should include the start of care; follow-up of the start of care; resumption of care; discharge to the community; transfer to an inpatient facility (with or without agency discharge); and death at home OASIS assessment items. Specifically, on patients admitted to the HHA on or after March 26, 1999 the data should include a start of care assessment and any other OASIS data collected in accordance with the requirements at § 484.55. For patients already under the care of the HHA as of March 26, 1999 the data may not include a start of care data set, but must include any OASIS data collected in accordance with the requirements at § 484.55 (follow-up, resumption of care (following an inpatient stay), transfer to inpatient facility (with or without agency discharge), or discharge (including death at home)). As stated above, OASIS data should be reported on all HHA patients except those specified in the regulation describing collection of OASIS data, that is, "Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies." Specific directions for coding these assessments for initial transmission will be included in the State training and manual instructions. On or after, April 26, 1999 and at least monthly thereafter, HHAs will transmit OASIS updates on those patients included in the initial transmission as well as comprehensive assessment OASIS data and updates on any patients admitted to the HHA on or after March 26, 1999.

To further clarify the OASIS effective dates schedule, we offer the following chart based on the assumption that this regulation and the companion regulation describing collection of OASIS data, "Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies," are published November 16, 1998. While the publication date of the OASIS regulations differs from the one used in this example, the effective dates in the following chart are based on an assumed publication date. HHAs are cautioned to substitute the actual publication date into the formulas listed below to derive the actual effective dates in addition to reading the discussion of effective dates above. When these regulations are published, we will post the publication date and effective dates on the OASIS webpage.

OASIS COLLECTION AND REPORTING TIMELINE

Publication date	Collection begins (11/16/98 + 30 days) [1]	Encoding begins (11/16/98 + 60 days) [2]	HHA tests transmission system (11/16/98 + 60 through 90 days)	HHA begins reporting OASIS data (11/16/98 + 90 days and monthly thereafter) [3]
11/16/98	12/16/98	1/15/99	1/15/99 through 2/14/99	2/14/99 and monthly thereafter.

[1] HHA collects start of care, resumption of care, follow-up, discharge to the community, transfer to an inpatient facility (with or without discharge) and death at home OASIS data on all patients under the care of the HHA as of 12/16/98.

[2] HHA collects *and encodes* start of care, resumption of care, follow-up, discharge to the community, transfer to an inpatient facility (with or without discharge) and death at home OASIS data on all patients under the care of the HHA as of 1/15/99. For patients admitted to the HHA before 1/15/99, it is not required to encode start of care data.

[3] HHA reports (transmits to the State agency or HCFA OASIS contractor) all OASIS data collected and encoded from 1/15/99 through 2/14/99 and monthly thereafter. Monthly transmissions should include all OASIS data collected and encoded in the previous month.

4. Section 484.20(d) Standard: Data Format

At § 484.20(d) we specify that the HHA must encode and transmit data using the software available from HCFA or software that conforms to HCFA standard electronic record layout, edit specifications, and data dictionary and includes OASIS data items specified in § 484.55(e). To meet the data format requirements, HHAs will be able to use the HAVEN software developed by HCFA, or other vendor's software that conforms to HCFA standardized electronic record formats, edit specifications, data dictionaries, and that passes standardized edits defined by HCFA. The HAVEN software can be used for several purposes. HHAs will be able to use HAVEN to encode OASIS data, maintain agency and patient-specific OASIS information, and create export files to submit OASIS data. HAVEN will provide comprehensive on-line help to users in encoding, editing and transmitting these data sets. Additionally, we have developed a hotline to support this software product.

HAVEN will alert the individual who is encoding the data to use the correct screen for the specific type of assessment record required. We suggest that as HHAs plan for implementation, those HHAs using paper copies of OASIS data sets consider a way to differentiate among the various subsets of OASIS data. For example, agencies who were involved in the demonstration pilot studies used different colored paper for each subset of the OASIS instrument. We caution HHAs that the HAVEN system will provide only the minimum requirements to encode and format the data. We will support these functions and applications; however, we do not intend to provide any other applications

related to care planning, financial information, durable medical equipment, medications, or personnel issues. Software vendors are encouraged to use the HAVEN software as a minimum system until they have developed their own software to accommodate HCFA specifications and other applications useful for HHAs. If the HHA uses software other than HAVEN it must conform to HCFA standardized electronic record formats, edit specifications, and data dictionaries. The software must also include the OASIS data items specified in § 484.55(e).

HCFA will provide standardized training to State agencies or HCFA OASIS contractors, who, in turn, will provide training to HHAs in each State in advance of the implementation date of this interim final rule. This training, which will include the OASIS User's Manual, will focus on how to use the HAVEN software to encode and format data, how to transmit data, and how to interpret the validation reports.

The required OASIS data set will be available on our website located at http://www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm at all times. HHAs will be able to access the website and download the required OASIS data set for each data collection time point (start of care; resumption of care following an inpatient facility stay; follow-up; discharge (not to an inpatient facility); transfer to inpatient facility (with or without agency discharge); and death at home). We expect the required OASIS to vary slightly from that published in the March 10, 1997, proposed rule; however, there are no changes in the core data items that were published in the proposed rule. Items in the Clinical Records Items section of the OASIS are being updated to accommodate electronic reporting. In addition, the HAVEN software is available on the HCFA website and can be downloaded at no charge to HHAs and used to report OASIS data. This website includes the data specifications, data dictionaries, OASIS data set, and the OASIS User's Manual for the OASIS data set, HAVEN software and HHA data submission. We will also post other educational materials for HHAs on the website. We intend for the website to provide direct access for HHAs, State agencies, HCFA OASIS contractors, software vendors, professional organizations, and consumers. We encourage vendors and agencies to regularly review the website for information related to the computerization of OASIS and other HCFA-related home health issues. We will continue to promote processes for assuring accuracy in the software. In the future, an alternate version of the OASIS may be required. HHAs will be directed to the HCFA website for the applicable version of the OASIS data set. Once the data set is approved by OMB, HHAs may also obtain hard copies from the National Technical Information Service at ((703) 487–4650).

B. Exemption for HHAs in Research and Demonstration Projects

Some HHAs participating in OASIS research and demonstration projects may be using other data collection sets, which have been approved by the Secretary. HHAs in research and demonstration projects may be exempt from the requirement to use the OASIS as part of the comprehensive assessment and reporting process for the duration of the project. These determinations will be made on a case-by-case basis. Whether an HHA participating in a research or demonstration project is exempt from the requirements of the final rules requiring collection and reporting of OASIS data will depend on several factors including, the nature of the demonstration project, the data set used, payment implications for the HHA, quality concerns, and burden issues.

At completion or termination of the studies, we will work on a case-by-case basis with these HHAs to transition them into compliance with the general collection and reporting requirements for HHAs that are required to meet the Medicare home health COPs.

C. Section 484.11 Condition of Participation: Release of Patient Identifiable OASIS Information

We are adding a new § 484.11 Condition of Participation: Release of Patient Identifiable OASIS Information. Section 484.11 provides that the HHA or agent acting on behalf of the HHA must ensure the confidentiality of all patient identifiable information contained in the clinical record and may not release patient identifiable OASIS information to the public. We believe that this provision will ensure that access to all OASIS data (hard copy as well as electronic data) will be secured and controlled by the HHA, State agency or HCFA OASIS contractor. We also specify that an agent acting on behalf of the HHA in accordance with a written contract between the HHA and the agent may not use or disclose the information. The agent may only use or disclose data to the extent the HHA itself is permitted to do so. We believe that this COP will act as a safeguard against the unauthorized use of a patient's clinical record information, regardless of the form or storage method.

D. Section 488.68 State Agency Responsibilities for OASIS Collection and Database Requirements

Under section 1891(b) of the Act, the Secretary must assure that processes are in place to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public moneys. Section 1864 of the Act authorizes the use of State health agencies to determine a provider's compliance with the COPs. State responsibilities for ensuring compliance with the COPs are set forth at part 488, Survey, Certification, and Enforcement Procedures.

Under the authority referenced above, we are adding a new § 488.68, State agency OASIS collection and data base responsibilities. This section provides that the overall responsibility for fulfilling requirements to operate the OASIS system will rest with the State agency or other entity designated by HCFA. The State may enter into an agreement with the State Medicaid agency, another State component, or a private entity to perform day-to-day operations of the system, or HCFA may contract with an entity directly, in the event the State is unable or unwilling to perform these operations. While these entities may actually perform all OASIS-related functions, the ultimate responsibility of the OASIS program rests with the State agency or authorized entity under contract directly to HCFA. If the standard State system is operated by an entity other than the State agency, the State must ensure that it has suitable access to this system to fully support all OASIS-driven functions required of the State agency (for example, outcome-based quality improvement reports and survey specific data). Section 488.68 also specifies State agency and HCFA OASIS contractor responsibilities with regard to the OASIS system, which are discussed in detail below.

1. Section 488.68(a) Establish and Maintain the OASIS Data Base

At § 488.68(a), we provide that the State agency or other entity designated by HCFA must use a standard system developed or approved by HCFA to collect, store and analyze data generated by OASIS. The system developed to compile the Minimum Data Set (MDS) assessments (the HCFA standard State system) has already been procured, installed, and used to collect MDS data. We are currently modifying the standard State system to accommodate OASIS data transmitted by HHAs. The standard State system currently includes a database, communication, supporting

files, print servers for client workstations, local and wide area data networks, and application software for performing all aspects of MDS related functions and tasks. This system may also be utilized to reconfigure data into reports that can be used by State surveyors to focus facility surveys and improve quality of care.

We are providing States with the software and any additional hardware needed to support the standard State system. In several States the home health component of the survey agency is a separate entity that is governed separately and sometimes located in a different geographical location from the agency that currently supports the standard State system. In these States, HCFA will fund the purchase and installation of a computer work station to provide these separate agencies access to OASIS data. As part of the survey responsibilities, § 488.68(a) also provides that States will be responsible for basic system management responsibilities such as hardware and software maintenance, system backup, and monitoring the status of the database.

We also set forth requirements for modification of the HCFA standard State system. Specifically, the State agency must obtain HCFA approval before modifying any parts of the system. The State agency or HCFA OASIS contractor may not modify any aspect of the standard State system that pertains to the standard HCFA-approved OASIS data items, standard HCFA-approved record formats and validation edits, and standard HCFA-approved agency encoding and transmission methods.

2. Section 488.68(b) Analyze and Edit OASIS Data

At § 488.68(b), we provide that the State agency or HCFA OASIS contractor is responsible for analyzing and preparing OASIS data for HCFA to retrieve. Upon receipt of data from an HHA, we require that the State agency or HCFA OASIS contractor edit the data as specified by HCFA, and ensure that the HHA resolves errors within the limits specified by HCFA. At least monthly, the State agency or HCFA OASIS contractor must make available for retrieval by HCFA all edited OASIS records received during that period, according to formats specified by HCFA, and correct and retransmit rejected data as needed. We will electronically retrieve OASIS data from the HCFA standard State system into a central repository at HCFA for analysis.

Finally, we require that the State agency or HCFA OASIS contractor analyze the data and generate reports as specified by HCFA. This responsibility includes generating the outcome reports discussed above for use by the HHA as well as for the State's own use in focusing onsite inspection activities associated with the home health survey process. The OASIS data will significantly improve each State's ability to identify areas of potential quality concerns and will facilitate partnership between States and industry in identifying opportunities to improve care. In addition to the responsibility for generating outcome reports, the State will issue validation reports once OASIS data is received in their systems. Validation reports provide timely feedback to HHAs as to whether the OASIS data they sent has been accepted or rejected, along with reasons why.

3. Section 488.68(c) Ensure Accuracy of OASIS Data

We are requiring at § 488.68(c) that, as part of the survey process, the State agency review an HHA's records to verify that OASIS data collected is consistent with OASIS data reported to the State agency or HCFA OASIS contractor. In keeping with § 484.20(b), which requires that the HHA's encoded OASIS data accurately reflect the patient's status at the time the information is collected, we expect that the HHA will develop a means to ensure that the data input into the computer and transmitted to the State agency or HCFA OASIS contractor reflects the data collected by the skilled professional. As discussed earlier, methods to ensure accuracy of OASIS data may include appointing staff to audit OASIS records after input as part of the HHA's overall quality assurance program. The State agency may include a review of the HHA's quality assurance documentation as part of the overall determination of compliance with OASIS related COPs.

4. Section 488.68(d) Restrict Access to OASIS Data

To secure and control access to patient identifiable information, we are requiring at § 488.68(d) that the State agency or HCFA OASIS contractor be responsible for restricting access to OASIS data. Specifically, we require that the State agency or HCFA OASIS contractor must assure that access to data is restricted except for transmission of data and reports to HCFA, transmission of data and reports to the State agency component that conducts surveys for purposes related to this function, and transmission of data and reports to other entities only when authorized by HCFA.

We also specify that patient identifiable OASIS data may not be released to the public by the State agency or HCFA OASIS contractor except to the extent it is permitted to do so under the Privacy Act of 1974: Disclosure may be made under the Privacy Act for "routine uses," that are compatible with the purpose for which the information was collected. These routine uses are described in the Privacy Act System of Records, which will be published in the near future. Consistent with these provisions, the State agency or HCFA OASIS contractor is not permitted to release patient identifiable information to the public but may release aggregated data.

5. Section 488.68(e) Provide Training and Technical Support for HHAs

The State agency will play a key role in providing educational and technical resources to the HHA to implement the automation of the OASIS data set. Therefore, at § 488.68(e), we require the State agency or HCFA OASIS contractor to provide training and technical support for HHAs. Specifically, we require the State agency or HCFA OASIS contractor to provide HHAs in each State with training on the administration and integration of the OASIS data set into the facility's own comprehensive assessment system. We also specify that the State agency is responsible for instructing each HHA on the use of software to encode and transmit OASIS data.

The State agency staff who operate the HCFA standard system will provide training to designated staff in HHAs on the use of the free HCFA software that will allow the HHAs to encode and format OASIS data for transmission to the State or HCFA OASIS contractor. In a similar manner, HCFA will provide standardized instructions for using the free software, as well as instructions for data submission which will be available electronically on the HCFA website. The designated trainer in the HHA should train HHA staff responsible for collecting OASIS information using a standard training curriculum and manual, which will be provided by HCFA. A User's Manual is available electronically on the HCFA website, and will be available in hard copy from the National Technical Information Service ((703) 487–4650).

States' responsibilities for training and supporting HHAs in the implementation of the OASIS and automation of the OASIS database will likely include the following tasks:

- Training HHAs on OASIS data set administration;

- Providing training and technical support to HHAs in integrating the OASIS items into the HHA's own comprehensive assessment system;
- Answering questions on the clinical aspects of OASIS and providing information to HHAs on the use of the OASIS data in determining prospective payment rates for HHA patients;
- Providing training to other State agency staff in using OASIS data and outcome reports for survey activities;
- Training HHAs on the submission of OASIS data to the State;
- Interpreting validation reports;
- Providing information relative to hardware and software requirements for HHAs to consider when purchasing computer equipment;
- Assisting with training HHAs on encoding and transmitting OASIS data to the State agency, including providing support for transmission of test data during startup, supporting callers requesting technical assistance, providing passwords to HHAs, answering questions about the computer edits and reports; and
- Participating in an annual update on the OASIS and home health prospective payment system project.

To promote national consistency in OASIS systems for States, we have requested that each State designate one or two individuals to support the several tasks involved in this project. These individuals, the State OASIS Educational Coordinator and State Automation Coordinator, will be funded by HCFA through the Medicare survey and certification program.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substance of the proposed rule or description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest.

The primary reasons for waiving the proposed rulemaking process are two-fold. First, in the interest of creating budgetary savings, Congress explicitly authorizes the Secretary under section 4602(e) of the BBA to collect whatever data the Secretary deems necessary to implement a revised home health payment structure to be implemented in the very near future. We cannot issue a proposed rule followed by a final rule and be timely with the implementation of the revised home health payment system within the timeframes contemplated by Congress. No later than April 26, 1999, we must begin receiving OASIS data in order to revise the payment system as required by section 4603 of the BBA. Currently, HHAs are receiving payment for services via an interim payment system and will continue to receive payment for services via the interim payment system until the new payment system is developed and implemented.

Second, we believe it is consistent with public interest not to delay implementation of a prospective payment system by publishing a proposed rule. Publication of this rule as final is necessary to begin the flow of data to HCFA in order to establish, in the very near future, a system of payment for home health agencies using case mix adjusters. Finalizing this rule is in the best interest of the public because affording notice and opportunity for comment would extend the time home health agencies are reimbursed under the current interim payment system while delaying the implementation of the prospective payment system.

In addition, delaying the OASIS reporting process would postpone the implementation of a variety of survey and quality measures designed to protect and promote patient health and safety. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day comment period for public comment.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are, however, requesting an emergency review of this interim final rule with comment period. In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are submitting to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection and reporting of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320, to ensure the timely availability and reporting of data as necessary for the development of a reliable case mix adjuster that we require for the establishment of a prospective payment system for home health services in compliance with sections 4602 and 4603 of the BBA. We cannot reasonably comply with normal clearance procedures because public harm is likely to result if the agency does not enforce the inclusion of OASIS elements into an HHA's comprehensive assessment requirement early enough to permit training and to enable the HHA to collect and report reliable OASIS data for the period beginning on April 26, 1999. As mentioned above, delaying the OASIS reporting process would delay the implementation of a variety of survey and quality measures designed to protect and promote patient health and safety. In addition, this time frame is necessary because a key aspect of creating a prospective payment system based on agency cost experience is the need to "standardize" the rates by adjusting the agency costs for their case mix. In effect, case mix needs to be adjusted out of the basic payment rates, then, relevant to admissions, built back into the rates on an agency-specific basis. We believe the most reliable way to accomplish this result is by using data from existing agencies. Because the prospective payment system must be implemented as soon as possible, we will need to begin receiving the data to be used for standardizing the prospective payment amounts.

The immediate publication of rules requiring the collection and reporting of OASIS data and OMB approval of these requirements pursuant to the Paperwork Reduction Act of 1995 are essential because these data are required for the development of the home health prospective payment system, required by statute in October of 2000. Because OASIS data will form the basis for the case mix adjustment component of the prospective payment system, national OASIS data must be used in the extensive statistical analyses needed to calculate standardized prospective payment rates and estimate their impact. The process of rate development must take place in the early spring of 1999 for incorporation in a proposed rule. The proposed rule regarding the home health prospective payment system must be published by the fall of 1999 to allow for necessary comments and revisions prior to the publication of a final rule in the summer of 2000. Given the lag time between the publication of the OASIS rules and the receipt of viable national data by HCFA, we are already at the point where only two months of national data will be potentially available for use in the proposed rule and less than a year of data for the final rule. Further delays would reduce the amount of national data available for development of the prospective payment rates and thus seriously undermine the project plan aimed at implementation of the prospective payment system on October 1, 2000.

We note that the information collection requirements and associated burden referenced in this regulation are primarily concerned with the "reporting" of OASIS data. The collection requirements and related burden associated with the "collection" of OASIS data are referenced in a separate final rule published today in the **Federal Register** and approved under OMB control number 0938–0365. Also worth noting is the fact that HCFA–R–39 (0938–0365), "Home Health Medicare Conditions of Participation Information Collection Requirement as Outlined in Regulation 42 CFR 484," is currently being revised to include the OASIS data set as displayed at http://www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm. As an alternative to Internet access, which is the most efficient method of obtaining the current version of the OASIS, agencies may contact their State agency or HCFA regional office home health representatives to request a paper copy of the data set for review.

The current version of OASIS is a proposed information collection requirement pending OMB approval. We have summarized the Paperwork Reduction Act process below and have described the timeframes associated with that process. We are asking not only for approval of OASIS but also reapproval of the COPs previously included in HCFA–R–39 and approved under the OMB control number indicated above.

HCFA is requesting OMB review and approval of this collection within 16 working days from the date of publication of this regulation, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 15 working days from the date of publication of this regulation.

During this 180-day approval period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

We are soliciting public comment on each of these issues for the provisions that contain information collection requirements as summarized below:

Section 484.11 Condition of Participation: Release of Patient Identifiable OASIS Information

Section 484.11 states that the HHA may release patient identifiable information to an agent acting on behalf of the HHA only in accordance with a written contract between the HHA and the agent. As such, the agent agrees not to use or disclose the information except to the extent the HHA itself is permitted to do so.

The burden associated with this record keeping requirement is the time and effort for the HHA to maintain a copy of the written agreement. We estimate that each HHA will maintain one written agreement which will take 2 minutes. We estimate that there will be 2,623 written agreements (25% x 10,492 HHAs x 1 agreement) which will each take 2 minutes for a total annual burden of 88 hours.

Section 484.20 Condition of Participation: Reporting OASIS Information

Section 484.20 states that HHAs must electronically report all OASIS data collected in accordance with § 484.55 and the requirements contained in this section.

The burden associated with meeting § 484.20 is the time and effort for the HHA to electronically report all OASIS data collected in accordance with § 484.55 and the requirements contained in this section. We estimate that each HHA will take 121.50 hours on an annual basis (486 admissions per year x 2.5 assessments x 6 minutes to review, enter, transmit and perform a 15-minute monthly data audit) to comply with § 484.20. We estimate that the total annual burden for 10,492 HHA's will be 1,274,778 hours. As noted above, the requirements and associated burden imposed by this section relate only to the "reporting" burden. The burden associated with the "collection" of OASIS data is contained in the regulation HCFA–3007–F which is published as a separate final rule in this issue of the **Federal Register**.

The table below indicates the annual number of responses for each regulation section in this interim final rule with comment period that contains information collection requirements, the average burden per response in minutes or hours, and the total annual burden hours.

ESTIMATED ANNUAL BURDEN

CFR section	Responses	Average burden per response	Annual burden hours
484.11(b)	2,623	2 minutes	88 hours
484.20	10,492	121.50 hours	1,274,778 hours
Total			1,274,866 hours

We have submitted a copy of this interim final rule with comment period to OMB for its review of the information collection requirements. These requirements are not effective until they have been approved by OMB. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) and/or OMB numbers referenced above, to *paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 15 working days from the date of this publication in the **Federal Register** to:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850 Attn: John Burke HCFA–3006–IFC Fax number: 410–786–0262

and,

Office of Information and Regulatory Affairs, Office of Management and Budget Room 10235, New Executive Office Building Washington, D.C. 20503 Attn.: Allison Herron Eydt, HCFA Desk Officer Fax numbers: 202–395–6974 or 202–395–5167

VI. Regulatory Impact Statement

A. General

We have examined the impacts of this interim final rule with comment period as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, most hospitals, and most other providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, most HHAs are considered small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for an interim final rule with comment period that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined, and the Secretary certifies that this interim final rule with comment period would not have a significant economic impact on the operations of a substantial number of small rural hospitals. However, we have provided a detailed discussion on the costs and various benefits of reporting OASIS data in tables, I and II in Section B. Costs associated with OASIS reporting, and in accompanying explanations.

Section 202 of the Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). As discussed in detail in the cost benefit analysis below, we estimate that the amount of the unfunded mandate associated with this interim rule with comment period will result in an annual expenditure of less than $100 million to these governmental and private sectors. Therefore, we believe the law does not apply.

We are requiring that all Medicare-certified HHAs and HHAs that are required to meet Medicare conditions of participation (for example, Managed Care and Medicaid HHAs), assess their patients using the standardized, outcome oriented data set known as OASIS. OASIS was developed through extensive research and validated in a multi-State demonstration project. As discussed in detail in a separate rule on OASIS data collection published today in the **Federal Register**, this defined set of core data items was developed largely for the purpose of measuring and risk adjusting patient-level outcomes in home health care and as such, is explicitly tailored to home care. Data reported from the OASIS will allow HHAs to integrate a quality assurance and performance improvement measurement system approach into their practices and, as discussed above, will also be used to support the Medicare HHA prospective payment system.

The Balanced Budget Act of 1997 requires HCFA to develop a prospective payment system for home health. A prospective payment system pays providers based on the predicted costs of care, giving providers the incentive to provide care efficiently. In the home health prospective payment system, beneficiaries will be classified into case mix groupings based on their predicted resource use, with each group having a specific payment rate.

In developing a sound classification system, HCFA must account for the factors that would influence the beneficiary's use of services. In the case of the hospital prospective payment system, this was done using Medicare claims data linked to diagnosis data. Because the majority of inpatient services are attributed to the medical diagnosis, Medicare claims provide enough information to classify patients for hospital payments.

Post-acute care services such as home health and skilled nursing facility services are influenced in part by the medical diagnosis. However, other factors have a strong influence in the use of post-acute care, such as the severity of illness and functional abilities. Therefore, a more comprehensive data source is needed for proper patient classification. Because Medicare claims provide information only about diagnosis, age, gender, and race, a claims-based grouping would not adequately classify beneficiaries into payment groups.

The first attempt to design a prospective payment system for post-acute services was the case of skilled nursing facilities. Under this payment system, HCFA has used data from both claims and the Minimum Data Set (MDS) to classify patients into payment groups. Similarly, HCFA plans to use OASIS data in addition to claims data to construct the home health prospective payment system. A classification system that takes into account severity of illness as well as functional abilities will help to ensure adequate payment for high-cost beneficiaries. At this time, there is no other viable data source that would provide this information other than OASIS. If HCFA does not use OASIS data to identify case mix groups, then, on average, prospective payment amounts could be too low for beneficiaries who need assistance with many activities of daily living and too high for beneficiaries who need less assistance.

The Balanced Budget Act of 1997 also requires the amounts paid for each case mix group under the prospective payment system to be based on a standardized payment rate. HCFA is designing the case-mix classification system based on OASIS and claims data from a stratified sample of 90 HHAs. Standardization requires removing the effect of case mix and wage variation from payment levels for these 90 HHAs and from national payment levels. This helps to ensure that if resource use varies from region to region, payments in the prospective payment system are adjusted accordingly. This process requires the same information that is used to classify patients into payment groups. Therefore, we must collect OASIS data from HHAs before HCFA can set standardized payment rates for a prospective payment system.

The OASIS instrument has been in development for the past ten years. A large number of home health agencies have participated in its development and testing. The instrument has demonstrated its validity and reliability as an assessment and outcome measurement tool. We share the industry's interest in the adoption of a useful and appropriate instrument with as little disruption to existing HHAs operations as possible. We also share the industry's interest in minimizing unnecessary paperwork and record keeping burdens, while at the same time, ensuring quality of care for beneficiaries. Paperwork and record keeping requirements must be cost effectively integrated into HCFA's survey and enforcement processes (both from the balanced perspectives of the public and private sectors), and must maximize available information technologies. In particular, we may reevaluate OASIS data and reporting needs for patient reassessments. We solicit public comment on appropriate refinements to reassessment data requirements and any other aspects of OASIS that can be improved as the result of program experience.

In addition to its use as the basis for prospective payment, OASIS will assist agencies in improving their performance through outcomes-based assessment. The quality component of OASIS is crucial to ensuring that beneficiaries receive needed services under the home health prospective payment system.

OASIS is one of several components of the outcome-based quality improvement (OBQI) approach that has produced documented positive impacts on the clinical status of HHA patients. The outcome data encapsulated in OASIS allows HHAs to improve quality, evaluate the effectiveness of its care, and better manage care to enhance outcomes and control costs and utilization. Key features of the OBQI approach are the collection of patient/client data at regular intervals; the aggregation and comparison of agency outcomes on a yearly basis and nationally; changing care associated with poor outcomes; and reinforcing care for exemplary outcomes. Outcome measures are defined as a quantification of a change in patient health status between two or more time points and in OBQI, outcome measures are computed using OASIS data from start of care and from subsequent time points or discharge. HCFA commissioned a demonstration study to evaluate the clinical outcomes associated with the application of OBQI/OASIS. The Center for Health Services and Policy Research at the University of Colorado has preliminary findings associated with an outcome-based quality improvement study. Preliminary results from the study, yet unpublished, suggest that risk-adjusted hospitalization rates declined from approximately 31 percent to 28 percent (about a 10 percent rate of decrease) from the first to second years of OBQI application. The demonstration findings also showed an improvement in other health status outcomes. OBQI, properly implemented and maintained, is capable of assisting HHAs enhance patient outcomes. However, in order to realize the full benefits of using OASIS data, the information needs to be computerized and configurable as an analytical tool. Implementation of this rule will allow this goal to be realized.

The OASIS data transmitted by HHAs and States to HCFA will improve the delivery of quality care to patients receiving services from HHAs in the following ways. The database will enable the State agencies and us to provide HHAs with reports of aggregated State and national patient outcome measures and trends. These reports will allow HHAs to compare themselves to similar providers and develop improvement activities, where the need is identified. By establishing internal quality assurance analyses derived from the computerized data, HHAs will be able to evaluate the effectiveness of various components of their home health care delivery systems. The evaluations will lead to identification of best clinical practices and interventions, optimal personnel staffing, and optimal length and type of services for each agency and its patients.

Access to this electronic data will provide information that will benefit both the policy and operational components of Federal and State government. The system has the potential of providing consumer groups with outcome and quality information for making health care decisions. States will have access to timely OASIS data that will improve their ability to focus on-site inspection activities associated with the home health survey process. Since we require OASIS data for almost all home health patients regardless of payer source, the database will allow for comparison of outcomes of most patients receiving home health services. The OASIS data will significantly improve each State's ability to identify areas of potential quality concerns in an effective and efficient manner, and will facilitate partnership between States and industry in identifying opportunities to improve care. At both the Federal and State level, information from the OASIS system will provide a valid and reliable tool for evaluating and improving the efficacy of survey and certification activities. The quality of peer profiling will be made available from the State agency to allow the HHA to compare itself against its peers. If the HHA needs assistance with ways to improve its activity, the State agency or other consultative group will be able to provide guidance in this iterative process.

We note that OASIS data will become part of the same information system that is being designed to collect and report beneficiary specific outcomes of care and provider performance data across a multitude of delivery sites. Currently, as required in § 483.315(h), States are collecting and reporting assessment data on residents in all Medicare and Medicaid certified nursing homes through the use of the MDS. As OASIS data becomes part of this standard State system, we will have data on the second piece of the post-acute care continuum. The systems and staffing infrastructure to collect OASIS and MDS information have already been established at each State survey agency, as well as within HCFA itself, so that State costs associated with electronically collecting OASIS data from HHAs will be on an incremental basis.

B. Costs Associated With OASIS Reporting

General

We anticipate that both HHAs and States will incur some incremental costs from reporting OASIS information. We estimate total start-up costs of $11.4 million, which represents only costs incurred by HHAs (we will be supplying the OASIS software directly to States and States already have the requisite hardware). This includes as much as $5.2 million in Medicare program costs.

We also estimate total ongoing annual costs of about $25.0 million, which includes $22.0 million in costs for HHAs and $3.0 million in costs for States. Approximately $10.1 million of the $22 million will be reimbursable by Medicare annually. The annual administrative cost for States of $3.0 million will be absorbed within HCFA's program management appropriation. We will be supplying OASIS software directly to States and States already have the requisite hardware. However, the benefits associated with computerizing the OASIS far outweigh the additional costs of automating the data.

The preceding represents our estimates of the individual costs associated with this effort. These figures are based on our best estimates of actual burden to existing HHAs and are without the benefit of actual cost data documenting the incremental costs associated with the reporting of OASIS data. Any adjustments to Medicare cost limits would necessarily be based on cost data rather than estimates. In addition, these costs are based on the assumption that implementation will be in fiscal years 1999 and 2000. On August 11, 1998, we published in the **Federal Register** a notice with comment period that set forth the schedules of per-visit and per-beneficiary limitations for HHA costs (63 FR 42912). In that notice, we included an OASIS offset adjustment factor to the per visit limitations to address costs incurred with OASIS implementation. While we based this adjustment on the best data we had available, we are concerned that we may not have captured all relevant costs, particularly ongoing and automation costs. In part, this is because our data are based on agencies whose costs in this regard may not have been fully representative of agency costs in general. In the above notice, we asked for specific comments on ongoing and automation costs associated with OASIS reporting. We also asked for cost data that would impact subsequent decision making on future cost limit notices. In this interim final rule, we are requesting comments on the adequacy of estimated initial and on-going costs associated with the automation of OASIS data. Because the comment period for the notice referred to above closed on October 13, 1998, we will consider comments on cost limit adjustments based on the estimates we have included in this rule in future cost limit notices. However, we will only consider such comments on cost limit adjustments if they relate to the provisions of this interim final rule, specifically those associated with the incremental cost of OASIS implementation.

We have used this approach of accepting comments on cost limit adjustment in response to this interim final rule because we would not consider re-opening the previous comment period. The issues in the August 1998 notice on the interim payment system are much broader than the payment adjustment for OASIS related costs. Consequently, the comments we received were almost entirely directed to the broader issues. In fact, we received only two comments suggesting additional factors to be considered in assessing costs associated with OASIS. We expect a great deal more comments relative to this issue in response to this interim rule with comment period, which focuses entirely on OASIS related concerns.

Home Health Agencies

Upon publication of this rule, each HHA that is required to meet the Medicare Conditions of Participation must electronically transmit OASIS data to its respective State survey agency or HCFA OASIS contractor. Most costs associated with computerizing the OASIS will be related to hardware and software. The costs presented below are based on the profile of an average HHA, where applicable, since certain costs (such as a computer) are constant regardless of the size of the agency. We define an average size HHA as having 18 clinicians and other service practitioners and 486 admissions per year.

At the current time, we estimate that approximately 50 percent of the 10,492 Medicare certified HHAs as of March 1998, or 5,246 agencies, already possess the requisite hardware needed to support automation of the OASIS. This estimate is based on a national survey conducted by the Joint Commission on Accreditation for Healthcare Organizations. We note that many HHAs currently contract with outside entities to electronically bill fiscal intermediaries for Medicare services. We anticipate that, similarly, many HHAs will choose to contract for the encoding and transmitting of the OASIS data as well. Therefore, these HHAs will not be incurring any costs associated with procuring the hardware needed to support this effort. Nonetheless, for the purpose of the estimates in this rule, we have assumed that all 50 percent of the HHAs without computer equipment will opt to purchase the requisite hardware.

Reimbursement for Costs

- Medicare

The BBA has mandated us to develop a prospective payment system for home health services based on units of payment. Until the HHA prospective payment system is in effect, the BBA also required that we implement an interim payment system (IPS) for home health, which began on October 1, 1997. This interim payment system established two sets of cost limits for home health agencies. Details of the IPS can be found in the March 31, 1998, **Federal Register** (63 FR 15718) and in the August 11, 1998, **Federal Register** (63 FR 42911). The IPS will generally result in overall reduced payments to HHAs. We anticipate that HHAs will incur some costs associated with the implementation of OASIS data collection and reporting. However, as stated above, we are evaluating comments on the August 11, 1998 payment notice setting forth HHA cost limitations that included an OASIS offset adjustment factor to the per visit limitations. This payment notice addresses costs incurred with the incremental costs of OASIS implementation.

The implementation of this interim final rule with comment period will be accomplished by HHAs in existence, and participating in HCFA programs. HHAs that apply for and receive Medicare certification in the future will be expected to comply with the current COPs regarding comprehensive assessment of patients prior to certification. Therefore we would not expect HHAs that are certified in the future to have start-up costs related to revising their comprehensive assessments.

- Medicaid

States have flexibility in designing their payment methodology for home health services that are reimbursable under the Medicaid program. The payment methodology can recognize provider costs or it can recognize a certain rate that the State is willing to pay. The State agency has a choice to either determine a negotiated rate with the HHA or to set a standard rate for all HHA providers. In this case, the HHA has the option of accepting the rate, or not. To the extent that an HHA incurs costs in computerizing the OASIS (such as, the acquisition of hardware or software, staff training, or additional staffing), the provider may take the costs into account when establishing its rates for home health services. The State Medicaid agency can also take the costs into consideration in reimbursing the provider. Therefore, we do not believe that these costs will serve as a barrier to new, viable HHA entrants.

The following tables show our estimates of national costs for OASIS reporting.

TABLE. I—NATIONAL START-UP COSTS FOR OASIS REPORTING

FY	Number of agencies incurring start-up costs	Start-up costs (in millions) [5]	Medicare costs (in millions)	Costs to other sources (in millions) [3]
1999 and 2000 [1]	10,492	$11.4 [4]	$5.2	$6.2
2001	0	0	0	0
2002	0	0	0	0
2003	0	0	0	0

TABLE II.—NATIONAL COSTS FOR OASIS REPORTING

FY	Number of HHAs	Total on-going costs (in millions) [5]	State Admin Costs (in millions) [2]	On-going Costs @ $2,097 per HHA (in millions)	Medicare Costs (in millions)	Costs to Other sources (in millions) [3]
1999 [1]	10,492	$25.0	$3.0	$22.0	$10.1	$11.9
2000 [1]	10,492	25.0	3.0	22.0	10.1	11.9
2001	10,492	25.0	3.0	22.0	10.1	11.9
2002	10,492	25.0	3.0	22.0	10.1	11.9
2003	10,492	25.0	3.0	22.0	10.1	11.9

Tables I and II reflect estimates of total costs versus incremental costs. These costs are based on the following assumptions:

[1] Implementation will be in Fiscal years 1999 and 2000.

[2] Expected to be absorbed within HCFA's program management appropriation.

[3] Medicare will reimburse HHAs for their reasonable start-up and ongoing costs, subject to cost limits, based on the estimate that approximately 46% of HHA patients are Medicare beneficiaries. This estimate is reflected in Table I by indicating that 46% of $11.4 million (or $5.2 million) will be reimbursable by Medicare for start up costs. This estimate is also reflected in Table II by indicating that 46% of $22.0 million (or $10.1. million) will be reimbursable by Medicare for annual ongoing costs. These estimates may be overstated to the extent that reasonable cost determinations and application of cost limits reduce this expense. The remaining 54% of the start-up costs, or $6.2 million in Table I, and the remaining 54% of the ongoing costs in Table II, or $11.9 million annually may be absorbed by a combination of the Medicaid program, private insurers, and beneficiaries. Because approximately 23% of HHA patients are Medicaid beneficiaries, we expect HHAs to try to have the Medicaid programs absorb up to 23% of the $11.4 million in start-up costs or $2.6 million. Subtracting $2.6 million from the remaining $6.2 million start-up costs leaves $3.6 million in start-up costs to be passed along to private insurers and beneficiaries. In a similar way, we expect HHAs to have the Medicaid programs absorb up to 23 per cent of the annual $22.0 million in ongoing costs, or $5.1 million. Subtracting $5.1 million from the remaining $11.9 million annual ongoing costs leaves $6.8 million in annual ongoing costs. However, after implementation, ongoing costs become part of the HHA's base history.

[4] See Table I—Estimated start-up costs include $170.00 for training expenses x 10,492 HHAs ($1.8 million). We estimate approximately $1,829 per HHA to purchase computers x 5,246 HHAs because an estimated one half of the 10,492 HHAs already have the necessary computer equipment ($9.6 million). Therefore, $1.8 million + $9.6 million = $11.4 million.

[5] The total of start up costs and ongoing costs equals $61.4 million. This is based on an estimated start up cost of $11.4 million for Fiscal years 1999 and 2000, and ongoing costs of $25 million per year, for those two years.

• *Hardware:* We estimate total hardware costs associated with automating the OASIS to be approximately $1,829 for a typical HHA, which includes the computer and communications components capable of running OASIS software and transmitting OASIS assessments, and a laser printer. This estimate is based on the most recent cost data available for a system that includes an Intel Pentium processor. This system typically would use Windows 95 or Windows NT 4.0, and include at least 32 megabytes of RAM, 2 gigabytes disk space, a 3.5 floppy disk drive, CD–ROM drive, a color SVGA monitor, a mouse, a laser printer, and a 56 kbps modem connected to a dedicated telephone line. The cost estimate is based on the optimal system we anticipate that many HHAs will choose to purchase. However, at a minimum, HHAs should have at least a 486–50 personal computer in a Windows 3.1 environment with 8 megabytes of RAM, at least 100 megabytes of available hard disk space, a VGA color monitor, keyboard, mouse, a 3.5 floppy drive, and a laser printer. All HHAs should have at least a 28.8 kbps modem for telecommunications of the data, as well as web browser software that supports dial-up communications for the transmission of HHA assessment data to the State. The communications capability must meet our specifications related to transmission of OASIS data.

• *Software:* HHAs have the option of purchasing data collection software that can be used to support other clinical or operational needs (for example, care planning, quality assurance, or billing) or other regulatory requirements for reporting patient information. However, HCFA has developed an OASIS data entry system (that is, Home Assessment Validation and Entry, or "HAVEN") that is available to HHAs at no charge through HCFA's website at http://www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm. HHAs may also request HAVEN on CD–ROM. Therefore, HHAs who plan to use HAVEN will need either Internet access (for example, a dial-up Internet Service Provider (ISP) account) or a CD–ROM drive in order to obtain and install the software.

HAVEN will offer users the ability to collect OASIS assessments data in a database and transmit the data in a HCFA-standard format to State databases. The data entry software will import and export data in standard OASIS record format, maintain agency, patient, and employee information, enforce data integrity through rigorous edit checks, and provide comprehensive on-line help. It is recommended that the

Windows operating system be operated at a screen resolution of 800x600 for HAVEN. While HAVEN will operate at 640x480 resolution, the data entry forms will not be completely visible on the screen, and the user will need to scroll to view some of the variables.

- *Supplies:* Supplies necessary for collection and transmission of data, including forms, diskettes, computer paper, and toner, will vary according to the size of the agency, the number of patients served, and the number of assessments conducted. We anticipate that an average HHA with 486 admissions per year will incur approximately $250 in costs for supplies.
- *Maintenance:* There are costs associated with normal maintenance of computer equipment such as the replacement of disk drives or memory chips. Typically, such maintenance is provided through extended warranty agreements with the original equipment manufacturer, system retailer, or a firm that provides computer support. These maintenance costs are estimated to average no more than $100 per year.
- *Training:* HHA staff will require training on encoding assessments and compiling OASIS data for electronic submission. One person in each agency should be trained in data entry and data transmission procedures and requirements. We expect that this initial training will require about 5.5 hours of staff time, and will cost an average HHA about $170 based on an average hourly rate of $12.50 for technical staff. This cost also includes travel expenses and travel time, since facility staff may need to travel to a centralized training site within the State (we anticipate that training will be provided in multiple sites in the State once the system is implemented). We expect that the State survey agencies will supply this training.
- *Data Entry:* HHAs have flexibility in choosing the method used to collect OASIS data, but the method must comply with our requirement for safeguarding the confidentiality of clinical records. HHAs must collect and transmit OASIS data to the State survey agency, at a minimum, on a monthly basis. The data may be entered directly by a technical staff member from a paper document completed by a clinical staff member, or by a data entry operator under contract to the HHA to key in data. Additionally, HHAs must allow time for data validation, preparation of data for transmission, and correction of returned records that failed checks at the State data-editing level. We estimate that an average HHA with 486 admissions per year will incur an annual data entry cost of $1,557 per year, based on an estimate of 2.5 assessments per admission and an hourly rate for data entry costs of $12.50. This cost includes data review and entry, as well as a (recommended) 15 minute monthly data entry audit for quality assurance purposes.
- *Ongoing Data Transmission:* HHAs will fund the cost of transmitting OASIS data to their respective State agencies. HHA staff must also manage the data transmission function, correct communications problems, and manage report logs and validation reports transmitted from the State. We estimate that it will take about one additional hour of staff time to perform data transmission related tasks each month, including running a data edit check program. This staff time will cost an average size HHA about $150 per year based on an hourly rate of $12.50.

Some States will opt to provide their HHAs with a toll-free line to use in transmitting their data. However, in the States that choose not to do so, we estimate that an average HHA will incur about $36 per year to electronically report its OASIS data to the State.

States

We expect that overall responsibility for fulfilling requirements to operate the State OASIS system will rest with the State survey agency. OASIS data will be maintained on the standard State systems that currently house the MDS assessments being reported by all certified nursing homes. HCFA has already procured and installed this system in each State survey agency. It is currently being used to collect the MDS data and to configure reports that will be used by the State surveyors to better focus surveys. However, there are some States in which responsibility for the long term survey and certification functions are located in different components of the State agency than the home health survey and certification functions. HCFA will fund the purchase and installation of a computer work station in these States, so that the non-long term care surveyors will have direct access to the OASIS data.

Since HCFA has already deployed computer hardware and software to the States to operate the MDS automated system, the entity operating the MDS system will also be responsible for day-to-day operations of the OASIS system. In most cases, the State is operating the system itself. However, several States have exercised their option to enter into an agreement with either the State Medicaid agency, another State component, or a private contractor to perform the day-to-day operations of the MDS system. Just as we required for MDS data, prior to entering an agreement with a subcontractor to extend support for OASIS data, a State must receive approval from its respective HCFA regional office if the State OASIS system is to be operated by an entity other than the survey agency. If the State system is operated by an entity other than the State survey agency, the State must ensure that the survey agency has suitable access to this system to fully support all OASIS-driven functions that the State will require of the survey agency (for example, quality indicator reporting and survey targeting). The State is also responsible for maintaining OASIS data for retrieval by HCFA to a central repository to be established by HCFA.

States will use OASIS data primarily to focus the home health survey process and to provide HHAs and consumers with OASIS-driven information. As previously mentioned, the OASIS information will be maintained on the already existing MDS system which currently includes a database, communication, supporting file(s), and print servers for client workstations; local and wide area data networks; and application software for performing all aspects of MDS related functions and tasks. This system has been designed and developed within a broad class of systems known as Client/Server architecture.

We are providing the OASIS system to States primarily for use in the survey and certification program. As such, most Federally reimbursable costs incurred by the States for automating the OASIS will be funded through the Medicare survey and certification program. However, some States could also choose to use OASIS data in administering their Medicaid programs. When that is the case, Federal reimbursement is applicable to the extent that a State uses the OASIS for administering its Medicaid program. As a result, it may be appropriate for a State to allocate some OASIS costs to its Medicaid administrative cost claims.

When a State does use OASIS in administering its Medicaid programs, it should apportion Federal costs associated with automating the OASIS and operating the data system between the Medicare survey and certification program and the Medicaid program (as administrative costs, when applicable). The State should apportion OASIS costs to these programs based on the State's determination of each program's utilization of the OASIS system. The Federal financial participation rate for costs apportioned as Medicaid administrative costs is 50 percent. When

the State licensure program benefits from the automation of the OASIS, the State should also share in the OASIS automation costs.

• *Hardware:* As previously discussed, States already have the systems infrastructure in place to support the requirement to collect OASIS data from their certified HHAs. However, HCFA will fund the purchase and installation of a computer work station in those States in which the long term care and non-long term care surveyors work in different offices. We anticipate that these States will require a Pentium 233 workstation with 8 gigabyte hard drive and a 15 inch monitor. This system will run on Windows NT 4.0 and include a network card for LAN connections.

• *Software:* HCFA will provide each State with a standard suite of software applications to perform all OASIS-related functions, including receipt and validation of OASIS records, posting of records to the master repository, and analytical applications to be used to inform and support the home health agency.

The OASIS system, in most cases, will be operated by personnel within the designated State agency. We will require the State systems to perform the full gamut of OASIS system responsibilities including receiving, authenticating, and validating the records received from HHAs, providing feedback to the HHAs, storing the OASIS records in a permanent database within the State system, creating system management reports and logs, generating provider performance reports, and retransmitting validated OASIS records from each State agency to a national OASIS repository maintained by HCFA. When a State develops its own customized OASIS applications, the costs of developing and maintaining these additional software applications (and any related hardware components) will not be Federally funded.

• *Operational Staff Time:* The systems infrastructure that will collect and configure the OASIS data from HHAs is already in place in all States. We expect that States will hire or reassign the technical staff required to support the system. However, HCFA recognizes that there will be incremental staff time required to support the additional technical activities associated with maintaining additional provider passwords and a larger database, as well as fulfilling the provider/vendor education and support role. We are requesting that each State assign an OASIS automation coordinator who will be our key contact within each State for managing OASIS system issues. States have already named an MDS automation coordinator, and we anticipate that in many cases, this same individual will also be supporting OASIS.

HCFA will fund additional staffing costs based on the incremental time requirements associated with the computerization of OASIS. We have ranked States into three groups based on the number of HHAs in each State and will fund staffing costs depending on the number of HHAs within each State. We will fund an additional .5 full time equivalent (FTE) staff time for a State with less than 100 HHAs; we will fund an additional 1.0 FTE for a State with 101–250 HHAs; and, we will fund an additional 1.5 FTE for a State with greater than 251 HHAs. These additional FTEs represent both the incremental technical time needed to support OASIS, as well as the duties of the OASIS Automation Coordinator whose duties will include training providers to encode data in the HCFA standard format, to create export files, and to use the communications software to dial into the State database; error tracking and resolution of HHA provider data problems; and other data management responsibilities such as cleaning and aggregating the data prior to transmission to HCFA and system backup and archiving. We estimate that the incremental staffing costs for both technical staff and the OASIS Automation Coordinator will be about $44,000 for an average size State with responsibility for 101–250 HHAs.

• *Supplies:* States can expect about $600 per year in incremental OASIS-related costs for products that are consumed, such as printer toner, paper, and back-up tapes.

• *Training:* We plan to centralize training of State personnel who will be responsible for administrative and technical aspects of OASIS operations. With our technical support and guidance, States will work closely with the HHA provider community in providing information on specific requirements related to the submission of OASIS assessments to the State repository.

In order to promote national consistency in OASIS system operations and troubleshooting, we will request the OASIS coordinators to attend a national multi-day training session. We will also convene at least one national meeting of the OASIS coordinators each year. We will use this forum to present new information, gather suggestions for system improvements, exchange ideas on OASIS system operations, administration and troubleshooting issues, and to discuss objectives for future system development and refinement. States will be expected to work with their HHA provider community to educate them on automating the OASIS. We anticipate annual training costs associated with training for an average size State to be about $5,600 which includes travel costs associated with both the centralized training and educating the HHAs and vendor community on computerization requirements.

• *Data Transmission:* States will incur data communication costs both in receiving OASIS data from HHAs and transmitting validation reports back to the HHAs. These costs have two basic elements:

(1) Fixed monthly line fees of approximately $23.00 per line per month. The number of lines required varies from 8 to 48 according to the number of HHAs supported by a State. On average, a State's fixed line costs will be $2,208 per year.

(2) Line connect and long distance charges of approximately $.03 per assessment for the monthly connection times associated with transmitting error logs and edit reports back to the HHAs. This translates into an average connection cost of $7,665 per year per State.

C. Conclusion

As discussed in detail above, HHAs and States will bear some incremental costs associated with this proposal. However, we believe that these costs are well justified when considered within the context of the anticipated increased quality of care for HHA patients, as well as the potential uses of the automated data by the HHAs, the States, and us. The foregoing estimates may actually overstate anticipated costs because they do not take into account cost-savings to be achieved by improving HHAs' management information systems, as well as potential improvements in patients' overall health status. Nor do they represent the savings inherent in future improvements to the survey and certification process, and specifically, a more focused, uniform approach by both the States and us in assessing quality of care in the nation's HHAs. We note that we have received feedback from many of the HHAs that chose to participate in the HCFA-sponsored OASIS Demonstration Project that has been underway for the past several years. These HHAs have indicated that the value of the information they have received about their individual performance has well outweighed the incremental cost associated with collecting and reporting the data.

In accordance with the provisions of Executive Order 12866, this regulation

was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as follows:

A. Part 484 is amended as follows:

PART 484—CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh))

Subpart B—Administration

2. Section 484.11 is added to subpart B to read as follows:

§ 484.11 Condition of participation: Release of patient identifiable OASIS information.

The HHA and agent acting on behalf of the HHA in accordance with a written contract must ensure the confidentiality of all patient identifiable information contained in the clinical record, including OASIS data, and may not release patient identifiable OASIS information to the public.

3. Section 484.20 is added to subpart B to read as follows:

§ 484.20 Condition of participation: Reporting OASIS information.

HHAs must electronically report all OASIS data collected in accordance with § 484.55.

(a) *Standard: Encoding OASIS data.* The HHA must encode and be capable of transmitting OASIS data for each agency patient within 7 days of completing an OASIS data set.

(b) *Standard: Accuracy of encoded OASIS data.* The encoded OASIS data must accurately reflect the patient's status at the time of assessment.

(c) *Standard: Transmittal of OASIS data.* The HHA must—

(1) Electronically transmit accurate, completed, encoded and locked OASIS data for each patient to the State agency or HCFA OASIS contractor at least monthly;

(2) For all assessments completed in the previous month, transmit OASIS data in a format that meets the requirements of paragraph (d) of this section;

(3) Successfully transmit test data to the State agency or HCFA OASIS contractor beginning March 26, 1999, and no later than April 26, 1999; and

(4) Transmit data using electronic communications software that provides a direct telephone connection from the HHA to the State agency or HCFA OASIS contractor.

(d) *Standard: Data Format.* The HHA must encode and transmit data using the software available from HCFA or software that conforms to HCFA standard electronic record layout, edit specifications, and data dictionary, and that includes the required OASIS data set.

B. Part 488 is amended as follows:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

1. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart B—Special Requirements

2. Section 488.68 is added to subpart B to read as follows:

§ 488.68 State Agency responsibilities for OASIS collection and data base requirements.

As part of State agency survey responsibilities, the State agency or other entity designated by HCFA has overall responsibility for fulfilling the following requirements for operating the OASIS system:

(a) *Establish and maintain an OASIS database*—. The State agency or other entity designated by HCFA must'

(1) Use a standard system developed or approved by HCFA to collect, store, and analyze data;

(2) Conduct basic system management activities including hardware and software maintenance, system back-up, and monitoring the status of the database; and

(3) Obtain HCFA approval before modifying any parts of the HCFA standard system including, but not limited to, standard HCFA-approved—

(i) OASIS data items;

(ii) Record formats and validation edits; and

(iii) Agency encoding and transmission methods.

(b) *Analyze and edit OASIS data.* The State agency or other entity designated by HCFA must—

(1) Upon receipt of data from an HHA, edit the data as specified by HCFA and ensure that the HHA resolves errors within the limits specified by HCFA;

(2) At least monthly, make available for retrieval by HCFA all edited OASIS records received during that period, according to formats specified by HCFA, and correct and retransmit previously rejected data as needed; and

(3) Analyze data and generate reports as specified by HCFA.

(c) *Ensure accuracy of OASIS data.* The State agency must audit the accuracy of the OASIS data through the survey process.

(d) *Restrict access to OASIS data.* The State agency or other entity designated by HCFA must do the following:

(1) Ensure that access to data is restricted except for the transmission of data and reports to—

(i) HCFA;

(ii) The State agency component that conducts surveys for purposes related to this function; and

(iii) Other entities if authorized by HCFA.

(2) Ensure that patient identifiable OASIS data is released only to the extent that it is permitted under the Privacy Act of 1974.

(e) *Provide training and technical support for HHAs.* The State agency or other entity designated by HCFA must—

(1) Instruct each HHA on the administration of the data set, privacy/confidentiality of the data set, and integration of the OASIS data set into the facility's own record keeping system;

(2) Instruct each HHA on the use of software to encode and transmit OASIS data to the State;

(3) Specify to a facility the method of transmission of data to the State, and instruct the facility on this method.

(4) Monitor each HHA's ability to transmit OASIS data.

(5) Provide ongoing technical assistance and general support to HHAs in implementing the OASIS reporting requirements specified in the conditions of participation for home health agencies; and

(6) Carry out any other functions as designated by HCFA necessary to maintain OASIS data on the standard State system.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.778, Medical Assistance Program)

Dated: November 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 15, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 99–1448 Filed 1–22–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 484

[HCFA–3007–F]

RIN 0938–AJ11

Medicare and Medicaid Programs: Comprehensive Assessment and Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule revises the existing conditions of participation that home health agencies (HHAs) must meet to participate in the Medicare program. Specifically, this rule requires that each patient receive from the HHA a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social and discharge planning needs. In addition, this final rule requires that as part of the comprehensive assessment, HHAs use a standard core assessment data set, the "Outcome and Assessment Information Set" (OASIS) when evaluating adult, non-maternity patients. These changes are an integral part of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through Federal programs and in the measurement of that care.

EFFECTIVE DATE: These regulations are effective on February 24, 1999.

ADDRESSES: Mail written copies of comments related to information collection requirements to the following addresses:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attention: John Burke HCFA–3007–F, Fax number: 410–786–0262 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503, Attention: Allison Herron Eydt, HCFA Desk Officer, Fax number: 202–395–6974 or 202–395–5167

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FOR FURTHER INFORMATION CONTACT: Janice Stevenson at (410) 786–4882.

SUPPLEMENTARY INFORMATION:

I. Background

Home health services are covered for the elderly and disabled under the Hospital Insurance (Part A) and Supplemental Medical Insurance (Part B) benefits of the Medicare program and are described in section 1861(m) of the Social Security Act (the Act). These services must be furnished by, or under arrangement with, an HHA that participates in the Medicare program, and be provided on a visiting basis in the beneficiary's home. Services may include the following:

- Part-time or intermittent skilled nursing care furnished by or under the supervision of a registered nurse.
- Physical therapy, speech-language pathology, and occupational therapy.
- Medical social services under the direction of a physician.
- Part-time or intermittent home health aide services.
- Medical supplies (other than drugs and biologicals) and durable medical equipment.
- Services of interns and residents if the HHA is owned by or affiliated with a hospital that has an approved medical education program.
- Services at hospitals, SNFs, or rehabilitation centers when they involve equipment too cumbersome to bring to the home.

Section 1861(o) of the Act specifies certain requirements that a home health agency must meet to participate in the Medicare program. (Existing regulations at 42 CFR 440.70(d) specify that HHAs participating in the Medicaid program must also meet the Medicare conditions of participation.) In particular, section 1861(o)(6) of the Act provides that an HHA must meet the conditions of participation specified in section 1891(a) of the Act and such other conditions of participation as the Secretary finds necessary in the interest of the health and safety of patients of HHAs. Section 1891(a) of the Act establishes specific requirements for HHAs in several areas, including patient rights, home health aide training and competency, and compliance with applicable Federal, State, and local laws.

Under the authority of sections 1861(o), 1871 and 1891 of the Act, the Secretary has established in regulations, the requirements that an HHA must meet to participate in the Medicare program. These requirements are set forth at 42 CFR Part 484, Conditions of Participation: Home Health Agencies. Unless a condition is specifically limited to Medicare beneficiaries, the conditions of participation (COPs) apply to an HHA as an entity and to the services it furnishes to an individual under its care. Under section 1891(b) of the Act, the Secretary is responsible for assuring that the COPs, and their enforcement, are adequate to protect the health and safety of individuals under the care of an HHA and to promote the effective and efficient use of Medicare funds. To implement this requirement, State survey agencies generally conduct surveys of HHAs to determine whether they are complying with the conditions of participation.

II. Provisions of the Proposed Rule and Discussion of Public Comments

On March 10, 1997, we published two proposed rules in the **Federal Register** that proposed significant changes to the HHA COPs. The first proposed rule, Conditions of Participation for Home Health Agencies (62 FR 11004), set forth broad based revisions to the COPs with the goal of eliminating cumbersome process regulations and focusing on outcomes of care. In the preamble to that proposed rule, we discussed in detail our rationale for revising the COPs and the principles underlying our

proposed revisions. Specifically, we stated that the revised COPs will promote a partnership between HCFA and the rest of the health care community, and are based on the belief that we should retain only those regulations that represent the most cost-effective, least intrusive, and most flexible means of meeting HCFA's quality of care responsibilities. Also, they rely on the principle that making powerful data available to consumers and providers can produce a strong nonregulatory force to improve quality of care. One of the most significant provisions of the HHA COPs proposed rule was the requirement that each patient receive from the HHA a patient-specific, comprehensive assessment that identifies the patient's continuing need for home care, and that meets the patient's medical, nursing, rehabilitative, social and discharge planning needs.

The second proposed rule published on March 10, 1997, Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies (62 FR 11035), proposed that as part of the comprehensive assessment, HHAs use a standard core assessment data set, the "Outcome and Assessment Information Set" (OASIS), when evaluating adult, non-maternity patients. In the preamble to that rule, we discussed in detail the process we used to develop the OASIS including numerous definitional and methodological issues that had to be addressed before the OASIS was finalized. In addition, we also described expectations regarding the use of the OASIS both in the near future and in the long run. Both the proposal to revise the HHA COPs and the proposal requiring use of the OASIS are integral parts of the Administration's efforts to achieve broad-based improvements in the quality of care furnished through the Medicare and Medicaid programs and in the measurement of that care.

Subsequent to the publication of the two proposed rules discussed above, the Balanced Budget Act (Public Law 105–33 (BBA)) was enacted on August 5, 1997. It amended the Act to require the Secretary to establish a prospective payment system for home health services. Although the implementation of a prospective payment system will be delayed until all related systems achieve year 2000 compliance, we will still need to begin receiving the data to be used for standardizing the payment amounts as soon as possible. In order to implement this prospective payment system, it is necessary that we have data from HHAs to develop a reliable case mix adjustment system. Case mix adjustment modifies prospective payment rates to reflect the differences in the amount of services required by patients of different diagnosis and severity, and allows the payments to correspond more closely with expected resource use by patients. Section 4602(e) of the BBA provides that for cost reporting periods beginning on or after October 1, 1997, the Secretary may require HHAs to submit additional information that the Secretary considers necessary to develop reliable case mix adjustments. We intend for the OASIS to be the vehicle through which information for the case mix adjustments is collected. Thus, to facilitate the implementation of the prospective payment system, in this final rule, we are setting forth only that portion of the proposed COPs concerning comprehensive assessment. In addition, we are finalizing the proposed rule that requires use of the OASIS. Specifically, as discussed in detail below, we are requiring that HHAs complete a comprehensive assessment for each patient and that they incorporate the OASIS into their comprehensive assessment process.

In addition to publishing this rule, in today's issue of the **Federal Register**, we are also publishing regulations that require HHAs to electronically report OASIS data as a condition of participation. Because the prospective payment system must be implemented as soon as possible, we will need to begin receiving the data to be used for standardizing the payment amounts. The publication of this final rule and the rule concerning reporting requirements for OASIS will allow us enough lead time to be assured that the data we collect are consistent and complete for the purposes of computing valid case mix adjusters. Only then can we be confident that resulting payment levels are proper. Should computations be flawed and payments improper, incentives would be distorted and patient care could quite possibly suffer.

The immediate publication of rules requiring the collection and reporting of OASIS data and OMB approval of these requirements pursuant to the Paperwork Reduction Act of 1995 are essential because these data are required for the development of the home health prospective payment system, required by statute in October of 2000. Because OASIS data will form the basis for the case mix adjustment component of the prospective payment system, national OASIS data must be used in the extensive statistical analyses needed to calculate standardized prospective payment rates and estimate their impact. The process of rate development must take place in the early spring of 1999 for incorporation in a proposed rule. The proposed rule regarding the home health prospective payment system must be published by the fall of 1999 to allow for necessary comments and revisions prior to the publication of a final rule in the summer of 2000. Given the lag time between the publication of the OASIS rules and the receipt of viable national data by HCFA, we are already at the point where only two months of national data will be potentially available for use in the proposed rule and less than a year of data for the final rule. Further delays would reduce the amount of national data available for development of the prospective payment rates and thus seriously undermine the project plan aimed at implementation of the prospective payment system on October 1, 2000.

Our commitment to revising the COPs for HHAs to focus on patient-centered, outcome-oriented care remains unchanged. Once HHAs have become familiar with collecting and reporting OASIS data, we expect to publish a final rule that sets forth the remainder of the revisions to the HHA COPs, which we proposed in March, 1997. Following is a discussion of the provisions of the March 10, 1997 proposed rules concerning comprehensive assessment and use of the OASIS as well as our responses to public comments received on these issues. We will respond to comments concerning the other home health conditions, which were proposed in the March 10, 1997 **Federal Register**, in a separate rulemaking document.

A. Comprehensive Assessment

The Comprehensive Assessment of Patients COP reflects the patient-centered, interdisciplinary approach, and underscores our view that systematic patient assessment is essential to improving quality of care and patient outcomes. We believe that the comprehensive assessment requirements reflect standard practice for most HHAs. In addition, this condition requires HHAs to incorporate the use of OASIS in their comprehensive assessment.

We proposed to add a new § 484.55 to require that each patient receive from the HHA a patient-specific, comprehensive assessment that identifies the patient's need for home care and that meets the patient's medical, nursing, rehabilitative, social and discharge planning needs. For Medicare patients, identifying the need for home care would include assessment of the patient's eligibility for the home health benefit, including the patient's homebound status. (This verification of a patient's eligibility for Medicare home

health benefit including homebound status does not apply to Medicaid patients or private pay patients.) As a result of the utility of OASIS as a case mix adjuster, we have slightly modified the appropriate populations for whom the OASIS data should be collected. Because OASIS data is necessary for payment purposes, it must be collected for all Medicare beneficiaries except pediatric patients, including those groups for whom OASIS is not as useful for outcome measurement as for others. We expect HHAs will collect OASIS data on all patients served by the HHA *except* prepartum and postpartum patients, patients under 18, and patients who are not receiving personal care or health services (that is patients who are receiving only services such as housecleaning, cooking or laundry).

General Comments

Comment: One commenter expressed concern that the home care industry is facing many major changes at one time including revised COPs (which include a new set of standards requiring data driven performance improvement), implementation of OASIS, and the implementation of a prospective payment system that has not been designed to consider the costs of outcome measurement and performance improvement.

Response: We agree that change, even necessary change, is difficult, and we have endeavored to make the transition as smooth as possible. To that end, we published OASIS and the revised COPs in the **Federal Register** in March, 1997, to give HHAs and the industry an opportunity to begin familiarizing themselves with the data set and developing strategies for complying with the proposed COPs. We recognize that recent changes in the reimbursement system have made the implementation of the OASIS requirements a challenging prospect for some HHAs. However, as a result of the BBA, HCFA and HHAs are faced with the rapid implementation of a prospective payment system. As discussed above, OASIS data is critical to the development of case mix adjustments for the prospective payment system for HHAs, which has been mandated by the BBA. Without such data, there is a strong likelihood that HCFA could not obtain the case mix information that is absolutely essential for the establishment of a prospective payment system. Although we recognize that it may be difficult for HHAs to cope with the changes that would result from implementation of all the proposed COPs at one time, we cannot delay implementation of the OASIS requirements. Therefore, in this rule, we are finalizing only the condition that requires collection of OASIS information. The reporting requirements for OASIS data are published in a separate rule in today's issue of the **Federal Register**. We plan to finalize the remainder of the home health conditions in a later rulemaking document. We believe this approach will give HHAs the opportunity to concentrate on OASIS implementation.

Comment: One commenter suggested that assessment and care planning are intertwined and should remain together in a single COP.

Response: We believe that assessment and care planning are sequential steps in patient management, as one cannot develop a care plan without first assessing the patient. By creating a separate condition for the assessment process, we emphasize the importance of this cornerstone of patient management. We provide specific assessment requirements to support not only care planning, but also data critical to the development and operation of a prospective payment system.

Comment: One commenter stated the belief that the requirement to assess Medicare patients' homebound status when identifying patients' need for home care is restricting. The commenter further stated the belief that requiring a patient to be homebound in order to obtain Medicare benefits limits them to the point of institutionalizing them. Another commenter pointed out that the homebound criteria is not a requirement for non-Medicare patients. The commenter recommended that this be clearly stated in the surveyor interpretive guidelines.

Response: We recognize the commenters' concerns. However, sections 1814(a)(2)(C), and 1835(a)(2)(A) of the Act require a physician to certify that an individual be homebound, or confined to the home, in order to receive Medicare coverage for home health services. This requirement is consistent with the statute, and promotes program integrity because it requires HHAs to evaluate the Medicare patients' eligibility for the home health benefit. We agree that homebound status and other Medicare eligibility requirements do not apply to patients served by the HHA who are not receiving Medicare home health benefits. Therefore, we have revised the introductory text of § 484.55 to clarify that the HHA must verify the patient's eligibility for the Medicare home health benefit including homebound status only for Medicare home health beneficiaries. Verification of a patient's eligibility for Medicare home health benefit including homebound status does not apply to Medicaid patients, beneficiaries receiving Medicare outpatient services or private pay patients. Because the comprehensive assessment may not be completed at the time of the initial assessment visit, we have also revised paragraphs (a) and (b) to require the HHA to assess the patient's eligibility for the home health benefit at the initial evaluation visit, and at the time the comprehensive assessment is completed. In addition, we will ensure that HCFA guidance and surveyor training reflect this distinction in accordance with the commenter's request.

Comment: Many commenters favored the comprehensive assessment, but requested clarification on the sequence of the assessment process as specified in § 484.55.

Response: We believe that commenters found the structure of the condition confusing, as the requirements proposed at § 484.55(a) addressed drug regimen review as part of the comprehensive assessment, § 484.55(b) addressed the initial assessment visit, and § 484.55 (c), (d) and (e) returned to the subject of the comprehensive assessment. To improve clarity, we have revised the regulation to place assessment requirements in sequential order within the condition. We have also shortened the title of the proposed standard at § 484.55(c), Standard: Time frame for completion of the comprehensive assessment to Standard: Completion of the comprehensive assessment, in order to focus on the activity of completing the comprehensive assessment, rather than to focus on the timing of the activity. To further clarify the condition, we are removing language at § 484.55(d), which requires that the comprehensive assessment meet the needs of the patient and include information on the patient's progress toward clinical outcomes. We have incorporated this requirement into the introductory text of § 484.55.

The comprehensive assessment COP requires that a patient receive an initial assessment in order to determine the immediate care and support needs of the patient. The initial assessment visit corresponds to the registered nurse initial evaluation visit required under the skilled nursing condition of participation at § 484.30. The initial assessment visit is intended to ensure that the patient's most critical needs for home care services are identified and met in a timely fashion. We do not require that a comprehensive assessment be completed at this visit, although the HHA may choose to do so. If the HHA does not complete the

comprehensive assessment during the initial visit, then the comprehensive assessment must be completed and updated according to the time points at § 484.55(b) and (d). Section 484.55(e) requires that OASIS items be incorporated into the HHA's comprehensive assessment.

Therefore, in order to avoid misunderstandings regarding the initial assessment, the comprehensive assessment and the OASIS, we have rearranged the sequence of the process in § 484.55 to read as follows: § 484.55(a) Initial assessment visit; § 484.55(b) Completion of the comprehensive assessment; § 484.55(c) Drug regimen review; § 484.55(d) Update of comprehensive assessment; and § 484.55(e) Incorporation of OASIS data items.

Standard: Initial Assessment Visit

The regulation for the initial assessment visit set forth at proposed § 484.55(b) (now § 484.55(a) in accordance with the reorganization scheme discussed above) required that a registered nurse perform an initial assessment visit based on physician's orders to determine the immediate care and support needs of the patient either within 48 hours of referral, within 48 hours after patient's return home, or within 48 hours of the physician-ordered start of care date. We proposed that when rehabilitation therapy services are the only services ordered by the physician, the initial assessment would be made by the appropriate rehabilitation skilled professional.

We solicited comments on the appropriateness of using competent individuals other than a registered nurse or appropriate therapist to perform initial patient assessments. We also invited comments on the feasibility of permitting the delegation of nursing responsibilities within the scope of State practice acts to competent individuals.

Comment: Several commenters questioned the requirement that the initial assessment be completed within 48 hours. Commenters stated that compliance would be difficult for home care providers who serve rural areas, especially for weekend therapy coverage. Some commenters suggested that the time frame be extended to 72 hours, others suggested it be left up to the HHA. One commenter questioned how HHAs would demonstrate that the patient was seen in the required amount of time. However, another commenter pointed out that if a patient receives a visit 48 hours after the physician orders those services to begin, then the HHA is not complying with the plan of care.

Response: The requirement for the initial assessment to be completed within a 48-hour time frame is imperative for the safety of the patient. As the complexity of the care needs of patients increase, so does the need for a comprehensive assessment of the patient, and the importance of the development and implementation of an effective care plan becomes paramount. In addition, HHAs are often providing services that were once exclusively provided in a hospital or other institutional settings (for example, chemotherapy, intravenous treatments, and care for patients dependent on respirators). Thus, HHAs are often caring for patients with severe and complex health care needs who require high-tech services. Patients who are discharged from the hospital or referred for home health services should not be left unattended in the home for any extensive period of time, unless the physician determines that a later start of care date is suitable. If the physician orders that the patient begin receiving home health services on a specific date, then it is reasonable to expect the HHA to comply with that order. If there is no start of care date ordered, or if access to the patient or provision of services are difficult to provide within 48 hours of referral or discharge from the hospital, then the HHA must communicate that difficulty to the physician. The physician can then establish a start of care date that is appropriate to meet the needs of the patient and is acceptable to the HHA.

We expect that HHAs will develop administrative processes to track admissions and timeliness of service, and see such attention as a positive outcome of this requirement. HHAs are free to choose the method that works for them, given the size and patient population of the HHA. We agree with the commenter that allowing the HHA to delay services for 48 hours after the physician orders services to begin would promote noncompliance with physician orders. As a result of this comment, we have revised the requirement at § 484.55(a)(1) to state that the initial assessment visit must occur either within 48 hours of referral, or within 48 hours of a patient's return home, or on the start of care date ordered by the physician. To further clarify, if the HHA is notified of a patient referral for home care on Monday, and the patient is discharged from the hospital on Wednesday, we would expect the initial assessment visit to occur by Friday, unless the physician specifies an earlier time. However, if the physician orders the start of care to begin on the following Monday (5 days after hospital discharge and 7 days after the referral), the initial assessment must be rendered on that day. We have also revised paragraph § 484.55 (a)(1) to remove language that requires the registered nurse to complete the initial assessment "based on physician's orders". We believe this language is unnecessary, since all visits to the patient are made based on physician orders.

Comment: One commenter indicated that most HHAs will not allow 48 hours or longer to complete the initial assessment. The commenter stated that paperwork requirements, which differ from State to State, mandate that all information be obtained and reduced to writing as quickly as possible in order to obtain the physician's signature on the document in the required time frames.

Response: In this final rule, we require specific time frames for the initial assessment visit and completion of the comprehensive assessment because we believe that these requirements are predictive of good patient care, and proactive for the prevention of harm to the patient. We recognize that States may have regulations that require completion of the assessment earlier. However, we do not preclude agencies from completing their assessments prior to the mandated timeframes.

Comment: Two commenters suggested that we consider patient choice and the patient's right to determine when the HHA will make the visit. A commenter offered an example of a patient who would have help at home until a designated point in time at which that help would cease. The commenter suggested that the patient should be able to request that home health services start as soon as help was no longer available.

Response: Section 1891(a)(1)(A) of the Act states that the patient has the right to be fully informed in advance about the care and treatment to be provided by the agency and the right to participate in planning care. Section 1861(m) of the Act requires that the individual receive services under a plan of care established and periodically reviewed by the physician. Therefore, we expect that the patient, the HHA and the physician will communicate in developing a plan of care that meets the patient's health needs, is considerate of the patient's concerns and can be delivered by the HHA. In the situation described by the commenter, we would expect that a later start of care date would be established by the physician if appropriate.

Comment: Several commenters disagreed with our proposed requirement that therapists can perform initial assessment visits. Commenters stated that, as the focal point for opening the case, the initial assessment should be performed only by a registered nurse, because the nurse has the broadest scope of clinical expertise. A few commenters stated that therapists, including occupational therapists, (but not therapy assistants) should be able to complete the initial assessment visit. Several commenters questioned who should complete the comprehensive assessment and asked that we clarify the requirement. One commenter stated that updates of the comprehensive assessment and completion of the OASIS at required intervals could be satisfactorily performed by a licensed practical nurse under RN supervision.

Response: We received many comments recommending both restriction (to registered nurses) and liberalization (to occupational therapists) of our current requirements. Section 484.30(a) states that the registered nurse make the initial evaluation visit; and, we agree that the broad scope of clinical expertise of the registered nurse is beneficial in conducting the initial evaluation. However, restricting the initial evaluation to the registered nurse only (when only a therapy service has been ordered by the physician) can be burdensome. In these instances, in an endeavor to allow flexibility, a physical therapist or speech language pathologist may conduct the initial evaluation visit in accordance with physician orders. This policy has been explained in interpretive guidelines, and is based on the proven ability of the physical therapist and/or speech language pathologist to conduct the initial visit.

At this time, we will make this policy explicit in regulation. As we have said above, the initial assessment visit and comprehensive assessment must be conducted by a registered nurse unless physical therapy or speech language pathology is the only required service for that patient. If that is the case, the physical therapist or speech-language pathologist can conduct these assessments. The staff requirements are the same for follow-up assessments and assessments at the time of transfers and discharges.

With regard to occupational therapists completing the initial assessment visit, we note that while Medicare pays for occupational therapy, eligibility for the Medicare home health benefit cannot be established based solely on the need for that service. The occupational therapist may complete the comprehensive assessment and its updates if the need for occupational therapy establishes program eligibility. The need for occupational therapy would not establish eligibility for the Medicare home health benefit, but could establish eligibility, for example, in some States under the Medicaid program. Conversely, the Medicare home health patient with multiple service needs can retain eligibility if, over time, the only remaining need is for occupational therapy. At that time, an occupational therapist can conduct the follow-up assessment as well as those associated with transfers and discharges. In the case of Medicaid patients, or Medicare patients receiving outpatient services, if the need for a single therapy service either establishes eligibility or allows eligibility to continue once it is otherwise established, the corresponding practitioner, (including a physical therapist, speech-language pathologist, or occupational therapist) can conduct any of the designated assessments.

We do not believe the comprehensive assessment can be completed by the licensed practical nurse in accordance with the COPs. The introductory text to § 484.55 requires that the comprehensive assessment meet the needs of the patient and include information on the patient's progress toward clinical outcomes. Thus, completing the comprehensive assessment involves an evaluation of the patient. In the current conditions of participation, patient evaluation is included in the duties of the registered nurse at § 484.30(a) and therapy services at § 484.32, but is not included in the duties of the licensed practical nurse at § 484.30(b). In response to comments, we have revised § 484.55(b)(2) to require that the registered nurse complete the comprehensive assessment.

Comment: Several commenters requested that we clarify the term "appropriate therapist". Commenters indicated that surveyors apply the Medicare restriction of occupational therapy as a qualifying skilled service to non-Medicare patients or those Medicare patients receiving outpatient services. Other commenters requested clarification regarding the inclusion of the occupational therapist as one of the disciplines to conduct the initial assessment visit.

Response: The appropriate therapist is the physical therapist or speech language pathologist; and, in some cases as indicated above, the occupational therapist. We have made this clarification in the regulatory text at § 484.55(a)(2). To further clarify, we have added a new paragraph (b)(3) to provide that the comprehensive assessment may be completed by the physical therapist, speech-language pathologist or occupational therapist if the need for occupational therapy establishes program eligibility.

Standard: Completion of the Comprehensive Assessment

At proposed § 484.55(c) (now § 484.55(b)) we specified the timeframe in which the HHA must complete the comprehensive assessment. We proposed that the HHA must complete the comprehensive assessment in a timely manner consistent with the patient's immediate needs, but no later than 5 working days after the start of care.

Comment: A few commenters questioned if the requirement for a comprehensive assessment with OASIS data applies to all payment sources, including managed care patients. Commenters also asked if managed care organizations (MCOs) will be responsible for supplying the follow-up to outcomes.

Response: The conditions of participation apply to the HHA, and thus to all patients served by the agency. Therefore, we would expect that managed care patients receive a comprehensive assessment, including OASIS items, where required in the COPs. With regard to MCO responsibility for follow-ups, we note that outcome reports generated from OASIS data will be sent directly to the HHA providing the services. At the discretion of the HHA, the HHA can work with the MCO to develop a plan for follow-ups to the outcome reports.

Comment: Several commenters disagreed with the requirement that the comprehensive assessment be completed within 5 working days after the start of care. Some commenters suggested the requirement be changed to 7 days. Other commenters disliked the term "working days", stating that every day is a working day for HHAs. These commenters suggested changing the requirement to 5 calendar days.

Response: We agree with commenters that the term "working days" may be misleading. HHAs provide care to patients in accordance with patient needs, and patient needs do not comply with the arbitrary limits of "working days". Therefore, we have revised § 484.55(b)(1) to change the term "working days" to "calendar days" in the requirement.

Comment: Two commenters requested that HCFA establish a standardized comprehensive assessment that must be used for all HHAs. The commenters felt

that this would improve efficiency for the HHA and the quality of patient assessment. Another commenter pointed out that HHAs must develop two comprehensive assessments; one for patients who require collection of OASIS items, and one for patients who do not need to have OASIS items included in their assessment. Commenters stated the belief that this can be confusing and potentially burdensome for the HHA.

Response: We do not believe that a standardized comprehensive assessment is necessary or useful to all HHAs. Our intent is that HHAs have the flexibility to use a comprehensive assessment that reflects the needs of their patient population. The standardized elements of the comprehensive assessment are the OASIS items that must be incorporated into the comprehensive assessment. We are aware that some provider, vendor and academic organizations have developed standard comprehensive assessments with the OASIS data set integrated into them. We expect that the availability of such standard assessments would be attractive to HHAs that do not want to develop their own. We do not require the HHA to develop different comprehensive assessments in order to accommodate OASIS data or varying clinical needs. The HHA is free to establish assessment policy and to develop the number and type of assessment forms that meet the individual HHA's needs.

Comment: One commenter stated that the OASIS follow-up must be completed by the same discipline that completed the initial OASIS to ensure reliability of the assessment.

Response: As discussed in the OASIS proposed rule, the University of Colorado has found the OASIS to be valid and reliable even when completed by different disciplines such as a nurse and physical therapist or speech language pathologist at subsequent time points. Therefore, we do not believe that the same discipline must complete the OASIS at every time point.

Standard: Drug Regimen Review

Under § 484.55(c) (proposed § 484.55(a)) drug regimen review, we proposed to incorporate the existing requirement concerning a drug regimen review from § 484.18(c). However, we clarify the requirements by eliminating the identification of "adverse actions" and "contraindicated medications" and substituting the more concise requirements of review for drug interactions, duplicative drug therapy and noncompliance with drug therapy. This modification narrows the scope of the drug regimen review, provides accountability, and focuses the assessment toward data predictive of a significant patient outcome. In this final rule, we are revising § 484.18(c), by removing the last sentence of the paragraph, which relates to review of the patient's medications. This requirement has been incorporated into § 484.55(c) (proposed § 484.55(a)).

Comment: Several commenters suggested that HCFA define the term "drug regimen" and questioned if this means all medications the patient is taking or only medication prescribed for an episode of treatment.

Response: We agree that the term "drug regimen" should be clarified. Therefore, we have revised this standard to reflect that drug regimen review is part of the comprehensive assessment of the patient and includes all medications the patient is using at the time of the assessment. This is an important safeguard for patients to evaluate compliance with drug therapy, to recognize and reduce the risk of complications from multiple medications, and prevent adverse drug interactions and unnecessary medication. If an adverse drug reaction should occur, the patient care provider should note the patient's side effects and or adverse reaction in the medical record, notify the patient's doctor, and, if possible, contact the pharmacy where the prescriptions were filled.

Comment: One commenter stated that the review of drugs, drug interactions, duplicative drug use, and noncompliance with the drug regimen is not necessary for patients receiving only aide services, as these patients are receiving their drug regimen from their physician and pharmacist.

Response: All patients, whether receiving skilled services or only aide services, receive their drug regimen from the physician. The drug regimen review is an integral part of the comprehensive assessment, and an important safeguard for patients who frequently receive medications from a variety of physicians and pharmacies. We believe that patients receiving aide services are likely to have multiple medications and therefore require this health and safety protection.

Comment: Several commenters stated that the standard concerning drug regimen review does not specify that the RN is responsible for the drug regimen review as part of the comprehensive assessment. Commenters were concerned that drug monitoring is beyond the scope of practice for therapists and stated that it should be the ongoing responsibility of the patient's physician and pharmacist in therapy-only cases. Another commenter stated that the therapist was capable of completing the drug regimen review and pointed out that therapists are currently doing so.

Response: Limiting the drug regimen review and completion of the comprehensive assessment to the registered nurse would be burdensome to the HHA, especially as the comprehensive assessment must be completed periodically. If a therapy-only patient admission has a drug regimen, we would expect the therapist to evaluate the patient's medications and patient knowledge during the initial assessment visit and bring any problems to the attention of the physician. We agree that management of drug therapy is the responsibility of the physician, regardless of whether the patient is receiving therapy-only services. We note that this is a continuation of our policy since regulations previously located at § 484.18(c) allowed the drug regimen review to be completed by the HHA nurse and therapist.

Standard: Update of the Comprehensive Assessment

Section 484.55(d) addresses the update of the comprehensive assessment. In this standard, we proposed to require that the comprehensive assessment must include information on the patient's progress toward clinical outcomes, and be updated and revised (1) as frequently as the patient requires but no less frequently than every 62 days from the start of care date, (2) when the patient's plan of care is revised for physician review, (3) within 48 hours of the patient's return home from the hospital, and (4) when the patient is discharged. The comprehensive assessment updates must include the appropriate OASIS items as indicated on the data set.

Comment: Several commenters objected to the requirement that the OASIS be completed for patients who are seen infrequently (for example, every two weeks, or monthly) in order to comply with the 57 to 62 day requirement. Commenters stated that this standard would require HHAs to provide additional skilled visits.

Response: In order to have data that is comparable across HHAs, OASIS data must be collected at uniformly defined time points including at recertification. We do not believe that this requirement will add to the number of skilled visits provided by the HHA. We understand that many HHAs arrange visit schedules to accommodate home health aide supervisory requirements and patient and care giver schedules. We would expect the HHA to similarly adjust the patient's visit schedule in order to

accommodate OASIS time points. As discussed in detail below, we have revised paragraph (d) by removing the proposed 62 day requirement. Instead, we provide that the comprehensive assessment must be completed every second calendar month beginning with the start of care date.

Comment: Several commenters objected to the requirement that the OASIS be completed within 48 hours of a patient's return home from a hospital, stating that this would be burdensome and duplicative of assessment information in the clinical progress notes. Other commenters stated that the comprehensive assessment and OASIS items should be completed after a hospital stay of 24 hours or more, as this would be more predictive of a significant patient event and less burdensome to the HHA. A few commenters questioned the sequence of events regarding collection of the OASIS data after the patient's return from the hospital.

Response: Hospitalization as an event is generally a good predictor of a deterioration in the patient's health status, and therefore should be captured in the OASIS data. HHAs that do not account for hospitalizations in their OASIS data collection may reflect poorer outcomes than those that do. Patients frequently improve rapidly upon returning home from the hospital, therefore it is important that the patient's health status at the time of discharge from the hospital be captured quickly. The 48-hour requirement is necessary, given the speed of changes in a patient's status after hospitalization. In addition, the importance of OASIS as a case mix adjuster makes it necessary, in the interest of the accuracy of patient data, for the HHA to assess the patient's true needs as quickly as possible upon discharge from the hospital. This standard is intended to ensure the timely and accurate assessment of patients who were not discharged from the HHA when they were admitted to the hospital, and have returned home.

We do not intend that the comprehensive assessment be duplicative of assessment information that is documented in the clinical progress notes. Rather, we expect the comprehensive assessment to *replace* assessment information that is transcribed in clinical progress notes. For example, if a nurse assesses and documents the status of a patient's surgical wound, ability to ambulate, presence of assistance in the home and ability to manage medications during the comprehensive assessment required upon return from a hospitalization, it is unnecessary, burdensome and counterproductive for the nurse to also document this information elsewhere in the clinical progress notes. We agree with the commenter that requiring that the comprehensive assessment (including the appropriate OASIS items) be completed after a hospital admission of 24 hours or more would be predictive of a significant patient event and less burdensome to the HHA. Therefore, we have revised § 484.55(d) to require that the comprehensive assessment (including administration of OASIS) be completed within 48 hours of the patient's return home from a hospital admission of 24 hours or more for any reason except diagnostic testing.

If home health care is resumed after a hospital admission (regardless of whether the patient was formally discharged from the HHA), the comprehensive assessment must include the OASIS items appropriate for assessment after a hospital admission. If the patient was not formally discharged from the HHA, the HHA should establish the next assessment time point at the end of the second calendar month interval that corresponds to the original start-of-care date. For example, if the start-of-care date is June 25th, the patient would be reassessed on August 25th.

If the patient is formally discharged from the HHA, the data collection proceeds on the basis of the new start-of-care date that followed the inpatient stay. For purposes of OASIS data collection, the HHA can establish its own internal policies regarding criteria for formal discharge versus interrupting home care services but maintaining the patient on the HHA admission roster.

Comment: Two commenters requested that HCFA define the update of the comprehensive assessment. The commenters asked if it is necessary to complete a full assessment and OASIS in the event that only one item has changed, if the patient has a planned re-hospitalization, or if the patient is chronically ill with frequent hospitalizations. Another commenter suggested that the HHA should only complete OASIS data related to the diagnostic or quality grouping of the patient, rather than all OASIS items.

Response: The diagnostic and quality groupings to which the commenter refers were made on aggregated patient data in the Medicare demonstration and discussed in the OASIS proposed rule (62 FR 11038). These groupings were created for research purposes and the HHAs in the demonstration did not vary OASIS data collection in order to accommodate these groupings. We believe the commenter misunderstood the purpose and utility of the quality groupings and the methodology of the Medicare demonstration. The update of the comprehensive assessment must, at a minimum, include completion of all follow-up data items of the OASIS and any changes in patient status. OASIS items must be re-assessed and documented regardless of whether the patient's status has changed.

It is only by doing an assessment that the caregiver can determine if a change in condition has occurred or if a change in treatment is warranted. For example, although a patient with testicular cancer may continue to be incontinent, other factors may change that would warrant a change in the care plan. Another example would be a diabetic patient who continues to require insulin therapy. An assessment would still be necessary to rule out any complications or other changes in the patient's physical or mental health that would warrant revision of the treatment plan.

For purposes of outcome measurement and case mix adjustment, it is important to capture stabilization of the patient's health as well as improved or deteriorated outcomes. Thus, the information must be collected in order to measure the patient's complete health status, not just to capture change. In addition, documentation of all the OASIS items is an important safeguard for data accuracy. In the Medicare demonstrations, HHAs with computer systems that allowed OASIS items to "carry over", rather than requiring re-entry every time, experienced poorer outcomes. Upon examination of the data, it was discovered that documenting OASIS by exception missed many of the subtle and interrelated improvements in the patient's health status. For the remainder of the comprehensive assessment that does not include the OASIS items, limiting documentation to the changes in the patient's assessment is acceptable. We have revised the introductory text of paragraph (d) to clarify that all updates and revisions of the comprehensive assessment include administration of the OASIS.

Comment: Several commenters expressed concern about the requirement for gathering OASIS data when the plan of care is revised for physician review, stating that this would require completion of a comprehensive assessment each time the physician's orders are changed. Other commenters stated that this requirement is duplicative of the requirement to update the assessment every 57–62 days.

Response: We agree with the commenter that the requirement at § 484.55(d)(2) is duplicative and have

eliminated it. It was not our intent to require the HHA to complete a comprehensive assessment whenever physician orders are changed, and therefore, the HHA is not required to complete the OASIS data set whenever the plan of care is revised. However, the HHA will still be required to complete a comprehensive assessment when there is a significant change (a major decline or improvement) in a patient's health status.

Comment: Commenters indicated that the completion of the OASIS should be based on the needs of the individual patient, rather than an arbitrary time frame.

Response: While the frequency of ongoing patient assessment is based on the needs of the individual patient, completion of the OASIS items at standardized time points is critical for comparable information and for a case mix system. To maintain a clear reporting timeframe that eliminates the variations of days in a month, we have revised the proposed 62 day requirement at paragraph (d)(1) to provide that the HHA must update the comprehensive assessment no less frequently than every second calendar month, beginning with the start of care date. The allowable completion dates for the first assessment and any subsequent follow-up assessments will be determined based on the start of care date. Follow-up assessments must be completed every two months that a patient is under care. For each month in which a follow-up assessment is due, it must be completed no earlier than five days before, and no later than one day before the calendar day on which care began. The new rule defines the completion date relative to the day of the month which marks every two-month anniversary of the start of care. Please note the following two examples:

Example 1: If the start of care date is March 1st, the first follow-up assessment must be completed between April 26th (five days before May 1st) and April 30th (1 day before May 1st). The second follow-up assessment must be completed between June 26th and June 30th.

Example 2: If the calendar day of the start of care exceeds the last day of a month in which a follow-up assessment is due, the completion dates are computed relative to the last day of the target month. For example, if the start of care date is December 31st, the first follow-up assessment must be completed between February 23 (five days before February 28th) and February 27th (one day before February 28th). This example assumes that the year is not a leap year. In a leap year, the completion date would fall between February 24th and February 29th.

Comment: One commenter suggested that the terms "discharge" and "transfer" be defined by HCFA in order to improve the accuracy of data. The commenter expressed concern over data accuracy issues, and encouraged HCFA to require accuracy of OASIS data collected.

Response: We agree that the term "discharge" should be clarified, since the COPs require update of the comprehensive assessment at discharge. For purposes of this requirement, the term "discharge" applies when the patient is officially released from home health care by the HHA, when the patient is transferred to another facility (such as a nursing home or hospital), or when the patient dies. If any of those events occur, then we would consider the patient to be discharged from the HHA and we expect the HHA to update the comprehensive assessment (including the appropriate OASIS items). A transfer occurs when the physician orders that the patient's care be assumed by another facility (for example, nursing home or rehabilitation hospital).

We also agree with the commenter that the data derived from the comprehensive assessment and OASIS will be meaningless unless they accurately reflect the patient's health status. Therefore, we have revised the introductory text at § 484.55 to require that the comprehensive assessment accurately reflect the patient's current status.

B. Use of the Outcome and Assessment Information Set (OASIS)

As discussed above, we published a proposed rule that proposed to require HHAs to incorporate the core standard assessment data set, called the "Outcome and Assessment Information Set" (OASIS), into their comprehensive assessment process. This proposed rule added a new paragraph (e), Standard: Incorporation of OASIS data items, to § 484.55. In the March 10, 1997 proposed rule (62 FR 11036), we discussed in detail the methods we used to develop and validate the OASIS items, as well as a demonstration project we established, which was conducted by the University of Colorado, to assess the value of the OASIS data set in targeting and guiding improvements in outcomes and satisfaction for HHA patients. In addition, we described both the short term and long term expectations for use of the data set. All public comments, including those comments received on the impact of the OASIS proposed rule have been summarized and are discussed below.

Standard: Incorporation of the OASIS Data Set

Section 484.55(e) provides that the HHA must incorporate the OASIS data set into its own assessment, using the language and groupings of the OASIS items. Integrating the OASIS items into the HHA's own assessment system in the order presented in the OASIS form would facilitate data entry of the items into data collection and reporting software. However, it is not mandatory that agencies integrate the items in any particular order. An HHA may integrate the OASIS items in such a way that best suits the agency's own assessment. OASIS data items include information regarding demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care, and discharge. The OASIS data set includes only information necessary to measure outcomes of care. Our intent was not to develop a complete patient assessment but rather to identify standardized data elements that fit within the HHA's overall comprehensive assessment responsibilities; that is, the incorporation of the core standard assessment data set will complement the HHA's current approach to comprehensive assessment.

We intend that the OASIS become one of the most important aspects of the HHA's activities in providing patient care. By integrating a core standard assessment data set into its own more comprehensive assessment system, an HHA can use such a data set as the foundation for valid and reliable information for patient assessment, care planning, service delivery, and improvement efforts.

Comment: We received many comments in favor of OASIS, but some commenters were concerned about the length of the assessment process if OASIS items are included.

Response: We agree that the assessment would be lengthy if the OASIS is added to the HHA's routine assessment form. However, we emphasize the need to replace similar items/questions on the agency's own assessment. It is our understanding that some HHAs have simply appended the OASIS items to their current assessment without considering which OASIS items could replace similar items on the agency's assessment. Obviously this approach adds time to the assessment process, and renders the comprehensive assessment burdensome and

duplicative. We wish to make it clear that the OASIS is not intended to constitute a complete comprehensive assessment. Rather, the data set comprises items that are a necessary part of a complete comprehensive assessment and are essential to uniformly and consistently measuring patient outcomes. The OASIS items are already used in one form or another by virtually all HHAs that conduct thorough assessments. We therefore believe that HHAs should replace similar items with OASIS items to avoid lengthening the assessment unnecessarily. In fact, when OASIS items have been used to replace similar assessment items, HHAs in the demonstration project found that completing the integrated assessment adds little to no net time increase to the visit. In addition, HHAs have found it less burdensome to enter OASIS data items into a data collection software program when they are inserted in order into the HHA's comprehensive assessment. This approach increases the speed and accuracy of data entry.

Comment: Several commenters applauded HCFA's effort to bring about OASIS stating that, from experience, they had found that incorporating the OASIS data set into their assessment process has proven to be very beneficial in assisting health care professionals in identifying the medical necessity and services that patients require. Commenters stated the belief that the OASIS data set had been developed using sound scientific processes, and will provide a useful minimal set of data items for HHAs in assessing and demonstrating outcomes by promoting systemization and completeness.

Response: We agree with the commenters that OASIS data will be helpful to HHAs and assist them in planning and providing home health services. We appreciate the positive comments and support for OASIS.

Comment: Several commenters stated that OASIS should have been developed to be compatible with the Minimum Data Set (MDS) used in Nursing Homes and/or the Uniform Needs Assessment that is under development for use in hospitals. Commenters stated that such compatibility or a crosswalk is crucial as we strive to develop integrated systems and well coordinated care.

Response: The MDS and OASIS are different data sets, developed for different purposes, for different patient care settings, and to implement different statutory provisions. MDS was developed in 1990 to implement sections 1819(f)(6) (A) and (B) of the Act for Medicare and sections 1919(f)(6) (A) and (B) of the Act for Medicaid, which required nursing homes to perform a comprehensive assessment of long term care facility residents. The MDS was designed to function as a complete assessment to promote decision making, care plan development, and care plan implementation and evaluation. The structure of the MDS is designed to enhance resident care and promote the quality of a resident's life.

The OASIS data set was developed in 1993, in part to implement sections 1891(c)(2)(C) and 1891(d)(1) of the Act, which require as part of the home health assessment, a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care. OASIS is the designated assessment instrument (or instruments) for use by an agency in complying with the requirement. OASIS focuses on outcomes of care, and was developed as a system of outcome measures that could be used specifically for outcome-based quality improvement and evaluation in HHAs. OASIS, while helpful for patient assessment, is not a care planning tool, and was not designed to be a comprehensive patient assessment. In addition, research has shown that there may be several uses for OASIS data, one of which will provide HCFA with data for case mix adjustment and grouping in the development of the home health prospective payment system.

OASIS is the data set currently in use in many HHAs and is the fundamental data set being evaluated for case mix adjustments for the HHA prospective payment system. The OASIS data set reflects the care of the patient populations in the home setting, and MDS reflects the care and patient population of the nursing home setting. Therefore, it is unlikely that we can collectively attain perfect overlap between the MDS, OASIS, or other assessments under development. However, it is our goal to ultimately attain as much commonality across these data sets as possible so that patient health status might eventually be monitored across provider settings using a core set of data items within each data set.

HCFA is currently pursuing research that could ultimately help in developing an assessment instrument that can support a common assessment across settings. As our data sets are modified and improved over time, our goal is to incorporate common data elements and definitions within each of the instruments to the fullest extent possible. This will improve HCFA's and States' ability to track the characteristics and care needs of beneficiaries across the post-acute and long term care service continuum. Use of common data elements will also benefit patient care by facilitating transfer of information to the continuing care provider and minimizing providers' data collection burden.

We have already started the process of identifying areas in which increased coordination of data elements is possible as part of our uniform needs assessment instrument (UNAI) initiative. This activity entails review of the item labels, definitions and reliabilities for OASIS, the long term care minimum data set (MDS), and the MDS for post-acute care (MDS–PAC), which incorporates items common to the MDS and is currently being tested for potential implementation in rehabilitation hospitals. We expect to be able to identify some areas in which increased commonality is possible across OASIS and MDS items. Refined item labels and definitions will be available for use within the next versions of these instruments (e.g., construction of version 3.0 of the MDS will begin in mid-1999.)

Comment: Several commenters requested that we add items to the OASIS data set. Requests for additions included: data items tested during the development of the OASIS data set; discipline-specific services, interventions, the amount and frequency of visits and outcomes; various ostomies for elimination status; surgical and V-codes; and, additions to the answers listed for some items. Other commenters suggested that we change or eliminate answers for some items, or that we change the order of the OASIS items.

Response: At this time, any changes to the OASIS data set, or changes in the order of existing items, would require further validation and reliability testing, and revision of the outcome measures. However, HHAs are reminded that OASIS is a core data set of required items. While the OASIS items must be used as written, HHAs may choose to collect additional data on discipline-specific services, etc., as part of their comprehensive assessment, as long as the same OASIS items, and the same answer choices as appear in the current version of OASIS are incorporated into the agency's own assessment. We have revised § 484.55(e) to provide that the OASIS data items are determined by the Secretary and must be used as they appear, and as set forth in the current version of the OASIS.

Comment: One commenter expressed concern that client/caregiver learning ability is not addressed in OASIS, when

a great deal of HHA's staff time is spent teaching clients.

Response: OASIS is a data set for gathering data that provides valid, reliable information to measure selected home health outcomes. Due to the lack of scientific measures that capture teaching outcomes within the home health context, OASIS does not currently provide outcome data on clients' learning ability, nor is it intended to gather workload data on activities carried out by care givers. We agree that patient education is a frequent service that HHAs provide, and we remain interested in looking at pertinent measures at some point in the future. In the interim, HHAs are at liberty to add these kinds of items to their comprehensive assessment in order to capture those activities.

Comment: Several commenters stated that the OASIS primarily measures outcomes that reflect skilled services, and does not address the broad scope of patients served in home health. The commenter was concerned that OASIS is a work in progress, and questioned the appropriateness of mandating something that is not tested or finished.

Response: We agree that not all OASIS items address the needs of patients receiving supportive services or specialized populations (such as pediatric or maternal-child health), although many of the data items are useful for comparison and to risk adjust outcomes. However, contrary to this commenter's concern, OASIS has been extensively tested in the field for validity, reliability and case mix adjustment for almost a decade. Like any other data set (such as the MDS), the OASIS will evolve to meet changing program needs and to reflect changes in the health care environment and additional experience in program administration.

We share the industry's interest in the adoption of a useful and appropriate instrument with as little disruption to existing HHAs operations as possible. We also share the industry's interest in minimizing unnecessary paperwork and record keeping burdens, while at the same time, ensuring quality of care for beneficiaries. Paperwork and record keeping requirements must be cost effectively integrated into HCFA's survey and enforcement processes (both from the balanced perspectives of the public and private sectors), and must maximize available information technologies. In particular, we may reevaluate OASIS data and reporting needs for patient reassessments.

Comment: One commenter was concerned that in the future, HCFA may wish to require the use of OASIS data for persons served in their new Medicaid Managed Long Term Care plan.

Response: The requirements at § 484.55 apply to HHAs that participate in the Medicare and Medicaid programs, and the patients served by that HHA. Requirements for Medicaid home and community-based waiver programs vary from State to State, and are addressed by the individual State.

Comment: A few commenters stated that the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) and the Community Health Accreditation Program (CHAP) data collection requirements should be considered, coordinated and approved by HCFA, which will minimize the data collection burden on HHAs. Commenters further stated that the relationship between JCAHO, CHAP and HCFA needs to be coordinated at the Federal level to ensure that data requirements are not duplicative, particularly since the goals of JCAHO, CHAP and HCFA are to foster and support a data driven quality assessment and performance improvement program in the home health care industry.

Response: HCFA has approved the deemed status option for use by HHA accreditation organizations (JCAHO and CHAP). This deemed status program ensures close coordination between HCFA and the HHA accrediting bodies. Once OASIS requirements become final, JCAHO and CHAP must adopt equivalent requirements for those HHAs that are accredited and certified in the Medicare program. In fact, JCAHO's ORYX measures, which have been approved by HCFA, contain the OASIS data set. CHAP has also incorporated OASIS into their accreditation program. In fact, in order for an accreditation organization to be granted deeming authority, its requirements must be comparable to those of HCFA. Therefore, there is no duplication of information.

Comment: One commenter suggested that Medicaid-eligible individuals' State/Medicaid ID number should be collected to allow analysis of data on dual eligible beneficiaries.

Response: The OASIS has a field that contains a patient ID number that is unique to the patient. HCFA requires OASIS data to be encoded and reported by the HHA, as provided in a separate rule in today's **Federal Register**, Reporting Outcome and Assessment Information Set (OASIS) Data as Part of the Conditions of Participation for Home Health Agencies (HCFA–3006–IFC). In the interim, this rule does not preclude HHAs and States from using Medicaid ID numbers to identify the patient.

Comment: One commenter requested that we clarify what is meant by the "current" version of OASIS. The commenter asked if we were referring to the OASIS–A, OASIS–B, or OASIS+.

Response: As stated in the preamble to the proposed regulation, we urge HHAs currently using various versions of the OASIS, including "partial" versions, to focus on the version of the OASIS published in the March 10, 1997 proposed rule. While the content of OASIS has not changed, there may be a few changes in coding and identifier items as a result of the OASIS reporting system. The version of OASIS approved by the Secretary and for which we are seeking OMB approval is available on HCFA's website on the Internet for HHAs to download at http://www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm. As an alternative to Internet access, which is the most efficient method of obtaining the current version of the OASIS, agencies may contact their State agency or HCFA regional office home health representatives to request a paper copy of the data set for review. The current version of OASIS is a proposed information collection requirement pending OMB approval. We have summarized the Paperwork Reduction Act process below and have described the timeframes associated with that process.

We note that some HHAs participating in research and demonstration projects may be using other data collection data sets, which have been approved by the Secretary. HHAs in research and demonstration projects may be exempt from the requirement to use the OASIS as part of the comprehensive assessment process for the duration of the project. We intend to make these determinations on a case-by-case basis, depending on several factors including, the nature of the demonstration project, the data set used, payment implications for the HHA, quality concerns, and burden issues.

Comment: Several commenters questioned the collection of OASIS data for various types of patients. Some commenters recommended that the comprehensive assessment be collected only on patients who were medically unstable or require therapeutic treatment. Others suggested that HHAs not be required to collect OASIS information for patients receiving services for brief periods of time (with suggestions ranging from two to eight days), for limited services (such as dressing changes), for infrequent visits

(less frequently than every two weeks) and for long term patients. Commenters stated that the financial burden to the HHA outweighs the benefits of the data collected for these types of patients.

Response: We disagree. It is important that OASIS data be collected on the entire spectrum of patients seen by the HHA (stable and unstable, short-term and long-term, minimal services and extensive services, frequent visits and infrequent visits). Eliminating an entire subset of patients served by the HHA would harm the quality of care and services to beneficiaries, and skew the case mix adjuster system which could potentially result in undesirable payment incentives. In addition, we would expect HHAs to be interested in evaluating the quality, efficacy and efficiency of care delivered to all their patients.

Comment: Several commenters recommended that consideration be given to the type of patients for whom the OASIS is appropriate. Commenters stated that the proposed conditions recognize that the OASIS data set is not applicable to all populations served by the HHA (for 53 example, pediatric and maternal/child), and all services such as non-personal care, and educational services. Commenters suggested that we specify for whom OASIS data must be collected.

Response: OASIS data will be used for two purposes. Specifically, the data will be used as outcome measures to evaluate HHA quality of care, and to provide data for a case mix adjustment and grouping for the home health prospective payment system. When collection of the OASIS information was proposed, we required the data to be collected for those populations that were appropriate for outcome measurement. Therefore, in the preamble of the OASIS proposed rule, we discussed OASIS data collection for all patients except prepartum and postpartum patients, pediatric patients, and patients who are not receiving personal care or health services (that is, patients who are receiving only services such as housecleaning, cooking, or laundry). We did not exempt patients receiving educational services from OASIS collection, as patient teaching is a skilled service and patient education can affect outcomes of care such as medication management, pain management, or equipment management.

As a result of the BBA and the utility of OASIS as a case mix adjuster, OASIS must be collected on most patients, including public and private pay patients, *except* prepartum and postpartum patients, patients under age 18, and patients who are not receiving personal care or health services (that is, patients who are receiving only services such as cooking, housecleaning, or laundry services). Additionally, HHAs must collect OASIS data on both public and private pay patients because section 1891(b) of the Act requires the Secretary to assure that the COPs and other requirements are adequate to protect all individuals under the care of the HHA. As we gain experience with OASIS, we will consider adjusting the patient populations and/or data items collected, consistent with our statutory mandate.

Comment: One commenter had concerns regarding terminally ill patients for whom a decline in status (a poor outcome) is expected, and whether the HHA will be penalized because the outcomes show a decline over the course of care.

Response: For terminally ill patients, death is an expected outcome; thus, conclusions about the quality of care for a patient cannot be made solely on the basis of whether or not the patient improved. The OASIS collects information on the patient's prognosis regarding recovery from illness, functional status improvement and life expectancy, and outcome measures are adjusted to accommodate these patient characteristics. Thus, HHAs that care for a large number of patients with poor prognoses are not placed at a disadvantage when their performance is compared to another HHA that serves a healthier population. This process of adjusting for differences in patient characteristics (case mix adjustment) is an important aspect of the OASIS and is also an important function in a prospective payment system.

Comment: One commenter stated that it would be helpful to know what outcomes HCFA will want reported in the next set of rules, stating that it seems a waste of time for everyone to set a data reporting system, when HCFA may mandate electronic submission of the data. Another commenter expressed concern that there is no approved software for the OASIS data.

Response: As discussed above, as a result of the statutory requirement that we develop a prospective payment system for home health agencies, we expect that HHAs will begin reporting OASIS data to HCFA in the very near future, as specified in the interim final rule published separately in today's **Federal Register**. That regulation and subsequent implementing manuals will outline the hardware and software requirements for the transmission of OASIS data. Therefore, HHAs will be aware of the OASIS reporting requirements as they integrate OASIS data collection into the work of the HHA.

Comment: Two commenters expressed concern about patient privacy issues. One commenter stated that OASIS contains personal information that patients may be reluctant to provide. Another commenter expressed concern about the confidentiality of OASIS data being used for benchmarking among HHAs nationally. The commenter especially objected to the information being shared with managed care organizations.

Response: We expect HHAs to protect the confidentiality of patient-specific OASIS information in accordance with Federal and State privacy requirements, just as they would any other part of the patient record. The condition concerning patient rights at § 484.10 provides that the patient has the right to confidentiality of the clinical record. In addition, the condition concerning clinical records at § 484.48 requires HHAs to protect the clinical record against loss or unauthorized use. Health professionals and HHAs have always had access to personal information that is necessary to provide patient care, and we expect the HHA to vigorously address confidentiality concerns in compliance with State and Federal laws.

The OASIS data set contains assessment data that is normally collected by the HHA in the course of delivering services. Disclosure of this data must comport with both Federal and State privacy protections.

Comment: One commenter stated that there is a need for HHAs to track outcome data. Several commenters stated that OASIS appears well conceived, and expressed support for the creation of a national database for outcomes measurement and benchmarking.

Response: We appreciate support for our efforts to improve outcomes of care in home health. As stated previously in this preamble, and as a result of the BBA, we will develop the database supported by the commenters.

III. Provisions of the Final Rule

We are adopting the provisions of the HHA COPs proposed rule related to comprehensive assessment and the provisions of the OASIS proposed rule, with the following revisions:

Section 484.18

- We revised paragraph (c) by removing the last sentence of the paragraph, which relates to review of the patient's medication.

Section 484.55, Reorganization

• To clarify the condition, we have rearranged the order of the standards in § 484.55 as follows: § 484.55(a) Initial assessment visit; § 484.55(b) Completion of the comprehensive assessment; § 484.55 Drug regimen review; § 484.55(d) Update of the comprehensive assessment; and § 484.55(e) Incorporation of the OASIS data set.

Section 484.55, Introductory text

• We revised the introductory text to require that the comprehensive assessment must accurately reflect the patient's current health status; and, for Medicare patients, the home health agency must verify the patient's eligibility for the Medicare home health benefit, including homebound status at the time of the initial evaluation visit, and at the time of the completion of the comprehensive assessment.

• We have also incorporated into the introductory text language from paragraph (d), which requires that the comprehensive assessment include information regarding the patient's progress toward desired outcomes.

Section 484.55(a) (Proposed § 484.55(b))

• In response to public comments, we revised paragraph (a)(1) to provide that the initial assessment visit must occur either within 48 hours of referral, or within 48 hours of the patient's return home, or on the start of care date ordered by the physician.

• We added, at paragraph (a)(1), the requirement that for Medicare patients, the initial assessment visit must include a determination of the patient's eligibility for the home health benefit, including homebound status.

• We removed the proposed requirement at paragraph (a)(1) that the initial assessment visit must be performed based on physician's orders.

• We revised paragraph (a)(2) to clarify that when rehabilitation therapy service (speech language pathology, physical therapy, or occupational therapy) is the only service ordered by the physician, and if the need for that service establishes program eligibility, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.

Section 484.55(b) (Proposed § 484.55(c))

• We revised the title of the standard to read "Completion of the Comprehensive Assessment".

• We revised paragraph (b)(1) to provide that the comprehensive assessment must be completed no later than 5 calendar days after the start of care date.

• We added a new paragraph, (b)(2), to provide that a registered nurse must complete the comprehensive assessment, and for Medicare patients determine eligibility for the Medicare home health benefit.

• We added a new paragraph (b)(3) to provide that when physical therapy or speech language pathology is the only service ordered by the physician, the physical therapist or speech language pathologist may complete the comprehensive assessment and that occupational therapists may complete the assessment when the need for occupational therapy establishes program eligibility.

Section 484.55(c) (Proposed § 484.55(a))

We revised this paragraph by removing the term "drug regimen review" and providing that a comprehensive assessment must include a review of all medications the patient is using at the time of the assessment.

Section 484.55(d) (Same Paragraph Designation as Proposed)

• For the purpose of clarity, we made editorial changes to this paragraph. Specifically, we incorporated language previously located in paragraph (d) into the introductory text of § 485.55 and we removed language from paragraph (d)(1) and included it in the introductory text for paragraph (d).

• We have revised the introductory text of paragraph (d) to clarify that all updates and revisions of the comprehensive assessment include administration of the OASIS, as frequently as the patient's condition warrants, due to a major decline or improvement in the patient's health status.

• We revised paragraph (d)(1) to provide that the HHA must update the comprehensive assessment every second calendar month beginning with the start of care date.

• We removed the proposed requirement at paragraph (d)(2) that the comprehensive assessment must be updated when the care plan is revised for physician review.

• We redesignated proposed paragraph (d)(3) as (d)(2) and proposed paragraph (d)(4) as (d)(3).

• We revised redesignated paragraph (d)(2) to provide that the comprehensive assessment must be completed within 48 hours of the patient's return home from a hospital admission of 24 hours or more for any reason other than diagnostic tests.

Section 484.55(e) (Same Paragraph Designation as Proposed)

• We revised this paragraph to provide that the OASIS data items determined by the Secretary must be incorporated into the HHA's own assessment and must include: clinical record items, demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care, and data items collected at inpatient facility admission or discharge only.

IV. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 through 612) unless we certify that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not considered small entities. HHAs, on the other hand, are considered small entities for the purposes of the RFA. Consequently, we are including a statement of impact on the effect that this final rule will have on HHAs. Also, we have discussed associated costs in detail in the Collection of Information Requirements section of this preamble. The impact associated with reporting of OASIS data will be in a separate rule in today's **Federal Register**.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is outside of a Metropolitan Statistical Area and has fewer than 50 beds. We are not preparing a rural impact statement since we have determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

We also have examined the impacts of this final rule as required by section 202 of the Unfunded Mandates Reform Act. Section 202 of the Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for

inflation). As discussed in detail in this preamble, we estimate that the amount of the unfunded mandate associated with this final rule will result in an annual expenditure of less than $100 million to these governmental and private sectors. Therefore, we believe the law does not apply.

In this final rule, under § 484.55, we are requiring HHAs to use the core assessment data set, the "Outcome and Assessment Information Set" (OASIS) as part of the agency's comprehensive assessment; specific timeframes for the initial assessment; completion of the assessment; and, interim updates to the patient assessment. We believe that these requirements, though process-oriented, are predictive of good patient care and safety, as well as necessary to prevent harm to the patient. Our rationale for these timeframes is that by definition, a new patient who is referred to a home health agency for initiation of services is at a point of immediate and serious need. Likewise, as the complexity of the care needs of patients increase, so does the need for comprehensive assessment of the patient. The importance of the development and implementation of an effective care plan becomes paramount.

We believe that the timeframe requirements pose little or no additional burden on the HHA since assessments at these intervals would in all likelihood be performed in the absence of regulations. However, the timeframes serve as a strong performance expectation for HHAs that may not have adequate resources. If too many patient referrals occur together, effective service delivery to some patients could be delayed by the HHA's inability to see the patient quickly and to complete the needed comprehensive assessment. Thus, if an HHA recognizes that its workload renders it incapable of assessing a patient upon referral, the HHA must contact the patient's physician to arrange an appropriate start of care date or to determine if the patient requires immediate service.

In the March 10, 1997 proposed rule, we solicited comments on whether the specific timeframe requirements in § 484.55 are reasonable and consistent with current medical practice, and whether the timeframes should be used as benchmarks to ensure the timeliness of the assessment components, and to protect patient health and safety. In this final rule, we have addressed comments regarding timeframes in section V.A. of this preamble.

The existing COPs contain several requirements that address the need for patient assessment, including most notably an extensive, detailed list of items that are required to be covered in a plan of care, such as pertinent diagnoses, mental status, and functional limitations. (See § 484.18(a).) In this final rule, we emphasize the importance of the comprehensive assessment by establishing "Comprehensive assessment of patients" as a separate COP. We have specified the desired outcome of the assessment (that is, the identification of a patient's care needs). We have required the use of a specific assessment data set (OASIS) and we are allowing HHAs the flexibility to determine how best to meet patients' care needs. We believe that most HHAs now perform a comprehensive assessment for most of their patients as a current accepted practice. We need to balance the possible short-term increase in costs or other administrative burden, if any, on the HHA with the long-term fundamental positive effect on patient health resulting from an organized and timely comprehensive assessment.

We anticipate that HHAs will incur some costs associated with the implementation of this final rule. It is unknown at this time exactly how many HHAs will receive an adjustment to the per visit limits associated with these costs, which was announced in a **Federal Register** notice on August 11, 1998. Only HHAs that have not already reached the per beneficiary limits will benefit from these adjustments through the HHA interim payment system. We estimate that approximately 70% of HHAs will not receive an adjustment for the costs associated with implementing this final rule. Because these HHAs have reached their per beneficiary limits, they will not be reimbursed by Medicare for the costs associated with OASIS collection start up activities. Those HHAs still below these limits will be reimbursed by Medicare. However, we also expect that the HHAs that will not be reimbursed by Medicare will, to varying degrees, be reimbursed by a combination of the Medicaid program, private insurers and beneficiaries. A table projecting the costs to HHAs for the implementation of the use of the OASIS is included at section V.C.3. of this preamble. These costs are based on the assumption that implementation will be in fiscal years 1999 and 2000.

On August 11, 1998, we published in the **Federal Register** a notice with comment period that set forth the per visit and per beneficiary limitations for HHA costs (63 FR 42912). That notice included an OASIS offset adjustment factor to the per visit limitation to address these costs. In that notice, we asked for specific comments, including data, that would impact future decision making on HHA cost limitations. While, in the March 7, 1997 proposed rule, we indicated implementation in 1998 and an estimated start-up cost for 5 years, we now realize that implementation of the final rule will occur in fiscal years 1999 and 2000, and that the start-up costs associated with implementation of this final rule will be incurred by HHAs in existence, and participating in HCFA programs as of the effective date of the rule. Therefore, HHAs that are certified after the effective date of this final rule will not have established patient assessment protocols requiring change to meet the HCFA requirements. Accordingly, these HHAs will not have the corresponding start-up costs associated with a change of protocols. (See table 1 in section V.C. of this preamble.) We strongly believe that the benefits associated with the use of OASIS data will far outweigh its costs.

As discussed above, OASIS data will improve the delivery of quality care in the nation's HHAs in several ways. HHAs will find the information helpful in organizing care planning, and the increased specificity in patient assessment will assist agency staff to uniquely tailor a treatment plan to each individual patient. Also, this data will become an integral factor in the development of case mix adjusters for a home health agency prospective payment system, as authorized by sections 4602 and 4603 of BBA '97.

The Balanced Budget Act of 1997 requires HCFA to develop a prospective payment system (PPS) for home health. A prospective payment system pays providers based on the predicted costs of care, giving providers the incentive to provide care efficiently. In the home health PPS, beneficiaries will be classified into case mix groupings based on their predicted resource use, with each group having a specific payment rate.

In developing a sound classification system, HCFA must account for the factors that would influence the beneficiary's use of services. In the case of the hospital prospective payment system, this was done using Medicare claims data linked to diagnosis data. Because the majority of inpatient services are attributed to the medical diagnosis, Medicare claims provide enough information to classify patients for hospital payments.

Post-acute care services such as home health and skilled nursing facility services are influenced in part by the medical diagnosis. However, other factors have a strong influence in the use of post-acute care, such as the severity of illness and functional abilities. Therefore, a more comprehensive data source is needed

for proper patient classification. Because Medicare claims provide information only about diagnosis, age, gender, and race, a claims-based grouping would not adequately classify beneficiaries into payment groups.

The first attempt to design a prospective payment system for post-acute services was the case of skilled nursing facilities. Under this payment system, HCFA has used data from both claims and the Minimum Data Set (MDS) to classify patients into payment groups. Similarly, HCFA plans to use OASIS data in addition to claims data to construct the home health PPS. A classification system that takes into account severity of illness as well as functional abilities will help to ensure adequate payment for high-cost beneficiaries. If HCFA does not use OASIS data to identify case mix groups, then, on average, prospective payment amounts could be too low for beneficiaries who need assistance with many activities of daily living and too high for beneficiaries who need less assistance.

The Balanced Budget Act of 1997 also requires the amounts paid for each case mix group under PPS to be based on a standardized payment rate. HCFA is designing the case-mix classification system based on OASIS and claims data from a stratified sample of 90 HHAs. Standardization requires removing the effect of case mix from past payment levels for these 90 HHAs and from national payment levels. This helps to ensure that if case mix changes over time, or if resource use varies from region to region, payments in the PPS are adjusted accordingly. This process requires the same information that is used to classify patients into payment groups. Therefore, we must collect OASIS data from HHAs before HCFA can set standardized payment rates for a PPS.

The OASIS instrument has been in development for the past ten years. A large number of home health agencies have participated in its development and testing. The instrument has demonstrated its validity and reliability as an assessment and outcome measurement tool. In addition to its use as the basis for PPS, OASIS will assist agencies in improving their performance through outcomes-based assessment. The quality component of OASIS is crucial to ensuring that beneficiaries receive needed services under the home health PPS.

On a more global scale, once data from the OASIS are available in the form of standardized outcome reports, consumers, purchasers, providers, and HCFA will be able to use the information to evaluate quality of care across the full spectrum of HHAs. The home health industry can use the data for comparative performance assessment. HCFA and State survey agencies will be able to use the data on a continuous basis to identify providers that are not performing as well as others. This use will allow us to further progress in our efforts to develop a more efficient and targeted survey approach.

The impact of these final regulations will vary from HHA to HHA depending upon an HHA's current assessment process. The additional impact on HHA workload centers around collection of information and paperwork burden. There are no other requirements in this final rule that will impact HHAs. As discussed in detail and illustrated in the tables in section V.C. of this preamble, implementation requirements of § 484.55, will not have a significant overall effect on the economy.

Section 804(2) of Title 5, United States Code (as added by section 251 of Pub. L. 104–121), specifies that a "major rule" is any rule that OMB finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic export markets.

Our estimation of the impact of this final rule does not meet the above definition of a major rule in Title 5, United States Code, section 804(2). Therefore it will not be forwarded to Congress for a 60-day review period.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are submitting to OMB the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. This is to ensure the timely availability and reporting of data as necessary for the development of a reliable case mix adjuster that is required by section 4603(a) of BBA '97 for the establishment of a prospective payment system for home health services in compliance with sections 4602 and 4603 of BBA '97. We cannot reasonably comply with normal clearance procedures because public harm is likely to result if the agency does not enforce the inclusion of OASIS elements into an HHA's comprehensive assessment requirement early enough to permit training and to enable HCFA to collect reliable OASIS data for the period beginning on January 1, 1999. This timeframe is necessary because a key aspect of creating a prospective payment rate system based on agency cost experience is the need to "standardize" the rates. The overall objective of standardization is to ensure that when the standardized payment rate for an episode of care is adjusted by the case-mix and the wage index, the results are consistent with the costs in the data base used to construct the prospective payment amounts. That is, when the average standardized payment rates are multiplied by the appropriate wage and case mix adjustment factors, and summed for all relevant episodes, the sum is equal to the total costs in the original data base. We know of no reliable way to accomplish this result except by using data from existing agencies. Because the payment system must be implemented, we will need to begin receiving the OASIS data to be used for standardizing the payment amounts as soon as possible.

The immediate publication of rules requiring the collection and reporting of OASIS data and OMB approval of these requirements pursuant to the Paperwork

Reduction Act of 1995 are essential because these data are required for the development of the home health prospective payment system, required by the BBA, in October of 2000. As stated earlier in this preamble, the process of rate development must take place in the early spring of 1999 for incorporation in a proposed rule. The home health prospective payment system proposed rule must be published by the fall of 1999 to allow for necessary comments and revisions prior to the publication of a final rule in the summer of 2000. Given the lag time between the publication of the OASIS rules and the receipt of viable national data by HCFA, we are already at the point where only two months of national data will be potentially available for use in the proposed rule and less than a year of data for the final rule. Further delays would reduce the amount of national data available for prospective payment rate development and thus seriously undermine the project plan aimed at implementation of the prospective payment system on October 1, 2000.

This notice explicitly seeks OMB reapproval, with revisions, of HCFA–R–39 (OMB # 0938–0365), "Home Health Medicare Conditions of Participation Information Collection Requirements as Outlined in Regulation 42 CFR 484", with a current expiration date of 11/30/2000. It should be noted that this revision includes the OASIS protocol that was proposed in HSQ–238–P, "Use of the OASIS as Part of the Conditions of Participation for Home Health Agencies" (62 FR 11035). We are not only asking for approval of OASIS but also reapproval of the existing conditions of participation.

The version of OASIS approved by the Secretary and for which we are seeking OMB approval is available on HCFA's website on the Internet for HHAs to download at http://www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm. As an alternative to Internet access, which is the most efficient method of obtaining the current version of the OASIS, agencies may contact their State agency or HCFA regional office home health representatives to request a paper copy of the data set for review. Any future changes to OASIS will be submitted to OMB to review pursuant to the Paperwork Reduction Act of 1995, will be available on the HCFA website, and, when approved by OMB, available in hard copy from the National Technical Information Service (NTIS) at (703) 487–4650.

We are requesting OMB review and approval of these collection requirements within 16 working days from the date of publication of this regulation, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the addressees referenced in section V.A. of this preamble, within 15 working days from the date of publication of this regulation.

During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

A. Responses to Public Comments on Collection of Information Requirements

Comment: Commenters suggested that the proposed requirement at § 484.55(d)(2) to update comprehensive assessment forms on patients each time the plan of care is revised, would be unnecessary, burdensome, and costly.

Response: HCFA specified in the proposed regulation at § 484.55(d)(2) that the comprehensive assessment must be updated whenever the plan of care is revised for physician review. However, after further consideration, we agree with the commenter that the requirement to update comprehensive assessment forms each time the plan of care is revised, at proposed § 484.55(d)(2), is unnecessary and accordingly, we have not included the requirement in this final rule.

Comment: Some commenters suggested that OASIS data collection requirements are excessive, both in terms of the number of items and the frequency that the assessment must be performed. Commenters stated that this could result in increased visits, particularly for rural public health agencies.

Response: Findings from the Medicare OASIS demonstration indicate that, after completion of the learning curve, this data collection requirement does not impose ongoing burden on HHAs. Currently, it is common practice for agencies to conduct ongoing assessments of patients. While the frequency of ongoing patient assessment is based on the needs of the individual patient, completion of the OASIS items, which may be only part of the assessment, must be done at standardized time points for comparable data and for the development of case mix adjusters for use in the creation of prospective payment rates. We also disagree that the data collection requirements will increase visits. We have specified timeframes for assessment that are intended to provide the HHA flexibility, and to diminish burden.

Comment: Several commenters stated concerns regarding increased paperwork burden and the associated cost of producing new forms to include the OASIS items.

Response: We acknowledge that developing and reproducing new forms that incorporate the OASIS into an HHA's own comprehensive assessment may create start-up costs for the HHA. Medicare OASIS demonstration data indicates that an agency may incur costs of approximately $280 to revise the start of care, assessment updates, and discharge forms. (See table 2 below.) Therefore, in our start-up cost estimates, we have now included a one time printing cost of $280 for the first year.

Comment: One commenter suggested that we have underestimated the time for the learning curve as it relates to the OASIS. The commenter stated that the HHA staff will not be proficient in using the OASIS data after only 5 uses as estimated in the proposed rule.

Response: We recognize that learning curves may vary from HHA to HHA, and person to person, and that some agencies may take longer than our estimates to become familiar with the OASIS. Therefore, we have adjusted our estimate of the number of uses required for the staff to become proficient with OASIS to eight uses. Findings from the Medicare OASIS demonstration indicate that use of the OASIS initially adds approximately 15 minutes per person more than the time taken for an HHA's existing assessment protocol. Then, rather than project a time savings after the first 8 uses, as some research seems to suggest, we have estimated neither a gain nor loss to the completion time.

Comment: Several commenters suggested that 2.5 minutes is an underestimation of the additional time necessary, above the HHA's routine patient assessment, for completion of the OASIS. Other commenters recommended that HCFA's estimate of an additional 2.5 minutes to complete OASIS items should be increased to 3 minutes.

Response: We believe that our original estimate of 2.5 additional minutes required to complete a comprehensive assessment that includes the OASIS is inaccurate. We have heard from agencies that participated in the OASIS demonstration about a time savings of 1 minute per assessment. The ease with which OASIS items can be assimilated into a comprehensive assessment process is apparent because all of the OASIS items are typically included in any effective, relevant comprehensive assessment of a patient.

Our analysis of data indicates that after the initial learning curve, ongoing OASIS data collection poses no additional burden above the routine patient assessment. In fact, agencies that participated in the Medicare OASIS demonstration required one minute less overall for completion of the patient assessment that included the OASIS than HHAs that did not use OASIS-incorporated assessments. However, as stated above, for the purpose of estimating burden on the provider community, we have not factored in the time savings mentioned above.

Comment: Several commenters requested that HCFA guarantee the availability of OASIS software prior to implementation of the requirements for the use of OASIS as part of the Medicare conditions of participation for home health agencies.

Response: The required OASIS form is available on our website at the following address: http://www.hcfa.gov/medicare/hsqb/oasis/oasishmp.htm. HHAs may access the HCFA website and download the required OASIS for each data collection time point. For example, data sets are available for start of care, resumption of care following an inpatient facility stay, follow-up, discharge (not to an inpatient facility), transfer to inpatient facility (with or without agency discharge), and death at home. In addition, HCFA will provide software on its website that can be downloaded and used to collect and report OASIS data. This software, the Home Assessment Validation Entry (HAVEN), will include the data specifications, data dictionaries, OASIS, a user's manual for the OASIS, the HAVEN manual, and the HHA submission manual. Other educational materials for the HHA will also be posted on the HCFA website. This medium was chosen, and will be supported by HCFA to provide for direct access by HHAs, State agencies, software vendors, professional organizations, and other consumers. We encourage vendors and agencies to regularly review the website for information related to the computerization of OASIS and other HCFA-related home health issues. We will continue to promote processes for assuring accuracy in the software that we anticipate will evolve over time.

Comment: Many commenters agreed that the OASIS items are similar to those that most agencies assess for their patients and should impose a minimal burden once they have been successfully incorporated into an HHA's assessment process. However, commenters stated that HCFA underestimated the time necessary to integrate OASIS into existing assessment forms.

Response: We agree that OASIS items are similar to those that most agencies use for their patients and that the OASIS should impose only a minimal burden once successfully incorporated into the assessment process. We stated in the proposed regulation that for each HHA a clerical employee would take 16 hours to integrate the form. Ongoing research indicates that revising assessment forms to incorporate the OASIS items will require 12 hours of clinician expertise and involvement, and 4 hours of clerical assistance (for a total of 16 hours). Therefore, we have revised the estimates accordingly. Further discussion on the reassessment of the start-up requirements, along with corresponding revisions to the summary tables, are below in section V.C. of this preamble.

Various firms have developed an integrated clinical record (that is, OASIS items integrated with other items necessary for good clinical assessments) available for purchase. Based on an observation of the Medicare OASIS demonstration, approximately one half to two-thirds of agencies will purchase forms (to use "as is" or with minor modifications). Since an agency will have the option of purchasing integrated forms, or developing its own forms, we believe that the burden for the average agency to integrate the OASIS into its existing assessment forms will be less than the 16 hours we have estimated for inclusion of OASIS elements into assessment forms.

Comment: Many commenters expressed concern that HCFA substantially underestimated the time and cost required to train agency staff on implementing OASIS. Commenters also stated that the proposed rule referred to training only full time staff, did not consider the training of part-time or contracted staff, nor did it consider the cost of staff turnover.

Response: After careful consideration, we have re-estimated the time and cost involved in training agency staff on the implementation of OASIS. Based on additional information we received from the Medicare OASIS demonstration, we have determined that training for OASIS data collection is necessary for two categories of HHA employee, an agency coordinator and the clinical staff. We estimate that the agency coordinator, specified as the individual who conducts training or clinical supervision for clinical staff, will need to read the OASIS manual (4 hours) and attend an 8-hour training session (for a total of 12 hours to train the coordinator). We also estimate that each clinical staff member in the agency will require an average of 3 hours of training, to include practice and retraining, if indicated. Additionally, we expect that training on data collection in general, data collection for follow-up assessments, and data auditing will be included within the 3 hours of staff training. In light of the Medicare demonstration, we have also re-estimated the total number of training hours stated in the March 10, 1997 proposed rule for the clinical staff to 3 hours (3 hours per clinical staff member). The estimated average training costs for each HHA have been increased to $1659 (that is, $144 more than the estimate of $1515 in the proposed rule). Training for part-time and contracted staff was considered; however, we calculate amounts for staff as full-time equivalents which encompasses HHAs' flexible staffing practices. Training costs associated with staff turnover should be considered part of an agency's normal operating costs.

Comment: Several commenters stated that in the proposed rule, HCFA did not accurately address the burden as it applies to the cost of developing the necessary educational programs, or the costs associated with preparing training materials.

Response: As part of the ongoing operating costs, an agency that wants to develop training and educational programs is free to do so. However, we have not developed cost estimates for additional training because individual agency training policies and needs vary to such a great degree.

Comment: Several commenters stated that the proposed rule provided no transition time for incorporation of OASIS into an agency's comprehensive patient assessment, or to develop related policies and procedures.

Response: Although HCFA did not specify an exact transition period, as discussed above in this preamble, requirements for a comprehensive assessment as a COP for HHAs and for the incorporation of OASIS into an HHA's patient assessment were published in the March 10, 1997 **Federal Register** in separate proposed rules. This final rule will become effective 30 days after the date of publication in the **Federal Register**.

Comment: A few commenters indicated that the timeframes for implementation will be cost prohibitive. Commenters also stated, that HCFA's estimated national HHA cost of $50 million dollars, although reimbursable, suggests a waste of taxpayer money and would unnecessarily raise the cost of health care.

Response: Fifty million dollars is a misstatement of what we estimated in the March 10, 1997 proposed rule. Our

final estimates of start-up costs indicate that HHA costs will decrease with the implementation of OASIS. As stated above, in the August 11, 1998 notice, we included an OASIS offset adjustment factor to the per visit limitation to address the costs. In that notice, we solicited specific comments, including data, that would impact future decision making on this issue. We believe the benefits of using the OASIS far outweigh the burden since the OASIS will promote standardization of information on patients. We believe that an HHA can integrate a core standard assessment data set (OASIS) into its own more comprehensive assessment system, then use that data set as the foundation for valid and reliable information for patient assessment, care planning, and service delivery. Also, we are using the OASIS data set to comply with section 1891(d)(1) of the Act, which gives the Secretary the authority to designate an assessment instrument for use by HHAs. As discussed above, OASIS data will support the BBA '97 requirement that mandates the implementation of a prospective payment system for HHAs. Therefore, we need OASIS data to develop case mix adjusters for standardizing HHA prospective payment amounts. To this end, we believe the prospective payment system will save taxpayer dollars.

Comment: Commenters suggested that use of the HCFA–485 form in conjunction with the OASIS is duplicative. They questioned whether information from the HCFA–485 will be sent to HCFA for use in the OASIS data base, whether the HCFA–485 form will be changed to a standardized format to make the information more useful to HHAs, or whether the HCFA–485 form will be discontinued.

Response: The HCFA–485 form and the OASIS are designed to serve two different purposes. The HCFA–485 is the plan of care form developed for payment purposes. It contains a certification statement that must be signed by the patient's physician, and the HHA must continue to maintain the HCFA–485 in the patient's medical records. The OASIS does not provide for the physician certification needed to authorize payments to HHAs for covered services.

B. Condition of Participation: Comprehensive Assessment of Patients (§ 484.55)—Discussion and Summary

The HHA condition of participation for the comprehensive assessment of patients at § 484.55 requires that each patient receive a comprehensive assessment that incorporates the exact use of the current version of the OASIS as part of the HHA's patient assessment. The OASIS includes only information necessary to measure outcomes of care for quality indicators. Accordingly, our intent is not to develop a complete patient assessment, but rather to identify standardized data elements that fit within the HHA's overall comprehensive assessment responsibilities. Therefore, we require that HHAs use the current version of the OASIS as specified in § 484.55(e). We believe this requirement is necessary to build a valid, reliable, comparable data set of outcomes. As discussed in the proposed rule, and elsewhere in this preamble, the items on the OASIS have undergone rigorous validity and reliability testing so that trained individuals can have confidence in incorporating the data items as part of their comprehensive assessment of patients. As long as the HHA staff conduct assessments accurately and use the measurement criteria specified for each item, in any HHA, the validity and reliability extend to the comparability of the data acquired using the same items to collect information from other patients. Altering the items or using a different data set, destroys the essential validity and comparability of the data collected. HHAs may distribute the OASIS items within the agency's own comprehensive assessment system as long as the items remain within the groupings as they appear in the current version, and as specified by the Secretary.

We intend for the OASIS to become one of the most important tools of the HHA's quality assessment and performance improvement efforts. By integrating a core standard assessment data set into the HHA's own more comprehensive assessment system, HHAs can use the data set as the foundation for valid and reliable information for patient assessment, care planning, and service delivery. Also, HHAs can use the data set to build a strong and effective quality assessment and performance improvement program. We believe, except as discussed below, that these requirements pose little or no burden for well managed HHAs since a comprehensive assessment would in all likelihood be performed in the absence of regulations. However, we acknowledge that the timeframes required by § 484.55 serve as a strong performance expectation for HHAs.

In summary, the information collection requirements in this final rule ensure that HHAs increase the precision of patient assessments and continue to demonstrate whether they meet the conditions of participation in the Medicare and/or Medicaid programs. The frequency of the revised information collection in the Medicare home health conditions of participation remain on an "as needed" basis. The affected public continues to be businesses or other for-profit and not-for-profit institutions. Due to changes in the number of certified home health agencies, as of March 1998, the number of respondents has increased to 10,492.

Except for the specific information collection for the OASIS for which we are requesting emergency approval from OMB (as discussed in detail below) we do not anticipate an increase in burden as a result of incorporating § 484.55 Condition of participation: Comprehensive assessment of patients into the HHA conditions of participation. In section V.A. of this preamble, we address public comments on the collection of information requirements of the comprehensive assessment of patients COP combined with comments on the use of the OASIS. However, we are interested in obtaining comments on the changes from the proposed rule regarding the currently approved home health conditions of participation information collection requirements, as referenced in this regulation, and on modifications of the burden discussed in detail in this section and summarized in tables below.

C. OASIS—Discussion and Summary

As discussed in section III. of this preamble, final regulations at § 484.55 will require HHAs to use the OASIS as part of a comprehensive assessment of the patient. In the proposed rule, we stated that the burden from requiring HHAs to collect OASIS data could be divided into the two categories of activities: those activities required for startup, and those required for ongoing data collection. The first burden category of activities that are required for startup include incorporating the OASIS data into an HHA's clinical records, initial adaptation to use of the OASIS, and training agency staff. After the initial startup activities, we stated that the second burden category arose from the ongoing collection of the OASIS data. Based on data obtained from the Medicare demonstration, we have reconsidered our original estimates, in addition to making technical mathematical corrections. While the overall actual burden has not increased from the proposed rule, our reassessment indicates that since OASIS implementation will occur in fiscal years 1999 and 2000, the burden estimate for subsequent years is zero. After the initial startup costs, HHAs will

have become familiar with OASIS, and its use will then be a common business practice for HHAs.

1. Startup Activities: Time and Cost

We expect HHAs to incorporate the OASIS data into their clinical records to minimize the documentation burden by not having to complete different forms with similar questions, and to increase the precision of patient assessments. Once the data items are incorporated into the clinical records, information can easily be collected at start of care and at each follow-up time point (that is, every two calendar months; within 48 hours after the return home from a hospital admission; and at discharge).

• Inclusion of OASIS Elements Into Assessment Forms

The following estimates are based on the experience of HHAs that participated in the development of the home health quality indicators.

We define an average-size HHA as having 18 clinicians and other service practitioners and 486 admissions per year. We estimate that the time required by an average-sized HHA to integrate OASIS into the HHA's assessment forms is approximately 16 hours. This 16 hours includes 8 hours required to revise the initial assessment forms, 4 hours to revise the clinical record forms for follow-up visits, and post hospital admissions. Many items in the discharge follow-up are identical to the follow-up assessment and the assessment within 48 hours after hospital admission, but there are several data elements associated with discharge that will result in an additional 4 hours for revisions of discharge forms. Thus, the total burden for clinical record forms revision is estimated to be 16 hours per agency for integration of OASIS items for all 4 data collection time points. This estimate includes time associated with pilot testing the revised forms and subsequent revisions as necessary.

In the proposed rule, we based our estimates on the assumption that only clerical staff would integrate the OASIS data elements into an HHA's assessment forms. However, research from the Medicare OASIS demonstration indicates that revising forms will require both clinical involvement and clerical assistance. Therefore, we now estimate that the cost for an average-size HHA to revise the clinical records will be $339, based on 12 hours at an hourly rate of $24.05 for clinician time, and 4 hours at an hourly rate of $12.50 for clerical time ((12 hrs. × $24.05/hr.) and (4 hrs. × $12.50/hr.)). The total national hours for revisions of patient assessment forms are now estimated to be 167,872 hours based on 10,492 Medicare certified HHAs as of March 1998 (16 hrs. × 10,492 HHAs), with an associated national cost of $3.6 million ((12 hrs. × $24.05/hr. × 10,492 HHAs) and (4 hrs. × $12.50/hr. × 10,492 HHAs)).

• Printing Forms

The time required to revise clinical records to include OASIS items will vary for each agency, depending on the nature of their current documentation. For example, HHAs that have developed their own forms using word processing software may find it easier to merge or replace items than those agencies without that capability. We stated in the preamble to the proposed rule that most HHAs are accustomed to revising patient assessments periodically, as new assessment protocols become available or as new requirements are implemented by accrediting bodies or regulators. Thus, we did not estimate costs for printing at that time. However, based on the Medicare OASIS demonstration, research data has shown that the need to revise the start of care, assessment updates, and discharge forms may create startup costs. The inclusion of OASIS items may add up to three pages to some of the HHA start of care forms, and may also cause HHAs to revise assessment update and discharge forms. HHAs participating in the demonstration estimated an average of $280 in printing costs. Therefore, we have included an additional one time estimated cost of $280 for the first year to print the following forms:

New patient/start of care:	
500 forms × 3 additional pages × .03/page	$45.00
Follow-up:	
250 forms × 9 total pages × .03/page	67.50
Discharge:	
500 forms × 10 total pages × .03/page	150.00
Stapling Charges	17.50
Total	280.00

HHAs currently print their start of care assessment forms which, prior to the implementation of this rule, have not been required to include OASIS items. The average HHA conducts its comprehensive assessment using forms that may vary in length from HHA to HHA. Based on the Medicare OASIS demonstration, we are aware that in order to comply with HCFA policy, an agency may need to print the start of care forms when OASIS items have been integrated; the revised forms may increase the length of an HHA's assessment form by 3 pages. Therefore, we have estimated the cost to print an additional 3 pages. Once OASIS items are included in an HHA's clinical record forms, we believe the HHA will have only minor subsequent revisions for any future OASIS releases.

• Staff Training

In the proposed rule, we estimated 3.5 hours as the necessary training time per nurse (or other clinical staff within each HHA) for the new OASIS record keeping. We have revised this estimate to 3 hours based on research conducted through the Medicare OASIS demonstration. The 3 hours have been allocated for training on data collection for the initial assessment, data collection for assessment at follow-up, data collection at discharge, and data auditing. In the proposed rule, we provided a breakout of the training hours. However, since training needs may differ from agency to agency, we have not specified within this final rule, a breakout of how the 3 hours of training should be used.

Part of the training described above would include an emphasis on data accuracy to ensure the production of meaningful outcome reports. Other procedures to be used by the agency to monitor data accuracy (including interdisciplinary comparisons and record reviews) require training as they are implemented. Several approaches to data auditing could be explained in 30 minute training sessions. The projected 3 hours of training time for staff is expected to cost an average HHA with 18 clinicians approximately $1,299 (3 hrs. × $24.05/hr. × 18 clinicians). The projected 12 hours of training for the OASIS coordinator is expected to cost $360 per HHA (12 hrs. × $30.00/hr. × 1 coordinator). These estimates are based on an average hourly rate of $24.05 for the clinical staff and of $30.00 for the

OASIS Coordinator. The total national training burden is estimated to be 692,472 hours ((3 hrs. × 18 staff) and (12 hrs. × 1 coordinator) × 10,492) across all certified HHAs, at a cost of $17.4 million ((3 hrs. × $24.05/hr. × 18 clinicians) and (12 hrs. × $30.00/hr. × 1 coordinator) × 10,492 HHAs).

Once HHA staff are familiar with the OASIS items, OASIS data collection does not impose a burden above the current patient assessments. OASIS data are collected using a combination of staff observation and patient/care giver interviews. Initially, the OASIS data collection may take additional time until the HHA clinicians become familiar with the precision and format of the items. Estimates from providers using clinical records with integrated OASIS items on the "learning curve" indicate that the use of the OASIS initially adds approximately 15 minutes to the start of care assessment. However, as discussed above, after using the OASIS approximately 8 times, the additional time required to complete a comprehensive assessment that incorporates the OASIS into an HHA's existing patient assessment is eliminated. Thus, the total learning curve (of 8 uses until familiar with OASIS) for an average HHA is estimated to be 36 hours (8 uses × .25 hr. × 18 clinicians), at a cost of about $866 per HHA, based on an average hourly rate of $24.05 per clinical staff for 18 clinicians (36 hrs. × $24.05/hr.).

2. Data Collection

Most items included in the OASIS require information that the majority of HHAs currently gather during patient assessments. However, the OASIS employs a more precise scale. For instance, most HHAs assess a patient's ability to bathe in the course of an assessment, but use only three levels (independent, needs moderate assistance, or dependent). The OASIS item for bathing requires that the clinician assesses each patient's bathing ability on a more precise six-level scale.

In order to measure outcomes, OASIS data are collected at uniformly defined time points (start of care, every two calendar months, and within 48 hours after return to home from a hospital admission for any reason except diagnostic testing). Some data items are unique to only one point in time (for example, selected items are collected only at patient discharge), while other data are collected at every time point. By collecting data using uniform data items and time points, specific information on individual patients is comparable and can be aggregated to produce agency-level outcome reports that permit comparisons between different groups of patients.

Since the proposed rule was published in the **Federal Register** on March 10, 1997, we have collected data from the Medicare OASIS demonstration that prompts us to revise our previous estimate of ongoing costs for initial care, follow-ups, post hospital admissions, and discharges. The data indicates that after the initial learning curve, OASIS data collection on an ongoing basis poses no additional burden above an HHA's routine patient assessment. Instead, agencies that participated in the University of Colorado's OASIS Time Survey and that completed comprehensive assessments incorporating the OASIS required one minute less overall for completion of the assessment than did the agencies that completed comprehensive assessments that did not include OASIS. Therefore, we have determined that providers using clinical records with integrated OASIS items will not need additional time on an ongoing basis for initial care or discharges. We have revised our estimates accordingly.

Based on the above findings, for the purposes of this analysis, it will not take any additional time to complete OASIS for the follow-up and post hospital admission items. In fact, we believe that the burden associated with completing these assessments will diminish with the incorporation of OASIS, after the learning curve.

Finally, as we stated earlier in this preamble, the OASIS will be updated and improved periodically after implementation. We anticipate these changes to be refinements of existing items and the addition and deletion of items depending on their value. We believe the implementation of later iterations of the OASIS will result in a very small one-time cost to HHAs.

3. Summary of Cost and Burden Estimates

The estimated total national start-up costs across all certified HHAs is $32,986,848. (See table 1 below). In this final rule, changes from the proposed rule burden estimates are based on updated data that show an increase in the number of certified HHAs, the addition of clinician involvement in the integration of OASIS into existing assessment forms, the addition of printing costs that research identified, and the inclusion of OASIS coordinator training.

The following 3 tables provide a summary of the statistics for start-up and ongoing costs, burden to the average HHA, and combined cost for all HHAs for the collection of OASIS data. The tables are as follows: (1) National Costs to HHAs for Implementation of the OASIS; (2) Breakdown of Agency Start-Up Costs; and (3) Hourly Breakdown and Computation of the Average OASIS Start-Up Costs per HHA.

1. NATIONAL COSTS FOR IMPLEMENTATION OF THE OASIS

Year FY	Number of agencies incurring start-up costs	Start-up costs @ $3144 per HHA (in millions)	Medicare costs (in millions)	Costs to other sources (in millions)
1999 and 2000[1]	10,492	$32.99	[2] $9.89	[2] $23.10
2001	0	0	0	0
2002	0	0	0	0
2003	0	0	0	0

These costs are based on the following assumptions:

[1] Implementation will be in fiscal years 1999 and 2000.

[2] Medicare will reimburse approximately 30% of HHAs for their reasonable Medicare share of start-up costs, based on the estimate that approximately 30% of HHAs will benefit from the add-on adjustment to per-visit cost limits, published on August 11, 1998 in an Interim Payment System Notice. This estimate is reflected by indicating that 30% of $32.99 million (or $9.89 million) will be reimbursed by Medicare. The remaining 70% of $32.99 million ($23.10 million) will most likely be absorbed by a combination of the Medicaid program, private insurers, and beneficiaries, to whom we expect the balance of HHAs to pass along these start-up costs. Because approximately 23% of HHA patients are Medicaid beneficiaries, we expect HHAs to try to have the Medicaid programs absorb up to 23% of this remaining $23.10 million.

2. BREAKDOWN OF AGENCY START-UP COSTS

Task	Agency costs (in dollars)	National costs (agency costs × 10,492 HHAs in millions of dollars)
Start-Up (One-Time Only) Costs		
Integration of OASIS into existing assessment forms:		
Clinician Input—12 hrs. × $24.05/hr	$289	$3.03
Clerical Input—4 hrs. × $12.50/hr	50	.52
Subtotal	339	3.55
Staff Training:		
Coordinator—		
12 hrs. × $30.00/hr. × 1 coordinator	360	3.78
Clinicians—		
3 hrs. × $24.05/hr. × 18 clinicians	1299	13.63
Subtotal	1659	17.41
Learning Curve:		
8 × .25 hr. × $24.05/hr. × 18 clinicians	866	9.09
Printing Costs	280	2.94
Total Start-Up Costs	3144	32.99

3. HOURLY BREAKDOWN AND COMPUTATION OF THE AVERAGE OASIS START-UP COSTS PER HHA

[Does not include costs for printing]

Task	Hours	Computation of average costs	Average cost (rounded to nearest dollar)
Integration of OASIS into existing assessment forms (revisions):			
Initial assessment forms	8.0	12 hrs. × $24.05/hr. (Avg. Clinician rate)	$289
Clinical forms (57–62 day and 48 hours post-hospital admission).	4.0	4 hrs. × $12.50/hr. (Avg. Clerical rate)	50
Discharge forms	4.0		
Sub-Total	16.0	Sub-Total	339
Staff Training:			
Coordinator Training for data collection at initial assessment, assessment at follow-up, at discharge, and data auditing.	12.0	12 hrs. × $30/hr. × 1 Coordinator	360
Clinical Staff Training for data collection at initial assessment, assessment at follow-up, collection at discharge, and data auditing.	54.0	3 hrs. × $24.05/hr. × 18 Clinicians	1299
Sub-Total	66.0	Sub-Total	1659
Learning Curve:			
Initial and next 7 Uses of the OASIS Data Collection (.25 hr./use).		2 hrs. x $24.05/hr. x 18 Clinicians.	
(8 × .25 hr. × 18 Clinicians).			
Sub-Total	36.0		866
Per HHA Total	118.0	Total	2864
Total National Hours	1,238,056	Total Costs	30,049,088

Note: HCFA has requested OMB approval of the Outcome and Assessment Information Set to support the use of collecting patient information as part of the conditions of participation for HHAs. The average start-up costs per HHA for the first years of implementation (FYs 1999 and 2000) is estimated to require 118.0 burden hours. Subsequent years will require approximately 79 burden hours per year. The average burden over a 3-year period is estimated to be 79 hours per year ((118.0 + 118.0 + 0) ÷3) for a national average of 828,862 burden hours per year (79 hours x 10,492 HHAs). While the overall actual burden has not increased from the proposed rule, the totals have been revised in the tables based on data from the Medicare OASIS demonstration, our reassessment on ongoing burden, and technical corrections to the tables published in the proposed rule. We estimate OASIS implementation will occur in fiscal years 1999 and 2000 at 118.0 hours each. The third year burden estimate is zero by which time the OASIS will have become a common business practice for HHAs. Therefore, we are requesting a three-year OMB approval for an average of 79 burden hours per year.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) and/or OMB numbers referenced above, to *paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 15 working days from the date of this publication in the **Federal Register** to:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attention: John Burke HCFA–3007–F, Fax number: 410–786–0262, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, D.C. 20503, Attention: Allison Herron Eydt, HCFA Desk Officer, Fax number: 202–395–6974 or 202–395–5167

List of Subjects in 42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

PART 484—CONDITIONS OF PARTICIPATION: HOME HEALTH AGENCIES

1. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart B—Administration

2. Section 484.18 is amended by revising paragraph (c) to read as follows:

§ 484.18 Condition of participation: Acceptance of patients, plan of care, and medical supervision.

* * * * *

(c) *Standard: Conformance with physician orders.* Drugs and treatments are administered by agency staff only as ordered by the physician. Verbal orders are put in writing and signed and dated with the date of receipt by the registered nurse or qualified therapist (as defined in § 484.4 of this chapter) responsible for furnishing or supervising the ordered services. Verbal orders are only accepted by personnel authorized to do so by applicable State and Federal laws and regulations as well as by the HHA's internal policies.

Subpart C—Furnishing of Services

3. Section 484.55 is added to subpart C to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

Each patient must receive, and an HHA must provide, a patient-specific, comprehensive assessment that accurately reflects the patient's current health status and includes information that may be used to demonstrate the patient's progress toward achievement of desired outcomes. The comprehensive assessment must identify the patient's continuing need for home care and meet the patient's medical, nursing, rehabilitative, social, and discharge planning needs. For Medicare beneficiaries, the HHA must verify the patient's eligibility for the Medicare home health benefit including homebound status, both at the time of the initial assessment visit and at the time of the comprehensive assessment. The comprehensive assessment must also incorporate the use of the current version of the Outcome and Assessment Information Set (OASIS) items, using the language and groupings of the OASIS items, as specified by the Secretary.

(a) *Standard: Initial assessment visit.* (1) A registered nurse must conduct an initial assessment visit to determine the immediate care and support needs of the patient; and, for Medicare patients, to determine eligibility for the Medicare home health benefit, including homebound status. The initial assessment visit must be held either within 48 hours of referral, or within 48 hours of the patient's return home, or on the physician-ordered start of care date.

(2) When rehabilitation therapy service (speech language pathology, physical therapy, or occupational therapy) is the only service ordered by the physician, and if the need for that service establishes program eligibility, the initial assessment visit may be made by the appropriate rehabilitation skilled professional.

(b) *Standard: Completion of the comprehensive assessment.* (1) The comprehensive assessment must be completed in a timely manner, consistent with the patient's immediate needs, but no later than 5 calendar days after the start of care.

(2) Except as provided in paragraph (b)(3) of this section, a registered nurse must complete the comprehensive assessment and for Medicare patients, determine eligibility for the Medicare home health benefit, including homebound status.

(3) When physical therapy, speech-language pathology, or occupational therapy is the only service ordered by the physician, a physical therapist, speech-language pathologist or occupational therapist may complete the comprehensive assessment, and for Medicare patients, determine eligibility for the Medicare home health benefit, including homebound status. The occupational therapist may complete the comprehensive assessment if the need for occupational therapy establishes program eligibility.

(c) *Standard: Drug regimen review.* The comprehensive assessment must include a review of all medications the patient is currently using in order to identify any potential adverse effects and drug reactions, including ineffective drug therapy, significant side effects, significant drug interactions, duplicate drug therapy, and noncompliance with drug therapy.

(d) *Standard: Update of the comprehensive assessment.* The comprehensive assessment must be updated and revised (including the administration of the OASIS) as frequently as the patient's condition warrants due to a major decline or improvement in the patient's health status, but not less frequently than—

(1) Every second calendar month beginning with the start of care date;

(2) Within 48 hours of the patient's return to the home from a hospital admission of 24 hours or more for any reason other than diagnostic tests;

(3) At discharge.

(e) *Standard: Incorporation of OASIS data items.* The OASIS data items determined by the Secretary must be incorporated into the HHA's own assessment and must include: clinical record items, demographics and patient history, living arrangements, supportive assistance, sensory status, integumentary status, respiratory status, elimination status, neuro/emotional/behavioral status, activities of daily living, medications, equipment management, emergent care, and data items collected at inpatient facility admission or discharge only.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.778, Medical Assistance Program)

Dated: November 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 15, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 99–1449 Filed 1–22–99; 8:45 am]

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federal register

Monday
January 25, 1999

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Cost Accounting Standards Post-Award Notification; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 98–003]

RIN 9000–AI23

Federal Acquisition Regulation; Cost Accounting Standards Post-Award Notification

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to reduce the subcontractor information that a contractor is required to provide to its cognizant contract administration office (CAO) when requesting the CAO to perform administration for Cost Accounting Standards (CAS) matters.

DATES: Comments should be submitted on or before March 26, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration FAR Secretariat (MVR) Attn: Laurie Duarte 1800 F Street, NW, Room 4035 Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–003@gsa.gov.

Please cite FAR case 98–003 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 98–003.

SUPPLEMENTARY INFORMATION:

A. Background

Under 48 CFR 9903.202–8(a), the contractor or higher-tier subcontractor is responsible for administering the CAS requirements contained in its subcontracts. FAR 30.601(b) requires the contractor or subcontractor to transfer this responsibility to the cognizant administrative contracting officer (ACO). The clause at FAR 52.230–6, Administration of Cost Accounting Standards, contains the notification requirement that implements FAR 30.601(b).

Without this delegation of CAS responsibility from the contractor or subcontractor to the cognizant ACO, the contractor or subcontractor would be required to expend significant resources to oversee the CAS system for each of its subcontractors that are subject to CAS. Accordingly, it is essential that FAR 30.601(b) be retained. Since paragraph (e)(2) of FAR clause 52.230–6 is the only mechanism for notifying the cognizant ACO of the CAS administration delegation, it is essential that this post-award notification requirement also be retained. Although paragraph (e)(2) of FAR clause 52.230–6 should not be deleted in its entirety, this paragraph has been streamlined to include only the information essential to the CAS administration delegation. The coverage currently contained in paragraph (e)(2)(iv) is proposed for deletion because any changes in the subcontractor's cost accounting practices will be reported directly by the subcontractor to the subcontractor's cognizant contract administration office under the applicable subcontractor CAS solicitation clause and/or CAS subcontract clause(s) requirements.

If respondents are aware of any alternatives for post-award notification that would comply with FAR 30.601(b) but be less burdensome to contractors and subcontractors, they may include their alternatives with public comments on the proposed rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201–1(b)(3). An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–003), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the proposed rule revises existing information collection requirements, resulting in a decrease in the estimated burden. Accordingly, a request for amendment of information collection requirements under approved Office of Management and Budget (OMB) Control Number 9000–0129 will be submitted to OMB under 44 U.S.C. 3501, *et seq.*, at the final rule stage. The proposed rule decreases the collection requirements currently approved under OMB Control Number 9000–0129, since the rule deletes the requirement to submit certain information at FAR 52.230–6(e)(2)(iv).

Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: *Estimated number of respondents:* 271; *Responses per respondent:* 2; *Average burden per response:* 0.33; *Total burden hours:* 179; *Frequency of report:* On occasion.

D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under **ADDRESSES**. Please cite the corresponding OMB Clearance Number in all correspondence related to the estimate.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: January 19, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.230–6 is amended by revising the date of the clause and paragraph (e) of the clause to read as follows:

52.230–6 Administration of Cost Accounting Standards.

* * * * *

Administration of Cost Accounting Standards (Date)

* * * * *

(e) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

* * * * *

[FR Doc. 99–1513 Filed 1–22–99; 8:45 am]

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federal register

Monday
January 25, 1999

Part IV

Nuclear Regulatory Commission

10 CFR Parts 30, 40, et al.
Nuclear Information and Resource Service; Receipt of Petition for Rulemaking; Proposed Rules

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, and 70

[Docket No. PRM–50–65]

Nuclear Information and Resource Service; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Information and Resource Service. The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–65. The petitioner requests that the NRC amend its regulations to require the shutdown of nuclear facilities that are not compliant with date-sensitive, computer-related issues regarding the Year 2000 (Y2K). The petitioner requests that the NRC take this action to ensure that Y2K issues will not cause the failure of nuclear safety systems and thereby pose a threat to public health and safety.

DATES: Submit comments by February 24, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-Free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received three related petitions for rulemaking, each dated December 10, 1998, submitted by the Nuclear Information Resource Service concerning various aspects of Y2K issues and nuclear safety. This petition requests that the NRC amend its regulations to require that nuclear facilities be shut down if they are not compliant with Y2K issues. The two related petitions would require nuclear power plant and major fuel cycle facilities to develop and implement adequate contingency and emergency plans to address potential system failures (PRM–50–66) and to provide reliable back-up sources of power for nuclear facilities (PRM–50–67).

Because of the nature of these petitions and the date-specific issues they address, the petitioner requests that the petitions be filed expeditiously and that public comment on the actions be limited to 30 days.

The Petitioner's Suggested Amendment

The petitioner requests that the NRC adopt the following text as a rule:

> Any and all facilities licensed by the Nuclear Regulatory Commission under 10 CFR Parts 30, 40, 50, and 70 shall be closed by 12 pm Eastern Standard Time, December 1, 1999, unless and until each facility has (a) fully and comprehensively examined all computer systems, embedded chips, and other electronic equipment that may be date-sensitive to ensure that all such systems that may be relevant to safety are Y2K compliant; (b) repaired, modified, and/or replaced all such systems that are not found to be Y2K compliant; (c) made available to the public all information related to the examination and repair, modification and/or replacement of all such systems; (d) determined, through full-scale testing, that all repairs, modifications, and/or replacements of all such systems are, in fact, Y2K compliant.

Discussion

The petitioner notes that in Generic Letter 98–01, the NRC has recognized the potential date-related problems that may affect a system or application (the Y2K problem). These potential problems include not representing the year properly, not recognizing leap years, and improper date calculations. These problems could result in the inability of computer systems to operate or to function properly. The petitioner states that the Y2K problem could potentially interfere with the proper operation of computer systems, microprocessor-based hardware, and software or databases relied on at nuclear power plants. The petitioner asserts that the Y2K problem could result in a plant trip and subsequent complications in tracking post-shutdown plant status and recovery due to a loss of emergency data collection. The petitioner is also concerned that power grids providing offsite power to nuclear stations could be impacted to the extent that localized and widespread grid failures could occur.

The petitioner acknowledges that the NRC has recognized the potential safety and environmental problems that could result if date-sensitive electronic systems fail to operate or provide false information. The petitioner also notes that NRC has, in Generic Letter 98–01, required its reactor and major fuel cycle facilities to report on their programs to ensure compliance with Y2K issues by July 1, 1999.

However, the petitioner asserts that the NRC has not made explicit how it will define compliance nor what it plans to do for facilities that cannot prove compliance. In the petitioner's suggested regulatory text, the petitioner defines compliance with Y2K issues as evaluation of all potential problems that may be safety-related, repair of all such problems, and full-scale testing of all solutions. The petitioner would also require full public disclosure of all evaluation, repair, and testing data so that it may be examined by independent experts and the public. Finally, the petitioner's suggested amendment would make it clear that nuclear facilities will be closed until they can demonstrate full compliance with Y2K issues.

The petitioner states that the NRC is obligated to act decisively to protect public health and safety and the environment. The petitioner believes that anything short of its suggested approach is insufficient to fulfill this obligation and that the NRC should adopt this suggested regulation as soon as possible.

Dated at Rockville, Maryland, this 15th day of January, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–1592 Filed 1–22–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–66]

Nuclear Information and Resource Service; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Information and Resource Service. The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–66. The petitioner requests that the NRC amend its regulations to require every nuclear utility to conduct a full-scale emergency planning exercise that involves coping with a date-sensitive, computer-related failure resulting from a Year 2000 issue (Y2K). The petitioner requests that the NRC take this action to ensure that nuclear power plant licensees have developed and can implement adequate contingency and emergency plans to address major system failures that may be caused by a Y2K problem.

DATES: Submit comments by February 24, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-Free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received three related petitions for rulemaking, each dated December 10, 1998, submitted by the Nuclear Information Resource Service concerning various aspects of Y2K issues and nuclear safety. This petition requests that the NRC amend its regulations to require nuclear power plant and major fuel cycle facilities to develop and implement adequate contingency and emergency plans to address potential system failures. The two related petitions would require that nuclear facilities be shut down if they are not compliant with Y2K issues (PRM–50–65) and that nuclear facilities provide reliable back-up sources of power for nuclear facilities (PRM–50–67).

Because of the nature of these petitions and the date-specific issues they address, the petitioner requests that the petitions be filed expeditiously and that public comment on the actions be limited to 30 days.

The Petitioner's Suggested Amendment

The petitioner requests that the NRC adopt the following text as a rule:

All licensees subject to 10 CFR Part 50 and Appendix E will conduct a full-scale emergency planning exercise (as normally required under 10 CFR 50.47) during 1999. This exercise shall include a component that includes failure of one or more computer or other digital systems (this is popularly known as the "Y2K bug") on January 1, 2000, or other relevant date. Licensees that do not conduct, or that fail, this exercise shall close their facilities licensed under this part by December 1, 1999, until such time as the licensees have conducted a successful exercise.

The NRC shall publish and provide to each licensee, within 30 days of the date of this rule, a Regulatory Guide that outlines potential emergency exercise scenarios. The NRC shall publish and provide to each licensee, by December 1, 1999, a Regulatory Guide that describes the various scenarios that have been undertaken and the successful (and unsuccessful) responses to the problem posed.

Discussion

The petitioner states that although the probability of Y2K-related events occurring that would require emergency response and the implementation of contingency plans is unknown, it would fall within the range of safety matters for which NRC requires emergency planning exercises. Furthermore, the petitioner asserts that addressing Y2K-related problems will require the use of potentially unfamiliar contingency plans, relying on ingenuity to circumvent failure of essential communications systems or the failure of off-site emergency responders to perform their tasks effectively, and coping with issues not normally tested during emergency exercises.

The petitioner believes that it is prudent to require each licensee to conduct an exercise and that each exercise address a different aspect of the Y2K problem. The petitioner suggests that some exercises should test problems initiated by Y2K-related failures and that others should test problems exacerbated by Y2K-related failures. The petitioner believes that this would provide some familiarity with the possible range of issues that could develop and create an overall industry capability to address potential Y2K problems.

Under the petitioner's suggested regulation, the licensees would develop exercise scenarios that would be approved by the NRC in an expedited fashion and the NRC would publish and distribute regulatory guides that would outline potential emergency response scenarios and describe the scenarios that were tested and the successful responses to the problem posed.

The petitioner believes that this action would provide reasonable assurance that nuclear power plant licensees have developed and can implement adequate contingency and emergency plans to address major system failures that may be caused by the Y2K problem.

The petitioner also believes that other major fuel cycle facilities should be subject to a similar rule.

Dated at Rockville, Maryland, this 15th day of January, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–1593 Filed 1–22–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

[Docket No. PRM–50–67]

Nuclear Information and Resource Service; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Information and Resource Service. The petition has been docketed by the Commission and has been assigned Docket No. PRM–50–67. The petitioner requests that the NRC amend its regulations to require that nuclear facilities ensure the availability of electricity to power atomic reactor and other nuclear facility safety systems in the event of a date-sensitive, computer-related incident resulting from a Year 2000 issue (Y2K). The petitioner requests that the NRC take this action to ensure that reliable back-up sources of power are available in the event of a Y2K incident.

DATES: Submit comments by February 24, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-Free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received three related petitions for rulemaking, each dated December 10, 1998, submitted by the Nuclear Information Resource Service concerning various aspects of Y2K issues and nuclear safety. This petition requests that the NRC amend its regulations to provide reliable back-up sources of power for nuclear facilities. The two related petitions would require that nuclear power plant and major fuel cycle facilities be shutdown if they are not compliant with Y2K issues (PRM–50–65) and require that nuclear facilities develop and implement adequate contingency and emergency plans to address potential system failures (PRM–50–66).

Because of the nature of these petitions and the date-specific issues they address, the petitioner requests that the petitions be filed expeditiously and that public comment on the actions be limited to 30 days.

The Petitioner's Suggested Amendment

The petitioner requests that the NRC adopt the following text as a rule:

The Nuclear Regulatory Commission recognizes that date-sensitive computer programs, embedded chips, and other electronic systems that perform a major role in distributing, allocating, and ensuring electric power throughout the United States may be prone to failure beginning on January 1, 2000. Loss of all alternating current electricity from both the offsite power grid and onsite emergency generators (commonly known as "station blackout,") long has been identified by the NRC as among the most prominent contributors to risk for atomic reactors.

(1) For these reasons, the NRC requires of Part 50 and 70 licensees as of December 1, 1999: (a) that all emergency diesel generators that provide back-up power to nuclear licensees must be operational and remain operational; (b) that licensees that cannot demonstrate full operational capabilities of all emergency diesel generators must close until such time that full operational capabilities of emergency diesel generators are attained; (c) that all licensees must have a 60-day supply of fuel for emergency diesel generators.

(2) Further, to ensure adequate protection of public health and safety, the NRC requires that all licensees under these sections must provide alternate means of back-up power sufficient to ensure safety. These may include, but are not limited to: solar power panels, wind turbines, hydroelectric power, biomass power, and other means of generating electricity. These additional back-up systems must provide electricity directly to the licensee rather than to the broader electrical grid.

(3) Irradiated fuel pools are to be immediately classified as Class 1-E; back-up power systems must be sufficient to provide cooling for such pools.

Licensees which cannot demonstrate compliance with sections (1) and (2) must cease operations as of December 1, 1999, until compliance with these sections is attained.

Discussion

The petitioner acknowledges that the NRC has recognized the potential safety and environmental problems that could result if date-sensitive electronic systems fail to operate or provide false information. The petitioner also notes that NRC has required its reactor and major fuel cycle facilities to report on their programs to ensure compliance with Y2K issues by July 1, 1999.

The petitioner is addressing a related problem concerning the availability of electricity to power atomic reactor and other safety systems. Electricity is required to operate atomic reactor safety and cooling systems. This electricity is provided by offsite sources, referred to by the petitioner as the overall electrical grid. The petitioner states that the NRC has long recognized that the loss of all alternating current from both onsite and offsite systems, known generally as "station blackout", is the most important contributor to risk at most atomic reactors. The petitioner notes that the NRC has required licensees to have back-up sources of onsite emergency power, normally multiple emergency diesel generators, capable of supplying the electricity necessary to operate essential safety systems.

The petitioner asserts that the emergency diesel generators used at atomic reactors have proven unreliable and are often out of service. The petitioner asserts that the unprecedented condition posed by the Y2K problem, coupled with the demonstrated and ongoing failures of emergency diesel generators, constitutes reasonable doubt that emergency fuel generators can be relied on. Therefore, the petitioner believes that the NRC should require all emergency diesel generators be operational, have a 60-day supply of fuel as of December 1, 1999, and that licensed facilities that cannot meet these requirements be closed.

The petitioner discusses the likelihood and potential consequences of a failure of all or a portion of the electric power grid in the United States. The petitioner recognizes that the failure of all or a portion of the electrical grid due to Y2K issues is well beyond the scope of NRC's authority. However, the petitioner states that the extended failure of all or a portion of the electrical grid would place severe stress on the current emergency diesel generator system of back-up power supply and that the failure of emergency diesel generators at one or more reactor sites could result in extended station blackouts and nuclear catastrophes. The petitioner asserts that this possibility is well within the range of probabilities for

which the NRC routinely requires action by its licensees. The petitioner further asserts that reliance on unreliable emergency diesel generators is insufficient under these conditions.

Therefore, the petitioner believes it is essential that the NRC take the type of regulatory action suggested in this petition on an expedited basis.

Dated at Rockville, Maryland, this 15th day of January, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–1594 Filed 1–22–99; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Parts 6, 180 and 570
Nondiscrimination in Programs and Activities Receiving Assistance Under Title I of the Housing and Community Development Act of 1974; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 6, 180, 570

[Docket No. FR 4092–F–02]

RIN 2501–AC28

Nondiscrimination in Programs and Activities Receiving Assistance Under Title I of the Housing and Community Development Act of 1974

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes procedures to file a complaint for a claim of discrimination under HUD's community planning and development programs funded under Title I of the Housing and Community Development Act of 1974. The procedure is modeled on HUD's regulations implementing the prohibition against discrimination on the basis of disability and the regulations implementing the prohibition against discrimination on the basis of race, color, or national origin in Federal programs. The rule also provides that hearings on complaints be conducted in accordance with HUD's consolidated hearing procedures for civil rights claims. This rule is needed to inform members of the public how to file complaints and how HUD will act on their complaints. The rule also informs the public of HUD's procedures for conducting compliance reviews.

DATES: Effective date February 24, 1999.

FOR FURTHER INFORMATION CONTACT: Betsy Ryan, Office of Enforcement, Office of Fair Housing and Equal Opportunity, Room 5208, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–5000, telephone (202) 619–8041, ext. 6991. (This telephone number is not toll-free.) Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 11, 1998, the Department published a proposed rule to implement the provisions of section 109 of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321) (Title I), at 63 FR 26022. The comment period ended on July 10, 1998, and no public comments were received. This final rule makes only clarifying changes to that proposed rule.

Section 109 was modeled on the language of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) (Title VI). Title VI prohibits discrimination on the bases of race, color, and national origin in any program or activity for which federal financial assistance is authorized under a law administered by the Department. However, unlike Title VI, which excludes employment practices except where employment is a primary purpose of the program, section 109 includes employment discrimination within its coverage. Section 109 was amended to direct that the existing prohibitions against discrimination on the basis of age and against discrimination on the basis of disability apply to Title I programs, and it was amended to add protection against discrimination on the basis of religion. (See complete history in the proposed rule preamble, published on May 11, 1998, 63 FR 26022.)

II. Changes From Proposed Rule

Only minor, clarifying changes are made to the May 11, 1998 proposed rule in the adoption of this final rule. The changes affect §§ 6.2, 6.3, and 6.11. To provide a complete version of the rule, this final rule republishes the language of the proposed rule, with minor clarifications.

The applicability section of the rule, § 6.2, did not specifically mention the Secretary's partial waiver of Section 109 with respect to programs for native Americans. A new paragraph (c) has been added, comparable to the paragraph dealing with Hawaiian Homelands. New paragraph (c) states that the section 109 protections against discrimination on the basis of race and national origin do not apply to grant recipients under the Native American Housing Assistance and Self-Determination Act, and it references the provision of the Indian Community Development Block Grant rule that already makes race and national origin restrictions inapplicable to Indian tribal entities.

The definition of Federal financial assistance found in § 6.3 contained a grammatical inconsistency, which is corrected in this rule.

At the proposed rule stage, § 6.11 was organized into two paragraphs. Paragraph (a) applied to complaints; paragraph (b) applied to compliance reviews. The provisions dealing with response after issuance of a letter of findings, informal resolution process, and right to file a civil action were all contained within paragraph (a), although these procedures actually are applied to compliance reviews as well. At this final rule stage, § 6.11 is reorganized to place the provisions applicable to both in separate new paragraphs (c), (d), (e), and (f), and the language is revised slightly to make it appropriate to apply to both situations. In light of these revisions, a paragraph that dealt with the issue of response to the letter of findings of noncompliance was removed from the paragraph on compliance reviews because it was redundant.

This final rule makes no substantive changes to the process provided in the proposed rule.

III. Findings and Certifications

Public Reporting Burden

The information collection requirements in § 6.6 of this rule are already imposed on Recipients of Title I assistance under existing regulations at 24 CFR 91.105, 91.115, 570.491, and 570.506. These information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2506–0117 and 2506–0077. This rule incorporates these recordkeeping requirements, but does not require duplication of this information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Coordination

The Department of Justice has reviewed and approved this final rule under Executive Order 12250.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Environmental Impact

In accordance with 24 CFR 50.19(c)(3) of the HUD regulations, the policies and procedures in this rule set out nondiscrimination standards and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act under 24 CFR 50.19(c)(3).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication, and by approving it certifies that this final rule would not

have a significant economic impact on small entities. The purpose of this rule is to provide for the enforcement of Section 109 of the Housing and Community Development Act of 1974, as amended, as it applies to recipients of Federal financial assistance from the Department of Housing and Urban Development. The rule will not have any meaningful impact on small entities. The entities that receive assistance under Title I of the Housing and Community Development Act, to which this rule applies, are either States or "entitlement jurisdictions", all of which have populations of greater than 50,000 and consequently do not fall within the definition of small entities. In addition, we note that the proposed rule preamble specifically invited comment on alternatives to the compliance procedure for small entities that might be less burdensome to them. There was no response.

Executive Order 13083, Federalism

The Department has determined that, under section 1 of Executive Order 13083, Federalism, the policies contained in this rule are not policies that have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this final rule are directed to Title I programs and activities, and do not impinge upon the relationship between the Federal government and State and local governments. Accordingly, the final rule is not subject to review under the Order.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.406.

List of Subjects

24 CFR Part 6

Administrative practice and procedure, Civil rights, Community development block grants, Equal employment opportunity, Grant programs—housing and community development, Investigations, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Urban renewal, Virgin Islands.

Accordingly, subtitle A and chapters I and V of title 24 of the Code of Federal Regulations are amended as follows:

1. A new Part 6 is added, to read as follows:

PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Subpart A—General Provisions

Sec.
6.1 Purpose.
6.2 Applicability.
6.3 Definitions.
6.4 Discrimination prohibited.
6.5 Discrimination prohibited—employment.
6.6 Records to be maintained.

Subpart B—Enforcement

6.10 Compliance information.
6.11 Conduct of investigations.
6.12 Procedure for effecting compliance.
6.13 Hearings and appeals.

Authority: 42 U.S.C. 3535(d) 42 U.S.C. 5309.

Subpart A—General Provisions

§ 6.1 Purpose.

The purpose of this part is to implement the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. Section 109 does not directly prohibit discrimination on the bases of age or disability, and the regulations in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

§ 6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under title I of the Housing and Community Development Act of 1974, including Community Development Block Grants—Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.

(b) The provisions of this part and sections 104(b)(2) and 109 of Title I that relate to discrimination on the basis of race shall not apply to the provision of Federal financial assistance by grantees under this title to the Hawaiian Homelands (42 U.S.C. 5309).

(c) The provisions of this part and sections 104(b)(2) and 109 of Title I that relate to discrimination on the basis of race and national origin shall not apply to the provision of Federal financial assistance to grant recipients under the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101). See also, 24 CFR 1003.601(a).

§ 6.3 Definitions.

The terms *Department*, *HUD*, and *Secretary* are defined in 24 CFR part 5. Other terms used in this part 6 are defined as follows:

Act means the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301–5320).

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Award Official means the HUD official who has been delegated the Secretary's authority to implement a Title I funded program and to make grants under that program.

Complete complaint means a written statement that contains the complainant's name and address, identifies the Recipient against which the complaint is made, and describes

the Recipient's alleged discriminatory action in sufficient detail to inform HUD of the nature and date of the alleged violation of section 109. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Federal financial assistance means:
(1) Any assistance made available under title I of the Housing and Community Development Act of 1974, as amended, and includes income generated from such assistance, and any grant, loan, contract, or any other arrangement, in the form of:

(i) Funds;

(ii) Services of Federal personnel; or

(iii) Real or personal property or any interest in or use of such property, including:

(A) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(B) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

(2) Any assistance in the form of proceeds from loans guaranteed under section 108 of the Act, but does not include assistance made available through direct Federal procurement contracts or any other contract of insurance or guaranty.

Program or activity (funded in whole or in part) means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes Federal financial assistance, and each department or agency (and each State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other post-secondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to the corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is described in paragraphs (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision; any public or private agency, institution, organization, or other entity; or any individual, in any State, to whom Federal financial assistance is extended, directly or through another Recipient, for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign, or transferee thereof. Recipient does not include any ultimate beneficiary under any program or activity.

Responsible Official means the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

Section 109 means section 109 of the Housing and Community Development Act of 1974, as amended.

Title I means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321).

§ 6.4 Discrimination prohibited.

(a) Section 109 requires that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance, on the grounds of race, color, national origin, religion, or sex.

(1) A Recipient under any program or activity to which this part applies may not, directly or through contractual, licensing, or other arrangements, take any of the following actions on the grounds of race, color, national origin, religion, or sex:

(i) Deny any individual any facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any facilities, services, financial aid, or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity;

(iii) Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to the receipt of any service or benefit under the program or activity;

(iv) Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions that the individual must meet in order to be provided any facilities, services, or other benefit provided under the program or activity;

(vi) Deny an individual an opportunity to participate in a program or activity as an employee;

(vii) Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;

(viii) Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;

(ix) Use criteria or methods of administration that have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or

(x) Deny a person the opportunity to participate as a member of planning or advisory boards.

(2) In determining the site or location of housing, accommodations, or facilities, a Recipient may not make selections that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, religion, or sex. The Recipient may not make selections that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of section 109 and of this part 6.

(3)(i) In administering a program or activity in which the Recipient has discriminated on the grounds of race, color, national origin, religion or sex, the Recipient must take any necessary steps to overcome the effects of prior discrimination.

(ii) In the absence of discrimination, a Recipient, in administering a program or activity, may take any steps necessary to overcome the effects of conditions that resulted in limiting participation by

persons of a particular race, color, national origin, religion, or sex.

(iii) After a finding of noncompliance, or after a Recipient has reasonable cause to believe that discrimination has occurred, a Recipient shall not be prohibited by this section from taking any action eligible under subpart C of 24 CFR part 570 to ameliorate an imbalance in benefits, services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy discriminatory practices or usage.

(iv)(A) Notwithstanding anything to the contrary in this part, nothing contained in this section shall be construed to prohibit any Recipient from maintaining or constructing separate living facilities or restroom facilities for the different sexes in order to protect personal privacy or modesty concerns. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can, in the interest of personal privacy or modesty, only be performed by a member of the same sex as those receiving the services.

(B) Section 109 of the Act does not directly prohibit discrimination on the basis of age or disability, but directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs and activities. Accordingly, for programs or activities receiving Federal financial assistance, the regulations in this part 6 apply to discrimination on the bases of race, color, national origin, religion, or sex; the regulations at 24 CFR part 8 apply to discrimination on the basis of disability; and the regulations at 24 CFR part 146 apply to discrimination on the basis of age.

§ 6.5 Discrimination prohibited—employment.

(a) *General.* A Recipient may not, under any program or activity funded in whole or in part with Federal financial assistance, directly or through contractual agents or other arrangements including contracts and consultants, subject a person to discrimination in the terms and conditions of employment. Terms and conditions of employment include advertising, interviewing, selection, promotion, demotion, transfer, recruitment and advertising, layoff or termination, pay or other compensation, including benefits, and selection for training.

(b) *Determination of compliance status.* The Assistant Secretary will follow the procedures set forth in this part and 29 CFR part 1691 and look to the substantive guidelines and policy of the Equal Employment Opportunity Commission when reviewing employment practices under Section 109.

§ 6.6 Records to be maintained.

(a) *General.* Recipients shall maintain records and data as required by 24 CFR 91.105, 91.115, 570.490, and 570.506.

(b) *Employment.* Recipients shall maintain records and data as required by the Equal Employment Opportunity Commission at 29 CFR part 1600.

(c) Recipients shall make available such records and any supporting documentation upon request of the Responsible Official.

(Approved by the Office of Management and Budget under control numbers 2506–0117 and 2506–0077.)

Subpart B—Enforcement

§ 6.10 Compliance information.

(a) *Cooperation and assistance.* The Responsible Official and the Award Official will provide assistance and guidance to Recipients to help them comply voluntarily with this part.

(b) *Access to data and other sources of information.* Each Recipient shall permit access by authorized representatives of HUD to its facilities, books, records, accounts, minutes and audio tapes of meetings, personnel, computer disks and tapes, and other sources of information as may be pertinent to a determination of whether the Recipient is complying with this part. Where information required of a Recipient is in the exclusive possession of any other agency, institution, or person, and that agency, institution, or person fails or refuses to furnish this information, the Recipient shall so certify in any requested report and shall set forth what efforts it has made to obtain the information. Failure or refusal to furnish pertinent information (whether maintained by the Recipient or some other agency, institution, or person) without a credible reason for the failure or refusal will be considered to be noncompliance under this part.

(c) *Compliance data.* Each Recipient shall keep records and submit to the Responsible Official, timely, complete, and accurate data at such times and in such form as the Responsible Official may determine to be necessary to ascertain whether the Recipient has complied or is complying with this part.

(d) *Notification to employees, beneficiaries, and participants.* Each Recipient shall make available to employees, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the program or activity under which the Recipient receives Federal financial assistance and make such information available to them in such manner as the Responsible Official finds necessary to apprise such persons of the protections against discrimination assured them by Section 109 and this part.

§ 6.11 Conduct of investigations.

(a) *Filing a complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may file, or may have an authorized representative file on his or her behalf, a complaint with the Responsible Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the Responsible Official.

(2) *Confidentiality.* Generally, the Responsible Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise. However, an exception to maintaining confidentiality of the identity of the person may be required to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the Responsible Official waives this time limit for good cause. For purposes of determining when a complaint is filed under this part, a complaint mailed to the Responsible Official via the U.S. Postal Service will be deemed filed on the date it is postmarked. A complaint delivered to the Responsible Official in any other manner will be deemed filed on the date it is received by the Responsible Official.

(4) *Where to file complaints.* Complaints must be in writing, signed, addressed to the Responsible Official, and filed with (mailed to or otherwise delivered to) the Office of Fair Housing and Equal Opportunity at any HUD Office.

(5) *Content of complaints.* Each complaint should contain the complainant's name, address, and phone number; a description or name, if available, of the Recipient alleged to have violated this part; an address where the violation occurred; and a description of the Recipient's alleged discriminatory action in sufficient detail

to inform the Responsible Official of the nature and date of the alleged violation of this part.

(6) *Amendments to complaints.* Amendments to complaints, such as clarification and amplification of allegations in a complaint or the addition of other Recipients, may be made by the complainant or the complainant's authorized representative at any time while the complaint is being considered, and any amendment shall be deemed to be made as of the original filing date.

(7) *Notification.* To the extent practicable, the Responsible Official will notify the complainant and the Recipient of the Responsible Official's receipt of a complaint within 10 calendar days of receipt of a complete complaint. If the Responsible Official receives a complaint that is not complete, the Responsible Official will notify the complainant and specify the additional information that is needed to make the complaint complete. If the complainant fails to complete the complaint, the Responsible Official will close the complaint without prejudice and notify the complainant. When a complete complaint has been received, the Responsible Official, or his or her designee, will assess the complaint for acceptance, rejection, or referral to an appropriate Federal agency within 20 calendar days.

(8) *Resolution of complaints.* After the acceptance of a complete complaint, the Responsible Official will investigate the complaint, attempt informal resolution, and, if resolution is not achieved, the Responsible Official will notify the Recipient and complainant, to the extent practicable within 180 days of the receipt of the complete complaint, of the results of the investigation in a letter of findings sent by certified mail, return receipt requested, containing the following:

(i) Findings of fact and a finding of compliance or noncompliance;

(ii) A description of an appropriate remedy for each violation believed to exist; and

(iii) A notice of the right of the Recipient and the complainant to request a review of the letter of findings by the Responsible Official. A copy of the final investigative report will be made available upon request.

(b) *Compliance reviews*—(1) *Periodic Compliance Reviews.* The Responsible Official may periodically review the practices of Recipients to determine whether they are complying with this part and may conduct on-site reviews. The Responsible Official will initiate an on-site review by sending to the Recipient a letter advising the Recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time before a final determination, to submit information that explains, validates, or otherwise addresses the practices under review. In addition, the Award Official will include, in normal program compliance reviews and monitoring procedures, appropriate actions to review and monitor compliance with general or specific program requirements designed to implement the requirements of this part.

(2) *Time period of the review.* (i) For the Entitlement program, compliance reviews will cover the three years before the date of the review.

(ii) For the Urban Development Action Grant (UDAG) program, the compliance review is applicable only to UDAG loan repayments or other payments or revenues classified as program income. UDAG repayments or other payments or revenues classified as miscellaneous revenue are not subject to compliance review under this part. (*See* 24 CFR 570.500(a).) The compliance review will cover the time period that program income is being repaid.

(iii) For the State and HUD-Administered Small Cities programs, the compliance review will cover the four years before the date of the review.

(iv) For all other programs, the time period covered by the review will be four years before the date of the review.

(v) On a case-by-case basis, at the discretion of the Responsible Official, the above time frames for review can be expanded where facts or allegations warrant further investigation.

(3) *Early compliance resolution.* On the last day of the on-site visit, after the compliance review, the Recipient will be given an opportunity to supplement the record. Additionally, a prefinding conference may be held and a summary of the proposed findings may be presented to the Recipient. In those instances where the issue(s) cannot be resolved at a prefinding conference or with the supplemental information, a meeting will be scheduled to attempt a voluntary settlement.

(4) *Notification of findings.* (i) The Assistant Secretary will notify the Recipient of Federal financial assistance of the results of the compliance review in a letter of findings sent by certified mail, return receipt requested.

(ii) *Letter of findings.* The letter of findings will include the findings of fact and the conclusions of law; a description of a remedy for each violation found; and a notice that a copy of HUD's final report concerning its compliance review will be made available, upon request, to the Recipient.

(c) *Right to a review of the letter of findings.* (1) Within 30 days of receipt of the letter of findings, any party may request that a review be made of the letter of findings, by mailing or delivering to the Responsible Official, Room 5100, Office of Fair Housing and Equal Opportunity, HUD, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified.

(2) The Responsible Official will send by certified mail, return receipt requested, a copy of the request for review to all parties. Parties other than the party requesting review and HUD shall have 20 days from receipt to respond to the request for review.

(3) The Responsible Official will either sustain or modify the letter of findings or require that further investigation be conducted, within 60 days of the request for review. The Responsible Official's decision shall constitute the formal determination of compliance or noncompliance.

(4) If no party requests that the letter of findings be reviewed, the Responsible Official, within 14 calendar days of the expiration of the time period in paragraph (a)(9)(i) of this section, will send a formal written determination of compliance or noncompliance to all parties.

(d) *Voluntary compliance time limits.* The Recipient will have 10 calendar days from receipt of the letter of findings of noncompliance, or such other reasonable time as specified in the letter, within which to agree, in writing, to come into voluntary compliance or to contact the Responsible Official for settlement discussions. If the Recipient fails to meet this deadline, HUD will proceed in accordance with §§ 6.12 and 6.13.

(e) *Informal resolution/voluntary compliance*—(1) *General.* It is the policy of HUD to encourage the informal resolution of matters. A complaint or a compliance review may be resolved by informal means at any time. If a letter of findings is issued, and the letter makes a finding of noncompliance, the Responsible Official will attempt to resolve the matter through a voluntary compliance agreement.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the Responsible Official will attempt to achieve a just resolution of the matter and to obtain assurances, where appropriate, that the Recipient will satisfactorily remedy any violations of the rights of any complainant, and will take such action as will assure the elimination of any

violation of this part or the prevention of the occurrence of such violation in the future. If a finding of noncompliance has been made, the terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the Recipient and the Responsible Official, and be made part of the file. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public.

(3) *Right to file a private civil action.* At any time in the process, the complainant has the right to file a private civil action. If the complainant does so, the Responsible Official has the discretion to administratively close the investigation or continue the investigation, if he or she decides that it is in the best interests of the Department to do so. If the Responsible Official makes a finding of noncompliance and an agreement to voluntarily comply is not obtained from the Recipient, the procedures at §§ 6.12 and 6.13 for effecting compliance shall be followed.

(f) *Intimidatory or retaliatory acts prohibited.* No Recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, compliance review, proceeding, or hearing under this part.

§ 6.12 Procedure for effecting compliance.

(a) Whenever the Assistant Secretary determines that a Recipient of Federal financial assistance has failed to comply with Section 109(a) or this part and voluntary compliance efforts have failed, the Secretary will notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and will request that the Governor or the Chief Executive Officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or the Chief Executive Officer fails or refuses to secure compliance, the Secretary will:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by Title VI;

(3) Terminate or reduce payments under Title I, or limit the availability of payments under Title I to programs or activities not affected by the failure to comply; or

(4) Take such other actions as may be provided by law, including but not limited to, the initiation of proceedings under 24 CFR part 24 or any applicable proceeding under State or local law.

(b) *Termination, reduction, or limitation of the availability of Title I payments.* No order terminating, reducing, or limiting the availability of Title I payments under this part shall become effective until:

(1) The Secretary has notified the Governor of the State or the Chief Executive Officer of the unit of general local government of the Recipient's failure to comply in accordance with paragraph (a) of this section and of the termination, reduction or limitation of the availability of Title I payments to be taken;

(2) The Secretary has determined that compliance cannot be secured by voluntary means;

(3) The Recipient has been extended an opportunity for a hearing in accordance with § 6.13(a); and

(4) A final agency notice or decision has been rendered in accordance with paragraph (c) of this section or 24 CFR part 180.

(c) If a Recipient does not respond to the notice of opportunity for a hearing or does not elect to proceed with a hearing within 20 days of the issuance of the Secretary's actions listed in paragraphs (b)(1), (2) and (3) of this section, then the Secretary's approval of the termination, reduction or limitation of the availability of Title I payments is considered a final agency notice and the Recipient may seek judicial review in accordance with section 111(c) of the Act.

§ 6.13 Hearings and appeals.

(a) When a Recipient requests an opportunity for a hearing, in accordance with § 6.12(b)(3), the General Counsel will follow the notification procedures set forth in 24 CFR 180.415. The hearing, and any petition for review, will be conducted in accordance with the procedures set forth in 24 CFR part 180.

(b) After a hearing is held and a final agency decision is rendered under 24 CFR part 180, the Recipient may seek judicial review in accordance with section 111(c) of the Act.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

2. The heading of part 180 is revised to read as set forth above.

3. The authority citation for 24 CFR part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d-1, 3535(d), 3601–3619, 5301–5320, and 6103.

4. In § 180.100, the paragraph (c) designation is removed and a new paragraph (c) is added immediately above the definition for Agency; and the definitions of "*Federal financial assistance*," "*Non-Fair Housing Act matters*," and "*Recipient*" are revised to read as follows:

§ 180.100 Definitions.

* * * * *

(c) Other terms used in this part are defined as follows:

* * * * *

Federal financial assistance has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

* * * * *

Non-Fair Housing Act Matters refers to proceedings under this part pursuant to:

(1) Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000d-1) and the implementing regulations at 24 CFR part 1;

(2) Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(3) The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6103) and the implementing regulations at 24 CFR part 146; or

(4) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5321) and the implementing regulations at 24 CFR part 6.

* * * * *

Recipient has the meaning provided in 24 CFR 1.2, 6.3, 8.3, or 146.7, as applicable.

* * * * *

5. Section 180.105 is amended by removing "and" at the end of paragraph (a)(3), by removing the period at the end of paragraph (a)(4) and adding "; and" in its place, and by adding a new paragraph (a)(5), to read as follows:

§ 180.105 Scope of rules.

(a) * * *

(5) Section 109 of title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301–5321) and implementing regulations at 24 CFR part 6.

* * * * *

6. In § 180.310, paragraph (a) is revised to read as follows:

§ 180.310 Parties.

(a) Parties to proceedings under this part are HUD, the respondent(s), and any intervenors. Respondents include persons named as such in a charge issued under 24 CFR part 103 and Recipients/applicants named as

respondents in hearing notices issued under 24 CFR parts 1, 6, 8 or 146 and notices of proposed adverse action under this part.

* * * * *

7. In § 180.415, the section heading and paragraph (a) are revised to read as follows:

§ 180.415 Notice of proposed adverse action regarding Federal financial assistance in non-Fair Housing Act matters.

(a) *Filing and service.* Within 10 days after a Recipient/applicant has requested a hearing, as provided for in 24 CFR parts 1, 6, 8, or 146, the General Counsel shall file a notice of proposed adverse action with the Chief Docket Clerk and serve copies (with the additional information required under paragraph (b) of this section) on all respondents and complainants.

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

8. The authority for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

9. Section 570.602 is revised to read as follows:

§ 570.602 Section 109 of the Act.

Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109 also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR part 6.

10. In § 570.913, a heading is added to paragraph (a) and the introductory text of paragraph (a) is revised to read as follows:

§ 570.913 Other remedies for noncompliance.

(a) *Action to enforce compliance.* When the Secretary acts to enforce the civil rights provisions of Section 109, as described in § 570.602 and 24 CFR part 6, the procedures described in 24 CFR parts 6 and 180 apply. If the Secretary finds, after reasonable notice and opportunity for hearing, that a recipient has failed to comply substantially with any other provisions of this part, the provisions of this section apply. The Secretary, until he/she is satisfied that there is no longer any such failure to comply, shall:

* * * * *

Dated: January 12, 1999.

Andrew Cuomo,

Secretary.

[FR Doc. 99–1621 Filed 1–22–99; 8:45 am]

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federal register

Monday
January 25, 1999

Part VI

Department of Education

Office of Educational Research and Improvement (OERI), Star School Program; Notice Inviting Applications and Application Review Procedures for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.203F]

Office of Educational Research and Improvement (OERI), Star Schools Program; Notice Inviting Applications and Application Review Procedures for New Awards for Fiscal Year 1999

Purpose of Program: The purpose of the Star Schools program is to encourage improved instruction in mathematics, science, foreign languages, and other subjects, such as literacy skills and vocational education, and to serve underserved populations, including the disadvantaged, illiterate, limited-English proficient persons, and individuals with disabilities through the use of distance learning technologies.

Eligible Applicants: Only eligible applicants that include at least one local educational agency in the proposed project may apply under this competition. Eligible telecommunications partnerships must be organized on a statewide or multistate basis. Eligible entities include:

(1) A public agency or corporation established for the purpose of developing and operating telecommunications networks to enhance educational opportunities provided by educational institutions, teacher training centers, and other entities, except that any such agency or corporation shall represent the interests of elementary and secondary schools that are eligible to participate in the program under part A of title I of the Elementary and Secondary Education Act of 1965, as amended by Pub. L. 103–352 (ESEA); or

(2) A partnership that will provide telecommunications services and includes three or more of the following entities. At least one of the agencies must be a local educational agency, as described in paragraph (A) below, or a State educational agency:

(A) A local educational agency that serves a significant number of elementary and secondary schools that are eligible for assistance under part A of title I of the ESEA or elementary and secondary schools operated or funded for Indian children by the Department of the Interior eligible under section 1121(c) of the ESEA;

(B) A State educational agency;

(C) Adult and family education programs;

(D) An institution of higher education or a State higher education agency;

(E) A teacher training center or academy which provides teacher preservice and inservice training, and receives Federal financial assistance or has been approved by a State agency;

(F) A public or private entity with experience and expertise in the planning and operation of a telecommunications network, including entities involved in telecommunications through satellite, cable, telephone, or computer; or a public broadcasting entity with experience of this type; or

(G) A public or private elementary or secondary school.

Application Available: January 26, 1999.

Deadline for Receipt of Applications: March 26, 1999.

Note: All applications must be received on or before this date. Applications not received by the deadline date will not be considered for funding unless the applicant can show proof that the application was (1) sent by registered or certified mail no later than five days before the deadline date; or (2) sent by commercial carrier not later than two days before the deadline date. The following are acceptable as proof of mailing: (1) a legibly dated U.S. Postal Service postmark, (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the Secretary. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102.

Deadline for Intergovernmental Review: May 25, 1999.

Available Funds: $9,850,000.

Estimated Range of Awards: $1,000,000–$2,000,000.

Estimated Average Size of Awards: $2,000,000.

Maximum Award: The Secretary will not consider an application that proposes a budget exceeding $2 million per year or amounts exceeding $10 million for five years.

Estimated Number of Awards: 4–5.

Project Period: Up to 60 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except 34 CFR 75.102(a) and (b)(1)), 77, 79, 80, 81, 82, 85, 86, and (b) 34 CFR 299.

Supplementary Information: The Star Schools program is authorized by the ESEA, Title III, Part B (20 U.S.C. 6891–6900). The Star Schools program provides quality, cost-effective instruction through distance education technologies to more than 2,000,000 learners annually in 50 states and U.S. territories. Although the program began with small rural schools, it is now equally valuable to schools in large urban areas. To ensure that learners are prepared for the 21st century, it is imperative that the traditional instructional model is transformed to an active-learner, more collaborative-based model. Star Schools projects have harnessed the power of emerging technologies such as the Internet, CD–ROM, videoconferencing, virtual environments and interactive software to achieve this transformation. Consequently, the Star Schools program reaches a diverse group of students to create an inclusive, effective learning experience for the 21st century learner.

Application Review Procedures

The Secretary will use a two-tier process for reviewing applications in this competition. In the first tier, all applications submitted will be reviewed. The ten applications with the highest scores in the first tier will be reviewed in the second tier. In the event of a tie for tenth in the rank order in the first tier, the top nine applications plus all those applications tied for tenth will be considered in the second tier. The same evaluation criteria will be used in each tier. The Secretary will select applications for funding on the basis of the rank ordering of applications in the second tier. In all other respects, the Secretary will follow the procedures set out in the Education Department General Administrative Regulations (EDGAR), 34 CFR Part 75, in reviewing applications. This process takes exception, in part, to EDGAR, 34 CFR 75.217.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these modifications to EDGAR, concerning the deadline for receipt of applications and the application review process, make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), proposed rulemaking is not required. (The valid OMB control number for this collection of information is 1850–0623.)

For Further Information Contact: Joseph Wilkes or Tawanna Coles, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW.,

Washington, DC 20208–5544. Telephone 202–208–3882. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting either contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting either contact person identified in this notice. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 6891–6900.

Dated: January 19, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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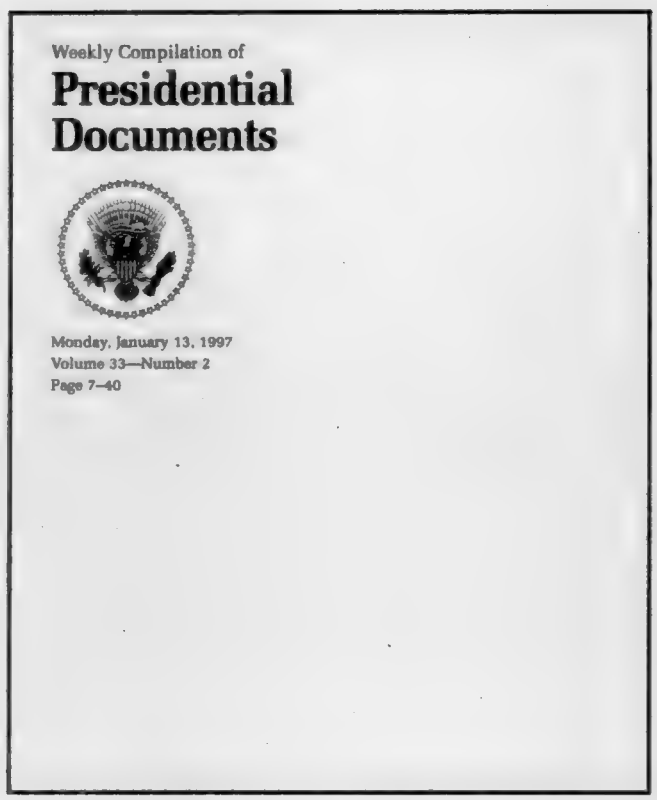

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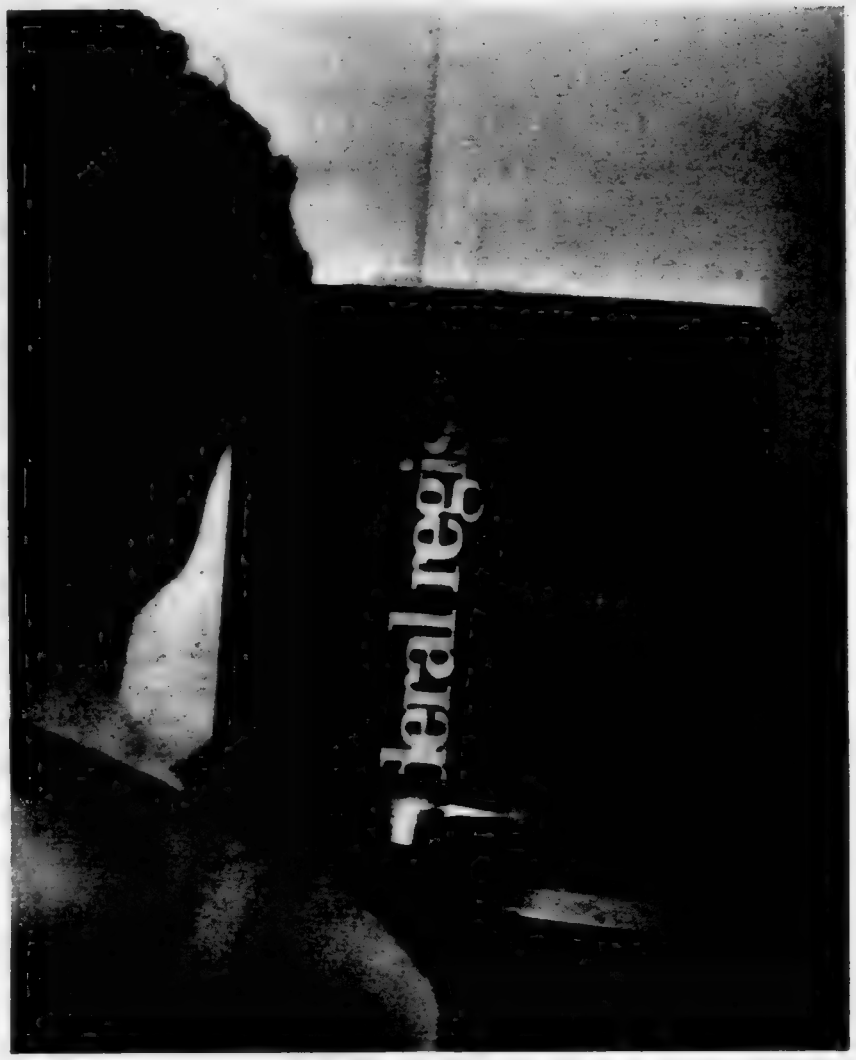

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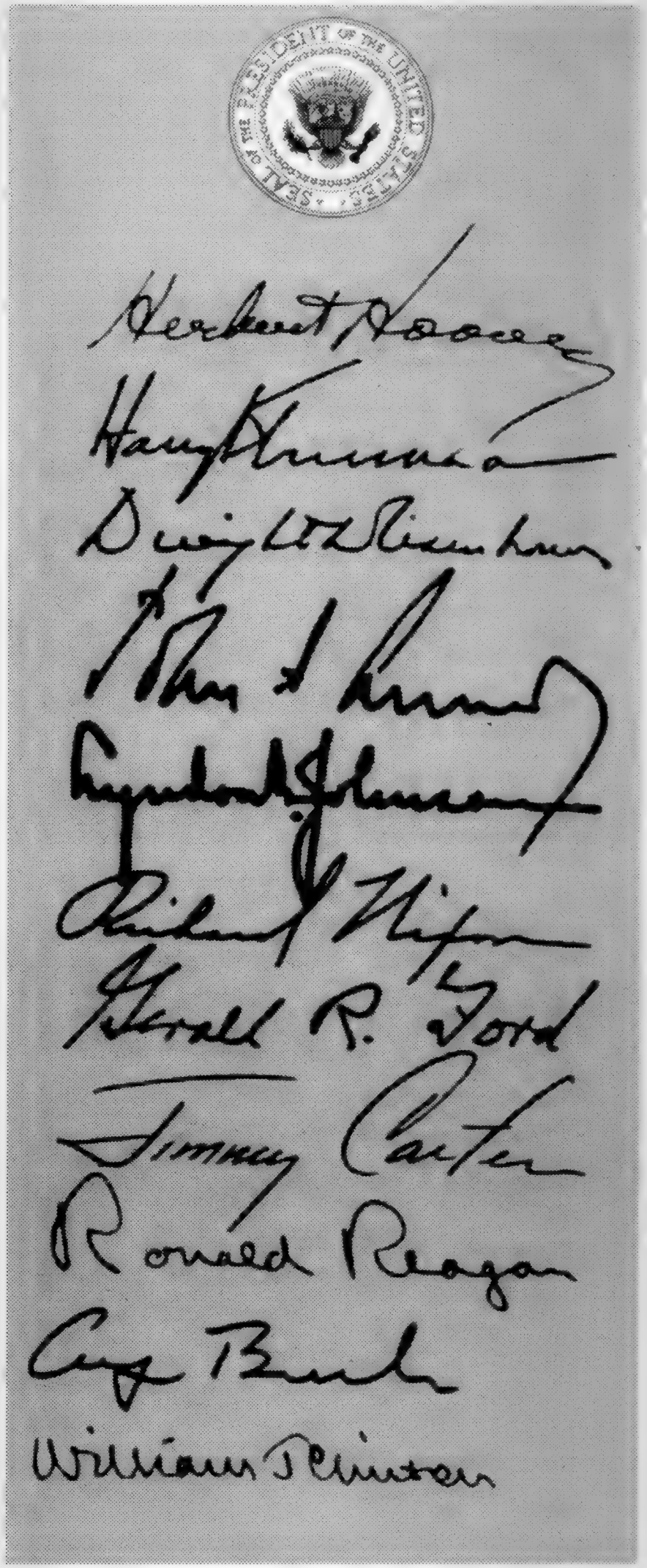

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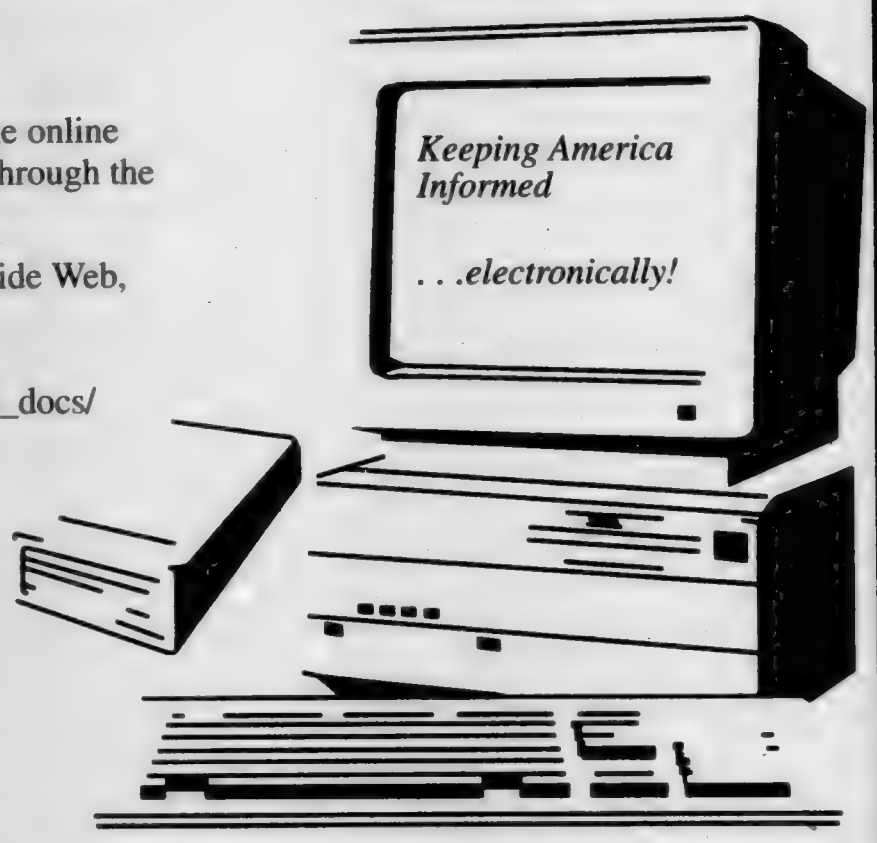

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV98–905–4 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is finalizing without change the provisions of an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market under the Florida citrus marketing order. The marketing order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). This rule continues in effect limits on the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1998–1999 season that began in September. The limits provided a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. The committee believed this action was necessary to help stabilize the market and improve grower returns.

EFFECTIVE DATE: February 25, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299-4770, Fax: (941) 299–5169; or Anne Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule limited the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1998–99 season beginning in September. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3$^{5}/_{16}$ inches in diameter).

Section 905.52 of the citrus marketing order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week is established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the order provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee may recommend that only a certain percentage of size 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The 11 week period begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This rule finalizes the provisions of an interim final rule limiting the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 21, 1998. A proposed rule was published on August 11, 1998, in the **Federal Register** (63 FR 42764). Subsequently, an interim final rule was published September 28, 1998, in the **Federal Register** (63 FR 51511). That rule limited the volume of small red seedless grapefruit entering the fresh market for each week of an 11 week period beginning the week of September 21. That rule limited the volume of sizes 48 and/or 56 red seedless grapefruit by establishing a weekly percentage for each of the 11 weeks. This rule finalizes the interim final rule without change. The interim rule established the weekly percentage for the first seven weeks (September 21 through November 8) at 37 percent and for the final four weeks (November 9 through December 6) at 32 percent.

The interim final rule included a change in the percentages originally recommended by the committee. The committee had voted to establish a weekly percentage of 25 percent for each of the 11 weeks in a vote of 14 in favor to 2 opposed at its meeting on May 22, 1998. The committee's initial recommendation was issued as a proposed rule published on August 11, 1998 (63 FR 42764). No comments were received during the comment period which expired August 31, 1998. The committee subsequently recommended adjusting the proposed percentages at its meeting September 3, 1998, in a vote of 13 in favor to 1 opposed.

For the seasons 1994–95, 1995–96, and 1996–97, returns on red seedless grapefruit had been declining, often not returning the cost of production. On tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (3/5 bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to a low of $1.41 per carton during the 1996–97 season.

The committee determined that one problem contributing to the market's condition was the excessive number of small sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. for large sizes dropped to within two dollars of the f.o.b. for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton during the period covered by this rule. Even though later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market had already been negatively affected. During the three seasons, the market did not recover, and the f.o.b. for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF-IFAS) in May 1997, found that on tree prices had fallen from a high near $7.00 in 1991–92 to around $1.50 for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around $1.50. The study also indicated that increasing minimum size restrictions could help raise returns.

To address this issue, the committee voted to utilize the provisions of § 905.153, and establish weekly percentage of size regulation during the first 11 weeks of the 1997–98 season. The initial recommendation from the committee was to set the weekly percentage at 25 percent for each of the 11 weeks. As more information on the crop became available, and as the season progressed, the committee met several times and adjusted its recommendations for the weekly percentages. The committee considered information from past seasons, crop estimates, fruit size, and other information to make their recommendations. Actual weekly percentages established during the 11 week period during the 1997–98 season were 50 percent for the first three weeks, and 35 percent for the other eight weeks.

In making this recommendation, the committee reviewed its experiences from the past season, and those of prior seasons. The committee believes establishing weekly percentages last season was successful. The committee examined shipment data covering the 11 week regulatory period for the last season and the four prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week and weekly f.o.b. figures. During the 11 week period, the regulation was successful at helping maintain prices at a higher level than the prior season, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

In comparison with f.o.b. prices from the 1996–97 season, for weeks when pricing information was available (weeks 6 through 11), last season's numbers were higher in five of the six weeks. The average f.o.b. for these weeks was $6.28 for the 1996–97 season and $6.55 for the 1997–98 season. Last season, sizes 48 and 56 represented only 31 percent of total shipments during the 11 week regulatory period as compared to 38 percent during the previous season. There was also a 15 percent reduction in shipments of sizes 48 and 56 by count for the 11 weeks.

Other information also indicates the regulation was successful. In past seasons, the on tree price had been dropping steadily. However, on tree prices for the month following the 11 weeks of regulation indicate that in December 1997 the on tree price for grapefruit was $2.26 compared to $1.55 for the previous season.

The committee was concerned that the glut of smaller, lower priced fruit on the early market was driving down the price for all sizes. There was a steep decline in prices for larger sizes in previous seasons. During the six weeks for mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season. Prices for the same sizes during the same period fell only 5, 5, 2, and 7 percent, respectively, last season with regulation. In fact, prices for all sizes were firmer during this period for last season when compared to the previous

year, with the weighted average price dropping only 9 percent during this period as compared to 22 percent for the previous season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, with larger sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher priced, larger sized grapefruit which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period last season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

A subcommittee had been formed to examine how weekly percentage of size regulation could best be used. The subcommittee recommended to the full committee that the weekly percentage of size regulation should be set at 25 percent for the 11 week period. Members believed that the problems associated with an uncontrolled volume of small sizes entering the market early in the season would continue. The subcommittee thought that to provide the committee with the most flexibility, the weekly percentage should be set at 25 percent for each of the 11 weeks in the regulated period. The subcommittee believed it was best to set regulation at the most restrictive level, and then relax the percentage as warranted by conditions later in the season. The subcommittee also recommended that the committee meet on a regular basis early in the season to consider adjustments in the weekly percentage rates as was done in the previous season.

The recommendations of the subcommittee were reviewed by the committee at its meeting on May 22, 1998. In its discussion, the committee recognized the need for and the benefits of the weekly percentage regulation. The committee agreed with the findings of the subcommittee, and recommended establishing the base percentage at 25 percent for each of the regulation weeks. This is as restrictive as § 905.153 will allow.

In making this recommendation, the committee considered that by establishing regulation at 25 percent, they could meet again in August and the months following and use the best information available to help the industry and the committee make the most informed decisions as to whether the established percentage is appropriate.

Based on this information and the experiences from last season, the committee agreed to establish the weekly percentage at the most restrictive level, then meet in late August, and in September and October as needed when additional information is available and determine whether the set percentage level is appropriate. They said this is essentially what was done the prior year, and it had been very successful. The committee had met in May 1997, and recommended a weekly percentage be established at 25 percent for each of the eleven weeks. In August, the committee met again, and recommended that the weekly percentage be relaxed. They met again in October, and recommended further relaxations. Changes to any established weekly percentages require additional rulemaking and the approval of the Secretary.

The committee noted that more information helpful in determining the appropriate weekly percentages would be available after August. At the time of the May meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October.

The committee met again on September 3, 1998, and revisited the weekly percentage issue and reviewed the information it had acquired since its May 22, 1998, meeting. At the meeting, the committee recommended that the weekly percentages be changed from 25 percent for each of the 11 regulated weeks to 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6).

In its discussion of this change, the committee reviewed the initial percentages recommended and the current state of the crop. The committee also reexamined shipping information from past seasons, looking particularly at volume across the 11 weeks. Based on this review, the committee agreed that setting the weekly percentage at 25 percent would be too restrictive and that allowing 37 percent for the first seven weeks and 32 percent for the final four weeks was more appropriate.

In its deliberations, the committee agreed that the weekly percentage of 35 percent that was in place for the majority of the weeks regulated last season was effective. This percentage seemed to have provided a sufficient volume of small sizes to service those markets, while being restrictive enough to prevent over supply.

During deliberations last season on weekly percentages, the committee considered how past shipments had affected the market. Based on statistical information, committee members believed there was an indication that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The committee believed that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

As for this season, the committee wanted to recommend a weekly percentage that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. They also originally recommended that the percentage for each of the 11 weeks be established at the 25 percent level. This percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment of approximately 244,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. The total shipments of small red seedless grapefruit would approach the 250,000 carton mark during regulated weeks without exceeding it.

However, during the 11 week period of weekly percentage regulation last season, the committee recommended increasing the weekly percentages to 35 percent for the majority of the 11 weeks, similar to what was recommended for this season. Even with the weekly percentage at 35 percent, shipments of sizes 48 and 56 remained close to the 250,000 carton mark during the 11 weeks. In only 3 of the 11 weeks did the volume of sizes 48 and 56 exceed 250,000 cartons, and even then, by not more than 35,000 cartons.

The committee recognized that since last season a number of packinghouses have gone out of business, lowering the total allotment available to the industry. The committee believed that adjusting the 35 percent to 37 percent would provide for the allotment lost and increase the total allotment available to the industry for loan or transfer. Therefore, the committee recommended relaxing the weekly percentage to 37

percent for the first seven weeks of the regulated period.

The committee further recommended that the weekly percentage for the last four weeks of the 11 weeks be established at 32 percent. The committee resolved that a lower percentage was desirable moving into the last four weeks of regulation. The committee believed that 32 percent was a viable figure as the season progressed because the crop would have begun to size and there would be a greater availability of larger sizes. The committee believed that as the industry moved into the season and shipments increased, a weekly percentage of 32 percent would provide the best balance between supply and demand for small sized red seedless grapefruit.

The committee again included in its deliberations that if crop and market conditions should change, the committee could recommend that the percentages be increased or eliminated to provide for the shipment of more small sizes in any one, or all of the 11 weeks. After examining the way the crop was sizing and maturing, the committee believed the rule at 25 percent was too restrictive and that the change to 37 percent for the first seven weeks and 32 percent for the last four weeks was preferable. They decided that a loosening of the regulated percentages could be done without adversely affecting the marketable quantity and returns on these small sizes. The interim final rule allowed all packinghouses to take advantage of the increased percentages, while not oversupplying the market.

While the official crop estimate was not available until October, there were indications that the grapefruit crop was not as large as in 1997–98. Also, grapefruit had been slow in maturing this season due to scattered rains and hot summer temperatures. This caused the harvest season to start late and may mean a greater volume of smaller sizes. Using this information on the 1998–99 crop, the committee members believed that relaxing the weekly percentages as recommended provided enough small sizes to supply those markets without disrupting the markets for larger sizes.

Under § 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that could be shipped by a handler during a regulated week was calculated using the recommended percentage of 37 or 32 percent depending on the regulated week. By taking the weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers could calculate the volume of sizes 48 and/or 56 they could ship in a regulated week.

An average week was calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons were added and divided by five to establish an average season. This average season was then divided by the 33 weeks to derive the average week. This average week was the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 37 or 32 percent, was multiplied by a handler's average week. The product was that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

The calculated allotment is the amount of small sized red seedless grapefruit a handler could ship. The minimum size was established under § 905.52 at size 56, and handlers could fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments were within the established limits. The committee staff performed the specified calculations and provided them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season is then divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This is Handler A's base. The weekly percentage of 37 percent is then applied to this amount. This provides this handler with a weekly allotment of 592 cartons (1,600 × .37) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments is calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments have no prior period on which to base their average week. Therefore, under the established procedures, a new handler could ship small sizes equal to 37 percent of their total volume of shipments during their first shipping week. Once a new handler had established shipments, their average week would be calculated as an average of the weeks they shipped during the current season.

This rule finalizes, without change, the weekly percentages for each of the eleven weeks of the regulatory period (September 21 through December 6) that appeared in the interim final rule.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler could handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) is deducted from the handler's allotment for the following week. Overshipments are not allowed during week 11 because there are no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped will not be carried forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party will, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party will promptly notify the committee so that proper adjustments of the records could be made. In each case, the committee confirms in writing all such transactions prior to the following week. The committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan.

The committee computed each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee notified each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could

handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

During committee deliberations at the May 22, 1998, meeting, several concerns were raised regarding the regulation. One area of concern was the way allotment base is calculated. Two members commented that the rule was not fair to those handlers that shipped the majority of their grapefruit shipments during the 11 week period. They said that using a 33 week season as the basis for allotment was not reflective of their shipments during the regulated period, and that their allotment was not enough to cover their customer base.

The committee chose to use the past five seasons to provide the most accurate picture of an average season. When recommending procedures for establishing weekly percentage of size regulation for red seedless grapefruit, the committee discussed several methods of measuring a handler's volume to determine this base. It was decided that shipments for the five previous years and for the 33 weeks beginning the third Monday in September to the first Sunday the following May should be used for calculation purposes.

This bases allotment on a 33 week period of shipments, not just a handler's early shipments. This was done specifically to accommodate small shippers or light volume shippers, who may not have shipped much grapefruit in the early season. The use of an average week based on 33 weeks also helps adjust for variations in growing conditions that may affect when fruit matures in different seasons and growing areas. After considering different ways to calculate the average week, the committee settled on this method as the definition of prior period that provides each handler with an equitable base from which to establish shipments.

In its discussion, the committee recognized that there were concerns regarding the way base is calculated. However, committee members also stated that this type of regulation is intended to be somewhat restrictive, and providing a system that satisfies everyone is difficult, if not impossible, to achieve. There was general agreement that this method was the best option considered thus far. Another member commented that this option also provides a larger industry base than an 11 week calculation, supplying a greater amount of available base overall.

In regards to whether their allotment is enough to cover their customer base, the procedures under which this rule was recommended provide flexibility through several different options. Handlers could transfer, borrow or loan allotment based on their needs in a given week. Handlers also had the option of overshipping their allotment by 10 percent in a week, as long as the overshipment was deducted from the following week's shipments. Statistics show that in none of the regulated weeks was the total available allotment used. The closest it came was 83 percent of available base used. However, this still left an available allotment for loan or transfer of over 57,000 cartons. Approximately 190 loans and transfers were utilized last season. To facilitate this process, the committee staff provided a list of handler names and telephone numbers to help handlers find possible sources of allotment if needed for loan or trade. Also, this regulation only restricts shipments of small sized red grapefruit. There are no volume restrictions on larger sizes.

Another concern expressed was that the rule only covers red seedless grapefruit. One member wanted the committee to consider adding white grapefruit to the regulation. The member also asked that the committee continue to consider other possibilities on which to base regulation. The committee agreed that the provisions by which this regulation is recommended should be reviewed on a continuous base. It was also stated that should the committee want to change § 905.153, the section outlining the procedures for setting weekly percentage of size regulation, they could consider it as part of the current meeting. No motions for change were received.

Another concern expressed was that the committee was considering meeting too often during the regulatory period to consider changing the weekly percentages. The member said that marketing plans are made further in advance than two to three weeks. The committee responded that information that is valuable in considering the appropriate percentage levels is not available until the regulatory period begins. Members agreed that it was important to meet and adjust percentages as necessary as seasonal information becomes available.

At the September 3, 1998, meeting, the concern was raised that the weekly percentages recommended were not high enough. One member expressed that they had routinely shipped all their allotment and that the weekly percentages should be higher. The committee responded that the provisions for loans, transfers, and overshipment were available to offset such problems. With the weekly percentages established, total industry allotment should exceed shipments for the majority of the 11 weeks, so that some allotment should be available for loan or transfer.

After considering the concerns expressed, and the available information, the committee determined that this rule is needed to regulate shipments of small sized red seedless grapefruit.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as

those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on the industry and committee data for the 1997–98 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1997–98 season was around $6.30 per 4/5 bushel cartons, and total fresh shipments for the 1997–98 season are estimated at 15.5 million cartons of red grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers, and growers may be classified as small entities.

Under the authority of § 905.52 of the order, this rule limits the volume of small red seedless grapefruit entering the fresh market during the 11 weeks beginning the third Monday in September for the 1998–99 season. This rule utilizes the provisions of § 905.153. This rule limits the volume of sizes 48 and/or 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6). This is a change from the committee's original recommendation of a 25 percent weekly percentage for each of the 11 weeks. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the established percentage.

By taking the established percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee calculates a handler's weekly allotment of small sizes. The rule sets the weekly percentage at 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6) of the 11 week period. This rule provides a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This rule is necessary to help stabilize the market and improve grower returns during the early part of the season.

At the May 22, 1998, meeting, the committee recommended that the percentage for each of the 11 weeks be established at the 25 percent level. They reasoned that this percentage, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of 239,243 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. This percentage would have allowed total shipments of small red seedless grapefruit to approach the 250,000 carton mark during regulated weeks without exceeding it.

The committee met again September 3, 1998, and revisited the weekly percentage issue. The committee recommended that the weekly percentages be set to 37 percent for the first seven weeks (September 21 through November 8), and 32 percent for the next four weeks (November 9 through December 6).

The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 250,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. Based on shipments from seasons 1993–97, a total available weekly allotment of 250,000 cartons would exceed actual shipments for each of the first three weeks that will be regulated under this rule. In addition, if a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to the 1996–97 season, an average of 4.2 percent of overall shipments during that period would have been affected. This rule affects even fewer shipments by establishing less restrictive weekly percentages. In addition, a large percentage of this volume most likely could have been replaced by larger sizes. Under this rule a sufficient volume of small sized red grapefruit will still be allowed into all channels of trade, and allowances will be in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry cost should be minimal.

The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. for large sizes has dropped to within two dollars of the f.o.b. for small sizes.

The over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices had fallen from a high near $7.00 in 1991–92 to around $1.50 for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around $1.50. The study also indicated that increasing minimum size restrictions could help raise returns.

This regulation will have a positive impact on affected entities. The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. There are no volume restrictions on larger sizes. Therefore, larger sizes could be substituted for smaller sizes with a minimum effect on overall shipments. While this rule may necessitate spot picking, which may entail slightly higher harvesting costs, many in the industry are already using the practice, and because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

This rule helps limit the effects of an over supply of small sizes early in the season. A similar rule was enacted successfully last season. During the 11 week period, the regulation was successful at helping maintain prices at a higher level than the prior season, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. Therefore, this action should have a positive impact on grower returns.

For the weeks when pricing information was available, last season's prices were higher in five of the six weeks when compared with f.o.b. prices from the 1996–97 season. The average f.o.b. for these weeks was $6.28 for the 1996–97 season and $6.55 for the 1997–98 season. It also reduced sizes 48 and 56 as a percentage of the crop. Last season sizes 48 and 56 represented 31 percent of shipments during the 11 week regulatory period, compared to 38 percent during the previous season. There was also a 15 percent reduction in shipments of sizes 48 and 56 by count. Numbers from the month following the 11 weeks of regulation also indicate that in December 1997 the on tree price for grapefruit was $2.26 compared to $1.55 for the previous season.

The rule was also successful in reducing the steep drop in prices for larger sizes that had occurred in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season. Prices for the same sizes during the same period last season only fell by 5, 5, 2, and 7 percent, respectively, under regulation. Prices for all sizes were firmer during this period last season when compared to the previous year, with the weighted average price dropping only 9 percent during this period last season as compared to 22 percent for the previous season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study indicated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. Prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, with larger sized grapefruit registering modest improvements. It also stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the 11 weeks during the 1996–97 season, compared to only 17 percent during the same period last season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Even with restrictions in place, total shipments during the 11 week period last season were higher than the previous season. There was also no noticeable drop in exports. Therefore, shipments remained strong and prices were stabilized during the regulated period.

The interim final rule increased the weekly percentages over the percentages originally recommended at the May 22, 1998, meeting. The changes recommended by the committee at its September 3, 1998, meeting set the percentages at a higher level, and at levels comparable to last season. These percentages were still restrictive, but allowed the utilization of more small sized fruit. During the 11 week period of weekly percentage regulation last season, the committee recommended increasing the weekly percentages to 35 percent for the majority of the 11 weeks, similar to what was recommended for this season. Even with the weekly percentage at 35 percent, shipments of sizes 48 and 56 remained close to the 250,000 carton mark during the 11 weeks. In only 3 of the 11 weeks did the volume of sizes 48 and 56 exceed 250,000 cartons, and even then, by not more than 35,000 cartons.

Over 50 percent of red seedless grapefruit is shipped to the fresh market. Because of reduced demand and an oversupply, the processing outlet is not currently profitable. Consequently, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action will only be for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season.

This rule is intended to stabilize the market during the early season and increase grower returns. Information available from last season suggests the regulation could do both. A stabilized price that returns a fair market value benefits both small and large growers and handlers. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation.

One alternative to the actions approved was considered by the committee prior to making the recommendations at the May 22, 1998, meeting. The alternative discussed was whether to amend § 905.153 in conjunction with setting a weekly percentage. Two members suggested that the calculation used to determine a handler's allotment base should be changed from 33 weeks to a calculation that used the 11 weeks regulated by the rule. In its discussion, the committee recognized that there were concerns regarding the way base is calculated. However, committee members also stated that this type of regulation is intended to be somewhat restrictive, and providing a system that satisfies everyone is difficult, if not impossible, to achieve. There was general agreement that though this method had its concerns, it was the best option considered thus far. Therefore, the committee rejected this alternative, concluding the recommendations previously discussed were appropriate for the industry.

Another alternative action was considered at the September 3, 1998, meeting. Rather than changing all the weekly percentages, it was suggested that the committee only consider three weeks at a time in making its recommendations for change. The committee would then meet before each three week period began to consider the appropriate weekly percentages for those three weeks. The committee agreed that it was important to meet on a regular basis during the regulation period to help ensure that the weekly percentages are at the appropriate level. However, the committee also recognized that marketing plans are made more than three weeks in advance, and that it was important to try to provide handlers with as much advance notice of their allotment of small sizes as possible. Therefore, the committee rejected this alternative.

Handlers utilizing the flexibility of the loan and transfer aspects of this action will be required to submit a form to the committee. The rule increases the reporting burden on approximately 80 handlers of red seedless grapefruit who will be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the committee's meetings were widely publicized throughout the citrus industry and all interested persons were invited to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the May 22, 1998, meeting, and the September 3, 1998, meeting were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, August 11, 1998 (63 FR 42764). A 20-day comment period was provided to allow interested persons to respond to the proposal. The comment period ended August 31, 1998. No comments were received. An interim final rule concerning this action was published in the **Federal Register** on Monday, September 28, 1998 (63 FR 51511). A 10-day comment period was provided to allow interested persons to respond to the rule. The comment period ended October 8, 1998. No comments were received. Copies of both rules were mailed or sent via facsimile

to all committee members and to grapefruit growers and handlers. The rules were also made available through the Internet by the Office of the Federal Register.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 51511, September 28, 1998) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 905 which was published at 63 FR 51511 on September 28, 1998, is adopted as a final rule without change.

Dated: January 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1786 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. LS–98–002]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adjusts representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act (Act) of 1985, to reflect changes in cattle inventories and cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in 1996. These adjustments are required by the Beef Promotion and Research Order (Order) and will result in a decrease in Board membership from 111 to 110, effective with the Secretary's appointments for terms beginning early in the year 2000.

EFFECTIVE DATE: March 29, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Program, Agricultural Marketing Service (AMS), Stop 0251, 1400 Independence Avenue, SW., Washington, D.C. 20250–0251. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and the Regulatory Flexibility Act

The Department of Agriculture (Department) is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 United States Code (U.S.C.) 601 *et seq.*). The Administrator of AMS has considered the economic effect of this action on small entities and has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the January 30, 1998, issue of "Cattle," the Department's National Agricultural Statistics Service (NASS) estimates that in 1997 the number of cattle operations in the United States totaled about 1.17 million. The majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration.

The final rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory and cattle and beef imports. This action will adjust representation on the Board, established under the Act. The adjustments are required by the Order and would result in a decrease in Board membership from 111 to 110.

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901 *et seq.*) and the Order issued thereunder (7 CFR 1260.101 *et seq.*). Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted by certified producer organizations. A producer may only be nominated to represent the unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Secretary modifications in the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional one million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members with appointments for terms effective in early in 1997.

The current Board representation by States or units has been based on an average of the January 1, 1993, 1994, and 1995 inventory of cattle in the

various States as reported by NASS of the Department. Importer representation has been based on a combined total average of the 1992, 1993, and 1994 live cattle imports as published by the Foreign Agricultural Service (FAS) of the Department and the average of the 1992, 1993, and 1994 live animal equivalents for imported beef products.

Recommendations concerning Board reapportionment were approved by the Board at its July 19, 1998, meeting. In considering reapportionment, the Board reviewed cattle inventories as well as cattle, beef, and beef product import data for the period January 1, 1995, to January 1, 1998. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 1996, 1997, and 1998 Department cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the 1996 reapportionment rule.

The Board reviewed the March 1998 FAS circular, "U.S. Trade and Prospects, Dairy, Livestock, and Poultry," to determine proper importer representation. The Board recommended the use of a combined total of the average of the 1995, 1996, and 1997 cattle import data and the average of the 1995, 1996, and 1997 live animal equivalents for imported beef products. The method used to calculate the total number of live cattle equivalents was the same as that used in the previous reapportionment of the Board. The recommendation for importer representation is based on the most recent 3-year average of data available to the Board at its July 19, 1998, meeting to be consistent with the procedures used for domestic representation.

On August 28, 1998, AMS published in the **Federal Register** (63 FR 45969) for public comment a proposed rule providing for the adjustment in Board membership.

The Department did not receive any comments concerning the proposed rule. Thus, the reapportionment of the Board in this final rule is unchanged from the proposed rule. The final rule decreases the number of representatives on the Board from 111 to 110. Two States and one unit—Missouri, Texas, and the Northwest unit—lose one member each; two States—Kansas and Nebraska—gain one member each. As recommended by the Board, the two member Western unit, composed of Nevada and Oregon which was formed in the most recent reapportionment because Nevada did not have sufficient cattle inventory to qualify independently for a position on the Board is dissolved. Since Nevada and Oregon each qualify for a Board member based on the 1996–98 inventory numbers, Nevada and Oregon are once again listed separately with one member each. The States and units affected by the reapportionment and the current and revised member representation per unit are as follows:

States	Current representation	Revised representation
1. Kansas	6	7
2. Missouri	5	4
3. Nebraska	6	7
4. Texas	15	14
5. Northwest unit	2	1
6. Western unit	2	0
7. Nevada	0	1
8. Oregon	0	1

The 1998 nomination and appointment process was in progress while the Board was developing its recommendations. Thus, the Board reapportionment will be effective with the 1999 nominations and appointments which will be effective early in the year 2000.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, 7 CFR part 1260 is amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901 *et seq.*

2. In section 1260.141, paragraph (a) and the table immediately following it, are revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 1999 Board nominations and the associated appointments effective early in the year 2000, the United States shall be divided into 40 geographical units and one unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 head)	Directors
1. Alabama	1,627	2
2. Arizona	810	1
3. Arkansas	1,870	2
4. California	4,600	5
5. Colorado	3,117	3
6. Florida	1,937	2
7. Georgia	1,497	1
8. Idaho	1,763	2
9. Illinois	1,720	2
10. Indiana	1,103	1
11. Iowa	3,867	4
12. Kansas	6,550	7
13. Kentucky	2,550	3
14. Louisiana	1,010	1
15. Michigan	1,133	1
16. Minnesota	2,767	3
17. Mississippi	1,3431	1
18. Missouri	4,450	4
19. Montana	2,683	3
20. Nebraska	6,517	7
21. Nevada	510	1
22. New Mexico	1,480	1
23. New York	1,527	2
24. North Carolina	1,160	1
25. North Dakota	1,857	2
26. Ohio	1,483	1
27. Oklahoma	5,467	5
28. Oregon	1,440	1
29. Pennsylvania	1,770	2
30. South Carolina	517	1
31. South Dakota	3,733	4
32. Tennessee	2,460	2
33. Texas	14,467	1
34. Utah	903	1
35. Virginia	1,797	2
36. Wisconsin	3,700	4
37. Wyoming	1,477	1
38. Northwest		1
Alaska	11	
Hawaii	167	
Washington	1,230	
Total	1,408	
39. Northeast		1
Connecticut	70	
Delaware	29	
Maine	113	
Massachusetts	63	
New Hampshire	41	
New Jersey	68	
Rhode Island	7	
Vermont	302	
Total	693	
40. Mid-Atlantic		1
District of Columbia	0	
Maryland	275	
West Virginia	447	
Total	722	
41. Importer [2]	6,535	7

[1] 1996, 1997, and 1998 average of January 1 cattle inventory data.

[2] 1995, 1996, and 1997 average of annual import data.

* * * * *

Dated: January 21, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–1785 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–34–AD; Amendment 39–11006; AD 99–02–14]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Model 2000 airplanes (commonly referred to as Beech Model 2000 airplanes). This AD requires inspecting the stainless steel fuel line, part number (P/N) 3035737, for evidence of chafing and a minimum clearance between the fuel line and power lever bracket, P/N 122–940028–1; and replacing the fuel line and modifying the power lever bracket, as necessary. This AD is the result of chafing found on the stainless steel fuel line on several of the affected airplanes. The actions specified by this AD are intended to prevent fuel line chafing caused by interference with the power lever bracket, which could result in fuel leakage and cause a fire in the engine compartment.

DATES: Effective March 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Scott West, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4146; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 2000 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 2, 1998 (63 FR 46711). The NPRM proposed to require inspecting the stainless steel fuel line, part number (P/N) 3035737, for evidence of chafing and a minimum clearance between the fuel line and power lever bracket, P/N 122–940028–1; and replacing the fuel line and modifying the power lever bracket, as necessary. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Raytheon Mandatory Service Bulletin SB.28–3104, Issued: September, 1997.

The NPRM was the result of chafing found on the stainless steel fuel line on several of the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 49 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish this action and that the average labor rate is approximately $60 an hour. Parts cost approximately $465 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $34,545, or $705 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–02–14 Raytheon Aircraft Company (Type Certificate No. A38CE formerly held by the Beech Aircraft Corporation): Amendment 39–11006; Docket No. 98–CE–34–AD.

Applicability: Model 2000 airplanes, serial numbers NC–4 through NC–53, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent fuel line chafing caused by interference with the power lever bracket, which could result in fuel leakage and cause a fire in the engine compartment, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the engine stainless steel fuel line, part number (P/N) 3035737, for evidence of chafing and a minimum clearance of .06-inch between the fuel line and power lever bracket, P/N 122–940028–1. Accomplish this inspection in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

(b) If chafing is evident on the fuel line, prior to further flight, replace the fuel line with a new fuel line and modify the power lever bracket in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

(c) If the clearance between the fuel line and the power lever bracket is less than .06-inch, prior to further flight, modify the power lever bracket in accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The inspection, replacement, and modification required by this AD shall be done in accordance with Raytheon Mandatory Service Bulletin SB.28.3104, Issued: September, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on March 5, 1999.

Issued in Kansas City, Missouri, on January 12, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1238 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–78–AD; Amendment 39–11007; AD 99–02–15]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Avions Pierre Robin Model R2160 airplanes. This AD requires repetitively inspecting the engine bearer for cracks, and replacing the engine bearer with a reinforced part either immediately or at a certain time period depending on whether cracks are found during the inspections. Replacing the engine bearer with a reinforced part terminates the repetitive inspection requirement. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified in this AD are intended to detect and correct cracks in the engine bearer, which could result in the engine separating from the airplane.

DATES: Effective March 29, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 1999.

Comments for inclusion in the Rules Docket must be received on or before February 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–78–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 80 44 20 50; facsimile: 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–78–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Avions Pierre Robin Model R2160 airplanes. The DGAC reports cracks in the engine bearer in the area of the spools.

This condition, if not detected and corrected, could result in the engine separating from the airplane.

Relevant Service Information

Avions Pierre Robin has issued Service Bulletin No. 97, dated April 22, 1983, which specifies procedures for inspecting the engine bearer for cracks. This service bulletin also specifies replacing the engine bearer with a reinforced part.

The DGAC classified this service bulletin as mandatory and issued French AD 83–99–(A), dated June 15, 1983, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Pierre Robin Model R2160 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires repetitively inspecting the engine bearer for cracks, and replacing the engine bearer with a reinforced part either immediately or at a certain time period depending on whether cracks are found during the inspections. Replacing the engine bearer with a reinforced part terminates the repetitive inspection requirement. Accomplishment of the inspections required by this AD is required in accordance with Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983. The replacement specified in the service bulletin and required by this AD shall be accomplished in accordance with the applicable maintenance manual.

Cost Impact

The FAA estimates that 1 airplane in the U.S. registry will be affected by this AD, that it will take approximately 8 workhours per airplane to accomplish the required actions, and that the average labor rate is approximately $60 per work hour. Parts cost approximately $1,587 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,067.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17) unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–78–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–02–15 Avions Pierre Robin: Amendment 39–11007; Docket No. 98–CE–78–AD.

Applicability: Model R2160 airplanes, serial numbers C193 through C199, and C202; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracks in the engine bearer, which could result in the engine separating from the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 25 hours TIS until the replacement required

by paragraph (b) of this AD is accomplished, visually inspect the engine bearer for cracks. Accomplish the inspections in accordance with Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983.

(b) At whichever of the compliance times in paragraphs (b)(1) and (b)(2) of this AD that occurs first, replace the engine bearer with a reinforced part (or FAA-approved equivalent), as referenced in Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983. Accomplish the replacement in accordance with the applicable maintenance manual.

(1) Prior to further flight if cracks are found during any inspection required by paragraph (a) of this AD; or

(2) Within the next 100 hours TIS after the effective date of this AD.

(c) Replacing the engine bearer with a reinforced part, as specified in paragraph (b) of this AD, is considered terminating action for the repetitive inspection requirement of this AD.

(d) As of the effective date of this AD, no person may install, on any affected airplane, an engine bearer that is not one of a reinforced part (or FAA-approved equivalent part number), as referenced in Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) The inspections required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 97, dated April 22, 1983. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 83–99–(A), dated June 15, 1983.

(h) This amendment becomes effective on March 29, 1999.

Issued in Kansas City, Missouri, on January 12, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1237 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–20–AD; Amendment 39–11010; AD 98–11–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–11–15, which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 212 helicopters by individual letters. This AD requires inspecting the trunnion assembly or tail rotor flapping stop (flapping stop), whichever is applicable, installing a trunnion assembly or flapping stop, if necessary; and replacing the tail rotor yoke (yoke). This amendment is prompted by an accident involving a BHTI Model 205A–1 helicopter in which the yoke failed during flight. This condition, if not corrected, could lead to failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective February 10, 1999, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–11–15, issued on May 19, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–20–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra Shelly, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On May 19, 1998, the FAA issued priority letter AD 98–11–15, applicable to BHTI Model 212 helicopters, which requires, before further flight, reviewing historical records of the helicopter and the yoke assembly to detect any usage or event that may have imposed an excessive bending load on the yoke. If such usage or event occurred, before further flight, this AD requires replacing the yoke assembly with an airworthy yoke assembly that has zero-hours TIS, or that has passed an x-ray diffraction inspection in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 212–96–100, Revision A, dated May 18, 1998, or ASB 212–96–101, dated September 3, 1996, whichever is applicable, as well as installing an airworthy trunnion assembly or an airworthy flapping stop, depending on which part-numbered yoke assembly is installed. If no usage or event that may have imposed an excessive bending load on the yoke has occurred, the yoke must be replaced within 180 calendar days. Thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident that may have imposed an excessive bending load on the yoke, this AD requires inspecting the trunnion assembly or the tail rotor flapping stop, whichever is applicable, for yielding. If yielding is detected, the yoke assembly and trunnion assembly or flapping stop, whichever is applicable, must be replaced. That action was prompted by an accident involving a BHTI Model 205A–1 helicopter in which the yoke failed during flight. The Model 205A–1 helicopter is similar in design to the Model 212 helicopter. Investigation of the accident revealed that the yoke assembly service life may be reduced due to unforeseen static and dynamic

loading of the tail rotor. This condition, if not corrected, could lead to failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 212–96–100, Revision A, dated May 18, 1998, which specifies inspections of the yoke assembly and trunnion assembly, and replacement of certain trunnion assemblies; and ASB 212–96–101, dated September 3, 1996, which specifies inspections of the yoke assembly, and installation of a tail rotor flapping stop.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 212 helicopters of the same type design, this AD requires, before further flight, reviewing historical records of the helicopter and the yoke assembly to detect any usage or event that may have imposed an excessive bending load on the yoke. If such usage or event occurred, before further flight, this AD requires replacing the yoke assembly with an airworthy yoke assembly that has zero-hours TIS, or that has passed an x-ray diffraction inspection in accordance with ASB 212–96–100, Revision A, dated May 18, 1998, or ASB 212–96–101, dated September 3, 1996, whichever is applicable, as well as installing an airworthy trunnion assembly or an airworthy flapping stop, depending on which part-numbered yoke assembly is installed. If no such usage or event has occurred, the yoke must be replaced within 180 calendar days. Thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident that may have imposed an excessive bending load on the yoke, this AD requires inspecting the trunnion assembly or the tail rotor flapping stop, whichever is applicable, for yielding. If yielding is detected, the yoke assembly and trunnion assembly or flapping stop, whichever is applicable, must be replaced. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter, and the yoke assembly may need to be replaced immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 19, 1998 to all known U.S. owners and operators of BHTI Model 212 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 250 helicopters of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per helicopter to accomplish the inspections and installations, and that the average labor rate is $60 per work hour. Required parts will cost approximately $6,637 for each yoke, $1,028 for each trunnion assembly, and $936 for each flapping stop per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,051,250 if both the yoke and the trunnion assembly are replaced in the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–20–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–11–15 Bell Helicopter Textron Inc.: Amendment 39–11010. Docket No. 98–SW–20–AD.

Applicability: Model 212 helicopters, with tail rotor yoke assembly, part number (P/N) 212–010–704-all dash numbers, P/N 212–010–744-all dash numbers, or P/N 212–011–702-all dash

numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail rotor yoke (yoke), loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review all historical records of the helicopter and the tail rotor yoke assembly (yoke assembly) for any static or dynamic incident history that could have imposed an excessive bending load on the yoke. If such a history exists, comply with paragraph (b) of this AD before further flight.

Note 2: Examples of excessive bending loads include exposure to high wind gusts (such as those from rotor wash or prop blast), improper ground handling (in which the tail rotor blade has been used as a hand hold), improper feathering bearing removal (in which the yoke is not properly supported when pressing out bearings), a static ground strike of some type (such as being struck by a vehicle), or an incident in which a damaged tail rotor blade was replaced due to a blade strike.

(b) Within the next 180 calendar days, remove the yoke assembly and replace it with an airworthy yoke assembly having zero hours time-in-service (TIS), or with an airworthy yoke assembly (regardless of TIS) that has passed an x-ray diffraction inspection in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 212–96–100, Revision A, dated May 18, 1998, or ASB 212–96–101, dated September 3, 1996, whichever is applicable. When the yoke assembly is replaced, for helicopters with a yoke assembly, P/N 212–011–702-all dash numbers, install an airworthy tail rotor flapping stop, P/N 212–011–713–103 and for helicopters with yoke assemblies, P/N 212–010–704-all dash numbers or P/N 212–010–744-all dash numbers, install an airworthy trunnion assembly, P/N 212–010–738–001. If any incident as described in paragraph (a) of this AD occurs after the effective date of this AD and prior to compliance with this paragraph, then compliance with this paragraph is required before further flight.

Note 3: Yoke assemblies that have passed an x-ray diffraction inspection at BHTI will have the letters "FM" vibro-etched on them following the serial number.

(c) After accomplishing the requirements of paragraph (b) of this AD, thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident as described in paragraph (a) of this AD, inspect the trunnion assembly and replace the yoke assembly and trunnion assembly, if required, in accordance with Part III, Paragraph 1, of ASB 212–96–100, Revision A, dated May 18, 1998; or inspect the tail rotor flapping stop and replace the yoke assembly and flapping stop, if required, in accordance with Part III, Paragraphs 1, 2, and 3, of ASB 212–96–101, dated September 3, 1996, whichever is applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office, Rotorcraft Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspection shall be done in accordance with ASB 212–96–100, Revision A, dated May 18, 1998, or ASB 212–96–101, dated September 3, 1996, whichever is applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 10, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–11–15, issued May 19, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 13, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–1351 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–28–AD; Amendment 39–11009; AD 99–02–17]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B and 214B–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214B and 214B–1 helicopters. This action requires a reduction of the never-exceed velocity (Vne) limitation until an inspection of the tail rotor yoke (yoke) assembly for fatigue damage and installation of a redesigned yoke flapping stop are accomplished. Recurring periodic and special inspections to detect occurrences of yoke overload are also required. This amendment is prompted by reports of inflight failures of yokes installed on civilian and military helicopters of similar type design. The actions specified in this AD are intended to prevent fatigue failure of the yoke that could result in loss of the tail rotor and subsequent loss of control of the helicopter.

DATES: Effective February 10, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–28–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry Edmiston, Aerospace Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5158, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to BHTI Model 214B and 214B–1 helicopters. This action requires, before further flight, reviewing the historical records for any incidents that may have imposed greater than normal bending loads on the tail rotor yoke, installing a placard on the instrument panel with a reduced airspeed limitation, and inserting the limitation into the Limitations section of the Rotorcraft Flight Manual (RFM). This action also requires, within 180 days, replacing the yoke assembly with a zero-hours time-in-service (TIS) airworthy yoke assembly, or one that has passed an x-ray diffraction inspection. A frangible tail rotor flapping stop/yield indicator, part number (P/N) 214–011–809–109, must also be installed. Further, this AD requires a repetitive 25 hours TIS inspection to detect tail rotor flapping stop damage due to a hard landing, sudden stoppage, or miscellaneous power on/off incidents, and an inspection after each incident in which damage due to a hard landing, sudden stoppage, or miscellaneous power on/off incidents may have occurred. This amendment is prompted by reports of inflight failures of yokes installed on civilian and military helicopters of similar type design. The actions specified in this AD are intended to prevent fatigue failure of the yoke that could result in loss of the tail rotor and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214–96–57, dated August 26, 1996, which specifies an immediate, temporary reduction in the maximum airspeed, installing a cockpit placard for this limitation, and incorporating a temporary RFM supplement until the yoke historical records are researched for previous damage history; until an x-ray diffraction inspection is performed on the yoke to detect fatigue damage; and until a frangible tail rotor flapping stop/yield indicator, P/N 214–011–809–109, is installed. A repetitive 25 hour TIS inspection to detect damaging tail rotor flapping stop contact due to a hard landing, sudden stoppage, or miscellaneous power on/off incidents has been added.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTI Model 214B and 214B–1 helicopters of the same type designs, this AD is being issued to prevent fatigue failure of the yoke that could result in loss of control of the tail rotor and subsequent loss of control of the helicopter. The actions are required to be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the actions stated in the AD are required prior to further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 10 helicopters will be affected by this proposed AD, that it will take approximately 9 work hours to accomplish the inspections and installations, and that the average labor rate is $60 per work hour. Required parts will cost approximately $21,844 for the yoke, and $936 for the flapping stop, per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $233,200 to replace the yoke and flapping stop in the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–28–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–02–17 Bell Helicopter Textron, Inc.: Amendment 39–11009. Docket No. 98–SW–28–AD.

Applicability: Model 214B and 214B–1 helicopters, serial numbers 28001 and higher, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the tail rotor yoke (yoke) that could result in loss of the tail rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review the historical records of the yoke assembly, part number (P/N) 214–011–802–105 or 214–011–802–111, for any recorded static or dynamic incidents that could have imposed a bending load on the yoke, but did not require replacing the yoke assembly; for example, an incident in which a damaged tail rotor blade was replaced due to a blade strike. If such a history exists, replace the yoke assembly with an airworthy yoke assembly.

(b) Before further flight, unless paragraph (c) of this AD has been accomplished previously:

(1) Install a Never Exceed Velocity (Vne) red line at 130 knots indicated airspeed (KIAS) on the pilot and copilot airspeed indicators using red tape or paint, and a slippage indicator on the instrument case and glass.

(2) Install a placard made of material that is not easily erased, disfigured, or obscured on the instrument panel in clear view of the pilot and copilot with the following words:

"Observe temporary Maximum Never Exceed (Vne) airspeed red line (marked at 130 knots indicated airspeed (KIAS)). Vne is the greater of 10 KIAS less than the value presented on the airspeed limits placard or 68 KIAS for each ambient condition."

(3) Insert the applicable Bell Helicopter Textron 214B or 214B–1 Temporary Revision for Airspeed Restriction, dated August 16, 1996, which is attached to Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214–96–57, dated August 26, 1996 (ASB), into the Limitations section of the applicable Model 214B or 214B–1 Rotorcraft Flight Manual (RFM).

(c) Within 180 calendar days after the effective date of this AD:

(1) Remove the yoke assembly, P/N 214–011–802–105 or 214–011–802–111, and replace it with an airworthy yoke assembly with zero hours time-in-service (TIS), or an airworthy yoke (regardless of TIS) that has passed a one-time x-ray diffraction inspection in accordance with the ASB.

(2) Install an airworthy tail rotor flapping stop, P/N 214–011–809–109.

(3) After the requirements of paragraphs (c)(1) and (c)(2) of this AD are accomplished, remove the 130 KIAS redline from the pilot and copilot airspeed indicators, remove the Vne airspeed restriction placard, and remove the Bell Helicopter Textron 214B or 214B–1 Temporary Revision for Airspeed Restriction, dated August 16, 1996, from the RFM.

(d) After accomplishing paragraph (c) of this AD, thereafter, inspect the yoke assembly and tail rotor flapping stop at intervals not to exceed 25 hours TIS in accordance with Part III, Recurring 25 Hour Special Inspection and Conditional Inspection Requirement, of the ASB.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The recurring 25 hours TIS inspection shall be done in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214–96–57, dated August 26, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on February 10, 1999.

Issued in Fort Worth, Texas, on January 13, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–1350 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–21–AD; Amendment 39–11011; AD 98–11–14]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A–1 and 205B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–11–14 which was sent previously to all known U.S. owners and operators of Bell Helicopter Textron, Inc. (BHTI) Model 205A–1 and 205B helicopters by individual letters. This AD requires inspecting the trunnion assembly or tail rotor flapping stop (flapping stop), whichever is applicable, installing a trunnion assembly or flapping stop, if necessary; and replacing the tail rotor yoke (yoke). This amendment is prompted by an accident involving a BHTI Model 205A–1 helicopter in which the yoke failed during flight. This condition, if not corrected, could lead to failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective February 10, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–11–14, issued on May 19, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–21–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest

Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry Edmiston, Aerospace Engineer, FAA, Rotorcraft Certification Office, Rotorcraft Directorate, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5158, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: On May 19, 1998, the FAA issued Priority Letter AD 98–11–14, applicable to BHTI Model 205A–1 and 205B helicopters, which requires, before further flight, reviewing historical records of the helicopter and yoke assembly to detect any usage or event that may have imposed an excessive bending load on the yoke. If such usage or event occurred, before further flight, the priority letter AD requires replacing the yoke assembly with an airworthy yoke assembly that has zero-hours time-in-service (TIS) or that has passed an x-ray diffraction inspection in accordance with BHTI's service bulletins, as well as installing an airworthy trunnion assembly or an airworthy flapping stop, depending on which part-numbered yoke assembly is installed. If no such usage or event has occurred, the yoke must be replaced within 180 calendar days. Thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident that may have imposed an excessive bending load on the yoke, this AD requires inspecting the trunnion assembly or the flapping stop, whichever is applicable, for yielding. If yielding is detected, replacing the yoke assembly and trunnion assembly or flapping stop, whichever is applicable, is required. That action was prompted by an accident involving a BHTI Model 205A–1 helicopter in which the yoke failed during flight. Investigation of the accident revealed that the yoke assembly service life may be reduced due to unforeseen static and dynamic loading of the tail rotor. This condition, if not corrected, could lead to failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 205–96–68, Revision A, dated May 18, 1998, which specifies inspecting the yoke and trunnion assemblies, and replacing certain trunnion assemblies; and ASB 205–96–69 and ASB 205B–96–25, both dated September 3, 1996, which specify inspecting the yoke assembly and installing a flapping stop.

Since the unsafe condition described is likely to exist or develop on other BHTI Model 205A–1 and 205B helicopters of the same type design, the FAA issued Priority Letter AD 98–11–14 to prevent failure of the yoke, loss of the tail rotor, and subsequent loss of control of the helicopter. The AD requires, before further flight, reviewing historical records of the helicopter and yoke assembly to detect any usage or event that may have imposed an excessive bending load on the yoke. If such usage or event occurred, this AD requires, before further flight, replacing the yoke assembly with an airworthy yoke assembly that has zero-hours TIS, or that has passed an x-ray diffraction inspection in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 205–96–68, Revision A, dated May 18, 1998, or ASB 205–96–69 or ASB 205B–96–25, both dated September 3, 1996, whichever is applicable, as well as installing an airworthy trunnion assembly or an airworthy flapping stop, depending on which part-numbered yoke assembly is installed. If no such usage or event has occurred, the yoke must be replaced within 180 calendar days. Thereafter, at intervals not to exceed 25 hours TIS, or before further flight after any incident that may have imposed an excessive bending load on the yoke, this AD requires inspecting the trunnion assembly or the flapping stop, whichever is applicable, for yielding. If yielding is detected, replacing the yoke assembly and trunnion assembly or flapping stop, whichever is applicable, is required. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect both the controllability and structural integrity of the helicopter. Therefore, the previously-stated actions are required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 19, 1998 to all known U.S. owners and operators of BHTI Model 205A–1 and 205B helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 495 helicopters of U.S. registry will be affected by this AD; that it will take approximately 9 work hours per helicopter to conduct the inspections, install the trunnion assembly or flapping stops, and replace the yoke; and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,028 for a trunnion assembly or $936 for the flapping stops and $6,637 for the yoke, per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,061,475 to replace both the trunnion assembly and the yoke in the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–21–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

98–11–14 Bell Helicopter Textron, Inc.: Amendment 39–11011. Docket No. 98–SW–21–AD.

Applicability: Model 205A–1 helicopters, with tail rotor yoke assembly, part number (P/N) 212–011–702-all dash numbers, or P/N 212–010–704-all dash numbers, or P/N 212–010–744-all dash numbers, and Model 205B helicopters, with tail rotor yoke assembly, P/N 212–011–702-all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail rotor yoke (yoke), loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, review all historical records of the helicopter and the tail rotor yoke assembly (yoke assembly) for any static or dynamic incident history that could have imposed an excessive bending load on the yoke. If such a history exists, comply with paragraph (b) of this AD before further flight.

Note 2: Examples of excessive bending loads include exposure to high wind gusts (such as those from rotor wash or prop blast), improper ground handling (in which the tail rotor blade has been used as a hand hold), improper feathering bearing removal (in which the yoke is not properly supported when pressing out bearings), a static ground strike of some type (such as being struck by a vehicle), or an incident in which a damaged tail rotor blade was replaced due to a blade strike. An overload may also occur dynamically during a power-on or power-off sudden stoppage incident or hard landing.

(b) Within the next 180 calendar days, remove the yoke assembly and replace it with an airworthy yoke assembly having zero hours time-in-service (TIS), or with an airworthy yoke assembly (regardless of TIS) that has passed an x-ray diffraction inspection in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 205–96–68, Revision A, dated May 18, 1998, or ASB 205–96–69 or ASB 205B–96–25, both dated September 3, 1996, whichever is applicable. When the yoke assembly is replaced, for helicopters with a yoke assembly, P/N 212–011–702-all dash numbers, install an airworthy tail rotor flapping stop, P/N 212–011–713–103, and for helicopters with yoke assemblies, P/N 212–010–704-all dash numbers or P/N 212–010–744-all dash numbers, install an airworthy trunnion assembly, P/N 212–010–738–001. If any incident as described in paragraph (a) of this AD occurs after the effective date of this AD and prior to compliance with this paragraph, then compliance with this paragraph is required before further flight.

Note 3: Yoke assemblies that have passed an x-ray diffraction inspection at BHTI will have the letters "FM" vibro-etched on them following the serial number.

(c) After accomplishing the requirements of paragraph (b) of this AD, thereafter at intervals not to exceed 25 hours TIS, or before further flight after any incident as described in paragraph (a) of this AD, inspect the trunnion assembly, and replace the yoke assembly and trunnion assembly, if required, in accordance with Part III, Paragraph 1, of ASB 205–96–68, Revision A, dated May 18, 1998; or inspect the flapping stop and replace the yoke assembly and flapping stop, if required, in accordance with Part III, Paragraphs 1, 2, and 3, of ASB 205–96–69 or ASB 205B–96–25, both dated September 3, 1996, whichever is applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office, Rotorcraft Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The repetitive inspections shall be done in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 205–96–68, Revision A, dated May 18, 1998, which specifies inspections of the yoke and trunnion assemblies, and replacement of certain trunnion assemblies; and ASB 205–96–69 and ASB 205B–96–25, both dated September 3, 1996, which specify inspections of the yoke assembly and installation of a flapping stop. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 10, 1999, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–11–14, issued May 19, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on January 14, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–1430 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–16–AD; Amendment 39–11008; AD 99–02–16]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Models B300 and B300C airplanes (commonly referred to as Beech Models B300 and B300C airplanes). This AD requires modifying the elevator trim tab actuators by incorporating a new elevator trim tab actuator assembly kit, replacing the elevator trim tab pushrod assembly, or modifying the elevator spar opening, whichever is applicable. Reports from operators of ice forming on the elevator trim tab actuators and jamming the trim tab control prompted this action. The actions specified by this AD are intended to prevent jamming of the elevator trim tab actuator caused by ice formations, which could result in loss of control of the airplane.

DATES: Effective March 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–16–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Rd., Rm 100, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Models B300 and B300C airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 25, 1998 (63 FR 45187). The NPRM proposed to require modifying the elevator trim tab system. Accomplishment of the proposed action as specified in the NPRM would be in accordance with the Installation Instructions in Raytheon Kit Part Number (P/N) 130–5011–3 or Raytheon Kit P/N 130–5011–9, which contain Beech Aircraft Corporation Drawing 130–5011, Revision E, dated March 21, 1996, as referenced in the COMPLIANCE section in the ACCOMPLISHMENT INSTRUCTIONS, PART I, PART II, or PART III (whichever is applicable to the airplane serial number) of Raytheon Mandatory Service Bulletin (MSB) No. 2620, Issued: November, 1996.

The NPRM was the result of reports from operators of ice forming on the elevator trim tab actuators and jamming the trim tab control.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 132 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 30 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5,000 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $897,600, or $6,800 per airplane.

Raytheon has informed the FAA that parts have been distributed to equip 102 of the affected airplanes. The FAA will presume that all 102 of the airplanes have the modification required by this AD incorporated. This will reduce the number of affected airplanes from 132 to 30 airplanes and will reduce the total cost impact on the U.S. operators from $897,600, to $204,000.

Regulatory Economic Analysis

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. This Act established "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation". To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a "significant economic impact on a substantial number of small entities." If the determination is that it will, the agency must prepare a Regulatory Flexibility Analysis as described in the Act. However, if after a review for a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, Section 605(b) of the Act provides that the head of the agency may so certify and a Regulatory Flexibility Analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that this airworthiness directive (AD) will not have a significant economic impact on a substantial number of small entities.

Review To Determine the Need for a Regulatory Flexibility Analysis

An examination of the U. S. Registered Aircraft Database indicated that there are 132 Beech B300 and B300C aircraft registered in the United States. Ownership is held by a large number and wide variety of entities, many of them recognizable as major corporations or as financial institutions that are believed to be leasing the aircraft to unnamed entities. Many of the small entities affected by this AD are believed to be in either Standard Industrial Classification (SIC) 4522, "Air

Transportation, Nonscheduled" or SIC 4581 "Airports, Flying Fields, and Airport Terminal Services." Under the Small Business Administration (SBA) *Table of Size Standards*, March 1, 1996, an entity in SIC 4522 would be a small entity if it has 1,500 or fewer employees and an entity in SIC 4581 would be a small entity if it has annual sales of $5 million or less. Thus, this AD is believed likely to affect a substantial number of small entities.

The cost that will be incurred in order to bring an airplane into compliance with this AD has been estimated to be approximately $5,000 for parts and 30 hours of labor at $60 per hour for installation, a total of approximately $6,800 per airplane. All these costs are incurred at the time of installation. It is assumed that the modification of the elevator tab actuator mechanism and other associated modifications cause no significant changes in requirements for subsequent inspection and recordkeeping.

It has been estimated that the modification has already been accomplished on the majority of the aircraft covered by this AD and that only 30 airplanes do not have the modification incorporated. This implies that the total cost arising from this AD will be approximately $200,000 ($6,800 x 30 = $204,000).

A reasonable range of annualized of costs arising from this AD is suggested in the following table:

Cost of capital (percent per year)	Remaining life of aircraft (years)	Annualized cost
10	20	$799
15	20	1,086
10	10	1,107
15	10	1,355

The average annualized cost per airplane is estimated to be in the range of approximately $800 to $1,400 (consistent with 10 to 20 years of remaining life and a cost of capital of 10 to 15 percent per year). Market values for the affected airplanes are believed to be on the order of $2,000,000 or more, with some variation depending on the airplane's age, condition, and installed equipment. Costs for the required modifications will be in the order of one-third of one percent (($6,800/$2,000,000) x 100% = 0.34%) of the market value of an affected airplane.

Annual operating costs are estimated to include about $46,000 for fuel and at least $11,000 for crew. According to the *General Aviation and Air Taxi Activity and Avionics Survey, Calendar Year 1995*, FAA–APO–97–4, these aircraft fly an average of about 270 hours per year (Table 2.2). Average fuel consumption for a two-engine turboprop seating 1 through 12 passengers is about 85 gallons per hour (Table 5.1). Recent prices for Jet A fuel are $2.00 per gallon (at http://www.fillupflyer.com in May 1998). This implies average annual fuel costs of approximately $46,000 (270 hours x 85 gallons/hour x $2/gallon = $45,900). Two crewmembers paid a nominal $20 per hour will cost at least $11,000 (2 x 270 hours x $20 = $10,800). Annualized capital costs for the aircraft will be in the range of $235,000 (capital recovery factor for 20 years at 10% x $2 million = $234,919) to $400,000 (capital recovery factor for 10 years at 15% x $2 million = $398,504). Costs for maintenance, insurance, and parking will further add to the total cost for owning and operating the aircraft, bringing the annual totals to the range of $300,000 to $500,000. In this context, this AD's implied annualized costs in the range of $800 to $1,400 are less than three tenths of one percent of the annualized cost of owning and operating the aircraft, a level that is not believed to have a significant economic impact on the owner/operator of such aircraft.

On the basis of these considerations, the FAA has determined that, although a substantial number of small entities is likely to be affected by this proposed AD, there will not be a significant economic impact on these entities. Based on the above analysis and findings, the FAA has determined that this AD will not have significant economic impact on a substantial number of small entities.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–02–16 Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by Beech Aircraft Corporation): Amendment 39–11008; Docket No. 97–CE–16–AD.

Applicability: The following models and serial number (S/N) airplanes, certificated in any category:

Models	Serial numbers
B300	FL–1 through FL–23, FL–25 through FL134, FL–136, and FL–137.
B300C	FM–1 through FM–9, and FN–1.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent jamming of the elevator trim tab actuator caused by ice formations, which could cause loss of control of the airplane, accomplish the following:

(a) Modify the elevator trim tab system in accordance with the Installation Instructions in Raytheon Kit Part Number (P/N) 130–5011–3 or Raytheon Kit P/N 130–5011–9, which contain Beech Aircraft Corporation Drawing 130–5011, Revision E, dated March 21, 1996, as referenced in the COMPLIANCE section in the ACCOMPLISHMENT INSTRUCTIONS, PART I, PART II, or PART III (whichever is applicable to the airplane serial number) of Raytheon Mandatory Service Bulletin (MSB) No. 2620, Issued: November, 1996.

Note 2: The MATERIALS section in Raytheon MSB No. 2620, Issued: November, 1996, provides a breakdown of the airplane Models and serial numbers affected by PART I, PART II, or PART III of the ACCOMPLISHMENT INSTRUCTIONS section.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The modification required by this AD shall be done in accordance with the Installation Instructions in Raytheon Kit Part Number (P/N) 130–5011–3 or Raytheon Kit P/N 130–5011–9, as referenced in Raytheon Mandatory Service Bulletin No. 2620, Issued: November, 1996. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on March 12, 1999. Issued in Kansas City, Missouri, on January 13, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1446 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–60]

Establishment of Class E Airspace; Bellevue, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bellevue, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 052° helicopter point in space approach has been developed for Bellevue Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Bellevue, OH, in order to include the point in space approach serving Bellevue Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Bellevue, OH (63 FR 63623). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Bellevue, OH, to accommodate aircraft executing the proposed GPS SIAP 052° helicopter point in space approach at Bellevue Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Bellevue, OH [New]

Bellevue Hospital, OH
Point in Space Coordinates
(Lat. 41°16′33″ N., long. 82°51′10″ W)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Bellevue Hospital, excluding the airspace within the Sandusky, OH, and Norwalk, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1740 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–59]

Modification of Class E Airspace; Sandusky, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Sandusky, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 097° helicopter point in space approach has been developed for Providence Hospital Heliport and Firelands Community Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Sandusky, OH, in order to include the point in space approach serving Providence Hospital Heliport and Fireland Community Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Sandusky, OH (63 FR 63624). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Sandusky, OH, to accommodate aircraft executing the proposed GPS SIAP 097° helicopter point in space approach at Providence Hospital Heliport and Firelands Community Hospital Heliport by modifying existing controlled airspace for the heliports. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Sandusky, OH [Revised]

Sandusky, Griffing Sandusky Airport, OH
(Lat. 41° 26′ 00″ N., long. 82° 39′ 08″ W)
Firelands Community Hospital, OH
Providence Hospital, OH
Point In Space Coordinates
(Lat. 41° 26′ 32″ N., long. 82° 43′ 29″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Griffing Sandusky Airport, and within a 6.0-mile radius of the Point in Space serving Firelands Community Hospital and Providence Hospital, excluding the airspace within the Port Clinton, OH, and Norwalk, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1739 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–58]

Modification of Class E Airspace; Norwalk, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Norwalk, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 037° helicopter point in space approach has been developed for Fisher-Titus Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Norwalk, OH, in order to include the point in space approach serving Fisher-Titus Medical Center Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Norwalk, OH (63 FR 63625). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Norwalk, OH, to accommodate aircraft executing the proposed GPS SIAP 037° helicopter point in space approach at Fisher-Titus Medical Center Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Norwalk, OH [Revised]

Norwalk-Huron County Airport, OH
(Lat. 41°14′41″ N., long. 82°33′04″ W)

Fisher-Titus Medical Center, OH
Point In Space Coordinates
(Lat. 41°12′53″ N., long. 82°36′37″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Norwalk-Huron County Airport and within 2.5 miles each side of the 338° bearing from the airport extending from the 6.4-mile radius to 8.8 miles northwest of the airport, and within a 6.0-mile radius of the Point in Space serving Fisher-Titus Medical Center, excluding that airspace within the Mansfield, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1738 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–57]

Modification of Class E Airspace; Fostoria, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Fremont, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 099° helicopter point in space approach has been developed for Fostoria Community Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Fostoria, OH, in order to include the point in space approach serving Fostoria Community Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Fostoria, OH (63 FR 63622). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 to FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Fostoria, OH, to accommodate aircraft executing the proposed GPS SIAP 099° helicopter point in space approach at Fostoria Community Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Fostoria, OH [Revised]

Fostoria Metropolitan Airport, OH
(Lat. 41° 11′ 27″N., long. 83° 23′ 40″W)
Fostoria Community Hospital, OH
Point In Space Coordinates
(Lat. 41° 10′ 08″N., long. 83° 26′ 31″W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Fostoria Metropolitan Airport, and within a 6.0-mile radius of the Point in Space serving Fostoria Community Hospital, excluding the airspace within the Tiffin, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1737 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–55]

Modification of Class E Airspace; Monroe, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Monroe, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 210° helicopter point in space approach has been developed for Mercy Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Monroe, MI, in order to include the point in space approach serving Mercy Memorial Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Monroe, MI (63 FR 63626). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Monroe, MI, to accommodate aircraft executing the proposed GPS SIAP 210° helicopter point in space approach at Mercy Memorial Hospital Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Monroe, MI [Revised]

Monroe, Custer Airport, MI
(Lat. 41°56′24″ N., long. 83°26′05″ W)
Mercy Memorial Hospital, MI
Point in Space Coordinates
(Lat. 41°56′05″ N., long. 83°23′34″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Custer Airport, and within a 6.0-mile radius of the Point in Space serving Mercy Memorial Hospital, excluding that airspace within the Detroit, MI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on January 12, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–1736 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–12–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–2]

Amendment to Class E Airspace; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Grand Island, Central Nebraska Regional Airport, NE. A review of the Class E airspace area for Grand Island, Central Nebraska Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the Instrument Landing System (ILS) and coordinates are added and included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), add the ILS and coordinates, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–2, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace area at Grand Island, NE. A review of the Class E airspace for Grand Island, Central Nebraska Regional Airport, NE, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This document adds the Central Nebraska Regional Airport ILS and coordinates. The amendment at Grand Island, Central Nebraska Regional Airport, NE, will provide additional controlled airspace for aircraft operating under IFR, add the ILS and coordinates, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA

does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–2." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Grand Island, NE [Revised]

Grand Island, Central Nebraska Regional Airport, NE
(Lat 40°58'03" N., long, 98°18'31" W.)
Grand Island VORTAC
(Lat. 40°59'03" N., long. 98°18'53" W.)
Grand Island, Central Nebraska Regional Airport ILS
(Lat. 40°58'55" N., long, 98°18'53" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Central Nebraska Regional Airport and within 4 miles each side of the Grand Island ILS Localizer course extending from the 6.6-mile radius to 8.7 miles south of the airport and within 4 miles northeast and 6 miles southwest of the 294° radial of the Grand Island VORTAC extending from the 6.6-mile radius to 16 miles northwest of the VORTAC and within 4 miles east and 6 miles west of the 360° radial of the Grand Island VORTAC extending from the 6.6-mile radius to 16 miles north of the VORTAC.

* * * * *

Issued in Kansas City, MO, on January 8, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–1560 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–15]

Amendment of Class E Airspace; Riverton, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The direct final rule published on October 30, 1998 (63 FR 58299) changed the Riverton, WY, Class E surface airspace legal description from part-time to continuous. The FAA commissioned an Automated Surface Observing System (ASOS) at the Riverton Regional Airport which makes the airport eligible for continuous Class E surface airspace.

EFFECTIVE DATE: The direct final rule published at 63 FR 58299 is effective 0901 UTC, 28 January, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the **Federal Register** on October 30, 1998 (63 FR 58299). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. The comment period ended November 30, 1998. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment or a written notice of intent to submit such an adverse comment were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Seattle, Washington on January 13, 1999.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–1559 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–1]

Amendment to Class E Airspace; Perryville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Perryville Municipal Airport, Perryville, MO. A review of the Class E airspace area for Perryville Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The Airport Reference Point (ARP) is amended and included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), amend the ARP, an comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–1, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Perryville, MO. A review of the Class E airspace for Perryville Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Perryville Municipal Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, amend the APR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–1." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive

Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Perryville, MO [Revised]

Perryville Municipal Airport, MO
(Lat. 37°52'07" N., long. 89°51'44" W.)
Farmington VORTAC, MO
(Lat. 37°40'24" N., long. 90°14'03" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Perryville Municipal Airport and within 1.8 miles each side of the 057° radial of the Farmington VORTAC extending from the 6.6-mile radius to 8.2 miles southwest of the airport.

Issued in Kansas City, MO, on January 8, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division Central Region.

[FR Doc. 99–1558 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANE–95]

Amendment to Class E Airspace; Rockland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects the description of revised Class E airspace at Rockland, ME (KRKD) published in the **Federal Register** on December 24, 1998 (63 FR 71218). That action was necessary due to the relocation of the Sprucehead Non-Directional Beacon (NDB) and to provide adequate controlled airspace for two new standard instrument approaches to the Rockland, Knox County Regional Airport.

DATES: Effective 0901 UTC, January 28, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 23, 1999.

ADDRESSES: Send comments on the rule to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 98–ANE–95, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9-ne-airspace@faa.gov" Comments sent electronically must indicate Docket 98–ANE–95 in the subject line.

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Acting Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7523; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION:

On December 24, 1998, the FAA published in the **Federal Register** a direct final rule revising the Class E airspace at Rockland, ME (KRKD) due to relocation of the Sprucehead Non-Directional Beacon (NDB) and to provide adequate controlled airspace for two new standard instrument approaches to the Rockland, Knox County Regional Airport (63 FR 71218). Since publication of that direct final rule, the FAA has determined that longitude and latitude coordinates of the Rockland, Knox County Regional Airport must be corrected slightly to reflect the results of a survey taken in February 1998, and that the revised description of Class E airspace at Rockland, ME need not reference the Sprucehead NDB because the airspace is now based solely on the airport location. This action makes those corrections to the revised airspace description.

Correction to the Direct Final Rule

Accordingly, pursuant to the authority delegated to me, the amendment to Class E airspace at Rockland, ME as published in the **Federal Register** on December 24, 1998 (63 FR 71218), **Federal Register** document 98–34166: page 71219, column 1; and the description in FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1; are corrected to read as follows:

ANE ME E5 Rockland, ME [Corrected]

Rockland, Knox County Regional Airport, ME
(Lat. 44°03'36"N, long. 69°05'57"W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Knox County Regional Airport.

Issued in Burlington, MA, on January 11, 1999.

Bill G. Peacock,

Manager, Air Traffic Division, New England Region.

[FR Doc. 99–1556 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–27]

Amendment of Class E Airspace; Golden Triangle Regional Airport, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment modifies the Golden Triangle Regional Airport Class E surface area airspace description by eliminating the specified 2,800 feet MSL

upper limit within 4.1-miles radius of the Golden Triangle Regional Airport. By definition, Class E surface area airspace extends upward from the surface to the overlying controlled airspace and should be without artificially specified upper limits, such as that improperly contained in the current description. The Class E airspace overlying the Golden Triangle Regional Airport extends upward from 700 feet above the surface of the earth. Therefore, the surface area airspace within a 4.1-mile radius of the Golden Triangle Regional Airport extends up to, but not including, 700 feet above the surface of the earth. This action corrects that technical discrepancy.

DATES: EFFECTIVE DATE: 0901 UTC, March 25, 1999.

Comments Date: Comments must be received on or before February 25, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–27, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves eliminating the specified 2,800 feet MSL upper limit within a 4.1-mile radius of the Golden Triangle Regional Airport, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds that further changes are appropriate, it will initiate rulemaking procedures to extend the effective date or to amend the regulation.

Commments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) changes the description of the Class E surface area airspace for the Golden Triangle Regional Airport by eliminating the 2,800 feet MSL upper limit within a 4.1-mile radius of the Golden Triangle Regional Airport. Class E airspace designations for surface areas are published in paragraph 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Since this action only makes a technical amendment to the Class E surface area description and should have no impact on the users of the airspace in the vicinity of the Golden Triangle Regional Airport the notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO MS E2 Columbus, MS [Revised]

Golden Triangle Regional Airport
(Lat. 33°27′01″ N, long. 88°35′29″ W)

Within a 4.1-mile radius of Golden Triangle Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia on January 11, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–1743 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 135, and 145

[Docket No. FAA–1998–4654; Amendment No. SFAR 36–7]

RIN 2120–AG64

Special Federal Aviation Regulation No. 36, Development of Major Repair Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; corrections.

SUMMARY Federal Aviation Administration published a final rule in the **Federal Register** (64 FR 958) on January 6, 1999, that amends and extends Special Federal Aviation Regulation (SFAR) No. 36, which provides that holders of authorized repair station or aircraft operating certificates may approve aircraft products or articles for return to service after accomplishing major repairs using self-developed repair data that have not been directly approved by the FAA. This document corrects an error in the heading and adds the date of issuance to the final rule.

FOR FURTHER INFORMATION CONTACT: Carol Martineau, Policy and Procedures Branch, Aircraft Engineering division, AIR–110, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone: (202) 267–9568.

Correction

In rule FR Doc. 99–128 beginning on page 958 in the **Federal Register** issue of Wednesday, January 6, 1999, make the following corrections:

1. On page 958, in the first column, in the heading section, on line 8, remove the words "Notice No. 98–15".

2. On page 961, in the third column, on the line before the signature block, insert a line containing the words "Issued in Washington, DC, on December 30, 1998".

Issued in Washington, DC, on January 20, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–1742 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8808]

RIN 1545–AW23

Modifications and Additions to the Unified Partnership Audit Procedures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The unified partnership audit procedures generally provide administrative rules for the auditing of partnership items at the partnership level. These regulations modify the existing unified partnership audit procedures to comply with the Taxpayer Relief Act of 1997 (1997 Act) and the Internal Revenue Service Restructuring and Reform Act of 1998 (1998 Act), and add new regulations to administer the new unified partnership audit provisions added by the 1997 Act. In general, the text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective January 26, 1999.

FOR FURTHER INFORMATION CONTACT: Robert G. Honigman, (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary amendments to the Procedure and Administration Regulations (26 CFR Part 301) relating to the unified partnership audit procedures found in sections 6221 through 6233 of the Internal Revenue Code (Code) and final regulations pertaining to the applicable dates of § 301.6231(a)(7)–1T(p)(2) and § 301.6231(a)(7)–1T(r)(1). Sections 1231 through 1243 of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788, modified some of the existing procedures and added certain new rules. Section 3507 of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685, modified section 6231. This document modifies existing regulations that, because of the 1997 Act or the 1998 Act, no longer reflect current law.

Explanation of Provisions

Penalties Determined at the Partnership Level

Before the 1997 Act, the Internal Revenue Service (Service) could impose penalties on a partner only through the application of the deficiency procedures after the completion of a partnership level proceeding. Forcing the Service to open deficiency proceedings against the individual partners was inconsistent with the efficiency goal of the unified partnership audit rules. The 1997 Act cured this problem by providing that, for partnerships under audit for taxable years ending after August 5, 1997, partnership level proceedings include the determination of applicable penalties at the partnership level. Partners now may raise any partner level defenses to the imposition of penalties only in a subsequent refund action.

Consistent with these statutory changes, the temporary regulations mandate that the partnership's penalty defenses are to be resolved during the partnership proceeding. Nevertheless, any individual defenses that a partner may have to the imposition of a penalty may be brought by the partner in a refund action subsequent to the partnership level determination. In order to minimize the burden on individual partners to defend themselves by bringing their own refund suits, the temporary regulations incorporate a large number of defenses at the partnership level. The majority of a partner's defenses to the imposition of penalties are not specific to a particular partner, but can be determined by reference to the activities of the partnership. The applicability of these defenses may be resolved at the partnership level during the partnership proceeding. In addition, the temporary regulations modify the computational adjustment rules to allow the Service to assess penalties under those procedures.

Partial Settlements

The period for assessing tax with respect to partnership items generally is the longer of the periods provided by section 6229 or section 6501. For partnership items that convert to nonpartnership items, section 6229(f) provides that the period for assessing tax shall not expire before the date which is one year after the date that the items became nonpartnership items. Section 6231(b)(1)(C) provides that the partnership items of a partner for a partnership taxable year become nonpartnership items as of the date the partner enters into a settlement agreement with the Service with respect to such items. In some audits, however, the taxpayer and the Service will enter into a settlement agreement regarding some, but not all, of the taxpayer's partnership items. The 1997 Act added a special rule for these partial settlement agreements in section 6229(f)(2), providing that the period for assessing any tax attributable to the settled items is determined as if the partial settlement had not been executed. Thus, the limitations period applicable to the last partnership item to be resolved for the partnership's taxable year under audit is controlling with respect to all disputed partnership items (including settled items) for such partnership taxable year.

The temporary regulations state that the one year period for assessing partnership items that convert to nonpartnership items applicable to settlement agreements under section 6231(b)(1)(C) does not apply to partial settlement agreements under section 6229(f)(2). Moreover, the temporary regulations clarify that the partner remains subject to the unified audit procedures regarding the nonsettled items.

Tax Matters Partner as a Debtor in Bankruptcy

Section 6229(b)(1)(B) provides that the statute of limitations under section 6229 is extended with respect to all partners in the partnership by an agreement entered into between the tax matters partner (TMP) and the Service. Treas. Reg. § 301.6231(a)(7)–1(l)(1)(iv) (1996) and Temp. Treas. Reg. § 301.6231(c)–7T(a) (1987), however, provide that upon the filing of a petition naming a partner as a debtor in a

bankruptcy proceeding, the partner/debtor's partnership items convert to nonpartnership items, and if the partner/debtor was the TMP, that status terminates. These rules were promulgated to avoid the complications that the automatic stay provision contained in 11 U.S.C. 362(a)(8) would have on a unified partnership audit. As a result, if a TMP executed a consent to extend the statute of limitations during a period when the TMP was a debtor in a bankruptcy proceeding, the consent would not be binding on the other partners. Under the regulations, the person signing the agreement was ineligible to act as the TMP and extend the statute as to all partners.

To resolve the uncertainty under prior law in the situation where a TMP executes an agreement extending the statute of limitations as to all partners while, unknown to the Service, the TMP is a debtor in a bankruptcy proceeding, the 1997 Act provides that the Service may rely on the executed statute extension agreement unless it is notified of the TMP's bankruptcy proceeding. If the Service is not notified of the TMP's bankruptcy proceeding, statute extensions granted by the TMP are binding on all partners in the partnership.

The temporary regulations provide a mechanism for the TMP, or other partners, to provide notice to the Service that the TMP is a debtor in a bankruptcy proceeding and therefore is ineligible to serve as TMP and extend the statute under section 6229. This mechanism is derived from existing regulations that provide guidance on how to notify the Service of information concerning a partnership's partners.

Small Partnership Exception

The 1997 Act amended the small partnership exception to the unified partnership audit procedures found in section 6231. Formerly, in order to qualify for the small partnership exception, the partnership had to have 10 or fewer partners at all times during the tax year, each of whom was a natural person (other than a nonresident alien) or an estate, and for which each partner's share of each partnership item was the same as that partner's share of every other partnership item. The 1997 Act amended the small partnership exception by allowing partnerships to qualify for the exception even if they have a C corporation for a partner or specially allocate some partnership items. The temporary regulations modify the existing regulations interpreting the small partnership exception to take account of this change in the law.

Effective Date

These final and temporary regulations are applicable January 26, 1999. In accordance with section 7805(e)(2), the temporary regulations contained herein shall expire January 25, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these final and temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting information. The principal authors of these temporary regulations are Robert G. Honigman, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), and William A. Heard, Office of the Assistant Chief Counsel (Field Service). However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Amend § 301.6221–1T by:

1. Redesignating paragraph (c) as paragraph (e).

2. Adding new paragraphs (c) and (d).

The additions read as follows:

§ 301.6221–1T Tax treatment determined at partnership level (temporary).

* * * * *

(c) *Penalties determined at partnership level (partnership taxable years ending after August 5, 1997).* Any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, shall be determined at the partnership level. Partner level defenses to such items can only be asserted through refund actions following assessment and payment. Assessment of any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item shall be made based on partnership level determinations. Partnership level determinations include all the legal and factual determinations that underlie the determination of any penalty, addition to tax, or additional amount, other than partner level defenses specified in paragraph (d) of this section.

(d) *Partner level defenses.* Partner level defenses to any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, may not be asserted in the partnership level proceeding, but may be asserted through separate refund actions following assessment and payment. See section 6230(c)(4). Partner level defenses are limited to those that are personal to the partner or are dependant upon the partner's separate return, and cannot be determined at the partnership level. Examples of these determinations are: whether any applicable threshold underpayment of tax has been met with respect to the partner or whether the partner has met the criteria of section 6664(b)(penalties applicable only where return is filed), or section 6664(c)(1)(reasonable cause exception) subject to partnership level determinations as to the applicability of section 6664(c)(2).

* * * * *

Par. 3. Amend § 301.6223(c)–1T by adding a sentence to the end of paragraph (c) to read as follows:

§ 301.6223(c)–1T Additional information regarding partners furnished to the Service (temporary).

* * * * *

(c) * * * Furthermore, reference to a prior general notification to the Service that a partner who would otherwise be the tax matters partner is a debtor in a bankruptcy proceeding or has had a receiver appointed for him in a receivership proceeding is not sufficient unless a copy of the notification document referred to is attached to the statement.

* * * * *

Par. 4. Amend § 301.6224(c)–3T by:

1. Revising the section heading.

2. Revising paragraphs (b), (c)(3)(ii), and (d), *Example (1).*

The revisions read as follows:

§ 301.6224(c)–3T Consistent settlement terms (temporary).

* * * * *

(b) *Requirements for consistent settlement terms*—(1) *In general.* Consistent settlement terms are those based on the same determinations with respect to partnership items. However, consistent settlement terms also may include partnership level determinations of any penalty, addition to tax, or additional amount that relates to partnership items. Settlements with respect to partnership items shall be self-contained; thus, a concession by one party with respect to a partnership item may not be based upon a concession by another party with respect to any item that is not a partnership item other than any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. Consistent agreements, whether comprehensive or partial, must be identical to the original settlement (that is, the settlement upon which the offered settlement terms are based). A consistent agreement must mirror the original settlement and may not be limited to selected items from the original settlement. Once a partner has settled a partnership item, or penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item, that partner may not subsequently request settlement terms consistent with a settlement that contains the previously settled item. The requirement for consistent settlement terms applies only if—

(i) The items were partnership items (and any related penalty, addition to tax, or additional amount) for the partner entering into the original settlement immediately before the original settlement; and

(ii) The items are partnership items (and any related penalty, addition to tax, or additional amount) for the partner requesting the consistent settlement at the time the partner files the request.

(2) *Effect of consistent agreement.* Consistent settlement terms are reflected in a consistent agreement. A consistent agreement is not a settlement agreement which gives rise to further consistent settlement rights because it is required to be given without volitional agreement of the Secretary. Therefore, a consistent agreement required to be offered to a requesting taxpayer is not a settlement agreement under section 6224(c)(2) of the Internal Revenue Code, or paragraph (c)(3) of this section which starts a new period for requesting consistent settlement terms. For all other purposes of the Internal Revenue Code, however, (e.g., binding effect under section 6224(c)(1), and conversion to nonpartnership items under section 6231(b)(1)(C)) a consistent agreement is treated as a settlement agreement.

(c) * * *

(3) * * *

(ii) The 60th day after the day on which the settlement agreement was entered into.

(d) * * *

Example (1). The Service seeks to disallow a $100,000 loss reported by Partnership P. The Service agrees to a settlement with X, a partner in P, in which the Service allows 60 percent of the loss, accepts the treatment of all other partnership items on the partnership return, and imposes a penalty for negligence related to the loss disallowance. Partner Y, which owns a 10 percent interest in the partnership, requests settlement terms which are consistent with the settlement made between X and the Service. The items are partnership items (and a related penalty) for X immediately before X enters into the settlement agreement and are partnership items (and a related penalty) for Y at the time of the request. The Service must offer Y settlement terms allowing a $6,000 loss, a negligence penalty on the $4,000 disallowance, and otherwise reflecting the treatment of partnership items on the partnership return.

* * * * *

Par. 5. Add § 301.6229(b)–2T to read as follows:

§ 301.6229(b)–2T Special rule with respect to debtors in Title 11 cases (temporary).

(a) *In general.* Notwithstanding any other law or rule of law, if an agreement is entered into under section 6229(b)(1)(B), and the agreement is signed by a person who would be the tax matters partner but for the fact that, at the time that the agreement is executed, the person is a debtor in a bankruptcy proceeding under Title 11 of the United States Code, such agreement shall be binding on all partners in the partnership unless the Service has been notified of the bankruptcy proceeding in accordance with paragraph (b) of this section.

(b) *Procedures for notifying the Service of a partner's bankruptcy proceeding.* (1) The Service shall be notified of the bankruptcy proceeding of the tax matters partner in accordance with the procedures set forth in § 301.6223(c)–1T.

(2) In addition to the information specified in § 301.6223(c)–1T, notification that a person is (or was) a debtor in a bankruptcy proceeding shall include the date the bankruptcy proceeding was filed, the name and address of the court in which the bankruptcy proceeding exists (or took place), the caption of the bankruptcy proceeding (including the docket number or other identification number used by the court), and the status of the proceeding as of the date of notification.

Par. 6. Add § 301.6229(f)–1T to read as follows:

§ 301.6229(f)–1T Special rule for partial settlement agreements (temporary).

(a) *In general.* If a partner enters into a settlement agreement with the Service with respect to the treatment of some of the partnership items in dispute for a partnership taxable year, but other partnership items for such year remain in dispute, the period of limitations for assessing any tax attributable to the settled items shall be determined as if such agreement had not been entered into.

(b) *Other items remaining in dispute.* Pursuant to section 6226(c), a partner is a party to a partnership level judicial proceeding with respect to partnership items. When a partner settles partnership items, the settled partnership items convert to nonpartnership items under section 6231(b)(1)(C) and will not be subject to any future or pending partnership level proceeding pursuant to section 6226(d)(1). The remaining unsettled partnership items, however, will remain subject to determination under partnership level administrative and judicial procedures. Consequently, any remaining unsettled items will be deemed to remain in dispute. Thus, the period for assessing settled items will be governed by the period for assessing the remaining unsettled items.

Par. 7. Amend § 301.6231(a)(1)–1T by:

1. Revising the first two sentences of paragraph (a)(1).
2. Removing paragraph (a)(3).
3. Redesignating paragraph (a)(4) as paragraph (a)(3).

The revision reads as follows:

§ 301.6231(a)(1)–1T Exception for small partnerships (temporary).

(a) * * *

(1) "*10 or fewer.*" The "10 or fewer" limitation described in section 6231(a)(1)(B)(i) is applied to the number of natural persons (other than nonresident aliens), C corporations, and estates of deceased partners that were partners at any one time during the partnership taxable year. Thus, for example, a partnership that at no time during the taxable year had more than 10 partners may be treated as a small partnership even if, because of transfers of interests in the partnership, 11 or more natural persons, C corporations, or estates of deceased partners owned interests in the partnership for some portion of the taxable year. * * *

* * * * *

Par. 8. Amend § 301.6231(a)(6)–1T by:
1. Revising paragraph (a).
2. Removing paragraph (c).
The revision reads as follows:

§ 301.6231(a)(6)–1T Computational adjustments (temporary).

(a) *In general.* A change in the tax liability of a partner to properly reflect the treatment of a partnership item under subchapter C of chapter 63 of the Internal Revenue Code is made through a computational adjustment. A computational adjustment includes a change in tax liability that reflects a change in an affected item where that change is necessary to properly reflect the treatment of a partnership item, or any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item. However, if a change in a partner's tax liability cannot be made without making one or more partner level determinations, that portion of the change in tax liability attributable to the partner level determinations shall be made under the provisions of subchapter B of chapter 63 of the Internal Revenue Code (relating to deficiency procedures), except for any penalty, addition to tax, or additional amount which relates to an adjustment to a partnership item.

(1) Changes in a partner's tax liability with respect to affected items that do not require partner level determinations (such as the threshold amount of medical deductions under section 213 that changes as the result of determinations made at the partnership level) are computational adjustments that are directly assessed. When making computational adjustments, the Service may assume that amounts the partner reported on the partner's individual return include all amounts reported to the partner by the partnership, absent contrary notice to the Service (for example, a "Notice of Inconsistent Treatment"). Such an assumption by the Service does not constitute a partner level determination. Moreover, substituting redetermined partnership items for the partner's previously reported partnership items (including partnership items included in carryover amounts) does not constitute a partner level determination where the Service otherwise accepts all nonpartnership items (including, for example, nonpartnership item components of carryover amounts) as reported.

(2) Changes in a partner's tax liability with respect to affected items that require partner level determinations (such as a partner's at-risk amount to the extent it depends upon the source from which the partner obtained the funds that the partner contributed to the partnership) are computational adjustments subject to deficiency procedures. Nevertheless, any penalty, addition to tax, or additional amount that relates to an adjustment to a partnership item may be directly assessed following a partnership proceeding, based on determinations in that proceeding, regardless of whether partner level determinations are required.

* * * * *

Par. 9. Amend § 301.6231(a)(7)–1 by adding a sentence at the end of paragraphs (p)(2) and (r)(1) to read as follows:

§ 301.6231(a)(7)–1 Designation or selection of tax matters partner.

* * * * *

(p) * * *

(2) * * * For regulations applicable on or after January 26, 1999 (reflecting statutory changes made effective July 22, 1998) and before January 25, 2002, see § 301.6231(a)(7)–1T(p)(2).

* * * * *

(r) * * * (1) * * * For regulations applicable on or after January 26, 1999 (reflecting statutory changes made effective July 22, 1998) and before January 25, 2002, see § 301.6231(a)(7)–1T(r)(1).

* * * * *

Par. 10. Add § 301.6231(a)(7)–1T to read as follows:

§ 301.6231(a)(7)–1T Designation or selection of tax matters partner (temporary).

(a) through (p)(1) [Reserved]. For further guidance, see § 301.6231(a)(7)–1(a) through (p)(1).

(p)(2) *When each general partner is deemed to have no profits interest in the partnership.* If it is impracticable under § 301.6231(a)(7)–1(o)(2) to apply the largest-profits-interest rule of § 301.6231(a)(7)–1(m)(2), the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in § 301.6231(a)(7)–1(q). The Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a), effective as of the date specified in the notice. For regulations applicable before July 22, 1998, see § 301.6231(a)(7)–1(p)(2).

(p)(3) through (q) [Reserved]. For further guidance, see § 301.6231(a)(7)–1(p)(3) through (q).

(r) *Notification of partnership*—(1) *In general.* If the Commissioner selects a tax matters partner under the provisions of § 301.6231(a)(7)–1(p)(1) or (3)(i), the Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a), effective as of the date specified in the notice. For regulations applicable before July 22, 1998, see § 301.6231(a)(7)–1(r)(1).

(r)(2) [Reserved]. For further guidance, see § 301.6231(a)(7)–1(r)(2).

Approved: December 30, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue Service.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–685 Filed 1–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 98–041]

Special Local Regulations; Hillsborough Bay, Tampa, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent Special Local Regulations are being established for the Gasparilla Marine Parade on Hillsborough Bay in Tampa, Florida. This event will be held annually on the first Saturday in February between 10 a.m. and 1:30 p.m. Eastern Standard Time (EST). These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective on January 26, 1999.

FOR FURTHER INFORMATION CONTACT: LTJG Brian Hill, (305) 536–4250, or Assistant Operations Office, Coast Guard Group St. Petersburg, FL, (813) 824–7533.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rulemaking concerning these regulations was published in the **Federal Register** on September 21, 1998 (63 FR 50179). No comments were received during the 60 days comment period.

Background and Purpose

These regulations are needed to provide for the safety of life, to protest vessels participating in the parade, and to protect marine mammals during the Gasparilla Marine Parade. There will be approximately 750 participants, afloat and ashore, participating in the marine

parade. Also, 200–400 spectator craft are expected. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters.

The regulated area will prohibit commercial vessels, jet skis, and vessels without propulsion from entering Hillsborough Bay during the parade, and will establish an idle speed no wake zone inside the regulated area.

In accordance with 5 U.S.C. 553, good cause exists for making these regulations effective in less than 30 days after **Federal Register** publication. A Notice of Proposed Rulemaking with a 60 day comment period was published in the **Federal Register** on September 21, 1998, with no negative comments received, and the parade is a well known annual event. Delaying its effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public as there is not sufficient time remaining to allow for a full 30 day delayed effective date prior to the event occurring in 1999 on February 6th.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect for approximately five and one half hours in a limited area one day each year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities as these regulations will be in effect in a limited area for five and one half hours only one day each year.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.734 is added to read as follows:

§ 100.734 Annual Gasparilla Marine Parade; Hillsborough Bay, Tampa, FL

(a) *Regulated Area.* A regulated area is established consisting of all waters of Hillsborough Bay and its tributaries north of a line drawn along latitude 27–51.30N. The regulated area includes the following in their entirety: Hillsborough Cut "D" Channel, Sparkman Channel, Ybor Channel, Seddon Channel and the Hillsborough River south of the John F. Kennedy Bridge. Coordinates Reference Datum: NAD 1983.

(b) *Special Local Regulations.*

(1) Entry into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 2:30 p.m. EST on the first Saturday in February.

(2) The regulated area is an idle speed, "no wake" zone.

(3) All vessels within the regulated area shall stay clear of and give way to all vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels in excess of 80 feet in length without mooring arrangements made prior to the first Saturday in February, are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels in excess of 80 feet without prior mooring arrangements not officially entered in the Gasparilla Marine Parade, must use the alternate route through Sparkman Channel.

(c) *Dates.* This section becomes effective annually at 9 a.m. and terminates at 2:30 p.m. EST on the first Saturday in February.

Dated: January 15, 1999.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–1697 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX86–1–7351a; FRL–6207–4]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonably Available Control Technology for Emissions of Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving demonstrations submitted by Texas on January 10, 1996, that Reasonably Available Control Technology (RACT) is in place on sources in the following source categories: Plastic Parts Coating in the Dallas/Fort Worth area, Volatile Organic Liquid (VOL) Storage and Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor and Distillation Processes. Also, EPA is approving revisions to the Texas Rules for the control of VOC emissions that the State submitted between 1995 and 1997. Finally, for most of the measures given limited approval in the May 22, 1997 **Federal Register** (62 FR 27964),

this approval action converts the limited approval to a full approval. The implementation of these measures will help ensure the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone as required by the Clean Air Act (Act) as amended in 1990.

DATES: This direct final rule is effective on March 29, 1999 unless EPA receives adverse comments by February 25, 1999. If EPA receives such comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Dallas, 1445 Ross Avenue, Texas 75202–2733, telephone: (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–7242.

SUPPLEMENTARY INFORMATION:

I. Background

A. Background of VOC RACT Requirements

Section 172(c) of the Act, entitled *Nonattainment Plan Provisions*, requires that States implement RACT rules for stationary sources of VOC in ozone nonattainment areas. Reasonably Available Control Technology is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility as defined in 44 **Federal Register** (FR) 53761 (September 17, 1979). In accordance with section 108 of the Act, EPA publishes Control Technique Guideline (CTG) documents to help the States develop RACT rules for source categories. The CTGs provide information on available air pollution control techniques and provide recommendations on what EPA considers the "presumptive norm" for RACT.

Section 182(b)(2) of the Act requires States to adopt RACT rules for three general groups of stationary sources of VOCs in ozone nonattainment areas classified as moderate or above. The first group consists of sources covered by a CTG issued after the enactment of the amended Act of 1990. These CTGs are referred to as "post-enactment" CTGs. The second group consists of sources covered by an existing CTG, i.e., a CTG issued before the enactment of the amended Act of 1990. The third group consists of major sources not covered by a CTG. These sources are referred to as "non-CTG" sources.

In areas with a moderate classification, Section 302(j) defines a major source as one emitting or having the potential to emit 100 tons/year or more. For serious areas, major sources are defined in section 182(c) as those that emit or have the potential to emit at least 50 tons/year and in severe areas major sources are defined in section 182(d) as those that emit or have the potential to emit 25 tons/year or more. Texas currently has four ozone nonattainment areas; Beaumont/Port Arthur (moderate), Dallas/Fort Worth (serious [1]), El Paso (serious), and Houston (severe).

Under section 183, *Federal Ozone Measures*, the Act requires EPA to issue CTGs for 13 source categories by November 15, 1993. Section 183 lists two specific source categories, Aerospace coatings and solvents, and Shipbuilding operations. The other 11 categories are listed in 57 FR 18077 (April 28, 1992), and are as follows:

1. SOCMI distillation
2. SOCMI Reactors
3. wood Furniture
4. plastic parts business machines
5. plastic parts coating (other)
6. offset lithography
7. industrial wastewater
8. auto refinishing
9. SOCMI batch processing
10. VOL storage tanks
11. clean up solvents

[1] Dallas/Fort Worth was reclassified to serious on February 18, 1998(63 FR 8128). Texas will have to affirm in a future SIP revision that RACT is being implemented on sources that emit or have a potential to emit 50 tons/year or more.

To date, EPA has published CTGs for five of the 13 source categories: SOCMI distillation, SOCMI reactors, wood furniture, aerospace coatings and solvents, and shipbuilding. As described in a January 20, 1994, memorandum from John Seitz, Director of Office of Air Quality Planning and Standards, EPA made available Alternative Control Technology (ACT) documents for the CTG source categories for which CTG documents have not yet been published. These ACT documents provide much of the same information as the CTG documents, however, instead of establishing a presumptive norm for RACT rule, these documents provide options for control. For the major sources in categories where EPA issued an ACT instead of CTG, the ACT provides information to determine if RACT is being implemented as required for "non-CTG" sources.

For post-enactment CTGs, the Act requires States to submit RACT rules according to the schedule specified in the corresponding CTG document. In Appendix E of the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," published on April 28, 1992, in 57 FR 18077, EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG based on the list of expected CTGs in Appendix E. Pursuant to Appendix E of the General Preamble, if EPA fails to issue a CTG by November 15, 1993 (which it did for 11 source categories), the responsibility shifts to the State to submit a non-CTG RACT rule for those sources by November 15, 1994.

A March 2, 1995, policy memorandum from the Assistant Administrator for Air, Mary Nichols, explained a policy to allow phased submittals of attainment demonstration. Under this policy, States were to submit a Phase I submittal by December 31, 1995, which would include RACT requirements, Rate of Progress (ROP) reductions, and commitments to complete the attainment demonstration by mid-1997.

II. State Submittal

On January 10, 1996, the State of Texas submitted to EPA a State Implementation Plan (SIP) revision intended to meet the requirements pertaining to RACT and commitments to complete the air quality plan as necessary for a Phase I submittal under the March 2, 1995 policy. Texas in separate submittals has provided SIP

revisions designed to meet the ROP requirements. In this action, EPA is approving only the portions of the January 10, 1996, SIP revision regarding RACT for SOCMI Reactor and Distillation Processes, VOL Storage, and Plastic Parts coating for the Dallas/Fort Worth area. The EPA is taking no action on whether RACT is being implemented on other source categories included in the January 10, 1996, SIP revision, including industrial wastewater, batch processing, wood furniture coating, or shipbuilding operations. These categories will be addressed in future **Federal Register** actions. The EPA is also taking no action on other portions of the January 10, 1996, SIP revision submittal regarding commitments to continue air quality planning.

Also, in this action, EPA is approving revisions to the Texas rules for the control of VOCs submitted on January 11, 1995, July 12, 1995, November 10, 1995, March 13, 1996, August 9, 1996, and May 21, 1997.

III. Analysis of State Submittal

A. Plastic Parts Coating

The January 10, 1996, SIP revision explained that there was only one major source of VOC emissions in the plastic parts coating category in a nonattainment area in Texas. The facility, Peterbilt Motors Company is located in the Dallas/Fort Worth nonattainment area. The facility, which manufactures custom, heavy duty trucks, uses a catalytic oxidizer to control emissions from their painting operations. The EPA is approving these controls which are required by TNRCC permit as RACT.

B. SOCMI Reactor and Distillation Processes

In August 1993, EPA published the CTG document titled *Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry*. As well as providing considerable information on emissions, controls, and costs, the CTG provided a model regulation representing RACT.

Texas rules for control of SOCMI Reactor and distillation processes are contained in its rules for general vent gas control. Texas Natural Resource Conservation Commission (TNRCC) Chapter 115, Section 115.121–129. Texas revised these rules in November 1993 to include the requirements of the CTG. It should be noted that these changes were based on the draft CTG. Then, in January 1995, the State submitted a SIP revision that revised the language dealing with the "once in always in" concept. Finally, on March 13, 1996, the State again revised the vent gas rule to allow exemptions for sources covered by other sections of TNRCC Chapter 115. Also, in the March 13, 1996 submittal, Texas revised the original rule to allow exemptions to be based on the total resource effectiveness(TRE) as RACT.

The Texas rules generally follow the approach contained in the CTG and the model rule. One difference between the Texas rule and the model approach is that Texas allows an exemption for streams of 0.011 standard cubic meters/min versus 0.0085 standard cubic meters/min in the model rule. This exemption is consistent with the New Source Performance Standard (NSPS). Another difference is that the Texas rule requires sources to use the equations contained in the NSPS for determining exemptions based on TRE rather than the equations contained in the CTG model rule. The NSPS equations set more stringent exemption levels than the equations included in the CTG. In combination, the Texas approach for determining exempt sources is more stringent than the CTG, so the rules are acceptable as RACT. C: Volatile Organic Liquid Storage: For this source category, EPA did not issue a CTG. Instead, EPA issued an Alternate Control Technique Document. An ACT does not identify a "presumptive norm" for RACT but instead provides cost information about potential control options. For VOL storage, EPA had previously published two CTGs for storage of petroleum liquids. These CTGs were:

Storage of Petroleum Liquids in Fixed Roof Tanks (EPA–450/2–77–036), December 1977.

Petroleum Liquid Storage in External Floating Roof Tanks (EPA–450/2–78–051), December 1978.

The VOL ACT recommends controls for all volatile organic liquids not just petroleum liquids. Texas has long regulated emissions from storage of all volatile organic liquids not just petroleum liquids. To ensure that the RACT is in place, EPA believes Texas must consider the new information provided in the ACT to see if additional controls may be technically or economically reasonable. Texas demonstrated that their existing rules provide nearly equivalent control to that provided by the most stringent control provided by the ACT.

Texas followed EPA's 5 percent policy that allows States to deviate from CTG requirements if the State rule results in nearly the same amount of control. This policy is articulated in a June 30, 1978, memorandum from Richard Rhoads, Director Control Programs Development Division, to Allyn Davis, Director Air and Hazardous Materials Division, Region IX. Approving a State regulation that differs from the CTG is possible, if the impact on emissions differs imperceptibly (less than 5 percent) from that of the CTG.

Texas has included a detailed demonstration that their rules result in less than a 5 percent difference in emissions from the most stringent control options included in the ACT. The ACT suggests that the following upgrades to the Texas rule would be reasonable.

(1) Lowering the vapor pressure exemption to 0.5 or 0.75 psi.

(2) upgrading of vapor mounted primary seals on internal floating roof tanks.

(3) installation of secondary seals on external floating roof tanks.

(4) 95 percent control efficiency for add-on control devices.

(5) installation of gasketed seals.

The State submittal addresses each of these requirements in turn and estimates the increased emissions associated with continued compliance with the State rule versus compliance with the suggested additional ACT controls. The EPA has analyzed the State submittal and agrees that implementing the more stringent requirements of the ACT will result in less than a 5 percent decrease in the emissions from VOL storage tanks in Texas. The reason the State can make this demonstration is that the State rules control some VOL storage tanks that the ACT does not suggest controlling.

D. Miscellaneous Rule Revisions

The State has submitted several rule revisions during the period January 1995 to March 1997. What follows is a brief description of the most significant changes made in these SIP revisions. The Technical Support Document for this action contains a more detailed evaluation of these rules.

1. January 11, 1995 Revisions

In this SIP revision, the State made minor revisions to its General Rules and rules for the control of emissions from storage of VOCs, vent gas control, industrial wastewater, municipal solid waste landfills, and loading and unloading of VOCs. The most significant changes were:

Revisions to the rules for storage of VOCs (115.112–115.119) to add additional methods for determining true vapor pressure to include American Society for Testing and Materials Test Methods D323–89,

D2879, D4953, D5190 or D5191. These additional test methods are acceptable.

Revisions to Rules for Vent Gas Control (115.121–115.149) to clarify the applicability requirements to include once-in-always-in requirements. This means that vents that become subject to the control requirements remain subject to the control requirements even if the vent's throughput later falls below the applicability threshold. Texas has included a provision that a source can become exempt from the rule if the source institutes a project that would lower emissions below the level of emissions that would be achieved by control of the vent stream. It is not sufficient, however to control emissions to just the level of emissions to applicability level of the rule. The EPA believes these revisions are acceptable.

Revisions to the rules for the control of Industrial Wastewater to clarify the rules. These rules were revised to correct cross-references to other TNRCC rules and to clarify their use as contingency measures in Beaumont/Port Arthur. The EPA is giving these minor changes limited approval because they strengthen rules previously given limited approval.

Revisions to the rule for Control of emissions from Municipal Solid Waste Landfills to extend the compliance date from May 31, 1995 to November 15, 1996. These rules were submitted as part of the 15% Rate-of-Progress Plan. The rules were given limited approval on May 22, 1997 62 FR 27964 as a strengthening of the SIP. The EPA is taking no action on these revisions in this action. The EPA will determine whether these rules are fully approvable in its action on the State Plan for Municipal Waste Landfill emissions control as required by section 111 of the Act and 40 CFR part 60, subparts Cc and WWW.

2. July 12, 1995 Revisions to VOCs Loading and Unloading Rules (115.212–115.219)

These are revisions to rules that require control of emissions during the loading of VOCs into tanker trucks and rail cars. Texas previously revised these rules to prohibit any non-vapor tight conditions during loading. The revision to the rule allows non-vapor tight conditions during sampling and gauging provided that the loading of VOCs is discontinued. The EPA believes that this revision is an acceptable change that with the conditions imposed by the State will result in only minor emissions and will facilitate operations.

3. November 10, 1995 Revisions to Requirements for Wastewater Separators

The State revised these rules that control emissions from oil/water separators to provide consideration for oil/water separators at oil and gas productions facilities. The revision provides an exemption for oil/water separators at oil and gas facilities that emit less than 18 tons/year (100 pounds/day). The exemption is necessary because these facilities are at remote locations often without existing flare systems so the installation of controls is not considered cost effective.

The State required controls at oil and gas production facilities when the State made revisions required by 182(b)(2) which required existing RACT controls to be extended to the newly designated nonattainment counties. The extension of the rules to the counties surrounding the Houston/Galveston areas affected many oil and gas production facilities. Previously, when these measures applied only in the urban areas, most of the wastewater separators were located at refinery or chemical plants where flare systems to control emissions were available.

The EPA issued a pre-enactment CTG "Control of Refinery Vacuum Systems, Wastewater Separators and Process Unit Turnarounds" on which the Texas Wastewater Separator rules are based. The CTG only applies to separators at refineries. Therefore, the CTG does not cover oil/water separators at oil and gas productions facilities. Further, by requiring oil/water separators that emit more than 100 pounds/day be controlled, Texas is ensuring that RACT is implemented at major sources. One hundred pounds/day translates to a maximum of about 18 tons/year which is well under the 25 tons/year major source definition in the Houston area. Finally, Texas has not projected emission reductions at oil and gas production facilities in its 15% plansor attainment plans. For the above reasons, this revision to the SIP is acceptable.

4. March 13, 1996 Revisions

This SIP revision includes revisions adopted by the TNRCC on December 6, 1995, and February 14, 1996.

On December 6, 1995, TNRCC adopted revisions to its rules for control of emissions from consumer and commercial products (115.612). The change deletes the VOC content limits for Insect-Repellents-Aerosols. The previous requirements had not gained widespread consumer acceptance. The deletion of the requirements makes the regulations in Texas consistent with other States' consumer products rules, and the final national consumer product rule (63 FR 48819). Texas used EPA estimates of the amount of emission reductions from the national rule to project emissions reductions from the State consumer/commercial product rules. Therefore, since this rule change is consistent with the national rulemaking, the EPA still expects the projected reductions to be achieved.

On February 14, 1996, Texas adopted changes to several of its rules for VOC control. The most significant are described below.

The State revised its definition of VOC to exclude acetone, parachlorobenzotriflouride, and volatile methyl siloxanes. The EPA has ruled that these compounds have negligible photochemical reactivity and thus do not contribute to the formation of urban ozone (59 FR 50693 and 60 FR 31633). These changes to the definition of VOC make the TNRCC definition consistent with the Federal definition.

The State also clarified that a tank with a self-supporting fixed roof (typically a bolted aluminum geodesic dome) is considered to be an internal floating roof storage tank. These self-supporting roofs are effective in controlling emissions because support poles do not penetrate the floating cover.

The State revised its storage tank rules to establish separate inspection requirements for internal and external floating roof tanks. They also establish a repair schedule where repairs of tank controls will take place within 60 days of discovery. The modifications clarify that facilities that are exempt from control because they store low vapor pressure materials are not exempt from maintaining records of the vapor pressure of the materials stored to show that they qualify for the exemption.

The State revised its vent gas control rules (Sections 115.121–129) to clarify that these rules were designed to control vents from processes that were not otherwise controlled by the Texas VOC control rules. This clarifies a long standing interpretation of the rule.

The State revised its rules to control emissions from Volatile Organic Compound Transfer Operations (115.212 to 115.219)to delete the requirement for vacuum assisted vapor collection systems on gasoline loading racks. The TNRCC adopted this requirement because EPA proposed it to be part of the Maximum Available Control Technology standard for gasoline terminals. The EPA dropped the requirement in the final MACT rule because it does not result in meaningful

additional emission reductions. The EPA estimated that installing the technology results in only 1.3 percent improvement in capture efficiency. Thus, the emission reduction potentially lost by not installing this technology is considered to be negligible. In addition, vacuum assisted vapor collection systems are not called for by the CTG for gasoline loading operations so this requirement is not necessary for the rule to be acceptable as RACT.

The State revised the rules for control of emissions from Degreasing Processes (115.412–419) to remove the requirement for control of acetone, because this chemical has been added to the list of substances that are not considered photochemically reactive (June 15, 1995, 60 FR 31633).

The State has revised its rules for the control of emissions from Surface Coating Processes to change the units of the emission limits from pounds VOC/gallon of solids to pounds VOC/gallon of coating. While this change is acceptable, it is important that all equivalency calculations for sources using improved transfer efficiency or add-on control devices be made on a solids basis. Texas included provisions in its rule to make this clear, including formulas to translate VOC content to a solids basis.

Texas also included a revision to provide for registration of an innovative product just before its introduction into the Texas market. Innovative products are those that due to some characteristic of the product formulation, design, delivery systems, or other factors, the use of the product will result in equal or less VOC emissions as compared to products that comply with the VOC limits in the rule. Registration is a departure from the approach of requiring approval of the innovative product by the State and/or EPA before marketing. Texas has included in the rules a considerable deterrent to facilities marketing noncompliant innovative products. A company will be required to provide VOC emission reduction in each nonattainment area equivalent to twice the excess emissions determined to have occurred in the respective nonattainment area due to the marketing of the non-compliant product. The manufacturer will be required to reformulate or withdraw the noncompliant product.

The innovative product waiver procedure provides for alternate means of compliance with the SIP with less review than EPA would generally find acceptable. Generally, EPA only approves provisions in SIPs for alternate methods of compliance which include a replicable procedure that will insure emission reductions equivalent to the underlying SIP provision. The EPA believes that the innovative product waiver procedure is acceptable, in this instance, because of the national rule for control of consumer product emissions (63 FR 48819). The national rule contains a procedure for obtaining innovative product waivers very similar to the procedure contained in the Texas Rule. Under the national rule, those regulated entities that have received innovative product waivers under State Regulations may submit the factual basis for the waiver to EPA as part of the documentation to receive an innovative product waiver from EPA. Also, the Texas rules provide for innovative product waivers from the Texas rules in a situation where the EPA has approved the waiver and the Federal standard is as stringent as the State. The TNRCC Executive Director will provide these waivers within 45 days of receipt.

5. August 9, 1996, Revisions to VOC Loading/Unloading (115.212–115.219) and Consumer Products Rules (115.616)

The State revised the requirement for quarterly instrument inspections for fugitive leaks at gasoline terminals to be replaced with monthly inspections using audio-visual-olfactory (AVO) methods. The requirement for instrument monitoring for fugitive leaks at gasoline terminals was originally added to achieve emission reductions as part of the State's 15% ROP plans. The State revised the rule to be consistent with Maximum Available Control Technology (MACT) rules (December 14, 1994, 59 FR 64303). The State referenced an American Petroleum Institute (API) study that showed that monthly AVO inspections at gasoline terminals achieved essentially the same amount (no statistical difference) of emission reductions as an instrument monitoring program. The EPA used this study in the issuance of the MACT standard. Based on the API study and the adopted MACT standard, these changes to the Texas rule are considered acceptable because the same emission reductions toward the 15% ROP plans should be achieved. The CTG for gasoline terminals does not require monitoring for fugitive leaks. Therefore, allowing AVO monitoring instead of instrument monitoring is acceptable to meet RACT requirements.

Texas also modified its consumer products rules to revise the labeling requirement to provide an option that rather than including the date of manufacture, the producer can put on the product label a statement that the product was manufactured after a certain day, month, and year, so long as that date is after the compliance date of the rule of January 1, 1996. This change is acceptable because sufficient information is still available to determine if a product is subject to the rules.

6. May 21, 1997, Vent Gas, Fugitives and Miscellaneous Revisions to the VOC Rules

The State made a variety of changes to its rules for the control of VOC emissions. Most of the changes were minor clarifications. The most notable changes are:

Updating the definition of VOC to be consistent with EPA definition of VOC by adding three compounds (HCFC–225ca, HCFC–225cb and HFC 43–10mee) to the list of exempt chemicals because they have negligible photochemical reactivity. This action is consistent with EPA's definition (61 FR 52847, October 8, 1996).

The State revised the rules for the control of emissions from Marine Vessel Loading. These rules previously allowed only vessels certified as leak free to be loaded. Because many vessels, particularly from foreign ports could not provide the required certification, the State added the following alternatives: VOCs shall be loaded into the marine vessel with the vessel product tank at negative pressure; leak testing shall be performed using Method 21 during the final 20 percent of loading, or documentation of leak testing conducted during the last 12 months by Method 21. The above alternatives are consistent with the Marine Vessel Loading MACT, and should serve to limit leaks during the loading of VOCs to Marine Vessel loading operations.

The State deleted the requirement that repair of valves be accompanied by the simultaneous use of an organic vapor analyzer. This is known as directed maintenance. This requirement was added as part of the new leak detection and repair rules developed as part of the 15% ROP plan. Directed maintenance is not required by any CTG, so it is not needed to insure that RACT is in place. The State also did not project additional emission reductions because of the inclusion of directed maintenance, and there is some question whether additional emission reductions occur by requiring this practice. Therefore it is acceptable to remove this provision.

V. Final Action

By this action, EPA is approving the revisions to the Texas SIP submitted on January 10, 1996, concerning RACT for VOCs for the following source categories: plastic parts coating in the Dallas/Fort Worth area, SOCMI distillation processes, SOCMI reactor processes and VOL storage.

With the approval of these rules, the applicable requirements relating to RACT for eight of the 13 CTG source categories have been met. No action has been taken with respect to whether RACT has been implemented for the industrial wastewater, batch processing, wood furniture, ship building operations, or aerospace coatings categories.

Texas submitted rules for the control of emissions from wood coating operations as part of their November 13, 1993, SIP revision. The EPA granted these rules limited approval on May 22, 1997. Texas has submitted revised rules to control emissions from wood furniture coating and new rules for ship building operations on April 13, 1998. The EPA will take action on these revisions and new rules in separate **Federal Register** notices. Also, the EPA has issued a CTG for aerospace coating. Texas is beginning the process of developing rules based on the aerospace CTG. Finally, Texas proposed in their January 10, 1996, SIP revision that existing TNRCC rules represented RACT for industrial wastewater and batch processing. For batch processing, the State claimed that the existing vent gas rule represented RACT for batch processing. The EPA will evaluate the State's demonstrations for industrial wastewater and batch processing in future **Federal Register** actions.

In addition, EPA is approving as RACT revisions to the Texas rules for the control of VOCs submitted on January 11, 1995 (except for the industrial wastewater revisions and the municipal solid waste landfill revisions), July 12, 1995, November 10, 1995, March 13, 1996, August 9, 1996, and March 21, 1997. No action is being taken on the revisions to the municipal solid waste landfill rules. See the following discussion for EPA action on the revisions to the industrial wastewater rules.

Limited Approval of VOC Control Measures

On November 13, 1993, May 9, 1994, and August 3, 1994, Texas submitted a number of revisions to its rules for VOC control as part of its plan to meet the 15% ROP requirements of the Act. On May 22, 1997 (62 FR 27964), EPA published a limited approval of these control measures in the Texas 15% ROP plan. The EPA gave these rules limited approval because they strengthened the SIP. The rules could not receive full approval because the rules had not been demonstrated to meet the underlying requirements of the Act, such as the requirement to implement RACT. In this action, the limited approval of rules in the November 13, 1993, May 9, 1994, and August 3, 1994 submittals is converted to a full approval with the exception of the rules for the control of emissions from industrial wastewater, wood furniture, municipal waste landfills, and bakeries which retain their limited approval. These latter rules status as RACT will be addressed in separate actions.

Also, in today's action, the EPA is giving limited approval to the revisions to the industrial wastewater rules submitted on Janaury 11, 1995, because the rules strengthen the SIP by clarifying the requirements.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on March 29, 1999 without further notice unless we receive adverse comment by February 25, 1999. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

F. Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

G. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involved decisions intended to mitigate environmental health or safety risks.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 10, 1998.

Sam Becker,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation of part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraphs (c)(105) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(105) Revisions to the Texas State Implementation Plan, submitted to EPA in letters dated January 11, 1995; July 12, 1995; November 10, 1995; January 10, 1996; March 13, 1996; August 9, 1996 and May 21, 1997. Sections 115.122(a)(3), 126(a)(4), 126(a)(5), 127(a)(5) and 129(2)–129(5) pertaining to bakeries, 115.140–115.149 pertaining to Industrial Wastewater, 115.421(a)(13) pertaining to wood coating, and 115.152–115.159 pertaining to municipal waste landfills retain their limited approval as revised in these SIP revisions because they strengthen the SIP. All other sections of these SIP revisions receive full approval.

(i) Incorporation by Reference

(A) Revisions to the General Rules as adopted by the Texas Natural Resources Conservation Commission (Commission) on January 4, 1995, effective January 27, 1995, Section 101.10(a)(1).

(B) Revisions to Regulation V, as adopted by the Commission on January 4, 1995, effective on January 27, 1995, Sections 115.112(c), 115.112(c)(2)(A), 115.112(c)(3), 115.113(a), 115.113(b), 115.113(c), 115.115(a)(7), 115.115(b)(7), 115.116(a)(2), 115.116(a)(2)(A)–115.116(a)(2)(J), 115.117(c), 115.119 introductory paragraph, 115.121(b), 115.122(a)(4)(B), 115.123(a)(1), 115.127(a)(5)(C), 115.127(b)(2)(A), 115.127(b)(2)(B), 115.143 introductory paragraph, 115.147(6), 115.149(a), 115.149(b), 115.159(a), 115.219(c).

(C) Certification dated January 4, 1995 that copies of revisions to General Rules and Regulation V adopted by the Commission on January 4, 1995, and submitted to EPA on January 11, 1995, are true and correct copies of documents on file in the permanent records of the Commission.

(D) Revisions to Regulation V, as adopted by the Commission on May 24, 1995, effective June 16, 1995, Sections 115.212(a)(1), 115.212(a)(2), 115.212(a)(5)(A)(i), 115.212(a)(5)(A)(ii), 115.212(a)(5)(C), 115.212(a)(5)(C)(i), 115.212(a)(5)(C)(ii), 115.212(a)(5)(D), 115.212(a)(10)(C), 115.212(a)(10)(C)(i), 115.212(a)(10)(C)(ii), 115.212(a)(12)(B), 115.212(b)(1), 115.212(b)(3)(A), 115.212(b)(3)(A)(i), 115.212(b)(3)(A)(ii), 115.212(b)(3)(C), 115.212(c)(1), 115.212(c)(2), 115.212(c)(3)(A), 115.212(c)(3)(A)(i), 115.212(c)(3)(A)(ii), 115.212(c)(3)(C), 115.213(a), 115.213(b), 115.213(c), 115.214(a)(3), 115.214(a)(4), 115.214(a)(4)(A)–115.214(a)(4)(E), 115.214(a)(5), 115.215(a)(7), 115.215(b)(7), 115.216(a)(3)(A), 115.215(a)(3)(B), 115.216(a)(4)(A), 115.216(a)(4)(B), 115.216(a)(5)(A), 115.216(a)(6)(C), 115.217(a)(3), 115.217(a)(4), 115.217(a)(6)(A)–115.217(a)(6)(D), 115.217(b)(2), 115.217(b)(4), 115.217(b)(4)(D), 115.217(b)(5)(C), 115.217(c)(2), 115.217(c)(4)(D), 115.217(c)(5)(C), 115.219 introductory paragraph, 115.219(1), 115.219(2), 115.219(3), 115.219(4), 115.219(5).

(E) Certification dated May 24, 1995, that the copy of revisions to Regulation V adopted by the Commission on May 24, 1995, and submitted to EPA on July 12, 1995, is a true and correct copy of the document on file in the permanent records of the Commission.

(F) Revisions to Regulation V, as adopted by the Commission on October 25, 1995, effective November 20, 1995, Sections 115.131(a), 115.131(c), 115.132(c), 115.133(a), 115.133(b), 115.133(c), 115.135(a), 115.135(a)(5), 115.135(b), 115.135(b)(5), 115.137(a)(1), 115.137(a)(2), 115.137(a)(3), 115.137(c), 115.137(c)(4), 115.139 introductory paragraph.

(G) Certification dated October 25, 1995, that the copy of revisions to Regulation V adopted by the Commission on October 25, 1995, and submitted to EPA on November 10, 1995, is a true and correct copy of the document on file in the permanent records of the Commission.

(H) Revisions to Regulation V, as adopted by the Commission on December 6, 1995, effective December 28, 1995, Section 115.612(a)(1) (Table III).

(I) Certification dated December 6, 1995, that the copy of revisions to Regulation V adopted by the Commission on December 6, 1995, and submitted to EPA on March 13, 1996, is a true and correct copy of the document on file in the permanent records of the Commission.

(J) Revisions to the General Rules as adopted by the Texas Natural Resource Conservation Commission on February 14, 1996, effective March 7, 1996, Section 101.1, definitions of Automotive basecoat/clearcoat system (used in vehicle refinishing (body shops)), Automotive precoat (used in vehicle refinishing (body shops)), Automotive pretreatment (used in vehicle refinishing (body shops)), Automotive primer or primer surfacers (used in vehicle refinishing (body shops)), Automotive sealers (used in vehicle refinishing (body shops)), Automotive specialty coatings (used in vehicle refinishing (body shops)), Automotive three-stage system (used in vehicle refinishing (body shops)), Automotive wipe-down solutions (used in vehicle refinishing (body shops)), Cold solvent cleaning, Conveyorized degreasing, Gasoline bulk plant, Gasoline terminal, High-bake coatings, Low-bake coatings, Mechanical shoe seal, Open-top vapor degreasing, Remote reservoir cold solvent cleaning, Vehicle refinishing (body shops), Volatile organic compound.

(K) Revisions to Regulation V, as adopted by the Commission on February 14, 1996, effective March 7, 1996, Section 115.1, definitions of Automotive basecoat/clearcoat system (used in vehicle refinishing (body shops)), Automotive precoat (used in vehicle refinishing (body shops)), Automotive pretreatment (used in vehicle refinishing (body shops)), Automotive primer or primer surfacers (used in vehicle refinishing (body shops)), Automotive sealers (used in vehicle refinishing (body shops)), Automotive specialty coatings (used in vehicle refinishing (body shops)), Automotive three-stage system (used in vehicle refinishing (body shops)), Automotive wipe-down solutions (used in vehicle refinishing (body shops)), Cold solvent cleaning, Conveyorized degreasing, External floating roof, Gasoline bulk plant, Gasoline terminal, High-bake coatings, Internal floating cover, Low-bake coatings, Mechanical shoe seal, Open-top vapor degreasing, Remote reservoir cold solvent cleaning, Vehicle refinishing (body shops), Volatile organic compound, sections 115.112(a)(2), 115.112(a)(2)(A), 115.112(a)(2)(B), 115.112(a)(2)(D), 115.112(b)(2), 115.112(b)(2)(A), 115.112(b)(2)(B), 115.112(b)(2)(D), new 115.114, 115.116(a)(1), 115.116(b)(1), 115.117(a)(1), 115.117(a)(4), 115.117(a)(6), 115.116(a)(6)(A), 115.117(a)(7), 115.117(a)(7)(A), 115.117(b)(1), 115.117(b)(4), 115.117(b)(6)(A), 115.117(b)(7)(A), 115.117(c), 115.117(c)(1), 115.121(a)(1)–115.121(a)(4), 115.121(c), 115.122(a)(1)–115.122(a)(3), 115.122(a)(3)(C), 115.122(a)(3)(D), 115.122(c), 115.123(c), 115.126(a)(1), 115.126(a)(5), 115.126(a)(5)(A), 115.127(a)(1), 115.127(a)(2), 115.127(a)(2)(A)–115.127(a)(2)(E), 115.127(a)(3), 115.127(a)(3)(A)–115.127(a)(3)(C), 115.127(a)(4), 115.127(a)(4)(A)–115.127(a)(5)(E), 115.127(a)(5), 115.127(a)(6), 115.127(a)(7), 115.127(b)(2), 115.127(b)(3), 115.127(b)(4), 115.127(c), 115.127(c)(2)(B), 115.127(c)(3), 115.127(c)(4), 115.129(1)–115.129(5), 115.212(a)(11), 115.219 introductory paragraph, 115.219(5), 115.219(5)(A)–115.219(5)(C), 115.412(a), 115.413(a), 115.413(b), 115.416(a), 115.417(a)(3), 115.417(a)(4), 115.417(b)(5), 115.419 introductory paragraph, 115.421(a), 115.421(a)(1)–115.421(a)(8), 115.421(a)(8)(B), 115.421(a)(8)(B)(i)–115.421(a)(8)(B)(ix), 115.421(a)(8)(C), 115.421(a)(9)(A)(i)–115.421(a)(9)(A)(v), 115.421(a)(12)(A), 115.421(a)(12)(A)(i), 115.421(a)(12)(A)(ii), 115.421(b), 115.421(b)(1)–115.421(b)(8), 115.421(b)(8)(A), 115.421(b)(8)(A)(i)–115.421(b)(8)(A)(iv), 115.422(1), 115.422(2), 115.423(a)(1), 115.423(a)(2), 115.423(b), 115.423(b)(1), 115.423(b)(2), 115.423(b)(4), 115.425(a)(1)(C), 115.425(b)(1)(C), 115.426(a)(1)(B), 115.427(a)(1)(A)–115.427(a)(1)(D), 115.427(a)(3), 115.427(a)(5), 115.427(b)(2), 115.427(b)(2)(B)–115.427(b)(2)(D), 115.427(b)(3), 115.429(a), 115.429(b), 115.433(a), 115.433(b), 115.435(a)(5), 115.435(b)(5), 115.436(a), 115.436(b), 115.437(a)(1), 115.437(a)(2), 115.439(b), 115.439(c), 115.442(1)(F)(i), 115.422(1)(F)(ii), 115.443 introductory paragraph, 115.445(5), 115.446(7), 115.512(1), 115.512(2), 115.513 introductory paragraph, 115.517(1), 115.541(a)(2)(C), 115.541(2)(E), 115.541(b), 115.541(b)(5), 115.542(a)(1), 115.542(a)(2), 115.542(a)(5), 115.542(b), 115.542(b)(1), 115.542(b)(2), 115.542(b)(4), 115.543 introductory paragraph, 115.546(1)(A), 115.547 introductory paragraph, 115.547(2), 115.547(4), 115.547(5), 115.549(a)–115.549(c), 115.600 introductory paragraph and definitions of Consumer product, Pesticide, Sections 115.614(a), 115.614(c), 115.614(c)(1), 115.614(c)(1)(A)–115.614(c)(1)(F), 115.614(c)(2),

115.614(c)(2)(A)–115.614(c)(2)(F), 115.614(d), 115.614(e), 115.614(f), 115.617(h).

(L) Certification dated February 14, 1996, that copies of revisions to General Rules and Regulation V adopted by The Commission on February 14, 1996, and submitted to EPA on March 13, 1996, are true and correct copies of documents on file in the permanent records of the Commission.

(M) Revisions to Regulation V, as adopted by the Commission on July 24, 1996, effective August 16, 1996, Sections 115.214(a)(4), 115.214(a)(4)(E), 115.214(a)(5), 115.216(a), 115.216(a)(7), 115.216(a)(7)(A)–115.216(a)(7)(G), 115.616(a), 115.616(a)(1)–115.616(a)(3).

(N) Certifications dated July 24, 1996, that the copy of revisions to Regulation V adopted by the Commission on July 24, 1996, and submitted to EPA on August 9, 1996, is a true and correct copy of the document on file in the permanent records of the Commission.

(O) Revisions to the General Rules as adopted by the Commission on April 30, 1997, effective May 22, 1997, Section 101.1, introductory paragraph and definitions of Component, Leak, Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation, Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process, Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation, Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit, Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process, Tank-truck tank, Vehicle refinishing (body shops), Volatile organic compound (introduction paragraph).

(P) Revisions to Regulation V, as adopted by the Commission on April 30, 1997, effective May 22, 1997, Section 115.10, introductory paragraph and definitions of Fugitive emission, Leak, Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch distillation operation, Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch process, Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation operation, Synthetic Organic Chemical Manufacturing Industry (SOCMI) distillation unit, Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactor process, Tank-truck tank, Vehicle refinishing (body shops), Volatile organic compound (introduction paragraph), and Sections 115.112(a)(2), 115.112(a)(2)(F), 115.112(b)(2), 115.112(b)(2)(F), 115.114(a), 115.114(a)(1), 115.114(a)(2), 115.114(a)(4), 115.114(b), 115.114(b)(1), 115.114(b)(2), 115.114(a)(4), 115.114(c), 115.114(c)(1), 115.114(c)(2), 115.115(a)(6), 115.115(b)(6), 115.116(a)(5), 115.116(b)(5), 115.119(a), 115.119(b), 115.121(a)(1), 115.121(a)(2), 115.121(a)(2)(A)–115.121(a)(2)(E), 115.121(a)(3), 115.121(b), 115.121(c), 115.121(c)(1), 115.121(c)(2), 115.121(c)(3), 115.121(c)(4), 115.122(a)(1), 115.122(a)(1)(A), 115.122(a)(1)(B), 115.122(a)(1)(C), 115.122(a)(2), 115.122(a)(2)(A), 115.122(a)(2)(B), 115.122(a)(3), 115.122(a)(4), 115.122(a)(4)(A), 155.122(a)(4)(B), 115.122(b), 115.122(b)(1), 115.122(b)(2), 115.122(b)(3), 115.122(c), 115.122(c)(1), 115.122(c)(1)(A)–115.122(c)(1)(C), 115.122(c)(2), 115.122(c)(2)(A), 115.122(c)(2)(B), 115.122(c)(3), 115.122(c)(3)(A), 115.122(c)(3)(B), 115.122(c)(4), 115.122(c)(4)(A), 115.122(c)(4)(B), 115.123(a)(1), 115.123(b), 115.123(c), 115.126(a), 115.126(a)(3), 115.126(a)(4)(A), 115.126(a)(4)(B), 115.126(a)(4)(C), 115.126(a)(5)(A)–115.126(a)(5)(C), 115.126(b), 115.126(b)(3), 115.127(a)(2), 115.127(a)(2)(C), 115.127(a)(2)(D), 115.127(a)(2)(E), 115.127(a)(3), 115.127(a)(4), 115.127(a)(4)(A)–115.127(a)(4)(E), 115.127(a)(5), 115.127(c), 115.127(c)(1), 115.127(c)(1)(A)–115.127(c)(1)(C), 115.127(c)(2), 115.129(1)–115.129(5), 115.132(a)(1), 115.132(a)(4)(A), 115.132(a)(4)(B), 115.132(b)(1), 115.132(c), 115.132(c)(1), 115.136(a)(4), 115.136(b)(4), 115.137(a)(3), 115.137(b)(5), 115.137(c), 115.137(c)(4), 115.146(5), 115.147(5)(A), 115.147(5)(B), 115.147(5)(C), 115.149(b), 115.153 introductory paragraph, 115.156(3)(E)(i), 115.159(a), 115.159(b), 115.159(c), 115.211(a)(1), 115.211(a)(3), 115.212(a)(1), 115.212(a)(2), 115.212(a)(3), 115.212(a)(3)(A), 115.212(a)(3)(A)(i), 115.212(a)(3)(A)(ii), 115.212(a)(3)(B), 115.212(a)(3)(C), 115.212(a)(3)(C)(i), 115.212(a)(3)(C)(ii), 115.212(a)(3)(D), 115.212(a)(4), 115.212(a)(5), 115.212(a)(6), 115.212(a)(6)(A), 115.212(a)(6)(B), 115.212(a)(6)(C), 115.212(a)(7), 115.212(a)(7)(A)–115.212(a)(7)(D), 115.212(a)(8), 115.212(a)(8)(A), 115.212(a)(8)(B), 115.212(a)(8)(B)(i), 115.212(a)(8)(B)(ii), 115.212(a)(8)(B)(iii), 115.212(a)(8)(C), 115.212(a)(8)(C)(i), 115.212(a)(8)(C)(ii), 115.212(a)(9), 115.212(a)(10), 115.212(a)(10)(A), 115.212(a)(10)(B), 115.214(a)(4), 115.214(a)(4)(E), 115.214(a)(5), 115.215(a)(8), 115.216(a), 115.216(a)(1), 115.216(a)(6), 115.216(b), 115.216(b)(1), 115.217(a)(1), 115.217(a)(2), 115.217(a)(3), 115.217(a)(4), 115.217(a)(4)(A), 115.217(a)(4)(B), 115.217(a)(5), 115.217(a)(6), 115.217(a)(6)(A)–115.217(a)(6)(D), 115.217(a)(7), 115.217(a)(7)(A)–115.217(a)(7)(E), 115.217(a)(8), 115.217(a)(8)(A)–115.217(a)(8)(C), 115.217(a)(9), 115.217(b)(2), 115.217(b)(4)(A)–115.217(b)(4)(D), 115.217(b)(5), 115.217(c)(2), 115.217(c)(4), 115.217(c)(4)(A)–115.217(c)(4)(D), 115.217(c)(5), 115.219(1), 115.219(4), 115.221 introductory paragraph, 115.222(7), 115.223 introductory paragraph, 115.226 introductory paragraph, 115.226(1), 115.253 introductory paragraph, 115.256 introductory paragraph, 115.311(a)(1), 115.311(a)(2), 115.311(b)(1)–115.311(b)(2), 115.312(a)(2), 115.312(a)(2)(A)–115.312(a)(2)(C), 115.312(b)(2) 115.312(b)(2)(A)–115.312(b)(2)(C), 115.313(a), 115.313(b), 115.319 introductory paragraph, 115.322 introductory paragraph, 115.322(1)–15.322(5), 115.323 introductory paragraph, 115.323(1), 115.323(2), new 115.324, 115.325 introductory paragraph, 115.325(1)–115.325(3), 115.326 introductory paragraph, 115.326(1), 115.326(2), 115.326(2)(A)–115.326(2)(I), 115.326(3), 115.324(4), 115.327 introductory paragraph, 115.327(1), 115.327(1)(A)–115.327(1)(C), 115.327(2)–115.327(6), 115.329 introductory paragraph, 115.352(1), 115.352(2), 115.352(9), 115.353 introductory paragraph, 115.354(1)(C), 115.354(4)–115.354(7), 115.354(7)(A), 115.354(7)(B), 115.354(8), 115.356(1)(I), 115.356(3), 115.357(2), 115.357(8), 115.421(a), 115.421(a)(13)(A), 115.422(3)(A), 115.422(3)(B), 155.424(a)(1), 115.424(a)(2), 115.424(b)(1), 115.426(a)(1)(D), 115.426(a)(2)(C), 115.426(b)(1)(D), 115.426(b)(2)(C), 115.427(a)(5), 115.427(a)(6), 115.442(1)(B)–115.422(1)(D), 155.446(8), 115.449(a), 115.449(b), 115.449(c), 115.532(a)(5), 115.532(a)(5)(A), 115.532(a)(5)(B), 115.533(a), 115.533(b), 115.536(a)(5), 115.536(b)(5), 115.537(a)(5), 115.539 introductory paragraph, 115.552(b)(1), 115.522(b)(2), 115.533 introductory paragraph, 115.559(a)–115.559(d), and repeal of Sections 115.332, 115.333, 115.334, 115.335, 115.336, 115.337, 115.339, 115.342, 115.343, 115.344, 115.345, 115.346, 115.347, 115.349.

(Q) Certification dated April 30, 1997, that copies of revisions to General Rules and Regulation V adopted by the Commission on April 30, 1997, and submitted to EPA on May 21, 1997, are true and correct copies of documents on file in the permanent records of the Commission.

(R) Texas Natural Resource Conservation Commission order adopting amendments to the SIP; Docket Number 95–1198–RUL, issued December 19, 1995.

(ii) Additional Material

(A) TNRCC certification letter dated December 13, 1995, and signed by the Chief Clerk, TNRCC that the attached are true and correct copies of the SIP revision adopted by the Commission on December 13, 1995.

(B) The following portions of the SIP narrative entitled Post-1996 Rate of Progress Plan for the Beaumont/Port Arthur and Houston/Galveston Ozone Nonattainment Areas Dated December 13, 1995: The section pertaining to Storage Tanks (pp. 17–37), the section pertaining to SOCMI Reactor and Distillation (p. 40), the Section pertaining to Plastic Parts Coating (pp. 54–55).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 102–0120; FRL–6220–2a]

Final Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on November 6, 1998. This limited approval and limited disapproval action will incorporate portions of Rules 1, 2 and 4 of Regulation 2—Permits, for the Bay Area Air Quality Management District (BAAQMD or the "District") into the federally approved State Implementation Plan (SIP).

The intended effect of finalizing this limited approval and limited disapproval of these rules is to strengthen the federally approved SIP by incorporating these updated provisions and to satisfy Federal requirements for an approvable nonattainment area NSR SIP for the District.

Thus, EPA is finalizing simultaneous limited approval and limited disapproval as a revision into the California SIP under provisions of the Act regarding EPA action on SIP submittals, and general rulemaking authority. While strengthening the SIP, this revision contains deficiencies which the BAAQMD must address before EPA can grant full approval under Section 110(k)(3).

DATES: This action is effective on February 25, 1999.

ADDRESSES: Copies of the state submittal and other supporting information used in developing the final action are available for public inspection (Docket Number CA102–0120) at EPA's Region IX office during normal business hours and at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: John Walser, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1257.

SUPPLEMENTARY INFORMATION:

I. Applicability

The following rules are being approved for limited approval and limited disapproval into the California SIP: District Regulation 2 Permits, Rule 1 General Requirements, Rule 2 New Source Review, and Rule 4 Emissions Banking. Rules 2 and 4 were submitted by the California Air Resources Board on behalf of the District to EPA on September 28, 1994. Rule 1 was submitted by the California Air Resources Board on behalf of the District to EPA on December 31, 1990.

II. Background

On November 6, 1998, in 63 FR 59924, EPA proposed limited approval and limited disapproval for BAAQMD Regulation 2 Permits, Rules 1, 2 and 4. The BAAQMD adopted Rule 1 on November 1, 1989, and Rules 2 and 4 on June 15, 1994. Submitted Rule 1 was found to be complete on February 28, 1991, and submitted Rules 2 and 4 were found to be complete on November 22, 1994,[1] pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.[2] These rules were proposed for limited approval and limited disapproval. A detailed discussion of the background for these rules and EPA's evaluation is provided in the November 6, 1998 Proposed Rulemaking Notice (NPRM) cited above.

III. Response to Comments

A 30 day public comment period was provided in 63 FR 59924. EPA received one public comment on the proposal from the California Council for Environmental and Economic Balance (CCEEB), and is responding to that comment in this document.

CCEEB commented that EPA should specifically exclude Section 2–4–304.3 of Regulation 2, Rule 4 from any final SIP approval of all or portions of Rule 4. Section 2–4–304.3 of Rule 4 states that "emission reduction credits may not be used to exempt a source from any other air pollution control requirements whatsoever of federal, State, or District laws, rules and regulations." CCEEB is concerned that Section 2–4–304.3 addresses State law issues, and is not necessary to meet Federal Clean Air Act requirements. In addition, CEEB commented that the California Health and Safety Code Section 39602 provides that the California SIP "shall include only those provisions necessary to meet the requirements of the Clean Air Act."

Section 2–4–304.3 was not a section of Regulation 2, Rule 4 that EPA identified as a SIP-approvability issue in 63 FR 59924. As written, Section 2–4–304.3 of Rule 4 is not inconsistent with federal requirements or EPA policy and does not present any SIP-approvability issues. If CCEEB believes the language is inconsistent with state law, its remedy is at the state and local level. The District, if in agreement with CCEEB, would need to revise the rule and submit the rule modification to the California Air Resources Board as a SIP submittal. EPA does not have the authority to revise the rule language as requested, or exclude Section 2–4–304.3 from final SIP approval.

IV. EPA Evaluation and Final Action

BAAQMD Regulation 2 clarifies the terms and requirements that apply to the District's NSR regulation and emissions banking program. BAAQMD Regulation 2 was originally adopted as part of BAAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. For EPA's detailed evaluation of BAAQMD Regulation 2, Rules 1, 2 and 4, please refer to the NPRM at 63 FR 59924, November 6, 1998.

EPA has evaluated District Rules 1, 2 and 4 of Regulation 2 and has determined that the rules contain

[1] The proposed action on November 6, 1998 mistakenly identified the submittal and completeness date for Rule 1 as the same date as Rules 2 and 4.

[2] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

deficiencies and are not fully consistent with CAA requirements, EPA regulations and EPA policy. Because these rule deficiencies are inappropriate for inclusion in the SIP, EPA cannot grant full approval of these rules under section 110(k)(3). Also, because the submitted rules are not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA is granting final limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The final approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is finalizing limited approval of BAAQMD's submitted Regulation 2 under sections 110(k)(3) and 301(a) of the CAA.

It should be noted that the rules covered by this final rulemaking have been adopted by the BAAQMD, subsequently revised, and are currently in effect in the BAAQMD. EPA's final limited disapproval action does not prevent the BAAQMD or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Docket

Copies of Bay Area's submittal and other information relied upon for the final actions are contained in docket number CA102–0120 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final rulemaking. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

C. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 4, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(182)(i)(B)(*6*) and (c)(199)(i)(A)(*8*) to read as follows:

§ 52.220 Identification of Plan.

* * * * *

(c) * * *

(182) * * *

(i) * * *

(B) * * *

(*6*) Regulation 2, Rule 1 adopted on November 1, 1989.

* * * * *

(199) * * *

(i) * * *

(A) * * *

(*8*) Regulation 2, Rule 2 and Rule 4 adopted on June 15, 1994.

* * * * *

[FR Doc. 99–1647 Filed 1–25–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD079–3035a; FRL–6218–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOCs From the Manufacture of Explosives and Propellant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision imposes reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) from sources that manufacture explosives and propellant. The intent of this action is to approve Maryland's request to amend its SIP to include RACT requirements to control VOCs from the manufacture of explosives and propellant.

DATES: This direct final rule is effective without further notice on March 29, 1999 unless by February 25, 1999, adverse or critical comments are received by EPA. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III; 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth at (215) 814–2183, or by e-mail at wentworth.paul@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above EPA Region III address.

SUPPLEMENTARY INFORMATION:

I. Background

On August 28, 1998, the State of Maryland submitted a formal revision to its SIP, which consists of amendments to COMAR 26.11.19 *Control of Volatile Organic Compounds from Specific Processes.* The revision consists of the addition of a new regulation at COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* to establish RACT for VOCs from the manufacture of explosives and propellant. This revision was submitted to satisfy the requirements of sections 182 and 184 of the Clean Air Act to implement RACT on major sources of VOCs.

II. Summary of the SIP Revision

The new regulation COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* applies to sources which manufacture explosives and propellant. The carrier for some of the raw materials used in the manufacture of explosives and propellant and the medium in which those raw materials are mixed contain VOCs. The majority of the VOC emissions are from the mixing and drying operations. The only currently known existing source of VOC emissions from the manufacture of explosives and propellant is located at the Naval Surface Warfare Center in Indian Head, Maryland.

COMAR 26.11.19 *Control of Volatile Organic Compounds from Specific Processes* applies statewide as does COMAR 26.11.19.25. The specific provisions found in COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* are summarized below:

A. Applicability

This regulation applies to a person who owns or operates existing equipment at a premise that has a potential to emit 25 tons or more of VOC per year from all explosives and propellant manufacturing equipment at the premises.

It also applies to a person who constructs, owns, or operates new equipment that has or will have total actual VOC emissions of 50 pounds or more per day. It must be noted that the applicability provisions of COMAR 26.11.19.25 pertaining to new equipment are imposed in addition to any applicable new source review (NSR) permitting requirements of the Federal Clean Air Act and the Maryland SIP. These provisions of COMAR 26.11.19.25 do not replace any applicable NSR requirements.

B. Definitions

COMAR 26.11.19.25 includes definitions of the following terms: Existing equipment, Explosives and propellant manufacturing equipment, New equipment, and Nitramine propellant manufacturing equipment.

C. General Requirements

Pursuant to COMAR 26.11.19.25 (C)(1), a person who owns or operates existing explosives and propellant manufacturing equipment subject to this regulation shall: (a) Install a VOC control device, having a VOC destruction or removal efficiency of 85 percent or more overall, on all active nitramine propellant mixing equipment that has a capacity of 150 gallons or more; (b) prepare and submit for approval by the Maryland Department of the Environment by not later than September 1, 1997, a good operating practices manual that when implemented will minimize VOC emissions from all other existing explosive, propellant, and nitramine propellant manufacturing equipment; and (c) implement the good operating practices within 30 days after approval by the Department.

Pursuant to COMAR 26.11.19.25(C)(2), a person who constructs, owns, or operates new equipment subject to this regulation shall reduce emissions from the new equipment by 85% or more, overall. It must be noted that these provisions of COMAR 26.11.19.25 pertaining to new equipment are imposed in addition to any applicable new source review (NSR) permitting requirements of the Federal Clean Air Act and the Maryland SIP. These provisions of COMAR 26.11.19.25 do not replace any applicable NSR requirements.

D. Reporting and Testing Requirements

A person who is subject to this regulation shall:

(1) By no later than October 1, 1997, submit to the Department:

(a) A VOC emissions inventory for calendar year 1990 and for each subsequent year through calendar year 1996 for all explosive and propellant manufacturing equipment at the premises, and

(b) Complete permit to construct application for the control device required in subsection C(1)(a) of the regulation;

(2) Not later than 90 days after the control device required in section C(1)(a) of this regulation has been installed must perform a stack test to demonstrate compliance with the requirements of subsection C of this regulation; and

(3) Submit to the Department a stack test report within 60 days after completing the test.

EPA has determined that the control requirements contained in these revisions to the subject rule constitutes an acceptable level of RACT on major sources manufacture explosives and propellants. EPA is approving this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This rule will be effective March 29, 1999 without further notice unless by February 25, 1999, adverse or critical comments are received. If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Only parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 29, 1999 and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving the addition of COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* submitted by the State of Maryland on August 28, 1998 as a revision to the Maryland SIP.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities.

Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing* as a revision to the Maryland SIP must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Dated: December 30, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(141) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c)* * *

(141) Revisions to the Maryland State Implementation Plan submitted on August 28, 1998 by the Maryland Department of the Environment.

(i) Incorporation by reference.

(A) Letter of August 28, 1998 from the Maryland Department of the Environment transmitting revisions to COMAR 26.11.19 pertaining to the control of VOCs from special processes. The revision adds a new regulation at COMAR 26.11.19.25 for the control of VOC compounds from explosives and propellant manufacturing adopted by the Secretary of the Environment on July 15, 1997 and effective August 11, 1997.

(B) Revisions to COMAR 26.11.19 entitled *Volatile Organic Compounds from Specific Processes:* The addition of new regulation COMAR 26.11.19.25 *Control of Volatile Organic Compounds from Explosives and Propellant Manufacturing.*

(ii) Additional Material: Remainder of August 28, 1998 Maryland State submittal pertaining to COMAR 26.11.19.25 to control VOCs from sources that manufacture explosives and propellants.

[FR Doc. 99–1762 Filed 1–25–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO 043–1043(a); FRL–6220–1]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is promulgating a redesignation request and State Implementation Plan (SIP) revision submitted by the state of Missouri on June 13, 1997. Additional material was sent on June 15, 1998. The request is to redesignate the portion of the St. Louis metropolitan area, currently a carbon monoxide (CO) nonattainment area, to a CO attainment area. Under the Clean Air Act (CAA) as amended in 1990, a redesignation to attainment may be promulgated if the state demonstrates full compliance with the redesignation requirements set forth in section 107(d)(3)(E). In this action, the EPA is also approving Missouri's SIP revision regarding the state's CO maintenance plan.

DATES: This direct final rule is effective on March 29, 1999 without further notice, unless the EPA receives adverse comment by February 25, 1999. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Stanley Walker, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stanley Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Redesignation Request

The CAA provides a process whereby a state may request the EPA to redesignate a nonattainment area to an attainment area for CO. As set forth in the CAA, an area must meet the requirements outlined in section 107(d)(3)(E). These requirements and the EPA's analysis of Missouri's submission as it relates to the requirements, are detailed in section II, below.

Missouri has submitted a redesignation based on ambient monitoring data showing no violation of the standard since 1987.

B. Summary of the SIP Revision

On June 13, 1997, the state submitted a maintenance plan and requested that the EPA redesignate the St. Louis metropolitan area from nonattainment to attainment for CO in accordance with the requirements of the CAA. On June 15, 1998, the state submitted additional material to further support Missouri's redesignation request. The St. Louis CO nonattainment area includes the city of St. Louis and the portion of St. Louis County encompassed by Interstate 270 and the Mississippi River.

II. Analysis of the Redesignation Request and Maintenance Plan

A. Attainment of the CO National Ambient Air Quality Standard (NAAQS) (Section 107(d)(3)(E)(i))

EPA Analysis

In accord with section 107(d)(3)(i) of the CAA, the state of Missouri showed that the area has attained, and continues to attain, the applicable NAAQS. Missouri used CO air quality data for the years 1994–1995 to form the basis of Missouri's request to redesignate St. Louis to attainment. Data collected in subsequent years confirm that no violations of the CO standard occurred and St. Louis continues to show attainment through 1998. The ambient air quality data are collected at ambient monitoring stations that are located in areas which are predicted to have high concentrations. These data are collected and quality assured in accordance with 40 CFR Part 58 and recorded in the Aerometric Information Retrieval System.

Criterion No. 1 has been met.

B. Fully Approved SIP Under Section 110(k) of the CAA (Section 107(d)(e)(ii))

The SIP for the area must be fully approved under section 110(k) and must satisfy all requirements that apply to the area.

EPA Analysis

As required, a CO SIP was submitted by the Missouri Department of Natural Resources (MDNR) prior to the 1990 CAA. This SIP was approved under the pre-1990 CAA Amendments. The St. Louis area was designated as an unclassified nonattainment area under the 1990 CAA Amendments. Since 1990, several revisions to Missouri's SIP which target CO emissions have been fully approved by the EPA under section 110(k) of the CAA. Please see the Technical Support Document for a listing of these additional regulations. Further discussion of how the Missouri SIP for St. Louis meets the requirements of section 110 and Part D can be found in Section II(D).

Criterion No. 2 has been met.

C. Permanent and Enforceable Improvement in Air Quality

As required, the State of Missouri attributes the improvement in air quality to regulations which are permanent and enforceable.

EPA Analysis

Missouri estimated that reductions have occurred from the year that the design value was determined for designation and classification. Most of

these reductions were achieved from Federal national programs and SIP measures. Specifically, reductions occurred due to the Federal Motor Vehicle Control Program and National Emission Standards for nonroad engines. In addition, the permanence of the reductions is evidenced by the fact that no violations have occurred since 1988.

The EPA finds that the measures have resulted in permanent and enforceable CO emission reductions that have allowed St. Louis to attain the NAAQS.

Criterion No. 3 has been met.

D. Applicable Requirements Under Section 110 and Part D

Section 110(a)(2) and Part D requirements must be met prior to approval of the redesignation request. In general, the EPA evaluates the state's compliance with requirements that come due under the Act prior to the submittal of a complete redesignation request. Areas, such as St. Louis, that are unclassified, are subject to the provisions of subpart 1 of Part D. The EPA has reviewed the SIP to ensure that it contains all requirements of section 110(a)(2) and subpart 1 of Part D.

Section 110 Requirements

The EPA has analyzed the SIP and determined that it is consistent with the requirements as amended in section 110(a)(2) of the Act. The SIP revisions relevant to CO were adopted by the Missouri Air Conservation Commission after reasonable notice and public hearing. The SIP contains enforceable emission limitations adequate to produce attainment, and requires monitoring, compiling, and analyzing ambient air quality data. The SIP also provides for adequate funding, staff, and associated resources necessary to implement SIP requirements and has provisions for review of new sources, and requires stationary source emissions monitoring and reporting.

Part D Requirements

Under Part D, an area's classification determines the requirements to which it is subject. Subpart 1 of Part D sets forth the basic requirements applicable to all nonattainment areas. The requirements for CO areas in Subpart 3 are applicable to CO areas in the moderate and serious classifications. The St. Louis area is an unclassified nonattainment area, and the applicable Part D requirements are in subpart 1 of Part D.

Subpart 1 of Part D—Section 172(c) Plan Provisions

The most relevant subpart 1 requirements are in section 172(c). These requirements include reasonably available control technology for existing sources, a new source review (NSR) program meeting the requirements of section 173, reasonable further progress (RFP) toward attainment of the applicable standard, an emission inventory of sources of the relevant pollutant, other measures as necessary for attainment, and a demonstration of attainment by the applicable attainment date. In the case of St. Louis, the state has satisfied all of the section 172(c) requirements necessary for redesignation.

Since St. Louis was subject to nonattainment plan requirements prior to the 1990 Amendments, many of the subpart 1 requirements had already been met. The requirements for RFP, identification of certain emission increases, and other measures needed for attainment have already been met, and there have been no violations of the NAAQS since 1987. In addition, the state already had reasonably available control technology (RACT) for major sources, and no new RACT requirements were triggered for unclassified areas. With respect to the section 172(c)(2) RFP requirements, since St. Louis has attained the CO NAAQS, no new RFP requirements apply.

The section 172(c)(3) emissions inventory requirements have been met by the inventory included in the maintenance plan. See discussion in section E of this document.

Section 172(c)(4) requires the state to demonstrate to the satisfaction of the Administrator that emissions quantified for the purpose of growth factors will be consistent with the achievement of RFP, and will not interfere with attainment of the applicable NAAQS by the attainment date. In the maintenance plan, the state demonstrates continued attainment through the year 2008. Growth factors were included in the state's analysis.

As for the section 172(c)(5) new source permitting requirements, the state revised its rule to meet the requirements of section 173 of the Act, and the EPA approved the revisions. (See 40 CFR section 52.1320(86).)

The state will maintain an ambient monitoring network to ensure that the NAAQS continues to be met.

As discussed in section 172(c), the state provides a discussion of its contingency measures in section E.5 pertaining to maintenance plans. The area has met its RFP requirements and attained the standard before the attainment date. In accord with the EPA's "Technical Support Document to Aid States with the Development of Carbon Monoxide State Implementation Plan," nonclassified CO areas such as St. Louis are not required to have contingency measures as defined under 172(c). The EPA believes it is appropriate not to apply the requirement for contingency measures for areas under the de minimis approach.

Criterion No. 4 has been met.

E. Approved Limited Maintenance Plan

Section 107(d)(3)(E)(iv) states that an area must have a maintenance plan meeting the requirements of section 175A.

1. Limited Maintenance Plan Option

The EPA provided national guidance regarding the Limited Maintenance Plan option in an October 6, 1995, memorandum from Joseph W. Paisie, Group Leader, Integrated Policy and Strategies Group, to Air Branch Chief, entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." In accord with the aforementioned memorandum, the CO design value for the area, based on eight consecutive quarters (two years of data) used to demonstrate attainment, must be at or below 7.65 parts per million (ppm) (85 percent of the exceedance levels of the CO NAAQS). In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. To assess whether an unclassified area meets the applicability cutoff for the limited maintenance plan, a separate design value must be developed for every monitoring site. If the area design value is at or below 7.65 ppm, the state may select the limited maintenance plan option for the first ten-year maintenance period under section 175A. As discussed below, the design value for the St. Louis CO nonattainment area is below 7.65 ppm, qualifying it for the limited maintenance plan option.

2. Attainment Inventory

The maintenance plan contains a comprehensive emissions inventory of CO emissions for the years 1994 to 1995 which establishes the amount of emission reductions that were necessary to reach attainment with the CO NAAQS.

The state developed an attainment emissions inventory to identify a level of emissions in the area which are sufficient to attain the NAAQS. This inventory is consistent with the EPA's most recent guidance on emissions inventories for nonattainment areas and represents emissions during the time period associated with the monitoring

data showing attainment. The inventory is based on actual "typical winter day" (tpwd) emissions of CO.

A baseline inventory for the year 1993 was used versus 1990 baseline because the state believed the 1993 base year was a better approximation of actual emissions. The emission inventory contains attainment year inventories for 1993 through April 1998 and projected inventories for 1998 through 2008 for the maintenance period. The inventories include point, area, on-road mobile, and nonroad mobile source categories; growth projections; action line determination; emission projection methodologies; and sample calculations for point and area sources. The highway mobile source inventory information includes vehicle miles traveled (VMT) growth projections, and Mobile 5.0 model inputs and outputs.

The state has met the required inventory criterion.

3. Demonstration of Maintenance of the CO NAAQS

The Maintenance Demonstration. The maintenance demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (7.65 ppm or 85 percent of the CO NAAQS). There is no requirement to project emissions over the maintenance period. The EPA believes if the area begins the maintenance period at or below 85 percent of exceedance levels, the air quality along with the continued applicability of prevention of significant deterioration or NSR requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial ten-year maintenance period.

EPA Evaluation. Total CO emissions were projected from 1993 through the year 2008. Using the 1994 and 1995 monitoring, the state calculated a design value of 5.7 ppm which is well below the design value for attainment. All emissions are reported in tpwd.

Missouri demonstrated that emissions for CO through the year 2008 will remain below the 1993 base year levels because of permanent and enforceable measures, while allowing for growth in population and VMT.

a. Monitoring Network/Verification of Continued Attainment. As required under the limited maintenance plan option, Missouri verified the attainment status of the area over the maintenance period; the maintenance plan contains provisions for continued operation of an appropriate EPA approved air quality monitoring network, in accordance with 40 CFR Part 58.

b. Contingency Plan. Section 175A of the Act requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. The contingency plan is considered to be an enforceable part of the SIP and should ensure that contingency measures are adopted expeditiously once they are triggered by a specific event. The contingency plan should identify the measures to be promptly adopted and provide a schedule and procedure for adoption and implementation of the measures. The state should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented.

Missouri meets the above requirement by committing to expeditiously implement contingency provisions in response to future emission increases in CO emissions or violation of the CO emission standards. Missouri has identified an action line which would trigger contingency controls for the scenario with no recorded violations of the CO NAAQS. Also, the state requires additional CO controls for future year emissions that exceed the contingency action line.

c. Conformity Determination Under Limited Maintenance Plans. The transportation conformity rule (58 FR 62188; November 24, 1993) and the general conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period, because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determinations under the transportation conformity rule could be considered to satisfy the necessary requirements. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the requirements specified in section 93.158(a)(5)(i)(A) of the rule.

As required by section by 176 of the CAAA, MDNR has developed transportation/air quality conformity procedures (10 CSR 10–5.480) and general conformity procedures (10 CSR 10–6.300) that are consistent with Federal conformity regulations. The state demonstrates conformity of Federal actions by indicating that expected emissions from the planned actions are consistent with the emissions budget for the area. As discussed above, the state meets the emissions budget criteria as required.

III. Final Action

The EPA is taking action to approve the St. Louis area maintenance plan because it meets the requirements set forth in section 175(A) in the CAA and in the aforementioned memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas." In addition, the Agency is approving the state of Missouri's request to redesignate the St. Louis CO area to attainment, because Missouri has demonstrated compliance with section 107(d)(3)(E) for redesignation.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective March 29, 1999 without further notice unless the Agency receives relevant adverse comments by February 25, 1999.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 29, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, Enhancing the Intergovernmental Partnership, the EPA

may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. E.O. 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See Section 307(b)(2).]

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: January 7, 1999.

William Rice,

Acting Regional Administrator, Region VII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. Subpart AA is amended by adding § 52.1340 to read as follows:

* * * * *

§ 52.1340 Control strategy: Carbon monoxide.

Approval—A maintenance plan and redesignation request for the St. Louis, Missouri, area was submitted by the Director of the Missouri Department of Natural Resources on June 13, 1997. Additional information was received on June 15, 1998. The maintenance plan and redesignation request satisfy all applicable requirements of the Clean Air Act.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. In § 81.326 the table for Missouri carbon monoxide is revised to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—CARBON MONOXIDE

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
St. Louis Area:				
St. Louis City	.....	Attainment.		
St. Louis County (part):				
The area encompassed by the I–270 and the, Mississippi River..	.....	Attainment.		
AQCR 137 Northern Missouri Intrastate:				
Pike County	.....	Unclassifiable/Attainment.		
Ralls County	.....	Unclassifiable/Attainment.		
AQCR 137 Northern Missouri Intrastate (Remainder of)	.....	Unclassifiable/Attainment.		
Adair County				
Andrew County				
Atchison County				
Audrain County				
Boone County				
Caldwell County				
Callaway County				
Carroll County				
Chariton County				
Clark County				
Clinton County				
Cole County				
Cooper County				
Daviess County				
De Kalb County				
Gentry County				
Grundy County				
Harrison County				
Holt County				
Howard County				
Knox County				
Lewis County				
Lincoln County				
Linn County				
Livingston County				
Macon County				
Marion County				
Mercer County				
Moniteau County				
Monroe County				
Montgomery County				
Nodaway County				
Osage County				
Putnam County				
Randolph County				
Saline County				

MISSOURI—CARBON MONOXIDE—Continued

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Schuyler County				
Scotland County				
Shelby County				
Sullivan County				
Warren County				
Worth County				
Rest of State	.....	Unclassifiable/Attainment.		
Barry County				
Barton County				
Bates County				
Benton County				
Bollinger County				
Buchanan County				
Butler County				
Camden County				
Cape Girardeau County				
Carter County				
Cass County				
Cedar County				
Christina County				
Clay County				
Crawford County				
Dade County				
Dallas County				
Dent County				
Douglas County				
Dunklin County				
Franklin County				
Gasconade County				
Greene County				
Henry County				
Hickory County				
Howell County				
Iron County				
Jackson County				
Jasper County				
Jefferson County				
Johnson County				
Laclede County				
Lafayette County				
Lawrence County				
Madison County				
Maries County				
McDonald County				
Miller County				
Mississippi County				
Morgan County				
New Madrid County				
Newton County				
Oregon County				
Ozark County				
Pemiscot County				
Perry County				
Pettis County				
Phelps County				
Platte County				
Polk County				
Pulaski County				
Ray County				
Reynolds County				
Ripley County				
Scott County				
Shannon County				
St. Charles County				
St. Clair County				
St. Francis County				
St. Louis County (part) Remainder of County				
Ste. Geevieve County				
Stoddard County				
Stone County				

MISSOURI—CARBON MONOXIDE—Continued

Designated Area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Taney County Texas County Vernon County Washington County Wayne County Webster County Wright County				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 99–1332 Filed 1–25–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6224–6]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing MT–31 as an Unacceptable Refrigerant Under EPA's Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this action, EPA's Significant New Alternatives Policy (SNAP) program lists as unacceptable for all refrigeration and air-conditioning end-uses the refrigerant blend known by the trade name MT–31. This refrigerant blend was previously listed as an acceptable substitute for CFC–12 and HCFC–22 in various end-uses within the refrigerant and air-conditioning sector. After June 3, 1997, the date on which EPA published the Notice of Acceptability that listed MT–31 as acceptable, EPA became aware of toxicity data concerning one of the chemicals contained in the MT–31 blend that present significant concerns about risks to human health that may arise as a result of the use of this chemical, either alone or in a blend, in the refrigeration and air-conditioning sector. Today, therefore, EPA is removing MT–31 from the list of acceptable substitutes, and is listing MT–31 as unacceptable in all refrigeration and air-conditioning end-uses.

DATES: *Effective Date:* This action is effective Janaury 26, 1999. *Comments:* EPA will consider all written comments received by February 25, 1999 to determine whether any change to this action is necessary.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Kelly Davis, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, DC 20460, (Docket # A–91–42), (202)–564–2303.

FOR FURTHER INFORMATION CONTACT: Kelly Davis, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, DC, 20460, (202)–564–2303 or electronically at davis.kelly@epa.gov. General information about EPA's SNAP program can be found by calling EPA's Stratospheric Ozone Protection Hotline at (800) 296–1996 or by viewing EPA's SNAP Program world wide web site at www.epa.gov/ozone/title6/snap/snap.html.

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IV. Additional Information

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.
- *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.
- *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into

interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History Background

On March 18, 1994, EPA published the Final SNAP Rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

C. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make under the SNAP program. The Agency has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ozone-depleting substitute with a substitute listed by SNAP as unacceptable for that end-use. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Such substitutes are described as "acceptable subject to use conditions." Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, *e.g.*, performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

As described in the Final SNAP Rule, EPA does not believe that rulemaking procedures are required to list alternatives that are determined to be acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA periodically adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published in separate Notices in the **Federal Register**.

Also as described in the Final SNAP Rule, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes. In this interim final rule, however, EPA is removing an alternative from lists of acceptable substitutes for CFC–12 and HCFC–22 refrigerants, and is listing MT–31 as unacceptable in all refrigeration and air-conditioning end-uses, without prior notice and comment. The reasons for the Agency's decision to do so in an interim final rule rather than in a notice-and-comment rulemaking are discussed in section D below.

D. Necessity for Interim Final Rule

Section 307(d)(3) of the Clean Air Act (CAA or the Act) states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register**. The promulgation or revision of regulations under Title VI of the CAA (relating to stratospheric ozone protection) is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraphs (A) or (B) of section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq.

APA section 553(b) requires that any rule to which it applies be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, APA section 553(b)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice-and-comment requirements of both APA section 553(b) and CAA section 307(d).

EPA believes that the circumstances presented here provide good cause to take the actions set forth in this final rule without prior notice and comment, since providing prior notice and comment would be impracticable and contrary to the public interest. Specifically, EPA is concerned about health risks to workers associated with the use in replacement refrigerant formulations of one of the chemicals found in MT–31, in light of toxicity data regarding this chemical. EPA became aware of these data only after the Agency listed MT–31 as an acceptable

replacement refrigerant. Due to the fact that the manufacturer of MT–31 has claimed confidentiality with respect to the chemical composition of MT–31, EPA is unable to identify in this interim final rule which chemical in MT–31 is the subject of the Agency's concerns.

The toxicity data indicate that typical worker exposure levels for the MT–31 chemical exceed minimal levels of concern for noncancer risks. Exposures to this chemical have been shown to lead to kidney damage. The Agency has conducted an exposure analysis to determine probable exposure concentrations of MT–31 in occupational settings. The Agency has determined that when this chemical is used as a refrigerant or as a component in a refrigerant blend, persons who manufacture, service or dispose of refrigeration and air-conditioning equipment that contains MT–31 may be exposed to levels of this chemical that put them at risk of kidney damage, particularly if they have not been specifically trained in the handling of this chemical or of blends containing this chemical. The Agency, moreover, is aware that MT–31 is currently commercially available, and is being used as a refrigerant, in multiple end-uses (*e.g.*, airport air-conditioning systems, ice machines and bus air-conditioning), in multiple commercial locations throughout the nation. EPA believes that persons servicing or disposing of the refrigeration and air-conditioning units in these locations are subject to a real threat of exposure and consequently, to an actual and immediate health risk. Therefore, the Agency believes that good cause exists to take the actions set forth in this final rule without prior notice and comment

As stated in section 612(c) of the Act, one of the Agency's objectives in implementing the SNAP program is to promulgate rules making it unlawful to replace any class I or class II substance with any substitute that EPA determines may present adverse effects to human health or the environment. The Agency believes that the chemical composition of MT–31 presents an unacceptable risk to human health, and that immediate action by EPA is necessary in order to avoid any resulting harm. The use of MT–31 in the refrigeration and air-conditioning sector will come to a halt most quickly through the publication of this interim final rule. In addition, this action, combined with Agency outreach and communication efforts, should provide any current or potential users of MT–31 with immediate notice that EPA does not consider MT–31 to be an appropriate compound to use in the refrigeration and air-conditioning sector, and that potential health risks are associated with exposure to MT–31 during the manufacture and servicing of any refrigeration and air-conditioning equipment that contains MT–31. A full notice-and-comment rulemaking would defeat the regulatory objective of the SNAP program to fully ensure protection of human health.

Nonetheless, EPA is providing 30 days for submission of public comments following today's action. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, APA section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. Since EPA has determined that good cause exists to remove MT–31 from the lists of replacement refrigerants acceptable under the SNAP program, and list it instead as unacceptable as a replacement refrigerant, EPA is making this action immediately effective in order to ensure the fullest protection of human health.

II. Listing of MT–31 as Unacceptable

EPA originally listed MT–31 as an acceptable replacement refrigerant in a Notice of Acceptability published at 62 FR 30275 on June 3, 1997. In that Notice, EPA specifically listed MT–31 as acceptable as a substitute for CFC–12 in the following retrofitted and new systems:

- Centrifugal and Reciprocating Chillers
- Industrial Process Refrigeration
- Cold Storage Warehouses
- Refrigerated Transport
- Retail Food Refrigeration
- Vending Machines
- Water Coolers
- Commercial Ice Machines
- Household Refrigerators
- Household Freezers

and as a substitute for HCFC–22 in all retrofitted end-uses. EPA stated in the Notice that "[t]his blend does not contain any flammable components, and all components are low in toxicity."

As noted above, however, in light of information recently reviewed by EPA concerning the toxicity of one of the chemicals contained in MT–31, EPA now is greatly concerned about this chemical in replacement refrigerant formulations. Due to the fact that the manufacturer of MT–31 has claimed confidentiality with respect to the chemical composition of MT–31, EPA is unable to identify in this interim final rule which chemical is the subject of the Agency's concerns.

EPA has completed a risk screen for this chemical which indicates that the use of MT–31 in the refrigeration and air-conditioning end-uses listed above is unacceptable because of the significant health concerns associated with these uses of the chemical contained in MT–31. (Note that a risk screen for the components of MT–31 is not located in the docket because the manufacturer of MT–31 has claimed confidentiality with respect to the chemical composition of MT–31.) In particular, EPA's risk screen indicates that MT–31 will pose a risk to anyone exposed to the chemical during the manufacture or servicing of refrigeration or air-conditioning equipment that uses refrigerant that contains this chemical. Because of the extremely low occupational exposure limit for the chemical, and the fact that worker exposure levels for the chemical were predicted to be above levels of concern for noncancer risks, this chemical, and therefore MT–31, should not be used in the refrigeration and air conditioning sector. It should be noted that today's determination has no bearing on the use of MT–31 other than as a replacement for a class I or class II substance in the refrigeration and air-conditioning sector. Other industrial sectors may have safeguards in place to protect against worker exposure to MT–31. Based on the review of the available toxicity information related to this chemical, and the results of the EPA risk screen, EPA is today listing MT–31 as unacceptable for all refrigeration and air-conditioning end-uses, whether as a substitute for a class I substance such as CFC–12, or as a substitute for a class II substance such as HCFC–22.

III. Summary of Supporting Analyses

A. Unfunded Mandates Reform Act and Regulatory Flexibility Act

Since this action is not subject to notice-and-comment rulemaking requirements under the APA or any other law, it is also not subject to sections 202, 204 or 205 of the Unfunded Mandates Reform Act (UMRA). In addition, since this action does not impose annual costs of $100 million or more on small governments or uniquely affect small governments, the Agency has no obligations under section 203 of UMRA. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute as stated above, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

B. Executive Order 12866: Review of Significant Regulatory Actions by OMB

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this rule is not a "significant regulatory action" within the meaning of the Executive Order.

C. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). The OMB Control Numbers are 2060–0226 and 2060–0350.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate upon any State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Executive Order 13045: Children's Health Protection

This final rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), § 12(d), Pub. L. 104–113, requires federal agencies and departments to use the technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

IV. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m., Eastern Time.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rule published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rules published under the SNAP program, as well as EPA publications on protection of atmospheric ozone, are available from EPA's Ozone World Wide Web site at http://www.epa.gov/ozone/

title6/snap, and from the Stratospheric Protection Hotline number listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 19, 1999.

Carol M. Browner,

Administrator.

40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

2. Subpart G is amended by adding Appendix E to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix E to Subpart G—Unacceptable Substitutes Listed in the Janaury 26, 1999 Final Rule, Effective Janaury 26, 1999

REFRIGERATION AND AIR-CONDITIONING SECTOR UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All refrigeration and air-conditioning end uses	MT–31	Unacceptable	Chemical contained in this blend presents unacceptable toxicity risk.

[FR Doc. 99–1764 Filed 1–25–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6224–7]

RIN 2060–AG12

Protection of Stratospheric Ozone: Listing Hexafluoropropylene (HFP) and HFP-Containing Blends as Unacceptable Refrigerants Under EPA's Significant New Alternatives Policy (SNAP) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: With this action, EPA's Significant New Alternatives Policy (SNAP) program lists as unacceptable for all refrigeration and air-conditioning end-uses hexafluoropropylene (HFP) and any blend containing HFP. Today's action responds to EPA's recent discovery of toxicity data concerning HFP, which present significant concerns about risks to human health that may arise as a result of exposure to HFP, either as a single chemical or in a blend, in the refrigeration and air-conditioning sector. Therefore, EPA is listing HFP and all HFP-containing blends as unacceptable substitutes for CFC–12 and HCFC–22 in this sector.

DATES: *Effective Date:* This action is effective January 26, 1999. *Comments:* EPA will consider all written comments received by February 25, 1999 to determine if any change to this action is necessary.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, Central Docket Section, South Conference Room 4, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone: (202) 260–7548. The docket may be inspected between 8:00 a.m. and 5:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. Those wishing to notify EPA of their intent to submit adverse comments on this action should contact Kelly Davis, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, DC 20460, (Docket # A–91–42), (202)–564–2303.

FOR FURTHER INFORMATION CONTACT: Kelly Davis, U.S. EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, S.W., Washington, DC, 20460, (202)–564–2303 or electronically at davis.kelly@epa.gov. General information about EPA's SNAP program can be found by calling EPA's Stratospheric Ozone Protection Hotline at (800) 296–1996 or by viewing EPA's SNAP Program world wide web site at www.epa.gov/ozone/title6/snap/snap.html.

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IV. Additional Information

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

- *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.
- *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

• *90-day Notification*—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History Background

On March 18, 1994, EPA published the Final SNAP Rule (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

C. Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risk screens can be found in the public docket.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make under the SNAP program. The Agency has identified five possible decision categories: acceptable, acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Acceptable substitutes can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ozone-depleting substitute with a substitute listed by SNAP as unacceptable for that end-use. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Such substitutes are described as "acceptable subject to use conditions." Use of such substitutes without meeting associated use conditions renders these substitutes unacceptable and subjects the user to enforcement for violation of section 612 of the Clean Air Act.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in applications and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

As described in the Final SNAP Rule, EPA does not believe that rulemaking procedures are required to list alternatives that are determined to be acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA periodically adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published in separate Notices in the **Federal Register**.

Also as described in the Final SNAP Rule, EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes. In this interim final rule, however, EPA is listing HFP and HFP-containing blends as unacceptable in all refrigeration and air-conditioning end-uses, without prior notice and comment. The reasons for the Agency's decision to do so in an interim final rule rather than in a notice-and-comment rulemaking are discussed in section D below.

D. Necessity for Interim Final Rule

Section 307(d)(3) of the Clean Air Act (CAA or the Act) states that in the case of any rule to which section 307(d) applies, notice of proposed rulemaking must be published in the **Federal Register**. The promulgation or revision of regulations under Title VI of the CAA (relating to stratospheric ozone protection) is generally subject to section 307(d). However, section 307(d) does not apply to any rule referred to in subparagraph (A) or (B) of section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 551 et seq.

APA section 553(b) requires that any rule to which it applies be issued only after the public has received notice of, and an opportunity to comment on, the rule. However, APA section 553(b)(B) exempts from those requirements any rule for which the issuing agency for good cause finds that providing prior notice-and-comment would be impracticable, unnecessary or contrary to the public interest. Thus, any rule for which EPA makes such a finding is exempt from the notice-and-comment requirements of both APA section 553(b) and CAA section 307(d).

EPA believes that the circumstances presented here provide good cause to

take the actions set forth in this final rule without prior notice and comment, since providing prior notice and comment would be impracticable and contrary to the public interest. Specifically, EPA is concerned about health risks to workers associated with the use of HFP in replacement refrigerant formulations, in light of recently reviewed toxicity data concerning HFP. The data indicate that typical worker exposure levels for HFP are above minimal levels of concern for noncancer risks. Exposures to HFP have been shown to lead to kidney damage. As a result, when HFP is used as a refrigerant or as a component in a refrigerant blend, there is a significant chance that persons who manufacture, service or dispose of refrigeration and air-conditioning equipment that contains HFP or an HFP blend may be exposed to levels that put them at risk of kidney damage, particularly if they have not been specifically trained in the handling of HFP or of blends containing HFP. Moreover, since HFP has not historically been used in refrigeration equipment, refrigerant technicians generally are not trained to handle HFP or HFP blends. Thus, any persons servicing or disposing of refrigeration and air-conditioning units that use an HFP-containing blend would be subject to an actual and immediate health risk. The Agency believes that there is a real threat of exposure.

Several parties have made submissions of HFP-containing refrigerants under the SNAP program and the 90-day prohibition on marketing has expired. Thus, EPA is concerned that refrigerant blends that contain HFP may currently be commercially available and in actual use around the nation. As a consequence, the Agency believes that good cause exists to take the actions set forth in this final rule without prior notice and comment in order to mitigate the risk of exposure to this toxic substance.

As stated in section 612 of the Act, one of the Agency's objectives in implementing the SNAP program is to promulgate rules making it unlawful to replace any class I or class II substance with any substitute that EPA determines may present adverse effects to human health or the environment. The Agency believes that HFP and HFP-containing blends present an unacceptable risk to human health, and that immediate action by EPA is necessary in order to mitigate any resulting harm. The use of HFP in the refrigeration and air-conditioning sector will come to a halt most quickly through the publication of this interim final rule. In addition, this action, combined with Agency outreach and communication efforts, should provide any current or potential users of HFP or HFP-containing blends with immediate notice that EPA does not consider HFP to be an appropriate compound to use in the refrigeration and air-conditioning sector and that potential health risks are associated with exposure to HFP during the manufacture and servicing of any refrigeration and air-conditioning equipment that contains HFP. A full notice-and-comment rulemaking would defeat the regulatory objective of the SNAP program to fully ensure protection of human health.

Nonetheless, EPA is providing 30 days for submission of public comments following today's action. EPA will consider all written comments submitted in the allotted time period to determine if any change to this action is necessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, if an Agency identifies a good cause, APA section 553(d)(3) allows a rule to take effect earlier, provided that the Agency publishes its reasoning in the final rule. Since EPA has determined that good cause exists to list HFP and HFP-containing blends as unacceptable as a replacement refrigerant, EPA is making this action immediately effective in order to ensure the fullest protection of human health.

II. Listing of HFP and HFP-Containing Blends as Unacceptable

As noted above, in light of information recently reviewed by EPA concerning the toxicity of HFP, EPA is greatly concerned about the use of HFP in replacement refrigerant formulations. EPA has completed an HFP risk screen, a copy of which is available in the docket, which indicates that its use as a refrigerant or in refrigerant blends will pose an unacceptable risk to anyone exposed to HFP during the manufacture or servicing of refrigeration or air-conditioning equipment that contains HFP or an HFP-containing blend. Because of the extremely low occupational exposure limit for HFP, and the fact that worker exposure levels for HFP were predicted to be above levels of concern for noncancer risks, HFP should not be used in the refrigeration and air conditioning sector. It should be noted that today's determination has no bearing on the use of HFP or any blend that contains HFP, other than as a replacement for a class I or class II substance in the refrigeration and air-conditioning sector. Other industrial sectors may have safeguards in place to protect against worker exposure to HFP. Based on the review of the available toxicity information related to HFP, and the results of the EPA risk screen, EPA is today listing HFP and all HFP-containing blends as unacceptable for all refrigeration and air-conditioning end-uses, whether as substitutes for a class I substance such as CFC–12, or as substitutes for a class II substance such as HCFC–22.

III. Summary of Supporting Analyses

A. Unfunded Mandates Reform Act and Regulatory Flexibility Act

Since this action is not subject to notice-and-comment rulemaking requirements under the APA or any other law, it is also not subject to sections 202, 204 or 205 of the Unfunded Mandates Reform Act (UMRA). In addition, since this action does not impose annual costs of $100 million or more on small governments or uniquely affect small governments, the Agency has no obligations under section 203 of UMRA. Moreover, since this action is not subject to notice-and-comment requirements under the APA or any other statute as stated above, it is not subject to section 603 or 604 of the Regulatory Flexibility Act.

B. Executive Order 12866: Review of Significant Regulatory Actions by OMB

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this rule is not a "significant regulatory action" within the meaning of the Executive Order.

C. Paperwork Reduction Act

EPA has determined that this final rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). The OMB Control Numbers are 2060–0226 and 2060–0350.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate upon any State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Executive Order 13045: Children's Health Protection

This final rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

G. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), § 12(d), Pub. L. 104–113, requires federal agencies and departments to use the technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This proposed rule does not mandate the use of any technical standards; accordingly, the NTTAA does not apply to this rule.

IV. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m., Eastern Time.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rule published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rules published under the SNAP program, as well as EPA publications on protection of atmospheric ozone, are available from EPA's Ozone World Wide Web site at http://www.epa.gov/ozone/title6/snap, and from the Stratospheric Protection Hotline number listed above.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 19, 1999.

Carol M. Browner,

Administrator.

40 CFR Part 82 is to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. Sec. 7414, 7601, 7671–7671q.

2. Subpart G is amended by adding Appendix F to read as follows:

Subpart G—Significant New Alternatives Policy Program

* * * * *

Appendix F to Subpart G—Unacceptable Substitutes Listed in the Janaury 26, 1999 Final Rule, Effective Janaury 26, 1999

REFRIGERATION AND AIR-CONDITIONING SECTOR UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
All refrigeration and air-conditioning end uses	Hexafluoropropylene (HFP) and all HFP-containing blends.	Unacceptable	Presents unacceptable toxicity risk.

[FR Doc. 99–1765 Filed 1–25–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6223–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a petition submitted by American Steel Cord, formerly Kokoku Steel Cord Corporation, to exclude (or "delist") certain solid wastes from the lists of hazardous wastes contained in Title 40 of the Code of Federal Regulations, Subpart D of Part 261. EPA has concluded that the petitioned waste is not a hazardous waste when disposed of in a Subtitle D landfill. This exclusion applies only to the wastewater treatment plant (WWTP) sludge generated by American Steel Cord in Scottsburg, Indiana. Today's action conditionally excludes the petitioned waste from the requirements of the hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill.

EFFECTIVE DATE: January 26, 1999.

ADDRESSES: The regulatory docket for this final rule which contains the complete petition and supporting documents is located at U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–3590, and is available for viewing from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Call Judy Kleiman at (312) 886–1482 for appointments. The public may copy material from the regulatory docket at cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, contact Judy Kleiman at the address above or at (312) 886–1842.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in Subpart D of Part 261. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 266, 268 and 273; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "facility-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, where there is reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, the Administrator must determine that such factors do not warrant retaining the waste as a hazardous waste.

B. History of this Rulemaking

American Steel Cord petitioned EPA to exclude its WWTP sludge from hazardous waste control. After evaluating the petition, on April 15, 1998, EPA proposed to exclude American Steel Cord's waste from the lists of hazardous wastes in subpart D of part 261 (see 63 FR 18354). This rulemaking addresses the public comments received on the proposal and finalizes the proposed decision to grant American Steel Cord's petition.

II. Disposition of Delisting Petition

American Steel Cord, Route 1 Box 357K, Scottsburg, Indiana 47170

A. Proposed Exclusion

American Steel Cord petitioned EPA to exclude an annual volume of 3,000 cubic yards of WWTP filtercake sludge from the list of hazardous wastes contained in § 261.31, and subsequently provided additional information to complete its petition. The WWTP sludge is listed as EPA Hazardous Waste No. F006. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel and cyanide (complexed) (see Appendix VII of part 261).

In support of its petition, American Steel Cord submitted detailed descriptions and schematic diagrams of its manufacturing and wastewater treatment processes, and analytical testing results for representative samples of the petitioned waste, including (1) the hazardous characteristics of corrosivity, reactivity, and toxicity; (2) total constituent analysis and Toxicity Characteristic Leaching Procedure (SW–846 Method 1311) analyses for the eight toxicity characteristic metals listed in § 261.24, plus copper, nickel, thallium, vanadium, and zinc; (3) total constituent and Toxicity Characteristic Leaching Procedure (TCLP, SW–846 Method 1311) analyses for 121 volatile and semi-volatile organic compounds; (4) analyses for total sulfide, total cyanide, and TCLP analysis for cyanide; and (5) analysis for oil and grease.

EPA evaluated the information and analytical data provided by American Steel Cord and tentatively determined that American Steel Cord had successfully demonstrated that the petitioned waste is not hazardous. See the proposed exclusion (63 FR 18354; April 15, 1998) for a detailed explanation of EPA's evaluation.

B. Response to Comments

EPA received public comment on the April 15, 1998 proposal from American Steel Cord and from the Environmental Defense Fund.

Comment: American Steel Cord commented that its waste is measured by weight, not by volume, and that the Agency was incorrect in assuming a density of one when converting from tons to cubic yards. The density of the waste is considerably less than one, so that the petitioned waste was more than 950 yd^3. Furthermore, American Steel Cord anticipates that the total annual volume of waste generated could increase to 3,000 cubic yards and requested that the exclusion be applied to this larger volume.

Response: The volume specified in today's final rule has been increased to 3,000 cubic yards from the 950 cubic yards proposed on April 15, 1998. In so doing, the final allowable levels for each constituent have been decreased from

the proposed levels in accordance with the CML model.

Comment: Commenter stated that the waste was only evaluated for risk under the scenario of mismanagement in a landfill, but the proposed delisting does not contain language limiting management of the delisted waste to disposal in a Subtitle D landfill.

Response: The Agency has recently adopted the policy that new delistings apply only to wastes managed in the type of unit modeled in the delisting risk assessment. In accordance with this policy, enforceable language has been incorporated into the final rule stating that this exclusion applies only if the waste is disposed in a Subtitle D landfill permitted by the State.

Comment: Commenter stated that there is no discussion of the possibility that the leachability might be underestimated by the TCLP or that this procedure may be affected by the iron content or other attributes of the waste such as pH.

Response: Although no laboratory test can exactly replicate environmental conditions for all landfills, the Agency has developed the TCLP to be used as a reasonable means of predicting leachability in a solid waste landfill. For wastes with close to neutral pH, such as the filtercake from American Steel Cord which has a pH between 8.5 and 8.9, the Agency believes that the TCLP is a reliable test in the absence of extreme environmental conditions. While some forms of iron may affect the leachability of lead bearing wastes, lead is not used in American Steel Cord's process and there is no significant amount of lead in the waste. Furthermore, there is no reason to believe that excess iron was introduced at any time into the process or the wastestream for the purpose of reducing the leachability of lead.

Comment: Commenter stated that the Agency should consider sampling and other requirements that will ensure that these factors will not change in the future.

Response: The exclusion requires periodic testing to verify that the waste will remain in compliance with the conditions of the exclusion. The final rule also includes language requiring American Steel Cord to notify the Agency of any change in process.

Comment: Commenter stated that the Agency should consider risks posed by total concentrations via the air pathway. No support has been offered for the conclusion that appreciable air releases are unlikely.

Response: Air modeling was done for the pathways of inhalation, ingestion of air borne particulates and air deposition on soil followed by ingestion by a child. The concentrations of all constituents in American Steel Cord's waste were orders of magnitude below the health based levels of concern for each of these pathways. A full discussion of the air modeling is contained in the docket.

Comment: Commenter stated that since total concentration is used in evaluating risk by the air pathway, EPA should promulgate limits on total concentrations, as well as limits on the TCLP concentrations.

Response: Screening levels for this waste were back calculated and were determined to be a thousand to a million times the levels detected in American Steel Cord's waste. Thus the waste is not expected to pose a threat by the air pathway and the Agency believes that it is not meaningful to set limits on totals which would be three to six orders of magnitude above the concentrations detected in the waste.

Comment: Commenter stated that the proposed TCLP limit for xylene in this waste exceeds the allowable level for xylene in storage tanks in the air characteristics study.

Response: The scenario upon which the air characteristic study was based is not applicable to American Steel Cord's waste. This delisting applies to a limited quantity of non-liquid waste which will be disposed in a Subtitle D landfill. Furthermore, the highest total concentration of xylene in any sample of this waste was 22 ppb which is well below air characteristics number of 200 ppm for xylene in waste stored in tanks.

Comment: Commenter stated that the proposed rule only requires the facility to meet the applicable delisting levels but does not require notification of a change in process which should trigger Agency verification activities. The EPA should require notification of changes in operating conditions.

Response: In the event of a process change, the facility is required to meet the established delisting limits and must perform testing to verify that the levels established in this rule are being met. The facility must also verify that no additional constituents have been introduced. Data obtained from verification testing must be submitted to EPA.

Comment: Commenter stated that the EPA should add provisions to the final rule stating that the delisting is only valid when the waste is disposed of in a Subtitle D landfill permitted by the State, since the Agency has not evaluated all potential mismanagement scenarios.

Response: Specific language has been added to paragraph 1 of the final rule which requires that the waste must be disposed of in a Subtitle D landfill.

Comment: Commenter stated that the EPA should add provisions to the final rule stating that if the facility plans to dispose of the waste in a landfill on site, it must notify the Agency at least 60 days prior to first utilizing an onsite landfill.

Response: The Agency is requiring that the waste be disposed of properly in a Subtitle D landfill regulated by the State. To dispose of the waste on site, American Steel Cord would have to construct a Subtitle D landfill on its property and obtain all necessary permits from the State of Indiana. The US EPA does not regulate which Subtitle D landfill the waste may be sent to, nor does the Agency routinely require notification of wastes disposed in units regulated by the State.

Comment: Commenter stated that EPA should add provisions to the final rule stating that American Steel Cord must report to EPA receipt of any environmental data that departs from the data that were modeled or predicted in the initial delisting evaluation.

Response: Language has been included in paragraph 4 of the final rule which requires the facility to report in writing any data which might indicate that the levels in paragraph 1 of this rule have been exceeded or that the initial delisting decision was inappropriate or wrong.

Comment: Commenter stated that the proposed delisting has failed to include procedures for suspension or termination of the exclusion in the event of mismanagement of delisted waste.

Response: The Agency has recently adopted a policy of incorporating language into all new exclusions which will allow the Agency to reopen, revoke, or otherwise suspend the delisting in a timely manner in the event of mismanagement. This language will establish a mechanism to review and act expeditiously on the delisting when additional data become available indicating the initial delisting decision was inappropriate or wrong.

C. Changes to Proposed Verification Testing Conditions

In the proposed rulemaking, EPA included delisting levels for 23 constituents which would be protective of human health and the environment and which could not be exceeded in a TCLP extract of the petitioned waste. These levels have been lowered in today's rule to allow for an increased volume. In addition, the proposed levels of 200 mg/l for barium, 10 mg/l for chromium, 5 mg/l for selenium and 20 mg/l for silver have been lowered to the levels set in the hazardous waste

toxicity characteristic in § 261.24 to ensure that the petitioned waste, even though protective of human health and the environment, remains below the TC levels.

Levels in the proposed rule were based on "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," December 1994. This document was revised in May, 1996, and the health based level for benzo butyl phthlate was changed from .01 mg/l to 7.0 mg/l, the health based level for 1,4-dichlorobenzene was changed from .075 mg/l to .004 mg/l, and the health based level for cis 1,2-dichloroethene was changed from .07 mg/l to .4 mg/l. The delisting levels in today's final rule are based on the more recent health based numbers.

The proposed rule incorrectly allowed for a level of 10 mg/l chloroform. Under the proposed rule, the correct level should have been 1 mg/l. Under today's rule, the increased volume lowers the level for chloroform to .68 mg/l.

Paragraph 1 in Table 1 of Appendix IX to Part 261 now reads 1. Verification Testing: American Steel Cord must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 68. Arsenic—3.4 Barium—100; Cadmium—.34; Chromium—5; Copper—88.4; Lead—1.02; Mercury—.136; Nickel—6.8; Selenium—1; Silver—5; Zinc—680; Cyanide—13.6; Acetone—272; Benzo butyl phthlate—476; Chloroform—.68; 1,4-Dichlorobenzene—.272; cis 1,2-Dichloroethene—27.2; Methylene chloride—.34; Naphthalene—68; Styrene—6.8; Tetrachloroethene—.34; Toluene—68; and Xylene—680. American Steel Cord must measure and record the pH of the waste using SW 846 method 9045 and must record all pH measurements performed in accordance with the TCLP.

D. Final Agency Decision

For the reasons stated in both the proposal and this notice, EPA has concluded that American Steel Cord's petitioned waste may be excluded from hazardous waste control. EPA, therefore, is granting a final exclusion for the WWTP sludge generated by American Steel Cord at its facility in Scottsburg, Indiana. This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 Appendix IX are satisfied.

Although management of the waste covered by this exclusion is removed from Subtitle C jurisdiction, this exclusion applies only where this waste is disposed of in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage municipal and/or industrial solid waste.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose (non-RCRA) regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their waste under State law.

Furthermore, some States are authorized to administer a delisting program in lieu of the Federal program (i.e., to make their own delisting decisions). Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to any State with delisting authorization, American Steel Cord must obtain delisting authorization from that State before the waste may be managed as nonhazardous in the State.

IV. Effective Date

This rule is effective Janaury 26, 1999. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule reduces the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule will not have an adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless

the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local or tribal governments or the private sector. EPA finds that today's proposed delisting decision is deregulatory in nature and does not impose any enforceable duty upon State, local or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

IX. Submission to Congress and General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

X. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866 and the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

XI. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

XII. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: December 21, 1998.

Margaret McCue,

Acting Director, Waste, Pesticides and Toxics Division.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Table 1 of Appendix IX of Part 261 is amended to add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
•	•	•
American Steel Cord ...	Scottsburg, IN	Wastewater treatment plant (WWTP) sludge from electroplating operations (EPA Hazardous Waste No. F006) generated at a maximum annual rate of 3,000 cubic yards per year, after January 26, 1999, and disposed of in a Subtitle D landfill. 1. Verification Testing: American Steel Cord must implement an annual testing program to demonstrate, based on the analysis of a minimum of four representative samples, that the constituent concentrations measured in the TCLP extract of the waste are within specific levels. The constituent concentrations must not exceed the following levels (mg/l) which are back-calculated from the delisting health-based levels and a DAF of 68. Arsenic—3.4; Barium—100; Cadmium—.34; Chromium—5; Copper—88.4.; Lead—1.02; Mercury—.136; Nickel—6.8.; Selenium—1; Silver—5; Zinc—680; Cyanide—13.6; Acetone—272; Benzo butyl phthlate—476; Chloroform—.68; 1,4-Dichlorobenzene—.272; cis-1,2-Dichloroethene—27.2; Methylene chloride—.34; Naphthalene—68; Styrene—6.8; Tetrachloroethene—.34; Toluene—68; and Xylene—680. American Steel Cord must measure and record the pH of the waste using SW 846 method 9045 and must record all pH measurements performed in accordance with the TCLP. 2. Changes in Operating Conditions: If American Steel Cord significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, American Steel Cord may handle the WWTP filter press sludge generated from the new process under this exclusion only after the facility has demonstrated that the waste meets the levels set forth in paragraph 1 and that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced. 3. Data Submittals: The data obtained through annual verification testing or compliance with paragraph 2 must be submitted to U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604–3590, within 60 days of sampling. Records of operating conditions and analytical data must be compiled, summarized, and maintained on site for a minimum of five years and must be made available for inspection. All data must be accompanied by a signed copy of the certification statement in 260.22(I)(12). 4. (a) If, anytime after disposal of the delisted waste, American Steel Cord possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level in the leachate higher than the delisting level established in Condition (1), or is at a level in the ground water or soil higher than the health based level, then American Steel Cord must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 10 days from the date of the Regional Administrator's notice to present such information. (d) Following the receipt of information from the facility described in paragraph (c) or (if no information is presented under paragraph (c) the initial receipt of information described in paragraph (a), the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise.

[FR Doc. 99–1756 Filed 1–25–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–129; RM–9076]

Radio Broadcasting Services; New Martinsville, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Seven Ranges Radio Company, Inc., allots Channel 222A at New Martinsville, West Virginia, as the community's third local FM transmission service. We will also allow petitioner to amend its pending application (File No. BPH–960223MA) to reflect operation on Channel 222A in lieu of Channel 258A at New Martinsville, West Virginia. *See* 62 FR 26466, May 14, 1997. Channel 222A can be allotted to New Martinsville in

compliance with the Commission's minimum distance separation requirements with a site restriction of 7.4 kilometers (4.6 miles) south to avoid a short-spacing to the licensed site of Station WWHC(FM), Channel 222A, Oakland, Maryland. The coordinates for Channel 222A at New Martinsville are North Latitude 39–34–38 and West Longitude 80–51–16. Since New Martinsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–129, adopted January 6, 1999, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Channel 222A at New Martinsville.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–1714 Filed 1–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–144; RM–9329, MM Docket No. 98–145; RM–9330]

Radio Broadcasting Services; Buxton, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Buxton Communications Company, allots Channel 260A to Buxton, NC, as the community's first local aural service, and at the request of Buxton Radio Group, allots Channel 268A to Buxton, NC, as its second local aural service. *See* 63 FR 43656, August 14, 1998. Channels 260A and 268A can be allotted to Buxton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 35–16–06 NL; 75–31–54 WL. With this action, this proceeding is terminated.

DATES: Effective March 1, 1999. A filing window for Channels 260A and 268A at Buxton, NC, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–144 and MM Docket No. 98–145, adopted January 6, 1999, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by adding Buxton, Channel 260A, Channel 268A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–1713 Filed 1–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–140; RM–9294, RM–9373]

Radio Broadcasting Services; Pauls Valley and Wynnewood, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Suelou, Inc., allots Channel 283A to Wynnewood, OK, as the community's first local aural service. The Commission also denies the request of Wright and Wright, Inc., to allot Channel 283A to Pauls Valley, OK, as the community's second local FM and third local aural service. *See* 63 FR 41766, August 5, 1998. Channel 283A can be allotted to Wynnewood in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 34–38–42 North Latitude; 97–10–00 West Longitude. With this action, this proceeding is terminated.

DATES: Effective March 1, 1999. A filing window for Channel 283A at Wynnewood, OK, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–140, adopted January 6, 1999, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services,

Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Wynnewood, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Cheif, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–1712 Filed 1–25–99; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL–6222–5]

Acquisition Regulation: Administrative Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this final rule to amend the EPA Acquisition Regulation (EPAAR) (48 CFR Chapter 15) to remove obsolete coverage and make other administrative changes based on recent revisions to the Federal Acquisition Regulation (FAR). As authorized by section 22(a) of the Office of Federal Procurement Policy Act, 41 U.S.C. 418b, this rule is being issued without notice and opportunity for public comment because it does not impose a significant cost or administrative impact on contractors or offerors.

EFFECTIVE DATE: February 25, 1999.

FOR FURTHER INFORMATION CONTACT: Louise Senzel, U.S. EPA, Office of Acquisition Management, (3802R), 401 M Street, SW, Washington, D.C. 20460, Telephone: (202) 564–4367.

SUPPLEMENTARY INFORMATION:

A. Background

As part of the FAR 15 rewrite, the statutory fee limitations imposed on cost-plus-fixed fee contracts that had been extended to cost-plus-award fee and cost-plus-incentive fee contracts was eliminated. The current FAR 15 only places limitations on fee for cost-plus fixed fee contracts. Additionally, two references included in the EPAAR 1552.242–70 "Indirect Costs" clause are no longer valid due to revisions in the FAR. This rule provides revised references to parallel FAR changes.

B. Executive Order 12866

This rule is not a significant regulatory action for the purposes of E.O. 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.)

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, recordkeeping, or compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

H. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of

the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the rulemaking and specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take affect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390.

List of Subjects in 48 CFR Parts 1516 and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

PART 1516—[AMENDED]

1. The authority citation for Parts 1516 and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended.

2. Section 1516.405, paragraph (b) is amended by removing the words "in accordance with FAR 15.903(d)" from the final sentence of the paragraph.

PART 1552—[AMENDED]

3. Section 1552.216–75, is revised to read as follows:

1552.216–75 Base fee and award fee proposal.

As prescribed in 1516.405(b), insert the following clause:

Base Fee and Award Fee Proposal (FEB 1999)

For the purpose of this solicitation, offerors shall propose a combination of base fee and award fee. Base fee shall not exceed 3% of the estimated cost, excluding fee, and the award fee shall not be less than ____% of the total estimated cost, excluding fee. The combined percentages of base and award fee shall not exceed ____% of the total estimated cost, excluding fee.

(End of clause)

1552.242–70 [Amended]

4. Section 1552.242–70 is amended by revising the reference "FAR 42.703(a)" in the first paragraph of paragraph (a) in the clause to read "FAR 42.703–1(a)" and the reference "FAR 15.804–4" in the undesignated paragraph after paragraph (a) in the clause to read "FAR 15.406–2".

Dated: December 14, 1998.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 99–1649 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amdt. 1–296]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard; Correction

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule; correction.

SUMMARY: This rule makes an editorial correction to the recently published final rule delegating to the Commandant, the United States Coast Guard, the authority pertaining to the enforcement of various conservation statutes. The final rule was published in the **Federal Register** on Wednesday, November 4, 1998 (63 FR 59474) and was effective upon publication.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Blane A. Workie, Office of the General Counsel, C–50, (202) 366–4723, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The final rule amending 49 CFR Part 1, erroneously amends § 1.46 by adding paragraph (ooo) to reflect the delegation of the Secretary's authority pertaining to the enforcement of various conservation statutes to the Commandant of the Coast Guard. The paragraph should have been designated as paragraph (ppp) rather than paragraph (ooo). This correction is to rectify this mistake.

Issued in Washington, D.C., this 19th day of January, 1999 under authority delegated to me by 49 CFR Part 1, § 1.57 (l).

Nancy E. McFadden,

General Counsel.

Accordingly, in final rule, FR Doc. 98–29517, published on November 4, 1998 (63 FR 59474), make the following correction:

PART 1—[CORRECTED]

§ 1.46 [Corrected]

On page 59475, in this first column, in § 1.46, paragraph (ooo) is correctly designated as paragraph (ppp).

[FR Doc. 99–1633 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980817221–9020–02; I.D. 072898A]

RIN 0648–AL22

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; emergency interim rule.

SUMMARY: NMFS issues a final rule to implement Amendment 45 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) and an emergency interim rule to implement requirements of the American Fisheries Act (AFA) related to the 1999 Western Alaska Community Development Quota (CDQ) Program. These actions permanently extend the allocation of pollock to the CDQ Program, remove squid from the CDQ Program, and revise pollock CDQ catch accounting regulations. This action is necessary to implement Amendment 45 and CDQ Program-related provisions of the AFA.

DATES: Effective January 21, 1999, except the definitions for "Directed fishing for pollock CDQ" and "Groundfish CDQ fishing (applicable through December 31, 1998)", at § 679.2 and the amendment to §§ 679.20(b)(1)(iii)(A) and (b)(1)(iii)(D), 679.32(a)(2) through (a)(4), and 679.32(g) of the emergency interim rule are effective January 21, 1999 through July 20, 1999. Comments on the emergency interim rule must be submitted by February 25, 1999.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for Amendment 45 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the emergency interim rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

In Amendment 45, the North Pacific Fishery Management Council (Council) recommended permanent extension of the allocation of 7.5 percent of the pollock total allowable catch (TAC) in the Bering Sea and Aleutian Islands management area (BSAI) to the Western Alaska CDQ Program. In addition, Amendment 45 removes the pollock CDQ Program from the inshore/offshore section of the FMP and reorganizes three separate CDQ-related sections of the FMP into one section.

A notice of availability (NOA) for Amendment 45 was published in the **Federal Register** on August 5, 1998 (63 FR 41782), and the proposed rule was published on September 3, 1998 (63 FR 46993). The public comment period on the NOA ended on October 5, 1998, and the public comment period on the proposed rule ended on October 19, 1998. NMFS received four comments on the NOA and the proposed rule, one expressing general support for the amendment and three from other Federal agencies expressing "no comment." No changes were made to this rule as a result of the comments. NMFS approved Amendment 45 on November 4, 1998. The reasons for implementing Amendment 45 are stated in the preamble of the proposed rule.

The AFA was signed into law by the President on October 20, 1998, as part of the Omnibus Appropriations Bill FY99, (Pub. L. 105–277). Additional requirements for the pollock CDQ fisheries in the AFA supplement the requirements of Amendment 45 and must be implemented by NMFS before the start of the pollock CDQ fisheries on January 20, 1999. Specifically, section 206(a) of the AFA requires that 10 percent of the TAC of pollock in the BSAI shall be allocated as a directed fishing allowance to the CDQ program. Section 206(b) of the AFA requires that pollock bycatch in non-pollock CDQ fisheries will not accrue against the pollock CDQ allocation created in section 206(a). Finally, section 213(a) of the AFA, with one limited exception at section 213(c)(2), requires that the 10–percent pollock CDQ allocation remain in effect until December 31, 2004.

The AFA's requirement to allocate 10 percent of the pollock TAC to the pollock CDQ reserve through December 31, 2004, has the effect of supplementing the Council's recommendation in Amendment 45 to permanently allocate 7.5 percent of the pollock TAC to a pollock CDQ reserve. In this final rule implementing Amendment 45, NMFS will retain the 7.5–percent allocation of the pollock TAC to the pollock CDQ reserve. NMFS will implement the AFA's 10–percent allocation of the pollock TAC to the pollock CDQ reserve through the BSAI groundfish specifications for 1999. Later in 1999, NMFS intends to initiate proposed and final rulemaking that would implement through regulation the AFA's 10–percent allocation for the years 2000 through 2004. If, at the end of 2004, the Council has not taken action to extend the 10–percent pollock CDQ allocation, the paragraph specifying a 10–percent allocation will expire and the pollock CDQ allocation will revert to 7.5 percent of the pollock TAC starting in 2005.

NMFS has determined that two types of changes to the Multispecies (MS) CDQ Program regulations must be implemented through an emergency interim rule in order for the CDQ Program-related provisions of the AFA to be effective by January 1999. These two regulatory changes are (1) to allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b) of the AFA, and (2) to remove the allocation of squid from the CDQ Program in order to allow the CDQ groups to maximize the possibility that the pollock CDQ directed fishing allowance will be fully harvested.

The AFA requires that NMFS implement these CDQ Program-related provisions of the AFA by January 1999. This deadline could not be met if the provisions were implemented through notice-and-comment rulemaking. At its November 1998 meeting, the Council concurred with NMFS's recommendation on this emergency interim rule.

Accounting for the Catch of Pollock in the CDQ Fisheries

The AFA requires that NMFS distinguish between pollock harvested in a directed fishery for pollock CDQ and pollock harvested in the non-pollock groundfish CDQ fisheries. Pollock harvested in the directed fisheries for pollock CDQ will accrue against the CDQ group's pollock CDQ allocation. Pollock harvested in other groundfish CDQ fisheries will not accrue against the CDQ group's pollock CDQ. This pollock catch will accrue against the pollock incidental catch allowance, established under section 206(b) of the AFA, for the incidental catch of pollock in groundfish fisheries other than pollock, including the non-

pollock open access fisheries and the non-pollock CDQ fisheries.

NMFS considered two options for defining directed fishing for pollock CDQ. The first option was to define directed fishing for pollock CDQ on the basis of the amount of pollock that is retained by a vessel while CDQ fishing. If pollock retention exceeded the maximum retainable bycatch (MRB) amount, then the vessel would be considered directed fishing for pollock CDQ. If pollock retention were below the MRB amount, any catch of pollock by the vessel would not accrue against the pollock CDQ. However, NMFS decided not to pursue this option for two reasons. First, using MRB amounts would lead to regulatory discards by vessels that catch pollock but do not want to have their pollock catch accrue to the pollock CDQ. Second, several sections of the regulations governing directed fishing and the calculation of MRB amounts for the open access fisheries would have to be revised to accommodate the application of MRBs in the CDQ fisheries. These revisions would add further complexity to already complex regulations and would increase the difficulty of managing the open access and CDQ fisheries.

The second option for defining directed fishing for pollock CDQ is to base the definition on the species composition of the haul by catcher/processors or of the delivery by catcher vessels. If the haul or delivery of pollock exceeds a certain percentage, the vessel will be considered directed fishing for pollock CDQ. NMFS selected this option because it does not require revisions to regulations governing the open access fisheries; it is simple to understand and apply; and it will not require regulatory discards of pollock.

In the EA/RIR prepared by NMFS for the emergency interim rule (see **ADDRESSES**), NMFS examined data from the 1998 pollock CDQ fisheries and the non-pollock open access groundfish fisheries in the BSAI to determine the appropriate percentage of pollock in the catch that will distinguish directed fishing for pollock CDQ from other groundfish CDQ fishing. This percentage will minimize situations in which (1) a haul or delivery by a vessel intending to target pollock does not meet the definition of directed fishing for pollock CDQ, and (2) a haul or delivery by a vessel not intending to target pollock CDQ does meet the definition of directed fishing for pollock CDQ. However, regardless of the percentage threshold selected, some pollock vessels intending to target pollock will catch pollock in hauls or deliveries that do not meet the definition of directed fishing for pollock CDQ and will, therefore, accrue against the pollock incidental catch allowance. The opposite situation will also occur. Some vessels not intending to target pollock CDQ will catch pollock in hauls or make deliveries that exceed the selected percentage, in which case, this pollock will accrue against the CDQ group's pollock CDQ allocation.

Based on the data examined in the EA/RIR for the emergency interim rule, NMFS selected 40 percent as an appropriate threshold percentage to distinguish directed fishing for pollock from directed fishing for other species in the CDQ fisheries. Data from the 1998 pollock CDQ fisheries show that, if the 40–percent threshold had been applied in 1998, approximately 10 percent of the hauls and 0.20 percent of the pollock catch would not have been defined as occurring in the directed fishery for pollock CDQ. The 115 mt of pollock caught in these hauls, which did accrue to the 1998 pollock CDQ, would not have accrued to the pollock CDQ under the 40–percent threshold definition of directed fishing for pollock CDQ.

Observer data from ten trawl catcher/processors eligible for the MS CDQ fisheries during their 1998 BSAI groundfish open access fisheries also were examined to provide information about the percent pollock represents in hauls from non-pollock groundfish fisheries. These data showed that 3 percent of the hauls and 26 percent of the total pollock catch by these catcher/processors in the 1998 BSAI non-pollock groundfish fisheries would have met the 40–percent pollock threshold. Although the future groundfish CDQ fisheries may not have the same amounts of total catch, catch composition, or fishing conditions, the distribution of pollock in the 1998 non-pollock fisheries is the best data available to predict the results of using a 40–percent threshold.

Based on this information, NMFS believes that the 40–percent threshold provides a balance. It will result in most of the pollock catch by vessels intending to target pollock accruing to the pollock CDQ, and it will minimize the amount of pollock caught by vessels not intending to engage in directed fishing for pollock accruing to the pollock CDQ. Therefore, a new definition for directed fishing for pollock CDQ will be added under this emergency interim rule. Directed fishing for pollock CDQ will be defined as fishing that results in the following catch composition:

(1) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more of the total round weight of all groundfish in the haul.

(2) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more of the total round weight of all groundfish delivered to a processor from a fishing trip.

The CDQ groups will be required to examine the catch composition of each haul or delivery by vessels using trawl gear and to determine whether the haul or delivery meets the definition of directed fishing for pollock CDQ. If the haul or delivery meets this definition, the CDQ group must report this pollock catch to NMFS on its CDQ catch report. NMFS will subtract this pollock catch from the amount available under the pollock CDQ allocation. If the haul or delivery does not meet the definition of directed fishing for pollock CDQ, the CDQ group is not required to report any pollock catch on the CDQ catch report for that particular haul or delivery. NMFS will examine observer data from all CDQ vessels to (1) verify the accuracy of the CDQ catch report and (2) add up the pollock caught by CDQ vessels that were not directed fishing for pollock CDQ and subtract that amount from the pollock incidental catch allowance.

Uncertainty exists concerning the appropriate percentage threshold because NMFS does not know how CDQ harvesting operations will be conducted under the new MS CDQ Program or how they may be affected by new conservation measures that NMFS will implement in 1999 to mitigate impacts of the pollock fisheries on Steller sea lions. NMFS intends to evaluate the impact of the 40–percent pollock threshold in the 1999 MS CDQ fisheries under this emergency interim rule. An adjustment to this threshold could be implemented under separate rulemaking if this percentage creates unanticipated constraints for the MS CDQ Program or creates an unintended opportunity for vessels participating in the MS CDQ fisheries to increase catch of pollock that will not accrue against the CDQ group's pollock CDQ allocation.

This action does not implement any changes to the current Improved Retention/Improved Utilization (IR/IU) regulations under which all vessels fishing CDQ are required to retain all pollock.

Accounting for the Catch of Other Groundfish CDQ or PSQ Species in the Pollock CDQ Fisheries

Under the regulations implementing Amendment 45, the pollock CDQ program will be integrated with the MS CDQ Program starting in 1999. One

change resulting from this integration is that incidental catch of non-pollock groundfish CDQ species in the directed pollock CDQ fishery will accrue against a CDQ group's allocation for those species. The AFA is silent concerning the accounting for incidental catch of non-pollock groundfish CDQ species in the pollock CDQ fishery and addresses only the accounting for incidental catch of pollock in the non-pollock groundfish CDQ fishery. As a result, the incidental catch of non-pollock groundfish CDQ species or prohibited species with a prohibited species quota (PSQ) in the pollock CDQ fishery must be subtracted from the CDQ group's CDQ and PSQ allocations.

Removing Squid as a CDQ Species

The current 7.5–percent squid CDQ allocation has been identified in public comment to NMFS and the Council as a likely constraint to the full harvest of the current 7.5–percent pollock CDQ allocation. Most of the squid caught in the CDQ fisheries will be caught in the pollock CDQ fishery. Changes in fishing practices to reduce the incidental catch of squid in other groundfish CDQ fisheries are not expected to prevent attainment of the 7.5–percent squid CDQ allocation before attainment of the 7.5–percent pollock CDQ allocation. Therefore, an increase in the pollock CDQ allocation to 10 percent of the pollock TAC without an increase in the squid CDQ allocation is very likely to constrain harvest of the AFA's allocation of pollock CDQ.

Squid bycatch in the 1998 pollock CDQ fisheries through November 6, 1998, was examined in the EA/RIR prepared for the emergency interim rule (see **ADDRESSES**). Approximately 339 mt of squid were caught in the 1998 pollock CDQ fisheries. The allocation of squid to the MS CDQ program in 1998 was 148 mt. In 1998, squid bycatch in the pollock CDQ fisheries did not accrue against the squid CDQ allocation. However, starting in 1999, under regulations implemented prior to the AFA, all squid bycatch in the pollock CDQ fisheries will accrue against the squid CDQ. Current regulations prohibit the CDQ groups from exceeding their squid CDQ. Starting in 1999, if the squid CDQ is reached before the pollock CDQ, existing CDQ regulations require the CDQ groups to stop fishing in any groundfish CDQ fisheries in which additional squid bycatch would be expected. Given existing regulations and the AFA increase in the pollock CDQ, the bycatch of squid likely will prevent the CDQ groups from catching their full pollock CDQ allocation. Based on the information in the EA/RIR, no other CDQ or PSQ allocation is likely to result in the same type of limitation on the catch of pollock CDQ.

An increase in the squid CDQ allocation corresponding to the AFA's increased pollock CDQ allocation is not an available management measure. Section 305(i)(1)(C)(ii)(II) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that, until October 1, 2001, the percentage of a groundfish TAC allocated to the CDQ Program cannot exceed the amount approved by the Council prior to October 1, 1995. Therefore, in order to implement the increased pollock CDQ allocation of the AFA and the Magnuson-Stevens Act CDQ provisions not superceded by the AFA, NMFS must remove squid from the CDQ Program. Removal of squid from the CDQ Program will eliminate this likely constraint to harvest of the AFA's pollock CDQ allocation and will further the ability of the CDQ Program to accomplish its economic, social, and developmental goals. By removing squid from the CDQ Program, the catch of squid by vessels CDQ fishing will accrue against the overall squid TAC, which will continue to be managed to ensure that catch in CDQ and non-CDQ fisheries remains within the TAC and does not exceed the overfishing limit and that no CDQ fishery will be constrained by a squid CDQ quota.

Changes From the Proposed Rule

The following regulatory amendments were contained in the proposed rule but are not implemented in the final rule because they conflict with elements of the emergency interim rule implemented to comply with the AFA:

1. In § 679.31, the separate paragraph (a) specifying the pollock CDQ reserve is not removed but is revised by removing the expiration date. Paragraphs (b) through (g) are not redesignated because the AFA requires specification of the pollock CDQ reserve separately from the other groundfish CDQ reserves.

2. The proposed revision to the definition of the halibut CDQ reserve in § 679.2 is not implemented because reference to a new paragraph number for the halibut CDQ reserve in § 679.31 is not necessary.

3. The separately specified pollock CDQ reserve in § 679.20(b)(1)(iii)(A) is not removed. The pollock CDQ reserve must continue to be specified separately from the other groundfish CDQ reserves because the percentage allocation for pollock CDQ under the AFA (10 percent) differs from the percentage allocation for most other groundfish CDQ species (7.5 percent).

The following changes are made in the final rule:

1. A new definition is added for the American Fisheries Act.

2. A December 31, 1998, expiration date is removed from the definition for "Community Development Quota Program." This sunset date was implemented under the inshore/offshore allocations and should have been proposed to be permanently extended under the proposed rule for Amendment 45.

3. The preamble to the proposed rule stated that NMFS was proposing to revise the definition of "CDQ reserve" so that it applied to any CDQ species (groundfish, halibut, or crab) rather than to groundfish CDQ only. However, NMFS inadvertently left out the revised definition in the proposed regulatory text. NMFS is including this definition in the final rule because it clarifies and corrects a definition without implementing a restriction. The public was provided with an opportunity to comment on the change as described in the preamble of the proposed rule.

4. The following definition for groundfish CDQ fishing expired on December 31, 1998: "groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any CDQ or PSQ species other than pollock CDQ, halibut CDQ, and fixed gear sablefish CDQ." This definition was necessary because the pollock CDQ fisheries, fixed gear halibut and sablefish CDQ fisheries and the MS groundfish CDQ fisheries were managed under different regulations through December 31, 1998. Under current regulations, pollock and fixed gear sablefish are integrated with the MS groundfish CDQ fisheries starting in 1999, although the AFA has since superceded some aspects of this integration. A slightly revised definition is necessary to support the current MS groundfish CDQ regulations and should have been included in the proposed rule for Amendment 45. The revised definition states that "groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species." The revised definition does not conflict with separate definitions for directed fishing for pollock CDQ under the emergency interim rule. A new definition for halibut CDQ fishing will be addressed in a future proposed rulemaking.

5. The prohibition currently at § 679.7(d)(24), which applies only in 1998 and prohibits the use of other than pelagic trawl gear in the pollock CDQ

fisheries, is removed. This prohibition was recommended by the Council at its meeting in April 1996 to minimize the amount of bycatch in the 1998 pollock CDQ fisheries that would accrue against TAC and prohibited species catch limits for the moratorium groundfish fisheries. This recommendation was made because bycatch in the 1998 pollock CDQ fisheries did not accrue against the multispecies groundfish CDQs or against the prohibited species quotas. The Council had recommended that the current prohibition be implemented only for 1998. However, at its June 1998 meeting, the Council recommended that NMFS prepare proposed rulemaking that would prohibit using other than pelagic gear in all BSAI pollock fisheries. If implemented, this prohibition would apply to the pollock CDQ fisheries in the future. Furthermore, the 1999 annual groundfish specifications allocate zero amounts of pollock to the directed fishery for pollock using non-pelagic trawl gear under § 679.20(a)(5)(i)(B). This prohibition will also apply to the 1999 pollock CDQ fishery.

6. In § 679.32(a)(1), the applicability paragraph is revised to remove reference to paragraphs (a)(2) and (a)(3) of this section which expired on December 31, 1998. See below for an explanation of a new paragraph (a)(4) that is added under this emergency interim rule.

7. In § 679.50(c)(4), reference to § 679.32(e) at the beginning of the paragraph is removed because it referred to the section that sunset on December 31, 1998.

The following emergency interim rule is implemented to comply with the AFA. These requirements are effective for 180 days after January 21, 1999.

1. A new definition is added for "Directed fishing for pollock CDQ." This definition and the reason for it was discussed in a previous section.

2. The definition for "Groundfish CDQ fishing (applicable through December 31, 1998)" is amended to remove a separate reference to pollock CDQ fishing and fixed gear that applied through December 31, 1998.

3. Section 679.20(b)(1)(iii)(A) is suspended and a new paragraph (b)(1)(iii)(D) is added to remove squid as a CDQ species.

4. In § 679.32, paragraphs (a)(2) and (a)(3) expired on December 31, 1998, and are suspended. In § 679.32, a new paragraph (a)(4) is added to reference requirements for pollock CDQ under the emergency interim rule in paragraph (g) of this section.

5. Section 679.32(e) expired on December 31, 1998 and is suspended. Under this emergency interim rule, a new § 679.32(g) is added to address the accounting of pollock in the groundfish CDQ fisheries. Section 679.32(g)(1) requires that pollock caught by vessels directed fishing for pollock accrue against the pollock CDQ and that this pollock CDQ must be reported on the CDQ catch report. Section 679.32(g)(2) requires that pollock caught by vessels that are not directed fishing for pollock does not accrue against the pollock CDQ. This pollock catch must not be reported on the CDQ catch report. Section 679.32(g)(3) reiterates that all pollock caught in any groundfish CDQ fishing must be retained under the IR/IU regulations.

Compliance Guide for Small Entities

The Small Business Regulatory Enforcement Fairness Act requires NMFS to prepare a compliance guide that explains how small entities must comply with the regulations implemented in this final rule and this emergency interim rule.

The small entities affected by this rule are the 6 CDQ groups, the 56 western Alaska communities eligible for the CDQ program, 4 of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, 3 motherships, and 8 shoreside processing plants (see additional discussion of impacts in the Classification section).

All of these small entities are affected by the permanent 7.5–percent extension of the pollock CDQ allocation. Direct participants in the fisheries, including the CDQ groups, their harvesting and processing partners, and the vessels and processors that participate in the open access pollock fisheries are required to conduct their pollock fisheries so that the catch of pollock does not exceed the quotas established by this rule and by other regulations governing the BSAI pollock quotas.

The CDQ groups are required to monitor and accurately report the catch of pollock CDQ. They must evaluate each haul by a catcher/processor or delivery by a catcher vessel to determine whether pollock represents 40 percent or more of the total groundfish catch weight. If this criteria is met, the pollock catch must be reported on the CDQ catch report subtracted from the CDQ group's available pollock CDQ. If the haul or delivery does not meet the 40 percent threshold, the CDQ group must not report this pollock catch on the CDQ catch report. This pollock catch will be monitored by NMFS through data collected by the CDQ observer and will be subtracted from the amount of pollock available to the CDQ and non-CDQ fisheries in the incidental catch allowance.

The removal of squid as a CDQ species does not result in any additional requirements on any participant in the CDQ or non-CDQ fisheries.

No additional recordkeeping or reporting requirements are placed on the vessels or processors participating in the pollock or other MS groundfish CDQ fisheries or on the communities affected by the pollock CDQ allocation.

Classification

The Administrator, Alaska Region, NMFS, (Regional Administrator) determined that the final rule implementing Amendment 45 and the emergency interim rule implementing parts of the AFA are necessary for the conservation and management of the groundfish fisheries of BSAI. The Regional Administrator also determined that this final rule and emergency interim rule are consistent with the Magnuson-Stevens Act and other applicable laws.

The final rule and the emergency interim rule have been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a final regulatory flexibility analysis for Amendment 45. Amendment 45 is necessary to continue the allocation of pollock to the CDQ Program after December 31, 1998. NMFS received no comments on the Initial Regulatory Flexibility Analysis.

The analysis estimates that the total universe of entities affected by regulations governing the BSAI pollock fishery is 249. Of these, 130 are small entities. The total universe comprises 6 CDQ groups, 56 western Alaska communities eligible for the CDQ program, 5 communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, 140 catcher vessels using trawl gear, 31 catcher/processors using trawl gear, 3 motherships, and 8 shoreside processing plants. The small entities are the 6 CDQ groups, the 56 western Alaska communities eligible for the CDQ program, 4 of the Alaskan communities whose residents participate in the BSAI pollock fisheries but are not eligible for the CDQ program, and 64 of the catcher vessels.

The 64 catcher vessels participating in the BSAI pollock fisheries could be significantly impacted by the pollock CDQ allocation because a 7.5–percent reduction in the pollock TAC may reduce the annual gross revenues of these vessel owners by more than 5

percent relative to the alternative of not allocating pollock to the CDQ program. The impact of the pollock CDQ allocation on the four Alaskan non-CDQ communities (Unalaska, Sand Point, King Cove, and Kodiak) is not known but could be significant depending on the amount of annual revenue lost because pollock CDQ may be processed at different plants than pollock from the open access fisheries. The 64 catcher vessels and four non-CDQ communities represent 52 percent of the small entities in the BSAI pollock fisheries.

The 6 CDQ groups representing 56 western Alaska communities derive a significant portion of their CDQ revenues from the pollock CDQ allocation. Allocating 7.5 percent of the pollock TAC to the CDQ program will allow these small entities to continue to benefit from the pollock CDQ fisheries. Not reauthorizing the pollock CDQ allocation would have a significant impact on these small entities.

NMFS considered two alternatives that could have mitigated the negative economic impacts on the small entities affected by this action. The first alternative would be to allocate 3.5 percent of pollock TAC to the CDQ reserve. Although this alternative would benefit the small entities not receiving CDQ allocation, the benefits accruing to the 56 CDQ communities would be considerably less. The alternatives that those communities have for generating income and investment are so small that the reduction from 7.5 percent to 3.5 percent reserve would be likely to produce significant negative economic impacts on these small entities. The trade off is clear; by reserving 3.5 percent instead of 7.5 percent, the catcher vessels gain at the expense of the CDQ communities. However, because of the relative absence of alternative economic bases in the CDQ communities, those communities will experience a relatively greater economic impact than would other regions of the State and the country in general.

The second alternative would be to let the present reserve of 7.5 percent of pollock TAC expire at the end of 1998. This action would result in a further shift of impacts from one set of small entities to another. It would benefit the non-CDQ participants in the fishery while cutting revenues of the CDQ groups.

Because the CDQ program is allocative by nature, any approved alternative will affect small entities. If the 7.5 percent allocation alternative were found to be inconsistent with the Magnuson-Stevens Act, NMFS could only disapprove it. Reconsideration of the 3.5 percent or other allocation alternatives by the Council and the public would be time consuming and disruptive to the ongoing CDQ program. Because this rule is an allocation from one group of small entities to another, the Council weighed the economic and social effects and selected its preferred alternative as a legal alternative for achieving its statutory objective of allocating the TAC of pollock in the Bering Sea and Aleutian Islands fishery to the CDQ program.

A copy of this analysis is available from NMFS (see **ADDRESSES**).

The portions of this rule implemented as an emergency interim rule are exempt from the procedures of the Regulatory Flexibility Act because these portions of the rule are issued without opportunity for prior public comment.

NMFS finds that good cause, under the authority contained in 5 U.S.C. 553(d)(3), exists to waive the 30-day delay in effective date for the provisions implemented by the final rule. The primary provision of the final rule is to permanently extend the 7.5% pollock CDQ allocation. This provision, which must be effective to coincide with the effective date of the emergency interim rule provisions prior to the start of the pollock CDQ fisheries on January 20, 1999, would not require any regulated entities to take any steps to come into compliance. As such, a delay in effective date is both unnecessary and contrary to the public interest.

NMFS also finds that the emergency portion of this rule implementing mandatory provisions of the AFA must be effective by January 20, 1999. The AFA was enacted October 20, 1998, and contains provisions which must be in place prior to the start of the pollock fishery on January 20, 1999. Given this very short time between enactment and the opening of the fishery, there was not sufficient time to accept prepromulgation comment on these provisions. Further, if the procedure for promulgating these rules went beyond January 20, the fishing season could not begin as scheduled. As such, there is good cause to waive the requirement to provide prior notice and the opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. Similarly, the need to implement these emergency measures by January 20, 1999, the opening of the pollock fishery, so that the CDQ groups may fully harvest their pollock CDQ and properly account for their pollock bycatch as established in the AFA, constitutes good cause under the authority contained in 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

The emergency interim rule contains a reduction in a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB control number 0648–0269. Shoreside processors and CDQ groups currently are required to report all pollock harvested in the CDQ fisheries on CDQ delivery reports and CDQ catch reports. This emergency interim rule requires that the incidental catch of pollock in non-pollock CDQ fisheries not be reported on the CDQ delivery report and the CDQ catch report.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 20, 1999.

Andrew A. Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In § 679.2, the definitions for "Community Development Quota Program (CDQ Program)(applicable through December 31, 1998)", "Community Development Quota Reserve (CDQ Reserve) (applicable through December 31, 1998)", "Pollock CDQ fishing" and "Sablefish CDQ reserve" are removed; the definitions for "CDQ allocation", "Community Development Quota", "PSQ allocation", and "PSQ species" are revised; the definition for "Groundfish CDQ fishing (applicable through December 31, 1998)" is suspended; and new definitions for "American Fisheries Act (AFA)", "Community Development Quota Program (CDQ Program)", "Community Development Quota Reserve", "Groundfish CDQ fishing", "Directed fishing for pollock CDQ", and

"Fixed gear sablefish CDQ reserve" are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

American Fisheries Act (AFA) means Title II—Fisheries Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105–277).

* * * * *

CDQ allocation means a percentage of a CDQ reserve specified under § 679.31 that is assigned to a CDQ group when NMFS approves a proposed CDP.

* * * * *

Community Development Quota (CDQ) means the amount of a CDQ species established under § 679.31 that is allocated to the CDQ program.

Community Development Quota Program (CDQ Program) means the Western Alaska Community Development Quota Program implemented under subpart C of this part.

Community Development Quota reserve (CDQ reserve) means a percentage of a total allowable catch for groundfish, a percentage of a catch limit for halibut, or percentage of a guideline harvest level for crab that has been set aside for purposes of the CDQ program.

* * * * *

Directed fishing for pollock CDQ means fishing that results in the following:

(1) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more by weight of the total round weight of all groundfish in the haul.

(2) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more by weight of the total round weight of all groundfish delivered to the processor.

* * * * *

Fixed gear sablefish CDQ reserve means 20 percent of the sablefish fixed gear TAC for each subarea in the BSAI for which a sablefish TAC is specified under § 679.20(b)(1)(iii)(B). See also § 679.31(b).

* * * * *

Groundfish CDQ fishing means fishing by an eligible vessel listed on an approved CDP that results in the catch of any groundfish CDQ species.

* * * * *

PSQ allocation means a percentage of a PSQ reserve specified under § 679.21(e)(1)(i) and (e)(2)(ii) that is assigned to a CDQ group when NMFS approves a proposed CDP. See also § 679.31(d).

PSQ species means any species that has been assigned to a PSQ reserve under § 679.21(e)(1)(i) and (e)(2)(ii) for purposes of the CDQ program. See also § 679.31(d).

* * * * *

§ 679.7 [Amended]

3. In § 679.7, paragraph (d)(24) is removed and paragraphs (d)(25) through (d)(28) are redesignated as paragraphs (d)(24) through (d)(27), respectively.

4. In § 679.20, paragraphs (b)(1)(iii)(A) is suspended and paragraph (b)(1)(iii)(D) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(D) *Groundfish CDQ.* Except as limited by § 679.31(a) and section 206(a) of the AFA, one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section for all species except squid is apportioned to the groundfish CDQ reserve.

* * * * *

5. In § 679.30, paragraph (a)(4) is revised to read as follows:

§ 679.30 General CDQ regulations.

(a) * * *

(4) *Request for CDQ and PSQ allocations.* A list of the percentage of each CDQ reserve and PSQ reserve, as described at § 679.31 that is being requested. The request for allocations of CDQ and PSQ must identify percentage allocations requested for CDQ fisheries identified by the primary target species of the fishery as defined by the qualified applicant and the gear types of the vessels that will be used to harvest the catch.

* * * * *

§ 679.31 [Amended]

6. In § 679.31, paragraph (a) is amended by removing parenthetical " (applicable through December 31, 1998)".

7. In § 679.32, paragraph (a)(1) is revised, paragraphs (a)(2), (a)(3), and (e) are suspended and new paragraphs (a)(4) and (g) are added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) *Applicability.* (1) The CDQ group, the operator of a vessel, and the manager of a shoreside processor must comply with the requirements of paragraphs (b) through (d) of this section while groundfish CDQ fishing as defined at § 679.2. In addition, the CDQ group is responsible for ensuring that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this section while harvesting or processing CDQ species.

* * * * *

(4) Requirements for the accounting of pollock while CDQ fishing are at paragraph (g) of this section.

* * * * *

(g) *Pollock CDQ*—(1) *Directed fishing for pollock CDQ.* Owners and operators of vessels directed fishing for pollock CDQ as defined at § 679.2 and processors taking deliveries from vessels directed fishing for pollock CDQ must comply with all applicable requirements of paragraphs (a) through (d) of this section. Pollock catch by vessels directed fishing for pollock CDQ will accrue against the pollock CDQ for the CDQ group. The CDQ group must report all pollock caught by vessels directed fishing for pollock CDQ on the CDQ catch report.

(2) *Catch of pollock by vessels not directed fishing for pollock CDQ.* Pollock catch by vessels groundfish CDQ fishing, but not directed fishing for pollock CDQ as defined at §

679.2, will not accrue against the pollock CDQ for the CDQ group. The CDQ group must not report this pollock catch on the CDQ catch report.

(3) Vessel operators must retain all pollock caught in any groundfish CDQ fishery as required at § 679.27 (IR/IU).

* * * * *

8. In § 679.50, paragraph (c)(4) is revised to read as follows.

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

* * * * *

(c) * * *

(4) *Groundfish CDQ fisheries.* The owner or operator of a vessel groundfish CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24–hour period and the CDQ observer is required to sample no more than 9 hours in each 24–hour period.

* * * * *

[FR Doc. 99–1605 Filed 1–21–99; 12:53 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 16
Tuesday, January 26, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–95–248, formerly Docket 50053; RIN 2139–AA00]

14 CFR PART 234

Amendments to the On-Time Disclosure Rule

AGENCY: Office of Secretary, DOT.

ACTION: Notice of withdrawal.

SUMMARY: The Office of Secretary is withdrawing its rulemaking proposal to revise the on-time flight performance reporting requirements. The Department had proposed to re-establish the exclusion of flights delayed or cancelled due to mechanical problems. This withdrawal of the rule is taken in response to comments made to the notice of proposed rulemaking by consumer groups, safety experts and various airlines.

FOR FURTHER INFORMATION CONTACT: Bernard Stankus or Clay Moritz, Office of Airline Information, K–25, Bureau of Transportation Statistics, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590–0001, (202) 366–4387 or 366–4385, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1995, the Research and Special Programs Administration ("RSPA") issued a Notice of Proposed Rulemaking ("NPRM") (60 FR 29515; June 5, 1995) seeking public comments on the proposal to revise the on-time flight performance reporting requirements by re-establishing the exclusion of flights delayed or cancelled due to mechanical problems. The NPRM also sought comments on (1) the retroactive application of the proposal, (2) the collection and publication of flight completion data, and (3) the filing frequency of the data collection.

Shortly, after the RSPA issued the NPRM, its Office of Airline Statistics was transferred to the Bureau of Transportation Statistics (BTS). BTS renamed the office the "Office of Airline Information" (OAI). OAI administers the on-time flight reporting program.

Comments to the NPRM were received from eight air carriers (America West, American Airlines, Delta Air Lines, Northwest Airlines, Southwest Airlines, Trans World Airlines, United Air Lines, and USAir); three labor unions (the Air Line Pilots Association, the International Association of Machinists and Aerospace Workers, and Southwest Airlines Pilots' Association); seven consumers groups (American Automobile Association, Aviation Consumer Action Project, Best Fares Magazine, Consumers Report Magazine, International Airline Passengers Association, J.D. Power and Associates, and the National Consumers League); one research group (Aviation Foundation); one state agency (Michigan Department of Transportation); and 19 individuals, which include three pilots and one mechanic. Also, letters to DOT Secretary Peña from Representatives Luther and Oberstar, Senator Pressler and the House of Representatives' Committee on Transportation and Infrastructure co-signed by Congressmen Duncan, Shuster, Costello, Weller, DeFazio, LaHood, Lipinski, Bachus, Clement, Seastrand, Kim, and Ewing were placed in the docket.

The issues addressed by the comments were safety, consumer interest, publication of a completion factor, reporting frequency, cost of reporting, and restatement of prior data. Each of these issues is discussed below under separate captions.

Safety

The American Automobile Association (AAA) has over 37 million members and operates approximately 900 accredited travel agency locations. AAA does not believe that any air carrier would cut safety to gain a perceived marketing advantage. According to an informal survey by AAA travel agencies, flight delays were low on the list of air passenger concerns.

The Airline Pilots Association (ALPA) believes the inclusion of mechanical delays and cancellations creates a conflict between safety and on-time performance. ALPA cites the report "Zero Accidents—A Shared Responsibility," prepared by a group of safety experts, that reporting mechanical delays and cancellations could intimidate maintenance personnel and encourage unsafe practices. ALPA wrote, "While airlines and their employees will always consciously place safety ahead of on-time performance, the rule as amended in September, 1994—to include mechanical delays in the on-time reports—raises the potential of a conflict between one-time performance and the commitment to safety."

American Airlines believes that DOT should continue requiring airlines to report mechanical delays and cancellations as they have done since January 1995 without any impact on safe operations. American said that there has not been any reported instance where a pilot or mechanic was pressured to compromise safety, since American and other airlines did not change their safety-related dispatch of aircraft. By letter dated April 21, 1995, the chief safety officers of American, Delta, United and USAir advised Secretary Peña that airline employees would not compromise safety because of on-time reporting considerations. They stated that reporting mechanical delays and cancellations creates an incentive for air carriers to improve their mechanical performance through the use of spare aircraft and parts, mechanic staffing, scheduling practices, fleet decisions, etc.

In testimony before the House Committee on Transportation and Infrastructure, Subcommittee on Aviation, Robert W. Baker, American's Executive Vice President—Operations, stated "No mechanic would jeopardize the lives of customers and fellow workers, as well as his or her career to give us a possible boost in a DOT dependability statistic." He went on to state that if the industry were now sending out unsafe aircraft to avoid delays, that fewer delays would be reported. However, the incidence of delays has not decreased.

In a letter to Secretary Peña, the Aviation Subcommittee on Transportation and Infrastructure stated, "Including mechanical delays may actually enhance safety by giving airlines an incentive to keep their aircraft in top condition to avoid mechanical problems." Moreover, since mechanical delays and cancellations have been included in the carriers' reports, there is no evidence that safety

has been impaired. A correlation to reporting mechanical-related delays is the reporting of weather-related delays. The subcommittee stated that it knows of no instances where an airline employee avoided deicing an aircraft, flew in dangerous weather conditions or engaged in risky behavior in order to improve on-time performance. "Given the competence and integrity of aviation workers, we cannot believe that any of them would put on-time performance ahead of human life."

Delta Air Lines states that there is "no safety issue associated with on-time reporting." Delta refutes Northwest's claim that, during a January 1995 safety conference, there was "unanimous" agreement that reporting mechanical delays and cancellations have negative safety implications. Delta along with American, United and USAir represent 68.4 percent of revenue passenger miles and 58.5 percent of departures among reporting carriers. These four carriers have confidence in the integrity of their pilots and mechanics that "they would not compromise safety to make an on-time goal."

Since there is no evidence that any airline or employee has ever compromised safety to achieve an on-time flight, Delta questions DOT's logic for singling out mechanical delays for exclusion from the reporting system. Delta believes that mechanical delays should be treated in the same manner as weather delays, fueling delays and deicing delays, since they all involve an element of employee judgment.

Mr. Jeffrey R. Grunow believes U.S. air travelers are intelligent consumers and do not need the benevolent protection of the government on this issue. One of the FAA's roles is to monitor the maintenance of aircraft. Maintenance delays should remain in the on-time reports.

International airline Passengers Association (IAPA) believes that the consumer should know if an airline is "suffering many mechanical delays, it may be an early sign of financial distress or retention of older aircraft too long." Also, IAPA believes in the integrity of the professional mechanics, flight crews and cabin crews to operate in a safe manner. If DOT is concerned that a mechanic would take improper action to improve a carrier's on-time performance, it should impose substantial fines or criminal sanctions for such an act.

The international Association of Machinists and Aerospace Workers (IAMAW) strongly supports the exclusion of mechanical delays and cancellations from on-time reporting. It states that interests of airline safety cannot be subordinated to the carriers' competitive need to improve on-time performance percentages. IAMAW stated that safety experts believe that "inclusion of mechanicals intimidates maintenance personnel and encourages potentially unsafe practices."

Mr. Darryl Jenkins, a visiting scholar at George Washington University, does not believe that safety will be adversely impacted by the reporting of mechanicals. However, if the Department believes otherwise, then delays due to weather should not be included in on-time performance report because dispatchers face a conflict between on-time performance and safety.

State of Michigan Department of Transportation believes including mechanical delays and cancellations could compromise safety. Airline personnel may feel compelled to send out an aircraft with mechanical problems to maintain on-time performance records.

Northwest Airlines contends that the inclusion of mechanicals may compromise safety by placing undue pressure on maintenance personnel and increase the likelihood of human error. Northwest states that the elimination of mechanicals from the Department's on-time reporting system ranked among the top five safety recommendations of the Aircraft Maintenance Procedures and Inspections Workshop at the 1995 Aviation Safety Conference. Northwest stated, "including mechanical delays in on-time reporting may well have an impact on the safety of our system. There is no legitimate reason for assuming any additional safety risk for the sake of more pristine on-time performance data. We can and should choose to eliminate this risk."

Southwest Airlines believes the only practical means of resolving the inherent conflict between on-time performance and safety is reinstitution of the exclusion for mechanical problems. Because on-time rankings are widely reported in the media, they have become an important component in airline advertising.

The Southwest Airlines Pilots' Association (SWAPA) states that the inclusion of mechanicals puts added pressure on an employee to get a job done properly and in a timely manner. SWAPA recommends that DOT take the safe and proven action of not reporting mechanicals.

TWA believes that there is a serious risk that operating personnel will feel pressured by the on-time reporting requirements to release aircraft faster, and that the risk of error will be increased by such pressure.

United Air Lines states that including mechanicals in its on-time reports for the first several months of 1995 has not otherwise affected United's operation or its commitment to safety. Passenger safety is still the most important responsibility of air carriers. For the Department to second-guess its earlier decision to include mechanical delays and cancellations and now reverse itself can only cause consumers and the airline industry, generally, to question the Department's credibility.

USAir (now US Airways) states that there is no evidence to support the argument that on-time reporting statistics affect safety or maintenance practices. Excluding mechanical delays rewards carriers that choose to operate with older, less reliable aircraft, or with less rigorous preventive maintenance programs.

Mr. Ed Wayman, an accountant with piloting experience, says that he always takes the safe course when it comes to flying, and this goes double when he has family along. He believes that mechanicals should be reported so that he and others can make more informed decisions.

Mr. Roger White, a pilot and airline consumer, believes that no pilot is going to take an aircraft with a questionable mechanical defect. No airline will survive if it intimidates mechanics into releasing non-airworthy aircraft. Too many people are involved in the process to say that one person alone can allow an unsafe aircraft to fly.

Representative Oberstar states, "The purpose of the [on-time] reporting was to encourage airlines to modify their behavior, not take risks. For that reason, mechanical delays, which are beyond the control of the carriers, wisely were not included in the counts." Representative Oberstar adds, "Mechanical delays are beyond the control of the carriers. It is critically important to safety that such delays be honored until the repairs are made. No good public purpose is served by giving an airline a black mark for fixing an airplane." Representative Oberstar argues that the Department should remove mechanical delays from the reports.

Consumer Interest

AAA stated that flights delayed or cancelled because of mechanical problems should be included in the air carrier on-time performance in order to provide the most reliable and accurate information to the consumer.

American and Delta believe that the inclusion of mechanical delays and cancellations is pro consumer, allowing

the consumer to know his overall chance of receiving on-time service.

Delta believes that if mechanical delays are excluded, the Department should limit the exclusion to the one flight where the mechanical occurred. The Department should not allow carriers to reap an unintended windfall by permitting exclusions of downline delays which may be only tenuously related to the initial event.

The National Consumers League, International Airline Passengers Association, Aviation Foundation, Best Fares, Consumer Reports Travel Letter, Aviation Consumer Action Project and JD Power Associates filed a consensus statement. Their main concern is that the traveling consumers receive "reliable, accurate, complete, and consistent information to make sound travel decisions." They believe that carriers must report their mechanical delays and cancellations to have reliable, accurate, complete, and consistent data.

Donald J. Arndt, a business traveler, wants more informative data to help when making travel decisions. Delays should be reported in five categories: weather, mechanicals, airline-induced, taxi delays, and other (passenger-induced, no fault of air carrier). If DOT drops mechanical delays and cancellations from the data, it should just stop providing the information. Mr. Arndt stated, "The main problem we have today is the amount of lying that goes on with airline information."

Peter Bentley requests that DOT not exclude mechanical delays and cancellations. He believes exclusion would distort the on-time results in favor of the least efficient airlines and be detrimental to the airlines that do not inconvenience their customers and still maintain safe aircraft.

The Aviation Subcommittee on Transportation and Infrastructure believes that on-time performance data provide important information to consumers that would lose value if certain types of delays were excluded.

Mr. Roy L. Farrelly, a pilot from Delta Air Lines, states that excluding mechanical delays would make the reports useless.

Ms. Laurie Fitch, Mr. Joseph M. Grohsan, Ms. Wendy Jaquez, Mr. Kenneth R. Kirkwood, Mr. G.L. Krayniak, Mr. Daniel C. Palmer, Mr. Gary Reed, and Mr. William M. Patterson filed separate comments. They want total, accurate information to make travel decisions. They support the inclusion of mechanical delays in the on-time statistics.

IAPA would like the reason for flight delays to be identified. Some delays are caused by weather, by the air traffic control system or by the airlines. "Any accurate system of on-time reporting should give higher grades to the airline that gets its passengers to its destination, rather than the airline that has a mechanical, cancels a flight and strands the passengers." Excluding mechanical delays from on-time reporting ends up penalizing a carrier that serves its passengers by getting them to their destination by using a backup aircraft when it has a mechanical problem.

Mr. Darryl Jenkins wrote, "In reality, the Department has failed to appreciate the power of information in the hands of the consumer. Information that is incomplete, unreliable and inaccurate—such as is being proposed—only sustains poor performance and reinforces marketplace inefficiencies."

Mr. Keith. Johnson, a pilot from United Airlines, supports the exclusion of mechanical delays and cancellations. He also believes that carriers like United, Delta and American are at a disadvantage because they use the latest technology that records their takeoff and landing times automatically. Northwest and Southwest use manual input, which Mr. Johnson believes can work to those carriers' benefit.

National Consumer League asks that DOT provide complete information about airline on-time performance. Excluding mechanicals is basically unfair. An airline that encounters a few weather delays, which are unavoidable, loses out in the on-time rankings to another carrier that misses the bad weather but has many flights delayed and canceled because of mechanical problems, because mechanical problems are not part of the calculation. By excluding mechanicals, DOT penalizes the very airlines that have chosen to put in place aggressive preventive maintenance programs.

Mr. Craig Searls says that it is very important to business travelers to assess the probability of arriving at their destination on-time. He believes most delays are caused by the weather, mechanical problems and system operation delays. The weather can be estimated from the newspapers, but the only way to assess the likelihood of mechanical problems is through DOT's on-time performance reports.

United Air Lines believes that including mechanical delays avoids the differences in how airlines categorize mechanical delays, and provides uniform and complete public disclosure. Excluding mechanicals skews the data and produces an inaccurate assessment of air carrier performance.

USAir believes that excluding mechanicals would be a real disservice to consumers because it paints an inaccurate picture of carriers' performances.

Mr. James Whelan, an aircraft maintenance professional with 30+ years of experience, states that maintenance delays are part of an airline's overall on-time performance and should be included in the statistics.

Mr. White wants to know what percentage of all flights arrive on-time, not just the "good flights" or those that do not have a mechanical problem.

Autre E. Wilson and Betty S. Wilson filed a joint comment. They believe mechanicals should be included in the on-time performance reports to provide the public with a real picture of airline performance. Air traffic controllers at St. Louis Lambert International Airport are frequently cited as the cause of airline delays when, in fact, the actual cause is an air carrier that operates many older jet aircraft.

Publication of a Flight Completion Factor

American believes that mechanicals should be included in the completion percentage even if they are excluded from the on-time percentages. DOT could require air carriers to tag those flights which are to be excluded from dependability reporting due to mechanical problems. DOT would then have comprehensive data to compute an accurate departure-completion percentage for each airline, as well as the ability to audit carrier compliance with the rules governing mechanical exclusions.

Delta believes the Department should collect and publish the overall scheduled completion rates for all carriers, which is the ratio of total domestic flights scheduled to total domestic flights completed. Nonscheduled and extra-section flights should be excluded because the numbers of such operations vary from carrier to carrier and from season to season and would distort the percentages. Delta believes publishing a completion factor would reward carriers that incur the cost of having spare aircraft and crew available.

IAPA believes that airline passengers should have information on the actual number of flights completed by an airline compared to the number of flights scheduled. All flights should be included regardless of the reason for cancellation, i.e., mechanical or weather problems.

Northwest and Southwest support the publication of completion percentages so long as mechanicals are excluded and

airlines will not be forced to incur any significant additional burden or cost. They believe the reasons for excluding mechanicals from the completion percentages are the same for excluding mechanicals from the on-time reports. Northwest believes that the completion percentage should be based on the number of scheduled departures completed rather than the number of scheduled miles completed.

The National Consumer League believes that one of the deficiencies in DOT's *Air Travel Consumer Report* is the failure to include information on which carriers most often complete their scheduled flights.

TWA believes that the publication of a completion percentage will provide useful information to consumers but, because the information is already available in reports filed with DOT, no further submissions should be required of carriers.

United believes that DOT can readily publish a completion factor from the data that is now reported. However, if mechanicals are once again excluded, United see no benefit of only reporting weather and air traffic-control related cancellations.

USAir states that a completion percentage should be based on the number of scheduled flights completed compared to its number of scheduled flights. Using T–100 data would skew the data, because extra section flights would cause a carrier's completion percentage to be overstated.

Reporting Frequency

American and Delta believes that less frequently reporting would not reduce reporting burden and support monthly reporting.

Northwest believes that significant savings to the airlines, CRS operators and the Department could be realized by the change to quarterly submissions.

Southwest states that less frequent reporting would not significantly reduce the burden on carriers or increase the usefulness of the information to consumers, who receive more current information by monthly, rather than quarterly reports.

TWA supports the continuation of monthly reporting. TWA states that since carriers will still have to collect on-time performance data, it will not make any difference whether they submit the data monthly or quarterly. There is no significant saving from less frequent reporting.

United Air Lines prefers monthly reporting, because consumers benefit from having the most recent and reliable information on which to base their purchasing decisions.

Cost of Reporting

Delta states that it is less costly to report under the current system where carriers report all domestic scheduled passenger flights.

Resubmission of Prior Data To Exclude Mechanicals

Northwest supports the retroactive application of the mechanical-based exclusion in order to preserve the integrity and consumer usefulness of the Department's historical on-time data.

While United Air Lines believes that airlines should continue to include mechanicals in their on-time performance, if the Department decides to exclude them, then the airlines should refile past reports for the intervening months to ensure that all monthly data are comparable and consistent.

Determination

Based on the reporting experience since 1995, the Department has decided to withdraw its notice of proposed rulemaking. There have been no incidents where a carrier operated a flight with an unairworthy aircraft to improve its on-time flight performance. The requirement to report mechanicals may create a market-based incentive for airlines to improve preventive maintenance procedures and to have readily available back-up flight crews and aircraft. Title 15 CFR Part 234 does not specify an on-time flight performance standard that carriers must meet. Rather, the carriers' reports provide consumers with information on carrier performance, which the consumer may use in carrier selection.

The Department compared the carrier rankings for the calendar year 1994 with calendar year 1995. The former period excludes mechanical delays and cancellations, while the latter period includes all flights. With the exception of two carriers, on-time performance percentages were lower in 1995. The lower on-time percentages can be attributed, in part, to the elimination of the mechanical exclusion. We believe the 1995 reports are a more truthful portrayal of air carrier performance.

Because we are continuing current practice, there is no need for collecting and publishing flight completion data. The carriers expressed little interest in reducing filing frequency so we are, therefore, not making any change.

Issued in Washington, DC, on January 19, 1999.

Rodney Slater,

Secretary.

[FR Doc. 99–1698 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–106564–98]

RIN 1545–AW86

Modifications and Additions to the Unified Partnership Audit Procedures

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking, notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing.

SUMMARY: In the Rules and Regulations of this issue of the **Federal Register**, the Internal Revenue Service (Service) is issuing temporary regulations relating to the unified partnership audit procedures added to the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). The text of those temporary regulations also generally serves as the text of these proposed regulations. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 26, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 14, 1999, at 10 a.m. must be received by March 24, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–106564–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–106564–98), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed and temporary regulations, Robert G. Honigman, (202) 622–3050; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing Michael L. Slaughter,

Jr., (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary and final regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) relating to the unified partnership audit procedures found in sections 6221 through 6233 of the Internal Revenue Code (Code).

The text of those temporary regulations also generally serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary and proposed regulations.

Temporary regulations previously were published on December 13, 1984 (49 FR 48536), and March 5, 1987 (52 FR 6779) (the existing regulations). The Service intends to finalize such regulations simultaneously with finalizing these regulations. Comments previously received in connection with the existing regulations will be considered as well as new or additional comments with respect to such regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the Service. All comments will be available for public inspection and copying. The Service and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for April 14, 1999, at 10 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 26, 1999 and an outline of the topics to be discussed and the time devoted to each topic (a signed original and eight (8) copies) by March 24, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information. The principal authors of these proposed regulations are Robert G. Honigman, Office of the Assistant Chief Counsel (Passthroughs & Special Industries), and William A. Heard, Office of the Assistant Chief Counsel (Field Service). However, other personnel from the Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6221–1 as proposed to be added at 51 FR 13235, April 18, 1986, is amended by:

1. Redesignating paragraph (c) as paragraph (e);

2. Adding paragraphs (c) and (d).

The additions read as follows:

§ 301.6221–1 Tax treatment determined at partnership level.

* * * * *

(c) and (d) [The text of proposed paragraphs (c) and (d) are the same as the text of § 301.6221–1T(c) and (d) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 3. Section 301.6223(c)–1 as proposed to be added at 51 FR 13238, April 18, 1986, is amended by adding a sentence at the end of paragraph (c) to read as follows:

§ 301.6223(c)–1 Additional information regarding partners furnished to the Service.

* * * * *

(c) * * * [The text of the proposed last sentence in paragraph (c) is the same as the text of the last sentence in § 301.6223(c)–1T(c) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 4. Section 301.6224(c)–3 as proposed to be added at 51 FR 13241, April 18, 1986, is amended by revising the section heading and paragraphs (b), (c)(3)(ii) and (d), *Example (1)* to read as follows:

§ 301.6224(c)–3 Consistent settlement terms.

* * * * *

(b) [The text of proposed paragraph (b) is the same as the text of § 301.6224(c)–3T(b) published elsewhere in this issue of the **Federal Register**].

(c) * * *

(3) * * *

(ii) [The text of proposed paragraph (c)(3)(ii) is the same as the text of § 301.6224(c)–3T(c)(3)(ii) published elsewhere in this issue of the **Federal Register**].

(d) * * *

Example (1). [The text of proposed paragraph (d) *Example (1).* is the same as the text of § 301.6224(c)–3T(d) *Example (1).* published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 5. Section 301–6229(b)–2 is added to read as follow:

§ 301.6229(b)–2 Special rule with respect to debtors in Title 11 cases.

[The text of this proposed section is the same as the text of § 301.6229(b)–2T published elsewhere in this issue of the **Federal Register**].

Par. 6. Section 301.6229(f)–1 is added to read as follows:

[The text of this proposed section is the same as the text of § 301.6229(f)–1T

published elsewhere in this issue of the **Federal Register**].

Par. 7. Section 301.6231(a)(1)–1 as proposed to be added at 51 FR 13243, April 18, 1986, is amended by:

1. Revising the first two sentences of paragraph (a)(1);
2. Removing paragraph (a)(3);
3. Redesignating paragraph (a)(4) as paragraph (a)(3).

The revision reads as follows:

§ 301.6231(a)(1)–1 Exception for small partnerships.

(a) * * *

(1) [The text of the proposed first two sentences of paragraph (a)(1) is the same as the text of the first two sentences of § 301.6231(a)(1)–1T(a)(1) published elsewhere in this issue of the **Federal Register**].* * *

* * * * *

Par. 8. Section 301.6231(a)(6)–1 as proposed to be added at 51 FR 13245, April 18, 1986, is amended by:

1. Revising paragraph (a);
2. Removing paragraph (c).

The revision reads as follows:

§ 301.6231(a)(6)–1 Computational adjustments.

(a) [The text of proposed paragraph (a) is the same as the text of § 301.6231(a)(6)–1T(a) published elsewhere in this issue of the **Federal Register**].

* * * * *

Par. 9. Section 301.6231(a)(7)–1 is amended by revising paragraphs (p)(2), (r)(1) and (s) to read as follows:

§ 301.6231(a)(7)–1 Designation or selection of tax matters partner.

* * * * *

(p) * * *

(2) *When each general partner is deemed to have no profits interest in the partnership.* If it is impracticable under paragraph (o)(2) of this section to apply the largest-profits-interest rule of paragraph (m)(2) of this section, the Commissioner will select a partner (including a general or limited partner) as the tax matters partner in accordance with the criteria set forth in paragraph (q) of this section. The Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a), effective as of the date specified in the notice.

* * * * *

(r) * * * (1) *In general.* If the Commissioner selects a tax matters partner under the provisions of paragraph (p)(1) or (3)(i) of this section, the Commissioner will notify, within 30 days of the selection, the partner selected, the partnership, and all partners required to receive notice under section 6223(a), effective as of the date specified in the notice.

* * * * *

(s) *Effective date.* This section applies to all designations, selections, and terminations of a tax matters partner occurring on or after December 23, 1996, except for paragraphs (p)(2) and (r)(1), that are applicable on the date they are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue Service.

[FR Doc. 99–886 Filed 1–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–99–002]

RIN 2115–AA98

Anchorage Grounds; Atlantic Ocean off Miami and Miami Beach, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the Anchorage Regulations for the Atlantic Ocean off Miami and Miami Beach, FL. The amendment is needed to strengthen existing anchoring requirements and guidelines in order to provide a higher degree of protection to the coastal area during periods of adverse weather which could cause anchored vessels to drag anchor and strike other vessels or become grounded.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Marine Safety Office Miami, 100 MacArthur Causeway Miami Beach, Florida 33139, or may be delivered to the same address between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 535–8705. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: CWO Marcos DeJesus, Coast Guard Marine Safety Office Miami, at (305) 535–8762.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–99–002] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

The east coast of Florida is susceptible to many erratic weather changes, and mariners who are not vigilant to the seas often discover themselves in dangerous situations. In recent years, a number of vessel groundings have resulted from vessels dragging anchor and drifting into the beach or onto reefs during bad weather. These amendments are intended to reduce these incidents by modifying the existing anchoring requirements and guidelines to account for possible adverse weather situations. The amended regulations will require vessels to notify the Captain of the Port when entering the anchorage areas and when any casualty or work affects the main propulsion or steering equipment. All vessels will also be required to have an English speaking watchstander monitor Channel 16 VHF at all times.

Regualtory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

must consider whether this proposed rule, if adopted will have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this will not have a significant economic impact on a substantial number of small entities as it will only affect anchored vessels in the waters off Miami and Miami Beach and the changes are minor in nature.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(f) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.188 add new paragraphs (b)(9), (b)(10) and (b)(11) to read as follows:

§ 110.188 Atlantic Ocean off Miami and Miami Beach, FL

* * * * *

(b) The regulations. * * *

(9) All vessels desiring to use the Anchorage must notify the Coast Guard Captain of the Port, via the Biscayne Bay Pilots on VHF–FM Channel 12 or 16.

(10) All vessels anchored within the anchorage area shall maintain a 24-hour bridge watch by an English speaking licensed deck officer monitoring VHF–FM Channel 16. This individual shall perform frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

(11) Vessels experiencing casualties such as a main propulsion, main steering or anchoring equipment malfunction or which are planning to perform main propulsion engine repairs or maintenance, shall immediately notify the Coast Guard Captain of the Port via the Coast Guard Group Miami on VHF–FM Channel 16.

(12) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety.

N.T. Saunders,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–1696 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–98–079]

RIN 2115–AA98

Anchorage Grounds; Port Everglades, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the Anchorage Regulations for Port Everglades, FL. The amendment is needed to strengthen existing anchoring requirements and guidelines in order to provide a higher degree of protection to the coastal area during periods of adverse weather, which could cause anchored vessels to drag anchor and strike other vessels or become grounded.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Marine Safety Office Miami, 100 MacArthur Causeway Miami Beach, Florida 33139, or may be delivered to the same address between 7 a.m. and 3:30 p.m., Monday through Friday, except federal holidays. The telephone number is (305) 535–8705. Comments will become a part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: CWO Marcos DeJesus, Coast Guard Marine Safety Office Miami, at (305) 535–8762.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–98–079] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a notice in the **Federal Register.**

Background and Purpose

The east coast of Florida is susceptible to many erratic weather changes, and mariners who are not vigilant to the seas often discover themselves in dangerous situations. In recent years, a number of vessel groundings have resulted from vessels dragging anchor and drifting into beach or onto reefs during bad weather. These amendments are intended to reduce these incidents by modifying the existing anchoring requirements and guidelines to account for possible adverse weather situations. The amended regulations will require vessels to notify the Captain of the Port when entering the anchorage areas and when any casualty or work affects the main propulsion or steering equipment. The proposed regulations will also require vessels to have an English speaking watchstander monitor Channel 16 VHF at all times.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not

require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted will have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities as it will only effect anchored vessels in the waters off Port Everglades and the changes are minor in nature.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this rule and concluded under Figure 2–1, paragraph 34(f) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation. An environmental analysis checklist and Categorical Exclusion Determination will be completed during the comment period.

List of Subjects in 33 CFR Part 110

Anchorage grounds

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

PART 110—[AMENDED]

1. The Authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Revise § 110.186(b) to read as follows:

§ 110.186 Port Everglades, Florida.

* * * * *

(b) *The regulations.*

(1) Commercial vessels in the Atlantic Ocean in the vicinity of Port Everglades shall anchor only within the anchorage area hereby defined and established, expect in cases of emergency.

(2) Prior to entering the anchorage area, all vessels shall notify the Coast Guard Captain of the Port, via the Port Everglades Harbormaster, on VHF–FM Channel 14.

(3) All vessels within the anchorage area shall maintain a 24-hour bridge watch by an English speaking licensed deck officer monitoring VHF–FM Channel 16. This individual shall perform frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

(4) Vessels experiencing casualties such as a main propulsion, main steering or anchoring equipment malfunction or which are planning to perform main propulsion engine repairs or maintenance, shall immediately notify the Coast Guard Captain of the Port via the Coast Guard Group Miami on VHF–FM Channel 16.

(5) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety.

(6) Commercial vessels anchoring under emergency circumstances outside the anchorage area shall shift to new positions within the anchorage area immediately after the emergency ceases.

N.T. Saunders,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 99–1695 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD–FRL–6223–4]

New Source Review (NSR)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public meeting.

SUMMARY: This is an announcement of a public meeting on February 2–3, 1999 to discuss an approach for changing the NSR applicability criteria and implementation of control technology requirements. Rulemaking was proposed on July 23, 1996 that would revise numerous requirements in the regulations governing the NSR programs mandated by parts C and D of title I of the Clean Air Act. See 61 FR 38249. A supplemental notice on certain applicability issues was published for comment on July 24, 1998. See 63 FR 39857.

DATES: The meeting will convene at 10:00 a.m. on February 2, 1999, and at 9:00 a.m. on February 3, 1999. It will end no later than 12:00 noon on February 3, 1999.

ADDRESSES: The meeting will be held at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, Northwest, Washington, DC 20004–1710, telephone (202) 393–2000. Documents related to the NSR Reform Rulemaking, are available for public inspection in the EPA Air Docket No. A–90–37. All written documents submitted at this public meeting will be placed in the Docket within approximately 2 weeks after the meeting. The Docket is available for public inspection and copying between 8:00 a.m. to 5:00 p.m., weekdays, at the EPA's Air Docket (6102), Room M–1500, 401 M Street, Southwest, Washington, DC 20460. A reasonable fee may be charged for copying.

A copy of a letter issued to specific stakeholders is available to the public on the EPA's NSR Website at http://www.epa.gov/ttn/nsr/rule_dev.html. This provides additional information regarding presentations that might be made by stakeholders at the meeting.

FOR FURTHER INFORMATION CONTACT: For questions concerning the topics to be discussed, please contact Dennis Crumpler at (919) 541–0871, telefax (919) 541–5509, E-mail: crumpler.dennis@epa.gov or by mail at U.S. EPA, OAQPS, Information Transfer and Program Integration Division (MD–12), Research Triangle Park, North Carolina 27711.

As of the date of this announcement, the Agency intends to proceed with the meeting as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public planning to attend this meeting are advised to contact Pam Smith, U.S. EPA, OAQPS, Information Transfer and Program Integration Division (MD–12), Research Triangle Park, North Carolina 27711; telephone (919) 541–0641 or E-mail: smith.pam@epa.gov, to confirm the February 2–3, 1999 meeting location and dates.

SUPPLEMENTARY INFORMATION: The EPA's preliminary thinking about seating arrangements is that seating around a discussion table will be reserved for 40–45 people divided equally among representatives from: (1) the industrial sector, (2) the public interest groups, (3) State and local governments or agencies, and (4) the Federal government. The EPA does not anticipate that it will be able to provide more than one seat at the table for each industrial sector. There will be additional seating, theater style, in the meeting room, available on a first come first served basis, for about 50 people. To the extent possible, everyone who wishes to speak or make a presentation will have an opportunity. An agenda will be provided at the meeting. If you plan to attend the meeting, please E-mail or call Pam Smith, at E-mail address smith.pam@epa.gov or telephone number (919) 541–0641, by January 28. Please also indicate whether you plan to give a presentation.

Dated: January 15, 1999.

Bruce C. Jordan,

Deputy Director, Office of Air Quality Planning and Standards.

[FR Doc. 99–1645 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX86–1–7351b; FRL–6208–4]

Approval and Promulgation of Implementation Plans, Texas; Reasonably Available Control Technology for Emissions of Volatile Organic Compounds (VOC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking direct final action on demonstrations submitted by Texas on January 10, 1996, that Reasonably Available Control Technology (RACT) is in place on sources in the following source categories: Volatile Organic Liquid (VOL) Storage, Synthetic Organic Chemical Manufacturing Industry Reactor and Distillation Processes and Plastic Parts coating. Also EPA is taking direct final action on revisions to the Texas Rules for the control of VOC emissions that the State submitted between 1995 and 1997. Finally, for most of the measures given limited approval in the May 22, 1997 **Federal Register** (62 FR 27964), this direct final action converts the limited approval to a full approval.

In the Rules and Regulations section of this **Federal Register**, we are approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no relevant adverse comments, we will not take further action on this proposed rule. If we receive relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. We will address all relevant public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received by February 25, 1999.

ADDRESSEES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–7242.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action of the same title that is located in the "Rules and Regulations" section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 10, 1998.

Sam Becker,

Acting Regional Administrator, Region 6.

[FR Doc. 99–1651 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA024–5037; FRL–6223–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Reasonably Available Control Technology for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing conditional limited approval of a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision establishes and requires the implementation of reasonably available control technology (RACT) on major sources of nitrogen oxides (NO_X) in the northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The intended effect of this action is to propose conditional limited approval of Virginia regulations to impose RACT on major sources of NO_X.

DATES: Comments must be received on or before February 25, 1999.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and

the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney, (215) 814–2092. Or by e-mail at gaffney.kristeen@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 1992, the Commonwealth of Virginia submitted a revision to its State Implementation Plan (SIP). This SIP revision consisted of regulations to establish reasonably available control technology (RACT) requirements on major sources of nitrogen oxides (NO_X) in the northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. The Commonwealth submitted additional materials to supplement the November 9, 1992 SIP revision on December 11, 1992 and again on April 11, 1998. This action is being taken under section 110 of the Clean Air Act (the Act).

Section 182(f) of the Act requires states to submit rules to implement RACT on major sources of NO_X in ozone nonattainment areas designated as moderate or above and throughout the Ozone Transport Region. The definition of major source is determined by the classification of the nonattainment area and whether or not it is located in the Ozone Transport Region. A portion of Northern Virginia is part of the Metropolitan Washington D.C. serious ozone nonattainment area and that same portion of Virginia is in the Ozone Transport Region. Therefore, sources in the Northern Virginia portion of the Washington D.C. nonattainment area which emit or have the potential to emit 50 tons or more of NO_X per year are considered major and are subject to the NO_X RACT requirements of the Act.

On November 9, 1992, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP consisting of adopted regulations to impose NO_X RACT on major sources in the northern Virginia nonattainment area. The VADEQ supplemented its November 1992 submittal on December 11, 1992. On August 11, 1998, the VADEQ made a submittal to EPA withdrawing certain provisions of the November 9, 1992 submittal, and forwarding revisions that corrected typographical errors and recodified and renumbered one of the relevant regulations, Appendix T [now 9 VAC 5–40–311].

II. Description of the SIP Revision Submittal

The November 9, 1992 submittal consisted of revisions to Virginia Regulation (VR) 120–01, Part IV, Emission Standards for General Process Operations (Rule 4–4) and to Appendix T, entitled "Reasonably Available Control Technology Guidelines for Stationary Sources of Nitrogen Oxides". Rule 4–4 was amended to insert a new section, 120–04–0408, entitled "Standard for nitrogen oxides". To accommodate the insertion of section 120–04–0408, the revision also renumbered the previously existing sections 120–04–0408 through 120–04–0418, inclusive, as sections 120–04–0409 through 120–04–0419, inclusive. On April 11, 1998, the VADEQ submitted a revised version of Appendix T to correct a technical error in the Virginia Register version of the final rule dated November 30, 1992. This error was corrected by Virginia in the Virginia Register on June 23, 1997. On April 11, 1998, the Commonwealth submitted the corrected version of Appendix T. In addition to the typographical correction, the Commonwealth also recodified Appendix T and renumbered it as 9 VAC 5–40–311.

Section 120–04–0408, entitled "Standard for nitrogen oxides" has five subsections:

Subsection (A) prohibits owners or other persons of affected facilities from permitting or causing NO_X emissions in excess of that resulting from using RACT.

Subsection (B) requires that compliance with RACT under subsection (A) be that defined in Appendix T [now 9 VAC 5–40–311] unless the source owner demonstrates otherwise to the satisfaction of the Virginia Air Pollution Control Board (the Board).

Subsection (C) defines which facilities are subject to the rule. NO_X RACT applies to all stationary sources located in the Northern Virginia Emissions Control Area that have a theoretical potential to emit of 50 tons per year or greater of NO_X. Subsection (C) also provides guidance on the calculation of "theoretical potential to emit" for determining applicability of 120–04–0408.

Subsection (D) requires owners of facilities subject to subsection (A) to notify the Board of applicability status, to commit to making a determination of what constitutes RACT and to submit a schedule to the Board for making this determination. Compliance with RACT is to be achieved as expeditiously as practicable but no later than May 31, 1995.

Subsection (E) requires owners of facilities subject to subsection (B) to notify the Board of applicability status, to commit to accepting an applicable standard in Appendix T or to submit a demonstration of RACT, and to provide a schedule for submitting that demonstration no later than January 1, 1994. Compliance with RACT is to be achieved as expeditiously as practicable but no later than May 31, 1995.

Appendix T [now 9 VAC 5–40–311] consists of four sections:

Section A—General states that RACT required by section 120–04–0408 is as defined in this section for certain source types unless approved otherwise by the Board.

Section B—Definitions defines various terms. The following terms are defined: "capacity factor", "combustion modification", "combustion unit", "fossil fuel", "fuel burning equipment", "fuel burning equipment installation", "gas turbine", "heat input", "incinerator", "internal combustion engine", "process heater", "rated capacity", "refuse derived fuel", "steam generating unit", and "total capacity".

Section C—Definition of reasonably available control technology defines emission limits as RACT for steam generating units, process heaters and gas turbines and requires RACT to be demonstrated on a daily basis. Section C of VAC 5–40–311 also exempts certain source categories and/or applicability thresholds for source categories from the requirement to demonstrate RACT under subsection 120–04–0408 (B). On August 11, 1998, VADEQ withdrew subdivisions C.3.a. and C.3.c. of section C. of 9 VAC 5–40–311 (formerly Appendix T) from its SIP revision submittal pending before EPA. Therefore, the provisions of subdivisions C.3.a. and C.3.c. of 9 VAC 5–40–311 are not being considered for approval as part of the Virginia SIP.

Section D—Emission Allocation System—On August 11, 1998, VADEQ withdrew section D of 9 VAC 5–40–311 (formerly section IV of Appendix T) from its SIP revision submittal pending before EPA. Therefore, the provisions of section D of 9 VAC 5–40–311 are not being considered for approval as part of the Virginia SIP.

III. EPA's Evaluation of the SIP Revision

A. Applicability

The provisions of section 120–04–0408, Standard for Nitrogen Oxides, apply to all sources in the Northern Virginia Emissions Control Area having

a theoretical potential to emit 50 or more tons per year of NO_X. The Northern Virginia Emissions Control Area consists of the counties of Arlington, Fairfax, Loudoun, Prince William and Stafford, and the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park. The geographical coverage of the Northern Virginia Emissions Control Area is the same as the Virginia portion of the designated Metropolitan Washington D.C. ozone nonattainment area. Virginia's section 120–04–0408 covers the same area as that required by section 182(f) of the Act for the Virginia portion of the Washington D.C. ozone nonattainment area, and meets the requirements for approval.

B. Presumptive RACT Emission Limits for Steam Generating Units/Process Heaters and Gas Turbines

Section C of 9 VAC 5–40–311 (formerly Appendix T) establishes presumptive RACT emission limits for steam generating units, process heaters and gas turbines. Subdivision C.1.a. sets limits for steam generating units and process heaters with a rated capacity of 100 or greater million British Thermal Units per hour (MMBTU/hr) as indicated in Table 1, below.

TABLE 1

Fuel type	Face* and tangential firing	Cyclone firing	Stokers
Coal—wet bottom	1.0 lbs/MMBTU	.55 lbs/MMBTU	N/A.
Coal—dry bottom	.38 lbs/MMBTU	N/A	.4 lbs/MMBTU.
Oil or Gas or both	.25 lbs/MMBTU	.43 lbs/MMBTU	N/A
Gas only	.20 lbs/MMBTU	N/A	N/A

*Includes wall, opposed and vertical firing methods.

Subdivision C.1.b. of 9 VAC 5–40–311 (formerly Appendix T) sets presumptive RACT limits for gas turbines. All limits for gas turbines are expressed in terms of dry volume corrected to 15 percent oxygen. RACT for gas-fuel, simple or combined cycle turbines, is 42 parts per million dry volume (ppmvd) of NO_X. RACT for oil-fueled simple or combined cycle units, is 65 ppmvd NO_X when the fuel bound nitrogen content is less than 0.015 percent and a limit of 77 ppmvd when the fuel bound nitrogen content is greater than or equal to 0.015 percent.

Subdivision C.2. of 9 VAC 5–40–311 requires that compliance with the limits set in C.1.a. and b. shall be met on a daily basis. EPA is proposing to approve the provisions of C.1.a. and b. and C.2. of 9 VAC 5–40–311 (formerly Appendix T) as RACT for utility boilers, process heaters and gas turbines.

C. Compliance

Subsections 120–04–0408 (D) and (E) require compliance with RACT as expeditiously as practicable but not later than May 31, 1995. This meets the corresponding requirement under section 182(f) of the Act and is approvable. The following sections of Virginia's general provisions are cross-referenced and apply to all sources subject to NO_X RACT: 120–04–0413 Compliance; 120–04–0414 Test methods and procedures; 120–04–0415 Monitoring; 120–04–016 Notification, records and reporting; 120–04–0417 Registration; 120–04–0418 Facility maintenance or malfunction; and 120–04–0419 Permits. These provisions are all SIP approved, and, therefore, section 120–04–0408 satisfies appropriate requirements for record-keeping, monitoring and compliance.

D. Exempted Sources

Provisions found at subdivision C.3.b. of 9 VAC 5–40–311 (formerly Appendix T) exempt any steam generating unit, gas turbine, or process heater with an annual capacity factor of less than five percent from the requirement to demonstrate RACT.

However, within three months following any calendar year in which the capacity factor exceeds five percent, a source becomes subject to subsection 120–04–0408 (A) or (B)—which require compliance with a RACT limit set presumptively or on a case-by-case basis—and the owner must make the notification and submittal required under subsection 120–04–0408 (D) or (E)—which require notification of applicability status. In this case, the compliance date is two years after the Board approves the schedule submitted by the source owner. Provisions of subdivision C.3.b. also provide that time periods in which a stand-by unit is used to provide replacement services for a unit being altered to comply with RACT are not to be included in the determination of the annual capacity factor for the stand-by unit.

Provisions found at subdivision C.3.d. of 9 VAC 5–40–311 (formerly Appendix T) exempt any stationary internal combustion engine with a rated capacity of less than 450 horsepower output from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.e. of 9 VAC 5–40–311 (formerly Appendix T) exempt any incinerator with a maximum capacity of less than 50 tons of waste per day from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.f. of 9 VAC 5–40–511 (formerly Appendix T) exempt any incinerator or thermal or catalytic oxidizer used exclusively as air pollution control equipment from the requirement to demonstrate RACT.

Provisions found at subdivision C.3.g. of 9 VAC 5–40–311 exempt any generator used solely to supply emergency power to buildings during periods when normal power supplies are interrupted and during periods of scheduled maintenance from the requirement to demonstrate RACT.

In a memorandum from G.T. Helms of the Office of Air Quality Planning & Standards (OAQPS) to the Regional Air Branch Chiefs, dated January 1, 1995, entitled "De Minimis Values for NO_X RACT", EPA provides guidance and technical data that may be used to evaluate de minimis levels for various categories of NO_X sources. Traditionally, regulatory agencies have typically included exemptions for very small emission units in volatile organic compound (VOC) RACT rules. The reason for the exemption is that control requirements at very small units are generally not reasonable, considering technological and economic feasibility. In the process of adopting rules to meet the NO_X RACT requirements of the Clean Air Act, many states have included exemptions in their state rules for very small or infrequently used NO_X emission sources similar to the VOC rule exemptions. Total annual emissions from certain units at a facility, such as small incinerators, emergency generators and peaking units, may be so

small that it is clear that no controls are reasonably available for such units. Based on the description of de minimis level of NO_X emissions from small units, EPA agrees that it is reasonable to exclude the source categories as provided in subdivisions C.3.b, C.3.d, C.3.e, C.3.f, and C.3.g of 9 VAC 5–40–311 (formerly Appendix T) of Virginia's regulations from RACT requirements.

E. Generic Provisions

Rule 120–04–0408 requires certain sources to comply with the applicable emission limits established in Appendix T (now known as 9 VAC 5–40–311); or to apply to the Board for an alternative emission limit through a source-specific RACT determination process. The emission limits of section C of 9 VAC 5–40–311 do not cover all categories of NO_X sources. Section C specifically enacts emission limits for boilers/steam generating units, process heaters and gas turbines. Other source categories, such as incinerators, reciprocating internal combustion engines, cement manufacturing and iron/steel manufacturing are not covered in 9 VAC 5–40–311.

These sources are not subject to specific, "up-front" (i.e. immediately ascertainable) emission limitations. Instead, the regulations establish a process for the Commonwealth to review and approve individual RACT emission limitations proposed by the sources, which are then to be submitted to EPA as SIP revisions. Additionally, subsection 120–04–0408(B) of Virginia's rule allows sources subject to the presumptive limits in Appendix T (now known as 9 VAC 5–40–311) to propose alternative RACT on a case-by-case basis provided they submit the proposal by January 1, 1998. The proposal must include technical and economic support documentation for the proposed RACT and include a schedule for compliance as expeditiously as practical but no later than May 31, 1995.

The Act requires states to implement RACT on all major stationary sources. Process-oriented generic regulations, such as those submitted by Virginia, which do not include specific and ascertainable emission limitations for all major sources, do not by themselves provide standards for EPA to approve or disapprove as satisfying the definition of RACT. Therefore, the Act's RACT requirements are satisfied only after the specific limitations imposed by the Commonwealth on its major sources have been submitted to EPA as SIP revisions and approved by EPA as RACT for the subject sources.

In a November 7, 1996 policy memo from Sally Shaver, Director, Air Quality Strategies and Standards Division of OAQPS, EPA issued guidance for approving state generic RACT regulations, like Virginia's, provided certain criteria are met. This guidance does not exempt any major source from RACT requirements but instead provides for a de minimis deferral of RACT only for the purposes of approving the state's generic RACT regulation. The de minimis deferral level is determined by using the 1990 NO_X emissions, excluding the utility boiler NO_X emissions. The remaining 1990 non-utility boiler emissions are then compared with the amount of non-utility NO_X emissions that have yet to have RACT approved into the SIP. Generally, EPA expects that all utility boiler RACTs will be approved prior to application of this de minimis deferral policy and possible conversion of the generic RACT conditional approval to full approval. EPA does not expect to defer more than 5% of the emissions calculated in this manner in order to fully approve Virginia's generic NO_X RACT regulation. In accordance with the November 1996 policy, EPA is requiring that all utility boiler RACT determinations be approved by EPA and all but a de minimis level of non-utility boiler RACT determinations be approved into the SIP before the limited approval can be converted to full approval. Full approval of a generic RACT regulation under this policy does not change the Commonwealth's statutory obligation to implement RACT for all major sources. No major NO_X source is being exempted from RACT requirements through this policy or today's rulemaking.

Because EPA has not received SIP revisions of source-specific RACT determinations for all major sources of NO_X subject to RACT under the Clean Air Act, EPA can at best, according to the November 7, 1996 policy memorandum, propose conditional limited approval of the NO_X RACT generic rule. In support of this proposed rulemaking, the Commonwealth committed in a letter dated April 11, 1998 to submit, as SIP revisions, RACT determinations for all sources subject to NO_X RACT within 12 months of EPA's final conditional approval of the generic rule.

F. Virginia's Audit Privilege Legislation

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Thus, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its

program consistent with the federal requirements.

Terms of and Rationale for Conditional Approval

EPA's is proposing conditional approval of Virginia's NO_X RACT regulations, based on the Commonwealth's commitment to submit for approval into the SIP, the case-by-case RACT proposals for all sources subject to RACT requirements currently known to the Virginia Department of Environmental Quality (VADEQ). The Commonwealth submitted this commitment in a letter to EPA, dated August 11, 1998. The case-by-case RACT proposals must be submitted by a date certain that is no later than 12 months after the effective date of EPA's final conditional approval.

To fulfill the conditions of this approval, the Commonwealth must, by no later than 12 months after the effective date of EPA's final conditional approval of the generic NO_X RACT SIP, (1) certify that is has submitted case-by-case RACT SIPs for all sources subject to the RACT requirements currently known to the Department; or (2) demonstrate that the emissions from any remaining subject sources represent a de minimis level of emissions (as described above). Once EPA has determined that the Commonwealth has satisified this condition, EPA shall remove the conditional nature of its approval and the Virginia NO_X RACT regulations will, at that time, retain limited approval status. Should the Commonwealth fail to meet the conditions specified above, the final conditional limited approval of the NO_X RACT regulations SIP revision shall convert to a disapproval.

EPA is also proposing limited approval of Virginia's NO_X RACT regulations, VA Rule 120–08–0408, and the provisions of 9 VAC 5–40–311 (formerly Appendix T) as requested by the VADEQ. The current Virginia SIP does not contain a general requirement that all major sources of NO_X must implement RACT. While EPA does not believe that the Virginia generic NO_X RACT regulation satisfies the Act's RACT requirements as discussed previously in this notice, EPA is also proposing limited approval of the Virginia NO_X RACT regulations on the basis that they strengthen the SIP. The purpose of the proposed approval of the presumptive limits as RACT for these categories of sources of NO_X is for the limited purpose of strengthening the Virginia SIP by adding RACT standards for sources of NO_X in the Northern Virginia Emissions Control Area where none existed before.

Section 110(k)(4) of the Act allows EPA to propose conditional approval of the Virginia RACT regulations based on a commitment by the Commonwealth to adopt specific enforceable measures by a date certain but no later than 1 year after the effective date of EPA's final conditional approval. On August 11, 1998, Virginia submitted a letter to EPA committing to submit all case-by-case RACT determinations to EPA as SIP revisions within 12 months of final conditional, limited rulemaking, including those for sources covered by new source review permits, subject to the presumptive RACT limits, and previously exempted from the state regulations. Once EPA determines that the Commonwealth has satisfied the conditions in this notice, EPA shall remove only the conditional nature of its approval and the NO_X RACT regulations will, at that time, retain limited approval status. Once EPA has approved all of the case-by-case RACT proposals as SIP revisions, the limited approval will convert to full approval. Therefore, even after the conditional status of EPA's approval of Virginia's regulations is removed, VADEQ must still continue to submit, and have EPA approve into the Virginia SIP, RACT requirements for the remaining de minimis amount of emissions. Removal of the conditional status to limited approval status in no way changes VADEQ's statutory obligation to implement RACT for all major sources. Although EPA fully expects that Virginia will meet the conditions set forth in this notice, should Virginia fail to meet the conditions in this notice, EPA is proposing that the final conditional limited approval shall convert to a disapproval.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. A more detailed description of the state submittal and EPA's evaluation are included in the Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IV. Proposed Action

EPA is proposing conditional limited approval of the Commonwealth's NO_X RACT SIP submittal of November 9, 1992, as modified on December 11, 1992 and April 11, 1998. EPA is proposing conditional limited approval of this SIP revision based on the commitment made by Virginia to submit all case-by-case RACT proposals for sources it is currently aware of as being subject to the major source NO_X RACT requirement, and because adding RACT standards for major sources of NO_X in the Northern Virginia Emissions Control Area where none existed before strengthens the SIP. On August 11, 1998, Virginia submitted a letter to EPA committing to submit all case-by-case RACT determinations to EPA as SIP revisions within 12 months of final conditional, limited rulemaking.

V. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental

health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action of Virginia's NO_x RACT regulations do not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 7, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–1648 Filed 1–25–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6225–5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Kansas submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Kansas portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

The EPA is proposing to conditionally approve the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Kansas State Implementation Plan (SIP). Final approval is contingent upon Kansas' submission of additional, enforceable control measures.

In a separate **Federal Register** notice published today, the EPA is also proposing conditional approval of a similar plan submitted by the Missouri Department of Natural Resources to address the Missouri portions of the ozone maintenance area.

DATES: Comments on this proposed rule must be received in writing on or before February 25, 1999.

ADDRESSES: Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document are available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas City metropolitan area (KCMA), consisting of Clay, Platte, and Jackson Counties in Missouri, and Johnson and Wyandotte Counties in Kansas, was designated nonattainment for ozone in 1978. The Clean Air Act (CAA) provides for areas with a prescribed amount of air quality data showing attainment of the standard to be redesignated from nonattainment to attainment, if the requirements of section 107(d)(3)(E) are met. One of these requirements is for the area to adopt a maintenance plan consistent with the requirements of section 175A. This plan must demonstrate attainment of the NAAQS with a margin of safety sufficient to remain in attainment for ten years. Also, the plan must contain a contingency plan to be implemented if the area once again violates the standard.

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the ozone NAAQS. In accordance with the CAA, the Kansas Department of Health and Environment (KDHE) revised the ozone SIP for the Kansas portion of the Kansas City area to recognize the area's attainment status. The EPA published final approval of the Kansas SIP on June 23, 1992. The SIP became effective on July 23, 1992 (57 FR 27939). This action effected the redesignation of the area to attainment.

The contingency plan approved as part of the 1992 SIP identified four measures which were to be implemented upon subsequent violation of the standard in the Kansas City area. These contingency measures required: (1) certain new or expanding sources of ozone precursors to acquire emissions offsets; (2) the installation of Stage II vapor recovery systems at retail gasoline stations or the implementation of an enhanced inspection and maintenance (I/M) program for motor vehicles; (3) the implementation of transportation control measures achieving a 0.5 percent reduction in areawide VOC emissions; and (4) the completion of a comprehensive emissions inventory.

In a letter from Dennis Grams, EPA Region VII Administrator, to James J. O'Connell, KDHE Secretary, on January 31, 1996, the EPA informed the KDHE of a violation of the ozone NAAQS. Quality-assured air quality monitoring data indicated measured exceedances of the ozone standard on July 11, 12, and 13, 1995, at the Liberty monitoring site in Kansas City. The highest recorded value for each day was 0.128 ppm, 0.161 ppm, and 0.131 ppm, respectively. These exceedances, in combination with the measured exceedance of 0.128 ppm recorded on July 29, 1993, constitute a violation of the standard.

As a result of this violation, Kansas was required to implement the contingency measures identified in the approved SIP. In a July 28, 1995 letter from Roger Randolph (Air Pollution Control Program Director) to William Spratlin (Air, RCRA, and Toxics Division Director), Missouri requested guidance on responding to the KCMA ozone violation. Specifically, Missouri requested flexibility in utilizing control measures other than those identified in the approved SIP. Via an August 17, 1995, letter from William Spratlin to Roger Randolph, the EPA affirmed that Missouri and Kansas may substitute other contingency measures for those in the approved SIP, provided: (1) the substitute measures would achieve substantially equivalent emission reductions; (2) the substitute measures were submitted as a SIP revision; and (3) the substitute measures were implemented before the 1996 ozone season. It must be emphasized that this flexibility was extended to both Kansas and Missouri.

To address the short-term need to control emissions, Kansas promulgated a rule to limit the Reid Vapor Pressure (RVP) of the gasoline sold during the summer months in the KCMA to 7.2 per square inch (psi) (K.A.R. 28–19–79). This regulation became effective May 2, 1997. The EPA published final approval of Kansas' RVP rule on July 7, 1997 (**Federal Register** Vol. 62, No. 129, 36212). The approval became effective on August 6, 1997.

To address the longer-term need to reduce VOC and nitrogen oxides (NO_x) emissions, the Mid-America Regional Council's Air Quality Forum (MARC AQF), comprised of representatives from local governments, business, and health and environmental organizations, agreed to examine various alternative control strategies and recommend a suite of viable measures to Missouri and Kansas. The AQF recommended: (1) expanding public education efforts; (2) low RVP gasoline; (3) motor vehicle I/M, (4) seasonal no-fare public transit; (5) a voluntary clean fuel fleets program; and (6) additional transportation control measures. The AQF also recommended a group of supplemental measures aimed at reducing ozone levels. The emissions reductions associated with the voluntary measures, specifically clean fuel fleets and transportation control, cannot be quantified due to their voluntary nature.

The Missouri Department of Natural Resources (MDNR) presented a maintenance SIP, with the AQF recommendations, to the Missouri Air Conservation Commission (MACC) on June 24, 1997. At that time, the MACC recommended inclusion of a more timely and less politically sensitive control measure in place of the I/M provision. As a result, on October 7, 1997, the AQF recommended the implementation of a reformulated gasoline (RFG) program in the KCMA. In response, Kansas intends to include RFG as a control measure in a year 2000 transitional attainment plan to demonstrate compliance with the revised NAAQS for ozone, should the area be eligible for transitional nonattainment status outlined in the President's July 16, 1997, directive to Administrator Browner. The intent is to have the RFG control measure in place prior to the beginning of the 2001 ozone season. Kansas reserves the option to use gasoline blends other than the Federal RFG blend, provided their use achieves similar VOC and NO_x emission reductions.

The final state submittal includes an emissions inventory; the two creditable control strategies—7.2 RVP gasoline, RFG; additional unquantifiable measures including voluntary clean fuel fleets and seasonal low-fare transit; continued monitoring; verification of continued attainment; and a contingency plan.

Because limiting the RVP of gasoline to 7.2 psi achieves VOC emissions reductions of only 4.0 tons per day, additional reductions are necessary to provide for reductions substantially equivalent to those obtainable by implementing the contingency measures approved in the 1992 SIP. The implementation of an RFG program is therefore critical to meeting Kansas' obligation to achieve the necessary reductions.

II. Evaluation Criteria

To evaluate the maintenance plan, the EPA referred to requirements of section 175A of the Act. The EPA also issued guidance specifically to address applicable procedures for handling

redesignation requests, including maintenance plan provisions "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, to EPA Regional Division Directors, dated September 4, 1992. In addition, the EPA reviewed the revised maintenance plan for evidence that the substitute control measures provide for emissions reductions which are substantially equivalent to those approved in the 1992 SIP, pursuant to guidance given in the August 17, 1995, letter, from William Spratlin to Roger Randolph. Finally, the EPA evaluated the revised maintenance plan with respect to the "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS," from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators.

III. Review of Submittal

According to the September 4, 1992, memo from John Calcagni regarding "Procedures for Processing Requests to Redesignate Areas to Attainment," a maintenance plan must provide for maintenance of the ozone NAAQS for at least ten years after redesignation. Section 175A of the CAA defines the general framework of a maintenance plan. The Calcagni memo identifies the following list of core provisions necessary to ensure maintenance of the ozone NAAQS: emissions inventory, maintenance demonstration (including control measures), air monitoring network, verification of continued attainment, and a contingency plan. Below is a discussion of each of these provisions, as addressed in the 1998 Revision to the Kansas City State Implementation Plan for Control of Ozone.

A. Emissions Inventory

The emissions inventory for the KCMA was revised in 1995. In a direct final rule (61 FR 18251), published on April 25, 1996, the EPA approved the revised emissions inventory. The emissions inventory estimated VOC and NO_X actual emissions for 1990 and 1992 while using industrial growth factors to project VOC and NO_X emissions for 1995, 2000, 2005, and 2010. Point, area, mobile, biogenic, VOC, and NO_X emission totals were estimated. The inventory summarized totals for each emissions category and reported emissions by source type. VOC emissions for the entire KCMA were estimated at 322,557 and 286,279 kilograms per summer day in 1990 and 1992, respectively. The present SIP revisions are based on the inventory as revised in 1995.

B. Control Measures

The state has provided estimates of the achievable emissions reductions for only two of the many measures (7.2 RVP gasoline and RFG) included in the SIP. These estimates were evaluated to determine whether they are substantially equivalent to the reductions for which the 1992 SIP provides. In accord with the original maintenance plan, implementation of a regulation requiring Stage II vapor recovery systems at retail gasoline stations would result in daily VOC emissions reductions of 6.9 tons per day. An additional 1.5 tons per day of VOC reductions would be achieved through implementation of transportation control measures, making the 1992 SIP designed to reduce VOC emissions by a minimum of 8.4 tons per day. Accordingly, Kansas must demonstrate the substitute control measures will provide for areawide VOC reductions of at least 8.4 tons per day.

1. Gasoline Volatility Control

Typically reported as RVP, volatility is a measure of the tendency of gasoline to evaporate. RVP, expressed in psi, denotes the pressure exerted by a vapor at 100°F. The evaporation of gasoline adds to the quantity of VOCs in the atmosphere which contribute to ozone formation.

As a result of the ozone violation in 1995, Kansas promulgated a rule to limit the summertime RVP of gasoline sold in the Kansas portion of the KCMA to 7.2 psi (K.A.R. 28–19–79). This regulation became effective May 2, 1997. The EPA published final approval of Kansas' RVP rule on July 7, 1997 (**Federal Register** Vol. 62, No. 129, 36212). The approval became effective on August 6, 1997.

Emissions estimates for on-road mobile sources were developed using the EPA MOBILE5a model. Evaporative emissions from off-road mobile sources were estimated to decrease by 2.7 percent, assuming 90 percent of the off-road emissions are combustive and 10 percent are evaporative. Kansas has demonstrated that limiting the volatility of gasoline to 7.2 pounds psi will reduce VOC emissions by 4.0 tons per day within the KCMA.

2. RFG

RFG is a blend of gasoline containing oxygenates and lower levels of toxic substances. It is designed to reduce emissions of pollutants, including VOC from motor vehicle exhaust. RFG contains many of the same ingredients found in conventional gasoline, but in different quantities. The addition of oxygenates, such as ethanol or methyl tertiary butyl ether, increases its oxygen content and thereby increases the combustion efficiency of the vehicle. The evaporative emissions can also be reduced depending on the RVP of the base gasoline to which the oxygenates are added.

The RVP requirement for RFG in Kansas, as defined in 40 CFR 80.71(a), is 7.2 psi. Emission reductions from RFG were modeled using the EPA's MOBILE5a emissions model and estimates of the number of vehicle miles traveled in the KCMA. Emissions are projected to be 96.65 tons per day in 2000. After implementation of 7.2 RVP, the emissions in 2000 are projected to be reduced to 89.22 tons per day. If RFG were to be implemented in 2000, emissions are projected to be reduced to 74.88, for an estimated incremental reduction of 14.34 tons per day.

As part of this proposed SIP revision, the KDHE commits to include RFG as a control measure in its year 2000 transitional plan as required to demonstrate compliance with the revised ozone NAAQS. The intent is to have the RFG control measure in place prior to the beginning of the 2001 ozone season. Kansas cited a preference for a 2001 implementation schedule because it is consistent with the AQF recommendations and the year 2000 transitional SIP planning process, and it provides reasonable opportunity for fuel refiners nearest the KCMA to complete the necessary capital improvements to compete for the newly created market for RFG. Previously, Kansas was prohibited from implementing RFG because the EPA had not promulgated the final regulation, making it possible for former nonattainment areas to participate in the Federal RFG program. However, this obstacle has been lifted by the EPA's rulemaking signed by the Administrator September 21, 1998, and published in the **Federal Register** on September 29, 1998 (63 FR 52093). Therefore, the EPA expects that the Governor of Kansas will request that the KCMA be included in the Federal RFG program. Upon fulfillment of this commitment, the EPA will propose to fully approve this revision to the maintenance SIP.

If the state does not opt in to the RFG program or adopt an equivalent state fuel program, the state must, by the deadline established in the final conditional approval, implement the contingency measures identified in the 1992 SIP. In this event, the state must adopt and submit any necessary regulations to implement the 1992 SIP contingency measures. If the state fails

to make a submittal by the deadline specified in the final conditional approval, the conditional approval converts to a disapproval.

3. Clean Fuel Fleets

Clean fuel fleets programs take advantage of vehicles relying on cleaner burning energy sources for fuel. These vehicles may operate on an array of fuels including electricity, compressed natural gas, propane, and ethanol blended gasolines. Because this program is voluntary, Kansas is not seeking and the EPA is not approving credit for emissions reductions under the maintenance plan.

4. Seasonal Low-fare Transit

The AQF and the MARC board recommended the area's transit providers provide no-fare transit during peak ozone season beginning in 1997. The Kansas City Area Transportation Authority requested the AQF endorse a reduced-fare program, commencing in 1998. Participation in this program is voluntary and difficult to estimate, and no permanent funding source has been identified. Therefore, Kansas is not seeking and the EPA is not approving credit for emission reductions for this program under this maintenance plan.

5. Additional Supplemental Measures

The EPA supports Kansas' commitment to implement various additional programs aimed at reducing VOC and NO_x emissions. Implementation of these programs will assist the KCMA in meeting both the 1-hour and 8-hour ozone standards. Kansas is not claiming and the EPA is not approving emissions reductions from these programs for purposes of the SIP. These measures include enhanced traffic signalization, a potentially expanded transit system, enhanced land-use planning, stationary source emissions controls, expanded public education programs, and air quality data collection.

C. Air Monitoring Network

The ambient air monitoring network which measures ozone concentrations in the KCMA consists of six monitoring stations. Five are located in Missouri at Liberty, Watkins Mill, Worlds of Fun, Kansas City International Airport (KCI), and Richards Gebaur Airport. The remaining monitoring station is located in Kansas City, Kansas. Liberty and Watkins Mill are downwind, assuming predominant winds are from the southwest. Two monitors, Worlds of Fun and KCI, are placed in populated areas. Richards Gebaur is considered an upwind site, designed to monitor ozone transport from outside the area. The final monitor is located in downtown Kansas City, Kansas, in Wyandotte County.

Ozone concentrations may not exceed the 1-hour standard more than an average of once per year at any single monitoring site over any given three-year period. Eighteen (18) exceedances of the ozone standard have been recorded in the KCMA from 1990 through 1998. Nine of these exceedances occurred in 1995, with three each at the Liberty and Watkins Mill sites, two at Worlds of Fun site, and one at the KCI site. Four exceedances recorded at the Liberty monitor constituted the violation triggering the implementation of the previously approved contingency plan.

D. Maintenance of the Standard

By virtue of the approval of the 1992 maintenance SIP, the Administrator deemed the VOC reductions for which the contingency measures provided, necessary to promptly correct any violation of the 1-hour ozone standard which might occur subsequent to redesignation. Hence, the revised contingency measures must provide for the equivalent level of reductions. The Agency has determined that if Kansas meets the conditions set forth in this action, the revised plan will achieve the required reductions. The state has provided VOC emissions projections for the ten-year period following maintenance plan development. In addition, the state has committed to regularly updating the emissions inventory for the KCMA to ensure that emissions trends are appropriately tracked to facilitate future air quality planning activities.

E. Contingency Plan

The revised maintenance plan includes additional control measures to replenish the contingency measures that are being implemented in response to the 1995 violation of the standard. These measures are to be implemented in the event that additional violations are recorded. The KDHE is committed to reducing combined Johnson County and Wyandotte County VOC emissions by 5 percent in response to a future violation of the 1-hour ozone standard.

In implementing this 5 percent reduction, the KDHE will review the latest emission inventory data, perform a comprehensive evaluation of available control strategies, and select those control measures that provide the greatest air quality benefits and most cost-effective response. The options to be considered for this shall include, but not be limited to the following: stationary source controls (NO_x and/or VOC), Stage II vapor recovery, and enhanced vehicle emissions reductions programs. These options will be considered in the order listed, as necessary to fulfill the 5 percent reduction obligation. If further violations of the 1-hour ozone standard occur, the KDHE will again review the data and evaluate additional control strategies.

F. Additional Reasonably Available Control Technology (RACT) Regulations

As a submarginal nonattainment area, the KCMA was required to implement RACT controls under section 182(a)(2)(A) of the CAA. The states of Missouri and Kansas implemented these regulations prior to the redesignation of the area. The KDHE implemented RACT on all major sources that were covered by control technique guideline (CTG) categories I, II, and III. In addition, the KDHE implemented non-CTG RACT on three source categories.

Kansas is currently developing a RACT rule to regulate the bakery source category in the area. Presently only one source is known to exist in the Kansas portion of the KCMA to require adoption of this RACT regulation. In response to the 1995 ozone standard violation, Kansas also initiated a source study to identify any additional facilities or categories requiring the adoption of additional specific RACT rules.

IV. Policy Review

Because Kansas City has recorded a violation of the 1-hour ozone standard in 1995, and recent air quality analyses performed by Kansas suggest Kansas City is likely to violate the new 8-hour standard, Kansas must proceed to expeditiously implement the provisions of the maintenance plan measures which are the subject of today's action. Protecting the 1-hour ozone standard becomes increasingly important in light of new requirements being established to implement the revised 8-hour ozone standard, which was finalized July 16, 1997. For this new standard, the EPA will establish a special "transitional" classification for areas that participate in a regional strategy or that opt to submit early plans addressing the 8-hour standard. The transitional classification will be available only to those areas meeting certain criteria, including having air quality data meeting the 1-hour standard by 2000. These transitional areas will be subject to less restrictive new source review and transportation conformity requirements than other ozone nonattainment areas. These less restrictive requirements are

important to companies seeking to expand existing operations or start new operations. Therefore, achieving the reductions associated with the maintenance plan proposed for approval today have critical implications for the ability of the KCMA to meet the requirements of the new 8-hour ozone standard. However, the control measures which would be conditionally approved are required to be implemented first and foremost to protect the 1-hour ozone standard.

Based on air quality data from 1996 through 1998 (after the violation which triggered the contingency measures in the 1992 maintenance plan), the Kansas City area may be able to demonstrate that it has now achieved the 1-hour ozone standard. However, the EPA's "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS" states that, in general, contingency measures which were triggered prior to revocation of the 1-hour standard must be retained. Therefore, although the EPA believes that the 1996 through 1998 data justify the brief delay in implementation of the substitute contingency measures, it does not relieve the states of the need to implement RFG, an equivalent state fuel, or one of the contingency measures identified in the 1992 SIP.

V. Conclusion

The EPA is soliciting public comments on this notice and on issues relative to the EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

VI. Proposed Action

In today's notice, the EPA proposes to conditionally approve Kansas' 1998 revisions to the Kansas City ozone maintenance plan. This includes the VOC control measures described above, the associated emissions reductions, and the commitment to implement the additional reductions as expeditiously as practicable. Full approval of the SIP is conditioned upon receipt of one of the following: (1) a request from the Governor of Kansas to require the sale of Federal RFG within the Kansas portion of the KCMA; (2) adopted regulations implementing the contingency measures identified in the 1992 maintenance plan, i.e., Stage II vapor recovery or an enhanced I/M program; or (3) adopted regulations to implement a state fuel program which will achieve reductions equivalent to a Federal RFG program. In the case of options 2 or 3, upon receipt of regulations implementing these provisions and a request to amend the maintenance plan accordingly, the EPA will initiate rulemaking on this subsequent revision. If the state fails to submit one of the above, the conditional approval converts to a disapproval. The EPA proposes to establish a deadline for meeting the condition which is one year from the effective date of the final rule conditionally approving the state's 1998 submittal. The statute requires that the condition be met within one year of the conditional approval. The EPA seeks comments on whether a shorter deadline should be established.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposal would not create a mandate on state, local, or tribal governments. It would merely approve actions which the state has already chosen to take. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility

analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state has already chosen to impose. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action would approve requirements which the state has chosen to undertake under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, would result from this action. This action would not result in annualized costs of 100 million dollars or more.

Authority: 42 U.S.C. 7401 et seq.

Dated: January 15, 1999.

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 99–1760 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6225–6]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Kansas City ozone maintenance area experienced a violation of the National Ambient Air Quality Standard (NAAQS) for ozone in 1995. In response to this violation, Missouri submitted revisions to its ozone maintenance plan. These revisions pertain to the implementation of control strategies to achieve reductions in volatile organic compound (VOC) emissions within the Missouri portion of the Kansas City ozone maintenance area. A major purpose of these revisions is to provide a more flexible approach to maintenance of acceptable air quality levels in Kansas City, while achieving emission reductions equivalent to those required by the previously approved plan.

The EPA is proposing to conditionally approve the 1998 revisions to the Kansas City ozone maintenance plan as a revision to the Missouri State Implementation Plan (SIP). Final approval is contingent upon Missouri's submission of additional, enforceable control measures.

In a separate **Federal Register** notice published today, the EPA is also proposing conditional approval of a similar plan submitted by the Kansas Department of Health and Environment to address the Kansas portions of the ozone maintenance area.

DATES: Comments on this proposed rule must be received in writing on or before February 25, 1999.

ADDRESSES: Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state submittal and the EPA-prepared technical support document are available for public review at the above address.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION:

I. Background

The Kansas City metropolitan area (KCMA), consisting of Clay, Platte, and Jackson Counties in Missouri and Johnson and Wyandotte Counties in Kansas, was designated nonattainment for ozone in 1978. The Clean Air Act (CAA) provides for areas with a prescribed amount of air quality data showing attainment of the standard to be redesignated from nonattainment to attainment, if the requirements of section 107(d)(3)(E) are met. One of these requirements is for the area to adopt a maintenance plan consistent with the requirements of section 175A. This plan must demonstrate attainment of the NAAQS with a margin of safety sufficient to remain in attainment for ten years. Also, the plan must contain a contingency plan to be implemented if the area once again violates the standard.

Ozone monitoring data from 1987 through 1991 demonstrated that the Kansas City nonattainment area had attained the ozone NAAQS. In accordance with the CAA, the Missouri Department of Natural Resources (MDNR) revised the ozone SIP for the Missouri portion of the Kansas City area to recognize the area's attainment status. The EPA published final approval of the Missouri SIP on June 23, 1992. The SIP became effective on July 23, 1992 (57 FR 27939). This action effected the redesignation of the area to attainment.

The contingency plan approved as part of the 1992 SIP identified four measures which were to be implemented upon subsequent violation of the standard in the Kansas City area. These contingency measures required: (1) Certain new or expanding sources of ozone precursors to acquire emissions offsets; (2) the installation of Stage II vapor recovery systems at retail gasoline stations or the implementation of an enhanced inspection and maintenance (I/M) program for motor vehicles; (3) the implementation of transportation control measures achieving a 0.5 percent reduction in areawide VOC emissions; and (4) the completion of a comprehensive emissions inventory.

In a letter from Dennis Grams, EPA Region VII Administrator, to David Shorr, MDNR Director, on January 31, 1996, the EPA informed the MDNR of a violation of the ozone NAAQS. Quality-assured air quality monitoring data indicated measured exceedances of the

ozone standard on July 11, 12, and 13, 1995, at the Liberty monitoring site in Kansas City. The highest recorded value for each day was 0.128 ppm, 0.161 ppm, and 0.131 ppm, respectively. These exceedances, in combination with the measured exceedance of 0.128 ppm recorded on July 29, 1993, constitute a violation of the standard.

As a result of this violation, Missouri was required to implement the contingency measures identified in the approved SIP. In a July 28, 1995, letter from Roger Randolph (Air Pollution Control Program Director), to William Spratlin (Air, RCRA, and Toxics Division Director), Missouri requested guidance on responding to the KCMA ozone violation. Specifically, Missouri requested flexibility in utilizing control measures other than those identified in the approved SIP. Via an August 17, 1995, letter from William Spratlin to Roger Randolph, the EPA affirmed that Missouri and Kansas may substitute other contingency measures for those in the approved SIP, provided: (1) The substitute measures would achieve substantially equivalent emission reductions; (2) the substitute measures were submitted as a SIP revision; and (3) the substitute measures were implemented before the 1996 ozone season. It must be emphasized that this flexibility was extended to both Kansas and Missouri.

To address the short-term need to control emissions, Missouri promulgated an emergency rule to limit the summertime Reid Vapor Pressure (RVP) of gasoline sold within the KCMA to 7.2 pounds per square inch (psi) (10 CSR 10–2.330). The emergency rule was to expire on October 27, 1997. Prior to its expiration, the state promulgated a permanent regulation. The permanent rule was published in the Code of State Regulations (CSR) on September 30, 1997, and became effective October 30. On October 9, 1997, the EPA published a rule, which conditionally approved the state emergency rule upon receipt of an equivalent, adopted permanent rule. The state fulfilled the requirements of the conditional approval by submitting a permanent Missouri rule on November 13, 1997. The EPA published full approval of Missouri's permanent RVP rule on April 24, 1998 (**Federal Register**, Vol. 63, No. 79, 20318). The approval became effective on May 24, 1998.

To address the longer-term need to reduce VOC and nitrogen oxides (NO_X) emissions, the Mid-America Regional Council's Air Quality Forum (MARC AQF), comprised of representatives from local governments, business, health, and environmental organizations, agreed to examine various alternative control strategies and recommend a suite of viable measures to Missouri and Kansas. The AQF recommended: (1) Expanding public education efforts; (2) low RVP gasoline; (3) motor vehicle I/M; (4) seasonal no-fare public transit; (5) a voluntary clean fuel fleets program; and (6) additional transportation control measures. The AQF also recommended a group of supplemental measures aimed at reducing ozone levels. The emissions reductions associated with the voluntary measures, specifically clean fuel fleets and transportation control, cannot be quantified due to their voluntary nature.

The MDNR presented a maintenance SIP, with the AQF recommendations, to the Missouri Air Conservation Commission (MACC) on June 24, 1997. At that time, the MACC recommended inclusion of a more timely and less politically sensitive control measure in place of the I/M provision. As a result, on October 7, 1997, the AQF recommended the implementation of a reformulated gasoline (RFG) program in the KCMA. In response, Missouri has committed to pursuing, among other options, petitioning the EPA to require the sale of RFG in the KCMA under the provisions of the Federal RFG program.

The final state submittal provides for continued monitoring, emissions inventory updates, a summertime RVP limit, and several programs for which emissions reductions cannot be quantified, including completion of a stationary source study, voluntary clean fuel fleets, seasonal low-fare transit, air quality conscious land use planning, and bicycle and pedestrian friendly transportation planning. In addition, the revised plan contains commitments to adopt either the Federal RFG Program, a state fuel regulation, or a Stage II regulation.

If violations continued to occur after implementation of the above measures, the state will adopt further regulations as necessary, selected from a list including, but not limited to, Stage II vapor recovery, enhanced I/M, emissions offsets from new or modified sources, and mandatory clean fuel fleets.

According to state estimates, limiting the summertime RVP of gasoline to 7.2 psi achieves VOC emissions reductions of only 4.0 tons per day. As such, additional reductions are necessary to provide for reductions substantially equivalent to those (8.4 tons per day) obtainable by implementing the contingency measures in the previously approved SIP. The implementation of an RFG program is therefore critical to meeting Missouri's obligation to achieve the necessary reductions.

II. Evaluation Criteria

To evaluate the maintenance plan, the EPA referred to requirements of section 175A of the Act. The EPA also issued guidance specifically to address applicable procedures for handling redesignation requests, including maintenance plan provisions "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, to EPA Regional Division Directors, dated September 4, 1992. In addition, the EPA reviewed the maintenance plan for evidence that the substitute control measures provide for emissions reductions which are substantially equivalent to those approved in the 1992 SIP, pursuant to guidance given in the August 17, 1995, letter, from William Spratlin to Roger Randolph. Finally, the EPA evaluated the revised maintenance with respect to the "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS" from Richard D. Wilson, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators.

III. Review of Submittal

According to the September 4, 1992, memo from John Calcagni regarding "Procedures for Processing Requests to Redesignate Areas to Attainment," a maintenance plan must provide for maintenance of the ozone NAAQS for at least ten years after redesignation. Section 175A of the CAA defines the general framework of a maintenance plan. The Calcagni memo identifies the following list of core provisions necessary to ensure maintenance of the ozone NAAQS: emission inventory, maintenance demonstration (including control measures), air monitoring network, verification of continued attainment, and a contingency plan. Below is a discussion of each of these provisions, as addressed in the 1998 revision to the Kansas City SIP for control of ozone.

A. Emissions Inventory

The emissions inventory for the KCMA was revised in 1995. In a direct final rule (61 FR 18251), published on April 25, 1996, the EPA approved the revised emissions inventory. The emissions inventory estimated VOC and NO_X actual emissions for 1990 and 1992 while using industrial growth factors to project VOC and NO_X emissions for 1995, 2000, 2005, and 2010. Point, area, mobile, biogenic VOC, and NO_X emission totals were estimated. The

inventory summarized totals for each emissions category and reported emissions by source type. VOC emissions for the entire KCMA were estimated at 322,557 and 286,279 kilograms per summer day in 1990 and 1992, respectively. The present SIP revisions are based on the inventory as revised in 1995.

B. Control Measures

The state has provided estimates of the achievable emissions reductions for only two of the many measures (7.2 RVP gasoline and RFG) included in the SIP. These estimates were evaluated to determine whether they are substantially equivalent to the reductions for which the 1992 SIP provides. In accord with the original maintenance plan, implementation of a regulation requiring Stage II vapor recovery systems at retail gasoline stations would result in daily VOC emissions reductions of 6.9 tons per day. An additional 1.5 tons per day of VOC reductions would be achieved through implementation of transportation control measures, making the 1992 SIP designed to reduce VOC emissions of by a minimum of 8.4 tons per day. Accordingly, Missouri must demonstrate the substitute control measures will provide for areawide VOC reductions of at least 8.4 tons per day.

1. Gasoline Volatility Control

Typically reported as RVP, volatility is a measure of the tendency of gasoline to evaporate. RVP, expressed in psi, denotes the pressure exerted by a vapor at 100°F. The evaporation of gasoline adds to the quantity of VOCs in the atmosphere contributing to ozone formation.

As a result of the ozone violation in 1995, Missouri developed an emergency regulation for the Missouri portion of the KCMA to limit the summertime RVP of gasoline to 7.2 psi. This regulation became effective May 1, 1997, and expired at midnight on October 27, 1997. In the meantime, the state worked to develop a permanent regulation limiting summertime RVP of gasoline to 7.2 psi. This regulation was presented at public hearing at the May 29, 1997, MACC meeting. The MACC adopted the regulation at the same meeting. The final order of rulemaking was published in the September 3, 1997, Missouri Register. The final permanent rule was published in the CSR on September 30, 1997, and became effective October 30. On October 9, 1997, the EPA published a conditional final rule, which was contingent upon Missouri submitting the final permanent rule by November 30, 1997. Missouri submitted the permanent rule on November 13, 1997. Therefore, the EPA published final approval of the 7.2 psi RVP rule on April 24, 1998 (63 FR 20318). The rule became effective on May 26, 1998.

Emissions estimates for on-road mobile sources were developed using the EPA MOBILE5a model. Evaporative emissions from off-road mobile sources were estimated to decrease by 2.7 percent, assuming 90 percent of the off-road emissions are combustive and 10 percent are evaporative. Missouri has demonstrated that limiting the volatility of gasoline to 7.2 psi will reduce VOC emissions by 4.0 tons per day within the KCMA.

2. RFG

RFG is a blend of gasoline containing oxygenates and lower levels of toxic substances. It is designed to reduce emissions of pollutants, including VOC from motor vehicle exhaust. RFG contains many of the same ingredients found in conventional gasoline, but in different quantities. The addition of oxygenates, such as ethanol or methyl tertiary butyl ether, increases its oxygen content, and thereby increases the combustion efficiency of the vehicle. The evaporative emissions can also be reduced depending on the RVP of the base gasoline to which the oxygenates are added.

The RVP requirement for RFG in Missouri, as defined in 40 CFR 80.71(a), is 7.2 psi. Emission reductions from RFG were modeled using the EPA MOBILE 5a. The MDNR modeled emission reductions from on-road mobile source emissions. Projected emissions are estimated to be 96.65 tons per day in 2000. After implementation of 7.2 RVP, the emissions in 2000 are projected to be reduced to 89.22 tons per day. If RFG were to be implemented in 2000, emissions are projected to be reduced to 74.88, for an estimated incremental reduction of 14.34 tons per day.

As part of this proposed SIP revision, the MDNR commits to requesting that the Governor of Missouri petition the EPA to include the KCMA in the Federal RFG Program as of April 15, 2000. Previously, Missouri was prohibited from implementing RFG because the EPA had not promulgated the final regulation, making it possible for former nonattainment areas to participate in the Federal RFG program. However, this obstacle has been lifted by the EPA's rulemaking signed by the Administrator September 21, 1998, and published in the **Federal Register** on September 29, 1998 (63 FR 52093). Therefore, the EPA expects that the Governor of Missouri will request that the KCMA be included in the Federal RFG program. Upon fulfillment of this commitment, the EPA will propose to fully approve this SIP.

If the state does not opt in to the RFG program, the state must, by the deadline established in the final conditional approval, implement one of the two proposed alternatives (either a state fuel or Stage II vapor recovery). In this case, the state must adopt and submit any necessary regulations to implement either of the proposed alternatives. The EPA will initiate a rulemaking on this subsequent revision. If the state fails to make such a submittal by the deadline specified in the final conditional approval, the conditional approval converts to a disapproval.

3. Clean Fuel Fleets

Clean fuel fleets programs take advantage of vehicles relying on cleaner burning energy sources for fuel. These vehicles may operate on an array of fuels including electricity, compressed natural gas, propane, and ethanol blended gasolines. Because this program is voluntary, Missouri is not seeking and the EPA is not approving credit for emissions reductions under the maintenance plan.

4. Seasonal Low-fare Transit

The AQF and the MARC board recommended the area's transit providers provide no-fare transit during peak ozone season beginning in 1997 to encourage people to choose public transportation over the use of personal motor vehicles. The Kansas City Area Transportation Authority requested the AQF endorse a reduced-fare program, commencing in 1998. Participation in this program is voluntary and difficult to estimate, and no permanent funding source has been identified. Therefore, Missouri is not seeking and the EPA is not approving credit for emission reductions for this program under this maintenance plan.

5. Stage II Vapor Recovery

Stage II vapor recovery systems are used to control emissions of VOC containing gasoline vapors which are displaced during motor vehicle refueling. The vapors are captured using specially equipped nozzles and are routed back to the underground storage tank from which the gasoline is being pumped. Emissions estimates were calculated based on output from the EPA's MOBILE5a emissions model. If Stage II vapor recovery systems were required in the KCMA, VOC emissions from refueling could be reduced by 6.1 tons per day during the first year of use. The need for such systems is expected

to decrease over the long term, given there is a Federal requirement that all light duty vehicles and trucks be equipped with on-board vapor recovery systems beginning with model years 1998 and 2001, respectively; however, Stage II systems will remain an effective control measure for several years given that on-board systems will be phased in over nine years, and it will be several years before older, unequipped vehicles will be retired.

6. Additional Supplemental Measures

The EPA supports Missouri's commitment to implement various additional programs aimed at reducing VOC and NO_x emissions. Implementation of these programs will assist the KCMA in meeting both the 1-hour and 8-hour ozone standards. Missouri is not claiming and the EPA is not approving emissions reductions from these programs for purposes of the SIP. These measures include enhanced traffic signalization, a potentially expanded transit system, enhanced land-use planning, stationary source emissions controls, expanded public education programs, and air quality data collection.

C. Air Monitoring Network

The ambient air monitoring network which measures ozone concentrations in the KCMA consists of six monitoring stations. Five are located in Missouri at Liberty, Watkins Mill, Worlds of Fun, Kansas City International Airport (KCI), and Richards Gebaur Airport. The remaining monitoring station is located in Kansas City, Kansas. Liberty and Watkins Mill are downwind, assuming predominant winds are from the southwest. Two monitors, Worlds of Fun and KCI, are placed in populated areas. Richards Gebaur is considered an upwind site, designed to monitor ozone transport from outside the area. The final monitor is located in downtown Kansas City, Kansas, in Wyandotte County.

Ozone concentrations may not exceed the 1-hour standard more than an average of once per year at any single monitoring site over any given three-year period. Eighteen exceedances of the ozone standard have been recorded in the KCMA from 1990 through 1998. Nine of these exceedances occurred in 1995, with three each at the Liberty and Watkins Mill sites, two at Worlds of Fun site, and one at the KCI site. Four exceedances recorded at the Liberty site constituted the violation triggering the implementation of the previously approved plan.

D. Maintenance of the Standard

By virtue of the approval of the 1992 maintenance SIP, the Administrator deemed the VOC reductions, for which the contingency measures provided, necessary to promptly correct any violation of the 1-hour ozone standard which might occur subsequent to redesignation of the area from nonattainment to attainment. Hence, the revised contingency measures must provide for the equivalent level of reductions. The Agency has determined that if Missouri meets the conditions set forth in this action, the revised plan will achieve the required reductions. The state has provided VOC emissions projections for the ten-year period following maintenance plan development. In addition, the state has committed to regularly updating the emissions inventory for the KCMA to ensure that emissions trends are appropriately tracked to facilitate future air quality planning activities.

E. Contingency Plan

The revised maintenance plan includes additional control measures to replenish the contingency measures that are being implemented in response to the 1995 violation of the standard. These measures are to be implemented in the event that additional violations are recorded. The MDNR is committed to implement, in the order listed, the following measures upon violation of the 1-hour ozone standard: (1) Stage II vapor recovery, (2) enhanced I/M (I/M 240), (3) emission offsets, and (4) mandatory clean fuel fleets. The implementation of these control measures is dependent on obtaining administrative and legislative approval.

F. Additional Reasonably Available Control Technology (RACT) Regulations

Because the KCMA was classified as a submarginal nonattainment area, Missouri was required to implement RACT controls under section 182(a)(2)(A) of the CAA. The states of Missouri and Kansas implemented these regulations prior to the redesignation of the area. The MDNR implemented RACT on all major sources that were covered by control technique guideline (CTG) categories I, II, and III. In addition, the Department implemented non-CTG RACT on sources greater than 100 tons of VOC emissions per year.

The MDNR conducted a stationary source study to determine sources that could further be controlled through RACT regulations. Based on this study, the MDNR recommends five VOC regulations to pursue: solvent cleaning, soybean oil extraction, aerospace surface coating, upgraded offset lithography, and volatile organic liquid storage.

IV. Policy Review

Because Kansas City has recorded a violation of the 1-hour ozone standard in 1995, and recent air quality analyses performed by Missouri suggest Kansas City is likely to violate the new 8-hour standard, Missouri must proceed to expeditiously implement the provisions of the maintenance plan which are the subject of today's action. Protecting the 1-hour ozone standard becomes increasingly important in light of new requirements being established to implement the revised 8-hour ozone standard, which was finalized July 16, 1997. For this new standard, the EPA will establish a special "transitional" classification for areas that participate in a regional strategy or that opt to submit early plans addressing the 8-hour standard. The transitional classification will be available only to those areas meeting certain criteria, including having air quality data meeting the 1-hour standard by 2000. These transitional areas will be subject to less restrictive new source review and transportation conformity requirements than other nonattainment areas. These less restrictive requirements are important to companies seeking to expand existing operations or start new operations. Therefore, achieving the reductions associated with the maintenance plan proposed for approval today has critical implications for the ability of the KCMA to meet the requirements of the new 8-hour ozone standard. However, the control measures which would be conditionally approved are required to be implemented first and foremost to protect the 1-hour ozone standard.

Based on air quality data from 1996 through 1998 (after the violation which triggered the contingency measures in the 1992 maintenance plan), the Kansas City area may be able to demonstrate that it has now achieved the 1-hour ozone standard. However, the EPA's "Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS" states that, in general, contingency measures which were triggered prior to revocation of the 1-hour standard must be retained. Therefore, although the EPA believes that the 1996 through 1998 data justify the brief delay in implementation of the substitute contingency measures, it does not relieve the states of the need to implement RFG, or one of the alternatives identified in this notice.

V. Conclusion

The EPA is soliciting public comments on this notice and on issues relative to the EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

VI. Proposed Action

In today's notice, the EPA proposes to conditionally approve Missouri's 1998 revisions to the Kansas City SIP for control of ozone. This includes the VOC control measures described above, the emissions reduction credits identified by the state, and the commitment to implement the additional reductions as expeditiously as practicable.

Full approval of the SIP is conditioned upon receipt of one of the following: (1) A letter from the Governor of Missouri requesting that the EPA require the sale of Federal RFG within the Missouri portion of the KCMA beginning April 15, 2000; (2) an alternative state fuel regulation; or (3) a regulation requiring Stage II vapor recovery systems at retail gasoline stations. If the state fails to submit one of the above, the conditional approval converts to a disapproval. The EPA proposes to establish a deadline for meeting the condition which is one year from the effective date of the final rule conditionally approving the state's 1998 submittal. The statute requires that the condition be met within one year of the conditional approval. The EPA seeks comments on whether a shorter deadline should be established.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposal would not create a mandate on state, local, or tribal governments. It would merely approve actions which the state has already chosen to take. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks that the EPA has reason to believe may have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state has already chosen to impose. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal

governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action would approve requirements which the state has chosen to undertake under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, would result from this action. This action would not result in annualized costs of 100 million dollars or more.

List of Subjects in 50 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: January 15, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–1761 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD080–3037; FRL–6224–2]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision implements Maryland's portion of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) which describes a regional nitrogen oxides (NO_X) cap and trade program that will significantly reduce NO_X emissions generated within the Ozone Transport Region (OTR). The intended effect of this action is to propose approval of Maryland's regulations entitled Post RACT Requirements for NO_X Sources and Polices and Procedures Relating to Maryland's NO_X Budget Program.

DATES: Written comments must be received on or before February 25, 1999.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at fernandez.cristina@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On August 28, 1998, Maryland Department of the Environment submitted a revision to its State Implementation Plan (SIP). The revision consists of Code of Maryland Regulations (COMAR) 26.11.27.01–.14, Post RACT Requirements for NO_X Sources and COMAR 26.11.28.01–.13, Polices and Procedures Relating to Maryland's NO_X Budget Program.

I. Background

The OTC adopted a MOU on September 27, 1994, committing the signatory states to the development and proposal of a two phase region-wide reduction in nitrogen oxides (NO_X) emissions by 1999 and 2003, respectively. As reasonably available control technology (RACT) to reduce NO_X emissions was required to be implemented by May of 1995, the MOU refers to the NO_X reductions to be achieved by 1999 as Phase II; and the NO_X reductions to be achieved by 2003 as Phase III. The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia and the District of Columbia. All the OTC states, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires reductions in ozone season NO_X emissions from utility and large industrial combustion facilities within the OTR in order to further the effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone.

In the MOU, the OTC states agreed to propose regulations for the control of NO_X emissions in accordance with the following guidelines:

1. The level of NO_X required would be established from a 1990 baseline emissions level.
2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.
3. The reduction would be determined based on the less stringent of each of the following:
   a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_X emissions by 65% from baseline, or emit NO_X at a rate no greater than 0.20 pound per million Btu. (This is referred to as a Phase II requirement).
   b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase II requirement).
   c. By May 1, 2003, the affected facilities in the inner and outer zone shall reduce their rate of NO_X emissions by 75% from baseline, or shall emit NO_X at a rate of no greater than 0.15 pounds per million Btu. (This is referred to as a Phase III requirement).
   d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is referred to as a Phase III requirement).

A Task Force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), were charged with the task of developing a model rule that would implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/ MARAMA NO_X Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model rule was issued May 1, 1996. The model rule was developed for the OTC states to implement the Phase II reduction called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

II. Summary of SIP Revision

The regulations of COMAR 26.11.27.01–.14, Post RACT Requirements for NO_X Sources are based solely upon the "NESCAUM/MARAMA NO_X Budget Rule" issued in May 1, 1996. The model rule was developed by the states in the OTR using the EPA's economic incentive rules (67 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

The Maryland NO_X Budget Program establishes NO_X emission allowances for each NO_X control period beginning May 1, 1999 through the NO_X control period ending September 30, 2002. This program identifies the budgeted sources and identifies the number of allowances each budget source is allocated. Maryland's NO_X Budget Program, includes the adoption of two new chapters: COMAR 26.11.27, Post RACT Requirements for NO_X Sources and COMAR 26.11.28, Polices and Procedures Relating to Maryland's NO_X Budget Program.

COMAR 26.11.27, Post RACT Requirements for NO_X Sources (NO_X Budget Program) is divided in fourteen sections: (.01) Definitions; (.02) Incorporation by Reference; (.03) Applicability; (.04) General Requirements; (.05) Allowance Allocations; (.06) Identification of Authorized Account Representatives; (.07) Allowance Banking; (.08) Emission Monitoring; (.09) Reporting; (.10) Record Keeping; (.11) End-of-Season Reconciliation; (.12) Compliance Certification; (.13) Penalties; (.14) Audit.

COMAR 26.11.28, Polices and Procedures Relating to Maryland's NO_X Budget Program is divided in thirteen sections: (.01) Scope; (.02) Definitions; (.03) Procedures Relating to Compliance Accounts; (.04) Procedures Relating to General Accounts; (.05) Allowance Banking, (.06) Allowance Transfer; (.07) Emissions Monitoring; (.08) Early Reduction Allowances; (.09) Opt-in Procedures; (.10) Audit Provisions; (.11) Allocations to Units in Operation in 1990; (.12) Allocations to Budget Sources Beginning Operation or for Which a Permit Was Issued After 1990 and Before January 1, 1998; (.13) Percent Contribution of Budget by Company.

Proposed Action

EPA is proposing to approve the Maryland SIP revision consisting of COMAR 26.11.27.01–.14, Post RACT Requirements for NO_X Sources and COMAR 26.11.28.01–.13, Polices and Procedures Relating to Maryland's NO_X Budget Program, submitted on August 28, 1998. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

III. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety. effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and

small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action to propose approval of Maryland's NOx Budget Program to implement Phase II of the OTC MOU.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 19, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–1757 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD079–3035; FRL–6218–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOCs From the Manufacture of Explosives and Propellant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision imposes reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) from sources that manufacture explosives and propellant. In the Final Rules section of this **Federal Register**, EPA is approving Maryland's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule and the technical support document is available at the address given below. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 25, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Section, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Paul T. Wentworth (215) 814–2183, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 30, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–1763 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MO 043–1043(b); FRL–6219–9]

Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a redesignation request submitted by the state of Missouri on June 13, 1997. Additional material was submitted on June 15, 1998. In this submittal, Missouri submitted a maintenance plan and a request that a portion of St. Louis be redesignated to attainment of the National Ambient Air Quality Standards (NAAQS) for carbon monoxide. In the final rules section of the **Federal Register**, the EPA is approving the state's State Implementation Plan (SIP) revision and request for redesignation as a direct final rule without a prior proposal, because the Agency views this as a noncontroversial revision and redesignation and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by February 25, 1999.

ADDRESSES: Comments may be mailed to Stanley Walker, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Stanley Walker at (913) 551–7494.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: January 7, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–1333 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC96

National Flood Insurance Program (NFIP); Insurance Coverage and Rates

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We (FEMA) propose a rule that would increase the amount of premium you (the flood insurance policyholder) pay for flood insurance coverage for "pre-FIRM" buildings in coastal areas subject to high velocity waters, such as storm surges, and wind-driven waves ("V" zones.). ("Pre-FIRM" buildings are those whose construction was started before January 1, 1975, or the effective date of a community's Flood Insurance Rate Map (FIRM), whichever is later. Pre-FIRM buildings and their contents are eligible for subsidized rates.) We propose this rate increase to bring the subsidized premiums that we currently charge for pre-FIRM, V-zone properties more in line with their actual risk.

DATES: Please send any comments received on or before February 25, 1999.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 202–646–3422, (facsimile) 202–646–4327, or (email) *charles.plaxico@fema.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Flood Insurance Act of 1968, as amended, authorizes the sale of flood insurance under the National Flood Insurance Program (NFIP). The NFIP makes flood insurance available in communities that adopt and enforce floodplain management ordinances designed to reduce future flood damage. Until we can complete a detailed flood risk study that produces a FIRM for your community (or in some cases if we decide that such a study is not cost effective), your community participates in what we call the "emergency program." Only a limited amount of flood insurance is available in the emergency program. We refer to construction started before January 1, 1975, or the effective date of the FIRM, whichever is later, as "pre-FIRM" construction. The premium rates we charge you for flood insurance coverage on pre-FIRM buildings are less than full risk premiums. (Throughout this proposed rule, we use the terms "subsidized rates" and "chargeable rates" interchangeably to describe less than full-risk premiums under the NFIP.)

Statutory Mandates for Setting Flood Insurance Premiums

Pub. L. 93–234 requires us to charge *full-risk* premiums for flood insurance coverage on buildings when their construction began after December 31, 1974, or the effective date of FEMA's Flood Insurance Rate Map, if the second date is later. (We call such construction "post-FIRM" construction.)

Pub. L. 93–234 authorizes us to apply chargeable rates to pre-FIRM property and gives the Federal Insurance Administrator flexibility to set the flood insurance rates for pre-FIRM construction. This legislation calls for us to balance the need to offer reasonable rates that encourage people to buy flood insurance with the statutory goal to distribute burdens fairly between all who will be protected by flood insurance and the general public.

Proposed Change and Its Purposes

We are proposing to increase the subsidized rates we charge for the initial limits of coverage under the NFIP for pre-FIRM properties that are in "V" zones on FEMA's FIRMs. ("V" zones represent coastal areas subject to high velocity water such as wind-driven waves from storms or tidal surges that are extremely hazardous to people and property). Subsidized rates are the same currently for properties in V and A zones). We are proposing this rate increase to distribute economic burdens more fairly among policyholders of the NFIP and the general body of taxpayers.

Need To Build Reserves for Future Catastrophic Losses

One of the goals of the NFIP is to shift the financial burden for flood disasters from the general body of taxpayers to those who live or own businesses at risk in the flood plains. The NFIP is doing that. Bringing our subsidized premiums as close to full risk premiums as our loss experience permits will work toward that goal and will reflect some of the variations in risk among properties eligible for subsidized premiums rates.

We currently use the same chargeable rates throughout the country for:

(1) buildings and contents in communities in the Emergency Program or initial phase of the NFIP, and

(2) certain structures in the Regular Program.

But the sum of the chargeable or subsidized premium and other administrative fees that you pay for flood coverage is less than our expenses and loss payments.

Recognition of Inherently Greater Risks

Until now, we have charged the same subsidized premium rate for flood insurance coverage in different risk zones of pre-FIRM property. Pre-FIRM properties in V zones are inherently greater risks than similar properties in A zones. This truth is born out by our loss experience. Our loss experience tells us that we must reflect in our chargeable rates the greater degree of hazard of a pre-FIRM property in a V-zone area than the hazard of a similar pre-FIRM property in an A-zone area.

Subsidized Rate Increases in the Past

We have increased the chargeable or subsidized premium rates three times during the program's history for the same reason that we are proposing this rule: to distribute burdens fairly among all who will be protected by flood insurance and among the general public. The changes proposed in this rule would move us closer toward that goal by bringing subsidized premiums more in line with the actual risk.

Comparison of Proposed Rate Increases With Current Rates

The following chart shows the existing subsidized rates for A-zone properties and the proposed increases for V-zone properties:

Type of structure	A zone rates[1] per year per $100 coverage on:		V zone rates[2] per year per $100 coverage on:	
	Structure	Contents	Structure	Contents
1. Residential				
No Basement or Enclosure	.68	.79	.82	.95
With Basement or Enclosure	.73	.79	.88	.95
2. All other including hotels and motels with normal occupancy of less than 6 months duration				
No Basement or Enclosure	.79	1.58	.95	1.90
With Basement or Enclosure	.84	1.58	1.01	1.90

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] V zones are zones V1–V30, VE, and unnumbered V zones.

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, FEMA is conducting an environmental assessment of this proposed rule. The assessment will be available for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C St. SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The proposed rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, we propose to amend 44 CFR Part 61 as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 61.9 is revised to read as follows:

§ 61.9 Establishment of chargeable rates.

(a) Under section 1308 of the Act, we are establishing annual chargeable rates for each $100 of flood insurance coverage as follows for pre-FIRM A zone properties, pre-FIRM V zone properties, and emergency program properties.

Type of structure	A zone rates[1] per year per $100 coverage on:		V zone rates[2] per year per $100 coverage on:	
	Structure	Contents	Structure	Contents
1. Residential				
No Basement or Enclosure	.68	.79	.82	.95
With Basement or Enclosure	.73	.79	.88	.95
2. All other including hotels and motels with normal occupancy of less than 6 months duration				
No Basement or Enclosure	.79	1.58	.95	1.90
With Basement or Enclosure	.84	1.58	1.01	1.90

[1] A zones are zones A1–A30, AE, AO, AH, and unnumbered A zones.
[2] V zones are zones V1–V30, VE, and unnumbered V zones.

(b) We will charge rates for contents in pre-FIRM buildings according to the use of the building.

(c) A-zone rates for buildings without basements or enclosures apply uniformly to all buildings throughout emergency program communities.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance"; No. 83.516, "Disaster Assistance")

Dated: January 18, 1999.

Jo Ann Howard,

Administrator, Federal Insurance Administration.

[FR Doc. 99–1745 Filed 1–25–99; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC94

Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) grants the President the authority for declarations of major disasters and emergencies. We, FEMA, provide a recommendation to the President whether Federal disaster assistance is warranted. This proposed rule would establish the factors that we take into consideration when evaluating a Governor's request for a major disaster declaration under the Stafford Act. This proposed rule would not affect presidential discretion, nor would it change published regulations and policies established under the Stafford Act.

DATES: We invite your comments, which may be submitted on or before April 26, 1999.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–4066, (facsimile) 202–646–4060, or (email) *patricia.stahlschmidt@fema.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Stafford Act requires that the Governor of the affected State submit requests for major disaster assistance to the President. The Governor's request must be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments. Our role is to evaluate the Governor's request and to make a recommendation to the President whether major disaster assistance is warranted. We take this role very seriously and evaluate each request on the basis of a number of factors. This process ensures that we evaluate requests fairly and consistently across all States while at the same time it permits us to look at the unique circumstances and needs of each request. In recent years the General Accounting Office, our Inspector General, Congress and some States and local governments have asked that we publish the criteria that we use to evaluate these requests.

Objectives

We agree that it is time to publish the factors used to evaluate major disaster declarations and have adopted four objectives for these factors:

1. They must be easy to understand and administer;
2. They should encourage the State to establish its own funded disaster assistance programs;
3. They should provide incentives for hazard mitigation and insurance;
4. They should focus primarily on the Public Assistance Program.

Discussions with Others

We discussed declaration factors with the National Emergency Management Association and a number of other organizations in the development of these evaluation factors. There are differences of opinion whether disaster declaration criteria should be published and what they should be. Some States want this information so that they know when a major disaster declaration request is reasonable, and what size disaster the State should be expected to manage so that they can have a target level for their own trust funds or disaster assistance programs. Other States object to criteria, seeing criteria as a "one-size-fits-all" approach and merely a means to transfer costs to State and local governments. All individuals that we met with saw the need to preserve the President's discretion.

We believe that the factors outlined below:

- Preserve presidential discretion while at the same time they provide a threshold of damages under the Public Assistance Program that we can reasonably expect States and local governments to manage;
- Are not a mechanism for transferring costs to State and local governments, but in fact, essentially mirror the process that we now use to evaluate requests for major disaster declarations;
- Would allow us to evaluate the unique circumstances or needs created by each disaster while permitting us to apply all factors consistently to each State's request; and
- Provide an objective and clear measurement by including a per capita figure among the factors that we would evaluate. However, the per capita amount alone does not automatically mean a denial if the State does not meet it, nor does it guarantee a declaration if the State meets it.

In summary, the evaluation factors propose a simple, clear and reasonable means to measure the severity, magnitude and impact of a disaster, while at the same time ensure that the President can respond quickly and effectively to a Governor's request for assistance.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This proposed rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 44 CFR Part 206 as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding section 206.48 to read as follows.

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

When we review a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. We consider other relevant information as well.

(a) Public Assistance Program. We evaluate the following factors to evaluate the need for assistance under the Public Assistance Program.

(1) *Estimated Cost of the Assistance.* We evaluate the estimated cost of Federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact within the State. We use a figure of $1 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and adjust this figure annually based on the Consumer Price Index for all Urban Consumers. We are establishing a minimum threshold of $1 million in public assistance damages per disaster in the belief that we can reasonably expect even the lowest population States to cover this level of public assistance damage.

(2) *Impact at the County Level.* We evaluate the impact of the disaster at the county level because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where the per capita impact at the county level might be extremely high. For example, we have at times seen localized damages in the tens or even hundreds of dollars per capita at the county level though the statewide per capita impact was low.

(3) *Insurance coverage in force.* We consider the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduce the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, we consider the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, we consider that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* We look at the disaster history within the last twelve-month period to evaluate better the overall impact on the State or locality. We consider declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* We also consider programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

(b) Factors for the Individual Assistance Program. We consider the following factors to measure the severity, magnitude and impact of the disaster and to evaluate the need for assistance to individuals under the Stafford Act.

(1) *Concentration of Damages.* We evaluate the concentrations of damages to individuals. High concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State.

(2) *Trauma.* We consider the degree of trauma to a State and to communities. Some of the conditions that might cause trauma are:

(i) Large numbers of injuries and deaths;

(ii) Large scale disruption of normal community functions and services; and

(iii) Emergency needs such as extended or widespread loss of power or water.

(3) *Special Populations.* We consider whether special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance.

(4) *Voluntary Agency Assistance.* We consider the extent to which voluntary agencies and State or local programs can meet the needs of the disaster victims.

(5) *Insurance.* We consider the amount of insurance coverage because, by law, Federal disaster assistance cannot duplicate insurance coverage.

(6) *Average Amount of Individual Assistance by State.* There is *no set threshold* for recommending Individual Assistance, but the following averages may prove useful to States and voluntary agencies as they develop plans and programs to meet the needs of disaster victims.

AVERAGE AMOUNT OF ASSISTANCE PER DISASTER

[July 1994 to August 1998]

	Small States (under 2 million pop.)	Medium States (2–10 million pop.)	Large States (over 10 million pop.)
Average Population (1990 census data)	1,045,452	4,888,599	15,556,781.
Number of Disaster Housing Applications Approved	1,375	2,434	5,517.
Number of Homes Estimated Major Damage/Destroyed	161	426	895.
Dollar Amount of Housing Assistance	$2.6 million	$4.3 million	$10.4 million.
Number of Individual and Family Grant Applications Approved	437	1,222	2,966.
Dollar Amount of Individual and Family Grant Assistance	$1.0 million	$2.6 million	$4.4 million.
Disaster Housing/IFG Combined Assistance	$3.6 million	$6.9 million	$14.8 million.

(**Note:** The high 3 and low 3 disasters, based on Disaster Housing Applications, are not considered in the averages. Number of Damaged/Destroyed Homes is estimated based on the number of owner-occupants who qualify for Eligible Emergency Rental Resources. Data source is FEMA's National Processing Service Centers. Data are only available from July 1994 to the present.)

Small Size States (under 2 million population, listed in order of 1990 population): Wyoming, Alaska, Vermont, District of Columbia, North Dakota, Delaware, South Dakota, Montana, Rhode Island, Idaho, Hawaii, New Hampshire, Nevada, Maine, New Mexico, Nebraska, Utah, West Virginia. U.S. Virgin Islands and all Pacific Island dependencies.

Medium Size States (2–10 million population, listed in order of 1990 population): Arkansas, Kansas, Mississippi, Iowa, Oregon, Oklahoma, Connecticut, Colorado, South Carolina, Arizona, Kentucky, Alabama, Louisiana, Minnesota, Maryland, Washington, Tennessee, Wisconsin, Missouri, Indiana, Massachusetts, Virginia, Georgia, North Carolina, New Jersey, Michigan. Puerto Rico.

Large Size States (over 10 million population, listed in order of 1990 population): Ohio, Illinois, Pennsylvania, Florida, Texas, New York, California.

Dated: January 12, 1999.

James L. Witt,

Director.

[FR Doc. 99–1746 Filed 1–25–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–3; RM–9427]

Radio Broadcasting Services; Rozel, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Dana Puopolo, proposing the allotment of Channel 273A to Rozel, Kansas, as that community's first local aural transmission service. Coordinates used for this proposal are 38–11–42 NL and 99–24–24 WL.

DATES: Comments must be filed on or before March 8, 1999, and reply comments on or before March 23, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 37 Martin Street, Rehoboth, MA 02769–2103.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–3, adopted December 30, 1998, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–1716 Filed 1–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–2; RM–9347]

Radio Broadcasting Services; Saltillo, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Broadcasters & Publishers, Inc. requesting the allotment of Channel 275C3 to Saltillo, Mississippi, as that community's first local aural transmission service. Coordinates used for this proposal are 34–23–56 NL and 88–34–06 WL.

DATES: Comments must be filed on or before March 8, 1999, and reply comments on or before March 23, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Erwin G. Krasnow, Esq., Verner, Liipfert, Bernhard, McPherson and Hand, 901 –15th Street, NW., Suite 700, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–2, adopted December 30, 1998, and released January 15, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–1715 Filed 1–25–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Vermilion Darter as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We (U.S. Fish and Wildlife Service) are announcing a 90-day finding for a petition to list the vermilion darter (*Etheostoma chermocki*) under the Endangered Species Act of 1973, as amended. We find that the petition presents substantial information indicating that listing this species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on January 7, 1999. Send your comments and materials to reach us on or before March 29, 1999. We may not consider comments received after the above date in making our decision for the 12-month finding.

ADDRESSES: You may submit data, information, comments, or questions concerning this petition to the Field Supervisor, U.S. Fish and Wildlife Service, Jackson Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Daniel J. Drennen, Biologist, at the above address (telephone 601–965–4900, extension 27).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information demonstrating that the petitioned action may be warranted. We base the finding on all the information available to us at the time the finding is made. To the maximum extent practicable, we make the finding within 90 days of receipt of the petition, and promptly publish the finding in the **Federal Register**. If we find that substantial information was presented, we must promptly commence a status review of the species.

The processing of this petition conforms with our current listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance gives highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition is a Tier 2 action.

We have made a 90-day finding on a petition to list the vermilion darter (*Etheostoma chermocki*) as endangered. Mr. Robert R. Reid, Jr. of Birmingham, Alabama, submitted the petition, dated July 22, 1998, which we received July 23, 1998. On August 18, 1998, we received supplemental information (dated August 12, 1998) on the species and a request from Dr. Paul D, Blanchard, of Samford University, in Birmingham, to be co-petitioner with Mr. Reid, at Mr. Reid's request.

The petition requested that we emergency list the vermilion darter as endangered. The petitioners stated that the vermilion darter merits listing because of its restricted range and threats to water quality, especially siltation. The petitioners requested emergency listing due to the perceived immediate threats to the species' continued existence from the proposed construction of the Jefferson County jail, and expansion of the county land fill and sewage treatment plant near this species' habitat.

We have reviewed the petition, the literature cited in the petition, other literature, and information available in our files. Based on the best scientific information available, we find the petition presents substantial information that listing this species may be warranted. Emergency listing is allowed under the Act whenever immediate protection is needed to address a significant risk to the species' well being. Based on currently available information, emergency listing is not needed for the vermilion darter. The proposed jail, and expansion of the county land fill and sewage treatment plant are localized activities near the downstream extent of the species' range. We have determined that they do not pose an imminent threat of extinction to a significant portion of the total population.

The vermilion darter is found only in the Turkey Creek drainage, a tributary of the Locust Fork of the Black Warrior River, Jefferson County, Alabama (Boschung *et al.* 1992, Blanco et al. 1995, Mettee *et al.* 1996). Blanco *et al.* (1995) documented the vermilion darter's known range to 7.2 miles of the mainstem of Turkey Creek and the lowermost reaches of one tributary, Dry Creek. The historic population size of the vermilion darter is unknown and current population data is limited. There are localities with favorable concentrations of darters and others with few or none. In the 1960s and 70s, the vermilion darter was common at the Highway 79 bridge site but, by 1992, it had become very rare there (Boschung *et al.* 1992).

Habitat for the vermilion darter is similar to that for other snub-nosed darters typically found in small-sized clear streams with gravel riffles and moderate currents (Kuehne and Barbour 1983, Etinier and Starnes 1993). Boschung *et al.* (1992) described the streams as 3 to 20 meters (9.84 to 65.6 feet) wide, 0.01 to >0.5 meter (0.034 to >1.64 feet) in depth, with pools of moderate current alternating with riffles of moderately swift current. The riffles are of coarse gravel, cobble and small rubble, and the bottoms of the pools are rock, sand, and silt. The darter is absent from bedrock, but it does occur in bedrock-dominated areas with sand and gravel.

Impacts of point and non-point source pollution are the primary threats to the survival of this species. The vermilion darter, being isolated and localized, is vulnerable to human-induced impacts to its habitat. Excessive sediments are believed to impact the habitat of darters and associated fish species by making it unsuitable for feeding and reproduction. Urbanization of the Turkey Creek watershed has likely contributed significantly to its sedimentation. The approximately 35 square mile Turkey Creek watershed drains 54,731 acres of Jefferson County, the most populous county in the state. A State highway divides the watershed and there is significant development (such as commercial, residential, and industrial) throughout the area. The creek has been noted to be brown-orange after heavy rains and completely muddy (Blanchard pers. comm. 1998). Implementation of the recently proposed Jefferson County jail would likely lead to increased sediment loading of the creek within the lower 2 miles of the known vermilion darter range (Boschung *et al.* 1992 and Blanco et al. 1995). Increased nutrient loading by sewage effluent has likely contributed to the eutrophication of the creek. Violations reported by Alabama Department of Environmental Management for the Turkey Creek Waste Water Plant (TCWWP) (Blanchard *in litt.* 1998) have shown elevated maximum values for fecal coliforms, while below the TCWWP, the creek has been altered by strip-mining and land fill.

We solicit information regarding occurrence and distribution of the species, threats to its continued existence, and any additional comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of the vermilion darter. Of particular interest is information regarding:

(1) Additional historic and current population data which may assist in determining range and long term population trends;

(2) Pertinent information on biology and life history;

(3) Additional information about habitat requirements and stream water quality; and,

(4) Information on immediate and distant ecological threats to the vermilion darter, other fish species of the creek, and the watershed in general.

After consideration of additional information, submitted during the indicated time period (see **DATES** section), we will prepare a 12-month finding as to whether listing of the species is warranted.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Jackson Field Office. See **ADDRESSES** above.

Author.

The primary author of this document is Daniel J. Drennen (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 7, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–1639 Filed 1–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF34

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for the Santa Ana Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service, propose threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for the Santa Ana sucker (*Catostomus santaanae*). The species is threatened by potential habitat destruction, natural and human-induced changes in streamflows, urban development and related land-use practices, intensive recreation, the introduction of non-native competitors and predators, and demographics associated with small populations. This proposed rule, if made final, would invoke the Federal protection and recovery provisions of the Act for this fish species within the Los Angeles, San Gabriel, and Santa Ana River drainages.

DATES: We must receive comments from all interested parties by March 29, 1999. We must receive public hearing requests by March 12, 1999.

ADDRESSES: Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul J. Barrett, biologist, U.S. Fish and Wildlife Service, at the above address (or telephone 760–431–9440; facsimile 760–431–9624).

SUPPLEMENTARY INFORMATION:

Background

The Santa Ana sucker (*Catostomus santaanae*) is a recognized full species and member of the sucker family (Catostoidae). The Santa Ana sucker was originally described as *Pantosteus santa-anae* by Snyder (1908, as in Moyle 1976). The genus *Pantosteus* was reduced to a subgenus of *Catostomus* and the hyphen omitted from the specific name in a subsequent revision of the nomenclature (Smith 1966). Moyle (1976) described the Santa Ana sucker as less than 16 centimeters (6.3 inches (in)) in length. The Santa Ana sucker is silvery below, darker along the back with irregular blotches, and the membranes connecting the rays of the tail are pigmented.

The Santa Ana sucker inhabits streams that are generally small and shallow, with currents ranging from swift (in canyons) to sluggish (in the bottomlands). All the streams are subject to periodic severe flooding (Moyle 1976). Santa Ana suckers appear to be most abundant where the water is cool (less than 22° Celsius) (72° Farenheit), unpolluted and clear, although they can tolerate and survive in seasonally turbid water (Moyle 1976, Moyle and Yoshiyama 1992). Santa Ana suckers feed mostly on algae, which they scrap off of rocks and other hard substrates. Larger fish generally feed more on insects than do smaller fish (Moyle 1976).

Santa Ana suckers generally live no more than 3 years (Greenfield *et al.* 1970). Spawning occurs from early April to early July. The peak spawning activity occurs in late May and June. Females produce approximately 4,000 to 16,000 eggs ranging in size from 78 millimeters (mm) (3.1 in) to 158 mm (6.2 in), respectively (Moyle 1976). The combination of early sexual maturity, protracted spawning period, and high fecundity should allow the Santa Ana sucker to quickly repopulate streams following periodic flood events that can decimate populations (Greenfield *et al.* 1970, Moyle 1976).

The native range of the Santa Ana sucker includes the Los Angeles, San Gabriel, and Santa Ana River drainage systems in Los Angeles, Orange, Riverside, and San Bernardino counties (Smith 1966). Although historic records are scarce, Santa Ana suckers presumably ranged from near the Pacific Ocean to the uplands in the Los Angeles River in the San Gabriel River system, and to at least Pump House #1 (near the San Bernardino National Forest boundary) in the Santa Ana River (Swift *et al.* 1993; C. Swift, Loyola Marymount University, pers. comm. 1996). Within its native range, the species is now restricted to three noncontiguous populations—lower Big Tujunga Creek (Los Angeles River drainage), the East, West, and North Forks of the San Gabriel River (San Gabriel River drainage), and the lower and middle Santa Ana River (Santa Ana River drainage) (Moyle and Yoshiyama 1992). An introduced population also occurs in the Santa Clara River drainage system, Ventura and Los Angeles counties (Moyle 1976, Smith 1966, Swift *et al.* 1993). Although the Santa Ana sucker was described as common in the 1970s (Moyle 1976), the species has experienced declines throughout most of its range (Swift *et al.* 1993). The present distribution is as follows:

Los Angeles River system. Although historically present, the species may have been extirpated from the Los Angeles River (Swift *et al.* 1993). Santa Ana suckers are still found in portions of Big Tujunga Creek (a tributary of the Los Angeles River) below Big Tujunga Dam. Recent surveys downstream of Big Tujunga Dam found the species to be present but rare (fewer than 20 individuals collected at each site) in the vicinities of Delta Flat, Wildwood, and Big Tujunga Dam and abundant (an estimated 200 individuals collected) near Stoneyvale (M. Wickman, Angeles National Forest, *in litt.* 1996). The portions of Big Tujunga Creek occupied by the Santa Ana sucker constitute approximately 25 percent of the total remaining native range of the species. Approximately 60 percent of the range of the Santa Ana sucker in the Los Angeles River basin occurs on private lands. The remaining 40 percent of the range in the Los Angeles River basin occurs on Angeles National Forest lands managed by the U.S. Forest Service.

San Gabriel River system. In light of current threats and the prevailing absence of management, Moyle and Yoshiyama (1992) suggested that the only viable population of Santa Ana suckers existing within the species' native range occurs in the San Gabriel River drainage system. Dr. Tom Haglund (University of California, Los Angeles, *in litt.* 1996) reported surveys in 1995 below Morris Dam failed to locate any suckers. Therefore, in the San Gabriel River, the Santa Ana sucker appears extant only upstream of the confluence of the East, West, and North Forks of the San Gabriel River. Furthermore, the population of Santa Ana suckers in the

North Fork is small. The portions of the San Gabriel River occupied by the Santa Ana sucker constitute approximately 15 percent of the total remaining native range of the species. However, catch per unit effort information gathered during sampling suggests the San Gabriel River may contain the most individuals of any remaining population (R. Ally, California Department of Fish and Game (CDFG), *in litt.* 1996; M. Guisti, CDFG, *in litt.* 1996; J. Hernandez, California Department of Fish and Game, *in litt.* 1997; Wickman, *in litt.* 1996). Approximately 15 percent of the range of the Santa Ana sucker in the San Gabriel River basin occur on private lands. The remaining 85 percent of the range in the San Gabriel River basin occurs in the Angeles National Forest.

Santa Ana River system. Several hundred Santa Ana suckers were observed in the Santa Ana River downstream of Prado Dam in 1986 and 1987. In 1996, a general fish survey of the Santa Ana River below Prado Dam yielded only five suckers from a total of 271 fishes captured (M. Guisti, CDFG, *in litt.* 1996). In April 1987, only five suckers were found during a sampling effort above the Prado Dam from the City of Norco to about five kilometers upstream. Thus above the dam, fish were scarce, small individuals were absent, and definite evidence of reproduction was not obtained (Moyle and Yoshiyama 1992). In 1991, sampling indicated that although fishery habitat in the Santa Ana River was primarily fair to poor, Santa Ana suckers were abundant between Norco and Riverside (Chadwick and Associates 1992). Additionally, evidence suggested Santa Ana suckers were using tributaries including Tequesquite Arroyo, Sunnyslope Channel, and Anaza Park Drain for spawning and nurseries (Chadwick and Associates 1996).

The Santa Ana sucker survives in the lower portions of the Santa Ana River, from the Imperial Highway (State Route 90) to Rubideaux near the City of Riverside, but is now apparently absent from the upper reach of this river in the San Bernardino Mountains (Moyle and Yoshiyama 1992, Swift *et al.* 1993). The portions of the Santa Ana River occupied by the Santa Ana sucker constitute approximately 60 percent of the total remaining native range of the species. Approximately 95 percent of the range of the Santa Ana sucker in the Santa Ana River basin occurs on private lands. The balance is within State, county, city, and regional park lands, with a very small portion, three percent, on military lands. Chadwick and Associates (1996) noted that length-frequency analysis indicates Santa Ana suckers are naturally reproducing in the Santa Ana River system. Furthermore, they asserted Santa Ana sucker population decreases in the river as evidenced by 1996 surveys (M. Guisti, *in litt.*, 1996) were due to high flows in the basin between 1991 and 1996. However, T. Haglund (*in litt.* 1996) contended the large number of suckers reported in tributaries are juveniles and may be the progeny of very few adults.

Santa Clara River system. An introduced population of Santa Ana suckers occurs in the Santa Clara River drainage. (Moyle 1976, Smith 1966, Swift *et al.* 1993). Santa Ana suckers were present in Piru Creek, a major Santa Clara tributary, by 1934 and in the Santa Clara River proper and its Sespe Creek tributary by 1940 (Buth and Crabtree 1982). Suckers occur from the estuary upstream to several miles upstream from the confluence of Sespe Creek, in Sespe Creek, and in several reaches in the Soledad Canyon area bordering the Angeles National Forest. Portions of the Santa Clara basin population are believed to have hybridized with another introduced species, the Owens River sucker (*Catostomus fumeiventris*) (Greenfield *et al.* 1970). This hybrid population occurs in the Sespe Creek area (Swift *et al.* 1993) in the lower to middle reach of the Santa Clara River. The hybrid population is separate and isolated (by dry streambed) from the introduced yet genetically pure Santa Ana suckers that occur in several portions of the upper reach of the Santa Clara River, in and downstream from Soledad Canyon. The dewatered sections of the Santa Clara River currently act as a barrier keeping the genetically pure Santa Ana suckers in the upper reach of the Santa Clara River from mixing with the hybrid population in the middle to lower reach of the river. In the past, the non-hybridized population of Santa Ana sucker in the Santa Clara River drainage system was thought to be large (Buth and Crabtree 1982). However, Haglund and Baskins (1992) reported that the Santa Clara River "population is in decline and throughout much of the drainage has hybridized with another introduced sucker." Sespe Creek contained a large number of suckers as recently as 1994; however, in 1996 suckers could not be captured in the creek (T. Haglund, *in litt.* 1996). The portions of the Santa Clara River occupied by the introduced pure and hybridized suckers, constitute approximately 50 percent of the total remaining range of the species. Over 90 percent of the range of this population occurs on private lands with the balance on federally managed lands.

In summary, the Santa Ana sucker has declined throughout significant portions of its range. The Santa Ana sucker has lost approximately 75 percent of its native range. Recent population densities range from approximately 246 fish in 1.8 miles on the East Fork, San Gabriel River (Hernandez 1997) to five fish in 4.5 miles of the Santa Ana River (Guisti 1996). This apparent overall decline in population is particularly surprising given the high fecundity and apparent broad habitat tolerances of the species. Urbanization, water diversions, dams, introduced competitors and/or predators, and other human-caused disturbances likely are playing a role in the decline of the species. These same factors have led to the decline of other western suckers (Minckley *et al.* 1991, Scoppettone and Vinyard 1991).

Populations Proposed for Protection

The Santa Ana sucker is recognized as a full species and thus constitutes a taxon eligible for protection pursuant to the Act. We are proposing to list the Santa Ana sucker only in its native range, which consists of the Los Angeles, San Gabriel, and Santa Ana River basins. The Santa Clara River population of the Santa Ana sucker is presumed to be an introduced population, which is located outside of the species native range. Therefore, we are not proposing to designate the Santa Clara River population of Santa Ana sucker as threatened pursuant to the Act. However, we do believe that the Santa Clara River population is important for recovery of the Santa Ana sucker within the Los Angeles, San Gabriel, and Santa Ana River basins, and may be used in efforts to re-establish the species within its native range.

Previous Federal Action

On September 6, 1994, we received a petition under the Act to list the Santa Ana sucker (*Catostomus santaanae*), Santa Ana speckled dace (*Rhinichthys osculus* ssp.), and the Shay Creek threespine stickleback (*Gasterosteus aculeatus* ssp.) as endangered species. The petition was submitted by the Sierra Club Legal Defense Fund, Inc., on behalf of seven groups including the California-Nevada Chapter of the American Fisheries Society, The Nature School, California Sportfishing Protection Alliance, Friends of the River, Izaak Walton League of America, California Trout, and Trout Unlimited. We deferred processing of this petition because of other higher priority listing actions and severe funding constraints

imposed by a number of continuing resolutions between November 1995 and April 1996.

On July 9, 1996, we published a 90-day petition finding (61 FR 36021) that substantial information had been presented indicating listing may be warranted for the Santa Ana sucker, and on November 26, 1996, we published a notice Initiating a Status Review for the Santa Ana Sucker (61 FR 60073). On April 3, 1997, we published a notice of the 12-month finding for the petition to list the Santa Ana Sucker as endangered (62 FR 15872). We announced in this finding that listing the Santa Ana sucker was warranted but precluded by higher listing priorities. This proposal constitutes the final petition finding of warranted as well as the proposal to list the species.

The threats facing the Santa Ana sucker have not substantially changed since the 12-month finding was published, and we consider them to be imminent but of moderate magnitude (a lower priority for listing). However, staff at the Carlsbad Fish and Wildlife Office became available to prepare this proposed rule after completing listings for other species facing threats of higher magnitude. This proposed rule was prepared in accordance with our final listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority to handling emergency situations (Tier 1); second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications; and third priority (Tier 3) to processing proposed and final designations of critical habitat. The processing of this proposed rule falls under Tier 2.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Santa Ana sucker are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Moyle and Yoshiyama (1992) concluded that the native range of the Santa Ana sucker is largely coincident with the Los Angeles metropolitan area. Intensive urban development of the area has resulted in water diversions, extreme alteration of stream channels, changes in the watershed that result in erosion and debris torrents, pollution, and the establishment of introduced of non-native fishes. Moyle and Yoshiyama (1992) stated, "[e]ven though Santa Ana suckers seem to be quite generalized in their habitat requirements, they are intolerant of polluted or highly modified streams." The impact associated with urbanization is likely the significant cause of the extirpation of this species from lowland reaches of the Los Angeles River and San Gabriel River.

As the Los Angeles urban area expanded, the Los Angeles, Santa Ana, and San Gabriel rivers were highly modified, channelized, or moved in an effort to either capture water runoff or protect property. As Moyle (1976) stated, "[t]he lower Los Angeles River is now little more than a concrete storm drain." The same is true for the Santa Ana and San Gabriel rivers. These channelized rivers and canals with uniform and altered substrates are not suitable for sustaining Santa Ana sucker populations (Chadwick and Associates 1996). Past and continuing projects have resulted (or will result) in channelization and concrete lining of the Santa Ana River channel throughout most of the native range of the Santa Ana sucker in Orange County. Urban development also threatens the Santa Ana sucker in the Los Angeles and Santa Ana river basins. In addition to physically altering the rivers, this urban development has resulted in changes in water quality and quantity, as well as the hydrologic regime of the systems.

All three river systems within the historic range of the Santa Ana sucker have dams that isolate and fragment fish populations. Dams likely have resulted in some populations being excluded from suitable spawning and rearing tributaries. Reservoirs also provide areas where introduced predators and competitors can live and reproduce (see factor C of this section). Seven Oaks Dam, now under construction upstream from the present range of Santa Ana sucker in the Santa Ana River, will prevent future upstream movement of fish and further isolate the Santa Ana sucker populations from their native range in the headwaters of the system.

The West Fork of the San Gabriel River is threatened by accidental high flows from Cogswell Reservoir, which have devastated this section of stream several times in the past (Moyle and Yoshiyama 1992; Haglund and Baskins 1992; T. Haglund, *in litt.* 1996). T. Haglund (*in litt.* 1996) stated that, "[t]he West Fork population was wiped out by a sluicing event (to remove sediment by releasing a sudden flow of water) from Cogswell Dam in 1981 (anecdotal data) but recolonized from tributaries that acted as refugia. However, data (from CDFG, no date) suggest that the suckers have never returned to their former abundance." Santa Ana suckers have biological adaptations that allow the fish to quickly repopulate streams following periodic flood events. However, successive high flows threaten to eliminate the sucker population in the West Fork of the San Gabriel River by rapidly depleting the individuals soon after they migrate into the mainstem from tributaries. Proposals exist to sluice or otherwise remove sediment from the Cogswell, Morris, and San Gabriel reservoirs on the San Gabriel River system (W. Phillips, California Regional Water Quality Control Board, Los Angeles Region, *in litt.* 1998). The potential effects of these proposals, the deposition of large amounts of silt on the streambed and rapid increase in suspended sediments in the water column, threaten the Santa Ana sucker populations in the San Gabriel River.

The petitioners contended that suction dredge mining has increased in the Cattle Canyon tributary to the East Fork of the San Gabriel River, threatening the Santa Ana sucker. However, the petitioner did not provide evidence that suction dredging poses a threat to the existence of the fish. We received a comment during the petition review process indicating that no suction dredging has occurred in Cattle Canyon and suggesting that the petitioners took Moyle and Yoshiyama (1992) out of context. (G. Hobbs, Public Lands Action Committee, *in litt.* 1996). The commenter also questioned the veracity of the report by Moyle and Yoshiyama and suggested suction dredging is beneficial to Santa Ana sucker.

The CDFG, (P. Wolf, *in litt.* 1996) indicated they are not aware of suction dredging in the Cattle Canyon tributary to the East Fork of the San Gabriel River. However, they had issued nearly 200 Special Dredge Permits for the East Fork of the San Garbiel River in 1995, the first time the East Fork had been dredged in 15 years.

Surveys in June of 1996 and 1997 indicate the East Fork of the San Gabriel River continues to maintain a healthy Santa Ana sucker population (R. Ally, CDFG, *in litt.* 1996; J. Hernandez, CDFG, *in litt.* 1997). Few studies exist on the impacts of suction dredging on fishes and none that specifically address Santa

Ana suckers. In their review of the literature, Harvey *et al.* (1995) concluded that small larvae of fish such as suckers are easily damaged by physical disturbance, but adults and juveniles are unlikely to be directly affected by entrainment because they either avoid or survive passage through suction dredges. The impact of increased suspended sediment is difficult to predict because of the variability in production of suspended sediment and the ways biota may be affected. Possible impacts associated with suction dredging include changes in stream substrates or food supply. Based on this information, we conclude that suction dredging may impact larvae and eggs of Santa Ana suckers, particularly if dredging is concentrated in an area containing spawning suckers.

Although the Santa Ana sucker evolved under conditions that presumably included droughts, some water diversions and management practices threaten the continued existence of the species. For example, stretches of the upper Santa Ana River have been permanently dewatered, eliminating Santa Ana sucker populations and migration through these reaches to other areas (Swift *et al.* 1993, Swift 1996). As previously discussed, channelization of the rivers of the Los Angeles Basin, water quality degradation, and dam construction have all combined to lower the quality of and eliminate historic Santa Ana sucker habitat. Future human population and urban growth of the basin will further stress the natural resources of the basin and likely exacerbate these conditions.

Fluctuations in water quality in the Santa Ana and Los Angeles Rivers may threaten the Santa Ana sucker (Moyle and Yoshiyama 1992). Several researchers contend nutrient loading rather than acute toxicity may threaten the fish (C. Swift and T. Haglund, pers. comm. 1996). However, in 1991 Chadwick & Associates (1992) found suckers to be common in some areas upstream from Prado Dam where several water treatment facilities discharge into the Santa Ana River. They attribute the high sucker numbers to adequate water supplies discharged by the treatment facilities and the presence of tributaries that offer spawning areas and refugia to the suckers. Nevertheless, Santa Ana sucker numbers are much reduced in the Santa Ana River (Moyle and Yoshiyama 1992; P. Wolf, *in litt.* 1996). Although water quality tolerances of this species are unknown, in general, point and non-point source pollution (e.g., urban runoff, sedimentation, etc.) have significantly degraded the aquatic resources in most of the native range of the Santa Ana sucker. In an effort to identify which water quality parameters affect the Santa Ana sucker, the United States Geologic Survey, Biological Resources Division in conjunction with us, the Orange County Water District, the County of Orange, California, and the Los Angeles County Department of Public Works, is initiating a study of the water quality tolerances of the species. Based on currently available information, we conclude that increased turbidity and associated deposition of fine particles and sand likely threaten the Santa Ana sucker population in the Santa Ana River by decreasing the availability of cobble and other hard substrates preferred by the species (Moyle and Yoshiyama 1992).

B. *Overutilization for commercial, sporting, scientific, or educational purposes.* The CDFG reported Santa Ana suckers being illegally caught with gill and throw nets in the Santa Ana River below Prado Dam (Lt. M. Maytorena, CDFG, pers. comm. 1997). The relative impact of these collections on the species is unknown.

C. *Disease or predation.* Moyle and Yoshiyama (1992) concluded that introduced brown trout (*Salmo trutta*) may have caused the extirpation of the Santa Ana sucker from the upper San Gabriel River in the San Bernardino Mountains. The petitioners noted that centrachids (sunfishes) and bullheads prey on suckers. In the Los Angeles River such introduced predators aggregate in pools during droughts, presumably feeding on native fishes including Santa Ana suckers (Sierra Club Legal Defense Fund 1994). Similar conditions exist in the Santa Ana River. Predation by introduced fishes in combination with habitat destruction has been implicated in the decline of other species of suckers in the southwest (Minckley *et al.* 1991, Scoppettone and Vinyard 1991). Accordingly, introduced predators and competitors likely threaten the continued existence of Santa Ana suckers throughout most of the species' range.

D. *The inadequacy of existing regulatory mechanisms.* Despite the presence of existing regulatory mechanisms and conservation activities accomplished to date by private, State, and Federal entities, the Santa Ana sucker has continued to decline throughout a significant portion of its range. Existing regulatory mechanisms that may provide some protection for the Santa Ana sucker include—(1) the California Endangered Species Act, (2) the California Environmental Quality Act (CEQA), (3) the National Environmental Policy Act (NEPA), (4) the Clean Water Act, (5) the Federal Endangered Species Act in those cases where the Santa Ana sucker occurs in areas where other federally listed species are located, and (6) land management or conservation measures by Federal, State, or local agencies or by private groups and organizations.

The State of California considers the Santa Ana sucker a "species of special concern." However, the Santa Ana sucker is not listed as endangered or threatened by the State, and "species of special concern" are afforded no protection under the California Endangered Species Act.

The California Environmental Quality Act (CEQA) requires full public disclosure of the potential environmental impact of proposed projects. This law also obligates disclosure of environmental resources within proposed project areas and may enhance opportunities for conservation efforts. However, CEQA does not guarantee that such conservation efforts will be implemented. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency may either require mitigation for effects through changes in the project or decide that overriding considerations justify approval of a project with significant impacts. In the latter case, projects may be approved that cause significant environmental damage, such as resulting in the loss of sites supporting State-listed species. Protection of listed species through CEQA is, therefore, not assured.

Local lead agencies responsible under CEQA have made determinations that have adversely affected, or would adversely affect, the Santa Ana sucker and its habitat. Examples of projects that have been completed or are currently undergoing the review process under CEQA and/or NEPA and will impact this species include the Santa Ana River Mainstem Project, which contains multiple projects including Seven Oaks Dam and the raising of Prado Dam, and continued channelization of the Santa

Ana River in Orange County. These reviews have not addressed the effects of the proposed actions on Santa Ana sucker. Similarly, on the San Gabriel River, proposed silt removal from Cogswell Dam may affect the sucker. While projects altering a stream course are subject to review under section 1601 or 1603 of the California Fish and Game Code, such State regulations have not prevented habitat loss or sufficiently protected habitat to prevent the decline of the Santa Ana sucker.

Section 404 of the Clean Water Act represents the primary Federal law that affords some protection for the Santa Ana sucker because the sucker occurs in an aquatic environment. However, the Clean Water Act, by itself does not provide adequate protection for Santa Ana sucker. Although the objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters' (33 U.S.C. § 1251), no specific provisions exist that address the need to conserve rare species. The Army Corps of Engineers (Corps) is the Federal agency responsible for administering the section 404 program. Under section 404, nationwide permits may be issued for certain activities that are considered to have minimal impacts, including minor dredging and discharges of dredged material, some road crossings, and minor bank stabilization (December 13, 1996; 61 FR 65873). However, the Corps seldom withholds authorization of an activity under nationwide permits unless the existence of a listed threatened or endangered species would be jeopardized. Activities that do not qualify for authorization under a nationwide permit, including projects that would result in more than minimal adverse environmental effects, either individually or cumulatively, may be authorized by an individual or regional general permit, which are typically subject to more extensive review. Regardless of the type of permit deemed necessary under section 404, rare species such as Santa Ana sucker may receive no special consideration with regard to conservation or protection unless they are listed under the Act.

As part of the section 404 review process, we provide comments to the Corps on nationwide permits and individual permits. Our comments are only advisory, although procedures exist for elevating permit review within the agencies when disagreements between us and the Corps arise concerning the issuance of a permit. In practice, the section 404 permit review process has often proven to be inadequate to protect unlisted but rare species such as the Santa Ana sucker.

The Santa Ana sucker may receive a small amount of benefit from the possible presence of the least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) on the Santa Ana River. These two animals are federally listed species. However, this benefit is diminished because these species occupy different areas and habitats and have dissimilar ecological requirements from the Santa Ana sucker. Vireos and flycatchers occur in well-developed streamside vegetation. Santa Ana suckers inhabit streams that are generally small and shallow, and subject to periodic severe flooding. Overlapping range with these listed birds provides little, if any, protection for the Santa Ana sucker. The San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is another federally listed species that occurs along the Santa Ana River; however, it occurs upstream from the present known range of the Santa Ana sucker. Therefore, the listing of the San Bernardino kangaroo rat will have little effect on the status or protection afforded the sucker.

Similarly, critical habitat designation for the least Bell's vireo and southwestern willow flycatcher offers little direct benefit to the Santa Ana sucker because these birds occupy different areas and habitats and have dissimilar ecological requirements from the Santa Ana sucker. However, these designations may have discouraged some ecologically damaging projects in the floodplain from being proposed. This preventative effect may have benefitted the Santa Ana sucker.

Forest Service lands encompass approximately 20 percent of the current known range of the Santa Ana sucker. Although a small portion of the range is within a designated wilderness area, the remaining portions of the range on Forest Service lands are not under wilderness management. Wilderness designation offers no direct regulatory protection to the sucker, but it does reduce some human induced impacts on the stream. For example, machines that require motors are excluded from these areas. This reduces or eliminates all motorized recreation and mining activities within the wilderness areas. These types of activities may harm Santa Ana sucker populations and thus wilderness designation offers some indirect benefit to the species. However, thousands of people from the Los Angeles metropolitan area and adjacent urban communities annually use both wilderness and nonwilderness areas within the Angeles National Forest's Big Tujunga Creek and San Gabriel Forks areas for recreation. The impact of the large number of people using these areas is destruction of streambank vegetation, streambank erosion, and the disposal of untreated human waste and other refuse into the creeks, all of which degrade water quality.

The status and threats to the Santa Ana sucker reflect the inadequacy of existing Federal, State, and local ordinances and statutes to protect and provide for the conservation of this fish.

E. *Other natural or manmade factors affecting its continued existence.* Periodic wildfires may adversely affect Santa Ana suckers by causing direct mortality, eliminating vegetation that shades the water and moderates water temperature, or producing silt and ash laden runoff that can significantly increase the turbidity of rivers. Recent fires, including the 1996 Biedebach fire, burned near the vicinity of Prairie Fork on the East Fork of the San Gabriel River. The fires did not burn the riparian corridor, but may contribute increased runoff and siltation to the creek.

The high degree of fragmentation of the remaining Santa Ana sucker populations makes the species especially vulnerable to random events, environmental factors, and loss of genetic variability. A small population size increases the rate of inbreeding and may allow increased expression of deleterious recessive genes occurring in the population (known as inbreeding depression). Loss of genetic variability, through random genetic drift (random gene frequency changes in a small population due to chance), reduces the ability of small populations to respond successfully to environmental stresses. Most of the lowland river habitats have been lost and the remaining populations of Santa Ana suckers are low in numbers, with the exception of the San Gabriel Forks populations. Random events such as floods, variations of annual weather patterns, predation and associated demographic uncertainty (conditions affected by chance events, such as sex ratios, that influence survival and reproduction in small populations) or other environmental stresses and human-caused factors such as chemical spills, may lead to the demise of the remnant populations in the Los Angeles or Santa Ana basins.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Santa Ana sucker (*Catostomus santaanae*) as threatened. While not in immediate danger of extinction, the Santa Ana sucker is

likely to become an endangered species in the foreseeable future if the present threats and declines continue. Based on this evaluation, the preferred action is to list the Santa Ana sucker (*Catostomus santaanae*) as threatened.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (I) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the economic benefits of such exclusion outweigh the conservation benefits, unless to do such would result in the extinction of the species.

We find that critical habitat is not determinable for the Santa Ana sucker at this time. When a "not determinable" finding is made, we must, within 2 years of the publication date of the original proposed rule, designate critical habitat, unless the designation is found to be not prudent.

In designating critical habitat, we consider the following requirements of the species: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring; and, generally, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR 424.12(b)). In addition to these factors, we also focus on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and may require special management considerations or protection. The essential features for the Santa Ana sucker may include, but are not limited to, spawning sites, food resources, and water quality and quantity (see 50 CFR 424.12(b)).

Williams and Finnley (1977) stated that the most serious and frequent threat to a species' existence is alteration of its natural habitat. Changes come in various ways, but they generally are physical, chemical, or biological. In an aquatic ecosystem, the components including a species' primary constituent elements are so tightly intertwined that effects on one alter others. Physical changes are the most obvious; they include dams, water diversion structures, stream channelization and dredging, as well as sedimentation and turbidity from urban runoff. Chemical alteration from pollution such as industrial chemicals, pesticides, and high concentrations of nutrients cause damage to the aquatic environment, frequently upsetting the acid-base aquatic balance and reducing levels of dissolved oxygen in the water column. Biological alterations can occur from introducing non-native species into the habitat resulting in predation, competition, or hybridization, any of which may adversely affect a native species. In the case of the Santa Ana sucker, any one or combination of such physical, chemical, or biological changes may result in negative impacts to the primary constituent elements and exceed the environmental limitations of the species thereby reducing population numbers, decreasing reproductive success, or altering species distribution through habitat fragmentation.

We conclude that there is insufficient knowledge and understanding of the biological needs and environmental limitations of the Santa Ana sucker and the primary constituent elements of its habitat to determine critical habitat for the fish. We think that the Santa Ana sucker is intolerant of highly polluted waters but little information is available concerning these possible limiting factors. Furthermore, in the Santa Ana River, suckers remain extant, although rare, in the lowlands where water quality is degraded as compared to the headwaters. We need additional information on the environmental limits of the sucker to enable us to accurately designate critical habitat for the Santa Ana sucker throughout its range. The physical and biological features including but not limited to water chemistry, water temperature, instream flows, streambed substrate and structure, and fauna and flora of the aquatic environment that supports the Santa Ana sucker are the features about which we need additional information. In an effort to gain these data, the Orange County Water District, the County of Orange, California, and the Los Angeles County Department of Public Works are working cooperatively with the National Fish and Wildlife Foundation, the Biological Resources Division of the United States Geologic Survey, and us to fund and implement research on the environmental limitations of the Santa Ana Sucker. The study will identify environmental parameters, including water quality (e.g., dissolved oxygen, turbidity, water chemistry, and water temperature) and some physical variables (e.g., flows, and streambed substrate and structure) associated with variations in population densities. If correlations are found, future research will focus on the variable(s) most likely to limit sucker populations.

The study began in late 1998 and results should be available in 2000. We will then reevaluate our knowledge of the species and, if determined prudent, propose critical habitat for the Santa Ana sucker. We will continue in our efforts to obtain more information on Santa Ana sucker biology and ecology, including distribution, population density, and essential habitat characteristics particularly in regard to water quality. We will use the information resulting from these efforts to identify measures needed to achieve conservation of the species, as defined under the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for all listed species. The

protection required of Federal agencies are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a federally listed species or result in destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must consult with us.

Federal agencies expected to have involvement with section 7 regarding the Santa Ana sucker include the Army Corps of Engineers and the Environmental Protection Agency because of their permit authority under section 404 of the Clean Water Act. The Forest Service will be involved through its activities on Angeles National Forest and Los Padres National Forest. These agencies either administer lands/waters containing the Santa Ana sucker or authorize, fund, or otherwise conduct activities that may affect this species.

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with purposes of the Act.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. We believe the following actions would not likely result in a violation of section 9:

(1) Existing discharges into waters supporting these species, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act including discharges regulated under the National Pollutant Discharge Elimination System (NPDES)).

(2) Actions that may affect the Santa Ana sucker and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act.

(3) Normal agricultural and silvicultural practices, including pesticide and herbicide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices.

(4) Development and construction activities designed and implemented in accordance with State and local water quality regulations.

(5) Existing recreational activities, such as swimming, wading, canoeing, and fishing.

(6) Possession, transport within or between States, and import and export of Santa Ana suckers that have not been sold or offered for sale and were legally collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxa to the list of threatened and endangered species.

Activities that we believe could potentially harm the Santa Ana sucker and result in a violation of section 9 of the Act include, but are not limited to:

(1) Take of Santa Ana suckers without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions.

(2) Possess, sell, deliver, carry, transport, or ship illegally taken Santa Ana suckers.

(3) Unauthorized interstate and foreign commerce (commerce across state and international boundaries) and import/export.

(4) Introduction of non-native species that compete or hybridize with, or prey on Santa Ana suckers.

(5) Unauthorized destruction or alteration of Santa Ana sucker habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, water quality, water temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

(6) Discharges or dumping of toxic chemicals, silt, organic waste, or other pollutants (such as may result from mining, land development or land management activities) into waters supporting Santa Ana suckers that results in death or injury to the species or results in the destruction or degradation of cover, channel stability, substrate composition, water quality, water temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243)

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on the Santa Ana sucker or its habitat;

(5) Information regarding the introduction of the Santa Clara River population and the role it may play in the recovery of this species.

We will take into consideration your comments and any additional information received on this species when making a final determination regarding this proposal. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Field Supervisor of the Service's Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to: Exsec@ios.doi.gov.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary author of this document is Dr. Paul J. Barrett, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	
FISHES							
•	•	•	•	•	•	•	
Sucker, Santa Ana	*Catostomus santaanae*	U.S.A. (CA)	Los Angeles, San Gabriel, and Santa Ana River basins.	T		NA	NA
•	•	•	•	•	•	•	

Dated: January 14, 1999
Jamie Rappaport Clark,
Director, Fish and Wildlife Service.
[FR Doc. 99–1700 Filed 1–25–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF36

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Critical Habitat Determinations for the Cactus Ferruginous Pygmy-Owl and the Plant Lilaeopsis schaffneriana ssp. recurva, (Huachuca Water Umbel)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that public hearings will be held on the proposed determination of critical habitat for the plant *Lilaeopsis schaffneriana* ssp. *recurva,* (Huachuca water umbel), and the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). The hearings will allow all interested parties to submit oral comments on the proposals.

DATES: Each public hearing will be for the purpose accepting public comment on either or both proposals. These hearings will be held from 7 p.m. to 9 p.m. on February 10, 1999 in Coolidge, Arizona; on February 11, 1999 in Sierra Vista, Arizona; and on February 12, 1999 in Tucson, Arizona. The comment period for these proposals will remain open until March 1, 1999. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on these proposals.

ADDRESSES: The public hearings will be held at the Coolidge Unified School District Auditorium, 800 West Northern Avenue, Coolidge, Arizona; Buena Performing Arts Center (Buena High School), 5225 Buena School Boulevard, Sierra Vista, Arizona; and Leo Rich Theatre (Tucson Convention Center), 260 South Church Avenue, Tucson, Arizona. Oral and written comments will be accepted at the hearings. Additionally, written comments can be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640–2720 ext. 240; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of *Glaucidium brasilianum cactorum* is listed as an endangered species. The Service proposed designation of approximately 730,565 acres of riverine riparian habitat and upland habitat as critical habitat for the cactus ferruginous pygmy-owl pursuant to the Endangered Species Act of 1973, as amended (Act). Proposed critical habitat is in Pima, Cochise, Pinal, and Maricopa counties, Arizona as described in the **Federal Register** (63 FR 71820; December 30, 1999).

The Huachuca water umbel is a plant found in cienegas (desert marshes), streams and springs in southern Arizona and northern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring. The Service proposed critical habitat including a total of 83.9 kilometers (52.1 miles) of streams or rivers in Cochise and Santa Cruz counties, Arizona (63 FR 71838; December 30, 1999).

Section 4(b)(5)(E) of the Act, as amended (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. However, due to the expeditious treatment of these proposed critical habitat determinations under Federal District Court order as described in the proposed rules, the Service has arranged for three public hearings to be held in proximity to the areas proposed for critical habitat designation. Each hearing will be held to accept information for both the pygmy-owl and the water umbel critical habitat proposals on the dates and at the addresses described above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearings or mailed to the Service.

Legal notices announcing the dates, times, and locations of the hearings will be published in newspapers concurrently with this **Federal Register** notice. The current comment period on this proposal closes on March 1, 1999. Written comments may be submitted to the Service office in the **ADDRESSES** section.

Author: The primary author of this notice is Jeffrey A. Humphrey (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

Dated: January 20, 1999.
Geoffrey L. Haskett,
Acting Regional Director, Region 2, Fish and Wildlife Service.
[FR Doc. 99–1692 Filed 1–25–99; 8:45 am]
BILLING CODE 4310–55–U

Notices

Federal Register
Vol. 64, No. 16
Tuesday, January 26, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–99–03]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting.

Name: National Advisory Committee for Tobacco Inspection Services.

Date: February 26, 1999.

Time: 9 a.m.

Place: Campbell House Inn, Campbell Room, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

Purpose: To elect officers, review regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) and to discuss the level of tobacco inspection services currently provided to producers by AMS. The Committee will recommend the desired level of services to be provided to producers by AMS and an appropriate fee structure to fund the recommended services for the 1999–2000 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: January 21, 1999.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.

[FR Doc. 99–1784 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–126–1]

AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Rice Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for certain rice transformation events, which have been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these rice transformation events present a plant pest risk.

DATES: Written comments must be received on or before March 29, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–126–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–126–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5141. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On November 25, 1998, APHIS received a petition (APHIS Petition No. 98–329–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for rice (*Oryza sativa* L.) designated as Liberty Link® Rice Transformation Events LLRICE06 and LLRICE62 (rice transformation events LLRICE06 and LLRICE62), which have been genetically engineered for tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject rice transformation events should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, rice transformation events LLRICE06 and LLRICE62 have been genetically engineered to contain the *bar* gene derived from *Streptomyces hygroscopicus*, strain HP632. The *bar* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *bar* gene is controlled by 35S promoter and terminator sequences derived from the plant pathogen cauliflower mosaic virus. The direct gene transfer method was used to transfer the added genes into the parental rice varieties, M202 (LLRICE06) and Bengal (LLRICE62).

The subject rice transformation events have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from a plant pathogen. Rice transformation events LLRICE06 and LLRICE62 have been field tested in the United States since 1997 under APHIS notifications. In the process of reviewing the notifications for the field trials of this rice, APHIS determined that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U. S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic eng neering. AgrEvo has begun consultation with FDA on the subject rice transformation events.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's rice transformation events LLRICE06 and LLRICE62, and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 20th day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1783 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Extend and Revise a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension for and revision to a currently approved information collection, the Field Crops Objective Yield Surveys.

DATES: Comments on this notice must be received by April 1, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington DC 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Field Crops Objective Yield.

OMB Number: 0535–0088.

Expiration Date of Approval: July 31, 1999.

Type of Request: Intent to extend and revise a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production. The Field Crops Objective Yield Surveys objectively predict yields for wheat, corn, cotton, soybeans, and potatoes. Sample fields are randomly selected for these crops. Plots and laid out and periodic counts and measurements are taken and used to forecast production during the growing season. Production forecasts are published in USDA Crop Production reports. An increase in the number of plots is planned. The Field Corps Objective Yield Surveys has approval from OMB for a 3-year period. NASS intends to request that the surveys be approved for another 3 years.

These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 19 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 8,100.

Estimated Total Annual Burden on Respondents: 4,200 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, DC, January 13, 1999.

Rich Allen,

Associate Administrator, National Agricultural Statistics Service.

[FR Doc. 99–1684 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Suspension of Direct and Guaranteed Loans for Hog Production

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The swine industry is currently in crisis due to over supply and low prices. The Secretary is concerned that, during this period of low prices, the availability of certain RBS credit programs may facilitate additional production capacity that will prolong the current hog price depression. Additional capacity is also likely to damage the prospects for long-term financial recovery in the industry. Continued financial stress on hog farmers may force and accelerate concentration of the production, processing, and marketing of hogs into fewer hands. This notice temporarily suspends direct Rural Economic Development Loan and Business and Industry Guaranteed Loan financing for the construction of specialized facilities used for the production of hogs.

FOR FURTHER INFORMATION CONTACT: William F. Hagy III, Deputy Administrator, Business Programs, Rural Business-Cooperative Service, 1400 Independence Avenue, SW., Washington, D.C. 20250–3220, telephone (202) 720–7287.

DATES: January 26, 1999. This notice will be in effect until rescinded by the National Office.

SUPPLEMENTARY INFORMATION: State Offices shall direct all questions regarding this notice to the Deputy Administrator, Business Programs. Any application for a direct or guaranteed loan for the construction or expansion of a specialized hog production facility will be accepted but held in abeyance until the suspension is lifted. A specialized hog production facility is defined as any building or enclosure and related equipment specifically to house, raise, or feed hogs of any size, age, or market class.

The loan processing time frames will not apply to these applications while the suspension is in effect. The State Office will notify both the applicant and the lender that the application is being held. All guaranteed lenders should be notified of the suspension.

Direct and guaranteed loan applications for purchase, refinancing, maintenance, or repair of facilities currently in production will continue to be processed. Direct and guaranteed loan applications that were received by Rural Development State Offices on or before the date of this notice will be processed through to completion and will not be affected by this temporary suspension. In all other cases, applications will only be processed when the Government's interest will be imperiled if the application is not processed.

Dated: January 14, 1999.

William F. Hagy III,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–1505 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000 Location Report for American Flag Vessels and Census 2000 Information for American Flag Vessels

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the draft forms should be directed to Charles Moore, Bureau of the Census, SFC2, MS–5700, Room 1304, 4301 Suitland Road, Suitland, Maryland 20746, phone number (301) 457–2050.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau must provide everyone in the United States and Outlying Areas the opportunity to be counted in the Census 2000, including persons living on vessels. To that end, the Census Bureau is currently developing final plans for implementing the Census 2000 Maritime Vessel Enumeration activities. The proposed Census 2000 Location Report for American Flag Vessels and Census 2000 Information for American Flag Vessels operation will greatly facilitate the enumeration of the ship board population and is similar to other vessel enumerations conducted in previous censuses. Beginning in 1999 we will work with the Maritime Administration, American Tuna Boat Association, and other vessel organizations to obtain a list of vessel owners/operators. Each owner/operator will be sent a letter asking for a list of ships and an estimated number of crew and passengers. We will then send questionnaire packages to the owners/operators for each vessel they report and ask that they distribute the packages to

their vessels. The packages will consist of shipboard census reports (SCRs) (previously cleared by the Office of Management and Budget), envelopes, Privacy Act Notices, and a Form D–47, Census 2000 Location Report for American Flag Vessels. The ship's captain/master is asked to complete the Location Report and return it with the completed SCRs to the Census Bureau's National Processing Center in Jeffersonville, IN. Each owner/operator is asked to complete a Form D–34, Census 2000 Information for American Flag Vessels for any ship that did not receive a packet. The Census Bureau will use the information on the D–34 to prepare and mail questionnaire packets to these missed ships. The information on the D–47 will be used to geocode each vessel to its correct census geography.

II. Method of Collection

The Census Bureau will mail forms D–34 and D–47 to the owners/operators and ship's captains/masters who will manually complete the forms and return them to the Census Bureau for geocoding and additional questionnaire mailings, as necessary.

III. Data

OMB Number: Not available.
Form Number: D–34, D–47.
Type of Review: Regular Submission.
Affected Public: American flag vessel owners/operators and ship's captains/masters.
Estimated Number of Respondents: We estimate that 780 American Flag Vessels will be reported to us initially, and that 30 ships will be missed in our initial questionnaire package mailing.
Estimated Time Per Response: Form D–34—2 minutes; Form D–47—5 minutes.
Estimated total Annual Burden: 66 hours.
Estimated total Annual Cost: There is no cost to respondents for providing information on this operation, except for a few minutes of their time.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden including hours and cost of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 20, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–1781 Filed 1–25–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Competitive Enhancement Needs Assessment Survey Program

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 4525, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small- and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely by cutbacks in defense spending and military base closures.

II. Method of Collection

Written survey.

III. Data

OMB Number: 0694–0083.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 5,000.
Estimated Time Per Response: 30 minutes per response.
Estimated Total Annual Burden Hours: 2,500.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 21, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–1782 Filed 1–25–99; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–834]

Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary determination of antidumping duty investigation.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") published the preliminary determination of its antidumping duty investigation of stainless steel sheet and strip in coils ("SSSS") from Korea. This investigation covers three respondents, Pohang Iron and Steel Co., Ltd. ("POSCO"), Taihan Electric Wire Co., Ltd. ("Taihan"), and Inchon Iron and Steel Co., Ltd. ("Inchon").

POSCO submitted a ministerial error allegation on December 28, 1998 with respect to the preliminary determination signed on December 17, 1998. Based on the correction of certain significant ministerial errors made in the preliminary determination, we are amending our preliminary determination. This amendment is in accordance with 19 CFR 351.224(e).

EFFECTIVE DATE: January 26, 1999.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1398 (Dybczak) or (202) 482–3818 (Johnson).

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 351 (1998).

Significant Ministerial Errors

Under 19 CFR 351.224, a significant ministerial error is defined as a correction which, by itself or in combination with other errors, (1) would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. We are amending the preliminary determination of sales at less than fair value for SSSS from Korea to reflect the correction of a significant ministerial error made in the margin calculations regarding POSCO in that determination, pursuant to 19 CFR 351.224(g)(1). We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties, the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below.

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of

plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." [1]

Certain electrical resistance alloy steel is also excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials ("ASTM") specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [2]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System ("UNS") as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6." [5]

Period of Investigation

The period of investigation ("POI") is April 1, 1997 through March 31, 1998.

Background

On December 17, 1998, the Department issued its notice of preliminary determination of the antidumping duty investigation of SSSS from Korea (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea* (64 FR 137 (January 4, 1999)). We preliminarily calculated a dumping margin of 12.35 percent based on POSCO's sales.

On December 28, 1998, POSCO submitted timely written allegations that the Department made a ministerial error which resulted in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted-average margin calculated in the preliminary determination. POSCO alleged that the Department erred by (1) failing to apply a weighted-average exchange rate in calculating normal value; (2) inadvertently excluding all of POSCO's sales to customers that had been affiliated only during a portion of the POI; and (3) failing to include deductions for inland freight transplant to warehouse and the warehousing expenses in calculating normal value.

The Department preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department stated that it would use daily rates exclusively for currency conversion purposes for home market sales matched to U.S. sales occurring between November 1, 1997 and December 31, 1997, while applying a standard exchange rate model with a modified benchmark for January to February, 1998. However, in the final stages of the margin calculation program, the Department inadvertently used these "modified" daily rates instead of a weighted-average exchange rate. For a further discussion of this

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

[5] "GIN4 Mo", "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

issue, *see Analysis of Alleged Ministerial Errors—Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Korea* ("Analysis Memo"), dated January 19, 1999.

With respect to sales made to unaffiliated parties during the POI, POSCO had made sales to unaffiliated parties that had previously been affiliated. In identifying and excluding sales to affiliated parties that had failed the "arm's length test," the margin calculation program did not differentiate between sales made before and after the companies were unaffiliated, and therefore, all sales to these companies were inadvertently excluded in the margin calculation program. *See Analysis Memo.* In addition, inland freight from plant to warehouse and warehousing expenses were also inadvertently excluded from the calculation of movement expense used to determine normal value. As both of these expenses are standard deductions to normal value, their exclusion was a clerical error on the part of the Department. For a further discussion of this issue, *see Analysis Memo.*

In conclusion, we agree with POSCO that we inadvertently used daily rates instead of a weighted-average exchange rate, that sales made to unaffiliated companies were erroneously excluded from the calculation of normal value, and that deductions for inland freight from plant to warehouse and warehousing expenses were inadvertently excluded from the calculation of normal value. Because these errors taken together constitute a significant ministerial error, as defined in 19 CFR 351.224(g), we are amending our preliminary determination. In accordance with this amendment, we will amend POSCO's cash deposit rate from 12.59 to 3.92 percent, and the All Other's rate from 12.59 to 3.92 percent. *See* "Suspension of Liquidation" section, below.

Amended Preliminary Determination

As a result of our correction of these ministerial errors, we have determined the following amended weighted-average dumping margins apply:

Manufacturer/exporter	Margin percentage
Inchon	0.00
POSCO	3.92
Taihan Electric Wire	58.79
All Others	3.92

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the U.S. price, as indicated in the chart above. We will also instruct the Customs Service not to require cash deposits for manufacutrers/exporters with *de minimis* or zero margins. These suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we are notifying the U.S. International Trade Commission ("ITC") of our amended determination. If our final determination is affirmative, the ITC will determine before July 6, 1999, whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 23, 1999, and rebuttal briefs, limited to issues raised in case briefs, no later than March 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held no later than March 3, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, no later than February 3, 1999. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination no later than May 19, 1999.

This amended preliminary determination and notice are in accordance with section 733(d)(2) of the Act and 19 CFR 351.224 of the Department's regulations.

Dated: January 14, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–1777 Filed 1–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Pennsylvania, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–043. *Applicant:* University of Pennsylvania, Philadelphia, PA 19104–6085. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 63 FR 50211, September 21, 1998. *Order Date:* July 1, 1998.

Docket Number: 98–044. *Applicant:* University of North Dakota School of Medicine & Health Sciences, Grand Forks, ND 58202. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Hitachi, Japan. *Intended Use:* See notice at 63 FR 50211, September 21, 1998. *Order Date:* April 14, 1998.

Docket Number: 98–045. *Applicant:* The University of Texas Health Science Center at San Antonio, San Antonio, TX 78284–7750. *Instrument:* Electron Microscope, Model EM208S. *Manufacturer:* N.V. Philips, Czech Republic. *Intended Use:* See notice at 63 FR 50556, September 22, 1998. *Order Date:* July 9, 1998.

Docket Number: 98–048. *Applicant:* North Carolina State University, Raleigh, NC 27695. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan.

Intended Use: See notice at 63 FR 58368, October 30, 1998. *Order Date:* August 13, 1998.

Docket Number: 98–055. *Applicant:* Mount Sinai School of Medicine, New York, NY 10029. *Instrument:* Electron Microscope and Accessories, Model H–7500. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* See notice at 63 FR 63292, November 12, 1998. *Order Date:* June 30, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–1774 Filed 1–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Minnesota, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 98–046. *Applicant:* University of Minnesota, Minneapolis, MN 55455. *Instrument:* (2) Bioelectric Impedance Tomographs, Models APT/EIT and Mk3a EIT/APT. *Manufacturer:* University of Sheffield, United Kingdom. *Intended Use:* See notice at 63 FR 50556, September 22, 1998. *Reasons:* The foreign instrument provides real time dynamic imaging of cardiac blood volume changes and characterization of tissues such as the lung using 16-channel recording for bioelectric impedance tomography. *Advice received from:* National Institutes of Health, December 10, 1998.

Docket Number: 98–049. *Applicant:* North Carolina State University, Raleigh, NC 27695–7212. *Instrument:* Oxylite Oxygen Monitor, Model 2000. *Manufacturer:* Oxford Optonix Ltd., United Kingdom. *Intended Use:* See notice at 63 FR 58368, October 30, 1998. *Reasons:* The foreign instrument provides an optical technique that incorporates a non-metallic fiber optic probe that may remain in-situ during magnetic resonance imaging. *Advice received from:* National Institutes of Health, December 10, 1998.

Docket Number: 98–056. *Applicant:* University of Wisconsin-Madison, Madison, WI 53706. *Instrument:* Piezo Manipulator, Model PPM–150FU. *Manufacturer:* Prime Tech Ltd., Japan. *Intended Use:* See notice at 63 FR 63292, November 12, 1998. Reasons: The foreign instrument provides a rapid and controllable deformation piezo electric element to drill carefully through the zona pellucida and enter a cell with minimal damage or deformation during transgenic cloning procedures. *Advice received from:* National Institutes of Health, December 11, 1998.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–1775 Filed 1–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Hawaii, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 98–058. *Applicant:* University of Hawaii, Honolulu, HI 96822. *Instrument:* Directional Wave Buoy. *Manufacturer:* Datawell bv, The Netherlands. *Intended Use:* See notice at 63 FR 65174, November 25, 1998. *Reasons:* The foreign instrument provides (1) capability for long-term deployment over deep water in the open ocean for measuring directional waves, (2) real time data access through telemetry to onshore locations and (3) compatibility with similar research projects in this area. *Advice received from:* Two domestic manufacturers of similar equipment, July 2, 1998.

Docket Number: 98–060. *Applicant:* Iowa State University of Science & Technology, Ames, IA 50011–3616. *Instrument:* Variable Temperature Scanning Tunneling Microscope. *Manufacturer:* Omicron Vakuum Physik, Germany. *Intended Use:* See notice at 63 FR 69264, December 16, 1998. *Reasons:* The foreign instrument provides (1) precise control of the temperature of the sample and the STM scanner over a range of 25° K to 750° K, (2) deposition of metal within the microscope and (3) continuous imaging of the sample during deposition. *Advice received from:* A domestic manufacturer of similar equipment, August 25, 1998.

Domestic manufacturers of similar equipment advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument (comparable cases).

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–1776 Filed 1–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010899C]

Marine Mammals; Scientific Research Permit (PHF393–1480–00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Permit.

SUMMARY: Notice is hereby given that Ms. Deborah A. Clockner-Ferrari, 39 Woodvine Court, Covington, LA 70433, has been issued a permit to take North Pacific humpback whales (*Megaptera novaeangliae*), bottlenose dolphins (*Tursiops truncatus*), Hawaiian spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), false killer whales (*Pseudorca crassidens*), and pilot whales (*Globicephala macrorhynchus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682–2396 (808/973–2987).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 4, 1998, notice was published in the Federal Register (63 FR 67045) that a request for a scientific research permit to take the above-references species had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 19, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–1767 Filed 1–25–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–1]

Cadet Manufacturing Company; Complaint

AGENCY: Consumer Product Safety Commission.

ACTION: Publication of a complaint under the Consumer Product Safety Act.

SUMMARY: Under provisions of its Rules of Practice for Adjudicative Proceeding (16 CFR Part 1025), the Consumer Product Safety Commission must publish in the **Federal Register** Complaints which it issues. Published below is a Complaint in the matter of Cadet Manufacturing Company.

SUPPLEMENTARY INFORMATION: The text of the Complaint appears below.

Dated: January 21, 1999.

Sadye E. Dunn,

Secretary.

In the Matter of Cadet Manufacturing Company, 2500 W. Fourth Plain Boulevard, Vancouver, Washington 98660, a Domestic Corporation.

COMPLAINT

Nature of Proceedings

1. This is an administrative enforcement proceeding pursuant to section 15 of the Consumer Product Safety Act ("CPSA"), as amended, 15 U.S.C. 2064, for public notification and remedial action to protect the public from substantial risks of injury presented by certain electric in-wall heaters manufactured by Cadet Manufacturing Company of Vancouver, Washington. This proceeding is governed by the Rules of Practice for Adjudicative Proceedings before the Consumer Product Safety Commission, 16 CFR Part 1025.

Jurisdiction

2. This proceeding is instituted pursuant to the authority contained in sections 15(c), (d), and (f) of the CPSA, 15 U.S.C. 2064(c), (d), and (f).

Parties

3. Complaint Counsel is the staff of the Legal Division, Office of Compliance, Consumer Product Safety Commission, an independent federal regulatory commission established pursuant to section 4 of the CPSA, 15 U.S.C. 2053.

4. Respondent Cadet Manufacturing Company ("Cadet") is a domestic corporation last organized and existing under the laws of the State of Washington, since 1993, with its principal place of business located at 2500 W. Fourth Plain Boulevard, Vancouver, Washington 98660.

5. Cadet manufactures electric heaters for use in or around a permanent or temporary household or residence; and is, therefore, a "manufacturer" of "consumer product[s]," as those terms are defined in sections 3(a) (1) and (4) of the CPSA, 15 U.S.C. 2052(a) (1) and (4).

Consumer Products

6. Since 1978, Cadet has manufactured and distributed in commerce electric in-wall heaters for use in homes and residences under the brand names "Cadet" and "Encore," all models and variants within each model of the series FW (models FW–051, FW–101, FW–122, FW–202, FW–202, and FW–751), manufactured between 1978 and 1989; series FX (Models FX–051, FX–052, FX–071, FX–072, FX–101, FX–102, FX–151, FX–122, FX–152, FX–202, and FX–242), manufactured between 1984 and 1995; series LX (models LX–242, LX–242, LX–302, LX–302, LX–402, LX–402, and LX–482), manufactured between 1984 and 1995; series TK (models TK–051, TK–071, TK–072, TK–101, TK–102, TK–151, and TK–152), manufactured between 1986 and 1998; series ZA (models ZA–051, ZA–052, ZA–071, ZA–072, ZA–101, ZA–102, ZA–122, ZA–151, ZA–152, ZA–202, ZA–242, manufactured between 1984 and 1995); first generation series Z (models Z–072, Z–101, Z–102, Z–152, Z–202, and Z–208), manufactured between 1993 and 1997; and/or all series and models of the same or functionally identical heaters

manufactured and distributed by Cadet under the Encore brand (hereinafter collectively, the "heaters"). Each of the heaters is, therefore, a "consumer product" "distributed in commerce" within the meaning of sections 3(a)(1) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), and (11), respectively.

7. Each of the heaters consists of a motor-driven fan, a heating element, and an over-temperature limit control switch ("OTC") housed in a metal box that is intended to be installed in a wall or under cabinets. The heater is connected to the main electric power supply in the home or residence. When energized with electric current, the fan of the heater pulls room air over the heating element, and pushes the heated air back into the room.

Product Defect

8. The heaters within series FW, FX, LX, TK, ZA, and/or the same or functionally identical Encore brand heaters, are defective because their design causes the heaters to overheat, fail, and catch fire; and/or allow lint, dirt, or debris within the heaters to catch fire. The heater design can also cause the heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence, or energize the heaters creating a risk of electric shock.

9. The heaters within the series FW, FX, LX, TK, ZA heaters, and/or same or functionally identical Encore brand heaters, are defective because they were manufactured or assembled with inadequate or faulty components, electrical connections, and/or contacts, which cause the components, electrical connections, and/or contacts to fail, overheat, and catch fire; and/or allow lint, dirt, or debris within the heaters to catch fire. These defects can also cause the heaters to spew flames and/or burning or molten particles, or eject sparks into the living space of a home or residence.

10. The heaters within the first generation Z series, and/or the same or functionally identical Encore heaters are defective in design or manufacture because the heater element can overheat, explode, and spew molten metal particles into the living space of a home or residence.

Substantial Product Hazards and Risks of Injury

11. The design defects in the series FW, FX, LX, TK, ZA heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 8 above are prevalent within those heaters.

12. The manufacturing or assembly defects in the series FW, FX, LX, TK, ZA heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 9 above are prevalent within those heaters.

13. The design or manufacturing defects in the first generation series Z heaters, and/or the same or functionally identical Encore brand heaters, identified in paragraph 10 above are prevalent within those heaters.

14. The defects identified and described in paragraphs 8 through 10 above have caused or contributed to serious thermal burns and death, and are likely to cause serious electric shock injury and death.

15. The staff knows of at least 183 instances of electrical fire or malfunction involving the heaters: 85 units of series FX; 18 units of series FW; 2 units of series LX; 49 units of series ZA; 2 units of series TK; and 27 units of series Z (first generation); including 131 heaters that allegedly smoked, sparked, caught fire, emitted flame, and/or ejected burning particles or molten metal particles as the result of the defects identified and described in paragraphs 8 through 10 above. These incidents have resulted in three deaths and two burn injuries.

16. Between 1978 and 1998, Cadet manufactured approximately 1,800,000 potentially defective heaters that present the hazards and risks of injury described in paragraphs 14 and 15 above.

17. It is likely that the series FX, FW, LX, TK, first generation Z, ZA heaters, and/or the same or functionally identical Encore brand heaters, will continue to fail in the same way and to present the same hazards and risks of injury as a result of the defects described in paragraphs 8 through 10 above, if public notice and remedial actions are not taken to eliminate or reduce the risk of injury presented by the heaters. Each of the heaters, therefore, presents a "substantial product hazard" within the meaning of sections 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), by reason of the substantial risk of injury or death alleged in paragraphs 11 through 17 above.

Relief Sought

Complaint Counsel requests the Commission to issue the following relief.

A. Determine that the heaters present a substantial product hazard within the meaning of section 15(a)(2), 15 U.S.C. 2064(a)(2).

B. Determine that public notification under section 15(c) of the CPSA, 15 U.S.C. 2064(c), is required to protect the public adequately from the risks of injury presented by the heaters.

C. Order Cadet, under section 15(c) of the CPSA, 15 U.S.C. 2064(c), to give such notice as is reasonably necessary to protect the public.

D. Order Cadet, under section 15(d) of the CPSA, 15 U.S.C. 2064(d), to cease manufacturing for sale, offering for sale, and distributing in commerce the defective heaters.

E. Order Cadet under section 15(d) of the CPSA, 15 U.S.C. 2064(d), to elect one of the following remedial actions:

1. Repair each heater in such a manner that it is free of defect and works in a proper and safe manner.

2. Replace each heater with a new heater, free of any defect, that works in a proper and safe manner.

3. Refund the purchase price of each heater, including the costs of materials, labor, and profit.

F. Order Cadet to submit a corrective action plan satisfactory to the Commission that requires Cadet to undertake public notice and remedial actions in accordance with paragraphs C, D, and E above, pursuant to section 15(d) of the CPSA, 15 U.S.C. 2064(d).

G. Order Cadet for a period of five (5) years after issuance of the Final Order in this matter, to notify the Commission at least sixty (60) days prior to any change in its business (such as incorporation, dissolution, assignment, sale, or petition for bankruptcy) that results in, or is intended to result in, the emergence of a successor corporation, going out of business, or any other change that might affect compliance obligations under a Final Order issued by the Commission in this matter.

H. Grant such other and further relief as the Commission may deem necessary.

Issued by Order of the Commission.

Dated: January 14, 1999.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504–0621, ext. 1349.

Eric L. Stone,

Director, Legal Division, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504–06261, ext. 1350.

Earl A. Gershenow,

Howard N. Tarnoff,

Trial Attorneys, Complaint Counsel, Legal Division, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207, Tel: (301) 504–9626, ext. 1343.

Hand Delivery Address: 4330 East West Highway, Room 613, Bethesda, Maryland 20814.

[FR Doc. 99–1779 Filed 1–25–99; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Spectrum Management Study in support of the HQ USAF Scientific Advisory Board will meet in Rosslyn, VA on February 24–25, 1999 from 8:00 A.M. to 5:00 P.M.

The purpose of the meeting is to kick off the 1999 Quicklook Study on Spectrum Management.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison.

[FR Doc. 99–1667 Filed 1–25–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Exclusive Licensing of U.S. Patent Nos. 5,806,741 for a Load Carrying System and 5,724,707 for an Interlock Attaching Strap System

AGENCY: U.S. Army Soldier and Biological Chemical Command, Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1), announcement is made of prospective exclusive licenses for a load carrying system and an interlock attaching strap system described in U.S. Patent Nos. 5,806,741 and 5,724,707, respectively.

DATES: Written objections must be filed on or before 26 March 1999.

ADDRESSES: U.S. Army Soldier and Biological Chemical Command, Soldier Systems Center, Office of Counsel, Attn: Patent Counsel, 15 Kansas Street, Natick, MA 01760–5035.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent J. Ranucci, Patent Counsel at 508–233–4510.

SUPPLEMENTARY INFORMATION: The Load Carrying System was invented by Mr. John Kirk. The Interlock Attaching Strap System was invented by Messrs. John Kirk, Gerald Tatton and Paul Dersain. Rights in the invention are vested in the U.S. Government as represented by the Secretary of the Army at the U.S. Army Soldier and Biological Chemical Command, Soldier Systems Center (SBCCOM). Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 92–502) and Section 207 of Title 35, U.S. Code, the Department of the Army, as represented by SBCCOM, intends to grant exclusive licenses on the load carrying system and an interlock attaching strap system to Specialty Defense Systems, a Division of Speciality Plastic Products, 530 Sherwood Avenue, Dunmore, PA 18512. Pursuant to 37 CFR 404.7(a)(1), any interested party may file written objections to the prospective license agreement. Written objections should be directed to the above address.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–1768 Filed 1–25–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: Thursday, February 4, 1999 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol Hotel located at 550 C Street, S.W., Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Treopia Washington, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, S.W., the Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities was established under Executive Order 12876 of November 1, 1993. The Board was established to advise on federal polices that impact upon Historically Black Colleges and Universities, to advise on strategies to increase participation of Historically Black Colleges and Universities in federally sponsored programs and funding opportunities, and to advise on strategies to increase private sector support for these colleges.

The meeting of the Board is open to the public. The meeting will focus on review of federal agency program activity with historically black colleges and universities, and new initiatives from the Higher Education reauthorization Act.

Records are kept of all Board procedures and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities located at 1250 Maryland Avenue, S.W., the Portals building, Suite 605, Washington, DC, 20202, from the hours of 8:30 a.m. to 5:00 p.m.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–1688 Filed 1–25–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Idaho Operations Office

Office of Site Operations

National Analytical Management Program Notice 99–01

AGENCY: Idaho operations office, Department of Energy (DOE).

ACTION: Notice of meetings open to the public.

SUMMARY: The National Analytical Management Program within the Office of Site Operations is announcing that the Environmental Protection Agency, Department of Energy, Department of Defense, Food and Drug Administration, National Institute of Standards and Technology, Nuclear Regulatory Commission, and U.S. Geological Survey are meeting to develop a joint interagency guidance manual for programs and laboratories to use when planning and implementing the analysis of environmental samples for radioactivity. The manual uses a performance based approach and will provide guidance to both project planners and laboratory personnel. The guidance is being developed as a draft document entitled the MultiAgency Radiation Laboratory Protocol (MARLAP) Manual, and it is anticipated that the final product will be a consensus document each agency can agree upon and adopt. Meetings of the group are open to the public on a first

come, space available basis with advance registration. The agenda for this meeting will be available on the appropriate INTERNET sites listed in the **SUPPLEMENTARY INFORMATION** section.

DATES: A meeting will be held on February 8, 9, 10, from 9:00 a.m. until 5:30 p.m. and on February 11 from 8:30 a.m. until 12:30 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology (NIST), Gaithersburg, MD, Building 245, Room C–301.

FOR FURTHER INFORMATION CONTACT: Persons wishing to attend this meeting should contact Kenneth Inn at 301–975–5541 to register. Persons needing further information concerning this group and the work of developing the MultiAgency Radiation Laboratory Protocols Manual should contact Stan Morton, U.S. Department of Energy/National Analytical Management Program, 850 Energy Drive, Idaho Falls, Idaho, 83402, (208) 526–2186.

SUPPLEMENTARY INFORMATION: The schedule, location, and registration information for future meetings will be posted at the following INTERNET sites:

EPA, http://www.epa.gov/radiation/marlap
DOE/EM, http://www.em.doe.gov/namp
DOE/EH, http://tis.eh.doe.gov/oepa
NRC, http://www.nrc.gov/NRC/PUBLIC/meet.html#OTHER

Issued in Washington, DC on January 14, 1999.

John S. Morton,

Director, National Analytical Management Program.

[FR Doc. 99–1721 Filed 1–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–146–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

January 20, 1999.

Take notice that on January 11, 1999, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP99–146–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate under the provisions of Section 7(c) of the Natural Gas Act (NGA) an interconnection between ANR and Brownsville Power I, LLC (Brownsville), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR's proposed interconnection will be located at its 30-inch main line and 30-inch loop line in Haywood County, Tennessee and will allow deliveries of natural gas to Brownsville's proposed power plant in Haywood County, Tennessee. ANR's proposed interconnection will consist of two 12-inch hot taps, one each on ANR's 30-inch main line and 30-inch loop line; one 10-inch ultrasonic meter assembly and one 4-inch turbine meter assembly; an electronic measurement system; one air-conditioned 10 foot by 10 foot building suitable for flow computer equipment; instrumentation to monitor flow or pressure; and approximately 1,000 feet of 12-inch piping. The maximum daily volume of the proposed interconnection will be 83.0 Mmcf/d. The total cost of ANR's facilities will be approximately $740,000, which will be fully reimbursed by Brownsville.

ANR states that the construction of the proposed interconnection facilities will have no effect on its peak day and annual deliveries, that its existing tariff does not prohibit additional interconnections, that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1673 Filed 1–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–158–001]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

January 20, 1999.

Take notice that on January 15, 1999, Discovery Gas Transmission LLC (Discovery) tendered the following tariff sheets for filing as part of its FERC Gas Tariff, Original Volume No. 1, with an effective date of January 1, 1999:

Second Revised Sheet No. 127
Second Revised Sheet No. 128
Second Revised Sheet No. 133
Second Revised Sheet No. 169
Original Sheet No. 169A
Original Sheet No. 252

Discovery states that the purpose of the filing is to clarify its right of first refusal procedures and its capacity allocation procedures with respect to negotiated rates in order to comply with the Commission's December 30, 1998, letter order in the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1676 Filed 1–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–5–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes FERC Gas Tariff

January 20, 1999.

Take notice that on January 14, 1999 Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised

Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of February 1, 1999.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS, the costs of which comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1679 Filed 1–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No ER99–637–000]

Koch Power Louisiana, L.L.C.; Notice of Issuance of Order

January 20, 1999.

Koch Power Louisiana L.L.C. (KPL) a Delaware corporation created to develop, own and operate a 200 MW electric generating facility in Sterlington, Louisiana, filed an application requesting that the Commission authorize it to sell power at market-based rates, and for certain waivers and authorizations. In particular, KPL requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuance of securities and assumptions of liabilities by KPL. On January 14, 1999, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceedings.

The Commission's January 14, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraph (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by KPL should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, KPL is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of KPL, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of KPL's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 16, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–1674 Filed 1–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–669–000]

SEI Wisconsin, L.L.C.; Notice of Issuance of Order

January 20, 1999.

SEI Wisconsin, L.L.C. (SEI Wisconsin), an affiliate of the Southern Company, filed an application for Commission authorization to engage in wholesale power sales at market-based rates in connection with both the construction, ownership and operation of generation and incidental transmission assets as well as the sale of power procured from other sources; these sales will be largely pursuant to a Power Purchase Agreement entered into between SEI Wisconsin and Wisconsin Electric Power Company. SEI Wisconsin also requested waiver of various Commission regulations. In particular, SEI Wisconsin requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuance so securities and assumptions of liability by SEI Wisconsin.

The Commission's January 14, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (F), (G), and (I):

(F) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by SEI Wisconsin should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(G) Absent a request to be heard within the period set forth in Ordering Paragraph (F) above, SEI Wisconsin is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of SEI Wisconsin, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of SEI Wisconsin's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 16, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–1675 Filed 1–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–001]

Stingray Pipeline Company; Notice of Compliance Filing

January 20, 1999.

Take notice that on January 14, 1999, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective January 1, 1999.

Stingray states that the purpose of the filing is to comply with the Commission's order issued December 30, 1998 in Docket No. RP99–166–000 (December 30th Order, which required Stingray to make various revisions to tariff sheets submitted to part of Stingray's rate case filed on December 1, 1998 in Docket No. RP99–166–000.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective January 1, 1999, pursuant to the December 30th Order.

Stingray states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the official service left in Docket No. RP99–166.

Any person desiring to protest this filing should file a protest with the Federal Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1677 Filed 1–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–174–003]

Williams Gas Pipeline Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

January 20, 1999.

Take notice that on January 14, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Effective January 1, 1999

First Revised Third Revised Sheet No. 6
First Revised Sixth Revised Sheet No. 6A
Second Substitute Second Revised Sheet No. 38
Second Substitute First Revised Sheet No. 39

Effective February 1, 1999

Substitute Fourth Revised Sheet No. 6
Substitute Seventh Revised Sheet No. 6A

Williams states that on December 1, 1998, as revised December 11, 1998 and December 18, 1998, it made a filing to recover through an alternative mechanism any GSR costs not recovered through the mechanism set forth in Article 14.2 of its tariff. By order issued December 30, 1998, the Commission approved the recovery of these costs, but directed Williams to file a reservation surcharge recovery mechanism. The instant filing is being made in compliance with the order.

Williams states that a copy of its filing was served on all participants listed on the service list maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1678 Filed 1–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP92–741–001]

Williston Basin Interstate Pipeline Company; Notice of Application for Amended Section 3 Authorization and Request for a Presidential Permit

January 20, 1999.

Take notice that on January 8, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP92–741–001 an application pursuant to Section 3 of the Natural Gas Act (NGA), as amended, and Subpart B of Part 153 of the Commission's Regulations thereunder, for an order amending previous authorization and Presidential Permit for the construction, operation, and maintenance of natural gas pipeline facilities in Burke County, North Dakota, for the import and export of up to 10,000 Mcf per day of natural gas at the International Boundary between the United States and Canada,[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin's application states its request to amend the Presidential Permit and its authorization under Section 3 of the Natural Gas Act in order to increase the maximum daily import and/or export quantity from 10,000 Mcf per day to 28,100 Mcf per day from or to the TransGas Limited Pipeline system in Canada. The border-crossing facilities have a capacity of 40,000 Mcf per day at its maximum allowable operating pressure of 700 psia, as indicated in Williston Basin's FERC Gas Tariff Sheet No. 775.

Williston Basin avers that the 28,100 Mcf per day represents the line section capacity of the Portal-Tioga Line Section No. 25 as reflected on Williston Basin's Electronic Bulletin Board. Williston Basin further states that transportation services in the United States associated with these increased quantities will be performed and provided under Rate Schedules FT–1 and/or IT–1 of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 10, 1999, file with the Federal Energy Regulatory Commission, 888

[1] The original authorization and Presidential Permit were granted in Docket No. CP92–741–000, Williston Basin Interstate Pipeline Company, 63 FERC ¶61,179, (1993).

First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its on reviewed of the matter finds that permission and approval for the proposed abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–1672 Filed 1–25–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6224–1]

Delegation of Authority of National Emission Standards for Hazardous Air Pollutants (NESHAPS) for Source Categories; Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Informational notice.

SUMMARY: The purpose of this notice is to announce that on April 20, 1998, EPA granted the Commonwealth of Virginia's request for partial delegation of the National Emission Standards for Hazardous Air Pollutants (NESHAPs), and associated infrastructure programs. Virginia's request for partial delegation of authority only pertains to affected sources of hazardous air pollutants (HAPs) for all source categories which are located at major sources. EPA granted the delegation with certain restrictions. The restrictions involve EPA's retainment of certain authorities including: implementation and enforcement of standards that control radionuclides or that apply to an area source which is not located at a major source, implementation and enforcement of an accidental release program, approvals of alternative means of limiting emissions, alternative control technologies, alternative test methods, alternative monitoring methods, and the authority to make certain applicability determinations. In addition, certain provisions will be delegated only on a case-by-case basis and require notification by the Virginia Department of Environmental Quality (VADEQ) to EPA. These provisions include: approvals of compliance extensions, site-specific test plans, performance evaluation plans; approvals of minor alternatives to test methods, monitoring, and shorter sampling times/volumes; and waivers of performance testing. On July 10, 1998, final guidance was issued in a Memorandum from the Office of Air Quality Planning and Standards (OAQPS) to the Regions regarding delegation of authorities to state and local air pollution control agencies. This memorandum identified authorities which may not be delegated to states, and included the waiver of recordkeeping. This authority, which was delegated to Virginia as part of the April 20, 1998 delegation of authority, was subsequently revoked in the EPA letter of November 19, 1998 to VADEQ.

EFFECTIVE DATES: The effective date of the delegation authority is April 20, 1998.

ADDRESSES: Copies of EPA's letter of delegation are available for public inspection at EPA's Region III Office, 1650 Arch Street, Philadelphia, PA 19103 and the VADEQ regional offices and satellite offices during normal business hours. The addresses of these offices are provided below. Effective immediately, all notifications, requests, applications, reports and other correspondence required pursuant to 40 CFR part 63 for major sources, as defined in 40 CFR Part 70, to be sent to the Administrator should be submitted to the EPA Region III office and, with respect to sources located in listed counties and cities, to the VADEQ Air Permit Manager at the following addresses:

Southwest Regional Office—Department of Environmental Quality, 355 Deadmore St., P.O. Box 1688, Abingdon, Virginia 24212–1688, Tel. (540) 676–4800. Includes counties of Bland, Buchanan, Carroll, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, Wythe and the cities of Bristol, Galax, and Norton.

West Central Regional Office—Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, Virginia 24019, Tel. (540) 562–6700. Includes the counties of Allegheny, Botetourt, Craig, Floyd, Franklin, Giles, Montgomery, Patrick, Pulaski, Roanoke and the cities of Clifton Forge, Covington, Radford, Roanoke, and Salem.

Lynchburg Satellite Office—Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, Virginia 24502, Tel. (804) 582–5120. Includes the counties of Amelia, Amherst, Appomatox, Bedford, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Halifax, Henry, Lunenburg, Mecklenburg, Nottoway, Pittsylvania, and Prince Edward and the cities of Bedford, Danville, Lynchburg, Martinsville, and South Boston.

Valley Regional Office—Department of Environmental Quality, 4411 Early Road, P.O. Box 1129, Harrisonburg, Virginia 22801, Tel. (540) 574–7800. Includes the counties of Augusta, Bath, Clarke, Frederick, Highland, Page, Rockbridge, Rockingham, Shenandoah, and Warren, and the cities of Buena Vista, Harrisonburg, Lexington, Staunton, Waynesboro, and Winchester.

Fredericksburg Satellite Office—Department of Environmental Quality, 300 Central Road, Suite B, Fredericksburg, Virginia 22401, Tel. (540) 899–4600. Includes the counties of Albemarle, Caroline, Culpeper, Essex, Fauquier, Fluvanna, Gloucester, Greene, King and Queen, King George, King William, Lancaster, Louisa, Madison, Mathews, Middlesex, Nelson, Northumberland, Orange, Rappahannock, Richmond, Spotsylvania, Stafford, and Westmoreland, and the cities of Charlottesville, and Fredericksburg.

Northern Regional Office—Department of Environmental Quality, 13901 Crown Court, Woodbridge, Virginia 22193, Tel. (703) 583–3800. Includes the counties of Arlington, Fairfax, Loudoun and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

Piedmont Regional Office—Department of Environmental Quality, 4949–A Cox Road, Glen Allen, Virginia 23060–6295, Tel. (804) 527–5020.

Includes the counties of Charles City, Chesterfield, Dinwiddie, Goochland, Greensville, Hanover, Henrico, New Kent, Powhatan, Prince George, Surry, and Sussex and the cities of Colonial Heights, Emporia, Hopewell, Petersburg, and Richmond.

Tidewater Regional Office—Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia 23462, Tel. (757) 518–2000. Includes the counties of Accomac, Isle of Wight, James City, Northampton, Southampton, and York and the cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, Permits and Technical Assessment Section (3AP11), Air Protection Division, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Telephone: 215–814–2308.

SUPPLEMENTARY INFORMATION: Section 112(l) of the Clean Air Act, as amended November 15, 1990, and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any state agency which submits adequate regulatory procedures for implementation and enforcement of emission standards of hazardous air pollutants.

Virginia initiated the request for delegation of 40 CFR Part 63 in its initial letter, dated November 12, 1993, from the Virginia Department of Environmental Quality (VADEQ) Director seeking approval of its Title V program. In this letter, Virginia requested that EPA grant Virginia "delegation of authority upon approval of the operating permit program, except Section 112(r), prevention of accidental releases." Virginia's request for partial delegation of authority only includes affected sources of hazardous air pollutants (HAPs), as defined in 40 CFR part 63, for all source categories which are located at major sources, as defined in 40 CFR part 70. On February 6, 1998, the Virginia Department of Environmental Quality (VADEQ) forwarded to the EPA regulatory revisions adopted by the State Air Pollution Control Board to confer to VADEQ the authority to implement and enforce existing National Emission Standards for Hazardous Air Pollutants (NESHAPs) and associated infrastructure programs, pursuant to Section 112 of the Clean Air Act (CAA), as set forth in 40 CFR part 63. This letter also requested that automatic delegation be granted to Virginia for all future NESHAPs.

On July 10, 1997, EPA approved VADEQ's Title V Operating Permits Program (see 62 FR 31516 dated June 10, 1997). Requirements for approval, specified in 40 CFR 70.4(b), encompass CAA section 112(l)(5) requirements for approval of a program for delegation of CAA section 112 standards as promulgated by EPA as they apply to 40 CFR part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation and an expeditious compliance schedule for enforcing standards, which are also requirements under 40 CFR part 70. Therefore, as part of the Title V Operating Permits Program approval, EPA also promulgated full approval under CAA section 112(l)(5) and 40 CFR 63.91 of the State's program for receiving delegation of the CAA section 112 standards that are unchanged from Federal standards as promulgated in 40 CFR part 63. This program for delegation only applies to sources covered by the 40 CFR part 70 program. The specific authority and commitments for Section 112 implementation is contained in detail in EPA's proposed interim approval of Virginia's Title V program (62 FR 12778 dated March 18, 1997). Today's notice serves to inform of the specific authorities which have been delegated to Virginia.

On April 20, 1998, the Environmental Protection Agency granted Virginia's request for partial delegation with certain restrictions. The following authorities will be retained by EPA Region III:

(1) implementation and enforcement of standards that control radionuclides (40 CFR part 63.12(b)(1));

(2) implementation and enforcement of standards that apply to an area source, as defined in 40 CFR part 63.2, which is not located at a major source, as defined in 40 CFR part 70;

(3) implementation and enforcement of an accidental release program, as defined in CAA section 112(r) and 40 CFR part 68;

(4) approval of alternative means of emission limitations and alternative control technologies;

(5) approval of alternative test methods;

(6) approval of alternative monitoring methods; and

(7) the authority to make certain applicability determinations, as required by formal requests from owners or operators of facilities or the public.

In addition, certain provisions of 40 CFR part 63 are delegated on a case-by-case basis to VADEQ and require VADEQ to notify US EPA Region III, in writing. These provisions include:

(1) compliance extensions;

(2) approval of site-specific test and performance evaluation plans;

(3) approval of minor alternatives to test methods and monitoring;

(4) approval of shorter sampling times/ volumes; and

(5) waiver of performance testing.

On July 10, 1998, final guidance was issued in a Memorandum from the OAQPS to the Regions regarding delegation of authorities to state and local air pollution control agencies. In this Memorandum, specific authorities were identified which could result in a "change to the stringency of the underlying standard, which are likely to be nationally significant, or which may require a rulemaking". Included as an authority which may not be delegated is the waiver of recordkeeping. This authority, which had been delegated to Virginia in EPA's letter of delegation of April 20, 1998, was subsequently revoked in the EPA letter of November 19, 1998. As of April 20, 1998, VADEQ has primary authority to enforce the standards in 40 CFR part 63 for CAA part 70 sources, however, EPA will retain independent enforcement authority.

Virginia has adopted by reference all existing NESHAPs and the corresponding amendments and revisions into 9 VAC 5–60–90 with only the wording changes provided by present state regulations. All future 40 CFR part 63 NESHAPs are automatically delegated, however, this delegation is conditioned upon each standard being legally adopted by the VADEQ and must be adopted by reference to the Federal regulations with only those wording changes provided by the present state regulations, and VADEQ must notify EPA Region III that it has adopted additional standards and that it intends to enforce the standards in conformance with the terms of this delegation.

If the Administrator determines that Virginia cannot adequately implement or enforce the requirements of 40 CFR part 63, this delegation may be revoked in whole or in part.

EPA hereby notifies the public that it has partially delegated the authority for implementation and enforcement of the NESHAPs for Source Categories, pursuant to CFR part 63, as outlined above, to the Virginia Department of Environmental Quality.

The Office of Management and Budget has exempted this notice informing the public of partial delegation of NESHAPS to VADEQ , as outlined above, from Executive Order 12866 review. This action is exempt from CRA review.

This notice is issued under the authority of sections 101, 110, 112 and

301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7410, 7412, 7601).

Dated: December 15, 1998.

W. Michael McCabe,

Regional Administrator, EPA Region III.

[FR Doc. 99–1759 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6223–7]

EPA Identification of Additional Waters To Be Added to Virginia's 1998 Clean Water Act Section 303(d) List of Impaired Waters, Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of hearings and availability for public comment, rescheduled hearings.

SUMMARY: The Environmental Protection Agency (EPA) is providing public notice of the availability of its December 16, 1998 identification of additional waters to be added to Virginia's 1998 Clean Water Act section 303(d) list and is inviting public comment on that identification. EPA is also providing notice of two public hearings. EPA intends to make a final determination 45 days after the close of this public comment period regarding the waters to be added to Virginia's 1998 303(d) list. EPA will transmit the listing of any additional waters to Virginia to incorporate into the current approved list of waters.

Section 303(d) of the Clean Water Act and the implementing regulations at 40 CFR 130.7 require states to identify their waters that do not, or will not, meet water quality standards even after required technology-based or other controls are in place. This list, known as the Section 303(d) list, must be submitted to EPA for approval.

Federal regulations require states to consider all existing and readily available water quality-related data and information in developing the 303(d) list. EPA determined that the Commonwealth of Virginia did not fully meet this requirement. The Agency partially approved and partially disapproved Virginia's 303(d) list on November 16, 1998. On December 16, 1998, EPA identified a number of waters to be added to Virginia's 303(d) list based on existing and readily available water quality-related data and information.

DATES: Comments must be received on or before March 15, 1999. The two public hearings will be held Wednesday, March 10, 1999, 7:00 p.m. to 9:30 p.m., Richmond, VA., and Thursday, March 11, 1999, 7:00 p.m. to 9:30 p.m., Roanoke, VA. These hearings have been rescheduled from the dates originally announced in the **Federal Register** on December 30, 1998. If you would like to testify at one or both of the public hearings, please register with Ms. Lenka Berlin at the phone number below by March 5, 1999.

ADDRESSES: Submit comments to Ms. Lenka Berlin (3WP13), Water Protection Division, USEPA Region III, 1650 Arch Street, Philadelphia, PA 19103. The March 10, 1999 public hearing will be at the Division of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220. The March 11, 1999 public hearing will be at the Roanoke County Administration Center, 5204 Bernard Drive, Roanoke, VA 24018.

FOR FURTHER INFORMATION CONTACT: For a copy of the document detailing EPA's November 16, 1998 partial disapproval and a list of the waters EPA has identified to be added to Virginia's list, contact Ms. Lenka Berlin by phone (215–814–5259), fax (215–814–2301), mail to the address shown above, or e-mail (berlin.lenka@epamail.epa.gov). For a copy of Virginia's final Section 303(d) list submittal, contact Mr. Charles Martin, Virginia Department of Environmental Quality, at (804) 698–4462.

SUPPLEMENTARY INFORMATION:

What Is Required of the Section 303(d) List?

Federal regulations include two requirements that are most pertinent to EPA's partial disapproval of Virginia's 1998 Section 303(d) list. First, the regulations require that states consider all existing and readily available water quality-related data and information in identifying waters for the 303(d) list. See 40 CFR 130.7(b)(5). Second if EPA disapproves a list, the Agency must identify the waters to which the disapproval applies. See 40 CFR 130.7(d)(2).

What Did Virginia's 303(d) List Include?

EPA received Virginia's final 1998 Section 303(d) report on October 16, 1998. The report included five parts plus appendices. Parts I and II of the report are the impaired waters that the Commonwealth determined require total maximum daily load (TMDL) calculations. EPA considers Parts I and II to be the Commonwealth's Section 303(d) list. Parts III, IV and V are waters of concern that the Commonwealth determined do not require TMDLS. EPA considers these three parts to be for informational purposes only, separate from the Section 303(d) list. Among the appendices to the submission is Appendix D, which lists the waters which the Commonwealth included on its 1996 Section 303(d) list but did not include on its 1998 list. Virginia explained that it did not include these waters because point sources on these waters had reportedly been issued water quality-based effluent limits that would eliminate the impairment within the next two-year reporting cycle.

Why Did EPA Partially Disapprove Virginia's 1998 Section 303(d) List?

In reviewing the list, EPA determined that Virginia had omitted certain waters from the list even through existing and readily available water quality-related data and information show that these waters do not meet water quality standards even after required technology-based and other controls are applied. On November 16, 1998 EPA disapproved on the omission of these waters from the list and on December 16, 1998, EPA identified the waters to be added to the list.

Which Waters Did EPA Identify To B

On December 16, 1998 EPA identified the following five groups of waters to be added to Virginia's 1998 303(d) list:

1. Portions of the main channel of the Chesapeake Bay and three tidal tributaries because existing and readily available water quality-related data and information show that the water quality standards for dissolved oxygen are not being met. EPA identified those portions of the main channel of the Chesapeake Bay and three tidal tributaries as high priority for TMDL development. In addition, EPA identified excessive nutrients as the pollutants of concern causing violations of the applicable water quality standard for dissolved oxygen.

2. 77 waters presented in Appendix D of Virginia's report (waters that were listed in 1996 as needing TMDLs but were not included on the 1998 list). The only data the Commonwealth provided to EPA (i.e., data submitted with the 1996 Section 303(d) list) indicated that these segments are impaired. EPA designated these waters as low priority for TMDL development.

3. 47 waters presented in Part V of Virginia's report (waters reportedly impaired by natural conditions and not identified as requiring TMDL development) because they fail to meet water quality standards. EPA designated these waters as low priority for TMDL development.

4. 10 waters that were identified as impaired (not meeting water quality standards or designated uses) in the Commonwealth's 1998 Section 305(b) report but were not included by Virginia on the Section 303(d) list.

5. 6 waters that already are listed for one or more pollutants but, based on information from the Commonwealth's 1998 Section 306(b) report, should be listed for an additional pollutant.

In addition to identifying the five groups of waters above, EPA recommends that the Commonwealth modify the priority rankings, from medium to high, for four waters identified by the U.S. Fish and Wildlife Service as adversely impacting endangered species.

Dated: January 14, 1999.

James Burke,

Acting Water Protection Division, Region III.

[FR Doc. 99–1652 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6224–3]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Wet Weather Flows and Urban Infrastructure Subcommittee of the Science Advisory Board's (SAB) Environmental Engineering Committee will meet by conference call Wednesday February 10, 1999 from 9:00 to 11:00 a.m. Eastern Standard Time (EST). The EEC was briefed on this topic at their December 1–3, 1998 public meeting (See 63 FR 63925–63926, November 17, 1998) and assigned the review to the Subcommittee.

The purpose of this conference call is to allow the individual Subcommittee members to present and discuss their preliminary findings based on their review of written materials, to identify areas where further information is needed, and, if possible, obtain that information from Agency staff. The Subcommittee will meet face-to-face February 25–26, 1999 to develop consensus findings and recommendations for its report; the face-to-face meeting will be the subject of a separate **Federal Register** Notice.

Members of the public wishing to obtain the review documents, attend the conference call meeting, or provide comments to the Subcommittee should contact Kathleen Conway, Designated Federal Officer by 4:00 p.m. EST on Monday February 8. (TEL: 202 260 2558, FAX 202 260 7118, Email conway.kathleen@epa.gov) The Subcommittee will accept only written comments for the conference call; the February 25–26 meeting will provide opportunities for both oral and written comment.

Individuals requiring special accommodation should contact Ms. Conway by noon Thursday, February 4 so that appropriate arrangements can be made.

Dated: January 20, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–1718 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400138; FRL–6058–5]

Persistent Bioaccumulative Toxic Chemicals; Toxic Chemical Release Reporting; Emergency Planning and Community Right-to-Know; Multimedia Strategy for Persistent Bioaccumulative Toxic Pollutants; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA will hold three public meetings to obtain public comment on two specific draft documents developed as part of the Agency's Persistent Bioaccumulative Toxic (PBT) Pollutant strategy. The two draft documents are "A Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants" and "EPA Action Plan For Mercury." EPA will also hold three public meetings to obtain public comment on the Agency's proposal and options: (1) To add certain PBT chemicals to the Emergency Planning and Community Right-to-Know Act (EPCRA) of 1986 section 313 list of toxic chemicals and (2) to lower reporting thresholds for certain PBT chemicals subject to EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA). The Agency is also requesting comment on the persistence and bioaccumulation criteria presented in the proposed rule.

DATES: The first meeting on EPA's PBT pollutant strategy will take place in Washington, DC on February 16, 1999, at 9 a.m. and adjourn by noon. The second meeting on EPA's PBT pollutant strategy will take place in Chicago, IL on February 23, 1999, at 9 a.m. and adjourn at noon. The third meeting on EPA's PBT pollutant strategy will take place in San Francisco, CA on March 5, 1999, at 9 a.m. and adjourn at noon.

The first meeting on the EPCRA section 313/PPA section 6607 proposed rulemaking will take place in Washington, DC on February 16, 1999, at 1 p.m. and adjourn by 4 p.m. The second meeting on the EPCRA section 313/PPA section 6607 proposed rulemaking will take place in Chicago, IL on February 23, 1999, at 1 p.m. and adjourn at 4 p.m. The third meeting on the EPCRA section 313/PPA section 6607 proposed rulemaking will take place in San Francisco, CA on March 5, 1999, at 1 p.m. and adjourn at 4 p.m.

ADDRESSES: The meetings in Washington, DC will be held at the Environmental Protection Agency, Auditorium, Education Center, 401 M St., SW., Washington, DC. The meetings in Chicago, IL will be held at the Environmental Protection Agency, Room 328, 77 West Jackson Boulevard, Chicago, IL. The meetings in San Francisco will be held at the Environmental Protection Agency, California Room, 75 Hawthorne St., San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: To sign up to speak at the meeting contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672. For further information on the EPCRA section 313/PPA section 6607 proposed rulemaking contact Daniel R. Bushman, 202–260–3882, e-mail: bushman.daniel@epamail.epa.gov. For further information on the Agency's PBT pollutant strategy, contact Sam Sasnett, 202–260–8020, e-mail: sasnett.sam@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. EPA's Persistent Bioaccumulative Toxic (PBT) Pollutants Strategy

In the **Federal Register** of November 17, 1998 (63 FR 63926) (FRL–6045–2), EPA published a Notice announcing the availability of a draft strategy for affecting reductions in the releases and exposures to persistent, bioaccumulative toxic (PBT) pollutants, including a specific draft action plan for mercury. That notice requested the submission of written comments by February 16, 1999.

II. EPCRA Section 313/PPA Section 6607 Proposed Rulemaking

In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA). In 1990, Congress passed the Pollution Prevention Act. Section 313 of EPCRA and section 6607 of PPA require certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release and otherwise manage as waste. The purpose of these requirements is to inform the public, government officials, and industry about releases and other quantities managed as waste in their communities.

Currently, the EPCRA section 313 reporting thresholds are 25,000 pounds for the "manufacture" or "processing" of a toxic chemical and 10,000 pounds for the "otherwise use" of a toxic chemical. On January 5, 1999 (64 FR 688) (FRL–6032–8), EPA proposed: (1) To lower the reporting thresholds for certain PBT chemicals that are subject to EPCRA section 313 and PPA section 6607; (2) to lower the reporting thresholds for dioxin and dioxin-like compounds, which were previously proposed for addition to the EPCRA section 313 list of toxic chemicals; and (3) to add certain PBT chemicals to the EPCRA section 313 list of toxic chemicals. The Agency also presented persistence and bioaccumulation criteria in the proposed rule. These public meetings are being scheduled in order to provide a forum for dialog to be shared by EPA, potentially affected industry groups, and the public about the basis of EPA's proposed action, options provided, and potential impacts and benefits.

III. Notice of Public Meeting

This Notice announces the Agency's intention to hold six public meetings to receive comments on both the PBT Strategy (including the Mercury Action Plan) and the EPCRA section 313 proposed rule. EPA planned these public meetings to cover these related actions because it believes that the same individuals are likely to want to comment on both. Therefore the public meetings have been scheduled such that comment on the PBT Strategy may be provided in the morning and comment on the EPCRA section 313 proposed rule may be provided in the afternoon. Oral statements will be scheduled on a first-come first-serve basis by calling the Emergency Planning and Community Right-to-Know Hotline at the numbers listed under FOR FURTHER INFORMATION CONTACT. All statements will be part of the public record.

List of Subjects

Environmental protection, Community right-to-know.

Dated: January 19, 1999.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–1749 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6224–4]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposal of CERCLA section 122(h)(1) administrative cost recovery settlement for the Uniroyal Hill Street Site.

SUMMARY: The United States Environmental Protection Agency ("U.S. EPA") proposes to address the potential liability of the Uniroyal Technology Corporation (the "Settling Party") by execution of a Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") section 122(h)(1) Administrative Order on Consent prepared pursuant to 42 U.S.C. 9622(h)(1) (the "Agreement"). The Agreement provides the Settling Party certain covenants not to sue under CERCLA, 42 U.S.C. 9601 *et seq.*, as amended, and section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, as amended, with respect to the Uniroyal Hill Street Site (the "Site"), located in Mishawaka, Indiana. The key terms and conditions of the Agreement may be briefly summarized as follows: (1) The Settling Party agrees to pay $525,000 to the Hazardous Substances Superfund in satisfaction of U.S. EPA's allowed general unsecured claim of $1,750,000; (2) the Settling Party agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or the Agreement; (3) Subject to the reservations specified in the Agreement, U.S. EPA affords the Settling Party a covenant not to sue for recovery of response costs pursuant to section 107 of CERCLA, 42 U.S.C. 9607(a), liability for injunctive relief or administrative order enforcement pursuant to section 106 of CERCLA, 42 U.S.C. 9606, liability for injunctive relief pursuant to section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, and contribution protection as provided by CERCLA sections 113(f)(2) and 122(h)(4), 42 U.S.C. 9613(f)(2) and 9622(h)(4), conditioned upon satisfaction of obligations under the Agreement. The Site is not on the NPL. The Agreement was signed by the Acting Regional Administrator, U.S. EPA, Region 5, on January 12, 1999.

DATES: Written comments on the proposed Agreement must be received by February 25, 1999.

ADDRESSES: The proposed Agreement and the U.S. EPA's response to any comments received will be available for public inspection at U.S. EPA Records Center Room 714, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed Agreement may be obtained from U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604. Comments should reference the Uniroyal Hill Street Site, Mishawaka, Indiana, and U.S. EPA Docket No. V–W–99–C–526 and should be addressed to Ms. Hedi Bogda-Cleveland, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Ms. Hedi Bogda-Cleveland, U.S. EPA Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886–5825.

Dated: January 12, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–1758 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6224–5]

Notice of Environmental Assessment on the Proposed Reissuance of General Permits for Concentrated Animal Feeding Operations in New Mexico, Oklahoma, and Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment on environmental assessment and finding of no significant impact.

SUMMARY: The Regional Administrator of EPA Region 6 has preliminarily determined that reissuance of National Pollutant Discharge Elimination System (NPDES) general permits authorizing discharges from concentrated animal feeding operations (CAFOs) in Texas (TXG800000, TXG810000), Oklahoma

(OKG800000, OKG810000), and New Mexico (NMG800000, NMG810000) will not significantly affect the quality of the human environment and that preparation of an environmental impact statement for further evaluation of that action is thus unnecessary. The environmental assessment (EA) supporting that preliminary determination describes the EPA's currently preferred alternatives, which differ in some instances from alternatives previously described in the notice proposing these permit actions. Interested Federal, State and local agencies, environmental groups, and individuals are invited to submit written comments on the preliminary determination and on the EA.

DATES: Written comments on EPA's finding of no significant impact (FONSI) or the EA may be submitted to the address below on or before February 25, 1999.

ADDRESSES: Copies of the FONSI and supporting environmental assessment (EA) may be obtained from Robert D. Lawrence, Acting Associate Director, Compliance Assurance and Enforcement Division (6EN–XP), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733; Telephone (214) 665–2258. Written comments should be submitted to Mr. Lawrence at the same address.

The FONSI and EA are also available on the internet at the following website address: http://www.epa.gov/region6/water/npdes/genpermt

FOR FURTHER INFORMATION CONTACT: For further information on this matter, please write or call Mr. Lawrence at the above address and telephone number.

SUPPLEMENTARY INFORMATION: EPA Region 6 proposed to reissue NPDES permits authorizing discharges from CAFOs in Texas, Oklahoma, and New Mexico at 63 FR 34874 (June 26, 1998). On September 11, 1998, the Agency reopened the comment period to solicit additional comments on a number of specific issues. See 63 FR 48731. EPA is still considering numerous comments it received on the proposed permits.

The Agency has prepared an EA to assist it in determining whether the proposed permit action may significantly affect the quality of the human environment and thus require preparation of an environmental impact statement pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969. In some areas, the EA describes EPA's currently preferred alternatives, which differ somewhat from alternatives described in its June 26, 1998, proposal. The public is also welcome to comment on this revised thinking/analysis. EPA will make no final decision on the FONSI or proposed permits until it considers all timely comments it receives.

Samuel J. Coleman,

Director, Compliance Assurance and Enforcement Division (6EN), Region 6.

[FR Doc. 99–1755 Filed 1–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

January 21, 1999.

FCC To Hold Open Commission Meeting Thursday, January 28, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, January 28, 1999, which is scheduled to commence at 9:30 a.m. in room TW–C305, at 445 12th Street, SW., Washington, DC.

Item no.	Bureau	Subject
1	Common Carrier	Title: Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996 (CC Docket No. 98–146). Summary: The Commission will consider whether advanced telecommunications capability are becoming available to all Americans, including schools and classrooms, in a reasonable and timely fashion (CC Docket No. 98–146).
2	Common Carrier	Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147); and Request by Bell Atlantic-West Virginia for Interim Relief Under Section 706 or, in the Alternative, a LATA Boundary Modification (NSD–L–98–99). Summary: The Commission will consider action concerning the availability and deployment of advanced services.
3	Common Carrier	Title: Inter-Carrier Compensation for ISP-Bound Traffic. Summary: The Commission will consider issues related to the jurisdictional nature of dial-up traffic delivered to Internet service providers.
4	Common Carrier	Title: Continuing Property Records Audits. Summary: The Commission will consider action to release findings related to audits of continuing property records.
5	Common Carrier	Title: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Third Order on Reconsideration (CC Docket No. 96–149). Summary: The Commission will reconsider its rules implementing the non-accounting safeguard provisions of Section 272 of the Communications Act of 1934, as amended.
6	Common Carrier	Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–128). Summary: The Commission will consider action concerning payphone compensation issues remanded by the court i *MCI v. FCC* and raised in petitions for reconsideration.
7	Common Carrier	Title: Defining Primary Lines (CC Docket No. 97–181). Summary: The Commission will consider action to define "primary residential line" and "single line business line" to ensure uniformity in the way price-cap local exchange carriers assess subscriber line charges (SLCs) and presubscribed interexchange carrier charges (PICCs).
8	Mass Media	Title: Creation of a Low Power Radio Service (RM's–9208 and 9242). Summary: The Commission will consider a proposal to establish a low power radio broadcast service.

Additional information concerning this meeting may be obtained form Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its _ inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–2770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1867 Filed 1–22–99; 2:31 pm]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Board of Visitors for the Emergency Management Institute

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

Name: Board of Visitors for the Emergency Management Institute.

Dates of Meeting: February 16–17, 1999.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Room 408, Emmitsburg, Maryland 21727.

Time: Monday, February 16, 1999, 8:30 a.m.—5:00 p.m. Tuesday, February 17, 1999, 8:30 a.m.—5:00 p.m.

Proposed Agenda: Status reports on training in response and recovery, planning, mitigation, and simulation and exercises; informal working sessions regarding EMI activities; expansion of the Independent Study program and EMI's Higher Education Program.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: January 8, 1999.

Kay C. Goss,

Associate Director for Preparedness, Training and Exercises.

[FR Doc. 99–1747 Filed 1–25–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 10, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Nefsy Family Voting Trust, Miles City, Montana; to acquire voting shares of Stockman Financial Corporation, Miles City, Montana, and thereby indirectly acquire voting shares of Stockman Bank of Montana, Miles City, Montana.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Thomas G. Fitzgerald and James G. Fitzgerald, both of Inverness, Illinois; to acquire voting shares of Southern Colorado Corp., Pagosa Springs, Colorado, and thereby indirectly acquire voting shares of Mancos Valley Bank, Mancos, Colorado, and Citizens Bank of Pagosa Springs, Pagosa Springs, Colorado.

Board of Governors of the Federal Reserve System, January 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1773 Filed 1–25–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Personal Financial Corp., Orland Park, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Personal Bank, Orland Park, Illinois (in organization).

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. ExTraCo Bankshares, Inc., Waco, Texas; to acquire 100 percent of the voting shares of Central Financial Bancorp, Inc., Lorena, Texas, and thereby indirectly acquire Central Delaware Financial Bancorp, Inc., Dover, Delaware, Bank of Troy, Troy, Texas, and Lorena State Bank, Lorena, Texas.

2. Cameron Bancshares, Inc., Cameron, Texas, and Cameron Bancshares of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of First National Bank, Cameron, Texas.

Board of Governors of the Federal Reserve System, January 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1653 Filed 1–25–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Carolina First Corporation, Greenville, South Carolina; to acquire 100 percent of the voting shares of Citizens First National Bank, Crescent City, Florida.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. United Community Banks, Inc., Blairsville, Georgia; to acquire 100 percent of the voting shares of Adairsville Bancshares, Inc., Adairsville, Georgia, and thereby indirectly acquire Bank of Adairsville, Adairsville, Georgia.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Hometown Banc Corp., Grand Island, Nebraska; to acquire 100 percent of the voting shares of Security State Bank, Sumner, Nebraska.

Board of Governors of the Federal Reserve System, January 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1772 Filed 1–25–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 9, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. National Westminster Bank PLC, London, England; to engage *de novo* through its subsidiary, XCO, LLC, New York, New York, in data processing and related activities, pursuant to § 225.28(b)(14) of Regulation Y.

Board of Governors of the Federal Reserve System, January 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1654 Filed 1–25–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 9823600]

American Honda Motor Company, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S–4302, 601 Pa. Ave., NW, Washington, D.C. 20580, (202) 326–3042 or (202) 326–2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Pubic Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent American Honda Motor Company, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, labeling and promotional practices related to the sale of lawn mowers. The Commission's complaint charges that respondent misrepresented that its Honda Masters, Honda Harmony II 3-in -1, and Honda Harmony II lawn mowers are all or virtually all made in the United States when, in truth and if fact, a significant portion of the components of these lawn mowers models is, or has been, of foreign origin.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which a lawn mower is made in the United States. The proposed order would allow respondent to represent that a lawn mower is made in the United States so long as all, or virtually all, of the component parts of the lawn mower are made in the United States and all, or virtually all, of the labor in manufacturing the lawn mower is preformed in the United States.

The proposed consent order additionally provides that the order shall not apply to the labeling of lawn mowers manufactured before the effective date of the order.

Part II of the proposed order requires the respondent to maintain materials relief upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company official and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date to issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1657 Filed 1–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9923019]

Johnson Worldwide Associates, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S–4302, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3042 or 326–2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "hhtp://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(b)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Johnson Worldwide Associates, Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, packaging, labeling, and promotional practices related to the sale of fishing line. The Commission's complaint charges that respondent misrepresented on packaging that its Super Mono fishing line is made in the United States of America and Japanese components. In addition, the complaint charges that respondent misrepresented in advertising that its Super Mono fishing line is all or virtually all made in the United States. In truth and in fact, the Super Mono fishing line is totally made in Japan with Japanese labor and components. Only the spool on which the fishing line is wrapped and the package, labeling, and package inserts contain American labor or components.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which any fishing product is made in the United States. The order defines fishing products as any product that is intended to be used for fishing, including but not limited to fishing rods, fishing reels, fishing line, fishing lures, and fishing spoons. The proposed order would allow respondent to represent that such fishing products are made in the United States as long as all, or virtually all, of the components of the products are of U.S.A. origin and all, or virtually all, of the labor in manufacturing them is performed in the United States.

The proposed order also provides that respondent shall not make a general U.S. origin claim, whether or not accompanied by qualifying information (e.g., "Made in U.S.A. of U.S. and imported parts" or "Manufactured in U.S. with imported materials") unless the fishing product was last substantially transformed in the United States, as the term "substantially transformed" is defined by regulations or administrative rulings issued by the U.S. Customs Service under section 304 of the Tariff Act of 1930, 19 U.S.C. 1304.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1659 Filed 1–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9823591]

Kubota Tractor Corporation, Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159,600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S–4302,601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3042 or 326–2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of thee consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Kubota Tractor Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, labeling and promotional practices related to the sale of lawn tractors and lawn and garden tractors. The Commission's complaint charges that respondent misrepresented that certain of its lawn tractors or lawn and garden tractors were all or virtually all made in the United States when, in truth and in fact, these products had significant foreign parts. In addition, the complaint charges that respondent misrepresented that entire product lines of lawn tractors and lawn and garden tractors were all or virtually all made in the United States. In truth and in fact, in one product line, one of the three lawn tractor models in the product line contained significant foreign part; in a second product line, both of the lawn and garden tractor models in that line contained significant foreign parts.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which a lawn tractor or lawn and garden tractor, or entire product line of lawn tractors or lawn and garden

tractors, is made in the United States. The proposed consent order defines the terms "lawn tractor" and "lawn and garden tractor" as products manufactured, labeled, advertised, promoted, offered for sale, sold, or distributed primarily for consumers to mow grass, including but not limited to respondent's T-Series lawn tractors and TG-Series lawn and garden tractors. It states that such products may be sold with or without attachments such as grass catchers, front blades, or snowblades. The proposed order would allow respondent to represent that any lawn tractor or lawn and garden tractor, or lawn tractor or lawn and garden tractor product line, is made in the United States so long as all, or virtually all, of the component parts of such product, or of all products in such product line, are made in the United States and all, or virtually all, of the labor in manufacturing such product, or of all products in such product line, is performed in the United States.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1658 Filed 1–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9923006]

Rand International Leisure Products, Ltd.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S–4302, 601 Pa. Ave., NW, Washington, DC 20580, (202) 326–3042 or 326–2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Rand International Leisure Products, Ltd.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns packaging and promotional practices related to the sale of bicycle tire tubes. The Commission's complaint charges that respondent misrepresented on its packaging for its "self-sealing" bicycle tire tubes that these tubes are made in the United States, when, in truth and in fact, the tubes were finished in the United States from imported tubes that were, or are, manufactured in Taiwan.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which any product is made in the United States. The proposed order would allow respondent to represent that a product is made in the United States so long as all, or virtually all, of the component parts of the product are made in the United States and all, or virtually all, of the labor in manufacturing the product is performed in the United States.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1661 Filed 1–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9810353]

Service Corporation International; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Joseph S. Brownman, FTC/S–2105, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–2605.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 15, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from Service Corporation International ("SCI") an Agreement Containing Consent Order ("Consent Agreement"). The proposed Consent Order is designed to remedy the likely anticompetitive effects arising from the proposed acquisition by SCI of Equity Corporation International ("ECI").

According to the draft of complaint that the Commission intends to issue, SCI, headquartered in Houston, Texas, is the nation's largest chain of funeral homes and cemeteries. ECI, in Lufkin, Texas, is the nation's fourth largest chain. SCI and ECI compete in the sale of funeral services and cemetery services in various local markets throughout the United States. Pursuant to an agreement of August 6, 1998, SCI intends to acquire all of the stock of ECI for $578 million.

The draft complaint alleges that the proposed acquisition would lessen competition in two relevant lines of commerce: (1) the provision of funeral services in six local geographic markets and (2) the provision of cemetery services in eight (additional) local geographic markets. Funeral services include transporting the deceased from the place of death to the funeral home, embalming and otherwise preparing the body for burial, providing a casket, holding a viewing or other ceremony, and transporting the body to the cemetery or crematorium. Although direct disposal cremation is a less costly alternative to funeral services, funeral service customers would not switch to cremation as a substitute in sufficient volume to defeat a price increase by funeral service providers.

In the market for funeral services, the Commission's draft complaint alleges that the acquisition would harm competition in the following geographic markets: (1) Phenix City, Alabama/Columbus, Georgia; (2) Evansville, Indiana; (3) Jacksonville Beach, Florida; (4) Roseville, California; (5) Ruskin/Sun City Center, Florida; and (6) West Pasco County and Tarpon Springs, Florida. In these funeral service markets, total annual sales are about $36.6 million. Premerger concentration in these six markets, as measured by the Herfindahl-Hirschman Index,[1] ranges from more than 2,200 to 7,450. As a result of the proposed acquisition, concentration would increase in each funeral service market by more than 100 points, to levels ranging from 3,270 to 10,000.[2]

According to the draft complaint, entry into the provision of funeral services in each of these six markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects from the acquisition.

The draft complaint alleges that a second line of commerce in which to analyze the competitive effects of the proposed acquisition is the provision of cemetery services. Cemetery services include the traditional products and services offered by perpetual care cemeteries. They include plots, mausoleum spaces, and opening, closing and maintaining grave sites. The complaint alleges that the acquisition would harm competition in the following geographic markets: (1) Broward County (Fort Lauderdale), Florida; (2) Chattanooga, Tennessee, and its north Georgia suburbs; (3) Citrus County, Florida; (4) Corpus Christi, Texas; (5) Eugene/Springfield, Oregon, (6) North Richmond, Virginia, and the northern eastern and western suburbs of Richmond; (7) the South Bay area of San Diego, California; and (8) Summit County (Akron), Ohio. In these cemetery service markets, total annual sales are about $47.3 million. Premerger concentration in these eight markets, as measured by the HHI, ranges from 2,350 to 4,400. As a result of the acquisition, concentration would increase in each cemetery service market by more than 100 points, to levels ranging from 3,450 to 10,000.

This line of commerce does not include cemeteries that serve a distinct group of customers, such as cemeteries limited to veterans and their families, or small church cemeteries that only serve members of the church congregation. Such cemeteries are not available to members of the general public served by the parties, and consumers could not turn to them to defeat an attempt to raise prices of cemetery services to the general public. This line of commerce also does not include direct disposal cremations, even though they are an alternative to cemetery services. An increase in the price of cemetery services would not cause a sufficient number of customers to switch from

[1] The Herfindahl-Hirschman Index, or "HHI," is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants in the market. Under Section 1.51 of the Horizontal Merger Guidelines issued April 2, 1992, by the Federal Trade Commission and the Department of Justice, the Commission considers concentration levels exceeding 1,800 as "highly concentrated" and concentration levels between 1,000 and 1,800 as "moderately concentrated."

[2] Under the HHI, a concentration level of 10,000 denotes a monopoly market in which one firm has 100% of the market. Squaring 100 yields a total of 10,000.

cemetery services to direct disposal cremations to make the price increase unprofitable.

According to the draft complaint, entry into the provision of cemetery services in each of these eight markets is difficult, and would not be timely, likely or sufficient to prevent anticompetitive effects from the acquisition.

The proposed Consent Order, if issued by the Commission, would remedy all of the Commission's competitive concerns about the proposed acquisition. Under the terms of the proposed Consent Order, SCI must divest one or more funeral homes in each of the funeral services markets and one or more cemeteries in each of the services markets, as follows:

1. In the Phenix City, Alabama/Columbus, Georgia, funeral service market, (a) Vance Memorial Chapel, 3738 Highway 431 North, Phenix City, Alabama 36867; and (b) Vance Memorial Chapel, 2919 Hamilton Road, Columbus, Georgia 31904;

2. In the Evansville, Indiana, funeral service market, Miller & Miller Colonial Chapel, 219 East Franklin Street, Evansville, Indiana 47711;

3. In the Jacksonville Beach, Florida, funeral service market, Beaches Funeral Home, 3600 South 3rd Street, Jacksonville Beach, Florida 32250;

4. In the Roseville, California, funeral service market, Cochrane's Chapel of the Roses, 103 Lincoln Street, Roseville, California 95678;

5. In the Ruskin/Sun City Center, Florida, funeral service market, Family Funeral Care Funeral Home, 1851 Rickenbacker Road, Sun City Center, Florida 33573;

6. In the West Pasco County, Florida, and Tarpon Springs, Florida, funeral service market, Michels & Lundquist Funeral Home, 130 State Road 54, New Port Richey, Florida 34652;

7. In the Broward County, Florida, cemetery service market, (a) Evergreen Cemetery, 1300 S.E. 10th Avenue, Fort Lauderdale, Florida 33316; (b) Lauderdale Memorial Park, 2001 S.W. 4th Avenue, Fort Lauderdale, Florida 33315; and (c) Sunset Memorial Gardens, 3201 19th Street, Fort Lauderdale, Florida 33311,

8. In the Chattanooga, Tennessee, and the neighboring north Georgia suburbs of Chattanooga cemetery service market, (a) Lakewood Memory Gardens East Cemetery, 4621 Shallowford Road, Chattanooga, Tennessee 37411; (b) Lakewood Memory Gardens West Cemetery, 3509 Cummings Road, Chattanooga, Tennessee 37419; and (c) Lakewood Memory Gardens South Cemetery, 627 Greens Lake Road, Rossville, Georgia 30741;

9. In the Citrus County, Florida, cemetery service market, Fountains Memorial Park, 4890 South Suncoast Boulevard, Homosassa Springs, Florida 34447;

10. In the Corpus Christi, Texas, funeral service market, Rose Hill Memorial Park, 2731 Comanche, Corpus Christi, Texas 78408;

11. In the Eugene/Springfield, Oregon, cemetery service market, Sunset Hills Memorial Gardens, 4810 South Willamette Street, Eugene, Oregon 97405;

12. In the North Richmond, Virginia, and the northern, eastern, and western suburbs of Richmond cemetery service market, Forest Lawn Cemetery, 4000 Pilots Land, Richmond, Virginia 23222;

13. In the South Bay area of San Diego, California, cemetery service market, LaVista Memorial Park, 3191 Orange Street, National City, California 91951; and

14. In the Summit County, Ohio, cemetery service market, Greenlawn Memorial Park, 2580 Romig Road, Akron, Ohio 44320.

SCI must complete the required divestitures to Carriage within seven days from the date the Consent Order becomes final, or 120 days from the date of the signing of the Agreement Containing Consent Order, whichever is earlier. In the event SCI does not divest the assets to an acquirer or acquirers acceptable to the Commission in the required time, the Consent Order establishes procedures for the appointment of a trustee to sell the assets. Also, for a period of ten years, SCI must give prior notice to the Commission of any proposed acquisition of a funeral home or cemetery, as applicable, in each of the 14 local markets. The Consent Order also requires SCI to deliver a copy of the required notice to the office of the attorney general in each state where any to-be-acquired assets are found.

An Asset Maintenance Agreement accompanies the proposed Consent Order. Under its terms, SCI must preserve and maintain the assets that it must divest. The procedures enumerated in the Asset Maintenance Agreement will ensure the continued competitive viability of these assets after they are divested.

The proposed Consent Order also requires SCI to provide the Commission a report of compliance with the terms of the order within thirty days following the date on which the order becomes final, every thirty days thereafter until the divestitures are completed, and annually for a period of ten years.

The proposed Consent Order has been placed on the public record for sixty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed Consent Order final.

By accepting the proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the proposed Consent Order in order to aid the Commission in its determination of whether to make the proposed Consent Order final. It is not intended to constitute an official interpretation of the proposed Consent Order, nor is it intended to modify the terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1655 Filed 1–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9823570]

Stanley Works; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Commnents must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S–4302, 601 Pa. Ave., N.W., Washington, D.C. 20580, (202) 326–3042 or 326–2890.

SUPPLEMENTARY INFORMATION: Pusuant to Section 6(f) of the Federal Trade

Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent The Stanley Works.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, marking, packaging, labeling, and promotional practices related to the sale of mechanics tools. The Commission's complaint charges that respondent misrepresented that certain of its mechanics tools were all or virtually all made in the United States when, in truth and in fact, a significant proportion of their content was of foreign origin.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extend to which its mechanics tools are made in the United States. The order defines mechanics tools as professional grade hand tools (other than carpentry tools) used by consumers or professionals in the assembly, repairs, or maintenance of machinery or vehicles, or for other purposes. Such tools include, but are not limited to, wrenches, ratchets, sockets, and chisels. The proposed order would allow respondent to represent that such mechanics tools are made in the United States as long as all, or virtually all, of the components of the mechanics tools are of U.S. origin and all, or virtually all, of the labor in manufacturing them is performed in the United States.

The proposed consent order additionally provides that the order shall not apply to the marking of mechanics tools or components of mechanics tools forged, machined, or cast before the date that the complaint and order became final.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and purposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1656 Filed 1–25–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9823587]

USDrives Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Laura Koss, FTC/S–4302, 601 Pa. Ave., NW, Washington, DC 20580, (202) 326–3042 or 326–2890.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 19, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent USDrives Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received

and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising, packaging, labeling and promotional practices related to the sale of optical drives that read information on compact disc read-only memory discs ("CD–ROM drives"). The Commission's complaint charges that respondent misrepresented that its CD–ROM drives were all or virtually all made in the United States when, in truth and in fact, its CD–ROM drives were assembled in the United States of primarily imported parts. In addition, the complaint charges that respondent misrepresented that CD–ROM drives that were made in China of primarily non-U.S. parts were all or virtually all made in the United States.

The proposed consent order contains a provision that is designed to remedy the charges and to prevent the respondent from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the respondent from misrepresenting the extent to which any CD–ROM drive is made in the United States. The proposed order would allow respondent to represent that a CD–ROM drive is made in the United States so long as all, or virtually all, of the component parts of the CD–ROM drive are made in the United States and all, or virtually all, of the labor in manufacturing the CD–ROM drive is performed in the United States.

Part II of the proposed order requires the respondent to maintain materials relied upon in disseminating any representation covered by the order. Part III of the proposed order requires the respondent to distribute copies of the order to certain company officials and employees. Part IV of the proposed order requires the respondent to notify the Commission of any change in the corporation that may affect compliance obligations under the order. Part V of the proposed order requires the respondent to file one or more compliance reports. Part VI of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–1660 Filed 1–25–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0747]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Customer/Partner Satisfaction Surveys; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of December 24, 1998 (63 FR 71294). The document announced that a proposed collection of information had been submitted to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995. The document was published with an incorrect docket number. This document corrects that error.

DATES: JANUARY 26, 1999.

FOR FURTHER INFORMATION CONTACT: Silvia R. Fasce, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–34111, appearing on page 71294 in the **Federal Register** of Thursday, December 24, 1998, the following correction is made:

1. On page 71294, in the first column, in the third line, "[Docket No. 97N–0260]" is corrected to read "[Docket No. 98N–0747]".

Dated: January 20, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1711 Filed 1–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pharmacy Compounding Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Pharmacy Compounding Advisory Committee which is scheduled for February 4 and 5, 1999. This meeting was announced in the **Federal Register** of January 6, 1999 (64 FR 886). The amendment is being made to reflect a change in the *Procedure* portion of the meeting notice. There are no other changes. This amendment will be announced at the beginning of the open portion of the meeting.

FOR FURTHER INFORMATION CONTACT: Igor Cerny or Tony Slater, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8183 (301–443–0572 in the Washington, DC area), code 12440.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 6, 1999 (64 FR 886), FDA announced that a meeting of the Pharmacy Compounding Advisory Committee would be held on February 4 and 5, 1999. This amendment is being made to reschedule the time allotted for oral presentations from the public.

On page 887, in the first column, the *Procedure* portion of this meeting notice is amended to read as follows:

Procedure: Interested persons may present data, information or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 29, 1999. Oral presentations from the public will be scheduled on February 4, 1999, between approximately 11 a.m. and 12 m. for: Mild silver protein, 4-aminopyridine, and 3,4-diaminopyridine, and between approximately 3 p.m. and 4 p.m. for: Hydrazine; and on February 5, 1999, between approximately 10 a.m. and 11 a.m. for: Dinitrochlorobenzene, diphenylcyclopropenone, and squaric acid dibutyl ester, and between approximately 3 p.m. and 4 p.m. for: Pentylenetetrazole, cyclandelate, and betahistine dihydrochloride. Time allotted for each presentation may be

limited. Those desiring to make a formal oral presentation should notify the contact person before January 29, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 20, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–1709 Filed 1–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0759]

Determination of Regulatory Review Period for Purposes of Patent Extension; Anzemet®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Anzemet® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Anzemet® (dolasetron mesylate). Anzemet® is indicated for the prevention of nausea and vomiting associated with moderately-emetogenic cancer chemotherapy, including initial and repeat courses, and for the prevention of postoperative nausea and vomiting. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Anzemet® (U.S. Patent No. 4,906,755) from Hoechst Marion Roussel, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 10, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Anzemet® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Anzemet® is 2,443 days. Of this time, 1,729 days occurred during the testing phase of the regulatory review period, 714 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: January 5, 1991. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 5, 1991.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: September 29, 1995. The applicant claims September 28, 1995, as the date the new drug application (NDA) for Anzemet® (NDA 20–623) was initially submitted. However, FDA records indicate that NDA 20–623 was submitted on September 29, 1995.

3. *The date the application was approved*: September 11, 1997. FDA has verified the applicant's claim that NDA 20–623 was approved on September 11, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,578 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 29, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 26, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–1710 Filed 1–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0172]

Guidance on Amended Procedures for Advisory Panel Meetings; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings." The purpose of the guidance document is to establish standard operating procedures (SOP's) to be followed by the Center for Devices and Radiological Health (CDRH), the Center for Biologics Evaluation and Research (CBER), FDA personnel, and interested persons outside FDA in carrying out the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments concerning the guidance document may be submitted at any time.

ADDRESSES: Submit written comments on the guidance document to one of the contact persons listed below. Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pluhowski, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022; or William Freas, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–1295.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" was developed to establish SOP's to be followed by CDRH, CBER, FDA personnel, and interested persons outside FDA in carrying out section 513(b)(6) of the act (21 U.S.C. 360c(b)(6)) as amended by section 208 of FDAMA. New section 513(b)(6)(A) of the act requires that FDA provide to any person whose device is specifically the subject of a classification panel review the same access as FDA to data and information about the device as that submitted to the panel, except for data and information that are not available for public disclosure under the Freedom of Information Act (5 U.S.C. 552). FDAMA further amended the act to require FDA to provide such persons the opportunity to submit information, based on the data or information provided in the application under review, to the panel for its review. Section 513(b)(6)(iii) amended the act to allow such persons the same opportunity as FDA to participate in panel meetings. Section 513(b)(6)(B) of the act requires that adequate time be provided for initial presentations and for response to any differing views by persons whose devices are specifically the subject of a classification panel, and that free and open participation by all interested parties be encouraged. FDA announced the availability of the draft guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" in the **Federal Register** of March 31, 1998 (63 FR 15426). The agency received one comment on the draft guidance document. FDA has reviewed the comment and has made some revisions to clarify the guidance. In addition, FDA agrees with the comment that another guidance document entitled "Policy and Guidance Handbook for FDA's Advisory Committees" should be subject to the agency's good guidance practices (GGP's). That guidance document is currently being revised.

This revised guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" supersedes the guidance document that was announced on March 31, 1998.

II. Significance of Guidance

This guidance document represents the agency's current thinking on the amended procedures for advisory panel meetings. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The agency has adopted GGP's, which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number 413 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance document may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes "Guidance on Amended Procedures for Advisory Panel Meetings," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The guidance document entitled "Guidance on Amended Procedures for Advisory Panel Meetings" will be available on CDRH's website at http://www.fda.gov/cdrh/modern/modguid.html and on CBER's website at http://www.fda.gov/cber/guidelines.htm.

IV. Comments

Interested persons may, at any time, submit written comments regarding this guidance document to one of the contact persons listed above. Such comments will be considered when determining whether to amend the current guidance.

Dated: January 10, 1999.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 99–1662 Filed 1–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[0917–ZA05]

Reimbursement Rates for Calendar Years 1998 and 1999

Notice is given that the Director of Indian Health Service, under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248(a) and 249(b) and section 601 of the Indian Health Care Improvement Act (25 U.S.C. 1601), has approved the following reimbursement rates for inpatient and outpatient medical care in facilities operated by the Indian Health Service for Calendar Year 1998 and Calendar Year 1999: Medicare, and Medicaid Beneficiaries and Beneficiaries of other Federal agencies. Also, with Respect to Medicaid inpatient rates, Indian Health Service facilities may elect to receive payments for physician services by meeting those requirements under an approved State Medicaid plan.

	Calendar year 1998	Calendar year 1999
Inpatient Hospital Per Diem Rate (Excludes Physician Service)		
Lower 48 States	$1,040	$1,065
Alaska	1,300	1,331
Outpatient Per Visit Rate (Excluding Medicare)		
Lower 48 States	168	172
Alaska	241	241
Outpatient Per Visit Rate (Medicare)		
Lower 48 States	138	138
Alaska	210	210
Medicare Part B Inpatient Ancillary Per Diem Rate		
Lower 48 States	420	420
Alaska	533	533

Outpatient Surgery Rate (Medicare)

Established rates for freestanding Ambulatory Surgery Centers.

Effective Date of Calendar Year 1998 and Calendar Year 1999 Rates

Consistent with previous annual rate revisions, the Calendar Year 1998 rates will be effective for services provided on/or after January 1, 1998 and the Calendar Year 1999 rates will be effective for services provided on/or after January 1, 1999.

Dated: January 19, 1999.

Michel E. Lincoln,

Acting Director.

[FR Doc. 99–1717 Filed 1–25–99; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Child Health and Human Development

Proposed Collection: Comment Request; Preventing Problem Behavior Among Middle School Students

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act, for the opportunity for public comment on the proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

PROPOSED COLLECTION:

Title: Preventing Problem Behavior Among Middle School Students.

Type of Information Collection Request: Extension, OMB Number 0925–0436, Expiration Date 6/30/99.

Need and Use of Information Collection: The purpose of this study is to test the efficacy of a comprehensive program of interventions that include participatory classroom curriculum, parent education and enhanced school environment. Middle schools in one school district in Maryland were assigned to either a special intervention treatment condition or usual education (control) condition. The intervention is sequentially structured with curricula implemented in each grade of middle school. Classroom-administered questionnaires were administered to all middle schools prior to the intervention to establish baseline levels of the variables of interest, including substance use, school misconduct, parent and peer influences, and school climate. Data is collected annually after the completion of the grade level intervention. Information about parenting style will be collected on a sample of parents of participating student using telephone interviews.

As of the expiration of the current OMB approval, data will have been collected on one cohort of middle school students annually throughout middle school (6–8 grade) and two years of data collection on the second cohort of students (grades 6 and 7). Completion of the study as proposed includes collecting data on the second cohort in grade 8 and follow-up measurement of both cohorts in grade 9. Data will also be collected on a sample of parents.

Frequency of Response: Data will be collected 2 times over a two-year period.

Affected Public: Individuals or households; State, local or Tribal Governments.

Type of Respondents: Children and their parents.

Respondent and Burden Estimate Information:

Type of respondent	Estimated number of respondents	Estimated number of annual responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Children in Cohort 1	1370	1	.91	1248
Children in Cohort 2	1390	1	.91	1264
Parents	250	1	1.0	375
Total	3010	.....	.....	2887

Annualized cost to respondents (based on $10.00 per hour): $28,870.00.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points:

(1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques for other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bruce Simons-Morton, Chief, Prevention Research Branch, Division of Epidemiology, Statistics and Prevention Research, National Institute of Child Health and Human Development, Building 6100, Room 7B05, 9000 Rockville Pike, Bethesda, MD 20892–7510 or call non-toll free number (301) 496–1126 or E-mail your request, including your return address to bm79K@nih.gov.

COMMENT DUE DATE: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 18, 1999.

Benjamin Fulton,

Executive Officer, NICHD.

[FR Doc. 99–1728 Filed 1–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Fogarty International Center Advisory Board.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board Subcommittee.

Date: February 8, 1999.

Closed: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 8–9, 1999.

Open: February 9, 1999, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation by the Director and two presentations on Medical Bioethics.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: February 9, 1999, 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: January 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1725 Filed 1–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Analytical Chemistry and Stability Testing of Treatment Drugs".

Date: February 17, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–1644.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1722 Filed 1–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group Epidemiology and Prevention Research Subcommittee.

Date: February 9–10, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Susan L. Coyle, Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Epidemiology and Prevention.

Date: February 10, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Kesinee Nimit, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Initial Review Group Basic Behavioral Science Research Subcommittee.

Date: February 17–18, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Mark Swieter, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Human Brain Project.

Date: February 23–24, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Mark Swieter, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Program Projects.

Date: February 23, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Rita Liu, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Centers.

Date: February 24, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Rita Liu, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Medication Development.

Date: February 24, 1999.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, VA 22209.

Contact Person: Khursheed Asghar, Chief, Basic Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 19, 1999.

LaVerne Y. Stringfield.

Committee Management Officer, NIH.

[FR Doc. 99–1723 Filed 1–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: February 10–12, 1999.

Open: February 11, 1999, 8:30 a.m. to 4:15 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; and other administrative and program developments.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: February 11, 1999, 4:15 p.m. to 5:30 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Closed: February 12, 1999, 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, Ph.D., Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke,

National Institutes of Health, Federal Building, Room 1014, 7550 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Council Review Committee.

Closed: February 10, 1999.

Time: 6:00 p.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Building 31, Room 8A28, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, Ph.D., Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Federal Building, Room 1014, 7550 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9248.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1724 Filed 1–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK–1 GRB–D (M2).

Date: January 26, 1999.

Time: 10:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Hagan, Chief, Review Branch, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93–848, Digestive Diseases and Nutrition Research; 93;849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1726 Filed 1–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: "Ultra Thin Walled Wire Reinforced Endotracheal Tubing"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application S/N 08/645, 887 entitled, "Ultra Thin Walled Wire Reinforced Endotracheal Tubing" filed on May 15, 1996 and now U.S. Patent 5,722,395 which issued on March 3, 1998 to Vital Signs, Inc. of Totowa, New Jersey. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be for the United States.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before March 29, 1999 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: 301/496–7056, ext. 287; Facsimile: 301/402–0220; E-mail: rr154z@nih.gov.

SUPPLEMENTARY INFORMATION: U.S. Patent 5,722,395 claims an ultra thin walled wire reinforced endotracheal tubing which includes a thin walled tubing comprising a polymeric material having a spring material incorporated therewith. Utilization of the spring wire material in combination with polymeric material results in a reduced wall thickness which results in a significant decrease in resistance to air flow through the endotracheal tubing and therefore should permit a patient to breathe in a more relaxed fashion so as not to become exhausted. The endotracheal tubing of the present invention is made by depositing a dissolvable polymeric material onto a rotating mandrel in successive layers. A spring material is also applied around the mandrel to produce the ultra thin walled wire reinforced endotracheal tubing.

The prospective exclusive license: will be royalty-bearing; will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7; and it will be structured in such a way not to preclude the U.S. Public Health Service from licensing the patent rights of U.S. Patents 5,305,740, 5,429,127, 5,537, 729, 5,711,296 and 5,785,998 and allowing appropriate licensees the right to practice these patent rights worldwide.

The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 20, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–1727 Filed 1–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Final Environmental Assessment and the Strategy and Guidelines for the Recovery and Management of the Red-cockaded Woodpecker and Its Habitat on National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service (Service or we) announces the availability of a finalized Strategy and Guidelines for the Recovery of the Red-cockaded Woodpecker (RCW) and Its Habitat on National Wildlife Refuges (Guidelines). Included in the Guidelines are population management objectives for 644–654 active clusters of RCWs on approximately 141,900 acres of pine and pine hardwood forest on 13 refuges in the southeastern United States. We will implement actions directed at protection of clusters, management of nesting habitat, population management, management of foraging habitat, forest management (including silvicultural activities), and management of RCWs in federally designated Wilderness.

We also announce the availability of a final environmental assessment (EA) and Finding of No Significant Impact (FONSI). The EA includes an evaluation of the environmental impact of four alternatives: (1) implementing the Guidelines as proposed; (2) taking no action to comprehensively implement revised recovery guidelines and strategies; (3) implementing the Guidelines, intensifying management efforts and expanding the area to be managed for RCWs; and (4) implementing the Guidelines on a smaller area of refuge land.

You may obtain copies of the Strategy and Guidelines and the EA by making a request in writing to the Regional Office (see **ADDRESSES**). This notice also advises the public that we have made a determination that issuing the Guidelines is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. We base the FONSI on an evaluation of the information contained in the Guidelines and provide this notice pursuant to NEPA regulations (40 CFR 1506.6).

DATES: We plan to implement the strategy and Guidelines effective upon publication of this notice in the **Federal Register**.

ADDRESSES: Persons wishing to obtain a copy of the Strategy and Guidelines, should submit a request in writing to: U.S. Fish and Wildlife Service, Southeast Regional Office, 1875 Century Boulevard, Atlanta, Georgia 30345. (Attn: Assistant Regional Director,. Refuges and Wildlife.) You may also obtain copies at the Southeast Regional Office (address above) and at the following locations: Office of the Red-cockaded Woodpecker Recovery Coordinator, U.S. Fish and Wildlife Service, Clemson University, Department of Forest Resources, 261 Lehotsky Hall, Clemson, SC 29634–1003, and Office of the Refuge Manager, Noxubee National Wildlife Refuge, Route 1, Brooksville, MS 39739.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Costa, Red-cockaded Woodpecker Recovery Coordinator, Clemson Field Office, (see **ADDRESSES** above), telephone: 864/656–2432, or Mr. David Richardson, Biologist, Noxubee National Wildlife Refuge (see **ADDRESSES** above), 601/323–5548.

SUPPLEMENTARY INFORMATION:

Background

The Service is the lead Federal agency responsible for preserving, protecting and enhancing nonmarine endangered species. We listed the RCW as an endangered species in 1970. In addition to responsibilities under the Endangered Species Act (Act), we administer National Wildlife Refuge system lands. There are an estimated 141,900 acres of pine and pine-hardwood habitat capable of supporting RCWs on 13 national wildlife refuges in the southeast United States.

The RCW is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups or clans which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. We call the aggregate of cavity trees a cluster. RCWs forage almost exclusively on pine trees, and they generally prefer pines greater than 10 inches in diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available.

The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurring in 13 southeastern states), but the remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

The most recent estimate of the status of RCW populations on National Wildlife Refuge lands indicates that 237 to 242 active RCW clusters are present.

The EA contains an evaluation of the environmental consequences of four alternatives, including the action to be implemented. This "action" alternative would result in implementation of the Guidelines as prepared by the Service. The "no action" alternative would result in a continuance of the current management activities with no revision to the guidelines for management actions or recovery on refuge lands beyond the actions contained in the 1987 Guidelines and the recovery plan for this species. The third alternative is to implement the Guidelines and expand their application to include additional habitat on Alligator River, Piedmont and Santee National Wildlife Refuges. The fourth alternative would result in a 50% reduction in the managed area under the revised Guidelines and a reallocation of resources to other wildlife management needs.

As stated above, we have made a determination that the issuance of the Guidelines is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. We provide an excerpt from the FONSI reflecting our finding on the application below:

Based on our analysis, we determined that:

1. Issuance of the Guidelines would not have significant indirect or cumulative adverse effects on the human environment.

2. Implementation of the Guidelines will contribute substantially to the recovery of the RCW by providing for consistent application of the most

appropriate forms of management available on all refuge lands. Application of the Guidelines will also assure that we accomplish forest management in a manner which will result in accelerated recovery of the species.

3. Population goals contained in the Strategy and Guidelines are substantially higher than the current population levels and would represent a major positive step towards recovery of the RCW.

We also have evaluated whether the issuance of the Guidelines complies with section 7 of the Act by preparing an intra-Service section 7 consultation. The results of the consultation in combination with the above findings, and public comment were used in the final analysis to make the decision to issue and implement the Guidelines.

Public Comments Received

The proposal to issue the above Guidelines was announced in the **Federal Register** on March 13, 1998 (63 FR 12498). In addition to general notice in the **Federal Register**, the draft Guidelines were distributed widely internally and to Service partners when an expression of interest was made. Public comment was open from the date of issue until close of business on April 27, 1998.

We received 36 requests for the Strategy and Guidelines and Draft Environmental Assessment and 4 sets of written comments. Respondents submitting written comments were: Mr. W. V. McConnel, Land Management Planner and Forester; Ms. Margaret S. Copeland, private citizen; Mr. Robert Bonnie, Economist, in the Wildlife Program of the Environmental Defense Fund; and Dr. Jerome A. Jackson, Professor of Biological Sciences, Mississippi State University. Many of the comments were editorial in nature, and we incorporated changes into the text. Other comments consisted of philosphical statements with no specific directions to amend the Guidelines or EA. Listed below are our responses to the substantive comments, summarized and grouped by subject matter category.

All letters requesting copies of the Guidelines and EA as well as written comments are on file at the Southeast Regional Office of the Fish and Wildlife Service and are available for review on request.

A. General Comments

1. The range of 60–90 million acres for the original extent of the longleaf pine forest seems rather imprecise. Don't we have better figures? If not, perhaps an explanation?

Answer: Frost (1993) estimated that prior to European settlement the southern pine ecosystem covered 92 million acres. Longleaf pine dominate 74 million of these acres and longleaf pine mixed with other pines and hardwoods dominate the remaining 18 million acres.

2. The figures presented on historic timberlands give no indication of habitat quality. The extent of old growth is what is important. Of the 4 million acres referred to as existing now, how much is old growth RCW habitat? See also Jackson 1988.

Answer: An assessment of this type is beyond the scope of guidelines which focus on the management of refuge forest lands as they relate to the recovery and management of the RCW. We now consider none of the refuge forest old growth and believe an estimated 3–4000 acres of virgin long-leaf forest to be left.

3. P. 26. "Bluebook" is not defined. Don't use in-house jargon that is meaningless to the reader.

Answer: We made changes in text to clarify use of the term "Bluebook."

B. Management Methods/Actions

1. P. 4. First paragraph, last sentence. This sentence needs to be stronger and more clearly written. The commenter suggests something like the following: "Efforts to accomplish Actions 1 and 2 should begin immediately if not already underway. Specific goals need to be set and a sustained action plan established and functioning within two years."

Answer: We made no changes; the statement in text is accurate.

2. P. 12. Monumentation. The commenter recommended adding cavity start with some scale of the extent of the start to the list: surface = <2 inches deep; tunnel = >2 inches deep, but no downward excavation; incomplete chamber = not a completed cavity, but capable of offering shelter—a bird can turn around in it. Flagging used on cavity trees should not be left with "long tails" blowing in the wind. The commenter further was against red flagging because of its potential as a negative behavioral stimulus and feel strongly that numbered tags should be unique—i.e., tags that simply say " 1," "2," etc. should not be in every cluster. A system should be developed to identify individual nest trees by a unique number.

Answer: Refuge procedures will assure that trees are individually identifiable although we have not yet worked out the specific methods. We noted other technical comments.

3. P. 16. Lines 12, 13. The commenter sees no justification for using snake nets (SNETs) under any circumstances. They are a lethal and very cruel device and simply cannot be justified. A recent suggestion to lower the SNETs to near ground level is untenable—there is no evidence to suggest that they would not capture birds even at that level and there is a much greater chance that they would ensnare and cause the slow death of a wide range of species.

Answer: We made changes in the text and will not authorize use of SNETS with the possible exception of research.

4. P. 23. Banding and marking. Banding should be done only by experienced, well-trained personnel. The commenter's recommendation would be to have a crew of trained individuals travel from refuge to refuge to do the banding—especially of nestlings. Injuries are occurring as a result of carelessness and lack of experience by the banders. Trainees should not be capturing RCW nestlings, but should be getting experience by banding the nestlings of other woodpecker species.

Answer: We already required this under section 10(a)1(A) of Endangered Species Act.

5. P. 25. The mandate to color band all nestlings at all sites each year (MIL 4) is not reasonable. There needs to be a good reason to do this and there needs to be flexibility. Survival of nestlings is much more important than rushing to get all of them banded, or trying to band nestlings that already have their eyes open, or having someone who is inadequately trained attempt to band them. The commenter emphasized here too that "training" per se is not enough. The commenter has frequently had students who were very bright who simply did not have the dexterity and patience to competently band adults, let alone nestlings. He feels that whoever is sent for training gets certified—and that not all of these individuals should really be attempting to band nestlings. It is not something that everyone can reasonably do. In addition to the mechanics of doing it, the disturbance of checking nests in small populations may not be justified. Some of the losses on the Daniel Boone NF may have been a result of disturbance as a result of too frequent nest checks.

Answer: We require that all activities, including banding, be conducted in a manner that will not result in a detriment to RCW. The Guidelines do not authorize any activities that will result in take of RCW absent the required permits and review.

6. P. 34. See discussion in Jackson et al. 1986 relative to management of RCWs in wilderness areas.

Answer: We reviewed the discussion by Jackson and made no changes in text.

7. P. 35. The commenter doesn't understand why a cooperative agreement should be necessary in order for there to be RCWs on Tombigbee National Forest; The Mississippi State University, John W. Starr Memorial Forest; and the State of Mississippi, Noxubee County School Board lands. In the case of the National Forest, that is Federal land with a clear obligation towards endangered species. There are recent historical records of the species from Tombigbee National Forest, and the species most likely disappeared from there as a result of inadequate management for the species—a potential violation of the ESA. Certainly Tombigbee National Forest has suitable habitat for the species and their stated goal should not be a population of zero RCWs—which is their currently stated management goal! In the case of the other two properties, there are also recent historical records of the RCW from these properties—birds which disappeared directly as a result of management actions taken by those responsible for the properties. Such actions were also potentially—almost certainly—in violation of the ESA since Federal monies are involved with each property. They are also potentially (probably) in violation of state endangered species law. The commenter feels FWS should first of all be in the business of enforcing the law and protecting the species—not in the business of negotiating away habitat and management responsibilities for endangered species.

Answer: The Guidelines presented here apply to the recovery and management of the RCW on national wildlife refuge lands. We noted the comments, but they are beyond the scope of these Guidelines.

8. While Bienville National Forest has been designated the "recovery" population in Mississippi, Noxubee NWR's contributions are too important to relegate to "second class." RCW research potential at Noxubee is vital, too.

Answer: We made changes in the text.

9. Why aren't Barge and Georgia Pacific included in the listings?

Answer: A Memorandum of Agreement is in effect with Georgia Pacific. We do not intend to exclude involvement of other private landowners by these Guidelines. In fact, we endorse and encourage such cooperation.

10. Does the PVC pipe eliminate the Red-bellied Woodpecker's competition for a cavity?

Answer: We do not believe that use of the pipe eliminates red-bellied woodpecker use of cavities.

11. A trained bander could readily travel from refuge to refuge (particularly all the smaller refuges) and band birds with less trauma to the RCWs and perhaps refuge personnel.

Answer: We noted the comments.

12. Some provision needs to be made to get RCWs, injured during banding, to trained people for rehabilitation and release. Probably the Forest Service needs that same type of help.

Answer: We noted the comments. Efforts are underway, in cooperation with personnel at Fort Bragg, to identify veterinarians in each state who could act as rehabilitators.

13. Cluster Survey/Inspection guidelines do not specifically require inspection with the "peeper" because a hole does not necessarily mean that a cavity is usable. The prime use of the "peeper" is to determine the condition of the cavities. Knowing this is essential to providing the number of cavities needed to maximize productivity.

Answer: We do not require cavity inspection with a peeper but recommend it as a useful tool to inspect cavities.

14. Does the Service have standard reporting forms for all RCW monitoring, etc.? Could you quickly have statistics that will help in decision making once information is readily shared and accessible.

Answer: We noted the comments, prepared forms, and will issue them in the near future.

15. Goals in the plan should focus on doing the maximum for RCWs rather than establishing minimum standards. RCW management at Noxubee NWR has demonstrated what intensive management can do in a matter of a few years. Why can't we move in that direction across the board immediately?

Answer: It is our intent to do the maximum extent of recovery and management for this species given habitat limitations, fund and staff resources, etc. In some instances other resource management efforts, including recovery of other threatened or endangered species, may limit efforts aimed exclusively at the RCW. We strive to take an ecosystem approach to management and recovery activities.

16. It is stated in the Guidelines that "The NWR System should set an example for proper RCW management through an aggressive program using all opportunities to enhance RCW populations." Firm timetables for this plan are needed. A greater than 10% increase (perhaps 20 to 25%) for the smaller refuges would be a more reasonable goal in "setting an example" with an aggressive program.

Answer: We noted the comments. Based on recent studies we believe that the maximum annual increase in RCW populations is about 10%, regardless of population size. We base this on studies of numerous populations throughout the species range.

17. Concern was expressed that the Service may be overlooking opportunities to manage for RCWs on several refuges in North Carolina and perhaps elsewhere. Pocosin Lakes NWR is listed in the draft NWR Guidelines as containing only one active cluster. The Service should conduct aerial surveys of Pocosin Lakes, Mattamuskeet, Cedar Island and Swanquarter NWRs if it has not already done so to better determine the extent of current use of these areas by RCWs.

Answer: This year we plan Surveys at Alligator River National Wildlife Refuge. We acknowledge the need to conduct new surveys and will accomplish this as funds become available. Refuges with no known population of RCWs are not free from the responsibility to survey habitat prior to authorizing activities that may impact woodpecker populations. The refuges listed are those with known populations of RCWss. Future comprehensive conservation planning efforts should identify recovery and management needs for the RCW and other threatened or endangered species.

18. Concerned was expressed that if the Service has neglected opportunities in these North Carolina refuges that it may have done the same for refuges in other states. Given the land management objectives of the National Wildlife Refuges (not to mention the fact that the Refuges are managed by the Service itself), the Service should pursue all opportunities to bolster recovery efforts on these lands.

Answer: We agree and efforts are now underway, see answer B.17.

19. The Service should seek to enter into safe harbor agreements with corporate and other private landowners in order to stabilize and increase available RCW habitat on lands surrounding refuges. This is especially important since several refuges have relatively small current and potential RCW populations. By stabilizing and perhaps increasing RCW numbers around refuges through safe harbor, this approach would in turn strengthen RCW populations on the refuges. Safe harbor agreements have been praised by both landowners and conservationists and offer a unique opportunity to build bridges with landowners surrounding refuges. Under the Service's proposed

national safe harbor policy, such agreements would not require completion of an HCP but could instead be done more easily through Section 10(a)(1)(A) permits. The Service could facilitate safe harbor agreements by using the expertise of refuge staff to assist landowners in baseline surveys and in undertaking proactive RCW management (such as artificial cavity construction).

Answer: As we develop refuge comprehensive management plans, we will identify and evaluate these considerations. Safe harbor and other Section 10 activities are valuable management tools but are beyond the scope of management guidelines for federally owned lands.

C. Management of Understory/Midstory

1. P. 4, paragraph 2, line 4. The commenter feels it is important not to give the impression that all hardwoods need to be eliminated from RCW habitat. Hardwoods mixed with pines provide habitat diversity that increases the diversity and stability of the bird's arthropod food supply and small strands of hardwoods often provide habitat barriers that separate adjacent RCW groups—for example, the boundaries among cavity clusters near refuge headquarters at Noxubee NWR. Do not destroy these natural barriers. Hardwoods need to be controlled, but not eliminated. They provide very important functions within the RCW's ecosystems. Furthermore, the importance of hardwoods likely varies from one geographic region to another—one across-the-range-of-the-species management plan for controlling hardwoods is not appropriate. Distinctions do need to be made between hardwoods in the proximity of cavity trees and hardwoods within foraging habitat, though both need to be controlled.

Answer: The draft text indicates that some hardwoods will remain in RCW habitat. We further modified text to reflect retention of hardwood component in the understory and midstory.

2. P. 12. Midstory Control. The statement "The removal of within-canopy hardwoods in the immediate vicinity of cavity trees is necessary" is ambiguous and needs to be clarified. The commenter disagrees that all such hardwoods must be removed. Removal should be a site-specific decision. Pruning might be an appropriate alternative in some situations. They also disagree strongly with the removal of all hardwood stems within 50 feet of a cavity tree. This says that even trees like dogwood would have to be removed. Again, the commenter feels, hardwoods play a positive role in RCW ecology too. They agree completely with the statement regarding retention of hardwoods to protect the cluster from wind damage. Examples of where such damage has occurred as a result of overaggressive hardwood removal include the Daniel Boone National Forest and D'Arbonne National Wildlife Refuge.

Answer: See answer C.2. We clarified the text to indicate that a hardwood component should remain.

3. P. 20. Last paragraph, line 2. The continued reference to Henry 1989 needs to be given further consideration. Henry's cookbook approach to habitat quality has no scientific basis as an "across the range of the species" management guideline. A 10-inch diameter tree in coastal South Carolina is considerably different from a 10-inch diameter tree in the Florida flatwoods. There are no data whatsoever that suggest they offer equivalent foraging opportunities for the RCW.

Answer: Comments noted. The "Henry Guidelines" are standard guidance for Federal properties. Our policy provides for development of population specific foraging guidelines based on multiple years of monitoring data and analysis of habitat use by groups.

4. P. 20. "Midstory-free forested corridors" absolutely not needed. A reduced midstory is needed, but not "midstory-free." This cut-it-all mentality not only creates an environment that would not be found in a natural ecosystem, it adds greatly to management costs and level of disturbance in the forest.

Answer: Changes made in text to reflect that the midstory will not be "midstory-free."

5. The section on Midstory Control should have a sentence suggesting that some 12 inch diameter trees be left dead as snags for other cavity nesting birds. The recommended removal of hardwoods seems too harsh. For example, the Forest Service plan allows dogwood and persimmon trees to remain. Hardwood midstory may be used by RCWs for foraging and provides protection from predators. Have studies on the first flights of RCWs indicated the importance of hardwood midstory for protection from predators and for foraging habitat?

Answer: We acknowledge the valid concern expressed but believe that the current text adequately addresses the concern.

6. Firewood cutting is the "best" way to remove midstory without damaging the remaining pine trees and the land in the cluster. This method should be listed number one and should be used by the smaller refuges? The commenter realizes the shear V-blade is faster—but the tracks left by the equipment are horrible and the mess left behind is really a fire hazard during the prescribed burns.

Answer: We determine the best method for midstory control on a case-by-case basis depending on stand characteristics, need, site conditions, administration factors and demand.

D. Forest Regeneration

1. P. 4. Paragraph 3. The commenter believes really serious consideration needs to be given to the extent of regeneration needed to "mimic" natural ecosystem processes. We have not eliminated southern pine beetles, thus they still function in the ecosystem—and often function in a positive way relative to the birds. We also can control fire in the ecosystem. In many cases regeneration is overdone and not needed to sustain the ecosystem. Nature provides regeneration and has done so without human assistance up until very recently.

Answer: We agree and considered the factors discussed and addressed them in the text.

2. P. 9. One commenter felt the maximum regeneration patch sizes are much too large for a National Wildlife Refuge—our refuges are not, and should not be, tree farms and there is no justification or need for such large regeneration areas. How about 5 and 10 acres? What justification is there for regular "rotations" at all—except commercial exploitation—which seems inappropriate for National Wildlife Refuges?

Answer: The Guidelines allow for 5 and 10 acre clearings. We provide individual refuges flexibility to apply the guidelines in their particular area. All regeneration, except off site slash pine, requires retention of some seed trees. A forest modified through seed tree and Shelterwood regeneration cuts does not necessarily result in non-woodpecker habitat.

3. Natural disturbances (in particular lightening strikes and wind problems) seem to be prolific in most of the RCW clusters. Regeneration by nature seems to be more than enough without the removal of the older trees that are vital for RCW survival. Old growth trees are removed in the name of "regeneration." Feeding ecology in old growth stands should be examined (i.e., time and quality of food offered to nestlings) prior to removal of mature trees. Have feeding studies (i.e., time and quality of food offered to nestlings) been conducted on

density, age, and type of habitat within/nearby the cluster? The vulnerability to lightening strikes within the cluster is increased with the removal of the surrounding large trees just outside the cluster.

Answer: We acknowledge the value of natural regeneration. However, due to the even-aged structure of much of the RCW habitat on refuges, it is important to maintain balance in stand age to provide for future nesting and foraging habitat. Active, planned management will insure adequate distribution of habitats in the age classes needed at the time needed.

E. Land Acquisition

1. P. 6. Paragraph 3, last line. This sentence does not follow from previous information provided. Why should priority for land acquisition be given to just those three refuges? On P. 5, four refuges are listed under the first goal—at the very least, St. Marks Refuge should be included for priority for land acquisition—or a reason stated as to why it shouldn't be included. On the other hand, the commenter suggests that D'Arbonne NWR should be a priority for land acquisition in order to assure adequate habitat for the species there for the short term. How about Santee and Upper Ouachita in that regard as well? These small populations can serve very important genetic reservoir functions—as well as important PR functions. They should be supported rather than written off.

Answer: St. Marks National Wildlife Refuge is part of an adequate land base when coupled with adjacent publicly owned lands. Land acquisition at St. Marks is not a critical need at this time with regard to RCW recovery. The other populations, while significant, are not designated as recovery populations. We will address the need for land acquisition to aid in the recovery of the RCW at each refuge, based on RCW recovery and other management needs.

F. Population Management/Ecology

1. P. 7. The commenter disagreed with the population delineation approach presented on this page. Citing the Forest Service as saying that "it is so" doesn't make it so. If you want "population delineation," then base it on hard science. There are no consistencies here (If you're going to accept the Forest Service's "18 miles," why does the Fish and Wildlife Service then use "20 miles"?), and no scientific justification for what is provided. There are two sides to the coin here that need to be considered. Here the FWS argues that we need delineation of populations to prevent habitat fragmentation—which is good. But elsewhere, FWS uses the same figures to argue for not protecting "demographically isolated populations"—which in my opinion is bad. Yes, we need to maintain corridors and the integrity of habitat, but no, we should not write off populations or move them just because they happen to be separated by 3.1 miles of unsuitable habitat from other clusters. The figures included in #1 at the bottom of this page are not reasonable considering what we know about the movements of these birds. In addition, with our abilities to move birds, we can as easily maintain these by occasionally moving birds into them as we can move the birds to a larger population. Annual evaluation of subpopulation delineation could appropriately be used to prevent habitat fragmentation—but it should not be used to write off clusters and justify moving birds to concentration centers. Unfortunately there seems to be a tendency to say the former and do the latter.

Answer: We changed the standard of 18 miles in the text from 20 and use the standard identified in the Guidelines to delineate MILs to direct allocation of management and recovery resources. It is not our intention to "write off" populations.

2. P. 16. Flying squirrel control. The commenter feels the use of the term "kleptoparasite" is misleading and a loaded term here. Southern flying squirrels are "secondary cavity users" and do not require an active RCW cavity in which to roost or nest. They often use natural cavities. A cavity that is actively being used by another species is generally left alone unless other cavities are not available. The case against flying squirrels is poorly documented and consists primarily of reports of their use of RCW cavities rather than documentation of reduced RCW fecundity. The commenter has no doubt that occasionally there may be reduced fecundity due to flying squirrels, but evidence to date suggests that it is the exception rather than the rule. We do not need language that encourages the old "predator elimination" mentality. Squirrel presence does not "constitute a history of squirrel problems." We do need a better understanding of the interrelationships between these species.

Answer: Additional research findings now indicate reduced fecundity due to flying squirrels which supports the current text. We believe elevating control of cavity competitors on a cluster-by-cluster basis when we document impacts on RCW productivity.

3. P. 20. First paragraph. The commenter didn't understand the sentence. What does it mean that the Service requires them to "annually establish"? Presumably once recruitment clusters have been established they don't need to be reestablished each year—they're already there. Perhaps the Service means they should "reevaluate" recruitment clusters on an annual basis. If so, this has some drawbacks. Once established, recruitment clusters should not be subject to "change." For example, the commenter can see a stand being labeled a recruitment cluster, then at age 60, have it "delisted" as one so that it can be cut, only to be replaced by a 20-year-old stand. The commenter feels the second paragraph helps to clarify this, but thinks clarification is needed in the first paragraph.

Answer: We made changes in the text to clarify this.

4. P. 22. Translocation of birds for reintroduction to unoccupied territories. The word reintroduction" should be replaced with "introduction."

Answer: We made changes in the text.

5. P. 22. Adult birds should not be moved. HCPs are not a valid excuse for moving them (see Jackson 1997).

Answer: We made clarification in the text. We will respond to opportunities to move adults from private lands through the Habitat Conservation Planning process.

6. P. 22. Juveniles, mid-paragraph. By definition, there can be no such thing as "intra-population demographic isolation."

Answer: We made changes in the text.

7. The use of "important" Service goal and "second" goal as used in the Population Objectives section do not represent the best choice of words? If these "important" goals for the four refuges are the primary or first goal, then those refuges should be managed at MIL 4. Carolina Sandhills NWR should not have the option of selecting a MIL 3 or 4 to assure that the maximum habitat for initial population growth is provided.

Answer: We made changes made in the text. See comment B.8.

G. Harvest Management

1. P. 10. Paragraph 2.

2. The commenter felt log landings should not be adjacent to a cluster either and to better define this. The traditional 200 foot buffer is inadequate to protect a cluster from disturbance such as log landings. Doubling that would certainly be better.

Answer: We are unaware of any factual basis for the recommendation and made no changes.

3. Even if no other access exists, new roads, temporary or otherwise, should not be constructed—or used—through a cluster during the nesting season.

Answer: We revised the text and agree that construction within clusters during the nesting season should not occur unless a Section 7 review and concurrence has been obtained.

4. No log landings are permitted within or adjacent to clusters. Please add: as the damage to tree trunks from bark scuffing in the cluster occurs due to carelessness of the loggers. In addition, the noise and activity can be detrimental.

Answer: We noted the comments and believe the Guidelines provide an adequate explanation.

5. Logging activities (outside of breeding season) near clusters should be allowed only after the RCWs leave the clusters in the morning and should cease prior to the time that RCWs will be returning to the cluster (approximately 1 hour before sundown).

Answer: We noted the comments and believe the Guidelines provide an adequate explanation.

6. If necessary, temporary roads should only be constructed on the edges of the cluster not "through the cluster." If skidding is allowed, the cavity tree must be absolutely protected from scuff marks or debarking.

Answer: See response G.3.

7. Language should be inserted to the effect that the cavity tree and the area within its drip line should be totally protected from harvesting operations.

Answer: See response G.4.

8. Timber/pulpwood sales at refuges create a negative public image and should be difficult to justify given the foraging/habitat needs of RCWs.

Answer: See response G.4.

9. The draft NWR Guidelines appear to limit the use of clearcutting to areas of <25 acres, except for the Sandhills NWR which could utilize patch sizes of 40 acres if its RCW population expands. Clearcutting may be appropriate when re-establishing longleaf pine on sites currently occupied by off-site pine and/or hardwoods. However, other silvicultural options do exist to convert off-site pines to longleaf. For example, in many of these stands, the Service could reduce the basal area of the pine overstory substantially, and underplant containerized longleaf pine. The advantages of this approach are that: (1) it is more aesthetically pleasing; (2) it requires less disturbance of the ground cover; and (3) a few off-site pines can be left as future potential cavity trees.

Answer: The Guidelines allow, i.e., do not limit, the type of management recommended by the commenter.

10. The draft NWR Guidelines appear to allow clearcutting in longleaf pine stands (page 9 and 29), though page 10 of the FONSI suggests clearcutting will only be used in converting stands back to longleaf pine. The commenter would appreciate clarification of this issue. Clearcutting in longleaf is inappropriate on the National Wildlife Refuges. Longleaf naturally grows in an uneven-aged manner (Platt et al. 1988. The population dynamics of a long-lived conifer (*Pinus palustris*). The American Naturalist 131[4]: pp. 491–525), and, as has been demonstrated throughout the South, selective timber management in longleaf pine mimics natural stand dynamics and provides excellent RCW habitat. While narrow strip cuts or small patch regeneration can be used, clearcutting should be specifically prohibited in longleaf pine on the refuges. Further, clearcutting in longleaf has the potential to fragment RCW foraging habitat leading to increased energetic requirements for the bird and increased risk of predation.

Answer: We will not generally use clearcuttting in regeneration of existing longleaf stands. Even aged regeneration systems most often used (irregular shelterwood and seed tree) require retention of a specified number of trees on each acre of forest in perpetuity.

11. No guidance is provided regarding site preparation, which can be far more disruptive to pine ecosystems than clearcutting itself. Intensive site preparation can severely damage ground cover in fire-maintained, southern pine ecosystems. This is an especially important consideration in longleaf pine and in stands that once were dominated by longleaf but now contain off-site pines. These stands may contain wiregrass or other natural vegetation depending upon past stand history. Such native vegetation is important to maintenance of the natural fire regime in southern pine and, thus, to the maintenance of RCW habitat. It also contributes significantly to the overall floral diversity of the forests. The Service should, therefore, protect such native ground cover. The commenter urges that the draft NWR Guidelines be amended to address protection of native ground cover during site preparation and/or reforestation.

Answer: We agree and revised the text to recommend using the least disruptive means of site preparation.

12. (page 25) Beyer et al, 1995 found that pine basal area (BA) had a high (R2 = .96) correlation with stem density. Requiring a minimum BA in addition to stem density seems to be redundant.

Answer: Guidelines follow the current recovery plan. We believe it would be most appropriate to effect changes through the revision of the Recovery Plan now underway.

13. (page 28) Minimum rotation ages of 100 years for slash and loblolly pine, especially for poorer sites, could result in mortality and beetle infestation. The May, 1986 Southern Forest Experiment Station publication. "Long-term strategies and research needs for managing southern forests to reduce southern pine beetle impacts" suggests rotations of 40 to 50 years. Refuge managers should be encouraged to set rotations based on prevailing sites and local conditions of beetle occurrence.

Answer: We noted the comments. Managers have the leeway to adjust rotations on a site specific basis, however, rotations of 40–50 years are too short. Sites with rotations of 40–50 years do not typically support populations of RCWss.

H. Prescribed Burning

1. P.10. Prescribed Burning: While prescribed burning may sometimes be used during the breeding season, it should definitely not be used at night in colony areas. Heat and smoke from night fires can force birds from their cavities at a time of day when they cannot see to avoid predators and such fires have been associated with bird loss/cluster abandonment. Burning during the nesting season should be avoided in colony areas under MIL 4 or 5 management.

Answer: RCWs evolved with growing season burns. The Guidelines provide adequate information.

2. P. 26. Prescribed Burning. The second paragraph is a bit distorted. The evidence suggests that natural fire would have been primarily during the breeding season and rarely during the dormant season.

Answer: We noted the comments. The time of the burn is dependent on the habitat objectives to be met.

3. Are dormant season burns really a contributing factor to the decline of RCWs? Would not a more likely cause simply be lack of burns? This sentence seems to require active-growing season burns. Why not recommend late July or August burns to avoid impacts on nesting species like Bachman's Sparrows? This would also avoid impacts on nesting RCWs. Even if this "produces the best understory control" this is not a good option for RCWs.

Answer: We believe that we adequately addressed the concern in the Guidelines.

4. A notation as to the acceptable intensity of the blaze and height of the flames might be needed to protect other trees in the cluster besides the cavity

trees. Often fires are too hot and seem to damage surrounding pines.

Answer: We noted the comments and the text needed no changes.

I. RCW Ecology

1. P. 11. A firm specified range of dates defining the extent of the breeding season is needed with the possibility of extension if needed—such as evidence of late summer or fall breeding. The commenter also disagreed with pine beetle control in a cavity cluster area during the nesting season. These can be important food resources for the birds at this time.

Answer: We added the July 31st date to the Guidelines. There is no justification for a January-February time frame. The currently proposed time frames are adequate although we may need some site-specific review. We would apply and identify group/cluster specific restrictions on a case-by-case basis.

2. P. 14. Inactive Clusters: While inactive clusters should be protected and managed and do have a higher rate of reoccupation, these need to be looked at on a case-by-case basis. The first question to be asked is "Why did abandonment occur?" If abandonment was due to habitat loss (maybe on neighboring private property) or to demographic isolation (real demographic isolation), then management potential and intensity might be different than if abandonment was due to mid-story encroachment.

Answer: We agreed and noted the comments.

3. P. 14. Abandoned Clusters: At Noxubee we have had at least one abandoned cluster reactivated after >nine years. In general, the commenter concurs with recommendations here.

Answer: We noted the comments.

4. P. 14–15. Competition should not be assumed by the presence of these other species. These species are natural components of the RCW's ecosystem and should be treated as such. Technically competition occurs only when one species causes a reduction in the fecundity of the other as a result of the two using the same resource.

Answer: We noted the comments.

5. P. 25. The cookbook approach presented in Henry (1989) will result in differing quality habitats in different geographic locations. The commenter feels that just because it's in print doesn't make it so. The commenter also feels it is also important to not automatically assume that a clan's foraging habitat will be symmetrically centered on the cavity cluster. Shape of the foraging range will depend on many factors: terrain, forest type and age, neighboring groups, presence of various disturbances, etc. In some cases, foraging habitat may include a substantial amount of non-pine—for example, one group at Noxubee NWR uses cypress extensively.

Answer: See our response to C.3.

J. Cavity Management

1. The commenter disagrees with Harlow's definition of an active cluster as one with two or more cavity trees—saying they have known several colonies with only a single cavity tree with multiple cavities. Granted more than one cavity tree is desired—but doesn't want to write-off or ignore single active nest trees.

Answer: We made changes in the text.

2. P. 20. The number of cavities provided should be the number of "acceptable cavities" provided. Some invariably are unacceptable because of gum, etc.—thus more need to be provided to compensate for those not useable by the birds.

Answer: The changes suggested were not needed since we will not intentionally prepare unacceptable cavities. If we subsequently deem some cavities unacceptable, we will prepare additional cavities.

3. Pileated woodpeckers seem to "attack" RCW cavity entrances following logging operations that remove the large trees near RCW clusters. Have their cavities been removed? Logging operations should consider the cavity trees that other species require to avoid enhancement of cavity competition.

Answer: We made changes in the text and will give priority to hardwoods with cavities.

4. The commenter feels artificial cavities should always be ready and available for use by the biologists. Artificial cavities should be available at the time cavity trees are removed because of pine beetles. There should not be a 24-hour period with no available cavities. If cavity trees for other species are also removed, there is the potential for real cavity competition. Therefore, extra suitable cavities would reduce the likelihood of competition.

Answer: We believe that the Guidelines provide adequate information. Quick installation of cavities may result in installation in trees that will later die as a result of beetle infestation.

5. In the firewood cuts at Noxubee NWR, the cavity trees for other species are marked and protected. This really seems to reduce RCW cavity competition following the removal of hardwood trees near clusters. Leaving cavity trees for other species should be addressed in the plan. Perhaps a paragraph needs to be added about cavity competition.

Answer: See response J.2.

6. Retention of cavity trees is encouraged. Other surrounding tall/mature trees should also be kept since the retained cavity trees will simply be lightening rods or vulnerable to the wind and not survive.

Answer: See response J.2.

7. In several places, 4 cavities to a cluster are mentioned. Because some cavities are unsuitable/unusable, the commenter firmly believes that each cluster should have a minimum of 6 (or 8) usable cavities available. Usable cavities (ones without flying squirrels, other birds, reptiles, etc.) should always be available; thus, a statement that 2–3 more cavities available than the number of RCWs present in a cluster would better fit the needs of the birds.

Answer: We made changes in the Guidelines to include a recommended 4–8 usable cavities.

8. When a breeding pair has a helper (3 adults in a cluster), the fledging rate is higher. Since many pairs will raise 3 young, a minimum of 6 cavities per cluster will insure maximum reproduction success and survival. In the smaller refuges this extra hour of time for insertion will repay dividends immediately in the survival of more fledglings—which is your way to increase numbers quickly. In addition, capture for translocation is easier when the RCWs roost in inserts rather than 40 to 60 feet in the air in a natural cavity. Those RCWs that have used inserts also more willingly occupy other inserts.

Answer: See response J.7.

K. Southern Pine Beetle Management

1. P. 11. Pine Beetle Suppression/Control: The number of artificial cavities installed should be greater than the number of cavities lost—not all artificial cavities are acceptable. Also, cavities unsuitable to RCWs that are destroyed may force competition with other species. The commenter urges caution and restraint relative to cutting any cavity tree—even with beetles. They know of no case of "control" of southern pine beetle (SPB), etc. that has truly saved RCWs—but know of several cases where control activities have devastated RCW habitats. The commenter would like to see documentation of control "successes relative to RCWs."

Answer: We believe the Guidelines provide adequate information.

2. P. 27. Pine beetle suppression/control. Where is the evidence that any pine beetle suppression/control efforts have ever saved a RCW cavity tree

cluster? There is a lot of evidence to the contrary. Cutting trees will definitely destroy RCW habitat. SPB are a natural and important part of the ecosystem and should be treated as such on a National Wildlife Refuge. Suppression/control efforts seem to be primarily of economic importance. Saying "spots that are active and growing" is too loose. How big is too big? Time of year is important too. A spot in early spring should be considered differently than one in late fall. The commenter disagrees with the use of pesticides near RCW trees. We now have the ability to provide replacement cavity trees as needed.

Answer: Documentation exists to support statements relative to Southern Pine Beetle control as helping RCWs on National Forest lands in Texas and on the Kisatchie National Forest in LA.

3. Are records kept or studies done on the necessity of removing cavity trees for pine beetle control? Have entire clusters been lost to pine beetle or is this just a fear that perpetuates logging?

Answer: See response K.2.

L. Forest Management

1. P. 14. Snag Retention: The sentence beginning on line 5 is important, yet is in opposition to the Midstory Control section. If you remove all hardwood trees, there will never be dead hardwoods for other species to use.

Answer: Guidelines included a discussion of midstory management including live trees. Removal of all midstory trees was not recommended. We will, therefore, produce/retain snags.

2. P. 20. Last two lines. The commenter hopes that we truly mean "all relict trees"—but suspects that we meant "all relict pines." Clarify.

Answer: We changed the text to reflect that the reference is to relict pines.

3. P. 20. Last sentence. "Reduced to at least 20 BA" is a bizarre way to state this. Do you mean no more than 20 BA" or do you mean "no less than 20 BA"? And how are you defining BA—are you counting only trees >2 inches dbh, 4 inches dbh, 10 inches dbh? Different people measure BA by different criteria.

Answer: We made changes to clarify text.

4. P. 25, bottom. #4. The specifications of stands "greater than 30 years of age and preferably >60 years of age" is too loose. While one would assume management would be for the birds, there are those who would think 30 years of age is adequate. Management on a National Wildlife Refuge should be optimum and not leave room for minimums. As far as the preferable habitat for foraging, the commenter would say >100 would be preferable to >60 years of age. With uneven age management, some older trees could/ should be on every acre of foraging habitat.

Answer: The guidelines are consistent with the recovery plan and we made no changes.

5. P. 26. Pine thinnings. Here the term BA is qualified—"60 to 80 square feet of pine BA greater than 30 years old." It has not been qualified elsewhere and the reader is left not knowing what was intended. This needs to be clarified.

Answer: We noted the comment and considered no changes in Guidelines necessary.

6. P. 26. The commenter questions the statement that timber harvests may still be appropriate when foraging habitat is limiting except in extremely dense stands. The other reasons given here could easily wait until growth has brought the habitat to the point where foraging habitat is not limiting.

Answer: We noted the comments and considered no changes in Guidelines necessary.

7. P. 28 and following relating to silvicultural methods: See the commenters above observations relative to dispersion of older trees. The commenter feels even-aged management is inappropriate in that it does not provide the habitat mosaic and landscape stability that would be provided by uneven-aged management. A scattering of trees across the landscape should be allowed to reach their natural potential longevity.

Answer: We noted the comments and believe the Guidelines will achieve this eventually through recommended management See G.10. Even aged regeneration systems that are used (irregular shelterwood and seed tree) require retention of trees on each acre in perpetuity.

8. P. 33, Clearing of RCW habitat, line 4. The implication here seems to be that clearing of habitat for road construction does not affect the future ability of a refuge to support RCWs. The commenter strongly disagrees. A road could be anything from a logging road to a 6–8-lane interstate—and anything approaching the latter could have very serious negative consequences for RCWs and their habitat. Such consequences could range from loss of acreage of forested area, to the function of a road as a barrier, to mortality of birds as a result of traffic, to reduction in the potential to use prescribed fire in management. The commenter agrees that potential RCW habitat on each refuge should not be reduced, but would add further that the reduction of any habitat on each refuge has the potential to influence the RCW. The commenter would also add that the tendency to "round" refuges by trading or selling peripheral lands in order to obtain more centralized in-holdings should be avoided. A refuge with a nice—perhaps more easily manageable compact boundary would likely support fewer RCWs than one that is more dispersed. Furthermore, the extension of fingers of habitat away from the refuge offers greater potential as dispersal corridors for birds to and from nearby forested areas on other lands.

Answer: We noted the comments and revised the guidelines.

9. The 40 BA of pine in regeneration areas must be allowed. Because Noxubee has the fourth highest current acreage and has the potential of working in cooperative agreements with several entities, their RCW population should not be relegated to "short-term" viability. Noxubee's third place in planned acreage also places this refuge higher in importance in its contributions to RCW sustainability and recovery.

Answer: We do not understand the comment. We have not relegated Noxubee National Wildlife Refuge to third and have revised the text to reflect this.

10. The commenter cannot understand any plan that removes old trees when these are the very trees that RCW's need the most at this critical time in their recovery. Minimum rotation age seems to be recommended and encouraged. Why is that? Isn't your goal maximum recovery potential? Then, encouragement of an even older rotation would allow trees to serve their function longer and the food potential would be maximized.

Answer: See response L.7. The Guidelines attempt to direct maximization of the number of trees allowed regardless of MIL. Note that a minimum of 6 trees/acre will be left at the time of cutting in perpetuity.

11. Also, page 22 of the FONSI states: "Since most seedling stage, yellow pine species are intolerant of fire, uneven-aged silviculture would be used only for longleaf pine." While most yellow pine species are intolerant of fire, uneven-aged management nonetheless can and should be used with them. Potlatch's Habitat Conservation Plan (approved by the Service), for example, documents and prescribes uneven-aged management in loblolly and shortleaf pine forests. Uneven-aged silviculture in loblolly/shortleaf forests has been well demonstrated elsewhere and has been the subject of numerous publications (e.g., James B. Baker. 1986). The Crossett farm forestry forties after 41 years of selection management. Southern Journal

of Applied Forestry 10:233–237). In addition, the above referenced sentence from the FONSI is not consistent with the draft NWR Guidelines, which specifically sanction the use of unevenaged management in all southern pine types managed for RCWs (see page 9).

Answer: We modified the FONSI to incorporate these comments.

12. (Page 32) The discussion of uneven-aged management does not address the problem of integrating fire with regeneration. As regeneration is standwide and as all southern pines, except long-leaf, are fire intolerant in the seedling and sapling stage, there appears to be no practical method of combining the practice of regular prescribed burning with all-age management, except in the longleaf type. The commenter knows of no research that has studied this problem, nor have they seen a proposed solution to the problem. It should also be noted that the research basis for the current proposals to use all-age management in longleaf pine consists of only 2 tracts, totaling 66 acres and established in 1977–78 (Farrar and Boyer, "Managing Longleaf Pine under the Selection System—Promises and Problems" 6th Biennial Southern Silvicultural Research Conference, Memphis TN, Oct. 1990).

Using uneven aged management will generally require the combined use of fire and alternative methods of competition control.

Answer: We added additional discussion of this issue to the Guidelines.

M. Foraging Habitat

1. Page 25 of the draft NWR Guidelines defines the foraging habitat criteria for the refuges and states that "foraging habitat must be greater than 30 years of age *and preferably* >60 years of age" (emphasis added). This is not consistent with the RCW Recovery Plan which calls for at least 50 acres of foraging habitat per cluster greater than 60 years. Due to no fault of the Service, some areas on the National Wildlife Refuges may not have enough >60 year old habitat to meet the Recovery Plan's standards. However, the language in the draft NWR Guidelines should clearly state that at least 50 acres of >60 year old habitat per cluster will be preserved whenever possible. Moreover, if a sufficient amount of >60 year old habitat is not available in a given refuge but can be produced, the refuge should immediately adjust harvest schedules to produce the requisite foraging habitat (the only possible exceptions are when dealing with southern pine beetle attacks or when undertaking management designed to achieve other ecological objectives).

Answer: We made changes in the text.

2. (page 25) The requirement of 6,350 stems >10″DBH within ½ mile of the cluster is based on a single unpublished study by Hooper and Lennartz. The commenter knows of no peer-reviewed and published study which supports this figure. Recent peer-reviewed research raises serious doubts as to the validity of this study and suggests that this number may be in excess of the density "optimum" to clan vigor, (James et al. 1997, Beyer et al. 1996, Hooper and Lennartz 1995, DeLotelle and Epting 1992, Wood et al. 1985). See also attached reformulation and re-analysis of the Hooper and Lennartz (1985) data which indicates a critical equivalent stem density of 2500—3500 stems rather than 6350.

Answer: We wrote the Guidelines to be consistent with the recovery plan. See also response I.5.

Authority

The authorities for this action are the Endangered Species Act (16 U.S.C. 1531 *et seq.*), The National Environmental Policy Act (42 U.S.C. 4321–4347) and the National Wildlife Refuge System Improvement Act of 1997 (Pub.L. 105–57 to be codified at 16 U.S.C. 668dd *et seq.*).

Dated: January 11, 1999.

Sam D. Hamilton,

Regional Director.

[FR Doc. 99–1687 Filed 1–25–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–090–1220–00]

Grand Gulch/Cedar Mesa, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of recreation fee structure, allocation system and prohibitions for Grand Gulch/Cedar Mesa in San Juan County, Utah.

SUMMARY: Beginning March 1, 1999, the Bureau of Land Management (BLM) will implement provisions of the 1993 Grand Gulch Plateau Cultural and Recreation Area Management Plan concerning an advanced reservation system, use limits, and permit fees. The permit area involves recreation use of the following canyons on Cedar Mesa including Grand Gulch Primitive Area, Fish, Owl, McCloyd, Road, Lime and Slickhorn Canyons. Use on the mesa tops of Cedar Mesa will not be regulated at this time. Permits will be required and fees charged from March 1 to November 30 of each year. The advanced reservation portion of the permit system will be in effect during the primary visitation season only, from March 1 to June 15, but may be extended in the future as need dictates. Advanced reservations will be accepted, for this time period, by phone or mail to the Monticello BLM office starting January 1, 1999. Day use of the canyons will require a day use pass or multi-day use pass (7 days), for which a fee is charged, from March 1 to November 30.

The permit requirement, because it is based on an allocation of the number of people per trailhead (Grand Gulch) or per canyon (other Cedar Mesa canyons), will help to decrease in-canyon use during the primary visitation season, and to monitor use at other times of the year.

Fees collected from individual, non-commercial visitors will be used to augment protection of Cedar Mesa's outstanding cultural and primitive recreation values. Notice is also given that campfires will be prohibited within any canyon on Cedar Mesa.

SUPPLEMENTARY INFORMATION: Cedar Mesa has long been identified with world class Ancestral Puebloan cultural remains and excellent day hiking and backpacking opportunities. Grand Gulch itself has been managed to protect these values since 1970 when the Secretary of the Interior designated it as a Primitive Area. The other canyons were protected within the Cedar Mesa Area of Critical Environmental Concern in the 1991 San Juan Resource Management Plan (RMP). In recognition of increasing recreational visitation and declining resource conditions, the BLM developed the Grand Gulch Plateau Cultural and Recreation Area Management Plan in 1993. In 1991, individual self-serve permits, advanced reservations for pack stock and larger foot parties, and fees were first established for Grand Gulch. The actions outlined in this **Federal Register** Notice are a continuation and implementation of direction established in the Grand Gulch Plateau Plan.

The fee for either day use or overnight non-commercial recreation use of the Cedar Mesa Canyons must be paid before entering. The day use fee ($2/person/day) can be paid at the Kane Gulch Ranger Station or at fee tubes placed at the trailheads. A multi-day use pass ($5/person for a 7 day pass) may be obtained at Kane Gulch or through the Monticello BLM office. Advanced overnight reservations ($8/person/trip) may be made through the Monticello

BLM office, and may be paid for by credit card, personal check or money order. Overnight walk-in permits are available only at Kane Gulch for $5/person/trip. Groups of 8–12 and pack and saddle stock supported visitors still require an advance reservation permit during the permit season, obtainable from the Monticello BLM office.

Due to concerns for public safety, resource damage and cultural resources protection, campfires will be prohibited within any canyon on Cedar Mesa. Campfires may still be used on the mesa tops of Cedar Mesa.

Failure to pay any fee, failure to obtain a permit, or operating with an expired permit on Cedar Mesa will make that person responsible under resource and land damages identified in 43 CFR 9268.3 and is punishable under 43 CFR 8372.0–7 pursuant to the Federal Land Policy and Management Act of 1976, and other laws when applicable.

FOR FURTHER INFORMATION CONTACT: Philip Gezon, Outdoor Recreation Planner, Bureau of Land Management, Monticello Field Office, P.O. Box 7, Monticello, Utah 84535 (435) 587–1519.

Dated: January 15, 1999.

G. William Lamb,

Utah State Director.

[FR Doc. 99–1693 Filed 1–25–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Solid Minerals Operational Model (OMB Control Number 1010–0120), which expires on June 30, 1999.

FORM: None.

DATES: Written comments should be received on or before March 29, 1999.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information which expires June 30, 1999. We are requesting OMB approval for a 3 year extension of this existing collection authority. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior is responsible for the collection of royalties from leases producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws.

MMS performs these royalty management functions for the Secretary. When a company or an individual enters into a contract or lease to develop, mine, and dispose of Federal or Indian minerals, that company or individual (the respondent) agrees to pay the appropriate royalty due based upon gross proceeds received from the sale of production from the leased lands. Royalty rates are specified in the lease agreement.

Specific lease language varies; however, respondents agree by the lease terms to furnish statements providing the details of all operations conducted on a lease and the quantity and quality of all production from the lease at such times and in such form as the Secretary may prescribe. Rules require respondents to provide accurate, complete, and timely reports for all minerals produced, in the manner and form prescribed by MMS in 30 CFR part 210, subpart E, and part 216, subpart A.

In order to facilitate the collection of information listed above, MMS currently requires the submission of eight separate forms. Respondents are also required to resubmit each of these forms to correct any errors which may have occurred on previous submissions of required information. These eight forms are:

- Form MMS–2014, Report of Sales and Royalty Remittance—payors report all royalty and lease-level transactions.
- Form MMS–4030, Payor Information Form (PIF)—establishes and maintains payor accounts required for processing Form MMS–2014.
- Form MMS–4050, Mine Information Form (MIF)—establishes and maintains mine-level production reporting.
- Form MMS–4051, Facility and Measurement Information Form (FMIF)—establishes and maintains facilities in the volume-tracking system including identifying key sales/transfer measurement points that are required to track production and identify all secondary processing and remote storage facilities.
- Form MMS–4059–A, Solid Minerals Operations Report, Part A (SMOR–A)—identifies the quantity and quality of all raw material produced from each Federal or Indian lease; specifies the disposition of those raw materials including sales, transfers, and adjustments; and tracks raw material inventories.
- Form MMS–4059–B, Solid Minerals Operations Report, Part B (SMOR–B)—allocates sales from a secondary processing or remote storage facility back to individual Federal or Indian leases within a mine.
- Form MMS–4060–A, Solid Minerals Facilities Report, Part A (SMFR–A)—provides detailed information on a secondary processing facilities' inputs/outputs.
- Form MMS–4060–B, Solid Minerals Facilities Report, Part B (SMFR–B)—shows a secondary processing or remote storage facility raw material receipts, production, inventory, and disposition.

In April 1997, we decided to conduct an in-depth reengineering of all our core business processes, and we decided to proceed with three operational models (offshore, onshore, and solid minerals) that will test the proposed reengineered business processes. The solid minerals operational model will initially include reporting from 15 mines owned by four major coal mining companies and one major sodium mining company; the companies volunteered to participate in the project.

In the solid minerals operational model, we will focus on the collection of production, royalty, and valuation data, while streamlining reporting requirements. We will test three reporting formats in the solid minerals operational model. The participating

companies will submit "parallel" reporting formats during the operational model. They will continue to submit all currently required forms and will also submit the three new reporting formats. We anticipate that these three new reporting formats will replace the eight currently submitted forms listed above.

We have combined six of the current forms into one monthly submission titled Form MMS–4430, Production and Royalty Report. We have combined two forms, Forms MMS–4060–A and MMS–4060–B, into a quarterly information collection titled Form MMS–4431, Facility Report. We have also developed a new quarterly Form MMS–4432, Marketing Profile Report, to obtain necessary contract information from respondents. The profile report will alert us to possible compliance problems at the beginning of the audit process, thereby allowing us to provide more timely resolution.

We will collect the production, royalty, and valuation data using information technology. The information collected will be used to support:

• Distribution and Disbursement. We must match the royalty payment submitted on Form MMS–2014 to the Production and Royalty Report, maintain lease accounts of payments, and ensure the distribution of data and disbursement of monies to our revenue recipients.

• Compliance and Asset Management Processes. We must determine areas not in compliance for a lease or mine sooner than the current processes allow. The Production and Royalty Report format is designed to give us the basic volume and valuation information necessary to begin these compliance activities so that we may compare it to the Facility Report and Market Profile Report formats.

• Monitoring Allowances and Off-site Activity. We must monitor allowance deductions and off-site inventory and sales. Companies maintain electronic data files of this information as a normal course of business. We propose to download the data from these company-maintained files to our compliance data systems. Our intent is to minimize the information collection burden on industry respondents as well as ourselves.

• The Bureau of Land Management (BLM) Production Verification, Diligent Development, and Recoverable Reserves Calculations. We must make facility data available on-line to all BLM, the Bureau of Indian Affairs, Tribes, and State Audit offices. During the operational model, we will refine the data provided on the Facility Report to ensure BLM can perform these processes, including monitoring plant efficiencies, maximum recovery and secondary product inventories.

• Compliance and Asset Management Processes. We will require the submission of supplemental information (Marketing Profile Report) be submitted to facilitate the compliance aspect of our reengineering efforts. The Marketing Profile Report information will be an integral part of the Compliance and Asset Management process being developed in the operational model. We will use this information to verify royalty value and augment monitoring and detection of compliance problems on those mines. This information will only be collected from those reporters whose royalties are based on gross proceeds or who sell products beyond the mine site.

To determine a reasonable hourly reporting burden using the new reports of the operational model, we started with the current reporting burden for the eight forms and, based on the elimination of some reporting functions and the corresponding reduction in reporting burden, we calculated the reduced burden for the three new reports. Approximately 90 coal mines currently report Federal lease production, and we receive an average of 12,000 coal financial data lines annually, 11 lines per month per reporting mine. We estimate that 2 minutes are spent on each line that is reported electronically, or 22 minutes for reporting royalty data to MMS per month per mine. We also estimate that a company spends 1.5 hours per month preparing and submitting their production data. Therefore, the reporting burden for both the financial and production data for the current system is approximately 2 hours per month per mine.

Using the new Production and Royalty Report, a respondent's reporting burden will be reduced. Adjustments made to correct previously reported information will be "netted" so that only one line will be reported rather then the two lines—the original, incorrect line and the new, corrected line—that are currently reported. Adjustment lines constitute 76 percent of the financial data submitted. Since respondents will no longer need to "back out" a reported line, their reporting burden for adjustment lines is reduced by one-half. The reporting burden is again reduced because only production by lease is reported, eliminating inventory calculations and transfer amounts which will be calculated automatically. We estimate that the reporting burden for both the financial and production data for the solid minerals operational model will be reduced to 1 hour per month per mine.

The Facility Report requires information that is readily available to each mining company from their files, and we estimate that the reporting burden is 15 minutes per month per mine.

The Marketing Profile Report requires up to 27 lines of input each quarter, although much of the information will generally not change from one quarter to the next. The information required is readily available to each mining company from their own files, and we estimate that the reporting burden is 45 minutes to fill out this form each quarter or 15 minutes per month per mine.

The total annual reporting burden associated with these three new reports for the solid minerals operational model (5 companies reporting on 15 mines) is 270 hours (1.5 hours per month × 12 months × 15 mines).

Dated: January 20, 1999.

Joan Killgore,

Acting Associate Director for Royalty Management.

[FR Doc. 99–1686 Filed 1–25–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Change In Noise Evaluation Methodology for Air Tour Operations Over Grand Canyon National Park

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: As part of its implementation actions to achieve the objectives of Public Law 100–91 regarding the substantial restoration of natural quiet at Grand Canyon National Park (GCNP), including current rulemaking [and environmental assessment actions], the National Park Service (NPS) is working cooperatively with the Federal Aviation Administration (FAA) on further actions to aid that restoration as well as planning for the development of a comprehensive noise management plan for air tour operations over GCNP. NPS previously determined that in order to substantially restore natural quiet to GCNP, at least 50 percent of the park must achieve "natural quiet" (i.e., no aircraft audible) for 75 to 100 percent of the day. The reasonableness and validity of this standard was upheld by the United States Court of Appeals for the District of Columbia in 1998.

In previous environmental assessments related to GCNP

rulemaking since 1996, a single threshold of the average natural ambient sound level plus 3 decibels was applied through the FAA Integrated Noise Model to estimate the percent of time that air tour aircraft would be noticeable under each action alternative. In light of its experience and additional information, NPS is now refining its methodology used to evaluate the achievement of its natural quiet restoration standard.

Particularly, the NPS refinements contemplate a two-zone system for evaluating achievement of the natural quiet standard. The zones reflect more accurately the differences in geography, facilities development, and regulatory restraints of specific geographic areas of GCNP and allow noise thresholds to be tailored to the circumstances of each zone. The refinements apply only to evaluation methodology; the standard for substantial restoration of natural quiet remains unchanged.

This notice seeks public comment on the refinements to NPS's evaluation methodology, i.e., the two-zone system and the noise thresholds to be applied to the zones. Additional matters concerning the GCNP comprehensive noise management plan for air tour operations will be addressed in subsequent public notices, including, but not limited to, a model validation study and a noise monitoring strategy.

DATES: Comments must be received on or before March 20, 1999.

ADDRESSES: Comments may be delivered or mailed, in triplicate, to, the National Park Service, attention: Tom Hale, National Park Service, Grand Canyon Science Center, P.O. Box 129, Grand Canyon, Arizona 86023.

FOR FURTHER INFORMATION CONTACT: Tom Hale (520–556–7219).

SUPPLEMENTARY INFORMATION

Background

Section 3 of Public Law 100–91 (Overflights Act) states that noise associated with aircraft overflights at Grand Canyon National Park (GCNP) is causing a significant adverse effect on the natural quiet and the experience of GCNP. The statute directed the Secretary of the Interior (Secretary) to make recommendations to the Administrator of the FAA for the development of a plan for management of air traffic in the air space above GCNP for the purposes, among other matters, of providing substantial restoration to the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight. The FAA is charged with implementing these recommendations without change unless it determines that they would adversely affect aviation safety.

A plan intended to achieve these purposes was established by FAA in 1988 with the adoption of Special Federal Aviation Regulation (SFAR) No. 50–2. SFAR 50–2 established minimum altitudes, four flight free zones, and special routes for commercial air-tour operators over the park.

In 1994, as required by the Overflights Act, the Secretary submitted to the Congress a report, developed by NPS, regarding overflights over units of the national park system in general. The "Report on the Effects of Aircraft Overflights on the National Park System" (Report), reviewed the effectiveness of SFAR 50–2 and offered a new set of recommendations for further regulatory action by FAA. The Report concluded that SFAR 50–2 had not succeeded in substantially restoring natural quiet to GCNP noting, particularly, that the level of commercial air-tour operations (and consequent aircraft noise) at GCNP had increased since 1988 and was likely to continue to increase under SFAR 50–2. The Report recommended simplification of the existing commercial air-tour route structure, expansion of flight free zones, phased implementation of quieter aircraft technology, consideration of limits on aircraft operations or noise, and the imposition of temporal curfews on commercial air-tour overflights.

In addition, the Report determined the threshold value for the substantial restoration of natural quiet: 50% or more of the park must achieve "natural quiet" (i.e., no aircraft audible) for 75–100 percent of the day. "Natural quiet" is a park resource defined as the natural ambient sound conditions found in national park units. It describes the natural sound conditions found in national parks when people with normal hearing can perceive nothing but the sounds produced by the natural and cultural components of the parks.

On April 22, 1996, in an Executive Memorandum, the President required the Secretary of Transportation, in consultation with the Secretary of the Interior and the National Park Service, to issue regulations "to place appropriate limits on sightseeing aircraft over the Grand Canyon National Park to reduce the noise immediately and make further substantial progress toward restoration of natural quiet, as defined by the Secretary of the Interior, while maintaining aviation safety in accordance with the Overflights Act (Pub. L. 100–91)."

In response, on December 31, 1996, the FAA published a Final Rule amending part 93 of Federal Aviation Regulations by adding a new subpart (Subpart U) to codify the provisions of Special Federal Aviation Regulation (SFAR) 50–2, Special Flight Rules in the Vicinity of GCNP (61 FR No. 252, pages 69302–69333) modifying the dimensions of the GCNP Special Flight Rules Area; establishing new and modifying existing flight corridors and flight free zones; establishing reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area; restricting flights in Zuni and Dragon Corridors during certain time periods (curfews); and limiting the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area (cap). Subsequently, it became necessary to delay implementation of several of the rule's provisions to continue consultation with Indian tribes on routes and address problems with the cap on sightseeing operations. As a result, the reporting requirements, curfews, and cap on aircraft numbers are in effect, but modification of the Special Flight Rules Area and the flight free zones will not be completed until decisions on air tour routes can be finalized.

In addition, on December 31, 1996, FAA published a notice of a proposed rulemaking regarding additional noise limitations for aircraft operations in the vicinity of GCNP (61 FR No. 252, pages 69334–69355). Then, on December 31, 1996, FAA issued proposed air-tour routes for GCNP (61 FR No. 252, pages 69356–69357). These latter actions have not been finalized. The FAA has initiated other actions since that time, notably delaying implementation of certain sections of the final rule to allow the FAA and the Department of Interior to consider comments and suggestions to improve the proposed route structure. Complete background information on these and other actions taken by the FAA may be found in the **Federal Register** Vol. 63, No. 234, pages 67544–67546.

The preamble to Subpart U, in addition to discussing the need for the rule, states that FAA and NPS are committed to the development of a noise management plan for GCNP related to air tour operations. This plan is intended to provide for a more adaptive management approach, full resolution of all monitoring and modeling issues, additional public input, and the provision of improved incentives to invest in noise efficient aircraft. The GCNP noise management plan is intended to ensure development of a flexible and adaptive approach to noise mitigation and management, and,

among other matters, will address validation and documentation of the most effective way(s) to monitor and model aircraft noise in GCNP.

Discussion

As part of its preparation for developing the GCNP air tour noise management plan, the NPS has reexamined the current methodology for evaluating the substantial restoration of natural quiet in GCNP.

As previously noted, the NPS determined in 1994 that the threshold for substantially restoring natural quiet to GCNP required that 50% or more of the park must achieve natural quiet (i.e., no audible aircraft), for 75–100% of the day.

The methodology previously used to evaluate the achievement of the substantial restoration of natural quiet under this standard treated the entirety of GCNP as one area and applied a single noise threshold to the entire area. The threshold used was the average natural ambient (multiple levels based on vegetative cover from the best available acoustic data set) plus 3 decibels, otherwise known as noticeability. Noticeability is defined as the level at which visitors engaged in activities other than contemplation of the national park are likely to hear aircraft noise. This threshold was used in calculating the percentage of the day and the percentage of GCNP that aircraft noise would be noticeable. And the threshold was used irrespective of differences in geography, development circumstances, or regulatory restraints of particular areas of the park, and, irrespective of the fact that it might be appropriate to apply different noise thresholds to different parts of GCNP to reflect such differing circumstances.

Based on further review and the experience of NPS and FAA in applying the current aircraft noise evaluation methodology, the NPS believes the current methodology should be refined to take into account the characteristics of specific areas of GCNP and to utilize different noise thresholds where appropriate.

Particularly, NPS is refining the current evaluation methodology by incorporating a two-zone geographic system with different noise thresholds applicable to the circumstances of each of the two zones.

In this connection, NPS, acting for the Secretary, is charged with the management of areas of the National Park System. It is the responsibility of NPS to preserve park areas and to provide for their enjoyment in a manner that will leave them unimpaired for the enjoyment of future generations. Preserving and maintaining natural and cultural "soundscapes" in areas of the national park system is a component of this responsibility. A concern for the achievement of the "substantial restoration of natural quiet" in GCNP is analogous to concerns regarding the preservation of wildlife, historic structures or ecosystems that are significant features of parks. As part of its mandate, the NPS seeks to make available the opportunity to experience the natural features of park areas with as little evidence of human activity, visible or audible, as possible.

All of the larger natural area parks are zoned by NPS for differing uses and differing levels of resource protection based upon park purpose and other mandates, and differing levels of development to serve visitors. In general, a park's frontcountry has facilities, roads, parking lots and commercial services to provide necessary and appropriate visitor needs, while the backcountry, whether a wilderness area or not, has only trails for use by visitors.

A similar planning methodology is now proposed to be adopted by NPS with respect to the substantial restoration of "natural quiet" at GCNP. Under this methodology for Grand Canyon, Zone One would be composed of (1) the developed areas of GCNP as identified in GCNP's 1995 General Management Plan, encompassing, on the South Rim, the area from approximately Desert View to Hermits Rest, and, on the North Rim, the developed area on Bright Angel Point; (2) the Sanup Flight Free Zone; and (3), the Marble Canyon Sector. Zone One comprises approximately one-third of the area of GCNP.

The developed areas included in Zone One for this purpose are generally those delineated as "Developed Areas" on the Management Zones map in the 1995 GCNP General Management Plan. Exceptions include (a) Tuweep and Phantom Ranch which are excluded from Zone One because they are managed to more primitive standards than the other developed areas; and (b) the North Rim paved roads because they are surrounded by proposed wilderness areas and because the roads and utility corridors are too narrow (approximately 600 feet) for practical noise and impact modeling on the scales involved. Only the Bright Angel Point developed area is included in Zone One on the North Rim. For Zone One on the South Rim, the system of developed areas, roads, and utility corridors is blocked into a single contiguous unit. This unit extends from the rim to the southern boundary of GCNP and from Hermit's Rest to Desert View.

The North and South Rim developed areas as described above are included in Zone One in recognition of the greater amount of human activity and consequent more limited expectations of natural quiet in these areas as opposed to undeveloped areas of the park. The area west Whitmore Rapid is included in Zone One because the relatively low designated aircraft ceiling of the Sanup Flight-free Zone (7999 feet, MSL), needed for safe transit of the area by general aviation, limits the ability of the flight-free zone to provide acoustic protection to this area.

The Marble Canyon Sector is included in Zone One because the narrowness of Marble Canyon and the SFRA boundary effectively preclude acoustic protection of the canyon floor and river area, and because it is not feasible to establish a flight-free zone while still providing for safe transit of the area by general aviation traffic.

Zone Two would encompass, in a large contiguous area in the center of GCNP, approximately two-thirds of the park's area. The two zones are shown on the map accompanying this notice.

Under this proposal, the noise threshold for Zone One is set at 3 decibels above the average natural ambient sound levels (A-weighted) found to exist in these areas of the park as determined by previous scientific acoustic measurement studies. This is the same as the single standard used in previous evaluations (i.e., noticeability).

The threshold for Zone Two is proposed to be different because data collected at GCNP indicates that technicians monitoring the sound environment identified aircraft noise levels at levels significantly below A-weighted natural ambient levels. These technicians, tested to have normal hearing, were listening actively to note the source of noise levels as the source changed over time, noting, for example, whether the noise source was the natural ambient environment or one or more of a variety of human sources such as aircraft or vehicles. The level at which an attentive listener, such as these technicians, can begin to hear a noise source is the only objective point from which the amount of time the source is audible can be measured; it incorporates the masking level natural ambient environment, including wind. Park visitors, sitting quietly but actively seeking to experience the natural quiet and solitude of the park, were key people that NPS decision-makers had in mind concerning the phrase "no aircraft audible" in the natural quiet standard. However, with a noise threshold of 3

decibels above average natural ambient sound levels, the NPS learned that such persons could potentially hear aircraft as much as 100% of the time at levels lower than that threshold. The NPS considers this standard to be inappropriate for the whole park.

The technicians identified aircraft noise at A-weighted levels of 8–12 decibels below the average A-weighted natural ambient sound levels, depending upon aircraft type. Therefore, the threshold for Zone Two is set at 8 decibels below the average ambient sound levels, a threshold which reflects the point at which aviation noise can be heard (i.e., audible) by ground visitors seeking to experience the natural and cultural soundscapes of national parks.

The legislative history of Public Law 100–91 confirms that the purpose of flight-free zones is to provide a location where visitors can experience the park essentially free from aircraft sound intrusions. The aerial extent of these zones will also be adequate to ensure that sound from aircraft flying adjacent is not detectable from most locations within the zones. It is within these flight-free zones that substantial restoration of natural quiet is expected to be achieved.

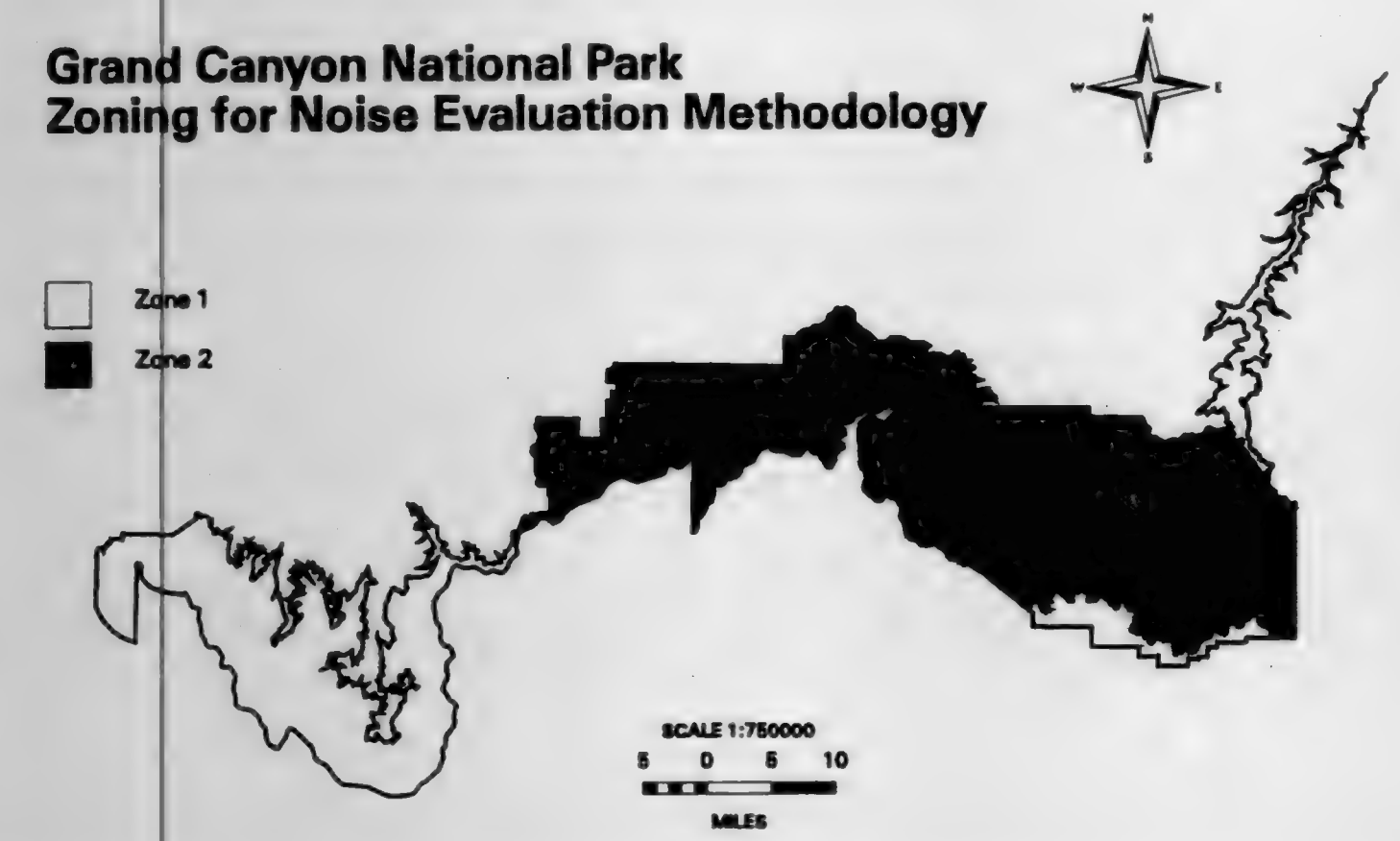
NPS considers that adoption of these changes to its noise evaluation methodology for GCNP will result in more accurate and realistic means to evaluate the substantial restoration of natural quiet in GCNP consistent with the NPS Report to Congress. The Report defined the substantial restoration of natural quiet using a noise evaluation standard based upon the sound level at which a person with normal hearing can hear aircraft noise.

The NPS and the FAA will use this refined methodology in future evaluations of the substantial restoration of natural quiet at GCNP, unless science or public planning processes provides better approaches. These refinements of the evaluation methodology may make more challenging the efforts to achieve the substantial restoration of natural quiet in GCNP. However, the use of the two noise thresholds and two geographic zones will better achieve the preservation of the GCNP resources and visitor experiences the NPS is charged to protect.

Jaqueline Lowie,

Deputy Director.

Grand Canyon National Park Zoning for Noise Evaluation Methodology



[FR Doc. 99–1685 Filed 1–25–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 16, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 10, 1999.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Autauga County

Bell House, 550 Upper Kingston Rd., Prattville, 99000150

Clarke County

Thomasville Historic District (Clark County MRA), Roughly bounded by AL 43, 1145

W. Front St., Wilson St., and 818 W. Third St., Thomasville, 99000151

Jefferson County

Roebuck Springs Historic District, Roughly off of Blountsville Cty Rd., Birmingham, 99000149

Morgan County

New Decatur—Albany Historic District (Boundary Increase), 136 First Ave. NE, Decatur, 99000148

ARKANSAS

Hot Spring County, Pine Bluff Street Historic District, Pine Bluff St., roughly from Bois D'Arc to McNeal St., Malvern, 99000154

Independence County

Hulsey Bend School, Freeze Bend Rd., 0.7 mi. E of jct of AR 122 and AR 14, Oil Trough vicinity, 99000153

Lincoln County

Star City Commercial Historic District (Civil War Commemorative Sculpture MPS), Roughly along Jefferson and Bradley Sts., Star City, 99000152

Miller County

Wadley, J.K., House, 618 Pecan St., Texarkana vicinity, 99000155

Sharp County

Graham, Fred House (Hardy, Arkansas MPS), US 62, W of jct. with Springwood Rd., Hardy, 99000157
Tucker, Carrie, House (Hardy, Arkansas MPS), US 62/63, E of jct. with Echo Ln., Hardy, 99000156

CALIFORNIA

San Diego County

Georgia Stree Bridge—Caltrans Bridge, Georgia St. and University Ave., bet. Florida St. and Park Blvd., San Diego, 99000158

FLORIDA

Volusia County

Daytona Beach Bandshell and Oceanfront Park Complex (Daytona Beach MPS), Ocean Ave., N of jct. of Main St. and Atlantic, Daytona Beach, 99000159

GEORGIA

Emanuel County

First Methodist Episcopal Church, Jct. of Third Ave. and Third St., Stillmore, 99000160

Fulton County

Midtown Historic District, Roughly bounded by 10th St., Ponce de Leon Ave., Piedmont Ave., and Lakeview Ave., Atlanta, 99000161

ILLINOIS

Cook County

Building at 900 West Lake Street, 900 W. Lake St., Chicago, 99000163
Lakewood Balmoral Historic District, Bounded by Magnolia, Wayne, Foster, and Bryn Mawr Aves., Chicago, 99000162

Kane County

Country Tea Room, 14N630 IL 25, East Dundee vicinity, 99000164

Montgomery County

Litchfield Public Library (Illinois Carnegie Libraries MPS), 400 N. State St., Litchfield, 99000165

INDIANA

St. Joseph County

Bergan, W.N.—J.C. Lauber Co. Building (East Bank MPS), 502–504 E. La Salle St., South Bend, 9900180
East Washington Street Historic District (East Bank MPS), Roughly between E. Colfax and E. Washington Sts., and St. Louis Ave. and Eddy St., South Bend, 99000182
Egan, Maurice, House (East Bank MPS), 1136 N. Notre Dame Ave., South Bend, 99000175
Fire House No. 3 (East Bank MPS), 219 N. Hill St., South Bend, 99000177
Fire House No. 7 (East Bank MPS), 803 N. Notre Dame Ave., South Bend, 99000170
Hoban, Martin, House (East Bank MPS), 205 N. St. Louis Blvd., South Bend, 99000171
Holden, Mabel, House (East Bank MPS), 1104 N. Notre Dame Ave., South Bend, 99000176
Howard Park Historic District (East Bank MPS), roughly between E. Jefferson and Wayne Sts., N. Eddy and the St. Joseph R., South Bend, 99000169
I and M Electric Co. Building—Transformer House and Garage (East Bank MPS), 401 E. Colfax and 312 E. La Salle Sts., South Bend, 99000173
La Salle Street Bridge (East Bank MPS), La Salle St., over the St. Joseph R., South Bend, 99000181
McCormick, Charles, Building (East Bank MPS), 526–532 E. Colfax Ave., South Bend, 99000178
Singer Manufacturing—South Bend Lathe Co. Historic District (East Bank MPS), Madison St. between N. Niles Ave. and St. Joseph R., South Bend, 99000174
Sommerer House (East Bank MPS), 415 Parry St., South Bend, 99000172
St. Joseph School (East Bank MPS), 210 N. Hill St., South Bend, 99000179

LOUISIANA

Ascension Parish

Fort Butler, Address Restricted, Donaldsonville vicinity, 99000183

Lafourche Parish

Nicholls, Francis T., Junior College Main Building, 906 LA 1 E, Thibodaux, 99000184

MASSACHUSETTS

Barnstable County

Universalist Society Meetinghouse, 3 River Rd., Orleans, 99000186

Dukes County

Gay Head—Aquinnah Town Center Historic District, South Rd. and Church St., Aquinnah, 99000187

Worcester County

Bancroft Memorial Library, 50 Hopedale St., Hopedale, 99000188
Upton Town Hall, 1 Main St., Upton, 99000185

MINNESOTA

Morrison County

Stanchfield Logging Camp (Commercial Logging in Minnesota MPS) Address Restricted, Little Falls vicinity, 99000190

St. Louis County

Bull-of-the-Woods Logging Scow (Shipwrecks of Minnesota's Inland Lakes and Rivers MPS) Address Restricted, Morse Township vicinity, 99000189

Scott County

Inyan Ceyaka Otonwe, Address Restricted, Louisville Township vicinity, 99000191

NEW JERSEY

Passaic County

Paterson Downtown Commercial Historic District, Roughly bounded by Patterson, Ward and Gross Sts., and Hamilton Ave., Paterson, 99000192

NEW YORK

Cattaraugus County

First Congregational Church of Otto, 9019 Main St., Otto, 99000194

New York County

Houses at 1026–1028 Fifth Ave., 1026–1028 Fifth Ave., New York, 99000197
Prince George Hotel, 10–20 E. 28th and 17–19 E. 27 Sts., New York, 99000195

Steuben County

Northrup Hill School District 10, Learn Rd., Rathbone, 99000196

Westchester County

Lord and Burnham Building, 2 Main St., Irvington, 99000193

NORTH CAROLINA

Robeson County

Maxton Historic District, Roughly bounded by Graham St., Martin Luther King Dr., McCaskill St., and Florence St., Maxton, 99000199

Rowan County

Grubb—Sigmon—Weisiger House, 213 McCoy Rd., Salisbury, 99000198

SOUTH CAROLINA

Anderson County

Shirley, Obediah, House, Bagwell Rd., Honea Path, 99000201

Marlboro County

James, William Apollos, House, 208 N. Dennis Ave., Bishopville, 99000200

SOUTH DAKOTA

Brookings County

Brookings University Residential Historic District, Roughly bounded by Harvey Dunn St., Medary Ave., Sixth St., and Main Ave., Brookings, 99000210

Buffalo County

Bank of Buffalo County, Main St., Gann Valley, 99000206

Duncan Church, SW of Crow Creek, 2 mi. S of Cty line, Gann Valley vicinity, 99000207
Viereck Barn, 1.5 mi. W of SD 45, Gann Valley vicinity, 99000211

Fall River County

Petty House, 201 N. Third St., Hot Springs, 99000202

Kingsbury County

Ruth, Thomas, H. House, 209 Poinset Ave., DeSmet, 99000212

Lake County

St. Williams Catholic Church, Third St., Ramona vicinity, 99000203

Lawrence County

Spearfish Post Office (Old) (Federal Relief Construction in South Dakota MPS), 526 Main St., Spearfish, 99000205

Minnehaha County

Old Courthouse and Warehouse District (Boundary Increase), Roughly bounded by N. Dakota Ave., 4th St., the Big Sioux R., and 7th St., Sioux Falls, 99000204

Walworth County

Mobridge State Bank, 123 Main St., Mobridge, 99000208

TENNESSEE

Montgomery County

Dunlop Milling Company (Clarksville MPS), 1138 Franklin St., Clarksville, 99000213

UTAH

Summit County

St. John's Swedish Lutheran Church, 323 Park Ave., Park City, 99000217

Wasatch County

Clotworthy—McMillan House, 261 S. Main St., Heber City, 99000216

Washington County

Leavitt, Lemuel and Mary Ann, House (Santa Clara, Utah MPS), 1408 Quail, Santa Clara, 99000215
Reber, Frederick, Jr., and Mary F., House (Santa Clara, Utah MPS), 3334 Hamblin Dr., Santa Clara, 99000214

VERMONT

Addison County

Fletcher, Paris and Anna, House, VT 22A, N of jct. with Middle Rd., Bridport, 99000218

[FR Doc. 99–1691 Filed 1–25–99; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Trinity River Basin Fish and Wildlife Task Force; Notice of Establishment

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the Trinity River Basin Fish and Wildlife Task Force (Task Force). The purpose of the Task Force is to assist the Secretary of the Interior in formulating and implementing a Trinity River watershed ecosystem management program for fish and wildlife. This ecosystem management program will incorporate the needs of multiple species and their interactions with physical habitats to assist the Secretary in restoring the natural function, structure, and species composition of the ecosystem, recognizing that all components are interrelated. The Task Force will advise the Secretary on (1) rehabilitation proposals for the Trinity River and its tributaries, (2) ways to increase the effectiveness of the Trinity River Fish Hatchery, and (3) on the establishment of an adaptive management program to monitor fish and wildlife populations and the effectiveness of the rehabilitation work.

Further information regarding the Task Force, including nominations for membership, may be obtained from the Bureau of Reclamation, Department of the Interior, 1849 C Street, NW, Washington, DC 20240. You may also call Bernice Sullivan, Trinity-Klamath Watershed Program Coordinator, at (916) 978–5113.

The certification of establishment is published below:

Certification

I hereby certify that establishment of the Trinity River Basin Fish and Wildlife Task Force is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–1680 Filed 1–25–99; 8:45 am]
BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Contra Costa Water District's Future Use and Operation of Contra Loma Reservoir Project, Contra Costa County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft environmental impact report/draft environmental impact statement (DEIR/DEIS). INT—DES 99–1.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD) have prepared a joint DEIR/DEIS for CCWD's future use and operation of Contra Loma Reservoir Project. The proposed action is for CCWD to comply with a California State Department of Health Services order requiring either that recreational body contact activities in Contra Loma Reservoir (Reservoir) cease, or that CCWD stop using the reservoir for domestic water supply storage. CCWD's proposal would permanently stop body contact activities in the Reservoir in September 1999, and would construct a lagoon within the existing Reservoir to allow swimming and certain other activities. This project would enable CCWD to continue using the Reservoir for its historic domestic water supply purposes, including use for meeting peaking requirements and for system reliability during shutdowns and other emergencies. Action taken by Reclamation would allow CCWD to implement the proposal on lands owned by the United States at the reservoir. The DEIR/DEIS describes and presents the environmental effects of five alternatives, including two no-action alternatives. A public hearing will be held to receive comments from interested parties, organizations, and individuals on the environmental impacts of the proposal.

DATES: Submit written comments on the DEIR/DEIS on or before March 25, 1999. Comments may be submitted to Reclamation or CCWD at the addresses provided below. The public hearing on the DEIR/DEIS will be held on February 18, 1999, at 7:00 p.m.

ADDRESSES: The public hearing will be held at the Antioch Senior Center, 415 W. Second Street in Antioch, California.

Written comments on the DEIR/DEIS should be addressed to Ms. Fran Garland, Contra Costa Water District, 2300 Stanwell Drive, Suite A, Concord CA 94524, or to Mr. Bob Eckart at the Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825.

Copies of the DEIR/DEIS may be requested from Ms. Garland at the above address or by calling (925) 688–8312.

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the DEIR/DEIS are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Eckart, Bureau of Reclamation, at (916) 978–5051, or Ms. Fran Garland, Contra Costa Water District, at (925) 688–8312.

SUPPLEMENTARY INFORMATION: The proposed action includes the continued use of Contra Loma Reservoir

(Reservoir) as a drinking water supply and the construction of a separate swimming lagoon (lagoon) within the existing reservoir footprint. A concrete-covered earthen berm would physically separate the lagoon from the main portion of the 80-acre reservoir. Water in the lagoon would be pumped, filtered, and treated to appropriate water quality standards for recreation use. This project would allow existing drinking water and swimming uses to continue at the Reservoir.

The action is proposed in response to an Order from the California State Department of Health Services requiring CCWD, as the water supplier, to either cease using the reservoir as a drinking water supply or eliminate body contact recreation activities occurring in it. The purpose of this action is to respond to the Order while allowing existing drinking water supply use to continue and maintaining the existing recreation activities at the Reservoir to the extent feasible. Recreation facilities at Contra Loma Reservoir are operated by the East Bay Regional Park District under an agreement with Reclamation.

Action alternatives evaluated in the DEIR/DEIS include construction of a water treatment plant, and connecting to East Bay Municipal Utility District's Mokelumne Aqueduct. No-Action alternatives evaluated include: (1) Stop use of the Reservoir for drinking water and allow body contact to continue, and (2) Stop use of the Reservoir for body contact activities and continue use as a drinking water supply.

Copies of the DEIR/DEIS are available for public inspection and review at the following locations:

- Contra Costa Water District at 2300 Stanwell Drive, Suite A in Concord, CA 94524; telephone: (925) 688–8312.
- Bureau of Reclamation, Program Analysis Office, Room 7456 at 1849 C Street NW in Washington DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167 at the Denver Federal Center, 6th and Kipling in Denver, CO 80225; telephone: (303) 445–2064.
- Bureau of Reclamation, Regional Director, Attention: MP–140 at 2800 Cottage Way in Sacramento, CA 95825–1898; telephone: (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior at 1849 C Street NW, Main Interior Building in Washington, DC 20240–0001.
- Antioch Branch Library at 501 W–18th Street in Antioch, CA 94509.
- Bay Point Branch Library at 205 Pacifica Avenue in Pittsburg, CA 94565.
- Pittsburg Branch Library at 80 Power Avenue in Pittsburg, CA 94565.
- Oakley Branch Library at 118 East Ruby in Oakley, CA 94561.
- Concord Branch Library at 2900 Salvio in Concord, CA 94519.
- Contra Costa County Public Library at 1750 Oak Park Boulevard in Pleasant Hill, CA 94523.

Hearing Process Information

CCWD staff will make a brief presentation to describe the proposed project, its purpose and need, alternatives considered, and scenarios for construction and operation. The public may comment on environmental issues addressed in the DEIR/DEIS. If necessary due to large attendance, comments will be limited to 5 minutes per speaker. Written comments will also be accepted.

Dated: January 13, 1999.

Michael Ryan,

Acting Regional Director.

[FR Doc. 99–1681 Filed 1–25–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 3, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–777–779 (Final) (Certain Preserved Mushrooms from China, India, and Indonesia)—briefing and vote.
5. Outstanding action jackets:
   (1.) Document No. GC–98–069: APO matters.
   (2.) Document No. GC–98–071: APO matters.
   (3.) Document No. GC–98–073: Disposition of respondents' petition to amend protective order in previous investigation (Inv. No. 337–TA–345) concerning Inv. No. 337–TA–414 (Certain Semiconductor Memory Devices and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: January 20, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1868 Filed 1–22–99; 2:36 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Project Title: Local Job Vacancy Survey

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: This Notice contains all of the necessary information and required forms to apply for grant funding. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of funds for Service Delivery Areas (SDAs) and/or organizations that represent them (e.g., States, One-Stop Centers, partners) to participate in enhancing the One-Stop Career System. The demonstration program will be funded by the Wagner-Peyser Act. This notice provides information on the process that eligible entities must use to apply for demonstration funds, how grantees are selected, and the responsibilities of grantees.

DATES: The closing date for receipt of proposals is March 31, 1999, at 4:00 p.m. (Eastern Time).

ADDRESSES: Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Acquisition and Assistance, Attention: Reda Harrison, Grants Management Specialist, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210, Reference: SGA/DAA 99–004.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Reda Harrison, Grants Management Specialist, Division of Acquisition and Assistance, Fax (202) 219–8739. This is not a toll-free number. All inquiries should include the SGA number (SGA/DAA 99-004) and a contact name and phone number. This solicitation will also be published on the Internet, on the Employment and Training Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on the Home Page.

SUPPLEMENTARY INFORMATION: The One-Stop/Labor Market Information (LMI)

Initiative is soliciting proposals, on a competitive basis, from Service Delivery Areas (SDAs) to fund the collection of localized job vacancy surveys. Applicants selected for award will be those who best delineate their innovative approaches to conduct the surveys. Proposals must demonstrate methods of how SDAs will cooperatively work with State and local One-Stops to produce localized job vacancy surveys that will be useful to One-Stop Career Centers. The announcement consists of four parts. Part I describes the application process for eligible applicants who wish to apply for grants funds. Part II provides the Government's Required Statement of Work. Part III describes the selection criteria for award. Part IV provides information regarding reporting requirements.

Part I. Application Process

A. Eligibility. Eligible applicants are JTPA Service Delivery Areas (SDAs) and/or organizations that represent them, e.g., stakeholders, Human Resource Councils, PICs, local Workforce Investment Boards, and other local entities, or State Workforce Development Councils. Applicants must demonstrate how they will develop a good working relationship with the state Labor Market Information (LMI) or Research and Analysis (R&A) offices and the local One-Stop Center. Finally, applicants must have fiscal agents familiar with Department of Labor practices AND must be able to sustain the survey two years after ETA seed money expires.

B. Period of Performance. The Period of Performance will be for a 12-month period.

C. Funding. The Department anticipates awarding six (6) grants not to exceed $75,000 each for a total of $450,000. Applications that exceed $75,000 will not be considered. Awards will be made on a competitive basis.

D. Page Limitation. Applicant's technical proposal shall be limited to 20 double-spaced, single-sided pages with 1-inch margins. Text type shall be at least 10 pitch or larger. Applications that do not meet these requirements will not be considered.

E. Submission of Proposal. An original and three copies must be received. Your proposal must be organized in the following manner:

Section I—Financial and Summary Information. (This section does not count against the page limitation.)

(1) Standard Form (SF)–424: "Application for Federal Assistance" (Appendix A). The Federal Domestic Assistance Catalog number 17.246.

(2) A one page summary of your proposed project which shall include information on the number of welfare recipients in the State and proposed target area.

(3) "Budget Information", (Appendix B). Also include, on separate pages, a detailed breakout of each proposed budget line item.

Section II—Technical Proposal. (limited to 20 pages.)

Your technical proposal must demonstrate the grant applicant's capabilities in accordance with the Statement of Work in Part II of this solicitation. No cost data or reference to costs shall be included in the Technical Proposal. Applicants must also include resumes of proposed staff and an organizational chart. (This does not count against the page limitation).

F. Hand Delivered Proposals. Proposals should be mailed at least five (5) days prior to the closing date. However if proposals are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Time, March 31, 1999. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time on the closing date. Telegraphed, electronic mail, or faxed proposals will not be honored. Failure to adhere to these instructions will be a basis for determination of nonresponsiveness.

G. Late Proposals. A proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before the award is made and was either:

(1) Sent by the U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of the proposals. The term "working days" excludes weekends and the U.S. Federal holidays.

(2) Sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th). The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. *Post-mark* means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper. Both postmarks must show a legible date, or the application shall be processed as though it had been mailed late. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late proposal sent by "Express Mail Next Day Service—Post Office to Addressee is the date entered by the Post Office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

H. Withdrawal of Proposals. A grant application may be withdrawn by written notice or telegram (including mailgram) received at any time before the awarding of a grant. An application may be withdrawn in person by the grant applicant, or by an authorized representative of the grant applicant if the representative's identity is made known and the representative signs a receipt for the proposal.

Part II. Background and Purpose

A. Background

In the past thirty years, the Federal Government has conducted three different experimental survey programs designed to measure job openings in the labor market. In the period 1969–1973, the Bureau of Labor Statistics (BLS) began the JOLTS (Job Openings and Labor Turnover Survey) program which collected data primarily in the manufacturing sector. Then in 1979–80, the BLS Job Openings Pilot Program (JOPP) conducted a series of pilot programs to assess the feasibility of collecting data nationally. Finally in 1990 and 1991, the BLS once again embarked on another similar pilot project which concluded that such data could be collected but was expensive to obtain. According to BLS officials, it is doubtful that any national effort to collect local job vacancy data will occur

in the near future. Throughout the 1970s, Wisconsin policymakers continued to collect job vacancy data despite the lack of federal funds in support of the program. From 1975 through 1981, the Wisconsin Department of Industry, Labor and Human Resources (DILHR) expanded coverage to all industries from the initial manufacturing emphasis; but, eventually shut down the program in December 1981 when federal funds were withdrawn.

In the mid-1960s, when unemployment rates were very low and job vacancies may have equaled the number of unemployed, the common view among academics and policymakers was that vacancies beyond normal turnover were the result of the unemployed not knowing how to find available jobs and that jobseekers mainly needed mechanisms to link up with the companies looking to fill vacancies (Abraham, 1983). More recently, the Employee Turnover Job Openings (ETJO) experiment reflected an interest in identifying occupational labor shortages to determine where hard to fill openings were occurring (BLS, 1991). Others have stressed the importance of collecting vacancy survey data and analyzing it in comparison to the unemployed and underemployed, noting that the supply of workers dramatically exceeds demand (Abraham, 1983: Reimer, 1988); (Levitan and Gallo, 1989). The combination of demand information available through establishment surveys combined with supply data from a CPS type of household survey can provide policy makers, employers and educators with an analysis more suited to solving the employment needs of those seeking work and of the non-working population which policymakers argue should be seeking employment.

During the 1970s and up until December 1981, the Bureau of Labor Statistics and the Wisconsin Department of Industry, Labor and Human Relations, regularly surveyed manufacturing establishment to obtain data on long- and short-term job openings, new hires and separation rates. The Job Openings and Labor Turnover Survey (JOLTS) was established by the Bureau of Labor Statistics and administered locally. It was sent out monthly to a statewide sample of 7,200 businesses in covered establishments, mostly in the manufacturing sector. The survey did not collect data on full-time/part-time status, wages or benefits, but provided valuable survey indicators to gauge local labor market trends. However, funding for this joint federal and state effort was discontinued by the Federal Government. Since the JOLTS survey was last administered in December 1981, no other establishment data has been collected on either openings or separations. More recently, the U.S. Department of Labor has piloted a survey which examines job vacancies and which was considered for introduction at the federal and state levels. This survey requests occupational and industry data and wage data, but not part-time/full-time status or fringe benefits.

B. Purpose

The primary purpose of this award is to institute six pilot sites where local job vacancy data can be produced at a level of quality that will fulfill the needs of local One-Stop Centers as they serve a variety of customers, including welfare-to-work recipients. Innovation, coordination and partnerships, non-duplication of existing services, and leveraging of scarce resources are also important factors. DOL is interested in SDAs, or their representatives, who can use leverage funds from other sources to maintain the survey two years after the initial one year DOL funding expires.

Part III. Statement of Work

With the tremendous growth in the economy over the past several years coupled with the growing needs for better labor market information as a result of the Welfare-to-Work legislation, localities need to know where local job vacancies exist. Information on new hires is particularly important because many firms use entry-level positions as steps for promotions within companies. Location of employment is essential not only for the value it may have for descriptive purposes but because companies often have sub-units throughout the state or region for which hiring and wage reporting is included, and metropolitan employment trends on administrative office locations may be skewed to overestimate openings.

To that end the major tasks of this procurement are, but not limited to, the following:

- To conduct local job vacancy surveys using the methodology designed by John Pawasarat at the Employment and Training Institute at the University of Wisconsin-Milwaukee.
- SDAs will have to develop a good working relationship with the state LMI or R&A offices in order to obtain the ES–202 file or the Employer Database file to design the survey instrument. Close coordination between SDAs and the State LMI office is strongly encouraged and is a necessity if the state is to share confidential employer files with the SDAs.
- Applicants must be willing and able to get a 75% response rate to any proposed survey or else submit an explanatory note why they were unable to do so.
- Applicants should also have a good working relationship with the local One-Stop Center and design a survey instrument which produces information helpful to the local One-Stop in supplying clients with job vacancy information.
- Applicants must be familiar with DOL practices and be able to sustain the survey two years after ETA seed money expires.
- Applicants must include a detailed work plan that delineates a schedule of proposed activities and milestones for implementing the tasks indicated above within the 12-month award period.
- Finally, selected applicants will be required to work with the Department of Labor to ensure that the survey instrument complies with all legal requirements that affect the Department, such as the Paperwork Reduction Act.

Part IV. Selection/Evaluation Criteria

Selection of grantees will be made after formal review of grant applications by a technical review panel. Each panelist will review the proposals for acceptability based upon overall responsiveness to the Statement of Work, with emphasis on the rating criteria listed below. The panels' recommendations are advisory in nature to help establish the competitive range. The Grant Officer will make final awards based on overall quality and what is in the best interests of the government. The Grant Officer may consider any or all available information. Applicants are advised that awards may be made without further discussions.

A. Technical Approach (20 points)—Applicants should develop a technical approach that includes, but is not limited to: (1) A detailed questionnaire design, (2) definition of terms, (3) sample design (including address correction issues), and (4) how to handle nonresponses. The technical approach must match or exceed the "cookbook" developed by the Employment and Training Institute at the University of Wisconsin-Milwaukee which is available on their website: http://www.uwm.edu:80/Dept/ETI/.

B. Grantee's Past Performance (15 points)—Applicants should document prior experience with conducting job vacancy surveys or such experience of anyone who might be sub-contracted to

do the same (i.e., a State LMI or R&A office).

C. Understanding (15 points)—Applicants should describe in their own words why they believe local job vacancy surveys are needed and by whom. Understanding should be couched in the realm of One-Stop Career Centers' delivery system philosophy.

D. Coordination with Other State Agencies (25 points)—Applicants must prove a close working relationship with the State Labor Market Information or Research and Analysis Office. This relationship is necessary because the SDA, or its representative, must use confidential ES–202 Employer or other Employer files which exist in the LMI offices in order to draw a sample from which to survey.

E. Coordination with local One-Stop Centers (25 points)—It is imperative that survey results are useful to the local One-Stop affiliated with the SDA; therefore, points will be awarded to those applicants who are able to show that the results of their job vacancy survey can be used in conjunction with other America's Labor Market Information System (ALMIS)-related products; specifically, but not limited to, America's Job Bank (AJB), America's Talent Bank (ATB), and America's Career InfoNet (ACINet).

Part V. Reporting Requirements

Applicants selected as grantees will be required to provide the following information in timely fashion:

A. Quarterly Financial Status Reports (i.e., Standard Form (SF) 269);

B. Monthly progress against the work plan (i.e., status) reports with narrative summaries:

C. Draft Final Project Report on desired outcomes within 30 days prior to grant expiration date. Specific format to be determined.

Signed on this 19th day of January 1999.

Janice E. Perry,

Grant Officer, Department of Labor/ETA.

Appendices

Appendix A—Application for Federal Assistance (Standard Form (SF)–424)

Appendix B—Budget Information

BILLING CODE 4510–30–P

APPENDIX A
OMB Approval No. 8348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel	$	$	$
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)	$		$
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)	$	$	$

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Training /Stipend Cost:** (If allowable)

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 99–1770 Filed 1–25–99; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, January 28, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Three (3) Federal Credit Unions to Convert to Community Charters.
2. Request from a Federal Credit Union to Expand its Community Charter.
3. Appeal from a Federal Credit Union of Regional Director's Denial of a Community Charter.
4. NCUA's 1999 Annual Performance Plan.
5. Adoption of the FFIEC Interagency Policy Statement on Assessment of Civil Money Penalties.
6. Final Rule: Amendment to Section 701.21(c)(7)(ii)(C), NCUA's Rules and Regulations, Interest Rate Ceiling.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, January 28, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Request for Authority for Expenditure of Funds. Closed pursuant to exemption (8).
2. Administrative Action under Part 745 of NCUA's Rules and Regulations. Closed pursuant to exemption (6).
3. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (4), (7), (8), (9)(A)(ii), and (9)(B).
4. NCUA's Travel Policy. Closed pursuant to exemptions (2) and (6).
5. Four (4) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–1832 Filed 1–21–99; 5:08 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9:00 a.m., local time on Wednesday, February 3, 1999, at the Charleston Hilton Hotel, 4770 Goer Drive, North Charleston, South Carolina 29406–6543 concerning the Sinking of the pleasure Morning Dew on December 29, 1997. For more information, contact Donald Tyrrell, NTSB Office of Marine Safety at (202) 314–6455 or Matt Furman, NTSB Office of Public Affairs at (202) 314–6100.

Dated: January 20, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–1682 Filed 1–25–99; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection:

NUREG/BR–0238, Materials Annual Fee Billing Handbook
NUREG/BR–0239, Financial EDI Authorization (NRC Form 628, "Financial EDI Authorization")
NUREG/BR–0253, Fact Sheet—Electronic Funds Transfer
NUREG/BR–0254, Payment Methods (NRC Form 629, "Authorization for Payment by Credit Card")

3. The form number if applicable:

NRC Form 628, "Financial EDI Authorization"
NRC Form 629, "Authorization for Payment by Credit Card"

4. How often the collection is required: Annually.
5. Who will be required or asked to report: Anyone doing business with the Nuclear Regulatory Commission including licensees, applicants and individuals who are required to pay a fee for inspections and licenses.
6. An estimate of the number of responses: 1,320 (300 for the NRC Form 628, "Financial EDI Authorization" and 1,020 for NRC Form 629, "Authorization for Payment by Credit Card").
7. The estimated number of annual respondents: 1,320 (300 for the NRC Form 628 and 1,020 for NRC Form 629).
8. An estimate of the total number of hours needed annually to complete the requirement or request: 105.6 (24 hours for NRC Form 628 and 81.6 hours for NRC Form 629).
9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.
10. Abstract: The U.S. Department of the Treasury encourages the public to pay monies owed the government through use of the Automated Clearinghouse Network and credit card. These two methods of payment are used by licensees, applicants, and individuals to pay civil penalties, full cost licensing fees, and inspection fees to the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by February 25, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0190), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 20th day of January 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–1706 Filed 1–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company, Pilgrim Nuclear Power Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Materials License and Issuance of Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. DPR–35 for the Pilgrim Nuclear Power Station (Pilgrim) currently held by Boston Edison Company (Boston Edison), as owner and licensed operator of Pilgrim. The transfer would be to Entergy Nuclear Generation Company (Entergy). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by Boston Edison and Entergy, Entergy would assume title to the facility following approval of the proposed license transfer, and would be responsible for the operation, maintenance, and eventual decommissioning of Pilgrim. No physical changes to the Pilgrim facility or operational changes are being proposed in the application.

The proposed amendment would replace references to Boston Edison in the license with references to Entergy, to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By February 16, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon John M. Fulton, Assistant General Counsel, at Boston Edison Company, 800 Boylston Street, Boston, Massuchusetts 02199–8003 (tel: 617–424–2553; fax: 617–424–2733; e-mail: john__fulton@bedison.com), Jay E. Silberg, counsel for Boston Edison, at Shaw Pittman Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128 (tel: 202–663–8063; fax: 202–663–8007; e-mail: jay__silberg@shawpittman.com), and Douglas E. Levanway, counsel for Entergy Nuclear Generating Company, at Wise, Carter, Childs and Caraway, P.O. Box 651, Jackson, Mississippi, 39205–0651 (tel: 601–968–5524; fax: 601–968–5519; e-mail: del@wisecarter.com); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by February 25, 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated December 21, 1998, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02199.

Dated at Rockville, Maryland this 21st day of January 1999.

For the Nuclear Regulatory Commission.

William M. Dean,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1703 Filed 1–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 106th meeting on February 23–25, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, February 23, 1999—8:30 A.M. until 6:00 P.M.

Wednesday, February 24, 1999—8:30 A.M. until 6:00 P.M.
Thursday, February 25, 1999—8:30 A.M. until 4:00 P.M.

The following topics will be discussed:

A. *Viability Assessment*—The Committee will continue its review of the Department of Energy's (DOE's) Yucca Mountain viability assessment (VA). Discussions with representatives of DOE and the NRC staff are possible. The Committee will discuss its own internal review of the VA.

B. *Waste Related Research*—The Committee will review nuclear waste related research and technical assistance being performed for the NRC. The Committee will present the results of this review in a report to the Commissioners due April 1999. Discussions with representatives of NRC's Office of Nuclear Regulatory Research and Nuclear Material Safety and Safeguards is anticipated.

C. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: an ACNW self-assessment, DOE's Viability Assessment, NRC supported Waste Related Research, a White Paper on Repository Design Issues at Yucca Mountain, and other topics discussed during this and previous meetings as the need arises.

D. *Repository Design*—The Committee will begin work on a White Paper that addresses Repository Design Issues for Yucca Mountain. The paper will focus on the results of thermal testing and modeling and how moisture contacts and affects the waste package. The Committee may also examine the significance of coupled effects, aspects of waste retrievability, repository ventilation, rock fall, and water dripping into drifts.

E. *Meeting with NEI*—Representatives from the Nuclear Energy Institute will present their perspective on the upcoming year. Topics will focus on the U.S. high-level radioactive waste program and related legislation.

F. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

G. *Prepare for the Next Meeting with the Commission*—The Committee will begin preparations for its next public meeting with the Commission. Specific topics for discussion will be finalized and reviewed.

H. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

I. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51967). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Dated: January 20, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–1707 Filed 1–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Revised Meeting

The agenda for the 459th meeting of the Advisory Committee on Reactor Safeguards scheduled to be held on February 3–6, 1999, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, has been revised to change the time for the ACRS meeting with the NRC Commissioners. The meeting with the NRC Commissioners will be held between 1:00 and 2:30 p.m., on Wednesday, February 3, 1999, instead of 2:00 and 3:30 p.m. Preparation of ACRS reports will begin at 3:00 p.m. instead of 4:00 p.m.

The agenda for February 4–6, 1999 remains the same as published in the **Federal Register** on Thursday, January 14, 1999 (64 FR 2525).

Further information regarding this meeting can be obtained by contacting Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EST.

Dated: January 20, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–1708 Filed 1–25–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of January 25, February 1, 8, and 15, 1999.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 25—Tentative

There are no meetings scheduled for the Week of January 25.

Week of February 1—Tentative

Tuesday, February 2

2:00 p.m.—Briefing by Executive Branch (Closed-Ex. 1)

3:30 p.m.—Affirmation Session (Public Meeting) (if needed)

Wednesday, February 3

1:00 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of February 8—Tentative

Monday, February 8

2:00 p.m.—Briefing on HLW Program Viability Assessment (Public Meeting)

Tuesday, February 9

9:30 a.m.—Briefing on Fire Protection Issues (Public Meeting)

11:00 a.m.—Affirmation Session (Public Meeting) (if needed)

Thursday, February 11

2:30 p.m.—Briefing on Y2K Issues (Public Meeting)

Week of February 15—Tentative

There are no meetings scheduled for the Week of February 15.

* The Schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

Additional Information: By a vote of 5–0 on January 20, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Partial Granting of Petition for Rulemaking Submitted by the Nuclear Energy Institute (PRM–50–62)."

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 22, 1999.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 99–1869 Filed 1–22–99; 2:41 pm]

BILLING CODE 7500–01–M

NUCLEAR REGULATORY COMMISSION

Final Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE). The purpose of the MOU is to continue the unique statutorily founded relationship and to update overall management policy that governs the relationship between NRC and DOE in the conduct of NRC-funded research programs at the DOE laboratories.

EFFECTIVE DATE: November 24, 1998.

ADDRESSES: Copies of all NRC documents are available for public inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. The NRC Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday (except Federal holidays). Telephone service is provided from 8:30 a.m. to 4:15 p.m. at 202–634–3273 or toll-free at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: Mary Lynn Scott, Office of Administration, U.S. Nuclear Regulatory Commission, telephone 301–415–6179, e-mail: mls2@nrc.gov.

Dated at Rockville, Maryland, this 19th day of January 1999.

For the Nuclear Regulatory Commission.

Michael L. Springer,

Director, Office of Administration.

Memorandum of Understanding Between the Nuclear Regulatory Commission and the Department of Energy Governing Nuclear Regulatory Commission Funded Work Performed at the Department of Energy Laboratories

I. Introduction

Section 205(c) of the Energy Reorganization Act of 1974 authorizes NRC to utilize the research facilities and services of DOE and other federal agencies to assist NRC in the conduct of its regulatory mission. On February 24, 1978, the Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) executed a Memorandum of Understanding (MOU) which established overall management policy for an interagency relationship in the conduct of NRC programs. This longstanding and productive relationship has allowed each agency to more effectively meet its mission and objectives. This document supersedes the February 24, 1978 MOU.

II. Authority

The DOE is acting pursuant to authorities conferred in the Energy Organization Act, 42 U.S.C. § 7101 et seq. (42 U.S.C. § 7151), and the Atomic Energy Act of 1954, 42 U.S.C. § 2011 (42 U.S.C. § § 2051, 2052, 2053). The NRC is acting pursuant to authority conferred in the Energy Reorganization Act of 1974, 42 U.S.C. § 5801 et seq. (42 U.S.C. § 5845 (b), (c), and (e)).

III. Purpose

The purpose of this MOU is to continue the unique statutorily founded relationship and to update overall management policy which governs the relationship between NRC and DOE in the conduct of NRC-funded research programs at the DOE laboratories. Specifically, this MOU provides for the following:

1. Priority. That NRC/DOE interagency activities will be conducted at DOE facilities based on a priority mutually agreeable to both agencies.

2. Independent Access. The NRC will have access to DOE's facilities as necessary to review and monitor project scope, schedule and funding.

3. Communication. That NRC and DOE will establish distinct lines of communication at various levels, as necessary, to ensure efficient and effective management of resources.

This MOU does not cover those activities and projects described in the January 15, 1997, MOU, entitled, "Memorandum of Understanding between the Department of Energy and the Nuclear Regulatory Commission for Cooperation and Support of Significant Projects and Activities." It is intended that each MOU coexist concurrently with each other. This MOU also does not cover any activities associated with external regulation of DOE facilities by NRC. This MOU shall not be used to obligate or commit funds or as the basis for transfer of funds between the agencies.

IV. Agreements Between Parties

A. Business Practices Associated with NRC Work Performed by DOE Laboratories

All NRC funded work performed at the DOE laboratories shall be administered in accordance with standard NRC and DOE policies and procedures as agreed to and implemented by each agency. The DOE policies governing work for others are set forth in DOE order 481.1, Work for Others (Non-Department of Energy Funded Work). The NRC policies for work placed at DOE laboratories are set forth in NRC Management Directive 11.7, NRC Procedures for Placement and Monitoring of Work with the U.S. Department of Energy (DOE).

When NRC initiates proposed changes in MD 11.7 that may affect NRC work at DOE laboratories, NRC shall promptly furnish DOE copies of the proposed changes and obtain DOE's review and comments prior to issuing such proposed changes in MD 11.7. When DOE initiates proposed changes in DOE Order 481.1 that may affect NRC work at DOE laboratories, DOE shall notify NRC of

those proposed changes and NRC shall promptly initiate conforming changes in MD 11.7 using the above procedures to the maximum practicable extent. Specifically, NRC Management Directive 11.7 ensures:

—that procedures for negotiating and managing agreements with DOE are consistent with sound business practices and contracting principles.
—the uniform application of an agency-wide standard of contract management of projects placed with DOE.
—that a framework exists for program management, control, administration, monitoring and closeout of projects placed with DOE.

B. NRC Dedicated Facilities

When an NRC dedicated facility is required for a project, NRC will plan, budget and fund feasibility and conceptual design studies, either through DOE or an NRC commercial contract. Upon the completion of the conceptual design stage for an NRC dedicated facility, the agencies will negotiate and execute an interagency agreement which identifies appropriate funding arrangements and procedures for detailed design and construction, related capital equipment, scope, schedule, and plans for future decommissioning or deactivation of the facility.

Upon completion of an NRC program at a dedicated facility, the NRC will make a determination as to the future need for that facility. If no further NRC need is established, and if DOE does not have need for the facility, it will be decommissioned or deactivated in accordance with the provisions of the interagency agreement for the project. The actual decommissioning work will be performed by DOE or its contractors.

C. Planning

1. *Long Range Planning.* NRC and DOE will cooperate to the extent necessary, on long range planning to ensure that all required research, technical assistance, facility and other associated expenses are properly budgeted by the respective agencies. When requested, either agency will assist the other in budget discussions with the Office of Management and Budget and the Congress in areas of mutual interest.

NRC, to the extent possible, will advise DOE of changes in program emphasis or agency budget changes which may have a significant impact on DOE Operations Offices and/or DOE laboratory employment levels. DOE will advise NRC of any plans that may have an adverse impact on NRC's projects and which could impair fulfillment of NRC's regulatory mission.

2. *Program Planning Agreements.* In order to accommodate the planning of research and development projects of mutual interest to NRC and DOE, the offices involved may enter into program planning agreements to establish a framework for cooperation and coordination of the technical activities of the two agencies in those areas of mutual interest. Such agreements may be used for advance coordination of major NRC research and development efforts involving the anticipated use of DOE laboratories. Program planning agreements shall be signed by the responsible NRC office director or designee and the responsible DOE office director or operations office director or designee. Program planning agreements shall not be used to obligate funds.

D. Information Management

1. Each agency recognizes that it is responsible for the identification, protection, control and accounting of information or data used or otherwise furnished in connection with this MOU in accordance with its established procedures. This consists of classified, proprietary, procurement-sensitive and safeguards information. Also included is Unclassified Controlled Nuclear Information as described by Section 148 of the Atomic Energy Act of 1954, as amended.

2. In accordance with DOE procedures, DOE will be responsible for assuring that its contractors and subcontractors involved in NRC programs fully protect the types of information specified above.

3. Requests for foreign nationals for access to information or data furnished by NRC will be referred to NRC for disposition.

E. Organizational Conflicts of Interest

DOE recognizes that Section 170A of the Atomic Energy Act of 1954, as amended, requires that NRC be provided with disclosures on potential conflicts when NRC obtains technical, consulting, research and other supporting services. DOE further recognizes that the assignment of NRC work to DOE laboratories must satisfy NRC's conflicts standards.

Accordingly, when NRC enters into an agreement with a DOE laboratory to perform work for NRC, the laboratory shall review its current work, planned work and, where appropriate, past work for DOE and others to determine whether such work is in the same or similar area as the proposed NRC project. Should that review reveal current or planned work for DOE or others in the same or similar technical area as the proposed NRC work, the laboratory shall disclose such potentially conflicting work to NRC. NRC shall then determine whether a conflict would result and, if one does, determine, after consultation with the laboratory and DOE, the appropriate action NRC or DOE should take to avoid the conflict or, when appropriate under NRC procedures, waive the conflict.

F. International Affairs

The NRC will request, as necessary, participation of foreign nationals in the conduct of research work performed at DOE laboratories. All such requests shall be in writing and provide sufficient lead time for DOE Operations Office and headquarters review and approval. A copy of each request will be provided to the Office of International Science and Technical Corporation in DOE, and to the Office of International Programs in NRC or their successor offices.

V. Agency Interface

A. Establishment of Policy

The NRC Executive Director for Operations and the Under Secretary for DOE or designee will establish any additional required policy consistent with this MOU for the conduct of interagency interface, relationship and responsibilities.

B. Administrative Matters

Administrative matters, including policy interpretation, and related issues are the responsibility of the following individual offices designated by each agency:

NRC
Office of Administration
DOE
Office of Laboratory Policy
Office of Energy Research

Representatives of these designated offices will meet as necessary to discuss and resolve any problems or issues which may affect either agency's ability to carry out the provisions of this agreement. If these representatives are unable to agree on a resolution, the matter will be raised through each agency's management chain, as necessary.

C. Routine Activities

The routine activities performed in accordance with this MOU are the responsibility of the DOE Operations Office in coordination with the NRC program or regional office. Therefore, every attempt should be made to resolve operational problems at the field level. When possible, a problem should be identified in writing. If a problem cannot be resolved at the field level, the matter will be raised through each agency's management chain, as necessary and appropriate.

VI. General Provisions

A. NRC Field Office

1. NRC may establish field offices at DOE sites. The functions of an NRC field office are:

—assignment of NRC personnel to dedicated facilities as necessary
—monitor and review all NRC work at the site; and
—act as an interface between the NRC headquarters and the DOE Operations Office

B. Effective Date

This MOU shall become effective upon the latter date of signature of the NRC Chairman or the DOE Secretary or their designees. This MOU shall remain in effect until terminated by mutual agreement or by written notice of either party submitted six months in advance of termination.

C. Amendments to This MOU

This MOU may be modified or amended by written agreement between the NRC Chairman and the DOE Secretary, or their designees as appropriate.

For U.S. Nuclear Regulatory Commission.

Dated: October 15, 1998.

Shirley Ann Jackson,

Chairman.

For U.S. Department of Energy.

Dated: November 24, 1998.

Bill Richardson,

Secretary.

[FR Doc. 99–1701 Filed 1–25–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–3453; License No. SEA–917]

Atlas Corporation; Director's Decision Under 10 CFR 2.206

SUMMARY: Notice is hereby given that a request for Hearing and Petition for Leave to Intervene (Petition) filed by the State of Utah (State) has been reviewed by the staff as a petition under 10 CFR 2.206, in accordance with 10 CFR 2.1205(l)(2). For reasons explained in Director's Decision DD–99–02, dated January 20, 1999, the Petition has been denied.

On August 2, 1988, Atlas Corporation (Atlas) submitted an application for a license amendment to revise its site reclamation plan for uranium mill tailings at its site near Moab, Utah. On April 4, 1994, notice of Receipt of Application and notice of Opportunity for Hearing on the application were published in the **Federal Register**. 59 FR 16,665 (1994). On July 13, 1998, the State filed its Petition stating that if the Petition is found to be untimely that it be treated as a 10 CFR 2.206 petition in accordance with 10 CFR 2.1205(l)(2). The Petition was filed by Denise Chancellor, Assistant Attorney General on behalf of the State. By Memorandum and Order dated August 13, 1998, the Presiding Officer determined that the Petition was inexcusably late and would be treated as a petition under 10 CFR 2.206, in accordance with 10 CFR 2.1205(l)(2). On October 22, 1998, notice of receipt of the Petition was published in the **Federal Register**. 63 FR 56667 (1998).

In its Petition, the State asserted that if Atlas were to proceed with its reclamation plan as approved by the Nuclear Regulatory Commission, it would be in violation of 10 CFR Part 40, Appendix A. The Petition was referred to the Director of the Office of Nuclear Material Safety and Safeguards. As provided by Section 2.206 and discussed in the **Federal Register** notice, appropriate action was taken on this Petition. The staff reviewed the specific assertions made by the State and concluded that the Petition should be denied. The basis for the staff's conclusions are detailed in Director's Decision DD–99–02, dated January 20, 1999. A copy of the Director's Decision is available for inspection at the Commission's Public Document Room at 2120 L Street, N.W., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Petition Manager, Telephone (301) 415–6629.

Dated at Rockville, Maryland, this 20 day of January, 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

Director's Decision Under 10 CFR 2.206

I. Introduction

On August 2, 1988, Atlas Corporation (Atlas or licensee) submitted an application for a license amendment to revise its site reclamation plan for uranium mill tailings at its site in Moab, Utah. On April 4, 1994, notice of Receipt of Application and notice of Opportunity for Hearing on the application were published in the **Federal Register**. 59 FR 16665 (1994). On July 13, 1998, the State of Utah (State or Utah) filed the State's Request for Hearing and Petition for Leave to Intervene (Petition). By Memorandum and Order dated August 13, 1998, the Atomic Safety and Licensing Board determined that the petition was inexcusably late and would be treated as a petition under 10 CFR 2.206, in accordance with 10 CFR 2.1205(l)(2).

In its Petition, the State asserts that if Atlas were to proceed with its reclamation plan as approved by the U.S. Nuclear Regulatory Commission (NRC), it would not meet the requirements of 10 CFR Part 40, Appendix A. More specifically, the State asserts that the rock apron design (armoring the side slope and toe of the tailings pile) does not provide reasonable assurance against engineering failure at the Atlas Uranium Tailings Site, and thus does not satisfy Appendix A. As bases for its assertion it is stated that the unpredictability of flood events, erosion, and vegetation growth along the river banks makes computation of the probability of river migration extremely difficult and that; therefore, conservatism should be built into how the tailings pile is armored. The State, furthermore, references an April 2, 1998, memorandum from its Department of Environmental Quality, Division of Radiation Control (DRC), wherein it is stated that: (1) There are two different conceptual designs for the Atlas tailings pile apron—one presented by Atlas and accepted by NRC, and the second presented by the U.S. Army Corps of Engineers (ACE); (2) assumptions and inputs to the conceptual models result in the size, gradation, and volume of rock necessary to protect the tailings pile from erosion by the Colorado River; (3) the DRC staff has concluded that the ACE approach is more protective of the tailings pile side slopes; and (4) the DRC staff disagrees with the NRC conclusion that the Atlas design provides the necessary protection of the tailings pile in the event of river migration. A letter acknowledging receipt of the Petition and its status for consideration pursuant to 10 CFR 2.206 was sent to the State on September 26, 1998.

II. Background

In 1997, the NRC staff issued NUREG–1532 "Final Technical Evaluation Report for the Proposed Revised Reclamation Plan for the Atlas Corporation Moab Mill" (TER), presenting its evaluation of technical issues related to Atlas Corporation's proposed reclamation plan for the uranium mill tailings pile. Among the issues considered was the ability of the proposed erosion protection design to prevent erosion from various flooding events over long periods of time. One of the features of the erosion protection design evaluated in the TER was the ability of the self-launching rock apron to prevent erosion of the tailings if the Colorado River were to migrate to the pile.

In the TER, the staff concluded that the rock apron provided adequate protection for the reclaimed tailings pile, in the unlikely event that the Colorado River migrated several hundred feet and reached the toe of the pile. The adequacy of the apron design was questioned by the State and the Grand County Council (GCC). In addition, the GCC funded a report developed by the ACE that indicated that the rock apron had not been designed properly. The GCC also solicited the opinions of vegetation and geomorphic experts and provided those opinions to the State. These reports, questions, and comments were transmitted to the NRC staff by the State by letters dated November 10, 1997, and January 9, 1998.

Because the 1997 TER only summarized the NRC staff review of the rock apron, a supplemental report (SR) was developed to address in detail the questions and concerns raised by the DRC. The SR addressed specific aspects of the staff review and provided a detailed technical basis for the staff's conclusions on the adequacy of the rock apron. The SR also addressed issues raised by the GCC and the ACE. Specific topics that were addressed included: (1) Potential for erosion and migration of the Colorado River; (2) riprap size needed for the side slopes to protect from overland or overtopping flows; (3) riprap size needed to protect the side slope from velocities in the river; (4) rock volume needed; (5) river velocities; (6) vegetation/tamarisk growth and the

effects on river flow velocities; (7) ACE design procedures, including specific discussions of computations and analytical methods; (8) potential for cohesive soils to affect the performance of the rock apron; (9) reasonable assurance requirements, NRC staff review procedures, and other regulatory requirements; (10) post-licensing monitoring and maintenance; and (11) other conservatisms in the design. Each of these factors was discussed in a degree of detail that was not provided in the TER. In addition, specific contentions and questions raised by the GCC, ACE, and/or DRC were addressed.

III. Discussion

As discussed in the TER, the staff considers that an adequate design has been provided for the rock apron to be placed at the toe of the Atlas tailings pile side slope near the Colorado River. This conclusion is based on many factors, including evaluation of design details that are very site-specific.

For the Atlas site, the design of the rock apron is affected by three principal factors: (1) The velocity or shear stress that is used in various analytical methods to determine the rock size necessary to resist erosive forces; (2) the analytical methods that are used to determine rock size, layer thickness, and rock volume; and (3) the estimated scour depth that is used to determine volume of rock needed in the apron. For each of these factors, there may be several acceptable methods for estimating and calculating the parameters. For example, a designer could assume various combinations of values for velocity, shear stress, radius of curvature, or other inputs to a design method and arrive at different estimates of rock size and rock volume. Also, each parameter requires input data, based to a great extent on the assumed configuration of the river and other assumptions related to expected river velocities.

It should also be emphasized that there are many procedures for determining the rock sizes necessary to resist erosion. Over the years, various Government agencies and individuals have developed procedures that best suit their needs, given the degree of conservatism necessary, the risk to public health and safety, and other factors, such as cost. Use of any specific one of those procedures, including the ACE procedure, for determining rock size, is not necessarily "correct" nor required. It should be recognized that different methods are used by different organizations and agencies. ACE's special need to protect embankments, where erosion or failure could immediately jeopardize many lives behind those structures, is not necessarily the needs of designers to provide reasonable assurance of tailings stability, or to meet the requirements of 10 CFR Part 40, Appendix A.

The staff considers it important to use input parameter values that can be reasonably expected to affect the rock apron (if the river were to migrate), not values that are based on very conservative assumptions. For many situations where streambank erosion is imminent, a bank configuration can be easily determined, based on observed conditions. However, in this case, the main river channel is hundreds of feet away and not threatening the tailings pile, and the rock apron must be designed for some future unknown configuration of the river. Therefore, the staff assumed that the river would retain its principal characteristics, even though it had migrated. Recognizing that exact characteristics would be difficult to predict, the staff assumed that the river would retain the same width, depth, radius of curvature, and velocity. It is also possible that the river would migrate and develop characteristics such as increased width, decreased depth, decreased velocity, and increased radius of curvature; such assumptions would result in lesser rock apron designs being protective of the pile.

In making assumptions such as those discussed above, the staff is required by 10 CFR Part 40, Appendix A, to have reasonable assurance of tailings stability. The staff is not required to make a determination with absolute certainty. Therefore, given the fact that river migration to the pile in itself is unlikely, the staff is required only to assume a reasonable configuration, not necessarily an extreme configuration that maximizes every design parameter or input to a riprap design method. Recognizing that a considerable amount of judgment is necessary to predict design conditions at this site , such as river configuration or river velocity, it is not the position of the NRC staff to assume the most critical value for every input parameter that is used in every calculation. Reasonable assurance only requires that input parameters be selected within a reasonably conservative range of values of the parameter.

It should be emphasized that the staff does not consider the ACE analyses or design method to be incorrect or inappropriate. Rather, the staff considered that the input parameters selected for use in the analyses were overly conservative for this specific application and do not represent conditions that can reasonably be expected to occur if the river were to migrate to the rock apron. In the SR, the staff provided many reasons to support its conclusion that the licensee's design was adequate and provided extensive discussion to show that the ACE report overestimates the riprap sizes and quantity of rock required for the rock apron to provide reasonable assurance of tailings stability. In summary, based on independent analyses of the licensee's proposal and the information provided the DRC and ACE, the staff concludes that Atlas proposes to use a volume and size of rock that is larger than the volume and size computed by the staff.

Each of the assertions made by the State in the Petition have been addressed previously by the staff. The staff provided its initial findings in its TER and provided further details of the staff analysis in its supplemental report that was transmitted to the State by letter dated February 26, 1998. The staff has provided detailed technical bases for its conclusion that the design of the rock apron meets the requirements of 10 CFR Part 40, Appendix A.

The State was offered an opportunity to provide additional information to further address its assertions. The State indicated that no additional information would be provided for staff review or consideration.

Each of the State's assertions is addressed in the following discussions. Each assertion is stated and a brief summary of the staff's analysis is provided. If additional details are needed, they may be found in the staff's SR.

Assertion 1. The unpredictability of flood events, erosion, and vegetation growth along the river banks makes computation of the probability of river migration very difficult, and therefore conservatism should be built into the tailings pile design.

The staff agrees that the computation of the probability of river migration is difficult. However, the staff has concluded that the potential for migration of the Colorado River to the tailings pile is very low and has provided several bases supporting that conclusion. The staff has also concluded that adequate conservatism has been provided by the apron design to demonstrate that Part 40 requirements have been met and has provided detailed analyses and technical bases supporting that conclusion.

First, the staff examined aerial photographs of the Colorado River in this area, taken over a period of about 47 years. Those photographs verified

that very little erosion has occurred over that period of time.

Second, the staff reviewed a report prepared by expert geomorphologists that addressed the river migration issue. In that report, it was concluded that river migration was unlikely and that lateral accretion, rather than erosion, has occurred in some areas near the pile. Those expert geomorphologists also examined aerial photographs and concluded that: "Review of available historical photographs indicates that the right bank * * * has remained *remarkably* fixed spatially." (Emphasis added.)

Third, the staff has visited the site several times and has determined that only some minor erosion of the river banks has occurred and that this can be attributed to sloughing, rather than erosion from river velocities. In fact, it was this minor erosion that led the staff to question the original conclusion of the licensee that the river would not erode.

Fourth, despite the information available on channel stability, a conservative approach was taken by Atlas in its reclamation plan by assuming that the Colorado River would migrate to the tailings pile and by designing the erosion protection apron to account for that event. This approach eliminated the need for Atlas to conduct further detailed analyses of river migration and provided a design that exceeds the reasonable assurance requirements specified in Part 40, Appendix A.

Fifth, the staff examined the effects of increased vegetation growth on the erosion potential of the Colorado River. The staff performed independent calculations and concluded that the potentially increased density of vegetation and tamarisks in the floodplains of the river will not significantly affect river velocities. Staff computations indicate that the maximum velocity will be only slightly increased in the river channel near the tailings pile. Based on staff experience with vegetated floodplains and the widespread use of vegetation to stabilize channel banks, it is also likely that increased vegetation density of the river will *increase* the erosion resistance of the channel banks and floodplain area near the tailings pile.

Assertion 2. There are two different conceptual designs: one presented by Atlas and accepted by the staff; and the second presented by the ACE.

The staff has recognized for some time that there are two designs and that the designs are different. In the SR, the staff addressed the ACE design and provided a detailed analysis of the ACE method and the use of various input parameters to the ACE method. The staff performed a detailed review of the analyses, provided in the ACE report, that were used to assess the rock requirements for the apron. The staff evaluated input parameters related to computation of scour depths, river velocities, increases in river velocities at channel bends, and factors of safety. The staff also examined the technical basis for the development of the ACE procedure, including the supporting laboratory data. The staff's analysis of the ACE report is also discussed in Assertion 3, below.

Assertion 3. Assumptions and inputs to the conceptual models results in differences in the size, gradation, and volume of rock necessary to protect the tailings pile from erosion by the Colorado River.

The staff has recognized that differences in input parameters can significantly affect the size and volume of rock required for the rock apron. Extensive discussion of the ACE report and the ACE design method were provided in the SR.

Based on its review of the ACE report, the staff concluded that the design parameters selected for use in the ACE calculations of rock size were very conservative and did not reflect conditions that are likely to occur at the rock apron if the river migrated to the tailings pile. Velocities, radii of curvature, and scour depths were based on conditions that currently exist upstream, but do not exist in the vicinity of the apron. Velocities that would affect the apron will likely be smaller, and radii of curvature greater, than those that currently exist upstream of the site. In addition, the methods used by ACE to determine design velocities, increases in velocities in bends, and scour depths are conservative and incorporate large factors of safety that may not be necessary to provide reasonable assurance that Appendix A requirements are met. The staff, however, concluded that if reasonable and likely, values of channel velocity and channel curvature are used in the ACE method, the rock apron design proposed by Atlas is acceptable, even if all the other ACE safety factors are taken into account.

Assertion 4. The DRC staff has concluded that the ACE approach is more protective of the tailings pile side slope.

The staff agrees that the ACE design is more conservative than the design approved and would protect the pile under more severe conditions if such conditions were to occur. Use of the ACE approach to determine rock size and volume results in larger quantity of larger rock. However, the staff has concluded that the design proposed by Atlas is acceptable and that more and larger rock is not required to meet the requirements of Appendix A.

In the SR, the staff provided an extensive discussion of how the reasonable assurance requirements are met by the proposed design. Further discussion was also provided on the use of standard review plans and design procedures that reflect an approach to tailings management that incorporates an appropriate level of safety.

Of considerable importance in the NRC staff's assessment of Atlas' proposed design of the rock apron is the concept of "reasonable assurance." NRC regulations require (Part 40, Appendix A, Criterion 6) "* * * a design which provides reasonable assurance of control of radiological hazards to * * * be effective for 1000 years* * *." This requirement comes directly from U.S. Environmental Protection Agency (EPA) requirements in 40 CFR Part 192. These standards do not require absolute nor even near certainty.

Several reasons can be offered to justify the appropriateness of a "reasonable assurance" requirement, rather than a more conservative requirement. Of primary importance is that exposure to uranium mill tailings do not pose an immediate acute risk to the health and safety of individuals. Rather, the risk posed by tailings is from continual exposure to low levels of radioactivity and is a long-term cumulative risk. If control of tailings were lost (for example, if an earthquake beyond the design basis were to damage the cover and expose tailings), actions could be taken to repair the damage, with little likelihood of endangering individuals.

Additionally, uranium mill tailings disposal sites will be under perpetual government custodial care. If the features providing control of the tailings were damaged or compromised in the future, the government custodian could assess the situation and provide repairs. Although NRC standards require that the design for control of radiological hazards not rely on maintenance, the concept of "reasonable assurance" does not preclude contemplation of government custodian actions in unusual or unlikely situations.

Finally, the rock apron does not have to withstand a single, severe event that could occur without warning at any time. This is unlike the situation in designing protection from earthquakes or severe precipitation. For those events, the protective design may not be tested for decades or centuries and then, in a

very short time, have to perform with a design event. If the Colorado River were to migrate towards the tailings pile, it would occur over decades or centuries. There would be ample time to determine whether the assumptions used in the design of the rock apron (e.g., the scour depth, river curvature, river velocity, etc.) were correct or appropriate.

In summary, NRC regulations and EPA standards do not require the degree of certainty about the potential future threats to the rock apron that would require an extremely conservative design, but rather "reasonable assurance" that the design will protect the tailings pile.

Assertion 5. The DRC disagrees with the NRC conclusion that the Atlas design provides the necessary protection of the tailings pile. DRC asserts that the apron design does not meet the requirements of 10 CFR Part 40, Appendix A.

As discussed in the TER and SR, the staff performed detailed evaluations of the proposed design. Based on those evaluations, the staff concludes that: (1) A conservative approach was taken by Atlas in its reclamation plan by assuming that the Colorado River would migrate to the tailings pile and by designing the erosion protection apron to account for that event; (2) the rock size of 11 inches proposed by Atlas for the rock apron is greater than the rock size of about 2.4 inches required to resist velocities produced by the Colorado River on the collapsed rock apron, based on the most conservative calculated channel velocity and considering the effects of channel curvature and increased shear forces on the outside of channel bends; (3) the volume of rock provided for the apron is acceptable; (4) the maximum river velocity that should be used for the design of the rock apron for reasonable assurance is approximately 5.2 feet per second (ft/sec), rather than the 6.9 ft/sec used by ACE; (5) the potentially increased density of vegetation and tamarisks in the floodplains of the river will not significantly affect river velocities in the channel; (6) the design parameters selected for use in the ACE calculations of rock size are very conservative and are not likely to reflect conditions that will exist at the rock apron, if the river were to migrate to the pile in the future; (7) cohesive soils that could adversely affect the performance of the apron are not significantly present; (8) the requirement of reasonable assurance of site stability for a period of 200–1000 years is met by the proposed apron design; (9) a post-licensing monitoring and maintenance program will be implemented for this by the long-term custodian and will help to assure that requirements are continuously met and to assure that any unexpected problems occurring at the site will be promptly detected and mitigated; (10) the current design includes an over-designed volume of 5.3-inch rock on the side slope of the tailings pile that would be available to also launch into any gaps formed in the launched 11-sinch rock; (11) the riprap for the side slopes is designed for a precipitation intensity approaching the world record rainfall intensity; and (12) the riprap layer thickness exceeds the design criteria routinely accepted by the staff; and (13) the rock sizes that will actually be constructed will likely exceed the sizes proposed by Atlas.

IV. Conclusions and Recommendations

The NRC staff has reviewed the concerns and issues raised in the State's Petition and has concluded that the rock apron design for the Atlas reclamation plan complies with 10 CFR Part 40, Appendix A. For the reasons discussed above, no basis exists for taking any action in response to the Petition. Accordingly, no action pursuant to Section 2.206 is being taken.

Dated at Rockville, Maryland, this 20th day of January, 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–1702 Filed 1–25–99; 8:45 am]

BILLING CODE 7590-01-P

POSTAL RATE COMMISSION

[Docket No. IM99–1; Order No. 1226]

International Mail Report

(Authority: 39 U.S.C. 3663)

AGENCY: Postal Rate Commission.

ACTION: Notice concerning international mail report.

SUMMARY: This document notes the establishment of a docket for matters related to the Commission's new annual international mail reporting responsibilities. It defers a formal rulemaking on permanent data submission requirements supporting this effort, but invites comments related to preparation of the initial report to Congress. These actions facilitate compliance with a new statutory provision requiring the Commission to prepare an annual report on international mail.

DATES: Initial written comments are due by January 29, 1999; reply comments are due by February 5, 1999. See Supplementary Information for other dates.

ADDRESSES: Send comments to Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H St. NW., Suite 300, Washington, DC 20268–0001.

FOR MORE INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 1333 H. St. NW., Washington, DC 20268–0001 at 202–789–6820.

SUPPLEMENTARY INFORMATION: On October 21, 1998, Public Law 105–277 was signed into law, adding section 3663 to the Postal Reorganization Act. This amendment requires that by July 1 of each year, the Commission transmit to the U.S. Congress a comprehensive report of costs, revenues, and volumes the Postal Service accrues in connection with mail matter conveyed between the United States and other countries for the prior fiscal year. It also requires the Service to provide, by March 15, data the Commission may need to prepare the report. It further directs that the data be in sufficient detail to enable the requisite analysis to be performed under methods the Commission determines appropriate for analysis of rates for domestic mail.

In recognition of this responsibility, the Commission issued order no. 1226 (January 15, 1999) establishing the docket designation "IM99–1" to refer to international mail and to reflect the unique, ongoing nature of the required report. The order also addressed the following matters.

Deferral of rulemaking given impending report deadline. On December 16, 1998, United Parcel Service (UPS) asked the Commission to institute a rulemaking to determine the data to be provided to the Commission and the methods to be used by the Commission in analyzing the costs, revenues, and volumes of each international mail product for the required report. UPS asserts that it has a vital interest in ensuring that Postal Service international products with which it competes are not subsidized by other Postal Service offerings. It notes that the GAO has recently reported that several of the Postal Service's competitive international mail products are currently being provided at a loss. It observes that analyzing the costs, volumes, and revenues of international mail is a new responsibility for the Commission, and argues that in deciding what data and what methods to use, the Commission is likely to benefit from the input of interests affected by international mail.

Section 3663 contemplates an ongoing responsibility of the Commission to analyze international mail costs and revenues. It therefore may be appropriate to establish permanent rules concerning data that the Postal Service should provide to enable the Commission to carry out this responsibility. However, it appears that initiating traditional procedures leading to the adoption of permanent data reporting rules would not be useful at this time, given the short period that remains for obtaining the data on which the initial study will be based.

Establishing permanent data reporting rules will involve a 5 U.S.C. 553 rulemaking of the type UPS suggests, but a rulemaking ordinarily requires more time than is available to obtain data for the initial report. The Commission must decide what data are necessary in advance of that deadline, and a rulemaking could delay identifying the information needed to prepare a report by July 1. Therefore, the Commission will defer establishing the rulemaking docket requested by UPS, although the Commission expects to initiate such an inquiry shortly after the July 1, 1999 report is completed.

Request for comments on data and other issues related to the annual report. Despite the short time remaining for identifying data necessary for preparing the first report, input from interested parties would be helpful, since the required report covers ground that is largely new to the Commission. Therefore, the Commission requests written comments on this topic on or before January 29, 1999, and reply comments on or before February 5, 1999. To facilitate replies, all comments will be made available on the Commission's website (www.prc.gov) as well as in the Commission's docket room.

To help interested parties focus their comments, the Commission invites them to identify the international mail products or services they believe should be analyzed in the report and to discuss their reasons for proposing the inclusion of these products. In that regard, an examination of relevant documents, including the International Mail Manual, USPS Publication 51, and the recent Government Accounting Office (GAO) report on new postal products (GAO/GGD–99–15), suggests that it might be appropriate for the report to consist of an analysis of the international products or services listed below. (This list appears as an attachment to order no. 1226.) Interested persons may wish to comment on whether this list is complete and whether the level of disaggregation is appropriate.

Identification of candidate international mail products and services for purposes of 39 U.S.C. 3663. The list of candidate products and services includes: A. Inbound mail: letter and cards/AO; express; and parcels. B. Outbound mail: letters and cards (letters and letter packages; post cards and postal cards; and aerograms); other articles: printed matter, including small packets and matter for the blind (air and surface); M-bags (air and surface); parcel post (air and surface); express mail international service (EMS); international priority airmail (IPA); international surface airlift (ISAL); Valuepost/Canada; bulk letter service to Canada; global priority mail; global package link; global parcel services; direct entry; international customized mail (ICM); and international special services. C. Transit mail.

Supporting data; request for comments. The Postal Service annually compiles an International Cost and Revenue Analysis (ICRA) containing data on international mail services generally comparable to those presented in the CRA for domestic mail. The Commission believes the data in the ICRA are necessary to support the required report. Additionally, supporting data on international mail services comparable to those provided in the cost segments and components (CSC) report for domestic mail will be necessary to support the report. The Commission invites parties to identify any additional data that they believe are likely to be helpful or necessary. Questions of commercial sensitivity should not be an obstacle to submission of data for the Commission's analysis, since the Commission has procedures that allow it to maintain and analyze *in camera* data found to be commercially sensitive.

Finally, the Commission invites comments on any other issues that interested parties consider relevant to the Commission's duty to analyze and report on international mail costs, volumes, and revenues under 39 U.S.C. 3663.

Dated: January 21, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–1778 Filed 1–25–99; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 10:00 a.m., Monday, February 1, 1999; 8:30 a.m., Tuesday, February 2, 1999.

PLACE: Naples, Florida, at the Registry Hotel, 475 Seagate Drive, in the Lalique I Room.

STATUS: February 1 (Closed); February 2 (Open).

MATTERS TO BE CONSIDERED:

Monday, February 1—10:00 a.m. (Closed)

1. Consideration of Delivery Confirmation Implementation Date.
2. Preliminary Annual Performance Plan Targets.
3. International Rates.
4. Strategic Alliance.
5. Office of the Inspector General FY 1999 Performance Plan.

Tuesday, February 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, January 4–5, 1999.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Appointment of Members to Board Committees.

Tuesday, February 2—8:30 a.m. (Open) [Continued]

4. Preliminary Annual Performance Plan.
5. Fiscal Year 1998 Comprehensive Statement on Postal Operations.
6. Quarterly Report on Service Performance.
7. Quarterly Report on Financial Results.
8. Capital Investments.
   a. Small Parcel and Bundle Sorter (SPBS) Feed System.
   b. 2,000 Trailers—Additional Funding Request.
9. Report on the Southeast Area and Suncoast Performance Cluster.
10. Tentative Agenda for the March 1–2, 1999, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–1805 Filed 1–21–99; 4:54 p.m.]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40954; File No. SR–NASD–98–91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Time Period for Filing Information Requests in Arbitration

January 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 8, 1998, the National Association of Securities Dealers, Inc., through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (e)(6) of Rule 19b–4 under the Exchange Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10321 of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to modify the earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

RULES OF THE ASSOCIATION

* * * * *

10000. CODE OF ARBITRATION PROCEDURE

* * * * *

10321. General Provisions Governing Pre-Hearing Proceedings

(a) (No change)

(b) Document Production and Information Exchange

(1) Any party may serve a written request for information or documents ("information request") upon another party [twenty (20) business] *45 calendar* days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The requesting party shall serve the information request on all parties and file a copy with the Director of Arbitration. The parties shall endeavor to resolve disputes regarding an information request prior to serving any objection to the request. Such efforts shall be set forth in the objection.

(2)–(4) (No change)

(c)–(e) (No change)

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change is intended to modify the earliest date to file document and information requests in arbitration proceedings from 20 business days to 45 calendar days after service of the Statement of Claim or upon filing of the Answer, whichever is earlier, to coincide with the recently amended time period to file an Answer to the Statement of Claim.

In a previous filing approved by the Commission[4] and effective on March 16, 1998, NASD Regulation enlarged the time to answer an arbitration claim from 20 business days to 45 calendar days, and eliminated extensions of time to answer except in extraordinary circumstances. That change was proposed because requests for extensions of time were common, generally because respondents needed additional time to develop a complete answer to the claim. The extension of time to 45 days was designed to ease the administrative burden on NASD Regulation staff by eliminating the burden of processing and granting routine extensions of time.

NASD Regulation has determined that a related change is necessary to the rule on discovery in arbitration, Rule 10321, which currently permits requests for documents and information to be made 20 business days or more after service of the Statement of Claim by the Director of Arbitration or upon filing of the Answer, whichever is earlier. The 20-day period was originally intended to coincide with the time to answer claims, in order to prevent the respondent from having to respond to a discovery request before it had prepared its answer. Since the time to answer has been extended to 45 days, however, Rule 10321 could require a party to respond to a document request in 20 business days (approximately a month), which would be over two weeks before the party's answer was due. Therefore, to maintain the original purpose of the discovery time period, NASD Regulation proposes that the time period in Rule 10321 be extended to 45 calendar days as well.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will protect investors and the public interest by facilitating a more orderly discovery procedure for all parties.

(B) Self-Regulatory Organization's Statement of Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(e)(6).

[4] Exchange Act Rel. No. 39664 (February 13, 1998) (File No. SR–NASD–98–07) 63 FR 8727 (February 20, 1998).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a "non-controversial" rule change under Rule 19b–4(e)(6) under the Exchange Act.[5] Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until January 11, 1999, more than 30 days from December 8, 1998, the date on which it was filed, and the NASD provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b–4(e)(6) thereunder.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–98–91 and should be submitted by February 16, 1999.

[5] 17 CFR 240.19b–4(e)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1699 Filed 1–25–99; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1511).

TIME AND DATE: 9 a.m. (EST), January 27, 1999.

PLACE: Chattanooga Office Complex, 110 Market Street, Chattanooga, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meetings held on December 9, 1998.

New Business

C—Energy

C1. Supplement to Contract No. 96X7C–108889–000 with Bailey Controls Company for genuine Bailey Controls spare parts, equipment, services, and training.

C2. Fixed-price contract with National Electric Coil for generator stator upgrades for various hydro plants.

C3. Contract with G–UB–MK Constructors for modification and supplemental maintenance work at TVA's Eastern Region fossil and hydro power generation facilities.

Information Items

1. Approval of recommendations for resolution of wage rate and other disputes with Laborers' International Union of North America.

2. Approval of implementation of the results of negotiations with the Public Safety Service Employees' Union over compensation for TVA annual employees for fiscal years 1999 and 2000.

3. Approval of recommendations resulting from the 63rd Annual Wage Conference, 1998—Construction Project Agreement Wage Rates.

4. Approval of termination of the Performance Incentive Plan.

5. Approval to file condemnation cases affecting the following transmission lines: Charleston District-Riceville, Bradley County, Tennessee; East Cleveland-Charleston District, Bradley County, Tennessee; Fulton-South Fulton, Itawamba County, Mississippi; Johnsonville-West Nashville Tap to Pomona and Burns, Dickson County, Tennessee; Oneida-McCreary, Scott County, Tennessee; Oneida-McCreary, McCreary County, Kentucky; and Pinhook-Smyrna, Rutherford County, Tennessee.

6. Approval to enter into a nonexclusive license with Shilo Foods permitting Shilo Foods to practice and have practiced TVA's patent pending, reciprocating wetlands technology.

7. Sale of fee interest at public auction and sale of permanent easement to the United States Postal Service affecting approximately 20.21 acres of the White Bridge Road property in Davidson County, Tennessee, as well as a permanent easement over approximately 1.03 acres of adjoining land (Tract No. XNVSC–11, Parcels 1 and 2, and a portion of Tract No. XNVSC–6SU).

8. Grant of a permanent easement for electric system purposes affecting approximately 5.02 acres of the Russellville, Kentucky, Power Service Center, Logan County, Kentucky (Tract No. XRPSC–2).

9. Grant of a permanent easement to the Tennessee Department of Transportation affecting approximately 0.11 acre of Huntsville, Tennessee, Substation land, Scott County, Tennessee (Tract No. XHUNSS–1H).

10. Abandonment of transmission line easements and rights-of-way affecting approximately 8.16 acres in Giles County, Tennessee (Tract No. AP–104, Parcels A and B; Tract No. AP–105, Parcels A and B; and Tract No. PF–3, Parcels A, B, and C).

11. Sale of fee simple interest in approximately 2.88 acres of land located on the Toccoa River in Fannin County, Georgia, for purposes authorized in Section 4(k)(a) of the TVA Act (Tract No. XTOCA–1).

12. Sale of noncommercial, nonexclusive permanent easements to Claude Sylvester, Claude Dalton, Jr., and Charles Johnson for private water-use facilities affecting approximately 0.41 acre of land on Tellico Lake, Monroe County, Tennessee (Tract Nos. XTELR–204RE, -205RE, and -206RE).

13. Grant of a 30-year public recreation easement to Rhea County, Tennessee, for a public park affecting approximately 6 acres of land on Chickamauga Lake, Rhea County, Tennessee (Tract No. XTCR–195RE).

14. Grant of a permanent easement to the Siam Utility District for a well site, waterlines, utility lines, and an access road affecting approximately 0.11 acre of land on Wilbur Reservoir, Carter County, Tennessee (Tract No. XWIR–6U).

15. Award of a contract to General Electric Company (GE) for the rewind of the generator fields for the combustion

turbine units originally manufactured by GE.

16. Approval of the Chief Financial Officer's proposed Retention of Net Power Proceeds and Nonpower Proceeds and Payments to the U.S. Treasury in March 1999, pursuant to Section 26 of the TVA Act.

17. Approval of the Chief Financial Officer's proposed Financial Statements for Fiscal Year 1998.

18. Approval to enter into a contract with Calgon Corporation for raw water and specialty chemicals, chemical treatment equipment, and for chemical treatment services at TVA Nuclear generating facilities for an amount not to exceed $18 million.

19. Approval of recommendations resulting from the 63rd Annual Wage Conference, 1998—Annual Trades and Labor Agreement Wage Rates.

20. Approval for TVA to modify TVA's membership agreement (Contract No. TV–49086A) with the Electric Power Research Institute, Inc. (EPRI), to provide for TVA's membership on a multiyear basis.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: January 20, 1999.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 99–1804 Filed 1–21–99; 4:50 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Aerospace Equipment (ISAC–1)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee (ISAC–1) will hold a meeting on January 26, 1999 from 11:00 a.m. to 4:00 p.m. The meeting will be open to the public from 11:00 a.m. to 11:15 a.m. and closed to the public from 11:15 a.m. to 4:00 p.m.

DATES: The meeting is scheduled for January 26, 1999, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Fred Elliot, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–1233 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–1 will hold a meeting on January 26, 1999 from 11:00 a.m. to 4:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 11:15 a.m. to 4:00 p.m. The meeting will be open to the public and press from 11:00 a.m. to 11:15 a.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 99–1748 Filed 1–25–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–4999]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Transportation has renewed the charter for the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) to remain in effect for a period of 2 years from December 10, 1998, until December 10, 2000. CFIVAC is a federal advisory committee constituted under 5 U.S.C. App. 2. Its purpose is to provide advice and make recommendations to the Coast Guard on the safe operation of commercial fishing vessels.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Mark Prescott, Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone 202–267–0214, fax 202–267–4570. For questions on viewing the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

Dated: January 15, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–1694 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23–XX–26, Powerplant Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) 23–XX–26, and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 23–XX–26. This proposed AC provides information and guidance concerning acceptable means, but not the only means, of compliance with Title 14 of the Code of Federal Regulations, part 23 (14 CFR part 23), subpart E, which is applicable to the powerplant installation in normal, utility, acrobatic, and commuter category airplanes. This proposed AC consolidates existing policy documents and certain AC's that cover specific paragraphs of the regulations, into a single document.

DATES: Comments must be received on or before March 29, 1999.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Standards Office (ACE–110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Scott Sedgwick, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone (816) 426–6941; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of this proposed AC by contacting the person named above under the **FOR FURTHER INFORMATION CONTACT** section. We invite interested parties to submit comments on the proposed AC. Commenters must identify the AC title and number when submitting any comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

The proposed AC is current policy and guidance through Amendment 23–51, effective March 11, 1996. This material spans approximately 30 years of Federal Aviation Administration (FAA) and Civil Aviation Authority (CAA) history.

Issued in Kansas City, Missouri, on January 13, 1999.

Larry E. Werth,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1734 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 20–XX FSCAP]

Proposed Advisory Circular (AC) on Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts (FSCAP), Engines, and Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed FSCAP AC; extension of comment period.

SUMMARY: On December 7, 1998, the FAA announced the availability of and requested comments on a proposed AC pertaining to guidance for use in determining the eligibility of and evaluating U.S. military surplus flight safety critical aircraft parts for installation on U.S. type certified products. This notice announces the extension of the comment period.

DATES: Comments must be received on or before March 5, 1999.

ADDRESSES: A copy of the proposed AC may be obtained by downloading through the Internet at the following Uniform Resource Location (URL): http://www.faa.gov/avr/afs/acs/fscap.pdf. The file name is "FSCAP.pdf". Interested persons are invited to comment on the draft AC either by submitting such written data, views, or arguments as they may desire to: Federal Aviation Administration, Continuous Airworthiness Maintenance Division, AFS–300, 800 Independence Avenue, SW., Washington, DC 20591, attention Al Michaels; or, E:mail Al Michaels at Albert.Michaels@faa.gov. Commenters should identify FSCAP AC, Eligibility and Evaluation of U.S. Military Surplus Flight Safety Critical Aircraft Parts, Engines, and Propellers to the address specified above. All comments will be considered by the Continuous Airworthiness Maintenance Division, AFS–300, before issuing the final AC. Comments may be inspected at the above address between 9:00 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Al Michaels, AFS–300, at the above address, or telephone (202) 267–8203, or facsimile (202) 267–5115.

Issued in Washington, DC on January 19, 1999.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

[FR Doc. 99–1741 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Chico Municipal Airport, Chico, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 25, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas J. Lando, City Manager/Airport Manager of the Chico Municipal Airport, at the following address: 411 Main Street, Chico, CA 95927. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Chico under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chico Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 8, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the city of Chico was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 8, 1999.

The following is a brief overview of the impose and use application No. 99–03–C–00–CIC.

Level of proposed PFC: $3.00.

Proposed charge effective date: June 1, 1999.

Proposed charge expiration date: March 1, 2001.

Total estimated PFC revenue: $89,300.

Brief description of the proposed projects: Terminal Building Improvements and Passenger Boarding Ramp/Lift.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the

application, notice and other documents germane to the application in person at the city of Chico.

Issued in Hawthorne, California, on January 8, 1999.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 99–1735 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–99–5019]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announce the Marine Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submittted on or before March 29, 1999.

FOR FURTHER INFORMATION CONTRACT: Christopher Krusa, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2648 or fax 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Supplementary Training Course Application.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2133–0030.

Form Number: MA–823.

Expiration Date of Approval: October 31, 1999.

Summary of Collection of Information: Section 1305 (a) of the Maritime Education and Training Act of 1980 states that the Secretary may provide additional training on maritime subjects and may make such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine. Also, the U.S. Coast Guard (USCG) requires a fire fighting certificate for U.S. merchant marine offficers, effective December 1989, pursuant to 46 CFR 10.205(g) and 10.207(f).

Need and Use of the Information: This information collection is necessary for eligibility assessment, enrollment, attendance verification and recordation. Without this information, the courses would not be documented for future reference by the program or individual student. This application form is the only document of record and is used to verify that students have attended the course.

Description of Respondents: U.S. Merchant Seamen, both officers and unlicensed personnel, and other U.S. citizens employed in other areas of waterborne commerce.

Annual Responses: 2,000 responses.

Annual Burden: 100 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this docuement and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW, Washington, DC 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., ET. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: January 21, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–1771 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–4603, Notice 1]

Ford Motor Company; Receipt of Application for Determination of Inconsequential Non-Compliance

Ford Motor Company, of Dearborn, Michigan, has applied to the Administrator, for exemption from the notice and remedy requirements of this application concerning certain 1998 model year Ford F150, F250, Expedition vehicles, and Lincoln Navigator vehicles, which have sun visor air bag warning labels that do not fully meet the location requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 208 "Occupant Crash Protection."

Pursuant to Part 573 of Title 49 of the Code of Federal Regulations, Defect and Noncompliance Reports, Ford Motor Company submits the following information concerning a safety-compliance action that it is initiating.

This notice of receipt of an application is published under 49 U.S.C. § 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S4.5.1.(b)(3) of FMVSS 208 specifies "Except for the information on an air bag maintenance label placed on the sun visor pursuant to S4.5.1(a) of this standard, no other information will appear on the same side of the sun visor to which the sun visor warning label is affixed." Ford manufactured approximately 91,600 vehicles in total (certain F150, F250, and Expedition 4X4 models, and certain Lincoln Navigator 4X4 and 4X2 models) from February 13, 1998 through May 21, 1998, that did not comply with this requirement. The affected 4X4 models were built with driver sun visors with air bag warning labels *and* 49 CFR 575.105 (c)(1) utility vehicle labels both affixed to the same sun visor side. The affected Lincoln Navigators equipped with moonroofs (both the 4X4 and 4X2 models) were built with a temporary paper label for the garage door opener transmitter *also* located on this same side of the visor.

The noncompliance was created when Ford implemented a sun visor label running change on February 13, 1998, for the affected vehicles. Prior to the change, the air bag alert label specified in FMVSS 208 S4.5.1(c), along with the 575.105(c)(1) utility vehicle label on the 4X4 models, and the garage door opener transmitter label on the moonroof equipped Navigator 4X4 and 4X2 models, were affixed to the driver sun visor on the side visible with the visor in the stowed position. The air bag warning label on these vehicles was affixed to the opposite side of the visor with no other labels located on this opposite side. The label running change eliminated the air bag alert label, and the air bag warning label was located in its place on the side of the visor visible when stowed. However, the utility vehicle label already located on that side of the visor on the 4X4 models, and the garage door transmitter label located on the side directly below the transmitter controls on the moonroof equipped Navigator visors, were not relocated.

Ford argued that, based on rulemaking history, the intent of the FMVSS 208 air bag warning label location requirement is to ensure that customers have access to important air

bag safety information, and to avoid "information overload" that could blunt the impact of this air bag information. The basic question with regard to these non-compliant vehicles is, therefore, does the presence of the utility vehicle label on the transmitter label on the same side of the visor as the air bag warning label actually detract from motor vehicle safety, and further, would the removal of the utility vehicle label and the garage door opener transmitter label from these vehicles enhance motor vehicle safety? Removal of the utility vehicle label is a possible field fix since the affected vehicles all have wheelbases that exceed 110 inches. Even though the utility vehicle label is *required* only on these types of vehicles with wheelbases of 110 inches or less, Ford nevertheless believes the information on the label may also be beneficial in utility vehicles with over 110 inch wheelbase, and affixes the labels to these vehicles also. The transmitter label is a temporary paper stick-on label intended to be removed by the customer, and in all likelihood is removed early in the life of the vehicle. It is provided merely as a customer convenience and directs the customer to operational instructions provided in the Owner Guide. Ford believes this is beneficial to the vehicle operator.

Supporting Arguments

For the following reasons, in Ford's view, the presence on the driver visor of the utility vehicle label or the transmitter label does not significantly detract from the air bag warning, and has no consequential effect on motor vehicle safety. First, the warning label is prominently displayed on both the driver and passenger visor, on the side visible when the visor is stowed. The label is thus visible the majority of the time. Second, the revisions to the air bag label requirements published on November 27, 1996—the addition of a pictogram, specified minimum area for message text, colors for a pictogram, text, and background—have effectively increased the air bag label's prominence and readability such that the presence of this utility vehicle label or the transmitter label, both of which are uniquely different in appearance from the air bag warning label, is unlikely to detract from the much more prominent air bag label. Finally, the affected vehicles do not require and are not equipped with the air bag maintenance label specified in S4.5.1(a) and, consequently, the air bag warning label need not compete with this maintenance label, thus reducing that potential for "information overload." In addition, the fact that S4.5.1(a) allows the air bag maintenance label to be placed on the same side of the visor with the air bag warning label provides explicit recognition by the agency that the risk of "information overload" from other labels on the visor is manageable. Based on these facts, Ford believes that the effectiveness of the air bag warning label is not significantly diluted by the presence of the utility vehicle label. They believe the same is true with regard to the temporary presence of the transmitter label.

Ford offers the following concerning the question of whether removal of the utility vehicle label or the transmitter label from the affected vehicle enhances motor vehicle safety. With regard to the utility vehicle label, the industry and the agency have and are considering, whether the presence of this label along with the air bag warning label, do in fact reduce the effectiveness of the air bag label. There is not complete agreement on this subject as evidenced by rulemaking including a January 13, 1997 AAMA Request for Technical Amendment or Petition for Reconsideration, to allow both labels on the same side of the visor—this request/petition was denied by the agency on June 24, 1998 (49 CFR 575.208). Citation for utility vehicles NPRM 63 FR 17974 April 13, 1998, Docket No. NHTSA 98–3381, Notice 1.

The transmitter label on the Navigators' vehicles on the other hand, a paper stick-on label which directs the customer to the Owner Guide for instructions on the operation of the transmitter controls on the visor, is not intended to be permanent, but is designed as a temporary label with the expectation that it will be removed early in the life of the vehicle. Because its early removal is intended, Ford does not argue that a field action to remove this label would be detrimental to safety, however, because Ford believes it will be removed by the customer, or by the dealer after review with the customer during delivery of the vehicle, Ford suggests there is no need for such a field action.

As a final point, the subject utility vehicle and transmitter labels, rather than being affixed, as they are, on the driver visors no closer that 2 inches from the air bag warning label, which does not satisfy Standard 208, alternatively could have been affixed to the vehicle headliner immediately above and approximately 2 inches away from the visor air bag label. This alternative would have been completely compliant with Standard 208, even though the proximity of these labels to the air bag warning label would have been essentially the same as with the non-compliant location on the visor. If, in this alternate compliant location, the air bag warning label is not diluted by the presence of the utility vehicle or transmitter label on the headliner, perhaps 2 inches away, Ford suggests that the air bag warning label is not diluted by the technically non-compliant presence on the visor of these labels which also are approximately 2 inches away from the air bag label.

In summary, Ford believes that the presence of the utility vehicle label or the garage door opener transmitter located two inches or more from the air bag warning label, does not constitute "information overload," nor does it present any risk to motor vehicle safety. Ford requests that the agency find this condition to be inconsequential to motor vehicle safety, and accordingly that Ford be exempted from the notice and remedy requirements of the Code. Ford has attached to this petition their June 23, 1998 letter to the agency advising of this condition, and of Ford's intent to petition for a determination of inconsequential noncompliance.

Interested persons are invited to submit written data, views and arguments on the application of Ford, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, Room PL 401 Seventh Street, SW, Washington, DC 20590. It is requested but not required that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 25, 1999. (49 U.S.C. 30118,30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: January 19, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–1744 Filed 1–25–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 19, 1999.

The Department of Treasury has submitted the following public

information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 25, 1999 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions Fund (CDFI)

OMB Number: 1505–0154.

Form Number: None:

Type of Review: Extension.

Title: Community Development Financial Institutions Program.

Description: The purpose of the CDFI Program is to promote economic revitalization community development through investment in and assistance to CDFIs. The investments by the Program are intended to facilitate the creation of a national network of financial institutions that is dedicated to community development.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 410.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—36–51 hours.

Core and Intermediary—100 hours.

Technical Assistance—50 hours.

Certification Only—15 hours.

Recertification—7 hours.

Frequency of Response: Quarterly, Annually.

Estimated Total Reporting/ Recordkeeping Burden: 32,570 hours.

Clearance Officer: Lois K. Holland (202) 622–1563 Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–1729 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 25, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0507.
Form Number: ATF F 5300.26.
Type of Review: Extension.
Title: Federal Firearms and Ammunition Excise Tax.

Description: This information is needed to determine how much tax is owed for firearms and ammunition. ATF uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms and ammunition. Businesses, including small to large, and individuals may be required to used this form.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 965.

Estimated Burden Hours Per Respondent: 7 hours.

Frequency of Response: Quarterly, Other (annual if no tax is due).

Estimated Total Reporting Burden: 27,020 hours.

OMB Number: 1512–0548.
Form Number: ATF F 6410.1.
Type of Review: Extension.
Title: Gang Resistance Education and Training Funding Application.

Description: State and local law enforcement agencies desiring financial assistance for the G.R.E.A.T. Program will submit ATF F 6410.1 to the ATF G.R.E.A.T. Branch. The information collected will be used by ATF to evaluate the applicants funding need. The information will also be used to determine funding priorities and levels of funding, as required by law.

Respondent: State, Local or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 800 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503,

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–1730 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 11, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 25, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1624.
Notice Number: IRS Notice 98–52.
Type of Review: Extension.
Title: Nondiscriminatory Safe Harbors; ADP Test; ACP Test.

Description: Section 1433(a) of the Small Business Job Protection of 1996 requires that the Service provide nondiscriminatory safe harbors with respect to section 401(k)(12) and section (m)(11) for plan years beginning after December 31, 1998. This notice implements that statutory requirement.

Respondents: Business and other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 80,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–1731 Filed 1–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 19, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before February 25, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1548.

Revenue Procedure Number: Revenue Procedure 98–55.

Type of Review: Extension.

Title: Late Election Relief for S Corporations.

Description: The IRS will use the information provided by taxpayers under this revenue procedure to determine whether relief should be granted for the relevant late election.

Respondents: Business and other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–1732 Filed 1–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–10]

Designation of Chief Information Officer for the Department of the Treasury

January 13, 1999.

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. 321(b), 44 U.S.C. 3506, and sections 5125 and 5131 of the Clinger-Cohen Act of 1996 (Division E of Pub. Law 104–106), it is hereby ordered that:

1. The Deputy Assistant Secretary (Information Systems) is designated as the Chief Information Officer of the Department.

2. The Chief Information Officer shall carry out:

a. The general responsibilities and the duties specified in sections 5125(b) and (c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1425 (b) and (c));

b. The responsibilities of the Department under chapter 35 of title 44, U.S.C., titled "Coordination of Federal Information Policy" ; and

c. The Chief Information Officer management responsibilities designated in Executive Order 13011, dated July 16, 1996;

3. The Assistant Secretary for Management and Chief Financial Officer may assign to the Chief Information Officer other functions and responsibilities which are not inconsistent with paragraph 2.

4. Pursuant to section 5131(c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)), I redelegate to the Chief Information Officer the authority to waive compulsory and binding Federal Information Processing Standards (FIPS) which has been delegated to the Secretary of the Treasury by the Secretary of Commerce. Any such waiver by the Chief Information Officer shall be made in conformity with the criteria and requirements for a waiver in: (a) section 5131; and (b) any applicable issuances of the Department of Commerce. This authority may not be redelegated by the Chief Information Officer.

5. The Chief Information Officer shall have direct access to the Secretary with respect to matters within paragraph 2.b.

6. *Cancellation.* Treasury Order 102–10, "Delegation of Authority to the Deputy Assistant Secretary (Information Systems)," dated September 29, 1994.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99–1670 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15–54]

Delegation of Authority to the Director, United States Secret Service, To Investigate Violations of 18 U.S.C. 1956 and 1957

January 19, 1999.

1. *Purpose.* This Directive delegates to the Director, United States Secret Service, authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e), 1957(e), and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Director, United States Secret Service:

a. investigatory authority over violations of 18 U.S.C. 1956 and 1957 involving an offense under: 18 U.S.C. 215 (relating to commissions or gifts for procuring loans); 18 U.S.C. 471–473 (counterfeiting of obligations or securities of the United States); 18 U.S.C. 500–503 (counterfeiting of blank or postal money orders, postage stamps, foreign government postage and revenue stamps, and postmarking stamps); 18 U.S.C. 513 (relating to securities of States and private entities); 18 U.S.C. 641 (relating to public money, property, or records); 18 U.S.C. 656 (involving theft, embezzlement or misapplication by a bank officer or employee); 18 U.S.C. 657 (relating to lending, credit, and insurance institutions); 18 U.S.C. 658 (property mortgaged or pledged to farm credit agencies); 18 U.S.C. 1005 (fraudulent bank entries); 18 U.S.C. 1006 (relating to fraudulent federal credit institution entries); 18 U.S.C. 1007 (relating to Federal Deposit Insurance Corporation transactions); 18 U.S.C. 1014 (relating to fraudulent loan and credit applications); 18 U.S.C. 1029 (fraud and related activity in connection with access devices); 18 U.S.C. 1032 (relating to concealment of assets from a conservator, receiver, or liquidating agent of a financial institution); 18 U.S.C. 1341 (relating to mail fraud); 18 U.S.C. 1343 (relating to wire fraud); 18 U.S.C. 1344 (relating to bank fraud); 18 U.S.C. 1510 (obstruction of criminal investigations); 18 U.S.C. 1512 (tampering with a witness, victim or

informant); 18 U.S.C. 1513 (retaliating against a witness, victim, or an informant); 18 U.S.C. 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises); 18 U.S.C. 1956 (C) (7) (B) (iii) (relating to an offense against a foreign nation involving any scheme or attempt to defraud, by or against a foreign bank when the financial transaction occurs in whole or in part in the United States); 18 U.S.C. 2314 (transportation of stolen goods, securities, or counterfeiting articles); 18 U.S.C. 2315 (sale or receipt of stolen goods or securities); or any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000; and

b. seizure and forfeiture authority and related authority under 18 U.S.C. 981 and 984 relating to violations of 1956 or 1957 that are within the investigatory jurisdiction of Secret Service under paragraph 2.a., and seizure authority under 18 U.S.C. 981 and 984 relating to any other violations of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 and 984 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Director, United States Secret Service, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, Secret Service discovers evidence of a matter within the jurisdiction of another Treasury bureau, Secret Service shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. Secret Service shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the sole investigatory jurisdiction of a Department of Justice bureau or the Postal Service, Secret Service shall adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or pursuant to any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, Secret Service shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Ratification.* To the extent that any action heretofore taken consistent with this Directive may require ratification, it is hereby approved and ratified.

7. Authorities.

a. 18 U.S.C. 981, 1952, 1956, 1957, 1961, and 2341–2346.

b. 31 U.S.C. 5311–5326 (other than violations of 31 U.S.C. 5316).

c. 22 U.S.C. 2778.

d. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated October 29, 1998, or successor documents.

e. TO 102–14, "Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992," dated January 10, 1995, or successor documents.

8. *Cancellation.* Treasury Directive 15–54, "Delegation of Authority to the Director, United States Secret Service to Investigate Violations of 18 U.S.C. 1956 and 1957," dated September 11, 1995, and the memorandum "Delegation of Authority to the Director, United States Secret Service, to Investigate Violations of 18 U.S.C, 1956 and 1957, " dated February 5, 1996, are superseded.

9. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or canceled prior to that date.

10. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

James E. Johnson,

Under Secretary (Enforcement).

[FR Doc. 99–1733 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 102–15]

Delegation of Authority To Invoke National Security Emergency Preparedness Treatment for Telecommunications Services

January 13, 1999.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b); Executive Order 12472, dated April 3, 1984; 47 CFR Part 64, Appendix A; and National Communications Systems (NCS) Directive 3–1 dated July 5, 1990, it is hereby ordered that:

1. The Deputy Assistant Secretary (Information Systems) and Chief Information Officer and the Director, Office of Corporate Systems Management, are each delegated authority to invoke National Security Emergency Preparedness treatment for the priority provisioning of telecommunications services from the Manager, NCS, and from concerned service vendors, on behalf of the Department or any of its bureaus; and

2. Upon issuance of this Order, and thereafter whenever required pursuant to NCS directives, the Assistant Secretary for Management and Chief Financial Officer shall prepare, for execution by the appropriate official, the necessary correspondence notifying NCS of the individuals authorized to invoke National Security Emergency Preparedness treatment.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99–1671 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 115–01]

Office of the Treasury Inspector General for Tax Administration

January 14, 1999.

By virtue of the authority vested in the Secretary of the Treasury by 31 U.S.C. § 321(b), 5 U.S.C. § 301 and § 302; and the authority contained in the Inspector General Act of 1978, 5 U.S.C. App. 3 (the I.G. Act), and the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, it is hereby ordered as follows.

1. Office of the Treasury Inspector for Tax Administration

a. There is within the Department of the Treasury an Office of the Treasury Inspector General for Tax Administration (OTIGTA). The OTIGTA

shall be headed by an Inspector General who is appointed by the President and who shall report to and be under the general supervision of the Secretary of the Treasury and the Deputy Secretary.

b. The Treasury Inspector General for Tax Administration (TIGTA) shall exercise all duties and responsibilities of an Inspector General with respect to the Department and the Secretary on all matters relating to the Internal Revenue Service (IRS). The TIGTA shall have sole authority under the I.G. Act to conduct an audit or investigation of the IRS Oversight Board, and the Office of Chief Counsel of the IRS (Office of Chief Counsel). (Hereafter the IRS Oversight Board and the Office of Chief Counsel are referred to as the "Related Entities".) All the powers and responsibilities of the IRS Office of Chief Inspector, except for the conducting of background checks and the providing of physical security, are transferred to the TIGTA.

c. The OTIGTA shall be placed organizationally within the Departmental Offices but shall be independent of the Departmental Offices and all other offices and bureaus within the Department.

d. It shall be the duty and responsibility of the TIGTA to:

(1) Provide policy direction for, and conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the IRS and Related Entities;

(2) Review existing and proposed legislation and regulations relating to the programs and operations of the IRS and Related Entities, and make recommendations in the semiannual reports required by § 5(a) of the I.G. Act concerning the impact of such legislation and regulations on the economy and efficiency in the administration of programs and operations administered or financed by the IRS and Related Entities or the prevention and detection of fraud and abuse in such programs and operations;

(3) Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by the IRS and Related Entities for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, their programs and operations;

(4) Recommend policies for, and conduct, supervise, or coordinate relationships between the IRS and Related Entities and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to all matters relating to the promotion of economy and efficiency in administration of, or the prevention and detection of fraud and abuse in, the programs and operations administered or financed by the IRS and Related Entities; or the identification and prosecution of participants in such fraud or abuse;

(5) Recommend actions to resolve fraud and other serious problems, abuses and deficiencies in the programs and operations of the IRS and Related Entities; and inform the Secretary and the Congress, fully and currently, of these problems and the progress made resolving these problems; and,

(6) Protect the IRS and Related Entities against external attempts to corrupt or threaten their employees except that the TIGTA shall not, with respect to employees of the IRS and Related Entities, conduct background checks or provide physical security.

e. The duties and responsibilities described in paragraph 1.d. shall not be construed to impair or reduce the responsibilities of program managers in the IRS and Related Entities to ensure that programs are administered in an economic and efficient manner and that such programs are protected against waste, fraud and abuse. Similarly, paragraph 1.d. shall not be construed to prevent program managers in the IRS and Related Entities from coordinating with other agencies in fulfilling the managers' responsibilities for proper administration of programs.

f. An audit or investigation conducted by the TIGTA shall not affect the final decision of the Secretary or his delegate under 26 U.S.C. § 6406.

g. The TIGTA shall not assume responsibility for any program operating responsibility of the IRS or Related Entities.

2. Audit and Investigative Matters

a. In executing the functions of an Inspector General, the TIGTA is authorized to:

(1) Access return and return information, as defined in 26 U.S.C. § 6103(b), only in accordance with the provisions of 26 U.S.C. § 6103 and the I.G. Act;

(2) Access all facilities of the IRS and Related Entities, including computer facilities and computer rooms, electronic data bases and files, electronic and paper records, reports and documents, and other material available to the IRS and Related Entities which relate to their programs and operations; and, when access is necessary to execute a function of the TIGTA pertaining to a matter within the jurisdiction of the TIGTA, all similar facilities throughout the Department.

(3) Make such investigations and reports relating to the administration of the programs and operations of the IRS and Related Entities as are, in the judgment of the TIGTA, necessary or desirable;

(4) Request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by the I.G. Act from any Federal, State, or local government agency or unit thereof;

(5) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of functions assigned by the I.G. Act, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate U.S. district court: provided, that procedures other than subpoenas shall be used by the TIGTA to obtain documents and information from Federal agencies;

(6) Administer to or take from any person an oath, affirmation, or affidavit whenever necessary for the performance of TIGTA functions, which oath, affirmation, or affidavit when administered or taken by or before a OTIGTA employee designated by the TIGTA shall have the same force and effect as if administered or taken by or before an officer having a seal;

(7) Enforce criminal provisions of the internal revenue laws, other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, or any other law for which the Secretary has delegated investigative authority to the IRS pursuant to section 8D(k)(1)(A) of the I.G. Act. The TIGTA and the Commissioner of the IRS (Commissioner) will establish policies and procedures to ensure that the TIGTA's and the Commissioner's responsibilities to investigate alleged offenses under the internal revenue laws and related statutes are delineated clearly;

(8) Carry firearms, and perform the following functions set out in 26 U.S.C. § 7608(b)(2):

(a) Execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under the authority of the United States;

(b) Make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in the OTIGTA employee's presence, or for any felony cognizable under such laws if there are reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and,

(c) Make seizures of property subject to forfeiture under the internal revenue laws;

(9) Report any reasonable grounds believed to be a violation of Federal criminal law to the Attorney General of the United States in accordance with sections 4(d) and 8D(k)(2) of the I.G. Act, subject to 26 U.S.C. § 6103;

(10) Investigate violations of 31 U.S.C. § 333 involving the misuse of the name or symbol of the IRS; the title of any IRS employee; the name or symbol of the Department of the Treasury in connection with internal revenue laws; or the title of any Treasury employee in connection with the activities of the IRS and Related Entities;

(11) Make determinations and issue orders, pursuant to 18 U.S.C. § 6001-§ 6005, with the approval of the Attorney General, to compel the testimony under a grant of immunity of any individual who has been or may be called to testify or provide information at any proceeding before the IRS which such individual refuses to give or provide on the basis of the individual's privilege against self-incrimination; and,

(12) Use the investigative, seizure and forfeiture authority under the Money Laundering and Control Act of 1986, 18 U.S.C. § 1956–§ 1957, where the underlying conduct is subject to investigation under the I.G. Act.

b. The TIGTA shall provide or arrange for audit services for contracts awarded by the IRS and Related Entities.

c. The TIGTA shall receive, investigate and prepare final investigative reports for the Secretary or his designate on matters referred to the Department by the Office of Special Counsel regarding allegations of prohibited personnel practices related to personnel of the IRS and Related Entities.

3. Other Matters

a. The TIGTA is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the OTIGTA subject to the provisions of Title 5, U.S.C., governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

b. The TIGTA may exercise any and all administrative functions attendant upon this personnel authority except those authorities and functions assigned by law to the Secretary which may not be delegated.

c. The TIGTA is authorized to exercise all authorities granted to an "appointing authority" pursuant to Title 5, U.S.C. as those authorities pertain to SES members or positions which are or would be within the OTIGTA. With regard to authorities accorded by law to the Department or the Secretary that pertain to SES members or positions, the TIGTA shall be under the general supervision of the Secretary and the Deputy Secretary and no other Departmental official.

d. The TIGTA is authorized to obtain services as authorized by 5 U.S.C. § 3109 at daily rates not to exceed the highest rate prescribed in the General Schedule by 5 U.S.C. § 5332.

e. Each fiscal year, the TIGTA shall submit to the Secretary a request for a separate appropriation account as contemplated by 31 U.S.C. § 1105(a)(25). The staffing and funding level transmitted to Office of Management and Budget for the TIGTA shall be subject to final determination by the Secretary or the Deputy Secretary.

f. To the extent and in such amounts as may be provided in advance by appropriations Acts, the TIGTA may enter into contracts and other arrangements for audits, studies, analyses, and other services, and make such payments as may be necessary to carry out the TIGTA's mission.

g. The TIGTA shall take all appropriate actions in response to a recommendation by the Office of Special Counsel with respect to TIGTA employees.

h. The TIGTA shall issue final decisions on administrative appeals under 5 U.S.C. § 552 and § 552a with respect to records that are within the custody of the OTIGTA.

i. The Secretary shall provide the TIGTA with adequate and appropriate office space at the Departmental Offices, IRS headquarters and IRS field office locations, together with such equipment, office supplies, communications facilities and services necessary for the effective operation of such offices, and will ensure necessary maintenance services for such offices, equipment, and facilities.

j. Pursuant to section 8D(b)(3) of the I.G. Act, the Inspector General of the Department of the Treasury and the TIGTA, within six months of the appointment of the TIGTA, shall develop procedures to:

(1) Determine how audits and investigations are allocated in cases of overlapping jurisdiction; and

(2) Provide for coordination, cooperation and efficiency in the conduct of such audits and investigations.

4. TIGTA Reporting Requirements

a. Pursuant to § 5(a) of the I.G. Act, the TIGTA shall, no later than April 30 and October 31 of each year, prepare semiannual reports for the Secretary to transmit to Congress.

(1) Such reports shall summarize the activities of the OTIGTA during the immediately preceding six-month periods ending March 31 and September 30.

(2) In addition to including the information described in § 5(a) of the I.G. Act, the semiannual reports shall contain information to fulfill the additional reporting requirements contained in 26 U.S.C. § 7803(d).

b. In the event that the TIGTA becomes aware of a particularly serious or flagrant problem, abuse or deficiency relating to the administration of programs and operations of the IRS or Related Entities, the TIGTA, pursuant to § 5(d) of the I.G. Act, shall report immediately to the Secretary or the Deputy Secretary.

(1) Such report shall be transmitted to the appropriate committees or subcommittees of Congress, the Commissioner, and the IRS Oversight Board (Board) within seven calendar days, together with a report from the Secretary containing any comments the Secretary deems appropriate.

(2) The required report may be transmitted at a time determined appropriate by the Secretary if the problem, abuse, or deficiency relates to the performance of a law enforcement function under § 8D(k)(1)(A) of the I.G. Act, and other sensitive information as described in § 8D(a)(1)(A) through (F) of the I.G. Act.

c. In addition to these reporting requirements, the TIGTA, pursuant to § 8D(l)(2) of the I.G. Act, shall:

(1) Timely submit to the Commissioner and the Board any final report of audit conducted by the TIGTA; and,

(2) Periodically submit to the Commissioner and the Board a list of investigations for which a final report has been completed, and shall provide, upon request, a copy of any such report to the Commissioner or the Board.

d. Pursuant to 26 U.S.C. § 6103(h)(5)(B), if the TIGTA or the Commissioner prepares any report or other matter for the Board in order to assist the Board in carrying out its duties, and the TIGTA or the Commissioner determines it is necessary to include any return or return information in such report or other matter to enable the Board to carry such duties, such return or return information (other than information regarding taxpayer identity) may be disclosed to members, employees, or detailees of the Board solely for the purpose of carrying out the Board's official duties.

e. Pursuant to Executive Order No. 12863, September 13, 1993, and No. 12333, December 4, 1981, the TIGTA, together with the General Counsel, to the extent permitted by law, shall report to the President's Intelligence Oversight Board concerning intelligence activities of the IRS and Related Entities where there is reason to believe the activities may be unlawful or contrary to Executive Order or Presidential Directive.

5. Responsibilities of Department of Treasury Personnel

a. All employees of the Department of the Treasury, including IRS and Office of Chief Counsel personnel, and members and staff of the Board, shall promptly and directly report to the OTIGTA, on matters under TIGTA authority:

(1) Complaints or information concerning the possible existence of any activity related to the IRS or Related Entities that constitutes a violation of law, including bribery overtures, or any other corrupt or threatening action to the extent it is within the TIGTA's jurisdiction;

(2) Complaints or information related to programs and operations of IRS or Related Entities concerning mismanagement; gross waste of funds; abuse of authority or violation of a taxpayer's rights; violations of regulations, including ethics regulations; or a substantial and specific danger to the public health and safety;

(3) Any unauthorized request from, or unauthorized disclosure of return or return information to, Board members, employees or detailees, which is prohibited by 26 U.S.C. § 6103(h)(5)(A);

(4) Any unlawful request by the President, Vice President, employees of the executive offices of either the President or Vice President, or any individual (except the Attorney General) serving in a position specified in 5 U.S.C. § 5312 (generally Cabinet level positions), that any IRS employee conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer, which is prohibited by 26 U.S.C. § 7217; and,

(5) Any matters that raise questions of propriety or legality under Executive Orders 12863 and 12333 regarding the conduct of United States intelligence activities with respect to IRS and Related Entities programs and operations.

b. Any employee of the Department of the Treasury, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to the TIGTA, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

c. No employee of the Department of the Treasury shall prevent or prohibit the TIGTA from initiating, carrying out, or completing any audit or investigation of a matter within the jurisdiction of the TIGTA, or from issuing any subpoena during the course of any such audit or investigation.

d. In carrying out their official duties, OTIGTA personnel shall have the full cooperation of employees of the Department of the Treasury and shall have full and prompt access to facilities, property, electronic or paper records, documents, correspondence, data, and computer systems, as such access is defined in paragraph 2.a.(2) of this Order.

e. Employees of the Department of the Treasury shall maintain in confidence all communications with OTIGTA employees when requested to do so, unless required or permitted by law to disclose, and shall not discuss any pending OTIGTA investigation with the subject(s) of the investigation or the subject's representatives unless required or permitted by law.

6. Responsibilities of OTIGTA Personnel

a. Whenever information or assistance requested under paragraphs 2.a.(1), 2.a.(2) or 2.a.(4) of this Treasury Order is, in the judgment of the TIGTA, unreasonably refused or not provided, the TIGTA shall report the circumstances to the Secretary or Deputy Secretary without delay.

b. Employees of the OTIGTA shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the TIGTA determines such disclosure is unavoidable during the course of an investigation.

c. Employees of the OTIGTA shall safeguard information in accordance with 26 U.S. C. § 6103(p)(4) and other applicable laws.

7. Conforming Amendments

a. Any authority or responsibility currently delegated to the Inspector General of the Department of the Treasury in Treasury Order 101–19, dated October 24, 1994; Treasury Order 101–21, dated July 7, 1997; Treasury Order 102–13, dated January 19, 1993; Treasury Order 102–19, dated March 19, 1998; Treasury Order 105–13, dated February 19, 1997; Treasury Order 107–05, dated March 2, 1995; and Treasury Order 150–29, dated November 23, 1982, is also delegated to the TIGTA until the listed Treasury Order is canceled or a successor Treasury Order is issued.

b. The TIGTA is designated a "Head of Bureau" and is authorized, with respect to the operations of the TIGTA, to exercise the functions delegated from the Secretary to the "Head of Bureau" in Treasury Order 101–06, dated July 7, 1980; Treasury Order 101–12, dated December 19, 1955; and Treasury Order 101–14, dated October 24, 1960, until the listed Treasury Order is canceled or a successor Treasury Order is issued.

c. The TIGTA may issue additional directives, delegations or regulations regarding the operations of the OTIGTA as the TIGTA deems appropriate.

8. Sunset Review

This Order shall be reviewed five years from the date of issuance unless superseded or canceled prior to that date.

Robert E. Rubin,

Secretary of the Treasury.

[FR Doc. 99–1668 Filed 1–25–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 27–14]

Organization and Functions of the Office of Treasury Inspector General for Tax Administration

January 15, 1999.

1. *Purpose.* This directive describes the organization and functions of the Office of Treasury Inspector General for Tax Administration (OTIGTA).

2. *The Treasury Inspector General for Tax Administration.* The Treasury Inspector General for Tax Administration (TIGTA) is appointed by the President, by and with the advice and consent of the Senate, and reports to the Secretary of the Treasury and the Deputy Secretary. The Office of the Treasury Inspector General for Tax Administration (OTIGTA) is organizationally placed within the Departmental Offices, but is independent of the Departmental Offices and all other offices and bureaus within the Department.

a. Pursuant to the Inspector General Act of 1978, as amended, the TIGTA carries out a comprehensive audit and investigative program to assess the operations and programs of the Internal Revenue Service (IRS), the IRS Oversight Board, and the Office of Chief

Counsel of the IRS. (Hereafter, the IRS Oversight Board and the Office of the Chief Counsel of the IRS are referred to as the "Related Entities").

b. The TIGTA carries out the duties and responsibilities described in Treasury Order 115–01 "Office of the Inspector General for Tax Administration" or successor documents.

c. The TIGTA provides executive leadership to the OTIGTA and exercises supervision over the personnel and functions of its major components. The TIGTA determines the budget needs of the OTIGTA, sets organizational policies and priorities, oversees organizational operations and provides reports to the Secretary and members of Congress.

d. The TIGTA is a member of the President's Council on Integrity and Efficiency (PCI&E).

e. Under the supervision of the TIGTA are a Deputy Inspector General for Tax Administration; a Counsel to the Treasury Inspector General for Tax Administration; an Assistant Inspector General for Audit; an Assistant Inspector General for Investigations; four Regional Inspectors General for Tax Administration; the Director, Office of Resources, Management and Support; the Director, Office of Systems Development and Integration; the Director, Central Case Development Center; the National Director for Communication, Education and Quality; and such support staff as the TIGTA deems necessary. (See Attachment I for chart of OTIGTA organization.)

3. *The Deputy Inspector General for Tax Administration.* The Deputy Inspector General for Tax Administration serves as the TIGTA's principal assistant and is designated as the first assistant to the TIGTA for the purposes of 5 U.S.C. 3345.

a. The Deputy Inspector General for Tax Administration directs and oversees the national proactive and coordinated activities of auditors and investigators to detect and deter fraud and abuse involving the IRS or the Related Entities;

b. The Deputy Inspector General for Tax Administration manages the strategic management process of the OTIGTA, which consists of formulating the TIGTA's Strategic Plan and Annual Business Plan; evaluating the programs and operations of the Assistant Inspectors General and Regional Inspectors General; and preparing the semiannual report for the Secretary and Congress.

c. The Deputy Inspector General for Tax Administration coordinates legislative activities for the OTIGTA.

d. The Deputy Inspector General for Tax Administration supervises the following officials:

(1) The Director, Office of Management, Resources and Support, who advises and assists the TIGTA on administrative, financial, personnel, and management matters; develops, directs and oversees OTIGTA administrative policy, planning and resource activities nationally; and furnishes administrative services for OTIGTA headquarters operations.

(2) The Director, Office of Systems Development and Integration, who is responsible for developing the OTIGTA's information system architecture and budget requirements; establishing information technology policies and procedures; acquiring, developing, and maintaining computer hardware, data telecommunications, and software applications; and providing information technology services in support of audits, investigations and administrative activities at OTIGTA locations nationwide.

(3) The Director, Central Case Development Center, who is responsible for detecting unauthorized access to taxpayer records by employees of the IRS and Related Entities, and detecting fraud and abuse by employees through analysis of audit trails and other records maintained on IRS computer systems.

(4) The National Director of Communications, Education, and Quality, who originates, plans, implements and directs the OTIGTA's system management program, leadership and management education programs, and internal and external communications programs.

4. *The Counsel to the Treasury Inspector General for Tax Administration.* The Counsel to the Treasury Inspector General for Tax Administration performs the following functions.

a. Provides legal advice to the various components of the OTIGTA on issues that arise in the exercise of their audit and investigative responsibilities. Such issues include the scope and exercise of the TIGTA's authorities and responsibilities; audit and investigative techniques and procedures; the impact of proposed and existing legislation and regulations on IRS and OTIGTA programs and operations; and legal issues that arise in the conduct and resolution of audits and investigations.

b. Provides legal advice on OTIGTA internal administration and operations, including appropriations, ethics, personnel matters, and the disclosure of tax and other information.

c. Conducts and supervises the litigation on personnel and Equal Employment Opportunity matters involving OTIGTA employees and, as applicable, coordinates with the Department of Justice and others on these matters.

d. Reviews and coordinates with the Department of Justice the enforcement of subpoenas issued by the OTIGTA, and representation of OTIGTA in litigation.

5. *The Assistant Inspector General for Audit.* The Assistant Inspector General for Audit (AIGA) performs the following functions.

a. Plans and oversees an audit program that provides for independent reviews and appraisals of the operations of the IRS and Related Entities. These reviews provide information on the condition of all functional activities of the IRS and Related Entities, and are sufficient in scope to provide a basis for constructive management action by responsible officials.

b. Provides overall leadership and direction for evaluating the vulnerability of IRS and Related Entities operating activities to problems, and recommends action to pursue in planning audit coverage that provides for:

(1) Systematic verifications and analyses of financial transactions;

(2) Assessments of the design and development of new and existing information systems;

(3) Appraisals of the effectiveness and efficiency of IRS and Related Entities programs and operations; and

(4) Execution of the responsibilities mandated under the Chief Financial Officers Act relating to audits of IRS financial statements.

c. Plans and executes continuous quality assurance of audit activities by conducting visitations to independently assess the execution of regional and headquarters audit operations and their adherence to the GAO's Government Auditing Standards; identifying operational concerns in audit activities and preparing reports that recommend appropriate management actions; monitoring and evaluating regional audit activities using qualitative and quantitative methods of analysis; and recommending new procedures and techniques for improving the overall quality of audit operations.

d. Formulates and maintains audit policies, procedures, and program guidelines; develops and maintains the audit management information system; and produces management information reports for use by OTIGTA managers.

e. Develops and maintains the professional skills of audit personnel by

providing professional training course development, design and instruction. The AIGA determines, in conjunction with the National Director for Communications, Education and Quality, training priorities and goals of the audit training programs, identifies training needs, and defines and articulates training objectives.

f. Supervises the Deputy Assistant Inspector General for Audit; the Directors of the Office of Strategic Planning; the Director, Office of Policy and Management; and the Director, Office of Audit Projects.

6. *Assistant Inspector General for Investigations.* The Assistant Inspector General for Investigations (AIGI) performs the following functions.

a. Plans and oversees a program to investigate activities related to fraud, waste, abuse, and mismanagement concerning the activities and operations of IRS and Related Entities. This includes investigating allegations against employees, applicants, grantees, and contractors (including those performing tax administration functions for the IRS) of criminal acts and other misconduct such as bribery; embezzlement; abuse of authority; unauthorized disclosure or use of tax information; false claims; conflict of interest; violations of the Federal ethics standards; and abuse of taxpayer rights.

b. Protects the IRS and Related Entities against external attempts to corrupt or threaten their employees such as attempts by non-IRS employees and tax practitioners to unlawfully interfere with the programs and operations of the IRS through bribery, impersonation, intimidation, harassment, threats, assaults or other unlawful actions that may impact IRS personnel and impede Federal tax administration.

c. Formulates investigative policies and procedures; performs quality assurance and oversight reviews to assure that the investigative program is in compliance with guidelines and investigative standards; prepares reports on investigative trends; and processes requests for release of information in compliance with the Freedom of Information Act, the Privacy Act and Internal Revenue Code disclosure provisions.

d. Provides support nationwide in the forensic examination of documentary evidence; furnishes expertise in the use of technical and electronic investigative equipment; assists in the enhancement of video and audio evidentiary material; provides expertise and assistance during the search and seizure of computers and computer data; performs tests of the security of IRS and Related Entities information systems; and, in conjunction with the National Director for Communications, Education and Quality, assesses investigative training needs and sets training objectives.

e. Operates a nationwide complaint center, including a hotline, to receive and process allegations of fraud, waste or abuse; supervises investigations of allegations against the IRS Executive Resources Board, members of the IRS Oversight Board, and officials who are appointed by the TIGTA; administers the Potentially Dangerous Taxpayer System; and gathers information regarding individuals or groups who advocate violence against the IRS.

f. Supervises the Deputy Assistant Inspector General for Investigations; the Director, Office of Investigations; the Director, Office of Policy and Oversight; the Director, Office of Training and Investigative Support; and an Executive Assistant.

7. *The Regional Inspectors General for Tax Administration.* The Regional Inspectors General for Tax Administration perform the following functions:

a. Provide executive level direction over regional audit and investigative staffs;

b. Supervise the regional information technology and administrative staffs; and

c. Direct local proactive activities of auditors and investigators to detect and deter fraud and abuse involving IRS personnel and activities.

d. There are four Regional Inspectors General for Tax Administration. The regional offices are located in the metropolitan areas of New York, NY; Atlanta, GA; Dallas, TX; and San Francisco, CA. These regional offices have the same geographical boundaries as the four IRS regions; OTIGTA personnel who are assigned to a Regional Inspectors General for Tax Administration are located at various locations within the region. (See Attachment II for chart of the OTIGTA field structure.)

(1) *The Regional Inspector General for Audit* is responsible for the execution of the audit program throughout the region. The audit program, which includes verification of financial transactions and analyses of IRS operating programs, policy and procedures, serves as the basis for informing appropriate officials of the manner in which operations are being carried out and responsibilities are being discharged, and recommending necessary changes in policies, practices and procedures.

(2) *The Regional Inspector General for Investigations* is responsible for the execution of the investigative program throughout the region. This program investigates allegations of fraud, abuse or misconduct by employees of the IRS and the Related Entities, and actions by individuals who attempt to threaten or corrupt these employees or impede tax administration. The investigative results are given to the Department of Justice, IRS management, or other authorities for appropriate criminal and administrative action.

8. *Authority.* Treasury Order 115–01, "Office of the Inspector General for Tax Administration".

9. *Expiration Date.* This Directive will expire three years from the date of issuance unless superseded or canceled prior to that date.

10. *Office of Primary Interest.* Office of Treasury Inspector General for Tax Administration.

Lawrence W. Rogers,

Acting Treasury Inspector General for Tax Administration.

Attachments:

1. OTIGTA Organization Chart
2. Map—OTIGTA National and Regional Office

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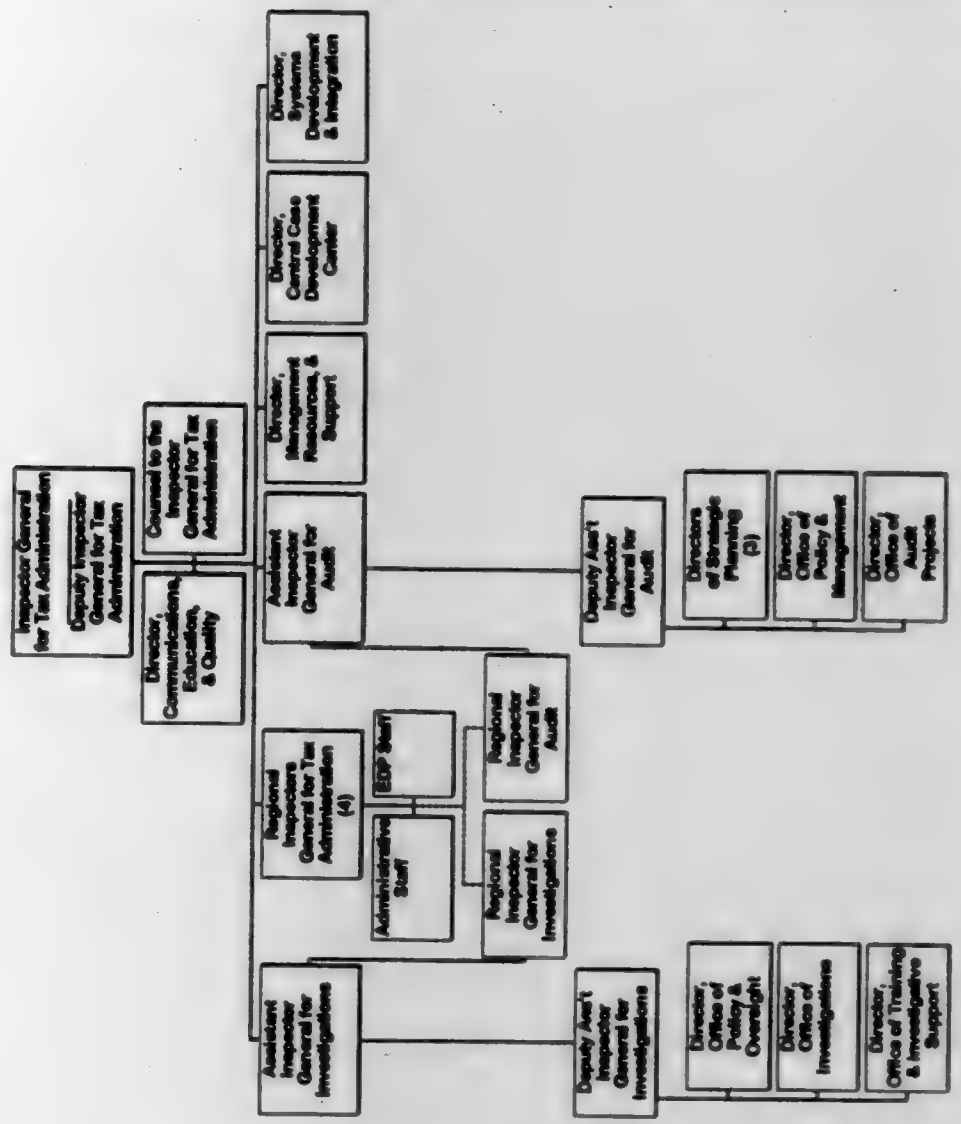
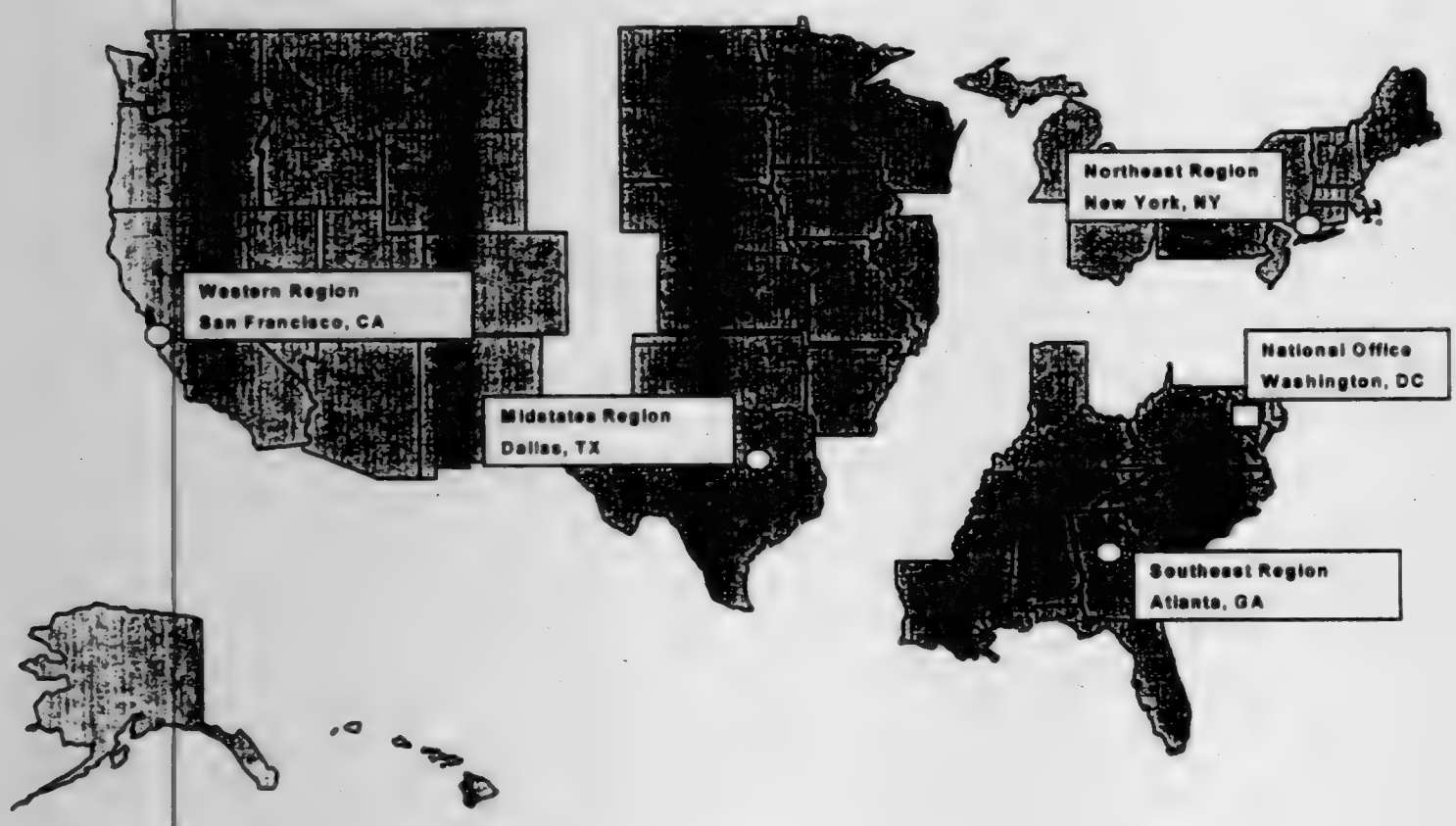
Treasury Inspector General for Tax Administration



Treasury Directive 27-12, dated 01-18-99

Attachment II

Treasury Inspector General for Tax Administration
Map - National and Field Office Locations



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federal register

Tuesday
January 26, 1999

Part II

Department of Labor

Employment and Training Administration

Welfare-to-Work Competitive Grants; Notice

VOL 64 ISS 16 JA 26 1999 JMI

DEPARTMENT OF LABOR

Employment and Training Administration

Welfare-to-Work Competitive Grants

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of availability of funds; solicitation for grant applications.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA) announces the third round of competitive grants under the Welfare-to-Work (WtW) grant program. The WtW program assists States and local communities to provide the transitional employment assistance needed to move hard-to-employ recipients of Temporary Assistance for Needy Families (TANF), and certain noncustodial parents, who have experienced or have characteristics associated with long-term welfare dependence, into lasting unsubsidized jobs. This announcement describes the conditions under which applications will be received under the (WtW) Competitive Grants program and how DOL/ETA will determine which applications it will fund. Please note that substantive changes have been made to this solicitation from previous WtW competitive grant solicitations. Read this Announcement carefully. In this round, the Department of Labor is placing a high priority on funding applications targeted to specific populations who face particular challenges in moving from welfare to work: noncustodial parents, individuals with disabilities, individuals who require substance abuse treatment, victims of domestic violence and individuals with limited English proficiency. Applications targeting these high priority populations may be eligible for bonus points. Applications for other WtW projects will also be considered, but will not be eligible for the bonus points associated with serving a high priority population. This announcement includes all of the information and forms needed to apply for WtW competitive grants.

DATES: The closing date for receipt of applications under this announcement is April 30, 1999. For the funding cycle covered by this announcement, complete applications must be received at the address below no later than 2 p.m. EST (Eastern Standard Time). Except as provided below, grant applications received after this date and time will not be considered. Applications which are not accepted for this announcement must be resubmitted to be considered for future announcements.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ms. Mamie D. Williams, SGA/DFA 99–003, 200 Constitution Avenue, NW, Room S4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Ms. Mamie D. Williams, Grant Management Specialist, Division of Federal Assistance, Fax: (202) 219–8739. This is not a toll-free number. Questions may also be sent via electronic mail to "disgu-sga@doleta.gov." All inquiries sent via fax or e-mail should include the SGA number (DFA 99–003) and a contact name and phone number. This announcement is also being published on the Internet on the Employment and Training Administration's Welfare-to-Work Home Page at http://wtw.doleta.gov. Commonly asked questions and answers with regard to the WtW competitive grants and the WtW program in general, and copies of the Interim Final Rule governing the Welfare-to-Work program, including activities conducted under the competitive grants, are also available on the WtW Home Page. Award notifications will be also published on the WtW Home Page.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 403(a)(5)(B) of Title IV of the Social Security Act. Regulations governing the WtW program are at 20 CFR Part 645, published at 62 FR 61588 (November 18, 1997).

II. Submission of Applications

Four copies of the application must be submitted, one of which must contain an original signature. Proposals must be submitted by the applicant only. All applications must be single-spaced, and on single-sided, numbered pages. A font size of at least 12 point is required.

Section I of the application must include the following required elements: (1) Application Cover Sheet; (2) Project Financial Plan, including the SF–424, (3) ETA Form 9070, Project Synopsis Form, and (4) Evidence of State and local consultation. Section I will not count against the application page limits. Failure to include all elements required in this section will result in disqualification of the application. Applications will not be reviewed if appropriate State and PIC/political subdivision certifications (or evidence of efforts to consult, as described in Section IV below) are not included. No additional information or materials will be accepted by the Department of Labor after the closing date, unless such additional material is specifically requested by the Grant Officer.

Section II of the application, the project narrative, shall not exceed twenty (20) pages for the Government Requirements/Statement of Work section, as described below in the "Required Content for WtW Competitive Grant Applications—Fiscal Year 1999," plus an additional ten (10) pages for Attachments, to include no information that is critical to the review of the proposal. Letters of support for a proposal should NOT be submitted and will count against the page limits.

Acceptable Methods of Submission

Applications may be hand-delivered or mailed. Hand-delivered applications must be received at the address identified above by the date and time specified. Overnight mail deliveries will be treated as hand-deliveries. Mailed applications that arrive after the closing date will be accepted if they are post-marked at least five (5) days prior to the closing date. Applications submitted via overnight mail that arrive after the closing date will be accepted if they are post-marked at least two (2) days prior to the closing date. Otherwise, late applications will not be accepted. Telegraphed and/or faxed applications will not be accepted.

Applications may be withdrawn by written notice or telegram (including mailgram), or in person if the representative's identity is made known, and the representative signs a receipt for the application.

OMB Approval of Paperwork Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1205–0399, expiration 7/99. The time required to complete this information collection is estimated to average twenty (20) hours per response, including the time to review the instructions, search existing data resources, gather data needed, and complete and review the information. Comments concerning this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Job Training Programs, Room N4459, Washington, DC 20210 (Paperwork Reduction Project 1205–0399).

Comments may be reflected in the development of future solicitations.

Catalog of Federal Domestic Assistance Number

The Welfare-to-Work program is listed in the Catalog of Federal Domestic Assistance at No. 17.253, "Employment and Training Assistance—Welfare-to-Work Grants to States & Local Entities for Hard-to-Employ Welfare Recipient Programs."

III. Program Scope and Funding

Competitive grant projects will be expected to achieve the purpose of all WtW grants:

To provide transitional assistance which moves welfare recipients into unsubsidized employment providing good career potential for achieving economic self-sufficiency.

This transitional assistance is to be provided through a "work first" service strategy in which recipients are engaged in employment-based activities. Grant funds may be used to provide needed basic and/or vocational skills training as a post-employment service in conjunction with either subsidized or unsubsidized employment. This flexibility, established in the Regulations, reflects the basic "work first" philosophy of the WtW legislation, and recognizes the critical importance of continuous skills acquisition and lifelong learning to economic self-sufficiency.

All competitive grant projects are expected to be integral parts of a comprehensive strategy for moving eligible individuals into unsubsidized employment in a local, community-based context. Projects should develop and implement innovative approaches that enhance a community's ability to move eligible individuals into self-sustaining employment, create upward mobility paths and higher earnings potential for WtW participants, and achieve sustainable improvements in the community's service infrastructure for assisting welfare recipients.

All applications will be reviewed under the criteria set forth in Part VII of this announcement, including the effectiveness of the proposal in moving TANF recipients who are least job ready into unsubsidized employment, in moving such recipients into unsubsidized employment in labor markets that have a shortage of low-skill jobs, and in expanding the base of knowledge about programs aimed at moving TANF recipients into long-term unsubsidized employment.

Targeted Populations

Within the overall WtW competition, the Department seeks applications that target one of five high priority populations—(1) noncustodial parents; (2) individuals with disabilities; (3) individuals requiring substance abuse treatment; (4) victims of domestic violence or (5) individuals with limited English proficiency. Applications that identify one (and only one) of these target populations on the Project Synopsis Form (ETA Form 9070, Appendix B) will be reviewed separately by a panel of appropriate subject matter experts. Applications that target more than one of the high priority populations will be considered as general applications. It is important to note that the eligibility criteria and the proposed outcomes for projects for these targeted populations are the same as for the WtW program overall—to place hard-to-employ individuals in unsubsidized employment leading to economic self-sufficiency.

Projects serving high priority populations must respond to the same requirements as all other WtW competitive grant proposals, as described in "Required Content for WtW Competitive Grant Applications—Fiscal Year 1999" below. In addition, these applications will be required to describe: the specific services to be provided that address the unique characteristics of the targeted population; the specific partner organizations who have experience serving the targeted population or who will be key to the recruitment of the population into the project; and the prevalence of the targeted population within the eligible WtW population in the local area(s) to be served by the project.

Other Areas of Interest

In addition to proposing innovative strategies for moving welfare recipients into lasting unsubsidized employment and for providing services to the targeted populations described above, applicants are encouraged to consider the following in designing responsive service strategies for the eligible population in their local area.

- Strategies that focus on serving public and assisted housing residents;
- Development of responsive transportation and child care service systems;
- Integration of work and learning strategies to develop skills that promote employment, retention and career development;
- Creation of job opportunities (including self-employment) that allow for flexibility to address work and family needs while providing income levels that are adequate for self-sufficiency;
- Proactive strategies to involve employers in design of service strategies and implementation of the project;
- Strategies that focus on family-based assistance and that are integrated with children systems (e.g., Child Care, Head Start) that can assist the full family unit;
- Activities to help women access nontraditional occupations; and
- Strategies that reflect effective integration with both the workforce development (e.g., One-Stop) and welfare systems.

In identifying those Other Areas of Interest addressed by the proposal on the Project Synopsis form (Required format can be found in Appendix B), please indicate the page number on which relevant text relating to this interest area can be found in the proposal narrative.

The Department is also interested in receiving applications to implement projects that are coordinated with community saturation strategies (in which comprehensive services are available to assist all of the eligible residents in a defined community). The Department expects that these applications would be submitted from communities in which there are concentrations of eligible hard-to-employ individuals, there is a reasonable opportunity to provide employment for all such individuals, and there are established partnerships which can contribute a significant level of resources to implement the strategy. A definition of "community saturation strategy" is provided in Appendix A.

Funding Availability

Approximately $240 million is available for Federal grant assistance through this announcement. Of the funds available in this round of competitive grants, the Department aims to distribute approximately 70 percent for projects to serve cities with large concentrations of poverty and 30 percent for projects to serve rural areas. Definitions for "cities with large concentrations of poverty" and "rural area" can be found in Appendix A of this announcement. Applications to serve rural areas should be targeted to serve eligible residents from subareas that represent concentrations of poverty. Further, as indicated under the Criteria section of this solicitation, applicants are strongly encouraged to present innovative strategies to address the needs of areas with concentrations of poverty. Each application must indicate

on the required Project Synopsis Form either a rural or an urban focus for its project services.

It is expected that most grant awards will be between $1 million and $5 million. Furthermore, it is expected that most grants will serve a minimum of 100 eligible participants. Applications that are outside of this range must provide a brief explanation of how the project will have substantial community impact (especially for those below $1 million and/or fewer than 100 participants), or how project services will be provided on a local level and targeted to the specific needs of the defined target group (especially for those applications over $5 million).

Award Period

It is expected that the planned performance period for most projects will be between 18 and 30 months. Grant funds are not available for expenditure for longer than three years. No obligation or commitment of funds will be allowed beyond the grant period of performance. Any unspent grant funds must be returned to the Federal government.

IV. Eligible Grant Applicants

Private Industry Councils (PICs), political subdivisions of the State, and private entities (as defined in Appendix A) are eligible to receive grant funds under this announcement. Eligible private entities include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, public and private colleges and universities, and other qualified organizations. Private entities include both non-profit and for-profit organizations but do not include individuals.

Entities other than a PIC or a political subdivision of the State must submit an application for competitive grant funds in conjunction with the PIC(s) or political subdivision(s) for the area in which the project is to operate. The term "in conjunction with" shall mean that the application must include a signed certification by both the applicant and either the appropriate PIC(s) or political subdivision(s) indicating that:

1. The applicant has consulted with the appropriate PIC(s)/political subdivision(s) during the development of the application; and

2. The activities proposed in the application are consistent with, and will be coordinated with, the WtW efforts of the PIC(s)/political subdivision(s).

If the applicant is unable to obtain the certification, it will be required to include information describing the efforts which were undertaken to consult with the PIC(s)/political subdivision(s) and indicating that the PIC(s)/political subdivision(s) were provided a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application prior to its submission to the Department of Labor. "Sufficient opportunity for PIC/political subdivision review and comment" shall mean at least 30 calendar days.

The certification, or evidence of efforts to consult, must be with either each PIC or each political subdivision in the service area in which the proposed project is to operate. These certifications must be included in Section I of the grant application, and will not count against the established page limitations. For the purposes of this portion of the application, applicants must demonstrate, through written documentation such as registered mail receipt, that project applications were shared with the PIC/political subdivision in a timely manner. Certifications or evidence of efforts to consult must be included with the application. The Department of Labor will not accept additional information after the closing date.

State-level Consultation

All applicants for competitive grants, including PICs and political subdivisions, must submit their applications to the Governor or, at the discretion of the Governor, to the designated State administrative entity for the WtW program, for review and comment prior to submission of the application to the Department. For private entities, State review must be subsequent to review by the PIC or political subdivision.

When submitted to the Department, the application must include any comments from the Governor or his/her designee or must include information indicating that the Governor was provided a sufficient opportunity for review and comment prior to submission to the Department. "Sufficient opportunity for State review and comment" shall mean at least 15 calendar days. For the purposes of this portion of the application, information indicating that the Governor was provided opportunity for review must be demonstrated by written documentation, such as registered mail receipt, that project applications were submitted to the Governor or his/her designee in a timely manner. Certifications or evidence of efforts to consult must be included with the application. The Department of Labor will not accept additional information after the closing date.

Applicants for Multiple Community or National Projects

Consideration will be given to applications which propose multi-community or national strategies to move welfare recipients into long-term unsubsidized employment leading to economic self-sufficiency. For example, an applicant may design a nationwide project to create jobs for welfare recipients in a particular industry. Applications which propose multi-community or national strategies must meet all of the application requirements contained in this Announcement. Specifically, private entities proposing such projects must include the signed certification from the applicable PIC or political subdivision of each local area in which the project will operate or other evidence indicating the efforts undertaken to obtain the required consultation as described above. Such applications must also demonstrate the required consultation with the Governors of the States in which the project will operate. Applications proposing national projects must comply with all statutory and regulatory requirements and will be rated under the same evaluation criteria as other applications. Applicants should be aware that the extent of local collaboration demonstrated in a national project will be considered as an important factor in the overall strength of the proposal. Applications targeting one of the high priority populations may also propose a multi-site project.

Lobbying Disclosure Act of 1995

Entities described in section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are not eligible to receive funds under this announcement. The Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 *et seq.*, prohibits the award of Federal funds to these entities if they engage in lobbying activities.

V. Program and Administrative Requirements

Participant Eligibility and Funding Expenditures

Each project will be required to meet the targeting provisions described at 20 CFR 645.211–645.213. [**Note:** The WtW Regulations are available at the WtW Internet web site at http://wtw.doleta.gov.] These provisions dictate that a minimum of 70 percent of the funds in each WtW competitive grant must be used to serve hard-to-employ individuals as described in Sec.

645.212. Furthermore, no more than 30 percent of the funds in each grant may be used to serve individuals with characteristics predictive of long-term welfare dependence, as described in Sec. 645.213.

Allowable Uses of Funds

Competitive grant funds shall be spent only for those activities identified in the WtW Regulations, at 20 CFR Part 645.220 and set forth below; for appropriate administrative costs; and for information technology costs in accordance with 20 CFR 645.235(c)(3).

WtW Allowable Activities Are:

(a) Job readiness activities financed through job vouchers or through contracts with public or private providers.

(b) Employment activities which consist of any of the following: (1) Community service programs; (2) Work experience programs; (3) Job creation through public or private sector employment wage subsidies; and (4) On-the-job training.

(c) Job placement services financed through job vouchers or through contracts with public or private providers subject to the payment requirements at Sec. 645.230(a)(3).

(d) Post-employment services financed through job vouchers or through contracts with public or private providers, which are provided after an individual is placed in one of the employment activities listed in paragraph (b) above, or in any other subsidized or unsubsidized job. Post-employment services include, but are not limited to, such services as: (1) Basic educational skills training; (2) Occupational skills training; (3) English as a second language training; and (4) Mentoring.

(e) Job retention services and support services which are provided after an individual is placed in a job readiness activity, as specified in paragraph (a) above, in one of the employment activities, as specified in paragraph (b) above, or in any other subsidized or unsubsidized job. These services can be provided with WtW funds only if they are not otherwise available to the participant. Job retention and support services include, but are not limited to, such services as: (1) Transportation assistance; (2) Substance abuse treatment (except that WtW funds may not be used to provide medical treatment); (3) Child care assistance; (4) Emergency or short-term housing assistance; and (5) Other supportive services.

(f) Individual development accounts which are established in accordance with section 404(h) of the Act.

(g) Intake, assessment, eligibility determination, development of an individualized service strategy, and case management may be incorporated in the design of any of the allowable activities listed in paragraphs (a) through (f) above.

Administrative Costs

Allowable costs and the 15 percent limitation on administrative costs for WtW competitive grants are defined in the WtW Regulations at 20 CFR 645.235. All proposed costs must be reflected as either a direct charge to specific budget line items, or as an indirect cost. Direct and indirect administrative costs are allowable, but combined, these costs cannot exceed 15 percent of the total grant. The administrative costs negotiated in the final grant document may be below fifteen percent.

Only costs which result from applying a federally-approved indirect cost rate may be entered on the "indirect cost" line item of the budget. If an indirect cost rate is used, the applicant must include documentation from the cognizant Federal agency which includes the approved rate, the cost base against which it is applied, and the approval date.

All applicants will be expected to justify proposed costs (see Item 1B, Project Financial Plan, in the "Required Content for WtW Competitive Grants Applications—Fiscal Year 1999"). Profits are not an allowable use of grant funds.

Use of Federal Funds

Federal funds cannot be used to support activities which would be provided in the absence of those funds. Grant funds may cover only those costs which are appropriate and reasonable. Federal grant funds may only be used to acquire equipment which is necessary for the operation of the grant. The grantee must receive prior approval from the DOL/ETA Grant Officer for the purchase and/or lease of any property and/or equipment with a per unit acquisition cost of $5,000 or more, and a useful life of more than one year as defined in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments", codified at 29 CFR Part 97 (also known as the "Common Rule"), and "Grants and Agreements with Institutes of Higher Education, Hospitals and Other Non-Profit Organizations," codified at 29 CFR Part 95 (also known as OMB Circular A–110). This restriction includes the purchase of Automated Data Processing (ADP) equipment. A request for such prior approval may be included in the grant application or submitted after the grant award. Requests submitted after the grant award must be directed through the Grant Officer Technical Representative (GOTR) and must include a detailed description and cost of the items to be acquired.

Grant funds also may not be used to cover any project-related costs incurred prior to the effective date of the grant award. In making a grant award, DOL/ETA has no obligation to provide any future additional funding in connection with the grant award.

Pursuant to 20 CFR Part 645.235(c)(3), the costs of information technology—computer hardware and software—needed for tracking or monitoring under a WtW grant are not subject to the fifteen percent limitation on administrative costs.

Year 2000 Compliance

Any information technology purchased in whole or in part with WtW funds, which is used for a period of time that goes beyond December 31, 1999, must be "year 2000 compliant." This means that such information technology shall accurately process date/time data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries, the years 1999 and 2000, and leap year calculations. Furthermore, "year 2000 compliant" information technology, when used in combination with other information technology, shall accurately process date/time data if the other information technology properly exchanges date/time with it.

Assurances and Certifications

The following assurances and certifications must be included as part of each grant application: Debarment & Suspension Certification.

Other assurances and certifications will be required as part of each executed grant agreement, but do not need to be submitted as part of a WtW Competitive grant application: Assurances/Non-Construction Programs; Certification Regarding Lobbying; Drug Free Workplace Certification; Certification of Non-delinquency; and Non-discrimination and Equal Opportunity Requirements.

Departmental Oversight

The Department reserves the right to conduct oversight and both programmatic and financial monitoring activities for all competitive grants

awarded under the WtW grants program.

Department of Health and Human Services Evaluation of the Welfare-to-Work Program

Competitive grant projects will participate in the evaluation of the WtW grant program by the U.S. Department of Health and Human Services (DHHS), as described in Title IV, section 413(j)(1) of the Social Security Act. The goal of the DHHS evaluation is to expand the base of knowledge about programs aimed at moving the least job-ready welfare recipients into unsubsidized employment. The Department of Health and Human Services has selected Mathematica Policy Research as the evaluation contractor for this project. The evaluator will collect program and administrative data to determine the range of WtW project designs and the employment outcomes for all WtW grantees, consistent with section 413(j)(1)(C) of the Social Security Act. In addition, the evaluator, in cooperation with DHHS, will select certain sites at which to qualitatively study the implementation of the WtW program and other sites where net impact and cost effectiveness of the program will be examined quantitatively. For more information concerning Mathematica's evaluation of the WtW grants program, visit their website at http://www.mathematica-mpr.com.

VI. Monitoring and Reporting

Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees, at approximately the midpoint of the project performance period. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding recipients who are served, expenditure of grant funds on allowable activities, integration with other resources and service providers in the local area, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to other additional reviews at the discretion of the Department.

Reporting

Applicants selected as grantees will be required to provide the following reports:

1. Financial Reporting: The Department of Labor (DOL) issued financial reporting instructions for competitive grantees on June 24, 1998. Financial reports will be submitted electronically directly to DOL.

2. Participant Reporting: Participant reporting instructions will be issued shortly covering the WtW competitive grant program. Participant reports for each competitive grant will be submitted in accordance with reporting instructions at a later date.

3. Other Reporting: The Department of Labor may negotiate additional reporting requirements with individual grantees, where necessary, for grant management and/or knowledge development purposes, including quarterly narrative reports.

In addition to required quarterly financial and participant reporting, some grantees may be asked to provide information to the appropriate ETA Regional Office during the early implementation phase of the project for the purpose of project oversight. This information may include project enrollment levels, participant characteristics, and emerging implementation issues.

VII. Review and Selection of Applications for Grant Award Review Process

The Department will screen all applications to determine whether all required elements are present and clearly identifiable. These elements are described below in the "Required Content for WtW Competitive Grant Applications—Fiscal Year 1999." Failure to include and all required elements in Section I of the grant application will result in rejection of the application.

Each complete application will be objectively rated by a panel against the criteria described in this announcement. Applicants are advised that the panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to award grants either with or without discussion with the applicant. In situations where no discussions occur, an award will be based on the applicant's signature on the SF424 form (See Appendix B), which constitutes a binding offer.

Those applications that target one of the high priority populations (noncustodial parents, individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence or individuals with limited English proficiency) will be reviewed separately from the general applications.

The Grant Officer will make final award decisions based on what is most advantageous to the Government, considering factors such as: Panel findings; the geographic distribution of the competitive applications; the extent to which the competitive applications reflect a reasonable distribution of funds across the targeted populations and other areas of interest identified in this announcement; and the availability of funds.

Criteria

The criteria, and the weights assigned to each, which will apply to the review of applications submitted in response to this announcement are:

1. "Relative Need for Assistance" [20 points] which shall consider the concentration of poverty and long-term welfare dependence and the lack of employment opportunities in the project service area (up to 9 points); the extent of gaps in the capacity of the local infrastructure to effectively address the employment barriers which characterize the targeted population, including an assessment of existing WtW competitive and formula funding in the local area (up to 6 points); and the responsiveness of the project design to the other areas of interest identified in Part III of this announcement (up to 5 points).

2. "Innovation" [20 points] which shall consider the extent to which the project incorporates new and better strategies for moving welfare recipients into lasting unsubsidized employment leading to economic self-sufficiency. These strategies can include, but are not limited to, new and better ways that services can be accessed by participants in the local community, new and better ways for local organizations to work together, or the replication of effective strategies in a new setting.

3. "Outcomes" [25 points] which shall consider the quality of the proposed employment and earnings outcomes (up to 10 points); the extent to which the proposed plan of services responds to identified needs, the barriers faced by proposed participants, and the conditions in the local area as well as the likelihood that the proposed service plan will result in the proposed outcomes (up to 12 points); and the reasonableness of the level of investment in relation to the proposed outcomes (up to 3 points).

4. "Local Collaboration and Sustainability" [25 points] which shall consider the extent to which the project is coordinated with the WtW formula

grant and TANF grant activities and supported by the PIC/political subdivision and local TANF agency (up to 8 points); the extent and quality of local community partnerships that are involved in and making substantial contributions of resources to the project (up to 7 points); involvement of and participation by local employers (up 5 points); and the extent to which the community and/or the local area has developed plans and commitments to maintain and expand the capacity to serve the target population with local resources over a sustained period of time (up to 5 points).

5. "Demonstrated Capability" [10 points] which shall consider the extent to which the applicant and its partner organizations demonstrate a history of success in serving a comparable target group, the extent of use of current or former welfare recipients in the provision of services, and the extent to which the applicant demonstrates the ability to effectively execute grant management responsibilities.

For those proposals that are deemed by the Grant Officer to be most competitive, applicants proposing projects in which the majority of participants to be served by the project reside in designated Empowerment Zones and Enterprise Communities (EZ/EC) will be eligible for 5 bonus points. Applicants must demonstrate that the majority of participants reside within a federally-designated EZ/EC in order to be awarded the 5 bonus points, and must indicate the name of the EZ/EC to be served. The applicant does not necessarily have to be located within the EZ/EC.

In addition, for those proposals that are deemed by the Grant Officer to be most competitive, applicants targeting one of five high priority populations (noncustodial parents, individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence or individuals with limited English proficiency) will be eligible for 10 bonus points. Applications must address the services, partner organizations and need in the local area relative to service to the targeted population.

Signed at Washington, D.C., this 22nd day of January 1999.

Janice E. Perry,

DOL Grant Officer.

Required Content for WtW Competitive Grant Applications Fiscal 1999

Each application must contain the information and follow the format outlined in this Part. The application must include: (1) Information that responds to these requirements; (2) information that indicates adherence to the provisions described in preceding sections of this announcement; and (3) any other information the applicant believes will address the review and selection criteria.

I. Project Summary

A. Application Cover Sheet

Each application shall complete an Application Cover Sheet (as found in Appendix B) to clearly designate the applicant name, affiliation and which, if any, of the targeted populations will be served. This form will help the Department in the processing of applications and is required.

B. Project Financial Plan

Information provided in this section will be evaluated predominantly under the "Outcomes" criteria.

The financial plan shall describe all costs associated with implementing the project that are to be covered with grant funds. All costs should be necessary and reasonable according to the Federal guidelines set forth in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," codified at 29 CFR Part 97 (also known as the "Common Rule"), and "Grants and Agreements with Institutes of Higher Education, Hospitals and Other Non-Profit Organizations' (also known as OMB Circular A–110), codified at 29 CFR Part 95.

The financial plan must contain the following parts:

- "Application for Federal Assistance" and "Budget Information Sheet" by line item for all costs required to implement the project design effectively. Submission of these two completed forms is required. (See Appendix B for these required forms.)

Note: Although there is no matching requirement for these grants, the Department strongly encourages the leveraging of financial and other resources in the implementation of WtW competitive grant projects. These resources will not, however, be recorded on the Budget Information Sheet (Appendix B). Leveraged resources offered by applicants will be evaluated in the selection criteria under "Local Collaboration and Sustainability."

- Budget narrative/justification which provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes.

C. Project Synopsis Form—ETA Form 9070

Each application shall provide a project synopsis form (ETA Form 9070) which identifies: the applicant; the type of organization; applicant contact information; the project service area; whether the service area is a city with a large concentration of poverty or a rural area; whether the project is located within an EZ/EC, and if so, which one; which, if any, of the five high priority populations will be served—noncustodial parents, individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence or individuals with limited English proficiency [NOTE: Applications which target more than one of the targeted populations will be reviewed as general applications]; the other areas of interest identified in the announcement which are addressed by the project (with page numbers where relevant portions of the project narrative can be found); the amount of grant funds requested; the planned period of performance; the planned number of WtW-eligible TANF recipients to be served; the number of noncustodial parents to be served (if applicable); the significant employment barriers which characterize the target group; and the planned employment and earnings outcomes. The required format for this synopsis can be found in Appendix B.

In addition, each application must provide a two-page executive summary of the grant proposal, describing the significant employment barriers which characterize the target group, the proposed service strategy, other significant service organizations involved in the delivery of services, and the most innovative elements of the proposal. This section must be limited to no more than two single-spaced, single-sided pages.

D. Evidence of Required Local and State Consultation

It is the expectation of the Department that, to the extent possible, all applications will be developed in consultation with the appropriate PIC/political subdivision and the Governor. Competitive grant projects should complement the WtW formula program activity, rather than exist independent of, or in conflict with, that program.

Each application must include the signed certification of the required consultation with the Governor, or of evidence of efforts to consult, as described in this announcement. Applications from private entities must also include the signed certification from the appropriate PIC(s) or political subdivision(s) or other evidence indicating the efforts undertaken to obtain the required consultation as described in this announcement. In areas where an entity other than the PIC

has been designated by the Governor and approved by the Secretary to administer the WtW formula grant, the applicant should also include evidence of consultation and/or support from that entity. All certifications or comments provided as part of this requirement must be included in this section of the grant application and will not be counted against the established page limits.

Note: All certifications or evidence of efforts to consult must be included as part of the application. The Department of Labor will not accept any information received after the closing date.

II. Government Requirements/ Statement of Work—Project Narrative

This section of the application should not exceed 20 single-spaced, numbered pages. The application should include information of the type described below, as appropriate.

Description of Service Area

Information provided in this section will be evaluated predominantly under the "Relative Need" criteria.

—Identify the specific political and geographic jurisdictions (e.g., cities, counties, subsections of cities/ counties) which are included in the service area for the project.
—Identify the percent of the population in the service area that has income below the poverty level.
—Identify the percent of the population in the service area that is receiving TANF assistance.

(**Note:** Child-only TANF cases should be excluded from this number unless these cases are relevant to the project target group—e.g. noncustodial parents—Please note that ETA Training and Employment Guidance Letter (TEGL) No. 6–98 entitled "Technical Amendment to Welfare-to-Work (WtW) Eligibility Criteria for Noncustodial Parents" and dated 9/21/98, provides further information on eligibility requirements of noncustodial parents).

—Identify the percent of the TANF population that has received TANF or AFDC assistance for 30 months or more, or is within 12 months of losing eligibility for assistance under State or Federal law (Note: Child-only TANF cases should be excluded from this number unless these cases are relevant to the project target group—e.g. noncustodial parents).
—Identify the most recent unemployment rate in the service area.
—Describe the significant deficiencies in the local area infrastructure that represent significant barriers to moving eligible recipients into permanent employment in an efficient manner (e.g., lack of transportation, labor market with a shortage of low-skill jobs, shortage of employers with appropriate employment opportunities, remoteness from health facilities, limited number of social and support service agencies).

Summary of Strategy for Use of WtW Formula and Existing Competitive Grant Funds in the Local Area

Information provided in this section will be evaluated predominantly under the "Local Collaboration and Sustainability" and "Relative Need" criteria.

—Identify the substate service area covered by the WtW formula and existing competitive grants.
—Describe the allocation of formula and existing competitive grant funds among the allowable activities.
—Identify the significant local and community organizations involved and their roles in providing assistance through the formula and existing competitive grants.
—Describe how the proposed competitive grant project will supplement and enhance the capacity of the WtW formula and existing competitive grant activities to effectively serve eligible recipients in the local area who have significant employment barriers.
—In cases where the applicant cannot obtain information regarding the formula grant because the State has not submitted a complete WtW Formula Grant Plan, the application should so indicate. Absence of this information, in and of itself, will not penalize the applicant.

Analysis of Target Group

Information provided in this section will be evaluated predominantly under the "Relative Need" criteria.

—Describe the individuals targeted for assistance through this project, including any noncustodial parents (See reference above to TEGL 6–98, dated 9/21/98 concerning eligibility determination for noncustodial parents), individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence, individuals with limited English proficiency, and public and assisted housing residents.
—Describe the significant employment barriers which characterize this target group, including the process for identifying those participants who are least job ready.

Note: An adequate analysis of employment barriers of the target group will be a critical factor in evaluating the need for grant assistance and the appropriateness of the proposed plan of services.

Analysis of Employment Opportunities

Information provided in this section will be evaluated predominantly under the "Relative Need" criteria.

—Identify the types of occupations in the local area which are being targeted as appropriate employment opportunities for the target group of this project.
—Describe the justification for the selection of the occupations in terms of their availability and the adequacy of expected placement wage and post-placement earnings potential to achieve self-sufficiency.

Service Strategy

Information provided in this section will be evaluated predominantly under the "Innovation" and "Outcomes" criteria.

—Identify the specific job readiness, placement (in both subsidized and unsubsidized employment), post-employment, job retention and/or support services to be provided with competitive grant funds as well as services to be leveraged from other sources.
—Describe the rationale for planned enrollments in activities in terms of the employment barriers, infrastructure deficiencies and employment opportunities previously identified above.
—Describe what individual support services, such as mentoring and case management, will be used to maintain participants in the program.

Service Process

Information provided in this section will be evaluated predominantly under the "Innovation" and "Outcomes" criteria.

—Describe the comprehensive service process that will be available to participants, and identify the organizations which will be involved in providing specific services/ activities. [A process flowchart and/or service matrix may be used to provide this description.] The description should specify what elements of the service strategy are already available in the community, whether through the WtW formula program, the TANF program or from other sources, as well as the elements or services that will be funded through the WtW competitive grant award.
—Describe the specific methods which will be used by the grantee and the local TANF agency to coordinate and work jointly in providing the following services: Outreach,

recruitment, and referral of appropriate recipients for assistance through the project; assessment of skills and identification of specific employment barriers; counseling and case management; and support services.

—Applicants are strongly encouraged to develop good linkages to the local TANF agency in the development of their proposal. Although not required, applicants are encouraged to consult with and, where possible, to share their proposals with the local TANF agency to incorporate that agency's perspective into their proposed service process.

—Where vouchers for services are to be used, describe the process by which vouchers will be distributed and redeemed (in compliance with 20 CFR Sec. 645.230(a)(3)), including who will be eligible, how amounts of vouchers will be determined, and how the grantee will ensure that quality services are being provided.

Integration of Resources

Information provided in this section will be evaluated predominantly under the "Local Collaboration and Sustainability" criteria.

—Identify specific financial and other resources and organizational/service provider capabilities which are being contributed to provide the full range of assistance to the identified target group for the project. At a minimum, describe the coordination and contributions of local JTPA service providers, local TANF providers, and local housing and transportation authorities. In developing their plans, applicants are encouraged to be mindful of their obligations not to interfere with collective bargaining rights or agreements or to displace employees.

[**Note:** There is no matching or cost sharing requirement for WtW competitive grants.]

—Describe the process that will be used to maintain and expand the service structure in the local area and engage new partners after receipt of WtW competitive grant funds.

—Describe how the project will develop a sustainable capacity in the local community to effectively move welfare recipients into permanent jobs and to foster the long-term self-sufficiency of the target population. It is expected that project services will provide assistance oriented towards long-term solutions. It is also expected that the need for grant funds to provide this assistance will diminish over time, specifically in the latter stages of the grant performance period.

Employer Support

Information provided in this section will be evaluated predominantly under the "Local Collaboration and Sustainability" criteria.

—Describe the specific responsibilities and approaches for developing relationships with and support of area employers to generate a sufficient number of unsubsidized employment opportunities for the target group. Specifically describe how employers will be encouraged to customize employment opportunities to meet work-related needs (e.g., child care, flexible work schedules) of recipients.

—Identify the employers in the local area who have made commitments to the project and describe the types of commitments made (e.g., number and types of jobs, contribution of employer resources for post-hire support services and/or training).

Planned Outcomes

Information provided in this section will be evaluated predominantly under the "Outcomes" criteria.

—Identify and justify planned performance for the comprehensive service strategy on the following measures: Number of participants to be placed into unsubsidized employment; average earnings at placement in unsubsidized employment; expected average earnings one year after placement in unsubsidized employment; and cost per placement in unsubsidized employment.

The application may include other measures and planned performance levels as deemed appropriate by the applicant. If these are included, the applicant should briefly describe their relevance to the project.

Implementation Plan

Information provided in this section will be evaluated predominantly under the "Outcomes" and "Innovation" criteria.

—Identify the critical activities, time frames and responsibilities for effectively implementing the project within the first 60 days after the award of the grant.

—Include an implementation schedule showing the number of participants, enrollments in allowable activities, placements in unsubsidized employment and terminations over the life of the grant.

Project Management Plan

Information provided in this section will be evaluated predominantly under the "Demonstrated Capability" and "Innovation" criteria.

Applicants must be able to document that they have systems capable of satisfying the administrative and grant management requirements for WtW grants as defined in 20 CFR Part 645.

—Include a project organizational chart which identifies the organizations, and staff, with key management responsibilities and the specific responsibilities of each organization;

—Describe the specific experience of the applicant and other key organizations involved in the project in serving individuals with significant barriers to employment. The information should include at a minimum specific projects or grants, a comparison of the characteristics of individuals served to the target group for this project, and the employment outcomes which were achieved. In addition, applicants should provide the names and addresses of their last three grantors, public and/or private, from which applicants received funding. The Department of Labor reserves the right to contact any or all of these funding organizations or to request additional information from the applicant regarding past performance as part of a responsibility review process, or if the Department is concerned about the applicants' financial responsibility or capability to manage grant funds.

—As appropriate, describe how current or former welfare recipients will be used to provide services.

—Describe the procedures which will be used to obtain feedback from participants and other appropriate parties on the responsiveness and effectiveness of the services provided.

—Applicants are advised that the Department of Labor may use information included in proposals to document the nature of the WtW applicant pool, as well as the range and depth of perceived service needs in the WtW population.

Innovation

Information provided in this section will be evaluated predominantly under the "Innovation" criteria.

Recipients of WtW competitive grants are expected to use creativity and innovation to help eligible individuals obtain long-term unsubsidized employment and economic self-sufficiency. The application should describe how the proposed approach represents an innovative method for

achieving the employment objectives of the project. Proposed strategies should represent an improvement over, or a variation on, approaches that have traditionally been used in the project service area to assist welfare recipients and other low-income unemployed individuals.

Grant recipients are also expected to share knowledge which they develop through the use of innovative approaches. Applicants should describe how they will report lessons learned in the course of the grant implementation, and further, describe their plans for disseminating the knowledge they have gained.

Additional Requirements for Community Saturation Projects

Information provided in this section will be evaluated predominantly under the "Outcomes" and "Innovation" criteria.

—Describe why a project employing a saturation strategy is appropriate for the project service area and target group.

—Describe the feasibility of a saturation strategy for the project service area and target group (e.g., based on available employment opportunities).

—Identify the local partners who will be involved in implementing the saturation strategy, the services to be provided and the dollar value of the contribution from each.

Additional Requirements for Projects Targeting High Priority Populations

Information provided in this section will be evaluated predominantly under the "Relative Need" and "Local Collaboration and Sustainability" criteria.

For those projects targeting services to noncustodial parents, individuals with disabilities, individuals requiring substance abuse treatment, victims of domestic violence or individuals with limited English proficiency:

—Describe the specific services to be provided that address the unique characteristics of the targeted population;

—Describe the specific partner organizations who have experience serving the targeted population or who will be key to the recruitment of the population into the project; and

—Describe the prevalence of the targeted population within the eligible WtW population in the local area(s) to be served by the project.

Appendix A: Definitions of Key Terms

City with Large Concentration of Poverty—Any county that contains an urban center of more than 50,000 people with a poverty rate of greater than 7.5 percent.

Community Saturation Strategy—Projects that propose to serve 100 percent of the WtW eligible population within a designated service area, i.e., the community is completely "saturated" with services.

Private Entity—Any organization, public or private, which is neither a PIC nor a political subdivision of a State.

Private Industry Council (PIC)—from Sec. 645.120 of the WtW Regulations—A Private Industry Council established under Section 102 of the Job Training Partnership Act, which performs the functions authorized at Section 103 of the JTPA.

Political Subdivision—A unit of general purpose local government, as provided for in State laws and/or Constitution, which has the power to levy taxes and spend funds and which also has general corporate and police powers.

Rural Area—(1) Any county that does not contain an urban center of more than 50,000 people, and where at least 50 percent of the geographical area of the county has a population density of less than 100 persons per square mile; or (2) in counties where there is an urban center, a rural area within the county that constitutes, or is part of, a distinct rural labor market.

Individual with a disability—A person with a physical or mental impairment as defined in Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Appendix B: Required Forms

(1) Application Cover Sheet

(2) Application for Federal Assistance (Standard Form 424)

Note: In completing the Standard Form 424, the applicant should indicate in Item 11 of the form whether the project is to operate in a city with a large concentration of poverty or in a rural area; identify the EC/EZ included in the project service area, if applicable; and identify any of the areas of interest identified in the announcement which are addressed by the project.

(3) Budget Information Sheet

(4) Project Synopsis Form

BILLING CODE 4510-30-P

Cover Sheet Applicant #: _____
(Leave Blank)

Solicitation for Grant Application
(SGA# 99-003)

Welfare-to-Work Competitive Grant
(Round #3)

_____
(Enter Legal Name of Applying Organization)

We are applying for grant funding under the following Category
(ONLY CHECK ONE)

_____ DISABILITIES ***(only)***

_____ DOMESTIC VIOLENCE ***(only)***

_____ LIMITED ENGLISH PROFICIENCY ***(only)***

_____ NONCUSTODIAL PARENTS ***(only)***

_____ SUBSTANCE ABUSE ***(only)***

_____ GENERAL ***(any combination of the above or another area)***

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
☐☐-☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

WELFARE-TO-WORK COMPETITIVE GRANTS

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Participant Wages			
11. TOTAL Funds Requested (Lines 8 through 10)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

WELFARE-TO-WORK COMPETITIVE GRANTS

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel.

2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.

3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.

4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.

5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.

6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.

7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. **Total, Direct Costs:** Add lines 1 through 7.

9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.

10. **Participant Wages:** Include any wages paid to participants or employers for work experience, OJT, job creation, community service work or any other subsidized employment activity.

11. **Total Federal funds Requested:** Show total of lines 8 through 10.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

PROJECT SYNOPSIS FORM **U.S. DEPARTMENT OF LABOR**
Employment and Training Administration

OMB No. 1205-0399
Expires: 07/31/99

Project Applicant Name:

Type of Organization:
____ PIC
____ Political Subdivision (City/County)
____ Private Entity
In conjunction with (identify specific PIC or Political Subdivision):

Applicant Contact:
Title:
Address:
Telephone: ( ) _____
E-mail address: _____
Fax: ( ) _____

Project Service Area (Counties or area to be served):
City ____
Rural Area ____
Identify EZ/EC:
EZ/EC ____

WtW TARGETED POPULATIONS (Choose only one)

[ ] Noncustodial Parents
[ ] Disabilities
[ ] Substance Abuser
[ ] Domestic Violence
[ ] Limited English Proficiency
[ ] General Application

DESCRIPTION OF OTHER AREAS OF INTEREST
(Indicate relevant page numbers in project narrative on the line provided for all areas that apply)

Key Service Strategies

____ Expanded/accessible Transportation Services
____ Expanded/accessible Child Care Services
____ Serving Public & Assisted Housing Residents
____ Integrated Work and Learning Skills Development
____ Family-focused Assistance
____ Job Creation/Self-Employment
____ Non-traditional Occupations for Women

Integration Strategies

____ Proactive Employer Involvement
____ Integration with Child and other Family Assistance Services
____ Integration with Workforce Development and Welfare Systems
____ Community Saturation

OUTCOME MEASURES

Funds Requested: $ _____
Period of Performance: From _____ To _____

Number of Participants: _____
Number of Noncustodial Parents: _____
Number of Placements (unsubsidized): _____
Cost Per Placement (unsubsidized): $ _____
Expected Average Wage at Placement: $ _____
Expected Average Wage One Year After Placement: $ _____

Persons are not required to respond to this collection of information unless it displays a current valid OMB control number. Respondents obligation to reply to these reporting requirements are required to obtain or retain benefits (20 CFR 645). Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the US Department of Labor, Office of Welfare-to-Work, Room C-4524, Washington, D.C. 20210 (Paperwork Reduction Project 1205-0387).

January 1999 ETA Form 9070

[FR Doc. 99–1834 Filed 1–25–99; 8:45 am]
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federal register

Tuesday
January 26, 1999

Part III

Department of Education

Fund for the Improvement of Postsecondary Education—Learning Anytime Anywhere Partnerships (LAAP) (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.339A; 84.339B]

Fund for the Improvement of Postsecondary Education—Learning Anytime Anywhere Partnerships (LAAP) (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To provide grants or enter into contracts or cooperative agreements to enhance the delivery, quality, and accountability of postsecondary education and career-oriented lifelong learning through technology and related innovations.

For fiscal year (FY) 1999, the Secretary encourages applicants to design projects that focus on the invitational priorities summarized in the invitational priorities section of this application notice.

Eligible Applicants: Partnerships consisting of two or more independent agencies, organizations, or institutions, including institutions of higher education, community organizations, and other public and private institutions, agencies, and organizations.

Note: A nonprofit organization must serve as the fiscal agent for a funded partnership.

Applications Available: January 26, 1999.

Deadline for Transmittal of Preapplications: April 2, 1999.

Deadline for Transmittal of Applications: June 18, 1999.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: August 17, 1999.

Available Funds: $10,000,000.

Note: Federal funds available under this competition provide not more than 50 percent of the cost of a project. The non-Federal share of project costs may be in cash or in kind, fairly evaluated, including services, supplies, or equipment.

Estimated Range of Awards: $100,000 to $500,000 per year.

Estimated Average Size of Awards: $333,333 per year.

Estimated Number of Awards: 25–30.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Authorized Activities

Funds awarded to an eligible partnership must be used to conduct one or more of the following activities:

(a) Develop and assess model distance learning programs or innovative educational software.

(b) Develop methodologies for the identification and measurement of skill competencies.

(c) Develop and assess innovative student support services.

(d) Support other activities consistent with the statutory purpose of this program.

Invitational Priorities

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1—Projects to address the need to ensure that significant development costs can be justified by wide-scale applicability and long-term sustainability of technology-mediated distance education, and the need to find new ways to overcome the barriers that may inhibit faculty across institutions from working collectively.

Invitational Priority 2—Projects to address the proper balance of interactivity, flexibility, and cost in order to ensure that educational opportunities are as convenient as possible but still instructionally effective and affordable.

Invitational Priority 3—Projects to develop high quality, interactive courseware that can be implemented to achieve the scale necessary to recoup large investments, but is modular and sufficiently flexible for faculty to shape and modify academic content.

Invitational Priority 4—Projects to package courses and programs to assist students who wish to draw from the offerings of multiple providers and to assist institutions to cooperate and share resources.

Invitational Priority 5—Projects to use skill competencies and learning outcomes in order to measure student progress and achievement in technology-mediated distance learning programs.

Invitational Priority 6—Projects to improve quality and accountability of technology-mediated distance education to ensure that credentials are meaningful, that educational providers are accountable, and that courses meet high standards.

Invitational Priority 7—Projects to create new technology-mediated education opportunities for underserved learners, especially those who have not always been well served by traditional campus-based education or common forms of distance education, including: individuals with disabilities; individuals who have lost their jobs; individuals making the transition from welfare to the workforce; and individuals seeking basic or technical skills or their first postsecondary education experience.

Invitational Priority 8—Projects to improve support services for students seeking technology-mediated distance education to ensure that they have complete and convenient access to needed services such as registration, financial aid, advising, assessment, counseling, libraries, and many others.

Selection Criteria

The Secretary selects from the criteria in 34 CFR 75.210 to evaluate preapplications and applications for this competition. Under 34 CFR 75.201, the Secretary announces in the application package the selection criteria and factors, if any, for this competition and the maximum weight assigned to each criterion.

FOR FURTHER INFORMATION OR APPLICATIONS: The Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 400 Maryland Avenue, SW, Room 3100, ROB–3, Washington, DC 20202–5175. Telephone: (202) 358–3041 to order applications; or (202) 708–5750, between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday, for information. Individuals may also request applications by submitting the name of the competition, their name, and postal mailing address to the e-mail address LAAP@ED.GOV. Individuals may obtain the application text from Internet address http://www.ed.gov/offices/OPE/FIPSE/. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Program Authority: 20 U.S.C. 1070f *et seq.*

Dated: January 20, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–1720 Filed 1–25–99; 8:45 am]

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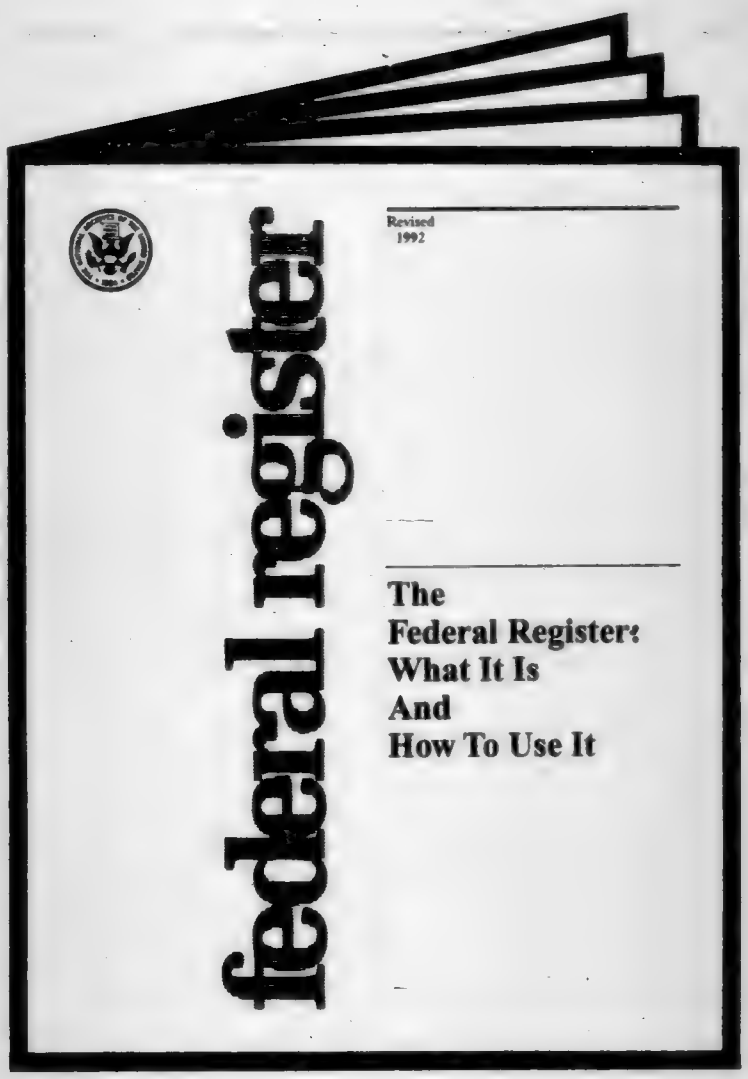

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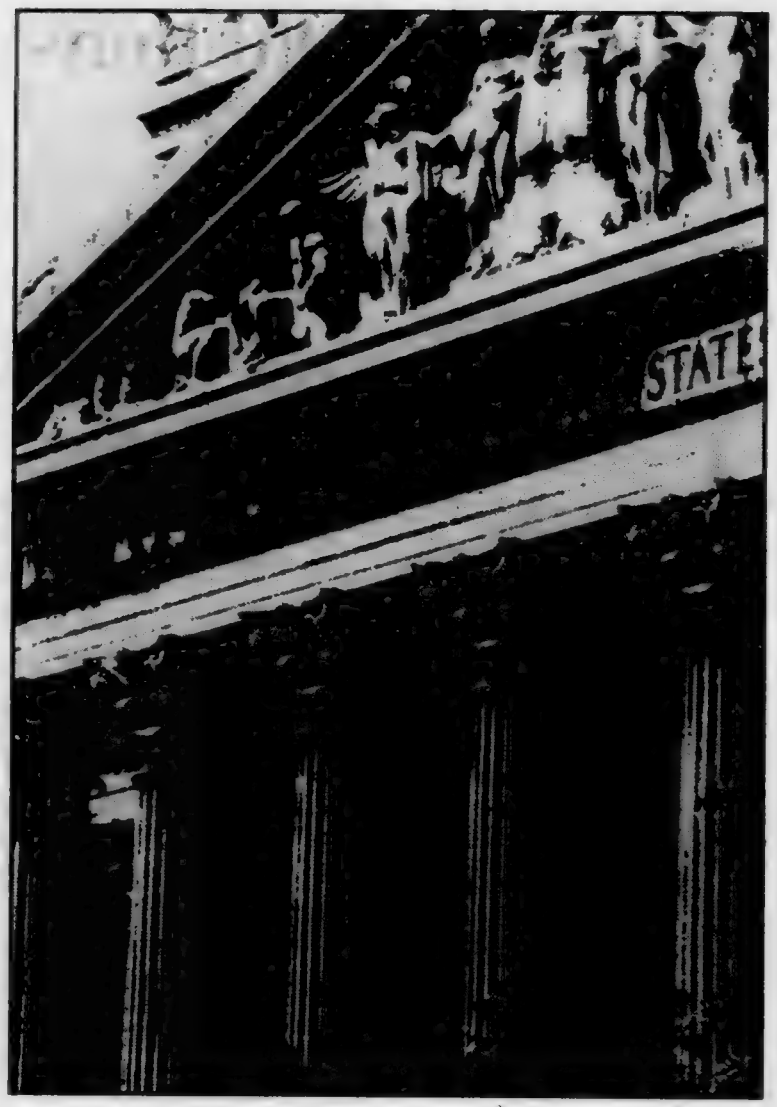

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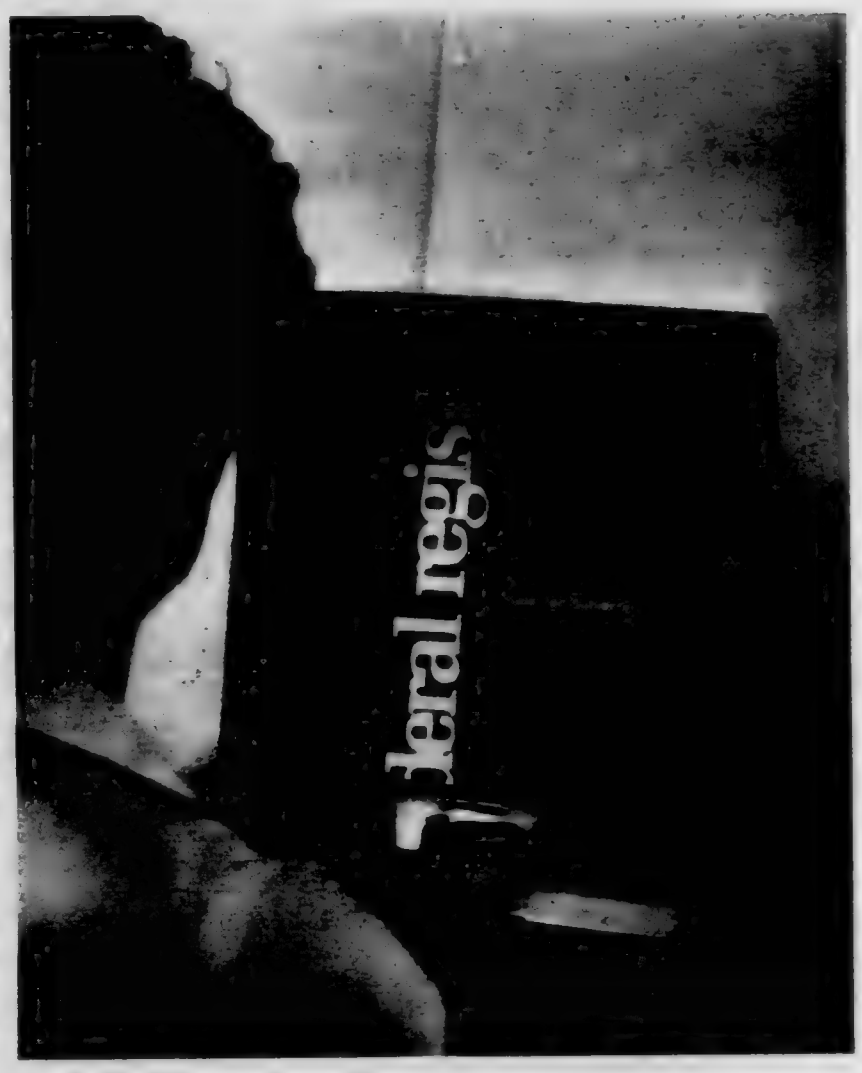

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB33

Assistance Regulations; Revisions to Rights in Data Regulations; Correction

AGENCY: Department of Energy.

ACTION: Correcting amendments.

SUMMARY: The Department of Energy published a final rule amending its financial assistance and acquisition regulations regarding rights in data on Wednesday, March 4, 1998 (63 FR 10499). This document corrects an error in that rule which inadvertently duplicated language instead of replacing it.

EFFECTIVE DATE: January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Webb on (202) 586–8264.

SUPPLEMENTARY INFORMATION:

List of Subjects in 10 CFR part 600

Administrative practice and procedure.

Accordingly, 10 CFR part 600 is corrected by making the following correcting amendment:

PART 600—[CORRECTED]

1. The authority citation for Part 600 continues to read as follows:

Authority: 42 U.S.C. 7254, 7256, 13525; 31 U.S.C. 6301–6308, unless otherwise noted.

§ 600.27 [Corrected]

2. In § 600.27, paragraph (b)(2)(i)(B) is amended by removing the phrase "the following paragraph (c) will be used in lieu of the provisions in 48 CFR 52.227–14(c):".

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

[FR Doc. 99–1855 Filed 1–26–99; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–265–AD; Amendment 39–11012; AD 99–02–18]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires removing the thermal insulating blankets from the upper rear nacelle structure; re-positioning the engine exhaust duct; and replacing the engine exhaust bracket with a new engine exhaust bracket, if necessary. For certain airplanes, this amendment also requires installing new stainless steel plates onto the upper rear nacelle structure. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fretting of the titanium thermal insulating blankets, which could result in an increased risk of fire in the engine exhaust duct of the tail pipe.

DATES: Effective March 3, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 3, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the **Federal Register** on November 16, 1998 (63 FR 63620). That action proposed to require removing the thermal insulating blankets from the upper rear nacelle structure; re-positioning the engine exhaust duct; and replacing the engine exhaust bracket with a new engine exhaust bracket, if necessary. For certain airplanes, that action also proposed to require installing new stainless steel plates onto the upper rear nacelle structure.

Conclusion

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 171 Model EMB–120 series airplanes of U.S. registry will be affected by this AD.

It will take approximately 9 work hours per airplane to accomplish the required actions on airplanes listed in "Part I" of EMBRAER Service Bulletin S.B. 120–54–0035, Change 02, at an average labor rate of $60 per work hour. Required parts will cost approximately $337 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of airplanes listed in "Part I" of the service bulletin is estimated to be $877 per airplane.

It will take approximately 2 work hours per airplane to accomplish the actions on airplanes listed in "Part II" of EMBRAER Service Bulletin S.B. 120–

54–0035, Change 02, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators of airplanes listed in "Part II" of the service bulletin is estimated to be $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–02–18 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11012. Docket 98–NM–265–AD.

Applicability: Model EMB–120 series airplanes, serial numbers (S/N) 120003, 120004, and 120006 through 120336 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fretting of the titanium thermal insulating blankets, which could result in an increased risk of fire in the engine exhaust duct of the tail pipe, accomplish the following:

(a) For airplanes identified in "Part I" of the effectivity listing of EMBRAER Service Bulletin S.B. 120–54–0035, Change 02, dated May 29, 1998: Within 2,400 flight hours after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) in accordance with the service bulletin.

(1) Remove the thermal insulating blankets from the upper rear nacelle structure.

(2) Install new stainless steel plates onto the upper rear nacelle structure.

(b) For airplanes identified in "Part II" of the effectivity listing of EMBRAER Service Bulletin S.B. 120–54–0035, Change 02, dated May 29, 1998: Within 2,400 flight hours after the effective date of this AD, remove the thermal insulating blankets from the upper rear nacelle structure in accordance with the service bulletin.

(c) For all airplanes: Prior to further flight following accomplishment of either paragraph (a) or (b) of this AD, as applicable, re-position the engine exhaust duct with the use of shims in accordance with EMBRAER Service Bulletin S.B. 120–54–0035, Change 02, dated May 29, 1998. If it is not possible to re-position the engine exhaust duct with the use of shims as specified in the service bulletin, prior to further flight, replace the rear exhaust duct bracket with a new rear exhaust duct bracket, in accordance with the "NOTE" in paragraph 1.3.1.1 of the Planning section of the service bulletin.

(d) As of the effective date of this AD, no person shall install on any airplane a thermal insulating blanket having part number (P/N) 120–35411–025, –035, –036, 120035413–001, or 12035411–002.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with EMBRAER Service Bulletin S.B. 120–54–0035, Change 02, dated May 29, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directives 97–11–03, dated December 3, 1997, and 97–11–03R1, dated July 6, 1998.

(h) This amendment becomes effective on March 3, 1999.

Issued in Renton, Washington, on January 15, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1545 Filed 1–26–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 600

[Docket No. 980519132–9004–02; I.D. 022498F]

RIN 0648–AK49

Magnuson-Stevens Act Provisions; List of Fisheries and Gear, and Notification Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule that establishes a list of fisheries and fishing gear used in those fisheries under the authority of each regional fishery management council (Council), or under authority of the Secretary of Commerce (Secretary) with respect to Atlantic highly migratory species (HMS). Effective 180 days after the date of publication of this list, no person or vessel may employ fishing gear or participate in a fishery not included in this list without giving 90 days advance notice to the appropriate Council or the Secretary with respect to Atlantic HMS. This final rule also establishes a process for giving such notification to the appropriate Council or to the Secretary. NMFS also issues guidelines for determining when a fishing gear or a fishery is sufficiently different from those listed to require notification to the appropriate authority. The list of fisheries and gear and the guidelines apply only to fisheries and gear that occur within the U.S. exclusive economic zone (EEZ). The list, notice requirements, and guidelines contained in this final rule are required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective February 26, 1999, except that § 600.725(v) is effective July 26, 1999.

ADDRESSES: Copies of the regulatory impact review for this action can be obtained from Dr. Gary C. Matlock, Director, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments regarding the collection-of-information requirement contained in this rule should be sent to the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Mark Millikin, NMFS, (301) 713–2344.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is required by the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), as amended by the Sustainable Fisheries Act, which was signed into law on October 11, 1996. Section 305(a) of the Magnuson-Stevens Act requires that the Secretary publish in the **Federal Register**, after notice and an opportunity for public comment, a list of fisheries under the authority of each Council and all fishing gear used in such fisheries. A fish whether targeted or not, may be retained only if it is taken within a listed fishery, is taken with a gear authorized for that fishery, and is taken in conformance with all other applicable regulations. This list is based on information submitted by the Councils and by the Director, Office of Sustainable Fisheries, NMFS (Director), in the case of Atlantic HMS. The Magnuson-Stevens Act requires the issuance of guidelines for determining when a fishing gear or a fishery is sufficiently different from those listed as to require fishermen or other individuals to notify a Council or the Secretary under § 305(a)(3).

A proposed rule for this action was published in the **Federal Register** on June 4, 1998 (63 FR 30455), requesting comments through July 6, 1998. The preamble of the proposed rule contained some background information for this rulemaking that has not changed so it is not repeated here. That information includes: (1) How information for the list of fisheries and gear was collected, (2) prohibitions on use of unlisted gear, and (3) procedures for notification of new gear or fisheries. Background information from the proposed rule that has been modified is included again in the preamble of this final rule. That information includes: (1) Gear names and definitions related to the issue of deployment, (2) the relationship of the rule to other Federal regulations, and (3) procedures after receiving notification for other than Atlantic HMS. The portion of the preamble containing the procedures after receiving notification for species other than Atlantic HMS is repeated for the convenience of the public. List of Fisheries and Gear

The list of gear, wherever possible, avoids gear names that also imply a method of deployment. This explains the absence of "gear" such as pelagic longline, pelagic trawl, bottom trawl, otter trawl, or drift gillnet in the list. For example, "bottom trawl" and "pelagic trawl" are considered deployment methods for trawl gear, rather than gear types. Terms such as "pelagic," "bottom," and "drift" are modifiers that describe where in the water column the specific gear type is used. It is noteworthy however, that in the proposed rule, "hand harvest" was included in the list only under fisheries where it was the only allowed method of harvest—the Caribbean Queen Conch FMP and the Coral Reef FMPs in the South Atlantic and the Gulf of Mexico. In response to public comments, in this final rule, "hand harvest" is added as an allowable gear type to various mollusk and crustacean fisheries that commenters felt should also have "hand harvest" included as an allowable gear.

Relationship of This Rule to Other Federal Fishery Regulations

Beyond this rule, fisheries and associated gear continue to be managed by implementing regulations in 50 CFR chapter VI for the various FMPs under authority of the Councils and the Secretary. FMPs often address issues about gear such as structure, size, shape, material, deployment, seasonality of allowed use, prohibitions, or other features of gear and its use. Therefore, the list of fisheries and allowable gear contained in this final rule is not intended to alter or supersede other regulations related to fisheries and gear.

It is NMFS' intent that this final rule will not affect experimental fisheries conducted for a year or less elsewhere under 50 CFR chapter VI.

NMFS is not aware of any Treaty Indian tribe or subsistence fisheries in the EEZ other than those listed in § 600.725(v). This action is not intended to supersede or otherwise affect exemptions that exist for fisheries or Native American harvest under Treaty Indian fisheries. In the proposed rule (63 FR 30455; June 4, 1998), NMFS announced that it was particularly interested in receiving public comment on this topic, but received none.

Procedures After Receiving Notification

Species Other Than Atlantic HMS

After receiving notification regarding intended participation in an unlisted fishery or use of unlisted gear, a Council will begin consideration of the notification and immediately send a copy of the notification to the appropriate NMFS Regional Administrator (RA). If, after consideration of the notification and accompanying information, a Council finds that the new gear or fishery would not compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act, the Council will recommend to the RA that the authorized list of fisheries and gear be amended, provide rationale and supporting analysis, and provide a draft proposed rule to amend the authorized list of fisheries and gear for publication in the **Federal Register**. If the Council finds that the proposed new gear or fishery will be detrimental to conservation and management efforts, the Council will recommend to the RA that the authorized list of fisheries and gear not be amended and that a proposed rule not be published, give reasons for its recommendation, and may request NMFS to issue emergency or interim regulations and begin preparation of an FMP or amendment to an FMP, if appropriate. Some examples

of how a new gear or fishery could be judged as "compromising the effectiveness of conservation and management efforts" would be if: (1) Fish stock rebuilding objectives would be seriously affected, (2) essential fish habitat would be severely impacted, (3) bycatch problems in the fishery would be further exacerbated, or (4) severe conflicts would result with existing gear or fisheries. This listing of examples of factors that would compromise the effectiveness of conservation and management efforts is not intended to be all-inclusive. The Councils and NMFS will need to consider each request on a case-by-case basis. Based on the information provided in the notification and by the Council, NMFS will make the final determination whether the new gear or fishery would compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act and whether to publish a proposed rule to amend the list of fisheries and gear.

If the initial determination is positive, NMFS will publish the proposed rule, with a 30-day comment period. Following the end of the comment period, NMFS will either approve or disapprove the change to the list, based on the potential impacts on the effectiveness of conservation and management efforts. If approved, NMFS will publish a final rule revising the list, and notify the applicant of the final approval. If the use of the gear or participation in a fishery is determined to be detrimental to conservation and management efforts under the Magnuson-Stevens Act, the proposed addition to the list will be disapproved, NMFS will notify the applicant and the appropriate Council of the negative determination and the reasons for the determination, and may publish emergency or interim regulations in the **Federal Register** to prohibit or restrict the use of the unlisted gear or fishing in the unlisted fishery. Upon notification by NMFS that the proposed revision has been disapproved, the Council should begin preparation of an FMP or amendment to an FMP in order to provide permanent regulations relative to that gear type or fishery.

If the initial determination by NMFS is negative, because use of the gear or participation in the fishery is likely to compromise conservation and management efforts under the Magnuson-Stevens Act, and it is unlikely that additional new information would be gained from a public comment period, then NMFS will notify the applicant and the Council of the negative determination and the reasons for that determination, and may publish emergency or interim regulations in the **Federal Register** to prohibit or restrict the use of the unlisted gear or fishing in the unlisted fishery. The Council should then begin preparation of an FMP or an amendment to an FMP to provide permanent regulations relative to that gear type or fishery.

Atlantic HMS

Notification of intent to use an unlisted gear or to participate in an unlisted fishery for Atlantic HMS should be addressed to the Director. After receiving such notification, NMFS would collect relevant information (including any information/data collected from the experimental fishing permit (EFP) program) and use the advisory panel process. A determination will be made whether the new gear or new fishery would compromise the effectiveness of conservation and management programs and whether to publish a proposed rule to amend the list of gear and fisheries. The EFP program allows NMFS to collect data such as catch rates of target and non-target finfish and protected species bycatch.

If the determination is positive, a proposed rule to amend the list of gear and fisheries will be published in the **Federal Register** for public comment. Following the end of the public comment period, NMFS will consider comments or new information received relative to the effect of the new gear or fishery on conservation and management programs, and will either approve or disapprove the proposed amendment. If approved, the applicant will be notified, and a final rule will be published amending the list of fisheries and gear. If, after receiving public comment, NMFS disapproves the proposed amendment, the applicant will be notified of the disapproval, including reasons for the disapproval, and NMFS may publish emergency or interim regulations and subsequently develop or amend the FMP to prohibit or restrict the use of the unlisted gear or participation in the unlisted fishery.

If the initial determination is negative, NMFS will notify the applicant, including the reasons for the disapproval, and may publish emergency or interim regulations and subsequently develop or amend an FMP to prohibit or restrict the use of the unlisted gear or participation in the unlisted fishery.

Comments and Responses

Seventeen sets of comments were received regarding the list of gear by fisheries and the notification procedures from various individuals and organizations.

Comment 1: Historically, if a fishery has not been addressed through the FMP process, the regulations of adjacent states have taken precedence. This has allowed the various states the ability to manage those fisheries under regulations that are consistent with the regulations in their own waters. Many fisheries that are prosecuted mainly in state waters which may occasionally intrude into Federal waters. An example from Louisiana is the oyster fishery, which occasionally harvests from Federal waters. Establishment of a set of Federal rules of allowable gears and fisheries would seem to have far-reaching implications in this type of situation. The fishery might be in violation in Federal waters, though completely legal in the adjacent state waters, where the majority of the resource resides. Alternatively, the fishery might be found to be under Federal management, and the brief list of gears would be the only regulations on the fishery, undermining the effectiveness of state regulations.

Response: The list of fisheries and gear contained in this final rule is required by the Magnuson-Stevens Act. NMFS has attempted to compile a list that includes all existing gear and fisheries in the EEZ (i.e., within the jurisdiction of the fishery management councils), unless otherwise prohibited. The lack of a gear or fishery in the list does not preclude the use of a gear or occurrence of a fishery in state waters. Under procedures established in this rulemaking, an individual interested in using a new gear or participating in a fishery in the EEZ not already listed may notify the appropriate fishery management council or the Director as described in § 600.747.

Comment 2: The proposed definition for "dredge" could either include wing nets or include oyster dredges with mesh bags, depending on how it is read. Also, it does not include suction dredges that may be used in some areas for clam harvest.

Response: The definition of "dredge" was structured to include all types of dredges currently used in the EEZ. The definition has been modified in this final rule to include suction dredges.

Comment 3: The proposed definition of "hoop net" is too vague. Too many gears could fall under that definition; instead use the following: "A cone-shaped net of vegetable or synthetic materials having throats or flues and which are stretched over a series of rings or hoops to support the webbing."

Response: The definition for "hoop net" has been changed in the final rule

to be consistent with the suggestion by the commenter.

Comment 4: The proposed definitions for "lampara net" and purse seine" are functionally very similar. They should be either combined into a single definition, or more clearly distinguished.

Response: The definitions have been modified to more clearly distinguish them in this final rule.

Comment 5: For the "Gulf of Mexico Shrimp" and "Recreational Shrimp Fishery," under the Gulf of Mexico Fishery Management Council, butterfly net, skimmer, cast net, and dip net gear should be added. These gears are typically used only in state waters, but may possibly be used in Federal waters.

Response: Except for dip nets, these gears are not normally used in the EEZ, and have not been added to the list of fisheries and gear in this final rule.

Comment 6: For the "Recreational Fishery (non-FMP)," cast net, hoop net, tong (for oyster), pipes, drums, cans, buckets, and tires, yo-yo or trigger devices, trotline, bow and arrow, barbless spear (for flounder) and spear (for garfish) should be added.

Response: NMFS believes that all these gears except for hoop nets are for inshore use only, and has not added them to allowable gear for this fishery in this final rule.

Comment 7: The fishery, "Non-groundfish Finfish (non-FMP)," should be added for species such as black drum, sheepshead, flounder, and bluefish, and minor species such as cutlassfish and anchovies, that might be taken incidentally through gears such as trawl, gillnet, longline, handline, rod and reel, bandit gear, and many others. This relates to the issue that the list of fisheries in this rule applies to fisheries presently under state jurisdiction.

Response: NMFS agrees that this fishery and associated gear occur in the EEZ, and has added them to the list of fisheries and gear in this final rule.

Comment 8: Several commenters felt that the proposed rule misinterpreted the intent and language of section 305 of the Magnuson-Stevens Act, which established requirements for notifying the Councils before a new gear or fishery is introduced. It does not establish a system to identify gear as "allowable." The proposed rule refers to gears on the list as "allowable," implying that gear not on the list is "not allowed." This is an inaccurate interpretation.

Response: Section 305(a)(3) of the Magnuson-Stevens Act states: "Effective 180 days after publication of such list, no person or vessel may employ fishing gear or engage in a fishery not included in such list * * *." NMFS believes, therefore, that its interpretation is correct in referring to gear in the list as "allowable gear."

Comment 9: One commenter stated that the proposed rule may misinterpret the language of the Magnuson-Stevens Act by giving the Secretary discretion to reject additions to the list recommended by the Council and to make changes not recommended by the Council. The statute does not give authority to the Secretary to make changes to the list, absent a recommendation by a Council. Section 305(a)(4) clearly states that the Secretary "shall publish a revised list" (emphasis added) after receiving any change the Council "deems appropriate." The commenter's interpretation of this language is that the Secretary must publish a proposed rule for public comment when a Council suggests a change to the list. If the Secretary does not have to publish a proposed rule, the public will not have an opportunity to counter an adverse determination by NMFS—and may not even know such a determination is being considered. The language in the proposed rule only makes sense if the list is interpreted as a list of "allowed" fisheries. The commenter does not believe this is the correct interpretation.

Response: While the Secretary and NMFS value the opinions, advice, and recommendations made by the Councils, the decision on implementing a regulatory action and issuing a rulemaking under the Magnuson-Stevens Act rests with the Secretary. An interpretation that the Secretary must implement whatever a Council recommends would run afoul of the Appointments Clause of the Constitution.

Comment 10: One commenter suggested that the list for gear and fisheries be based on permit category, rather than geographic area; this may shorten the list and would clearly identify allowed gear types. The commenter also recommended that the gear designations be more specific so fishermen can clearly understand what gear is allowed.

Response: The gear by fisheries is listed by geographic area because § 305(a)(1) of the Magnuson-Stevens Act focuses on the list of all fisheries under the authority of each Council, irrespective of whether permits exist for a given fishery. More general definitions were chosen for the list of gear by fisheries, to meet the requirements of this provision while maintaining simplicity and flexibility in its implementation. More specific descriptions and regulations to prohibit or otherwise restrict the gear in question can be found elsewhere in 50 CFR part 600.

Comment 11: The regulation may leave the industry vulnerable to inaction by the Councils. While new gear may be used after the 90-day advance notice period, there is no requirement for the Councils to act within that time frame, so the fishermen may not know when the Council will reply. This will inhibit investment of time and money in technological improvements. Therefore, the commenter recommended that, after a specific time period (180 days or less), new gear and fisheries should be added to the list unless the Council has notified the fishermen that it will not recommend the addition.

Response: Unless specifically prohibited by rulemaking, the individual who has served notice may use a new gear in an existing fishery or may participate in a new fishery after the 90-day waiting period. NMFS will endeavor to process the request within the 90-day period.

Comment 12: The proposed rule should have consistently applied the policy stated in the Supplementary Information section that "while gear types are included on the list, methods of gear deployment were not." The example used is that "jig" and "troll" are not listed as gear because they are just methods of using hook-and-line gear, yet definitions are added for buoy gear and longline (methods of deploying hook-and-line gear) and pair trawl (a method for deploying a trawl net).

Response: Gear types differentiated by deployment are not included unless absolutely necessary. For example, "pair trawl" is no longer listed separately, but is included in the definition for "trawl." In a few instances, however, the method of deployment had to be included for gear that is significantly different than others in the category and for clarity in the description of the gear in question.

Comment 13: The proposed rule creates a "Catch 22" for the Councils and industry. Fishermen would be required to advise the Council only if a new gear or fishery is not on the list. The proposed rule uses broad definitions, to avoid the problem of trying to describe the countless gears and fisheries in use. These definitions are so broad that almost any new gear or fishery may fit under the definitions and the proposed rule will serve little useful purpose. An example is the Mid-Atlantic Fishery Management Council non-FMP "mixed trawl fishery'—any trawl for any species not covered by an FMP would fit this listing.

Response: The general wording for definitions of gear was purposefully used to provide flexibility for fishermen

and in an attempt to make the authorized list of fisheries and gear easy to refer to and understand. NMFS believes that variations of existing gear would not generally constitute a different gear. NMFS is trying to achieve a middle ground that would implement a process that is not overly burdensome to the fishermen and the Councils. At the same time, significantly new gear or fisheries should fall under the procedures of this rule. In any event, the Councils have the authority to regulate gear (e.g., size, shape, materials, deployment, seasons, areas) and fisheries (e.g., areas, seasons) more specifically if there is an identified reason to do so.

Comment 14: The New England Fishery Management Council is not submitting a list of fisheries or gear that are not included in the proposed rule. It expressed concern that the creation of such a list could easily overlook a gear or fishery, unfairly placing a notification burden on that fishery. The inconsistent structure of the list makes such a mistake probable. Therefore, it recommended that all gear types be listed for every fishery unless specifically prohibited by existing regulations.

Response: This rule satisfies the requirements of § 305(a) of Magnuson-Stevens Act (i.e., to compile a list of fisheries and gear in use in the EEZ, categorized by Council, and of NMFS, in the case of Atlantic HMS). All allowable gear and fisheries known to NMFS have been listed.

Comment 15: There should not be any exception to the full 90-day waiting period before using a new gear or participating in a new fishery. This is the minimum period necessary for the Councils to have an opportunity to review and decide on a proposed addition to the list. Any shorter period would not provide adequate time for careful review of the conservation impacts of a new gear or fishery.

Response: The provisions of § 305(a) of the Magnuson-Stevens Act do not prohibit the Secretary from amending the list of gear and fisheries within the 90-day notification period. NMFS will try to expeditiously process the notification while meeting all the requirements of this section.

Comment 16: The rule has not been published according to the timeline set by the SFA.

Response: NMFS made every effort to comply with the statutory deadlines of the SFA. However, the complexity of the proposed rule and the importance of the contents to the public required diligence and deliberation.

Comment 17: One commenter asked for listing electric jigging machines, bandit gear, and trolling green sticks as fishing gear used in various Atlantic HMS (tunas, swordfish, and mahi mahi) fisheries. The commenter noted that these gear types are all currently being used in these fisheries, partly due to the concerns over the future of pelagic longlining.

Response: NMFS recognizes that various gear may be used to enhance productivity of these fisheries. Bandit gear is currently authorized in the Atlantic tunas fishery and as a bycatch gear type in the swordfish fishery (two fish per trip). Green sticks are allowed for Atlantic tunas, if the vessel is carrying a General category permit. Jigging machines are not authorized for Atlantic tunas nor for Atlantic swordfish, although they could be allowed a two swordfish per trip bycatch allowance if used to target other species.

Changes From the Proposed Rule

Section 600.725(v) in the proposed rule has been revised to indicate that the list of fisheries and gear in that paragraph is intended to include allowable gear for harvest and retention of a fish, whether that fish is targeted or not. If the list of gear applied only to fish that were targeted, it would be extremely difficult to determine whether a fish caught and retained was legally taken under provisions of this rule. The intent of this rule is that fish in a listed fishery should not be allowed to be retained if caught with gear other than that listed under that fishery to protect the resources from development of uncontrolled fisheries or introduction of potentially harmful gear.

Section 600.746 in the proposed rule has been changed to § 600.747 in this final rule because a new § 600.746 was added by a final rule for an unrelated action published on May 18, 1998 (63 FR 27217), effective on June 17, 1998. Similarly, § 600.725(q) in the proposed rule is changed to § 600.725(v) in this final rule because paragraphs (q), (r), (s), (t), and (u) were added to this section in the same final rule (63 FR 27217, May 18, 1998) mentioned above.

Because of comments received from various Councils and NMFS Regional Offices, this final rule contains definitions for "Cast net," "Hand harvest," "Hook-and-line," "Pot," and "Submersible" that were not defined in § 600.10 of the proposed rule. The definitions for "Allowable chemical," "Barrier net," "Dredge," "Hoop net," and "Lampara net" have been changed in the final rule.

In the table of the list of authorized fisheries and gear in § 600.725(v), the following changes have been made in accordance with comments received from various Councils, NMFS Regional Offices, state agencies, and members of the public:

1. Under the heading "New England Fishery Management Council," the following changes have been made:

a. "Hand harvest" and "recreational fisheries" have been added to the Atlantic Sea Scallops Fishery FMP.

b. "Rod and reel" has been added to the groundfish hook and line fishery for the Northeast Multispecies Fishery FMP.

c. For the American Lobster Fishery FMP, the "hand harvest fishery" has been added and "hand harvest" has also been added to the gear for the recreational fishery.

d. The Striped Bass Fishery (non-FMP), the Surf Clam and Ocean Quahog Fishery FMP, and the Hagfish Fishery (non-FMP) have been added.

e. For the Atlantic Halibut Fishery (non-FMP), "handline," "gillnet," and "trawl" have been added as allowable gear.

f. "Hand harvest fishery" has been added to the Atlantic Mussel/Sea Urchin Fishery (non-FMP).

g. "Hook and line" has been added to the Atlantic Skate Fishery (non-FMP).

h. The "demersal longline fishery," "dredge fishery," and "trap/pot fishery" have been added to the Monkfish Fishery (non-FMP).

2. Under the heading "Mid-Atlantic Fishery Management Council" the following changes have been made:

a. The "striped bass fishery (non-FMP)" has been added.

b. The "bandit gear fishery" has been added to the Atlantic Mackerel, Squid, and Butterfish Fishery FMP.

c. The "Surf Clam/Ocean Quahog Fishery (FMP)" has been divided into a "dredge fishery" and a "recreational fishery."

d. The "hand harvest fishery" has been added to the "Atlantic Sea Scallop Fishery FMP" and the "American Lobster Fishery FMP."

e. The "demersal longline fishery" has been added to the monkfish fishery (non-FMP).

f. The tilefish fishery (non-FMP) and the dogfish fishery (non-FMP) have been added along with associated fisheries and allowable gear types.

3. Under the heading, "South Atlantic Fishery Management Council," "powerhead" has been added as an allowable gear to the commercial fishery of the South Atlantic Snapper-Grouper Fishery FMP, and the "sargassum fishery" and its accompanying gear (trawl) has been added.

4. Under the heading, "Gulf of Mexico Fishery Management Council," the following changes have been made:

a. A new category has been added, "oyster fishery (non-FMP)" with associated gear.

b. The "Gulf of Mexico shrimp trawl fishery" has been changed to the "Gulf of Mexico commercial shrimp fishery" and several gear types other than "trawl" have been added.

c. "Non-groundfish finfish (non-FMP)" and associated gear have been added to address possible harvest of species such as black drum, sheepshead, flounder, bluefish, cutlassfish, and anchovies.

5. Under the heading, "Caribbean Fishery Management Council," the "hand harvest fishery" has been added to the "Caribbean Spiny Lobster FMP" and "rod and reel" has been added as a gear for the "recreational fishery for Caribbean pelagics (non-FMP)."

6. Under the heading, "Pacific Fishery Management Council," the following changes have been made:

a. The "Pacific halibut fishery" has been properly labeled as a "non-FMP," and subdivided into the "longline/setline fishery" and "hook-and-line fishery."

b. The "California halibut trawl" and "trammel net fishery" have been added.

c. "Jack mackerel" has been added to the "Pacific sardine, Pacific mackerel, Pacific saury, Pacific bonito, Jack mackerel purse seine fishery."

7. Under the heading, "North Pacific Fishery Management Council," the following changes have been made:

a. "Diving gear" has been added to the "Alaska Scallop Fishery FMP."

b. The "Gulf of Alaska Groundfish Fishery FMP" with associated fisheries and gear has been added.

8. Under the heading, "Western Pacific Fishery Management Council," the following changes have been made:

a. The following new categories have been added along with associated fisheries and gear: "western Pacific crustacean (non-FMP)," "western Pacific precious corals (non-FMP)," "western Pacific pelagics (non-FMP)," "western Pacific coastal pelagics (non-FMP)," "western Pacific squid/octopus (non-FMP)," and "western Pacific shallow reef (non-FMP)."

b. The "gillnet fishery (non-FMP)" and the "recreational fishery (non-FMP)" have been deleted.

c. Under the "Western Pacific Bottomfish Fishery FMP," the "bottomfish handline fishery," has been deleted, and the "recreational fishery" has been moved to a new category, "the "western Pacific bottomfish fishery (non-FMP)."

d. Under the "Western Pacific Pelagics FMP," the dip net/hoop net fishery" and "pole and line fishery" have been deleted. Also, under the same FMP, the more specifically named fisheries, "tuna handline/hook and line," and "swordfish, tuna, billfish, mahi mahi, wahoo, shark longline/setline fishery" have been replaced by the more general headings, "hook and line fishery" and "longline fishery."

9. Under the heading, "Secretary of Commerce," the following changes have been made:

a. "Harpoon fishery" is removed from the "Atlantic Sharks FMP" and from the "Atlantic Billfish FMP."

b. "Bandit gear" and "harpoon" have been removed from the gear listed for the "recreational fishery" for the "Atlantic tunas (non-FMP)."

c. "Bandit gear" has been added to the gear in the "hook and line fishery" under the "Atlantic Swordfish FMP."

d. "Bandit gear" and "handline" have been removed from the "hook and line fishery" for the "Atlantic Billfish FMP."

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0346 for 50 CFR 600.725 and 600.747.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that, if adopted, it would not have a significant impact on a substantial number of small entities. This action does not change the analyses already completed nor the conclusions made under the Regulatory Flexibility Act (RFA) for any gear that can be used in a fishery or gear that is prohibited seasonally, or year round, for any previous rulemakings for fisheries under 50 CFR parts 600, 622, 630, 640, 644, 648, 649, 654, 660, 678, and 679. NMFS' guidelines for preparation of economic analyses to comply with the RFA assume that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on a substantial number of small entities if any of the following criteria are met: Annual gross revenues are reduced by more than 5 percent, total costs of production are increased by more than 5 percent, compliance costs for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities, or the action results in a cessation of business operations of 2 percent or more of small entities affected by the action. None of the aforementioned criteria were met by this action. The formalized list of fisheries currently in the EEZ and gear within those fisheries does not change any costs or revenues for members of the fishing industry. The new procedure that will be required before a fisherman may participate in a new fishery or employ a new gear in an existing fishery will affect only that small group of individuals (about 20 per year) having to comply with the notification procedure because of reporting requirements associated with it. As a result, a regulatory flexibility analysis was not prepared for this action. Any future rule prohibiting or restricting use of gear or prosecution of a fishery will be analyzed in accordance with the RFA.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been approved by OMB and assigned the number 0648–0346. Public reporting burden for this collection of information has been revised from the average estimate of 1 hour per response to 1½ hours per response for Council notification of entry into a new fishery or use of a new gear in a current fishery, including the time for reviewing instructions. searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: January 20, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), in the table, under 50 CFR, the entries for §§ 600.725 and 600.747 are added to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR:	
* * * * *	
600.725	–0346
600.747	–0346
* * * * *	

Chapter VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.10, the definition for "Trawl" is revised and new definitions for "Allowable chemical", "Bandit gear", "Barrier net", "Bully net", "Buoy gear", "Cast net", "Dip net", "Dredge", "Hand harvest", "Handline", "Hook and line", "Hoop net", "Lampara net", "Longline", "Pot", "Powerhead", "Purse seine", "Rod and reel", "Seine", "Slurp gun", "Snare", "Spear", "Submersible", "Tangle net dredge", "Trammel net", and "Trap", are added in alphabetical order to read as follows:

§ 600.10 Definitions.

* * * * *

Allowable chemical means a substance, generally used to immobilize marine life so it can be captured alive, that, when introduced into the water, does not take Gulf and South Atlantic prohibited coral (as defined at 50 CFR 622.2) and is allowed by Florida or Hawaii or the U.S. Pacific Insular Area for the harvest of tropical fish.

* * * * *

Bandit gear means vertical hook and line gear with rods that are attached to the vessel when in use. Lines are retrieved by manual, electric, or hydraulic reels.

Barrier net means a small-mesh net used to capture coral reef or coastal pelagic fishes.

Bully net means a circular frame attached at right angles to a pole and supporting a conical bag of webbing.

Buoy gear means fishing gear consisting of a float and one or more lines suspended therefrom. A hook or hooks are on the lines at or near the end. The float and line(s) drift freely and are retrieved periodically to remove catch and rebait hooks.

Cast net means a circular net with weights attached to the perimeter.

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Dip net means a small mesh bag, sometimes attached to a handle, shaped and framed in various ways. It is operated by hand or partially by mechanical power to capture the fish.

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Dredge means a gear consisting of a mouth frame attached to a holding bag constructed of metal rings or mesh.

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Hand harvest means harvesting by hand.

Handline means fishing gear that is set and pulled by hand and consists of one vertical line to which may be attached leader lines with hooks.

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Hook and line means one or more hooks attached to one or more lines (can include a troll).

Hoop net means a cone-shaped net having throats and flues stretched over a series of rings or hoops for support.

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Lampara net means a surround net with the sections of netting made and joined to create bagging. It is hauled with purse rings and is generally much smaller in size than a purse seine net.

Longline means a line that is deployed horizontally and to which gangions and hooks or pots are attached. Longlines can be stationary, anchored, or buoyed lines that may be hauled manually, electrically, or hydraulically.

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Pot means trap.

Powerhead means any device with an explosive charge, usually attached to a spear gun, spear, pole, or stick, that may or may not fire a projectile upon contact.

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Purse seine means a floated and weighted encircling net that is closed by means of a drawstring threaded through rings attached to the bottom of the net.

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Rod and reel means a hand-held (including rod holder) fishing rod with a manually or electrically operated reel attached.

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Seine means a net with long narrow wings, that is rigged with floats and weights.

Slurp gun means a tube-shaped suction device that operates somewhat like a syringe by sucking up the fish.

Snare means a device consisting of a pole to which is attached a line forming at its end a loop with a running knot that tightens around the fish when the line is pulled.

Spear means a sharp, pointed, or barbed instrument on a shaft. Spears can be operated manually or shot from a gun or sling.

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Submersible means a manned or unmanned device that functions or operates primarily underwater and is used to harvest fish, i.e., precious corals, with mechanical arms.

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Tangle net dredge means dredge gear consisting of weights and flimsy netting that hangs loosely in order to immediately entangle fish.

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Trammel net means a net consisting of two or more panels of netting, suspended vertically in the water column by a common float line and a common weight line. One panel of netting has a larger mesh size than the other(s) in order to entrap fish in a pocket.

* * * * *

Trap means a portable, enclosed device with one or more gates or

entrances and one or more lines attached to surface floats. Also called a pot.

Trawl means a cone or funnel-shaped net that is towed through the water, and can include a pair trawl that is towed simultaneously by two boats.

* * * * *

3. In § 600.725, paragraph (v) is added to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) The use of any gear or participation in a fishery not on the following list of authorized fisheries and gear is prohibited after July 26, 1999. A fish, whether targeted or not, may be retained only if it is taken within a listed fishery, is taken with a gear authorized for that fishery, and is taken in conformance with all other applicable regulations. Listed gear can only be used in a manner that is consistent with existing laws or regulations. The list of fisheries and allowable gear does not, in any way, alter or supersede any definitions or regulations contained elsewhere in this chapter. A person or vessel is prohibited from engaging in fishing or employing fishing gear when such fishing or gear is prohibited or restricted by regulation under an FMP or under other applicable law. However, after July 26, 1999, an individual fisherman may notify the appropriate Council, or the Assistant Administrator in the case of Atlantic highly migratory species, of the intent to use a gear or participate in a fishery not already on this list. Ninety days after such notification, the individual may use the gear or participate in that fishery unless regulatory action is taken to prohibit the use of the gear or participate in the fishery (e.g., through emergency or interim regulations). The list of authorized fisheries and gear is as follows:

Fishery	Allowable gear types
New England Fishery Management Council (NEFMC)	
Atlantic Sea Scallops Fishery (FMP):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Hand harvest fishery	C. Hand harvest.
D. Recreational fishery	D. Hand harvest.
Atlantic Salmon Fishery (FMP)	No harvest/possession in the EEZ.
Striped Bass Fishery (Non-FMP)	No harvest/possession in the EEZ.
Northeast (NE) Multispecies Fishery (FMP):	
A. NE Multispecies Sink Gillnet	A. Gillnet.
B. North Atlantic bottom trawl	B. Trawl.
C. Groundfish hook and line	C. Longline, handline, rod and reel.
D. Mixed species trap/pot	D. Trap/pot.
E. Dredge fishery	E. Dredge.
F. Seine fishery	F. Seine.
G. Recreational fishery	G. Rod and reel, handline, spear.
American Lobster Fishery (FMP):	
A. Lobster pot/trap	A. Pot, trap.
B. North Atlantic bottom trawl	B. Trawl.
C. Dredge fishery	C. Dredge.
D. Hand harvest fishery	D. Hand harvest.
E. Recreational fishery	E. Pot, trap, hand harvest.
Atlantic Herring Fishery (Preliminary FMP):	
A. Coastal herring trawl	A. Trawl fishery.
B. Atlantic herring purse seine fishery	B. Purse seine.
C. Coastal/inshore gillnet fishery	C. Gillnet.
D. Recreational fishery	D. Hook and line, gillnet.
Dogfish Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Recreational fishery	C. Hook and line, rod and reel.
Atlantic Bluefish (FMP managed by Mid-Atlantic Fishery Management Council (MAFMC)):	
A. Pelagic longline/hook and line	A. Longline, handline.
B. Seine fishery	B. Purse seine, seine.
C. Mixed species pot/trap fishery	C. Pot, trap.
D. Bluefish, croaker, flounder trawl fishery	D. Trawl.
E. Pelagic drift gillnet fishery	E. Gillnet.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot.
Atlantic Mackerel, Squid and Butterfish Fishery (FMP managed by the MAFMC):	
A. Mackerel, squid, butterfish trawl fishery	A. Trawl.
B. Pelagic drift gillnet fishery	B. Gillnet.
C. Pelagic longline/hook and line fishery	C. Longline, handline.
D. Purse seine fishery	D. Purse seine
E. Mixed species pot/trap fishery	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, pot.
Surf Clam and Ocean Quahog Fishery (FMP managed by the MAFMC)	Dredge.
Atlantic Menhaden Purse Seine Fishery (Non-FMP)	Purse seine.
Atlantic Halibut Fishery (Non-FMP)	Longline, handline, gillnet, trawl.
Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line.

Fishery	Allowable gear types
Atlantic Mussel/Sea Urchin Fishery (Non-FMP):	
A. Dredge fishery	A. Dredge.
B. Hand harvest fishery	B. Hand harvest.
Atlantic Skate Fishery:	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Hook-and-line fishery	C. Longline and handline.
Crab Fishery (Non-FMP)	Pot.
Northern Shrimp Fishery:	
A. Shrimp trawl fishery	A. Trawl.
B. Shrimp pot fishery	B. Pot.
Monkfish Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Demersal longline fishery	C. Longline.
D. Dredge fishery	D. Dredge.
E. Trap/pot	E. Trap/pot.
Summer Flounder, Scup, Black Sea Bass Fishery (FMP managed by MAFMC):	
A. Bluefish, croaker, flounder trawl fishery	A. Trawl.
B. Pelagic longline/hook and line fishery.	B. Longline, handline.
C. Mixed species pot/trap fishery	C. Pot, trap.
D. Pelagic drift gillnet fishery	D. Gillnet.
E. Recreational fishery	E. Rod and reel, handline, pot, trap.
Hagfish Fishery (Non-FMP)	Trap/pot.
Mid-Atlantic Fishery Management Council	
Summer Flounder, Scup, Black Sea Bass FMP:	
A. Bluefish, croaker, flounder trawl fishery	A. Trawl.
B. Pelagic longline/hook and line fishery	B. Longline, handline.
C. Mixed species pot/trap fishery.	C. Pot, trap.
D. Pelagic drift gillnet fishery.	D. Gillnet.
E. Recreational fishery	E. Rod and reel, handline, pot, trap.
Atlantic Bluefish FMP:	
A. Bluefish, Croaker, Flounder trawl fishery	A. Trawl.
B. Pelagic longline/hook and line fishery	B. Longline, handline.
C. Mixed species pot/trap fishery	C. Pot, trap.
D. Pelagic drift gillnet fishery	D. Gillnet.
E. Seine fishery	E. Purse seine, seine.
F. Dredge fishery	F. Dredge.
G. Recreational fishery	G. Rod and reel, handline, trap, pot.
Atlantic Mackerel, Squid, and Butterfish Fishery (FMP):	
A. Mackerel, Squid, Butterfish trawl fishery	A. Trawl.
B. Pelagic drift gillnet fishery	B. Gillnet.
C. Pelagic longline/hook and line fishery	C. Longline, handline.
D. Purse seine fishery	D. Purse seine.
E. Mixed species pot/trap fishery	E. Pot, trap.
F. Dredge fishery	F. Dredge.
G. Bandit gear fishery	G. Bandit gear.
H. Recreational fishery	H. Rod and reel, handline, pot.
Surf Clam/Ocean Quahog Fishery (FMP):	
A. Dredge fishery	A. Dredge.
B. Recreational fishery	B. Hand harvest.
Atlantic Sea Scallop Fishery (FMP managed by NEFMC):	
A. Dredge fishery	A. Dredge.
B. Trawl fishery	B. Trawl.
C. Hand harvest fishery	C. Hand harvest.
Atlantic Menhaden Purse Seine Fishery (Non-FMP)	Purse seine.
Striped bass Fishery (Non-FMP)	No harvest/possession in the EEZ.
Northern Shrimp Trawl Fishery (Non-FMP)	Trawl.
American Lobster Fishery (FMP managed by NEFMC):	
A. Pot/trap fishery	A. Pot/trap.
B. Hand harvest fishery	B. Hand harvest.
Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line.
Mixed Species Trawl Fishery (Non-FMP)	Trawl.
Whelk Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Pot/trap fishery	B. Pot/trap.
Monkfish Fishery (Non-FMP):	

Fishery	Allowable gear types
A. Trawl fishery	A. Trawl.
B. Longline fishery	B. Longline.
Tilefish Fishery (Non-FMP):	
A. Groundfish hook-and-line fishery	A. Longline, handline.
B. Recreational fishery	B. Rod and reel.
Dogfish Fishery (Non-FMP):	
A. Gillnet fishery	A. Gillnet.
B. Trawl fishery	B. Trawl.
C. Recreational fishery	C. Hook and line.
Coastal Gillnet Fishery (Non-FMP)	Gillnet.
Recreational Fishery (Non-FMP)	Rod and reel, handline.
South Atlantic Fishery Management Council	
Golden Crab Fishery (FMP)	Trap.
Atlantic Red Drum Fishery (FMP)	No harvest/possession in EEZ.
Coral and Coral Reef Fishery (FMP):	
A. Octocoral commercial fishery	Hand harvest only.
B. Live rock aquaculture fishery	Hand harvest only.
C. Octocoral recreational fishery	Hand harvest only.
South Atlantic Shrimp Fishery (FMP)	Trawl.
South Atlantic Snapper-Grouper Fishery (FMP):	
A. Commercial fishery	A. Longline, rod and reel, bandit gear, handline, spear, powerhead.
B. Black sea bass trap/pot fishery	B. Pot, trap.
C. Wreckfish fishery	C. Rod and reel, bandit gear, handline.
D. Recreational fishery	D. Handline, rod and reel, bandit gear, spear, powerhead.
South Atlantic Spiny Lobster FMP:	
A. Commercial fishery	A. Trap, pot, dip net, bully net, snare.
B. Recreational fishery	B. Trap, pot, dip net, bully net, snare.
South Atlantic Coastal Migratory Pelagics FMP:	
A. Commercial Spanish mackerel fishery	A. Handline, rod and reel, bandit gear, gillnet, cast net.
B. Commercial King mackerel fishery	B. Handline, rod and reel, bandit gear.
C. Other commercial coastal migratory pelagics fishery	C. Longline, handline, rod and reel, bandit gear.
D. Recreational fishery	D. Bandit gear, rod and reel, handline.
Atlantic Mackerel, Squid, and Butterfish Trawl Fishery (Non-FMP)	Trawl.
Weakfish Fishery (Non-FMP):	
A. Commercial fishery	A. Trawl, gillnet, hook and line.
B. Recreational fishery	B. Hook and line.
Whelk Trawl Fishery (non-FMP)	Trawl.
Marine Life Aquarium Fishery (Non-FMP)	Dip net, slurp gun, barrier net, allowable chemical.
Calico Scallops Trawl Fishery (Non-FMP)	Trawl.
Bluefish, Croaker, Flounder Trawl Fishery (Non-FMP)	Trawl.
Recreational Fishery (Non-FMP)	Handline, bandit gear, rod and reel.
Sargassum Fishery (Non-FMP)	Trawl.
Gulf of Mexico Fishery Management Council	
Gulf of Mexico Red Drum FMP	No harvest/possession in EEZ.
Coral Reef FMP:	
A. Commercial fishery	A. Hand harvest only.
B. Recreational fishery	B. Hand harvest only.
Gulf of Mexico Reef Fish FMP:	
A. Snapper-Grouper reef fish longline/hook and line fishery	A. Longline, handline, bandit gear, rod and reel, buoy gear.
B. Pot/trap reef fish fishery	B. Pot, trap.
C. Other commercial fishery	C. Spear, powerhead, cast net, trawl.
D. Recreational fishery	D. Spear, powerhead, bandit gear, handline, rod reel, cast net.
Gulf of Mexico Shrimp FMP:	
A. Gulf of Mexico commercial fishery	A. Trawl butterfly net, skimmer, castnet.
B. Recreational fishery	B. Trawl.

Fishery	Allowable gear types
Gulf of Mexico Coastal Migratory Pelagics FMP:	
A. Large pelagics longline fishery	A. Longline.
B. King/Spanish mackerel gillnet fishery	B. Gillnet.
C. Pelagic hook and line fishery	C. Bandit gear, handline, rod and reel.
D. Pelagic species purse seine fishery	D. Purse seine.
E. Recreational fishery	E. Bandit gear, handline, rod and reel, spear.
Gulf of Mexico Spiny Lobster FMP:	
A. Spiny lobster pot/trap fishery	A. Trap, pot.
B. Dip net fishery	B. Dip net, bully net, hoop net.
C. Recreational fishery	C. Dip net, bully net, pot, trap, snare.
Stone Crab FMP:	
A. Trap/pot crab fishery	A. Trap, pot.
B. Recreational fishery	B. Trap, pot.
Mullet Fishery (Non-FMP):	
A. Trawl fishery	A. Trawl.
B. Gillnet fishery	B. Gillnet.
C. Recreational fishery	C. Bandit gear, handline, rod and reel.
Inshore Coastal Gillnet Fishery (Non-FMP)	Gillnet.
Golden Crab Fishery (Non-FMP)	Trap.
Octopus Fishery (Non-FMP)	Trap.
Marine Life Aquarium Fishery (Non-FMP)	Dip net, slurp gun, barrier net, allowable chemical.
Coastal Herring Trawl Fishery (Non-FMP)	Trawl.
Butterfish Trawl Fishery (Non-FMP)	Trawl.
Gulf of Mexico Groundfish (Non-FMP):	
A. Commercial fishery	A. Trawl, purse seine, gillnet.
B. Recreational fishery	B. Hook and line.
Gulf of Mexico Menhaden Purse Fishery (Non-FMP)	Purse seine.
Sardine Purse Seine Fishery (Non-FMP)	Purse seine.
Oyster Fishery (Non-FMP)	Dredge.
Non-Groundfish finfish (Non-FMP)	Trawl, gillnet, longline, handline, rod and reel, bandit gear.
Recreational fishery (Non-FMP)	Bandit gear, handline, rod and reel, spear, bully net, gillnet, dip net, longline, powerhead, seine, slurp gun, trap, trawl, harpoon, castnet, hoop net.
Caribbean Fishery Management Council	
Caribbean Spiny Lobster FMP:	
A. Trap/pot fishery	A. Trap/pot.
B. Dip net fishery	B. Dip net.
C. Entangling net fishery	C. Gillnet, trammel net.
D. Recreational fishery	D. Dip net, trap, pot, gillnet, trammel net.
E. Hand harvest fishery	E. Hand harvest.
Caribbean Shallow Water Reef Fish FMP:	
A. Longline/hook and line fishery	A. Longline, hook and line.
B. Trap/pot fishery	B. Trap, pot.
C. Entangling net fishery	C. Gillnet, trammel net.
D. Recreational fishery	D. Dip net, handline, rod and reel, slurp gun, spear.
Coral and Reef Resources FMP:	
A. Commercial fishery	A. Dip net, slurp gun.
B. Recreational fishery	B. Dip net, slurp gun.
Queen Conch FMP:	
A. Commercial fishery	A. Hand harvest only.
B. Recreational fishery	B. Hand harvest only.
Caribbean Pelagics (Non-FMP):	
A. Pelagics drift gillnet	A. Gillnet fishery.
B. Pelagics longline/hook and line fishery	B. Longline/hook and line.
C. Recreational fishery	C. Spear, handline, longline, rod and reel.
Pacific Fishery Management Council	
Washington, Oregon, and California Salmon FMP:	
A. Salmon set gillnet fishery	A. Gillnet.
B. Salmon hook and line fishery	B. Hook and line.

Fishery	Allowable gear types
C. Trawl fishery	C. Trawl.
D. Recreational fishery	D. Rod and reel.
West Coast Groundfish FMP:	
A. Pacific groundfish trawl fishery	A. Trawl.
B. Set gillnet fishery	B. Gillnet.
C. Groundfish longline/setline fishery	C. Longline.
D. Groundfish handline/hook and line fishery	D. Handline, hook and line.
E. Groundfish pot/trap fishery	E. Pot, trap.
F. Recreational fishery	F. Rod and reel, handline, spear, hook and line.
Northern Anchovy Fishery (FMP)	Purse seine, lampara net.
Angel Shark, White Croaker, California Halibut, White Sea Bass, Pacific Mackerel Large-Mesh Set Net Fishery (Non-FMP).	Gillnet.
Thresher Shark/ Swordfish Drift Gillnet Fishery (Non-FMP)	Gillnet.
Pacific Shrimp/Prawn (Non-FMP):	
A. Pot/trap fishery	A. Pot/trap.
B. Trawl fishery	B. Trawl.
Lobster, Rock Crab Pot/Trap Fishery (Non-FMP)	Pot, trap.
Pacific Halibut (Non-FMP):	
A. Longline/setline fishery	A. Longline/setline.
B. Hook-and-line fishery	B. Hook-and-line.
California Halibut Trawl and Trammel Net Fishery	Trawl and trammel net.
Shark/Bonito Longline/Setline Fishery (Non-FMP)	Longline.
Dungeness Crab Pot/Trap Fishery (Non-FMP)	Pot, trap.
Hagfish Trap/Pot Fishery (Non-FMP)	Trap, pot.
Pacific Albacore, Other Tuna Hook and Line Fishery (Non-FMP)	Hook and line.
Pacific Swordfish Harpoon Fishery (Non-FMP)	Harpoon.
Pacific Scallop Dredge Fishery (Non-FMP)	Dredge.
Pacific Yellowfin, Skipjack Tuna, Purse Seine Fishery (Non-FMP)	Purse seine.
Market Squid Fishery (Non-FMP)	Purse seine; dip net.
Pacific Sardine, Pacific	Purse seine.
Mackerel, Pacific Saury, Pacific Bonito, Jack mackerel, Purse Seine Fishery (Non-FMP):	
Finfish and Shellfish Live Trap, Hook and line/Handline Fishery (Non-FMP)	Trap, handline, hook and line.
Recreational Fishery (Non-FMP)	Spear, trap, handline, pot, hook and line, rod and reel.
North Pacific Fishery Management Council	
Alaska Scallop Fishery (FMP)	Dredge, diving gear.
Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery FMP:	
Pot fishery fishery	Pot.
BS and AI King and Tanner Crab Fishery (Non-FMP):	
Recreational fishery	Pot.
BS and AI Groundfish Fishery FMP:	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook and line, handline fishery	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. BS and AI pot/trap fishery	D. Pot, trap.
BS and AI Groundfish Fishery (Non-FMP):	
Recreational fishery	Handline, rod and reel, hook and line, pot, trap.
Gulf of Alaska (GOA) Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line and handline	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. GOA pot/trap fishery	D. Pot/trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
Pacific Halibut (Non-FMP):	
Hook and line, jig and troll fishery	Hook and line, and jig.
Alaska High Seas Salmon FMP:	
Hook and line fishery	Hook and line.
Alaska Salmon (Non-FMP).	
A. Alaska salmon hook and line fishery	A. Hook and line.
B. Alaska salmon gillnet fishery	B. Gillnet.
C. Alaska salmon purse seine fishery	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.
Finfish Purse Seine Fishery (Non-FMP)	Purse seine.
Octopus/Squid Longline Fishery (Non-FMP)	Longline.
Finfish Handline/Hook and Line Fishery (Non-FMP)	Handline, hook and line.
Recreational Fishery (Non-FMP)	Handline, rod and reel, hook line.

Fishery	Allowable gear types
Western Pacific Fishery Management Council	
Western Pacific Crustacean FMP Lobster Fishery	Trap.
Western Pacific Crustacean (Non-FMP):	
A. Commercial fishery	A. Gillnet, hand harvest, hoop net, spear, snare, trap, trawl.
B. Recreational fishery	B. Gillnet, hand harvest, hoop net, spear, snare, trap.
C. Charter fishery	C. Hand harvest, spear.
Western Pacific Precious Corals FMP:	
A. Tangle net dredge fishery	A. Tangle net dredge.
B. Submersible fishery	B. Submersibles.
C. Coral Dive/Hand Collection Fishery	C. Hand harvest only.
D. Recreational fishery	D. Hand harvest only.
Western Pacific Precious Corals (Non-FMP)	Hand harvest, submersible, tangle net dredge.
Western Pacific Bottomfish/Seamount Groundfish FMP:	
A. Bottomfish hook and line fishery	A. Bandit gear, buoy gear, handline, hook and line, rod and reel.
B. Seamount groundfish fishery	B. Longline, trawl.
C. Bottom longline fishery	C. Longline.
D. Trap fishery	D. Trap.
E. Spear fishery	E. Spear, powerhead.
Western Pacific Bottomfish/Seamount Groundfish (Non-FMP):	
A. Commercial fishery	A. Bandit gear, buoy gear, gillnet, handline, hook-and-line, longline, rod and reel, spear, trap.
B. Recreational fishery	B. Bandit gear, buoy gear, Gillnet, handline, hook-and-line, longline, rod and reel, spear, trap.
C. Charter fishery	C. Bandit gear, buoy gear, handline, hook-and-line, rod and reel, spear.
Western Pacific Pelagics FMP:	
A. Longline fishery	A. Longline.
B. Hook and line fishery	B. Bandit gear, buoy gear, handline, hook and line, rod and reel.
C. Purse seine fishery	C. Lampara, purse seine.
D. Spear fishery	D. Spear, powerhead.
Western Pacific Pelagics (Non-FMP):	
A. Recreational fishery	A. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
B. Commercial fishery	B. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
C. Charter fishery	C. Bandit gear, buoy gear, dip net, handline, hook and line, hoop net, powerhead, rod and reel, spear.
Western Pacific Coastal Pelagics (Non FMP)	Bandit gear, buoy gear, dip, net, gillnet, handline, hook and line, hoop net, lampara net, purse seine, rod and reel, spear.
Western Pacific Squid/Octopus (Non FMP)	Bandit gear, hand harvest, hook and line, rod and reel, spear, trap.
Western Pacific Shallow Reef (Non FMP)	Allowable chemical, barrier net, dip net, gillnet, hand harvest, seine, slurp gun, trap.
Secretary of Commerce	
Atlantic Swordfish FMP:	
A. Hook and line fishery	A. Rod and reel, handline, bandit gear.
B. Longline fishery	B. Longline.
C. Drift gillnet fishery	C. Gillnet.
D. Harpoon fishery	D. Harpoon.
Atlantic Sharks FMP:	

Fishery	Allowable gear types
A. Hook and line fishery	A. Rod and reel, handline, bandit gear.
B. Longline fishery	B. Longline.
C. Drift gillnet fishery	C. Gillnet.
Atlantic Billfish FMP (Recreational only):	
Hook and line fishery	Rod and reel.
Atlantic Tunas (Non-FMP):	
A. Hook and line fishery	A. Rod and reel, handline, bandit gear.
B. Purse seine fishery	B. Purse seine.
C. Longline fishery	C. Longline.
D. Harpoon fishery	D. Harpoon.
E. Recreational fishery	E. Rod and reel, handline.

4. In subpart H, § 600.747 is added to read as follows:

§ 600.747 Guidelines and procedures for determining new fisheries and gear.

(a) *General.* Section 305(a) of the Magnuson-Stevens Act requires the Secretary to prepare a list of all fisheries under the authority of each Council, or the Director in the case of Atlantic highly migratory species, and all gear used in such fisheries. This section contains guidelines in paragraph (b) for determining when fishing gear or a fishery is sufficiently different from those listed in § 600.725(v) as to require notification of a Council or the Director in order to use the gear or participate in the unlisted fishery. This section also contains procedures in paragraph (c) for notification of a Council or the Director of potentially new fisheries or gear, and for amending the list of fisheries and gear.

(b) *Guidelines.* The following guidance establishes the basis for determining when fishing gear or a fishery is sufficiently different from those listed to require notification of the appropriate Council or the Director.

(1) The initial step in the determination of whether a fishing gear or fishery is sufficiently different to require notification is to compare the gear or fishery in question to the list of authorized fisheries and gear in § 600.725(v) and to the existing gear definitions in § 600.10.

(2) If the gear in question falls within the bounds of a definition in § 600.10 for an allowable gear type within that fishery, as listed under § 600.725(v), then the gear is not considered different, is considered allowable gear, and does not require notification of the Council or Secretary 90 days before it can be used in that fishery.

(3) If, for any reason, the gear is not consistent with a gear definition for a listed fishery as described in paragraph (b)(2) of this section, the gear is considered different and requires Council or Secretarial notification as described in paragraph (c) of this section 90 days before it can be used in that fishery.

(4) If a fishery falls within the bounds of the list of authorized fisheries and gear in § 600.725(v) under the Council's or Secretary's authority, then the fishery is not considered different, is considered an allowable fishery and does not require notification of the Council or Director before that fishery can occur.

(5) If a fishery is not already listed in the list of authorized fisheries and gear in § 600.725(v), then the fishery is considered different and requires notification as described in paragraph (c) of this section 90 days before it can occur.

(c) *Procedures.* If a gear or fishery does not appear on the list in § 600.725(v), or if the gear is different from that defined in § 600.10, the process for notification, and consideration by a Council or the Director, is as follows:

(1) *Notification.* After July 26, 1999, no person or vessel may employ fishing gear or engage in a fishery not included on the list of approved gear types in § 600.725(v) without notifying the appropriate Council or the Director at least 90 days before the intended use of that gear.

(2) *Notification procedures.* (i) A signed return receipt for the notice serves as adequate evidence of the date that the notification was received by the appropriate Council or the Director, in the case of Atlantic highly migratory species, and establishes the beginning of the 90-day notification period, unless required information in the notification is incomplete.

(ii) The notification must include:

(A) Name, address, and telephone number of the person submitting the notification.

(B) Description of the gear.

(C) The fishery or fisheries in which the gear is or will be used.

(D) A diagram and/or photograph of the gear, as well as any specifications and dimensions necessary to define the gear.

(E) The season(s) in which the gear will be fished.

(F) The area(s) in which the gear will be fished.

(G) The anticipated bycatch species associated with the gear, including protected species, such as marine mammals, sea turtles, sea birds, or species listed as endangered or threatened under the ESA.

(H) How the gear will be deployed and fished, including the portions of the marine environment where the gear will be deployed (surface, midwater, and bottom).

(iii) Failure to submit complete and accurate information will result in a delay in beginning the 90-day notification period. The 90-day notification period will not begin until the information received is determined to be accurate and complete.

(3) *Action upon receipt of notification.* (i) *Species other than Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear, a Council must immediately begin consideration of the notification and send a copy of the notification to the appropriate Regional Administrator.

(B) If the Council finds that the use of an unlisted gear or participation in a new fishery would not compromise the effectiveness of conservation and management efforts, it shall:

(*1*) Recommend to the RA that the list be amended;

(*2*) Provide rationale and supporting analysis, as necessary, for proper consideration of the proposed amendment; and

(*3*) Provide a draft proposed rule for notifying the public of the proposed addition, with a request for comment.

(C) If the Council finds that the proposed gear or fishery will be detrimental to conservation and management efforts, it will recommend to the RA that the authorized list of

fisheries and gear not be amended, that a proposed rule not be published, give reasons for its recommendation of a disapproval, and may request NMFS to publish emergency or interim regulations, and begin preparation of an FMP or amendment to an FMP, if appropriate.

(D) After considering information in the notification and Council's recommendation, NMFS will decide whether to publish a proposed rule. If information on the new gear or fishery being considered indicates it is likely that it will compromise conservation and management efforts under the Magnuson-Stevens Act, and no additional new information is likely to be gained from a public comment period, then a proposed rule will not be published and NMFS will notify the appropriate Council. In such an instance, NMFS will publish emergency or interim regulations to prohibit or restrict use of the gear or participation in the fishery. If NMFS determines that the proposed amendment is not likely to compromise conservation and management efforts under the Magnuson-Stevens Act, NMFS will publish a proposed rule in the **Federal Register** with a request for public comment.

(ii) *Atlantic Highly Migratory Species.* (A) Upon signing a return receipt of the notification by certified mail regarding an unlisted fishery or gear for Atlantic highly migratory species (HMS), NMFS will immediately begin consideration of the notification.

(B) Based on information in the notification and submitted by the Council, NMFS will make a determination whether the use of an unlisted gear or participation in an unlisted HMS fishery will compromise the effectiveness of conservation and management efforts under the Magnuson-Stevens Act. If it is determined that the proposed amendment will not compromise conservation and management efforts, NMFS will publish a proposed rule.

(C) If NMFS finds that the proposed gear or fishery will be detrimental to conservation and management efforts in this initial stage of review, it will not publish a proposed rule and notify the applicant of the negative determination with the reasons therefor.

(4) *Final determination and publication of a final rule.* Following public comment, NMFS will approve or disapprove the amendment to the list of gear and fisheries.

(i) If approved, NMFS will publish a final rule in the **Federal Register** and notify the applicant and the Council, if appropriate, of the final approval.

(ii) If disapproved, NMFS will withdraw the proposed rule, notify the applicant and the Council, if appropriate, of the disapproval; publish emergency or interim regulations, if necessary, to prohibit or restrict the use of gear or the participation in a fishery; and either notify the Council of the need to amend an FMP or prepare an amendment to an FMP in the case of Atlantic highly migratory species.

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TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: This document amends TVA's regulations under the Freedom of Information Act (FOIA). The FOIA regulations contain new provisions implementing the Electronic Freedom of Information Act (EFOIA) of 1996. Additionally, the regulations include updated cost figures to be used in calculating and charging fees.

EFFECTIVE DATE: February 26, 1999.

FOR FURTHER INFORMATION CONTACT: Wilma H. McCauley, FOIA Officer, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801, telephone number (423) 751–2523.

SUPPLEMENTARY INFORMATION:

Background Information

On September 8, 1998, TVA published a proposed rule that revised its existing regulations under the FOIA and added new provisions implementing the Electronic FOIA Amendments. See 63 FR 47448, Sept. 8, 1998. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. TVA received no comments to its proposed rule.

New provisions implementing the Electronic FOIA Amendments are found at Sec. 1301.2 (electronic reading room), Sec. 1301.5(b) (multitrack processing), Sec. 1301.5(c) (processing under unusual circumstances), Sec. 1301.5(d) (expedited processing), Section 1301.6(b) (deletion marking), Sec. 1301.6(c) (appeal of format determinations), Sec. 1301.6(c)(3) (volume estimation), Sec. 1301.10(b)(3) (format of disclosure), and Sec. 1301.10(b)(8) (electronic searches). Revisions to TVA's fee schedule are found at Sec. 1301.10(c) and (d).

Regulatory Flexibility Act Certification

We certify that these rules will not have a significant economic impact on a substantial number of small entities because these rules affect primarily individuals, not small entities, and for the most part simply implement the language of the EFOIA amendments. There is no reason to believe that the revised rules will impose any costs on FOIA requesters beyond those nominal costs imposed under TVA's former rules. Further, the "small entities" that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

List of Subjects in 18 CFR Part 1301

Freedom of Information, Privacy, Sunshine Act.

For the reasons stated in the preamble, TVA amends 18 CFR Part 1301 to read as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301 Subpart A continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552.

2. Subpart A of Part 1301 is revised to read as follows:

Subpart A—Freedom of Information Act

Sec.

1301.1 General provisions.
1301.2 Public reading rooms.
1301.3 Requirements for making requests.
1301.4 Responsibility for responding to requests.
1301.5 Timing of responses to requests.
1301.6 Responses to requests.
1301.7 Exempt records.
1301.8 Business information.
1301.9 Appeals.
1301.10 Fees.

§ 1301.1 General provisions.

(a) This subpart contains the rules that TVA follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about access to records maintained by TVA. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, which are processed under subpart B of this part, are processed under this subpart also. Information routinely provided to the

public as part of a regular TVA activity (for example, press releases) may be provided to the public without the need for a FOIA request under this subpart. As a matter of policy, TVA makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

§ 1301.2 Public reading rooms.

TVA maintains a public electronic reading room accessible in its Corporate Libraries at 400 Summit Hill Drive, Knoxville, TN 37902–1499 and 1101 Market Street, Chattanooga, TN 37402–2801. This electronic reading room contains the records that the FOIA requires to be made regularly available for public inspection and copying. Each TVA organization is responsible for determining which of the records it generates are required to be made available in this way and for ensuring that those records are available in TVA's reading room. TVA's FOIA Officer will maintain a current subject-matter index of TVA's reading room records. The index will be updated regularly, at least quarterly, with respect to newly included records.

§ 1301.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of TVA by writing to the Tennessee Valley Authority, TVA FOIA Officer, Enterprise Document Management (EDM), 1101 Market Street (WR 4Q), Chattanooga, TN 37402–2801. You may find TVA's "Guide to Information About TVA"—which is available electronically at TVA's World Wide Web site, and is available in paper form as well—helpful in making your request. For additional information about the FOIA, you may refer directly to the statute. If you are making a request for records about yourself, see Subpart B Privacy Act for additional requirements. If you are making a request for records about another individual, either a written authorization signed by that individual permitting disclosure of those records to you or proof that that individual is deceased (for example, a copy of a death certificate or an obituary) will help the processing of your request. Your request will be considered received as of the date it is received by the FOIA Officer. For the quickest possible handling, you should mark both your request letter and the envelope "Freedom of Information Act Request."

(b) *Descriptions of records sought.* You must describe the records that you seek in enough detail to enable TVA personnel to locate them with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, you should include any file designations or descriptions for the records that you want. As a general rule, the more specific you are about the records or type of records that you want, the more likely TVA will be able to locate those records in response to your request. If TVA determines that your request does not reasonably describe records, it shall tell you either what additional information is needed or why your request is otherwise insufficient. TVA shall also give you an opportunity to discuss your request so that you may modify it to meet the requirements of this section. If your request does not reasonably describe the records you seek, the agency's response to your request may be delayed.

(c) *Agreement to pay fees.* If you make a FOIA request, it shall be considered an agreement by you to pay all applicable fees charged under § 1301.11, up to $25.00, unless you seek a waiver of fees. TVA's FOIA Officer will confirm this agreement in an acknowledgement letter. When making a request, you may specify a willingness to pay a greater or lesser amount.

1301.4 Responsibility for responding to requests.

(a) TVA's FOIA Officer, or the FOIA Officer's designee, is responsible for responding to all FOIA requests. In determining which records are responsive to a request, TVA will include only records in its possession as of the date the request is received by the FOIA Officer. If any other date is used, the FOIA Officer shall inform the requester of that date.

(b) *Authority to grant or deny requests.* TVA's FOIA Officer, or the FOIA Officer's designee, is authorized to grant or deny any request for a TVA record.

(c) *Consultations and referrals.* When the FOIA Officer receives a request for a record in TVA's possession, the FOIA Officer shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the FOIA Officer determines that TVA is not best able to process the record, the FOIA Officer shall either:

(1) Respond to the request regarding that record, after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(d) *Notice of referral.* Whenever TVA refers all or any part of the responsibility for responding to a request to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals will be handled according to the date the FOIA request initially was received by the FOIA Officer, not any later date.

(f) *Agreements regarding consultations and referrals.* TVA may make agreements with other agencies to eliminate the need for consultations or referrals for particular types of records.

§ 1301.5 Timing of responses to requests.

(a) In general, TVA ordinarily shall respond to requests according to their order of receipt and placement in an appropriate processing track, as follows:

(b) *Multi-track processing procedures.* TVA has established three tracks for handling requests and the track to which a request is assigned will depend on the nature of the request and the estimated processing time, including a consideration of the number of pages involved. If TVA places a request in a track other than Track 1, it will advise requesters of the limits of its faster track(s). TVA may provide requesters in its tracks 2 and 3 with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of TVA's faster track(s). When doing so, TVA may contact the requester either by telephone or by letter, whichever is most efficient in each case.

(1) Track 1. Requests that can be answered with readily available records or information. These are the fastest to process. These requests ordinarily will be responded to within 20 working days of receipt of a request by the FOIA

Officer. The 20 working day time limit provided in this paragraph may be extended by TVA for unusual circumstances, as defined in paragraph (c) of this section, upon written notice to the person requesting the records.

(2) Track 2. Requests where we need records or information from other offices throughout TVA, where we must consult with other Governmental agencies, or when we must process a submitter notice as described in § 1301.8(d), but we do not expect that the decision on disclosure will be as time consuming as for requests in Tract 3.

(3) Tract 3. Requests which require a decision or input from another office or agency, extensive submitter notifications because of the presence of Business Information as defined in § 1301.8(b)(1), and a considerable amount of time will be needed for that, or the request is complicated or involves a large number of records. Usually, these cases will take the longest to process.

(c) *Unusual circumstances.* (1) Where the time limits for processing a request cannot be met because of unusual circumstances and TVA determines to extend the time limits on that basis, TVA shall as soon as practicable notify the requester in writing of the unusual circumstances and of the date by which processing of the request can be expected to be completed. Where the extension is for more than ten working days, TVA shall provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period with TVA for processing the request or a modified request. As used in this paragraph, 'unusual circumstances' means, but only to the extent reasonably necessary to the proper processing of the particular requests:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(2) When TVA reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated, as defined in § 1301.10(h). Multiple requests by a requester involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests and appeals will be taken out of order and given expedited treatment whenever TVA determines that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, a request for expedited processing must be sent to and received by TVA's FOIA Officer.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category in paragraph (d)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within the category in paragraph (d)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, TVA's FOIA Officer shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted upon expeditiously.

§ 1301.6 Responses to requests.

(a) *Acknowledgements of requests.* On receipt of a request, the FOIA Officer ordinarily shall send an acknowledgement letter to the requester which shall confirm the requester's agreement to pay fees under § 1301.10 and provide an assigned request number for further reference.

(b) *Grants of requests.* Ordinarily, TVA shall have twenty business days from when a request is received to determine whether to grant or deny the request. Once TVA makes a determination to grant a request in whole or in part, it shall notify the requester in writing. The FOIA Officer shall inform the requester in the notice of any fee charged under § 1301.10 and shall disclose records to the requester promptly on payment of any applicable fee, if the fee is equal to or more than $100. If the fee is less than $100, the FOIA officer shall disclose the records along with a statement of the fee. Records disclosed in part shall be marked or annotated to show the amount of information deleted unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also shall be indicated on the record, if technically feasible.

(c) *Adverse determinations of requests.* If TVA makes an adverse determination denying a request in any respect, they shall notify the requester of that determination in writing. Adverse determinations, or denials of requests, consist of: a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; a determination on any disputed fee matter, including a denial of a request for a fee waiver; and a denial of a request for expedited treatment. The denial letter shall be signed by the FOIA Officer or the FOIA Officer's designee, and shall include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemption applied by TVA in denying the request;

(3) An estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided

if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under § 1301.9 and a description of the requirements of § 1301.9.

§ 1301.7 Exempt records.

(a) *Records available.* TVA's records will be made available for inspection and copying upon request as provided in this section, except that records are exempt and are not made available if they are:

(1)(i) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and

(ii) Are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of TVA;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from any person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a private party in litigation with TVA, including without limitation records relating to control and accounting for special nuclear material and to the physical security plans for the protection of TVA's nuclear facilities;

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings,

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication,

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institution; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) The availability of certain classes of nonexempt records is deferred for such time as TVA may determine is reasonably necessary to avoid interference with the accomplishment of its statutory responsibilities. Such records include bids and information concerning the identity and number of bids received prior to bid opening; all nonexempt records relating to bids between the time of bid opening and award; and all nonexempt records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations. Any reasonably segregable portion of an available record shall be provided to any person requesting such record after deletion of the portions which are exempt under this paragraph.

§ 1301.8 Business information.

(a) *In general.* Business information obtained by TVA from a submitter will be disclosed under the FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by TVA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from whom TVA obtains business information, directly or indirectly. The term includes corporations; state and local governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* TVA shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish notification of submitters.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) TVA has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* TVA will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section. If a submitter has any objection to disclosure, it is required to submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that is not received by TVA until after its disclosure decision has been made shall not be considered by TVA. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* TVA shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever TVA decides to disclose business information over the objection of a submitter, TVA shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed, and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section shall not apply if:

(1) TVA determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by applicable regulation; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the component shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, TVA shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever TVA provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, TVA shall also notify the requester(s). Whenever TVA notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, TVA shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, TVA shall notify the requester(s).

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, the Senior Manager, Administrative Services, Tennessee Valley Authority, 400 Summit Hill Drive (ET 6M), Knoxville, TN 37902–1499. You must make your appeal in writing and it must be received by the Senior Manager within 30 days of the date of the letter denying your request. Your appeal letter may include as much or as little related information as you wish, as long as it clearly identifies the TVA determination (including the assigned request number, if known) that you are appealing. An adverse determination by the TVA Appeal Official will be the final action of TVA.

(b) *Responses to appeals.* The decision on your appeal will be made in writing within 20 days (excluding Saturdays, Sundays, and legal holidays) after an appeal is received. A decision affirming an adverse determination in whole or in part shall contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any adverse determination, you must first appeal it under this section.

§ 1301.10 Fees.

(a) In general, TVA shall charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. If the applicable fees are $100 or more, TVA ordinarily will collect all applicable fees before sending copies of requested records to a requester. If the applicable fees are less than $100, TVA ordinarily will bill the requester for the fees in the letter responding to the request and enclosing the requested records. Requesters must pay fees by check or money order made payable to the Tennessee Valley Authority.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. TVA shall determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because TVA has reasonable cause to doubt a requester's stated use, TVA shall provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that TVA actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits, unless the fee is a standard TVA fee as set forth in paragraph (c) of this section) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk), among others. TVA shall honor a requester's specified preference of form or format of disclosure if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, or an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for commercial or private use, but are sought to further scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a "commercial" basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial or private use but are sought to further scientific research.

(6) *Representative of the news media*, or *news media requester*, means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make

their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but TVA shall also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial or private use. However, a request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure—for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 1301.8, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. TVA shall ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, TVA shall not search line-by-line where duplicating an entire document would be quicker and less expensive.

(c) *Fees.* In responding to a FOIA request, TVA shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search time charges for other than computer searches.* For time spent by clerical employees in searching files, the charge is $14.90 per hour. For time spent by supervisory and professional employees, the charge is $34.30 per hour.

(2) *Duplication charges.* For photostatic reproduction of requested material which consists of sheets no larger than 8½ by 14 inches, the charge is 10 cents per page. For copies produced by computer, such as tapes or printouts, TVA will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, TVA will charge the direct cost of that duplication.

(3) *Review charges.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review—in other words, the review done when TVA determines whether an exemption applies to a particular record or record portion at the initial request level. No charge will be made for review at the administrative appeal level for an exemption already applied. However, record or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by a change of circumstances. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1) of this section.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) No search fee or review fee will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(3) Except for requesters seeking records for a commercial use, TVA will provide the following without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(4) No fee is charged to any requester if the cost of collecting the fee would be equal to or greater than the fee itself.

(5) The provisions of paragraphs (d)(3) and (4) of this section work together. This means that for requesters other than those seeking records for a commercial use, no fee will be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages is equal to or greater than the fee itself.

(e) *Notice of anticipated fees in excess of $25.00.* When TVA determines or estimates that the fees to be charged under this section will amount to more than $25.00, TVA shall notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, TVA shall advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees amount to more than $25.00, the request shall not be considered received and further work shall not be done on it until the requester agrees to pay the anticipated total fee. Any such agreement should be documented in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with TVA personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Apart from the other provisions of this section, when TVA chooses as a matter of administrative discretion to provide a special service—such as certifying that records are true copies or sending them by other than ordinary mail—the direct costs of providing the service ordinarily will be charged.

(g) *Charging interest.* TVA may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by TVA.

(h) *Aggregating requests.* When TVA reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, TVA may aggregate those requests and charge accordingly. TVA may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, TVA will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all of the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i) (2) and (3) of this section, TVA shall not require the requester to make an advance payment-in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where TVA determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to TVA or another agency within 30 days of the date of billing, TVA may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before TVA begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which TVA requires advance payment or payment due under paragraph (i) (2) or (3) of this section, the request shall not be considered received and further work will not be done on it until the required payment is received.

(j) *Other fees for TVA published materials.* The fee schedule of this section does not apply to fees charged by TVA for documents, including maps or reports and the like, which TVA sells to the public at established prices. Where records responsive to requests are maintained for distribution and sale by TVA at established prices. TVA will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where TVA determines, based on all available information, that the requester has documented that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, TVA will consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. TVA shall not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.

(3) To determine whether the second fee waiver requirement is met, TVA will consider the following factors:

(i) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure. TVA shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in paragraph (b) (1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) The primary interest in disclosure. Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. TVA ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the requested records satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k) (2) and (3) of this section, insofar as they apply to each request. TVA will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decisionmaking process, however, in deciding to grant waivers or reductions of fees.

William S. Moore,

Senior Manager, Administrative Services.

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DEPARTMENT OF JUSTICE

21 CFR Part 1308

[DEA–17F]

Schedules of Controlled Substances: Placement of Modafinil into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance, modafinil, including its salts, isomers and salts of isomers, into Schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV will be applicable to the manufacture, distribution, importation and exportation of modafinil and products containing modafinil.

EFFECTIVE DATE: January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration,

Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Modafinil is a central nervous system (CNS) stimulant that produces many of the same pharmacological effects and adverse reactions as classic psychomotor stimulants, but at higher doses. Modafinil will be marketed as a prescription drug product for the treatment of excessive daytime sleepiness associated with narcolepsy under the trade name Provigil®.

On December 22, 1997, the Acting Assistant Secretary for Health, Department of Health and Human Services (DHHS), sent the Acting Deputy Administrator of DEA a letter recommending that modafinil, and its salts, be placed into Schedule IV of the CSA (21 U.S.C. 801 *et seq.*). Enclosed with the December 22, 1997 letter was a document prepared by the Food and Drug Administration (FDA) entitled "Basis for the Recommendation for Control of Modafinil in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider (21 U.S.C. 811(b)).

Subsequent correspondent from the FDA's Associate Commissioner for Health Affairs dated February 24, 1998, confirmed that the FDA had determined that the New Drug Application (NDA) for modafinil was "approvable" and had issued an approvable letter to the NDA sponsor on December 29, 1997. According to the February 24, 1998 letter from the FDA, "upon full approval of the NDA, modafinil will have a currently accepted medical use in treatment in the United States."

After a review of the available data, including the DHHS recommendation, the Acting Deputy Administrator of the DEA, in an April 14, 1998 **Federal Register** notice (63 FR 18170), proposed placement of modafinil into Schedule IV of the CSA, if and when the modafinil NDA is approved by the FDA. The notice provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing in writing to be received by the DEA on or before May 14, 1998.

The DEA received one comment regarding the proposal. The comment was received from Cephalon, Inc., the company sponsoring the modafinil NDA. The comment did not object to the placement of modafinil in Schedule IV, but requested clarification of some of the descriptions of the pharmacological effects of modafinil. Cephalon, Inc. commented that modafinil did not produce significant dopaminergic activity nor did it produce classic dopaminergic-like pharmacological effects. Cephalon also stated that the time to peak pharmacological activity of modafinil is one to three hours and the effects last six to eight hours after oral administration. It did not characterize such pharmacodynamic effects of modafinil as "quick onset and short duration of action," as they were described in the **Federal Register** proposal.

The DEA's review of the DHHS scheduling recommendation and review document and the available scientific literature indicates that the precise biochemical mechanism of action of modafinil is not clearly defined. Data indicate that modafinil does not act directly on any single neurotransmitter system, but appears to act indirectly on dopamineric, serotonergic, and GABA systems. Although its mechanism of action may not be medicated primarily through the dopaminergic system, the behavioral and pharmacological effects and adverse reactions produced by modafinil are similar to those of other psychomotor or stimulants which produce significant dopaminergic activity. The data reviewed by the DHHS and the DEA show that modafinil is well-absorbed after oral administration. Peak plasma concentration for modafinil occurs at one to four hours. Elimination half-life was nine to fourteen hours after oral administration of 200 to 400 mg of modafinil. These pharmacodynamic actions of modafinil were characterized at "fast onset and short duration" by the DHHS. Thus, the modafinil data presented in the **Federal Register** proposal and the comments by Cephalon regarding these statements are not substantive scientific discrepancies, but are differences in describing the same data.

On December 30, 1998, the FDA notified the DEA that the modafinil NDA was approved by the FDA on December 24, 1998. Relying on the scientific and medical evaluation and the recommendation of the DHHS Acting Assistant Secretary for Health received in accordance with section 201(b) of the Act (21 U.S.C. 811(b)), communication with the FDA Associate Commissioner for Health and the independent review of the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Based on information now available, modafinil has a low potential for abuse relative to the drugs or other substances in Schedule III;

(2) Modafinil has a currently accepted medical use in treatment in the United States; and

(3) Abuse of modafinil may lead to limited physical dependence and psychological dependence relative to the drugs or other substances in Schedule III.

Based on these findings, the Deputy Administrator of the DEA concludes that modafinil, including its salts, isomers and salts of isomers, warrants control in Schedule IV of the CSA. In order to make modafinil pharmaceutical products available for medical use as soon as possible, the Schedule IV controls of modafinil will be effective January 27, 1999. In the event that the regulations impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the Schedule IV regulations regarding modafinil. The applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports modafinil or who engages in research or conducts instructional activities with modafinil, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* Modafinil must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75 (b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels on commercial containers of, and all labeling of, modafinil which is distributed shall comply with the requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

4. *Inventory.* Registrants possessing modafinil are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations.

5. *Records.* All registrants must keep records pursuant to §§ 1304.03, 1304.04 and 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

6. *Prescriptions.* All prescriptions for modafinil are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulations.

7. *Importation and Exportation.* All importation and exportation of modafinil shall be in compliance with Part 1312 of Title 21 of the Federal Code of Regulations.

8. *Criminal Liability.* Any activity with modafinil not authorized by, or in violation of, the CAS or the Controlled

Substances Import and Export Act shall be unlawful.

In accordance with the provisions of the CSA (21 U.S.C. 811(a)), this action is a formal rulemaking on the record after opportunity for a hearing. Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, Section 3(d)(1).

The Deputy Administrator, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. Modafinil is a new drug in the United States; recent approval of the product and its labeling by the FDA will allow it to be marketed once it is placed into Schedule IV of the CAS. This final rule will allow these entities to have access to a new pharmaceutical product.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended by redesignating the existing paragraphs (e)(7) through (e)(11) as (e)(8) through (e)(12) and by adding a new paragraph (e)(7) to read as follows: § 1308.14 Schedule IV.

* * * * *

(e) * * *

(7) Modafinil	1680

* * * * *

Dated: January 20, 1999.

Donnie R. Marshall,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 99–1791 Filed 1–26–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01 99–002]

RIN 2115–AA97

Safety Zone: Sunken Fishing Vessel Cape Fear, Buzzards Bay Entrance

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone within a five hundred (500) yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734) in the entrance to Buzzards Bay at approximate position 41–23 North and 71–01 West. This safety zone is needed to protect the maritime community from possible hazards associated with the sunken vessel, ongoing oil pollution response operations and the exposed location salvage operations. Entry into this zone is prohibited unless authorized by the Captain of the Port (COTP), Providence RI.

EFFECTIVE DATES: This rule is effective from 12 o'clock, noon, on Tuesday, January 12, 1999 until 12 o'clock, midnight, on Friday, February 12, 1999.

FOR FURTHER INFORMATION CONTACT: CWO Payne, Waterways Management, Coast Guard Marine Safety Office, Providence RI, at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective less then 30 days after **Federal Register** publication. Due to the date that conclusive information for this event was received there was insufficient time to draft and publish an NPRM. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the entrance to Buzzards Bay to protect the maritime public from the hazards associated with the sunken vessel, on going oil pollution response and the exposed location salvage operation.

Background and Purpose

This regulation establishes a safety zone in all the waters within a five hundred (500) yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734) in the entrance to Buzzards Bay in approximate position 41–23N and 71–01W. The safety zone is needed to protect vessels from the hazards associated with the sunken vessel, on going pollution response and the exposed location salvage operation. No vessel may enter the safety zone without permission of the Captain of the Port, Providence, RI.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Costs to the shipping industry from these regulations if any, will be minor and have no significant adverse financial effect on vessel operators. In addition, due to the limited number of vessels affected, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that these regulations do not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of these regulations and concluded that under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Habors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary section 165.T01–002 to read as follows:

§ 165.T01–002 Safety Zone: Sunken Fishing Vessel CAPE FEAR, Buzzards Bay Entrance.

(a) *Location.* The following area has been declared a safety zone: All waters within a five hundred (500) yard radius of the site of the sunken fishing vessel CAPE FEAR (O.N. D655734), in the entrance to Buzzards Bay in approximate position 41–23 North and 71–01 West.

(b) *Effective date:* This section is effective from 12 noon, on Tuesday, January 12, 1999 until 12 midnight, on Friday 12, 1999.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the COTP Providence.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast guard.

(3) The general regulations covering safety zones in section 165.23 of this part apply.

Dated: January 12. 1999.

Peter A. Popko,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 99–1881 Filed 1–26–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98–184]

RIN 2115–AA97

Safety Zone: Swift Creek Channel, Freeport, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone that includes all waters within 200 yards of the Loop Parkway Bridge which spans Swift Creek channel, Freeport, NY. The safety zone is needed to facilitate the construction of the new loop parkway bridge. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, Long Island Sound, New Haven, CT.

EFFECTIVE DATE: This regulation is effective on January 1, 1999, from 8 a.m. until March 1, 1999.

ADDRESSES: Documents relating to this temporary final rule are available for inspection and copying at U.S. Coast Guard Group/MSO Long Island Sound, 120 Woodward Ave, New Haven, CT 06512. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander T.J. Walker, Chief of Port Operations, Captain of the Port, Long Island Sound at (203) 468–4444.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register.** Due to construction requirements, this office had insufficient time to publish a proposed rule in advance of the event. Publishing a NPRM and delaying the effective date would effectively suspend work on the new bridge, which would be contrary to the public interest.

Background and Purpose

A safety zone preventing vessels from transiting the Swift Creek channel beneath the Loop Parkway bridge because of construction of a new bridge has been in effect since September 8, 1998 and will expire on December 31, 1998. The safety zone has been needed to facilitate the building of the center of the bridge and to protect construction personnel and the maritime community. Construction of the new bridge has not been completed and therefore and additional safety zone preventing vessels from transiting the Swift Creek channel is needed. Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Entry into this zone will be prohibited until March 1, 1999. Although this regulation prevents traffic from transiting a portion of Swift Creek Channel, Freeport, NY, the effect of this regulation will not be significant for several reasons: there are alternative routes around the channel; the closure is during the off-season for recreational boating; and extensive, advance maritime advisories have been made of the channel closure and will continue to be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have significant economic impact on a substantial number of small entities. "Small entities" include small businesses that are independently owned and operated and are not dominant in their fields, not-for profit organizations and governmental jurisdictions with populations of less than 50,000. For the reasons addressed under the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this action under the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that under figure 2–1, paragraph 34(g) of Commandant Instruction "M16475.1.C.", this temporary final rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A temporary section, 165.T01–184, is added to read as follows:

§ 165.T01–184 Swift Creek Channel, Freeport, NY.

(a) *Location:* The safety zone includes all waters surrounding the Loop Parkway Bridge where it spans Swift Creek channel, within a 200 yard distance on either side of the bridge.

(b) *Effective date.* This section is effective on January 1, 1999, from 8 a.m. until March 1, 1999.

(c) *Regulations.* The general regulations contained in section 165.23 apply.

P.K. Mitchell,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 99–1882 Filed 1–26–99; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21 and 74

[MM Docket No. 97–217; FCC 98–231]

MDS and ITFS Two-Way Transmissions; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of November 25, 1998 amendments to its rules to enable Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to engage in fixed two-way transmissions. This document corrects the section numbers of the regulations on individually licensed 125 kHz channel MDS and ITFS response stations. Furthermore, this document corrects the effective dates of the rules.

DATES: Effective January 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Jacobs, (202) 418–7066 or Dave Roberts, (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** of June 1, 1998 (63 FR 29667), adding § 21.940. In FR Doc. 98–31334, published in the **Federal Register** of November 25, 1998 (63 FR 65087), the Commission inadvertently gave the same designation to another new rule added in the latter document. This correction correctly designates the second § 21.940 as § 21.949. In addition, for the sake of consistency, this correction redesignates the companion rule to part 74 of our Rules, § 74.940, as § 74.949, and replaces all references to § 21.940 or § 74.940 in the document with references to § 21.949 or § 74.949, as appropriate. Finally, this correction clarifies that all of the rules adopted in FR Doc. 98–31334 are subject to congressional review, and that §§ 1.1307(b)(1), Table 1; 21.27(d); 21.42(c)(8); the amendment to 21.201; 21.304; 21.900(b); 21.901(d); 21.903(d); 21.905(d)(3); 21.906(a); 21.909(c), (d), (f), (g)(6), (h), (i), (k), and (n); 21.913(a), (b), (d), and (e); 21.949(a), (b), and (f); 74.902(f); 74.911(d); 74.931(c)(1), (3), and (6)(ii) and (iii); 74.931(d)(6)(ii) and (iii); 74.936(b)(3) and (g); 74.939(c), (d), (f), (g)(6), (h), (i), (l)(1), (2) and (4), (m), and (p); 74.949(a), (b)(3) and (4), and (f); 74.951(b); 74.965; and 74.985(a), (b), and (d) through (f) of the rules adopted in FR Doc. 98–31334 are subject to approval of the information collection requirements by OMB and cannot become effective until approval is received.

FR Doc. 98–31334, published on November 25, 1998 (63 FR 65087), is corrected as follows:

1. On page 65087, in the third column, correct the "**DATES**" caption to read:

DATES: These final rules have been classified as a major action subject to congressional review. The effective date is February 8, 1999. If, however, at the conclusion of the congressional review process the effective date has been changed, the FCC will publish a document in the **Federal Register** to establish the actual effective date or to issue notice of termination of the final

rule action. In addition, §§ 1.1307(b)(1), Table 1; 21.27(d); 21.42(c)(8); the amendment to 21.201; 21.304; 21.900(b); 21.901(d); 21.903(d); 21.905(d)(3); 21.906(a); 21.909(c), (d), (f), (g)(6), (h), (i), (k), and (n); 21.913(a), (b), (d), and (e); 21.949(a), (b), and (f); 74.902(f); 74.911(d); 74.931(c)(1), (3), and (6)(ii) and (iii); 74.931(d)(6)(ii) and (iii); 74.936(b)(3) and (g); 74.939(c), (d), (f), (g)(6), (h), (i), (l)(1), (2) and (4), (m), and (p); 74.949(a), (b)(3) and (4), and (f); 74.951(b); 74.965; and 74.985(a), (b), and (d) through (f) contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish documents in the **Federal Register** announcing the effective dates for those sections.

2. In parts 21 and 74, §§ 21.940 and 74.940 are redesignated as §§ 21.949 and 74.949, and all references to "§§ 21.940" and "74.940" are revised to read "21.949" and "74.949", respectively.

Dated: January 22, 1999.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 99–1898 Filed 1–25–99; 2:09 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 630

[Docket No. 980630163–9010–02; I.D. 011598A]

RIN 0648–AJ68

Atlantic Swordfish Fishery; Management of Driftnet Gear

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to prohibit the use of driftnet gear in the North Atlantic swordfish fishery. The purpose of this action is to improve the conservation and management of the North Atlantic swordfish resource and other marine resources; specifically, to reduce bycatch of protected resources in a manner that maximizes the benefit to the Nation.

DATES: All provisions of this final rule are effective February 25, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) supporting this action may be obtained from Rebecca Lent, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Jill Stevenson or Chris Rogers, 301–713–2347 or FAX 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic swordfish fishery is managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Atlantic Swordfish Fishery Management Plan (FMP) has been issued pursuant to requirements of the Magnuson-Stevens Act. The FMP is implemented by regulations at 50 CFR part 630. This fishery is also subject to the requirements of the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA).

Introduction

This rule prohibits the use of driftnet gear in the north Atlantic swordfish fishery. The intent of the rule is to reduce marine mammal bycatch in the swordfish driftnet fishery while increasing the net benefits to the nation. Background information about the need to address bycatch and management concerns in the Atlantic swordfish driftnet fishery was provided in the preamble to the proposed rule (63 FR 55998, October 20, 1998) and is not repeated here.

NMFS wishes to address fishery management issues in an efficient manner that increases economic benefits to the nation. Further, NMFS seeks to reduce marine mammal takes consistent with the MMPA and the ESA. To do this, NMFS considered implementing take reduction measures and evaluated the effects of those measures on finfish, protected species, and administrative costs. Prohibiting the use of driftnets in the North Atlantic swordfish fishery serves to reduce potential marine mammal takes in an efficient manner.

Measures necessary for reducing marine mammal takes and for monitoring this fishery, specifically, monitoring the limited quota and observer coverage, are costly. For some alternatives considered to reduce marine mammal takes, the costs of implementation would exceed the net revenues from the landed swordfish. The swordfish driftnets are used by a limited number of participants to harvest a very small proportion of the swordfish quota within a short season. Further, there is currently no mechanism to limit access to this gear in place.

Some of the fishermen affected by this prohibition may choose to continue fishing with driftnets for other species in the same area as long as they discard any swordfish incidentally taken. Some fishermen that have participated in the swordfish driftnet fishery have stated that they would use driftnet gear to "target" (to the extent possible with relatively non-selective gear) tunas or pelagic sharks. NMFS has proposed to prohibit the use of driftnets in the Atlantic tunas fishery in the draft HMS FMP. Driftnet fishermen have not used this gear to target pelagic sharks in the past, however, high expected rates of marine mammal bycatch are not consistent with the objectives of this rule or the draft HMS FMP. Therefore, NMFS seeks comments on prohibiting the use of this gear in all highly migratory species fisheries in order to reduce marine mammal takes and bycatch of other protected species.

Under the authority of the MMPA, the Atlantic Offshore Cetacean Take Reduction Team (AOCTRT) was convened in 1996 to recommend measures that would reduce takes of marine mammals in the longline and driftnet fisheries for Atlantic highly migratory species (HMS). That team submitted a draft plan to NMFS that outlined its recommended measures for both fisheries. NMFS published a draft EA in 1997 and comments were received, some indicating preferred alternatives by constituents. After consideration of those comments, the AOCTRT recommendations, and HMS Advisory Panel comments, NMFS proposed those take reduction measures applicable to the pelagic longline fishery in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP). For driftnet gear, the AOCTRT recommended measures, which included a set allocation scheme, limited access, time/area closure, and 100 percent observer coverage, would require excessive administrative costs and were not considered effective at reducing marine mammal interactions or addressing fishery management concerns. NMFS has instead decided to prohibit the use of driftnet gear in the Atlantic swordfish fishery in order to reduce marine mammal and sea turtle takes and to resolve fishery management issues.

Comments and Responses

NMFS considered comments received on the 1997 draft EA in formulation of the proposed rule. In addition, over 300 written comments (mostly postcards) were submitted to NMFS and two public hearings were held during the 60-day comment period on the proposed

rule to prohibit driftnets. Three members of the AOCTRT and five driftnet fishermen submitted comments to NMFS concerning this issue during the public comment period. NMFS considered all comments received when drafting the draft EA/RIR/IRFA and the proposed rule.

Management Alternatives

Comment 1: Driftnet fishermen and an AOCTRT member continue to support the recommended measures of the AOCTRT, as submitted to NMFS in November 1996. One commenter indicated support for implementation of these measures on a trial basis of 1 year as suggested in the AOCTRP.

Response: For the driftnets, NMFS has determined that a set allocation scheme, time/area closure, limited entry, and other measures would be cumbersome and costly to implement and would not guarantee reductions in marine mammal or sea turtle interactions. Conversely, NMFS has determined that the AOCTRT longline measures could be effective and NMFS has proposed many of the those recommended measures in the draft HMS FMP. One measure (reduction in the length of longline) has been proposed to be implemented for a 1-year trial period.

Comment 2: Two members of the AOCTRT believe that the set allocation scheme proposed by that team would not achieve the necessary take reductions. One commenter indicated that alternative would be too costly and cumbersome to implement, would cause the swordfish quota to be exceeded, and would not achieve the goals of the MMPA.

Response: NMFS agrees. While the set allocation scheme might reduce the derby nature of this fishery, fishermen may not be able to avoid marine mammals, and this strategy would leave NMFS with no mechanism to close the fishery mid-season if authorized take levels are exceeded. Further, it is possible that the swordfish driftnet quota could be exceeded under this alternative. It is likely that administrative costs of implementing the recommended driftnet measures in the AOCTRP would exceed the estimated value of the swordfish driftnet fishery. However, it is unlikely that the overall swordfish quota would be exceeded as this commenter suggested, given the magnitude of the longline/harpoon quota relative to the driftnet quota.

Comment 3: Over 300 commenters (postcard campaign and others) expressed their support for the prohibition of driftnets in U.S. waters.

Response: This final rule prohibits driftnets only in the Atlantic swordfish fishery. In the draft HMS FMP, NMFS is proposing to prohibit the use of driftnet gear in the Atlantic tunas fishery. Driftnets are authorized in the Southeast Atlantic shark fishery but are subject to the implementing regulations of the Atlantic Large Whale Take Reduction Plan (ALWTRP). The ALWTRP regulations would not apply to a shark driftnet fishery in the Mid-Atlantic Bight or Southern New England areas, should fishermen choose to re-direct their fishing effort to sharks. This shift in effort is unlikely given the limited large coastal shark quota and season and the low ex-vessel prices for pelagic and small coastal sharks relative to large coastal sharks.

Comment 4: Some commenters supported the marine mammal bycatch limit. One commenter felt that it should be a comprehensive mammal limit, not an individual species limit. This alternative would allow the fishery to operate and would keep takes below the Potential Biological Removal (PBR) level for each species.

Response: NMFS concluded that the marine mammal bycatch limit alternative would be costly and burdensome to implement, regardless if it was by species or for all species combined. This alternative would not guarantee that marine mammal takes would be below the PBR level for each strategic stock or that the fishery would be able to take the swordfish driftnet quota prior to closure based on marine mammal take. Further, the marine mammal bycatch limit on a by-vessel limit would not reduce the derby nature of the fishery that results from a limited swordfish quota.

Comment 5: Commenters indicated that NMFS had implemented the Pacific Offshore Cetacean Take Reduction Plan (PCTRP) for the west coast driftnet fishery and that it was inconsistent not to implement the AOCTRP.

Response: In 1997, NMFS published regulations that implemented the majority of the recommendations of the PCTRP. Current data indicate that the bycatch reduction measures required by the new regulations appear to be successful in reducing incidental takes of cetaceans to biologically sustainable levels in the California/Oregon drift gillnet fishery for thresher shark and swordfish. However, the Atlantic and Pacific driftnet fisheries present very different challenges, both in bycatch reduction and fishery management. Atlantic driftnet fishermen indicated that the derby nature of the fishery results in high marine mammal takes in the Atlantic Ocean, whereas there is no quota system for Pacific swordfish that might create a similar accelerated derby fishery.

Further, many of the measures considered by NMFS and the AOCTRT were rejected by the Pacific Offshore Cetacean Take Reduction Team (PCTRT) as too restrictive, too costly, or too difficult to enforce (e.g., marine mammal bycatch limit, 100 percent observer coverage, time/area closures, set allocation scheme.) That team concluded, and NMFS agrees, that set allocations would be complicated to calculate and difficult to enforce. In addition, the PCTRT concluded that placing a quota on the number of sets does not reward fishermen that have low marine mammal entanglement rates.

The PCTRT also rejected the alternative of time/area closures. They felt that this strategy might encourage fishermen to fish during poor weather and place fishermen at a greater safety risk. In addition, time/area closures might increase takes of other species of marine mammals due to seasonal concentrations of those animals in the fishing grounds. Analysis of observer data did not indicate significant relationships between areas fished and cetacean entanglement. Time/area closures were also rejected by the PCTRT, because they would be difficult and costly to enforce.

Comment 6: Some commenters opposed the transfer of driftnet quota to the longline category and supported "retiring" that quota. One commenter indicated that marine mammal mortalities or injuries would not be reduced to levels below PBR (except for harbor porpoise) if the quota was transferred to the longline fishery. Concern was expressed that mortality reductions were overstated given that NMFS has not estimated the level of serious injuries to marine mammals as a result of longline interactions.

Response: NMFS is required by the Magnuson-Stevens Act to provide U.S. fishermen with a "reasonable opportunity" to catch the entire U.S. swordfish quota that is adopted by ICCAT. Similarly, ATCA provides that no regulation may have the effect of increasing or decreasing an ICCAT quota. Thus, NMFS cannot simply "retire" the driftnet quota.

Mortalities in the pelagic longline fishery have exceeded PBR for the short-finned pilot whale. The annual marine mammal bycatch rate in this fishery is based only on incidental mortalities and does not include those animals that are incidentally injured. NMFS is currently developing biological criteria for determining what constitutes a serious

injury to a marine mammal that is injured incidental to commercial fishing operations. NMFS' consideration of marine mammal injuries that occur incidental to the pelagic longline fishery will likely result in a combined mortality and serious injury rate which is higher than the current level. The proposed take reduction measures in the HMS FMP should offset this increase.

Comment 7: One commenter stated that NMFS needs to take similar restrictive measures to reduce protected species takes in the longline fishery.

Response: NMFS agrees that protected species bycatch in the longline fishery needs to be reduced and has proposed take reduction measures for the longline fishery in the draft HMS FMP. These measures include gear restrictions, educational workshops, and time/area closures.

Comment 8: One commenter supported the alternative that includes closure of right whale critical habitat to pelagic driftnet fishing, 100–percent observer coverage, limited entry for the driftnet fishery under the authority of the MMPA, and mandatory educational workshops.

Response: NMFS agrees that closing the winter driftnet fishery in the Mid-Atlantic Bight would be beneficial and would likely reduce bycatch of common dolphins. However, the August 1998 driftnet fishery exceeded the PBR level for common dolphins by capturing 254 common dolphins in the Northeast Coastal fishing grounds. Further, NMFS realizes that 100–percent observer coverage would be necessary for swordfish driftnets where potential take rates are quite high and extremely variable. It is difficult to project catch rates of target or non-target species in this fishery. NMFS agrees that educational workshops could be very useful in reducing bycatch or bycatch mortality of protected species and has proposed mandatory educational workshops for pelagic longline fishermen in the draft HMS FMP. However, given other considerations such as the derby nature of the fishery and the nature of the driftnet gear, workshops alone would not sufficiently reduce marine mammal takes. Further, the combination of some of these measures would costs more to administer than the net revenue of swordfish caught in driftnets.

Comment 9: One commenter did not support the alternative that the fishery bear part of the administrative costs by purchasing a vessel monitoring system unit and paying for observer coverage.

Response: The costs to implement a set allocation scheme are so large and the implementation strategy so cumbersome, that NMFS sought to develop additional alternatives that might facilitate implementation of the AOCTRP, given limited NMFS funding. If industry participants did not pay for these programs, costs of implementation would have been even higher.

Comment 10: One commenter stated that NMFS' proposed plan does not eliminate risk to marine mammals due to transfer of the quota and that mortality in vulnerable fish species may be increased.

Response: Large coastal sharks are caught at higher rates by driftnets; however, other finfish species are caught more frequently by pelagic longlines. NMFS has proposed bycatch reduction measures for pelagic longlines in the draft HMS FMP that may counteract some of the increased mortality as a result of increased longline fishing pressure. However, the amount of transferred driftnet swordfish quota is so small, relative to the existing longline swordfish quota, that impacts to finfish, turtles, and marine mammals from increased longline fishing effort would be minimal. Further, NMFS has proposed marine mammal take reduction measures in the HMP FMP to reduce takes of strategic stocks of marine mammals by pelagic longlines.

Procedural Issues

Comment 11: NMFS was encouraged to transfer driftnet observer funding to the longline observer program.

Response: NMFS will consider this when making programmatic decisions. Observer coverage is assessed on an annual basis considering both finfish and protected species bycatch issues.

Comment 12: A commenter questioned the validity of closing a fishery based on administrative costs exceeding fishery revenues. NMFS was questioned as to how decisions would be made in other fisheries where this might be the case.

Response: NMFS has based this decision not only on the administrative costs of the alternatives but also on the effectiveness of the measures in reducing bycatch and fishery management objectives. Fisheries are managed on a case-by-case basis depending on the circumstances of the fishery and the objectives of the relevant laws and fishery management plans.

Comment 13: Commenters expressed frustration with the preferred alternative of banning driftnets, given the participation of team members in the take reduction plan process. Commenters indicated that the take reduction plan process should allow fisheries to continue while take reduction measures are implemented. A commenter also indicated that at no time during the course of the negotiations, did NMFS indicate that closing the fishery was an option.

Response: NMFS participated in the take reduction process in good faith. However, upon consideration of the AOCTRP, and the subsequent amendment to the Biological Opinion that considered new data, NMFS responded with an additional alternative of the marine mammal bycatch limit. NMFS considered broader fishery management issues in conjunction with the take reduction alternatives, and analyzed the alternatives, including prohibiting the use of driftnets in the swordfish fishery, and illustrated reasons for doing so, in the draft EA published in 1997.

Comment 14: Commenters indicated a preference that take reduction plans be implemented under the authority of the MMPA, not the Magnuson-Stevens Act or ATCA.

Response: NMFS disagrees and supports implementing this rule under the authority of the Magnuson-Stevens Act. Implementing rules under multiple authorities results in a more comprehensive analysis of all impacts and highlights the consistent objectives found in all applicable laws. NMFS examined fishery management issues regarding take reduction alternatives in the swordfish fishery in part, because the AOCTRT felt that the derby fishing conditions contributed to escalating marine mammal bycatch. In this fishery, measures to address international and domestic management objectives can affect marine mammal takes and, therefore, NMFS is implementing this rule under the authority of the Magnuson-Stevens Act.

Comment 15: One commenter believed that allowing the continuation of either the longline fishery or the driftnet fishery without a take reduction plan in place is a clear violation of the mandates of the MMPA.

Response: NMFS has proposed take reduction measures for pelagic longlines in the draft HMS FMP. It is the intention of NMFS that take reduction measures for pelagic longlines be finalized in 1999. This rule prohibits the use of driftnets in the Atlantic swordfish fishery. Additionally, the draft HMS FMP has a proposal to prohibit driftnets in the Atlantic tunas fishery.

Environmental Assessment

Comment 16: One commenter believed that NMFS overestimated the costs to implement the options.

Response: NMFS analyzed the costs to the Government associated with managing driftnets in the swordfish

fishery in recent years. These costs are estimates based on existing programs throughout NMFS and serve as an indicator of the relative costs associated with each alternative.

Comment 17: One commenter believed that increased takes of protected species, especially sea turtles, in the 1998 driftnet season may be a result of increased stock sizes of protected species.

Response: NMFS acknowledges that future stock assessments of protected species could reflect increased stock size, and hence, may result in increased PBR levels. However, at this time, NMFS must protect marine mammals and sea turtles under the MMPA and ESA and must adhere to current PBR estimates. In the future, take reduction measures and PBR estimates may be adjusted if warranted.

Comment 18: One commenter indicated that NMFS' conclusory statements about finfish impacts resulting from transferral of quota into the pelagic longline category were understated.

Response: NMFS analyzed existing data and concluded that increasing longline quota may incrementally increase catch rates of undersized swordfish, bluefin tuna, marlins, and pelagic sharks. Catches of large coastal sharks are likely to decrease as a result of the quota transfer. NMFS has proposed bycatch reduction measures for pelagic longlines in the HMS FMP, including a time/area closure to protect juvenile swordfish.

Comment 19: One commenter thought that it was acceptable to place an observer in an enforcement role under the marine mammal bycatch limit. This person stated that the Inter-American Tropical Tuna Commission has not encountered such problems.

Response: NMFS places observers on Atlantic fishing vessels to collect data, not to track interactions of protected species in real time. Observers are currently overwhelmed with a heavy workload, and are expected to work in difficult conditions. Further, NMFS does not desire to place an observer in an enforcement role because the driftnet observers are not NMFS employees; they are contract employees. U.S. Coast Guard funding is limited and is not controlled by NMFS. Therefore, it can not ignore the comments concerning at-sea enforcement costs submitted by the U.S. Coast Guard during development of this rule and the HMS FMP.

Comment 20: A commenter disagreed with NMFS' concern that under an overall marine mammal bycatch limit, the PBR level could be exceeded for some species if a large number of vessels captured that species exclusively. The commenter stated that such a phenomenon is unlikely.

Response: NMFS disagrees. In August 1998, one driftnet set captured 42 common dolphins. Admittedly, this appears to be an anomaly, but such a set could be repeated, considering the concentration of marine life and food sources on the fishing grounds during that time of the year.

Changes From the Proposed Rule

NMFS changes the proposed semi-annual directed fishery quota to remove the driftnet allocation in § 630.24(b)(2). The proposed rule inadvertently omitted this change. Further, § 630.24(b)(1) should have been left unchanged from the existing regulations because swordfish driftnets were legally used in the North Atlantic during the 1998 fishing year. Editorial changes have been made and typographical errors have been corrected in the final rule.

Classification

This final rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*, and ATCA, 16 U.S.C. 971 *et seq.*

NMFS prepared a FRFA. NMFS has concluded that this action to prohibit the use of driftnet gear in the Atlantic swordfish fishery will have a significant economic impact on a substantial number of small entities. As a result of temporary closures of the driftnet fishery, fishermen who have used this gear have: (1) transferred fishing effort into the longline/harpoon category in order to take advantage of the transferred swordfish quota from the driftnet category, (2) fished for other species with other fishing gears, (3) used driftnets for other highly migratory species, including Pacific species or (4) exited commercial fishing. Therefore, the FRFA assumes that fishermen, during the time they would normally fish for swordfish with a driftnet, would fall into one of these four categories. Seventeen driftnet vessels were considered to be the universe of affected small entities in this analysis. Under the preferred alternative, each of these scenarios results in greater than a 5–percent decrease in gross revenues for more than 20 percent of the affected entities, or would cause greater than 2 percent of the affected entities to be forced to cease operations. Therefore, regardless of which activity any individual driftnet fisherman pursues should the proposed action be implemented, the RFA thresholds for significant impact are expected to be exceeded.

The other alternatives considered include the status quo, a set allocation scheme to reduce the derby nature of the fishery (with associated measures), and a marine mammal bycatch limit (with associated measures). These alternatives may have lesser economic impacts on the driftnet participants; however, none of those alternatives guarantee reduced takes of marine mammals and, further, do not eliminate such fishery management concerns as the increasing costs to manage this limited fishery. Further, the management costs of the preferred alternative relating to the value of the swordfish gear quota compares favorably with the costs of managing the pelagic longline fishery. The RIR provides further discussion of the economic effects of all the alternatives considered. Given that the alternative selected by NMFS is to permanently close the driftnet fishery for swordfish, there are no measures which would minimize the economic impact on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This rule has been determined to be not significant for purposes of E.O. 12866.

This action will not impose any additional reporting or recordkeeping requirements subject to OMB review under the Paperwork Reduction Act.

NMFS reinitiated formal consultation for all HMS commercial fisheries on September 25, 1996, and again on August 12, 1997, under section 7 of the ESA. In Biological Opinions issued on May 29, 1997, and August 29, 1997, NMFS concluded that operation of the harpoon fishery is not likely to adversely affect the continued existence of any endangered or threatened species under NMFS' jurisdiction and that operation of the longline fishery may adversely affect, but may not jeopardize, the continued existence of any endangered or threatened species under NMFS jurisdiction. Conversely, it was concluded that driftnet fishing for swordfish in the Northeast and the Mid-Atlantic and for sharks in the Southeast will jeopardize the continued existence of the northern right whale. A temporary rule under the authority of the ESA implemented time/area closures for driftnet gear in the northeast as an interim measure. Another rulemaking implemented a take reduction plan for Atlantic large whales in the southeast United States under the MMPA. This final rule will further reduce the likelihood of interactions between driftnet gear and northern right whales.

List of Subjects in 50 CFR Part 630

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Dated: January 21, 1999.

Rolland A. Schmitten,

Assitant Adminsitrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 630, is amended as follows:

PART 630—ATLANTIC SWORDFISH FISHERY

1. The authority citation for part 630 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 971 *et seq.*

2. In § 630.3, paragraph (b) is amended by removing the words "or gillnet".

3. In § 630.7, paragraphs (p), (s), and (t) are revised, and paragraphs (bb) and (cc) are redesignated as paragraphs (aa) and (bb) respectively, to read as follows:

§ 630.7 Prohibitions.

* * * * *

(p) Fish for Atlantic swordfish with a driftnet or possess an Atlantic swordfish on board a vessel with a driftnet on board, as specified in § 630.22.

* * * * *

(s) During a closure of the directed fishery under § 630.25(a)(1) or (b), on board a vessel using or having on board the specified gear, fish for swordfish, or possess or land swordfish in excess of the bycatch limits, as specified in § 630.25(c).

(t) On board a vessel using or having on board gear other than longline or harpoon, fish for swordfish, or possessing or landing swordfish in excess of the bycatch limit, as specified in § 630.25(d).

* * * * *

4. Section 630.22 is revised to read as follows:

§ 630.22 Gear restrictions.

No driftnet may be used to fish for swordfish from the North or South Atlantic swordfish stocks. An Atlantic swordfish may not be possessed on board or harvested by a vessel using or having on board a driftnet.

5. In § 630.24, paragraphs (a)(1), (b)(2), and (e)(1) are revised, paragraph (a)(3) is removed and (f) is removed and reserved to read as follows:

§ 630.24 Quotas.

(a) *Applicability.* (1) A swordfish harvested from the North Atlantic swordfish stock by a vessel of the United States other than one participating in the recreational fishery is counted against the directed-fishery quota or the bycatch quota. A swordfish harvested by longline or harpoon and landed before the effective date of a closure for that gear, pursuant to § 630.25(a)(1), is counted against the directed-fishery quota. After a closure, a swordfish landed by a vessel using or possessing gear for which bycatch is allowed under § 630.25(c) is counted against the bycatch allocation specified in paragraph (c) of this section. Notwithstanding these provisions, a swordfish harvested by a vessel using or possessing gear other than longline, harpoon, or rod and reel is counted against the bycatch quota specified in paragraph (c) of this section at all times.

* * * * *

(b) *Directed-fishery quotas.* * * *

(2) The annual directed fishery quota for the North Atlantic swordfish stock for the period June 1, 1999, through May 31, 2000, is 2,033.2 mt dw. The quota is divided into two equal semiannual quotas of 1016.6 mt dw, one for the period June 1 through November 30, 1999, and the other for the period December 1, 1999, through May 31, 2000.

* * * * *

(e) *Inseason adjustments.* (1) NMFS may adjust the December 1 through May 31 semiannual directed fishery quota to reflect actual catches during the June 1 through November 30 semiannual period, provided that the 12-month directed-fishery quota is not exceeded.

* * * * *

6. In § 630.25, the section heading and paragraphs (a)(1) and (c), and the introductory text to paragraph (d) are revised to read as follows:

§ 630.25 Closures and incidental catch limits.

(a) *Notification of a closure.* (1) When the directed-fishery annual or semiannual quota specified in § 630.24 is reached, or is projected to be reached, NMFS will publish notification in the **Federal Register** closing the directed-fishery for fish from the North Atlantic swordfish stock or from the South Atlantic swordfish stock, as appropriate. The effective date of such notification will be at least 14 days after the date such notification is filed at the Office of the Federal Register. The closure will remain in effect until additional directed-fishery quota becomes available.

* * * * *

(c) *Bycatch limits during a directed-fishery closure.* (1) During a closure of the directed fishery, aboard a vessel using or having aboard a longline and not having aboard harpoon gear—

(i) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(ii) No more than 15 swordfish per trip may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5 degrees N. lat., or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state. The Assistant Administrator may modify or change the bycatch limits upon publication of notice in the **Federal Register** pursuant to the notification requirements and procedures in paragraph (a)(1) of this section. Changes in the bycatch limits will be based upon the length of the directed fishery closure as well as the estimated catch per vessel in the non-directed fishery.

(2) During a closure of the directed fishery, aboard a vessel using or having aboard harpoon gear—

(i) A person may not fish for swordfish from the North Atlantic swordfish stock; and

(ii) No swordfish may be possessed in the North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, north of 5° N. latitude, or landed in an Atlantic, Gulf of Mexico, or Caribbean coastal state.

(d) Bycatch limits in the non-directed fishery. On board a vessel using or having on board gear other than harpoon or longline, other than a vessel in the recreational fishery—

* * * * *

[FR Doc. 99–1872 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No 981231335–8335–01; I.D. 122498B]

RIN 0648–AM14

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 26; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to an instruction in the regulatory text for the final rule to implement Framework Adjustment 26, which was published on Friday, January 15, 1999.

DATES: Effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION:

Need for Correction

Framework Adjustment 26, which was published in the **Federal Register** of January 15, 1999 (64 FR 2601), revised a portion of the regulatory text for the GOM Inshore Closure Areas (§ 648.81(g)(1)). In FR Doc. 99–1000, amendatory instruction 4. revised paragraph (g)(1) to § 648.81 and is corrected to revise the "introductory text" to paragraph (g)(1) to § 648.81. This correction sets out the amendatory instruction 4. to include the omitted language.

Correction of Publication

On page 2603, in the second column, amendatory instruction 4. is corrected to read as follows:

"4. In § 648.81, paragraphs (d) and (g)(1) introductory text are revised and paragraph (o) is added to read as follows:"

Dated: January 22, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1877 Filed 1–26–99; 8:45 am]

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VOL 64 ISS 17 JA 27 999 UMI

Proposed Rules

Federal Register
Vol. 64, No. 17
Wednesday, January 27, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–ANE–44]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. ( )HC-( )2Y( )-( ) Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede priority letter airworthiness directive (AD) 90–02–23 by adopting a new AD applicable to Hartzell Propeller Inc. ( )HC-( )2Y( )-( ) propellers. Priority letter AD 90–02–23 currently requires repetitive visual inspections of propeller hubs for cracks using a 10X glass, and, if necessary, removal and replacement of cracked hubs with serviceable parts. This proposal would change the frequency and method of inspection by requiring initial and repetitive eddy current inspections (ECI) of the propeller hub fillet radius for cracks. In addition, this proposed AD would allow installation of an improved design propeller hub as terminating action to the repetitive ECI. This proposal is prompted by reports of cracked propeller hubs found in service after they had been inspected in accordance with the visual inspections required by the priority letter AD. The actions specified by the proposed AD are intended to improve the method for detecting propeller hub cracks, which can result in an inflight separation of propeller blades and damage to the aircraft.

DATES: Comments must be received by March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 89–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Hartzell Propeller Inc., Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4299, fax (937) 778–4365. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 89–ANE–44." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 89–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On January 22, 1990, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 90–02–03, applicable to Hartzell Propeller Inc. ( )HC-( )2Y( )-( ) propellers specified by serial number, which requires repetitive (50 hour intervals) visual inspections of propeller hubs for cracks using a 10X glass, and, if necessary, removal and replacement of cracked hubs with serviceable parts. That action was prompted by reports of cracked propeller hubs.

Since the issuance of that priority letter AD, the FAA has received fifteen reports of cracked propeller hubs that warrant that the visual inspection requirement be removed and replaced with an eddy current inspection requirement. Also, since five of the fifteen reports were of cracked hubs whose serial number or model number were outside the serial number and model number limitation denoted in the priority letter AD, there is a need to expand the list of affected propeller models and not limit it by serial number. In addition, the priority letter AD required that propellers be inspected if they were installed on any aircraft with Lycoming TIO–540 series engines and IO–540 series engines rated at 260 horsepower or higher certificated in any category. None of the reports received since the issuance of the priority letter AD support this general applicability requirement and it has been revised to address propellers installed on Piper PA–32( ) aircraft with Textron Lycoming 540 series engines rated at 300 HP or higher, and Britten Norman BN–2( ) aircraft with Textron Lycoming 540 series engines. Note that five of the fifteen reports do document the continued need to inspect propellers installed on any agricultural or acrobatic aircraft.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Service Bulletin (SB) No. HC–SB–61–227, dated January 16, 1998, that describes procedures for eddy current inspections (ECI) of propeller hub fillet radius for cracks, and also describes procedures for installation of an improved design propeller hub.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, the proposed AD would supersede priority letter AD 90–02–03 to expand the models of propellers affected and to require initial and repetitive (150 hour intervals) ECI of propeller hub fillet radius for cracks, and, if necessary, removal from service of cracked hubs and replacement with serviceable parts. In addition, this AD allows installation of an improved design propeller hub as terminating action to the repetitive ECI. The actions are required to be accomplished in accordance with the SB described previously.

There are approximately 7,745 propellers of the affected design in the worldwide fleet. The FAA estimates that 4,576 propellers installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per propeller to accomplish the proposed actions, and that the average eddy current inspection rate is $150 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators per ECI is estimated to be $686,400.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Hartzell Propeller Inc.: Docket No. 89–ANE–44. Supersedes priority letter AD 90–02–03.

Applicability: Hartzell Propeller Inc ( )HC-( )2Y( )-( ) propeller models installed on Piper PA–32() aircraft with Textron Lycoming 540 series engines rated at 300 HP or higher and Britten Norman BN–2() aircraft with Textron Lycoming 540 series engines, both aircraft certificated in any category, and on acrobatic category and agricultural category aircraft.

Please note that the following list is for reference purposes only and that this airworthiness action is not limited to the following aircraft:

Aermacchi S.p.A. (formerly SIAI-Marchetti) S.205 series aircraft, S.208 series aircraft, F.260 series a/c
American Champion (formerly Bellanca, Champion) 8KCAB, 8GCBC
Aviat (licensed by Sky International [formerly White International]) (Pitts) S–1T, S–2, S–2A, S–2S, S–2B
Britten Norman Islander BN–2 series aircraft Cessna A188A, A188B, T188C
Flugzeugwerke Altenrheim AG (FFA) AS202/18A "BRAVO", AS202/18A4" BRAVO"
Great Lakes Aircraft Co. 2T–1 series aircraft
Moravan National Corporation Zlin 526L
Piper PA–25–260, PA–32 series aircraft, PA–36–600
SOCATA—Groupe Aerospatiale (Morane Saulnier) MS893A, MS893E

This AD is only applicable to Hartzell propellers manufactured before December 1991, which do not have a suffix letter "A" or "B" at the end of the hub serial number. Propellers with the suffix letter "A" or "B" are exempt from this AD, except for the following hubs which were reworked at the Hartzell factory in 1990: DN3607A, DN3609A, DN3613A, DN3615A, DN3628A, DN3630A, DN3641A, DN3940A, DN3944A, DN3949A, DN3962A.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect propeller hub cracks, which can result in an inflight separation of propeller blades and damage to the aircraft, accomplish the following:

(a) Perform initial and repetitive eddy current inspections (ECI) of the propeller hub fillet radius for cracks in accordance with Hartzell Propeller Inc. Service Bulletin (SB) No. HC–SB–61–227, dated January 16, 1998, as follows:

(1) For propellers affected by the applicability requirements of AD 90–02–23, perform the initial ECI within 50 hours time in service (TIS) since last visual inspection conducted in accordance with AD 90–02–23. For all other applicable propellers, perform the initial ECI within 50 hours TIS after the effective date of this AD.

(i) Prior to further flight, remove from service cracked propeller hubs and replace with a serviceable part.

(ii) If no cracks are found, then permanently mark the hub in accordance with Hartzell Propeller Inc. SB No. HC–SB–61–227, dated January 16, 1998.

(2) Thereafter, perform ECI at intervals not to exceed 150 hours TIS since last ECI. Prior to further flight, remove from service cracked propeller hubs and replace with a serviceable part.

(b) A propeller hub from an aircraft that is identified in the applicability section of this AD may not be removed and reused on an aircraft for which this AD is not applicable.

(c) Terminating action to the repetitive inspection requirements of this AD is the replacement of affected hubs with a Hartzell propeller hub model with the serial number suffix letter "A" or "B", except for the following hubs which were reworked at the Hartzell factory in 1990: DN3607A, DN3609A, DN3613A, DN3615A, DN3628A, DN3630A, DN3641A, DN3940A, DN3944A, DN3949A, DN3962A. The hub replacement must be performed in accordance with Hartzell Propeller Inc. SB No. HC–SB–61–227, dated January 16, 1998.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on January 20, 1999.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–1828 Filed 1–26–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

United States Mint

31 CFR Part 100.11, 100.12

RIN 1525–ZA00

Exchange of Coin

AGENCY: Department of the Treasury, United States Mint.

ACTION: Proposed Rule; Request for Comments.

SUMMARY: In furtherance of the U.S. Mint's efforts to improve the environment, reduce energy consumption and enhance workplace safety and efficiency, the Mint wishes to discontinue melting and instead employ mechanical means as a means of destroying mutilated coins. These mechanical means cannot be used to process fused or mixed coins, which represent a very small percentage of the coins redeemed annually by the Mint. Accordingly, the proposed amendment would also allow the Mint to discontinue accepting fused or mixed coins for redemption, and require that all bent or partial coins submitted for redemption be separated by denomination in order to be acceptable.

DATES: Submit comments on or before March 29, 1999.

ADDRESSES: Address all comments concerning this proposed rule to Gwen H. Mattleman, United States Mint, 633 Third Street NW , Washington DC 20220. See Supplementary Information for electronic access and filing information.

FOR FURTHER INFORMATION CONTACT: (Legal) Kenneth Gubin, Chief Counsel (202) 874–5953; (Technical) Andrew Cosgarea, Associate Director, Head, Circulating Coinage Business Unit (202) 874–6100

SUPPLEMENTARY INFORMATION:

Background

Part 100, Subpart C of Treasury Regulations 31 CFR, promulgated under 31 U.S.C. 5120, provides among other things for the exchange of bent, partial, fused and mixed coins. Bent, partial and mixed coins (i.e., coins of several alloy categories presented together) which are submitted and accepted for redemption are currently separated by alloy, melted and cast into ingots or bars by the United States Mint. These bars are furnished to the Mint's suppliers and used to fabricate coinage strip in lieu of virgin copper and nickel. Fused coins are also melted and cast into bars, but since this material has been contaminated with base elements such as lead and arsenic it is unsuitable for using in fabricating coinage strip and is instead sold as scrap through the General Services Administration. The Mint has identified and is actively pursuing initiatives to improve the environment, reduce energy consumption and enhance efficiency and workplace safety. Melting coins submitted for redemption by the Mint's current heat induction procedures is not energy efficient and adds to the Mint's annual electrical expenses. It is also a physically challenging process for the Mint's employees. As metal is heated and poured in its molten state into ingots, it can reach 1500 degrees Celsius. Ingots weighing 60 lbs. must be lifted and moved manually. Therefore, the Mint wishes to discontinue melting and use mechanical means (such as a hammer mill or rolling mill) to destroy mutilated coins. However, as the proposed mechanical destruction process requires that coins be separated by alloy, these mechanical methods cannot be used to process fused coins or unsorted (mixed) coin lots. Because mutilated coins delivered in lots of mixed alloy categories often are in a condition which precludes machine sorting, redemption of mixed coins can be labor-intensive and inefficient. As shown by the charts below, fused and mixed coins represent a very small component of the United States Mint's annual coin redemptions.

BILLING CODE 4810–37–P

YR	Total Coins Redeemed by U. S. Mint (Kg.)	Total Mixed or Fused Coins Redeemed (U.S.Mint records do not distinguish mixed and fused redemptions) (Kg.)	% of Mixed or Fused Coins Redeemed Over Total Redeemed	Total U.S. Mint Payout for All Coins Redeemed (includes sorted bent and partial coins redeemed at weight equivalent of face value, plus fused/ mixed at lower, metal rates (fixed or inventory)
1996	310,000	2849	.91	$6,400,000
1997	342,000	2750	.80	$7,200,000
1998 (ends 7/31)	327,000	2107	.64	$5,500,000

YR	Total Lots of Coins Redeemed	Mixed or Fused Lots Redeemed	% of Mixed or Fused Lots Redeemed over Total Lots Redeemed
1996	1820	23	1.26
1997	2200	19	.86
1998 (ends 7/31)	1720	13	.75

BILLING CODE 4810-37-C

For the foregoing reasons, the Mint wishes to amend Part 100 of 31 CFR to discontinue acceptance of fused and mixed coins for redemption, and require that all bent or partial coins be separated by denomination when submitted for redemption.

Certifications

This proposed regulation is not a significant regulatory action for purposes of Executive Order 12866. The Mint has paid out less than $8 million in total annual mutilated coin redemptions for each of 1996, 1997 and the seven-month period ending July 31, 1998. For each such period, fused and mixed coins as a group constitute less than 1% of total coins redeemed, and approximately 1% or less of the total lots redeemed. Fused and mixed coins are currently redeemed at metal rates lower than the rates paid for sorted coins. For these reasons, the United States Mint does not believe that the proposed regulation will have an annual effect on the economy of $100 million or more or materially adversely affect any sector of the economy, productivity, competition, jobs, the environment, public health, or State, local, or tribal governments or communities. The Mint does not anticipate that the rule will result in inconsistency, interfere with another agency's actions, materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. It is hereby certified that this proposed regulation will not have a significant economic impact on a significant number of small entities. Accordingly, a regulatory flexibility analysis is not required. Lots of fused and mixed coins recorded together as a group constituted approximately 1% or less of the total coin lots redeemed for each of calendar 1996, 1997 and the period ending July 31, 1998, amounting to 23, 19 and 13 lots, respectively, of fused and mixed coins. Although the Mint does not maintain records which consistently indicate the business or personal nature of the transactions conducted by individuals or entities tendering coins for redemption, the majority of these lots were submitted by individuals transacting with the Mint in their own name. Even if each such individual were a "small entity" within the meaning of 5 USC 604(a), the Mint does not believe that this quantity of lots indicates that a significant number of small entities will be significantly impacted if the Mint were to require sorting of coins previously accepted as mixed and discontinue accepting fused coins.

Comments

In lieu of hand-delivery, comments on the proposed rules may be faxed to the attention of Gwen H. Mattleman at (202) 874-6479 or sent by electronic mail to: legal@usmint.treas.gov. Hand delivery, U.S. mail or fax are preferred.

List of Subjects in 31 CFR Part 100 Subpart C

Currency.

For the reasons set forth in the preamble, the United States Mint proposes to amend 31 CFR Part 100 substantially as follows:

PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

Subpart C—Exchange of Coin

1. The authority citation for Part 100 Subpart C is revised to read as follows:

Authority: 31 U.S.C. 321.

2. Revise 100.11(b) to read as follows:

§ 100.11 Exchange of bent and partial coins.

* * * * *

(b) Redemption basis. Bent and partial coins shall be presented separately by denomination category in lots of at least one pound for each category. Bent and partial coins shall be redeemed on the

basis of their weight and denomination category rates (which is the weight equivalent of face value). If not presented separately by denomination category, bent and partial coins will not be accepted for redemption. Denomination categories and rates are: Cents, @ $1.4585 per pound; Nickels, @ $4.5359 per pound; Dimes, Quarters, Halves, and Eisenhower Dollars @$20.00 per pound; and Anthony Dollars @ $56.00 per pound. Copper plated zinc cents shall be redeemed at the face value equivalent of copper one cent coins.

* * * * *

3. Revise 100.12(b) to read as follows:

§ 100.12 Exchange of fused and mixed coins.

* * * * *

(b) The United States Mint will not accept fused or mixed coins for redemption.

Philip N. Diehl,

Director.

[FR Doc. 99–1683 Filed 1–26–99; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011499B]

RIN 0648–AL73

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Atlantic Mackerel, Squids, and Butterfish Fisheries; and Atlantic Surfclam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of amendments to three fishery management plans; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 12 to the Fishery Management Plan (FMP) for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Amendment 8 to the FMP for the Atlantic Mackerel, Squids, and Butterfish Fisheries; and Amendment 12 to the FMP for the Atlantic Surfclam and Ocean Quahog Fisheries, for review by the Secretary of Commerce (Secretary) and is requesting comments from the public. These amendments are intended to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act of October 1996 (SFA).

DATES: Comments on the amendments must be received on or before March 29, 1999.

ADDRESSES: Send comments to Jon C. Rittgers, Acting Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on the Mid-Atlantic SFA Amendments."

Copies of the proposed amendments, the Environmental Assessments (EA), the regulatory impact reviews (RIR), and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978–281–9221.

SUPPLEMENTARY INFORMATION:

The Council has submitted three amendments that are intended to bring the aforementioned FMPs into compliance with the SFA requirements. The SFA revised significantly several of the national standards and added three new standards regarding impacts on fishing communities (national standard 8), minimizing bycatch (national standard 9), and promoting safety at sea (national standard 10). In addition, the SFA requires the Councils to identify and to describe essential fish habitat (EFH) for the species managed.

The Magnuson-Stevens Act requires that each regional fishery management council submit any fishery management plan or amendment it prepares to the Secretary for review. The Magnuson-Stevens Act also requires that the Secretary, upon receiving the plan or amendment for review, immediately make a preliminary evaluation of whether the amendment is sufficient to warrant continued review and publish notification that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or amendment.

The amendments to the FMPs, if approved, would revise overfishing definitions, describe and identify EFH, implement a framework adjustment process for amending management measures for these fisheries in the future, limit the size of domestic harvesting vessels permitted in the Atlantic mackerel fishery, and implement an operator permit requirement for the surfclam and ocean quahog fishery.

A proposed rule that would implement the amendments has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on proposed regulations to implement the amendments in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendments in order to be considered in the approval/disapproval decision on the amendments to the FMPs. All comments received by March 29, 1999, whether specifically directed to the amendments or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendments.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 21, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1876 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 011999B]

RIN: 0648–AK83

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Amendment 13

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of amendment to fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 13 to The West Coast Salmon Plan (Salmon FMP) for Secretarial review. Amendment 13 changes the management goals for the Oregon coastal natural (OCN) coho salmon (coho). The FMP amendment implements the fisheries management provisions of the Oregon Coastal Salmon Restoration Initiative (OCSRI).

DATES: Comments on Amendment 13 must be received on or before March 29, 1999.

ADDRESSES: Comments on Amendment 13, or supporting documents should be sent to William W. Stelle, Jr., Administrator, Northwest Region, NMFS, Sand Point Way NE, BIN C15700, Seattle, WA 98115–0070; or to William T. Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213.

Copies of Amendment 13, the Environmental Assessment (EA)/ Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), the Amendment 13 Issues Attachment, and the ODFW/NMFS risk assessment are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Svein Fougner at 562–980–4040, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan (FMP) or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period in determining whether to approve the FMP or FMP amendment.

Amendment 13 would change the management goals for the OCN coho. The major provisions of this amendment are not codified because, in order to streamline the regulations the salmon escapement goals were previously removed from the codified regulations and remain only in the FMP. Therefore, the modification of the OCN escapement goals requires only a minor modification of the regulations to change the language that explains that the coho allocation provisions south of Cape Falcon apply only when coho abundance allows a directed harvest of coho. The existing language is tied to the existing level of harvest allowed on OCN coho. NMFS will publish a proposed rule that would change the language to be more generic and accurate under Amendment 13.

The FMP amendment implements the fisheries management provisions of the OCSRI. In a Memorandum of Agreement with the Governor of Oregon, NMFS pledged to work with the State of Oregon to encourage the Council to adopt the OCSRI. The OCSRI fisheries management provisions are just one part of a broad-based coastal recovery plan. Amendment 13 is a major step toward full implementation. The amendment would provide a more conservative management of OCN coho, *Oncorhynchus kisutch*, by disaggregating the OCN stock into four components, restricting total harvest exploitation rates on each component to a maximum of 35 percent, and linking increases in harvest rates for each component from the current low rates (10–13 percent) to increases in marine survival and to proven reproductive success of the present brood year.

NMFS welcomes comments on the proposed FMP amendment through the end of the comment period. NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendment. A proposed rule to implement Amendment 13 to the Salmon FMP has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on this rule in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendments, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision on the amendment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 22, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1878 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 17
Wednesday, January 27, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Draft Agreement Between the Advisory Council on Historic Preservation and the Narragansett Indian Tribe for the Assumption by the Narragansett Tribe of Certain Responsibilities Pursuant to the National Historic Preservation Act

Authority: 16 U.S.C. 470a(d)(5)

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of intent to execute Agreement with the Narragansett Indian Tribe.

SUMMARY: The Advisory Council on Historic Preservation intends to execute an agreement with the Narragansett Indian Tribe through which the Tribe will assume certain responsibilities pursuant to the National Historic Preservation Act, including the review of federal undertakings under their own, tribal historic preservation regulations instead of under the regulations promulgated by the Advisory Council. Through this notice, the Advisory Council invites comments from the public regarding the draft of said agreement and the Tribe's historic preservation regulations, before execution of the agreement.

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Comments should be addressed to the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, D.C. 20004. Fax (202) 606–8672. Comments may be submitted via e-mail to achp@achp.gov.

FOR FURTHER INFORMATION CONTACT: Javier Marqués, Assistant General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, D.C. 20004. (202) 606–8503.

SUPPLEMENTARY INFORMATION: Section 101 of the National Historic Preservation Act of 1966, as amended, provides that the Advisory Council

may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

16 U.S.C. 470a(d)(5). Section 106 requires Federal agencies to take into account the effect of their undertakings on properties included in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment on such undertakings.

In accordance with the provisions of Section 101, the Advisory Council and the Narragansett Indian Tribe drafted the Agreement titled "Agreement between the Advisory Council on Historic Preservation and the Narragansett Indian Tribe for the Assumption by the Narragansett Tribe of Certain Responsibilities Pursuant to the National Historic Preservation Act," and related tribal historic preservation regulations titled "Procedures and Rules for the Registration and Protection of Tribal Properties." Through this agreement, it is the intent of the Narragansett Indian Tribe to take charge of the Section 106 historic preservation review of federal undertakings that affect historic resources located in their tribal land, and subject such review to the provisions of the Narragansett tribal historic preservation regulations.

You may obtain a copy of the draft agreement and the regulations by contacting Javier Marqués, Assistant General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004; (202) 606–8503.

Dated: January 21, 1999.

John M. Fowler,

Executive Director.

[FR Doc. 99–1831 Filed 1–26–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 3:00 p.m., Tuesday, February 9, 1999.

PLACE: Conference Room 11, Marriott Rivercenter, 101 Bowie Street, San Antonio, TX.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Status of PBO planning.
3. Status of procurement request for legal advisor to privatization committee.
4. Upcoming stockholders meeting.
5. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 10:00 a.m., Wednesday, February 10, 1999.

PLACE: Conference Room 13–14, Marriott Rivercenter, 101 Bowie Street, San Antonio, TX.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on the November 19, 1998, Minutes.
3. Report on loans approved in the first quarter of FY 1999.
4. Summary of financial activity for the first quarter of FY 1999.
5, Privatization committee report.
6. Consideration of contract for outside legal advisor to the privatization committee.
7. Consideration of resolution to establish a date and location for the biennial meeting of stockholders and the "as of date" for determining voting rights.
8. Consideration of resolution to approve Jonathan P. Claffey to serve as the Deputy Assistant Governor and the Assistant Secretary of the Bank.
9. Consideration of resolution to commemorate the 50th anniversary of the RUS Telecommunications Program.
10. Establish date and location of next two regular board meetings.
11. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: January 21, 1999.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 99–1971 Filed 1–25–99; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 1:30 p.m. on February 18, 1999, at the Rivier Collage, Dion Center Board Room, 420 Main Street, Nashua, New Hampshire 03060. The purpose of the meeting is to discuss plans for holding a full-day briefing on the status of civil rights in New Hampshire as part of its project, A Biennial Report on the Status of Civil Rights in New Hampshire. The Committee will also be briefed by invited community advocates on pertinent civil rights issues.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Nury Marquez, 603–627–5127, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 20, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–1854 Filed 1–26–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

End-User Certificates for High Performance Computers Exports to the Peoples's Republic of China

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 29, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Ave., NW, Room 6881, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Export Administration is required to perform post-shipment verifications on high performance computers exported to the PRC under License Exception CTP in addition to those exported under a license. U.S. exporters of high performance computers to PRC will obtain the End-User Certficate in each transaction.

II. Method of Collection

Submitted in written form.

III. Data

OMB Number: 0694–0112.

Form Number: N/A.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Response: 15 minutes per response.

Estimated Total Annual Burden Hours: 75 hours.

Estimated Total Annual Cost: $0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 21, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–1857 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 2–99]

Foreign-Trade Zone 202—Los Angeles, California, Expansion of Manufacturing Authority—Subzone 202A, Minnesota Mining and Manufacturing Company Facility (Pharmaceuticals), Los Angeles, CA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Board of Harbor Commissioners of the City of Los Angeles, grantee of FTZ 202, requesting authority on behalf of the Minnesota Mining and Manufacturing Company (3M), to expand the scope of manufacturing authority under zone procedures at the 3M facility in Los Angeles, California. It was formally filed on January 11, 1999.

Subzone 202A was approved by the Board in 1997 at the 3M facility located at 19901 Nordhoff Street, Los Angeles, California. Authority was granted for the manufacture of solid-dose pharmaceutical products and controlled-dose inhalers using the following imported materials: aluminum bottles, valve stems for aerosol, valve retaining cups, plastic actuator assemblies for aerosol, orphenadrine citrate, flacanide acetate, methenamine hippurate, pirbuterol acetate, and ethyl oleate (Board Order 916, 62 FR 45394, 8/27/97).

3M is now proposing to expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 202A to include propellant for the controlled dosage pharmaceutical aerosol inhalers used for the treatment of bronchial asthma, bronchospasm, and vascular headaches.

The propellants are trichlorofluoromethane/CFC–11 (HTSUS 2903.41.0000) and dichlorodifluoromethane/CFC–12 (HTSUS 2903.42.0000), both having a 3.7% duty rate.

Zone procedures would exempt the facility from Customs duty payments on the foreign components used in export activity. On its domestic sales, the company would be able to elect the duty rate that applies to finished products (duty-free) for the foreign components noted above. The application indicates that the savings from FTZ procedures will help improve 3M's international competitiveness.

The production, importation, exportation and sale of these propellants for exempted uses is regulated by the U.S. Environmental Protection Agency (EPA) (60 FR 24970, 5/10/95). 3M has been granted annual essential use allowances for these propellants by the EPA. Zone procedures would not exempt 3M from any EPA requirements and they would not affect EPA's ability to regulate and monitor importation, exportation and sale of these substances.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 29, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 12, 1999.

A copy of the request will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 350 South Figueroa Street, Suite 172, Los Angeles, California 90071

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: January 13, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–1893 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–810]

Oil Country Tubular Goods From Argentina; Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On September 28, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Argentina (*See* Notice of Initiation, 63 FR 51893). This review covers the period August 1, 1997 through July 31, 1998. The only companies subject to review in this segment of the proceeding are Siderca S.A.I.C. and its U.S. affiliate, Siderca Corporation (collectively, Siderca). We determine that there were no consumption entries during the period of review (POR) of OCTG from Argentina produced or exported by Siderca.

We have reviewed petitioner's claim that subject merchandise was entered for consumption into the United States during the POR. We received confirmation from the U.S. Customs Service (Customs) that the merchandise entered for consumption during the POR was not manufactured by Siderca, and therefore not subject to this review. This review has therefore been rescinded as a result of our determination that there were no consumption entries during the POR of OCTG from Argentina produced or exported by Siderca.

EFFECTIVE DATE: (Insert date of publication in the **Federal Register**.)

FOR FURTHER INFORMATION CONTACT: Heather Osborne or John Kugelman, AD/CVD Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3019 or (202) 482–0649, respectively, or fax (202) 482–1388.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (62 FR 27296, May 19, 1997).

Scope of the Review

Oil country tubular goods are hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited-service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this review are currently classified in the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.80, 7304.39.00, 7304.51.50, 7304.20.70, 7304.59.60, 7304.59,80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70, and 7606.90.10. The HTSUS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

Background

We received a request on August 31, 1998, for an administrative review of Siderca S.A.I.C., an Argentine producer and exporter of OCTG, and Siderca Corporation, an affiliated U.S. importer and reseller of such merchandise (collectively, Siderca), from the petitioner, North Star Steel Ohio (North Star). The antidumping duty order was published in the **Federal Register** on August 11, 1995 (60 FR 41055).

SUPPLEMENTARY INFORMATION: In its original submission, dated October 14, 1998, Siderca claimed that "it did not, directly or indirectly, enter for consumption, or sell, export, or ship for entry for consumption in the United States subject merchandise during the period of review." Siderca also claimed that Siderca Corporation did not import for consumption any subject merchandise during the POR.

The petitioner subsequently claimed that publicly available import data from the Department's IM–145 database contradicted Siderca's claims that no subject merchandise was entered for consumption during the POR. The

petitioner claimed that U.S. import statistics reveal that 2,658 tons of subject merchandise were imported into the U.S. during the POR and that 154 tons of Argentine OCTG were entered for consumption during the POR. The petitioner asked the Department to investigate these entries, and to require Siderca to provide detailed freight, customs, and value information for these shipments.

In its November 20, 1998 response to petitioner's allegation of consumption entries, Siderca indicated that it made no U.S. sales or consumption entries during the POR. Siderca claimed that all of its shipments to the United States were general, non-consumption entries (*e.g.*, FTZ entries), and were destined for re-export. Siderca noted that the 154 ton consumption entry cited by the petitioner is an entry of nonseamless (welded) oil well tubing classified under HTSUS item 7306.20.60.50. Because Siderca does not produce nonseamless material, the consumption entry could not possibly be a Siderca product.

On November 13, 1998, the Department requested additional information from Customs regarding the consumption entry cited by the petitioner. Customs subsequently confirmed that the entry was in fact a consumption entry, but was not merchandise produced or exported by Siderca. Customs confirmed that there were no consumption entries of Argentine OCTG produced or exported by Siderca, and that all of Siderca's shipments of OCTG to the United States during the POR were either under a temporary import bond for re-export to third countries, or through a foreign trade zone to be further processed and then re-exported, and therefore not subject to antidumping duties. (*See* Memo to the File, January 6, 1999). Based on the foregoing, there is no evidence that Siderca made any U.S. consumption entries of Argentine OCTG during the POR. The Department therefore determines that no subject merchandise produced or exported by Siderca was entered into the United States for consumption during the POR and, thus, there are no entries subject to the review.

Because Siderca was the only firm for which a review was requested and it had no U.S. entries for consumption of covered merchandise during the POR, there is no basis for continuing this administrative review. We therefore are rescinding this review in accordance with section 351.213(d)(3) of the Department's regulations. The cash deposit rate for all firms will continue to be the rate established in the most recently completed segment of this proceeding (*i.e.*, 1.36 percent).

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: January 21, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–1894 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–830]

Notice of Amended Preliminary Determination of Sales at Not Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended preliminary determination of antidumping duty investigation.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") published the preliminary determination of its antidumping duty investigation of stainless steel sheet and strip in coils ("SSSS") from Taiwan. This investigation covers four respondents, Yieh United Steel Corporation ("YUSCO"), Tung Mung Development Co., Ltd. ("Tung Mung"), Chang Mien Industries, Co., Ltd. ("Chang Mien"), and Ta Chen Stainless Steel Pipe, Ltd. and Ta Chen International (collectively "Ta Chen").

YUSCO submitted a ministerial error allegation on January 5, 1999 with respect to the preliminary determination. Based on the correction of these ministerial errors made in the preliminary determination, we are amending our preliminary determination. *See* 19 CFR 351.224(e). As a result of the correction, the Department preliminarily determines that sales have not been made at less than fair value with respect to stainless steel sheet and strip in coils from Taiwan.

EFFECTIVE DATE: January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Gideon Katz or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5255 and (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to the regulations set forth at 19 CFR part 351.

Significant Ministerial Errors

We are amending the preliminary determination of sales at less than fair value for SSSS from Taiwan to reflect the correction of significant ministerial errors made in the margin calculations regarding YUSCO in that determination, pursuant to 19 CFR 224(g)(1) and (2). A significant ministerial error is defined as a correction which, singly or in combination with other errors, (1) would result in a change of at least 5 absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) would result in a difference between a weighted-average dumping margin of zero or de minimis and a weighted-average dumping margin of greater than de minimis or vice versa. We are publishing this amendment to the preliminary determination pursuant to 19 CFR 351.224(e).

Scope of the Investigation

For purposes of this investigation, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35,

7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

In response to comments by interested parties the Department has determined that certain specialty stainless steel products are also excluded from the scope of this investigation. These excluded products are described below:

Flapper valve steel is excluded. It is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters also is excluded from the scope of this investigation. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip also is excluded from the scope of this investigation. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III." [1]

Certain electrical resistance alloy steel also is excluded from the scope of this investigation. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36." [2]

Certain martensitic precipitation-hardenable stainless steel also is excluded from the scope of this investigation. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17." [3]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments also are excluded from the scope of this investigation. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[4] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17" is a trédemark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6".[5]

Period of Investigation

The period of investigation ("POI") is April 1, 1997 through March 31, 1998.

Background

On January 4, 1999, the Department published in the **Federal Register** its notice of preliminary determination of the antidumping duty investigation of SSSS from Taiwan (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Taiwan* (64 FR 101 (January 4, 1999)). We preliminarily calculated a dumping margin of 2.93 percent based on YUSCO's sales.

YUSCO

On January 5, 1999, YUSCO submitted a timely written allegation that the Department made two ministerial errors which resulted in a *de minimis* weighted average dumping margin. YUSCO alleged that the Department erred by failing to convert U.S. billing adjustments and warranty expenses reported in New Taiwan Dollars (NTD) into U.S. dollars.

We agree with YUSCO that we inadvertently failed to convert these expenses into U.S. dollars. *See Clerical Error Memorandum*, January 16, 1999. Because these ministerial errors are significant, as defined in 19 CFR 351.224(g), we are amending our preliminary determination. YUSCO's amended weighted-average margin is *de minimis*. We will instruct the U.S. Customs Service accordingly. *See* "Suspension of Liquidation" section, below.

Amended Preliminary Determination

As a result of our corrections of ministerial errors, we have determined that the following amended weighted-average dumping margins apply.

Manufacturer/exporter	Margin percentage
Chang Mien	.57
Tung Mung	.07
YUSCO	1.00
All Others	1.00

Suspension of Liquidation

Because the margins are *de minimis* (see 351.106), we are not directing the U.S. Customs Service to suspend liquidation of entries of stainless steel sheet and strip in coils from Taiwan.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our amended determination. If our final determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of the preliminary determination or 45 days after our final determination.

Public Comment

As stated in the Department's preliminary determination in this investigation (64 FR 101, 108), case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than February 23, 1999, and rebuttal briefs, limited to issues raised in case briefs, no later than March 1, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held March 3, 1999 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, no later than February 3, 1999. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). We intend to issue our final determination in this investigation no later than May 19, 1999.

This amended preliminary determination is issued and published in accordance with section 703(d)(2) of the Act (19 CFR 351.224).

Dated: January 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–1895 Filed 1–26–99; 8:45 am]
BILLING CODE 3510–DS–P

[5] "GIN4 Mo", "GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–803]

Titanium Sponge From the Russian Federation; Rescission of Antidumping Duty Administrative Review: Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review: Correction.

EFFECTIVE DATE: January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy Frankel, AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3936 and 482–5849, respectively.

CORRECTION: The Department of Commerce (the Department) inadvertently referenced an incorrect period of review (POR) in *Titanium Sponge From the Russian Federation: Rescission of Antidumping Duty Administrative Review*, 63 FR 67857 (December 9, 1998). The POR for this administrative review is August 1, 1997 through July 31, 1998. However, the Department incorrectly referenced a

POR of April 1, 1997 through March 31, 1998 in the above-referenced **Federal Register** notice. Specifically, the notice reads, "This review was requested by TMC and covers the period April 1, 1997 through March 31, 1998" and "On August 28, 1998, TMC requested that the Department conduct an administrative review of titanium sponge from Russia for the period April 1, 1997 through March 31, 1998." *See* 63 FR 67857.

Pursuant to the Department's regulations at 19 CFR 351.224(e), we correct this statement in the above-referenced notice to read as follows: "This review was requested by TMC and covers the period August 1, 1997 through July 31, 1998" and "On August 28, 1998, TMC requested that the Department conduct an administrative review of titanium sponge from Russia for the period August 1, 1997 through July 31, 1998."

Dated: January 11, 1999.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 99–1897 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–834]

Postponement of Preliminary Countervailing Duty Determination: Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary countervailing duty determination.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary determination of the countervailing duty investigation of live cattle from Canada. This extension is made pursuant to section 703(c)(1)(B) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189.

SUPPLEMENTAL INFORMATION: Because this case is extraordinarily complicated and additional time is necessary to make the preliminary determination, the Department of Commerce ("the Department") is extending the time limit for completion of the preliminary determination in accordance with section 703(c) of the Tariff Act of 1930, as amended ("the Act"), to not later than May 3, 1999. *See* January 20, 1999 Memorandum from Acting Deputy Assistant Secretary for AD/CVD Enforcement Laurie Parkhill to Assistant Secretary for Import Administration Robert LaRussa on file in the public file of the Central Records Unit, B–099 of the Department.

This notice is in accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(2).

Dated: January 21, 1999.

Gary Taverman,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 99–1896 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012199A]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in February, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between February 11 and February 12, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, February 11, 1999, 9:30 a.m.—Groundfish Committee Meeting

Location: Holiday Inn at the Crossings, 801 Greenwich Avenue, Warwick, RI 02886; telephone: (401) 732–6000.

Agenda: Consider and take public comment on the scope of issues that should be addressed in Amendment 13 to rebuild overfished stocks and to supplement or change elements of the fishery management plan (FMP) as may be necessary, and will identify management alternatives to be considered in the Draft Supplemental Environmental Impact Statement (DSEIS). Measures under consideration for this amendment include, but are not limited to: action to rebuild overfished stocks under new overfishing definitions; implementation of a two-tier permit system to address latent fishing effort; proposals for industry support systems involving scientific research and conservation engineering programs, including exemptions or other incentive programs for participation in scientific or gear research; modification of the annual adjustment schedule and possible change to the fishing year; and including quotas as a management tool within the FMP.

Friday, February 12, 1999, 10:00 a.m.—Gear Conflict Committee Meeting

Location: Holiday Inn at the Crossings, 801 Greenwich Avenue, Warwick, RI 02886; telephone: (401) 732–6000.

Agenda: Development of alternatives to address gear conflicts between lobster and trawl gear fishermen in the offshore canyon areas south of New England; identification of gear conflict issues to be considered during future discussions to allow scallop vessel access to the groundfish closed areas.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 21, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1874 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011999C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for Pacific whiting will hold a work session which is open to the public.

DATES: The Pacific whiting Stock Assessment Review Panel will meet beginning at 10:00 a.m., February 17, 1999 and continue until 5:00 p.m. on February 18, 1999 or as necessary to complete business.

ADDRESSES: The Pacific whiting Stock Assessment Review Panel meeting will be held at the Best Western Pacific Inn Resort and Conference Center, Costa Rica Room, 1160 King Georges Highway, White Rock, British Columbia, Canada, V4A 4C2; telephone: (604) 535–1432.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Although other issues not contained in this agenda may come before the Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 21, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1873 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012199B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a public meeting in conjunction with a workshop to review new information on groundfish harvest rates.

DATES: The GMT meeting will be held on Monday, February 22, 1999 beginning at 1:00 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8:00 a.m. to 5:00 p.m. on Tuesday, February 23, and from 8:00 a.m. to noon on Wednesday, February 24. At 1:00 p.m. on Wednesday, February 24, the workshop on groundfish harvest policies will convene. The workshop will continue on Thursday, February 25 from 8:00 a.m. to 5:00 p.m. and on Friday, February 26, from 8:00 a.m. to noon or as necessary.

ADDRESSES: The meeting will be held at the Hatfield Marine Science Center, Meeting Room #9, 2030 S. Marine Science Drive, Newport, OR; telephone: (541) 867–0249.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the GMT meeting is to develop a work plan for 1999 and to prepare technical advice and reports to support Council decisions throughout the year. Specific agenda items will include: (1) appoint representatives to track assessments in the stock assessment review process; (2) prepare a work plan for 1999 GMT activities; (3) review methodology for developing inseason catch projections and potential open access trip limit adjustments; (4) evaluate data and analysis requirements related to lingcod and rockfish allocation and management; (5) review program cost estimates for an observer program; (6) review new information related to the status of the Pacific whiting stock and develop an acceptable biological catch/optimum yield recommendation; and (7) discuss the review of harvest policies.

Starting on Wednesday, February 24, 1999, the GMT and other participants at the harvest policy workshop will hear recent information regarding appropriate harvest rates for various groundfish species. Some investigations indicate current harvest policies (F_{35}% and F_{40}%) may not adequately protect stocks and may not produce the maximum sustainable yield. This workshop will primarily be a presentation of new information and analysis. A follow-up workshop will be held in March 1999, after which the GMT will prepare specific recommendations and a final report to the Council on appropriate harvest rates.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 21, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1875 Filed 1–26–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission.

TIME AND DATE: 10:00 a.m., Wednesday, February 3, 1999.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Bunk Beds

The Commission will consider options to address the hazard of children's entrapment in bunk beds.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway., Bethesda, MD 20207 (301) 504–0800.

Dated: January 25, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–2065 Filed 1–25–99; 3:33 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Motor Vehicle Traffic Accident Report; AF Form 1315; OMB Number 0701–0133.

Type of Request: Reinstatement.

Number of Respondents: 20,000.

Responses Per Respondent: 1.

Annual Response: 20,000.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 5,000.

Needs and Uses: The information collection requirement is necessary to record information and details of traffic accidents involving damage to government vehicles or fixed government property and fatal or nonfatal personal injury. The completed form is used as a source document to record information and details of traffic accidents which may: (1) Require investigative action by commanders, security police, and other law enforcement/investigative authorities; and/or, (2) require possible criminal prosecution and civil court actions. The form also provides information to appropriate individuals and organizations within DoD and appropriate law enforcement authorities who ensure proper legal and administrative actions are taken. Failure to collect data from witnesses and complainants will: (1) Prevent the identification of offenders; (2) prevent the determination of accident cause/liability; and, (3) prevent the resolution of the accident through subsequent legal and administrative actions.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 20, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–1790 Filed 1–26–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense, Advisory Committee on Women in the Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming Quarterly Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Executive Committee Meeting is to review the responses to the recommendations and request for information adopted by the committee at the DACOWITS 1998 Fall Conference.

DATES: February 8, 1999, 9:15 a.m.–4:00 p.m.

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Sandy Lewis, ARNGUS, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: Meeting agenda:

Monday, February 8, 1999

Time	*Event*
9:15–9:29 a.m	Introductions (3E869—SecDef Conf Rm, (Open to Public).
9:30–10:59 a.m	Naval Ship Berthing Briefing (Open to Public).
11:00 a.m.–14:14 p.m	Break for lunch and member Training (DACOWITS Members Only).
2:15–3:44 p.m	Subcommittee Chairs Review Conference Materials for the 1999 Spring Conference to be held 28 April–2 May at the Washington Dulles Airport Hilton Hotel, Herndon, VA (Open to Public).
3:45–4:00 p.m	Wrap Up, Review 1999 Mission, Vision & Goals and Discuss Spring Conference & Summer Overseas Trip (Open to Public).
4:15 p.m	DACOWITS members depart.

Dated: January 21, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–1789 Filed 1–26–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on February 26, 1999 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 21, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–85 DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Army Substance Abuse Program (ASAP) rehabilitation/ counseling facilities (e.g., Community Counseling Center/ASAP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Secondary location: Army Center for Substance Abuse Program, ATTN: PEDA, Suite 320, 4501 Ford Avenue, Alexandra, VA 22302 1460.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Eligible military members, civilians employees, family members of military members and retirees who are screened and/or enrolled in the ASAP, and those federal civilians in testing designated positions.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Primary location: Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, Patient Intake/ Screening record-PIR (DA Form 4465-R); Patient Progress Report-PPR (DA Form 4466-R); Resource and Performance Report (DA Form 3711-R); and Specimen Custody Document-Drug Testing (DD Form 2624), and similar or related documents.

Secondary location: Copies of Patient Intake/Screening record-PIR (DA Form 4465-R); Patient Progress Report-PPR (DA Form 4466-R); Resource and Performance Report (DA Form 3711-R); and Specimen Custody Document-Drug Testing (DD Form 2624), and demographic composites thereof.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 290dd-2; Federal Drug Free Workplace Act of 1988; Army Regulation 600-85, Army Substance Abuse Program; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'To identify alcohol and drug abusers within the Army; to treat, counsel, and rehabilitate individuals who participate in the Army Substance Abuse Program; to judge the magnitude of drug and alcohol abuse in the Army.'

* * * * *

A0600–85 DAPE

SYSTEM NAME:

Alcohol and Drug Abuse Rehabilitation Files.

SYSTEM LOCATION:

Primary location: Army Substance Abuse Program (ASAP) rehabilitation/ counseling facilities (e.g., Community Counseling Center/ASAP Counseling Facilities) at Army installations and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Secondary location: Army Center for Substance Abuse Program, ATTN: PEDA, Suite 320, 4501 Ford Avenue, Alexandra, VA 22302–1460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible military members, civilians employees, family members of military members and retirees who are screened and/or enrolled in the Army Substance Abuse Program (ASAP), federal civilians in testing designated positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Primary location: Copies of patient intake records, progress reports, psychosocial histories, counselor observations and impressions of patient's behavior and rehabilitation progress, copies of medical consultation and laboratory procedures performed, results of biochemical urinalysis for alcohol/drug abuse, Patient Intake/ Screening record-PIR (DA Form 4465-R); Patient Progress Report-PPR (DA Form 4466-R); Resource and Performance Report (DA Form 3711-R); and Specimen Custody Document-Drug Testing (DD Form 2624), and similar or related documents.

Secondary location: Copies of Patient Intake/Screening record-PIR (DA Form 4465-R); Patient Progress Report-PPR (DA Form 4466-R); Resource and Performance Report (DA Form 3711-R); and Specimen Custody Document-Drug Testing (DD Form 2624), and demographic composites thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 290dd-2; Federal Drug Free Workplace Act of 1988; Army Regulation 600-85, Army Substance Abuse Program; and E.O. 9397 (SSN).

PURPOSE(S):

To identify alcohol and drug abusers within the Army; to treat, counsel, and rehabilitate individuals who participate in the Army Substance Abuse Program; to judge the magnitude of drug and alcohol abuse in the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to this system.

The Patient Administration Division at the medical treatment facility with jurisdiction is responsible for the release of medical information to malpractice insurers in the event of malpractice litigation or prospect thereof.

Information is disclosed only to the following persons/agencies:

To health care components of the Department of Veterans Affairs furnishing health care to veterans.

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel conducting scientific research, audits, or program evaluations, provided that a patient may not be identified in such reports, or his or her identity further disclosed by such personnel.

In response to a court order based on the showing of good cause in which the need for disclosure and the public's interest is shown to exceed the potential harm that would be incurred by the patient, the physician-patient relationship, and the Army's treatment program. Except as authorized by a court order, no record may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

NOTE: Records of identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked metal containers; computer database; computer magnetic discs/tapes.

RETRIEVABILITY:

By patient's surname; Social Security Number or other individually identifying characteristics.

SAFEGUARDS:

Records are maintained in storage areas in locked file cabinets where access is restricted to authorized persons having an official need-to-know.

RETENTION AND DISPOSAL:

Primary location: Records are destroyed 5 years after termination of the patient's treatment, unless the Army Medical Department Activity/Facility commander authorizes retention for an additional 6 months.

Secondary location: Manual records are retained up to 18 months or until information taken therefrom and entered into computer records is transferred to the 'history' file, whichever is sooner. Disposal of manual records is by burning or shredding. Computer records are retained permanently for historical and/or research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army (DAPE-HR-PR), 300 Army Pentagon, Washington, DC 20320–3000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the commander of the medical center/medical department activity where treatment was obtained or the Army Center for Substance Abuse Programs, 4501 Ford Avenue, Suite 320, Alexandria, VA 22302–1460. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name, Social Security Number, date of birth, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

Denial to amend records in this system can be made only by the Deputy Chief of Staff for Personnel in coordination with The Surgeon General.

RECORD SOURCE CATEGORIES:

From the individual by interviews and history statement; abstracts or copies of pertinent medical records; abstracts from personnel records; results of tests; physicians' notes, observations of client's behavior; related notes, papers, and forms from counselor, clinical director, and/or commander.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–1788 Filed 1–26–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 26, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the

information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 21, 1999.

Kent H. Hannaman,

Leader,

Information Management Group,

Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Application for Grants under Bilingual Education: Training for all Teachers.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Burden:

Responses: 50.

Burden Hours: 7,080.

Abstract: The Department needs and uses this information to make grants. The respondents are local educational agencies, State educational agencies and institutions of higher education and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 99–1833 Filed 1–26–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.320A, 84.321A, and 84.322A]

Office of Elementary and Secondary Education; Notice Inviting Application for New Awards for Fiscal Year 1999

SUMMARY: The Secretary invites applications for new awards for fiscal year (FY) 1999 under three direct grant programs for Alaska Natives and announces deadline dates for the transmittal of application under these programs.

Date Applications Available: January 27, 1999.

Deadline for Transmittal of Applications: March 26, 1999.

Estimated Available Funds: Up to $2 million.

Note: The Secretary will hold a single competition for projects under all three programs described in this notice. These funds will be allocated among the highest-quality applications received. Applicants must submit a separate application for each program for which they apply.

Estimated Range of Awards: $50,000 to $2,000,000.

Project Period for all Programs: 36 months.

Note: The Department is not bound by any estimates in this notice. Funding estimates are for the first year of the project period only. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (*see* 34 CFR 75.253).

84.320A—Alaska Native Educational Planning, Curriculum Development, Teacher Training and Recruitment Program

Purpose of Program: To support projects that recognize and address the unique educational needs of Alaska Native students through consolidation, development, and implementation of educational plans and strategies to improve schooling for Alaska, Natives, development of curricula, and the training and recruitment of teachers. This program is authorized by section 9304 of the Elementary and Secondary Education Act.

Eligible Applicants: Alaska Native organizations or educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages, or partnerships involving Alaska Native organizations.

Program Authority: 20 U.S.C. 7934.

84.321A—Alaska Native Home-Based Education for Preschool Children.

Purpose of Program: To support home instruction programs for preschool Alaska Native children that develop parents as educators for their children and ensure the active involvement of parents in the education of their children from the earliest ages. This program is authorized by section 9305 of the Elementary and Secondary Education Act.

Eligible Applicants: Alaska Native organizations or educational entities with experience in developing or operating Alaska Native programs, or partnerships involving Alaska Native organizations.

Program Authority: 20 U.S.C. 7935.

84.322A—Alaska Native Student Enrichment Programs.

Purpose of Program: To support projects that provide enrichment programs and family support services for Alaska Native students from rural areas who are preparing to enter village high schools so that they may excel in sciences and mathematics. This program is authorized by section 9306 of the Elementary and Secondary Education Act.

Eligible Applicants: Alaska Native educational organizations or educational entities with experience in developing or operating Alaska Native programs, or partnerships including Alaska Native organizations.

Program Authority: 20 U.S.C. 7936.

Selection Criteria: The Secretary uses the selection criteria published in 34 CFR 75.209 and 75.210 to evaluate applications for the Alaska Native Educational Planning, Curriculum Development, Teacher Training and Recruitment Program: the Alaska Native Home-Based Education for Preschool Children Program; and the Alaska Native Student Enrichment Programs. The application package includes the selection criteria and the points assigned to each criterion.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86.

For Applications or Information Contact: Mrs. Lynn Thomas, U.S. Department of Education, 400 Maryland Avenue, SW, FOB6, Room 3C124, Mail Stop 6140, Washington, D.C. 20202. Telephone (202) 260–1541, or FAX: (202) 250–5630. Internet: Lynn__Thomas@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877/8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate

format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the Internet at either of the following sites:

http;//ocfo.ed.gov/fedreg.hmt
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530, or, toll free at 1–888–293–6498.

Dated: January 22, 1999.

Gerald N. Tirozzi,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–1866 Filed 1–26–99; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for a Transuranic Waste Treatment Facility at Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Notice of Intent.

SUMMARY: The U. S. Department of Energy (DOE) intends to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) and its implementing regulations on the proposed construction, operation, and decontamination/decommissioning of a Transuranic (TRU) Waste Treatment Facility at Oak Ridge, Tennessee. The four types of TRU waste that would be treated at the facility are remote-handled (RH)–TRU waste sludge, low-level radioactive waste supernatant associated with the sludge, contact-handled (CH)–TRU/alpha low-level radioactive waste solids, and RH–TRU/alpha low-level radioactive waste solids. Because much of the waste displays Resource Conservation and Recovery Act (RCRA) characteristics, the proposed facility would be permitted under RCRA. All the waste DOE proposes to treat currently is stored at Oak Ridge National Laboratory (ORNL) in Oak Ridge, Tennessee. The proposed site for the treatment facility is adjacent to the Melton Valley Storage Tanks, where the waste sludge and supernatant are being stored.

DOE invites the public, organizations, and agencies to present oral or written comments concerning the scope of the EIS, including the issues the EIS should address and the alternatives it would analyze.

DATES: The public scoping period begins on the date of this publication and continues until February 26, 1999. Written comments submitted by mail should be postmarked by the closing date to ensure consideration. Comments mailed after that date will be considered to the extent practicable.

DOE will conduct public scoping meetings to assist in defining the appropriate scope of the EIS and to identify significant environmental issues to be addressed. These meetings will be held at the following time(s) and location:

February 11, 1999, American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee 37830; Time: 6:30–9:30 p.m.

February 16, 1999, American Museum of Science and Energy, 300 South Tulane Avenue, Oak Ridge, Tennessee 37830; Time: 6:30–9:30 p.m.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS, requests to speak at the public scoping meetings, requests for special accommodations to enable participation at scoping meetings (e.g., interpreter for the hearing-impaired), and questions concerning the project to: Gary L. Riner, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, Tennessee 37831, telephone: (423) 241–3498, facsimile: (423) 576–5333, or e-mail rinerg@oro.doe.gov.

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585–0119, telephone: (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

Research and development activities supporting national defense and energy initiatives have been performed at ORNL since its construction in eastern Tennessee in 1943, generating radioactive and hazardous waste legacies that now pose environmental concerns. Meeting the cleanup challenges associated with legacy TRU waste is a high priority for the DOE, Tennessee Department of Environment and Conservation (TDEC), and stakeholders. The TRU waste treatment project at the ORNL will be an important component of DOE cleanup efforts at the site.

TRU waste is radioactive waste that is not classified as high-level radioactive waste and that contains more than 100 nanocuries per gram of alpha-emitting transuranic (atomic numbers greater than 92) isotopes with half-lives greater than 20 years. Alpha low-level radioactive waste contains alpha-emitting transuranic isotopes with half-lives greater than 20 years at concentrations less than 100 nanocuries per gram.

The TRU waste to be treated also contains beta- and gamma-emitting isotopes in addition to alpha-emitting isotopes, which result in its classification as either CH (surface dose rate of 200 mrem/hr or less) or RH (surface dose rate of greater than 200 mrem/hr).

Solid waste at ORNL is a heterogeneous mixture consisting of paper, glass, rubber, cloth, plastic, and metal from glove boxes, fuel processing, hot cells, and reactors. Solid waste is currently packaged in metal boxes, drums and concrete overpacks, and stored in RCRA permitted facilities. Most of the solid waste containers do not meet current Department of Transportation regulations and would require repackaging prior to shipment.

Based on generator records, the solid waste has been classified as either TRU or alpha low-level radioactive waste. However, because the nature of the solid waste can only be confirmed after retrieval and characterization, solid wastes addressed in this Notice of Intent are characterized as "TRU/alpha low-level radioactive waste" to note the current uncertainty. The solid waste may contain RCRA characteristic metals, but generator records do not indicate the presence of any RCRA listed constituents. The supernatant, the liquid layer covering the sludge in the tanks, is considered a low-level waste but is not considered hazardous under the RCRA definitions.

Approximately 62 percent of the legacy TRU wastes are currently stored in 50 year-old tanks. The remaining 38 percent of the legacy TRU wastes are currently stored in subsurface trenches, vaults, and metal buildings.

Approximate quantities of the four primary waste streams needing

treatment are: 900 m^3 of RH–TRU sludge, located in the tanks; 1600 m^3 of low-level supernatant, located in tanks; 550 m^3 of RH–TRU waste/alpha low-level radioactive waste solids in vaults and trenches; and 1,000 m^3 of CH–TRU waste/alpha low-level radioactive waste solids in metal buildings.

Purpose and Need for Agency Action

The DOE needs to ensure the safe and efficient retrieval, processing, certification, and disposition of legacy TRU waste at ORNL. There are legal mandates for DOE to address TRU waste management needs. DOE has been directed by the TDEC and the U. S. Environmental Protection Agency (EPA) to address environmental issues including disposal of its legacy TRU waste. DOE is under a Commissioner's Order issued by the State of Tennessee (September 1995) to implement the Site Treatment Plan, under the Federal Facility Compliance Act, that mandates specific requirements for the processing and disposal of ORNL's TRU waste. The primary milestone in the Commissioner's Order is that DOE begin processing TRU sludge in order to make the first shipment to the Waste Isolation Pilot Plant (WIPP) (a DOE transuranic waste disposal facility) in New Mexico by January 2003. In addition, two Records of Decision issued in connection with the Federal Facility Agreement among EPA, TDEC, and DOE, under the Comprehensive Environmental Response, Compensation, and Liability Act, mandate that the waste from the Gunite and Associated Tanks Project (in Bethel Valley) and the Old Hydrofracture Facility Tanks Project (in Melton Valley) be processed and disposed of along with the TRU waste from the Melton Valley Storage Tanks.

Waste retrieval operations are currently underway to prepare ORNL TRU waste storage tanks for closure, and the waste removed from the Bethel Valley tanks will be consolidated in the Melton Valley Storage Tanks before processing. After processing, TRU waste must be certified for shipment to and disposal at WIPP, and any low-level radioactive waste resulting from TRU waste processing must be certified for shipment to and disposal at the DOE site(s) to be selected in a Record of Decision for the Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (WM PEIS) (DOE/EIS–0200–F, May 1997). No facilities for processing TRU/alpha low level radioactive waste exist at the Oak Ridge Reservation.

Proposed Action and Alternatives

Proposed Action

Under the proposed action, a waste treatment facility for the ORNL legacy TRU waste would be constructed, operated, and decontaminated/decommissioned under a contract awarded to the Foster Wheeler Environmental Corporation. Under the contract, the action would be carried out in four phases: Phase I, Licensing and Permitting (currently in process, includes DOE's NEPA analysis and contractor design activities); Phase II, Construction and Pre-Operational Testing; Phase III, Treatment and Packaging; Phase IV, Decontamination and Decommissioning. If the current NEPA review results in the selection of an alternative other than the proposed action, Phase II (Construction and Pre-Operational Testing) of the contract would not be executed. Waste volume reduction would be a major component of the processing in order to minimize waste generation and costs and to conserve resources. After processing, the waste would be certified for disposal as either low-level radioactive, alpha low-level radioactive, or TRU waste, as discussed above.

All activities associated with the proposed action must be performed safely and in compliance with applicable Federal and state regulatory requirements. Foster Wheeler Environmental Corporation would be responsible for achieving compliance with all applicable environmental, safety and health laws and regulations, and regulatory agencies would be responsible for monitoring the Corporation's compliance. The State of Tennessee and EPA would regulate the Corporation according to permits under their purview. DOE would regulate occupational safety and health and nuclear safety according to specific environment, safety and health requirements.

DOE would lease the Melton Valley Storage Tanks, subject to notification of EPA and the State of Tennessee, and an adjacent land area totaling approximately 10 acres to Foster Wheeler Environmental Corporation for construction of the facility. The Melton Valley Storage Tanks are separate from ORNL's main plant area. The proposed treatment facility would be fenced, with controlled access to Tennessee State Highway 95.

Foster Wheeler Environmental Corporation has proposed a process of evaporating and drying the sludges and supernatant that is flexible enough to address a wide range of waste properties. The low temperature treatment would reduce waste volume, generate additional waste as a result of treatment, and meet specified waste acceptance criteria. To ensure that the waste would meet RCRA Land Disposal Restrictions (LDR) standards, additives that reduce the solubility of the RCRA metals in the waste would be added to form stable compounds. The dried stabilized sludge would pass the Toxic Characteristic Leaching Procedures and no longer exhibit a RCRA characteristic. The relatively inexpensive stabilization process could be easily performed during the overall treatment process and would result in waste that meets the LDR treatments standards and could be stored on site, if necessary, pending disposal. The supernatant would be dried for final disposal at an approved DOE low-level radioactive waste disposal site consistent with a WM PEIS Record of Decision yet to be issued for low-level radioactive waste. Segregation of the supernatant from the sludge would result in significant life-cycle cost avoidance when compared to disposal at WIPP.

The proposed action includes no treatment for the bulk of the solid waste that is not regulated under RCRA other than repackaging with some compaction to meet the 50% volume reduction required by the contract. The solid waste would be better characterized during the repackaging effort to achieve final waste form certification before disposal. RCRA characteristic items would be isolated for macroencapsulation or other processing techniques to comply with applicable RCRA LDRs. This would ensure that alpha low-level radioactive waste would meet non-RCRA low-level waste disposal requirements and comply with RCRA LDRs if interim storage is required on site.

Alternatives

DOE will consider alternatives to the proposed action, such as shipment of TRU wastes to other DOE sites for processing, alternative technologies for sludge waste, and no action. Under a shipment alternative, DOE would ship CH-TRU/alpha low-level and RH–TRU/alpha low-level radioactive waste solids to other DOE site(s) for processing. Most of the solid waste containers do not meet current Department of Transportation regulations and would require repackaging prior to shipment. After processing, the waste would be certified for disposal as either low-level radioactive, alpha low-level radioactive, or TRU waste and transported to appropriate disposal facilities. Under a treatment alternative, DOE would process RH–TRU sludge waste and the

low-level radioactive waste supernatant associated with the sludge by using vitrification or grouting technology. This alternative would include no treatment for the bulk of the solid waste that is not regulated under RCRA other than repackaging with some compaction. The solid waste would be better characterized during the repackaging effort to achieve final waste form certification before disposal. RCRA characteristic items would be isolated for macroencapsulation or other processing techniques to comply with applicable RCRA LDRs. This would ensure that alpha low-level radioactive waste would meet non-RCRA low-level waste disposal requirements and comply with RCRA LDRs if interim storage is required on site.

As required by the Council on Environmental Quality's (CEQ's) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), a no action alternative will be evaluated. Under this alternative, DOE would continue to store the TRU waste in tanks, subsurface trenches, vaults, and metal buildings, as discussed in the Background section, above.

Preliminary Environmental Analysis

DOE incorporated environmental information very early in the project planning. Prior to selection of the contractor, DOE held two public meetings with stakeholders, had ongoing discussions with regulators, prepared a characterization report for the site of the proposed action, and sponsored an independent study of treatment technologies and contracting alternatives known as the Parallax study (ORNL/M–4693, Feasibility Study for Processing ORNL TRU Waste in Existing and Modified Facilities, September 15, 1995) (available in the public reading rooms listed below). Bidders were required to submit environmental data, and DOE prepared an environmental critique (under 10 CFR 1021.216) for consideration in the procurement process. A synopsis of this critique has been filed with the EPA and made available to the public.

NEPA Process

The EIS for the proposed project will be prepared according to the National Environmental Policy Act of 1969, the CEQ NEPA regulations, and DOE's NEPA Implementing Procedures (10 CFR Part 1021).

Through the NEPA process begun with this Notice of Intent, DOE will continue to analyze environmental impacts and evaluate alternative actions while Phase I of the awarded contract is underway. The EIS for the proposed TRU waste treatment will incorporate pertinent analyses performed as part of the DOE's WIPP Disposal Phase Supplemental Environmental Impact Statement (DOE/EIS–0026–S–2, September, 1997) and the WM PEIS. Processing the ORNL TRU waste in Oak Ridge is consistent with the Records of Decision issued for management of the transuranic waste for the aforementioned Environmental Impact Statements (63 FR 3624 and 3629, respectively, January 23, 1998). The disposal of low-level radioactive waste included in this contract will be consistent with the WM PEIS ROD for low-level waste that is yet to be issued.

The contract allows DOE and Foster Wheeler Environmental Corporation to identify during Phase I other potential waste streams for processing at this facility. Any such waste streams would be considered in this EIS and subject to further NEPA review, as appropriate.

Preliminary Identification of EIS Issues

DOE intends to address the following issues when assessing the potential environmental impacts of the alternatives in this EIS. DOE invites comment on these and any other issues that should be addressed in the EIS.

—Potential effects on air, soil, and water quality from normal operations and reasonably foreseeable accidents.
—Potential effects on the public, including minority and low-income populations, and workers from exposure to radiological and hazardous materials from normal operations and reasonably foreseeable accidents.
—Compliance with applicable Federal, state, and local requirements and agreements.
—Pollution prevention, waste minimization, and energy and water use reduction technologies to eliminate or reduce use of energy, water, and hazardous substances and to minimize environmental impacts.
—Potential socioeconomic impacts, including potential impacts associated with the workforce needed for operations.
—Potential cumulative environmental impacts of past, present, and reasonably foreseeable future operations, including impacts from using the proposed facility for potential waste streams other than those currently being proposed.
—Potential irreversible and irretrievable commitment or resources.

Related NEPA Reviews

Final Waste Management Programmatic Environmental Impact Statement for Managing Treatment, Storage, and Disposal of Radioactive and Hazardous Waste (DOE/EIS–0200–F, May 1997); Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement (DOE/EIS–0026–S–2, September 1997); and Advanced Mixed Waste Treatment Project at the Idaho National Engineering and Environmental Laboratory Environmental Impact Statement (DOE/EIS–0290–F, to be issued January 1999).

Scoping Meetings

The purpose of this NOI is to encourage early public involvement in the EIS process and to solicit public comments on the proposed scope of the EIS, including the issues and alternatives it would analyze. DOE plans to hold public scoping meetings in Oak Ridge to solicit both oral and written comments from interested parties. See **DATES** and **ADDRESSES**, above, for the times and locations of these meetings.

DOE will designate a presiding officer for the scoping meetings. The scoping meetings will not be conducted as evidentiary hearings, and there will be no questioning of the commentors.

However, DOE personnel may ask for clarification of statements to ensure that they fully understand the comments and suggestions. The presiding officer will establish the order of speakers. At the opening of each meeting, the presiding officer will announce any additional procedures necessary for the conduct of the meetings. If necessary to ensure that all persons wishing to make a presentation are given the opportunity, a five-minute limit may be applied for each speaker, except for public officials and representatives of groups who would be allotted ten minutes each. Comment cards will also be available for those who would prefer to submit written comments.

DOE will make transcripts of the scoping meetings and other environmental and project-related materials available for public review in the following reading rooms:

U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1 E–190, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 586–3142

U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Room G–217, Oak Ridge, Tennessee 37831, Telephone: (423) 241–4780.

EIS Schedule

The draft EIS is scheduled to be published by August 1999. A 45-day comment period on the draft EIS is planned, and public hearings to receive comments will be held approximately one month after issuance. Availability of the draft EIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in the local news media.

The final EIS, which will incorporate public comments received on the draft EIS, is scheduled for January 2000. A Record of Decision would be issued no sooner than 30 days after a notice of availability of the final EIS is published in the **Federal Register**.

Signed in Washington, DC, this 21st day of January 1999.

Peter N. Brush,

Principal Deputy Assistant Secretary Environment, Safety and Health.

[FR Doc. 99–1856 Filed 1–26–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–156–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 21, 1999.

Take notice that on January 14, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–1046, filed in Docket No. CP99–156–000 a request pursuant to Sections 157.205 and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon approximately 0.05 miles of 4- and 8-inch pipeline and a point of delivery under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia requests authorization to abandon approximately 0.05 miles of 4- and 8-inch pipeline and a point of delivery to Columbia Gas of Pennsylvania, Inc. (CPA), all located in Elk County, Pennsylvania. Columbia states that the pipeline will be abandoned in place and all above ground facilities will be removed. CPA states that it no longer requires service from this point of delivery.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1819 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–155–00]

Columbia Gas Transmission Corporation; Notice of Application

January 21, 1999.

Take notice that on January 13, 1999, Columbia Gas Transmission Corporation (Columbia), filed in Docket No. CP99–155–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon natural gas service currently provided by Columbia to Orange and Rockland Utilities, Inc. (O&R) and UGI Corporation (UGI) under its Rate Schedule X–124, and to abandon the operation of two segments of pipeline owned by O&R and UGI, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, Columbia proposes to abandon: (i) the transportation service currently provided under its Rate Schedule X–124 and, (ii) the certificate authority to operate the facilities located in Steuben and Allegany Counties, New York, that were constructed to provide the service proposed to be abandoned. Columbia states that its Rate Schedule X–124 provided for firm transportation service by Columbia to O&R for 4,600 Dth/d and to UGI Utilities, Inc., the successor in interest to UGI, for 22,400 Dth/d. Columbia states that the service, facilities and Columbia's authorization to lease and operate the facilities were approved by the Commission on June 28, 1984 in Docket No. CP83–478. Columbia also states that as it does not own the subject facilities, no facilities will be physically abandoned or removed by Columbia as a result of the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 11, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–1820 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS87–36–002]

Endicott Pipeline Company; Notice Approving First Amendment Settlement

January 21, 1999.

Take notice that on January 12, 1999, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, the State of Alaska (State) and Endicott Pipeline Company (EPC) filed a petition, asking the Commission to approve the "First Amendment to Settlement Agreement Between State of Alaska and Endicott Pipeline Company" (First Amendment). The petitioners state that the First Amendment amends the "Endicott Settlement Agreement," which established the method for calculating rates for the Endicott Pipeline, and was approved in *Endicott Pipeline Co.*, 63 FERC ¶61,076 (1993).

The petitioners further state that the changes the First Amendment makes to the Endicott Settlement Agreement are required because of the recent connection to the Endicott Pipeline by the Badami Oil Pipeline. The Endicott Settlement Agreement did not provide a method for allocating costs among deliveries originating at different receipt points in case of such a connection. The First Amendment adopts a barrel-mile allocation methodology, which the petitioners state is consistent with the cost allocation method the Commission has approved for use by the Trans Alaska Pipeline System.

The State and EPC indicate that they have served the foregoing Petition to amend the Endicott Settlement Agreement upon all subscribers to Endicott Pipeline Company's tariffs.

Initial comments on the filing are due on or before February 1, 1999, and any reply comments are due on or before February 11, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–1821 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–148–001]

Garden Banks Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

January 21, 1999.

Take notice that on January 15, 1999, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 10, 1998.

GBGP states that the purpose of this filing is to correctly reflect the authorized changes on GBGP's Original Volume No. 1, FERC Gas Tariff that were approved in Docket Nos. RP99–148–000 and RP99–5–001 dated December 7, 1998 and December 10, 1998 respectively.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1816 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–143–001]

Nautilus Pipeline Co., L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

January 21, 1999.

Take notice that on January 15, 1999, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 12, 1998.

Nautilus states that the purpose of this filing is to correctly reflect the authorized changes on Nautilus' Original Volume No. 1, FERC Gas Tariff that were approved in Docket Nos. RP99–143–000 and RP99–4–001 dated December 7, 1998 and December 10, 1998 respectively.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1815 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–148–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

January 21, 1999.

Take notice that on January 12, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–148–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate certain interconnect facilities as a new delivery point to The Peoples Gas Light and Coke Company (Peoples). Northern Border makes such request under its blanket certificate issued in Docket No. CP84–420–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Specifically, Northern Border requests authorization to construct and operate a 16-inch tee and valve to serve as a delivery point to Peoples in Will County, Illinois. It is indicated that the facility will be known as the Elwood delivery point. The estimated cost of Northern Border's proposed facilities is $95,000—and it is stated that Northern Border will be reimbursed for all costs

incurred for constructing the proposed delivery point.

It is stated that the natural gas volumes to be delivered at the proposed delivery point are volumes which will be transported by Northern Border. Northern Border states its intent to deliver up to 240,000 Mcf on a peak day and an estimated 11 Bcf annually to Peoples. It is averred that the natural gas volumes received from Northern Border will be used for electrical generation, by an electric generation facility presently being built by Elwood Energy, LLC (Elwood Energy)—and that Elwood Energy will need natural gas volumes at the plant by approximately April 1, 1999.

Northern Border further states that the proposal is not prohibited by its existing tariff, and Northern Border asserts that it has sufficient capacity in its system to accomplish delivery of gas to the proposed delivery point without detriment or disadvantage to any of its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1817 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–154–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

January 21, 1999.

Take notice that on January 13, 1999, Southern Natural Gas Company (Southern), AmSouth-Sonat Tower, 1900 Fifth Avenue, North, Birmingham, Alabama 35203, filed in Docket No. CP99–154–000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to install and operate a delivery tap, offshore Louisiana, under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to install and operate a delivery tap in order to deliver gas to Chevron USA Inc. (Chevron) for use as gas lift gas on its offshore production platform in Main Pass Block 133A, offshore Louisiana. Chevron plans to construct and install a 2-inch meter station on Chevron's existing Main Pass Block 133A Platform at or near Lambert Grid Coordinates X=2,861,490.381 and Y=276,276.751, Main Pass Block 133A, offshore Louisiana. Southern estimates that the cost of installing the meter station is approximately $40,000 for which Chevron will pay the actual cost of installing.

Southern states that it will transport gas to Chevron pursuant to a service agreement between Southern and Chevron, or its designated agent, under Southern's Rate Schedule IT. Southern further states that Chevron anticipates receiving on average 1,200 Mcf of natural gas per day at the proposed facilities. Southern states that the operation of the proposed facilities will have no significant effect on its peak day or annual requirements. Southern states that this proposal will be without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1818 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. EG99–60–000, et al.]

AES Jennison, L.L.C., et al. Electric Rate and Corporate Regulation Filings

January 19, 1999.

Take notice that the following filings have been made with the Commission:

1. AES Jennison, L.L.C.

[Docket No. EG99–60–000]

Take notice that on January 14, 1999, AES Jennison, L.L.C. (AES Jennison), c/o Henry Aszklar, 1001 North 19th Street, Arlington, Virginia 22209, filed with the Federal Energy Regulatory Commission, an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

AES Jennison is a Delaware limited liability company. AES Jennison intends to operate and maintain, under an operation and maintenance agreement, the generating station currently known as the Jennison Station, Route 7, Bainbridge, New York 13733, which is comprised of two steam turbine units (Units 1 and 2) with a maximum aggregate generating capacity of approximately 71 MW. Electricity generated by the facility will be sold at wholesale by the owner of the facility to one or more power marketers, utilities, cooperatives, or other wholesalers.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Duke Power Co. and PanEnergy Corp.

[Docket No. EC97–13–000]

Take notice that on January 12 1999, Duke Energy Corporation (Duke Energy) tendered for filing a letter notifying the Commission of the means by which control over the jurisdictional assets of Duke/Louis Dreyfus, L.L.C. (D/LD) will be transferred to Duke Energy Trading and Marketing L.L.C. (DETM). The Commission approved the transfer of such control in its May 28, 1997 Order Approving Merger in this proceeding.

Duke Power Co., 79 FERC ¶ 61,236. Duke Energy states that control will be transferred by an assignment of D/LD's jurisdictional assets to DETM.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. AES Hickling, L.L.C.

[Docket No. EG99–61–000]

Take notice that on January 14, 1999, AES Hickling, L.L.C. (AES Hickling), c/o Henry Aszklar, 1001 North 19th Street, Arlington, Virginia 22209, filed with the Federal Energy Regulatory Commission, an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

AES Hickling is a Delaware limited liability company. AES Hickling intends to operate and maintain, under an operation and maintenance agreement, the generating station currently known as the Hickling Station, 11884 Hickling Station, Corning, New York 14830, which is comprised of two steam turbine units (Units 1 and 2) with a maximum aggregate generating capacity of 85 MW. Electricity generated by the facility will be sold at wholesale by the owner of the facility to one or more power marketers, utilities, cooperatives, or other wholesalers.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Central Maine Power Company v. FPL Energy Maine, Inc.

[Docket No. EL99–28–000]

Take notice that on January 13, 1999, Central Maine Power Company filed pursuant to Section 207(a)(2) of the Federal Power Act a petition for declaratory order and request for expedited order on scope of prior commission orders issued October 29, 1998.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company

[Docket No. ER98–4159–001]

Take notice that on January 14, 1999, Duquesne Light Company tendered for filing a revised Code of Conduct as an amended compliance filing to the Code of Conduct filed in compliance with the Commission's October 2, 1998, Order in Docket No. ER98–4159–000.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER99–1257–000]

Take notice that on January 13, 1999, the Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 2, to its partial requirements service agreement with Washington Island Electric Cooperative (WIEC), Door County, Wisconsin. Supplement No. 2, provides WIEC's contract demand nominations for January 1999—December 2002, under WPSC's W–2A partial requirements tariff and WIEC's applicable service agreement.

The company states that copies of this filing have been served upon WIEC and to the State Commissions where WPSC serves at retail.

Comment date: February 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER99–1258–000]

Take notice that on January 13, 1999, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, for service to the Northern Wasco County Pud (Wasco).

A copy of this filing has been served on the Arizona Corporation Commission and Wasco.

Comment date: February 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Ameren Services Company

[Docket No. ER99–1259–000]

Take notice that on January 13, 1999, Ameren Services Company (Ameren), tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and Allegheny Power and Soyland Power Cooperative, Inc. Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: February 3, 1999, in accordance with StandardParagraph E at the end of this notice.

9. Northern States Power Company (Minnesota Company)

[Docket No. ER99–1260–000]

Take notice that on January 13, 1999, Northern States Power Company (Minnesota) (NSP), tendered for filing an Interconnection Study Agreement dated October 21, 1998, between NSP and Lakefield Junction LLC (Lakefield).

NSP requests the Agreement be accepted for filing effective January 8, 1999 and requests waiver of the Commission's notice requirements in order for the termination notice to be accepted for filing on the date requested.

Comment date: February 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Energy East South Glens Falls, LLC

[Docket No. ER99–1261–000]

Take notice that on January 13, 1999, Energy East South Glen Falls, LLC (Glens Falls), tendered for filing with the Federal Energy Regulatory Commission and Glen Falls' Electric Power Sales Tariff, FERC Electric Rate Schedule No. 1, which permits Glen Falls to make wholesale power sales at market-based rates.

Glens Falls requests an effective date of January 14, 1999.

Notice of said filing has been served upon the New York State Public Service Commission.

Comment date: February 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. California Power Exchange Corporation

[Docket No. ER99–1262–000]

Take notice that on January 13, 1999, the California Power Exchange Corporation (PX), provided notice of a temporary, experimental deviation from the Hour-Ahead timeline contained in the PX's FERC-authorized tariff in order to test the efficiency benefits of a "Day-Of Market" timeline for a three-month period commencing January 17, 1999.

The PX states that it has served copies of its filing on the PX Participants and on the California Public Utilities Commission. The filing also has been posted on the PX website at http://www.calpx.com.

Comment date: February 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No. ER99–1263–000]

Take notice that on January 13, 1999, Portland General Electric Company (PGE), tendered for filing PGE FERC Electric Tariff, First Revised Volume No. 11 (Tariff), to revise its Market-Based Rates Tariff, Portland General Electric Company, FERC Electric Tariff, Original Volume No. 11.

PGE requests that the revised Tariff become effective on February 12, 1999.

A copy of this filing was served upon the Oregon Public Utility Commission.

Comment date: February 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Electric Power Company

[Docket No. ER99–1264–000]

Take notice that on January 13, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a revised interconnection agreement between itself and the City of Marquette, Michigan Board of Light and Power (Board) under Wisconsin Electric's FERC Rate Schedule No. 63. The submittal is filed to recognize the revised point of interconnection occasioned by the Board's purchase of 69 kV and related facilities from Upper Peninsula Power Company.

Wisconsin Electric respectfully requests an effective date of January 1, 1999, in order to allow economic coordination transactions to continue between the parties. Consequently, Wisconsin Electric requests waiver of the notice provisions of the Commission Regulations. Wisconsin Electric is authorized to state that the Board joins in the requested effective date.

Copies of the filing have been served on the Board, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Ameren Services Company

[Docket No. ER99–1266–000]

Take notice that on January 14, 1999, Ameren Services Company (Ameren Services), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Perry, Missouri (the City). Ameren Services asserts that the purpose of the Agreement is to permit Ameren Services to provide transmission service to the City pursuant to Ameren's Open Access Tariff.

Ameren Services requests that the Network Service Agreement and Network Operating Agreement filed herewith be allowed to become effective as of January 1, 1999.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Ameren Services Company

[Docket No. ER99–1267–000]

Take notice that on January 14, 1999, Ameren Services Company (ASC) as Agent for Union Electric Company (UE), tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and the City of Perry (the City), Missouri. ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to the City pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that as directed in the Commission's Order No. 888, the Service Agreement be allowed to become effective as of January 1, 1999.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Central Illinois Light Company

[Docket No. ER99–1268–000]

Take notice that on January 14, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an amendment of its Open Access Transmission Tariff to explicitly incorporate the transmission loading relief (TLR) procedures developed by the Northern American Electric Reliability Council (NERC) approved by the Commission in Docket No. EL98–52–000.

CILCO requested an effective date one day after its filing, and therefore respectfully requested waiver of the Commission's notice requirements.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER99–1269–000]

Take notice that on January 14, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing revisions to WPSC's W–2A and W–3, Partial Requirements Tariffs limiting future service under these tariffs to service agreements in effect as of January 14, 1999. WPSC also requests authorization to limit increases in firm service pursuant to these existing service agreements.

WPSC requests that the Commission make these revisions effective on January 14, 1999.

WPSC states that copies of this submittal have been served on the date of filing on all customers served under the W–2A and W–3, Tariffs and on the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Company

[Docket No. ER99–1270–000]

Take notice that on January 14, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing a Firm Transmission Service Agreement with Alliant Services Company/ Wisconsin Power and Light (Alliant), dated December 21, 1998, and entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of January 1, 1999, for the Agreement and, accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Alliant, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. The United Illuminating Company

[Docket No. ER99–1271–000]

Take notice that on January 14, 1999, The United Illuminating Company (UI), tendered for filing changes to the rate set forth in UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. The changes reflect a decrease in UI's rate of return and corresponding decrease in UI's rate for transmission service.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Company

[Docket No. ER99–1272–000]

Take notice that on January 14, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with The Energy Authority, Inc. (TEA), for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of March 15, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on TEA and the Florida Public Service Commission.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Tampa Electric Company

[Docket No. ER99–1273–000]

Take notice that on January 14, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with Sonat

Power Marketing L.P. (Sonat), for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of March 15, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Sonat and the Florida Public Service Commission.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Tampa Electric Company

[Docket No. ER99–1274–000]

Take notice that on January 14, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with LG&E Energy Marketing Inc. (LG&E Energy), for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of March 15, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on LG&E Energy and the Florida Public Service Commission.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Dayton Power and Light Company

[Docket No. ER99–1275–000]

Take notice that on January 14, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing with Ameren Services Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon with Ameren Services Company and the Public Utilities Commission of Ohio.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Dayton Power and Light Company

[Docket No. ER99–1276–000]

Take notice that on January 14, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Ameren Services Company as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Ameren Services Company and the Public Utilities Commission of Ohio.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Dayton Power and Light Company

[Docket No. ER99–1277–000]

Take notice that on January 14, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing TransAlta Energy Marketing (U.S.) Inc., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon TransAlta Energy Marketing (U.S.) Inc., and the Public Utilities Commission of Ohio.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Pacific Gas and Electric Company

[Docket No. ER99–1278–000]

Take notice that on January 14, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing a true-up to rates pursuant to Contract No. 14–06–200–2948A, PG&E Rate Schedule FERC No. 79 (Contract 2948A), between PG&E and the Western Area Power Administration (Western).

Pursuant to Contract 2948A and the PG&E-Western Letter Agreement dated February 7, 1992, electric energy sales are made initially at rates based on estimated costs and are then trued-up at rates based on recorded costs after the necessary data become available. The proposed rate change establishes recorded cost-based rates for true-up of energy sales from Energy Account No. 2, made during 1997, at rates based on estimated costs.

Copies of this filing have been served upon Western and the California Public Utilities Commission.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Niagara Mohawk Power Corporation

[Docket No. ER99–1279–000]

Take notice that on January 14, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Select Energy, Inc. This Transmission Service Agreement specifies that Select Energy, Inc., has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Select Energy, Inc., to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for Select Energy, Inc., as the parties may mutually agree.

Niagara Mohawk requests an effective date of January 8, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Select Energy, Inc.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Duquesne Light Company

[Docket No. ER99–1280–000]

Take notice that on January 14, 1999, Duquesne Light Company tendered for filing proposed changes to Duquesne's Open Access Transmission Tariff (OATT) and for an order accepting its proposed changes.

Duquesne has requested an effective date of January 1, 1999.

A copy of this filing was served on the Pennsylvania Public Utilities Commission and customers presently taking service under Duquesne's OATT.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services, Inc. Vastar Power Marketing, Inc.

[Docket No. ER99–1281–000]

Take notice that on January 14, 1999, Cinergy Services, Inc. (Cinergy) and Vastar Power Marketing, Inc. (Vastar), now a predecessor company of Southern Company Energy Marketing L.P., are requesting cancellations of Cinergy's Interchange Agreement Rate Schedule No. 52, and Vastar's Interchange Agreement Rate Schedule No. 2.

Cinergy and Vastar requests an effective date of one (1) day after this filing of the Notice of Cancellations and Narrative Statement.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Northeast Utilities Service Company

[Docket No. ER99–1282–000]

Take notice that on January 14, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric power to Rowley Municipal Light Plant.

NUSCO states that a copy of this filing has been mailed to Rowley Municipal Light Plant and the Massachusetts Department of Public Utilities.

NUSCO requests that the rate schedule change become effective on February 1, 1999.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Northeast Utilities Service Company

[Docket No. ER99–1283–000]

Take notice that on January 14, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with New Hampshire Electric Cooperative, Inc. (NHEC), under the NU System Companies' System Power Sales/Exchange Tariff No. 6 and a Letter Agreement for specific service under the Tariff.

NUSCO states that a copy of this filing has been mailed to NHEC.

NUSCO requests that the Service Agreement and the Letter Agreement become effective January 15, 1999.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Maine Public Service Company

[Docket No. ER99–1284–000]

Take notice that on January 14, 1999, Maine Public Service Company tendered for filing Amendments to Agreements for full requirements wholesale power with both Van Buren Light and Power Company, and with Eastern Maine Electric Cooperative. These Amendments correct a date for service.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Boston Edison Company

[Docket No. ER99–1285–000]

Take notice that on January 14, 1999, Boston Edison Company (Boston Edison), tendered for filing a facilities agreement between Boston Edison and New England Power Company in support of NEP's plan to add an emergency alternative 115 kV line to serve load in the City of Quincy, Massachusetts.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Dayton Power and Light Company

[Docket No. ER99–1286–000]

Take notice that on January 14, 1999, Dayton Power and Light Company (Dayton), tendered for filing an amendment to its Open Access Transmission Tariff to incorporate the transmission loading relief procedures developed by the North American Reliability Council approved by the Commission in Docket No. EL98–52.

Dayton requests an effective date of one day subsequent to this filing. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served on Dayton's transmission service customers and the Public Utilities Commission of Ohio.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Ameren Services Company

[Docket No. ER99–1287–000]

Take notice that on January 14, 1999, Ameren Services Company (Ameren), tendered for filing an amendment to its Open Access Transmission Tariff to explicitly incorporate the transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) approved by the Commission in Docket No. EL98–52–000.

Furthermore, Ameren Services requested an effective date coincident with its filing, and thereby respectfully requested a waiver of the Commission's notice requirements.

Copies of the filing have been served on Ameren Services transmission service customers, the Missouri Public Service Commission and the Illinois Commerce Commission.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Southwestern Public Service Company

[Docket No. ER99–1288–000]

Take notice that on January 14, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing notice indicating that the joint open access transmission tariff of Cheyenne Light, Fuel and Power Company (Cheyenne), Public Service Company of Colorado (PS Colorado), and Southwestern should be considered modified by NERC's TLR Procedures Amendment (Amendment). However, the Amendment shall only apply to Southwestern as Cheyenne and PS Colorado are not in the Eastern interconnect.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Atlantic City Electric Company

[Docket No. ER99–1289–000]

Take notice that on January 14, 1999, Atlantic City Electric Company submitted a quarterly report for transactions under its market-based rate sales tariff. The report is for the period July 1, 1998 through September 30, 1998.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Duquesne Light Company

[Docket No. ER99–1290–000]

Take notice that on January 14, 1999, Duquesne Light Company (Duquesne), tendered for filing Notice of an amendment to its Open Access Transmission Tariff to incorporate the transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) as approved by the Commission in Docket No. EL98–52–000.

Duquesne has requested an effective date of January 14, 1999.

A copy of this filing was served on the Pennsylvania Public Utilities Commission and customers presently taking service under Duquesne's OATT.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. South Carolina Electric & Gas Company

[Docket No. ER99–1291–000]

Take notice that on January 14, 1999, South Carolina Electric & Gas Company, in accordance with the Commission's Order On Petition For Declaratory Order issued in this docket on December 16, 1998, 85 FERC ¶ 61,353, tendered for filing notice stating that it uses the Transmission Line Relief (TLR) procedures of the North American Electric Reliability Council (NERC) and that SCE&G's Open Access Transmission Tariff should be considered modified by NERC's TLR procedures filed in Docket No. EL98–52–000 on October 7, 1998 in red-lined form.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. New York State Electric & Gas Corporation

[Docket No. ER99–1292–000]

Take notice that on January 14, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing executed Network Service and Network Operating Agreements between NYSEG and Amerada Hess Corporation. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG requests waiver of the Commission's 60-day notice requirements and an effective date of December 18, 1998, for the Agreement.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customer.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Southern Company Services, Inc.

[Docket No. ER99–1302–000]

Take notice that on January 14, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing Southern Company's notice to the Commission that Southern Company uses the Transmission Loading Relief Procedures (TLR) of the North American Electric Reliability Council (NERC) and Southern Company's Open Access Transmission Tariff (FERC Electric Tariff, Original Volume No. 5), should be considered modified to reflect the generic amendment adopted by the Commission in Docket No. EL98–52–000.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Western Resources, Inc.

[Docket No. ES99–20–000]

Take notice that on December 30, 1998, Western Resources, Inc. (Western Resources) submitted an application, under Section 204 of the Federal Power Act, for authorization to issue up to 3,000,000 shares of common stock, par value $5 per share, under its 1996 Long Term Incentive and Share Award Plan.

Western Resources also requested that the issuance of the securities be exempted from compliance with the Commission's competitive bidding and negotiated placement regulations.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

43. PP&L, Inc.

[Docket No. ES99–21–000]

Take notice that on January 11, 1999, PP&L, Inc. (Applicant) filed an Application under § 204 of the Federal Power Act seeking authority to issue up to $750 million on promissory notes and other evidences of secured and unsecured indebtedness maturing in less that one year from the date of issuance.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

44. El Paso Electric Company

[Docket No. ES99–22–000]

Take notice that on January 12, 1999, El Paso Electric Company (El Paso) filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to Section 204 of the Federal Power Act to enter into a replacement $100 million revolving credit facility, to issue replacement first mortgage bonds relating to the revolving credit facility, and to engage in related transactions for the purpose of refinancing of a revolving credit facility that provides up to $70 million for nuclear fuel purchases and up to $50 million (depending on the amount of borrowings outstanding for nuclear fuel purchases) for working capital needs. El Paso has asked that the Commission grant the requested authorizations no later than February 10, 1999.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

45. Coso Energy Developers (BLM Facility); Coso Finance Partners (Navy I Facility); Coso Power Developers (Navy II Facility); Salton Sea Power Generation L.P. (Salton Sea III Facility); Del Ranch, L.P.; Elmore, L.P.; Vulcan/BN Geothermal Power Co.; Power Resources, Inc.; (PRI Facility); Salton Sea Power Generation L.P.; Fish Lake Power Company (Salton Sea IV Facility); Norcon Power Partners, L.P.; Yuma Cogeneration Associates; Salton Sea Power Generation L.P.; (Salton Sea I Facility); Leathers, L.P.; Salton Sea Power Generation L.P. (Salton Sea II Facility)

[Docket Nos. QF86–590–008; QF84–327–006; QF86–591–008; QF86–1043–005; L.P.; QF86–727–007; QF86–647–006; QF85–199–006; QF86–930–006; QF95–9–003; QF89–299–005; QF90–143–004; QF87–511–006; QF88–543–004; and QF89–297–005]

On January 19, 1999, the above-named applicants, located at 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission in a single document combined applications for recertification of their facilities as qualifying small power production facilities and/or qualified cogeneration facilities. No determination has been made that the submittal constitutes a complete filing.

Recertification is sought to reflect the divestiture of half of the ownership interest in the facilities held by an upstream owner and a subsequent change in status of such owner.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

46. Saranac Power Partners, L.P.

[Docket No. QF90–114–007]

On January 19, 1999, Saranac Power Partners L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on June 5, 1990, in Docket No. QF90–114–000 and recertified the facility in Docket Nos. QF90–114–002. The Facility was self-recertified in Docket Nos. QF90–114–003, –004 and –005. Recertification is sought to reflect the divestiture of half of the ownership interest in the facility held by an upstream owner and a subsequent change in status of such owner.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1810 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–930–000, et al.]

SE Holdings, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

January 20, 1999.

Take notice that the following filings have been made with the Commission:

1. SE Holdings, L.L.C.

[Docket No. ER99–930–000]

Take notice that on January 14, 1999, SE Holdings, L.L.C., of Pittsburgh, Pennsylvania, a Delaware limited liability company, tendered for filing an amendment to a market based rate schedule which was submitted in this docket on December 16, 1998. The amendment edits certain provisions to both the rate schedule and the accompanying Code of Conduct which conform these filings more closely to the Commission's requirements and regulations.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of New Hampshire v. New Hampshire Electric Cooperative, Inc.

[Docket No. EL95–71–002]

Take notice that on January 13, 1999, the Public Service Company of New Hampshire tendered for filing an Amendment to Refund Report in the above-captioned matter. On October 6, 1998, the Commission ordered the Public Service Company of New Hampshire (PSNH) to recalculate bills and to refund with interest certain charges it had made to the New Hampshire Electric Cooperative, Inc. and to file a refund report with the Commission (85 FERC ¶ 61,044). PSNH filed its refund report on October 26, 1998. By letter dated December 29, 1998, the Commission's Division of Rate Applications informed PSNH that its refund report was deficient and directed PSNH to file an explanation of its refund calculation.

Copies of this filing were served upon New Hampshire Electric Cooperative, Inc., Bio Energy Corporation, and the Executive Director and Secretary of the New Hampshire Public Utilities Commission.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. K N Marketing, Inc.; MidCon Power Service Corp.; Energy Atlantic, LLC; Bangor Energy Resale, Inc.

[Docket Nos. ER95–869–014; ER94–1329–019; ER98–4381–001; and ER98–459–005]

Take notice that on January 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. Griffin Energy Marketing, L.L.C.; AES Power, Inc.; American Energy Trading, Inc.; MIECO Inc.

[Docket Nos. ER97–4168–005; ER94–890–019; ER97–360–009; and ER98–51–004]

Take notice that on January 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. Western Energy Marketers, Inc.; Poco Petroleum, Inc.; Poco Petroleum, Inc.; Kaztex Energy Ventures, Inc.; DC Tie, Inc.; Murphy Oil USA, Inc.

[Docket Nos. ER98–537–001; ER97–2197–005; ER97–2198–005; ER95–295–017; ER91–435–028; and ER97–610–007]

Take notice that on January 14, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. MAC Power Marketing, L.L.C.; Salem Electric, Inc.; Prairie Winds Energy; Nicole Energy Services; Bollinger Energy Corporation; ProGas Power, Inc.; NAP Trading and Marketing, Inc.; Lambda Energy Marketing Company; Eastern Pacific Energy; Power Exchange Corporation; Energy Transfer Group, L.L.C.; Power Fuels, Inc.; Anker Power Services, Inc.; Kimball Power Company

[Docket Nos. ER98–575–003; ER98–2175–003; ER95–1234–011; ER98–2683–002; ER98–1821–002; ER95–968–007; ER95–1278–009; ER94–1672–016; ER98–1829–004; ER95–72–017; ER96–280–012; ER96–1930–010; ER97–3788–005; ER95–232–016; and ER95–232–017

Take notice that on January 11, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

7. PowerSource Corp.; Direct Electric Inc.; Texas-Ohio Power Marketing, Inc.; Dynegy Power Services, Inc.

[Docket Nos. ER98–3052–002; ER94–1161–018; ER94–1676–016; and ER94–1612–020]

Take notice that on January 13, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

8. 3E Technologies, Inc.; Symmetry Device Research, Inc.; Alliance Power Marketing, Inc.; ICC Energy Corporation; Shamrock Trading, LLC; Kamps Propane, Inc.; Con Edison Solutions, Inc.

[Docket Nos. ER98–3809–001; ER96–2524–004; ER96–1818–012; ER96–1819–009; ER98–3526–002; ER98–1148–002; and ER97–705–007]

Take notice that on January 15, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned

proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

9. Monmouth Energy, Inc.

[Docket No. ER99–1293–000]

Take notice that on January 14, 1999, Monmouth Energy, Inc. (Monmouth), tendered for filing a petition for waiver and blanket approvals under various regulations of the Commission and for an order accepting its proposed tariff governing negotiated market-based capacity and energy sales and an order accepting a power sales agreement. If accepted for filing, Monmouth will use the market rate tariff to sell power from its generation facility.

Monmouth has requested an effective date for the market rate tariff of January 14, 1999. Monmouth has requested an effective date of the power sales agreement of April 10, 1998.

A copy of this filing was served on the New Jersey Board of Public Utilities, the Pennsylvania Public Utilities Commission and GPU.

Comment date: February 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. West Virginia Power

[Docket No. ER99–1294–000]

Take notice that on January 15, 1999, UtiliCorp United Inc., on behalf of its West Virginia Power division provided notice to the Commission that West Virginia Power adopts the North American Electric Reliability Council Transmission Loading Relief procedures.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER99–1295–000]

Take notice that on January 15, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the PJM Open Access Transmission Tariff (PJM Tariff) to incorporate into the PJM Tariff the PJM Regional Transmission Owners' (RTOs) zonal rates for network integration transmission service, point-to-point transmission service, and reactive supply and voltage control services established in the settlements approved by the Commission in Docket Nos. ER97–3189–001 through 008 and to revise certain PJM-wide rates based on those settlement rates.

Copies of this filing were served upon all PJM members and all state electrical regulatory commissions in the PJM control area.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER99–1296–000]

Take notice that on January 15, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a notice pursuant to the Commission's "Order on Petition for Declaratory Order," issued in the above-captioned proceeding on December 16, 1998 (December 16 Order), stating that: (1) it uses the North American Electric Reliability Council's (NERC's) Transmission Loading Relief procedures; and (2) its current open access transmission tariff should be modified to reflect the generic amendment proffered by NERC and approved by the Commission in the December 16, Order.

Tampa Electric states that a copy of its notice has been served on each person identified on the official service list in this proceeding.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company; Commonwealth Edison Company of Indiana

[Docket No. ER99–1297–000]

Take notice that on January 15, 1999, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collective ComEd), tendered for filing in accordance with the Federal Energy Regulatory Commission's December 16, 1998, "Order on Petition for Declaratory Order" issued in Docket No. EL98–52–000, 85 FERC ¶ 61,353 (1998) (December 16, 1998 Order), that ComEd's Open Access Transmission Tariff shall be considered modified by adopting the North American Electric Reliability Council's Transmission Loading Relief Alternative Transmission Tariff Amendment designated by the Commission in the December 16, 1998 Order.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER99–1298–000]

Take notice that on January 15, 1999, Duke Energy Corporation (Duke), tendered for filing an amendment of its Open Access Transmission Tariff to explicitly incorporate the transmission loading relief (TLR), procedures developed by the North American Electric Reliability Council (NERC) approved by the Commission in Docket No. EL98–52–000.

Duke requests an effective date coincident with its filing, and therefore respectfully requests waiver of the Commission's notice requirements.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

Docket No. ER99–1299–000

Take notice that on January 15, 1999, pursuant to North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998) (NERC), Entergy Services, Inc., as agent and on behalf of the Entergy Operating Companies, tendered for filing notice of a generic amendment to its Open Access Transmission Tariff (OATT) reflecting the North American Electric Reliability Council (NERC) Transmission Loading Relief (TRL), procedures accepted by the Commission in NERC.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Louisville Gas and Electric Company/Kentucky Utilities Co.

[Docket No. ER99–1300–000]

Take notice that on January 15, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an unexecuted Service Agreement for Market Based Sales Service, Rate MBSS, between LG&E/KU and Enserch Energy Services, Inc.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Maine Public Service Company

[Docket No. ER99–1301–000]

Take notice that on January 15, 1999, Maine Public Service Company (MPS), tendered for filing notification that its open access transmission tariff should not be considered modified by NERC's TLR Alternative Transmission Tariff Amendment and that MPS is not submitting procedures to address parallel flows.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. St. Joseph Light & Power Company

[Docket No. ER99–1303–000]

Take notice that on January 15, 1999, St. Joseph Light & Power Company (SJLP), provided notice to the Commission that SJLP adopts the Mid-Continent Area Power Pool's Line Loading Relief Procedures (LLR), as amended to comply with the Commission's orders in Docket No.

ER98–3709–000. SJLP attached to its notice (i) LLR and (ii) modifications to its open access transmission tariff to incorporate LLR.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. WestPlains Energy-Kansas

Docket No. ER99–1304–000

Take notice that on January 15, 1999, UtiliCorp United Inc., on behalf of its WestPlains Energy-Kansas (WestPlains-Kansas) division provided notice to the Commission that WestPlains-Kansas (1) adopts the Mid-Continent Area Power Pool's Line Loading Relief Procedures (LLR), as amended to comply with the Commission's orders in Docket No. ER98–3709–000, for transmission overloads within the Mid-Continent Area Power Pool (MAPP), and (2) adopts the North American Electric Reliability Council Transmission Loading Relief procedures for transmission overloads outside of MAPP.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Missouri Public Service Company

[Docket No. ER99–1305–000]

Take notice that on January 15, 1999, UtiliCorp United Inc., on behalf of its Missouri Public Service Company (MPS) division provided notice to the Commission that MPS (1) adopts the Mid-Continent Area Power Pool's Line Loading Relief Procedures (LLR), as amended to comply with the Commission's orders in Docket No. ER98–3709–000, for transmission overloads within the Mid-Continent Area Power Pool (MAPP), and (2) adopts the North American Electric Reliability Council Transmission Loading Relief procedures for transmission overloads outside of MAPP.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Otter Tail Power Company

[Docket No. ER99–1306–000]

Take notice that on January 15, 1999, Otter Tail Power Company tendered for filing notification that Otter Tail Power Company adopts the Mid-Continent Area Power Pool's Line Loading Relief Procedures (LLR), as amended to comply with the Commission's orders in Docket No. ER98–3709–000. Otter Tail Power Company attached to its notice (i) LLR and (ii) modifications to its open access transmission tariff to incorporate LLR.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Louisville Gas and Electric Co.; Kentucky Utilities Company

[Docket No. ER99–1307–000]

Take notice that on January 15, 1999, Louisville Gas and Electric Company and Kentucky Utilities Company (the Companies) tendered for filing an amendment of its Open Access Transmission Tariff (LG&E Energy Corporation, FERC Electric Tariff, Original Volume No. 1), to explicitly incorporate the transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) approved by the Commission in Docket No. EL98–52–000.

The Companies request an effective date coincident with its filing, and therefore respectfully requests waiver of the Commission's notice requirements.

Copies of the filing have been served on the Companies' transmission service customers, the Kentucky Public Service Commission and the Virginia State Corporation Commission.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Carolina Power & Light Company

[Docket No. ER99–1308–000]

Take notice that on January 15, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Carolina Power & Light—Wholesale Power Department. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of February 1, 1999, for this Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Carolina Power & Light Company

[Docket No. ER99–1309–000]

Take notice that on January 15, 1999, Carolina Power & Light Company (CP&L), tendered for filing a notice to amend its Open Access Transmission Tariff to incorporate the North American Electric Reliability Council's Transmission Loading Relief procedures.

CP&L has requested waiver of the 60-day notice provision and has requested an effective date of January 15, 1999.

Copies of the filing were served on persons that have executed point-to-point or network service agreements under CP&L's Open Access Transmission Tariff, the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Oklahoma Gas and Electric Company

[Docket No. ER99–1310–000]

Take notice that on January 15, 1999, Oklahoma Gas and Electric Company (OG&E), tendered for filing in accordance with the Commission's December 16, 1998, Order on Petition for Declaratory Order in Docket No. EL98–52–000, 85 FERC & 61,353 (1998) that OG&E's open access transmission tariff shall be considered modified by adopting the North American Reliability Council's Transmission Line-Loading Relief Alternative Transmission Tariff Amendment.

Copies of this filing have been served on each of the affected parties, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Minnesota Power, Inc.

[Docket No. ER99–1311–000]

Take notice that on January 15, 1999, Minnesota Power, Inc., provided notice to the Commission that Minnesota Power, Inc., adopts the Mid-Continent Area Power Pool's Line Loading Relief Procedures (LLR), as amended, to comply with the Commission's orders in Docket No. ER98–3709–000. Minnesota Power, Inc. attached to its notice (i) LLR and (ii) modifications to its open access transmission tariff to incorporate LLR.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. The Empire District Electric Company

[Docket No. ER99–1312–000]

Take notice that on January 15, 1999, The Empire District Electric Company tendered for filing an amendment of its Open Access Transmission Tariff to explicitly incorporate the transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) approved by the Commission in Docket No. EL98–52–000.

The Empire District Electric Company requests an effective date coincident with its filing, and therefore respectfully requests waiver of the Commission's notice requirements.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER99–1313–000]

Take notice that on January 15, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP Companies), tendered for filing notification that the NSP Companies adopt the Mid-Continent Area Power Pool (MAPP) Line Loading Relief (LLR) procedures, as amended to comply with the Commission's orders in Docket No. ER97–3709–000. The NSP Companies attached to their notice (a) a copy of the LLR procedures, as amended; and (b) proposed modifications to Sections 13.6, 14.7 and 33 of its Open Access Transmission Tariff (Tariff) to incorporate the MAPP LLR procedures. This filing is submitted in compliance with ordering paragraph (C) in the Commission's "Order on Petition for Declaratory Order" issued December 16, 1998 in Docket No. EL98–52–000.

The NSP Companies state they have served a copy of the filing on the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin and on customers presently taking service under the NSP Tariff.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Southern Company Services, Inc.

[Docket No. ER99–1314–000]

Take notice that on January 15, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company (MPC), and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing one service agreement for network integration transmission service between SCS, as agent for Southern Company, and Southern Wholesale Energy, as agent for MPC; one service agreements for firm point-to-point transmission service between SCS, as agent for Southern Company, and Columbia Power Marketing Corporation (Columbia); one service agreement for non-firm point-to-point transmission service between SCS, as agent for Southern Company, and Columbia under the Open Access Transmission Tariff of Southern Company (FERC Electric Tariff, Original Volume No. 5).

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Madison Gas and Electric Company

[Docket No. ER99–1315–000]

Take notice that on January 15, 1999, Madison Gas and Electric Company (MGE), tendered for filing an amendment of its Open Access Transmission Tariff (MGE FERC Electric Tariff, Original Volume No. 1), to explicitly incorporate the transmission loading relief (TLR) procedures developed by the North American Reliability Council (NERC) approved by the Commission in Docket No. EL98–52–000.

MGE requests an effective date coincident with its filing, and therefore respectfully requests waiver of the Commission's notice requirements.

Copies of the filing have been served on MGE's transmission service customers and the Public Service Commission of Wisconsin.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1811 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3131–032]

S.R. Hydropower of Brockway Mills; Notice of Availability of Revised Draft Environmental Assessment

January 21, 1999.

A revised draft environmental assessment (EA) is available for public review. The EA is for an application for surrender of license. The EA reviews alternative for surrender and decommissioning the project. The EA finds approval of the application, with staff recommendations, would not constitute a major federal action significantly affecting the quality of the human environment. The Project is located on the Williams River, Windham County, Vermont.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, NE, Washington, DC 20426. The EA may also be viewed on the web at www.ferc.fed.us. Please call (202) 208–2222 for assistance.

Please submit any comments within 45 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 3131–032 to all comments. For further information, please contact the project manager, Mr. Robert Grieve, at (202) 219–2655.

David P. Boergers,

Secretary.

[FR Doc. 99–1823 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment Application

January 21, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment Application.

b. *Project No:* 2916–032.
c. *Date Filed:* September 14, 1998.
d. *Applicant:* East Bay Municipal Utility District.
e. *Name of Project:* Lower Mokelumne River.
f. *Location:* Mokelumne River, Amador, Calaveras, and San Joaquin Counties, California.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Mr. Jon A. Myers, Manager, Water Resources Planning, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, CA 94607–4240, (510) 278–1121.
i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.
j. *Comment Date:* March 1, 1999.
k. *Description of Application:* EBMUD is proposing to remove Mine Run Dam, which is located on Mine Creek on the upstream reach of the project's Camanche Reservoir. The Mine Run Dam was used to control acid mine drainage from the abandoned deep shaft copper mine (Penn Mine). The Mine Run Dam controls the flow of contaminated water from the Penn Mine.

EBMUD plans to remove the Mine Run Dam as a part of the Environmental Protection Agency's (EPA) Long Term Solution Project (Remediation Plan) for the Penn Mine Site. The Remediation Plan was mandated by EPA through a Clean Water Act section 309 order.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specific comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–1812 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment to Article 407

January 21, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Action:* Notice of Amendment to Article 407.
b. *Project No:* 6972–026.
c. *License Issued:* May 30, 1986.
d. *Licensee:* Hollow Dam Power Company.
e. *Name of Project:* Hollow Dam Project.
f. *Location:* West Branch of the Oswegatchie River in St. Lawrence County, New York.
g. *Authorization:* Paragraph B of Order amending License, issued February 27, 1990 (50 FERC ¶ 62,126).
h. *Licensee contact:* Mr. Sean Fairfield, Algonquin Power Systems, Inc., 2085 Hurontario St.—Suite 210, Mississauga, ON L5A 4G1, (905) 273–8900.
i. *FERC Contact:* Robert Grieve (202) 219–2655.
j. *Comment Date:* March 1, 1999.
k. *Description of Proceeding:* Article 407 requires the licensee provide a minimum flow of 21 cfs below the spillway by removing two stoplogs at each of three slots along the project dam and maintaining a minimum headpond elevation of 630.8 feet. The Commission's staff request of the licensee to recalibrate the minimum flow release method resulted in the licensee proposing to release the 21 cfs flow by removing the appropriate stoplogs from the three slots and maintaining a minimum headpond elevation of 630.92 feet.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–1813 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests and Comments

January 21, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11646–000.

c. *Date filed:* December 8, 1998.

d *Applicant:* Elsinore Hydropower.

e. *Name of Project:* Elsinore Hydroelectric Project.

f. *Location:* On Lake Elsinore, Morrell Canyon Creek, and South Fork of Decker Canyon Creek, in Riverside County, California. Would Utilize U.S. Forest Service lands in the Trabuco Ranger District of the Cleveland National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. *Applicant Contact:* Mr. Harold L. Mitchell, Elsinore Hydropower, 11808 Rancho Bernando Road, #123–1, San Diego, CA 92128, (619) 592–1540.

i. *FERC Contact:* Any questions on this notice should be addressed to Robert Bell, E-mail address, robert.bell@ferc.fed.us, or telephone 202–219–2806.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice and procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Description of Project: The proposed pumped storage project would have two upper reservoirs (one in Morrell Canyon the other in Decker Canyon) and would use the natural Lake Elsinore as the lower reservoir. The project would consist of: (1) a proposed 550-foot-long, 75-foot-high impervious core rock fill upstream Morrell Canyon Dam; (2) a proposed 575-foot-long, 105-foot-high impervious core rock fill downstream Morrell Canyon Dam; (3) a proposed impoundment having a surface area of 41 acres, with a stream capacity of 1,700 acre-feet, and normal maximum water surface elevation of 2,845 feet msl; (4) a proposed 1,800-foot-long, 155-foot high impervious core rock filled Decker Canyon Dam; (4) a proposed impoundment having a surface area of 45 acres, with a storage capacity 1,600 acre-feet, and normal maximum water surface elevation of 2,760 feet msl; (5) the existing Lake Elsinore impoundment having a water surface elevation of 3,400 acres, with a storage capacity of 68,000 acre-feet, and a normal maximum water surface elevation 2,248 feet msl; (6) three proposed 10-foot diameter steel line penstocks with a y branch at an elevation below the two upper reservoirs; (7) a proposed powerhouse containing three generating unit with a total installed capacity of 524 MW; (8) there proposed 12-foot-diameter tailraces to Lake Elsinore; (9) a proposed 10-miles-long, 500 kV transmission line; and (10) appurtenant facilities.

The project would have an annual generation of 300,000 MWh and would be sold to a local utility.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–1814 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2233]

Portland General Electric Company Smurfit Newsprint Corporation; Notice of Initial Information Meeting

January 21, 1999.

By letter dated September 1, 1998, Portland General Electric Company (PGE) of Portland, Oregon, and Smurfit Newsprint Corporation of Oregon City, Oregon, co-licensees, have asked to use an alternative procedure in filing an application for a new license for their Willamette Falls Project No. 2233.[1]

The Commission's regulations allow applicants the option of preparing their own Environmental Assessment (EA) for hydropower projects, and filing the EA with their license application as part of the alternative licensing procedure.[2] On December 10, 1998, the Commission approved the use of an alternative licensing procedure in the preparation of the Willamette Falls license application.

The alternative procedures include provisions for the distribution of an initial information package, and for the identification of special studies and environmental issues. On December 31, 1998, PGE, acting on behalf of itself and Smurfit Newsprint Corporation distributed an initial information package (IIP) to all parties who had expressed interest in the proceeding. Copies of the IIP can be obtained by contacting David Heintzman at PGE at (503) 464–8162.

Two public meetings will be held to discuss these documents. PGE will give an overview of the existing facilities and operation, discuss what is currently known about environmental resources at the project, and discuss how these resources are currently being managed. As time permits preliminary environmental issues and special studies will be discussed.

Additional notices seeking comments on the specific project proposal, public scoping, interventions and protests, and recommended terms and conditions will be issued at later dates.

PGE will hold the public meetings on February 17 and February 18, 1999. All interested individuals, organizations, and agencies representatives are invited and encouraged to attend any or all the meetings.

The February 17th meeting will be held at the Oregon City High School Cafeteria, 1306 12th Street, Oregon City, Oregon from 7 p.m. until 9 p.m.

The February 18th meeting will be held at the Two World Trade Center, Plaza Conference Room, 121 SW Salmon Street, Portland, Oregon from 9 a.m. until 3 p.m.

For further information, please contact Dave Heintzman at PGE at (503) 464–8162 or John Blair at the Commission at (202) 219–2845.

David P. Boergers,

Secretary.

[FR Doc. 99–1822 Filed 1–26–99; 8:45 am]

BILLING CODE 6717–01–M

[1] The project consists of an 8-foot-high dam along the crest of Willamette Falls on the Willamette River. PGE operates the 16-megawatt T.W. Sullivan powerhouse, located on the west side of the falls. Co-licensee, Smurfit Newsprint Corporation, operates a 1.5-megawatt powerhouse on the east side of the falls. The project is not located on any Federal land.

[2] 81 FERC 61,103 (1997).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6226–7]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on February 10–12, 1999 at the Park Hyatt Hotel, 24th and M Street, NW, Washington, D.C. for the purpose of information exchange with stakeholders on issues related to the health effects of microbial pathogens and disinfection byproducts (DBPs) in drinking water. The meeting will start at 8:30 AM on February 10 and will adjourn on February 12 at 4:00 PM. The meeting will provide: (1) A summary of the current literature on the health effects from DBPs and microbial pathogens; (2) a summary of ongoing and planned health effects research in support of the Stage 2 microbial pathogen and disinfection byproduct rules and when the information will be available; and (3) perspectives on characterizing the risk from DBPs and microbial pathogens.

EPA is inviting all interested members of the public to participate in the meeting. As with all previous meetings in this series, to the extent that is available, EPA is instituting an open door policy to allow any member of the public to attend any of the meetings for any length of time. Approximately 50 seats will be available for the public. Seats will be available on a first-come, first-served basis.

For additional information about the meeting, please contact Ephraim King or Mike Cox of EPA's Office of Ground Water and Drinking Water at (202) 260–7575 or by e-mail at cox.michael@epamail.epa.gov.

Dated: January 20, 1999.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–2026 Filed 1–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34151; FRL 6035–1]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on July 26, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of

Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This Notice announces receipt by the Agency of applications from registrants to delete uses in the three pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients, and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before July 26, 1999, to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (Note: Registration number(s) preceded by ** indicate a 30–day comment period.)

TABLE 1 — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
008660–00050	1% Rotenone Garden Dust	Rotenone; Cube resins other than Rotenone	All Food crop uses
010350–00010	Dursban 20 MEC	Chlorpyrifos	Indoor uses on furniture, upholstery, rugs, direct application to pets, indoor/outdoor commercial use in sewer manholes
**066951–00002	Lindane Technical Powder	Lindane	Alfalfa, apples, apricots, asparagus, avocados, beans (All Types), beets, carrots, cherries, clover, cotton, cucumber, eggplant, flax, grapes, guavas, lentils, mangoes, peas (all types), pears, pecans, peppers, pineapples, plums including prunes, pumpkins, quinces, safflower, soybeans, squash, strawberries, sudangrass, sugar beets, summer squash, sunflower, tomato, tobacco, ornamental plants, lawns, beef cattle, goats, hogs, horses, mules, sheep, and military use on human skin and clothing

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2 — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
008660	Pursell Industries, Inc., c/o H.R. McLane, Inc., 74 7210 Red Road, Suite 206, Miami, FL 33143.
010350	3M Animal Care, Attn: S. Price, 3M Center 270–2N–03, St. Paul, MN 55144.
066951	Kanoria Chemicals Industries Ltd., c/o Jellinek, Schwartz Connolly, Inc., 1525 Wilson Blvd., Suite 600, Arlington, VA 22209.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: September 29, 1998.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–1754 Filed 1–26–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66261; FRL 6045–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by July 26, 1999, orders will be issued canceling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time,

request that any of its pesticide registrations be canceled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 24 pesticide products registered under section 3 or 24 of FIFRA. These registrations are listed in sequence by registration number (or company number and 24 number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000264–00451	Asulam Technical	Methyl sulfanilylcarbamate
000577–00548	Cuprinol No. 30 Clear Wood Preservative	2-(Thiocyanomethylthio)benzothiazole Methylenebis(thiocyanate)
000655–00790	Prentox Larva-Lur	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
000769–00655	SMCP Para-Blox Weather Proof Rat Bait Fish and Grain Fl	2-(Diphenylacetyl)-1,3-indandione
000769–00657	SMCP (R) 110.	2-(Diphenylacetyl)-1,3-indandione, sodium salt
000769–00660	SMCP Para Blox Kills Rats Weath PRF Paraffin Rat Bait Fish	2-(Diphenylacetyl)-1,3-indandione
000769–00669	Commerical Size Para-Blox (Cereal & Molasses)	2-(Diphenylacetyl)-1,3-indandione
000769–00670	Kill Rats with Para-Blox	2-(Diphenylacetyl)-1,3-indandione
000769–00706	Pelletized Slug and Snail Bait	4-(Methylthio)-3,5-xylyl methylcarbamate
000769–00707	Crumblized Slug and Snail Bait	4-(Methylthio)-3,5-xylyl methylcarbamate
000769–00758	AFC Diphacinnone 0.1%	2-(Diphenylacetyl)-1,3-indandione
000769–00787	Di-Mix 110	2-(Diphenylacetyl)-1,3-indandione, sodium salt
010182 MO–96–0012	Starfire Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010182 MO–96–0013	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
028293–00088	Unicorn Coumaphos Screwworm Spray	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
041014–00009	Marlate 400 Flowable Concentrate	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
041014–00011	Marlate 300 Methoxychlor Flowable	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane)
045385–00046	Chem-Tox Low Odor Flea Spray	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
056228 ID–91–0018	Zinc phosphide	Zn3P2
065626–00001	Mycotrol GHOF for Rangeland and Improved Pastures	Beauveria bassiana GHA
065626–00003	Mycotrol GHOF for Repackaging Use Only	Beauveria bassiana GHA
065626–00004	Mycotrol GHES for Rangeland and Improved Pastures	Beauveria bassiana GHA
065626–00005	Mycotrol GHES for Crops	Beauveria bassiana GHA
065626–00006	Mycotrol GHES for Repackaging Only	Beauveria bassiana GHA

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. *Note: Kincaid Enterprises, Inc., EPA Company Number 041014, has requested a 30–day comment period for their two products listed in this notice.* Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000577	The Sherwin-Williams Co., Cuprinol Group/The Thompson's Co., 101 Prospect Ave, Cleveland, OH 44115.
000655	Prentiss Inc., C.B., 2000 Floral Park, NY 11001.
000769	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
028293	Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
041014	Kincaid Enteprises Inc., Box 549, Nitro, WV 25143.
045385	CTX Inc., 481 Scotland Rd., Mchenry, IL 60050.
056228	U.S. Department of Agriculture, Animal & Plant Health Inspection Service, 4700 River Rd., Unit 152, Riverdale, MD 20737.
065626	Mycotech Corp., Attn: Mary M. Mcmahon, Box 4109, Butte, MT 59702.

III. Loss of Active Ingredients

Unless the request for cancellation is withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrant to explore the possibility of their withdrawing their request for cancellation. The active ingredient is listed in the following Table 3, with the EPA Company and CAS Number.

TABLE 3. — ACTIVE INGREDIENT WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANT'S REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
3337–71–1	Methyl Sulfanilylcarbamate	000264

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before July 26, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; (FRL 3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 14, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–1752 Filed 1–26–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66262; FRL 6051–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by July 26, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish

a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 33 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000352 OK–92–0009	Du Pont Sinbar Herbicide	3-tert-Butyl-5-chloro-6-methyluracil
000352 OR–92–0003	Du Pont Sinbar Herbicide	3-tert-Butyl-5-chloro-6-methyluracil
000352 PA–90–0003	Du Pont Sinbar Terbacil Weed Killer	3-tert-Butyl-5-chloro-6-methyluracil
000352 VA–90–0004	Du Pont Sinbar Terbacil Weed Killer	3-tert-Butyl-5-chloro-6-methyluracil
000352 WA–93–0007	Du Pont Sinbar Herbicide	3-tert-Butyl-5-chloro-6-methyluracil
000432–00746	Gold Crest Vengeance Rodenticide	*N*-Methyl-2,4-dinitro-*N*-(2,4,6-tribromophenyl)-6-(trifluoromethyl)benzenamine
000769–00706	Pelletized Slug and Snail Bait	4-(Methylthio)-3,5-xylyl methylcarbamate
000769–00707	Crumblized Slug and Snail Bait	4-(Methylthio)-3,5-xylyl methylcarbamate
001812–00417	Dupont Lorox DF Herbicide	3-(3,4-Dichlorophenyl)-1-methoxy-1-methylurea
001812–00418	Dupont Karmex DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
002393 WA–91–0003	Hopkins Zinc Phosphide Mouse Bait for Control of Mice I	Zinc phosphide (Zn3P2)
002393 WA–91–0018	Hopkins Zinc Phosphide Mouse Bait for Control of Mice I	Zinc phosphide (Zn3P2)
003125–00123	Guthion 2S	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
003125–00193	Guthion 50% Wettable Powder Crop Insecticide	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
003125–00338	Guthion 3 Flowable Insecticide	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
003125–00378	Guthion 35% Wettable Powder Insecticide	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
003125–00379	Guthion Solupak 35% Wettable Powder In Water Soluble PA	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
003125–00425	Guthion Technical	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
003125–00426	Guthion 2L	*O,O*-Dimethyl phosphorodithioate *S*2-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
003125–00427	Guthion 3 Flowable Insecticide	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
003282–00079	D-Con Mouse Killing Station	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
005887–00001	1% Rotenone Garden Dust	Rotenone
		Cube Resins other than rotenone
007173–00197	Ridall-Zinc Tracking Powder for Control of House Mice	Zinc phosphide (Zn3P2)
007401–00426	Hi-Yield 7.5% Bromacil Liquid Concentrate	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
007401–00427	Hi-Yield 2.5% Bromacil Liquid Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil, lithium salt
007969–00053	Ronilan Fungicide 50W	3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione
010163–00119	Prokil Azinphos-M	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
010163–00148	Gowan Azinphos-M 50W	*O,O*-Dimethyl phosphorodithioate *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl)
034282–00006	Rinse - Disinfectant - Sanitizer - Deodorizer	Ethanol
		Alkyl* dimethyl benzyl ammonium chloride *(50%C_{14}, 40%C_{12}, 10%C_{16})
059639–00088	Orthene Turf, Tree & Ornamental Spray WSP	*O,S*-Dimethyl acetylphosphoramidothioate
062719 TX–96–0007	Treflan E. C.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
062719 WI–95–0006	Treflan M. T. F.	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)
068329–00010	Alpha 412	Dodecylguanidine hydrochloride
		Methylenebis(thiocyanate)

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000432	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
000769	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
001812	Griffin L.L.C., Box 1847, Valdosta, GA 31603.
002393	HACO, Inc., Box 7190, Madison, WI 53707.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003282	Reckitt & Colman Inc., Household Products Division, Attn: EPA Regulatory Dept, 1655 Valley Rd., Wayne, NJ 07470.
005887	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
007173	Liphatech, Inc., 3101 W. Custer Ave., Milwaukee, WI 53209.
007401	Voluntary Purchasing Group Inc., Box 460, Bonham, TX 75418.
007969	BASF Corp., Agricultural Products, Box 13528, Research Triangle Park, NC 27709.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
034282	Dickler Chemical Laboratories Inc., Box 9523, Philadelphia, PA 19124.
059639	Valent U.S.A. Corp., 1333 N. California Blvd, Ste 600, Walnut Creek, CA 94596.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd., 308/3E, Indianapolis, IN 46268.
068329	Unichem, A Division of BJ Services Co., U.S.A., 5500 Northwest Central Dr., Houston, TX 77092.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before July 26, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 11, 1999.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–1750 Filed 1–26–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34157; FRL 6051–9]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: The Agency will approve these use deletions and the deletions will become effective on or soon after the date of publication.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Office of Pesticide Programs (7505C), Environmental Protection Agency 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5404; mcneilly.dennis@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in two chlorpyrifos pesticide registrations listed in Table 1 below. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Although the food use site being deleted has been a registered site for chlorpyrifos products, a tolerance has not been established for this commodity under the Federal Food, Drug, and Cosmetic Act (FFDCA). Therefore, under FIFRA section 2(bb), this uses represent an unreasonable adverse effect on the environment, as it would result in human dietary risk from residues resulting from use of a pesticide in or on food inconsistent with the standard under section 408 of FFDCA. As such, the Agency is hereby waiving the 180–day comment period normally given for the deletion of a minor use, in accordance with FIFRA section 6(f)(1)(c). The Agency has determined that, while these actions require publication for the purpose of announcement, a comment period is not warranted.

TABLE 1—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
062719–00220	Lorsban 4E	Chlorpyrifos	Use on popcorn
067760–28	Nufos 4E	Chlorpyrifos	Use on popcorn

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
062719	Dow AgroSciences Corporation, 9330 Zionsville Rd., Indianapolis, IN 46268
067760	Cheminova, Inc., Oak Hill Park, 1700 Route 23, Suite 210, Wayne, New Jersey 07470

III. Existing Stocks Provisions

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after the effective date of use deletions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 14, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–1751 Filed 1–26–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34153A; FRL 6051–7]

Correction; Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing an amendment to a notice of receipt of request by registrant to delete uses in certain pesticide registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

Corrections to Intent to Delete Uses

This is an amendment to **Federal Register** dated December 2, 1998 (63 FR 66542) (FRL 6044–4). The EPA Registrations (041014–00009, Marlate 400 Flowable Concentrate and 041014–00011, Marlate 300 Methoxychlor Concentrate) listed in referenced **Federal Register** (FR) notice were incorrectly included in notice. The correct registrations for Kincaid Enterprises, Inc., should have been listed as follows:

EPA Reg. No.	Product Name	Active Ingredient	Delete From Label
041014–00002	Marlate 50 Methychlor Insecticide	Methychlor	Livestock dipping uses
041014–00003	Marlate Garden Insecticide 5% Dust	Methychlor	Livestock dipping uses
041014–00005	Marlate Methoxychlor Technical	Methychlor	Livestock dipping uses
041014–00012	Marlate 70% Methoxychlor Dust Base	Methychlor	Livestock dipping uses

The 30–day comment period announced in referenced FR notice for these registrations still applies.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 14, 1998

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–1753 Filed 1–26–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2313]

January 20, 1999.

Petitions for Reconsideration and Application for Review of Action in Rulemaking Proceedings

Petitions for Reconsideration and Application for Review have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 11, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.49b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations, (Sibley, Iowa and Brandon, South Dakota) (MM Docket No. 96–66, RM–8729, RM–8821).

Number of Petitions Filed: 1.

Subject: Wireless Ventures, Inc. (WT Docket No. 97–82. Emergency Request for Waiver of Automatic License Cancellation Provisions of Section 1.2110(f) of the Commission's Rules (PCS C Block Licenses for Markets 21, 164, 352 & 373).

Number of Petitions Filed: 1.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45.

Number of Petitions Filed: 1.

Subject: Biennial Regulatory Review-Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services (WT Docket 98–20).

Amendment of the Amateur Service Rules to Authorize Visiting Foreign Amateur Operators to Operate Stations in the United States (WT Docket No. 96–188, RM–8677.

Number of Petitions Filed: 8.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1799 Filed 1–26–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

DJR Logistics, Inc., 10 Industrial Highway, Tinicum Industrial Park, MS #29, Lester, PA 19113, Officers: Dennis J. Rowles, President; Connie L. Rowles, Secretary.

Dated: January 21, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1829 Filed 1–26–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information collection activities: Proposed collection; comment request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection,

including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before March 29, 1999.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Notification of Foreign Branch Status

Agency form number: FR 2058
OMB control number: 7100-0069
Frequency: on occasion
Reporters: state member banks, national banks, bank holding companies, Edge and agreement corporations
Annual reporting hours: 20
Estimated average hours per response: 15 minutes
Number of respondents: 80
Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 321, 601, 602, 615, and 1844(c)) and is not given confidential treatment.

Abstract: Member banks, bank holding companies, and Edge and agreement corporations are required to notify the Federal Reserve System of the opening, closing, or relocation of an approved foreign branch. The notice requests information on the location and extent of service provided by the branch, and is filed within thirty days of the change in status. The Federal Reserve System needs the information requested on the FR 2058 form to fulfill supervisory responsibilities specified in Regulation K including the supervision of foreign branches of U.S. banking organizations.

Regulation K, "International Banking Operations," sets forth the conditions under which a foreign branch may be established. For their initial establishment of foreign branches, organizations must request prior Federal Reserve approval as directed in Attachment A of the FR K-1, "International Applications and Prior Notifications Under Subparts A and C of Regulation K" (OMB No. 7100-0107). For subsequent branch establishments into additional foreign countries, organizations must give the Federal Reserve System forty-five days prior written notice using Attachment B of FR K-1. Organizations use the FR 2058 notification to notify the Federal Reserve when any of these branches has been opened, closed, or relocated.

2. Report title: International Applications and Prior Notifications under Subparts A and C of Regulation K

Agency form number: FR K-1
OMB control number: 7100-0107
Frequency: on occasion
Reporters: state member banks, national banks, bank holding companies, Edge and agreement corporations, and certain foreign banking organizations
Annual reporting hours: 636
Estimated average hours per response:
Attachments A - G: 10
Attachments H, I: 15
Attachment J: 20
Number of respondents: 36
Small businesses are not affected.

General description of report: This information collection is mandatory(12 U.S.C. 601-604(a), 611-631, 1843(c)(13), 1843(c)(14), and 1844(c)) and is not given confidential treatment. The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Abstract: The FR K-1 comprises a set of applications and notifications that govern the formation of Edge or agreement corporations and the international and foreign activities of U.S. banking organizations. The applications and notifications collect information on projected financial data, purpose, location, activities, and management. The Federal Reserve requires these applications for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Federal Reserve Act and the Bank Holding Company Act of 1956.

Regulatory Flexibility Act Statement: The Board certifies that the extension of the above applications and notifications is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. Report title: Reports Related to Public Welfare Investments of State Member Banks

Agency form number: FR H-6
OMB control number: 7100-0278
Frequency: event-generated
Reporters: state member banks
Annual reporting hours: 78
Estimated average hours per response:
Investment Notice: 2
Application: 2.75
Extension of divestiture period: 5
Number of respondents: 35
Small businesses are not affected.

General description of report: This information collection is required to obtain a benefit (12 U.S.C. 338a) and is generally not given confidential treatment. However, if the information collected contains an examination rating (or other supervisory information), that information would be exempt from disclosure (5 U.S.C. 552(b)(4)).

Abstract: The FR H-6 comprises of an investment notice, application for Board approval of an investment, and request for extension of the divestiture period of an investment. The state member banks may make certain public welfare investments without prior Board approval, they need only notify the Federal Reserve. Certain other public welfare investments require prior approval and the request must be

submitted to the Board. If an investment ceases to conform to certain requirements the state member bank must divest itself of the investment. In some cases the bank must submit a request for extension of the divestiture period. The proposed revisions for the FR H-6 would conform the information collection with the recently revised Regulation H. The Board is eliminating the requirement that, to avoid applying for Board approval, the investment must be smaller than 2 percent of capital and surplus. This should result in fewer applications and more notices of investments not requiring Board approval. Additionally, a requirement has been added to the application for Board approval: if the bank is not permitted to make the investment without Board approval, the institution must explain the reason(s) why the investment is ineligible.

Regulatory Flexibility Act Analysis: Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) the Federal Reserve hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

2. Report title: Application for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company

Agency form number: FR Y-3
OMB control number: 7100-0121
Frequency: Event-generated
Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System
Annual reporting hours: 30,443
Estimated average hours per response:
Section 3(a)(1): 49 hours,
Section 3(a)(3) and 3(a)(5): 59.5 hours
Number of respondents:
Pursuant to Section 3(a)(1): 274,
Pursuant to Section 3(a)(3) and 3(a)(5): 286
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. §§ 1842(a)(1), (a)(3), and (a)(5) and 12 U.S.C. § 1844(c)). Individual respondent data are available to the public except any portions which have been granted confidential treatment at the applicant—s request (5 U.S.C.552 (b)(4) and (b)(8)).

Abstract: This application collects information concerning proposed bank holding company formations, acquisitions, and mergers between banks and bank holding companies for review by the Federal Reserve. The application collects financial and managerial information and data on competitive and public convenience factors.

Current Actions: Tier 3 capital would be included in the information requested for question 4.d of the FR Y-3 due to changes in the international risk-based capital standards. Information on debt servicing would be added to the FR Y-3 to conform the report with revisions to sections 225.24 and 225.17 of Regulation Y.

Clarifications are proposed to the "Competition and Convenience and Needs" section of the application to remove certain outdated references. Question 11 of this section would be clarified and question 12 of this section would be revised to conform with proposed changes to the Interagency Bank Merger Act Application (FR 2070; OMB No. 7100-0171). In addition, clarifications would be made to the publication requirements for this application.

3. Report title: Application for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities

Agency form number: FR Y-4
OMB control number: 7100-0121
Frequency: Event-generated
Reporters: Bank holding companies
Annual reporting hours: 4,147
Estimated average hours per response:
Post-consummation: 0.50 hours;
Expedited notification: 5 hours;
Complete notification: 12 hours.
Number of respondents:
Post-consummation: 29;
Expedited notification: 92;
Complete notification: 306.
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. § 1843 and 1844 (c)). Individual respondent data are available to the public except any portions granted confidential treatment at the applicant—s request (5 U.S.C. § 552(b)(4) and (8)).

Abstract: This form is completed by a bank holding company seeking prior approval (1) to acquire or retain the assets or shares of a nonbank company or (2) to engage *de novo* in nonbank activities. Most applications require information on the proposed transaction, information on competition and public benefits, and financial and managerial information. For applications to engage *de novo* in nonbank activities permissible under Regulation Y, less detailed information is required.

Current Actions: The Federal Reserve proposes to revise the FR Y-4 to reflect changes to Regulation Y that provide for two separate streamlined procedures for certain nonbanking proposals that are intended to reduce significantly regulatory burden and to improve the ability of well-run bank holding companies to respond quickly to changes in the market place. The FR Y-4 would become a notification form instead of an application.

4. Report title: Annual Report of Foreign Banking Organizations; Foreign Banking Organization Structure Report on U.S. Banking and Nonbanking Activities; Foreign Banking Organization Confidential Report of Operations

Agency form number: FR Y-7; FR Y-7A; FR 2068
OMB control number: 7100-0125
Frequency: Annual
Reporters: foreign banking organizations
Annual reporting hours: 5,150 hours
Estimated average hours per response: 15.75
Number of respondents: 327
Small businesses are not affected.

General description of report: These information collections are mandatory (12 U.S.C. §§1844(c), 3106, and 3108(a)). Upon request from a respondent certain information in the FR Y-7 and FR Y-7A may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. §§ 552(b)(4) and (6)). The FR 2068 is a confidential report of operations that is exempted from public disclosure pursuant to the Freedom of Information Act (5 U.S.C. § 552(b)(8) and 12 CFR § 261.11(h).

Abstract: The FR Y-7, FR Y-7A, and FR 2068 are annual reports completed by foreign banking organizations that engage in banking in the United States, either indirectly through a subsidiary bank, Edge or agreement corporation, or commercial lending company, or directly through a branch or agency. The FR Y-7 collects financial, managerial, and organizational information on the foreign banking organization. The FR 2068 collects confidential financial and organizational information, which is not collected in the FR Y-7. A foreign banking organization is currently exempt from filing the FR 2068 if it meets certain criteria related to the size and type of its U.S. banking operations. The FR Y-7A collects structural information on the foreign banking organization and its subsidiaries. All of the reports are filed as of the end of the reporter's fiscal year. The information contained in these reports is used by the Federal Reserve System to assess the foreign banking organization's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

Current Actions: The Federal Reserve proposes to reduce regulatory reporting burden for foreign banking organizations (FBOs) by eliminating the FR 2068 and by reducing and clarifying the amount of information to be reported on the FR Y-7 and FR Y-7A. Most of the information collected in the FR 2068 is now publicly available. The publicly available portion of two of the items currently reported on the FR 2068 would be added to the FR Y-7: (1) financial statements of unconsolidated majority-owned related subsidiaries, and (2) financial data on unconsolidated minority-owned related companies. The most significant changes on the FR Y-7 are the elimination of the information requested on directors and officers, the simplification of the information requested for the organization chart, and the addition of two items currently reported on the FR 2068 as mentioned above The most significant changes on the FR Y-7A are the simplification of the information requested on securities held through debts previously contracted and on Legal Authority, and the addition of four new items.

Proposal to approve under OMB delegated authority the implementation of the following report:

1. Report title: Notice for Prior Approval to Become a Bank Holding Company, or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company

Agency form number: FR Y-3N
OMB control number: 7100-0121
Frequency: Event-generated
Reporters: Corporations seeking to become bank holding companies, or bank holding companies and state chartered banks that are members of the Federal Reserve System
Annual reporting hours: 945
Estimated average hours per response: 5 hours
Number of respondents: 189
Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. § 1844(c)). Individual respondent data are available to the public except any portions which have been granted confidential treatment at the applicant's request (5 U.S.C. 552 (b)(4) and (b)(8)).

Abstract: The Federal Reserve is proposing to implement the FR Y-3N due to Regulation Y revisions that provide for streamlined processes for reviewing applications and notifications from respondents meeting certain qualifying criteria. The FR Y-3N requests substantially less information than the current FR Y-3 for respondents that meet the qualifying criteria.

Current Actions: The proposed FR Y-3N reporting form would be used for: (1) notifications filed using the abbreviated notice procedures for certain BHC formations, as described in section 225.17 of Regulation Y; (2) notifications filed to acquire shares, assets, or control of a bank, or a merger or consolidation between BHCs, filed under the streamlined procedures described in section 225.14 of Regulation Y, and (3) notifications filed to acquire a nonbank insured depository institution that require approval under section 4 of the BHC Act, if the BHC and the proposal would meet all of the criteria for expedited action under section 225.14 if the nonbank insured depository institution were a bank.

Proposal to approve under OMB delegated authority the discontinuance of the following reports:

1. Report title: Notification Pursuant to Section 211.23(h) of Regulation K on Acquisitions by Foreign Banking Organizations

Agency form number: FR 4002
OMB control number: 7100-0110
Frequency: Event-generated
Reporters: foreign banking organizations
Annual reporting hours: 80
Estimated average hours per response: 0.50
Number of respondents: 160
Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. §§ 1844(c), 3106, and 3108(a)). Upon request from a respondent certain information in the FR 4002 may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. §§ 552(b)(4) and (6)).

Abstract: The FR 4002 is an event-generated information collection that foreign banking organizations are required to submit, in a letter to the appropriate Federal Reserve Bank. The information is due within thirty days of the end of a quarter during which the foreign banking organization acquires shares of companies that engage, directly or indirectly, in business in the United States, or during which a foreign subsidiary of the FBO commences direct activities in the United States. The letter should include a brief description of the nature and scope of each company's U.S. business(es), including the four-digit Standard Industrial Classification (SIC) code(s) of the U.S. activities of the company and of its direct parent, and a statement of total assets and total revenue of the direct parent. The foreign banking organization is not required to report information whose collection would cause the FBO to incur "unreasonable effort or expense," or information that is otherwise "unknown and not reasonably available."

Current Actions: In December 1997, the Board proposed changes to Regulation K to require the information reported in the FR 4002 annually instead of quarterly (62 FR 68424). If the Board implements these proposed changes, the information collected on the FR 4002 will be reflected annually in the FR Y-7 and FR Y-7A, eliminating the need for this separate information collection. However, the final rulemaking has not been published. This proposal seeks approval to discontinue the FR 4002 upon publication of a final rulemaking permitting annual reporting of the information.

Board of Governors of the Federal Reserve System, January 21, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–1838 Filed 1–26–99; 8:45AM]

Billing Code 6210-01-F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-1492) published on page 3518 of the issue for Friday, January 22, 1999.

Under the Federal Reserve Bank of Kansas City heading, the entry for Bert D. Backard, Independence, Kansas, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bert D. Blackard, Independence, Kansas; to acquire voting shares of First Howard Bankshares, Inc., Cherryvale, Kansas, and thereby indirectly acquire voting shares of First National Bank of Howard, Howard, Kansas, First Security Bankshares, Inc., Topeka, Kansas, I and B, Inc., Cherryvale, Kansas, and Peoples State Bank, Cherryvale, Kansas.

Comments on this application must be received by February 8, 1999.

Board of Governors of the Federal Reserve System, January 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1884 Filed 1–26–99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company

Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Bay Port Financial Corporation, Bay Port, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Bay Port State Bank, Bay Port, Michigan.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. MemphisFirst Corporation, Memphis, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of MemphisFirst Community Bank, Memphis, Tennessee, in organization.

Board of Governors of the Federal Reserve System, January 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1883 Filed 1–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 11, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Wachovia Corporation, Winston-Salem, North Carolina; to acquire Interstate/Johnson Lane, Inc., Charlotte, North Carolina, and thereby engage in underwriting and dealing in municipal revenue bonds (including certain unrated and private ownership municipal revenue bonds), 1-4 family mortgage-related securities, consumer receivable-related securities, and commercial paper, *see Citicorp*, 73 Fed. Res. Bull. 473 (1987), and underwriting and dealing in all types of debt and equity securities, *see J.P. Morgan & Co., Inc., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Fed. Res. Bull. 192 (1989); in extending credit and providing services related to credit, pursuant to §§ 225.28(b)(1) and (2) of Regulation Y; in providing leasing services, pursuant to § 225.28(b)(3) of Regulation Y; in performing trust company functions, pursuant to § 225.28(b)(5) of Regulation Y; in providing financial and investment advisory services, pursuant to §§ 225.28(b)(6)(i)-(vi) of Regulation Y; in providing securities brokerage, riskless principal, private placement, and other agency transactional services, pursuant to §§ 225.28(b)(7)(i)-(iv) of Regulation Y; in underwriting and dealing in government obligations and money market instruments that state member banks may underwrite and deal, pursuant to § 225.28(b)(8)(i) of Regulation Y; in investing and trading activities, pursuant to § 225.28(b)(8)(ii) of Regulation Y; and in providing management consulting advice, pursuant to § 225.28(b)(9)(i) of Regulation Y.

In connection with the proposed transaction, Wachovia Corporation also has applied to acquire an option to purchase up to 19.9 percent of the outstanding shares of Interstate/Johnson Lane, Inc.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community Trust Financial Services Corporation, Hiram, Georgia; to acquire First Family Financial Services of Georgia, Inc., Atlanta, Georgia, and thereby engage in making, acquiring, brokering, or servicing loans or other extension of credit, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, January 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1885 Filed 1-26-99; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, February 1, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 22, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1915 Filed 1–22–99; 4:20 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Samar N. Roy, Ph.D., New York Blood Center: Based on a report forwarded to the Office of Research Integrity (ORI) by the New York Blood Center (NYBC) on February 26, 1998, and information obtained by ORI during its oversight review, ORI found that Dr. Roy, former assistant member, Laboratory of Membrane Biochemistry, NYBC, engaged in scientific misconduct in biomedical research supported in part by a National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grant.

Specifically, Dr. Roy intentionally falsified the claim reported in S.N. Roy, B. Kudryk, and C.M. Redman, J. Biol. Chem. 270:23761–23767 (1995) (the "JBC 270 paper") that he had obtained the expression of wild type and mutant fibrinogen in yeast cells. Dr. Roy falsified the claim by "spiking" various samples with fibrinogen obtained from mammalian sources that were submitted to other laboratories for analysis. Also, Dr. Roy intentionally falsified the data reported in Figure 2A of the JBC 270 paper by using a different exposure of the same autoradiogram that he later used in the first six lanes of Figure 2 reported in S. Roy, A. Sun, and C. Redman, J. Biol. Chem. 271:24544–24550 (1996) (the "JBC 271 paper"). The falsified autoradiogram in Figure 2A of the JBC 270 paper was described differently, though correctly, in Figure 2 of the JBC 271 paper. The JBC 270 paper has been retracted.

Dr. Roy has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning January 7, 1999:

(1) To exclude himself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR Part 76 (Debarment Regulations); and

(2) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852 (301) 443–5330

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–1798 Filed 1–26–99; 8:45 am]

BILLING CODE 4160–17–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for HIV, STD and TB Prevention Division of HIV and AIDS Prevention

Name: Consultation Meeting on HIV Prevention in Disproportionately Affected Communities.

Time and Dates: 4 p.m.–6 p.m., February 1, 1999; 9 a.m.–5 p.m., February 2, 1999.

Place: Atlanta Sheraton Buckhead, 3405 Lenox Rd, Atlanta, Georgia 30326. Telephone 404/261–9250.

Status: Attendees will include invited participants from affected communities around the nation and is open to the public, limited only by space available. The meeting room will accommodate approximately 70 people.

Purpose: Attendees will be charged with reviewing major concepts and strategies that pertain to the Centers for Disease Control and Prevention (CDC), Division of HIV and AIDS Prevention's pending funding announcements for communities of color. The funding announcements are in response to the eighteen million dollars appropriated to the CDC by Congress in response to the Congressional Black Caucus.

Matters to be Discussed: Agenda items include discussion of directly funding community based organizations; national, regional and minority organizations; faith communities; and community development and coalition building.

Contact Person for More Information: Carrie Salone, National Center for HIV, STD and TB Prevention, Division of HIV and AIDS Prevention, 1600 Clifton Rd., NE, m/s E–58, Atlanta, Georgia 30333. Telephone 404/639–5244, e-mail *CAJ2@cdc.gov*

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: January 20, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–1836 Filed 1–26–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Savannah River Site Phase II Environmental Dose Reconstruction Project (Source Term): Public Meetings

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) and the Risk Assessment Corporation (RAC) announce the following public meetings.

Name: Savannah River Site (SRS) Phase II Environmental Dose Reconstruction Project (Source Term): Public Meetings.

Dates: The meeting dates are:

1. Thursday, February 4, 1999, 7 p.m.–9 p.m.

2. Tuesday, February 9, 1999, 7 p.m.–9 p.m.

3. Wednesday, February 10, 1999, 7 p.m.–9 p.m.

Addresses: The meeting locations are:

1. Hilton Savannah DeSoto, 15 East Liberty Street, Savannah, Georgia 32412–8207. Telephone 912/232–9000.

2. Holiday Inn Express, 155 Colony Parkway, Aiken, South Carolina 29803. Telephone 803/648–0999.

3. Holiday Inn Coliseum, 630 Assembly Street, Columbia, South Carolina 29201. Telephone 803/799–7800.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE), replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic

epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: The SRS Dose Reconstruction Project supports research that evaluates past releases of radioactive materials and chemicals from the SRS to the surrounding environment. The CDC and RAC are conducting a study of the SRS to determine whether past nuclear materials production caused offsite health effects. Phase I of that study involved the most comprehensive review of records ever undertaken at any of the U.S. Weapons facilities. Phase II of the study, to be completed in August of 1999, uses that information to estimate past releases of radionuclides and chemicals from the SRS. The research team has also analyzed the offsite environmental measurements of these materials performed since the early 1950's. Phase II of the project is nearing completion, with the release of a draft, 1400-page report for technical peer review in February of 1999.

This series of public meetings will present the study's draft results, and will provide an opportunity for individuals to comment on the research and to provide additional information concerning past SRS operations.

Public input and the promise to provide clear and easily obtained sources of public information are important parts of this study, from start to finish. Newsletters have been published regularly to provide updates on the progress of the research. Fact sheets highlighting specific research topics have been released throughout the work as well.

Contact Person for More Information: Paul G. Renard, Project Officer, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724. Telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: January 20, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–1837 Filed 1–26–99; 8:45 am]

BILLING CODE 4163–18 P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: Family Preservation and Family Support (FP/FS) Services Implementation Study—State Level Data Collection

OMB No.: 0970–0137

Description: The Omnibus Budget Reconciliation Act of 1993 (OBRA 93) established title IV–B, subpart 2 of the Social Security Act (42 U.S.C. 62–628) to provide funds to states for the development of family preservation and family support programs and services. Subpart 2, Section 435 of OBRA 93 requires the Secretary of HHS to evaluate the effectiveness of programs carried out under the legislation. The Adoption and Safe Families Act of 1997, P.L. 105–89, reauthorizes the family preservation and family support programs and services and amended Section 431 [42 U.S.C. 639a] to add two new services: Time-Limited Family Reunification Services and Adoption Promotion and Support Services.

In this second phase of data collection, the five data collection instruments, which were used during the previous phase (1996–1999) will be used with minor changes to reflect the language and amendments of the 1997 reauthorization of the program. Each instrument is geared toward obtaining information from individuals/agencies who will have a slightly different perspective on the context, planning, and implementation of the FP/FS legislation. The data collection instruments will seek information on the programs and services funded, the goals of the planning process, populations targeted, reform efforts initiated, the relationship between family preservation, family support and child welfare, staffing and training, and information systems. Data collection on states planning and implementation experiences will be accomplished through semi-structured interviews with state officials and other key stakeholders who are knowledgeable about child welfare.

Both qualitative and quantitative analyses will be completed to highlight the process states employ to implement the legislation coordinate with other funding sources, develop new systems, and improve service delivery systems. Data analyses also will focus on the impact of legislative changes on the state implementation of the program and comparisons of state implementation before and after the legislative reauthorization. Information obtained from data analyses will provide feedback to ACF in the determination of future policy guidance and the scope and nature of technical assistance to be provided to states. The information will also provide direct feedback to states concerning successful implementation strategies.

Respondents: State, Local or Tribal government and Not-for-Profit Institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Traditional Child Welfare Staff	40	1	.54	21.60
Program Coordinator	10	1	1.00	10.00
Stakeholders	80	1	1.00	80.00
Family Preservation Staff	10	1	.75	7.50
Family Support Staff	10	1	1.00	10.00

Estimated Total Annual Burden Hours: 129.10.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and

Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 21, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–1860 Filed 1–26–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0811]

Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry: Designation, Development, and Application Review for Products in Fast-track Drug Development Programs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information concerning submissions by sponsors of investigational new drugs and applicants for new drug approvals or biological licenses that request fast-track designation and the guidance for industry on fast-track drug development programs.

DATES: Submit written comments on the collection of information by March 29, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct of the information they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed as follows.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry: Designation, Development, and Application Review for Products in Fast-track Drug Development Programs (OMB Control Number 0910–0389)—Extension

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amends the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356) and authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to meet an unmet medical need. The issuance of the guidance will be under section 112(b) of FDAMA, which requires the agency to issue guidance regarding fast-track policies and procedures within 1 year of the date of enactment of FDAMA, November 21, 1997. The guidance will discuss collections of information that are expressly specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. For example, under section 506 of the act, an applicant who seeks fast-track designation must submit a request to FDA. Some of the support for such a request may be required under regulations, such as parts 312, 314, and 601 (21 CFR parts 312, 314, and 601), which specify the types and format of information and data that should be submitted to FDA for evaluation of the safety and effectiveness of investigational new drug applications (IND's) (part 312), new drug applications (part 314), or biological license applications (part 601). The guidance will describe three general areas involving collection of information: Designation requests, premeeting packages, and requests to submit portions of an application. Of these, designation requests, and premeeting packages in support of obtaining a fast-track program benefit will provide for additional collections of information not provided elsewhere in statute or regulation. Information in support of fast-track designation or fast-track program benefits that has previously been submitted to the agency, may, in some cases, be incorporated by referring to them rather than by resubmission. In some instances, a summary of data and information may be submitted in support of fast-track designation or fast-

track program benefits. Therefore, FDA anticipates that the PRA reporting burden under the guidance will be minimal.

Under section 506(a)(1) of the act, an applicant who seeks fast-track designation is required to submit a request to the agency. In order to receive a fast-track designation, the requester must establish that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. In most cases, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulation. Such information, if already submitted to the agency, may be summarized in a fast-track designation request. The guidance will also recommend that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to meet an unmet medical need where approved therapy exists for the serious or life-threatening condition to be treated. Such information may include: Clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast-track designation have been met.

After the agency makes a fast-track designation, a sponsor or applicant may submit a premeeting package, which may include additional information to support a request to participate in certain fast-track programs. As with the request for fast-track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations, such as descriptions of clinical safety and efficacy trials not conducted under an IND (i.e., foreign studies), and information to support a request for accelerated approval. If information has been previously submitted to FDA under an OMB approved collection of information, the discussion of such information in a fast-track premeeting package may be summarized. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Section 506(c) of the act requires a collection of information before an applicant may be permitted to submit to FDA portions of an application for review. Under this provision of the fast-track statute, a sponsor must submit clinical data sufficient for the agency to determine, after preliminary evaluation, that a fast-track product may be effective. Section 506(c) also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance will not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) or any other provision of the act.

All forms that will be referred to in the guidance have valid OMB control numbers. These forms include: FDA Form 1571 (OMB Control No. 0910–0104, expires December 31, 1999); FDA Form 356h (OMB Control No. 0910–0338, expires April 30, 2000); and FDA Form 3397 (OMB Control No. 0910–0297, expires April 30, 2001). Respondents to this information collection are sponsors and applicants that seek fast-track designation under section 506 of the act.

The agency estimates that the aggregate annual number of respondents submitting requests for fast-track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 60. To obtain this estimate, FDA extrapolated from the number of requests for fast-track designation actually received by CBER and CDER in a 6-month period since November 21, 1997, the date of enactment of FDAMA. Within this time period, CBER received 9 requests, and CDER received 20 requests. FDA estimates that the number of hours needed to prepare a request for fast-track designation may generally range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in Table 1 of this document.

Not all requests for fast-track designation may meet the statutory standard. The agency estimates that approximately 90 percent of all annual requests, approximately 54 respondents, for fast-track designation would be granted. Of those respondents who receive fast-track designation for a product, FDA expects that all will submit a premeeting package and that a premeeting package would generally need more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in Table 1 of this document.

The hour burden estimates contained in Table 1 of this document are for information collections requests in the guidance only and do not include burden estimates for statutory requirements specifically mandated by the act, the PHS Act, or implementing regulations. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation Request	60	1	60	60	3,600
Premeeting Packages	54	1	54	100	5,400
Totals	114		114		9,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 20, 1999.
William K. Hubbard,
Associate Commissioner for Policy Coordination.
[FR Doc. 99–1797 Filed 1–26–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0143]

Agency Information Collection Activities; Announcement of OMB Approval; Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units From Prior Collections From Donors with Repeatedly Reactive Screening Test for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Guidance for Industry: Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units From Prior Collections From Donors with Repeatedly Reactive Screening Test for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 21, 1998 (63 FR 56192), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0388. The approval expires on April 30, 1999.

Dated: January 20, 1999.
William K. Hubbard,
Associate Commissioner for Policy Coordination.
[FR Doc. 99–1795 Filed 1–26–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0721]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by February 26, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance. In the **Federal Register** of October 6, 1998 (63 FR 53675), the agency requested comments on the proposed collection of information. No comments were received.

Due to a clerical error, the title of the information collection that appeared in the **Federal Register** of October 6, 1998, was incorrect. The correct title follows.

I. Premarket Approval of Medical Devices—21 CFR Part 814 and FDAMA Sections 201, 202, 205, 207, 208, 209 (OMB Control Number 0910–0231—Extension)

Section 515 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e) sets forth requirements for premarket approval of certain medical devices. Under section 515 of the act, an application must contain several pieces of information, including: Full reports of all information concerning investigations showing whether the device is safe and effective; a statement of components; a full description of the methods used in, and the facilities and controls used for, the manufacture and processing of the device; and labeling specimens. The implementing regulations, contained in part 814 (21 CFR part 814), further specify the contents of a premarket approval application (PMA) for a medical device and the criteria FDA will employ in approving, denying, or withdrawing approval of a PMA. The purpose of these regulations is to establish an efficient and thorough procedure for FDA's review of PMA's for class III (premarket approval) medical devices. The regulations will facilitate the approval of PMA's for devices that have been shown to be safe and effective and otherwise meet the statutory criteria for approval. The regulations will also ensure the disapproval of PMA's for devices that have not been shown to be safe and effective and that do not otherwise meet the statutory criteria for approval.

Under § 814.15, an applicant may submit in support of a PMA studies from research conducted outside the United States, but an applicant must explain in detail any differences between standards used in a study to support the PMA's and those standards found in the Declaration of Helsinki. Section 814.20 provides a list of information required in the PMA, including: A summary of information in the application, a complete description of the device, technical and scientific information, and copies of proposed labeling. Section 814.37 provides requirements for an applicant who seeks to amend a pending PMA. Section 814.82 sets forth postapproval requirements FDA may propose, including periodic reporting on safety effectiveness, and reliability, and display in the labeling and advertising of certain warnings. Other potential postapproval requirements include the maintenance of records to trace patients and the organizing and indexing of records into identifiable files to enable FDA to determine whether there is reasonable assurance of the device's continued safety and effectiveness. Section 814.84 specifies the contents of periodic reports.

II. FDA Modernization Act of 1997

The FDA Modernization Act of 1997 (FDAMA), enacted on November 21, 1997, to implement revisions to the act, streamlines the process of bringing safe and effective drugs, medical devices, and other therapies to the U.S. market. Several provisions of this act that affect the PMA process and impact collection of information have been or will be implemented by FDA and are discussed as follows.

Section 201(b) of FDAMA amends section 515(d) of the act to allow submission of data from investigations of earlier versions of a device, in support of a safety and effectiveness determination for a PMA. The data is valid if modifications to earlier versions of the investigational device, whether made during or after the investigation, do not constitute a significant change that would invalidate the relevance of the data. This section also allows for the submission of data or information relating to an approved device that are relevant to the design and intended use of a device for which an application is pending, provided the data are available for use under the act (i.e., available by right of reference or in the public domain).

Section 202 of FDAMA amends section 515(d) of the act to state that FDA will provide special review, which can include expedited processing of a PMA application, for certain devices intended to treat or diagnose life threatening or irreversibly debilitating diseases or conditions.

Section 205(a) of FDAMA amends section 513(a)(3) of the act (21 U.S.C. 360c(a)(3)) to allow sponsors planning to submit a PMA to submit a written request to FDA for a meeting to determine the type of information (valid scientific evidence) necessary to support the effectiveness of their device. FDA must meet with the requester and communicate in writing the agency's determination of the type of data that will be necessary to demonstrate effectiveness within 30 days after the meeting.

Section 205(c) of FDAMA amends section 515(d) of the act to state that PMA supplements are required for all changes that affect safety or effectiveness, unless such change involves modifications in a manufacturing procedure or method of manufacturing. Clearance for this information collection, included within a proposed rule, has already been sought by FDA in an earlier document (63 FR 20558, April 27, 1998).

Section 205(c) of FDAMA amends section 515(d) of the act to allow for approval of incremental changes in design affecting safety and effectiveness based on nonclinical data that demonstrate the change creates the intended additional capacity, function, or performance of the device; and clinical data included in the original PMA application or any supplement to that application that provides reasonable assurance of safety and effectiveness. If needed, FDA may require a sponsor to submit new clinical data to demonstrate safety and effectiveness.

Section 207 of FDAMA amends section 513 of the act to allow an applicant who submits a premarket notification submission (510(k)) and receives a not substantially equivalent (NSE) determination, placing the device into a class III category, to request FDA to classify the product into class I or II. The request must be in writing and sent within 30 days from the receipt of the NSE determination. Within 60 days from the date the written request is submitted to FDA, the agency must classify the device by written order.

If FDA classifies the device into class I or II, this device can be used as a predicate device for other 510(k)'s. However, if FDA determines that the device will remain in class III, the device cannot be distributed until the applicant has obtained an approved PMA or an approved investigational device exemption.

Section 208 of FDAMA amends section 513 of the act to allow PMA applicants to have the same access as FDA to data and information submitted by FDA to a classification panel, except data not available for public disclosure; the opportunity to submit information based on the PMA, through FDA, to the panel; and the same opportunity as FDA to participate in panel meetings.

Section 209(b) of FDAMA amends section 515(d) of the act to state that FDA must, upon the written request of the applicant, meet with that party within 100 days of receipt of the filed PMA application to discuss the review status of the application. With the concurrence of the applicant, a different schedule may be established. Prior to this meeting, FDA must inform the applicant in writing of any identified deficiencies and what information is required to correct those deficiencies. FDA must also promptly notify the applicant if FDA identifies additional deficiencies or of any additional information required to complete agency review.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
814.15, 814.20, and 814.37	52	1	52	837.28	43,539
814.82	37	1	37	134.68	4,983
814.84	37	1	37	10	370
Total					48,892

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
814.82(a)(5) and (a)(6)	814	1	814	16.7	13,594
Total					13,594

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
Note: Statutory burden is not included on the burden chart.

III. Reporting/Disclosure

The reporting burden can be broken out by certain sections of the PMA regulation: (1) § 814.15—Research conducted outside the United States, (2) § 814.20—Application, and (3) § 814.37—PMA amendments and resubmitted PMA's.

The bulk of the burden is due to the previous three requirements. Included in these three requirements are the conduct of laboratory and clinical trials as well as the analysis, review, and physical preparation of the PMA application. FDA's estimate of the hours per response (837.28) was derived through FDA's experience and consultation with industry and trade associations. Included in these three requirements are the conduct of laboratory and clinical trials as well as the analysis, review, and physical preparation of the PMA application. FDA estimates, based on the 1985 study, that these requirements account for the bulk of the burden identified by manufacturers.

IV. § 814.39—PMA Supplements

Clearance for this information collection, included within a proposed rule, has already been sought by FDA in an earlier document (63 FR 20558).

V. § 814.82—Postapproval Requirements

Postapproval requirements concern approved PMA's for devices that were not reclassified and require an annual report. In the last decade (1988 to 1997), the range of PMA's which fit this category averaged approximately 37 per year (70 percent of the 52 annual submissions). Most approved PMA's have been subject to some restriction. Approximately half of the average submitted PMA's (26) require associated postapproval information (i.e., clinical trials or additional preclinical information) that is labor-intensive to compile and complete, and the other PMA's require minimal information. Based on its experience and on consultation with industry, FDA estimates that preparation of reports and information required by this section requires 4,983 hours (134.68 hours per respondent).

VI. § 814.84—Reports

Postapproval requirements described in § 814.82 require a periodic report. FDA has determined respondents meeting the criteria of § 814.84 will submit reports on an annual basis. As stated previously, the range of PMA's fitting this category averaged approximately 37 per year. These reports have minimal information requirements. FDA estimates that respondents will construct their report and meet their requirements in approximately 10 hours. This estimate is based on FDA's experience and on consultation with industry. FDA estimates that the periodic reporting required by this section will take 370 hours.

VII. Recordkeeping

The recordkeeping burden in this section involves the maintenance of records to trace patients and the organization and indexing of records into identifiable files to ensure the device's continued safety and effectiveness. These requirements are to be performed only by those manufacturers who have an approved PMA and who had original clinical research in support of that PMA. For a typical year's submissions, 70 percent of the PMA's are eventually approved and close to 100 percent of those have original clinical trial data. Therefore, about 37 PMA's a year (52 annual submissions times 70 percent) would be subject to these requirements. Also, because the requirements apply to all active PMA's, all holders of active PMA applications must maintain these records. PMA's have been required since 1976, so there are around 814 active PMA's that could be subject to these requirements (22 years x 37 per year). Each study has approximately 200 subjects, and, at an average of 5 minutes per subject, there is a total burden per study of 1,000 minutes, or 16.7 hours. The aggregate burden for all 814 holders of approved original PMA's, therefore, is 13,594 hours.

The applicant determines which records should be maintained during product development to document and/or substantiate the device's safety and effectiveness. Records required by the current good manufacturing practice/quality systems regulation (21 CFR part 820) may be relevant to a PMA review and may be submitted as part of an application. In individual instances, records may be required as conditions to approval to ensure the device's continuing safety and effectiveness.

Respondents to this information collection are persons filing an application with the Secretary of Health and Human Services for approval of a class III medical device. Part 814 defines a person as any individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit, or other legal entity. These respondents include manufacturers of commercial medical devices in distribution prior to May 28, 1976 (the enactment date of the Medical Device Amendments).

Dated: January 20, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1852 Filed 1–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Notice of Formation of a Subcommittee to the Food and Drug Administration Science Board

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the formation of a subcommittee to the Food and Drug Administration (Science Board). The subcommittee has been established to address scientific issues related to the research programs conducted by the FDA's Center for Food Safety and Applied Nutrition (CFSAN). The subcommittee's findings will be presented to the Science Board for full public discussion at a future meeting.

FOR FURTHER INFORMATION CONTACT: Anita O'Connor, Office of Science (HF–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3312.

SUPPLEMENTARY INFORMATION: FDA is announcing the formation of a subcommittee of the Science Board to the Food and Drug Administration (Science Board). The subcommittee has been established to address issues related to the scientific quality, mission relevance, and scientific management and leadership of the research programs conducted by CFSAN. The subcommittee will hold its meeting(s) over the next 3 months to: (1) Collect information on CFSAN's research programs, (2) conduct an external peer review of CFSAN research for quality and relevance, and (3) assess CFSAN's programmatic prioritization. The subcommittee's findings will be presented to the Science Board for full public discussion at a future meeting which will be announced in the **Federal Register** prior to the meeting. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

Dated: January 20, 1999.
Michael A. Friedman,
Deputy Commissioner for Operations.
[FR Doc. 99–1793 Filed 1–26–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0784]

Determination of Regulatory Review Period for Purposes of Patent Extension; Viagra™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Viagra™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Viagra™ (sildenafil citrate). Viagra™ is indicated for the treatment of erectile dysfunction. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Viagra™ (U.S. Patent No. 5,250,534) from Pfizer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 10, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Viagra™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Viagra™ is 1,176 days. Of this time, 996 days occurred during the testing phase of the regulatory review period, while 180 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: January 8, 1995. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 8, 1995.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: September 29, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for Viagra™ (NDA 20–895) was initially submitted on September 29, 1997.

3. *The date the application was approved*: March 27, 1998. FDA has verified the applicant's claim that NDA 20–895 was approved on March 27, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 283 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 29, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 26, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1999.
Thomas J. McGinnis,
Deputy Associate Commissioner for Health Affairs.
[FR Doc. 99–1796 Filed 1–26–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0757]

Determination of Regulatory Review Period for Purposes of Patent Extension; Xeloda™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Xeloda™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Xeloda™ (capecitabine). Xeloda™ is indicated for the treatment of patients with metastatic breast cancer resistant to both paclitaxel and an anthracycline-containing chemotherapy regimen or resistant to paclitaxel and for whom further anthracycline therapy is not indicated. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Xeloda™ (U.S. Patent No. 4,966,891) from Hoffmann–La Roche, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 10, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Xeloda™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Xeloda™ is 1,410 days. Of this time, 1,228 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act)(21 U.S.C. 355) became effective: June 22, 1994. The applicant claims June 19, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 22, 1994, which was 30 days after FDA receipt of the IND.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the act: October 31, 1997. The applicant claims October 28, 1997, as the date the new drug application (NDA) for Xeloda™ (NDA 20–896) was initially submitted. However, FDA records indicate that NDA 20–896 was submitted on October 31, 1997.

3. The date the application was approved: April 30, 1998. FDA has verified the applicant's claim that NDA 20–896 was approved on April 30, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 799 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 29, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 26, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–1851 Filed 1–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0783]

Determination of Regulatory Review Period for Purposes of Patent Extension; Emadine™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Emadine™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory

review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Emadine™ (emedastine difumarate). Emadine™ is indicated for the temporary relief of the signs and symptoms of allergic conjunctivitis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Emadine™ (U.S. Patent No. 4,430,343) from Kanebo, Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 10, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Emadine™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Emadine™ is 1,410 days. Of this time, 766 days occurred during the testing phase of the regulatory review period, while 644 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: February 20, 1994. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 20, 1994.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: March 26, 1996. The applicant claims March 22, 1996, as the date the new drug application (NDA) for Emadine™ (NDA 20–706) was initially submitted. However, FDA records indicate that NDA 20–706 was submitted on March 26, 1996.

3. *The date the application was approved*: December 29, 1997. FDA has verified the applicant's claim that NDA 20–706 was approved on December 29, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,028 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 29, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 26, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–1792 Filed 1–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1268]

Guidance for Industry on Variations in Drug Products That May Be Included in a Single Abbreviated New Drug Application; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Variations in Drug Products That May Be Included in a Single ANDA." This guidance was developed by the Office of Generic Drugs (OGD) in the Center for Drug Evaluation and Research to provide information to applicants on certain specific variations of a drug product that should be included in a single abbreviated new drug application (ANDA) and describe the general factors to be considered when determining whether single or multiple ANDA's should be submitted. It is intended to reduce the burden on industry for submitting and maintaining separate applications for certain variations of the same drug product.

DATES: Written comments may be submitted on the guidance by April 27, 1999. General comments on agency guidances are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of "Variations in Drug Products That May Be Included in a Single ANDA" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. West, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5846.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Variation in Drug Products That May Be Included in a Single ANDA." Prior

to October 1, 1990, applicants were to submit separate ANDA's for each dosage form of a drug product and also for each variation (e.g., strength, color, shape) within a dosage form. Separate applications were requested for ease of review since having information on a number of variations within one application could make review more difficult. On October 1, 1990, the OGD Interim Policy and Procedure Guide (PPG) 20–90 was issued. This guide permitted certain variations of solid oral dosage forms and injectables to be submitted within a single abbreviated application. On June 7, 1995, PPG 20–90 was amended to allow certain variations to be filed as supplements.

This guidance incorporates the policies and procedures in PPG 20–90 and clarifies the practice of permitting variations of products in a single application.

This guidance is being issued as a level 1 guidance consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It is being implemented immediately without prior public comment because it is intended to reduce the burden on industry. However, the agency wishes to solicit comments from the public and is providing a 90-day comment period and establishing a docket for the receipt of comments.

This guidance represents the agency's current thinking on variations in drug products that may be included in a single abbreviated application. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 20, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1850 Filed 1–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1218]

Blood Standards; Pilot Program for Gamma Irradiated Blood and Blood Components and Draft "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to establish a pilot program for licensed blood product manufacturers seeking to market irradiated blood components in interstate commerce. FDA is also announcing the availability for public comment of a draft guidance document entitled "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing." FDA is proposing a pilot program that would allow a manufacturer to self-certify conformance to specific criteria as a substitute for the Center for Biologics Evaluation and Research (CBER) review of information submitted in a biologics license application (BLA) supplement filing. Instead of submitting a BLA supplement with supporting operating procedures and data derived from validation and quality control testing, the manufacturer would submit an application form (FDA Form 356h), a self-certification statement that provides that the manufacturer is in compliance with all applicable FDA regulations and meets the criteria for gamma irradiated blood and blood components set forth in the draft guidance document entitled "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing," as well as written request to the CBER Director for an exception to filing a detailed supplement. This action is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiatives and is intended to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments on the proposed pilot program and draft guidance document may be submitted at any time, however, comments should be submitted by April 27, 1999, to ensure their adequate consideration in preparation of the final document and for the initiation of the pilot program.

ADDRESSES: Submit written requests for single copies of "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments and letters of interest on the proposed pilot program and the draft guidance document to the Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Steven F. Falter, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing its intent to launch a pilot program for licensed blood product manufacturers seeking to market irradiated blood components in interstate commerce. The pilot program provides that FDA will review for completeness FDA Form 356h, the self-certification, and written request for an exception to filing a detailed supplement and at FDA discretion will schedule a prelicense inspection within 90 days of receipt of the self-certification to confirm conformance with applicable Federal regulations and the recommended criteria contained in the draft guidance document.

To participate in the program a manufacturer must already be licensed for nonirradiated blood components and should be ready for a prelicense inspection at the time it forwards FDA Form 356h, self-certification, and request for exception to FDA. If, during the prelicense inspection, FDA finds significant deficiencies in quality assurance, manufacturing facilities, or product safety, purity, potency, or effectiveness, FDA may withdraw the manufacturer from the pilot program and the manufacturer will be required to submit a BLA supplement with complete supporting documentation

prior to marketing irradiated blood components in interstate commerce.

FDA intends the pilot program to span approximately 1 year, but the actual length of the program depends on the number of manufacturers participating in the program. FDA intends to begin the pilot program 30 days after a final notice announcing the initiation of the program and the availability of the final guidance document is published in the **Federal Register**. At the end of the pilot program, FDA will evaluate the program for efficiency and effectiveness. FDA will make this analysis available to the public upon its completion. If the program proves to be efficient and effective, FDA will consider extending the program to other blood products.

FDA also is announcing the availability of a draft guidance document entitled "Guidance for Industry: Gamma Irradiation of Blood and Blood Components: A Pilot Program for Licensing." This draft guidance document is intended to help manufacturers of irradiated blood components comply with the regulations in Title 21 of the Code of Federal Regulations and to provide criteria acceptable for the manufacture of irradiated blood components. At this time, the draft guidance document is being made available for comment purposes only and is not intended for use by the industry. The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This document is being issued as a draft level 1 guidance document consistent with GGP's.

This draft guidance document represents the agency's current thinking with regard to gamma irradiation of blood and blood components intended for transfusion. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

FDA is soliciting the following from the public: (1) Comments on the draft guidance document, (2) comments concerning the public's interest in a pilot program that would allow licensure by self-certification, a written request for exception to filing a detailed supplement, and an inspection in lieu of a complete application review, and (3) letters of interest from manufacturers who would consider participating in the pilot program.

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document and the pilot program, including those comments expressing interest in participating in the pilot program. Written comments may be submitted at any time, however, comments should be submitted by April 27, 1999, to ensure adequate consideration in preparation of the final document and the pilot program. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document by using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: January 20, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1794 Filed 1–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental Research Council, NADCRC January Meeting.

Date: January 25–26, 1999.

Open: January 25, 1999, 8:30 am to 5:00 pm.

Agenda: Director's Report, Division Updates, Presentations.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Closed: January 26, 1999, 9:00 am to 2:00 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Dushanka V. Kleinman, Deputy Director, National Institute of Dental Research, National Institutes of Health, 9000 Rockville Pike, 31/2C39, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 21, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1825 Filed 1–26–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–06]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment due date: February 26, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, and extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 19, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Requisition for Disbursement of Section 202 Loan Funds.

Office: Housing.

OMB Approval Number: 2502–0187.

Description of the Need for the Information and Its Proposed Use: Forms HUD–92403–CA will be used by the non-profit borrower entity to obtain disbursement on its HUD-funded building loan under the Section 202 Housing Program for the Elderly or Handicapped. Its use during the construction period will enable the borrower to obtain funds to settle his obligations or reimbursements in a timely manner.

Form Number: HUD–92403–CA.

Respondents: Not-For-Profit Institutions.

Frequency of Submission:

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92403–CA	310		3		.5		465

Total Estimated Burden Hours: 465.

Status: Reinstatement without changes.

Contact: Rita Ross, HUD, (202) 708–2556; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 19, 1999.

[FR Doc. 99–1800 Filed 1–26–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–07]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 26, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be of obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and house of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 19, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Eligibility of a Non-Profit Corporation.

Office: Housing.

OMB Approval Number: 2502–0057.

Description of the Need for the Information and Its Proposed Use: Form HUD–3433 identifies the nonprofit qualifications to successfully sponsor a multifamily housing project. Forms HUD–3434 and 3435 identify the nonprofit motivation for sponsoring the project and relationships that exist between the officers, directors and other development team members. Outstanding regulations prohibit nonprofits from being controlled or under the direction of firms seeking to derive a profit or gain.

Form Number: HUD–3433, HUD–3434, and HUD–3435.

Respondents: Businesses or Other For-Profit, Non-Profit Institutions, and Federal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–3433	30		1		.75		22.50
HUD–3434	30		1		.50		15
HUD–3435	210		1		.25		52.50

Total Estimated Burden Hours: 90.

Status: Reinstatement without changes.

Contact: Wendy Carter, HUD, (202) 708–2300; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 99–1801 Filed 1–26–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 4, 1999.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 5:30 PM at the Amica Corporate Headquarters, 100 Amica Way, Lincoln, RI for the following reasons:

1. Approval of Minutes
2. Executive Director's report
3. Chairman's Report
4. Approval of Fiscal Year 1999 Development Plan
5. Approval of Commission By-Laws

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Acting Executive Director, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Acting Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Acting Executive Director BRVNHCC.

[FR Doc. 99–644 Filed 1–26–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Milwaukee County Zoological Gardens, Milwaukee, WI, PRT–007101.

The applicant requests a permit to import tracheal and gastric lavage samples from a captive held Bonobo (*Pan paniscus*) currently held at Zoofari, Mexico to enhance the survival of the species through scientific research and propagation.

Applicant: Milwaukee County Zoological Gardens, Milwaukee, WI, PRT–007119.

The applicant requests a permit to import one captive held male Bonobo (*Pan paniscus*) currently held at Zoofari, Mexico to enhance the survival of the species through conservation education and propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: January 22, 1999.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–1858 Filed 1–26–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–040–08–1410–00; AA–44380]

Realty Action: Sec. 302 of the Federal Land Policy and Management Act Classification and Lease: Alaska

AGENCY: Bureau of Land Management, Anchorage Field Office.

ACTION: Notice of Realty Action, Sec. 302 of the Federal Land Policy and Management Act, Classification and Lease of Public Land—Anchorage, Alaska.

SUMMARY: The following public lands are located in the Le Blondeau Glacier area, on the south bank of the Tsirku River approximately 30 miles west of Haines, Alaska. These lands have been examined and found suitable for classification and lease under the provisions of Sec. 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1732 and 43 CFR 2920). Albert Gilliam, dba Alaska Cross Country Guiding and Rafting, has requested renewal of his commercial occupancy lease on an existing base camp that he has maintained for the past 10 years. This lease is intended to

authorize continuous use, operation and maintenance of the existing base camp that Mr. Gilliam uses as a stop off point for guiding activities, such as wilderness hiking, hunting and rafting tours.

Copper River Meridian

T. 30 S., R. 55 E.,
Section 18 Containing 1.00 acre, more or less.

SUPPLEMENTARY INFORMATION: These lands have been selected by the State of Alaska for future conveyance under the Alaska Statehood Act. The lease will be offered at non-competitive fair market rental of $850.00 annual. The term is 30 years, subject to the following: (1) The lease will terminate upon conveyance to the State of Alaska; (2) or upon non-compliance with the terms and conditions of the lease; and (3) the applicant or holder will comply with the requirements of the annual Special Recreation Permit, specifically the requirements contained in 43 CFR 8370. If the applicant or holder fails to meet these requirements, BLM will terminate the lease, require that the premises be vacated and treat the improvements as unauthorized occupancy and use of public lands according to regulations found in 43 CFR 9230. The lease is renewable at the discretion of the authorized officer and transferable only with BLM approval.

Application Comments

For a period of 45 days from the date of publication of this notice, interested parties may submit comments to the Bureau of Land Management, Field Manager, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599. In the absence of timely objections, this proposal shall become the final.

FOR FURTHER INFORMATION CONTACT: Kathy A. Stubbs, BLM, Anchorage Field Office, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599, (907) 267–1284 or 1–800–478–1263.

Nicholas Douglas,

Field Manager.

[FR Doc. 99–1853 Filed 1–26–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–62920]

Notice of Realty Action; Direct Sale; Nevada

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following land in Elko County, Nevada has been examined and identified as suitable for disposal by direct sale, including the mineral estate, under Section 203 and Section 209 of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (43 U.S.C. 1713 and 1719) at no less than fair market value as determined by an appraisal:

Mount Diablo Meridian, Nevada

T. 37 N., R. 59 E., Section 26,
E½NW¼NW¼NW¼.
Comprising 5.0 acres, more or less.

The above described land is being offered as a direct sale to the Nevada Department of Transportation. The land will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 E. Idaho Street, Elko, Nevada 89801.

SUPPLEMENTARY INFORMATION: The proposed action is consistent with the objectives of the Elko RMP and are consistent with Federal, State, and local laws, regulations, and plans to the maximum extent possible. The land is not needed for any resource program and is not suitable for management by the Bureau or another Federal department or agency. The proposal has been reviewed by the Elko County Planning Commission.

The land has no known value for minerals. Therefore, the mineral estate, will be conveyed simultaneously with the sale of the surface estate. Acceptance of the sale offer will constitute an application to purchase the mineral estate. A non-refundable mineral estate fee of $50.00 will be required along with the purchase money. Failure to submit the purchase money and the non-refundable filing fee for the mineral estate within the time frame specified by the authorized officer will result in cancellation of the sale.

The subject lands have been previously segregated from appropriation under the public land laws and mineral laws on behalf of the Western Resource Management Land Exchange (N–59405). A decision, based on the Environmental Assessment (BLM/EK/PL–99/008), determined that the direct sale to the Nevada Department of Transportation (NDOT) best serves the interest of the public rather than to dispose of the parcel through a land exchange. This action will not adversely impact the exchange. The segregative effect by the Western Resource Management Land Exchange (N–59405) is hereby terminated for the subject parcel described above. The termination will be effective at 9 a.m., 30 days after publication of this notice in the **Federal Register**.

Upon publication of this Notice of Realty Action in the **Federal Register**, the subject lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or disposals pursuant to Sections 203 and 209 of FLPMA. The segregation shall terminate upon issuance of a patent or other document of conveyance, upon publication in the **Federal Register** of a Notice of Termination of Segregation, or 270 days from date of this publication, which ever occurs first.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, (43 U.S.C. 945).

The rights granted by the existing highway right-of-way (Nev-061282) and material site right-of-way (Nev-059247), both held by (NDOT), will merge with title to the land upon issuance of patent and therefore, no reservation of these rights will be made.

For a period of 45 days from the date of publication in the **Federal Register**, interested parties may submit comments to the Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. Any adverse comments will be evaluated by the State Director, who may sustain, vacate or modify this realty action and issue a final determination. In the absence of timely filed objections, this realty action will become a final determination of the Department of the Interior.

Dated: January 12, 1999.

Helen Hankins,

Field Manager.

[FR Doc. 99–1809 Filed 1–26–99; 8:45 am]

BILLING CODE 4310–HC–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–188 (Review)]

Prestressed Concrete Steel Wire Strand From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping finding on prestressed concrete steel wire strand from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on September 1, 1998 (63 FR 46477), and determined on December 4, 1998, that it would conduct an expedited review (63 FR 70158, December 18, 1998). The views of the Commission are contained in USITC Publication 3156 (February 1999), entitled Prestressed Concrete Steel Wire Strand from Japan: Investigation No. AA1921–188 (Review).

Issued: January 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1891 Filed 1–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Refrigeration Compressors From Singapore (Inv. No. 701–TA–B (Review)); Brass Fire Protection Products From Italy (Inv. No. 731–TA–165 (Review))

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in November 1998 to determine whether revocation of the existing suspension agreement/antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to a domestic industry. On January 14, 1999, the Department of Commerce published notice that it was revoking the orders because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 2471, January 14, 1999). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR § 207.69), the subject reviews are terminated.

EFFECTIVE DATE: January 14, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

Issued: January 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1889 Filed 1–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–69]

Certain Steel Wire Rod

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. § 2252) (the Act).

SUMMARY: Following receipt of a properly filed petition on January 12, 1999, on behalf of Atlantic Steel Industries, Inc., Birmingham Steel Corp., Connecticut Steel Corp., Co-Steel Raritan, GS Industries, Inc., Keystone Steel & Wire Co., North Star Steel Co., North Star Steel Texas, Inc., Northwestern Steel & Wire Co., the Independent Steel Workers Alliance, and the United Steelworkers of America AFL–CIO, the Commission instituted investigation No. TA–201–69 under section 202 of the Act to determine whether hot-rolled bars and rods, in irregularly wound coils, of circular or approximately circular solid cross section, having a diameter of 5 mm or more but less than 19 mm, of non-alloy or alloy steel, except such bars and rods of free-machining steel [1] or of alloy steel containing by weight 24 percent or more of nickel, provided for in subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60 of the Harmonized Tariff Schedule of the United States (HTSUS),[2] are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: January 12, 1999.

FOR FURTHER INFORMATION CONTACT: Sioban Maguire (202–708–4721), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Askey dissenting.

[1] Free-machining steel is any steel product containing by weight one or more of the following elements, in the specified proportions: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorous, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium.

[2] The product covered by the investigation is commonly known as "wire rod." The scope of the investigation does not cover concrete reinforcing bars and rods, or bars and rods of stainless steel or tool steel, which are provided for in other HTSUS subheadings.

the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of confidential business information (CBI) under an administrative protective order (APO) and CBI service list.—Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearings on injury and remedy.—The Commission has scheduled separate hearings in connection with the injury and remedy phases of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on April 15, 1999 at the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on June 8, 1999. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before April 7 and June 2, 1999, respectively. All persons desiring to appear at the hearings and make oral presentations should attend prehearing conferences to be held at 9:30 a.m. on April 12 and June 4, 1999, respectively, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is April 9, 1999; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. § 2252(a)(6)(B), is May 27, 1999. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury is April 20, 1999; that for filing posthearing briefs on remedy is June 14, 1999. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before April 20, 1999, and pertinent to the consideration of remedy on or before June 14, 1999. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.
Issued: January 22, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1890 Filed 1–26–99; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. § 9622(d), notice is hereby given that a proposed Consent Decree in *United States* v. *C&D Technologies, Inc., et al.*, Civil Action Number 99–52 (WHW), DOJ #90–11–2–1075, was lodged in the United States District Court for the District of New Jersey on January 6, 1999. The Consent Decree resolves the liability of defendants under Sections 106(a) and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607(a), and the Resource Conservation and Recovery Act, 42 U.S.C. § 6973 relating to the NL Industries, Inc. Superfund Site in Pedricktown, New Jersey (the "Site").

Under the proposed decree Defendants agree to perform EPA's first operable unit and Phase V removal action for the Site as set forth in EPA's Record of Decision of July 1994 ("OU1"), which requires: excavation, treatment, and disposal of soils and removal of stream sediments contaminated with lead above the remedial action objective of 500 parts per million (ppm); extraction and treatment of contaminated ground water; and appropriate environmental monitoring to ensure effectiveness of the remedy. The estimated cost for the remedy is $21,021,550. Defendants also agree to pay the first $3,515,064 in Past Costs and Future Response Costs incurred in connection with the Site. In exchange for the work and payment of response costs, Defendants will receive a covenant not to sue for response actions at the Site subject to certain reservations of rights.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *C&D Technologies, Inc., et al.* DOJ # 90–11–2–1075.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street Room 501, Newark, New Jersey 07102; at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, N.W., 3d Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3d Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $65.50 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–1806 Filed 1–26–99; 8:45 am]
BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on January 8, 1999, a

proposed consent decree in *United States* v. *Hercules Incorporated,* Civil Action No. LRC99–022, was lodged with the United States District Court for the Eastern District of Arkansas, Western Division. The proposed Consent Decree resolves the liability of the Settling Defendant under Sections 107 of CERCLA at the Vertac Superfund Site ("Site") located in Jacksonville, Arkansas. Under the terms of the Consent Decree, the Settling Defendant has agreed to pay $1.0 million for compensation for injury to natural resources. This sum will be used for implementation of restoration projects and payment of the Department of Interior's assessment costs.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Hercules Incorporated,* DOJ #90–7–18F.

The proposed consent decree may be examined at the offices of the United States Attorney for the Eastern District of Arkansas, Western Division, 425 W. Capital, 5th Floor, Little Rock, Arkansas 72201, and at the office of the United States Department of the Interior, Office of the Solicitor, Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring St., S.W., Atlanta, Georgia 30303 (Attention: Holly Deal, Attorney-Advisor). A copy of the consent decree may also be examined at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. Copies of the decree may be obtained in person or by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $6.50 (25 cents per page reproduction charge for decree, with attachment) payable to "Consent Decree Library". When requesting copies, please refer to *United States* v. *Hercules Incorporated,* DOJ #90–7–1–18F.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–1807 Filed 1–26–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. Tansitor Electronics, Inc. et al., Civil Action No. 2:99–CV–14, was lodged on January 11, 1999, with the United States District Court for the District of Vermont. The proposed consent decree resolves the claims of the United States in a complaint filed against Tanitor Electronics, Inc. ("Tansitor") and Siemens Communication Systems, Inc. ("Siemens") (the "Settling Defendants"), pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607. In the compliant, which was filed with the proposed decree, the United States seeks (1) recovery of past unreimbursed response costs incurred by the United States at the Tansitor Electronics, Inc. Superfund Site ("Site"), located in Bennington, Vermont, (2) recovery for injury to natural resources at the Site, and (3) an order requiring Settling Defendants to implement the remedy selected for the Site by EPA in a Record of Decision dated September 29, 1995 ("ROD"). The Settling Defendants are current and former owners and operators of the Site.

Pursuant to the proposed settlement, the Settling Defendants have agreed to (1) Reimburse the EPA Hazardous Substance Superfund in the amount of $300,000, (2) pay the United State's future oversight costs in connection with the Site in excess of $40,000, (3) pay $21,000 to the Department of the Interior with respect to damages to natural resources at the Site, and (4) implement the remedy for the Site selected by EPA in the ROD, which includes the filing of a restrictive easement, long-term groundwater monitoring, and the implementation of further studies of certain contingencies occur.

The State of Vermont is also a party to the settlement. The Settling Defendants have agreed to reimburse Vermont for all future oversight costs in excess of $10,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Tansitor Electronics, Inc.,* DOJ Ref. Number 90–11–3–737A.

The proposed consent decree may be examined in EPA Region 1 (contact Audrey Zucker, 617–918–1788); and the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 614–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $91.50 (25 cents per page reproduction costs) for the decree with all appendices, or in the amount of $37.25 for the decree without Appendix A, which is the ROD, payable to the Consent Library.

Joel M. Gross,

Section Chief, Enviromental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–1808 Filed 1–26–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Reinstatement, with change, of a previously approved collection for which approval has expired; National Instant Criminal Background Check System (NICS) Federal Firearms Licensee Enrollment Form.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by February 5, 1999. If granted, this emergency approval is only valid for 180 days. Comments should be directed to Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same period a regular review of this collection is also being undertaken. Public comments are encouraged and will be accepted until March 29, 1999. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Jim Jaye, National Instant Criminal Background Check System, Operations Manager, Federal Bureau of Investigation, CIJS Division, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, (304) 625–7331.

Overview of this information collection:

(1) Type of Information Collection: Reinstatement, with change, of previously approved collection for which approval has expired.

(2) Title of the Form/Collection: National Instant Criminal Background Check System (NICS) Federal Firearms Licensee Enrollment Form.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: None. Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit (Federally licensed firearms dealers, manufacturers, or importers).

Brief Abstract: The Brady Handgun Violence Prevention Act of 1994, requires the Attorney General to establish a national instant criminal background check system that any Federal Firearm Licensee may contact, by telephone or by other electronic means in addition to the telephone, for information, to be supplied immediately, on whether receipt of a firearm to a prospective purchaser would violate federal or state law. Information pertaining to licensees who may contact the NICS is being collected manage and control access to the NICS, to ensure appropriate resources are available to support the NICS, and also to ensure the privacy and security of NICS information.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 6,000 Federal Firearms Licensees annually at an average of 20 minutes to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,000 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1001 G Street NW, Suite 850, Washington, DC 20530.

Dated: January 26, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–1802 Filed 1–26–99; 8:45 am]

BILLING CODE 4410–02–M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 2–99]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Friday, February 5, 1999, 10:00 a.m.

Subject Matter: Hearings on the Record on Objections to Proposed Decisions on claims against Albania, as follows:

Claim No. ALB–092 Thanas A. Laske, ALB–173 Marigo Tellios, et al., ALB–220 Gjergji Gjeli

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, N.W., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, January 25, 1999.

David E. Bradley,

Chief Counsel.

[FR Doc. 99–2025 Filed 1–25–99; 2:14 pm]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

Department of Justice, Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of Information Collection Under Review, (Reinstatement, without change, of a previously approved collection for which approval has expired).

The National Judicial Reporting Program, Form NJRP–1

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (BJS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on October 28, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until January 28, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitted electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* National Judicial Reporting Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is NJRP–1. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Court authorities. The National Judicial Reporting Program (NJRP) is the only collection effort that provides an ability to maintain important statistics on felons convicted and sentenced in state courts. The NJRP enables the Bureau, Federal, State, and local correctional administrators; legislators; researchers; and planners to track change in the numbers and types of offenses and sentences felons convicted in state courts receive; as well as track changes in the demographics, conviction type, number of charges, sentence length, and time between arrest and conviction and sentencing of felons convicted in state courts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 344 respondents will take 8.1 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual burden hours are 2,786.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: January 21, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–1830 Filed 1–26–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–04; Exemption Application No. D–10288, et al.]

Grant of Individual Exemptions; Salomon Smith Barney Inc, et al

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Salomon Smith Barney, Inc. Located in New York, New York.

[Prohibited Transaction Exemption 99–04; Exemption Application No. D–10288]

Exemption

Section I—Transactions

A. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities between certain affiliates of Salomon Smith Barney, Inc. (SSB) which are foreign broker-dealers or banks (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, including options written by a Plan, SSB, or a Foreign Affiliate, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

(2) The terms of any transaction are at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party; and

(3) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets, and the Foreign Affiliate is a

party in interest or disqualified person with respect to the Plan assets involved in the transaction solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections. For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to a Plan solely by reason of providing securities custodial services for a Plan.

B. The restrictions of sections 406(a)(1)(A) through (D) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any extension of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions, regardless of whether they are effected on an agency or a principal basis, or in connection with the writing of options contracts, provided that the following conditions and the General Conditions of Section II, are satisfied:

(1) The Foreign Affiliate is not a fiduciary with respect to the Plan assets involved in the transaction, unless no interest or other consideration is received by the Foreign Affiliate or an affiliate thereof, in connection with such extension of credit; and

(2) Any extension of credit would be lawful under the Securities Exchange Act of 1934 (the 1934 Act) and any rules or regulations thereunder, if the 1934 Act, rules, or regulations were applicable.

C. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the lending of securities to the Foreign Affiliates by the Plans, provided that the following conditions, and the General Conditions of Section II, are satisfied:

(1) Neither the Foreign Affiliate nor an affiliate thereof has discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(2) The Plan receives from the Foreign Affiliate (by physical delivery, by book entry in a securities depository, wire transfer, or similar means) by the close of business on the day the loaned securities are delivered to the Foreign Affiliate, collateral consisting of cash, securities issued or guaranteed by the U.S. Government or its agencies or instrumentalities, irrevocable U.S. bank letters of credit issued by persons other than the Foreign Affiliate or an affiliate of the Foreign Affiliate, or any combination thereof. All collateral shall be in U.S. dollars, or dollar-denominated securities or bank letters of credit, and shall be held in the United States;

(3) The collateral has, as of the close of business on the preceding business day, a market value equal to at least 100 percent of the then market value of the loaned securities (or, in the case of letters of credit, a stated amount equal to same);

(4) The loan is made pursuant to a written loan agreement (the Loan Agreement), which may be in the form of a master agreement covering a series of securities lending transactions, and which contains terms at least as favorable to the Plan as those the Plan could obtain in a comparable arm's length transaction with an unrelated party;

(5) In return for lending securities, the Plan either: (a) Receives a reasonable fee, which is related to the value of the borrowed securities and the duration of the loan, or (b) has the opportunity to derive compensation through the investment of cash collateral. In the latter case, the Plan may pay a loan rebate or similar fee to the Foreign Affiliate, if such fee is not greater than what the Plan would pay in a comparable arm's length transaction with an unrelated party;

(6) The Plan receives at least the equivalent of all distributions on the borrowed securities made during the term of the loan, including, but not limited to, cash dividends, interest payments, shares of stock as a result of stock splits, and rights to purchase additional securities, that the Plan would have received (net of applicable tax withholdings) [1] had it remained the record owner of such securities;

(7) If the market value of the collateral as of the close of trading on a business day falls below 100 percent of the market value of the borrowed securities as of the close of trading on that day, the Foreign Affiliate delivers additional collateral, by the close of the Plan's business on the following business day, to bring the level of the collateral back to at least 100 percent. However, if the market value of the collateral exceeds 100 percent of the market value of the borrowed securities, the Foreign Affiliate may require the Plan to return part of the collateral to reduce the level of the collateral to 100 percent;

(8) Before entering into a Loan Agreement, the Foreign Affiliate furnishes to the independent Plan fiduciary: (a) The most recent available audited statement of the Foreign Affiliate's financial condition, (b) the most recent available unaudited statement of its financial condition (if more recent than the audited statement), and (c) a representation that, at the time the loan is negotiated, there has been no material adverse change in its financial condition that has not been disclosed since the date of the most recent financial statement furnished to the independent Plan fiduciary. Such representation may be made by the Foreign Affiliate's agreeing that each loan of securities shall constitute a representation that there has been no such material adverse change.

(9) The Loan Agreement and/or any securities loan outstanding may be terminated by the Plan at any time, whereupon the Foreign Affiliate shall deliver certificates for securities identical to the borrowed securities (or the equivalent thereof in the event of reorganization, recapitalization, or merger of the issuer of the borrowed securities) to the Plan within: (a) The customary delivery period for such securities, (b) five business days, or (c) the time negotiated for such delivery by the Plan and the Foreign Affiliate, whichever is least, or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded; [2]

(10) In the event that the loan is terminated and the Foreign Affiliate fails to return the borrowed securities, or the equivalent thereof, within the time described in paragraph 9, the Plan may purchase securities identical to the borrowed securities (or their equivalent as described above) and may apply the collateral to the payment of the purchase price, any other obligations of the Foreign Affiliate under the Loan Agreement, and any expenses associated with the sale and/or purchase. The Foreign Affiliate is obligated to pay, under the terms of the Loan Agreement,

[1] The Department notes the applicant's representation that dividends and other distributions on foreign securities payable to a lending Plan may be subject to foreign tax withholdings and that the Foreign Affiliate will always put the Plan back in at least as good a position as it would have been in had it not loaned the securities.

[2] PTCE 81–6 provides an exemption under certain conditions from section 406(a)(1)(A) through (D) of the Act and the corresponding provisions of section 4975(c) of the Code for the lending of securities that are assets of an employee benefit plan to a U.S. broker-dealer registered under the 1934 Act (or exempted from registration under the 1934 Act as a dealer in exempt Government securities, as defined therein) or to a U.S. bank, that is a party in interest with respect to such plan.

and does pay, to the Plan the amount of any remaining obligations and expenses not covered by the collateral, plus interest at a reasonable rate. Notwithstanding the foregoing, the Foreign Affiliate may, in the event it fails to return borrowed securities as described above, replace non-cash collateral with an amount of cash not less than the then current market value of the collateral, provided that such replacement is approved by the independent Plan fiduciary; and

(11) The independent Plan fiduciary maintains the situs of the Loan Agreement in accordance with the indicia of ownership requirements under section 404(b) of the Act and the regulations promulgated under 29 CFR 2550.404(b)-1. However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of Section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

If the Foreign Affiliate fails to comply with any condition of the exemption in the course of engaging in a securities lending transaction, the Plan fiduciary who caused the Plan to engage in such transaction shall not be deemed to have caused the Plan to engage in a transaction prohibited by section 406(a)(1)(A) through (D) of the Act solely by reason of the Foreign Affiliate's failure to comply with the conditions of the exemption.

Section II—General Conditions

A. The Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III.B, and is in compliance with all applicable rules and regulations thereof in connection with any transactions covered by this exemption;

B. The Foreign Affiliate, in connection with any transactions covered by this exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (S.E.C.) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

C. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions;

D. The Foreign Affiliate maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction such records as are necessary to enable the persons described in paragraph E to determine whether the conditions of the exemption have been met, except that——

(1) a party in interest with respect to a Plan, other than the Foreign Affiliate, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by paragraph E; and

(2) a prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the Foreign Affiliate's control, such records are lost or destroyed prior to the end of the six year period;

E. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Foreign Affiliate makes the records referred to in paragraph (D) unconditionally available during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the S.E.C.; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in (2) through (5) of this subsection are authorized to examine the trade secrets of the Foreign Affiliate or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term *affiliate* of another person shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and (3) any corporation or partnership of which such other person is an officer, director or partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

B. The *term Foreign Affiliate* shall mean an affiliate of Salomon Smith Barney Inc. (or its successor in name within Citigroup) that is subject to regulation as a broker-dealer or bank by (1) the Ontario Securities Commission and the Investment Dealers Association in Canada; (2) the Securities and Futures Authority in the United Kingdom; (3) the Deutsche Bundesbank and the Federal Banking Supervisory Authority, i.e., der Bundesaufsichtsamt fuer das Kreditwesen (the BAK) in Germany; or

(4) the Ministry of Finance and the Tokyo Stock Exchange in Japan;

C. The *term security* shall include equities, fixed income securities, options on equity and on fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

EFFECTIVE DATE: This exemption is effective as of June 7, 1996.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 6, 1998 at 63 FR 53703.

Written Comments

The Department received written comments with respect to the notice of proposed exemption (the Notice), which were submitted by the applicant. The comments request certain modifications and additions to the operative language of the final exemption and to the Summary of Facts and Representations (the Summary) contained in the Notice (see 63 FR 53705). These modifications and additions are discussed below.

1. First, in order to perfect the record upon which the Notice was based, the comments provide new information regarding certain corporate mergers and restructurings that have occurred. In November, 1997, a subsidiary of the then Travelers Group Inc. (now, Citigroup Inc., as discussed below) acquired all of the shares of Salomon Inc., the ultimate parent of Salomon Brothers Inc. (Salomon Bros.). Initially, Salomon Bros. and Smith Barney Inc. (Smith Barney), an affiliate of Travelers Group Inc., were operated as separately registered broker-dealers. However, on September 1, 1998, Salomon Bros. was merged into Smith Barney, and Smith Barney became the surviving corporation and changed its name to Salomon Smith Barney Inc. On October 15, 1998, Salomon Smith Barney Inc. was merged into Pendex Real Estate Corporation, a New York corporation. The New York entity survived the merger and changed its name to Salomon Smith Barney Inc., a New York

corporation. In addition, in April of 1998, Travelers Group Inc. and Citicorp announced a proposed merger. On October 8, 1998, the merger closed, and Citicorp was merged into a subsidiary of Travelers Group Inc. Travelers Group Inc. became a bank holding company and changed its name to Citigroup Inc.

Accordingly, the applicant requests, and the Department concurs with, the following revisions to the Notice, which are reflected in this exemption.

a. All references to Salomon Brothers Inc. should be changed to Salomon Smith Barney Inc. and all references to Salomon Bros. to SSB.

b. In Paragraph 1 of the Summary, the first two full subparagraphs and the first sentence of the third subparagraph (see 63 FR 53705, column 3) should be replaced with the following:

> Salomon Smith Barney Inc., a New York corporation, is an indirect subsidiary of Salomon Smith Barney Holdings Inc., a Delaware corporation, which in turn is a subsidiary of the Citigroup Inc. (formerly the Travelers Group Inc.). Salomon Smith Barney Inc. is one of the largest full-line investment service firms in the United States. It is registered with and regulated by the S.E.C. as a broker-dealer, is registered with and regulated by the Commodities Futures Trading Commission as a futures commission merchant, is a member of the New York Stock Exchange and other principal securities exchanges in the United States, and is also a member of the National Association of Securities Dealers, Inc. As of December 31, 1997, the then Travelers Group Inc. had approximately $387 billion in assets and approximately $21 billion in stockholders' equity.
>
> SSB has several affiliates which are broker-dealers or banks. Those covered by the proposed exemption * * * etc.

c. The references to Salomon Bros. Canada Inc., Salomon Bros. U.K. Limited, Salomon Bros. U.K. Equity Limited, Salomon Bros. International Limited, Salomon Bros. AG, and Salomon Bros. Asia should be changed to Salomon Smith Barney Canada Inc., Salomon Brothers U.K. Limited, Salomon Brothers U.K. Equity Limited, Salomon Brothers International Limited, Salomon Brothers AG, and Salomon Smith Barney (Japan) Limited, respectively.

2. Second, in consideration of the corporate mergers and restructurings that have occurred or may occur in the future involving SSB, the comments request that the Department confirm that this exemption will continue to be effective for any successor entity to SSB, provided that Citigroup remains the indirect parent corporation of such successor entity. In this regard, the Department notes that this exemption would be effective if SSB reorganized or changed its name, provided that such actions did not occur in connection with the sale of the underlying assets of SSB to an unrelated third party. Thus, in response to this comment, the Department has modified the definition of the term "Foreign Affiliate" in Section III.B. of the exemption to clarify that such term applies to an affiliate of SSB or its successor in name within Citigroup.

3. Third, the comments request certain modifications in order to clarify that the provisions of this exemption are consistent with other recent similar exemptions granted by the Department.[3]

a. The comments state that Section I.A. of the Notice (see 63 FR 53703–4) should be revised to read as follows (note deleted and italicized language):

> A. The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities [delete "including options on securities"] between certain affiliates of Salomon Smith Barney Inc. (SSB) which are foreign broker-dealers or banks (the Foreign Affiliates, as defined below) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are parties in interest, *including options written by a Plan, SSB, or a Foreign Affiliate,* * * *

The revised language regarding options, above, is more specific in order to clarify that such options may be written by a Plan. In this regard, the Department cautions Plan fiduciaries to understand the risks and benefits associated with particular options strategies and to monitor such strategies effectively, in order to act prudently, as required under section 404(a) of the Act, when making investment decisions on behalf of a Plan.

b. The comments state that the following sentence should be added to the end of Section I.A., Paragraph 3 of the Notice (see 63 FR 53704, column 1):

> For purposes of this paragraph, the Foreign Affiliate shall not be deemed to be a fiduciary with respect to a Plan solely by reason of providing securities custodial services for a Plan.

c. The comments state that the word "any" in Section I.B, Paragraph 1 of the Notice (see 63 FR 53704, column 1) should be replaced with the word "such" so that the phrase reads "in connection with *such* extension of credit."

d. The comments state that, in order to avoid any ambiguity, Footnote 4 of the Summary (see 63 FR 53707, center column) should be modified by adding the following italicized language:

> SSB represents that currently all such requirements *under* Rule 15a–6 relating to record-keeping of principal transactions would be applicable [delete "to"] *in respect of* any Foreign Affiliate in a *principal* transaction that would be covered by this proposed exemption.

The Department concurs with the applicant's requests and, where necessary, has so modified the language of this exemption.

4. Fourth, the comments request, as a matter of clarification, that the following sentence be added to the end of the first subparagraph of Paragraph 11 in Section I.C. of the Notice (see 63 FR 53705, column 1):

> However, in the event that the independent Plan fiduciary does not maintain the situs of the Loan Agreement in accordance with the indicia of ownership requirements of Section 404(b) of the Act, the Foreign Affiliate shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code.

The Department acknowledges the above-described clarification to the Notice and has so modified the language of this exemption.

5. Fifth, the comments request certain clarifications and additions to the information contained in Paragraph 6 of the Summary (see 63 FR 53706–07), in order to conform the language of the Summary to the relevant language of S.E.C. Rule 15a–6 and to reflect certain S.E.C. interpretations or modifications to that rule, pursuant to a No-Action letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997.

a. The comments state that references to "U.S. major institutional investor" and "major institutional investor" should be changed to "major U.S. institutional investor" in order to be consistent with Rule 15a–6.

b. The comments state that a footnote should be inserted after the definition of "major U.S. institutional investor" in the third full subparagraph of Paragraph 6 of the Summary (see 63 FR 53707, column 1) which reads as follows:

> Note that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by an S.E.C. No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

c. The comments state that another footnote should be inserted after the text of subparagraph (c)(5) of Paragraph 6 of the Summary (see 63 FR 53707, center column) which reads as follows:

> Under certain circumstances described in the April 9, 1997 No-Action Letter (e.g.,

[3] See, e.g., Prohibited Transaction Exemption (PTE) 97–08 (62 FR 4811, January 31, 1997) regarding Morgan Stanley & Co., PTE 97–57 (62 FR 56203) regarding NatWest Securities Corp., and PTE 98–62 (63 FR 71307) regarding Barclays Bank PLC.

clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a–6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

d. The comments state that the following sentence should be inserted at the end of subparagraph (c)(6) of Paragraph 6 of the Summary (see 63 FR 53707, center column):

Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

The Department acknowledges the above-described clarifications to the information included in the Summary.

6. Finally, with respect to the lending of securities by a Plan to a Foreign Affiliate, the applicant states that it wishes to avoid the necessity of amending this individual exemption each time PTCE 81–6 is further amended or superseded. Therefore, the comments request that the following phrase be added to the language at the end of Section I.C., Paragraph 9 of the Notice (see 63 FR 53704, column 3), relating to the required time for delivery of borrowed securities back to the plan:

"or, alternatively, such period as permitted by Prohibited Transaction Class Exemption (PTCE) 81–6 (46 FR 7527, January 23, 1981, as amended at 52 FR 18754, May 19, 1987), as it may be amended or superseded."

In addition, the comment states that the above phrase should be inserted after the sentence ending ". . . whichever is least" in Paragraph 18 of the Summary (see 63 FR 53708, column 3), also relating to the required time for delivery of borrowed securities back to the plan.

The Department has modified the language of this exemption to reflect the applicant's clarifications to the record, as discussed above, and also acknowledges such clarifications as they relate to the information contained in the Notice, as published in the **Federal Register** on October 6, 1998.

No other comments were received by the Department.

Accordingly, based on the information contained in the entire record, the Department has determined to grant the proposed exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Individual Retirement Accounts (the IRAs) for Sharilyn Brune, Richard C. Glowacki, Carl B. Mockensturm, Arthur T. Parrish, W. Alan Robertson, David A. Snavely and Duane Stranahan, Jr. (collectively, the IRA Participants) Located in Holland, OH.

(Prohibited Transaction Exemption 99–05; Application Nos. D–10636—D–10642, respectively)

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective December 1, 1998 to (1) the cash sale by the IRAs [4] to TTC Holdings, Inc. (TTC), the parent of The Trust Company of Toledo, N.A., the trustee of the IRAs and a disqualified person, of certain preferred stock (the Preferred Stock) issued by TTC; and (2) the arrangement for the subsequent purchase by the IRA Participants in their individual capacities, from TTC, pursuant to an agreement with TTC, of an equal number of shares of common stock (the Common Stock) issued by TTC, provided the following conditions are met:

(a) The terms and conditions of the sale and purchase transactions were at least as favorable to each IRA as the terms obtainable in an arm's length transaction with an unrelated party.

(b) The sale by the IRAs of the Preferred Stock and the purchase by the IRA Participants of the Common Stock, in their individual capacities, were one-time transactions for cash which occurred on the same business day;

(c) Each IRA received from TTC, as the sales price for the Preferred Stock, cash consideration reflecting the fair market value of such stock as determined by a qualified, independent appraiser;

(d) Each IRA Participant purchased, in his or her individual capacity, shares of the Common Stock which were equal in number to the shares of Preferred Stock sold by TTC;

(e) No IRA was required to pay any commissions, fees or other expenses in connection with each sale transaction; and

(f) An independent fiduciary determined that the transactions described herein were in the best interest and protective of the IRAs at the time of the transactions; supervised and monitored such transactions on their behalf; assured that the conditions of the proposed exemption were met; and took whatever actions were necessary and proper to protect the interests of the IRAs, including reviewing amounts paid by TTC for the Preferred Stock.

EFFECTIVE DATE: This exemption is effective as of December 1, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 16, 1998 at 63 FR 69319.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department at (202) 219–8881. (This is not a toll-free number.)

Individual Retirement Accounts (the IRAs) for Robert C. Hummel, Garth L. Gibson, Hugh B. Force, Ellen K. Davidson and Michael Davidson (Collectively; the Participants) Located respectively in Greeley, Colorado; Montrose, Colorado; Fort Collins, Colorado; Green River, Wyoming; and Green River, Wyoming.

(Prohibited Transaction Exemption 99–06; Exemption Application Nos. D–10683, D–10684, D–10685, D–10697 and D–10698)

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective December 15, 1998, to the cash sales (the Sales) of certain shares of closely-held common stock of First Mountain Company (the Stock) by the IRAs [5] to the Participants, disqualified persons with respect to the IRAs, provided that the following conditions have been met:

1. The terms and conditions of the Sales were at least as favorable to each IRA as those obtainable in an arm's-length transaction with an unrelated party;

2. The Sale of the Stock by each IRA was a one-time transaction for cash;

3. Each IRA received the fair market of the Stock, as was established by a qualified, independent appraiser, at the time of the Sale; and

4. The IRAs did not pay any commissions, costs or other expenses in connection with the Sales.

EFFECTIVE DATE: The exemption is effective as of December 15, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on December 16, 1998 at 63 FR 69323 (the Notice).

[4] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[5] Because each IRA has only one Participant, there is no jurisdiction under 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

Written Comments

The Department received one written comment from the applicant (the Comment) with respect to the Notice and no requests for a public hearing. The Comment states that Robb and Lynne Morgan Ruyle did not consummate the transaction as outlined in the Notice. Instead, Robb and Lynne Morgan Ruyle each decided to terminate their respective IRAs, distribute the IRAs' assets to themselves, file the appropriate tax returns, and pay the penalties and taxes associated with such distributions. As such, the Applicant states that this exemption need not apply to the Robb and Lynne Morgan Ruyle IRAs.

The Department concurs and has eliminated all references to the Robb and Lynne Morgan Ruyle IRAs in this exemption.[6]

Accordingly, the Department has determined to grant the proposed exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions do not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 21st day of January, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

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BILLING CODE 4510–29–P

[6] The files containing exemption requests for Robb and Lynn Morgan Ruyle were assigned numbers D–10687 and D–10686, respectively. Because the applicant requested that this exemption not apply to the Robb and Lynn Morgan Ruyle IRAs, the Department has closed these files administratively.

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10468, et al.]

Proposed Exemptions; Wells Fargo Bank, N.A. (Wells Fargo)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Wells Fargo Bank, N.A. (Wells Fargo), Located in San Francisco, CA

[Application No. D–10468]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Proposed Exemption for the Conversion of Assets (the Conversion Transactions)

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (F) of the Code, shall not apply, effective September 16, 1996, to the exchange of the assets of various employee benefit plans (the Plans) that are either held in certain collective investment funds (the CIF or CIFs) maintained by Wells Fargo, or otherwise held by Wells Fargo as trustee, investment manager or in any other capacity as fiduciary on behalf of the Plans, for shares of any open-end investment company (the Fund or Funds) registered under the Investment Company Act of 1940 (the 1940 Act) to which Wells Fargo or any of its affiliates (collectively, Wells Fargo) serves as investment adviser and may provide other services, provided the following conditions are met:

(a) The Plans are not sponsored by Wells Fargo.

(b) No sales commissions are paid by a Plan in connection with a Conversion Transaction.

(c) All or a *pro rata* portion of the assets of a CIF or all or a *pro rata* portion of the assets of the Plans held by Wells Fargo in any capacity as fiduciary on behalf of such Plans are transferred in-kind to the Funds in exchange for shares of such Funds.

(d) The Plans or the CIFs receive shares of the Funds that have a total net asset value equal in value to the assets of the Plans or the CIFs exchanged for such shares on the date of transfer.

(e) The current market value of the assets of a Plan or the CIF is determined in a single valuation performed in the same manner as of the close of the same business day with respect to all such Plans participating in the transaction on such day, using independent sources in accordance with the procedures set forth in Rule 17a–7b (Rule 17a–7) under the Investment Company Act of 1940 (the 1940 Act), as amended, and the procedures established by the Funds pursuant to Rule 17a–7 for the valuation of such assets. Such procedures must require that all securities for which a current market price cannot be obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the Conversion Transaction determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Wells Fargo.

(f) A second fiduciary (the Second Fiduciary) who is acting on behalf of each affected Plan and who is independent of and unrelated to Wells Fargo, as defined in paragraph (g) of Section III below, receives advance written notice of the Conversion Transaction and the disclosures described in paragraph (f) of Section II below.

(g) On the basis of the information described in paragraph (f) of Section II below, the Second Fiduciary authorizes in writing the Conversion Transaction, the investment of such assets in corresponding Funds and the fees received by Wells Fargo in connection with its services to the Funds. Such authorization by the Second Fiduciary is consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(h)(1) For the Conversion Transaction which occurred on September 16, 1996, the written confirmation described below in paragraph (h)(2) was made by Wells Fargo to all Second Fiduciaries of the appropriate Plans within 38 business days of the transaction.

(2) Not later than 30 days after completion of each Conversion Transaction (except for the transaction described in paragraph (h)(1) above), Wells Fargo sends by regular mail to the Second Fiduciary, a written confirmation that contains the following information:

(A) The identity of each of the assets that was valued for purposes of the transaction in accordance with Rule 17a–7(b)(4) under the 1940 Act;

(B) The price of each of the assets involved in the transaction; and

(C) The identity of each pricing service or market maker consulted in determining the value of such assets.

(i) No later than 90 days after completion of each Conversion Transaction, Wells Fargo sends by regular mail to the Second Fiduciary, a written confirmation that contains the following information:

(1) The number of CIF units held by such affected Plan immediately before the conversion (and the related per unit value and the aggregate dollar value of the units transferred); and

(2) The number of shares in the Funds that are held by such affected Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(j) The conditions set forth in paragraphs (d), (e), (f), (n), (o), (p), and (q) of Section II below are satisfied.

Section II. Proposed Exemption for Receipt of Fees From Funds (Transactions Involving the Receipt of Fees)

If the exemption is granted, the restrictions of section 406(a) and section 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) through (F) of the Code, shall not apply to the receipt of fees by Wells Fargo from the Funds for acting as the investment adviser, as well as for acting as the custodian, sub-administrator, or for providing any "secondary service" (the Secondary Service) to the Funds [as defined in Section III(h)], in connection with the investment in the Funds by the Plans for which Wells Fargo acts as a fiduciary, provided that:

(a) No sales commissions are paid by the Plans in connection with purchase or sale of shares of the Funds through a Conversion Transaction, and no redemption fees are paid in connection with the sale of such shares by the Plans to the Funds.

(b) The price paid or received by the Plans for shares of the Funds, in connection with a Conversion Transaction is the net asset value per share, as defined in paragraph (e) of Section III, at the time of the transaction and is the same price which would have been paid or received for the shares by any other investor at that time.

(c) Neither Wells Fargo nor an affiliate, including any officer or director purchases from or sells to any of the Plans shares of any of the Funds.

(d) As to each individual Plan, the combined total of all Plan-level and Fund-level fees received by Wells Fargo for the provision of services to such

[1] For purposes of this proposed exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

Plan and to the Funds (with respect to the Plan's assets invested in the Funds), respectively, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) Wells Fargo does not receive any fees payable pursuant to Rule 12b–1 under the 1940 Act (the 12b–1 Fees) in connection with the transactions.

(f) The Second Fiduciary receives, in advance of the investment by the Plan in a Fund, a full and detailed written disclosure of information concerning such Fund (including, but not limited to—

(1) A current prospectus for each Fund in which a Plan is considering investing;

(2) A statement describing the fees for investment advisory or similar services, any Secondary Services, and all other fees to be charged to or paid by the Plan and by the Funds, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Wells Fargo may consider such investment to be appropriate for the Plan;

(4) A statement describing whether there are any limitations applicable to Wells Fargo with respect to which assets of a Plan may be invested in the Funds, and if so, the nature of such limitations; and

(5) Upon request of the Second Fiduciary, a copy of the proposed exemption and/or a copy of the final exemption, if granted, once such documents are published in the **Federal Register**.

(g) On the basis of the prospectus and disclosure referred to in paragraph (f) of this Section II, the Second Fiduciary gives prior approval for such purchases, holdings and sales of Fund shares through Conversion Transactions that is consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Such approval must be in accordance with the provisions of Prohibited Transaction Exemption (PTE) 77–4 (42 FR 18732, April 8, 1977) or its successor, as it may be amended from time to time.

(h) The authorization, described in paragraph (g) of this Section II, is terminable at will by the Second Fiduciary of a Plan, without penalty to such Plan. Such termination will be effected by Wells Fargo redeeming the shares of the Fund held by the affected Plan by the close of the business day following the date of receipt by Wells Fargo, either by mail, hand delivery, facsimile, or other available means of written communication at the option of the Second Fiduciary, of the termination form (the Termination Form), as defined in paragraph (i) of Section III below, or any other written notice of termination; provided that if, due to circumstances beyond the control of Wells Fargo, the sale cannot be executed within one business day, Wells Fargo shall have one additional business day to complete such redemption.

(i) Each Plan satisfies either (but not both) of the following:

(1) For a Plan for which Wells Fargo serves as a non-discretionary trustee, the Plan does not pay any Plan-level investment management fees, investment advisory fees, or similar fees to Wells Fargo with respect to Plan assets invested in the Funds. (This condition does not preclude the payment of investment advisory fees or similar fees by a Fund to Wells Fargo under the terms of its investment advisory agreement adopted in accordance with section 15 of the 1940 Act, nor does it preclude the payment of fees for Secondary Services to Wells Fargo pursuant to a duly adopted agreement between Wells Fargo and the Funds.)

(2) For a Plan for which Wells Fargo serves as a discretionary fiduciary (i.e., a trustee or investment manager), such Plan pays Wells Fargo an investment advisory fee based on total Plan assets from which a credit has been subtracted representing such Plan's *pro rata* share of investment advisory fees paid by the Funds. (This condition also does not preclude the payment of fees for Secondary Services to Wells Fargo pursuant to a duly adopted agreement between Wells Fargo and the Funds.)

(j) In the event of an increase in the rate of any fees paid by the Funds to Wells Fargo regarding any investment management services, investment advisory services, or fees for similar services that Wells Fargo provides to the Funds over an existing rate for such services that had been authorized by a Second Fiduciary, in accordance with paragraph (g) of this Section II, Wells Fargo will, at least 30 days in advance of the implementation of such increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is increasing such fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(k) In the event of an addition of a Secondary Service, as defined in paragraph (g) of Section III below, provided by Wells Fargo to the Fund for which a fee is charged or an increase in the rate of any fee paid by the Funds to Wells Fargo for any Secondary Service, as defined in paragraph (h) of Section III below, that results either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by Wells Fargo for such fee over an existing rate for such Secondary Service which had been authorized by the Second Fiduciary of a Plan, in accordance with paragraph (g) of this Section II, Wells Fargo will, at least 30 days in advance of the implementation of such additional service for which a fee is charged or fee increase, provide a written notice (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service for which a fee is charged or the nature and amount of the increase in fees) to the Second Fiduciary of each of the Plans invested in a Fund which is adding a service or increasing fees. Such notice shall be accompanied by the Termination Form, as defined in paragraph (i) of Section III below.

(l) The Second Fiduciary is supplied with a Termination Form at the times specified in paragraphs (j), (k) and (m) of this Section II with instructions regarding the use of such Termination Form including the following information—

(1) The authorization is terminable at will by any of the Plans, without penalty to such Plans. Such termination will be effected by Wells Fargo redeeming shares of the Fund held by the Plans requesting termination within one business day following the date of receipt by Wells Fargo, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination; provided that if, due to circumstances beyond the control of Wells Fargo, the redemption of shares of such Plans cannot be executed within one business day, Wells Fargo shall have one additional business day to complete such redemption; and

(2) Failure by the Second Fiduciary to return the Termination Form on behalf of a Plan will be deemed to be an approval of the additional Secondary Service for which a fee is charged or increase in the rate of any fees, if such Termination Form is supplied pursuant to paragraphs (j) and (k) of this Section II, and will result in the continuation of the authorization, as described in paragraph (h) of this Section II, of Wells Fargo to engage in the transactions on behalf of such Plan.

(m) The Second Fiduciary is supplied with a Termination Form, annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the notice granting this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter; provided that the Termination Form need not be supplied to the Second Fiduciary, pursuant to paragraph (m) of this Section II, sooner than six months after such Termination Form is supplied pursuant to paragraphs (j) and (k) of this Section II, except to the extent required by said paragraphs (j) and (k) of this Section II to disclose an additional Secondary Service for which a fee is charged or an increase in fees.

(n)(1) With respect to each of the Funds in which a Plan invests, Wells Fargo will provide the Second Fiduciary of such Plan:

(A) At least annually with a copy of an updated prospectus of such Fund;

(B) Upon the request of such Second Fiduciary, with a report or statement (which may take the form of the most recent financial report, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund to Wells Fargo; and

(2) With respect to each of the Funds in which a Plan invests, in the event such Fund places brokerage transactions with Wells Fargo, Wells Fargo will provide the Second Fiduciary of such Plan at least annually with a statement specifying:

(A) The total, expressed in dollars, brokerage commissions of each Fund's investment portfolio that are paid to Wells Fargo by such Fund;

(B) The total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to Wells Fargo;

(C) The average brokerage commissions per share, expressed as cents per share, paid to Wells Fargo by each portfolio of a Fund; and

(D) The average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to Wells Fargo.

(o) All dealings between the Plans and any of the Funds are on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Plans.

(p) Wells Fargo maintains, for a period of six years, in a manner that is convenient and accessible for audit and examination, the records necessary to enable the persons, described in paragraph (q) of Section II below, to determine whether the conditions of this proposed exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Wells Fargo, the records are lost or destroyed prior to the end of the 6 year period; and

(2) No party in interest, other than Wells Fargo, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (q) of Section II below;

(q)(1) Except as provided in paragraph (q)(2) of this Section II and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (p) of Section II above are unconditionally available at their customary location for examination during normal business hours by——

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission (the SEC);

(B) Any fiduciary of each of the Plans who has authority to acquire or dispose of shares of any of the Funds owned by such a Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in paragraph (q)(1)(B) and (q)(1)(C) of Section II shall be authorized to examine trade secrets of Wells Fargo, or commercial or financial information which is privileged or confidential.

Section III. Definitions

For purposes of this proposed exemption,

(a) The term "Wells Fargo" means Wells Fargo Bank, N.A. and any of its affiliates, as defined in paragraph (b) of this Section III.

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person.

(2) Any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" means any diversified open-end investment company or companies registered under the 1940 Act for which Wells Fargo serves as investment adviser (including sub-adviser), and may also provide custodial or other services as approved by such Funds.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and redemptions through the Conversion Transactions, calculated by dividing the value of all securities, determined by a method adopted by the Fund's board of directors in accordance with the 1940 Act, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a plan who is independent of and unrelated to Wells Fargo. For purposes of this exemption, the Second Fiduciary will not be deemed to be independent of and unrelated to Wells Fargo if——

(1) Such Second Fiduciary directly or indirectly controls, is controlled by, or is under common control with Wells Fargo;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary is an officer, director, partner, or employee of Wells Fargo (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly receives any compensation or other consideration from Wells Fargo for his or her own personal account in connection with any transaction described in this proposed exemption.

If an officer, director, partner, or employee of Wells Fargo (or a relative of such persons), is a director of such Second Fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser, (B) the approval of any purchase or redemption by the Plan of shares of the Funds through a Conversion Transaction, and (C) the approval of any change of fees charged to or paid by the Plan, in connection with any of the transactions described in Sections I and II above, then

paragraph (g)(2) of Section III above, shall not apply.

(h) The term "Secondary Service" means a service, other than an investment management, investment advisory, or similar service, which is provided by Wells Fargo to the Funds, including but not limited to custodial, accounting, brokerage, administrative, or any other service.

(i) The term "Termination Form" means the form supplied to the Second Fiduciary, at the times specified in paragraphs (j), (k) and (m) of Section II above, which expressly provides an election to the Second Fiduciary to terminate on behalf of the Plans the authorization, described in paragraph (g) of Section II. Such Termination Form may be used at will by the Second Fiduciary to terminate such authorization without penalty to the Plans and to notify Wells Fargo in writing to effect such termination by redeeming the shares of the Fund held by the Plans requesting termination by the close of the business day following the date of receipt by Wells Fargo, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of written notice of such request for termination; provided that if, due to circumstances beyond the control of Wells Fargo, the redemption cannot be executed within one business day, Wells Fargo shall have one additional business day to complete such redemption.

EFFECTIVE DATE: If granted, this proposed exemption will be effective September 16, 1996 with respect to the Conversion Transactions described in Section I and effective as of the date of the grant with respect to Transactions Involving the Receipt of Fees, as described in Section II.

Preamble

On April 4, 1996, the Department granted PTE 96–54 at 61 FR 37933. PTE 96–54 permitted, effective July 2, 1993 until October 1, 1993, the in-kind transfer of all or a *pro rata* portion of assets of Plans that were held in certain CIFs maintained by Wells Fargo to certain Funds advised by Wells Fargo, in exchange for shares of the Funds, in connection with the partial termination of the CIFs. The assets transferred consisted of stock, U.S. Treasury obligations, other government and agency obligations, certain fixed income obligations, asset-backed securities and other securities. The Department made a decision to bifurcate the original exemption request thereby exempting the transaction described in PTE 96–54. The Department also provided no exemptive relief in PTE 96–54 for transactions involving the receipt of fees by Wells Fargo from the Funds beyond that provided under PTE 77–4.[2]

In its amended exemption request, Wells Fargo has agreed to modify the original application so that it will apply to current and future Conversion Transactions and to implement a "negative consent" procedure with respect to fees paid to Wells Fargo by the Funds (i.e., Transactions Involving the Receipt of Fees). If granted, the proposed exemption will be effective as of September 16, 1996 with respect to the Conversion Transactions and effective on the date the grant notice is published in the **Federal Register** for Transactions Involving the Receipt of Fees.

Summary of Facts and Representations

Description of the Parties

1. *Wells Fargo,* which is located in San Francisco, California, is a wholly owned subsidiary of Wells Fargo & Company (WFC) and the seventh largest commercial bank in the United States. Wells Fargo currently serves as a fiduciary with respect to the assets of certain Plans. As of January 15, 1999, Wells Fargo had approximately $15 billion under management. Wells Fargo also serves as a trustee of certain CIFs and as the investment adviser or sub-adviser with respect to the Funds that are described below.

Effective December 31, 1995, WFC and its affiliates sold certain elements of their institutional trust business, including interests in other entities to Barclays Bank PLC (Barclays). These entities were subsequently reorganized primarily into Barclays Global Fund Advisors. In addition to the Barclays' transaction, effective January 23, 1996, First Interstate Bancorp, a bank holding company (First Interstate), merged into WFC, with the latter as the surviving entity. Effective April 1, 1996, First Interstate's wholly owned subsidiary, First Interstate Bank of California, N.A., was merged into Wells Fargo. Although First Interstate's bank subsidiaries in six other states also merged into Wells Fargo in June 1996, several former First Interstate bank subsidiaries in other states currently remain as separate subsidiaries of WFC. These First Interstate entities have also been made parties to this exemption request.

2. *The Plans,* as well as those that may invest in the future, consist of various pension plans as defined in section 3(2) of the Act, independently-sponsored pension and profit sharing plans, qualified plans of owner-employees and welfare plans, as defined in section 3(1) of the Act. The Plans do not include any plans sponsored by Wells Fargo.[3]

3. *The CIFs* are various portfolios of the Wells Fargo Bank Collective Investment Funds for Business Retirement Programs and the Wells Fargo Bank Collective Investment Funds for BRP Retirement Plans[4] and similar CIFs that may be formed in the future for which Wells Fargo serves as trustee and manager. (Any CIFs acquired as part of the First Interstate transaction have been and will be merged into the Wells Fargo CIFs.)

The CIFs were formed effective April 1, 1995 with the assets spun off from the Wells Fargo Investment Funds for Employee Retirement Plans in anticipation of the Barclays transaction. Many of the CIFs invest as "feeder" funds in counterpart to Wells Fargo "master" funds. Under this arrangement, the master fund holds all of the investment assets while the feeder fund invests in the master fund and does not hold the actual investment property but instead holds interests in the master fund. Plans have the option of investing either directly in the master fund or indirectly, by investing in the feeder fund which will then invest in the master fund.[5]

The CIFs described herein relate only to those CIFs for which a Wells Fargo affiliate serves as trustee/manager and/or investment adviser. These CIFs are identified as follows:

Wells Fargo Bank Collective Investment Funds for Business Retirement Programs (BRP)

- *"Feeder" CIFs for BRP Employee Retirement Plans—*

[2] In relevant part, PTE 77–4 permits, under certain conditions, the purchase and sale by an employee benefit plan of shares of a registered open-end investment company when a fiduciary with respect to such plan is also the investment adviser for the investment company.

[3] The Department herein is not proposing relief for any transaction afforded relief by Section 404(c) of the Act.

[4] The applicant represents that the Wells Fargo Bank Collective Investment Funds for Business Retirement Plans do not charge a fee whereas the Wells Fargo Bank Collective Investment Funds for BRP Retirement Plans charges a management fee of 75 basis points.

[5] It is represented that the primary benefit of the master-feeder arrangement is the flexibility it offers clients of Wells Fargo with respect to the payment of investment management fees while allowing a pooling of a larger group of assets. A master-feeder arrangement gives a plan the option of having the plan, or the plan sponsor, pay the investment management fee directly to the investment manager if Plan assets are invested in the master fund (in which case the investment management fee would be paid at the plan-level) or having the investment management fee paid out of the Plan's assets invested in the fund assuming plan assets are invested in the feeder fund (in which case the investment management fee would be paid at the feeder fund-level).

Asset Allocation Fund,
Bond Index Fund,
U.S. Treasury Allocation Fund,
S&P 500 Stock Fund,
S&P MidCap Stock Fund,
Equity Value Fund,
Money Market Fund,
Extended Market Fund,
International Equity Fund,
Income Accumulation Fund,
Core Bond Fund,
Growth Stock Fund,
Short-Intermediate Term Fund,
Small Capitalization Growth Fund.

The 14 foregoing CIFs, other than the Money Market Fund, are "shadow" or "feeder" funds that are managed by Wells Fargo. These CIFs invest in counterpart "master" collective investment trusts that are also managed by Wells Fargo.

- "Master" CIFs for BRP Retirement Plans—

Core Bond Fund for BRP Retirement Plans,
Growth Stock Fund,
Short-Intermediate Term Fund,
Small Capitalization Growth Fund.

The aforementioned 4 CIFs are "master" funds that are managed by Wells Fargo. These CIFs invest directly in portfolio securities. Wells Fargo BRP Plan clients invest directly in these CIFs.

Wells Fargo Bank Collective Investment Funds for BRP Retirement Plans

- "Feeder CIFs" for BRP Retirement Plans—

Asset Allocation,
Bond Index Fund,
U.S. Treasury Allocation Fund,
S&P 500 Stock Fund,
International Equity Fund.

The above-mentioned 5 CIFs are "shadow" or "feeder" funds that are managed by Wells Fargo. These CIFs invest in counterpart "master" collective investment trusts that are managed by Wells Fargo. The CIFs are distinct from the parallel, but similarly-named counterpart Funds for BRP Employee Retirement Plans (also listed above) and, as also noted previously, have different fee arrangements.

4. *The Mutual Funds* to which the requested exemption will apply are certain investment portfolios of the Stagecoach Funds, Inc. (the Stagecoach Funds), the Overland Express Funds, Inc. (the Overland Funds), certain corresponding master funds in which these Funds may invest (e.g., the MasterWorks Funds), and to any similar Funds for which Wells Fargo or any of its affiliates may provide investment advisory and other services. The Funds are being offered to Plan investors at no load.

(a) The Stagecoach Funds constitute an open-end management investment company that was organized as a Maryland corporation on September 9, 1991 and registered under the 1940 Act. Currently, the Stagecoach Funds comprise 25 portfolios, some of which are "feeder" portfolios that invest in the Master Investment Trust, an open-end investment company organized as a Delaware business trust on August 15, 1991 and registered under the 1940 Act. Wells Fargo serves as investment adviser to all of the Stagecoach Funds. For those Fund portfolios that operate under the master-feeder structure, all advisory services are performed at the master fund-level by Wells Fargo. Under such circumstances, the feeder funds have no investment adviser.

The portfolios of the Stagecoach Funds are presented below. As noted, some of the feeder Funds may invest in the Master Investment Trust through a series of master portfolios (the Master Portfolios) having objectives similar to the affected Funds. Other Funds may not be used by Plans as investment vehicles.

Portfolios for the Stagecoach Funds

Money Market Mutual Fund*
Aggressive Growth Fund
Balanced Fund*
Corporate Stock Fund
Diversified Income Fund
Equity Value Fund*
Growth & Income Fund*
Small Cap Fund*
Asset Allocation Fund*
U.S. Government Allocation Fund
California Tax-Free Money Market Fund**
Government Money Market Fund
National Tax-Free Money Market Fund**
Treasury Money Market Mutual Fund*
Prime Money Market Mutual Fund*
Arizona Tax-Free Bond Fund
California Tax-Free Bond Fund**
California Tax-Free Income Fund**
Ginnie Mae Fund*
Intermediate Bond Fund
Short-Intermediate U.S. Government Income Fund*
Money Market Trust*
National Tax-Free Fund
Oregon Tax-Free Fund
California Tax-Free Money Market Trust

*Feeder Fund investing in the Master Investment Trust through a comparable Master Portfolio.

**Fund generally not used by a Plan as an investment vehicle.

For investment advisory services rendered to the Stagecoach Funds, Wells Fargo is paid an annualized investment advisory fee ranging from 0.20 percent of the average daily net assets of the National Tax-Free Money Market Fund to 0.60 percent of the average daily net assets of the Small Cap Master Portfolio which holds the assets of the Small Cap Fund.

(b) The Overland Funds constitute an open-end management investment company that has been organized as a Maryland corporation on April 27, 1987 and registered under the 1940 Act. At present, the Overland Funds consist of 15 portfolios, some of which are feeder portfolios that also invest in the Master Investment Trust. Wells Fargo serves as investment adviser to all of the Overland Funds. For those portfolios of the Overland Funds that operate under the master-feeder structure, all advisory services are performed at the master-fund level through comparable Master Portfolios. Again, under such circumstances, the feeder Funds would have no investment adviser.

Portfolios for the Overland Funds

Asset Allocation Fund
California Tax-Free Bond Fund**
California Tax-Free Money Market Fund**
Money Market Fund
Municipal Income Fund*
National Tax-Free Institutional Money Market Fund**
Overland Sweep Fund**
Short-Term Government-Corporate Income Fund*
Short-Term Municipal Income Fund*
Strategic Growth Fund*
U.S. Government Income Fund
U.S. Treasury Money Market Fund
Variable Rate Government Funds
Index Allocation Fund*
Small Cap Strategy Fund*

*Feeder Fund investing in the Master Investment Trust through a comparable Master Portfolio.

**Fund generally not used by a Plan as an investment vehicle.

For investment advisory services provided to those Overland Funds that are available to Plan investors, Wells Fargo is paid an annualized investment advisory fee ranging from 0.25 percent of the average daily net assets of the U.S. Treasury Money Market Fund to 0.70 percent of the average daily net assets of the Asset Allocation Fund.

In addition, to investment advisory services, Wells Fargo may provide certain non-advisory or Secondary Services to the Stagecoach Funds and Overland Funds for which it is separately compensated at the "Fund" or "feeder" Fund level, in the case of a master-feeder arrangement.[6] Currently,

[6] Because of the manner in which fees are structured under the aforementioned master-feeder

Continued

these annualized fees and their respective ranges can be summarized as follows:

- *Custodial Services*, 0.0167 percent plus certain transaction charges according to published schedules (e.g., wire transfers).
- *Portfolio Accounting*, 0.070 percent of the first $50 million, 0.045 percent of the next $50 million and 0.2 percent of any excess.
- *Transfer Agency Services*, 0 percent or 0.02 percent (Overland Funds and Stagecoach Money Market Funds) to 0.06 percent (other Stagecoach Funds).
- *Shareholder Servicing*, 0 percent (Overland and certain Stagecoach Funds) to 0.25 percent (certain Stagecoach Funds).
- *Subadministration*, 0.04 percent of the 0.06 percent fee paid to Stephens, Inc. as administrator. Some of the subadministration services performed by Wells Fargo include maintaining and preserving the records of the Funds, tracking authorized versus issued shares, furnishing statistical and research data, and coordinating (or assisting in) the preparation and filing with the SEC of registration statements, notices, reports and other materials required to be filed under applicable laws.

The Conversion Transactions

5. Besides the Conversion Transactions that were described in PTE 96–54, on September 16, 1996, Wells Fargo began offering Plans shares of the Funds as an investment vehicle alternative to units in the CIFs. Although Wells Fargo intends that the CIFs and their corresponding Funds will be identical from the standpoint of their investment objectives, it anticipates that the Fund option will be selected by Plans that desire to obtain daily price quotations and ease of trading. Therefore, Wells Fargo is providing each Plan the opportunity to designate one or more Funds in lieu of the parallel CIFs for investment purposes with respect to part or all of the assets of the Plan. The decision to engage in a Conversion Transaction is subject to the review and approval of a Second Fiduciary.

In addition, Wells Fargo represents that it may choose to terminate one or more CIFs if the CIF does not have a sufficient number of investors to make it economically viable. Further, Wells Fargo proposes that from time to time it may be appropriate for an individual Plan for which Wells Fargo serves as a fiduciary to transfer all or a *pro rata* share of its assets that are held in a custodial Account with Wells Fargo, in-kind, to any of the Funds in exchange for shares of such Funds. In this regard, in the case of an in-kind exchange between an individual Plan whose portfolio consists of common stock, money market securities and real estate and a Fund that invests only in common stock and money market securities, the Conversion Transaction would involve all or a *pro rata* share of the common stock and money market securities held by the Plan, if the stock and securities are eligible for purchase by the Fund and would not involve the transfer or exchange of the real estate holdings of the Plan. No brokerage commissions or other fees or expenses (other than customary transfer charges paid to parties other than Wells Fargo or its affiliates) have been or will be charged to the Plans in connection with any of the Conversion Transactions and the acquisition of shares of the Funds by the investing Plans.

Finally, to avoid potentially large brokerage expenses that would otherwise be incurred, Wells Fargo proposes that an exchange of Plan interests in a CIF for shares in a corresponding Fund (or a direct exchange of securities between a Plan and a Fund as previously described) may be effected by means of a direct transfer to the Fund of the Plan's proportionate interest in the CIF (or of the securities), in exchange for the issuance of Fund shares. In this regard, the Plan's proportionate interest in certain securities investments of the CIF would be transferred directly.[7]

6. Wells Fargo represents that the Conversion Transactions are ministerial transactions performed in accordance with pre-established objective procedures which are approved by the board of trustees of each Fund. Such procedures require that assets transferred to a Fund (a) be consistent with the investment objectives, policies and restrictions of the corresponding portfolios of the Fund, (b) satisfy the applicable requirements of the 1940 Act and the Code and, (c) have a readily ascertainable market value. In addition, any assets that are transferred will be marketable and will not be subject to restrictions on resale. Assets which do not meet these requirements will be sold in the open market through an unaffiliated brokerage firm prior to any Conversion Transaction. Further, prior to entering into a Conversion Transaction, each affected Plan will receive certain disclosures from Wells Fargo and approve such transaction in writing.

Prior to a Conversion Transaction, the assets of a transferring CIF will be reviewed to confirm that they are appropriate investments for the receiving Fund. If any of the assets of a CIF are not appropriate for its corresponding Fund, Wells Fargo intends to sell such assets in the open market through an unaffiliated brokerage firm.

7. As noted above, on September 16, 1996, Wells Fargo exchanged all interests in the Small Capitalization Growth "shadow" or feeder CIF for mutual fund shares of the Stagecoach Small Capitalization Fund. The feeder CIF held interests in the Small Capitalization Growth Fund, which was managed by Wells Fargo and invested in portfolio securities. The Small Capitalization Growth Fund consisted of a master CIF and the subject feeder CIF.

The transaction involved an in-kind transfer by the Plans of their interests in the feeder CIF to the Fund and a simultaneous transfer of such interests to the master CIF in exchange for all of its underlying assets. Wells Fargo represents that the Small Capitalization CIF assets were valued for purposes of the Conversion Transaction in accordance with Rule 17a-7 (see Representation 9) such that the value of the Fund shares received by the CIF interest-holders on the conversion date was equal to the value of the CIF interests as so calculated. All interests in the Small Capitalization CIF (both master and feeder) were transferred in-kind and the CIF was subsequently terminated. Wells Fargo further represents that Plans participating in the Small Capitalization CIF were provided notice of the Conversion Transaction and every Plan affirmatively elected to participate in such Conversion Transaction.

Following the Conversion Transaction, Wells Fargo states that it provided Second Fiduciaries with written confirmations of the transaction. In this regard, approximately 38 business days after the Conversion Transaction, Wells Fargo sent each affected Second Fiduciary written confirmation of the identity of the assets that were valued for purposes of the in-kind transfer in accordance with Rule

arrangements, Wells Fargo has confirmed that it does not receive any double fees for the services it renders to the Funds.

[7] In certain cases, a Conversion Transaction will not take place to the extent that it will result in the creation of fractional shares. In this situation, the number of shares to be transferred will be automatically (mechanically) rounded up or down to the next nearest whole number. For this purpose, Wells Fargo states that fractional dollar amounts ending below $0.005 and fractional share amounts ending below 0.5 will be rounded downward to the next lower cent or whole share, respectively. Amounts at or above these figures will be rounded upward to the next higher cent or whole share.

17a-7(b)(4), the price determined for such assets and the identity of each pricing service or market maker consulted in determining their value.[8] In addition, no later than 90 days after the Conversion Transaction, Well Fargo sent each affected Second Fiduciary written confirmation of (a) the number of CIF units held by the Plan before the Conversion Transaction (and the related per unit value and the aggregate dollar value of the units transferred); and (b) the number of Fund shares received by the Plan as the result of the Conversion Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

Wells Fargo requests that the exemption apply retroactively for the Conversion Transaction that took place on September 16, 1996 and prospectively with respect to any similar Fund in which a Plan invests and with respect to which Wells Fargo or any of its affiliates may provide investment advisory and other services. For this purpose, Wells Fargo represents that all other future Funds to which Wells Fargo will serve as investment adviser and that utilize the exemption will assume similar investment structures and Plan investments therein will be subject to the terms and conditions of the exemption.

Advance Disclosure/Approval

8. With respect to each Conversion Transaction, Wells Fargo will provide the Second Fiduciary of each affected Plan with the disclosures required by PTE 77–4. In this regard, such information will include, but is not limited to, (a) a current prospectus for the Fund in which the Plan is considering investing; (b) a statement describing the fees that are to be paid to Wells Fargo and its affiliates and to unrelated parties, including the nature and extent of any differential between the rates of the fees; and (c) the reasons why Wells Fargo considers such investment to be appropriate for the Plan. In addition, upon the request of the Second Fiduciary, Wells Fargo will provide a copy of the proposed exemption and/or a copy of the final exemption, if granted. Based on the required disclosures, the Second Fiduciary will approve, in writing, the Conversion Transaction, including the fees to be paid by the Funds to Wells Fargo.

[8] The securities subject to valuation under Rule 17(a)-7(b)(4) include all securities other than "reported securities" as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934, or those quoted on the NASDAQ system or for which the principal market is an exchange.

Valuation Procedures

9. The assets transferred in connection with a Conversion Transaction will consist entirely of cash and marketable securities. For this purpose, the value of the securities in the CIF will be determined based on market value as of the close of business on the last business date prior to the transfer (the Valuation Date). The values on the Valuation Date will be determined in a single valuation using the valuation procedures described in Rule 17a–7 under the 1940 Act. In this regard, the "current market price" for specific types of CIF securities will be determined as follows:

(a) If the security is a "reported security" as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (1934 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the Valuation Date; or if there are no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the 1934 Act), as of the close of business on the Valuation Date; or

(b) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange on the Valuation Date; or if there is no reported transaction on such exchange that day, the average of the highest current independent bid and lowest current independent offer on such exchange as of the close of business on the Valuation Date; or

(c) If the security is not a reported security and is quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ as of the close of business on the Valuation Date; or

(d) For all other securities, the average of the highest current independent bid and lowest current independent offer as of the close of business on the Valuation Date, determined on the basis of reasonable inquiry. For securities in this category, Wells Fargo intends to obtain quotations from at least three sources that are either broker-dealers or pricing services independent of and unrelated to Wells Fargo and, where more than one valid quotation is available, use the average of the quotations to value the securities, in conformance with interpretations by the SEC and practice under Rule 17a–7.

The securities received by a transferee Fund portfolio will be valued by such portfolio for purposes of the transfer in the same manner and as of the same day as such securities will be valued by the corresponding transferor CIF. The per share value of the shares of each portfolio of each Fund portfolio issued to the CIFs will be based on the corresponding portfolio's then-current net asset value. Wells Fargo represents that the value of a Plan's investment in shares of each Fund as of the opening of business on the date of the Conversion Transaction will be not less than the value of such Plan's investment in the CIF as of the close of business on the last business day prior to the Conversion Transaction.

Not later than 30 business days after completion of a Conversion Transaction, Wells Fargo will send by regular mail a written confirmation of the transaction to each affected Plan. Such confirmation will contain: (a) The identity of each security that is valued in accordance with Rule 17a–7(b)(4), as described above; (b) the price of each such security for purposes of the transaction; and (c) the identity of each pricing service or market maker consulted in determining the value of such securities.

No later than 90 days after completion of each Conversion Transaction, Wells Fargo will mail to the Plan a written confirmation of the fair market value (i.e., the Rule 17a–7 value) of the securities held by the Plan immediately before the Conversion Transaction and the number of shares in each Fund that are held by the Plan following the Conversion Transaction (and the related per share net asset value and the aggregate dollar value of the shares received).

Transactions Involving the Receipt of Fees

10. In connection with the Plans' investment in the Funds, Wells Fargo represents that PTE 77–4 permits it to receive fees from the Funds under either of two circumstances: (a) Where a Plan does not pay any investment management, investment advisory, or similar fees with respect to the assets of such Plan invested in shares of a Fund for the entire period of such investment; or (b) where a Plan pays investment management, investment advisory, or similar fees to Wells Fargo based on the total assets of such Plan from which a credit has been subtracted representing such Plan's *pro rata* share of such investment advisory fees paid to Wells Fargo by the Fund. As such, Wells Fargo notes that there may be two levels of fees—those fees which a Wells Fargo affiliate could charge to the Plans for serving as trustee with investment discretion or as investment manager (the Plan-level fees); and those fees a Wells Fargo affiliate could charge to the Funds (the Fund-level fees) for serving as investment adviser, custodian, or service provider.

In this regard, Wells Fargo states that its client Plans are typically subject to standard Plan-level fee schedules

covering various services provided by it and/or its affiliates. These fees are subject to negotiation with the individual Plans. Wells Fargo represents that it also receives investment management fees with respect to the CIFs. All fees are disclosed and approved in advance as part of the Plan's fee schedule and vary from CIF to CIF. Wells Fargo further represents that it may be reimbursed by the CIFs for certain direct expenses (e.g., charges of outside auditors).

With respect to Fund-level fees, Wells Fargo represents that all such fees are described in prospectuses and include investment advisory fees that are paid to Wells Fargo as well as certain fees for Secondary Services provided by Wells Fargo entities (see Representation 4). Wells Fargo states that it does not receive any 12b–1 Fees in connection with the transactions. In addition, Wells Fargo represents that the Funds' service providers may be reimbursed for certain third-party expenses.

11. Depending upon the nature of its fiduciary relationship with a Plan, Wells Fargo currently utilizes the following fee structures:

(a) With respect to Plans for which Wells Fargo serves as a nondiscretionary trustee, such Plans pay a Plan-level fee to Wells Fargo for basic administrative services. The administrative services include, among others, Wells Fargo's acting as custodian of the assets of a Plan, maintaining the records of a Plan, preparing periodic reports concerning the status of the Plan and its assets, and accounting for contributions, benefit distributions, and other receipts and disbursements.[9] Wells Fargo represents that these Plan-level functions are separate and distinct from those it performs at the Fund-level. At the Fund-level, the Wells Fargo is receiving compensation for investment advisory services rendered to the Funds. In addition, Wells Fargo is retaining fees for providing Secondary Services to the Funds.

(b) For Plans for which it serves as a discretionary fiduciary (i.e., trustee or investment adviser), Wells Fargo presently charges an overall Plan-level management fee that includes investment management/investment advisory services in addition to Plan-level administrative services. Currently, the standard fee is 95 basis points. For such managed accounts, Wells Fargo is utilizing the "credit" or "offset" approach of PTE 77–4, i.e., it charges a Plan-level investment management fee based on total assets under management from which an advance credit is subtracted representing the Plan's *pro rata* share of the Fund-level investment advisory fees paid to Wells Fargo. In addition, Wells Fargo proposes to retain fees for Secondary Services provided to the Funds.

12. Wells Fargo believes that the foregoing fee arrangements comply with PTE 77–4 and that as to each Plan, the combined total of all Plan-level and Fund-level fees received by it for the provision of services to the Plans and to the Funds (with respect to the Plan's assets invested in the Funds), respectively, are not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.[10] However, Wells Fargo notes that there is one difference from PTE 77–4 for which it has requested exemptive relief from the Department. In this regard, one of the requirements of PTE 77–4 has been that any future change in any of the rates of fees would require prior written approval by the Second Fiduciary of the Plans participating in the Funds. Wells Fargo maintains that where many Plans participate in a Fund, the addition of a service or any good faith increase in fees cannot be implemented until written approval of such change is obtained from every Second Fiduciary. Therefore, Wells Fargo proposes to follow an alternative "negative consent" procedure set out in other similar exemptions granted by the Department. Wells Fargo believes the negative consent procedure will provide the basic safeguards for the Plans and is more efficient, cost effective, and administratively feasible than those contained in PTE 77–4.

Specifically, in the event of an increase in the rate of any investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or an increase in the fees for Secondary Services paid by the Funds to Wells Fargo over an existing rate that had been authorized by the Second Fiduciary, Wells Fargo will provide, at least 30 days in advance of the implementation of such additional service or fee increase, to the Second Fiduciary of the Plans invested in such Fund a written notice of such additional service or fee increase, (which may take the form of a proxy statement, letter, or similar communication that is separate from the prospectus of the Fund and which explains the nature and amount of the additional service or the nature and amount of the increase in fees). In this regard, such increase in fees for Secondary Services can result either from an increase in the rate of such fee or from the decrease in the number or kind of services performed by Wells Fargo for such fee over that which had been authorized by the Second Fiduciary of a Plan. Wells Fargo believes that notice provided in this way will give the Second Fiduciary of each of the Plan adequate opportunity to decide whether or not to continue the authorization of a Plan's investment in any of the portfolios of the Funds in light of the increase in investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or the increase in fees for any Secondary Services. In addition, Wells Fargo represents that such fee increase will be disclosed to the Second Fiduciaries in an amendment of or supplement to the Fund's prospectus or in the Funds' Statement of Additional Information, to the extent necessary to comply with SEC disclosure requirements.[11]

Authorization Requirements for the Second Fiduciary

13. The written notice of an additional service for which a fee is charged or a fee increase, as described in Representation 12, will be accompanied by a Termination Form, as defined in paragraph (i) of Section III, and by instructions on the use of such

[9] For Plan-level trustee services, Wells Fargo may be paid a quarterly fee of up to 0.30 percent on the first $1 million of Account assets, 0.15 percent based on the next $9 million of Account assets and 0.05 percent on the balance.

[10] The fact that certain transactions and fee arrangements are the subject of an administrative exemption does not relieve the fiduciaries of the Plans from the general fiduciary responsibility provisions of section 404 of the Act. Thus, the Department cautions the fiduciaries of the Plans investing in the Funds that they have an ongoing duty under section 404 of the Act to monitor the services provided to the Plans to assure that the fees paid by the Plans for such services are reasonable in relation to the value of the services provided. Such responsibilities would include determinations that the services provided are not duplicative and that the fees are reasonable in light of the level of services provided.

[11] An increase in the amount of a fee for an existing Secondary Service (other than through an increase in the value of the underlying assets in the Funds) or the imposition of a fee for a newly-established Secondary Service shall be considered an increase in the rate of such Secondary Fee. However, in the event a Secondary Fee has already been described in writing to the Second Fiduciary and the Second Fiduciary has provided authorization for the amount of such Secondary Fee, and such fee was waived, no further action by Wells Fargo would be required in order for Wells Fargo to receive such fee in the same amount at a later time. Thus, for example, no further disclosure would be necessary if Wells Fargo had received authorization for a fee for custodial services from Plan investors and subsequently determined to waive the fee for a period of time in order to attract new investors but later charged the fee. However, reinstituting the fee at an amount greater than previously disclosed would necessitate Wells Fargo providing notice of the fee increase and a Termination Form.

form, as described in paragraph (l) of Section II, which expressly provide an election to the Second Fiduciaries to terminate at will any prior authorizations without penalty to the Plans. The Second Fiduciary will be supplied with a Termination Form annually during the first quarter of each calendar year, beginning with the first quarter of the calendar year that begins after the date the grant of this proposed exemption is published in the **Federal Register** and continuing for each calendar year thereafter, regardless of whether there have been any changes in the fees payable to Wells Fargo or changes in other matters in connection with services rendered to the Funds. However, if the Termination Form has been provided to the Second Fiduciary in the event of an increase in the rate of any investment management fees, investment advisory fees, or similar fees, an addition of a Secondary Service for which a fee is charged, or an increase in any fees for Secondary Services paid by the Fund to Wells Fargo, then such Termination Form need not be provided again to the Second Fiduciary until at least six months have elapsed, unless such Termination Form is required to be sent sooner as a result of another increase in any investment management fees, investment advisory fees, or similar fees, the addition of a Secondary Service for which a fee is charged, or an increase in any fees for Secondary Services.

The Termination Form will contain instructions regarding its use which will state expressly that the authorization is terminable at will by a Second Fiduciary, without penalty to any Plan, and that failure to return the form will be deemed to be an approval of the additional Secondary Service or the increase in the rate of any fees and will result in the continuation of all authorizations previously given by such Second Fiduciary. Termination by any Plan of authorization to invest in the Funds will be effected by Wells Fargo redeeming the shares of the Fund held by the affected Plan by the close of business on the day following receipt by Wells Fargo, either by mail, hand delivery, facsimile, or other available means at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination. If, due to circumstances beyond the control of Wells Fargo, the redemption cannot be executed within one business day, Wells Fargo shall have one additional business day to complete such redemption.

Conditions for Exemption

14. If granted, this proposed exemption will be subject to the satisfaction of certain general conditions that will further protect the interests of the Plans. For example, the proposed transactions are subject to the prior authorization of a Second Fiduciary, acting on behalf of each of the Plans, who has been provided with full written disclosure by Wells Fargo. The Second Fiduciary will generally be the administrator, sponsor, or a committee appointed by the sponsor to act as a named fiduciary for a Plan.

With respect to disclosure, the Second Fiduciary of each Plan will receive advance written notice of the in-kind transfer of assets of the Plan or the CIF upon termination of a CIF (with respect to any Conversion Transaction) and full written disclosure of information concerning the Funds (including a current prospectus for each of the Funds and a statement describing the fee structure), consistent with the requirements of PTE 77–4, as well as information regarding the terms and conditions of the requested exemption.

On the basis of the information disclosed, the Second Fiduciary will authorize in writing the investment of assets of the Plans in shares of the Fund in connection with the transactions set forth herein and the compensation received by Wells Fargo in connection with its services to the Funds. For any Conversion Transaction, the Second Fiduciary's written authorization will extend to only those investment portfolios of the Funds with respect to which the Plan has received the written disclosures referred to above. For other investments, written authorization may be set out in the Plan documents or the Plan's investment management agreement as contemplated by PTE 77–4, provided again that investment in any Fund may be made only with respect to those investment portfolios of the Funds with respect to which the Plan has received the written disclosures. Having obtained the authorization of the Second Fiduciary, Wells Fargo will invest the assets of a Plan among the portfolios and in the manner covered by the authorization, subject to satisfaction of the other terms and conditions of this proposed exemption.

In addition to the disclosures provided to the Plan prior to investment in any of the Funds, Wells Fargo represents that it will routinely provide at least annually to the Second Fiduciary updated prospectuses of the Funds in accordance with the requirements of the 1940 Act and the SEC rules promulgated thereunder. Further, the Second Fiduciary will be supplied, upon request, with a report or statement (which may take the form of the most recent financial report of such Funds, the current statement of additional information, or some other written statement) which contains a description of all fees paid by the Fund. Depending upon the type of relationship (e.g., discretionary or non-discretionary) Wells Fargo has with the Plan, each Plan will be advised that it may or may not be required to pay a Plan-level investment management or advisory fee with respect to Plan assets invested in the Funds and that Wells Fargo will receive and retain fees for Secondary Services.

Wells Fargo and its affiliates currently do not execute securities brokerage transactions for the investment portfolios of the Funds. To the extent that it proposes to do so in the future, Wells Fargo will, at least 30 days in advance of the implementation of such additional service, provide a written notice to the Plan's Second Fiduciary which explains the nature of such additional brokerage service and the amount of the fees. Further, with respect to any Fund for which Wells Fargo will provide such brokerage services, Wells Fargo will provide at least annually to the Second Fiduciary of any Plan that invests in such Funds with a written disclosure indicating (a) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid to Wells Fargo by such Fund; (b) the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to brokerage firms unrelated to Wells Fargo; (c) the average brokerage commissions per share, expressed as cents per share, paid to Wells Fargo by each portfolio of a Fund; and (d) the average brokerage commissions per share, expressed as cents per share, paid by each portfolio of a Fund to brokerage firms unrelated to Wells Fargo.

In addition to the foregoing, Wells Fargo represents that (a) Plans and other investors will purchase or redeem shares in the Funds in accordance with standard procedures adopted by each Fund's board of directors; (b) the Plans will pay no sales commissions or redemption fees in connection with purchase or redemption of shares in the Funds by the Plans; (c) Wells Fargo will not purchase from or sell to any of the Plans shares of any of the Funds; and (d) the price paid or received by the Plans for shares of the Funds will be the net asset value per share at the time of such purchase or redemption and will be the same price as any other investor would

have paid or received at that time. The value of the Funds' shares and the value of each Funds' portfolios are determined on a daily basis. Assets are valued at fair or market value, as required by Rule 17a–7. Net asset value per share for purposes of pricing purchases and redemptions is determined by dividing the value of all securities and other assets of each portfolio, less the liabilities charged to each portfolio, by the number of each portfolio's outstanding shares.

15. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plans or the CIFs have not and will not pay sales commissions or redemption fees in connection with a Conversion Transaction or in connection with purchases or redemptions by the Plans or the CIFs of shares of the Funds.

(b) The Plans have received or will receive shares of the Funds that are equal in value to the assets of the Plans or the CIFs exchanged for such shares, with the value of such Plan or CIF asset determined in a single valuation performed in the same manner and as of the close of business on the same day in accordance with the procedures set forth in Rule 17a–7 under the 1940 Act, as amended from time to time or any successor rule, regulation or similar pronouncement.

(c) Within 38 business days of the initial Conversion Transaction involving the Small Capitalization CIF and not later than 30 business days after completion of a subsequent Conversion Transaction, each affected Plan has received or will receive written confirmation of the assets involved in the exchange which were valued in accordance with Rule 17a–7(b)(4), the price of such assets and the identity of the pricing service or market maker consulted.

(d) No later than 90 days after completion of a Conversion Transaction, Wells Fargo has mailed or will mail to the Second Fiduciary of each Plan, a written confirmation containing (1) the aggregate dollar value of the assets held by the Plan immediately before a Conversion Transaction, (2) the number of CIF units held by a Plan prior to the Conversion Transaction (and the related per unit value or the aggregate dollar value of the assets transferred), and (3) the number of shares of the Funds that are held by such Plan following the conversion (and the related per share net asset value and the aggregate dollar value of the shares received).

(e) The price that has been or will be paid or received by the Plans for shares in the Funds is the net asset value per share at the time of the transaction and will be the same price for the shares which would have been paid or received by any other investor for shares of the same class at that time.

(f) Neither Wells Fargo nor an affiliate, including any officer or director have not and will not purchase from or sell to any of the Plans shares of any of the Funds.

(g) As to each individual Plan, the combined total of all fees received by Wells Fargo for the provision of services to a Plan, and in connection with the provision of services to any of the Funds in which the Plan may invest, will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(h) Wells Fargo will not receive any 12b–1 Fees in connection with the transactions.

(i) Depending on the nature of its relationship with Wells Fargo, a Plan either (i) will not pay any Plan-level investment management, investment advisory or similar fees to Wells Fargo with respect to any of the assets of such Plans which are invested in shares of the Funds; or (ii) will pay a Plan-level investment advisory fee based on total Plan assets from which a credit has been subtracted representing the Plan's *pro rata* share of investment advisory fees paid by the Funds.

(j) Prior to investment by a Plan in any of the Funds, the Second Fiduciary has received or will receive a full and detailed written disclosure of information concerning such Fund.

(k) On the basis of the disclosures, the Second Fiduciary has authorized or will authorize the Conversion Transaction, as applicable, and investment of the Plan's assets in the Funds.

(l) Subsequent to the investment by a Plan in any of the Funds, Wells Fargo has provided or will provide the Plan, among other information, at least annually with an updated copy of the prospectus for each of the Funds in which the Plan invests.

(m) The authorization by the Second Fiduciary will be terminable at will without penalty to such Plans, and any such termination will be effected by the close of the business day following the date of receipt by Wells Fargo, either by mail, hand delivery, facsimile or other available means of written communication at the option of the Second Fiduciary, of the Termination Form or any other written notice of termination, unless due to circumstances beyond the control of Wells Fargo delay execution for no more than one additional business day.

(n) With respect to each Plan, the Second Fiduciary will receive a written notice accompanied by the Termination Form with instructions regarding the use of such form, at least 30 days in advance of the implementation of any increase in the rate of any fees for investment management, investment advisory or similar fees, any addition of a Secondary Service for which a fee is charged, or any increase in fees for Secondary Services that Wells Fargo provides to the Funds.

(o) In the event such Fund places brokerage transactions with Wells Fargo, Wells Fargo will provide the Second Fiduciary of such Plan at least annually with a statement specifying the total, expressed in dollars, of brokerage commissions of each Fund's investment portfolio that are paid by such Fund to Wells Fargo and to unrelated brokerage firms and the average brokerage commissions per share, expressed as cents per share, by each portfolio of a Fund paid to Wells Fargo and to brokerage firms unrelated to Wells Fargo.

(p) All dealings between the Plans and any of the Funds have been and will remain on a basis that is no less favorable to such Plans than dealings between the Funds and other shareholders holding the same shares of the same class as the Plans.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Plumbers and Pipefitters National Pension Fund (the Pension Plan) and Pipefitters Local No. 211 Joint Educational Trust (the Welfare Plan) (Collectively, the Plans) Located in Alexandria, VA and Houston, TX, Respectively

[Application Nos. D–10700 and L–10709]

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) by the Pension Plan to the Welfare Plan, a party in interest with respect to the

Pension Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Pension Plan and the Welfare Plan than those which either the Pension Plan or the Welfare Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Pension Plan and the Welfare Plan incur no expenses, fees, or commissions from the Sale other than their own respective appraisal, recording, and legal expenses;

(D) The Welfare Plan pays as consideration for the Property no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale;

(E) The Pension Plan sells the Property for a price that is not less than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale; and

(F) The fiduciaries for the Pension Plan and the Welfare Plan, respectively, will enforce the terms of the proposed exemption, if granted.

Summary of Facts and Representations

1. The Pension Plan is a jointly administered Taft-Hartley trust fund established pursuant to section 302(c)(5) of the Labor Management Relations Act which is intended to qualify under section 401(a) of the Code. The Pension Plan's participants are employees covered by collective bargaining agreements between sponsoring employers of the Pension Plan and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (the United Association), including seven employees of the Welfare Plan. The United Association and its local affiliates are the sole collective bargaining agencies for employees covered by applicable collective bargaining agreements who are employed by the sponsoring employers of the Pension Plan.

The Pension Plan is administered by a six member Board of Trustees (the Trustees) of whom three members are appointed by the sponsoring employers, and three members are appointed by the United Association. The Trustees of the Pension Plan are represented by the applicant to have investment discretion over the assets of the Pension Plan. Currently the Trustees are Messrs. Charles H. Carlson, Fred G. Christman, and James A. House, who were appointed by the employers; and Messrs. Martin J. Maddaloni, Chairman, General President of the Union Association, Thomas H. Patchell, General Secretary-Treasurer of the Union Association, and Patrick R. Perno, Admin. Asst. to the General President for the Union, who were appointed by the United Association.

The applicant represents that, as of June 30, 1997, the Pension Plan had total assets of approximately $3,166,000,000; and as of September 23, 1998, the Pension Plan had approximately 97,988 participants and beneficiaries.

2. The Welfare Plan is a jointly administered Taft-Hartley trust fund established pursuant to section 302(c)(5) of the Labor Management Relations Act, which provides training for apprentices and journeymen pipe fitters located in the Houston, Texas area, who are members of the United Association Local Union No. 211 (Local 211). The Welfare Plan has four trustees (the Trustees) who are represented by the applicant to have investment discretion over the assets of the Welfare Plan. Currently the Trustees include Messrs. William A. Gregory and John Morrow, who were appointed by the sponsoring employers of the Welfare Plan; and Messrs. Lynn Williams, Business Manager of Local 211 and Richard Seeton, who were appointed by Local 211.

The applicant represents that as of July 31, 1997, the Welfare Plan had total assets of $1,147,297. Presently there are 137 participants in the apprenticeship program given by the Welfare Plan.

The applicant further represents that none of the Trustees of the Pension Plan serves as a Trustee of the Welfare Plan, and none of the Trustees of the Welfare Plan serves as a Trustee of the Pension Plan. However, the applicant represents that the Sale is a prohibited transaction because seven employees of the Welfare Plan are participants of the Pension Plan; and as such, the Welfare Plan is an employer as defined under section 3(14) of the Act and is a party in interest with respect to the Pension Plan.

3. The Property is described by the applicant as 1.5863 acres of land, being Tract 10, out of the J. R. Harris Survey, Abstract 27, Houston, Harris County, Texas, with improvements consisting of asphalt paving and a chain link fence. It is located at the southeast corner of Old Galveston Road and Loop 610. The Property was appraised by an independent appraiser, Randy L. Seale, MAI, with Allen, Williford & Seale, located in Houston, Texas, who determined that the Property had a fair market value of $69,100, as of June 30, 1998.

4. The Pension Plan proposes to sell the Property to the Welfare Plan for cash in a one-time transaction with no expenses, fees, or commissions incurred from the Sale by either the Pension Plan or the Welfare Plan other than their own respective appraisal, recording, and legal expenses. The applicant represents that the Pension Plan will receive, as consideration from the Sale, no less than the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser.

The applicant represents that the Pension Plan is prompted to take this action because the Property does not fit within the investment strategy of the Pension Plan. The applicant further represents that the continued possession of the Property will increase costs and expenses to the Pension Plan without generating a reasonable return on the investment. Title to the Property was obtained by the Pension Plan in June 1990 as a result of Local 211's pension plan being merged into the Pension Plan. During 1992, consideration was given to having the Property sold to the Welfare Plan and then abandoned. In 1994 the Pension Plan listed the Property with a commercial real estate agent in Houston, Texas in an attempt to sell it to an unrelated party. After one year, when no offers to purchase the Property were received, the Pension Plan did not renew the listing agreement. During June 1997, the Pension Plan agreed to sell the Property to the Welfare Plan upon obtaining from the Department an exemption from the prohibited transaction provisions of the Act.

The applicant represents that the Trustees for both Plans have determined that the proposed Sale of the Property will be in the best interests of their respective Plans and the rights of their participants and beneficiaries will be protected because the Property will provide each of the Plans with desirable improvements in their respective investments. The Pension Plan will sell an illiquid and superfluous asset, and the Welfare Plan will acquire an asset that has a proximity to its present facilities which will provide increased on-site parking space and increased security in a changing neighborhood, and thus, minimizing inconveniences to participants and beneficiaries and personnel of the Welfare Plan, enhancing its administrative efficiencies.

The applicant also represents that compliance with the terms and conditions of the requested exemption will be monitored and enforced by the independent fiduciaries of the

respective Plans. The respective fiduciaries of both Plans represent that the proposed Sale is in the best interests of the Plans and is protective of the rights of the participants and beneficiaries of the Plans; and that they have the power, authority, and responsibility to take the necessary action in the proposed transaction so that the Welfare Plan will not pay more and the Pension Plan will not receive less than the fair market value as determined by the independent appraiser on the date of the Sale.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because (a) the Sale is a one-time transaction for cash; (b) the Plans will not incur any expenses from the transaction other than their own respective expenses; (c) the Pension Plan will receive no less than the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser; (d) the Welfare Plan will pay no more than the fair market value of the Property as determined on the date of the Sale by a qualified, independent appraiser; and (e) the proposed transaction will be enforced by the Plans respective independent fiduciaries.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

State Street Bank and Trust Company (State Street), Located in Boston, Massachusetts

[Application Number D–10701]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

Section I. Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and section 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) of fractional amounts of certain fixed-income instruments (Fractional Amounts) to State Street and its affiliates by plans for which State Street or its affiliates provide fiduciary or other services (Client Plans), as well as employee benefit plans established and maintained by State Street or its affiliates (State Street Plans; collectively, the Plans), provided that the following conditions are met:

(a) Each Sale involves a one time transaction for cash;

(b) The terms of each Sale are at least as favorable to the Plan as those terms which would be available in an arm's-length transaction with an unrelated party;

(c) The Plans receive an amount which is not less than the par value for each of the Fractional Amounts;

(d) In the case of single Client Plans:

(1) Each Sale is subject to the prior consent of an independent plan fiduciary;

(2) The independent fiduciary of each Plan is furnished with notice within 90 days of the proposed Sale, providing information necessary for the independent fiduciary to determine whether to approve the Sale transaction. If the fixed-income instruments are not redenominated within a year of provision of this notice, additional notice will be provided to the independent fiduciaries of each Plan each year notifying them of their right not to participate in this program of Sales; and

(3) Each independent fiduciary who determines to participate in the Sale receives written confirmation of the decision to participate and written confirmation of the transaction and its terms.

(e) In the case of Client Plans participating in collective funds for which State Street serves as trustee or investment manager,

(1) Each Sale engaged in by the collective fund is subject to the prior approval of each independent plan fiduciary of Plans participating in the fund;

(2) The independent fiduciary of each Plan is furnished notice within 90 days of the proposed Sale, containing information necessary for the independent fiduciary to determine whether to approve the Sale transaction or withdraw from the collective fund prior to the Sale. If the fixed-income instruments are not redenominated within a year of provision of this notice, additional notice will be provided to the independent fiduciaries each year notifying them of their right to withdraw from the collective fund;

(3) Each independent fiduciary of a plan participating in a collective fund who determines to participate in the Sale receives written confirmation of the decision to participate and written confirmation of the transaction and its terms;

(f) In the case of the Plans, State Street must engage in the Sale within 30 days of the date that the Fractional Amounts are received by State Street as custodian or trustee for the Plans from the issuers of the fixed-income security;

(g) The Plans do not incur any commissions or other expenses in connection with the Sales; and

(h)(1) State Street or an affiliate maintains or causes to be maintained within the United States, for a period of six years from the date of such transaction, the records necessary to enable the persons described in this section to determine whether the conditions of this exemption have been met; except that a party in interest with respect to an employee benefit plan, other than State Street or its affiliates, shall not be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) or (b) of the Code, if such records are not maintained, or are not available for examination, as required by this section, and a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of State Street or its affiliates, such records are lost or destroyed prior to the end of such six year period;

(2) The records referred to in subsection (1) above are unconditionally available for examination during normal business hours by duly authorized employees of (a) the Department, (b) the Internal Revenue Service, (c) plan participants and beneficiaries, (d) any employer of plan participants and beneficiaries, and (e) any employee organization whose members are covered by such plan; except that none of the persons described in (c) through (e) of this subsection shall be authorized to examine trade secrets of State Street or its affiliates or any commercial or financial information which is privileged or confidential.

Section II. Definitions

(a) The term "affiliate" of State Street means any other bank or similar financial institution directly or indirectly controlling, controlled by, or under common control with State Street.

(b) The term "Euro" means the single European currency introduced on January 1, 1999 in eleven Member States of the European Union.[12]

(c) The term "Fractional Amount" means, with respect to any fixed-income instrument, an amount less than one Euro.

(d) The term "independent plan fiduciary" means a plan fiduciary

[12] For purposes of reference, on January 6, 1999, 1 Euro equaled approximately 1.16 U.S. dollars.

independent of State Street and any of its affiliates.

(e) The term "par value" means the face value of the fixed-income instrument.

(f) The term "Plan" includes all employee benefit plans to which State Street or an affiliate acts as a service provider, including a fiduciary, and all plans established and maintained by State Street and its affiliates, which have net assets of at least $25,000,000.

EFFECTIVE DATE: This exemption is effective for the period beginning on January 1, 1999 and ending three years from the date on which each country joining the European Economic and Monetary Union converts to the Euro.

Summary of Facts and Representations

1. State Street, a Massachusetts banking corporation, is a commercial bank which provides a wide range of banking, fiduciary, record keeping, custodial, brokerage and investment services to corporations, institutions, governments, employee benefit plans, governmental retirement plans and private investors worldwide. State Street is a wholly-owned subsidiary of State Street Corporation, a bank holding company organized in 1970 under the laws of the Commonwealth of Massachusetts. As a Massachusetts trust company and a member bank of the Federal Reserve System, State Street is a bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 and section 581 of the Code. As of December 31, 1997, State Street Corporation's total assets were $37.975 billion with shareholders' equity of $1.995 billion.

2. Among the assets of the Client Plans and the State Street Plans are corporate and government-issued fixed-income instruments denominated in the currencies of the following eleven European nations: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Portugal and Spain. In May 1998, these eleven nations agreed to join the Economic and Monetary Union (EMU) and to cooperate in the creation of a European Central Bank and the development of a central currency (the Euro), in lieu of the individual currencies of the eleven members (Legacy Currencies). Beginning on January 1, 1999, these Legacy Currencies will be converted into the Euro,[13] although the Legacy Currencies will continue to coexist with the Euro for a limited time as denominations of the Euro.[14]

During the initial transition weekend that included January 1, 1999, nine of the eleven securities markets (Austria, Belgium, Finland, France, Germany, Italy, Luxembourg, Portugal and Spain) in the EMU underwent a conversion in which: (1) All stock exchanges and depositories commenced pricing, trading and settling only in the Euro, (2) approximately 1500 government securities were redenominated, (3) currency balances were converted to the Euro, and (4) all securities transactions pending over that weekend were converted to settle in the Euro. Since January 1, 1999 forward, the stock exchanges, depositories and national or central banks in these nine countries operate only in the Euro. Ireland permitted Legacy Currency or Euro currency instructions until January 8, 1999, and the Netherlands is permitting Legacy Currency or Euro currency instructions throughout the entire three-year transition period.

With regard to fixed-income instruments, the process of conversion is scheduled to take place over a three-year period. The applicant states that the other European nations not currently part of the EMU may decide to follow these eleven nations and start their own conversion process after January 1, 1999. In that event, these other nations may take approximately three years from their commencement of the conversion process to redenominate fixed-income securities. State Street represents that in the process of this redenomination, Fractional Amounts (as defined in paragraph (c) of Section II) will be created as a result of the relationship between the former currency values and the Euro.[15]

4. State Street seeks exemptive relief permitting it and its affiliates to purchase the Fractional Amounts resulting from the conversion to the Euro of certain fixed-income instruments denominated in the Legacy Currencies that are held by its Client Plans and the State Street Plans. State Street represents that while its custody systems currently support Fractional Amounts, it is widely predicted that there will be little or no market for Fractional Amounts resulting from the conversion to the Euro. In addition, State Street represents that the Fractional Amounts will need to be disposed of as soon as possible after the Euro conversion because these Fractional Amounts will likely trade at a discount in any potential secondary market. In addition, when transaction costs and other costs are considered, the cost of selling the Fractional Amounts may exceed their value. Accordingly, State Street proposes purchasing the Fractional Amounts for 120% of par value from its clients, including Client Plans, and the State Street Plans to ensure that no losses are sustained by such investors in the Sale of the Fractional Amounts.

5. State Street represents that it contacted the independent fiduciaries of each of its Client Plans within 90 days of December 31, 1998 to provide notice of the subject transaction. In notifying the independent fiduciaries of the Client Plans, State Street provided several items of important information. First, State Street informed the Client Plans regarding the conversion of certain European currencies into the Euro. In doing so, State Street advised the Client Plans of the background and timing of the conversion, including the fact that Fractional Amounts would result from the process of conversion. Second, State Street advised the Client Plans that such Fractional Amounts were not being traded on the open market. Also, as an accommodation to its customers, State Street informed the Client Plans that it would purchase the Fractional Amounts for 120% of the par value of such shares, and clients would see a confirmation of that transaction and future activity regarding the Fractional Amounts on their quarterly statements as the issuers of the fixed-income

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[13] On December 31, 1998, the Council of the European Union adopted the irrevocably fixed conversion rates between the Euro and the currencies of the Member States adopting the Euro. See Council Regulation (EC) No. 2866/98. The Council of the European Union mandated the following conversion rates: 1 Eur=40.3399 BEF, 1 Eur=1.95583 DEM, 1 Eur=166.386 ESP, 1 Eur=6.55957 FRF, 1 Eur=.787564 IEP, 1 Eur=1936.27 ITL, 1 Eur=40.3399 LUF, 1 Eur=2.20371 NLG, 1 Eur=13.7603 ATS, 1 Eur=200.482 PTE, 1 Eur=5.94573 FIM.

[14] For example, a French Franc will be treated as a sub-unit of a Euro in the same way as a centime is treated as a subunit of the Franc. The applicant represents that because the conversion rate will be irrevocably fixed throughout a three-year transitional period, all existing banknotes and coins will continue in circulation as legal tender but will be treated as referring to the Euro at the fixed conversion rate.

[15] In the case of Austria, Belgium, Finland, Germany, Ireland, Italy, Luxembourg, Portugal, and Spain, fixed-income instruments are being reissued in whole Euros. These securities markets are dealing with the resulting Fractional Amounts by issuing fractional shares of the fixed-income securities. Instead of issuing fractional shares, France and the Netherlands have directed that their sovereign debt instruments are to be redenominated in whole Euros, with the value of the fractional share compensated with cash. As for corporate issuers in France and the Netherlands, State Street represents that it is unclear how they will redenominate. Regardless, State Street represents that it is treating each transaction as the Sale by the plan of a Fractional Amount of the underlying security, regardless of the treatment by France and the Netherlands, and is paying to each Plan an amount equal to 120% of the par value of such Fractional Amount.

instruments converted their fixed-income securities. Third, Client Plans were informed that if they opt not to have their Fractional Amounts purchased by State Street, State Street would accommodate such request and permit the Client Plans to deal with the Fractional Amounts as they so choose. In this regard, State Street represents that every Client Plan was given an adequate amount of time prior to December 31, 1998 to opt out of the program. In the case of Client Plans participating in collective funds, such Plans were given the opportunity to withdraw from the fund if they objected to participation in the program of Sales.

State Street represents that every independent fiduciary of the single Client Plans and Client Plans participating in collective funds has agreed to participate in the program of Sales. State Street provided each independent fiduciary with written confirmation of their decision to participate in the program of Sales. Furthermore, State Street represents that its quarterly statements will continue to provide the Client Plans with an indication of the activity in the accounts with respect to Fractional Amounts as issuers redenominate the fixed-income securities.

6. State Street represents that the subject transactions are administratively feasible in that each Sale is for cash at an amount equal to 120% the par value of the Fractional Amounts and that all transaction records will be maintained. Furthermore, State Street states that each transaction should be viewed as being in the best interest of the Plans and their participants and beneficiaries because such transactions provide for more efficient administration of the currency conversion process for such assets and increased value to the Plan's investments. Finally, State Street represents that the subject transactions are protective of the Plans' participants and beneficiaries because each Plan receives 120% of the par value for the Fractional Amounts during a time when any market that may develop for these interests could result in them being sold at a discount.

7. In summary, State Street represents that the transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975 of the Code because:

(a) Each Sale involves a one time transaction for cash;

(b) The terms of each Sale are at least as favorable to the Plan as those terms which would be available in an arm's-length transaction with an unrelated party;

(c) The Plans receive an amount which is not less than the par value for each of the Fractional Amounts;

(d) In the case of Single Client Plans:

(1) Each Sale is subject to the prior consent of an independent plan fiduciary;

(2) The independent fiduciary of each Plan is furnished with notice within 90 days of the proposed Sale, providing information necessary for the independent fiduciary to determine whether to approve the Sale transaction. If the fixed-income instruments are not redenominated within a year of provision of this notice, additional notice will be provided to the independent fiduciaries each year notifying them of their right not to participate in this program of Sales; and

(3) each independent fiduciary who determines to participate in the Sale receives written confirmation of its decision to participate and written confirmation of the transaction and its terms.

(e) In the case of Client Plans participating in collective funds for which State Street serves as trustee or investment manager,

(1) Each Sale engaged in by the collective fund is subject to the prior approval of each independent plan fiduciary of Plans participating in the fund;

(2) The independent fiduciary of each Plan is furnished notice within 90 days of the proposed Sale, containing information necessary for the independent fiduciary to determine whether to approve the Sale transaction or withdraw from the collective fund prior to the Sale. If the fixed-income instruments are not redenominated within a year of provision of this notice, additional notice will be provided to the independent fiduciaries each year notifying them of their right to withdraw from the collective fund;

(3) Each independent fiduciary of a plan participating in a collective fund who determines to participate in the Sale receives written confirmation of the decision to participate and written confirmation of the transaction and its terms;

(f) In the case of the Plans, State Street must engage in the Sale within 30 days of the date that the Fractional Amounts are received by State Street from the issuers of the fixed-income security; and

(g) The Plans do not incur any commissions or other expenses in connection with the Sales.

NOTICE TO INTERESTED PERSONS: Because of the large number of interested persons associated with the Plans, the Department and the applicant have agreed that notification through publication of the proposal in the **Federal Register** is sufficient.

FOR FURTHER INFORMATION: Contact James Scott Frazier of the Department, phone number (202) 219–8881 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new

exemption may be made to the Department.

Signed at Washington, DC, this 21st day of January, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–1848 Filed 1–26–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XLIV

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on February 5, 1999 from 8:30 a.m. to 12:30 p.m. The Committee will convene to discuss a variety of reports and projects. The meeting will be held in the James W. McLamore Center at the University of Miami, 5250 University Drive, Coral Gables, Florida.

The Committee meeting will begin at 8:30 a.m. with a welcome from the University President and opening remarks by Dr. John Brademas, Chairman. This will be followed by the Director's Update from Harriet Mayor Fulbright. There also will be a report on International issues, including cultural policy meetings and international art exhibits, reports from the National Endowments for the Arts and the Humanities and the Institute of Museum & Library services, and a report on the Coming Up Taller project. There will be a discussion of "Gaining the Arts Advantage," the Committee's new report on arts education. The meeting will conclude with general discussion about future plans.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c) (4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Regina Syquia of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Ms. Syquia.

If you need special accommodations due to a disability, please contact Ms. Syquia through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–1824 Filed 1–26–99; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Exercise of Discretion for an Operating Facility, NRC Enforcement Policy (NUREG–1600).

2. Current OMB approval number: 3150–0136.

3. How often the collection is required: On occasion.

4. Who is required or asked to report: Nuclear power reactor licensees.

5. The number of annual respondents: 36.

6. The number of hours needed annually to complete the requirement or request: 2,160.

7. Abstract: The NRC's revised Enforcement Policy includes the circumstances in which the NRC may exercise enforcement discretion. This enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and relates to circumstances which may arise where a licensee's compliance with a Technical Specification Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. A licensee seeking the issuance of a NOED must provide a written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

Submit, by March 29, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of January 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–1843 Filed 1–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: NRC Form 536, "Operator Licensing Examination Data".
2. OMB approval number: 3150–0131.
3. How often the collection is required: Annually.
4. Who is required or asked to report: All holders of operating licenses or construction permits for nuclear power reactors.
5. The number of annual respondents: 80.
6. The number of hours needed annually to complete the requirement or request: 80.
7. Abstract: NRC is requesting reinstatement of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for operator licensing initial examinations; (2) the estimated dates of the examinations; (3) if the examination will be facility developed or NRC developed, and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

Submit, by March 29, 1999, comments that address the following questions:

1. Is the proposed collection information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of January 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–1844 Filed 1–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–210]

Niagara Mohawk Power Corporation; Correction

The December 30, 1998, **Federal Register** contained a "Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing," for Nine Mile Point Nuclear Power Station, Unit 1. The title inadvertently referred to Unit No. 2 rather than Unit No. 1. This notice corrects the notice published in the **Federal Register** on December 30, 1998 (63 FR 71968). The title should read:

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1 (NMP1), Oswego County, New York.

Dated at Rockville, Maryland, this 20th day of January 1999.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1845 Filed 1–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Power Authority of the State of New York; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of the Power Authority of the State of New York (the licensee, also known as the New York Power Authority) to withdraw its February 6, 1998, application for proposed amendment to Facility Operating License No. DPR–59 for the James A. FitzPatrick Nuclear Power Plant, located in Oswego County, New York.

The proposed amendment would have revised Technical Specifications for inservice leak and hydrostatic testing operation.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 22, 1998 (63 FR 19976). However, by letter dated December 30, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 6, 1998, and the licensee's letter dated December 30, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 21st day of January 1999.

For the Nuclear Regulatory Commission.

Joseph F. Williams,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1846 Filed 1–26–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

TU Electric; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is

considering issuance of an amendment to Facility Operating License Nos. NPF–87 and 89, issued to the TU Electric (TUE or the licensee), for operation of the Comanche Peak Steam Electric Station, Units 1 and 2 (CPSES), located in Somervell County, Texas.

The initial notice of consideration of issuance of amendment to facility operating license and opportunity for hearing was originally published in the **Federal Register** (63 FR 58074) on October 29, 1998. The information included in the supplemental letters indicates the original notice, that included seven proposed beyond-scope issues (BSIs) to the Improved Technical Specifications (ITS) conversion, needs to be expanded (add fourteen new BSIs) and revised (delete two previous BSIs) to include a total of nineteen BSIs and requires re-notice in the **Federal Register**. This notice supercedes the previous notice.

The proposed amendment, requested by the licensee in a letter dated May 15, 1997, as supplemented by letters dated June 26, August 5, August 28, September 24, October 21, October 23, November 24, December 11, December 17 and December 18, 1998, would represent a full conversion from the current Technical Specifications (CTS) to a set of ITS based on NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1, dated April 1995. NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications (TSs) for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's "Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement)," published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS, and, using NUREG–1431 as a basis, proposed an ITS for CPSES. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, "Technical Specifications," in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

This conversion is a joint effort in concert with three other utilities: Pacific Gas & Electric Company for Diablo Canyon Power Plant, Units 1 and 2 (Docket Nos. 50–275 and 323); Union Electric Company for Callaway Plant (Docket No. 50–483); and Wolf Creek Nuclear Operating Corporation for Wolf Creek Generating Station (Docket No. 50–482). This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 Specifications, and the NUREG–1431 Bases, that has been accepted by the staff. This includes the convention that, if the words in a CTS specification are not the same as the words in the ITS specification but they mean the same or have the same requirements as the words in the ITS specification, the licensees do not indicate or describe a change to the CTS.

This common methodology is discussed at the end of Enclosure 2, "Mark-Up of Current TS"; Enclosure 5a, "Mark-Up of NUREG–1431 Specifications"; and Enclosure 5b, "Mark-Up of NUREG–1431 Bases, for each of the 14 separate ITS sections that were submitted with the licensee's application. For each of the 14 ITS sections, there is also the following: Enclosure 1, the cross reference table, sorted by CTS and ITS Specifications; Enclosure 3, the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change applies to; Enclosure 4, the no significant hazards consideration (NHSC) of 10 CFR 50.91 for the changes to the CTS with generic NHSCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NHSCs for less restrictive changes and with the organization of the NHSC evaluation discussed in the beginning of the enclosure; and Enclosure 6, the descriptions of the differences from NUREG–1431 Specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference applies to. Another convention of the common methodology is that the technical justifications for the less restrictive changes are included in the NHSCs.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the existing TSs. The proposed changes include: (a) providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in the TSs. Relocated changes are those current TSs requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Attachment 2 to its May 15, 1997, submittal, which is entitled, "General Description and Assessment." The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the final safety analysis report (FSAR), the ITS BASES, the Technical Requirements Manual (TRM) that is incorporated by reference in the FSAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation

of process variables, structures, systems, and components described in the safety analyses. For each requirement in the CTS that is more restrictive than the corresponding requirement in NUREG–1431 that the licensee proposes to retain in the ITS, they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant "less restrictive" requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the current TS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are differences to the requirements in both the CTS and the Improved Standard Technical Specifications (NUREG–1431). The first five BSIs were included in the previous (superceded notice) and still apply to the conversion, however there are fourteen additional BSIs. The additional beyond-scope issues (BSIs) are discussed in the licensee's response to requests for additional information (RAIs) from the NRC staff. These proposed BSIs to the ITS conversion are as follows:

1. ITS 3.1.7, a new action added for more than one digital rod position indicator per group inoperable.

2. ITS surveillance requirement (SR) 3.2.1.2, frequency, within 24 hours for verifying the axial heat flux hot channel factor is within limit after achieving equilibrium conditions.

3. ITS SR 3.6.3.7, note added to not require leak rate test of containment purge valves with resilient seals when penetration flow path is isolated by leak-tested blank flange.

4. ITS LCO 3.7.15, changes reference for the spent fuel pool level from that above top of fuel stored in racks to that above the top of racks.

5. ITS 5.6.5a.8, adds refueling boron concentration limits to the core operating limits report.

The fourteen additional BSIs are listed below with the associated change number, RAI number, RAI response submittal date, and description of the change.

6. Change 10–3–LS–37 (ITS 3/4.4), question Q5.5–2, response letter dated September 24, 1998, the change added an allowance to CTS SR 4.4.9 for the reactor coolant pump flywheel inspection program (ITS 5.5.7) to provide an exception to the examination requirements specified in the CTS SR (i.e., regulatory position C.4.b of NRC Regulatory Guide (RG) 1.14, Revision 1).

7. Change 1–22–M (ITS 3/4.3), question Q3.3–49, response letter dated November 24, 1998, the change is given in the application. Quarterly channel operational tests (COTs) would be added to CTS Table 4.3–1 for the power range neutron flux-low, intermediate range neutron flux, and source range flux trip functions. The CTS only require a COT prior to startup for these functions. New Note 17 would be added to require that the new quarterly COT be performed within 12 hours after reducing power below P–10 for the power range and intermediate range instrumentation (P–10 is the dividing point marking the Applicability for these trip functions), if not performed within the previous 92 days. In addition, Note 9 is revised such that the P–6 and P–10 interlocks are verified to be in their required state during all COTs on the power range neutron flux-low and intermediate range neutron flux trip functions.

8. Change 1–7–LS–3 (ITS 3.4/3), question Q3.3–107, response letter dated November 24, 1998, the changes are given in the application and would (1) extend the completion time for CTS Action 3.b from no time specified to 24 hours for channel restoration or changing the power level to either below P–6 or above P–10, (2) reduce the applicability of the intermediate range neutron flux channels and deleted CTS Action 3.a as being outside the revised applicability, and (3) add a less restrictive new action that requires immediate suspension of operations involving positive reactivity additions and a power reduction below P–6 within 2 hours, but no longer requires a reduction to Mode 3. The changes would be to CTS Table 3.3–1 (Action 3 and New Action 3.1, and Function #5 and Footnote h to its applicable modes).

9. Change 1–9–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new administrative change added to the application. The CTS 6.2.2.e requirements concerning overtime would be replaced by a reference to administrative procedures for the control of working hours.

10. Change 1–15–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new administrative change added to the application. The proposed change would revise CTS 6.2.2.G to eliminate the title of Shift Technical Advisor. The engineering expertise is maintained on shift, but a separate individual would not be required as allowed by a Commission Policy Statement.

11. Change 2–18–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new administrative change added to the application. The dose rate limits in the Radioactive Effluent Controls Program for releases to areas beyond the site boundary would be revised to reflect 10 CFR Part 20 requirements.

12. Change 2–22–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new administrative change added to the application. The Radioactive Effluents Controls Program would be revised to include clarification statements denoting that the provisions of CTS 4.0.2 and 4.0.3, which allow extensions to surveillance frequencies, are applicable to these activities.

13. Change 3–11–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, the proposed change would revise the 3–11–A change submitted in the application. CTS 6.12, which provides high radiation area access control alternatives pursuant to 10 CFR 20.203(c)(2), would be revised to meet the current requirements in 10 CFR Part 20 and the guidance in NRC RG 8.3.8, on such access controls.

14. Change 3–18–LS–5(ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, a new less restrictive change added to the application. The CTS 6.9.1.5 requirement to provide documentation of all challenges to the power operated

relief valves (PORVs) and safety valves on the reactor coolant system would be deleted. This is based on NRC Generic Letter 97–02 which reduced requirements for submitting such information to the NRC and did not include these valves for information to be submitted.

15. Change 3.19–A (ITS 5.0), question Q5.2–1, response letter dated September 24, 1998, the administrative change is being withdrawn with the licensee submitting change 3–11–A above.

16. Change 10–20–LS–39 (ITS 3/4.7), question Q3.7.10–14, response letter dated October 21, 1998, the change is given in the application and would revise and add an action to CTS LCO 3.7.7.1, for ventilation system pressure envelope degradation, that allows 24 hours to restore the CR pressure envelope through repairs before requiring the unit to perform an orderly shutdown. The new action has a longer allowed outage time than LCO 3.0.4 which the CTS would require to be entered immediately. This change recognizes that the ventilation trains associated the pressure envelope would still be operable.

17. Change 4–8–LS–34 (ITS 3/4.4), question Q3.4.11–2, response letter dated September 24, 1998, the change is given in the application and would limit the CTS SR 4.4.4.2 requirement to perform the 92 day surveillance of the pressurizer PORV block valves and the 18 month surveillance of the pressurizer PORVs (i.e., perform one complete cycle of each valve) to only Modes 1 and 2.

18. Change 4–9–LS–36 (ITS 3/4.4), question Q3.4.11–4, response letter dated September 24, 1998, the Change 4–9–LS–4 is revised to add a note to Action d for CTS LCO 3.4.4 that would state that the action does not apply when the PORV block valves are inoperable as a result of power being removed from the valves in accordance Action b or c for an inoperable PORV.

19. Change 1–60–A (ITS 3/4.3), question TR 3.3–007, followup items letter dated December 18, 1998, a new administrative change is being added to the application. The change would revise the frequency for performing the trip actuating device operational test (TADOT) in CTS Table 4.3–1 for the turbine trip (functional units 16.a and 16.b) to be consistent with the modes for which the surveillance is required. This would be adding a footnote to the TADOT that states "Prior to exceeding the P–9 interlock whenever the unit has been in Mode 3."

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 28, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request

should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 27, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/ Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 21st day of January 1999.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1847 Filed 1–26–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 4, 1999, through January 14, 1999. The last biweekly notice was published on January 13, 1999.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 26, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois.

Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

Date of application for amendment request: December 17, 1998.

Description of amendment request: The amendments would revise the respective facility Technical Specifications (TS) by adding a new Limiting Conditions for Operations which provides an administrative enhancement by allowing testing required to return equipment to service to be conducted under administrative controls.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change has no impact on the design basis of the plant. The change has no impact on the response of the plant during normal or transient conditions. Incorporation of ISTS [improved Standard Technical Specification] 3.0.5 provides the necessary administrative controls that allow the return of equipment to service to complete testing required to demonstrate operability. Without this allowance, certain components could not be restored to operable status and a plant shutdown would ensue. It is not the intent of the TS to preclude the return to service of a component in order to confirm its operability or the operability of other equipment. This allowance is deemed to be a safer operation than requiring a plant shutdown to complete necessary testing. This allowance is considered acceptable because it: (1) is temporary; (2) accompanied by appropriate administrative controls, and; (3) provides a safety enhancement by restoring the plant status to, or confirming the existing plant status is in, a condition that is expected to provide for safe operation.

ISTS 3.0.5 was adopted to address the ambiguity that ACTION requirements do not strictly allow the restoration of equipment to its normal configuration to perform functional testing required to demonstrate operability. The components involved will have completed maintenance and or testing that will demonstrate, with reasonable assurance, that the component can perform its intended safety function.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated:

The proposed changes do not introduce new features or modify plant structures, systems or components that may impact station operations under normal or abnormal conditions. The proposed changes will allow the necessary testing to ensure safety related equipment will perform its design basis safety function.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety for the following reasons:

The proposed changes have no impact on any of the Safety Limits provided in the Technical Specifications, nor does the change impact the operation of structures, systems and components import to plant safety. The purpose of the proposed change is to return equipment to service, under administrative controls, to complete operability testing. Therefore, allowing the return of equipment to service will promote timely restoration of, or confirmation of, equipment operability thereby increasing the margin of safety from that existing with this equipment remaining out of service. Temporarily returning inoperable equipment to service for the purpose of confirming operability places the plant in a condition which has been previously evaluated and determined to be acceptable for short periods. Therefore, the proposed change does not involve a significant reduction in safety.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

Local Public Document Room location: for Dresden, Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450; for Quad Cities, Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021; for LaSalle, Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Project Director: Stuart A. Richards.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: December 24, 1998.

Description of amendment request: These amendment requests change the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Technical Specifications (TSs) to ensure that Emergency Diesel Generator (EDG) requirements contained in Technical Specification 3/4.8.1 for both units are consistent with assumptions contained in design analyses and requirements of plant procedures. Revisions to TS 3/4.8.1 "A.C. Sources," contained in this amendment provide more conservative limiting conditions for operation (LCO) and surveillance requirements that affect EDG fuel oil storage volume, EDG load rejection and overspeed testing, and EDG operating frequency requirements. The applicable bases for each unit are also refined, as necessary, to strengthen the explanations regarding EDG fuel oil storage systems and provide the EDG overspeed in terms of frequency (Hertz) and speed (Revolutions Per Minute).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The addition of the term "usable" to LCO 3.8.1.1 and 3.8.1.2 for both Units will assure that the required quantity of fuel oil will be available to operate the diesel during emergency conditions. This revision including the discussion contained in the Technical Specification Bases has no physical impact on the diesels or their setpoints. These revisions also do not delete any function previously provided by the diesels. There are no design bases accidents for which failure of the diesel is considered an initiating event. Therefore, the probability of an accident previously evaluated in the safety analysis is not increased by this change. The proposed changes do not involve an increase in the consequences of an accident previously analyzed, as they make the limiting condition for operation and associated bases more conservative and involve no physical changes to the diesels.

The revised EDG single largest load rejection and overspeed criteria do not involve an increase in the probability or the consequences of accidents previously analyzed. The surveillance tests impacted by the proposed revision are performed only during shutdown when the opposite train EDG and its connected AC power system are relied upon as the emergency AC power source. Further, there are no design basis accidents for which changes to EDG load rejection test acceptance criteria can be an initiating event. The proposed changes affect the diesel testing requirements but do not affect the operating or design parameters. The changes also do not affect the diesels' ability to mitigate the consequences of an accident. They serve to ensure the ability of the diesel to reject the largest load. The overspeed criteria ensures that diesel frequency does not exceed a certain value subsequent to a load rejection. This criteria also ensures compliance with the guidance of Safety Guide 9 for Unit 1 and Regulatory Guide 1.9 for Unit 2. It does not involve an increase in the consequences of an accident previously analyzed. The revision does not impact accidents previously analyzed and would not, therefore, affect the consequences of accidents previously analyzed.

Revising the EDG operating frequency as discussed in the proposed amendment protects [engineered safety feature] ESF pumps from runout conditions and motors from operating in an unanalyzed condition. The narrower frequency limits are more restrictive and have no adverse effect on the diesel generator operability. The proposed revision to decrease the EDG operating frequency limit does not involve an increase in the probability of an accident as described in the [Updated Final Safety Analysis Report] UFSAR. There are no design basis accidents for which failure of the diesel is considered an initiating event. A narrower operating frequency does not increase the probability of a design basis accident; it ensures that equipment performs their intended function. This change is intended to prevent the diesel from being loaded beyond analyzed loading limits and protect ESF equipment. The more conservative surveillance requirements being applied to operating limits will provide greater assurance that the diesels will be operable and that greater performance requirements are not imposed on ESF equipment. This change, therefore, will not result in an increase in the consequences of an accident previously described.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions do not create the possibility of a new or different kind of accident from any accident previously evaluated. They also will have no adverse impact on the design basis accidents previously evaluated in the UFSAR. The revisions contained in the proposed amendment are more restrictive to assure that diesel and ESF equipment are available and fully operable to perform their intended safety function following a design basis accident and a loss of offsite power. The proposed changes do not involve physical changes to plant equipment or the AC power system configuration. New failure modes are not introduced as a result of the proposed revisions. A revision of the diesel frequency will prevent motors and pumps from being subjected to over-frequency conditions which could reduce the life of the equipment. Increasing the load rejection criteria for Unit 1 and including overspeed criteria for both units revises surveillance test criteria for verifying load rejection capability. This does not affect the probability of malfunction of a diesel or its connected emergency AC power system. Further, it does not create a new failure mode. Revising diesel fuel oil storage requirements to include the term "usable" reduces the potential for misinterpretation of this specification; it does not create a new kind of accident from any accident previously evaluated.

The revisions contained in this license amendment have the effect of making the BVPS Technical Specifications more conservative than previously. This license amendment request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The margin of safety is not reduced as a result of the proposed revisions. The margin of safety depends on the maintenance of specific operating parameters within design limits. The margin of safety derived from limiting condition for operation 3.8.1.1 and 3.8.1.2 for both Units is enhanced by adding "usable" in these requirements. This revision reduces the possibility of misinterpreting Technical Specification requirements. The addition of diesel overspeed criteria (both units) and increasing load rejection criteria for Unit 1 does not reduce the margin of safety. Diesel reliability and performance during a loss of offsite power and a design basis accident are enhanced by this more conservative surveillance test requirement. Revision of diesel operating frequency limits protects engineered safety features equipment from overfrequency conditions; this would not be a significant reduction in the margin of safety. Though the temporary Unit 1 EDG loading limit of 2791.51 exceeds the Safety Guide 9 value of 2745, it still is below the EDG 2000 hour rating limit of 2850 kW contained in Surveillance Requirement 4.8.1.1.2.b.6. Further, the loading value of 2791.51 kW does not exceed the design

loading capability of the EDG. Based on engineering analyses, the revisions contained in the proposed amendment will not significantly reduce the margin of safety. Engineered safety features equipment will continue to function, as assumed in the safety analysis, to ensure that fuel, reactor coolant system and containment design limits are not exceeded.

Therefore, this change will not involve a significant reduction in a margin of safety due to the continued availability and reliability of the A.C. electrical power sources.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for Licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: December 24, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) requirements for the axial flux difference [AFD] monitor, quadrant power tilt ratio [QPTR] monitor, rod position deviation monitor, and rod insertion limit (RIL) monitor. The changes would (1) relocate requirements for the AFD monitor and the QPTR monitor to the Licensing Requirements Manual (LRM); (2) delete requirements for the rod position deviation monitor and RIL monitor from the TSs; (3) modify Unit 1 surveillance requirements (SR) 4.1.3.5 and 4.1.3.6 by incorporating the Unit 2 wording to provide surveillances more consistent with the Limiting Condition for Operation (LCO); (4) change Unit 1 SR 4.1.3.2.2, SR 4.1.3.5, SR 4.1.3.6 and Unit 2 SR 4.1.3.5 from 24 hour surveillance frequencies to 12 hour frequencies; and (5) delete Unit 1 SR 4.1.3.2.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment would modify applicable Technical Specifications (TS) by deleting requirements associated with the rod position deviation monitor and rod insertion limit (RIL) monitor and relocating the requirements associated with the axial flux difference (AFD) monitor and quadrant power tilt ratio (QPTR) monitor from the following specifications and Bases:

Unit 1: 4.1.3.1.2, 3.1.3.2, 4.1.3.2.2, 4.1.3.2.3, 4.1.3.6, 4.2.1.1, 4.2.4;

Unit 2: 4.1.3.1.2, 4.1.3.2, 4.1.3.6, 4.2.1.1, 4.2.4.

The TS contains requirements where a reduced surveillance interval is required in the event the monitors referenced in the above specifications, surveillance requirements (SR) and associated Bases are inoperable. Removing the requirements associated with these monitors from the TS will not affect the ability of any system to perform its design function.

Nuclear Electric Institute (NEI) Technical Specification Task Force (TSTF) 110 Revision 2 provides the basis for these changes and recommends relocating the requirements for these monitors to "plant administrative practices." The AFD monitor and the QPTR monitor requirements will be relocated to the LRM and changes to these requirements will be controlled in accordance with the 10 CFR 50.59 process which will require NRC approval if the change constitutes an unreviewed safety question. However, based on the smaller change in surveillance intervals, deletion and not relocation of the rod position deviation monitor and the RIL monitor requirements can be justified and is proposed.

Although these monitors are being removed from the TSs, they will continue to be maintained as described in the [Updated Final Safety Analysis Report] UFSAR (subject to revisions via the 10 CFR 50.59 process). Removing the rod deviation monitor requirements from Unit 1 SR 4.1.3.2.3 makes the remaining portion of SR 4.1.3.2.3 redundant to SR 4.1.3.2.2.a; therefore, SR 4.1.3.2.3 has been deleted. In addition, the 24-hour surveillance frequency in Unit 1 SR 4.1.3.2.2, 4.1.3.5 and 4.1.3.6 as well as in Unit 2 SR 4.1.3.5 is being changed to 12 hours to assure the required parameters are adequately monitored and to provide consistency between the units and related requirements as well as the Improved Standard Technical Specifications (ISTS).

Removing these monitors from the TS is consistent with the NRC approved changes to the ISTS identified in TSTF–110, Revision 2. Verification that plant conditions are within specified limits at the frequency specified in the normal SR provides sufficient information that allows the operator to detect a parameter that is beginning to deviate from its expected limits. The specified frequency takes into account other information (i.e., rod position indication system, rod bottom alarm and excore neutron detectors) that is continuously available to the operator in the control room, so that during changes in plant conditions, deviation from the limits can be readily detected.

The proposed changes do not affect the operation of the system or the accident analyses and are consistent with the NRC approved changes to the surveillances identified for the ISTS of NUREG–1431 identified in TSTF–110, Revision 2. These changes do not involve a change to plant equipment and do not affect the performance of plant equipment used to mitigate an accident. Although the deletion of these monitor requirements from the TS results in elimination of the reduced surveillance interval when the alarm is inoperable (for those requirements not being relocated to the LRM) the change in frequency is not significant considering the indications available to the operator and the relatively slow changes in the parameters being monitored during steady state operation. Therefore, based on the above, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Unit 1 SRs 4.1.3.5 and 4.1.3.6 have been additionally modified by incorporating the Unit 2 wording which more closely provides a surveillance appropriate for the LCO. The LCO requires the shutdown rods/control banks to be within the insertion limits and the revised SR requires a determination that each shutdown rod/control bank is within the insertion limits on a 12-hour frequency. Therefore, the revised SRs are consistent with the LCO requirements and more clearly provide verification that the LCO is met. This change does not affect the operation of the rod position indication system or any other system and is consistent with the Unit 2 and ISTS wording. This change will not affect the ability of any system to perform its design function; therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Changing the surveillance frequency from 24 to 12 hours is more conservative and assures the affected parameters are adequately monitored. In addition, the change removes monitors from the TSs and provides consistency between the SRs, the units and the ISTS. Changing the surveillance frequency, correcting the Unit 1 SRs and removing reference to the identified monitors from the TS will not cause a significant reduction in system reliability nor affect the ability of any system to perform its design function. There are no hardware changes associated with this license amendment nor are there any changes in the method by which any safety-related plant system performs its safety function. No new accident scenarios, transient precursors, failure mechanisms or limiting single failures are introduced as a result of these changes. These changes do not introduce any adverse effects or challenges to any safety-related systems. No change is required to any system configurations, plant equipment or analyses. Therefore, these changes will not create the possibility of any new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not affect the acceptance criteria for any analyzed event nor impact any plant safety analyses since the assumptions used will remain unchanged. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since the proposed changes do not affect the accident analyses assumptions or equipment required to mitigate design basis accidents described in the UFSAR. Although the deletion of these monitor requirements from the TSs results in elimination of the reduced surveillance interval when the alarm is inoperable (for those requirements not being relocated to the LRM) the effect is not significant considering the indications available to the operator and the relatively slow changes in the parameters being monitored during steady state operation. The TSs continue to assure the applicable operating parameters are maintained within the required limits. Based on engineering judgement, incorporating these changes will not involve a significant reduction in the margin of safety.

The margin of safety depends upon maintenance of specific operating parameters within design limits. The TSs continue to require that these limits be maintained and provide appropriate remedial actions if a limit is exceeded. The maintenance of these limits continues to be assured through performance of the normal surveillance at the proposed frequency and the requirements for increased monitoring that are relocated to the LRM. Additional assurance that the required parameters are adequately monitored is provided through other information readily available (i.e., rod position indication system, rod bottom alarm and excore neutron detectors) that allows the operator to detect a parameter that is beginning to deviate from its expected limits and through the proposed changes which reduce the normal surveillance interval from 24 hours to 12 hours to assure the affected parameters are adequately monitored. Although these monitors are being removed from the TSs, they will continue to be maintained as described in the UFSAR (subject to revisions via the 10 CFR 50.59 process). Therefore, the plant will be maintained within the analyzed limits and the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: S. Singh Bajwa.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2 (ANO–1&2), Pope County, Arkansas.

Date of amendment request: November 24, 1998.

Description of amendment request: The proposed changes implement the consolidated Entergy Operations Quality Assurance Plan Manual approved by the NRC on November 6, 1998. The proposed changes also clarify the responsibilities of the shift technical advisor position on shift, simplify the contents of the monthly operating report description in accordance with Generic Letter (GL) 97–02, complete the relocation of fire protection requirements from the TS to the fire protection program in accordance with GL 88–12, and replace position titles with descriptions of functional responsibility in accordance with GL 88–06.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed changes only affect the administrative controls contained in Section 6.0 of the Arkansas Nuclear One—Unit 1 (ANO–1) and Unit 2 (ANO–2) Technical Specifications (TSs). The proposed changes either add additional administrative controls, reduce regulatory duplication of requirements consistent with NUREG–1430 "Standard Technical Specifications—Babcock and Wilcox Plants" dated April 1995, and NUREG–1432 "Standard Technical Specifications—Combustion Engineering Plants" dated April 1995, or revise or relocate administrative controls in accordance with NRC guidance. The proposed changes do not affect the operation of any structure, system, or component or the assumptions of any accident analysis. The details relocated from the ANO–1 and ANO–2 TSs, and changes to these details, are controlled under the ANO 10 CFR 50.59 or 10 CFR 50.54 processes as appropriate.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes to the ANO–1 and ANO–2 Section 6.0 administrative controls do not involve a change in the plant design or affect the configuration or operation of any structure, system, or component.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes to the ANO–1 and ANO–2 TSs affect only administrative requirements and do not involve changes to safety limits, limiting conditions for operation, or surveillance requirements on equipment required to operate the station.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: November 30, 1998.

Description of amendment request: The proposed amendment would change the CR–3 Improved Technical Specifications (ITS) Section 3.9.3, Containment Penetrations. The proposed changes recognize the use of an outage equipment hatch (OEH) during refueling operations. The proposed changes would also allow both doors in the personnel air locks, and the single door in the OEH, to be open during core alterations or movement of irradiated fuel assemblies within containment provided certain specified conditions are met.

The licensee stated that the ability to open these doors under administrative controls would assist in the maintenance of cleanliness and housekeeping, and would provide a safer work environment inside containment. In addition, the licensee stated that evacuation of personnel could be quickly achieved in the unlikely event of a fuel handling accident or other radiological event inside containment, reducing the potential for exposures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change would allow both doors in the personnel air locks and the door in the outage equipment hatch (OEH) to remain open during core alterations or the movement of irradiated fuel inside containment. These doors are normally closed during this period in order to prevent the escape of radioactive materials in case of a fuel handling accident.

Operations involving the personnel air locks during refueling operations cannot be an initiator of a fuel handling accident or other radiological event inside containment. Similarly, operations involving the OEH during refueling operations cannot be an initiator of a fuel handling accident or other radiological event inside containment. The personnel air locks and the OEH are remotely located to the fuel handling equipment and cannot affect the function of this equipment. The personnel air locks and the OEH are not in the immediate vicinity of the reactor vessel and the contained irradiated fuel, or any of the paths used for movement of irradiated fuel. Additionally, allowing both doors in the personnel air locks and the door in the OEH to be open during core alterations or the movement of irradiated fuel inside containment cannot create the possibility of a fuel handling accident or other radiological event inside containment. Therefore, the probability of occurrence of any accident previously evaluated is unaffected.

The approved fuel handling accident analysis does not take credit for containment closure. This analysis results in a maximum calculated offsite dose well within the limits of 10 CFR 100, and the existing analysis as presented in the CR–3 Final Safety Analysis Report does not require revision as a result of this proposed change. By providing a designated individual readily available to close at least one door in the personnel air locks and the door in the OEH, containment closure is assured following any required evacuation of containment terminating any release of radioactive materials outside of the containment. Therefore, the consequences of accidents will not be greater than that previously evaluated.

2. Create the possibility of a new or different kind of accident from previously evaluated accidents?

The operations involving the personnel air locks and the OEH cannot be an initiator of any type of accident during refueling operations. The personnel air locks and the OEH are passive structural features designed to retain structural integrity under the expected environmental conditions when installed. Operation of the personnel air lock doors and the door in the OEH does not affect any safety-related component or structure. Additionally, allowing both doors in the personnel air locks and the door in the OEH to be open during core alterations or the movement of irradiated fuel inside containment cannot initiate any type of accident. Therefore, the possibility of a new or different kind of accident occurring as a result of this change is not created.

3. Involve a significant reduction in a margin of safety?

The margin of safety as defined by 10 CFR 100 has not been reduced. The existing approved fuel handling accident analysis does not credit containment closure, and remains bounding with both doors in the personnel air locks and the door in the OEH open. Closing at least one door in the personnel air locks and the door in the OEH after evacuation of containment further reduces the offsite doses in case of a fuel handling accident, and provides additional margin to the calculated offsite doses. Therefore, the existing margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC—A5A, P. O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Cecil O. Thomas

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 4, 1998.

Description of amendment request: The proposed change would revise Technical Specifications Surveillance Requirement 4.5.2b.1 to delete the prescribed method of venting the Emergency Core Cooling System (ECCS) which would allow alternate methods to verify that the ECCS piping is full of water. In addition, the associated Bases would be expanded to reflect the intent of the surveillance requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated. The proposed change does not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

Removal of the prescriptive requirements will not subject the ECCS system to conditions adverse to nuclear safety. The proposed change does not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. The use of proven alternative techniques to verify that the ECCS piping is full of water will continue to ensure that the ECCS system is capable of performing its intended designed safety function. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the design assumptions, conditions, configuration of the facility or the manner in which the plant is operated and maintained in a state of readiness. Existing system and component redundancy is not being changed by the proposed change. The proposed change has no adverse affect on component or system interactions. The use of proven alternative techniques to verify that the ECCS piping is full of water will continue to ensure that the ECCS system is capable of performing its intended designed safety function. Therefore, since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and maintained in a state of readiness, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change does not adversely affect equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed change does not change the intent of the surveillance requirement of ensuring that the system will perform properly, injecting its full capacity into the RCS upon demand without subjecting the system to hydraulic transients, pump cavitation, and pumping of non-condensable gas (e.g., air, nitrogen, or hydrogen) into the reactor vessel following a safety injection (SI) signal or during shutdown cooling.

Thus, it is concluded that the ECCS will continue to be available upon demand to mitigate the consequences of an accident and, therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, Founders Park, Exeter, NH 03833.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Project Director: William M. Dean.

Northeast Nuclear Energy Company (NNECO), et al., Docket Nos. 50–245, 50–336, and 50–423, Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3, New London County, Connecticut

Date of amendment request: December 22, 1998.

Description of amendment request: The proposed amendment would replace specific titles in Section 6.0 of the Technical Specifications of all three Millstone units with generic titles.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the attached proposed changes and ha[s] concluded that they do not involve a Significant Hazard Consideration (SHC). The basis for this conclusion is that the three criterion of 10 CFR 50.92 are not compromised. The proposed change is not a[n] SHC because the proposed change will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No design basis accidents are affected by these proposed changes. The proposed changes are administrative in nature and are being proposed to eliminate the need for a Technical Specification change each time there is a change in the organization.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no changes in the way the plant is operated due to these administrative changes. The potential for an unanalyzed accident is not created. There is no impact on plant response, and no new failure modes are introduced. The proposed administrative and editorial changes have no impact on safety limits or design basis accidents, and have no potential to create a new or unanalyzed event.

3. Involve a significant reduction in a margin of safety.

These changes do not directly affect any protective boundaries nor do they impact the safety limits for the protective boundaries. These proposed changes are administrative and editorial in nature. Therefore there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: November 13, 1998.

Description of amendment request: NNECO has determined that the increase in radiological consequences, due to changes in the assumptions used in the updated dose consequence analysis of the Steam Generator Tube Rupture (SGTR) event in the Millstone Unit No. 2 Final Safety Analysis Report (FSAR), involves an unreviewed safety question (USQ). The changes include a change in High Pressure Safety Injection (HPSI) pump runout flowrate, a change in Auxiliary Feedwater Pump (AFW) flowrate, a change in the iodine partition factor for the air ejector, inclusion of the potential of flashing of the primary-to-secondary leakage, and a change in the atmospheric release point assumed following actuation of the Enclosure Building Filtration Actuation Signal (EBFAS). Therefore, per 10CFR50.59(c), NNECO requested that the NRC review and approve the changes to the FSAR through an amendment to Operating License DPR–65, pursuant to 10CFR50.90.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The FSAR changes reflect changes in the updated SGTR analysis. The analysis was updated because of changes in the assumptions used in the dose consequence analysis of the SGTR event in Millstone Unit No. 2 FSAR. These changes include a change in the iodine partition factor for the air ejector, inclusion of the potential of flashing of the primary-to-secondary leakage, and a change in the atmospheric release point assumed following actuation of the EBFAS. In addition, the operator actions associated with Reactor Coolant System (RCS) cooldown that are specified in the Emergency Operating Procedures have been incorporated, mass releases assuming an RCS cooldown to Shutdown Cooling Entry conditions have been used in the dose consequence analysis, thyroid doses were calculated using ICRP–30 dose conversion factors, Iodine releases account for potential flashing of the primary-to-secondary leakage, and the Reactor Coolant pumps are assumed to be tripped following actuation of a safety injection actuation signal. The revised HPSI flowrate is higher than that used in the previous analysis. Higher HPSI flowrates would increase the primary-to-secondary break flow and, thereby, increase the dose consequences. A more conservative iodine partition factor for the air ejector has been used along with more limiting atmospheric dispersion coefficients as a result of manual realignment of the air ejector discharge path to the atmosphere. These changes in radiological assumptions are the major reason for the increase in calculated dose. The revised AFW flowrate is lower than that used in the previous analysis. Lower AFW flowrate would tend to increase the steaming required and, thereby, increase the dose consequences. The probability that an accident could occur due to these changes is not increased since changing the analysis and its description can not cause a steam generator tube rupture. Therefore, these changes will not significantly increase the probability of an accident previously evaluated.

The dose consequences for the updated SGTR analysis are higher than the dose consequences for the previous analysis. However, the dose consequences are within the acceptance criteria of SRP [Standard Review Plan] 15.6.3 and GDC [General Design Criterion] 19. Therefore, these changes will not significantly increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The FSAR changes reflect changes in the updated SGTR analysis. The updated analysis does not introduce any new or unanalyzed failure modes of equipment or systems, and does not change the configuration of the plant. While the updated analysis incorporates operator actions that are in accordance with the Emergency Operating Procedures, it does not alter the way any structure, system, or component functions, and does not alter the manner in which the plant is operated. Therefore, there are no new or different types of failures of systems or equipment important to safety

which could cause a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The FSAR changes reflect changes in the updated SGTR analysis. The updated analysis shows that the dose consequence acceptance criteria are met. The updated analysis incorporates operator actions that are in accordance with the Emergency Operating Procedures, and credits equipment consistent with its capabilities. Therefore, the updated analysis does not reduce the margin of safety. The FSAR changes do not alter the acceptance limits of the safety parameters of the accident analyses stated in the FSAR. Therefore, these changes do not significantly reduce the margin of safety.

The NRC has provided guidance concerning the application of standards in 10CFR50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are considered not likely to involve an SHC. The changes proposed herein are covered by example (vi) in that the consequences for the updated SGTR analysis are higher than dose consequences for the previous analysis. However, the dose consequences are within the acceptance criteria of SRP 15.6.3 and GDC 19.

As described above, this License Amendment Request does not involve a significant increase in the probability of an accident previously evaluated, does not involve a significant increase in the consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not result in a significant reduction in a margin of safety. Therefore, NNECO has concluded that the proposed changes do not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 20, 1998.

Description of amendment request: This amendment request updates the Emergency Diesel Generator (EDG) day tank volume Surveillance Requirement (SR) 3.8.1.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed amendment changes EDG day tank volume requirements to reflect the [Susquehanna Steam Electric Station] SSES design.

The safety function of the EDG day tanks is to supply the EDG's with enough fuel to ensure the availability of necessary power to [engineered safety feature] ESF systems so that fuel, reactor coolant and containment system design limits are not exceeded. The proposed change increases the minimum diesel fuel oil day tank volume for Unit 1 and Unit 2 SR 3.8.1.4 from 325 gallons to 420 gallons for EDG A–D and 425 gallons for EDG E.

This volume corresponds to the tank volume at which automatic refill occurs. This volume provides for 55 minutes of EDG A–D and 62 minutes for EDG E operation at continuous rated load conditions.

Currently, the bases for SR 3.8.1.4 identifies that "administrative controls ensure a useable volume of the fuel oil in the day tank adequate for approximately 60 minutes of DG operation plus 10% at the continuous rated load." These administrative controls ensure compliance with the Regulatory Guide 1.137 requirements. Regulatory Guide 1.137 revision 1 endorses American National Standards Institute (ANSI) N195–1976. The ANSI N195–1976 requires each diesel to be equipped with a day tank whose capacity is sufficient to maintain at least 60 minutes of operation. This capacity is to be based on the fuel consumption at a load of 100% of the continuous rating of the diesel plus a minimum margin of 10%.

These administrative controls on day tank level ensure that the required initial fuel oil supply is available to meet the intent of the Standard as it applies to the Technical Specification surveillance. This Technical Specification change eliminates these unnecessary controls needed to conform to the ANSI standard.

An assessment of the proposed change based on the guidance provided in Regulatory Guide 1.174, July 1998, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis" concludes that the increase in risk is insignificant. It is therefore concluded that the proposed changes to SSES Unit 1 and Unit 2 Technical Specification SR 3.8.1.4 day tank volume requirements ensures the volume is adequate to support the EDG's post accident design basis safety function to ensure the availability of necessary power to ESF systems so that fuel, reactor coolant system, and containment design limits are not exceeded.

Based upon the above, PP&L concludes that the proposed action does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not create the probability of a new or different type of accident from any accident previously evaluated. The change to the day tank required minimum volume does not change any plant systems, structures, or components, nor does the change affect any existing or create any new or different kind of accident.

An assessment of the proposed change based on the guidance provided in Regulatory Guide 1.174, July 1998, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis" concludes that the increase in risk is insignificant. Based on this, it is concluded that the proposed changes to SSES Unit 1 and Unit 2 Technical Specification SR 3.8.1.4 day tank volume requirements ensures the volume is adequate to support the EDG's post accident design basis safety function to ensure the availability of necessary power to ESF systems so that fuel, reactor coolant system, and containment design limits are not exceeded.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

An assessment of the proposed change based on the guidance provided in Regulatory Guide 1.174, July 1998, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant Specific Changes to the Licensing Basis" concludes that the increase in risk is insignificant.

It is concluded that the proposed changes to SSES Unit 1 and Unit 2 Technical Specification SR 3.8.1.4 day tank volume requirements ensures the volume is adequate to support the EDG's post accident design basis safety function to ensure the availability of necessary power to ESF systems so that fuel, reactor coolant system, and containment design limits are not exceeded.

Based on this, the proposed changes do not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: November 23, 1998.

Description of amendment request: These amendments would modify the Susquehanna Steam Electric Station, Units 1 and 2, Technical Specifications (TS) limiting condition for operation (LCO) 3.8.3 and surveillance requirement (SR) 3.8.3.1 to increase the minimum fuel oil storage tank (FOST) volume ranges. The Bases would be modified to reflect that the proposed volumes equal the 7-day fuel oil consumption at the continuous emergency diesel generator (EDG) ratings, which are greater than design basis analysis (DBA) loads, plus the unusable volume in the storage tanks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed amendment increases FOST volume requirements so to increase the margin of safety thus providing further assurance that the EDG FOST volume is adequate to support the EDG's post accident design basis safety function.

The safety function of the EDG FOST is to supply the emergency diesel generators with enough fuel to ensure the availability of necessary power to ESF systems so that fuel, reactor coolant and containment system design limits are not exceeded. The current Technical specification FOST specified volume is based on the EDG post DBA load profile. The proposed FOST volume is based on EDG continuos [sic] [continuous] rated load rating which is greater than the post DBA load profile providing margin and further assurance that the EDG FOST will support the EDG safety function. The proposed required FOST volumes are calculated in accordance with ANSI N195–1976.

Based upon the above, PP&L concludes that the proposed action does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not create the probability of a new or different type of accident from any accident previously evaluated. The FOST required minimum values do not change any plant systems, structures, or components, nor do they change any existing or create any new or different kind of accident. The proposed amendment changes FOST volume requirements so to increase the margin of safety thus providing further assurance that the EDG FOST volume is adequate to support the EDG's post accident design basis safety function. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change increases the margin of safety since the proposed FOST values are based on the EDG continuos [sic] [continuous] rated load ratings which bound the post DBA load profile.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: November 6, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications for the Nuclear Instrumentation System [NIS] Power Range daily surveillance requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed surveillance change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed surveillance change does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. This modification does not directly initiate an accident. The consequences of accidents previously evaluated in the FSAR are not adversely affected by this proposed change because the change to the NIS Power Range channel adjustment requirement ensures the conservative response of the channel even at part power levels.

2. Does the proposed surveillance change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed surveillance change does not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed Technical Specifications change does not challenge the performance or integrity of any safety-related systems. Therefore, the possibility of a new or different kind of accident is not created.

3. Does the proposed surveillance change involve a significant reduction in a margin of safety?

The proposed surveillance change does not involve a significant reduction in a margin of safety. The proposed change does require a revision to the criterion for implementation of Power Range channel adjustment based on secondary power calorimetric calculation; however, the change does not eliminate any RTS [Reactor Trip Setpoint] surveillances or alter the frequency of surveillances required by the Technical Specifications. The revision to the criterion for implementation of the daily surveillance will have a conservative effect on the performance of the NIS Power Range channel, particularly at part power after normalization at 100% RTP [Rated Thermal Power] conditions. The nominal trip setpoints specified by the Technical Specifications and the safety analysis limits assumed in the transient and accident analysis are unchanged. The margin of safety associated with the acceptance criteria for any accident is unchanged. Therefore, the proposed change will not significantly reduce the margin of safety as defined in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Project Director: Herbert N. Berkow.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia.

Date of amendment request: December 4, 1998.

Description of amendment request: The proposed amendments would make two changes to the Technical Specifications (TSs). Change 1 would delete the footnote in Hatch Unit 1 TS Section 2.1.1.2 that ties the Safety Limit Minimum Critical Power Ratio to Cycle 18. Change 2 would delete TS Section 5.6.5.b.2 for Units 1 and 2, and incorporate TS Section 5.6.5.b.2 into TS Section 5.6.5.b.1 for both units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Basis for Proposed Change 1

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The footnote in Section 2.1.1.2 of the Hatch-1 Technical Specifications restricts the applicability of the Safety Limit for MCPR [minimum critical power ratio] (SLMCPR) [safety limit minimum critical power ratio] to Cycle 18 only. By applying the same NRC-approved methods used to calculate the Cycle 18 SLMCPR it has been determined that the current value is bounding for Cycle 19 as well. However, because of the footnote, it [cannot] be applied to Cycle 19 without a Technical Specifications amendment. In order to eliminate future Technical Specifications revisions that do not change the SLMCPRs values, SNC [Southern Nuclear Operating Company, Inc.] proposes to delete the footnote which ties those values to a specific operating cycle. Removing the footnote does not change the method of calculating SLMCPR for other cycles, nor does it eliminate the requirement to revise the Technical Specifications if a different value is used for future cycles. Deletion of the cycle-specific footnote does not change the operation of any plant structure, system or component; therefore, it has no affect on the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

Deleting the cycle-specific footnote in Section 2.1.1.2 of the Technical Specifications does not result in any new methods of operating the facility and does not involve any facility modifications. No new initiating events or transients result from this change.

Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The purpose of the SLMCPR in the Technical Specifications is to ensure at least 99.9% of the fuel pins in the core are expected to avoid transition boiling during the worst anticipated operational occurrence (AOO) throughout an operating cycle. The footnote in Section 2.1.1.2 of the Hatch-1 Technical Specifications is intended to ensure the correct SLMCPR is used each cycle. Prior to the Spring of 1996, the Safety Limits had been calculated for each fuel type, independently of operating cycle. As long as the limiting fuel type in the core did not change from cycle to cycle, the Safety Limit did not change. It was discovered in 1996, however, that generic SLMCPRs based on fuel type alone may not be bounding for all cycles for all reactors. In response to this discovery GE committed to evaluating SLMCPRs based on cycle-unique information as a more accurate method of ensuring 99.9% of the fuel pins in the core are expected to avoid transition boiling during AOOs. The new methodology, which is now applied each cycle, is based on NRC-approved methods and incorporates implementing procedures that model cycle-specific parameters. This methodology was used to calculate the Cycle 18 value that is currently in the Technical Specifications. The same procedure was also employed to determine that the Hatch-1 Cycle 19 SLMCPR and it was determined the Cycle 19 value is bounded by the Cycle 18 value. Thus, except for the footnote in Section 2.1.1.2, there is no need to revise the Hatch-1 Technical Specifications in order to ensure the correct SLMCPR is implemented for Cycle 19. As a way of avoiding similar changes in the future, SNC proposes that the footnote be deleted. Since NRC-approved methodology will still be used to determine the cycle-specific SLMCPRs to ensure that [ ] 99.9% of the fuel rods are expected to avoid transition boiling during AOOs, there will be no reduction of margin of safety as a result of this change.

Basis for Proposed Change 2

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Section 5.6.5.b.2) no longer describes NRC-approved methods for analyzing fuel in the Unit 1 and Unit 2 reactors because the ANF [advanced nuclear fuel] LUAs [lead use assemblies] have been permanently discharged. Deleting Section 5.6.5.b.2) from the Administrative Controls portion of the Technical Specifications does not change the operation of any structure, system, or component in the facility. Therefore, this amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

Deleting Section 5.6.5.b.2), which describes the use of ANF methods for analyzing LUAs, from the Technical Specifications does not result in any new methods of operating the facility and does not involve any facility modifications. No new initiating events or transients result from this change. Therefore, this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

ANF LUAs are no longer used as fuel in the Plant Hatch reactors, therefore, ANF NRC-approved methods described in Technical Specifications Section 5.6.5.b.2) are not used to determine power distribution limits which appear in the COLR [Core Operating Limit Report]. GE's [General Electric's] reload licensing methodology described in Section 5.6.5.b.1) will be incorporated into Section 5.6.5.b. and will continue to be used to analyze the GE fuel in both units. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Project Director: Herbert N. Berkow.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: November 4, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Sections 4.6.A.1.b and Basis 3.16 for Units 1 and 2 to revise the start/load time testing and ratings for emergency diesel generators (EDGs). The changes will bring the TS into conformance with the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Operation of the Surry Units 1 and 2 in accordance with the proposed Technical Specification change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

The currently specified "less than 30 seconds" time to be replaced has no specific safety significance or design basis regarding EDG starting. The proposed time change to "less than or equal to 10 seconds" is more conservative and in agreement with current accident analysis and surveillance testing. These changes do not, in any way, affect the as-built conditions of the plant and do not affect the initiators of analyzed events or the assumed mitigation of accident or transient events. Analyzed events are initiated by the failure of plant structures, systems, or components. The proposed changes do not impact the condition or performance of these structures, systems or components. Consequences of analyzed events are the result of the plant being operated within assumed parameters at the onset of any event, and the successful functioning of at least one train or division of the equipment credited with mitigating the event. There is no impact on the capability of the credited equipment to perform, nor is there any change in the likelihood that credited equipment will fail to perform. As a result, there is no significant increase in the probability or consequences of any accident previously evaluated and Criterion 1 is, thereby, satisfied.

Criterion 2—The proposed Technical Specifications change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant, or a change in the methods used to operate the plant or to respond to plant transients. No new or different equipment is being installed and no installed equipment is being removed or operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints, which initiate protective or mitigative actions. Consequently, no new failure modes are introduced and the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated and Criterion 2 is, thereby satisfied.

Criterion 3—The proposed Technical Specifications change does not involve a significant reduction in a margin of safety.

Margin of safety is established through the design of the plant structures, systems and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The replacement of the "less than 30 seconds" requirement for loading the EDGs with the more stringent "less than or equal to 10 seconds" requirement makes no change to the condition or performance of equipment or system used in accident mitigation or assumed for any accident analysis that could reduce a margin of safety as described in the basis for any TS. Therefore, the proposed changes do not involve a significant reduction in any margin of safety described in the bases for the Technical Specifications and Criterion 3 is, thereby, satisfied.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 28, 1998 (TSCR 208).

Description of amendment request: The proposed amendments will clarify the notation definition of "R" in the Technical Specifications (TS) and add a new frequency of "A." The revision of "R" would specify the refueling frequency as 18 months and "A" would be defined as an annual or 12-month frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant [PBNP] in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

These changes do not involve a significant increase in the probability of an accident previously evaluated because no such accidents are affected by the proposed revisions to clarify that the provisions of TS 15.4.0.2 apply to notation "R" in TS Table 15.4.1–1. The proposed TS changes do not introduce any new accident initiators since no accidents previously evaluated have as their initiators anything related to the change in the frequency of surveillance testing.

The increased time potential between surveillance frequencies does not significantly increase the probability [of] failure of the instrumentation contained in TS Table 15.4.1–1. As noted above, instrument drift studies concluded that the magnitude of the instrument drift (for instrumentation affected by drift) that could occur over a 22.5-month interval was bounded by the uncertainty allowances used in determining safety system setpoints, and the review of historical calibration data concluded that the as-found and as-left data has not exceeded acceptable limits for the calibration intervals reviewed, except on rare occasions.

In addition, initiating conditions and assumptions are unchanged and remain as previously analyzed for accidents in the PBNP Final Safety Analysis Report. The proposed TS changes do not involve any physical changes to systems or components, nor do they alter the typical manner in which the systems or components are operated. Therefore, these changes do not increase the probability of previously evaluated accidents.

These changes do not involve a significant increase in the consequences of an accident previously evaluated because the source term, containment isolation or radiological releases are not being changed by these proposed revisions. Existing system and component redundancy and operation is not being changed by these proposed changes. The assumptions used in evaluating the radiological consequences in the PBNP Final Safety Analysis Report are not invalidated; therefore, these changes do not affect the consequences of previously evaluated accidents.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes do not introduce nor increase the number of failure mechanisms of a new or different type than those previously evaluated since there are no physical changes being made to the facility. The surveillance test requirements and the way they are performed will remain unchanged. The design and design basis of the facility remain unchanged. The plant safety analyses remain unchanged. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not introduced.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety because existing component redundancy is not being changed by these proposed changes. There are no new or significant changes to the initial conditions contributing to accident severity or consequences, and safety margins established through the design and facility license including the Technical Specifications remain unchanged. Therefore, there are no significant reductions in a margin of safety introduced by [these] proposed amendment[s].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: October 5, 1998 (TSCR 200).

Description of amendment request: The proposed change modifies Technical Specifications Section 15.4.1, "Operational Safety Review," by removing the requirement to check environmental monitors on a monthly basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant [PBNP] in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates a surveillance requirement for environmental monitors. The environmental monitors referred to by this surveillance were eliminated from the Radiological Environmental Monitoring Program and from the Technical Specifications by previous amendments. Therefore, this change is administrative in nature in that it corrects a previous administrative oversight. The requirement is not related to any accident initiator or accident mitigation structures, systems or components for any previously evaluated accident. Therefore, no increase in the probability or consequences of a previously evaluated accident can result.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment[s] does not create a new or different kind of accident from any accident previously evaluated.

The amendments remove a surveillance requirement from the Technical Specifications related to environmental monitors. The environmental monitors were removed from the environmental monitoring program by previously approved amendments. The surveillance requirement is not related to an existing design feature of PBNP. Therefore, elimination of the surveillance requirement cannot create a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendment[s] does not result in a significant reduction in a margin of safety.

Margins of safety are defined by the safety limits and design limits for PBNP. The surveillance is not related to, nor does it affect, these limits. Monitoring of the environment continues under an approved Radiological Environmental Monitoring Program which ensures that any changes in radiation levels in the environs is detected, thus ensuring the impact of PBNP operation on the environment is minimized. Therefore, the proposed change cannot result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1 (WBN), Rhea County, Tennessee

Date of application for amendment: December 22 and revision dated December 23, 1998.

Brief description of amendment: In order to prevent a potential shutdown due to sporadic grounds encountered on an annunciator circuit used to confirm operability of an ice condenser inlet door position monitoring system, the proposed amendment would provide a temporary, optional method of satisfying the requirements for the channel check until the next operating Mode, planned in late February 1999, for the next refueling outage. Date of publication of individual notice in the **Federal Register**: December 31, 1998 (63 FR 72339).

Expiration date of individual notice: February 1, 1999.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the

local public document rooms for the particular facilities involved.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 11, 1998.

Brief description of amendments: The amendments revise Technical Specification Surveillance Requirements (SRs) 3.6.11.6 AND 3.6.11.7, regarding the Containment Pressure Control System (CPCS), of the units' joint Technical Specifications. The revision brings the SRs into conformity with the current design of the CPCS.

Date of issuance: January 14, 1999.

Effective date: As of the date of issuance to be implemented concurrently with implementation of Amendment Nos. 173 (Unit 1) and 165 (Unit 2).

Amendment Nos.: 174—Unit 1; Unit 2—166.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: December 2, 1998 (63 FR 66591). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: September 17, 1998.

Brief description of amendment: The amendment incorporates the use of a range rather then a specific setpoint for the automatic removal of the operating bypasses for the core power calculator (CPC) generated trips and the high logarithmic power level trip to accommodate the design of the plant protection system (PPS) which uses a single bistable to control both of these functions.

Date of issuance: December 31, 1998.

Effective date: December 31, 1998.

Amendment No.: 196.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56247).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: June 29, 1998.

Brief description of amendment: The amendment modifies the TS surveillance requirements for SR 4.8.2.3.b.2, SR 4.8.2.3.c.4 and the Bases for TS 3.8.2.3 Action b. The licensee is planning to modify the 120 volt vital alternating current (ac) electrical distribution system by installing new inverters during the 2R13 refueling outage. Normally, the present inverters for ANO–2 are ac powered and automatically shift to direct current (dc) power on a loss of the ac source. The new inverters will be powered from the 125 dc system at all times.

Date of issuance: January 13, 1999.

Effective date: January 13, 1999, with implementation following completion of the required modifications but prior to restart from the 2R13 outage.

Amendment No.: 198.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56244).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Florida Power and Light Company, et al., Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: October 29, 1998.

Brief description of amendment: The amendment revised the terminology used in the St. Lucie Plant Technical Specifications (TS) relative to the implementation and automatic removal of certain protection system trip bypasses to ensure that the meaning of explicit terms used in the TS are consistent with the intent of the stated requirements.

Date of Issuance: January 5, 1999.

Effective Date: As of date of issuance and shall be implemented within 30 days of receipt.

Amendment No.: 159.

Facility Operating License No. DPR–67: Amendment revised the TS.

Date of initial notice in **Federal Register**: December 2, 1998 (63 FR 66594) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 5, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 4, 1998.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) relating to the condensate storage tank (CST) relating to the required minimum water volume and also adds a new TS which establishes requirements for the atmospheric steam dump valves (ASDVs) to assure their operability. The applicable TS Bases for the CST is updated to reflect the proposed changes and a new TS Bases section is added to discuss the new TS for the ASDVs.

Date of issuance: December 31, 1998.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 223.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 26, 1998 (63 FR 45526).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 26, 1997, as supplemented by letters dated March 18, 1998, and November 17, 1998.

Brief description of amendment: The amendment revises Technical

Specifications (TS) 2.1.6 and its associated Basis to restrict the number of inoperable main steam safety valves when the reactor is critical.

Date of issuance: December 31, 1998.

Effective date: December 31, 1998.

Amendment No.: 189.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 16, 1997 (62 FR 38137). The March 18, 1998, and November 17, 1998, supplemental letters provided additional clarifying information and did not change the original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 31, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: April 14, 1997, as supplemented October 17, 1997, March 20, 1998, May 18, 1998, and August 17, 1998.

Brief description of amendment: The amendment changes the Technical Specifications to allow for a Safety Review Committee review of plant performance as opposed to an audit of plant performance and replaces the position title of Vice President Regulatory Affairs and Special Projects with Director Regulatory Affairs and Special Projects.

Date of issuance: December 30, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 186.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 27, 1997 (62 FR 45460).

The October 17, 1997, March 20, 1998, May 18, 1998, and August 17, 1998, letters provided clarifying information that did not change the proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: March 22, 1996, as revised and supplemented on February 6, 1998, April 17, 1998, and October 30, 1998.

Brief description of amendment: The amendment provides function-specific actions and allowed outage times for certain instrumentation, and relocates some instrumentation requirements to licensee-controlled documents.

Date of issuance: January 12, 1999.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 250.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 8, 1996 (61 FR 20855).

The revision and supplemental information provided on February 6, 1998, April 17, 1998, and October 30, 1998, provided clarifying information that did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: June 30, 1997.

Brief description of amendments: The amendments delete License Condition 2.C(19)b for San Onofre Nuclear Generating Station (SONGS) Unit 2 and revises TSs 3.3.1, 3.3.2, 3.3.5, 3.3.10, 3.3.11, 3.4.7, 3.4.12.1, 3.7.5, 5.5.2.10 and 5.5.2.11 for both SONGS units. These changes reinstate provisions of the SONGS Units 2 and 3 TS previously revised as part of NRC Amendment Nos. 127 and 116, respectively, make corrections to the TS, or remove information inadvertently added to the TS that are not applicable to the SONGS units design.

Date of issuance: December 22, 1998.

Effective date: December 22, 1998, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2—147; Unit 3—139.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised Facility Operating License No. NPF–10 and the technical specifications for both licenses.

Date of initial notice in **Federal Register**: March 11, 1998 (63 FR 11921). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 22, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 20th day of January 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1705 Filed 1–26–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23659; 812–11436]

CityFed Financial Corp.; Notice of Application

January 20, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 ("Act") for exemption from all provisions of the Act, except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

SUMMARY OF APPLICATION: The requested order would exempt the applicant, City Fed Financial Corp. ("CityFed"), from certain provisions of the Act until the earlier of one year from the date the requested order is issued or such time as CityFed would no longer be required to register as an investment company under the Act. The order would extend an exemption granted until February 12, 1999.[1]

FILING DATE: The application was filed on December 17, 1998. Applicant has agreed to file an amendment during the

[1] CityFed Financial Corp., Investment Company Act Release Nos. 22473 (January 17, 1997) (notice) and 22506 (February 12, 1997) (order).

notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 11, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. CityFed, 35 Old South Road, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634 or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. CityFed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank ("City Federal"). During the five year period ending December 31, 1988, City Federal was the source of substantially all of CityFed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision ("OTS") placed City Federal into receivership and appointed the Resolution Trust Corporation ("RTC") as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings Bank, F.S.B. ("City Savings"). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, CityFed no longer conducted savings and loan operations through any subsidiary and substantially all of its assets consisted of cash that has been invested in money market instruments with a maturity of one year or less and money market mutual funds. As of September 30, 1998, CityFed held cash and securities of approximately $9.4 million.

3. While CityFed's Board of Directors has considered from time to time whether to engage in operating business, the board has determined not to engage in an operating business at the present time because of the claims filed against CityFed, whose liability thereunder cannot be reasonably estimated and may exceed its assets.

4. On June 2, 1994, the OTS issued a Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Notice of Charges") against CityFed and certain current or former directors and, in some cases, officers of CityFed and City Federal. The Notice of Charges requests that an order be entered by the Director of the OTS requiring CityFed to make restitution, reimburse, indemnify or guarantee the OTS against loss in an amount not less than $118.4 million, which the OTS alleges represents the regulatory capital deficiency ("Net Worth Maintenance Claim") reported by City Federal in the fall of 1989. On November 30, 1995, the OTS issued an Amended Notice of Charges and Hearing for Cease and Desist Order to Direct Restitution and Other Appropriate Relief and Notice of Assessment of Civil Money Penalties ("Amended Notice of Charges") that is identical to the Notice of Charges, except that the Amended Notice of Charges includes a reference to a federal statutory provision not referred to in the Notice of Charges that the OTS asserts provides an additional basis for the issuance of a Cease and Desist Order against CityFed and certain current or former directors and, in some cases, officers of CityFed and of City Federal ("Respondents"). On February 1, 1996, an administrative law judge ("ALJ") issued a prehearing order ("Prehearing Order") granting the OTS's motion for partial summary disposition with respect to CityFed and denying both CityFed's motion for partial summary disposition of the OTS's assessment of civil money penalties and its cross-motion for summary adjudication. On June 12, 1996, CityFed moved for interlocutory review by the acting director of the OTS of the conclusions in the Prehearing Order and, if necessary, will seek appellate review of any adverse decision. On August 20, 1997, the OTS Director issued a decision and order granting CityFed's motion for interlocutory review. The Director concluded that the ALJ had erred in recommending summary disposition on the OTS Net Worth Maintenance Claim against CityFed and held that there were disputed issues of fact on that claim that precluded summary judgment, and he remanded the case to the ALJ for further proceedings consistent with his decision. The ALJ has lifted the stay of the proceedings, and CityFed and OTS have begun to engage in discovery on the Net Worth Maintenance Claim.

5. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist ("Temporary Order") against CityFed. The Temporary Order required CityFed to post $9.0 million as security for the payment of the amount sought by the OTS in its Notice of Charges. CityFed unsuccessfully petitioned the district court for an injunction against the Temporary Order. CityFed and the Respondents filed notices of appeal from the D.C. Court's Order to the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit"), and the Respondents filed a motion in the D.C. Circuit for an expedited appeal and an order enjoining the enforcement of the Temporary Order during the pendency of the appeal. The D.C. Circuit denied the Respondents' motion for injunction on October 21, 1994. On July 11, 1995, the D.C. Circuit affirmed the denial by the D.C. Court of the motions by CityFed and the Respondents for a temporary restraining order and an injunction against the Temporary Order. On October 26, 1994, CityFed and the OTS entered into an Escrow Agreement ("Escrow Agreement") with CoreStates Bank, N.A. ("CoreStates") pursuant to which CityFed transferred substantially all of its assets to CoreStates for deposit into an escrow account to be maintained by CoreStates. CityFed's assets in the escrow account continue to be invested in money market instruments with a maturity of one year or less and money market mutual funds. Withdrawals or disbursements from the escrow account are not permitted without the written authorization of the OTS, other than for (a) monthly transfers to CityFed in the amount of $15,000 for operating expenses, (b) the disbursement of funds on account of purchases of securities by CityFed, and (c) the payment of the escrow fee and expenses to CoreStates. The Escrow Agreement also provides that CoreStates will restrict the escrow account in such a manner as to implement the terms of the Escrow Agreement and to prevent a change in status or function of the escrow account

unless authorized by CityFed and the OTS in writing.

6. On December 7, 1992, the RTC filed suit against CityFed and two former officers of City Federal seeking damages of $12 million dollars for failure to maintain the net worth of City Federal ("First RTC Action"). In light of the filing by the OTS of the Notice of Charges on June 2, 1994, the RTC and CityFed agreed to dismiss without prejudice the RTC's claim against CityFed in the First RTC Action.

7. In addition, the RTC filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect to certain loans ("Second RTC Action"). The RTC seeks in excess of $200 million in damages. Under its bylaws, CityFed may be obligated to indemnify these former officers and directors and advance their legal expenses. On the advice of counsel to a special committee of CityFed's Board of Directors, comprised of directors who have not been named in the First or Second RTC Action, CityFed advanced reasonable defense costs to such former directors and officers in such Actions. CityFed is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims, although the amount may be material.

8. On August 7, 1995, CityFed, acting in its own right and as shareholder of City Federal, filed a civil action in the United States Court of Federal Claims seeking damages for loss of "supervisory goodwill." CityFed's goodwill suit is presently pending in that court. The United States Court of Federal Claims has established a procedure for deciding supervisory goodwill claims that may affect CityFed's right to assert a claim for the loss of supervisory goodwill on the books of City Federal.

9. Currently, CityFed's stock is traded sporadically in the over-the-counter market. CityFed has one employee who is president, chief executive officer, and treasurer. CityFed's secretary does not received any compensation for her service.

Applicant's Legal Analysis

1. Section 3(a)(1) defines an investment company as any issuer who "is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities." Section 3(a)(3) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash).

2. Section 6(c) of the Act provides that the Commission may exempt any person from any provision of the Act "if and to the extent that such exemption is necessary or appropriate in the public interest." Section 6(e) provides that in connection with any SEC order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as though such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. CityFed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, CityFed requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions described below. CityFed requests an exemption until the earlier of one year from the date of the requested order or such time as it would no longer be required to register as an investment company under the Act.

4. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. CityFed believes that it meets these criteria.

5. CityFed believes that its failure to become primarily engaged in a non-investment business by February 12, 1999 is due to factors beyond its control. CityFed asserts that the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed its assets. If CityFed is unable to resolve these claims successfully, it states that it may seek protection from the bankruptcy courts or liquidate. CityFed also asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved. Additionally, CityFed states that its circumstances are unlikely to change over the requested one year period in light of the number of claims currently pending against it and because of the existence of the Escrow Agreement. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, CityFed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

6. During the term of the proposed exemption, CityFed states that it will comply with sections 9, 17 (a) and (d) (subject to the exception below and the modifications described in condition 3, below), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder. With respect to section 17(d), CityFed represents that it established a stock option plan when it was an operating company. Although the plan has been terminated, certain former employees of City Federal have existing rights under the plan. CityFed believes that the plan may be deemed a joint enterprise or other joint arrangement or profit-sharing plan within the meaning of section 17(d) and rule 17d–1 thereunder. Because the plan was adopted when CityFed was an operating company and to the extent there are existing rights under the plan, CityFed seeks an exemption to the extent necessary from section 17(d).

Applicant's Conditions

CityFed agrees that the requested exemption will be subject to the following conditions:

1. CityFed will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by CityFed's Board of Directors, subject to two exceptions:

a. CityFed may make an equity investment in issuers that are not investment companies as defined in section 3(a) of the Act (including issuers that are not investment companies because they are covered by a specific exclusion from the definition of investment company under sections 3(c) of the Act other than sections 3(c)(1) and 3(c)(7)) in connection with the possible acquisition of an operating business as evidenced by a resolution approved by CityFed's Board of Directors; and

b. CityFed may invest in one or more money market mutual funds that limit their investments to "Eligible Securities" within the meaning of rule 2a–7(a)(10) promulgated under the Act.

2. CityFed's Form 10–KSB, Form 10–QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that CityFed and

other persons, in their transactions and relations with CityFed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if CityFed were a registered investment company, except as permitted by the requested order.

Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of CityFed may engage in a transaction that otherwise would be prohibited by these sections with CityFed:

a. if such proposed transaction is first approved by a bankruptcy court on the basis that (i) the terms thereof, including the consideration to be paid or received, are reasonable and fair to CityFed, and (ii) the participation of CityFed in the proposed transaction will not be on a basis less advantageous to CityFed than that of other participants; and

b. in connections with each such transaction, CityFed shall inform the bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–1803 Filed 1–26–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

1. Government Pension Questionnaire—0960–0160. The Social Security Act and Regulations provide that an individual receiving spouse's benefits and concurrently receiving a Government pension, based on the individual's own earnings, may have the Social Security benefits amount reduced by two-thirds of the pension amount. The data collected on Form SSA–3885 is used by the Social Security Administration (SSA) to determine if the individual's Social Security benefit will be reduced, the amount of reduction, the effective date of the reduction and if one of the exceptions in 20 CFR404.408a applies. The respondents are individuals who are receiving (or will receive) Social Security spouse' benefits and also receive their own Government pension.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 12.5 minutes.

Estimated Average Burden: 6,250 hours.

2. Statement Regarding the Inferred Death of an Individual by Reason of Continued and Unexplained Absence—09060–0002. The information collected on form SSA–723 is used to determine if the Social Security Administration may infer that a missing person is deceased. The respondents are individual who know or are related to the missing person.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 1,500 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: January 21, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–1871 Filed 1–26–99; 8:45 am]

BILLING CODE 4190–29–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Schedule for a Hearing and Deadlines for Submitting Comments on Soda Ash Petition for the GSP 1998 Country Practices Review

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: The purpose of this notice is to set forth the timetable for a hearing, and for providing public comments on a petition requesting the modification in the status of a GSP beneficiary country in regard to its practices, as specified in 15 CFR 2007.0(b).

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508 (Tel. 202/395–6971). Public versions of all documents relating to this review may be seen by appointment in the USTR public Reading Room between 9:30–12 a.m. and 1–4 p.m. (Tel. 202/395–6186).

SUPPLEMENTARY INFORMATION: The GSP program is authorized pursuant to Title V of the Trade Act of 1974, as amended ("the Trade Act") (19 U.S.C. 2461 et seq.). The GSP program grants duty-free treatment to designated eligible articles that are imported from designated beneficiary developing countries. In 1998 USTR received three new petitions requesting that certain practices in certain beneficiary developing countries be reviewed to determine whether such countries are in compliance with the eligibility criteria set forth in sections 502(b) and 502(c) of the Trade Act (19 U.S.C. 2462(b) and 2462(c)).

I. Subject of Review

Pursuant to 15 CFR 2007.0(b), the Trade Policy Staff Committee has accepted a petition to review the GSP status of India for its alleged failure to provide equitable and reasonable access to its soda ash market. Petitions concerning the enforcement of internationally recognized worker rights in Guatemala and Cambodia were not accepted for review.

Any modifications to the list of beneficiary developing countries for purposes of the GSP program resulting from the Country Practices Review will take effect on such date as will be notified in a future **Federal Register** notice.

II. Opportunities for Public Comment and Inspection of Comments

The GSP Subcommittee of the TPSC invites comments in support of, or in opposition to, the petition which is the subject of this notice. Submissions should comply with 15 CFR Part 2007, including sections 2007.0 and 2007.1.

Comments should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW, Room 518, Washington, DC 20508. Information submitted will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, any document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain confidential information (the public version) should be clearly marked at the top and bottom of every page (either "public version" or "nonconfidential").

III. Notice of Public Hearings

A hearing will be held on March 23, 1999 at 10:00 a.m. at 1724 F Street, NW, Washington, DC 20508. The hearing will be open to the public and a transcript of the hearing will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to present oral testimony at the hearing must submit the name, address, and telephone number of the witness(es) representing their organization to the Chairman of the GSP Subcommittee. Such requests to present oral testimony at the public hearings should be accompanied by fourteen (14) copies, in English, of a written brief or statement, and should be received by 5 p.m. on March 15, 1999. Oral testimony before the GSP Subcommittee will be limited to ten minute presentations that summarize or supplement information contained in the briefs or statements or supplement information contained in the briefs or statements submitted for the record. Post-hearing and rebuttal briefs or statements should conform to the regulations cited above and be submitted in fourteen (14) copies, in English, no later than 5 p.m. April 8, 1999. Interested persons not wishing to appear at the public hearings may also submit pre-hearing written briefs or statements by 5:00 p.m. on March 15, 1999, and post-hearing and rebuttal written briefs or statements by April 8, 1999.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–1842 Filed 1–26–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4272]

Annual Certification of Cook Inlet Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of recertification.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis, an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Cook Inlet, Alaska. This certification allows the advisory group to monitor the activities of terminal facilities and crude oil tankers under the Cook Inlet Program established by the statute. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Cook Inlet, Alaska. The period of certification is being administratively adjusted to allow realignment of the recertification process with the annual budget year of the Cook Inlet Regional Citizens' Advisory Council (CIRCAC). The effective period of this recertification is from June 1, 1998 to July 31, 1999.

FOR FURTHER INFORMATION CONTACT: For general information regarding the CIRCAC contact LT Pittmen, Marine Safety and Environmental Protection Directorate, Office of Response, (G–MOR–1), (202) 267–0426. For questions on viewing material submitted to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), section 5002, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with the environmental concerns in the operation of terminal facilities and crude-oil tankers. Subsection 5002(o) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the terminal facilities in the Cook Inlet, in lieu of a council of the type specified in subsection 5002(d), if certain conditions are met. The Act requires that the group enter into a contract to ensure annual funding, and that it receive annual certification by the President to the effect that it fosters the general goals and purposes of the Act and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Cook Inlet. Accordingly, in 1991, the President granted certification to the CIRCAC. The authority to certify alternative voluntary advisory groups was subsequently delegated to the Commandant of the Coast Guard and redelegated to the Assistant Commandant for Marine Safety and Environmental Protection.

On August 7, 1998, in the **Federal Register**, the Coast Guard announced the availability of the application for recertification that it received from the CIRCAC and requested comments (63 FR 42475). It received 14 comments to the docket.

Discussion of Comments

One commenter indicates that the CIRCAC did not obtain adequate input from the city of Homer. In a meeting with the Executive Director the Coast Guard learned that the Mayor of Homer is now on the Board of the CIRCAC; in addition, the City of Homer offered no letter to the docket indicating any dissatisfaction with the CIRCAC. We believe the CIRCAC has successfully taken steps to resolve this potential difficulty.

One commenter believes the government should fund the CIRCAC. The statute does not authorize federal funding of the CIRCAC. Another commenter complains that the CIRCAC is underfunded. This comment does not pertain directly to the determination of recertification but rather to contractual provisions.

Two commenters complain that the CIRCAC has no vision, goals, and objectives. The CIRCAC indicated in a letter to the Coast Guard clarifying concerns and questions related to recertification that they use the goals and objectives of the Oil Pollution Act of 1990 (OPA 90) as identified in the context of the alternative voluntary advisory groups. Considering the fact

that Congress used the terms "fostering the goals and purposes of" referring to wording within the Act, the Coast Guard agrees that the Congressionally identified goals satisfy the requirement for vision goals and objectives.

Two commenters indicate a belief that the CIRCAC applies inadequate internal oversight. Based upon the bylaws of the CIRCAC and comments of all other submitters this comment appears unfounded. In the wording of the Act, regional citizens' advisory councils are allowed to be self-governing. The meaning of this is very clear. The Act with respect to the CIRCAC as an alternative voluntary advisory group is even less restrictive by allowing the CIRCAC to foster the goal of self-government.

Two commenters express concern regarding accountability of members to their constituents. Accountability exists in the annual ability of the area or interest group represented by the member to withhold their letter of endorsement.

Two commenters indicate general concerns regarding conflict of interest. The CIRCAC has a conflict of interest policy that is available to the public upon request. There is no specific allegation in either comment of conflict of interest.

Two commenters recommend the Coast Guard require a policy and controls audit. The CIRCAC is encouraged in its recertification letter to conduct an audit and make the results available as part of the next recertification application process.

One commenter indicates that members are sometimes uncooperative. The Coast Guard reminds members of the CIRCAC in its recertification letter of the importance of cooperation.

Twelve commenters recommend recertification. Two commenters suggest that the CIRCAC should not be certified as an alternative voluntary advisory group "but rather as a "Council" under the statute. Since the commenters show numerous examples, and CIRCAC shows additional examples in their application, of fostering the goals and purposes of Section 5002, there is no basis to disallow certification for the purpose of assigning a "Council".

In light of the many positive comments received regarding CIRCAC's performance during the past year and the above analysis, the Coast Guard has determined that recertification in accordance with the Act is appropriate. The Coast Guard has requested the CIRCAC to conduct a policy and controls audit and include documentation in its application next year explaining how each of the issues raised in the comments has been addressed. Such documentation should include recent correspondence from the CIRCAC to the Coast Guard resolving concerns.

RECERTIFICATION: By letter dated November ____, 1998, the Assistant Commandant for Marine Safety and Environmental Protection certified that the CIRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on July 31, 1999.

Dated: January 13, 1999

R.C. North

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–1879 Filed 1–26–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4271]

Annual Certification of Prince William Sound Regional Citizens' Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of Recertification.

SUMMARY: Under the Oil Terminal and Oil Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis, an alternative voluntary advisory group in lieu of a regional citizens' advisory council for Prince William Sound, Alaska. This certification allows the advisory group to monitor the activities of terminal facilities and crude oil tankers under the Prince William Sound Program established by the statute. The purpose of this notice is to inform the public that the Coast Guard has recertified the alternative voluntary advisory group for Prince William Sound, Alaska. The period of certification is being administratively adjusted to allow realignment of the recertification process with the annual budget year of the Prince William Sound Regional Citizens' Advisory Council (PWSRCAC). The effective period of this recertification is from June 1, 1998 to January 30, 2000.

FOR FURTHER INFORMATION CONTACT: For general information regarding the PWSRCAC contact LT Pittman, Marine Safety and Environmental Protection Directorate, Office of Response, (G–MOR–1), (202 267–0426. For questions on viewing materials submitted to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION: As part of the Oil Pollution Act of 1990, Congress passed the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (the Act), Section 5002, to foster the long-term partnership among industry, government, and local communities in overseeing compliance with the environmental concerns in the operation of terminal facilities and crude-oil tankers. Subsection 5002(o) permits an alternative voluntary advisory group to represent the communities and interests in the vicinity of the terminal facilities in the Prince William Sound, in lieu of a council of the type specified in subsection 5002(d), if certain conditions are met.

The Act requires that the group enter into a contract to ensure annual funding, and that it receive annual certification by the President to the effect that it fosters the general goals and purposes of the Act, and is broadly representative of the communities and interests in the vicinity of the terminal facilities and Prince William Sound. Accordingly, in 1991, the President granted certification to the PWSRCAC. The authority to certify alternative advisory groups was subsequently delegated to the Commandant of the Coast Guard and redelegated to the Assistant Commandant for Marine Safety and Environmental Protection.

On August 7, 1998, the Coast Guard announced in the **Federal Register** the availability of the application for recertification that it received from the PWSRCAC and requested comments (63 FR 42475). It received twenty-one comments to the docket.

Discussion of Comments

One commenter expresses concern about the "jurisdiction limits of the PWSRCAC". Contrary to a "Council" that would have operating limits clearly delineated, the alternative voluntary advisory group is limited to certain regions or terminal facilities but not in the scope of its allowable actions. This stems from the wording of the statute itself. The Act does not preclude actions often termed "outside of the intent" of OPA 90 as long as the voluntary alternative group meets the recertification threshold for alternative voluntary advisory groups, as follows: "fosters the general goals and purposes of this section and is broadly representative * * *." Due to the fact that the action in question (evaluation of a proposed pipeline) appears "representative of the communities and

interests in the vicinity of the terminal facilities and Prince William Sound," the action is not outside of the scope of the Act.

Three commenters express concern regarding individual staff and board members representing their personal opinions as those of PWSRCAC during official meetings with other organizations. This is an internal issue for the PWSRCAC. The Coast Guard identified one specific instance of a member of the PWSRCAC presenting a personal position as that of the PWSRCAC. The Executive Director of the PWSRCAC personally visited the mayor of the city from which the representative came; the city appointed a different representative for the next term. After this conflict occurred, the PWSRCAC revised the code of conduct. This revised code of conduct was included in this year's recertification application. the Coast Guard agrees that corrective actions should be reported to the organizations that received a misrepresentation of the PWSRCAC's position in order to maintain trust and open communications. These commenters recommend the Coast Guard require a policy and controls audit. In the recertification letter, we have asked the PWSRCAC to conduct an internal audit based upon its rules for self-government. One commenter recommends the PWSRCAC continue to maintain offices in two cities. Presently, the Coast Guard is unaware of any plans to change this. One commenter suggests that the RCAC should not be certified as an alternative voluntary advisory group but rather as a "Council" under the statute. Since most commenters mention many examples how the PWSRCAC fosters the goals and purposes of the Act, there is no basis to disallow certification for the purpose of assigning a "Council". Several commenters indicate the PWSRCAC does not act like more rigidly structured organizations such as government agencies or oil companies. Congress did not intend to impose a highly structured organization on voluntary alternative groups.

Three commenters indicate a desire to have greater accountability of PWSRCAC members to their constituencies. Appointment of a representative to the PWSRCAC under its by-laws and membership provisions, together with subsequent endorsements of the localities or interest groups they represent, constitutes a de facto acknowledgement that they speak for a constituency. There is no mandate under OPA 90 to further limit the alternative voluntary advisory group through a detailed proscription of its functions.

Three commenters question the efficacy of alternative voluntary advisory groups as models for other United States ports. The input to the docket will be maintained for consideration during such a potential study in the future.

The commenter challenges the residency status of one PWSRCAC member representative. PWSRCAC indicates that the member representative in question meets the Alaska State minimum standards for residency; however, his residency status is under question by an Alaska court. PWSRCAC indicated in follow up discussion with the Coast Guard the intent to follow the decision by the Alaska court to set their future actions regarding citizenship standards. The Coast Guard also has concerns about the ability of a resident to adequately represent a constituency when the resident is only present two months of the year. The PWSRCAC has been asked to resolve this by the next recertification period in the recertification letter. Two commenters express concern that PWSRCAC members are sometimes uncooperative. The statute requires the PWSRCAC to foster the goal and purpose of cooperation. The majority of commenters underscored the cooperativeness and effectiveness of the RCAC at representing constituent views. There is nothing in the statute that requires the PWSRCAC to agree with industry or government positions. The PWSRCAC is advisory in nature. The Coast Guard determined that concern stems from the contrast between the way a voluntary organization builds consensus vice a structured chain of command. One commenter criticized the PWSRCAC's press conferences. The Act includes language that encourages cooperation but in no way precludes the use of press conference.

One commenter expresses concern regarding special interests of members and their representatives. The diverse interests of members are inherent in the process of obtaining appointed representatives.

One commenter states that advisory groups should not encroach on technical compliance with regulations. This comment is directed at comments, provided by PWSRCAC in their advisory role, related to the implementation of regulations by the state and federal governments. There is nothing in the Act that restricts advice provided under the Act from covering regulatory compliance, especially regarding the topic areas specifically identified under the Act. One commenter suggests difficulty in staff communications. The Coast Guard's discussions with commenters indicate that this problem pertains to one or two individuals. The Coast Guard encourages the PWSRCAC to take steps to resolve actions of specific individuals who may be undermining communications by appropriate use of its self-governing process.

One commenter indicates a concern about efforts aimed at long-term partnering. Based upon remarks of numerous commenters, overall actions of the PWSRCAC appear to foster goal of building long-term partnerships. The PWSRCAC clearly does not agree with all activities undertaken by industry or government; however, the actions of the PWSRCAC identified by virtually every commenter show a pattern of partnering. Two commenters direct complaints at a lack of management control over staff. Based upon Coast Guard calls to clarify this item there seem to be two underlying concerns: draft documents that were used in a litigation by a private citizen (the litigating citizen also happens to be a representative of a member of the PWSRCAC's Board). There is a circumstantial link but no direct evidence that the PWSRCAC Staff members passed these draft documents. There were others on the working group who could have also passed these draft documents. The other concern was that a specific staff member was being uncooperative. Therefore, encouragement of the PWSRCAC to conduct an internal audit is merited. The problem is not widespread, as such it should be resolved through the internal "self-government" process of the PWSRCAC.

One commenter expresses concern regarding alleged staff support of legal efforts without Board consideration or approval. The reference appears to refer to information provided to various parties involved in an action that ultimately became litigation. The PWSRCAC appears to have supported all parties requesting information, similar in nature to a Freedom of Information Act response by the government. The Executive Director indicated to the Coast Guard that such support actions were approved by the Board in the session immediately prior to provision of the information.

Two commenters complain of unfair or inadequate present funding. The statements were not supported and the level of funding is a contractual issue. One commenter indicates that RCAC should be held to legal and regulatory mandates. The Act requires voluntary alternative advisory groups to foster the goals and purposes of the Act. The Coast Guard holds the RCAC to this standard.

One commenter indicates that the advisory group process has not evolved into effective partnerships. There is not sufficient evidence to support such a claim; rather, the contrary is evidenced through the many items identified annually by commenters and in the recertification application that demonstrate efforts to enhance marine safety. In letters expressing concern to the contrary there was indication of sufficient partnering efforts to indicate the PWSRCAC fosters such a goal.

One commenter believes that individual members should obtain PWSRCAC approval before litigating. Based upon Coast Guard calls, the litigation in question was a private matter between a representative of a member of the PWSRCAC, not acting under the capacity of their PWSRCAC office. There is no requirement in the Act that precludes members of the PWSRCAC from initiating and conducting personal litigation against any entity. The Act merely precludes others from litigation against "Councils".

One comment criticizes the PWSRCAC for not accepting outcomes counter to those indicated in its advice. The Act does not preclude the PWSRCAC from continuing to pursue initiatives that it believes to be in its best interest. Two commenters offer specific examples for the previous comment. As an alternative voluntary advisory group, the PWSRCAC is not compelled to adopt a position that seems based only upon science. It is responsible to represent its regional interests.

Twenty commenters to the docket recommend recertification. One commenter does not oppose recertification but stops short of recommending recertification.

Three additional positive letters were received after the docket closed, two from members of Comgress and one from the Governor of Alaska.

As a result of the above analysis, the following recommendations were conveyed to the PWSRCAC in the recertification letter: that the PWSRCAC revisits the Alaska residency issue as part of the "self-governing process"; that the PWSRCAC conducts an internal policy and controls audit; that the PWSRCAC makes results of the previous two items and any actions stemming from an audit available in the next recertification application; and, that the PWSRCAC includes a copy of the by-laws as part of the recertification package for the next recertification and in subsequent years following changes to the by-laws.

In light of the many positive comments received regarding the PWSRCAC's performance during the past year and the above analysis, the Coast Guard has determined that recertification in accordance with the Act is appropriate. The Coast Guard has requested the PWSRCAC to include documentation in its application next year indicating how each of the issues has been addressed. Such documentation should include recent correspondence from the PWSRCAC to the Coast Guard resolving concerns.

RECERTIFICATION: By letter dated November ____, 1998, the Assistant Commandant for Marine Safety and Environmental Protection certified that the PWSRCAC qualifies as an alternative voluntary advisory group under 33 U.S.C. 2732(o). This recertification terminates on January 30, 2000.

Dated: January 13, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–1880 Filed 1–26–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on PFC Application 99–06–C–00–PDX To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Airport; Submitted by the Port of Portland (Port), Portland, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use, and use only the revenue from a PFC at Portland International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 26, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Sue Haynes, Finance Manager I, at the following address; 7000 N.E. Airport Way, Portland, OR 97218.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Portland International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 99–06–C–00–PDX to impose and use the revenue from a PFC at Portland International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 19, 1999, the FAA determine that the application to impose and use the revenue from a PFC submitted by the Port of Portland, Portland, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 16, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2006.

Proposed charge expiration date: March 1, 2014.

Total estimated net PFC revenue: $194,309,000.

Brief description of proposed project(s): Terminal Expansion South (TES)—Phase 2.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators and is defined as "the carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carrier, of aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds. 'Air taxi/commercial operators' shall also include, without regard to number of passengers or payload capacity, revenue passengers transported for student instruction, nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of the airport, ferry or

training flights, aerial photography or survey charters, and fire fighting charters."

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Regional Office, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315; Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Portland International Airport, Portland, Oregon.

Issued in Renton, Washington on January 19, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–1840 Filed 1–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4839]

Transportation Equity Act for the 21st Century; Federal Highway Post-Accident Alcohol Testing Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This notice invites public comments on issues relating to the legislative requirement to conduct a study and report to the Congress on the feasibility of utilizing law enforcement officers for conducting post-accident alcohol testing of commercial motor vehicle operators provided in section 4020 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat.107, 414. The FHWA is initiating the study and would like all comments to address the following issues:

(1) The impact of current post-accident alcohol testing requirements on commercial motor carrier employers, including any burden that they may encounter in attempting to perform an alcohol test within two hours of an accident; and

(2) The feasibility of utilizing law-enforcement officers for conducting post-accident alcohol testing of commercial motor vehicle operators as a method of obtaining more timely information.

DATES: This docket will remain open until the study is completed. However, in order for comments responding to issues raised by this notice to be considered during critical early stages of the study, they should be submitted no later than March 29, 1999.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Dr. Alfred E. Barrington, DTS–34, Safety and Environmental Technology Division, (617) 494–2018, Volpe National Transportation Systems Center, 55 Broadway, Cambridge, MA 02142; or Mr. Michael Falk, Office of the Chief Counsel, (HCC–20), (202) 366–1384, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register's** home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

Section 4020 of TEA–21, Post-Accident Alcohol Testing, requires:

(a) STUDY. —The Secretary [of Transportation] shall conduct a study of the feasibility of utilizing law enforcement officers for conducting post-accident alcohol testing of commercial motor vehicle operators under section 31306 of title 49, United States Code, as a method of obtaining more timely information. The study shall also assess the impact of the current post-accident alcohol testing requirements on motor carrier employers, including any burden that employers may encounter in meeting the testing requirements of such section 31306.

(b) REPORT. —Not later than 18 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the study, together with such recommendation as the Secretary determines appropriate.

Under 49 CFR 382.303, commercial motor vehicle operators must be tested for alcohol and controlled substances as soon as practicable following an accident if:

(1) The accident involved the loss of human life, regardless of whether the operator was issued a citation for a moving traffic violation; or

(2) The operator was issued a citation under State or local law for a moving traffic violation arising from the accident and the accident involved:

(a) Bodily injury requiring medical treatment away from the accident scene; or

(b) Disabling damage to any motor vehicle requiring its removal from the accident scene by tow truck or other motor vehicle.

If the required post-accident alcohol test is not administered within two hours following the accident, the commercial motor carrier employer must prepare and maintain on file a record stating the reason the test was not promptly administered. If the test is not administered within eight hours following the accident, the employer must cease attempting to administer the test and shall prepare and maintain an appropriate record.

Comments and suggestions are invited concerning any aspects as to the feasibility of the post-accident alcohol test by police and the burden imposed on commercial motor carriers by the existing requirements. Of concern are operational, legal and financial factors, as well as equipment, human resources and training. Comments are requested specifically on the following questions that arise from the above requirements.

1. Are law-enforcement agencies and commercial motor carrier employers aware of the Federal regulation that requires motor carrier employers to test drivers for alcohol "as soon as practicable" if involved in an accident?

2. Do law-enforcement agencies/commercial motor carrier employers believe that this test is feasible?

3. Are commercial motor vehicle operators aware that they are required under certain circumstances to be tested for alcohol after being involved in an accident?

4. Are commercial motor carrier employers equipped to test a commercial motor vehicle operator for alcohol within two hours after an accident?

5. Are police equipped to test a commercial motor vehicle operator for alcohol within two hours of an accident?

6. If so equipped, can police be required to test a commercial motor vehicle operator for alcohol after an accident as an additional duty, regardless as to whether he or she was issued a citation?

Authority: 23 U.S.C. 315; 49 U.S.C. 31306; sec. 4020, Pub. L. 105–178, 112 Stat. 107, 414; and 49 CFR 1.48.

Issued on: January 21, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–1841 Filed 1–26–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20943]

Coach USA, Inc. and Coach Canada, Inc.—Control—Autocar Connaisseur, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transaction.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier that controls numerous motor passenger carriers, and its wholly owned noncarrier subsidiary, Coach Canada, Inc. (Coach Canada) (collectively, applicants), filed an application under 49 U.S.C. 14303 for control of Autocar Connaisseur, Inc. (Autocar II), an entity that intends to become a motor carrier of passengers. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8.[1] The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by March 15, 1999. Applicants may file a reply by April 5, 1999. If no comments are filed by March 15, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20943 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach currently controls a number of motor passenger carriers. Coach Canada is a wholly owned Coach subsidiary established for the purpose of obtaining control of those motor passenger carriers that Coach currently controls that are based in Canada, as well as Canada-based motor passenger carriers that Coach and Coach Canada may in the future seek to control. In their application, Coach and Coach Canada state that Coach assumed control of Autocar Connaisseur, Inc. (Autocar I) by a stock transaction that was consummated on December 19, 1996. Applicants indicate that Coach did not until recently determine that Autocar I holds not only operating authority from Canadian agencies, but also authority issued by the Interstate Commerce Commission. Having discovered this unresolved control issue, Coach and Coach Canada sought Board authority in STB Docket No. MC–F–20938 to control this carrier.[2]

Applicants state that, under Canadian law, Autocar I is to be amalgamated (merged) with three other noncarrier entities with which it is affiliated by common ownership: Connaisseur Parts Distribution, Inc., Agencie de Vehicules Connaisseur, Inc., and 170861 Canada, Inc. Applicants aver that each of these four corporations now shares common ownership with Autocar I, and that the ultimate parent of each within the Connaisseur Group of companies is 3329003 Canada, Inc., a noncarrier owned by Coach. Applicants further contend that the product of the amalgamation transaction will be a new corporate entity also to be known as Autocar Connaisseur, Inc. (Autocar II). Applicants state that, following the amalgamation, Autocar II will carry on the same motor carrier business now conducted by Autocar I, under the same management that now operates Autocar I, and pursuant to the same operating authorities now held by Autocar I. Applicants aver that the amalgamation will in fact be "invisible" to Autocar's customers.

Applicants state that granting the application will not result in any changes to carrier operations that are now being conducted and will not reduce competitive options available to the traveling public. They assert that Autocar II is relatively small and will face substantial competition from other bus companies and modes of transportation.

Applicants also submit that granting the application will produce substantial benefits, including reduced fixed charges in the form of interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. Specifically, applicants claim that Autocar II will benefit from the lower insurance premiums negotiated by Coach or Coach Canada and from volume discounts for equipment and fuel. Applicants indicate that Coach will provide Autocar II with centralized legal and accounting functions and coordinated purchasing services. In addition, applicants state that vehicle sharing arrangements will be facilitated through Coach or Coach Canada to ensure maximum use and efficient operation of equipment. Applicants aver that, with Coach's and Coach Canada's assistance, coordinated driver training services will be provided, enabling Autocar II to allocate driver resources in the most efficient manner possible. Applicants add that the proposed transaction will have no adverse impacts on the employees of Autocar II and that collectively bargained agreements will be recognized.

Applicants state that Coach Canada, like other management subsidiaries that Coach has established to assume control of, and manage the operations of, motor passenger carriers as to which control authority has previously been granted to Coach, will focus its efforts on those carriers that are based in Canada. Applicants also indicate that Coach Canada will be responsible for developing strategic business and growth plans for the Canadian based entities that it seeks to control, and for assessing opportunities for further Canadian acquisitions of passenger transportation entities. Applicants add that, over the long term, Coach and Coach Canada will provide centralized marketing and reservation services for the bus firms that they control, thereby further enhancing the benefits resulting from these control transactions.

Applicants certify that: (1) Autocar II does not hold an unsatisfactory safety rating from the U.S. Department of

[1] Revised procedures governing finance applications filed under 49 U.S.C. 14303 were adopted in *Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers*, STB Ex Parte No. 559 (STB served Sept. 1, 1998).

[2] Autocar I is a Quebec corporation. It holds federally issued operating authority in Docket No. MC–166643, allowing it to conduct charter and special operations between certain U.S./Canada border crossings and points in the United States. Autocar I operates a fleet of approximately 180 buses and employs approximately 250 full and part time persons. Autocar I's annual revenues for the twelve month period ending June 1998 were approximately $12.1 million. Autocar II will undertake the same business operations now conducted by Autocar I.

Transportation;[3] (2) Autocar II will maintain sufficient liability insurance; (3) Autocar II is not domiciled in Mexico or owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicants' representatives.

Under 49 U.S.C. 14303, we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application.[4] If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

[3] Autocar I holds a satisfactory rating from the U.S. Department of Transportation. Because it will be a new carrier following the amalgamation, Autocar II holds no safety rating.

[4] Under revised 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on March 15, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: January 21, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 99–1886 Filed 1–26–99; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "The Treasury of St. Francis of Assisi"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "The Treasury of St. Francis of Assisi," imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, from on or about March 15, 1999, to on or about June 27, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6982, or USIA, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: January 21, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–1839 Filed 1–26–99; 8:45 am]

BILLING CODE 8230–01–M

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federal register

Wednesday
January 27, 1999

Part II

Department of Education

Technological Innovation and Cooperation for Foreign Information Access Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

DEPARTMENT OF EDUCATION

[CFDA No. 84.337]

Technological Innovation and Cooperation for Foreign Information Access Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: The Technological Innovation and Cooperation for Foreign Information Access Program provides grants to develop innovative techniques or programs using new electronic technologies, to collect and distribute information on world regions and countries other than the United States. The techniques or programs the Secretary assists are those that address our Nation's teaching and research needs in international education and foreign languages.

Eligible Applicants: Institutions of higher education, public or nonprofit private libraries, or consortia of such institutions or libraries.

Applications Available: January 15, 1999.

Deadline for Transmittal of Applications: March 17, 1999.

Deadline for Intergovernmental Review: May 17, 1999.

Estimated Range of Awards: $95,000 to $225,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 5.

Project Period: 36 months.

Note: The Department is not bound by any estimates in this notice.

Supplementary Information: The techniques or projects this program supports are those designed to collect, organize, preserve, and widely disseminate information that addresses our Nation's teaching and research needs in International Education and Foreign Languages. Because the program has no specific regulations we encourage each potential applicant to read the authorizing statute (section 606 of part A, title VI, of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1998). The statute will be included in the application package.

The statute lists the following activities an applicant may apply to carry out. However, an applicant may propose to carry out other activities that are consistent with the legislation. The activities listed in the statute are:

(a) To facilitate access to or preserve foreign information resources in print or electronic forms;

(b) To develop new means of immediate, full-text document delivery for information and scholarship from abroad;

(c) To develop new means of shared electronic access to international data;

(d) To support collaborative projects of indexing, cataloging, and other means of bibliographic access for scholars to important research materials published or distributed outside the United States;

(e) To develop methods for the wide dissemination of resources written in non-Roman language alphabets;

(f) To assist teachers of less commonly taught languages in acquiring, via electronic and other means, materials suitable for classroom use; and

(g) To promote collaborative technology based projects in foreign languages, area studies, and international studies among grant recipients under this title.

Please note that the statute limits the Federal share of the total cost of carrying out a program supported by a grant under this section shall to no more than 66⅔ percent. A grantee may provide the non Federal share of this cost may be provided either in-kind or in cash and may include contributions from private sector corporations or foundations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86.

Selection Criteria: The Secretary uses the selection criteria published in 34 CFR 75.209 and 75.210 to evaluate applications for the Technological Innovation and Cooperation for Foreign Information Access Program. The application package includes selection criteria and the points assigned to the criteria.

For Applications or Information Contact: Susanna C. Easton, International Education and Graduate Program Service, U.S. Department of Education, 400 Maryland Avenue, SW., suite 600C, Portals Building, Washington, DC 20202–5332. Telephone (202) 401–9780. Internet: Susanna_Easton@ed.gov

If you use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person for the respective program, as listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access To This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free, at 1–888–293–6498.

You may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1121 *et. seq.*

Dated: January 21, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–1826 Filed 1–26–99; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
January 27, 1999

Part III

Department of Education

Bilingual Education: Teachers and Personnel Grants; Inviting Applications for New Awards for Fiscal Year (FY) 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195A]

Bilingual Education: Teachers and Personnel Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7143 and 7146–7149 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act)(20 U.S.C. 7473 and 7476–7479)).

Purpose of Program: This program provides grants for preservice and inservice professional development for bilingual education teachers, administrators, pupil services personnel, and other educational personnel who are either involved in, or preparing to be involved in, the provision of educational services for children and youth of limited English proficiency.

Eligible Applicants: (1) One or more institutions of higher education (IHEs) which have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs), to achieve the purposes of this section. (2) SEAs and LEAs for inservice-professional development programs.

Deadline for Transmittal of Applications: February 27, 1999.

Deadline for Intergovernmental Review: April 26, 1999

Available Funds: $10 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 50.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

(b) 34 CFR part 299.

Description of Program

Funds under this program are to provide for preservice and inservice professional development for bilingual education teachers and other educational personnel. Activities shall assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, shall lead to the awarding of college or university credit.

Priorities

Competitive Priority 1

The Secretary, under 34 CFR 75.105(c)(2)(i) and 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards up to 3 points for an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

Competitive Priority 2

Under 34 CFR 75.105 (c)(2) (ii) and section 7143(b) of the Act, the Secretary gives a competitive preference to applications that meet the following priority:

Institutions of higher education, in consortia with local or State educational agencies, that offer degree programs that prepare new bilingual education teachers in order to increase the availability of educators to provide high-quality education to limited English proficient students.

The Secretary selects applications that meet this priority over applications of comparable merit which do not meet the priority.

Invitational Priorities

The Secretary is particularly interested in applications that meet one of the following the invitational priorities in the next paragraphs. However, an application that meets these invitational priorities receives no competitive or absolute preference over other applications (34 CFR.105(c)(1)).

(1) Applicants which propose to provide special support for new bilingual teachers during their initial teaching years.

(2) Applicants which propose to improve teacher preparation programs in institutions of higher education to better prepare all teachers to meet the needs of LEP students.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(b) *Quality of the project design.* (55 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(c) *Quality of project services.* (10 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers (i) the extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) Quality of the project evaluation. (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3 1998 (63 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.195A, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.195A), Washington, D.C. 20202–4725

or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.195A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public

reporting burden, a notice to applicants regarding compliance with Section 427 of the General Education Provisions Act, additional non-regulatory guidance, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden.
b. Group Application Certification.
c. Participant Data.
d. Project Documentation.
e. Program Assurances.
f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.
g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.
h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: This form is intended for the use of grantees and should not be transmitted to the Department.)
i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget in the **Federal Register** (61 FR 1413 on January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit one original signed application and two copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Mahal May (202) 205–8727 or Steve Van Pelt (202) 205–8732 U.S. Department of Education, 400 Maryland Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to this Document

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http://ocfo.ed.gov/fedreg.htm
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7473.

Dated: January 22, 1999.

Art Love,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0536, Exp. Date: 12/31/00. The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202–4651. If you have any comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Washington, D.C. 20202–6510.

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (Use this form to document participation of consortia members)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year (Attached to Form No. 524)
5. Participant Data epproximate number of participants to be served each year.
6. Project Documentation Transmittal Letter to SEA Documentation of Empowerment Zone or Enterprise Community (if applicable)
7. Program Assurances
8. Non-Construction Programs (SF 424B)
9. Certifications Regarding Lobbying; Debarment Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
11. Disclosure of Lobbying Activities (SF–LLL)
12. Notice to All Applicants (See form provided below)
13. Table of Contents
14. One-page abstract (single-spaced)
15. Application Narrative (double-spaced not to exceed 30 pages, see instructions below)
16. One original and three copies of the application for transmittal to the Department's Application Control Center.

Mandatory Page Limits for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

A page is 8.5 × 11, on one side only with 1" margins at the top, bottom, and both sides.

You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all

text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents. The page limit applies only to item 15 in the checklist for applicants provided above.

If, in Order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, your application will not be considered for funding.

Application Narrative and Abstract

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. *Do not simply paraphrase the criteria.* Provide position descriptions for key personnel. This package includes non-regulatory guidance (Questions and Answers) to assist you in preparing the narrative portion of the application. Prepare a one-page single-spaced abstract which summarizes the proposed project activities, the expected outcomes, and how the application addresses the announced invitational priorities, if applicable.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. Prepare an itemized budget for each year of requested funding. Indirect costs for institutions of higher education which are the fiscal agents for Teachers and Personnel Grants are limited to the lower of either 8% of the modified total direct cost base or the institution's indirect cost agreement. A modified direct cost is defined as total direct costs less stipends, tuition and related fees, and capital expenditures of $5,000 or more. In describing student support costs distinguish costs for tuition and fees from costs for stipends.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 23, 1999.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a) (4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Questions and Answers

Does the Teachers and Personnel Grants Program Have Specific Evaluation Requirements?

Yes, the evaluation requirements are described in Section 7149 of Title VII of ESEA, 20 U.S.C. 7479

What Priorities Exist for the Teachers and Personnel Grants?

Fiscal Year 1999 the Department has announced an invitational priority for applicants proposing to improve teacher preparation programs in institutions of higher education to better prepare all teachers to meet the needs of LEP students. In addition, the Department has announced an invitational priority for applicants which propose to provide special support for new bilingual teachers during their initial teaching years. The competitive priorities for this program are (1) for applications from institutions of higher education, in consortia with local or State educational agencies, that offer degree programs that prepare new bilingual education teachers in order to increase the availability of educators to provide high-quality education to limited English proficient students, and, (2) for programs that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprize Community, and are made an integral part of the Zones or Community's comprehensive revitalization strategies.

Applicants proposing to address invitational or competitive priorities may include in their abstracts a brief description of their plans to address the priorities.

What Requirements Must Grantees Meet Related to Teacher Certification?

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. 20 U.S.C. 7477. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

What Activities Are Authorized Under Teachers and Personnel Grants?

Authorized activities are those which support the purpose of the development for teachers and other educational personnel. Such activities may include, but are not limited to, the development of program curricula; collaboration with local school districts in designing new teacher training activities; and reforming and improving teacher training programs to reflect high standards of professionalism. Only institutions of higher education, applying in consortia arrangements with one or more local educational agencies or State educational agencies, are eligible to apply for preservice programs. This means the institution of higher education would be the lead agency and the fiscal agent for the grant. State educational agencies and local educational agencies may, however apply for inservice training programs.

May Program Budgets Include Costs for Items Other Than Student Tuition and Fees?

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other costs to support developmental activities.

What Information May Be Helpful in Preparing Narrative for a Teachers and Personnel Grant?

In responding to the selection criteria, applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education, and other partnership organizations in planning, implementing, and evaluating

the proposed program? What resources and support will be provided by each of the contributing partners?

- How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?
- How will the program assist in systemically reforming policies and practices in the target schools and in the HE related to the preparation of new teachers, the induction of new bilingual teachers, clinical experiences for new bilingual teachers and other educational personnel, or professional development opportunities for all teachers?
- What selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements?
- What support will be provided to new bilingual teachers by experienced bilingual teachers, higher education faculty, and school administrators to guide them during their period of induction?
- How will the instructional responsibilities of new teachers be balanced with appropriate professional development, support and planning time?
- How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?
- How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?
- What performance indicators will the proposed program use to support the effectiveness of the program, participants, and graduates related to for example, improved teaching practices, performance on National or State benchmark tests; reduction in the number of new teachers leaving the profession in targeted districts; improvement in participant completion rates; decline in attrition, or other performance indicators.
- How will the program evaluation incorporate strategies for assessing progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; identifying exemplary program features; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?
- How will the proposed program improve teacher preparation curricula, clinical experiences and the skills and knowledge of higher education faculty to better prepare ALL teachers in content and pedagogy related to the needs of LEP students.

In Addition, Applicants May Wish To Consider the Department of Education Professional Development Principles in Planning a Teachers and Personnel Grant

The following are the professional development principles:

- Focuses on teachers as central to student learning, yet includes all other members of the school community;
- Focuses on individual, collegial and organizational improvement; Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;
- Reflects best available research and practice in teaching, learning, and leadership;
- Enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;
- Promotes continuous inquiry and improvement embedded in the daily life of schools;
- Is planned collaboratively by those who will participate in and facilitate that development;
- Requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and
- Uses this assessment to guide subsequent professional development efforts.

What Other Information May Be Helpful in Applying for a Teachers and Personnel Grant?

Applicants are reminded that they must submit a copy of their application to the SEA for review and comment. In addition, applicants must submit a copy of their application to the State Single Point of Contact to satisfy the requirements of Executive Order 12372. The SEA review requirement and the requirements for Executive Order 12372 are two distinct requirements.

BILLING CODE 4000-01-P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____

_____ ____ _____ _____ - ____

City State County ZIP Code

Organizational Unit

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 [redacted] 1 9 5 A → Title: Bilingual Education: ~~Teachers and Personnel Grants~~

4. Project Director: _____

Address: _____

_____ ____ _____ - ____

City State ZIP Code

Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

Yes *(Date made available to the Executive Order 12372 process for review)*: ___/___/_____

No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

d. E-Mail Address: _____

e. Signature of Authorized Representative Date:

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com/dbis/about/dbinfdunsbtm.

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** If research activities involving human subjects are not planned at any time during the proposed project period, check "No." The remaining parts of item 11 are then not applicable.

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in "PROTECTION OF HUMAN SUBJECTS IN RESEARCH" attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions are appropriate.

    If the planned research activities involving human subjects are covered (not exempt), complete the remaining parts of item 11 and follow the instructions in "PROTECTION OF HUMAN SUBJECTS IN RESEARCH" attached to this form. If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may review an application through an expedited review procedure only if it complies with Section 97.110 of the human subjects regulations 34 CFR 97. If the IRB review is unavoidably delayed beyond the submission of the application, enter "Pending" in item 11c. A follow-up certification of IRB approval from an official signing for the applicant organization must then be sent to and received by the designated ED official. The certification must be received within 30 days of a specific formal request from the designated ED official. The certification must include: the PR Award number, title of the project from item #12, name of the principal investigator, project director, fellow, or other, institution, Multiple Assurance number, date of IRB approval, and appropriate signatures.

    If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance that covers the proposed research activity, enter "None" in item 11b. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days of a specific formal request from the designated ED official.

    For additional instructions regarding proposals that involve human subjects research see, "PROTECTION OF HUMAN SUBJECTS IN RESEARCH" attached to this form.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions from the human subjects regulations, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below.

If you marked "Yes" to item 11 on the Face Page, and designated no exemptions from the regulations, address the following six points. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Be sure to provide this information on a separate page(s) entitled "Protection of Human Subjects Attachment."

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880–0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- Teachers and Personnel Grants Program
- Career Ladder Program
- Training for all Teachers Program

Estimated number of anticipated participants in each of the following three categories per year

Preservice Teachers _____

Inservice Teachers _____

Other Type of Educational Personnel _____
(Specify type below)

_____

_____

Degree level (if applicable) _____

Certification Type _____

Languages of Participants _____
(other than English)

Training for all Teachers Program applicants may not necessarily anticipate providing services to participants during the grant period. If this is the case indicate NA in the "anticipated participants" categories above.

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants Program
- Career Ladder Program
- Training for All Teachers Program

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Zone, or Enterprise Community that the proposed project will serve.
(See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

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PROGRAM ASSURANCES

Note: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3)

Authorized Representative Signature:_____

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

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EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110–

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

_____

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report

4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *If known:* Congressional District, *If known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *If known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *If applicable:*
8. Federal Action Number, *If known:*	9. Award Amount, *If known:* $
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*
11. Amount of Payment (check all that apply): $ _____ ☐ actual ☐ planned	13. Type of Payment (Check all that apply): ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____ (attach Continuation Sheet(s) SF-LLL, if necessary)	
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No	
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:
Federal Use Only:	Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single

narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

General Education Provisions Act (GEPA) Requirement

Applicants should use this section to address the GEPA provision.

EXECUTIVE ORDER - INTERGOVERNMENTAL REVIEW

The Education Department General Administrative Regulations (EDGAR), 34 CFR 79, pertaining to intergovernmental review of Federal programs, apply to the program included in this application package.

Immediately upon receipt of this notice, all applicants, other than federally recognized Indian Tribal Governments, must contact the appropriate State Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform in more than one State should contact, immediately upon receipt of this notice, the Single Points of Contact for each State and follow the procedures established in those States under the Executive Order. A list containing the Single Point of Contact for each State is included in the application package for this program.

In States that have not established a process or chosen a program for review, State, area wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments by a State Point of Contact and any comments from State, area wide, regional, and local entities must be mailed or hand-delivered by the date in the Program announcement for Intergovernmental Review to the following address:

The Secretary
E.O. 12372 - CFDA # 84.200
U.S. Department of Education, FB-10, Room 6213
600 Independence Avenue, SW
Washington, DC 20202

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be de determined on the same basis as applications.

Please note that the above address is not the same address as the one to which the applicant submits its completed application.

DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

STATE SINGLE POINTS OF CONTACT

ARIZONA

Ms. Janice Dunn
Arizona State Clearinghouse
3800 North Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone: (602) 280-1315

ARKANSAS

Ms. Tracie L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Service
Department of Finance and Administration
P.O. Box 3278
Little Rock, Arkansas 72203
Telephone: (501) 682-1074

CALIFORNIA

Mr. Glenn Staber
Grants Coordinator
Office of Panning & Research
1400 Tenth Street
Sacramento, California 95814
Telephone: (916) 323-7480

COLORADO

State Single Point of Contact
State Clearinghouse
Division of Local Government
1313 Sherman Street, Room 520
Denver, Colorado 80203
Telephone: (303) 866-2156

DELAWARE

Ms. Francine Booth
State Single Point of Contact
Executive Department
Thomas Collins Building
Dover, Delaware 19903
Telephone: (302) 739-3326

DISTRICT OF COLUMBIA

Mr. Rodney T. Hallman
State Single Point of Contact
Office of Grants Management & Development
717 14th St. N.W., Suite 500
Washington, DC 20005
Telephone: (202) 727-6551

FLORIDA

Florida State Clearinghouse
Intergovernmental Affairs Policy Unit
Executive Office of the Governor
Office of Planning & Budgeting
The Capitol
Tallahassee, Florida 32399-0001
Telephone: (904) 488-8114

GEORGIA

Charles H. Badger, Administrator
Georgia State Clearinghouse
270 Washington Street, S.W.
Room 534A
Atlanta, Georgia 30334
Telephone: (404) 656-3855

INDIANA

Ms. Jean S. Blackwell
Budget Director
State Budget Agency
212 State House
Indianapolis, Indiana 46204
Telephone: (317) 232-5610

IOWA

Mr. Steven R. McCann
Division for Community Progress
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 281-3725

KENTUCKY

Mr. Ronald W. Cook
Office of the Governor
Department of Local Government
1024 Capitol Center Drive
Frankfort, Kentucky 40601
Telephone: (502) 564-2382

MAINE

State Single Point of Contact
Attn: Joyce Benson
State Planning Office
State House Station #38
Augusta, Maine 04333
Telephone: (207) 289-3261

CONNECTICUT

Mr. William T. Quigg
Intergovernmental Review Coordinator
State Single Point of Contact
Office of Policy and Management
Intergovernmental Policy Division
80 Washington Street
Hartford, Connecticut 06106-4459
Telephone: (203) 566-3410

ILLINOIS

Mr. Steve Klokkenga
State Single Point of Contact
Office of the Governor
State of Illinois
107 Stratton Building
Springfield, Illinois 62706
Telephone: (217) 782-1671

MARYLAND

Mary Abrams, Chief
Maryland State Clearinghouse
Department of State Planning
301 West Preston Street
Baltimore, Maryland 21201
Telephone: (301) 225-4490

* In accordance with Executive Order #12372, "Intergovernmental Review Process," this listing represents the designated State Single Points of Contact. Upon request, a background document explaining the Executive Order is available. The Office of Management and Budget point of contact for updating this listing is: Donna Rivelli (202) 395-5090. The States not listed no longer participate in the process. These include: Alabama; Alaska; Kansas; Hawaii; Idaho; Louisiana; Minnesota; Montana; Nebraska; Oklahoma; Oregon; Pennsylvania; Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will be made only upon formal notification by the State.

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MASSACHUSETTS

Ms. Karen Arone
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Executive Office of Communities and Development
100 Cambridge Street, Room 1803
Boston, Massachusetts 02202
Telephone: (617) 727-7001

MICHIGAN

Richard S. Pastula
Director
Michigan Department of Commerce
Office of Federal Grants
P.O. Box 30225
Lansing, Michigan 48909
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MISSISSIPPI

Ms. Cathy Mallette
Clearinghouse Officer
Office of Federal Grant Management and Reporting
Department of Finance and Administration
301 West Pearl Street
Jackson, Mississippi 39203
Telephone: (601) 949-2174

NEW HAMPSHIRE

Mr. Jeffrey H. Taylor, Director
New Hampshire Office of State Planning
Attn: Intergovernmental Review Process/James E. Bieber
2 1/2 Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271-2155

NEW JERSEY

Gregory W. Adkins, Acting Director
Division of Community Resources
New Jersey Department of Community Affairs

Please direct all correspondence and questions about intergovernmental review to:
Andrew Jaskolka
State Review Process
Division of Community Resources
CN 814, Room 609
Trenton, New Jersey 08625-0814
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NEW MEXICO

Mr. George Elliott
Deputy Director
State Budget Division
Rm 190, Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone: (505) 827-3640

NORTH DAKOTA

North Dakota State Single Point of Contact
Office of Intergovernmental Assistance
Office of Management & Budget
600 East Boulevard Avenue
Bismarck, N. Dakota 58505-0170
Telephone: (701) 224-2094

OHIO

Mr. Larry Weaver
State Single Point of Contact
State\Federal Funds Coordinator
State Clearinghouse
Office of Budget & Management
30 East Broad Street, 34th Floor
Columbus, OH 43266-0411
Telephone: (614) 466-0698

RHODE ISLAND

Mr. Daniel W. Varin
Associate Director
Statewide Planning Program
Department of Administration
Division of Planning
265 Melrose Street
Providence, Rhode Island 02907
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Please direct correspondence and questions to :
Review Coordinator
Office of Strategic Planning

MISSOURI

Ms. Lois Pohl
Federal Assistance Clearinghouse
Office of Administration
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Room 430, Truman Building
Jefferson City, Missouri 65102
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NEVADA

Department of Administration
State Clearinghouse
Capitol Complex
Carson City, Nevada 89710
Attn: Ron Sparks
Clearinghouse Coordinator
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NEW YORK

New York State Clearinghouse
Division of the Budget
State Capitol
Albany, New York 12224
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NORTH CAROLINA

Mrs. Chrys Baggett, Director
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N.C. State Clearinghouse
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SOUTH CAROLINA

Ms. Omeagia Burgess
State Single Point of Contact
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TERRITORIES

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Mr. Charles Brown
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TEXAS

Mr. Tom Adams
Governor's Office of Budget and Planning
P.O. Box 12428
Austin, Texas 78711
Telephone: (512) 463-1778

UTAH

Utah State Clearinghouse
Office of Planning and Budget
Attn: Ms. Carolyn Wright
Room 116, State Capitol
Salt Lake City, Utah 84114
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VERMONT

Mr. Bernard D. Johnson
Assistant Director
Office of Policy Research and Coordination
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Montpelier, Vermont 05602
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WEST VIRGINIA

Mr. Fred Cutlip
Director
Community Development Division
West Virginia Development Office
Building #6, Room 553
Charleston, West Virginia 25305
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WISCONSIN

Mr. William C. Carey, Section Chief
Federal/State Relations Office
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WYOMING

Ms. Sheryl Jeffries
State Single Point of Contact
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NORTHERN MARIANA ISLANDS

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Planning and Budget Office
Office of the Governor
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Northern Mariana Islands 96950

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Chairman/Director
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VIRGIN ISLANDS

Mr. Jose George, Director
Office of Management & Budget
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Wednesday
January 27, 1999

Part IV

Department of Education

Bilingual Education: Career Ladder Program; Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195E]

Bilingual Education: Career Ladder Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: This program provides grants to upgrade the qualifications and skills of noncertified educational personnel, especially educational paraprofessionals, to meet high professional standards, including certification and licensure as bilingual teachers and other educational personnel who serve limited English proficient students, and to help recruit and train secondary students as bilingual education teachers and other educational personnel to serve limited English proficient students.

Eligible Applicants: (1) One or more institutions of higher education (IHEs) that have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs), to achieve the purposes of this section. Consortia may include community-based organizations or professional education organizations.

Deadline for Transmittal of Applications: February 27, 1999.

Deadline for Intergovernmental Review: April 26, 1999.

Available Funds: $9.7 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 49.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 60 Months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Description of Program:

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7144 and 7146–7150 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994) (the Act) (20 U.S.C. 7474 and 7476–7480).

Funds under this program may be used to provide for the development of bilingual education career ladder program curricula appropriate to the needs of consortia participants; assistance for stipends and costs related to tuition fees and books for coursework required to complete degree and certification requirements for bilingual education teachers; and programs to introduce secondary school students to careers in bilingual education teaching that are coordinated with other activities assisted under this program. Activities conducted under this program must assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, must lead to the awarding of college or university credit.

Priorities

Competitive Priority 1: The Secretary, under 34 CFR 75.105(c)(2)(i) and 299.3(b), gives preference to applications that meet the following competitive priority. The Secretary awards up to 3 points for an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided in the appendix to this notice.

Competitive Priority 2: Under 34 CFR 75.105 (c)(2)(ii) and section 7144(d) of the Act, the Secretary gives a competitive preference to applications that meet the following priority:

Applications that propose to provide for participant completion of baccalaureate and master's degree teacher education programs, and certification requirements and may include effective employment placement activities; the development of teacher proficiency in English as a second language, including demonstrating proficiency in the instructional use of English and, as appropriate, a second language in classroom contexts; coordination with programs for the recruitment and retention of bilingual students in secondary and postsecondary programs training to become bilingual educators; and the applicant's contribution of additional student financial aid to participating students.

The Secretary selects applications that meet this priority over applications of comparable merit which do not meet the priority.

Invitational Priorities

The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority receives no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Applicants which propose to collaborate with 2-year institutions of higher education to develop or improve teacher preparation programs for bilingual paraprofessionals.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(b) *Quality of the project design.* (55 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(v) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(c) *Quality of project services.* (10 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the qualifications, including relevant training and experience, of key project personnel.

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(f) *Quality of the project evaluation.* (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on November 3, 1998 (63 FR 59452 through 59455).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.195E, U.S. Department of Education, Room 6213, 400 Maryland Avenue, SW., Washington, D.C. 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195E), Washington, D.C. 20202–4725,

or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195E), Room #3633, Regional Office Building #3, 7 Th and D Streets, SW., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an

applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice is divided into three parts, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with Section 427 of the General Education Provisions Act, questions and answers on this program (located at the end of the notice) and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden.
b. Group Application Certification.
c. Participant Data.
d. Project Documentation.
e. Program Assurances.
f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.
g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.
h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

(**Note:** This form is intended for the use of grantees and should not be transmitted to the Department.)

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget in the **Federal Register** (61 FR 1413) on (January 19, 1996).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *ONE* original signed application, including ink signatures on all forms and assurances, and *two* copies of the application. Please mark each application as "original" or "copy". No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Carol Manitaras (202)205–9729 or Sue Kenworthy (202)205–9839, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the Federal Register, in text or portable document format (pfd) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pfd you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pfd, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7474.

Dated: January 22, 1999.

Art Love,

Acting Deputy Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0542, Exp. Date: 12/31/00. The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–6510.

The following forms and other items must be included in the application:

☐ 1. Application for Federal Assistance (SF 424)
☐ 2. Group Application Certification (if applicable)
☐ 3. Budget Information (ED Form No. 524)
☐ 4. Itemized Budget for each year (attached to ED Form No. 524)
☐ 5. Participant Data—approximate number of participants to be served each year.
☐ 6. Project Documentation
Section A—Copy of Transmittal Letter to SEA requesting SEA to comment on application
Section B—Documentation of Empowerment Zone or Enterprise Community—if applicable
☐ 7. Program Assurances
☐ 8. Non-Construction Programs (SF 424B)
☐ 9. Certifications Regarding Lobbying; Debarment Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
☐ 10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
☐ 11. Disclosure of Lobbying Activities (SF–LLL)
☐ 12. Notice to all Applicants (See form provided below)

☐ 13. Table of Contents
☐ 14. One-page single-spaced abstract
☐ 15. Application narrative (Not to exceed 30 double-spaced pages, see instructions below)
☐ 16. One original and three copies of the application for transmittal to the Department's Application Control Center

Mandatory Page Limits for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

(1) A page is 8.5″ × 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables figures and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to the Application for Federal Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents. The page limit applies only to item 15 in the Checklist for Applicants provided above.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARD SPECIFIED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Application Narrative and Abstract

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Provide position descriptions for key personnel. This package includes non-regulatory guidance (Questions and Answers) to assist you in preparing the narrative portion of your application. Prepare a one-page single-spaced abstract which summarizes the proposed project activities, the expected outcomes, and how the application addresses the invitational priority, if applicable.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. Prepare an itemized budget for each year of requested funding. Indirect costs for institutions of higher education which are the fiscal agents for Career Ladder Programs are limited to the lower of either 8% of a modified total direct cost base or the institution for higher education's actual indirect cost agreement. A modified direct cost base is defined as total direct costs less stipends, tuition and related fees and capital expenditures of $5,000 or more. In describing student support costs for tuition and fees from costs for stipends.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 23, 1999.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a)(4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package.

Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Questions and Answers

Does the Career Ladder Program have specific evaluation requirements?

Yes, the evaluation requirements are described in Section 7149 of Title VII of ESEA, 20 U.S.C. 7479.

What requirements must grantees meet related to teacher certification?

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. 20 U.S.C. 7477. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

May program budgets include costs for items other than student tuition and fees?

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other reasonable and necessary costs to support developmental activities.

What information may be helpful in preparing the application narrative for a Career Ladder Program?

In responding to the selection criteria applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education and other partnership organizations in planning, implementing and evaluating the proposed program? How is the program linked to the school district's overall professional development plan?
- What resources and support will each of the consortia members provide? How will resources be integrated to ensure maximum effectiveness of the program and to promote capacity building and long-range collaboration?
- How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?
- How will the program assist in systemically reforming policies and practices in the target schools and in the IHE related to the preparation of new teachers, the induction of new bilingual teachers, clinical experiences for new bilingual teachers and other educational personnel, or professional development opportunities for all teachers?
- What special selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements?
- What special support will be provided to participants by experienced bilingual teachers, higher education

faculty, and school administrators to guide them during their period of induction?

• How will the instructional responsibilities of participants be balanced with appropriate professional development, support and planning time?

• How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?

• How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?

• What performance indicators will the proposed program use to support the effectiveness of the program related to, for example: improved teaching practices; participants' effectiveness in the instructional setting; improved performance on National or State benchmark tests; reduction in the number of new bilingual teachers leaving the profession; improvement of graduation rates?

• How will the program evaluation incorporate strategies for assessing the progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; documenting and identifying exemplary program features and successful strategies; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?

In addition, applicants may wish to consider the Department of Education Professional Development Principles in planning a Career Ladder Program

The following are the professional development principles:

• Focuses on teachers as central to student learning, yet includes all other members of the school community;

• Focuses on individual, collegial and organizational improvement;

• Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;

• Reflects best available research and practice in teaching, learning, and leadership; enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;

• Promotes continuous inquiry and improvement embedded in the daily life of schools;

• Is planned collaboratively by those who will participate in and facilitate that development;

• Requires substantial time and other resources;

• Is driven by a coherent long-term plan;

• Is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and uses this assessment to guide subsequent professional development efforts.

What other information may be helpful in applying for a Career Ladder Program?

Applicants are reminded that they must submit a copy of their application to the SEA for review and comment. In addition, applicants must submit a copy of their application to the State Single Point of Contact to satisfy the requirements of Executive Order 12372. The SEA review requirement and the requirements for Executive Order 12372 are two separate requirements.

BILLING CODE 4000–01–P

Application for Federal Education Assistance

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____ Organizational Unit

Address: _____

_____

City _____ State _____ County _____ ZIP Code _____

2. Applicant's D-U-N-S Number

3. Catalog of Federal Domestic Assistance #: 8 4 1 9 5 E — Title: Bilingual Education: Career Ladder Program

4. Project Director: _____

Address: _____

City _____ State _____ ZIP Code _____

Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)*

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

Yes *(Date made available to the Executive Order 12372 process for review)*: ___/___/_____

No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

d. E-Mail Address: _____

e. Signature of Authorized Representative _____ Date: _____

2 —

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com/dbis/aboutdb/latlduns.htm.

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check "Yes" only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check "No."

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check "Yes" if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check "No."

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** If research activities involving human subjects are not planned at any time during the proposed project period, check "No." The remaining parts of item 11 are then not applicable.

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check "Yes." If the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in "PROTECTION OF HUMAN SUBJECTS IN RESEARCH" attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions are appropriate.

    If the planned research activities involving human subjects are covered (not exempt), complete the remaining parts of item 11 and follow the instructions in "PROTECTION OF HUMAN SUBJECTS IN RESEARCH" attached to this form. If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may review an application through an expedited review procedure only if it complies with Section 97.110 of the human subjects regulations 34 CFR 97. If the IRB review is unavoidably delayed beyond the submission of the application, enter "Pending" in item 11c. A follow-up certification of IRB approval from an official signing for the applicant organization must then be sent to and received by the designated ED official. The certification must be received within 30 days of a specific formal request from the designated ED official. The certification must include: the PR Award number, title of the project from item #12, name of the principal investigator, project director, fellow, or other, institution, Multiple Assurance number, date of IRB approval, and appropriate signatures.

    If the applicant organization does not have on file with GPOS or OPRR an approved Assurance of Compliance that covers the proposed research activity, enter "None" in item 11b. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days of a specific formal request from the designated ED official.

    For additional instructions regarding proposals that involve human subjects research see, "PROTECTION OF HUMAN SUBJECTS IN RESEARCH" attached to this form.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions from the human subjects regulations, provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under II.B. "Exemptions," below.

If you marked "Yes" to item 11 on the Face Page, and designated no exemptions from the regulations, address the following six points. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Be sure to provide this information on a separate page(s) entitled "Protection of Human Subjects Attachment."

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of *exemptions* are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. *If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.* [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative					
Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

VOL 64 ISSUE 17 JANUARY 27 1999

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880–0538

Expiration Date: 10/31/99

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

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Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- Teachers and Personnel Grants Program
- Career Ladder Program
- Training for all Teachers Program

Estimated number of anticipated participants in each of the following three categories per year

Preservice Teachers _____

Inservice Teachers _____

Other Type of Educational Personnel _____
(Specify type below)

_____

_____

Degree level (if applicable) _____

Certification Type _____

Languages of Participants _____
(other than English)

Training for all Teachers Program applicants may not necessarily anticipate providing services to participants during the grant period. If this is the case indicate NA in the "anticipated participants" categories above.

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants Program
- Career Ladder Program
- Training for All Teachers Program

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Zone, or Enterprise Community that the proposed project will serve.
(See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

_____

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PROGRAM ASSURANCES

Note: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.
(Authority: 20 U.S.C. 7426(g)(3)

Authorized Representative Signature:_____

OMB Approval No. 0348-0040

ASSURANCES- NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968, as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to

[illegible]

EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official	Title	
Applicant Organization		Date Submitted

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110–

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c)Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application b. initial award c. post-award	3. Report Type: ☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier ____, *If known:* Congressional District, *If known:*	5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime: Congressional District, *If known:*	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *If applicable:*	
8. Federal Action Number, *if known:*	9. Award Amount, *If known:* $	
10. a. Name and Address of Lobbying Entity Registrant *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*	
11. Amount of Payment *(check all that apply):* $ _____ ☐ actual ☐ planned	13. Type of Payment *(Check all that apply):* ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____	
12. Form of Payment *(check all that apply):* ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, Including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____ *(attach Continuation Sheet(s) SF-LLL-A, if necessary)*		
15. Continuation Sheet(s) SF-LLL attached: ☐ Yes ☐ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date:	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs.

This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single

narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

General Education Provisions Act (GEPA) Requirement

Applicants should use this section to address the GEPA provision.

EXECUTIVE ORDER - INTERGOVERNMENTAL REVIEW

The Education Department General Administrative Regulations (EDGAR), 34 CFR 79, pertaining to intergovernmental review of Federal programs, apply to the program included in this application package.

Immediately upon receipt of this notice, all applicants, other than federally recognized Indian Tribal Governments, must contact the appropriate State Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform in more than one State should contact, immediately upon receipt of this notice, the Single Points of Contact for each State and follow the procedures established in those States under the Executive Order. A list containing the Single Point of Contact for each State is included in the application package for this program.

In States that have not established a process or chosen a program for review, State, area wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments by a State Point of Contact and any comments from State, area wide, regional, and local entities must be mailed or hand-delivered by the date in the Program announcement for Intergovernmental Review to the following address:

The Secretary
E.O. 12372 - CFDA # 84.200
U.S. Department of Education, FB-10, Room 6213
600 Independence Avenue, SW
Washington, DC 20202

In those States that require review for this program, applications are to be submitted simultaneously to the State Review Process and the U.S. Department of Education.

Proof of mailing will be de determined on the same basis as applications.

Please note that the above address is not the same address as the one to which the applicant submits its completed application.

DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.

STATE SINGLE POINTS OF CONTACT

ARIZONA

Ms. Janice Dunn
Arizona State Clearinghouse
3800 North Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone: (602) 280-1315

ARKANSAS

Ms. Tracie L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Service
Department of Finance and Administration
P.O. Box 3278
Little Rock, Arkansas 72203
Telephone: (501) 682-1074

CALIFORNIA

Mr. Glenn Staber
Grants Coordinator
Office of Panning & Research
1400 Tenth Street
Sacramento, California 95814
Telephone: (916) 323-7480

COLORADO

State Single Point of Contact
State Clearinghouse
Division of Local Government
1313 Sherman Street, Room 520
Denver, Colorado 80203
Telephone: (303) 866-2156

DELAWARE

Ms. Francine Booth
State Single Point of Contact
Executive Department
Thomas Collins Building
Dover, Delaware 19903
Telephone: (302) 739-3326

DISTRICT OF COLUMBIA

Mr. Rodney T. Hallman
State Single Point of Contact
Office of Grants Management & Development
717 14th St. N.W., Suite 500
Washington, DC 20005
Telephone: (202) 727-6551

FLORIDA

Florida State Clearinghouse
Intergovernmental Affairs Policy Unit
Executive Office of the Governor
Office of Planning & Budgeting
The Capitol
Tallahassee, Florida 32399-0001
Telephone: (904) 488-8114

GEORGIA

Charles H. Badger, Administrator
Georgia State Clearinghouse
270 Washington Street, S.W.
Room 534A
Atlanta, Georgia 30334
Telephone: (404) 656-3855

INDIANA

Ms. Jean S. Blackwell
Budget Director
State Budget Agency
212 State House
Indianapolis, Indiana 46204
Telephone: (317) 232-5610

IOWA

Mr. Steven R. McCann
Division for Community Progress
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 281-3725

KENTUCKY

Mr. Ronald W. Cook
Office of the Governor
Department of Local Government
1024 Capitol Center Drive
Frankfort, Kentucky 40601
Telephone: (502) 564-2382

MAINE

State Single Point of Contact
Attn: Joyce Benson
State Planning Office
State House Station #38
Augusta, Maine 04333
Telephone: (207) 289-3261

CONNECTICUT

Mr. William T. Quigg
Intergovernmental Review
Coordinator
State Single Point of Contact
Office of Policy and Management
Intergovernmental Policy Division
80 Washington Street
Hartford, Connecticut 06106-4459
Telephone: (203) 566-3410

ILLINOIS

Mr. Steve Klokkenga
State Single Point of Contact
Office of the Governor
State of Illinois
107 Stratton Building
Springfield, Illinois 62706
Telephone: (217) 782-1671

MARYLAND

Mary Abrams, Chief
Maryland State Clearinghouse
Department of State Planning
301 West Preston Street
Baltimore, Maryland 21201
Telephone: (301) 225-4490

In accordance with Executive Order #12372, "Intergovernmental Review Process," this listing represents the designated State Single Points of Contact. Upon request, a background document explaining the Executive Order is available. The Office of Management and Budget point of contact for updating this listing is: Donna Rivelli (202) 395-5090. The States not listed no longer participate in the process. These include: Alabama; Alaska; Kansas; Hawaii; Idaho; Louisiana; Minnesota; Montana; Nebraska; Oklahoma; Oregon; Pennsylvania; Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will be made only upon formal notification by the State.

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MASSACHUSETTS

Ms. Karen Arone
State Clearinghouse
Executive Office of Communities and Development
100 Cambridge Street, Room 1803
Boston, Massachusetts 02202
Telephone: (617) 727-7001

MICHIGAN

Richard S. Pastula
Director
Michigan Department of Commerce
Office of Federal Grants
P.O. Box 30225
Lansing, Michigan 48909
Telephone: (517) 373-7356

MISSISSIPPI

Ms. Cathy Mallette
Clearinghouse Officer
Office of Federal Grant Management and Reporting
Department of Finance and Administration
301 West Pearl Street
Jackson, Mississippi 39203
Telephone: (601) 949-2174

NEW HAMPSHIRE

Mr. Jeffrey H. Taylor, Director
New Hampshire Office of State Planning
Attn: Intergovernmental Review Process/James E. Bieber
2 1/2 Beacon Street
Concord, New Hampshire 03301
Telephone: (603) 271-2155

NEW JERSEY

Gregory W. Adkins, Acting Director
Division of Community Resources
New Jersey Department of Community Affairs

Please direct all correspondence and questions about intergovernmental review to:
Andrew Jaskolka
State Review Process
Division of Community Resources
CN 814, Room 609
Trenton, New Jersey 08625-0814
Telephone: (609) 292-9025

NEW MEXICO

Mr. George Elliott
Deputy Director
State Budget Division
Rm 190, Bataan Memorial Building
Santa Fe, New Mexico 87503
Telephone: (505) 827-3640

NORTH DAKOTA

North Dakota State Single Point of Contact
Office of Intergovernmental Assistance
Office of Management & Budget
600 East Boulevard Avenue
Bismarck, N. Dakota 58505-0170
Telephone: (701) 224-2094

OHIO

Mr. Larry Weaver
State Single Point of Contact
State\Federal Funds Coordinator
State Clearinghouse
Office of Budget & Management
30 East Broad Street, 34th Floor
Columbus, OH 43266-0411
Telephone: (614) 466-0698

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Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 14, 15, and 52
Federal Acquisition Regulation; Conforming Late Offer Treatment; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 14, 15, and 52

[FAR Case 97–030]

RIN 9000–AI25

Federal Acquisition Regulation; Conforming Late Offer Treatment

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to align guidance regarding receipt of late offers for commercial, sealed bid, and negotiated acquisitions.

DATES: Comments should be submitted on or before March 29, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97–030@gsa.gov.

Please cite FAR case 97–030 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1958. Please cite FAR case 97–030.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to provide a single standard for receipt of late offers under commercial, sealed bid, and negotiated acquisitions. The proposed rule amends paragraph (f) of the clause at FAR 52.212–1, Instructions to Offerors—Commercial Items, to permit consideration of late offers if the Government mishandled the offer. This proposed rule also amends guidance on receipt of late offers in FAR sections 14.304 and 15.208 and associated FAR solicitation provisions 52.214–7, Late Submissions, Modifications, and Withdrawals of Bids; 52.214–23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Bidding; and paragraph (c)(3) of the solicitation provision at 52.215–1, Instruction to Offerors—Competitive Acquisitions, to align the guidance for sealed bids and negotiated acquisitions. Solicitation provision 52.214–32, Late Submissions, Modifications, and Withdrawals of Bids (Overseas) and 52.214–33, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas) are deleted, as the revisions to 52.214–7 and 52.214–23 eliminate the need for a separate provision.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will affect when an offer is considered late, and, although no statistics regarding the number of late proposals exist, we expect that less than 1 percent of the offers will be received late. Under the rule, late offers, including late offers under commercial acquisitions will not be penalized for Government mishandling. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–030), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 14, 15, and 52

Government procurement.

Dated: January 22, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 14, 15, and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 14, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 14—SEALED BIDDING

2. Section 14.201–6 is amended by revising paragraph (c)(3); by removing paragraph (c)(4); by revising paragraph (r); by removing paragraph (v); and by redesignating paragraphs (w) through (y) as (v) through (x), respectively.

The revised text reads as follows:

14.201–6 Solicitation provisions.

* * * * *

(c) * * *

(3) 52.214–7, Late Submissions, Modifications, and Withdrawals of Bids.

* * * * *

(r) The contracting officer shall insert the provision at 52.214–23, Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

* * * * *

3. Section 14.304 is revised to read as follows:

14.304 Submission, modification, and withdrawal of bids.

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bid (IFB) by the time specified in the IFB. They may use any transmission method authorized by the IFB (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal of a bid received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late bid would not unduly delay the acquisition, and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m.

one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB, and urgent Government requirements preclude amendment of the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the IFB on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214–31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid. Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and, where practicable, shall be purged from primary and backup data storage systems.

(f) The contracting officer shall promptly notify any bidder if its bid, modification, or withdrawal, was received late, and shall inform the bidder whether its bid will be considered, unless contract award is imminent and the notices prescribed in 14.409 would suffice.

(g) Late bids and modifications that are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee shall be returned.

(h) The following shall, if available, be included in the contract files for each late bid, modification, or withdrawal:

(1) The date and hour of receipt.

(2) A statement, with supporting rationale, regarding whether the bid was considered for award.

(3) The envelope, wrapper, or other evidence of the date of receipt.

PART 15—CONTRACTING BY NEGOTIATION

4. Section 15.208 is revised to read as follows:

15.208 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for submitting proposals, and any revisions, and modifications, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b)(1) Any proposals, modification, revision, or withdrawal that is received at the designated Government office after the exact time specified for receipt of proposals is "late" and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition and—

(i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government's control prior to the time set for receipt of proposals; or

(iii) It was the only proposal received.

(2) However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Proposals may be withdrawn by written notice at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer shall document the contract file when oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror's request. Where practicable, electronically transmitted proposals that are withdrawn shall be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals shall only be returned at the offeror's request and expense.

(f) The contracting officer shall promptly notify any offeror if its proposal, modification, or revision was received late, and shall inform the offeror whether its proposal will be considered, unless contract award is imminent and the notice prescribed in 15.503(b) would suffice.

(g) Late proposals and modifications that are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(h) The following shall, if available, be included in the contracting office files for each late proposal, modification, revision, or withdrawal:

(1) The date and hour of receipt.

(2) A statement regarding whether the proposal was considered for award, with supporting rationale.

(3) The envelope, wrapper, or other evidence of date of receipt.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.212–1 is amended by revising the date of the clause and paragraph (f) to read as follows:

52.212–1 Instructions to Offerors—Commercial Items.

* * * * *

Instructions to Offerors—Commercial Items (Date)

* * * * *

(f) *Late submissions, modifications, revisions, and withdrawals of offers.* (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late offer would not unduly delay the acquisition, and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. The contracting officer shall document the contract file when such oral withdrawals are made. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

* * * * *

6. Section 52.214–7 is amended by revising the provision to read as follows:

52.214–7 Late Submissions, Modifications, and Withdrawals of Bids.

* * * * *

Late Submissions, Modifications, and Withdrawals of Bids (Date)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition, and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, a late modification of an otherwise successful bid that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision at 52.214–31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

7. Section 52.214–23 is amended by the revising the section heading and the provision to read as follows:

52.214–23 Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

* * * * *

Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding (Date)

(a) Bidders are responsible for submitting technical proposals, and any modifications or revisions, so as to reach the Government office designated in the request for technical proposals by the time specified in the invitation for bids (IFB). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids or revisions are due.

(b)(1) Any technical proposal under step one of two-step sealed bidding or modification or revision or withdrawal of such proposal received at the Government office designated in the request for technical proposals after the exact time specified for receipt will not be considered unless the Contracting Officer determines that accepting the late technical proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the request for technical proposals, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt; or

(iii) It is the only proposal received and it is negotiated under Part 15 of the Federal Acquisition Regulation.

(2) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the technical proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical

proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. If the request for technical proposals authorizes facsimile technical proposals, they may be withdrawn via facsimile received at any time before the exact time set for receipt of proposals, subject to the conditions specified in the provision at 52.214–31, Facsimile Bids. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

52.214–32 and 52.214–33 [Reserved]

8. Sections 52.214–32 and 52.214–33 are removed and reserved.

9. Section 52.215–1 is amended by revising the date of the provision and paragraph (c)(3) to read as follows:

52.215–1 Instructions to Offerors—Competitive Acquisition.

* * * * *

Instructions to Offerors—Competitive Acquisition (Date)

* * * * *

(c) * * *

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, revision, or withdrawal received at the Government office designated in the solicitation after the exact time specified for receipt of offers is "late" and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition, and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision at 52.215–5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

* * * * *

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Part VI

Department of Education

Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Higher Education Collaboration Between the United States and the European Community; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.116J]

Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: Higher Education Collaboration Between the United States and the European Community

Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education, combinations of institutions, and other public and private nonprofit educational institutions and agencies.

Applications Available: January 27, 1999.

Deadline for Transmittal of Applications: March 11, 1999.

Deadline for Intergovernmental Review: May 10, 1999.

Available Funds: $1,600,000 over three years.

Estimated Range of Awards: $100,000–$175,000 per consortium for up to three years. Awards for the first planning year will be $20,000 per consortium.

Estimated Average Size of Awards: $160,000 for up to three years.

Estimated Number of Awards: 10.

Project Period: Up to 36 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85 and 86.

Supplemental Information: For FY 1999, the competition includes an invitational priority to encourage proposals designed to support the formation of educational consortia of institutions in the United States and the European Union to encourage cooperation in the coordination of curricula, the exchange of students, and the opening of educational opportunities between the United States and the European Union. The invitational priority is issued in cooperation with the European Union. European institutions participating in any consortium proposal responding to the invitational priority may apply to the European Commission Directorate Generale for Education, Training, and Youth for funding under a separate European competition.

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority: Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility between the United States and the member states of the European Union.

Methods for Applying Selection Criteria

The Secretary gives equal weight to the listed criteria. Within each of the criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

1. *The quality of the design of the proposed project,* as determined by—

a. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

b. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

2. *The significance of the proposed project,* as determined by—

a. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

b. The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used in a variety of other settings; and

c. The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

3. *The adequacy of resources,* as determined by—

a. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project;

b. The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support; and

c. The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

For Applications or Information Contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 7th & D Streets, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175. You may also request application forms by calling 732–544–2872 (fax on demand), or application guidelines by calling 202–358–3041 (voice mail) or submitting the name of the competition and your name and postal address to FIPSE@ED.GOV (e-mail). Applications are also listed on the FIPSE Web Site <http://www.ed.gov/offices/OPE/FIPSE>. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. For additional program information call Beverly Baker at the FIPSE office (202–708–5750) between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512-1530 or, toll free, at 1–888–293–6498.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1138–1138d.

Dated: January 22, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

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Part VII

Department of Health and Human Services

Administration for Children and Families

Request for Applications Under the Office of Community Services' Fiscal Year 1999 Assets for Independence Demonstration Program (IDA Program); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–99–04]

Request for Applications Under The Office of Community Services' Fiscal Year 1999 Assets for Independence Demonstration Program (IDA Program)

AGENCY: Office of Community Services (OCS), ACF, DHHS.

ACTION: Announcement of availability of funds and request for competitive applications under the Office of Community Services' Assets for Independence Demonstration Program.

SUMMARY: The Office of Community Services (OCS) invites eligible entities to submit competitive grant applications for new demonstration projects that will establish, support, and participate in the evaluation of Individual Development Accounts for lower income individuals and families. Applications will be screened and competitively reviewed as indicated in this Program Announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

DATES: To be considered for funding applications must be *postmarked* on or before April 27, 1999. Applications postmarked after that date will not be accepted for consideration. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Richard Saul (202) 401–9341 or Sheldon Shalit (202) 401–4807, Department of Health and Human Services, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC, 20447.

In addition, this Announcement is accessible on the OCS WEBSITE for reading or downloading at "http://www.acf.dhhs.gov/programs/ocs" under "funding opportunities".

SUPPLEMENTARY INFORMATION: This program announcement consists of seven parts plus appendices:

PART I: BACKGROUND INFORMATION: legislative authority, program purpose, CFDA number, and definition of terms.

PART II: PROGRAM OBJECTIVES AND REQUIREMENTS: program priority areas, eligible applicants, project and budget periods, funds availability and grant amounts, project eligibility and requirements, non-Federal matching funds requirements, preferences, multiple applications, treatment of program income, and partnership with financial institutions.

PART III: THE PROJECT DESCRIPTION, PROGRAM PROPOSAL ELEMENTS AND REVIEW CRITERIA: project summary; the review process, project goals, application brevity; proposal elements and review criteria; and funding reconsideration.

PART IV: APPLICATION PROCEDURES: application materials, application development/availability of forms, application submission, intergovernmental review, initial OCS screening, application consideration.

PART V: INSTRUCTIONS FOR COMPLETING APPLICATION FORMS: SF424, SF424A, SF424B.

PART VI: CONTENTS OF APPLICATION AND RECEIPT PROCESS: content and order of program application, acknowledgement of receipt.

PART VII: POST AWARD INFORMATION AND REPORTING REQUIREMENTS: notification of grant award, attendance at evaluation workshops, reporting requirements, audit requirements, prohibitions and requirements with regard to lobbying, applicable Federal regulations.

APPENDICES: Application forms and required attachments.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including Program Announcements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number OMB–0970–0139 (expires 10/31/2000).

Part I. Background Information

A. Legislative Authority

The Assets for Independence Demonstration Program (IDA Program) was established by the Assets for Independence Act (AFI Act), under Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (P.L. 105–285, 42 U.S.C. 604 Note).

B. Program Purpose

The purpose of the program is, in the language of the AFI Act: to provide for the establishment of demonstration projects designed to determine:

(1) The social, civic, psychological, and economic effects of providing to individuals and families with limited means an incentive to accumulate assets by saving a portion of their earned income;

(2) The extent to which an asset-based policy that promotes saving for postsecondary education, homeownership, and microenterprise development may be used to enable individuals and families with limited means to increase their economic self-sufficiency; and

(3) The extent to which an asset-based policy stabilizes and improves families and the community in which the families live.

C. The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.602. The title is Assets for Independence Demonstration Program (IDA Program).

D. Definition of Terms

For the purposes of this Announcement:

(1) *AFI Act* means the Assets for Independence Act (Title IV of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998) which authorizes this program.

(2) *Eligible Individual* means an individual who meets the income and net worth requirements of the program as set forth in PART II, Section G(2)(a).

(3) *Emergency Withdrawal* means a withdrawal of only those funds, or a portion of those funds, deposited by the eligible individual (Project Participant) in an Individual Development Account of such Individual. Such withdrawal must be approved by the Project Grantee, must be made for an allowable purpose as defined in the AFI Act and under the Project Eligibility Requirements set forth in PART II of this Announcement, and must be repaid by the individual Project Participant within 12 months of the withdrawal. [See PART II, Section G(6)(b)]

(4) *Household* means all individuals who share use of a dwelling unit as primary quarters for living and eating separate from other individuals.

(5) *Individual Development Account* means a trust created or organized in the United States exclusively for the purpose of paying the qualified expenses of an eligible individual, or enabling the eligible individual to make an emergency withdrawal, but only if the written governing instrument creating the trust meets the requirements of the AFI Act and of the Project Eligibility and Requirements set

forth in this Announcement. [See PART II, Section G(3)]

(6) *Net Worth of a Household* means the aggregate market value of all assets that are owned in whole or in part by any member of the household, exclusive of the primary dwelling unit and one motor vehicle owned by a member of the household, minus the obligations or debts of any member of the household.

(7) *Project Grantee* means a Qualified Entity as defined in paragraph (10) below, which receives a grant pursuant to this Announcement.

(8) *Project Participant* means an Eligible Individual as defined in paragraph (2) above who is selected to participate in a demonstration project by a qualified entity.

(9) *Project Year* means, with respect to a funded demonstration project, any of the 5 consecutive 12-month periods beginning on the date the project is originally awarded a grant by ACF.

(10) *Qualified Entity* means an entity eligible to apply for and operate an assets for independence demonstration project, under Priority Area 1.0, as one or more not-for-profit 501(c)(3) tax exempt organizations, or a State or local government agency, or a tribal government, submitting an application jointly with such a not-for-profit organization. States eligible to apply under Priority Area 2.0 are deemed to be Qualified Entities.

(11) *Qualified Expenses* means one or more of the expenses for which payment may be made from an individual development account by a project grantee on behalf of the eligible individual in whose name the account is held, and is limited to expenses of (A) post-secondary education, (B) first home purchase, and/or (C) business capitalization, as defined below:

(A) *Post-Secondary Educational Expenses* means post-secondary educational expenses paid from an individual development account directly to an eligible educational institution, and includes:

(i) *Tuition and Fees* required for the enrollment or attendance of a student at an eligible educational institution.

(ii) *Fees, Books, Supplies, and Equipment* required for courses of instruction at an eligible educational institution.

(iii) *Eligible Educational Institution* means the following:

(I) *Institution of Higher Education.*—An institution described in Section 101 or 102 of the Higher Education Act of 1965.

(II) *Post-Secondary Vocational Education School.*—An area vocational education school (as defined in subparagraph (C) or (D) of section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any State (as defined in section 521(33) of such Act) as such sections are in effect on the date of enactment of this title.

(B) *First-Home Purchase* means qualified acquisition costs with respect to a principal residence for a qualified first-time homebuyer, if paid from an individual development account directly to the persons to whom the amounts are due. Within this definition:

(i) *Principal Residence* means a main residence, the qualified acquisition costs of which do not exceed 100 percent of the average purchase price applicable to a comparable residence in the area.

(ii) *Qualified Acquisition Costs* means the cost of acquiring, constructing, or reconstructing a residence, including usual or reasonable settlement, financing, or other closing costs.

(iii) *Qualified First-Time Homebuyer* means an individual participating in the project involved (and, if married, the individual's spouse) who has no present ownership interest in a principal residence during the 3-year period ending on the date on which a binding contract is entered into for purchase of the principal residence to which this subparagraph applies.

(C) *Business Capitalization* means amounts paid from an individual development account directly to a business capitalization account that is established in a Qualified Financial Institution and is restricted to use solely for qualified business capitalization expenses of the eligible individual in whose name the account is held. Within this definition:

(i) *Qualified Business Capitalization Expenses* means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(ii) *Qualified Expenditures* means expenditures included in a qualified plan, including but not limited to capital, plant, equipment, working capital, and inventory expenses.

(iii) *Qualified Business* means any business that does not contravene any law or public policy (as determined by the Secretary).

(iv) *Qualified Plan* means a business plan, or a plan to use a business asset purchased, which—

(I) Is approved by a financial institution, a microenterprise development organization, or a nonprofit loan fund having demonstrated fiduciary integrity;

(II) Includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(III) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(12) *Qualified Financial Institution* means a Federally insured Financial Institution, or a State insured Financial Institution if no Federally insured Financial Institution is available.

(13) *Qualified Savings of the Individual for the Period* means the aggregate of the amounts contributed by an eligible individual to the individual development account of the individual during the period.

(14) *Secretary* means the Secretary of Health and Human Services, acting through the Director of the Office of Community Services.

(15) *Tribal Government* means a tribal organization, as defined in section 4 of the Indian Self-Determination and Education Assistance Act (24 U.S.C. 450b) or a Native Hawaiian organization, as defined in section 9212 of the Native Hawaiian Education Act (20 U.S.C. 7912).

(16) *Trust Agreement* means the instrument by which an Individual Development Account is established in the partnering Financial Institution as required in PART II Section G(3).

(17) *Trustee* means the Qualified Financial Institution responsible for management of the Individual Development Account pursuant to the Trust Agreement.

Part II. Program Objectives and Requirements

The Office of Community Services (OCS) invites qualified entities to submit competing grant applications for new demonstration projects that will establish, support, manage, and participate in the evaluation of Individual Development Accounts for eligible participants among lower income individuals and families.

A. Program Priority Areas

There are two Program Priority Areas under this program: Priority Area 1.0, under which OCS will accept applications from Qualified Entities as described below and in Section G; and Priority Area 2.0, under which OCS will accept applications from States for eligible statewide individual asset-building programs carried out in a manner consistent with the purposes of the Assets for Independence Act, that were established under State law as of the date of enactment of that act [October 27, 1998], and that as of such date were operating with an annual State appropriation of not less than $1,000,000 in non-Federal funds.

B. Eligible Applicants

Eligible applicants for the Assets for Independence Demonstration Program Priority Area 1.0 are one or more not-for-profit 501(c)(3) tax exempt organizations, or a State or local government agency, or a tribal government, submitting an application jointly with such a not-for-profit organization. Applicants must provide documentation of their tax exempt status. The applicant can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of their currently valid IRS tax exemption certificate. Failure to provide evidence of Section 501(c)(3) tax exempt status will result in rejection of the application.

For Priority Area 2.0 eligible applicants are States which are carrying out any statewide individual asset-building program that is carried out in a manner consistent with the purposes of the Assets for Independence Act, and which was established under State law as of the date of enactment of that act [October 27, 1998], and that as of such date was operating with an annual State appropriation of not less than $1,000,000 in non-Federal funds. Applicants under Priority Area 2.0 must provide documentation that their program meets these requirements.

C. Project and Budget Periods for Projects under Priority Area 1.0

This announcement is inviting applications under Priority Area 1.0 for project and budget periods of five (5) years. Grant actions, on a competitive basis, will award funds for the full five year project and budget period. As noted below in Section E., subject to the availability of funds, grantees may be offered the opportunity to compete for supplementary funding in later years during the five-year project.

Note: Applicants should be aware that OCS funds awarded pursuant to this Announcement will be from FY 1999 funds and may not be expended after the end of the five-year Project/Budget Period to support administration of the project or matching contributions to Individual Development Accounts which may be open at that time.

D. Project and Budget Periods for Projects Under Priority Area 2.0

This announcement is inviting applications from eligible States under Priority Area 2.0 for project periods of five (5) years. Awards will be for an initial one-year budget period. Applications for continuation grants funded under these awards beyond the one-year budget period but within the five (5) year project period will be entertained in subsequent years on a noncompetitive basis, subject to satisfactory progress of the grantee, availability of funds, and a determination that continued funding would be in the best interest of the Government.

E. Funds Availability and Grant Amounts Under Priority Area 1.0

In Fiscal Year 1999 approximately $7.44 million is available under Priority Area 1.0 for funding commitments to approximately 30 projects, not to exceed $500,000 and averaging a total of approximately $250,000 for the five-year project and budget periods. Applicants are reminded that grant awards are limited to the amount of committed non-Federal cash matching contributions, and are urged to make realistic projections of project needs over the five year project and propose project budgets accordingly. Draw-down of grant funds over the five-year budget period will be permitted in amounts that will match non-Federal deposits into the Project Reserve Fund. (See PART II Section I.) As noted above, subject to availability of funds and the progress of individual demonstration projects, grantees may be offered the opportunity to compete for supplementary funding in later years during the five-year project, if there were a determination that this would be in the best interest of the government.

F. Funds Availability and Grant Amounts Under Priority Area 2.0

In Fiscal Year 1999 up to approximately $1.86 million is available under Priority Area 2.0 for up to two grants of up to approximately $930,000 each for the first budget year of a five-year State project. Any funds not awarded in FY 1999 under Priority Area 2.0 will be available for project grants under Priority Area 1.0.

G. Project Eligibility and Requirements Under Priority Area 1.0

To be eligible for funding under Priority Area 1.0, projects must be sponsored and managed by Qualified Entities and must meet the following requirements:

(1) Reserve Fund. A grantee, other than a State or local government agency or tribal government, must establish a Reserve Fund and maintain it in accordance with accounting regulations prescribed by the Secretary. (Note: Such regulations will be issued prior to grant awards and made available to grantees at the time of the award.)

(a) Amounts in the Reserve Fund. As soon after receipt as is practicable, such grantees shall deposit in such Reserve Fund the non-Federal matching contributions received pursuant to the "Non-Federal Share Agreement" or Agreements reached with the provider(s) of non-Federal matching contributions. Once such non-Federal funds are deposited in the Reserve Fund, grantees may draw down OCS grant funds in amounts equal to such deposits. Similarly, as soon after receipt as practical, such grantees shall deposit the income received from any investment made of those funds (see below).

(b) Use of Amounts in the Reserve Fund. Grantees shall use the amounts in such Reserve Fund as follows:

(A) At least 90.5% of the funds shall be used as matching contributions, equally divided between federal and non-federal monies, to individual development accounts for project participants, in an agreed upon ratio to deposits made in those accounts by project participants from earned income.

(B) At least 2% but no more than 9.5% of the Federal grant funds shall be used toward the expense of collecting and providing to the research organization evaluating the demonstration project the data and information required for the evaluation.

(C) Up to 7.5% of the Federal grant funds may be used for administration of the demonstration project and toward expenses of assisting project participants to obtain the skills (including economic literacy, budgeting, and business management skills), training, and information necessary to achieve economic self-sufficiency through activities requiring qualified expenses.

(D) Up to 9.5% of the required matching non-Federal funds may be used for expenses outlined in Paragraphs (B) and (C), above, or other project-related expenses as agreed by the Applicant and the providing entity.

Note: If a grantee mobilizes matching non-Federal contributions in excess of the required 100 percent match, such non-Federal funds may be used however the grantee and provider of the funds may agree.

(c) Authority to Invest Funds. A grantee shall invest the amounts in its Reserve Fund that are not immediately needed for payment under paragraph (b), in a manner that provides an appropriate balance between return, liquidity, and risk, and in accordance with Guidelines which will be issued by the Secretary prior to making of grant awards and provided to grantees at the time of grant award.

(d) Use of Investment Income. Income generated from investment of Reserve Fund monies that are not allocated to existing Individual Development Accounts may be added by grantees to the funds committed to program administration, participant support, or evaluation data collection. As noted in Paragraph M, below, once funds have been committed as matching contributions to Individual Development Accounts, then any income subsequently generated by such funds must be deposited/credited to the credit of such accounts.

Note: No part of such income is to be considered as a Federal funds contribution subject to the $2000/$4000 limitations under Paragraph (5)(b), below.

(e) Joint Project Administration. If two or more qualified entities are jointly administering a project, none shall use more than its proportional share for the purposes described in subparagraphs (B) and (C), of paragraph (b).

(2) Eligibility and Selection of Project Participants.

(a) Participant Eligibility. Eligibility for participation in the demonstration projects is limited to individuals who are members of households eligible for assistance under TANF or of households whose adjusted gross income does not exceed the earned income amount described in Section 32 of the Internal Revenue Code of 1986 (taking into account the size of the household), and whose net worth as of the end of the calendar year preceding the determination of eligibility does not exceed $10,000, excluding the primary dwelling unit and one motor vehicle owned by a member of the household.

(b) Participant Selection. In keeping with the statutory preference in Section 405(d)(3) of the AFI Act for applications that target individuals from neighborhoods or communities that experience high rates of poverty or unemployment, grantees under Priority Area 1.0 only, in their selection of Project Participants, may restrict participation in such neighborhoods or communities targeted by their demonstration projects to individuals and households with lower incomes and net worth than set forth above, provided that they shall nonetheless select individuals that they determine to be best suited to participate in the demonstration project.

(3) Establishment of Individual Development Accounts. Grantees must create, through written governing instruments, trusts which will be Individual Development Accounts on behalf of Project Participants. Trustees must be Qualified Financial Institutions. The written governing instruments of the trusts must contain the following requirements:

(a) No contribution will be accepted unless in cash or by check.

Note: In accordance with U.S. Treasury Regulations and accepted commercial practice, electronic transfer of funds will be considered a cash payment for purposes of this Announcement.

(b) The assets of the trust will be invested in accordance with the direction of the Project Participant after consultation with the grantee and pursuant to the guidelines of the Secretary (which will be issued prior to the making of grant awards and made available to grantees at the time of grant award).

(c) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(d) In the event of the death of the Project Participant, any balance remaining in the trust shall be distributed within 30 days of the date of death to another Individual Development Account established for the benefit of an eligible individual as directed by the Participant in the Savings Plan Agreement under sub-paragraph (h), below; provided, that the Participant may at their option direct the disposition of any funds in the trust which were deposited in the trust by the Participant.

(e) Except in the case of the death of the Project Participant, amounts in the trust attributable to deposits by the grantee from grant funds and matching non-federal contributions, and any interest thereon, may be paid, withdrawn or distributed out of the trust only for the purpose of paying qualified expenses of the Project Participant (i.e. for post-secondary education expenses, first-home purchase, or business capitalization. See PART I Section D(11))

(f) The procedures governing the withdrawal of funds from the Individual Development Account, for both Qualified Expenses and Emergency Withdrawals, which comply with the provisions of Paragraph (6) Withdrawals from Individual Development Accounts, below.

(g) A provision, in accordance with the direction of the Project Participant, for the distribution within 30 days of any balance in the trust on the day following the death of such Participant, to another individual development account established for the benefit of an eligible individual.

[**Note** that this will mean that each Project Participant must provide such direction at the time the Individual Development Account is established. Provision should be made by grantees for modification of such directions during the course of the project, in the event of changing circumstances.]

(h) a "Savings Plan Agreement" between the grantee and the Project Participant, which should include: (1) savings goals (including a proposed schedule of savings deposits by the Participant from earned income, which may be for a period of less than five years); (2) the rate at which participant savings will be matched (from one dollar to eight dollars for each dollar in savings deposited by Participant, up to a total of $2000 during the five-year project period); (3) the proposed qualified expense for which the Account is maintained, (4) any training or education related to the qualified expense which the Grantee agrees to provide and of which the Participant agrees to partake, (5) contingency plans in the event that the Participant exceeds or fails to meet projected savings goals or schedules, (6) any agreement as to investments of assets described in subparagraph (c), above, (7) provision for disposition of the funds in the trust (account) in the event of the Participant's death (see sub-Paragraph (d), above; and (8) provision for amendment of the Agreement with the concurrence of both Grantee and Participant.

(4) Custodial Accounts. Grantees may establish Custodial Accounts on behalf of minor children of Eligible Individuals, or up to age 24 in the case of students, of disabled dependents of Eligible Individuals, or of Eligible Individuals who are disabled. Such a Custodial Account shall be treated as a trust if the assets of the custodial account are held by a bank (as defined in section 408(n) of the Internal Revenue Code of 1986) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which such person will administer the custodial account will be consistent with the requirements of the AFI Act and paragraph (3), above, and if the custodial account would, except for the fact that it is not a trust, constitute an individual development account described above. In the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of that custodial account shall be treated as the trustee of the account. Grantees are reminded that (1) the savings deposits into such Custodial Accounts can be made only from earned income of the Eligible Individual, and (2) there is a limitation of $2000 per individual and $4000 per household on matching contributions from OCS grant funds.

(5) Deposits in Individual Development Accounts.

(a) Matching Contributions. Not less than once every three months during the demonstration project grantees will make deposits into Individual Development Accounts, or into a parallel account maintained by the grantee, as matching contributions to deposits made by Project Participants during the period since the previous deposit, from earned income.

Note: Deposits made by Project Participants shall be deemed to have been made from earned income so long as the Participant's earned income (as defined in Section 911(d)(2) of the Internal Revenue Code of 1986) during the period since the Participant's previous deposit in the account is greater than the amount of the current deposit.

Matching contributions must be made in equal amounts from Federal grant funds and non-Federal public and private funds committed to the project as matching contributions. Matching contribution deposits by grantees (Federal plus non-Federal) may be from $1 to $8 for each dollar of earned income deposited in the account by the Project Participant in whose name the account is established. At the time such deposits are made, the grantee will also deposit into the Individual Development Account (or the parallel account) any interest or income that has accrued since the previous deposit on amounts previously deposited in or credited to that account.

(b) Limitations on Matching Contributions. Over the course of the five year demonstration, not more than $2,000 in Federal grant funds shall be provided through matching contributions to any one individual; and not more than $4,000 shall be provided to any one household.

(6) Withdrawals from Individual Development Accounts.

(a) Limitations. No earlier than six months after the initial deposit by a Project Participant in an Individual Development Account, funds may be withdrawn from such account, but only upon written approval of the Project Participant and of a responsible official of the project grantee, and only for one or more Qualified Expenses (as defined in Part I) or for an Emergency Withdrawal.

(b) Emergency Withdrawals. An Emergency Withdrawal may only be of those funds, or a portion of those funds, deposited in the account by the Project Participant, and for the following purposes:

(i) Expenses for medical care or necessary to obtain medical care for the Project Participant or a spouse or dependent of the Participant;

(ii) Payments necessary to prevent eviction of the Project Participant from, or foreclosure on the mortgage for, the principal residence of the Participant;

(iii) Payments necessary to enable the Project Participant to meet necessary living expenses (food, clothing, shelter—including utilities and heating fuel) following loss of employment.

(c) Reimbursement of Emergency Withdrawals. A Project Participant shall reimburse an Individual Development Account for any funds withdrawn from the account for an Emergency Withdrawal, not later than 12 months after the date of the withdrawal. If the Participant fails to make the reimbursement, the Project Grantee must transfer the funds deposited into the account or a parallel account from Federal and non-Federal matching contributions, and any income generated thereby, back to the Reserve Fund of the grantee, and use the funds to benefit other individuals participating in the demonstration project involved. Any remaining funds deposited by the Project Participant (plus any income generated thereby) shall be returned to such Project Participant.

(d) Transfers to Individual Development Accounts of Family Members. At the request of a Project Participant, and with the written approval of a responsible official of the grantee, amounts may be paid from an individual development account directly into another such account established for the benefit of an eligible individual who is—

(i) The Participant's spouse, or

(ii) Any dependent of the Participant with respect to whom the Participant is allowed a deduction under section 151 of the Internal Revenue Code of 1986.

H. Project Eligibility and Requirements under Priority Area 2.0

State applicants which are eligible under Priority Area 2.0 (see PART II Sections A and B) are subject to the same Project Eligibility standards and Requirements as grantees under Priority Area 1.0 except that where such standards or requirements are inconsistent with State statutory requirements in effect as of the date of enactment of the AFI Act (October 27, 1998), governing such statewide program; they shall not apply to the program.

I. Non-Federal Matching Funds Requirements

Grantees must provide at least one hundred percent of the OCS grant amount in cash non-Federal share for deposit to the Reserve Fund as matching contribution. Public sector resources that can be counted toward the minimum required match include funds from State and local governments, and funds from various block grants allocated to the States by the Federal Government providing the authorizing legislation for these grants permits such use. (Note, for example, that Community Development Block Grant (CDBG) funds may be counted as matching funds; CSBG FUNDS MAY NOT.) To be considered for funding an Application must include a copy of a "Non-Federal Share Agreement" or Agreements in writing executed with the entity or entities providing the required non-Federal matching contributions, on letterhead of the entity and signed by a person authorized to make a commitment on behalf of the entity. Such Agreement(s) must include: (1) a commitment to provide the non-Federal funds contingent only on the grant award; (2) a schedule of deposits to the project's Reserve Fund of at least ten percent of the total committed for the entire project at the start of each of the five Project Years, plus any additional amounts needed to assure that there is at least $2000 of non-Federal matching contribution funds in the Reserve Fund for each Individual Development Account that has been opened; and (3) a statement that up to 9.5 percent of the required non-Federal matching contribution funds it provides may be allocated from the Reserve Fund to the support of project administration, Participant support, data collection or other project-related expenses. (See Section G(1)(b), above, and PART IV, Section D(5)) Grantees are encouraged to mobilize additional resources, which may be cash or in-kind contributions, Federal or non-Federal, for support of project administration and assistance to Project Participants in obtaining skills, knowledge, and needed support services. (See PART III, Element IV)

Note: If a grantee mobilizes matching non-Federal contributions in excess of the required 100 percent match, such non-Federal funds may be used however the grantee and provider of the funds may agree. Grantees will be held accountable for commitments of such excess matching funds and additional resources proposed or pledged as part of an approved application even if over the amount of the required match.

J. Preferences

In accordance with the provisions of the AFI Act, in considering an application to conduct a demonstration project under Priority Area 1.0, OCS

will give preference to an application that

(1) Demonstrates the willingness and ability of the applicant to select individuals for participation in the project who are predominantly from households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardians;

(2) Provides a commitment of non-Federal funds with a proportionately greater amount of such funds committed from private sector sources; and

(3) Targets individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities, public housing developments, Empowerment Zones and Enterprise Communities) that experience high rates of poverty or unemployment.

K. Multiple Applications

Qualified Entities may submit more than one application for different demonstration projects, but no more than one such application will be funded to the same Qualified Entity.

L. Treatment of Program Income

As noted in Section G(1)(d), above, income generated from investment of unallocated funds in the Reserve Fund may be added to the funds already committed from the Reserve Fund to program administration, participant support, or evaluation data collection. However, once funds have been committed as matching contributions to Individual Development Accounts, then any income generated by such funds must be deposited proportionately to the credit of such accounts.

Note: No part of such income is to be considered as a Federal funds contribution subject to the $2000/$4000 limitations under Section G(5)(b), above. (See also Sections G(1)(d) and G(5)(a), above).

M. Agreements With Qualified Financial Institutions

All applicants under Priority Area 1.0 must enter into agreements with one or more Qualified Financial Institutions, under which Reserve Funds and Individual Development Accounts will be established and maintained. To be considered for funding, an Application under Priority Area 1.0 must include a copy of an Agreement or Agreements with one or more partnering Qualified Financial Institutions, which state(s) that the accounting procedures to be followed in account management will conform to Guidelines established by the Secretary (which will be issued prior to grant awards and made available to grantees at time of award), and under which the partnering Financial Institution agrees to provide data and reports as requested by the applicant. The Agreement may also include other services to be provided by the partnering Financial Institution that could strengthen the program, such as Financial Education Seminars, favorable pricing or matching contributions provided by the Financial Institution, and assistance in recruitment of Project Participants.

Part III. The Project Description, Program Proposal Elements and Review Criteria

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Cross-referencing should be used rather than repetition. OCS is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

A. Project Summary

Applicants should provide a Project Summary of not more than one page which should be page 1 of the Project Narrative-/Description.

B. Project Goals, Application Brevity

The ultimate goals of the projects to be funded under the Assets for Independence Demonstration Program are: (1) to achieve, through project activities and interventions, the creation of asset accumulation opportunities for recipients of Temporary Assistance for Needy Families (TANF) and other eligible individuals and families that can lead to economic self-sufficiency of members of the communities served through activities requiring one or more qualified expenses; (2) to support and make possible the evaluation of the effectiveness of these interventions and of the project design through which they were implemented; and (3) thus to make possible the replication of successful programs. As noted here, OCS intends to make the awards of all the above grants on the basis of brief, concise narrative project descriptions. The elements and format of these project descriptions, along with the review criteria that will be used to evaluate them, will be outlined in this Part.

In order to simplify the application preparation and review process, OCS seeks to keep grant proposals cogent and brief. Applications with project narratives (excluding appendices) of more than 30 letter-sized pages of 12 c.p.i. type or equivalent on a single side will not be reviewed for funding. Applicants should prepare and assemble their project description using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

C. Proposal Elements and Review Criteria for Applications Under Priority Area 1.0

Applications which pass the initial screening will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement. Scoring will be based on a total of 100 points.

The competitive review of proposals will be based on the degree to which applicants:

(1) Adhere to the requirements in PART II and incorporate each of the Elements and Sub-Elements below into their proposals, so as to:

(2) Describe convincingly a project that will develop new asset accumulation opportunities for TANF recipients and other eligible individuals and families that can lead to a transition from dependency to economic self-sufficiency through activities requiring one or more qualified expenses; and

(3) Provide for the collection of relevant data to support the testing and evaluation of the project design, implementation, and outcomes so as to make possible replication of a successful program.

For each of the Project Elements or Sub-Elements below there is at the end of the discussion a suggested number of pages to be devoted to the particular element or sub-element. These are suggestions only; but the applicant must remember that the overall Project Narrative must not be longer than 30 pages.

Element I. Organizational Experience and Administrative Capability. (Total Weight of 0 to 20 Points

Sub-Element I(a) Experience and Staffing. (Weight of 0–10 Points)

The applicant should cite its capability and relevant experience in developing and operating programs which deal with poverty problems similar to those to be addressed by the proposed project, including the provision of supportive services to TANF recipients and other low income individuals and families seeking to achieve economic stability and self-sufficiency, as well as with evaluations and data collection. Applications should identify applicant agency executive leadership in this section and briefly describe their involvement in the proposed project and provide assurance of their commitment to its successful implementation. The application should note and justify the priority that this project will have within the agency including the facilities and resources that it has available to carry it out.

Finally, the application must identify the two or three individual staff persons who will have the most responsibility for managing the project, coordinating services and activities for participants and partners, and for achieving performance targets. The focus should be on the qualifications, experience, capacity and commitment to the program of the key staff persons who will administer and implement the project. The person identified as Project Director should have supervisory experience, experience in working with financial institutions and budget related problems of the poor, and experience with the target population. Because this is a demonstration project within an already-established agency, OCS expects that the key staff person(s) would be identified, if not hired.

It is suggested that applicants use no more than 3 pages for this sub-Element, not counting actual resumes or position descriptions, which should be included in an Appendix to the proposal.

Sub-Element I(b) Ability to Assist Participants. (Weight of 0–10 Points)

The experience and ability of the applicant in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through the development of assets. The application should cite the organization's experience in collaborative programming and operations which involve financial institutions and financial planning, budget counseling, educational guidance, preparation for home ownership, and self-employment training. The application should also cite the roles, responsibilities, and experience of any other organizations that will be collaborating with the Applicant to assist and support Project Participants in the pursuit of their goals under the project.

It is suggested that applicants use no more than 3 pages for this sub-Element. Any supportive materials or reports should be included in the Appendix to the proposal.

Element II. Sufficiency of the Project Theory, Design, and Plan (Total Weight of 0–40 Points)

The degree to which the project described in the application appears likely to aid project participants in achieving economic self-sufficiency through activities requiring one or more qualified expenses.

OCS seeks to learn from the application why and how the project as proposed is expected to establish the creation of new opportunities for asset accumulation by eligible individuals and families that can lead to significant improvements in individual and family self-sufficiency through activities requiring one or more qualified expenses: for post-secondary education, home ownership, and/or qualified business capitalization.

Applicants are urged to design and present their project in terms of a conceptual cause-effect framework that makes clear the relationship between what the project plans to do and the results it expects to achieve.

Sub-Element II(a). Description of Target Population, Analysis of Need, and Project Assumptions (Weight of 0–15 Points)

The project design or plan should begin with identifying the underlying assumptions about the program. These are the beliefs on which the proposed program is built. They should begin with assumptions about the strengths and needs of the population to be served; about how the accumulation of assets will enable project participants to build on those strengths in their quest to achieve self-sufficiency; about what anticipated needs of the participants could be barriers to that achievement, and why and how the services or interventions proposed by the applicant are appropriate and will meet those needs and remove such barriers; and about the impact the proposed interventions will have on the project participants.

In other words, the underlying assumptions of the program are the applicant's analysis of the participant strengths and potential to be supported and their needs and problems to be addressed by the project, and the applicant's theory of how its proposed interventions will address those strengths and needs to achieve the desired result. Thus a strong application is based upon a clear description of the needs and problems to be addressed and a persuasive understanding of the causes of those problems.

In this sub-element of the proposal the applicant must precisely identify the target population to be served. The geographic area to be impacted should then be briefly described, citing the percentage of residents who are low-income individuals and TANF recipients, as well as the unemployment rate, and other data that are relevant to the project design.

The application should include an analysis of the identified personal barriers to employment, job retention and greater self-sufficiency faced by the population to be targeted by the project. (These might include such problems as illiteracy, substance abuse, family violence, lack of skills training, health or medical problems, need for childcare, lack of suitable clothing or equipment, or poor self-image.) The application should also include an analysis of the identified community systemic barriers which the project will seek to overcome. These might include lack of public transportation; lack of markets; unavailability of financing, insurance or bonding; inadequate social services (employment service, child care, job training); high incidence of crime; inadequate health care; or environmental hazards. Applicants should be sure not to overlook the personal and family services and support needed by project participants after they are on the job which will enhance job retention and advancement, and help to assure that benefits attainable through asset accumulation are not wasted by crises beyond the participants' control.

Note: In accordance with the legislative preferences set forth in Part III Section J, above, the maximum score for this sub-Element in the review of applications under Priority Area 1.0 will only be given to applications which—

(1) Demonstrate the willingness and ability of the applicant to select individuals for participation in the project who are predominantly from households in which a child (or children) is living with the child's biological or adoptive mother or father, or with the child's legal guardians; and

(2) Target individuals residing within one or more relatively well-defined neighborhoods or communities (including rural communities, public housing developments, Empowerment Zones and

Enterprise Communities) that experience high rates of poverty or unemployment.

Each of these preferences will be valued at 2 points in the proposal review, so that the absence of one will reduce the review score for the sub-Element by 2 points; the absence of both will reduce the review score by 4 points.

It is suggested that applicants use no more than 5 pages for this Sub-Element.

Sub-Element II(b). Project Approach and Design: Interventions, Outcomes, and Goals (Weight of 0–20 Points)

The Application should outline a plan of action which describes the scope and detail of how the proposed work will be accomplished and result in outcomes which will build on the strengths of the Program Participants and assist them to overcome the identified personal and systemic barriers to achieving self-sufficiency. In other words, what will the project staff do with the resources provided to the project and how will what they do (interventions) assist project participants to accumulate assets in Individual Development Accounts and use those assets for qualified expenses in a manner that will lead them to self-sufficiency?

In this sub-element the applicant should discuss all of the planned activities and interventions and should explain the reasons for taking the approaches proposed.

The application should include here a brief discussion of the following aspects of the proposed project:

(1) Plans for recruitment of participants into the program;

(2) Criteria for selection of participants from among the eligible target population;

(3) The proposed rate(s) for matching contributions to Individual Development Accounts. (If more than one rate project-wide is proposed, the rationale should be provided);

(4) The provisions of the "Savings Plan Agreements" proposed to be made with Project Participants and included in the Trust Agreements establishing Individual Development Accounts. (A sample Savings Plan Agreement may be provided to satisfy this criterion.) [See PART II, Section G(3)(g) of this Announcement]

(5) The role of partnering financial institutions in account management and data collection and reporting;

(6) The role of the applicant and partners in providing training, counseling, and other types of support to participants, including those activities documented as in-kind contributions to the project under Element IV, below; and

(7) Any plans included in the proposed project for crisis intervention activities that will be able to provide assistance to participants so as to avoid emergency withdrawals which might jeopardize continued participation in the project.

It is suggested that applicants use no more than 9 pages for this Sub-Element, not including any sample "Savings Plan Agreement", which if provided should be included in an Appendix.

Sub-Element II(c). Work Plan, Projections, Time Lines. (Weight of 0–5 Points)

Applicant should provide quantitative quarterly projections of the activities to be carried out and such information as the projected number of participants to be enrolled, the number of Individual Development Accounts to be opened, the number and amount of deposits, and the number and types of services provided to participants. The plan should briefly describe the key project tasks, and show the timelines and major milestones for their implementation. Applicant may be able to use a simple Gantt or time line chart to convey the work plan in minimal space.

It is suggested that applicants use no more than 2 pages for this Sub-Element.

Element III. Evaluation Data: Adequacy of Plan for Providing Information for Evaluation (Weight of 0–15 Points)

Applicant should identify the kinds of data to be collected, maintained, and/or disseminated. The AFI Act makes provision for a national evaluation of the demonstration program as a whole, and sets aside 2% of the appropriated funds for its support. In addition, each grantee must spend at least 2% of its grant funds (but not more than 9.5%) for the collection of data needed to support the evaluation. This Element of the application will be judged on the adequacy of the plan for providing information relevant to an evaluation of the project.

Note: The maximum score for this Element will be awarded in the review process to applications that include a statement that the applicant agrees to use the "MIS IDA" information system software developed by the Center for Social Development, or a *comparable and compatible* system, for the maintenance, collection, and transmission of data from the proposed project.

It is suggested that applicants use no more than 2 pages for this Element.

Element IV. Commitment of Non-Federal Funds and Additional Resources. (Weight of 0–15 Points)

The aggregate amount of direct funds from non-federal public sector and from private sources that are formally committed to the project as matching contributions; and the mobilization of additional resources in support of project .

As noted below in Part IV, Paragraph D Initial OCS Screening, only applications which include written documentation of a commitment to the provision of a non-Federal share, in cash as distinguished from in-kind, of at least the amount of the total federal budget for the project will be considered for competitive review.

At the same time, OCS has determined that the strict legislative limitations on the use of Federal grant funds and of the minimum required non-Federal match (at least 90.5% of each must go toward matching deposits in Individual Development Accounts) mean that important training, counseling and support activities, critical to the success of a project, can only be supported by additional resources, both of the applicant itself and mobilized by the applicant in the community.

Consequently, applicants documenting only the required non-Federal 100% cash matching contributions to the project will receive no more than 8 points for this Element, subject to the Notation below regarding legislative preferences.

In this section the applicant should identify those additional resources, cash and in-kind, which will be dedicated to support of those activities and interventions identified in sub-Element II(b), such as training, counseling, and crisis intervention; and any staff activities described in Element III. Such resources may be existing programs of the applicant or a project partner, such as Family Development, Literacy classes, or Small Business Training, in which Project Participants will be enrolled as part of their efforts to achieve self-sufficiency. This Element will be judged in the review process on the adequacy of the mobilized resources to support the activities and interventions described in sub-Element II(b). The commitment of such resources to the project must be documented in writing and submitted as an Appendix to the Application. Because such additional resources are not part of the legislatively mandated non-Federal matching requirement, these additional resources may be of Federal or non-Federal origin, public or private, in cash or in-kind. Applicants are reminded that they will be held accountable for commitments of such additional resources even if over the amount of the required match.

Note: In accordance with the legislative preferences set forth in Part III Section J,

above, the maximum score for this Element, in the review of applications under Priority Area 1.0 only, will only be given to applications which provide a commitment of required non-Federal cash matching contributions with a proportionately greater amount of such funds committed from private sector as opposed to public sources. This preference will be valued at 2 points in the proposal review, so that the absence of such a commitment will reduce the review score for the Element by 2 points.

It is suggested that no more than 3 pages be used for this Element, not including any letters of commitment or partnership agreements, which should be put in an Appendix to the proposal.

Element V. Results or Benefits Expected: Significant and Beneficial Impacts. (Weight of 0–10 Points)

The proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community and lead TANF recipients and other eligible individuals and families toward economic self-sufficiency. Results are expected to be quantifiable in terms of the number of Individual Development Accounts opened, their rate of growth, the number and size of withdrawals for each of the three qualified expenses, and the impact of the payment of those expenses on the participants' movement toward self-sufficiency.

Applicants should set forth their realistic goals and projections for attainment of these and other beneficial impacts of the proposed project.

Critical issues or potential problems that might affect the achievement of project objectives should be explicitly addressed, with an explanation of how they would be overcome, and how the objectives will be achieved notwithstanding any such problems.

It is suggested that no more than 3 pages be used for this Element.

D. Proposal Elements and Review Criteria for Application Under Priority Area 2.0.

Applications under Priority area 2.0 will be reviewed by OCS staff for their satisfactory adherence to the following criteria. These criteria will be considered thresholds for eligible State Applicants to receive grants and participate in the IDA Program. Consequently, rather than a rating score in points, reviewers will rate the Applications as having met the criterion satisfactorily or not. To be recommended for funding Applications under Priority Area 2.0 must satisfactorily meet all of the following criteria:

Element I: Sufficiency of the Project

Applicants should describe the project to be carried out, including participant recruitment, criteria for participant selection, the rate(s) by which participant savings will be matched, the role of the State and local project administrators in providing training, counseling, and other types of support to participants designed to help them achieve economic self-sufficiency. The Application will be reviewed on the degree to which the project described in the application appears likely to aid project participants in achieving economic self-sufficiency through activities requiring one or more qualified expenses.

Element II: Administrative Ability

The Application will be reviewed on the experience and ability of the applicant to responsibly administer the project. The application should describe how the applicant proposes to administer the project, what collaboration exists or is proposed with financial institutions for management of Individual Development Accounts, and the type of agreement reached with Project Participants with regard to planned savings and the goal or goals to be pursued in achieving one or more the Qualified Expenses. The Application should include a statement that the accounting procedures to be followed in account management will conform to Guidelines established by the Secretary (which will be issued prior to grant awards and made available to grantees at time of the award), and that any partnering financial institution agrees to provide data and reports as requested by the applicant.

Element III: Ability to Assist Participants

The application should document the experience and ability of the applicant in recruiting, educating, and assisting project participants to increase their economic independence and general well-being through the development of assets.

Element IV: Commitment of Non-Federal Funds

The aggregate amount of direct funds from non-federal public sector and from private sources that are formally committed to the project as matching contributions to Individual Development Accounts. The application must contain documentation of commitment of non-Federal matching cash contribution to the project in an amount equal to the grant requested, which will be available to the project during the Budget Period of the grant.

Element V: Adequacy of Plan for Providing Information for Evaluation

The adequacy of the plan for providing information relevant to an evaluation of the project. Applications that include a statement that the applicant agrees to use the "MIS IDA" information system software developed by the Center for Social Development, or a *comparable and compatible system,* for the maintenance, collection, and transmission of data from the proposed project will be deemed to have satisfactorily met this Criterion.

D. Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. ACF does not select from multiple ranking lists for a program. Therefore, should a new competition based on the same review criteria be scheduled and applications remain ranked without final disposition, such applications will be entered into the rank order list for the new competition in accordance with their previous score. At the same time, such applicants will be informed of their opportunity instead to reapply for the new competition, if they so choose, and to the extent practical, in which case the previous application will be disregarded.

Part IV. Application Procedures

A. Application Development/ Availability of Forms

In order to be considered for a grant under this program announcement, an application must conform to the Program Requirements set out in Part II and be prepared in accordance with the guidelines set out in Part III, above. It must be submitted on the forms supplied in the attachments to this Announcement and in the manner prescribed below. Attachments A through I contain all of the standard forms necessary for the application for awards under this OCS program. These attachments and Parts IV and V of this Announcement contain all the instructions required for submittal of applications.

Additional copies may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION CONTACT** at the beginning of this announcement. In addition, this Announcement is accessible on the

Internet through the OCS WEBSITE for reading or downloading at "http://www.acf.dhhs.gov/programs/ocs" under "funding opportunities".

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace, debarment regulations and the Certification Regarding Environmental Tobacco Smoke, set forth in Attachments G, I and H.

PART III contains instructions for the substance and development of the project narrative. PART V contains instructions for completing application forms. PART VI, Section A describes the contents and format of the application as a whole.

B. Application Submission

(1) Number of Copies Required. One signed original application and four copies should be submitted at the time of initial submission. (OMB 0970–0139)

(2) Deadline. Mailed applications shall be considered as meeting the announced deadline of April 27, 1999 if they are either received on or before the deadline date or postmarked on or before the deadline date and received by ACF in time for the independent review. Mailed applications must be sent to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of grants Management, Office of Child Support Enforcement, "Attention: IDA Program", 370 L'Enfant Promenade, S.W., Washington, D.C. 20447.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Applications handcarried by applicants, applicant couriers, overnight/express delivery services, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of grants Management, Office of Child Support Enforcement, Mailroom, 2nd Floor (near loading dock), Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: IDA Program". (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

(3) Late applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

(4) Extension of deadlines. ACF may extend an application deadline when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruption of the mail service, or in other rare cases. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

C. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

NOTE: STATE/TERRITORY PARTICIPATION IN THE INTERGOVERNMENTAL REVIEW PROCESS DOES NOT SIGNIFY APPLICANT ELIGIBILITY FOR FINANCIAL ASSISTANCE UNDER A PROGRAM. A POTENTIAL APPLICANT MUST MEET THE ELIGIBILITY REQUIREMENTS OF THE PROGRAM FOR WHICH IT IS APPLYING PRIOR TO SUBMITTING AN APPLICATION TO ITS SPOC, IF APPLICABLE, OR TO ACF.

Attachment J is a Single Point of Contact List for participating jurisdictions. The following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, American Samoa, Colorado, Connecticut, Kansas, Hawaii, Idaho, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, and Washington. Applicants from these jurisdictions, for projects administered by federally recognized Indian Tribes, or which are States (under Priority Area 2.0) need take no action in regard to E.O. 12372. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Office of Child Support Enforcement, 370 L'Enfant Promenade, S.W., Mail Stop 6C–462, Washington, D.C. 20447.

D. Initial OCS Screening

Each application submitted under this program announcement will undergo a pre-review to determine that the application was postmarked by the closing date and submitted in accordance with the instructions in this announcement.

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

The following requirements must be met by all applicants except as noted:

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF–424), a budget

(SF–424A), and signed "Assurances" (SF 424B) completed according to instructions published in Part V and Attachments A, B, and C of this Program Announcement.

(2) A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be limited to 30 pages, typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (cpi) or equivalent. The Budget Narrative, Charts, exhibits, resumes, position descriptions, letters of support or commitment, Agreements with partnering organizations, and Business Plans (where required) are not counted against this page limit. IT IS STRONGLY RECOMMENDED THAT APPLICANTS FOLLOW THE FORMAT AND CONTENT FOR THE NARRATIVE DESCRIBED IN THE PROGRAM ELEMENTS SET OUT IN PART III.

(3) The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. Applicants must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(4) In the case of applications under Priority Area 1.0 only, application must contain documentation of the applicant's tax exempt status as required under Part II, Section A.

(5) In the case of Application under Priority Area 1.0 only, the Application must include a copy of a "Non-Federal Share Agreement" or Agreements in writing executed with the entity or entities providing the required non-Federal matching contributions, on letterhead of the entity and signed by a person authorized to make a commitment on behalf of the entity. Such Agreement(s) must include: (1) a commitment to provide the non-Federal funds contingent only on the grant award; (2) a schedule of deposits to the project's Reserve Fund of at least ten percent of the total committed for the entire project at the start of each of the five Project Years, plus any additional amounts needed to assure that there is at least $2000 of non-Federal matching contribution funds in the Reserve Fund for each Individual Development Account that as been opened; and (3) a statement that up to 9.5 percent of the required non-Federal matching contribution funds it provides may be allocated from the Reserve Fund to the support of project administration, Participant support, data collection or other project-related expenses. (See PART II Sections G(1)(b) and I.) Grantees are encouraged to mobilize additional resources, which may be cash or in-kind contributions, Federal or non-Federal, for support of project administration and assistance to Project Participants in obtaining skills, knowledge, and needed support services. (See PART III, Element IV.)

Note: If a grantee mobilizes matching non-Federal contributions in excess of the required 100 percent match, such non-Federal funds may be used however the grantee and provider of the funds may agree.

(See also PART II, Section J.)

(6) In the case of Application under Priority Area 1.0 only, the Application must include a copy of an Agreement between the Applicant and one or more Qualified Financial Institution(s), which states that the accounting procedures to be followed in account management will conform to Guidelines established by the Secretary (which will be issued prior to grant awards and provided to grantees at time of award), and under which the partnering financial institution will agree to provide data and reports as requested by the applicant.

E. Consideration of Applications under Priority Area 1.0

Applications which pass the initial OCS screening will be reviewed and rated by an independent review panel on the basis of the specific review criteria described in Part III, above. The review criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the review criteria within the context of this program announcement. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; the amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

Since non-Federal reviewers will be used for review of applications under Priority Area 1.0, applicants may omit from the application copies (under Priority Area 1.0 only) which will be made available to the non-Federal reviewers, the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

F. Consideration of Applications under Priority Area 2.0

Applications under Priority Area 2.0 will be reviewed by OCS staff for eligibility under the criteria set out in PART II, Section B, and for compliance with the threshold criteria listed in PART III, Section D. Those meeting the criteria will be recommended for funding to the Director of OCS for his consideration.

Part V. Instructions for Completing Application Forms

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments A and B) as modified by the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss

the necessity, reasonableness, and allocability of the proposed costs.

A. SF–424—Application for Federal Assistance (Attachment A)

Top of Page

Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form (third line from the top).

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. If applicant is a State, enter "A" in the box. If applicant is an Indian Tribe enter "K" in the box. If applicant is a non-profit organization enter "N" in the box.

Item 9. Name of Federal Agency—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.602. The title is "IDA Program".

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

I—Individual projects under Priority Area 1.0

S—Statewide projects under Priority Area 2.0

Item 13. Proposed Project—The project start date must begin on or before September 30, 1999; the ending date should be calculated on the basis of 60-month Project Period.

Item 15a. This amount should be no greater than $500,000 for applications under Priority Area 1.0; no greater than $1,000,000 for applications under Priority Area 2.0.

Item 15b–e. These items should reflect both cash and third-party, in-kind contributions for the Project Period.

B. SF–424A—Budget Information—Non-Construction Programs

(Attachment B)

In completing these sections, the Federal Funds budget entries will relate to the requested OCS funds only, and Non-Federal will include mobilized funds from all other sources—applicant, state, local, and other. Federal funds other than requested OCS funding should be included in Non-Federal entries.

Sections A, B, and C of SF–424A should reflect budget estimates for each year of the Project Period.

Section A—Budget Summary

You need only fill in lines 1 and 5 (with the same amounts):

Col. (a): Enter "IDA Program" as Item number 1. (Items 2, 3, 4, and 5 should be left blank.)

Col.(b): Catalog of Federal Domestic Assistance number is 93.602. Col.

(c) and (d): not relevant to this program.

Column (e)–(g): enter the appropriate amounts in items 1. and 5. (Totals) Column e should not be more than $500,000 for applications under Priority Area 1.0; or more than $1,000,000 for applications under Priority Area 2.0 (although as noted in Part II grants are expected to be of approximately $930,000); and in no case can it be more than the committed non-Federal matching cash contribution.

Section B—Budget Categories

(Note that the following information supersedes the instructions provided with the Form in Attachment C)

Columns (1)–(5): For each of the relevant Object Class Categories:

Column 1: Enter the OCS grant funds for the full 5-year budget period. With regard to Class Categories, at least 90.5 percent of OCS grant funds should be entered in "h. Other", representing the funds to be deposited in the Reserve Fund. At least 2 percent of OCS grant funds, for data collection, should be entered under "Other", "Contractual", and/or "Personnel" as appropriate. Up to 7.5 percent of OCS grant funds, which may be for project administration and support, should be entered in Class Categories as appropriate.

Columns 2, 3 and 4 are not relevant to this program.

Column 5: Enter the total federal OCS grant funds for the five year budget by Class Categories, showing a total of not more than $500,000 (or $1,000,000 Priority Area 2.0).

Note: Only out-of-town travel should be entered under Category c. Travel. Local travel costs should be entered under Category h. Other. Costs of supplies should be included under Category e. "Supplies" is tangible personal property other than "equipment". "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000. Articles costing less should be included in "Supplies".

Section C—Non Federal Resources

This section is to record the amounts of "non-Federal" resources that will be used to support the project. In this context, "Non-Federal" resources mean other than the OCS funds for which the applicant is applying. Therefore, mobilized funds from other Federal programs, such as the Job Training Partnership Act program or the Welfare-to-Work program, should be entered on these lines. Provide a brief listing of these "non-Federal" resources on a separate sheet and describe whether it is a grantee-incurred cost or a third-party cash or in-kind contribution. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process under the Non-Federal Resources program element.

(Note: Even though non-Federal resources mobilized may go beyond the amount required as match under the IDA Program, grantees will be held accountable for any such cash or in-kind contribution proposed or pledged as part of an approved application. (See PART II, Section I. and PART III, Element IV.)

Sections D, E, and F may be left blank by Applicants under Priority Area 1.0. State Applicants under Priority Area 2.0 must complete Section E. Estimates of OCS funds needed for the subsequent four years of the five-year Project Period (not to exceed $1,000,000 per year) should be entered on line 16 under columns (b), (c), (d), and (e).

As noted in Part VI, a supporting Budget Justification must be submitted providing details of expenditures under each budget category, with justification of dollar amounts which relate the proposed expenditures to the work program and goals of the project.

C. SF–424B Assurances: Non-Construction Programs

Applicants requesting financial assistance for a non construction project must file the Standard Form 424B, "Assurances: Non-Construction Programs." (Attachment C) Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a certification concerning Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. (See Attachments D and E) Applicants must sign and return the certification with their applications. Applicants should note that the Lobbying Disclosure Act of 1995 has simplified the lobbying information required to be disclosed under 31 USC 1352.

Applicants must make the appropriate certification on their compliance with the Drug-Free Workplace Act of 1988 and the Pro-Children Act of 1994 (Certification Regarding Smoke Free Environment). (See Attachments G and H) By signing and submitting the applications, applicants are attesting to their intent to comply with these requirements and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. (See Attachment I) By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. Copies of the certifications and assurances are located at the end of this announcement.

Part VI. Contents of Application and Receipt Process

Application pages should be numbered sequentially throughout the application package, beginning with an Abstract of the proposed project as page number one; and each application must include all of the following, in the order listed below:

A. Content and Order of IDA Program Application

1. Table of Contents;
2. An Abstract of the project—very brief, not to exceed 300 words, that would be suitable for use in an announcement that the application has been selected for a grant award; which identifies the type of project(s), the target population, the applicant, partners, and the major elements of the work plan.
3. A completed Standard Form 424 (Attachment A) which has been signed by an official of the organization applying for the grant who has authority to obligate the organization legally; [Note: The original SF–424 must bear the original signature of the authorizing representative of the applicant organization];
4. A completed Budget Information-Non-Construction Programs (SF–424A) (Attachment B);
5. A narrative budget justification for each object class category included under Section B;
6. Proof of tax-exempt status (in the case of Applications under Priority Area 1.0 only); in the case of Applications under Priority Area 2.0, evidence of eligibility as required by PART II Section C;
7. *A project narrative,* limited to the number of pages specified below, which includes all of the required elements described in Part III. [Specific information/data required under each component is described in Part III Sections C and D, Application Elements and Review Criteria.]
8. *Appendices,* which should include the following:

a. Filled out, signed and dated *Assurances—Non-Construction Programs* (SF–424B), Attachment C;

b. *Restrictions on Lobbying—Certification for Contracts, Grants, Loans, and Cooperative Agreements:* filled out, signed and dated form found at Attachment D;

d. *Disclosure of Lobbying Activities, SF–LLL:* Filled out, signed and dated form found at Attachment E, if appropriate (omit Items 11–15 on the SF LLL and ignore references to continuation sheet SF–LLL–A)

e. *Maintenance of Effort Certification* (See Attachment F);

f. signed *Agreement* with partnering Financial Institution(s) (in the case of Application under Priority Area 1.0 only);

g. signed *Agreements with providers of Required non-Federal matching contributions;*

h. resumes and/or position descriptions (see Program Element IV);

i. any letters from cooperating or partnering agencies in target communities. [Such letters are not part of the Narrative and should be included in the Appendices. These letters are therefore not counted against the page limitations of the Narrative.]; and

j. single points of contact comments, if applicable.

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8–1/2 x 11 inch paper only. They must not include colored, oversized or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. The applications should be two-hole punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip. The submission of bound plans, or plans enclosed in binders is specifically discouraged.

B. Acknowledgement of Receipt

Acknowledgment of Receipt—All applicants will receive an acknowledgement with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their Application, or a FAX number or e-mail address which can be used for acknowledgement. The assigned identification number, along with any other identifying codes, must be referenced in all subsequent communications concerning the Application. If an acknowledgement is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 205–5082.

Part VII. Post Award Information and Reporting Requirements

A. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated.

B. Attendance at Evaluation Workshops

OCS hopes to sponsor one or more national evaluation workshops in Washington, D.C. or in other locations during the course of the five-year project. Project Directors will be expected to attend such workshops provided funds can be made available by OCS for expenses of attending.

C. Reporting Requirements

Grantees will be required to submit a semi-annual program progress and financial report (SF 269) covering the six months after grant award, and similar reports after conclusion of the first Project Year. Such reports will be due 60 days after the reporting period. Thereafter grantees will be required to submit annual program progress and financial reports (SF 269), as well as a final program progress and financial report within 90 days of the expiration of the grant.

D. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR Parts 74 (non-profit organization) and OMB Circular A–133.

E. Prohibitions and Requirements With Regard to Lobbying

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier

contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification.

The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H, for certification and disclosure forms to be submitted with the applications for this program.

F. Applicable Federal Regulations

Attachment K indicates the regulations which apply to all applicants/grantees under the Assets for Independence Demonstration Program.

Dated: January 22, 1999.

Donald Sykes,

Director, Office of Community Services.

BILLING CODE 4184-01-P

Attachment A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION
Legal Name: | Organizational Unit:
Address (give city, county, State, and zip code): | Name and telephone number of person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): __-_____

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State; B. County; C. Municipal; D. Township; E. Interstate; F. Intermunicipal; G. Special District; H. Independent School Dist.; I. State Controlled Institution of Higher Learning; J. Private University; K. Indian Tribe; L. Individual; M. Profit Organization; N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other(specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: __-___
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

INSTRUCTIONS FOR THE SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).

3. Stat use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name or primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided:

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the Stat Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

Attachment B

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal ~~Domestic Assistance~~ Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-1

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

INSTRUCTIONS FOR THE SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when apply for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Liens 1–4

Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For *new applications*, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes*, to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplement) or funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment C—Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duty authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share or project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standard or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6105–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290dd–3 and 290ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis Bacon Act (40 U.S.C. 276a to 276a–7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition in $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safety Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the endangered Species Act of 1973, as amended (P.L. 92–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organization."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

Date Submitted _____

Attachment D—Certification Regarding Lobbying

Certification for Contracts. Grants. Loans. and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress,

or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184-01-P

Attachment E

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184-01-C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment F—Certification Regarding Maintenance of Effort

In accordance with the applicable program statute(s) and regulation(s), the undersigned certifies that financial assistance provided by the Administration for Children and Families, for the specified activities to be performed under the _____ Program by _____ (Applicant Organization), will be in addition to, and not in substitution for, comparable activities previously carried on without Federal assistance.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Date

Attachment G—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals. Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement;

consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant:

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Attachment H

Administration for Children and Families U.S. Department of Health and Human Services

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residence, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment I

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntary excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4 debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,"

provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when the transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC. DOES NOT HAVE A "STATE SINGLE POINT OF CONTACT." JURISDICTIONS WITHOUT "STATE SINGLE POINTS OF CONTACTS" INCLUDE: Alabama; Alaska; American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Oklahoma; Oregon;

Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington.

This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Attachment K

DHHS Regulations Applying to All Applicants/Grantees Under the Assets for Independence Demonstration Program (IDA Program)

Title 45 of the *Code of Federal Regulations:*

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (grants with subgrants to entities)
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-Discrimination Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Sections 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

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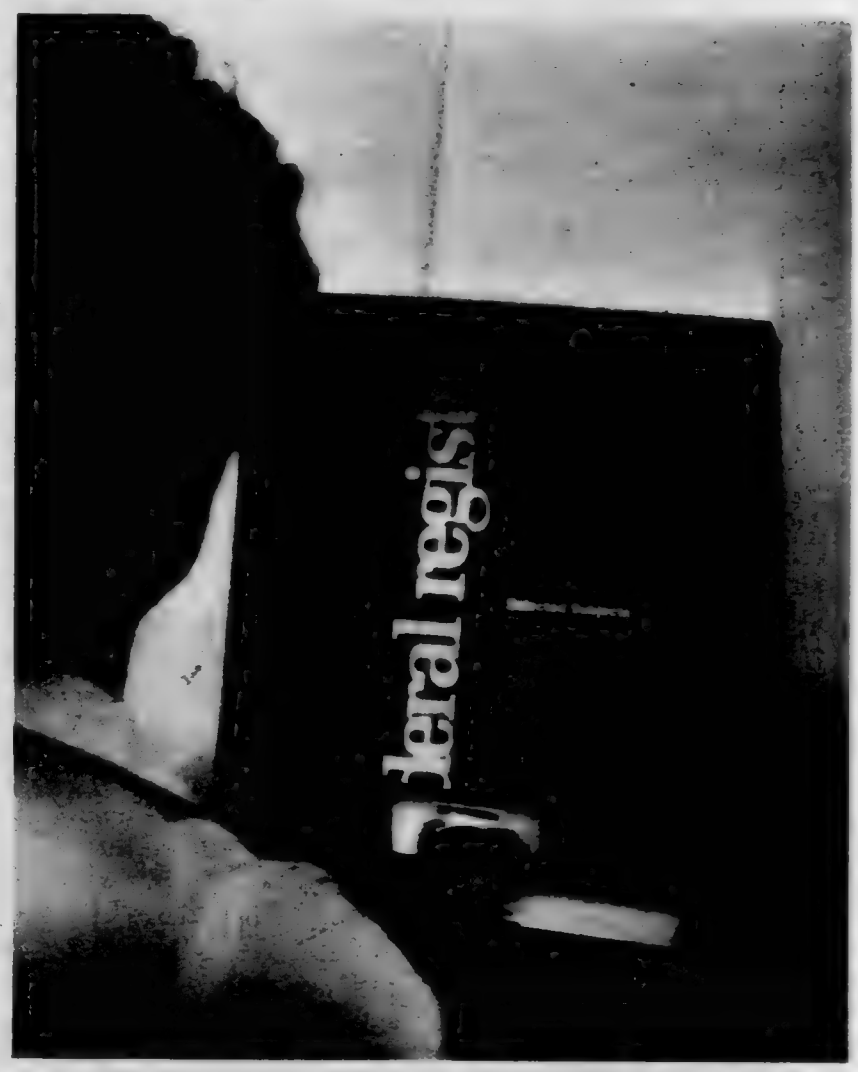

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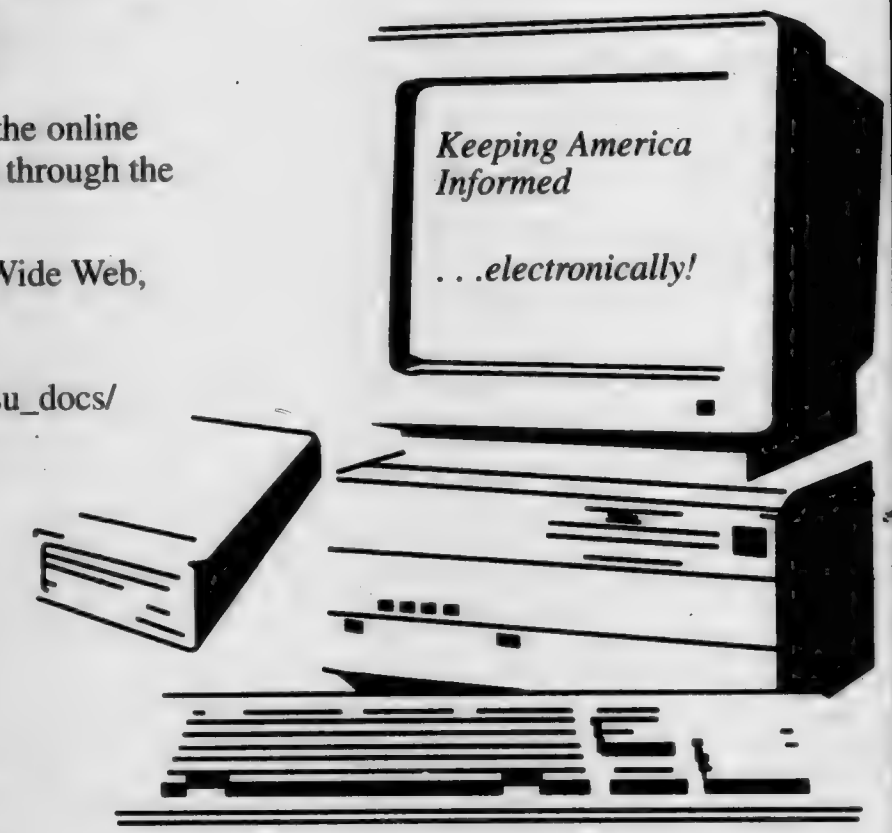

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Rules and Regulations

Federal Register
Vol. 64, No. 18
Thursday, January 28, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–072–2]

Gypsy Moth Generally Infested Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the gypsy moth quarantine and regulations by adding Indiana to the list of States quarantined because of gypsy moth and by adding Steuben County in Indiana to the list of generally infested areas. The interim rule was necessary in order to impose certain restrictions on the interstate movement from Steuben County of regulated articles to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule was effective on July 16, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Coanne E. O'Hern, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: coanne.e.o'hern@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on July 16, 1998 (63 FR 38279–38280, Docket No. 98–072–2), we amended the gypsy moth quarantine and regulations in 7 CFR part 301 by adding Indiana to the list in § 301.45(a) of States quarantined because of gypsy moth, and by adding Steuben County, IN, to the list in § 301.45–3(a) of generaliy infested areas.

Comments on the interim rule were required to be received on or before September 14, 1998. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

Regulatory Flexibility Act

This document affirms an interim rule that amended the gypsy moth quarantine and regulations by adding Steuben County, IN, to the list of generally infested areas. This action was necessary to prevent the artificial spread of gypsy moth to noninfested areas of the United States.

This action affects the interstate movement of regulated articles and outdoor household articles (OHA's) from and through Steuben County, IN. There are several types of restrictions that apply to this newly quarantined area. These restrictions will have their primary impact on persons moving OHA's, nursery stock, logs and wood chips, and mobile homes interstate from Steuben County, IN, to any area that is not generally infested.

Under the regulations, OHA's may not be moved interstate from a generally infested area unless they are accompanied by either a certificate issued by an inspector or an OHA document issued by the owner of the articles, attesting to the absence of any life stage of the gypsy moth. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State certified pesticide applicators, trained by the State or U.S. Department of Agriculture (USDA), inspect and issue certificates.

With two exceptions, regulated articles (for example, logs, pulpwood, and wood chips; mobile homes; and nursery stock) may not be moved interstate from a generally infested area to any area that is not generally infested unless they are accompanied by a certificate or limited permit issued by an inspector. The first exception is that a regulated article may be moved from a generally infested area without a certificate if it is moved by the USDA for experimental or scientific purposes and is accompanied by a permit issued by the Administrator of the Animal and Plant Health Inspection Service. The second exception is that logs, pulpwood, and wood chips may be moved without a certificate or limited permit if the person moving the articles attaches a statement to the waybill stating that he or she has inspected the articles and has found them free of any lifestage of the gypsy moth. This exception minimizes costs with regard to logs, pulpwood, and wood chips.

Persons moving regulated articles interstate from a generally infested area to any area that is not generally infested may obtain a certificate or limited permit from an inspector or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. These documents may also be self-issued under a compliance agreement. Certificates for interstate movement of mobile homes from a generally infested area may also be obtained from qualified certified applicators.

When inspection of regulated articles or OHA's reveals gypsy moth, treatment is often necessary. Treatment is done by qualified certified applicators, which are private businesses that charge, on the average, $75 to $100 to treat a shipment of articles. Most qualified certified applicators are small businesses. By declaring an area as a generally infested area, the regulations may increase business for qualified certified applicators located in Steuben County, Indiana. It is estimated that these businesses will average $75 to $150 per month in additional income per business.

Entities in the newly quarantined areas that will incur the most costs from the interim rule will be establishments moving trees or shrubs with roots, such as nurseries. We estimate that approximately 2 such establishments move approximately 10 shipments of trees and shrubs each year from the newly quarantined area. Both of these establishments are believed to be small

entities. These establishments will need to be inspected by a State or Federal inspector. If the inspection reveals signs of gypsy moth, the establishment will have to be treated in order to ship regulated articles outside the generally infested area. We estimate that annually, one of these establishments may require treatment, and that the average area to be treated will be 20 acres. At an average treatment cost of $10 to $20 per acre, the average total annual cost to each establishment will be $200 to $400.

The Christmas tree industry and establishments that sell other forest products and that move their products interstate from the newly quarantined area will also bear direct costs from the interim rule. There are approximately two farms that sell forest products and Christmas trees in the newly quarantined area. These account for less than one percent of the total number of such farms in Indiana. Both of these establishments are believed to be small entities. Services of an inspector will be available without charge to inspect these farms and issue certificates and permits. We anticipate that both of these farms will be free of gypsy moth and will meet the requirements for certification by having inspectors certify that the tree farms are free from gypsy moth. This alternative is less costly than inspecting or treating each individual shipment of trees and will thus minimize the economic impact of the change to the regulations for the newly quarantined area.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 63 FR 38279–38280 on July 16, 1998.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 21st day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1919 Filed 1–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV99–932–2 IFR]

Olives Grown in California; Modification to Handler Membership on the California Olive Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule invites comments on modifications to the handler membership on the California Olive Committee (Committee). The Committee locally administers the California olive marketing order (order) which regulates the handling of olives grown in California. The Committee is composed of 16 industry members of which 8 are producers and 8 are handlers. Current handler membership is allocated between cooperative marketing organizations and independent handlers (handlers not affiliated with cooperatives), and the number of handler members that may be affiliated with any one handler is limited to two. This rule removes the distinction between cooperative and independent handlers, removes the limitation on handler affiliation, and reallocates handler membership on the basis of the total quantity of olives handled. These modifications will allow two vacant handler member positions on the Committee to be filled. This rule was unanimously recommended by the Committee.

DATES: Effective January 29, 1999; comments received by March 29, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket_clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–9921; Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay_N_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for

a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Section 932.25 of the order provides for the establishment of the Committee to locally administer the terms and provisions of the order. The Committee is composed of 16 industry members, each with an alternate. Of the 16 industry members, 8 are producers and 8 are handlers. This section also specifies how the handler membership on the Committee is allocated. Authority is provided for the Committee, with the approval of the Secretary, to change the allocation of both producer and handler members as may be necessary to assure equitable representation.

Section 932.159 of the administrative rules and regulations provides that two members shall represent cooperative marketing organizations and six members shall represent handlers who are not cooperative marketing organizations. In addition, § 932.160 limits to two the number of handler members that may be affiliated with the same handler.

The Committee met on December 10, 1998, and unanimously recommended modifying the rules and regulations to remove the distinction between cooperative and independent handlers, and the limitation on the number of handler members that may be affiliated with the same handler. It also unanimously recommended that the two handlers who handled the largest and second largest total volume of olives during the crop year in which nominations are made and the preceding crop year be represented by three members each, and that the third largest handler be represented by two members. This rule is intended to modify the Committee's handler membership to reflect structural changes within the handler segment of the industry, and to enable the Committee to operate at full strength; i.e., with all eight handler and producer positions filled.

The structure of the olive industry has changed over the years and the number of handlers, both cooperative and independent, has decreased. At one time, there were a number of cooperative marketing organizations and independent handlers and the Committee's structure was designed so that four of the eight handler seats were held by cooperatives and four were held by independents. This representation was also weighted by the volume of olives handled so that if one group, either cooperatives or independents, handled 65 percent or more of the total industry's volume handled during the nominating crop year and the preceding crop year, that group would have five seats on the Committee and the other group would have three seats.

In 1993, handler membership on the Committee was reallocated to reflect changes within the industry. The number of industry handlers declined to only five handlers—one cooperative and four independents. At that time, § 932.159 of the order's rules and regulations was modified to reapportion handler membership to provide cooperative handlers with two seats on the Committee and independent handlers with six seats.

Since 1993, the number of handlers in the olive industry has continued to decline. Today there are three handlers remaining—one cooperative and two independents. Because there is only one existing cooperative, the Committee believes that the distinction regarding cooperative and independent handlers on the Committee is no longer appropriate or necessary.

Additionally, § 932.160 specifies that no more than two nominees for member and alternate member positions may be affiliated with the same handler. Because there are only three handlers remaining in the industry, this restriction has resulted in two vacant handler positions on the Committee that cannot be filled.

To allow these positions to be filled and enable the Committee to operate at full strength, the Committee recommended that § 932.159 be revised to eliminate the distinction between cooperative marketing organizations and independent handlers (or handlers not affiliated with a cooperative marketing organization). It also recommended that the eight handler seats on the Committee be reallocated based on the total volume of olives handled during the crop year in which nominations are made and the preceding crop year, with the handlers handling the first and second largest volume being represented with three members each, and the remaining handler being represented with two members.

The reallocation of handler membership in § 932.159 makes the two nominee limitation on affiliation with the same handler specified in § 932.160 unnecessary, and that section is removed.

These changes are designed to modify the Committee's handler membership to reflect structural changes within the handler segment of the industry, and to remove the current barriers to filling the two vacant handler positions on the Committee.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 3 handlers of California olives who are subject to regulation under the marketing order and approximately 1,200 olive producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. None of the olive handlers may be classified as small entities.

Based on a review of historical and preliminary price and marketing information, total grower revenue for the 1998–99 crop year (August 1 through July 31) is estimated to be approximately $39,500,000, and the average grower revenue will be approximately $33,000. Thus, it can be concluded that the majority of producers of California olives may be classified as small entities.

This rule modifies the order's administrative rules and regulations regarding the structure of handler membership on the Committee. The Committee locally administers the order and is composed of 16 industry members. Eight of the 16 industry members are producers and 8 are handlers. Current handler membership provisions distinguish between cooperative marketing organizations and independent handlers specifying that two members shall represent cooperative marketing organizations and six members shall represent handlers who are not cooperative marketing organizations. The handler nominee provisions also specify that no more than two nominees for handler member

and alternate member positions may be affiliated with the same handler.

This rule modifies the order's rules and regulations to remove the distinction between cooperative and independent handlers, and to specify that the number of members representing each of the three currently existing industry handlers shall be based on the total volume of olives handled during the nominating crop year and the preceding crop year, with the two handlers handling the largest and second largest volume of olives represented by three members and alternates each, and the remaining handler represented by two members and alternates. This rule also removes provisions limiting the number of members to which each handler is entitled because the limitation is no longer necessary. The changes were unanimously recommended by the Committee and are intended to modify the Committee's handler membership to reflect structural changes within the handler segment of the industry, and to remove current barriers to filling two vacant handler positions on the Committee. Authority for this rule is provided in § 932.25 which allows the Committee, with the approval of the Secretary, to reallocate the Committee's producer or handler membership as necessary to assure equitable representation.

Removal of the distinction between cooperative and independent handlers will not have any impact on handlers or producers in the California olive industry.

One alternative to this rule discussed at the meeting was to leave the language in § 932.159 unchanged; however, the Committee believes that the distinction between cooperative and independent is no longer appropriate, because there is only one existing cooperative in the industry and two independent handlers. Another alternative discussed at the meeting was to leave § 932.160 of the order's rules and regulations unchanged so that only two members may be affiliated with the same handler, but with only three handlers currently in the industry that would result in uneven representation between growers with eight members and handlers with six members, and would fail to assure equitable representation on the Committee as is required pursuant to § 932.25.

This rule will not impose any additional reporting or recordkeeping requirements on any of the three olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Further, the Committee's meeting was widely publicized throughout the olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 10, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. All three industry handlers are currently represented on the Committee and participated in the deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on modifications to the handler membership on the Committee. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) There are currently two vacant handler member seats on the Committee that cannot be filled until these modifications to the administrative rules and regulations are implemented, and it is important that the Committee operate at full strength; (2) timely implementation of this action will allow the vacancies to be filled; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (4) all three handlers are represented on the Committee and participated in deliberations; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.159 is revised to read as follows:

§ 932.159 Reallocation of handler membership.

Pursuant to § 932.25, handler representation on the committee is reallocated to provide that the two handlers who handled the largest and second largest total volume of olives during the crop year in which nominations are made and in the preceding crop year shall be represented by three members and alternate members each, and the remaining handler shall be represented by two members and alternate members.

§ 932.160 [Removed]

3. Section 932.160 is removed.

Dated: January 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1970 Filed 1–27–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–41–AD; Amendment 39–11005; AD 99–02–13]

RIN 2120–AA64

Airworthiness Directives, Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France (Eurocopter) Model AS332C, L, and L1 helicopters, that requires the replacement of certain main rotor hub spindles (spindles) and flapping hinge pins (pins). This amendment is prompted by testing of aged frequency adapters, which shows that premature failure of the spindles and pins can occur due to increased loading from increased stiffness of the aged frequency

adapters. The actions specified by this AD are intended to prevent the loss of a main rotor blade and subsequent loss of control of the helicopter.

DATES: Effective March 4, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701, Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace, Engineer, FAA, Rotorcraft Directorate, 2601 Meacham Blvd, Fort Worth, Texas 76137, telephone 817–222–5123, fax 817–222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter Model AS332C, L, and L1 helicopters was published in the **Federal Register** on October 27, 1998 (63 FR 57257). That action proposed to require replacing certain spindles and pins.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $21,600 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $87,360.

The regulations adopted herein will not have substantial director effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–02–13 Eurocopter France: Amendment 39–11005. Docket No. 97–SW–41–AD.

Applicability: Eurocopter France (Eurocopter) Model AS332C, L, and L1 helicopters with main rotor hub spindles (spindles), part number (P/N) 332A31–1390–00 through –07 or 332A31–1398–00 or flapping hinge pin (pin), P/N 332A31–1380–all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alternation, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spindles or pins that could result in loss of a main rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) For the spindles and pins that have never been overhauled, remove the spindles and pins and replace them with airworthy spindles and pins in accordance with paragraphs 2.B.1)a) through 2.B.1)d) and 2.B.2) of the Accomplishment Instructions of Eurocopter France Service Bulletin No. 01.00.44, dated March 26, 1996 (SB), as follows:

(i) Within 6 calendar months of spindles and pins that have been in service for 12 or more calendar years.

(ii) Within 18 calendar months for spindles and pins that have been in service for 8 or more calendar years but less than 12 calendar years.

(b) For the spindles and pins that have been overhauled at least once, remove the spindles and pins and replace them with airworthy spindles and pins in accordance with paragraphs 2.B.1)a) through 2.B.1)d) and 2.B.2) of the SB as follows:

(i) Within 3 calendar months for spindles and pins that have been in service for 6 or more calendar years since last overhaul.

(ii) Within 15 calendar months for spindles and pins that have been in service for 4 or more calendar years but less than 6 calendar years since last overhaul.

(c) Remove spindle, Serial Number (S/N) FR 25012, and pins, S/N's M 243, FR 139, FR 230, M 127, or M 112, and replace them with airworthy spindles and pins in accordance with paragraphs 2.B.1)a) through 2.B.1)d) and 2.B.2) of the SB within 6 calendar months.

(d) Remove spindle, S/N FR 25866, and replace it with an airworthy spindle in accordance with paragraphs 2.B.1)a) through 2.B.1)d) and 2.B.2) of the SB within 18 calendar months.

(e) This AD revises the Airworthiness Limitations Section of the Maintenance Manual by establishing a new retirement life of 8 calendar years for the spindles, P/N 332A31–1390–00 through –07 and 332A31–1398–00, and pins, P/N 332A31–1380–all dash numbers, except as otherwise specifically limited by this AD.

(f) Installation of a main rotor hub with modification 332A07–43100 constitutes terminating action for the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(i) The modification shall be done in accordance with paragraphs 2.B.1)a) through 2.B.1)d) and 2.B.2) of the Accomplishment Instructions of Eurocopter France Service Bulletin No. 01.00.44, dated March 26, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on March 4, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–100–058–(B), dated May 22, 1996.

Issued in Fort Worth, Texas, on January 12, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–1236 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–52–AD; Amendment 39–11013; AD 99–03–01]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth K.G. Models Standard-Cirrus, Nimbus-2, JANUS, and Mini-Nimbus HS–7 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Schempp-Hirth K.G. (Schempp-Hirth) Models Standard-Cirrus, Nimbus-2, JANUS, and Mini-Nimbus HS–7 sailplanes. This AD requires installing a safety device for the tailplane locking hook. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the locking hook on the tailplane attachment bracket from disengaging, which could result in the horizontal tailplane coming loose from the fin with possible loss of longitudinal control of the sailplane.

DATES: Effective March 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Schempp-Hirth Flugzeugbau GmbH, Postbox 14 43, D–73222 Kirchheim unter Teck, Federal Republic of Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–52–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Schempp-Hirth Models Standard-Cirrus, Nimbus-2, JANUS, and Mini-Nimbus HS–7 sailplanes was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on November 9, 1998 (63 FR 60224). The supplemental NPRM proposed to require installing a safety device for the tailplane locking hook. Accomplishment of the proposed action as specified in the supplemental NPRM would be in accordance with Schempp-Hirth Appendix to Technical Note No. 278–36, 286–33, 295–26, 328–11, 798–3, dated November 11, 1994.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 91 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $35 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $19,565, or $215 per sailplane.

Compliance Time of This AD

Although the unsafe condition identified in this AD occurs during flight and is a direct result of sailplane operation, the FAA has no way of determining how much time will elapse before the tailplane is not securely attached to the fin. For example, the condition could exist on a sailplane with 200 hours time-in-service (TIS), but could be developing on a sailplane with 50 hours TIS and not actually exist on this sailplane until 300 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Differences Between the Technical Note, German AD, and This AD

Both Schempp-Hirth Technical Note No. 278–36, 286-33, 295–26, 328–11, 798–3, dated November 11, 1994, and German AD 95–015, dated December 15, 1994, apply to the Model Nimbus-2M sailplanes. This sailplane model is not type certificated for operation in the United States and therefore is not covered by the applicability of this AD.

The Model Nimbus-2M sailplanes could be operating in the United States with an experimental certificate. The FAA is including a NOTE in this AD to recommend that any person operating a Model Nimbus-2M sailplane in the United States with an experimental certificate accomplish the actions specified in the technical note.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–03–01 Schempp-Hirth K.G.: Amendment 39–11013; Docket No. 98–CE–52–AD.

Applicability: The following sailplane models and serial numbers, certificated in any category:

Models	Serial Nos.
Standard Cirrus	573, 586, 593, 595, 597 through 599, 601 through 701.
Nimbus-2	86, 93, and 96 through 116, 118 through 129, 131, and 176.
JANUS	1 through 55, and 59.
Mini-Nimbus HS–7	1 through 60, and 65.

Note 1: Both Schempp-Hirth Technical Note No. 278–36, 286–33, 295–26, 328–11, 798–3, dated November 11, 1994, and German AD 95–015, dated December 15, 1994, apply to the Model Nimbus-2M sailplanes. This sailplane model is not type certificated for operation in the United States, and therefore is not covered by the applicability of this AD. The Model Nimbus-2M sailplanes could be operating in the United States with an experimental certificate. The FAA recommends that any person operating a Model Nimbus-2M sailplane in the United States with an experimental certificate accomplish the actions specified in the technical note.

Note 2: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent the locking hook on the tailplane attachment bracket from disengaging, which could result in the horizontal tailplane coming loose from the fin with possible loss of longitudinal control of the sailplane, accomplish the following:

(a) Install a safety device for the tailplane locking hook in accordance with Schempp-Hirth Appendix to Technical Note No. 278–36, 286–33, 295–26, 328–11, 798–3, dated November 11, 1994.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to the service information referenced in this document should be directed to Schempp-Hirth Flugzeugbau GmbH, Postbox 14 43, D–73222 Kirchheim unter Teck, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The installation required by this AD shall be done in accordance with Schempp-Hirth Appendix to Technical Note No. 278–36, 286–33, 295–26, 328–11, 798–3, dated November 11, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Schempp-Hirth Flugzeugbau GmbH, Postbox 14 43, D–73222 Kirchheim unter Teck, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German AD 95–015, dated December 15, 1994.

(f) This amendment becomes effective on March 12, 1999.

Issued in Kansas City, Missouri, on January 19, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1827 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–10–AD; Amendment 39–11014; AD 99–03–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model MD–11 series airplanes. This action requires a one-time inspection to detect discrepancies of certain wiring and insulation in the cockpit and cabin, and repair, if necessary. This amendment is prompted by test results obtained in support of an accident investigation. The actions specified in this AD are intended to prevent electrical arcing of certain wiring, which could cause a fire and/or smoke in the cockpit or cabin.

DATES: Effective February 12, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The information concerning this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On September 2, 1998, a McDonnell Douglas Model MD–11 series airplane was involved in an accident following takeoff from John F. Kennedy International Airport in Jamaica, New York. The cause of the accident has not been determined.

In support of the subsequent accident investigation, examinations were conducted on several Model MD–11 series airplanes; the examinations focused on the area from the cockpit to station 515 (near the forward doors of the airplane in the forward drop ceiling area). The FAA recently has been informed of the results of these examinations, which revealed chafed, cracked, broken, and cut electrical and bonding wires in several of these areas. These conditions, if not corrected, could result in electrical arcing of wiring and consequent fire and/or smoke in the cockpit or cabin.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent electrical arcing of wiring, which could cause a fire and/or smoke in the cockpit or cabin. This AD requires accomplishment of a one-time visual inspection to detect discrepancies (including loose wire connections, loose ground wires, broken bonding wires, small wire bending radii, cracked support brackets, and chafed and cracked wire insulation) of the wiring and insulation in the cockpit and overhead drop ceiling panel areas at stations Y=304 through Y=516 and X=−27 left side through X=27 right side above the floor. The inspection is required to be performed in accordance with a method approved by the FAA.

This AD also requires repair of any discrepancy in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated October 1, 1998.

Further, this AD requires that operators report results of inspection findings (both positive and negative) to the FAA.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the discrepant wiring, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–10–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–03–02 McDonnell Douglas: Amendment 39–11014. Docket 99–NM–10–AD.

Applicability: All Model MD–11 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing of certain wiring, which could cause a fire and/or smoke in the cockpit or cabin, accomplish the following:

(a) Within 60 days after the effective date of this AD: Perform the one-time visual inspections required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD to detect discrepancies (including loose wire connections, loose ground wires, broken bonding wires, small wire bending radii, cracked support brackets, and chafed and cracked wire insulation); in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(1) Inspect all cabin wiring and insulation, including the wire harness protective wrap if applicable, on and above the forward cabin drop ceiling, from the cockpit bulkhead (at approximately station 392) to the aft edge of the forward drop ceiling (at approximately station 516). And

(2) Inspect all cockpit wiring and insulation, including the wire harness protective wrap if applicable, within the overhead switch panel and overhead circuit breaker panel (at approximately stations 304 through 360). And

(3) Inspect all cockpit wiring and insulation, including the wire harness protective wrap if applicable, in the following areas:

- Aft of the overhead circuit breaker panel (at approximately station 360);
- Forward of the cockpit entry bulkhead (at approximately station 392);
- 16 inches left of centerline (at approximately station X = −16); and
- Above the top edge of the right clear-view window, including wiring within and outboard of the upper and lower avionics circuit breaker panels.

Note 2: Inspection of wiring within conduits is not required by this AD.

Note 3: Insulation blankets (which hide wiring that is generally routed through conduits) and wire harness protective wrap (including gray sleeving, spiral wrap, and centerline tape) are not required to be removed during the inspection.

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated October 1, 1998.

(c) Within 10 days after accomplishing the inspections required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on February 12, 1999.

Issued in Renton, Washington, on January 21, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1976 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 564

[Docket No. 95N–0313]

Standards for Animal Food and Food Additives in Standardized Animal Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to remove its animal food standards regulations. The action is in response to the administration's "Reinventing Government" initiative, which seeks to streamline government to ease the burden on regulated industry and consumers, and it is intended to remove unnecessary regulations.

DATES: This final rule becomes effective on March 1, 1999.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6651, E-mail: ggraber@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 25, 1996 (61 FR 59845), FDA published a proposed rule that would remove part 564 (21 CFR part 564), Definitions and Standards for Animal Food, of subchapter E, Animal Drugs, Feeds, and Related Products. Subpart A of part 564 contains procedural regulations for establishing standards for animal food, and subpart B contains regulations applicable to food additives included in standardized animal foods.

FDA continues to believe, as stated in the preamble to the proposed rule, that because neither FDA nor the private sector has ever used the procedures in part 564 to develop a regulatory standard, part 564 is unnecessary. Further, should FDA ever receive a request to develop an animal food standard regulation, the agency could determine whether procedural regulations are necessary and issue such procedures through the notice and comment rulemaking process as the standard was being developed.

II. Response to Comments

Forty-two comments were received on the proposed rule. Four comments were from organizations and the remainder from individuals. The majority of comments appear to have been prompted by an "Action Alert" (Alert) issued by one organization that states that there is no Federal regulation of animal food. The Alert states that enforcement is inconsistent and that standards for animal nutrition are inadequate.

1. Thirteen comments were identical form letters that repeat virtually the same language contained in the Alert, but concluding with the statement "Apparently, there is no interest by your department, the FDA, in developing a regulatory standard for animal and food

additives, although there is a need for such standards. Therefore, the current regulation should be eliminated as a part of President Clinton's 'Reinventing Government' initiative."

2. Twelve comments digress from the issue at hand, to discuss topics such as bovine spongiform encephalopathy or other animal food safety matters that do not relate to part 564.

3. The remaining comments paraphrased the form letter mentioned previously. Many included the erroneous statement that "At the present there is NO federal regulation of animal food," adding that regulation is only at the State level. The comments inaccurately concluded that part 564 provides our only authority to regulate animal foods, implying that in this regulation's absence we have no authority to regulate.

FDA disagrees with comments that suggest removal of part 564 adversely affects the agency's authority to regulate animal food. A misconception of FDA's regulatory authority apparently exists, because the agency has never relied on part 564 for regulation of animal food. FDA's authority under the Federal Food, Drug, and Cosmetic Act (the act), and the regulations under 21 CFR part 501 (labeling), 21 CFR part 502 (common or usual names), 21 CFR part 509 (contaminants), 21 CFR parts 570, 571, and 573 (food additives), 21 CFR part 579 (irradiation), 21 CFR part 582 (generally recognized as safe (GRAS) substances), and 21 CFR part 589 (prohibited substances), provide adequate authority for the needed regulation of animal food formulation and labeling.

The act prohibits the sale of adulterated and misbranded food in interstate commerce. The definition of food relates to food for man or animal, i.e., feed. The act also allows the agency to establish standards of identity or standards of fill as needed. However, there has been no interest or perceived need by the agency or other parties in developing standards under part 564.

In addition to the existing regulations and statute cited previously, FDA and State regulatory authorities recognize the common feed ingredient definitions established by the Association of American Feed Control Officials (AAFCO) with input from FDA. Feed ingredient definitions consist of specifications established to standardize feed ingredients to ensure that the production, sale and use of ingredients will result in safe and effective feeds. AAFCO has also developed standards, such as the AAFCO Dog and Cat Nutrient Profiles and Feeding Protocols, to help ensure that pet foods contain ingredients needed to meet the animals' nutritional requirements. FDA considers these protocols to be acceptable and appropriate for the evaluation of performance characteristics of commercial foods for dogs and cats.

The definitions and standards that AAFCO issues have served as models for State laws and regulations covering feed ingredients and their proper labeling. Because most pet food manufacturers market products in more than one State, those companies are obligated to manufacture and label pet food products to be in compliance with both FDA and State laws. Thus, the agency finds no basis to conclude that removal of part 564 would adversely affect the authority to regulate animal food.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, and distributive impacts and equity). The Regulatory Flexibility Act requires agencies to examine the economic impact of a rule on small entities. The Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before enacting any rule that may result in an expenditure in any 1 year by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The agency has reviewed this final rule and has determined that the rule is consistent with the principles set forth in the Executive Order and in these two statutes. FDA finds that the rule will not be a major rule under the Executive Order.

The rule would remove the regulations establishing standards for animal foods, since neither FDA nor the private sector have ever used the procedures for developing a regulatory standard. FDA is taking this action in response to the administration's "Reinventing Government" initiative which seeks to remove unnecessary regulations.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this rule will have on small entities, including small businesses, and certifies that the rule will not have a significant economic impact on a substantial number of small entities. FDA has also analyzed this rule in accordance with the Unfunded Mandates Reform Act and determined that the rule will not result in the expenditure by State, local, and tribal Governments, in the aggregate, or by the private sector of $100 million. Therefore, no further analysis is required.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. The Paperwork Reduction Act of 1995

FDA tentatively concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 564

Animal foods, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 564 is removed and reserved.

PART 564—DEFINITIONS AND STANDARDS FOR ANIMAL FOOD

1. Part 564 is removed and reserved.

Dated: January 22, 1999.

William K. Hubbard,

Associate Deputy Commissioner for Policy.

[FR Doc. 99–2057 Filed 1–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 2204–99]

Withdrawal of the Attorney General's Delegation of Gift-Acceptance Authority to the Director of the Bureau of Prisons and the Administrator of the Drug Enforcement Administration

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule eliminates current rules that delegate to the Director of the Bureau of Prisons the Attorney

General's authority to accept gifts made to the Bureau of Prisons, Federal Prisons Industries, and the Commissary Funds, Federal Prisons. This rule also adds language to clarify that delegations to the Administrator of the Drug Enforcement Administration of functions vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, are qualified by the Attorney General's right to reserve authority over any of those functions and to grant some or all of those functions to other officers or employees of the Department of Justice. The purpose of these changes is to reflect the Attorney General's recent delegation of general gift-acceptance authority to the Assistant Attorney General for Administration. This action is being undertaken to promote administrative efficiency.

EFFECTIVE DATE: January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Dorothy L. Foley, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, (202) 514–3452.

SUPPLEMENTARY INFORMATION: Currently, 28 CFR 0.96(f) delegates to the Director of the Bureau of Prisons the authority vested in the Attorney General, pursuant to 18 U.S.C. 4043, to accept "gifts or bequests of money for credit to the 'Commissary Funds, Federal Prisons.'" Section 0.96(s) of title 28 of the Code of Federal Regulations delegates to the Director of the Bureau of Prisons the authority vested in the Attorney General pursuant to 18 U.S.C. 4044 "to accept any form of devise, bequest, gift or donation of money or property for use by the Bureau of Prisons and Federal Prison Industries."

Section 0.100(b) of title 28 of the Code of Federal Regulations delegates to the Administrator of the Drug Enforcement Administration "[f]unctions vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended* * * and not otherwise specifically assigned or reserved by him." 28 CFR 0.100(b). Among the functions assigned to the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended, is the authority to "accept in the name of the Department of Justice any form of devise, bequest, gift or donation where the donor intends to donate property for the purpose of preventing or controlling the abuse of controlled substances." 21 U.S.C. 871(c).

Recently-enacted legislation gave the Attorney General general authority to accept gifts on behalf of all components of the Department of Justice. 28 U.S.C. 524(d)(1). The Attorney General has delegated this gift-acceptance authority to the Assistant Attorney General for Administration. Department of Justice Order No. 2400.2 (September 2, 1997). Through this delegation to the Assistant Attorney General for Administration, the Attorney General withdrew all previous delegations of gift-acceptance authority to other components of the Department. This rule reflects the withdrawal of that gift-acceptance authority by removing the inconsistent delegation language of sections 0.96(f) and (s) of title 28 of the Code of Federal Regulations regarding the Director of the Bureau of Prisons and clarifying that the delegation of functions to the Administrator of the Drug Enforcement Administration in section 0.100(b) is qualified by other delegation of those functions by the Attorney General.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section (1)(b), Principles of Regulation. The Department of Justice has determined that this rule is not a regulation or rule subject to review pursuant to Executive Order 12866, section 3(d)(3), and accordingly it has not been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This rules makes an administrative change in the Department's internal regulations and will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provision of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This rule makes an administrative change in the Department's internal regulations concerning the acceptance of gifts by the Department and will not result in an annual effect on the economy of $100,000,000 or more, a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 12612, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This rule meets the applicable standards provided in section 3(a) and (b)(2) of Executive Order 12988.

Administrative Procedure Act

This rule was not published for public comment because it pertains to a matter of internal Department of Justice management.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies); Government employees; Organization and Functions (Government Agencies); Whistleblowing.

Accordingly, Part 0 of title 28 of the Code of Federal Regulation is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. In § 0.96 of Subpart Q of 28 CFR, remove paragraphs (f) and (s) and redesignate paragraphs (g) through (v) as paragraphs (f) through (t).

3. In § 0.100 of Subpart R of 28 CFR, revise the first sentence of paragraph (b) to read as follows:

§ 0.100 General functions.

* * * * *

(b) Except where the Attorney General has delegated authority to another Department of Justice official to exercise such functions, functions vested in the Attorney General by the Comprehensive

Drug Abuse Prevention and Control Act of 1970, as amended. * * *

* * * * *

Dated: January 8, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–1900 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–AR–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–71–1–7311a; FRL–6222–1]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Multiple Air Contaminant Sources or Properties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the State Implementation Plan (SIP) revision to 30 TAC Chapter 101, Section 101.2(b) concerning Multiple Air Contaminant Sources. The SIP revision was submitted by the Governor to EPA on January 10, 1996. The revision to the rule eliminates the 50,000 population limitation and is now applicable statewide to all counties regardless of population. The revision also limits the use of the provision to a property under the control of a single entity which has been or will be divided and placed under the control of separate entities, creating a new property line configuration for properties operated, or intended to be operated, as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity. The approval of these Texas SIP revisions make the revisions federally enforceable.

DATES: This rule is effective on March 29, 1999 without further notice, unless EPA receives adverse comment by March 1, 1999. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission (TNRCC), Office of Air Quality, 12100 Park Circle, Austin, Texas 78753.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW.,Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202, telephone: (214) 665–7259.

SUPPLEMENTARY INFORMATION:

I. Background

The original 1967 regulation regarding multiple air contaminant sources allowed two or more property holders in an area to petition to have their properties designated as a single entity for the purpose of controlling air emissions. The rule applies to properties which are contiguous except for intersecting roads, railroads, rights-of-way, canals, and watercourses which are considered a part of the area for purposes of this provision. The rule required that the petition describe the manner in which the combined emissions will be administered and it shall name the responsible party or parties. In 1972, the regulation was limited in applicability to counties with a population less than 50,000 as determined by the most recent census.

The amendment to the rule eliminates the 50,000 population limitation and it limits the use of the provision to properties under the control of a single entity. The proposal would require the parties dividing ownership to establish which of them is responsible for emissions related impacts. Also, the definition of an eligible facility is further narrowed to exclude property previously divided by a canal, bayou, waterway, or public right-of-way.

II. Analysis of State Submission

The EPA had no adverse comments regarding the proposed rule change, provided that each petition be accompanied by a statement indicating ownership, control, and clarified responsibility. In its response to comments, Texas agreed that the petition would clearly indicate ownership, control, and responsibility.

III. Final Action

The EPA is approving the revisions to the Texas SIP regarding Multiple Air Contaminant Sources or Properties. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, the proposed section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective on March 29, 1999 unless EPA receives adverse comment by March 1, 1999. If adverse or critical comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective March 29, 1999 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific, technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Orders (E.O.) 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from review under Executive Order E.O. 12866, entitled "Regulatory Planning Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds

necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

C. Executive Order 13045

Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations,

Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 18, 1998.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(112) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(112) Revision to the Texas State Implementation Plan submitted by the Governor on January 10, 1996.

(i) Incorporation by reference.

(A) Texas Natural Resource Conservation Commission (TNRCC) General Rules [30 TAC Chapter 101), Section 101.2(b), adopted by TNRCC on December 13, 1995, effective January 8, 1996.

(B) TNRCC Docket No. 95–0849–RUL issued December 13, 1995, for adoption of amendments to 30 TAC Chapter 101, Section 101.2(b), regarding Multiple Air Contaminant Sources or Properties and revision to the SIP.

(ii) Additional materials.

A letter from the Governor of Texas dated January 10, 1996, submitting revisions to 30 TAC Chapter 101, Section 101.2(b), for approval as a revision to the SIP.

[FR Doc. 99–1912 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6222–7]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, the Yolo-Solano Air Quality Management District (YSAQMD) requested approval to implement and enforce its "Rule 9.7: Perchloroethylene Dry Cleaning Operations" (Rule 9.7) in place of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP) for area sources under YSAQMD's jurisdiction. The Environmental Protection Agency (EPA) has reviewed this request and has found that it satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting YSAQMD the authority to implement and enforce Rule 9.7 in place of the dry cleaning NESHAP for area sources under YSAQMD's jurisdiction.

DATES: This rule is effective on March 29, 1999 without further notice, unless EPA receives adverse comments by March 1, 1999. If EPA receives such comment, then it will publish a timely withdrawal in the Federal Register informing the public that this rule will not take effect. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 29, 1999.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the EPA Region IX office listed below. Copies of YSAQMD's request for approval are available for public inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901. Docket # A–96–25.

California Air Resources Board, Stationary Source Division, 2020 "L" Street, P.O. Box 2815, Sacramento, California 95812–2815.

Yolo-Solano Air Quality Management District, 1947 Galileo Court, Suite 103, Davis, California 95616.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

On September 22, 1993, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for perchloroethylene dry cleaning facilities (*see* 58 FR 49354), which was codified in 40 CFR Part 63, Subpart M, "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP). On May 21, 1996, EPA approved the California Air Resources Board's (CARB) request to implement and enforce section 93109 of Title 17 of the California Code of Regulations, "Airborne Toxic Control Measure for Emissions of Perchloroethylene from Dry Cleaning Operations" (dry cleaning ATCM), in place of the dry cleaning NESHAP for area sources (*see* 61 FR 25397). This approval became effective on June 20, 1996.

Thus, under Federal law, from September 22, 1993, to June 20, 1996, all dry cleaning facilities located within the jurisdiction of the Yolo-Solano Air Quality Management District (YSAQMD) that used perchloroethylene were subject to and required to comply with the dry cleaning NESHAP. Since June 20, 1996, all such dry cleaning facilities that also qualify as area sources are subject to the Federally-approved dry cleaning ATCM; major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the Clean Air Act (CAA) Title V operating permit program.

On April 25, 1997, EPA received, through CARB, YSAQMD's request for approval to implement and enforce its "Rule 9.7: Perchloroethylene Dry Cleaning Operations" (Rule 9.7), as the Federally-enforceable standard for area sources under YSAQMD's jurisdiction. YSAQMD's request, however, does not include the authority to determine equivalent emission control technology for dry cleaning facilities in place of 40 CFR 63.325. On November 14, 1997, YSAQMD withdrew its request to make revisions to Rule 9.7. YSAQMD subsequently revised Rule 9.7 on November 13, 1998, and resubmitted the rule on December 21, 1998, for EPA's approval.

II. EPA Action

A. YSAQMD's Dry Cleaning Rule

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, Subpart E (*see* 58 FR 62262, dated November 26, 1993). Under these regulations, a local air pollution control agency has the option to request EPA's approval to substitute a local rule for the applicable Federal rule. Upon approval, the local agency is given the authority to implement and enforce its rule in

place of the otherwise applicable Federal rule. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.93 must be met.

After reviewing the request for approval of YSAQMD's Rule 9.7, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.93. Accordingly, with the exception of the dry cleaning NESHAP provisions discussed in sections II.A.1 and II.A.2 below, as of the effective date of this action, YSAQMD's Rule 9.7 is the Federally-enforceable standard for area sources under YSAQMD's jurisdiction. This rule will be enforceable by the EPA and citizens under the CAA. Although YSAQMD now has primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112.

1. Major Dry Cleaning Sources

Under the dry cleaning NESHAP, dry cleaning facilities are divided between major sources and area sources. YSAQMD's request for approval included only those provisions of the dry cleaning NESHAP that apply to area sources. Thus, dry cleaning facilities using perchloroethylene that qualify as major sources, as defined by the dry cleaning NESHAP, remain subject to the dry cleaning NESHAP and the CAA Title V operating permit program.

2. Authority To Determine Equivalent Emission Control Technology for Dry Cleaning Facilities

Under the dry cleaning NESHAP, any person may petition the EPA Administrator for a determination that the use of certain equipment or procedures is equivalent to the standards contained in the dry cleaning NESHAP (*see* 40 CFR 63.325). In its request, YSAQMD did not seek approval for the provisions in Rule 9.7 that would allow for the use of alternative emission control technology without previous approval from EPA (i.e., Rule 9.7 sections 216, 301.3.a(v), 301.3.b(ii)(c), and 502). A source seeking permission to use an alternative means of emission limitation under CAA section 112(h)(3) must receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

B. California's Authorities To Implement and Enforce CAA Section 112 Standards

1. Penalty Authorities

As part of its request for approval of the dry cleaning ATCM, CARB submitted a finding by California's Attorney General stating that "State law provides civil and criminal enforcement authority consistent with [40 CFR] 63.91(b)(1)(i), 63.91(b)(6)(i), and 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day *per violation* * * *" [emphasis added]. In accordance with this finding, EPA understands that the California Attorney General interprets section 39674 and the applicable sections of Division 26, Part 4, Chapter 4, Article 3 ("Penalties") of the California Health and Safety Code as allowing the collection of penalties for multiple violations per day. In addition, EPA also understands that the California Attorney General interprets section 42400(c)(2) of the California Health and Safety Code as allowing for, among other things, criminal penalties for knowingly rendering inaccurate any monitoring *method* required by a toxic air contaminant rule, regulation, or permit.

As stated in section II.A above, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112, including the authority to seek civil and criminal penalties up to the maximum amounts specified in CAA section 113.

2. Variances

Division 26, Part 4, Chapter 4, Articles 2 and 2.5 of the California Health and Safety Code provide for the granting of variances under certain circumstances. EPA regards these provisions as wholly external to YSAQMD's request for approval to implement and enforce a CAA section 112 program or rule and, consequently, is proposing to take no action on these provisions of state or local law. EPA does not recognize the ability of a state or local agency who has received delegation of a CAA section 112 program or rule to grant relief from the duty to comply with such Federally-enforceable program or rule, except where such relief is granted in accordance with procedures allowed under CAA section 112. As stated above, EPA retains the right, pursuant to CAA section 112(l)(7), and citizens retain the right, pursuant to CAA section 304, to enforce any applicable emission standard or requirement under CAA section 112.

Similarly, section 39666(f) of the California Health and Safety Code allows local agencies to approve alternative methods from those required in the ATCMs, but only as long as such approvals are consistent with the CAA. As mentioned in section II.A.2 above, a source seeking permission to use an alternative means of emission limitation under CAA section 112 must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with CAA section 112.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.93 do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. section 7412.

Dated: January 11, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for Part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Section 63.14 is amended by revising paragraph (d)(1) to read as follows:

§ 63.14 Incorporation by Reference

* * * * *

(d) * * *

(1) *California Regulatory Requirements Applicable to the Air Toxics Program*, January 5, 1999, IBR approved for § 63.99(a)(5)(ii) of subpart E of this part.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

3. Section 63.99 is amended by revising paragraph (a)(5)(ii) introductory text, revising paragraph (a)(5)(ii)(A) introductory text, revising the first sentence of paragraph (a)(5)(ii)(A)(*1*)(*i*), revising the first sentence of paragraph (a)(5)(ii)(B)(*1*)(*is*), and adding paragraph (a)(5)(ii)(D), to read as follows:

§ 63.99 Delegated Federal Authorities

(a) * * *

(5) * * *

(ii) Affected sources must comply with the *California Regulatory Requirements Applicable to the Air Toxics Program*, January 5, 1999 (incorporated by reference as specified in § 63.14) as described as follows:

(A) The material incorporated in Chapter 1 of the *California Regulatory*

Requirements Applicable to the Air Toxics Program (California Code of Regulations Title 17, section 93109) pertains to the perchloroethylene dry cleaning source category in the State of California, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(*1*) * * *

(*i*) California is not delegated the Administrator's authority to implement and enforce California Code of Regulations Title 17, section 93109, in lieu of those provisions of subpart M which apply to major sources, as defined in § 63.320(g). * * *

(*ii*) * * *

(B) * * *

(*1*) * * *

(*i*) San Luis Obispo County Air Pollution Control District is not delegated the Administrator's authority to implement and enforce Rule 432 in lieu of those provisions of subpart M which apply to major sources as defined in § 63.320(g). * * *

(*ii*) * * *

(C) * * *

(D) The material incorporated in Chapter 4 of the *California Regulatory Requirements Applicable to the Air Toxics Program* (Yolo-Solano Air Quality Management District Rule 9.7) pertains to the perchloroethylene dry cleaning source category in the Yolo-Solano Air Quality Management District, and has been approved under the procedures in § 63.93 to be implemented and enforced in place of subpart M—National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as it applies to area sources only, as defined in § 63.320(h).

(*1*) Authorities not delegated.

(*i*) Yolo-Solano Air Quality Management District is not delegated the Administrator's authority to implement and enforce Rule 9.7 in lieu of those provisions of subpart M which apply to major sources, as defined in § 63.320(g). Dry cleaning facilities which are major sources remain subject to subpart M.

(*ii*) Yolo-Solano Air Quality Management District is not delegated the Administrator's authority of § 63.325 to determine equivalency of emissions control technologies. Any source seeking permission to use an alternative means of emission limitation, under sections 216, 301.3.a(v), 301.3.b(ii)(c), and 502 of Rule 9.7, must also receive approval from the Administrator before using such alternative means of emission limitation for the purpose of complying with section 112.

* * * * *

[FR Doc. 99–1910 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300778; FRL 6053–8]

RIN 2070–AB78

Diflufenzopyr; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of diflufenzopyr, 2-(1-[([3,5-difluorophenylamino]carbonyl)-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1 (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one) in or on field corn stover, forage and grain. BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective January 28, 1999. Objections and requests for hearings must be received by EPA on or before March 29, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300778], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300778], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300778]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 21, 1997, (62 FR 62304) (FRL 5755–4), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by BASF Corporation, P.O. Box 13528, Research Triangle Park, North Carolina 27709. This notice included a summary of the petition prepared by BASF Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing tolerances for combined residues of the herbicide diflufenzopyr, 2-(1-[([3,5-difluorophenylamino]carbonyl)-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1, (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one), in or on field corn fodder (stover), forage and grain at 0.05 part per million (ppm). Note that the scientific assessments relevant to establishing these tolerances for diflufenzopyr were conducted jointly between EPA and the Pest Management Regulatory Agency (PMRA) of Canada as a project under the North American Free Trade Agreement (NAFTA) and the Canadian United States Trade Agreement (CUSTA). Diflufenzopyr qualified as a candidate for such a program due to its classification as a reduced risk pesticide.

I. Risk Assessment and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances, November 26, 1997, (62 FR 62961) (FRL 5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diflufenzopyr and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for combined residues of diflufenzopyr, 2-(1-[([3,5-difluorophenylamino] carbonyl)hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1, (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one) on field corn stover, forage and grain at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diflufenzopyr are discussed below.

1. Acute toxicology studies place technical-grade diflufenzopyr in Toxicity Category III or IV for all routes of exposure. It is not a dermal sensitizer.

2. In a subchronic feeding study in rats, male and female Wistar rats were fed test diets containing technical diflufenzopyr, purity 96%, at dose levels of 0, 1,000, 5,000, 10,000 and 20,000 ppm (equal to 0, 60.8, 352, 725 and 1,513 milligram/kilogram body weight/day (mg/kg bw/day) for males, and 0, 72.8, 431, 890 and 1,750 mg/kg bw/day for females) for a period of 13 weeks, 10 rats per sex per group. An additional 10 rats per sex were assigned to the 0 and 20,000 ppm groups for a 4-week recovery period following treatment. The no observed adverse effect level (NOAEL) was set at 5,000 ppm (equal to 352 mg/kg bw/day for males, and 431 mg/kg bw/day for females) based on lower mean body weight gain and decreased food efficiency in the 10,000 and 20,000 ppm groups, both sexes. Additional findings were decreased food intake (20,000 ppm, males only); slight increases in cholesterol (20,000 ppm, both sexes, and 10,000 ppm, males only) and ALAT (10,000 and 20,000 ppm, both sexes); and slightly lower chloride (20,000 ppm, both sexes). Histopathological findings were an increased incidence of foamy macrophages in the lungs in the 10,000 and 20,000 ppm groups, both sexes, and testicular atrophy in the 20,000 ppm group. Following the 4-week recovery period, the only treatment-related effects which showed partial or no evidence of recovery were foamy macrophages in the lungs and testicular atrophy.

3. In a 13-week feeding study, male and female CD-1 mice were fed test diets containing technical diflufenzopyr, purity 97.1%, at dietary concentrations of 0, 350; 1,750, 3,500 and 7,000 ppm (equal to 0, 58, 287, 613 and 1,225 mg/kg bw/day for males, and 0, 84, 369, 787 and 1,605 mg/kg bw/day for females) for a period of 13 weeks, 10 mice per sex per group. The NOAEL was determined to be 7,000 ppm (equal to 1,225 mg/kg bw/day for males and 1,605 mg/kg bw/day for females) since there were no treatment-related effects observed in male or female mice at any dose level tested.

4. In a subchronic toxicity study in dogs, diflufenzopyr (98% a.i.) was administered to beagle dogs (4/sex/dose) by feeding at dose levels of 0, 1,500, 10,000, or 30,000 ppm (0, 58, 403, or 1,131 mg/kg/day for males; 0, 59, 424, or 1,172 mg/kg/day for females) for 13 weeks. The lowest adverse effect level (LOAEL) for this study is 10,000 ppm (403 mg/kg/day in males and 424 mg/kg/day in females), based on the occurrence of erythroid hyperplasia in the bone marrow, extramedullary hemopoiesis in the liver, and hemosiderin deposits in Kupffer cells. The NOAEL is 1,500 ppm (58 mg/kg/day in males and 59 mg/kg/day in females).

5. In the subchronic dermal toxicity study, technical diflufenzopyr, purity 96.4%, was moistened with distilled water and administered by dermal application to male and female New Zealand White rabbits, 5/sex/dose, at dose levels of 0, 100, 300 and 1,000 mg/kg bw per application. Duration of application was 6 hours a day, daily for 21 to 24 consecutive days. The NOAEL for systemic toxicity was determined to be 1,000 mg/kg bw/day, since there were no apparent signs of treatment-related systemic effects observed in male or female rabbits at any dose level tested. A NOAEL for dermal effects could not be determined since local dermal irritation was observed at all dose levels tested (there were no corresponding findings upon histopathological examination).

6. In a chronic toxicity study in dogs, diflufenzopyr (98.1% a.i.) was administered to beagle dogs (4/sex/dose) by feeding at dose levels of 0, 750, 7,500, or 15,000 ppm (0, 26, 299, or 529 mg/kg/day for males; 0, 28, 301, or 538 mg/kg/day for females) for 52 weeks. The LOAEL for this study is 7,500 ppm (299 mg/kg/day for males and 301 mg/kg/day for females), based on erythroid hyperplasia in the bone marrow in bone sections, reticulocytosis, and increased hemosiderin deposits in the liver, kidneys, and spleen. The NOAEL is 750 ppm (26 mg/kg/day for males and 28 mg/kg/day for females).

7. In a mouse carcinogenicity study, male and female CD-1 mice were fed test diets containing technical diflufenzopyr, purity 98.1%, at dietary concentrations of 0, 700, 3,500 and 7,000 ppm (equal to 0, 100, 517 and 1,037 mg/kg bw/day for males, and 0, 98, 500 and 1,004 mg/kg bw/day for females), 60 mice per sex per group, for a period of 78 weeks. The NOAEL for systemic toxicity was determined to be 7,000 ppm (equal to 1,037 mg/kg bw/day for males and 1,004 mg/kg bw/day for females). There were no treatment-related effects observed at any dose level tested in male rats. There was a slight, but statistically significantly lower mean overall body weight gain for

females in the 7,000 ppm group, due primarily to decreased gain/increased weight loss during the second year of the study. In the absence of any other treatment-related findings, this was not considered to be an adverse, toxicologically significant finding. There was no evidence of oncogenic potential of diflufenzopyr for male or female mice at any dose level tested.

8. In a combined chronic toxicity/carcinogenicity study, male and female Wistar rats were fed test diets containing technical diflufenzopyr, purity 97.1% to 99.6%, at dietary concentrations of 0, 500, 1,500, 5,000 and 10,000 ppm (equal to 0, 22, 69, 236 and 518 mg/kg bw/day for males, and 0, 29, 93, 323 and 697 mg/kg bw/day for females), 72 rats per sex per group, for a period of 104 weeks. The NOAEL for systemic toxicity was set at 5,000 ppm (equal to 236 mg/kg bw/day for males and 323 mg/kg bw/day for females). Treatment-related effects in the 10,000 ppm group were significantly lower body weight and body weight gains throughout the study period and decreased food efficiency. There was no evidence of oncogenic potential of diflufenzopyr at any dose level tested. The incidences of benign and malignant tumors were comparable between control and treated groups.

9. In a developmental toxicity study, technical diflufenzopyr (98.1% a.i.) in 0.5% aqueous methyl cellulose was administered by gavage to 25 female Crl: CD BR VAF/Plus (Sprague Dawley) rats/dose at dose levels of 0, 100, 300, or 1,000 mg/kg/day from days 6 through 15 of gestation. The maternal NOAEL is 300 mg/kg/day and the maternal LOAEL is 1,000 mg/kg/day based on decreases in food consumption and weight gain. Developmental effects, characterized as significantly lower fetal body weights in males (5%) and skeletal variations, exhibited as incompletely ossified and unossified sternal centra and reduced fetal ossification sites for caudal vertebrae, were observed at 1,000 mg/kg/day. The developmental LOAEL is 1,000 mg/kg/day, based on decreased fetal body weights and skeletal variations. The developmental NOAEL is 300 mg/kg/day.

10. In a developmental toxicity study, technical diflufenzopyr (98.1% a.i.) in 0.5% aqueous methyl cellulose was administered by gavage to 20 female New Zealand White Hra: (NZW)SPF rabbits/dose at dose levels of 0, 30, 100, or 300 mg/kg/day from days 6 through 19 of gestation. The maternal LOAEL is 100 mg/kg/day, based on minimal reductions in body weight gain with no reduction in food consumption and clinical signs of toxicity (abnormal feces). The maternal NOAEL is 30 mg/kg/day. Developmental effects, characterized as significant increases ($p \leq 0.01$) in the incidence of supernumerary thoracic rib pair ossification sites (12.74 vs. 12.54 for controls) occurred at the 300 mg/kg/day dose. No treatment-related developmental effects were noted at the low- or mid-doses. The developmental LOAEL is 300 mg/kg/day based on increased skeletal variations (supernumerary rib ossification sites). The developmental NOAEL is 100 mg/kg/day.

11. In a 2-generation reproduction study, technical diflufenzopyr (98.1% a.i.) was administered continuously in the diet to 26 Wistar rats/sex/dose at dose levels of 0, 500, 2,000 or 8,000 ppm in the diet (0, 27.3–42.2, 113.1–175.9, or 466.2–742.0 mg/kg/day). The systemic LOAEL is 2,000 ppm (113.1–175.9 mg/kg/day) based on reduced body weight gain, increased food consumption, and increased seminal vesicle weights. The systemic NOAEL is 500 ppm (27.3–42.2 mg/kg/day). The reproductive LOAEL is 8,000 ppm (466.2–742.0 mg/kg/day) based on lower live birth and viability indices, total pre-perinatal loss, reduced body weights and body weight gain during lactation, a higher proportion of runts, and a higher percentage of offspring with no milk in the stomach. The reproductive NOAEL is 2,000 ppm (113.1–175.9 mg/kg/day).

12. In an acute neurotoxicity study, diflufenzopyr (96.4% a.i.) was administered by gavage to Crl:CD BR rats (10/sex/group) at dose levels of 0, 125, 500 or 2,000 mg/kg. The rats were evaluated for reactions in functional observations and motor activity measurements at 3 hours, 7 days, and 14 days postdosing. Histopathological evaluation on the brain and peripheral nerves was assessed after day 14. Diflufenzopyr had no definite impact on neurotoxic responses, although a few abnormalities were observed in the functional battery on the day of dosing. A decrease in immediate righting responses that was observed in several males in all treatment groups was not concentration-dependent. Nasal staining was observed in more rats in the 2,000 mg/kg treatment groups (6 males; 3 females), but was not considered a definite or significant response to treatment. Lower mean brain weights in all female treatment groups lacked associated macroscopic and microscopic histopathological changes, and were only 4–5% lower than the control brain weight. Mean locomotor activities for the 2,000 mg/kg female treatment groups were decreased on Days 7 (~27%, $p < 0.05$) and 14 (~15%, not significant) after dosing, but the pattern of activity for the individual animals was similar to the individual controls over time. There were no definite treatment-related differences in body weights or food consumption in any of the treatment groups. There was no evidence of treatment-related neuropathology in the 2,000 mg/kg treatment group. A LOAEL was not established. The NOAEL for acute neurotoxicity is 2,000 mg/kg (the limit dose).

13. In a subchronic neurotoxicity study, diflufenzopyr (96.4% a.i.) was administered in the diet to Crl: CD BR rats (10/sex/group) at dose levels of 0, 25, 75 or 1,000 mg/kg/day for 13 weeks. The rats were evaluated for reactions in functional observations and motor activity testing at 4 hours and during weeks 4, 8 and 13 of treatment. No treatment-related neurotoxicological effects were observed at any treatment level. A LOAEL for neurotoxicological effects was not established; the NOAEL was 1,000 mg/kg/day for both sexes. Treatment-related toxic effects were observed at the 1,000 mg/kg/day treatment level. The toxicological LOAEL for this study is 1,000 mg/kg/day, based on decreased body weight gains for both sexes. The toxicological NOAEL is 75 mg/kg/day.

14. In a microbial mutagenicity assay, Salmonella typhimurium strains TA98, TA100, TA1535, TA1537, and TA1538 were exposed to diflufenzopyr (97.1%) in DMSO at concentrations of 333, 667, 1,000, 3,330, 6,670 and 10,000 µg/plate in the presence and absence of mammalian metabolic activation. Diflufenzopyr (97.1%) was tested to twice the limit concentration of 5,000 µg/plate and cytotoxicity was observed at 6,670 and 10,000 µg/plate in the absence of activation (-S9) but not in its presence (+S9). The positive controls induced the appropriate responses in the corresponding strains. There was no evidence that the test article induced mutant colonies over background.

15. In a mammalian cell gene mutation assay at the thymidine kinase locus, heterozygous L5178Y (TK +/-) mouse lymphoma cells cultured *in vitro* were exposed in independent repeat assays to diflufenzopyr technical (97.1% a.i.) in dimethyl sulfoxide at dose levels ranging from 0.05 to 3.0 mg/mL (50 to 3,000 µg/mL) in the presence and absence of S9 mammalian metabolic activation in the first trial, and 0.05 to 2.0 mg/mL (50 to 2,000 µg/mL) in the second. Diflufenzopyr was tested up to cytotoxic dose levels and mutation frequencies were determined for dose levels selected on the basis of relative

growth. Although initially declared positive by the then study director, application of more recent criteria for mutagenic responses has rendered the test article negative for forward gene mutation at the TK locus in mouse L5178Y cells in the presence and absence of S9 activation. The positive controls induced the appropriate responses.

16. In an *in vivo* mouse bone marrow micronucleus assay, groups of 15 male and female ICR mice were dosed by oral gavage with diflufenzopyr (technical, 97.1%) in corn oil at 500, 1,667, and 5,000 mg/kg. Bone marrow cells were harvested at 24, 48, or 72 hours and scored for micronucleated polychromatic erythrocytes (MPCEs). No mortalities or adverse clinical signs were observed at any dose including the limit dose of 5,000 mg/kg, and there were no changes in the PCE/NCE ratios (an indirect measure of cytotoxicity). The positive control induced significant increases in MPCEs, also in the absence of any target cell cytotoxicity. No significant increase in the frequency of MPCEs in bone marrow cells after any treatment time were recorded; therefore, the test article is considered negative in this micronucleus assay.

17. In an unscheduled DNA synthesis assay, primary rat hepatocyte cultures were exposed to diflufenzopyr (97.1% a.i.) in dimethylsulfoxide (DMSO) at 15 concentrations ranging from 0.0250 to 1,000 µg/mL in the presence of 10µCi/ml^3 HtdR (42 Ci/mmole) for approximately 19 hours. Mutagenicity, as measured by unscheduled DNA synthesis (UDS), was determined for 6 concentrations selected on the basis of cytotoxicity. The concentrations selected were 5.00, 10.0, 25.0, 50.0, 100, and 250 µg/mL. The highest concentration selected for UDS evaluation, 250 µg/mL, was moderately toxic (50.8% survival). There was no evidence that unscheduled DNA synthesis, as determined by radioactive tracer procedures (nuclear silver grain counts) was induced. The positive control induced the appropriate response.

18. In a rat metabolism study, (phenyl-U-^{14}C) or (pyridinyl-4,6-^{14}C) diflufenzopyr was administered to five Wistar rats/sex/dose group as a single intravenous dose at 1 mg/kg/day, a single oral dose (gavage) at 10 or 1,000 mg/kg or a single dose at 10 mg/kg following a 14-day pretreatment with unlabeled diflufenzopyr at 10 mg/kg. Bile-duct cannulated rats from each dose group were sacrificed at 48 hours post-dose (Subgroup 2). Non-cannulated rats from each dose group were sacrificed at 72 hours (Subgroup 1) or 24 hours (Subgroup 3) post-dose. (^{14}C) Diflufenzopyr was only partially absorbed from the GI tracts of orally dosed rats as indicated by the levels of excretion in urine and bile. In all orally dosed groups, 20–44% of the dose was excreted in the urine and 3–11% was excreted in the bile. In contrast, intravenously dosed rats excreted 61–89% of the dose in urine and 4–19% of the dose in bile. For all orally dosed groups, the level of absorption was similar between sexes. Dose level and pretreatment had little effect on the proportion of the dose excreted in urine following oral administration. Enterohepatic circulation plays a role in the elimination of ^{14}C diflufenzopyr in rats. 3–19% of the dose was recovered in the bile of all dose groups. Within 72 hours of dosing, intravenously-dosed rats excreted the majority of radioactivity in urine (61–89%), whereas orally-dosed rats excreted most of the radioactivity in feces (49–79%), regardless of radiolabel or sex. Pretreatment did not appear to affect the pattern of excretion. Bile-cannulated rats excreted lesser amounts in feces compared to non-cannulated rats; 3–19% of the dose was excreted in bile. The estimated half-lives of radiocarbon eliminated in urine and feces was 5.3-6.9 hours for all single intravenous and oral dose groups, and 7.7-10.8 hours for all repeat oral dose groups. Total radioactive residues in tissues from rats in all dose groups were <3% of the administered dose. Total tissue residue levels were highest in rats sacrificed at 24 hours post-dose; residue levels were highest in blood, blood cell, and serum for the phenyl label groups, and were highest in liver and kidney for the pyridinyl label groups. Blood residue levels for all dose groups were <1% of the administered dose at all sampling intervals through 72 hours post-dose. TLC and HPLC analyses were conducted on 0-72 and 0-48 urine and feces samples, and on 0-48 hour bile samples from each treatment regimen. The structures of the metabolites were confirmed using 2-D TLC, HPLC, LC/MS, DIP/MS, FAB/MS, and proton NMR. For each dose group, the metabolic profile was similar between sexes, except for differences in metabolite levels. Unchanged diflufenzopyr was identified as the major component in urine, feces, and bile from all dose groups using either radiolabel. Urinary metabolites identified in the ^{14}C-phenyl labeled dose groups included: 3,5-difluoroaniline (M2; aniline) and 6-((3,5-difluorophenyl) carbomyl)-8-methyl-pyrido (2,3-*d*)-5-pyridazinone (M5; carbamoyl phthalazinone). Urinary metabolites identified in the ^{14}C-pyridinyl labeled dose groups included: 8-methyl-5-hydroxy-pyrido(2,3-*d*)-pyridazine (M1; phthalazinone); carbamoyl phthalazinone (M5); 2-acetyl nicotinic acid (M6; 2-acetyl nicotinic acid); 8-methylpyrido[2,3-d]pyridazine-2,5(1*H*, 6*H*)-dione (M9; 2-keto-M1); 8-hydroxymethyl-5(6*H*)-pyrido[2,3-d]pyridazinone (M10; 8-hydroxymethyl-M1); and, 8-hydroxymethylpyrido[2,3-d]pyridazine-2,5(1*H*,6*H*)-dione (M19; 2-keto-8-hydroxymethyl-M1 or Metabolite E). Fecal metabolites identified in the phenyl label groups included: methyl *N*-(3,5-difluorophenyl)carbamate (M8) and M5. Fecal metabolites identified in the pyridinyl label groups included: M1, M5, M6, M9, and M10. Besides parent, bile samples also contained minor amounts of M5 (both labels) and M1 (pyridinyl label only). The data indicate that diflufenzopyr is excreted primarily as unchanged parent in urine, feces, and bile. Minor amounts of hydrolysis products (M1, M5, and M6) and hydroxylation products (M9, M10, and M19) were identified in excreta.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary risk assessment, an acute Reference Dose (RfD) of 1.0 mg/kg/day has been selected, based on the developmental NOAEL of 100 mg/kg/day from the Rabbit Developmental Study and an uncertainty factor of 100 (10x for interspecies differences and 10x for intraspecies variations). The endpoint is based on developmental findings (increased skeletal variations) in rabbits which can be attributed to a single gavage dose during gestation and which occurred at a maternally toxic dose. The population subgroup at risk for this developmental effect is females of child-bearing age (13+ years). No appropriate toxicological endpoint is available in the data base for other subgroups of the population including infants and children.

2. *Short - and intermediate - term toxicity.* Since there was no observed dermal or systemic toxicity in a rabbit 21-day dermal study with diflufenzopyr, short- and intermediate-term toxicity endpoints are not being established.

3. *Chronic toxicity.* EPA has established the RfD for diflufenzopyr at 0.26 milligrams/kilogram/day (mg/kg/day). This RfD is based on bone marrow compensated hemolytic anemia observed in the 1-year dog feeding study with a NOAEL of 26 mg/kg/day.

4. *Carcinogenicity.* Based on the lack of evidence of carcinogenicity in mice and rats at doses that were judged to be adequate to assess the carcinogenic

potential, diflufenzopyr has been characterized as "not likely" to be a human carcinogen.

C. Exposures and Risks

1. *From food and feed uses.* No previous tolerances have been established for the combined residues of diflufenzopyr, 2-(1-[([3,5-difluorophenylamino]carbonyl)-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1, (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one). Risk assessments were conducted by EPA to assess dietary exposures from diflufenzopyr as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk assessment was performed for diflufenzopyr, its metabolites characterized as M1, and M10. The analysis was conducted using the acute RfD of 1.0 mg/kg/day, based on developmental findings (increased skeletal variations) observed in the Rabbit Developmental Study. For the population subgroup of concern, females 13 years and older, the estimated 95th percentile of exposure is equal to 0.01% of the acute RfD. The analysis is conservative since it assumes that 100% of corn-derived foods contain residues at the tolerance level (0.05 ppm).

ii. *Chronic exposure and risk.* A chronic dietary risk assessment was performed for diflufenzopyr, its metabolites characterized as M1, and M10. The analysis used the RfD of 0.26 mg/kg bwt/day and assumed that 100% of corn-derived foods contain residues at the tolerance level (0.05 ppm). These assumptions result in a Theoretical Maximum Residue Contribution (TMRC) that is less than or equal to 0.1% of the RfD for the overall U.S. population (48 states) and all population subgroups.

2. *From drinking water.* There are no established Maximum Contaminant Levels or health advisory levels for residues of diflufenzopyr or its metabolites in drinking water. EPA used the SCI-GROW (Screening Concentration in Ground Water) model to estimate residues of diflufenzopyr in ground water and the GENEEC (Generic Expected Environmental Concentration) model to estimate diflufenzopyr residue levels in surface water. Estimated environmental concentrations (EECs) in ground water reflecting an application rate of 0.12 pounds of active ingredient per acre were 0.006 parts per billion (ppb) for acute and chronic exposure scenarios. EECs in surface water were 3.8 ppb for acute exposure scenarios and 1.95 ppb for chronic exposure scenarios. The computer generated EECs represent conservative estimates and should be used only for screening.

i. *Acute exposure and risk.* EPA has calculated a drinking water level of comparison (DWLOC) for acute exposure to diflufenzopyr in drinking water for the relevant population subgroup, females 13 + years of age. THE DWLOC is 29,970 ug/L.

To calculate the DWLOCs for acute exposure relative to an acute toxicity endpoint, the acute dietary food exposure from the DEEM (Dietary Exposure Evaluation Model) analysis was subtracted from the ratio of the acute NOAEL (used for acute dietary assessments) to the acceptable margin of exposure (MOE) for aggregate exposure to obtain the acceptable acute exposure to diflufenzopyr in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

Estimated maximum concentrations of diflufenzopyr in surface and ground water are 3.80 ppb and 0.006 ppb, respectively. The estimated maximum concentrations in water are less than EPA's level of comparison (29,970 ppb) for diflufenzopyr residues in drinking water as a contribution to acute aggregate exposure. Therefore, taking into account the use proposed in this action, EPA concludes with reasonable certainty that residues of diflufenzopyr in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

ii. *Chronic exposure and risk.* EPA has calculated drinking water levels of comparison (DWLOCs) for chronic exposure to diflufenzopyr in drinking water. For chronic (non-cancer) exposure to diflufenzopyr in surface and ground water, the drinking water levels of comparison are 9,100 ug/L and 2,600 ug/L for the U.S. population and the subgroup children (1–6 years old), respectively.

To calculate the DWLOCs for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure (from the DEEM analysis) and residential exposure were subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to diflufenzopyr in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures.

Estimated average concentrations of diflufenzopyr in surface and ground water are 1.95 ppb and 0.006 ppb, respectively. The DWLOCs are 9,100 ppb for the U.S. population and 2,600 ppb for the subgroup, children (1–6 years old). The estimated average concentrations of diflufenzopyr in surface and ground water are less than EPA's levels of comparison for diflufenzopyr in drinking water as a contribution to chronic aggregate exposure.

3. *From non-dietary exposure.* There are no registered or proposed residential uses for diflufenzopyr.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether diflufenzopyr has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diflufenzopyr does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diflufenzopyr has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the population subgroup of concern, females 13+ years old, the acute dietary (food) exposure does not exceed 0.02% of the acute RfD. The drinking water level of comparison (DWLOC) for acute exposure to diflufenzopyr residues is 29,970 ug/L for females (13+ years). The maximum concentration of diflufenzopyr in drinking water (3.80 ug/L) is less than EPA's level of comparison for diflufenzopyr in drinking water as a contribution to acute aggregate exposure. EPA concludes with reasonable certainty that residues of diflufenzopyr in drinking water will not contribute significantly to the aggregate acute human health risk and that the

acute aggregate exposure from diflufenzopyr in food and water will not exceed the Agency's level of concern for acute dietary exposure.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to diflufenzopyr from food will utilize less than 0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure, children 1–6 years old, is "discussed below." EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to diflufenzopyr in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diflufenzopyr residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. There are no established or proposed residential uses for diflufenzopyr. Therefore, the short and intermediate aggregate risks are adequately addressed by the chronic aggregate dietary risk assessment.

4. *Aggregate cancer risk for U.S. population.* Diflufenzopyr has been classifiedd as "not likely" to be a human carcinogen.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diflufenzopyr residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of diflufenzopyr, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and post-natal sensitivity.* There is no indication of increased sensitivity of rats or rabbits to *in utero* and/or early postnatal exposure to diflufenzopyr in the developmental and reproductive toxicity studies.

iii. *Conclusion.* There is a complete toxicity database for diflufenzopyr and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Taking into account the completeness of the database and the toxicity data regarding pre- and post-natal sensitivity, EPA concludes, based on reliable data, that use of the standard margin of safety will be safe for infants and children without addition of another tenfold factor.

2. *Acute risk.* No appropriate acute toxicological endpoint has been identified for infants and children.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to diflufenzopyr from food will utilize 0.1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to diflufenzopyr in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to diflufenzopyr residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants (field corn) and animals is understood. In field corn, the urea bond is cleaved to yield metabolites containing a new bicyclic ring system. No diflufenzopyr was detected in any of the corn matrices; metabolites comprising >10% total radioactive residue (TRR) include M1 (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one), M10 (8-hydroxymethyl-5(6*H*)-pyrido[2,3-*d*]pyridazone) and its glucose conjugate, and M9 (8-methylpyrido[2,3-*d*]pyridazine-2,5(1*H*,6*H*)-dione in forage and fodder, and 6–14% TRR lignin was found in fodder. Corn grain contained 3–4 discrete unknowns, all at <10% TRR or <0.05 ppm each. The residues of concern in plants are diflufenzopyr, 2-(1-[([3,5-difluorophenylamino]carbonyl)-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1 (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one).

In livestock, the majority (≧90%) of diflufenzopyr was excreted. In the ruminant, major metabolites include M1, M5 (6-([3,5-difluorophenylcarbamoyl-8-methyl-pyrido[2,3-*d*]-5-pyridazinone) and M19 (8-hydroxymethylpyrido[2,3-d]pyridazine-2,5(1*H*,6*H*)-dione. A substantial amount (8–50%) of diflufenzopyr was also found in milk, kidney, and liver. In poultry, diflufenzopyr was not detected, and M1 was the only significant metabolite identified, and in egg white only. Transfer of secondary residues to livestock is not expected .

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

Residues of diflufenzopyr, 2-(1-[([3,5-difluorophenylamino]carbonyl)-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1 (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one) are not expected to exceed 0.05 ppm in field corn grain, forage and stover.

D. International Residue Limits

There are no CODEX or Mexican residue limits established for diflufenzopyr or its metabolites. As part of the joint review, Canada will be setting an equivalent Maximum Residue Level (MRL) for corn grain. Therefore, no compatibility problems exist for the proposed tolerances.

E. Rotational Crop Restrictions

The end-use product, which contains the active ingredients diflufenzopyr and dicamba (sodium salts), will contain a statement limiting the planting of rotational crops for a least 120 days after application. This restriction is based on rotational crop data for dicamba. The rotational crop study submitted for diflufenzopyr was not conducted in accordance with EPA guidelines. However, based on the results of this study, the low residues in the treated corn crop and diflufenzopyr's lack of persistence in soil, EPA does not expect residues of diflufenzopyr and its metabolites to occur in rotational crops at the 120–day plant-back interval, when corn is treated at the label rate of up to 0.125 pounds active ingredient per acre per season.

IV. Conclusion

Therefore, tolerances are established for combined residues of diflufenzopyr, 2-(1-[([3,5-difluorophenylamino]carbonyl)-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1, (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one) in field corn stover, forage and grain at 0.05 ppm ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 29, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33. If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300778] (including any comments and data submitted electronically): A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 14, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 – [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By adding §180.549 to read as follows:

§180.549 Diflufenzopyr; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of diflufenzopyr, 2-(1-[[[3,5-difluorophenylamino]carbonyl]-hydrazono]ethyl)-3-pyridinecarboxylic acid, and its metabolites convertible to M1 (8-methylpyrido[2,3-*d*]pyridazin-5(6*H*)-one) in or on the following raw agricultural commodities.

Commodity	Parts per million
Field corn, forage	0.05
Field corn, grain	0.05
Field corn, stover	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–1901 Filed 1-27-99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300788; FRL–6058–7]

RIN 2070–AB78

Partial Withdrawal of Cryolite Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; partial withdrawal.

SUMMARY: This final rule and order withdraws the revocation of tolerances for residues of cryolite (fluorine compounds) on apricots, blackberries, boysenberries, dewberries, kale, loganberries, nectarines, and youngberries made in a final rule entitled "Revocation of Tolerances for Canceled Food Uses", (October 26, 1998; (63 FR 57067) (FRL–6035–6) which had an effective date of January 25, 1999. EPA is withdrawing the revocation of those specific tolerances because comments from Gowan Company made to the proposed rule (63 FR 5907, February 5, 1998) (FRL–5743–9) concerning cryolite were inadvertently not addressed.

DATES: This rule is effective on January 25, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, CM #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

You may be affected by this notice if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Pesticide reregistration and other actions [see FIFRA section 4(g)(2)] include tolerance and exemption reassessment under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA). Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Agricultural Stakeholders.	Growers/Agricultural Workers, Contractors [Certified/Commercial Applicators, Handlers, Advisors, etc.], Commercial Processors, Pesticide Manufacturers, User Groups, Food Consumers
Food Distributors.	Wholesale Contractors. Retail Vendors, Commercial Traders/Importers
Intergovernmental Stakeholders.	State, Local, and/or Tribal Government Agencies
Foreign Entities.	Governments, Growers, Trade Groups

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, you can consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section. In addition, the official record for this notice, including the public version, has been established under docket control number [insert the appropriate docket number], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall (CM) #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

III. Can I Challenge the Agency's Final Decision Presented in this Document?

Yes. You can file a written objection or request a hearing by March 29, 1999 in the following manner:

A. By Paper

Written objections and hearing requests, identified by the docket control number OPP–300788], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, room M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to room 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

B. Electronically

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending e-mail to opp-docket@epamail.epa.gov, per the instructions given in "By Paper" above. Electronic copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300788. Do not submit CBI through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository libraries.

IV. What Action Is Being Taken?

In the **Federal Register** of February 5, 1998 (63 FR 5907) (FRL–5743–9), EPA issued a proposed rule for specific pesticides announcing the proposed revocation of tolerances for canceled food uses and inviting public comment for consideration and for support of tolerance retention under Federal Food, Drug, and Cosmetic Act (FFDCA) standards. The Agency received comments, considered them, and responded to them in a final rule published in the **Federal Register** on October 26, 1998 (63FR 57067) (FRL–6035–6), announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text.

In the final rule, the Agency inadvertently overlooked comments on cryolite (fluorine compounds) made to the proposed rule of February 5, 1998 (63 FR 5907). This order addresses those comments and withdraws the revocation of tolerances for residues of cryolite on apricots, blackberries, boysenberries, dewberries, kale, loganberries, nectarines, and youngberries made on October 26, 1998.

Gowan Company's comment letter on the proposed changes to the cryolite tolerances, dated April 3, 1998, did not have a notation indicating the docket control number OPP–300602, as the proposed rule instructed, and consequently the letter was not inserted into the docket. In November, Gowan Co. filed an objection to the final rule (63 FR 57067) with the Hearing Clerk and provided the Agency with documentation that EPA received the comment letter in April, 1998. Gowan Co. supports the apricot and nectarine tolerances using peach data as outlined in 40 CFR 180.34(e)(8) and cites § 180.1(h) which lists the tolerance for the general category "peaches" as applicable to "nectarines". Gowan Co. supports the kale tolerance outlined in § 180.34(e)(19) using collard data. Had EPA seen these comments, the Agency would not have revoked the cryolite tolerances in question.

Also, the Interregional Research Project No. 4 (IR–4 Project), U.S. Department of Agriculture's National Agricultural Program for Minor Use Pest Management, filed an objection to the final rule (63 FR 57067) with the Hearing Clerk in November. The IR–4 Project wrote that EPA was informed of

IR–4's support of cryolite use on blackberry, boysenberry, dewberry, loganberry, and youngberry via the crop group approach outlined in 40 CFR 180.41 in the comment letter from Gowan dated April 3, 1998. In several communications to EPA from 1996 through 1998, the IR–4 Project announced that it was developing data to support cryolite use on blackberry, boysenberry, dewberry, loganberry, and youngberry via the crop group approach. The IR–4 Project is developing data on raspberries to cover caneberries. The caneberry crop subgroup is outlined in § 180.41(c)(13)(iii). Definitions and interpretations for blackberries and caneberries are given in § 180.1(h). In a letter dated May 6, 1998, the IR–4 Project declared it would petition EPA for cryolite use on caneberries in 1999.

Pursuant to FFDCA section 408(g)(2)(C), when EPA wishes to revise a tolerance regulation based on an objection to that action, the Agency shall do so by issuing an order stating the action taken and setting forth any revision to the regulation or prior order that the Agency has found to be warranted.

After reviewing the comments made by Gowan Co. and IR–4, it has been determined that the tolerance revocations in 40 CFR 180.145(a)(1) for cryolite use on apricots, blackberries, boysenberries, dewberries, kale, loganberries, nectarines, and youngberries made on October 26, 1998 (63 FR 57067) should be withdrawn. Therefore, this order withdraws those specific tolerance revocations for cryolite. However, tolerance revocations for cryolite use on "apples"; "beans"; "beets, tops"; "carrots"; "corn"; "mustard greens"; "okra"; "peanuts"; "pears"; "peas"; "quinces"; "radish, tops"; "rutabaga, tops"; and "turnip, tops" remain and become effective January 25, 1999 (63 FR 57067).

V. When Does This Action Become Effective?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and contrary to public interests. The timing of this action, i.e., withdrawal of the Agency's revocation of a tolerance, is critical to ensure that the tolerance is not revoked before the withdrawal takes effect. In addition, the Food Quality Protection Act (FQPA), authorizes the Agency to make these determinations without notice and comment. Once the determination is made, the final rule is issued to amend the regulations to incorporate the Agency's decision. Notice and an opportunity to comment on a final rule that merely corrects the regulation is unnecessary. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to make this amendment without prior notice and comment.

VI. How Do the Regulatory Assessment Requirements Apply to this Action?

A. Is this a "Significant Regulatory Action"?

No. Under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action." The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not "significant" unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this action is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10–fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

B. Does this Action Contain Any Reporting or Recordkeeping Requirements?

No. This action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

C. Does this Action Involve Any "Unfunded Mandates"?

No. This action does not impose any enforceable duty, or contain any "unfunded mandates" as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action in this Document?

No. Under Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Under Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action

does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Does this Action Involve Any Environmental Justice Issues?

No. This action is not expected to have any potential impacts on minorities and low income communities. Special consideration of environmental justice issues is not required under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

F. Does this Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Action Involve Technical Standards?

No. This tolerance action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

H. Are There Any International Trade Issues Raised by this Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a Federal Register document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested stakeholders.

I. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq* ., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of January 25, 1999. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit V of this preamble. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 25, 1999.

Stephen L. Johnson,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

For the reasons set forth in the preamble, the amendment to § 180.145, published at 63 FR 57073, October 26, 1998, removing the entries for apricots, blackberries, boysenberries, dewberries, kale, loganberries, nectarines, and youngberries from the table in paragraph (a)(1) is withdrawn. The other removals from § 180.145 are not affected by this withdrawal.

[FR Doc. 99–2009 Filed 1–25–99; 4:23 pm]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 239

[FRL–6223–8]

RIN 2050–AD03

Subtitle D Regulated Facilities; State Permit Program Determination of Adequacy; State Implementation Rule—Amendments and Technical Corrections

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to modify the State Implementation Rule ("SIR rule"). This modification changes the withdrawal of state permit programs provision in § 239.13 of the SIR rule so that Agency withdrawals of an approved state municipal solid waste landfill (MSWLF) or conditionally exempt small quantity generator (CESQG) permit program would only apply to the entire approved program.

The final SIR, which was published on October 23, 1998, set forth a flexible framework for modifications of approved programs, established procedures for withdrawal of approvals (including withdrawal of a part or parts of a state program), and confirmed the process for future program approvals so that standards that safeguard human health and the environment are maintained (63 FR 57026). Withdrawal of a part or parts of a state program will no longer apply.

EPA is also making some technical corrections to the withdrawal provision of the SIR rule.

DATES: This rule is effective on March 29, 1999 without further notice, unless EPA receives relevant adverse comment by March 1, 1999. If we receive relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be sent to the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please see the proposed rule elsewhere in today's **Federal Register** action for additional information on submission of comments.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; 800–424–9346; TDD 800–553–7672 (hearing impaired); in the Washington, DC metropolitan area, the number is 703–412–9810; TDD 703–486–3323.

For more detailed information on specific aspects of this rulemaking, contact Karen Rudek, Office of Solid Waste (5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street SW, Washington, DC 20460; 703–308–1682, rudek.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

The U.S. Environmental Protection Agency (EPA or the Agency) is promulgating these amendments to the SIR rule under the authority of section 2002(a)(1) and 4005(c) of the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended by the Hazardous and Solid Waste Amendments of 1984.

Subtitle D of RCRA, at section 4005(c)(1)(B), requires each state to develop and implement a permit program or other system of prior approval to ensure that facilities that receive household hazardous waste or conditionally exempt small quantity generator (CESQG) hazardous waste are in compliance with the federal revised criteria promulgated under section 4010(c) of Subtitle D of RCRA. Section 4005(c)(1)(C) further directs EPA to determine whether state permit programs are adequate to ensure compliance with the revised federal criteria. Section 2002(a)(1) of RCRA authorizes EPA to promulgate regulations necessary to carry out its functions under the Act.

II. Regulated Entities

Regulated entities include state governments requesting full or partial approvals of permit programs or other systems of prior approval, or revisions to existing fully or partially approved programs.

III. Background

A. The RCRA Subtitle D Federal Revised Criteria

On October 9, 1991, EPA promulgated the "Solid Waste Disposal Facility Criteria: Final Rule," which established 40 CFR part 258 (56 FR 50978). These criteria include location restrictions and standards for design, operation, ground-water monitoring, corrective action, financial assurance, and closure and post-closure care for MSWLFs. On July 1, 1996, EPA amended 40 CFR part 257 by adding Subpart B, "Federal Disposal Standards for the Receipt of CESQG Wastes at Non-Municipal, Non-Hazardous Waste Disposal Units" (61 FR 34252). The 40 CFR part 257, Subpart B criteria include location restrictions, ground-water monitoring, and corrective action standards for non-municipal, non-hazardous waste disposal units that receive CESQG hazardous wastes. The 40 CFR part 257, Subpart B and 40 CFR part 258 criteria, henceforth referred to as the "Subtitle D federal revised criteria," establish minimum federal standards that take into account the practical capability of owners and operators and ensure that both MSWLFs and non-municipal, non-hazardous waste disposal units that receive CESQG hazardous wastes are designed and managed in a manner that is protective of human health and the environment.

Every standard in the Subtitle D federal revised criteria is designed to be implemented by the owner or operator, with or without oversight or participation by a regulatory agency. States with approved programs may choose to permit the Subtitle D federal revised criteria exactly, or they may choose to allow owners and operators to use site-specific alternative approaches to meet the federal performance standards. The flexibility that an owner or operator may be allowed under an approved state program can provide a significant reduction in the burden associated with complying with the federal criteria.

IV. The SIR Rulemaking

A. Partial Withdrawals of State Permit Programs

On January 26, 1996, EPA published a proposed rule which set forth standards which would guide states in developing, implementing, and revising RCRA Subtitle D permit programs that would meet criteria for an EPA determination of adequacy under RCRA section 4005(c)(1)(C) (61 FR 2584). In the proposal, we provided standards and procedures (§ 239.13) for withdrawing an adequacy determination when a Regional Administrator has reason to believe that a state "* * * no longer has an adequate permit program or adequate authority to administer and enforce an approved program * * *" (61 FR 2605). At the same time, the Agency proposed procedures for approving state permit programs on a partial basis (§ 239.11; 61 FR 2604).

EPA received a number of comments on the proposed rule, and took those comments into consideration in promulgating the SIR rule. For example, the Agency received one comment from a state environmental agency which we interpreted as suggesting that EPA include in the final rule the option of allowing Regional Administrators to withdraw a state permit program in a partial manner. In response to this comment, EPA modified the final rule to allow for such partial withdrawals of state permit programs (63 FR 57035). As promulgated, § 239.13 authorized the Regional Administrator to initiate and proceed with withdrawal actions for "all or a part of a state program * * *" (63 FR 57043).

Since publication of the SIR rule, however, a number of different stakeholders, including states and a state solid waste management organization, have contacted EPA and have raised questions about the partial withdrawal provision in section 239.13. Based on these additional discussions, we now recognize that there are issues and concerns that we had not considered before including the partial withdrawal provision in the SIR rule. We now believe that the issue of partial withdrawals of RCRA Subtitle D state permit programs is a matter that deserves additional discussion with relevant stakeholders. Thus, we have decided to amend the SIR rule to allow for withdrawal only of an entire program, as originally proposed (rather than allowing for the withdrawal of all or a part of an approved state program). The Agency intends to consider this issue further and to have additional discussions with interested stakeholders before taking any additional action.

B. Technical Corrections

In addition to this amendment to the SIR rule, we are also promulgating two technical corrections to errors which the Agency discovered in the language of

§ 239.13. First, in § 239.13(g)(3), both the proposed and final rule had stated that the Regional Administrator would hold a public hearing on a tentative withdrawal determination if such a hearing would "clarify issues involved in the tentative adequacy determination" (63 FR 57044, Oct. 23, 1998; 61 FR 2605, Jan. 26, 1996). As reflected in both the title of this section of the SIR rule ("Criteria and procedures for withdrawal of determination of adequacy") and in the preamble to the proposed rule (61 FR 2509), it is clear that the Agency intended this language in § 239.13(g)(3) to allow the Regional Administrator to hold a public hearing to clarify issues involved in the tentative "withdrawal" determination and not the tentative "adequacy" determination. The Agency has modified the SIR rule to reflect this intention.

Second, in the first sentence of both § 239.13(f) and (g), we have inserted the word "the" in the phrase "withdrawal of determination of adequacy" to read "withdrawal of the determination of adequacy." We believe that these corrections merely clarify the language without altering the intent of the two provisions.

EPA is publishing this rule without prior proposal because we view these changes as noncontroversial amendments and/or corrections to the SIR rule and anticipate no relevant adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to amend the SIR rule as outlined herein if adverse comments are received. This rule will be effective on March 29, 1999 without further notice unless we receive relevant adverse comment by March 1, 1999. If EPA receives relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action must do so at this time.

If we receive relevant adverse comment on any amendment, paragraph, or section of this rule, only those amendments, paragraphs, or sections rule will be withdrawn; the other amendments, paragraphs, and sections of the rule will go into effect within the time frame specified above.

V. Regulatory Assessments

A. Executive Order 12866: Assessment of Potential Costs and Benefits

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether any proposed or final regulatory action is "significant," and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action." Thus, EPA has not submitted this action to OMB for review under E.O. 12866.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act ("SBREFA") of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Agency has determined that today's final rule will not have a significant economic impact on a substantial number of small entities, since the rule has direct effects only on state agencies. Therefore, no regulatory flexibility analysis has been prepared. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a federal mandate (under the regulatory provisions of Title II of the UMRA) that may result in expenditures of $100 million or more for state and local governments in the aggregate, or for the private sector in any one year. Thus, there is no obligation to prepare a written statement, including a cost-benefit analysis, under section 202 of UMRA. For the same reasons outlined

in part V.B above, EPA has determined that this direct final rule amending the SIR rule will not significantly or uniquely affect small governments (UMRA section 203).

D. Paperwork Reduction Act

Today's rule does not add new burden as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget has previously approved the information collection in the existing regulations and has assigned OMB control number 2050–0152, (EPA ICR No. 1608.01).

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of the final State Implementation Rule on low-income populations and minority populations and concluded that the SIR will potentially advance environmental justice causes (63 FR 57039, Oct. 23, 1998). Today's amendments to the SIR will not affect these beneficial impacts on environmental justice causes.

H. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

In developing this rule, EPA consulted with various states and a state organization to enable them to provide meaningful and timely input in the development of this rule. EPA also worked closely with state governments in the development of the final SIR (63 FR 57039, Oct. 23, 1998).

Through notice, EPA sought input from small governments during the SIR rulemaking process. However, today's rule amending the SIR rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact on these communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 239

Environmental protection, Administrative practice and procedure, Municipal solid waste landfills, Non-municipal solid waste, Non-hazardous solid waste, State permit program approval, Adequacy.

Dated: January 19, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below:

PART 239—REQUIREMENTS FOR STATE PERMIT PROGRAM DETERMINATION OF ADEQUACY

1. The authority citation for Part 239 continues to read as follows:

Authority: 42 U.S.C. 6912, 6945.

2. Section 239.13 is amended by revising paragraphs (a), (b), (c), (f), and (g)(3) to read as follows:

§ 239.13 Criteria and procedures for withdrawal of determination of adequacy.

(a) The Regional Administrator may initiate withdrawal of a determination of adequacy when the Regional Administrator has reason to believe that:

(1) A state no longer has an adequate permit program; or

(2) The state no longer has adequate authority to administer and enforce an approved program in accordance with this part.

(b) Upon receipt of substantive information sufficient to indicate that a state program may no longer be adequate, the Regional Administrator shall inform the state in writing of the information.

(c) If, within 45 days of the state's receipt of the information in paragraph (b) of this section, the state demonstrates to the satisfaction of the Regional Administrator that the state program is adequate (i.e., in compliance with this part), the Regional Administrator shall take no further action toward withdrawal of the determination of adequacy and shall so notify the state and any person(s) who submitted information regarding the adequacy of the state's program and authorities.

* * * * *

(f) If the state takes appropriate action to correct deficiencies, the Regional Administrator shall take no further action toward withdrawal of the determination of adequacy and shall so notify the state and any person(s) who submitted information regarding the adequacy of the state's permit program. If the state has not demonstrated its compliance with this part to the satisfaction of the Regional Administrator, the Regional Administrator shall inform the State Director and may initiate withdrawal of the determination of state program adequacy.

(g) * * *

(3) Indicate that a public hearing will be held by EPA if sufficient public interest is expressed during the comment period or when the Regional Administrator determines that such a hearing might clarify issues involved in the tentative withdrawal determination.

* * * * *

[FR Doc. 99–1906 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2506

RIN 3045–AA21

Claims Collection

AGENCY: Corporation for National and Community Service.

ACTION: Interim rule with request for comments.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") is issuing interim regulations to govern the collection of debts owed to the Corporation and to other federal agencies. These regulations describe a number of actions that the Corporation may take to collect debts owed to it. These regulations also provide that the Corporation will enter into a cross-servicing agreement with the U.S. Department of the Treasury (Treasury) under which the Treasury will take authorized action to collect amounts owed to the Corporation.

DATES: These regulations are effective on January 28, 1999. Written comments must be received on or before March 29, 1999.

ADDRESSES: Send comments to: Corporation for National and Community Service, Kenneth L. Klothen, General Counsel, 1201 New York Avenue, N.W., Washington, D.C. 20525; telefax number (202) 565–2796.

FOR FURTHER INFORMATION CONTACT: Suzanne Dupre, Associate General Counsel, telephone number (202) 606–5000, extension 396.

SUPPLEMENTARY INFORMATION: These regulations describe a number of actions that the Corporation may take to collect debts owed to it, including: making offsets against amounts (including salary payments) owed to the debtor by the Corporation or other federal agencies; making offsets against tax refunds owed to the debtor by the Internal Revenue Service; referring the debt to a private collection contractor, and referring the matter to the U.S. Department of Justice (DOJ) for the initiation of an action in a judicial proceeding against the debtor. In addition, these regulations describe the actions necessary for the Corporation to take collection actions on behalf of another federal agency. These actions could include making offsets against the salary of a Corporation employee or any other amounts owed by the Corporation.

The regulations of this part are issued under section 3 of the Federal Claims Collection Act of 1966, Public Law 89–508, 80 Stat. 308; the Debt Collection Act of 1982, Public Law 97–365, 96 Stat. 1749; the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321; 31 U.S.C. 3720A; and in conformity with the Federal guidelines for agency debt collection issued by the DOJ and the General Accounting Office (4 CFR chapter II) and the guidelines of the Office of Personnel Management (5 CFR part 550, subpart K) on offsets against Federal employee salaries. These regulations also provide that the Corporation will enter into a cross-servicing agreement with the Treasury which is authorized under the Debt Collection Improvement Act of 1996, to take all of the above-listed actions to collect the debt for the Corporation. The Corporation anticipates that some of these procedures may change when revised Federal Claims Collection Standards are issued by the DOJ and the Treasury.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these regulations effective in less than 30 days. The Corporation wishes to have these procedures in effect at the earliest possible date in order to initiate debt collection action against persons who owe money to the Corporation.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, the effect of these regulations on State, local, and tribal governments and the private sector has been assessed. Other than by incorporating requirements specifically set forth in law, this regulation will not compel either the private sector or State, local, and tribal governments (in the aggregate) to expend $100 million or more in any one year. Therefore, a statement under 2 U.S.C. 1532 is not required.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), the Corporation submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in today's **Federal Register**. This interim rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 45 CFR Part 2506

Administrative practice and procedure, Claims, Government employees, Grants administration, Income taxes, Penalties, Wages.

For the reasons stated in the preamble, the Corporation amends 45 CFR Chapter XXV by adding Part 2506 to read as follows:

PART 2506—CLAIMS COLLECTION

Subpart A—Definitions, Authority, Administrative Collection, Compromise, Termination, and Referral of Claims

Sec.

2506.1 What definitions apply to the regulations in this Part?
2506.2 What is the Corporation's authority to issue these regulations?
2506.3 What other regulations also apply to the Corporation's debt collection efforts?
2506.4 Do these regulations apply to claims involving fraud or misrepresentation?
2506.5 What is the extent of the Chief Executive Officer's authority to compromise debts owed to the Corporation?
2506.6 What notice will I be provided if I owe a debt to the Corporation?
2506.7 What interest, penalty, and administrative costs will I have to pay on a debt owed to the Corporation?
2506.8 What opportunity do I have to obtain a review of my debt within the Corporation?
2506.9 How can I resolve the Corporation's claim through a voluntary repayment agreement?
2506.10 How will the Corporation use credit reporting agencies to collect its claims?
2506.11 How will the Corporation contract for collection services?
2506.12 When will the Corporation refer claims to the DOJ?
2506.13 Will the Corporation use a cross-servicing agreement with the Treasury to collect its claims?

Subpart B—Salary Offset

2506.20 What debts are included or excluded from coverage of these regulations on salary offset?
2506.21 May I ask the Corporation to waive an overpayment that would otherwise be collected by offsetting my salary as a federal employee?
2506.22 What are the Corporation's procedures for salary offset?
2506.23 How will the Corporation coordinate salary offsets with other agencies?
2506.24 Under what conditions will the Corporation make a refund of amounts collected by salary offset?
2506.25 Will the collection of a claim by salary offset act as a waiver of my rights to dispute the claimed debt?

Subpart C—Tax Refund Offset

2506.30 Which debts can the Corporation refer to the Department of the Treasury for collection by offsetting tax refunds?
2506.31 What are the Corporation's procedures for collecting debts by tax refund offset?

Subpart D—Administrative Offset

2506.40 Under what circumstances will the Corporation collect amounts that I owe to the Corporation (or some other federal agency) by offsetting the debt against payments that the Corporation (or some other federal agency) owes me?
2506.41 How will the Corporation request that my debt to the Corporation be collected by offsetting against some payment that another federal agency owes me?
2506.42 What procedures will the Corporation use to collect amounts I owe to a federal agency by offsetting a payment that the Corporation would otherwise make to me?
2506.43 When may the Corporation make an offset in an expedited manner?

Authority: 31 U.S.C. 3711, 3716, 3720A; 42 U.S.C. 12651f.

Subpart A—Definitions, Authority, Administrative Collection, Compromise, Termination, and Referral of Claims

§ 2506.5 What definitions apply to the regulations in this Part?

As used in this part:

(a) *Administrative offset* means the withholding of funds payable by the United States to any person (including funds payable to the United States on behalf of a State government), or the withholding of funds held by the United States for any person, in order to satisfy a debt owed to the United States.

(b) *Agency* means an executive department or agency, the United States Postal Service, the Postal Rate Commission, the United States Senate, the United States House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and Government corporations.

(c) *Corporation* means the Corporation for National and Community Service.

(d) *Certification* means a written debt claim form received from a creditor agency which requests the paying agency to offset the salary of an employee.

(e) *Chief Executive Officer* means the Chief Executive Officer of the Corporation for National and Community Service, or his or her designee.

(f) *Creditor agency* means an agency of the Federal Government to which the debt is owed.

(g) *Debt* means money owed by a person to the United States, including a debt owed to the Corporation or to any other Federal agency.

(h) *Debtor* means a person who owes a debt. Uses of the terms "I", "you," "me," and similar references to the reader of the regulations in this part are meant to apply to debtors as defined in this paragraph (h).

(i) *Delinquent debt* means a debt that has not been paid within the time limit prescribed by the Corporation.

(j) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retirement pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld, excluding any garnishment under 5 CFR parts 581 and 582. The Corporation will deduct the following items in determining the amount of disposable pay that will be subject to salary offset:

(1) Federal Social Security and Medicare taxes;

(2) Federal, state, and local income taxes, but no more than would be the case if the employee claimed all dependents to which he or she is entitled and any additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(3) Health insurance premiums;

(4) Normal retirement contributions as set forth in 5 CFR 581.105(e);

(5) Normal life insurance premiums, excluding optional life insurance premiums; and

(6) Levies pursuant to the Internal Revenue Code, as defined in 5 U.S.C. 5514(d).

(k) *Employee* means a current employee of an agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

(l) *Federal Claims Collection Standards* means the standards published at 4 CFR chapter II.

(m) *Paying agency* means the agency of the Federal Government that employs the individual who owes a debt to the United States. In some cases, the Corporation may be both the creditor agency and the paying agency.

(n) *Payroll office* means the payroll office in the paying agency that is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee.

(o) *Person* includes a natural person or persons, profit or non-profit corporation, partnership, association, trust, estate, consortium, State and local government, or other entity that is capable of owing a debt to the United States Government; however, agencies of the United States are excluded.

(p) *Private collection contractor* means a private debt collector under contract with an agency to collect a non-tax debt owed to the United States.

(q) *Salary offset* means a payroll procedure to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

(r) *Tax refund offset* means the reduction of a tax refund by the amount of a past-due legally enforceable debt owed to the Corporation or any other Federal agency.

(s) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by a person to the Corporation or any other Federal agency as permitted or required by 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 2506.2 What is the Corporation's authority to issue these regulations?

The Corporation is issuing regulations in this part under 42 U.S.C. 12651f and 31 U.S.C. 3711, 3716, and 3720A. The Corporation is also issuing the regulations in this part in conformity with the Federal Claims Collection Standards, 4 CFR chapter II, which prescribe standards for the handling of the federal government's claims for money or property, including standards for administrative collection, compromise, termination of agency collection action, and referral to the U.S. Department of Justice (DOJ) for litigation.

§ 2506.3 What other regulations also apply to the Corporation's debt collection efforts?

All provisions of the Federal Claims Collection Standards also apply to the regulations in this part. This part supplements the Federal Claims Collection Standards by prescribing procedures and directives necessary and appropriate for operations of the Corporation.

§ 2506.4 Do these regulations apply to claims involving fraud or misrepresentation?

The Federal Claims Collection Standards and this part do not apply to any claim as to which there is an indication of fraud or misrepresentation, as described in the Federal Claims Collection Standards, unless returned to the Corporation by the DOJ to the Corporation for handling.

§ 2506.5 What is the extent of the Chief Executive Officer's authority to compromise debts owed to the Corporation?

The Chief Executive Officer may exercise his or her compromise authority for those debts not exceeding $100,000, excluding interest, in conformity with the Federal Claims Collection Act of 1966, as amended; the Federal Claims Collection Standards issued thereunder; and this part, except where standards are established by other statutes or authorized regulations issued pursuant to them.

§ 2506.6 What notice will I be provided if I owe a debt to the Corporation?

(a) When the Chief Executive Officer determines that you owe a debt to the Corporation, he or she will send you a written notice. The notice will be hand-delivered or sent to you by certified mail, return receipt requested at the most current address known to the Corporation. The notice will inform you of the following:

(1) The amount, nature, and basis of the debt, and that a designated Corporation official has reviewed the claim and has determined that the debt is valid;

(2) That payment of your debt is due as of the date of the notice, and that the debt will be considered delinquent if you do not pay it within 30 days of the date the notice is mailed or hand-delivered;

(3) The Corporation's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made against you unless excused in accordance with the Federal Claims Collection Standards and this part;

(4) That you have the right to inspect and copy Corporation records pertaining to your debt, or to receive copies of those records if personal inspection is impractical;

(5) That you have the opportunity to enter into an agreement, in writing and signed by both you and the Chief Executive Officer, for voluntary repayment of the debt; and

(6) The address, telephone number, and name of the Corporation official available to discuss the debt.

(b) *Notice of possible collection actions.* The notice provided by the Chief Executive Officer under paragraph (a) of this section will also advise you that, if your debt (including any interest, penalties and administrative costs) is not paid within 60 days of the date of the notice, or you do not enter into a voluntary repayment agreement within 60 days of the date of the notice, the Corporation may enforce the collection of the debt by any or all of the following methods:

(1) Referral to a credit reporting agency (See § 2506.10), a collection agency (See § 2506.11), or the DOJ (See § 2506.12);

(2) If you are a Corporation employee, by deducting money from your disposable pay account (in the amount and with the frequency, approximate beginning date and duration specified by the Corporation) until the debt (and all accumulated interest, penalties, and administrative costs) is paid in full, and that such proceedings with respect to the debt are governed by 5 U.S.C. 5514;

(3) If you are an employee of a federal agency other than the Corporation, by initiating certification procedures to implement a salary offset by the federal agency, as appropriate (which may not exceed 15 percent of the employee's disposable pay), and that such proceedings with respect to the debt are governed by 5 U.S.C. 5514;

(4) By referring the debt to the U.S. Department of the Treasury (Treasury) for offset against any refund of overpayment of tax (see Subpart C of this part); or

(5) By administrative offset (see Subpart D of this part).

(c) *Notice of opportunity for review.* The notice provided by the Chief Executive Officer under paragraph (a) of this section will also advise you of the opportunity to obtain a review within the Corporation concerning the existence or amount of the debt, the proposed schedule for offset of federal employee salary payments, or whether the debt is past due or legally enforceable. The notice shall also advise you:

(1) Of the name, address, and telephone number of an officer or employee of the Corporation who may be contacted concerning procedures for requesting a review;

(2) Of the method and time period for requesting a review;

(3) That the timely filing of a request for a review on or before the 60th calendar day following the date of the notice to the debtor will stay the commencement of collection proceedings;

(4) Of the name and address of the officer or employee of the Corporation to whom you should send the request for a review;

(5) That a final decision on the review (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the receipt of the request for a review, unless you request, and the review official grants, a delay in the proceedings;

(6) That any knowingly false or frivolous statements, representations, or evidence may subject you to:

(i) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR part 752, or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3733, or any other applicable statutory authority; and

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 102, or any other applicable statutory authority;

(7) Of any other rights available to you to dispute the validity of the debt or to have recovery of the debt waived, or remedies available to you under statutes or regulations governing the program for which the collection is being made; and

(8) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt which are later waived or found not owed will be promptly refunded to you.

(d) The Corporation will respond promptly to communications from you.

§ 2506.7 What interest, penalty, and administrative costs will I have to pay on a debt owed to the Corporation?

(a) *Interest.* (1) The Corporation will assess interest on all delinquent debts unless prohibited by statute, regulation, or contract.

(2) Interest begins to accrue on all debts from the date that the debt becomes delinquent. The Corporation will not recover interest if you pay the debt within 30 days of the date on which interest begins to accrue. Unless otherwise established in a contract, repayment agreement, or by statute, the Corporation shall assess interest at the rate established annually by the Secretary of the Treasury under 31 U.S.C. 3717, unless a different rate is necessary to protect the interests of the Corporation. The Corporation will notify you of the basis for its finding when a different rate is necessary to protect the Corporation's interests.

(3) The Chief Executive Officer may extend the 30-day period for payment without interest where he or she determines that such action is in the best interest of the Corporation. A decision to extend or not to extend the payment period is final and is not subject to further review.

(b) *Penalty.* The Corporation will assess a penalty charge, not to exceed six percent a year, on any portion of a debt that is delinquent for more than 90 days.

(c) *Administrative costs.* The Corporation will assess charges to cover administrative costs incurred as a result of your failure to pay a debt before it becomes delinquent. Administrative costs include the additional costs incurred in processing and handling the debt because it became delinquent, such as costs incurred in obtaining a credit report, or in using a private collection contractor, or service fees charged by a Federal agency for collection activities undertaken on behalf of the Corporation.

(d) *Allocation of payments.* A partial payment by a debtor will be applied first to outstanding administrative costs, second to penalty assessments, third to accrued interest, and then to the outstanding debt principal.

(e) *Waiver.* (1) The Chief Executive Officer may (without regard to the amount of the debt) waive collection of all or part of accrued interest, penalty, or administrative costs, if he or she determines that collection of these charges would be against equity and good conscience or not in the best interest of the Corporation.

(2) A decision to waive interest, penalty charges, or administrative costs may be made at any time before a debt is paid. However, where these charges have been collected before the waiver decision, they will not be refunded. The Chief Executive Officer's decision to waive or not waive collection of these charges is final and is not subject to further review.

§ 2506.8 What opportunity do I have to obtain a review of my debt within the Corporation.

(a) *Request for review.* If you desire a review within the Corporation concerning the existence or amount of the debt, the proposed schedule for offset of federal employee salary payments, or whether the debt is past due or legally enforceable, you must send such a request to the Corporation office designated in the notice to debtor. (See § 2506.6(c)).

(1) Your request for review must be signed by you and fully identify and explain with reasonable specificity all the facts and evidence that support your position.

(2) The request for review must be received by the designated office on or before the 60th calendar day following the date of the notice. Timely filing will stay the commencement of collection procedures. If you file a request for a review after the expiration of the 60 day period provided for in this section, the Corporation will accept the request if you can show that the delay was the result of circumstances beyond his or her control or because you did not receive notice of the filing deadline (unless you had actual notice of the filing deadline).

(b) *Review of Corporation records related to the debt.* (1) In accordance with § 2506.6, if you want to inspect or copy Corporation records related to the debt, you must send a letter to the official designated in the notice to the debtor stating his or her intention. Your letter must be received within 30 calendar days after the date of the notice to debtor.

(2) In response to a timely request submitted by the debtor, the designated official will notify you of the location and time when you may inspect and copy records related to the debt.

(3) If personal inspection is impractical, reasonable arrangements will be made to send you copies of those records.

(c) *Review official.* The Chief Executive Officer shall designate an officer or employee of the Corporation (who was not involved in the determination of the debt) as the review official. When required by law or regulation, the Corporation may request an administrative law judge to conduct the review, or may obtain a review

official who is an official, employee, or agent of the United States (but who is not under the supervision or control of the Chief Executive Officer). However, unless the review is conducted by an official or employee of the Corporation, any unresolved dispute you have regarding whether all or part of the debt is past due or legally enforceable (for purposes of collection by tax refund offset under § 2506.31), must be referred to the Chief Executive Officer for ultimate administrative disposition, and the Chief Executive Officer must directly notify you of his or her determination.

(d) *Review procedure.* After you request a review, the reviewing official will notify you of the form of the review to be provided. The reviewing official shall determine the type of review to be conducted (i.e. whether an oral hearing is required), and shall conduct the review in accordance with the standards included in 4 CFR 102.3(c). If the review will include an oral hearing, the notice will set forth the date, time, and location of the hearing. If the review will be on a written record, you will be notified that you should submit arguments and evidence in writing to the review official by a specified date after which the record will be closed. This date will give you reasonable time to submit documentation.

(e) *Date of decision.* The reviewing official will issue a written decision, based upon either the written record or documentary evidence and information developed at an oral hearing, as soon as practical, but not later than 60 days after the date on which the Corporation received your request for a review, unless you request and the review official grants a delay in the proceedings.

(f) *Content of review decision.* The review official shall prepare a written decision that will include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The reviewing official's findings, analysis, and conclusions; and

(3) The terms of any repayment schedules, if applicable.

(g) *Interest, penalty, and administrative cost accrual during review period.* During the review period, interest, penalties, and administrative costs authorized by law will continue to accrue.

§ 2506.9 How can I resolve the Corporation's claim through a voluntary repayment agreement?

In response to a notice of a debt owed to the Corporation, you may propose to the Corporation you be allowed to repay a debt through a voluntary payment agreement in lieu of the Corporation taking other collection actions under this part.

(a) Your request to enter into a voluntary repayment must:

(1) Admit the existence of the debt; and

(2) Either propose payment of the debt (together with interest, penalties, and administrative costs) in a lump sum, or set forth a proposed repayment schedule.

(b) The Corporation will consider a request to enter into a voluntary repayment agreement consistent with the standards in 4 CFR 102.11. The Chief Executive Officer may request additional information from you in order to make a determination of whether to accept a voluntary repayment agreement, including requesting financial statements if you request to make payments in installments. It is within the Chief Executive Officer's discretion to accept a repayment agreement instead of proceeding with other debt collection actions under this part, and to set the necessary terms of any voluntary repayment agreement. At the Corporation's option, you may be required to enter into a confess-judgment note or bond of indemnity with surety as part of an agreement to make payments in installments. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 31 U.S.C. 3711.

§ 2506.10 How will the Corporation use credit reporting agencies to collect its claims?

(a) The Corporation may report delinquent debts to appropriate credit reporting agencies by providing the following information:

(1) A statement that the debt is valid and is overdue;

(2) The name, address, taxpayer identification number, and any other information necessary to establish the identity of the debtor;

(3) The amount, status, and history of the debt; and

(4) The program or pertinent activity under which the debt arose.

(b) Before disclosing debt information to a credit reporting agency, the Corporation will:

(1) Take reasonable action to locate the debtor if a current address is not available; and

(2) If a current address is available, provide the notice required under § 2506.6.

(c) At the time debt information is submitted to a credit reporting agency, the Corporation will provide a written statement to the reporting agency that all required actions have been taken. In addition, the Corporation will, thereafter, ensure that the credit reporting agency is promptly informed of any substantive change in the conditions or amount of the debt, and promptly verify or correct information relevant to the claim.

(d) If a debtor disputes the validity of the debt, the credit reporting agency will refer the matter to the appropriate Corporation official. The credit reporting agency will exclude the debt from its reports until the Corporation certifies in writing that the debt is valid.

§ 2506.11 How will the Corporation contract for collection services?

The Corporation will use the services of a private collection contractor where it determines that such use is in the best interest of the Corporation. When the Corporation determines that there is a need to contract for collection services, it will—

(a) Retain sole authority to:

(1) Resolve any dispute with the debtor regarding the validity of the debt;

(2) Compromise the debt;

(3) Suspend or terminate collection action;

(4) Refer the debt to the DOJ for litigation; and

(5) Take any other action under this part which does not result in full collection of the debt;

(b) Require the contractor to comply with the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), with applicable Federal and State laws pertaining to debt collection practices (e.g., the Fair Debt Collection Practices Act (15 U.S.C. 1692–1692o)), and with applicable regulations of the Corporation in this chapter;

(c) Require the contractor to account accurately and fully for all amounts collected; and

(d) Require the contractor to provide to the Corporation, upon request, all data and reports contained in its files relating to its collection actions on a debt.

§ 2506.12 When will the Corporation refer claims to the DOJ?

The Chief Executive Officer will refer to the DOJ for litigation all claims on which aggressive collection actions have been taken but which could not be collected, compromised, suspended, or terminated. Referrals will be made as early as possible, consistent with aggressive Corporation collection action, and within the period for bringing a timely suit against the debtor.

§ 2506.13 Will the Corporation use a cross-servicing agreement with the Treasury to collect its claims?

Yes. The Corporation will enter into a cross-servicing agreement with the Treasury which will authorize the Treasury to take all of the debt collection actions described in this part. These debt collection services will be provided to the Corporation in accordance with 31 U.S.C. Chapter 37.

Subpart B—Salary Offset

§ 2506.20 What debts are included or excluded from coverage of these regulations on salary offset?

(a) The regulations in this subpart provide Corporation procedures for the collection by salary offset of a federal employee's pay to satisfy certain debts owed to the Corporation or to other federal agencies.

(b) The regulations in this subpart apply to collections by the Chief Executive Officer, from:

(1) Federal employees who owe debts to the Corporation; and

(2) Employees of the Corporation who owe debts to other federal agencies.

(c) The regulations in subpart A and this subpart do not apply to debts arising under the Internal Revenue Code of 1986, as amended (title 26, United States Code); the Social Security Act (42 U.S.C. 301 et seq.); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 et seq., 4 CFR parts 101–105, 38 CFR 1.900–1.994).

(e) A levy pursuant to the Internal Revenue Code takes precedence over a salary offset under this subpart, as provided in 5 U.S.C. 5514(d).

(f) This subpart does not apply to any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four or fewer pay periods.

§ 2506.21 May I ask the Corporation to waive an overpayment that would otherwise be collected by offsetting my salary as a federal employee?

Yes, the regulations in this subpart do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 10 U.S.C. 2774, 32 U.S.C. 716, or under other statutory provisions pertaining to the particular debts being collected.

§ 2506.22 What are the Corporation's procedures for salary offset?

(a) The Corporation will coordinate salary deductions under this subpart as appropriate.

(b) The Corporation's payroll office will determine the amount of an employee's disposable pay and will implement the salary offset.

(c) Deductions will begin within three official pay periods following receipt by the Corporation's payroll office of certification of debt from the creditor agency.

(d) Types of collection—

(1) *Lump-sum offset.* If the amount of the debt is equal to or less than 15 percent of disposable pay, the debt generally will be collected through one lump-sum offset.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted from any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Deductions from final check.* A deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment under 31 U.S.C. 3716 and the Federal Claims Collection Standards, in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Deductions from other sources.* If an employee subject to salary offset is separated from the Corporation, and the balance of the debt cannot be liquidated by offset of the final salary check, the Corporation may offset any later payments of any kind against the balance of the debt, as allowed by 31 U.S.C. 3716 and the Federal Claims Collection Standards.

(e) Multiple debts. In instances where two or more creditor agencies are seeking salary offsets, or where two or more debts are owed to a single creditor agency, the Corporation's payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

§ 2506.23 How will the Corporation coordinate salary offsets with other agencies?

(a) *Responsibilities of the Corporation as the creditor agency.* Upon completion of the procedures established in the regulations in this subpart and pursuant to 5 U.S.C. 5514, the Corporation must submit a debt claim to a paying agency.

(1) The Corporation must include in its claim a certification, in writing, that:

(i) The employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date the Corporation's right to collect the debt first accrued;

(iv) That the Corporation's regulations in this subpart have been approved by the Office of Personnel Management under 5 CFR part 550, subpart K;

(2) If the collection must be made in installments, the Corporation's claim will also advise the paying agency of the amount or percentage of disposable pay to be collected in each installment. The Corporation may also advise the paying agency of the number of installments to be collected, and the date of the first installment if that date is other than the next officially established pay period.

(3) The Corporation shall also include in its claim either:

(i) The employee's written consent to the salary offset;

(ii) The employee's signed statement acknowledging receipt of the procedures required by 5 U.S.C. 5514; or

(iii) Information regarding the completion of procedures required by 5 U.S.C. 5514, including the actions taken and the dates of those actions.

(4) If the employee is in the process of separating and has not received a final salary check or other final payment(s) from the paying agency, the Corporation must submit its debt claim to the paying agency for collection under 31 U.S.C. 3716. The paying agency will (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), certify the total amount of its collection on the debt and notify the employee and the Corporation. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal Government sources, then (under its regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), the paying agency will provide written notice of the outstanding debt to the agency responsible for making the other payments to the debtor employee. The written notice will state that the employee owes a debt, the amount of the debt, and that the provisions of this

section have been fully complied with. However, the Corporation must submit a properly certified claim under this paragraph (a)(4) to the agency responsible for making the payments before the collection can be made.

(5) Separated employee. If the employee is already separated and all payments due from his or her former paying agency have been paid, the Corporation may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR part 831, subpart R, or 5 CFR part 845, subpart D) or other similar funds, be administratively offset to collect the debt.

(6) Employee transfer. When an employee transfers from one paying agency to another paying agency, the Corporation will not repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Corporation will submit a properly certified claim to the new paying agency and will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) *Responsibility of the Corporation as the paying agency.* (1) Complete claim. When the Corporation receives a certified claim from a creditor agency (under the creditor agency's regulations adopted under 5 U.S.C. 5514 and 5 CFR part 550, subpart K), deductions should be scheduled to begin within three officially established pay intervals. Before deductions can begin, the employee will receive a written notice from the Corporation including:

(i) A statement that the Corporation has received a certified debt claim from the creditor agency;

(ii) The amount of the debt claim;

(iii) The date salary offset deductions will begin; and

(iv) The amount of such deductions.

(2) Incomplete claim. When the Corporation receives an incomplete certification of debt from a creditor agency, the Corporation will return the debt claim with a notice that the creditor agency must comply with the procedures required under 5 U.S.C. 5514 and 5 CFR part 550, subpart K, and must properly certify a debt claim to the Corporation before the Corporation will take action to collect from the employee's current pay account.

(3) Review. The Corporation is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) Employees who transfer from the Corporation to another paying agency. If, after the creditor agency has submitted the debt claim to the Corporation, the employee transfers from the Corporation to a different paying agency before the debt is collected in full, the Corporation will certify the total amount collected on the debt and notify the employee and the creditor agency in writing. The notification to the creditor agency will include information on the employee's transfer.

§ 2506.24 Under what conditions will the Corporation make a refund of amounts collected by salary offset?

If the Corporation is the creditor agency, it will promptly refund any amount deducted under the authority of 5 U.S.C. 5514, when:

(a) The debt is waived or all or part of the funds deducted are otherwise found not to be owed (unless expressly prohibited by statute or regulation); or

(b) An administrative or judicial order directs the Corporation to make a refund.

(c) Unless required or permitted by law or contract, refunds under this section will not bear interest.

§ 2506.25 Will the collection of a claim by salary offset act as a waiver of my rights to dispute the claimed debt?

Your involuntary payment of all or any portion of a debt being collected under this subpart will not be construed as a waiver of any rights which you may have under 5 U.S.C. 5514 or any other provisions of a written contract or law, unless there are statutory or contractual provisions to the contrary.

Subpart C—Tax Refund Offset

§ 2506.30 Which debts can the Corporation refer to the Department of the Treasury for collection by offsetting tax refunds?

(a) The regulations in this subpart implement 31 U.S.C. 3720A which authorizes the Treasury to reduce a tax refund by the amount of a past-due legally enforceable debt owed to a Federal agency.

(b) For purposes of this section, a past-due legally enforceable debt referable to the Treasury for tax refund offset is a debt that is owed to the Corporation; and:

(1) Is at least $25.00 dollars;

(2) Except in the case of a judgment debt, has been delinquent for at least three months and will not have been delinquent more than 10 years at the time the offset is made;

(3) Cannot be currently collected under the salary offset provisions of 5 U.S.C. 5514;

(4) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Corporation against amounts payable to the debtor by the Corporation;

(5) With respect to which the Corporation has given the debtor at least 60 days to present evidence that all or part of the debt is not past due or legally enforceable, has considered evidence presented by the debtor, and has determined that an amount of the debt is past due and legally enforceable;

(6) Which has been disclosed by the Corporation to a credit reporting agency as authorized by 31 U.S.C. 3711(e), unless the credit reporting agency would be prohibited from reporting information concerning the debt by reason of 15 U.S.C. 1681c;

(7) With respect to which the Corporation has notified or has made a reasonable attempt to notify the debtor that:

(i) The debt is past due, and

(ii) Unless repaid within 60 days thereafter, the debt will be referred to the Treasury for offset against any refund of overpayment of tax; and

(8) All other requirements of 31 U.S.C. 3720A and the Treasury regulations relating to the eligibility of a debt for tax return offset have been satisfied (31 CFR 285.2).

§ 2506.31 What are the Corporation's procedures for collecting debts by tax refund offset?

(a) The Chief Executive Officer will be the point of contact with the Treasury for administrative matters regarding the offset program.

(b) The Corporation will ensure that the procedures prescribed by the Treasury are followed in developing information about past-due debts and submitting the debts to the Treasury.

(c) The Corporation will submit a notification of a taxpayer's liability for past-due legally enforceable debt to the Treasury which will contain:

(1) The name and taxpayer identifying number (as defined in section 6109 of the Internal Revenue Code, 26 U.S.C. 6109) of the person who is responsible for the debt;

(2) The dollar amount of the past-due and legally enforceable debt;

(3) The date on which the original debt became past due;

(4) A statement certifying that, with respect to each debt reported, all of the requirements of eligibility of the debt for referral for the refund offset have been satisfied. (See § 2506.30(b)). For purposes of this section, notice that collection of the debt is affected by a bankruptcy proceeding involving the individual will bar referral of the debt to the Treasury.

(d) The Corporation shall promptly notify the Treasury to correct Corporation data submitted when it:

(1) Determines that an error has been made with respect to a debt that has been referred;

(2) Receives or credits a payment on the debt; or

(3) Receives notice that the person owing the debt has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

(e) When advising debtors of an intent to refer a debt to the Treasury for offset, the Corporation will also advise the debtors of remedial actions available to defer or prevent the offset from taking place.

Subpart D—Administrative Offset

§ 2506.40 Under what circumstances will the Corporation collect amounts that I owe to the Corporation (or some other federal agency) by offsetting the debt against payments that the Corporation (or some other federal agency) owes me?

(a) The regulations in this subpart apply to the collection of any debts you owe to the Corporation, or to any request from another federal agency that the Corporation collect a debt you owe by offsetting your debt against a payment the Corporation owes you. Administrative offset is authorized under section 5 of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3716). The Corporation shall carry out administrative offset in accordance with the provisions of the Federal Claims Collection Standards; the regulations in this subpart are intended only to supplement the provisions of the Federal Claims Collection Standards.

(b) The Chief Executive Officer, after attempting to collect a debt you owe to the Corporation under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset, subject to the following:

(1) The debt you owe is certain in amount; and

(2) It is in the best interest of the Corporation to collect your debt by administrative offset because of the decreased costs of collection and acceleration in the payment of the debt.

(c) The Chief Executive Officer may initiate administrative offset with regard to debts you owe to another federal agency. The head of the creditor agency, or his or her designee, must submit a written request for the offset with a certification that the debt exists and that you have been afforded the necessary due process rights.

(d) The Chief Executive Officer may request another federal agency that holds funds payable to you to instead pay those funds to the Corporation in settlement of your debt. The Corporation will provide certification that:

(1) The debt exists; and

(2) You have been afforded the necessary due process rights.

(e) No collection by administrative offset will be made on any debt that has been outstanding for more than 10 years unless facts material to the Corporation or a federal agency's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting the debt.

(f) The regulations in this subpart do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute; or

(2) Debts owed to the Corporation by federal agencies or by any State or local government.

§ 2506.41 How will the Corporation request that my debt to the Corporation be collected by offsetting against some payment that another federal agency owes me?

The Chief Executive Officer may request that funds due and payable to you by another federal agency instead be paid to the Corporation in payment of a debt you owe to the Corporation. In requesting administrative offset, the Corporation, as creditor, will certify in writing to the federal agency that is holding funds for you:

(a) That you owe the debt;

(b) The amount and basis of the debt; and

(c) That the Corporation has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations in this subpart, and the applicable provisions of the Federal Claims Collection Standards with respect to providing the debtor with due process.

§ 2506.42 What procedures will the Corporation use to collect amounts I owe to a federal agency by offsetting a payment that the Corporation would otherwise make to me?

Any federal agency may request that the Corporation administratively offset funds due and payable to you in order to collect a debt you owe to that agency. The Corporation will initiate the requested offset only:

(a) Upon receipt of written certification from the creditor agency stating:

(1) That you owe the debt;

(2) The amount and basis of the debt;

(3) That the agency has prescribed regulations for the exercise of administrative offset; and

(4) That the agency has complied with its own administrative offset regulations and with the applicable provisions of the Federal Claims Collection Standards, including providing you with any required hearing or review; and

(b) Upon a determination by the Chief Executive Officer that offsetting funds payable to you by the Corporation in order to collect a debt owed by you would be in the best interest of the United States as determined by the facts and circumstances of the particular case, and that such an offset would not otherwise be contrary to law.

§ 2506.43 When may the Corporation make an offset in an expedited manner?

The Corporation may effect an administrative offset against a payment to be made to you before completion of the procedures required by §§ 2506.41 and 2506.42 if failure to take the offset would substantially jeopardize the Corporation's ability to collect the debt and the time before the payment is to be made does not reasonably permit the completion of those procedures. An expedited offset will be promptly followed by the completion of those procedures. Amounts recovered by offset, but later found not to be owed to the Corporation, will be promptly refunded.

Dated: January 15, 1999.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 99–1769 Filed 1–27–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 87–268; FCC 98–315]

Advanced Television Systems and Their Impact Upon the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a *Second Memorandum Opinion and Order* (*Second MO&O*) addressing petitions for reconsideration of the *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* (*Service Reconsideration Order*) and the *Memorandum Opinion and Order on Reconsideration of the Sixth*

Report and Order (*Allotment Reconsideration Order*) in this proceeding. This *Second MO&O* generally reaffirms the Commission's DTV eligibility and allotment policies. The Commission is, however, revising and clarifying certain of its DTV allotment policies in response to petitioners' requests. These actions will resolve the remaining issues regarding our policies and rules for DTV and analog (NTSC) channel allotments.

DATES: Effective March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bruce Franca (202–418–2470), Alan Stillwell (202–418–2470) or Robert Eckert (202–428–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* (*Second MO&O*) in MM Docket No. 87–268, FCC 98–315, adopted November 24, 1998, and released December 18, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplicating contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036, (202–857–3800).

Summary of the Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders

1. In the *Second MO&O*, the Commission has affirmed, with some minor modifications and clarifications, its *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order* (*Service Reconsideration Order*) in MM Docket No. 87–268, FCC 98–23, adopted February 17, 1998, 63 FR 15774 (April 1, 1998), and its *Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order* (*Allotment Reconsideration Order*) in MM Docket No. 87–268, adopted February 17, 1998, FCC 98–24, 63 FR 13546 (March 3, 1998). In the *Service Reconsideration Order*, the Commission addressed petitions for reconsideration of its eligibility standards for the initial DTV channels and other rules and procedures for broadcasters to convert to digital television (DTV) service. In the *Allotment Reconsideration Order*, the Commission addressed petitions for reconsideration of its decisions on a Table of Allotments for digital television (DTV) service, policies and rules for the initial DTV allotments, procedures for assigning those allotted channels, and plans for spectrum recovery.

2. The Commission revised and clarified certain of its DTV allotment policies in response to petitioners' requests. First, in response to a petition from Fox Broadcasting Company, the Commission modified its policy temporarily restricting requests for maximization of UHF DTV station power to 200 kW to provide flexibility for DTV licensees to request higher power, up to the 1000 kW maximum, where certain conditions are met. The Commission found that the 200 kW cap may not be needed in all situations and that it is desirable to permit immediate full maximization to 1000 kW in situations where such changes would not affect the maximization plans of others. The Commission indicated that the following provisions will apply to applications proposing such power increases that would increase a station's DTV service area in one or more directions beyond the area resulting from the station's allotment parameters. Such requests must include an interference analysis that demonstrates compliance with the *de minimis* interference standard set forth in § 73.623(c)(2) of the rules. This interference analysis must be performed assuming that all other DTV facilities are operating at the DTV power levels specified for their allotment, or 200 kW, whichever is greater, and at the allotted site and antenna height above average terrain. All such applications will be placed on public notice and interested parties will be allowed 30 days to file objections. A party may object to such requests where the change would impact its future plans to maximize its own DTV operations, *i.e.*, to an extent greater than could be achieved at a power level of 200 kW. Upon the filing of an objection to a maximization application, the affected parties will be allowed 30 days to resolve the conflict. In the event the parties are unable to resolve their differences, the application will be dismissed and the applicant will be allowed to resubmit the application with a request for no more than 200 kW ERP. These policies will apply both to future applications and applications now on file at the Commission.

3. The Commission also clarified its policy with respect to pending applications to modify existing analog, or NTSC, television facilities. Several petitioners argued that the Commission's treatment of applications for modification of NTSC facilities and new NTSC applications is disparate and unfair. They observed that in the *Allotment Reconsideration Order* the Commission stated that service replication of DTV allotments is based on facilities authorized as of April 3, 1997, and that it refused requests to process all pending NTSC modification applications and grant them full DTV service replication of the modified facility. In contrast to this decision, they observe that in the *Service Reconsideration Order* the Commission stated that applications for new NTSC facilities that were pending as of April 3, 1997, would be processed and that the grantees could operate either a digital or analog station prior to conversion. These petitioners argued that all applications pending as of April 3, 1997, whether for new or modified NTSC facilities, should be treated the same. The Commission explained that its actions with respect to modification applications granted before the DTV Table were evaluated based on the same criteria that will be applied in evaluating other NTSC modification applications and did not compromise either its DTV allotment goals or opportunities for increasing the NTSC or DTV facilities of other stations, and therefore its treatment of all such applications is fair and equitable.

4. The Commission advised interested parties that in processing the remaining pending applications for modification of NTSC facilities, it will consider the impact of the proposed change on the service area of any affected DTV station as computed from the location and facilities specified in the *Second MO&O*, or any increases in facilities authorized subsequent to those established in Appendix B. The Commission further advised applicants that, to the extent it grants applications for modifications of NTSC facilities, it will not automatically increase the facilities of the associated DTV channel to replicate the new NTSC service area. In this regard, the Commission stated that it is concerned that increasing DTV facilities in this manner could result in significant new interference to either or both NTSC stations or other DTV stations. Accordingly, if parties with pending applications for NTSC modifications also desire to have their DTV facilities modified, they must submit a separate application for modification of the DTV station. Such applications for DTV station modifications will be evaluated under the criteria set forth in §§ 73.622 and 73.623 of the rules.

5. The Commission next clarified its policy with respect to protection of allotments for proposed new NTSC stations. A number of petitioners that had filed applications for new NTSC stations within areas covered by the

Commission's 1987 *Order* (*Freeze Order*) freezing acceptance of applications for new television stations in certain congested areas sought reconsideration to ensure that allotments will be available for their applications. These petitioners argued that, in the *Sixth Report and Order* in the DTV proceeding, the Commission indicated that it would continue to process applications filed on or before September 20, 1996, because it did not believe that those applications would have a significant negative impact on the DTV Table. They further contended that in the *Allotment Reconsideration Order* the Commission confirmed that it intended to protect pending NTSC applications filed by this deadline. These parties argued that in the *Allotment Reconsideration Order* the Commission made clear for the first time that applications not accepted for filing were not protected and that to the extent that a conflicting DTV allotment has been made, it did not plan to allot a replacement channel for those applications. They stated that the Commission did not provide an explanation for not protecting the allotments sought in their applications.

6. In reviewing the petitioners' requests for reconsideration, the Commission found that these parties appeared to misunderstand its policy with respect to applications for new NTSC stations that were filed on or before September 20, 1996, as that policy applies to applications for new stations at locations within areas covered by the 1987 *Freeze Order*. The Commission indicated that its policy of maintaining and protecting vacant NTSC allotments that are the subject of pending applications applied only to applications for new NTSC stations outside of the freeze areas. It stated that it did not consider applications within the freeze areas to be pending and did not protect such applications by avoiding the creation of DTV allotments that would conflict with the new NTSC stations they propose. In this regard, the Commission noted that it had indicated previously, in the *Sixth Further Notice* in the DTV proceeding, that it would continue its longstanding policy of considering requests for waiver of the *Freeze Order* on a case-by-case basis. The Commission noted that if all vacant allotments were protected, it would not be possible to accommodate all existing broadcasters and the expected service areas of many of the DTV allotments would be reduced.

7. The Commission did, however, indicate that it found it desirable to provide applicants seeking to operate new NTSC stations in the freeze areas with options to pursue their applications wherever such options would not conflict with NTSC or DTV stations (including DTV allotments, authorized or requested increases in DTV allotment facilities and proposals for new or modified DTV allotments). In this regard, it adopted the suggestion of several of the petitioners that it allow parties whose NTSC applications conflict with DTV stations to request a change in the NTSC channel they seek or to amend their application to eliminate all such conflicts. The Commission agreed that where an alternate NTSC channel below channel 60 is available, it would provide a win-win solution in avoiding interference to DTV service and allowing the public to receive additional television service. The Commission therefore stated that in a subsequent Public Notice, its Mass Media Bureau will announce a window of time during which such petitions to amend the NTSC Table of Allotments or amendments to freeze-waiver applications may be filed. Parties that had filed applications for new NTSC stations using allotments in the freeze areas will be permitted to amend their applications if such amendment would eliminate interference to DTV service predicted using the criteria set forth in § 73.623(c) of the rules. Such amendments may include changes in the ERP, directional antenna pattern, antenna height or site location requested in the application, but the amendment must conform to pertinent NTSC requirements. The application amendment may also specify DTV operation.

8. In response to an *ex parte* request from the Dispatch Broadcast Group (Dispatch), the Commission modified its operating requirements for DTV stations to provide licensees with greater flexibility in scheduling their DTV operations in the early phases of the DTV implementation process. In particular, the Commission modified its rules to allow stations, both commercial and noncommercial, that voluntarily commence DTV service early full flexibility in determining the schedule on which they operate their DTV service, and thereafter to require that they operate in accordance with the existing requirement that they must provide at least one free over-the-air DTV video program at no charge to viewers, at any time their associated NTSC stations are operating.

9. Finally, the Commission make several adjustments to the DTV Table in response to requests of individual petitioners. The revised DTV Table and associated technical parameters for station operation are available for inspection on the internet at *www.fcc.gov* and at the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554 during regular business hours.

Procedural Matters

10. *Paperwork Reduction Act of 1995 Analysis.* This *Second MO&O* has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law No. 104–13, and found to impose no new or modified information collection requirements on the public.

11. *Supplemental Final Regulatory Flexibility Analysis.* With respect to this *Second MO&O*, the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis, under the Regulatory Flexibility Act, of the possible significant economic impact on small entities of the rules in this document. None of the petitions for reconsideration of the *Service Reconsideration Order* or the *Allotment Reconsideration Order* raised issues concerning the Supplemental FRFAs prepared for those decisions. The Supplemental FRFA for the *Second MO&O* is as follows:

A. Need for, and Objectives of, this Memorandum Opinion and Order

12. In the *Fifth Report and Order*, the Commission adopted rules for the transition to DTV service, including eligibility standards for the initial DTV channels, a construction schedule, a requirement that broadcasters continue to provide a free, over-the-air television service, and a simulcast requirement phased-in at the end of the transition period. In the *Service Reconsideration Order*, the Commission addressed petitions for reconsideration of its eligibility standards for the initial DTV channels and other elements of its rules and procedures for broadcasters to convert to DTV service. In the *Sixth Report and Order*, the Commission adopted policies, procedures and technical criteria for use in conjunction with operation of broadcast digital television (DTV) service, adopted a DTV Table of Allotments, adopted a plan for the recovery of a portion of the spectrum currently allocated to TV broadcasting, and provided procedures for assigning DTV frequencies. In the *Allotment Reconsideration Order*, the Commission addressed petitions for reconsideration of its decisions on the DTV Table of Allotments, policies and rules for the initial DTV allotments, procedures for assigning those allotted channels, and plans for spectrum recovery. In the present *Memorandum Opinion and Order*, the Commission addresses petitions for reconsideration

of both the *Service Reconsideration Order* and the *Allotment Reconsideration Order*. Throughout this proceeding, we have sought to allot DTV channels in a manner that is most efficient for broadcasters and the public and least disruptive to broadcast television service during the period of transition from NTSC to DTV service. We wish to ensure that the spectrum is used efficiently and effectively through reliance on market forces, and ensure that the introduction of digital TV fully serves the public interest.

B. Summary of Significant Issues Raised by the Public In Response to the Supplemental FRFAs

13. None.

C. Description and Estimate Of The Number Of Small Entities To Which The Rules Will Apply

14. As noted, Final Regulatory Flexibility Analyses were incorporated into the *Fifth Report and Order* and the *Sixth Report and Order*. In those analyses, we described in detail the small entities that might be significantly affected by the rules adopted in the *Fifth Report and Order* and the *Sixth Report and Order*. Those entities included full service television stations, TV translator facilities, and LPTV stations. In addition, while we did not believe that television equipment manufacturers, manufacturers of television equipment used by consumers, and computer manufacturers constituted regulated entities for the purpose of those previous FRFAs, we included them in the analysis of the FRFAs because we thought that some rule changes and textual discussions in the *Fifth Report and Order* and the *Sixth Report and Order* might ultimately have some affect on equipment compliance. In the present *Memorandum Opinion and Order* we address reconsideration petitions filed in response to the *Service Reconsideration Order* and the *Allotment Reconsideration Order*. In this present Supplemental FRFA, we hereby incorporate by reference the description and estimate of the number of small entities from the previous FRFAs in this proceeding.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

15. The rules adopted will result in no changes in current reporting, recordkeeping, or other compliance requirements.

E. Steps Taken to Minimize Significant Economic Burdens on Small Entities, and Significant Alternatives Considered

16. As noted in the previous FRFAs, the DTV Table of Allotments will affect all of the commercial and noncommercial broadcast television stations eligible for a DTV channel in the transition period and a significant number of the LPTV and TV translator stations. LPTV and TV translator stations, especially, are likely to be small entities. It is expected that the allotments will constitute the population of channels on which broadcasters will operate DTV service in the near future. Affected stations will need to modify or obtain new transmission facilities and, to a varying extent, production equipment to operate on the new DTV channels. The actual cost of equipment is expected to vary in accordance with the degree to which the station becomes involved in DTV programming and origination.

Considering this and other information, the Memorandum Opinion and Order makes the following changes to the Commission's DTV policies:

(1) Reaffirms the Commission's initial DTV eligibility standards and denies requests by several petitioners that we change the channel of certain DTV allotments that conflict with the NTSC allotments for which they have submitted applications or petitions for rule making. (In general, these petitioners filed applications that had not been accepted or acted upon by the Commission because they contained a request for waiver of the 1987 *Freeze Order*.) The MO&O does, however, grant the petitioners' alternative suggestion that they be permitted to modify their existing applications to specify alternative channels that do not conflict with the DTV allotments. This will allow those parties to continue to pursue their outstanding investments in seeking a new stations wherever possible.

(2) Grants Fox's request that we modify our decision to limit initial maximization requests to 200 kW, subject to certain conditions. Accordingly, the item permits parties to submit requests for DTV power increases above 200 kW, up to the 1000 kW maximum. Such requests must include an engineering showing that demonstrates compliance with the *de minimis* interference standard with all affected stations assumed to be operating at the DTV power level specified for their allotment or at 200 kW, whichever is greater. Requests will be placed on public notice for 30 days and any objections to the increase above 200 kW must be resolved by the applicant. This action will allow a number of stations to construct their initial DTV facilities with greater than 200 kW effective radiated power and thereby avoid the need for them to undertake a more costly two-stage construction process to achieve higher power in the future, after the current 200 kW limitation on power increases is lifted.

(3) Grants Dispatch's request for modification of the operating requirements for DTV stations to provide licensees with greater flexibility in scheduling their DTV operations in the early phases of the DTV implementation process. In particular, the rules have been modified to allow stations, both commercial and noncommercial, that voluntarily commence DTV service early full flexibility in determining the schedule on which they operate their DTV service. Thereafter, such stations must operate in accordance with the existing requirement that they provide at least one free over-the-air DTV video program at no charge to viewers, at any time their associated NTSC stations are operating.

(4) Grants a number of individual requests for changes in the initial DTV allotments. These actions do not alter in any significant way the previous FRFAs and Supplemental FRFAs or the potential effect of the rules on any small entities that may be subject to them.

17. The Commission will send a copy of the *Memorandum Opinion and Order*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

18. In accordance with the actions described herein, *it is ordered that* Part 73 of the Commission's rules *is amended* as set forth in the rule changes. In addition, *it is ordered* that the rule amendments as set forth *shall be effective* 30 days after publication in the **Federal Register**. This action is taken pursuant to authority contained in §§ 4(i), 7, 301, 302, 303, 307 and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 301, 302, 303, 307 and 336.

19. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, *shall send* a copy of this Memorandum Opinion and Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

20. For additional information concerning this matter, contact Bruce

Franca, Office of Engineering and Technology, (202) 418–2470, Alan Stillwell, Office of Engineering and Technology, (202) 418–2470, or Robert Eckert, Office of Engineering and Technology, Technical Research Branch, (202) 418–2433.

List of Subjects in 47 CFR Parts 73 and 74

Television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 73 and 74 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622 is amended by removing the designation "c" from entries in paragraph (b) to read as follows:

Under CALIFORNIA, channel 63 at Concord
Under CALIFORNIA, channel 39 at Corona
Under CALIFORNIA, channel 48 at Porterville
Under CALIFORNIA, channels 21, 35, *53 and 55 at Sacramento
Under CALIFORNIA, channel 43 at Salinas
Under CALIFORNIA, channel 61 at San Bernardino
Under CALIFORNIA, channel 41 at San Jose
Under CONNECTICUT, channel *52 at Bridgeport
Under FLORIDA, channel *44 at Boca Raton
Under FLORIDA, channel 22 at Miami
Under HAWAII, channel 31 at Honolulu
Under HAWAII, channel *7 at Lihue
Under ILLINOIS, channels 19 and 43 at Chicago
Under ILLINOIS, channel 16 at Rockford
Under INDIANA, channel 51 at Salem
Under MASSACHUSETTS, channel 29 at Worcester
Under MICHIGAN, channel *55 at East Lansing
Under MICHIGAN, channel 51 at Lansing
Under NEW HAMPSHIRE, channel *49 at Keene
Under NEW HAMPSHIRE, channel 59 at Manchester
Under NEW JERSEY, channel *18 at New Brunswick
Under NEW YORK, channel *42 at Binghamton
Under NEW YORK, channel 56 at New York
Under NEW YORK, channel 19 at Syracuse
Under NEW YORK, channel 21 at Watertown
Under OHIO, channel 42 at Sandusky
Under OHIO, channels 19 and 49 at Toledo
Under OHIO, channel 20 at Youngstown
Under PENNSYLVANIA, channel *62 at Allentown
Under PENNSYLVANIA, channel 64 at Philadelphia
Under PENNSYLVANIA, channels 25 and *26 at Pittsburgh
Under RHODE ISLAND, channel 17 at Block Island
Under TENNESSEE, channel *29 at Memphis
Under TEXAS, channel 44 at Houston
Under VIRGINIA, channel 43 at Manassas
Under VIRGINIA, channel 22 at Petersburg
Under WASHINGTON, channel 46 at Wenatchee
Under PUERTO RICO, channel *16 at Fajardo
Under PUERTO RICO, channels 29 and 35 at Mayaguez

3. Section 73.622 is amended by adding or revising the following entries in the table in paragraph (b) to read as follows:

§ 73.622 DTV Table of Allotments.

* * * * *

(b) *DTV Table of Allotments.*

* * * * *

Arizona

Kingman	19, *46

* * * * *

California

Barstow	44
Blythe	*4
Calipatria	50
Clovis	44c
Coalinga	*22
Concord	63c
Huntington Beach	*48
Long Beach	61c
Los Angeles	31c, 35c, 36, *41c, 42, 43, 53c, *59c, 60, 65c, 66
San Bernardino	*26, 38

* * * * *

Colorado

Colorado Springs	10, 22c, 24
Craig	*48
Denver	16, 17, *18, 19, 32c, 34, 35, *40, 43, 51c
Glenwood Springs	23, *39
Grand Junction	2, 7, 12c, 15, *17
La Junta	*30
Lamar	*50
Leadville	*49
Longmont	29

* * * * *

Florida

Bradenton	*5, 42
Live Oak	48
Marathon	*34
Melbourne	20, 48

* * * * *

Idaho

Boise	*21, 26, 28
Burley	*48
Caldwell	10c
Twin Falls	16, *22, 34
Weiser	*34

Illinois

* * * * *

Indiana

Evansville	28, 45c, 46, *54, 59

* * * * *

Iowa

Cedar Rapids	27, 47, 51, 52
Centerville	*44
Council Bluffs	*33c

* * * * *

Kansas

Garden City	16, 18, *42
Lawrence	36
Oakley	*40
Pittsburg	30

* * * * *

Minnesota

Hibbing	36, *51

* * * * *

Missouri

Birch Tree	*7

Bowling Green	*50
Cape Girardeau	22, 57
• • • • •	
Montana	
• • • • •	
Miles City	13, *39
• • • • •	
Nevada	
Elko	8, *15
• • • • •	
New Jersey	
Atlantic City	49, 50
• • • • •	
New Mexico	
• • • • •	
Las Cruces	*23c, 47
• • • • •	
Roswell	28c, 38, 41
• • • • •	
Silver City	12, *33
Socorro	*31
New York	
• • • • •	
Oklahoma	
• • • • •	
Eufala	*31
Guymon	*29
Lawton	23
• • • • •	
Texas	
• • • • •	
Longview	31
Lubbock	25, 27, 35c, *39, 40, 43
• • • • •	
Texarkana	15, *50
• • • • •	
Utah	
• • • • •	
Cedar City	14, 44
Monticello	*41
Ogden	29, *34
• • • • •	

4. Section 73.622 is amended by revising paragraph (e) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(e) *DTV Service Areas.* (1) The service area of a DTV station is the geographic area within the station's noise-limited F(50,90) contour where its signal strength is predicted to exceed the noise-limited service level. The noise-limited contour is the area in which the predicted F(50, 90) field strength of the station's signal, in dB above 1 microvolt per meter (dBu) as determined using the method in § 73.625(b), exceeds the following levels (these are the levels at which reception of DTV service is limited by noise):

	dBu
Channels 2–6	28
Channels 7–13	36
Channels 14–69	41

(2) Within this contour, service is considered available at locations where the station's signal strength, as predicted using the terrain dependent Longley-Rice point-to-point propagation model, exceeds the levels above. Guidance for evaluating coverage areas using the Longley-Rice methodology is provided in *OET Bulletin No. 69.* Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the: Federal Communications Commission, 1919 M St., N.W., Public Reference Room (Room 239), Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

5. Section 73.623 is amended by redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f), to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

* * * * *

(f) Parties requesting new allotments on channel 6 be added to the DTV Table must submit an engineering study demonstrating that no interference would be caused to existing FM radio stations on FM channels 200–220.

* * * * *

6. Section 73.624 is amended by revising paragraph (b) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(b) At any time that a DTV broadcast station permittee or licensee transmits a video program signal on its analog television channel, it must also transmit at least one over-the-air video program signal at no direct charge to viewers on the DTV channel that is licensed to the analog channel, *provided* that, before the date on which DTV station is required to be constructed under paragraph (d) of this section, the DTV broadcast station permittee or licensee is not subject to any minimum schedule for operation on the DTV channel. The DTV service that is provided pursuant to this paragraph must be at least comparable in resolution to the analog television station programming transmitted to viewers on the analog channel, but subject to paragraph (f) of this section, DTV broadcast stations are not required to simulcast the analog programming.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTION SERVICES

7. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

8. Section 74.706 is amended by revising paragraph (d)(1) to read as follows:

§ 74.706 Digital TV (DTV) station protection.

* * * * *

(d) * * *

(1) −2 dB or less for co-channel operations. This maximum L/D ratio for co-channel interference to DTV service is only valid at locations where the signal-to-noise (S/N) ratio is 25 dB or greater. At the edge of the noise-limited service area, where the S/N ratio is 16 dB, the maximum L/D ratio for co-channel interference from analog low power TV, TV translator or TV booster service into DTV service is −21 dB. At locations where the S/N ratio is greater than 16 dB but less than 25 dB, the maximum L/D field strength ratios are found from the following Table (for values between measured values, linear interpolation can be used):

Signal-to-noise ratio(dB)	DTV-to-low power ratio (dB)
16.00	21.00
16.35	19.94
17.35	17.69
18.35	16.44
19.35	7.19
20.35	4.69
21.35	3.69
22.35	2.94
23.35	2.44
25.00	2.00

* * * * *

[FR Doc. 99–1941 Filed 1–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF02

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service hereby issues final regulations to authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. We clarified types of activities covered by this incidental take authority that were identified in our proposed regulations issued on November 17, 1998 (63 FR 63812), and they are essentially identical to activities covered by our original 5-year incidental take regulations effective from December 16, 1993, through December 15, 1998. As allowed by the Marine Mammal Protection Act (Act), these final regulations are effective through January 30, 2000, during which time we will consider new information associated with sub-sea pipelines to evaluate the scope of activities that will be covered in a future rule. It is our intention next year, at a minimum, to propose to extend these regulations for an additional four years for the activities described in this rule. As noted below, these regulations do not address or authorize incidental takes resulting from sub-sea pipeline activities located offshore in the Beaufort Sea.

DATES: This rule is effective January 28, 1999 and remains effective through January 30, 2000.

ADDRESSES: Comments and materials received in response to this action are available for public inspection during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, Anchorage, Alaska, at 907/786–3800, FAX 907/786–3816, or Internet John_Bridges@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Act gives the Secretary of the Interior (Secretary) through the Director of the Service the authority to allow, on request by U.S. citizens [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region the incidental, but not intentional, taking of small numbers of marine mammals. We may grant permission for incidental takes for periods of up to 5 years.

If we find, based on the best scientific evidence available, that the taking of marine mammals will have a negligible impact on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses, we may allow the taking of marine mammals. We then are required to publish regulations that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. We issue Letters of Authorization (LOA), upon request and receipt of appropriate date, to individual entities to conduct activities pursuant to the regulations.

The term "take" as defined by the Act means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment as defined by the Act, as amended in 1994, "* * * means any act of pursuit, torment, or annoyance which—

(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) Has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

As a result of 1986 amendments to the Act, we published a final rule on September 29, 1989, (54 FR 40338), amending 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities). The final rule in § 18.27(c) included, among other things, a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact" as follows. "Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival * * *. Unmitigable adverse impact means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met."

Oil and gas exploration, development, and production activities conducted in marine mammal habitat risk violating the moratorium on the taking of marine mammals and, therefore, violating the terms of the Act. Although there is no legal requirement for Industry to obtain incidental take authority, they have chosen to seek authorization to avoid the uncertainties of conducting oil and gas industry activities in marine mammal habitat.

On December 17, 1991, BP Exploration (Alaska), Inc. (BPXA), for itself and on behalf of Amerada Hess Corporation, Amoco Production Company, ARCO Alaska, Inc., CGG American Service, Inc., Conoco Inc., Digison Geophysical Corp., Exxon Corporation, GECO Geophysical Co., Halliburton Geophysical Services, Inc., Mobil Oil Corporation, Northern Geophysical of America, Texaco Inc., Unocal Corporation, and Western Geophysical Company, petitioned us to promulgate regulations pursuant to section 101(a)(5) of the Act.

The geographic region defined in Industry's 1991 application included offshore waters beginning at a north/south line at Barrow, Alaska, east to the Canadian border, including all Alaska state waters and OCS waters. The same north/south line at Barrow, extending 25 miles inland and east to the Canning River defined the onshore region. The Arctic National Wildlife Refuge was excluded from Industry's proposal; and it was also excluded from our subsequent final remaking actions in 1993 and 1995, as briefly described in the next paragraph.

On November 16, 1993 (58 FR 60402), we issued final regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus in the event that such taking(s) occurred in the course of Industry activities during year-round operations in the Beaufort Sea, in Alaskan State waters and Outer Continental Shelf (OCS) waters and the adjacent northern coast of Alaska. The regulations were

issued for a period of 18 months. At the same time, the Secretary of the Interior directed us to develop, then begin implementation of, a polar bear habitat conservation strategy prior to extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. We developed *The Habitat Conservation Strategy for Polar Bears in Alaska* to ensure that the regulations fully met with the intent of the *1973 International Agreement on the Conservation of Polar Bears*. On August 17, 1995, we issued the final rule and notice of availability of a completed final polar bear habitat conservation strategy (60 FR 42805); and we extended the regulations for an additional 42 months to expire on December 15, 1998.

Summary of the Current Rulemaking Action

On August 28, 1997, BPXA submitted a petition for rulemaking pursuant to section 101(a)(5)(A) of the Act, and section 553(e) of the Administrative Procedure Act (APA). Their request sought regulations to allow the incidental, but not intentional, taking of small numbers of polar bears and Pacific walrus in the event that takings occurred in the course of Industry operations in Arctic Alaska. Specifically, BPXA requested an extension of the incidental take regulations beginning at 50 CFR 18.121 for an additional five-year term from December 16, 1998, through December 15, 2003. However, the petition for new regulations includes two new oil fields (Liberty and Northstar). Plans to develop each field identify need for an offshore gravel island and a buried sub-sea pipeline to transport crude oil to connect with existing facilities. The request was submitted by BPXA for itself and on behalf of ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company.

The geographic extent of this request was the same as that of our previously issued regulations beginning at 50 CFR 18.121 that were in effect through December 15, 1998, a north/south line at Barrow, Alaska, including all Alaska State waters and OCS waters, and east of that line to the Canadian border; with the onshore region being the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge was excluded from the proposal.

In response to Industry's 1997 application, on November 17, 1998, we published proposed specific regulations (63 FR 63812) to allow the incidental, unintentional take of polar bears and Pacific walrus in the Beaufort Sea and northern coast of Alaska. The proposed regulations were to be in effect year-round for a five year period expected to begin at the December 15, 1998, expiration of our incidental take regulations that began at 50 CFR 18.121 for entities conducting oil and gas industry activities. However, information related to sub-sea pipelines is in Draft Environmental Impact Statements and is preliminary. Currently, two Environmental Impact Statements are being finalized; one by the U.S. Army Corps of Engineers for the Northstar Project, and one by the Minerals Management Service (MMS) for the Liberty Project. Once these documents are final, we will be better positioned to make a finding based on the latest scientific and engineering information. Therefore the issuance of these one year final regulations will not address or authorize the incidental take of polar bears and Pacific walrus during construction or operations of sub-sea pipelines in the Beaufort Sea.

These regulations do not permit the actual activities associated with oil and gas exploration, development, and production, but rather allow the incidental, unintentional take of polar bears and Pacific walrus that is associated with the described activities. The Department of the Interior's MMS and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands, respectively, and the State of Alaska is responsible for activities on State lands and in State waters.

Concern has been directed at polar bear encounter incidents where human life is in jeopardy. When human activity occurs in polar bear habitat, polar bear/human encounters are possible. However, during more than 25 years of industry activity in this area, only three polar bears have died as a result of industrial activity. Each person operating under these regulations will have polar bear interaction training and knowledge of polar bear interaction plans. We authorize deterrent activities under section 109(h)(1) of the Act, while lethal take is authorized in defense of self or others in accordance with section 101(c) of the Act.

The regulations authorize the incudental take of polar bears and Pacific walrus associated with incidents that occur between Industry and the two species during year-round oil and gas activities that might cause minor disturbances to polar bears or Pacific walrus, especially those incidents that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity.

The regulations include requirements for monitoring and reporting, and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. Oil and gas exploration, development, and production activities in the geographic area applicable to this effort may involve the taking of polar bears and Pacific walrus. However, we have made a finding that the total impact of the takings have a negligible impact on these species and on their availability for subsistence uses. Monitoring reports submitted for each exploration, development, and production activity conducted from 1993–1997 support this finding.

The rule requires a person to obtain a LOA to conduct exploration, development, and production activities pursuant to the regulations. Where there is the likelihood of taking polar bear or walrus when carrying out one or more of these activities, each group or individual conducting an oil and gas industry-related activity may request a LOA. Further, applicants for LOAs must submit a plan to monitor the effects on polar bear and walrus that are present during the authorized activities. Also, applicants for LOAs must identify, in a Plan of Cooperation, measures taken to minimize adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Each request for a LOA is evaluated on the specific activity and the specific location, and we condition each LOA for that activity and location if necessary.

Description of Activity

As allowed by section 101(a)(5)(A) of the Act, this final rule is effective through January 30, 2000. Activities that are covered in this final rule are exploration activities such as geological and geophysical surveys which include: geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, air gun and water gun seismic data collection, explosive seismic data collection, geological surveys, and drilling operations. The latter include: drill ships, floating drill platforms such as the Kulluk, ice pads, artificial islands, caisson-retained islands, and two types of bottom founded structures: (1) Concrete island drilling system, and (2) single steel drilling caisson. This rule does not authorize incidental take of polar bears or Pacific walrus by activities associated with sub-sea pipelines.

Development and production activities are located on the North Slope along the shores of the Beaufort Sea. This region contains more than 11 separate oil and gas fields. All of the fields lie within the range of polar bears, while those in the offshore/near shore may encounter Pacific walrus on an irregular basis. At present, seven fields are in production: Prudhoe Bay, Kuparuk, Endicott, Lisburne, Milne Point, Niakuk, and Point McIntyre. Additional fields expected to be in production over the next few years are Northstar, Badami, Liberty, Tarn, and Alpine. The Trans-Alaska Pipeline System transports oil from each of the producing fields 800 miles south to Valdez, Alaska.

As mentioned above, this final rule does not authorize incidental takes of polar bears or Pacific walrus from any sub-sea pipeline activity. While Industry's original August 28, 1997, application briefly discussed its plans to develop the offshore Northstar and Liberty sites and sub-sea pipelines, the actual construction and use of sub-sea pipelines to transport oil is an activity that we did not examine during our prior, 1993 final rulemaking. This precludes us at this time from making any findings about sub-sea pipelines. Upon completion of the two environmental impact statements addressing this new activity, we will reconsider the best available scientific information and reevaluate the scope and duration of a future rulemaking. Therefore, although incidental take from other development and production activities, such as the construction and use of gravel islands and ice roads, is covered by this rule, any incidental take resulting from the construction or use of sub-sea pipelines is not covered by this rule. We have made no decision on the eligibility of sub-sea pipelines to be included in a rulemaking under section 101(a)(5) of the Act, and nothing in this rule or in any LOA issued under this rule should be interpreted as creating an expectation that incidental take authority will be granted for sub-sea pipeline activities at a future date.

Potential sources of incidental take are noise, physical interactions, and permitted and unpermitted discharges (oil spills). Oil and gas well drilling operations will include artificial islands, caisson-retained islands, ice island, bottom-founded structures and ice pads and drill ships.

During the life of the regulations, we anticipate a similar level of activity as during the previous five years, with the addition of a number of new developments as mentioned above. Because of the large number of variables influencing exploration activity, any predictions as to the exact dates and locations of the operations that will take place over the next year would be highly speculative. However, requests for LOAs must include specific details regarding dates, duration, and geographic locations of proposed activities.

Biological Information

Polar bears and Pacific walrus utilize the area as habitat which is vital to their survival, more so for polar bears than the Pacific walrus. The geographic area is the land and water area east of a north/south line through Barrow, Alaska. The onshore area is 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is outside of the area. Offshore, the area extends through Alaska State waters and into the OCS waters of the Beaufort Sea from Barrow east to the Canadian border.

Pacific Walrus

The Pacific walrus primarily occurs in the waters of the Chukchi Sea along the western coast of Alaska. Most of the population congregates near the ice edge of the Chukchi Sea pack ice during the summer. The primary summer range of the walrus does not extend east of Point Barrow. In the winter, walrus occur in areas where there are polynyas, open leads, or thin ice in which they can create and maintain breathing holes, and major winter concentrations occur in the southeastern Bering Sea. Walrus do occur in the Beaufort Sea but in small numbers. Data from our Marking, Tagging, and Reporting Program show that from 1994 through 1997, 73 walrus were reported killed by Barrow hunters. Tagging certificates shows that nearly all walrus were taken west of Barrow. Based on four years of monitoring Industry's activities in the Beaufort Sea required as a condition to LOAs, only two walrus were observed by on-site monitors.

Polar Bear

Polar bears occur only in the Northern Hemisphere, where their distribution is circumpolar, and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. We estimate the world population at 21,000–28,000, with possibly as many as 5,000 bears in Alaska. The most extensive north-south movements of polar bears occur with the ice in the spring and fall.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. An average of two cubs, sometimes one and rarely three, are usually born in December, and the family group emerges from the den in late March or early April. Only pregnant females den for an extended period during the winter. Other polar bears may burrow out depressions to escape harsh winter winds. The average reproduction interval for polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these conditions, a polar bear may produce about ten cubs in her lifetime.

The fur and blubber of the polar bear provide vital protection from the cold air and frigid water. Newly emerged cubs of the year may not have a sufficient layer of blubber to maintain body heat when immersed in water for long periods of time. For this reason, the mother is very protective of the cubs. Cubs abandoned prior to the normal weaning age of 2.5 years likely will not survive.

Ringed seals (*Phoca hispida*) are the primary prey species of the polar bear; occasionally, they hunt bearded seals (*Erignathus barbatus*) and walrus calves. Polar bears scavenge on marine mammal carcasses washed up on shore. They also eat non-food items such as Styrofoam, plastic, car-batteries, anti-freeze, and lubricating fluids.

Polar bears have no natural predators, and they do not appear to be prone to death by diseases or parasites. The most significant source of mortality are humans. Since 1972, with the passage of the Act, only Alaska Natives hunt polar bears in Alaska and use bears for their subsistence needs and manufacture of handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number, or season, providing takes are non-wasteful. From 1980–1997, the total annual harvest averaged 103 bears. The majority of this harvest (70 percent) came from the Chukchi Sea area.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Walrus

Oil and gas industry activities such as air and vessel traffic, noise from air traffic, seismic surveys, ice breakers, supply ships and drilling may frighten or displace walrus. However, as previously stated in this document, the primary range of the Pacific walrus is west of Point Barrow and the likelihood of many walrus being in the Beaufort Sea is small. Therefore, it is unlikely that oil and gas industry activities will result in more than a negligible impact

on the species. Likewise, activities during the ice covered periods and the onshore development and production activities should not impact the species.

Stationary drilling structures may affect the movement of walrus. Walrus are attracted to certain activities or repelled from others by noise or smell. In the 1989 drilling season an incident occurred in a Chuckchi Sea operation where a young walrus surfaced in the center hole (moonpool) of the drill ship. A cargo net removed the walrus from the drilling area, after which the walrus left the scene of the incident and was not seen again.

The majority of the population congregates during the summer months (open water season) in the southern region of the Chukchi Sea pack ice between Long Strait and Wrangel Island to the west and Point Barrow, Alaska, to the east. These animals stray or are blown by storms into the proposed regulation area. The remainder of the population, primarily adult males, stay in the Bering Sea, Especially along the Anadyr Gulf coast and in several areas in northern Bristol Bay.

In winter, walrus are found in two major regions where open leads, polynyas, or thin ice occur. Generally, one group ranges from the Gulf of Anadyr into the region southwest of St. Lawrence Island, and a second group is found in the southeastern Bering Sea from south of Nunivak Island into northwestern Bristol Bay. No impacts to walrus are expected during winter oil and gas industry activities since the winter range of the Pacific walrus is not within the geographic area covered by these regulations.

Seismic surveys generally take place on solid ice or open water. Since most walrus activity occurs near the ice edge, interactions with walrus and the seismic activity are unlikely.

Subsistence

Few walrus are harvested in the Beaufort Sea along the northern coast of Alaska. Walrus constitute a small portion of the harvest for the village of Barrow. For the four year period that the current incidental take regulations have been in place and for which data is available, 1994 through 1997, 73 walrus were reported taken by Barrow hunters. Reports indicate that all but one of the 73 walrus were taken west of Point Barrow, outside the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik have not reported taking any walrus during this time.

Polar Bear

Oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska may affect the polar bear. Drill ships and icebreaker activity may be physical obstructions to normal movement. Noise, sights, and smells produced by activities may attract or repel bears. These disruptions may introduce detrimental changes in the bears' natural behavior.

Exploration activities during the open-water season are not likely to impact the movements or natural behavior of the polar bear. Although polar bears have been documented in open water, miles from the ice edge or ice floes, they normally are found near the ice edge. Therefore, it is unlikely that exploration activities in the open-water season will have more than a negligible impact on the polar bear.

Winter oil and gas activities have a greater possibility of having detrimental impacts on the polar bear. Polar bears that continue to move over the ice pack throughout the year are likely to encounter Industry activities.. Curious polar bears are likely to investigate drill ships and artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for Industry/bear interactions.

Offshore drill sites within the pack ice may modify the habitat by creating open water leads down current from the activity. Polar bears are attracted to open water leads which create temporary niches for subadult or non-breeding ringed seals, the primary prey species for the polar bear. Polar bears attracted to these artificial open water leads create possibilities of Industry/polar bear encounters.

Polar bear interaction plans are developed for each operation. Industry personnel participate in a polar bear interaction training program while on -site. These training programs and interaction plans insure that the activity and possible interactions have the least detrimental effect on industry personnel and the polar bear. Occasionally, work is performed on ice adjacent to elevated drill ships or platforms. In such cases, well-lighted and open work areas are provided to reduce the likelihood of an encounter with an undetected polar bear.

Winter seismic activity (survey crews) have a potential of disturbing denning females which are sensitive to noise disturbances. Denning females may stop seeking a preferred denning site, or may abandon dens, thereby risking the lives of their offspring. Prior to initiating seismic survey activity, Industry provides us with its proposed survey route. Through satellite observations of radio collared bears, we are able to inform Industry of known denning sites, and from knowledge of the geographic area, we can identify areas of probable denning sites. Likewise, cooperative research Industry in the development of Forward Looking Infrared Radar shows promise of detecting polar bears in maternity dens. Industry also cooperates with us to alter survey routes to pass within no less than one mile of denning sites. As a result of the ongoing cooperative operating procedures, Industry activities avoid known den sites in response to required Letter of Authorization conditions.

Subsistence

The polar bear is not a primary subsistence species of the villages of Barrow, Nuiqsut, or Kaktovik. Preliminary data from our Marking, Tagging, and Reporting Program indicate that from July 1, 1993, to June 30, 1997, a total of 83 polar bears were reported harvested by the Natives of Barrow, 5 polar bears from the village of Nuiqsut; and 9 polar bears from the village of Kaktovik. Hunting success varies considerably from year-to-year because of variable ice and weather conditions.

Industry works with the local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. It is assumed that oil and gas exploration, development, and production will not have more than a negligible impact on subsistence activities.

Oil Spills

The accidental discharge of oil into the environment during Industry activities could result from operational spills during refueling, handling of lubricants and liquid products, and during general maintenance. The spills are small in quantity, generally less than a barrel of oil per incident. Drilling units maintain onboard cleanup equipment and train personnel to handle operational spills. These spills do not pose a threat to polar bear or walrus.

A blowout (i.e., the loss of control during drilling) is a potentially more serious type of spill accident. However, based on data calculated by the MMS, the probability of a major blowout in the Beaufort Sea is extremely low; data compiled by that agency verify that although blowouts occur during exploratory drilling on the OCS, no oil has been spilled. This data set includes all blowouts including those caused by gas or water, as well as oil. All blowouts

do not necessarily result in the release of oil. Sub-sea pipeline oil release probabilities are not included in this data.

Swimming polar bears are directly impacted by contracting oil-contaminated waters. Bears that are fouled by oil may suffer thermoregulatory problems, ingest oil, and exhibit other detrimental effects such as inflammation of the nasal passages or damage to their renal and central nervous system.

We acknowledged that while there is a low probability of oil spills connected with a blowout, the potential negative effects to polar bears or their habitats may be significant. Bears that contact oil are likely to die. We balance the probability of an oil spill with the potential severity of harm to the species or stock when determining negligible impact.

Due to the small number of walrus in the Beaufort Sea area, impacts resulting from oil spills are foreseen as negligible.

Conclusions

Based on the previous discussion and recent years' monitoring program results, we make the following findings regarding the actions.

Impact on Species

We find, based on the best scientific information available and the results of four years of monitoring data, the effects of oil and gas related exploration, development, and production activities for the next one year in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat and on the availability of these species for subsistence uses if certain conditions are met. Oil and gas activities have occurred in the Beaufort Sea and the adjacent northern coast of Alaska for many years. To date, there has been only one documented case of a lethal take of a polar bear at an exploratory drill site. In the event of a catastrophic spill, we would reassess the impacts to the polar bear and/or walrus populations and reconsider the appropriateness of authorizations for taking through section 101(a)(5)(A) of the Act.

Our finding of "negligible impact" applies to exploration, development, and production related to oil and gas activities, excluding any production activities associated with sub-sea pipelines. The following are generic conditions intended to minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. We may expand the conditions in the LOAs based upon site-specific and species-specific reasons.

(1) These regulations to not authorize intentional taking of polar bear or walrus. When an intentional take (e.g., harassment associated with deterrent activities and/or lethal take) situation arises, we can allow such action under authority of sections 109(h)(1) or 101(c) of the Act.

(2) For the protection of pregnant polar bears during denning activities (selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities will be restricted in specific locations during certain specified times of the year. These restrictions will be applied on a case-by-case basis in response to a request for each LOA. In potential denning areas, pre-activity surveys, as determined by us, may be required to determine the presence or absence of denning activity.

(3) Each activity authorized by a LOA requires a site-specific plan of operation, and a site-specific monitoring and reporting plan. The purpose of the required plans is to ensure that the level of activity and possible takes will be consistent with the finding that the cumulative total of takes will have a negligible impact on polar bear and Pacific walrus, their habitat, and where relevant, on the availability of the species for subsistence uses.

Impact on Subsistence

Polar bear and Pacific walrus contribute a small amount of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, this does not mean that the harvesting of these species is not important to Alaska natives. To ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses is negligible, prior to receipt of a LOA, Industry must provide evidence to us that a plan of cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, the Alaska Nanuuq Commission, and the North Slope Borough. This plan of cooperation will provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus.

If there is evidence that oil and gas activities will affect, or in the future may affect, the availability of polar bear or walrus for subsistence, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of the monitoring program is to determine short-term and direct effects of authorized oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Plans must identify the methods used to assess the effects on the movements, behavior, and habitat use of polar bear and walrus in response to Industry's activities. Monitoring activities are summarized and reported each year, and reviewed by us. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of a LOA. The applicant must submit an annual monitoring and reporting plan, at least 90 days prior to initiation of proposed activity, for each exploratory activity; and the applicant must submit a final monitoring report to us no later than 90 days after completion of the exploratory activity. Since development and production activities are continuous long-term activities, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until expiration of the regulations, whichever occurs first. We will require that the operator submit development and production activity monitoring results associated with LOAs annually for our review no later than January 15 for the previous activity. We require annual approval of the monitoring results for continued operation under the LOA.

Discussion of Comments on the Proposed Rule

The proposed rule, and request for comments was published in the **Federal Register** (63 FR 63812) on November 17, 1998. The closing date for comments was December 11, 1998. We received 228 comments and the following primary issues were raised by the majority of the commenters.

Comment: Commenters believed that the Service should prepare a full Environmental Impact Statement (EIS).

Response: Through the preparation of an Environmental Assessment (EA), we found that the final rule will not significantly affect the quality of the human environment, thereby resulting in a "Finding Of No Significant Impact (FONSI)." Therefore, in accordance with the national Environmental Policy Act, no EIS is required. The Service's analysis in the Final EA found that

these regulations, which exclude sub-sea pipelines, would not have a significant impact on a species or stock. A one year final rule anticipates that the two Final EIS's, Northstar and Liberty, will provide us with additional information for reconsideration of the scope and duration of the regulations.

Comment: Commenters were concerned about allowing incidental take associated with sub-sea pipelines stating that sub-sea pipelines are an unprecedented expansion into the Beaufort Sea.

Response: We made the decision to issue one year regulations. Information in two Draft Environmental Impact Statements on the effect of oil spilled from sub-sea pipelines on polar bears is preliminary. After the Environmental Impact Statements are final, we will consider the best available scientific information and reevaluate the scope and duration of a future rulemaking. Incidental take resulting from the construction or operation of sub-sea pipelines is not covered by this rule.

Comment: Commenters stated that the regulations should exclude the Beaufort Sea area offshore of the Arctic National Wildlife Refuge and the refuge itself.

Response: The Arctic National Wildlife Refuge is excluded from this rulemaking. Also Lease Sale 170 does not allow further oil and gas leasing in the Outer Continental Shelf area offshore of the Arctic National Wildlife Refuge. However, some oil and gas industry activity may occur in this area due to existing leases. The area from the coast to 3 miles out is State of Alaska waters. A State of Alaska lease sale is planned for this area in the future. By regulations being implemented, we will have more access to oil and gas operations off the coast of the refuge to monitor and mitigate potential impacts through the Letter of Authorization process.

Comment: Commenters stated that the regulations should increase the level of protection in Important Habitat Areas designated in our Habitat Conservation Strategy for Polar Bears in Alaska.

Response: Important habitat areas are presently protected through the Letter of Authorization process. LOAs are conditioned to insure the safety of polar bear denning activities.

Comment: Commenters stated that the comment period was too short.

Response: The length of the comment period was derived in consideration of the then approaching expiration on December 15, 1998, of incidental take regulations beginning at 50 CFR 18.121 that have governed Industry operations in the Beaufort Sea since December 1993, and we received extensive public input. These new regulations allow activities that are identical to the regulations that Industry has operated under for the past five years. Also, this final rule is issued for only one year. No later than the end of this one year period, we will conduct another rulemaking process with full public review.

Required Determinations

We have prepared an Environmental Assessment (EA) in conjunction with this rulemaking and concluded in a Finding of No Significant Impact (FONSI) that this is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National environmental Policy Act of 1969. For a copy of the EA and FONSI, contact the person in Alaska identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT.**

This rulemaking is not a significant rule and was not subject to OMB review under Executive Order 12866.

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The regulations are not likely to result in: (1) An annual effect on the economy of $100 million or more. Expenses will be related, but not necessarily limited, to development of applications for regulations and LOAs, to monitoring, record keeping, and reporting activities conducted during industry oil and gas operations, development of polar hear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous five years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations and LOA requests probably does not exceed $500,000 per year, far short of the $100 million "major rule" threshold that would require preparation of a regulatory impact analysis. It should be pointed out that without specific regulations and LOAs, the cost to Industry resulting from lost profits, relinquishing leases earlier than expected, and writing off bonus payments against current income; and the cost to American society resulting from lost royalties and tax payments might be substantial if incidental takes were to occur and legal challenges succeeded in long-term stoppages of oil and gas operations on Federal and State lands and waters. Such stoppages are unlikely, but if any cessation of activities did occur, they likely would be short-term and would not have an annual effect on the economy surpassing $100 million. On the contrary, the most likely regulatory scenario finds a rule imposing relatively minor costs. Such a rule would be unlikely to force firms to cease operations. As is presently the case, profits would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments; (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have also determined that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors, conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT.**

This final rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt them from civil and criminal liability. The final rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The Solicitor's Office has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

The reinstatement of authority (under OMB Number 1018–0070) to collect information contained in this rule was submitted to the OMB for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On April 1, 1998, we published a notice in the **Federal Register** with a 60-day comment period

announcing to the public its intention to seek OMB approval for the collection of information associated with this rulemaking. On September 22, 1998, we published a **Federal Register** notice with 30-day comment period announcing to the public that this collection of information had been submitted to the OMB for reinstatement. On October 24, 1998, the OMB granted approval of our request for reinstatement of this information collection requirement.

The Administrative Procedure Act, 5 U.S.C. 553(d), generally requires that the effective date of a final rule not be less than 30 days from publication date of the rule. Section 553(d)(1) provides that the 30 day period may be waived if the rule grants or recognizes an exemption or relieves a restriction. Since this rule relieves certain restrictions concerning take of marine mammals, and the previous exemption has expired, the Service has determined that this final rule should be made effective upon the date of publication.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

For the reasons set forth in the preamble, the Service amends part 18, subchapter B of Chapter I, Title 50 of the Code of Federal Regulations as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Revise subpart J to read as follows:

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

18.121 What specified activities does this rule cover?
18.122 In what specified geographic region does this rule apply?
18.123 When is this rule effective?
18.124 How do I obtain a Letter of Authorization?
18.125 What criteria do we use to evaluate Letter of Authorization requests?
18.126 What does my Letter of Authorization allow?
18.127 What activities are prohibited?
18.128 What are the monitoring and reporting requirements?
18.129 What are the information collection requirements?

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

§ 18.121 What specified activities does this rule cover?

Regulations in this subpart apply to the incidental, but not intentional, take of polar bear and Pacific walrus by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. These regulations do not apply to the incidental, unintentional take of polar bear and Pacific walrus resulting from sub-sea pipelines offshore in the Beaufort Sea, and subsequent production and transport of oil through sub-sea pipelines to tie in with onshore facilities. These regulations and any authorizations under these regulations do not constitute approval of future sub-sea pipeline construction and operation activities.

18.122 In what specified geographic region does this rule apply?

This rule applies to the specified geographic area defined by a North/South line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded from this rule.

§ 18.123 When is this rule effective?

Regulations in this subpart are effective January 28, 1999 through January 30, 2000, for year-round oil and gas exploration, development, and production activities.

§ 18.124 How do I obtain a Letter of Authorization?

(a) You must be a U.S. citizen as defined in § 18.27(c) of this part.

(b) If you are conducting an oil and gas exploration, development, or production activity in the geographic area described in § 18.122 that may take a polar bear or Pacific walrus in execution of those activities, you should apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. You must submit the application for authorization to our Alaska Regional Director at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration, the specific location and the estimated area affected by that activity;

(2) A site-specific plan to monitor the behavior and effects of the activity on polar bear and Pacific walrus that are present during the on-going activities. Our Alaska Regional Director must approve your plan which identifies the survey techniques that determine the actions of the polar bear and Pacific walrus in response to the on-going activity. Your monitoring program must document the actions of these marine mammals and estimate the actual level of take. The monitoring requirements will vary depending on the activity, the location, and the time.

(3) A polar bear awareness and interaction plan if the activity is on ice or in an area of active ice movement. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(4) A Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting. This Plan of Cooperation must identify measures to minimize adverse effects on the availability of polar bear and Pacific walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. You should contact affected subsistence communities to discuss potential conflicts with the location, timing, and methods of proposed operations. You must make reasonable efforts to assure that Industry activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or Pacific walrus are properly mitigated.

(d) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.125 What criteria do we use to evaluate Letter of Authorization requests?

When you request a Letter of Authorization, we will determine whether the level of activity identified in the request exceeds that considered by us in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is greater, we will re-evaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on the results of the evaluation, we may allow the authorization to stand as is, add

further conditions, or withdraw the authorization.

§ 18.126 What does my Letter of Authorization allow?

(a) Depending on your application for incidental take authority, your Letter of Authorization (see § 18.124) allows the incidental, but not intentional, take of polar bear and Pacific walrus when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities; and

(4) Drilling production wells and performing production support operations, except the construction and operation of sub-sea pipelines.

(b) You must conduct methods and activities identified in your Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and Pacific walrus, their habitat, and on the availability of these marine mammals for subsistence uses.

§ 18.127 What activities are prohibited?

(a) You may not intentionally take polar bear or Pacific walrus under these regulations. Under section 109(h)(1) and section 101(c) of the Marine Mammal Protection Act, we may authorize intentional take (e.g., harassment associated with deterrent activities, and taking in defense of self or others).

(b) Letters of Authorization prohibit any take that fails to comply with the terms and conditions of these specific regulations.

(c) This rule does not authorize the incidental take of polar bear and Pacific walrus during sub-sea pipeline activities.

(d) In accordance with § 18.27(f) of this part, we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment. This requirement for notice and public comment will not apply if we determine that an emergency exists which poses a significant risk to the well-being of the species or stocks of polar bear or Pacific walrus.

§ 18.128 What are the monitoring and reporting requirements?

(a) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and Pacific walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bear and Pacific Walrus.

(c) We may choose to place an observer on site of the activity, on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of your activity on polar bear and Pacific walrus.

(d) For exploratory activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information.

(1) Dates and times of activity;

(2) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities including an estimate of the level of take.

§ 18.129 What are the information collection requirements?

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. We need to collect the information in order to describe the proposed activity and estimate the impacts of potential takings by all persons conducting the activity. We will use the information to evaluate the application and determine whether to issue specific regulations, and, subsequently, Letters of Authorization.

(b) For the initial year, we estimate your burden to be 200 hours to develop an application requesting us to promulgate incidental take regulations. For the initial year and annually thereafter when you conduct operations under this rule, we estimate an 8 hour burden per Letter of Authorization, a 4 hour burden for monitoring, and an 8 hour burden per monitoring report. You must respond to this information collection request to obtain a benefit pursuant to Section 101(a)(5) of the Marine Mammal Protection Act. You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 224 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, DC 20503.

Dated: January 22, 1999.

Nancy K. Hayes,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–2010 Filed 1–25–99; 2:48 pm]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 64, No. 18
Thursday, January 28, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 731

RIN 3206–AC19

Suitability

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is proposing changes to the rule on personnel suitability which OPM previously issued as a proposed rule for comments. OPM has received and considered public comments and is now publishing for comment proposed changes. The proposed rule addresses many of the concerns expressed, incorporates many of the suggestions received, and makes additional changes because of policy revisions and the abolishment of the Federal Personnel Manual (FPM). OPM will issue final regulations after review of the comments received on this proposed rule.

DATES: Comments must be submitted on or before March 1, 1999.

ADDRESSES: Send written comments to: Richard A. Ferris, Associate Director, Investigations Service, room 5416, U.S. Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415–4000, fax: 202–606–2390, e-mail: raferris@opm.gov.

FOR FURTHER INFORMATION CONTACT: Thomas DelPozzo, (724) 794–5612.

SUPPLEMENTARY INFORMATION: OPM promulgated the proposed final suitability regulations with a request for comments in the **Federal Register** (61 FR 394, Jan. 5, 1996). Comments were received from 19 sources, including Federal agencies, individuals, and public interest organizations. Because of changes made in certain parts of these rules, we are seeking additional comments. Those who responded to the January 5, 1996, publication need not submit their comments again. Those responses will continue to be considered. Additionally, when part 731 was previously published, proposed changes to parts 732 and 736 were published at the same time. Those parts are still under consideration and individuals who commented on those parts need not respond to this publication. Those comments are still being considered. The following summarizes the principal comments and suggestions received and proposed actions to be taken, as well as information added because of the abolishment of the FPM or changes made because of policy revisions.

Part 731

Organization

Some subparts and sections were moved, added or removed for clarification purposes (only one section—§ 731.203—Due Process—was removed, but the information was moved to § 731.103), as follows:

Subpart A—Scope

Sec.
731.101 Purpose.
731.102 Implementation.
731.103 Delegation to agencies.
731.104 Appointments subject to investigation.
731.105 Jurisdiction.
731.106 Designation of public trust positions and investigative requirements.

Subpart B—Suitability Determinations

731.201 Standard.
731.202 Criteria.
731.203 Actions by OPM and other agencies.
731.204 Debarment by OPM.
731.205 Debarment by agencies.

Subpart C—Suitability Action Procedures

731.301 Scope.
731.302 Notice of proposed action.
731.303 Answer.
731.304 Decision.

Subpart D—Appeal to the Merit Systems Protection Board

731.401 Appeal to the Merit Systems Protection Board.

Subpart E—Savings Provision

731.601 Savings provision.

Section 731.101 Purpose

Agencies asked a number of questions about when to apply the regulations (*i.e.*, Excepted Service employees with or without intentional falsification, non-probationary employees, reinvestigated employees, employees with investigations initiated or completed after the first year). No changes were made in this section (§ 731.101 currently explains part 731 is used to make suitability determinations for employment in positions in the competitive service or for career appointment in the Senior Executive Service). However, clarifications were added at various other points (e.g., §§ 731.104 and 731.105 address investigation time frames, and § 731.106 addresses reinvestigations).

Language in the former Basic Federal Personnel Manual also stated that "Heads of agencies, at their discretion, may apply all or part of these requirements (in part 731) for employment or continued employment in positions outside the competitive service." This clarification will be included in supplemental guidance.

In response to agencies' requests, some definitions were added. Other definitions will be included in supplemental guidance.

Section 731.102 Implementation

With the increased delegation of responsibilities to agencies, clarification was added to point out the consequences of not carrying out responsibilities according to OPM regulations (*i.e.*, revocation of delegation).

Section 731.103 Delegation to Agencies

One commenter felt the regulations should incorporate the guidance an agency will need to implement 5 CFR part 731, rather than issuing separate guidance. Because the CFR is a general body of regulatory laws governing practices and procedures, the detailed guidance/instructions will be issued separately. This guidance will allow agencies flexibility in carrying out the regulations and opportunity to develop their own internal procedures. OPM intends to issue this supplemental guidance as soon as possible after the regulations are finalized.

Comment was received from agencies regarding the hardship that delegation of applicant and appointee suitability adjudication authority would create from a staffing/training standpoint. Several wondered if they could redelegate or contract out their suitability adjudication responsibility. Although training may be needed, we believe the staffing implications for

agencies will be negligible. OPM will continue to adjudicate material falsification cases, and debarment cases when referred to OPM by an agency, which should encompass most of the adverse adjudication workload. The major benefit of delegating applicant suitability authority to agencies is that they no longer will have to refer all competitive examining applications with admitted suitability issues to OPM for suitability review.

One agency indicated contracting out adjudication decisions is currently prohibited. With OPM's Investigations Service privatization effort, OPM has contracted much of its adjudicative case processing, with close OPM oversight. However, OPM has retained all decision making responsibility, which it views as an inherently governmental function. Any agency contracting of OPM delegated suitability adjudication would be subject to OPM approval to ensure the agency retains the responsibility for all adjudicative decisions and develops a sufficient oversight program.

Agencies' delegated suitability authority under part 731 procedures is limited to applicant and appointee cases. Only OPM will adjudicate employee cases under part 731 procedures, since OPM is retaining authority for adjudicating material falsification cases, and material falsification is the most commonly used suitability factor in employee cases. An agency will have to use another authority such as part 752, if appropriate, to take action against an employee for reasons that could also form the basis for a part 731 suitability action. Agencies may also take action under other authorities, if appropriate, in appointee cases. Allowing agencies to use existing authorities, as appropriate, will provide them with more flexibility—i.e., part 315 is a more expedited procedure, and part 752 allows actions other than removal (although no debarment actions may be included using these authorities).

A few commenters opposed OPM's decision to retain jurisdiction over falsification cases; they felt it was cumbersome and not necessary. It was argued agencies are in a better position to adjudicate falsification cases involving their employees than OPM, since OPM is removed from and not familiar with the employee. However, it is precisely for this reason that OPM has decided to retain this authority. OPM will continue to adjudicate falsification cases across agency lines, and then take the appropriate action (removal and extended debarment from all competitive service positions) when an appointment is obtained fraudulently. This also is consistent with OPM's role in protecting the Merit System and reflects the position that performance in a position obtained through fraud is irrelevant.

In agreement with agency comments that, because of law or regulation they could not be delegated, OPM also retained jurisdiction in "refusal to furnish testimony" cases, and those cases involving 30 percent or more Compensable Disability Preference veterans.

In § 731.103(b) agencies are given the option of referring a case with suitability issues to OPM when a general, across agency lines debarment appears warranted, or adjudicating the case themselves. OPM will require that agencies conduct a sufficient level of investigation to resolve potentially serious suitability issues and determine if OPM debarment is warranted. The agency will need to coordinate with OPM before referring any cases. OPM will issue additional guidance to agencies to show what issues would warrant referral, *i.e.*, support a general debarment or a nexus debarment from general classifications of jobs across agency lines (e.g., all law enforcement positions). OPM adjudication will be at OPM's discretion.

To respond to concerns about when a suitability determination is needed, § 731.103(d) was added. The guidance is consistent with OPM Investigations Service's Federal Investigations Notice 95–1, issued January 19, 1995, and available from OPM's Investigations Service, which instructed agencies to determine qualifications and whether the person was in reach of selection before considering suitability matters.

The section previously entitled "Due Process" (§ 731.203) was included in this section as paragraph (e) for clarification of delegated responsibilities.

Some commenters wanted the regulations to authorize consideration of confidential information when making a suitability determination. Clarification was added to § 731.103(e)(3) explaining the proper use of confidential information in a suitability decision, i.e., the confidential information can be used as lead information and in interrogatories if the identity of the source is not compromised in any way. Fairness requires that only non-confidential information be used as a basis for an adverse action. Additionally, confidential information cannot normally be disclosed in administrative or judicial forums.

Commenters wanted to limit the appeal rights given to probationary employees under part 731. If the agency takes an action under part 731, it must follow the procedures and provide the appeal rights stated in this part. Part 315, covering probationers, contains more limited appeal rights and may also be used.

Sections 731.104 Appointments Subject to Investigation, and 731.105 Jurisdiction

Commenters suggested clarifying jurisdiction. The language in the previous regulation dealing with jurisdiction discussed appointments "subject to investigation," which was confusing, and created problems for agencies. Commenters felt the 1 year subject to investigation requirement was the time frame for initiating and completing investigations. The 1 year period is used to determine jurisdiction (OPM or the employing agency) and is not an investigative restriction. We made revisions to part 731 to clarify this topic, adding definitions under § 731.101(b) and using separate sections to differentiate between "subject to investigation" (§ 731.104) and "jurisdiction" (§ 731.105).

Section 731.106 Designation of Public Trust Positions and Investigative Requirements

Commenters, fearing inconsistencies between agencies, recommended retaining definitions for risk level designations. OPM has done so, and will also issue a model agencies may use to determine risk in supplemental guidance.

A commenter recommended adding to the definition of "high risk public trust" any position that regularly involves access to information concerning law enforcement, including criminal investigations. "Access to sensitive but unclassified information" and "law enforcement duties" are already included in the definition; agencies may also use the "other duties demanding a high degree of public trust" category to meet their individual needs.

Some agencies felt they should be given authority to determine the level of investigation needed for a particular position. OPM will provide supplemental guidance which will include minimum standards for government-wide consistency but allow some flexibility regarding investigative requirements. Agencies will need to consider both the level of public trust and position sensitivity to ensure the appropriate level of investigation is conducted as required by parts 731 and 732.

OPM's reinvestigation requirement for public trust positions was eliminated from the published proposed

regulations. Commenters opposed this removal, believing reinvestigations to be a necessary and valuable tool for their use in ensuring the public trust. While OPM finds no explicit statutory authority on which to base an OPM requirement that agencies conduct public trust reinvestigations, agencies may rely on other appropriate authority to require that certain positions be subject to periodic reinvestigations. We reference some other authorities in this section. Agencies may also promulgate their own regulations to require reinvestigations for certain public trust positions if they have no other existing authority.

Commenters requested clarification regarding reinvestigation requirements when a person moves from a lower to higher risk position. This was done in § 731.106(e).

Section 731.201 Standard

Proposed regulation had added "other appropriate actions" as being possible, in addition to removals, in suitability cases. One agency wanted "other appropriate actions" identified. OPM decided to remove this wording. OPM will be making debarment and removal decisions only, and if agencies want to take other actions, such as a suspension, there are other authorities they can use when appropriate (i.e., part 752).

The phrase "protect the integrity * * * of the service" was added. This clarifies that an important facet of the suitability standard is the integrity of the Merit System and fair and open competition for positions.

A commenter felt § 731.201 requires an adverse suitability determination on every unsuccessful candidate and asked if "federal employment" was used in the narrow or broadest sense. We added clarifying and limiting language to subpart A, particularly at § 731.103(d), to address this concern. The "Delegation Examining Operations Handbook" lists a number of reasons an eligible may be eliminated from consideration. Suitability is only one of these reasons. The Handbook also recommends suitability review be done in the hiring phase. OPM will be issuing further clarification regarding the suitability adjudication process in supplemental guidance.

Section 731.202 Criteria

Language was deleted from the general criteria of § 731.202(a) and from the suitability factors in § 731.202(b)(1) and (2). Nexus language is contained in § 731.201.

Language was returned to § 731.202(c) to give an adjudicative agency discretion as to when to apply the additional considerations.

A commenter felt the additional consideration "circumstances surrounding the conduct" covers the consideration of "societal conditions" which could then be removed. This was not changed because the factors address two separate areas of consideration that could impact the final decision. Our supplemental guidance will elaborate on all the additional considerations.

Section 731.203 Actions by OPM and Other Agencies

§ 731.203(a) was revised to eliminate confusion over "subject to investigation" language and to be consistent with other similar revisions.

OPM's authority to cancel reinstatement eligibility was added in § 731.203(b) to ensure OPM's authority to do so is clear and contained in regulation and to further distinguish available OPM actions from agency actions.

Wording was added to § 731.203(c) so agencies will understand they may use other authorities in lieu of an action under part 731.

We will clarify, in supplemental guidance, the procedures an agency should follow when releasing a copy of the "materials relied upon" referred to in § 731.203(e) when the action is based on an OPM investigation.

Section 731.204 Debarment by OPM

OPM has revised the regulations and delegated authority to agencies for limited debarments. This section distinguishes OPM's debarment authority and procedures from those delegated to agencies, which are addressed in § 731.205.

Section 731.204(b) was revised to reflect OPM's authority to take a subsequent debarment action after expiration of a prior period of debarment, but eliminates the requirement that OPM redetermine every debarred individual's suitability. This change also takes into consideration that, with delegated applicant suitability authority, agencies can adjudicate applicant cases when they have been previously debarred by OPM and the debarment has expired. The agency may favorably adjudicate at that point, refer for OPM review, or take their own debarment action. Unless new issues are present, a new general debarment action by OPM would normally not be warranted. The agency will be alerted to prior OPM debarments if reported by the subject on the OF 306 and/or SF 85P/86, or during the agency's Suitability/Security Investigations Index (SII) check, and may use its delegated suitability authority to determine if the person is suitable for the specific position sought.

Section 731.205 Debarment by Agencies

Since agencies would be making agency nexus adverse suitability decisions, OPM also delegates to them authority to take a limited debarment action, for a period not to exceed one year, and only for positions within that agency. This will prevent a person found unsuitable by an agency from immediately refiling an application for the same or other positions in the agency and ensure the agency does not have to make multiple suitability determinations in connection with the same individual.

Since agency debarment authority is limited to applicants or appointees under part 731, the lack of agency authority to debar employees should prompt agencies to request investigations and adjudicate on a more timely basis when a person is first appointed. Also, if an employee is removed by an agency under part 752 and reapplies for a position in the agency, OPM or the agency may adjudicate suitability under part 731 as a separate action.

The agency will be responsible for taking appropriate action if it determines a person has applied or been appointed while under agency debarment. "Appropriate actions" could include rating additional applications ineligible, removing an appointee, or referring the matter to OPM for general debarment.

Section 731.302 Notice of Proposed Action

A commenter said the notice fails to advise the individual of his constitutional right to representation. The regulation does not prevent an individual from retaining counsel to assist in preparing a response to a proposed action if so desired, and specifically mentions representation in § 731.303. Also, if a person appeals a suitability determination to MSPB, 5 CFR 1201.31 states the appellant may be represented in any matter related to the appeal.

Commenters questioned the efficiency of the requirement that the notice of proposed action be mailed to both the duty station and last known address. We have changed the wording to allow OPM or the agency to decide the most effective and efficient method of delivery, to include mailings to both locations, if necessary, to ensure a timely delivery.

Section 731.302(c) was added to show a requirement specific to OPM.

Section 731.303 Answer

Because only OPM will be adjudicating employee cases under part 731 procedures (where an opportunity for an oral response is provided), we removed reference to the agency.

Section 731.304 Decision

Commenters questioned the need to retain an appointee or employee 30 days after OPM directs removal. We have eliminated this requirement. We now require that the agency effect OPM's directed removal action within 5 work days of receipt of our decision to allow agencies time to process the removal action.

Section 731.401 Appeal to the Merit Systems Protection Board

A provision was added regarding MSPB modification of debarments. In cases where the MSPB does not sustain all the reasons for an OPM or agency debarment action and, as a result, determines the length of debarment may be inappropriate, the case would be returned to OPM or the agency to determine the debarment length warranted for the issues sustained.

A commenter felt the agency option to either retain in a pay status pending appeal of an OPM directed removal, or remove, would be based on the level of agency support an appointee or employee enjoys, thereby creating two disparate classes. This concern is eliminated by our revision to § 731.304.

Reference to an OPM directed suspension was inappropriate here, and deleted, as discussed previously.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this rule will not have significant economic impact on a substantial number of small entities because it affects only Federal applicants, employees and agencies.

List of Subjects in 5 CFR Part 731

Administrative practice and procedure, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 731 as follows:

Part 731 is revised to read as follows:

PART 731—SUITABILITY

Subpart A—Scope

Sec.
731.101 Purpose.
731.102 Implementation.
731.103 Delegation to agencies.
731.104 Appointments subject to investigation.
731.105 Jurisdiction.
731.106 Designation of public trust positions and investigative requirements.

Subpart B—Suitability Determinations
731.201 Standard.

731.202 Criteria.
731.203 Actions by OPM and other agencies.
731.204 Debarment by OPM.
731.205 Debarment by agencies.

Subpart C—Suitability Action Procedures
731.301 Scope.

731.302 Notice of proposed action.
731.303 Answer.
731.304 Decision.

Subpart D—Appeal to the Merit Systems Protection Board

731.401 Appeal to the Merit Systems Protection Board.

Subpart E—Savings Provision

731.501 Savings provision.

Authority: 5 U.S.C. 1302, 3301, 7301,7701; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; E.O. 12731, 3 CFR, 1990 Comp., p. 306., 5 CFR, part 5.

Subpart A—Scope

§ 731.101 Purpose.

(a) The purpose of this part is to establish criteria and procedures for making determinations of suitability for employment in positions in the competitive service and for career appointment in the Senior Executive Service (hereinafter in this part, "competitive service") pursuant to 5 U.S.C. 3301 and E.O. 10577 (3 CFR, 1954–1958 Comp., p. 218). Section 3301 of title 5, United States Code, directs consideration of "age, health, character, knowledge, and ability for the employment sought." E.O. 10577 directs OPM to examine "suitability" for competitive Federal employment. This part concerns only determinations of "suitability" based on an individual's character or conduct that may impact the integrity or efficiency of the service. Determinations made under this part are distinct from determinations of eligibility for assignment to, or retention in, sensitive national security positions made under E.O. 10450 (3 CFR, 1949–1953 Comp., p. 936), E.O. 12968 or similar authorities.

(b) Definitions. In this part:

Applicant. A person being considered for employment.

Appointee. A person who has entered on duty and is in the first year of a subject to investigation appointment (as defined in § 731.104).

Employee. A person who has completed the first year of a subject to investigation appointment.

Material, intentional false statement is one that is capable of influencing, or has a natural tendency to affect, an official decision. The test for materiality thus does not rest on whether an agency actually relied on the false statement.

§ 731.102 Implementation.

(a) An investigation conducted for the purpose of determining suitability under this part may not be used for any other purpose except as provided in a Privacy Act system of records notice published by the agency conducting the investigation.

(b) Under OMB Circular No. A–130 Revised, issued February 8, 1996, the Director of OPM is to establish personnel security policies for Federal personnel associated with the design, operation, or use of Federal automated information systems. Agencies are to implement and maintain a program to ensure that adequate security is provided for all automated information systems. Agency programs should be consistent with government-wide policies and procedures issued by OPM. The Computer Security Act of 1987 (Pub. L. 100–235) provides additional requirements for Federal automated information systems.

(c) Policies, procedures, criteria, and guidance for the implementation of this part shall be set forth in issuances of the OPM. Agencies exercising authority under this part by delegation from OPM shall conform to such policies, procedures, criteria, and guidance. Failure to do so may result in revocation by OPM of an agency's delegation to adjudicate suitability under this part.

§ 731.103 Delegation to agencies.

(a) OPM delegates to the heads of agencies limited authority for adjudicating suitability in cases involving applicants for and appointees to competitive service positions in the agency (including limited, agency-specific debarment authority under § 731.205). OPM retains jurisdiction in all competitive service cases involving evidence of material, intentional false statement or deception or fraud in examination or appointment. Agencies must refer these cases to OPM for adjudication, or contact OPM for prior approval if the agency wants to take action under its own authority (5 CFR part 315 or 5 CFR part 752). Also, this delegation does not include cases

involving refusal to furnish testimony as required by § 5.4 of this chapter, or passover requests involving preference eligibles who are 30 percent or more compensably disabled which must be referred to OPM for adjudication, as provided under Pub. L. 95–454.

(b) Any adjudication by an agency acting under delegated authority from OPM which indicates that a general, across agency lines debarment by OPM under § 731.204(a) may be an appropriate action should be referred to OPM for debarment consideration if not favorably adjudicated by the agency. Referral should be made prior to any proposed action, but after sufficient resolution of the suitability issue(s) through subject contact or investigation to determine if a general debarment period appears warranted.

(c) Agencies exercising authority under this part by delegation from OPM must show by policies and records that reasonable methods are used to ensure adherence to regulations, standards, and quality control procedures established by OPM.

(d) Before making any applicant suitability determination, the agency should first ensure the applicant is eligible for the position, among the best qualified, and/or within reach of selection. Because suitability issues may not be disclosed until late in the application/appointment process, only the best qualified should require a suitability determination, with appropriate procedures followed and appeal rights provided, if suitability issues would form the only basis for elimination from further consideration.

(e) When an agency, exercising authority under this part by delegation from OPM, makes an adjudicative decision under this part, or changes a tentative favorable placement decision to an unfavorable decision, based on an OPM report of investigation or upon an investigation conducted pursuant to OPM-delegated authority, the agency should:

(1) Insure that the records used in making the decision are accurate, relevant, timely, and complete to the extent reasonably necessary to ensure fairness to the individual in any determination;

(2) Insure that all applicable administrative procedural requirements provided by law, the regulations in this part, and OPM policy guidance have been observed;

(3) Consider all available information in reaching its final decision, except information furnished by a non-corroborated confidential source. Information furnished by a non-corroborated confidential source can only be used for limited purposes, such as lead information or in interrogatories to a subject if the identity of the source is not compromised in any way. An adverse suitability decision may not be based on such information; and

(4) Keep any record of the agency action as required by OPM in its supplemental guidance.

(f) Paragraph (a) of this section notwithstanding, OPM may exercise its jurisdiction under this part in any case when it, in its discretion, deems necessary.

(g) Any applicant or appointee who is found unsuitable by any agency acting under delegated authority from OPM under this part may appeal the adverse suitability decision to the Merit Systems Protection Board under the Board's regulations.

§ 731.104 Appointments subject to investigation.

(a) In order to establish an appointee's suitability for employment in the competitive service, every appointment to a position in the competitive service is subject to investigation by OPM, or an agency conducting investigation under delegated authority from OPM, except:

(1) Promotions;

(2) Demotions;

(3) Reassignment;

(4) Conversion from career-conditional to career tenure;

(5) Appointment, or conversion to an appointment, involving an employee of an agency who has been serving continuously with that agency for at least 1 year in one or more positions under an appointment subject to investigation; and

(6) Transfer, provided the individual has served continuously for at least 1 year in a position subject to investigation.

(b) Appointments are subject to investigation to continue OPM's (or a delegated agency's) jurisdiction to investigate the suitability of an applicant after appointment, and to authorize OPM or an agency acting under delegated authority to require removal when it finds the appointee unsuitable for Federal employment. The subject to investigation condition may not be construed as requiring an employee to serve a new probationary or trial period or as extending the probationary or trial period of an employee.

§ 731.105 Jurisdiction.

(a) OPM may take a suitability action under this part against an applicant or appointee based on any of the criteria of § 731.202;

(b) An agency, exercising delegated authority, may take a suitability action under this part against an applicant or appointee based on the criteria of § 731.202 subject to the agency limitations prescribed in § 731.103;

(c) OPM may take a suitability action under this part against an employee only in cases involving material, intentional false statement or deception or fraud in examination or appointment, or refusal to furnish testimony as required by § 5.4 of this chapter, or statutory or regulatory bar.

(d) An agency may not take a suitability action against an employee under this part; rather, it may take a suitability action against an employee to promote the efficiency of the service under the authority and following the procedures of part 752 of this chapter.

§ 731.106 Designation of public trust positions and investigative requirements.

(a) *Risk designation.* Agency heads shall designate every competitive service position within the agency at a high, moderate, or low risk level as determined by the position's potential for adverse impact to the efficiency and integrity of the service. OPM will provide an example of a risk designation system for agency use in supplemental guidance.

(b) *Public trust positions.* Positions at the high or moderate risk levels would normally be designated as "Public Trust" positions. Such positions would involve policy making, major program responsibility, public safety and health, law enforcement duties, fiduciary responsibilities, or other duties demanding a significant degree of public trust; and positions involving access to or operation or control of sensitive but unclassified information or financial records, with a significant risk for causing damage or realizing personal gain.

(c) *Investigative requirements.* Persons receiving an appointment made subject to investigation under this part shall undergo a background investigation. Minimum investigative requirements correlating to risk levels will be established in supplemental guidance provided by OPM. Investigations must be initiated before appointment or, at most, within 14 calendar days of placement in the position.

(d) *Suitability reinvestigations.* Agencies, relying on authorities such as the Computer Security Act of 1987 and OMB Circular No. A–130 Revised (issued February 8, 1996), may require incumbents of certain public trust positions to undergo periodic reinvestigations. The appropriate level of any reinvestigation will be determined by the agency, but may be

based on supplemental guidance provided by OPM.

(e) *Risk level changes.* If the risk level of the position itself is changed (e.g., the individual moves from a low risk to a moderate or high risk position) the incumbent may remain in the position, but any upgrade reinvestigation required by the agency for the new risk level should be initiated within 14 calendar days after the new designation is final.

Subpart B—Suitability Determinations

§ 731.201 Standard.

Subject to subpart A of this part, an applicant, appointee, or employee may be denied Federal employment or removed from a position only when the action will protect the integrity or promote the efficiency of the service.

§ 731.202 Criteria.

(a) *General.* In determining whether its action will protect the integrity or promote the efficiency of the service, OPM, or an agency to which OPM has delegated authority, shall make its determination on the basis of the specific factors which follow, with appropriate consideration given to the additional considerations outlined in paragraph (c) of this section.

(b) *Specific factors.* When making a determination under paragraph (a) of this section, the following reasons may be considered a basis for finding an individual unsuitable:

(1) Misconduct or negligence in employment;

(2) Criminal or dishonest conduct;

(3) Material, intentional false statement or deception or fraud in examination or appointment;

(4) Refusal to furnish testimony as required by § 5.4 of this chapter;

(5) Alcohol abuse of a nature and duration which suggests that the applicant or appointee would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of others;

(6) Illegal use of narcotics, drugs, or other controlled substances, without evidence of substantial rehabilitation;

(7) Knowing and willful engagement in acts or activities designed to overthrow the U.S. Government by force;

(8) Any statutory or regulatory bar which prevents the lawful employment of the person involved in the position in question.

(c) *Additional considerations.* In making a determination under paragraphs (a) and (b) of this section, OPM and agencies shall consider the following additional considerations to the extent they deem them pertinent to the individual case:

(1) The nature of the position for which the person is applying or in which the person is employed;

(2) The nature and seriousness of the conduct;

(3) The circumstances surrounding the conduct;

(4) The recency of the conduct;

(5) The age of the person involved at the time of the conduct;

(6) Contributing societal conditions; and

(7) The absence or presence of rehabilitation or efforts toward rehabilitation.

§ 731.203 Actions by OPM and other agencies.

(a) An applicant may be denied employment or an appointee may be removed when OPM or an agency exercising delegated authority under this part finds that the applicant or appointee is unsuitable for the reasons cited in § 731.202 subject to the agency limitations of § 731.103(a).

(b) OPM may require that an employee be removed on the basis of a material, intentional false statement, or deception or fraud in examination or appointment; or refusal to furnish testimony; or a statutory or regulatory bar. OPM may also cancel any reinstatement eligibility obtained as a result of false statement, deception or fraud in the examination or appointment process.

(c) An action to remove an appointee or employee for suitability reasons under this part is not an action under parts 752 or 315 of this chapter, but agencies may use their authority under and follow the procedures of parts 752 or 315, as appropriate, in lieu of taking the action under this part 731.

(d) When OPM instructs an agency to remove an appointee or employee under this part, it shall notify the agency and the appointee or employee of its decision in writing.

(e) Before OPM, or any agency having delegated authority from OPM under this part, shall take a final suitability action against an applicant, appointee, or employee under this part, the person against whom the action is proposed shall be given notice of the proposed action (including the availability for review, upon request, of the materials relied upon), an opportunity to respond, notice of the final decision on the action, and notice of rights of appeals.

(f) Agencies are required to report to OPM all unfavorable adjudicative actions taken under this part, and all actions based on an OPM investigation.

§ 731.204 Debarment by OPM.

(a) When OPM finds a person unsuitable for any reason listed in § 731.202, OPM, in its discretion, may deny that person examination for, and appointment to, a competitive service position for a period of not more than 3 years from the date of determination of unsuitability.

(b) On expiration of a period of debarment, OPM or an agency may redetermine a person's suitability for appointment in accordance with the procedures of this part.

(c) OPM, in its sole discretion, determines the duration of any period of debarment imposed under this section.

§ 731.205 Debarment by agencies.

(a) Subject to the provisions of § 731.103, when an agency finds an applicant or appointee unsuitable for reasons listed in § 731.202, the agency may deny that person examination for, and appointment to, all, or specific, competitive service positions within the agency for a period of not more than 1 year from the date of determination of unsuitability.

(b) On expiration of a period of agency debarment, the agency may redetermine a person's suitability for appointment by the agency, in accordance with the procedures of this part.

(c) The agency is responsible for enforcing the period of debarment and taking appropriate action should the individual apply or be inappropriately appointed during the debarment period. This does not limit OPM's ability to exercise jurisdiction and take an action if it deems appropriate.

(d) The agency, in its sole discretion, determines the duration of any period of debarment imposed under this section.

Subpart C—Suitability Action Procedures

§ 731.301 Scope.

(a) *Coverage.* This subpart sets forth the procedures to be followed when OPM or an agency having delegated authority from OPM, acting under authority of this part, proposes to take or to instruct an agency to take, a final suitability ineligibility action, including removal, against an applicant, appointee or employee in the competitive service.

(b) *Definition.* In this subpart, *days* means calendar days.

§ 731.302 Notice of proposed action.

(a) OPM or the agency having delegated authority from OPM under this part shall notify the applicant, appointee, or employee (hereinafter, the "respondent") in writing of the

proposed action and of the charges against the respondent. The notice shall state the reasons, specifically and in detail, for the proposed action. The notice shall also state that the respondent has the right to answer this notice in writing. If the respondent is an employee, the notice shall further state that the employee may also make an oral answer, as specified in § 731.303(a). The notice shall further inform the respondent of the time limits for response as well as the address to which such response should be made.

(b) The notice of proposed action shall be served upon the respondent by being mailed or hand delivered to the respondent's last known residence, and/or duty station, no less than 30 days prior to the effective date of the proposed action. If the respondent is employed in the competitive service on the date the notice is served, the respondent shall be entitled to be retained in a pay status during the notice period.

(c) In an OPM action, OPM shall send a copy of this notice to any employing agency that is involved.

§ 731.303 Answer.

(a) *Respondent's answer.* A respondent may answer the charges in writing and furnish documentation and/or affidavits in support of the response. A respondent who is an employee may also answer orally. The respondent may be represented by a representative of the respondent's choice, and such representative shall be designated in writing. To be timely, a written answer shall be made no more than 30 days after the date of the notice of proposed action. In the event an employee requests to make an oral answer, the request must be made within this 30 day time frame, and OPM shall determine the time and place thereof, and shall consider any answer the respondent makes in reaching a decision.

(b) *Agency's answer.* In actions proposed by OPM, the agency may also answer the notice of proposed action. The time limit for filing an answer is 30 days from the date of the notice. OPM shall consider any answer the agency makes in reaching a decision.

§ 731.304 Decision.

The decision shall be in writing, dated, and inform the respondent of the reasons for the decision. In an OPM directed removal, the employing agency shall remove the appointee or employee from the rolls within 5 work days of receipt of OPM's final decision; removals taken by an agency under this part should be effected within 5 work days of their final decision to remove. The respondent shall also be informed that an adverse decision can be appealed in accordance with subpart D of this part. In OPM actions, OPM shall also notify the respondent's employing agency of its decision.

Subpart D—Appeal to the Merit Systems Protection Board

§ 731.401 Appeal to the Merit Systems Protection Board.

(a) *Appeal to the Merit Systems Protection Board.* An individual who has been found unsuitable for employment may appeal the decision to the Merit Systems Protection Board (the Board). However, the Board may not modify a debarment period. If the Board finds that fewer than all of the charges are supported by a preponderance of the evidence, and affirms the determination of unsuitability, it shall remand the case to OPM or the agency to determine whether the debarment period is still appropriate based on the sustained charges. This subsequent determination by OPM or the agency shall be final without any further appeal to the Board.

(b) *Appeal procedures.* The procedures for filing an appeal with the Board are found at part 1201 of Chapter II of this chapter.

Subpart E—Savings Provision

§ 731.501 Savings provision.

No provision of the regulations in this part shall be applied in such a way as to affect any administrative proceeding pending on (THE EFFECTIVE DATE OF THE FINAL RULE). An administrative proceeding is deemed to be pending from the date of the "notice of proposed action" described in § 731.302.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 47

[Docket Number FV98–358]

Amendments to Rules of Practice Under the Perishable Agricultural Commodities Act (PACA)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture (USDA) is proposing to amend the Rules of Practice under the Perishable Agricultural Commodities Act (other than formal disciplinary proceedings). In addition to bringing several sections of the Rules of Practice into compliance with the PACA Amendments of 1995, USDA is proposing numerous additional changes in an effort to enhance customer service.

DATES: Comments must be received by March 1, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to Charles W. Parrott, Assistant Chief, PACA Branch, Fruit and Vegetable Division, AMS, USDA, Room 2095-So. Bldg., P.O. Box 96456, Washington, DC 20090–6456. Email—charles__w__parrott@usda.gov. All comments should reference the docket number and the date and page number of this issue in the **Federal Register** and will be made available for public inspection in the PACA Branch during regular business hours and posted on the internet at www.ams.usda.gov/fv/paca.htm.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 720–4180.

SUPPLEMENTARY INFORMATION:

Background

The Perishable Agricultural Commodities Act (PACA or Act) establishes a code of fair trading practices for the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The Act requires that parties fulfill their contractual obligations, and provides a forum where firms that buy and sell fruits and vegetables can settle commercial disputes outside of the civil court system. Under the PACA, these disputes, or reparation complaints, are handled first on an informal basis in an attempt to achieve an amicable settlement between the disputing parties. About 75 percent of all reparation complaints are resolved informally, generally within eight weeks. However, if an informal settlement is not reached, there is a formal complaint procedure available under which USDA's Judicial Officer issues a binding decision in the case. The Rules of Practice applicable to reparation proceedings inform the industry of USDA's procedures and requirements for the handling of informal and formal complaints under the PACA.

Agricultural Marketing Service (AMS) believes that amending the Rules of Practice will enhance customer service by expediting the handling of

documents in PACA reparation proceedings. For example, the Rules of Practice applicable to reparation proceedings presently require that the initial attempt to serve formal reparation documents must be made by certified or registered mail. The amendments will expand the options for the service of certain documents to include private or commercial mail delivery.

The amendments would also clarify certain regulations and definitions. The Rules of Practice are being amended throughout Part 47 to replace the term "shortened procedure" with "documentary procedure". This more accurately reflects a formal reparation process that does not involve an oral hearing.

A number of definitions have been amended in the Rules of Practice. Due to the reorganization of AMS, a definition of the "Fruit and Vegetable Programs" would be substituted for the definition of "Division," a definition of "Associate Administrator" would be substituted for the definition of "Deputy Administrator," and a definition of "Deputy Administrator" would be substituted for the definition of "Director." Additionally, the words "Program" and "Deputy Administrator" would be substituted for "Division" and "Director" respectively, wherever they appear in Part 47. The term "examiner", § 47.2(i)(1) has been expanded to indicate that senior marketing specialists may also prepare decisions in shortened or "documentary procedure" cases under the review of USDA's Office of the General Counsel (OGC). The definition of "examiner's report" in § 47.2(j) has been shortened to eliminate the references to Administrative Law Judges because they do not participate in reparation cases and do not write examiner's reports. As already indicated, the definitions of "mail" and "re-mail" have been expanded to allow for additional methods of service to include commercial or private mail delivery services. The section regarding informal complaints, § 47.3, would be revised to require that the complaint be in writing and would allow for the filing of an informal complaint by facsimile transmission. The required information to be contained in an informal complaint would be slightly revised for clarification purposes. The revision changes "car initial and number, if carlot;" to read "carrier identification;" and corrects a typographical error in § 47.3(a) (2) (vii) by inserting the word "and" between the words "gross net." A statement regarding the required filing fee of $60.00 would be added to the text. Without the required accompanying fee, a reparation case file will not be opened and the statute of limitations would not be tolled. Additionally, paragraph (c) of that section regarding the "Status of person filing informal complaint" would be eliminated because it is not pertinent to these regulations.

In section 47.4, which addresses service matters, revisions would permit the commercial or the private delivery of certain documents and describe when service is perfected under the various mailing options. By expanding ways to "mail" and "re-mail", service options will be more flexible and accommodating. Additionally, the reference to the service of the Chief's determination that a person was responsibly connected with a licensee will be deleted from paragraph (b)(1) because this issue is addressed in § 47.49 of the regulations (7 CFR 47.49).

The section that delineates formal complaints in the Rules of Practice would be changed to include a requirement that a formal complaint be filed within nine months of notification that complainant may proceed formally or complainant will lose the opportunity to proceed with a formal complaint. Additionally, the rules would now require that a $300.00 handling fee must accompany the filing of a formal complaint in order for the complaint to be served upon the respondent. If respondent files a counterclaim as part of its answer, it must also include the $300.00 handling fee. The handling fee for formal complaints is required by the Act and including it in the rules is a change to conform with the 1995 Amendments.

Significant changes would be made to section 47.9, which addresses the reply to a counterclaim or set-off, in order to require the same information in the reply that is now required in the answer. The counterclaim or set-off would be treated as a formal complaint filed by the respondent, and therefore, failure to reply would be a default on complainant's part as to the counterclaim or the set-off. In the current rules, a failure to file a reply is treated as a denial of the allegations of the counterclaim or set-off; the proposed changes will create a parallel between the filing of a complaint and the filing of a counterclaim or set-off.

With the new expanded definition of examiner in section 47.2(i), section 47.11 is amended to clarify that only OGC attorneys, and not other USDA employees, would be granted certain powers under this section of the regulations because only OGC attorneys may conduct oral hearings. The examiner's powers would be amended to include the ability to require parties to provide copies of exhibits prior to hearings and depositions in any type of hearing. Currently, this power is limited to audio-visual and telephone hearings, but it is appropriate to expand the examiner's powers in this way in order to promote efficiency. In addition, only OGC attorneys may permit intervention of a party for good cause shown. While the definition of examiner has been expanded for documentary procedures, any non-attorney examiner's powers would be specified and reviewed in order to ensure that legally sound and consistent reparation decisions are prepared. The Rules of Practice would be changed throughout to reflect this assignment of responsibilities.

The proposed amendments update the Rules of Practice to comply with the 1995 PACA Amendments which raised the minimum claim for damages required for an oral hearing from $15,000 to $30,000. Another correction that would be made in sections 47.11 and 47.16 is the clarification that any subpoenas or orders for depositions would be made over the facsimile signature of the Secretary. In addition, the regulations regarding oral hearings would no longer permit complainant to submit evidence in the form of depositions in lieu of appearing in person or by counsel. Instead, all parties would be required to appear in person or through a representative.

The section which discusses the deposition process would be expanded to include references to the possibility of depositions in a case that is converted from an oral hearing case to a documentary procedure case. Currently, the section does not refer to this type of deposition; the regulations only refer to depositions linked to oral hearings.

In order to ensure sufficient opportunity for review by the examiner and sufficient notice to the individual who is subpoenaed, section 47.17 would be amended to require that applications for subpoena be received at least thirty days prior to the hearing or deposition date, and that the subpoena be issued at least twenty days before the date of appearance. An exception may be made for good cause shown.

All filings with regard to claims for fees and expenses in oral hearing cases and the resultant objections would be filed with the Hearing Clerk instead of the examiner in order to ensure that the documents are properly filed into the official record kept by the Hearing Clerk. The Hearing Clerk's Office would also be the appropriate place to file petitions for rehearing, reargument, reconsideration of orders, reopening of hearings and reopening after a default. Anywhere in the regulations that the

words "hearing clerk" appears would be replaced by the words "Hearing Clerk".

As already discussed, the term "shortened procedure" would be changed to "documentary procedure". In the documentary procedure section, the rule regarding verification of pleadings or statements would be expanded to note that certification by a notary public alone is not sufficient, rather, a signed verifying statement must be appended to the document.

Procedures for requesting a reopening after a default would be removed from the provision that covers filing, extensions of time, effective date of filing, computations of time, and official notice and moved to the more appropriate section that deals with rehearing, reargument, reconsideration of orders, and reopening of hearings. In addition, the provision for reopening after a default would be revised to permit a petition to reopen the proceedings to be filed before the expiration of 30 days from the date of issuance of the default order. This revision would eliminate any confusion that exists in the current regulation because it does not provide a time certain for filing. The amendment clarifies that the filing must be made before the Default Order becomes final. For all filings, the provision for computation of time would be corrected to include Saturdays as well as Sundays and holidays.

Executive Orders 12866 and 12988

This proposed rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et. seq.*), as amended, has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform and is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et. seq.*), USDA has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121) as those whose with less than 500 employees. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, a majority of which may be classified as small entities.

The proposed revisions to the PACA Rules of Practice would streamline USDA procedures and requirements for handling of informal and formal complaints under the PACA. In Fiscal Year 1998, there were 2198 informal reparation claims, 21 counterclaims, and 563 formal reparation cases filed with USDA under the PACA. The proposed revisions to the reparation Rules of Practice would apply only to firms that utilize USDA's service for resolving commercial disputes under the PACA. AMS believes that the revisions to the Rules of Practice will enhance customer service to the industry by expediting the handling of documents in PACA reparation proceedings. Most of the proposed revisions provide notice to claimants of the procedure that AMS will follow in adjudicating claims. For example, the proposed revision that provides for additional methods of service of formal documents by AMS will not produce any economic effect on licensees initially. But, if the use of commercial and/or express delivery services take the place of certified mail, licensees may be required to absorb the additional costs through marginally higher fees.

There are some proposed revisions, however, that would affect the rights and obligations of claimants. For example, claimants must be certain to adhere to the filing requirements for both informal and formal complaints, which require the payment of statutorily mandated filing and handling fees, respectively. If the required fees do not accompany a filing, a claimant may lose access to the reparation forum. These revisions, and others, may affect a claimant's due process rights, which are difficult to quantify. However, since the reparation forum is but one available means to resolve contract disputes concerning perishable agricultural products in interstate commerce, AMS has determined that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR, Part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and record keeping requirements covered by this proposed rule were approved by OMB on April 1, 1998, and expire on April 30, 2001.

List of Subjects in 7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers.

For the reasons set forth in the preamble, 7 CFR Part 47 is proposed to be amended as follows:

PART 47—[AMENDED]

1. The authority citation for part 47 is revised to read as follows:

Authority: 7 U.S.C. 499o; 7 CFR 2.22(a)(1)(viii)(L), 2.79(a)(8)(xiii).

2. Section 47.2 is amended by removing paragraph (j)(2) and redesignating paragraph (j)(1) as paragraph (j) and revising paragraphs (e), (g), (h), (i), (s), and (t) to read as follows:

§ 47.2 Definitions.

* * * * *

(e) *Associate Administrator* means the Associate Administrator of the Service, or any officer or employee of the Service to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his or her stead.

* * * * *

(g) *Fruit and Vegetable Programs* means the Fruit and Vegetable Programs of the Agricultural Marketing Service.

(h) *Deputy Administrator* means the Deputy Administrator of the Fruit and Vegetable Programs or any officer or employee of the Fruit and Vegetable Programs to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated by the Deputy Administrator, to act in his stead.

(i) *Examiner.* In connection with reparation proceedings, the term "examiner" is synonymous with "presiding officer" and means any attorney employed in the Office of the General Counsel of the Department, or in connection with reparation proceedings conducted pursuant to the documentary procedure in § 47.20, the term "examiner" may mean any other employee of the PACA Branch whose work is reviewed by an attorney employed in the Office of the General Counsel of the Department.

* * * * *

(s) *Mail* means to deposit an item in the United State Mail with postage affixed and addressed as necessary to cause it to be delivered to the address

shown by ordinary mail, or by certified mail or registered mail if specified, or to cause a properly addressed item to be delivered by a commercial or private mail delivery service to the address shown.

(t) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail or by a commercial or private mail delivery service.

5. In § 47.3, the first sentence in paragraph (a)(2) and paragraph (a)(2)(iv) are revised, in paragraph (a)(2)(vii) the word "and" is added between the words "gross" and "net", paragraph (c) is removed, and a new paragraph (a)(4) is added to read as follows:

§ 47.3 Institution of proceedings.

(a) * * *

(1) * * *

(2) Informal complaints may be made in writing by telegram, by letter, or by facsimile transmission, setting forth the essential details of the transaction complained of. * * *

* * * * *

(iv) Carrier identification;

* * * * *

(4) The informal complaint shall be accompanied by a filing fee of $60 as required by the Act.

* * * * *

7. Section 47.4 is amended by revising the section heading and paragraphs (b)(1), (b)(3), (c)(1), and (d)(1) to read as follows:

§ 47.4 Service and proof of service.

* * * * *

(b) *Service on party.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, a final order, or other document specifically ordered by the presiding officer or Judicial Officer to be served by certified or registered mail, or commercial or private mail delivery service, shall be deemed to be received by any party to a proceeding on the date of delivery by certified or registered mail, or commercial or private mail delivery service to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, last known residence of such party if an individual: Provided, That, if any such document or paper is sent by certified, registered, commercial, or private mail, but is returned, it shall be deemed to be received by such party on the date of the re-mailing by ordinary mail to the same address.

* * * * *

(3) Any document or paper served other than by certified, registered, commercial, or private mail on any party to a proceeding shall be deemed to be received by such party on the date of:

* * * * *

(c) * * *

(1) Delivery by certified, registered, commercial, private or mail to the last known principal address of such person, last know principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

* * * * *

(d) * * *

(1) A certified or registered mail receipt returned by the postal service with a signature, or a signed receipt returned by a private or commercial mail delivery service;

* * * * *

8. In § 47.6, paragraphs (a) and (c) are revised to read as follows:

§ 47.6 Formal Complaints.

(a) *Filing; contents; number of copies.* (1) If the procedure provided in § 47.3(b) fails to effect an amicable or informal settlement, the person who filed the informal complaint may, if further proceedings are desired, file a formal complaint with the Fruit and Vegetable Programs. The formal complaint shall be filed within nine months of notification of the opportunity to proceed formally. Failure to file a formal reparation complaint within the time prescribed shall result in the waiver of further proceedings on the claim alleged in the informal complaint.

(2) The formal complaint shall set forth the information and be accompanied by the papers indicated in § 47.3(a)(2) and (3), including a statement of the amount of damages claimed, with the basis therefor, and the method of determination. The original and three copies shall be furnished for filing, and service on the respondent. If there is more than one respondent, a further copy shall be furnished for each additional respondent.

* * * * *

(c) *Service upon respondent; proof of service.* Upon receipt by the Fruit and Vegetable Programs of the formal complaint, the accompanying papers and the $300 handling fee required by the Act, a copy thereof shall be served by the Fruit and Vegetable Programs upon the respondent in accordance with § 47.4. If the complaint is not in the proper form, the Fruit and Vegetable Programs shall return it and inform the complainant of the deficiencies therein.

* * * * *

9. In § 47.8, paragraph (a) is amended by adding a sentence at the end of the section to read as follows:

§ 47.8 The answer.

(a) * * * If the answer includes a counterclaim, the answer shall be accompanied by the $300 handling fee required by the Act for formal complaints.

* * * * *

10. In § 47.9, paragraphs (b) and (c) are revised to read as follows:

§ 47.9 The reply.

* * * * *

(b) *Contents.* The reply shall be confined strictly to the matters alleged in the counterclaim or set-off in the answer. It shall contain a precise statement of the facts which constitute the grounds of defense to the counterclaim or set-off, and shall specifically admit, deny, or explain each of the allegations of the counterclaim or set-off, unless the complainant is without knowledge, in which case the reply shall so state; or a statement that the complainant admits all of the allegations of the counterclaim or set-off; or a statement containing an admission of liability in an amount less than that alleged in the counterclaim or set-off and a denial of liability for the remaining amount.

(c) *Failure to file reply.* Failure to file a reply shall be deemed a waiver of hearing on the counterclaim or set-off and an admission of the allegations contained in the counterclaim or set-off. If no reply is filed, the allegations of the counterclaim or set-off shall be deemed admitted.

11. In § 47.11, the introductory text of paragraph (c), and paragraphs (c)(4), (c)(9), (c)(10) and (c)(13) are revised to read as follows:

§ 47.11 Examiners.

* * * * *

(c) *Powers.* Subject to review by the Secretary, as provided in this Part, the examiner who is an attorney employed in the Office of the General Counsel of the Department, in any proceeding assigned to him or her, shall have power to:

* * * * *

(4) Issue subpoenas over the facsimile signature of the Secretary requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;

* * * * *

(9) Require each party, prior to any hearing, to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence;

(10) Require each party, prior to any deposition, to provide all other parties and the examiner with a copy of any document that the party intends to use to examine a deponent;

* * * * *

(13) Do all acts and take all measures necessary for the maintenance of order and for the efficient conduct of the proceeding.

* * * * *

12. In § 47.12, the introductory text is revised to read as follows:

§ 47.12 Intervention.

At any time after the institution of a proceeding and before it has been submitted to the Secretary for final consideration, the Secretary or the examiner as defined in § 47.2(i)(1) may, upon petition in writing and for good cause show, permit any person to intervene therein. The peition shall state with preciseness and particularity:

* * * * *

13. In § 47.15, paragraphs (a)(1), (a)(2), (b) and (d)(1) are revised to read as follows:

§ 47.15 Oral hearing before the examiner.

(a) *When permissible.* (1) Where the amount of the damages claimed, either in the complaint or in the counterclaim, does not exceed $30,000, an oral hearing shall not be held, unless deemed necessary or desirable by the Fruit and Vegetable Programs or unless granted by the examiner as defined in § 47.2(i)(1), upon application of complainant or respondent setting forth the peculiar circumstances making an oral hearing necessary for a proper presentation of the case.

(2) Where the amount of damages claimed, either in the complaint or in the counterclaim, is in excess of $30,000, the procedure provided in this section (except as provided in § 47.20(b)(2)) shall be applicable.

(b) *Request for hearing.* Any party may request an oral hearing on the facts by including such request in the complaint. Failure to request an oral hearing within the time allowed for filing of the reply, or within 10 days after the expiration of the time allowed for filing an answer, shall constitute a waiver of such hearing, and any party so failing to request an oral hearing will be deemed to have agreed that the proceeding may be decided upon a record formed under the documentary procedure provided in § 47.20.

* * * * *

(d) *Appearances*—(1) *Representation.* In any proceeding under the Act, the parties may appear in person or by counsel or other representative.

* * * * *

14. In § 47.16, the introductory text of paragraph (a), and paragraph (b)(1) are revised to read as follows:

§ 47.16 Depositions.

(a) *Application for taking deposition.* Upon the application of a party to the proceeding, the examiner as defined in § 47.2(i)(1) may, except as provided in paragraph (b), at any time after the filing of the moving papers, order, over the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing, shall be filed with the Hearing Clerk, and shall set forth:

* * * * *

(b) *Examiner's order for taking deposition.* (1) If, after examination of the application, the examiner is of the opinion that the deposition should be taken, or if the parties are using depositions in lieu of affidavits pursuant to § 47.20(b)(2), the examiner shall order the taking of the deposition. In no case, except for good cause shown, may the examiner order the taking of a deposition less than 10 days prior to the designated date of deposition. The order shall be filed with the Hearing Clerk upon the parties in accordance with § 47.4.

* * * * *

15. In § 47.17, a sentence is added at the end of paragraph (a) to read as follows:

§ 47.17 Subpoenas.

(a) *Issuance of subpoenas.* * * * Except for good cause shown, applications for subpoenas shall be filed with the Hearing Clerk at least 30 days prior to the designated date of hearing or deposition. Except for good cause shown, the examiner shall not issue subpoenas less than 20 days prior to the designated date of hearing or deposition.

* * * * *

16. In § 47.19, paragraphs (d)(1), (d)(4), (d)(5) and (d)(6) are revised to read as follows:

§ 47.19 Post-hearing procedure before the examiner.

* * * * *

(d) *Claim for award of fees and expenses*—(1) *Filing.* Prior to the close of the hearing, or within 20 days thereafter, each party may file with the Hearing Clerk a claim for the award of the fees and expenses which he incurred in connection with the oral hearing. No award of fees and expenses to the prevailing party and against the losing party shall be made unless a claim therefor has been filed, and failure to file a claim within the time allowed shall constitute a waiver thereof.

* * * * *

(4) *Service of claim.* A copy of each such claim filed shall be served by the Hearing Clerk on the other party or parties to the proceeding.

(5) *Objections to claim.* Within 20 days after being served with a copy of a claim for fees and expenses, the party so served may file with the Hearing Clerk written objections to the allowance of any or all of the items claimed. If evidence is offered in support of an objection, it must be in affidavit form. A copy of any such objections shall be served by the Hearing Clerk on the other party or parties.

(6) *Reply to objections to claim.* A claimant who is served with a copy of objections to his or her claim may, within 20 days after such service, file with the Hearing Clerk a reply to such objection. If evidence is offered in support of a reply, it must be in affidavit form. A copy of any such reply shall be served by the Hearing Clerk on the other party or parties.

* * * * *

17. In § 47.20, the section heading, the first sentence of paragraph (a), paragraphs (b)(1), (b)(2), and the introductory text of paragraph (h) are revised to read as follows:

§ 47.20 Documentary procedure.

(a) *In general.* The documentary procedure described in this section shall, whenever it is applicable as provided in paragraph (b) of this section, take the place and serve in lieu of the oral hearing procedure hereinbefore provided. Under the documentary procedure, the pleadings of the parties, if verified in accordance with paragraph (h) of this section, and any report of investigation filed with the hearing clerk pursuant to § 47.7 will be considered as evidence in the proceeding. * * *

(b) *When applicable*—(1) *Where damages claimed do not exceed $30,000.* The documentary procedure provided for in this section shall (except as provided in § 47.15(a)) be used in all reparation proceedings in which the amount of damages claimed, either in the complaint or in the counterclaim, does not exceed $30,000.

(2) *Where damages claimed exceed $30,000.* In any proceeding in which the amount of damages claimed, either in the complaint or in the counterclaim, is greater than $30,000, the examiner,

whenever he or she is of the opinion that proof may be fairly and adequately presented by use of the documentary procedure provided for in this section, shall suggest to the parties that they consent to the use of such procedure. Parties are free to consent to such procedure if they choose, and declination of consent will not affect or prejudice the rights or interests of any party. A party, if he or she has not waived oral hearing, may consent to the use of the documentary procedure on the condition that depositions rather than affidavits be used. In such case, if the other party agrees, depositions shall be required to be filed in lieu of verified statements. If any party who has not waived oral hearing does not consent to the use of the documentary procedure, the proceeding will be set for oral hearing. The suggestion that the documentary procedure be used need not originate with the examiner. Any party may address a request to the examiner asking that the documentary procedure be used.

* * * * *

(h) *Verification.* Verification shall be made under oath of any facts set forth in the pleading or statement, by the person who signs the pleading or statement. Certification by a notary public is insufficient. The form of verification may be as follows:

* * * * *

18. Section 47.21 is revised to read as follows:

§ 47.21 Transmittal of record.

The hearing clerk, immediately after the filing of the examiners' report, shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; motions and requests filed, and rulings thereon; the report of investigation conducted by the Fruit and Vegetable Programs; the transcript or record of the testimony taken at the hearing, together with the exhibits filed therein; any statements or stipulations filed under the documentary procedure; any documents or papers filed in connection with conferences; such proposed findings of fact, conclusions, and orders and briefs as may have been permitted to be filed in connection with the hearing as provided in § 47.19(b) and (c); such statements of objections, and briefs in support thereof, as may have been filed in the proceeding; and the examiner's report.

* * * * *

19. In § 47.24, the section heading and paragraph (a) are revised and a new paragraph (d) is added to read as follows:

§ 47.24 Rehearing, reargument, reconsideration of orders, reopening of hearings, reopening after default.

(a) *Petitions to rehear, reargue, and reconsider.* A petition for rehearing or reargument of the proceeding, or for reconsideration of the order, shall be made by petition to the Secretary filed with the Hearing Clerk within 20 days after the date of service of the order. Every such petition shall state specifically the matters claimed to have been erroneously decided and the alleged errors. If the Secretary concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, the Secretary shall dismiss the peition without service on the other party. Otherwise, the Secretary shall direct that a copy of the petition be served upon such party by the Hearing Clerk. The filing of a petition to rehear or reargue a proceeding, or to reconsider an order, shall automatically operate to set aside the order pending final action on the petition. Only one petition to rehear, reargue, or reconsider will be accepted from each party, except when a mathematical or typographical error appears in either the original decision and order or in the decision on reconsideration.

* * * * *

(d) *Reopening after default.* The party in default in the filing of an answer or reply required or authorized under this part may petition to reopen the proceeding at any time prior to the expiration of 30 days from the date of service of the default order. If, in the judgment of the examiner, after notice to and consideration of the views of the other party(ies), there is good reason for granting such relief, the party in default will be allowed 20 days from the date of the order reopening the proceeding to file an answer.

20. In § 47.25, the section heading and paragraph (d) are revised, paragraph (e) is removed and paragraph (f) is redesignated as paragraph (e) to read as follows:

§ 47.25 Filing; extensions of time; effective date of filing; computations of time; official notice.

* * * * *

(d) *Computations of time.* Saturdays, Sundays and holidays shall be included in computing the time allowed for the filing of any document or paper: Provided, That, when such time expires on a Saturday, Sunday or Federal holiday, such period shall be extended to include the next following business day.

* * * * *

21. Part 47 is amended by removing the words "hearing clerk" and adding in their place the words "Hearing Clerk", everywhere they appear.

22. Part 47 is amended by removing the word "Division" and adding in its place the words "Fruit and Vegetable Programs", everywhere they appear.

23. Part 47 is amended by removing the words "Director" and "Director's", and adding in their place the words "Deputy Administrator" and "Deputy Administrator's" respectively, everywhere they appear.

Dated: January 21, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1968 Filed 1–27–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 98–021–1]

Cut Flowers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the cut flowers regulations to provide that APHIS inspectors issue a written notice when pests are detected and action on the part of the importer is required. We are also proposing to amend the regulations to make it clear that the importer of cut flowers is responsible for all costs of destroying or otherwise disposing of pest-infested cut flowers should the importer choose not to treat or re-export them. These proposed changes would help reduce the risk of cut flowers introducing plant pests into the United States by ensuring that any necessary treatment or other required actions are completed.

DATES: Consideration will be given only to comments received on or before March 29, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–021–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–021–1. Comments may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to

inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231, (301) 734–6799; or e-mail: Peter.M.Grosser@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of plants, plant parts, and related materials to prevent the introduction of foreign plant pests into the United States.

The importation of cut flowers into the United States is regulated under "Subpart—Cut Flowers," contained in §§ 319.74 through 319.74–4 (referred to below as the regulations).

The regulations require that all cut flowers be inspected for injurious insects and plant diseases at the port of entry. If cut flowers are found to be infested, an inspector may require the cut flowers to be cleaned or treated before allowing them entry into the United States. If treatment is required, the importer or his agent is given the option of: (1) Cleaning or treating the cut flowers as prescribed by the inspector until free of plant pests; (2) shipping the cut flowers to a point outside the United States; or (3) abandoning the cut flowers at the port of entry for destruction. If the inspector finds that the pests cannot be eliminated by cleaning or treatment, the cut flowers may be refused entry into the United States and must be shipped to a point outside the United States or abandoned for destruction.

Under the regulations, all costs of treatment are to be borne by the importer or his agent, as are the costs of shipping cut flowers to a point outside the United States. However, if the importer or his agent elects to abandon imported cut flowers at the port of entry, the regulations do not explicitly require the importer or his agent to bear the costs of destroying the flowers.

APHIS' policy regarding the costs associated with inspections, which is stated in the "costs and charges" sections or paragraphs throughout our regulations in title 7, chapter III, is that the services of an inspector during regularly assigned hours of duty and at the usual places of duty will be furnished without cost, but that all additional costs associated with the inspection, treatment, movement, storage, or destruction of articles subject to our regulations are the responsibility of the importer or owner.

Due to increasing volumes of abandoned cut flowers that have been destroyed at government expense, especially at Miami International Airport, which handles over 90 percent of all cut flower importations into the United States, we are proposing to amend the regulations to require that importers be responsible for the cost of destroying infested or infected cut flowers, just as they are responsible for the cost of any other treatment under the regulations. This proposed change, which would be set out in a new § 319.74–4, "Costs and Charges," is consistent with the policy described in the previous paragraph. This proposed change to the cut flowers regulations would make "Subpart—Cut Flowers" more consistent with our regulations elsewhere in title 7, chapter III.

We are also proposing to amend the regulations to provide that an inspector would issue the importer of cut flowers or his agent a written notification in the event that an inspector found imported cut flowers to be infested with injurious insects or infected with plant diseases. Specifically, an inspector would issue an emergency action notification (EAN) (PPQ Form 523), which would outline in detail the options available to the importer. The EAN would also recommend specific treatments, if available; notify the importer that reexportation and destruction of cut flowers are permissible alternatives to treatment; and clearly state that any actions ordered on the emergency action notification and the cost of performing those actions would be the responsibility of the importer. Further, we would also amend the regulations to state that the importer of infested or infected cut flowers must respond to the orders on the EAN within the period of time specified on the EAN by the inspector. In the event that the importer does not respond by the specified time, APHIS would arrange for the destruction, disposal, treatment, or reexportation of the cut flowers and would hold the importer responsible for all costs associated with such actions.

Further, as part of our effort to make it clear who would be responsible for cut flowers being imported into the United States, we are also proposing to revise the terminology we use to refer to the importer of cut flowers. The current regulations use the term "importer or his agent." We are proposing to replace that term with "importer, owner, or agent or representative of the importer or owner" in order to encompass the range of individuals who may be held responsible for cleaning, treating, transporting, or destroying cut flowers and for the costs of doing so.

We are also proposing to make several nonsubstantive editorial and organizational changes to the regulations, including removing an outdated reference to "special quarantine or other restrictive orders," updating definitions, and revising and reorganizing the subpart to make the regulations easier to understand and more consistent with the rest of the regulations in part 319. These proposed changes would not alter any current requirements. The following table shows where the current provisions in "Subpart—Cut Flowers" can be found in the proposed regulations:

Current section	Proposed section
319.74(a)	Removed.
319.74(b)	Removed.
319.74(c)	319.74–1.
319.74–1(a)	319.74–1.
319.74–1(b)	319.74–1.
319.74–2	319.74–2(a).
319.74–3(a)	319.74–2(a), (b), and (c)(1).
319.74–3(b)	319.74–2(b), 319.74–4.
319.74–3(c)	319.74–2(c)(2).
319.74–4	319.74–3.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this proposed rule on small entities. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic impact on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the economic impacts of this proposed rule on small entities. Therefore, we are inviting comments on potential economic impacts. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of plants and plant products to prevent the introduction of injurious plant pests.

We are proposing to amend the cut flowers regulations to make it clear that

the person importing cut flowers, and not APHIS, is responsible for the costs of destroying cut flowers when pests are detected and the cut flowers will not be treated or reexported. We are also proposing to provide for inspectors to issue a written notice when pests are detected and action on the part of the importer is required. These proposed changes would help reduce the risk of cut flowers introducing plant pests into the United States by ensuring that any necessary treatment or other required actions are completed.

This proposed rule would also help reduce costs for the government because it would explicitly require that the costs of destroying infested or infected cut flowers be the responsibility of the importer, owner, or agent or representative of the importer or owner. It is estimated that approximately 200 to 400 boxes of cut flowers are abandoned each month at Miami International Airport, the port of entry for more than 90 percent of foreign cut flowers. Estimates of the annual cost to APHIS for the disposal or destruction of cut flowers range from $100,000 to $240,000.

The entities potentially affected by this proposed rule are importers and others in the United States who are involved in the importation of cut flowers. This proposed rule would increase costs for importers, who would be required to absorb the cost of destroying infested or infected flowers at U.S. ports of entry. The number and size of those entities potentially affected by this proposed rule is unknown.

It is reasonable to assume that most of the entities potentially affected by this proposed rule are small by U.S. Small Business Administration (SBA) standards. In 1992, 99 percent of 4,322 wholesalers of flowers, nursery stock, and florists' supplies were considered small entities. The magnitude of the potential economic impact on small entities is not available.

There is reason to believe that the overall economic impact of this proposed rule on small entities would be insignificant, given that the volume of cut flowers abandoned at U.S. ports of entry is very small compared to the total volume of imported cut flowers allowed entry into the United States. In 1996, the United States imported approximately 2.5 billion fresh cut flower stems through Miami International Airport. No more than 72,000 cut flowers are abandoned yearly at Miami International Airport. Abandoned cut flowers, therefore, represent only a small percentage of the overall volume of cut flower importations into the United States.

Two alternatives to this proposed rule were considered: (1) To make no changes in the regulations and (2) to begin charging importers for destruction by APHIS of abandoned cut flowers without making changes to the regulations. We rejected the first alternative—making no change in the regulations—after determining that the costs to APHIS are too high to continue destroying or disposing of abandoned cut flowers at APHIS' expense. We also rejected the second alternative—charging importers for destruction by APHIS of abandoned cut flowers without making changes to the regulations—because we believe it is necessary to clarify our regulations regarding this issue since they do not currently state that importers are responsible for abandoned cut flowers. Because we have elected to exercise our authority to recover all costs that we incur when disposing of abandoned cut flowers, we believe it is necessary to amend the cut flowers regulations to make them more consistent with our regulations elsewhere in title 7, chapter III, by requiring that the importer, owner, or agent or representative of the importer or owner of cut flowers pay all additional costs associated with the importation of cut flowers. APHIS would continue to provide the services of an inspector during regular hours of duty at the usual place of duty at no cost to the importer.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Subpart—Cut Flowers would be revised to read as follows:

Subpart—Cut Flowers

319.74–1 Definitions.
319.74–2 Conditions governing the entry of cut flowers.
319.74–3 Importations by the Department.
319.74–4 Costs and charges.

Subpart—Cut Flowers

§ 319.74–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Cut flower. The highly perishable commodity known in the commercial flower-producing industry as a cut flower, which is the severed portion of a plant, including the inflorescence, and any parts of the plant attached to it, in a fresh state. This definition does not include dried, bleached, dyed, or chemically treated decorative plant materials; filler or greenery, such as fern fronds and asparagus plumes, frequently packed with fresh cut flowers; or Christmas greenery, such as holly, mistletoe, and Christmas trees.

Inspector. Any individual authorized by the Administrator to enforce this subpart.

United States. All of the States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories or possessions of the United States.

§ 319.74–2 Conditions governing the entry of cut flowers.

(a) *Inspection.* All cut flowers imported into the United States must be made available to an inspector for examination and must remain at the port of entry until released, or authorized further movement, by an inspector.

(b) *Actions to prevent the introduction of plant pests; notice by an inspector.* If an inspector orders any disinfection, cleaning, treatment, reexportation, or other action with regard to imported cut flowers that are found to be infested with injurious plant pests or infected with diseases, the inspector will provide an emergency action notification (PPQ Form 523) to the importer, owner, or

agent or representative of the importer or owner of the cut flowers. The importer, owner, or agent or representative of the importer or owner must, within the time specified in the PPQ Form 523 and at his or her own expense, destroy the cut flowers, ship them to a point outside the United States, move them to an authorized site, and/or apply treatments, clean, or apply other safeguards to the cut flowers as prescribed by the inspector on the PPQ Form 523. Further, if the importer, owner, or agent or representative of the importer or owner fails to follow the conditions on PPQ form 523 by the time specified on the form, APHIS will arrange for destruction of the cut flowers, and the importer, owner, or agent or representative of the importer or owner will be responsible for all costs incurred. Cut flowers that have been cleaned or treated must be made available for further inspection, cleaning, and treatment at the option of the inspector at any time and place indicated by the inspector before the requirements of this subpart will have been met. Neither the Department of Agriculture nor the inspector may be held responsible for any adverse effects of treatment on imported cut flowers.

(c) *Fumigation for agromyzids.* (1) Cut flowers imported from any country or locality and found upon inspection to be infested with agromyzids (insects of the family Agromyzidae) must be fumigated at the time of importation with methyl bromide in accordance with paragraph (c)(2) of this section, with the following exceptions:

(i) Fumigation will not be required for cut flowers imported from Canada (including Labrador and Newfoundland) or Mexico because of the finding of agromyzids.

(ii) Fumigation will not be required for cut flowers of *Chrysanthemum* spp. imported from Colombia or the Dominican Republic because of the finding of agromyzids, when such agromyzids are identified by an inspector to be only agromyzids of the species *Liriomyza trifolii* (Burgess).

(2) *Fumigation schedules.* Fumigation of cut flowers for agromyzids (insects of the family Agromyzidae) must consist of fumigation with methyl bromide at normal atmospheric pressure in a chamber or under a tarpaulin in accordance with one of the following schedules:

1½ lbs. per 1,000 cu. ft. for 2 hours at 80–90 °F.

(19 oz. concentration at first ½ hour)
(12 oz. concentration at 2 hours); or

2 lbs. per 1,000 cu. ft. for 2 hours at 70–79 °F.

(24 oz. concentration at first ½ hour)
(16 oz. concentration at 2 hours); or

2½ lbs. per 1,000 cu. ft. for 2 hours at 60–69 °F.

(30 oz. concentration at first ½ hour)
(20 oz. concentration at 2 hours); or

3 lbs. per 1,000 cu. ft. for 2 hours at 50–59 °F.

(36 oz. concentration at first ½ hour)
(24 oz. concentration at 2 hours); or

3½ lbs. per 1,000 cu. ft. for 2 hours at 40–49 °F.

(41 oz. concentration at first ½ hour)
(27 oz. concentration at 2 hours)

Note: There is a possibility that some cut flowers could be damaged by such fumigation.

(d) *Refusal of entry.* If an inspector finds that imported cut flowers are so infested with a plant pest or infected with disease that, in the judgment of the inspector, they cannot be cleaned or treated, or if they contain soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

§ 319.74–3 Importations by the Department.

The U.S. Department of Agriculture may import cut flowers for experimental or scientific purposes under such conditions and restrictions as the Administrator may prescribe to prevent the dissemination of plant pests.

§ 319.74–4 Costs and charges.

The Animal and Plant Health Inspection Service, U.S. Department of Agriculture, will be responsible only for the costs of providing the services of an inspector during regularly assigned hours of duty and at the usual places of duty (provisions relating to costs for other services of an inspector are contained in 7 CFR part 354). The importer, owner, or agent or representative of the importer or owner of cut flowers is responsible for all additional costs of inspection, treatment, movement, storage, or destruction ordered by an inspector under this subpart, including the costs of any labor or chemicals, packing materials, or other supplies required.

Done in Washington, DC, this 21st day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1918 Filed 1–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. FV99–932–1 PR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $17.10 to $26.18 per ton of olives established for the California Olive Committee (Committee) under Marketing Order No. 932 for the 1999 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of olives grown in California. Authorization to assess olive handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by March 1, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket_clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, and Mary Kate Nelson, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning on January 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1999 and subsequent fiscal years from $17.10 per ton to $26.18 per ton of olives.

The California olive marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on December 10, 1998, and unanimously recommended 1999 expenditures of $1,845,185 and an assessment rate of $26.18 per ton of olives. In comparison, last year's budgeted expenditures were $1,750,000. The assessment rate of $26.18 is $9.08 higher than the rate currently in effect. A higher assessment rate is needed because:

(1) Assessable tonnage is down for the second year in a row due in large part this crop year to adverse conditions created by the weather phenomenon El Niño. Assessable tonnage in 1996 totaled 144,075 tons, in 1997 it totaled 85,585 tons, and in 1998 the assessable tonnage totaled 67,990 tons; and

(2) Rather than reduce 1999 expenditures, the Committee determined that more funds are needed to continue the development of an improved mechanical olive harvester that can efficiently harvest most orchard configurations. The California olive industry recognized that it needs to make cutting harvesting costs a top priority if it is to remain competitive with imports. Consequently, after considerable discussion, the Committee recommended increasing the $52,000 1999 Research Fund initially suggested by Committee members by an additional $250,000. The additional $250,000 is to be used specifically for the purpose of further development of a mechanical harvester that can be more effectively utilized by growers throughout the California olive industry while at the same time reducing harvesting costs.

The following table compares major budget expenditure recommendations for the 1999 fiscal year with those from last year:

Budget expenditure	1998	1999
Administration ...	$357,900	$346,485
Research	50,000	302,000
Market Development	1,308,500	1,190,500

The assessment rate recommended by the Committee was derived by considering anticipated expenses, actual receipts of olives, and additional pertinent factors. The quantity of assessable olives for the 1999 fiscal year is 67,990 tons which should provide $1,779,978 in assessment income. Income derived from handler assessments, interest, and carryover of reserve funds would be adequate to cover budgeted expenses. Funds in the reserve (currently $316,409) would be kept within the maximum permitted by the order (approximately one fiscal year's expenses, § 932.40).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,200 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. None of the olive handlers may be classified as small entities, while the majority of olive producers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999 and subsequent fiscal years from $17.10 per ton to $26.18 per ton of olives. The Committee recommended 1999 expenditures of $1,845,185 and an assessment rate of $26.18 per ton. The proposed assessment rate of $26.18 is $9.08 higher than the 1998 rate. The quantity of assessable olives for the 1999 fiscal year is 67,990 tons. Thus, the $26.18 rate should provide $1,779,978 in assessment income and be adequate to meet this year's budgeted expenses, when combined with funds from the authorized reserve and interest income.

The following table compares major budget expenditure recommendations for the 1999 fiscal year with those from last year:

Budget expenditure	1998	1999
Administration	$357,900	$346,485
Research	50,000	302,000
Market Development	1,308,500	1,190,500

A higher assessment rate is needed for 1999 because:

(1) Assessable tonnage is down for the second year in a row due in large part this crop year to adverse conditions created by the weather phenomenon El Niño. Assessable tonnage in 1996 totaled 144,075 tons, in 1997 it totaled 85,585 tons, and in 1998 the assessable tonnage totaled 67,990 tons; and

(2) Rather than reduce 1999 expenditures, the Committee determined that more funds are needed to continue the development of an improved mechanical olive harvester that can efficiently harvest most orchard configurations. The California olive industry recognized that it needs to make cutting harvesting costs a top priority if it is to remain competitive with imports. Consequently, after considerable discussion, the Committee recommended increasing the $52,000 1999 Research Fund initially suggested by Committee members by an additional $250,000. The additional $250,000 is to be used specifically for the purpose of further development of a mechanical harvester that can be more effectively utilized by growers throughout the California olive industry while at the same time reducing harvesting costs.

The Committee reviewed and unanimously recommended 1999 expenditures of $1,845,185 which included the $250,000 increase in Research for further development of an improved mechanical olive harvester. To finance this additional research allotment, the Committee considered reducing the Market Development budget item by amounts ranging from $100,000 to $309,530. The prevailing opinion was that the money allocated for 1999 Market Development recommended by the Marketing Subcommittee remain the same ($1,190,500) as initially suggested, which is $118,000 less than budgeted for 1998. The Committee members believed that the Administrative Budget had already been reduced as low as possible ($11,415 less than for 1998). The only other alternative was to increase the assessment rate. The assessment rate of $26.18 per ton of assessable olives was then derived by considering anticipated expenses, actual receipts of olives, and additional pertinent factors.

Based on a review of historical and preliminary marketing and price information, grower revenue for the 1998–99 crop year (August 1 through July 31) is estimated to be approximately $39,500,000. Therefore, the estimated assessment revenue of $1,779,978 for the 1999 fiscal year will be approximately 4.5 percent of grower revenue.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the California olive industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 10, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1999 fiscal year began on January 1, 1999, and the order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (3) all three handlers are represented on the Committee and participated in deliberations, (4) and all handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is proposed to be amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 932.230 is proposed to be revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 1999, an assessment rate of $26.18 per ton is established for California olives.

Dated: January 22, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–1969 Filed 1–27–99; 8:45 am]

BILLING CODE 3410–02–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1307 and 1308

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Proposed rule; notice of hearing.

SUMMARY: The Northeast Dairy Compact Commission proposes to amend the method for determining the amount of the administrative assessment charged to milk handlers. The proposed rule would give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at an amount less than the current flat rate of 3.2c per hundredweight of fluid milk. The Commission's goal is to maintain a reserve account in the range of 80% to 120% of four-months operating expenses, as determined to be necessary in the budget approved by the Commission. However, his range would not be binding on the Commission and the Commission would at all times retain discretion whether to waive the administrative assessment or to set the rate at an amount less than 3.2 cents. The Commission also invites comments on whether the rule should be amended to permit the Commission to adjust the administrative assessment upward, from the current rate of 3.2c, in exceptional circumstances and, if so, what exceptional circumstances would justify such an adjustment. Finally, the Commission proposes to promulgate a new rule that would require handlers to make payment to the Compact Commission by electronic funds transfer, if the total amount due is greater than $25,000.

DATES: A public hearing will be held on March 3, 1999 at 9 a.m. Sworn and notarized written testimony, comments and exhibits may be submitted until 5 p.m. on March 17, 1999.

ADDRESSES: The public hearing will be held at Tuck Library, Chubb Auditorium, 30 Park Street, Concord, New Hampshire. Mail, or deliver, sworn and notarized testimony, comments and exhibits to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 27, 1998, the Commission issued a notice of proposed rulemaking proceedings on several subjects and issues, including whether the amount of, or method for determining, the administrative assessment should be amended.[4] The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5 p.m. on December 31, 1998.

On January 13, 1999, the Commission held its deliberative meeting, pursuant to 7 CFR 1361.8, to consider all oral and written comments received at the public hearing and the additional comments received by the Commission's published comment deadline of December 31, 1998, and to deliberate and act on the proposed subjects and issues rulemaking regarding whether the amount of, or method for determining, the administrative assessment should be amended.[5]

Based on the oral testimony and written comments and exhibits received in that proceeding, the Commission proposes to amend the method for determining the amount of the administrative assessment charged to milk handlers.[6] The proposed rule would give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at an amount less than the current flat rate of 3.2¢ per hundredweight of fluid milk. The waiver or reduction would be based on the Commission's reserves and expenses. The Commission's goal is to maintain a reserve account in the range of 80% to 120% of four-months operating expenses, as determined to be necessary in the budget approved by the Commission. However, this range would not be binding on the Commission and the Commission would at all times retain discretion whether to waive the administrative assessment or to set the rate at an amount less than 3.2 cents. The Commission would welcome public comments on these proposals. The Commission also invites comments on whether the rule should be amended to permit the Commission to adjust the administrative assessment upward, from the current rate of 3.2¢, in exceptional circumstances and, if so, what exceptional circumstances would justify such an adjustment.

In addition to the proposed amendments to the administrative assessment, the Commission also proposes to promulgate a new rule that would require handlers to make payment to the Compact Commission by electronic funds transfer, if the total amount due is greater than $25,000.

II. Summary and Analysis of Issues and Comments

Administrative Assessment

The Commission received oral and written testimony and comment from the Commission's Regulations Administrator, Carmen Ross, and eight commenters in the subjects and issues rulemaking proceeding regarding whether the amount of, or method for determining, the administrative assessment should be amended.[7]

Mr. Ross testified that the Compact authorizes the Commission to impose an assessment on milk handlers to cover

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[1] 62 FR 29626 (May 30, 1997)

[2] 62 FR 62810 (Nov. 25, 1997)

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

[4] 63 FR 65563 (Nov. 27, 1998).

[5] 64 FR 533 (Jan. 5, 1999).

[6] The current administrative assessment regulation is published at 7 CFR part 1308.

[7] Carmen L. Ross, Transcript ("Tr.") at 4; Charles Arbing, Tr. at 30; Diane Bothfeld Tr. at 54 and Written Comment ("WC") at 32; Leon J. Berthiaume, WC 13; Robert D. Wellington, WC 16; Edward W. Gallagher, WC 1?; Sally J. Beach, WC 21; Michael L. Altman, WC 2?; and Leon Graves, WC 34.

the costs of the administration and enforcement of the over-order price regulation. The Compact also requires the Commission to establish a reserve for the ongoing operating expenses.[8] Mr. Ross explained that the current regulation requires handlers of Class I milk products disposed of in the regulated area to pay their pro rata share of the expenses of the administration and enforcement of the over-order price regulation. The current administrative assessment is a flat rate of 3.2 cents per hundredweight and results in a variance in income of up to 13% per month.[9]

The Commission regulation is, in all material respects, the same as corresponding provisions of the Federal Order # 1 regulations.[10]

Under the Compact, like Federal Order #1, the handler is responsible for making payments of the administrative assessment. Under the Compact, like Federal Order #1, the handler is responsible for payment to the pool. Both the Compact and the Federal Order # 1 regulate handlers of fluid milk products disposed of in the regulated area, and define "handler" to cover operator's of pool plants, partially regulated plants, cooperative associations and others who receive and distribute fluid milk products.[11]

Mr. Ross explained that under the Federal Market Order # 1 regulation, "the Federal Market Order (Administrator) can, when conditions warrant it, reduce or even waive the administrative assessment." [12] Under Federal Market Administrator Instruction #207, the United States Department of Agriculture Dairy Division recommends that budgeted operating reserves be maintained within a range of 80% to 120% of the designated reserve level. [13]

Some commenters [14] suggested that the Commission waive or reduce the administrative assessment in months in which there is no producer pool. Conversely, other commenters [15] concluded that the administrative assessment should be charged in all months, regardless of whether there is a Compact producer pool in a particular month, to ensure adequate funding of the Commission's other functions. Mr. Ross testified, that the Commission has responsibilities in addition to running the pool. In particular, he stated that it is imperative that the Compact Commission continues to monitor the Compact pool because the handlers still have to report and producers may be qualified in and out of the pool, even in months when the federal price is above the Compact minimum price and there is no Compact producer pool.[16] Accordingly, the Commission does not agree that the administrative assessment should be tied to whether there is a producer pool in a particular month.

Many commenters [17] encouraged the Commission to amend the administrative assessment regulation to allow the flexibility to adjust the assessment rate, as needed and appropriate, to meet the Commission's expenses, and to waive or reduce the assessment when the Commission operating reserves permit it. For example, Mr. Arbing testified that the Commission should waive the administrative assessment in months in which the Commission has sufficient reserves.[18] He testified that he would support a methodology that allowed the Commission discretion to waive or adjust the assessment depending on the reserves and expenses of the Commission.[19] He further testified that he would consider four months operating reserves, based on the budget approved by the Commission, to be an appropriate level for a reserve fund.[20] Other commenters also recommended that the Commission establish adequate reserves based on the Commission's budget.[21]

The Commission concludes that these commenters [22] raise valid points and, therefore, proposes to amend the method for determining the amount of the administrative assessment charged to milk handlers, without regard to whether there is a producer pool in a given month. The proposed rule would give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at an amount less than the current flat rate of 3.2 cents per hundredweight of fluid milk. The waiver or reduction would be based on the Commission's reserves and expenses. The Commission's goal is to maintain a reserve account in the range of 80% to 120% of four-months operating expenses, as determined to be necessary in the budget approved by the Commission. This range, however, would not be binding on the Commission and the Commission would at all times retain discretion whether to waive or set a lower rate for the administrative assessment. The Commission also is considering an additional amendment that would give the Commission discretion to adjust the administrative assessment upward, from the current rate of 3.2 cents, in exceptional circumstances and, if so, what exceptional circumstances would justify such an adjustment.

One commenter [23] offered several arguments related to the Commission's use of the funds generated by the administrative assessment. This commenter argues that section 18 of the Compact only permits the Commission to assess and use the administrative assessment for the direct costs of administering the producer pool, i.e. computation and announcement of the over-order price, pursuant to 7 CFR part 1305, and the computation and announcement of the producer price, pursuant to 7 CFR part 1306, and the receipt and distribution of monies from the producer-settlement fund.[24] This commenter asks the Commission to amend its regulations to conform to this narrow interpretation of the Compact.[25]

The implication of this argument is that the commenter does not view the Commission as authorized to use the administrative assessment funds for administration and enforcement of any other regulation or provision of the Compact. Some of the Commission activities authorized by these other regulations and Compact provisions include rulemaking,[26] prescribing and verifying handler's reports (which are the basis for the administration of the over-order price),[27] determining the qualification of producers,[28] classifying milk,[29] providing an exemption process for regulated persons,[30] to meet and

[8] Ross, Tr. at 5; See also, Compact Article IV, Section 10 (9) and Article VII, Section 18(a).

[9] Ross, Tr. at 5–6.

[10] Ross, Tr. at 6–8.

[11] Ross, Tr. at 8.

[12] Ross, Tr. at 8.

[13] Market Administrator Instruction #207, WC at 3–11.

[14] Arbing, Tr. at 31–32; Bothfeld, Tr. at 55; Berthiaume, WC at 14; and Graves, WC at 34.

[15] Wellington, WC at 16–17; Gallagher, WC at 20; and Beach, WC at 22.

[16] Ross, Tr. at 24–25.

[17] Arbing, Tr. at 31; Bothfeld, Tr. at 55; Berthiaume, WC at 14; Wellington, WC at 16; Gallagher, WC at 20; and Graves, WC at 34.

[18] Arbing, Tr. at 31.

[19] Arbing, Tr. at 53–54.

[20] Arbing, Tr. at 38, 40–41.

[21] Bothfeld, Tr. at 55; Berthiaume, WC at 14; Wellington, WC at 16; Gallagher, WC at 20; and Graves, WC at 34.

[22] Arbing, Tr. at 31, 38, 40–41(re: importance to processors to waive the administrative assessment when the Commission has adequate reserves); and Bothfeld, Tr. at 55, Berthiaume, WC at 14, Wellington, WC at 16, Gallagher, WC at 20, Beach, WC at 22, Graves, WC at 34 (re: in support of the Commission having the flexibility to waive or reduce the administrative assessment rate when the operating reserves permit it)

[23] Altman, WC at 26.

[24] Altman, WC at 26–30.

[25] Altman, WC at 30.

[26] 7 CFR 1300.1 and 7 CFR parts 1361 and 1371 and Compact Article V.

[27] 7 CFR 1300.1, 7 CFR Part 1303 and Compact Article VI.

[28] 7 CFR 1301.11.

[29] 7 CFR part 1304.

[30] 7 CFR part 1381, Compact Article VI, Section 16.

conduct business,[31] enforcing the Compact and over-order price regulation,[32] and conducting and administering the activities authorized by Articles I, II, IV or VII of the Compact.

The Commission respectfully disagrees with this commenter's narrow interpretation of its authority as being contrary to both the letter and the spirit of the Compact. The Compact charges the Commission with the broad mission of taking "such steps as are necessary to assure the continued viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk." Compact Article I, Section 1. In addition to the activities authorized by the Compact cited above, the Compact specifically authorizes the Commission to adopt a compact over-order price regulation, and permits that regulation to include "an assessment for the specific purpose of their administration." Compact Article VII, Section 18(a). The Compact further states that any price regulation may include "[o]ther provisions and requirements as the commission may find are necessary or appropriate to effectuate the purposes of this compact and to provide for the payment of fair and equitable minimum prices to producers." Compact Article IV, Section 10 (11). The Compact also requires the regulations to "provide for establishment of a reserve for the commission's ongoing operating expenses." Compact, Article VII, Section 18(a). The Commission has promulgated regulations at 7 CFR Chapter XIII to effectuate its obligations and responsibilities under the Compact. The Commission is responsible for the administration and enforcement of each of the individual regulations that constitute the Northeast Dairy Compact Over-order Price Regulation, not only those selected regulations identified by the commenter.

Finally, three commenters,[33] asked the Commission to consider amending the regulations to eliminate the over-order obligation and administrative assessment on raw skim milk that is sold in bulk to other processing plants who further process and bottle that milk. The Commission considered the concerns expressed by these commenters, but declines to propose the requested amendments at this time. The Commission notes that the present Compact regulations are, in all material respects, identical to the Federal Order # 1 regulations in the treatment of the raw skim milk that is sold for further processing.

The Northeast Dairy Compact Commission has considered all the testimony and comments provided and proposes to amend the method for determining the amount of the administrative assessment charged to milk handlers. The proposed rule would give the Commission discretion, in any given month, to waive the administrative assessment entirely or to set the rate at an amount less than the current flat rate of 3.2 cents per hundredweight of fluid milk. The waiver or reduction would be based on the Commission's reserves and expenses.

Method of Payment and Charges on Overdue Accounts

The Commission also proposes to add a new regulation which would require that handlers make payment of the over-order obligation and administrative assessment to the Commission by electronic transfer of funds if the aggregate total due for the month is greater than $25,000. The Commission seeks to add this rule in order to best ensure the efficient and timely transfer of funds into the producer-settlement fund and the corresponding timely distribution of funds from the producer-settlement fund. Based on the experience of the Commission in administering the producer-settlement fund, most handlers already use electronic transfer of funds. The Commission also uses electronic transfer of funds for distribution to handlers of monies from the producer-settlement fund.

Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 CFR 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearing March 3, 1999, or afterward, of relevant facts, statistics, data, conclusions, and other information provided by or through the United States Department of Agriculture, including, but not limited to, matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area.

The Commission will also receive into the record of this rulemaking proceeding the entire record, including the public hearing transcript and written comments and submissions, of the subjects and issues rulemaking proceeding regarding whether the amount of, or method for determining, the administrative assessment should be amended.

Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding these proposed rules. The Commission continues to benefit from the valuable insights and active participation of all segments of the affected community including consumers, processors and producers in the development and administration of the Over-order Price Regulation.

Date, Time and Location of the Public Hearing

The Northeast Dairy Compact Commission will hold a public hearing at 9 a.m. on March 3, 1999 at the Tuck Library, Chubb Auditorium, 30 Park Street, Concord, New Hampshire.

Request for Pre-filed Testimony and Written Comments

Pursuant to the Commission rules, 7 CFR 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments or exhibits to the Commission. Comments and exhibits may be submitted at any time before 5 p.m. on March 17, 1999.

Please note: Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn and notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5 p.m. deadline, but the original must then be sent by ordinary mail.

The Commission is requesting pre-filed testimony from any interested person. Pre-filed testimony must include the name, address and occupation of the witness and a sworn notarized statement indicating that the testimony is presented based upon the author's personal knowledge and belief. Pre-filed testimony must be received in the Commission office no later than 5 p.m. February 22, 1999 to insure distribution to Commission members prior to the public hearing.

Pre-filed testimony, comments and exhibits should be sent to: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602 or by facsimile to (802) 229–2028.

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[31] Compact Article III.

[32] Compact Article VI.

[33] Bothfeld, Tr. at 55–59; Berthiaume, WC at 14–15; and Beach, WC at 22.

List of Subjects in 7 CFR Parts 1307 and 1308

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission proposes to amend 7 CFR parts 1307 and 1308 as follows:

PART 1307—PAYMENTS FOR MILK

1. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256

§ 1307.4 [Redesignated as §1307.5]

2. Section 1307.4 is redesignated § 1307.5.

3. A new § 1307.4 is added to read as follows:

§ 1307.4 Method of payment.

If the combined total of the handler's producer-settlement fund debit for the month as determined under § 1307.2(a) and the handler's obligation for the month as determined under § 1308.1 of this chapter is greater than $25,000, then the handler must make payment to the compact commission by electronic transfer of funds on or before the 18th day after the end of the month.

PART 1308—ADMINISTRATIVE ASSESSMENT

1. The authority citation for part 1308 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1308.1 is amended by revising the introductory text to read as follows:

§ 1308.1 Assessment for pricing regulations adminstration.

On or before the 18th day after the end of the month, each handler shall pay to the compact commission his pro rata share of the expense of administration of this pricing regulation. The payment shall be at the rate of 3.2 cents per hundredweight. The Commission may waive, or set the rate at an amount less than 3.2 cents, pursuant to § 1308.2. The payment shall apply to:

* * * * *

3. A new § 1308.2 is added to read as follows:

§ 1308.2 Method to waive or change the administration assessment.

The compact commission may waive or change the assessment for pricing regulation administration to maintain the operating reserve in the range of 80% to 120% of four months operating expenses, as determined in the budget approved by the commission. The compact commission will announce, pursuant to § 1305.2 of this chapter, the waiver or change in rate of assessment.

Dated: January 22, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–1993 Filed 1–27–99; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1 and 3

[Docket No. 98–106–1]

Animal Welfare; Petition for Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of petition and request for comments.

SUMMARY: We are notifying the public of our receipt of a petition for rulemaking, and we are soliciting public comment on that petition. The petition, sponsored by several petitioners, requests that the Secretary of Agriculture amend the definition of "animal" in the Animal Welfare Act regulations to remove the current exclusion of rats and mice bred for use in research and birds and grant such other relief as the Secretary deems just and proper."

DATES: Consideration will be given only to comments received on or before March 29, 1999.

ADDRESSES: We are accepting comments in two ways—either in hard copy or via the Internet. However, comments submitted in either method must be submitted as described below; comments sent to other than the physical address or the Internet address listed below will not be considered. For comments submitted in hard copy, please send an original and three copies to Docket No. 98–106–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–106–1. Anyone wishing to see copies of comments received or the petition may do so by coming to USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Please call ahead on (202) 690–2817 to facilitate entry into the comment reading room. Any person who wishes to submit a comment electronically must use a form located on the Internet at http://comments.aphis.usda.gov. Electronically submitted comments need only be submitted once. These comments are available for public viewing at the same Internet address.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA). Within APHIS, the responsibility for AWA administration has been delegated to Animal Care. Regulations established under the Act are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3. Part 1 contains definitions for terms used in parts 2 and 3; part 2 contains general requirements for regulated parties; and part 3 contains specific requirements for the care and handling of certain animals.

The Secretary has received a petition for rulemaking sponsored by the Alternatives Research and Development Foundation; In Vitro International and Rich Ulmer, president of In Vitro International; Barbara Orlans, senior research fellow at the Kennedy Institute of Ethics at Georgetown University; George K. Russell, professor for the Department of Biology at Adelphi University; and Ruy Tchao, associate professor for the Department of Pharmacology and Toxicology at the Philadelphia College of Pharmacy and Science. The petition requests the Secretary of Agriculture to take two actions: (1) Initiate rulemaking proceedings to amend the definition of "animal" contained at 9 CFR 1.1 to eliminate the exclusion of birds, rats, and mice; and (2) grant such other relief as the Secretary deems just and proper.

The term "animal" is defined in the AWA as follows: any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warmblooded animal as the Secretary may determine is

being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

We believe that the language "or such other warmblooded animal as the Secretary may determine" gives the Secretary broad power to include or exclude certain animals from AWA regulation, and we further believe that the legislative history of the AWA supports this conclusion. For example, a House Committee report on the 1970 amendments to the AWA demonstrates that Congress intended for the Secretary to have the authority to determine which warmblooded animals should be included in coverage under the Act. In promulgating the AWA regulations, the Secretary used this discretionary authority to exclude all birds and the types of rats and mice most commonly bred and used for research from coverage under the AWA. Accordingly, 9 CFR 1.1 defines "animal" for purposes of AWA enforcement as:

> any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, and horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.

Through this definition, the AWA regulations since 1972 have excluded birds and laboratory rats and mice from coverage. Congress has amended the AWA numerous times since its enactment but has never expressed any dissatisfaction with this exclusion.

The reason USDA excludes the types of rats and mice commonly bred and used for research and birds from coverage under the AWA regulations is for purposes of effective resource management and because we believe that the majority of these animals are already being afforded certain protections. AWA enforcement resources are determined annually by congressional appropriation. In administering the AWA, Animal Care constantly strives to use this finite amount of resources as prudently as possible to meet congressional intent under the law. APHIS enforces the AWA by inspecting the premises of regulated facilities and taking regulatory action against persons found to be in violation of the AWA regulations. In fiscal year 1997, a staff of about 73 Animal Care inspectors conducted almost 16,000 inspections to ensure compliance with the AWA regulations. Our goal is to provide effective protection for as many animals covered by the AWA as we can.

For the last 7 years, the appropriation for AWA enforcement has been basically constant at about $9.2 million; we anticipate that this appropriation will remain at the current level in the coming years. However, because of inflation, the purchasing power of the AWA enforcement budget decreases from year to year. Level funding has necessitated the elimination of the financial equivalent of three to five Animal Care positions per year. Additional information about the Animal Care programs staffing and accomplishments may be obtained from the Animal Care home page on the Internet at http://www.aphis.usda.gov/ac/, by reviewing the Animal Care Annual Report to Congress, or by calling (301) 734–7799.

We believe that the cost of extending AWA enforcement to all entities and facilities that handle rats of the genus *Rattus*, mice of the genus *Mus*, and birds for purposes covered by the AWA would be substantial. We want the public to know that we believe that extending AWA coverage to laboratory rats, laboratory mice, and birds would significantly affect overall AWA enforcement, as discussed below.

We also want the public to know that we believe that extending AWA coverage to laboratory rats, laboratory mice, and birds would have a substantial financial impact on the affected entities and that the vast majority of rats, mice, and birds being used in biomedical research are already being afforded certain protections. USDA and the Public Health Service (PHS) of the U.S. Department of Health and Human Services estimate that at least 90 percent of the rats, mice, and birds being used for research in the United States are provided oversight by PHS assurance, voluntary accreditation, or both. Most biomedical research in the United States is performed in laboratories funded at least in part by PHS. The PHS Policy on Humane Care and Use of Laboratory Animals covers rats, mice, and birds, in addition to all other live, vertebrate animals that are involved in activities supported by PHS. The PHS Policy requires an Animal Welfare Assurance, which commits the research institution to a program of animal care and use that is consistent with the *Guide for the Care and Use of Laboratory Animals*, a publication produced by the National Research Council to assist institutions in caring for and using animals in ways judged to be scientifically, technically, and humanely appropriate. The animal care standards listed in the *Guide* are at least consistent with and in many cases exceed the standards specified in the AWA regulations.

In addition to PHS oversight, many U.S. research facilities are accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC). This private organization, through inspections and reviews, accredits laboratories that meet or exceed the animal care standards specified in the *Guide*. Research facilities seek AAALAC accreditation for assistance with public relations and in receiving grants. AAALAC currently accredits approximately 600 U.S. research facilities, and approximately 40 percent of USDA-regulated research facilities are AAALAC accredited.

We have seriously considered the issue of bringing laboratory rats, laboratory mice, and birds under AWA regulation. As a regulatory agency, we are required to consider the effects of the regulations we promulgate and enforce on affected entities. Extending AWA coverage to facilities that use birds, laboratory rats, or laboratory mice would affect numerous entities, including many small businesses. As stated above, many of these entities currently meet PHS and AAALAC requirements. If these entities come under APHIS regulation, they might not incur costs associated with coming into compliance with the AWA requirements. However, these entities would incur costs pertaining to licensing or registration, and we do not necessarily believe that these new expenses would translate into a higher standard of protection for the animals, which are already being maintained in conditions that meet or exceed the AWA requirements.

The AWA requires USDA to perform at least one inspection of each regulated research facility every year. U.S. research facilities use vast numbers of rats and mice in research and testing, and many research facilities use these species exclusively. In 1990, APHIS conducted a study of the potential effects of extending AWA protection to

laboratory rats, laboratory mice, and birds. The estimated annual cost for conducting inspections of the additional research facilities that would come under AWA regulation was at least $3.5 million (in 1990 dollars), or roughly one-third of the current Animal Care budget. This estimate represents only the minimum additional annual funding that would have been needed by APHIS to inspect research facilities that use birds, rats, and mice; it does not include the additional funding that would have been needed to conduct inspections of breeders, dealers, carriers, and intermediate handlers of birds, rats, and mice. Also excluded from this estimate are first-year implementation expenditures (for training, automobile purchases, etc.) and additional annual enforcement costs.

The following facts were derived from the 1990 study and an informal survey of Animal Care managers in 1998:

- The number of regulated research facilities in the United States in 1990 was 2,410. If rats and mice bred for use in research had been brought under AWA regulation that year, an estimated additional 2,324 research sites would have required inspection. Therefore, extending AWA protection to laboratory rats and mice alone would have doubled the number of regulated research facilities.
- Regulating the research facilities, breeders, dealers, and exhibitors that handled birds in 1990 would have added an estimated 2,302 facilities to the Animal Care inspection workload.
- To maintain the level of AWA inspections conducted in 1990 and conduct inspections of facilities that deal with rats, mice, and birds, Animal Care would have needed to hire an estimated additional 34 veterinarians and 16 animal health technicians.

As stated previously, past appropriations have necessitated reductions in Animal Care staffing. Therefore, a staffing increase of the magnitude projected in 1990 would be an impossibility within the current and anticipated Animal Care budget. However, we recognize that the estimates made in the 1990 study are dated at this point, and we would appreciate more current data. Commenters are encouraged to provide information on the numbers of facilities that would come under AWA regulation today if USDA were to regulate the care provided to rats and mice bred for use in research and birds.

Despite the resource issues, we have examined many possible courses of action to bring laboratory rats, laboratory mice, and birds under AWA protection. Four options and the known and anticipated drawbacks of each are discussed below:

1. Regulate the care provided to all rats, mice, and birds being used for purposes covered by the AWA at all facilities, including those not currently being regulated by USDA.

- For APHIS: This option would greatly increase the Animal Care inspection workload and, therefore, would cause inspection activities for all currently regulated facilities-especially breeders, dealers, carriers, and zoos and circuses-to be dramatically curtailed.
- In addition, developing regulatory standards for the care of birds would be difficult, time-consuming, and expensive because the housing and husbandry needs of avian species vary greatly. All Animal Care inspectors would need additional training in the veterinary and husbandry care needs of birds.
- For the regulated industry: Entities not currently regulated by APHIS would need to absorb costs associated with AWA regulation.

2. Regulate the care provided to all rats, mice, and birds at research facilities only.

- This option would increase the number of research sites for Animal Care to inspect and, therefore, would seriously compromise inspection activities for other currently regulated facilities, such as breeders, dealers, carriers, and exhibitors.
- As with option 1, entities not currently subject to regulation by APHIS would become subject to such regulation, and the additional costs to these entities would not necessarily result in greater protection for the animals.

3. Regulate the care provided to all rats and mice at research facilities only.

- Again, this option would increase the number of facilities Animal Care inspects. However, the number would be less than the numbers that would result from the adoption of options 1 or 2. This increase in regulated facilities would also result in reduced inspection activities for currently regulated facilities.
- As with options 1 and 2, research facilities not currently subject to regulation by APHIS would become subject to such regulation.

4. Maintain the status quo. Do not initiate regulation of facilities dealing with rats of the genus *Rattus*, mice of the genus *Mus*, and birds.

- Current AWA inspection activities would not be adversely affected, and no additional entities would need to bear the costs of APHIS regulation.

In addition, we are exploring the possibility of obtaining partial funding for AWA enforcement through user fee authority. USDA is considering seeking the statutory authority to charge fees for the services required to issue and renew licenses and registrations for conducting AWA-regulated activities. Our goal is to recover approximately 30 to 40 percent of our current operating expenses through user fees. However, even if such authority is granted, the amount collected would likely offset a reduction from the current appropriation and would not enable Animal Care to extend effective enforcement services to all facilities that use birds and laboratory rats and mice. In that context, we are seeking public comment on whether it would be appropriate to seek authority to charge user fees for costs associated with any services pertaining to the regulation of the care provided to laboratory rats, laboratory mice, or birds. Because these would be new, rather than existing, services, they could be funded by user fees, with no additional cost to the Federal Government.

In summary, we believe that extending AWA protection to rats and mice bred for use in research and birds with current AWA enforcement resources would have serious consequences for the protection of other species covered by the AWA regulations. To conduct annual inspections of research facilities that use rats, mice, and birds, we would need to reduce by approximately one-third the number of inspections in other areas, such as breeders and dealers of dogs and cats, commercial carriers, large and small zoos, and circuses. We believe that such a reduction in inspection services would greatly compromise our efforts to ensure AWA compliance of all currently regulated facilities and adequate protection to all currently covered species.

The petition is reprinted below. We invite comments on the proposed changes discussed in the petition. In particular, we are soliciting comments addressing the questions listed below before the petition. While we are providing this list of questions for the convenience of persons who wish to submit comments, we will accept written comments in any format or via the electronic form mentioned previously in **ADDRESSES**.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington, DC, this 21st day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

BILLING CODE 3410–34–P

Comments on the Petition for Rulemaking to the Secretary of Agriculture Regarding the Exclusion of Rats of the Genus Rattus, Mice of the Genus Mus, and Birds From the Definition of "Animal" in the Animal Welfare Act Regulations

Question 1: Should the definition of "animal" in 9 CFR part 1 be revised to include laboratory rats, laboratory mice, and birds, or any of the three?

Comment:

Question 2: If the definition of "animal" in 9 CFR part 1 is amended to include laboratory rats, laboratory mice, and birds, should Animal Care regulate the care provided to these species in all circumstances covered by the AWA or in certain circumstances, such as use in research, only?

Comment:

Question 3: The AWA requires that USDA inspect all research facilities at least once a year. Because of current and anticipated resources for AWA enforcement, any coverage of rats, mice, or birds would result in significantly reduced numbers of inspections for other AWA-regulated entities, such as dog and cat dealers, intermediate handlers and carriers, large and small zoos, and circuses. Should AWA enforcement activities be equal for all species covered by the AWA? If not, what should be the relative priorities?

Comment:

Question 4: If the definition of "animal" in 9 CFR part 1 is amended to include laboratory rats, laboratory mice, and birds, how many additional facilities would come under USDA regulation?

Comment:

Question 5: Other comments?

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Petition for Rulemaking To Amend the USDA Regulation Excluding Birds, Rats, and Mice From Coverage Under the Animal Welfare Act

Alternatives Research and Development Foundation, 801 Old York Road, Jenkintown, PA 19046, *and* Rich Ulmer, President, In Vitro International, 16632 Milikan Avenue, Irvine, CA 92606, *et al.* v. Daniel Glickman, Secretary of Agriculture, U.S. Department of Agriculture, 1400 Independence Ave, S.W., Room 200A, Whitten Building, Washington, DC 20250.

I. Introduction

Pursuant to the Right to Petition Government Clause contained in the First Amendment of the United States Constitution,[1] the Administrative Procedure Act,[2] and the United States Department of Agriculture ("USDA") implementing regulations,[3] petitioners file this petition with the USDA and respectfully request the Secretary to undertake the following actions:

(1) Initiate rulemaking proceedings to amend the definition of "animal" contained at 9 CFR 1.1 to eliminate the exclusion of birds, rats and mice; and

(2) Grant such other relief as the Secretary deems just and proper.

USDA's regulation excluding "[b]irds, rats of the genus *Rattus*, and mice of the genus *Mus* bred for use in research" (hereinafter referred to as "birds, rats, and mice") is arbitrary and capricious, an abuse of agency discretion and otherwise not in accordance with law. Petitioners request that a new rulemaking procedure be initiated that is consistent with the Animal Welfare Act ("AWA") by regulating birds, rats, and mice.

I. Petitioners

The AWA, 7 U.S.C. 2131 *et seq.*, is the only federal law regulating the use of animals in research, testing, and education. The 1985 Amendments, 7 U.S.C. note, to the AWA were passed, in part, because Congress found that,

(2) methods of testing that do not use animals are being and continue to be developed which are faster, less expensive, and more accurate than traditional animal experiments for some purposes and further opportunities exist for the development of these methods of testing;

(3) measures which eliminate or minimize the unnecessary duplication of experiments on animals can result in more productive use of Federal funds.

Explicit provisions of the AWA require research facilities to undertake steps in the direction of using alternatives to animals when an animal experiment causes pain or distress.[4] These requirements must be met whenever "animals" are used. Thus, in order to further the Congressional goals of developing methods of testing which do not use animals and developing measures which eliminate or minimize duplication of experiments on animals, the regulatory definition of "animal" is of critical importance. Simply put, if an animal is defined as not being an animal by regulation, there is no statutory or regulatory requirement, that alternatives, i.e., non-animal models, be considered or used instead of that animal. Because USDA has defined birds, rats, and mice as non-animals, there is no statutory or regulatory requirement that anyone consider alternatives to the use of these creatures.

This "Petition for Rulemaking to Amend the USDA Regulation Excluding Birds, Rats, and Mice from Coverage Under the Animal Welfare Act" is filed on behalf of the following petitioners:

Petitioner Alternatives Research and Development Foundation ("ARDF") is located at 801 Old York Road, Jenkintown, PA 19046. ARDF is a four year old nonprofit organization that is affiliated with the American Anti-Vivisection Society ("AAVS"). ARDF supports the development and promotes the use of non-animal methods in research, testing, and education. ARDF has funded numerous in vitro, non-animal methods, projects to promote the development and use of in vitro methods. Some of the projects ARDF has funded include, a computer graphic animations for interactive videodisc alternatives to live animal teaching, the development of an in vitro alternative to replace the isolate tissue bath assay, and the development of a simple, inexpensive alternative to replace mice for small, medium, and large scale monoclonal antibody production. ARDF also gives the annual Cave Award to distinguished people who have developed and promoted the use of alternative methods.

Not only does ARDF sponsor alternative research, but it also works to educate researchers about the use of in vitro methods. In September 1997, the Johns Hopkins University and The Office for Protection from Research Risks of the National Institutes of Health ("NIH") hosted a workshop on the "Alternatives in Monoclonal Antibody Production." This workshop resulted from ARDF's petition to NIH concerning the ASCITES method, a painful form of animal research. ARDF also participated in several workshops sponsored by the organization, Public Responsibility in Medicine and Research "PRIM&R" in March 1998 on "In Vitro and In Vivo Production of Polyclonal and Monoclonal Antibodies." Petitioner is also organizing workshops for the Third World Congress on Alternatives and Animal Use in the Life Sciences. ARDF's programs work to promote the development and use of alternative methods, however, these programs are frustrated and impeded by USDA's illegal definition. USDA has illegally defined "animal" by excluding birds, rats, and mice. Consequently, there is no statutory requirement for researchers to consider alternatives when experimenting on birds, rats, and mice.

Petitioner Rich Ulmer is the President of In Vitro International located at 16632 Milikan Avenue, Irvine, CA 92606. Petitioner heads a science-based, publicly traded company that develops, manufacturers, and markets laboratory tests to replace animal testing. Agents represent the company in the United States and around the world. Petitioner represents one of only three in vitro companies in the world. In Vitro International, also a petitioner, was established to protect the well-being of laboratory animals by promoting the development and use of alternative methods. In Vitro International is marketing a technology that is intended to minimize animal pain and distress by promoting ocular and dermal irritation alternatives for testing the misuse of products such as cosmetics, shampoos, deodorants, and car wash fluids. Because USDA definition of "animal" excludes birds, rats, and mice from AWA protection, researchers have no requirement to consider alternative methods before testing, researching, or experimenting on these "non-animals." This exclusion affects the company's ability to successfully market non-animal methods because researchers have no incentive under the AWA to

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[1] "Congress shall make no law * * * abridging * * * the right of the people * * * to petition Government for a redress of grievances." U.S. Const., amend. I. The right to petition for redress of grievances is among the most precious of the liberties safeguarded by the Bill of Rights. *United Mine Workers of America, Dist. 12* v. *Illinois State Bar Ass'n*, 389 U.S. 217, 222, 88 S. Ct. 353, 356 (1967). It shares the "preferred place" accorded in our system of government to the First Amendment freedoms, and has a sanctity and a sanction not permitting dubious intrusions. *Thomas* v. *Collins*, 323 U.S. 516, 530, 65 S. Ct. 315, 322 (1945). "Any attempt to restrict those First Amendment liberties must be justified by clear public interest, threatened not doubtful or remotely, but by clear and present danger." *Id.* The Supreme Court has recognized that the right to petition is logically implicit in, and fundamental to, the very idea of a republican form of government. *United States* v. *Cruikshank*, 92 U.S. (2 Otto) 542, 552, 23 L. Ed. 588 (1875).

[2] 5 U.S.C. 553(e) (1994).

[3] 7 CFR Subtitle A § 1.28 (1997).

[4] 7 U.S.C. 2143(a)(3) and 7 U.S.C. 2143(b)(3).

consider alternative methods for the excluded animals. As a result, the company has a limited number of consumers interested in using in vitro methods. This is a significant impediment for the growth of the company because birds, rats, and mice encompass the majority of laboratory animals used in research. Petitioners' interest in preventing inhumane treatment of these animals is impeded by USDA's failure to require researchers to consider alternatives before using birds, rats, and mice.

Petitioner Barbara Orlans resides at 7106 Laverock Lane, Bethesda, MD 20817. Petitioner is a Senior Research Fellow at the Kennedy Institute of Ethics at Georgetown University. She received a Bachelor of Science degree in Physiology and a Masters in Science and a Ph.D. degree in Physiology. Petitioner is the author of the books *Animal Care: From Protozoa to Small Mammals, In the Name of Science: Issues in Responsible Animal Experimentation*, and the co-author of *The Human Use of Animals: Case Studies in Ethical Choice*. She has also written numerous articles on animals published in peer-reviewed scientific journals including, "Animal Pain Scales in Public Policy", "Regulation and Ethics of Animal Experiments: An International Comparison", and "Ethical Decision-Making About Animal Experiments." Petitioner teaches a course on ethical issues of animal research at Georgetown University because of her interest in the humane treatment of animals. She was also founding president of the Scientists Center for Animal Welfare, a non-profit organization dedicated to educating scientists about animal issues including the "three R's," reduction, refinement, and replacement of animal testing methods. For over thirty years, Orlans has worked to protect the well-being of laboratory animals. USDA's failure to regulate the use of birds, rats, and mice provides a disincentive for researchers to use alternatives and thus, harms and impedes petitioners ability to educate and encourage researchers and students to use non-animal alternatives.

Petitioner George K. Russell is a professor for the Department of Biology at Adelphi University, Garden City, NY 11530. He has an A.B. and a Ph.D. in biology. Petitioner is one of the first to develop a non-animal approach to teaching undergraduate biology courses. He is also editor of *Orion: People and Nature*. The publication is dedicated to a deeper understanding of human relationships to the environment. For the past twenty-five years, petitioner has been dedicated to protecting the well-being of laboratory animals. He has written several articles urging teachers to avoid experiments that cause harm to animals. Due to USDA's wrongful exclusion of birds, rats, and mice from AWA protection, universities are not required under the AWA to consider the availability of alternatives or the treatment of these "non-animals" when used in animal testing. As a result, students are not educated about the humane treatment of animals or the use and availability of alternative methods.

Petitioner Ruy Tchao resides at 404 Cedar Lane, Flourtown, PA 19031. He has a Bachelor of Science degree in Chemistry and a Ph.D. in Biochemistry. He is an Associate Professor at the Philadelphia College of Pharmacy and Science in the Department of Pharmacology and Toxicology. He has written several articles on the research and development of in vitro methods and the use of these methods as a viable alternative to animal testing. He has worked with in vitro methods for seventeen years because he believes that this type of research can provide more relevant data than the data derived from animals. The AWA requires research facilities to consider alternatives when experimentation on an animal may cause pain or distress. However, USDA has defined birds, rats, and mice as non-animals and as a result, research facilities are not required to consider alternatives for these creatures. Thus, petitioner's promotion of the valuable data obtained from in vitro methods is frustrated and impeded by USDA's definition of "animal."

II. Statement of Facts

In 1966, Congress enacted the Federal Laboratory Animal Welfare Act to address the abuses that develop as a result of experimenting with animals.[5] This Act is the only federal statute designed to protect animals used in all research facilities.

The 1970 amendments enacted a broad definition of animal which covers "warm-blooded animals, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation or exhibition purposes."[6] This language has remained throughout both the 1976 and 1985 amendments. Despite this broad statutory definition, the USDA has excluded birds, rats, and mice from its regulation defining "animal."[7] As a result of this exclusion, the majority of all animals used in research are not protected by the AWA.[8]

Under the AWA, research facilities must meet requirements for animal care and treatment in order to minimize animal pain and distress.[9] Investigators must also consider alternatives to any procedure that is likely to produce pain or distress in animals used for research.[10] Contrary to Congressional intent, USDA's animal welfare regulations do not affect the vast majority of research facilities because USDA has excluded the majority of laboratory animals from AWA protection. Consequently, researchers may research, test, and experiment on birds, rats, and mice without considering the use of any non-animal alternative methods.

On April 23, 1997, AAVS petitioned USDA requesting the agency to amend its animal welfare regulations. USDA denied the petition by claiming that it does not have the resources to regulate these animals at this time.[11] This response is similar to the reply received by the Humane Society of the United States ("HSUS") and the Animal Legal Defense Fund's ("ALDF") petition requesting USDA to amend its definition of "animal." A United States District Court examined the validity of USDA's denial of this petition in *Animal Legal Defense Fund v. Madigan*.[12] The court held that USDA's denial of ALDF's rulemaking petition was arbitrary and capricious because USDA focused on availability of resources and personnel rather than whether these animals are used for purposes that allow them to receive AWA protection.[13] The court also addressed whether USDA has the discretion to exclude birds, rats, and mice from AWA coverage. The court held that USDA's exclusion of these

[5] Pub.L. 89–544, 80 Stat. 359 (1966).

[6] 7 U.S.C. 2132(g) (1994).

[7] 9 C.F.R. 1.1.

[8] U.S. Congress, Office of Technology Assessment, *Alternatives to Animal Use in Research, Testing, and Education* 5 (Washington, D.C., 1986) (reporting that "the best data source available—the USDA/APHIS census—suggests that at least 17 million to 22 million animals were used in research and testing in the United States in 1983. The majority of animals used—between 12 million and 15 million—were rats and mice."). *Also see* USDA's August 6, 1997 response to AAVS' petition (explaining that in 1990 USDA analyzed the impact of covering mice, rats, and birds and concluded that it would represent "a 96 percent increase in the number of animal research sites under USDA inspection authority") [hereinafter "USDA response"].

[9] 7 U.S.C. 2143(a)(3)(A).

[10] *Id.* sec. 2143(a)(3)(B).

[11] USDA response.

[12] *Animal Legal Defense Fund v. Madigan*, 781 F. Supp.797(D.D.C. 1992), *vacated sub nom. Animal Legal Defense Fund v. Espy*, 23 F.3d 496 (D.C. Cir. 1994) (decision vacated because the court held that plaintiffs lacked standing to sue).

[13] *Madigan*, 781 F. Supp. at 805–806.

animals is arbitrary and capricious and violates the AWA.[14]

Despite the holding in *Madigan*, USDA continues to exclude birds, rats, and mice. Petitioners file this petition because USDA's regulation defining "animal" fails to require the use and development of non-animal laboratory research alternatives for the majority of animals used in research, testing, and experimentation. Petitioners are working to further the AWA's purpose by developing and using alternative non-animal methods but are impeded due to USDA's definition of "animal." As long as USDA excludes birds, rats, and mice, all parts of the AWA and the regulations which mandate consideration about the use of alternative methods and the minimization or elimination of painful procedures on animals *bypass* birds, rats, and mice.

Once USDA promulgates rules that are consistent with the AWA by regulating birds, rats, and mice, then the new regulatory protection afforded the majority of laboratory animals will require researchers to minimize animal distress and pain by considering alternative methods. As a result, researchers will have an incentive to use in vitro methods. Thus, in vitro marketers, users, and advocators, including petitioners, will have an opportunity to promote and encourage the use of non-animal methods.

III. Statement of the Law

A. AWA Policies and Congressional Findings

1. Congressional Statement of Policy

The Congress finds that animals and activities which are regulated under this Act (citation omitted) are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this Act (citation omitted) is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

(1) To *insure that animals intended for use in research facilities* or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) To assure the humane treatment of animals during transportation in commerce; and

(3) To protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this Act (citation omitted), the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for *research or experimental purposes* or for exhibition purposes or holding them for sale as pets or for any such purpose or use.[15]

2. Congressional Findings for 1985 Amendment

(1) The use of animals is instrumental in certain research and education for advancing knowledge of cures and treatment for diseases and injuries which afflict both humans and animals;

(2) *Methods of testing that do not use animals are being and continue to be developed which are faster, less expensive, and more accurate than traditional animal experiments for some purposes and further opportunities exist for the development of these methods of testing;*

(3) *Measures which eliminate or minimize the unnecessary duplication of experiments on animals* can result in more productive use of Federal funds; and

(4) Measures which help meet the public concern for laboratory animal care and treatment are important in assuring that research will continue to progress.[16]

B. Definitions of "Animal" Under AWA and USDA Regulations

1. Animal Welfare Act

The term "animal" means any live or dead dog, cats, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet; but such term excludes horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes; [17]

2. USDA Regulations

Animal means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warm-blooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes: Birds, rats of the genus *Rattus* and mice of the genus *Mus* bred for use in research, and horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, sed or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.[18]

C. AWA Standards and Certification Process for Humane Handling, Care, Treatment and Transportation of Animals

(a)(1) The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors.

(3) In addition to the requirements under paragraph (2), the standards described in paragraph (1) shall, with respect to animals in research facilities, include requirements—

(A) For animal care, treatment, and practices in experimental *procedures to ensure that animal pain and distress are minimized,* including adequate veterinary care and the appropriate use of anesthetic, analgesic, tranquilizing drugs, or euthanasia;

(B) *That the principal investigator considers alternatives to any procedure likely to produce pain to or distress in an experimental animal.*

(6)(A) Nothing in this Act (citation omitted)—

(I) Except as provided in paragraphs (7) of this subsection, shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the design, outlines, or guidelines of actual research or experimentation by a research facility as determined by such research facility;

(ii) Except as provided subparagraphs (A) and (C) (ii) through (v) of paragraph (3) and paragraph (7) of this subsection, shall be construed as authorizing the Secretary to promulgate rules, regulations, or orders with regard to the performance of actual research or experimentation by a research facility as determined by such research facility;

(7)(A) The Secretary shall require each research facility to show upon inspection, and to report at least

[14] *Id.* at 806.

[15] 7 U.S.C. 2131 (emphasis added).

[16] *Id.* sec. 2131 note (emphasis added).

[17] *Id.* sec 2132(g).

[18] 9 CFR 1.1 (1997) (emphasis added).

annually, that the provisions of this Act (citation omitted) are being followed and that professionally acceptable standards governing the care, treatment, and use of animal are being followed by the research facility during actual research or experimentation.

(B) In complying with subparagraph (A), such research facilities shall provide—

(I) Information on procedures likely to produce pain or distress in any animal and assurances demonstrating that the *principal investigator considered alternatives to those procedures*;

(ii) Assurances satisfactory to the Secretary that such facility is adhering to the standards described in this section * * *.

(d) Each research facility shall provide for the training of scientists, animal technicians, and other personnel involved with animal care and treatment in such facility as required by the Secretary. Such training shall include instruction on—

(1) The humane practice of animal maintenance and experimentation;

(2) Research or testing methods that *minimize or eliminate the use of animals* or limit animal pain or distress * * *.

(e) The Secretary shall establish an information service at the National Agricultural Library. Such service shall, in cooperation with the National Library of Medicine, provide information—

(2) Which could prevent unintended duplication of animal experimentation as determined by the needs of the research facility; and

(3) On improved methods of animal experimentation, including methods which could

(A) *Reduce or replace animal use*; and

(B) Minimize pain and distress to animals, such as anesthetic and analgesic procedures.

(f) In any case in which a Federal agency funding a research project determines that conditions of animal care, treatment, or practice in a particular project have not been in compliance with standards promulgated under this Act (citation omitted), despite notification by the Secretary or such Federal agency to the research facility and an opportunity for correction, such agency shall suspend or revoke Federal support for the project * * *[19]

[19] 7 U.S.C. 2143 (emphasis added).

IV. Consistent With Congressional Intent Under the Animal Welfare Act, USDA Should Initiate Rulemaking Proceedings To Redefine "Animal" To Include Birds, Rats, and Mice

Congress enacted the Animal Welfare Act ("AWA") and subsequent amendments to protect animals used in research.[20] In order to further congressional intent, petitioners request that USDA promulgate regulations that are consistent with the AWA's definition of "animal." The AWA states that:

> The term "animal" means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes or as a pet; but such term excludes horses not used for research purposes and other farm animals, such as but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for improving animal nutrition, breeding, management or production efficiency, or for improving the quality of food or fiber. With respect to a dog the term means all dogs including those used for hunting, security, or breeding purposes.[21]

Under the AWA, USDA must provide protection to all warm-blooded animals used in research. Instead of complying with this mandate, USDA's regulation excludes birds, rats, and mice from AWA protection despite the fact that these animals encompass the majority of animals used in laboratory research. USDA's exclusion of these animals is arbitrary and capricious and not in accordance with law based upon the Supreme Court's holding in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*[22] The holding in *Chevron* directs a court to apply a two-part test when reviewing an agency's construction of a statute. First, the court is to look at the plain meaning of the statute.[23] If the statute is unambiguous, then the court and the agency must give effect to Congress' intent.[24] Only if a statute is silent or ambiguous must the court then move to the second step under *Chevron* which requires the court to look at whether the agencies interpretation of the statute is reasonable.[25]

[20] *Id.* §§ 2131–2157.
[21] *Id.* sec. 2132(g).
[22] 467 U.S. 837 (1984)
[23] *Id.* at 842–3.
[24] *Id.*
[25] *Id.* at 843.

A. The First Step of the Chevron Analysis Shows That the Purpose and Plain Meaning of the Animal Welfare Act Does Not Support the USDA's Definition of "Animal"

When promulgating a regulation, an agency must first determine whether Congress has directly addressed the subject matter at issue. Under *Chevron*, an agency must make this decision by determining the plain meaning of the statute. Ordinarily, the words of a statute must be interpreted in light of the purpose that Congress intended to serve. In this case, Congress specifically passed the AWA to provide for the humane care and treatment of animals used in research, for exhibition, and as pets.[26]

USDA's exclusion of birds, rats, and mice from AWA protection directly contravenes the AWA's statutory purpose of assuring the humane treatment of laboratory animals. The effect of USDA's regulation is that the regulated industry will never be in violation of the AWA regardless of how it treats birds, rats, and mice. For example, under the AWA, research facilities can deny these animals food, water, appropriate housing and can also inflict excruciating pain without providing an analgesic. In this case, not only does the exclusion of these animals have no relevance to any of the stated purposes of the Act, but the *inclusion* of these animals would insure that animals used in research facilities are provided humane care and treatment as the AWA requires.

Furthermore, the Congressional findings for the 1985 amendments state that "methods of testing that do not use animals are being and continue to be developed which are faster, less expensive, and more accurate than traditional animal experiments for some purposes and further opportunities exist for the development of these methods of testing."[27] Due to USDA's failure to provide birds, rats, and mice AWA protection, the use of alternative methods for these species is rarely, if ever, undertaken. In fact, in USDA's response to the AAVS petition, the agency stated that regulating birds, rats, and mice would constitute a ninety-six percent increase in regulated research facilities. USDA's own figure indicates that the majority of researchers are choosing to use birds, rats, or mice instead of alternatives. By using these animals, facilities can escape inspection and bypass the Act's requirement that they consider alternatives. Because

[26] 7 U.S.C. 2131.
[27] *Id.* sec. 2131 note (emphasis added).

USDA has exempted these animals from the definition of "animal", there is no incentive for the use or advancement of alternative methods for the majority of animals used in research. This practice is contrary to the AWA's purpose of advancing alternatives. Therefore, in light of the general tenet "to favor interpretation which would render statutory design effective in terms of policies behind its enactment and to avoid interpretation which would make such policies more difficult of fulfillment," [28] the AWA's purpose supports the definition of birds, rats, and mice as animals and their regulation in research.

The plain meaning of the AWA also shows that USDA's regulation defining "animal" is inconsistent with the statute. The AWA indicates that if an animal is warm-blooded and used for research, testing, or experimentation, then the animal is an "animal" for AWA purposes. Furthermore, Congress has explicitly stated which limited subset of animals the Secretary is authorized to exclude by stating:

> Such term (animal) excludes horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for improving animal nutrition, breeding, management or production efficiency, or for improving the quality of food or fiber. With respect to a dog the term means all dogs including those used for hunting, security, or breeding purposes.[29]

Although, birds, rats, and mice are not included in this list of excluded animals, the Secretary has arbitrarily decided to exclude them from the protections of this Act.

A Congressional report issued in 1986 provides further evidence that USDA's regulation contradicts the AWA's plain meaning. The Office of Technology Assessment ("OTA") conducted a study to analyze the scientific, regulatory, economic, legal, and ethical considerations involved in alternative technologies in biomedical and behavioral research, toxicity testing, and education.[30] The report lays out numerous policy issues and options for Congressional action and reiterates the AWA's inconsistency with USDA's regulation. The OTA report concludes that the exclusion of mice and rats from the protections of the AWA is inconsistent with the language of the Act and "appears to frustrate the policy Congress sought to implement in 1970 and consequently to be beyond the Secretarys authority." [31]

In support of its exclusion of birds, rats, and mice, the USDA argues in its response to the AAVS petition that the AWA "gives the Secretary of Agriculture broad discretionary authority to exclude rats of the genus Rattus, mice of the genus Mus, and birds." [32] This argument, however, is in direct contrast to USDA's prior position where it stated that it had no discretion to exclude warm-blooded animals used in research. The agency previously explained:

> * * * Gerbils became a regulated species when the 1970 amendments to the Act expanded the definition of "animal" to include "such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use for research, testing * * *." We do not have the authority to remove these animals from the coverage of the regulations.[33]

USDA admits in the gerbil example that it has no discretionary authority to deny protection to warm-blooded animals used in research under the AWA. In fact, the Secretary has promulgated an entire subset of generic animal welfare regulations that govern the care and handling of animals not specifically mentioned in the statute but are covered by the AWA because they are warm-blooded and used for research.[34] These generic regulations address animal care including feeding, watering, temperature, cage space, and handling.

USDA has also admitted that birds, rats, and mice are used for the purposes described in the AWA.[35] However, USDA's generic animal care regulations do not cover birds, rats, and mice. This exclusion leaves these species with no minimum standards for their care, no protections under the Act, and no legal barriers preventing cruelty, intentional or negligent deprivation of food, water, shelter or veterinary care. These effects are contrary to Congress' stated purpose under the AWA of providing humane care and treatment for animals used in research.[36]

Based on this information, the purpose and plain meaning of the AWA indicates that USDA's exclusion of birds, rats, and mice contradicts and frustrates the AWA. Furthermore, the interpretation of the AWA as explained in the OTA report, USDA's admissions, and USDA's own regulations indicates that the exclusion is inconsistent with the statute. A *Chevron* step one analysis shows that the statute is unambiguous and, therefore, USDA should immediately redefine the term "animal" and regulate birds, rats, and mice.

B. The Second Step of the Chevron Analysis Shows That the Definition of "Animal" Is Not Reasonable

The second step of the *Chevron* analysis is only necessary if the statute is ambiguous. The key issue is "whether the agency's view that [its construction] is appropriate in the context of this particular program is a reasonable one." [37] In this case, even if the AWA statutory language is ambiguous, USDA's regulation is not reasonable. Applying *Chevron* to this case presents the issue of whether USDA has the discretion to exclude birds, rats, and mice from the definition of "animal."

1. The Animal Welfare Act's Legislative History Does Not Support USDA's Regulation Defining "Animal"

Congress first passed the AWA in 1966 and defined "animal" as a "live dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster and rabbit." [38] This language limited AWA protection to six specific species. However in 1970, Congress amended the statute to include "such other warm-blooded animal as the Secretary may determine is being used, or intended for use, for research, testing, experimentation." [39] This language broadened the number of species protected under the Act and has remained throughout both the 1976 and 1985 amendments.

The legislative history of the AWA provides no indication that Congress authorized the Secretary's regulation excluding birds, rats, and mice. When the AWA was amended in 1970, Congress was aware of the wide use of birds, rats, and mice in research but did not explicitly deny these animals protection under the Act. Instead, Congress used the phrase "warm-blooded animal" in order to expand the species of animals protected by the Act.

If Congress had intended for the Secretary to have unlimited discretion to designate which warm-blooded animals were to be protected under the Act, then the legislature would have specifically stated it in the statute. Not

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[28] *Motor & Equipment Manufacturers Ass'n, Inc. v. E.P.A.*, 627 F.2d 1095 (D.C. Cir. 1979), *cert. denied, General Motors Corp. v. Costle*, 446 U.S. 952 (1980).

[29] *Id.* sec. 2132(g).

[30] U.S. Congress, Office of Technology Assessment, Alternatives to Animal Use in Research, Testing, and Education (1986) [hereinafter OTA Report].

[31] *Id.* at 278.

[32] USDA response at 1.

[33] 54 FR 10824 (March 15, 1989).

[34] 9 CFR 3.125 (subpart f).

[35] *Madigan*, 781 F. supp. at 801.

[36] U.S.C. 2131.

[37] *Chevron*, 467 U.S. at 845.

[38] 80 Stat. 350, 351 (1966).

[39] 7 U.S.C. 2132(g).

only is there no statutory language granting USDA unlimited discretion, but the legislative history also reveals that Congress did *not* intend for the Secretary to have broad discretion. This intent is evident by Congress' rejection of Representative Whitehurst's proposed amendment which defined "animal" to include "any warm-blooded animal, as determined by the Secretary." [40] This amendment would have given the Secretary the discretion to choose which warm-blooded animals would be protected by the Act and thus would support USDA's exclusion of birds, rats, and mice.

Instead of amending the AWA to give the Secretary broad discretion to exclude animals, Congress wanted to expand the definition of "animal" to include more species while specifically delineating which animals would be exempted. The house and floor discussions support this assertion:

Rep. Thomas Foley (D-Washington), speaking on behalf of the House Agriculture Committee, remarked that "(t)his bill, within its definition *includes all warm-blooded animals designated by the Secretary, with certain specific limitations and defined exceptions.*" [41]

Rep. Catherine May (R-Washington), urging her colleagues to approve the legislation described the bill: "First, it *expands the definition of the term 'animal' to include more species.* The present law applies only to live dogs, cats, rabbits, hamsters, guinea pigs, and monkeys. *All warm-blooded animals designated by the Secretary of Agriculture, with limited exceptions would be included.*" [42]

Rep. Wiley Mayne (R-Iowa) agreed that the bill "*expands the definition of covered animals to include all warm-blooded animals designated by the Secretary,* rather than just live dogs, cats, rabbits, hamsters, guinea pigs, and monkeys." [43]

Rep. Wilmer Mizell (R-North Carolina) explained that "[t]his bill includes provisions regulating the transportation, purchase, sale, housing, care, handling and treatment of warm-blooded animals used in research * * * *(m)ore species of animals will be protected: all warm-blooded animals designated by the Secretary of Agriculture, with but a few specific exceptions.*" [44]

Rep. Robert Price (R-Texas) remarked that the bill "extends the definition to include all warm-blooded animals designated by the Secretary of Agriculture, *with certain specific limitations and defined exceptions.*" [45]

The Supreme Court has stated that when "statements of individual legislators * * * are consistent with the statutory language and legislative history, they provide evidence of Congress' intent." [46] The statements from these individual legislatures all indicate that Congress intended the AWA to cover *all* warm-blooded animals used in research, including birds, rats, and mice with only a few specific exceptions.

A House Committee on Agriculture report which accompanied the proposed bill also supports this premise: "This bill includes within its definition all warm-blooded animals designated by the Secretary with only *limited and specifically defined exceptions.*" [47] Additionally, a letter from then Secretary of Agriculture J. Phil Campbell to W.R. Poage, Chairman of the Committee on Agriculture, explained that "(i)f Federal regulation of laboratory animals is extended to all warm-blooded animals, we suggest it would be appropriate and consistent to extend the species of animals presently regulated under (the AWA) to include all warm-blooded animals." Not only does the legislative history show Congress' intent in expanding the number of animals protected by the AWA, but it also shows that the Secretary of Agriculture understood and supported Congress' purpose.

Based on the legislative history, it is unreasonable to conclude that Congress amended the AWA in order to provide more animals protection while also giving the Secretary the broad discretion to exclude the majority of animals used in research, testing, and experimentation. The only discretion Congress granted the Secretary was the authority to determine whether warm-blooded animals are being used for research, testing, or experimentation. Indeed, in *Madigan*, the court looked at USDA's discretionary authority and found that, "since the USDA does not dispute that birds, rats, and mice are used for [research] purposes, it is inconsistent with the plain meaning of the statute and 'the unambiguously expressed intent of Congress to exclude them from coverage under the Act.' " [48] The court also conducted a *Chevron* step two analysis and found that the agency's definition of "animal" was not supported by the legislative history. [49]

The legislative history along with the reasoning in the *Madigan* decision shows that USDA does not have the discretion to choose which warm-blooded animals used in research it will deny AWA protection. The effect of USDA's exclusion demonstrates its illegality, because the majority of laboratory animals are not presently covered by USDA's animal welfare regulations. Based on this information, USDA's exclusion of birds, rats, and mice is ultra vires because Congress has not specifically granted the agency authority to decide on a matter that Congress has already addressed.

2. USDA Has Not Reasonably Justified Its Regulation Excluding Birds, Rats, and Mice From Animal Welfare Protection

USDA's interpretation of the AWA is not reasonable because it does not satisfy the *Chevron* step-two framework. In *Chevron*, the Supreme Court found that EPA's construction of the Clean Air Act was reasonable because the agency: (1) Advanced a reasonable explanation for its conclusion that the regulations serve the statutory objectives; (2) balanced competing statutory concerns in a technical and complex regulatory scheme; and (3) engaged consistently and historically in a search to review and question its policy on a continuing basis. [50]

In this case, USDA has failed to show the reasonableness of its regulation. In fact, USDA enacted its regulation excluding birds, rats, and mice in 1971 without any explanation showing how the exclusion of these animals meets the AWA's objective in providing for the humane treatment of animals. [51] In 1989, when questioned about the exclusion, the agency stated "we do have the authority to regulate these animals, though except for wild rats and mice, we have never covered them in our regulations. However, * * * we are considering developing regulations and standards for them." [52] Nine years have passed since this statement and during this time, the agency has failed to initiate any rulemaking proceedings to regulating birds, rats, and mice. USDAs failure to give any explanation for its arbitrary exclusion of these animals does not demonstrate reasoned decision-making. The Supreme Court addressed the issue of agency deference by stating:

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[40] *Hearings before the Subcommittee on Livestock and Grains of the House Agricultural Committee on H.R. 13957 to Amend the 1966 Act, 91st Cong., 2d Sess. 84 (1970).*

[41] 116 Cong. Rec. H40154 (Dec. 7, 1970) (emphasis added).

[42] 116 Cong. Rec. H40156 (Dec. 7, 1970) (emphasis added).

[43] 116 Cong. Rec. H40158 (Dec. 7, 1970) (emphasis added).

[44] 116 Cong. Rec. H40159 (Dec. 7, 1970) (emphasis added).

[45] 116 Cong. Rec. H40159 (Dec. 7, 1970) (emphasis added).

[46] *Brock* v. *Pierce County*, 476 U.S. 253, 106 S.Ct. 1834 (1986).

[47] H.R. Rep. No. 1651, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.C.C.A.N. 5103, 5104 (emphasis added).

[48] 781 F. Supp. at 801 (citation omitted).

[49] *Id.* at 802.

[50] *Chevron*, 467 U.S. 863–65.

[51] 36 FR 24917–27 (Dec. 24, 1971).

[52] 54 FR 10823 (March 15, 1989).

Agency deference has not come so far that we will uphold regulations wherever it is possible to conceive a basis for administrative action * * * Thus the mere fact that there is "some rational basis within the knowledge and experience of the (regulators)" under which they "might have concluded" that the regulation was necessary to discharge their statutorily authorized mission, will not suffice to validate agency decisionmaking * * * Our recognition of Congress need to vest administrative agencies with ample power to assist in the difficult task of governing a vast and complex industrial Nation carries with it the correlative responsibility of the agency to explain the rationale and factual basis for its decision, even though we show respect for the agency's judgement in both.[53]

Whether USDA has discretionary authority under the AWA to exclude these animals was addressed in *Madigan*. Judge Richey found that USDA's argument for discretionary authority under the Act was "strained and unlikely."[54] USDA has not shown that excluding birds, rats, and mice is reasonable. Therefore, USDA should redefine "animal" in accordance with the AWA.

C. USDA Was Arbitrary and Capricious in Refusing AAVS's Petition To Initiate Rulemaking Proceedings

The only explanation USDA gave for denying AAVS' petition for rulemaking was that it was not economically practical.[55] In denying AAVS' petition, USDA analyzed the increase cost that would result from regulating birds, rats, and mice. Based on that information, USDA decided not to grant these animals AWA protection. USDA's reliance on budgetary constraints is arbitrary and capricious because the agency failed to consider the many parts of the Act that are self implementing.[56]

In *Madigan*, the court explained that "birds, rats, and mice could be included in the definition without requiring the expenditure of significant agency resources" because the AWA includes many provisions that are self-implementing by the regulated industry.[57] By regulating these animals, researchers would be required to treat animals humanely without any action from the agency. In *Madigan*, the court held that USDA's denial of ALDF's rulemaking petition based upon the availability of resources and increase cost was arbitrary and capricious and not in accordance with law.[58] Based upon the *Madigan* decision, USDA's denial of a rulemaking petition to redefine "animal" based solely on economic reasons is not valid. Therefore, USDA should grant this petition by initiating rulemaking proceedings to regulate birds, rats, and mice consistently with the AWA.

V. Agency Action Requested

The AWA's purpose and plain meaning, Congress' legislative intent, and the reasoning in *Madigan* show that birds, rats, and mice should be granted protection under the AWA. Furthermore, the USDA has acknowledged that it has the authority to regulate rats and mice and has admitted that the agency was considering developing regulations for these animals.[59] However, the agency's continual delay in addressing this matter along with its justification for denying these animals protection is unreasonable and demands further consideration.

Therefore, for the reasons cited in this petition, the petitioner requests that the USDA immediately amend its current definition to include mice, rats, and birds under the AWA. The proposed regulation should be amended to read as follows:

Animal means any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warm-blooded animal, which is being used, or is intended for use for research, teaching, testing, experimentation, or exhibition purposes, or as a pet. This term excludes horses not used for research purposes and other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs, including those used for hunting, security, or breeding purposes.

Except as described above, petitioners know of no other similar issue, act, or transaction to this petition currently being considered or investigated by any USDA office, other federal agency, department, or instrumentality, state municipal agency or court, or by any law enforcement agency.

As required by 7 CFR Subtitle A § 1.28, the USDA is required to give this petition prompt consideration. Petitioner is requesting a substantive response to this petition within ninety (90) calendar days. In the absence of an affirmative response, petitioners will be compelled to consider litigation in order to achieve the agency actions requested.

The undersigned certifies that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data known to the petitioner which are unfavorable to the petition.

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[53] *Bowen* v. *Am. Hosp. Ass'n.*, 476 U.S. 610, 627 (1986) (citations omitted).

[54] Animal Legal Defense Fund, 781 F. Supp. at 800–806

[55] USDA response at 1–2.

[56] *See* eg., 7 U.S.C. 2143 (a)(7)(A) (requiring each research facility to provide information on procedures that may produce pain or distress in animals and also provide assurances that alternatives were considered) 7 U.S.C. 2136 (every research facility shall register with the Secretary).

[57] 781 F. Supp. at 803.

[58] *Id.*

[59] 54 FR 10,823.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–225–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the Instructions for maintenance manual [757 Airworthiness Limitations Instructions (ALI)]. The revision would incorporate certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). This proposal is prompted by analysis of data that identified specific initial inspection thresholds and repetitive inspection intervals for certain PSE's to be added to the ALI. The actions specified by the proposed AD are

intended to ensure that fatigue cracking of various PSE's is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Comments must be received by March 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–225–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Patrick Safarian, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (425) 227–2775; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–225–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–225–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In accordance with airworthiness standards requiring "damage-tolerance assessments" [reference current section 1529 of parts 23, 25, 27, and 29 of the Federal Aviation Regulations (FAR); section 4 of parts 33 and 35 of the FAR; section 82 of part 31 of the FAR; and the Appendices referenced in those sections], all products certificated to comply with those sections must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals) that include an Airworthiness Limitations Section. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the Airworthiness Limitations Section is required by FAR sections 43.16 (for persons maintaining products) and 91.403 (for operators).

As airplanes gain service experience, or as the result of post-certification testing and evaluation, it may become necessary to add additional life limits or structural inspections in order to ensure the continued structural integrity of the airplane. The manufacturer may revise the Airworthiness Limitations Section to include new or more restrictive life limits and inspections. However, in order to require compliance with those revised life limits and/or inspection intervals, the FAA must engage in rulemaking. Because loss of structural integrity would result in an unsafe condition, it is appropriate to impose these requirements through the airworthiness directive (AD) process.

Actions Taken by the Manufacturer

Boeing recently has completed extensive analyses and testing of fatigue cracking of principal structural elements (PSE) on certain Model 757 series airplanes, which included:

- Crack growth analysis,
- Service experience analysis,
- Crack growth testing,
- Fatigue testing, and
- Analysis of the effectiveness of applicable non-destructive inspection
- Techniques to detect cracking and other anomalies.

The results of the testing and analyses demonstrated the need to incorporate certain inspections into the current Airworthiness Limitations Instructions (ALI).

New Revision of ALI

The FAA has reviewed and approved Boeing Document D622N001–9, Revision "MAY 1997," titled "757 Maintenance Planning Data Document (MPD) Section 9, Airworthiness Limitations and Certification Maintenance Requirements (CMRs)." That document is the ALI of the maintenance manual to which this proposed AD refers. That document describes specific initial inspection thresholds and repetitive inspection intervals for certain PSE's [identified as structural significant items (SSI) in the ALI]. That document explicitly identifies, for the first time, all of the PSE's that are to be inspected in accordance with the requirements of the ALI.

Although the Boeing document includes thresholds for all PSE's, in many cases the identified threshold is 50,000 total flight cycles for passenger airplanes. Because none of the affected airplanes is likely to reach this threshold for a number of years, Boeing has not yet developed the specific inspection procedures for these PSE's. However, these procedures will be developed well before any airplane reaches the threshold, and the FAA may consider further rulemaking when they become available.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require operators to revise the 757 ALI to incorporate Boeing Document D622N001–9, Revision "MAY 1997" of the ALI. However, nothing in this proposed AD is intended to affect any of the requirements related to the life limits or certification maintenance requirements that are contained elsewhere in the ALI. This proposed AD is intended to address only those PSE inspections that are referred to in Chapter B. ("Airworthiness Limitations—Structural Inspections") of Boeing Document D622N001–9, Revision "MAY 1997."

Explanation of Action Taken by the FAA

As stated previously, in order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely, the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the Airworthiness Limitations Section that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under FAR section 91.403(c), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

Once that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the Airworthiness Limitations. (This is analogous to AD's that require changes to the Limitations Section of the Airplane Flight Manual.)

Requiring a revision of the Airworthiness Limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all Airworthiness Limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

Determination of Grace Period

This proposed AD allows operators up to three years after the effective date of this AD to accomplish the ALI revision required by this AD. This period provides operators of airplanes that are approaching or have already reached the 25,000-flight-cycle inspection threshold with a reasonable amount of time to plan and perform the inspections. The FAA notes that only one PSE in the ALI has an initial inspection threshold of 25,000 total flight cycles. The majority of PSE's in the ALI have an initial inspection threshold that corresponds to the design service objective of the affected airplane (i.e., 50,000 total flight cycles). In addition, the Model 757 Structures Working Group, whose membership is composed of many of the major operators worldwide and almost all U.S. operators, has been aware of the specific contents and requirements of this ALI revision since August 1996. These facts have led the FAA to determine that three years is an appropriate and reasonable grace period for operators to perform the earliest PSE inspections.

Cost Impact

There are approximately 764 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $18,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Although this proposed AD requires only a revision to the current ALI, the FAA recognizes that the inspections contained in the ALI would then be required by parts 43 and 91 of the FAR. The FAA estimates that it would take approximately 1,000 work hours to accomplish all of the ALI inspections. At an average labor rate of $60 per work hour, the cost to perform the ALI inspections (required by FAR parts 43 and 91, rather than by part 39) would be approximately $60,000 per airplane. The FAA notes that the majority of work hours needed to perform the inspections would be expended when an affected airplane reached the 50,000-flight-cycle threshold. Based upon current airplane utilization, the FAA estimates that no airplane would reach this threshold for at least 10 years.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–225–AD.

Applicability: Model 757 series airplanes having line numbers 1 through 764 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

(a) Within 3 years after the effective date of this AD, revise Section 9 of the Model 757 Maintenance Planning Data (MPD) Document entitled "Airworthiness Limitations and Certification Maintenance Requirements (CMRs)" to incorporate Chapter B. of Boeing Document D622N001–9, Revision "MAY 1997."

Note 2: The referenced Chapter B. contains a requirement that cracks found during the specified inspections be reported to the Seattle Aircraft Certification Office. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) and have been assigned OMB Control Number 2120–0056.

(b) Except as provided in paragraph (c) of this AD: After the actions required by paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the PSE's contained in Boeing Document D622N001–9, Revision "MAY 1997."

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1979 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that would have required repetitive lubrication of the engine control push-pull cables. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by adding a requirement to install heating tubes on the control cables in the cockpit area and in the left-hand and right-hand engine balconies, which would terminate the repetitive lubrication requirement. The actions specified by this new proposed AD are intended to prevent ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane.

DATES: Comments must be received by February 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–156–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–156–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on July 7, 1998 (63 FR 36621). That NPRM would have required repetitive lubrication of the engine control push-pull cables. That NPRM was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. Ice building up on the engine control push-pull cables during flight prompted operators to descend to a lower altitude (higher temperature) to melt off any build-up. Such build-up of ice on the engine control push-pull cables, if not corrected, could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

When the previous NPRM was issued, the FAA indicated that the actions proposed in that NPRM were considered interim action and that further rulemaking action was being considered. The manufacturer now has developed a modification, which, when accomplished, would terminate the requirement for repetitive lubrication of the engine control push-pull cables. Consequently, the FAA has determined that further rulemaking action is indeed necessary in order to address the unsafe condition and ensure the continued safe operation of those airplanes; this

supplemental NPRM follows from that determination.

New Service Information

Dornier has issued Service Bulletin SB–328–76–254, dated June 30, 1998, and Revision 1, dated August 6, 1998, that describe procedures for installation of heating tubes on the control cables in the cockpit area. Dornier also has issued Service Bulletin SB–328–76–267, Revision 1, dated September 25, 1998, and Revision 2, dated October 8, 1998, that describe procedures for installation of heating tubes on the control cables in the left-hand and right-hand engine balconies. Installation of heating tubes on the control cables in accordance with those service bulletins would eliminate the need for repetitive lubrication of the engine control push-pull cables. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, classified these service bulletins as mandatory and issued German airworthiness directive 1997–148/6, dated December 3, 1998, in order to assure the continued airworthiness of these airplanes in Germany.

Conclusion

Since this change expands the scope of the originally proposed rule by proposing to add a requirement to install heating tubes on the control cables of the cockpit area and in the left-hand and right-hand engine balconies, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed lubrication, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact on U.S. operators is estimated to be $12,000, or $240 per airplane.

The FAA estimates that the installation of heating tubes on the control cables proposed in this AD action would take approximately 50 work hours per airplane to accomplish, and that the average labor rate is $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators is estimated to be $150,000, or $3,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GMBH: Docket 98–NM–157–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice from building up on the engine control push-pull cables, which could result in friction or jamming of the engine controls, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 2 months after the effective date of this AD, lubricate the engine control push-pull cables in accordance with Dornier Alert Service Bulletins ASB–328–76–022, dated December 22, 1997, and ASB–328–76–015, Revision 3, dated January 9, 1998. Repeat the lubrication thereafter at intervals not to exceed 300 flight hours until the actions required by paragraph (b) of this AD are accomplished.

(b) Within 6 months after the effective date of this AD, accomplish the actions specified in paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of these actions constitutes terminating action for the repetitive lubrication requirement of paragraph (a) of this AD.

(1) Install heating tubes on the control cables in the cockpit area in accordance with Dornier Service Bulletin SB–328–76–254, dated June 30, 1998, or Revision 1, dated August 6, 1998.

(2) Install heating tubes on the control cables in the left and right engine balconies in accordance with Dornier Service Bulletin SB–328–76–267, Revision 1, dated September 25, 1998, or Revision 2, dated October 8, 1998.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in German airworthiness directives 1998–105, dated January 30, 1998, and 1997–148/6, dated December 3, 1998.

Issued in Renton, Washington, on January 21, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1978 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–276–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require revising the Airworthiness Limitations Section of the maintenance manual [767 Airworthiness Limitations Instructions (ALI)]. The revision would incorporate into the ALI certain inspections and compliance times to detect fatigue cracking of principal structural elements (PSE). This proposal is prompted by analysis of data that identified specific initial inspection thresholds and repetitive inspection intervals for certain PSE's to be added to the ALI. The actions specified by the proposed AD are intended to ensure that fatigue cracking of various PSE's is detected and corrected; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Comments must be received by March 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–276–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Patrick Safarian, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington; telephone (425) 227–2775; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–276–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–276–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In accordance with airworthiness standards requiring "damage-tolerance assessments" [reference current section 1529 of parts 23, 25, 27, and 29 of the Federal Aviation Regulations (FAR); section 4 of parts 33 and 35 of the FAR; section 82 of part 31 of the FAR; and the Appendices referenced in those sections], all products certificated to comply with those sections must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals) that include an Airworthiness Limitations Section. That section must set forth:

- Mandatory replacement times for structural components,
- Structural inspection intervals, and
- Related approved structural inspection procedures necessary to show compliance with the damage-tolerance requirements.

Compliance with the terms specified in the Airworthiness Limitations Section is required by FAR sections 43.16 (for persons maintaining products) and 91.403 (for operators).

As airplanes gain service experience, or as the result of post-certification testing and evaluation, it may become necessary to add additional life limits or structural inspections in order to ensure the continued structural integrity of the airplane. The manufacturer may revise the Airworthiness Limitations Section to include new or more restrictive life limits and inspections. However, in order to require compliance with those revised life limits and/or inspection intervals, the FAA must engage in rulemaking. Because loss of structural integrity would result in an unsafe condition, it is appropriate to impose these requirements through the airworthiness directive (AD) process.

Actions Taken by the Manufacturer

Boeing recently has completed extensive analyses and testing of fatigue cracking of principal structural elements (PSE) on certain Model 767 series airplanes, which included:

- Crack growth analysis,
- Service experience analysis,
- Crack growth testing,
- Fatigue testing, and
- Analysis of the effectiveness of applicable non-destructive inspection techniques to detect cracking and other anomalies.

The results of the testing and analyses demonstrated the need to incorporate certain inspections into the current Airworthiness Limitations Instructions (ALI).

New Revision of ALI

The FAA has reviewed and approved Boeing Document D622T001–9, Revision "JUNE 1997," titled "767 Maintenance Planning Data (MPD) Document, Section 9, Airworthiness Limitations and Certification Maintenance Requirements (CMRs)." That document is the ALI of the maintenance manual to which this proposed AD refers. That document describes specific initial inspection thresholds and repetitive inspection intervals for certain PSE's [identified as structural significant items (SSI) in the ALI]. That document explicitly

identifies, for the first time, all of the PSE's that are to be inspected in accordance with the requirements of the ALI.

Although the Boeing document includes thresholds for all PSE's, in many cases the identified threshold is 50,000 total flight cycles for passenger airplanes. Because none of the affected airplanes is likely to reach this threshold for a number of years, Boeing has not yet developed the specific inspection procedures for these PSE's. However, these procedures will be developed well before any airplane reaches the threshold, and the FAA may consider further rulemaking when they become available.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require operators to revise the Boeing Model 767 ALI to incorporate Boeing Document D622T001–9, Revision "JUNE 1997." However, nothing in this proposed AD is intended to affect any of the requirements related to the life limits or certification maintenance requirements that are contained elsewhere in the ALI. This proposed AD is intended to address only those PSE inspections that are referred to in Chapter B. "Airworthiness Limitations-Structural Inspections" of Boeing Document D622T001–9, Revision "JUNE 1997."

In addition, Model 767–300F freighter airplanes are not affected by this rule because the revision of the ALI that was in effect at the time of the first delivery of a Model 767–300F freighter already addressed the need for inspections of PSE's.

Explanation of Action Taken by the FAA

As stated previously, in order to require compliance with these inspection intervals and life limits, the FAA must engage in rulemaking, namely, the issuance of an AD. For products certificated to comply with the referenced part 25 requirements, it is within the authority of the FAA to issue an AD requiring a revision to the Airworthiness Limitations Section that includes reduced life limits, or new or different structural inspection requirements. These revisions then are mandatory for operators under FAR section 91.403(c), which prohibits operation of an airplane for which airworthiness limitations have been issued unless the inspection intervals specified in those limitations have been complied with.

Once that document is revised, as required, and the AD has been fully complied with, the life limit or structural inspection change remains enforceable as a part of the Airworthiness Limitations. (This is analogous to AD's that require changes to the limitations section of the Airplane Flight Manual.)

Requiring a revision of the Airworthiness Limitations, rather than requiring individual inspections, is advantageous for operators because it allows them to record AD compliance status only once—at the time they make the revision—rather than after every inspection. It also has the advantage of keeping all Airworthiness Limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

Determination of Grace Period

This proposed AD allows operators up to three years after the effective date of this AD to accomplish the ALI revision required by this AD. This period provides operators of airplanes that are approaching or have already reached the 25,000-flight-cycle inspection threshold with a reasonable amount of time to plan and perform the inspections. The FAA notes that only a few PSE's in the ALI have an initial inspection threshold of 25,000 total flight cycles. The majority of PSE's in the ALI have an initial inspection threshold that corresponds to the design service objective of the affected airplane (i.e., 50,000 total flight cycles for passenger airplanes). In addition, the Model 767 Structures Working Group, whose membership is composed of many of the major operators worldwide and almost all U.S. operators, has been aware of the specific contents and requirements of this ALI revision since August 1996. These facts have led the FAA to determine that three years is an appropriate and reasonable grace period for operators to perform the earliest PSE inspections.

Cost Impact

There are approximately 660 Boeing Model 767 series airplanes (excluding Model 767–300F freighters) of the affected design in the worldwide fleet. The FAA estimates that 250 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $15,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Although this proposed AD requires only a revision to the current ALI, the FAA recognizes that the inspections contained in the ALI would then be required by parts 43 and 91 of the FAR. The FAA estimates that it would take approximately 1,000 work hours to accomplish all of the ALI inspections. At an average labor rate of $60 per work hour, the cost to perform the ALI inspections (required by FAR parts 43 and 91, rather than by part 39) would be approximately $60,000 per airplane. The FAA notes that the majority of work hours needed to perform the inspections would be expended when an affected airplane reached the 50,000 flight-cycle-threshold. Based upon current airplane utilization, the FAA estimates that no airplane would reach this threshold for at least 10 years.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 97–NM–276–AD.

Applicability: Model 767–200 and –300 series airplanes having line numbers 1 through 669 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure continued structural integrity of these airplanes, accomplish the following:

(a) Within 3 years after the effective date of this AD, revise Section 9 of the Model 767 Maintenance Planning Data (MPD) Document entitled "Airworthiness Limitations and Certification Maintenance Requirements (CMR's)" to incorporate Chapter B. of Boeing Document D622T001–9, Revision "JUNE 1997."

Note 2: The referenced Chapter B contains a requirement that cracks found during the specified inspections be reported to the Seattle Aircraft Certification Office. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) and have been assigned OMB Control Number 2120–0056.

(b) Except as provided in paragraph (c) of this AD: After the actions required by paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals shall be approved for the PSE's contained in Boeing Document D622T001–9, Revision "JUNE 1997."

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 21, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1977 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–104924–98]

RIN 1545–AW06

Mark-to-Market Accounting for Dealers in Commodities and Traders in Securities or Commodities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations for dealers in commodities and traders in securities or commodities regarding the election to use the mark-to-market method of accounting for their businesses. Section 1001(b) of the Taxpayer Relief Act of 1997 amended the applicable tax law for these taxpayers. This document also contains proposed regulations providing guidance on statutory changes to section 475 contained in the Internal Revenue Service Restructuring and Reform Act of 1998 (IRS Restructuring Act). This guidance is necessary because section 7003 of the IRS Restructuring Act generally prohibited the application of mark-to-market accounting to nonfinancial customer paper. Among other things, the proposed regulations provide guidance to taxpayers who are using mark-to-market accounting for nonfinancial customer paper. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments and outlines of topics to be discussed at the public hearing scheduled for June 3, 1999, at 10 a.m. must be received by May 13, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–104924–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–104924–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax—regs/comments.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations about elections by commodities dealers and securities and commodities traders, Jo Lynn Ricks, 202–622–3920; concerning the regulations about nonfinancial customer paper, Pamela Lew, 202-622–3950; concerning submissions and the hearing, Michael L. Slaughter, Jr., 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments concerning the collection of information must be received by March 29, 1999.

The first collection of information in this proposed regulation is described in the Explanation of Provisions section of this document (rather than being included in the text of the proposed regulations). That description indicates that the elections under section 475(e)(1) and (f)(1) and (2) may be required to be made on a form to be

developed by the IRS. This burden will be reflected on that new form.

The second collection of information in this proposed regulation is in §§ 1.475(e)–1 and 1.475(f)–2. The information required to be recorded under §§ 1.475(e)–1 and 1.475(f)–2 is required by the IRS to determine whether an exemption from mark-to-market accounting is properly claimed. This information will be used to make that determination upon audit of taxpayers' books and records. The likely recordkeepers are businesses or other for-profit institutions. Estimated total annual recordkeeping burden: 1,000 hours. The estimated annual burden per recordkeeper varies from 15 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1 hour. Estimated number of recordkeepers: 1,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 475 provides that dealers in securities generally must use mark-to-market accounting for all securities. Exceptions from the mark-to-market requirement are generally provided for securities not held for sale to customers and certain securities held as a hedge, provided that the securities are identified as exempt in a proper and timely manner.

For purposes of section 475, a security includes any note, bond, debenture, or other evidence of indebtedness. Revenue Ruling 97–37 (1997–39 I.R.B. 4), clarified that "other evidence of indebtedness" includes customer paper, commonly referred to as trade accounts receivable. The IRS provided procedures for a taxpayer to change its method of accounting for customer paper in Revenue Procedure 97–43 (1997–39 I.R.B. 12).

The IRS Restructuring Act modified the definition of security for purposes of section 475 to exclude nonfinancial customer paper. For this purpose, nonfinancial customer paper is any receivable arising out of the sale of nonfinancial goods or services by a person the principal activity of which is the selling or providing of nonfinancial goods or services if the receivable is held by that person (or a related person) at all times since its issuance. Section 475(c)(4), added by the IRS Restructuring Act, precludes a taxpayer from using mark-to-market accounting under section 475 for nonfinancial customer paper. In addition, the legislative history of the IRS Restructuring Act indicates that taxpayers may not account for nonfinancial customer paper using a mark-to-market or lower-of-cost-or-market method of accounting under other sections of the Code. See H.R. Conf. Rep. No. 599, 105th Cong., 2d Sess. 353–54 (1998). Congress, however, authorized the Secretary to issue regulations describing situations where taxpayers must use mark-to-market accounting for nonfinancial customer paper in order to prevent taxpayers from using the exclusion in section 475(c)(4) to avoid marking to market receivables that are inventory in the hands of the taxpayer or a related person.

Section 475(e) and (f), added by section 1001(b) of the Taxpayer Relief Act of 1997, allows securities traders and commodities traders and dealers to elect mark-to-market accounting similar to that currently required for securities dealers. These provisions are effective for all taxable years ending after August 5, 1997, the date of enactment of the Taxpayer Relief Act. The proposed regulations clarify several issues relating to these elections, including the identification of securities and commodities as exempt from mark-to-market accounting, the character of marked securities and commodities, and the time and manner for making the elections.

Explanation of Provisions

Nonfinancial Customer Paper

Sections 1.446–1(c)(2)(iii), 1.471–12, and 1.475(c)–2(d) of the proposed regulations provide that taxpayers may not use mark-to-market or lower-of-cost-or-market accounting for any nonfinancial customer paper unless a regulation affirmatively provides that the nonfinancial customer paper is to be marked to market as inventory.

The remaining proposed regulations pertaining to section 475(c)(4) are cross references or minor technical changes required by the addition of § 1.475(c)–2(d).

Dealers in Commodities

The proposed regulations generally provide that, except as provided in guidance prescribed by the Commissioner, the rules for mark-to-market accounting for securities dealers apply to commodities dealers that make an election under section 475(e)(1) (electing commodities dealers). Comments are requested whether there are circumstances where the specific rules applicable to securities dealers should not be applied to electing commodities dealers.

Under the proposed regulations, unless the Commissioner otherwise provides in a revenue ruling, revenue procedure, or letter ruling, the exemption from mark-to-market accounting for assets held for investment does not apply to a commodity derivative held by an electing dealer in commodities. If the rule described in the preceding sentence applies (and consequently requires a commodity derivative to be marked to market), the gain or loss is ordinary. The IRS and the Treasury Department believe that it would be extremely rare for a commodity derivative held by a commodities derivative dealer to be acquired other than in a dealer capacity. See § 1.475(c)–1(a)(2). Moreover, the IRS and the Treasury Department believe that a dealer in physical commodities generally engages in derivatives activities that are virtually indistinguishable from its dealings in physical commodities. This situation invokes many of the practical concerns that led Congress to enact section 475(b)(4). The IRS and the Treasury Department welcome comments on whether, and under what circumstances, it may be appropriate for a dealer in physical commodities to identify commodity derivatives as held for investment.

The proposed regulations also provide that, in all cases, if a dealer in commodities identifies a commodity as exempt from mark-to-market accounting under section 475(b)(2), the identification is ineffective unless it is made before the close of the day on which the commodity was acquired, originated, or entered into. Thus, a rule similar to the 30-day identification rule for certain securities in Holding 8 of Rev. Rul. 97–39 (1997–39 I.R.B. 4), does not apply to commodities dealers.

Traders in Securities or Commodities

The proposed regulations provide that the principles underlying the rules and administrative interpretations applicable to securities dealers also apply to electing traders, unless the proposed regulations or the Commissioner provides otherwise. The IRS and the Treasury Department request comments on whether there are circumstances under which a specific rule applicable to securities dealers

should not apply to electing securities traders.

The proposed regulations provide rules for the identification of investment securities as exempt from mark-to-market accounting. The proposed regulations clarify that a trader in securities who elects mark-to-market accounting under section 475(f)(1) for its trading business (an electing trader) must identify, in accordance with section 475(f)(1)(B)(ii), any security held other than in connection with the trading business.

If the electing trader is also a dealer in securities, the trader need only identify under section 475(f)(1)(B)(ii) securities that are not held in connection with the trading business and that are also described in section 475(b)(1) (without regard to section 475(b)(2)). That is, the trader need not identify securities that could not properly be identified as being exempt from section 475(a).

The IRS and the Treasury Department believe that in making the section 475 election available to securities traders, Congress did not want taxpayers selectively to mark to market some securities but selectively to identify other securities as exempt from this treatment. Congress addressed this concern by establishing a higher burden of proof for electing securities traders to identify securities as not subject to section 475 than is applicable to securities dealers. The IRS and the Treasury Department share this concern, particularly because it traditionally has been easier to distinguish investment securities from dealer securities than to distinguish investment securities from trading securities. Accordingly, the proposed regulations provide that in no event is the requirement of section 475(f)(1)(B)(i) satisfied unless the electing trader demonstrates by clear and convincing evidence that a security has no connection to its trading activities. The IRS and Treasury Department request comments on whether any trader of securities could meet this burden and under what circumstances.

In addition, the IRS and the Treasury Department seek comments on the manner in which securities are identified as not held in connection with trading activities and, in particular, comments that focus on the administrability of rules in this area.

Because of the fungible nature of certain securities, the proposed regulations provide a special rule for identifying securities held other than in connection with the electing trader's trading business when the electing trader also trades other of the same or substantially similar securities. In this circumstance, the electing trader does not satisfy section 475(f)(1)(B)(i) unless the security is held in a separate, nontrading account maintained with a third party. The IRS and the Treasury Department are considering extending this special identification rule to all securities, rather than solely to those that are fungible, and request comments on the advisability of doing so.

Under the proposed regulations, all identifications under section 475(f)(1)(B)(ii) must be made on the same day the electing trader acquires, originates, or enters into the security. Thus, a rule similar to the 30-day identification rule for certain securities in Holding 8 of Rev. Rul. 97–39 does not apply to electing traders.

Because the principles of the rules and administrative interpretations applicable to securities dealers apply to electing traders, if an electing trader improperly identifies as exempt a security that is actually held in connection with that business, the gain or loss with respect to the security is ordinary, and the consequences described in section 475(d)(2) apply to the security (i.e., the security is marked to market and any losses realized with respect to the security prior to its disposition are recognized only to the extent of gain previously recognized with respect to the security). Similarly, under the proposed regulations, if an electing trader fails to identify a security that is not held in connection with its trading business, the consequences of section 475(d)(2) apply to the security, and the gain or loss with respect to the security is ordinary. Moreover, in the event of this failure, the Commissioner may nevertheless treat the security as if the requirements for exemption from mark-to-market accounting were satisfied.

The proposed regulations further provide that the gain or loss with respect to a security that is marked to market under section 475(f)(1)(A) is ordinary. Under this rule, if an electing trader disposes of a security before the close of the taxable year, proposed § 1.475(a)–2 applies, and the gain or loss is ordinary income or loss. See sections 475(f)(1)(D) and 475(d)(3) and the legislative history to section 475(f). H.R. Rep. No. 148, 105th Cong., 1st Sess. 445 (1997).

Under the proposed regulations, the above rules for electing securities traders also apply to electing commodities traders. In addition, the proposed regulations provide a special character rule for traders in section 1256 commodity contracts who elect mark-to-market accounting for their businesses. For these traders, the proposed regulations clarify that the capital character rule of section 1256 does not apply to these contracts and, thus, the gain or loss with respect to such contracts is ordinary.

Making the Elections

The proposed regulations clarify that if a dealer in securities also has a securities or commodities trading business or a commodities dealing business, the dealer may make an election for that business.

The proposed regulations also provide that the mark-to-market elections for dealers in commodities and for traders in securities or commodities must be made in the time and manner prescribed by the Commissioner. The IRS and the Treasury Department anticipate requiring taxpayers to make the election by filing a form, to be developed by the IRS, not later than 2½ months after the beginning of the taxable year for which the election is made. (See the Paperwork Reduction Act section of this preamble, which requests comments on the burden that may be imposed by this requirement.) Interim procedures are being provided in a revenue procedure.

Proposed Effective Dates

The proposed regulations in § 1.475(c)–2(d)(1) apply to every taxpayer who is required by section 475(c)(4) to cease using mark-to-market accounting for nonfinancial customer paper. These regulations are applicable for all taxable years ending after July 22, 1998. Proposed §§ 1.446–1(c)(2)(iii), 1.471–12, and 1.475(c)–2(d)(2) are applicable for all taxable years ending on or after January 28, 1999.

The proposed regulations in §§ 1.475(e)–1 and 1.475(f)–2 generally apply to securities or commodities acquired on or after March 1, 1999. The rules concerning the time and manner for making the mark-to-market elections for commodities dealers and securities and commodities traders are generally applicable for taxable years ending on or after January 28, 1999.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory impact analysis is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. As previously noted, in those instances where a small entity elects to apply the rules in these regulations, the burden of the collection of information is not

significant. Accordingly, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 3, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 13, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal authors of these regulations are Jo Lynn Ricks and Pamela Lew of the Office of Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§ 1.475(a)–3 through 1.475(e)–1 and adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.475(a)–3 also issued under 26 U.S.C. 475(g).

Section 1.475(b)–1 also issued under 26 U.S.C. 475(b)(4) and 26 U.S.C. 475(g).

Section 1.475(b)–2 also issued under 26 U.S.C. 475(b)(2) and 26 U.S.C. 475(g).

Section 1.475(b)–4 also issued under 26 U.S.C. 475(b)(2), 26 U.S.C. 475(g), and 26 U.S.C. 6001.

Section 1.475(c)–1 also issued under 26 U.S.C. 475(g).

Section 1.475(c)–2 also issued under 26 U.S.C. 475(g) and 26 U.S.C. 860G(e).

Section 1.475(d)–1 also issued under 26 U.S.C. 475(g).

Section 1.475(e)–1 also issued under 26 U.S.C. 475(g).

Section 1.475(f)–1 also issued under 26 U.S.C. 475(g).

Section 1.475(f)–2 also issued under 26 U.S.C. 475(g).* * *

Par. 2. In § 1.446–1, paragraph (c)(2)(iii) is added to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(c) * * *

(2) * * *

(iii) Section 475 is the exclusive authority on which a taxpayer may rely to use the mark-to-market method of accounting for nonfinancial customer paper, as defined in section 475(c)(4)(B). Thus, except to the extent provided in § 1.475(c)–2(d), the mark-to-market method of accounting is not a permissible method of accounting for nonfinancial customer paper. In addition, the lower-of-cost-or-market method of accounting is not a permissible method of accounting for these assets. See § 1.471–12. This paragraph (c)(2)(iii) applies to all tax years ending on or after January 28, 1999.

* * * * *

Par. 3. Section 1.471–12 is added as follows:

§ 1.471–12 Nonfinancial customer paper.

Nonfinancial customer paper, as defined in section 475(c)(4)(B), may not be treated as inventory except as provided in § 1.475(c)–2(d). This section applies to taxable years ending on or after January 28, 1999.

Par. 4. In § 1.475(c)–1, paragraphs (b)(3)(i) and (b)(4)(ii) are revised to read as follows:

§ 1.475(c)-1 Definitions—dealer in securities.

* * * * *

(b) * * *

(3) * * *

(i) For purposes of section 471, the taxpayer accounts for any security (as defined in section 475(c)) as inventory;

* * * * *

(4) * * *

(ii) *Continued applicability of an election.*—(A) *In general.* Except as provided in paragraph (b)(4)(ii)(B) of this section, an election under this paragraph (b)(4) continues in effect for subsequent taxable years until revoked. The election may be revoked only with the consent of the Commissioner.

(B) *Taxable years ending after July 22, 1998.* An election under this paragraph (b)(4) is ineffective for taxable years ending after July 22, 1998.

* * * * *

Par. 5. In § 1.475(c)–2, paragraph (d) is added to read as follows:

§ 1.475(c)–2 Definitions—security.

* * * * *

(d) *Inventory*—(1) *Nonfinancial customer paper is generally not marked to market under section 475.* Except as provided in paragraph (d)(3) of this section, nonfinancial customer paper (as defined in section 475(c)(4)(B)) is not a security even if it is inventory.

(2) *Treatment of nonfinancial customer paper under other sections of the Internal Revenue Code.* For nonfinancial customer paper that is not a security, the mark-to-market method of accounting and the lower-of-cost-or-market method of accounting are not permissible methods of accounting. See §§ 1.446–1(c)(2)(iii) and 1.471–12.

(3) *Nonfinancial customer paper treated as inventory.* [Reserved]

§ 1.475(e)–1 [Redesignated as § 1.475(g)–1]

Par. 6. Section 1.475(e)–1 is redesignated as § 1.475(g)–1.

Par. 7. New § 1.475(e)–1 and §§ 1.475(f)–1 and 1.475(f)–2 are added to read as follows:

§ 1.475(e)–1 Election of mark-to-market accounting for dealers in commodities.

(a) *Time and manner of making election.* An election under section 475(e)(1) must be made in the time and manner prescribed by the Commissioner.

(b) *Application of securities dealer rules to electing commodities dealers.* Except as otherwise provided in this

section or in other guidance prescribed by the Commissioner, the rules and administrative interpretations under section 475 for dealers in securities apply to dealers in commodities that make an election under section 475(e)(1).

(c) *Commodity derivatives deemed not held for investment*—(1) *In general.* Except as otherwise determined by the Commissioner in a revenue ruling, revenue procedure, or letter ruling, if a dealer in commodities that made an election under section 475(e)(1) holds a commodity described in section 475(e)(2)(B) or (C) (describing certain notional principal contracts and commodity derivatives), section 475(b)(1)(A) (exempting from mark-to-market accounting certain positions that are held for investment) does not apply to that commodity.

(2) *Character of commodity derivatives required to be marked to market.* If a commodity is required to be marked to market because of the application of paragraph (c)(1) of this section, the gain or loss with respect to that commodity is ordinary.

(d) *Same day identification.* An identification of a commodity as exempt from mark-to-market accounting under section 475(b)(2) is not effective unless it is made before the close of the day on which the commodity was acquired, originated, or entered into.

§ 1.475(f)–1 Procedures for electing mark-to-market accounting for traders.

(a) *Time and manner of making election.* An election under section 475(f)(1) or (2) must be made in the time and manner prescribed by the Commissioner.

(b) *Coordination with section 475(a).* If a dealer in securities also has a securities or commodities trading business or a commodities dealing business, the dealer may make an election under section 475(e)(1), (f)(1), or (f)(2) for that business.

§ 1.475(f)–2 Election of mark-to-market accounting for traders in securities or commodities.

(a) *Securities not held in connection with trading activities*—(1) *Taxpayer identification of investment securities.* If a trader in securities makes an election under section 475(f)(1)(A) (electing trader) and holds a security other than in connection with that trading business, the electing trader must identify that security in accordance with section 475(f)(1)(B)(ii). If the electing trader is also a dealer in securities, however, the preceding sentence applies only to securities described in section 475(b)(1) (without regard to section 475(b)(2)).

(2) *Satisfaction of Commissioner.* In no event is the requirement of section 475(f)(1)(B)(i) satisfied unless the electing trader demonstrates by clear and convincing evidence that a security has no connection to its trading activities.

(3) *Substantially similar securities held for trading and investment.* An electing trader that holds a security other than in connection with its trading business and also trades the same or substantially similar securities in no event satisfies the requirement of section 475(f)(1)(B)(i) unless the security is held in a separate, nontrading account maintained with a third party.

(4) *Consequences of failure to identify investment securities.* If an electing trader holds a security that is not held in connection with its trading business and fails to identify the security in a manner that satisfies the requirements of section 475(f)(1)(B)(ii)—

(i) The consequences described in section 475(d)(2) apply to the security; and

(ii) The character of the gain or loss with respect to the security is ordinary.

(5) *Commissioner identification of investment securities.* Notwithstanding paragraph (a)(4) of this section, the Commissioner may treat a security described in that paragraph as meeting the requirements of section 475(f)(1)(B)(i) and (ii).

(b) *Character of securities marked to market.* The gain or loss with respect to a security that is marked to market under section 475(f)(1)(A) is ordinary.

(c) *Application of securities dealer rules to electing traders.* Except as otherwise provided in this section or in other guidance prescribed by the Commissioner, the principles of the rules and administrative interpretations under section 475 for dealers in securities apply to traders in securities that make an election under section 475(f)(1).

(d) *Same day identification.* An identification of a security as exempt from mark-to-market accounting under section 475(f)(1)(B) is not effective unless it is made before the close of the day on which the security was acquired, originated, or entered into.

(e) *Application to traders in commodities*—(1) *General rule.* If a trader in commodities makes an election under section 475(f)(2), paragraphs (a), (b), (c), and (d) of this section apply to the trader in the same manner that they apply to a trader in securities who makes an election under section 475(f)(1).

(2) *Coordination with section 1256.* If a trader in commodities makes an election under section 475(f)(2) and trades section 1256 contracts that are commodities as defined in section 475(e)(2), then the rules of section 475(f) and paragraph (e)(1) of this section apply to those contracts, and not the capital character rules of section 1256.

Par. 8. Newly designated § 1.475(g)–1 is amended by revising paragraphs (h)(2) and (i) and adding paragraphs (k), (l), and (m) to read as follows:

§ 1.475(g)–1 Effective dates.

* * * * *

(h) * * *

(2) Section 1.475(c)–1(b) (concerning sellers of nonfinancial goods and services) applies as follows:

(i) Except as otherwise provided in this paragraph (h)(2), § 1.475(c)–1(b) applies to taxable years ending on or after December 31, 1993.

(ii) Section 1.475(c)–1(b)(4)(ii)(B) applies to taxable years ending after July 22, 1998.

* * * * *

(i) Section 1.475(c)–2 (concerning the definition of security) applies as follows:

(1) Section 1.475(c)–2(a), (b), and (c) (concerning the definition of security) applies to taxable years ending on or after December 31, 1993. By its terms, however, § 1.475(c)–2(a)(3) applies only to residual interests or to interests or arrangements acquired on or after January 4, 1995; and the integrated transactions that are referred to in § 1.475(c)–2(a)(2) and (b) exist only after August 13, 1996 (the effective date of § 1.1275–6).

(2) Section 1.475(c)–2(d) applies as follows:

(i) Section 1.475(c)–2(d)(1) applies to taxable years ending after July 22, 1998.

(ii) Section 1.475(c)–2(d)(2) applies to taxable years ending on or after January 28, 1999.

* * * * *

(k) Section 1.475(e)–1(a) (concerning the time and manner for making the mark-to-market election for dealers in commodities) applies to taxable years ending on or after January 28, 1999. Section 1.475(e)–1(b), (c) and (d) applies to commodities acquired on or after March 1, 1999.

(l) Section 1.475(f)–1 (procedures for electing mark-to-market accounting for traders in securities or commodities) applies to taxable years ending on or after January 28, 1999.

(m) Section 1.475(f)–2 (concerning the mark-to-market rules for traders in securities or commodities) applies to

securities or commodities acquired on or after March 1, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1787 Filed 1–27–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–71–1–7311B; FRL–6222–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to approve the State Implementation Plan (SIP) revisions to 30 TAC Chapter 101, Section 101.2(b) concerning Multiple Air Contaminant Sources. The SIP revisions were submitted by the Governor to EPA on January 10, 1996. The approval of these Texas SIP revisions make the revisions federally enforceable.

In the Rules and Regulation section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to the rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by March 29, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Boyce of the EPA Region 6 Air Planning Section at (214) 665–7259 at the address above.

SUPPLEMENTARY INFORMATION: For additional information, see the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: December 22, 1998.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–1913 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6222–8]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Perchloroethylene Air Emission Standards for Dry Cleaning Facilities; State of California; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA) and through the California Air Resources Board, Yolo-Solano Air Quality Management District (YSAQMD) requested approval to implement and enforce its "Rule 9.7: Perchloroethylene Dry Cleaning Operations" (Rule 9.7) in place of the "National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities" (dry cleaning NESHAP) for area sources under YSAQMD's jurisdiction. In the Rules section of this **Federal Register**, EPA is granting YSAQMD the authority to implement and enforce Rule 9.7 in place of the dry cleaning NESHAP for area sources under YSAQMD's jurisdiction as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by March 1, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted request are available for public inspection at EPA's Region IX office during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns YSAQMD Rule 9.7, Perchloroethylene Dry Cleaning Operations, revised on November 13, 1998. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: January 11, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–1911 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 239

[FRL–6226–2]

RIN 2050–AD03

Subtitle D Regulated Facilities; State Permit Program Determination of Adequacy; State Implementation Rule—Amendments and Technical Corrections

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to modify the State Implementation Rule ("SIR rule"). This modification changes the withdrawal of state permit programs provision in § 239.13 of the SIR rule so that Agency

withdrawals of an approved state municipal solid waste landfill (MSWLF) or conditionally exempt small quantity generator (CESQG) permit program would only apply to the entire approved program.

The SIR, which was published on October 23, 1998, set forth a flexible framework for modifications of approved programs, established procedures for withdrawal of approvals (including withdrawal of a part or parts of a state program), and confirmed the process for future program approvals so that standards that safeguard human health and the environment are maintained (63 FR 57026). Withdrawal of a part or parts of a state program will no longer apply.

EPA is also making some technical corrections to the withdrawal provision of the SIR rule.

Elsewhere in the Final Rule Section of today's **Federal Register**, EPA is taking direct final action to modify the SIR rule. This direct final rule will make these amendments and technical corrections effective in sixty (60) days unless relevant adverse comment is received on this rule within thirty (30) days. We are taking this direct final action because we view this amendment and the corrections to the SIR rule as being non-controversial. Thus, we anticipate no adverse comments. A detailed rationale for the changes to the withdrawal provisions of the SIR rule are provided in the preamble to the direct final rule.

If no relevant adverse comment is received in response to this rule, no further activity is contemplated regarding this proposal. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and address comments in a subsequent final rule. EPA will not provide additional opportunities for comment. If we receive relevant adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. If we receive relevant adverse comment on any amendment, paragraph, or section of this rule, only those amendments, paragraphs, or sections of the rule will be withdrawn; all other amendments, paragraphs, and sections of the direct final rule will go into effect within the time frame specified in that direct final rule notice (sixty (60) days).

DATES: Comments must be submitted on or before March 1, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing the docket identification number F–1999–ST2F–FFFFF to the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the RIC at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–1999–ST2F–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; 800–424–9346; TDD 800–553–7672 (hearing impaired); in the Washington, DC metropolitan area, the number is 703–412–9810; TDD 703–486–3323.

For more detailed information on specific aspects of this rulemaking, contact Karen Rudek, Office of Solid Waste (5306W), U.S. Environmental Protection Agency Headquarters, 401 M Street SW, Washington, DC 20460; 703–308–1682, rudek.karen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Authority

The U.S. Environmental Protection Agency (EPA or the Agency) is proposing these amendments to the SIR rule under the authority of sections 2002(a)(1) and 4005(c) of the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), as amended by the Hazardous and Solid Waste Amendments of 1984.

Subtitle D of RCRA, at section 4005(c)(1)(B), requires each state to develop and implement a permit program or other system of prior approval to ensure that facilities that receive household hazardous waste or conditionally exempt small quantity generator (CESQG) hazardous waste are in compliance with the federal revised criteria promulgated under section 4010(c) of Subtitle D of RCRA. Section 4005(c)(1)(C) further directs EPA to determine whether state permit programs are adequate to ensure compliance with the revised federal criteria. Section 2002(a)(1) of RCRA authorizes EPA to promulgate regulations necessary to carry out its functions under the Act.

II. Regulated Entities

Regulated entities include state governments requesting full or partial approvals of permit programs or other systems of prior approval, or revisions to existing fully or partially approved programs.

III. Background

The background of the RCRA Subtitle D federal revised criteria and the SIR rule are set forth elsewhere in the Final Rule Section of today's **Federal Register**. This proposed rule incorporates that background and historical information.

IV. Proposed Changes to the SIR Rule

A. Partial Withdrawal of State Permit Programs

EPA is proposing to amend the SIR rule so that section 239.13, which pertains to the withdrawal of state permit programs, would only apply to the entire approved program and not to part or parts of a state program. The reasons for this change are set forth in the preamble of the direct final rule published elsewhere in the Final Rules Section of today's **Federal Register**. Those reasons are hereby incorporated into this proposed rule.

B. Technical Corrections

In addition to this amendment to the SIR rule, we are proposing two technical corrections to errors which the Agency discovered in the language of § 239.13. First, in § 239.13(g)(3), both the proposed and final rule had stated that the Regional Administrator would hold a public hearing on a tentative withdrawal determination if such a hearing would "clarify issues involved in the tentative adequacy determination" (63 FR 57044, Oct. 23, 1998; 61 FR 2605, Jan. 26, 1996). As reflected in both the title of this section of the SIR rule ("Criteria and procedures for withdrawal of determination of adequacy") and in the preamble to the proposed rule (61 FR 2509), it is clear that the Agency intended this language in § 239.13(g)(3) to allow the Regional

Administrator to hold a public hearing to clarify issues involved in the tentative "withdrawal" determination and not the tentative "adequacy" determination. The Agency is proposing to modify the SIR rule to reflect this intention.

Second, in the first sentence of both § 239.13(f) and (g), we propose inserting the word "the" in the phrase "withdrawal of determination of adequacy" to read "withdrawal of the determination of adequacy." We believe that these corrections will merely clarify the language without altering the intent of the two provisions.

V. Regulatory Assessments

A. Executive Order 12866: Assessment of Potential Costs and Benefits

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether any proposed or final regulatory action is "significant," and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action." Thus, EPA has not submitted this action to OMB for review under E.O. 12866.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant adverse economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Agency has determined that today's proposed rule will not have a significant economic impact on a substantial number of small entities, since the rule has direct effects only on state agencies. Therefore, no regulatory flexibility analysis has been prepared. Based on the foregoing discussion, I hereby certify that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under "202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, "205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA "205 do not apply when they are inconsistent with applicable law. Moreover, UMRA "205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative, if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under "203 of UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a federal mandate (under the regulatory provisions of Title II of the UMRA) that may result in expenditures of $100 million or more for state and local governments in the aggregate, or for the private sector in any one year. Thus, there is no obligation to prepare a written statement, including a cost-benefit analysis, under "202 of UMRA. For the same reasons outlined in part V.B above, EPA has determined that this proposed rule to amend the SIR rule will not significantly or uniquely affect small governments (UMRA "203).

D. Paperwork Reduction Act

Today's proposed rule does not add new burden as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget has previously approved the information collection in the existing regulations and has assigned OMB control number 2050–0152, (EPA ICR No. 1608.01).

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent

with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

G. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of the final State Implementation Rule on low-income populations and minority populations and concluded that the SIR will potentially advance environmental justice causes (63 FR 57039, Oct. 23, 1998). Today's proposed amendments to the SIR will not affect these beneficial impacts on environmental justice causes.

H. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

In developing this proposed rule, EPA consulted with various states and a state organization to enable them to provide meaningful and timely input in the development of this rule. EPA also worked closely with state governments in the development of the final SIR (63 FR 57039, Oct. 23, 1998).

Through notice, EPA sought input from small governments during the SIR rulemaking process. However, today's proposed rule to amend the SIR will not create a mandate on State, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. There is no impact on these communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 40 CFR Part 239

Environmental protection, Administrative practice and procedure, Municipal solid waste landfills, Non-municipal solid waste, Non-hazardous solid waste, State permit program approval, Adequacy.

Dated: January 19, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–1907 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. MARAD–99–5038]

RIN 2133–AB37

Regulations To Be Followed by All Departments and Agencies Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD) is soliciting public comment concerning whether MARAD should amend its cargo preference regulations governing the carriage of agricultural exports. Your comment is welcome on the questions listed below or on any aspect of MARAD's oversight of other governmental agencies' ocean shipping activities under the Cargo Preference Act of 1954, as amended by the Food Security Act of 1985. Such comments will be considered in any future decision by MARAD to initiate a rulemaking process applicable to the carriage of agricultural export cargoes. Present regulations and policies remain in force. This docket does not address the carriage of military cargoes.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than March 29, 1999.

ADDRESSES: You should mention the docket number that appears at the top of this document in your comments and submit your comments in writing to:

Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th St., SW, Washington, DC 20590. You may call Docket Management at (202) 366–9324. You may visit the Docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For non-legal issues you may call Thomas W. Harrelson, Director, Office of Cargo Preference at (202) 366–5515. For legal issues, you may call Murray Bloom, Chief, Division of Maritime Assistance Programs of the Office of Chief Counsel at (202) 366–5320. You may send mail to both of these officials at Maritime Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION:

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a proposed rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket Room are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on "search." On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "MARAD–1999–1234," you would type "1234." After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

The Cargo Preference Act of 1954, Pub. L. 83–664, 68 Stat. 832 (1954), amended the Merchant Marine Act, 1936, by adding Section 901(b), codified at 46 App. U.S.C. 1241(b) ('54 Act). The '54 Act applies:

"[w]henever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, * * *"

Government agencies are required to take such steps as may be necessary and practicable to assure that at least 50 percent of the gross tonnage of certain government-sponsored cargoes—

"* * * (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas. * * *"

The Food Security Act of 1985, Pub. L. 99–198, exempted certain agricultural export enhancement programs from cargo preference, but increased the U.S.-flag share of humanitarian food aid programs from 50 to 75 percent.

MARAD's oversight role in administration of cargo preference is founded on section 27 of the Merchant Marine Act of 1970, Pub. L. 91–469, which added the following subsection to section 901(b) of the Merchant Marine Act, 1936:

"Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto." 46 App. U.S.C. 1241(b).

The Secretary of Transportation has delegated the authority under this provision to the Maritime Administrator. (49 CFR 1.66(e).) MARAD's regulations governing administration of cargo preference are located at 46 CFR part 381. Guidance as to the priority of a completely U.S.-flag service over a mixed U.S./foreign-flag service is contained in a policy letter issued on June 16, 1986.

MARAD is requesting comment on whether the regulations governing the '54 Act, last revised in 1996, should be updated. Comments are requested specifically on the questions presented below:

1. Clarification of §§ 381.4 and 381.5

Sections 381.4 and 381.5, which address liner and bulk vessels, respectively, relate to the requirement to fix American-flag tonnage prior to fixing foreign-flag vessels in order to ensure fair and reasonable participation of U.S.-

flag vessels. MARAD has interpreted these provisions to mean that at least 75 percent, as applicable to packaged or bulk agricultural products, of the freight generated by each commodity procurement transaction must be transported on U.S.-flag vessels. Doing so ensures that the shipper agencies meet their preference obligations on a current basis during the year. Some shipper agencies have argued that the language of the two sections may not support MARAD's interpretation, or in any event, should be modified to allow greater flexibility. On the other hand, the use of more direct language in §§ 381.4 and 381.5 may serve to quell confusion or doubt as the intent of these provisions. Accordingly, we request your comment on whether these two provisions should be clarified, and also whether the two provisions could be combined or otherwise revised.

2. Foreign-Flag Feeder Vessels

MARAD's guidance letter of June 16, 1986, summarizes the holdings of several long-standing decisions of the Comptroller General (B–145455, June 12, 1968; B–140872, May 10, 1960; B–165421, Dec. 23, 1968; and B–155185, Nov. 17, 1969) and provides that an ocean service which provides for U.S.-flag carriage for the entire voyage has preference over an ocean service which uses a foreign-flag vessel for a portion of the transportation. Only in the absence of all-U.S.-flag service is a mixed U.S.-flag/foreign-flag service considered to be in fulfillment of the requirements of cargo preference. When two mixed U.S.-flag/foreign-flag services are vying for the same shipment, the service that makes the greater use of U.S.-flag vessels (i.e., the service with the longer leg served by U.S.-flag vessels) wins the cargo.

Shipper agencies note that the guidance sometimes restricts their ability to ship cargo expeditiously and comply with cargo preference due to the paucity of direct U.S.-flag service and the relative abundance of mixed U.S.-flag/foreign-flag service. The shipper agencies complain that the added cost of all-U.S.-flag service over mixed U.S.-flag/foreign-flag service results in less funds being available for purchase of commodities. They also note that large, modern U.S.-flag container vessels cannot serve many of the recipient developing nation's ports, or do so economically due to lack of port facilities. Although 75 percent U.S.-flag carriage is statutorily required, there may be ways to achieve that required level of U.S.-flag participation in these cargoes while allowing better use of U.S.-flag vessels and more efficient routing of shipments. Accordingly, we seek your comment on whether MARAD may, and if so should, adopt new preference guidance, which may be incorporated into a rule, such as one that gives equal preference to all-U.S.-flag service and mixed U.S.-flag/foreign-flag service, but counts only the ton miles carried by the U.S.-flag vessel towards the goal of 75 percent U.S.-flag carriage. In other words, can performance by U.S.-flag vessels of 75 percent of the ton miles generated by the preference cargoes equate to fulfillment of the statutory requirement that U.S.-flag vessels carry 75 percent of the preference cargoes in consonance with the determinations of the Comptroller General?

3. Basis for Compliance Measurement

In addition to the 75 percent carriage requirement, the statute requires that U.S.-flag vessels be given fair and reasonable opportunity to transport such cargoes by liner, tanker and dry bulk vessels and by geographic areas. The geographic areas referred to in the statute are foreign geographic areas inasmuch as this provision is intended to ensure that U.S.-flag vessels participate in the long hauls as well as the short hauls.

The Food for Progress Act provides for the donation of food to emerging democratic nations. Section 416 of the Agriculture Act of 1949 provides for the donation of bulk grain and other surplus agricultural commodities. The foreign assistance programs, popularly known as "PL–480," established by the Agricultural Trade Development and Assistance Act of 1954, as amended, consist of three titles. Title I provides concessional, long-term financing for the sale of U.S. agricultural commodities to friendly developing countries. Title II provides for the donation of packaged, processed and bulk commodities to least developed countries. Title III provides for the donation of food to least developed countries on a grant basis.

Compliance with cargo preference requirements for programs under Food for Progress and Section 416 has been measured on a country-by-country basis for each commodity procurement. Title I shipments are monitored by a more restrictive requirement that cargo reservation be measured on a purchase authorization basis by vessel type. Unlike other PL–480 programs, under Title I requirements, each commodity requires a separate purchase authorization. Only with regard to the Title II program has MARAD informally acquiesced to measurement of compliance on a "global" basis by vessel type. This program primarily ships numerous smaller parcels on liner vessels, where there is reduced likelihood of disadvantage accruing to the U.S.-flag carrier and greater difficulty by the program office in meeting compliance by country by vessel type.

We invite your comments on whether these compliance regimes should be maintained as is, and memorialized in regulations, standardized or consolidated or otherwise revised. Should performance in meeting preference standards for the Title II program be changed to a country by vessel type basis so as to conform to the requirements for other PL–480 programs?

4. Definition of "Liner" Vessel and "Transshipment'

While the statute specifies that U.S.-flag carriers be given a fair and reasonable opportunity for the carriage of food aid cargo by liner, tanker and bulk vessel, the term "liner" does not connote or adequately define what is a liner vessel. The term "liner" relates to a type of service instead of a type of vessel. A vessel engaged in liner service, which is regularly scheduled service available for common carriage, may be a general cargo vessel, a breakbulk vessel, a container vessel or a tug/deck barge combination. Cargo shipped under liner service requirements for humanitarian aid programs are contracted for under booking notices, whereas freight for dry bulk or tanker vessels are subject to charter parties or contracts of affreightment. Use of the term "liner" in the statute, without further definition in the regulations, has led to administrative difficulties in adequately recording shipments subject to cargo preference. Therefore, we welcome your comments regarding whether MARAD should amend its regulations to define what type of vessels constitute or should be included under the term "liner" vessels for the purpose of measuring compliance under cargo preference.

Ocean transportation has changed dramatically since the cargo preference regulations were last revised. Containerization with hub and spoke networks, alliances and consortia now dominate the non-bulk trades. The commercial world and insurance underwriters now differentiate between "transshipment" and "relay" between vessels of the same transportation network manager. Should MARAD recognize and define "relay" versus "transshipment?" What should be those definitions? Should they apply only to containerized cargoes? What impact

would this have on preference cargo transportation?

5. Definition of Commercial Terms

The use of special government-defined terms of sale and transportation for preference cargoes sometimes creates confusion in the marketplace and increases costs. Commercial suppliers and carriers use commercial terms for the majority of their business but must use non-standard government terms when dealing with the U.S. Government. For example, the U.S. Department of Agriculture (USDA) and the Agency for International Development (AID) have defined the term "FAS" (free along side) to mean delivery to a point of rest in a terminal rather than the International Commercial Terms (Incoterms) definition of "FAS (* * *named port)" as "alongside the vessel on the quay or in the lighters at the named port of shipment." As a result, MARAD interprets the government definition to not require that a vessel physically call at the port whereas the commercial Incoterm definition requires a physical vessel call. Similarly, USDA and AID use other non-standard terms, such as "Intermodal-Plant" and "Intermodal-Point" with different buyer/seller/carrier responsibilities than the commercial Incoterm "EXWorks (. . .named place)."

We welcome your comments on whether MARAD should require the use of commercial terms for cargo preference transactions. Would this clarify the sales and transportation requirements? Would it simplify the process and reduce overall government costs?

6. Commercial Practices

The use of non-commercial practices in government cargo preference transportation contracts may be reducing competition and increasing costs. For example, USDA and AID transportation contracts do not follow the general commercial practices of "freight earned upon loading" and "freight payable on loading," or "free-in and out" for dry bulk charters. As a result, the ocean carrier has to finance the costs of moving these government agricultural cargoes. Those added financial costs to the carrier are reflected in higher freight rates borne by the Government.

Should MARAD require the use of commercial practices in the transportation of preference cargoes? If so, what commercial practices should be implemented? Would such commercial practices simplify the transportation contracts and reduce costs to the Government?

7. Other Issues

This request for comments concerning the desirability of rulemaking is not limited to the foregoing. MARAD also seeks comments and/or suggestions concerning other issues that may affect the implementation of the cargo preference statutes and whether MARAD's regulations should be amended or modified in light of such issues.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review)

If a rule is actually promulgated, we may consider it an economically significant regulatory action under section 3(f) of E.O. 12866. In the event that MARAD decides to proceed with a rulemaking, we will prepare a preliminary regulatory evaluation that reflects the comments to this advance notice of proposed rulemaking.

Federalism

MARAD has analyzed this advance notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that any rule that might be subsequently promulgated would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration will evaluate any future proposed rule under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, to certify whether any rule that might be promulgated subsequent to this advance notice of proposed rulemaking would have a significant economic impact on a substantial number of small entities. Companies providing the carriage of preference cargoes generally are not small entities.

EIS

Any rule that might be subsequently promulgated would not be expected to significantly affect the environment. Accordingly, an Environmental Impact Statement may not be required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

We would evaluate any rule that might be promulgated to determine whether it would be expected to significantly change the current requirement for the collection of information.

By order of the Maritime Administrator.

Dated: January 25, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–2046 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–99–5032]

RIN 2127–AG 77

Anthropomorphic Test Dummy; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to adopt design and performance specifications for a new 3-year-old child dummy. The agency believes that the new dummy, part of the family of Hybrid III test dummies, is more representative of humans than the existing 3-year old child dummy specified by agency regulations. Further, it allows the assessment of the potential for more types of injuries. The new dummy is especially needed to evaluate the effects of air bag deployment on out-of-position children. It would also provide greater and more useful information in a variety of environments to better evaluate child safety. Adopting the dummy would be the first step toward using the dummy to evaluate the safety of air bags for children. The issue of specifying use of the dummy in determining compliance with performance tests, e.g., as part of the agency's occupant protection standard and/or child restraint standard, is being addressed in other rulemakings, most notably the proposed advanced air bag rulemaking currently pending before the agency.

DATES: Comments must be received by March 29, 1999.

ADDRESSES: Comments should refer to the docket number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590 (Docket hours are from 10 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Stan Backaitis, Office of Crashworthiness Standards (telephone: 202–366–4912).

For legal issues: Rebecca MacPherson, Office of the Chief Counsel (202–366–2992).

Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The need for a new 3-year-old dummy has become urgent with the emergence of the safety problems that current air bags pose for out-of-position children. Experience in using the existing 3-year-old dummy in subpart C of part 572 has shown it to be adequate for the purpose of evaluating child restraints for the injury criteria and test conditions specified by Standard No. 213, Child restraint systems. However, that dummy is limited with respect to the types of injury risks it can measure, particularly in an air bag environment.

For example, since neck injury is one of the primary causes of air bag-related fatalities to out-of-position children, a dummy must have a high degree of biofidelity in areas such as impact responses in neck flexion and extension motion to evaluate the effects of air bag deployment. However, the neck of the existing subpart C dummy does not have a multi-segment design. Accordingly, it has limited biofidelity in these areas.

By contrast, the more advanced Hybrid III 3-year-old child dummy (hereafter referred to as the H–III3C dummy) provides a more human-like impact response than the subpart C dummy as well as a broader selection of instrumented measurements to assess the injury potential to child occupants. Of particular significance is the multi-segmented neck, multi-rib thorax, and the ability to monitor submarining tendencies related to abdominal loading. Because of the greater biofidelity and extended measurement capability of the H–III3C dummy, it can be used to evaluate the safety of children in a much wider array of environments than the existing dummy, including assessing the effects of air bag deployment on out-of-position children. The agency notes that the H–III3C dummy is the only advanced 3-year-old child dummy that has been developed and evaluated to date.

The H–III3C dummy is part of a family of Hybrid III-type dummies. The first Hybrid III dummy was a 50th percentile male dummy. NHTSA has specified use of this dummy for compliance testing under Standard No. 208, *Occupant Crash Protection*, since 1986, initially on an optional basis, and more recently on a mandatory basis.

The need for a family of Hybrid III-type dummies having considerably improved biofidelity and anthropometry was recognized by the Centers for Disease Control and Prevention (CDC) in 1987 when it awarded a contract to Ohio State University under the title "Development for Multi-sized Hybrid III Based Dummy Family." At that time, the funding covered only the development of a small female and a large male dummy.

Development of a Hybrid III 3-year-old dummy began in 1992 when the SAE Small Female, Large Male and Six Year Old Child Dummies Task Group [1] identified a need for a new dummy equipped with sufficient instrumentation capable of assessing a child's interaction with both air bags and child restraints. The task group noted that the dummy should be suitable for use in sitting, kneeling and standing postures. After a preliminary design was conceived and reviewed, a prototype dummy was developed and made available to the task group in July 1994. Initial evaluation of the dummy revealed numerous structural and functional problems. Prior to testing by NHTSA, the dummy designer, under the guidance of the SAE Hybrid III Dummy Family Task Group, addressed additional structural and impact response problems revealed through testing of the revised prototype throughout 1995, 1996, and early 1997. In May 1997, NHTSA initiated a thorough test and evaluation program in anticipation of formal rulemaking.

The agency has now completed its evaluation of the H–III3C dummy and has tentatively concluded that it is ready for incorporation into part 572. NHTSA is placing in the docket a technical report entitled "Development and Evaluation of the Hybrid III 3-Year-Old Child Dummy." That report provides the technical information supporting this rulemaking.

Accordingly, the agency is proposing specifications and performance criteria for the H–III3C dummy. The specifications would consist of the following two items:

(1) A drawings and specifications package entitled "Parts List and Drawings for the Hybrid III 3-Year-Old Dummy (October 1998)"; and

(2) A user's manual entitled "User's Manual for the Hybrid III 3-Year-Old Test Dummy [a date would be inserted in the final rule]".

In order to allow comment on the general content and format of the user's manual, NHTSA has placed in the docket a copy of a manual entitled "Hybrid III 3-Year-Old Child Dummy User's Manual", SAE Engineering Aid 31 (rev. June 25, 1998).

The specifications are intended to ensure that the dummies are uniform in their construction and capable of uniform and repeatable response in the impact environment. The agency notes that the first item listed above, the parts list and drawings, will be available for inspection in NHTSA's docket. (Since this item is non-scannable, it cannot be placed in the DOT Dockets Management System (DMS). Instead a statement indicating where it may be viewed, i.e., in NHTSA's docket, will be placed in the DMS.) Copies may also be obtained from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705; Telephone: (301) 210–5600.

As with other dummies, NHTSA is proposing impact performance criteria to serve as calibration checks, and to further assure the kinematic uniformity of the dummy and the absence of structural damage and functional deficiency from previous use. The tests address head, neck, and thorax impact responses and resistance assessments of the lumbar spine-abdomen area to torso flexion motion.

The agency is proposing generic specifications for all of the dummy-based sensors. For most earlier dummies, the agency specified sensors by make and model. However, NHTSA believes that approach is unnecessarily restrictive and limits innovation and competition.

The proposed specifications are essentially generic and reflect performance characteristics of the sensors used in NHTSA's dummy evaluation series that are identified by make and model in the above-referenced technical report "Development and Evaluation of the Hybrid III 3-year-old Child Dummy." Specifications for the proposed sensors are included in the drawing package. Interested persons are encouraged to comment on the adequacy of the proposed specifications; the potential impact on the quality of measurements to be acquired, including the comparability of data using sensors manufactured by different companies; and issues related to calibration assurance tests.

NHTSA notes that the H–III3C dummy is the third of several new dummies it is proposing to add to part 572. The agency has already proposed adding a new, advanced 6-year-old dummy (H–III6C) (63 FR 35170) and a fifth percentile small adult female dummy (H–III5F) (63 FR 46981). Within the next six weeks, it plans to propose adding the CRABI 12-month-old child

[1] The task group has been renamed the "Hybrid III Dummy Family Task Group". Minutes of the task groups meetings are available for review in the NHTSA docket (Docket no. NHTSA98-4283).

dummy. The agency intends to use these dummies in connection with its rulemaking for advanced air bags which is currently in the notice and comment stage (63 FR 49958). All of these dummies could be specified for use in a variety of potential Standard No. 208 tests, including static out-of-position tests and/or various dynamic tests. The child dummies could also be specified for use in Standard No. 213 tests.

This notice only concerns the H–III3C dummy, and is only proposing to add the dummy to part 572. The issue of specifying the use of the H–III3C dummy as part of Standard No. 208 is addressed in the advanced air bag rulemaking and may be addressed in a future rulemaking regarding Standard No. 213. However, since one of the primary purposes of adding the dummy to part 572 is to enable it to be specified for use in the Federal motor vehicle safety standards, NHTSA encourages commenters to address its suitability for tests related to occupant crash protection, e.g., those discussed or proposed in the NPRM on advanced air bags. The agency also encourages commenters to address the dummy's suitability with respect to measuring proposed and other injury criteria.[2]

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has been determined not to be significant under the Department's regulatory policies and procedures.

This document proposes to amend 49 CFR part 572 by adding design and performance specifications for a new, more advanced 3-year old child dummy which the agency may later separately propose for use in the Federal motor vehicle safety standards. If this proposed rule becomes final, it would directly affect only those businesses which choose to manufacture or test with the dummy. Vehicle manufacturers could be indirectly affected under the advanced air bag rulemaking currently pending before the agency. It does not impose any requirements on anyone.

The cost of an instrumented H–III3C dummy would be between $44,000 and $80,000, with an uninstrumented H–III3C dummy costing approximately $30,000 and instrumentation costing approximately $14,000 to $50,000 (depending on the amount of data channels the user chooses to collect).

Because the economic impacts of this proposal are so minimal, no further regulatory evaluation is necessary.

B. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. The proposed amendment would not impose or rescind any requirements for anyone. Therefore, it would not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

The agency has analyzed this proposed amendment in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that the proposed amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This proposal does not meet the definition of a Federal mandate because it does not impose requirements on anyone. In addition, annual expenditures would not exceed the $100 million threshold.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposed rule.

Request for Comments

Interested persons are invited to submit comments on this proposal. Two copies should be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received by NHTSA before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to this action will be considered as suggestions for further rulemaking action. Comments will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing

[2] For information concerning potential injury criteria, see *Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems*, June, 1998, Docket No. NHTSA98–4405–9. (Available on the NHTSA website at http://www.nhtsa.dot.gov.)

date, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 572 as follows:

Part 572—Anthropomorphic Test Dummies

1. The authority citation for part 572 would continue to read as follows:

Authority: 49 USC 332, 30111, 30115, 30117; and 30166 delegation of authority at 49 CFR 1.50.

2. 49 CFR Part 572 would be amended by adding a new Subpart P consisting of 572.140–572.146 to read as follows:

Subpart P—3-year-Old Child

Sec.

572.140 Incorporation by reference.
572.141 General description.
572.142 Head assembly and test procedure.
572.143 Neck-headform assembly and test procedure.
572.144 Thorax assembly and test procedure.
572.145 Upper and lower torso assemblies and torso flexion test procedure.
572.146 Test Condition and Instrumentation.

Subpart P—3-year-Old Child

§ 572.140 Incorporation by reference.

(a) The following materials are hereby incorporated in this subpart P by reference:

(1) A drawings and specifications package entitled "Parts List and Drawings for the Hybrid III 3-year-old dummy (October 1998)";

(2) A user's manual entitled "Operations and Maintenance Manual for the Hybrid III 3-year-old test dummy [a date will be inserted in the final rule]";

(3) SAE Recommended Practice J211, Rev. Mar95 "Instrumentation for Impact Tests";

(4) SAE J1733 of 1994–12 "Sign Convention for Vehicle Crash Testing".

(5) The Director of the **Federal Register** approved those materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be inspected at NHTSA's Docket Section, 400 Seventh Street SW, room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(b) The incorporated materials are available as follows:

(1) The drawings and specifications package referred to in paragraph (a)(1) of this section and the user's manual referred to in paragraph (a)(2) of this section are available from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705, (301) 419–5070.

(2) The SAE materials referred to paragraphs (a)(3) and (a)(4) of this section are available from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

§ 572.141 General description.

(a) The representative 3-year-old is described by the following materials:

(1) Technical drawings and specifications package 210–0000, the titles of which are listed in Table A;

(2) Operation and Maintenance Manual (to be incorporated at issuance of final rule);

(b) The dummy is made up of the component assemblies set out in the following Table A:

TABLE A

Component assembly	Drawing No.
Head Assembly	210–1000.
Neck Assembly (complete)	210–2001.
Upper/Lower Torso Assembly	210–3000.
Leg Assembly	210–5000–1(L),–2(R).
Arm Assembly	210–6000–1(L),–2(R).

(c) Adjacent segments are joined in a manner such that except for contacts existing under static conditions, there is no contact between metallic elements throughout the range of motion or under simulated crash impact conditions.

(d) The structural properties of the dummy are such that the dummy conforms to this part in every respect before its use in any test similar to those specified in Standard Nos. 208, Occupant Crash Protection, and 213, Child Restraint Systems.

§ 572.142 Head assembly and test procedure.

(a) The head assembly for this test consists of the assembly (drawing 210–1000), the adapter plate (drawing ATD 6259), accelerometer mounting block (drawing SA–572–S80), mass simulation of 1/2 neck load transducer (drawing TE–107–001), and 3 accelerometers (drawing SA–572–S4).

(b) When the head assembly in paragraph (a) of this section is dropped from a height of 376.0+/−1.0 mm (14.8+/−0.04 in) in accordance with paragraph (c) of this section, the peak resultant acceleration at the location of the accelerometers at the head CG shall not be less than 250 g or more than 280 g. The resultant acceleration versus time history curve shall be unimodal, and the oscillations occurring after the main pulse shall be less than 10 percent of the peak resultant acceleration. The lateral acceleration shall not exceed +/−15 g's.

(c) Head test procedure. The test procedure for the head is as follows:

(1) Soak the head assembly in a controlled environment at any temperature between 18.9 and 25.6 °C (66 and 78 °F) and at any relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Prior to the test, clean the impact surface of the head skin and the steel impact plate surface with isopropyl alcohol, trichlorethane, or an equivalent. Both impact surfaces must be clean and dry for testing.

(3) Suspend the head assembly with its midsagittal plane in vertical orientation as shown in Figure P1. The lowest point on the forehead is 376.0+/−1.0 mm (14.8 +/−0.04 in) from the steel impact surface. The 1.57 mm (0.062 in.) diameter holes located on either side of the dummy's head in transverse alignment with the CG, are used to ensure that the head transverse plane is level with respect to the impact surface. The angle between the lower surface plane of the neck transducer mass simulator (TE–107–001) and the

plane of the impact surface is 62 +/−1 degrees.

(4) Drop the head assembly from the specified height by a means that ensures a smooth, instant release onto a rigidly supported flat horizontal steel plate which is 51 mm (2 in) thick and 610 mm (24 in) square. The impact surface shall have a finish of not less than 0.2 microns (8 micro inches) (RMS) and not more than 2 microns (80 micro inches) (RMS).

(5) Allow at least 2 hours between successive tests on the same head.

§ 572.143 Neck-headform assembly and test procedure.

(a) The neck and headform assembly for the purposes of this test consist of the neck (drawing 210–2015), neck cable (drawing 210–2040), lower mount plate insert (drawing 9001373), upper mount plate insert (drawing 910420–048), bib simulator (drawing TE208–050), urethane washer (drawing 210–2050), neck mounting plate (drawing TE250–021), two jam nuts (drawing 9001336), load-moment transducer (drawing SA–572–S19), and head form (drawing TE208–000).

(b) When the neck and headform assembly, as defined in paragraph (a) of this section, is tested according to the test procedure in paragraph (c) of this section, it shall have the following characteristics:

(1) Flexion.

(i) Plane D referenced in Figure P2 shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline not less than 70 degrees and not more than 82 degrees occurring between 45 milliseconds (ms) and 60 ms after time zero.

(ii) The peak moment measured by the neck transducer (drawing SA–572–S19) about the occipital condyles shall have a value not less than 44 Nm (32.4 ft-lb) and not more than 56 Nm (41.3 ft-lbs) occurring within the minimum and maximum rotation interval and the positive moment shall decay for the first time to 10 Nm (7.4 ft-lb) between 60 ms and 80 ms.

(2) Extension.

(i) Plane D referenced in Figure P3 shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline not less than 80 degrees and not more than 90 degrees occurring between 50 ms and 65 ms after time zero.

(ii) The peak negative moment measured by the neck transducer (drawing SA–572–S19) about the occipital condyles shall have a value not more than −42 Nm (−31.0 ft-lb) and not less than −53 Nm (−39.1 ft-lb) occurring within the minimum and maximum rotation interval and the negative moment shall decay for the first time to −10Nm (−7.4 ft-lb) between 60 and 80 ms after time zero.

(3) Time-zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material.

(c) Test Procedure.

(1) Soak the neck assembly in a controlled environment at any temperature between 20.6 and 22.2 °C (69 and 72 °F) and at any relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Torque the jam nut (drawing 9001336) on the neck cable (drawing 210–2040) to 0.2 Nm to 0.35Nm (2 in-lb to 3 in-lb).

(3) Mount the neck-headform assembly, defined in paragraph (a) of this section, on the pendulum so the midsagittal plane of the headform is vertical and coincides with the plane of motion of the pendulum as shown in Figure P2 for flexion and Figure P3 for extension tests.

(i) The moment and rotation data channels are defined to be zero when the longitudinal centerline of the neck and pendulum are parallel.

(ii) The test shall be conducted without inducing any torsion type twisting of the neck.

(4) Release the pendulum and allow it to fall freely to achieve an impact velocity of 5.50+/−0.10 m/s (18.05 + 0.40 ft/s) for flexion and 3.65 +/−0.1 m/s (11.98+/−0.40 ft/s) for extension tests, measured at the center of the pendulum accelerometer at the instant of contact with the honeycomb.

(i) Time-zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material. The pendulum accelerometer data channel shall be at the zero level at this time.

(ii) Stop the pendulum from the initial velocity with an acceleration vs. time pulse which meets the velocity change as specified below. Integrate the pendulum acceleration data channel to obtain the velocity vs. time curve as indicated in Table B:

TABLE B

Time	Flexion		Time	Extension	
ms	m/s	ft/s	ms	m/s	ft/s
Pendulum Pulse					
10	2.0–2.7	6.6–8.9	6	1.0–1.4	3.3–4.6
15	3.0–4.0	9.8–13.1	10	1.9–2.5	6.2–8.2
20	4.0–5.1	13.1–16.7	14	2.8–3.5	9.2–11.5

§ 572.144 Thorax assembly and test procedure.

(a) Thorax assembly. The thorax consists of the part of the torso assembly shown in drawing 210–3000.

(b) When the thorax of a completely assembled dummy (drawing 210–0000) is impacted by a test probe conforming to § 572.146(a) at 6.0 +/−0.1 m/s (19.7 +/−0.3 ft/s) according to the test procedure in paragraph (c) of this section,

(1) Maximum sternum displacement relative to the spine, measured with the chest deflection transducer (SA–572–S50), shall not be less than 32mm (1.3 in) and not more than 38mm (1.5in). During this displacement interval, the peak force, measured by the probe-mounted accelerometer in accordance with paragraph § 572.146(a), shall not be less than 0.6 kN (135 lb) and not more than 0.8 kN (180 lb).

(2) The internal hysteresis of the ribcage in each impact, as determined from the force vs deflection curve, shall be not less than 65 percent and not more than 85 percent.

(c) Test procedure.

(1) Soak the dummy in a controlled environment at any temperature between 20.6 and 22.2 °C (69 and 72 °F) and at any relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Seat and orient the dummy, that wears light-weight-cotton stretch short-sleeve shirt and above-the-knee pants, on a seating surface without back support as shown in Figure P4, with the lower limbs extended horizontally and forward, the upper arms parallel to the

torso and the lower arms extended horizontally and forward all parallel to the midsagittal plane. The midsagittal plane is vertical within +/−1 degree and the posterior surface of the upper spine box is aligned at 90+/−1 degrees from the horizontal.

(3) Establish the impact point at the chest midsagittal plane so that the impact point of the longitudinal centerline of the probe coincides with the dummy's midsagittal plane and is centered on the center of No. 2 rib within +/−2.5mm and 0.5 degrees of a horizontal plane.

(4) Impact the thorax with the test probe so that at the moment of contact the probe's longitudinal center line falls within 2 degrees of a horizontal line in the dummy's midsagittal plane.

(5) Guide the test probe during impact so that there is no significant lateral, vertical or rotational movement.

(6) Allow at least 30 minutes between successive tests.

§ 572.145 Upper and lower torso assemblies and torso flexion test procedure.

(a) Upper/lower torso (drawing 210–3000) and upper leg assembly (drawings 210–5100–1(left) and -2(right)). The test objective is to determine the resistance of the lumbar spine and abdomen of a fully assembled dummy (drawing 210–0000) to flexion articulation between upper and lower halves of the torso assembly.

(b) When the upper half of the torso assembly of a seated dummy is subjected to a force continuously applied at the occipital condyle level through the rigidly attached adaptor bracket as shown in Figure P5 according to the test procedure set out in paragraph (c) of this section, the lumbar spine-abdomen assembly shall:

(1) Flex by an amount that permits the upper half of the torso as measured at the posterior surface of the spine accelerometer box (drawing 210–8020) to rotate in midsagittal plane 45 degrees with respect to the vertical, at which time the force level is not less than 130 N (28.8 lb) and not more than 180 N (41.2 lb), and

(2) Upon removal of the force, the upper torso assembly returns to within 10 degrees of its initial position.

(c) Test procedure. The procedure for the upper/lower torso flexion stiffness test is as follows:

(1) Soak the dummy in a controlled environment at any temperature between 20.6° and 22° C (69 and 72° F) and at any relative humidity between 10 and 70 percent for at least 4 hours prior to a test.

(2) Assemble the complete dummy (with or without the lower legs) and position at the fixture in a seated posture as shown in Figure P5.

(i) Secure the pelvis to the fixture where the lumbar load transducer or its structural replacement bolts to the pelvis weldment (drawing 219–4510) with a rigid bracket as shown in Figure P5.

(ii) Tighten the mountings so that the pelvis-lumbar joining surface is horizontal within +/−1 deg and the dummy as seated is in contact with the test surface.

(3) Install a low weight rigid loading adapter bracket (not to exceed 0.75 kg (1.65 lb)) to the posterior surface of the upper spine box as shown in Figure P5. The loading bracket is designed such that the point of load application coincides with the level of the occipital condyle and also provides means for measuring the rotation of the upper torso.

(4) Point the upper arms vertically downward and the lower arms forward.

(5) Inspect and adjust, if necessary, the seating of the abdominal insert within the pelvis cavity.

(6) The initial orientation of the angle reference plane of the seated, unsupported dummy shall not exceed 15 degrees of flexion as shown in Figure P5. The angle reference plane is defined by the transverse plane of the posterior surface of the upper thoracic instrumentation cavity makes with respect to the vertical as shown in Figure P5.

(7) Apply a forward force in the midsagittal plane through the adaptor bracket as shown in Figure P5 at any upper torso flexion rate between 0.5 and 1.5 degrees per second, until the angle reference plane reaches 45 degrees of flexion with the applied force at 62 degrees to 65 degrees from horizontal.

(8) Continue to apply a force sufficient to maintain 45 degrees of flexion for 10 seconds, and record the highest applied force during the 10 seconds period.

(9) Release all force as rapidly as possible, and measure the return angle with respect to the initial angle reference plane as defined in paragraph (c)(7) of this section 3 minutes after the release.

§ 572.146 Test conditions and instrumentation

(a) The test probe used for thoracic impact tests is a 50.8 mm (2 in) diameter cylinder that weighs 1.7+/−.02 kg (3.75 lb) including instrumentation. Its impacting end has a flat right angle face that is rigid and has an edge radius of 12.7 mm (0.5 in). The test probe has an accelerometer mounted on the end opposite from impact with its sensitive axis co-linear to the longitudinal centerline of the cylinder.

(b) Head accelerometers have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA–572–S4 and are mounted in the head as shown in drawing 210–0000.

(c) The neck force-moment transducer has the dimensions, response characteristics, and sensitive axis locations specified in drawing SA–572–S19 and is mounted for testing as shown in the head-neck assembly consisting of drawing 210–0000.

(d) The shoulder force transducers have the dimensions and response characteristics specified in drawing SA–572–S21 and are allowed to be mounted as an option in the torso assembly as shown 210–0000.

(e) The thorax accelerometers have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA–572–S4 and are mounted in the torso assembly in triaxial configuration at the T4 location, and as options at T1, and T12, and in uniaxial configuration on the sternum at the midpoint level of ribs 1 and 3 and on the spine coinciding with the midpoint level of #3 rib as shown in drawing 210–0000.

(f) The chest deflection potentiometer has the dimensions and response characteristics specified in drawing SA–572–50 and is mounted in the torso assembly as shown drawing 210–0000.

(g) The lumbar spine force/moment transducer has the dimensions and response characteristics specified in drawing SA–572–S20 and is allowed to be mounted as an option in the torso assembly as shown drawing 210–0000.

(h) The pubic force transducer has the dimensions and response characteristics specified in drawing SA–572–S18 and is allowed to be mounted as an option in the torso assembly as shown 210–0000.

(i) The acetabulum force transducers have the dimensions and response characteristics specified in drawing SA–572–S22 and are allowed to be mounted as options in the torso assembly as shown 210–0000.

(j) The anterior-superior iliac spine transducers have the dimensions and response characteristics specified in drawing SA-572-S17 and are allowed to be mounted as options in the torso assembly as shown drawing 210–0000.

(k) The pelvis accelerometers have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA–572-S4 and are mounted within the pelvis in triaxial configuration as shown drawing 210–0000.

(l) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part are recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211, Mar95 "Instrumentation for Impact Tests," with channel classes as follows:

(1) Head acceleration—Class 1000

(2) Neck

(i) force—Class 1000

(ii) moments—Class 600

(iii) pendulum acceleration—Class 180

(3) Thorax:

(i) rib/sternum acceleration—Class 1000

(ii) spine and pendulum accelerations—Class 180

(iii) Thorax deflection—Class 600

(4) Lumbar: Forces and moments—Class 1000

(5) Pelvis: accelerations, forces and moments—Class 1000.

(m) Coordinate signs for instrumentation polarity conform to the Sign Convention For Vehicle Crash Testing, Surface Vehicle Information Report, SAE J1733, 1994–12.

(n) The mountings for sensing devices shall have no resonance frequency within range of 3 times the frequency range of the applicable channel class.

(o) Limb joints shall be set at lg, barely restraining the weight of the limb when it is extended horizontally. The force required to move a limb segment shall not exceed 2 g throughout the range of limb motion.

(p) Performance tests of the same component, segment, assembly, or fully assembled dummy shall be separated in time by a period of not less than 30 minutes unless otherwise noted.

(q) Surfaces of dummy components are not painted except as specified in this part or in drawings subtended by this part.

BILLING CODE 4910–59–P

Figure P 1

HEAD DROP TEST SET-UP SPECIFICATIONS

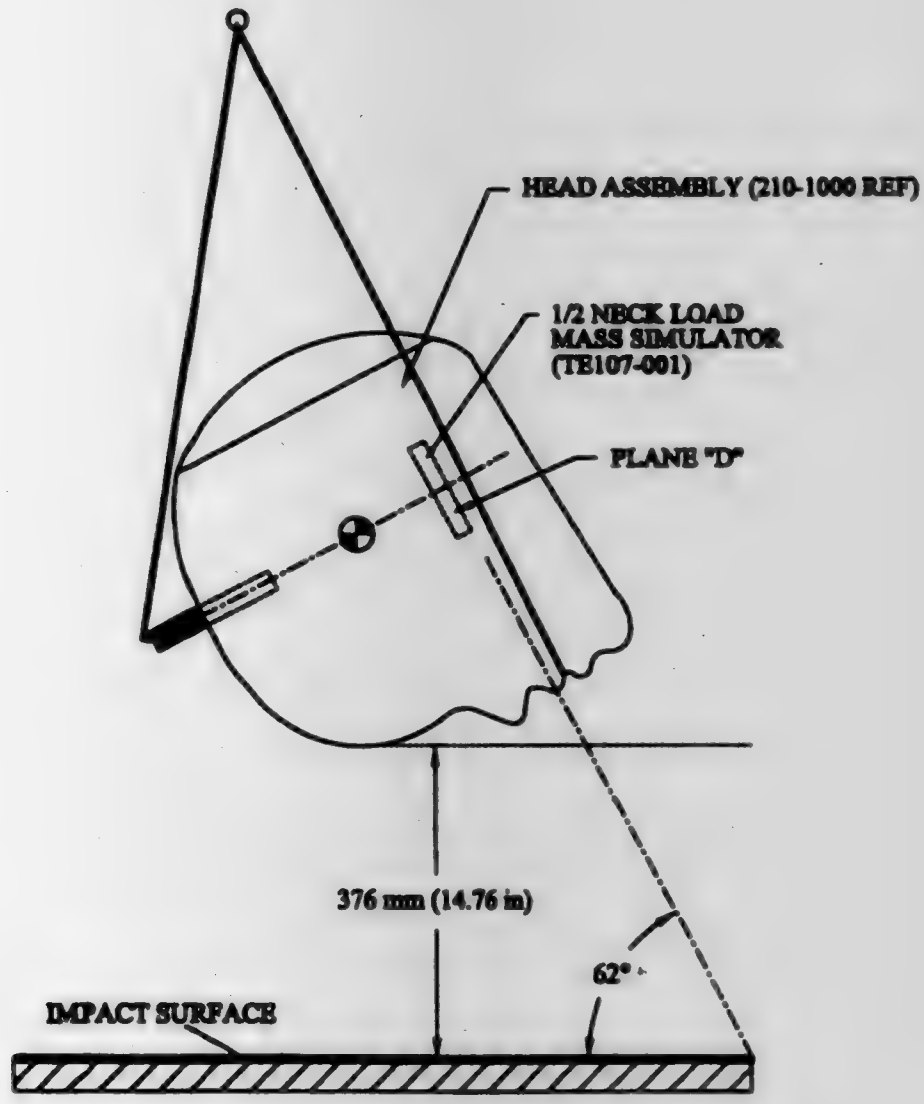
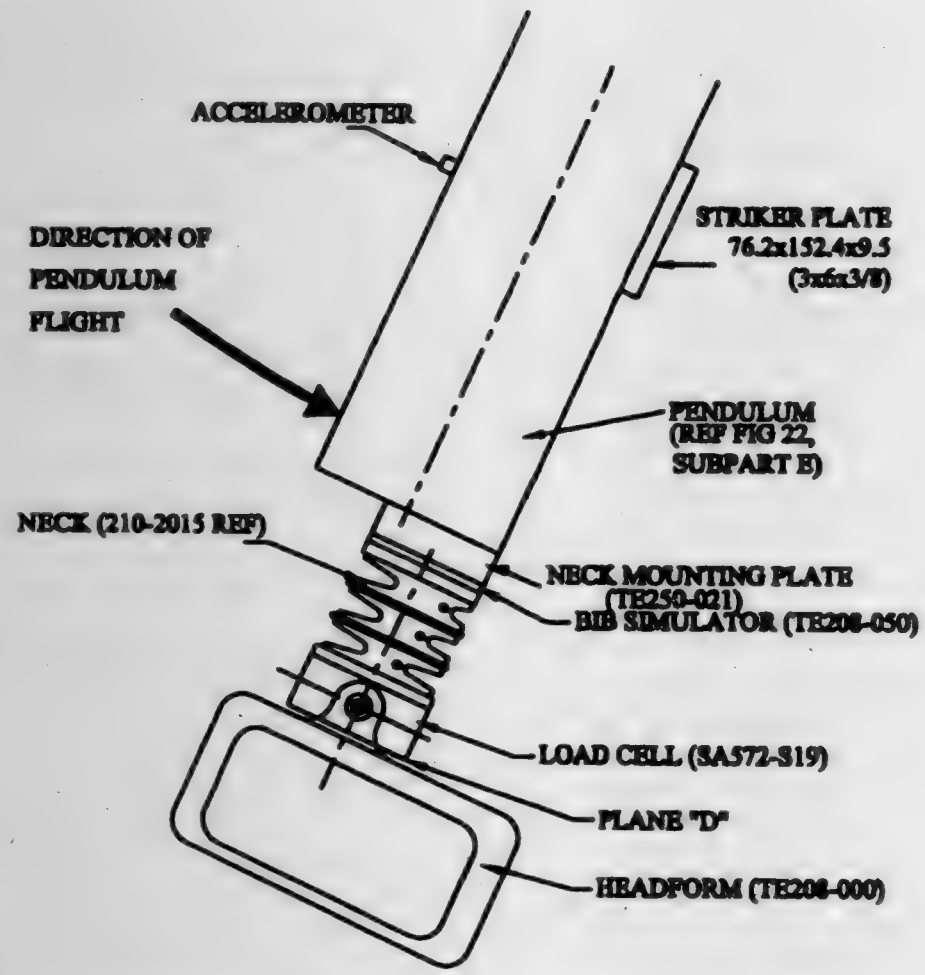


Figure P 2

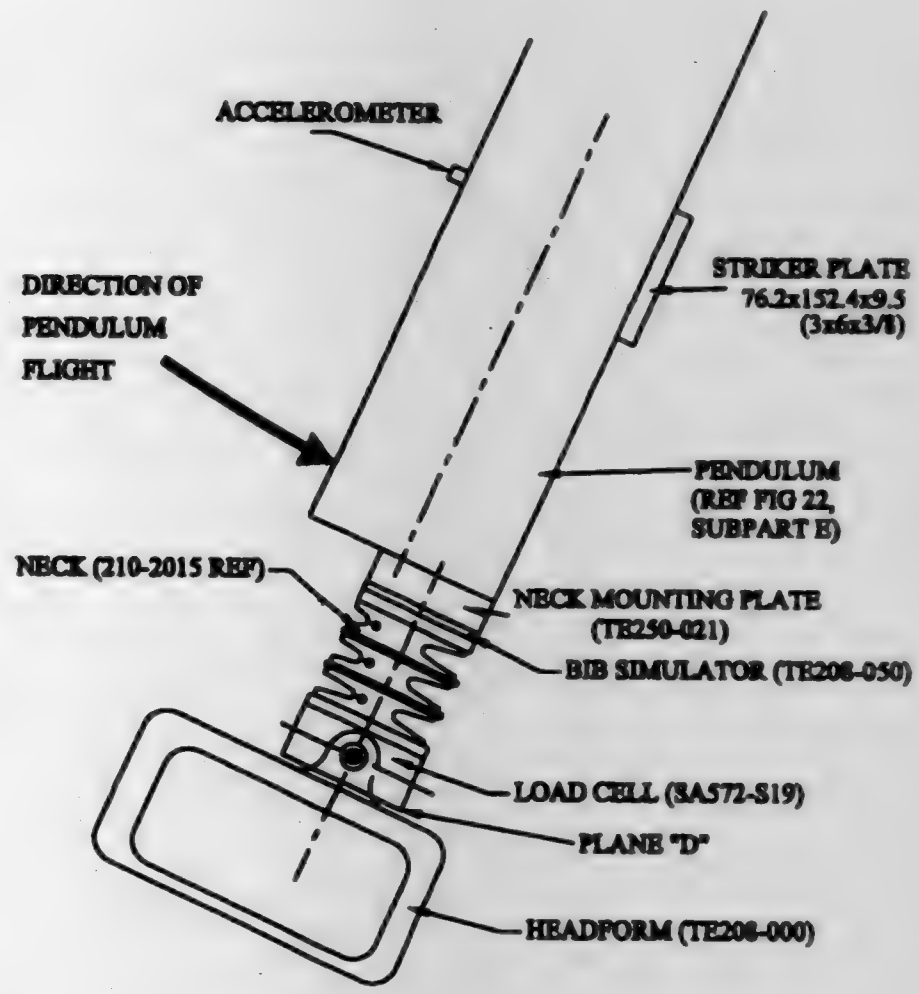
NECK FLEXION TEST SET-UP SPECIFICATIONS



NOTE: MOUNT NECK AT LEADING EDGE OF PENDULUM TO AVOID INTERFERENCE WITH HEADFORM MOTION.

Figure P 3

NECK EXTENSION TEST SET-UP SPECIFICATIONS



NOTE: MOUNT NECK AT LEADING EDGE OF PENDULUM TO AVOID INTERFERENCE WITH HEADFORM MOTION.

Figure P 4

THORAX IMPACT TEST SET-UP SPECIFICATIONS

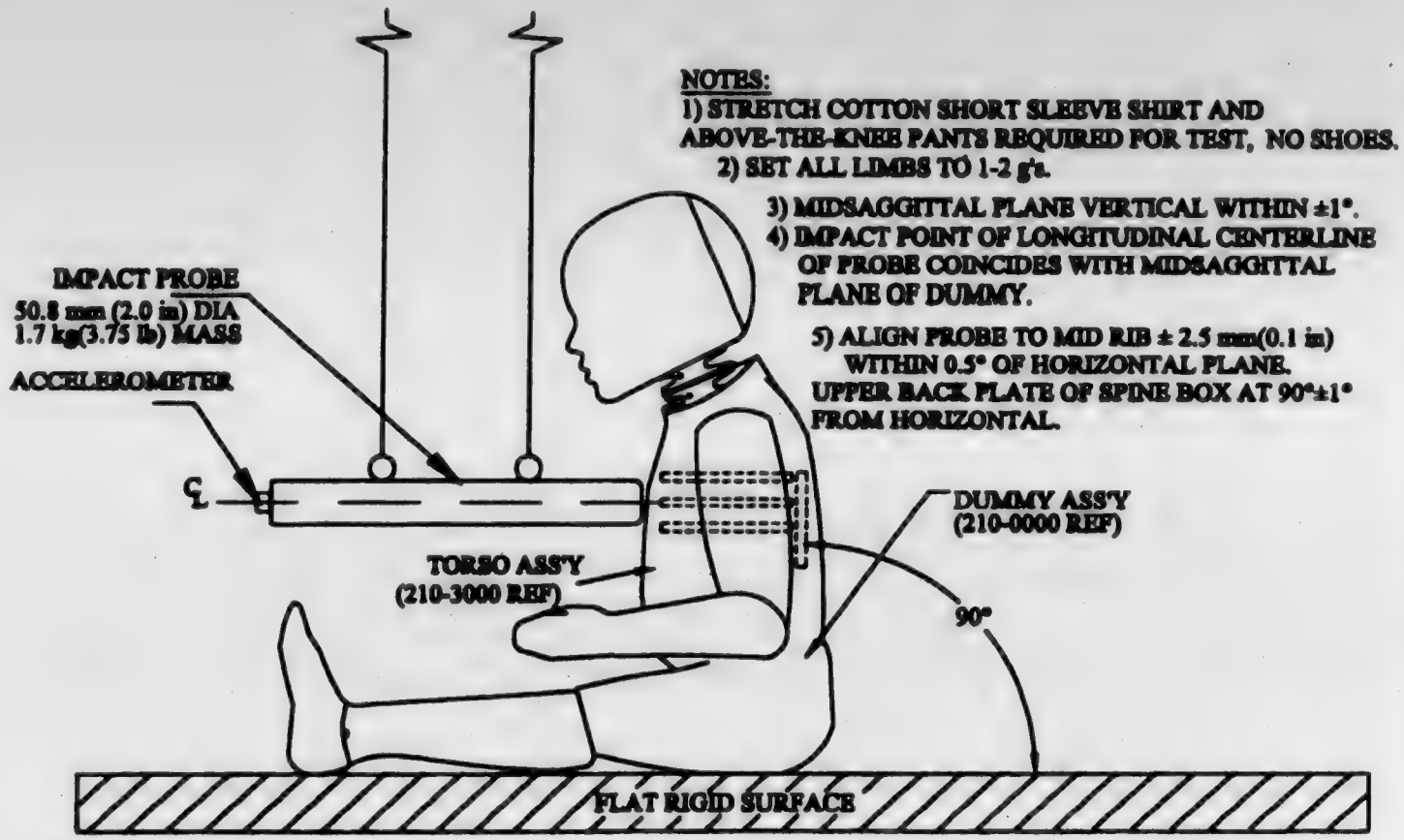
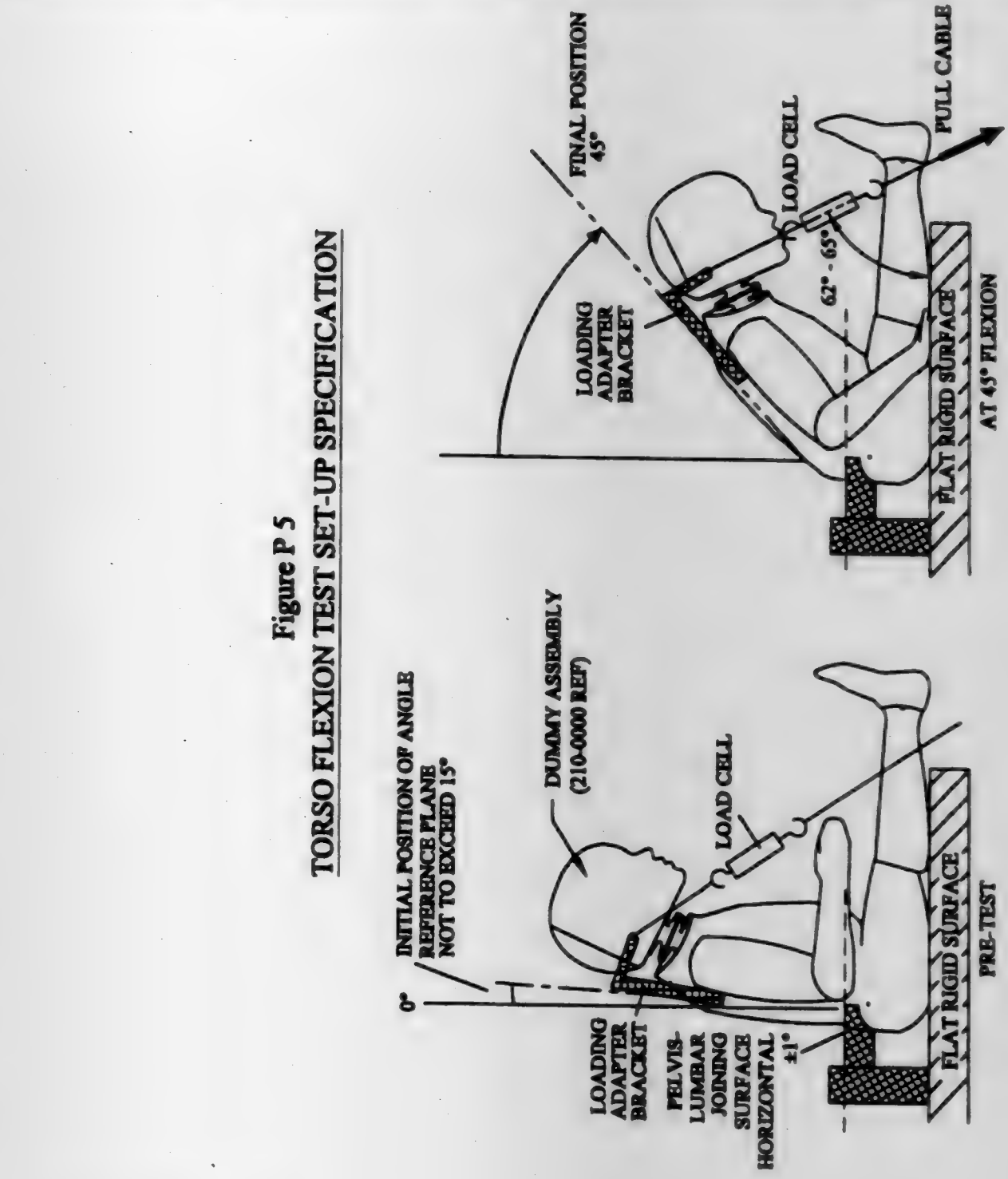


Figure P 5

TORSO FLEXION TEST SET-UP SPECIFICATION



Issued on: January 22, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–1939 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–59–C

Notices

Federal Register

Vol. 64, No. 18

Thursday, January 28, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Subcommittee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee will meet on February 4, 1999, at the DoubleTree Hotel, Jantzen Beach, 909 N. Hayden Island Drive, Portland, Oregon 97217. The purpose of the meeting is to continue discussions on the implementation of the Northwest Forest Plan. The meeting will begin at 9:15 a.m. and continue until 3:00 p.m. Agenda items to be discussed include, but are not limited to: information sharing on the state salmon plans and the Clean Water Act and Safe Water Drinking Act; continued discussion on integrating the forest plan into the management landscape; and progress reports on effectiveness monitoring and information issues. The IAC meeting will be open to the public and is fully accessible for people with disabilities. Interpreters are available upon request in advance. Written comments may be submitted for the record at the meeting. Time will also be scheduled for oral public comments. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Don Knowles, Executive Director, Regional Ecosystem Office, 333 SW 1st Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2180).

Dated: January 21, 1999.

Donald R. Knowles,

Designated Federal Official.

[FR Doc. 99–1995 Filed 1–27–99; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: February 4, 1999; 8:00 a.m.

PLACE: The Omni Colonnade Hotel, Conference Room, 80 Aragon Avenue, Miami (Coral Gables), Florida 33134.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field such as those relating to Cuba. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: January 26, 1999.

John A. Lindburg,

Legal Counsel.

[FR Doc. 99–2223 Filed 1–26–99; 3:55 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet March 2, 1999, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on policies under review.
4. Update on encryption regulations.
5. Discussion on High Performance Computer interim regulation.
6. Report on licensing under India/Pakistan sanctions.
7. Report on pending Wassenaar Arrangement regulation.
8. Discussion on proposal to revise definition of Exporter of Record.
9. Election of new Chairperson.

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, BXA MS:3886C, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be

exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: January 22, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–2004 Filed 1–27–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 980930252–9012–02]

Special American Business Internship Training Program (SABIT)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of extension of funding availability for grants under the Special American Business Internship Training Program (SABIT).

SUMMARY: This Notice supplements the **Federal Register** Notice of November 6, 1998 (63 FR 59938–59941) announcing the availability of funds for the Special American Business Internship Training Program (SABIT), for training business executives (also referred to as "interns") from the Newly Independent States of the Former Soviet Union. All information in the previous announcement remains current, except for the changes to the closing date.

DATES: This Notice extends the closing date of the referenced Federal Register Notice for two months to 5 p.m. March 31, 1999. All awards are expected to be made prior to June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Liesel Duhon, Director, Special American Business Internship Training Program, International Trade Administration, U.S. Department of Commerce, phone—(202) 482–0073, facsimile—(202) 482–2443. These are not toll free numbers.

Dated: January 21, 1999.

Liesel Duhon,

Director, SABIT Program.

[FR Doc. 99–2023 Filed 1–27–99; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of the Panel Review of the final antidumping duty determination made by the International Trade Administration in the administrative review, respecting Circular Welded Non-Alloy Steel Pipe and Tube From Mexico (Secretariat File No. USA–97–1904–06).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the Investigating Authority, the panel review is terminated as of January 13, 1999. Complaints were filed pursuant to Rule 39, Notices of Appearance were filed pursuant to Rule 40 and a panel has been appointed. All "participants" in this review as defined in Rule 3 of the *Rules of Procedure for Article 1904 Binational Panel Review* have consented to the motion for termination. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: January 21, 1999.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–2053 Filed 1–27–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

AGENCY: North American Free-Trade Agreement (NAFTA) Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Binational Panel.

SUMMARY: By an opinion dated January 20, 1999, the Binational Panel reviewing the final affirmative redetermination made by the International Trade Administration (ITA) respecting Certain Corrosion-Resistant Carbon Steel Products from Canada (Secretariat File No. USA–97–1904–03) remanded the September 4, 1998 redetermination to the ITA for further action. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). The Rules were published in

the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). A consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the **Federal Register** on February 8, 1994 (59 FR 5892). The panel review in this matter was conducted in accordance with the Rules, as amended.

Panel Decision: On September 4, 1998, the International Trade Administration issued its Final Remand Determination in response to the Panel Decision.

Stelco filed comments objecting to this Determination on September 28, 1998, and requested the Panel to review the Department's Final Remand Determination.

On November 18, 1998, the Panel issued an order extending the date for issuance of the decision until January 18, 1999 and then to January 20, 1999. The Panel decision issued on January 20, 1999, remanded this matter to the Department of Commerce with the following instructions:

1. That the Department reconsider the costs associated with Baycoat's painting services to Stelco in a manner not inconsistent with the opinion.

2. That the Department will return a determination on remand within 60 days of the issuance of the Order (by March 22, 1999).

Dated: January 21, 1999.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–2052 Filed 1–27–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904 Binational Panel Reviews: Notice of Completion of Panel Review

AGENCY: North American Free Trade Agreement, NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final affirmative antidumping determination made by the U.S. International Trade Administration, in the matter of Gray Portland Cement and Clinker from Mexico, Secretariat File No. USA–97–1904–02.

SUMMARY: Pursuant to the Order of the Binational Panel dated December 4, 1998, affirming the final determination described above was completed on January 18, 1999.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On December 4, 1998, the Binational Panel issued an order which affirmed the final affirmative antidumping duty determination of the United States International Trade Administration ("ITA") concerning Gray Portland Cement and Clinker from Mexico. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no Request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules*, the Panel Review was completed and the panelists discharged from their duties effective January 18, 1999.

Dated: January 21, 1999.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–2051 Filed 1–27–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Multi-Agency Business Development Infrastructure Mission to China and Hong Kong, and Business Development Mission to Korea; Correction

AGENCY: International Trade Administration, Commerce.

ACTION: Correction to 64 FR Notice.

This notice is to provide updated and corrected information for 64 FR 477–479 which appeared in the **Federal Register** on January 5, 1999. The notice announced the Multi-Agency Business Development Mission to China and Hong Kong and the Business Development Mission to Korea. The corrected information is as follows:

Change of Title:

Multi-Agency Business Development Mission to China and the Business Development Mission to Korea

Change of Dates for the Trade Missions:

Korea: March 25–27—Seoul

China: March 28–April 1—Beijing, Shanghai and Guangzhou

Application Deadline: The new deadline for applications is February 5, 1999.

Dated: January 22, 1999.

Lucie Naphin,

Director, Office of Business Liaison.

[FR Doc. 99–2021 Filed 1–27–99; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012299A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will hold a work session which is open to the public.

DATES: The meeting will begin at 10:00 a.m. on Tuesday, February 16, 1999 and continue from approximately 8:00 a.m. to 5:00 p.m. each day through Friday, February 19, 1999.

ADDRESSES: The meeting will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting, which is primarily a work session of the STT, is to draft the stock status report, "Preseason Report 1: Stock Abundance Analysis for 1998 Ocean Salmon Fisheries". The final report will be distributed to the public and reviewed by the Council at its March 1999 meeting in Portland, OR.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 22, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2048 Filed 1–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Ballistic Missile Defense Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session in Colorado Springs, Colorado, on 18–19 February 1999.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition and Technology), on all matters relating to BMD acquisition, system development, and technology.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended by 5 U.S.C., Appendix II, it is hereby determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C., 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: January 25, 1999.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–2007 Filed 1–27–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Assessment (EA) for the Disposal and Reuse of Excess Facilities at Fort Hunter Liggett, California

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army will prepare an EA for the disposal and reuse of excess facilities at Fort Hunter Liggett, California.

The proposed action is to implement the recommendation of the 1995 Defense Base Closure and Realignment (BRAC) Commission under Public law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, for Fort Hunter Liggett, California. The EA will address the direct and indirect environmental and socioeconomic effects associated with implementing the Commission's recommendation to retain minimum essential facilities and training area as an enclave to support the Reserve Components. Specifically, the EA will examine the effects associated with the disposal and reuse of approximately 139 acres, 63 buildings; and 86 family housing units at Fort Hunter Liggett, California.

ADDRESSES: Questions should be directed to Dr. Neil Robinson, U.S. Army Engineer District, Mobile (ATTN: CESAM–P–E), P.O. Box 2288, 109 St. Joseph Street, Mobile, Alabama 36602.

SUPPLEMENTARY INFORMATION: Opportunities for public participation will be announced in the local newspapers. Comments from the public will be considered before any action is taken to implement these disposal and reuse actions.

Dated: January 20, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA(I,L&E).

[FR Doc. 99–2016 1–27–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Disposal, Transfer or Retention of the Family Housing at Fort Buchanan, Puerto Rico

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army will prepare an EIS for the disposal, transfer or retention of family housing at Fort Buchanan, Puerto Rico.

The proposed action is to implement the recommendation of the 1995 Defense Base Closure and Realignment (BRAC) Commission under Public Law 101–510 to dispose of family housing at Fort Buchanan, Puerto Rico.

ADDRESSES: Questions should be directed to Mr. Glen Coffee, U.S. Army Engineer District, Mobile (ATTN: CESAM–PD–EO, 109 St. Joseph Street, Mobile, Alabama 36602.

FOR FURTHER INFORMATION CONTACT: Mr. Glen Coffee at (334) 690–2729.

SUPPLEMENTARY INFORMATION: The EIS will address the environmental and socioeconomic effects associated with implementing the Commission's recommendation to dispose of the 361 units of family housing located in four housing areas on Fort Buchanan. The EIS will analyze the following alternatives for disposal, transfer or retention of the housing: reuse of the property by the local community; transfer of the family housing to other Federal agencies; demolition of some or all of the housing units; a commercial residential development alternative; a combination of these alternatives; and a no action alternative. Under the no action alternative, the Army will analyze the effects of retaining the housing to meet the Army's future housing needs. The no action alternative affords a baseline for comparison of no other alternatives. The Army, with the approval of the Secretary of Defense, could decide to retain some or all of the family housing. The Secretary of Defense has authority to do so under the 1999 Defense Appropriations Act.

A draft EIS will be published in 1999 and will be made available for a 45-day public comment period. The final EIS is expected to be published in 2000 and will be made available for public comment during a 30-day waiting period after its publication.

A public scoping meeting will be held in the San Juan-Fort Buchanan area with the time and place to be announced. Comments received will be used to assist the Army in developing issues and identifying potential impacts to the quality of the human environment.

Dated: January 20, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc 99–2017 Filed 1–27–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 16 and 17 February 1999.

Time of Meeting: 0800–1800 (both days).
Place: Arlington, VA.
Agenda: The Army Science Board's (ASB) Summer Study panel on "Full Spectrum Protection for 2025-Era Ground Platforms" will meet for briefings and discussions. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and manner permitted by the committee. The classified portion of this meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). For further information, please contact Jackie Ladd at (703) 604–7479.

Leonard Gliatta,

Colonel, GS, Army Science Board.

[FR Doc. 99–2044 Filed 1–27–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO's Executive Panel is to conduct the mid-term briefing of the Homeland Defense Task Force to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy involvement in the defense of the homeland. This will include a discussion on the implications of the Navy's role in National Missile Defense.

DATES: The meeting will be held on February 11, 1999 from 1:30 p.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Lieutenant Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, telephone number (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2). These matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: January 20, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 99–2042 Filed 1–27–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Impact Aid

AGENCY: Department of Education.

ACTION: Notice extending the application deadline date for Impact Aid fiscal year (FY) 1999 section 8002 grants and FY 2000 section 8003 grants.

SUMMARY: The Secretary extends the deadline date for the submission of applications for Impact Aid FY 1999 section 8002 grants and FY 2000 section 8003 grants to March 1, 1999. Impact Aid regulations at 34 CFR 222.3 specify that the annual application deadline is January 31. Due to unavoidable delays in the production and the distribution of the application packages, the Secretary extends the deadline for the potential applicants under sections 8002 and 8003 for Impact Aid assistance for the respective years specified. Section 8003 applicants should use a survey date for their student counts that is at least three days after the start of the 1998–99 school year and before the extended deadline of March 1, 1999.

EFFECTIVE DATE: This notice extending the application deadline date to March 1, 1999, for Impact Aid FY 1999 section 8002 grants and FY 2000 section 8003 grants is effective January 28, 1999.

DEADLINE DATE FOR TRANSMITTAL OF APPLICATIONS: : March 1, 1999. The Secretary will also accept and approve for payment any otherwise approvable application that is received on or before the 60th calendar day after March 1, 1999, which is April 30, 1999. However, any applicant meeting the conditions of the preceding sentence will have its payment reduced by 10 percent of the amount it would have received had its application been filed by March 1, 1999.

DEADLINE DATE FOR INTERGOVERNMENTAL REVIEW: The deadline date for the transmittal of comments on those applications by State educational agencies is March 16, 1999.

FOR APPLICATIONS OR INFORMATION CONTACT: Impact Aid Program, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6244. Telephone: (202) 260–3858. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Waiver of rulemaking: Currently, 34 CFR 222.3, which establishes the annual January 31 Impact Aid application deadline, is in effect. However, due to unavoidable delays in the production and distribution of the application packages, applicants may not have sufficient time to comply with that annual deadline. Because this amendment makes a procedural change for this year only as a result of unique circumstances, proposed rulemaking is not required under 5 U.S.C. 553(b)(A). In addition, the Secretary has determined under 5 U.S.C. 553(b)(B) that proposed rulemaking on this one-time suspension of the regulatory deadline date is impracticable, unnecessary, and contrary to the public interest.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7705.

(Catalog of Federal Domestic Assistance Number 84.041)

Dated: January 22, 1999.

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–2018 Filed 1–27–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.305T]

Office of Educational Research and Improvement (OERI); National Research Institutes' Field-Initiated Studies (FIS) Research Grant Program; Notice of Extension of Deadline for Receipt of Applications and Applications Availability Date for Fiscal Year 1999

On December 14, 1998, the Secretary published in the **Federal Register** (63 FR 68985) a notice inviting applications for new awards for fiscal year 1999 for the FIS Research Grant Program. The Secretary extends the *deadline date for the receipt of applications* for the OERI fiscal year 1999 FIS grants from February 19, 1999, to *March 26, 1999. Application packages* will be available on *January 29, 1999.*

FOR FURTHER INFORMATION OR APPLICATION: To request an application or to obtain further information, write to the Office of Educational Research and Improvement, U.S. Department of Education, 555 New Jersey Avenue, NW, Room 604, Washington, DC 20208, or contact Veda Bright by e-mail at veda__bright@ed.gov or by telephone at (202) 219–1935. Application packages will be available electronically on the World Wide Web at the following site: http://www.ed.gov/offices/OERI/FIS/

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511, or toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 6031(c)(2)(B)

Dated: January 25, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–2128 Filed 1–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.315A, 84.315B, 84.315C]

Capacity Building for Traditionally Underserved Populations; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To improve services provided under the Rehabilitation Act of 1973, as amended (Act), especially services provided to individuals from minority backgrounds, and to provide outreach and technical assistance to minority entities and Indian tribes to enhance their capacity and promote their participation in activities funded under the Act.

Eligible Applicants: State and public or private nonprofit agencies and organizations, including Indian tribes and institutions of higher education. For Absolute Priority 1 and Absolute Priority 2, only minority entities as defined in section 21(b)(5)(B) of the Act and Indian tribes are eligible to apply for funds (section 21(b)(2)(B)).

SUPPLEMENTARY INFORMATION: Three types of projects are announced for FY 1999 under this program, and they are authorized under section 21(b)(2)(B) and (b)(2)(C) of the Act.

The term "minority entity" is defined in section 21(b)(5)(B) of the Act to mean an entity that is a historically Black college or university, a Hispanic-serving institution of higher education, an American Indian tribal college or university, or another institution of higher education whose student minority enrollment is at least 50 percent.

Deadline for Transmittal of Applications: March 24, 1999.

Deadline for Intergovernmental Review: May 23, 1999.

Note: Assistance to federally recognized Indian tribes is excluded from coverage under 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

Applications Available: January 28, 1999.

Available Funds: $2,000,000.

Maximum Awards: In no case does the Secretary make an award greater than the maximum amount listed for a single budget period of 12 months for each absolute priority. The Secretary rejects and does not consider an application that proposes a budget exceeding the following maximum amounts:

Absolute Priority 1 " $150,000
Absolute Priority 2 " $400,000
Absolute Priority 3 " $200,000

Estimated Range of Awards: $120,000 to $400,000.

Absolute Priority 1 " $120,000 to $150,000
Absolute Priority 2 " $300,000 to $400,000
Absolute Priority 3 " $150,000 to $200,000

Note: Applicants should apply for level funding for each project year.

Estimated Number of Awards: 12.

Absolute Priority 1—8
Absolute Priority 2—1
Absolute Priority 3—3

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

(1) A "page" is 8.5" × 11", on one side only with 1" margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget

section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we won't consider your application for funding.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education only.

Priorities

Absolute Priority 1 (84.315A): Under 34 CFR 75.105(c)(3) and section 21(b)(2)(B) of the Act, the Secretary gives an absolute preference to applications from minority entities and Indian tribes that propose projects that would provide training, technical assistance, or related activities in order to improve services under the Act, especially services provided to individuals from minority backgrounds. The Secretary funds under this competition only applications that meet this absolute priority.

Invitational Priority: Within Absolute Priority 1, the Secretary is particularly interested in applications from minority entities that propose to do both of the following:

(A) Provide training, technical assistance, or related activities in order to improve the delivery of vocational rehabilitation services provided under the Act, especially services provided to individuals from minority backgrounds.

(B) Establish collaborative relationships and partnerships with community-based organizations, particularly those community-based organizations that provide services to individuals with disabilities from minority backgrounds.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Approved applications from this competition also may be funded in FY 2000.

Absolute Priority 2 (84.315B): Under 34 CFR 75.105(c)(3) and section 21(b)(2)(B) of the Act, the Secretary gives an absolute preference to applications from minority entities and Indian tribes that propose projects that would improve services provided under the Act by providing training, technical assistance, or related activities to assist grantees funded under the Vocational Rehabilitation Service Projects for American Indians with Disabilities program (CFDA No. 84.250). The Secretary funds under this competition only applications that meet this absolute priority.

Absolute Priority 3 (84.315C): Under 34 CFR 75.105(c)(3) and section 21(b)(2)(C) of the Act, the Secretary gives an absolute preference to applications that propose projects that would provide outreach and technical assistance to minority entities and Indian tribes to promote their participation in activities funded under the Act, including assistance to enhance their capacity to carry out those activities. Projects may provide technical assistance to minority entities who are first-time recipients of grants funded under the Act in order to increase their capacity to carry out their grants. The Secretary funds under this competition only applications that meet this absolute priority.

Selection Criteria: In evaluating an application for a new grant under these competitions, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for these competitions will be provided in the application package for these competitions.

For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3317, Switzer Building), Washington, D.C. 20202–2649; Telephone (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Ellen C. Chesley, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3318 Switzer Building), Washington, D.C. 20202–2649. Telephone: (202) 205–9481. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 718b (Section 21 of the Rehabilitation Act of 1973, as amended).

Dated: January 22, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–2019 Filed 1–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–516–000; FERC–516]

Proposed Information Collection and Request for Comments

January 22, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of

the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comments on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before March 29, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–516 "Electric Rate Schedule Filings" (OMB No. 1902–0096) is used by the Commission to carry out the general authority in Sections 15, 19, 20, 205, 206 and 207 of the Federal Power Act (FPA) (16 U.S.C. 808, 812, 813, 824d–f). A public utility must obtain Commission authorization for all rates and charges made, related contracts and service conditions, and for wholesale sales and transmission of energy in interstate commerce. The Commission is authorized to investigate the rates charged by public utilities subject to its jurisdiction. If after investigation the Commission determines that the rates, terms or conditions of service are "unjust and unreasonable or unjustly discriminatory or unduly preferential," it is authorized to determine and prescribe the just and reasonable rates, terms or conditions. Either full or abbreviated cost data is required to support the proposed rate levels as part of the justification for the complete electric rate schedules. Submission of the information is necessary because of the complexity of the electric industry and the controversial nature of many of the elements of a utility's cost to provide service. Sufficient detail must be obtained for the Commission to make informed and equitable decisions concerning the appropriate level of rates, and to aid customers and other parties who may wish to challenge the rate proposed by the utility. The compliance with these requirements is mandatory. The reporting requirements are found at 18 CFR Parts 35 and 292.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
858	3.42	183	536,800

Over the last three years, the Commission has seen a dramatic increase in both the number of respondents and the number of filings as is shown in the figures above. A decrease in average burden hours per respondent is the result of a dramatic increase in tariff service agreement filings. These filings have very short preparation times and are so numerous that when combined with other more lengthy types of filings, the result is a significant reduction in the overall average burden hours per response. Overall, there is a slight reduction in the total annual burden hours.

Estimated total cost burden to respondents: 536,800 hours per year ÷ 2080 hours per year × $109,889 = $28,359,815. The cost per respondent is equal to $33,053.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

David P. Boergers,

Secretary.

[FR Doc. 99–1957 Filed 1–27–99; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–205–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

January 22, 1999.

Take notice that on January 20, 1999, Equitrans, L.P. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective February 1, 1999:

Fourth Revised Sheet No. 251
Fourth Revised Sheet No. 300
Second Revised Sheet No. 301
Fifth Revised Sheet No. 314
Sixth Revised Sheet No. 321
Sixth Revised Sheet No. 329
Third Revised Sheet No. 353

Equitrans states that the purpose of this filing is to request the discontinuation of Equitrans' propriety Electronic Bulletin Board (EBB) and to

rely on its Internet Web site pursuant to Order No. 587–C to satisfy its obligations under the Commission's Regulation relating to EBBs.

Equitrans states that this filing revises Equitrans' General Terms and Conditions, Section 26 to state that Equitrans' EQUIPATH Electronic Communications System can be accessed via the Internet's World Wide Web @ www.equitrans.com. address. Equitrans proposes amendments to the Forms of Service Agreements to include reference to Equitrans' internet address. Also, the service request form is modified to request that customers include their e-mail address.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1946 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1981–010]

Octonto Electric Cooperative; Notice Rescinding Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 22, 1999.

On December 3, 1998, the Federal Energy Regulatory Commission (Commission) issued a Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions, 63 FR 67875 (Dec. 9, 1998) for the Stiles Project (P–1981), located on the Oconto River, Oconto County, Wisconsin. Comments are due on February 3, 1999.

By letter dated January 5, 1999, the parties to an on-going settlement negotiation for the Stiles Project requested that the Commission rescind the December 3, 1998 Notice. The parties believe that the negotiation process will accomplish a comprehensive settlement of key issues. Consequently, the Commission rescinds the December 3, 1998 Notice.

David P. Boergers,

Secretary.

[FR Doc 99–1945 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–204–000]

Panhandle Eastern Pipe Line Company; Notice of Filing

January 22, 1999.

Take notice that on January 19, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its reconciliation report in compliance with Article I, Section 3(e)(ii) of the May 22, 1995 Stipulation and Agreement in Docket No. RP94–325–000 (Settlement). The Settlement required the filing of a reconciliation report as soon as practicable following the termination of the Carryover GSR Settlement Interruptible Rate Component.

Panhandle states that pursuant to the Commission's November 28, 1997 order in Docket No. RP98–27–000 it established the Carryover GSR Settlement Interruptible Rate Component to be effective during the twelve month period commencing December 1, 1997. Panhandle further states that it filed on October 30, 1998 in Docket No. RP99–107–000 to suspend the Carryover GSR Settlement Interruptible Rate Component for services provided under Rate Schedules IT and EIT effective December 1, 1998. Panhandle's filing was approved by Commission letter order issued November 27, 1998.

Panhandle states that copies of this filing are being served on all parties to the proceeding in Docket No. RP94–325.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1947 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–13–001]

The Peoples Gas Light and Coke Company; Notice of Revised Operating Statement

January 22, 1999.

Take notice that on January 7, 1999, The Peoples Gas Light and Coke Company (Peoples Gas) filed a revised Operating Statement pursuant to 18 CFR 284.224. The Operating Statement modifies the Operating Statement filed as Exhibit B to its petition for rate approval in PR98–13–000. The revised Operating Statement incorporates revisions to Peoples Gas' proposal to offer firm and interruptible storage services, limited parking and loaning service, title tracking service, charges for fuel retention, and other miscellaneous changes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 29, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1950 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–178–000]

TransColorado Gas Transmission Company; Notice of Technical Conference

January 22, 1999.

In the Commission's order issued on December 30, 1998, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday, February 11, 1999, at 10:00 a.m., in a room to the designated at the offices of the Federal Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 99–1949 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–203–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

January 22, 1999.

Take notice that on January 19, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of February 19, 1999:

First Revised Sheet No. 255

Williams states that this filing is being made in accordance with Section 154.204 of the Commission's regulations. Williams is proposing in this filing to eliminate the use of paper service agreements for temporary releases of capacity. The elimination of paper service agreements is being done at the request of customers and will reduce costs and provide efficiencies to both Williams and its customers. Paper service agreements will be required when the release is for the entire remaining term of all or a portion of the Releasing Shipper's capacity on Williams' system.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1948 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–62–000, et al.]

AES Westover, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

January 21, 1999.

Take notice that the following filings have been made with the Commission:

1. AES Westover, L.L.C.

[Docket No. EG99–62–000]

On January 19, 1999, AES Westover, L.L.C. (AES Westover), c/o Henry Aszklar, 1001 North 19th Street, Arlington, Virginia 22209, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

AES Westover is a Delaware limited liability company. AES Westover intends to operate and maintain, under an operation and maintenance agreement, the generating station currently known as the Goudey Generating Station, 720 Riverside Drive, Johnson City, New York 13902, which is comprised of two pulverized coal units (Units 7 and 8) with a maximum aggregate generating capacity of 126 MW. Electricity generated by the facility will be sold at wholesale by AES Eastern Energy, L.P. to one or more power marketers, utilities, cooperatives, or other wholesalers.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. AES Somerset, L.L.C.

[Docket No. EG99–63–000]

On January 19, 1999, AES Somerset, L.L.C. (AES Somerset), c/o Henry Aszklar, 1001 North 19th Street, Arlington, Virginia 22209, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

AES Somerset is a Delaware limited liability company. AES Somerset intends to operate and maintain, under an operation and maintenance agreement, the generating station currently known as the Kintigh Generating Station, 7725 Lake Road, Barker, New York 14012, which is comprised of a steam turbine generating unit (Unit 1), which provides a maximum of 688 MW of generating capacity. Electricity generated by the facility will be sold at wholesale by AES Eastern to one or more power marketers, utilities, cooperatives, or other wholesalers.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. AES Greenidge, L.L.C.

[Docket No. EG99–64–000]

On January 19, 1999, AES Greenidge, L.L.C. (AES Greenidge), c/o Henry Aszklar, 1001 North 19th Street, Arlington, Virginia 22209, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

AES Greenidge is a Delaware limited liability company. AES Greenidge intends to operate and maintain, under an operation and maintenance agreement, the generating station currently known as the Greenidge Station, Route 14, Dresden, New York 14441, which is comprised of two steam turbine units (Units 1 and 2) with a maximum aggregate generating capacity of 85 MW. Electricity generated by the facility will be sold at wholesale by AES Eastern Energy, L.P., to one or more power marketers, utilities, cooperatives, or other wholesalers.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The

Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. AES Cayuga, L.L.C.

[Docket No. EG99–65–000]

On January 19, 1999, AES Cayuga, L.L.C. (AES Cayuga), c/o Henry Aszklar, 1001 North 19th Street, Arlington, Virginia 22209, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

AES Cayuga is a Delaware limited liability company. AES Cayuga intends to operate and maintain, under an operation and maintenance agreement, the generating station currently known as the Milliken Generating Station, 228 Milliken Road, Lansing, New York 14882, which is comprised of two steam turbine generating units (Units 1 and 2) which provide a maximum of 305 megawatts (MW) of generating capacity. Electricity generated by the facility will be sold at wholesale by AES Eastern to one or more power marketers, utilities, cooperatives, or other wholesalers.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. American Electric Power Company

[Docket No. ER98–2786–002]

Take notice that on January 14, 1999, American Electric Power Company and Central and South West Corporation tendered for filing a revision to the credit worthiness provisions of their Open Access Transmission Tariff filed in Docket No. ER98–2786–000. The filing modifies the compliance filing that the companies made on December 10, 1998.

A copy of this filing has been served on the persons listed on the official service list in this docket.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United, Inc.

[Docket No. ER99–1316–000]

Take notice that on January 15, 1999, UtiliCorp United, Inc. (UtiliCorp), for its operating divisions, Missouri Public Service (MPS), WestPlains Energy-Kansas (WPE–KS) and WestPlains Energy-Colorado (WPE–CO), tendered for filing notices of cancellation of the umbrella non-firm point-to-point transmission service agreements between MPS, WPE–KS and WPE–CO and Vastar Power Marketing, Inc. The cancellation is at the request of Vastar Power Marketing, Inc.

MPS, WPE–KS, and WPE–CO request an effective date of January 15, 1999, for the notices of cancellation. Accordingly, MPS, WPE–KS, and WPE–CO request waiver of the Commission's Regulations. MPS, WPE–KS and WPE–CO state that a copy of the filing has been served on Vastar Power Marketing, Inc.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER99–1317–000]

Take notice that on January 15, 1999, Western Resources, Inc., tendered for filing a letter stating that it is adopting the NERC TLR Alternative Transmission Tariff Amendment approved by the Commission on December 16, 1998 in Docket No. EL98–52–000 and that therefore Western Resources' FERC Electric Tariff, First Revised Volume No. 5, shall be considered to be so modified to reflect the generic amendment described in the Commission's Order.

The effective date of this modification shall be December 16, 1998.

A copy of the letter was served upon the Kansas Corporation Commission.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. FirstEnergy Operating Companies

[Docket No. ER99–1318–000]

Take notice that on January 15, 1999, the FirstEnergy Operating Companies, in accordance with the Commission's Order On Petition For Declaratory Order issued December 16, 1998 in this docket, 85 FERC ¶61,353, tendered for filing notification that they use the Transmission Line Relief (TLR) procedures of the North American Electric Reliability Council (NERC) and that FirstEnergy's Open Access Transmission Tariff should be considered modified by NERC's TLR procedures filed in Docket No. EL98–52–000 on October 7, 1998 in red-lined form.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. WPS Resources Corporation

[Docket No. ER99–1319–000]

Take notice that on January 15, 1999, WPS Resources Corporation, on behalf of its respective public utility subsidiaries, Wisconsin Public Service Corporation and Upper Peninsula Power Company, tendered for filing notification that its public utility subsidiaries use the NERC TLR procedures and that its pro forma tariff should be modified to reflect the generic tariff amendment filed by NERC.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER99–1320–000]

Take notice that on January 15, 1999, Virginia Electric and Power Company tendered for filing notification that it uses the NERC TLR procedures referred to in the EL98–52–000, proceeding and that its pro forma tariff should be modified to reflect the generic tariff amendment filed by NERC.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Florida Power Corporation

[Docket No. ER99–1321–000]

Take notice that on January 15, 1999, in compliance with the Commission's December 16, 1998, Order in Docket No. EL98–52–000, Florida Power Corporation tendered for filing notification stating that it employs the North American Electric Reliability Council's Transmission Loading Relief Procedures.

Florida Power states that copies of its Notice have been served on all parties on the Commission's service list for this proceeding.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER99–1322–000]

Take notice that on January 15, 1999, Cinergy Services, Inc., on behalf of PSI Energy, Inc., and The Cincinnati Gas & Electric Company tendered for filing notification indicating that its open access transmission tariff should be considered modified by NERC's TLR Alternative Transmission Tariff Amendment.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Southwest Power Pool

[Docket No. ER99–1323–000]

Take notice that on January 15, 1999, Southwest Power Pool, on behalf of its transmission owning members, tendered for filing notice indicating that the SPP Open Access Transmission Tariff should be considered modified by North American Electric Reliability Council's TLR Alternative Transmission Tariff Amendment.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Electric Energy, Inc.

[Docket No. ER99–1324–000]

Take notice that on January 15, 1999, Electric Energy, Inc. (EEInc.), tendered for filing its Notice of Adoption of North American Electric Reliability Council Transmission Line Loading Relief procedures.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Northern Indiana Public Service Company

[Docket No. ER99–1325–000]

Take notice that on January 15, 1999, Northern Indiana Public Service Company (Northern Indiana), tendered for filing its Notice of Adoption of North American Electric Reliability Council Transmission Line Loading Relief procedures.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission, the Indiana Office of Utility Consumer Counselor and all persons who have executed contracts with Northern Indiana pursuant to its Open Access Transmission Tariff.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER99–1326–000]

Take notice that on January 15, 1999, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing a notice that it will use the North American Electric Reliability Council (NERC) Transmission Loading Relief (TLR) procedures. Pursuant to the order in North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998), Wolverine further tendered for filing notice that Wolverine's open access transmission service tariff is modified to reflect the NERC generic amendment respecting TLR procedures.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. East Texas Electric Cooperative, Inc.

[Docket No. ER99–1327–000]

Take notice that on January 15, 1999, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing notification that it will use the North American Electric Reliability Council (NERC) Transmission Loading Relief (TLR) procedures. Pursuant to the order in North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998), ETEC further tendered notice that ETEC's open access transmission service tariff is modified to reflect the NERC generic amendment respecting TLR procedures.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. DukeSolutions, Inc.

[Docket No. ER99–1328–000]

Take notice that on January 15, 1999, DukeSolutions, Inc. (DukeSolutions), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that DukeSolutions had completed all the steps for pool membership. DukeSolutions requests that the Commission amend the WSPP Agreement to include it as a member.

DukeSolutions requests an effective date of January 15, 1999, for the proposed amendment. Accordingly, DukeSolutions requests waiver of the Commission's notice requirements for good cause.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Bangor Hydro-Electric Company

[Docket No. ER99–1329–000]

Take notice that on January 15, 1999, Bangor Hydro-Electric Company, tendered for filing notice indicating that Bangor's Open Access Transmission Tariff should be considered modified by NERC's TLR Alternative Transmission Tariff Amendment.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power & Light Company

[Docket No. ER99–1330–000]

Take notice that on January 15, 1999, in compliance with the Commission's December 16, 1998, order in Docket No. ER99–1330-000, Florida Power & Light Company (FPL), tendered for filing notification stating that it employs the North American Reliability Council's Transmission Loading Relief Procedures.

FPL states that copies of its Notice have been served on all parties on the Commission's service list for this proceeding.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Illinois Power Company

[Docket No. ER99–1331–000]

Take notice that on January 15, 1999, Illinois Power Company tendered for filing two unexecuted agreements for the provision of Network Integration Transmission Service to Southern Illinois Power Cooperative: (1) a Service Agreement for Network Integration Transmission Service; and (2) a Network Operating Agreement.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Northwestern Public Service Company

[Docket No. ER99–1332–000]

Take notice that on January 15, 1999, Northwestern Public Service Company tendered for filing notification that Northwestern Public Service Company adopts the Mid-Continent Area Power Pool's Line Loading Relief Procedures (LLR), as amended to comply with the Commission's orders in Docket No. ER98–3709–000. Northwestern Public Service Company attached to its notice (i) LLR and (ii) modifications to its open access transmission tariff to incorporate LLR.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Midwest Independent Transmission System Operators, Inc.

[Docket No. ER99–1333–000]

Take notice that on January 15, 1999, the Midwest Independent Transmission System Operators, Inc. (Midwest ISO), on behalf of its transmission owning members, tendered for filing a notice indicating that the Midwest ISO Open Access Transmission Tariff should be considered modified by the North American Electric Reliability Council's TLR Alternative Transmission Tariff Amendment.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Alliant Services, Inc.

[Docket No. ER99–1334–000]

Take notice that on January 15, 1999, Alliant Services, Inc. tendered for filing an informational filing on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC) and Wisconsin Power and Light Company (WPL), in response to the Commission's order dated December 16, 1998, in North American Electric Reliability Council, Docket No. EL98–52–000 (NERC Order).

Alliant hereby provides notice that in accordance with the NERC Order it adopts MAPP's Line Loading Relief Procedures (LLR) for Alliant West and that Alliant's Open Access Transmission Tariff (OATT) on file with the Commission may be modified by the

generic amendment attached hereto, which reflects the changes to LLR approved by the Commission on December 18, 1998. Mid-Continent Area Power Pool, Docket No. ER98–3709–000, 85 FERC ¶ 61,352 (December 16, 1998), clarified, 85 FERC ¶ 61,396 (December 18, 1998) (conforming the nonfirm curtailment priorities of LLR to those set forth in the pro forma tariff). Alliant hereby provides notice that in accordance with the NERC Order it adopts NERC's Transmission Loading Relief Procedures (TLR) for Alliant East. In the event the Commission rejects MAPP's LLR, Alliant will adopt NERC's TLR for both Alliant-West and Alliant-East.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Cleco Corporation

[Docket No. ER99–1335–000]

Take notice that on January 15, 1999, Cleco Corporation, (Cleco), tendered for filing notice indicating that the Cleco Corporation open access transmission tariff should be considered modified by NERC's TLR Alternative Transmission Tariff Amendment noted as Attachment B in Docket No. EL98–52.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Central Vermont Public Service Corporation

[Docket No. ER99–1336–000]

Take notice that on January 15, 1999, Central Vermont Public Service Corporation tendered for filing notification that the ISO-New England, Inc., and the New England Power Pool are responsible for TLR procedures referred to in the above-captioned proceeding.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Boston Edison Company

[Docket No. ER99–1337–000]

Take notice that on January 15, 1999, Boston Edison Company tendered for filing notification that the ISO-New England, Inc., and the New England Power Pool are responsible for TLR procedures referred to in Docket No. EL98–52–000.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1944 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11282–001–RI]

Summit Hydropower, Incorporated; Notice of Availability of Final Environmental Assessment

January 22, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original license for the Gainer Dam Hydroelectric Project, located in the town of Scituate, Providence County, Rhode Island, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental effects of rehabilitating and enlarging an existing project and has concluded that approval of the project, as proposed with additional staff-recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. The EA may also be viewed on the web at www.ferc.fed.us. Please call (202) 208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–1956 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–21–000]

Northern Border Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Project 2000 and Request for Comments on Environmental Issues

January 22, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Project 2000 involving construction and operation of facilities by Northern Border Pipeline Company (Northern Border) in Montana, North Dakota, South Dakota, Minnesota, Iowa, Illinois, and Indiana.[1] These facilities would consist of about 34.4 miles of 36-inch-diameter pipeline, and about 53,000 horsepower (hp) of compression. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail

[1] Northern Border's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Northern Border requests authorization to:

- Construct about 34.4 miles of 36-inch-diameter pipeline from Manhattan, Illinois to North Hayden, Indiana;
- Construct two new compressor stations totaling 14,500 hp at existing sites in Johnson County, Iowa and Bureau County, Illinois;
- Increase compression totaling 38,500 hp at three existing compressor stations in Roosevelt County, Montana, McKenzie County, North Dakota, and Grundy County, Iowa;
- Construct a new meter station in Lake County, Indiana; and
- Construct four mainline valves and associated remote blow down valves in Will County, Illinois.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 574.3 acres of primarily agricultural land (including all extra work spaces). All facilities would be within or adjacent to existing rights-of-way. Following construction, about 209.9 acres would be maintained as new permanent pipeline right-of-way. About 44.1 acres would be retained for the aboveground facilities, including 43.0 acres already owned by Northern Border. All areas would be restored after construction, and areas not needed for aboveground facilities would return to their former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Air Quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern Border. This preliminary list of issues may be changed based on your comments and our analysis.

- Five federally listed threatened or endangered species may occur in the proposed project area.
- The project would cross 14 perennial streams classified as warmwater fisheries.
- The project would cross 10 wetlands.
- The pipeline facilities would disturb about 485.6 acres of agricultural land.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP99–21–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 22, 1999.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 99–1954 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–606–001]

Texas Eastern Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the CNG Lease Expansion Project and Request for Comments on Environmental Issues

January 22, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the CNG Lease Expansion Project involving construction and operation of the facilities by Texas Eastern Transmission Corporation (Texas Eastern) in Westmoreland and Juniata Counties, Pennsylvania.[1] These facilities would consist of about 3.98 miles of 36-inch-diameter loop, aboveground facilities to connect the loop to an adjacent existing pipeline; and modifications at an existing compressor station. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as order, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

Texas Eastern wants to amend its certificate to change the facilities necessary to provide CNG Transmission Corporation (CNG) leased capacity in the CNG Lease Expansion Project. The facilities would provide up to 19,500 decatherms per day (Dth/d) of leased capacity to CNG. In addition, the facilities would provide up to 50,000 Dth/d of capacity on Texas Eastern's Penn-Jersey System. Texas Eastern seeks authority to:

- Construct 3.98 miles of 36-inch-diameter loop downstream of the Delmont Compressor Station from milepost (MP) 2.90 to MP 6.88 and aboveground facilities to connect the loop to the adjacent existing pipeline facilities in Westmoreland County, Pennsylvania; and
- Construct a 30-inch suction valve; remove a 12-inch valve; and install remote control capability on another 12-inch valve at its Perulack Compressor Station in Juniata County, Pennsylvania.

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 29.9 acres of land. Following construction, about 12.1 acres would be maintained as new permanent right-of-way (ROW) and new aboveground facility sites. The remaining 17.8 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Public safety
- Land use
- Cultutal resources
- Air quality and noise
- Hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendation on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interests groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all

[1] Texas Eastern's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section on page 4 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Texas Eastern. This preliminary list of issues may be changed based on your comments and our analysis.

- Three streams would be crossed.
- Sixteen wetlands would be affected.
- About 43 percent of the land that would be affected by the project is forested.
- One residence would be located within 36 feet of the construction ROW near MP 3.71.
- The project would cross about 0.13 mile of land owned by the U.S. Army Corps of Engineers.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP96–606–001; and
- Mail your comments so that they will be received in Washington, DC on or before February 22, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 99–1955 Filed 1–27–99; 8:45 am]

BILLING 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

January 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of license.

b. Project No: 2170–010.

c. Date Filed: November 17, 1998.

d. Applicant: Chugach Electric Association, Inc.

e. Name of Project: Cooper Lake.

f. Location: On the Cooper Creek, Copper Lake, and Kenai Lake on Kenai Peninsula, in the vicinity of Cooper Landing, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Burke Wick, Chugach Electric Association, Inc., 5601 Minnesota Drive, P.O. Box 196300, Anchorage, Alaska 99519–6300, Tel: (907) 563–7494.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: March 1, 1999.

k. Description of Amendment: Licensee proposes to upgrade the two generating units of the project by replacing the turbines and rewinding the generators and auxiliary equipment. This upgrade would increase the projects installed capacity from 15 MW (2 units at 7.5 MW each) to 21.2 MW (2 units at 10.6 MW each). The new units would have a hydraulic capacity of 190 cfs each.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does

not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–1952 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 22, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Minor License.

b. Project No.: 597–003.

c. Date filed: June 24, 1998.

d. Applicant: PacificCorp.

e. Name of Project: Stairs Hydroelectric Project.

f. Location: On Big Cottonwood Creek in Big Cottonwood Canyon, Salt Lake County, near the town of Sandy, about 15 miles southeast of downtown Salt Lake City, Utah. The project affects federal lands within the Wasatch-Cache National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Michael B. Burke, Project Manager, PacificCorp, 910 S.W. Sixth Avenue, 610PSB, Portland, Oregon, 97204, (503) 464–5344.

i. FERC Contact: Any questions on this notice should be addressed to Gaylord W. Hoisington, E-mail address gaylord.hoisington@ferc.fed.us, or telephone (202) 219–2756.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of the Project: The existing project consists of: (1) a 150-foot-long and 35-foot-high earth-fill diversion dam; (2) a reinforced concrete spillway; (3) a reinforced concrete intake structure; (4) a 2,850-foot-long penstock; (5) a 100-foot-wide by 35-foot-long masonry powerhouse; (6) one Francis turbine generator with a rated capacity of 1,200 kilowatts; (7) a 7-foot-wide by 5.3-foot-deep reinforced concrete tailrace; and (8) other appurtenances. No new construction is planned.

m. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: B, and D6.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–1953 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11282–001 Rhode Island]

Summit Hydropower; Notice Modifying and Establishing a Restricted Service List for Comments on a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

January 22, 1999.

On September 8, 1998, the Commission issued a notice for Project No. 11282 proposing to establish a restricted service list for the purpose of developing and executing a programmatic agreement for managing properties included in or eligible for inclusion in the National Register of Historic Places.

The existing project features—Scituate Reservoir, Gainer Dam, generating unit, powerhouse, meter chamber, and appurtenant structures—are owned by the Providence Water Supply Board. Construction, operation, and maintenance of the proposed project would directly affect all of these features.

Rule 2010 of the Commission's Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The following addition is made to the proposed restricted service list notice issued on September 8, 1998, for Project No. 11282: Providence Water Supply Board, 552 Academy Avenue, Providence, RI 02908.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

David P. Boergers,

Secretary.

[FR Doc. 99–1951 Filed 1–27–99; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 CFR 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140278; FRL–6057–2]

Access to Confidential Business Information by Tetra Tech

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Tetra Tech Environmental Management Inc. (Tetra Tech), of 200 Randolph Drive, Suite 4700, Chicago, Illinois, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to confidential data submitted to EPA will occur no sooner than February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W–99–008, Tetra Tech, of 200 East Randolph Drive, Chicago, IL, will assist the Office of Waste and Chemicals Management and Regional Offices RCRA Enforcement, Permitting and Assistance Programs in implementing the requirements of RCRA, as amended and future amendments. The major areas of support include enforcement, permitting activities, Subtitle D solid waste, corrective action, and RCRA program planning. Other areas of support include underground storage tanks, biennial reporting, waste minimization, and state and tribal assistance.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W–99–008, Tetra Tech will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Tetra Tech personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Tetra Tech access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at Tetra Tech facilities located at 200 East Randolph Drive, Suite 4700, Chicago, IL; One Union Square, 600 University St., Suite 800, Seattle, WA; 1 Dallas Center, 350 North St. Paul St., Suite 2600, Dallas, TX; and 1099 18th St., Suite 1960, Denver, CO.

Tetra Tech will be authorized access to TSCA CBI at their facilities, provided they comply with the provisions of the EPA *TSCA Confidential Business Information Security Manual.*

Before access to TSCA CBI is authorized at Tetra Tech's sites, EPA will perform the required inspection of its facilities, and ensure that these facilities are in compliance with the Manual. Upon completing review of the CBI materials, Tetra Tech will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until December 31, 2001.

Tetra Tech personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: January 15, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution and Prevention and Toxics.

[FR Doc. 99–1903 Filed 1-27-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6226–3]

Notice of Meetings, Open to the Public, of the Multi-Agency Radiation Laboratory Protocols Manual Development Working Group

AGENCY: Environmental Protection Agency, lead.

ACTION: Meetings open to the public.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that the

Department of Defense, Department of Energy, Environmental Protection Agency, Food and Drug Administration, National Institute of Standards and Technology, Nuclear Regulatory Commission, and U.S. Geological Survey are meeting to develop a joint interagency guidance manual for programs and laboratories to use when planning and implementing the analysis of environmental samples for radioactivity. The manual uses a performance based approach and will provide guidance to both project planners and laboratory personnel. The guidance is being developed as a draft document, entitled the Multi-Agency Radiation Laboratory Protocols (MARLAP) Manual, and it is anticipated that the final product will be a consensus document each agency can agree upon and adopt. Meetings of the group are open to the public on a first come, space available basis with advance registration. The agenda for this meeting will be available on the appropriate INTERNET sites listed below.

DATES, ADDRESS, AND REGISTRATION: A meeting will be held on February 8, 9, 10, from 9:00 AM until 5:30 PM and on February 11 from 8:30 AM until 12:30 PM. The meeting will be held at the National Institute of Standards and Technology (NIST), Gaithersburg, MD, Building 245, Room C–301. Persons wishing to attend this meeting should contact Kenneth Inn at 301–975–5541 to register. The schedule, location, and registration information for future meetings will be posted at the following INTERNET sites:

EPA *http://www.epa.gov/radiation/marlap*

DOD *http://chppm-www.apgea.army.mil/dls/marlap.htm.*

DOE *http://www.em.doe.gov/namp* (National Analytical Management Program, Office of Site Operations, EM–70)

DOE *http://tis.eh.doe.gov/oepa* (Office of Environmental Policy and Assistance, EH–41)

NRC *http://www.nrc.gov/NRC/PUBLIC/meet.html#OTHER*

FOR FURTHER INFORMATION CONTACT: Persons needing further information concerning this group and the work of developing the Multi-Agency Radiation Laboratory Protocols Manual should contact John Griggs, U.S. Environmental Protection Agency/ORIA, 540 South Morris Avenue, Montgomery, AL 36115–2601, (334) 270–3450.

Dated: January 21, 1999.

Larry Weinstock,

Director, Radiation Protection Division, EPA Office of Radiation and Indoor Air.

[FR Doc. 99–1914 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6225–7]

National Environmental Justice Advisory Council Workgroup on Waste Transfer Stations; Notice of Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The National Environmental Justice Advisory Council (NEJAC) working group on Waste Transfer Stations (WTS) and the United States Environmental Protection Agency (EPA) is sponsoring a meeting in Washington, DC on February 17, 1999. The purpose of the meeting is for the working group to gather information related to potential environmental issues related to Waste Transfer Stations nationwide. Information gathered from these hearings will be gathered in a report for recommendations to EPA from the NEJAC.

The WTS working group was formed after a NEJAC resolution calling for EPA to "examine the risks from the siting and operation of Waste Transfer Stations for the purpose of determining its regulatory responsibilities and prescribe requirements to reduce health risks associated with such facilities." The WTS working group consists of representatives of community based organizations, business interests, and elected officials from impacted communities for the purposes of advising on the design and implementation of the WTS study.

To examine waste transfer stations in New York, the working group hosted a fact-finding meeting in New York on November 10, 1998. The Washington, DC meeting will be held on February 17, 1999 at the Washington Convention Center from 8:30 to 5:30. The Washington Convention Center is located at 900 Ninth Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Please call Kent Benjamin, Office of Solid Waste and Emergency Response at (202) 260–2822 or Nancy Wilson, Office of Solid Waste and Emergency Response at (202) 260–1910 for more information.

Dated: January 21, 1999.

Linda Garczynski,

Director, Outreach and Special Projects, Office of Solid Waste and Emergency Response.

[FR Doc. 99–1905 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–854; FRL–6056–3]

AgrEvo USA Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–854, must be received on or before March 1, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Peg Perreault, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW,

Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 207, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5417; e-mail: perreault.peg@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–854] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–854) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 19, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgrEvo USA Company

PP 9F3705 and 9H5572

EPA has received pesticide petitions (PP 9F3705 and 9H5572) from AgrEvo USA Company, Little Falls Center One, 2711 Centerville Road, Wilmington, DE 19808, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C.346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of clofentezine in or on the raw agricultural commodity apples at 0.5 parts per million (ppm), in the processed feed commodity wet apple pomace at 10 ppm, and in milk at 0.05 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

APOLLO® SC Ovicide/Miticide (active ingredient clofentezine) is registered for use on apples (early season through tight cluster), pears, almonds, walnuts, apricots, cherries, nectarines, and peaches to control European red mites and several spider mite species. It is an environmentally-friendly, IPM-compatible product used at low dose rates, and only once per season. Clofentezine has been shown to be relatively non-toxic in studies conducted on mammals, fish, birds, aquatic invertebrates, predacious and other beneficial mites, bees, algae, and plants.

On February 23, 1995, EPA conditionally approved the use of APOLLO® SC on apples (early season through tight cluster) and established a permanent tolerance for clofentezine on fresh apples of 0.01 ppm. The registration was made permanent February 19, 1998, following the completion of a successful analytical method try-out (MTO) by EPA (at the 0.01 ppm limit of quanitation (LOQ).

The information summarized below was previously submitted in support of the requested label amendment for use on apples with a 45 day pre-harvest interval. The studies on which this summary is based were thoroughly reviewed and approved by the Agency as part of previous regulatory actions. However, the accuracy of this summary has not been evaluated by the Agency.

Upon re-examination of this tolerance petition, AgrEvo trusts that EPA will agree that the label amendment to allow the use of APOLLO® SC (clofentezine) on apples through a 45 day pre-harvest interval would not pose a significant risk to human health, including that of infants, and children, and is in compliance with the requirements of the Food Quality Protection Act (FQPA) of 1996.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of clofentezine has been studied in three crops representative of the use pattern for APOLLO® SC: apples (pome fruit), peaches (stone fruit), and grapes (vines/small fruit). In each case, unchanged clofentezine was the major extractable residue present. Non-extractable residues (fiber-bound) were negligible. Minor amounts of 2-chlorobenzonitrile, the major photo-degradation product, were detected, predominantly on the fruit surface. Dissipation of this component may be a significant route in the degradation of clofentezine on the surface of these crops. The nature of the residue in apples, and in all the other registered crops, is therefore adequately understood. The residue of concern is the parent, clofentezine.

2. *Analytical method.* EPA recently approved an analytical method for clofentezine on apples (MRID 43800801) at a LOQ of 0.01 ppm. In support of that effort, AgrEvo submitted an independent laboratory validation of the method (MRID 44038001) which involves organic extraction and then cleanup, followed by high-pressure liquid chromatography. This method is suitable for enforcement for the current registration of APOLLO® SC ovicide/miticide on apples through the tight cluster timing.

For the requested use on apples with a 45 day PHI, an analytical method similar to the above was previously approved during the review of the petition, PP 9F3705/9H5572. This method was deemed suitable for enforcement of the tolerances proposed

in the tolerance petition. Similar analytical methods suitable for enforcement purposes are available for all the other registered crops and relevant animal tissues/milk/fat.

3. *Magnitude of residues.* Extensive field residue trials have been conducted with APOLLO® SC on apples throughout the major apple-growing regions of the United States. Application through 45 days PHI at the maximum use rate resulted in residues of clofentezine on fresh apples of < 0.01 ppm to 0.44 ppm. In processing studies on apples which had been treated with APOLLO® SC at the maximum use rate through 45 days PHI, residues in the processed commodity apple juice were lower than those in the raw agricultural commodity; residues in wet apple pomace ranged from < 0.01 ppm to 0.03 ppm. In tolerance petition PP 9F3705/9H5572 tolerances were proposed and approved (although not enacted) for apples (0.5ppm), and apple pomace, wet and dry (10 ppm).

Residue trials were conducted for APOLLO® SC on pears, apricots, cherries, nectarines, peaches, almonds, and walnuts at the maximum use rates and minimum pre-harvest intervals (PHIs) throughout the major growing regions of the United States. Residues in pears ranged from < 0.01 to 0.2 ppm. Residues in stone fruit ranged from < 0.01 to 0.66 ppm. Residues on almond hulls ranged from 0.93 to 2.4 ppm, on almond nut meats from < 0.05 to 0.3 ppm, and on walnuts < 0.02 ppm. Tolerances were therefore established on pears (0.5 ppm); apricots, cherries, nectarines, and peaches (1.0 ppm); almond nutmeats (0.5 ppm); almond hulls (5.0 ppm); and walnuts (0.02 ppm).

Ruminant feeding studies were conducted to determine the magnitude of the clofentezine-derived residues in the tissues and milk of cows. Four groups of three dairy cattle were fed technical clofentezine in the diet at dose levels of 0, 10, 30, and 100 ppm over a period of 28 days. Daily milk samples were taken and at the termination of the study, the following organs were analyzed: liver, kidney, heart, muscle, peritoneal fat and subcutaneous fat. At the feeding level of 10 ppm, residues were 0.3 ppm in liver and < 0.05 ppm in kidney, milk, and other tissues. EPA established tolerances for cattle, goats, hogs, horses, and sheep as follows: 0.05 ppm in meat, fat, and meat by-products except liver; 0.4 ppm in liver; and 0.01 ppm in milk. The tolerances on meat, fat, meat by-products, and liver were also previously approved in tolerance petitions PP 9F3705/9H5572, the label amendment for use on apples through 45 days PHI. The tolerance for milk was approved (although not enacted) at 0.05 ppm in this tolerance petition.

B. Toxicological Profile

The toxicology of clofentezine has been thoroughly evaluated by EPA as part of previous regulatory actions. The studies are considered to be valid, reliable and adequate for the purposes of evaluating potential health risks and for establishing tolerances. The primary studies submitted in support of the registration of clofentezine are summarized below. The conclusions presented are those determined by the Agency (as reported by the registrant).

1. *Acute toxicity.* Technical grade clofentezine has a relatively low degree of acute toxicity and irritation potential. It is classified as Toxicity Category III for oral, dermal and inhalation toxicity, and Toxicity Category IV for eye and skin irritation. The acute oral LD_{50} of clofentezine was determined to be >5,200 milligram/kilogram (mg/kg) in rats and mice, >3,200 mg/kg in hamsters, and >2,000 mg/kg in beagle dogs. The acute rat dermal LD_{50} was >2,100 mg/kg. Clofentezine is considered to be practically non-irritating to eyes and skin but is considered to be a weak skin sensitizer in the guinea pig maximization assay.

APOLLO® SC is classified as Toxicity Category IV for oral toxicity and skin irritation, and as Toxicity Category III for dermal toxicity and eye irritation. The acute oral LD_{50} of APOLLO® SC was determined to be > 5,000 mg/kg in rats; the acute dermal LD_{50} in rats was > 2,400 mg/kg. APOLLO® SC is considered slightly irritating to eyes and skin.

2. *Genotoxicty.* No evidence of genotoxicity was noted in a battery of *in vitro* and *in vivo* studies. Studies submitted included *Ames Salmonella* and mouse lymphoma gene mutation assays, a mouse micronucleus assay, a rat dominant lethal assay, a gene conversion, and mitotic recombination assay in yeast.

3. *Reproductive and developmental toxicity.* A multigeneration rat reproduction study was conducted at dietary concentrations of 0, 4, 40 and 400 ppm. The parental no-observed adverse effect level (NOAEL) was 40 ppm based on slightly reduced body weights, increased liver weights and hepatocellular hypertrophy at 400 ppm. No treatment related reproductive effects were noted at any dose level.

In a rat developmental toxicity study, clofentezine was administered by gavage at dose levels of 0, 320, 1,280 and 3,200 mg/kg/day during gestation days 6 to 20. Evidence of maternal toxicity was noted at 3,200 mg/kg/day and consisted of decreased weight gain, increased liver weights and centrilobular hepatocellular enlargement. No developmental effects were observed at any dose level.

In a rabbit developmental toxicity study, clofentezine was administered by gavage at dose levels of 0, 250, 1,000 and 3,000 mg/kg/day during gestation days 7 to 28. Slight maternal toxicity (decreased maternal food consumption and weight gain) and a slight decrease in fetal weight were noted at 3,000 mg/kg/day. Thus, the NOAEL was considered to be 1,000 mg/kg/day for both maternal and developmental effects.

4. *Subchronic toxicity.* In a preliminary 90 day feeding study designed to select a suitable high dose level for a subsequent chronic rat study, clofentezine was administered to rats at dietary concentrations of 0, 3,000, 9,000 and 27,000 ppm. A significant reduction in weight gain was noted at 9,000 and 27,000 ppm. In addition, a marked, dose-related hepatomegaly and centrilobular hepatocyte enlargement was noted in all treatment groups. In a subsequent 90-day feeding study, clofentezine was administered to rats at dietary concentrations of 0, 40, 400 and 4,000 ppm. Slightly reduced weight gain, alterations in several clinical pathology parameters, increased liver, kidney and spleen weights, and centrilobular hepatocyte enlargement were noted at 400 and/or 4,000 ppm. Thus, 40 ppm (~2.8 mg/kg/day) was considered to be the NOAEL for this study.

Clofentezine was administered to beagle dogs for 90 days at dietary concentrations of 0, 3,200, 8,000 and 20,000 ppm. Increased liver weights were noted at all dose levels but no histopathological changes nor any other treatment-related effects were observed.

5. *Chronic toxicity.* In a 12 month feeding study, clofentezine was administered to beagle dogs at dietary concentrations of 0, 50, 1,000 and 20,000 ppm. An increase in adrenal and thyroid weights, as well as moderate hepatotoxicity consisting of minimal periportal hepatocyte enlargement with cytoplasmic eosinophilia, hepatomegaly and increased plasma cholesterol, triglycerides and alkaline phosphatase levels, were noted at 20,000 ppm. Evidence of slight hepatotoxicity was also noted at 1,000 ppm. Thus, the NOAEL for this study was considered to be 50 ppm (~1.25 mg/kg/day[1]).

In a 27 month feeding study, clofentezine was administered to rats at dietary concentrations of 0, 10, 40 and 400 ppm. Effects noted at 400 ppm were

limited to the liver and thyroid, primarily of males, and consisted of increased liver weights, a variety of microscopic liver lesions (centrilobular hepatocyte hypertrophy and vacuolation, focal cystic hepatocellular degeneration and diffuse distribution of fat deposits), increased serum thyroxine levels, and a slight but statistically significant increase in the incidence of thyroid follicular cell tumors. The NOAEL was considered to be 40 ppm (~2 mg/kg/day).

Clofentezine was not oncogenic to mice when administered for 2 years at dietary concentrations of 0, 50, 500 and 5,000 ppm. Decreased weight gain, increased liver weights, and increased mortality were noted at 5,000 ppm. An increased incidence of eosinophilic or basophilic hepatocytes was noted at 5,000 ppm, and possibly 500 ppm.

6. *Special studies.* Numerous studies were conducted to investigate the mechanism for the increased incidence of male thyroid follicular tumors that was observed in the chronic rat study. These studies suggest that the tumors may have been caused by increased thyroid stimulating hormone (TSH) levels, which, in turn, resulted from clofentezine's liver toxicity.

7. *Animal metabolism.* The metabolism, tissue distribution and excretion of clofentezine have been evaluated in a number of species. In all species, almost all of the administered dose was recovered within 24 to 48 hours after treatment, primarily via the feces. The major route of metabolism was found to be ring hydroxylation, sometimes preceded by the replacement of a chlorine atom with a methyl-thio group. Blood and tissue levels in the fetuses of pregnant rats that had been treated with clofentezine were much lower than the levels found in the mother, indicating that clofentezine does not readily pass across the placenta. In addition, less than 1% of the administered dose was absorbed through the skin of rats following a 10 hour exposure to a 50 SC (50% suspension concentrate) formulation of clofentezine.

Following oral dosing of a cow and three goats with ^{14}C- labeled clofentezine, the residue in milk was identified as a single metabolite, 4-hydroxyclofentezine. Similarly, 4-hydroxyclofentezine has been shown to be the only metabolite present in fat, liver, and kidney. No unchanged clofentezine or other metabolites were found. Therefore, the nature of the residue in animals is adequately understood. The residues of concern are the combined residues of the parent, clofentezine, and the 4-hydroxyclofentezine metabolite.

8. *Endocrine disruption.* Except for the thyroid mechanistic studies mentioned above, no special studies have been conducted to investigate the potential of clofentezine to induce estrogenic or other endocrine effects. However, the standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. However, with the exception of a slightly increased incidence of thyroid tumors in male rats, no such effects were noted in any of the studies with clofentezine. The male rat is known to be much more susceptible than humans to the carcinogenic effects resulting from thyroid hormone imbalance and/or increased levels of TSH. Therefore, the alterations in thyroid hormone and subsequent thyroid pathological changes, which have been noted following administration of high doses of clofentezine, are considered to be of minimal relevance to human risk assessment, particularly considering the low levels of clofentezine to which humans are likely to be exposed.

C. Aggregate Exposure

Clofentezine is a miticide used on apples, pears, almonds, walnuts, apricots, cherries, peaches, and nectarines. Clofentezine has also been registered recently for use on ornamental plants, however, the product registered for use on ornamental plants (OVATION® miticide/insecticide) is not being marketed at this time. There are no other non-crop uses. Thus, potential sources of non-occupational exposure to clofentezine would consist only of any potential residues in food and drinking water. There are no acute toxicity concerns with clofentezine. Therefore, only chronic exposures are addressed here.

1. *Dietary exposure—Food.* A worst case dietary exposure assessment was performed for clofentezine using the Exposure® 1 software system (TAS, Inc.) and the 1977-78 USDA consumption data. This assessment assumed that 100% of all apples, pears, almonds, walnuts, apricots, cherries, nectarines, peaches, milk, and the fat, meat, and meat by-products of cattle, goats, horses, sheep, and hogs contained residues at the established and proposed tolerance levels. specify here or previously. A more realistic assessment was also conducted using estimates of market share.

2. *Drinking water.* All EPA environmental fate data requirements have been satisfied. The potential for clofentezine to leach into groundwater was assessed in terrestrial field dissipation studies conducted in several locations and in varying soil types. Half-lives ranged from 32.4 to 83 days. No evidence of leaching of parent or degradation products was observed. Based upon these and other studies, EPA concluded that "clofentezine is a relatively short-lived, non-mobile compound which does not pose a risk to groundwater, and will not be expected to accumulate in rotational crops." Thus, the potential for finding significant clofentezine residues in drinking water is minimal and the contribution of any such residues to the total dietary intake of clofentezine will be negligible. No Maximum Contaminant Level for clofentezine has been established.

D. Cumulative Effects

The primary effects observed in the toxicity studies conducted with clofentezine appear to be a result of its potency as an enzyme inducer. Although many other chemicals are also known to induce microsomal enzymes, insufficient information is available at this time to determine whether or not the potential toxic effects from these chemicals are cumulative. Furthermore, realistic estimates of potential non-occupational exposure to clofentezine indicate that such exposures are minimal and far below the levels that might be expected to produce any effects. Thus, any contribution of clofentezine to cumulative risk will not be significant. Therefore, only exposure from clofentezine is being addressed at this time.

E. Safety Determination

1. *U.S. population.* The toxicity and residue data bases for clofentezine are considered to be valid, reliable and essentially complete. Although clofentezine has been classified by EPA as Category C for oncogenicity, quantitative oncogenic risk assessment was considered inappropriate for the following reasons:

i. Evidence of tumors was limited to a single site in one sex of one species and occurred only at the high-dose level.

ii. The increased incidence of thyroid follicular tumors was only marginally increased above both concurrent and historical control levels.

iii. No evidence of genotoxicity has been observed.

iv. Mechanistic data indicate that the thyroid tumors were likely a secondary, threshold-mediated effect associated with clofentezine's liver toxicity. Furthermore, humans are believed to be much less susceptible to this effect than rats. Therefore, no effect on the thyroid-pituitary axis or oncogenic response would be expected at exposure levels which did not affect the liver.

Thus, a standard margin of safety approach is considered appropriate to assess the potential for clofentezine to produce both oncogenic and non-oncogenic effects. Based on the previously described data, EPA has adopted an reference dose (RfD) value for clofentezine of 0.0125 mg/kg/day, which was calculated using the NOAEL of 1.25 mg/kg/day from the 1 year dog feeding study and a 100-fold safety factor.

Using the worst-case assumptions of 100% of crop treated and that all crops and animal commodities contain residues of clofentezine at the current tolerance levels, the aggregate exposure of the general population to clofentezine from the established tolerances utilizes about 5% of the RfD. Using more realistic estimates of percent crop treated and adjusting for contribution from livestock diet, this decreases to less than 0.5% of the RfD. Repeating these assessments with the proposed tolerances, the percent RfD for the worst case is less than 10%, and for the more realistic case the percent RfD decreases to less than 1.2%. There is generally no concern for exposures which utilize less than 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime would not pose significant risks to human health. Therefore, there is a reasonable certainty that no harm will result to the general population from aggregate exposure to clofentezine residues.

2. *Infants and children.* Data from rat and rabbit developmental toxicity studies and rat multi generation reproduction studies are generally used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide.

No indication of increased sensitivity to infants and children was noted in any of the studies with clofentezine. No developmental effects were noted in rats, even at a dose level (3,200 mg/kg/day) that exceeded the 1,000 mg/kg/day limit dose and produced maternal toxicity. In addition, no evidence of reproductive toxicity was noted in the rat multigeneration reproduction study. Slight developmental toxicity (decreased fetal weights) was noted in rabbits, but only at a dose level (3,000 mg/kg/day) that exceeded the EPA limit dose and also produced maternal toxicity.

FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children to account for pre- and post-natal toxicity and the completeness of the data base. The toxicology database for clofentezine regarding potential pre- and post-natal effects in children is complete according to existing Agency data requirements and does not indicate any developmental or reproductive concerns. Furthermore, the existing RfD is based on a NOAEL of 1.25 mg/kg/day (from the 1 year dog study) which is already more than 800-fold lower than the NOAEL in the rabbit developmental toxicity study. Thus, the existing RfD of 0.0125 mg/kg/day is considered to be appropriate for assessing potential risks to infants and children and an additional uncertainty factor is not warranted.

Using the conservative exposure assumptions described above (proposed tolerances, 100% crop treated, and no adjustments for percent contribution from livestock diet), aggregate exposure to residues of clofentezine are expected to utilize about 65% of the RfD in non-nursing infants, 33% of the RfD in nursing infants, and 25% of the RfD in children aged 1 to 6 years old.

Using more realistic estimates of percent crop treated and adjusting for the percent contribution from livestock diet, the percent of RfD utilized is less than 8% for these population subgroups. These numbers would be lowered further if anticipated residues were utilized rather than tolerance values. Therefore, there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to clofentezine residues.

F. International Tolerances

Codex tolerances have been established for clofentezine on a wide variety of crops, including apples. The following MRLs were adopted by the Codex Committee on Pesticide Residues (CCPR) in April, 1988, except as noted in parentheses:

Commodity	MRL (mg/kg)
Cattle meat	0.05
Cattle, edible offal,	0.1
Cattle, milk	0.01
1Citrus fruits	0.5 (1995)
Cucumber	1.0 (1991)
Currants	0.01 (1993)
Eggs (poultry)	0.05
Grapes	1.0 (1995)
Pome fruits	0.5
Poultry, edible offal	0.05
Poultry meat	0.05
Stone fruits	0.2
Strawberry	2.0

[FR Doc. 99–1904 Filed 1–27–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30466; FRL–6054–1]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 1, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30466] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the

comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Product Manager (PM-25), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 524–UOO. Applicant: Monsanto Company, 600 13th St., NW., Suite 660, Washington, DC 20005. Product Name: MON 37500 Technical. Herbicide. Active ingredient: *N*-[[(4,6-dimethoxy-2-pyrimidinyl) amino]-carbonyl]-2-(ethyl-sulfonyl) imidazo[1,2-*a*] pyridine-3-sulfonamide at 98.0%. Proposed classification/Use: None. For use only in the manufacture of herbicide formulations.

2. File Symbol: 524–LNN. Applicant: Monsanto Co. Product Name: Maverick. Herbicide. Active ingredient: Sulfosulfuron, 1-(2-ethylsulfonylimidazo [1,2-a] pyridin-3-ylsulfonyl)-3-(4,6-dimethoxypyrimidin-2-yl) urea at 75%. Proposed classification/Use: None. For the control of annual grasses and broadleaf weeds in winter and spring wheat.

3. File Symbol: 524–LNN. Applicant: Monsanto Co. Product Name: MON 37503NC. Herbicide. Sulfosulfuron, 1-(2-ethylsulfonylimidazo [1,2-a] pyridin-3-ylsulfonyl)-3-(4,6-dimethoxypyrimidin-2-yl) urea at 75%. Proposed classification/Use: None. For the control of annual and perennial grass and broadleaf weeds in noncrop areas.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30466] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30466]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: January 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–1902 Filed 1-27-99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6226–4]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of four *de minimis* parties for response costs incurred and to be incurred at the C&R Battery Company, Inc. Superfund Site, Chesterfield County, Virginia.

DATES: Comments must be provided on or before March 1, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, and should refer to: *In Re C&R Battery Company, Inc. Superfund Site*, Chesterfield County, Virginia, U.S. EPA Docket No. III–98–090–DC.

FOR FURTHER INFORMATION CONTACT: Yvette Hamilton-Taylor (3RC32), 215/814–2636, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

SUPPLEMENTARY INFORMATION: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the C&R Battery Company, Inc. Superfund Site, in Chesterfield County, Virginia. The administrative settlement was signed by the United States Environmental Protection Agency, Region III's Regional Administrator on November 12, 1998 and is subject to review by the public pursuant to this Notice. This agreement is also subject to the approval of the Attorney General, United States Department of Justice or her designee and for the grant of a covenant not to sue for natural resource damages, is also subject to agreement in writing by the Department of Interior. Below are listed the parties who have executed binding certifications of their consent to participate in this settlement:

1. C&C Cullet Supply, Inc.
2. J. Solotkin & Company, Inc.
3. Tidewater Metals Company

4. Virginia Scrap Iron and Metal Company, Inc.

These four parties collectively have agreed to pay $10,341.37 to the Hazardous Substances Trust Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Monies collected from the *de minimis* parties will be applied towards past response costs incurred at or in connection with the Site. Out of such amount $937.90 will be paid directly to the Department of Interior for natural resources damages. The settlement includes a premium to cover the risk of cost overruns or increased costs to address conditions at the Site previously unknown to EPA but discovered after the effective date of the Consent Order. EPA is entering into this agreement under the authority of sections 107 and 122(g) of CERCLA, 42 U.S.C. 9607 and 9622(g). Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with potentially responsible parties in connection with the C&R Battery Company, Inc. Superfund Site, each of whom is responsible for less than one percent of the volume of hazardous substance disposed of at the Site. The grant of a covenant not to sue for natural resources damages by the Department of Interior to those parties paying their share of such allocated costs is subject to agreement in writing by the Department of Interior pursuant to section 122(j) of CERCLA, 42 U.S.C. 9622(j). EPA issued a draft settlement proposal to the *de minimis* parties on September 4, 1998 and invited comments and challenges to the volumetric ranking. By September 23, 1998 the *de minimis* parties submitted executed certifications to the draft settlement proposal and did not elect to comment on either the draft proposal or the volumetric ranking summary.

The Environmental Protection Agency will receive written comments relating to this Agreement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent can be obtained from the Environmental Protection Agency, Region III, Office of Regional Counsel, 1650 Arch Street, Philadelphia, Pennsylvania, 19103 by contacting Yvette Hamilton-Taylor at (215) 814–2636.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–2050 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6227–1]

Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under section 122(h)(1) of CERCLA concerning the Moschiano Plating Company, Inc., site at 2808–2824 West Lake Street, Chicago, Illinois ("Site"). The settlement resolves an EPA claim under section 107(a) of CERCLA against (1) the Estate of Frank B. Moschiano, (2) Josephine S. Moschiano, individually and as the Executor of the Estate of Frank B. Moschiano, and (3) the heirs, successors and assigns of the property in the Estate of Frank B. Moschiano. The settlement requires the settling parties to pay $39,750 to the Hazardous Substances Superfund. The settlement also requires that the settling parties use their best efforts to sell the Site property and then pay to the Hazardous Substances Superfund the proceeds of that sale minus reasonable fees incurred to sell the Site. Additionally, in future the settling parties must notify EPA if certain events occur: (1) if the settling parties offer to sell, or accept an offer to sell, the Site property; (2) if the settling parties file an insurance claim or receive payment on an insurance claim related to the Site or Moschiano Plating Company, Inc.; and (3) if the settling parties receive payments on any accounts receivable for Moschiano Plating Company, Inc.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before March 1, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the Superfund Records Center, located at 77 West Jackson Boulevard, Seventh Floor, Chicago, Illinois. A copy of the proposed settlement also may be obtained from the Superfund Records Center, located at the address above, or by contacting Jacqueline Kline at telephone number 312/886–7167. Comments should reference the Moschiano Plating Company, Inc., Site, Chicago, Illinois, and EPA Docket No. V–W–99–AO–10 and should be addressed to Jacqueline Kline, Associate Regional Counsel, 77 West Jackson Boulevard (C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jacqueline Kline, Associate Regional Counsel, at the address and telephone number listed above.

Dated: January 13, 1999.

James Mayka,

Acting Director, Superfund Division, Region 5.

[FR Doc. 99–2049 Filed 1–27–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

January 20, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L.104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and

expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418–0217.

Federal Communications Commission.

OMB Control No.: 3060–0834.
Expiration Date: 12/31/2001.
Title: Reconsideration of Rules and Policies for the 220–222 MHz Radio Service—PR 89–552, GN 93–252, PR 93–253.
Form No.: N/A.
Estimated Annual Burden: 44,850 annual hours; .30 minutes to 12 hours per response; 18,400 responses.
Needs and Uses: The information collected will be used by the Commission to verify licensee compliance with Commission rules and regulations, to ensure the integrity of the 220 MHz service, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934.

Federal Communications Commisssion.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1940 Filed 1–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER NUMBER: 99–1512.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, January 26, 1999, 10:00 A.M., meeting closed to the public. This meeting was cancelled.

* * * * *

DATE AND TIME: Tuesday, February 2, 1999, at 10:00 A.M.

PLACE 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Wednesday, February 3, 1999, at 2:00 P.M.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes. Legislative Recommendations, 1999. Report of the Audit Division on Michigan Republican State Committee. Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, telephone (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–2129 filed 1–26–99; 10:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011606–001
Title: The COSCON/KL Slot Exchange Agreement
Parties: COSCO Container Lines, Kawasaki Kisen Kaisha, Ltd.
Synopsis: The proposed amendment would extend the termination date of the Agreement through March 2, 2001.

Dated: January 22, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1917 Filed 1–27–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

First Unicorn International, 9333 Guess Street, Rosemead, CA 91770, Officers: Henry Q. Cheung, President, Yeh To, Vice President.

Dated: January 22, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1916 Filed 1–27–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Memphis Bancshares, Inc., Memphis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Memphis, Memphis, Missouri, in organization.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Castle Creek Capital Partners Fund IIa, LP, and Castle Creek Capital Partners Fund IIb, LP, both of Rancho Santa Fe, California; to become bank

holding companies by acquiring up to 23.93 percent of the voting shares of Rancho Santa Fe National Bank, Rancho Santa Fe, California.

2. WJR Corporation, Rancho Santa Fe, California; to become a bank holding company by acquiring 22.96 percent of the voting shares of Castle Creek Capital LLC, Rancho San Fe, California, and thereby indirectly acquire Rancho Santa Fe National Bank, Rancho Santa Fe, California.

3. Eggemeyer Advisory Corp., Rancho Santa Fe, California; to increase its indirect ownership through Castle Creek Capital Partners Fund I, LP, Rancho Santa Fe, California, Castle Creek Capital Partners Fund IIa, LP, and Castle Creek Capital Partners Fund, IIb, both of Rancho Santa Fe, California, to approximately 48.94 percent of the voting shares of Rancho Santa Fe National Bank, Rancho Santa Fe, California.

Board of Governors of the Federal Reserve System, January 25, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2047 Filed 1–27–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–141]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period April 1998 through September 1998. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on July 15, 1998, [63 FR 38175]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 487–4650. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between April 1, 1998 and September 30, 1998 public health assessments were issued for the sites listed below:

NPL Sites

Arizona

Luke Air Force Base—Phoenix—(PB98–149289)

Yuma Marine Corps Air Station—Yuma—(PB98–1167810)

California

Norton Air Force Base—Norton Air Force Base—(PB–144967)

Tracy Defense Depot (a/k/a Defense Distribution Region West Tracy Army)—Tracy—(PB98–173094)

Travis Air Force Base—Travis—(PB99–101321)

Florida

Homestead Air Force Base—Homestead—(P99–109365)

MRI Corporation—Tampa—(PB98–159841)

Georgia

Southwire Company and Southwire Company Copper Division—Carrollton—(PB99–102998)

Illinois

Casswood Treated Products—Beardstown—(PB98–139280)

Danville H & L Danville City Dump—Danville—(PB99–101339)

Dowzer Electric—Mt. Vernon—(PB98–139119)

H.O.D. Landfill—Antioch—(PB99–107394)

Lenz Oil Service Incorporated—Lemont—(PB98–159833)

Minnesota

U.S Air Force Twin Cities Reserve Small Arms Range (a/k/a Minneapolis St. Paul International Airport Air Reserve Station)—Minneapolis—(PB98–149164)

Texas

Air Force Plant #4 (General Dynamics)—Fort Worth—(PB98–154313)

Pantex Plant—Amarillo—(PB99–109779)

U.S. Virgin Islands

Virgin Island Chemical Corporation—St. Croix—(PB98–148224)

Washington

U.S. Navy Port Hadlock Detachment (Indian Island Depot) (a/k/a Naval Ordnance Center, Pacific Division)—Indian Island—(PB99–110959)

Non NPL Petitioned Sites

Connecticut

Gallup's Quarry—Planfield—(PB99–104274)

Flordia

Loxahatchee Nursery—Palm City—(PB99–109290)

Georgia

Atlanta Gaslight Company—Augusta—(PB98–150261)

Kentucky

Rubbertown—Louisville—(PB99–109202)

Montana

Kings Creek (a/k/a Fort Belknap Indian Reservation/Zortman Mining Incorporated)—Lodgepole—(PB98–148448)

South Carolina

Laidlow Environmental Services Facility—Roebuck—(PB98–173800)

Dated: January 22, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–1987 Filed 1–27–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Centers for Disease Control and Prevention

Public Meeting of the Inter-Tribal Council on Hanford Health Projects (ICHHP) in Association With the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

Name: Public meeting of the Inter-tribal Council on Hanford Health Projects (ICHHP) in association with the Citizens Advisory Committee on PHS Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 9 a.m.—4 p.m., February 24, 1999.

Place: Cavanaugh's's Hotel at Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community Involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ICHHP is part of these efforts. The ICHHP will work with the HHES to provide input on American Indian health effects at the Hanford, Washington site.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including discussion on Hanford Thyroid Disease Study results, update on tribal cooperative agreements, and development of a National Research Agenda with tribal input.

Matters to be Discussed: Agenda Items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include exploring cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Agenda items are subject to change as priorities dictate.

CONTACT PERSONS FOR MORE INFORMATION: Leslie C. Campbell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE m/s E–56, Atlanta, GA 30333. Telephone 1–888/42–ATSDR (28737), Fax 404/639–6075.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1992 Filed 1–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substance and Disease Registry

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on PHS Activities and Research at Department of Energy (DOE) Sites: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 8:30 a.m.–5:30 p.m., February 25, 1999; 8:30 a.m.–4:30 p.m., February 26, 1999.

Place: Cavanaugh's's Hotel at Columbia Center, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336. Telephone 509/783–0611.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: Under a Memorandum of Understanding (MOU) signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining

to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to receive an update from the Inter-tribal Council on Hanford Health Projects; to review and approve the Minutes of the previous meeting; to receive updates from ATSDR/NCEH and NIOSH; to receive reports from the Outreach, Public Health Assessment, Public Health Activities, and the Studies Workgroups; and to address other issues and topics, as necessary.

Matters To Be Discussed: Agenda items include a presentation and discussion on the Nevada Test Site Fallout Study, implications for proposed Hanford Medical Monitoring Program, results of the Hanford Thyroid Disease Study, and worker health surveillance programs.

Agenda items are subject to change as priorities dictate.

Contact Persons for More Information: Leslie C. Campbell, Executive Secretary HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE m/s E–56, Atlanta, Georgia 30333. Telephone 1–888/42–ATSDR(28737), Fax 404/639–6075.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1991 Filed 1–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Administration on Aging

[Program Announcement No. AoA–99–1]

Fiscal Year 1999 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications to carry out cooperative agreement awards to train retired persons to serve in their communities as volunteer expert resources and educators in combating health care waste, fraud, and abuse.

SUMMARY: The Administration on Aging (AoA) announces that under this program announcement it will hold a competition for "Senior Medicare Patrol Projects" that demonstrate effective ways of utilizing retired persons as volunteer expert resources and educators in community efforts to combat health care waste, fraud and abuse. The deadline date for the submission of applications is March 31, 1999.

Public and/or nonprofit agencies, organizations, and institutions are eligible to apply under this program announcement. However, consistent with the terms of Senate Report 105–300, which accompany the Omnibus Consolidated Appropriations Act of 1999 (Pub.L.105–277), preference will be given in the making of cooperative agreement awards to projects that will be carried out by consortia headed by community-based public or non-profit agencies or organizations. In addition, the AoA is currently funding "Senior Medicare Patrol Projects" in twelve states—California, Hawaii, Illinois, Iowa, Maryland, Minnesota, Missouri, New Hampshire, New York, Pennsylvania, Rhode Island, and Wisconsin. No further awards will be made in these states.

Application kits are available by writing to the Department of Health and Human Services, Administration on Aging, Office of Governmental Affairs and Elder Rights, 330 Independence Avenue, SW., Room 4748, Washington, DC 20201, telephone: (202) 619–7592 or (202) 690–7525.

Dated: January 21, 1999.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 99–2056 Filed 1–27–99; 8:45 am]

BILLING CODE 4150–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office of the Director, Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

Name: Guide to Community Preventive Services (GCPS) Task Force Meeting.

Times and Dates: 9 a.m.–4:45 p.m., February 10, 1999. 8 a.m.–3:30 p.m., February 11, 1999.

Place: The Sheraton Buckhead Hotel Atlanta, 3405 Lenox Road, Atlanta, Georgia 30326. Telephone 404/261–9250.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The mission of the Task Force is to develop and publish a Guide to Community Preventive Services, which is based on the best available scientific evidence and current expertise regarding essential public health services and what works in the delivery of those services.

Matters to be Discussed: Agenda items include an update on the Healthy Aging Project by the Health Care Financing Administration; a progress report on the development of the Guide; a discussion of the key issues for methods development; a discussion on the key decisions for chapter development: review of logic frameworks and proposed interventions for the Sociocultural Environment, Sexual Behavior, and Cancer chapters; a discussion of the implementation and evaluation plans for the Guide; a discussion of cost effectiveness; a progress report on the draft manuscripts: Methods, Data Collection Procedures and Instrument for Systematic Reviews, Quality of Execution, and Scope and Organization of the Guide; a discussion on the timeline for the development of the Guide; an update on the revisions and field test results of the Vaccine Preventable Diseases chapter; a discussion on the prevention research agenda issues and a discussion on planning the evidentiary database.

Agenda items are subject to change as priorities dictate.

Persons interested in reserving a space for this meeting should call 404/639–4301 by close of business on February 5, 1999.

Contact Person for Additional Information: Marguerite Pappaioanou, Chief, CPS Guide Development Activity, Division of Prevention Research and Analytic Methods, Epidemiology Program Office, CDC, 1600 Clifton Road, NE, M/S D–01, Atlanta, Georgia 30333. Telephone 404/639–4301.

The Director, Management Analysis and Services office has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2012 Filed 1–27–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Occupational Exposure to Asphalt; NIOSH Meeting

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Scientific Review of Draft NIOSH Hazard Review Document, "Health Effects of Occupational Exposure to Asphalt."

Time and Date: 1 p.m.–5 p.m., February 26, 1999.

Place: Robert A. Taft Laboratories, Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: To provide peer review of the draft NIOSH Hazard Review Document, "Health Effects of Occupational Exposure to Asphalt." Participants will provide NIOSH with their individual advice and comments regarding the technical and scientific aspects of the document. Persons wishing to attend or make a presentation at the meeting (limited to 5 minutes), or obtain a copy of the draft document should respond by February 19, 1999, to the contact person listed below.

Contact Person for General Information: Kellie Pierson, Education and Information Division (EID), NIOSH, CDC, 4676 Columbia Parkway, m/s C–34, Cincinnati, Ohio 45226. Telephone 513/533–8362, e-mail kmp0@cdc.gov. Information is also available from the NIOSH Internet Homepage: http://www.cdc.gov/niosh/homepage.html.

Contact Person for Technical Information: Joann Wess, Education and Information Division (EID), NIOSH, CDC, 4676 Columbia Parkway, m/s C–32, Cincinnati, Ohio 45226. Telephone 513/533–8342, e-mail jew4@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 22, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2011 Filed 1–27–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0616]

Determination of Regulatory Review Period for Purposes of Patent Extension; Prandin™ (5,216,167)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Prandin™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Prandin™ (repaglinide). Prandin™ is indicated for use as an adjunct to diet and exercise to lower the blood glucose in patients with type 2 diabetes mellitus (non-insulin dependent diabetes mellitus) whose hyperglycemia cannot be controlled satisfactorily by diet and exercise alone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Prandin™ (U.S. Patent No. 5,216,167) from Dr. Karl Thomae GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 10, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Prandin™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Prandin™ is 2,091 days. Of this time, 1,916 days occurred during the testing phase of the regulatory review period, while 175 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: April 3, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 3, 1992.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: July 1, 1997. The applicant claims June 1, 2797, as the date the new drug application (NDA) for Prandin™ (NDA 20–741) was initially submitted. However, FDA records indicate that NDA 20–741 was submitted on July 1, 1997.

3. *The date the application was approved*: December 22, 1997. FDA has verified the applicant's claim that NDA 20–741 was approved on December 22, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 922 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 29, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 27, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies

(except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–1936 Filed 1–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0475]

Determination of Regulatory Review Period for Purposes of Patent Extension; Prandin (5,312,924)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Prandin and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Prandin (repaglinide). Prandin is indicated for use as an adjunct to diet and exercise to lower the blood glucose in patients with type 2 diabetes mellitus (non-insulin dependent diabetes mellitus) whose hyperglycemia cannot be controlled satisfactorily by diet and exercise alone. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Prandin (U.S. Patent No. 5,312,924) from Dr. Karl Thomae GmbH, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 10, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Prandin represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Prandin is 2,091 days. Of this time, 1,916 days occurred during the testing phase of the regulatory review period, while 175 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act)(21 U.S.C. 355) became effective: April 3, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 3, 1992.

2. The date the application was initially submitted with respect to the human drug product under section 505 of the act: July 1, 1997. The applicant claims June 27, 1997, as the date the new drug application (NDA) for Prandin (NDA 20–741) was initially submitted.

3. The date the application was approved: December 22, 1997. FDA has verified the applicant's claim that NDA 20–741 was approved on December 22, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 747 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 29, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before July 27, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 18, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–1937 Filed 1–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0053]

Announcement of a Pilot Customer Satisfaction Survey: Medical Device Inspection Evaluation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a 1-year pilot of a customer satisfaction survey entitled "Medical Device Inspection Evaluation." The purpose of the evaluation is to provide a means whereby the medical device industry can provide feedback in an anonymous way to FDA's Office of Regulatory Affairs (ORA) regarding the medical device inspectional process. ORA intends to utilize a third party to collect the evaluations and trend the data submitted.

DATES: Written comments may be submitted at any time between March 1, 1999, through February 28, 2000.

ADDRESSEES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Denise D. Dion, Office of Regulatory Affairs, Division of Emergency and Investigational Operations (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5645, e-mail "ddion@ora.fda.gov".

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has granted approval for this evaluation as a customer satisfaction survey. The evaluation is a followup to FDA/ORA's successful medical device industry initiatives, which included preannounced inspections, FDA 483 annotations, and postinspection notification letters. The Medical Device Industry Initiative Grassroots Taskforce, which includes members from industry and industry trade groups from across the nation as well as from FDA/ORA and FDA/Center for Devices and Radiological Health, is responsible for the design and development of this evaluation tool. The University of California-Irvine (UCI) Center for Statistical Consulting, Irvine, CA, is the third party that will collect and collate the evaluation forms and data. The data trends and findings will be made publicly available and will be shared with industry. The evaluation will be piloted for medical device preapproval, quality system/good manufacturing practices, and other related inspections.

The evaluation forms will contain preprinted information completed by the investigator regarding the name of the firm inspected, date of inspection, whether an FDA 483 was issued, the name of the investigator(s), the applicable FDA District Office and the reason for the inspection. The form will be accompanied by a preaddressed stamped envelope that is to be used to return the form to the UCI Center for Statistical Consulting (UCI). FDA expects the firm official with the most knowledge of the inspection to complete the industry survey portion of the evaluation as soon as possible after the inspection has ended. UCI will report the results by FDA District, FDA Region and nationwide.

The purpose of including investigator and firm identifiers on the evaluation is to assist UCI in obtaining clarifying information if needed and to determine the number of responses received versus the number of inspections conducted. FDA/ORA intends to share FDA's inspectional accomplishments (numbers) with UCI to help facilitate this determination of response rate. Neither the firm nor investigator identifier information will be entered into the data base or shared with FDA or industry.

The information collection provisions in this notice have been approved under OMB control number 0910–0360. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Interested persons may, at any time between March 1, 1999, through February 28, 2000, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

BILLING CODE 4160–01–F

MEDICAL DEVICE INDUSTRY INITIATIVES TASK FORCE

MEDICAL DEVICE INSPECTION EVALUATION

This Section to be Completed by the FDA

Company Information

Company Name:

Company Address:

Telephone: ( ) Fax: ( ) E-mail:

Type of device(s) inspected:

Dates of Inspection: Start date: ____/____/____ (Month Day Year) End date: ____/____/____ (Month Day Year)

FDA Information

Name of lead investigator:

Number of supporting investigators:

FDA District (circle one): 1-NYK 2-NWE 3-PHI 4-BLT 5-NWJ 6-CIN 7-ATL 8-FLA 9-NSH 10-NOL 11-SJN 12-CHI 13-DET 14-MIN 15-DAL 16-KAN 17-DEN 18-SAN 19-LOS 20-SEA

Was a 483 issued?

1 YES
2 NO

Reason(s) for inspection (circle all that apply):

1 Pre-approval
2 QS/GMP
3 Other (please specify): _____

ALL FOLLOWING TO BE COMPLETED BY THE COMPANY

Definitions:

FDA 483 – FDA form issued to establishment management at the close of inspection if any problem(s) found.
EIR – Establishment Inspection Report
QS/GMP – Quality System/Good Manufacturing Practices

The first set of questions asks what happened before the inspection began. Please circle the number associated with the answer you choose. Your responses to all questions will be kept confidential.

Q-1 Did your company receive advance notification of the inspection?

1 YES → (If yes) How many days advance notification did you receive?
2 NO

_____ NUMBER OF DAYS

Q-2 During the pre-announcement phone call, did you have clarity of inspection requirements as to

a. Products 1 YES 2 NO
b. Records 1 YES 2 NO
c. Personnel 1 YES 2 NO

Q-3 Was it necessary to reschedule the proposed start of the inspection?

1 YES
2 NO

(If yes) Was the impact on your business

1 HELPFUL
2 NEUTRAL
3 DISRUPTIVE

The next set of questions asks about things that may have happened during the inspection.

Q-4 Was it necessary to interrupt the inspection for more than two working days?

1 YES
2 NO

(If yes) Was the interruption requested by

1 FDA
2 YOUR COMPANY

Characterize the impact of the interruption on your company

1 HELPFUL
2 NEUTRAL
3 DISRUPTIVE

Q-5 Were you able to have **all** the right personnel available during the inspection?

1 YES
2 NO → PLEASE EXPLAIN:_____

Q-6 Was your company able to meet **all** the needs of the investigator(s) for records availability?

1 YES
2 NO → PLEASE EXPLAIN:_____

Q-7 During the process of the inspection was your firm always notified daily of the investigator(s) observations?

1 YES
2 NO → PLEASE EXPLAIN:_____

Q-8 Did the investigator(s) provide any helpful information or suggestions?

1 YES
2 NO

The following questions pertain to the outcome of the inspection.

Q-9 Was an FDA 483 issued at the close of the inspection?

1 YES
2 NO → SKIP TO Q-18 ON THE BACK PAGE

Q-10 Were there any corrective actions taken or promised by your company during the process of the inspection? (CIRCLE **ALL** THAT APPLY)

1 YES, TAKEN
2 YES, PROMISED
3 NO, NEITHER → SKIP TO Q-14 ON THE NEXT PAGE

Q-11 Were there any corrective actions taken that were not verified by the FDA inspector(s) and you think could have been?

1 YES → Please list the corrective actions taken which you believe could have been verified by the FDA inspector(s) but were not: _____
2 NO
3 N/A, NO CORRECTIVE ACTIONS TAKEN

Q-12 Have you already, or do you plan to fulfill any promised actions?

1 YES
2 NO → (If no) Have you advised the FDA of any changes in plans or delays?
3 N/A, NO CORRECTIVE ACTIONS PROMISED

1 YES
2 NO

Q-13 Were the promised or taken corrective actions appropriately annotated on the FDA 483?

1 YES, ALL WERE
2 SOME WERE, SOME WERE NOT
3 NO, NONE WERE

Please list whatever actions you believe were not appropriately annotated on the FDA 483: _____

Q-14 Were there any inaccuracies on the FDA 483 **other than** those you may have described in Q-13 above?

1 YES → (If yes) Were these inaccuracies on the FDA 483 corrected?
2 NO

1 YES
2 NO → Please describe the situation(s): _____

The final set of questions asks your evaluation of the inspection and about your company's actions.

Q-15 Were all of the observations on the FDA 483 understandable?

1 YES
2 NO → Please comment on what was not clear: _____

Q-16 Other than inaccuracies (noted in Q-14 above), were any of the observations on the FDA 483 inappropriate?

1 YES → (If yes) Inappropriate items on the 483 were (CIRCLE ALL THAT APPLY):
2 NO

1 INSIGNIFICANT OBSERVATIONS
2 DIFFERENCE OF INTERPRETATION
3 OTHER → Please explain: _____

Q-17 Do you plan to respond to the FDA 483 observations in writing?

1 YES
2 NO→ Please Explain: _____

Q-18 How did this inspection process compare with past inspections?

1 THIS WAS BETTER → Please explain: _____
2 SAME
3 THIS WAS WORSE → Please explain: _____
4 NEVER BEEN INSPECTED BEFORE

Q-19 Was the highest level executive in your facility in attendance at the final discussion with management?

1 YES
2 NO

Q-20 Worldwide, what is the total number of people your company employs in its medical device division(s)?

_____ NUMBER OF PEOPLE

Finally, we ask that you provide contact information should we need clarification about any of your responses. This is for the use by The UCI Center for Statistical Consulting *only* and will *not* be released to the FDA, to any industry group, or to anyone else.

Person Completing this Evaluation:

Name:

Title:

Telephone:

Fax:

We Invite Your Comments. We would like your suggestions concerning how the FDA inspection process could be improved. In particular, we would appreciate information concerning specific questions. If your comment pertains to a particular question number, it would be helpful if you would note the question number.

_____

_____

_____

_____

_____

_____

Thank you very much for your help!

Please return completed questionnaire to:

Anita Iannucci, Ph.D.
The UCI Center for Statistical Consulting
Social Science Plaza
University of California
Irvine, CA 92697-5105
(949) 824-1682 iannucci@uci.edu

Dated: January 21, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2014 Filed 1–27–99; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0148]

Open Meeting on World Health Organization Recommendations on Ephedrine and Other Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, under international treaties, on ephedrine and other drug substances. The comments received as a result of this public meeting will be considered in preparing the U.S. position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, on March 16 through 25, 1999.

DATES: The public meeting will be held on Friday, February 19, 1999, from 9:30 a.m. to 4 p.m. Notifications on participation and/or attendance should be submitted by Tuesday, February 16, 1999.

ADDRESSES: The public meeting will be held in Parklawn Bldg., conference room C, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1696, e-mail "nreuter@oc.fda.gov".

There is no registration fee, however, space is limited. Participants and persons interested in attending the public meeting should call the contact person listed in this document to register. Registrations also may be transmitted by fax to 1–301–443–0232. Please include the name and title of the person participating or attending, the name of the organization, telephone number, and fax number. An agenda and other information will be compiled after February 16, 1999.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 11, 1999 (64 FR 1629), FDA published a notice announcing the WHO recommendations to control substances under international drug control treaties. The notice also provided interested persons with the opportunity to submit written comments and to request an informal public meeting. In response to that notice, FDA received requests for a public meeting. The comments received as a part of this public meeting, along with information submitted in response to the January 11, 1999, notice will be considered in preparing the U.S. position on these proposals for a meeting of the CND in Vienna, Austria, on March 16 through 25, 1999.

Dated: January 22, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2058 Filed 1–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0054]

Guidance for Industry on Providing Regulatory Submissions in Electronic Format—NDA's; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—NDA's." The guidance discusses in detail how to submit a new drug application (NDA) in electronic format to the Center for Drug Evaluation and Research (CDER). A notice of availability for a related guidance entitled "Providing Regulatory Submissions in Electronic Format—General Considerations" is being published elsewhere in this issue of the **Federal Register**. It discusses issues common to all submissions in electronic format to CDER and the Center for Biologics Evaluation and Research (CBER). Both guidances are part of a series of guidances being developed by the agency to assist applicants who wish to make regulatory submissions in electronic format. Guidances addressing other submission types, such as biologics license applications, abbreviated new drug applications (ANDA's), and investigational new drug applications (IND's), are being developed and will be issued in the future. Although submissions in electronic format are voluntary, the agency encourages them as a way to improve the efficiency of handling and reviewing documents and data.

DATES: Written comments on agency guidance documents may be submitted at any time.

ADDRESSES: Copies of this guidance for industry can be obtained on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this notice.

FOR FURTHER INFORMATION CONTACT: Kenneth Edmunds, Center for Drug Evaluation and Research (HFD–73), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3276, e-mail: ESUB@CDER.fda.gov.

SUPPLEMENTARY INFORMATION: Traditionally, FDA has required that regulatory submissions, such as IND's and NDA's, be submitted as paper documents. In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published the electronic records and electronic signatures regulation, which provided for the voluntary submission of parts or all of an application, as defined in the relevant regulations, in electronic format without an accompanying paper copy (21 CFR part 11). The agency also established public Docket No. 92S–0251 to provide a list of the agency unit(s) that are prepared to receive electronic submissions and the specific types of records and submissions that can be accepted in electronic format (62 FR 13467, March 20, 1997). Shortly after establishing the docket, CDER published a guidance for industry entitled "Archiving Submissions in Electronic Format—NDA's" (62 FR 49695, September 23, 1997), to assist applicants wishing to make electronic submissions. The September 1997 guidance provided specific information on submitting case report forms (CRF's) and case report tabulations (CRT's) as part of the NDA archival submission.

In the **Federal Register** of April 8, 1998 (63 FR 17184), CDER published a draft guidance entitled "Providing Regulatory Submissions in Electronic Format—NDA's". This draft guidance expanded on the September 1997 guidance and provided new information

on submitting a complete archival copy of the NDA in electronic format, including CRF's and CRT's. The comment period, which closed on June 8, 1998, was extended 30 days to allow interested parties to review CDER's document together with guidances on electronic submissions published by CBER (63 FR 29741, June 1, 1998). The agency considered received comments as it finalized this guidance. Because of the ever changing nature of this technology, the agency believes that the procedures for submitting electronic applications will continue to evolve over time. To facilitate the updating of guidances on electronic submissions in a timely and efficient manner, the agency has decided to develop one guidance on those topics common to all submission types and to create individual guidances on specific submission types.

Subsequent guidances on other submission types will be issued as they are developed. Consistent with the agency's Good Guidance Practices (62 FR 8961, February 27, 1997), guidances will be issued first in draft for comment, then revised and published in final.

As in the past, applicants planning to make submissions in electronic format should consult public Docket No. 92S–0251 to determine which agency units are prepared to receive electronic submissions and the specific types of documents that can be submitted in electronic format.

This guidance document represents the agency's current thinking on providing NDA's in electronic format to CDER. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 22, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2060 Filed 1–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0075]

Guidance for Industry on General Considerations for Providing Regulatory Submissions in Electronic Format; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—General Considerations." This guidance discusses issues common to all submissions in electronic format to the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). A notice of availability for a related guidance entitled "Providing Regulatory Submissions in Electronic Format—NDA's" is being published elsewhere in this issue of the **Federal Register**. Both guidances are part of a series of guidances being developed by the agency to assist applicants who wish to make regulatory submissions in electronic format. Guidances addressing other submission types, such as biologics license applications, abbreviated new drug applications (ANDA's), and investigational new drug applications (IND's), are being developed and will be issued in the future. Although submissions in electronic format are voluntary, the agency encourages them as a way to improve the efficiency of handling and reviewing documents and data.

DATES: Written comments may be submitted at any time.

ADDRESSES: Copies of "Guidance for Providing Regulatory Submissions in Electronic Format—General Considerations" can be obtained on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenneth Edmunds, Center for Drug Evaluation and Research (HFD–73), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3276, e-mail: ESUB@CDER.fda.gov; or Michael B. Fauntleroy, Center for Biologics Evaluation and Research, Office of the Director, (HFM–99), Food and Drug Administration, rm. 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5101, e-mail: Esubprep@cber.fda.gov.

SUPPLEMENTARY INFORMATION: Traditionally, FDA has required that regulatory submissions, such as IND's and new drug applications (NDA's), be submitted as paper documents. In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published the electronic records and electronic signatures regulation, which provided for the voluntary submission of parts or all of an application, as defined in the relevant regulations, in electronic format without an accompanying paper copy (21 CFR part 11). The agency also established public Docket No. 92S–0251 to provide a list of the agency unit(s) that are prepared to receive electronic submissions and the specific types of records and submissions that can be accepted in electronic format (62 FR 13467, March 20, 1997). Shortly after establishing the docket, CDER published a guidance for industry entitled "Archiving Submissions in Electronic Format—NDA's" (62 FR 49695, September 23, 1997), to assist applicants wishing to make electronic submissions. The September 1997 guidance provided specific information on submitting case report forms (CRF's) and case report tabulations (CRT's) as part of the NDA archival submission.

In the **Federal Register** of April 8, 1998 (63 FR 17184), CDER published a draft guidance entitled "Providing Regulatory Submissions in Electronic Format—NDA's"; this draft guidance expanded on the September 1997 guidance and provided new information on submitting a complete archival copy of the NDA in electronic format, including CRF's and CRT's. In June 1998, CBER published four guidances on electronic submissions: (1) "Electronic Submissions of a Biologics License Application (BLA) Product License Application (PLA)/ Establishment License Application

(ELA) to the Center for Biologics Evaluation and Research" (63 FR 29741, June 1, 1998); (2) "Electronic Submissions of Case Report Forms (CRF's), Case Report Tabulations (CRT's), and Data to the Center for Biologics Evaluation and Research" (63 FR 29739, June 1, 1998); (3) "Pilot Program for Electronic Investigational New Drug Applications (eIND) for Biological Products" (63 FR 29740, June 1, 1998); and (4) "Instructions for Submitting Lot Release Protocols to the Center for Biologics Evaluation and Research" (63 FR 29742, June 1, 1998).

As part of agency efforts to harmonize the procedures for making electronic submissions, FDA has decided to combine certain information from the CDER and CBER guidances into this guidance on general considerations common to all submission types. The agency has considered received comments on the CDER and CBER guidances as it finalized this guidance document. Because of the ever changing nature of electronic submission technology and the need, for now, to recognize existing differences in CDER and CBER systems, the agency has decided to maintain separate guidances on CDER's NDA submissions and CBER's marketing application submissions. The agency will harmonize the concepts in the guidances to the extent our electronic systems permit.

Subsequent guidances on other submission types will be issued as they are developed. Consistent with the agency's Good Guidance Practices (62 FR 8961, February 27, 1997), guidances will be issued first in draft for comment, then revised and issued in final. This final guidance incorporates information from the earlier draft CDER and CBER documents and takes into account comments received on them.

As in the past, applicants planning to make submissions in the electronic format should consult public Docket No. 92S–0251 to determine which agency units are prepared to receive electronic submissions and the specific types of documents that can be submitted in electronic format.

This guidance document represents the agency's current thinking on general considerations for providing regulatory submissions in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests are to be identified with the docket number found in the brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 22, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2059 Filed 1–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1266]

Draft Guidance for Industry on Placing the Therapeutic Equivalence Code on Prescription Drug Labels and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Placing the Therapeutic Equivalence Code on Prescription Drug Labels and Labeling." The draft guidance is intended to clarify for prescription drug manufacturers, relabelers, and distributors FDA's position regarding placing the therapeutic equivalence code on approved FDA product labels and labeling. It also provides recommendations on how to display therapeutic equivalence codes on labels and labeling. Inclusion of a therapeutic equivalence code on prescription drug labels/labeling is voluntary.

DATES: Written comments may be submitted by March 29, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jerry Phillips, Center for Drug Evaluation and Research (HFD–610), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3225.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Placing the Therapeutic Equivalence Code on Prescription Drug Labels and Labeling." With the repeal of section 301(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(l)) as part of the Food and Drug Administration Modernization Act of 1997, FDA believes that it is legally permissible to allow therapeutic equivalence codes to be placed on drug product labels and labeling. The agency also believes that the use of therapeutic equivalence codes will contribute to the accurate and safe selection of generic products by pharmacists. This draft guidance is intended to: (1) Provide a historical perspective on therapeutic equivalence, (2) describe the process by which the agency advises the public on the therapeutic equivalence of approved drug products, and (3) advise manufacturers, relabelers, and distributors of the preferred format and placement of such information on product labels. Although inclusion of a therapeutic equivalence code on prescription drug labels/labeling normally is voluntary, in certain cases where safety issues are raised, the agency may ask that a code be included.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on placing the therapeutic equivalence code on the labeling of prescription drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, on or before March 29, 1999, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the

office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 21, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2015 Filed 1–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0249]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; Title of Information Collection: Hospice Cost Report and Supporting Regulations in 42 CFR 413.20, and 413.24; Form No.: HCFA–R–0249 (OMB# 0938-new); Use: Medicare certified hospice programs must file an annual cost report with HCFA. This report contains information on overhead costs, assets, depreciation, and compensation which will be used for hospice rate evaluations.; Frequency: Annually; Affected Public: Not-for-profit institutions, and Business or other for-profit; Number of Respondents: 1,720; Total Annual Responses: 1,720; Total Annual Hours: 302,720.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 19, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–2028 Filed 1–27–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–8003]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Home and Community-Based Services Waiver Requests and Supporting Regulations in 42 CFR 440.180, and 441.301–441.310; *Form No.:* HCFA–8003 (OMB# 0938–0449); *Use:* Under a Secretarial waiver, States may offer a wide array of home and community-based services to individuals who would otherwise require institutionalization. States requesting a waiver must provide certain assurances, documentation and cost & utilization estimates which are reviewed, approved and maintained for the purpose of identifying/verifying States' compliance with such statutory and regulatory requirements. The purpose of this request is to provide authority for the State to furnish such individuals with services in the home and community-based setting; *Frequency:* When a State requests a waiver or amendment to a waiver; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 50; *Total Annual Responses:* 128; *Total Annual Hours:* 7,860.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 19, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–2029 Filed 1–27–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Draft Compliance Guidance for the Durable Medical Equipment, Prosthetics, Orthotics and Supply Industry

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period.

SUMMARY: This **Federal Register** notice seeks the comments of interested parties

on draft compliance program guidance developed by the Office of Inspector General for the durable medical equipment, prosthetics, orthotics and supplier (DMEPOS) industry. Through this notice, the OIG is setting forth (1) its general views on the value and fundamental principles of DMEPOS suppliers' compliance programs, and (2) the specific elements that each DMEPOS supplier should consider when developing and implementing an effective compliance program. This document presents basic procedural and structural guidance for designing a compliance program, that is, a set of guidelines to be considered by a DMEPOS supplier interested in implementing a compliance program.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on March 1, 1999.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–3N–CPG, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG–3N–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Christine Saxonis, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION:

A. Background

The creation of compliance program guidance has become a major initiative of the OIG in its efforts to engage the private health care community in addressing and fighting fraud and abuse. Recently, the OIG has developed and issued compliance program guidance directed at various segments of the health care industry in the following areas:

- Clinical laboratories (62 FR 9435; March 3, 1997, as amended in 63 FR 45076; August 24, 1998),
- Hospitals (63 FR 8987; February 23, 1998),
- Home health agencies (63 FR 42410; August 7, 1998), and
- Third party medical billing companies (63 FR 70138; December 18, 1998).

The guidance can also be found on the OIG web site at http://www.dhhs.gov/progorg/oig. The guidance is designed to provide clear direction and assistance to specific sections of the health care industry that are interested in reducing and eliminating fraud and abuse within their organizations.

In an effort to formalize the process by which the OIG obtains public input on the guidances, on August 7, 1998, the OIG published a solicitation notice seeking information and recommendations for developing guidance for the DMEPOS industry (63 FR 42409). In response to that solicitation notice, the OIG received a number of comments from various parts of the industry and their representatives. We have carefully considered previous OIG publications, such as the Special Fraud Alerts and the recent findings and recommendations in reports issued by the OIG's Office of Audit Services and Office of Evaluation and Inspections, as well as the experience of past and recent fraud investigations conducted by the OIG's Office of Investigations and the Department of Justice. We have also consulted with the Health Care Financing Administration and the durable medical equipment regional carriers.

B. Elements Addressed in This Guidance

This draft of DMEPOS guidance contains the following 7 elements that the OIG has determined are fundamental to an effective compliance program:

- Implementing written policies, procedures and standards of conduct;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Enforcing standards through well-publicized disciplinary guidelines;
- Conducting internal monitoring and auditing; and
- Responding promptly to detected offenses and developing corrective action.

These elements are contained in the other guidances issued by the OIG. As is the case with the other guidances, the contents of the guidance should not be viewed as mandatory for providers or as an exclusive discussion of the advisable elements of a compliance program.

In an effort to ensure that all parties have an opportunity to provide input into the OIG's guidance, we are publishing this latest guidance in draft form, and welcome any comments from interested parties regarding this guidance, particularly with respect to the section concerning written policies and procedures. We will consider all comments received in a timely manner, incorporate any recommendations as appropriate, and prepare and publish a final version of the DMEPOS guidance later this year.

C. Draft Compliance Program Guidance for the DMEPO Industry

I. Introduction

The Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) continues in its efforts to promote voluntarily developed and implemented compliance programs for the health care industry. The following compliance program guidance is intended to assist suppliers [1] of durable medical equipment,[2] prosthetics,[3] orthotics,[4] and supplies [5] (DMEPOS) and their agents and subcontractors (referred to collectively in this document as "DMEPOS suppliers") develop effective internal controls that promote adherence to applicable Federal and State law, and the program requirements of Federal, State and private health plans. The adoption and implementation of voluntary compliance programs significantly advance the prevention of fraud, abuse, and waste in these health care plans while at the same time further the fundamental mission of all DMEPOS suppliers, which is to provide quality items, service, and care to patients.

Within this document, the OIG first provides its general views on the value and fundamental principles of DMEPOS suppliers' compliance programs, and then provides the specific elements that each DMEPOS supplier should consider when developing and implementing an

[1] The term "supplier" is defined in this document as an entity or individual, including a physician or Part A provider, which sells or rents Part B covered items. See 42 CFR 424.57(a).

[2] The term "durable medical equipment" is applied in this document as defined in 42 U.S.C. 1395x(n).

[3] The term "prosthetics" and "prosthetic devices" are applied in this document as defined in 42 U.S.C. 1395 x (s)(9) and (s)(8), respectively.

[4] The term "orthotics" is applied in this document as defined in 42 U.S.C. 1395x(s)(9).

[5] The term "supplies" includes home dialysis supplies and equipment as described in 42 U.S.C. 1395x(s)(2)(f); surgical dressings and other devices as described in 42 U.S.C. 1395x(s)(5); immunosuppressive drugs as described in 42 U.S.C. 1395x(s)(2)(J); and any other items or services designated by the Health Care Financing Administration (HCFA).

effective compliance program. While this document presents basic procedural and structural guidance for designing a compliance program, it is not in itself a compliance program. Rather, it is a set of guidelines to be considered by a DMEPOS supplier interested in implementing a compliance program.

The OIG recognizes the size-differential that exists between operations of the different DMEPOS suppliers and organizations that compose the DMEPOS supplier industry. Appropriately, this guidance is pertinent for all DMEPOS suppliers, regardless of size (in terms of employees and gross revenue); number of locations; type of equipment provided; or corporate structure. The applicability of the recommendations and guidelines provided in this document depends on the circumstances of each individual DMEPOS supplier. However, regardless of a DMEPOS supplier's size or structure, the OIG believes that every DMEPOS supplier can and should strive to accomplish the objectives and principles underlying all of the compliance policies and procedures recommended within this guidance.

Fundamentally, compliance efforts are designed to establish a culture within a DMEPOS supplier that promotes prevention, detection, and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the DMEPOS supplier's ethical and business policies. In practice, the compliance program should effectively articulate and demonstrate the DMEPOS supplier's commitment to ethical conduct. Benchmarks that demonstrate implementation and achievements are essential to any effective compliance program. Eventually, a compliance program should become part of the fabric of routine DMEPOS supplier operations.

Specifically, compliance programs guide a DMEPOS supplier's owner(s), governing body (e.g., board of directors or trustees), chief executive officer (CEO), president, vice presidents, managers, sales representatives, billing personnel, and other employees in the efficient management and operation of a DMEPOS supplier. They are especially critical as an internal quality assurance control in the reimbursement and payment areas, where claims and billing operations are often the source of fraud and abuse, and therefore, historically have been the focus of Government regulation, scrutiny, and sanctions.

It is incumbent upon a DMEPOS supplier's owner(s), corporate officers, and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct. Employees, managers, and the Government will focus on the words and actions of a DMEPOS supplier's leadership as a measure of the organization's commitment to compliance. Indeed, many DMEPOS suppliers have adopted mission statements articulating their commitment to high ethical standards. A formal compliance program, as an additional element in this process, offers a DMEPOS supplier a further concrete method that may improve quality of service and reduce waste. Compliance programs also provide a central coordinating mechanism for furnishing and disseminating information and guidance on applicable Federal and State statutes, regulations, and Federal, State and private health care program requirements.

Implementing an effective compliance program requires a substantial commitment of time, energy, and resources by senior management and the DMEPOS supplier's governing body.[6] Superficial programs that simply have the appearance of compliance without being wholeheartedly adopted and implemented by the DMEPOS supplier or programs that are hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective and could expose the DMEPOS supplier to greater liability than no program at all. Although it may require significant additional resources or reallocation of existing resources to implement an effective compliance program, the long term benefits of implementing the program significantly outweigh the costs. Undertaking a voluntary compliance program is a beneficial investment that advances both the DMEPOS supplier's organization and the stability and solvency of the Medicare program.

A. Benefits of a Compliance Program

The OIG believes an effective compliance program provides a mechanism that brings the public and private sectors together to reach mutual goals of reducing fraud and abuse, improving operational quality, improving the quality of health care services and reducing the cost of health care. Attaining these goals provides positive results to the DMEPOS supplier, the Government and individual citizens alike. In addition to fulfilling its legal duty to ensure that it is not submitting false or inaccurate claims to Government and private payors, a DMEPOS supplier may gain numerous additional benefits by voluntarily implementing an effective compliance program. These benefits may include:

- The formulation of effective internal controls to assure compliance with Federal and State statutes, rules, and regulations, and Federal, State and private payor health care program requirements, and internal guidelines;
- A concrete demonstration to employees and the community at large of the DMEPOS supplier's strong commitment to honest and responsible corporate conduct;
- The ability to obtain an accurate assessment of employee and contractor behavior relating to fraud and abuse;
- An increased likelihood of identification and prevention of criminal and unethical conduct;
- The ability to more quickly and accurately react to employees' operational compliance concerns and the capability to effectively target resources to address those concerns;
- Improvement of the quality, efficiency, and consistency of providing services;
- Increased efficiency on the part of employees;
- A centralized source for distributing information on health care statutes, regulations, policies, and other program directives regarding fraud and abuse and related issues;
- Improved internal communication;
- A methodology that encourages employees to report potential problems;
- Procedures that allow the prompt, thorough investigation of alleged misconduct by corporate officers, managers, sales representatives, employees, independent contractors, consultants, clinicians, and other health care professionals;
- Initiation of immediate, appropriate, and decisive corrective action;
- Early detection and reporting, minimizing the loss to the Government from false claims, and thereby reducing the DMEPOS supplier's exposure to civil damages and penalties, criminal sanctions, and administrative remedies, such as program exclusion;[7] and

[6] Recent case law suggests that the failure of a corporate Director to attempt in good faith to institute a compliance program in certain situations may be a breach of a Director's fiduciary obligation. See, e.g., *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Ct. Chanc. Del. 1996).

[7] The OIG, for example, will consider the existence of an *effective* compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative sanctions. However, the burden is on the DMEPOS

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• Enhancement of the structure of the DMEPOS supplier's operations and the consistency between: any related entities of the DMEPOS supplier; different departments within the DMEPOS supplier; the DMEPOS supplier's different locations; and the DMEPOS supplier's separate business units (e.g., franchises, subsidiaries).

Overall, the OIG believes that an effective compliance program is a sound investment on the part of a DMEPOS supplier.

The OIG recognizes that the implementation of a compliance program may not entirely eliminate fraud, abuse, and waste from the DMEPOS supplier system. However, a sincere effort by DMEPOS suppliers to comply with applicable Federal and State statutes, rules, and regulations and Federal, State and private payor health care program requirements, through the establishment of an effective compliance program, significantly reduces the risk of unlawful or improper conduct.

B. Application of Compliance Program Guidance

Given the diversity within the industry, there is no single "best" DMEPOS supplier compliance program.[8] The OIG understands the variances and complexities within the DMEPOS supplier industry and is sensitive to the differences among large national and regional DMEPOS supplier organizations, and small independent DMEPOS suppliers. However, elements of this guidance can be used by all DMEPOS suppliers, regardless of size (in terms of employees and gross revenue); number of locations; type of equipment provided; or corporate structure, to establish an effective compliance program. Similarly, a DMEPOS supplier or corporation that owns a DMEPOS supplier or provides DMEPOS supplies may incorporate these elements into its system-wide compliance or managerial structure.[9]

We recognize that some DMEPOS suppliers may not be able to adopt certain elements to the same comprehensive degree that others with more extensive resources may achieve. This guidance represents the OIG's suggestions on how a DMEPOS supplier can best establish internal controls and monitor its conduct to correct and prevent fraudulent activities. By no means should the contents of this guidance be viewed as an exclusive discussion of the advisable elements of a compliance program. On the contrary, the OIG strongly encourages DMEPOS suppliers to develop and implement compliance elements that uniquely address the individual DMEPOS supplier's risk areas.

The OIG believes that input and support by individuals and organizations that will utilize the tools set forth in this document is critical to the development and success of this compliance program guidance. In a continuing effort to collaborate closely with the private sector, the OIG placed a notice in the **Federal Register** soliciting recommendations and suggestions on what should be included in this compliance program guidance.[10] Further, we considered previous OIG publications, such as Special Fraud Alerts, advisory opinions,[11] the findings and recommendations in reports issued by OIG's Office of Audit Services and Office of Evaluation and Inspections, as well as the experience of past and recent fraud investigations related to DMEPOS suppliers conducted by OIG's Office of Investigations and the Department of Justice.

As appropriate, this guidance may be modified and expanded as more information and knowledge is obtained by the OIG, and as changes in the statutes, rules, regulations, policies, and procedures of the Federal, State and private health plans occur. The OIG understands DMEPOS suppliers will need adequate time to react to these modifications and expansions and to make any necessary changes to their voluntary compliance programs. New compliance practices may eventually be incorporated into this guidance if the OIG discovers significant enhancements to better ensure an effective compliance program.

The OIG recognizes that the development and implementation of compliance programs in DMEPOS suppliers often raise sensitive and complex legal and managerial issues.[12] However, the OIG wishes to offer what it believes is critical guidance for providers who are sincerely attempting to comply with the relevant health care statutes and regulations.

II. Compliance Program Elements

The elements proposed by these guidelines are similar to those of the other OIG compliance program guidances[13] and the OIG's corporate integrity agreements.[14] The OIG believes that every DMEPOS supplier can benefit from the principles espoused in this guidance, which can be tailored to fit the needs and financial realities of a particular DMEPOS supplier.

The OIG believes that every effective compliance program must begin with a formal commitment[15] by the DMEPOS supplier's governing body to include *all* of the applicable elements listed below, which are based on the seven steps of the Federal Sentencing Guidelines.[16] The OIG recognizes full implementation of all elements may not be immediately feasible for all DMEPOS suppliers. However, as a first step, a good faith and meaningful commitment on the part of

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supplier to demonstrate the operational effectiveness of a compliance program. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government within 30 days of detection, in certain circumstances will be subject to not less than double, as opposed to treble, damages. See 31 U.S.C. 3729(a). Thus, the ability to react quickly when violations of the law are discovered may materially help reduce the DMEPOS supplier's liability.

[8] This is particularly true in the context of DMEPOS suppliers, which include many small independent DMEPOS suppliers with limited financial resources and staff, as well as large DMEPOS supplier chains with extensive financial resources and staff.

[9] For Medicare, this would include any individual or entity that meets the supplier standards as described in 42 CFR 424.57 and has a National Supplier Clearinghouse Number.

[10] See 63 FR 42409 (August 7, 1998), Notice for Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for the Durable Medical Equipment Industry.

[11] The OIG periodically issues advisory opinions responding to specific inquiries from members of the public and Special Fraud Alerts setting forth activities that raise legal and enforcement issues. Special Fraud Alerts and Advisory Opinions, as well as the regulations governing issuance of advisory opinions can be obtained on the Internet at: http://www.dhhs.gov/progorg/oig, in the **Federal Register**, or by contacting the OIG's Public Information Desk at (202) 619–1142.

[12] Nothing stated within this document should be substituted for, or used in lieu of, competent legal advice from counsel.

[13] See 63 FR 70138 (December 18, 1998) for the Compliance Program Guidance for Third Party Medical Billing Companies; 63 FR 42410 (August 7, 1998) for the Compliance Program Guidance for Home Health Agencies; 63 FR 45076 (August 24, 1998) for the Compliance Program Guidance for Clinical Laboratories, as revised; 63 FR 8987 (February 23, 1998) for the Compliance Program Guidance for Hospitals. These documents are also located on the Internet at http://www.dhhs.gov/progorg/oig.

[14] Corporate integrity agreements are executed as part of a civil settlement between a health care provider or entity responsible for billing on behalf of the provider and the Government to resolve a case based on allegations of health care fraud or abuse. These OIG-imposed programs are in effect for a period of three to five years and require many of the elements included in this compliance program guidance.

[15] A formal commitment may include a resolution by the board of directors, owner(s) or president, where applicable. A formal commitment should include the allocation of adequate resources to ensure that each of the elements is addressed.

[16] See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(k). The Federal Sentencing Guidelines are detailed policies and practices for the Federal criminal justice system that prescribe the appropriate sanctions for offenders convicted of Federal crimes.

the DMEPOS supplier, especially the owner(s), governing body, president, vice presidents, CEO, and managing employees, will substantially contribute to the program's successful implementation. As the compliance program is implemented, that commitment should cascade down through the management to every employee of the DMEPOS supplier.

At a minimum, comprehensive compliance programs should include the following seven elements:

(1) The development and distribution of written standards of conduct, as well as written policies and procedures that promote the DMEPOS supplier's commitment to compliance (e.g., by including adherence to the compliance program as an element in evaluating managers and employees) and address specific areas of potential fraud, such as claims development and submission processes, completing certificates of medical necessity (CMNs), and financial relationships with physicians and/or other persons authorized to order DMEPOS;

(2) The designation of a compliance officer and other appropriate bodies, (e.g., a corporate compliance committee), charged with the responsibility for operating and monitoring the compliance program, and who report directly to the CEO and the governing body; [17]

(3) The development and implementation of regular, effective education and training programs for all affected employees; [18]

(4) The creation and maintenance of a process, such as a hotline or other reporting system, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and to protect callers from retaliation;

(5) The development of a system to respond to allegations of improper/illegal activities and the enforcement of appropriate disciplinary action against employees who have violated internal compliance policies, applicable statutes, regulations, or Federal, State or private payor health care program requirements; [19]

(6) The use of audits and/or other risk evaluation techniques to monitor compliance, identify problem areas, and assist in the reduction of identified problem areas; [20] and

(7) The investigation and remediation of identified systemic problems and the development of policies addressing the non-employment or retention of sanctioned individuals.

A. Written Policies and Procedures

Every compliance program should require the development and distribution of written compliance policies, standards, and practices that identify specific areas of risk and vulnerability to the individual DMEPOS supplier. These policies, standards, and practices should be developed under the direction and supervision of the compliance officer and the compliance committee (if such a committee is practicable for the DMEPOS supplier) and, at a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the DMEPOS supplier's agents and independent contractors who may affect billing decisions.[21] In addition to these general corporate policies, it may be necessary to implement individual policies for the different components of the DMEPOS supplier.

1. Standards of Conduct. DMEPOS suppliers should develop standards of conduct for all affected employees that include a clearly delineated commitment to compliance by the DMEPOS supplier's senior management,[22] including any related entities or affiliated providers operating under the DMEPOS supplier's control,[23] and other health care professionals (e.g., nurses, licensed pharmacists, physicians, and respiratory therapists). The standards of conduct should function in the same fashion as a constitution, i.e., as a foundational document that details the fundamental principles, values, and framework for action within the DMEPOS supplier. The standards should articulate the DMEPOS supplier's commitment to comply with all Federal and State statutes, rules, regulations and Federal, State and private payor health care program requirements, with an emphasis on preventing fraud and abuse. They should explicitly state the organization's mission, goals, and ethical principles relative to compliance and clearly define the DMEPOS supplier's commitment to compliance and its expectations for all DMEPOS supplier owners, governing body members, president, vice presidents, corporate officers, managers, sales representatives, employees, and, where appropriate, independent contractors and other agents. These standards should promote integrity, support objectivity, and foster trust. Standards should not only address compliance with statutes and regulations, but should also set forth broad principles that guide employees in conducting business professionally and properly.

The standards should be distributed to, and comprehensible by, all affected employees (e.g., translated into other languages when necessary and written at appropriate reading levels). Further, to assist in ensuring that employees continuously meet the expected high standards set forth in the standards of conduct, any employee handbook delineating or expanding upon these standards should be regularly updated as applicable statutes, regulations, and Federal, State and private payor health care program requirements are modified and/or clarified.[24]

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[17] The integral functions of the compliance officer and the corporate compliance committee in implementing an effective compliance program are discussed throughout this compliance program guidance. However, the OIG recognizes that the differences in the sizes and structures of DMEPOS suppliers will result in differences in the ways in which compliance programs are set up. The important thing is that the DMEPOS supplier structures its compliance program in such a way that the program is able to accomplish the key functions of the corporate compliance officer and the corporate compliance committee discussed within this document.

[18] Training and education programs for DMEPOS suppliers should be detailed and comprehensive. They should cover specific billing procedures, sales and marketing practices, as well as the general areas of compliance. See section II.C and accompanying notes.

[19] The term "Federal health care programs" is applied in this document as defined in 42 U.S.C. 1320a–7b(f), which includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (i.e., via programs such as Medicare, Federal Employees' Compensation Act, Black Lung, or the Longshore and Harbor Worker's Compensation Act) or any State health plan (e.g., Medicaid, or a program receiving funds from block grants for social services or child health services). Also, for the purposes of this document, the term "Federal health care program requirements" refers to the statutes, regulations, rules, requirements, directives, and instructions governing Medicare, Medicaid, and all other Federal health care programs.

[20] For example, spot-checking the work of coding and billing personnel periodically should be an element of an effective compliance program.

[21] According to the Federal Sentencing Guidelines, an organization must have established compliance standards and procedures to be followed by its employees and other agents in order to receive sentencing credit for an "effective" compliance program. The Federal Sentencing Guidelines define "agent" as "any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization." See United States Sentencing Commission Guidelines, *Guidelines Manual*, 8A1.2, Application Note 3(d).

[22] The OIG strongly encourages high-level involvement by the DMEPOS supplier's owner(s), governing body, chief executive officer, president, vice presidents, as well as other personnel, as appropriate, in the development of standards of conduct. Such involvement should help communicate a strong and explicit organizational commitment to compliance goals and standards.

[23] E.g., pharmacies, billing services, and manufacturers.

[24] The OIG recognizes that not all statutes, rules, regulations, standards, policies, and procedures need to be communicated to all employees.

Continued

When employees first begin working for the DMEPOS supplier, and each time new standards of conduct are issued, the OIG suggests employees be asked to sign a statement certifying that they have received, read, and understood the standards of conduct. The employee's certification should be retained by the DMEPOS supplier in the employee's personnel file, and available for review by the compliance officer.

2. Written Policies for Risk Areas. As part of its commitment to compliance, DMEPOS suppliers should establish a comprehensive set of written policies and procedures that take into consideration the particular statutes, rules, regulations and program instructions applicable to each function of the DMEPOS supplier.[25] In contrast to the standards of conduct, which are designed to be a clear and concise collection of fundamental standards, the written policies should articulate specific procedures personnel should follow.

Consequently, we recommend that the individual policies and procedures be coordinated with the appropriate training and educational programs with an emphasis on areas of special concern that have been identified by the OIG.[26] Some of the special areas of OIG concern include:[27]

- Billing for items or services not provided;[28]
- Billing for medically unnecessary services;[29]
- Duplicate billing;[30]
- Billing for items or services not ordered;[31]
- Using a billing agent whose compensation is based on the dollar amounts billed or based on the actual collection of payment;[32]
- Upcoding;[33]
- Billing patients for denied charges without a signed written notice;[34]
- Unbundling items or supplies;[35]
- Billing for new equipment and providing used equipment;[36]
- Continuing to bill for rental items after they are no longer medically necessary;[37]
- Resubmission of denied claims with different and incorrect information in an attempt to be reimbursed;[38]
- Refusing to submit a claim to Medicare;[39]
- Inadequate management and oversight of contracted services, which results in improper billing;[40]

Charge limitations;[41]

- Providing and/or billing substantially excessive amounts of DMEPOS items or supplies;[42]

However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all affected employees' training. The DMEPOS supplier must decide whether additional educational programs should be targeted to specific categories of employees based on job functions and areas of responsibility.

[25] A DMEPOS supplier can conduct focus groups composed of managers from various departments to solicit their concerns and ideas about compliance risks that may be incorporated into the DMEPOS supplier's policies and procedures. Such employee participation in the development of the DMEPOS supplier's compliance program can enhance its credibility and foster employee acceptance of the program.

[26] DMEPOS supplier compliance programs should require that the legal staff, compliance officer, or other appropriate personnel carefully consider any and all Special Fraud Alerts and advisory opinions issued by the OIG that relate to DMEPOS suppliers. See note 11. Moreover, the compliance programs should address the ramifications of failing to cease and correct any conduct criticized in such a Special Fraud Alert or advisory opinion, if applicable to DMEPOS suppliers, or to take reasonable action to prevent such conduct from reoccurring in the future. If appropriate, a DMEPOS supplier should take the steps described in section G regarding investigations, reporting, and correction of identified problems.

[27] The OIG's work plan is currently available on the Internet at: http://www.dhhs.gov/progorg/oig. The OIG Work Plan details the various projects of the Office of Audit Services, Office of Evaluation and Inspections, Office of Investigations, and Office of Counsel to the Inspector General that are planned to be addressed during each Fiscal Year.

[28] Billing for items or services not provided involves submitting a claim representing the DMEPOS supplier provided an item or service or part of an item or service that the patient did not receive.

[29] Billing for medically unnecessary services involves seeking reimbursement for a service that is not warranted by the patient's current and documented medical condition. See 42 U.S.C. 1395y(a)(1)(A) ("no payment may be made under part A or part B [of Medicare] for any expenses incurred for items or services which . . . are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of the malformed body member"). Upon submission of a HCFA claim form (whether paper or electronic), a DMEPOS supplier certifies that the services provided and billed were medically necessary for the health of the beneficiary, and were provided in accordance with orders by the beneficiary's treating physician or other authorized person. In limited instances, HCFA does allow DMEPOS suppliers to submit claims when the DMEPOS supplier believes the item or service may be denied. Such instances include, but are not limited to: when a beneficiary has signed a written notice (see *Medicare Carriers Manual*, section 7300.5) (See also section II.A.3.i for further discussion on written notices); and when the beneficiary requests the DMEPOS supplier to submit the claim (see *Medicare Carriers Manual*, section 3043). In the first instance, the DMEPOS supplier should include modifier "GA" on the claim, which indicates the beneficiary has signed a written notice. In the latter instance, the DMEPOS supplier should use modifier "ZY." Civil monetary penalties and administrative sanctions may be imposed against any person who submits a claim for services "that [the] person knows or should know are not medically necessary." See 42 U.S.C. 1320a–7a(a). Remedies may also be available under criminal and civil law, including the False Claims Act. See discussion in section II.A.3.a and accompanying notes.

[30] Duplicate billing occurs when more than one claim for payment is submitted for the same patient, for the same service, for the same date of service (by the same or different DMEPOS suppliers), or the same claim is submitted to more than one primary payor. Although duplicate billing can occur due to simple error, fraudulent duplicate billing is evidenced by systematic or repeated double billing, and creates liability under criminal, civil, or administrative law, particularly if any overpayment is not promptly refunded.

[31] Billing for items or services not ordered involves seeking reimbursement for services provided but not ordered by the treating physician or other authorized person.

[32] DMEPOS supplier billing agents may only receive payment based on a fixed fee, and not based upon a percentage of revenue. See 42 U.S.C. 1395u(b)(6); 42 CFR 424.73; *Medicare Carriers Manual*, section 3060; 3060.10.

[33] Upcoding involves selecting a code to maximize reimbursement when such a code is not the most appropriate descriptor of the service (e.g., billing for a more expensive piece of equipment when a less expensive piece of equipment is provided).

[34] This includes, but is not limited to, billing the patient for items or services denied by the payor on assigned claims, where there has been no written notice signed by the patient, the written notice has been inappropriately obtained or the written notice was drafted inappropriately. See *Medicare Carrier Manual*, section 7300.5A, regarding the requirements for written notice.

[35] Unbundling items or supplies involves billing for individual components when a specific HCPCs code provides for the components to be billed as a unit (e.g., providing a wheelchair and billing the individual parts of the wheelchair, rather than the wheelchair as a whole).

[36] The DMEPOS supplier must indicate on the Medicare claim form, through the use of modifiers, whether the item provided is new or used. The modifier for providing new equipment is "NU." The modifier for providing used equipment is "UE." A knowing failure to correctly document the item provided would constitute falsifying information on the claim form and would constitute a violation of the False Claims Act. See 31 U.S.C. 3729.

[37] Once a rental item is no longer medically necessary, the DMEPOS supplier is required to discontinue billing the payor for it. In addition, the OIG recommends the DMEPOS supplier pick up such equipment from the patient in a timely manner.

[38] This practice involves the DMEPOS supplier improperly changing information on a previously denied claim and continuing to resubmit the claim in an attempt to receive payment.

[39] This practice involves a DMEPOS supplier not submitting a claim to the Medicare program on behalf of the beneficiary. Irrespective of whether or not a DMEPOS supplier accepts assignment, it is obligated to submit the claim on behalf of the beneficiary. See 42 U.S.C 1395w–4(g)(4).

[40] DMEPOS suppliers should create internal mechanisms to ensure that the use of contractors does not lead to improper billing practices.

[41] DMEPOS suppliers should ensure their billing personnel are informed of the different payment rules of all Federal, State, and private health care programs they bill. DMEPOS suppliers should be aware that billing for items or services furnished substantially in excess of the DMEPOS supplier's usual charges may result in exclusion. See 42 U.S.C. 320a–7(b)(6)(A). See also OIG Ad. Op. 98–8 (1998) regarding this issue.

[42] This practice, which constitutes overutilization, involves providing and/or billing for substantially more items or supplies than are reasonable and necesssary for the needs of each individual patient. Such practices may lead to exclusion from Federal health care programs. See 42 U.S.C. 1320a–7(b)(6)(B).

- Providing and/or billing for an item or service that does not meet the quality and standard of the DMEPOS item claimed (e.g., item provided is in violation of Food and Drug Administration (FDA) regulations and standards);[43]
- Capped rentals;[44]
- Failure to monitor medical necessity on an on-going basis;[45]
- Dispensing certain items or supplies prior to receiving a physician's order and/or appropriate CMN;[46]
- Falsifying information on the claim form, CMN, and/or accompanying documentation;[47]
- Completing portions of CMNs reserved for completion only by treating physician or other authorized person;[48]
- Altering medical records;[49]
- Manipulating the patient's diagnosis in order to receive payment;[50]
- Failing to maintain medical necessity documentation;[51]
- Inappropriate use of place of service codes;[52]
- Inappropriate use of cover letters;[53]
- Improper use of ZX modifier;[54]
- Providing incentives to actual or potential referral sources (e.g., physicians, hospitals, patients, etc.) that may violate the anti-kickback statute or other similar Federal or State statute or regulation;[55]
- Compensation programs that offer incentives for items or services ordered and revenue generated;[56]
- Routine waiver of deductibles and coinsurance;[57]
- Joint ventures between parties, one of whom can refer Medicare or Medicaid business to the other;[58]
- Situations where conflict of interest may result due to referrals by physicians that own or have compensation arrangements with DMEPOS supply companies;[59]
- Billing for items or services furnished pursuant to a prohibited referral under the Stark physician self-referral law;[60]
- Improper telemarketing practices;[61]
- Improper patient solicitation activities and high-pressure marketing of non-covered or unnecessary services;[62]
- Co-location of DMEPOS items and supplies with the referral source;[63]

[43] This practice involves providing and/or billing for an item or service that does not meet the definition and/or requirement of the item or service ordered by the treating physician or other authorized person. Generally, such items are inferior in quality, and therefore, do not meet the definition of what was ordered and/or billed. Sometimes this may mean that products were never determined to be safe and effective by the FDA, as required by law. This practice may lead to billing for items that are not reasonable and necessary. DMEPOS suppliers should ensure that the items or services they furnish meet professionally recognized minimum standards of health care.

[44] See discussion in section II.A.3.k and accompanying notes.

[45] In order for a patient to continue to receive items or supplies (e.g., rental equipments, supplies for an on-going condition), the patient must meet the medical necessity criteria for that specific item or supply on an on-going basis. The items or supplies furnished by the DMEPOS supplier should be replaced or adjusted, in a timely manner, to reflect changes in the patient's condition.

[46] This practice involves the DMEPOS supplier dispensing to the patient, and/or billing the payor for, items or supplies that have not yet been ordered by the treating physician or other authorized person. Medicare requires written physician orders for certain items before dispensing. See 42 CFR 410.38.

[47] This practice involves supplying false information to be included on the claim form, the CMN, or other accompanying documentation. The information reported on these documents should accurately reflect the patient's information, including medical information, and the items or services ordered by the treating physician or other authorized person and provided by the DMEPOS supplier.

[48] This practice involves not completing the CMN in compliance with Medicare regulations (i.e., sections B and D should never be completed by the supplier). Instructions for completing the CMN can be found on the back of the form. See section 3312 of the *Medicare Carriers Manual*, which provides instructions on how to complete the CMN and the civil monetary penalties (CMPs) that may be assessed for improper completion of the CMN. See also 42 U.S.C. 1395m(j)(2); section II.A.3.c and accompanying notes for further discussion on CMNs.

[49] This practice involves the DMEPOS supplier falsifying information on the medical records to justify reimbursement for an item or service.

[50] This practice involves the DMEPOS supplier incorrectly altering the diagnosis in order to receive reimbursement for the particular item or service. A DMEPOS supplier should not claim the patient has a particular medical condition in order to qualify for an item for which he or she would not otherwise qualify.

[51] This practice involves failing to ensure that the medical necessity documentation requirements for the item or service billed are properly met (e.g., failing to maintain the original physician orders or CMNs or failing to ensure that CMNs contain adequate and correct information). See section 4105.2 of the *Medicare Carriers Manual* for evidence of medical necessity. See also sections II.A.3.b and II.A.3.c regarding physician orders and CMNs, respectively.

[52] This practice involves indicating on the claim form that the place of service is a location other than where the service was provided. For example, the patient resides in a skilled nursing facility (SNF) and the DMEPOS supplier submits a claim with the place of service being the patient's home. Provided that the DMEPOS items or services are ordered, provided, reasonable and necessary given the clinical condition of the patient, the items or services may be covered if the beneficiary resides at home. However, such items may not be covered if the beneficiary resides in a SNF. See *Medicare Carriers Manual*, section 2100.3 for the definition of a beneficiary's home.

[53] This practice involves sending the treating physician or other authorized person a cover letter attached to the CMN that contains information that the physician is supposed to include on the CMN or otherwise may lead the physician to order medically unnecessary equipment or supplies for the specified patient. Cover letters should only be used to describe what is being ordered and how it is to be administered. See discussion in section II.A.3.m.

[54] This practice involves the improper use of the ZX modifier, relating to maintaining medical necessity documentation. See discussion in section II.A.3.l.

[55] Examples of arrangements that may run afoul of the anti-kickback statute include practices in which a DMEPOS supplier pays a fee to a physician for each CMN the physician signs, provides free gifts to physicians for signing CMNs, and/or provides items or services for free or below fair market value to providers or beneficiaries of Federal health care programs. *See* 42 U.S.C. 1320a–7b(b); 60 FR 40847 (August 10, 1995). See also discussion in section II.A.4. and accompanying notes.

[56] Compensation programs that offer incentives for items or services ordered or the revenue they generate may lead to the ordering of medically unnecessary items or supplies and/or the "dumping" of such items or supplies in a facility or in a beneficiary's home (e.g., mail order supply companies that continue to send the patient supplies when the supplies are no longer medically necessary).

[57] See discussion in section II.A.3.j and accompanying notes.

[58] Equally troubling to the OIG is the proliferation of business arrangements that may violate the anti-kickback statute. Such arrangements are generally established between those in a position to refer business, such as physicians, and those providing items or services, such as a DMEPOS supplier, for which a Federal health care program pays. Sometimes established as "joint ventures," these arrangements may take a variety of forms. The OIG currently has a number of investigations and audits underway that focus on such areas of concern. The OIG has also issued a Special Fraud Alert on Joint Venture Arrangements. This Special Fraud Alert can be found at 59 FR 65372 (December 19, 1994) or on the Internet at: http://www.dhhs.gov/progorg/oig.

[59] See 42 U.S.C. 1395nn.

[60] Under the Stark physician self-referral law, if a physician (or an immediate family member of such physician) has a financial relationship with a DMEPOS supplier, the physician may not make a referral to the DMEPOS supplier and the DMEPOS supplier may not bill for furnishing DMEPOS items or supplies for which payment may be made under the Federal health care programs. See 42 U.S.C. 1395nn.

[61] See 42 U.S.C. 1395m(a)(17) or Pub.L. 103–432, section 132(a) for the prohibition on telemarketing. See also discussion in section II.A.5 and accompanying notes.

[62] DMEPOS suppliers should not utilize prohibited or inappropriate conduct to carry out their initiatives and activities designed to maximize business growth and patient retention. Many cases against DMEPOS suppliers have involved the DMEPOS supplier giving the beneficiary free gifts such as angora underwear, microwaves and air conditioners in exchange for providing and billing for unnecessary items. Any marketing information offered by DMEPOS suppliers should be clear, correct, non-deceptive, and fully informative. See discussion in section II.A.5 and accompanying notes.

[63] In this situation, a physician allows a DMEPOS supplier to stock space (space may or may not be rented by the DMEPOS supplier) in a physician's office with DMEPOS items and supplies. When such items and supplies are dispensed to the patient, Medicare is then billed. DEMPOS suppliers should check the policy of the individual durable medical equipment regional carrier(s) (DMERC) they bill with regard to this arrangement. Although such arrangements are not prohibited by a national policy, the OIG believes that such arrangements may potentially raise anti-kickback and self-referral issues.

- Non-compliance with the Federal, State and private payor supplier standards;[64]
- Providing false information on the Medicare DMEPOS supplier enrollment form;[65]
- Not providing corrected information on the DMEPOS supplier enrollment form in a timely manner;[66]
- Misrepresentation of a person's status as an agent or representative of Medicare;[67]
- Knowing misuse of supplier number, which results in improper billing;[68]
- Failing to meet individual payor requirements;[69]
- Performing tests on a beneficiary that a DMEPOS supplier is not authorized to perform;[70]
- Failing to refund overpayments to a health care program;[71]
- Failing to refund overpayments to patients;[72]
- Lack of communication between the DMEPOS supplier, the physician, and the patient;[73]
- Lack of communication between different departments within the DMEPOS supplier;[74] and
- Employing persons excluded from participation in Federal health care programs.[75]

A DMEPOS supplier's prior history of noncompliance with applicable statutes, regulations, and Federal, State or private health care program requirements may indicate additional types of risk areas where the DMEPOS supplier may be vulnerable and that may require necessary policy measures to be taken to prevent avoidable recurrence.[76] Additional risk areas should be assessed by DMEPOS suppliers and incorporated into the written policies and procedures and training elements developed as part of their compliance program.

3. *Claims Development and Submission.* a. *Medical Necessity.* A DMEPOS supplier's compliance program should ensure that services are billed only if they were ordered by the treating physician or other authorized person, have been provided, are covered, and are reasonable and necessary given the clinical condition of the patient.[77] DMEPOS suppliers must keep the treating physician's or other authorized person's original signed and dated order or CMN on file for all DMEPOS items and services.[78] Because the DMEPOS supplier is in a unique position to inform its clients who write orders and refer patients, the DMEPOS supplier may want to send a written notice to such clients concerning the necessary paperwork requirements.

As a preliminary matter, the OIG recognizes that physicians and other authorized persons must be able to order any items or services for the treatment of their patients. However, Medicare and other Government and private health care plans will only pay for those services otherwise covered that meet the appropriate medical necessity standards (e.g., ordered, provided, covered, reasonable, necessary, and criteria established by medical review policies). DMEPOS suppliers should not knowingly bill for services that do not meet the applicable medical necessity standards.[79] Upon a payor's request, the DMEPOS supplier must be able to provide documentation, such as original orders, proof of delivery, completed original certificates of medical necessity, written confirmation of verbal orders and any other documentation, to support the medical necessity of an item or service that the DMEPOS supplier has provided.[80]

Although DMEPOS suppliers do not and cannot treat patients or make medical necessity determinations, there are steps that a DMEPOS supplier can take to help maximize the likelihood that they only bill for services that are ordered, provided, covered, reasonable and necessary for each individual patient. The OIG recommends that DMEPOS supplier personnel understand the coverage and payment criteria of each payor they bill. To help aid supplier personnel, the DMEPOS supplier's compliance officer may want to create a clear, comprehensive summary of the "medical necessity" or coverage criteria and applicable rules of the various Government and private plans. This summary should be disseminated and explained to the appropriate DMEPOS supplier personnel.

We also recommend that DMEPOS suppliers formulate internal control mechanisms through their written policies and procedures. Such policies and procedures should include periodic claim reviews, both prior and subsequent to billing for items and services. Such a procedure will verify that patients are receiving and the DMEPOS supplier is billing for items and/or services that are ordered,

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[64] See 42 CFR 424.57 for the Medicare supplier standards. DMEPOS suppliers may have the appropriate personnel acknowledge they have reviewed and will abide by these standards. In addition, DMEPOS suppliers should ensure they are meeting individual state and private payor supplier standards.

[65] Criminal penalties may be imposed against an individual who knowingly and willfully makes or causes to be made any false statements or representations of a material fact in any application for any benefit or payment under a Federal health care program. See 42 U.S.C. 1320a–7b(a)(1).

[66] By signing the DMEPOS supplier enrollment application, the DMEPOS supplier certifies it will notify the Medicare contractor of any changes in its enrollment information within 30 days of the effective date of the change.

[67] It is unlawful for a DMEPOS supplier to represent itself as a Medicare representative. See 42 U.S.C. 1320b–10.

[68] This practice may involve, but is not limited to, using another DMEPOS supplier's billing number.

[69] DMEPOS suppliers should be aware of the requirements of any payor they bill, especially in those situations where there is a primary and secondary payor.

[70] E.g., Medicare does not permit DMEPOS suppliers to perform oxygen tests (e.g., oximetry tests and arterial blood gas tests) to qualify patients for oxygen and oxygen supplies. See section 60–4 of the *Medicare Coverage Issues Manual.* See also discussion in section II.A.3.o.

[71] An overpayment is the amount of money the DMEPOS supplier has received in excess of the amount due and payable under a health care program. Examples of overpayments include, but are not limited to, instances where a DMEPOS supplier is: (1) paid twice for the same service, for the same beneficiary; or (2) paid for services that were provided but not ordered by the treating physician or other authorized person. DMEPOS suppliers should institute procedures to detect overpayments and to promptly remit such overpayments to the affected payor. See 42 U.S.C. 1320a–7b(a)(3), which provides criminal penalties for failure to disclose an overpayment.

[72] If the patient is also due money when a DMEPOS supplier identifies an overpayment to a health care program, the DMEPOS supplier should make a prompt refund to the patient. See 42 U.S.C. 1395m(j)(4) on limitation of patient liability for non-assigned claims that are denied due to medical necessity. See also 42 U.S.C. 1395pp(h) on limitation of patient liability for assigned claims that are denied due to medical necessity.

[73] A lack of communication between the DMEPOS supplier, physician, and patient may result in the DMEPOS supplier inappropriately billing for items or supplies (e.g., supplies for an on-going condition or rental equipment that are no longer medically necessary).

[74] A lack of communication between the different departments of the DMEPOS supplier may result in the DMEPOS supplier filing incorrect claims and/or equipment delivery problems.

[75] This involves hiring or contracting with individuals or entities who have been excluded from participation in Federal health care programs or any other Federal procurement or non-procurement program. See section II.E.2.

[76] "Recurrence of misconduct similar to that which an organization has previously committed casts doubt on whether it took all reasonable steps to prevent such misconduct" and is a significant factor in the assessment of whether a compliance program is effective. *See* United States Sentencing Commission Guidelines, *Guidelines Manual,* 8A1.2, Application Note 3(k)(iii).

[77] See note 29.

[78] See *Medicare Carriers Manual,* section 3312. See also *Medicare Carrier Manual,* section 4105.2 regarding what information must be included on the physician's order.

[79] See note 29.

[80] In order to ensure correct reimbursement, the payor may conduct a post-payment audit of the DMEPOS supplier's claims. Such audits may require that the DMEPOS supplier submit documentation that substantiates that the items or services were ordered by the treating physician or other authorized person, provided, covered, reasonable and necessary. See 42 CFR 424.5(a)(6).

provided, covered, reasonable and necessary. DMEPOS suppliers may choose to incorporate this claims review function into pre-existing quality assurance mechanisms.

b. *Physician Orders.* The DMEPOS supplier's written policies and procedures should state that the DMEPOS supplier will not bill for an item or service unless and until it has been ordered by the treating physician or any other authorized person. For all Medicare reimbursed DMEPOS items or services, the DMEPOS supplier must receive a written order from the patient's physician. When the DMEPOS supplier receives a verbal order, the supplier should document the verbal order and must have the treating physician confirm it in writing prior to billing.

The written policies and procedures should also state for items requiring a written order prior to delivery, that the order must be received by the DMEPOS supplier before it delivers the equipment to the patient and before it bills the payor.[81]

c. *Certificate of Medical Necessity.*[82] For some DMEPOS items and services, the DMEPOS supplier must receive a signed CMN from the treating physician or other authorized person. Currently, CMNs are required for Medicare reimbursement for fourteen items.[83] The original CMN must be retained in the DMEPOS supplier's file and be available to the DMERCs upon request.[84]

Each CMN has four sections: A, B, C, and D. Section A may be completed by the DMEPOS supplier. Section B may not be completed by the DMEPOS supplier.[85] Section B may only be completed by the treating physician, a non-physician clinician involved in the care of the patient or a physician employee who is knowledgeable about the patient's treatment. If section B was completed by a physician employee, the section must be reviewed by the treating physician or other person authorized to order such equipment for the patient to ensure accuracy. Section C must be completed by the DMEPOS supplier prior to the CMN being furnished to the treating physician or other authorized person for signature.[86] Section D is the attestation statement and may only be signed by the treating physician or other person authorized to order equipment for the patient.[87] The written policies and procedures on completing CMNs should reflect these standards.

DMEPOS suppliers should take all reasonable steps to ensure that each section of the CMN is completed in accordance with the above guidelines. The DMEPOS suppliers' written policies and procedures should require, at a minimum, that they:

- Do not forward blank CMNs to the treating physician or other authorized person for signature;
- Do not complete section B (Medical Necessity) of the CMN;
- Do not include diagnostic information on a cover letter (to the treating physician or other authorized person) attached to the CMN;[88]
- Do not alter or add any information on the CMN after receiving the completed and signed CMN from the physician or other authorized person;[89]
- Do not sign the CMN for the treating physician or other authorized person;
- Do not urge physicians or other authorized person to order equipment or supplies that exceed what is reasonable and necessary for the patient;
- Do not deliver an item that needs pre-authorization prior to receiving the physician order and CMN;[90]
- Do not submit a claim for items or services until the CMN is properly and correctly completed by the treating physician or other authorized person;
- Do maintain the original CMNs in their files;
- Do consult with the treating physician or other authorized person who signed the CMN when there is a question on the order;
- Do properly complete sections A and C of the CMN and forward the remainder of the CMN to the treating physician or other authorized person for his/her review, information, and signature; and
- Only bill for services that the treating physician or other authorized person attests in section D are ordered, covered, reasonable, and necessary for the patient.

d. *Billing.* DMEPOS suppliers should include in their written policies and procedures that they will only submit to Medicare or other Federal, State or private payor health care plans claims for equipment and supplies that are properly completed, accurate, and correctly identify the equipment or supplies ordered by the treating physician or other authorized person and furnished to the patient. Also, before submitting a claim, the DMEPOS supplier should ensure the item or service being claimed was provided, covered, reasonable and necessary.

The written policies and procedures should also clarify that a DMEPOS supplier cannot submit bills or receive payment for drugs used in conjunction with DMEPOS, unless the DMEPOS supplier is licensed to dispense the drug.[91]

e. *Selection of HCPCs Codes.* DMEPOS suppliers' written policies and procedures should state that only the HCPCs code that most accurately describes the item or service ordered and provided should be billed. The OIG views intentional "upcoding" (i.e., the selection of a code to maximize reimbursement when such a code is not the most appropriate descriptor of the service) as raising, among other things, false claims issues under the Federal False Claims Act.[92] To ensure code accuracy, the OIG recommends the DMEPOS supplier include a requirement in its policies and procedures that the codes be reviewed (random sample or certain codes) by individuals with technical expertise in coding before claims containing such codes are submitted to the affected payor. If a DMEPOS supplier has questions regarding the appropriate

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[81] See 42 CFR 410.38.

[82] As defined in 42 U.S.C. 1395m(j)(2)(B). See also OIG Special Fraud Alert regarding Physician Liability for Certifications in the Provision of Medical Equipment and Supplies and Home Health Services, 64 FR 1813 (January 12, 1999). Special Fraud Alerts are also available on the Internet.

[83] Items or services requiring CMNs are as follows: Home oxygen therapy (HCFA form 484); Hospital beds (HCFA form 841); Support surfaces (HCFA form 842); Motorized wheelchairs (HCFA form 843) (Section C continuation, HCFA form 854); Manual wheelchairs (HCFA form 844) (Section C continuation, HCFA form 854); Continuous positive airway pressure (CPAP) devices (HCFA form 845); Lymphedema pumps (pneumatic compression devices) (HCFA form 846); Osteogenesis stimulators (HCFA form 847); Transcutaneous electrical nerve stimulators (TENS) (HCFA form 848); Seat lift mechanisms (HCFA form 849); Power operated vehicles (HCFA form 850); Infusion pumps (HCFA form 851); Parenteral nutrition (HCFA form 852); and Enteral nutrition (HCFA form 853).

[84] See *Medicare Carrier Manual*, section 3312.

[85] A supplier who knowingly and willfully completes section B of the form is, at a minimum, subject to a civil money penalty up to $1,000 for each form or document completed in such manner. See 42 U.S.C. 1395m(j)(2). That supplier may also face civil or criminal liability.

[86] A supplier who knowingly and willfully fails to include, in section C, the fee schedule amount and the supplier's charge for the equipment or supplies being furnished may be subject to a civil money penalty up to $1,000 for each form or document so distributed. See 42 U.S.C. 1395m(j)(2).

[87] Physicians or other authorized persons should only sign CMNs in which sections A–C are completed and correct. Signature and date stamps are not acceptable. See *Medicare Carriers Manual*, section 3312.

[88] See discussion in section A.II.3.m.

[89] There have been many investigations centering on DMEPOS suppliers who alter information in order to affect their reimbursement (e.g., altering diagnosis code, altering HCPCs code of service provided).

[90] See 42 U.S.C. 1395m(a)(11)(B). See also 42 CFR 410.38.

[91] See Medicare program memoranda B–98–6 and B–98–18.

[92] See 31 U.S.C. 3729, which provides for the imposition of penalties of $5,000 to $10,000 per false claim, plus up to three times the amount of damages suffered by the Federal Government because of the false claim.

code to be used, it should contact the Statistical Analysis Durable Medical Equipment Carrier's (SADMERC) HCPCS coding help line.[93]

f. *Valid Supplier Numbers.* The DMEPOS supplier should ensure that appropriate personnel are knowledgeable in (1) completing the HCFA 855S supplier application;[94] and (2) complying with the Federal requirements of 42 CFR 424.57(e) for updating supplier number applications.

The written policies and procedures should state that the DMEPOS supplier should not bill any other Federal, State or private payor health care plan without obtaining the necessary billing numbers and that the billing numbers will be used correctly.[95]

Prior to applying for a valid supplier number, DMEPOS suppliers providing services to Medicare beneficiaries must meet the supplier standards.[96] DMEPOS suppliers should take all affirmative steps to ensure that no claims for Medicare reimbursement are submitted prior to the DMEPOS supplier being issued a valid supplier number by the National Supplier Clearinghouse. A DMEPOS supplier should not have more than one supplier number unless it is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.[97]

g. *Mail Order Suppliers.* We recommend that any DMEPOS supplier who engages in the mail order supply business clearly articulate its protocol for this segment of its business in the company's written policies and procedures.

Mail order supplies should only be delivered in accordance with the treating physician's or other authorized person's order. Regularly shipping supplies without such orders may lead to providing supplies substantially in excess of the patient's needs.[98] We also recommend that the supplier utilize a tracking system so it will be able to determine whether or not the patient received the supplies and will be able to track the location of an item or supply at any given time. In addition, the mail order DMEPOS supplier should maintain an accurate inventory list and should not bill for or commit to sending items that are not part of its inventory.

h. Assignment. If a DMEPOS supplier accepts Medicare assignment, its written policies and procedures should state that it will not charge Medicare beneficiaries more than the amounts allowed under the Medicare fee schedule, including coinsurance and deductibles. If the beneficiary pays the DMEPOS supplier prior to the DMEPOS supplier submitting the claim, the DMEPOS supplier should ensure it is not charging the beneficiary more than the coinsurance on the allowed amount under the fee schedule. In the event that the DMEPOS supplier collects excess payments from a Medicare beneficiary, it should have mechanisms in place to promptly refund the overpayment to the beneficiary. DMEPOS suppliers should be knowledgeable about the Medicare rules and instructions for accepting assignment and receiving direct payment from beneficiaries for items or services.

If a DMEPOS supplier chooses not to accept Medicare assignment, it is still responsible for submitting the claim to Medicare on behalf of the beneficiary.[99]

If the DMEPOS supplier chooses to utilize a billing agent, the DMEPOS supplier should ensure it is complying with all of the relevant statutes and requirements governing such an arrangement.[100] The OIG strongly recommends that the supplier coordinate closely with the billing company to establish compliance responsibilities. Once the responsibilities have been clearly delineated, they should be formalized in the written contract between the DMEPOS supplier and the billing agent. The OIG recommends that the contract enumerate those functions that are shared responsibilities and those that are the sole responsibility of either the billing agent or the DMEPOS supplier.

i. Liability Issues. A DMEPOS supplier or Medicare beneficiary is not liable for payment on assigned claims where the beneficiary did not know, and could not reasonably have been expected to know, that the payment for such services would not be made.[101] However, when the DMEPOS supplier knew, or could have been expected to know, the items or services would be denied, the liability for the charges for the denied items or services rest with the DMEPOS supplier.[102]

When a DMEPOS supplier knows or has reason to believe that the equipment or supplies ordered by the treating physician or other authorized person will be denied, the DMEPOS supplier should inform the patient prior to furnishing the item or service and ask the patient to sign a written notice.[103] If the DMEPOS supplier has not received a signed written notice from the beneficiary and the claim is denied, the DMEPOS supplier should not bill the beneficiary. The written notice must be in writing, must clearly identify the particular item or service, must state that the payment for the particular service likely will be denied, and must give the reason(s) for the belief that payment is likely to be denied. It is the beneficiary's decision whether or not to sign the written notice. If the beneficiary does sign the notice, the supplier should: (1) include the appropriate modifier on the claim form; (2) maintain the written notice in its files; and (3) be able to produce the written notice to the DMERC, upon request.

Routine notices to beneficiaries that do no more than state that denial of payment is possible or that they never know whether payment will be denied are not considered acceptable evidence of written notice. Notices should not be given to beneficiaries unless there is some genuine doubt regarding the likelihood of payment as evidenced by the reasons stated on the written notice. Giving notice for all claims, items or services is not an acceptable practice.

The DMEPOS supplier should include liability issues (e.g., circumstances where the DMEPOS supplier knows or could be expected to know of a denial, use of advance beneficiary notice, etc.) in their written policies and procedures.

j. Routine Waiver of Deductibles and Coinsurance. Routine waivers of deductibles and coinsurance may result in false claims, violations of the anti-kickback statute and overutilization of items or services.[104] DMEPOS suppliers are permitted to waive the Medicare coinsurance amounts for cases of

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[93] The phone number for the SADMERC's HCPCS coding help line is: (803) 736–6809. The hours of operation are Monday through Friday from 9:00 am to 4:00 pm, EST. The SADMERC will aid the DMEPOS supplier in choosing the most accurate code for the item or service ordered and supplied. However, DMEPOS suppliers should be aware that assigning a HCPCs code to an item or service does not necessarily guarantee reimbursement.

[94] By signing the certification statement of the enrollment application, the applicant agrees that he/she has read, understood, meets and will continue to meet the supplier standards and will be disenrolled from the program if any standards are not met or violated.

[95] E.g., if a DMEPOS supplier has more than one location, the supplier number of the location that filled the physician's order will be used on the claim form.

[96] See 42 CFR 424.57.

[97] See 42 U.S.C. 1395m(j)(1)(D).

[98] Providing a substantially excessive amount of supplies may, for example, constitute grounds for a supplier's exclusion under 42 U.S.C. 1320a–7(b)(6)(B).

[99] See 42 U.S.C. 1395w–4(g)(4).

[100] See 42 U.S.C. 1395u(b)(6); 42 CFR 424.73; *Medicare Carrier Manual*, section 3060. See also OIG Ad. Op. 98–1 (1998) and OIG Ad. Op. 98–4 (1998).

[101] See 42 U.S.C. 1395pp.

[102] Id.

[103] See *Medicare Carriers Manual*, section 7300.5.

[104] See 59 FR 31157 (December 19, 1994) or the OIG web site at http://www.dhhs.gov/progorg/oig for the OIG Special Fraud Alert on Medicare Deductibles and Copayments.

indigency.[105] However, we recommend the supplier develop and maintain written criteria documenting its policy for determining indigency, and consistently apply these criteria to all cases. This indigency exception must not be used routinely and a good faith effort must be made to collect deductibles and coinsurance.

DMEPOS suppliers' written policies and procedures should state that they will not routinely waive deductibles and coinsurance for Medicare beneficiaries. Such policies and procedures should include, but not be limited to, statements that DMEPOS supplier personnel are prohibited from: advertising an intent to waive deductibles or coinsurance; advertising an intent to discount services for Medicare beneficiaries; giving unsolicited advice to patients that they need not pay; charging Medicare beneficiaries more than other patients for similar services and items; or collecting deductibles and coinsurance only when a patient has a certain insurance. Routine waivers of deductibles and coinsurance may result in civil monetary penalties, False Claims Act liability, and/or a violation of the anti-kickback statute.[106]

K. Capped Rentals. DMEPOS suppliers' written policies and procedures should address Government and private payor requirements when providing rental equipment to beneficiaries (e.g., the purchase option [107] and servicing and maintenance [108]). DMEPOS suppliers must offer a purchase option to beneficiaries during the 10th continuous rental month.[109] The DMEPOS supplier should clearly, accurately, and non-deceptively discuss the pros and cons of the different options with the beneficiary. If the beneficiary does not accept the purchase option, the DMEPOS supplier must continue to provide the item without charge to the beneficiary or Medicare after the 15th continuous month of receiving rental payments from Medicare, providing the item or service continues to be medically necessary.

However, the DMEPOS supplier may submit additional claims for the maintenance and servicing fees associated with the rental item.[110] The DMEPOS supplier should ensure it is performing basic safety and operational function checks after use by each patient, and is performing routine and preventative maintenance on equipment. The DMEPOS supplier must ensure it has qualified staff or contractors to service, set up, and instruct the patient on the proper use of the equipment. The DMEPOS supplier should ensure it maintains current service manuals for all equipment they supply. In addition, the policies and procedures should also establish an internal control system which allowed the DMEPOS suppler to track the location of each piece of equipment at any given time.

The policies and procedures should also address the guidelines for determining continuous use and criteria for a new rental period.[111] If a beneficiary dies during a rental period, the DMEPOS supplier may receive the entire monthly rental payment.[112] However, if the DMEPOS supplier continues to bill for the item because it did not receive notice of the beneficiary's death until the following month, any payments received for rental items the month after the beneficiary dies are considered an overpayment and must promptly be refunded. The DMEPOS supplier should create internal mechanisms to ensure the correct rental month appears on the claim and the correct modifier is used.

In addition, the DMEPOS supplier should ensure it is not submitting claims for rental equipment when the beneficiary is residing in an institution. The OIG is aware that some DMEPOS suppliers deliver equipment to beneficiaries residing in institutions just prior to the beneficiary being discharged. However, if the beneficiary is residing in an institution when the DMEPOS supplier delivers the equipment, the HCFA claim form should indicate the date of delivery as being the date the beneficiary is discharged from the institution. The DMEPOS supplier may not submit the claim prior to the beneficiary's date of discharge.

l. ZX Modifier. The ZX modifier is used to indicate that the DMEPOS supplier is maintaining medical necessity documentation in its files. Such documentation only needs to be submitted to the DMERC upon request.

DMEPOS suppliers should create internal mechanisms to ensure the proper use of the ZX modifier. Improper use of the modifier may result in the submission of false claims. The written policies and procedures should address the DMEPOS supplier's protocol for using the ZX modifier.[113]

m. Cover Letters. The DMEPOS supplier should address the use of cover letters in its written policies and procedures, if applicable.[114]

In many instances, the DMEPOS supplier will send a cover letter along with the CMN to the physician. The information contained in the cover letter should address issues relating to HCFA or DMERC regulation/policy changes, brief descriptions of the item(s) being provided and changes in the patient's regimen. The cover letter must not (i) lead physicians to order medically unnecessary items or supplies or (ii) include diagnostic information. In addition, the DMEPOS supplier should not distribute completed "sample" CMNs to physicians. DMEPOS suppliers should maintain on file a copy of the cover letter sent to physicians. The DMERCs may request to review the information provided in cover letters to ensure the DMEPOS supplier is in compliance with the law.

n. Communication. The OIG suggests DMEPOS suppliers create mechanisms that increase the communication between treating physicians or other authorized persons who refer business to the DMEPOS supplier, the patients, and the DMEPOS supplier. Such mechanisms should be included in the DMEPOS supplier's written policies and procedures and may include the DMEPOS supplier periodically calling the patient to ensure the equipment is still being used and operating properly or an arrangement between the DMEPOS supplier and the physician whereby the physician immediately informs the DMEPOS supplier when equipment is no longer medically necessary. The DMEPOS supplier should create mechanisms to ensure communications between different departments (e.g., sales and billing) in order to prevent the filing of incorrect claims.

o. Oxygen and Oxygen Equipment. The OIG recommends the written policies and procedures for DMEPOS suppliers furnishing oxygen state that the DMEPOS supplier will ensure that initial claims for oxygen therapy include the written results of an arterial blood gas study or oximetry test (on the CMN) that has been ordered and evaluated by the patient's treating physician. Further, the written policies

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[105] See section 5520 of the *Medicare Carriers Manual.*

[106] See 42 U.S.C. 1320a–7a(a)(5); 31 U.S.C. 3729–3733; 42 U.S.C. 1320a–7b.

[107] See 42 CFR 414.229(d).

[108] See 42 CFR 414.229(e).

[109] DMEPOS suppliers must offer beneficiaries the option of purchasing power-driven wheelchairs at the time the DMEOS supplier first furnishes the item. See 42 CFR 414.229(d)(1).

[110] See 42 CFR 414.229(e).

[111] See 42 CFR 414.230.

[112] See *Medicare Carriers Manual,* section 4105.3.

[113] See relevant DMERC supplier manual(s) for guidelines on proper use.

[114] Id.

and procedures should provide for the DMEPOS supplier to maintain such test results and any other independent physiological laboratory (IPL) documents supporting the patient's medical necessity for the oxygen. The DMEPOS supplier should have the IPLs from which they receive tests results submit all raw test results to the ordering physician for the physician's benefit, and not just a summary of the results. The written policies and procedures should provide that a DMEPOS supplier is not qualified to conduct the blood gas study or to prescribe the oxygen therapy.[115] When submitting an oxygen or oxygen equipment claim for reimbursement, the DMEPOS supplier must ensure it is complying with the payment rules.[116]

4. Anti-Kickback and Self-Referral Concerns. The DMEPOS supplier should have policies and procedures in place with respect to compliance with Federal and State laws, including the anti-kickback statute, as well as the Stark physician self-referral law.[117] Such policies should provide that:

- All of the DMEPOS supplier's contracts and arrangements with actual or potential referral sources (e.g., physicians) are reviewed by counsel and comply with all applicable statutes and regulations, including the anti-kickback statute and the Stark physician self-referral law provisions; [118]
- The DMEPOS supplier not submit or cause to be submitted to the Federal health care programs claims for patients who were referred to the DMEPOS supplier in accordance with contracts or financial arrangements that were designed to induce such referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation or that otherwise violates the Stark physician self-referral law; and
- The DMEPOS supplier does not offer or provide gifts, free services, or other incentives or things of value to patients, relatives of patients, physicians, home health agencies, nursing homes, hospitals, contractors, assisted living facilities, or other potential referral sources for the purpose of inducing referrals in violation of the anti-kickback statute or similar Federal or State statute or regulation.[119]

Further, the written policies and procedures should specifically reference and take into account the OIG's safe harbor regulations, which describe those payment practices that are immune from criminal and administrative prosecution under the anti-kickback statute.[120]

5. Marketing. DMEPOS supplier compliance programs should require honest, straightforward, fully informative and non-deceptive marketing, where marketing is permitted. It is in the best interest of patients, DMEPOS suppliers, physicians and health care programs that physicians or other persons authorized to order DMEPOS fully understand the services offered by the DMEPOS supplier, the items or services that will be provided when ordered and the financial consequences for Medicare as well as other payors for items or services ordered. If the DMEPOS supplier services a large number of non-English speaking patients, it should ensure its marketing materials are available in that other language. The DMEPOS supplier's written policies and procedures should ensure that its marketing information is clear, correct, and fully informative. Salespeople must not offer physicians, patients or other potential referral sources incentives, in cash or in kind, for their business.[121] Similarly, they must not engage in any marketing activity that either explicitly or implicitly implies that Medicare beneficiaries are not obligated to pay their coinsurance or can receive "free" services.[122] In addition, DMEPOS suppliers must not promote items or services to patients or physicians that are not reasonable or necessary for the treatment of the individual patient. The OIG suggests the DMEPOS supplier's written policies and procedures create internal mechanisms to avoid these situations.

With respect to marketing and sales, the OIG has a longstanding concern that percentage compensation arrangements for sales and marketing personnel may increase the risk of such persons violating the anti-kickback statute.[123] The OIG recommends the DMEPOS supplier monitor its sales representatives on a regular basis (e.g., rotate sales staff or send sales manager on some sales calls).

DMEPOS suppliers are prohibited from making unsolicited telephone contacts to Medicare beneficiaries.[124] In addition, a DMEPOS supplier cannot accomplish through an agent that which it cannot do itself. Since a DMEPOS supplier has no control over the means by which a non-employee sales or other representative might contact a Medicare beneficiary regarding the furnishing of such items, DMEPOS suppliers may not accept any referral from a sales or other representative who is not an employee of the DMEPOS supplier, regardless of the means allegedly used to contact the beneficiary. We suggest the DMEPOS supplier's written policies and procedures reflect this prohibition.

DMEPOS suppliers are prohibited from using symbols, emblems, or names in reference to Social Security or Medicare in a manner that such person knows or should know would convey the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration, or the Department of Health and Human Services or that such person has some connection with, or authorization from, any of these agencies.[125]

6. Retention of Records. DMEPOS supplier compliance programs should provide for the implementation of a records system. DMEPOS suppliers should ensure that records are maintained for the length of time required by Federal and State law and private payors, or by the supplier's record retention policies, whichever is longer. This system should establish policies and procedures regarding the creation, distribution, retention, storage, retrieval, and destruction of documents.[126] The three types of documents developed under this system should include: (1) all records and documentation (e.g., billing and claims documentation) required either by Federal or State law and the program requirements of Federal, State and private health plans; (2) records listing the persons responsible for implementing each part of the

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[115] See *Coverage Issues Manual*, section 60–4.

[116] See 42 CFR 414.226.

[117] Towards this end, the DMEPOS supplier should, among other things, obtain copies of all relevant OIG regulations, Special Fraud Alerts, and advisory opinions (these documents are located on the Internet at http://www.dhhs.gov/progorg/oig), and ensure that the DMEPOS supplier's policies reflect the guidance provided by the OIG. See 42 U.S.C. 1395nn(a) for the Stark physician referral laws. See also 42 U.S.C. 1320a–7b for prohibited activities under the anti-kickback statute.

[118] If the DMEPOS supplier questions an arrangement it may enter into, it should consider asking the OIG for an advisory opinion regarding the anti-kickback statute or HCFA for an advisory opinion regarding Stark. See 62 FR 7350 (February 19, 1997) and 63 FR 38311 (July 16, 1998) for instructions on how to submit an Advisory Opinion to the OIG. These instructions are also located on the Internet at: http://www.dhhs.gov/progorg/oig. See 63 FR 1645 (January 9, 1998) on how to submit an advisory opinion to HCFA.

[119] See 42 U.S.C. 1320a–7(a)(5), which provides for civil money penalties for improper inducements to beneficiaries. See also 42 U.S.C. 1320a–7b(b).

[120] See 42 CFR 1001.952.

[121] See anti-kickback statute discussion in section II.A.4.

[122] See discussion in section II.A.3.j.

[123] See, e.g., 42 U.S.C. 1320a–7b(b); OIG Ad. Op. 98–10 (1998); section II.A.4.

[124] See 42 U.S.C. 1395m(a)(17), Pub. L. 103–432, section 132(a).

[125] See 42 U.S.C. 1320b–10.

[126] This records system should be tailored to fit the individual needs and financial resources of the DMEPOS supplier.

compliance program; and (3) all records necessary to protect the integrity of the DMEPOS supplier's compliance process and confirm the effectiveness of the program. The documentation necessary to satisfy the third requirement includes, but is not limited to: evidence of adequate employee training; reports from the DMEPOS supplier's hotline; results of any investigation conducted as a consequence of a hotline call; modifications to the compliance program; self-disclosure; all written notifications to providers;[127] and the results of the DMEPOS supplier's auditing and monitoring efforts.[128]

7. Compliance as an Element of a Performance Plan. Compliance programs should require that the promotion of, and adherence to, the elements of the compliance program be a factor in evaluating the performance of all employees. Employees should be periodically trained in new compliance policies and procedures. In addition, all managers and supervisors involved in the claims development and submission processes should:

- Discuss with all supervised employees and relevant contractors the compliance policies and legal requirements applicable to their function;
- Inform all supervised personnel that strict compliance with these policies and requirements is a condition of employment; and
- Disclose to all supervised personnel that the DMEPOS supplier will take disciplinary action up to and including termination for violation of these policies or requirements.

In addition to making performance of these duties an element in evaluations, the compliance officer or DMEPOS supplier management should include a policy that managers and supervisors will be sanctioned for failing to adequately instruct their subordinates or for failing to detect noncompliance with applicable policies and legal requirements, where reasonable diligence on the part of the manager or supervisor would have led to the discovery of any problems or violations.

B. Designation of a Compliance Officer and a Compliance Committee

1. Compliance Officer. Every DMEPOS supplier should designate a compliance officer to serve as the focal point for compliance activities. The compliance officer should be a person of high integrity. This responsibility may be the individual's sole duty or added to other management responsibilities, depending upon the size and resources of the DMEPOS supplier and the complexity of the task. When a compliance officer has other duties, the other duties should not be in conflict with the compliance goals.[129]

Designating a compliance officer with the appropriate authority is critical to the success of the program, necessitating the appointment of a high-level official in the DMEPOS supplier with direct access to the DMEPOS supplier's owner(s), president or CEO, governing body, all other senior management, and legal counsel.[130] The compliance officer should be highly enough placed in the company so that he or she can exercise independent judgment without fear of reprisal, and so that employees will know that bringing a problem to that person's attention is not a wasted exercise. The compliance officer should have sufficient funding and staff to fully perform his or her responsibilities. Coordination and communication are the key functions of the compliance officer with regard to planning, implementing, and monitoring the compliance program.

The compliance officer's primary responsibilities should include:

- Overseeing and monitoring the implementation of the compliance program;[131]
- Reporting on a regular basis to the DMEPOS supplier's owner(s), governing body, CEO, president, and compliance committee (if applicable) on the progress of implementation, and assisting these components in establishing methods to improve the DMEPOS supplier's efficiency and quality of services, and to reduce the DMEPOS supplier's vulnerability to fraud, abuse and waste;
- Periodically revising the program in light of changes in the organization's needs, and in the statutes, rules, regulations, and requirements of Federal, State and private payor health care plans;
- Reviewing employees' certifications that they have received, read, and understood the standards of conduct;
- Developing, coordinating, and participating in a multifaceted educational and training program that focuses on the elements of the compliance program, and seeks to ensure that all appropriate employees and management are knowledgeable of, and comply with, pertinent Federal, State and private payor health care program requirements;
- Ensuring independent contractors and agents who provide services (e.g., billing companies, delivery services and sources of referrals) to the DMEPOS supplier are aware of the requirements of the DMEPOS supplier's compliance program with respect to coverage, billing, and marketing, among other things;
- Coordinating personnel issues with the DMEPOS supplier's Human Resources/Personnel office (or its equivalent) to ensure that the National Practitioner Data Bank,[132] Cumulative Sanction Report,[133] and the General Services Administration's List of Parties Excluded from Federal Procurement and Nonprocurement Programs[134] have been checked with respect to all employees, referring physicians or other authorized persons, and independent contractors (as appropriate);[135]
- Assisting the DMEPOS supplier's financial management in coordinating internal compliance review and monitoring activities, including annual or periodic reviews of departments;
- Independently investigating and acting on matters related to compliance,

[127] This should include notifications regarding inappropriate claims and overpayments.

[128] The creation and retention of such documents and reports may raise a variety of legal issues, such as patient privacy and confidentiality. These issues are best discussed with legal counsel.

[129] E.g., companies should not choose a sales manager who may be pressured to achieve high sales, which might result in a conflict with compliance goals.

[130] The OIG believes that it is not advisable for the compliance function to be subordinate to the DMEPOS supplier's general counsel, comptroller or similar DMEPOS supplier financial officer. Free standing compliance functions help to ensure independent and objective legal reviews and financial analyses of the institution's compliance efforts and activities. By separating the compliance function from the key management positions of general counsel or chief financial officer (where the size and structure of the DMEPOS supplier make this a feasible option), a system of checks and balances is established to more effectively achieve the goals of the compliance program.

[131] For DMEPOS supplier chains, the OIG encourages coordination with each DMEPOS supplier location through the use of a headquarter's compliance officer, communicating with parallel positions in each facility or regional office, as appropriate.

[132] The National Practitioner Data Bank, maintained by the Public Health Service, is a data base that contains information about medical malpractice payments, sanctions by boards of medical examiners or state licensing boards, adverse clinical privilege actions, and adverse professional society membership actions. Health care entities can have access to this data base to seek information about their own medical or clinical staff, as well as prospective employees.

[133] The Cumulative Sanction Report is an OIG-produced report available on the Internet at http://www.dhhs.gov/progorg/oig. It is updated on a regular basis to reflect the status of individuals and entities who have been excluded from participation in the Medicare and Medicaid programs.

[134] The List of Parties from Federal Procurement and Nonprocurement programs is a GSA-produced report available on the Internet at: http://www.arnet.gov/epls.

[135] Depending upon State requirements or DMEPOS supplier policy, the Compliance Officer may also conduct a criminal background check of employees.

including the flexibility to design and coordinate internal investigations (e.g., responding to reports of problems or suspected violations) and any resulting corrective action (e.g., making necessary improvements to DMEPOS supplier policies and practices, taking appropriate disciplinary action, etc.) with all DMEPOS supplier departments, independent contractors, and health care professionals;

• Developing policies and programs that encourage managers and employees to report suspected fraud and other improprieties without fear of retaliation; and

• Continuing the momentum of the compliance program and the accomplishment of its objectives long after the initial years of implementation.[136]

The compliance officer must have the authority to review all documents and other information that are relevant to compliance activities, including, but not limited to, patient records (where appropriate), billing records, and DMEPOS supplier records concerning the marketing efforts of the DMEPOS supplier and the DMEPOS supplier's arrangements with other parties, including employees, home health agencies, skilled nursing facilities, and ordering physicians or other authorized persons. This policy enables the compliance officer to review contracts and obligations (seeking the advice of legal counsel, where appropriate) that may contain referral and payment provisions that could violate the anti-kickback statute, as well as the Stark physician self-referral prohibition or other statutory or regulatory requirements.

In addition, the compliance officer should be copied on the results of all internal audit reports and work closely with key managers to identify aberrant trends in the coding and billing areas. The compliance officer should ascertain patterns that require a change in policy and forward these issues to the compliance committee to remedy the problem. The compliance officer should have full authority to stop the processing of claims that he or she believes are problematic until such time as the issue in question has been resolved.

2. Compliance Committee. The OIG recommends, where feasible,[137] that a compliance committee be established to advise the compliance officer and assist in the implementation of the compliance program.[138] When assembling a team of people to serve as the DMEPOS supplier's compliance committee, the DMEPOS supplier should include individuals with a variety of skills.[139] The OIG strongly recommends that the compliance officer manage the compliance committee. Once a DMEPOS supplier chooses the people that will accept the responsibilities vested in members of the compliance committee, the DMEPOS supplier must train these individuals on the policies and procedures of the compliance program, as well as how to discharge their duties.

The committee's responsibilities should include:

• Analyzing the organization's regulatory environment, the legal requirements with which it must comply,[140] and specific risk areas;

• Assessing existing policies and procedures that address these risk areas for possible incorporation into the compliance program;

• Working with appropriate DMEPOS supplier departments to develop standards of conduct and policies and procedures that promote allegiance to the DMEPOS supplier's compliance program;

• Recommending and monitoring, in conjunction with the relevant departments, the development of internal systems and controls to carry out the organization's standards, policies, and procedures as part of its daily operations;[141]

• Determining the appropriate strategy/approach to promote compliance with the program and detection of any potential violations, such as through hotlines and other fraud reporting mechanisms;

• Developing a system to solicit, evaluate, and respond to complaints and problems; and

• Monitoring internal and external audits and investigations for the purpose of identifying troublesome issues and deficient areas experienced by the DMEPOS supplier, and implementing corrective and preventive action.

The committee may also address other functions as the compliance concept becomes part of the overall DMEPOS supplier's operating structure and daily routine.

C. Conducting Effective Training and Education

1. Initial Training in Compliance. The proper education and training of corporate officers, managers, employees and the continual retraining of current personnel at all levels, are significant elements of an effective compliance program. In order to ensure the appropriate information is being disseminated to the correct individuals, the training should be separated into sessions. All employees should attend the general session on compliance, employees whose job primarily focuses on submission of claims for reimbursement should receive additional training on this subject, and employees who are involved in sales and marketing should receive additional training on this subject.

a. General Sessions. As part of their compliance programs, DMEPOS suppliers should require all affected personnel to attend training on an annual basis, including appropriate training in Federal and State statutes, regulations and guidelines, the policies of private payors, and training in corporate ethics. The general training sessions should emphasize the DMEPOS

[136] Periodic on-site visits of DMEPOS supplier operations, bulletins with compliance updates and reminders, distribution of audiotapes or videotapes on different risk areas, lectures at management and employee meetings, circulation of recent health care articles covering fraud and abuse, and innovative changes to compliance training are various examples of approaches and techniques the compliance officer can employ for the purpose of ensuring continued interest in the compliance program and the DMEPOS supplier's commitment to its policies and principles.

[137] The OIG recognizes that smaller DMEPOS suppliers may not be able to establish a compliance committee. In those situations, the compliance officer should fulfill the responsibility of the compliance committee.

[138] The compliance committee benefits from having the perspectives of individuals with varying responsibilities in the organization, such as operations, billing, coding, marketing, and human resources, as well as employees and managers of key operating units. These individuals should have the requisite seniority and comprehensive experience within their respective departments to implement any necessary changes to the DMEPOS supplier's policies and procedures as recommended by the committee. A compliance committee for a DMEPOS supplier that is part of another organization (e.g., home health agency) might benefit from the participation of officials from other departments in the organization, such as the accounting and billing departments.

[139] A DMEPOS supplier should expect its compliance committee members and compliance officer to demonstrate high integrity, good judgment, assertiveness, and an approachable demeanor, while eliciting the respect and trust of employees of the DMEPOS supplier. The DMEPOS supplier's compliance committee members should also have significant professional experience working with billing, documentation, and auditing principles.

[140] This includes, but is not limited to, the civil False Claims Act, 31 U.S.C. 3729–3733; the criminal false claims statutes, 18 U.S.C. 287, 1001; the fraud and abuse provisions of the Balanced Budget Act of 1997, Pub. L. 105–33; the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191; and compliance with the Medicare supplier standards, 42 CFR 424.57.

[141] With respect to national DMEPOS supplier chains, this may include fostering coordination and communication between those employees responsible for compliance at headquarters and those responsible for compliance at the individual supplier branches.

supplier's commitment to compliance with these legal requirements and policies.

These training programs should include sessions highlighting the DMEPOS supplier's compliance program, summarizing fraud and abuse laws and regulations, Federal, State and private payor health care program requirements, claim submission procedures and marketing practices that reflect current legal and program standards. The DMEPOS supplier must take steps to communicate effectively its standards and procedures to all affected employees, physicians, independent contractors and other significant agents, e.g., by requiring participation in training programs and disseminating publications that explain specific requirements in a practical manner.[142] Managers of specific departments can assist in identifying areas that require training and in carrying out such training.[143] Training instructors may come from outside or inside the organization. New employees should be targeted for training early in their employment.[144]

As part of the initial training, the standards of conduct should be distributed to all employees.[145] At the end of this training session, every employee, as well as physicians, independent contractors, and other significant agents, should be required to sign and date a statement that reflects their knowledge of and commitment to the standards of conduct. This attestation should be retained in the employee's personnel file. For physicians, independent contractors, and other significant agents, the attestation should become part of the contract and remain in the file that contains such documentation.

Further, to assist in ensuring that employees continuously meet the expected high standards of conduct, any employee handbook delineating or expanding upon these standards should be regularly updated as applicable statutes, regulations and Federal health care program requirements are modified.[146] DMEPOS suppliers should provide an additional attestation in the modified standards that stipulates the employee's knowledge of and commitment to the modifications.

b. Claim Development and Billing Training. In addition to specific training in the risk areas identified in section II.A.2, above, primary training to appropriate corporate officers, managers and other claim development and billing staff should include such topics as:

- Specific Government and private payor reimbursement principles;[147]
- Providing DMEPOS items or services without proper authorization;
- Proper documentation of services rendered, including the correct application of official ICD–9 and HCPCs coding rules and guidelines;
- Improper alterations to documentation (e.g., patient records, CMNs);
- Compliance with the Federal, State and privator payor supplier standards;
- Signing a form for a physician without the physician's authorization; and
- Duty to report misconduct.
- Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a DMEPOS supplier's billing and coding personnel, in that the pressure to meet business goals may render employees vulnerable to engaging in prohibited practices.

c. *Sales and Marketing Training.* In addition to specific training in the risk areas identified in section II.A.2, above, primary training to sales and marketing personnel should include such topics as:

- General prohibition on paying or receiving renumeration to induce referrals;
- Routine waiver of deductibles and/or coinsurance;
- Disguising referral fees as salaries;
- Offering free items or services to induce referrals;
- High pressure marketing of non-covered or unnecessary services;
- Improper patient solicitation; and
- Duty to report misconduct.

Clarifying and emphasizing these areas of concern through training and educational programs are particularly relevant to a DMEPOS supplier's sales and marketing personnel, in that the pressure to meet business goals may render employees vulnerable to engaging in prohibited practices.

2. Format of the Training Program. The OIG suggests that all relevant levels of personnel be made part of various educational and training programs of the DMEPOS supplier.[148] Employees should be required to have a minimum number of educational hours per year, as appropriate, as part of their employment responsibilities.[149] For example, as discussed above, employees involved in billing functions should be required to attend periodic training in applicable reimbursement coverage and documentation of records.[150]

A variety of teaching methods, such as interactive training and training in several different languages, particularly where a DMEPOS supplier has a culturally diverse staff, should be implemented so that all affected employees are knowledgeable about the DMEPOS supplier's standards of conduct and procedures for alerting senior management to problems and concerns.[151] Targeted training should be provided to corporate officers, managers and other employees whose actions affect the accuracy of the claims submitted to the Government, such as employees involved in the coding, billing, sales, and marketing processes. All training materials should be designed to take into account the skills, knowledge and experience of the individual trainees. Given the complexity and interdependent relationships of many departments, it is

[142] Publications such as Special Fraud Alerts, audit and inspection reports, and advisory opinions, as well as the annual OIG work plan, are readily available from the OIG and could be the basis for standards, educational courses and programs.

[143] Significant variations in functions and responsibilities of different departments may create the need for training materials that are tailored to the compliance concerns associated with particular operations and duties.

[144] Certain positions, such as those involving developing and submitting claims, as well as sales and marketing, create a greater organizational legal exposure, and therefore require specialized training. DMEPOS suppliers should fill such positions with individuals who have the appropriate educational background, training, experience, and credentials.

[145] Where the DMEPOS supplier has a culturally diverse employee base, the standards of conduct should be translated into other languages and written at appropriate reading levels.

[146] The OIG recognizes that not all standards, policies and procedures need to be communicated to all employees. However, the OIG believes that the bulk of the standards that relate to complying with fraud and abuse laws and other ethical areas should be addressed and made part of all employees' training. The DMEPOS supplier should determine what additional training to provide categories of employees based upon their job responsibilities.

[147] Government, in this context, includes the appropriate Medicare DMERC(s).

[148] In addition, where feasible, the OIG recommends that a DMEPOS supplier afford outside contractors and its physician clients that opportunity to participate in the DMEPOS supplier's compliance training and educational programs, or develop their own programs that complement the DMEPOS supplier's standards of conduct, compliance requirements and other rules and practices.

[149] Currently, the OIG is monitoring a significant number of corporate integrity agreements that require many of these training elements. The OIG usually requires a minimum of one to three hours annually for basic training in compliance areas. Additional training is required for specialty fields such as billing, coding, sales and marketing.

[150] Appropriate coding and billing depends upon the quality and completeness of documentation. Therefore, the OIG believes that the DMEPOS supplier must foster an environment where interactive communication is encouraged.

[151] Post training tests can be used to assess the success of training provided and employee comprehension of the DMEPOS supplier's policies and procedures.

important for the compliance officer to supervise and coordinate the training program.

The OIG recommends that attendance and participation in training programs be made a condition of continued employment and that failure to comply with training requirements should result in disciplinary action, including possible termination, when such failure is serious. Adherence to the provisions of the compliance program, such as training requirements, should be a factor in the annual evaluation of each employee. The DMEPOS supplier should retain adequate records of its training of employees, including attendance logs and material distributed at training sessions.

3. Continuing Education on Compliance Issues. It is essential that compliance issues remain at the forefront of the DMEPOS supplier's priorities. The OIG recommends that DMEPOS supplier compliance programs address the need for periodic professional education courses for DMEPOS supplier personnel. In particular, the DMEPOS supplier should ensure that coding personnel receive annual professional training on the updated codes for the current year and have knowledge of the SADMERC's HCPCs coding helpline. [152]

In order to maintain a sense of seriousness about compliance in a DMEPOS supplier's operations, the DMEPOS supplier must continue to disseminate the compliance message. One effective mechanism for maintaining a consistent presence of the compliance message is to publish a monthly newsletter to address compliance concerns. This would allow the DMEPOS supplier to address specific examples of problems the company encountered during its ongoing audits and risk analyses, while reinforcing the DMEPOS supplier's firm commitment to the general principles of compliance and ethical conduct. The newsletter could also include the risk areas published by the OIG in its Special Fraud Alerts. Finally, the DMEPOS supplier could use the newsletter as a mechanism to address areas of ambiguity in the coding and billing process and/or its sales and marketing practices. The DMEPOS supplier should maintain its newsletters in a central location to document the guidance offered, and provide new employees with access to guidance previously provided.

[152] See note 93.

D. Developing Effective Lines of Communication

1. Access to the Compliance Officer. An open line of communication between the compliance officer and DMEPOS supplier employees is equally important to the successful implementation of a compliance program and the reduction of any potential for fraud, abuse and waste. Written confidentiality and non-retaliation policies should be developed and distributed to all employees to encourage communication and the reporting of incidents of potential fraud. [153] The compliance committee should also develop several independent reporting paths for an employee to report fraud, waste or abuse so that such reports cannot be diverted by supervisors or other personnel.

The OIG encourages the establishment of a procedure for personnel to seek clarification from the compliance officer or members of the compliance committee in the event of any confusion or question regarding a DMEPOS supplier policy, practice, or procedure. Questions and responses should be documented and dated and, if appropriate, shared with other staff so that standards, policies, practices, and procedures can be updated and improved to reflect any necessary changes or clarifications. The compliance officer may want to solicit employee input in developing these communication and reporting systems.

2. Hotlines and Other Forms of Communication. The OIG encourages the use of hotlines, [154] e-mails, written memoranda, newsletters, suggestion boxes and other forms of information exchange to maintain these open lines of communication. [155] If the DMEPOS supplier establishes a hotline, the telephone number should be made readily available to all employees and independent contractors, possibly by circulating the number on wallet cards or conspicuously posting the telephone number in common work areas. [156] Employees should be permitted to report matters on an anonymous basis. [157] Matters reported through the hotline or other communication sources that suggest substantial violations of compliance policies, Federal, State or private payor health care program requirements, regulations, or statutes should be documented and investigated promptly to determine their veracity. A log should be maintained by the compliance officer that records such calls, including the nature of any investigation and its results. [158] Such information should be included in reports to the owner(s), governing body, the CEO, president, and compliance committee. [159] Further, while the DMEPOS supplier should always strive to maintain the confidentiality of an employee's identity, it should also explicitly communicate that there may be a point where the individual's identity may become known or may have to be revealed.

The OIG recognizes that assertions of fraud and abuse by employees who may have participated in illegal conduct or committed other malfeasance raise numerous complex legal and management issues that should be examined on a case-by-case basis. The compliance officer should work closely with legal counsel, who can provide guidance regarding such issues.

E. Enforcing Standards Through Well-Publicized Disciplinary Guidelines

1. Discipline Policy and Actions. An effective compliance program should include guidance regarding disciplinary action for corporate officers, managers, employees, and other health care professionals who have failed to comply with the DMEPOS supplier's standards

[153] The OIG believes that whistleblowers should be protected against retaliation, a concept embodied in the provisions of the False Claims Act. See 31 U.S.C. 3730(h). In many cases, employees sue their employers under the False Claims Act's *qui tam* provisions out of frustration because of the company's failure to take action when a questionable, fraudulent, or abusive situation was brought to the attention of senior corporate officials.

[154] The OIG recognizes that it may not be financially feasible for a smaller DMEPOS supplier to maintain a telephone hotline dedicated to receiving calls solely on compliance issues. These companies may want to explore alternative methods, e.g., outsourcing the hotline or establishing a written method of confidential disclosure.

[155] In addition to methods of communication used by current employees, an effective employee exit interview program could be designed to solicit information from departing employees regarding potential misconduct and suspected violations of DMEPOS supplier policies and procedures.

[156] DMEPOS suppliers should also post in a prominent, available area the HHS–OIG Hotline telephone number, 1–800–447–8477 (1–800–HHS–TIPS), in addition to any company hotline number that may be posted.

[157] The OIG recognizes that guaranteeing anonymity may be infeasible for small DMEPOS suppliers. In such instances, we recommend DMEPOS employees need not fear retribution when reporting a portential violation.

[158] To efficiently and accurately fulfill such an obligation, the DMEPOS supplier should create an intake form for all compliance issues identified through reporting mechanisms. The form could include information concerning the date that the potential problem was reported, the internal investigative methods utilized, the results of the investigation, any corrective action implemented, any disciplinary measures imposed, and any overpayments returned.

[159] Information obtained over the hotline may provide valuable insight into management practices and operations, whether reported problems are actual or perceived.

of conduct, policies and procedures, Federal and State statutes, rules, and regulations or Federal, State or private payor health care program requirements. It should also address disciplinary actions for those who have engaged in wrongdoing, which has the potential to impair the DMEPOS supplier's status as a reliable, honest, and trustworthy health care provider.

The OIG believes that the compliance program should include a written policy statement setting forth the degrees of disciplinary actions that may be imposed upon corporate officers, managers, employees, and other health care professionals for failing to comply with the DMEPOS supplier's standards, policies, and applicable statutes and regulations. Intentional or reckless noncompliance should subject transgressors to significant sanctions. Such sanctions could range from oral warnings to suspension, termination, or financial penalties, as appropriate. Each situation must be considered on a case-by-case basis to determine the appropriate sanction. The written standards of conduct should elaborate on the procedures for handling disciplinary problems and those who will be responsible for taking appropriate action. Some disciplinary actions can be handled by managers, while others may have to be resolved by the owner(s), president or CEO. Disciplinary action may be appropriate where a responsible employee's failure to detect a violation is attributable to his or her negligence or reckless conduct. Personnel should be advised by the DMEPOS supplier that disciplinary action will be taken on a fair and equitable basis. Managers and supervisors should be made aware that they have a responsibility to discipline employees in an appropriate and consistent manner.

It is vital to publish and disseminate the range of disciplinary standards for improper conduct and to educate corporate officers, managers, and other DMEPOS supplier employees regarding these standards. The consequences of noncompliance should be consistently applied and enforced, in order for the disciplinary policy to have the required deterrent effect. All levels of employees should be subject to the same types of disciplinary action for the commission of similar offenses. The commitment to compliance applies to all personnel levels within a DMEPOS supplier. The OIG believes that corporate officers, managers, supervisors, and health care professionals should be held accountable for failing to comply with, or for the foreseeable failure of their subordinates to adhere to, the applicable standards, statutes, rules, regulations and procedures.

2. New Employee Policy. For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, DMEPOS suppliers should conduct a reasonable and prudent background investigation, including a reference check,[160] as part of every such employment application. The application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a–7(i), or exclusion action. In accordance with the compliance program, DMEPOS supplier policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded, or otherwise ineligible for participation in Federal health care programs (as defined in 42 U.S.C. 1320a–7b(f)).[161] In addition, pending the resolution of any criminal charges or proposed debarment or exclusion, the OIG recommends that such individuals should be removed from direct responsibility for, or involvement with, the DMEPOS supplier's business operations related to any Federal health care program. In addition, we recommend the DMEPOS supplier remove such individual from any position(s) for which the individual's salary or the items or services rendered, ordered, or prescribed by the individual are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds.[162] Similarly, with regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment, or exclusion, then the DMEPOS supplier should remove the individual from direct responsibility for or involvement with all Federal health care programs.

[160] See notes 132–135. Since the employees of DMEPOS suppliers have access to potentially vulnerable people and their property, DMEPOS suppliers should also strictly scrutinize whether it should employ individuals who have been convicted of crimes of neglect, violence or financial misconduct.

[161] Likewise, DMEPOS supplier compliance programs should establish standards prohibiting the execution of contracts with companies that have been recently convicted of a criminal offense related to health care or that are listed by a federal agency as debarred, excluded, or otherwise ineligible for participation in Federal health care programs. See notes 133 and 134.

[162] Prospective employees who have been officially reinstated into the Medicare and Medicaid programs by the OIG may be considered for employment upon proof of such reinstatement.

F. Auditing and Monitoring

An ongoing evaluation process is critical to a successful compliance program. The OIG believes that an effective program should incorporate thorough monitoring of its implementation and regular reporting to the DMEPOS supplier's corporate officers.[163] Compliance reports created by this ongoing monitoring, including reports of suspected noncompliance, should be maintained by the compliance officer and shared with the DMEPOS supplier's corporate officers and the compliance committee. The extent and frequency of the audit function may vary depending on factors such as the size of the DMEPOS supplier, the resources available to the DMEPOS supplier, the DMEPOS supplier's prior history of noncompliance, and the risk factors that are prevalent in a particular DMEPOS supplier.

Although many monitoring techniques are available, one effective tool to promote and ensure compliance is the performance of regular, periodic compliance audits by internal or external auditors who have expertise in Federal and State health care statutes, rules, regulations, and Federal, State and private payor health care program requirements. The audits should focus on the different DMEPOS supplier's departments, including external relationships with third-party contractors, specifically those with substantive exposure to Government enforcement actions. At a minimum, these audits should be designed to address the DMEPOS supplier's compliance with laws governing kickback arrangements, the physician self-referral prohibition, pricing, contracts, claim development and submission, reimbursement, sales and marketing. In addition, the audits and reviews should examine the DMEPOS supplier's compliance with the Federal, State and private payor supplier standards and the specific rules and policies that have been the focus of particular attention on the part of the Medicare DMERCs, and law enforcement, as evidenced by educational and other communications from OIG Special Fraud Alerts, advisory opinions, OIG audits and evaluations,

[163] Even when a DMEPOS supplier is owned by a larger corporate entity, the regular auditing and monitoring of the compliance activities of an individual DMEPOS supplier must be a key feature in any annual review. Appropriate reports on audit findings should be periodically provided and explained to a parent organization's senior staff and officers.

and law enforcement's initiatives.[164] In addition, the DMEPOS supplier should focus on any areas of specific concern identified within that DMEPOS supplier and those that may have been identified by any entity, whether Federal, State, private or internal.

Monitoring techniques may include sampling protocols that permit the compliance officer to identify and review variations from an established baseline.[165] Significant variations from the baseline should trigger a reasonable inquiry to determine the cause of the deviation. If the inquiry determines that the deviation occurred for legitimate, explainable reasons, the compliance officer and DMEPOS supplier management may want to limit any corrective action or take no action. If it is determined that the deviation was caused by improper procedures, misunderstanding of rules, including fraud and systemic problems, the DMEPOS supplier should take prompt steps to correct the problem.[166] Any overpayments discovered as a result of such deviations should be returned promptly to the affected payor, with the following information: (1) That the refund is being made pursuant to a voluntary compliance program; (2) a description of the complete causes and circumstances surrounding the overpayment; (3) the methodology by which the overpayment was determined; (4) the amount of the overpayment; and (5) any claim-specific information, reviewed as part of the self-audit, used to determine the overpayment (e.g., beneficiary health insurance claims number, claim number, date of service, and payment date).

An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied, e.g., whether there has been appropriate dissemination of the program's standards, training, ongoing educational programs, and disciplinary actions, among other elements.[167] This process will verify actual conformance by all departments with the compliance program and may identify the necessity for improvements to be made to the compliance program, as well as the DMEPOS supplier's operations. Such reviews could support a determination that appropriate records have been created and maintained to document the implementation of an effective program.[168] However, when monitoring discloses that deviations were not detected in a timely manner due to program deficiencies, appropriate modifications must be implemented. Such evaluations, when developed with the support of management, can help ensure compliance with the DMEPOS supplier's policies and procedures.

As part of the review process, the compliance officer or reviewers should consider techniques such as:

- Testing billing staff on their knowledge of reimbursement coverage criteria and official coding guidelines (e.g., present hypothetical scenarios of-situations experienced in daily practice and assess responses);
- On-site visits to all facilities and locations;
- Ongoing risk analysis and vulnerability assessments of the DMEPOS supplier's operations;
- Assessment of existing relationships with physicians, and other potential referral sources;
- Unannounced audits, mock surveys, and investigations;
- Examination of DMEPOS supplier complaint logs;
- Checking personnel records to determine whether any individuals who have been reprimanded for compliance issues in the past are among those currently engaged in improper conduct;
- Interviews with personnel involved in management, operations, sales and marketing, claim development and submission, and other related activities;
- Questionnaires developed to solicit impressions of the DMEPOS supplier's employees;
- Interviews with physicians or other authorized persons who order services provided by the DMEPOS supplier;
- Interviews with independent contractors who provide services to the DMEPOS supplier;
- Reviews of medical necessity documentation (e.g., physicians orders, CMNs), and other documents that support claims for reimbursement;
- Validation of qualifications of physicians or other authorized persons who order services provided by the DMEPOS supplier;
- Evaluation of written materials and documentation outlining the DMEPOS supplier's policies and procedures; and
- Utilization/trend analyses that uncover deviations, positive or negative, for specific HCPCs codes or types of items over a given period.

The reviewers should:

- Possess the qualifications and experience necessary to adequately identify potential issues with the subject matter to be reviewed;
- Be objective and independent of line management;[169]
- Have access to existing audit and health care resources, relevant personnel, and all relevant areas of operation;
- Present written evaluative reports on compliance activities to the owner(s), president, CEO, governing body, and members of the compliance committee on a regular basis, but not less than annually; and
- Specifically identify areas where corrective actions are needed.

We recommend these audit reports be prepared and submitted to the compliance officer and senior management to ensure they are aware of the results. We suggest the reports specifically identify areas where corrective actions are needed. With these reports, DMEPOS supplier management can take whatever steps are necessary to correct past problems and prevent them from recurring. In certain cases, subsequent reviews or studies would be advisable to ensure that the recommended corrective actions have been implemented successfully.

The DMEPOS supplier should document its efforts to comply with applicable Federal and State statutes, rules, and regulations, and Federal, State and private payor health care program requirements. For example, where a DMEPOS supplier, in its efforts to comply with a particular statute, regulation or program requirement, requests advice from a Government agency (including a Medicare DMERC) charged with administering a Federal health care program, the DMEPOS supplier should document and retain a record of the request and any written or

[164] See also section II.A.2.

[165] The OIG recommends that when a compliance program is established in a DMEPOS supplier, the compliance officer, with the assistance of department managers, should take a "snapshot" of operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This "snapshot," often used as part of benchmarking analyses, becomes a baseline for the compliance officer and other managers to judge the DMEPOS supplier's progress in reducing or eliminating potential areas of vulnerability.

[166] In addition, when appropriate, as referenced in section G.2, below, reports of fraud or systemic problems should also be made to the appropriate governmental authority.

[167] One way to assess the knowledge, awareness, and perceptions of the DMEPOS supplier's employees is through the use of a validated survey instrument (e.g., employee questionnaires, interviews, or focus groups).

[168] Such records should include, but not be limited to, logs of hotline calls, logs of training attendees, training agenda and materials, and summaries of corrective action and improvements with respect to DMEPOS supplier policies as a result of compliance activities.

[169] The OIG recognizes that DMEPOS suppliers that are small in size and have limited resources may not be able to use internal reviewers who are not part of line management or hire outside reviewers.

oral response, including the identity and position of the individual providing the response. DMEPOS suppliers should take the same steps when requesting advice from private payors. This step is extremely important if the DMEPOS supplier intends to rely on that response to guide it in future decisions, actions, or claim reimbursement requests or appeals. A log of oral inquiries between the DMEPOS supplier and third parties will help the organization document its attempts at compliance. In addition, the DMEPOS supplier should maintain records relevant to the issue of whether its reliance was "reasonable" and whether it exercised due diligence in developing procedures and practices to implement the advice.

G. Responding to Detected Offenses and Developing Corrective Action Initiatives

1. Violations and Investigations. Violations of a DMEPOS supplier's compliance program, failures to comply with applicable Federal or State statutes, rules, regulations or Federal, State or private payor health care program requirements, and other types of misconduct threaten a DMEPOS supplier's status as a reliable, honest and trustworthy health care provider. Detected but uncorrected misconduct can seriously endanger the mission, reputation, and legal status of the DMEPOS supplier. Consequently, upon reports or reasonable indications of suspected noncompliance, it is important that the compliance officer or other management officials immediately investigate the conduct in question to determine whether a material violation of applicable law, rules or program instructions or the requirements of the compliance program has occurred, and if so, take decisive steps to correct the problem.[170] As appropriate, such steps may include an immediate referral to criminal and/or civil law enforcement authorities, a corrective action plan,[171] a report to the Government,[172] and the return of any overpayments, if applicable.

Where potential fraud or False Claims Act liability is not involved, the OIG recommends that the DMEPOS supplier promptly return overpayments to the affected payor as they are discovered. However, even if the overpayment detection and return process is working and is being monitored by the DMEPOS supplier, the OIG still believes that the compliance officer needs to be made aware of these overpayments, violations, or deviations that may reveal trends or patterns indicative of a systemic problem.

Depending upon the nature of the alleged violations, an internal investigation will probably include interviews and a review of relevant documents, such as submitted claims and CMNs. Some DMEPOS suppliers should consider engaging outside auditors or health care experts to assist in an investigation. Records of the investigation should contain documentation of the alleged violation, a description of the investigative process (including the objectivity of the investigators and methodologies utilized), copies of interview notes and key documents, a log of the witnesses interviewed and the documents reviewed, the results of the investigation, e.g., any disciplinary action taken, and any corrective action implemented. Although any action taken as the result of an investigation will necessarily vary depending upon the DMEPOS supplier and the situation, DMEPOS suppliers should strive for some consistency by utilizing sound practices and disciplinary protocols.[173] Further, after a reasonable period, the compliance officer should review the circumstances that formed the basis for the investigation to determine whether similar problems have been uncovered or modifications of the compliance program are necessary to prevent and detect other inappropriate conduct or violations.

If an investigation of an alleged violation is undertaken and the compliance officer believes the integrity of the investigation may be at stake because of the presence of employees under investigation, those subjects should be removed from their current work activity until the investigation is completed (unless an internal or Government-led undercover operation known to the DMEPOS supplier is in effect). In addition, the compliance officer should take appropriate steps to secure or prevent the destruction of documents or other evidence relevant to the investigation. If the DMEPOS supplier determines disciplinary action is warranted, it should be prompt and imposed in accordance with the DMEPOS supplier's written standards of disciplinary action.

2. Reporting. If the compliance officer, compliance committee or other management official discovers credible evidence of misconduct from any source and, after a reasonable inquiry, has reason to believe that the misconduct may violate criminal, civil, or administrative law, then the DMEPOS supplier should promptly report the existence of misconduct to the appropriate Federal and State authorities[174] within a reasonable period, but not more than sixty (60) days[175] after determining that there is credible evidence of a violation.[176] Prompt reporting will demonstrate the DMEPOS supplier's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating

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[170] Instances of non-compliance must be determined on a case-by-case basis. The existence, or amount, of a *monetary* loss to a health care program is not solely determinative of whether or not the conduct should be investigated and reported to governmental authorities. In fact, there may be instances where there is no readily identifiable monetary loss at all, but corrective action and reporting are still necessary to protect the integrity of the applicable program and its beneficiaries.

[171] Advice from the DMEPOS supplier's in-house counsel or an outside law firm may be sought to determine the extent of the DMEPOS supplier's liability and to plan the appropriate course of action.

[172] The OIG currently maintains a provider self-disclosure protocol that encourages providers to report suspected fraud. The concept of voluntary self-disclosure is premised on a recognition that the Government alone cannot protect the integrity of the Medicare and other Federal health care programs. Health care providers must be willing to police themselves, correct underlying problems, and work with the Government to resolve these matters. The self-disclosure protocol can be located on the OIG's web site at: http://www.dhhs.gov/progorg/oig.

[173] The parameters of a claim review subject to an internal investigation will depend on the circumstances surrounding the issue(s) identified. By limiting the scope of an internal audit to current billing, a DMEPOS supplier may fail to identify major problems and deficiencies in operations, as well as be subject to certain liability.

[174] Appropriate Federal and State authorities include the Office of Inspector General, Department of Health and Human Services; the Criminal and Civil Divisions of the Department of Justice; the U.S. Attorney in the relevant district(s); and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as: the State Medicaid Fraud Control Unit; the Defense Criminal Investigative Service; the Department of Veterans Affairs; the Office of Inspector General, U.S. Department of Labor (which has primary criminal jurisdiction over FECA, Black Lung and Longshore programs); and the Office of Inspector General, U.S. Office of Personnel Management (which has primary jurisdiction over the Federal Employee Health Benefits Program).

[175] In contrast, to qualify for the "not less than double damages" provision of the False Claims Act, the report must be provided to the Government within thirty (30) days after the date when the DMEPOS supplier first obtained the information. See 31 U.S.C. 3729(a).

[176] The OIG believes that some violations may be so serious that they warrant immediate notification to governmental authorities, prior to, or simultaneous with, commencing an internal investigation, e.g., if the conduct: (1) is a clear violation of criminal law; (2) has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care); or (3) indicates evidence of a systemic failure to comply with applicable laws, rules or program instructions or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

factor by the OIG in determining administrative sanctions (e.g., penalties, assessments and exclusion), if the reporting provider becomes the target of an OIG investigation.[177]

When reporting misconduct to the Government, a DMEPOS supplier should provide all evidence relevant to the alleged violation of applicable Federal or State law(s) and potential cost impact. The compliance officer, if applicable, with advice of counsel, and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately reveals that criminal, civil, or administrative violations have occurred, the appropriate Federal and State authorities [178] should be notified immediately.

3. Corrective Actions. As previously stated, the DMEPOS supplier should take appropriate corrective action, including prompt identification of any overpayment to the affected payor and the imposition of proper disciplinary action. If potential fraud or violations of the False Claims Act are involved, any repayment of the overpayment should be made as part of the discussion with the Government following a report of the matter to law enforcement authorities. Otherwise, the overpayment should be promptly refunded to the affected payor. The refund should also include the information as outlined in section II.F. Failure to disclose overpayments within a reasonable period of time could be interpreted as an intentional attempt to conceal the overpayment from the Government, thereby establishing an independent basis for a criminal violation with respect to the DMEPOS supplier, as well as any individuals who may have been involved. For this reason, DMEPOS supplier compliance programs should emphasize that overpayments obtained from Medicare or other Federal health care programs should be promptly disclosed and returned to the payor that made the erroneous payment.

[177] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude a health care provider from program participation pursuant to 42 U.S.C. 1320a-7(b)(7) for violations of various fraud and abuse laws. See 62 FR 67392 (December 24, 1997).

[178] See note 174.

III. Conclusion

Through this document, the OIG has attempted to provide a foundation to the process necessary to develop an effective and cost-efficient DMEPOS supplier compliance program. As previously stated, however, each program must be tailored to fit the needs and resources of an individual DMEPOS supplier, depending upon its size; number of locations; type of equipment provided; or corporate structure. The Federal and State health care statutes, rules, and regulations and Federal, State and private payor health care program requirements, should be integrated into every DMEPOS supplier's compliance program.

The OIG recognizes that the health care industry in this country, which reaches millions of beneficiaries and expends about a trillion dollars annually, is constantly evolving. In particular, legislation has been passed that creates additional Medicare program participation requirements, such as requiring DMEPOS suppliers to purchase surety bonds and expanding the Medicare supplier standards.[179] As stated throughout this guidance, compliance is a dynamic process that helps to ensure DMEPOS suppliers and other health care providers are better able to fulfill their commitment to ethical behavior, as well as meet the changes and challenges being imposed upon them by Congress and private insurers. Ultimately, it is OIG's hope that a voluntarily created compliance program will enable DMEPOS suppliers to meet their goals, improve the quality of service to patients, and substantially reduce fraud, waste, and abuse, as well as the cost of health care, to Federal, State and private health insurers.

Dated: January 22, 1999.

Michael Mangano,

Principal Deputy Inspector General.

[FR Doc. 99–2055 Filed 1–27–99; 8:45 am]

BILLING CODE: 4150–04–P

[179] See 63 FR 2926 (January 20, 1998).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

Date: March 7–10, 1999.

Time: 6:30 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC 20005.

Contact Person: Mary Bell, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–7978.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1962 Filed 1–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Oncogene

Deregulation Tumor Suppressor Gene Loss of Function in CLL.

Date: March 3, 1999.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Kevin Ryder, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, EPN Room 635, 6130 Executive Blvd. MSC 7408, Bethesda, MD 20892–7408, 301–402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1963 Filed 1–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Therapeutic Modulation of Angiogenesis in Disease.

Date: February 17–19, 1999.

Time: 4:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1964 Filed 1–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Date: February 8–10, 1999.

Name of Committee: National Cancer Advisory Board, Subcommittee on Cancer Centers.

Open: February 8, 1999, 7:00 pm to 8:30 pm.

Agenda: To discuss NCI Cancer Centers policies.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Susquehana Severn Room, Bethesda, MD 20892.

Contact Person: Brian Kimes, Executive Secretary, Office of Centers, Training, and Resources, National Cancer Institute, National Institutes of Health, Executive Plaza North—Suite 502, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–8537.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Open: February 9, 1999, 12:10 pm to 1:30 pm.

Agenda: To discuss the current and future initiatives of the NCI Bypass Budget.

Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: Ms. Cherie Nichols, Executive Secretary, Office of Science Policy, National Cancer Institute, National Institutes of Health, Building 31, Room 11A03, 3100 Center Drive, Bethesda, MD 20892, (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Open: February 9, 1999, 9:00 am to 4:00 pm.

Agenda: Introductions and Welcome to New Members; Reports from NCI Director, President's Cancer Panel, American Association for Cancer Research, A110 and FOIA; Annual Delegation of Authority; Update on Geographic Patterns of Cancer Mortality in the U.S.; Legislative Update, and Cancer Surveillance Series Surveillance Implementation Group Report.

Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Closed: February 9, 1999, 4:15 pm to Adjournment.

Agenda: To review and discuss grant applications.

Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Open: February 10, 1999, 9:00 am to 12:05 pm.

Agenda: Annual Report on Gender and Minority Accrual to Clinical Trials; Update on Programs for Underserved Populations; Office of Cancer Complimentary and Alternative Medicine; Subcommittee Reports, New Business; and Future Agenda Items.

Place: Building 31, C Wing, 6 Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, Executive Secretary, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, Suite 600, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–5147.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 22, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–1965 Filed 1–27–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 22–23, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holidasy Inn Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Alan L. Willard, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: Februrary 26, 1999.

Time: 9 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 15th St. & Pennsylvania Ave., NW., Washington, DC 20005.

Contact Person: Alan Willard, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 21, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–1921 Filed 1–27–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 17, 1999.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: 7550 Wisconsin Avenue, room 9C10, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Ninds, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 21, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–1922 Filed 1–27–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel ICIDR.

Date: March 3–5, 1999.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, N.W., Washington, DC 20007.

Contact Person: Gary S. Madonna, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C21, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–3528.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 1999.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 99–1960 Filed 1–27–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision

set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel International Collaborations in Infectious Disease Research.

Date: Febraury 22–24, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenca: To review and evaluate grant applications.

Place: Hyatt Arlington, 1325 Wilson Blvd., Arlington, VA 22209.

Contact Person: M. Sayeed Quraishi, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C22, 6003 Executive Bouleard MSC 7610, Bethesda, MD 20892–7610, Bethesda, MD 20892–7610, 301–496–7465.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1961 Filed 1–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK–1 GRB–D (M2).

Date: January 26, 1999.

Time: 10:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ann A. Hagan, Chief, Review Branch, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS–37, Bldg., 45, Bethesda, MD 20892, (301) 594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 22, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1966 Filed 1–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 27, 1999.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Cellular Biology and Physiology Subcommittee 1.

Date: February 1–2, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: James Deatherage, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group, Chemical Pathology Study Section.

Date: February 3–5, 1999.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 2055 Harbor Boulevard, Ventura, CA 93001.

Contact Person: Syed Quadri, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Initial Review Group, General Medicine B Study Section.

Date: February 4–5, 1999.

Time: 8:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Shirley Hilden, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Molecular Cytology Study Section.

Date: February 4–5, 1999.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ramesh K. Nayak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 21, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1923 Filed 1–27–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF INTERIOR

Geological Survey

Notice of proposed Cooperative Research and Development Agreement (CRADA) Negotiations

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a CRADA with the American Petroleum Institute (API) to develop a computer model to quantify impacts on ground water from surface or near-surface spills of gasoline containing methyl tert-butyl ether. Information on the proposed CRADA is available to the public upon request at the following location: U.S. Geological Survey, 810 Bear Tavern Rd., Suite 206, West Trenton, New Jersey 08628.

INQUIRIES: For further information, contact Matthew A. Lahvis, U.S. Geological Survey, Waster Resources Division at the address given above; telephone (609) 771–3978, email: mlahvis@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Robert M. Hirsch,

Chief Hydrologist.

[FR Doc. 99–2031 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Pictometry International, LLC. (Pictometry) for the purpose of developing a product that combines oblique 'Pictometric' images and USGS Digital Orthophoto Quadrangle (DOQ) images into a single Pictometric mosaic to create a "virtual, computer-based Electronic Field Study." The combined imagery product will enable a wide range of customers, such as students, corporations, and government agencies, to answer questions about a specific geographic area that would not have been possible previously without physically visiting the site. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet "ebrunson@usgs.gov".

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: January 13, 1999.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 99–2030 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Describing the Areas of Interest and Establishing the Closing Date for Receipt of Applications Under the National Earthquake Hazards Reduction Program (NEHRP) for Fiscal Year (FY) 2000

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Applications are invited for research projects under the NEHRP.

The purpose of this Program is to support the USGS Earthquake Hazards Program by providing products for earthquake loss reduction to the public and private sectors and by carrying out research on earthquake occurrence and effects.

Applications may be submitted by educational institutions, private firms, private foundations, individuals, and agencies of state and local governments.

ADDRESSES: The program announcement is expected to be available on or about February 8, 1999. You may obtain a copy of Announcement No. 00HQPA0001 from the USGS Contracts and Grants Information Site at http://www.usgs.gov/contracts/nehrp/ or by writing Brian Heath, U.S. Geological Survey, Office of Acquisition and Federal Assistance—Mail Stop 205A, 12201 Sunrise Valley Drive, Reston, Virginia 20192, or by fax (703–648–7901).

DATES: The closing date for receipt of applications will be on or about June 1, 1999. The actual closing date will be specified in Announcement No. 00HQPA0001.

FOR FURTHER INFORMATION CONTACT: John Unger, Earthquake Hazards Reduction Program—U.S. Geological Survey, Mail Stop 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone: (703) 648–6722.

SUPPLEMENTARY INFORMATION: Authority for this program is contained in the Earthquake Hazards Reduction Act of 1977, Public Law 95–124 (42 U.S.C. 7701, et. seq.). The Office of Management and Budget Catalog of Federal Domestic Assistance number is 15.807.

Dated: January 20, 1999.

P. Patrick Leahy,

Chief, Geologic Division.

[FR Doc. 99–1996 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Third Amendment to the Tribal-State Compact for Class III Gaming between The Confederated Tribes of the Chehalis Reservation and the State of Washington, which was executed on November 23, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1926 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Third Amendment to the Tribal-State Compact for Class III Gaming between the Jamestown S'Klallam Tribe and the State of Washington, which was executed on November 25, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1935 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Second Amendment to the Tribal-State Compact for Class III Gaming between the Muckleshoot Indian Tribe and the State of Washington, which was executed on November 25, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1929 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Third Amendment to the Tribal-State Compact for Class III Gaming between the Nooksack Indian Tribe and the State of Washington, which was executed on December 2, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1927 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Class III Gaming between the Port Gamble S'Klallam Tribe and the State of Washington, which was executed on November 30, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1933 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Class III Gaming between the Puyallup Tribe of Indians and the State of Washington, which was executed on November 25, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1928 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Class III Gaming between the Squaxin Island Tribe and the State of Washington, which was executed on November 25, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 8, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1932 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the First Amendment to the Tribal-State Compact for Class III Gaming between the Suquamish Tribe and the State of Washington, which was executed on November 30, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1930 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Third Amendment to the Tribal-State Compact for Class III Gaming between the Swinomish Indian Tribal Community and the State of Washington, which was executed on November 25, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1925 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Fourth Amendment to the Tribal-State Compact for Class III Gaming between the Tulalip Tribes of Washington and the State of Washington, which was executed on November 25, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1928 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Third Amendment to the Tribal-State Compact for Class III Gaming between the Upper Skagit Tribe and the State of Washington, which was executed on November 25, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1931 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal-State Compact for Class III Gaming between the Yakama Indian Nation and the State of Washington, which was executed on November 30, 1998.

DATES: This action is effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–1934 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–1220–00]

Closure of Public Lands to Camping and Off-Road Vehicle Use; Modification of Maximum Camping Stay Limit; and Exemption From Visitor Use Fees for Native Americans; Phoenix Field Office, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure, modification of maximum camping stay limit, and fee exemption for Native Americans.

SUMMARY: This notice is to inform the public that the Bureau of Land Management (BLM) intends to close certain public lands in the Painted Rock Mountains in Maricopa County to camping and off-road vehicle use except designated/signed open roads. The closure will be year-round and will remain in effect until rescinded or modified by the Phoenix Field Office Manager. The public lands affected by this closure are specifically identified as follows:

All BLM administered lands in,

T. 4 S., R. 7 W.,
Sections 30, 31, 32.
T. 4 S., R. 8 W.,
Sections 13, 14, 24, 25,
T. 5 S., R. 7 W.,
Sections 5, 6, 7, 8, 17, 20.
T. 5 S., R. 8 W.,
Sections 1, 2, 3, 10, 11, 12.

The designated area will be posted with signs. This closure will go into effect upon completion of signing, approximately April 15, 1999.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure: Employees of the BLM, Arizona Game and Fish Department, and local and federal law enforcement and fire protection personnel. Access by additional parties may be allowed, but must be approved in advance in writing by the Phoenix Field Office Manager.

This closure is in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 USC 1701), and 43 CFR, Subpart 8364.1. Any person who fails to comply with the provisions of this closure may be subject to penalties outlined in 43 CFR Subpart 8360.0–7. In accordance with 43 CFR 8364.1 and Subpart 8365, a maximum camping stay of seven (7) months per party is established at designated sites within the limits of Petroglyph Campground, T. 5 S., R. 8 W, section 1, lot 4 and W½NW¼; and section 2, lots 1, 2, 5, 6, and NE¼. Persons may continuously occupy any one site during the period October 1 through April 30. During the period May 1 through September 30, the existing 14-day camping limit will remain in effect at Petroglyph Campground. On all other public lands administered by Phoenix Field Office, the existing 14-day camping limit, as published in the **Federal Register** Vol. 54, No. 215, November 8, 1989, will remain in effect year-round.

This closure and camping stay limit is being established to assist the BLM in reducing the incidence of unauthorized long-term occupancy on public lands, protect vegetation and soil resources, eliminate the potential for health hazards associated with indiscriminate dumping of litter and waste, and to address Native American concerns regarding proper etiquette by visitors to a petroglyph site.

Pursuant to the American Indian Religious Freedom Act of 1978, and Executive Orders 13007 and 13084, visitor use fees at Painted Rock Petroglyph Site and Campground will be waived upon request for Native Americans visiting the site for the purpose of engaging in activities of traditional cultural importance. Application for such waiver of fees may be obtained by contacting the Phoenix Field Office Manager. Applicants must demonstrate a tribal affiliation and identify the period of time during which the waiver will be used.

FOR FURTHER INFORMATION CONTACT: Michael A. Taylor, Field Manager, Phoenix Field Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027; (602) 580–5500.

SUPPLEMENTARY INFORMATION: Petroglyph Campground has sanitation and other facilities adequate to support additional visitor use demands caused by the closure. Painted Rock Petroglyph Site is listed on the National Register of Historic Places and is recognized as a place of traditional cultural importance by the Tohono O'odham Nation and other Native American tribes. BLM cannot restrict access by other visitors to Painted Rock Petroglyph Site and Campground during such times that activities of traditional cultural importance may be undertaken.

Dated: January 22, 1999.

Michael A. Taylor,

Field Manager.

[FR Doc. 99–1990 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–930–07–1320–00]

Notice of Public Hearing and Call for Public Comment on the Environmental Impact Statement, Proposed Sale and Fair Market Value and Maximum Economic Recovery Consideration for Coal Lease Application UTU–76195

AGENCY: Bureau of Land Management, Utah.

SUMMARY: The Bureau of Land Management (BLM) announces a public hearing on the Environmental Impact

Statement, the proposed sale and requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale. The lands included in the delineated Federal coal lease tract ("The Pines") are located in Sevier County, Utah, approximately 5 miles northwest of Emergy, Utah on public land located in the Manti-LaSal National Forest and are described as follows:

T. 20 S., R. 5 E., SLM
Section 35, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼SE¼;
Section 36, W½SW¼, SE¼SW¼.
T. 21 S., R. 5E., SLM
Section 1, lots 3–4, S½SW¼, SW¼SE¼;
Section 2, lots 1–4, S½S½;
Section 3, lots 1–2, S½SE¼;
Section 10, E½;
Sections 11–14, all;
Section 15, E½;
Section 22, E½;
Sections 23–26, all;
Section 25, N½, N½S½;
Section 26, N½, NE¼SW¼, E½NW¼SW¼, SE¼.
T. 21 S., R. 6E., SLM
Section 19, lots 3–4 E½SW¼;
Section 30, lots 1–3, E½NW¼, NE¼SW¼.
Containing 7,311.43 acres more or less.

The Tract has one potentially minable coal seam, the Upper Hiawatha. The minable portions of the seam in this area are from 6 to 14 feet in thickness and average 10.9 feet. This tract contains an estimated 65–70 million tons of recoverable high-volatile C bituminous coal. The coal quality in the seam on an as received basis is as follows: 11,539 Btu/lb., 8.37 percent moisture, 8.78 percent ash, 36.87 percent volatile matter, 45.98 percent fixed carbon, and 0.5 percent sulfur. The public is invited to the hearing to make public or written comments on the environmental implications of leasing the proposed tract, and also to submit comments on the fair market value (FMV) and the maximum economic recovery (MER) of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 4322 and 4325, a public hearing shall be held on the proposed sale to allow public comment on and discussion of the potential effects of mining and proposed lease. Not less than 30 days prior to the publication of the notice of sale, the Secretary shall solicit public comments on fair market value appraisal and meximum economic recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office during regular business hours (8:00 a.m. to 4:00 p.m.) Monday through Friday. Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.
2. The mining method or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production.
3. The quantity of coal.
4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value.
5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit).
6. The configuration of any larger mining unit of which the tract may be a part.
7. Restrictions to mining which may affect coal recovery.
8. The price that the mined coal would bring when sold.
9. Costs, including mining and reclamation, of producing the coal and the time of production.
10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given.
11. Depreciation and other tax accounting factors.
12. The value of any surface estate where held privately.
13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area.
14. Any comparable sales data of similar coal lands.

Coal quantities and the FMV of the coal developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

DATES: The public hearing will be held in the Salina City Hall located at 90 West Main Street in Salina, Utah, at 7:00 p.m. on March 3, 1999. Entrance to the building and parking is at the rear entrance. Written comments on fair market value and maximum economic recovery must be received at the Bureau of Land Management, Utah State Office, by March 17, 1999.

FOR FURTHER INFORMATION: Contact Max Nielson, 801–539–4038, Bureau of Land Management, Utah State Office, Division of Natural Resources, P.O. Box 45155, Salt Lake City, Utah, 84145–0155. Copies of an Environmental Impact Statement that considers leasing of this tract may be obtained by contacting Janette Kaiser, Forest Supervisor at the Manti-LaSal National Forest, 599 West Price River Dr. in Price, Utah (801–637–2817).

Dated: January 22, 1999.

Douglas M. Koza,

DSD, Natural Resources, Utah.

[FR Doc. 99–1989 Filed 1–27–99; 8:45 am]
BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–09–1210–04]

Notice of Availability of Draft Environmental Impact Statement on Oil and Gas Development Within the Bisti/De-Na-Zin Wilderness Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft Environmental Impact Statement.

SUMMARY: The Bureau of Land Management (BLM), Farmington District Office has written a Draft Environmental Impact Statement (DEIS) on proposed oil and gas development of two existing leases within the Bisti/De-Na-Zin Wilderness Area. The DEIS analyzes three alternatives of a proposal by Speerex, Ltd. To drill thirteen wells on leases they have held since 1991.

Copies of the DEIS can be requested by writing the Bureau of Land Management, Farmington Field Office, 1235 La Plata Highway, Suite A, Farmington, NM 87401, or by calling the Farmington Field Office at (505) 599–8900. Individuals, organizations, or companies who had previously responsed to the Notice of Intent have been sent the DEIS and need not make a requisition.

DATES: Written comments on the DEIS will be accepted through the close of business April 30, 1999. Oral and/or written comments may also be presented at three public hearings to be held:

Albuquerque, NM, February 23, 1999, 7:00 p.m., Mountain View Holiday Inn, 2020 Menaul Blvd, NE

Santa Fe, NM, February 24, 1999, 7:00 p.m., Santa Fe Community College, 6401 Richards Ave.

Farmington, NM, February 25, 1999, 7:00 p.m., Jemez Room 1, San Juan College, 4601 College Blvd., Room 7103 (Computer Science Lecture Hall)

A Navajo translator will be available at the Farmington hearing.

ADDRESSES: Comments should be sent to: Lee Otteni, Field Manager; Bureau of Land Management, Farmington Field Office; 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Christopher V. Barns at the address above, or call 505–599–6338.

SUPPLEMENTARY INFORMATION: The existing leases are found in the upper portions of Hunter Wash drainage in the Bisti/De-Na-Zin Wilderness Area.

The Proposed Action would approve Applications for Permit to Drill (APD's) 13 oil and gas wells (5 Fruitland Coal wells and 8 Gallup wells) on two leases and grant 3 off-lease Rights-of-Way (ROW's) on Federal surface totalling 8,137 feet.

Alternative A would approve the APD's but deny the ROW's.

The No Action Alternative would deny both the APD's and ROW's.

There is no Preferred Alternative in the DEIS. The anticipated impacts to the environment by each alternative are analyzed both in terms of severity and duration. Various mitigative measures are outlined. Several alternatives that were considered but dropped from further consideration also are briefly discussed.

A Notice of Intent was filed in the **Federal Register** on January 27, 1998. Scoping meetings were held in Farmington, NM and Santa Fe, NM on February 24 and 25, 1998, respectively. Any comments presented throughout the process have been considered.

Dated: January 19, 1999.

Michelle Chávez,

State Director.

[FR Doc. 99–1988 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–010–1610–00]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management (BLM), Worland Field Office, Wyoming, announces: (1) The availability of the Record of Decision (ROD) for the Environmental Impact Statement (EIS) for the Grass Creek Resource Management Plan (RMP), (2) the approved Grass Creek RMP, and (3) notice of off-road vehicle designations for the Grass Creek Planning Area.

SUMMARY: The ROD documents the selection and approval of the Grass Creek RMP. The Grass Creek RMP provides multiple use management direction for approximately 968,000 acres of public land surface and 1,171,000 acres of Federal mineral estate administered by the BLM in portions of Big Horn, Hot Springs, Park, and Washakie counties in north central Wyoming.

The draft EIS for the Grass Creek RMP was made available for public review and comment in January 1995. Comments received on the draft EIS were considered in preparing the proposed Grass Creek RMP and final EIS which was made available for public review and protest in August 1996.

Planning and management decisions are presented in the Grass Creek RMP for all BLM-administered public land and resource values and uses within the planning area including air quality; cultural, paleontological, and natural history resources; fire; forestlands; hazardous materials and wastes; lands and realty; livestock grazing; minerals; off-road vehicle use; recreation; vegetation; visual resources; watershed; wild horses; wildlife and fish habitat; and areas of critical environmental concern. Since wilderness values are addressed in other documents, the Grass Creek RMP does not address them.

The Grass Creek RMP is a comprehensive land use plan providing for multiple use. It is a refinement of the preferred alternative presented in the draft EIS and the proposed RMP presented in the final EIS. While the intent and general content of the Grass Creek RMP are not different from the proposed RMP, comments from the public, review by BLM staff, and new information obtained since the distribution of the final EIS have prompted some wording clarifications in the RMP.

This **Federal Register** Notice serves as the notice for the Off-Road Vehicle (ORV) designations for the Grass Creek Planning Area as identified in the Grass Creek RMP. The ORV designations are described under **SUPPLEMENTARY INFORMATION** in this notice.

ADDRESSES: Information on the Grass Creek RMP may be obtained from the Worland Field Office, P.O. Box 119 (101 South 23rd Street), Worland, Wyoming 82401–0119, (307) 347–5100.

FOR FURTHER INFORMATION CONTACT: Bob Ross, Planning Coordinator, at the Worland Field Office, P.O. Box 119 (101 South 23rd Street), Worland, Wyoming 82401–0119, (307) 347–5100.

SUPPLEMENTARY INFORMATION: Thirteen protests were submitted to the Director of the Bureau of Land Management during the 30-day protest period for the Proposed Grass Creek RMP. Each protest letter was responded to and resolved by the Director. Resolution of the protests did not result in changes to any of the proposed land-use planning decisions.

The Grass Creek RMP includes the designation of the Upper Owl Creek Area of Critical Environmental Concern (ACEC) to protect fragile soils, alpine tundra, important wildlife habitat, and scenic values on approximately 16,300 acres of BLM-administered public lands. The management actions for the ACEC include limiting or prohibiting surface-disturbing activities and closing the area to, and pursuing withdrawal from, the staking and development of mining claims.

Three areas are designated special recreation management areas (SRMAs). These are the Absaroka Mountain Foothills (comprising about 68,000 acres of public land), Badlands (comprising about 208,600 acres of public land), and Bighorn River (comprising about 1,200 acres of public land). The remainder of the BLM-administered public lands in the planning area are designated an Extensive Recreation Management Area (ERMA).

In the course of conducting the planning effort and preparing the Grass Creek RMP, public lands along all waterways in the planning area were reviewed to determine their eligibility for inclusion in the National Wild and Scenic River System. No public lands were found to meet the eligibility criteria.

Management of wilderness values is not addressed in the Grass Creek RMP. The BLM's recommendations to the Secretary of the Interior on four Wilderness Study Areas (WSAs) in the Grass Creek Planning Area have been made under separate documentation. These areas were addressed in separate

wilderness EIS and wilderness report documents which are also on file in the Worland Field Office. The decisions regarding wilderness area designations are made by Congress. When Congress makes the wilderness decisions for the WSAs in the Grass Creek Planning Area, those decisions will be incorporated into the Grass Creek RMP.

The Grass Creek RMP includes the following Off-Road Vehicle (ORV) designations: areas open to off-road vehicle use, areas closed to off-road vehicle use, and areas with off-road vehicle use limited to designated roads and trails, limited seasonally, and limited to existing roads and trails. Maps of the ORV designations are on file in the Worland Field Office.

Specific designations are as follows: An open designation on approximately 900 acres west of Worland.

Closed designations on approximately 80 acres at the Duck Swamp-Bridger Trail Environmental Education Area and on approximately 900 acres at the Worland rifle range. In addition, public lands near the Sheep Mountain, Red Butte, Bobcat Draw Badlands, and Owl Creek wilderness study areas (about 52,460 acres) will be managed as closed to ORV use until activity planning specifically addresses ORV use in these areas.

Limited designations: Off-road vehicle use is limited to designated roads and trails and limited seasonally on about 68,000 acres of public land in the Absaroka Mountain foothills. Off-road vehicle use is limited to designated roads and trails on about 9,000 acres of public land in the Red Canyon Creek area south of Thermopolis. Off-road vehicle use in the Meeteetse Draw Rock Art area is limited to designated roads and trails on about 6,800 acres of public land. In the remainder of the planning area, ORV use on BLM-administered public land is limited to existing roads and trails.

Parties who are interested in and who wish to be involved in future activity planning and implementation of management actions that may involve or affect the resource values addressed in the Grass Creek RMP are requested to identify themselves. Please contact the Worland Field Office at the above address and request to be placed on a future contact list for activity planning and implementation activities concerning the Grass Creek RMP.

Dated: January 12, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–1967 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1020–00]

Availability of Draft Statewide Resource Management Plan Amendment/Draft Environmental Impact Statement, of Land Use Plans in New Mexico for Implementation of New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management

AGENCY: Bureau of Land Management, New Mexico State Office.

ACTION: Notice of Availability, and Public Hearing Schedule.

SUMMARY: The Bureau of Land Management announces the availability for public review of the Draft Statewide Resource Management Plan Amendment/Draft Environmental Impact Statement, of Land Use Plans in New Mexico for Implementation of New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management. The Draft Statewide Resource Management Plan Amendment/Draft Environmental Impact Statement addresses the effects of adopting statewide standards for public land health and guidelines for livestock grazing on BLM administered lands in New Mexico. When adopted the standards and guidelines would be incorporated into eight BLM land use plans that cover approximately 13.5 million acres of BLM-administered land. This action is proposed in accordance with revised regulations for livestock grazing on BLM-administered lands (43 CFR 4100). Notice also is given that public hearings will be held to seek public comment on the adequacy of the Draft Statewide Resource Management Plan Amendment/Draft Environmental Impact Statement, including alternatives and the impacts of those alternatives.

DATES: Twelve public hearings have been scheduled. All hearings will have an afternoon and an evening session. The afternoon hearing will begin at 2:00 p.m. and continue until those signed up to speak have done so or until 5:00 p.m., at which time there will be a dinner recess. After a break for dinner the hearing will reconvene at 7:00 p.m. for the evening hearing and run until those signed up to speak have had an opportunity to do so. Both oral and written testimony will be accepted at the hearings. A 5-minute time limit will be placed on oral comments, which should be accompanied by a written synopsis of the presentation. Written and oral comments will be equally evaluated in full and considered in the preparation of the Proposed Resource Management Plan Amendment/Final Environmental Impact Statement.

Hearings are scheduled for the following locations and dates:

March 08, 1999—Crownpoint Institute of Technology, Crownpoint, NM.

March 09, 1999—Civic Center located at 200 West Arrington, Farmington, NM.

March 10, 1999—Cuba High School, 50 County Road 13, Cuba, NM.

March 11, 1999—Lucero Center in the Espanola Plaza, Espanola, NM.

March 15, 1999—Holiday Inn at Paseo Del Pueblo Sur, Taos, NM.

March 16, 1999—BLM Office, 2nd Floor Conference Room, 1474 Rodeo Rd., Santa Fe, NM.

March 17, 1999—BLM Office, Conference Room, 1800 Marquess St., Las Cruces, NM.

March 18, 1999—110 South Diamond, Deming, NM.

March 22, 1999—BLM Office, Conference Room, 435 Montano NE, Albuquerque, NM.

March 23, 1999—Otero County Courthouse, Commission Chambers, Room 253, 1000 New York Ave., Alamogordo, NM.

March 24, 1999—Carlsbad Public Library Annex at 101 St. Halagueno, Carlsbad, NM.

March 25, 1999—NM Military Institute, Toles Learning Center, Maybee Room, 101 W College, Roswell, NM.

Oral and written testimony will be accepted at the hearings.

ADDRESSES: Written comments on the document must be postmarked on or before May 17, 1999 (closing date for public comments) and should be addressed to: J.W. Whitney, BLM Project Team Leader, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–7115, telephone: 505–438–7438. Copies of the Draft Statewide Resource Management Plan Amendment/Draft Environmental Impact Statement are available at BLM field offices in Farmingtom, Taos, Albuquerque, Socorro, Las Cruces, Roswell and Carlsbad. The BLM and State have also requested County Managers to make individual copies available for review at each County Manager's Office throughout the State of New Mexico.

FOR FURTHER INFORMATION CONTACT: J.W. Whitney, BLM Project Leader, BLM, New Mexico State Office, P.O. Box 27115, Santa Fe, NM 87502–7115.

SUPPLEMENTARY INFORMATION: Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours

(8:00 a.m. to 5:00 p.m.) Monday through Friday, except holidays, and may be published as part of the Proposed Statewide Resource Management Plan Amendment/Final Environmental Impact Statement. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or business, will be made available for public inspection in their entirety. Four alternatives are considered in detail in the Draft Statewide Resource Management Plan Amendment/Draft Environmental Impact Statement. The no action alternative (continuation of current management) provides a baseline for comparison with other alternatives. The proposed action (RAC alternative) is to incorporate statewide standards and guidelines into affected land use plans. The proposed action is also the BLM preferred alternative. The county alternative is to adopt and implement county developed standards and guidelines into affected land use plans. The fallback alternative is to adopt and implement standards and guidelines defined in BLM's grazing regulations into affected land use plans.

Dated: January 21, 1999.

Richard A. Whitley,

Associate State Director.

[FR Doc. 99–2013 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Availability of Environmental Documents Prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and § 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Conoco, Inc., Exploration Activity, SEA No. N–6213.	Atwater Valley Area, Blocks 155 and 156, Leases OCS–G 18504 and 18505, 82 miles south-southeast of Plaquemines Parish, Louisiana.	10/20/98
Coastal Oil & Gas Corporation, Development Activity, SEA No. N–6250A.	High Island Area, East Addition, South Extension, Blocks A–368 and A–373, Leases OCS–G 2433 and 18970, 119 miles south of the Texas coast.	12/17/98
BP Exploration Inc., Exploration Activity, SEA No. N–6263.	Green Canyon Area, Blocks 644 and 645, Leases OCS–G 11080 and 11081, 119 miles south of Terrebonne Parish, Louisiana.	10/15/98
Coastal Oil & Gas Corporation, Exploration Activity, SEA No. S–4793U.	High Island Area, East Addition, South Extension, Block A–368, Lease OCS–G 2433, 119 miles south of the Texas coast.	12/03/98
Vastar Resources, Inc., Structure Removal Operations, SEA No. ES/SR 98–013A.	South Marsh Island Area, Block 24, Lease OCS–G 14437, 46 miles south of Vermilion Parish, Louisiana.	12/27/98
Forest Oil Corporation, Structure Removal Operations, SEA No. ES/SR 98–078A.	Eugene Island Area, Block 307, Lease OCS–G 1980, 67 miles southwest of Terrebonne Parish, Louisiana.	11/13/98
IP Petroleum Company, Inc., Structure Removal Operations, SEA No. ES/SR 98–082.	High Island Area, Block 68, Lease OCS–G 15771, 15 miles from the Texas coastline.	12/11/98
EEX Corporation, Structure Removal Operations, SEA No. ES/SR 99–01.	West Cameron Area, Block 406, Lease OCS–G 11789, 70 miles from the Texas Coast.	12/11/98
Chevron U.S.A., Structure Removal Operations, SEA No. ES/SR 99–02.	West Cameron Area, Block 48, Lease OCS–G 1351, 8 miles south of Cameron, Louisiana.	11/03/98
Seneca Resources Corporation, Structure Removal Operations, SEA No. ES/SR 99–03.	West Delta Area, Block 17, Lease OCS–G 5668, 10 miles south of Lafourche Parish, Louisiana.	12/03/98
Murphy E&P Company, Structure Removal Operations, SEA No. ES/SR 99–04.	South Pelto Area, Block 20, Lease OCS 074, 12 miles from the coast of Louisiana.	12/17/98

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION CONTACT: Public Information, Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental

documents required under the NEPA Regulations.

Dated: January 21, 1999.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 99–1975 Filed 1–27–99; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: U.S. International Trade Commission.

ACTION: Notice of proposed collection; comment request.

SUMMARY: The proposed information collection is a 3-year extension, pursuant to the Paperwork Reduction Act of 1995 (P.L. 104–13), of the current "generic clearance" (approved by the Office of Management and Budget under control No. 3117–0016) under which the Commission can issue information collections (specifically, producer, importer, purchaser, and foreign producer questionnaires and certain institution notices) for the following types of import injury investigations: countervailing duty, antidumping, escape clause, market disruption, NAFTA safeguard, and "interference with programs of the USDA." Comments concerning the proposed information collections are requested in accordance with 5 CFR 1320.8(d); such comments are described in greater detail in the section of this notice entitled supplementary information.

DATES: To be assured of consideration, written comments must be received not later than March 26, 1999.

ADDRESSES: Signed comments should be submitted to Donna Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collections (and related instructions) and draft Paperwork Reduction Act Submission and Supporting Statement to be submitted to the Office of Management and Budget may be obtained from either of the following persons: Debra Baker, Office of Investigations, U.S. International Trade Commission, telephone 202–205–3180, or Lynn Featherstone, Director, Office of Investigations, U.S. International Trade Commission, telephone 202–205–3160. The draft Supporting Statement is also on the Commission's website (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automated, electronic, mechanical, or other technological forms of information technology, e.g., permitting electronic submission of responses).

Summary of the Proposed Information Collections

(1) Need for the Proposed Information Collections

The Commission conducts countervailing duty and antidumping investigations under provisions of Title VII of the Tariff Act of 1930 to determine whether domestic industries are being materially injured or threatened with material injury by reason of imports of products which are subsidized (countervailing duty cases) or sold at less than fair value (antidumping cases). Five-year reviews of antidumping and countervailing duty orders and suspended investigations are conducted to determine whether revocation of the existing orders would be likely to lead to continuation or recurrence of material injury to the domestic industry. The Commission conducts escape-clause investigations to determine whether increased imports are a substantial cause of serious injury or threat of serious injury to a domestic industry. NAFTA safeguard investigations are conducted under the authority of the North American Free Trade Agreement and examine whether increased imports from Canada or Mexico are a substantial cause of serious injury or threat of serious injury to a domestic industry. Market disruption investigations are conducted to determine whether imports of an article produced in a Communist country are causing material injury to a domestic industry. The Commission also conducts investigations to determine whether imports are interfering with programs of the Department of Agriculture for agricultural commodities or products. Specific investigations are almost always instituted in response to petitions received from U.S. manufacturers of the product(s) in question. Data received in response to the questionnaires (specifically, producer, importer, purchaser, and foreign producer questionnaires) issued under the terms of the proposed generic clearance are consolidated and form much of the statistical base for the Commission's determinations in these statutorily-mandated investigations.

Included in the proposed generic clearance are the institution notices for the five-year reviews of antidumping and countervailing duty orders and suspended investigations. Responses to the institution notices will be evaluated by the Commission and form much of the record for its determination to conduct either an expedited or full review.

(2) Information Collection Plan

Using the sample "generic clearance" questionnaires as a guide, questionnaires for specific investigations are prepared and are sent to U.S. producers manufacturing the product(s) in question and to all significant importers of the products, except in cases involving an unusually large number of firms. In these instances, questionnaires are sent to a representative sample of firms. Purchaser questionnaires are also sent to all significant purchasers of the product(s). Finally, all foreign manufacturers of the product(s) in question that are represented by counsel are sent questionnaires, and, in addition, the Commission attempts to contact any other foreign manufacturers, especially if they export the product(s) in question to the United States. Firms receiving questionnaires include businesses, farms, and/or other for-profit institutions; responses are mandatory.

The institution notices for the five-year reviews are published in the **Federal Register** and solicit comment from interested parties (i.e., U.S. producers within the industry in question as well as labor unions or representative groups of workers, U.S. importers and foreign exporters, and involved foreign country governments).

(3) Description of the Information to be Collected

Producer questionnaires generally consist of the following four parts: (part I) general questions relating to the organization and activities of the firm; (part II) data on capacity, production,

inventories, employment, and the quantity and value of the firm's shipments and purchases from various sources; (part III) financial data, including income-and-loss data on the production in question, data on asset valuation, research and development expenses, and capital expenditures; and (part IV) pricing and market factors. (Questionnaires may, on occasion, also contain part V, an abbreviated version of the above-listed parts, used for gathering data on additional product categories.)

Importer questionnaires generally consist of three parts: (part I) general questions relating to the organization and activities of the firm; (part II) data on the firm's imports and the shipment and inventories of its imports; and (part III) pricing and market factors similar to that requested in the producer questionnaire.

Purchaser questionnaires generally consist of five parts: (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the purchases of the product by the firm; (part III) market characteristics and purchasing practices; (part IV) comparisons between imported and U.S.-produced product; and (part V) actual purchase prices for specific types of domestic and subject imported products and the names of the firm's vendors.

Foreign producer questionnaires generally consist of (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the firm's manufacturing operations; and set reviews include 11 specific requests for information that firms are to provide if their response is to be considered by the Commission.

The notices of institution for the five-year reviews include 11 specific requests for information that firms are to provide if their response is to be considered by the Commission.

The Commission solicits input from petitioners and other potential recipients when preparing questionnaires for individual investigations. Further, the Commission has formalized the process where interested parties comment on data collection and draft questionnaires in final phase countervailing duty and antidumping investigations (including the 5-year reviews). Interested parties are provided approximately 2 weeks to provide comments to the Commission on the draft questionnaires. All efforts are made to minimize burden to the firms that will be receiving the questionnaires.

(4) Estimated Burden of the Proposed Information Collection

The Commission estimates that information collections issued under the requested generic clearance will impose an average annual burden of 105,000 response hours on 2,600 respondents (i.e., recipients that provide a response to the Commission's questionnaires or the notices of institution of five-year reviews). Table 1 lists the projected annual burden for each type of information collection for the period July 1999 through June 2002:

TABLE 1.—PROJECTED ANNUAL BURDEN DATA, BY TYPE OF INFORMATION COLLECTION, JULY 1999–JUNE 2002

Item	Producer questionnaires [1]	Importer questionnaires [2]	Purchaser questionnaires [3]	Foreign producer questionnaires [4]	Institution notices for 5-year reviews [5]	Total
	Estimated burden hours imposed annually for July 1999–June 2002					
Number of respondents	890	871	575	208	86	2,630
Frequency of response	1	1	1	1	1	1
Total annual responses	890	871	575	208	86	2,630
Hours per response	52.6	44.1	23.2	28.0	7.4	39.9
Total hours	46,825	38,426	13,335	5,832	636	105,054

[1] *Producer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of producer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 91 percent of the total producer questionnaire burden (48.1 hours per response), outside review burden accounts for 6 percent of the total burden, and third-party disclosure burden accounts for the remaining 3 percent. (The averages per questionnaire of the outside review and third-party disclosure burdens are not listed here since they are incurred only for the questionnaires of interested parties; such averages for all questionnaires are not meaningful.)

[2] *Importer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of importer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 98 percent of the total importer questionnaire burden (43.3 hours per response), outside review burden and third-party disclosure burden each account for about 1 percent of the total burden. (The averages per questionnaire of the outside review and third-party disclosure burdens are not listed here since they are incurred only for the questionnaires of interested parties; such averages for all questionnaires are not meaningful.)

[3] *Purchaser questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of purchaser respondents per case) and hours per response (responding firm burden). See definitions below. Purchasers are not interested parties to investigations by statute and rarely engage outside counsel. Therefore, there is no measurable outside review burden nor third-party disclosure burden for purchasers.

[4] *Foreign producer questionnaires.*—Estimates based upon the following variables: number of respondents (anticipated caseload (×) number of foreign producer respondents per case) and hours per response (responding firm burden (+) outside review burden (+) third-party disclosure burden). See definitions below. Responding firm burden accounts for 34 percent of the total foreign producer questionnaire burden (9.6 hours per response), outside review burden accounts for another 34 percent, and third-party disclosure burden accounts for 32 percent of the total burden.

[5] *Institution notices for 5-year reviews.*—Estimates based upon the following variables: anticipated 5-year review caseload, number of respondents to each notice, and responding firm burden. The Commission based its estimate of the number of respondents upon the number of responses per review received to date. Responding firm burden is estimated based on a comparison of the amount of information contained in notices received to date to completed producer questionnaires.

Note.—Above estimates include questionnaires for specific investigations where the mailing list consists of fewer than 10 firms. In such instances the majority or all firms within the industry under investigation may be said to receive questionnaires. According to the Paperwork Reduction Act of 1995, "(a)ny collection of information addressed to all or a substantial majority of an industry is presumed to involve ten or more persons."

Definitions and Methodology

Anticipated caseload.—Derived from current Commission budget estimates.

Number of respondents per case.—Defined as the number of firms which return *completed* (see note 2 to table 3) questionnaires to the Commission. Current estimates of "number of respondents per case" for the producer,

importer, and purchaser questionnaires were derived, in part, from the number of respondents to Commission questionnaires that were issued in FY1996–98. Averaged to that is the estimated number of respondents for questionnaires to be issued to 9 or fewer firms. Data for these mailings were not collected during FY1996–98 and Commission staff estimates that 4 respondents per mailing return such questionnaires. Similarly, foreign producer questionnaires are typically sent to 9 or fewer firms and Commission staff again used an estimate of 4 respondents per mailing for foreign producer questionnaires.

Responding firm burden.—Defined as the time required by the firm which received the questionnaire to review instructions, search data sources, and complete and review its response. Commission questionnaires do not impose the burden of developing, acquiring, installing and utilizing technology and systems, nor require adjusting existing methodology or training personnel. Current estimates of "responding firm burden" for the producer, importer, and purchaser questionnaires were derived from the actual burden reported by firms that responded to Commission questionnaires issued in FY1996–98. Current estimates of "respondent firm burden" for the foreign producer questionnaires was estimated by Commission staff based upon its review of previously returned questionnaires.

Outside review burden.—Time devoted by outside legal and financial advisors to reviewing questionnaires completed by the responding firms who are their clients prior to submitting them to the Commission. Commission staff conducted a survey of fewer than 10 law firms which have appeared before the Commission to derive a "petitioner" review burden estimate per party questionnaire and a "respondent" review burden estimate. Staff also reviewed a number of past investigations (33) to determine the average number of "parties" (i.e., respondent interested parties who were represented by outside counsel) per investigation and calculated the total number of review burden hours that would be incurred annually. The "petitioner/producer" review burden was applied to the producer questionnaire burden figures and the "respondent" review burden was divided among the importer and foreign producer questionnaires.

Third party disclosure burden.—Time required for outside legal advisors to serve their clients' questionnaires on other interested parties to the investigation or review under an administrative protective order. Commission staff included in its survey of law firms a request for the average third party disclosure burden and using the same methodology described above for outside review burden applied the third party disclosure burden to the hours per response figures for the producer, importer, and foreign producer questionnaires.

The Commission further estimates that it costs responding firms $65.30 per burden hour to complete a specific questionnaire issued under the generic clearance. (This estimate is based upon actual costs reported by respondents to questionnaires issued under the current generic clearance.) More complete information concerning costs to respondents, including costs incurred for the purchase of services, and estimates of the annualized cost to the Commission are presented in the draft Supporting Statement available from the Commission. There is no known capital and start-up cost component imposed by the proposed information collections.

(5) Information Technology

The Commission's collection of data through its questionnaires does not currently involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Completed questionnaires are almost always returned to the Commission in paper-form. While the Commission has explored the use of alternative methods of submission, it has proved most expedient to receive paper copies for a number of reasons. (The draft Supporting Statement available from the Commission addresses this issue in greater detail.) However, while there are certain impediments to the easy *receipt* of data in electronic form, the Commission will, and has in the past, accept electronic submissions when large amounts of "repetitive" data are being requested. Further, the Commission will make the questionnaires available to firms in electronic format to aid respondents. Likewise, it is the Commission's experience that it is most expedient that the information provided in response to its notices of institution for the five-year reviews be submitted in document form directly to its Office of the Secretary.

Issued: January 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2045 Filed 1–27–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 13, 1999, a proposed consent decree in *United States* v. *Vermont American Corporation*, Civil Action No. 2:99–CV–9, was lodged with the United States District Court for the District of Vermont. This proposed consent decree resolves the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against Vermont American Corporation relating to certain response costs that have been or will be incurred at or from a Site known as the Parker Landfill Superfund Site ("Site") located in the Town of Lyndon, Vermont.

The consent decree requires the defendant to pay $350,000 to the United States, $150,000 to the parties constructing the cap at the Site, waive its claims against municipalities that disposed of municipal solid waste at the Site and withdraw its adverse comments to an earlier consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Vermont American Corporation*, D.J. Ref. 90–11–2–1120A.

The proposed consent decree may be examined at the Office of the United States Attorney, 11 Elmwood Ave., Burlington, Vt. 05401, at the Region I office of the Environmental Protection Agency, JFK Federal Building, Boston, MA., 02203–2211, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in

the amount of $7.00 payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–2033 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Asymmetrical Digital Subscriber Line Forum

Notice is hereby given that, on March 20, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Asymmetrical Digital Subscriber Line Forum ("ADSL") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accelerated Networks, Westlake Village, CA; Advanced Hardware Architectures, Pullman, WA; Advanced Micro Devices, Sunnyvale, CA; Aware, Bedford, MA; Atlas Communication Engines, Inc., Santa Barbara, CA; Bell Canada, Montreal, Quebec, CANADA; Bellcore, Morristown, NJ; Bosch Telecom, Backnang, Baden-Wuerttenberg, GERMANY; Broadband Technologies, Research Triangle Park, NC; Cable & Wireless, London, ENGLAND; CopperCom, Cupertino, CA; Diamond Multimedia, St. Ingbert, Saarland, GERMANY; Fluke Corporation, Everett, WA; General Signal Networks, Westford, MA; Globaloop, Kfar Sava, ISRAEL; FORE Systems, Warrendale, PA; Harris Corporation, Melbourne, FL; Intel, Santa Clara, CA; Interspeed, Lawrence, MA; Jetstream, San Jose, CA; MCI Telecommunications, Richardson, TX; New Information Technologies, Inc. (NITECH), Freehold, NJ; PMC-Sierra, Burnaby, British Columbia, CANADA; Philips Multimedia & Network Systems GmbH, Bautzen, GERMANY; Pulse, San Diego, CA; OKI America, Merrifield, VA; Robertson, Stephens & Co., San Francisco, CA; RouterWare, Newport Beach, CA; Shasta Networks, Menlo Park, CA; Siecor, Keller, TX; Sprint, Westwood, KS; Starnet, San Jose, CA; TTC, Germantown, MD; Tele Danmark, Aarhus, DENMARK; Tollgrade, Cheswick, PA; Tut Systems, Pleasant Hill, CA; Transwitch, Shelton, CT; and VTT Electronics, Oulu, FINLAND have been added as parties to this venture. SMC, Irvine, CA has changed its name to Escalate Networks, Irvine, CA. SouthWestern Bell, Austin, TX has changed its name to SBC Technology Resources, Austin, TX. Ericsson Austria AG, Vienna, AUSTRIA has changed its name to LM Ericsson, Vienna, AUSTRIA.

Amati, San Jose, CA has merged with Texas Instruments, Dallas, TX.

Also, Sourcecom, Santa Clarita, CA; and Interphase, Dallas, TX have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ADSL intends to file additional written notifications disclosing all changes in membership.

On May 15, 1995, ADSL filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 25, 1995 (60 FR 38058).

The last notification was filed with the Department on December 16, 1997. A notice was published in the **Federal Register** pursuant to section 69b) of the Act on April 8, 1998 (63 FR 17214).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2035 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc. ("CableLabs")

Notice is hereby given that, on May 5, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Monarch Cablesystems Ltd., Medicine Hat, Alberta, CANADA; and TV Cable Bogota, Bogota, COLUMBIA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Cable Television Laboratories, Inc. ("CableLabs") intends to file additional written notification disclosing all changes in membership.

On August 8, 1988, Cable Television Laboratories, Inc. ("CableLabs") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on January 30, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2040 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc. ("CableLabs")

Notice is hereby given that, on January 30, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Globocabo S.A., Sao Paolo, BRAZIL; and Seaview Communications, Maple Ridge, British Columbia, CANADA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Cable Television Laboratories, Inc. ("CableLabs") intends to file additional written notification disclosing all changes in membership.

On August 8, 1988, Cable Television Laboratories, Inc. ("CableLabs") filed its

original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on November 3, 1997. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 19, 1998 (63 FR 13432).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2041 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Oil Industry Consortium for Nuclear Modeling Technology

Notice is hereby given that, on November 30, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Oil Industry Consortium for Nuclear Modeling Technology has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Chevron Petroleum Technology Company, La Habra, CA; Halliburton Energy Services, Houston, TX; Schlumberger-Doll Research, Ridgefield, CT; Sperry-Sun Drilling Services, Houston, TX; and Western Atlas Logging Services, Houston, TX. The nature and objectives of the venture are to develop advanced nuclear modeling techniques for the oil industry.

Participation in this program will remain open to all interested persons and organizations until the Project Completion Date, which is anticipated to occur no later than August 21, 2001.

The Participants intend to file additional written notification disclosing all changes in membership. Information regarding participation in the program may be obtained from Dr. Ahmed Badruzzaman, Chevron Petroleum Technology Company, 1300 Beach Blvd. #5–5238, La Habra, CA 90631–6374, Telephone (562) 694–7204, Fax (562) 694–7228.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2034 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PDES, Inc.

Notice is hereby given that, on August 26, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PDES, Inc. ("PDES") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Delphi Delco Electronics, Kokomo, IN; DoD/Ramp Program Office, Crane, IN; NASA, Greenbelt, MD; and Theorem Solutions Limited, Fradley Park, Staffordshire, ENGLAND have been added as parties to this venture. Also, AT&T, Holmdel, NJ; Autodesk, San Rafael, CA; Computervision Corporation, Bedford, MA; and General Electric Company, Cincinnati, OH have been dropped as parties to this venture.

General Dynamics Corporation, Groton, CT has changed its membership name to Electric Boat Corporation—A General Dynamics Company, Groton, CT; and McDonnell Douglas Corporation, St. Louis, MO has merged with The Boeing Company, Seattle, WA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PDES intends to file additional written notifications disclosing all changes in membership.

On September 20, 1988, PDES filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 14, 1988 (53 FR 40282).

The last notification was filed with the Department on March 27, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 20, 1995 (60 FR 32170).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2039 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Symbian Limited

Notice is hereby given that, on July 21, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Symbian Limited has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Nokia Corporation, Espoo, FINLAND; Telefonaktiebologet L. M. Ericsson, Stockholm, SWEDEN; and Psion PLC, London, ENGLAND. The nature and objectives of the venture are to develop an operating system, as well as development tools and applications, for Wireless Information Devices. Symbian intends to license the technologies developed by the venture to the participants to the venture and third parties.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2036 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on September 23, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the TeleManagement Forum ("the Forum"), formerly known as the Network Management Forum, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its

membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Emirates Telecommunications Corp. (ETISALAT), Abu Dhabi, UNITED ARAB EMIRATES; MediaOne Group, Boulder, CO; and EHPT, Stockholm, SWEDEN have been added as Corporate Members.

Slovak Telecom, Bratislava, SLOVAK REPUBLIC; Beechwood Data Systems, Clark, NJ; Oracle Corporation, Redwood Shores, CA; SSA Softwright, Langley, Berkshire, ENGLAND; StreamSoft, Inc., San Jose, CA; Kingston Communications PLC, Hull, ENGLAND; BSW Telecoms, Midrand, SOUTH AFRICA; Finnet Nine LTD., Tampere, FINLAND; Hermes Europe Railtel-Her Network Services BVBA, Hoeilaart, BELGIUM; Net2Net Corporation, Hudson, MA; Openet International, Dublin, IRELAND; Concert Communications Company, Reston, VA; Visionael, Tulsa, OK; Teleknowledge Group Ltd., Kfar Saba, ISRAEL; Nightfire Software, Inc., Berkeley, CA; Telkom SA, Pretoria, SOUTH AFRICA; Infostrada SJA, Milan, ITALY; Nextel Communications, Inc., McLean, VA; Teligent, Herndon, VA; Wandel & Goltermann, Ltd., Plymouth, Devon, ENGLAND; InConcert, Inc., Cambridge, MA; ComArch S. A., Krakow, POLAND; and Netscient Limited, Alvechurch, Worcestershire, ENGLAND have been added as Associate Members.

Ernst & Young, LLP., Sacramento, CA; Broadband & Networking Consultants, Inc., Herndon, VA; Hanson Cooke, London, ENGLAND; Ukrainian Research Institute of Communications (UNDIZ), Kiev, UKRAINE; Instituto Costarricense de Electricidad, San Jose, COSTA RICA; United Systems, Ltd., Ipswich, Suffolk, ENGLAND; Conexus Global Information AG, Zurich, SWITZERLAND; and JK Zcom, Inc., Manassas, VA have been added as Affiliate Members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on April 3, 1998. A notice for this filing has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2038 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Witech: Widegap Technology, LLC

Notice is hereby given that, on December 29, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Widegap Technology, LLC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Widegap Technology, LLC, Wetlake Village, CA; General Electric Company, Cleveland, OH; and GELcore, LLC, Cleveland, OH. The nature and objectives of the venture are to develop and demonstrate high efficiency solid state lighting devices.

The activities of this Joint Venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2037 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Comment Request

ACTION: Request OMB Emergency Approval; Employment Authorization Document.

The Department of Justice, Immigration and Naturalization Service has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. OMB approval has been requested by February 5, 1999. If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for "sixty days" until March 29, 1999. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement without change of previously approved collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information on the collection will be used by the INS to determine eligibility for work authorization and for the issuance of the employment document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,244,722 responses at 3 hours and 25 minutes (3.416) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,251,970 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 22, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–1972 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; (Reinstatement, with change, of a previously approved collection for which approval has expired) Census of Jails, Form CJ–3, CJ–3 Addendum, CJ–3A, CJ–3B.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until March 29, 1999.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Darrell Gilliard, 202–616–3280, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Census of Jails.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Forms CJ–3, CJ–3 Addendum, CJ–3A, and CJ–3B, Bureau of Justice Statistics, Office of Justice Program, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, County, City, and Tribal jail authorities. The Census of Jails is conducted every 5 to 6 years, obtaining information on each jail facility, admissions and releases, court orders, programs that offer alternatives to incarceration, amount charged to hold an inmate for another jurisdiction, crowding and use of space, staffing, and health care (including prevalence, of HIV/AIDS and tuberculosis). The census furnishes the sampling frame for the Survey of Jail Inmates and the Annual Survey of Jails. The Omnibus Crime Control and Safe Street Act of 1968, as amended (42 U.S.C. 3732) authorizes the Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice to collect this information.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,553 respondents will complete a 1-hour census form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total number of burden hours to complete the Census of Jails is 3,553 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, N.W., Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: January 22, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–1981 Filed 1–27–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Membership Nominations; Federal Committee on Apprenticeship

SUMMARY: Notice is hereby given that under the provisions of the Federal Advisory Committee Act, the Secretary of Labor is seeking nominations to fill 21 vacancies on the Federal Committee on Registered Apprenticeship (FCRA). The Committee was reestablished December 28, 1998.

Recommendations are being sought from these groups:

Management: Representatives of an employer or national employer association.

Labor: Representatives of employees or national employees association.

Public: Representatives of religious, social welfare, academic, charitable organizations, community-based organizations, national women's organizations, state or local government.

Only individuals who have timely knowledge or familiarity with apprenticeship and structured, workplace training programs should be recommended. Also, a description of the candidate's qualifications, and the group he or she would represent should be included. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse FCRA membership.

DATES: To ensure consideration, nominations should be postmarked on or before March 1, 1999.

ADDRESSES: Nominations should be submitted to Mr. Anthony Swoope, Director, Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor, Frances Perkins Building, Room N–4649, 200 Constitution Avenue, NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Telephone: (202) 219–5921 (X–102) (this is not a toll-free number). FAX (202) 219–5011.

Signed at Washington, D.C., this 22nd day of January, 1999.

Raymond Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 99–2005 Filed 1–27–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–017)]

Information Collections; Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13: 44 U.S.C. 3506(c)(2)(A)). This information is used to determine whether the requested license should be granted.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before March 29, 1999.

ADDRESSES: All comments should be addressed to Mr. Robert Yang / 211, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681. All comments will become a matter of public record and will be summarized in NASA's request for OMB approval.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: NASA Commercial Technology Program (CTP) Client Feedback Survey.

OMB Number: 2700–

Type of review: New.

Need and Uses: This collection will be used to evaluate agency CTP business practices in order to determine their adequacy and efficiency, and to promote the development and use of business principles, standards and guidelines.

Affected Public: Business or other for-profit.

Number of Respondents: 500.

Responses Per Respondent: 1.

Annual Responses: 300.

Hours Per Request: ¼ hr.

Annual Burden Hours: 75.

Frequency of Report: Annually.

David B. Nelson,

Acting Chief Information Officer, Office of the Administrator.

[FR Doc. 99–2061 Filed 1–27–99; 8:45 am].

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–018]

NASA Advisory Council (NAC), Technology and Commercialization Advisory Committee (TCAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology and Commercialization Advisory Committee.

DATES: Tuesday, February 9, 1999, 8:30 a.m. to 5 p.m. and Wednesday, February 10, 1999, 8:30 a.m. to 2 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room MIC–6, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory M. Reck, Code AF, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4700).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—NASA response to advisory members on commercial policy and planning
—NASA response to advisory members on NASA technology
—Briefing on Human Exploration and Development of Space technologies

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 25, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–2062 Filed 1–27–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–019]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub.

L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Wednesday, February 24, 1999, 8:30 a.m. to 5 p.m.; and Thursday, February 25, 1999, 8:30 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 9H40, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be closed to the public on Wednesday, February 24, 1999, from 8:30 a.m. to 5 p.m. in accordance with 5 U.S.C. 552b(c)(4), to allow for industry presentations which may contain proprietary data. Thursday, February 25, 1999, will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Status Presentation of X–33 and X–34
—Committee/TaskForce/Working Group Reports
—Discussion of Findings and Recommendations

A detailed agenda and further information about the NASA Advisory Council is available on the world wide web at: http://www.hq.nasa.gov/office/codez/nac.htm.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 22, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–2063 Filed 1–27–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–020]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Solar System Exploration Subcommittee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Solar System Exploration Subcommittee.

DATES: Monday, February 22, 1999, 8:30 a.m. to 5 p.m., and Tuesday, February 23, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: Radisson Resort on the Port, 8701 Astronaut Boulevard, Cape Canaveral, Florida.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Pilcher, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The Agenda for the meeting is as follows:

—Introductory Plenary
—SSES–SeCAS meeting
—Plenary with Dr. E. Weiler
—SSES–OS meeting
—SSES–SEUS meeting
—General meeting
—SSES meets with Dr. E. Weiler
—Concluding discussion; future plans

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 22, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–2064 Filed 1–27–99; 8:45 am]

BILLING CODE 7510–01–P

THE NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE

Public Meeting

The National Bipartisan Commission on the Future of Medicare will hold a public meeting on Tuesday, February 9, 1999 beginning at 9:00 a.m. Location of the meeting to be announced. Please check the Commission's web site for additional information: *http://Medicare.Commission.Gov*

Tuesday, February 9, 1999, 9:00 a.m.

Agenda: Members of the Commission to discuss a premium support system.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202–252–2380.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register**.

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 99–2183 Filed 1–26–99; 3:03 pm]

BILLING CODE 1132–00–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–461]

Illinois Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to Illinois Power Company (IP, or the licensee) for operation of the Clinton Power Station (CPS), located in DeWitt County, Illinois.

The proposed amendment requests changes to the Technical Specification degraded voltage relay setpoints.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The degraded voltage relays are designed to respond to degraded voltage conditions from the offsite sources, and are not initiators of such a condition themselves. However, proper establishment of the degraded voltage relay setpoints is necessary to avoid inadvertent or unnecessary disconnection of the offsite source and transfer to the standby diesel generators (DGs) when the offsite sources are still capable of supplying adequate power to the plant safety buses. At the same time, proper establishment of the setpoints must also ensure that a transfer will occur when required so that power can be provided to safety loads, with voltage at greater than or equal to the minimum required voltage. The revised degraded voltage setpoints were established consistent with these requirements using an NRC-

approved methodology. The revised setpoints (and the revised minimum bus voltage specified in the DG surveillances) take into account the new minimum required bus voltage required for all safety loads based on a more in-depth circuit analysis. Concurrently, the expected range of offsite voltage has been factored into the setpoint calculations to ensure that the offsite source can reset the degraded voltage relays at the minimum expected offsite voltage, thus maximizing the availability of the offsite source consistent with the intent of 10 CFR 50 Appendix A General Design Criterion 17.

Raising the degraded voltage relay setpoints does not increase the probability of transferring the safety buses to the DGs. This is because the existing margin between the safety bus voltage (based on the minimum expected offsite voltage) and the upper reset value of the degraded voltage relay will be maintained by the static VAR compensators that are installed on the CPS auxiliary power system.

Chapter 15 of the Clinton Updated Safety Analysis Report (USAR) discusses the effects of anticipated process disturbances to determine their consequences and the capability of the plant to control or accommodate such events. Subsection 15.2.6 discusses loss of a-c power, including loss of grid voltage. This discussion demonstrates that fuel design limits and reactor coolant pressure boundary design conditions are not exceeded. The proposed changes do not affect the discussion nor the conclusion of this evaluation.

Due to the associated change in the tap setting for the reserve auxiliary transformer (RAT), the proposed changes involve some increased potential for overvoltage for certain loads. Although the estimated magnitude of the overvoltage to those loads is not severe, procedural guidance will be established to prevent or mitigate such a condition. This will minimize the potential for equipment failure due to overvoltage. Therefore, this aspect of the proposed changes does not involve a significant increase in the probability of failure of equipment important to safety.

Based on the above, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve setpoint changes for the degraded voltage relays and a change to the minimum bus voltage required to be achieved during DG testing. The setpoint changes to the relays alters their performance in an intended manner but in no other way affects their intended function. The change to the DG surveillance criteria is primarily administrative since the DGs have repeatedly shown that they are able to achieve this value during testing. The DGs themselves are physically unaffected. These changes by themselves thus involve no physical changes to the facility, no new failure modes of initiating conditions that could lead to a new or different accident.

Notwithstanding the above, and as noted previously, the associated change in the RAT tap setting could involve an increased potential for overvoltage to some plant loads. As noted above, however, this potential is reduced by providing procedural guidance to plant operators. The potential for equipment failure due to overvoltage is thus minimized, and no new failure mode is thus introduced.

Based on the above, the proposed changes do not involve any significant increase in the failure of plant equipment due either to overvoltage or inadequate voltage, and do not introduce any new failure modes or conditions that could lead to a new or different kind of accident. On this basis, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

(3) None of the proposed changes involve a significant reduction in a margin of safety.

The margin of safety that may be associated with the degraded voltage relays is the margin involved in ensuring adequate voltage to plant safety loads. The revised degraded voltage relay setpoints, as proposed, were established by an NRC-accepted methodology that ensures the revised setpoints will maintain this margin of safety. Consistent with this determination, the proposed revision of the lower voltage limit for the DG surveillances (SR3.8.1.2, SR 3.8.1.7, SR 3.8.1.11, SR 3.8.1.12, SR 3.8.1.15, SR 3.8.1.19, and SR 3.8.1.20) will assure that the DGs will be capable of controlling voltage to a range that will be adequate for the loads on the bus. This value was determined using revised voltage calculations and is consistent with the proposed degraded voltage setpoints. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days of the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 1, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the

petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 20, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Vespasian Warner Public Library, 310 N. Quincy Street, Clinton, IL 61727.

Dated at Rockville, Maryland, this 22nd day of January 1999.

For the Nuclear Regulatory Commission.

Jon B. Hopkins,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1984 Filed 1–27–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[SF 2809–1]

Submission for OMB Review; Comment Request for Review of a New Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for a new information collection. SF 2809–1, Annuitant/OWCP Health Benefits Election Form, will be used by annuitants of Federal retirement systems other than the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), including the Foreign Service Retirement System and the Office of Workers' Compensation Programs (OWCP), and certain former dependents of these individuals. These former dependents include certain former spouses who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and certain former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a).

Approximately 9,000 SF 2809–1 forms will be completed annually. Each form will take approximately 30 minutes to complete. The annual estimated burden will be 4,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received by March 1, 1999.

ADDRESSES: Send or deliver comments to—

Abby L. Block, Chief, Insurance Policy and Information Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3425, Washington, DC 20415–0001, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.
Janice R. Lachance,
Director.
[FR Doc. 99–1959 Filed 1–27–99; 8:45 am]
BILLING CODE 6325–01–P

POSTAL RATE COMMISSION

Notice of Change in Docket Room Hours

(Authority: 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662, 3663)
AGENCY: Postal Rate Commission.
ACTION: Change in docket room hours.

SUMMARY: The Commission hereby provides notice that the hours of operation for the docket section, effective February 1, 1999, will be 7:30 a.m. to 4:30 p.m. These hours will be in effect until further notice.
DATES: Changes are effective February 1, 1999.
FOR FURTHER INFORMATION CONTACT: Margaret P. Crenshaw, Secretary, 1333 H Street, NW, Washington, D.C. 20268–0001 (202–789–6840).

Dated: January 25, 1999.
Margaret P. Crenshaw,
Secretary.
[FR Doc. 99–2027 Filed 1–27–99; 8:45 am]
BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (ABM Industries Incorporated, Common Stock, $0.01 Par Value, and Preferred Stock Purchase Rights) File No. 1–8929

January 22, 1999.

ABM Industries Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities ("Securities") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities of the Company are currently listed for trading on the PCX and the New York Stock Exchange, Inc. ("NYSE"). The Company has complied with Rule 3.4(b) of the PCX by filing with the Exchange a certified copy of the resolutions adopted by the Board of Directors and by the Executive Committee of the Board of Directors authorizing the withdrawal, and in an accompanying letter to the Exchange has stated the reasons for the proposed withdrawal. In making the decision to withdraw from listing on the PCX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Securities. The Company does not see any particular advantage in the dual trading of its Securities. The Company has also determined that the average daily volume of trading in its Securities on the Exchange is under 900 shares, or less than 3% of the total number of shares traded.

The Exchange has informed the Company that it has approved the Company's request to be removed from listing and registration on the Exchange.

This Application relates solely to the withdrawal from listing of the Company's Securities from the Exchange and shall have no effect upon the continued listing of such Securities on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person may, on or before February 12, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.
Jonathan G. Katz,
Secretary.
[FR Doc. 99–1999 Filed 1–27–99; 8:45 am]
BILLING CODE 5010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23661; File No. 812–11456]

MBL Life Assurance Corporation, *et al.*; Notice of Application

January 22, 1999.
AGENCY: The Securities and Exchange Commission ("Commission").
ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving a substitution of securities, and pursuant to Section 17(b) of the 1940 Act exempting related transactions from Section 17(a) of the 1940 Act.

Summary of Application: Applicants request an order to permit certain registered unit investment trusts to substitute shares of the Dreyfus Life and Annuity Index Fund, operating as Dreyfus Stock Index Fund for the shares of MBL Growth Fund, Inc. currently held by those unit investments trusts, and to permit certain in-kind redemptions of portfolio securities in connection with the substitutions.
Applicants: MBL Life Assurance Corporation ("MBLLAC") and MBL Variable Contract Account–2 ("VCA–2") and MBL Variable Contract Account–3 ("VCA–3," together with VCA–2, the "Separate Accounts").
Filing Date: The application was filed on January 7, 1999.
Hearing Or Notification Of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 12, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.
ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Frank D. Casciano, Esq., Executive Vice President and General Counsel, MBL Life Assurance Corporation, 520 Broad Street, Newark, New Jersey 07102–3111; Copies to: Frank E. Morgan II, Esq., Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTAL INFORMTION: The following is a summary of the application, the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representation

1. MBL Life Assurance Corporation ("MBLLAC") is a New Jersey stock life insurance company. MBLLAC serves as sponsor and depositor Of VCA–2 and VCA–3.

2. MBLLAC's is currently operating under the terms of the Plan of Rehabilitation ("Plan") approved by the Superior Court of New Jersey ("Rehabilitation Court") for its former parent, Mutual Benefit Life Insurance Company in Rehabilitation ("MBL"). Pursuant to the terms of the Plan, on April 29, 1994, MBL assigned to MBLLAC and MBLLAC assumed from MBL, substantially all of MBL's assets and insurance liabilities. MBLLAC will operate under the terms of the Plan until June 30, 1999 (the expiration date of the rehabilitation period). Upon the termination of the Plan, the Separate Accounts are expected to be liquidated and certain contracts, as decribed below, will be terminated (the "Termination").

3. Each of the Separate Accounts is registered with the Commission as a unit investment trust. VCA–2 serves as the funding medium for certain group variable annuity contracts (the "Group Contracts"). VCA–3 serves as the funding medium for certain individual variable annuity contracts (the "Individual Contracts," together with the Group Contracts, the "Contracts"). VCA–3 has not accepted new or additional contributions since July 16, 1991. Each Separate Account invests exclusively in shares of the MBL Growth Fund, Inc. ("MBL Fund").

4. MBL Fund is a open-end diversified management investment company incorporated under Maryland law and registered with the Commission under the 1940 Act. Shares of MBL Fund are registered with the Commission under the Securities Act of 1933 (the "1933 Act"). MBL Fund's primary investment objective is long-term appreciation of capital. It seeks to achieve this objective through investment primarily in equity-type securities including common stocks, as well as securities convertible into, or exchangeable for, common stocks. Shares of MBL Fund are currently sold only to separate accounts of MBLLAC to fund variable annuity contracts. The investment adviser to MBL Fund is Markston Investment Management ("Markston"), a partnership between Markston International, Inc. and MBL Sales Corporation, an indirect subsidiary of MBLLAC. Markston is a registered investment adviser under the Investment Advisers Act of 1940.

5. In accordance with the terms of the Plan, MBLLAC will operate under the terms of the Plan until June 30, 1999 (the expiration date of the rehabilitation period). Pursuant to the Plan (as amended by the Rehabilitation Court in November 1998) on or before the effective date of the Termination (the "Termination Date"), MBLLAC and the Separate Accounts will be liquidated and the Contracts will be terminated.

6. The Contracts expressly reserve to MBLLAC the right, subject to either: (a) a vote of holders of the Contracts ("Contractholders"); or (b) compliance with the 1940 Act, to substitute shares of another open-end management investment company for shares of MBL Fund held by the appropriate Separate Account.

7. MBLLAC, on its own behalf and on behalf of the Separate Accounts, proposes to substitute shares of Dreyfus Life and Annuity Index Fund, operating as Dreyfus Stock Index Fund ("Index Fund"), an open-end, non-diversified, management investment company for shares of MBL Fund currently held by the Separate Accounts (the "Substitution"). Applicants assert that the Substitution will benefit the Contract owners and the Separate Account because it is intended to: (a) ensure that the interests of Contractholders in the Separate Accounts will at all times until the Termination Date be sufficiently liquid such that the Separate Accounts are able to honor and comply with any and all requests for transfer or redemption by Contractholders of their contract or account values (the "Account Values"), within the terms and provisions of the 1940 Act; (b) maintain the Separate Accounts' investment objectives prior to the Termination; and (c) provide for the final payout to the remaining Contractholders in connection with the Termination.

8. The investment objective of the Index Fund is to provide investment results that correspond to the price and yield performance of publicly traded common stocks in the aggregate, as represented by the Standard & Poor's 500 Composite Stock Price Index. Applicants assert that the investment objectives and policies of the MBL Fund are sufficiently similar to the investment objectives and policies of the Index Fund such that the Index Fund will provide a comparable investment strategy and level of risk exposure to that of the Fund, which will serve the interests of Contractholders.

9. The total expenses of the Index Fund currently are 0.26%. The total expenses of the MBL Fund are 0.77%. The total return of the Index Fund has been 8.7%, 22.2%, and 19.4% for the one, three and five year periods ending September 30, 1998. The total return of the MBL Fund has been 8.7%, 25.3% and 19.8% for the last one, three and five year periods. As of September 30, 1998, the Index Fund had $2,606,084,554 in net assets, compared to $58,520,509 for the MBL Fund.

10. On August 6, 1998, MBLLAC notified Contractholders in VCA–2 and VCA–3 that MBLLAC planned to terminate the Contracts and to liquidate the Separate Account on the Termination Date.

11. MBLLAC asserts that it will effect the Substitution as soon as practicable following the issuance of the requested order so as to maximize the liquidity benefits to be realized from the Substitution.

12. Within five days after the Substitution, MBLLAC will send to Contractholders written notice of the Substitution (the "Substitution Notice") which will identify the shares of MBL Fund that have been eliminated and the shares of the Index Fund that have been substituted. In addition, if a propsectus relating to the Index Fund has not already been forwarded to Contractholders, the Substitution Notice will be accompanied by such a prospectus. Contractholders will be advised in the Substitution Notice that Contracts which remain with MBLLAC at the Termination Date are subject to termination, and the associated Account Value will be paid as required by law and the Plan (as amended).

13. The Substitution will not result in any change to the Contract fees and charges currently being paid by existing Contract owners.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such

substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Section 26(b) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to insure that unnecessary or burdensome sales loads, additional reinvestment costs or other charges will not be incurred due to unapproved substitutions of securities.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the Substitution. Applicants represent that the purposes, terms, and conditions of the Substitution are consistent with the protection for which Section 26(b) was designed. Applicants believe the Substitution will benefit Contractholders because funds in the Separate Accounts would immediately become invested in a larger and more diverse pool of securities than those in which they are currently invested, thereby assuring liquidity. In addition, Applicants assert that the Index Fund provides an investment strategy and level of risk exposure that are comparable to those the MBL Fund. Applicants further assert that the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act because the Substitution is an appropriate interim step in connection with the withdrawal of MBL Fund as an investment option under the Contracts and the proposed termination of the Contracts.

3. Applicants represent that the Contractholders have the right, at any time, both before and after the Substitution Date and prior to the Termination Date, to transfer Account Values from the Separate Accounts to any other separate account which funds similar contracts without incurring any additional fees or charges with respect to such transfer at any time. Applicants represent that the Substitution will in no way alter or interfere with this right.

4. Applicants assert that, following the Substitution and until the Termination Date, Contractholders will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts, as they currently have. MBLLAC will bear the cost of the Substitution, including any brokerage, legal and/or accounting fees. Contractholders will not incur any additional fees or charges as a result of the Substitution, nor will their rights or the obligations under any of the Contracts diminish in any way. The Substitution will not result in any adverse tax consequences to any Contractholder, any change in the economic interest or Account Value of any Contractholder or any change in the dollar value of any Contract held by a Contractholder.

5. Section 17(a)(1) of the 1940 Act prohibits any affiliated person or an affiliate of an affiliated person, of a registered investment company, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such affiliated persons from purchasing any security or other property from such registered investment company.

6. Section 17(b) of the 1940 Act authorizes the Commission to issue an order exempting a proposed transaction from Section 17(a) if: (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to use a portion of the securities received in-kind by the Separate Accounts (the "Accepted Underlying Securities") from MBL Fund to purchase shares of the Index Fund (the "In Kind Transactions").

8. Applicants assert that the proposed In Kind Transactions, including the consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. As part of the In Kind Transactions, MBLLAC on behalf of the Separate Accounts, will seek to simultaneously place redemption requests with MBL Fund and purchase shares of the Index Fund so that purchases will be for the exact amount of the redemption proceeds. The In Kind Transactions will not effect an appreciable economic change on the Contractholders. MBLLAC, on behalf of the Separate Accounts, will effect the redemption in-kind and the transfer of the Accepted Underlying Securities in a manner that is consistent with the investment objectives and policies and diversification requirements applicable to the Index Fund. MBLLC, on behalf of the Separate Accounts, will take appropriate steps to assure that the Accepted Underlying Securities are suitable investments for the Index Fund.

9. Applicants assert that the Substitution is consistent with the general purposes of the 1940 Act and that the In Kind Transactions do not present any of the conditions or abuses that the 1940 Act was designed to prevent.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the Substitution and In Kind Transactions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–1998 Filed 1–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23660; 811–7417]

Old Mutual South Africa Equity Trust; Notice of Application

January 22, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant requests an order declaring that is has ceased to be an investment company.

FILING DATES: The application was filed on September 29, 1998 and amended on December 17, 1998 and January 20, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 16, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, Washington Mall Phase II,

4th Floor, 22 Church Street, Hamilton HM11, Bermuda.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC (telephone (202) 942–8090).

Applicant's Representations

1. Applicant is an open-end, management investment company organized as a trust under the laws of the Commonwealth of Massachusetts. On November 9, 1995, applicant filed a Notification of Registration under section 8(a) of the Act on Form N–8A and an initial registration statement on Form N–1A under section 8(b) of the Act. Applicant has not filed any registration statements with respect to its shares under the Securities Act of 1933 ("1933 Act"). Applicant has sold its shares solely in private placement transactions within the meaning of section 4(2) of the 1933 Act, to institutional investors that are "accredited investors" within the meaning of Regulation D under the 1933 Act, as well as to certain investment funds organized outside the United States.

2. Applicant's shares currently are held only by Old Mutual South Africa Growth Assets Fund Limited (the "SAGA Fund"), which owns 10.50% of applicant's shares, and Old Mutual Fund Holdings (Bermuda) ("Old Mutual"), which owns 89.50% of applicant's shares. Old Mutual is a wholly owned subsidiary of the South Africa Mutual Life Assurance Society. The SAGA Fund is organized under the laws of Bermuda, has 20 beneficial owners, and invests all of its investable assets in applicant. Each investor in the SAGA Fund that is, based on its representations, a U.S. person (as defined in Regulation S under the 1933 Act) received prior to the date of its investment in the SAGA Fund written disclosure stating that applicant would seek to deregister under the Act and would, upon completion of the deregistration, no longer be subject to regulation as an investment company under the Act. Each investor in the SAGA Fund may redeem its interest on any day on which the New York Stock Exchange is open for trading.

3. As of December 14, 1998, applicant's assets totaled approximately U.S. $570 million and applicant had liabilities of approximately $6,600,000, consisting primarily of investment advisory fees, custodian and administrative charges, and legal and accounting expenses. Applicant intends to continue investing its assets primarily in equity securities of South African issuers.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the SEC, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the SEC shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(c)(1) of the Act provides that an issuer is not an investment company within the meaning of the Act if (a) its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons, and (b) it is not making and does not presently propose to make a public offering of its securities.

3. Applicant states that it is not an investment company within the meaning of section 3(c)(1) of the Act because its outstanding securities are owned by fewer than 100 persons and it is not making and does not presently propose to make a public offering of its securities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–2000 Filed 1–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40956; File No. SR–Amex–98–48]

Self-Regulatory Organizations; Notice of Filing of Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Term Notes Linked to Select Sector SPDR℠

January 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 21, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to list and trade term notes linked to Select Sector SPDR℠,[3] traded on the Amex (the "Notes"). Each Note issuance will be linked to a separate Select Sector SPDR℠ approved for trading on the Amex. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Amex to list term notes, each of which shall be separately linked to one of nine Select Sector SPDR℠ approved for trading on the Amex. Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Select Sector SPDRs℠, to which the Notes will be linked, comprise liquid and highly capitalized stocks included in the S&P® 500 Index. The nine Select Sector SPDRs℠ currently approved for trading on the Exchange are the Basic Industries, Consumer Services, Consumer Staples, Cyclical/Transportation, Energy, Financial, Industrial, Technology and Utilities Select Sector SPDRs℠. Each is offered by the Select Sector SPDRs℠ Trust ("Fund"), an open-end management investment company registered under the Investment Company Act of 1940 and has been approved for trading on the Amex pursuant to Amex Rules 1000A through 1003A (Index Fund Shares Rules). Securities Exchange Act Release No. 40749 (December 4, 1998), 63 FR 68483 (December 11, 1998). In addition, Select Sector SPDRs℠ may underlie options pursuant Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998).

categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[4] Similar to other Exchange traded Index-linked Notes, the Amex represents that both the issues and the issuer will meet the general criteria set forth in Section 107A of the Amex *Company Guide*. Furthermore, the issuer will have a minimum tangible net worth in excess of $100,000,000 and otherwise substantially exceed the earnings requirements set forth in Section 101 of the Amex *Company Guide*.[5]

The Notes will be issued by Merrill Lynch & Co., Inc. ("Merrill") and underwritten by Merrill Lynch Pierce Fenner & Smith Incorporated. The Notes will be senior, unsecured debt securities. Although a specific maturity date will not be established until the time of the offering, the Notes will provide for a maturity of between two and seven years from the date of issuance. Each note will provide for payment at maturity based in whole or in part on changes in the net asset value of the corresponding Select Sector SPDR℠. The Amex represents that Merrill will issue the Notes in various amounts, between $10 and $25 per unit, with aggregate offerings in an amount equal to between $15 and $100 million. The Amex represents that Merrill is currently undertaking to prepare a preliminary prospectus for the Notes which will be available for distribution to investors.

The Exchange believes the Notes are appropriately linked to Select Sector SPDRs℠ because Select Sector SPDRs℠ are open-ended investment companies. For this reason, the Exchange believes that any concerns with respect to potential manipulation or market impact upon settlement of the Notes at maturity are minimized. Similar to the exercise of an option overlying a Select Sector SPDR℠, which would require physical delivery of the underlying Select Sector SPDR℠, and as was discussed in the order approving the trading of options on Select Sector SPDRs℠,[6] concerns with respect to potential manipulation or market impact upon settlement are minimized because Select Sector SPDRs℠ even though some or all of the necessary securities needed to be deposited are not available, the Exchange believes that the underlying Select Sector SPDRs℠ will be available in the secondary market upon settlement. Further, although there is no absolute assurance that market participants will create Select Sector SPDRs℠, it is likely that arbitrage opportunities will create an incentive to do so.

Surveillance procedures similar to those in place and used to surveil the trading in Merrill Lynch Euro Fund MITTS[7] ("Euro Fund MITTS") will be used to surveil trading in the term notes linked to the various Select Sector SPDRs℠. Accordingly, the Exchange will monitor trading in the Notes and in the Select Sector SPDRs℠. And similar to the Euro Fund MITTS, if the Exchange detects unusual activity in the Select Sector SPDR℠ Notes, it will examine, if necessary, activity in the stocks held by the Select Sector SPDR℠ as well as the redemption activity in the Select Sector SPDR℠ itself. The net asset values of the Select Sector SPDRs℠ will be calculated continuously by Amex and disseminated every 15 seconds on Network B of the Consolidated Tape Association ("CTA"). As discussed in the order approving the trading of Select Sector SPDRs℠, Merrill currently has in place procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the Select Sector SPDRs℠.[8]

Holders of the Notes will not receive any interest payments. However, holders of the Notes will receive at maturity settlement payment equal to the principal amount of the notes plus a "Supplemental Redemption Amount", based on the percentage increase in the Select Sector SPDR℠ from the starting value to the adjusted ending value. The starting value will equal the net asset value of the Select Sector SPDR℠ on or prior to the pricing date, the adjusted ending value will equal the average value of the Select Sector SPDR℠ on five consecutive trading days shortly prior to maturity, as reduced by an adjustment factor and as adjusted for certain anti-dilution events. The annual adjustment factor, generally in an amount between 0.5% and 3%, will be applied to the net asset value of the Select Sector SPDR℠ on a pro rata basis each day for purposes of determining the adjusted ending value. The actual adjustment factor will be determined on the pricing date. Upon maturity, at Merrill's option, the Notes will settle into either shares of the Select Sector SPDR℠ or cash. The exchange notes that the formula may produce a total return at maturity which is lower than the return a holder of the corresponding Select Sector SPDRs℠ might receive during the same period. At maturity, holders of the Notes will not receive less than 100% of the initial issue price.

Because the Notes are linked to a portfolio of equity securities, the Amex's existing equity floor trading rules and standard equity trading hours (9:30 a.m. to 4:00 p.m. Eastern Standard Time) will apply to the trading of the Notes. Pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Notes. Further, pursuant to Amex Rule 462, the Notes will be subject to the equity margin rules of the Exchange. In addition, consistent with other structured products, the Exchange will distribute a circular to its membership, prior to the commencement of trading, providing guidance with regard to member firm compliance responsibilities, including appropriate suitability criteria and/or guidelines. The circular will state that before a member, member organization, or employee of such member organization undertakes to recommend a transaction in the security, such member or member organization should make a determination that the security is suitable for such customer and the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that they may be capable of evaluating the risks and the special characteristics of the recommend transaction, including those highlighted, and is financially able to bear the risks of the recommended transaction. Lastly, as with other

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[4] Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990). Section 107A of the Amex *Company Guide*, states that the Exchange will consider listing any security not otherwise covered by the Exchange's listing requirements, provided the security satisfies the following criteria: Assets/Equity—the issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer which is unable to satisfy the earnings criteria set forth in Section 101 (*i.e.*, pre-tax income of $750,000 in its last fiscal year, or in two of its last three fiscal years and net income of at least $400,000), the Exchange generally will require the issuer to have either assets in excess of $200 million and stockholders' equity of at least $10 million or assets in excess of $100 million and stockholders' equity of at least $20 million; Distribution—minimum public distribution of 1,000,000 trading units with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders; and Principal Amount/Aggregate Market Value—not less than $4 million.

[5] Section 101 of the Amex *Company Guide*, requires, among other things, that an issuer have stockholders' equity of at least $4 million and pre-tax income of $750,000 in its last fiscal year, or in two of its last three fiscal years.

[6] Supra note 3.

[7] Securities Exchange Act Release No. 40367 (August 26, 1998), 63 FR 47052 (September 3, 1998).

[8] Supra note 3.

structured products, the Exchange will closely monitor activity in the Notes to identify and deter any potential improper trading activity in the Notes.

2. Basis

The proposed rule change is consistent with Section 6(b)[9] of the Act in general and furthers the objectives of Section 6(b)(5)[10] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[11] and Rule 19b–4(e)(6)[12] of the Act. The proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition; and does not become operative prior to 30 days after the date the proposed rule change was filed with the Commission.

Rule 19b–4(e)(6) also provides that the SRO provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission. The Amex requested that the Commission waive the notification period in order to expedite the listing and trading of term notes linked to Select Sector SPDRs℠. The Commission finds good cause to waive the notification period because it previously reviewed and approved the composition and maintenance of the nine Select Sector SPDRs℠ underlying the term notes.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–98–48 and should be submitted by February 18, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(e)(6).

[13] Supra note 3.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40951; File No. SR–CBOE–98–33]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Exercise Advice Procedures

January 15, 1999.

I. Introduction

On July 27, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change. The Exchange proposes to clarify certain existing exercise procedures for cash-settled and noncash-settled options and to provide that the failure to submit an exercise advice in a timely manner will be designated as a minor rule violation subject to summary fines set forth in CBOE Rule 17.50. Amendment No. 1 was submitted to the Commission on November 3, 1998.[3] The proposed rule change was published for comment in the **Federal Register** on November 16, 1998.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

Restrictions on the Exercise of Cash-Settled Index Options

Currently, a cash-settled index option cannot be exercised during a trading delay, halt or suspension. This policy does not apply if the trading delay, halt, or suspension occurs on the last business day prior to expiration or if the President of the Exchange or his designee determines otherwise. The Exchange proposes to amend CBOE Rule 11.1.05 to codify this policy.[5] In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated October 27, 1998 ("Amendment No. 1"). Amendment No. 1 clarifies the Business Conduct Committee's authority to impose sanctions under proposed rules 17.50(c)(2) and (d)(2); makes technical corrections to the proposed rule language; clarifies amendments to proposed rules 11.1.05 and 11.1.07; and elaborates on the statutory basis for the proposed rule change.

[4] Exchange Act Release No. 40645 (November 6, 1998) 63 FR 63761 (November 16, 1998).

[5] The Exchange note that the restriction of the exercise of cash-settled index options is currently reflected in Exchange Regulatory Circular RG–91–11.

addition, the Exchange proposes to allow processing of an exercised cash-settled index option during a trading delay, halt, or suspension if it can be documented that the decision to exercise the option was made during an allowable time frame, before the delay, halt, or suspension. The Exchange proposes to codify this policy in proposed CBOE Rule 4.16(b), which is the general rule regarding exercise restrictions.[6]

Exercise Notice Procedures for Cash-Settled Index Options

CBOE Rule 11.1.03 currently requires members to notify the Exchange of certain exercise decisions concerning cash-settled index options and sets forth procedures for providing such notification. The Exchange proposes to amend CBOE Rule 11.1.03 that the rule only applies to American-style, cash-settled index options and dies not apply to European-style, cash settled index options.[7]

Exercise Notices Inconsistent with Just and Equitable Principles of Trade

Currently, CBOE Rule 11.1.07 states that submitting or preparing an exercise instruction after the exercise cutoff time for any expiring option on the basis of material information released after the cutoff time is inconsistent with just and equitable principles of trade. CBOE Rule 11.1.07 applies to expiring noncash-settled equity options. The Exchange has also considered preparing or submitting an exercise advice or advice cancel after the applicable deadline for any non-expiring American-style, cash-settled index option based on material information released after the deadline to be inconsistent with just and equitable principles of trade.

The Exchange believes this policy would be more effectively communicated to members if it is moved to proposed Rule 11.1.03(e), for American-style, cash-settled index options and repeated in proposed CBOE Rule 11.1.06(f) for noncash-settled equity options. By adding these new subdivisions, the Exchange believes members will be made aware of the policy without having to refer to other interpretations of the Rule.

Therefore, the Exchange proposes to add new paragraph (e) to Rule 11.1.03 to specify for non-expiring American-style, cash-settled index options that preparing or submitting an exercise advice or advice cancel after the applicable deadline on the basis of material information released after the deadline, in addition to constituting a violation of Rule 11.1, is an activity inconsistent with just and equitable principles of trade. Moreover, the Exchange proposes to add new paragraph (f) to CBOE Rule 11.1.06 to specify that preparing or submitting an exercise instruction, contrary exercise advice, or advice cancel after 4:30 p.m. Chicago Time on the basis of material information released after such time, in addition to constituting a violation of CBOE Rule 11.1, is an activity inconsistent with just and equitable principles of trade. Accordingly, the general provision currently found in CBOE Rule 11.1.07 will no longer be necessary and will be deleted.

Options Not Subject to Exercise by Exception

The Exchange proposes to clarify the requirements in CBOE Rule 11.1.06(c) which applies to exercise decisions and instructions for noncash-settled equity options that are not subject to the exercise by exception provisions of the Options Clearing Corporation's Rule 805. Proposed CBOE Rule 11.1.06(c) will clarify that a member must deliver to the Exchange, no later than 4:30 p.m. Chicago Time, each exercise instruction prepared, submitted, or accepted by the member for all noncash-settled equity options that are not subject to the automatic exercise procedures of exercise by exception. Proposed CBOE Rule 11.1.06(d) clarifies that a member is excused from compliance with the exercise instruction requirements if one of the exceptions set forth in CBOE Rule 11.1(b) applies and the member complies with Interpretation .01 of the Rule. Accordingly, the Exchange proposes to delete paragraphs (c)–(e) of CBOE Rule 11.1.06 and replace them with new paragraphs (c) and (d).

Other Clarifications

The Exchange also proposes to revise CBOE Rule 11.1.03(c) concerning the preparation of exercise advices before the purchase of American-style, cash-settled index option contracts to mirror the same provision that applies to noncash-settled equity options in CBOE Rule 11.1(d). In addition, the Exchange proposes to amend CBOE Rule 11.1 to accurately reference the definitions of preparation, submission and acceptance of exercise instructions. As amended, the Exchange believes the proposed rule reflects the different sources of exercise instructions (*i.e.*, Clearing Members prepare exercise instructions for proprietary accounts, members submit exercise instructions to Clearing Members, and members accept exercise instructions from customer accounts). Finally, the Exchange has corrected references to defined terms. For example, references to "Member" or "Member Organization" have been corrected to refer to the term member as defined in Section 1.1 of the Exchange Constitution.

Summary Fines for Failure to Submit an Exercise Advice

The Exchange proposes to make the failure to submit a contrary exercise advice, advice cancel, or exercise instruction in a timely manner pursuant to CBOE Rule 11.1.06, relating to the exercise or nonexercise of a noncash-settled equity option, a minor rule violation subject to the procedures and summary fine provisions of CBOE Rule 17.50. The Exchange proposes to add new paragraph (8) to CBOE Rule 17.50(g) to provide that any member that fails to follow the advice procedures in CBOE Rule 11.1.06 will be subject to summary fines specified in CBOE Rule 17.50. A member will receive a Letter of Information for the first infraction, in any twelve-month period. A member will receive a Letter of Caution for a second infraction, and for any subsequent infractions a member will receive a $500 fine.

Members will be able to contest a summary fine decision for violation of proposed CBOE Rule 17.50(g)(8). CBOE Rule 17.50(c)(1), which permits members to seek review by the Business Conduct Committee ("BCC"), has been amended to provide review of fines imposed under new paragraph (g)(8).

Calculation of Summary Fines for Failure to Submit Accurate Trade Information

CBOE Rules 17.50(g)(4)(b) and (5)(b) provide for the escalation of total fines for repeated violations of CBOE Rule 6.51. CBOE Rule 6.51 sets forth the reporting duties of members. The Exchange proposes to amend paragraphs (4)(b) and (5)(b) regarding the calculation of the total fine imposed on a member after 2 fines for failing to submit or report accurate trade information in any 18-month period. If a member incurs two fines under CBOE Rule 17.50(g)(4) or, similarly CBOE Rule 17.50(g)(5), in any 18-month period, any subsequent fine will be calculated by adding the amount of the fine assessed

[6] Proposed CBOE Rule 11.1.05 will also cross reference proposed CBOE Rule 4.16(b).

[7] The proposed rule does not apply to European-style options because European-style options cannot be exercised early. Moreover, their value is fixed on their expiration day and cannot be changed or effected by subsequent news. Therefore, the Exchange does not require exercise advices to be filed.

for the current violation to the amount of the next most recently incurred fine.[8]

The Exchange also proposes to amend CBOE Rule 17.50.03(a) to change from the fifth day of the month to the tenth day of the month the date by which the Exchange shall attempt to serve members who incur fines under CBOE Rule 17.50(g)(4) or (g)(5). The proposed rule change also amends the day by which a member may request verification of the fine from the Exchange. The member will now have to make such a request by the twenty-fifth of the month instead of the twentieth of the month, as currently required. The Exchange believes these changes will provide more time to process the fines at the beginning of the month while preserving the current time period by which a member may request verification of the fines.

Exchange Discretion to Bring Disciplinary Action

The Exchange is proposing to modify the summary fine appeal provisions found in CBOE Rule 17.50(c)(2) and (d)(2). The Exchange proposes to clarify the BCC's and the Appeals Committee's authority to impose sanctions in an appeal of a minor rule violation. The appellate panel must determine that the conduct serving as the basis for the action under review is in fact a violation of an Exchange rule before a sanction may be imposed. The BCC and the Appeals Committee, however, may only review the alleged conduct to determine if the conduct violates the rule charged and appealed. If the alleged conduct would constitute a violation, the BCC or the Appeals Committee could determine that the conduct at issue did not rise to the level that would trigger a summary fine but was, nonetheless, in violation of the Exchange Rule alleged to have been violated. In such a case, the BCC or the Appeals Committee could impose a disciplinary sanction for the violating conduct as part of its decision concerning the summary fine appeal.

The Exchange also proposes to modify CBOE Rule 17.50(f) the conform it to a rule of the Chicago Stock Exchange.[9] Proposed CBOE Rule 17.50(f) has been amended to clarify that the Exchange has the discretion not to issue a summary fine under CBOE Rule 17.50 in appropriate circumstances such as when extenuating circumstances exist or when no remedial purpose would be served by the issuance of the fine. In addition, the Exchange would have the discretion to commerce a formal disciplinary proceeding under CBOE Rule 17.2 whenever the Exchange determines that a rule violation is not minor in nature.

The Exchange proposes to implement the proposed rule change within 45 days after its approval by the Commission. The Exchange notes the reason for the time interval is to give the Exchange the opportunity to inform members in the Exchange's Regulatory Bulletin before the changes are put into effect. The Exchange proposes to publish the effective date in the Exchange's Regulatory Bulletin and will notify the Commission of the effective date by letter.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Sections 6(b)(5) and 6(b)(6)[11] of the Act.

Section 6(b)(5) of the Act[12] provides, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, and settling securities transactions, and to protect investors and the public interest. The proposed rule change clarifies and codifies options exercise procedures and the disciplinary procedures for certain violations. By clarifying and codifying these procedures, the Exchange provides notice of Exchange rules, which should discourage fraudulent and manipulative acts and practices and facilitate Exchange members' compliance with exercise procedures.

The proposed rule change further clarifies and classifies the exercise procedures for both cash-settle index options and noncash-settled equity options. The proposed rule change further clarifies the appropriate rules for each type of product by expressly stating the procedures and policies applicable to each type of product under independent subsections. For example, the exercise rules for American-style cash-settled index options, found in CBOE Rule 11.1.03(d), have been amended to reflect the policy that an exercise advice may not be prepared before the purchase of the option contract. This amendment mirrors the same provision found in CBOE Rule 11.1(d), which applies to noncash-settled equity options. By further grouping these rules together based upon the type of product, members will have a clearer picture of applicable exercise procedures, which should prevent fraudulent and manipulative acts and practices and thereby foster investor protection.

The mandates of Section 6(b)(5) are also furthered because the proposed rule change clarifies that submitting or preparing an exercise instruction for either non-expiring American-style, cash-settled index options or expiring noncash settled equity options on the basis of material information released after the cutoff time is inconsistent with just and equitable principles of trade. This policy will now be found in proposed CBOE Rule 11.1.03(e), for American-style, cash-settled index options and repeated in proposed CBOE Rule 11.1.06(f). The policy ensures that options are exercised justly and equitably by preventing the improper use of material information.

The Commission also finds that the proposed rule change is consistent with the requirements of Section 6(b)(6) of the Act,[13] which requires that members shall be appropriately disciplined for violation of the provisions of the Act, the rules and regulations thereunder, or the rules of the exchange. The Exchange proposes to make the failure to submit a contrary exercise advice, advice cancel, or exercise instruction in a timely manner pursuant to CBOE Rule 11.1.06, relating to the exercise or nonexercise of a noncash-settled equity option, a minor rule violation subject to the procedures and summary fine provisions of CBOE Rule 17.50. By making the violation of CBOE Rule 11.1.06 a minor rule violation, members will be appropriately disciplined in a

[8] The Exchange provided the following example: In January, Member XYZ incurs a fine of $100 under CBOE Rule 17.50(g)(4) for violation of CBOE Rule 6.51 (based on the percentage of times that the member submitted inaccurate or no transaction times). In February, Member XYZ incurs a second fine under CBOE Rule 17.50(g)(4) and the appropriate fine is deemed to be $250. In March, Member XYZ incurs a third fine for $100 and, pursuant to CBOE Rule 17.50(g)(4)(b), must pay a total fine of $350, which is calculated by adding the third fine incurred ($100) to the next most recently incurred fine ($250). In April, Member XYZ incurs a fourth fine of $250 and, pursuant to CBOE Rule 17.50(g)(4)(b), must pay a total of $600 calculated by adding the fourth fine ($250) to the total fine most recently incurred ($350).

[9] *See* Exchange Act Release No. 37255 (May 30, 1996) 61 FR 28918 (June 6, 1996) (approving Chicago Stock Exchange Article XII, Rule 9).

[10] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78f(b)(6)

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(6).

timely manner, which should quickly prevent future violations. Members should not be prejudiced by the rule because their right of review by the BCC remains intact.

The proposed CBOE Rules 17.50(c)(2) and (d)(2) are also consistent with the disciplinary requirements of Section 6(b)(6). These provisions are amended to reflect the BCC's and the Appeals Committee's authority to review conduct and impose sanctions during a summary fine appeal. If the BCC or the Appeals Committee determines that a member's conduct is in violation of the Exchange rule alleged to have been violated, either appellate panel has the authority to impose sanctions even if the conduct does not rise to the level of triggering a summary fine. The Exchange explained that it believes these appellate panels have the authority to impose alternate sanctions even if the conduct does not reach the level to trigger a summary fine.[14] The BCC and the Appeals Committee are, however, limited to reviewing the alleged conduct as it refers to the rule originally charged and appealed and to imposing sanctions for violations found of such rule. The Commission believes that these rules are designed to appropriately and fairly discipline members of violations of Exchange rules. The proposed rule change should ensure that members who repeatedly commit minor violations will not be able to avoid discipline. Moreover, the proposed rule protects members by limiting the appellate panel to review the member's conduct as it relates to violations of the rule originally charged and appealed.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–98–33) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2001 Filed 1–27–99; 8:45 am]

BILLING CODE 8010–01–M

[14] *See* CBOE Rule 17.50(f), which provides that the Exchange may, whenever it determines that any violation is not minor in nature, proceed under CBOE Rule 17.2.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40957; File No. SR–CBOE–98–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend the Firm Quote Requirement

January 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 15, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its firm quote rule, Rule 8.51, and Interpretation and Policy .04 to Rule 6.8, to amend the firm quote requirement so that it is equal to the RAES contract limit applicable to that class of options. Rule 8.51 also will allow the appropriate Floor Procedure Committee ("FPC") to establish a different requirement for a particular class of options that is no less than the RAES contract limit and no more than fifty (50) contracts to enable the FPC to deal with specific circumstances of trading in a particular options class. For classes or series that are not traded on RAES, the appropriate FPC would be able to establish a firm quote requirement of between ten (10) and fifty (50) contracts. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Basis

The Exchange proposes to amend its firm quote requirement to allow the appropriate FPC to establish the requirement for each particular class of options. Generally, the firm quote requirement will be equal to the RAES contract limit applicable to that class of options. The firm quote requirement will apply at all times, except during a trading rotation, and obligates a trading crowd to sell (buy) the established number of contracts at the offer (bid) which is displayed when a buy (sell) customer order reaches the trading station where the particular option class is located for trading. Currently, paragraph (a)(2) of Rule 8.51 requires trading crowds to buy (sell) at least ten (10) contracts under these circumstances.

Because RAES is essentially a form of electronic firm quote, the Exchange believes that in most cases, the firm quote requirement should be no less than the RAES contract limit for a particular options class. In fact, in deciding to raise the firm quote requirement, the Exchange noted that the appropriate FPC responsible for setting the contract limit for RAES in particular option classes recently increased the RAES maximum contract size, such that in most cases the RAES contract limit is now higher than the firm quote requirement.[2] Additionally, the CBOE proposes to allow the appropriate FPC, in its discretion, to establish a different firm quote requirement for a particular class of options that is no less than the RAES contract limit and no more than fifty (50) contracts. This provision would enable the appropriate FPC to deal with the specific circumstances of trading in a particular option class. For classes or series that are not traded on RAES, the appropriate FPC would be able to establish a firm quote requirement of between ten (10) and fifty (50) contracts.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Regulatory Circulars RG98–102, RG98–117, RG98–119.

[3] The new firm quote requirement will remain in effect for that options class indefinitely or until the FPC changes it. The FPC meets once every two weeks. The discretion given by the proposed rule change is intended to enable the FPC to respond to general trading trends in a given options class. Phone call between Timothy Thompson, Director, Regulatory Affairs, Legal Department, CBOE, Sonia

Continued

Exchange Rule 8.51 will continue to provide that the appropriate Market Performance Committee may determine the classes and series that will be subject to the requirements of the Rule. The CBOE also is amending Interpretation and Policy .06 to Rule 8.51 to clarify that the firm quote requirement for spreads and straddles applies only in equity options. The CBOE notes that issue was clearly stated in rule filing SR–CBOE–94–54 and in the Commission's order approving that filing.[4] However, the rule language itself is not clear on this point. Thus, the CBOE is making this change to clarify in the rule text what was originally intended by that rule filing.

2. Statutory Basis

The Exchange believes that by raising the firm quote requirement, the proposed rule change will increase the liquidity of the affected option classes such that it is consistent with and furthers the objectives of Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it removes impediments to a free and open market and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–53 and should be submitted by February 18, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2002 Filed 1–27–99; 8:45 am]

BILLING CODE 8010–01–M

Patton, Attorney, Division of Market Regulation, Commission, and Constance Kiggins, Special Counsel, Division of Market Regulation, Commission, on January 6, 1999.

[4] Securities Exchange Act Release No. 35785 (May 31, 1995), 60 FR 30125 (June 7, 1995).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

North Alabama Pipeline Crossing of the Tennessee River and Use of Transmission Line Right-of-Way, Cullman, Limestone, and Morgan Counties, Alabama

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Record of Decision and Adoption of Final Environmental Impact Statement for the North Alabama Pipeline Project and the Final Supplement to the Final Environmental Impact Statement for the Amended North Alabama Pipeline Project prepared by the Federal Energy Regulatory Commission (FERC).

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality (CEQ) regulations (40 CFR 1500 to 1508) and TVA procedures implementing the National Environmental Policy Act.

TVA has decided to concur with a right-of-way permit issued by the U.S. Fish and Wildlife Service (FWS) for crossing of the Wheeler National Wildlife Refuge in Limestone and Morgan Counties, Alabama. TVA also may have to make a decision on requests made by the Southern Natural Gas Company (hereinafter "Southern") for use of TVA's existing rights of way along the Trinity-Cullman and Huntsville-Decatur transmission lines in Cullman, Limestone, and Morgan Counties, Alabama. The environmental impacts of the North Alabama Pipeline Project were assessed in a 1997 Environmental Impact Statement (EIS) and 1998 Supplemental EIS prepared by FERC. TVA was a cooperating agency in the preparation of the above two EISs. Under 40 CFR 1506.3(c) of the CEQ Regulations, TVA has independently reviewed the two EISs prepared by the Federal Energy Regulatory Commission and found them to be adequate, and is herewith adopting them. TVA has also determined that the alternatives considered in the two EISs and the decisions based on them will fulfill the requirements of sections 101 and 102(1) of the National Environmental Policy Act.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (423) 632–6889 or e-mail hmdraper@tva.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1996, Southern filed an application with FERC for a Certificate of Public Convenience and Necessity under the Natural Gas Act for authorization to construct, own, and operate a new natural gas pipeline between Tuscaloosa and Huntsville within the state of Alabama. The proposed pipeline would serve Huntsville (AL) Utilities, Decatur (AL) Utilities, Marshall County (AL) Gas District, Dekalb-Cherokee Counties (AL) Gas District, and Austell (GA) Gas System. Huntsville and Decatur would be new customers of Southern. In order to provide gas service to Huntsville, Southern needs to cross the Tennessee River on lands formerly owned by TVA and transferred to the U.S. Fish and Wildlife Service (FWS) for the Wheeler

National Wildlife Refuge. TVA needs to concur in FWS's right-of-way permit. In addition, TVA may need to approve Southern's request to use TVA transmission line right of ways between Trinity and Cullman (pipeline mileposts 84 to 92) and between Huntsville and Decatur (pipeline mileposts 115 to 120).

FERC issued a certificate for the proposed route on May 30, 1997. The approved crossing of the Tennessee River and Wheeler National Wildlife Refuge System lands was called the Triana Variation and was located at Tennessee River Mile (TRM) 321. Subsequently, FWS informed Southern that it would prefer a different route for the pipeline to cross the refuge. Southern filed an application for an amended certificate, and this was granted by FERC on October 28, 1998. The revised approved route, called the I–65 Alternative, Variation Number 3, crosses the Tennessee River at TRM 309.5 and also follows the TVA Decatur to Huntsville transmission line in Limestone County. The revised pipeline route would extend 113 miles between Tuscaloosa and Huntsville. FWS issued a National Wildlife Refuge System compatibility determination and right-of-way permit on January 15, 1999. FWS has requested that TVA concur with its right-of-way permit.

FERC issued a Notice of Intent to Prepare an EIS on February 26, 1996. A public scoping meeting was held on April 1, 1996. A Draft EIS (DEIS) was issued in March 1997. Comments were received at public hearings on April 2, 1997 at Cordova, Alabama and on April 3, 1997 at Hartselle, Alabama. A total of 149 public hearing comments and letters were received. As a cooperating agency, TVA commented on the DEIS. A Final EIS, including responses to the comments received, was issued in May 1997. Subsequent to the decision of FERC, one of the cooperating agencies, FWS, informed Southern that it would prefer that the Tennessee River be crossed at an existing utility or highway corridor, if such a corridor could be directionally drilled. FWS requested that existing corridors be tested before a crossing would be considered at the certificated route (Tennessee River Mile 321). Southern subsequently tested the I–65 corridor and determined that a directional drill was feasible. Accordingly, Southern requested a certificate for an alternative route (the I–65 Alternative). FERC issued a Draft Supplemental EIS (DSEIS) on the I–65 Alternative in June 1998. A total of 16 letters were received and 25 public hearing statements were recorded at a public hearing on July 30, 1998 in Hartselle, Alabama. As a cooperating agency, TVA commented on the DSEIS. A Final Supplemental EIS, including responses to the comments received, was issued in October 1998.

Alternatives Considered

The EIS and SEIS prepared by FERC considered use of other pipeline systems (System Alternatives), Major Route Alternatives, and minor variations of each major route alternative, in addition to No Action. For the proposed crossing of the Tennessee River (the action that requires TVA concurrence), FERC, FWS, and TVA considered two alternatives in detail, Action and No Action. In addition, three minor variations of the action alternative (designated Variation Numbers 1, 2 and 3) were analyzed in detail. The proposed I–65 Alternative (Action Alternative) would follow Interstate 65 and cross the former TVA land now in the Wheeler National Wildlife Refuge for 2.7 miles (70 to 90 foot wide construction right-of-way). The Tennessee River crossing would be at Tennessee River Mile (TRM) 309.5, on the west side of I–65. The river crossing would be underground and would involve a directional drill.

Variation Number 1 would cross the Tennessee River on the east side of I–65 and would be further from residences. Variation Number 2 would be north of the Tennessee River in Limestone County, Alabama, and would follow an existing TVA power line and pipeline rights of way to avoid the crossing of forested wetlands associated with Beaverdam Creek. Variation Number 3 would also be north of the Tennessee River in Limestone County, and would follow an existing TVA power line and Old Highway 20. It also would avoid forested wetlands associated with Beaverdam Creek.

Several alternatives were considered but not analyzed in detail. The White Springs Power Line Alternative would follow an existing power line and would cross at TRM 307.5, involving 2.85 miles of former TVA land in Wheeler National Wildlife Refuge and 1.1 miles of former TVA land now in Point Mallard City Park. The crossing of the Tennessee River and Flint Creek would be by open trench construction. Open trench construction would have potential impacts on endangered and threatened species. Because this alternative would have greater land requirements and would involve open trench construction of the Tennessee River, this alternative did not offer any environmental advantages that would merit detailed analysis.

The Hudson Bridge Alternative would involve a crossing of the Tennessee River at TRM 305. The crossing would be adjacent to the U.S. 31 bridge (Hudson Bridge) crossing. This route would involve crossing 2.7 miles of former TVA land and extensive urban area construction, in addition to major open cut crossings of the Tennessee River and Flint Creek. Because of the greater impact on densely populated areas and the required open cut of the Tennesssee River, this alternative did not offer any environmental advantages that would merit detailed analysis.

The Hartselle Alternative would involve crossing 0.8 miles of former TVA land and 3 miles of current TVA land in the Swan Creek Wildlife Management Area. It would also involve extensive urban area construction, in addition to major open cut crossings of the Tennessee River and Flint Creek. Because this alternative was twice as long as the proposed route and would require open cut construction of the Tennessee River, this alternative did not offer any environmental advantages that would merit detailed analysis.

On October 28, 1998, FERC issued an order amending the certificate for the North Alabama Pipeline Project. The certificate authorized Southern to construct the pipeline along the I–65 alternative and variation number 3.

Decision: TVA has decided to concur with the FWS right-of-way easement allowing Southern to implement the I–65 Alternative, Variation Number 3. In addition, TVA may also have to make a decision on any request made by Southern to use TVA's Decatur to Huntsville transmission line right-of-way in Limestone County (pipeline mileposts 115 to 120) and its Trinity to Cullman transmission line right-of-way in Cullman and Morgan Counties (pipeline mileposts 84 to 92). In making these decisions, TVA has carefully considered the environmental impacts of a new pipeline corridor across the Tennessee River as well as the comments of those who oppose the pipeline for environmental and other reasons. TVA believes that with the choice of the I–65 crossing, the use of directional drill, and the selection of variation Number 3 which avoids forested wetlands, the environmental impacts of the proposal have been reduced to insignificant levels.

Environmentally Preferable Alternative

Of the alternatives discussed in the EIS and SEIS, TVA has determined that the No Action alternative would be environmentally preferable. It would not, however, accomplish the applicant's and FERC's goals of supplying additional natural gas at competitive rates to Huntsville Utilities,

Decatur Utilities, Marshall County (AL) Gas District, Dekalb-Cherokee Counties (AL) Gas District, Austell (GA) Gas System, or Cartersville (GA) Utilities.

Environmental Consequences and Commitments

As a long, linear pipeline, the project generally follows existing rights of way. About 40 percent of the proposed route is unforested and would revert to its previous open land uses after pipeline construction. However, forested lands would be cleared and maintained in an unforested condition by the company through periodic maintenance activities. Forested wetlands would be cleared in several places along the 122-mile pipeline route. Approximately 37.67 acres of forested wetlands would be cleared in Tuscaloosa, Fayette, Walker, Cullman, Morgan, and Limestone Counties of Alabama. Of this, 24.22 acres would be permanently maintained as cleared right-of-way. FWS and FERC have adopted mitigation measures to avoid or minimize environmental harm. TVA believes that the measures required by FERC in its October 28, 1998 order would substantially reduce the environmental impacts of this project. These include detailed construction Best Management Practices, use of environmental inspectors, completion of compliance with Section 106 of the National Historic Preservation Act, and surveys of caves for Indiana and gray bats. Southern will comply with the following measures:

- In order to compensate for temporary and permanent wetland impacts, Southern will purchase 185 acres of drained wetland in Limestone County, Alabama (known as the Devaney Tract) adjacent to the Wheeler National Wildlife Refuge and deed the tract to the FWS. The FWS would restore wetland hydrology to approximately 105 acres and plant hardwood trees on remaining acreage.
- Southern will comply with measures required by FERC's Order Amending Certificate and Denying Stay and Rehearing of October 28, 1998 (Docket Nos. CP96–153–002, 003 and 004) and FERC's May 30, 1997 Order Issuing Certificate and Denying Rehearing (Docket Nos. CP96–153–000 and 002).

Dated: January 19, 1999.

Kathryn J. Jackson,

Executive Vice President, Resource Group.

[FR Doc. 99–2043 Filed 1–27–99; 8:45 am]

BILLING CODE 8120–08–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Final Environmental Impact Statement for Terminal Doppler Weather Radar To Serve John F. Kennedy International and LaGuardia Airports, New York, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: In accordance with requirements of the National Environmental Policy Act of 1969, as Amended, and FAA order 1050.ID—Policies and Procedures for Considering Environmental Impacts, the FAA announces the availability of a Final Environmental Impact Statement (EIS) for terminal Doppler weather radar to Serve John F. Kennedy International and LaGuardia Airports, New York, New York. The Final EIS provides responses to comments on the Draft EIS received in written form or in oral presentations at five official public hearings held during the public review period for the Draft EIS. The text and figures of the Draft EIS have been revised as necessary to provide information and analyses requested by comments from the public. The Final EIS is a comprehensive document containing the contents of the Draft EIS, as revised, copies of all comment letters received during the public review period, transcripts of the five public hearings, and the FAA's official responses to those comments. A copy of the Final EIS will be mailed to all parties who received the Draft EIS directly from the FAA and all additional parties who requested a copy of the document. The Final EIS is available for review at FAA Headquarters in Washington, DC, and libraries of the potentially affected area in New York City. A copy of the Final EIS may be obtained from the FAA through request to the contact listed below.

In accordance with regulations at 40 Code of Federal Regulations 1506.10(b)(2), the FAA's decision on whether to proceed with the proposed action will not be made or recorded until the appropriate time. At the time such decision is made, the FAA will release a Record of Decision with that information.

FOR FURTHER INFORMATION CONTACT: Jerome D. Schwartz, Environmental Lead for TDWR, AND–402, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9841.

Issued in Washington, DC on January 20, 1999.

James C. Link,

Acting Leader, Integrated Product Team For Surveillance, AND–400.

[FR Doc. 99–2022 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

Ocular-based Measures of Driver Alertness; Notice of Conference and Request for Submissions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of conference and request for submissions.

SUMMARY: This notice is both an invitation to participate in a conference addressing ocular-based measures of driver alertness and a request for submissions to be presented/demonstrated at the conference. The conference is being sponsored by the FHWA's Office of Motor Carriers and the National Highway Traffic Safety Administration's (NHTSA) Office of Vehicle Safety Research (formerly, the Office of Crash Avoidance). The purpose of the conference is to (1) share recent FHWA/NHTSA findings regarding the validity of eye-based measures of driver alertness, (2) share recent FHWA and NHTSA technology developments in this area, (3) identify and provide information about other Research and Technology (R&T) studies relevant to in-vehicle alertness monitoring, (4) review the overall state-of-the-art of in-vehicle alertness monitoring, (5) review concepts for feedback of alertness information to drivers and other proposed features of the driver-vehicle interface, and (6) review concepts for the successful and user-acceptable introduction of in-vehicle alertness monitoring systems to commercial motor carrier fleets.

DATES: The conference will be held on April 26–27, 1999. Each day's session will begin at 9 a.m. and end at 5 p.m. Papers and technology demonstration proposals/abstracts must be received on or before March 1, 1999.

ADDRESSES: The conference will be held at the Hyatt-Dulles Hotel, 2300 Dulles Corner Boulevard, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: For conference information and to obtain

registration materials, contact Ms. Annette Smith, Portfolio Management Group, Ltd., 8513 Ashwood Drive, Capitol Heights, MD 20743; Telephone: (301) 499–4936; FAX: (301) 499–1405; E-mail: portmgmt@erols.com. Paper and technology demonstration proposals should be submitted to Robert J. Carroll, Office of Motor Carrier Research and Standards (HCS–30), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590; Telephone: (202) 366–9109; FAX: (202) 366–8842; E-mail: robert.carroll@fhwa.dot.gov.

SUPPLEMENTARY INFORMATION: From 1997–1998, the Intelligent Transportation Systems/Commercial Vehicle Operations Division of the FHWA's Office of Motor Carriers funded a program, which was managed by the NHTSA's Office of Crash Avoidance Research, to study competing fatigue detection technologies. Under the program, the University of Pennsylvania (UPENN) conducted laboratory experiments to evaluate the validity, sensitivity, and reliability of selected personal (psychophysiological) fatigue-detection devices and measures. The study evaluated eye closure measures such as PERCLOS, a measure of eyelid droop identified in earlier NHTSA research as being a promising index of fatigue. PERCLOS is defined as the percent of time eyelids are closed 80% or more—a measure found to be significantly correlated with driver fatigue. Other psychophysiological measures assessed included two eye-blink measures, two electroencephalograph (EEG) measures, and a head movement detector. All measures had some validity, but the results corroborated most strongly the validity of PERCLOS. The final report, "Evaluation of Techniques for Ocular Measurement," DOT–HS–808 762, is available through the National Technical Information Service, telephone (703) 605–6000 or (800) 553–6847. The FHWA and the NHTSA believe that the PERCLOS measure is one of the most promising known real-time indicators of driver alertness for in-vehicle systems. Laboratory-based studies of the driver-vehicle interface for a PERCLOS-based in-vehicle alertness monitoring system are currently underway. This Intelligent Vehicle Initiative (IVI)-funded project is being managed by the NHTSA's Office of Crash Avoidance Research and is a follow-up to the PERCLOS validation study. Under the program, UPENN is conducting laboratory experiments to evaluate the effectiveness of various potential elements of the driver-vehicle interface (DVI) of in-vehicle CMV driver alertness monitoring devices. Also, under this program, Carnegie Mellon Research Institute has developed, and is testing, a new camera and related software that can monitor and analyze a driver's PERCLOS in real-time. Other DVI components to be assessed include real-time gauges, informational alarms/warnings, and alerting stimuli. The study will make recommendations regarding optimal DVI design elements for CMV driver alertness monitors. This new study will be completed in the Spring of 1999 and reported at the conference. This technical conference/workshop is planned to discuss recent scientific validation findings regarding PERCLOS and other eye activity measures as metrics of alertness, and the status of efforts to develop in-vehicle sensors to continuously measure PERCLOS as an indicator of driver alertness (i.e., develop an "alertometer"). The conference will also address the potential and appropriate uses of "alertometer" data and ways to ensure the active participation and acceptance of drivers and management in the use of such technologies. Since the PERCLOS measure will likely be a key metric employed in any operational test of alertness monitoring technology, the workshop will also provide an update of the FHWA's plans for implementing the IVI operational tests, as described above.

Due to limited seating, early registration is encouraged. The registration fee is $150. The registration fee for full-time students is $100. Those registering before March 1, 1999 may pay an early registration fee of $100 ($75 for full-time students). Full refund of registration fees will be made for cancellations received by April 15, 1999. Refunds of 75 percent of the registration fee will be made for cancellation notices received after April 15, 1999. Persons interested in attending, presenting papers, and/or demonstrating relevant technologies are invited to obtain registration materials and submit papers or technology demonstration proposals, in accordance with the criteria set forth below.

To be accepted for presentation, papers proposing methods of alertness measurement should describe how the measure/method meets one of the following three criteria for continuous, in-vehicle driver alertness monitoring, regardless of the technology used:

(1) Provide continuous, in-vehicle driver-alertness monitoring, using the PERCLOS measure.

(2) Be highly correlated with the PERCLOS.

(3) Have gone through a validation process similar to the PERCLOS validation.

Technologies proposed for demonstration at the conference will be evaluated with respect to their validity in measuring driver alertness, their reliability/durability for in-vehicle operation, and their current or potential cost of production and integration in vehicle operations. Interested parties are instructed to request a registration packet and submit a 300–500 word abstract, describing the paper or technology demonstration proposed for presentation at the conference. The abstracts related to technology demonstrations should include a description of the technology, including its major components, functional basis (i.e., what it measures), how it is installed in a vehicle (and/or worn by operators), what kind of feedback it provides to drivers, evidence of validity (e.g., correlation with performance on vigilance or alertness-related tasks), operational reliability/durability, unobtrusiveness/acceptability, and affordability (or potential affordability following further development). Empirical data on device validity (i.e., evidence that it is accurately measuring alertness as measured by some independent criterion which is a known valid measure of alertness, such as the psychological vigilance test) is particularly important. The FHWA and NHTSA will select or invite presentations and demonstrations for the conference, based upon these criteria. Submitters are instructed not to submit any confidential or proprietary data on device design or performance.

The outcomes of this conference are expected to be (1) greater public awareness of recent FHWA/NHTSA findings with respect to the validity of eye-based measures of driver alertness and related technology developments in this area, (2) the identification of other research and technology studies relevant to in-vehicle alertness monitoring, (3) a review of the overall state-of-the-art of in-vehicle alertness monitoring, (4) a review of concepts for providing feedback of alertness information to drivers, as well as other proposed features of the driver-vehicle interface, and (5) a review of concepts for successful and user-acceptable introduction of in-vehicle alertness monitoring to commercial motor carrier fleets. The FHWA does not believe the outcomes of this conference will impact the agency's on-going rulemaking addressing its prescriptive hours-of-service rules.

Authority: 23 U.S.C. 315; 49 U.S.C. 31136; 49 U.S.C. 31502; 49 CFR 1.48 and 1.50.

Issued on: January 22, 1999.

George L. Reagle,

Associate Administrator for Motor Carriers Federal Highway Administration.

Raymond P. Owings,

Associate Administrator for Research and Development, National Highway Traffic Safety Administration.

[FR Doc. 99–2020 Filed 1–27–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33680]

Central New England Railroad, Inc.—Operation Exemption—Line Owned by State of Connecticut Department of Transportation

Central New England Railroad, Inc., an existing Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to operate approximately 8.7 miles of rail line owned by the State of Connecticut Department of Transportation from milepost 0.0, at Hartford, CT, to milepost 8.7, at Griffins, CT (known as the Griffins Industrial Track).[1]

The transaction is expected to be consummated on or after January 22, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33680 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, D.C. 20423–0001. In addition, a copy of each pleading must be served upon Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 21, 1999.

[1] Applicant represents that the result of the proposed transaction will be the resumption of common carrier service on a state-owned line.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–1887 Filed 1–27–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33704]

Pioneer Railcorp and Wabash & Western Railway Co.—Acquisition of Control Exemption—Michigan Southern Railroad Co., Inc.

Pioneer Railcorp (Pioneer), a noncarrier holding company, and Wabash & Western Railway Co. (WAB), a Class III rail carrier, have jointly filed a verified notice of exemption to acquire, through stock purchase, Michigan Southern Railroad Co., Inc., (MSR), a Class III rail carrier, operating in the States of Michigan and Indiana.[1]

The earliest the transaction could be consummated was January 6, 1999, the effective date of the exemption (7 days after the exemption was filed).

As indicated by Pioneer and WAB in their notice, pursuant to the original lease agreement between WAB, MSR, Gordon D. Morris, and Morris Leasing Co., Ltd. (MLSC), WAB has the option to purchase the outstanding stock of MSR, and the rail assets of MLSC would be transferred to MSR prior the closing of the stock purchase. WAB will continue to lease and operate the lines of MSR as well as operate under the name of Michigan Southern Railroad.[2]

WAB is a subsidiary of Pioneer Railcorp (Pioneer), which directly controls thirteeen existing shortline rail carriers.[3] Pioneer will indirectly control MSR upon completion of this transaction.

Pioneer and WAB state that: (i) The railroads do not connect with each other; (ii) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33704, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Daniel A. LaKemper, Esq., 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 21, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–1888 Filed 1–27–99; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Morris Leasing Co., Ltd. and Michigan Southern Railroad, Inc.—Acquisition and Operation Exemption—Lines of Consolidated Rail Corporation*, STB Finance Docket No. 33265 (STB served Nov. 13, 1996).

[2] *See Wabash & Western Railway Co.—Lease and Operation Exemption—Morris Leasing Co., Ltd., and Michigan Southern Railroad, Inc.*, STB Finance Docket No. 33306 (STB served Dec. 24, 1996).

[3] See Pioneer Railcorp—Continuance in Control Exemption—Pioneer Industrial Railway Co., STB Finance Docket No. 33550 (STB served Feb. 20, 1998).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 21, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 1, 1999 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0089.
Form Number: ATF F 5100.24.
Type of Review: Revision.
Title: Application for Basic Permit Under the Federal Alcohol Administration Act.
Description: ATF Form 5100.24 will be completed by persons intending to engage in a business involving beverage alcohol operations at distilled spirits plants, bonded wineries, or wholesaling/importing businesses. The information allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a permit.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,600.
Estimated Burden Hours Per Respondent: 1 hour, 45 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,800 hours.
OMB Number: 1512–0090.
Form Number: ATF F 5110.18 (1643).
Type of Review: Revision.
Title: Application for Amended Basic Permit Under the Federal Alcohol Administration Act.
Description: ATF F 5100.18 is completed by permittees who change their operations which require a new permit to be issued or a notice to be received by ATF. The information allows ATF to identify the permittee, the changes to the permit or business and to determine whether the applicant qualifies.
Respondent: Business or other for-profit.
Estimated Number of Respondents: 1,200.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 600 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W.,Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–1942 Filed 1–27–99; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 21, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 1, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1478.
Regulation Project Number: INTL–9–95 Final.
Type of Review: Extension.
Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporation's.
Description: Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies (section 367(a)). Under the regulations, no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.
Respondents: Business and other for-profit.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 10 hours.
Frequency of Response: Other (once).
Estimated Total Reporting Burden: 1,000 hours.
OMB Number: 1545–1479.
Regulation Project Number: IA–41–93 Final.
Type of Review: Extension.
Title: Automatic Extension of Time for Filing Individual Income Tax Returns; Automatic Extension of Time to File Partnership Return of Income, Trust Income Tax Return, and U.S. Real Estate Mortgage Investment Conduit Income Tax Return.
Description: Under section 1.6081–4, an individual required to file an income tax return is allowed an automatic 4-month extension of time to file if (a) an application is prepared on Form 4868, "Application for Automatic Extension of Time to File U.S. Individual Income Tax Return," or in such other manner as may be prescribed by the Internal Revenue Service (IRS), (b) the application is filed on or before the date the return is due, and (c) the application shows the full amount properly estimated as tax.
Respondents: Individuals or households.
Estimated Number of Respondents: 1.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 99–1943 Filed 1–27–99; 8:45 am]
BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Sigmar Polke: Works on Paper 1963–1974"

AGENCY: United States Information Agency.
ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Sigmar Polke: Works on Paper 1963–1974," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, New York, from on or about April 1 through on or about June 16, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit items, or for

other information, contact Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel at 202/619–6084. The address is Room 700, U.S. Information Agency, 301 4th Street, NW., Washington, DC 20547–0001.

Dated: January 22, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–2008 Filed 1–27–99; 8:45 am]

BILLING CODE 8230–01–M

VOL 64 ISS 18 JA 28 999 UMI

Corrections

Federal Register
Vol. 64, No. 18
Thursday, January 28, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

Correction

In notice document 99–1296, appearing on page 3296, in the issue of Thursday, January 21, 1999, make the following correction:

On page 3296, in the second column, in the seventh line, "2966–099" should read "2966–009".

[FR Doc. C9–1296 Filed 1–27–99; 8:45 am]

BILLING CODE 1505–01–D

Postal Rate Commission

39 CFR Part 3001

[Docket Nos. RM99-1, Order No. 1225]

Amendments to Domestic Mail Classification Schedule

Correction

In rule document 99–326 beginning on page 1392 in the issue of Friday, January 8, 1999, make the following corrections:

Appendix A to Subpart C [Corrected]

1. On page 1395, in the first column, under paragraph 321.37, add the following paragraph:

* * * * *

321.45 Residual Shape Surcharge. Nonprofit subclass mail is subject to a surcharge if it is prepared as a parcel or if it is not letter or flat shaped.

* * * * *

2. On page 1404, Schedule 221 should read as set forth below:

FIRST-CLASS MAIL RATE SCHEDULE 221—LETTERS AND SEALED PARCELS

	Rate (cents)
Regular	
Single Piece: First Ounce	
Presort[1]	
Qualified Business Reply Mail	
Additional Ounce[2]	
Nonstandard Surcharge	
Single Piece	
Presort	
Automation—Presort[1]	
Letters[3]	
Basic Presort[4]	
3-Digit Presort[5]	
5-Digit Presort[6]	
Carrier Route Presort[7]	
Flats[8]	
Basic Presort[9]	
3/5-Digit Presort[10]	
Additional Ounce[2]	
Nonstandard Surcharge	

[1] A mailing fee of $_____ must be paid once each year at each office of mailing by any person who mails other than Single Piece First-Class Mail. Payment of the fee allows the mailer to mail at any First-Class rate. For presorted mailings weighing more than 2 ounces, subtract $_____ cents per piece.

[2] Rate applies through 13 ounces. Heavier pieces are subject to Priority Mail rates.

[3] Rates apply to bulk-entered mailings of at least 500 letter-size pieces, which must be delivery point barcoded and meet other preparation requirements specified by the Postal Service.

[4] Rate applies to letter-size Automation-Presort category mail not mailed at 3-Digit, 5-Digit, or Carrier Route rates.

[5] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple three-digit ZIP Code destinations specified by Postal Service.

[6] Rate applies to letter-size Automation-Presort category mail presorted to single or multiple five-digit ZIP Code destinations specified by the Postal Service.

[7] Rate applies to letter-size Automation-Presort category mail presorted to carrier routes specified by the Postal Service.

[8] Rates apply to bulk-entered mailings of at least 500 flat-size pieces, each of which must be delivery-point barcoded or bear a ZIP+4 barcode, and must meet other preparation requirements specified by the Postal Service.

[9] Rate applies to flat-size Automation-Presort category mail not mailed at the 3/5-Digit rate.

[10] Rate applies to flat-size Automation-Presort category mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

3. On page 1407, Schedule 321.4B should read as set forth below:

STANDARD MAIL RATE SCHEDULE 321.4B—NONPROFIT SUBCLASS AUTOMATION CATEGORIES[1]

[Full rates]

	Rates (cents
Letter Size[2]	
Piece Rate	
Basic Letter[3]	
3-Digit Letter[4]	
5-Digit Letter[5]	
Destination Entry Discount per Piece	
BMC	
SCF	
Flat Size[6]	
Piece Rate	
Minimum per Piece[7]	
Basic Flat[8]	
3/5-Digit Flat[9]	
Destination Entry Discount per Piece	
BMC	
SCF	
Pound Rate[7]	
Plus per Piece Rate	
Basic Flat[8]	
3/5-Digit Flat[9]	
Destination Entry Discount per Pound	
BMC	

STANDARD MAIL RATE SCHEDULE 321.4B—NONPROFIT SUBCLASS AUTOMATION CATEGORIES[1]—Continued

[Full rates]

	Rates (cents
SCF	

[1] A fee of $_____ must be paid once each 12-month period for each bulk mailing permit.

[2] For letter-size automation pieces meeting applicable Postal Service regulations.

[3] Rate applies to letter-size automation mail not mailed at 3-digit, 5-digit or carrier route rates.

[4] Rate applies to letter-size automation mail presorted to single or multiple three-digit ZIP Code destinations as specified by the Postal Service.

[5] Rate applies to letter-size automation mail presorted to single or multiple five-digit ZIP Code destinations as specified by the Postal Service.

[6] For flat-size automation mail meeting applicable Postal Service regulations.

[7] Mail pays either the minimum piece rate or the pound rate, whichever is higher.

[8] Rate applies to flat-size automation mail not mailed at 3/5-digit rate.

[9] Rate applies to flat-size automation mail presorted to single or multiple three- and five-digit ZIP Code destinations as specified by the Postal Service.

4. On page 1407, Schedule 321.5 should read as set forth below:

STANDARD MAIL RATE SCHEDULE 321.5—NONPROFIT ENHANCED CARRIER ROUTE SUBCLASS[1]

[Full rates]

	Rates (cents)
Letter Size	
Piece Rate	
Basic	
Basic Automated Letter[2]	
High Density	
Saturation	
Destination Entry Discount per Piece	
BMC	
SCF	
DDU	
Non-Letter Size[3]	
Piece Rate	
Minimum per Piece[4]	
Basic	
High Density	
Saturation	
Destination Entry Discount per Piece	
BMC	
SCF	
DDU	
Pound Rate[4]	
Plus per Piece Rate	
Basic	
High Density	
Saturation	
Destination Entry Discount per Pound	
BMC	
SCF	
DDU	

[1] A fee of $_____ must be paid once each 12-month period for each bulk mailing permit.

[2] Rate applies to letter-size automation mail presorted to routes specified by the Postal Service.

[3] Residual shape pieces are subject to a surcharge of $_____ per piece.

[4] Mailer pays either the minimum piece rate or the pound rate, whichever is higher.

5. On page 1413, Schedule 423.2 should read as set forth below:

PERIODICALS RATE SCHEDULE 423.2—WITHIN COUNTY

[Full rates]

	Rate (cents)
Per Pound	
General	
Delivery Office [1]	
Per Piece	
Required Presort	
Presorted to 3-digit	
Presorted to 5-digit	
Carrier Route Presort	
Per Piece Discount	
Delivery Office [2]	
High Density (formerly 125 piece) [3]	
Saturation	

PERIODICALS RATE SCHEDULE 423.2—WITHIN COUNTY—Continued

[Full rates]

	Rate (cents)
Automation Discounts for Automation Compatible Mail [4]	
From Required:	
Prebarcoded Letter size	
Prebarcoded Flat size	
From 3-digit:	
Prebarcoded Letter size	
Prebarcoded Flat size	
From 5-digit:	
Prebarcoded Letter size	
Prebarcoded Flat size	

[1] Applicable only to carrier route (including high density and saturation) presorted pieces to be delivered within the delivery area of the originating post office.

[2] Applicable only to carrier presorted pieces to be delivered within the delivery area of the originating post office.

[3] Applicable to high density mail, deducted from carrier route presort rate. Mailers also may qualify for this discount on an alternative basis as provided in DMCS section 423.83.

[4] For automation compatible pieces meeting applicable Postal Service regulations.

6. On page 1417, Schedule 943 should read as set forth below:

FEE SCHEDULE 943—INSURANCE

Coverage	Fee (in addition to postage)
Express Mail Insurance	
Document Reconstruction:	
$0.01 to $500	no charge
Mechandise:	
$0.01 to $500	no charge
500.01 to 5000	$_____ for each $100 (or fraction thereof) over $500 in value.
General Insurance [1]	
$0.01 to $50	
50.01 to 100	
100.01 to 5000	$_____ plus $_____ for each $100 (or fraction thereof) over $100 in coverage.

[1] For bulk insurance, deduct $_____ per piece.

[FR Doc. C9–326 Filed 1–27–99; 8:45 am]
BILLING CODE 1505-01-D

federal register

Thursday
January 28, 1999

Part II

Department of Housing and Urban Development

Funding Availability for the Welfare-to-Work Section 8 Tenant-Based Assistance Program for Fiscal Year 1999; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4448–N–01]

Notice of Funding Availability for the Welfare-to-Work Section 8 Tenant-Based Assistance Program for Fiscal Year 1999

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: *Purpose of Program:* The purpose of the Section 8 Welfare-to-Work Rental Voucher program is to provide tenant-based rental assistance that will help eligible families make the transition from welfare to work.

Available Funds: Approximately $248.2 million.

Eligible Applicants: Housing agencies (HAs), Indian tribes, and tribally designated housing entities (TDHEs). Two or more HAs or Indian tribes and TDHEs may apply jointly.

Application Deadline: The application deadline for Section 8 Welfare-to-Work Rental Vouchers under this NOFA is April 28, 1999, at the time described in section I. of this NOFA, below.

Match: None.

SUPPLEMENTARY INFORMATION:

If you are interested in applying for funding under this program, please review carefully the following information:

I. Application Due Date, Application Kits, and Technical Assistance

Application Due Date: April 28, 1999.

Address for Submitting Applications: The application and two copies must be submitted to the HA's local HUD Field Office HUB (Attention: HUB, Director of Public Housing) or local HUD Field Office Program Center (Attention: Program Center Coordinator) or for Indian tribes and their tribally designated housing entities, to the local Office of Native American Programs, (Attention: Administrator, Office of Native American Programs). Throughout this NOFA, the Field Office HUBs and Program Centers and the local Offices of Native American Programs will be referred to as the local HUD Field offices. Applicants should not submit any copies of their applications to HUD Headquarters.

(1) *Mailed Applications (Other than Overnight or Express Mail Delivery).* Your application will be considered timely filed if postmarked before midnight, local time, on the application due date and received by the appropriate local HUD Field Office on or within ten (10) days of the application due date.

(2) *Applications Sent by Overnight/Express Mail Delivery.* Applications sent by overnight delivery or express mail will be considered timely filed if received by the appropriate local HUD Field Office before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

(3) *Hand Carried Applications.* Applications must be delivered to the appropriate local HUD Field Office by 6:00 pm local time on the due date. Hand carried applications will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6:00 pm.

For Application Kits, Further Information and Technical Assistance

For an application kit and any supplemental information, please call the Public and Indian Housing Information and Resource Center at 1–800–955–2232. An application kit will also be available on the Internet through the HUD web site at http://www.hud.gov. When requesting an application kit, please refer to the Section 8 Welfare-to-Work Rental Voucher Program, and provide your name, address (including zip code) and telephone number (including area code).

For answers to your questions, you may also contact the Public and Indian Housing Information and Resource Center at 1–800–955–2232, or contact the Director of Public Housing, the Program Center Coordinator or the Office of Native American Program Administrator in your local HUD Office. Hearing-or speech-impaired individuals may call HUD's TTY number (202) 708–0770 or 1 800–877–8339 (the Federal Information Relay Service TTY). (Other than the "800" number, these numbers are not toll-free.) Information can also be accessed via the Internet through the HUD web site at http://www.hud.gov.

The HUD web site will also provide a text link to HUD's Welfare-to-Work home page, and the Welfare-to-Work related websites of the Departments of Health and Human Services, Labor, and Transportation, to assist you in coordinating your proposed program with the efforts sponsored by these Departments.

Prior to the application deadline, staff at the numbers given above will be available to provide general guidance, but not guidance in actually preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

II. Amount Allocated

Of the $283 million appropriated in Fiscal Year (FY) 1999 to fund Section 8 Welfare-to-Work Rental Vouchers, approximately $248.2 million is made available to housing agencies through the national competition under this NOFA.

Of the remainder, at least $4 million each shall be made available for local self-sufficiency/welfare-to-work initiatives in San Bernardino County California; Cleveland, Ohio; Kansas City, Missouri; Charlotte, North Carolina; Miami/Dade County, Florida; Prince Georges County Maryland; New York City, New York; and Anchorage, Alaska as provided by the VA/HUD and Independent Agencies Appropriations Act, 1999 (99 App. Act). HUD will contact these set-aside sites to advise them of specific application submission requirements and deadlines. Each HA for a set-aside site must submit to HUD any application materials requested by HUD. Funding will not be made available to a set-aside site until the site has submitted all HUD-required materials and obtained HUD approval of the submission.

In accordance with the 99 App. Act, $2.83 million of the $283 million available for Section 8 Welfare-to-Work Rental Vouchers may be used by HUD

to conduct a detailed evaluation of the effect of providing Section 8 Welfare-to-Work Rental Voucher assistance, rather than be awarded under this NOFA.

III. Program Description; Eligible Applicants; Eligible Activities

(A) Program Description

The Section 8 Welfare-to-Work Rental Voucher program provides tenant-based Section 8 rental assistance to help eligible families make the transition from welfare to work. Tenant-based Section 8 rental assistance is to be provided in connection with programs where the HA, tribe, or TDHE has demonstrated that tenant-based rental assistance is critical to the success of eligible families to obtain or retain employment. No additional funding is provided under this NOFA for welfare-to-work services for families. Funding is only for Section 8 Welfare-to-Work rental voucher housing assistance and regular Section 8 administrative fees for administration of such housing assistance. If appropriate, HAs may project base a portion of the funding following the applicable Section 8 Project-Based Certificate (PBC) program regulations (24 CFR part 983). The Section 8 Welfare-to-Work Rental Voucher program must take into account the particular circumstances of the local community. The rental assistance provided to families through the Section 8 Welfare-to-Work Rental Voucher program must be coordinated with other welfare reform and welfare-to-work initiatives.

The maximum number of Section 8 Welfare-to-Work Rental Vouchers that can be provided under this NOFA to an HA, tribe or TDHE is as follows: For an HA that is a State agency, (i.e., an agency with state-wide jurisdiction)—the lesser of 2,000 or one-half of the total budgeted Section 8 rental certificates and vouchers in the HA's Section 8 program for the HA's current Fiscal Year. If more than one HA applies as a State agency from the same State, only the highest-ranking one will be eligible for an award. For all other HAs, that are not set-aside sites identified in section II. of this NOFA, above—the lesser of 700 or one-half of the total budgeted Section 8 rental certificates and vouchers in the HA's Section 8 program for the HA's current Fiscal Year, or for tribes or TDHEs, the number of rental certificates and vouchers the entity was administering as of September 30, 1997. If you are a set-aside site that would receive fewer units than would be available to you under the above formula, and you wish to apply for the maximum number of units under the formula, you must apply under the national competition in this NOFA. The number of units available to you under the set-aside plus any units requested under this NOFA may not exceed the maximum that would be available to you under this NOFA.

An HA seeking welfare-to-work housing vouchers under this NOFA may use some of its current pool of other Section 8 voucher funding to augment the welfare-to-work vouchers in order to enlarge the pool of vouchers available to those families qualifying for its approved welfare-to-work program.

(B) Eligible Applicants

HAs, including Indian tribes and their tribally designated housing entities, may apply. All applicant HAs, tribes and TDHEs must develop a program in consultation with the State, local or Tribal entity administering the Temporary Assistance to Needy Families (TANF) program and the entity, if any, administering the Welfare-to-Work formula and/or competitive grants allocated by the United States Department of Labor.

(C) Eligible Activities

You may only use funds available under this NOFA for a Section 8 Welfare-to-Work rental voucher program. In the Section 8 Welfare-to-Work Rental Voucher Program, you will perform all normal rental voucher program activities, but you may only provide rental assistance to families that meet all normal Section 8 program requirements and also meet the specific requirements of the Welfare-to-Work Voucher Program. These specific requirements are stated in section IV.(A) of this NOFA.

IV. Program Requirements

(A) Eligibility of Families

(1) *Section 8 Welfare-to-Work Rental Voucher eligible families.* The term "Section 8 Welfare-to-Work rental voucher program eligible family" means a family that, in addition to meeting the eligibility requirements of the normal tenant-based Section 8 assistance program, also meets the following additional requirements:

(a) When initially selected for welfare-to-work rental voucher assistance, families must be eligible to receive, be currently receiving, or shall have received within the preceding two years, assistance or services funded under the TANF program;

(b) Tenant-based housing assistance must be determined to be critical to the family's ability to successfully obtain or retain employment; and

(c) The family shall not already be receiving tenant-based assistance under Section 8 of the United States Housing Act of 1937 (1937 Act—42 U.S.C. 1473f).

(2) To be eligible for selection for the Section 8 Welfare-to-Work Rental Voucher Program, families must be on the waiting list used by the HA for its tenant-based Section 8 program. For Indian tribes and TDHEs only, to be eligible for this program, families must be on either the rental or homeownership waiting list of that entity.

(B) HA Responsibilities

If your application is funded:

(1) You must modify your selection system to require the selection of Section 8 Welfare-to-Work Rental Voucher program eligible families for the program;

(2) Families on your Section 8 waiting list must be selected in accordance with the established selection policies in your HA's administrative plan;

(3) If you have a closed Section 8 waiting list and do not have a sufficient number of welfare-to-work eligible families on your waiting list, you must reopen the waiting list to accept an application from any Section 8 Welfare-to-Work eligible applicant family that is not currently on your waiting list for your tenant-based Section 8 program;

(4) You must administer the rental assistance in accordance with applicable voucher program regulations and requirements and your Section 8 administrative plan;

(5) During the term of this welfare-to-work funding, if Section 8 rental assistance for a family under this program is terminated, available welfare-to-work rental assistance must be provided to another Section 8 Welfare-to-Work eligible family selected from your tenant-based Section 8 program waiting list. The term of welfare-to-work funding is the term of the welfare-to-work ACC funding increment.

(6) *Welfare-to-Work Evaluation Participation.* HUD is seeking 5 to 9 HAs to participate, on a voluntary basis, in the evaluation that HUD intends to conduct on the Section 8 Welfare-to-Work Rental Voucher Program. HAs who volunteer to participate as a special evaluation site for purposes of this evaluation, if they are selected for an award under this NOFA, will be compensated for any additional administrative burden from the $2.83 million evaluation setaside in the 99 App. Act. In order to participate as a special evaluation site, you and your partners must:

(a) Be awarded at least 450 units under this NOFA.

(b) Fully cooperate with random assignment of your welfare-to-work applicants to treatment and control groups. You will be required to follow an established protocol for determining that some eligible families receive and some eligible families do not receive welfare-to-work vouchers on a random basis.

(c) Assist in data collection and retrieval for the evaluation through administration of special forms and extraction of data from management systems.

(d) Submit a budget with reasonable and necessary costs once HUD specifies the required activities for the evaluation.

If HUD does not receive sufficient voluntary applications to participate as evaluation sites for this Congressionally mandated study, HUD may require one or more sites receiving at least 450 units to cooperate with an evaluation based on random assignment as a condition of funding. If you submit an application for 450 or more units, your consent to cooperate with a random-assignment evaluation may be assumed by HUD, even if you do not explicitly volunteer.

(C) TANF and Welfare-to-Work Support

Your application must include certifications from the State, local or Tribal entity administering assistance under the TANF program and from the entity, if any, administering the Welfare-to-Work formula and/or competitive grants allocated by the United States Department of Labor that these entities support your proposed Section 8 Welfare-to-Work program and will cooperate with you, as the administrator of the housing assistance, to assure that the rental assistance is coordinated with other welfare reform and welfare-to-work initiatives. If any of these entities does not respond to your request for this certification within a reasonable time period, its concurrence shall be assumed but you will be required to submit a copy of your request for this certification with your application. If any of these entities objects to the application, their concerns must accompany the application when it is submitted to HUD so that HUD can take the concerns into account in its funding decision.

(D) Waiver Requests

Your proposed Section 8 Welfare-to-Work program must be workable without any waivers, and will be rated and ranked without the waiver of any requirements. Statutory waivers will not be granted. However, your application may include requests for waivers of any regulatory, handbook or directive requirements along with an explanation of how the waivers would improve your program. If you are selected for an award, HUD will consider whether or not to grant your waiver request. Among other considerations, waivers will not be granted if they have an adverse impact on fair housing and civil rights.

(E) Program Compliance and Designation of Subcontractor

Immediately after the publication of this NOFA, the local HUD field office will notify, in writing, those HAs that are not eligible to apply without a subcontractor acceptable to HUD or a proposal for management improvements acceptable to HUD, as explained in this section.

(1) *Program compliance.* Your application must designate a subcontractor acceptable to HUD to administer the new funding increment on your behalf, in accordance with paragraph (2) of this section, if you have:

(a) Material weaknesses or reportable conditions outstanding from Inspector General audit findings, or HUD management review findings for one or more of your Section 8 rental voucher, rental certificate or moderate rehabilitation programs;

(b) Serious underutilization evidenced by fewer than 85 percent of budgeted rental certificates or vouchers under lease; or

(c) Significant findings in program compliance reviews.

(2) *Designation of Subcontractor.* If you have any of the compliance problems listed in paragraph (1) of this section, you must designate a subcontractor acceptable to HUD to administer the new funding increment under this NOFA on your behalf. In such instances, your application must include:

(a) An agreement by the subcontractor to administer the new funding increment; and

(b) A statement that outlines the steps you are taking to resolve the compliance problems, which may be a proposal for management improvements that you will implement to remedy the problems.

(F) Statutory Requirements

To be eligible for funding under this NOFA, you, the applicant, must meet all applicable statutory and regulatory requirements. If you need copies of regulations, they are available at the HUD web site located at http://www.HUD.gov. HUD may reject an application from further funding consideration if the activities or projects proposed in the application are not eligible activities and projects, or HUD may eliminate the ineligible activities from funding consideration and reduce the grant amount accordingly.

(G) Threshold Requirements—Compliance with Fair Housing and Civil Rights Laws

With the exception of Federally recognized Indian tribes, all applicants must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). If you are a Federally recognized Indian tribe, you must comply with the Age Discrimination Act of 1975, section 504 of the Rehabilitation Act of 1973, and the Indian Civil Rights Act. If you, the applicant,—

(1) Have been charged with a violation of the Fair Housing Act by the Secretary;

(2) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice; or

(3) Have received a letter of noncompliance findings under Title VI of the Civil Rights Act, section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act—

You are not eligible to apply for funding under this NOFA until you have resolved the charge, lawsuit, or letter of findings to the satisfaction of the Department.

(H) Additional Nondiscrimination Requirements

You, the applicant, must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972.

(I) Affirmatively Furthering Fair Housing

If you are a successful applicant, you will have a duty to affirmatively further fair housing. You, the applicant, should include in your application or work plan the specific steps that you will take to:

(1) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

Further, you, the applicant, have a duty to carry out the specific activities provided in your responses to the NOFA rating factors that address affirmatively furthering fair housing.

(J) Forms, Certifications and Assurances

You, the applicant, are required to submit signed copies of the standard forms, certifications, and assurances, included in the HUD Section 8 application, form HUD–52515 (see section VI.(A), below, of this NOFA) and the certification required by 24 CFR 24.510. (The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status, and a certification is required.)

(K) Conflicts of Interest

If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under this NOFA, you are subject to 18 U.S.C. 208, the Federal criminal conflict of interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for this NOFA, you may not serve on a selection panel and you may not serve as a technical advisor to HUD for this NOFA. All individuals involved in rating and ranking this NOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. Individuals involved in the rating and ranking of applications must disclose to HUD's General Counsel or HUD's Ethic Law Division the following information if applicable: the selection or non-selection of any applicant under this NOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208; or the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The individual must disclose this information prior to participating in any matter regarding this NOFA. If you have questions regarding these provisions or if you have questions concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at 202–708–3815 and ask to speak to one of HUD's attorneys in this division.

(L) Environmental Requirements

In accordance with 24 CFR 50.19(b)(11) of the HUD regulations, tenant-based activities assisted under this program are categorically excluded from the requirements of the National Environmental Policy Act and are not subject to environmental review under the related laws and authorities. In accordance with 24 CFR 983.11(b), you must have a responsible entity complete an environmental review and obtain a HUD release of funds before entering into any agreement to provide project-based assistance.

(M) Notice of Repeal of Local Government Comment Requirements

Local government comments that HUD was previously required to obtain from the unit of general local government on HA applications for Section 8 rental assistance under Section 213(c) of the Housing and Community Development Act of 1974 are no longer required. Section 551 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA) repealed the provisions of Section 213(c) of the Housing and Community Development Act of 1974. Although section 503 of QHWRA establishes an effective date of October 1, 1999, for its provisions unless otherwise specifically provided, section 503 also permits any QHWRA provision or amendment to be implemented by notice, unless otherwise specifically provided. Accordingly, this section of the NOFA provides the notice of implementation of section 551 of QHWRA as permitted by section 503 of QHWRA.

V. Application Selection Process

(A) Overview of Process

Selections of applicants will be made on the basis of a national competition according to the criteria described in section V.(C), below, of this NOFA. Local HUD field offices will initially review applications to ensure that your applications are complete and on time and that you meet the threshold requirements found in section V.(B), below, of this NOFA. Based on your past experience and field office knowledge of your capacity to perform, the field office must also determine if the number of units you request can reasonably be placed under lease within 12 months. If the field office determines that you cannot enroll the number of Section 8 Welfare-to-Work families projected and place under lease the number of units requested, the field office will determine the number of units that can be expected to be placed under lease within 12 months.

All eligible applications will then be forwarded to the Grants Management Center with the field office recommendation of the maximum number of units that should be considered for approval for each application based on its analysis of capacity. Applications will be rated and ranked by the Grants Management Center based on the criteria listed below in section V.(C). An application must meet all of the threshold requirements of this NOFA and receive a score of at least 55 points to qualify for funding. In this national competition, HUD will fund applications from at least the two highest rated and ranked Indian tribes or their tribally designated housing entities that qualify for funding. All other awards will be made in rank order to qualifying applications.

(B) Threshold Requirements

(1) The application is received on time.

(2) The application is complete and all required certifications, including those described in section IV.(K), above, of this NOFA.

(3) Any technical deficiencies have been corrected by the end of the 14-day correction period.

(4) You meet the requirements of section IV.(G) of this NOFA, Compliance With Fair Housing and Civil Rights Laws.

(5) The application designates a subcontractor in accordance with section IV.(E), above, of this NOFA, if necessary under that section.

(6) Your leasing rate for your Section 8 rental certificate and rental voucher programs is at least 90 percent of the units in your HUD-approved budget for the last completed HA fiscal year prior to this application funding.

(C) Rating Factors

(1) *Factor 1:* Need for Welfare-to-Work Voucher Program (20 points)

(a) *Description:* This factor examines the extent to which you identify the community need that your proposed activities will target and the urgency of meeting this need. You must provide evidence of the housing need of the eligible population that will be served by this program and demonstrate that tenant-based assistance is essential to assist these families obtain/retain employment. If the HA plans to project-base any of the Welfare-to-Work rental voucher funding, the HA must explain how this would benefit the HA's Welfare-to-Work rental voucher program. Applicants with jurisdiction outside of metropolitan areas must address the needs of rural areas.

(b) *Submission Requirements for Factor 1:* You must submit a narrative that documents that tenant-based rental assistance for which you are applying is necessary to assist Welfare-to-Work eligible families to obtain/retain employment. If you plan to project-base a portion of the Welfare-to-Work rental

voucher funding, the need to develop project-based units must be explained and how this would best meet the needs of welfare-to-work eligible families, and you must provide an estimate of the time to occupancy.

(2) *Factor 2:* Soundness of Approach (20 Points).

(a) *Description:* This factor examines the quality of your Welfare-to-Work voucher program. You must describe in narrative form the proposed program developed in coordination with the TANF program and other welfare-to-work programs. And how the proposed program design encourages and aids Welfare-to-Work eligible families to move from welfare to work. In evaluating this factor, HUD will consider the extent to which your application demonstrates that tenant-based assistance is critical to the success of assisting eligible families to obtain or retain employment. HUD will also consider the extent to which your application lays out an effective plan, with a fully developed strategy of outreach to eligible families to ensure that all Welfare-to-Work vouchers are under lease within a year of award, including how your analysis of need in Factor 1 affects your outreach to families and targeting of assistance. You should describe any innovative approaches that will be included in your proposed program. You must address your strategy for tenant counseling, housing search, and landlord outreach, and specify the criteria for selecting among eligible families.

HUD will also consider the extent to which, and how well, your plan of proposed activities is described in detail in your application; addresses the goals and purposes of the Welfare-to-Work voucher program; addresses the need for a Welfare-to-Work program that was identified under Factor 1, above; will be carried out in a timely manner, conducted in a manner that will reach and benefit members of the target group, and will make use of services and materials that are accessible to all persons, including persons with disabilities; and will yield long-term results and innovative strategies or "best practices" that can be readily disseminated to other organizations and State, tribal and local governments.

(b) *Submission Requirements for Factor 2:*

(i) A detailed narrative describing your proposed Welfare-to-Work voucher program developed in coordination with the TANF program and other welfare-to-work programs; the specific tasks and subtasks to be performed, including innovative approaches and plans for tenant counseling, housing search and landlord outreach.

(ii) A discussion of how your application demonstrates that tenant-based assistance is critical to the success of assisting eligible families to obtain or retain employment.

(iii) A discussion of how your proposed activities address the goals and purposes of the Welfare-to-Work voucher program including how the program design encourages and aids the move to self-sufficiency, and the criteria for selecting among eligible families.

(iv) A discussion of how your application lays out a fully developed and effective plan with outreach to eligible families to ensure that all Welfare-to-Work vouchers are under lease within a year of award. Your discussion must specify how your analysis of need in Factor 1 affects your outreach to families and targeting of assistance, including families in rural areas if your jurisdiction includes rural areas, unless you provide justification for not addressing rural areas.

(v) A description of the immediate benefits of your proposed activities and how the benefits will be measured. You must describe the methods you will use to determine the effectiveness of Welfare-to-Work program activities.

(vi) A Section 8 Leasing Schedule.

(vii) A discussion of how the activities will reach and benefit members of the target group and will make use of services and materials that are accessible to all persons, including persons with disabilities;

(viii) A description of how the proposed activities will yield long-term results and innovative strategies or "best practices" that can be readily disseminated to other organizations, communities, and State, tribal and local governments.

(3) *Factor 3:* Capacity of Applicant and Relevant Organizational Experience (20 Points)

(a) *Description:* This factor examines the extent to which your organization (including individuals or organizations, such as subcontractors or consultants, if any, that will be your partners in carrying out the proposed activities) have the organizational resources necessary to carry out your proposed activities in a timely manner. In evaluating this factor, HUD will consider the extent to which you demonstrate recent and relevant experience in, and knowledge about, carrying out the same or similar activities as those proposed. The overall quality of your staff, administrative ability, and fiscal management ability will be evaluated by HUD. HUD may also rely on information from performance reports, financial status information, monitoring reports, audit reports and other information available to HUD in making its determination under this factor.

Your overall administrative ability is evidenced by factors such as leasing rates, MTCS reporting, correct administration of housing quality standards, compliance with fair housing and equal opportunity program requirements, assistance computation and rent reasonableness and, if you have a mandatory Family Self-Sufficiency Program, implementation of an FSS program of at least the minimum program size or a smaller program size approved by HUD. Your relevant organization experience would be evidence of a successful implementation of an FSS program, Family Unification program, or other program that involved coordination with other agencies and/or coordination of services for families.

(b) *Submission Requirements for Factor 3:*

(i) Narrative description of past performance in carrying out activities that are the same as, or similar to, the activities proposed for funding, and demonstrate reasonable success in carrying out those activities. You may demonstrate such reasonable success by showing that your previous activities have been carried out as proposed and in a timely manner. You must show that benchmarks in operation were met and performance reports were prepared as required. You must also describe any delays that were encountered, and the actions you took to overcome such delays.

(ii) You must submit the proposed number of staff years necessary to carry out the proposed activities, identifying the employees and partners, such as co-applicants, subgrantees, contractors, consultants, and volunteers, to be allocated to the project; the titles and relevant professional background and experience of each employee and partner proposed to be assigned to the project; and the roles to be performed by each identified employee and partner. If you do not presently have the employees and partners necessary to carry out all of the proposed activities, you must identify the gaps in your current staffing and describe in detail your proposed method for securing the necessary employees and partners to carry out the project in a timely manner.

(iii) You must provide a comprehensive description of the project's management structure. You must also describe how staff and partners relate to the project's administrator or manager, including the

lines of authority and accountability for all the proposed activities.

(iv) You must demonstrate ability in handling financial resources with adequate financial control procedures and accounting procedures by providing a comprehensive description of the fiscal management structure for the proposed project, including budgeting, fiscal controls and accounting. HUD will also consider findings identified in your most recent audits; internal consistency in the application of numeric quantities; accuracy of mathematical calculations; and other available information on financial management ability.

(4) *Factor 4:* Leveraging Resources. (20 Points)

(a) *Description:* This factor addresses the commitment of public and private resources that will support your Welfare-to-Work voucher program. HUD will consider the extent to which you can document firm, written commitments of resources from the local TANF agency, and, if applicable, from the entity administering the Department of Labor Welfare-to-Work formula and/or competitive grant; other Federal, State, tribal, and local sources; and from other entities, such as private industry, and for-profit and not-for-profit organizations to provide services and assistance in the form of cash funding, in-kind contributions, services or personnel. Such commitments may include, but are not limited to: child care, transportation necessary to receive services or maintain employment, remedial education, education for completion of secondary or post-secondary schooling, job training, preparation and counseling; substance abuse treatment and counseling; training in homemaking and parenting skills; training in money management; counseling in homeownership responsibilities and opportunities available for rental and homeownership in the private housing market; and job development and placement.

(b) *Submission Requirements for Factor 4:*

(i) Describe all firm commitments to the Welfare-to-Work voucher program including cash funding, in-kind contributions, services or personnel from other Federal, State, tribal, local and private sources.

(ii) Provide evidence of leveraging/partnerships by including in the application, letters of firm commitments, memoranda of understanding, or agreements to participate from those entities identified as partners. To be firmly committed, there must be a written agreement to provide the resources. The written agreement may be contingent upon an application receiving funding under this NOFA. Each letter of commitment, memorandum of understanding, or agreement to participate should include the partner organization's or individual's name, proposed level of commitment and responsibilities as they relate to the proposed activities. The commitment must also be signed by an official legally able to make commitments on behalf of the organization.

(5) *Factor 5:* Comprehensiveness and Coordination (20 Points)

(a) *Description:* This factor addresses the extent to which your proposal reflects a coordinated, comprehensive process of identifying needs and building a system to address needs on an ongoing basis by using available HUD funding and other resources. You must describe the extent to which assistance under your proposed Welfare-to-Work program will be coordinated with welfare reform and with other welfare-to-work initiatives, including the U.S. Department of Transportation's Job Access program. The application must include certifications from the TANF agency and the entity, if any, administering the Welfare-to-Work formula and/or competitive grants of the Department of Labor agency of their cooperation and support of the proposed program or evidence of your request for the certification of those agencies and of their failure to respond within a reasonable time, or, if either agency objects to your proposed Welfare-to-Work program, the objections must be included in your application.

In evaluating this factor, HUD will consider:

(i) The extent to which you demonstrate the support and participation of the TANF agency and the entity, if any, administering the Department of Labor Welfare-to-Work formula and/or competitive grant and the commitment of other public and private organizations in the community.

(ii) The specific steps you will take to share with others information on solutions and outcomes resulting from the Welfare-to-Work voucher program, if funded.

(iii) The specific steps you have taken or will take to become active in the community's Consolidated Plan process; Analysis of Impediments to Fair Housing Choice process; Continuum of Care Homeless Assistance planning process, if homeless persons are to be served by the proposed activities; or the community's Indian Housing Plan process; and to address, through these processes, the needs that are the focus of the Welfare-to-Work voucher program.

(iv) The specific steps you have taken or will take to coordinate, through meetings, information networks, planning processes, or other mechanisms, your activities with other welfare-to-work activities in the community, including the appropriate local transportation entity (i.e., transit properties, metropolitan planning organizations, State and/or Indian tribe departments of transportation).

(b) *Submission Requirements for Factor 5:*

(i) Describe what role families, community leaders and organizations and government and private entities in communities you serve have had in planning the activities described in your application and what role they will have in carrying out such activities.

(ii) Describe how you will share with others information on solutions and outcomes resulting from the Section 8 Welfare-to-Work voucher program, if funded.

(iii) Describe specific steps you have taken or will take to become active in the community's Consolidated Plan process; or the process for the Analysis of Impediments to Fair Housing Choice; or the community's Continuum of Care Homeless Assistance planning process, if homeless persons are to be served by the proposed welfare-to-work activities; or the community's Indian Housing Plan process; and to address, through these processes, the needs that are the focus of your proposed activities.

(iv) Describe the specific steps you have taken or will take to coordinate, through meetings, information networks, planning processes, or other mechanisms, your activities with other proposed or on-going activities in the community funded by HUD or other Federal, State, tribal, local or private sources, including the appropriate local transportation entity (i.e., transit properties, metropolitan planning organizations, State and/or Indian tribe departments of transportation.

VI. Application Submission Requirements

(A) Form HUD–52515

Funding Application, form HUD–52515, must be completed and submitted for the Section 8 Welfare-to-Work voucher program. This form includes all the necessary certifications for Fair Housing, Drug-Free Workplace and Lobbying Activities. An application must include the information in Section C, Average Monthly Adjusted Income of form HUD–52515 in order for HUD to calculate the amount of Section 8

budget authority necessary to fund the requested number of voucher units. You may obtain a copy of form HUD–52515 from the local HUD Field Office or may download it from the HUD Home page on the internet's world wide web (http://www.HUD.gov).

(B) Response to Threshold Requirements

Your application must respond to the threshold requirements that apply to you in paragraphs V.(B)(2) through (5), above, in this NOFA.

(C) Narrative response to Factors for Award

Your application package must include the narrative description and any letters, certifications or other materials required for each of the ranking and rating factors from Section V.(C) of this NOFA.

(D) Waiver Requests

Your application may include requests for waivers of any administrative requirements in HUD regulations or directives (handbooks and notices). Statutory waivers will not be granted. Waiver requests must include an explanation of how the waivers would improve your program. Your proposed program must be workable without any waivers, and waiver requests will not be considered in rating and ranking your application. Your waiver requests will only be considered if you receive an award under this NOFA.

(E) Program Evaluation Participation

If you would like to participate in HUD's Welfare-to-Work program evaluation, your application should also include a statement that you are willing to participate as a special evaluation site in accordance with the conditions described in section IV.(B)(6) of this NOFA, above.

VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any eligibility or selection factors. *Examples* of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

VIII. Findings and Certifications

(A) Paperwork Reduction Act Statement

The information collection requirements related to this program have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB approval number 2577–0169. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

(B) Environmental Impact

Except to the extent that recipients may project base assistance provided under this NOFA, this NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. To the extent that recipients project base assistance provided under this NOFA, that assistance is subject to 24 CFR part 983, including the environmental review provisions set out at 24 CFR 983.11. Accordingly, under 24 CFR 50.19(c) (1) and (5), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321).

(C) Federalism, Executive Order 12612

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this NOFA will not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the NOFA solicits applicants to help eligible families make the transition from welfare to work, and does not impinge upon the relationships between the Federal government and State and local governments. As a result, the NOFA is not subject to review under the Order.

(D) Prohibition Against Lobbying Activities

You, the applicant, are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that they will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (THDEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.

(E) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) Section 103 HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(G) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance numbers for this program are 14.855 and 14.857.

IX. Authority

The VA/HUD and Independent Agencies Appropriations Act, 1999 appropriated $283 million for the Welfare-to-Work Tenant-Based Assistance Program.

Dated: January 25, 1999.

Harold Lucas,

Assistant, Secretary for Public and Indian Housing.

[FR Doc. 99–1985 Filed 1–25–99; 2:46 pm]

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Part III

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2520

Use of Electronic Communication and Recordkeeping Technologies By Employee Pension and Welfare Benefit Plans; Proposed Rule

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2520

RIN 1210–AA71

Use of Electronic Communication and Recordkeeping Technologies by Employee Pension and Welfare Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed rulemaking and Request for information.

SUMMARY: This document contains proposed rules under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), concerning the disclosure of certain employee benefit plan information through electronic media and standards for the maintenance and retention of employee benefit plan records in electronic form. The proposal would establish a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may satisfy their obligations to furnish summary plan descriptions, summaries of material modifications, updated summary plan descriptions, and summary annual reports using electronic media. With respect to recordkeeping, the proposal would provide standards concerning the use of electronic media, including electronic storage and automatic data processing systems, for the maintenance and retention of records required by sections 107 and 209 of ERISA. This document also sets forth the Department's view that, in the absence of final regulations or other guidance, good faith compliance with the standards set forth in these proposed regulations will, with respect to the disclosure and recordkeeping requirements specifically addressed in the proposed regulations, constitute compliance with a reasonable interpretation of 29 CFR 2520.104b–1 and ERISA sections 107 and 209. In addition, the Department is inviting public comments on a number of issues relating to the use of new technologies in the administration of employee benefit plans that are not specifically addressed by the proposed rules. The proposed rules, if adopted, would affect employee pension and welfare benefit plans, including group health plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: Written comments on these proposed rules must be received by the Department of Labor on or before March 29, 1999.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) concerning the proposed rules and request for information to: Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5669, Washington, DC 20210. Attention: Proposed New Technology Rules. Written comments may also be sent by Internet to the following address: "etechreg@pwba.dol.gov" (without the quotation marks). All submissions will be open to public inspection and copying in the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–5638, Washington, DC, from 8:00 a.m. to 4:30 p.m., E.S.T.

FOR FURTHER INFORMATION CONTACT: Katherine Lewis, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC, 20210, (202) 219–8521 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

Section 1510(a) of the Taxpayer Relief Act of 1997 (TRA 97) [1] directs the Secretary of Labor to issue guidance designed to interpret the notice, election, consent, disclosure, time requirements, and related recordkeeping requirements of ERISA as applied to the use of new technologies by sponsors and administrators of retirement plans. Section 1510 further requires that the guidance maintain the protection of the rights of plan participants and beneficiaries. Any regulations applicable to this guidance may not be effective until the first plan year beginning at least six months after the issuance of final regulations.

The proposed disclosure rule would amend § 2520.104b–1(c) to establish a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may satisfy the obligations described in ERISA section 104(b)(1) and 104(b)(3) to furnish summary plan descriptions (SPDs), summaries of material modifications (SMMs), updated SPDs, and summary annual reports (SARs) using electronic media. The proposed recordkeeping rule would provide standards concerning the use of electronic media, including electronic storage and automatic data processing (ADP) systems, for the maintenance and retention of records required by sections 107 and 209 of ERISA. In addition, the Department is inviting public comments on a number of issues relating to the use of new technologies in the administration of employee benefit plans that are not specifically addressed by the proposed rules.

The Department's regulation at 29 CFR 2520.104b–1 governs the delivery of information required to be furnished to participants and beneficiaries under Part I of Title I of ERISA. In April 1997, the Department, in accordance with a separate directive under section 101(c) of the Health Insurance Portability and Accountability Act of 1996 (HIPAA),[2] issued an interim disclosure rule, § 2520.104b–1(c), that provides a "safe harbor" for using electronic media to furnish SPDs, SMMs, and updated SPDs to participants of group health plans.[3] The Department invited and received public comments on the interim rule. However, the Department is deferring changes to the interim rule pending consideration of public comments on the broader-based rule proposed herein. The Department's objective is to avoid piecemeal rulemaking in this area by having the interim disclosure rule for group health plans and this proposal converge so that a single final rule is issued following consideration of public comments on the full range of issues relevant to the use by all welfare and pension plans covered by Title I of ERISA of electronic media as a method of furnishing documents under § 2520.104b–1. In this regard, comments previously submitted to the Department in connection with the interim rule need not be resubmitted. A discussion of the proposed rules contained in this document is set forth below.

B. The Proposed Regulations

1. Expanding the HIPAA Interim Disclosure Rule to All Welfare and Pension Plans Covered Under Title I of ERISA

The proposed disclosure rule would amend § 2520.104b–1(c) to establish a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may satisfy certain disclosure obligations described in ERISA section 104(b)(1) and 104(b)(3) using electronic media. This would expand the safe harbor set forth in the interim disclosure rule for group health plans to all plans covered under Title I of ERISA and expand the disclosure

[1] Pub. L. 105–34, enacted August 5, 1997.

[2] Pub. L. 104–191, enacted August 21, 1996.

[3] See 62 FR 16979 (April 8, 1997).

documents covered by the safe harbor to include SARs. In the Department's view, a method of electronic delivery appropriate for the furnishing of SPDs, SMMs, and updated SPDs by group health plans would also be appropriate for furnishing those documents by other types of plans, and for furnishing SARs, given the similar nature of the information provided and similar furnishing requirements.[4] These actions are consistent with comments received by the Department in connection with the interim rule.

This proposal adopts the approach of the interim rule, which describes safe harbor conditions under which electronic disclosures will be deemed to satisfy the disclosure requirements under 29 CFR 2520.104b–1. As with the interim rule, the proposed amendment is intended to establish a safe harbor on which plan administrators may rely in delivering plan disclosures through electronic media, but is not intended to represent the exclusive means by which the requirements of § 2520.104b–1 may be satisfied using electronic media.

Proposed paragraph (c)(1) of § 2520.104b–1 sets forth the same conditions currently in the interim rule for group health plans. In this regard, the proposal provides, at paragraph (c)(1)(i)-(ii), that: (i) the administrator takes appropriate and necessary measures to ensure that the system for furnishing documents results in actual receipt by participants of transmitted information, such as through the use of a return-receipt electronic mail feature or periodic reviews or surveys by the plan administrator to confirm the integrity of the delivery system; and (ii) electronically delivered documents are prepared and furnished in a manner consistent with the style, format and content requirements applicable to the disclosure (*see* 29 CFR 2520.102–2 through 2520.102–5, and 29 CFR 2520.104b–10). Proposed paragraph (c)(1)(iii) requires notification to each participant, through electronic means or in writing, apprising the participant of the disclosure documents furnished electronically (e.g., SPDs, summaries of material changes to the plan, changes to information included in the SPD, and SARs), the significance of the documents (e.g., the document contains summary descriptions of changes in the benefits described in your SPD), and the participant's right to request and receive, free of charge, a paper copy of each such document from the plan administrator. The notification requirement is designed to ensure that participants who, for example, receive a disclosure document as an attachment to an electronically transmitted message or in the form of a message and hyperlink to a plan internet site will be put on notice that the communication contains important plan information. As the Department explained in issuing the interim rule, the safe harbor criteria are generally intended to ensure that a system of electronic communication utilized by a plan administrator for distribution of disclosure information results in the actual delivery of such information to participants, and that the information delivered is equivalent in both substance and form to the disclosure information the participants would have received had they been furnished the information in paper form.

As with the interim rule, it is the view of the Department that participants have a general right to receive required plan disclosures in paper form from the plan administrator. Accordingly, the proposal would require that where a plan administrator uses electronic media as the method for delivering required plan disclosures, participants must be afforded the opportunity to obtain the disclosures from the plan administrator in paper form, free of charge. The obligation to furnish paper copies of documents furnished through electronic media is set forth in proposed paragraph (c)(1)(iv). The Department specifically invites public comment on the relative costs and benefits of this requirement in light of the separate safe harbor requirement, discussed below, that participants must have the opportunity at their worksite to convert furnished documents from electronic form to paper form, free of charge.

Proposed paragraph (c)(2), like the interim rule, describes the participants with respect to whom the electronic delivery of plan disclosures will be deemed to be an acceptable method of delivery for fulfilling the disclosure obligation under § 2520.104b-1(b)(1). Such participants must have the ability to effectively access at their worksite documents furnished in electronic form, and the opportunity at their worksite to convert furnished documents from electronic form to paper form, free of charge.

Comments submitted on the interim disclosure rule for group health plans requested clarification of what constitutes a "worksite" for purposes of the safe harbor. It is the view of the Department that, for purposes of the safe harbor, a worksite would include any location where an employee is reasonably expected to perform his or her duties and where access to the employer's electronic information system is an integral part of those duties. In this regard, the Department believes that the actual location of the worksite (e.g., an employee's home, a client's office, or an employee's hotel room) is of less importance than the employee being reasonably expected to access the employer's information system in the course of performing his or her duties and, therefore, more likely to receive timely communication of plan information. Comments were also received requesting clarification of the safe harbor provisions requiring that participants have the opportunity to convert electronic documents to paper copies at their worksite location. The Department believes that this provision of the safe harbor may be satisfied by ensuring that participants have access to a printer at their principal worksite location. For example, if an employee works at home four days a week and at his or her employer's office one day a week, it is the view of the Department that the employee's principal worksite location would be his or her home. On the other hand, if an employee travels to the offices of various clients four days a week and is in the employer's office one day a week, it is the view of the Department that the employee's principal worksite location would be the employer's office.

2. Electronic Recordkeeping

Section 107 of ERISA provides, in relevant part, that "[e]very person subject to a requirement to file any report or to certify any information therefor under this title or who would be subject to such a requirement but for an exemption or simplified reporting requirement * * * shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets,

[4] To the extent that other disclosure obligations under Title I of ERISA may be satisfied through the furnishing of an SPD, the furnishing of the SPD to a participant by electronic means in accordance with the proposed rule will satisfy such other disclosure requirements with respect to the participant the same as if the SPD were provided in paper form. The safe harbor provisions, however, are limited to communications to participants at their worksites. The safe harbor would not cover electronic communication of an SPD to a participant at his or her worksite as a way of satisfying the COBRA notice obligation under section 606(a)(1) to the covered employee's spouse even if the SPD contained the required COBRA information and it was furnished electronically to the participant at the time he or she commenced coverage under the plan. Elsewhere in this document the Department is specifically requesting comments on the use of electronic media to satisfy disclosure obligations with respect to beneficiaries, including spouses.

receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based upon the information which they contain . . ." Persons required to retain records for purposes of section 107 include any person who is or may be required under Title I of ERISA to file any report (e.g., the plan administrator) or to certify any information for such reports (e.g., insurance carriers or other organizations which provide some or all of the benefits under the plan, banks or similar institutions which hold some or all of the assets of the plan, and plan sponsors). In addition to the record retention requirements of section 107, ERISA section 209 generally requires records to be maintained by employers with respect to each employee sufficient to determine the benefits due or which may become due to the employee under a pension benefit plan and authorizes the Secretary to prescribe regulations governing such records. In the case of a pension plan adopted by more than one employer, section 209(a)(2) requires employers to furnish to the plan administrator the information necessary for the administrator to maintain the records and requires the administrator to maintain the records.

No specific provision of Title I of ERISA or any regulation issued thereunder sets forth rules or standards regarding the use of electronic media as the form in which records are retained. The Department is proposing to adopt a new regulation, 29 CFR 2520.107–1, to provide standards concerning the use of electronic media, including electronic storage and ADP systems, for the maintenance and retention of records required by sections 107 and 209 of ERISA. The proposal, however, is not intended to define or address the types of records required to be maintained under sections 107 and 209, nor the period of time for which records must be retained under those sections of the Act.

In general, the proposed regulation provides that electronic media may be used for purposes of complying with the records maintenance and/or retention requirements of sections 107 and 209, provided: (1) The recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form; (2) the electronic records are maintained in reasonable order, in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records); (3) the electronic records can be readily converted into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under Title I of ERISA, and (4) adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system).[5] The proposal also provides that the electronic recordkeeping system may not be subject to any agreement or limitation that would, directly or indirectly, compromise a person's ability to comply with any reporting and disclosure requirement or any other obligation under Title I of ERISA. In addition, the proposed regulation provides guidance regarding when original records may be discarded after they have been transferred to electronic media.

The Department wishes to emphasize that the duty to maintain records in accordance with Title I of ERISA cannot be avoided by contract, delegation or otherwise. Use of a third party to provide an electronic recordkeeping system does not relieve the person responsible for the maintenance and retention of records required under Title I of ERISA of the responsibilities described therein. For example, if the administrator of a plan arranges with a service provider to perform functions with respect to the plan and, pursuant to the arrangement, the service provider creates, maintains, retains or prepares the plan's records, and keeps physical custody of those records, the statutory requirements relating to such records remain with the administrator, and the administrator must make such agreements and arrangements with the service provider as are necessary to ensure that the records are properly maintained and retained.[6]

Furthermore, it is the Department's view that persons subject to recordkeeping obligations under section 107 and section 209 of ERISA would, pursuant to Department's investigative authority under section 504 of ERISA, be required to provide the Department, upon request, with the necessary equipment and resources (including software, hardware and personnel) as would be needed for inspection, examination and conversion of electronic records into legible and readable paper copy or other usable form acceptable to the Department. Similarly, such persons would be required to have the capability of converting electronic records into usable form, including, at a minimum, paper copy, as may be necessary to satisfy reporting, disclosure and other obligations under Title I of ERISA.

C. Effective Date and Good Faith Compliance

In accordance with section 1510 of TRA 97, final regulations issued in connection with this proposal will be effective no earlier than the first plan year beginning at least six months after the issuance of such final regulations. In the absence of final regulations or other guidance on using electronic media for purposes of complying with ERISA's Title I disclosure and recordkeeping requirements, it is the Department's view that good faith compliance with the standards set forth in these proposed regulations will, with respect to the disclosure and recordkeeping requirements specifically addressed in the proposed regulations, constitute compliance with a reasonable interpretation of 29 CFR 2520.104b–1 and ERISA sections 107 and 209. The interim rule pertaining to electronic disclosures continues to be effective for group health plans.

D. Request for Public Comments on Electronic Disclosure and Recordkeeping Issues

In requiring guidance to be issued on the use of new technologies, section 1510(a) of TRA 97 specifically references guidance regarding notice, election, consent, disclosure, time

[5] The proposed standards are not inconsistent with guidance issued by the Internal Revenue Service under section 6001 of the Internal Revenue Code of 1986 regarding the maintenance of books and records on an electronic storage system or within an ADP system. *See* Rev. Proc. 97–22, 1997–13 I.R.B. 9, and Rev. Proc. 98–25, 1998–11 I.R.B. 7. The Department also notes that the proposed regulation does not specifically address the use of microfilm and microfiche for storing employee benefit plan records. The Department previously addressed this issue in an information letter to Gregg M. Goodman from Robert J. Doyle (August 23, 1983). The letter stated that, in the absence of regulations providing otherwise, the retention of microfilm, microfiche or similar reproduction of records, in lieu of original records, would not violate the provisions of sections 107 or 209 provided certain conditions were met.

[6] See Advisory Opinion 84–19A (April 26, 1984).

requirements, and related recordkeeping requirements. Some requirements in these areas occur only under the Internal Revenue Code or relate to sections of Title I of ERISA over which the Internal Revenue Service has regulatory authority pursuant to Reorganization Plan No. 4 of 1978.[7] With respect to ERISA provisions under the Department's authority, the Department is continuing to evaluate what guidance relating to new technologies is appropriate for pension and welfare benefit plans covered by Title I of ERISA. To aid in these efforts, the Department is interested in obtaining views and comments from the benefit plan community on new technology issues where the Department's guidance may be useful. Specifically, the Department invites information and comments on the following:

1. Should the standards proposed herein regarding use of electronic media be expanded to other plan disclosures (e.g., individual benefit statements, COBRA notices upon a "qualifying event," or notices concerning qualified domestic relations orders or qualified medical child support orders), and if so, to which disclosures or types of disclosures, and under what conditions to safeguard the rights of participants and beneficiaries?

2. Do time-sensitive disclosures, such as notices that activate the running of time periods for participants to take actions, require additional safeguards, and if so, what safeguards?

3. Under what circumstances would it be appropriate for electronic media to be used for communications at places other than worksites? For example, should participants who are on paid leave or retired be permitted to elect that electronic disclosures be made to them at home or elsewhere? Should spouses and other beneficiaries, such as alternate payees under qualified domestic relations orders (QDROs) or qualified child medical support orders (QCMSOs), be permitted to elect that disclosures be made to them by electronic means? Should such elections be required to be renewed periodically? If so, how often and by what means?

4. The Department also requests comments on the use of, and standards for, electronic media (i) for making materials described in ERISA § 104(b)(2) available for examination by plan participants and beneficiaries; and (ii) for responding to requests by participants and beneficiaries for copies of materials described in ERISA § 104(b)(4) and § 2520.104b–1(b)(2).

5. Is guidance on the use of electronic media needed under any other provisions of Title I of ERISA?

[7] 43 FR 47713, October 17, 1978, effective December 31, 1978.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The Department has determined that this regulatory action is not significant within the meaning of the Executive Order.

Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the two information collection requests (ICRs) which would be affected by the proposal with respect to the use of electronic communications and recordkeeping by employee benefit plans. Copies of the ICRs may be obtained by contacting the office listed in the addressee section of this notice.

The Department has submitted the information collections which would be revised by these proposals to OMB for review in accordance with 44 U.S.C. 3507(d). The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through March 29, 1999, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

Addresses (PRA 95): Address requests for copies of the ICR to Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

The ICRs affected by this proposal are included in the disclosures required under ERISA to be made to participants and beneficiaries of employee pension and welfare plans, including the Summary Plan Description (SPD) and Summary of Material Modifications (SMM), and the Summary Annual Report (SAR). The SPD and SMM requirements are included in a single ICR for purposes of approval under PRA 95. Although the use of electronic media to satisfy disclosure requirements was not precluded by existing regulations,

and was in fact specifically addressed in the interim disclosure rule under HIPAA, the Department has not previously estimated the degree to which electronic media may be used for this purpose.

The burden reductions estimated to result from the use of electronic media for required disclosure purposes are based upon cost and hour burdens for the Department's existing ICRs for the SPD/SMM and SAR as adjusted for the numbers of plans and participants assumed to have access to the necessary electronic resources to send and receive the disclosures, and the number of plan sponsors assumed to choose to make use of their electronic resources to make required disclosures to plan participants.

This analysis does not address the provisions of the proposal which relate to electronic recordkeeping because the proposal is not intended to define or address the types of records required to be maintained, or the period of time for which records must be maintained. Instead, the proposal is intended to describe certain minimum electronic recordkeeping standards which are believed to be consistent with reasonable and prudent business practices.

The Department is not aware of any data source which would directly identify the ERISA plan sponsors who either use or will use electronic media for required disclosures, and the number of participants in those plans with access to electronic media. Therefore, estimates have been developed using information concerning the likely prerequisites for the use of electronic disclosure by ERISA plan administrators.

These prerequisites would likely include the use of electronic media by employers, access to electronic media and electronic mail or Internet/Intranet applications by employees in the course of their work, employer sponsorship of a pension and/or welfare plan, and a determination by the employer or plan administrator that disclosure through electronic media would be either cost effective or beneficial in some other way that would outweigh cost concerns. Another indicator of the likelihood of the use of electronic disclosures might be the employer's existing use of electronic media for general communication with employees.

The Department sought information concerning the use of electronic technologies in the workplace and for communication with employees. Data published in the 1997 Current Population Survey (CPS) indicates that approximately 50 percent of employees have access to computers at work, and that somewhat smaller percentages of employees use electronic mail or the Internet at work. No information was found to indicate how these rates may differ in relation to firm size. However, it is assumed that access rates are somewhat lower in smaller firms and higher in larger firms.

Two recent surveys offer data concerning companies' use of information technologies. According to a 1997/1998 survey conducted by Watson Wyatt Worldwide [8], 59 percent of respondent companies currently use electronic technologies for corporate communications, and an additional 34 percent plan to do so in the next year. Twenty-two percent of the survey respondents reported that they currently use electronic technologies for benefits enrollment, retirement and savings plans, with another 53 percent planning to do so in the next year. This survey also indicated that 82 percent of respondents' U.S. employees made use of desktop computers, and 50 percent of the respondents' employees had access to Internet applications. A survey conducted by Sedgwick Noble Lowndes [9] indicates that 92 percent of respondents either use or anticipate using the Internet, with primary uses being electronic mail and distribution of information. Of the 59 percent of respondents indicating utilization of Intranet technology, 53 percent indicated the primary use would be providing general information to employees.

It is not known how the employee groups considered in these sources compare to the participants of ERISA-covered pension and welfare plans. However, for purposes of this analysis, access to and use of electronic media by participants is assumed to resemble that of employees at large. As a result, it is assumed that 50 percent of all plan participants, and beneficiaries (35 percent in plans with fewer than 100 participants, and 65 percent in plans with 100 or more participants) would potentially have access to electronic disclosures.

This number is further reduced based on the number of employers or plan sponsors considered likely to make use of electronic disclosures, based on assessments of the potential cost effectiveness and business value of electronic disclosure. Electronic communication with employees is generally perceived to have positive business value due to increased speed, convenience, and ease of use. Costs may in many cases be reduced in direct proportion to the reduction of handling, mailing, and materials costs. Added costs would typically arise from time required to prepare and monitor the receipt of electronic mail messages, time to prepare and make documents available for viewing and downloading at a specific Internet or Intranet site, and investment in system development and equipment.

System development and equipment costs have not been assessed here because it is assumed that participant disclosures will be made by plan administrators in settings in which equipment and electronic communication is already in use. The Watson Wyatt and Sedgwick Noble Lowndes surveys appear to support the conclusion that a primary purpose of system development is general communication with employees.

Electronic distribution of the SAR is estimated to be cost effective in many cases because a large proportion of the total cost and hour burden for the SAR comes from materials, mailing, and handling. Mailing and handling costs of the 235,000,000 SARs estimated to be distributed each year could be significantly reduced, while the added cost to make what is typically a one page document available electronically would be minimal. Given this potential for cost effectiveness, and the rates of use of electronic communication by respondents to the surveys cited, it is assumed that plan administrators for 50 percent of participants with access to electronic media will distribute their SARs electronically. The same assumption is made for electronic disclosure of the SMM, although it is part of a separate ICR.

This burden estimate for the SAR takes into consideration the fact that some participants of those plans will not have appropriate access to electronic media, and some will either prefer paper-based SARs or request paper-based SARs in addition to the electronic version. The estimate also includes the added costs of monitoring the receipt of electronic communications by participants.

The electronic disclosure of the SPD is considered to be somewhat less cost effective, and as a result, somewhat less likely to be implemented by plan administrators. Although improvements in speed of delivery and ease of use could be accomplished by electronic distribution of the SPD and related or incorporated documents, such as group health plan provider directories, these

[8] "Forging Global Links Through Web Technology, A Survey Report on Human Resources and the Web," Watson Wyatt Worldwide, 1998.

[9] "Employee Benefits Minisurvey," Sedgwick Noble Lowndes, September, 1998.

are commonly lengthy documents which would be more time-consuming to prepare for electronic access through electronic mail, Internet, or Intranet. These materials are also frequently used away from the worksite by family members other than the employee, which may prevent the electronic version from eliminating the need for a paper-based version. While there may be significant value in making the SPD available electronically, the effort to produce the electronic version may not result in replacement of the paper-based version or significant aggregate cost reductions. Therefore, for purposes of this analysis it is assumed that 10 percent of participants with the potential to receive or gain access to SPDs electronically will actually receive only an electronic version. The Department believes that use of electronic technology for the distribution of SPDs can be expected to increase significantly in the future as plan administrators seek opportunities to make increasing and more cost effective use of electronic technologies in other areas of plan administration. The Department requests comments concerning plans' current and anticipated use of electronic technology for distribution of the SPD.

The estimates of burden hour and cost savings derived from these assumptions are shown below. It is assumed that these savings will be recognized immediately, due either to the good faith compliance described in this preamble, or to the existing use of electronic media by plan sponsors. The Department requests comments on each of the assumptions used in this analysis.

Type of Review: Revision of currently approved collections of information.

Agency: Pension and Welfare Benefits Administration.

Titles: Summary Plan Description Requirements under ERISA (SMM/SPD); ERISA Summary Annual Report (SAR) Requirement.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Other information:

	SMM/SPD	SAR
OMB Number	1210–0039	1210–0040
Frequency of Response	On occasion	Annually
Respondents	2,027,293	817,000
Responses: [10].		
1999	52,115,000	235,000,000
2000	160,703,000	235,000,000
Estimated Burden Hour Reduction:		
1999	68,867	560,043
2000	172,735	.....
Estimated Total Burden Hours:.		
1999	746,983	1,369,577
2000	1,928,889	1,369,577
Estimated Annual Cost Reduction:.		
1999	$3,611,969	16,350,000
2000	$8,249,376	.....
Estimated Total Annual Costs: [11].		
1999	$99,898,165	$111,375,000
2000	216,316,365	111,375,000

[10] The number of respondents and the related cost and hour burdens for the SMM/SPD are estimated to increase in 2000 as a result of Interim Final Rules published on September 9, 1998 (63 FR 48371) and a Notice of Proposed Rulemaking published on September 9, 1998 (63 FR 48376), both of which would amend SPD content requirements.

[11] Operating and Maintenance Costs.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed rule is likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities, and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

This proposed rule would establish a safe harbor pursuant to which all pension and welfare plans covered under Title I of ERISA may satisfy disclosure obligations described in ERISA section 104(b)(1) and 104(b)(3) using electronic media. It would also establish certain minimum standards for the use of electronic media for maintenance and retention of records required by sections 107 and 209 of ERISA. The proposal would not, however, require any plan or entity sponsoring a plan to use electronic media for either disclosure or recordkeeping purposes. The rule may, therefore, have no economic impact on plans and sponsors who choose not to make use of electronic media for these purposes.

A marginal expense may be incurred by plans or sponsors that already use electronic media for recordkeeping purposes to conform their procedures to the minimum standards described in this proposal. The Department believes this expense would be limited because the standards proposed are not intended to establish detailed methods of compliance, but rather to describe general performance objectives which are consistent with the reasonable and

prudent business practices already required of ERISA plan fiduciaries. Under the proposal, plans and sponsors would retain the flexibility to make any changes necessary, for example, to ensure the integrity and safety of the records, or to improve indexing and ease of retrieval, in the manner which is most cost effective for them.

On this basis, the undersigned certifies that this rule, if promulgated as proposed, will not have a significant impact on a substantial number of small entities regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), as an employee benefit plan with fewer than 100 participants. In the Department's view, this proposed rule will not significantly impact entities in any size category. The Department requests comments on this certification, and seeks additional information from small entities regarding what, if any, special problems they might encounter if the proposal were to be adopted, and what changes, if any, could be made to minimize those problems.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to Congress and the Comptroller General for review. The rule is not a "major rule" as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, this proposed rule does not include any federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 million.

Statutory Authority

This regulation is proposed pursuant to the authority in sections 104(b), 107, 209, and 505 of ERISA (Pub. L. 93–406, 88 Stat. 894, 29 U.S.C. 1027, 1059, 1134, 1135) and under Secretary of Labor's Order No. 1–87, 52 FR 13139, April 21, 1987.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting and Recordkeeping requirements.

For the reasons set forth above, Part 2520 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2520—[AMENDED]

1. The authority for Part 2520 is revised to read as follows:

Authority: Secs. 101, 102, 103, 104, 105, 107, 109, 110, 111(b)(2), 111(c), 209, and 505, Pub. L. 93–406, 88 Stat. 840–52, 865, 893 and 894 (29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135); Secretary of Labor's Order No. 27–74, 13–76, 1–87, and Labor Management Services Administration Order 2–6. Sections 2520.102–3, 2520.104b–1 and 2520.104b–3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104–191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104–204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c). Sections 2520.104b–1 and 2520.107 are also issued under the authority of sec. 1510 of Pub. L. 105–37, 111 Stat. 1114.

2. Section 2520.104b-1 is amended by revising paragraph (c) to read as follows:

§ 2520.104b–1 Disclosure

* * * * *

(c) *Disclosure through electronic media.* (1) The administrator of an employee benefit plan furnishing documents described in section 104(b)(1) or 104(b)(3) of the Act through electronic media will be deemed to satisfy the requirements of paragraph (b)(1) of this section with respect to participants described in paragraph (c)(2) of this section if:

(i) The administrator takes appropriate and necessary measures to ensure that the system for furnishing documents results in actual receipt by participants of transmitted information and documents (e.g., uses return-receipt electronic mail feature or conducts periodic reviews or surveys to confirm receipt of transmitted information);

(ii) Electronically delivered documents are prepared and furnished in a manner consistent with the applicable style, format and content requirements (See 29 CFR 2520.102–2 through 2520.102–5, and 29 CFR 2520.104b–10);

(iii) Each participant is provided notice, through electronic means or in writing, apprising the participant of the document(s) to be furnished electronically, the significance of the document (e.g., the document describes changes in the benefits provided by your plan) and the participant's right to request and receive, free of charge, a paper copy of each such document; and (iv) Upon request of any participant, the administrator furnishes, free of charge, a paper copy of any document delivered to the participant through electronic media.

(2) For purposes of paragraph (c)(1) of this section, the furnishing of documents through electronic media satisfies the requirements of paragraph (b)(1) of this section only with respect to participants:

(i) Who have the ability at their worksite to effectively access documents furnished in electronic form; and (ii) Who have the opportunity at their worksite to readily convert furnished documents from electronic form to paper form free of charge.

* * * * *

3. By adding a new subpart G to part 2520 to read as follows:

Subpart G—Recordkeeping Requirements

Sec.

2520.107–1 Use of electronic media for maintenance and retention of records.

Subpart G—Recordkeeping Requirements

§ 2520.107–1 Use of electronic media for maintenance and retention of records.

(a) *Scope and purpose.* Sections 107 and 209 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) contain certain requirements relating to the maintenance of records for reporting and disclosure purposes and for determining the pension benefits to which participants and beneficiaries are or may become entitled. This section provides standards applicable to both pension and welfare plans concerning the use of electronic media for the maintenance and retention of records required to be kept under sections 107 and 209 of ERISA.

(b) *General requirements.* The record maintenance and retention requirements of sections 107 and 209 of ERISA will be satisfied when using electronic media if:

(1) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;

(2) The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily

inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(3) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under Title I of ERISA;

(4) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under Title I of ERISA; and

(5) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records; and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system).

(c) *Legibility and readability.* All electronic records must exhibit a high degree of legibility and readability when displayed on a video display terminal and when reproduced in paper form. The term "legibility" means the observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term "readability" means that the observer must be able to recognize a group of letters or numerals as words or complete numbers.

(d) *Disposal of original paper records.* Original paper records may be disposed of any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this section, except such original records may not be discarded if they have legal significance or inherent value as original records such that an electronic reproduction would not constitute a duplicate record (for example, notarized documents, insurance contracts, stock certificates, and documents executed under seal).

Signed at Washington, DC, this 25th day of January, 1999.

Leslie B. Kramerich,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–2006 Filed 1–27–99; 8:45 am]

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Part IV

Congressional Budget Office

Transmittal of Sequestration Preview Report for Fiscal Year 2000 to the Congress and the Office of Management and Budget; Notice

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Preview Report for Fiscal Year 2000 to the Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Preview Report for Fiscal Year 2000 to the House of Representatives, the Senate, and the Office of Management and Budget.

David M. Delquadro,

Assistant Director, Administration and Information Division, Congressional Budget Office.

[FR Doc. 99–2269 Filed 1–27–99; 11:22 am]

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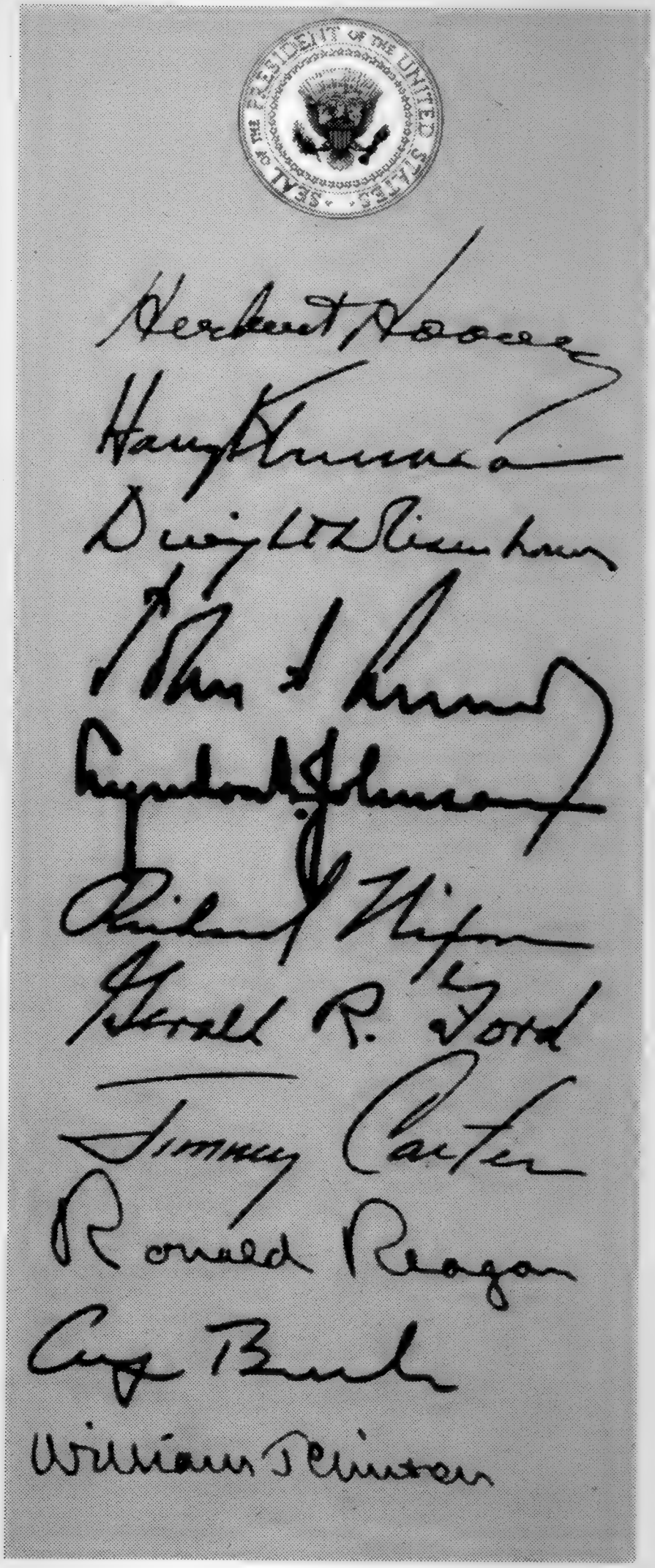

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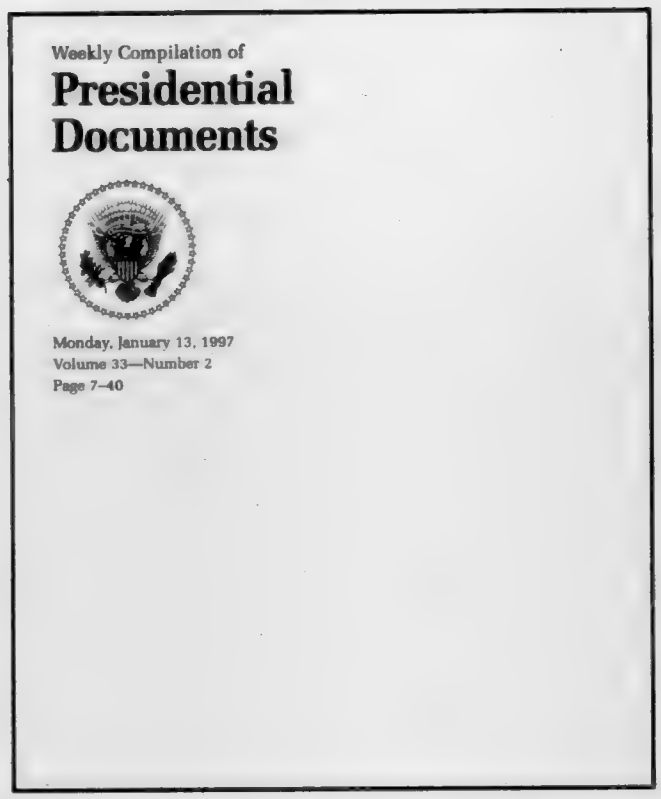

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Rules and Regulations

Federal Register
Vol. 64, No. 19
Friday, January 29, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AG47

Pay Administration; Premium Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing revised interim regulations on availability pay (a form of premium pay that applies to criminal investigators who are required to complete substantial amounts of unscheduled overtime duty) to incorporate the provisions of three laws that have become effective since interim regulations were first published on December 23, 1994. These statutory changes extend the coverage of availability pay to special agents employed in the Diplomatic Security Service of the Department of State and to pilots employed by the United States Customs Service who are law enforcement officers; permit any Office of Inspector General that employs fewer than five criminal investigators to elect to exclude those employees from availability pay; and provide alternative requirements for compensating overtime work and crediting unscheduled duty hours for special agents and other criminal investigators who provide protective services for Federal officials and other individuals.

DATES: *Effective date:* January 29, 1999.

Applicability dates: Except for availability pay for special agents employed by the Department of State, these regulations are applicable on January 29, 1999. Availability pay for special agents in the Diplomatic Security Service of the Department of State is applicable on January 31, 1999.

Comments date: Comments must be received on or before March 30, 1999.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, FAX: (202) 606–0824, or email: payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: James R. Weddel, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: Section 633 of the Treasury, Postal Service, and General Government Appropriations Act, 1995 (Pub. L. 103–329, September 30, 1994), amended title 5, United States Code, to provide for a form of premium pay called availability pay for criminal investigators. Availability pay became effective on the first day of the first pay period beginning on or after October 30, 1994, except that implementation was delayed until September 1995 for certain criminal investigators employed by Inspectors General. Criminal investigators receiving availability pay are exempt from the minimum wage and overtime pay provisions of the Fair Labor Standards Act of 1938, as amended (FLSA), and may not receive annual premium pay for administratively uncontrollable overtime (AUO) work authorized by 5 U.S.C. 5545(c)(2).

On December 23, 1994, the Office of Personnel Management (OPM) published interim regulations on availability pay in the **Federal Register** (59 FR 66149). We have received numerous comments on these interim regulations. We plan to address those comments, as well as any comments we receive on the revised interim regulations, when we publish final regulations. Therefore, it is not necessary to resubmit any comments that were submitted on the interim regulations published on December 23, 1994.

Coverage of Special Agents in the Diplomatic Security Service

Section 407 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in section 101(b) in Division A of Pub. L. 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (October 21, 1998), amended 5 U.S.C. 5545a by adding a new subsection (k), which extends coverage of law enforcement availability pay to special agents of the Diplomatic Security Service in the Department of State. A provision identical to section 407 is also contained in section 2316 of the Foreign Affairs Reform and Restructuring Act of 1998, Division G of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. A conforming amendment was also made to 5 U.S.C. 5545a(a)(2) to delete a provision that previously excluded special agents in the Diplomatic Security Service from the definition of "criminal investigator."

As implemented in these interim regulations, availability pay applies to a law enforcement officer in the Diplomatic Security Service if one of the following criteria is met: (1) the employee is a special agent in a position properly classified in the GS–1811 occupational series; (2) the employee is a special agent in a position that has been properly determined by the Department of State to have a Foreign Service primary skill code of 2501; (3) the employee is a special agent who has been placed by the Department of State in a non-covered position on a long-term training assignment that will be career-enhancing for a current or future assignment as a Diplomatic Security Service special agent, provided the employee is expected to return to duties as a Special Agent in a Foreign Service position with a 2501 primary skill code or to a position properly classified in the GS–1811 series immediately following such training; or (4) the employee occupies a position in the Department of State in which he or she performs duties and responsibilities of a special agent requiring Foreign Service primary skill code 2501, pending the opening of a position with primary skill code 2501 and placement in that position as a Special Agent.

In addition, availability pay applies to a special agent with a Foreign Service personal primary skill code of 2501 (or whose position is properly classified in the GS–1811 series) if he or she meets all of the following three conditions:

(i) The individual is assigned outside the Department of State;

(ii) The assigned position would have a primary skill code of 2501 (or would be properly classified in the GS–1811 series under the General Schedule classification system based on OPM classification standards) if the position were under the Foreign Service (or General Schedule) in the Department of State; and

(iii) The individual is expected to return to a position as a special agent in the Diplomatic Security Service with a 2501 primary skill code (or to a position that is properly classified in the GS–1811 series) immediately following such outside assignment. (See the revised definition of *criminal investigator* in § 550.103.)

Availability pay does not apply to members of the Senior Foreign Service, Foreign Service Officers, or members of the Senior Executive Service. These groups of employees are not covered by subchapter V—Premium Pay—of chapter 55 of title 5, United States Code, including 5 U.S.C. 5545a, the legal authority for availability pay for criminal investigators. (See 5 U.S.C. 5541(2)(xiv), (xv), and (xvi).)

Section 407 also provides that no later than the effective date for availability pay for special agents, each special agent in the Diplomatic Security Service who is a criminal investigator (as defined in § 550.103), and the appropriate supervisory officer designated by the Secretary of State, must make an initial certification to the Secretary of State that the special agent is expected to meet the unscheduled duty hours requirement for availability pay in 5 U.S.C. 5545a(d). Section 5545a(d) provides that a criminal investigator must have an annual average of 2 unscheduled duty hours for each regular workday. Under section 407, General Schedule and Foreign Service special agents in the Diplomatic Security Service may not rely on 5 U.S.C. 5545a(d)(2)(B) to satisfy the unscheduled duty hour requirement in section 5545a(d)(1). These special agents may count only hours actually worked as unscheduled duty hours, not hours the agent was available for work. This requirement is reflected in §§ 550.182 (a) and (d).

Hours of availability are also not counted as hours of work for the purpose of determining overtime pay on an hourly basis under 5 U.S.C. 5542. Therefore, § 550.111(h) has been added to clarify this point.

In addition, section 407 provides that, while performing protective duties under the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)(3)), special agents of the Diplomatic Security Service may receive overtime pay on an hourly basis for all regularly scheduled overtime work (including the first 2 hours of overtime work on a regular workday), provided they perform, on the same day, at least 2 hours of overtime work not scheduled in advance of the administrative workweek. This change in law is reflected in §§ 550.103 (definition of "protective duties"), 550.111(f)(2), and 550.182(b)(2).

Section 407 provides that in applying the requirement in 5 U.S.C. 5545a(h) that availability pay will be 25 percent of basic pay, any reference to basic pay will be considered to include, with respect to a special agent in the Diplomatic Security Service, amounts designated as "salary." Therefore, § 550.185(a) has been amended to provide that availability pay is an amount equal to (1) 25 percent of a criminal investigator's rate of basic pay, as defined in § 550.103, including amounts designated as "salary" for special agents in the Diplomatic Security Service; or (2) a lesser amount to avoid exceeding the special maximum earnings limitation for law enforcement officers in 5 U.S.C. 5547(c). This special maximum earnings limitation for law enforcement officers is also found in § 550.107 and applies to all criminal investigators, including those who are special agents in the Diplomatic Security Service.

Section 407 amended 5 U.S.C. 5545a(h)(2)(A) with regard to special agents in the Diplomatic Security Service to provide that availability pay will be considered basic pay for the purposes of sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, as amended, which pertain to Foreign Service retirement benefits. Therefore, a parallel paragraph has been added at § 550.186(b)(7).

Section 407 amended 5 U.S.C. 5545a(h)(2)(B) to provide that availability pay is also basic pay for any other purposes explicitly provided for by law or as OPM or the Secretary of State (to the extent that matters exclusively within the jurisdiction of the Secretary are concerned) may prescribe by regulation. Therefore, a parallel provision has been added at § 550.186(b)(8).

Finally, section 407 requires the Director of OPM and the Secretary of State to determine that all regulations necessary to implement availability pay for special agents are in effect. The Director of OPM and the Secretary of State agree that, with the publication of these regulations, all regulations necessary to implement availability pay for special agents are in effect.

Suspension of Availability Pay for Special Agents

Special agents in the Diplomatic Security Service of the Department of State who are in the Foreign Service are not covered by the adverse action procedures in 5 U.S.C. 7512 and 5 CFR part 752. (See 5 U.S.C. 7511(b)(6) and 5 CFR 752.401(d)(6).) Therefore, the requirements in 5 U.S.C. 5545a(e)(2), which provide that involuntary reductions in pay resulting from a denial of certification for availability pay must be accomplished under the adverse action procedures in subchapter II of 5 U.S.C. chapter 75, are not applicable to special agents in the Foreign Service. Instead, § 550.184(e) has been amended to provide that involuntary suspension of availability pay for Foreign Service special agents, resulting from a denial or cancellation of certification for availability pay under § 550.184(d), will be administered under procedures established by regulations of the Department of State.

Coverage in Offices of Inspectors General

After the publication of the original interim availability pay regulations, section 901 of Pub. L. 104–19, July 27, 1995 (109 Stat. 230), amended section 5545a of title 5, United States Code, to add a new subsection (j), which provides that "[n]otwithstanding any other provision of this section, any Office of Inspector General which employs fewer than 5 criminal investigators may elect not to cover such criminal investigators under this section." Therefore, § 550.181(a) has been amended, and § 550.181(b) has been added, to reflect the authority to exempt criminal investigators in Offices of Inspectors General with fewer than five criminal investigators. This authority became effective on July 27, 1995, the date of enactment of Pub. L. 104–19.

Coverage of Customs Service Pilots Who Are Law Enforcement Officers

After publication of the original interim availability pay regulations, section 902 of Pub. L. 104–19, July 27, 1995 (109 Stat. 230), amended section 5545a of title 5, United States Code, to add a new subsection (i), which provides that "[t]he provisions of subsections (a)–(h) providing for availability pay shall apply to a pilot employed by the United States Customs Service who is a law enforcement officer as defined under section 5541(3)."

Section 902 also provides that coverage of the designated Customs Service pilots under the law authorizing

availability pay became effective on the first day of the first applicable pay period that began on or after the 30th day following the date of enactment of Pub. L. 104–19. Pub. L. 104–19 was enacted on July 27, 1995. Therefore, section 902 became effective on the first day of the first pay period that began on or after August 26, 1995. The revised interim regulations reflect this change in law by adding "[w]ho is a pilot employed by the United States Customs Service" to the definition of *criminal investigator* in § 550.103.

Overtime Pay for Criminal Investigators Who Perform Protective Duties

After publication of the original interim availability pay regulations, section 531 of Pub. L. 104–52, November 19, 1995 (109 Stat. 496), amended section 5542 of title 5, United States Code, to add a new subsection (e), which provides that "[n]otwithstanding subsection (d)(1) of this section, all hours of overtime work scheduled in advance of the administrative workweek shall be compensated under subsection (a) if that work involves duties as authorized by section 3056(a) of title 18, United States Code, and if the investigator performs, on that same day, at least 2 hours of overtime work not scheduled in advance of the administrative workweek."

This amendment provides for payment of overtime pay on an hourly basis for all regularly scheduled overtime hours of work for criminal investigators performing protective duties authorized by section 3056(a) of title 18, including the first 2 overtime hours on a regular workday. However, payment of overtime pay for all regularly scheduled overtime hours worked is permitted only if the criminal investigator performs 2 hours of overtime work during the same workday that were not scheduled in advance of the administrative workweek. Hours of availability may not be substituted for the required unscheduled overtime work. This change in law became effective on November 19, 1995, the date of enactment, and is reflected in the revised interim regulations at §§ 550.103 (definition of protective duties), 550.111(f)(2), and 550.182(b)(2). (Note: Except for days on which employees perform protective duties authorized by section 3056(a) of title 18, United States Code, or by section 2709(a)(3) of title 22, United States Code, the first 2 overtime hours on a regular workday are always compensated by availability pay for criminal investigators, even if those overtime hours are regularly scheduled in advance of the administrative workweek.)

Availability Pay Is Basic Pay for the Thrift Savings Plan

Pub. L. 104–208, September 30, 1996, repealed 5 U.S.C. 8431 and amended 5 U.S.C. 8401(4) to provide that the term "basic pay" has the meaning given that term by 5 U.S.C. 8331(3) for the purpose of regulations issued by the Federal Retirement Thrift Savings Board. Paragraph (d) of section 628 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) in Division A of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, amended 5 U.S.C. 8331(3) to add availability pay for a criminal investigator authorized by 5 U.S.C. 5545a to the definition of "basic pay" in 5 U.S.C. 8331(3). Since 5 U.S.C. 8431 was repealed in 1996, § 550.186(b)(5) has been revised to state that availability pay is basic pay for the purpose of the Thrift Savings Plan authorized by subchapter III of chapter 84 of title 5, United States Code.

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B) and 5 U.S.C. 553(d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and making this rule effective on the date of its publication in the **Federal Register**, except that regulations implementing availability pay for special agents in the Diplomatic Security Service will become effective on January 31, 1999. Section 407 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in section 101(b) in Division A of Pub. L. 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, provides that the amendments providing availability pay for special agents will take effect on the first day of the first applicable pay period that begins on or after the 90th day following the enactment of the Act, and on which date all regulations necessary to carry out such amendments are (in the judgment of the Director of the Office of Personnel Management and the Secretary of State) in effect. This waiver is also appropriate because the attached changes in regulations update Office of Personnel Management regulations to make them consistent with the following changes in law that are already effective and have previously been implemented.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

1. The authority citation for part 550, subpart A, is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545a(h)(2)(B) and (i), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

2. In § 550.103, the definition of *Criminal investigator* is revised, and a new definition of *Protective duties* is added in alphabetical order to read as follows:

§ 550.103 Definitions.

* * * * *

Criminal investigator means a law enforcement officer as defined in 5 U.S.C. 5541(3) and this section—

(1) Whose position is properly classified under the GS–1811 or GS–1812 series in the General Schedule classification system based on OPM classification standards (or would be so classified if covered under that system);

(2) Who is a pilot employed by the United States Customs Service;

(3) Who is a special agent in the Diplomatic Security Service in a position which has been properly determined by the Department of State to have a Foreign Service primary skill code of 2501;

(4) Who is a special agent in the Diplomatic Security Service who has been placed by the Department of State in a non-covered position on a long-term training assignment that will be career-enhancing for a current or future assignment as a Diplomatic Security

Service special agent, provided the employee is expected to return to duties as a special agent in a Foreign Service position with a 2501 primary skill code or to a position properly classified in the GS–1811 series immediately following such training;

(5) Who occupies a position in the Department of State in which he or she performs duties and responsibilities of a special agent requiring Foreign Service primary skill code 2501, pending the opening of a position with primary skill code 2501 and placement in that position as a special agent; or

(6) Who is a special agent in the Diplomatic Security Service with a Foreign Service personal primary skill code of 2501 (or whose position immediately prior to the detail was properly classified in the GS–1811 series) and who meets all of the following three conditions:

(i) The individual is assigned outside the Department of State;

(ii) The assigned position would have a primary skill code of 2501 (or would be properly classified in the GS–1811 series under the General Schedule classification system based on OPM classification standards) if the position were under the Foreign Service (or General Schedule) in the Department of State; and

(iii) The individual is expected to return to a position as a special agent in the Diplomatic Security Service with a 2501 primary skill code (or to a position that is properly classified in the GS–1811 series) immediately following such outside assignment.

* * * * *

Protective duties means duties authorized by section 3056(a) of title 18, United States Code, or by section 2709(a)(3) of title 22, United States Code.

* * * * *

3. In § 550.111, paragraph (f) is revised, and a new paragraph (h) is added to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(f)(1) Except as provided in paragraph (f)(2) of this section, for any criminal investigator receiving availability pay under § 550.181, overtime work means actual work that is scheduled in advance of the administrative workweek—

(i) In excess of 10 hours on a day containing hours that are part of such investigator's basic 40-hour workweek; or

(ii) On a day not containing hours that are part of such investigator's basic 40-hour workweek.

(2) Notwithstanding paragraph (f)(1) of this section, all overtime work scheduled in advance of the administrative workweek on a day containing part of a criminal investigator's basic 40-hour workweek must be compensated under this section if both of the following conditions are met:

(i) The overtime work involves protective duties authorized by section 3056(a) of title 18, United States Code, or section 2709(a)(3) of title 22, United States Code; and

(ii) The investigator performs on that same day at least 2 consecutive hours of overtime work that are not scheduled in advance of the administrative workweek and are compensated by availability pay.

(3) Any work that would be overtime work under this section but for paragraphs (f)(1) and (f)(2) of this section will be compensated by availability pay under § 550.181.

* * * * *

(h) Availability hours, as described in § 550.182(c), are not hours of work for the purpose of determining overtime pay under this section.

4. Section 550.181 is revised to read as follows:

§ 550.181 Coverage.

(a) Each employee meeting the definition of *criminal investigator* in § 550.103, and fulfilling the conditions and requirements of 5 U.S.C. 5545a and §§ 550.181 through 550.186, must receive availability pay to compensate the criminal investigator for unscheduled duty in excess of the 40-hour workweek based on the needs of the employing agency, except as provided in paragraph (b) of this section.

(b) Any Office of Inspector General that employs fewer than five criminal investigators may elect not to cover such criminal investigators under the availability pay provisions of 5 U.S.C. 5545a.

5. In § 550.182, paragraph (a) is revised; paragraphs (b) through (f) are redesignated as paragraphs (c) through (g), respectively; a new paragraph (b) is added; and the newly redesignated paragraph (d) is revised to read as follows:

§ 550.182 Unscheduled duty.

(a) *Unscheduled Duty Hours.* For the purpose of availability pay, unscheduled duty hours are those hours during which a criminal investigator performs work, or (except for a special agent in the Diplomatic Security Service) is determined by the employing agency to be available for work, that are not—

(1) Part of the 40-hour basic workweek of the investigator; or

(2) Regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111.

(b) *Regularly Scheduled Overtime Hours.* For criminal investigators receiving availability pay, regularly scheduled overtime hours compensated under 5 U.S.C. 5542 and § 550.111 are those overtime hours scheduled in advance of the investigator's administrative workweek, excluding—

(1) The first 2 hours of overtime work on any day containing a part of the investigator's basic 40-hour workweek, as required by § 550.111(f)(1)); or

(2) The first 2 hours of overtime work performing protective duties authorized by section 3056(a) of title 18, United States Code, or section 2709(a)(3) of title 22, United States Code, on any day containing a part of the investigator's basic 40-hour workweek, unless the investigator performs 2 or more consecutive hours of unscheduled overtime work on that same day.

* * * * *

(d) *Availability Hours.* To be considered available for work under paragraph (a) of this section, a criminal investigator must be determined by the employing agency to be generally and reasonably accessible to perform unscheduled duty based on the needs of the agency. Generally, the agency will place the investigator in availability status by directing the investigator to be available during designated periods to meet agency needs, as provided by agency policies and procedures. Placing the investigator in availability status is not considered scheduling the investigator for overtime hours compensated under 5 U.S.C. 5542 and § 550.111. Availability hours may include hours during which an investigator places himself or herself in availability status to meet the needs of the agency, subject to agency policies and procedures (including any requirements for after-the-fact validation or approval). A special agent in the Diplomatic Security Service may not be credited with availability hours and will be credited with only hours actually worked.

* * * * *

6. In § 550.184, paragraph (e) is revised to read as follows:

§ 550.184 Annual certification.

* * * * *

(e) An involuntary suspension of availability pay resulting from a denial or cancellation of certification under

paragraph (d) of this section is a reduction in pay for the purpose of applying the adverse action procedures of 5 U.S.C. 7512 and part 752 of this chapter, except for special agents in the Foreign Service. For special agents in the Foreign Service, an involuntary suspension of availability pay resulting from a denial or cancellation of certification under paragraph (d) of this section will be administered under procedures established by regulations of the Department of State.

* * * * *

7. In § 550.185, paragraph (a) is revised to read as follows:

§ 550.185 Payment of availability pay.

(a) Availability pay is paid only for periods of time during which a criminal investigator receives basic pay. Availability pay is an amount equal to the lesser of—

(1) 25 percent of a criminal investigator's rate of basic pay, as defined in § 550.103, including amounts designated as "salary" for special agents in the Diplomatic Security Service; or

(2) The maximum amount that may be paid to avoid exceeding the maximum earnings limitation on premium pay for law enforcement officers in 5 U.S.C. 5547(c).

* * * * *

8. In § 550.186, paragraph (b) is revised to read as follows:

§ 550.186 Relationship to other payments.

* * * * *

(b) Availability pay is treated as part of basic pay or basic salary only for the following purposes:

(1) 5 U.S.C. 5524a, pertaining to advances in pay;

(2) 5 U.S.C. 5595(c), pertaining to severance pay;

(3) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(4) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4), pertaining to retirement benefits;

(5) Subchapter III of chapter 84 of title 5, United States Code, pertaining to the Thrift Savings Plan;

(6) 5 U.S.C. 8704(c), pertaining to life insurance;

(7) Sections 609(b)(1), 805, 806, and 856 of the Foreign Service Act of 1980, as amended (Pub. L. 96–465), pertaining to Foreign Service retirement benefits; and

(8) For any other purposes explicitly provided for by law or as the Office of Personnel Management or the Secretary of State (for matters exclusively within the jurisdiction of the Secretary) may prescribe by regulation.

* * * * *

[FR Doc. 99–2153 Filed 1–27–99; 3:16 pm]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–386–AD; Amendment 39–11015; AD 99–01–12]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 99–01–12 that was sent previously to all known U.S. owners and operators of certain EMBRAER Model EMB–145 series airplanes by individual notices. This AD requires revisions to the Airplane Flight Manual to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. This AD also requires installation of certain warning placards. This action is prompted by a report indicating that, during a flight test of a similar airplane model, the pitch trim monitoring subsystem malfunctioned internally. The actions specified by this AD are intended to prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and consequent reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss.

DATES: Effective February 2, 1999, to all persons except those persons to whom it was made immediately effective by emergency AD 99–01–12, issued December 29, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–386–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Cappezzuto, Aerospace Engineer, ACE–116A, Systems and Flight Test Branch, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 773–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On December 29, 1998, the FAA issued emergency AD 99–01–12, which is applicable to certain EMBRAER Model EMB–145 series airplanes.

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that, during a flight test of a similar airplane model, equipped with a Honeywell Primus 1000 Integrated Avionics System, the pitch trim monitoring subsystem experienced an internal malfunction. The cause of the failure of this system has been attributed to a software error, which resulted in failure of the trim monitoring subsystem to detect a trim malfunction. This condition, if not corrected, could cause undetected autopilot trim runaway, which could result in reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss. If these conditions occur at low altitude, control of the airplane could be unrecoverable.

Explanation of Relevant Service Information

EMBRAER has issued Alert Service Bulletin S.B. 145–31–A010, dated December 15, 1998, which describes procedures for installation of certain warning placards on the left and right

sides of the cockpit glareshield panel to prohibit use of the autopilot below 1,500 feet above ground level (AGL). The DAC classified this alert service bulletin as mandatory and issued Brazilian Emergency Airworthiness Directive 98–12–01, dated December 21, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued emergency AD 99–01–12 to prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and consequent reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss.

The AD requires installation of certain warning placards on the left and right sides of the cockpit glareshield panel to prohibit autopilot below 1,500 feet AGL. The installation of the placard is required to be accomplished in accordance with the alert service bulletin described previously.

In addition, the FAA has determined that a revision to the Airplane Flight Manual (AFM) is necessary to ensure that the Limitations Section of the AFM is changed to provide the flight crew with updated procedures prohibiting the use of the autopilot below 1,500 feet AGL, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim.

This amendment is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on December 29, 1998, to all known U.S. owners and operators of certain EMBRAER Model EMB–145 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–386–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–01–12 Empresa Brasileira de Aeronautica, S.A. (EMBRAER): Amendment 39–11015. Docket 98–NM–386–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145047 inclusive and 145049 through 145051 inclusive; certificated in any category; equipped with IC–600 having part number (P/N) 7017000–82402 or P/N 7017000–83402; excluding those airplanes on which the modification specified in any of the following Embraer service bulletins has been accomplished:

- Embraer Service Bulletin 145–22–0001, dated May 7, 1998;
- Embraer Service Bulletin 145–22–0004, Revision 01, dated July 30, 1998;
- Embraer Service Bulletin 145–31–0007, Revision 02, dated June 30, 1998.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and result in reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss; accomplish the following:

(a) Within 20 flight hours after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Install warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glareshield panel, using double-face tape (or similar), in accordance with Embraer Alert Service Bulletin S.B. 145–31–A010, dated December 15, 1998, which state:

"DO NOT OPERATE AUTOPILOT BELOW 1,500 FT A.G.L."

(2) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) (in the "AUTOPILOT" section) to include the information contained in this paragraph of the AD. This may be accomplished by inserting a copy of this AD in the AFM.

AUTOPILOT

THE USE OF AUTOPILOT BELOW 1,500 FEET IS PROHIBITED."

(3) Revise the Emergency Procedures Section of the FAA-approved AFM (in the "PITCH TRIM RUNAWAY" section) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

PITCH TRIM RUNAWAY

Immediately and simultaneously:
Control Column .....HOLD FIRMLY
Quick Disconnect Button .....PRESS AND HOLD
Pitch Trim Main System.....OFF
Pitch Trim Back Up System .....OFF
Quick Disconnect Button .....RELEASE

If control column forces are excessive, try to recover airplane control by turning one system on and trimming the airplane as necessary. Initiate with the backup system. Leave the failed system off.

If neither system is operative:
PITCH TRIM INOPERATIVE
Procedure .....COMPLETE
Autopilot.....OFF

Do not use the autopilot for the remainder of the flight."

(4) Revise the Abnormal Procedures Section of the FAA-approved AFM (in the "AUTOPILOT" section) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

AUTOPILOT TRIM FAILED

PITCH TRIM RUNAWAY Procedure
..... PERFORM

STABILIZER OUT OF TRIM

PITCH TRIM RUNAWAY Procedure
..... PERFORM"

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Embraer Alert Service Bulletin S.B. 145–31-A010, dated December 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directive 98–12–01, dated December 21, 1998.

(e) This amendment becomes effective on February 2, 1999, to all persons except those persons to whom it was made immediately effective by emergency AD 99–01–12, issued December 29, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on January 21, 1999.

Darrell M. Pederson,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–1980 Filed 1–28–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–379–AD; Amendment 39–11016; AD 98–26–51]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1802SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–26–51 that was sent previously to all known U.S. owners and operators of certain McDonnell Douglas Model DC–8 series airplanes by individual telegrams. This AD requires a revision to the Airplane Flight Manual to specify restrictions on operating if any pressurization anomaly is detected. This AD also requires a one-time inspection to detect discrepancies and cracking of the main deck cargo door in the immediate area of the bolts attaching the latch fittings, and repair, if necessary. This action is prompted by a report that a cabin pressurization anomaly was detected on a McDonnell Douglas Model DC–8 series airplane, and by subsequent investigation, which revealed fatigue cracking in the structure of the main deck cargo door. The actions specified by this AD are intended to detect and correct fatigue cracking in the structure of the main deck cargo door, which could result in cabin decompression of the airplane and loss of the main deck cargo door, and consequent reduced controllability of the airplane.

DATES: Effective February 3, 1999, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–26–51, issued December 18, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–379–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748.

FOR FURTHER INFORMATION CONTACT: Rany Azzi, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6080; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On December 18, 1998, the FAA issued telegraphic AD T98–26–51, which is applicable to certain McDonnell Douglas Model DC–8 series airplanes

modified in accordance with Supplemental Type Certificate (STC) SA1802SO. That action was prompted by a report indicating that a cabin pressurization anomaly was detected on a McDonnell Douglas Model DC–8 series airplane modified in accordance with STC SA1802SO. Investigation revealed fatigue cracking in the structure of the main deck cargo door. Propagation of cracks on the frames and inner skin of the latch fitting supports could lead to severed frames and inner skin at the latch fitting supports of the main deck cargo door. This condition, if not corrected, could result in cabin decompression of the airplane and loss of the main deck cargo door, and consequent reduced controllability of the airplane.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued telegraphic AD T98–26–51 to detect and correct fatigue cracking in the structure of the main deck cargo door, which could result in cabin decompression of the airplane and loss of the main deck cargo door, and consequent reduced controllability of the airplane. The AD requires a revision to the FAA-approved Airplane Flight Manual to specify restrictions on operating if any pressurization anomaly is detected. The AD also requires a one-time detailed visual inspection to detect discrepancies and cracking of the main deck cargo door in the immediate area of the bolts attaching the latch fittings, and repair, if necessary.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 18, 1998, to all known U.S. owners and operators of McDonnell Douglas Model DC–8 series airplanes modified in accordance with STC SA1802SO. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–379–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–26–51 McDonnell Douglas: Amendment 39–11016. Docket 98–NM–379–AD.

Applicability: Model DC–8 series airplanes that have been converted from a passenger-carrying to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1802SO.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the structure of the main deck cargo door, which could result in cabin decompression of the airplane and loss of the main deck cargo door, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 24 hours after the effective date of this AD, revise the Limitations Section of

the FAA-approved Airplane Flight Manual (AFM) to include the following information. This may be accomplished by inserting a copy of this AD into the AFM.

"IF ANY UNEXPECTED LOSS OF CABIN PRESSURE OCCURS, DO NOT INCREASE CABIN PRESSURE. IMMEDIATELY SELECT A HIGHER CABIN ALTITUDE AND, AS SOON AS POSSIBLE, DESCEND TO A LOWER FLIGHT ALTITUDE."

(b) Except as provided by paragraph (d) of this AD, within 7 days after the effective date of this AD: Perform an internal detailed visual inspection to detect cracking or any discrepancy of the main deck cargo door in the immediate area of the bolts attaching the latch fittings. Inspect for cracking or any discrepancy of the skin in the immediate area of the fastener heads, and for loose or missing fasteners. In addition, prior to the internal detailed visual inspection, clean and degrease the inside structure where the latch fitting bolts attach to the frames, and perform a detailed visual inspection of the frames to detect cracking emanating from the bolt holes and at the bend radius of the frames.

Note 2: Removal of the inner skin of the main deck cargo door is not necessary to gain access and inspect for cracking emanating from the bolt holes and at the bend radius of the frames.

(c) Prior to accomplishment of the inspections required by paragraph (b) of this AD, notify an appropriate FAA Principal Maintenance Inspector of the date and time the inspection required by paragraph (b) of this AD is to be accomplished.

(d) For airplanes on which there have been reports of cabin pressurization anomalies or illuminations of the main deck cargo door warning light within 30 days prior to the effective date of this AD or within 7 days after the effective date of this AD: Perform the inspection required by paragraph (b) of this AD prior to further flight.

(e) If any discrepancy is detected during the inspections required by paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(f) Within 24 hours after accomplishment of the inspections required by paragraph (b) of this AD, or within 24 hours after the effective date of this AD, whichever occurs later, submit a report of the inspection results (both positive and negative findings) to the Manager, Atlanta ACO, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; fax (770) 703–6097. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the paperwork reduction act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) This amendment becomes effective on February 3, 1999, to all persons except those persons to whom it was made immediately effective by telegraphic AD T98–26–51, issued on December 18, 1998, which contained the requirements of this amendment.

Issued in Renton, Washington, on January 22, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2107 Filed 1–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–14–AD; Amendment 39–11017; AD 99–03–03]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company Model AE 3007A and AE 3007A1/1 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Allison Engine Company Model AE 3007A turbofan engines, that currently requires reprogramming the Full Authority Digital Engine Control (FADEC) to software version VI.2. This amendment requires reprogramming the FADEC to a serviceable software version and reidentifying the FADEC assembly. This amendment is prompted by reports of at least seven uncommanded engine shutdowns, four of which occurred in flight, as a result of deficiencies in software version VI.2 on the AE 3007A engines and version VI.4 on the AE 3007A1/1 engines. The actions specified by this AD are intended to prevent an unintentional or uncommanded in-flight engine shutdown.

DATES: Effective February 16, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–14–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Kyri Zaroyiannis, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–7836, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On June 9, 1998, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 98–12–12, Amendment 39–10568 (63 FR 31338 June 9, 1998), to require programming the Full Authority Digital Engine Control (FADEC) with software version VI.2 (Allison Software part number 23068660; Allison FADEC assembly, with software VI.2 installed, part number 23068661). Additionally, the AD required that the FAA-approved Airplane Flight Manual be revised by incorporating the Embraer Flight Manual AFM 145/1153, Revision 14, dated May 7, 1998. These actions were prompted by reports of five in-flight engine shutdowns on Allison Engine Company AE 3007 series turbofan engines due to inadequate fault accommodation logic. That condition, if not corrected, could result in an unintentional or uncommanded in-flight engine shutdown.

Since the issuance of that AD, there have been at least seven uncommanded engine shutdowns, four of which occurred in flight, as a result of deficiencies in software version VI.2 on the AE 3007A engines and version VI.4 on the AE 3007A1/1 engines. Improved software version, VI.6A has been developed to address the deficiencies in software versions VI.2 and VI.4.

The compliance hourly schedule of this AD was chosen based on overall fleet risk assessment of a hazardous condition occurring, parts availability, and shop capacity. The compliance end date was chosen to further assure the desired level of safety of this action as affected by aircraft utilization variations throughout the fleet.

Since an unsafe condition has been identified that is likely to exist or develop on other Allison Engine Company AE 3007A and AE 3007A1/1 turbofan engines of the same type design, this AD supersedes AD 98–12–12 to require replacing FADEC

assemblies, P/N 23062835, 23069253, 23068661, and 23068670 with serviceable parts.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–14–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10568, (63 FR 31338, June 9, 1998), and by adding a new airworthiness directive, Amendment 39–11017, to read as follows:

99–03–03 Allison Engine Company: Amendment 39–11017. Docket 98–ANE–14–AD. Supersedes AD 98–12–12, Amendment 39–10568.

Applicability: Allison Engine Company AE 3007A and AE 3007A1/1 turbofan engines. These engines are installed on, but not limited to the following airplanes: Embraer Model EMB–145, EMB–145ER, EMB–145MR, and EMB–145LR.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an unintentional or uncommanded in-flight engine shutdown, accomplish the following:

(a) Replace the Full Authority Digital Electronic Control (FADEC) assembly part numbers (P/N) 23062835, 23069253, 23068661, and 23068670, with serviceable parts within 200 flight hours after the effective date of this AD, but not later than April 30, 1999.

(b) Prior to further flight, revise the FAA-approved Airplane Flight Manual by incorporating Embraer EMB–145 U.S. Airplane Flight Manual, Document No. AFM–145/1153, pages 3–14, 3–36B, 4–1, and 4–11, and 4–12 of Revision 14, dated May 7, 1998, until all affected engines within that operator's fleet are in compliance with this AD.

(c) For the purpose of this AD, a serviceable part is any serviceable FADEC assembly except P/N's 23062835, 23069253, 23068661, or 23068670. This AD action eliminates FADEC assembly P/N's 23062835, 23069253, 23068661, or 2306867 from installation eligibility and continued use in service.

Note 2: Complete instructions for reprogramming and reidentifying the existing FADEC are contained in Rolls-Royce SB AE 3007A–73–021, Revision 1, dated December 23, 1998.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on February 16, 1999.

Issued in Burlington, Massachusetts, on January 25, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–2151 Filed 1–28–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–6]

RIN 2120–AA66

Modification of the San Diego Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the San Diego, CA, Class B airspace area. Specifically, this action lowers the upper limit of the San Diego Class B airspace area from 12,500 feet mean sea level (MSL) to 10,000 feet MSL; expands the western and eastern boundaries of the airspace area; and moves the southern boundary north to align with the POGGI Very High Frequency Omnidirectional Range Tactical Air Navigation (VORTAC). The FAA is taking this action to enhance safety, reduce the potential for midair collision, and to improve the management of air traffic operations into, out of, and through the San Diego Class B airspace area, while accommodating the concerns of airspace users.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace areas (now known as Class B airspace areas).

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule in the **Federal Register** (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated TCA (now known as Class B airspace area) primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this final rule.

Background

The Terminal Control Airspace area (now known as the Class B airspace area) program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic operations by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increases the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas normally contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Public Input

On May 19, 1998, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket 97–AWA–6; 63 FR 27519) proposing to modify the San Diego Class B Airspace Area, CA. The comment period for this NPRM closed on July 20, 1998.

The FAA received seven comments in response to the proposal. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's response is summarized below.

Discussion of Comments

The Air Line Pilots Association (ALPA) and the U.S. Marine Corps endorsed the proposed modification of the San Diego Class B airspace area as proposed, stating that the proposal will improve the safety, efficiency and the utility of airspace surrounding San Diego. Five other commenters endorsed the proposal, but included the recommendations discussed below.

One commenter stated that the instrument approach angle to Miramar Marine Corps Air Station (MCAS) is currently a nonstandard 3.25 degree angle and requested that this nonstandard angle be maintained to provide safe vertical separation for those aircraft operating below the Class B airspace area from aircraft inbound on the final approach. The commenter believed that the NPRM did not clearly provide notice that the FAA was proposing to change the instrument approach angle from 3.25 degrees to 3.00 degrees.

The FAA does not agree with this request. In 1995 the U.S. Navy lowered the approach angle from 3.25 degrees to a standard approach angle of 3.00 degrees. The nonstandard angle required aircraft conducting an instrument approach to maintain excessive descent rates on final approach. The base altitude in the vicinity of the approach is necessary to contain the high volume of turbo-jet arrivals and departures to and from Miramar MCAS. The continued use of a standard 3.0 degree approach angle provides aircraft operating under the Class B airspace area with safe vertical separation from aircraft on final approach to Miramar MCAS.

The San Diego Airspace Users Group (SDAUG) and the Aircraft Owners and Pilots Association (AOPA) requested that the triangular-shaped southeast corner of Area Q be eliminated from the Class B airspace area and included in the VFR corridor to provide a direct

route from the VFR corridor to Brown Field.

A review of this recommendation determined that the triangular-shaped corner of Area Q provided no operational advantage to ATC and could be eliminated. Therefore, the FAA has adopted this recommendation by removing the southeast corner of Area Q, where it borders Area P, from the Class B airspace area and included this area in the VFR corridor.

The SDAUG and AOPA stated that the proposed Class B Area I 3200-foot MSL floor would create a dangerous situation by squeezing the VFR traffic entering and exiting Gillespie Airport to/from the northeast, into a small band of airspace between 2900 feet and 3200 feet MSL. It was recommended that the Class D airspace area at Gillespie Field be lowered from its current 2900 feet MSL to 2400 feet MSL to eliminate a narrow 300-foot shelf of airspace between the Class B airspace in Area I and the Gillespie Field Class D airspace area.

The FAA agrees with this recommendation and has lowered the Gillespie Field Class D airspace area ceiling to 2400 feet MSL. This creates an 800-foot transition area under the Class B airspace area and over the Gillespie Class D airspace area for VFR aircraft.

The SDAUG and AOPA questioned the rationale for using Lindberg Field and Miramar MCAS as the primary airports to determine the 30–NM Mode C veil. They pointed out that Federal Aviation Regulation Part 91 Appendix D Section 1 states that location, not airport, is the basis for establishing the center of the veil. Based on this, they recommended that the San Diego Mode C veil reference point be changed from the designated airports Lindberg Field and Miramar MCAS to the Mission Bay VORTAC (MZB). These commenters contend that this would provide a method of Class B airspace area boundary simplification for navigation using Distance Measuring Equipment (DME) to define the 30–NM Mode C veil.

The FAA does not agree with this recommendation. Currently, Class B airspace is designated for airports, and legal descriptions are based on the airport reference point of a designated primary airport(s) as listed in Subpart B Federal Aviation Order 7400.9. Additionally, 14 CFR Section 91.215 (b)(2) states that all aircraft operating within 30 NM of an airport listed in Appendix D Section 1 must comply with the Mode C rule. Charts are provided for VFR navigation which contain a substantial number of visual landmarks such as highly visible roadways, landmarks, and other visual checkpoints easily identifiable from the air. These charts also include other navigation information to provide guidance in and around the Class B airspace area. The FAA believes that sufficient aeronautical information is available for VFR pilots to navigate in and around the Class B airspace area without sole reliance upon DME information to define the Mode C Veil when appropriately planned during preflight or in coordination with ATC.

The SDAUG and AOPA recommended several charting additions to the San Diego VFR Terminal Chart to assist pilots navigating in the San Diego area. Specifically, these commenters recommended the following: (1) Provide VOR radial DME table to define each corner of the Class B airspace area using local navigational aids (NAVAID's); (2) create a VFR terminal chart be similar to the Los Angeles terminal area chart; (3) publish recommended altitudes on the chart for the VFR corridor; (4) include new visual check points on the chart; (5) chart Area O as a 20 NM DME fix; (6) adjust the VFR flyway to reflect changes.

The FAA agrees with these recommendations because they will facilitate VFR operations in the San Diego area, and has taken action to include them on future San Diego VFR Terminal Area charts.

The Rule

This amendment to 14 CFR part 71 modifies the San Diego Class B airspace area. Specifically, this action lowers the upper limit of the San Diego Class B airspace area from 12,500 feet MSL to 10,000 feet MSL, expands the western and eastern boundaries, and moves the southern boundary northward to align with the POGGI VORTAC. The FAA is taking this action to improve the boundary definition and decrease the overall size of the Class B airspace area. The modification of the San Diego Class B airspace area includes a redundant system of boundary depiction to the maximum extent possible. The primary boundary definition uses latitude and longitude points (Global Positioning System [GPS] waypoints) and, wherever feasible, the boundaries are also aligned with reference to existing ground-based NAVAID's and prominent geographical landmarks. This modification of the San Diego Class B airspace area results in a net reduction in the size of the airspace area. These changes will improve efficiency of the airspace area and provide a clearer definition of Class B airspace area boundaries to aid those users who choose to remain outside of the Class B airspace area.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in Paragraph 3000 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document will be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its minimal costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

The FAA is modifying the San Diego Class B airspace area by lowering the ceiling from 12,500 feet MSL to 10,000 feet MSL, by expanding and moving lateral boundaries, and by modifying base altitudes. The FAA has determined that modification of the San Diego Class B airspace area will improve the efficiency of aircraft movement in the airspace and enhance safety for VFR and IFR airspace users while accommodating the operations of turbo-jet aircraft and helicopters at Marine Corps Air Station (MCAS) Miramar.

The modifications will generate several benefits for system users. These benefits include redefining the Class B airspace subareas, increased airspace for aircraft transitioning to and from satellite airports, improved containment within the Class B airspace area for turbo-jet aircraft arriving and departing MCAS Miramar, and reduced potential

for midair collisions in the San Diego terminal area.

The final rule will impose minimal costs on FAA or airspace users. Printing of aeronautical charts which reflect the changes to the Class B airspace area will be accomplished during a scheduled chart printing, and will result in no additional costs for plate modification and updating of charts. Notices will be sent to all pilots within a 100-mile radius of the San Diego International Airport at a total cost of $100.00 for postage. No staffing changes will be required to maintain the modified Class B airspace area.

The San Diego Class B airspace area will be designated by a redundant boundary depiction system which uses longitude and latitude points (GPS waypoints), existing NAVAIDs, and visual references to identify the airspace boundaries. These three options, two of which are available currently, will not cause airspace users to incur any additional equipment costs. Moreover, the overall reduction of the Class B airspace area will increase the airspace for nonparticipating aircraft operators thereby reducing the circumnavigation costs to GA aircraft operators. In view of the minimal cost of compliance, enhanced safety, and operational efficiency, the FAA has determined that the final rule will be cost-beneficial.

Cost-Benefit Analysis

The final rule will generate benefits to system users and the FAA in the form of improved flow of air traffic in the Class B airspace around the San Diego area.

Benefits of the Class B airspace changes will include clearer airspace boundaries along major roadways for VFR users; greater terrain clearance for VFR aircraft below the Class B airspace so as not to require flight over the ocean or near mountainous terrain; increased airspace available for VFR aircraft transitioning to and from satellite airports in the San Diego area; easier navigation for VFR aircraft around the Class B airspace area; and an overall reduction of the impact of the Class B airspace area on VFR traffic.

There will be a 5 to 10 percent increase in the amount of GA aircraft operating in uncontrolled airspace as a result of the overall decrease in the San Diego Class B airspace area. The FAA contends that this modification will reduce the cost of circumnavigation to nonparticipating operators.

A redundant system of airspace boundary depiction will be used. This means that longitude and latitude points (GPS waypoints), existing NAVAIDs, and visual landmarks will all be available for Class B boundary identification.

Furthermore, the final rule will improve the flow of air traffic and enhance the safety of turbo-jet aircraft. The rule will provide turbo-jet aircraft inbound to San Diego Lindbergh Airport (Runway 27) the optimum 300 foot per nautical mile descent gradient. Additionally, turbo-jet aircraft arriving and departing at MCAS Miramar and at San Diego Lindbergh Airport will experience improved containment during arrival and departure thereby reducing the potential for midair collisions in the congested airspace in the San Diego area.

Costs

The FAA has determined that implementation of the final rule will impose negligible costs on the agency and no additional costs on airspace users. No staffing changes will be required to maintain the altered Class B airspace. The final rule will not create any additional administrative costs for personnel, facilities, or equipment to the FAA. The FAA systematically revises IFR charts every 56 days and sectional and terminal area charts every six months. Printing the revised aeronautical charts to reflect the Class B airspace area changes around San Diego will be accomplished during regularly scheduled chart printings. Any costs associated with modifying the plates used to print the charts and printing the updated charts will be considered a normal cost of doing business.

The Western-Pacific Region will send a mailing to all pilots within a 100-mile radius of the San Diego International Airport as a routine public service. The cost for the postage for the mailing is $100.00.

Although many aircraft do not currently have GPS equipment, the Class B airspace depiction uses existing NAVAID's and visual references to identify the airspace boundaries. Therefore no additional costs will be imposed by using GPS waypoints for boundary identification. Thus, there will be no additional costs imposed on airspace users as a result of the San Diego Class B airspace modification.

International Trade Impact Assessment

The final rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA contends that there will be no additional costs imposed on aircraft operators as a result of using GPS waypoints for boundary identification. Although many aircraft do not currently have a GPS receiver, the redundant boundary depiction system also uses existing NAVAID's and visual references to identify the airspace boundaries for which GPS equipment is not required. Aircraft operators may navigate accurately using VORTAC radials and DME arcs, visually by using prominent geographic landmarks, or a combination of these options.

The FAA, in conducting this review of the final rule, has determined that the rule will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final

agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Federalism Implications

This rule will not have substantial direct effects on the States, the relationship between the National government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41695; October 30, 1987), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that there are benefits in the form of improved flow of both GA and military air traffic, and enhanced safety for aircraft operators in the Class B airspace area, especially to military aircraft. This final rule will reduce the size of the Class B airspace area around San Diego and provide more uncontrolled airspace for VFR operations. In addition, there will be minimal costs for a mailing to local pilots informing them of the alteration of the San Diego Class B airspace area. Because of the distinct benefits and minimal costs of the final rule, the FAA has determined that this final rule will be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

AWP CA B San Diego, CA [Revised]

San Diego (Lindbergh Field), CA (Primary Airport)
(Lat. 32°44′01″ N., long. 117°11′23″ W.)
MCAS Miramar, Miramar, CA (Primary Airport)
(Lat. 32°52′06″ N., long. 117°08′33″ W.)
POGGI VORTAC (PGY)
(Lat. 32°36′37″ N., long. 116°58′45″ W.)
Oceanside VORTAC (OCN)
(Lat. 33°14′26″ N., long. 117°25′04″ W.)
Julian VORTAC (JLI)
(Lat. 33°08′26″ N., long. 116°35′09″ W.)
Mission Bay VORTAC (MZB)
(Lat. 32°46′56″ N., long. 117°13′32″ W.)

Boundaries

Area A. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the JLI 262° radial and the eastern edge of Warning Area 291 (W–291) (lat. 32°59′31″ N., long. 117°47′25″ W.); thence east via the JLI 262° radial to intercept the MZB 325° radial (lat. 33°02′13″ N., long. 117°26′14″ W.); thence southeast via the MZB 325° radial to intercept the JLI 257° radial (lat. 32°58′53″ N., long. 117°23′27″ W.); thence west via the JLI 257° radial to intercept the OCN 200° radial (lat. 32°57′02″ N., long. 117°32′35″ W.); thence south via the OCN 200° radial to the intersection of the OCN 200° radial and the eastern edge of W–291 (lat. 32°45′23″ N., long. 117°37′35″ W.); thence northwest via the eastern edge of W–291 to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the eastern edge of W–291 and the OCN 200° radial (lat. 32°45′23″ N., long. 117°37′35″ W.); thence north via the OCN 200° radial to intercept the JLI 257° radial (lat. 32°57′02″ N., long. 117°32′35″ W.); thence east via the JLI 257° radial to intercept the OCN 182° radial (lat. 32°58′25″ N., long. 117°25′44″ W.); thence south via the OCN 182° radial to intercept the PGY 290° radial (lat. 32°45′02″ N., long. 117°26′17″ W.); thence east via the PGY 290° radial to the intersection of the PGY 290° radial and the 32°43′22″ latitude line (lat. 32°43′22″ N., long. 117°20′47″ W.); thence east via the 32°43′22″ latitude line to intercept the OCN 171° radial (lat. 32°43′22″ N., long. 117°19′15″ W.); thence south via the OCN 171° radial to intercept the PGY 279° radial (lat. 32°39′14″ N., long. 117°18′28″ W.); thence west via the PGY 279° to intercept the eastern edge of W–291 (lat. 32°41′27″ N., long. 117°35′27″ W.); thence northwest along the eastern edge of W–291 to the point of beginning.

Area C. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 182° and the JLI 257° radials (lat. 32°58′25″ N., long. 117°25′44″ W.); thence east via the JLI 257° radial to intercept the MZB 325° radial (lat. 32°58′53″ N., long. 117°23′27″ W.); thence southeast via the MZB 325° radial to intercept the OCN 167° radial (lat. 32°54′08″ N., long. 117°19′31″ W.); thence south via the OCN 167° radial to intercept the MZB 310° radial (lat. 32°50′28″ N., long. 117°18′30″ W.); thence southeast via the MZB 310° radial to the Mission Bay VORTAC; thence west via the MZB 279° radial to intercept the OCN 171° radial (lat. 32°47′48″ N., long. 117°20′04″ W.); thence south via the OCN 171° radial to the intersection of the OCN 171° radial and the 32°43′22″ latitude line (lat. 32°43′22″ N., long. 117°19′15″ W.); thence west via the 32°43′22″ latitude line to intercept the PGY 290° radial (lat. 32°43′22″ N., long. 117°20′47″ W.); thence west via the PGY 290° radial to intercept the OCN 182° radial (lat. 32°45′02″ N., long. 117°26′17″ W.); thence north via the OCN 182° radial to the point of beginning.

Area D. That airspace extending upward from 1,800 feet MSL to and including 3,200 feet MSL and that airspace extending upward from 6,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of MZB 325° and the JLI 257° radials (lat. 32°58′53″ N., long. 117°23′27″ W.); thence southeast direct to the intersection of I–5, I–805, and the JLI 247° radial (lat. 32°54′31″ N., long. 117°13′39″ W.); thence south direct to the intersection of I–5 and Genessee Avenue (lat. 32°53′13″ N., long. 117°13′40″ W.); thence south direct to the intersection of

Genessee Avenue and Route 52 (lat. 32°50'49" N., long. 117°12'08" W.); thence northwest direct to the intersection of the westerly extension of the Montgomery Field Runway 10L/28R centerline and the OCN 167° radial (lat. 32°53'11" N., long. 117°19'15" W.); thence north via the OCN 167° radial to intercept the MZB 325° radial (lat. 32°54'08" N., long. 117°19'31" W.); thence northwest via the MZB 325° radial to the point of beginning.

Area E. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the intersection of the MZB 008° and the JLI 252° radials (lat. 32°58'21" N., long. 117°11'37" W.); thence east via the JLI 252° radial to intercept the OCN 135° radial (lat. 32°59'32" N., long. 117°07'24" W.); thence southeast via the OCN 135° radial to intercept the MZB 027° radial (lat. 32°58'45" N., long. 117°06'29" W.); thence southwest via the MZB 027° radial to intercept the JLI 247° radial (lat. 32°56'45" N., long. 117°07'35" W.); thence southwest via the JLI 247° radial to intercept the MZB 008° radial (lat. 32°55'05" N., long. 117°12'10" W.); thence north via the MZB 008° radial to the point of beginning.

Area F. That airspace extending upward from the surface to and including 3,200 feet MSL and that airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of I–5, I–805, and the JLI 247° radial (lat. 32°54'31" N., long. 117°13'39" W.); thence southeast direct to the departure end of MCAS Miramar Runway 24R (lat. 32°51'49" N., long. 117°09'55" W.); thence east direct to the approach end of MCAS Miramar Runway 28 centerline (lat. 32°51'57" N., long. 117°07'37" W.); thence east direct to the intersection of the Gillespie Field Class D airspace area and a line extending west from the southern boundary of the MCAS Miramar Class E airspace area (lat. 32°51'14" N., long. 117°03'03" W.); thence southwest direct to the intersection of the Gillespie Field Class D airspace area and the MZB 065° radial (lat. 32°51'00" N., long. 117°03'10" W.); thence west direct to the intersection of Santo Road, Route 52, and the 32°50'25" N. latitude line (lat. 32°50'25" N., long. 117°05'48" W.); thence west via the 32°50'25" N. latitude line to the intersection of 32°50'25" N. latitude line and Route 52 (lat. 32°50'25" N., long. 117°09'50" W.); thence northwest direct to the intersection of Route 52 and I–805 (lat. 32°50'50" N., long. 117°10'40" W.); thence west direct to the intersection of Route 52 and Genessee Avenue (lat. 32°50'49" N., long. 117°12'08" W.); thence northwest direct to the intersection of I–5 and Genessee Avenue (lat. 32°53'13" N., long. 117°13'40" W.); thence north via I–5 to the point of beginning.

Area G. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of the OCN 135° and the JLI 247° radials (lat. 32°57'38" N., long. 117°05'10" W.); thence southeast via the OCN 135° radial to intercept the south boundary line of the MCAS Miramar Class E airspace area (lat. 32°52'03" N., long. 116°58'35" W.); thence west along the southern boundary line to the intersection of the southern boundary line and the Gillespie Field Class D airspace area 4.3-mile arc (lat. 32°51'14" N., long. 117°03'03" W.); thence west direct to the approach end of MCAS Miramar Runway 28 (lat. 32°51'57" N., long. 117°07'37" W.); thence west direct to the departure end of MCAS Miramar Runway 24R (lat. 32°51'49" N., long. 117°09'55" W.); thence northwest direct to the intersection of I–5, I–805, and the JLI 247° radial (lat. 32°54'31" N., long. 117°13'39" W.); thence northeast via the JLI 247° radial to the point of beginning.

Area H. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 135° and the JLI 247° radial (lat. 32°57'38" N., long. 117°05'10" W.); thence northeast via the JLI 247° radial to intercept the OCN 130° radial (lat. 32°58'33" N., long. 117°02'38" W.); thence southeast via the OCN 130° radial to the PGY 005° radial (lat. 32°54'27" N., long. 116°56'54" W.); thence south via the PGY 005° radial to the southern boundary line of the MCAS Miramar Class E airspace area (lat. 32°52'18" N., long. 116°57'07" W.); thence west along the southern boundary line to intercept the OCN 135° radial (lat. 32°52'03" N., long. 116°58'35" W.); thence northwest via the OCN 135° radial to the point of beginning.

Area I. That airspace extending upward from 3,200 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 130° and the JLI 247° radials (lat. 32°58'33" N., long. 117°02'38" W.); thence northeast via the JLI 247° radial to intercept the OCN 127° radial (lat. 32°59'08" N., long. 117°01'01" W.); thence southeast via the OCN 127° radial to intercept the PGY 010° radial (lat. 32°55'11" N., long. 116°54'52" W.); thence south via the PGY 010° radial to the southern boundary line of the MCAS Miramar Class E airspace area (lat. 32°52'37" N., long. 116°55'24" W.); thence west along the southern boundary line to intercept the PGY 005° radial (lat. 32°52'18" N., long. 116°57'07" W.); thence north via the PGY 005° radial to intercept the OCN 130° radial (lat. 32°54'27" N., long. 116°56'54" W.); thence northwest via the OCN 130° radial to the point of beginning.

Area J. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the southern boundary line of the MCAS Miramar Class E airspace area and the OCN 132° radial (lat. 32°52'28" N., long. 116°56'13" W.); thence southeast via the OCN 132° radial to intercept the JLI 201° radial (lat. 32°44'36" N., long. 116°45'59" W.); thence south via the JLI 201° radial to intercept the PGY 083° radial (lat. 32°37'37" N., long. 116°49'08" W.); thence west via the PGY 083° radial to the POGGI VORTAC; thence northeast via the PGY 069° radial to intercept the JLI 207° radial (lat. 32°38'25" N., long. 116°53'13" W.); thence northeast via the JLI 207° radial to intercept the MZB 099° radial (lat. 32°43'45" N., long. 116°50'02" W.); thence west via the MZB 099° radial to the Mission Bay VORTAC; thence via the MZB 310° radial to intercept the OCN 167° radial (lat. 32°50'28" N., long. 117°18'30" W.); thence north via the OCN 167° radial to intercept the westerly extension of the Montgomery Field Runway 10L/28R centerline (lat. 32°53'11" N., long. 117°19'15" W.); thence southeast direct to the intersection of Route 52 and Genessee Avenue (lat. 32°50'49" N., long. 117°12'08" W.); thence east direct to the intersection of Route 52 and I–805 (lat. 32°50'50" N., long. 117°10'40" W.); thence southeast direct to the intersection of Route 52 and the 32°50'25" N. latitude line (lat. 32°50'25" N., long. 117°09'50" W.); thence east along the 32°50'25" N. latitude line to the intersection of the 32°50'25" N. latitude line, Route 52, and Santo Road (lat. 32°50'25" N., long. 117°05'48" W.); thence east direct to the intersection of the MZB 065° radial and the Gillespie Field Class D airspace area (lat. 32°51'00" N., long. 117°03'10" W.); thence northeast direct to the intersection of the Gillespie Field Class D airspace area and a line extending west from the southern boundary of the MCAS Miramar Class E airspace area (lat. 32°51'14" N., long. 117°03'03" W.); thence east via the southern boundary line to the point of beginning.

Area K. That airspace extending upward from 5,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 132° and the MZB 091° radials (lat. 32°46'31" N., long. 116°48'29" W.); thence east via the MZB 091° radial to intercept the JLI 191° radial (lat. 32°46'22" N., long. 116°40'14" W.); thence south via the JLI 191° radial to intercept the PGY 083° radial (lat. 32°38'20" N., long. 116°42'04" W.); thence west via the PGY 083° radial to intercept the JLI 201° radial (lat. 32°37'37" N., long. 116°49'08" W.); thence north via the JLI 201° radial to intercept the OCN 132° radial (lat. 32°44'36" N., long. 116°45'59" W.); thence northwest via the OCN 132° radial to the point of beginning.

Area L. That airspace extending upward from the surface to and including 10,000 feet MSL beginning at the intersection of the OCN 171° and the MZB 279° radials (lat. 32°47'48" N., long. 117°20'04" W.); thence east via the MZB 279° radial to the Mission Bay VORTAC; thence east via the MZB 099° radial to the MZB 099° radial 10 DME fix (lat. 32°45'21" N., long. 117°01'49" W.); thence south direct to the intersection of the MZB 10-mile arc and the easterly extension of the Lindbergh Field Runway 09/27 centerline (lat. 32°42'02" N., long. 117°03'11" W.); thence southwest direct to the intersection of the PGY 300° radial and the MZB 10-mile arc (lat. 32°39'47" N., long. 117°05'13" W.); thence northwest via the PGY 300° radial to the PGY 300° radial 13.5 DME fix (lat. 32°43'22" N., long. 117°12'36" W.) thence west direct to the OCN 171° radial 31.4 DME fix (lat. 32°43'22" N., long. 117°19'15" W.); thence north via the OCN 171° radial to the point of beginning; excluding the VFR corridor described as that airspace extending upward from 3,301 feet MSL to, but not including 4,700 feet MSL in an area beginning at the Mission Bay VORTAC; thence east direct to the intersection of I–8, I–805, and the MZB 099° radial (lat. 32°46'11" N., long. 117°07'55" W.); thence south direct to the intersection of I–5 and Highway 94 (lat. 32°42'49" N., long. 117°08'51" W.); thence southerly via I–5 to the intersection of I–5 and the PGY 300° radial (lat. 32°40'27" N., long. 117°06'35"

W.); thence southwest direct to the intersection of the PGY 279° radial, the MZB 10-mile arc, and Silver Strand Boulevard (lat. 32°37'54" N., long. 117°08'23" W.); thence northwesterly via the Silver Strand Boulevard to the Hotel del Coronado (south end of Coronado Island) (lat. 32°40'51" N., long. 117°10'41" W.) thence north direct to the point of beginning.

Area M. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL beginning at the MZB 099° radial 10 DME fix (lat. 32°45'21" N., long. 117°01'49" W.); thence east via the MZB 099° radial to the MZB 099° radial 13 DME fix (lat. 32°44'53" N., long. 116°58'18" W.); thence south direct to the intersection of the easterly extension of the Lindbergh Field Runway 09/27 centerline and the MZB 13-mile arc (lat. 32°41'11" N., long. 116°59'42" W.); thence southwest direct to the intersection of the MZB 13-mile arc and the PGY 300° radial (lat. 32°38'14" N., long. 117°02'03" W.); thence northwest via the PGY 300° radial to the intersection the PGY 300° radial and the MZB 10-mile arc (lat. 32°39'47" N., long. 117°05'13" W.); thence northeast direct to the intersection of the Lindbergh Field Runway 09/27 centerline and the MZB 10-mile arc (lat. 32°42'02" N., long. 117°03'11" W.); thence north direct to the point of beginning.

Area N. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL beginning at the MZB 099° radial 13 DME fix (lat. 32°44'53" N., long. 116°58'18" W.); thence east via the MZB 099° radial to the MZB 099° radial 15 DME fix (lat. 32°44'34" N., long. 116°55'58" W.); thence south direct to the intersection of the easterly extension of the Lindbergh Field Runway 09/27 centerline and the MZB 15-mile arc (lat. 32°40'37" N., long. 116°57'24" W.); thence southwest direct to the intersection of the MZB 15-mile arc and the PGY 300° radial (lat. 32°37'13" N., long. 116°59'58" W.); thence northwest via the PGY 300° radial to the PGY 300° radial 13 DME fix (lat. 32°38'14" N., long. 117°02'03" W.); thence northeast direct to the intersection of the Lindbergh Field Runway 09/27 centerline and the MZB 13-mile arc (lat. 32°41'11" N., long. 116°59'42" W.); thence north direct to the point of beginning.

Area O. That airspace extending upward from 3,500 feet MSL to and including 10,000 feet MSL beginning at the MZB 099° radial 15 DME fix (lat. 32°44'34" N., long. 116°55'58" W.); thence east via the MZB 099° radial to intercept the JLI 207° radial (lat. 32°43'45" N., long. 116°50'02" W.); thence southwest along the JLI 207° radial to intercept the PGY 069° radial (lat. 32°38'25" N., long. 116°53'13" W.); thence southwest via the PGY 069° radial to the POGGI VORTAC; thence northwest via the PGY 300° radial to intercept the MZB 15-mile arc (lat. 32°37'13" N., long. 116°59'58" W.); thence northeast direct to the intersection of the MZB 15-mile arc and the easterly extension of the Lindbergh Field Runway 09/27 centerline (lat. 32°40'37" N., long. 116°57'24" W.); thence north direct to the point of beginning.

Area P. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the PGY 279° radial and the eastern edge of W–291 (lat. 32°41'27" N., long. 117°35'27" W.); thence east via the PGY 279° radial to the intersection of the PGY 279° radial, the MZB 10-mile arc, and Silver Strand Boulevard (lat. 32°37'54" N., long. 117°08'23" W.); thence northeast direct to the intersection of I–5 and the PGY 300° radial (lat. 32°40'27" N., long. 117°06'35" W.); thence southeast via the PGY 300° radial to the POGGI VORTAC; thence west via the PGY 264° radial to the eastern edge of W–291 (lat. 32°33'40" N., long. 117°31'13" W.); thence north via the eastern edge of W–291 to the point of beginning.

Area Q. That airspace extending upward from 2,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 171° radial 31.4 DME fix (lat. 32°43'22" N., long. 117°19'15" W.); thence east direct to the intersection of the PGY 300° radial 13.5 DME fix (lat. 32°43'22" N., long. 117°12'36" W.); thence southeast via the PGY 300° radial to the intersection of I–5 and the PGY 300° radial (lat. 32°40'27" N., long. 117°06'35" W.); thence southwest direct to the intersection of the PGY 279° radial, the MZB 10-mile arc, and Silver Strand Boulevard (lat. 32°37'54" N., long. 117°08'23" W.); thence west via the PGY 279° radial to intercept the OCN 171° radial (lat. 32°39'14" N., long. 117°18'28" W.); thence north via the OCN 171° radial to the point of beginning; excluding that airspace contained in the VFR corridor as described in Area L.

Area R. That airspace extending upward from 4,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 135° and the JLI 257° radials (lat. 33°01'36" N., long. 117°09'51" W.); thence east via the JLI 257° radial to intercept the OCN 115° radial (lat. 33°03'53" N., long. 116°58'19" W.); thence via the OCN 115° radial to intercept the PGY 019° radial (lat. 33°00'13" N., long. 116°49'06" W.); thence south via the PGY 019° radial to intercept the OCN 121° radial (lat. 32°56'51" N., long. 116°50'29" W.); thence northwest via the OCN 121° radial to intercept the JLI 247° radial (lat. 33°00'25" N., long. 116°57'28" W.); thence southwest via the JLI 247° radial to intercept the MZB 027° radial (lat. 32°56'45" N., long. 117°07'35" W.); thence northeast via the MZB 027° radial to intercept the OCN 135° radial (lat. 32°58'45" N., long. 117°06'29" W.); thence northwest via the OCN 135° radial to the point of beginning.

Area S. That airspace extending upward from 6,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the JLI 262° and the MZB 325° radials (lat. 33°02'13" N., long. 117°26'14" W.); thence east via the JLI 262° radial to intercept the OCN 115° radial (lat. 33°05'14" N., long. 117°01'43" W.); thence southeast via the OCN 115° radial to intercept the JLI 257° radial (lat. 33°03'53" N., long. 116°58'19" W.); thence west via the JLI 257° radial to intercept the MZB 008° radial (lat. 33°01'21" N., long. 117°11'07" W.); thence south via the MZB 008° radial to intercept the JLI 247° radial (lat. 32°55'05" N., long. 117°12'10" W.); thence southwest via the JLI 247° radial to the intersection of I–5, I–805, and the JLI 247° radial (lat. 32°54'31" N., long. 117°13'39" W.); thence northwest direct to the intersection of the JLI 257° and the MZB 325° radials (lat. 32°58'53" N., long. 117°23'27" W.); thence northwest via the MZB 325° radial to the point of beginning.

Area T. That airspace extending upward from 3,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the OCN 127° and the JLI 247° radials (lat. 32°59'08" N., long. 117°01'01" W.); thence northeast via the JLI 247° radial to intercept the OCN 121° radial (lat. 33°00'25" N., long. 116°57'28" W.); thence southeast via the OCN 121° radial to intercept the PGY 019° radial (lat. 32°56'51" N., long. 116°50'29" W.); thence south via the PGY 019° radial to intercept a line extending east from the southern boundary of the MCAS Miramar Class E airspace area (lat. 32°53'14" N., long. 116°51'58" W.); thence west along the southern boundary line to intercept the PGY 010° radial (lat. 32°52'37" N., long. 116°55'24" W.); thence north via the PGY 010° radial to intercept the OCN 127° radial (lat. 32°55'11" N., long. 116°54'52" W.); thence northwest via the OCN 127° radial to the point of beginning.

Area U. That airspace extending upward from 3,800 feet MSL to and including 10,000 feet MSL beginning at the intersection of the MZB 008° and the JLI 257° radials (lat. 33°01'21" N., long. 117°11'07" W.); thence east via the JLI 257° radial to intercept the OCN 135° radial (lat. 33°01'36" N., long. 117°09'51" W.); thence southeast via the OCN 135° radial to intercept the JLI 252° radial (lat. 32°59'32" N., long. 117°07'24" W.); thence southwest via the JLI 252° radial to intercept the MZB 008° radial (lat. 32°58'21" N., long. 117°11'37" W.); thence north via the MZB 008° radial to the point of beginning.

Issued in Washington, DC, on January 21, 1999.

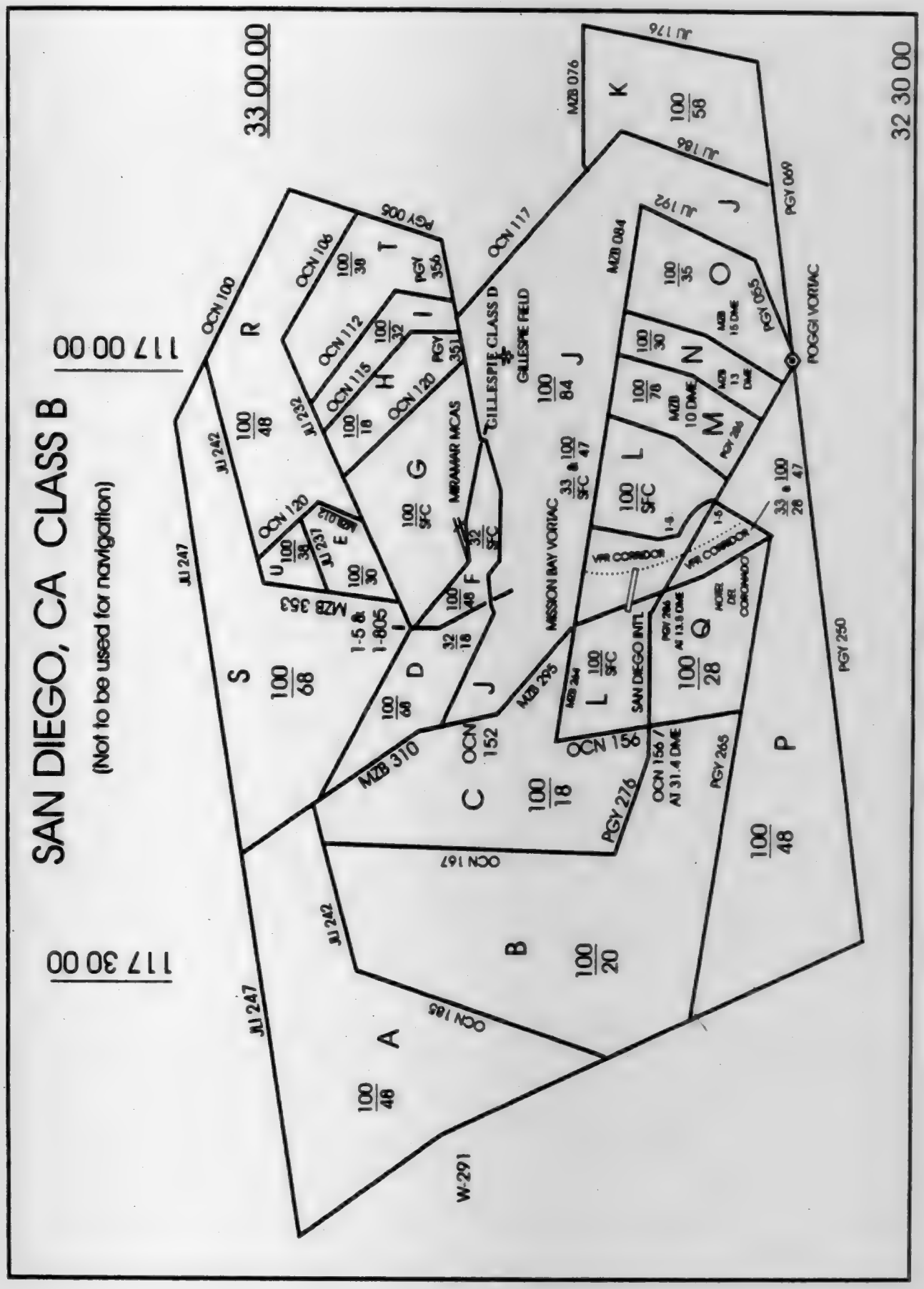
Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

Note: This Appendix will not appear in the Code of Federal Regulations.

BILLING CODE 4910–13–P

Appendix—San Diego, CA, Class B Airspace Area



[FR Doc. 99–2135 Filed 1–28–99; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 96–ASW–40]

RIN 2120–AA66

Amendments to Restricted Areas 5601D and 5601E; Fort Sill, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action raises the upper limit of Restricted Area 5601D (R–5601D) from the current 16,500 feet mean sea level (MSL) to Flight Level (FL) 400. Additionally, this action amends the times and days of designation for R–5601D and R–5601E when these areas may be activated without a prior issuance of a Notice to Airmen (NOTAM). These changes are necessary to accommodate high altitude/high angle bomb delivery training and to support weekday and night flying requirements.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Bil Nelson, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On November 10, 1997, the FAA proposed to amend 14 CFR part 73 to raise the upper limit of R–5601D and to expand the times and change the days of designation for R–5601D and R–5601E (62 FR 60463). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 73.56 of part 73 was republished in FAA Order 7400.8F dated October 27, 1998.

The Rule

This amendment to 14 CFR part 73 raises the upper limit of R–5601D from the current 16,500 feet MSL to FL 400. The United States Air Force (USAF) requested this change to R–5601D in order to contain high-altitude jet aircraft bombing patterns in the Falcon Range target area located in R–5601C. Although R–5601C airspace extends to FL 400, there is not enough maneuvering airspace to allow jet aircraft to climb to the required delivery altitudes before final approach into the target area. Raising the upper limit of R–5601D to FL 400 will alleviate this airspace problem and allow for quality high altitude/high angle bomb delivery training, a USAF pilot requirement for "mission ready" status.

Additionally, this rule expands the times of designation and days of operation for R–5601D and R–5601E from the current "Sunrise to sunset, Tuesday through Saturday; other times by NOTAM" to "Sunrise to 2200, Monday–Friday; other times by NOTAM." This expansion in the time of designation is necessary to accommodate a change in flying requirements by both the 301st Fighter Wing, Carswell Field, TX, and the 88th Training Wing at Sheppard AFB, TX. Although there will still be occasional weekend flying, most activity will occur during weekdays. The extension of flying times beyond sunset is necessary due to the USAF training requirement to fly night sorties. This action will not alter the horizontal boundaries or the designated purpose of the restricted areas.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The Department of the Army, with the concurrence of the Department of the Air Force, has requested that this airspace action be excluded from requirements for an Environmental Impact Statement and finding of no significant impact under Categorical Exclusion (CATEX) 2.3.35. The FAA considered the applicability of CATEX 2.3.35 to this action under the terms of the Memorandum of Understanding between the FAA and the Department of Defense (DOD), executed on January 26, 1998. The FAA also considered whether FAA CATEX 3(c) applies to this action, FAA Order 1050.1D, App.3, Para.3(c).

The DOD's CATEX 2.3.35 excludes all military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level (AGL) or higher. This action raises the altitude of the area from 16,000 feet AGL to FL 400. Additionally, no extraordinary circumstances exist that warrant the preparation of an environmental assessment. The requirements for CATEX 2.3.35 are therefore satisfied because the proposed changes would affect altitudes above 3,000 feet AGL.

In addition, FAA CATEX 3(c) applies to this action because it involves the minor adjustment of raising an altitude in special use airspace. This action raises the vertical boundaries of the affected airspace but does not alter the horizontal boundaries, nor does it change the frequency of activity conducted within the restricted areas for the designated purpose. Therefore, the FAA has determined that this action qualifies for CATEX 3(c) in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts."

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.56 [Amended]

2. Section 73.56 is amended as follows:

* * * * *

R–5601D Fort Sill, OK [Amended]

By removing the current "Designated altitudes. 500 feet AGL to 16,500 feet MSL" and substituting "Designated altitudes. 500 feet AGL to FL 400" and also by removing "Time of designation. Sunrise to sunset, Tuesday through Saturday; other times by NOTAM" and substituting "Time of designation. Sunrise to 2200, Monday through Friday; other times by NOTAM."

R–5601E Fort Sill, OK [Amended]

By removing the current "Time of designation. Sunrise to sunset, Tuesday through Saturday; other times by NOTAM" and substituting "Time of designation. Sunrise to 2200, Monday through Friday; other times by NOTAM."

* * * * *

Issued in Washington, DC, on January 25, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–2136 Filed 1–28–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 170 to 199, revised as of April 1, 1998, make the following corrections:

1. In § 178.3130(b), on page 364, in the second column, in the first line of number 2 under Alkyl mono- and disulfonic acids, correct "be" to read "to", and in the same column, at the end of the fourth paragraph, after the words "such foods have a pH", add the words "above 5.0".

2. In § 178.3620(c)(3), on page 384, in the first column, in the first full paragraph, line 14, after the words "Loosen the" correct "top" to read "topmost" and add the following:

* * * * *

"few millimeters of each adsorbent layer with the end of a metal rod before the addition of the next layer. Continue packing in this manner until all the 14 grams of the adsorbent is added to the tube. Level off the top of the adsorbent by pressing down firmly with a flat glass rod or metal plunger to make the depth of the adsorbent bed approximately 12.5 centimeters in depth. Turn off the vacuum and remove the suction flask. Fit the 500–milliliter reservoir onto the top of the chromatographic column and prewet the column by passing 100 milliliters of isooctane through the column. Adjust the nitrogen pressure so that the rate of descent of the isooctane coming off the column is between 2–3 milliliters per minute. Discontinue pressure just before the last of the isooctane reaches the level of the adsorbent. (Caution: Do not allow the liquid level to recede below the adsorbent level at any time.) Remove the reservoir and decant the 5–milliliter isooctane concentrate solution onto the column and with slight pressure again allow the liquid level to recede to barely above the adsorbent level. Rapidly complete the transfer similarly with two 5–milliliter portions of isooctane, swirling the flask repeatedly each time to assure adequate washing of the residue. Just before the final 5–milliliter wash reaches the top of the adsorbent, add 100 milliliters of isooctane to the reservoir and continue the percolation at the 2–3 milliliters per minute rate. Just before the last of the isooctane reaches the adsorbent level, add 100 milliliters of 10 percent benzene in isooctane to the reservoir and continue the percolation at the"

* * * * *

2. In § 178.3910(a)(2) table, on pages 406 and 407, in the first column, under "List of substances", correct the second, third, and fifth entries to read as follows:

* * * * *

α–Butyl–Ω–hydroxypoly(oxypropyl–ene) (CAS Reg. No. 9003-13–8) having a minimum molecular weight of 1000.

α–Lauroyl–Ω–hydroxpoly (oxyethylene) (CAS Reg. No. 9004–81–3) having a minimum molecular weight of 200.

* * * * *

alpha–Alkyl–*omega*–hydroxypoly–(oxyethylene) produced by the condensation of 1 mole of C_{12}–C_{15} straight chain primary alcohols with an average of 3 moles of ethylene oxide (CAS Reg. No. 68002–97–1).

* * * * *

[FR Doc. 99–55505 filed 1–28–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

Indirect Food Additives: Adhesives and Components of Coatings

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 170 to 199, revised as of April 1, 1998, on page 157, second column, § 175.300 is corrected in paragraph (b)(3)(vii)(*a*) by correcting the CAS Reg. No. for 1,4–cyclohexanedicarboxylic to read "(CAS Reg. No. 1076–97–7)".

[FR Doc. 99–55504 filed 1–28–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 78N–036L]

RIN 0910–AA01

Laxative Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that the over-the-counter (OTC) stimulant laxative ingredients danthron and phenolphthalein are not generally recognized as safe and effective and are misbranded. FDA is issuing this final rule as part of its ongoing review of OTC drug products after considering data and information on the safety of danthron and phenolphthalein.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Turner, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC laxative, antidiarrheal, emetic, and antiemetic drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (the Panel), which was the advisory review panel that evaluated data on the active ingredients in these classes. In the advance notice of proposed rulemaking, the Panel recommended Category I (generally recognized as safe and effective and not misbranded) status for the OTC stimulant laxative ingredients danthron and phenolphthalein (40 FR 12902 at 12908 to 12910). The agency concurred with the Panel's Category I classification of these ingredients in the tentative final monograph published in the **Federal Register** of January 15, 1985 (50 FR 2124 at 2152 to 2156).

In the **Federal Register** of September 2, 1997 (62 FR 46223), FDA reopened

the administrative record and proposed to amend the tentative final monograph for OTC laxative drug products to reclassify danthron and phenolphthalein from Category I to Category II (not generally recognized as safe and effective or misbranded) and to add these ingredients to a list of nonmonograph active ingredients. Interested persons were invited to submit comments on or before October 2, 1997. Data and information received after the administrative record was reopened are on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

This final rule declares OTC laxative drug products containing the active ingredients danthron or phenolphthalein to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)), for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing these drugs for laxative use also would be misbranded under section 502 of the act (21 U.S.C. 352).

The final rule amends part 310 (21 CFR part 310) to include the laxative active ingredients danthron and phenolphthalein by adding new § 310.545(a)(12)(iv)(B). Because a safety problem has been identified for OTC drug products containing danthron and phenolphthalein, this final rule is effective on the date of its publication in the **Federal Register**. Therefore, on or after January 29, 1999, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

Nineteen comments were received in response to the proposed rule on danthron and phenolphthalein. All comments addressed phenolphthalein. Copies of the comments received are on public display in the Dockets Management Branch (address above).

II. The Agency's Conclusions on the Comments

1. Three comments agreed that phenolphthalein should be removed from OTC laxative drug products because of the public health importance of this matter and the need for prompt closure by FDA. Eight comments contended that phenolphthalein should remain in OTC laxative drug products because the National Toxicology Program (NTP) data (Ref. 1) were insufficient to determine whether phenolphthalein posed a risk to humans, and because phenolphthalein has been safely and effectively used for many years. Several consumers indicated that they will not be able to find another laxative ingredient as effective as phenolphthalein, and believed that their health will be affected if they can no longer use phenolphthalein.

As stated in this document, the agency concludes that phenolphthalein is not safe and not of sufficient medical value to outweigh the potential risks associated with its OTC use. As there are at least 25 other laxative ingredients available for OTC use, the agency concludes that consumers have access to sufficient alternative laxatives.

2. Four comments offered alternatives to removing phenolphthalein from OTC laxative drug products. Three comments argued that stronger warning statements on the phenolphthalein product label and public education would adequately alert consumers of the potential health risk to humans and emphasize appropriate use of the drug.

The agency concludes that stronger warning statements and public education will not change the potential risk of using phenolphthalein and that this risk is not acceptable given the benefit for laxative use in the OTC target population.

3. Three manufacturers contended that actual carcinogenic effects of phenolphthalein in humans have not been determined and recommended that studies be conducted to evaluate the safe use of phenolphthalein in humans. One manufacturer stated that these additional data may take 2 to 3 years to obtain and recommended a moratorium on the decision to remove phenolphthalein from OTC laxative drug products. One manufacturer offered to conduct a case control human surveillance safety study. Two manufacturers recommended that FDA or another agency conduct studies to evaluate the safe use of phenolphthalein in humans.

The agency notes that it is the manufacturer's responsibility to conduct studies to determine whether phenolphthalein is safe for human use. Because of public health concerns, the agency disagrees that phenolphthalein should remain on the market while further human safety studies are being conducted and is stopping initial introduction or initial delivery for introduction into interstate commerce of OTC laxative drug products containing phenolphthalein as of the date this final rule is published in the **Federal Register**.

4. Two manufacturers submitted comments (Refs. 2 through 8) questioning the validity of the NTP data (Ref. 1). They argued that: (1) The studies failed to demonstrate a proposed mechanism of genotoxic action for phenolphthalein that is relevant to humans, (2) alternative mechanisms were not considered, (3) the data obtained from the p53 deficient mouse study are inconsistent with what was expected based on the 2-year carcinogenicity studies, (4) the NTP data do not provide a sufficient basis for FDA to draw firm conclusions regarding the potential human carcinogenicity of phenolphthalein, and (5) there are no relevant human data to draw any firm conclusions regarding potential risk of phenolphthalein in humans.

One comment submitted four consultant reports (Refs. 2 through 5), which reanalyzed the NTP data. One report by Roe (Ref. 3) directed criticisms primarily at the p53 deficient mouse study and the "null" mouse, which lacks both wild type p53 alleles. Roe dismissed the positive genotoxicity results as apparent only under conditions of toxicity or in some cases as an estrogenic effect. Roe also rejected the findings of genotoxicity demonstrated for phenolphthalein in the Chinese Hamster Ovary (CHO) cell chromosome aberrations assays, in the several positive in vivo micronucleus assays, and in the mutation and chromosomal aberration findings in the Syrian hamster embryo cells (SHE) transformation assay by Tsutsui et al. (Ref. 9).

Two reports from CanTox U.S., Inc., (Refs. 2 and 4) concurred with the estrogenic mechanism of carcinogenesis proposed by Roe. CanTox proposed that an aneugenic effect may be involved and questioned the validity of the mutagenicity data presented by Tsutsui et al. (Ref. 9) for the SHE cell assay, noting that the control data were not different from the treated groups.

One comment included a position paper on phenolphthalein from the European Agency for the Evaluation of Medicinal Products, Committee for Proprietary Medicinal Products (CPMP) (Ref. 7). The CPMP argued that while carcinogenicity and genotoxicity for phenolphthalein were confirmed by data from a transgenic mouse model, the systemic exposures to active drug, both in the conventional rodent bioassays and p53 mouse, appeared to be well in excess of those likely to be encountered in normal human use. CPMP stated that the extent of risk to humans cannot be established without adequate mechanistic data addressing whether a threshold exists for the carcinogenic

effects in mice and the in vivo genotoxic effects. CPMP added that it was unable to verify from original data FDA's statement that the "systemic exposures in rodents were approximately fortyfold to seventyfold and sixtyfold to hundredfold the human exposure for rats and mice, respectively."

Another comment (Ref. 8) also reanalyzed the NTP data and concluded that phenolphthalein was a genotoxic carcinogen in rodents. No new information was submitted.

The comments did not submit any new data, but focused on interpreting findings that already were available. The issue of carcinogenicity through a genotoxic mechanism was discussed in the proposed rule (62 FR 46223 at 46224) and at the April 30, 1997, FDA Center for Drug Evaluation and Research (CDER) Carcinogenicity Assessment Committee (CAC) meeting (Ref. 10). The CAC concluded that the study in p53 heterozygous mice supports other evidence that phenolphthalein may be carcinogenic through a genotoxic mechanism. There was a clear dose-dependent increase in the incidence of thymic lymphoma in the p53 assay, confirming one of the primary tumors of concern to the CAC based on its original evaluation of the 2-year assay data. These tumors occurred at doses that showed no other signs of toxicity. Further, the CAC believed that the results of several of the assays and data support a genotoxic clastogenic mechanism. Phenolphthalein was positive in chromosome aberration tests and showed chromosomal abnormality and hypoxanthine phosphoribosyltransferase (hprt) mutations in the SHE cell assay, where nontoxic doses caused cell transformation, mutations, and chromosome aberration. The p53 protein accumulation in the nucleus of thymic lymphoma cells of the original 2-year mouse bioassay, coupled with the deletion of the wild type p53 allele in the thymic lymphomas of p53 mice, is indicative of interaction with the p53 gene as a target site. In vivo, repeated exposure resulted in micronuclei in both the original bioassay and in p53 mice studies. In the p53 mice, an increase in peripheral blood micronucleus occurred even at the low doses (about 15 times the human exposure) with increased duration of treatment without establishing a no effect dose. Further, the exposures used to demonstrate these in vivo and in vitro genotoxic effects were in the range that could occur with human laxative use.

With regard to use of the p53 assay and its usefulness for quantitative risk assessment, NTP used the p53 heterozygous mouse assay to test phenolphthalein; therefore, many of the comments in Roe's report regarding the "null" mouse (which lacks both wild type p53 alleles) do not apply. Information is available regarding the responsiveness of the p53 model and the types of compounds to which it responds. To date, when using a 6-month protocol design, the p53 mouse only appears to respond to compounds known to be carcinogenic and genotoxic, and not to compounds that are carcinogenic and nongenotoxic. There is also no evidence to date that the p53 heterozygous mouse assay that was used responds to carcinogens at significantly lower doses than are positive in standard bioassays. Data for the micronucleus response from Tice et al. (Ref. 11) indicate that, while the maximal response in the p53 mouse is greater than for other strains of mice, response below 2,000 milligram/kilogram/day is similar to that of normal CD-1 mice similarly treated with phenolphthalein. Furthermore, the tumor response to phenolphthalein in the p53 model occurred over a dose range that could have been predicted based on the results of the 2-year bioassay in mice (assuming a genotoxic mechanism). Thus, the agency considers it reasonable to use the p53 model as a part of the weight of evidence in assessing a drug suspected of being a genotoxic carcinogen.

The agency further notes that the CAC's evaluation was not a quantitative assessment for either the standard bioassays or the p53 assay, rather the data were viewed qualitatively considering exposure. The evidence from several experimental studies indicating that phenolphthalein acts through a genotoxic mechanism via deoxyribonucleic acid (DNA) structural damage decreases the utility of a direct quantitative risk assessment. The genotoxicity data were also considered in the evaluation of the 2-year bioassay results, which contributed significantly to the conclusion of a relevant risk to humans. The p53 mouse assay was conducted under test conditions where factors such as target organ toxicity did not confound its interpretation, and where exposures and pharmacodynamic effects were well characterized. Thus, the results of the p53 mouse assay appear to be more likely relevant to humans than the results from the 2-year bioassay as conducted.

Further, the agency disagrees with Roe's dismissal of the genotoxic findings in the CHO cell chromosome aberration, micronucleus, and SHE cell transformation assays as apparent under conditions of toxicity or in some cases as an estrogenic effect. The agency is aware that phenolphthalein is known to have estrogenic activity. The information available on phenolphthalein indicates that its potency for binding at estrogen receptors and for induction of estrogenic effects is low compared to endogenous estrogens (by about a factor of 10^3 and 10^4 less than estradiol). Given the concentrations of phenolphthalein achieved in the bioassays, this action may be considered to have little overall contribution to the estrogenic load in the rodent models tested. The types of tumors observed for phenolphthalein are generally unlike those observed with other estrogenic chemicals. While there may be some contribution by estrogenic effects in the tumor response, the estrogenic effects appear most relevant for the ovarian tumors observed only in the 2-year mouse bioassay.

The genotoxic effects of phenolphthalein were observed under conditions compatible with the International Conference on Harmonization (ICH) guidance for the conduct of such genotoxicity studies. Although the repeat dose micronucleus assay that was originally reported was conducted at doses causing bone marrow toxicity, which could be viewed as confounding the results, the micronucleus assay conducted in the p53 mouse exhibited little evidence of toxicity and yielded results essentially identical to those of the prior assays. Thus, excessive toxicity is not essential to the micronucleus response for phenolphthalein. Further, this assay, although not part of the standard ICH test battery, is believed by many in the scientific community to be a more comprehensive assessment than the acute dose micronucleus assay, as it allows for any metabolic induction processes that might occur in vivo. This assay also allows exposures to achieve steady state conditions and reduces the uncertainty of appropriate sampling times, which can confound the standard acute assessments. Use of such tests is in accordance with ICH recommended guidelines for additional genotoxicity testing where positive findings have been observed in carcinogenicity studies.

The agency notes that there was an error in the Tsutui et al. report (Ref. 9), in that the number of mutations found in the control group for the SHE cell transformation assay should have been reported as $<0.25 \times 10^{-6}$. The Tsutui et al. findings for the control treatment are consistent with historical experience and less than 1/16 the response in phenolphthalein treated cells. The positive control produced an effect only

threefold greater than phenolphthalein. Thus, these data indicate a mutational effect for phenolphthalein.

The data also indicate that both aneuploidy and structural damage are caused by phenolphthalein. Tice et al. (Ref. 11) showed a possible increase in aneuploidy based on the kinetochore analysis. There was also significant evidence of structural damage; phenolphthalein treatment caused an approximate fourfold increase in micronuclei with structural damage and an eightfold increase in aneugenic damage calculated based on the ratio of normochromatic erythrocytes and polychromatic erythrocytes, and the increase in micronuclei. Also, an effect on aneuploidy was not observed in the study by Tsutsui et al. (Ref. 9) with SHE cells, whereas DNA structural damage and mutation were reported. The view that aneuploidy is the primary mechanism of genetic damage related to the carcinogenic effect also ignores the evidence of structural damage observed in the CHO cell chromosomal aberration studies, including those done by NTP, with responses approaching those seen with the positive control. Although the loss of heterozygosity observed in tumors from the p53 mouse could be explained by an aneugenic mechanism, it could also be the result of a chromosome break or deletion of a significant segment of the p53 region targeted by the assay. This allele loss was also specific for the p53 wild-type gene, with no effect on the null allele. Such a selective effect would not be anticipated from chromosome loss by an aneugenic mechanism functioning at the spindle apparatus.

One CanTox report (Ref. 5) presented information on the effects of phenolphthalein on thymidylate synthase (TS) activity and the potential relationship to the genotoxic and carcinogenic effects observed following phenolphthalein treatment in various systems. This report was evaluated by FDA's Executive CAC and Genetic Toxicology Committees (the Committees) (Ref. 12), which noted that the TS enzyme inhibitory activity was reported for a bacterial source and could differ between the bacterial and human or other mammalian forms, but there is no information available for assessing increased or decreased sensitivity. The Committees found no available information for estimation of intracellular versus extracellular concentrations of phenolphthalein to determine whether the in vivo phenolphthalein concentrations are within a reasonable range of those that were studied in vitro for TS inhibition. The inhibitor effects, however, appear to occur at plasma concentrations of phenolphthalein tenfold to hundredfold greater than the plasma concentrations associated with in vivo effects. There was also no information available on the TS activity of the glucuronide or other metabolites of phenolphthalein. In addition, the nucleotide pool disruption model lacked in vivo data and other information showing that a disruption of nucleotide pools was caused by phenolphthalein or that nucleotide pool effects were involved in the observed responses to phenolphthalein. The Committees noted that the effects of phenolphthalein on induction of micronuclei could be considered consistent with an effect on TS, based on comparisons of effects with 5-fluorouracil (5-FU) and methotrexate (MTX) treatment. However, the TS inhibitory activity does not appear consistent with or explain the other observed effects of phenolphthalein. In contrast to the assays conducted on phenolphthalein, 5-FU and MTX failed to increase SHE cell transformation. This suggests that, if phenolphthalein is active as a TS inhibitor at the tested concentrations, its effects on SHE cells (such as transformation, mutation, and chromosomal aberration) appear independent of the TS activity. Also, phenolphthalein is associated with increased chromosomal aberrations in CHO cells only in the presence of metabolic activation. This contrasts with the ability of phenolphthalein to directly inhibit TS. The comment's suggestion that the effect in CHO cells is due to fragile site damage in the CHO cell genome is not consistent with data provided by Witt et al. (Ref. 6), nor with the observations on CHO cells discussed at the April 2, 1996, CAC meeting (Ref. 13). In both data sets, there were increases in both complex and simple chromosomal breaks. In the latter data set, the proportionate response of simple and complex breaks appears similar to that caused by cyclophosphamide (a known genotoxicant used as the positive control for the assay). There was no discussion by the comment as to why a fragile site response would not be relevant for human adverse effects. The Committees noted that in a chromosomal aberration assay on human peripheral blood lymphocytes tested in vitro (Ref. 14), there was evidence of a clastogenic response from one of two subjects tested. While there is evidence that phenolphthalein can inhibit TS in some in vitro systems, the Committees stated that the data do not support the argument that TS inhibition explains all of the genetic damage observed in tests conducted on phenolphthalein, and that TS inhibition is the underlying mechanism of tumor formation in the three in vivo assays conducted. The Committees concluded that the data on TS inhibition do not refute the potential relevance of phenolphthalein's toxicologic effects for humans.

The CPMP (Ref. 7) contended that the extent of risk in humans cannot be established because the mechanistic data are inadequate and the phenolphthalein doses used in the study were excessive. The agency is not aware of any available data that would suggest that the mechanisms thought to account for tumor induction by phenolphthalein in experimental animals would not also operate in humans. Further, the phenolphthalein exposures used to demonstrate the in vivo and vitro genotoxic effects were in the range of those that humans use to cause laxation. The agency also notes that the exposure information for phenolphthalein that the CPMP could not verify was based on data obtained from a kinetic study (Ref. 15) sponsored by the 1992–1993 Nonprescription Drug Manufacturers Association Phenolphthalein Study Group.

After review of all the available data, the agency concludes that phenolphthalein caused chromosome aberrations, cell transformation, and mutagenicity in mammalian cells. Because benign and malignant tumor formation occurs at multiple tissue sites in multiple species of experimental animals, phenolphthalein is reasonably anticipated to have human carcinogenic potential.

III. References

1. Comment No. RPT7, Docket No. 78N–036L, Dockets Management Branch.

2. CanTox U.S., Inc., "Discussion of New Data Related to Phenolphthalein Presented at the April 30, 1997 Meeting of the Carcinogenicity Assessment Committee of the U.S. Food and Drug Administration," June 9, 1997, in Comment No. C167, Docket No. 78N–036L, Dockets Management Branch.

3. Roe, F. J., "Opinion on the Safety of Phenolphthalein as an Ingredient of OTC Laxative Preparations," August 28, 1996, in Comment No. C180, Docket No. 78N–036L, Dockets Management Branch.

4. CanTox U.S., Inc., "Evaluation of the Rodent Carcinogenicity of Phenolphthalein," October 1, 1997, in Comment No. C180, Docket No. 78N–036L, Dockets Management Branch.

5. CanTox U.S., Inc., "The Relevance of the Role of Phenolphthalein as an Inhibitor of Thymidylate Synthase for the Interpretation of the Genotoxic Potential and Carcinogenicity Assessment of this Compound," December 4, 1997, in Comment No. C186, Docket No. 78N–036L, Dockets Management Branch.

6. Witt, K. L. et al., "Phenolphthalein: Induction of Micronucleated Erythrocytes in Mice," Mutation Research, 341:151–160, 1995, in Comment No. C186, Docket No. 78N–036L, Dockets Management Branch.

7. Comment No. C189, Docket No. 78N–036L, Dockets Management Branch.

8. Comment No. RPT9, Docket No. 78N–036L, Dockets Management Branch.

9. Tsutsui, T. et al., "Cell Transforming Activity and Genotoxicity of Phenolphthalein in Cultured Syrian Hamster Embryo Cells," unpublished manuscript, 1997, in Comment No. RPT7, Docket No. 78N–036L, Dockets Management Branch.

10. Comment No. MM13, Docket No. 78N–036L, Dockets Management Branch.

11. Tice, R. R. et al., "Tumorigenicity Studies of Dietary Phenolphthalein (CAS No. 77–09–8) in TSG-p53 Transgenic Female Mice," final report, April 11, 1997, in Comment No. RPT7, Docket No. 78N–036L, Dockets Management Branch.

12. Comment No. MM15, Docket No. 78N–036L, Dockets Management Branch.

13. Comment No. MM12, Docket No. 78N–036L, Dockets Management Branch.

14. Comment No. RPT10, Docket No. 78N–036L, Dockets Management Branch.

15. BTC Study No. P0392002 in Comment No. RPT11, Docket No. 78N–036L, Dockets Management Branch.

5. One comment expressed concern about the availability of an acceptable bowel cleansing system for use by physicians if the use of phenolphthalein is banned. The comment argued that its bowel cleansing system containing phenolphthalein, magnesium citrate, and bisacodyl should not be considered an OTC laxative. The comment stated that if phenolphthalein cannot be used, patients may be misdiagnosed because adequate bowel cleansing was not achieved prior to undergoing a bowel examination. The comment requested that the agency allow the continued sale of phenolphthalein in bowel cleansing systems if the product is adequately labeled, limited to a one-time application, and purchased and used under a physician's supervision.

This final rule prohibits the use of phenolphthalein in OTC laxative drug products. If an OTC bowel cleansing system is reformulated to contain a different laxative ingredient, data must be submitted to the rulemaking for OTC laxative ingredients to support the safety and effectiveness of the reformulated bowel cleansing system. Bowel cleansing systems that contain phenolphthalein and are limited to purchase and use under a physician's supervision may be submitted for agency review in a new drug application.

6. One comment stated that if phenolphthalein is reclassified as a Category II ingredient in the final rule, an immediate effective date would be unfair because it would cause significant economic harm to manufacturers of phenolphthalein. The comment recommended that a 1-year transition period be allowed for manufacturers to reformulate their laxative products, which will involve the purchase and production of new materials and, possibly, new equipment. The comment did not present any information that was not previously addressed in the proposed rule.

Because over 1 year has passed since the proposal was published, providing adequate time for reformulation, the agency denies the comment's request. In the preamble to the proposed rule (58 FR at 46226 to 46227), FDA found good cause under 5 U.S.C. 553(d) and 21 CFR 10.40(c)(4) for an immediate effective date for this final rule. In the reasons given in that preamble, as well as the fact that an additional period of more than 1 year has passed; the agency confirms the finding of good cause for an immediate effective date for this final rule.

IV. The Agency's Final Conclusions on Danthron and Phenolphthalein

Based on new data and information, the agency is reclassifying the stimulant laxative ingredients danthron and phenolphthalein from Category I (monograph) to Category II (nonmonograph) and is adding danthron and phenolphthalein to the list of stimulant laxatives in § 310.545(a)(12)(iv). The current list in that section is redesignated as § 310.545(a)(12)(iv)(A) and danthron and phenolphthalein are being included in new § 310.545(a)(12)(iv)(B). As a result of this reclassification of danthron and phenolphthalein, the amendments proposed in §§ 334.18, 334.30, 334.32, 334.60, and 344.66 (62 FR 46223 at 46227) will be finalized in the final rule for OTC laxative drug products, to be published in a future issue of the **Federal Register**.

V. Analysis of Impacts

One comment was received in response to the agency's request in the proposal for specific comment on the economic impact of this rulemaking (62 FR 46223 at 46225). (See comment 6 of this document.)

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The purpose of this final rule is to establish conditions under which the OTC stimulant laxative ingredients danthron and phenolphthalein are not generally recognized as safe and effective. Cessation of marketing of OTC laxative drug products containing danthron occurred in 1987. Therefore, no reformulation or relabeling will be necessary for this ingredient.

Products containing phenolphthalein will need to be reformulated to replace the ingredient with another laxative active ingredient. A number of laxative ingredients in proposed part 334 (50 FR 2124 at 2152) could be used. In addition, most OTC laxative drug products containing phenolphthalein have already been reformulated since the proposal was published.

When the proposed rule was published, the agency was aware of only one phenolphthalein dosage form, a flavored chewable tablet. Sales of this dosage form by all manufacturers were about $20 million in 1995 (most attributed to one large manufacturer), comprising about 3 percent of the total retail market for laxative products. The major manufacturer of this product informed the agency on August 29, 1997 (Ref. 1), that it planned to reformulate the product with another OTC laxative ingredient within 60 days.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (21 CFR parts 210 and 211), all firms have the necessary skills and personnel to perform the tasks of reformulation, validation, and relabeling either in-house or by contractual arrangement. The rule will not require any new reporting and recordkeeping activities. No additional professional skills are needed. There are no other Federal rules

that duplicate, overlap, or conflict with this rule.

Based on the agency's understanding that most manufacturers have already reformulated or otherwise are in the process of reformulating, the agency expects that this final rule will not be economically significant under Executive Order 12866, nor would it impose an Unfunded Mandate (as that term is described in the Unfunded Mandate Reform Act). The agency also believes that it has undertaken steps to reduce the burden to small entities. Nevertheless, some entities may incur significant impacts, especially manufacturers that still must reformulate their phenolphthalein products and, to a lesser extent, private label manufacturers that provide labeling for a number of the affected products. Danthron was removed from OTC laxative drug products in 1987 and has not been available for approximately 10 years. Therefore, it is unlikely that reclassification of danthron as a nonmonograph ingredient would have any economic impact. This economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VI. Reference

1. Comment No. C173, Docket No. 78N–036L, Dockets Management Branch.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.31(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by redesignating paragraph (a)(12)(iv) as paragraph (a)(12)(iv)(A) and by revising the newly redesignated heading, by adding paragraphs (a)(12)(iv)(B) and (d)(29), and by revising paragraph (d) introductory text and paragraph (d)(1) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(12) * * *

(iv)(A) Stimulant laxatives—Approved as of May 7, 1991. * * *

(iv)(B) Stimulant laxatives—Approved as of January 29, 1999.

Danthron

Phenolphthalein

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(29) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3) through (a)(4), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), and (a)(16) through (a)(18) of this section.

* * * * *

(29) January 29, 1999, for products subject to paragraph (a)(12)(iv)(B) of this section.

Dated: January 20, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1938 Filed 1–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs

CFR Correction

In Title 21 of the Code of Federal Regulations, parts 500 to 599, revised as of April 1, 1998, on page 176, second column, § 520.2158b is corrected by adding paragraph (d) to read as follows:

§ 520.2158b Dihydrostreptomycin tablets.

* * * * *

(d) *Conditions of use. Calves*—(1) *Amount.* 150 milligrams of dihydrostreptomycin and 1.5 grams of chlorhexidine dihydrochloride per 100 pounds of body weight per day.

(2) *Indications for use.* Treatment of bacterial scours in calves.

(3) *Limitations.* Administer orally once a day for 5 days; withdraw 3 days before slaughter.

[FR Doc. 99–55506 filed 1–28–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[TD 8815]

RIN 1545–AT99

Federal Unemployment Tax Act (FUTA) Taxation of Amounts Under Employee Benefit Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 3306(r)(2) of the Internal Revenue Code (Code), that provide guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Unemployment Tax Act (FUTA). Section 3306(r)(2), relating to treatment of certain nonqualified deferred compensation, was added to the Code by section 324 of the Social Security Amendments of 1983. These regulations provide guidance to employers who maintain nonqualified deferred compensation plans.

DATES: *Effective Date:* These regulations are effective January 29, 1999.

Applicability Date: These regulations are applicable on and after January 1, 2000. In addition, these regulations provide certain transition rules for amounts deferred and benefits paid before January 1, 2000, including allowing employers to use a reasonable, good faith interpretation of section 3306(r)(2).

FOR FURTHER INFORMATION CONTACT: Janine Cook, Linda E. Alsalihi, or Margaret A. Owens, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend the Employment Tax Regulations (26 CFR

part 31) under section 3306(r)(2). Section 3306(r)(2) was added to the Internal Revenue Code (Code) by section 324 of the Social Security Amendments of 1983 (1983 Amendments). Section 2662(f)(2) of the Deficit Reduction Act of 1984 (DEFRA) amended section 324 of the 1983 Amendments.

Notice 94–96 (1994–2 C.B. 564) provides that until final regulations are issued, the IRS will not challenge an employer's determination of FUTA tax liability with respect to a nonqualified deferred compensation plan for periods before the effective date of any final regulations if the determination is based on a reasonable, good faith interpretation of section 3306(r)(2). On January 25, 1996, a notice of proposed rulemaking (EE–55–95), under section 3306(r)(2) was published in the **Federal Register** (61 FR 2214), providing guidance related to the FUTA tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans. On December 24, 1997, a notice of proposed rulemaking (REG–209484–87 and REG–209807–95), under section 3306(r)(2), extending the proposed general effective date of the regulations to January 1, 1998, was published in the **Federal Register** (62 FR 67304).

Comments regarding the proposed regulations were received from the public, and on June 24, 1996, the IRS held a public hearing concerning the proposed amendments. After consideration of the public comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

These final regulations provide guidance under section 3306(r)(2), relating to when amounts deferred under or paid from nonqualified deferred compensation plans are taken into account as wages for FUTA purposes. These rules are substantially similar to the rules applicable to the FICA (Federal Insurance Contributions Act) tax treatment of such amounts deferred under section 3121(v)(2). Thus, these final regulations cross-reference the final regulations under section 3121(v)(2) (FICA tax treatment of nonqualified deferred compensation), published elsewhere in this issue of the **Federal Register**.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Janine Cook, Linda E. Alsalihi, and Margaret A. Owens, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 31 is amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 31.3306(r)(2)–1 is added to read as follows:

§ 31.3306(r)(2)–1 Treatment of amounts deferred under certain nonqualified deferred compensation plans.

(a) *In general.* Section 3306(r)(2) provides a special timing rule for the tax imposed by section 3301 with respect to any amount deferred under a nonqualified deferred compensation plan. Section 31.3121(v)(2)–1 contains rules relating to when amounts deferred under certain nonqualified deferred compensation plans are wages for purposes of sections 3121(v)(2), 3101, and 3111. The rules in § 31.3121(v)(2)–1 also apply to the special timing rule of section 3306(r)(2). For purposes of applying the rules in § 31.3121(v)(2)–1 to section 3306(r)(2) and this paragraph (a), references to the Federal Insurance Contributions Act are considered references to the Federal Unemployment Tax Act (26 U.S.C. 3301 et seq.), references to FICA are considered references to FUTA, references to section 3101 or 3111 are considered references to section 3301, references to section 3121(v)(2) are considered references to section 3306(r)(2), references to section 3121(a), (a)(5), and (a)(13) are considered references to section 3306(b), (b)(5), and (b)(10), respectively, and references to § 31.3121(a)–2(a) are considered references to § 31.3301–4.

(b) *Effective dates and transition rules.* Except as otherwise provided, section 3306(r)(2) applies to remuneration paid after December 31, 1984. Section 31.3121(v)(2)–2 contains effective date rules for certain remuneration paid after December 31, 1983, for purposes of section 3121(v)(2). The rules in § 31.3121(v)(2)–2 also apply to section 3306(r)(2). For purposes of applying the rules in § 31.3121(v)(2)–2 to section 3306(r)(2) and this paragraph (b), references to section 3121(v)(2) are considered references to section 3306(r)(2), and references to section 3121(a)(2), (a)(3), or (a)(13) are considered references to section 3306(b)(2), (b)(3), or (b)(10), respectively. In addition, references to § 31.3121(v)(2)–1 are considered references to paragraph (a) of this section. For purposes of applying the rules of § 31.3121(v)(2)–2 to this paragraph (b)—

(1) References to "December 31, 1983" are considered references to "December 31, 1984";

(2) References to "before 1984" are considered references to "before 1985";

(3) References to "Federal Insurance Contributions Act" are considered references to "Federal Unemployment Tax Act"; and

(4) References to "FICA" are considered references to "FUTA".

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 23, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–1664 Filed 1–28–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 31 and 602

[TD 8814]

RIN 1545–AT27

Federal Insurance Contributions Act (FICA) Taxation of Amounts Under Employee Benefit Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 3121(v)(2) of the Internal Revenue Code (Code) that provide guidance as to when amounts deferred under or paid from a nonqualified deferred compensation plan are taken into account as wages for purposes of the employment taxes imposed by the Federal Insurance Contributions Act (FICA). Section 3121(v)(2), relating to treatment of certain nonqualified deferred compensation, was added to the Code by section 324 of the Social Security Amendments of 1983. These regulations provide guidance to employers who maintain nonqualified deferred compensation plans and to participants in those plans.

DATES: *Effective Date:* These regulations are effective January 29, 1999.

Applicability Date: These regulations are applicable on and after January 1, 2000. In addition, these regulations provide certain transition rules for amounts deferred and benefits paid before January 1, 2000, including allowing employers to use a reasonable, good faith interpretation of section 3121(v)(2).

FOR FURTHER INFORMATION CONTACT: Janine Cook, Linda E. Alsalihi, or Margaret A. Owens, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1643.

The collection of information in this regulation is in § 31.3121(v)(2)–1(b)(2). This information is required to implement Code section 3121(v). This information will be used to identify the material terms of a plan. The collection of information is required to obtain a benefit. The likely recordkeepers are business or other for-profit institutions.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by March 30, 1999.

Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The estimated total annual recordkeeping burden for § 31.3121(v)(2)–1(b)(2) is 12,500 hours. The annual estimated burden per recordkeeper varies from 2 hours to 10 hours, depending on the individual circumstances, with an estimated average of 5 hours. The estimated number of recordkeepers is 2,500.

Estimates of the reporting burden in § 31.3121(v)(2)–1(f) and (g) are reflected in the burden estimates of Form 941, Employer's Quarterly Federal Tax Return, Form 941c, Supporting Statement To Correct Information, Form W–2, Wage and Tax Statement, and Form W–2c, Corrected Wage and Tax Statement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

These regulations amend the Employment Tax Regulations (26 CFR part 31) under section 3121(v)(2). Section 3121(v)(2) was added to the Internal Revenue Code (Code) by section 324 of the Social Security Amendments of 1983 (1983 Amendments). Section 2662(f)(2) of the Deficit Reduction Act of 1984 (DEFRA) amended section 324 of the 1983 Amendments.

Notice 94–96 (1994–2 C.B. 564) provides that until final regulations are issued, the IRS will not challenge an employer's determination of FICA tax liability with respect to a nonqualified deferred compensation plan for periods before the effective date of any final regulations if the determination is based on a reasonable, good faith interpretation of section 3121(v)(2). On January 25, 1996, a notice of proposed rulemaking (EE–142–87) under section 3121(v)(2) was published in the **Federal Register** (61 FR 2194), providing guidance related to the Federal Insurance Contributions Act (FICA) tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans. On December 24, 1997, a notice of proposed rulemaking (REG–209484–87 and REG–209807–95) under section 3121(v)(2) extending the proposed general effective date of the regulations to January 1, 1998, was published in the **Federal Register** (62 FR 67304).

Comments regarding the 1996 proposed regulations were received from the public, and on June 24, 1996, the IRS held a public hearing concerning the proposed amendments. After consideration of the public comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

Sections 3101 and 3111 impose FICA tax on employees and employers, respectively. FICA tax consists of the Old-Age, Survivors, and Disability Insurance (OASDI) tax and the Hospital Insurance (HI) tax. Generally, FICA tax is computed as a percentage of wages (as defined in section 3121(a)) with respect to employment. Subject to specific exceptions, section 3121(a) defines *wages* as all remuneration for employment. Section 31.3121(a)–2(a) provides that FICA tax is imposed at the time the remuneration is actually or constructively paid.

1983 Amendments

Prior to the 1983 Amendments, benefits under a nonqualified deferred

compensation plan generally were wages subject to FICA tax at the time they were actually or constructively paid, unless certain retirement-related exclusions applied. These exclusions (former section 3121(a)(2)(A), (a)(3), and (a)(13)(A)(iii)) were repealed by the 1983 Amendments. Thus, under the 1983 Amendments, which generally apply to remuneration paid after December 31, 1983, retirement payments are no longer excluded from wages. Instead, the 1983 Amendments added section 3121(v)(2), which provides a special timing rule for wages (within the meaning of section 3121(a)) that constitute an amount deferred under a nonqualified deferred compensation plan.[1]

Under section 3121(v)(2)(A), any amount deferred under a nonqualified deferred compensation plan must be taken into account as wages for FICA tax purposes as of the later of (1) when the services are performed or (2) when there is no substantial risk of forfeiture of the rights to such amount. This special timing rule may result in imposition of FICA tax before the benefit payments under the plan begin.

Section 3121(v)(2)(B) provides a special exclusion (the nonduplication rule) that prevents double taxation. Once an amount deferred under a nonqualified deferred compensation plan is taken into account as wages under the special timing rule, the nonduplication rule provides that neither that amount nor the income attributable to that amount is again treated as FICA wages. Thus, benefit payments under a nonqualified deferred compensation plan are not subject to FICA tax when actually or constructively paid (i.e., under the general timing rule for wage inclusion) if the benefit payments consist of amounts deferred under the plan that were previously taken into account as FICA wages under the special timing rule plus attributable income. Conversely, benefits under a nonqualified deferred compensation plan are subject to FICA tax when actually or constructively paid to the extent the benefits relate to an amount deferred that was not previously taken into account under the special timing rule.

[1] The 1983 Amendments did not amend the definition of net earnings from self-employment under section 1402(a) or the timing of the tax on self-employment income under section 1401. Accordingly, the special timing rule under section 3121(v)(2) does not apply to nonqualified deferred compensation that constitutes net earnings from self-employment.

Repeal of Wage Based Limitation

Section 3121(a)(1) imposes a dollar limit on the annual amount of wages subject to the OASDI portion of FICA tax. Section 13207 of the Omnibus Budget Reconciliation Act of 1993 repealed the dollar limit on the annual amount of wages subject to the HI portion of FICA tax, effective for 1994 and later years.

Application of these Regulations to Taxes Imposed by the Railroad Retirement Tax Act

In accordance with the cross-reference in section 3231(e)(8)(B), the provisions of section 3121(v)(2) and these final regulations also apply for purposes of the taxes imposed by the Railroad Retirement Tax Act under sections 3201 through 3231.

Overview of Final Regulations

In general, comments received on the proposed regulations were favorable and, accordingly, the final regulations retain the general structure and substance of the proposed regulations, including a wide variety of examples illustrating the substance of the final regulations. However, commentators made a number of specific recommendations for modifications and clarifications of the regulations. In response to these comments, the final regulations incorporate the modifications and clarifications described below.

- The proposed regulations provided that certain types of benefits do not result from the deferral of compensation and, accordingly, are not subject to the special timing rule under section 3121(v)(2). The final regulations generally retain these rules. However, in response to comments, the final regulations allow certain cost-of-living adjustments provided to former employees to be treated as deferred compensation for purposes of section 3121(v)(2) and provide transition relief for window programs that begin before the effective date of the final regulations. The final regulations also clarify the rules under which stock options, death benefits, disability benefits, and severance pay are excluded from the special timing rule.
- The final regulations retain the distinction between the method of calculating the amount deferred (and the income on that amount) for account balance plans and the method for nonaccount balance plans, but provide additional guidance simplifying those calculations. The final regulations provide that a plan that bases benefits on an account balance but permits optional forms (such as annuities) can use the simple methodology that applies to account balance plans if the plan terms preclude a subsidized optional form. Also, a nonaccount balance plan that provides multiple benefit distribution options or commencement dates under plan terms that preclude subsidized optional forms and commencement dates can determine the amount deferred by assuming that a participant elects to receive the normal form of payment (regardless of which option is actually elected).
- The final regulations clarify the rules governing when income under an account balance plan is excluded from FICA wages. The final regulations also provide that, while the determination of whether an account balance plan is using a reasonable interest rate generally is made annually, a rate that is specified for a fixed period of up to five years is treated as reasonable for that period if it was reasonable when it was specified (even if it ceases to be reasonable during the period for which it is specified).
- The final regulations retain the structure of the rules in the proposed regulations under which FICA tax payments are not required to be made on amounts that are not reasonably ascertainable until certain uncertainties related to benefit payments are resolved. Those rules permit earlier inclusion with a true-up at the resolution date, when those uncertainties are resolved. However, the final regulations modify the calculation of the true-up to eliminate the risk that additional amounts will have to be taken into account at the resolution date because of changes in interest rates between the early inclusion date and the resolution date.
- The final regulations permit an employer to choose how the amounts deferred under a plan over a series of years can be allocated among those years when the plan formula does not do so by its terms (for example, where the plan has a benefit formula that includes an offset of another plan's benefit).
- The final regulations retain the flexibility provided in the proposed regulations permitting an employer to delay the date on which amounts deferred are taken into account to a later date within the year, and also broaden and simplify two options that provide additional time to calculate the amount deferred. The first option permits an employer to estimate the amount deferred and then adjust it at any time within three months. Alternatively, FICA tax payment can be postponed by treating the entire amount deferred as if it were deferred on a date that is within

three months of the date the amount is otherwise required to be taken into account, provided that the amount deferred is increased by interest at the applicable federal rate[2] (AFR) until it is included in wages.

• The final regulations include a number of special transition rules that provide relief to employers that, prior to the effective date of the regulations, followed a reasonable, good faith interpretation of section 3121(v)(2). Under the final regulations, amounts deferred for 1994 and 1995 can be taken into account, without interest, as late as March 31, 2000. Further, the final regulations reflect the transition rule in the proposed regulations under which amounts deferred that would have been required or permitted to be taken into account before 1994 are treated as having been correctly taken into account before 1994.

Summary of Comments Received and Changes Made

a. Application of the Special Timing Rule

The special timing rule provided under section 3121(v)(2) is set forth in paragraph (a) of the regulations. The special timing rule imposes FICA tax on amounts deferred under nonqualified deferred compensation plans at the later of the date when the services creating the right to the amount deferred are performed and the date on which the right to that amount is no longer subject to a substantial risk of forfeiture. This date usually is earlier than when any benefit is paid. Several commentators requested clarification as to whether the special timing rule is elective and whether failure to comply with the special timing rule may lead to the imposition of interest or penalties. The special timing rule is not elective and, if an employer does not take an amount deferred into account (including payment of any resulting FICA tax) when required by section 3121(v)(2), interest and penalties may be imposed. Moreover, to the extent that the amount deferred is not taken into account in accordance with the special timing rule, the nonduplication rule, under which amounts deferred that are properly taken into account under the special timing rule are excluded from FICA wages upon payment, does not apply.

[2] The regulations define the applicable federal rate as the mid-term applicable federal rate, as defined pursuant to section 1274(d), for January 1 of the calendar year, compounded annually.

b. Amounts or Benefits That Do Not Result From the Deferral of Compensation

The definition of a nonqualified deferred compensation plan for purposes of section 3121(v)(2) is set forth in paragraph (b) of the regulations. A number of comments were received on the rules in the proposed regulations for determining whether an amount or benefit results from the deferral of compensation subject to the special timing rule of section 3121(v)(2). The final regulations make several clarifications and changes to reflect these comments. The regulations clarify that the grant (as well as the exercise) of stock options, stock appreciation rights, and other stock value rights generally is not subject to section 3121(v)(2). Thus, FICA tax is not imposed at the time of grant, but is generally imposed at the time of exercise. No inference is intended as to whether or not these options and rights are deferred compensation for any tax purposes other than section 3121(v)(2).

The final regulations retain the rule in the proposed regulations that benefits established after termination of employment are not subject to section 3121(v)(2). However, in response to comments, the final regulations provide an exception under which certain payments to which the employee obtains a legally binding right after termination of employment that are in the nature of cost-of-living adjustments are nonetheless subject to section 3121(v)(2).

The final regulations retain the rule in the proposed regulations that window benefits do not result from the deferral of compensation. However, the final regulations include a transition rule under which window benefits can be treated as subject to section 3121(v)(2) if the window program commences prior to January 1, 2000 (the general effective date of the final regulations). Payments made pursuant to a window program that qualifies for the transition rule are not subject to FICA tax under the general timing rule at the time payment is made, provided that the present value of the window benefits has been taken into account under section 3121(v)(2) on a timely basis.

c. Account Balance Plans

Paragraph (c) of the regulations defines account balance plan and provides that, for purposes of section 3121(v)(2), the amount deferred under an account balance plan generally is based on the amount of principal credited to the account. Commentators asked whether a plan that permits optional forms of benefit can be treated as an account balance plan. The final regulations provide that if the plan's terms preclude subsidies of optional forms of benefit (for example, if, under the terms of the plan at the time the amount is deferred, alternative forms of payment will be actuarially equivalent to the account balance based on a rate of interest that will be reasonable at the time the optional form is elected), the plan does not fail to be an account balance plan merely because of the availability of optional forms of benefit.

d. Income and Reasonable Rate of Interest

Under paragraph (d) of the proposed regulations, if an account balance plan credits income based on a reasonable rate of interest or a rate of return that does not exceed the rate of return on a predetermined actual investment specified under the plan, FICA tax would not be imposed on that income. A number of commentators requested clarification as to whether a rate of interest that was fixed for an extended period could be reasonable for this purpose. The final regulations clarify that the determination of whether interest credited under an account balance plan is reasonable is generally made annually. However, a rate that is specified for a fixed period of up to five years and that was reasonable when it was specified is treated as continuing to be reasonable (even if it subsequently ceases to be reasonable during the period for which it is specified).

The final regulations also clarify what constitutes a predetermined actual investment and provide rules for determining the amount deferred in cases in which income is credited under a plan that uses neither a predetermined actual investment nor a reasonable interest rate. In these cases, the final regulations generally provide for the income credited in excess of AFR to be treated as an additional amount deferred. However, the final regulations provide that if the employer takes into account as an additional amount deferred the income credited to the extent it exceeds a reasonable rate of interest calculated by the employer, the remaining income (which is no greater than a reasonable rate of interest) is excluded from FICA wages.

Some commentators suggested that the employer's creditworthiness should be permitted to be considered in determining whether the interest rate credited under a plan of the employer is reasonable. The final regulations, like the proposed regulations, permit the amount deferred to be calculated after application of a discount to reflect the

time value of money and the risk that benefits will not be paid due to death. However, no discount is permitted for the risk that the amount deferred will not be paid by the employer. Permitting employers to implicitly achieve the same result through the interest rate credited under an account balance plan would be inconsistent with this restriction. Accordingly, the final regulations do not permit the employer's creditworthiness to be considered in determining whether the interest rate credited under a plan of the employer is reasonable.

e. Treatment of Amounts Deferred That Are Not Reasonably Ascertainable

Paragraph (e) of the final regulations retains the rule in the proposed regulations that the amount deferred need not be taken into account until it is reasonably ascertainable. This rule addresses the difficulty of determining the appropriate amount to be taken into account for a plan that provides benefits that are not fixed until certain future events occur, such as a nonaccount balance plan with subsidized optional forms or a long-term incentive plan that depends on subsequent corporate performance. The final regulations retain the rule in the proposed regulations that allows optional inclusion of these amounts at an earlier date with a true-up at the resolution date when the amount deferred becomes reasonably ascertainable.

Under the proposed regulations, the early inclusion amount was to be accumulated to the resolution date at an interest rate (and with a mortality assumption, if appropriate) that was reasonable at the early inclusion date. That accumulated amount was then compared to the present value of payments using actuarial assumptions that were reasonable at the resolution date. This methodology exposes the employer to the risk that an additional amount could be required to be taken into account at the resolution date solely as a result of changes in interest rates between the early inclusion date and the resolution date. In response to comments, this true-up methodology has been modified.

Under the final regulations, in performing the true-up, the amount taken into account at the early inclusion date is converted to an actuarially equivalent benefit payment stream in the form, and with the commencement date, in which benefits are actually paid. The conversion is done using actuarial assumptions that were reasonable as of the early inclusion date. The benefit payment stream thus derived is compared to the benefits actually payable. To the extent the benefit payment stream actually payable exceeds the benefit payment stream that is actuarially equivalent to the amount taken into account at the early inclusion date, the present value of the excess (determined using actuarial assumptions that are reasonable as of the resolution date) must be taken into account on the resolution date. If the benefit payment stream that is actuarially equivalent to the amount taken into account at the early inclusion date equals (or exceeds) the actual benefit payment stream, no additional amount is required to be taken into account at the resolution date, regardless of any changes in interest rates between the early inclusion date and the resolution date. This method—an annuity purchase model—eliminates the risk that the employer will be required to take additional amounts into account merely because of interest rate changes between the early inclusion date and the resolution date.

In addition, the final regulations provide that an amount deferred under certain nonaccount balance plans that permit optional forms of benefit or alternative commencement dates will not fail to be reasonably ascertainable merely because the form or commencement date has not been selected. If the terms of a nonaccount balance plan, at the time an amount is deferred, provide that the amount payable under each optional form and commencement date will be equivalent using actuarial assumptions that are reasonable at the resolution date (generally, the time the optional form and commencement date are selected) the amount deferred can be calculated based solely on the normal form of payment commencing at normal commencement date (regardless of which optional form or commencement date is ultimately selected). For this purpose, the normal form of benefit commencing at normal commencement date is the form and date of commencement under which the payments due to an employee under the plan are expressed, before adjustments for form or timing of commencement of payments.

The final regulations clarify how to allocate amounts deferred among periods for purposes of the early inclusion rules, including a rule requested by commentators concerning plan offsets. For example, the final regulations provide a rule to determine how amounts deferred are to be allocated among years in cases in which an employee obtains a legally binding right in each of several years to receive payments from a nonqualified deferred compensation plan that provides a specified gross benefit for the years which is to be offset by the benefits payable under a qualified plan. Under this rule, the amount deferred in the first year may be treated as equal to the gross benefit for the year, reduced by the offset applicable at the end of the first year (even if the offset increases after the end of that year). The same method applies to subsequent years, with adjustments for amounts allocated to an earlier year.

The regulations also retain the rule of administrative convenience that was in the proposed regulations under which the amount deferred during a year can be treated as required to be taken into account at any later date during the year, provided that income attributable to the amount deferred through that date is included. Thus, in a nonaccount balance plan this rule permits the present value of amounts deferred throughout a year to be determined as of the end of the year based on the employee's age and appropriate actuarial assumptions at the end of the year.

f. Withholding Rules

For purposes of withholding and depositing FICA tax, paragraph (f) of the final regulations provides that an amount deferred under a nonqualified deferred compensation plan generally is treated as wages paid by the employer and received by the employee at the time it is taken into account under section 3121(v)(2) and these regulations. However, in certain situations, the employer may be unable to readily calculate the amount deferred for a given year by December 31 of that year. The proposed regulations provided relief in these situations by allowing employers to use either of two alternative methods, the estimated method and the lag method, for withholding and depositing FICA tax.

The final regulations provide broader relief by permitting these methods to be used as of any date during the year and for the methods to be available without regard to whether the amount deferred can be readily calculated. Thus, the final regulations provide that, under the estimated method, an employer may make a reasonable estimate of the amount deferred as of the date the amount deferred is required to be taken into account. If the employer underestimates the amount deferred that should have been taken into account and, therefore, deposits less FICA tax than the amount due, the employer may treat the shortfall as wages either on the estimate date or on any date that is within three months thereafter. If the

employer overestimates the amount deferred that should have been taken into account as wages on the estimate date, the employer may claim a refund or credit in accordance with sections 6402, 6413, and 6511. If the employer treats any shortfall as wages on the estimate date or overestimates the amount deferred on the estimate date, the employer must correct any previously-reported wage information.

Further, the final regulations provide that, under the second alternative method, the lag method, an employer may treat the amount deferred on any date as wages paid on any date that is no later than three months following the date the amount deferred is required to be taken into account. In addition, in response to comments, the final regulations simplify use of the lag method by permitting the FICA tax due to be calculated using a fixed rate of interest, not less than AFR, rather than on the basis of income under the plan.

Effective Dates

These final regulations are applicable on and after January 1, 2000. However, the final regulations include certain special transition provisions for periods before January 1, 2000.

For amounts deferred and benefits paid before the January 1, 2000 general effective date, an employer may rely on a reasonable, good faith interpretation of section 3121(v)(2), taking into account Notice 94–96. The final regulations specifically provide that an employer will be deemed to have determined FICA tax liability and satisfied FICA tax withholding requirements in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if that liability is determined in accordance with the final regulations and the withholding method and timing comply with the final regulations. An employer will also be deemed to have determined FICA tax liability and satisfied FICA tax withholding requirements in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if that liability is determined in accordance with the proposed regulations and the withholding method and timing comply with the proposed regulations. Whether an employer has made a reasonable, good faith interpretation of section 3121(v)(2) will be determined based on the relevant facts and circumstances, including consistency of treatment by the employer and the extent to which the employer has resolved unclear issues in its favor.

The regulations address consistency in the treatment of stock options, stock appreciation rights, or other stock value rights that are exercised before the January 1, 2000 general effective date. Under the final regulations, the grant of these options and rights cannot be treated as subject to section 3121(v)(2) after December 31, 1999, and FICA tax generally applies at exercise. For periods before January 1, 2000, an employer that treats the grant of such an option or right as subject to section 3121(v)(2) has not acted in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if the employer has not treated that grant and all earlier grants as subject to section 3121(v)(2).

The final regulations include a transition rule for periods [3] before 1994 that applies if the employer acted in accordance with a reasonable, good faith interpretation of section 3121(v)(2). Under this rule, an amount deferred that would be required or permitted to be taken into account in any period that ends prior to January 1, 1994, under the final regulations, is treated as if it had been taken into account in accordance with the final regulations.[4] For example, in the case of an amount deferred before 1994 that was not reasonably ascertainable, the employer is treated as having taken the amount deferred into account at an early inclusion date before 1994 using a method permitted in the final regulations, including anticipation of the actual form in which the benefit payments attributable to the amount deferred are paid and the actual date of commencement. Thus, the employer is not required to pay any additional FICA tax when the amount deferred becomes reasonably ascertainable or when the benefit payments attributable to the amount deferred are actually or constructively paid.

The final regulations include a new transition rule for amounts deferred that were required to be taken into account in 1994 or 1995. Under the final regulations, an employer will be treated as taking the amount deferred into account under the final regulations to the extent the employer takes the amount into account by treating it as wages paid by the employer and received by the employee as of any date prior to April 1, 2000. The amount taken into account before April 1, 2000, is not required to be increased by attributable income or interest.

These and the other transition provisions of the final regulations are in addition to the interest-free adjustment procedures that are available under section 6205 at any time before the period of limitations has expired. Thus, for example, with respect to a FICA tax return (Form 941) for a period before the effective date, an employer may make an adjustment to take an amount deferred under a nonqualified deferred compensation plan into account in accordance with the final regulations if the period is still open.

Section 31.3121(v)(2)–2 of the final regulations provides special rules relating to a March 24, 1983 agreement and certain agreements adopted after March 24, 1983, and before January 1, 1984. The final regulations also include certain clarifications to the transition rules that have been made in response to comments on the proposed regulations, including clarification of the effect of post-1983 amendments.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Janine Cook, Linda E. Alsalihi, and Margaret A. Owens, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement,

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[3] For purposes of FICA tax, the period of limitations is generally based on calendar quarters (whereas, for purposes of the Federal Unemployment Tax Act (FUTA) tax, the period of limitations is based on calendar years). See section 6501.

[4] The proposed regulations (as amended in 1997) included a similar rule applicable to periods that were closed as of January 1, 1998 (which generally would have been periods before 1994). Commentators recommended that this rule apply even if the period is kept open beyond the normal period of limitations, such as by agreement with the IRS or by a claim for refund. In response to those comments, the final regulations provide that this rule applies to all periods prior to 1994 regardless of whether the period remains open.

Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 31 and 602 are amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

PAR. 2. Sections 31.3121(v)(2)-1 and 31.3121(v)(2)-2 are added to read as follows:

§ 31.3121(v)(2)-1 Treatment of amounts deferred under certain nonqualified deferred compensation plans.

(a) *Timing of wage inclusion*—(1) *General timing rule for wages.* Remuneration for employment that constitutes wages within the meaning of section 3121(a) generally is taken into account for purposes of the Federal Insurance Contributions Act (FICA) taxes imposed under sections 3101 and 3111 at the time the remuneration is actually or constructively paid. See § 31.3121(a)-2(a).

(2) *Special timing rule for an amount deferred under a nonqualified deferred compensation plan*—(i) *In general.* To the extent that remuneration deferred under a nonqualified deferred compensation plan constitutes wages within the meaning of section 3121(a), the remuneration is subject to the special timing rule described in this paragraph (a)(2). Remuneration is considered deferred under a nonqualified deferred compensation plan within the meaning of section 3121(v)(2) and this section only if it is provided pursuant to a plan described in paragraph (b) of this section. The amount deferred under a nonqualified deferred compensation plan is determined under paragraph (c) of this section.

(ii) *Special timing rule.* Except as otherwise provided in this section, an amount deferred under a nonqualified deferred compensation plan is required to be taken into account as wages for FICA tax purposes as of the later of—

(A) The date on which the services creating the right to that amount are performed (within the meaning of paragraph (e)(2) of this section); or

(B) The date on which the right to that amount is no longer subject to a substantial risk of forfeiture (within the meaning of paragraph (e)(3) of this section).

(iii) *Inclusion in wages only once (nonduplication rule).* Once an amount deferred under a nonqualified deferred compensation plan is taken into account (within the meaning of paragraph (d)(1) of this section), then neither the amount taken into account nor the income attributable to the amount taken into account (within the meaning of paragraph (d)(2) of this section) is treated as wages for FICA tax purposes at any time thereafter.

(iv) *Benefits that do not result from a deferral of compensation.* If a nonqualified deferred compensation plan (within the meaning of paragraph (b)(1) of this section) provides both a benefit that results from the deferral of compensation (within the meaning of paragraph (b)(3) of this section) and a benefit that does not result from the deferral of compensation, the benefit that does not result from the deferral of compensation is not subject to the special timing rule described in this paragraph (a)(2). For example, if a nonqualified deferred compensation plan provides retirement benefits which result from the deferral of compensation and disability pay (within the meaning of paragraph (b)(4)(iv)(C) of this section) which does not result from the deferral of compensation, the retirement benefits provided under the plan are subject to the special timing rule in this paragraph (a)(2) and the disability pay is not.

(v) *Remuneration that does not constitute wages.* If remuneration under a nonqualified deferred compensation plan does not constitute wages within the meaning of section 3121(a), then that remuneration is not taken into account as wages for FICA tax purposes under either the general timing rule described in paragraph (a)(1) of this section or the special timing rule described in this paragraph (a)(2). For example, benefits under a death benefit plan described in section 3121(a)(13) do not constitute wages for FICA tax purposes. Therefore, these benefits are not included as wages under the general timing rule described in paragraph (a)(1) of this section or the special timing rule described in this paragraph (a)(2), even if the death benefit plan would otherwise be considered a nonqualified deferred compensation plan within the meaning of paragraph (b)(1) of this section.

(b) *Nonqualified deferred compensation plan*—(1) *In general.* For purposes of this section, the term *nonqualified deferred compensation plan* means any plan or other arrangement, other than a plan described in section 3121(a)(5), that is established (within the meaning of paragraph (b)(2) of this section) by an employer for one or more of its employees, and that provides for the deferral of compensation (within the meaning of paragraph (b)(3) of this section). A nonqualified deferred compensation plan may be adopted unilaterally by the employer or may be negotiated among or agreed to by the employer and one or more employees or employee representatives. A plan may constitute a nonqualified deferred compensation plan under this section without regard to whether the deferrals under the plan are made pursuant to an election by the employee or whether the amounts deferred are treated as deferred compensation for income tax purposes (e.g., whether the amounts are subject to the deduction rules of section 404). In addition, a plan may constitute a nonqualified deferred compensation plan under this section whether or not it is an employee benefit plan under section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended (29 U.S.C. 1002(3)). For purposes of this section, except where the context indicates otherwise, the *term* plan includes a plan or other arrangement.

(2) *Plan establishment*—(i) *Date plan is established.* For purposes of this section, a plan is established on the latest of the date on which it is adopted, the date on which it is effective, and the date on which the material terms of the plan are set forth in writing. For purposes of this section, a plan will be deemed to be set forth in writing if it is set forth in any other form that is approved by the Commissioner. The material terms of the plan include the amount (or the method or formula for determining the amount) of deferred compensation to be provided under the plan and the time when it may or will be provided.

(ii) *Plan amendments.* In the case of an amendment that increases the amount deferred under a nonqualified deferred compensation plan, the plan is not considered established with respect to the additional amount deferred until the plan, as amended, is established in accordance with paragraph (b)(2)(i) of this section.

(iii) *Transition rule for written plan requirement.* For purposes of this section, an unwritten plan that was adopted and effective before March 25, 1996, is treated as established under this section as of the later of the date on which it was adopted or became effective, provided that the material

terms of the plan are set forth in writing before January 1, 2000.

(3) *Plan must provide for the deferral of compensation*—(i) *Deferral of compensation defined.* A plan provides for the *deferral of compensation* with respect to an employee only if, under the terms of the plan and the relevant facts and circumstances, the employee has a legally binding right during a calendar year to compensation that has not been actually or constructively received and that, pursuant to the terms of the plan, is payable to (or on behalf of) the employee in a later year. An employee does not have a legally binding right to compensation if that compensation may be unilaterally reduced or eliminated by the employer after the services creating the right to the compensation have been performed. For this purpose, compensation is not considered subject to unilateral reduction or elimination merely because it may be reduced or eliminated by operation of the objective terms of the plan, such as the application of an objective provision creating a substantial risk of forfeiture (within the meaning of section 83). Similarly, an employee does not fail to have a legally binding right to compensation merely because the amount of compensation is determined under a formula that provides for benefits to be offset by benefits provided under a plan that is qualified under section 401(a), or because benefits are reduced due to investment losses or, in a final average pay plan, subsequent decreases in compensation.

(ii) *Compensation payable pursuant to the employer's customary payment timing arrangement.* There is no deferral of compensation (within the meaning of this paragraph (b)(3)) merely because compensation is paid after the last day of a calendar year pursuant to the timing arrangement under which the employer ordinarily compensates employees for services performed during a payroll period described in section 3401(b).

(iii) *Short-term deferrals.* If, under a nonqualified deferred compensation plan, there is a deferral of compensation (within the meaning of this paragraph (b)(3)) that causes an amount to be deferred from a calendar year to a date that is not more than a brief period of time after the end of that calendar year, then, at the employer's option, that amount may be treated as if if were not subject to the special timing rule described in paragraph (a)(2) of this section. An employer may apply this option only if the employer does so for all employees covered by the plan and all substantially similar nonqualified deferred compensation plans. For purposes of this paragraph (b)(3)(iii), whether compensation is deferred to a date that is not more than a brief period of time after the end of a calendar year is determined in accordance with § 1.404(b)–1T, Q&A–2, of this chapter.

(4) *Plans, arrangements, and benefits that do not provide for the deferral of compensation*—(i) *In general.* Notwithstanding paragraph (b)(3)(i) of this section, an amount or benefit described in any of paragraphs (b)(4)(ii) through (viii) of this section is not treated as resulting from the deferral of compensation for purposes of section 3121(v)(2) and this section and, thus, is not subject to the special timing rule of paragraph (a)(2) of this section.

(ii) *Stock options, stock appreciation rights, and other stock value rights.* The grant of a stock option, stock appreciation right, or other stock value right does not constitute the deferral of compensation for purposes of section 3121(v)(2). In addition, amounts received as a result of the exercise of a stock option, stock appreciation right, or other stock value right do not result from the deferral of compensation for purposes of section 3121(v)(2) if such amounts are actually or constructively received in the calendar year of the exercise. For purposes of this paragraph (b)(4)(ii), a *stock value right* is a right granted to an employee with respect to one or more shares of employer stock that, to the extent exercised, entitles the employee to a payment for each share of stock equal to the excess, or a percentage of the excess, of the value of a share of the employer's stock on the date of exercise over a specified price (greater than zero).

Thus, for example, the term stock value right does not include a phantom stock or other arrangement under which an employee is awarded the right to receive a fixed payment equal to the value of a specified number of shares of employer stock.

(iii) *Restricted property.* If an employee receives property from, or pursuant to, a plan maintained by an employer, there is no deferral of compensation (within the meaning of section 3121(v)(2)) merely because the value of the property is not includible in income (under section 83) in the year of receipt by reason of the property being nontransferable and subject to a substantial risk of forfeiture. However, a plan under which an employee obtains a legally binding right to receive property (whether or not the property is restricted property) in a future year may provide for the deferral of compensation within the meaning of paragraph (b)(3) of this section and, accordingly, may constitute a nonqualified deferred compensation plan, even though benefits under the plan are or may be paid in the form of property.

(iv) *Certain welfare benefits*—(A) *In general.* Vacation benefits, sick leave, compensatory time, disability pay, severance pay, and death benefits do not result from the deferral of compensation for purposes of section 3121(v)(2), even if those benefits constitute wages within the meaning of section 3121(a).

(B) *Severance pay.* Benefits that are provided under a severance pay arrangement (within the meaning of section 3(2)(B)(i) of ERISA) that satisfies the conditions in 29 CFR 2510.3–2(b)(1)(i) through (iii) are considered severance pay for purposes of this paragraph (b)(4)(iv). If benefits are provided under a severance pay arrangement (within the meaning of section 3(2)(B)(i) of ERISA), but do not satisfy one or more of the conditions in 29 CFR 2510.3–2(b)(1)(i) through (iii), then whether those benefits are severance pay within the meaning of this paragraph (b)(4)(iv) depends upon the relevant facts and circumstances. For this purpose, relevant facts and circumstances include whether the benefits are provided over a short period of time commencing immediately after (or shortly after) termination of employment or for a substantial period of time following termination of employment and whether the benefits are provided after any termination or only after retirement (or another specified type of termination). Benefits provided under a severance pay arrangement (within the meaning of section 3(2)(B)(i) of ERISA) are in all cases severance pay within the meaning of this paragraph (b)(4)(iv) if the benefits payable under the plan upon an employee's termination of employment are payable only if that termination is involuntary.

(C) *Death benefits and disability pay*—(*1*) *General definition.* Payments made under a nonqualified deferred compensation plan in the event of death are death benefits within the meaning of this paragraph (b)(4)(iv), but only to the extent the total benefits payable under the plan exceed the lifetime benefits payable under the plan. Similarly, payments made under a nonqualified deferred compensation plan in the event of disability are disability pay within the meaning of this paragraph (b)(4)(iv), but only to the extent the disability benefits payable under the plan exceed the lifetime benefits payable under the plan. Accordingly, any benefits that a nonqualified deferred compensation plan provides in the event of death or disability that are associated with an amount deferred under this section are

disregarded in applying this section to the extent the benefits payable under the plan in the event of death or in the event of disability have a value in excess of the lifetime benefits payable under the plan.

(*2*) *Total benefits payable defined.* For purposes of paragraph (b)(4)(iv)(C)(*1*) of this section, the term *total benefits payable* under a plan means the present value of the total benefits payable to or on behalf of the employee (including benefits payable in the event of the employee's death) under the plan, disregarding any benefits that are payable only in the event of disability and determined separately with respect to each form of distribution or other election that may apply with respect to the employee.

(*3*) *Disability benefits payable defined.* For purposes of paragraph (b)(4)(iv)(C)(*1*) of this section, the term *disability benefits payable* under a plan means the present value of the benefits payable to or on behalf of the employee under the plan, including benefits payable in the event of the employee's disability but excluding death benefits within the meaning of this paragraph (b)(4)(iv).

(*4*) *Lifetime benefits payable defined.* For purposes of paragraph (b)(4)(iv)(C)(*1*) of this section, the term *lifetime benefits payable* under a plan means the present value of the benefits that could be payable to the employee under the plan during the employee's lifetime, determined under the plan's optional form of distribution or other election that is or was available to the employee at any time with respect to the amount deferred and that provides the largest present value to the employee during the employee's lifetime of any such form or election so available.

(*5*) *Rules of application.* For purposes of determining present value under this paragraph (b)(4)(iv)(C), present value is determined as of the time immediately preceding the time the amount deferred under a nonqualified deferred compensation plan is required to be taken into account under paragraph (e) of this section, using actuarial assumptions that are reasonable as of that date but taking into consideration only benefits that result from the deferral of compensation, as determined under this paragraph (b), and benefits payable in the event of death or disability. In addition, for purposes of paragraph (b)(4)(iv)(C)(*4*) of this section, present value must be determined without any discount for the probability that the employee may die before benefit payments commence and without regard to any benefits payable solely in the event of disability.

(v) *Certain benefits provided in connection with impending termination*—(A) *In general.* Benefits provided in connection with impending termination of employment under paragraph (b)(4)(v)(B) or (C) of this section do not result from the deferral of compensation within the meaning of section 3121(v)(2).

(B) *Window benefits*—(*1*) *In general.* For purposes of this paragraph (b)(4)(v), except as provided in paragraph (b)(4)(v)(B)(*3*) of this section, a window benefit is provided in connection with impending termination of employment. For this purpose, a window benefit is an early retirement benefit, retirement-type subsidy, social security supplement, or other form of benefit made available by an employer for a limited period of time (no greater than one year) to employees who terminate employment during that period or to employees who terminate employment during that period under specified circumstances.

(*2*) *Special rule for recurring window benefits.* A benefit will not be considered a window benefit if an employer establishes a pattern of repeatedly providing for similar benefits in similar situations for substantially consecutive, limited periods of time. Whether the recurrence of these benefits constitutes a pattern of amendments is determined based on the facts and circumstances. Although no one factor is determinative, relevant factors include whether the benefits are on account of a specific business event or condition, the degree to which the benefits relate to the event or condition, and whether the event or condition is temporary or discrete or is a permanent aspect of the employer's business.

(*3*) *Transition rule for window benefits.* In the case of a window benefit that is made available for a period of time that begins before January 1, 2000, an employer may choose to treat the window benefit as a benefit that results from the deferral of compensation if the sole reason the window benefit would otherwise fail to be provided pursuant to a nonqualified deferred compensation plan is the application of paragraph (b)(4)(v)(B)(*1*) of this section.

(*C*) *Termination within 12 months of establishment of a benefit or plan.* For purposes of this paragraph (b)(4)(v), a benefit is provided in connection with impending termination of employment, without regard to whether it constitutes a window benefit, if—

(*1*) An employee's termination of employment occurs within 12 months of the establishment of the plan (or amendment) providing the benefit; and

(*2*) The facts and circumstances indicate that the plan (or amendment) is established in contemplation of the employee's impending termination of employment.

(vi) *Benefits established after termination.* Benefits established with respect to an employee after the employee's termination of employment do not result from a deferral of compensation within the meaning of section 3121(v)(2). However, cost-of-living adjustments on benefit payments under a nonqualified deferred compensation plan (within the meaning of paragraph (b) of this section) shall not be considered benefits established after the employee's termination of employment for purposes of this paragraph (b)(4)(vi) merely because the employee does not obtain the right to the adjustment until after the employee's termination of employment. For purposes of the preceding sentence, *cost-of-living adjustments* are payments that satisfy conditions similar to those of 29 CFR 2510.3–2(g)(1)(ii) and (iii).

(vii) *Excess parachute payments.* An excess parachute payment (as defined in section 280G(b)) under an agreement entered into or renewed after June 14, 1984, in taxable years ending after such date, does not result from the deferral of compensation within the meaning of section 3121(v)(2). For this purpose, any contract entered into before June 15, 1984, that is amended after June 14, 1984, in any relevant significant aspect, is treated as a contract entered into after June 14, 1984.

(viii) *Compensation for current services.* A plan does not provide for the deferral of compensation within the meaning of section 3121(v)(2) if, based on the relevant facts and circumstances, the compensation is paid for current services.

(5) *Examples.* This paragraph (b) is illustrated by the following examples:

Example 1. (i) In December of 2001, Employer L tells Employee A that, if specified goals are satisfied for 2002, Employee A will receive a bonus on July 1, 2003, equal to a specified percentage of 2002 compensation. Because Employee A meets the specified goals, Employer L pays the bonus to Employee A on July 1, 2003, consistent with its oral commitment.

(ii) This arrangement is not a nonqualified deferred compensation plan under this section because its terms were not set forth in writing and, therefore, it was not established in accordance with paragraph (b)(2) of this section.

Example 2. (i) In 2004, Employer M establishes a compensation arrangement for Employee B under which Employer M agrees to pay Employee B a specified amount based on a percentage of his salary for 2004. The amount due is to be paid out of the general assets of Employer M and is payable in 2008.

(ii) Employee B has a legally binding right during 2004 to an amount of compensation

that has not been actually or constructively received and that, pursuant to the terms of the arrangement, is payable in a later year. Therefore, the arrangement provides for the deferral of compensation.

Example 3. (i) Employer N establishes a nonqualified deferred compensation plan (within the meaning of paragraph (b)(1) of this section) for Employee C in 1984. The plan is amended on January 1, 2001, to increase benefits, and the amendment provides that the increase in benefits is on account of Employee C's performance of services for Employer N from 1985 through 2000.

(ii) The additional benefits that resulted from the plan amendment cannot be taken into account as amounts deferred for 1985 through 2000, even though the plan was established before then. Pursuant to paragraphs (b)(2)(ii) and (e)(1) of this section, the additional benefits cannot be taken into account before the latest of the date on which the amendment is adopted, the date on which the amendment is effective, or the date on which the material terms of the plan, as amended, are set forth in writing.

Example 4. (i) In 2002, Employer O, a state or local government, establishes a plan for certain employees that provides for the deferral of compensation and that is subject to section 457(a).

(ii) Paragraph (b)(1) of this section provides that nonqualified deferred compensation plan means any plan that is established by an employer and that provides for the deferral of compensation, other than a plan described in section 3121(a)(5). Section 3121(a)(5) lists, among other plans, an exempt governmental deferred compensation plan as defined in section 3121(v)(3). Under section 3121(v)(3)(A), this definition does not include any plan to which section 457(a) applies. Thus, the plan established by Employer O is not an exempt governmental deferred compensation plan described in section 3121(v)(3) and, consequently, is not a plan described in section 3121(a)(5). Accordingly, the plan is a nonqualified deferred compensation plan within the meaning of section 3121(v)(2) and paragraph (b)(1) of this section.

(iii) However, the general timing rule of paragraph (a)(1) of this section and the special timing rule of paragraph (a)(2) of this section apply only to remuneration for employment that constitutes wages. Under section 3121(b)(7), certain service performed in the employ of a state, or any political subdivision of a state, is not employment. Thus, even though the plan is a nonqualified deferred compensation plan, the extent to which section 3121(v)(2) applies to a participating employee will depend on whether or not the service performed for Employer O is excluded from the definition of employment under section 3121(b)(7).

Example 5. (i) In 2000, Employer P establishes a plan that provides for bonuses to be paid to employees based on an objective formula that takes into account the employees' performance for the year. Employer P does not have the discretion to reduce the amount of any employee's bonus after the end of the year. The bonus is not actually calculated until March 1 of the following year, and is paid on March 15 of that following year.

(ii) The plan provides for the deferral of compensation because the employees have a legally binding right, as of the last day of a calendar year, to an amount of compensation that has not been actually or constructively received and, pursuant to the terms of the plan, that compensation is payable in a later year. However, because the bonuses under the plan are paid within a brief period of time after the end of the calendar year from which they are deferred, Employer P may choose, pursuant to paragraph (b)(3)(iii) of this section, to treat all the bonuses as if they are not subject to the special timing rule of paragraph (a)(2) of this section.

(iii) If the employer uses the special timing rule, the amount deferred would be taken into account as wages on December 31, 2000. If the employer chooses not to use the special timing rule, the amount of the bonus is wages on the date it is actually or constructively paid, March 15, 2000.

Example 6. (i) Employer Q establishes a plan under which bonuses based on performance in one year may be paid on February 1 of the following year at the discretion of the board of directors. The board of directors meets in January of each year to determine the amount, if any, of the bonuses to be paid based on performance in the prior year.

(ii) Because an employee does not have a legally binding right to any bonus until January of the year in which the bonus is paid, any bonus paid under the plan in that year is not deferred from the preceding calendar year, and the plan does not provide for the deferral of compensation within the meaning of paragraph (b)(3)(i) of this section.

Example 7. (i) Employer R maintains a plan for employees that provides nonqualified stock options described in § 1.83–7(a) of this chapter. Under the plan, employees are granted in 2001 the option to acquire shares of employer stock at the fair market value of the shares on the date of grant ($50 per share). The options can be exercised at any time from the date of grant through 2010. The options do not have a readily ascertainable fair market value for purposes of section 83 at the date of grant, and shares are issued upon the exercise of the options without being subject to a substantial risk of forfeiture within the meaning of section 83. In 2005, when the fair market value of a share of employer stock is $80, Employee D exercises an option to acquire 1,000 shares.

(ii) Under paragraph (b)(4)(ii) of this section, neither the grant of a stock option nor amounts received currently as a result of the exercise of a stock option result from the deferral of compensation for purposes of section 3121(v)(2). Thus, under the general timing rule of paragraph (a)(1) of this section, the $30,000 spread between the amount paid for the shares ($50,000) and the fair market value of the shares on the date of exercise ($80,000) is taken into account as wages for FICA tax purposes in the year of exercise.

(iii) If the options had been granted at $45 per share, $5 per share below the fair market value on date of grant, the $35,000 spread between the amount paid for the shares ($45,000) and the fair market value of the shares on the date of exercise ($80,000) would similarly be taken into account as wages for FICA tax purposes in the year of exercise.

Example 8. (i) Employer T establishes a phantom stock plan for certain employees. Under the plan, an employee is credited on the last day of each calendar year with a dollar amount equal to the fair market value of 1,000 shares of employer stock. Upon termination of employment for any reason, each employee is entitled to receive the value on the date of termination, in cash or employer stock, of the shares with which he or she has been credited.

(ii) Because compensation to which the employee has a legally binding right as of the last day of one year is paid in a subsequent year, the phantom stock plan provides for the deferral of compensation. The phantom stock plan does not provide stock value rights within the meaning of paragraph (b)(4)(ii) of this section because it provides for awards equal in value to the full fair market value of a specified number of shares of Employer T stock, rather than the excess of that fair market value over a specified price.

Example 9. (i) Employer U establishes a severance pay arrangement (within the meaning of section 3(2)(b)(i) of ERISA) which provides for payments solely upon an employee's death, disability, or dismissal from employment. The amount of the payments to an employee is based on the length of continuous active service with Employer U at the time of dismissal, and is paid in monthly installments over a period of three years.

(ii) Because benefits payable under the plan upon termination of employment are payable only upon an employee's involuntary termination, the plan is a severance pay plan within the meaning of paragraph (b)(4)(iv)(B) of this section. Thus, the benefits are not treated as resulting from the deferral of compensation for purposes of section 3121(v)(2).

Example 10. (i) Employer V establishes a nonqualified deferred compensation plan under which employees will receive benefit payments commencing at age 65 as a life annuity or in one of several actuarially equivalent annuity forms. If an employee dies before benefit payments commence under the plan, a benefit is payable to the employee's designated beneficiary in a single sum payment equal to the present value of the employee's annuity benefit. This benefit (sometimes called a full reserve death benefit) is calculated using the applicable interest rate specified in section 417(e) and, for the period after age 65, the applicable mortality table specified in section 417(e), both of which are reasonable actuarial assumptions. During 2002, Employee E obtains a legally binding right to an annuity benefit under the plan, payable at age 65. This annuity benefit has a present value of $10,000 at the end of 2002, determined using the same assumptions as are used under the plan to calculate the full reserve death benefit.

(ii) The present value, at the end of 2002, of the total benefits payable to or on behalf of Employee E (i.e., the sum of the present

value of the annuity benefit commencing at age 65, and the present value of the full reserve death benefit, with both determined using the actuarial assumptions described in paragraph (i) of this *Example 10*, except also taking into account the probability of death prior to age 65) is $10,000. This present value does not exceed the present value of the annuity benefits that could be payable to Employee E under the plan during Employee E's lifetime determined without a discount for the possibility that Employee E might die before age 65 (also $10,000). Thus, the benefit payable in the event of the Employee E's death is not a death benefit for purposes of paragraph (b)(4)(iv) of this section.

(iii) The same result would apply in the case of a plan that bases benefits on an interest bearing account balance and pays the account balance at termination of employment or death (because the sum of the deferred benefits payable in the future if the employee terminates employment before death with a discount for the probability of death before that date plus the present value of the benefit payable in the event of death necessarily equals the present value of the deferred benefits payable with no discount for the probability of death).

Example 11. (i) The facts are the same as in Example 10, except that, in lieu of the full reserve death benefit, the plan provides a monthly life annuity benefit to an employee's spouse in the event of the employee's death before benefit payments commence equal to 100 percent of the monthly annuity that would be payable to the employee at age 65 under the life annuity form. Employee E is age 63 and has a spouse who is age 51. The sum of the present value of Employee E's annuity benefit commencing at age 65 determined with a discount for the possibility that Employee E might die before age 65 and the present value of the 100 percent annuity death benefit for Employee E's spouse exceeds $10,000.

(ii) The amount deferred for 2002 is $10,000 (because the 100 percent annuity death benefit for Employee E's spouse is disregarded to the extent that the total benefits payable to or on behalf of Employee E exceeds the present value of the annuity benefits that could be payable to Employee E under the plan during the Employee E's lifetime without a discount for the probability of Employee E's death before benefit payments commence).

Example 12. (i) On January 1, 2001, Employer W establishes a plan that covers only Employee F, who owns a significant portion of the business and who has 30 years of service as of that date. The plan provides that, upon Employee F's termination of employment at any time, he will receive $200,000 per year for each of the immediately succeeding five years. Employee F terminates employment on March 1, 2001.

(ii) Because Employee F terminates employment within 12 months of the establishment of the plan and the facts and circumstances set forth above indicate that the plan was established in contemplation of impending termination of employment, the plan is considered to be established in connection with impending termination within the meaning of paragraph (b)(4)(v) of this section. Therefore, the benefits provided under the plan are not treated as resulting from the deferral of compensation for purposes of section 3121(v)(2).

Example 13. (i) Employer X establishes a plan on January 1, 2004, to supplement the qualified retirement benefits of recently hired 55-year old Employee G, who forfeited retirement benefits with her former employer in order to accept employment with Employer X. The plan provides that Employee G will receive $50,000 per year for life beginning at age 65, regardless of when she terminates employment. On April 15, 2004, Employee G unexpectedly terminates employment.

(ii) The facts and circumstances indicate that the plan was not established in contemplation of impending termination. Thus, even though Employee G terminated employment within 12 months of the establishment of the plan, the plan is not considered to be established in connection with impending termination within the meaning of paragraph (b)(4)(v) of this section. Benefits provided under the plan are treated as resulting from the deferral of compensation for purposes of section 3121(v)(2).

Example 14. (i) Employer Y establishes a plan to provide supplemental retirement benefits to a group of management employees who are at various stages of their careers. All employees covered by the plan are subject to the same benefit formula. Employee H is planning to (and actually does) retire within six months of the date on which the plan is established.

(ii) Even though Employee H terminated employment within 12 months of the establishment of the plan, the plan is not considered to have been established in connection with Employee H's impending termination within the meaning of paragraph (b)(4)(v) of this section because the facts and circumstances indicate otherwise.

Example 15. (i) Employee J owns 100 percent of Employer Z, a corporation that provides consulting services. Substantially all of Employer Z's revenue is derived as a result of the services performed by Employee J. In each of 2001, 2002, and 2003, Employer Z has gross receipts of $180,000 and expenses (other than salary) of $80,000. In each of 2001 and 2002, Employer Z pays Employee J a salary of $100,000 for services performed in each of those years. On December 31, 2002, Employer Z establishes a plan to pay Employee J $80,000 in 2003. The plan recites that the payment is in recognition of prior services. In 2003, Employer Z pays Employee J a salary of $20,000 and the $80,000 due under the plan.

(ii) The facts and circumstances described above indicate that the $80,000 paid pursuant to the plan is based on services performed by Employee J in 2003 and, thus, is paid for current services within the meaning of paragraph (b)(4)(viii) of this section. Accordingly, the plan does not provide for the deferral of compensation within the meaning of section 3121(v)(2), and the $80,000 payment is included as wages in 2003 under the general timing rule of paragraph (a)(1) of this section.

(c) *Determination of the amount deferred*—(1) *Account balance plans*—(i) *General rule.* For purposes of this section, if benefits for an employee are provided under a nonqualified deferred compensation plan that is an account balance plan, the amount deferred for a period equals the principal amount credited to the employee's account for the period, increased or decreased by any income attributable to the principal amount through the date the principal amount is required to be taken into account as wages under paragraph (e) of this section.

(ii) *Definitions*—(A) *Account balance plan.* For purposes of this section, an account balance plan is a nonqualified deferred compensation plan under the terms of which a principal amount (or amounts) is credited to an individual account for an employee, the income attributable to each principal amount is credited (or debited) to the individual account, and the benefits payable to the employee are based solely on the balance credited to the individual account.

(B) *Income.* For purposes of this section, *income* means any increase or decrease in the amount credited to an employee's account that is attributable to amounts previously credited to the employee's account, regardless of whether the plan denominates that increase or decrease as income.

(iii) *Additional rules*—(A) *Commingled accounts.* A plan does not fail to be an account balance plan merely because, under the terms of the plan, benefits payable to an employee are based solely on a specified percentage of an account maintained for all (or a portion of) plan participants under which principal amounts and income are credited (or debited) to such account.

(B) *Bifurcation permitted.* An employer may treat a portion of a nonqualified deferred compensation plan as a separate account balance plan if that portion satisfies the requirements of this paragraph (c)(1) and the amount payable to employees under that portion is determined independently of the amount payable under the other portion of the plan.

(C) *Actuarial equivalents.* A plan does not fail to be an account balance plan merely because the plan permits employees to elect to receive their benefits under the plan in a form of benefit other than payment of the account balance, provided the amount of benefit payable in that other form is actuarially equivalent to payment of the account balance using actuarial assumptions that are reasonable. Conversely, a plan is not an account

balance plan if it provides an optional form of benefit that is not actuarially equivalent to the account balance using actuarial assumptions that are reasonable. For this purpose, the determination of whether forms are actuarially equivalent using actuarial assumptions that are reasonable is determined under the rules applicable to nonaccount balance plans under paragraph (c)(2)(iii) of this section.

(2) *Nonaccount balance plans*—(i) *General rule.* For purposes of this section, if benefits for an employee are provided under a nonqualified deferred compensation plan that is not an account balance plan (a nonaccount balance plan), the amount deferred for a period equals the present value of the additional future payment or payments to which the employee has obtained a legally binding right (as described in paragraph (b)(3)(i) of this section) under the plan during that period.

(ii) *Present value defined.* For purposes of this section, *present value* means the value as of a specified date of an amount or series of amounts due thereafter, where each amount is multiplied by the probability that the condition or conditions on which payment of the amount is contingent will be satisfied, and is discounted according to an assumed rate of interest to reflect the time value of money. For purposes of this section, the present value must be determined as of the date the amount deferred is required to be taken into account as wages under paragraph (e) of this section using actuarial assumptions and methods that are reasonable as of that date. For this purpose, a discount for the probability that an employee will die before commencement of benefit payments is permitted, but only to the extent that benefits will be forfeited upon death. In addition, the present value cannot be discounted for the probability that payments will not be made (or will be reduced) because of the unfunded status of the plan, the risk associated with any deemed or actual investment of amounts deferred under the plan, the risk that the employer, the trustee, or another party will be unwilling or unable to pay, the possibility of future plan amendments, the possibility of a future change in the law, or similar risks or contingencies. Nor is the present value affected by the possibility that some of the payments due under the plan will be eligible for one of the exclusions from wages in section 3121(a).

(iii) *Treatment of actuarially equivalent benefits*—(A) *In general.* In the case of a nonaccount balance plan that permits employees to receive their benefits in more than one form or commencing at more than one date, the amount deferred is determined by assuming that payments are made in the normal form of benefit commencing at normal commencement date if the requirements of paragraph (c)(2)(iii)(B) of this section are satisfied. Accordingly, in the case of a nonaccount balance plan that permits employees to receive their benefits in more than one form or commencing at more than one date, unless the requirements of paragraph (c)(2)(iii)(B) of this section are satisfied, the amount deferred is treated as not reasonably ascertainable under the rules of paragraph (e)(4)(i)(B) of this section until a form of benefit and a time of commencement are selected.

(B) *Use of normal form commencing at normal commencement date.* The requirements of this paragraph (c)(2)(iii)(B) are satisfied by a nonaccount balance plan if the plan has a single normal form of benefit commencing at normal commencement date for the amount deferred and each other optional form is actuarially equivalent to the normal form of benefit commencing at normal commencement date using actuarial assumptions that are reasonable. For this purpose, each form of benefit for payment of the amount deferred commencing at a date is a separate optional form. For purposes of this paragraph (c)(2)(iii)(B), each optional form is actuarially equivalent to the normal form of benefit commencing at normal commencement date only if the terms of the plan in effect when the amount is deferred provide for every optional form to be actuarially equivalent and further provide for actuarial assumptions to determine actuarial equivalency that will be reasonable at the time the optional form is selected, without regard to whether market interest rates are higher or lower at the time the optional form is selected than at the time the amount is deferred. Thus, a plan that provides for every optional form to be actuarially equivalent satisfies this paragraph (c)(2)(iii)(B) if it provides for actuarial equivalence to be determined—

(*1*) When an optional form is selected or when benefit payments under the optional form commence, based on assumptions that are reasonable then;

(*2*) Based on an index that reflects market rates of interest from time to time (for example, the plan specifies that all benefits will be actuarially equivalent using the applicable interest rate and applicable mortality table specified in section 417(e)); or

(*3*) Based on actuarial assumptions specified in the plan and provides for those assumptions to be revised to be reasonable assumptions if they cease to be reasonable assumptions.

(C) *Fixed mortality assumptions permitted.* A plan does not fail to satisfy paragraph (c)(2)(iii)(B) of this section merely because the plan specifies a fixed mortality assumption that is reasonable at the time the amount is deferred, even if that assumption is not reasonable at the time the optional form is selected. (But see paragraph (c)(2)(iii)(E) of this section for additional rules that apply if the mortality assumption is not reasonable at the time the optional form is selected.)

(D) *Normal form of benefit commencing at normal commencement date defined.* For purposes of this paragraph (c)(2)(iii), the normal form of benefit commencing at normal commencement date under the plan is the form, and date of commencement, under which the payments due to the employee under the plan are expressed, prior to adjustments for form or timing of commencement of payments.

(E) *Rule applicable if actuarial assumptions cease to be reasonable.* If the terms of the plan in effect when an amount is deferred provide for actuarial assumptions to determine actuarial equivalency that will be reasonable at the time the optional form is selected or payments commence as provided in paragraph (c)(2)(iii)(B) of this section, but, at that time, the actuarial assumptions used under the plan are not reasonable, the employee will be treated as obtaining a legally binding right at that time (or, if earlier, at the date on which the plan is amended to provide actuarial assumptions that are not reasonable) to any additional benefits that result from the use of an unreasonable actuarial assumption. This might occur, for example, if the plan specifies that the actuarial assumptions will be reasonable assumptions to be set at the time the optional form is selected and the assumptions used are in fact not reasonable at that time.

(3) *Separate determination for each period.* The amount deferred under this paragraph (c) is determined separately for each period for which there is an amount deferred under the plan. In addition, paragraphs (d) and (e) of this section are applied separately with respect to the amount deferred for each such period. Thus, for example, the fraction described in paragraph (d)(1)(ii)(B) of this section and the amount of the true-up at the resolution date described in paragraph (e)(4)(ii)(B) of this section are determined separately with respect to each amount deferred. See paragraph (e)(4)(ii)(D) of this section

for special rules for allocating amounts deferred over more than one year.

(4) *Examples.* This paragraph (c) is illustrated by the following examples. (The examples illustrate the rules in this paragraph (c) and include various interest rate and mortality table assumptions, including the applicable section 417(e) mortality table, the GAM 83 (male) mortality table, and UP–84 mortality table. These tables can be obtained from the Society of Actuaries at its internet site at http://www.soa.org.) The examples are as follows:

Example 1. (i) Employer M establishes a nonqualified deferred compensation plan for Employee A. Under the plan, 10 percent of annual compensation is credited on behalf of Employee A on December 31 of each year. In addition, a reasonable rate of interest is credited quarterly on the balance credited to Employee A as of the last day of the preceding quarter. All amounts credited under the plan are 100 percent vested and the benefits payable to Employee A are based solely on the balance credited to Employee A's account.

(ii) The plan is an account balance plan. Thus, pursuant to paragraph (c)(1) of this section, the amount deferred for a calendar year is equal to 10 percent of annual compensation.

Example 2. (i) Employer N establishes a nonqualified deferred compensation plan for Employee B. Under the plan, 2.5 percent of annual compensation is credited quarterly on behalf of Employee B. In addition, a reasonable rate of interest is credited quarterly on the balance credited to Employee B's account as of the last day of the preceding quarter. All amounts credited under the plan are 100 percent vested, and the benefits payable to Employee B are based solely on the balance credited to Employee B's account. As permitted by paragraph (e)(5) of this section, any amount deferred under the plan for the calendar year is taken into account as wages on the last day of the year.

(ii) The plan is an account balance plan. Thus, pursuant to paragraph (c)(1) of this section, the amount deferred for a calendar year equals 10 percent of annual compensation (i.e., the sum of the principal amounts credited to Employee B's account for the year) plus the interest credited with respect to that 10 percent principal amount through the last day of the calendar year. If Employer N had not chosen to apply paragraph (e)(5) of this section and, thus, had taken into account 2.5 percent of compensation quarterly, the interest credited with respect to those quarterly amounts would not have been treated as part of the amount deferred for the year.

Example 3. (i) Employer O establishes a nonqualified deferred compensation plan for a group of five employees. Under the plan, a specified sum is credited to an account for the benefit of the group of employees on July 31 of each year. Income on the balance of the account is credited annually at a rate that is reasonable for each year. The benefit payable to an employee is equal to one-fifth of the account balance and is payable, at the employee's option, in a lump sum or in 10 annual installments that reflect income on the balance.

(ii) The plan is an account balance plan notwithstanding the fact that the employee's benefit is equal to a specified percentage of an account maintained for a group of employees.

Example 4. (i) The facts are the same as in *Example 3*, except that the plan also permits an employee to elect a life annuity that is actuarially equivalent to the account balance based on the applicable interest rate and applicable mortality table specified in section 417(e) at the time the benefit is elected by the employee.

(ii) Under paragraphs (c)(1)(iii)(C) and (c)(2)(iii) of this section, the plan does not fail to be an account balance plan merely because the plan permits employees to elect to receive their benefits under the plan in a form that is actuarially equivalent to payment of the account balance using actuarial assumptions that are reasonable at the time the form is selected.

Example 5. (i) Employer P establishes a nonqualified deferred compensation plan for a group of employees. Under the plan, each participating employee has a fully vested right to receive a life annuity, payable monthly beginning at age 65, equal to the product of 2 percent for each year of service and the employee's highest average annual compensation for any 3-year period. The plan also provides that, if an employee dies before age 65, the present value of the future payments will be paid to his or her beneficiary. As permitted under paragraph (e)(5) of this section, any amount deferred under the plan for a calendar year is taken into account as FICA wages as of the last day of the year. As of December 31, 2002, Employee C is age 60, has 25 years of service, and high 3-year average compensation of $100,000 (the average for the years 2000 through 2002). As of December 31, 2003, Employee C is age 61, has 26 years of service, and has high 3-year average compensation of $104,000. As of December 31, 2004, Employee C is age 62, has 27 years of service, and has high 3-year average compensation of $105,000. The assumptions that Employer P uses to determine the amount deferred for 2003 (a 7 percent interest rate and, for the period after commencement of benefit payments, the GAM 83 (male) mortality table) and for 2004 (a 7.5 percent interest rate and, for the period after commencement of benefit payments, the GAM 83 (male) mortality table) are assumed, solely for purposes of this example, to be reasonable actuarial assumptions.

(ii) As of December 31, 2002, Employee C has a legally binding right to receive lifetime payments of $50,000 (2 percent × 25 years × $100,000) per year. As of December 31, 2003, Employee C has a legally binding right to receive lifetime payments of $54,080 (2 percent × 26 years × $104,000) per year. Thus, during 2003, Employee C has earned a legally binding right to additional lifetime payments of $4,080 ($54,080 − $50,000) per year beginning at age 65. The amount deferred for 2003 is the present value, as of December 31, 2003, of these additional payments, which is $28,767 ($4,080 × the present value factor for a deferred annuity payable at age 65, using the specified actuarial assumptions for 2003). Similarly, during 2004, Employee C has earned a legally binding right to additional lifetime payments of $2,620 (2 percent × 27 years × $105,000, minus $54,080) per year beginning at age 65. The amount deferred for 2004 is the present value, as of December 31, 2004, of these additional payments, which is $18,845 ($2,620 × the present value factor for a deferred annuity payable at age 65, using the specified actuarial assumptions for 2004).

Example 6. (i) Employer Q establishes a nonqualified deferred compensation plan for Employee D on January 1, 2001, when Employee D is age 63. During 2001, Employee D obtains a fully vested right to receive a life annuity under the nonqualified deferred compensation plan equal to the excess of $200,000 over the life annuity benefits payable to Employee D under a qualified defined benefit pension plan sponsored by Employer Q. The life annuity benefit payable annually under the qualified plan is the lesser of $200,000 and the section 415(b)(1)(A) limitation in effect for the year, where the section 415(b)(1)(A) limitation is automatically adjusted to reflect changes in the cost of living. Benefits under both the qualified and nonqualified plan are payable monthly beginning at age 65. For purposes of this example, the section 415(b)(1)(A) limit for 2001 is assumed to be $140,000. The nonqualified plan provides no benefits in the event Employee D dies prior to commencement of benefit payments. As permitted under paragraph (e)(5) of this section, any amount deferred under the plan for a calendar year is taken into account as FICA wages as of the last day of the year. The assumptions that Employer Q uses to determine the amount deferred for 2001 (a 7 percent interest rate, a 3 percent increase in the cost of living and the GAM 83 (male) mortality table) are assumed, solely for purposes of this example, to be reasonable actuarial assumptions. As of December 31, 2001, Employee D has a legally binding right to receive lifetime payments as set forth in the following table:

Year	Annual gross amount	Assumed qualified plan annual payment (based on cost of living)	Net annual payment under nonqualified plan
2003	$200,000	$145,000	$55,000
2004	200,000	150,000	50,000
2005	200,000	155,000	45,000
2006	200,000	160,000	40,000
2007	200,000	165,000	35,000
2008	200,000	170,000	30,000
2009	200,000	175,000	25,000
2010	200,000	180,000	20,000
2011	200,000	185,000	15,000
2012	200,000	190,000	10,000
2013	200,000	195,000	5,000
2014 and thereafter	200,000	205,000 or greater	0

(ii) The amount deferred for 2001 is the present value, as of December 31, 2001, of the net lifetime payments under the nonqualified plan, or $223,753.

(d) *Amounts taken into account and income attributable thereto*—(1) *Amounts taken into account*—(i) *In general.* For purposes of this section, an amount deferred under a nonqualified deferred compensation plan is taken into account as of the date it is included in computing the amount of *wages* as defined in section 3121(a), but only to the extent that any additional FICA tax that results from such inclusion (including any interest and penalties for late payment) is actually paid before the expiration of the applicable period of limitations for the period in which the amount deferred was required to be taken into account under paragraph (e) of this section. Because an amount deferred for a calendar year is combined with the employee's other wages for the year for purposes of computing FICA taxes with respect to the employee for the year, if the employee has other wages that equal or exceed the wage base limitations for the Old-Age, Survivors, and Disability Insurance (OASDI) portion (or, in the case of years before 1994, the Hospital Insurance (HI) portion) of FICA for the year, no portion of the amount deferred will actually result in additional OASDI (or HI) tax. However, because there is no wage base limitation for the HI portion of FICA for years after 1993, the entire amount deferred (in addition to all other wages) is subject to the HI tax for the year and, thus, will not be considered taken into account for purposes of this section unless the HI tax relating to the amount deferred is actually paid. In determining whether any additional FICA tax relating to the amount deferred is actually paid, any FICA tax paid in a year is treated as paid with respect to an amount deferred only after FICA tax is paid on all other wages for the year.

(ii) *Amounts not taken into account*—(A) *Failure to take an amount deferred into account under the special timing rule.* If an amount deferred for a period (as determined under paragraph (c) of this section) is not taken into account, then the nonduplication rule of paragraph (a)(2)(iii) of this section does not apply, and benefit payments attributable to that amount deferred are included as wages in accordance with the general timing rule of paragraph (a)(1) of this section. For example, if an amount deferred is required to be taken into account in a particular year under paragraph (e) of this section, but the employer fails to pay the additional FICA tax resulting from that amount, then the amount deferred and the income attributable to that amount must be included as wages when actually or constructively paid.

(B) *Failure to take a portion of an amount deferred into account under the special timing rule.* If, as of the date an amount deferred is required to be taken into account, only a portion of the amount deferred (as determined under paragraph (c) of this section) has been taken into account, then a portion of each subsequent benefit payment that is attributable to that amount is excluded from wages pursuant to the nonduplication rule of paragraph (a)(2)(iii) of this section and the balance is subject to the general timing rule of paragraph (a)(1) of this section. The portion that is excluded from wages is fixed immediately before the attributable benefit payments commence (or, if later, the date the amount deferred is required to be taken into account) and is determined by multiplying each such payment by a fraction, the numerator of which is the amount that was taken into account (plus income attributable to that amount determined under paragraph (d)(2) of this section through the date the portion is fixed) and the denominator of which is the present value of the future benefit payments attributable to the amount deferred, determined as of the date the portion is fixed. For this purpose, if the requirements of paragraph (c)(2)(iii)(B) of this section are satisfied, the present value is determined by assuming that payments are made in the normal form of benefit commencing at normal commencement date. In addition, if the employer demonstrates that the amount deferred was determined using reasonable actuarial assumptions as determined by the Commissioner, the present value of the future benefit payments attributable to the amount deferred is determined using those assumptions. In any other case, see paragraph (d)(2)(iii) of this section.

(2) *Income attributable to the amount taken into account*—(i) *Account balance plans*—(A) *In general.* For purposes of the nonduplication rule of paragraph (a)(2)(iii) of this section, in the case of an account balance plan, the *income attributable to the amount taken into account* means any amount credited on behalf of an employee under the terms of the plan that is income (within the meaning of paragraph (c)(1)(ii)(B) of this section) attributable to an amount previously taken into account (within the meaning of paragraph (d)(1) of this section), but only if the income reflects a rate of return that does not exceed either the rate of return on a predetermined actual investment (as determined in accordance with paragraph (d)(2)(i)(B) of this section) or, if the income does not reflect the rate of return on a predetermined actual investment (as so determined), a reasonable rate of interest (as

determined in accordance with paragraph (d)(2)(i)(C) of this section).

(B) *Rules relating to actual investment—(1) In general.* For purposes of this paragraph (d)(2)(i), the rate of return on a predetermined actual investment for any period means the rate of total return (including increases or decreases in fair market value) that would apply if the account balance were, during the applicable period, actually invested in one or more investments that are identified in accordance with the plan before the beginning of the period. For this purpose, an account balance plan can determine income based on the rate of return of a predetermined actual investment regardless of whether assets associated with the plan or the employer are actually invested therein and regardless of whether that investment is generally available to the public. For example, an account balance plan could provide that income on the account balance is determined based on an employee's prospective election among various investment alternatives that are available under the employer's section 401(k) plan, even if one of those investment alternatives is not generally available to the public. In addition, an actual investment includes an investment identified by reference to any stock index with respect to which there are positions traded on a national securities exchange described in section 1256(g)(7)(A).

(*2*) *Certain rates of return not based on predetermined actual investment.* A rate of return will not be treated as the rate of return on a predetermined actual investment within the meaning of this paragraph (d)(2)(i)(B) if the rate of return (to any extent or under any conditions) is based on the greater of the rate of return of two or more actual investments, is based on the greater of the rate of return on an actual investment and a rate of interest (whether or not the rate of interest would otherwise be reasonable under paragraph (d)(2)(i)(C) of this section), or is based on the rate of return on an actual investment that is not predetermined. For example, if a plan bases the rate of return on the greater of the rate of return on a predetermined actual investment (such as the value of the employer's stock), and a 0 percent interest rate (i.e., without regard to decreases in the value of that investment), the plan is using a rate of return that is not a rate of return on a predetermined actual investment within the meaning of this paragraph (d)(2)(i)(B).

(C) *Rules relating to reasonable interest rates—(1) In general.* If income for a period is credited to an account balance plan on a basis other than the rate of return on a predetermined actual investment (as determined in accordance with paragraph (d)(2)(i)(B) of this section), then, except as otherwise provided in this paragraph (d)(2)(i)(C), the determination of whether the income for the period is based on a reasonable rate of interest will be made at the time the amount deferred is required to be taken into account and annually thereafter.

(*2*) *Fixed rates permitted.* If, with respect to an amount deferred for a period, an account balance plan provides for a fixed rate of interest to be credited, and the rate is to be reset under the plan at a specified future date that is not later than the end of the fifth calendar year that begins after the beginning of the period, the rate is reasonable at the beginning of the period, and the rate is not changed before the reset date, then the rate will be treated as reasonable in all future periods before the reset date.

(ii) *Nonaccount balance plans.* For purposes of the nonduplication rule of paragraph (a)(2)(iii) of this section, in the case of a nonaccount balance plan, the *income attributable to the amount taken into account* means the increase, due solely to the passage of time, in the present value of the future payments to which the employee has obtained a legally binding right, the present value of which constituted the amount taken into account (determined as of the date such amount was taken into account), but only if the amount taken into account was determined using reasonable actuarial assumptions and methods. Thus, for each year, there will be an increase (determined using the same interest rate used to determine the amount taken into account) resulting from the shortening of the discount period before the future payments are made, plus, if applicable, an increase in the present value resulting from the employee's survivorship during the year. As a result, if the amount deferred for a period is determined using a reasonable interest rate and other reasonable actuarial assumptions and methods, and the amount is taken into account when required under paragraph (e) of this section, then, under the nonduplication rule of paragraph (a)(2)(iii) of this section, none of the future payments attributable to that amount will be subject to FICA tax when paid.

(iii) *Unreasonable rates of return—(A) Account balance plans.* This paragraph (d)(2)(iii)(A) applies to an account balance plan under which the income credited is based on neither a predetermined actual investment, within the meaning of paragraph (d)(2)(i)(B) of this section, nor a rate of interest that is reasonable, within the meaning of paragraph (d)(2)(i)(C) of this section, as determined by the Commissioner. In that event, the employer must calculate the amount that would be credited as income under a reasonable rate of interest, determine the excess (if any) of the amount credited under the plan over the income that would be credited using the reasonable rate of interest, and take that excess into account as an additional amount deferred in the year the income is credited. If the employer fails to calculate the amount that would be credited as income under a reasonable rate of interest and to take the excess into account as an additional amount deferred in the year the income is credited, or the employer otherwise fails to take the full amount deferred into account, then the excess of the income credited under the plan over the income that would be credited using AFR will be treated as an amount deferred in the year the income is credited. For purposes of this section, *AFR* means the mid-term applicable federal rate (as defined pursuant to section 1274(d)) for January 1 of the calendar year, compounded annually. In addition, pursuant to paragraph (d)(1)(ii) of this section, the excess over the income that would result from the application of AFR and any income attributable to that excess are subject to the general timing rule of paragraph (a)(1) of this section.

(B) *Nonaccount balance plans.* If any actuarial assumption or method used to determine the amount taken into account under a nonaccount balance plan is not reasonable, as determined by the Commissioner, then the income attributable to the amount taken into account is limited to the income that would result from the application of the AFR and, if applicable, the applicable mortality table under section 417(e)(3)(A)(ii)(I) (the 417(e) mortality table), both determined as of the January 1 of the calendar year in which the amount was taken into account. In addition, paragraph (d)(1)(ii)(B) of this section applies and, in calculating the fraction described in paragraph (d)(1)(ii)(B) of this section (at the date specified in paragraph (d)(1)(ii)(B) of this section), the numerator is the amount taken into account plus income (as limited under this paragraph (d)(2)(iii)(B)), and the present value in the denominator is determined using the AFR, the 417(e) mortality table, and reasonable assumptions as to cost of living, each determined as of the time

the amount deferred was required to be taken into account.

(3) *Examples.* This paragraph (d) is illustrated by the following examples:

Example 1. (i) In 2001, Employer M establishes a nonqualified deferred compensation plan for Employee A under which all benefits are 100 percent vested. In 2002, Employee A has $200,000 of current annual compensation from Employer M that is subject to FICA tax. The amount deferred under the plan on behalf of Employee A for 2002 is $20,000. Thus, Employee A has total wages for FICA tax purposes of $220,000. Because Employee A has other wages that exceed the OASDI wage base for 2002, no additional OASDI tax is due as a result of the $20,000 amount deferred. Because there is no wage base limitation for the HI portion of FICA, additional HI tax liability results from the $20,000 amount deferred. However, Employer M fails to pay the additional HI tax.

(ii) Under paragraph (d)(1)(i) of this section, an amount deferred is considered taken into account as wages for FICA tax purposes as of the date it is included in computing FICA wages, but only if any additional FICA tax liability that results from inclusion of the amount deferred is actually paid. Because the HI tax resulting from the $20,000 amount deferred was not paid, that amount deferred was not taken into account within the meaning of paragraph (d)(1) of this section. Thus, pursuant to paragraph (d)(1)(ii) of this section, benefit payments attributable to the $20,000 amount deferred will be included as wages in accordance with the general timing rule of paragraph (a)(1) of this section and will be subject to the HI portion of FICA tax when actually or constructively paid (and the OASDI portion of FICA tax to the extent Employee A's wages do not exceed the OASDI wage base limitation).

Example 2. (i) The facts are the same as in *Example 1*, except that Employer M takes all actions necessary to correct its failure to pay the additional tax before the applicable period of limitations expires for 2002 (including payment of any applicable interest and penalties).

(ii) Because the HI tax resulting from the $20,000 amount deferred is paid, that amount deferred is considered taken into account for 2002. Thus, in accordance with paragraph (a)(2)(iii) of this section, neither the amount deferred nor the income attributable to the amount taken into account will be treated as wages for FICA tax purposes at any time thereafter.

Example 3. (i) Employer N establishes a nonqualified deferred compensation plan under which all benefits are 100 percent vested. Under the plan, an employee's account is credited with a contribution equal to 10 percent of salary on December 31 of each year. The employee's account balance also is increased each December 31 by *interest* on the total amounts credited to the employee's account as of the preceding December 31. The interest rate specified in the plan results in income credits that are not based on the rate of return on a predetermined actual investment within the meaning of paragraph (d)(2)(i)(B) of this section, and that are greater than the income that would result from application of a reasonable rate of interest within the meaning of paragraph (d)(2)(i)(C) of this section. Employer N fails to take into account an additional amount for the excess of the income credited under the plan over a reasonable rate of interest.

(ii) Pursuant to paragraph (d)(2)(iii)(A) of this section, the income credits in excess of the income that would be credited using the AFR are considered additional amounts deferred in the year credited.

Example 4. (i) The facts are the same as in *Example 3*, except that the annual increase is based on Moody's Average Corporate Bond Yield.

(ii) Because this index reflects a reasonable rate of interest, the income credited under the plan is considered income attributable to the amount taken into account within the meaning of paragraph (d)(2)(i) of this section.

Example 5. (i) The facts are the same as in *Example 3*, except that the annual increase (or decrease) is based on the rate of total return on Employer N's publicly traded common stock.

(ii) Because the income credited under the plan does not exceed the actual rate of return on a predetermined actual investment, the income credited is considered income attributable to the amount taken into account within the meaning of paragraph (d)(2)(i) of this section.

Example 6. (i) The facts are the same as in *Example 3*, except that the annual rate of increase or decrease is equal to the greater of the rate of total return on a specified aggressive growth mutual fund or the rate of return on a specified income-oriented mutual fund. Employer N fails to take into account an additional amount for the excess of the income credited under the plan over a reasonable rate of interest.

(ii) Because the rate of increase or decrease is based on the greater of two rates of returns, the increase is not based on the return on a predetermined actual investment within the meaning of paragraph (d)(2)(i)(B) of this section. Thus, if the rate of return credited under the plan (i.e., the greater of the rates of return of the two mutual funds) exceeds the income that would be credited using the AFR, the excess is not considered income attributable to the amount taken into account within the meaning of paragraph (d)(2)(i) of this section and, pursuant to paragraph (d)(2)(iii)(A) of this section, is considered an additional amount deferred.

Example 7. (i) The facts are the same as in *Example 6*, except that the annual increase or decrease with respect to 50 percent of the employee's account is equal to the rate of total return on the specified aggressive growth mutual fund and the annual increase or decrease with respect to the other 50 percent of the employee's account is equal to the increase or decrease in the Standard & Poor's 500 Index.

(ii) Because the increase or decrease attributable to any portion of the employee's account is based on the return on a predetermined actual investment, the entire increase or decrease is considered income attributable to the amount taken into account within the meaning of paragraph (d)(2)(i) of this section.

Example 8. (i) The facts are the same as in *Example 3*, except that, pursuant to the terms of the plan, before the beginning of each year, the board of directors of Employer N designates a specific investment on which the following year's annual increase or decrease will be based. The board is authorized to switch investments more frequently on a prospective basis. Before the beginning of 2004, the board designates Company A stock as the investment for 2004. Before the beginning of 2005, the board designates Company B stock as the investment for 2005. At the end of 2005, the board determines that the return on Company B stock was lower than expected and changes its designation for 2005 to the rate of return on Company C stock, which had a higher return during 2005. Employer N fails to take into account an additional amount for the excess of the income credited under the plan over a reasonable rate of interest.

(ii) The annual increase or decrease for 2004 is based on the return of a predetermined actual investment. Although the annual increase or decrease for 2005 is based on an actual investment, the actual investment is not predetermined since it was not designated before the beginning of 2005. Pursuant to paragraph (d)(2)(iii)(A) of this section, the excess of the income credited under the plan over the income determined using AFR is an additional amount deferred for 2005.

Example 9. (i) Employer O establishes a nonqualified deferred compensation plan for Employee B. Under the plan, if Employee B survives until age 65, he has a fully vested right to receive a lump sum payment at that age, equal to the product of 10 percent per year of service and Employee B's highest average annual compensation for any 3-year period, but no benefits are payable in the event Employee B dies prior to age 65. As permitted under paragraph (e)(5) of this section, any amount deferred under the plan for the calendar year is taken into account as wages as of the last day of the year. As of December 31, 2002, Employee B has 25 years of service and Employee B's high 3-year average compensation is $100,000 (the average for the years 2000 through 2002). As of December 31, 2002, Employee B has a legally binding right to receive a payment at age 65 of $250,000 (10 percent × 25 years × $100,000). As of December 31, 2003, Employee B is age 63, has 26 years of service, and has high 3-year average compensation of $104,000. As of December 31, 2003, Employee B has a legally binding right to receive a payment at age 65 of $270,400 (10 percent × 26 years × $104,000). Thus, during 2003, Employee B has earned a legally binding right to an additional payment at age 65 of $20,400 ($270,400 − $250,000). The assumptions that Employer O uses to determine the amount deferred for 2003 are a 7 percent interest rate and the GAM 83 (male) mortality table, which, solely for purposes of this example, are assumed to be reasonable actuarial assumptions. The amount deferred for 2003 is the present value, as of December 31, 2003, of the $20,400 payment, which is $17,353. Employer O takes this amount into account by including it in Employee B's FICA wages for 2003 and paying the additional FICA tax.

(ii) Under paragraph (d)(2)(ii) of this section, the income attributable to the amount that was taken into account is the increase in the present value of the future payment due solely to the passage of time, because the amount deferred was determined using reasonable actuarial assumptions and methods. As of the payment date at age 65, the present value of the future payment earned during 2003 is $20,400. The entire difference between the $20,400 and the $17,353 amount deferred ($3,047) is the increase in the present value of the future payment due solely to the passage of time, and thus constitutes income attributable to the amount taken into account. Because the amount deferred was taken into account, the entire payment of $20,400 represents either an amount deferred that was previously taken into account ($17,353) or income attributable to that amount ($3,047). Accordingly, pursuant to the nonduplication rule of paragraph (a)(2)(iii) of this section, none of the payment is included in wages.

Example 10. (i) The facts are the same as in *Example 9*, except that, instead of providing a lump sum equal to 10 percent of average compensation per year of service, the plan provides Employee B with a fully vested right to receive a life annuity, payable monthly beginning at age 65, equal to the product of 2 percent for each year of service and Employee B's highest average annual compensation for any 3-year period. The plan also provides that, if Employee B dies before age 65, the present value of the future payments will be paid to his or her beneficiary. As of December 31, 2002, Employee B has a legally binding right to receive lifetime payments of $50,000 (2 percent × 25 years × $100,000) per year. As of December 31, 2003, Employee B has a legally binding right to receive lifetime payments of $54,080 (2 percent × 26 years × $104,000) per year. Thus, during 2003, Employee B has earned a legally binding right to additional lifetime payments of $4,080 ($54,080 − $50,000) per year beginning at age 65. The amount deferred for 2003 is $32,935, which is the present value, as of December 31, 2003, of these additional payments, determined using the same actuarial assumptions and methods used in *Example 9*, except that there is no discount for the probability of death prior to age 65. Employer O takes this amount into account by including it in Employee B's FICA wages for 2003 and paying the additional FICA tax.

(ii) Under paragraph (d)(2)(ii) of this section, the income attributable to the amount that was taken into account is the increase in the present value of the future payments due solely to the passage of time, because the amount deferred was determined using reasonable actuarial assumptions and methods. Because the amount deferred was taken into account, each annual payment of $4,080 attributable to the amount deferred in 2003 represents either an amount deferred that was previously taken into account or income attributable to that amount. Accordingly, pursuant to the nonduplication rule of paragraph (a)(2)(iii) of this section, none of the payments are included in wages.

Example 11. (i) The facts are the same as in *Example 10*, except that no amount is taken into account for 2003 because Employer O fails to pay the additional FICA tax.

(ii) Under paragraph (d)(1)(ii)(A) of this section, if an amount deferred for a period is not taken into account, then the benefit payments attributable to that amount deferred are included as wages in accordance with the general timing rule of paragraph (a)(1) of this section. In this case, assuming that the amounts deferred in other periods were taken into account, $4,080 of each year's total benefit payments will be included in wages when actually or constructively paid, in accordance with the general timing rule.

Example 12. (i) Employer P establishes an account balance plan on January 1, 2002, under which all benefits are 100 percent vested. The plan provides that amounts deferred will be credited annually with interest beginning in 2002 at a rate that is greater than a reasonable rate of interest. Employer P treats the excess over the applicable interest rate in section 417(e) as an additional amount deferred for 2002 and in each year thereafter, and takes the additional amount into account by including it in FICA wages and paying the additional FICA tax for the year.

(ii) Under the nonduplication rule in paragraph (a)(2)(iii) of this section, the benefits paid under the plan will be excluded from wages for FICA tax purposes.

Example 13. (i) The facts are the same as in *Example 9*, except that, in determining the amount deferred, Employer O uses a 15 percent interest rate, which, solely for purposes of this example, is assumed not to be a reasonable interest rate. Employer O determines that the amount deferred for 2003 is the present value, as of December 31, 2003, of the $20,400 payment, which is $15,023. Employer O includes $15,023 in wages and pays any resulting FICA tax. Solely for purposes of this example, it is assumed that the AFR as of January 1, 2003, is 7 percent.

(ii) Under paragraph (d)(2)(iii)(B) of this section, if any actuarial assumption or method is not reasonable, then the income attributable to the amount taken into account is limited to the income that would result from application of the AFR and, if applicable, the 417(e) mortality table. Because the 15 percent interest rate is unreasonable, the income attributable to the amount taken into account is limited to the income that would result from using a 7 percent interest rate and, in this case, an increase for survivorship using the 417(e) mortality table. Under these assumptions, the income attributable to the $15,023 amount taken into account for 2003 is $1,199 in 2004 and $1,313 in 2005. Under paragraph (d)(1)(ii) of this section, the sum of these amounts ($17,535) is excluded from Employee B's wages pursuant to the nonduplication rule of paragraph (a)(2)(iii) of this section, and the balance of the payment ($2,865) is subject to the general timing rule of paragraph (a)(1) of this section and, thus, is included in Employee B's wages when actually or constructively paid.

(iii) The same result can be reached by multiplying the attributable benefit payments by a fraction, the numerator of which is the amount taken into account, and the denominator of which is the amount deferred that would have been taken into account at the same time had the amount deferred been calculated using the AFR and the 417(e) mortality table. These assumptions are determined as of January 1 of the calendar year in which the amount was taken into account. In this *Example 13*, the fraction would be $15,023 divided by $17,478, which equals .85954. The $20,400 payment is multiplied by this fraction to determine the amount of the payment that is excluded from wages pursuant to the nonduplication rule of paragraph (a)(2)(iii) of this section. Thus, $17,535 ($20,400 x .85954) is excluded from wages and the balance ($2,865) is subject to FICA tax when actually or constructively paid.

Example 14. (i) The facts are the same as *Example 10*, except that Employer O calculates the amount deferred for 2003 as $18,252 and takes that amount into account by including that amount in wages and paying any resulting FICA tax. The assumptions that Employer O uses to determine the amount deferred are a 15 percent interest rate and, for the period after commencement of benefit payments, the GAM 83 (male) mortality table. The 15 percent interest rate is assumed, solely for purposes of this example, not to be a reasonable actuarial assumption. Solely for purposes of this example, it is assumed that the AFR as of January 1, 2003, is 7 percent.

(ii) Under paragraph (d)(2)(iii)(B) of this section, if any actuarial assumption or method used is not reasonable, then the income attributable to the amount taken into account is limited to the income that would result from application of the AFR and, if applicable, the 417(e) mortality table. Because the 15 percent interest rate is not reasonable, the income attributable to the amount taken into account is equal to the income that would result from using a 7 percent interest rate and the amount taken into account is treated as if it represented a portion of the amount deferred for purposes of applying paragraph (d)(1)(ii)(B) of this section. Under these assumptions, the income attributable to the $18,252 amount taken into account for 2003 is $1,278 in 2004 and $1,367 in 2005. Under paragraph (d)(1)(ii)(B) of this section, the portion of each benefit payment attributable to the amount deferred that is excluded from wages pursuant to the nonduplication rule of paragraph (a)(2)(iii) of this section is determined at benefit commencement by multiplying each benefit payment by a fraction, the numerator of which is the amount taken into account (plus income attributable to that amount) and the denominator of which is the present value of future benefit payments attributable to the amount deferred. Because the interest rate assumption is not reasonable, not only is the income limited to the application of the AFR, but the present value in the denominator must be determined using the AFR and (if applicable) the 417(e) mortality table. In this case, the present value is $40,283 and thus the fraction is $20,897 divided by $40,283, or .51875. Thus, $2,116 (.51875 × $4,080) of each year's benefit payment is excluded from

wages and the balance of each year's payment ($1,964) is subject to the general timing rule of paragraph (a)(1) of this section and is included in wages when actually or constructively paid.

(iii) The same result can be reached by multiplying the attributable benefit payments by a fraction the numerator of which is the amount taken into account, and the denominator of which is the amount deferred that would have been taken into account at the same time had the amount deferred been calculated using the AFR and the 417(e) mortality table. These assumptions are determined as of January 1 of the calendar year in which the amount was taken into account. In this *Example 14*, the fraction would be $18,252 divided by $35,185, which equals .51875. The $4,080 annual payment is multiplied by this fraction to determine the amount of the payment that is excluded from wages pursuant to the nonduplication rule of paragraph (a)(2)(iii) of this section. Thus, $2,116 ($4,080 × .51875) is excluded from wages and the balance ($1,964) is subject to FICA tax when actually or constructively paid.

(e) *Time amounts deferred are required to be taken into account*—(1) *In general.* Except as otherwise provided in this paragraph (e), an amount deferred under a nonqualified deferred compensation plan must be taken into account as wages for FICA tax purposes as of the later of the date on which services creating the right to the amount deferred are performed (within the meaning of paragraph (e)(2) of this section) or the date on which the right to the amount deferred is no longer subject to a substantial risk of forfeiture (within the meaning of paragraph (e)(3) of this section). However, in no event may any amount deferred under a nonqualified deferred compensation plan be taken into account as wages for FICA tax purposes prior to the establishment of the plan providing for the amount deferred (or, if later, the plan amendment providing for the amount deferred). Therefore, if an amount is deferred pursuant to the terms of a legally binding agreement that is not put in writing until after the amount would otherwise be taken into account under this paragraph (e)(1), the amount deferred (including any attributable income) must be taken into account as wages for FICA tax purposes as of the date the material terms of the plan are put in writing.

(2) *Services creating the right to an amount deferred.* For purposes of this section, services creating the right to an amount deferred under a nonqualified deferred compensation plan are considered to be performed as of the date on which, under the terms of the plan and all the facts and circumstances, the employee has performed all of the services necessary to obtain a legally binding right (as described in paragraph (b)(3)(i) of this section) to the amount deferred.

(3) *Substantial risk of forfeiture.* For purposes of this section, the determination of whether a substantial risk of forfeiture exists must be made in accordance with the principles of section 83 and the regulations thereunder.

(4) *Amount deferred that is not reasonably ascertainable under a nonaccount balance plan*—(i) *In general*—(A) *Date required to be taken into account.* Notwithstanding any other provision of this paragraph (e), an amount deferred under a nonaccount balance plan is not required to be taken into account as wages under the special timing rule of paragraph (a)(2) of this section until the first date on which all of the amount deferred is reasonably ascertainable (the resolution date). In this case, the amount required to be taken into account as of the resolution date is determined in accordance with paragraph (c)(2) of this section.

(B) *Definition of reasonably ascertainable.* For purposes of this paragraph (e)(4), an amount deferred is considered reasonably ascertainable on the first date on which the amount, form, and commencement date of the benefit payments attributable to the amount deferred are known, and the only actuarial or other assumptions regarding future events or circumstances needed to determine the amount deferred are interest and mortality. For this purpose, the form and commencement date of the benefit payments attributable to the amount deferred are treated as known if the requirements of paragraph (c)(2)(iii)(B) of this section (under which payments are treated as being made in the normal form of benefit commencing at normal commencement date) are satisfied. In addition, an amount deferred does not fail to be reasonably ascertainable on a date merely because the exact amount of the benefit payable cannot readily be calculated on that date or merely because the exact amount of the benefit payable depends on future changes in the cost of living. If the exact amount of the benefit payable depends on future changes in the cost of living, the amount deferred must be determined using a reasonable assumption as to the future changes in the cost of living. For example, the amount of a benefit is treated as known even if the exact amount of the benefit payable cannot be determined until future changes in the cost of living are reflected in the section 415 limitation on benefits payable under a qualified retirement plan.

(ii) *Earlier inclusion permitted*—(A) *In general.* With respect to an amount deferred that is not reasonably ascertainable, an employer may choose to take an amount into account at any date or dates (an early inclusion date or dates) before the resolution date (but not before the date described in paragraph (e)(1) of this section with respect to the amount deferred). Thus, for example, with respect to an amount deferred under a nonaccount balance plan that is not reasonably ascertainable because the plan permits employees to receive their benefits in more than one form or commencing at more than one date (and the requirements of paragraph (c)(2)(iii) of this section are not satisfied), an employer may choose to take an amount into account on the date otherwise described in paragraph (e)(1) of this section before the form and commencement date are selected (based on assumptions as to the form and commencement date for the benefit payments) or may choose to wait until the form and commencement date of the benefit payments are selected. An employer that chooses to take an amount into account at an early inclusion date under this paragraph (e)(4)(ii) for an employee under a plan is not required until the resolution date to identify the period to which the amount taken into account relates.

(B) *True-up at resolution date.* If, with respect to an amount deferred for a period, an employer chooses to take an amount into account as of an early inclusion date in accordance with this paragraph (e)(4)(ii) and the benefit payments attributable to the amount deferred exceed the benefit payments that are actuarially equivalent to the amount taken into account at the early inclusion date (payable in the same form and using the same commencement date as the benefit payments attributable to the amount deferred), then the present value of the difference in the benefits, determined in accordance with paragraph (c)(2) of this section, must be taken into account as of the resolution date.

(C) *Actuarial assumptions.* For purposes of determining the benefits that are actuarially equivalent to the amount taken into account as of an early inclusion date, the amount taken into account is converted to an actuarially equivalent benefit payable in the same form and commencing on the same date as the actual benefit payments attributable to the amount deferred using an interest rate, and, if applicable, mortality and cost-of-living assumptions, that were reasonable as of the early inclusion date. Thus, with respect to an amount deferred for a

period, the amount required to be taken into account as of the resolution date is the present value (determined using an interest rate, and, if applicable, mortality and cost-of-living assumptions, that are reasonable as of the resolution date) of the excess, if any, of the future benefit payments attributable to the amount deferred over the future benefits payable in the same form and commencing on the same date that are actuarially equivalent to the portion of the amount deferred that was taken into account as of the early inclusion date (where actuarial equivalence is determined using an interest rate, and, if applicable, mortality and cost-of-living assumptions, that were reasonable as of the early inclusion date).

(D) *Allocation rules for amounts deferred over more than one period—(1) General rule.* The rules of this paragraph (e)(4)(ii)(D) apply for purposes of determining whether an amount has been included under this paragraph (e)(4) before the earliest date permitted under paragraph (e)(1) of this section.

(*2*) *Future compensation increases.* Increases in an employee's compensation after the early inclusion date must be disregarded.

(*3*) *Early retirement subsidies.* An early retirement subsidy that the employee ultimately receives may be taken into account at an early inclusion date if the employee would have a legally binding right to the subsidy at the early inclusion date but for any condition that the employee continue to render services. Accordingly, an employer may take into account at an early inclusion date any early retirement subsidy that the employee ultimately receives to the extent that elimination or reduction of that subsidy would violate section 411(d)(6)(B)(i) if that section applied to the plan.

(*4*) *Allocation with respect to offsets.* In any case in which a series of amounts are deferred over more than one period, the amounts deferred are not reasonably ascertainable until a single resolution date and the benefit payments attributable to the entire series are determined under a formula that provides a gross benefit that in the aggregate is subject to an objective reduction for future events under the terms of the plan, such as an offset for the aggregate benefits payable under a plan qualified under section 401(a), the attribution of benefit payments to the amount deferred in each period is determined under the rules of this paragraph (e)(4)(ii)(D)(*4*). In a case described in the preceding sentence, the benefit payments made as a result of the series of amounts deferred may be treated as attributable to the amount deferred as of the earliest period in which the employee obtained a legally binding right to a benefit under the plan equal to the excess, if any, of the amount of the gross benefit attributable to that period (determined at the resolution date), over the amount of the reduction determined as of the end of that period. Thus, for example, if an employee obtains a legally binding right in each of several years to benefit payments from a nonqualified deferred compensation plan that provides for a specified gross benefit for the years to be offset by the benefits payable under a qualified plan, the amount deferred in the first year may be treated as equal to the gross benefit for the year, reduced by the offset applicable at the end of the year (even if the offset increases after the end of the year).

(E) *Treatment of benefits paid before the resolution date.* If a benefit payment is attributable to an amount deferred that is not reasonably ascertainable at the time of payment (or is paid before the date selected under paragraph (e)(5) of this section), and the employer has previously taken an amount into account with respect to the amount deferred under the early inclusion rule of this paragraph (e)(4), then, in lieu of the pro rata rule provided in paragraph (d)(1)(ii)(B) of this section, a first-in-first-out rule applies in determining the portion of the benefit payment attributable to the amount taken into account. Under this first-in-first-out rule, the benefit payment is compared to the sum of the amount taken into account at the early inclusion date and the income attributable to that amount. If the benefit payment equals or exceeds the amount taken into account at the early inclusion date and the income attributable to that amount as of the date of the benefit payment, the benefit payment is included as wages under the general timing rule of paragraph (a)(1) of this section to the extent of any excess, and the amount taken into account at the early inclusion date (and income attributable to that amount) is disregarded thereafter with respect to the amount deferred. If the amount taken into account at the early inclusion date and the income attributable to that amount as of the date of the benefit payment exceeds the benefit payment, the benefit payment is not included as wages under the general timing rule of paragraph (a)(1) of this section and, in determining the amount that must be taken into account thereafter with respect to the amount deferred, the amount taken into account at the early inclusion date, plus attributable income as of the date of the benefit payment, is reduced by the amount of the benefit payment, and only the excess plus future income attributable to the excess (credited using assumptions that were reasonable on the early inclusion date) is taken into consideration. If amounts have been taken into account at more than one early inclusion date, this paragraph (e)(4)(ii)(E) applies on a first-in-first-out basis, beginning with the amount taken into account at the earliest early inclusion date (including income attributable thereto).

(5) *Rule of administrative convenience.* For purposes of this section, an employer may treat an amount deferred as required to be taken into account under this paragraph (e) on any date that is later than, but within the same calendar year as, the actual date on which the amount deferred is otherwise required to be taken into account under this paragraph (e). For example, if services creating the right to an amount deferred are considered performed under paragraph (e)(2) of this section periodically throughout a year, the employer may nevertheless treat the services creating the right to that amount deferred as performed on December 31 of that year. If an employer uses the rule of administrative convenience described in this paragraph (e)(5), any determination of whether the income attributable to an amount deferred under an account balance plan is based on a reasonable rate of interest or whether the actuarial assumptions used to determine the present value of an amount deferred in a nonaccount balance plan are reasonable will be made as of the date the employer selects to take the amount into account.

(6) *Portions of an amount deferred required to be taken into account on more than one date.* If different portions of an amount deferred are required to be taken into account under paragraph (e)(1) of this section on more than one date (e.g., on account of a graded vesting schedule), then each such portion is considered a separate amount deferred for purposes of this section.

(7) *Examples.* This paragraph (e) is illustrated by the following examples:

Example 1. (i) Employer M establishes a nonqualified deferred compensation plan for Employee A on November 1, 2005. Under the plan, which is an account balance plan, Employee A obtains a legally binding right on the last day of each calendar year (if Employee A is employed on that date) to be credited with a principal amount equal to 5 percent of compensation for the year. In addition, a reasonable rate of interest is credited quarterly. Employee A's account balance is nonforfeitable and is payable upon Employee A's termination of employment. For 2006, the principal amount credited to

Employee A under the plan (which, in this case, is also the amount deferred within the meaning of paragraph (c) of this section) is $25,000.

(ii) Under paragraph (e)(2) of this section, the services creating the right to the $25,000 amount deferred are considered performed as of December 31, 2006, the date on which Employee A has performed all of the services necessary to obtain a legally binding right to the amount deferred. Thus, in accordance with paragraph (e)(1) of this section, the $25,000 amount deferred must be taken into account as of December 31, 2006, which is the later of the date on which services creating the right to the amount deferred are performed or the date on which the right to the amount deferred is no longer subject to a substantial risk of forfeiture.

Example 2. (i) The facts are the same as in *Example 1*, except that the principal amount credited under the plan on the last day of each year (and attributable interest) is forfeited if the employee terminates employment within five years of that date.

(ii) Under paragraph (e)(3) of this section, the determination of whether the right to an amount deferred is subject to a substantial risk of forfeiture is made in accordance with the principles of section 83. Under § 1.83–3(c) of this chapter, a substantial risk of forfeiture generally exists where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance of substantial services. Because Employee A's right to receive the $25,000 principal amount (and attributable interest) is conditioned on the performance of services for five years, a substantial risk of forfeiture exists with respect to that amount deferred until December 31, 2011.

(iii) December 31, 2011, is the later of the date on which services creating the right to the amount deferred are performed or the date on which the right to the amount deferred is no longer subject to a substantial risk of forfeiture. Thus, in accordance with paragraph (e)(1) of this section, the amount deferred (which, pursuant to paragraph (c)(1) of this section, is equal to the $25,000 principal amount credited to Employee A's account on December 31, 2006, plus the interest credited with respect to that principal amount through December 31, 2011) must be taken into account as of December 31, 2011.

Example 3. (i) The facts are the same as in *Example 2*, except that the principal amount credited under the plan on the last day of each year (and attributable interest) becomes nonforfeitable according to a graded vesting schedule under which 20 percent is vested as of December 31, 2007; 40 percent is vested as of December 31, 2008; 60 percent is vested as of December 31, 2009; 80 percent is vested as of December 31, 2010; and 100 percent is vested as of December 31, 2011. Because these dates are later than the date on which the services creating the right to the amount deferred are considered performed (December 31, 2006), the amount deferred is required to be taken into account as of these dates that fall in five different years.

(ii) Paragraph (e)(6) of this section provides that, if different portions of an amount deferred are required to be taken into account under paragraph (e)(1) of this section on more than one date, then each such portion is considered a separate amount deferred for purposes of this section. Thus, $5,000 of the principal amount, plus interest credited through December 31, 2007, is taken into account as an amount deferred on December 31, 2007; $5,000 of the principal amount, plus interest credited through December 31, 2008, is taken into account as a separate amount deferred on December 31, 2008; etc.

Example 4. (i) On November 21, 2001, Employer N establishes a nonqualified deferred compensation plan under which all benefits are 100 percent vested. The plan provides for Employee B (who is age 45) to receive a lump sum benefit of $500,000 at age 65. This benefit will be forfeited if Employee B dies before age 65.

(ii) Because the amount, form, and commencement date of the benefit are known, and the only assumptions needed to determine the amount deferred are interest and mortality, the amount deferred is reasonably ascertainable within the meaning of paragraph (e)(4)(i) of this section on November 21, 2001.

Example 5. (i) The facts are the same as in *Example 4*, except that plan provides that the lump sum will be paid at the later of age 65 or termination of employment and provides that the $500,000 payable to Employee B is increased by 5 percent per year for each year that payment is deferred beyond age 65.

(ii) Because the commencement date of the benefit payment is contingent on when Employee B terminates employment, the commencement date of the benefit payment is not known. Thus, the amount deferred is not reasonably ascertainable within the meaning of paragraph (e)(4)(i) of this section, unless the plan satisfies the requirements of paragraph (c)(2)(iii)(B) of this section. Because the fixed 5 percent factor may not be reasonable at the time benefit payments commence (i.e., 5 percent might be higher or lower than a reasonable interest rate when payments commence), the plan fails to satisfy paragraph (c)(2)(iii)(B) of this section and accordingly the amount deferred is not reasonably ascertainable until termination of employment.

Example 6. (i) The facts are the same as in *Example 4*, except that the $500,000 is payable to Employee B at the later of age 55 or termination of employment.

(ii) Because the commencement date of the benefit payment is contingent on when Employee B terminates employment, the commencement date of the benefit payment is not known. Thus, the amount deferred is not reasonably ascertainable until termination of employment.

Example 7. (i) The facts are the same as in *Example 4*, except that Employee B may elect to take the benefit in the form of a life annuity of $50,000 per year (commencing at age 65).

(ii) Because the plan permits employees to elect to receive benefits in more than one form and the alternative forms may not have the same value when Employee B makes his election, the plan fails to satisfy the requirements of paragraph (c)(2)(iii)(B) of this section until a form of benefit is selected. Thus, the amount deferred is not reasonably ascertainable until then.

Example 8. (i) Employer O establishes a nonqualified deferred compensation plan. The plan is a supplemental executive retirement plan (SERP) that provides Employee C with a fully vested right to receive a pension, in the form of a life annuity payable monthly, beginning at age 65, equal to the excess of 3 percent of Employee C's final 3-year average pay for each year of participation up to 15 years, over the amount payable to Employee C from Employer O's qualified pension plan. The amount payable under the qualified pension plan is a life annuity payable monthly, beginning at age 65, equal to 1.5 percent of final 3-year average pay for each year of employment, excluding pay in excess of the section 401(a)(17) compensation limit. No benefits are payable under the SERP if Employee C dies before age 65. Employee C becomes a participant in the SERP on January 1, 2001, at age 44. The amount deferred under the SERP for any year is not reasonably ascertainable prior to termination of employment because the amount of the benefit is not known and the determination of the amount deferred requires assumptions other than interest and mortality (e.g., an assumption as to Employee C's average pay for the final three years of employment). As permitted by paragraph (e)(4)(i) of this section, Employer O chooses not to take any amount into account for any year before the resolution date. Employee C terminates employment on December 31, 2018 when he is age 62.

(ii) As of the date Employee C terminates employment, the amount of the benefit is known and the only actuarial or other assumptions needed to determine the amount deferred are an interest rate assumption and a mortality assumption. At that time, the amount deferred in each past year becomes reasonably ascertainable, and Employer O is able to determine that during 2001 Employee C earned a legally binding right to a life annuity of $4,000 per year beginning in 2021 when Employee C is age 65. Employer O determines the present value of Employee C's future benefit payments under the SERP as of this resolution date (December 31, 2018), using a 7 percent interest rate and the UP–84 mortality table, which, solely for purposes of this example, are assumed to be reasonable actuarial assumptions for December 31, 2018. The special timing rule will be satisfied if the resulting present value, $26,950, is taken into account on that date in accordance with paragraph (d)(1) of this section.

Example 9. (i) The facts are the same as in *Example 8*, except that the plan provides that Employee C may choose to receive early retirement benefits on an unreduced basis at any time after age 60 if Employee C has completed 15 years of service by that date.

(ii) As of the date Employee C terminates employment, the amount of the benefit is known and the only actuarial or other assumptions needed to determine the amount deferred are an interest rate assumption and a mortality assumption. At that time, the amount deferred in each past year becomes reasonably ascertainable, and Employer O is able to determine that during 2001 Employee C earned a legally binding right to a life annuity of $4,000 per year beginning on

December 31, 2018 when Employee C is age 62. Employer O determines the present value of Employee C's future benefit payments under the SERP as of this resolution date (December 31, 2018), using a 7 percent interest rate and the UP–84 mortality table, which, solely for purposes of this example, are assumed to be reasonable actuarial assumptions for December 31, 2018. The special timing rule will be satisfied if the resulting present value, $37,576, is taken into account on that date in accordance with paragraph (d)(1) of this section.

Example 10. (i) The facts are the same as in *Example 9*, except that, as permitted under paragraph (e)(4)(ii) of this section, Employer O chooses to take an amount into account before the amount deferred for 2001 is reasonably ascertainable. The amount that Employer O takes into account on December 31, 2001, is $13,043 (the present value of a life annuity of $4,000 per year, payable at age 62, using a 6 percent interest rate and the UP–84 mortality table). Employer O does not take any other amount into account before the resolution date.

(ii) In accordance with paragraph (e)(4)(ii)(B) of this section, Employer O must determine any additional amount required to be taken into account in 2018. If the $4,000 payable in the form of a life annuity beginning at age 62 exceeds the life annuity which is actuarially equivalent to the $13,043 previously taken into account, the present value of the excess must be taken into account. In this *Example 10*, the $13,043 previously taken into account is actuarially equivalent to a $4,000 annuity commencing at age 62 using a 6 percent interest rate and the UP–84 mortality table (which, solely for purposes of this example, are assumed to be reasonable actuarial assumptions for December 31, 2001). Accordingly, no additional amount need be taken into account in 2018, regardless of any changes in market rates of interest between 2001 and 2018.

Example 11. (i) The facts are the same as in Example 9, except that, as permitted under paragraph (e)(4)(ii) of this section, Employer O chooses to take an amount into account before the amount deferred for 2001 is reasonably ascertainable. The amount that Employer O takes into account on December 31, 2001, is $9,569 (the present value of a life annuity of $4,000 per year, payable at age 65, using a 6 percent interest rate and the UP–84 mortality table). Employer O does not take any other amount into account before the resolution date.

(ii) In accordance with paragraph (e)(4)(ii)(B) of this section, Employer O must determine any additional amount required to be taken into account in 2018. If the $4,000 payable in the form of a life annuity beginning in 2018 at age 62 exceeds the life annuity which is actuarially equivalent to the $9,569 previously taken into account, the present value of the excess must be taken into account. In this case, the $9,569 previously taken into account is actuarially equivalent to a $2,935 annuity commencing at age 62 using a 6 percent interest rate and the UP–84 mortality table (which, solely for purposes of this example, are assumed to be reasonable actuarial assumptions for December 31, 2001). Accordingly, an additional amount needs to be taken into account in 2018 equal to the present value of the excess of the $4,000 annual stream of benefit payments to which Employee C obtained a legally binding right during 2001 over the $2,935 annual stream of benefit payments which is actuarially equivalent to the amount previously taken into account. This present value (i.e., the present value of a life annuity equal to $4,000 minus $2,935, or $1,065 annually) is determined by Employer O to be $10,005 as of the resolution date using a 7 percent interest rate and the UP–84 mortality table (which, solely for purposes of this example, are assumed to be reasonable actuarial assumptions for December 31, 2018).

Example 12. (i) The facts are the same as in *Example 9*, except that the amount that Employer O takes into account on December 31, 2001, is $15,834 (the present value of $4,000, payable at age 60, using a 6 percent interest rate and the UP–84 mortality table). Employer O does not take any other amount into account before the resolution date.

(ii) In accordance with paragraph (e)(4)(ii)(B) of this section, Employer O must determine any additional amount required to be taken into account in 2018. If the $4,000 payable in the form of a life annuity beginning at age 62 exceeds the life annuity which is actuarially equivalent to the $15,834 previously taken into account, the present value of the excess must be taken into account. In this case, the $15,834 previously taken into account is actuarially equivalent to a $4,856 annuity commencing at age 62 using a 6 percent interest rate and the UP–84 mortality table (which, solely for purposes of this example, are assumed to be reasonable actuarial assumptions for December 31, 2001). Because the life annuity of $4,856 per year (which is equivalent to the amount taken into account at the early inclusion date) exceeds the $4,000 annuity attributable to the amount deferred in 2001, no additional amount is required to be taken into account for that amount deferred as of the resolution date. Employer O may claim a refund or credit for the overpayment of FICA tax with respect to amounts taken into account prior to the resolution date to the extent permitted by sections 6402, 6413, and 6511.

Example 13. (i) The facts are the same as in *Example 12*, except that Employee C became a participant in the SERP on January 1, 2000. In addition, Employer O determines in 2018 that during 2000 Employee C earned a legally binding right to a life annuity of $1,500 per year beginning on December 31, 2018.

(ii) Employer O may allocate the $15,834 previously taken into account among any amounts deferred on or before the early inclusion date. At the resolution date, Employer O will have to take into account the present value of an annuity equal to the excess of the life annuity attributable to the amounts deferred for 2000 and 2001 over a life annuity of $4,856 per year.

Example 14. (i) In 2003, Employer P establishes a nonqualified deferred compensation plan for Employee D. The plan provides that, in consideration of Employee D's services to be performed on Project X in 2004, Employee D will have a nonforfeitable right to receive 1 percent per year of Employer P's net profits associated with Project X for each of the immediately succeeding three years. No services beyond 2004 are required. The 1 percent of net profits payable each year will be paid on March 31 of the immediately succeeding year. One percent of net profits associated with Project X is $750,000 in 2005, $400,000 in 2006, and $90,000 in 2007. Employee D receives $750,000 on March 31, 2006, $400,000 on March 31, 2007, and $90,000 on March 31, 2008.

(ii) Because the services creating the right to all of the amount deferred are performed in 2004, the benefit payments based on the 2005, 2006, and 2007 net profits are all attributable to the amount deferred in 2004. However, because the present value of Employee D's future benefit is contingent on future profits, the determination of the amount deferred requires the use of assumptions other than interest, mortality, and cost of living. Thus, all of the amount deferred in 2004 will not be reasonably ascertainable within the meaning of paragraph (e)(4)(i) of this section until December 31, 2007 (which is the resolution date). Employer P does not choose to take any amount into account prior to the amount deferred becoming reasonably ascertainable.

(iii) However, paragraph (d)(1)(ii)(A) of this section provides that a benefit payment attributable to an amount deferred under a nonqualified deferred compensation plan must be included as wages when actually or constructively paid if the amount deferred has not been taken into account as wages under the special timing rule of paragraph (a)(2) of this section. Thus, the benefit payments in 2006 and 2007 must be included as wages when paid.

(iv) As of December 31, 2007, all of the amount deferred under the plan becomes reasonably ascertainable because the amount of the benefit payable attributable to the amount deferred is treated as known under paragraph (e)(4)(i)(B) of this section, and the only assumption needed to determine the present value of the future benefits is interest. However, since Employer P was required to treat the payments in 2006 and 2007 as wages when paid under the general timing rule of paragraph (a)(1) of this section, only the present value of the payment to be made in 2008 is required to be taken into account as of the resolution date (December 31, 2007) under the special timing rule of paragraph (a)(2) of this section. Using an interest rate of 10 percent per year (which, solely for purposes of this *Example 14*, is assumed to be reasonable), Employer P determines that on December 31, 2007, the present value of the future benefits is $87,881, and Employer P includes that additional amount in wages for 2007. (Note that Employer P can choose to use the lag method of withholding described in paragraph (f)(3) of this section, which allows the resolution date amount to be taken into account no later than March 31, 2008, provided that the amount deferred is increased by interest using the AFR for January of 2008.)

Example 15. (i) The facts are the same as in *Example 14*, except that Employer P

chooses the early inclusion option permitted by paragraph (e)(4)(ii) of this section to take $1,000,000 into account on December 31, 2004, before the amount deferred for 2004 is reasonably ascertainable.

(ii) Pursuant to paragraph (e)(4)(ii)(E) of this section, in applying the nonduplication rule of paragraph (a)(2)(iii) of this section, a first-in-first-out rule applies in determining the benefit payments that are attributable to amounts previously taken into account. Using the 10 percent interest rate, Employer P determines that the $750,000 benefit payment on March 31, 2006, and the March 31, 2007, benefit payment of $400,000 are less than the $1,000,000 taken into account at the early inclusion date, plus attributable income, and, therefore, are not included in wages when paid.

(iii) Under paragraph (e)(4)(ii)(E) of this section, if an employer chooses to take an amount into account before the resolution date, the amount taken into account (plus income attributable to that amount) is disregarded to the extent the amount is attributed to benefit payments made before the resolution date. Thus, Employer P must reduce the $1,000,000 taken into account in 2004 (plus income attributable to that amount) based upon the two benefit payments ($750,000 and $400,000) that were excluded from wages. Using an interest rate of 10 percent, Employer P determines that the amount taken into account in 2004 plus interest to the resolution date and reduced based upon the two benefit payments is $15,228 and the additional amount that is required to be taken into account as of December 31, 2007, is $72,653 ($87,881–$15,228).

Example 16. (i) Employee E obtains a fully vested, legally binding right during 2002, 2003, and 2004 to payments from a nonqualified deferred compensation plan of Employer Q under which the benefits are based on a formula that includes an actuarial offset by the account balance under a qualified defined contribution plan of Employer Q as of December 31, 2004. The payments from the nonqualified deferred compensation plan are to commence on December 31, 2005. At the resolution date for the amounts earned during 2002, 2003, and 2004, which is December 31, 2004, Employee E has a legally binding right to a net annual benefit of $100,000 payable for life to commence on December 31, 2005. On the resolution date, Employer Q determines that on December 31, 2002, Employee E had a legally binding right to receive $100,000 annually for life beginning on December 31, 2005 (as a result of the gross benefit under the nonqualified plan being $120,000 annually for life, and the offset being $20,000 annually for life, as of December 31, 2002). On December 31, 2003, Employee E had a legally binding right to receive $95,000 annually for life beginning on December 31, 2005 (as a result of the gross benefit under the nonqualified plan being $135,000 annually for life, and the offset being $40,000 annually for life, as of December 31, 2003). On December 31, 2004, Employee E had a legally binding right to receive $100,000 annually for life beginning on December 31, 2005 (as a result of the gross benefit under the nonqualified plan being $145,000 annually for life, and the offset being $45,000 annually for life, as of December 31, 2004).

(ii) In this case, pursuant to paragraph (e)(4)(ii)(D)(*4*) of this section, Employer Q can attribute the entire $100,000 life annuity to the amount deferred for 2002, even though Employee E's benefit under the nonqualified deferred compensation plan is reduced to $95,000 in 2003.

Example 17. (i) In 2010, Employee F performs services for which she earns a right to 10 percent of the proceeds from the sale of a motion picture. In 2011, Employee F performs services for which she earns a right to 10 percent of the proceeds from the sale of another motion picture. These proceeds are calculated by subtracting the total advertising expenses for both movies. Payment is to be made in the year following the date on which both pictures have been sold, but not later than 2018. At the end of 2010, the advertising expenses for both pictures totaled $300,000. The first motion picture is sold for $10,000,000 in 2014. The second motion picture is sold for $17,000,000 in 2017. At the end of 2017, the advertising expenses totaled $1,700,000. In 2018, Employee F is paid $2,530,000 (10 percent of the sum of $10,000,000 and $17,000,000 minus $1,700,000).

(ii) Pursuant to paragraph (e)(4)(ii)(D)(*4*) of this section, $970,000 (10 percent of the excess of the gross proceeds from the sale of the first motion picture at the resolution date in 2017 over the advertising expenses incurred at the end of 2010) of the payment made in 2018 can be attributed to the amount deferred in 2010 (and with the remaining payment of $1,560,000 to be attributed to the amount deferred in 2011).

(f) *Withholding*—(1) *In general.* Unless an employer applies an alternative method described in paragraph (f)(2) or (3) of this section, an amount deferred under a nonqualified deferred compensation plan for any employee is treated, for purposes of withholding and depositing FICA tax, as wages paid by the employer and received by the employee at the time it is taken into account in accordance with paragraph (e) of this section. However, paragraphs (f)(2) and (3) of this section provide alternative methods which may be used with respect to an amount deferred for an employee. An employer is not required to be consistent in applying the alternatives described in this paragraph (f) with respect to different employees or amounts deferred.

(2) *Estimated method*—(i) *In general.* Under the alternative method provided in this paragraph (f)(2), the employer may make a reasonable estimate of the amount deferred on the date on which the amount is taken into account in accordance with paragraph (e) of this section and take that estimated amount into account as wages paid by the employer and received by the employee on that date (the estimate date), for purposes of withholding and depositing FICA tax.

(ii) *Underestimate of the amount deferred*—(A) *General rule.* If the employer underestimates the amount deferred (as determined after calculating the actual amount deferred that should have been taken into account as of the date on which the amount was taken into account in accordance with paragraph (e) of this section, using an interest rate and other actuarial assumptions that are reasonable as of that date), the employer may treat the shortfall as wages paid as of the estimate date or as of any date that is no later than three months after the estimate date. In either case, the shortfall does not include the income credited to the amount deferred after the amount is taken into account in accordance with paragraph (e) of this section.

(B) *Shortfall is treated as wages paid on a date after the estimate date.* If the employer chooses to treat the shortfall as wages paid on a date that is no later than three months after the estimate date, the employer must take that shortfall into account as wages paid by the employer and received by the employee on that date, for purposes of withholding and depositing FICA tax.

(C) *Shortfall is treated as wages paid on the estimate date.* If the employer chooses to treat the shortfall as wages paid as of the estimate date, the shortfall is treated as an error for purposes of withholding and depositing FICA tax. Appropriate adjustments may be made in accordance with section 6205(a) and the regulations thereunder; however, for purposes of § 31.6205–1(b), the error need not be treated as ascertained before the date that is three months after the estimate date.

(D) *Reporting.* The employer must report the shortfall as wages on Form 941, Employer's Quarterly Federal Tax Return (and, if applicable, Form 941c, Supporting Statement to Correct Information) and Form W–2, Wage and Tax Statement (or, if applicable, Form W–2c, Corrected Wage and Tax Statement) in accordance with its treatment of the shortfall under paragraph (f)(2)(ii) (B) or (C) of this section.

(iii) *Overestimate of the amount deferred.* If the employer overestimates the amount deferred (as determined after calculating the actual amount deferred that should have been taken into account as of the date on which the amount was taken into account in accordance with paragraph (e) of this section, using an interest rate and actuarial assumptions that are reasonable as of that date) and deposits

more than the amount required, the employer may claim a refund or credit in accordance with sections 6402, 6413, and 6511. A Form 941c, or an equivalent statement, must accompany each claim for refund. In addition, Form W–2 or, if applicable, Form W–2c must also reflect the actual amount deferred that should have been taken into account.

(3) *Lag method.* Under the alternative method provided in this paragraph (f)(3), an amount deferred, plus interest, may be treated as wages paid by the employer and received by the employee, for purposes of withholding and depositing FICA tax, on any date that is no later than three months after the date the amount is required to be taken into account in accordance with paragraph (e) of this section. For purposes of this paragraph (f)(3), the amount deferred must be increased by interest through the date on which the wages are treated as paid, at a rate that is not less than AFR. If the employer withholds and deposits FICA tax in accordance with this paragraph (f)(3), the employer will be treated as having taken into account the amount deferred plus income to the date on which the wages are treated as paid.

(4) *Examples.* This paragraph (f) is illustrated by the following examples:

Example 1. (i) Employer M maintains a nonqualified deferred compensation plan that is an account balance plan. The plan provides for annual bonuses based on current year profits to be deferred until termination of employment. Employer M's profits for 2003, and thus the amount deferred, is reasonably ascertainable, but Employer M calculates the amount deferred on March 3, 2004, when the relevant data is available.

(ii) In accordance with the alternative method described in paragraph (f)(2) of this section, Employer M makes a reasonable estimate that the amount deferred that must be taken into account as of December 31, 2003, for Employee A is $20,000, and withholds and deposits FICA tax on that amount as if it were wages paid by Employer M and received by Employee A on that date. In January of 2004, Employer M files and furnishes Form W–2 for Employee A including the $20,000 in FICA wages. On March 3, 2004, Employer M determines that the actual amount deferred that should have been taken into account on December 31, 2003, was $22,000.

(iii) In accordance with the alternative method described in paragraph (f)(2)(ii) of this section, Employer M may treat the additional $2,000 as wages paid to and received by Employee A on December 31, 2003, the estimate date. Employer M may treat the $2,000 shortfall as an error ascertained on March 3, 2004, and withhold and deposit FICA tax on that amount. Form W–2c for Employee A for 2003 must include the $2,000 shortfall in FICA wages. Employer M must also correct the information on Form 941 for the last quarter of 2003, reporting the adjustment on Form 941 for the first quarter of 2004, accompanied by Form 941c for the last quarter of 2003.

(iv) Instead, Employer M may treat the $2,000 shortfall as wages paid on March 31, 2004, and withhold and deposit FICA tax on that amount as if it were wages paid by Employer M and received by Employee A on that date. Form W–2 for Employee A for 2004 and Form 941 for the first quarter of 2004 must include the $2,000 shortfall in FICA wages.

Example 2. (i) The facts are the same as in *Example 1*, except that on March 3, 2004, Employer M determines that the actual amount deferred that should have been taken into account on December 31, 2003, was $19,000.

(ii) Under paragraph (f)(2)(iii) of this section, Employer M may, in accordance with sections 6402, 6413, and 6511, claim a refund or credit for the overpayment of tax resulting from the overestimate. In addition, Employer M must file and furnish a Form W–2c for Employee A and must correct the information on Form 941 for the last quarter of 2003.

Example 3. (i) The facts are the same as in *Example 1*, except that Employer M does not make a reasonable estimate of the amount deferred that must be taken into account as of December 31, 2003. Instead, Employer M withholds and deposits FICA tax on the amount deferred plus interest on that amount using AFR (for January 2004) as if it were wages paid by Employer M and received by Employee A on March 15, 2004.

(ii) Under the alternative method described in paragraph (f)(3) of this section, the amount taken into account on March 15, 2004 (including the interest), will be treated as FICA wages paid to and received by Employee A on March 15, 2004.

Example 4. (i) The facts are the same as in *Example 1*, except that an amount is also deferred for Employee B which is required to be taken into account on October 15, 2003, and Employer M chooses to use the lag method in paragraph (f)(3) of this section in order to provide time to calculate the amount deferred.

(ii) Employer M may use any date not later than January 15, 2004, to take the amount deferred into account (provided that the amount deferred includes interest, at AFR for January 1, 2003, through December 31, 2003, and at AFR for January 1, 2004, through January 15, 2004).

(g) *Effective date and transition rules*—(1) *General effective date.* Except for paragraphs (g)(2) through (4) of this section, this section is applicable on and after January 1, 2000. Thus, paragraphs (a) through (f) of this section apply to amounts deferred on or after January 1, 2000; to amounts deferred before January 1, 2000, which cease to be subject to a substantial risk of forfeiture on or after January 1, 2000, or for which a resolution date occurs on or after January 1, 2000; and to benefits actually or constructively paid on or after January 1, 2000.

(2) *Reasonable, good faith interpretation for amounts deferred and benefits paid before January 1, 2000*—(i) *In general.* For periods before January 1, 2000 (including amounts deferred before January 1, 2000, and any benefits actually or constructively paid before January 1, 2000, that are attributable to those amounts deferred), an employer may rely on a reasonable, good faith interpretation of section 3121(v)(2), taking into account pre-existing guidance. An employer will be deemed to have determined FICA tax liability and satisfied FICA withholding requirements in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if the employer has complied with paragraphs (a) through (f) of this section. For purposes of paragraphs (g)(2) through (4) of this section, and subject to paragraphs (g)(2)(ii) and (iii) of this section, whether an employer that has not complied with paragraphs (a) through (f) of this section has determined FICA tax liability and satisfied FICA withholding requirements in accordance with a reasonable, good faith interpretation of section 3121(v)(2) will be determined based on the relevant facts and circumstances, including consistency of treatment by the employer and the extent to which the employer has resolved unclear issues in its favor.

(ii) *Plan must be established or adopted.* If an amount is deferred under a plan before January 1, 2000, and benefit payments attributable to that amount are actually or constructively paid on or after January 1, 2000, then in no event will an employer's treatment of the amount deferred be considered to be in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if the employer treats that amount as taken into account as wages for FICA tax purposes prior to the establishment of the plan (within the meaning of paragraph (b)(2) of this section) providing for the deferred compensation (or, if later, the establishment of the plan as amended to provide for the deferred compensation, as provided in paragraph (b)(2)(ii) of this section). If an amount is deferred under a plan before January 1, 2000, and benefit payments attributable to that amount are actually or constructively paid before January 1, 2000, then in no event will the employer's treatment of that amount deferred be considered to be in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if the employer treats that amount as taken into account as wages for FICA tax purposes prior to the adoption of the plan providing for the deferred

compensation (or, if later, the adoption of the plan amendment providing the deferred compensation). For example, awards, bonuses, raises, incentive payments, and other similar amounts granted under a plan as compensation for past services may not be taken into account under section 3121(v)(2) prior to the establishment (or, if applicable, the adoption) of the plan.

(iii) *Certain changes in position for stock options, stock appreciation rights, and other stock value rights not reasonable, good faith interpretation.* In the case of a stock option, stock appreciation right, or other stock value right (as defined in paragraph (b)(4)(ii) of this section) that is exercised before January 1, 2000, an employer that treats the exercise as not subject to FICA tax as a result of the nonduplication rule of section 3121(v)(2)(B) is not acting in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if the employer has not treated that grant and all earlier grants as subject to section 3121(v)(2) by reporting the current value of such options and rights as FICA wages on Form 941 filed for the quarter during which each grant was made (or, if later, for the quarter during which each grant ceased to be subject to a substantial risk of forfeiture).

(3) *Optional adjustments to conform with this section for pre-effective-date open periods*—(i) *General rule.* If an employer determined FICA tax liability with respect to section 3121(v)(2) in any period ending before January 1, 2000, for which the applicable period of limitations has not expired on January 1, 2000 (pre-effective-date open periods), in a manner that was not in accordance with this section, the employer may adjust its FICA tax determination for that period to conform to this section. Thus, if an amount deferred was taken into account in a pre-effective-date open period when it was not required to be taken into account (e.g., an amount taken into account before it became reasonably ascertainable), the employer may claim a refund or credit for any FICA tax paid on that amount to the extent permitted by sections 6402, 6413, and 6511.

(ii) *Consistency required.* In the case of a plan that is not a nonqualified deferred compensation plan (within the meaning of paragraph (b)(1) of this section), if any payment was actually or constructively paid to an employee under the plan in a pre-effective-date open period and that payment was not included in FICA wages by reason of the employer's treatment of the plan as a nonqualified deferred compensation plan, then the employer may claim a refund or credit for FICA tax paid on amounts treated as amounts deferred under the plan (in accordance with the employer's treatment of the plan as a nonqualified deferred compensation plan) for that employee for pre-effective-date open periods only to the extent that the FICA tax paid on all amounts treated as amounts deferred for the employee in all pre-effective-date open periods under the plan exceeds the FICA tax that would have been due on the benefits actually or constructively paid to the employee in those periods under the plan if those benefits were included in FICA wages when paid. If any benefit payments attributable to amounts deferred after December 31, 1993, were actually or constructively paid to an employee under a nonqualified deferred compensation plan (within the meaning of paragraph (b)(1) of this section) in a pre-effective-date open period, but these payments were treated as subject to FICA tax because the employer treated the plan as not being a nonqualified deferred compensation plan, then the employer may claim a refund or credit for the FICA tax paid on those benefit payments only to the extent that the FICA tax paid on those benefit payments exceeds the FICA tax that would have been due on the amounts deferred to which those benefit payments are attributable if those amounts deferred had been taken into account when they would have been required to have been taken into account under this section (if this section had been in effect then).

(iii) *Reporting.* Any employer that adjusts its FICA tax determination in accordance with paragraphs (g)(3)(i) and (ii) of this section must make appropriate adjustments on Form 941 and Form 941c for the affected periods, and, in addition, must file and furnish Form W–2, or, if applicable, Form W–2c, for any affected employee so that the Social Security Administration may correctly post the amount deferred to the employee's earnings record. The adjustments may be made in accordance with section 6205(a) and the regulations thereunder; however, for purposes of § 31.6205–1(b), the error is not required to be treated as ascertained before March 31, 2000.

(4) *Application of reasonable, good faith standard*—(i) *Plans that are not subject to section 3121(v)(2).* If a plan is not a nonqualified deferred compensation plan within the meaning of paragraph (b)(1) of this section, but, for a period ending prior to January 1, 2000, and, pursuant to a reasonable, good faith interpretation of section 3121(v)(2), an amount under the plan was taken into account (within the meaning of paragraph (d)(1) of this section) as an amount deferred under a nonqualified deferred compensation plan, then, pursuant to paragraph (g)(2) of this section, the following rules shall apply—

(A) With respect to benefit payments actually or constructively paid before January 1, 2000, that are attributable to amounts previously taken into account under the plan, no additional FICA tax will be due;

(B) On or after January 1, 2000, benefit payments under the plan must be taken into account as wages when actually or constructively paid in accordance with paragraph (a)(1) of this section; and

(C) To the extent permitted by paragraph (g)(3) of this section, the employer may claim a refund or credit for FICA tax actually paid on amounts taken into account prior to January 1, 2000.

(ii) *Plans that are subject to section 3121(v)(2) for which the amount deferred has not been fully taken into account*—(A) *In general.* The rules of paragraphs (g)(4)(ii)(B) through (E) of this section apply if a plan is a nonqualified deferred compensation plan (within the meaning of paragraph (b)(1) of this section) and, with respect to an amount deferred under the plan for an employee prior to January 1, 2000, the employer, in accordance with a reasonable, good faith interpretation of section 3121(v)(2), either took into account an amount that is less than the amount that would have been required to be taken into account if paragraphs (a) through (f) of this section had been in effect for that period or took no amount into account. Thus, paragraphs (g)(4)(ii)(B) through (E) of this section apply both to an employer that treated the plan as if it were not a nonqualified deferred compensation plan within the meaning of section 3121(v)(2) (by withholding and paying FICA tax due on benefits actually or constructively paid under the plan during that period, if any) and to an employer that treated the plan as a nonqualified deferred compensation plan within the meaning of section 3121(v)(2).

(B) *No additional tax required.* Pursuant to paragraph (g)(2) of this section, no additional FICA tax will be due for any period ending prior to January 1, 2000.

(C) *General timing rule applicable.* In accordance with paragraph (d)(1)(ii) of this section, except as provided in paragraphs (g)(4)(ii) (D) and (E), the general timing rule described in paragraph (a)(1) of this section applies to benefits actually or constructively paid on or after January 1, 2000, attributable to an amount deferred in a period before January 1, 2000, to the

extent the amount taken into account was less than the amount that would have been required to be taken into account if paragraphs (a) through (f) of this section had been in effect before January 1, 2000.

(D) *Special rule for amounts deferred before 1994.* The difference between the amount that was taken into account in any period ending prior to January 1, 1994, and the amount that would have been required or permitted to be taken into account in that period if paragraphs (a) through (f) of this section had been in effect is treated as if it had been taken into account within the meaning of paragraph (d)(1) of this section. For example, in the case of an amount deferred before 1994 that was not reasonably ascertainable (and which was not subject to a substantial risk of forfeiture), the employer is treated as if it had anticipated the actual amount, form, and commencement date for the benefit payments attributable to the amount deferred and had taken the amount deferred into account at an early inclusion date before 1994 using a method permitted under this section. Thus, with respect to such an amount deferred, the employer is not required to take any additional amount into account when the amount deferred becomes reasonably ascertainable, and no additional FICA tax will be due when the benefit payments attributable to the amount deferred are actually or constructively paid.

(E) *Special rule for amounts required to be taken into account in 1994 or 1995.* In the case of an amount deferred that would have been required to be taken into account in 1994 or 1995 if paragraphs (a) through (f) of this section had been in effect, an employer will be treated as taking the amount deferred into account under paragraph (d)(1) of this section to the extent the employer takes the amount into account by treating it as wages paid by the employer and received by the employee as of any date prior to April 1, 2000.

(iii) *Plans that are subject to section 3121(v)(2) for which more than the amount deferred has been taken into account.* If a plan is a nonqualified deferred compensation plan (within the meaning of paragraph (b)(1) of this section) and an amount was taken into account under the plan for an employee before January 1, 2000, in accordance with a reasonable, good faith interpretation of section 3121(v)(2), but that amount could not have been taken into account before January 1, 2000, if paragraphs (a) through (f) of this section had been in effect then, the following rules apply—

(A) The determination of the amount deferred for any period beginning on or after January 1, 2000, must be made in accordance with paragraph (c) of this section, and the time when amounts deferred under the plan are required to be taken into account must be determined in accordance with paragraph (e) of this section, without regard to any such amount that was taken into account for any period ending before January 1, 2000; and

(B) To the extent permitted by sections 6402, 6413, and 6511, the employer may claim a refund or credit for an overpayment of tax caused by the overinclusion of wages that occurred before January 1, 2000.

(5) *Examples.* This paragraph (g) is illustrated by the following examples:

Example 1. (i) In 1996, Employer M establishes a nonqualified deferred compensation plan that is a nonaccount balance plan for Employee A. All benefits under the plan are 100 percent vested. In order to determine the amount deferred on behalf of Employee A under the plan for 1996 and 1997, Employer M must make assumptions as to the date on which Employee A will retire and the form of benefit Employee A will elect, in addition to interest, mortality, and cost-of-living assumptions. Based on assumptions made with respect to all of these contingencies, Employer M determines that the amount deferred for 1996 is $50,000 and the amount deferred for 1997 is $55,000. In 1996 and 1997, Employee A's total wages (without regard to the amounts deferred) exceed the OASDI wage bases. Employer M withholds and deposits HI tax on the $50,000 and $55,000 amounts. Employee A does not retire before January 1, 2000. Employer M chooses under paragraph (g)(3) of this section to apply this section to 1996 and 1997 before the January 1, 2000, general effective date.

(ii) Under this section, the amounts deferred in 1996 and 1997 are not reasonably ascertainable (within the meaning of paragraph (e)(4)(i) of this section) before January 1, 2000. Thus, as long as the applicable period of limitations has not expired for the periods in 1996 and 1997, Employer M may, to the extent permitted under paragraph (g)(3) of this section, apply for a refund or credit for the HI tax paid on the amounts deferred for 1996 and 1997 and, in accordance with paragraph (e)(4) of this section, take into account the amounts deferred when they become reasonably ascertainable.

Example 2. (i) Employer N adopts a plan on January 1, 1994, that covers Employee B, who has 10 years of service as of that date. The plan provides that, in consideration of Employee B's outstanding services over the past 10 years, Employee B will be paid a $500,000 lump sum distribution upon termination of employment at any time. On January 15, 1996, Employee B terminates employment with Employer N. Employer N determines, based on a reasonable, good faith interpretation of section 3121(v)(2), that the plan is a nonqualified deferred compensation plan under that section. Employer N treats the $500,000 as having been taken into account as an amount deferred in 1993 and earlier years.

(ii) Under paragraph (g)(2)(ii) of this section, if all amounts are deferred and all benefits are paid under a plan before January 1, 2000, then in no event will an employer's treatment of amounts deferred under the plan be considered to be in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if the employer treats these amounts as taken into account as wages for FICA tax purposes prior to the adoption of the plan. Accordingly, Employer N's treatment is not in accordance with a reasonable, good faith interpretation of section 3121(v)(2) because Employer N treated amounts as taken into account in years before the adoption of the plan. As a result, the payment made to Employee B in 1996 was subject to both the OASDI and HI portions of FICA tax when paid.

Example 3. (i) Employer O adopts a bonus plan on December 1, 1993, that becomes effective and legally binding on January 1, 1994. Under the plan, which is not set forth in writing, a specified bonus amount (which is 100 percent vested) is credited to Employee C's account each December 31. A reasonable rate of interest on Employee C's account balance is credited quarterly. Employee C's account balance will begin to be paid in equal annual installments over 10 years beginning on January 1, 2000. Employer O determines, based on a reasonable, good faith interpretation of section 3121(v)(2), that the bonus plan is a nonqualified deferred compensation plan under that section and, therefore, treats the amounts credited from January 1, 1994, through December 31, 1999, as amounts deferred and, in accordance with a reasonable, good faith interpretation of section 3121(v)(2), takes those amounts deferred into account as wages for FICA tax purposes as of those dates. The bonus plan is set forth in writing on May 1, 1999, and, thus, is treated as established as of January 1, 1994.

(ii) Under paragraph (g)(2)(ii) of this section, if an amount is deferred before January 1, 2000, and the attributable benefit is paid on or after January 1, 2000, then in no event will an employer's treatment of the amount deferred under a plan be considered to be in accordance with a reasonable, good faith interpretation of section 3121(v)(2) if the employer treats the amount deferred as taken into account as wages for FICA tax purposes prior to the establishment of the plan (within the meaning of paragraph (b)(2) of this section). Because the bonus plan is treated as established on January 1, 1994 (pursuant to the transition rule for unwritten plans in paragraph (b)(2)(iii) of this section), and because Employer O, in accordance with a reasonable, good faith interpretation of section 3121(v)(2), took amounts deferred into account in 1994 through 1999, the amounts paid to Employee C attributable to those amounts deferred will not be subject to FICA tax when paid.

Example 4. (i) In 1985, Employer P establishes a compensation arrangement for Employee D that provides for a lump sum

payment to be made after termination of employment but the arrangement is not a nonqualified deferred compensation plan (within the meaning of paragraph (b)(1) of this section). However, prior to January 1, 2000, and in accordance with a reasonable, good faith interpretation of section 3121(v)(2), Employer P treats the arrangement as a nonqualified deferred compensation plan under section 3121(v)(2). Employer P determines that Employee D's total wages (without regard to the amount deferred) for each year from 1985 through 1993 exceed the applicable OASDI and HI wage bases for each of those years and, consequently, there is no FICA tax liability with respect to the amounts deferred for those years. In 1994, Employee D's total wages (without regard to the amount deferred) exceed the OASDI wage base. However, because there is no limit on the HI wage base, the amount deferred for 1994 results in additional HI tax liability of $290, which is timely paid by Employer P.

(ii) Employee D terminates employment with Employer P in 1995 and receives a plan payment of $50,000. In that year, Employee D also receives wages of $60,000 from Employer P. In accordance with its treatment of the plan as a nonqualified deferred compensation plan under section 3121(v)(2), Employer P does not treat the $50,000 payment in 1995 as wages for FICA tax purposes in that year.

(iii) Because amounts under a plan were taken into account (within the meaning of paragraph (d)(1) of this section) as amounts deferred under a nonqualified deferred compensation plan pursuant to a reasonable, good faith interpretation of section 3121(v)(2)(A), but that plan is not a nonqualified deferred compensation plan within the meaning of paragraph (b)(1) of this section, the transition rules provided in paragraph (g)(4)(i) of this section apply. Thus, no additional FICA tax will be due on the benefits paid in 1995.

(iv) Because $290 of HI tax was paid on the amount deferred in 1994, Employer P is entitled to a refund or credit for that amount to the extent permitted under sections 6402, 6413, and 6511—but only to the extent that $290 exceeds the FICA tax that would have been due on the $50,000 payment in 1995 if that payment had been subject to FICA tax when paid (i.e., if paragraphs (a) through (f) of this section had been effective for those years). In 1995, Employee D had other wages of $60,000. Thus, only $1,200 (the $61,200 OASDI wage base, less the $60,000 of other wages) of the $50,000 payment would have been subject to OASDI; the full $50,000 would have been subject to HI. This would have resulted in $148.80 of OASDI tax ($1,200 x 12.4 percent) and $1,450 of HI tax ($50,000 x 2.9 percent). Employer P is not entitled to a refund or credit under the consistency rule of paragraph (g)(3)(ii) because the $290 of HI tax paid in 1994 is less than the total $1,598.80 of FICA tax liability that would have resulted if this section had applied for 1995.

(v) However, if the benefit payment is instead actually or constructively paid on or after January 1, 2000, the benefit payment must be taken into account as wages when actually or constructively paid in accordance with the general timing rule of paragraph (a)(1) of this section (and paragraph (g)(4)(i)(B) of this section).

Example 5. (i) In 1985, Employer Q establishes a compensation arrangement for Employee E that is a nonqualified deferred compensation plan within the meaning of paragraph (b)(1) of this section. However, prior to January 1, 2000, Employer Q determines, based on a reasonable, good faith interpretation of section 3121(v)(2), that the arrangement is not a nonqualified deferred compensation plan within the meaning of that section. Thus, when Employee E retires at the end of 1996 and benefit payments under the arrangement begin in 1997, Employer Q withholds and deposits FICA tax on the amounts paid to Employee E. Payments under the arrangement continue on or after January 1, 2000. Employer Q does not choose (under paragraph (g)(3) of this section) to adjust its FICA tax determination for a pre-effective-date open period by treating this section as in effect for all amounts deferred and benefits actually or constructively paid for any such period. The periods in 1994 and 1995 are not pre-effective-date open periods for Employer Q.

(ii) Under paragraph (g)(4)(ii) of this section, for purposes of determining whether benefits actually or constructively paid on or after January 1, 2000, were previously taken into account for purposes of applying the nonduplication rule of section 3121(v)(2)(B), any amount that would have been required to have been taken into account before 1994 will be treated as if it had been taken into account within the meaning of paragraph (d)(1) of this section. Under the nonduplication rule, benefit payments attributable to an amount that has been so treated as taken into account is not treated as wages for FICA tax purposes at any later time (such as upon payment).

(iii) Because Employer Q does not adjust its FICA tax determination by treating this section as in effect for all amounts deferred for periods ending after December 31, 1993, any benefit payments attributable to amounts deferred in periods ending after December 31, 1993, will be included in wages when actually or constructively paid in accordance with the general timing rule of paragraph (a)(1) of this section.

Example 6. (i) The facts are the same as in *Example 5*, except that Employer Q chooses (in accordance with paragraph (g)(3) of this section) to adjust its FICA tax determination for all pre-effective-date open periods by treating this section as in effect for all amounts deferred for those periods. In addition, Employer Q chooses (in accordance with paragraph (g)(4)(ii)(E) of this section) to take the amounts deferred for 1994 and 1995 into account by treating these amounts as FICA wages paid and received by Employee E on January 15, 2000.

(ii) In accordance with the nonduplication rule of paragraph (a)(2)(iii) of this section, because all amounts deferred for Employee E under the plan were taken into account (or treated as taken into account), any benefit payments made to Employee E under the plan will not be included as FICA wages when actually or constructively paid.

Example 7. (i) The facts are the same as in Example 5, except that Employer Q does not withhold and deposit the FICA tax due on benefits actually or constructively paid before January 1, 2000.

(ii) Because Employer Q did not withhold and deposit the FICA tax due on benefits actually or constructively paid before January 1, 2000, Employer Q did not determine FICA tax liability and satisfy FICA tax withholding requirements in accordance with a reasonable, good faith interpretation of section 3121(v)(2). Thus, the transition rules provided in paragraphs (g)(3) and (4) of this section do not apply. As a result, any amount that would have been required to have been taken into account under this section before 1994 is not treated as if it had been so taken into account under paragraph (g)(4)(ii)(D) of this section, and benefit payments attributable to amounts deferred before January 1, 2000, are treated as FICA wages when actually or constructively paid in accordance with the general timing rule of paragraph (a)(1) of this section.

Example 8. (i) In 1993, Employer R establishes a nonqualified deferred compensation plan for Employee F under which Employee F will have a fully vested right to receive a lump sum payment in 2000 equal to 50 percent of Employee F's highest rate of salary. On December 31, 1993, Employee F's highest salary is $1 million. In accordance with a reasonable, good faith interpretation of section 3121(v)(2), Employer R determines that, for 1993, there is an amount deferred that must be taken into account as wages for FICA tax purposes. Based Employer R's estimate that Employee F's highest salary will be $3 million in 2000, Employer R determines that the amount deferred is equal to the present value in 1993 of $1.5 million payable in 2000. However, because Employee F has other wages in 1993 that exceed the applicable OASDI and HI wage bases for that year, no additional FICA tax is paid as a result of that amount deferred being taken into account for 1993. In addition, Employer R takes no amounts into account under the plan after 1993 for Employee F. Under paragraphs (e)(1) and (4)(ii)(D)(*2*) of this section, the largest amount that could have been taken into account in 1993 is the present value of a lump sum payment of $500,000, payable in 2000, because that is the maximum amount to which Employee R has a legally binding right as of December 31, 1993. Employee F's highest salary is, in fact, $3 million in 2000 and Employee F receives $1.5 million under the plan on December 31, 2000.

(ii) In accordance with paragraphs (g)(1) and (4)(iii)(A) of this section, the determination of the amount deferred under the plan for any period beginning on or after January 1, 2000, and the time when that amount deferred is required to be taken into account must be determined in accordance with this section. In addition, these determinations must be made without regard to any amount deferred that was taken into account for any period ending before January 1, 2000, that could not be taken into account before January 1, 2000, if paragraphs (a) through (f) of this section had been in effect. Because no FICA tax was actually paid on

that $1 million in 1993, no overpayment of tax was caused by the overinclusion of wages in 1993 and, thus, Employer R is not entitled to a refund or credit (even assuming that the period of limitations has been kept open for periods in 1993). In addition, because the difference between the present value of the $1.5 million payment and the present value of a $500,000 payment was not taken into account for periods beginning on or after January 1, 1994, $1 million must be included in FICA wages under the general timing rule when paid.

§ 31.3121(v)(2)–2 Effective dates and transition rules.

(a) *General statutory effective date.* Except as otherwise provided in paragraphs (b) through (e) of this section, section 3121(v)(2) and the amendments made to section 3121(a)(2), (a)(3), and (a)(13) by the Social Security Amendments of 1983 (Pub. L. 98–21, 97 Stat. 65), as amended by section 2662(f)(2) of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 494), apply to amounts deferred and benefits paid after December 31, 1983.

(b) *Definitions.* For purposes of § 31.3121(v)(2)–1 and this section, the following definitions apply:

(1) *FICA. FICA* means the Federal Insurance Contributions Act (26 U.S.C. 3101 *et seq.*).

(2) *457(a) plan. A 457(a) plan* means an eligible deferred compensation plan of a State or local government or of a tax-exempt organization to which section 457(a) applies.

(3) *Gap agreement. Gap agreement* means an agreement adopted after March 24, 1983, and on or before December 31, 1983, between an individual and a nonqualified deferred compensation plan within the meaning of § 31.3121(v)(2)–1(b). Such an agreement does not fail to be a gap agreement merely because the terms of the plan are changed after December 31,1983.

(4) *Individual party to a gap agreement. Individual party to a gap agreement* means an individual who was eligible to participate in a gap agreement on December 31, 1983, under the terms of the agreement on that date. An individual will be treated as an individual party to a gap agreement even if the individual has not accrued any benefits under the plan by December 31, 1983, and regardless of whether the individual has taken any specific action to become a party to the agreement. However, an individual who becomes eligible to participate in a gap agreement after December 31, 1983, is not an individual party to a gap agreement.

(5) *Individual party to a March 24, 1983 agreement. Individual party to a March 24, 1983 agreement* means an individual who was eligible to participate in a March 24, 1983 agreement under the terms of the agreement on March 24, 1983. An individual will be treated as an individual party to a March 24, 1983 agreement even if the individual has not accrued any benefits under the plan by March 24, 1983, and regardless of whether the individual has taken any specific action to become a party to the agreement. However, an individual who becomes eligible to participate in a March 24, 1983 agreement after March 24, 1983, is not an individual party to a March 24, 1983 agreement.

(6) *March 24, 1983 agreement. March 24, 1983 agreement* means an agreement in existence on March 24, 1983, between an individual and a nonqualified deferred compensation plan within the meaning of § 31.3121(v)(2)–1(b). Such an agreement does not fail to be a March 24, 1983 agreement merely because the terms of the plan are changed after March 24, 1983. In addition, for purposes of this paragraph (b)(6) only, any plan (or agreement) that provides for payments that qualify for one of the retirement payment exclusions is treated as a nonqualified deferred compensation plan. For example, § 31.3121(v)(2)–1(b)(4)(v) provides that certain benefits established in connection with impending termination do not result from the deferral of compensation and thus are not considered deferred under a nonqualified deferred compensation plan. However, a plan that provides such benefits and that was in existence on March 24, 1983, is treated as a nonqualified deferred compensation plan for purposes of this paragraph (b) to the extent it provides benefits that would have satisfied one of the retirement payment exclusions.

(7) *Retirement payment exclusions. Retirement payment exclusions* are the exclusions from wages (for FICA tax purposes) for retirement payments under section 3121(a)(2)(A), (a)(3), and (a)(13)(A)(iii), as in effect on April 19, 1983 (the day before enactment of the Social Security Amendments of 1983).

(8) *Transition benefits. Transition benefits* are payments made after December 31, 1983, attributable to services rendered before January 1, 1984. For this purpose, transition benefits are determined without regard to any changes made in the terms of the plan after March 24, 1983, in the case of a March 24, 1983 agreement or after December 31, 1983, in the case of a gap agreement.

(c) *Transition rules*—(1) *In general.* Except as provided in paragraph (c)(2) or (3) of this section, the general statutory effective date described in paragraph (a) of this section applies to benefit payments after December 31, 1983. Thus, except as provided in paragraph (c)(2) or (3) of this section, section 3121(v)(2) applies, and the retirement payment exclusions do not apply, to benefit payments made after December 31, 1983, even if the benefit payments are made under a March 24, 1983 agreement or a gap agreement.

(2) *Transition benefits under a March 24, 1983 agreement.* With respect to an individual party to a March 24, 1983 agreement, transition benefits paid under that March 24, 1983 agreement (except for those paid under a 457(a) plan) are not subject to the special timing rule of section 3121(v)(2) and are subject to section 3121(a) as in effect on April 19, 1983. Thus, transition benefits under a March 24, 1983 agreement (except for those under a 457(a) plan) to an individual party to a March 24, 1983 agreement are excluded from wages (for FICA tax purposes) only if they qualify for any of the retirement payment exclusions (or any other exclusion provided under section 3121(a) as in effect on April 19, 1983).

(3) *Transition benefits under a gap agreement.* With respect to an individual party to a gap agreement, the payor of transition benefits under the gap agreement must choose to either—

(i) Take the transition benefits into account as wages when paid; or

(ii) Take the amount deferred (within the meaning of § 31.3121(v)(2)–1(c)) with respect to the transition benefits into account as wages under section 3121(v)(2) (as if section 3121(v)(2) had applied before its general statutory effective date).

(d) *Determining transition benefit portion.* For purposes of determining the portion of total benefits under a nonqualified deferred compensation plan that represents transition benefits, if, under the terms of the plan, benefit payments are not attributed to specific years of service, the employer may use any reasonable method. For example, if a plan provides that the employee will receive benefits equal to 2 percent of high 3-year average compensation multiplied by years of service, and the employee retires after 25 years of service, 9 of which are before 1984, the employer may determine that 9/25 of the total benefit payments to be received beginning in 2000 are transition benefits attributable to services performed before 1984.

(e) *Order of payment.* If an employer determines, in accordance with paragraph (d) of this section, that a portion of the total benefits under a

nonqualified deferred compensation plan constitutes transition benefits, then, for purposes of determining the portion of each benefit payment that constitutes transition benefits, the employer must treat each benefit payment as consisting of transition benefits in the same proportion as the transition benefits that have not been paid (as of January 1, 2000) bear to total benefits that have not been paid (as of January 1, 2000), unless such allocation is inconsistent with the terms of the plan. However, for a benefit payment made before January 1, 2000, the employer may use any reasonable allocation method to determine the portion of a payment that consists of transition benefits, provided that the allocation method is consistent with the terms of the plan.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In § 602.101, paragraph (c) is amended by adding the following entry in the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
31.3121(v)(2)–1	1545–1643
. . . . .	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 23, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–1663 Filed 1–28–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA 34–2–9902a; FRL–6227–7]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to Georgia State Implementation Plan; Vehicle Inspection/Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim rule.

SUMMARY: EPA is approving the enhanced Inspection/Maintenance (I/M) program for the State of Georgia. The program had initially been given conditional interim approval under the terms of section 110 of the Clean Air Act (CAA) and section 348 of the National Highway Systems Designation Act (NHSDA), as noted in EPA's final conditional interim rule action in the August 11, 1997, **Federal Register**. Due to delays in implementing Phase 2 of the program, the Georgia enhanced I/M program had been disapproved on March 11, 1998, which triggered an eighteen month clock prior to the imposition of sanctions. This approval action also serves to stop the sanctions clock.

DATES: This final interim rule is effective March 30, 1999 without further notice, unless EPA receives adverse comment by March 1, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the final interim rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Contact Scott Martin 404–562–9036. Reference file Georgia 34–2–9902.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin at 404–562–9036 or for information regarding the I/M program contact Dale Aspy at 404–562–9041.

SUPPLEMENTARY INFORMATION:

I. Background

On December 13, 1996 (61 FR 65496), EPA published a notice of proposed rulemaking (NPR) for the State of Georgia. The NPR proposed conditional interim approval of Georgia's enhanced I/M program, for the Atlanta ozone nonattainment area, submitted to satisfy the applicable requirements of both the CAA and the NHSDA. The formal SIP revision, which was submitted by the Georgia Environmental Protection Division (EPD) on March 27, 1996, contained plans to implement the program in two phases. The plan for Phase 1 described how the program would be expanded from the four counties in the previous program to the 13 ozone nonattainment counties. Phase 1 also implemented a two speed idle (TSI) test and a gas cap pressure check for all vehicles that were subject to an emissions inspection. The implementation of Phase 2 requires an acceleration simulation mode (ASM) test for vehicles older than six model years, while newer vehicles continue to be subject to the TSI test. Phase 2 also implements minor changes in emission testing software. It was proposed the program be conditionally approved because it lacked ASM test method specifications and a requirement to implement the program in a timely manner. Subsequently, on January 31, 1997, the Georgia EPD submitted the necessary ASM test method, satisfying one of the conditions for program approval. These specifications were largely based upon EPA's specifications for the ASM test. Therefore, on August 11, 1997 (62 FR 42916) EPA noted the test specifications condition of the December 13, 1996, proposal was met and removed, and final conditional interim approval was given to the program, contingent upon a timely start-up. The Georgia EPD began implementation of the I/M program as scheduled and had met all program milestones at the time the final conditional interim approval was published on August 11, 1997. However, problems were encountered when mandatory ASM testing began as scheduled on October 1, 1997. There were an insufficient number of stations capable of performing ASM testing due to a lack of test equipment and also other hardware and software problems. Due to the continued inability of equipment vendors to supply a sufficient number of stations with approved ASM equipment and Phase 2 software, the State passed an emergency rule on November 15, 1997, effective on the same day, that temporarily

suspended mandatory ASM testing, but encouraged it as an option through an incentive program for testing stations. The two speed idle test continued to be the emissions test used to ultimately pass or fail a vehicle in the program. Because numerous problems were indicated by preliminary software testing, and additional time was required to resolve these problems, on March 25, 1998, the State adopted a rule which extended the use of the two speed idle test until as late as January 1, 1999. This rule became effective on April 15, 1998. However, the State indicated to EPA that it would resume ASM testing earlier, if sufficient capability existed to minimize testing waiting times. As a result of this delay in fully implementing the program, EPA sent a letter to the State on March 11, 1998, indicating that the conditional approval had converted to a disapproval pursuant to the terms of the conditional approval, with respect to the full start-up of the program. This letter had the effect of staying the 18 month evaluation clock under the NHSDA during the disapproval time period. The Georgia EPD subsequently determined there would be sufficient testing capability to minimize waiting times before the January 1, 1999 date. Therefore, on August 26, 1998, the State adopted rules, which became effective on October 1, 1998, that moved the resumption of mandatory ASM testing to October 1, 1998. Subsequently, on October 1, 1998, mandatory ASM testing of vehicles older than six model years resumed. EPA was notified of this occurrence via letter on November 4, 1998.

EPA has the authority to reapprove the SIP based on the letter from the State of Georgia without further SIP submission as the SIP has not been changed. The program, as described in the above referenced **Federal Register** documents, has been implemented.

As noted in the August 11, 1997 **Federal Register** document referenced above, the term of the interim approval of the Georgia I/M program was set to expire on February 11, 1999 as per the NHSDA requirements. However, the March 11, 1998 letter stayed that clock until the program was reapproved. Therefore, interim rulemaking will now expire on November 11, 1999. A full approval of Georgia's final I/M SIP revision is still necessary under section 110 and under section 182, 184 or 187 of the CAA. After EPA reviews Georgia's submitted enhanced I/M program evaluation and regulations, final rulemaking on the State's full SIP revision will occur.

Additional detailed discussion of the Georgia enhanced I/M SIP and the rationale for EPA's action are explained in the proposal notice published December 13, 1996, at 61 CFR 65496–65504 and in the final conditional interim approval notice published on August 11, 1997, at 62 FR 42916–42918 and will not be restated here.

II. Final Action

EPA is giving final interim approval to the Georgia I/M program because it is consistent with the CAA and Agency requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective March 30, 1999 without further notice unless the Agency receives adverse comments by March 1, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on March 30, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically

significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866 and it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 30, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.582 is amended by adding paragraph (c) to read as follows:

§ 52.582 Control Strategy: Ozone.

* * * * *

(c) EPA is giving final interim approval to the Georgia Inspection and Maintenance (I/M) Program submitted on March 27, 1996, with supplemental information submitted on January 31, 1997, until November 11, 1999.

* * * * *

[FR Doc. 99–2194 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6227–5]

RIN 2060–AE04

National Emission Standards for Hazardous Air Pollutants From Secondary Lead Smelting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This action corrects the national emission standards for hazardous air pollutants (NESHAP) for new and existing secondary lead smelters. Specifically, the compliance date is corrected to December 23, 1997, and a 5-year Title V permitting deferral for non-major sources is reinstated.

DATES: *Effective Date:* January 29, 1999.

Judicial Review. Under section 307(b)(1) of the Act, judicial review of a NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of the publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket No. A–92–43, containing information considered by the EPA in development of the promulgated standards, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street, SW, Washington, DC 20460; telephone (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavender, Metals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541–2364.

SUPPLEMENTARY INFORMATION:

I. Overview

The EPA promulgated the NESHAP for new and existing secondary lead smelters on June 23, 1995 (60 FR 32587). The compliance date was set at June 23, 1997. On December 12, 1996 (61 FR 65334), the EPA extended the compliance date to December 23, 1997. On June 13, 1997, the EPA amended the rule, and inadvertently reset the compliance date to June 23, 1997. This action corrects the compliance date to December 23, 1997, as extended in the December 12, 1996 amendment to the rule.

On June 3, 1996, a 5-year Title V permitting deferral for area sources was added (61 FR 27785). Again, when the rule was amended on June 13, 1997, the deferral was inadvertently removed. This action reinstates the 5-year Title V permitting deferral for area sources.

II. Administrative Requirements

The Administrative Procedure Act

Consistent with section 553(b) of the Administrative Procedure Act (APA), the EPA has found good cause that notice and an opportunity to comment on this action is unnecessary because this action merely corrects a typographical error and would not benefit from public comment. In addition, the EPA has found good cause under APA section 553(d)(3) for waiving the APA's 30-day delay in effectiveness as to this final rule. It is important that this minor correction becomes effective immediately because it corrects a regulatory requirement that is currently applicable to affected facilities.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docket system is intended to allow members of the public and affected industries to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the background information documents (BIDs) and preambles to the proposed and promulgated standards, the contents of the docket, excluding interagency review materials, will serve as the official record in case of judicial review (section 307(d)(7)(A) of the Act).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The EPA has determined that this correction to the final rule is not a "significant regulatory action" under the terms of the Executive Order and is therefore not subject to OMB review.

Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's correction does not create a mandate on State, local or tribal governments. The correction does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this correction.

Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This action will not impose any new information collection requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a screening analysis indicates a regulation will have a significant economic impact on a substantial number of small entities. This action will not result in increased economic impacts to small entities.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This action does not involve technical standards.

Protection of Children from Environmental Health Risks and Safety Risk Under Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to E.O. 13045 because it is not economically significant, nor does it involve decisions based on environmental health or safety risks.

List of Subjects in 40 CFR Part 63

Environmental protection, Compliance dates, Secondary lead smelters.

Dated: January 22, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 63.541 is amended by adding paragraph (c) to read as follows:

§ 63.541 Applicability.

* * * * *

(c) The owner or operator of any source subject to the provisions of this subpart X is subject to title V permitting requirements. These affected sources, if not major or located at major sources as defined under 40 CFR 70.2, may be deferred by the applicable title V permitting authority from title V permitting requirements for 5 years after the date on which the EPA first approves a part 70 program (i.e., until December 9, 1999). All sources receiving deferrals shall submit title V permit applications within 12 months of such date (by December 9, 2000). All sources receiving deferrals still must meet the compliance schedule as stated in § 63.546.

3. Section 63.546 is amended by revising paragraph (a) as follows:

§ 63.546 Compliance dates.

(a) Each owner or operator of an existing secondary lead smelter shall achieve compliance with the requirements of this subpart no later than December 23, 1997. Existing sources wishing to apply for an extension of compliance pursuant to section § 63.6(i) of this part must do so no later than June 23, 1997.

* * * * *

[FR Doc. 99–2196 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300772; FRL–6050–6]

RIN 2070–AB78

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues or residues of azoxystrobin or methyl (E)-2-[2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl]-3-methoxyacrylate) and its Z isomer in or on strawberries. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on strawberries in Florida. This regulation establishes a maximum permissible level for residues of Azoxystrobin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on July 30, 2000.

DATES: This regulation is effective January 29, 1999. Objections and requests for hearings must be received by EPA on or before March 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300772], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300772], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300772]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline E. Gwaltney, Registration Division (7505C), Office of

Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-6792, e-mail: Gwaltney.Jackie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues or residues of the fungicide azoxystrobin and its Z isomer, in or on strawberry at 0.05 part per million (ppm). This tolerance will expire and is revoked on July 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Azoxystrobin on Strawberry and FFDCA Tolerances

The Florida Department of Agriculture and Consumer Services requested an emergency exemption on September 28, 1998 for the control of anthracnose on strawberries. Anthracnose adversely affect the plants in a variety of ways. It can cause plant losses (crown rot, root rot, anthracnose of the stolon and petiole, but rot, and leaf spots) and fruit losses (anthracnose fruit rot and flower blight).

The two factors that have brought about this emergency condition include variety shift and lack of efficacy of previously effective fungicides. No single variety has all the desirable characteristics. Among these desirable characteristics important to Florida growers are: season-long production, early and late production, disease resistance, insect and mite resistance, etc.

EPA has authorized under FIFRA section 18 the use of azoxystrobin on strawberry for control of anthracnose in Florida. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin in or on strawberry. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on July 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether azoxystrobin meets EPA's registration requirements for use on strawberry or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of azoxystrobin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Florida to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for azoxystrobin, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available

scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of azoxystrobin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues or residues of azoxystrobin on strawberry at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by azoxystrobin are discussed below.

1. *Acute toxicity.* The Agency evaluated the existing toxicology database for azoxystrobin and did not identify an acute dietary endpoint. Therefore, a risk assessment is not required.

2. *Short - and intermediate - term toxicity.* The Agency evaluated the existing toxicology database for short- and intermediate-term dermal and inhalation exposure and determined that this risk assessment is not required.

3. *Chronic toxicity.* EPA has established the reference dose (RfD) for azoxystrobin at 0.18 milligrams/kilogram/day (mg/kg/day). This RfD is based on a chronic toxicity study in rats with a no observed adversed effect level (NOAEL) of 18.2 mg/kg/day. Reduced body weights and bile duct lesions were observed at the lowest effect level (LEL) of 34 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extrapolation and the intraspecies variability.

4. *Carcinogenicity.* The Agency determined that azoxystrobin should be classified as "Not Likely" to be a human carcinogen according to the proposed revised Cancer Guidelines. This classification is based on the lack of evidence of carcinogenicity in long-term rat and mouse feeding studies.

B. Exposures and Risks

1. *From food and feed uses.* Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its Z isomer, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm in pecans to 1.0 ppm in grapes. In addition, time-limited tolerances have been established (40 CFR 180.507(b) at levels ranging from 0.006 ppm in milk to 20 ppm in rice hulls) in conjunction with previous section 18 requests. Risk assessments were conducted by EPA to assess dietary exposures and risks from azoxystrobin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Agency did not conduct an acute risk assessment because no toxicological endpoint of concern was identified during review of available data.

ii. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions -- 100% of strawberry commodities and all other commodities having azoxystrobin tolerances will contain azoxystrobin residues and those residues would be at the level of the tolerance with the exception of grapes-raisins, grape-juice, tomatoes-juice, and tomatoes-puree -- which result in an overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, The Agency is taking into account this conservative exposure assessment.

The existing azoxystrobin tolerances (published, pending, and including the necessary section 18 tolerance(s)) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Population Sub-Group	TMRC (mg/kg/day)	% RFD
U.S. Population (48 States).	0.0036	2.0%
All Infants (<1 year old)	0.0011	5.9%
Nursing Infants (<1 year old).	0.0034	1.9%
Non-Nursing Infants (<1 year old).	0.0014	7.6%
Children (1-6 years old)	0.0083	4.6%
Children (7-12 years old).	0.0050	2.8%
U.S. Population (Summer Season).	0.0039	2.2%
U.S. Population (Spring Season).	0.0042	2.3%
Northeast Region	0.0041	2.3%
Western Region	0.0038	2.1%
Hispanics	0.0042	2.3%
Non-Hispanics Blacks	0.0038	2.1%
Non-Hispanics (Other Than Black or White).	0.0068	3.8%
Females (13+/nursing)	0.0045	2.5%

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants and children; (3) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

2. *From drinking water.* There is no established Maximum Contaminant Level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established.

i. *Acute exposure and risk.* An assessment was not appropriate since no toxicological endpoint of concern was identified during review of the available data.

ii. *Chronic exposure and risk.* Based on the chronic dietary (food) exposure estimates, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and are summarized in Table 1. The highest EEC for azoxystrobin in surface water is from the application of azoxystrobin on grapes (39 µg/L) and is substantially lower than the DWLOCs calculated. Therefore, chronic exposure to azoxystrobin residues in drinking water do not exceed EPA level of concern.

Table 1. Drinking Water Levels of Concern

	Chronic RfD (mg/kg/day)	TMRC [Food Exposure] (mg/kg/day)	Max Water Exposure[1] (mg/kg/day)	DWLOC [2,3,4] (µg/L)
U.S. Population (48 States)	0.18	0.0036	0.18	6200
Females (13 + years old, not pregnant or nursing).	0.18	0.0045	0.18	5300
Non-nursing Infants (< 1 year old)	0.18	0.014	0.17	1700

[1] Maximum Water Exposure (mg/kg/day) = Chronic RfD (mg/kg/day) - TMRC from DRES (mg/kg/day)
[2] DWLOC (µg/L) = Max water exposure (mg/kg/day) * body wt (kg) /[(10^{-3} mg/µg) *water consumed daily (L/day)]

[3] HED Default body wts for males, females, and children are 70 kg, 60 kg, and 10 kg respectively.
[4] HED Default Daily Drinking Rates are 2 L/Day for Adults and 1 L/Day for children

3. *From non-dietary exposure.* Azoxystrobin is not currently registered for any residential uses.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether Azoxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, Azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that Azoxystrobin has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* This is not applicable since no toxicological end-point of concern was identified during review of the available data.

2. *Chronic risk.*Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the exposure to azoxystrobin from food will utilize 3.8% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Under current EPA guidelines, the registered non-dietary uses of azoxystrobin do not constitute a chronic exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to azoxystrobin residues. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to azoxystrobin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. This risk assessment is not applicable since no indoor and outdoor residential exposure uses are currently registered for azoxystrobin.

4. *Aggregate cancer risk for U.S. population.* The Agency determined that azoxystrobin should be classified as "Not Likely" to be a human carcinogen according to the proposed revised Cancer Guidelines. The Agency has therefore not conducted a cancer risk assessment.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to Azoxystrobin residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children —*i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of Azoxystrobin, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* — a. *Rabbit* - In the developmental toxicity study in rabbits, developmental NOAEL was 500 mg/kg/day, at the highest dose tested (HDT). Because there were no treatment-related effects, the developmental LEL was ≥ 500 mg/kg/day. The maternal NOAEL was 150 mg/kg/day. The maternal LEL of 500 mg/kg/day was based on decreased body weight gain during dosing.

b. *Rat* - In the developmental toxicity study in rats, the maternal (systemic) NOAEL was not established. The maternal LEL of 25 mg/kg/day at the lowest dose tested (LDT) was based on increased salivation. The developmental (fetal) NOAEL was 100 mg/kg/day (HDT).

iii. *Reproductive toxicity study — Rat* - In the reproductive toxicity study in rats, the parental (systemic) NOAEL was 32.3 mg/kg/day. The parental LEL of 165.4 mg/kg/day was based on decreased body weights in males and females, decreased food consumption and increased adjusted liver weights in females, and cholangitis. The reproductive NOAEL was 32.3 mg/kg/day. The reproductive LEL of 165.4 mg/kg/day was based on increased weanling liver weights and decreased body weights for pups of both generations.

iv. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for azoxystrobin is complete with respect to current toxicological data requirements.

v. *Conclusion.* The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The additional 10X safety factor to account for sensitivity of infants and children was removed by the Agency.

2. *Acute risk.* Not applicable, no end-point.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to azoxystrobin from food will utilize 1.9% to 5.6% of

the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

4. *Short- or intermediate-term risk.* Not applicable, no end-point.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

1. The nature of the residue in grapes is adequately understood. These data are being translated for strawberries for this section 18 temporary tolerance.

2. The qualitative nature of the residue in animals is adequately understood for the purposes of this section 18 request. A ruminant metabolism study has been submitted, however the animal metabolism data have not been reviewed by the Office of Pesticide Program's Metabolism Assessment Review Committee. The residues of concern in ruminants appears to be different from that of plants. Unidentified metabolite compounds,designated metabolites 2, 20, and 28, appear to be the major components of the residue inruminant tissues. For the purposes of these time-limited tolerances for emergencyexemptions only, the residues of concern in animal tissues are azoxystrobin and its Z-isomer.

3. As strawberry commodities are not considered to be major poultry feed items, the natureand the magnitude of residues in poultry and eggs are not of concern for the this section18.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (example - gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–5229.

V. Conclusion

Therefore, the tolerance is established for combined residues or residues of azoxystrobin in strawberry at 0.05 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300772] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance/exemption from the tolerance requirement under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any

enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408(l)(6), such as the tolerance/exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.507, paragraph (b) by alphabetically inserting the following commodity to the table to read as follows:

§ 180.507 Azoxystrobin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ RevocationDate
* *	*	* *
Strawberries	10.0	7/30/00
* *	*	* *

* * * * *

[FR Doc. 99–2206 Filed 1–28–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300776; FRL–6054–3]

RIN 2070–AB78

Fenbuconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of Fenbuconazole and its metabolites RH-9129 and RH-9130, expressed as the parent fenbuconazole in or on grapefruit and livestock commodities . This action is in response to EPA's granting of an emergency exemption under section 18 of the

Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on grapefruit. This regulation establishes maximum permissible levels for residues of fenbuconazole in these food and feed commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on June 30, 2000.

DATES: This regulation is effective January 29, 1999. Objections and requests for hearings must be received by EPA on or before March 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300776], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300776], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300776]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9356, e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the fungicide fenbuconazole and its metabolites RH-9129 and RH-9130, expressed as the parent fenbuconazole, in or on whole grapefruit at 0.5 part per million (ppm), at 4.0 ppm in/on dried grapefruit, at 35 ppm in/on grapefruit oil; and at 0.1 ppm in/on meat and meat by-products of cattle, goats, hogs, horses, and sheep. These tolerances will expire and are revoked on June 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Fenbuconazole on Grapefruit and FFDCA Tolerances

The Florida Department of Agriculture and Consumer Services has requested an exemption for the use of fenbuconazole on grapefruit for control of the disease, greasy spot (*Mycosphaerella citri*). Greasy spot disease has become a problem in Florida because of high relative humidity (nearly 100%) and higher temperatures for prolonged periods. The disease affects all citrus varieties and can be a more serious problem on grapefruit, due to its low resistance. The applicant asserts that this pathogen has developed resistance to a registered alternative, while other alternatives have limited efficacy and can cause damage to the fruit, causing them to be downgraded to juice grade. A recent drop in grapefruit prices have exacerbated this situation, and significant economic losses are predicted without the requested fungicide. EPA has authorized under FIFRA section 18 the use of fenbuconazole on grapefruit for control of greasy spot (*Mycosphaerella citri*) in Florida. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of fenbuconazole in or on grapefruit and livestock commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on June 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on grapefruit and animal commodities after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether fenbuconazole meets EPA's registration requirements for use on grapefruit or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of fenbuconazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Florida to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for fenbuconazole, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7) .

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of fenbuconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of fenbuconazole and its metabolites RH-9129 and RH-9130, expressed as the parent fenbuconazole on whole grapefruit at 0.5 ppm, at 4.0 ppm in/on dried grapefruit, at 35 ppm in/on grapefruit oil; and at 0.1 ppm in/on meat and meat by-products of cattle, goats, hogs, horses, and sheep. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by fenbuconazole are discussed below.

1. *Acute toxicity.* For the purposes of the acute dietary risk assessment, EPA assessments are based on an acute reference dose (RfD) of 0.3 milligrams/kilogram/day (mg/kg/day). This figure is derived from the No Observed Adversed Effect Level (NOAEL) of 30 mg/kg/day from the developmental toxicity study in rats, and an uncertainty factor of 100. The observed effect was a decrease in the number of live fetuses at the Lowest Effect Level (LEL) of 75 mg/kg/day.

2. *Short- and intermediate-term toxicity.* No dermal or systemic toxicity endpoints were identified for this exposure duration. Therefore, a risk assessment is not needed.

3. *Chronic toxicity.* EPA has established the chronic RfD for fenbuconazole at 0.03 mg/kg/day. This RfD is based on a chronic toxicity study in the rat with a NOAEL of 3.03/4.02 mg/kg/day in males/females, and an uncertainty factor of 100. The NOAEL is based on decreased body weight gains (females), hepatocellular enlargement and vaculation (females), increases in thyroid weight (both sexes) and histopathological lesions in the thyroid glands (males), at the LEL of 30.62/43.04 mg/kg/day in males/females.

4. *Carcinogenicity.* Using its Guidelines for Carcinogen Risk Assessment, EPA has classified fenbuconazole as a Group C (possible human carcinogen) chemical. EPA believes it is appropriate to use the Q_1^* approach for determination of risk, and has calculated a Q^{1*} of 3.59×10^{-3} (mg/kg/day)$^{-1}$.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.480) for the combined residues or residues of fenbuconazole and its metabolites RH-9129 and RH-9130, expressed as the parent fenbuconazole, in or on a variety of raw agricultural commodities. Time-limited tolerances have been established for residues of fenbuconazole, alpha-2-(4-chlorophenyl)-ethyl-alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile] and its metabolites, cis-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H* 1, 2, 4-triazole-1-ylmethyl-2-3*H*-furanone, expressed as fenbuconazole in or on commodities ranging from 0.1 ppm in pecans to 2.0 ppm in the stone fruit crop group. Risk assessments were conducted by EPA to assess dietary exposures and risks from fenbuconazole as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk assessment for fenbuconazole is only needed for the population subgroup, females 13+ years (yrs.) old, as the effect was increased resorptions and decreased live fetuses. The acute dietary risk assessment used the Theoretical Maximum Residue Contribution (TMRC, tolerance level residues and 100% crop treated); the tolerances used for grapefruit and animal commodities are the levels given above. The Novigen Dietary Exposure Evaluation Model (DEEM) analysis was used and this analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure. Resulting exposure values (at the 99th percentile) and percentage of the acute RfD are shown below. Values for the 99th percentile are considered to be conservative as OPP policy dictates exposure estimates from as low as the 95th percentile may be utilized for risk estimates from acute DEEM runs. Thus,

these results are viewed as conservative estimates, and refinement using anticipated residue values and percent crop treated information, in conjunction with a Monte Carlo analysis, would result in lower estimates of acute dietary exposure and risk. The resulting high-end exposure estimates (food only, 99.9 percentiles) ranges from 0.0072 to 0.015 mg/kg/day for the population subgroups females 13+ yrs. old (nursing), and females 13 - 19 yrs. old (not pregnant or nursing), respectively. The percentages of the acute RfD utilized by these exposure levels, for these two subgroups are 2.3 and 5.0%, respectively.

ii. *Chronic exposure and risk.* The chronic dietary risk assessment is partially refined. Additional refinement would incorporate percent crop treated and anticipated residues for all commodities, and would result in lower exposure estimates. Again, the Novigen DEEM analysis was used, as described above. Tolerance level residues were assumed for all commodities, including stone fruits. Percent crop treated data were used for stone fruits only and 100% crop-treated data were used for all other commodities. The existing tolerances for fenbuconazole plus exposures connected with the section 18 on grapefruit result in an anticipated residue contribution (ARC) that is equivalent to 3.1% of the RfD for non-nursing infants <1 yr. old, the highest exposed subpopulation. Exposure for all other population subgroups was at a level below this. iii. Cancer Risk. Fenbuconazole is classified as a Group C Carcinogen, with a Q_1^* of 3.59×10^{-3} $(mg/kg/day)^{-1}$. Using the partially refined exposure estimates described above under Chronic exposure and risk, the cancer risk estimate for the U.S. Population is calculated to be 8.3×10^{-7}.

2. *From drinking water.* There is no established Maximum Contaminant Level or Health Advisory Levels for imidacloprid in drinking water. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency uses models designed for use for ecological assessment, which are not ideal tools for use in drinking water risk assessment, as they could overestimate actual drinking water concentrations.

Thus, these models are considered a coarse screening tool for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern. For surface water, the Agency used PRZM1 (Pesticide Root Zone Model - simulates the transport of a pesticide off the agricultural field) and EXAMS (EXposure Analysis Modeling System - simulates fate and transport of a pesticide in surface water) models which are used to produce estimates of pesticide concentrations in a farm pond. For ground water the Agency used SCI-GROW (Screening Concentration In GROund Water) model to estimate the concentration of imidacloprid residues in ground water. SCI-GROW is a prototype model for estimating "worst case' ground water concentrations of pesticides. This model assumes that the pesticide is applied at its maximum rate in areas where the ground water is particularly vulnerable to contamination. SCI-GROW is biased in that studies where the pesticide is not detected in ground water are not included in the data set. Thus, it is not expected that SCI-GROW estimates would be exceeded. In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimated environmental concentrations (EECs) of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to imidacloprid they are further discussed in the aggregate risk sections below.

i. *Acute exposure and risk.* EPA used estimated concentrations of imidacloprid in surface and ground water for acute exposure analysis of 6.7 and 0.03 g/L parts per billion (ppb), respectively. Since the ground water estimate is much less than that for surface water, only the surface water estimated maximum concentration of 6.7 ppb was used for comparison to the DWLOCs. The acute DWLOC was calculated for the segment of the population subgroup of concern with the highest food exposure, females 13 - 19 yrs. old (not pregnant or nursing). This DWLOC was calculated to be 8,600 ppb.

ii. *Chronic exposure and risk.* Since the estimated concentration for chronic exposure to ground water (0.03 ppb) was much less than that for surface water (3.6 ppb), EPA used the surface water estimate for chronic exposure analysis as a worst case estimation. The chronic DWLOCs were calculated for the population subgroup with the highest food exposure, Non-Hispanic (other than black or white). These DWLOCs were calculated to be 1,000 ppb for males and 890 ppb for females.

3. *From non-dietary exposure.* Fenbuconazole is not currently registered for use on any residential non-food sites: Therefore, a discussion of the toxicity endpoints for non-dietary exposure and a risk assessment for these uses is not germane to this review.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether fenbuconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, fenbuconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that fenbuconazole has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the population subgroups of concern, females 13+ yrs. old (nursing), and females 13 - 19 yrs. old (not pregnant or nursing), the percentages of the acute RfD utilized by these exposure levels, for these two subgroups are 2.3 and 5.0%, respectively. EPA generally has no concerns for exposures below 100% of the acute RfD. In addition, for acute exposures associated with drinking water, EPA has concluded that the DWLOC is 8,600 ppb. The EEC value is 6.7 ppb. This leads EPA to conclude that acute exposure to fenbuconazole is within acceptable limits, and there is reasonable certainty of no harm.

2. *Chronic risk.* Using the ARC exposure assumptions described above,

EPA has concluded that aggregate exposure to fenbuconazole from food will utilize <1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 3.1% of the chronic RfD for non-nursing infants <1 yr. old, which is further discussed below. For the rest of the population subgroups, the RfD utilized is <1 - 2.5%. Based upon dietary (food only) exposure, the chronic DWLOCs were calculated for the population subgroup with the highest food exposure, Non-Hispanic (other than black or white). These DWLOCs were calculated to be 1,000 ppb for males and 890 ppb for females. Using the rough screening models described above for ground and surface water, the EEC was estimated at 3.6 ppb, significantly less than the calculated DWLOCs. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenbuconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term endpoints were not identified; additionally, fenbuconazole has no residential uses. Thus short- and intermediate-term aggregate risk assessments are not required.

4. *Aggregate cancer risk for U.S. population.* The existing tolerance plus this proposed tolerance for this exemption result in a cancer risk estimate of 8.3×10^{-7} for the overall U.S. population. The risk from the time-limited tolerances with section 18s (blueberries, grapefruit, meat, and meat by-products) was not amortized. This is sometimes done to account for the temporary nature of the section 18 use. Based on this level, and the level considered to be acceptable for cancer risk, and incorporating the usual default values for body weight and drinking water consumption, a DWLOC was calculated of 1.6 ppb for the U.S. Population. This is compared to the EEC, as derived from the rough screening models (described above) of 3.6 ppb. EPA policy is that a factor of 3 will be applied to these model values to determine whether a DWLOC has been exceeded. If the model value is <3 times the DWLOC, the pesticide is considered to have passed the screen and no further assessment is needed. In this case, the model value of 3.6 ppb is less than three times the DWLOC (3 x 1.6 = 4.8 ppb), and thus EPA concludes with reasonable certainty that residues of fenbuconazole in drinking water, considered along with other sources of chronic exposure, will not result in unacceptable levels of aggregate cancer risk estimates. EPA also notes that the chronic food exposure estimate is only partially refined, and further refinement of this exposure would result in lower risk estimates.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fenbuconazole residues.

D. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* —i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fenbuconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the developmental toxicity study in rats, the maternal (systemic) NOAEL was 30 mg/kg/day, based on decreases in body weight and body weight gain at the lowest observed effectlevel (LOEL) of 75 mg/kg/day. The developmental (fetal) NOAEL was 30 mg/kg/day, based on an increase in post implantation loss and a significant decrease in the number of live fetuses per dam at the LOEL of 75 mg/kg/day. In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 10 mg/kg/day, based on decreased body weight gain at the LOEL of 30 mg/kg/day. The developmental (pup) NOAEL was 30 mg/kg/day, based on increased resorptions at the LOEL of 60 mg/kg/day.

iii. *Reproductive toxicity study.* In the 2-generation reproductive study in rats, the maternal (systemic) NOAEL was 4 mg/kg/day, based on decreased body weight and food consumption, increased number of dams not delivering viable or delivering nonviable offspring, and increases in adrenal and thyroid weights at the LOEL of 40 mg/kg/day. The reproductive (pup) NOAEL was 40 mg/kg/day, the highest dose tested (HDT).

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre-and post-natal toxicity for fenbuconazole is complete with respect to EPA's current data requirements. EPA has determined that the studies indicated no increased susceptibility of rats or rabbits to in utero and/or postnatal exposure to fenbuconazole. In the prenatal developmental toxicity studies in rats and rabbits, and the 2-generation reproduction study in rats, toxicity to the fetuses and offspring, when observed, occurred at equivalent or higher doses and was not judged to be more severe than toxic effects on the maternal and parental animals. Based on the developmental and reproductive toxicity studies, EPA scientists concluded that the FQPA 10x uncertainty factor may be removed.

v. *Conclusion.* There is a complete toxicity database for fenbuconazole and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Toxicological effects relevant to infants and children that could be attributed to a single exposure (dose) were not observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. A dose and endpoint was not identified. Therefore, an aggregate risk assessment is not required for this subpopulation.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to fenbuconazole from food will utilize 3.1% of the RfD for the most highly exposed subgroup for infants and children, non-nursing infants <1 yr. old. EPA generally has no concern for

exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to fenbuconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Short- and intermediate-term endpoints were not identified; additionally, fenbuconazole has no residential uses. Thus short- and intermediate-term aggregate risk assessments are not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fenbuconazole residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue of fenbuconazole in plants and livestock is adequately understood, for this action. The residue of concern is fenbuconazole (alpha-[2-4-chlorophenyl)-ethyl] alpha-phenyl-3-(1*H*-1,2,4-triazole)-1-propanenitrile) and its metabolites, cis-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanoneandtrans-5-(4-chlorophenyl)dihydro-3-phenyl-3-(1*H*-1,2,4-triazole-1-ylmethyl)-2-3*H*-furanone (also known as RH-9129 and RH-9130,respectively), expressed as fenbuconazole as specified in 40 CFR 180.480.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with a nitrogen phosphorus detector) is available to enforce the tolerance expression. The method has not yet appeared in the Pesticide Analytical Manual II, but may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues of fenbuconazole and its regulated metabolites are not expected to exceed 0.5 ppm in/on whole grapefruit, 4.0 ppm in dried citrus pulp, and 35 ppm in citrus oil. Grapefruit pulp is not a poultry feed, but may be fed to other livestock. Therefore, residues are not expected to exceed 0.01 ppm in or on meat and meat by-products of cattle, goats, hogs, horses, and sheep.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits (MRLs) for fenbuconazole on grapefruit or livestock commodities. Thus, harmonization is not an issue for this use.

E. Rotational Crop Restrictions

Grapefruit is not rotated to other crops, and therefore, rotational crop restrictions are not germane to this action.

V. Conclusion

Therefore, the tolerance is established for combined residues of fenbuconazole and its metabolites RH-9129 and RH-9130, expressed as the parent fenbuconazole in grapefruit at 0.5 ppm, in grapefruit pulp, dried, at 4.0 ppm, in grapefruit oil at 35 ppm, and in meat and meat by-products of cattle, goats, hogs, horses, and sheep at 0.01 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 30, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given un der the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to wave any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300776] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs,

Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes time-limited tolerances under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.480, paragraph (b) by alphabetically inserting the following commodities to the table to read as follows:

§ 180.480 Fenbuconazole; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* * * * * * *		
Cattle, fat	0.01	6/30/00
Cattle, mbyp	0.01	6/30/00
Cattle, meat	0.01	6/30/00
Goats, fat	0.01	6/30/00
Goats, mbyp	0.01	6/30/00
Goats, meat	0.01	6/30/00
Grapefruit	0.5	6/30/00
Grapefruit pulp, dried.	4.0	6/30/00
Grapefruit oil	35	6/30/00
Hogs, fat	0.01	6/30/00
Hogs, mbyp	0.01	6/30/00
Hogs, meat	0.01	6/30/00
Horses, fat	0.01	6/30/00
Horses, mbyp	0.01	6/30/00
Horses, meat	0.01	6/30/00
* * * * * * *		
Sheep, fat	0.01	6/30/00
Sheep, mbyp	0.01	6/30/00
Sheep, meat	0.01	6/30/00
* * * * * * *		

* * * * *

[FR Doc. 99–2207 Filed 1–28–99; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300780; FRL–6056–2]

RIN 2070–AB78

Lambda-cyhalothrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for the combined residues of lambda-cyhalothrin and its epimer in or on flax, barley, canola, and sugarcane. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on flax, barley, canola, and sugarcane. This regulation establishes maximum permissible levels for residues of lambda-cyhalothrin in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on December 31, 2000.

DATES: This regulation is effective January 29, 1999. Objections and requests for hearings must be received by EPA on or before March 30, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300780], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300780], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300780]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9367, e-mail: ertman.andrew@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408 and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), is establishing a tolerances for the combined residues of the insecticide lambda-cyhalothrin and its epimer, in or on flax seed at 0.1 parts per million (ppm), barley bran at 0.2 ppm, barley grain at 0.05 ppm, barley hay at 2.0 ppm, barley straw at 2.0 ppm, canola seed at 0.1 ppm and sugarcane at 0.03 ppm. These tolerances will expire and are revoked on December 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue*** ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide

chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Lambda-cyhalothrin on Flax, Barley, Canola, and Sugarcane and FFDCA Tolerances

North Dakota declared a crisis for the use of lambda-cyhalothrin on flax to control grasshoppers. The emergency was due to a lack of control of this pest with other registered alternatives. Grasshopper infestations in 1998 were significantly greater than in 1997 and conditions require treatment with lambda-cyhalothrin.

Several states declared crises for the use of lambda-cyhalothrin on barley to control the Russian wheat aphid. Although there are several registered alternative products available, each has disadvantages, including lack of efficacy, that lead to the states requesting the use of lambda-cyhalothrin. The states assert that without the use of lambda-cyhalothrin, they will incur significant economic losses.

Two states declared crises for the use of lambda-cyhalothrin on canola to control flea beetles. The applicants stated that flea beetles are significant pests of seedling canola and damage the plants by feeding on leaf tissue, stems and pods.

Sugarcane yield loss from the sugarcane borer is estimated at 60% unless adequately controlled. Registered alternatives can cause secondary outbreaks of aphids due to toxicity to non-target arthropods (parasites and predators). EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on flax for control of grasshoppers, barley for control of the Russian wheat aphid, canola for control of flea beetles in several states, and sugarcane for control of the sugarcane borer in Louisiana. After having reviewed the submissions, EPA concurs that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of lambda-cyhalothrin in or on flax, barley, canola, and sugarcane. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on flax, barley, canola, and sugarcane after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether lambda-cyhalothrin meets EPA's registration requirements for use on flax, barley, canola, and sugarcane or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of lambda-cyhalothrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than North Dakota, Minnesota, Colorado, Idaho, and Louisiana to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for lambda-cyhalothrin, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of lambda-cyhalothrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of lambda-cyhalothrin and its epimer on flax seed at 0.1 ppm, barley bran at 0.2 ppm, barley grain at 0.05 ppm, barley hay at 2.0 ppm, barley straw at 2.0 ppm, canola seed at 0.1 ppm, and sugarcane at 0.03 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by lambda-cyhalothrin are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity.* The acute dietary RfD is 0.005 milligrams/kilogram/day (mg/kg/day) based on a chronic toxicity study in dogs. The systemic No Observed Adverse Effect Level (NOAEL) was determined to be 0.5 mg/kg/day based on gait abnormalities. An uncertainty factor of 100 was applied.

2. *Short- and intermediate-term toxicity.* The short- and intermediate-term dermal toxicity NOAEL was determined to be 10.0 mg/kg/day based on mortality, clinical signs and effects on body weight and food consumption in a 21–day dermal rat study. An acceptable MOE will be $\geq$ 100.

3. *Chronic toxicity.* EPA has established the Reference Dose (RfD) for lambda-cyhalothrin at 0.001 mg/kg/day. This RfD is based on a No Observed Adverse Effect Level (NOAEL) of 0.1 mg/kg/day in a chronic toxicity study in dogs. Symptoms included neurotoxicity, ataxia and convulsions. An uncertainty factor of 100 was applied.

4. *Carcinogenicity.* Lambda-cyhalothrin has been classified by the Agency as a group D carcinogen ("not classifiable as to human carcinogenicity").

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established under 40 CFR 180.438 for residues of lambda-cyhalothrin and its epimer expressed as: a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer a 1:1 mixture of (*S*)-α-cyano-3-phenoxybenzyl-(*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclo-propanecarboxylate and (*R*)-α-cyano-3-phenoxybenzyl (*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclo-propanecarboxylate in numerous plant commodities at levels ranging from 0.01 to 6.0 ppm; in the fat of cattle, goats, hogs, horses, and sheep at 3.0 ppm; in the meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm; milkfat at 5.0 ppm (reflecting 0.2 ppm in whole milk); and in poultry fat, meat, meat byproducts, and eggs at 0.01 ppm. Food additive tolerances have been established for residues of lambda-cyhalothrin in all food items (other than those already covered by a higher tolerance as a result of use on growing crops) in food handling establishments (0.01 ppm), dried hops (10.0 ppm), corn grain flour (0.15 ppm), sunflower oil (0.30 ppm), and wheat bran (0.2 ppm). Feed additive tolerances for residues of lambda-cyhalothrin on sunflower hulls (0.50 ppm), tomato pumice (6.0 ppm), and wheat bran (0.2 ppm) have been established under 40 CFR 180.438. Risk assessments were conducted by EPA to assess dietary exposures and risks from lambda-cyhalothrin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

An acute dietary (food) risk assessment was performed that used a tier three analysis (i.e., Monte Carlo) of the Novigen DEEM (Dietary Exposure Evaluation Model) system, which employed both percent crop treated data and processing data in the calculation. Flax was added to the analysis at the 100% crop treated level. The residue value for flax was taken from canola which is another seed oil. The DEEM analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals (CSFII) conducted in 1989 through 1991. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure.

Resulting exposure values (at the 99.9th percentile) and percentage of the acute RfD occupied range from 28% for nursing infants (<1 year old) up to 72% for non-nursing infants (<1 year old). EPA generally has no concern for exposures below 100% of the RfD (when the FQPA safety factor has been removed, as it has in this case).

ii. *Chronic exposure and risk.* A tier three DEEM chronic exposure analysis was performed using anticipated residues, percent crop treated, and processing data. The analysis evaluates individual food consumption as reported by respondents in the USDA CSFII conducted in 1989 through 1991. The model accumulates exposure to the chemical for each commodity and expresses risk as a function of dietary exposure.

The existing lambda-cyhalothrin tolerances (published, pending, and including the necessary Section 18 tolerances) result in Anticipated Residue Contributions (ARCs) that are equivalent to the percentages of the Chronic RfD ranging from 2% for nursing infants (<1 year old) up to 19% for children (1–6 years old). As noted above, the Agency generally has no concern for exposures below 100% of the RfD (when the FQPA safety factor has been removed).

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used a tier three DEEM analysis provided by the petitioner. This analysis was performed using anticipated residues, percent crop treated, and processing data.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which lambda-cyhalothrin may be applied in a particular area.

2. *From drinking water.* Estimated Environmental Concentrations (EECs) for lambda-cyhalothrin residues were determined to be 0.095 µg/L for acute surface water and 0.003 µg/L for chronic surface water.

i. *Acute exposure and risk.* [As mentioned previously, the acute risk for "food only" does not exceed EPA's level of concern. Drinking water levels of concern (DWLOC) for acute dietary exposure range from 14 µg/L for infants and children up to 120 µg/L for the U.S.

population (48 states). These levels are substantially higher than the surface water EEC (0.095 µg/L). Therefore, the risk from acute aggregate exposure to lambda-cyhalothrin does not exceed EPA's level of concern.

ii. *Chronic exposure and risk.* As is the case with acute risk, the chronic risk for "food only" does not exceed EPA's level of concern. DWLOC for chronic dietary exposure range from 8 µg/L for infants and children to 32 µg/L for the U.S. population. These levels are substantially higher than the highest chronic water EEC (0.003 µg/L). Chronic residential exposures to lambda-cyhalothrin are not expected for current registered uses. Therefore, chronic aggregate exposure to lambda-cyhalothrin does not exceed EPA's level of concern.

3. *From non-dietary exposure.* Lambda-cyhalothrin is currently registered for use on several non-food sites that include general pest control (crack/crevice/spot), termiticide, landscape, turf ornamentals, commercial ornamentals, golf course turf, and unoccupied agricultural premises. A risk assessment was performed for post application activities on lawns treated with lambda-cyhalothrin previously. At the time that this assessment was completed, exposures from lawn use were considered to be a "worst case" estimate of exposure from high-end of the registered residential uses.

i. *Chronic exposure and risk.* Chronic residential exposures to lambda-cyhalothrin are not expected for currently registered uses and thus a risk assessment is not required.

ii. *Short- and intermediate-term exposure and risk.* Short-term exposure and risk assessments were conducted by the Agency. The oral MOEs for infants and children was 3,500; the dermal MOEs were 1.5 million for the U.S. population and 7,810 for infants and children; and the inhalation MOEs were 15,000 for the U.S. population and 4,800 for infants and children. All of the above MOEs are well above the acceptable short term MOE of 100.

The Agency also conducted intermediate-term exposure and risk assessments. The oral MOEs for infants and children was 700; the dermal MOEs were 1.5 million for the U.S. population and 7,810 for infants and children; and the inhalation MOEs were 15,000 for the U.S. population and 4,800 for infants and children. All of the above MOEs are well above the acceptable short term MOE of 100.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether lambda-cyhalothrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, lambda-cyhalothrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that lambda-cyhalothrin has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute risk for "food only" does not exceed the Agency's level of concern, taking up 32% of the RfD for the U.S. population. The DWLOC for acute dietary exposure is 120 µg/L for the U.S. population, well above the maximum acute EEC of 0.095 µg/L.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to lambda-cyhalothrin from food will utilize 7% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The DWLOCs for chronic risk were calculated to be 32 µg/L for the U.S. population, well above the maximum chronic EEC of 0.003 µg/L. Chronic residential exposures to lambda-cyhalothrin are not expected for currently registered uses and thus a risk assessment is not required.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

i. *Short-term aggregate risk (food + water + residential).* MOEs for dietary and residential exposures are well above the acceptable short-term MOE of 100 and the short-term aggregate DWLOCs are higher than average surface water EECs. Therefore, short-term aggregate risk does not exceed EPA's level of concern.

ii. *Intermediate-term aggregate risk (food + water + residential).* MOEs for dietary, residential exposures are well over the acceptable short-term aggregate MOE of 100 and the intermediate-term aggregate drinking water DWLOCs are higher than average surface water EECs. Therefore, intermediate-term aggregate risk does not exceed EPA's level of concern.

4. *Aggregate cancer risk for U.S. population.* Because lambda-cyhalothrin has been classified as a group D carcinogen, "not classifiable as to human carcinogenicity," this risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to lambda-cyhalothrin residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of lambda-cyhalothrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using

the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* From the developmental toxicity study in rats, the maternal (systemic) NOAEL was 10 mg/kg/day. The maternal Lowest Observed Adverse Effect Level (LOAEL) of 15 mg/kg/day was based on decreased body weight gain and decreased food consumption. The developmental (fetal) NOAEL was > 15 mg/kg/day at the highest dose tested (HDT).

From the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 10 mg/kg/day. The maternal LOAEL of 30 mg/kg/day was based on decreased body weight gain. The developmental (fetal) NOAEL was > 30 mg/kg/day (HDT).

iii. *Reproductive toxicity study.* From the 3-generation reproductive toxicity study in rats, both the parental (systemic) and reproductive (pup) NOAELs were 1.5 mg/kg/day. Both the parental (systemic) and reproductive (pup) LOAELs were 5 mg/kg/day. They were based on a significant decrease in parental body weight (systemic) or a significant decrease in pup body weight (reproductive). The developmental NOAEL was 5 mg/kg/day (HDT).

iv. *Pre- and post-natal sensitivity.* The toxicology data base for lambda-cyhalothrin is complete with respect to current toxicological data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 3-generation reproductive toxicity study in rats.

v. *Conclusion.* Based on the above, EPA concludes that reliable data support the use of the standard hundredfold margin of uncertainty factor and that an additional uncertainty factor is not warranted at this time.

2. *Acute risk.* The acute risk for "food only" does not exceed the Agency's level of concern, taking up from 28% of the RfD for nursing infants <1 year old to 72% for non-nursing infants <1 year old. The DWLOC for acute dietary exposure is 14 µg/L for the infants and children, well above the maximum acute EEC of 0.095 µg/L.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to lambda-cyhalothrin from food will utilize from 2% of the RfD for nursing infants <1 year old to 19% of the RfD for children 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The DWLOC for chronic dietary exposure is 8 µg/L for the infants and children, well above the maximum chronic EEC of 0.003 µg/L. Chronic non-dietary, non-occupational exposures to lambda-cyhalothrin are not expected for currently registered uses and thus a risk assessment for this exposure portion was not conducted.

4. *Short- or intermediate-term risk.* The short- and intermediate-term risk estimates for infants and children do not exceed the Agency's level of concern.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to lambda-cyhalothrin residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

Data on plant metabolism show that lambda-cyhalothrin is metabolized by cleavage of the ester linkage to form cyclopropane carboxylic acids and the corresponding phenoxybenzoic acid and/or 3-phenoxybenzyl alcohol. The residues to be regulated are lambda-cyhalothrin and its epimer as specified in 40 CFR 180.438.

Studies of lambda-cyhalothrin metabolism in ruminants and poultry have been reviewed. In addition to the plant metabolites, lambda-cyhalothrin animal metabolites include 3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2-hydroxymethyl-2-methylcyclopropane-carboxylic acid (OH-CPA) and 4-hydroxy-3-phenoxybenzoic acid (4'-OH-3-PBAcid).

Lambda-cyhalothrin is the major component of the residue, except in the kidney and liver of ruminants and liver of poultry. In addition to the plant metabolites, 3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2-hydroxymethyl-2-methylcyclopropane-carboxylic acid (OH-CPA) and 4-hydroxy-3-phenoxybenzoic acid (4'-OH-3PBAcid) may be present in significant quantities. A residue transfer study in which cows were fed dietary levels of 8, 25 or 80 ppm lambda-cyhalothrin demonstrated that, at ≤ 8 ppm, OH-CPA levels in tissue would not exceed 0.01 ppm. The Agency has determined that animal metabolites do not need to appear in the tolerance expression at this time. As with plants, the residues to be regulated are lambda-cyhalothrin and its epimer.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

Residues are not expected to exceed 0.1 ppm in flax seed; 0.05 ppm in barley grain; 0.2 ppm in barley, bran; 2 ppm in barley, straw; 2 ppm in barley, hay; 0.10 in canola seed; and 0.03 ppm in sugarcane as a result of these section 18 uses.

D. International Residue Limits

No Codex MRLs for residues of lambda-cyhalothrin have been established (only cyhalothrin). No Canadian MRLs have been established for residues of lambda-cyhalothrin. Mexico has not established tolerances for residues of lambda-cyhalothrin on flax, only on cottonseed (0.05 ppm). Therefore, harmonization is not an issue.

V. Conclusion

Therefore, the tolerance is established for combined residues of lambda-cyhalothrin and its epimer in flax seed at 0.1 parts per million (ppm), barley bran at 0.2 ppm, barley grain at 0.05 ppm, barley hay at 2.0 ppm, barley straw at 2.0 ppm, and canola seed at 0.1 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408 and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 30, 1999, file written objections to any aspect of this regulation and may also request a

hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300780] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of

Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 13, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.438, by revising the table in paragraph (b) to read as follows:

§ 180.438 Lambda-cyhalothrin; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

***

Commodity	Parts per million	Expiration/ revocation date
Barley, bran	0.2	12/31/00
Barley, grain	0.05	12/31/00
Barley, hay	2.0	12/31/00
Barley, straw	2.0	12/31/00
Canola, seed	0.1	12/31/00
Flax, seed	0.1	12/31/00
Sugarcane	0.03	12/31/00

* * * * *

[FR Doc. 99–2208 Filed 1–28–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–6219–2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is granting a petition submitted by Occidental Chemical Inc. (Occidental), to exclude from hazardous waste control (or delist) certain solid wastes. The wastes being delisted consist of Rockbox Residue, and Limestone Sludge. This action responds to Occidental Chemical's petition to delist these treated wastes on a "generator specific" basis from the lists of hazardous waste. After careful analysis, the EPA has concluded that the petitioned wastes are not hazardous wastes when disposed of in Subtitle D landfills/surface impoundments. This exclusion applies to Rockbox Residue and Limestone Sludge generated at Occidental Chemical's Ingleside, Texas facility. Accordingly, this final rule excludes the petitioned wastes from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills/surface impoundments but imposes testing conditions to ensure that the future-generated wastes remain qualified for delisting.

EFFECTIVE DATE: January 29, 1999.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Freedom of Information Act review room on the 7th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is "TXDEL–OCCIDENTAL." The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general information, contact Bill Gallagher, at (214) 665–6775. For technical information concerning this notice, contact Jon Rinehart, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665–6789.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow the EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional

constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of This Rulemaking

Occidental Chemical-Ingleside petitioned the EPA to exclude from hazardous waste control its Limestone Sludge, Rockbox Residue, and Caustic Neutralized Wastewater waste generated at the wastewater treatment facility. The Rockbox Residue and Limestone Sludge are currently disposed in an off-site hazardous waste landfill. The Caustic Neutralized Wastewater is discharged through its National Pollution Discharge Elimination System (NPDES) permit. After evaluating the petition, EPA proposed, on May 11, 1998, to exclude all three of Occidental Chemical's wastes from the lists of hazardous wastes under §§ 261.31 and 261.32. *See* 63 *FR* 25797. This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Occidental Chemical's petition.

II. Disposition of Petition

Occidental Chemical Incorporated—Ingleside, Texas 78362–0710

A. Proposed Exclusion

Occidental Chemical petitioned EPA to exclude, from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, an annual volume of Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater generated from the wastewater treatment plant. Specifically, in its petition, Occidental requested that EPA grant a standard exclusion for 128 cubic yards of Rockbox Residue, 1,114 cubic yards of Limestone Sludge, and 148,284 cubic yards of Caustic Neutralized Wastewater generated per calender year. The Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater are listed for six EPA Hazardous Waste Numbers due to the "derived-from" and mixture rules. The wastes are listed as K019, K020, F001, F003, F005 and F025. The listed constituents of concern for these EPA Hazardous Waste Numbers are shown in Table 1. *See* 40 CFR part 261, Appendix VII.

TABLE 1.—HAZARDOUS WASTE CODES ASSOCIATED WITH WASTEWATER STREAMS

Waste code	Basis for characteristics/listing
K019/K020	Ethylene dichloride, 1,1,1-trichloroethane, 1,1,2-trichloroethane, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, trichloroethylene, tetrachloroethylene, carbon tetrachloride, chloroform, vinyl chloride, vinylidene chloride.
F001	Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, chlorinated fluorocarbons.
F003	N.A. Waste is hazardous because it fails the test for the characteristic of ignitability, corrosivity, or reactivity.
F005	Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, 2-nitropropane.
F025	Chloromethane, dichloromethane, trichloromethane, carbon tetrachloride, chloroethylene, 1,1-dichloroethane, 1,2-dichloroethane, trans-1,2-dichloroethylene, 1,1-dichlorothylene, 1,1,1-trichloroethane, 1,1,2-trichloroethane, trichlorothylene, 1,1,1,2-tetrachloroethane, 1,1,2,2-tetrachloroethane, tetrachloroethylene, pentachloroethane, hexachloroethane, 3-chloropropene, dichloropropane, dichloropropene, 2-chloro-1,3-butadiene, hexachloro-1,3-butadiene, hexachlorocyclopentadiene, benzene, chlorobenzene, dichlorobenzene, 1,2,4-trichlorobenzene, tetrachlorobenzene, pentachlorobenzene, hexachlorobenzene, toluene, naphthalene.

Occidental Chemical petitioned to exclude the Rockbox Residue, Limestone Sludge, and Caustic Neutralized Wastewater treatment residues because it does not believe that the petitioned wastes meet the criteria for which they were listed.

Occidental also believes that the wastes do not contain any other constituents that would render them hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)–(4).

In support of its petition, which included the sampling and analysis plan, Occidental submitted: (1) Descriptions of its waste water treatment processes and the incineration activities associated with petitioned waste; (2) results of the total constituent list for 40 CFR part 264, Appendix IX volatiles, semivolatiles, and metals except for pesticides, herbicides, and PCBs; (3) results of the constituent list for Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals; (4) results for reactive sulfide; (5) results for reactive cyanide; (6) results for pH; (7) results of the total basis for dioxin and furan; and (8) results of the dioxin and furan TCLP extract.

B. Summary of Comments and Responses

The EPA received public comment on May 11, 1998, on the delisting proposal from two interested parties, the Environmental Defense Fund (EDF) and the petitioner, Occidental Chemical.

Comment

Efficacy of the TCLP. In a recent delisting decision, EPA concluded that the TCLP may not accurately predict leachability in a highly alkaline waste. Based on that decision, the EDF commented on the efficacy of the TCLP and suggested that the pH be tested on the Limestone Sludge and Rockbox Residue as the pH of the Limestone Sludge is 9.55. It was suggested that the TCLP values may vary with changing pH values.

Response

Caustic Neutralized Wastewater is not being delisted. The EPA does not expect the pH of the Limestone Sludge or Rockbox Residue to vary greatly, based upon historical data submitted by the company. The Limestone Sludge was tested for pH on six different occasions. The values were as follows: (1) 8.81, (2) 7.97, (3) 8.03, (4) 7.95, (5) 8.19, (6) 9.55, which are in standard units. In a recent delisting action, to which the commenter referred, EPA determined, based upon unusually high pH values which sometimes exceeded 13, that the accuracy of the TCLP results was skewed. *See* 62 FR 41009 (July 31, 1997). There has been no indication that pH levels of the Limestone Sludge or Rockbox Residue even approach this

magnitude. Additionally, waste that was the subject of the earlier action was disposed of in a monofill, a fact which is at odds with the premise of the TCLP. The TCLP was designed to predict codisposal in a municipal landfill not a monofill. Occidental will dispose of its waste in a Subtitle D landfill where codisposal will occur. At this time EPA has no reason to believe the TCLP is not an efficacious test as applied to these wastes.

The EPA will revise the requirements for the verification testing to include pH testing for the wastes Rockbox Residue and Limestone Sludge. Verification sampling will determine if the waste will continue to be delisted.

Air Pathway Risk Analysis. A comment was received concerning the air pathway risk analysis performed by EPA. First, it was suggested that EPA did not evaluate the risk from storing the waste in tanks prior to disposal in a landfill. Second, a comment was made that the distance of 1,000 feet from the source to a potential receptor used in analysis of an air pathway was too a great distance. Third, a comment was made concerning the active life of the landfill used in the model. The model used 18.6 years when the commenter suggested that 40 years should instead be used. Fourth, it was suggested that EPA failed to consider the disposal of other Occidental wastes in the landfill, therefore, a cumulative affect should have been modeled.

Response

The wastes were modeled using a landfill life of 40 years as opposed to 18.6 years and a distance of 150 feet to the nearest receptor as opposed to 1,000 feet. There was no change in the delisting values; therefore, the delisting will be approved based on this evaluation. This analysis will be included in the RCRA public docket for today's decision additionally, EPA similarly adjusted these factors to determine the effect on the modeling for air emissions. The results were not significantly impacted. The commenter noted that other studies have been used with the different landfill life lengths. In listing determinations like the Petroleum Refining Listing Determination, a landfill life of 30 years was used in lieu of 20 years. For listing determinations, waste disposal of materials may already be managed in a nonhazardous landfill. In contrast, a petitioned waste is hazardous until it has been delisted, thus, the waste should be managed in a hazardous waste landfill until the petition is finalized. According to the 1986 Landfill Survey Act, the planned landfill units average approximately 21.3 years of life. The active units in the recalculation average less than 20 years. Currently, until further studies have been completed, EPA will continue to use a basis of 20 years after the active landfill life. The model that is utilized by EPA only considers the waste that is being delisted and no other Occidental waste that is co-disposed at a landfill.

Comment

Comment was also made concerning storage of these wastes in tanks. The position was taken that they should be considered in an air pathway risk analysis.

Response

These tanks are covered so it is not appropriate to consider an air pathway risk for this petition.

Comment

Due to the presence of dioxin in the Occidental waste, the commenter felt that a more comprehensive risk evaluation should be done before the delisting petition could be approved.

Response

The concentration of the dioxin in this waste is very low, therefore EPA felt the evaluation that was done was adequate.

Use of the EPACMTP Model. Occidental felt that the EPACMTP model, which was used in the initial screening to determine if the petitioned waste was a candidate for a delisting petition, should be utilized in the proposed **Federal Register**. This model was used as a tool to preliminarily determine whether the wastes could meet the criteria for delisting.

Response

The EPACML model was utilized because it is the model used in all previously approved delisting petitions. In order for the EPACMTP to actually be used in approval of a delisting petition, the model itself would have to have been proposed for formal adoption and opportunity for public comment on its adoption would have been necessary. The EPA felt instead that if the waste streams could pass the delisting levels using the EPACML model, then that model would continue to be used in the petitions. Until the Agency has completed its adoption of the EPCMTP model for delisting, the EPACML model will continue to be used.

Typographical Errors and Corrections. There were mathematical errors found in the petition and in the consistent use of nondetectable constituents in the delisting evaluation.

Response

The mathematical errors will be corrected in the final **Federal Register**. The nondetectable total constituents will be included.

Addition of Brine Sludge. The facility proposes to add brine sludge upstream of the rockbox to help neutralize the acid stream prior to entering the rockbox tank. This material is currently being disposed in a Class 1 nonhazardous landfill. The facility feels that this is a method of recycle/reuse.

Response

No analysis of brine sludge after it is mixed with Rockbox Residue has been provided to EPA, therefore, is unable to adequately assess effect on the delisted waste streams. The brine sludge may not be added to the delisted waste streams until a petition containing the required delisting criteria is submitted and approved allowing EPA to evaluate its merit.

Increase in Waste Volume

Comment

The facility would like to increase the waste volume for the Rockbox Residue from 128 cubic yards to 1,000 cubic yards per year. The plant apparently has gathered information that additional waste will be generated and therefore requests that the increased annual volume be allowed.

Response

A change in the volume of Rockbox Residue waste will not change the Dilution Attenuation Factor (DAF), therefore the delisting levels will remain the same. The EPA approves the request to increase the volume of Rockbox Residue from 128 cubic yards to 1,000 cubic yards and revising the exclusion.

Removal of Caustic Neutralized Wastewater

Comment

The facility has reconsidered its request for delisting the Caustic Neutralized Wastewater and has decided to remove the request for delisting this waste.

Response

The facility was planning on managing this waste in the same manner regardless of whether the delisting petition was approved or denied. Therefore, delisting of this waste stream will not be made final.

Conclusions

For reasons stated in both the proposal and this document, EPA believes that Occidental Chemical's

Limestone Sludge, and Rockbox Residue should be excluded from hazardous waste control. The EPA therefore is granting a final exclusion to Occidental Chemical, located in Ingleside, Texas, for its Limestone Sludge and Rockbox Residue. This exclusion applies to the waste described in the petition only if the requirements described in Table 1 of part 261 and the conditions contained herein are satisfied. The maximum annual volume of Limestone Sludge is 1,114 cubic yards and the Rockbox Residue is 1,000 cubic yards.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of the waste in an on-site facility, must either treat, store, or dispose of the waste or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility which is permitted, licensed or registered by a state to manage municipal or industrial solid waste.

III. Limited Effect Of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA programs), petitioners are urged to contact the State regulatory authority to determine the current status of their wastes under the State law.

Furthermore, some States (e.g., Louisiana, Georgia, Illinois) are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to or managed in any State with delisting authorization, Occidental must obtain delisting authorization from that State before the waste can be managed as non-hazardous in the State.

IV. Effective Date

This rule is effective January 29, 1999. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. This proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling a facility to treat its waste as non-hazardous. There is no additional impact due to today's rule. Therefore, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VI. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

VII. Executive Order 13045

Protection of Children from Environmental health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866 and the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

VIII. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

IX. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make

available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This rule, if promulgated, will not have any adverse economic impact on any small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

X. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined in section 804 (2) of the APA as amended.

XI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

XII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements. The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector. EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: December 29, 1998.

William N. Rhea,

Acting Director, Multimedia Planning and Permitting.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Tables 1, and 2 of Appendix IX of part 261, add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
.	.	.
Occidental Chemical.	Ingleside, Texas.	Limestone Sludge, (at a maximum generation 1,114 cubic yards per calender year) Rockbox Residue, (at a maximum generation of 1,000 cubic yards per calender year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue and the Limestone Sludge (EPA Hazardous Waste No. F025, F001, F003, and F005) generated at Occidental Chemical. Occidental Chemical must implement a testing program that meets the following conditions for the exclusion to be valid: (1) *Delisting Levels:* All concentrations for the following constituents must not exceed the following levels (ppm). The Rockbox Residue and the Limestone Sludge, must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (A) Rockbox Residue (i) Inorganic Constituents: Barium-100; Chromium-5; Copper-130; Lead-1.5; Selenium-1; Tin-2100; Vanadium-30; Zinc-1,000 (ii) Organic Constituents: Acetone-400; Bromodichloromethane-0.14; Bromoform-1.0; Chlorodibromethane-0.1; Chloroform-1.0; Dichloromethane-1.0; Ethylbenzene-7,000; 2,3,7,8-TCDD Equivalent-0.00000006 (B) Limestone Sludge (i) Inorganic Constituents: Antimony-0.6; Arsenic-5; Barium-100; Beryllium-0.4; Chromium-5; Cobalt-210; Copper-130; Lead-1.5; Nickel-70; Selenium-5; Silver-5; Vanadium-30; Zinc-1,000 (ii) Organic Constituents Acetone-400; Bromoform-1.0; Chlorodibromomethane-0.1; Dichloromethane-1.0; Diethyl phthalate-3,000, Ethylbenzene-7,000; 1,1,1-Trichloroethane-20; Toluene-700; Trichlorofluoromethane-1,000, Xylene-10,000, 2,3,7,8-TCDD Equivalent-0.00000006;

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description

(2) *Waste Holding and Handling:* Occidental Chemical must store in accordance with its RCRA permit, or continue to dispose of as hazardous waste all Rockbox Residue and the Limestone Sludge generated until the verification testing described in Condition (3)(B), as appropriate, is completed and valid analyses demonstrate that condition (3) is satisfied. If the levels of constituents measured in the samples of the Rockbox Residue and the Limestone Sludge do not exceed the levels set forth in Condition (1), then the waste is nonhazardous and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in a sample exceed any of the delisting levels waste generated during the time period corresponding to this sample must be managed and disposed of in accordance with Subtitle C of RCRA.

(3) *Verification Testing Requirements:* Sample collection and analyses, including quality control procedures, must be performed according to SW–846 methodologies. If EPA judges the incineration process to be effective under the operating conditions used during the initial verification testing, Occidental Chemical may replace the testing required in Condition (3)(A) with the testing required in Condition (3)(B). Occidental Chemical must continue to test as specified in Condition (3)(A) until and unless notified by EPA in writing that testing in Condition (3)(A) may be replaced by Condition (3)(B).

(A) *Initial Verification Testing:* (i) During the first 40 operating days of the Incinerator Offgas Treatment System after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Limestone Sludge. Daily composites must be representative grab samples collected every 6 hours during each unit operating cycle. The two wastes must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. The waste must also be analyzed for pH. Occidental Chemical must report the operational and analytical test data, including quality control information, obtained during this initial period no later than 90 days after the generation of the two wastes.

(ii) When the Rockbox unit is decommissioned for cleanout, after the final exclusion is granted, Occidental Chemical must collect and analyze composites of the Rockbox Residue. Two composites must be composed of representative grab samples collected from the Rockbox unit. The waste must be analyzed, prior to disposal, for all of the constituents listed in Paragraph 1. The waste must be analyzed for pH. No later than 90 days after the Rockbox is decommissioned for cleanout the first two times after this exclusion becomes final, Occidental Chemical must report the operational and analytical test data, including quality control information.

(B) *Subsequent Verification Testing:* Following written notification by EPA, Occidental Chemical may substitute the testing conditions in (3)(B) for (3)(A)(i). Occidental Chemical must continue to monitor operating conditions, analyze samples representative of each quarter of operation during the first year of waste generation. The samples must represent the waste generated over one quarter. (This provision does not apply to the Rockbox Residue.)

(C) *Termination of Organic Testing for the Limestone Sludge:* Occidental Chemical must continue testing as required under Condition (3)(B) for organic constituents specified under Condition (3)(B) for organic constituents specified in Condition (1)(A)(ii) and (1)(B)(ii) until the analyses submitted under Condition (3)(B) show a minimum of two consecutive quarterly samples below the delisting levels in Condition (1)(A)(ii) and (1)(B)(ii), Occidental Chemical may then request that quarterly organic testing be terminated. After EPA notifies Occidental Chemical in writing it may terminate quarterly organic testing. Following termination of the quarterly testing, Occidental Chemical must continue to test a representative composite sample for all constituents listed in Condition (1) on an annual basis (no later than twelve months after exclusion).

(4) *Changes in Operating Conditions:* If Occidental Chemical significantly changes the process which generate(s) the waste(s) and which may or could affect the composition or type waste(s) generated as established under Condition (1) (by illustration, but not limitation, change in equipment or operating conditions of the treatment process), Occidental Chemical must notify the EPA in writing and may no longer handle the wastes generated from the new process or no longer discharges as nonhazardous until the wastes meet the delisting levels set Condition (1) and it has received written approval to do so from EPA.

(5) *Data Submittals:* The data obtained through Condition 3 must be submitted to Mr. William Gallagher, Chief, Region 6 Delisting Program, U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–O) within the time period specified. Records of operating conditions and analytical data from Condition (1) must be compiled, summarized, and maintained on site for a minimum of five years. These records and data must be furnished upon request by EPA, or the State of Texas, and made available for inspection. Failure to submit the required data within the specified time period or maintain the required records on site for the specified time will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(6) *Reopener:* (a) If Occidental Chemical discovers that a condition at the facility or an assumption related to the disposal of the excluded waste that was modeled or predicted in the petition does not occur as modeled or predicted, then Occidental Chemical must report any information relevant to that condition, in writing, to the Director of the Multimedia Planning and Permitting Division or his delegate within 10 days of discovering that condition. (b) Upon receiving information described in paragraph (a) from any source, the Director or his delegate will determine whether the reported condition requires further action. Further action may include revoking the exclusion, modifying the exclusion, or other appropriate response necessary to protect human health and the environment. (7) *Notification Requirements:* Occidental Chemical must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

TABLE 2.—WASTES EXCLUDED FROM EXCLUDED SPECIFIC SOURCES

Facility	Address	Waste description
•	•	• • • • • • •
Occidental Chemical.	Ingleside, Texas.	Limestone Sludge, (at a maximum generation of 1,114 cubic yards per calendar year) Rockbox Residue, (at a maximum generation of 1,000 cubic yards per calendar year) generated by Occidental Chemical using the wastewater treatment process to treat the Rockbox Residue and the Limestone Sludge (EPA Hazardous Waste No. K019, K020). Occidental Chemical must implement a testing program that meets conditions found in Table 1. Wastes Excluded From Non-Specific Sources from the petition to be valid.
•	•	• • • • • • •

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6226–1]

Nevada; Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Nevada has applied for Final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revision covers regulatory changes that occurred between July 1, 1995 through June 30, 1997. The EPA has reviewed Nevada's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period, EPA's decision to authorize Nevada's hazardous waste program revision will take effect as provided below.

DATES: This final authorization for Nevada will become effective without further notice on March 30, 1999, if EPA receives no adverse comment. Should EPA receive such comments EPA will withdraw this rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. Any comments on Nevada's program revision application must be filed by March 1, 1999.

ADDRESSES: Written comments should be sent to Lisa McClain-Vanderpool, U.S. EPA Region IX (WST–3), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–2086. Copies of Nevada's program revision application is available during the business hours of 9:00 a.m. to 5:00 p.m. at the following addresses for inspection and copying:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710, Phone: 702/687–5872. Contact Allen Biaggi, Administrator.

U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–1510.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool, U.S. EPA Region IX (WST–3), 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415/744–2086.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. Nevada

Nevada initially received final authorization for the base program on August 19, 1985 effective October 18, 1985 (160 *FR* 33359). Nevada received authorization for revisions to its program on April 29, 1992 effective June 29, 1992 (57 *FR* 18083), on May 27, 1994 effective July 26, 1994 (59 *FR* 27472), on April 11, 1995 effective June 12, 1995 (60 *FR* 18358) and on June 24, 1996 effective August 23, 1996 (60 *FR* 32345).

On September 22, 1998, Nevada submitted a final complete program revision application, seeking

authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Nevada's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Nevada's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Nevada Final Authorization for the program modifications contained in the revision.

The public may submit written comments on EPA's immediate final decision until March 1, 1999. Copies of Nevada's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

If EPA does not receive adverse written comment pertaining to Nevada's program revision by the end of the comment period, the authorization of Nevada's revision will become effective 60 days from the date this document is published. If the Agency does receive adverse written comment, it will publish a document withdrawing this immediate final rule before its effective date. EPA will then address the comments in a later final rule based on the companion document appearing in the Proposed Rules section of today's **Federal Register**. EPA may not provide additional opportunity for comment. Any parties interested in commenting should do so at this time.

Nevada is applying for authorization for changes and additions to the Federal RCRA implementing regulations that occurred between July 1, 1995 and June 30, 1997, as listed below.

Description of Federal requirement	Federal Register	Analogous State authority
Hazardous Waste Management: Liquids in Landfills III/ Checklist 145.	July 11,1995, 60 FR 35703	Nevada Revised Statutes (NRS) 459.485 and 459.490; Nevada Administrative Code (NAC) 444.8632 through 444.8634 and regulations included as Sections 8 and 9 of LCB File No. R–202–97 filed with the Secretary of State, March 5, 1998.
RCRA Expanded Public Participation/Checklist 148	December 11, 1995, 60 FR 63417	Same as above.
Identification and Listing of Hazardous Waste: Amendments to Definition of Solid Waste/Recovered Oil Exclusion, Correction Checklist 150.	March 26, 1996, 61 FR 13103	Same as above.
Land Disposal Restrictions Phase III-Decharacterized Waste Waters, Carbamate Wastes and Spent Potliners/Checklist 151.	61 FR 15566 and 15660, April 8, 1996; 61 FR 19117, April 30, 1996; 61 FR 33680, June 28, 1996; 61 FR 36419, July 10, 1996; 61 FR 43924, August 26, 1996; 62 FR 7502, February 19, 1997.	Same as above.
Conditionally Exempt Small Quantity Disposal Options under RCRA subtitle D/Checklist 153.	July 1, 1996, 61 FR 34252	Same as above.
Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments and Containers/Checklist 154.	December 6, 1994, 59 FR 62896–62953; May 19, 1995, 60 FR 26828–26829; September 29,1995, 60 FR 50426–50430; November 13, 1995, 60 FR 56952–56954; February 9, 1996, 61 FR 4903–4916; June 5, 1996, 61 FR 28508–28511; and November 25, 1996, 61 FR 59932–59997.	Same as above.
Land Disposal Restrictions Phase III: Emergency Extension of K088 Capacity/Checklist 155.	January 14, 1997, 62 FR 1992	Same as above.
Military Munitions Rule/Checklist 156	February 12, 1997, 62 FR 6622	Same as above.
Land Disposal Restrictions Phase IV—Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions/Checklist 157.	May 12, 1997, 62 FR 25998	Same as above.
Testing and Monitoring Activities/Checklist 158	June 13, 1997, 62 FR 32452	Same as above.
Conformance with Carbamate Vacatur/Checklist 159	June 17, 1997, 62 FR 32974	Same as above.

Note: NRS 459.485 effective 1981, amended 1991; NRS 459.490 effective 1981, amended 1987. NAC 444.8632 adopts by reference 40 CFR part 2, subpart A; part 124, subparts A and B; parts 260 through 270, inclusive; part 273 and part 279 as modified by NAC 444.8633, NAC 444.8634, 444.86325 and the regulations included as section 8 and 9 of LCB File No. R–202–97 (filed with the Secretary of State on March 5, 1998).

Nevada agrees to review all State hazardous waste permits which have been issued under State law prior to the effective date of this authorization. Nevada agrees to then modify or revoke and reissue such permits as necessary to require compliance with the amended State program. Nevada is not being authorized to operate any portion of the hazardous waste program on Indian lands.

C. Decision

I conclude that Nevada's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Nevada Final Authorization to operate its hazardous waste program as revised. Nevada now has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Nevada also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under

section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Nevada's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart DD until a later date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Nevada program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal

governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from today's action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Nevada is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 21, 1998.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 99–1908 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970527125–8310–04; I.D. 122297D]

RIN 0648–AJ95

Appointment of Members to the Regional Fishery Management Councils

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS revises guidelines for requirements and procedures for the appointment of members to the Regional Fishery Management (RFMCs). The guidelines are revised to clarify compliance requirements, improve their readability, and emphasize the

March 15 deadline for information from the RFMC governors, appropriate chairpersons of tribal Indian governments and RFMC nominees. On January 30, 1998, NMFS published in the **Federal Register** a proposed rule requesting comments on revisions to regulations affecting the nomination and appointment of RFMC members. Comments on the revised guidelines contained in the proposed rule were requested by March 2, 1998. This rule implements the regulations contained in the proposed rule.

DATES: Effective January 29, 1999.

ADDRESSES: Comments regarding the collection-of-information contained in this final rule should be sent to the Director, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, Maryland 20910, and to the Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Loretta E. Williams, F/SF5, NMFS, 301–713–2337.

SUPPLEMENTARY INFORMATION: Additional background for this final rule may be found in the preamble to the proposed rule published at 63 FR 4618 (January 30, 1998), and in regulations contained at 50 CFR part 600.215. The primary purposes of this

final rule are (1) to clarify guidelines that relate to compliance by RFMC state governors, appropriate Pacific Fishery Management Council (PFMC) tribal Indian Governments, and RFMC nominees, (2) to emphasize the requirement for the submission of complete nominations packages by the required March 15 deadline, and (3) to reorganize and improve readability of procedures affecting the RFMC nomination and appointment process. This rule does not contains substantive changes to the existing guidelines.

Comments and Responses

Comment 1: Comments were received from one commenter.

The commenter suggests that, in cases where the terms of both an obligatory member and an at-large member expire concurrently, § 600.215(b)(5) of the proposed rule should be amended to reduce the total minimum number of obligatory and at-large nominees submitted by a governor from six to four.

Response: NMFS finds that existing language in § 600.215 (b)(5) meets the intent of this comment. However, NMFS has reinserted the following text to the end of paragraph (b)(5) that had been inadvertently omitted: "provided that the resulting total number of nominees submitted by that governor for the expiring at-large seat is no fewer than three different nominees."

Comment 2. The commenter stated that, because some constituent states of the RFMCs are heavily involved in the press of state legislative matters during the first quarter of the calendar year, more lead time should be allowed for the recruitment of nominees, preparation of nomination kits, and review of nominations by the governors' offices. The commenter requested that nomination kits be delivered to the governors no later than October 1 of the year preceding the March 15 deadline. *Response*: No change was made. NMFS believes it is unnecessary to establish by regulation a date for the distribution of forms and requests for information contained in the nomination packages. In addition, the expiration of members' terms and pending vacancies at the end of the RFMC year are well known; therefore, governors and chairpersons of tribal Indian Governments are encouraged to begin working with potential nominees as early as possible prior to the term expiration or vacancy. NMFS will endeavor to work with the states throughout the year to facilitate the appointment process.

Changes From the Proposed Rule

Section 600.215 (b)(5) has been revised to include existing language which was inadvertently omitted in the proposed rule and which clarifies requirements when the terms of obligatory and

at-large members from a state expire concurrently.

Classification

Because this is a non-substantive rule of agency procedure, it is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Because the rule is a non-substantive rule of procedure, it will not have an economic impact on the fishing industry or on small entities operating in the fishery.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains a collection-of-information requirement, subject to the Paperwork Reduction Act (PRA). The total public reporting burden for nominations submitted by RFMC governors, PFMC tribal Indian governments, and nominees is estimated to be 120 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed and completing and reviewing the collection of information.

The collection of this information has been approved by the OMB under control number 0648–0314. Send comments on these or any other aspects of the collection of information to the Office of Sustainable Fisheries and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Fisheries, Fishing, Fishing vessels, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: January 25, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set forth in the preamble, 50 CFR part 600 is amended as follows:

PART 600–MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et. seq.*

2. Section 600.215 is revised to read as follows:

§ 600.215 Council nomination and appointment procedures.

(a) General. (1) Each year, the 3-year terms for approximately one-third of the appointed members of the Councils expire. The Secretary of Commerce (Secretary) will appoint or new members or will reappoint seated members to another term to fill the seats being vacated.

(2) There are two categories of seats to which voting members are appointed: "Obligatory" and "At-large."

(i) Obligatory seats are state specific. Each constituent state is entitled to one seat on the Council on which it is a member, except that the State of Alaska is entitled to five seats and the State of Washington is entitled to two seats on the North Pacific Fishery Management Council. When the term of a state's obligatory member is expiring or when that seat becomes vacant before the expiration of its term, the governor of that state must submit the names of at least three qualified individuals to fill that Council seat.

(ii) The Magnuson-Stevens Act also provides for appointment, by the Secretary, of one treaty Indian tribal representative to the Pacific Fishery Management Council (Pacific Council). To fill that seat, the Secretary solicits written nominations from the heads of governments of those Indian Tribes with federally recognized fishing rights from the States of California, Oregon, Washington, or Idaho. The list of nominees must contain a total of at least three individuals who are knowledgeable and experienced regarding the fishery resources under the authority of the Pacific Council. The Secretary will appoint one tribal Indian representative from this list to the Pacific Council for a term of 3 years and rotate the appointment among the tribes.

(iii) At-large seats are regional. When the term of an at-large member is expiring or when that seat becomes vacant before the expiration of a term,

the governors of all constituent states of that Council must each submit the names of at least three qualified individuals to fill the seat.

(b) *Responsibilities of State Governors.* (1) Council members are selected by the Secretary from lists of nominees submitted by Governors of the constituent states, pursuant to section 302(b)(2)(C) of the Magnuson-Stevens Act. For each applicable vacancy, a Governor must submit the names of at least three nominees who meet the qualification requirements of the Magnuson-Stevens Act. A Governor must provide a statement explaining how each of his/her nominees meet the qualification requirements, and must also provide appropriate documentation to the Secretary that each nomination was made in consultation with commercial and recreational fishing interests of that state and that each nominee is knowledgeable and experienced by reason of his or her occupational or other experience, scientific expertise, or training in one or more of the following ways related to the fishery resources of the geographical area of concern to the Council:

(i) Commercial fishing or the processing or marketing of fish, fish products, or fishing equipment;

(ii) Fishing for pleasure, relaxation, or consumption, or experience in any business supporting fishing;

(iii) Leadership in a state, regional, or national organization whose members participate in a fishery in the Council's area of authority;

(iv) The management and conservation of natural resources, including related interactions with industry, government bodies, academic institutions, and public agencies. This includes experience serving as a member of a Council, Advisory Panel, Scientific and Statistical Committee, or Fishing Industry Advisory Committee;

(v) Representing consumers of fish or fish products through participation in local, state, or national organizations, or performing other activities specifically related to the education or protection of consumers of marine resources; or

(vi) Teaching, journalism, writing, consulting, practicing law, or researching matters related to fisheries, fishery management, and marine resource conservation.

(2) To assist in identifying qualifications, each nominee must furnish to the appropriate governor's office a current resume, or equivalent, describing career history—with particular attention to experience related to the criteria in paragraph (b)(1) of this section. Nominees may provide such information in any format they wish.

(3) A constituent State Governor must determine the state of residency of each of his/her nominees. A Governor may not nominate a non-resident of that state for appointment to a Council seat obligated to that state. A Governor may nominate residents of another constituent state of a Council for appointment to an at large seat on that Council.

(4) If, at any time during a term, a member changes residency to another state that is not a constituent state of that Council, or a member appointed to an obligatory seat changes residency to any other state, the member may no longer vote and must resign from the Council. For purposes of this paragraph, a state resident is an individual who maintains his/her principal residence within that constituent state and who, if applicable, pays income taxes to that state and/or to another appropriate jurisdiction within that state.

(5) When the terms of both an obligatory member and an at-large member expire concurrently, the Governor of the state holding the expiring obligatory seat may indicate that the nominees who were not selected for appointment to the obligatory seat may be considered for appointment to an at-large seat, provided that the resulting total number of nominees submitted by that governor for the expiring at-large seat is no fewer than three different nominees. When obligatory and at-large seats do not expire concurrently, the Secretary may select from any of the nominees for such obligatory seat and from the nominees for any at-large seat submitted by the Governor of that state, provided that the resulting total number of nominees submitted by that Governor for the expiring seats is no fewer than six. If a total of fewer than six nominees is submitted by the Governor, each of the six will be considered for the expiring obligatory seat, but not for the expiring at-large seat.

(c) *Responsibilities of eligible tribal Indian governments.* The tribal Indian representative on the Pacific Council will be selected by the Secretary from a list of no fewer than three individuals submitted by the tribal Indian governments with federally recognized fishing rights from California, Oregon, Washington, and Idaho, pursuant to section 302(b)(5) of the Magnuson-Stevens Act. To assist in assessing the qualifications of each nominee, each head of an appropriate tribal Indian government must furnish to the Assistant Administrator a current resume, or equivalent, describing the nominee's qualifications, with emphasis on knowledge and experience related to the fishery resources affected by recommendations of the Pacific Council. Prior service on the Pacific Council in a different capacity will not disqualify nominees proposed by tribal Indian governments.

(d) *Nomination deadlines.* Nomination letters and completed kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15. For appointments outside the normal cycle, a different deadline for receipt of nominations will be announced.

(1) *Obligatory seats.* (i) The governor of the state for which the term of an obligatory seat is expiring must submit the names of at least three qualified individuals to fill that seat by the March 15 deadline. The Secretary will appoint to the Pacific Council a representative of an Indian tribe from a list of no fewer than three individuals submitted by the tribal Indian governments.

(ii) If the nominator fails to provide a nomination letter and at least three complete nomination kits by March 15, the obligatory seat will remain vacant until all required information has been received and processed and the Secretary has made the appointment.

(2) *At-large seats.* (i) If a Governor chooses to submit nominations for an at-large seat, he/she must submit lists that contain at least three different qualified nominees for each vacant seat. A nomination letter and at least three complete nomination kits must be forwarded by express mail under a single mailing to the address specified by the Assistant Administrator by March 15.

(ii) Nomination packages that are incomplete after March 15 will be returned to the nominating Governor and will be processed no further. At-large members will be appointed from among the nominations submitted by the governors who complied with the nomination requirements and the March 15 deadline.

(e) *Responsibilities of the Secretary.* (1) The Secretary must, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries in the Council's area of authority. Further, the Secretary must take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries in the Council's area of authority are fairly represented as voting members on the Councils.

(2) The Secretary will review each list submitted by a governor or the tribal Indian governments to ascertain whether the individuals on the list are qualified for the vacancy. If the Secretary determines that a nominee is not qualified, the Secretary will notify the appropriate Governor or tribal Indian government of that determination. The Governor or tribal Indian government shall then submit a revised list of nominees or resubmit the original list with an additional explanation of the qualifications of the nominee in question. The Secretary reserves the right to determine whether nominees are qualified.

(3) The Secretary will select the appointees from lists of qualified nominees provided by the Governors of the constituent Council states or of the tribal Indian governments that are eligible to nominate candidates for that vacancy.

(i) For Governor-nominated seats, the Secretary will select an appointee for an obligatory seat from the list of qualified nominees submitted by the governor of the state. In filling expiring at-large seats, the Secretary will select an appointee(s) for an at-large seat(s) from the list of all qualified candidates submitted. The Secretary will consider only complete slates of nominees submitted by the governors of the Council's constituent states. When an appointed member vacates his/her seat prior to the expiration of his/her term, the Secretary will fill the vacancy for the remainder of the term by selecting from complete nomination letters and kits that are timely and contain the required number of candidates.

(ii) For the tribal Indian seat, the Secretary will solicit nominations of individuals for the list referred to in paragraph (c) of this section only from those Indian tribes with federally recognized fishing rights from California, Oregon, Washington, or Idaho. The Secretary will consult with the Bureau of Indian Affairs, Department of the Interior, to determine which Indian tribes may submit nominations. Any vacancy occurring prior to the expiration of any term shall be filled in the same manner as described in paragraphs (d)(1) and (2) of this section, except that the Secretary may use the list referred to in paragraph (b)(1) of this section from which the vacating member was chosen. The Secretary shall rotate the appointment among the tribes, taking into consideration:

(A) The qualifications of the individuals on the list referred to in paragraph (c) of this section.

(B) The various rights of the Indian tribes involved, and judicial cases that set out the manner in which these rights are to be exercised.

(C) The geographic area in which the tribe of the representative is located.

(D) The limitation that no tribal Indian representative shall serve more than three consecutive terms in the Indian tribal seat.

[FR Doc. 99–2188 Filed 1–28–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 012599B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-pelagic Trawl Gear in the Red King Crab Savings Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 25, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The Interim 1999 Harvest Specifications of Groundfish (64 FR 50, January 4, 1999) established the interim 1999 red king crab bycatch limit in the RKCSS as 10,000 animals

In accordance with § 679.21(e)(7)(ii)(B), the Administrator, Alaska Region, NMFS, has determined that the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS will be caught. NMFS is closing the RKCSS to directed fishing for groundfish with non-pelagic trawl gear.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the amount. Further delay would only result in the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 25, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2067 Filed 1–25–99; 4:22 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 012199C]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Other Than Pollock by Catcher/Processors Identified in Section 208(e)(1)–(20) of the American Fisheries Act in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing specified groundfish fisheries for specific catcher/

processors identified in the American Fisheries Act (AFA) in the Bering Sea and Aleutian Islands management area (BSAI). These actions are necessary to prevent exceeding the amount of the 1999 interim harvest limitations of groundfish other than pollock, established under the AFA for listed catcher/processors.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 25, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

In accordance with section 211(b)(2)(A) of the AFA, the Interim 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 50, January 4, 1999) established harvest limitations of groundfish other than pollock for the specific catcher/processors identified in section 208(e)(1)–(20) of the AFA (listed catcher/processors). NMFS filed an emergency interim rule on January 15, 1999, that establishes inseason authority to limit harvesting activities of the listed catcher/processors to minimize the potential for specified harvest limitations being exceeded.

Under the new emergency rule regulations at § 679.20(d)(1)(iv), if the Administrator, Alaska Region, NMFS (Regional Administrator), determines that any harvest limitation of groundfish other than pollock, established under section 211(b)(2)(A) of the AFA for listed catcher/processors will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to the listed catcher/processors. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district applicable only to the listed catcher/processors (§ 697.20).

The Regional Administrator has determined that the following harvest limitation amounts are necessary as incidental catch to support other anticipated groundfish fisheries for the 1999 fishing year (amounts in metric tons):

Greenland turbot:	
Aleutian Islands	19
Bering Sea	85
Pacific ocean perch:	
Eastern Aleutian Islands	47
Central Aleutian Islands	45
Western Aleutian Islands	136
Bering Sea	12
"Other rockfish":	
Aleutian Islands	29
Bering Sea	12
Sablefish trawl gear:	
Aleutian Islands	0
Bering Sea	3
Sharpchin/northern: Aleutian Islands	280
Shortraker/rougheye rockfish: Aleutian Islands	8
"Other red rockfish": Bering Sea.	

In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes these amounts as directed fishing allowances.

The Regional Administrator finds that these directed fishing allowances will be reached before the end of the year. In accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by the listed catcher processors for these species in the specified areas. These closures will remain in effect through 2400 hrs, A.l.t., December 31, 1999.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the harvest limitations and other restrictions on the fisheries established in the Interim 1999 Harvest Specifications for Groundfish for the BSAI. It must be implemented immediately to prevent exceeding the harvest limitations of several groundfish species in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days.

Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 25, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2066 Filed 1–25–99; 4:11 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 19
Friday, January 29, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–219–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: OSM is withdrawing the notice of a proposed amendment to the Kentucky regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) that was published on Wednesday, January 6, 1999 (64 FR 816, FR Doc. 99–190). The proposed notice was inadvertently published by OSM and incorrectly announces amendments to the Kentucky program that the State has not made. The notice relates to silviculture or managed woodland, and fish and wildlife, postmining land uses on mountaintop removal mining operations.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2494.

Background

By letter dated December 3, 1998 (Administrative Record No. KY–1445), Kentucky requested that OSM review some language that the State is considering as a proposed program amendment. The State had intended that if OSM finds the language to be acceptable, the State would amend the Kentucky program and submit the amendments to OSM for publication in the **Federal Register** as a proposed amendment. OSM inadvertently published the language as if it were an actual amendment to the Kentucky program. Therefore, the proposed program amendment published in the **Federal Register** dated January 6, 1999 (64 FR 816, FR Doc. 99–190), relating to silviculture or managed woodland, and fish and wildlife, postmining land uses on mountaintop removal mining operations, is withdrawn and Part 917 Title 30 of the Code of Federal Regulations is not amended.

Dated: January 20, 1999.

Tim L. Dieringer,

Acting, Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–2217 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Alaska Federal Subsistence Regional Advisory Council Meetings; Subsistence Management Regulations for Public Lands in Alaska

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Regional Advisory Council meetings.

SUMMARY: The Federal Subsistence Board announces the winter Regional Council meetings identified above. You are invited to attend and observe meeting proceedings. In addition, you are invited to provide oral testimony to the Councils on proposals to change Subsistence Management Regulations for Public Lands in Alaska for the 1999–2000 regulatory year as set forth in a proposed rule on August 17, 1998 (63 FR 43990–44032). We distributed a booklet of proposed regulation changes by mail on November 13, 1998.

The following agenda items will be discussed at each Regional Council meeting: Introduction of Regional Council members and guests; Old business; New business: Member recruitment and Review and development of recommendations on proposals to change Subsistence Management Regulations (1999–2000) for Public Lands in Alaska.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3888. For questions related to subsistence management issues on National Forest Service lands, inquiries may also be directed to Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

SUPPLEMENTARY INFORMATION: Regional Council meetings—The Federal Subsistence Board announces the forthcoming public meetings of the Federal Subsistence Regional Advisory Councils. The Regional Councils will meet in the following Alaska locations, and begin on the specified dates:

Region 1 (Southeast)—Sitka—Feb. 11, 1999
Region 2 (Southcentral)—Anchorage—Mar. 23, 1999
Region 3 (Kodiak/Aleutians)—Port Lions—Feb. 24, 1999
Region 4 (Bristol Bay)—Dillingham—Mar. 23, 1999
Region 5 (Yukon-Kuskokwim Delta)—Alakanuk—Mar. 2, 1999
Region 6 (Western Interior)—Galena—Mar. 9, 1999
Region 7 (Seward Peninsula)—Nome—Mar. 4, 1999
Region 8 (Northwest Arctic)—Kiana—Mar. 2, 1999
Region 9 (Eastern Interior)—Delta Junction—Feb. 27, 1999
Region 10 (North Slope)—Barrow—Feb. 23, 1999

We will publish a notice of specific times and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. Length of the Regional Council meetings will be determined by the amount of work on each Regional Council's agenda.

The Regional Councils were established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska,

36 CFR Part 242 and 50 CFR Part 100, Subparts A, B, and C (57 FR 22940–22964). The Regional Councils advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act.

The identified Regional Council meetings will be open to the public. You are invited to attend these meetings, observe the proceedings, and provide comments to the Regional Councils.

Dated: January 20, 1999.

Ken Thompson,

Acting Regional Forester, USDA–Forest Service.

Dated: January 19, 1999.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 99–2102 Filed 1–28–99; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–34–9902b; FRL–6227–6]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the Georgia State Implementation Plan; Vehicle Inspection/Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the enhanced Inspection/Maintenance (I/M) program for the State of Georgia. The program had initially been given conditional interim approval under the terms of section 110 of the Clean Air Act (CAA) and section 348 of the National Highway Systems Designation Act (NHSDA), as noted in EPA's final conditional interim rule action in the August 11, 1997, **Federal Register**. Due to delays in implementing Phase 2 of the program, the Georgia enhanced I/M program had been disapproved on March 11, 1998, which triggered an eighteen month clock prior to the imposition of sanctions. This proposed approval action also would serve to stop the sanctions clock.

DATES: Written comments must be received on or before March 1, 1999.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION: For additional information see the final interim rule which is published in the Rules section of this **Federal Register**.

Dated: January 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–2195 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6225–9]

Nevada: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Nevada Department of Environmental Protection. In the final rules section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the authorization is set forth in the immediate final rule. If no adverse written comments are received on this action, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule before its effective date by publishing a notice of withdrawal in the **Federal Register**. EPA will then respond to public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before March 1, 1999.

ADDRESSES: Mail written comments to Lisa McClain-Vanderpool, 75 Hawthorne St. (WST–3), San Francisco, CA 94105. You can examine copies of the materials submitted by Nevada during normal business hours at the following locations: U.S. EPA Region IX Library-Information Center, 75 Hawthorne Street, San Francisco, CA 94105 , 415/744–1510; or Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710, Phone: 702/687–5872.

FOR FURTHER INFORMATION CONTACT: Lisa McClain-Vanderpool at the address above.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: January 15, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 99–1909 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50563A; FRL–6050–7]

RIN 2070–AB27

Diphenyl-2,4,6-Trimethylbenzoyl Phosphine Oxide; Withdrawal of Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing a proposed significant new use rule (SNUR) for diphenyl-2,4,6-trimethylbenzoyl phosphine oxide based on receipt of new data. Based on the new data the Agency no longer finds that activities not described in the Premanufacture Notice (PMN) for this substance may result in significant changes in human or environmental exposure.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202)

554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

In the **Federal Register** of February 2, 1988 (53 FR 2857), EPA proposed a SNUR to be codified at 40 CFR 721.855 establishing significant new uses for diphenyl-2,4,6-trimethylbenzoyl phosphine oxide. Because of additional data EPA has received for this substance, EPA is withdrawing this proposed rule.

I. Background

The Agency proposed the SNUR for diphenyl-2,4,6-trimethylbenzoyl phosphine oxide in the **Federal Register** of February 2, 1988 (53 FR 2857). The background and reasons for the SNUR are set forth in the preamble of the proposed rule. After the proposed SNUR, EPA received a 90-day oral subchronic study in rats for the substance. The study resulted in a No Observed Adverse Effect Level (NOAEL) of 100 milligrams/kilograms/day (mg/kg/day). There were effects noted in the liver, blood, and testes at 300 and 1000 mg/kg/day but there was no significant evidence of neurotoxic effects at any dose. EPA had expressed concerns for severe neurotoxicity hazard in the proposed SNUR. Based on this data, EPA no longer finds that activities not described in the PMN may result in significant changes in human exposure and is withdrawing the proposed rule.

II. Rationale for Withdrawal of the Proposed Rule

During review of the PMNs submitted for the chemical substance that is the subject of this withdrawal, EPA concluded that regulation was warranted based on available information that indicated activities not described in the PMN might result in significant changes in human exposure. Based on these findings, a SNUR was proposed.

Based on the submitted test data, EPA no longer finds that activities other than those described in the PMN may result in significant changes in human exposure. Therefore, EPA is withdrawing the proposed SNUR for this chemical substance. When this withdrawal is published in the **Federal Register**, export notification under section 12(b) of TSCA will no longer be required.

III. Public Record

The official record for this proposed rule, as well as the public version, has been established for this proposed rule under docket control number OPPTS–50563A (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This proposed rule does not impose any requirements. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create an unfunded Federal mandate on State, local, or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. This proposed rule does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 19, 1999.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–2205 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Part 829

RIN 2900–AJ32

VA Acquisition Regulation: Taxes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Veterans Affairs Acquisition Regulation (VAAR) by deleting procedures and controls prescribed in the VAAR whereby facilities or institutions owned or controlled by State Governments, territories, and the District of Columbia, under supervision of a Federal agency, can obtain tax-free tobacco products for gratuitous distribution to present and former members of the Armed Forces of the United States. These procedures and controls are inconsistent with VA policy against promotion of the use of tobacco products. Accordingly, we propose to delete the provisions concerning tax-free tobacco products. Further, this document proposes to remove provisions stating that contracting officers will submit requests for legal advice, through channels, to the General Counsel. These provisions are internal VA instructions to contracting officers and are not required to be published in the **Federal Register** or the Code of Federal Regulations. In addition, this document proposes to remove provisions stating that the VAAR contains refund procedures for State and local taxes, since the VAAR does not contain such provisions.

DATES: Comments must be received on or before March 30, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AJ32." All written comments will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, telephone number (202) 273–8819.

SUPPLEMENTARY INFORMATION: The Secretary hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This rule would have a minuscule effect, if any, on small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 48 CFR Part 829

Government procurement, Taxes.

Approved: January 22, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR parts 829 is proposed to be amended as follows:

PART 829—TAXES

1. The authority citation for part 829 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

2. Section 829.000 is revised to read as follows:

829.000 Scope of part.

This part prescribes policies and procedures for exemptions from Federal excise taxes imposed on alcohol products purchased for use in the Department of Veterans Affairs medical care program.

Subpart 829.1—[Removed]

3. Subpart 829.1 consisting of section 829.101 is removed.

829.270 through 829–270–2 [Removed]

4. Sections 829.270 through 829.270–2 are removed.

[FR Doc. 99–2126 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF30

Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) provides notice that the comment period on the Service's proposal to establish special regulations for the conservation of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (63 FR 66777, December 3, 1998) is extended through March 5, 1999. The Service notes that revisions of Mouse Protection Areas and Potential Mouse Protection Areas referenced in the December 3, 1998, proposed rule are available for review.

DATES: The public comment period, which was originally to close on February 1, 1999, is extended for an additional 31 days and now closes on March 5, 1999.

ADDRESSES: Written comments and materials should be sent to Colorado Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: LeRoy W. Carlson, Colorado Field Supervisor, telephone 303/275–2370, facsimile 303/275–2371 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

The Preble's meadow jumping mouse, a small rodent in the family Zapodidae, is known to occur only in eastern Colorado and southeastern Wyoming. It lives primarily in heavily vegetated riparian habitats and immediately adjacent upland habitats. Habitat loss and degradation caused by agricultural, residential, commercial, and industrial development have resulted in concern over its continued existence.

On May 13, 1998, the Service published a final rule (63 FR 26517) to

list the Preble's meadow jumping mouse as a threatened species under the Endangered Species Act (Act) of 1973 (16 U.S.C. sections 1531 to 1544) without critical habitat. At the time the Preble's was listed, a special rule for the conservation of the Preble's was not promulgated and therefore virtually all of the restrictions of the Act became applicable to the species. On December 3, 1998, the Service proposed a special rule under 4(d) of the Act to establish standards for the conservation of the Preble's for 18 months.

Some revisions have been made to the geographic locations of Mouse Protection Areas and Potential Mouse Protection Areas described in the December 3, 1998, proposed rule. These revisions, based on the best scientific information currently available, are maintained by the Service at addresses provided below. These geographic locations can be viewed at the U.S. Fish and Wildlife Service, Colorado Field Office, 755 Parfet Street, Suite 361, Lakewood, Colorado, telephone 303/275–2370 or at the U.S. Fish and Wildlife Service, Wyoming Field Office, 4000 Morrie Avenue, Cheyenne, Wyoming 82001, telephone 307/722–2374. Depictions of these geographic locations are also available on our internet home page (www.r6.fws.gov/preble).

Legal notice and news releases announcing the extension of the comment period are being published in newspapers concurrently with this **Federal Register** notice.

Written statements concerning the proposed special rule should be mailed to the Service office identified in the **ADDRESSES** section above on or before March 5, 1999.

Author

The author of this notice is Peter Plage, Colorado Field Office (see **ADDRESSES** above), telephone 303/275–2370.

Authority

Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: January 22, 1999.

Terry T. Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 99–1994 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 64, No. 19
Friday, January 29, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Revenue Coverage

ACTION: Notice of availability.

SUMMARY: In accordance with section 508(h) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) approves for reinsurance and subsidy the insurance of corn, grain sorghum, soybeans, cotton, and rice in select states and counties under the Crop Revenue Coverage (CRC) plan of insurance for the 1999 crop year. This notice is intended to inform eligible producers and the private insurance industry of the CRC coverage changes for corn, grain sorghum, soybeans, cotton and rice and provide its terms and conditions.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, Missouri, 64131, telephone (816) 926–7387.

SUPPLEMENTARY INFORMATION: Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act.

In accordance with the Act, the Board approved a program of insurance known as CRC, originally submitted by American Agrisurance, a managing general agency for Redland Insurance Company.

The CRC program has been approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses. CRC is designed to protect producers against both price and yield losses. CRC provides a harvest revenue guarantee that pays losses from the established yield coverage at a higher price if the harvest time price is higher than the spring price.

In the 1996 crop year, the CRC program was available for corn and soybeans in all counties in Iowa and Nebraska.

In the 1997 crop year, the CRC program was expanded for corn into Colorado, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Ohio, Oklahoma, South Dakota, and Texas, and soybeans into Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Ohio, Oklahoma, South Dakota, and Texas. New CRC programs were also made available for grain sorghum in Colorado, Nebraska, Oklahoma, and crop reporting districts 20, 30, 50, and 70 in Kansas, 40 in Missouri, 50 and 80 in South Dakota, and 40, 51, 52, 81, 82, 90, 96, and 97 in Texas; for cotton in Arizona, Georgia, Oklahoma, and crop reporting districts 11, 12, 21, and 22 in Texas; and for wheat into Kansas, Michigan, Minnesota, Nebraska, South Dakota, Texas, Washington, and twenty-three counties each in Montana and North Dakota.

In the 1998 crop year, the CRC program was expanded for corn into Alabama, Arizona, Arkansas, California, Georgia, Idaho, Kentucky, Louisiana, Mississippi, Montana, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Tennessee, Utah, Virginia, Washington, Wisconsin, and Wyoming; for soybeans into Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, North Dakota, South Carolina, Tennessee, Virginia, and Wisconsin; for grain sorghum into Alabama, Arkansas, California, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, New Mexico, North Carolina, North Dakota, Ohio, South Carolina, Tennessee, Virginia, Wisconsin, and the remaining counties in Kansas, Missouri, South Dakota, and Texas; for cotton into Alabama, Arkansas, California, Kansas, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, South Carolina, Tennessee, Virginia, and the remaining counties in Texas; and for wheat into Alabama, Arizona, Arkansas, California, Colorado, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Virginia, Wisconsin, Wyoming, and remaining counties in Montana and North Dakota.

Prior to the 1998 crop year, the CRC policy provided coverage for basic and optional units only, as selected by the insured, and the expected market price was based on 95 percent of the average daily settlement price. Beginning with the 1998 crop year, insureds could select basic, optional or enterprise units for corn and soybeans and 95 or 100 percent of the average daily settlement price for corn, grain sorghum, soybeans and cotton. The CRC program was also changed to provide insurance at an appropriate premium for any producer that had been identified on the nonstandard classification system (NCS).

Beginning with the 1999 crop year for CRC wheat, producers can select basic, optional or enterprise units, 95 or 100 percent of the average daily settlement price, coverage for all acreage classified as high risk, and a separate price for durum wheat. A methodology also has been developed for determining the spring wheat Base Price in counties that had both fall and spring wheat programs, but only a fall cancellation date.

Beginning with the 1999 crop year, new CRC programs are available for rice in Arkansas, California, Florida, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas; for corn, grain sorghum, and soybeans in Maryland; and for corn, grain sorghum, soybeans, and cotton in Florida. Enterprise units are now available for all CRC crops; and, written agreements are allowed for rating purposes only. Beginning with the 1999 spring crops, insureds can select increased coverage levels of 80 and 85 percent for crops and in counties where Risk Management Agency (RMA) offers coverage levels up to 85 percent, and high-risk classification rating has been added for corn, grain sorghum, soybeans, cotton, and rice.

FCIC herewith gives notice of the above stated changes for the 1999 crop year for CRC corn, grain sorghum, soybeans, cotton, spring wheat, and rice for use by private insurance companies.

The CRC underwriting rules, rate factors and forms for 1999 spring crops will be released electronically to all reinsured companies through FCIC's Reporting Organization Server. FCIC will also make available the terms and conditions of the CRC reinsurance agreement. Requests for this information should be sent to Heyward Baker, Director, Reinsurance Services Division, Federal Crop Insurance Corporation, 1400 Independence Avenue, SW, Stop 0804, Room 6727–S, Washington, DC, 20250–0804.

Following is a complete list of insurable CRC crops by state for the 1999 crop year:

Alabama: Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Arizona: Corn, Cotton, Wheat
Arkansas: Corn, Cotton, Grain Sorghum, Rice, Soybeans, Wheat
California: Corn, Cotton, Grain Sorghum, Rice, Wheat
Colorado: Corn, Grain Sorghum, Wheat
Georgia: Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Florida: Corn, Cotton, Grain Sorghum, Rice, Soybeans
Idaho: Corn, Wheat
Illinois: Corn, Grain Sorghum, Soybeans, Wheat
Indiana: Corn, Grain Sorghum, Soybeans, Wheat
Iowa: Corn, Grain Sorghum, Soybeans, Wheat
Kansas: Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Kentucky: Corn, Grain Sorghum, Soybeans, Wheat
Louisiana: Corn, Cotton, Grain Sorghum, Rice, Soybeans, Wheat
Maryland: Corn, Grain Sorghum, Soybeans
Michigan: Corn, Grain Sorghum, Soybeans, Wheat
Minnesota: Corn, Grain Sorghum, Soybeans, Wheat
Mississippi: Corn, Cotton, Grain Sorghum, Rice, Soybeans, Wheat
Missouri: Corn, Cotton, Grain Sorghum, Rice, Soybeans, Wheat
Montana: Corn, Wheat
Nebraska: Corn, Grain Sorghum, Soybeans, Wheat
New Mexico: Corn, Cotton, Grain Sorghum, Wheat
North Carolina: Corn, Cotton, Grain Sorghum, Soybeans, Wheat
North Dakota: Corn, Grain Sorghum, Soybeans, Wheat
Ohio: Corn, Grain Sorghum, Soybeans, Wheat
Oklahoma: Corn, Cotton, Grain Sorghum, Rice, Soybeans, Wheat
Oregon: Corn, Wheat
South Carolina: Corn, Cotton, Grain Sorghum, Soybeans, Wheat
South Dakota: Corn, Grain Sorghum, Soybeans, Wheat
Tennessee: Corn, Cotton, Grain Sorghum, Rice, Soybeans, Wheat
Texas: Corn, Cotton, Grain Sorghum, Texas, Soybeans, Wheat
Utah: Corn, Wheat
Virginia: Corn, Cotton, Grain Sorghum, Soybeans, Wheat
Washington: Corn, Wheat
Wisconsin: Corn, Grain Sorghum, Soybeans, Wheat
Wyoming: Corn, Wheat

Notice: The Basic Provisions, Crop Provisions, and Commodity Exchange Endorsements for the 1999 CRC spring crop programs of insurance are as follows:

Crop Revenue Coverage (CRC) Insurance Policy

(This is a continuous policy. Refer to section 3.)

This policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the authority of section 508(h) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1508(h)). The provisions of the policy may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC or us. In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by FCIC. No state guarantee fund will be liable to pay the loss.

Throughout the policy, "you" and "your" refer to the named insured shown on the accepted application and "we," "us," and "our" refer to the insurance company providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Agreement to Insure: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in the policy. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) the Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) these Basic Provisions, with (1) controlling (2), etc.

Basic Provisions

Terms and Conditions

1. Definitions

Abandon. Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.

Acreage report. A report required by section 7 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions or as provided in section 7 by which you are required to submit your acreage report.

Act. The Federal Crop Insurance Act, (7 U.S.C. 1501 *et seq.*).

Actuarial documents. The material for the crop year which is available for public inspection in your agent's office, and which show the revenue guarantees, coverage levels, premium rates, practices, insurable acreage, and other related information regarding crop insurance in the county.

Additional coverage. Plans of crop insurance providing a level of coverage equal to or greater than 65 percent of the approved yield indemnified at 100 percent of the Base Price, or a comparable coverage.

Administrative fee. An amount you must pay for limited and additional coverage for each crop year as specified in section 8.

Agricultural commodity. All insurable crops and other fruit, vegetable or nut crops produced for human or animal consumption.

Another use, notice of. The written notice required when you wish to put acreage to another use (see section 15).

Application. The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested. If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us, or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop. Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

Approved yield. The yield determined in accordance with 7 CFR part 400, subpart G. This yield is established for basic or optional units. The Approved Yield for each basic or optional unit comprising an enterprise unit is retained for premium and final guarantee purposes under an enterprise unit.

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your

right to an indemnity payment to any party of your choice for the crop year.

Base Price. The initial price determined in accordance with the Commodity Exchange Endorsement and used to calculate your premium and Minimum Guarantee.

CRC low price factor. A premium factor, as set forth in the actuarial documents, used to calculate the risk associated with a decrease in the Harvest Price relative to the Base Price.

CRC high price factor. A premium factor, as set forth in the actuarial documents, used to calculate the risk associated with an increase in the Harvest Price relative to the Base Price.

CRC rate. A premium rate, as set forth in the actuarial documents, used to calculate the risk associated with producing a level of production.

Cancellation date. The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us, or terminated in accordance with the policy terms.

Claim for indemnity. A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the Harvest Price is released (see section 15.)

Consent. Approval in writing by us allowing you to take a specific action.

Contract. (see "Policy".)

Contract change date. The calendar date by which we make any policy changes available for inspection in the agent's office (see section 5.)

County. Any county, parish, or other political subdivision of a state shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

Coverage. The insurance provided by this policy, against insured loss of revenue by unit as shown on your summary of coverage.

Coverage begins, date. The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 12 of these Basic Provisions for specific provisions relating to prevented planting.)

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown, regardless of whether or not it is actually grown; and designated by the calendar year in which the insured crop is normally harvested.

Damage. Injury, deterioration, or loss of revenue of the insured crop due to insured or uninsured causes.

Damage, notice of. A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 15.)

Days. Calendar days.

Deductible. The amount determined by subtracting the coverage level percentage you choose from 100 percent. For example, if you elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65% = 35%).

Delinquent account. Any account you have with us in which premiums, and interest on those premiums, is not paid by the termination date specified in the Crop Provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

Earliest planting date. The earliest date established for planting the insured crop (see Special Provisions and section 14.)

End of insurance period, date of. The date upon which your crop insurance coverage ceases for the crop year (see Crop Provisions and section 12.)

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA.

Field. All acreage of tillable land within a natural or artificial boundary (*e.g.*, roads, waterways, fences, etc.)

Final Guarantee. The number of dollars guaranteed per acre determined to be the higher of the Minimum Guarantee or the Harvest Guarantee, where:

(1) Minimum Guarantee—The Approved Yield per acre multiplied by the Base Price multiplied by the coverage level percentage you elect.

(2) Harvest Guarantee—The Approved Yield per acre multiplied by the Harvest Price, multiplied by the coverage level percentage you elect.

If you elect enterprise unit coverage, the Basic Units or Optional units comprising the enterprise unit will retain separate Final Guarantees.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full Final Guarantee.

FSA. The Farm Service Agency, an agency of the USDA, or a successor agency.

FSA farm serial number. The number assigned to the farm by the local FSA office.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the Final Guarantee and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest Price. The final price determined in accordance with the Commodity Exchange Endorsement and used to calculate your Calculated Revenue and the Harvest Guarantee.

Insured. The named person shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

Insured crop. The crop for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the Final Guarantee on the irrigated acreage planted to the insured crop.

Late planted. Acreage initially planted to the insured crop after the final planting date.

Late planting period. The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

Limited coverage. Plans of insurance offering coverage that is equal to or greater than 50 percent of the approved yield indemnified at 100 percent of the Base Price, or a comparable coverage, but less than 65 percent of the approved yield indemnified at 100 percent of the Base Price, or a comparable coverage.

Limited resource farmer. A producer or operator of a farm:

(a) With an annual gross income of $20,000 or less derived from all sources, including income from a spouse or other members of the household, for each of the prior two years; or

(b) With less than 25 acres aggregated for all crops, where a majority of the

producer's gross income is derived from such farm or farms, but the producer's gross income from farming operations does not exceed $20,000.

Loss, notice of. The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period, whichever is earlier (see section 15.)

MPCI. Multiple peril crop insurance program, a program of insurance offered under the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (Act) and implemented in 7 CFR chapter IV.

Negligence. The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. "Person" does not include the United States Government or any agency thereof.

Planted acreage. Land in which seed, plants, or trees have been placed appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

Policy. The agreement between you and us consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured crop, and the applicable regulations published in 7 CFR chapter IV.

Practical to replant. Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the final planting date if no late planting period is applicable, unless replanting is generally occurring in the area. Unavailability of seed or plants will not be considered a valid reason for failure to replant.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Prevented planting. Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

Production report. A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 4). The report contains yield information for previous years, including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, by measurement of farm-stored production, or by other records of production approved by us on an individual case basis.

Replanting. Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the insured acreage with the expectation of producing at least the yield used to determine the Final Guarantee.

Representative sample. Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

Sales closing date. A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

Section (for the purposes of unit structure). A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

Share. Your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss, or the beginning of harvest.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

State. The state shown on your accepted application.

Substantial benefit interest. An interest held by any person of at least 10 percent in the applicant or insured.

Summary of coverage. Our statement to you, based upon your acreage report, specifying the insured crop and the Revenue Guarantee provided by unit.

Tenant. A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of "Share" above.)

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Unit.

(a) Basic unit—A unit established in accordance with section 2 (a).

(b) Optional unit—A unit established from basic units in accordance with section 2 (b).

(c) Enterprise unit—A unit established from basic units or optional units in accordance with section 2 (c).

USDA. United States Department of Agriculture.

Void. When the policy is considered not to have existed for a crop year as a result of concealment, fraud, or misrepresentation (see section 27).

Written Agreement. A document that alters designated terms of a policy as authorized under these Basic Provisions. See section 34.

2. Unit Structure.

(a) Basic unit—All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis. (Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units; one for each crop share lease and one that combines the two cash leases and the land you own.) Land rented for cash, a fixed commodity payment, or a consideration other than a share in the insured crop, or proceeds from the sale of the insured crop, on such land will be considered as owned by the lessee (see definition of "Share" above).

(b) Optional unit—Unless limited by the Crop Provisions or Special Provisions, a basic unit as defined in section 2(a) may be divided into optional units if, for each optional unit:

(1) You meet the following:

(i) You have records, that are acceptable to us, of planted acreage and the production from each optional unit for at least the last crop year used to determine your Final Guarantee;

(ii) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(iii) All optional units you select for the crop year are identified on the acreage report for that crop year (Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made after the acreage reporting date for any reason); and

(iv) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us.

(2) Each optional unit must meet one or more of the following, unless otherwise specified in the Crop Provisions:

(i) Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number; and

(ii) In addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number, optional units may be based on irrigated and non-irrigated acreage. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the Final Guarantee is based, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage if the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit. In this case, production from both practices will be used to determine your approved yield.

(3) If you do not comply fully with the provisions in this section, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined by us to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(c) Enterprise unit—A unit that consists of all insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. If you select and qualify for an enterprise unit, you will qualify for a premium discount based on the insured crop and number of acres in the enterprise unit. The following requirements must be met to qualify for an enterprise unit:

(1) The enterprise unit must contain 50 or more acres;

(2) The acreage that comprises the enterprise unit must also qualify;

(i) For two or more basic units of the same insured crop as defined in section 2(a) that are located in two or more separate sections, section equivalents or FSA farm serial numbers; or

(ii) For two or more optional units of the same insured crop established by separate sections, section equivalents, or FSA farm serial numbers as defined in section 2(b)(2)(i).

(3) These basic units or optional units that comprise the enterprise unit must each have insurable acreage of the same crop in the crop year insured;

(4) You must comply with all reporting requirements for the enterprise unit. (You must maintain required production records on a basic or optional unit basis if you wish to change your unit structure for any subsequent crop year.);

(5) The qualifying basic units or optional units may not be combined into an enterprise unit on any basis other than as described herein; and

(6) If you do not comply with the reporting provisions for the enterprise unit, your yield for the enterprise unit will be determined in accordance with section 4(e).

(d) Selection of unit structure—Basic, optional, or enterprise units will be determined when the acreage is reported but may be adjusted, combined, or separated to reflect the actual unit structure when adjusting a loss. If you select an enterprise unit structure, you must elect that option in writing by the earliest sales closing date for the insured crops. If you do not qualify for an enterprise unit when the acreage is reported, we will assign the basic unit structure.

All applicable unit structures must be stated on the acreage report for each crop year.

3. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy, or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable, (except as stated herein) coverage level, price percentage, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) If any amount due, including administrative fees or premium, is not paid, or an acceptable arrangement for payment is not made on or before the termination date for the crop on which the amount is due, you will be determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with 7 CFR part 400, subpart U.

(1) For a policy with unpaid administrative fees or premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate;

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1998, and crop B, with a termination date of March 15, 1999, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 1998, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 1999. If you enter an agreement to repay the debt on April 25, 1999, you can apply for insurance for crop A by the October 31, 1999, sales closing date and crop B by the March 15, 2000, sales closing date. If you fail to make a scheduled payment on November 1, 1999, you will be ineligible for crop insurance effective on November 1, 1999, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

(i) You are not eligible to participate in the Crop Revenue Coverage program if you have elected the MPCI Catastrophic Risk Protection Endorsement except if you execute a High Risk Land Exclusion Option for a Crop Revenue Coverage Policy, you may elect to insure the "high risk land" under an MPCI Catastrophic Risk Protection Endorsement, provided the Catastrophic Risk Protection Endorsement is obtained from us. If both policies are in force, the acreage of the crop covered under the Crop Revenue Coverage policy and the acreage covered under an MPCI Catastrophic Risk Protection Endorsement will be considered as separate crops for insurance purposes, including the payment of administrative fees.

(j) When obtaining limited or additional coverage, you must provide information regarding crop insurance coverage on any crop previously obtained from an approved insurance provider, including the date such insurance was obtained and the amount of the administrative fee.

4. Coverage Level, Price Percentage, and Approved Yield for Determining Final Guarantee and Indemnity

(a) For each crop year, the Final Guarantee, coverage level, and price percentage at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the Special Provisions or in the actuarial documents.

(b) You may select only one coverage level from among those offered by us for each insured crop. By written notice to us, you may change the coverage level for the following crop year not later than the sales closing date for the affected insured crop. If you do not change the coverage level for the succeeding crop year you will be assigned the same coverage level that was in effect the previous crop year.

(c) You may select only one price percentage for each insured crop. You may change the price percentage for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. The price percentage you select applies to both the Base Price and Harvest Price. Since the average daily settlement price may change each year, if you do not select a new price percentage on or before the sales closing date, we will assign a price percentage which bears the same relationship to the price percentage schedule that was in effect for the preceding year. (For example: If you selected a price percentage of 100 for the previous crop year, and you do not select a new price percentage for the current crop year, we will assign a price percentage of 100 for the current crop year.)

(d) This policy is an alternative to the Multiple Peril Crop Insurance program and satisfies the requirements of section 508 (b)(7) of the Act.

(e) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless otherwise stated in the Special Provisions.

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your Approved Yield for the purpose of determining your Final Guarantee for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you

which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(f) We may revise your Final Guarantee for any unit, and revise any indemnity paid based on that Final Guarantee, if we find that your production report under paragraph (e) of this section:

(1) Is not supported by written verifiable records in accordance with the definition of production report; or

(2) Fails to accurately report actual production, acreage, or other material information.

(g) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such a person to sign.

5. Contract Changes

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, premium rates, and program dates will be provided by us to your crop insurance agent not later than the contract change date contained in the Crop Provisions. You may view the documents or request copies from your crop insurance agent.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop Provisions, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

6. Liberalization

If we adopt any revision that broadens the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

7. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 7(a) (1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections 7(a) (1) or (2); or

(C) Five (5) days after the end of the late planting period for the insured crop, if applicable.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The date the insured crop was planted.

(d) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity that may be due, you may not revise this report after the acreage reporting date without our consent.

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 7(g).

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

(g) If the information reported by you on the acreage report for share, acreage, practice, type or other material information is inconsistent with the information that is determined to actually exist for a unit and results in:

(1) A lower liability than the actual liability determined, the Final Guarantee on the unit will be reduced to an amount that is consistent with the reported information. In the event that insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity; and

(2) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information. If we discover that you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years that substantiates your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense.

(h) Errors in reporting units may be corrected by us at the time of adjusting a loss to reduce our liability and to conform to applicable unit division guidelines.

8. Annual Premium and Administrative Fees

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the premium billing date specified in the Special Provisions. The premium due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions.

(b) Any amount you owe us related to any crop insured with us under the authority of the Act will be deducted from any prevented planting payment or indemnity due you for any crop insured with us under the authority of the Act.

(c) The annual premium amount is determined by:

(1) Multiplying the Approved Yield times the coverage level, times the MPCI Base Rate specified in the applicable MPCI actuarial documents, and times

the Base Price as defined in the Commodity Exchange Endorsement;

(2) Multiplying the Approved Yield times the coverage level, times the CRC Rate specified in the actuarial documents, and times the Low Price Factor specified in the actuarial documents ;

(3) Multiplying the Approved Yield times the coverage level, times the MPCI Base Rate specified in the applicable MPCI actuarial documents, and times the High Price Factor specified in the actuarial documents;

(4) Adding sections 8(c)(1), (2), and (3);

(5) Multiplying the result of section 8(c)(4) times the acres insured, times your share at the time coverage begins, and as applicable, times any Rate Map Area Adjustment Factor; Rate Class Option Factor; Option Factor; and Yield Adjustment Surcharge specified in the actuarial documents;

(6) Multiplying the Approved Yield times the coverage level, times the MPCI Base Rate specified in the applicable actuarial documents, times the MPCI Market Price Election, times the acres insured, times your share at the time coverage begins, and as applicable, times any Rate Map Area Adjustment Factor; Rate Class Option Factor; Option Factor; and Yield Adjustment Surcharge specified in the actuarial documents, and times the applicable producer subsidy percentage to calculate the appropriate amount of subsidy. The producer subsidy percentage is based upon the coverage level and is contained in the actuarial documents; and

(7) Subtracting section 8(c)(6) from section 8(c)(5) to determine the annual producer paid premium.

(d) The annual premium amount for any applicable High Risk Classification is determined by:

(1) Multiplying the Approved Yield (with yield adjustments specified in the actuarial documents) times the coverage level, times the High Risk Classification Rate specified in the actuarial documents, times the Rate Differential specified in the actuarial documents, and times the Base Price as defined in the Commodity Exchange Endorsement;

(2) Multiplying the result of section 8(d)(1) times the acres insured, times your share at the time coverage begins, times any applicable Rate Class Option Factor; and Option Factor specified in the actuarial documents, and times the High Risk Classification Premium Factor calculated using the High Risk Classification Premium Formula specified in the actuarial documents;

(3) Multiplying the Approved Yield (with yield adjustments specified in the actuarial documents) times the coverage level, times the High Risk Classification Rate specified in the actuarial documents, times the Rate Differential specified in the actuarial documents, times the MPCI Market Price Election, times the acres insured, times your share at the time coverage begins, and as applicable, times any Rate Class Option Factor; and Option Factor specified in the actuarial documents, and times the applicable producer subsidy percentage to calculate the appropriate amount of subsidy. The producer subsidy percentage is based upon the coverage level and is contained in the actuarial documents; and

(4) Subtracting section 8(d)(3) from section 8(d)(2) to determine the annual producer paid premium.

(e) In addition to the premium charged:

(1) If you elect limited coverage, you must pay an administrative fee each crop year of $50 per crop per county, not to exceed $200 per county, or $600 for all counties in which you elected to obtain limited coverage.

(2) If you elect additional coverage, you must pay an administrative fee of $20 per crop for each crop year in which crop insurance coverage remains in effect.

(3) The administrative fee must be paid no later than the time that premium is due.

(4) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report, you may be subject to criminal and administrative sanctions.

(5) The administrative fee for limited coverage will be waived if you request it and you qualify as a limited resource farmer.

(6) The administrative fee for additional coverage is not subject to any limits and may not be waived.

(7) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

9. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates or Final Guarantee have been established;

(2) Of a type, class or variety established as not adapted to the area or excluded by the policy provisions;

(3) That is a volunteer crop;

(4) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions;

(5) That is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the Crop Provisions; or

(6) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

10. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable except acreage:

(1) That has not been planted and harvested within one of the 3 previous crop years, unless:

(i) Such acreage was not planted:

(A) To comply with any other USDA program;

(B) Because of crop rotation, (*e.g.*, corn, soybean, alfalfa; and the alfalfa remained for 4 years before the acreage was planted to corn again);

(C) Due to an insurable cause of loss that prevented planting; or

(D) Because a perennial tree, vine, or bush crop was grown on the acreage.

(ii) Such acreage was planted but was not harvested due to an insurable cause of loss; or

(iii) The Crop Provisions specifically allow insurance for such acreage.

(2) That has been strip-mined, unless an agricultural commodity other than a cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) That is interplanted, unless allowed by the Crop Provisions;

(5) That is otherwise restricted by the Crop Provisions or Special Provisions; or

(6) That is planted in any manner other than as specified in the policy provisions for the crop.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and adequate water, or the reasonable expectation of

receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

(c) Notwithstanding the provisions in section 9(b)(1), if acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as "non-irrigated," or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that we will insure to the amount allowed under any acreage limitation program established by the USDA if we notify you of that restriction prior to the sales closing date.

11. Share Insured

(a) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for BOTH a minimum payment (such as a specified amount of cash, bushels, pounds, etc.,) AND a crop share will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for EITHER a minimum payment OR a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

12. Insurance Period

(a) Except for prevented planting coverage (see section 18), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 3);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on a unit; 1

(4) The calendar date contained in the Crop Provisions for the end of the insurance period;

(5) Abandonment of the crop on the unit; or

(6) As otherwise specified in the Crop Provisions.

13. Causes of Loss

The insurance provided is against only unavoidable loss of revenue directly caused by specific causes of loss contained in the Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(b) Failure to follow recognized good farming practices for the insured crop;

(c) Water contained by any governmental, public, or private dam or reservoir project;

(d) Failure or breakdown of irrigation equipment or facilities; or

(e) Failure to carry out a good irrigation practice for the insured crop, if applicable.

14. Replanting Payment

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable.)

(b) No replanting payment will be made on acreage:

(1) On which our appraisal establishes that production will exceed the level set by the Crop Provisions;

(2) Initially planted prior to the earliest planting date established by the Special Provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the Crop Provisions.

(d) No replanting payment will be paid if we determine it is not practical to replant.

15. Duties in the Event of Damage or Loss

Your Duties—

(a) In case of damage to any insured crop you must:

(1) Protect the crop from further damage by providing sufficient care;

(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop (we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss);

(3) Leave representative samples intact for each field of the damaged unit as may be required by the Crop Provisions;

(4) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(i) Show us the damaged crop;

(ii) Allow us to remove samples of the insured crop; and

(iii) Provide us with records and documents we request and permit us to make copies; and

(5) Give us notice of your expected revenue loss not later than 45 days after the date the Harvest Price is released.

(b) You must obtain consent from us before, and notify us after you:

(1) Destroy any of the insured crop that is not harvested;

(2) Put the insured crop to an alternative use;

(3) Put the acreage to another use; or

(4) Abandon any portion of the insured crop. We will not give consent for any of the actions in sections 15(b)(1) through (4) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the date the Harvest Price is released. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and

(2) Submit to examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during

the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

(f) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after:

(1) We reach agreement with you;

(2) Completion of arbitration or appeal proceedings; or

(3) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

(d) We recognize and apply the loss adjustment procedures established or approved by FCIC.

16. Production Included in Determining Indemnities

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

(c) Appraised production will be used to calculate your claim if you will not be harvesting the acreage. To determine your indemnity based on appraised production, you must agree to notify us if you harvest the crop and advise us of the production. If the acreage will be harvested, harvested production will be used to determine any indemnity due, unless otherwise specified in the policy.

(d) The amount of an indemnity that may be determined under the applicable provisions of your crop policy may be reduced by an amount, determined in accordance with the Crop Provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by you as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage prevented from being planting will be based on a reduced Final Guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.

17. Late Planting

Unless limited by the Crop Provisions, insurance will be provided for acreage planted to the insured crop after the final planting date in accordance with the following:

(a) The Final Guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

(1) The Final Guarantee for each acre planted as specified in this subsection will be determined by multiplying the Final Guarantee that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) by an insurable cause occurring within the insurance period for prevented planting coverage; and

(3) All production from acreage as specified in this section will be included as production to count for the unit.

(c) The premium amount for insurable acreage specified in this section will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due, and no indemnity will be paid).

(d) Any acreage on which an insured cause of loss is a material factor in preventing completion of planting, as specified in the definition of "planted acreage" (e.g., seed is broadcast on the soil surface but cannot be incorporated) will be considered as acreage planted after the final planting date and the Final Guarantee will be calculated in accordance with section 17(b)(1).

18. Prevented Planting

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop by an insured cause that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence;

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report; and

(3) You did not plant the insured crop during or after the late planting period. If such acreage was planted to the insured crop during or after the late planting period, it is covered under the late planting provisions.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date.

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions.

(3) If you have an MPCI Catastrophic Risk Protection Endorsement for any acreage of "high risk land," the additional levels of prevented planting coverage will not be available for that acreage; and

(4) You may not increase your elected or assigned preventing planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Drought or failure of the irrigation water supply will be considered to be an insurable cause of loss for the purposes of prevented planting only if on the final planting date (or within the late planting period if you elect to try to plant the crop):

(1) For non-irrigated acreage, the area that is prevented from being planted has

insufficient soil moisture for germination of seed and progress toward crop maturity due to a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

(2) For irrigated acreage, there is not a reasonable probability of having adequate water to carry out an irrigated practice.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 18(f)(4) or (5). The eligible acres for each insured crop will be determined in accordance with the following table:

Type of crop	Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee	Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee
(i) The crop is not required to be contracted with a processor to be insured.	(A) The maximum number of acres certified for APH purposes or reported for insurance for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a substitute crop other than an approved cover crop). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program.	(B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 18(e)(1)(i)(A).
(ii) The crop must be contracted with a processor to be insured.	(A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. (For the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used.).	(B) The number of acres of the crop as determined in section 18(e)(1)(ii)(A).

(2) Any eligible acreage determined in accordance with the table contained in section 18(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section 17(b).

(f) Regardless of the number of eligible acres determined in section 18(e), prevented planting coverage will not be provided for any acreage:

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less. Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field unless the acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any of the 4 most recent crop years;

(2) Used for conservation purposes or intended to be left unplanted under any program administered by the USDA;

(3) For which the actuarial documents do not designate a premium rate unless a written agreement designates such premium rate;

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (excluding share arrangements), unless you have coverage greater than the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(5) On which the insured crop is prevented from being planted, if any crop from which any benefit is derived under any program administered by the USDA is planted and fails, or if any crop is harvested, hayed or grazed on the same acreage in the same crop year (other than a cover crop which may be hayed or grazed after the final planting date for the insured crop), unless you have coverage greater than that applicable to the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage. (If one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used);

(6) Of a crop that is prevented from being planted if a cash lease payment is also received for use of the same acreage in the same crop year (not applicable if acreage is leased for haying or grazing

only). If you state that you will not be cash renting the acreage and claim a prevented planting payment on the acreage, you could be subject to civil and criminal sanctions if you cash rent the acreage and do not return the prevented planting payment for it;

(7) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(8) That exceeds the number of acres eligible for a prevented planting payment;

(9) That exceeds the number of eligible acres physically available for planting;

(10) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the Final Guarantee (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(11) Based on an irrigated practice Final Guarantee unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting. Acreage with an irrigated practice Final Guarantee will be limited to the number of acres allowed for that practice under sections 18(e) and (f); or

(12) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years. Types for which separate insurance guarantees are available must be included in your APH database in at least one of the four most recent crop years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 18(e)(1)(i)(B). We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 18(e) and (f).

(g) If you purchased a limited or additional coverage policy for a crop, and you executed a High Risk Land Exclusion Option that separately insures acreage which has been designated as "high risk" land by FCIC under a Catastrophic Risk Protection Endorsement for that crop, the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in sections 18(e) and (f).

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 18(e)(1), your prevented planting production guarantee, premium, and prevented planting payment will be based on the crops insured for the current crop year, for which you have remaining eligible prevented planting acreage. The crops used for this purpose will be those that result in a prevented planting payment most similar to the prevented planting payment that would have been made for the crop that was prevented from being planted.

(1) For example, assume you were prevented from planting 200 acres of corn and have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment, 90 acres of grain sorghum eligibility that would result in a $30 per acre payment, and 100 acres of soybean eligibility that would result in a $25 per acre payment. Your prevented planting coverage for the 200 acres would be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and 10 acres of soybeans ($25 per acre).

(2) Prevented planting coverage will be allowed as specified in this section (18(h)) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop on which payment is being based.

(i) The prevented planting payment for any eligible acreage within a basic or optional unit will be determined by:

(1) Multiplying the Final Guarantee for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(i)(1) by the number of eligible prevented planting acres in the unit; and

(3) Multiplying the result of section 18(i)(2) by your share.

(j) The prevented planting payment for any eligible acreage within an enterprise unit will be determined by:

(1) Multiplying the Final Guarantee for each basic unit or optional unit within the enterprise unit, for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(j)(1) by the number of eligible prevented planting acres in each basic unit or optional unit within the enterprise unit;

(3) Multiplying the result of section 18(j)(2) by your share; and

(4) Total the results from section 18(j)(3).

19. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

20. Arbitration

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under the policy.

21. Access to Insured Crop and Records, and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also provide upon our request, separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records will, at our option, result in:

(1) Cancellation of the policy;

(2) Assignment of production to the units by us;

(3) Combination of the optional units; or

(4) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

(1) To any records relating to this insurance at any location where such records may be found or maintained; and

(2) To the farm.

(d) By applying for insurance under the authority of the Act or by continuing insurance for which you previously applied, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist us in obtaining all records which we request from third parties.

22. Other Insurance

(a) Other Like Insurance—You must not obtain any other crop insurance issued under the authority of the Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) Other Insurance Against Fire—If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of subsection (b) of this section, the amount of loss from fire will be the reduction in revenue of the insured crop on the unit involved determined pursuant to this policy.

23. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provision (title XVII of the Food Security Act of 1985 (Pub. L. 99–198)) and the regulations promulgated under the Act by USDA. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see section 24(d)) if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(e) Amounts owed to us by you may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

25. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal regulations.

26. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not

be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the end of the insurance period, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss From a Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

31. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

32. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or, if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

33. Multiple Benefits

(a) If you are eligible to receive an indemnity under a limited or additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The total amount of the actual loss is the difference between the fair market value of the insured commodity before and after the loss, based on your production records and the highest price election or amount of insurance available for the crop.

(c) FSA will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

(d) Farm ownership and operating loans may be obtained from USDA in addition to crop insurance indemnities.

34. Written Agreements

Only rates or rates of premium for this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 34(e);

(b) The application for a written agreement must contain the rate or rate of premium applicable to this policy that will be in effect if the written agreement rate is not approved;

(c) If approved, the written agreement will specify the rate or rate of premium that will be in effect;

(d) Each written agreement will only be valid for one crop year (If the written agreement is not specifically renewed the following year, the rates for subsequent crop years will be the rate specified in the actuarial document), or if no rate is specified the acreage will not be insurable; and

(e) An application for a written agreement submitted after the sales closing date may be approved if you demonstrate your physical inability to apply prior to the sales closing date, or it is submitted in accordance with any regulation which may be promulgated under 7 CFR 400, and after physical inspection of the acreage by us, if required, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Crop Revenue Coverage

Coarse Grains Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) the Commodity Exchange Endorsement; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Calculated Revenue. The production to count multiplied by the Harvest Price.

Coarse grains. Corn, grain sorghum, and soybeans.

Grain sorghum. The crop defined as sorghum under the United States Grain Standards Act.

Harvest. Combining, threshing, or picking the insured crop for grain.

Local market price. The cash grain price per bushel for U.S. No. 2 yellow corn, U.S. No. 2 grain sorghum, or U.S. No. 1 soybeans, offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade for yellow corn and grain sorghum, or U.S. No. 1 grade for soybeans. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein and oil, will not be considered.

Planted acreage. In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows (corn must be planted in rows far enough apart to permit mechanical cultivation), unless otherwise provided by the Special Provisions or actuarial documents.

Silage. A product that results from severing the plant from the land and chopping it for the purpose of livestock feed.

2. Coverage Level and Price Percentage

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of each crop in the county insured as grain under this policy will have the same coverage level and price percentage elections.

3. Contract Changes

In accordance with Section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
(a) For corn and grain sorghum:	
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28.
All other Texas counties and all other states	March 15
(b) For soybeans:	
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

5. Insured Crop

(a) In accordance with section 9 of the Basic Provisions, the crop insured will be each coarse grain crop you elect to insure for which premium rates and prices are provided by the actuarial documents:

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area, including air seeded soybeans subject to our approval;

(3) That is not (unless allowed by the Special Provisions):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume; and

(4) Planted for harvest as grain.

(b) For corn only, in addition to the provisions of section 5(a), the corn crop insured will be all corn that is yellow dent or white corn, including mixed yellow and white, waxy, high-lysine corn, high-oil corn blends containing mixtures of at least ninety percent high yielding yellow dent female plants with high-oil male pollinator plants, commercial varieties of high-protein hybrids, and excluding:

(1) High-amylose, high-oil except as defined in section 5(b), flint, flour, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn.

(2) A variety of corn adapted for silage use when the corn is reported for insurance as grain.

(c) For grain sorghum only, in addition to the provisions of section 5(a), the grain sorghum crop insured will be all of the grain sorghum in the county:

(1) That is a combine-type hybrid grain sorghum (grown from hybrid seed); and

(2) That is not a dual-purpose type of grain sorghum (a type used for both grain and forage).

(d) For soybeans only, in addition to the provisions of section 5(a), the soybean crop insured will be all of the soybeans in the county that are planted for harvest as beans.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions under section 12 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) For corn:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington.	October 31.
(3) All other counties and states	December 10.
(b) For grain sorghum:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) All other Texas counties and all other states	December 10.
(c) For soybeans:	
All states	December 10.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions insurance is provided only against an unavoidable loss of revenue due to the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply, if applicable, due to a cause of loss contained in section 8 (a) through (g) occurring within the insurance period; or

(i) A Harvest Price that is less than the Base Price.

9. Replanting Payments

(a) In accordance with section 14 of the Basic Provisions, replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the Minimum Guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the Minimum Guarantee or:

(1) For corn, 8 bushels multiplied by the Base Price, multiplied by your insured share;

(2) For grain sorghum, 7 bushels multiplied by the Base Price, multiplied by your insured share; and

(3) For soybeans, 3 bushels multiplied by the Base Price multiplied by your insured share.

(c) When the crop is replanted using a practice that is uninsurable as an original planting, the Final Guarantee for the unit will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide, extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

(b) In addition to the requirements of section 15 of the Basic Provisions, you must notify us before harvest begins if you intend to harvest corn acreage for silage.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any insured basic or optional unit of Coarse Grains by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee;

(2) Subtracting the Calculated Revenue from the result of section 11(b)(1); and

(3) Multiplying the result of 11(b)(2) by your share.

If the result of section 11(b)(3) is greater than zero, an indemnity will be paid. If the result of section 11(b)(3) is less than zero, no indemnity will be due.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any insured enterprise unit by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee for each basic unit or optional unit within the enterprise unit;

(2) For each basic unit or optional unit in 11(c)(1), compute the Calculated Revenue;

(3) Subtract each result in section 11(c)(2) from the respective result of section 11(c)(1);

(4) Multiplying each result of section 11(c)(3) by your share; and

(5) Total the results of section 11(c)(4).

If the result of section 11(c)(5) is greater than zero, an indemnity will be paid. If the result of section 11(c)(5) is less than zero, no indemnity will be due.

(d) The total production in bushels to count from all insurable acreage for the crop on the unit will include:

(1) All appraised production as follows:

(i) Not less than that amount of production that when multiplied by the Harvest Price equals the Final Guarantee for the acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Planted for grain but harvested as silage, if you fail to give us notice before harvest begins;

(D) Damaged solely by uninsured causes; or

(E) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(e)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(e) Mature coarse grain production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) Fifteen percent for corn (If moisture exceeds 30 percent, production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent);

(ii) Fourteen percent for grain sorghum; and

(iii) Thirteen percent for soybeans.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Corn not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor;

(B) Grain sorghum not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except smut odor), or meets the special grade requirements for smutty grain sorghum; or

(C) Soybeans not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except garlic odor), or which meet the special grade requirements for garlicky soybeans; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. (Test weight for quality adjustment purposes may be determined by our loss adjuster).

(4) Coarse grain production that is eligible for quality adjustment, as specified in sections 11(e)(2) and 11(e)(3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(f) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your Final Guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Crop Revenue Coverage

Mandatory Actuarial Document Endorsement

Commodity Exchange Endorsement—Coarse Grains

(This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Coarse Grains crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Coarse Grains policy are determined.

(III) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by summing all the daily settlement prices for the contract specified in the applicable Base Price and/or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price and/or Harvest Price definition, and dividing that sum by the total number of days included in the sum. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price and/or Harvest Price definition. A full active trading day is any day on which there are fifty (50) or more open interest contracts of the contract specified in the Base Price and/or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price and/or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price and/or Harvest Price definition, during the month specified in the applicable Base Price and/or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(IV) This endorsement defines the Base Price and Harvest Price as shown in Section 1 of the Crop Revenue Coverage Basic Provisions by Cancellation Date as follows:

Corn (for Grain)—Chicago Board of Trade (CBOT)—Counties With a March 15 Cancellation Date

Base Price (CBOT)—The February harvest year average daily settlement price for the harvest year's CBOT December corn futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial Document Addendum (Special Provisions) by March 10 of the harvest year, and will be available in your agent's office.

Harvest Price (CBOT)—The November harvest year average daily settlement price for the harvest year's CBOT December corn futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus one dollar and fifty cents ($1.50), or greater than the Base Price plus one dollar and fifty cents ($1.50). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by December 10 of the harvest year, and will be available in your agent's office.

Corn (for Grain)—CBOT—Counties With a Cancellation Date Prior to March 15

Base Price (CBOT)—The December pre-harvest year average daily settlement price for the harvest year's CBOT September corn futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial

Document Addendum (Special Provisions) by January 10 of the harvest year, and will be available in your agent's office.

Harvest Price (CBOT)—The August harvest year average daily settlement price for the harvest year's CBOT September corn futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus one dollar and fifty cents ($1.50), or greater than the Base Price plus one dollar and fifty cents ($1.50). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by September 10 of the harvest year, and will be available in your agent's office.

Grain Sorghum (for Grain)—CBOT—Counties With a March 15 Cancellation Date

Base Price (CBOT)—The Preliminary Grain Sorghum Base Price multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Preliminary Grain Sorghum Base Price equals the February harvest year average daily settlement price for the harvest year's CBOT December corn futures contract (rounded to the nearest whole cent), multiplied times .95 and rounded to the nearest whole cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial Document Addendum (Special Provisions) by March 10 of the harvest year, and will be available in your agent's office.

Harvest Price (CBOT)—The Preliminary Grain Sorghum Harvest Price multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Preliminary Grain Sorghum Harvest Price equals the November harvest year average daily settlement price for the harvest year's CBOT December corn futures contract (rounded to the nearest whole cent) multiplied times .95 and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus one dollar and fifty cents ($1.50), or greater than the Base Price plus one dollar and fifty cents ($1.50). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by December 10 of the harvest year, and will be available in your agent's office.

Grain Sorghum (for Grain)—CBOT—Counties With a Cancellation Date Prior to March 15

Base Price (CBOT)—The Preliminary Grain Sorghum Base Price multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Preliminary Grain Sorghum Base Price equals the December pre-harvest year average daily settlement price for the harvest year's CBOT September corn futures contract (rounded to the nearest whole cent) multiplied times .95 and rounded to the nearest whole cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial Document Addendum (Special Provisions) by January 10 of the harvest year, and will be available in your agent's office.

Harvest Price (CBOT)—The Preliminary Grain Sorghum Harvest Price multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Preliminary Grain Sorghum Harvest Price equals the August harvest year average daily settlement price for the harvest year's CBOT September corn futures contract (rounded to the nearest whole cent) multiplied times .95 and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus one dollar and fifty cents ($1.50), or greater than the Base Price plus one dollar and fifty cents ($1.50). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by September 10 of the harvest year, and will be available in your agent's office.

Soybeans—CBOT—Counties With a March 15 Cancellation Date

Base Price (CBOT)—The February harvest year average daily settlement price for the harvest year's CBOT November soybean futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial Document Addendum (Special Provisions) by March 10 of the harvest year, and will be available in your agent's office.

Harvest Price (CBOT)—The October harvest year average daily settlement price for the harvest year's CBOT November soybean futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus three dollars ($3.00), or greater than the Base Price plus three dollars ($3.00). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by November 10 of the harvest year, and will be available in your agent's office.

Soybeans—CBOT—Counties With a Cancellation Date Prior to March 15

Base Price (CBOT)—The December pre-harvest year average daily settlement price for the harvest year's CBOT September soybean futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial Document Addendum (Special Provisions) by January 10 of the harvest year, and will be available in your agent's office.

Harvest Price (CBOT)—The August harvest year average daily settlement price for the harvest year's CBOT September soybean futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus three dollars ($3.00), or greater than the Base Price plus three dollars ($3.00). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by September 10 of the harvest year, and will be available in your agent's office.

All other terms and conditions of the Policy remain unchanged.

Crop Revenue Coverage

Cotton Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) the Commodity Exchange Endorsement; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Calculated Revenue. The production to count multiplied by the Harvest Price.

Cotton. Varieties identified as American Upland Cotton.

Final Guarantee. In lieu of the definition contained in the Basic

Provisions, the number of dollars guaranteed per acre is determined to be the higher of the Minimum Guarantee or the Harvest Guarantee, where:

(1) Minimum Guarantee—The Approved Yield per acre, multiplied by the applicable cotton yield conversion factor for non-irrigated skip-row planting patterns, multiplied by the Base Price multiplied by the coverage level percentage you elect.

(2) Harvest Guarantee—The Approved Yield per acre, multiplied by the applicable cotton yield conversion factor for non-irrigated skip-row planting patterns, multiplied by the Harvest Price, multiplied by the coverage level percentage you elect.

If you elect enterprise unit coverage, the Basic Units or Optional Units comprising the enterprise unit will retain separate Final Guarantees.

Growth area. A geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

Harvest. The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

Mature cotton. Cotton that can be harvested either manually or mechanically.

Planted acreage. In addition to the definition contained in the Basic Provisions, cotton must be planted in rows, unless otherwise provided by the Special Provisions or actuarial documents. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any other spring planted crop.

Skip-row. A planting pattern that:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by FSA.

2. Coverage Level and Price Percentage

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of each crop in the county insured as cotton under this policy will have the same coverage level and price percentage elections.

3. Contract Changes

In accordance with Section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 3(h) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Vctoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

5. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the cotton lint, in the county for which premium rates are provided by the actuarial documents:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions):

(1) Colored cotton lint;

(2) Planted into an established grass or legume;

(3) Interplanted with another spring planted crop;

(4) Grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(5) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than 50 percent of the small grain plants reach the heading stage.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions:

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

(a) In lieu of section 12(b)(2) of the Basic Provisions, insurance will end upon the removal of the cotton from the field.

(b) In accordance with the provisions under section 12 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows:

(1) September 30 in Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof;

(2) January 31 in Arizona, California, New Mexico, Oklahoma, and all other Texas counties; and

(3) December 31 in all other states.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against an unavoidable loss of revenue due to the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply, if applicable, due to a cause of loss contained in section 8(a) through (g) occurring within the insurance period; or

(i) A Harvest Price that is less than the Base Price.

9. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 15 of the Basic Provisions, in the event of damage or loss:

(1) The cotton stalks must remain intact for our inspection; and

(2) If you initially discover damage to the insured crop within 15 days of harvest, or during harvest, you must leave representative samples of the unharvested crop in the field for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit.

(b) The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss given to us.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any insured basic or optional unit by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee;

(2) Subtracting the Calculated Revenue from the result of section 10(b)(1); and

(3) Multiplying the result of 10(b)(2) by your share.

If the result of section 10(b)(3) is greater than zero, an indemnity will be paid. If the result of section 10(b)(3) is less than zero, no indemnity will be due.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any insured enterprise unit by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee for each basic unit or optional unit within the enterprise unit;

(2) For each basic unit or optional unit in 10(c)(1), compute the Calculated Revenue;

(3) Subtract each result in section 10(c)(2) from the respective result of section 10(c)(1);

(4) Multiplying each result of section 10(c)(3) by your share; and

(5) Total the results of section 10(c)(4);

If the result of section 10(c)(5) is greater than zero, an indemnity will be paid. If the result of section 10(c)(5) is less than zero, no indemnity will be due.

(d) The total production (in pounds) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than that amount of production that when multiplied by the Harvest Price equals the Final Guarantee for the acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

(D) For which you fail to provide records of production that are acceptable to us; or

(E) On which the cotton stalks are destroyed, in violation of section 9;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of white cotton may be adjusted for quality deficiencies in accordance with section 10(e)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count) ; or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage, including any mature cotton retrieved from the ground.

(e) Mature white cotton may be adjusted for quality when production has been damaged by insured causes. Unless otherwise provided by the Special Provisions, such production to count will be reduced if the price quotation for cotton of like quality (price quotation "A") for the applicable growth area is less than 75 percent of price quotation "B". Price quotation "B" is defined as the price quotation for the applicable growth area for cotton of the color and leaf grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations "A" and "B" will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If not available on the date the last bale was classed, the price quotations will be determined on the date the last bale from the unit was delivered to the warehouse, as shown on the insured's account summary obtained from the gin. If eligible for quality adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of production eligible for such adjustment by the factor derived from dividing price quotation "A" by price quotation "B'.

(f) Colored cotton lint will not be eligible for quality adjustment.

11. Prevented Planting

(a) In addition to the provisions contained in section 18 of the Basic Provisions, your prevented planting Final Guarantee will be based on your approved yield without adjustment for skip-row planting patterns.

(b) Your prevented planting coverage will be 50 percent of your Final Guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Crop Revenue Coverage

Mandatory Actuarial Document Endorsement

Commodity Exchange Endorsement—Cotton

(This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Cotton crop policy provisions and Actuarial Documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Cotton policy are determined.

(III) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by summing all the daily settlement prices for the contract specified in the applicable Base Price and/or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price and/or Harvest Price definition, and dividing that sum by the total number of days included in the sum. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price and/or Harvest Price definition. A full active trading day is any day on which there are fifty (50) or more open interest contracts of the contract specified in the Base Price and/or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price and/or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price and/or Harvest Price definition, during the month specified in the applicable Base Price and/or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(IV) This endorsement defines the Base Price and Harvest Price as shown in Section 1 of the Crop Revenue Coverage Basic Provisions by Cancellation Date as follows:

Cotton—New York Cotton Exchange (NYCE)—Counties With a February 28 or March 15 Cancellation Date

Base Price (NYCE)—The January 15 to February 14 harvest year average daily settlement price for the harvest year's NYCE December cotton futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial Document Addendum (Special Provisions) by February 20 of the harvest year, and will be available in your agent's office.

Harvest Price (NYCE)—The November harvest year average daily settlement price for the harvest year's NYCE December cotton futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus seventy cents ($0.70), or greater than the Base Price plus seventy cents ($0.70). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by December 10 of the harvest year, and will be available in your agent's office.

Cotton—NYCE Counties with a January 15 Cancellation Date

Base Price (NYCE)—The December pre-harvest year average daily settlement price for the harvest year's NYCE October cotton futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The available Price Percentages and subsequent Base Price will be released as a Actuarial Document Addendum (Special Provisions) by January 10 of the harvest year, and will be available in your agent's office.

Harvest Price (NYCE)—The September harvest year average daily settlement price for the harvest year's (NYCE) October cotton futures contract (rounded to the nearest whole cent) multiplied times the selected Price Percentage and rounded to the nearest whole cent. The Harvest Price cannot be less than the Base Price minus seventy cents ($0.70), or greater than the Base Price plus seventy cents ($0.70). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by October 10 of the harvest year, and will be available in your agent's office.

All other terms and conditions of the Policy remain unchanged

Crop Revenue Coverage Insurance Policy

Rice Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) The Commodity Exchange Endorsement; (3) these Crop Provisions; and (4) The Basic Provisions, with (1) controlling (2), etc.

1. Definitions

Average Daily Settlement Price. Refer to the definition contained in the Commodity Exchange Endorsement—Rice.

Calculated Revenue. The production to count multiplied by the Harvest Price.

Flood irrigation. An irrigated practice commonly used for rice production whereby the planted acreage is intentionally covered with water that is maintained at a uniform and shallow depth throughout the growing season.

Harvest. Combining or threshing the rice for grain. A crop that is swathed prior to combining is not considered harvested.

Local market price. The cash price per pound for the U.S. No. 3 grade of rough rice offered by buyers in the area in which you normally market the rice. Factors not associated with grading under the United States Standards for Rice including, but not limited to, protein and oil content or milling quality will not be considered.

Planted. The uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods:

(a) Drill seeding—Using a grain drill to incorporate the seed to a proper soil depth;

(b) Broadcast seeding—Distributing seed evenly onto the surface of an unflooded seedbed followed by either timely mechanical incorporation of the seed to a proper soil depth in the seedbed or flushing the seedbed with water; or

(c) Broadcast seeding into a controlled flood—Distributing the rice seed onto a prepared seedbed that has been intentionally covered to a proper depth by water. The water must be free of movement and be completely contained on the acreage by properly constructed levees and gates.

Acreage seeded in any other manner will not be insurable unless otherwise provided by the Special Provisions.

Prevented planting guarantee. The Prevented Planting Guarantee for such acreage will be that percentage of the Final Guarantee for timely planted acres as set forth in section 13.

Saline water. Water that contains a concentration of salt sufficient to cause damage to the insured crop.

Second crop rice. The regrowth of a stand of rice following harvest of the initially insured rice crop that can be harvested in the same crop year.

Swathed. Severance of the stem and grain head from the ground without removal of the rice kernels from the plant and placing in a windrow.

Total milling yield. Rice production consisting of heads, second heads, screenings, and brewer's rice as defined by the official United States Standards for Rice.

2. Unit Structure

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

3. Coverage Level and Price Percentage

In addition to the requirements of section 4 of the Basic Provisions all the insurable acreage of each crop in the county insured as grain under this policy will have the same coverage level and price percentage elections.

4. Contract Changes

In accordance with section 5 in the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 3(b) of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and termination date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas; and all Texas Counties south thereof.	January 15.
Florida	February 15.
All other Texas counties and all other states	February 28.

6. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the rice in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That is planted for harvest as grain;

(c) That is flood irrigated; and

(d) That is not wild rice.

7. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions:

(a) We will not insure any acreage planted to rice:

(1) The preceding crop year unless allowed by the Special Provisions; or

(2) That does not meet the rotation requirements shown in the Special Provisions; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant.

8. Insurance Period

In accordance with the provisions of section 12 of the Basic Provisions, the calendar date for the end of the insurance period is October 31 immediately following planting.

9. Causes of Loss

(a) In addition to the provisions under section 13 of the Basic Provisions, any loss covered by this policy must occur within the insurance period. The specific causes of loss for rice are:

(1) Adverse weather conditions (except drought);

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(9) A Harvest Price that is less than the Base Price.

(b) In addition to the causes of loss not insured against in section 13 of the Basic Provisions, we will not insure against any loss of production due to the application of saline water.

10. Replanting Payment

(a) A replanting payment for rice is allowed as follows:

(1) You must comply with all requirements regarding replanting payments contained under section 14 of the Basic Provisions;

(2) The rice must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the Minimum Guarantee for the acreage; and

(3) The replanted rice must be seeded at a rate that is normal for initially planted rice (if new seed is planted at a reduced seeding rate into a partially damaged stand of rice, the acreage will not be eligible for a replanting payment).

(b) In accordance with the provisions of section 14 of the Basic Provisions, the maximum amount of the replanting payment per acre will be the lesser of 20 percent of the Minimum Guarantee or 400 pounds, multiplied by the Base Price, multiplied by your insured share.

(c) When rice is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

In addition to your duties under section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any insured basic or optional unit of rice by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee;

(2) Subtracting the Calculated Revenue from the result of section 12(b)(1); and

(3) Multiplying the result of 12(b)(2) by your share.

If the result of section 12(b)(3) is greater than zero, an indemnity will be paid. If the result of section 12(b)(3) is less than zero, no indemnity will be due.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any insured enterprise unit by:

(1) Multiplying the insured acreage of the crop by the Final Guarantee for each basic unit or optional unit within the enterprise unit;

(2) For each basic unit or optional unit in section 12(c)(1), compute the Calculated Revenue;

(3) Subtract each result in section 12(c)(2) from the respective result of section 12(c)(1);

(4) Multiplying each result of section 12(c)(3) by your share; and

(5) Total the results of section 12(c)(4).

If the result of section 12(c)(5) is greater than zero, an indemnity will be paid. If the result of section 12(c)(5) is less than zero, no indemnity will be due.

(d) The total production to count (in pounds) from all insurable acreage on the unit will include: All appraised production as follows:

(i) Not less than that amount of production that when multiplied by the Harvest Price equals the Final Guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(e));

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage, including any production from a second rice crop harvested in the same crop year.

(e) Mature rough rice may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 12 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Rice, result in rice not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of red rice, chalky kernels or damaged kernels;

(ii) The rice has a total milling yield of less than 68 pounds per hundredweight;

(iii) The whole kernel weight is less than 55 pounds per hundredweight of milled rice for medium and short grain varieties;

(iv) The whole kernel weight is less than 48 pounds per hundredweight of milled rice for long grain varieties; or

(v) Substances or conditions are present that are identified by the Food and Drug Administration of other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions specified in section 12(e)(2) resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions specified in section 12(e)(2) result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions specified in section 12(e)(2) are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade rice under the authority of the United States Agriculture Marketing Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Notwithstanding the preceding sentence, test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Rice production that is eligible for quality adjustment, as specified in sections 12(e)(2) and (3), will be reduced as follows:

(i) In accordance with quality adjustment factors contained in the Special Provisions; or

(ii) If quality adjustment factors are not contained in the Special Provisions, as follows:

(A) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those that are usual, customary, and reasonable. The price will not be reduced for:

(1) Moisture content;

(2) Damage due to uninsured causes; or

(3) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the rice; except, if the price of the damaged production can be increased by conditioning, we may reduce the price of the production after it has been conditioned by the cost of conditioning but not lower that the value of the production before conditioning.

(We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the rice to those buyers.);

(B) The value of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor; and

(C) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds (if appropriate)) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(f) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Prevented Planting

Your prevented planting coverage will be 45 percent of your Final Guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Crop Revenue Coverage

Mandatory Actuarial Document Endorsement

Commodity Exchange Endorsement—Rice

(This is a Continuous Endorsement)

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Special Provisions; (2) this Commodity Exchange Endorsement; (3) the Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

How this endorsement affects your coverage:

(I) This endorsement is attached to and made a part of your Crop Revenue Coverage (CRC) Rice crop policy provisions and actuarial documents, subject to the terms and conditions described herein.

(II) This endorsement specifies how, where, and when commodity prices for your CRC Rice policy are determined.

(III) This endorsement defines the Average Daily Settlement Price, as used in the Base Price and Harvest Price, as—The average calculated by summing all the daily settlement prices for the contract specified in the applicable Base Price and/or Harvest Price definition (established on full active trading days), during the month specified in the applicable Base Price and/or Harvest Price definition, and dividing that sum by the total number of days included in the sum. The average must include at least fifteen (15) days and each day included in the average must be a full active trading day for the contract specified in the applicable Base Price and/or Harvest Price definition. A full active trading day is any day on which there are fifty (50) or more open interest contracts of the contract specified in the Base Price and/or Harvest Price definition. If there are less than fifteen (15) full active trading days for the contract specified in the applicable Base Price and/or Harvest Price definition, then additional daily settlement prices, established on full active trading days, for the contract immediately prior to the contract specified in the applicable Base Price and/or Harvest Price definition, during the month specified in the applicable Base Price and/or Harvest Price definition, will be used until there are fifteen (15) prices from fifteen (15) full active trading days included in the average.

(IV) This endorsement defines the Base Price and Harvest Price as shown in section 1 of the Crop Revenue Coverage Basic Provisions by Cancellation Date as follows:

Rice—Chicago Board of Trade (CBOT)—(All Counties With a January 15 Cancellation Date)

Base Price (CBOT)—The December pre-harvest year average daily settlement price per pound for the harvest year's CBOT September rough rice futures contract (rounded to the nearest one-tenth (1/10) of a cent) multiplied times the selected Price Percentage and rounded to the nearest one-tenth (1/10) of a cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial Document Addendum (Special Provisions) by January 10 of the harvest year, and will be available in your agent's office.

Harvest Price (CBOT)—The August harvest year average daily settlement price per pound for the harvest year's CBOT September rough rice futures contract (rounded to the nearest one-tenth (1/10) of a cent) multiplied times the selected Price Percentage and rounded to the nearest one-tenth (1/10) of a cent. The Harvest Price cannot be less than the Base Price minus five cents ($0.05), or greater than the Base Price plus five cents ($0.05). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by September 10 of the harvest year, and will be available in your agent's office.

Rice—(CBOT)—(All Counties With February 15 or February 28 Cancellation Dates)

Base Price (CBOT)—The January harvest year average daily settlement price per pound for the harvest year's CBOT November rough rice futures contract (rounded to the nearest one-tenth (1/10) of a cent) multiplied times the selected Price Percentage and rounded to the nearest one-tenth (1/10) of a cent. The available Price Percentages and subsequent Base Price will be released as an Actuarial Document Addendum (Special Provisions) by February 10 of the harvest year, and will be available in your agent's office.

Harvest Price (CBOT)—The October harvest year average daily settlement price per pound for the harvest year's CBOT November rough rice futures contract (rounded to the nearest one-tenth (1/10) of a cent) multiplied times the selected Price Percentage and rounded to the nearest one-tenth (1/10) of a cent. The Harvest Price cannot be less than the Base Price minus five cents ($0.05), or greater than the Base Price plus five cents ($0.05). The Price Percentage used to calculate the Harvest Price is equal to the selected Price Percentage used to calculate the Base Price. The Harvest Price will be released as an Actuarial Document Addendum (Special Provisions) by November 10 of the harvest year, and will be available in your agent's office. All other terms and conditions of the Policy remain unchanged.

Signed in Washington, DC on January 22, 1999.

John Zirschky,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–2109 Filed 1–28–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–001N]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives and Contaminants

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture, and the Food and Drug Administration (FDA), Department of Health and Human Services, are sponsoring a public meeting on February 9, 1999, to provide information and receive public comments on agenda items that will be discussed at the Thirty-first Session of the Codex Committee on Food Additives and Contaminants (CCFAC), which will be held in the Hague, the Netherlands, March 22–26, 1999. The Office of the Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information and address agenda items on the Thirty-first Session of the CCFAC.

DATES: The public meeting is scheduled for Tuesday, February 9, 1999, from 2 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 1419, FOB 8, 200 C St. SW, Washington, DC. Send an original and two copies of written comments to: FSIS Docket Clerk, Docket # 99–001N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th St., SW, Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW, Washington, DC 20250–3700, Telephone: (202) 205–7760; Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Food Additives and Contaminants establishes or endorses maximum or guideline levels for individual food additives, contaminants (including environmental contaminants), and naturally occurring toxicants in foodstuffs and animal feeds. In addition, the Committee prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives; recommends specifications of identity and purity for food additives for adoption by the Commission; considers methods of analysis for their determination in food; considers and elaborates standards or codes for related subjects such as the labelling of food additives when sold as such; and review process for food irradiation.

Issues to be discussed at the public meeting:

General Issues

1. Adoption of the Agenda
2. Matters Referred by the Codex Alimentarius Commission and other Codex Committees
3. Summary Report of the 51st Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
4. Action Required as a Result of Changes in ADI Status and other Toxicological Recommendations
5. Discussion Paper on the Application of Risk Analysis Principles for Food Additives and Contaminants

Food Additives

1. Endorsement and/or Revision of Maximum Levels for Food Additives in Codex Standards
2. Consideration of the Codex General Standard for Food Additives
3. Discussion Paper on the Use of Colours in Foods
4. Specifications for the Identity and Purity of Food Additives Arising from the 51st JECFA Meeting
5. Proposed Amendments to the International Numbering System

Contaminants

1. Endorsement and/or Revision of Maximum Levels for Contaminants in Codex Standards
2. Comments on Section 3.2 (Health Related Limits for Certain Substances) of the Codex Standard for Natural Mineral Water
3. Codex General Standard for Contaminants and Toxins in Foods: Report of the ad hoc Working Group on Contaminants and Toxins
4. Methodology and Principles for Exposure Assessment in the Codex General Standard for Contaminants and Toxins in Foods
5. Mycotoxins in Food and Feed
   (a) Ochratoxin
   (b) Zearalenone
   (c) Patulin
6. Industrial and Environmental Contaminants in Foods
   (a) Proposed Draft Code of Practice for Source Directed Measures to Reduce Contamination of Food with Chemicals
   (b) Lead
   (c) Tin
   (d) Cadmium
   (e) Arsenic
   (f) Dioxins

General Issues

1. Proposals for Priority Evaluation of Food Additives and Contaminants by JECFA
2. Other Business and Future Work
   (a) Comments on Methods of Analysis for the Determination of Food Additives and Contaminants in Foods
   (b) Comments on the Inventory of Processing Aids
   (c) Comments on Packaging Provisions to Maintain the Stability of Iodized Salt in the Codex Standard for Food Grade Salt

At the February 9, 1999, public meeting, the agenda items will be described and discussed and attendees will have the opportunity to pose questions and offer comments. Comments may be sent to the FSIS Docket Room (see **ADDRESSES**). Written comments should state that they relate to CCFAC activities of the Thirty-first Session.

Done at Washington, DC on January 26, 1999.

F. Edward Scarbrough,

U.S. Manager for Codex.

[FR Doc. 99–2222 Filed 1–28–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

The Summit at Snoqualmie Master Development Plan; Mt. Baker-Snoqualmie and Wenatchee National Forests, King and Kittitas Counties, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) for Ski Lifts, Inc. (The Summit at Snoqualmie) ski area proposal to develop its Master Development Plan. The Summit at Snoqualmie consists of four ski areas: Alpental; Summit West; Summit Central and Summit East. The proposed action would expand the area under special use permit to 1,905 acres, an increase of 41 acres, to provide for additional parking at Summit West and to connect the Summit Central and Summit East ski areas. The proposed development includes the replacement and addition of chair and surface lifts; addition of a multi-user gondola at Alpental; new lifts and terrain within the existing SUP boundary; and expanded night skiing at Alpental and Summit Central. In addition, the proposal includes the expansion and addition of parking lots at Summit West, Summit Central and Alpental, day lodges and other related facilities, maintenance facilities and utilities to support the skiing and other recreational opportunities. The project also includes reforestation at Summit West and Summit Central, as well as

identified watershed restoration projects.

At Alpental, implementation of the proposed MDP would increase the Skiers-At-One-Time (SAOT) capacity from 1,710 to 2,800. Accordingly, the peak day capacity of the facility would increase from 1,881 Persons-at-One-Time (PAOT) to 3,080. At The Summit at Snoqualmie (excluding Alpental), the MDP proposes to increase the SAOT capacity from 7,410 to 10,900. Consequently, the peak day capacity of The Summit at Snoqualmie will increase from 8,151 to 11,990.

DATES: Comment concerning the scope of this analysis should be in writing and postmarked by March 5, 1999.

ADDRESSES: Send written comments to Daniel T. Harkenrider, Acting Forest Supervisor, 21905 64th Avenue West, Mountlake Terrace, Washington, 98043, Attention: The Summit At Snoqualmie Master Development Plan.

FOR FURTHER INFORMATION CONTACT: Larry Donovan, Winter Sports Specialist, Mt. Baker-Snoqualmie National Forest Supervisor's Officer, 21905 64th Avenue West, Mountlake Terrace, Washington 98043–2278. Phone (425) 744–3403. Internet: ldonovan/r6pnw__mbs@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Summit at Snoqualmie operates under a Special Use Permit from the USDA Forest Service. Presently, alpine skiing/snowboarding and other four-season resort activities are provided to the public through a Special Use Permit administered by the Mt. Baker-Snoqualmie National Forest.

Currently, there are four master plans for the Summit at Snoqualmie, dating from the time each of the four areas (Alpental, Summit West, Summit Central and Summit East) were managed as separate ski areas. The purpose (objective) of this project is to develop one Master Development Plan for the management and development of The Summit at Snoqualmie over the next 7–10 years. The goal of the Master Development Plan is to ensure the long-term economic viability of The Summit at Snoqualmie, maintain the competitive position of The Summit at Snoqualmie with other ski areas in the Puget Sound Basin; maintain and restore a healthy ecosystem; and be consistent with the Mt. Baker-Snoqualmie National Forest Plan.

The proposed action is the submitted Master Development Plan proposal. At Alpental it would include: replacement of one existing chairlift, re-alignment of one existing chairlift, construction of one new chairlift and construction of a gondola, providing for year-round access to the top of the facility. Two existing lifts would remain unchanged and the two existing surface tows would be removed. Downhill terrain would be expanded by 18.5 acres and night skiing terrain would increase by 34 acres. The proposed action would include the addition of 17,500 square feet of visitor support facilities, including a mountain-top restaurant. Parking would be expanded from 8.4 acres to 8.5 acres. The proposed action would also include watershed restoration projects as identified in the Upper South Fork Snoqualmie and Coal Creek Watershed Condition Assessment. Implementation could begin in the summer of 2000 and would continue for approximately 7–10 years.

At the Summit at Snoqualmie (Summit West, Summit Central and Summit East), the Master Development Plan proposal would include 23 chairlifts and surface tows. It includes the elimination, replacement or realignment of 21 of the 22 existing chair and surface lifts. When coupled with new chairlift construction there would be a total of 17 chairlifts and 6 surface tows. Downhill terrain would be expanded by 54 acres and night skiing would increase from 386 acres to 440 acres. The proposed action would include the addition of 60,708 square feet of guest support facilities, including a new mountain-top restaurant at Alpental and remodeling the existing mountain-top restaurant at Summit West. Parking would be expanded from 26.3 to 32.7 acres. The proposed action would also include watershed restoration projects as identified in the Upper South Fork Snoqualmie and Coal Creek Watershed Condition Assessment. Implementation could begin in the summer of 2000 and would continue for approximately 7–10 years.

The site-specific environmental analysis provided in The Summit at Snoqualmie Master Development Plan EIS will assist the Forest Supervisor in determining which improvements are needed to meet the goals and objectives, as stated above.

An EIS will be produced, which will display alternatives considered including (1) no action (continued management of the ski area under the existing master development plans), and (2) the proposed action. Three additional alternatives have been tentatively identified: (3) reduced development in the area between Summit Central and Summit East (Section 16); (4) no development in the area between Summit Central and Summit East (Section 16); and (5) reduced disturbance to riparian reserves. The EIS will analyze the direct, indirect and cumulative effects of the alternatives. Past, present and projected activities on both private and National Forest System lands will be considered. The EIS will disclose the effects of site-specific mitigation.

Comments from the public will be used to:

- Identify potential issues.
- Identify major issues to be analyzed in depth.
- Eliminate minor issues or those that have been covered by a previous environmental analysis, such as the Mt. Baker-Snoqualmie or Wenatchee Land and Resource Management Plans.
- Identify alternatives to the proposed action.

Issues identified as the result of internal scoping include:

- Consistency with the Forest Plan/Aquatic Conservation Strategy Objectives.
- Consistency with the Snoqualmie Pass Adaptive Management Area Plan (1997).
- Ability to maintain or increase the north/south Late-Successional connective corridors in the areas between Summit Central and Summit East; and Summit West and Summit Central.
- Ability to maintain snag and large downed wood habitat with the development of ski runs and chairlifts.
- Maintenance of habitat for Threatened & Endangered, Sensitive and Survey & Manage species.
- Potential removal/degradation of wetland habitat.
- Opportunity to implement restoration projects that will improve visual quality and reduce erosion.
- Potential disruption of the back-country skiing route to Nordic Pass.

Scoping and public involvement are continuing. An initial scoping letter was mailed on January 15, 1999. Two public scoping meetings will be held: February 8, 1999, from 5:30 PM to 9:00 PM at the Cle Elum Ranger Station, 803 West 2nd Street, Cle Elum, WA 98922; and February 10, 1999, from 5:30 PM to 9:00 PM at the West Coast Bellevue Hotel, 625 116th Avenue NE, Bellevue, WA 98004. The information and comments received will be used in the preparation of the draft EIS.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under

36 CFR 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be submitted with or without the name and address within 30 days.

The draft EIS is expected to be filed in May 1999. Following the release of the draft EIS, there will be a public comment period of at least 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register.**

The Forest Service believes that it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the EIS. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final EIS is scheduled to be completed in December 1999. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. The lead agency is the Forest Service. The Forest Supervisors of the Mt. Baker-Snoqualmie and Wenatchee National Forest are the responsible officials. The responsible officials will document the decision and the reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations 36 CFR Parts 215 or 251.

Dated: January 19, 1999.

Daniel T. Harkenrider,

Acting Forest Supervisor.

[FR Doc. 99–1974 Filed 1–28–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ski Lifts, Inc. Master Plan, Mt. Baker-Snoqualmie National Forest, King and Kittitas Counties, Washington

AGENCY: Forest Service, USDA.

ACTION: Cancellation Notice.

SUMMARY: On July 16, 1993, a Notice of Intent to prepare an environmental impact statement for the Ski Lifts, Inc. Master Plan on the lands administered by the Mt. Baker-Snoqualmie National Forest was published in the **Federal Register** (58 FR 38358). This notice is being withdrawn because an updated Notice of Intent that reflects the submitted Master Development Plan proposal, current issues and preliminary alternatives will be published. The 1993 Forest Service Notice of Intent is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Larry Donovan, EIS Team Leader, Supervisor's Office, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue W., Mountlake Terrace, Washington, phone 425–744–3403.

Dated: January 20, 1999.

Daniel T. Harkenrider,

Acting Forest Supervisor.

[FR Doc. 99–2147 Filed 1–28–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, February 11, 1999. The meeting will be held at the Salem BLM Office; 1717 Fabry Road SE; Salem, Oregon 97306; phone (503) 375–5642. The meeting is scheduled to begin at 9:00 a.m. and will conclude at approximately 4:00 p.m. The tentative agenda includes: (1) Introduction and orientation of new members, (2) Wilderness Management, (3) Willamette River Initiative and Corp of Engineer floodplain restoration projects, (4) Recommended topics for joint IAC/PAC meeting, (5) Public Forum.

The Public Forum is expected to occur at approximately 10:30 a.m., and time allotted for individual presentations will be limited 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may also be submitted prior to the meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: January 25, 1999.

H. Woody Fine,

Acting Forest Supervisor.

[FR Doc. 99–2148 Filed 1–28–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Northeast Indiana (IN) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces designation of Northeast Indiana Grain Inspection, Inc. (Northeast Indiana), to provide

official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: February 1, 1999.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: In the December 21, 1998, **Federal Register** (63 FR 70386), GIPSA asked persons interested in providing official services in the Northeast Indiana area to submit an application for designation. Applications were due by January 15, 1999. Northeast Indiana, the only applicant, applied for designation to provide official services in the entire Northeast Indiana area.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Northeast Indiana is able to provide official services in the Northeast Indiana geographic area.

Effective February 1, 1999, and ending January 31, 2002, Northeast Indiana is designated to provide official services in the geographic area specified in the December 21, 1998, **Federal Register**.

Interested persons may obtain official services by contacting Northeast Indiana at 219–639–6390.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 22, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–2171 Filed 1–28–99; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Alabama Electric Cooperative, Inc.; Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to Hold Scoping Meeting and Prepare an Environmental Assessment and/or Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR part 1794), proposes to prepare an Environmental Assessment (EI) and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Alabama Electric Cooperative, Inc., to construct and operate a 250 to 500 megawatt (MW) combined cycle electric generating plant in south Alabama.

MEETING INFORMATION: RUS will conduct a scoping meeting in an open house forum on Monday, February 15, 1999, at the Jackson City Hall, 400 Commerce Street, Jackson, Alabama from 6 p.m. until 8 p.m. for the Washington County site. A similar meeting will be held on Tuesday, February 16, 1999, at Alabama Electric Cooperative's Boardroom, Highway 29 North, Andalusia, Alabama, from 6 p.m. until 8 p.m. for the Covington and Escambia County sites.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468. The E-mail address is bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: Alabama Electric Cooperative, Inc., proposes to construct the plant at one of three potential sites. These sites are the Damascus site in Escambia County, Alabama, along Highway 29 South in Township 2 North, Range 13 East, Section 6, the Lowman site in Washington County, Alabama, just off U.S. Highway 43 in Township 6 North, Range 1 East, Section 24, and at Alabama Electric Cooperative's existing McWilliams Plant located in Covington County, Alabama, along Highway 29 North in Township 5 North, Range 16 East, Section 17.

The project as proposed would consist of a 250 to 500 MW gas-fired combined cycle plant. The plant may be designed to use No. 2 diesel as a backup fuel for periods when natural gas may be in short supply. The plant will require air and water quality permits from the Alabama Department of Environmental Management. Plant water will be drawn from and released to the Conecuh River if either the Covington or Escambia County sites are selected, and from the Tombigbee River if the Washington County site is selected. Air impacts are anticipated to be minimal because the plant will utilize clean fuels and will be designed in accordance with Best Available Control Technology. The plant will require a site of 40 acres or more in size. The specific plant layout will be designed to avoid significant impact to threatened or endangered species, cultural resources, wetlands or other areas considered to be environmentally unique or sensitive.

Locating the project at the Damascus site would require construction of a 34-mile, 12–20 inch gas pipeline and 18 miles of double circuit 230 kV transmission line. Locating the project at the Lowman site would require the construction of a 32-mile, 12–20 inch gas pipeline and 1 mile each of double circuit 230 kV transmission line and single circuit 230 kV transmission line. Locating the plant at the McWilliams Plant would require the construction of a 69-mile, 10–12 inch gas pipeline, 1 mile of double circuit 230 kV transmission line and 17 miles of single circuit 230 kV transmission line.

Alternatives considered by RUS and Associated Electric Cooperative, Inc., to constructing the generation facility proposed include: (a) no action, (b) power purchases, (c) coal fired technology, (d) alternative technology such as solar, wind, and biomass, and (e) non-generation alternatives such as conservation, interruptible loads, and load management.

Alabama Electric Cooperative, Inc., has developed a siting study/alternative evaluation which is available for public review at RUS at the address provided in this notice or at Alabama Electric Cooperative, Inc., Highway 29 North, Andalusia, Alabama. This document will also be available at the Andalusia Public Library on South Three Notch Street in Andalusia, Alabama, and at the White Smith Memorial Library at 213 College Ave. in Jackson, Alabama.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Alabama Electric Cooperative, Inc., will be available at both scoping meetings to discuss RUS' environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the public scoping meetings. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the siting study/alternative evaluation, input that may be provided by government agencies, private organizations, and the public, Alabama Electric Cooperative, Inc., will prepare an environmental analysis to be submitted to RUS for review. If RUS finds the environmental analysis acceptable, it will serve as RUS' environmental assessment of the

project. Should RUS determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. Public notification of a FONSI would be published in the **Federal Register** and in newspapers with a circulation in the project area. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: January 22, 1999.

Lawrence R. Wolfe,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 99–2110 Filed 1–28–99; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: March 1, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 9, November 30, December 11 and 18, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 F.R. 54436, 65746, 68428, 70099 and 70100) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Commissary Shelf Stocking, Custodial and Warehousing

Bangor ANGB

Bangor, Maine

Food Service Attendant
MacDill Air Force Base, Florida

Janitorial/Custodial

National Oceanic and Atmospheric Administration
National Marine Fisheries Service (NMFS)
Southeast Fisheries Science Center (SEFSC)
75 Virginia Beach Drive
Miami, Florida

Janitorial/Custodial

Various U.S. Army Reserve Centers
Fort Indiantown Gap, Pennsylvania

Operation of Individual Equipment Element Store
Luke Air Force Base, Arizona

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the services.

3. The action may result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following services are hereby deleted from the Procurement List:

Access Control
Fleet and Industrial Supply Center
250 Executive Way
Oakland, California

Cardboard & Paper Scrap Recovery
Bonneville Power Administration
11743 NE Sumner Street
Portland, Oregon

Document Processing
Naval Air Station
Alameda, California

Grounds Maintenance
Department of the Army
Television and Audio Support Activities
Mather Air Force Base, California

Janitorial/Custodial

Bonneville Power Administration
Kalispell Maintenance Complex
2520 Highway #2 East
Kalispell, Montana

Janitorial/Custodial

Basewide
Fort Indiantown Gap
Annville, Pennsylvania

Janitorial/Custodial

Philadelphia International Airport
Air Mobility Command Terminal D/ Concourse D
Philadelphia, Pennsylvania

Janitorial/Custodial

U.S. Army Reserve Center #3
400 Dry Hill Road
Beckley, West Virginia

Laundry Service
Naval Station
Long Beach, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–2172 Filed 1–28–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 1, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

SuperDisk Drive
7045–01–454–8199
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania

Pen, Rollerball, Free Ink
7520–01–461–2660
7520–01–461–2663
7520–01–461–2664
7520–01–461–2665
NPA: San Antonio Lighthouse San Antonio, Texas

Services

Administrative Services

GSA Regional Emergency Management Control Center
GSA Complex
Auburn, Washington
NPA: Northwest Center for the Retarded Seattle, Washington

Base Supply Center
Mountain Home Air Force Base, Idaho
NPA: Envision, Inc. Wichita, Kansas

Base Supply Center
Fallon Naval Air Station
Fallon, Nevada
NPA: The Lighthouse for the Blind, Inc. Seattle, Washington

Grounds Maintenance
BRECC 3900 Loch Raven Boulevard
Baltimore, Maryland
NPA: Baltimore Association for Retarded Citizens, Inc. Baltimore, Maryland

Mailroom Operation
Internal Revenue Service
(Requirements for Anchorage, Alaska; Honolulu, Hawaii; Portland, Oregon and Seattle, Washington)
NPA: Portland Habilitation Center, Inc.
Portland, Oregon

Operation of Individual Equipment Element Store
Mountain Home Air Force Base, Idaho
NPA: Envision, Inc.
Wichita, Kansas

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–2173 Filed 1–28–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–829]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Postponement of Time Limit for Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Time Limit for Preliminary Results of Countervailing Duty Investigation

SUMMARY: The Department of Commerce is extending the time limit of the preliminary determination in the countervailing duty investigation of hot-rolled flat-rolled carbon-quality steel products from Brazil because we determine that additional time is necessary to make the preliminary determination.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Lockard or Javier Barrientos, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Postponement

On October 15, 1998, the Department of Commerce ("the Department") initiated the countervailing duty investigation of hot-rolled flat-rolled carbon-quality steel products from Brazil. *See Initiation of Countervailing Duty Investigation: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 63 FR 56623 (October 22, 1998). On December 1, 1998, the Department deemed this investigation to be extraordinarily complicated, and postponed the preliminary determination to no later than January 25, 1999. *See Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Postponement of Time Limit for Countervailing Duty Investigation*, 63 FR 67459 (December 7, 1998). For the same reasons referenced in our earlier postponement, the Department has determined that

additional time is necessary to make the preliminary determination. Therefore, pursuant to section 703(c)(1) of the Act, we are postponing the preliminary determination in this investigation to no later than February 12, 1999.

This notice is published pursuant to section 703(c)(2) of the Act.

Dated: January 22, 1999.

Robert. S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–2221 Filed 1–28–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Government Owned Inventions

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The inventions available for licensing are:

NIST Docket Number: 97–015US.

Title: Noise Reduction In Volume Holographic Memories.

Abstract: A method for improving the quality of holographic images by reducing local noise in a holographic memory system is disclosed. The method is characterized by: storing a white reference image and a black reference image in the memory system, storing a series of data images in the memory system, applying a simple model based on a point-to-point of linear interpolation to the series of data images, the white reference image and the black reference image to provide a series of corrected data images having reduced noise. The simple model is preferably in a form which is characterized by temporal stability for the series of data images for each set of the black and white reference images.

NIST Docket Number: 97–045US.

Title: Granting Assisted Acousto-Optic Tunable Filter and Method.

Abstract: Dense wavelength division multiplexing (D–WDM) is promising in future information networks to increase the communication bandwidth. The invention is an acousto-optic tunable filter that can increase the number of channels significantly by combining a diffraction grating with an acousto-optic spectrum analyzer. The novel grating-assisted acousto-optic tunable filter (GA–AOTF) allows a very narrow spectral bandwidth (only 5% of those of conventional AOTFs) resulting in a significant increase in bandwidth and available channels by a factor of approximately 20.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 99–2072 Filed 1–28–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011199E]

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and of important dates.

DATES: The February 19, 1999, Interagency Meeting will be held at 2:00 p.m. See **SUPPLEMENTARY INFORMATION** for tentative 1999 meeting schedules.

ADDRESSES: The February 19, 1999, meeting will be held in Room 1863, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, (301) 713–2322.

SUPPLEMENTARY INFORMATION: The February 19, 1999, Interagency Committee meeting will review recent events relating to the IWC and issues that will arise at the 1999 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere, who is also the U.S. Commissioner to the IWC. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

Tentative Meeting Schedule

The schedule of additional meetings and deadlines, including those of the IWC, during 1999 follows. Specific locations and times will be published in the **Federal Register**.

April 9, 1999 (Department of Commerce, Herbert C. Hoover Building, Room 1863, Washington, D.C.): Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 1998 IWC annual meeting.

April 30 to May 3, 1999 (Grenada): IWC Scientific Committee

Working Groups.

May 3 to 15, 1999 (Grenada): IWC Scientific Committee.

May 17 to 19, 1999 (Grenada): IWC Whale Killing Methods Workshop.

May 19 to 21, 1999 (Grenada): IWC Commission Committee, Sub-committees and Working Groups.

May 24 to 28, 1998 (Grenada): IWC 51st Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Catherine Corson at least 5 days prior to the meeting date.

Dated: January 25, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–2187 Filed 1–28–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Notice of Availability of the Draft Supplement III to the Final Environmental Impact Statement for the Manteo (Shallowbag) Bay Project, Dare County, North Carolina; Dated January 1999

AGENCY: Army Corps of Engineers, Wilmington District, DOD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers has prepared Supplement No. 2 General Design Memorandum and a Draft Supplement III to the Final Environmental Impact Statement (EIS) for the Manteo (Shallowbag) Bay project, located in Dare County, North Carolina. The project was originally authorized in 1970, and called for the deepening of the navigation channel from the Atlantic Ocean through Oregon Inlet to Wanchese, North Carolina. Because of the dynamic and hazardous nature of Oregon Inlet, dual jetties, combined with a means to bypass sand around the inlet, were authorized to provide safe navigation and reduce the frequency of maintenance dredging.

A range of jetty spacings was analyzed to determine the optimum for protecting navigation, channeling tidal flows, preventing sound side setup, and facilitating larval fish passage through the inlet. Based on this analysis, a jetty spacing of 3,000 feet was selected. Three alternative jetty designs were analyzed to determine whether cost effective measures are available to minimize potential impacts on larval fish: (a) The previously proposed project at a 3,000-foot spacing; (b) jetties along the same alignment which are 1,000 feet shorter; and (c) jetties which are 1,000 feet shorter along the same alignment and with a weir section in the north jetty to allow larval fish passage during mid to high tides. Refined modeling and offshore surveys have indicated that shorter jetties will be effective at intercepting littoral sands and capturing sediments in the ebb tide delta, therefore, shorter jetties are being recommended. Analysis of the weir jetty alternative indicates that movement of larval fishes into the inlet would be facilitated by the presence of a weir. Initial construction costs would be slightly lower and there would be unquantifiable fishery benefits. A weir jetty would allow for the movement of sand over the weir into the inlet where it could be readily bypassed during any season instead of the summer season bypassing required under the previously proposed plan. The dredging only plan has also been reexamined. It has been confirmed that, due to high rate of shoaling in Oregon Inlet, construction and maintenance of the authorized improved channel without jetties is not economically feasible. The no action alternative, which includes the continuation of year-round sidecast dredging supplemented by pipeline and hopper dredging in an effort to maintain the existing project, does not provide a safe, navigable channel in Oregon Inlet. The hazardous navigation conditions will continue to cause vessel losses and damages, injuries to crews, and occasional deaths. After consideration of the environmental consequences of the spacing changes and refinements to the jetty alternative, the dredging only alternative, and the no action alternative, the preferred alternative is to construct shortened jetties with a 3,000-foot spacing and a weir section in the north jetty.

The Supplement No. 2 General Design Memorandum and Draft Supplement III to the Final EIS are now being circulated to allow the public and other interested parties to comment on this sand management plan and other project features which have changed since the last EIS supplement, dated May 1985. All interested persons are invited to provide their views on any aspect of the proposed project.

FOR FURTHER INFORMATION CONTACT: For information on the Supplement No. 2 General Design Memorandum contact Mr. William Dennis, U.S. Army Corps of Engineers, Wilmington District, PO Box 1890, Wilmington, North Carolina 28402–1890, at (910) 251–4780; and for information on the DEIS supplement contact Mr. William Adams, U.S. Army Corps of Engineers, Wilmington District, P.O. Box 1890, Wilmington, North Carolina 28402–1890, at (910) 251–4748.

SUPPLEMENTARY INFORMATION: Lands on either side of the inlet are in public ownership, with Cape Hatteras National Seashore to the north and Pea Island National Wildlife Refuge to the south. Without sand bypassing, jetties, which trap sand as it moves along the beach, can cause significant erosion of adjacent shorelines. During 1991, the U.S. Army Corps of Engineers and the Department of the Interior formed a Joint Task Force to develop a sand-bypassing plan that was agreeable to both parties. The outcome of this effort was the development of a Sand Management Plan which went beyond previous sand bypassing plans by predefining project related shoreline impacts and delineating shoreline reaches which will be managed as a project responsibility.

SCOPING: Individuals and agencies may present written comments relevant to the Draft EIS Supplement by sending the information to Mr. William Adams at the address above prior to March 18, 1999. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Final EIS Supplement are also welcome and can be furnished to Mr. Adams at the above address or via e-mail to: william.f.adams@saw02.usace.army.mil, or by FAX at (910) 251–4965.

Copies of the Draft EIS Supplement are available from Mr. William Adams at the address above. Review copies are also available in the library of the Wilmington District Headquarters located at 69 Darlington Avenue, Wilmington, North Carolina.

Dated: January 13, 1999.

Terry R. Youngbluth,

Colonel Corps of Engineers, District Engineer.

[FR Doc. 99–2186 Filed 1–28–99; 8:45 am]

BILLING CODE 3710–GN–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement for the Section 33, the "Missouri River Between Fort Peck Dam, Montana, and Gavins Point Dam, South Dakota and Nebraska," Bank Stabilization Project

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The dams and reservoirs on the upper Missouri River have caused a lowering of the streambed in the open reaches downstream from the dams. They have also caused a continuing net loss of high-bank lands, the reduction or elimination of the annual cycle of erosion and accretion, and a widening of the channel in some locations. The "Section 33" program was created by Congress with the expressed purpose of allowing the Corps of Engineers to assist affected landowners in alleviating these effects through a variety of measures. These measures include maintaining or rehabilitating existing bank stabilization structures, constructing new bank stabilization structures, purchasing affected property and monetary compensation.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS should be directed to Candace M. Thomas, Chief, Environmental and Economics Section, Water Resources Branch, U.S. Army Corps of Engineers, 215 North 17th Street, Omaha, Nebraska 68102–4978 or at 402–221–4575.

SUPPLEMENTARY INFORMATION: The purpose of this programmatic Environmental Impact Statement (EIS) is to evaluate the potential degree or level of implementation of the alternative measures authorized by Congress, and their expected environmental impacts. Because the specific components of the Section 33 program are not known at this time, and specific sites have not been identified for development, this will be a programmatic EIS that identifies the general impacts and issues associated with each of the alternatives evaluated. The programmatic EIS provides for the coverage of general matters in a broader environmental document. Subsequent narrower and site-specific environmental analyses will be performed when specific projects are determined in the future.

The Missouri River reaches included in the Section 33 program are as follows:

a. Fort Peck Dam to about twenty miles upstream of Lake Sakakawea (RM 1770 to RM 1580).

b. Garrison Dam to the upper end of Lake Oahe (RM 1390 to RM 1303).

c. Oahe Dam to about Pierre, South Dakota (RM 1071 to RM 1066).

d. About five miles downstream from Fort Randall Dam to Springfield, South Dakota (RM 875 to RM 832).

e. Gavins Point Dam to about 20 miles upstream of Sioux City, Iowa (RM 810 to RM 752).

Scoping meetings will be held on February 22, 1999 at the Sherman Motor Inn in Wolf Point, Montana at 6:30 p.m.; on February 23, 1999 at the Doublewood Inn in Bismarck, North Dakota at 6:30 p.m.; and on February 25, 1999 at the Prairie Inn & Convention Center in Vermillion, South Dakota at 6:30 p.m. These scoping meetings, as well as agency meetings, will be held to solicit input on the issues, studies needed, alternatives to be evaluated, and other related matters. Written comments will also be requested.

Candace M. Thomas,

Chief, Environmental & Economics Section, Water Resources Branch, Engineering Division.

[FR Doc. 99–2185 Filed 1–28–99; 8:45 am]

BILLING CODE 3710–62–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 1, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 25, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: National Survey to Determine the Need for Special Education Services.

Frequency: One time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 689.

Burden Hours: 668.

Abstract: The Office of Correctional Education is conducting a study to

determine the number of incarcerated juvenile and youthful offenders with disabilities. This study is being undertaken by the American Institutes for Research. Three surveys and methodology are being presented for review.

[FR Doc. 99–2111 Filed 1–28–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies

AGENCY: National Center for Education Statistics, Department of Education.

ACTION: Notice of dates of submission of state revenue and expenditure reports for fiscal year 1998 and of revisions to those reports.

SUMMARY: The Secretary of Education announces dates for the submission by state educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey) for fiscal year (FY) 1998. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Bureau of the Census is the data collection agent for the Department's National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2000 appropriated funds.

DATES: The date on which submissions will first be accepted is March 15, 1999. The mandatory deadline for the final submission of all data, including any revisions to previously submitted data, is September 7, 1999.

ADDRESSES: SEAs may mail ED Form 2447 to: Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800.

Alternatively, SEAs may hand deliver submissions to: Governments Division, Bureau of the Census, 8905 Presidential Parkway, Washington Plaza II, Room 508, Upper Marlboro, MD 20772, by 4 p.m. (Eastern Time).

If an SEA's submission is received by the Bureau of the Census after September 8, in order for the submission to be accepted, the SEA must show one of the following as proof that the submission was mailed on or before the mandatory deadline date:

1. A legibly dated U.S. Postal Service postmark.
2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
3. A dated shipping label, invoice, or receipt from a commercial carrier.
4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.
2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence R. MacDonald, Chief, Bureau of the Census, ATTENTION: Governments Division, Washington, DC 20233–6800. Telephone: (301) 457–1574. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to: Frank Johnson, National Center for Education Statistics, U.S. Department of Education, Washington, DC 20208–5651. Telephone: (202) 219–1618.

SUPPLEMENTARY INFORMATION: Under the authority of section 404(a) of the National Education Statistics Act of 1994 (20 U.S.C. 9003(a)), which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines the average state per pupil expenditure (SPPE) for elementary and secondary education, as defined in the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 8801 (12)).

In addition to using the SPPE data as useful information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including Title I of the Elementary and Secondary Education Act of 1965 as amended by the Improving America's Schools Act of 1994 (Title I), Impact Aid, and Indian Education. Other programs such as the Goals 2000: Educate America Act, the Technology Literacy Challenge Fund, the Education for Homeless Children and Youth Program under Title VII of the Stewart B. McKinney Homeless Assistance Act, the Dwight D. Eisenhower Professional Development Program, and the Safe and Drug-Free Schools and Communities Program make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I allocations.

In January 1999, the Bureau of the Census, acting as the data collection agent for NCES, will mail to SEAs ED Form 2447 with instructions and request that SEAs submit data to the Bureau of the Census on March 15, 1999, or as soon as possible thereafter. SEAs are urged to submit accurate and complete data on March 15, or as soon as possible thereafter, to facilitate timely processing. Submissions by SEAs to the Bureau of the Census will be checked for accuracy and returned to each SEA for verification. All data, including any revisions, must be submitted to the Bureau of the Census by an SEA not later than September 7, 1999.

Having accurate and consistent information, on time, is critical to an efficient and fair allocation process, as well as the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for allocation purposes, September 7, 1999, as the final date by which ED Form 2447 must be submitted. However, if an SEA submits revised data after the final deadline that results in a lower SPPE figure, its allocations may be adjusted downward or the Department may request the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs. If an SEA submits revised data after September 7, the data may also be too late to be included in the final NCES published dataset.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) via the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an

electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Authority: 20 U.S.C. 9003(a).

Dated: January 25, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–2162 Filed 1–28–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science and Office of Environmental Management; Office of Science Financial Assistance Program Notice 99–06; Environmental Management Science Program: Research Related to Subsurface Contamination/Vadose Zone Issues

AGENCY: U.S. Department of Energy (DOE).

ACTION: Correction.

In notice document 99–543 beginning on page 1607, in the issue of Monday, January 11, 1999, make the following correction:

On page 1608, in the third column, under the heading "Preapplications", in the third line the date should read "February 9, 1999".

Issued in Washington, DC on January 20, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–2175 Filed 1–28–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Golden Field Office; Notice of Solicitation for Financial Assistance Applications; Million Solar Roofs Initiative Small Grant Program for State and Community Partnerships

AGENCY: Department of Energy.

ACTION: Notice of Solicitation for Financial Assistance Applications Number DE–PS36–99GO10419.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Million Solar Roofs Program for State and Community Partnerships. The selected applicant's will receive financial assistance under a grant with DOE.

DATES: The solicitation will be issued on or about January 22, 1999.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties must access the Golden Field Office Application, Award and Solicitation page at http://www.eren.doe.gov/golden/solicit.htm, click on "solicitations" and then locate the solicitation number identified above. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: DOE's Million Solar Roofs (MSR) Initiative is an initiative to install solar energy systems on one million U.S. buildings by 2010. It was announced by President Clinton on June 26, 1997 in his speech before the United Nations Session on Environment and Development. This effort includes two types of solar energy technology—photovoltaics that produce electricity from sunlight and solar thermal panels that produce heat for domestic hot water, space heating or heating swimming pools. A key strategy of the Initiative is to catalyze market demand in local areas through the establishment of State and Community MSR Partnerships. The Congressional language in Public Law 105–245 authorizing these funds specifically directs DOE to use these funds to eliminate barriers to the use of solar energy systems and to support partnerships. The overall goal of this solicitation is to assist State and Community Partnerships in contributing to the installation of one million solar energy systems on U.S. rooftops by the year 2010. This solicitation is only open to both existing and new MSR State and Community Partnerships. These Partnerships bring together business, government and community organizations at the regional level with a commitment to install a pre-determined number of solar energy systems. There were nine such existing partnerships under the MSR Initiative, as of October 1, 1998. They received their MSR Partnership designation by writing a letter of commitment to DOE with their goal for actual installations by 2010. In return, DOE provides access to a variety of financing options; training and technical assistance from DOE's existing infrastructure; recognition and support; and a link to solar energy businesses, associations and related industries that can provide assistance. New MSR Partnerships can declare their intent to join the Initiative by including such a letter with their application for this solicitation. A complete description of partnerships and their representative activities can be found in Appendix A and on the MSR website at *http//www.MillionSolarRoofs.org*.

DOE's Office of Energy Efficiency and Renewable Energy will only consider proposals from interested State and Community Partnerships to help fund their MSR program development and implementation activities. Projects will be managed by the DOE Regional Support Offices. DOE intends to allocate a portion of total available funding to each of the six DOE regions based on a formula that considers existing partnerships and the potential for new partnerships to be established. Applicants will only be competing against other partnerships in their DOE region.

The project or activity must be conducted in a designated MSR partnership community. Any member of a State or Community Partnership, except industry associations, can apply on behalf of the Partnership, including builders, energy service providers, utilities, non-governmental organizations, local governments, state governments, or Federal government agencies. The different organizations/offices involved in a State or Community Partnership are encouraged to collaborate on their response to this solicitation. There is no cost-sharing requirement for these grants although cost-sharing will be considered in the selection process. Subject to the availability of funds, multiple Awards for a total of $600,000 (DOE funding) in Fiscal Year (FY) 1999 are anticipated as a result of this Solicitation (approximately 12 to 30 small grants, $10,000 to $50,000 in size) will be awarded. Solicitation number DE–PS36–99GO10419 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting applications for funding. No pre-application conference is planned. Issuance of the solicitation is planned on or about January 22 , 1999, with responses due on February 19, 1999.

FOR FURTHER INFORMATION CONTACT: Ruth Adams, Contracting Officer, at 303–275–4722, e-mail ruth__adams@nrel.gov, or Robert Martin, Project Officer, at 303–275–4763, e-mail robert__martin@nrel.gov.

Issued in Golden, Colorado, on January 21, 1999.

Ruth E. Adams,

Chief, Procurement, GO.

[FR Doc. 99–2177 Filed 1–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, February 24, 1999, 8:30 a.m. to 5:00 p.m.; and Thursday, February 25, 1999, 8:30 a.m. to 2:00 p.m.

ADDRESSES: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

FOR FURTHER INFORMATION CONTACT: Sharon Long, Office of Basic Energy Sciences; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: 301–903–5565.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda: Agenda will include discussions of the following:

- Opening Remarks and Introduction from Dr. Martha Krebs, Director, Office of Science
- Fiscal Year 2000 Budget Status
- Scientific Simulation Initiative Update
- Report from the National Institutes of Health (NIH) on NIH Macromolecular Crystallography Activities at Synchrotron Radiation Light Sources
- Status of the Spallation Neutron Source Science Program
- User Fees at Basic Energy Sciences Facilities
- Report of the Solid State Sciences Committee on Condensed-Matter and Materials Physics
- BESAC Fourth Generation Light Source Panel Report
- BESAC E-Beam Review Status
- Update on Complex and Collective Phenomena Workshop
- BESAC/Office of Science—Roadmapping

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Sharon Long at 301–903–6594 (fax) or sharon.long@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; 1E–190, Forrestal Building; 1000 Independence Avenue, SW; Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 26, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–2176 Filed 1–28–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–145–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

January 25, 1999.

Take notice that on January 11, 1999, as supplemented on January 19, 1999, Williams Gas Pipelines Central, Inc. (Williams), One Williams Center, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–145–000 a request pursuant to Sections 157.205 and 157.212(a) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212(a)) for authorization to utilize facilities installed for the delivery of NGPA Section 311 transportation gas to Missouri Public Service (MPS) for the Greenwood (Greenwood) power plant located in Jackson County, Missouri, for purposes other than NGPA Section 311 transportation under Williams blanket certificate issued in Docket No. CP82–479–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that the facilities consist of a 16-inch tap on its 20-inch Grain Valley pipeline (Line XMA) and a triple run orifice meter setting, a 10′ × 12′ meter house, electronic flow measurement equipment, and appurtenant facilities setting on a 50′ by 105′ site in the plant yard. Williams anticipates that these facilities will be used for deliveries of gas other than NGPA Section 311 transportation and is seeking authorization to perform those deliveries. Williams states that it began delivering gas to MPS for Greenwood on December 19, 1996 with an initial delivery of 1,915 Dth. The annual volume to be delivered is estimated to be 685,000 Dth increasing to 729,000 Dth within three years. Williams estimates that the peak day volume will be 25,000 Dth. Williams notes that subject authorization will allow MPS receipt point and capacity release flexibility in the future.

Williams states the operation of the subject facilities will have no impact on its peak day or annual deliveries since the power plant load is primarily from May through October. According to Williams, the cost to construct the subject facilities was $249,942, which was fully reimbursed by MPS. Williams contends that since it is an open access transporter pursuant to Section 284 blanket certificate, the volume of gas delivered to MPS after the request will not exceed the volume of gas authorized prior to the request. Williams has attached copies of its clearance letters from the Missouri Department of Natural Resources, the U.S. Fish and Wildlife Service, and the Missouri State Historic Preservation Officer. Additionally, Williams has attached a copy of its Upland Erosion Control, Revegetation and Maintenance Plan utilized in the construction of the facilities. Williams states that it is sending a copy of the request to the Missouri Public Service Commission. Williams states that the proposal is not prohibited by an existing tariff, and Williams has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–2154 Filed 1–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2731–020.

c. *Date Filed:* May 27, 1998.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Weybridge Project.

f. *Location:* On Otter Creek, at river mile 19.5 from the confluence with Lake Champlain, in Addison County, Vermont. There are no federal lands located within the project area.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John C. Greenan, P.E., Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vermont 05701, (802) 747–5707.

i. *FERC Contact:* Any questions on this notice should be addressed to Jack Duckworth, E-mail address, jack.duckworth@ferc.fed.us, or telephone (202) 219–2818.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of the Project: The project consists of the following existing facilities: (1) a 30-foot-high, 302.6-foot-long concrete gravity dam consisting of two spillway sections, a 150-foot-long west spillway section, topped with a 6-foot-high hinged steel flashboard, and abutted by a 20-foot-wide and 10-foot-high Taintor gate, and a 116-foot-long east spillway section topped with an automatically inflated rubber weir; (2) a 1.5-mile-long, 62-acre impoundment with a normal water surface elevation of 174.3 feet above mean sea level (msl); (3) a powerhouse integral with the dam containing a single turbine generator with an installed capacity of 3,000 kilowatts (kW); (4) transmission facilities; and (5) appurtenant facilities.

m. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room, 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address shown in item h.

n. this notice also consists of the following standard paragraph: D10.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS", or "PRESCRIPTIONS"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing response; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all person listed on the service list prepared by the Commission in this proceeding, in accordance with 19 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–2155 Filed 1–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental, Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2737–002.

c. *Date Filed:* June 25, 1998.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Middlebury Lower Project.

f. *Location:* On Otter Creek, at river mile 24.5 from the confluence with Lake Champlain, in Addison County, Vermont. There are no federal lands located within the project area.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. John C. Greenan, P.E., Central Vermont Public Service Corporation, 77 Grove Street, Rutland, Vermont 05701, (802) 747–5707.

i. *FERC Contact:* Any questions on this notice should be addressed to Jack Duckworth, E-mail address, jack.duckworth@ferc.fed.us, or telephone (202) 219–2818.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a 30-foot-high, 478-foot-long concrete gravity dam consisting of two ogee spillway sections, a 123-foot-long western spillway section, and a 260-foot-long eastern spillway section; (2) a 1-mile-long, 16 acre impoundment with a normal water surface elevation of 314.5 feet above mean sea level (msl); (3) a powerhouse integral with the dam containing three Francis turbine units for a total installed capacity of 2,250 kilowatts (kW); (4) transmission facilities; and (5) appurtenant facilities.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address shown in item h.

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The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All rely comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "Recommendations," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–2156 Filed 1–28–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Resource Pool Size

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of public process on resource pool size and notice of informal public information meetings.

SUMMARY: The Western Area Power Administration (Western) is seeking public comment on the size of project-specific resource pools needed to meet the fair share needs of Native American tribes in the marketing areas served by the Central Valley Project, Washoe Project, and the Salt Lake City Area Integrated Projects.

DATES: The consultation and comment period will end March 1, 1999. To be assured of consideration, written comments must be received by the end of the consultation and comment period.

Three informal public information meetings have been scheduled. The first will be held on February 3, 1999, starting at 9 a.m. at Western's Desert Southwest Regional Office, 615 South 43rd Avenue, Phoenix, Arizona. The second will be held on February 5, 1999, starting at 9 a.m. at the Department of Energy's Training Center, 1401 Maxwell, Kirtland Air Force Base NE., Albuquerque, New Mexico. The third will be held on February 9, 1999, starting at 1:30 p.m. at Western's Sierra Nevada Regional Office, 114 Parkshore Drive, Folsom, California. The purpose of the informal meetings is to educate Native Americans on Western's power allocation policies, including the resource pool that will be the source of allocations of power to eligible Native American tribes. Although the target audience for these workshops is Native American tribes, these meetings are open to the public.

ADDRESSES: Written comments may be hand-delivered, mailed, emailed, or faxed to Robert C. Fullerton, Project Manager, Corporate Services Office, Western Area Power Administration, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401–0098, telephone (303) 275–2700, fax (303) 275–1290, email: fullerto@wapa.gov. All documentation developed or retained by Western during the course of this public process will be available for inspection and copying at this address.

FOR FURTHER INFORMATION CONTACT: Robert C. Fullerton, Project Manager, Corporate Services Office, Western Area Power Administration, 1627 Cole Boulevard, P.O. Box 3402, Golden, CO 80401–0098, telephone (303) 275–2700, email: fullerto@wapa.gov.

Joel K. Bladow, Regional Manager, Rocky Mountain Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, telephone (970) 490–7201, email: bladow@wapa.gov.

J. Tyler Carlson, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457,

Phoenix, AZ 85005–6457, telephone (602) 352–2453, email: carlson@wapa.gov.

David Sabo, Customer Service Center Manager, Colorado River Storage Project, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, telephone (801) 524–6372, email: sabo@wapa.gov.

Jerry W. Toenyes, Regional Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4418, email: toenyes@wapa.gov.

Gerald C. Wegner, Regional Manager, Upper Great Plains Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, telephone (406) 247–7405, email:wegner@wapa.gov.

SUPPLEMENTARY INFORMATION: Western's inquiry on the impact of electric utility restructuring started pursuant to the publication of notice in the **Federal Register** on December 1, 1998 (63 FR 66166). We sought input on six questions to help in the consideration of the impact of electric utility industry restructuring on the way that Western allocates power. While the comment period for this inquiry closed on January 15, 1999, a separate issue has been identified that must be addressed before completion of pending marketing plans. That issue is the size of the project-specific resource pools that are needed to meet the fair share needs of Native American tribes. The resource pools are derived from power that is not extended to existing long-term firm power customers.

Considerable attention was devoted to the resource pool issue during the course of development of the Energy Planning and Management Program (Program) (60 FR 54151). The Program, which was adopted on October 20, 1995, established a framework for the project-specific allocation of hydropower. Pursuant to the Program, Western signed resource extension contracts with existing customers of the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects. Resource pools of up to 6 percent of the marketable resource were set aside to meet a fair share of the needs of new customers, including Native American tribes, and other purposes as determined by Western. Four percent of the marketable resource was initially made available, and additional resource pool increments of up to 1 percent will be made available 5 and 10 years into the 20-year contract term.

While the resource pools size for the Pick-Sloan Missouri Basin Program-Eastern Division and the Loveland Area Projects has already been determined, the Program anticipated that the resource pool size for the Central Valley Project, Washoe Project, and Salt Lake City Area Integrated Projects would be determined on a project-specific basis. In February of 1997, Western proposed application of the Program to the Salt Lake City Area Integrated Projects, and further proposed "an initial resource pool of up to 4 percent of available Federal resource . . . for new customers to encourage customer development of new technologies for conservation or renewable resources and for contingencies." In that **Federal Register** notice, published on February 26, 1997 (62 FR 8709), Western also proposed potential reductions to resource commitments 5 and 10 years into the contract term, for the same purposes as the initial resource pool.

On that same day, Western announced its Proposed 2004 Power Marketing Plan, which provided for marketing of power from Central Valley Project and Washoe Project powerplants after the year 2004. In a **Federal Register** notice published at 62 FR 8710, Western proposed a 4 percent initial resource pool for new allocations and an additional incremental resource pool of up to 2 percent in the year 2014.

While there was considerable public comment on resource pool size as a result of the publication of these two **Federal Register** notices in February of 1997, there is a need to receive further public comment on the fair share needs of eligible Native American tribes before the size of project-specific resource pools can be decided and pending marketing plans can be completed.

Under the Program, entities that desire to purchase power from Western for resale to consumers, including municipalities, cooperatives, public utility districts, and public power districts, must have utility status. Native American tribes are not subject to this requirement. Western has stated that we would consider arrangements for the delivery of the benefits of cost-based Federal power to Native American tribes without utility status.

Dated: January 22, 1999.

Michael S. Hacskaylo,

Adminstrator.

[FR Doc. 99–2178 Filed 1–28–99; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 11, 1999 Through January 15, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–AFS–J65287–UT Rating LO, South Spruce Ecosystem Rehabilitation Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron and Kane Counties, UT.

Summary: EPA review has not identified any potential environmental impacts which require substantive changes to the proposal.

ERP No. D–AFS–J65289–UT Rating EC2, Pine Tract Project, Implementation, Coal Lease Tract (UTU–76195); Modification to Federal Coal Lease (U–63214 Quitchupah Lease) and Permit Amendment Application to Subside Box Canyon, Manti-La Sal National Forest, Ferron/Price Ranger District, Emery and Sevier Counties, UT.

Summary: EPA expressed environmental concerns with the narrow scope, air quality analysis, coal/methane conflicts and impacts from transportation of coal. EPA requested further information on cumulative impacts.

ERP No. D–AFS–K61145–CA Rating EC2, Ansel Adams, John Muir, Dinkey Lakes and Monarch Wildernesses, Proposed New Management Direction, Amending the Land and Resource Management Plans for the Inyo, Sierra and Sequoia National Forests, Implementation, Inyo, Madera, Mono and Fresno Counties, CA.

Summary: EPA expressed environmental concerns regarding proposed management direction for four Wilderness Areas, and particularly noted the lack of analysis of direct, indirect, and cumulative impacts associated with cattle and sheep grazing. Some comments were held pending the release of a revised NEPA document to address issues related to recreational stock and commercial

outfitters that emerged during the public comment period.

ERP No. D–AFS–L65309–ID Rating EC2, Spruce Moose and Moose Lake Right-of-Way Analysis Area, Implementation, Timber Harvesting, Road Construction, Reforestation and Watershed Restoration, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID.

Summary: EPA expressed environmental concerns on the continued cutting of Old Growth forest, and the potential for contributing additional sediment to streams that are currently degraded by sediment. The DEIS does not disclose adequate information concerning water quality, status of stream listings under CWA Section 303(d), and cumulative effects.

ERP No. DR–AFS–L65261–AK Rating EC2, Port Houghton/Cape Fanshaw Timber Harvest Sale Project, Implementation, Revision to Tongass National Forest Land Management Plan. Tongass National Forest, Chatham and Stikine Area, South of Juneau, AK.

Summary: EPA expressed environmental concerns related to the potential adverse impact of the project on the marine environment.

ERP No. DS–AFS–K65193–NV Rating EO2, Griffon Mining Project, Implementation, Updated Information, Revision for Expanding Gold Mining, Plan of Operations, Humboldt-Toiyabe National Forests, Ely Ranger District, White Pine County, NV.

Summary: EPA expressed environmental objections based on the potential for significant environmental degradation of the project-affected watershed. EPA requested additional information in the Final Supplement (EIS) regarding water quality impacts, mitigation/monitoring measures, and waste rock characterization of material from the proposed mine expansion and whether the project impacts were consistent with the Clean Water Act and applicable permit conditions. Mitigation recommendations were provided.

Final EISs

ERP No. F–AFS–J65281–UT, Spruce Ecosystem Recovery Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K65275–CA, Fourmile Hill Geothermal Development Project, Construction, Operation and Maintenance, 49.9 megawatt (MW) Geothermal Power Plant, Federal Geothermal Leases CA–21924 and CA–21926, Glass Mountain Known Geothermal Resource Area, Klamath and Modoc National Forests, Siskiyou and Modoc Counties, CA.

Summary: EPA continued to express environmental objections based on potential adverse impacts to water resources. These impacts would likely be less than significant, assuming proper implementation of mitigation, monitoring and contingency plans. EPA also acknowledged the strong public opposition to the proposed project, and questioned the need for the project at this time, based on information provided in the Final EIS by the lead agencies, and the agencies' obligations under NEPA to balance environmental amenities and values with economic and technical consideration in decision making.

ERP No. F–NPS–L61217–OR, Oregon Caves National Monument, General Management Plan, Development Concept Plan, Josephine County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NPS–L65277–WA, Lake Crescent Management Plan, Implementation, Olympic National Park, WA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: January 26, 1999.

B. Katherine Biggs,

Associated Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–2210 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed January 18, 1999 Through January 22, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990015, FINAL EIS, FAA, NY, Terminal Doppler Weather Radar (TDWR) Installation and Operation, Serve the John F. Kennedy International Airports (JFK) and La Guardia (LFA), Site Specific, Air Station Brooklyn, Borough of Queens, King County, NY, Due: March 08, 1999, Contact: Jerome D. Schwartz (202) 267–9841.

EIS No. 990016, FINAL EIS, IBR, WA, Programmatic EIS—Yakima River Basin Water Enchancement (Phase 2) Project, Implementation, Benton, Yakima and Kittitas Counties, WA, Due: March 08, 1999, Contact: Ms. Lola Sept (208) 378–5032.

EIS No. 990017, DRAFT EIS, IBR, CA, Contra Loma Reservoir Project, Future Use and Operation of Contra Costa Water District, COE Section 404 Permit, Contra Costa County, CA, Due: March 25, 1999, Contact: Bob Eckart (916) 978–5051.

EIS No. 990018, LEGISLATIVE FINAL EIS, USN, NV, Fallon Naval Air Station, Renewal of the B–20 Land Withdrawal, City of Fallon, Churchill County, NV, Due: March 08, 1999, Contact: Sam Dennis (650) 244–3007.

EIS No. 990019, FINAL SUPPLEMENT, BLM, CO, Glenwood Springs Resource Area, Resource Management Plan and Wilderness Recommendations, Implementation and Recommendations, Garfield, Mesa, Routt, Eagle, and Pitkin Counties, CO, Due: March 08, 1999, Contact: Steve Moore (970) 947–2800.

EIS No. 990020, DRAFT EIS, TVA, TN, GA, Peaking Capacity Additions, Construction and Operation of Natural Gas-Fired Combustion Turbines, NPDES and COE Section 404 Permits; Three Sites Proposed: Colbert Fossil Plant, Colbert County, AL, Gallatin Fossil Plant, Sumner County, TN and Johnsonville Fossil Plant, Humphreys County, TN, Due: March 22, 1999, Contact: Gregory L. Askew, P.E. (423) 632–6418.

EIS No. 990021, DRAFT EIS, BLM, NM, New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management, Implementation, NM, Due: May 17, 1999, Contact: J. W. Whitney (505) 438–7438.

EIS No. 990022, FINAL EIS, BLM, AK, Squirrel River Wild and Scenic River Suitability Study, Designation and Non-Designation, National Wild and Scenic Rivers System, AK, Due: March 08, 1999, Contact: Lon Kelly (907) 474–2368.

EIS No. 990023, DRAFT EIS, NPS, AL, Little River Canyon National Preserve, General Management Plan, Implementation, DeKalb and Cherokee Counties, AL, Due: April 06, 1999, Contact: William Spring (256) 845–9605.

EIS No. 990024, FINAL EIS, GSA, VA, U.S. Patent and Trademark Office (PTO) Consolidation, Acquisition of 2.4 million Rentable Square Feet with a 20-year Lease Term, Three Possible

Sites: Crystal City, Carlyle and Eisenhower Avenue, VA, Due: March 08, 1999, Contact: Carl Winters (202) 401–1025.

EIS No. 990025, DRAFT EIS, UMC, AZ, Yuma Marine Corps Air Station (MCAS), To Improve Ordnance Handling and Storage, Construct a new Combat Aircraft Loading Area (CALA); New Station Ordnance Area and Relocation of MCAS Yuma, AZ, Due: March 22, 1999, Contact: Richard Samrah (520) 341–3163.

EIS No. 990026, DRAFT EIS, AFS, ID, WA, Douglas-fir Beetle Project, Proposal To Harvest Tree, Regenerated Forest, Aquatic Restoration and Fuels Reduction, Idaho Panhandle National Forest, Coeur d'Alene River and Priest Lake Ranger District and Colville National Forest, Newport Ranger District, Kootenai, Shoshone and Bonner Counties, ID and Pend Orielle County, WA, Due: March 22, 1999, Contact: David J. Wright (208) 664–2318.

Amended Notices

EIS No. 980526, FINAL EIS, FHW, DC, Canal Road Entrance to the Georgetown University Improvements, Reconstruction between Whitehurst Freeway and Foxhall Road, Washington, D.C., Due: February 22, 1999, Contact: Edward Sheldal (202) 523–0163.

Published FR 01–08–99—Review Period extended.

EIS No. 990002, DRAFT EIS, DOA, MN, Snake River Watershed Plan, Watershed Protection and Flood Prevention, NPDES Permit and COE Section 404 Permit, Marshall Pennington and Polk Counties, MN, Due: March 01, 1999, Contact: Vic Ruhland (612) 602–7900.

Published FR—01–15–99 Correction of Agency's code from DOE to DOA.

Dated: January 26, 1999.

B. Katherine Biggs,

Associated Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–2211 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6227–9]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held on February 2–4, 1999, at the Washington Marriott, 1221 22nd Street, NW, Washington, D.C. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, February 2, 1999, Work Group meetings only; plenary sessions Wednesday, February 3 and Thursday, February 4, 1999.

ADDRESSES: Washington Marriott, 1221 22nd Street, NW, Washington, D.C.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Outreach and Communications Work Group, the Science and Research Work Group, the Regulatory Process Work Group will meet from 10:00 a.m. to 5:00 p.m. on Tuesday, February 2, 1999. The Economics and Assessment Work Group will meet from 8:30 a.m. to 4:30 p.m. on Tuesday, February 2, 1999.

The plenary session will begin on Wednesday, February 3 from 8:30 a.m. to 5:00 p.m. and Thursday, February 4, from 8:30 a.m. to 12:30 p.m. The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Some tentative agenda items include reports from the Work Groups, a panel discussion on key economics issues and a session on the role of economics in EPA decisionmaking. There will be a public comment period on Wednesday, February 3, 1999, from 4:30–5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Contact Paula R. Goode, Office of Children's Health Protection, USEPA, MC 1107, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7778, goode.paula@epa.gov.

Dated: January 22, 1999.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 99–2200 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–1]

National Advisory Council for Environmental Policy and Technology Reinvention Criteria Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, P.L. 92463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Reinvention Criteria Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues.

The NACEPT Reinvention Criteria Committee (RCC) has been asked to help the Agency understand how incentives can be used most successfully to inspire firms, companies, communities, and individuals to go beyond mere compliance with existing regulations and to begin the process of addressing outstanding environmental problems. In particular, the committee is focusing on the following questions:

- What opportunities exist for EPA to use incentives to promote environmental stewardship in industry? In local communities? In the general public?
- How can EPA evaluate the effectiveness of incentives to encourage environmental stewardship that leads to improved environmental results? How can EPA measure the impact that incentives have on public confidence? What criteria should be used to decide whether the use of incentives is appropriate?
- How can the concept of performance ladders be used to tailor incentives most effectively?

This meeting is being held to provide the EPA with perspectives from representatives of state, and local governments, environmental organizations, academia, industry, and NGOs.

DATES: The RCC will hold a 1½-day public meeting at the Best Western Old Colony Inn, located at 615 First Street, Alexandria, Virginia, on Monday March 15, from 1:00pm to 5:30pm and Tuesday March 16, 1999 from 8:30am to 5:00pm.

ADDRESSES: Materials or written comments may be transmitted to the committee through Gwendolyn Whitt, Designated Federal Officer, NACEPT RCC, U.S. EPA, Office of Cooperative

Environmental Management (1601F), 401 M Street, SW, Washington, D.C. 20460. There will also be an opportunity for the public to make comments directly to the committee during the first day of the meeting. Requests to make public comments must be submitted no later than March 1,1999 to Gwendolyn Whitt, at the address above or faxed to (202)-260–6882.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer, NACEPT, at (202) 260–9484.

Dated: January 21, 1999.

Gordon Schisler,

Deputy Director, Office of Cooperative Environmental Management.

[FR Doc. 99–2199 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[PF–853; FRL–6055–8]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–853, must be received on or before March 1, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Support Branch, Registration Division (7505), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 268, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–9368; e-mail: jamerson.hoyt@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–853] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–853) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petitions is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petitions was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries with minor editing. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 5E4434, 5E4559 and 7E4872,

EPA has received pesticide petitions (5E4434, 5E4559, and 7E4872) from the Interregional Research Project Number 4 (IR-4), Center for Minor Crop Pest Management, Technology Center of New Jersey, Rutgers, the State University of New Jersey, 681 U.S. Highway # 1 South, North Brunswick, NJ 08902-3390, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the fungicide aluminum tris (o-ethylphosphonate) (referred to in this document as fosetyl-Al) in or on certain raw agricultural commodities as follows:

1. EPA has received an amendment to PP 5E4434 from IR-4 proposing to amend the time-limited tolerance established for blueberries at 40 ppm. IR-4 requests that the tolerance for bluberries be amended by extending the expiration date to December 31, 2000. The time extension will allow IR-4 to develop additional magnitude of residue data in support of a permanent tolerance for blueberries.

2. PP 5E4559 proposes the establishment of a tolerance for grapes at 10 parts per million (ppm). Registration for use of fosetyl-Al on

grapes would be limited to areas east of the Rocky Mountains based on the geographical representation of the residue data submitted.

3. PP 7E4872 proposes the establishment of a tolerance for macadamia nuts at 0.3 ppm.

EPA has determined that the petitions contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fosetyl-Al in plants is adequately understood. Adequate data on the nature of the residues in plants, including identification of major metabolites and degradates of fosetyl-Al, are available. Radio labeled studies on the uptake, translocation and metabolism in plants show that the chemical proceeds through hydrolytic cleavage of the ethyl ester. The major residues are fosetyl-Al, phosphorus acid and ethanol. The tolerances are established for the parent only, that is fosetyl-Al. There is no reasonable expectation of residues occurring in eggs, milk, and meat of livestock and poultry since there are no livestock feed items associated with commodities treated with fosetyl-Al.

2. *Analytical method.* Adequate methods are available for enforcement purposes. There are two analytical methods acceptable for determining residues of fosetyl-Al in plants: a gas chromatography method is available for enforcement of tolerance in pineapple and is listed as Method I in PAM, Vol. II; a gas chromatography/phosphorus specific flame photometric detector (FPD-P) method (Rhone-Poulenc Method No. 163) for citrus has undergone a successful method tryout on oranges and has been sent to the FDA for inclusion in PAM as Method II.

B. Toxicological Profile

1. *Acute toxicity.* A complete battery of acute toxicity studies for fosetyl-Al technical have been conducted. The acute oral rat and primary dermal irritation studies indicate category IV toxicity. A guinea pig dermal sensitization study shows fosetyl-Al is not a skin sensitizer. The primary eye irritation study in rabbits shows fosetyl-Al to be an eye irritant with Category I toxicity.

2. *Genotoxicty.* Fosetyl-Al is neither mutagenic nor genotoxic. The genetic toxicity potential of fosetyl-Al was assessed in several assays.

3. *Reproductive and developmental toxicity.* Rhone-Poulenc concludes that fosetyl-Al is not a reproductive toxicant and shows no evidence of estrogenic or androgenic related effects.

i In a 3-generation reproduction study, fosetyl-Al was administered to rats at dietary levels of 0, 6,000, 12,000 or 24,000 ppm. No adverse effects on reproductive performance or pup survival were observed in any dose group. The lowest-observed adverse effect level (LOAEL) was established at 12,000 ppm based on effects on animal weights and urinary tract changes. The no-observed adverse effect level (NOAEL) for all effects was 6,000 ppm.

ii. A teratology study in rats dosed via oral gavage at 500, 1,000 or 4,000 milligrams/kilogram/day (mg/kg/day) showed a developmental NOAEL of 1,000 mg/kg. At 4,000 mg/kg, there was maternal toxicity, as evidenced by effects on animal weights, maternal deaths, increased resorptions and delayed fetal ossification.

iii. A rabbit teratology study showed no toxic effects at oral doses up to 500 mg/kg.

Effects of fosetyl-Al on fetal development were observed only in the rat at a dose producing severe maternal toxicity. In the absence of maternal toxicity, NOAEL on fetal development were observed, i.e. at 1,000 mg/kg/day in rats or at 500 mg/kg/day in rabbits.

4. *Subchronic toxicity.* In subchronic studies, no significant toxicity was observed even at doses exceeding the limit of 1,000 mg/kg/day.

5. *Chronic toxicity.* Chronic feeding studies have been conducted in dogs and rats. The LOAEL for chronic effects of fosetyl-Al is 10,000 ppm (250 mg/kg/day) based on a 2 year feeding study with dogs fed diets containing 0, 10,000, 20,000 and 40,000 ppm. This NOAEL is based on a slight degenerative effect on the testes at the 20,000 ppm dose level. In the rat, calculi in the urinary bladder and related histopathological changes in the bladder and kidneys of males and females were observed at 30,000/40,000 ppm (1,500/2,000 mg/kg/day).

6. *Carcinogenicity.* Long-term feeding studies were conducted with technical grade fosetyl-Al in mice and rats and with monosodium phosphite, the primary urinary metabolite of fosetyl-Al, in rats. In addition, a mechanistic study in rats was conducted with feeding levels up to 50,000 ppm. Fosetyl-Al was administered via admixture in the diet to CD rats at target levels of 0, 2,000, 8,000, and 30,000/40,000 ppm for approximately 2 years. After 2 weeks at 40,000 ppm, this dietary level was reduced to 30,000 ppm. Calculi in the urinary bladder were observed for several male and female rats at 30,000/40,000 ppm. Microscopic examination revealed transitional cell carcinomas and papillomas in the urinary bladders of high dose males. In addition, a statistically significant increase in adrenal pheochromocytomas (benign and malignant combined) was observed in males at 8,000 and 30,000/40,000 ppm. The adrenal slides were independently reread by two consulting pathologists who found no significant dose-related increases in the incidence of pheochromocytomas or hyperplasia.

A subsequent mechanistic study in rats conducted with dietary levels of 8,000, 30,000 and 50,000 ppm demonstrated that the massive doses of 30,000 and 50,000 ppm fosetyl-Al alter calcium/phosphorous homeostasis resulting in severe acute renal injury, similar to that observed in the chronic rat study, and the formation of calculi in kidneys, ureters, and bladder. Under conditions of chronic exposure, these effects could lead to the formation of bladder tumors as seen in the chronic rat study. At 8,000 ppm, no evidence of renal injury was observed, a result consistent with the absence of bladder tumors.

A carcinogenicity study in rats was conducted with monosodium phosphite administered via dietary mixture at levels of 2,000, 8,000, and 32,000 ppm. No evidence of oncogenicity was observed in this study. A 2 year feeding/carcinogenicity study was conducted in mice fed diets containing fosetyl-Al at 0, 2,500, 10,000, or 20,000/30,000 ppm. The 20,000 ppm dose was increased to 30,000 ppm during week 19 of the study. The NOAEL for all effects was 20,000/30,000 ppm (3,000/4,500 mg/kg/day). There were no carcinogenic effects observed under the conditions of this study.

The Office of Pesticide Programs', Health Effects Division, Carcinogenicity Peer Review Committee (CPRC) concluded that the pesticidal use of fosetyl-Al is unlikely to pose a carcinogenic hazard for humans given that; (i) tumors develop in rats under extreme conditions that are unlikely to be achieved other than under laboratory conditions (at a dose in excess of the OPP dose limit for carcinogenicity studies); (ii) tumors in rats are believed to develop only at doses that produce stones; (iii) human dietary exposure to fosetyl-Al is only about one-500,000th of the NOAEL for stone formation in the rat (the most sensitive experimental model); and (iv) the dose of fosetyl-Al which can be absorbed dermally by applicators is also probably too low to

result in stone formation. EPA has therefore chosen to use the Reference Dose (RfD) to quantify dietary risk to humans.

7. *Animal metabolism.* Rat metabolism studies showed that most of the radiolabel rapidly appeared in exhaled carbon dioxide. There was also some radiolabel excreted in the urine as phosphite, along with a smaller amount as the unchanged parent compound. It appears that fosetyl-Al is essentially completely absorbed after ingestion and extensively hydrolyzed to carbon dioxide which is exhaled. The phosphite is excreted in the urine without further oxidation to phosphate. Aluminum does not appear to be absorbed to a significant extent from the gastrointestinal tract.

8. *Metabolite toxicology.* There are no metabolites of toxicological concern. The tolerances are established for the parent only, that is fosetyl-Al.

9. *Endocrine disruption.* No evidence of estrogenic or androgenic effects were noted in any study with fosetyl-Al. NOAEL on mating or fertility indices and gestation, live birth, or weaning indices were noted in a 3-generation rat reproduction study at doses well above EPA's limit of 1,000 mg/kg/day. Therefore, Rhone-Poulenc concludes that fosetyl-Al does not have any effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—*i. *Food.* The calculated potential dietary exposure for the U.S. population is 0.065760 milligram/kilogram/bodyweight/day (mg/kg/bwt/day). Potential exposure for nursing and non-nursing infants less than 1-year old, children aged 1 to 6 years, and children aged 7 to 12 years is calculated to be 0.134076, 0.116682, and 0.069637 mg/kg/bwt/day, respectively. Chronic dietary exposure was estimated using established and proposed tolerance residue levels, 1987 food consumption data, and 100% crop treated.

ii. *Drinking water.* There is no established maximum contaminant level (MCL) or health advisory level (HAL) for fosetyl-Al. Rhone-Poulenc expects the potential for ground water and/or surface water contamination by fosetyl-Al and its degradates to be very low, in most cases, due to the rapid degradation of the compound in soil to non-toxic degradates under both aerobic and anaerobic conditions. Under aerobic laboratory conditions, the half-life of fosetyl-Al is between 1 and 1.5 hours in loamy sand, silt loam and clay loam and 20 minutes in sandy loam soil. The degradation proceeds through the hydrolysis of the ethyl ester bond, resulting in the formation of phosphorous acid and ethanol. The ethanol is further degraded into carbon dioxide. An anaerobic aquatic soil metabolism study was conducted. When anaerobic conditions were established by flooding soil, the half-life was 40 hours with silty clay loam and 14 hours with sandy loam soil.

2. *Non-dietary exposure.* Considering that fosetyl-Al is applied by commercial applicators on about 0.03% of available lawn acres (the majority being commercial landscapes), the likelihood of post application exposure occurring, particularly in a residential situation, is extremely low. The use of fosetyl-Al by the homeowner constitutes a minor use of the product since only small quantities are expected to be sold in 1998. Other applications by professional operators, e.g. golf courses, nurseries, sod farms, present only very limited exposure to a limited population of adults but do not pose any exposure to small children. Thus, Rhone-Poulenc concludes that the ornamental and turf uses are not expected to add significantly to the aggregate exposure for fosetyl-Al, and only dietary exposure has been taken into consideration for risk assessment purposes.

D. Cumulative Effects

According to Rhone-Poulenc the effects associated with fosetyl-Al are unlikely to be cumulative with any other compound. The formation of calculi and bladder tumors in rats is the only significant toxicological effect observed with fosetyl-Al. These effects were observed in rat only at a dose which not only exceeds estimated human exposure by several orders of magnitude but is in excess of the OPP dose limit for carcinogenicity studies. Therefore, an aggregate assessment based on common mechanisms of toxicity is not appropriate as exposure to humans will be well below the levels producing calculi and bladder tumors in rats. Further, considering the rapid elimination of fosetyl-Al in the rat metabolism study, any effects associated with fosetyl-Al are unlikely to be cumulative with any other compound. Based on these reasons, only the potential risks of fosetyl-Al are considered in the exposure assessment.

E. Safety Determination

1. *U.S. population.* EPA has established an RfD of 3.0 mg/kg/day using a 100 fold safety factor and a NOAEL of 250 mg/kg/bodyweight/day from the two year feeding study in dogs. A chronic dietary risk assessment using established and proposed tolerance residue levels results in utilization of 2.2, 4.5, 3.9, and 2.3% of the RfD for the whole U.S. population, non-nursing infants less than 1 year old, children aged 1 to 6 years, and children aged 7 to 12 years, respectively. Thus, the dietary exposure for fosetyl-Al is well below the RfD of 3.0 mg/kg/day and is negligible for all segments of the population including infants and children. Based on a lack of acute toxicity and the large margins of exposure (MOE) in the chronic dietary assessment, Rhone-Poulenc concludes that fosetyl-Al does not pose any acute dietary risks.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of fosetyl-Al, the available developmental and reproductive toxicity studies and the potential for endocrine modulation were considered.

Developmental toxicity studies in two species indicate that fosetyl-Al has no teratogenic potential at any dose level. Further, NOEAL on fetal development were observed in rabbits at doses up to 500 mg/kg/day or in rats at doses up to 1,000 mg/kg/day. In a 3-generation rat reproduction study, NOAEL on reproductive performance or pup survival were observed up to 24,000 ppm (equivalent to a dose well above EPA's limit dose (LTD) of 1,000 mg/kg/day). Maternal and developmental NOAELs and LELs were comparable in all studies indicating no increase susceptibility of developing organisms. Further, fosetyl-Al has no endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, reproductive, subchronic, and chronic studies. The probability of non-occupational sources of exposure to fosetyl-Al is negligible. Therefore, based upon the completeness and reliability of the toxicity data and the conservative exposure assessment, Rhone-Poulenc concludes that there is a reasonable certainty that no harm will result to infants and children from exposure to the residues of fosetyl-Al and no additional uncertainty factor is warranted.

F. International Tolerances

There are presently no Codex maximum residue levels established for residues of fosetyl-Al on any crop.

[FR Doc. 99–2202 Filed 1–28–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50850; FRL–6056–7]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 212, CM #2, Arlington, VA, 703–305–6502, e-mail: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit:

264–EUP–119. Issuance. Rhone-Poulenc AG Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 0.0012 pounds of the insecticide fipronil on 60 acres of turfgrass that is not used for grazing or recreation to evaluate the control of imported fire ants. The program is authorized only in the States of Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The experimental use permit is effective from December 21, 1998 to December 21, 1999.

Persons wishing to review this experimental use permit are referred to the designated contact person. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 21, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–2203 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00235; FRL–5772–5]

Printed Wiring Board Cleaner Technologies Substitute Assessment, Making Holes Conductive; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The Environmental Protection Agency's (EPA) Design for The Environment (DfE) Program is announcing the availability of a document providing pollution prevention and human health and environmental risk reduction information for the Printed Wiring Board industry.

ADDRESSES: The document is available free of charge for a limited time from the Pollution Prevention Information Clearinghouse (PPIC), Environmental Protection Agency (7409), 401 M St. SW., Washington, DC 20460, telephone 202–260–1023, fax 202–260–4659 and e-mail at: ppic@epamail.epa.gov. Also, the document can be viewed and downloaded from the DfE Program web site at http://www.epa.gov/dfe.

FOR FURTHER INFORMATION CONTACT: Dipti Singh, Design for the Environment Program, Office of Pollution Prevention and Toxics (7406), Environmental Protection Agency, 401 M St., SW., Washington, DC, 20460; 202–260–1678, fax 202–260–0981, e-mail: oppt.dfe@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Project Background

The document entitled "Printed Wiring Board Cleaner Technologies Substitutes Assessment: Making Holes Conductive" (EPA 744–R–97–002a and b) details the findings of EPA's Design for the Environment (DfE) Printed Wiring Board (PWB) Project regarding alternative technologies for performing the "making holes conductive" function during the manufacture of PWB's. The draft report was released in August 1996 (August 22, 1997, 62 FR 44692; (FRL–5724–5)). Minor changes made due to internal review have been incorporated in the final document.

EPA's Design for the Environment (DfE) Program began working with the Printed Wiring Board (PWB) Industry in 1994, to identify and evaluate environmentally beneficial and cost effective alternatives to PWB manufacturing technologies. The DfE PWB Project is a voluntary, cooperative partnership between EPA, the PWB industry, public-interest groups, and other stakeholders. The goal of this Project is to provide information that will assist the PWB industry in making informed decisions when evaluating and implementing beneficial alternatives to PWB manufacturing technologies.

For purposes of this study, the project evaluated seven alternative technologies for performing the "making holes conductive" (MHC) function during the manufacture of PWBs. The non-conveyorized electroless copper process was considered the baseline process against which alternative technologies and equipment configurations were compared. With this notice, EPA is announcing the availability of the final document entitled "Printed Wiring Board Cleaner Technologies Substitutes Assessment: Making Holes Conductive."

This document marks the culmination of research by the DfE PWB Project and the University of Tennessee Center for Clean Products and Clean Technologies. The data gathered on the comparative risk, performance, cost, and natural resource requirements of the alternatives and baseline technologies are presented in this document.

Dated: January 21, 1999.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics, Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 99–2204 Filed 1–28–99; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 2, 1999, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes
—January 14, 1999 (Open and Closed)
B. New Business
—Regulation
—Releasing Information [12 CFR Part 602] (Proposed)

***Closed Session**

C. Reports
1. OSMO Report
2. ABA/IBAA Appeal

Dated: January 27, 1999.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–2301 Filed 1–27–99; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sixth Meeting of the Advisory Committee for the 2000 World Radiocommunication Conference (WRC–2000 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–2000 Advisory Committee will be held on February 19, 1999, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2000 World Radiocommunication Conference. The Advisory Committee will consider any consensus views or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: February 19, 1999; 10:00 am–12:00 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–2000 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2000 World Radiocommunication Conference (WRC–2000). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the WRC–2000 Advisory Committee. The WRC–2000 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the sixth meeting is as follows:

Agenda

Sixth Meeting of the WRC–2000 Advisory Committee, Federal Communications Commission, 445 12th Street, SW, Room TW–C305, Washington, DC 20554

February 19, 1999; 10:00 am–12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fifth Meeting
4. IWG Reports
5. Consideration of Consensus Views and Issue Papers
6. Development of Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2161 Filed 1–28–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: *99–2129.*

PREVIOUSLY ANNOUNCED DATE AND TIME: *Wednesday, February 3, 2:00 p.m.*—Meeting open to the public.

The starting time has been changed to 10:00 a.m.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer; Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–2268 Filed 1–29–99; 10:32 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3134–EM]

Illinois; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Illinois (FEMA–3134–EM), dated January 8, 1999, and related determinations.

EFFECTIVE DATE: January 8, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 8, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the impact in certain areas of the State of Illinois, resulting from the record/near record snow on January 1, 1999, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Illinois.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

*Session closed-exempt pursuant to 5 U.S.C. 552b(c) (8), (9), and (10).

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lawrence L. Bailey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this emergency.

I do hereby determine the following areas of the State of Illinois to have been affected adversely by this emergency:

The counties of Adams, Brown, Cass, Champaign, Cook, DeWitt, DuPage, Ford, Fulton, Grundy, Hancock, Henderson, Iroquois, Kane, Kankakee, Kendall, Knox, Lake, Livingston, Logan, Marshall, Mason, McDonough, McLean, Menard, Peoria, Piatt, Pike, Schuyler, Stark, Tazewell, Warren, Will, and Woodford for reimbursement for emergency protective measures, Category B, under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–2169 Filed 1–28–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3134–EM]

Illinois; Amendment to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Illinois, (FEMA–3134–EM), dated January 8, 1999, and related determinations.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Illinois, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 8, 1999:

The counties of Bureau, Calhoun, Greene, Henry, La Salle, Mercer, Morgan, Putnam, Sangamon, Scott, and Vermilion for reimbursement for emergency protective measures, Category B, under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2170 Filed 1–28–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., Wednesday, February 3, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposal relating to Federal Reserve System benefits.
2. Any items carried forward from a previously announced meeting.

* * * * *

* The Committee on Employee Benefits considers matters relating to the Retirement, Thrift, Long-Term Disability Income, and Insurance Plans for employees of the Federal Reserve System.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement of this meeting. (The Web site also includes procedural and other information about the meeting.)

Dated: January 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2263 Filed 1–27–99; 10:27 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST) February 8, 1999.

PLACE: 4th Floor, Conference Room 4506, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the January 11, 1999, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick report:

"Pension and Welfare Benefits Administration Review of Thrift Savings Plan C and F Fund Investment Management Operations at Barclays Global Investors, N.A."

4. Review of investment policy.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 26, 1999.

John J. O'Meara,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–2242 Filed 1–26–99; 5:03 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act information collection requirements associated with five rules issued and enforced by the Commission. OMB had provisionally extended the expiration for these clearances from September 30, 1998 to March 31, 1999. The FTC proposes that OMB extend its approval for the clearances an additional three years from the prior expiration date of September 30, 1998.

DATES: Comments must be submitted on or before March 1, 1999.

ADDRESSES: Send written comments to Gary M. Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580. All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information

should be addressed to Gary M. Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202–326–2753.

SUPPLEMENTARY INFORMATION: The FTC has submitted a request to OMB to extend the existing clearance to collect information associated with the five rules described below. A **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 16, 1998 (63 FR 63731). No comments were received.

The relevant information collection requirements are as follows: 1. The Funeral Rule, 16 C.F.R. Part 453 (OMB Control Number: 3084–0025), ensures that consumers who are purchasing funeral goods and services have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Estimated annual hours burden: The estimated burden associated with the collection of information required by the Rule is 22,300 hours for recordkeeping and 57,900 hours for disclosures, for a total of 80,200 hours. This estimate is based on the number of funeral providers (approximately 22,300), the number of funerals annually (approximately 2.3 million), and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on an average burden of one hour per provider per year for this task, the total burden for the 22,300 providers is 22,300 hours. This estimate is unchanged from 1995.

Disclosure: The Rule requires that funeral providers (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

Maintaining current price lists requires that funeral providers revise their price lists from time to time through the year to reflect price changes. Based on an average burden of two hours per provider per year for this task, the total burden for 22,300 providers is 44,600 hours. This estimate is unchanged from the FTC's previous estimate in 1995.

The original rulemaking record indicated that 87 percent of funeral providers provided written documentation of funeral arrangements, even in the absence of the Rule's requirements.[1] Accordingly, the Rule imposes a disclosure burden on 2,899 providers (13 percent of 22,300 providers). These providers are typically the smallest funeral homes. The disclosure requirement can be satisfied through the use of a standard form (an example of which is available to the industry in the Compliance Guide to the Funeral Rule). Based on an estimation that these smaller homes arrange, on average, approximately 20 funerals per year, and that it would take each of them about 3 minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with this disclosure requirement is one hour per provider not already in compliance, for a total of 2,899 hours.

The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about nine percent of funeral purchasers make telephone inquiries, with each call lasting an estimated three minutes. Only about half of that additional time is attributable to disclosures required solely by the Rule, since many providers would provide the requested information even without the Rule. Thus, assuming that the average purchaser makes two calls per funeral to compare prices, the estimated burden is 10,350 hours [(½ × 3 minute call × 2 calls/funeral) × 207,000 funerals (nine percent of 2,300,000 funerals/year)]. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the disclosure total is 57,849 hours (44,600 + 2,899 + 10,350), rounded to 57,900 hours. The total estimated hours burden associated with the Rule for both recordkeeping and disclosure requirements is 80,200 (Recordkeeping: 22,300 hours + Disclosure: 57,900 hours).

Estimated annual cost burden: $3,900,000, rounded ($3,560,000 in labor costs and $340,300 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

Clerical personnel, at an hourly rate of $10, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 22,300 hours, the estimated cost burden for recordkeeping is $223,000 ($10 × 22,300 hours).

The two hours required of each provider, on average, to update price lists should consist of approximately 1.5 hours of managerial or professional time, at $75 per hour, and .5 hours of clerical time, at $10 per hour, for a total of $117.50 per provider. Thus, the estimated total cost burden for maintaining price lists is $2,620,250 ($117.50 × 22,300 providers) (rounded to $2,620,000). The cost of providing written documentation of the goods and services selected by the consumer is 2,899 hours of managerial or professional time at approximately $75 per hour, or $217,425 (rounded to $217,000). The cost of responding to telephone inquiries about offerings or prices is 10,350 hours of managerial or professional time at $75, or $776,250 (rounded to $776,000).

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $3,613,000 ($2,620,000 + $217,000 + $776,000). The total labor cost for recordkeeping and disclosures is $3,836,000 ($223,000 for recordkeeping + $3,613,000 for disclosures).

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. Most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance.

Compliance with the Rule however, does entail some expense to funeral providers for printing and duplication of price lists. Based on a rough estimate of 300 pages per year per provider for copies of the various price lists, at 5 cents per page, and 22,300 providers, the total cost burden associated with printing and copying is $334,500. In addition, the estimated 2,899 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at 5 cents per page, at an average of 20 funerals per year, the added cost burden would be $5,798, rounded to $5,800. Thus, estimated non-labor costs are $340,300.

[1] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate "Statement of Funeral Goods and Services Selected." The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

The cost of training associated with Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, the FTC has provided its Compliance Guide to all funeral providers at no cost, and additional copies are available on the FTC web site or by mail. Accordingly, the Rule imposes no additional training costs.

2. The Used Car Rule, 16 CFR Part 455 (OMB Control Number: 3084–0108), facilitates informed purchasing decisions by consumers by requiring used car dealers to disclose information about warranty coverage, if any, and the mechanical condition of used cars they offer for sale.

Estimated annual hours burden: The FTC is requesting approval for an estimated burden of 1,925,000 hours relating solely to disclosure requirements.[2] This estimate is based on the number of used car dealers (approximately 80,000, according to industry sources [3]), the number of used cars sold by dealers annually (approximately 30,000,000, according to industry data), and the time needed to fulfill the information collection tasks required by the Rule.[4] The current estimated annual burden reflects a decrease from the prior estimate, attributable to a more accurate estimate of the number of used cars sold by dealers, and recent industry input to more accurately reflect the time it takes used car dealers to enter data on Buyers Guides.

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide in the window of each used car they offer for sale.The component tasks associated with this requirement include (1) ordering and stocking Buyers Guide forms, (2) entering applicable data on Buyers Guides, (3) posting the Buyers Guides on vehicles, and (4) making any necessary revisions in Buyers Guides.

Dealers should need no more than an average of one hour per year to obtain Buyers Guide forms, which are readily available from many commercial printers or could be produced by an office word-processing or desk-top publishing system. Based on a universe of 80,000 dealers, the annual hours burden for producing or obtaining and stocking Buyers Guides is 80,000 hours.

For used cars sold "as is," copying vehicle-specific data from dealer inventories to the Buyers Guide forms and checking off the "no warranty" box may take up to two minutes per vehicle if done by hand, and only seconds for those dealers who have automated the process. Staff conservatively assumes that this task, on average, will require 1.5 minutes. For used cars sold under warranty, checking off the warranty box and adding warranty information may take an additional one minute, i.e., 2.5 minutes, Based on input from industry sources, staff estimates that approximately 60% of used cars sold by dealers are sold "as is," with the remainder sold under warranty. Thus, staff estimates the time required to enter data for used cars sold without warranty is 450,000 hours (30,000,000 × 60% × 1.5 minutes ÷ 60 minutes/hour) and 500,000 hours for used cars sold under warranty (30,000,000 × 40% × 2.5 minutes ÷60 minutes/hour), for an overall total of 950,000 hours.

Although there will be substantial variance in the time required to post the Buyers Guides on each used car, FTC staff estimates that, on average, dealers will spend 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and place it in or on the vehicle. For the 30,000,000 vehicles sold, the burden associated with this task is 875,000 hours. To the extent dealers are able to integrate this process into other activities performed in their ordinary course of business, this estimate likely overstates the actual burden.

If negotiations between buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Guide to reflect the actual terms of sale. According to the rulemaking record, bargaining over warranty coverage rarely occurs. Allowing for revision in 2% of sales, at two minutes per revision, staff estimates that dealers will spend 20,000 hours annually revising Buyers Guides.

Estimated annual cost burden: $28,250,000, consisting of $19,250,000 in labor costs and $9,000,000 in non-labor costs.

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of $10 per hour and an estimate of 1,925,000 burden hours for disclosure requirements, the total labor cost burden would be approximately $19,250,000.

Capital or other non-labor costs: The cost of the Buyers Guide form itself is estimated to be 30 cents per form, so that forms for 30 million vehicles would cost dealers $9,000,000. In making this estimate, staff conservatively assumes that all dealers will purchase preprinted forms instead of producing them internally, although dealers may produce them at minimal expense using currently office automation technology. Capital and start-up costs associated with the Rule are de minimis.

3. The Consumer Product Warranty Rule, 16 CFR Part 701 (OMB Control Number: 3084–0111), prevents deception by providing consumers with information to assess written warranty terms. The Rule requires that written warranties disclose certain material facts regarding their terms and conditions.

Estimated annual hours burden: In 1995, FTC staff estimated that the required disclosures imposed an average annual burden of 8 hours on each of approximately 4,241 warrantors of products. Because there have been no changes to the Rule's requirements, staff has no reason to believe that this estimate requires revision. Based on this assumption, the total compliance burden relating to disclosures is approximately 34,000 hours (rounded from 33,928).[5] Nonetheless, this estimate likely overstates substantially the actual burden because most warrantors would disclose the terms and conditions of their warranties even in the absence of the Rule.

Estimated annual cost burden: $340,000, consisting solely of labor costs.

Labor costs: The work required to comply with the Rule is predominantly clerical. Based on an average hourly rate of $10 for clerical employees and the total hours burden of 34,000 hours, the annual labor cost is approximately $340,000.

Capital or other non-labor costs: The Rule imposes no appreciable current capital or start-up costs. The vast majority of warrantors have already modified their warranties to include the information required by the Rule. Rule compliance does not require the use of any capital goods other than ordinary

[2] The Used Car Rule does not impose any recordkeeping requirement.

[3] Source: 1997 Used Car Market Report ("ADT Market Report"), published by ADT Automotive, 435 Metroplex Drive, Nashville, Tennessee 37211.

[4] A relatively small number of dealers opt to contract with outside companies to perform the various tasks associated with complying with the Rule. Staff assumes that outside contractors would require about the same amount of time and incur similar cost as dealers to perform these tasks. Accordingly, the hours and cost burden totals shown, while referring to "dealers," incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule.

[5] The Consumer Product Warranty Rule imposes no recordkeeping requirement.

office equipment, which providers would already have available for general business use.

4. The Pre-Sale Availability Rule, 16 C.F.R. Part 702 (OMB Control Number: 3084–0112), ensures that consumers can make informed purchasing decisions by requiring that the terms of written warranties for consumer products be made available to consumers prior to purchase. The Rule requires retailers to make warranty information available to consumers and requires warrantors (i.e., manufacturers) to provide retailers with the materials necessary to do so. The Rule also requires catalog and door-to-door sellers to make warranty information available.

Estimated annual hours burden: The FTC is seeking approval for an estimated disclosure burden of 2,760,000 hours.[6] This estimate is based on the number of large and small retailers and manufacturers, according to census data, and the estimated scope of the compliance burden for businesses by type. FTC staff first calculated burden estimates by type of business in the early 1980s. Staff believes that estimates remain valid for manufacturers, and that subsequent amendments to the Rule to allow more flexibility have reduced the burden on retailers by approximately 50 percent.[7] Approximately 6,552 large retailers and 422,100 small retailers spend an annual average of 26 hours and 6 hours, respectively, to comply with the Rule, for a cumulative combined total of 2,702,952 hours for retailers. Approximately 146 large manufacturers and 4,095 small manufacturers spend an annual average of 52 hours and 12 hours, respectively, for a cumulative total of 56,732 hours for manufacturers. Thus, the combined cumulative total for retailers and manufacturers is 2,759,684 hours, rounded to 2,760,000 hours.

Estimated annual cost burden: $27,600,000, consisting sole of labor costs.

Labor costs: Most of Rule 702's disclosure requirements involve simple clerical functions such as maintaining copies of the warranties at the retail level and, at the manufacturer level, ensuring that copies of warranties are provided to retailers. Assuming a clerical labor cost rate of $10/hour and an estimate of 2,760,000 burden hours for disclosures, the total annual labor cost burden is approximately $27,600,000.

Capital or other non-labor costs: The capital or start-up costs imposed by the Rule are de minimis. The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails simply filing warranties in binders and posting an inexpensive sign indicating warranty availability.[8] Manufacturer compliance entails providing retailers with a copy of the warranties included with their products.

5. The Informal Dispute Settlement Procedure Rule, 16 C.F.R. Part 703 (OMB Control Number: 3084–0113), helps to ensure that consumers are fully informed regarding informal dispute settlement procedures in product warranties. The Rule imposes certain requirements when a warrantor requires, as part of a written warranty, that consumers first use an informal dispute settlement mechanism (IDSM) to seek resolution of a warranty dispute before pursuing remedies in court. The Rule requires that affected warrantors disclose certain information to consumers. It also requires that warrantors, through IDSMs, retain (1) individual records for each dispute, (2) indexes that categorize disputes by product model and show the extent to which the warrantor has abided by decisions of the resolution process, and (3) statistical summaries that classify disputes according to various status and final disposition categories. Affected entities must conduct an annual audit of their dispute resolution procedures and report to the FTC.

Estimated annual hours burden: The FTC is requesting approval for an estimated burden of 4,333 recordkeeping hours and 1,625 disclosure hours, for a total burden estimate of approximately 6,000 hours. This estimate is based on the number of warranty disputes handled by IDSMs and the average time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: Since maintenance of individual case records is necessary in the ordinary course of business, the Rule imposes little additional recordkeeping burden. FTC staff estimates that retaining additional information that would not otherwise be kept adds a burden of 30 minutes per case. Staff also estimates that IDSMs require an additional 10 minutes per case for compilation of the indexes, statistical summaries, and the annual audit required by the Rule, resulting in a total recordkeeping requirement of 40 minutes per case. Finally, staff estimates that the two IDSMs affected by the Rule handle, combined, about 6,500 covered disputes annually. Thus, the total recordkeeping burden associated with the Rule is approximately 4,333 hours.

Disclosure: The Rule requires that affected warrantors disclose information about the dispute settlement mechanism in the written warranty, and that IDSMs disclose certain information upon request. The incremental cost of a warrantor's required disclosure is negligible. IDSMs must provide certain information, such as their annual audits, to anyone who requests it. In addition, on request, IDSMs must also provide consumers who have a dispute before them with a copy of records relating to their disputes. FTC staff estimates that the average hour burden of copying and producing this information is approximately 15 minutes for each dispute handled by an IDSM. Based on an estimate of 6,500 disputes annually, the hour burden associated with copying and providing these disclosures is 1,625 hours.

Estimateed annul cost burden: $281,000, consisting of $81,000 in labor costs and $200,000 in non-labor costs.

Labor costs: Assuming that IDSMs would use skilled clerical personnel or technical support staff, at an hourly rate of $15, to compile and maintain the records required by the Rule the labor cost of the 4,333 recordkeeping burden hours is approximately $64,995. Assuming that IDSMs would use less-skilled labor, at an hourly rate of $10, to reproduce records, the labor costs of the 1,625 hours disclosure burden hours is approximately $16,250. The combined total labor cost for recordkeeping and disclosures is $81,245, rounded to $81,000.

Capital or other non-labor costs: The Rule imposes no appreciable current capital or start-up costs. The vast majority of warrantors have already developed systems to retain the records and provide the disclosures required by the Rule. Rule compliance does not require the use of any capital goods other than ordinary office equipment, to which providers would already have access.

The only additional cost imposed on IDSMs operating under the Rule that would not be incurred for other IDSMs is the annual audit requirement. One of the two IDSMs currently operating

[6] The Pre-Sale Availability Rule does not impose any recordkeeping requirement.

[7] To comply with Rule 702, sellers need only maintain specimen copies of the warranties provided to them by manufacturers. The Rule allows sellers substantial flexibility in how to maintain those copies, since the Rule states only that the warranty must be made readily available upon request. If the warrantor prints the warranty on the product's package, for example, the retailer has no further obligation since consumers can readily review the warranty by looking at the package.

[8] Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

under the Rule estimates the total annual costs of this requirement to be less than $100,000. Since there are two IDSMs operating under the Rule, the total cost imposed by them is an estimated $200,000.[9] This total includes copying costs of roughly $20,000, which is based on estimated copying costs of 5 cents per page and several conservative assumptions or estimates. Staff estimates that the "average" dispute-related file is about 25 pages long and that a typical annual audit file is about 200 pages in length. For purposes of estimating copying costs, staff conservatively assumes that every consumer complainant requests a copy of the file relating to his or her dispute. Staff also assumes that, for 1,000 of the estimated 6,500 disputes each year, consumers request copies of warrantors' annual audit reports (although, based on requests for audit reports made directly to the FTC, the indications are that considerably less requests are actually made). Thus, the estimated total annual copying costs for average-sized files would be approximately $8,125 (25 pages/file × .05 × 6,500 requests) and $10,000 for copies of annual audits (200 pages/audit report × .05 × 1,000 requests), rounded to a total of $20,000.

Combined with estimated annual labor cost of $81,000, total estimated annual cost burden is $281,000 ($200,000+$81,000).

John D. Graubert,

Acting General Counsel.

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[9] The commenter did not break down this estimate by cost item. Staff conservatively included the entire $100,000 in its estimate of capital and other non-labor costs, even though some of this burden is likely already accounted for as labor costs.

FEDERAL TRADE COMMISSION

[File No. 981–0345]

The British Petroleum Co. p.l.c., et al.; Analysis to Aid Public Comment and Commissioner Statements

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement: Publication of Commissioner Statements.

SUMMARY: The consent in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations. This document also contains the Statement of Chairman Pitofsky, Commissioner Anthony, and Commissioner Thompson; and the Statement of Commissioner Swindle, Concurring in Part and dissenting in Part.

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Richard Liebeskind, FTC/H–374, 600 Pennsylvania Avenue, NW, Washington, DC 20580. (202) 326–2932 or 326–2441.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721 15 U.S.C. 46, and § 2.34 of the Commission Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for public comment, until March 8, 1999. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. This document also contains (1) the Statement of Chairman Pitofsky, Commissioner Anthony, and Commissioner Thompson; and (2) the Statement of Commissioner Swindle, Concurring in Part and Dissenting in Part.[1] An electronic copy of the full text of the consent agreement package, including the Commissioner Statements, can be obtained from the FTC Home Page (for December 30, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[1] The Analysis alone was published in the **Federal Register** on January 6, 1999—before the Statements were made public—and the public comment period began at that point. *See* 64 Fed. Reg. 880 (January 6, 1999).

Analysis of the Proposed Consent Order and Draft Complaint To Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from The British Petroleum Company p.l.c. ("BP") and Amoco Corporation ("Amoco") (collectively "the proposed Respondents") an Agreement Containing Consent Order ("the proposed consent order"). The proposed Respondents have also reviewed a draft complaint contemplated by the Commission. The proposed consent order is designed to remedy likely anticompetitive effects arising from the merger of BP and Amoco.

II. Description of the Parties and the Proposed Acquisition

BP, headquartered in London, England, is a diversified energy products company engaged in oil and gas exploration; the development, production and transportation of crude oil and natural gas; the refining, marketing, transportation, terminaling and sale of gasoline, diesel fuel, jet fuel and other petroleum products; and the production, marketing and sale of petrochemicals. BP is a major producer of gasoline and other petroleum products in the United States. BP distributes and markets its gasoline under the BP brand name through terminals and retail service stations in a variety of areas, including areas in the southeastern and midwestern United States.

Amoco, headquartered in Chicago, Illinois, is an integrated petroleum and chemical products company engaged in the exploration, development, and production of crude oil, natural gas, and natural gas liquids; the marketing of natural gas and natural gas liquids; the refining, marketing, and transportation of petroleum products, including crude oil, gasoline, jet fuel, diesel fuel, heating oil, asphalt, motor oil, lubricants, natural gas liquids, and petrochemical feedstocks; the terminaling and sale of gasoline, diesel fuel, and other petroleum products; and the manufacture and sale of various petroleum-based chemical products. Like BP, Amoco is a major producer of gasoline and other petroleum products in the United States. Amoco distributes and markets gasoline under the Amoco brand name through terminals and retail service stations in many of the same areas as does BP.

Pursuant to an agreement and plan of merger dated August 11, 1998, BP intends to acquire all of the outstanding

common stock of Amoco in exchange for stock of BP valued at the time of the agreement at approximately $48 billion. The new combined entity is to be renamed BP Amoco p.l.c. As a result of the merger, BP's shareholders will hold approximately 60%, and Amoco's shareholders will hold approximately 40%, of the new combined entity.

The Commission has carefully examined all of the areas in which BP and Amoco's operations might overlap in or affecting the United States. The Commission found that BP's and Amoco's operations do not overlap in many areas. However, the transaction raises competitive concerns in a number of local markets, and the Commission proposes to take action to remedy the potential anticompetitive effects of this merger in these markets.

The Commission considered this transaction in the context of what appears to be a significant trend toward consolidation in the petroleum industry. In recent months, there have been consolidations in this industry involving the refining and marketing operations of Texaco and Shell, Marathon and Ashland, and Tosco and Unocal. Other proposed combinations may occur, including Exxon's announced proposed merger with Mobil and Phillips' proposed combination of its refining and marketing operations with those of Ultramar Diamond Shamrock. The Commission will continue to examine the effect of proposed consolidations through careful analysis of each specific transaction in the context of the trend toward concentration.

III. The Draft Complaint

The draft complaint alleges that the merger of Amoco and BP would lessen competition in two relevant lines of commerce: (1) the terminaling of gasoline and other light petroleum products in nine specified geographic markets, and (2) the wholesale sale of gasoline in thirty cities or metropolitan areas in the eastern United States.

A. Terminaling

The draft complaint alleges that one line of commerce (i.e., product market) in which to analyze the merger is the terminaling of gasoline and other light petroleum products, such as diesel fuel and jet fuel.

Petroleum terminals are facilities that provide temporary storage of gasoline and other petroleum products received from a pipeline or marine vessel, and the redelivery of such products from the terminal's storage tanks into trucks or transport trailers for ultimate delivery to retail gasoline stations or other buyers. Terminals provide an important link in the distribution chain for gasoline between refineries and retail service stations. According to the complaint, there are no substitutes for petroleum terminals for providing terminaling services.

The complaint identifies nine metropolitan areas that are relevant sections of the country (i.e., geographic markets) in which to analyze the effects of the acquisition on terminaling. These metropolitan areas are: Cleveland, Ohio; Chattanooga and Knoxville, Tennessee; Jacksonville, Florida; Meridian, Mississippi; Mobile and Montgomery, Alabama; and North Augusta and Spartanburg, South Carolina. Amoco and BP both operate terminals that supply each of these nine metropolitan areas with gasoline and other light petroleum products.

The complaint charges that the terminaling of gasoline and other light petroleum products in each of these nine metropolitan areas is either moderately concentrated or highly concentrated, and would become significantly more concentrated as a result of the merger. Premerger concentration in these nine markets, as measured by the Herfindahl-Hirschman Index,[1] ranges from more than 1,300 to more than 2,500. As a result of the merger, concentration would increase in each terminal market by more than 100 points to levels ranging from more than 1,500 to more than 3,600.

According to the draft complaint, entry into the terminaling of gasoline and other light petroleum products in each of these nine metropolitan areas is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects that may result from the merger.[2]

[1] The Herfindahl-Hirschman Index, or "HHI," is a measurement of market concentration calculated by summing the squares of the individual market shares of all participants in the market. Under Section 1.51 of the Horizontal Merger Guidelines issued April 2, 1992, by the Federal Trade Commission and the Department of Justice, the Commission considers concentration levels exceeding 1,800 as "highly concentrated" and concentration levels between 1,000 and 1,800 to be "moderately concentrated."

[2] The Commission has found reason to believe that terminal mergers would be anticompetitive on prior occasions. E.g., Shell Oil Co., C–3803 (1997) (combination of refining and marketing businesses of Shell and Texaco); Texaco Inc., 104 F.T.C. 241 (1984) (Texaco's acquisition of Getty Oil Company); Chevron Corp., 104 F.T.C. 597 (1984) (Chevron's acquisition of Gulf Corporation). Indeed, several of the markets involved in this proceeding are markets in which BP acquired terminals that were divested by Chevron in 1984 pursuant to the Commission's order in Chevron.

B. Wholesale Gasoline

The draft complaint alleges that a second line of commerce in which to analyze the competitive effects of the merger is the wholesale sale of gasoline. Gasoline is a motor fuel used in automobiles and other vehicles. It is manufactured from crude oil at refineries in the United States and throughout the world. There are no substitutes for gasoline as a fuel for automobiles and other vehicles that use gasoline.

According to the draft complaint, there are thirty cities or metropolitan areas in which to evaluate the effects of this merger on the wholesale sale of gasoline: Albany, Georgia; Athens, Georgia; Birmingham, Alabama; Charleston, South Carolina; Charlotte, North Carolina; Charlottesville, Virginia; Clarksville, Tennessee; Cleveland, Ohio; Columbia, South Carolina; Columbus, Georgia; Cumberland, Maryland; Dothan, Alabama; Fayetteville, North Carolina; Florence, Alabama; Goldsboro, North Carolina; Hattiesburg, Mississippi; Hickory, North Carolina; Jackson, Tennessee; Memphis, Tennessee; Meridian, Mississippi; Mobile, Alabama; Myrtle Beach, South Carolina; Pittsburgh, Pennsylvania; Raleigh, North Carolina; Rocky Mount, North Carolina; Savannah, Georgia; Sumter, South Carolina; Tallahassee, Florida; Toledo, Ohio; and Youngstown, Ohio (hereinafter collectively referred to as the "gasoline markets").

The wholesale sale of gasoline, as alleged in the complaint, is the business of selling branded gasoline to retail dealers. Both BP and Amoco sell branded gasoline at wholesale in the markets alleged in the complaint. In some cases BP or Amoco, or both, sell gasoline on a wholesale basis to retail gasoline stations owned by BP or Amoco, and operated either by employees of BP or Amoco ("company operated" or "owned and operated" stations) or by persons who lease the station from BP or Amoco ("lessee dealers"). In other cases, BP and Amoco sell gasoline to independently owned stations ("open dealers") or to intermediaries ("jobbers") who deliver gasoline to individual gas stations owned by the jobber or by other persons.

Irrespective of the identity of the wholesale customer, wholesale sellers (BP and Amoco, and their branded and unbranded competitors) set the wholesale price of gasoline paid by retail dealers, and that wholesale price affects the price of gasoline charged to motorists. In the gasoline markets alleged in the complaint, the wholesale

sale of gasoline would become significantly more concentrated as a result of the merger, and the relatively small number of remaining wholesalers could tacitly or expressly coordinate price increases. Postmerger concentration, as measured by the Herfindahl-Hirschman Index, would increase by more than 100 points, to levels above 1,400 in five markets and to levels above 1,800 in the remaining markets. In each of the gasoline markets alleged in the complaint, BP and Amoco, and three other firms, would have at least 70% of the wholesale gasoline market.

According to the complaint, entry into the wholesale sale of gasoline in each of these markets is difficult and would not be timely, likely or sufficient to prevent anticompetitive effects that may result from this merger.

IV. Terms of the Agreement Containing Consent Order ("the Proposed Consent Order")

The proposed consent order will remedy the Commission's competitive concerns about the proposed acquisition. Under Paragraph II of the proposed consent order, the proposed Respondents must divest the Amoco terminal serving each of the nine relevant terminal markets to Williams Energy Ventures, Inc., a subsidiary of the Williams Companies ("Williams"), or to another acquirer approved by the Commission. Williams is a major energy company with substantial experience in operating terminals.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed buyer must not itself present competitive problems. The Commission believes that Williams is well qualified to operate the divested terminals and that divestiture to Williams will not be anticompetitive in these markets.

The proposed consent order requires that the divestitures occur no later than ten days after the BP/Amoco merger is consummated, or thirty days after the consent agreement is signed, whichever is later. The proposed consent agreement also requires respondents to rescind the transaction with Williams if the Commission, after the comment period, decides to reject Williams as the buyer. If the Williams agreement is rescinded, then respondents are required to divest the terminals within six months from the date the order becomes final, at no minimum price, to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. If respondents have not divested the terminals pursuant to Paragraph II of the order, then the Commission may appoint a trustee to divest the assets.

The proposed consent order obtains relief with respect to the wholesale sale of gasoline in two ways. First, in eight markets where either Amoco or BP (or both) own retail gasoline stations (Charleston, South Carolina; Charlotte, North Carolina; Columbia, South Carolina; Jackson, Tennessee; Memphis, Tennessee; Pittsburgh, Pennsylvania; Savannah, Georgia; and Tallahassee, Florida), Paragraph III of the proposed order requires respondents to divest gasoline stations belonging to either Amoco or BP (as specified in the proposed order) to an acquirer approved by the Commission. These divestitures must be completed within six months of the date on which the parties signed the agreement containing consent order (December 29, 1998).

Second, in all 30 markets, including markets in which neither Amoco nor BP owns retail gasoline stations, Paragraph IV of the order requires Amoco and BP to give their wholesale customers (both jobbers and open dealers) the option of canceling their franchise and supply agreements with Amoco and BP, freeing them to switch their retail gasoline stations to other brands. In order to provide an incentive for these persons to switch to other brands, the order provides that wholesale customers who take advantage of this provision will be released from all debts, loans, obligations and other responsibilities under their agreements with Amoco and BP (other than for fuels actually delivered and other specific debts scheduled by the respondents), if they agree to stop selling Amoco and BP gasoline in the market and not sell any other brand that has more than 20% of the market. The proposed order requires that BP and Amoco provide notice to their wholesale customers upon the Commission's final acceptance of the proposed order (should the Commission do so after the public comment period), and allows these customers thirty days to exercise this option. Should a wholesale customer choose to terminate its relationship with BP or Amoco under the terms of the proposed order, BP and Amoco will not solicit that customer as a reseller of branded gasoline for two years thereafter.

In addition, Paragraph V of the order requires that unless retail gasoline sellers representing a specified volume of sales in Toledo and Youngstown, Ohio agree to switch to other brands, then respondents must divest retail gasoline stations with an equivalent volume of sales to an acquirer acceptable to the Commission.

For a period of ten years from the date the proposed consent order becomes final, the proposed Respondents are required to provide notice to the Commission prior to acquiring terminal assets or gasoline stations located in the markets at issue.

The proposed Respondents are required to provide to the Commission a report of compliance with the proposed consent order within thirty days following the date on which the order becomes final, every thirty days thereafter until the divestitures are completed, and annually for a period of ten years.

V. Opportunity for Public Comment

The proposed consent order has been placed on the public record for sixty days for receipt of comments by interested persons, until March 8, 1999. Comments received during this period will become part of the public record. After that date, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the proposed consent order final.

By accepting the proposed consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the proposed consent order, including the proposed sale of terminal assets to Williams, in order to aid the Commission in its determination of whether to make the proposed consent order final. This analysis is not intended to constitute an official interpretation of the proposed consent order, nor is it intended to modify the terms of the proposed consent order in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson

On December 30, 1998, the Commission published a proposed complaint alleging that this merger would violate Clayton Act § 7, 15 U.S.C. § 18, and FTC Act § 5, 15 U.S.C. § 45, in 30 wholesale gasoline markets and nine light petroleum products terminating markets in the United States, and accepted a proposed consent order resolving those allegations. Our colleague, Commissioner Swindle, dissents from that portion of the

proposed complaint and consent order that alleges violations and mandates relief in 27 of the wholesale gasoline markets.[1] We write to clarify our view.

British Petroleum Company p.l.c. ("BP") and Amoco Corporation ("Amoco") are integrated producers, refiners and marketers of petroleum products, including gasoline, in the United States. Although BP's and Amoco's operations do not overlap in many areas,[2] both are wholesale marketers of gasoline in the southeastern and midwestern United States, i.e., both BP and Amoco sell gasoline to retail gas stations that they may or may not own. In these markets, BP is the only firm that can sell "BP"-branded gasoline to retail dealers, and Amoco is the only firm that can sell "Amoco"-branded gasoline to dealers. Therefore, measuring concentration of retail sales by brand is an adequate proxy for measuring concentration in gasoline wholesaling.[3]

In 25 metropolitan area markets, the combination of BP and Amoco would result in a highly concentrated wholesale gasoline market, and an increase in concentration in an amount that the Department of Justice-FTC Merger Guidelines presume likely to create or enhance market power or facilitate its exercise. Merger Guidelines § 1.51(c).[4] In each of these markets, the top four firms will together have at least 70% of wholesale sales; in 15 markets, the top four firms will have more than 80%.[5]

Market shares and concentration levels of this magnitude raise antitrust concern because they suggest that a small number of firms might, after this merger, be able to raise price without losing significant sales to what could well be an insignificant fringe.[6] See, e.g., *United States* v. *Rockford Memorial Corp.*, 898 F.2d 1278, 1283–84 (7th Cir. 1990). Concerns about collusion or coordination, and consequent price increases to consumers, are more pronounced in markets—such as gasoline markets—where (among other factors) the product is homogeneous and prices are generally observable, making it relatively easier for a small number of firms to coordinate and to detect deviation.

Of course, high market concentration is less of a threat to consumers if retailers in the market are likely to switch to new sources of supply in the event of a wholesale price increase. But, we required persuasive evidence that entry would be timely, likely and sufficient to defeat a coordinated price increase. Merger Guidelines § 3. Our colleague concludes that such entry could occur, and is likely to occur, "if there are enough branded retail gasoline stations that could switch and become customers of the new wholesale entrant."[7] We do not disagree with this analysis, but we are unpersuaded by the investigative record here that there is a sufficient likelihood that switching would occur to allay our concerns. The history of switching in these markets appears to be more among incumbents than to new entrants, and switching among incumbents (particularly among incumbents with substantial market shares) will not defeat a wholesale price increase by those incumbents. Dealers also would be less likely to switch to fringe suppliers or to new entrants if there are significant reasons for dealers to prefer major brands (particularly major brands that are well-established in a given area), such as the benefit of local marketing or of brand credit card programs. Moreover, dealers might not have an incentive to switch to new entrants to defeat a price increase by their suppliers in which they also may profit.

Instead, we believe that the proposed consent order will make jobbers and open dealers able to switch, and by relieving them of financial penalties that might deter switching to new entrants, make it more likely that they will in fact switch, preventing an increase in concentration that otherwise could well give rise to a substantial risk of higher prices for gasoline in the markets alleged in the proposed complaint. As we noted, our disagreement with our colleague is narrow: whether, in the absence of the proposed relief, jobbers and open dealers are sufficiently likely to switch in substantial numbers to protect the ultimate consumers from the risk that otherwise would be associated with highly concentrated gasoline markets. In this case, we believe the investigative record regarding dealer switching is insufficiently compelling to demand that ultimate consumers bear the substantial risk of higher prices for gasoline that may result from these highly concentrated markets.

Statement of Commissioner Orson Swindle Concurring in Part and Dissenting in Part

The Commission's proposed complaint alleges that the merger of Amoco Corporation ("Amoco") and British Petroleum Company p.l.c. ("BP") is likely to substantially lessen competition or tend to create a monopoly in certain terminaling markets and in certain markets for the wholesale sale of gasoline. I agree that the merger is likely to have anticompetitive effects in terminaling markets and that the divestitures that would be required adequately remedy these antitrust violations. However, because the merger is unlikely to have anticompetitive effects in southeastern United States markets for the wholesale

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[1] Commissioner Swindle concurs in the proposed complaint and consent order to the extent it alleges that the merger of BP and Amoco would violate the antitrust laws in the nine terminal markets and in wholesale gasoline markets in Pittsburgh, Pennsylvania, and Cleveland, Toledo and Youngstown, Ohio.

[2] For example, to a large extent, Amoco and BP produce and market different petrochemical products in the United States. BP produces acetic acid and acrylonitrile in the U.S., but Amoco does not. Similarly, Amoco produces ethylene, propylene, polypropylene, and styrene in the U.S., but BP does not. In the few petrochemical areas where the parties overlap in the U.S., concentration would not change significantly as a result of the merger.

[3] Indeed, brand concentration may understate concentration in the wholesale market, because some branded wholesale sellers also supply unbranded gasoline to unbranded retail stations. The brand concentration statistics used here would not attribute these unbranded sales by branded wholesalers to the branded wholesaler.

[4] The Merger Guidelines presume anticompetitive effects when the post-merger Herfindahl-Hirschman Index ("HHI") is over 1800 and there is an increase of more than 100 points. HHI is a statistical index that measures the degree of concentration in a relevant antitrust market. Those metropolitan areas and the changes in HHI are: Albany, Georgia (post-merger HHI 3674, increase of 542); Charleston, South Carolina (1865/362); Charlotte, North Carolina (1909/610); Charlottesville, Virginia (2214/278); Clarkesville, Tennessee (1863/492); Cleveland, Ohio (1859/124); Columbia, South Carolina (2257/378); Columbus, Georgia (2194/351); Cumberland, Maryland (2592/161); Dothan, Alabama (2259/235); Fayetteville, North Carolina (2635/795); Florence, Alabama (1959/269); Goldsboro, North Carolina (2133/310); Hattiesburg, Mississippi (2214/281); Jackson, Tennessee (2051/508); Memphis, Tennessee (1948/468); Myrtle Beach, South Carolina (2138/353); Pittsburgh, Pennsylvania (2129/663); Raleigh, North Carolina (2032/535); Rocky Mount, North Carolina (2003/302); Savannah, Georgia (2668/515); Sumter, South Carolina (1920/528); Tallahassee, Florida (2366/794); Toledo, Ohio (2022/351); and Youngstown, Ohio (2540/1043).

[5] In addition, in five areas the HHI will increase substantially (by more than 100 HHI points): Birmingham, Alabama (post-merger HHI 1778, increasing by 273); Mobile, Alabama (1600/160); Athens, Georgia (1654/251); Meridian, Mississippi (1705/359); and Hickory, North Carolina (1782/354). In each of these "moderately concentrated" markets, the top four firms will together have at least 70% of wholesale sales, and independent unbranded sellers have less than 20%.

[6] In this case, the Commission examined the gasoline markets in which BP and Amoco competed and alleged antitrust violations in markets with a small number of fringe players, and not in markets where fringe competitors collectively appear to have significant market presence.

[7] We all agree that our concerns about concentration among wholesale sellers of gasoline are not obviated by the asserted fact that retailers can set their own prices for retail gasoline sold at their outlets. The wholesale price of gasoline is plainly the most substantial portion of the dealer's cost, and increases in wholesale prices will likely result in increases in retail prices.

sale of gasoline,[1] I dissent from the allegations and relief related to those markets.

Refined gasoline is transported by pipeline from the refinery to gasoline terminals. Wholesalers sell refined gasoline from terminals to retail gasoline stations. Retail gasoline stations may be either unbranded or branded. Unbranded retail gasoline stations do not display the brand of a wholesaler and do not sell branded gasoline. In contrast, branded retail gasoline stations display the brand of the wholesaler, such as "Amoco" or "Texaco," and sell the wholesaler's brand of gasoline, which is refined gasoline plus proprietary additives.

Among branded retail gasoline stations, there are various types of ownership and operation arrangements. The wholesaler may itself own and operate the retail gasoline station (a "company station"). The wholesaler may own the retail gasoline station but lease the station pursuant to an agreement that requires the operator (a "lessee/dealer") to purchase branded gasoline from the wholesaler. The wholesaler may have franchisees ("open dealers") who sell branded gasoline pursuant to a franchise agreement. Finally, the wholesaler may sell branded gasoline to independent firms known as "jobbers" that distribute the branded gasoline to retail gasoline stations (which are sometimes owned by the jobber).

The proposed complaint alleges, among other things, that the merger of Amoco and BP, both wholesalers of branded gasoline, would have an anticompetitive effect in certain southeastern United States markets for the wholesale sale of gasoline. Each of these markets would be moderately concentrated or highly concentrated after the merger, which would significantly increase the levels of concentration in these markets. The theory is that because these markets would be concentrated following the merger, wholesalers could coordinate the wholesale price of gasoline, which, in turn, would harm consumers by causing higher gasoline prices at the pump.[2]

Any effort by wholesalers to pass on a collusive price increase would be defeated if enough branded retail gasoline stations switched to other wholesalers rather than pay the higher price. Entry by new wholesalers offering lower prices could defeat a collusive price increase, and such entry is likely if there were enough branded retail gasoline stations that could switch and become customers of the new wholesale entrant.[3] Cheating by an existing wholesaler on a collusive price also is likely if enough branded retail gasoline stations would switch to make cheating worthwhile.

Is such switching likely to occur? I certainly think so. An evaluation of the southeastern markets reveals that switching is already the reality, not mere speculation or prediction. Unlike company stations and lessee/dealer stations, open dealers and jobbers have the option of responding to their wholesaler's collusive price increase by switching to another wholesaler. Open dealers and jobbers currently (and with some frequency), switch relatively easily and quickly[4] in response to changes in market conditions, including trying to combat price increases. Open dealers and jobbers have stated that they would in fact switch in response to a price increase attributable to the merger, and they have explained that they would not anticipate significant problems in switching.

Would enough branded retail gasoline stations in the southeastern markets be willing to switch to make possible new wholesale entry or cheating by an existing wholesaler? Again, I certainly think so. In most of these markets, open dealers and jobbers purchase from about 60 percent to about 80 percent of the gasoline that is sold at retail.[5] Given that open dealers and jobbers account for such a large proportion of retail gasoline sales and that they are likely to switch, enough switching could occur to induce entry or cheating sufficient to defeat a collusive price increase by wholesalers.

The majority of the Commission emphasizes that the concentration levels in these markets create a presumption of anticompetitive effects and that history demonstrates that switching to new wholesale entrants is unlikely to prevent these effects. Specifically, the majority believes that open dealers and jobbers will switch primarily to incumbent wholesalers. The majority reasons that switching will be limited primarily to incumbent wholesalers because many of them offer benefits (such as local marketing or brand credit card programs) that would not be offered by a new wholesale entrant.

The investigative record is to the contrary. While there has been significant switching by open dealers and jobbers among incumbent wholesalers, there also has been significant switching away from incumbent wholesalers to new branded wholesalers and new unbranded wholesalers.[6] Moreover, open dealers and jobbers have stated that they would switch in response to a collusive price increase, but have not stated that their switching would be limited to moving from one incumbent wholesaler to another. Detailed economic analysis has shown that whatever non-price benefits incumbent wholesalers may be able to offer to open dealers and jobbers, they are unlikely to induce open dealers and jobbers to ignore promising opportunities offered by new wholesale entrants.[7]

Because switching is likely to defeat any collusive price increase, the merger of Amoco and BP would not have anticompetitive effects in the southeastern United States markets for the wholesale sale of gasoline. The Commission nevertheless has extracted from the merging parties a variety of costly concessions designed to facilitate switching and improve the marketplace. As explained above, because market forces are likely to cause sufficient switching without government intervention, these measures are simply

[1] The "southeastern United States markets for the wholesale sale of gasoline" include all of the "gasoline markets" described in Paragraph 15 of the proposed complaint except those located in Ohio and Pittsburgh, Pennsylvania. I support the Commission's action in the Ohio and Pittsburgh wholesaling markets.

[2] There is no evidence that wholesalers in these markets have already attempted to collude.

[3] Because the Commission's proposed order should help ensure that gasoline terminaling markets in the southeastern United States remain competitive, a new wholesale entrant would be able to purchase gasoline at terminals to sell to jobbers.

[4] Switching can occur relatively quickly because, although any individual open dealer or jobber may have to wait for its contract to expire before it can switch, the short-term nature of contracts between Amoco and open dealers and jobbers means that some of those contracts are expiring at any given time. Station switching also can occur relatively inexpensively, especially because new wholesalers often reimburse open dealers and jobbers for the costs incurred in switching.

[5] By contrast, in other investigations the Commission has determined that sufficient switching would not occur in markets that are dominated by company stations and lessee/dealer stations.

[6] For example, by offering lower prices to induce switching, Citgo has been able to enter Florida and Coastal has expanded in South Carolina. Similarly, by offering lower prices to induce switching, unbranded wholesalers (such as Kwic Trip, Racetrac, Speedway, Smile, Wilco, and Hess) also have been able to enter many of these markets.

[7] The majority also posits that instead of switching, open dealers and jobbers may decide to accept a collusive price increase, pass it on consumers at the pump, and share in the profit from the price increase. For an open dealer or jobber to share in the profit from a collusive increase, it would have to be confident that increased prices at the pump would not be undercut by other retailers. Given that wholesalers do not control the pricing at most retail gasoline stations in these markets, open dealers and jobbers would have good reason to worry that any collusive price that they sought to impose would be undercut, especially to the extent that there are unbranded retail gasoline stations in these markets.

unnecessary. Rather than imposing excessive requirements that will force substantial costs on the parties, the Commission should have allowed the merger of Amoco and BP to proceed with antitrust relief limited to terminaling as well as the Ohio and the Pittsburgh, Pennsylvania wholesaling situation.

I therefore dissent from the aspects of this matter dealing with gasoline wholesaling in the southeastern United States markets identified in Paragraph 15 of the proposed complaint.

[FR Doc. 99–2073 Filed 1–28–99; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.
ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Ms. Nellie Briggs-Brown, Rush-Presbyterian-St. Luke's Medical Center: Based on the report of an investigation conducted by Rush-Presbyterian-St. Luke's Medical Center dated December 3, 1997, ORI finds that Ms. Briggs Brown, former employee, Department of Neurology, engaged in scientific misconduct in clinical research supported by two National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH) grants.

Specifically, Ms. Briggs-Brown (1) falsified seven monthly screening logs for a NINDS funded study involving stroke victims (Randomized Trial of Org 10172 in Acute Ischemic Stroke Treatment) and submitted the same logs with altered dates on multiple occasions to the University of Iowa Coordinating Center; and (2) falsified several Human Investigation Committee research approval forms.

None of the questioned data has been included in publications.

ORI has implemented the following administrative actions for the three (3) year period beginning January 25, 1999:

(1) Ms. Briggs-Brown is prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) Any institution that submits an application for PHS support for a research project on which Ms. Briggs-Brown's participation is proposed or which uses her in any capacity on PHS supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. Briggs-Brown's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,
Acting Director, Office of Research Integrity.

[FR Doc. 99–2158 Filed 1–28–99; 8:45 am]
BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.
ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Robert J. Thackeray, R.N., M.P.H., University of Pittsburgh: Based on an investigation report prepared by the University of Pittsburgh, dated June 24, 1998, and information obtained by ORI during its oversight review, ORI found that Mr. Thackeray, former program coordinator, Multi center AIDS Cohort Study (MACS), Department of Infectious Diseases and Microbiology, Graduate School of Public Health, University of Pittsburgh, engaged in scientific misconduct in research supported by the National Institutes of Health (NIH). The Pitt Men's Study is a component of the MACS funded by a cooperative agreement with the National Institute of Allergy and Infectious Diseases (NIAID), NIH.

Specifically, Mr. Thackeray falsified and/or fabricated research data that he recorded from various tests that he was responsible for conducting on subjects enrolled in the MACS.

Mr. Thackeray falsified and/or fabricated data for five subjects and reported that data on the "Neurological Assessment Form 10" and on the "Instrumental Activities of Daily Living Scale" questionnaire.

The fabricated and/or falsified research data were not compiled elsewhere and were not included in any publications.

Mr. Thackeray has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the three (3) year period beginning January 19, 1999:

(1) To exclude himself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which his participation is proposed or which uses him in any capacity on PHS supported research, or that submits a report of PHS-funded research in which he is involved, must concurrently submit a plan for supervision of his duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Mr. Thackeray's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,
Acting Director, Office of Research Integrity.

[FR Doc. 99–2157 Filed 1–28–99; 8:45 am]
BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2) announcement is made of the following subcommittees scheduled to meet during the month of February 1999:

Name: Health Care Quality and Effectiveness Research.

Date and Time: February 9, 1999, 8:00 a.m.

Place: Bethesda Hyatt, 1 Bethesda Metro Center, Bethesda, Maryland 20814.

Open February 9, 8:30 a.m. to 8:45 a.m.
Closed for remainder of meeting.

Purpose: To review and evaluate grant applications.

Name: Health Systems Research.

Date and Time: February 18, 1999, 9:30 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Versailles IV Room, Bethesda, Maryland 20814.

Open February 18, 9:30 a.m. to 9:45 a.m. Closed for remainder of meeting.

Purpose: To review and evaluate grant applications.

Agenda: The open session of the meetings will be devoted to business covering administrative matters and reports. During the closed sessions, the Subcommittees will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meetings, or other relevant information should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: January 21, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–2106 Filed 1–28–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Change in Dates for Availability of Application Kits and Deadline for Receipt of Applications Under the Office of Community Services' Urban and Rural Community Economic Development Program for Fiscal Year 1999

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice.

SUMMARY: The Office of Community Services (OCS) published a **Federal Register** Notice on December 28, 1998 indicating that the application kit for the Urban and Rural Community Economic Development Program for FY 1999 would be available on January 22, 1999. This notice also indicated that the deadline for receipt of applications would be on April 23, 1999. These dates are no longer valid. When new dates are established, a follow-up notice will be published in the **Federal Register**. The deadline date will be adjusted accordingly. This application kit will be posted on the OCS Website after it becomes available. The OCS Website address is: http://www.acf.dhhs.gov/programs/ocs

FOR FURTHER INFORMATION CONTACT: Thelma Johnson (202) 401–5523.

Dated: January 22, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–2180 Filed 1–28–99; 8:45 am]

BILLING CODE 01–4184–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0446]

Agency Information Collection Activities; Submission for OMB Review; Postmarketing Reporting of Adverse Drug Experiences

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by March 1, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Postmarketing Reporting of Adverse Drug Experiences—21 CFR 310.305 and 314.80 (OMB Control Number 0910–0230—Reinstatement)

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) requires applicants to submit data showing whether a drug is safe and effective. FDA is authorized to issue regulations requiring the recordkeeping and reporting necessary to enable it to evaluate the safety or effectiveness of a drug product, including whether the product is misbranded or adulterated under sections 501 and 502 of the act (21 U.S.C. 351 and 352). Under §§ 310.305 and 314.80 (21 CFR 310.305 and 314.80), FDA set forth reporting and recordkeeping requirements regarding adverse drug experiences.

All applicants who have received marketing approval of drug products are required to file Alert Reports with FDA regarding serious, unexpected adverse drug experiences, as well as followup reports on the adverse drug experiences when the applicant receives new information or as requested by FDA (§ 314.80(c)(1)). The Alert Reports include reports of all foreign or domestic adverse experiences, as well as reports obtained in scientific literature (§ 314.80(d)), and if there is a reasonable possibility that the drug caused the adverse experience, reports from postmarketing studies (§ 314.80(e)). Under § 314.80(c)(2), applicants must provide periodic reports of adverse drug experiences. Under § 314.80(i), applicants must keep for 10 years records of all adverse drug experience reports known to the applicant.

For marketed prescription drug products without approved new drug applications or abbreviated new drug applications, manufacturers, packers, and distributors are required to report to FDA serious, unexpected adverse drug experiences, as well as followup reports on the adverse drug experiences when the applicant receives new information or as requested by FDA (§ 310.305(c)(1) and (c)(2)). Under § 310.305(f), each manufacturer, packer, and distributor shall maintain for 10 years records of all adverse drug experiences required to be reported.

The primary purpose of FDA's adverse drug experience reporting system is to provide a signal for potentially serious safety problems with marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provide, for the first time, the opportunity to collect

information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because the information enables FDA to make important changes to the product's labeling (such as adding a new warning) and, when necessary, to initiate removal of a drug from the market.

Respondents to this collection of information are manufacturers, packers, distributors, and applicants.

In the **Federal Register** of December 30, 1997 (62 FR 67874), the agency requested comments on the proposed collection of information. FDA received one comment. The comment questioned the accuracy of several of the information collection burden estimates, and suggested higher estimates for annual frequency per response and hours per response. In light of this comment, the agency reevaluated its estimates and is revising its previous estimate of the number of periodic reports prepared per respondent, from the 1.5 originally reported to 18. On review, FDA determined that this number reflects the average number of periodic reports it receives. A periodic report includes a narrative summary, individual case safety reports, and history of actions taken. In addition, the agency is revising the hours per response for preparing a periodic report under § 314.80(c)(2) from 5 to 28 hours. The comment suggested, and FDA agrees, that 28 hours more accurately reflects the amount of time required to prepare a response.

The comment also suggested ways to enhance the quality, utility, and clarity of the information to be collected and ways to minimize the burden of the collection of information on respondents.

FDA is in the process of revising its safety reporting and recordkeeping regulations and will consider these comments in developing its rulemaking. The respondent has had and will have an opportunity for comment on these rulemaking initiatives. In the **Federal Register** of October 27, 1994 (59 FR 54046), FDA published a proposed rule to amend its postmarketing expedited and periodic safety reporting requirements, as well as others, to implement international standards and to facilitate the reporting of adverse drug experiences. In the **Federal Register** of October 7, 1997 (62 FR 52237), FDA published a final rule amending its expedited safety reporting regulations to implement certain recommendations in the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) E2A guidance on definitions and standards for expedited reporting (58 FR 37408, July 9, 1993). At this time, the agency is further considering recommendations in the ICH E2A guidance for additional amendments to its postmarketing expedited safety reporting regulations. With respect to the proposed amendments to the periodic adverse drug experience reporting requirements in the proposal of October 27, 1994, FDA has decided to repropose these amendments based on recommendations in the ICH E2C guidance on periodic safety update reports (62 FR 27470, May 19, 1997). In developing the reproposal, FDA will also consider comments submitted in response to the proposed rule of October 27, 1994, regarding periodic adverse experience reports. FDA is also considering rulemaking concerning the electronic submission of postmarketing expedited and periodic safety reports using standardized medical terminology, data elements, and electronic transmission standards recommended by the ICH.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
310.305(c)(5)		1	1	1	1	1
314.80(c)(1)(iii)		5	1	5	1	5
314.80(c)(2)		683	18	12,300	28	344,400
Total						344,406

[1] The reporting burden for §§ 310.305(c)(1), (c)(2), (c)(3), and 314.80(c)(1)(i) and (c)(1)(ii) was reported under OMB control number 0910–0291. There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

	21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
310.305(f)		25	1	2	1	25
314.80(i)		683	1	683	1	683
Total						708

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The numbers in Tables 1 and 2 of this document are accurate as of the time of publication. FDA is in the process of revising its safety reporting and recordkeeping regulations. These numbers may change when the revisions to those regulations are finalized.

Dated: January 22, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2160 Filed 1–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1234]

New Monographs, Revisions of Certain Food Chemicals Codex Monographs, New General Analytical Procedures, and Revisions of General Analytical Procedures; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex specification monographs in the fourth edition and on proposed new specification monographs and proposed new and revised general analytical procedures. New specification monographs for certain substances used as food ingredients; additions, revisions, and corrections to current monographs; and new and revised general analytical procedures are being prepared by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex (the committee). This material is expected to be presented in the next publication of the Food Chemicals Codex (the second supplement to the fourth edition) at a date yet to be determined.

DATES: Written comments by March 15, 1999. (The committee advises that comments received after this date may not be considered for the second supplement to the fourth edition. Comments received too late for consideration for the second supplement will be considered for later supplements or for a new edition of the Food Chemicals Codex.)

ADDRESSES: Submit written comments and supporting data and documentation to the NAS/IOM Committee on Food Chemicals Codex/FO–3042, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418. Copies of the new monographs, the proposed revisions to current monographs, and the proposed new and revised general analytical procedures may be obtained upon written request from NAS (address above) or from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests for copies should specify by name the monographs or analytical procedures desired. Copies may also be obtained through the Internet at "http://www2.nas.edu/codex".

FOR FURTHER INFORMATION CONTACT:

Fatima N. Johnson/FO–3042, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580; or

Paul M. Kuznesof, Division of Product Manufacture and Use, Office of Premarket Approval, Center for Food Safety and Applied Nutrition (HFS–246), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3009.

SUPPLEMENTARY INFORMATION: By contract with NAS/IOM, FDA supports the preparation of the Food Chemicals Codex, a compendium of specification monographs for substances used as food ingredients. Before any specifications are included in a Food Chemicals Codex publication, public announcement is made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or other documentation to facilitate and expedite review by the committee.

In the **Federal Register** of December 3, 1996 (61 FR 64098), and March 28, 1997 (62 FR 14911), FDA announced that the committee was considering additional new monographs and a number of monograph revisions for inclusion in the first supplement to the fourth edition of the Food Chemicals Codex. The first supplement to the fourth edition of the Food Chemicals Codex was released by the National Academy Press (NAP) in September 1997. It is now available for sale from NAP (1–800–624–6242; 202–334–3313; FAX 202–334–2451; Internet "http://www.nap.edu") 2101 Constitution Ave. NW., Lockbox 285, Washington, DC 20055.

FDA now gives notice that the committee is soliciting comments and information on additional proposed new monographs, proposed changes to certain current monographs, and proposed new and revised general analytical procedures. These new monographs and analytical procedures and changes are expected to be published in the second supplement to the fourth edition of the Food Chemicals Codex. Copies of the proposed new monographs and analytical procedures and revisions to current monographs and analytical procedures may be obtained upon written request from NAS at the address listed above or through the Internet at "http://www2.nas.edu/codex".

FDA emphasizes, however, that it will not consider adopting and incorporating any of the committee's new monographs and general analytical procedures, or revisions to monographs or analytical procedures into FDA regulations without ample opportunity for public comment. If FDA decides to propose the adoption of new monographs or analytical procedures or changes that have received final approval of the committee, it will announce its intention and provide an opportunity for public comment in the **Federal Register**.

The committee invites comments and suggestions by all interested parties on specifications or analytical procedures to be included in the proposed new monographs (4), revisions of current monographs (30), and new and revised general analytical procedures (3) listed below:

I. Proposed New Monographs

Erythritol
Maltitol
Menhaden Oil, Hydrogenated
Menhaden Oil, Refined

II. Current Monographs to which the Committee Proposes to Make Revisions

L–Aspartic Acid (correct identification test)
Butadiene-Styrene 50/50 Rubber (delete arsenic specification)
Butadiene-Styrene 25/75 Rubber (delete arsenic specification)
Calcium Phosphate, Monobasic (correct limits for loss on drying and loss on ignition)
Carbon, Activated (reinstate arsenic specification)
Carmine (correct assay calculation; revise assay limit, description, and ash determination)
Dimethylpolysiloxane (modify identification test)
Disodium Inosinate (delete barium specification)

Fructose (delete arsenic specification)
Glucose Syrup (delete arsenic specification)
Glucose Syrup, Dried (delete arsenic specification)
Grape Skin Extract (delete arsenic specification)
Invert Sugar (delete arsenic specification)
Lemon Oil, Coldpressed (delete foreign oils specification)
Malic Acid (correct CAS number)
Maltitol Syrup (modify synonym and description, delete heavy metals specification, add nickel specification)
Methyl Ester of Rosin, Partially Hydrogenated (delete arsenic specification)
Pentaerythritol Ester of Partially Hydrogenated Wood Rosin (delete arsenic specification)
Pentaerythritol Ester of Wood Rosin (delete arsenic specification)
Polydextrose (modify description, add nickel specification, modify pH of a 10% solution specification)
Polyisobutylene (delete arsenic specification)
Potassium Phosphate, Tribasic (correct loss on ignition limit for the anhydrous material)
Potassium Polymetaphosphate (correct CAS number)
Sodium Acid Pyrophosphate (correct fluoride limit test to method III)
Sodium Polyphosphates, Glassy (correct fluoride limit test to method III)
Sorbitol (delete arsenic specification)
Terpene Resin, Natural (delete arsenic specification)
Terpene Resin, Synthetic (delete arsenic specification)
DL-α-Tocopherol (correct CAS number)
Xylitol (delete arsenic specification, add nickel specification, lower limits for other polyols and for residue on ignition)

III. Proposed New and Revised General Analytical Procedures

Fatty Acid Composition (Revised)
Nickel Limit Test (New)
Peroxide Value Test (New)

Interested persons may, on or before March 15, 1999, submit to NAS written comments regarding the monographs and general analytical procedures listed in this notice. Timely submission will ensure that comments are considered for the second supplement to the fourth edition of the Food Chemicals Codex. Comments received after this date may not be considered for the second supplement, but will be considered for subsequent supplements or for a new edition of the Food Chemicals Codex. Those wishing to make comments are encouraged to submit supporting data and documentation with their comments. Two copies of any comments regarding the monographs or analytical procedures listed in this notice are to be submitted to NAS (address above). Comments and supporting data or documentation are to be identified with the docket number found in brackets in the heading of this document and each submission should include the statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment to the Dockets Management Branch (address above). Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 14, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–2159 Filed 1–28–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4442–N–02]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: March 30, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Robert Leonard, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8140, Washington, DC 20410; telephone (202) 708–3700, extension 4027 (this is not a toll-free number). Copies of the proposed forms and other available documents to be submitted to OMB may be obtained from Mr. Leonard.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Interim Assessment of the HOPE VI Program: Survey Development, Data Collection and Case Studies.

Description of the need for the information and proposed use: The HOPE VI program, formerly known as the Urban Revitalization Demonstration Program, was created for the purpose of comprehensively addressing the need of severely distressed or obsolete public housing developments and the residents of those developments. Since 1993, Congress has appropriated nearly $3 billion for the HOPE VI program.

In 1994, HUD initiated a ten-year evaluation of the HOPE VI program in order to identify its impact on public housing developments, public housing residents, and the neighborhoods surrounding targeted developments. Under contract to HUD, Abt Associates Inc. undertook the first phase of this study, the Historical and Baseline Assessment of the HOPE VI Program, between 1994 and 1996. The study was designed to collect data on conditions and characteristics prior to revitalization at 15 of the 25 HOPE VI sites that received awards over the first two program years. As part of the Baseline Assessment, a survey of residents who were living in the developments prior to revitalization was undertaken. The survey captured information about the characteristics of those residents, as well as their attitudes

toward their housing, experiences with crime, safety concerns, and use of supportive services.

The data collection effort that is now proposed is for an interim evaluation that will build on the original study by comparing conditions before and after revitalization and examining the impacts of the program to date at the original 15 study sites. At each site, Abt Associates will conduct in-person surveys with 150 randomly selected residents who have recently moved to the revitalized HOPE VI developments, as well as 150 randomly selected individuals who reside in the surrounding neighborhood. The proposed survey will collect information on the attitudes of HOPE VI residents toward their new homes and the development. Both HOPE VI residents and residents from the surrounding neighborhood will be surveyed regarding neighborhood satisfaction (including perceptions of crime, adequacy of public services and other facilities, community involvement, and level of social cohesion), potential changes in the neighborhood since the HOPE VI redevelopment started, and the use of supportive services provided through the program.

The large-scale investment in public housing through this program and its unique programmatic elements necessitate the continuation of the study of HOPE VI to determine the program's effects. The results will provide valuable lessons for policy makers, developers, researchers, and those directly involved in public housing management and administration concerning the impact of these comprehensive efforts on public housing residents, their neighborhoods, and the larger communities of their cities.

Members of affected public: At each of 15 HOPE VI developments, the survey will involve a random sample of 150 households living in the development shortly after it is reoccupied and 150 households in the neighborhood that immediately surrounds the development. One individual, aged 18 years or older, will be interviewed in each household.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response.

The survey will involve 4,500 respondents, half of whom will be living in HOPE VI developments and half of whom will be residents in the neighborhoods surrounding the developments. Information will be collected by a one time personal interview that will take approximately 15 minutes to complete. A total of 1,125 hours of respondents' time (15 minutes times 4,500 respondents divided by 60 minutes) will be consumed by the survey process.

Status of the proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 22, 1999.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 99–2181 Filed 1–28–99; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–4085–FA–03; FR–4207–FA–04; FR–4359–FA–02; FR–4360–FA–02; and FR–4358–FA–02]

Announcement of Funding Awards for Fiscal Year 1998 for the Rental Voucher and Rental Certificate Programs

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 1998 to housing agencies (HAs) under the Section 8 rental voucher and rental certificate programs. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide rental assistance to very low-income families.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, telephone (202) 708–1872. Hearing- or speech-impaired individuals may call HUD's TTY number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the rental certificate and rental voucher programs are published at 24 CFR part 982. The regulations for allocating housing assistance budget authority under section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR part 791, subpart D.

The purpose of the rental voucher and rental certificate programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. The FY 98 awards announced in this notice were selected for funding consistent with the provisions in the Notices of Funding Availability (NOFAs) published in the **Federal Register** on October 30, 1996 (61 FR 56090), April 10, 1997 (62 FR 17672), April 17, 1997 (62 FR 18777), April 30, 1998 (63 FR 23050), June 1, 1998, (63 FR 29866), and June 1, 1998 (63 FR 29860).

The October 30 NOFA made available rental certificates and rental vouchers for persons with disabilities in support of designated housing allocation plans. This NOFA did not have a deadline date.

The April 10 NOFA made available rental certificates and rental vouchers for persons with disabilities in support of designated housing allocation plans and establishment of preferences for certain Section 8 developments. This NOFA did not have a deadline date.

The April 17 NOFA is a correction to the April 10 NOFA. This NOFA limits the number of units for which an HA may apply for persons with disabilities in support of preferences for certain Section 8 developments.

The April 30 NOFA made available rental certificates and rental vouchers for persons with disabilities under the Mainstream Housing Program. This NOFA also made available rental certificates and rental vouchers for non-elderly persons with disabilities in support of designated housing allocation plans; and for non-elderly disabled families in connection with certain Section 8 project-based development where the owner has established a preference for the admission of elderly households. The June 1, NOFA made available rental certificates for the Family Unification Program to assist families for whom the lack of adequate housing is a primary factor in the separation, or imminent separation, of children from their families.

The June 1 NOFA made available Section 8 Family Self-Sufficiency (FSS) Coordinator funds to hire FSS program coordinators.

A total of $424,249,176 in budget authority for rental vouchers and rental certificates (52,784 units) was awarded to recipients under all of the above mentioned categories, and other categories not provided in connection

with a NOFA, but provided on an as-needed basis.

The Catalog of Federal Domestic Assistance numbers for this program are 14.855 and 14.857.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: January 21, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998

Housing agency	Address	Units	Award
Designated Housing (Certificates)			
COLORADO DEPT OF HUMAN SERVICES	4131 S. JULIAN WAY, DENVER, CO 80236	100	$387,732
COMM DEV PROG COMM OF MA., E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	200	1,375,512
MILLVILLE HA	PO BOX 803, 122 E MAIN ST, MILLVILLE, NJ 08332	30	184,074
PATERSON HA	CITY HALL, 155 MARKET ST, PATERSON, NJ 07505.	75	753,101
METROPOLITAN DEV'T & HSG AGENCY	701 SIXTH ST, NASHVILLE-DAVIDSON, TN 37206	200	988,104
BURLINGTON HSG AUTH	230 ST PAUL ST, BURLINGTON, VT 05401	200	851,376
Totals for Designated Housing (Certificates)		805	$4,539,899
Designated Housing (Vouchers)			
COLORADO DEPT OF HUMAN SERVICES	4131 S. JULIAN WAY, DENVER, CO 80236	100	$387,732
WICHITA HSG AUTH	455 N MAIN CITY HALL 11TH FLO, WICHITA, KS 67202.	15	38,201
MONTGOMERY CO HSG AUTH	10400 DETRICK AVE, KENSINGTON, MD 20895	200	1,296,024
COMM DEV PROG COMM OF MA.,E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	200	1,366,512
HA COUNTY OF KING	15455 65TH AVE SO, TUKWILA, WA 98188	200	1,019,784
HSG AUTH OF LONGVIEW	1207 COMMERCE AVE, LONGVIEW, WA 98632	100	297,228
Totals for Designated Housing (Vouchers)		815	$4,405,481
Existing Amendments (Certificates)			
HA SAMSON	PO BOX 307, SAMSON, AL 36477	0	$14,117
WALNUT RIDGE HSG AGENCY	PO BOX 225, WALNUT RIDGE, AR 72476	0	50,799
CITY OF FRESNO HSG AUTH	PO BOX 11985, FRESNO, CA 93776	0	10,528,800
CITY OF LAWNDALE HSG AUTH	14717 BURIN AVE, LAWNDALE,, CA 90260	0	171,276
HSG AUTH OF THE CITY AND CO OF DENVER	PO BOX 40305-MILE HI STN, DENVER, CO 80204	0	2,823,509
LONGMONT HSG AUTH	900 COFFMAN, STE C, LONGMONT, CO 80501	0	22,709
HA COCOA	PO BOX 338, MERRITT ISLAND, FL 32952	0	24,286
ST. PETERSBURG H/A	PO BOX 12849, ST. PETERSBURG, FL 33733	0	701,848
GEORGIA RESIDENTIAL FINANCE AUTH	60 EXECUTIVE PKWY SOUTH, STE 250, ATLANTA, GA 30329.	0	14,386,845
DENHAM SPRINGS HSG AUTH	PO BOX 910, DENHAM SPRINGS, LA 70727	0	29,000
MINDEN HSG AUTH	1211 FULTON ST, MINDEN, LA 71055	0	144,514
OUACHITA PARISH POLICE JURY, SEC.8	PO BOX 3007, MONROE, LA 71210	0	5,397
TERREBONNE PARISH COUNCIL	PO BOX 6097, HOUMA, LA 70361	0	116,024
GLOUCESTER HSG AUTH	PO BOX 1599, GLOUCESTER, MA 01931	0	116,127
HINGHAM HSG AUTH	30 THAXTER ST, HINGHAM, MA 02043	0	4,804
WORCESTER HSG AUTH	40 BELMONT ST, WORCESTER, MA 01605	0	726,079
TOWNER COUNTY HSG AUTH	808 E. 6TH ST, CANDO, ND 58324	0	15,660
DOUGLAS COUNTY HSG AUTH	5404 NORTH 107TH PLAZA, OMAHA, NE 68134	0	354,281
FREEHOLD HA	107 THROCKMORTON ST, FREEHOLD, NJ 07728	0	64,763
HA OF MADISON	PO BOX 495, MADISON, NJ 07940	0	114,777
LAKEWOOD HA	PO BOX 1543, LAKEWOOD, NJ 08701	0	841,342
PERTH AMBOY HA	881 AMBOY AVE PO BOX 390, PERTH AMBOY, NJ 08862.	0	136,364
SECAUCUS HA	777 FIFTH ST, SECAUCUS, NJ 07094	0	81,596
SOUTH AMBOY HA	BAYSHORE DR, SOUTH AMBOY, NJ 08879	0	195,689
TOWNSHIP OF CHERRY HILL	PO BOX 5002, CHERRY HILL, NJ 08034	0	185,843
TOWNSHIP OF HAMILTON	2090 GREENWOOD AVE, PO 150, HAMILTON, NJ 08650.	0	71,457
TOWNSHIP OF MONTCLAIR HA	205 CLAREMONT AVE, MONTCLAIR, NJ 07042	0	171,732
SAN MIGUEL COUNTY HA	COUNTY CTHOUSE ANNEX, BUILDING, LAS VEGAS, NM 87701.	0	63,406
TOWN OF BABYLON	281 PHELPS LANE, ROOM 9, NORTH BABYLON, NY 11703.	0	292,374
FT. GIBSON HSG AUTH	PO BOX 426, FORT GIBSON, OK 74434	0	67,743
MUSKOGEE HSG AUTH	200 N 40TH, MUSKOGEE, OK 74401	0	11,262
NORTHWEST OREGON HSG ASSOC	1508 EXCHANGE, ASTORIA, OR 97103	0	21,497
LACKAWANNA COUNTY HSG AUTH	2019 WEST PINE ST, DUNMORE, PA 18512	0	2,386
MUNICIPALITY OF LAS MARIAS	BOX 91, LAS MARIAS, PR 00670	0	263,676

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
HA LAKE CITY	PO BOX 1017, LAKE CITY, SC 29560	0	12,707
HSG AUTH OF NACOGDOCHES	715 SUMMIT ST, NACOGDOCHES, TX 75961	0	110,190
ROMA HSG AUTH	P.O. BOX 1002, ROMA, TX 78584	0	5,850
TROUP HSG AUTH	P.O. BOX 206, 1009 S. JACKSON ST., TROUP, TX 75789.	0	40,000
WISE COUNTY REDEV & H/A	P.O. DRAWER W, COEBURN, VA 24230	0	21,320
BOONE COUNTY HSG AUTH	BLACK DIAMOND ARBORS, LICK CREEK RD, DANVILLE, WV 25053.	0	70,000
Totals for Existing Amendments (Certificates)			$33,082,049
Mod. Rehab. Amendments (Certificates)			
CITY OF ANAHEIM HSG AUTH	201 S. ANAHEIM BLVD., 2ND FL, ANAHEIM, CA 92805.	0	600,675
CITY OF FRESNO HSG AUTH	PO BOX 11985, FRESNO, CA 93776	0	23,099
CITY OF HAWTHORNE	4455 W 126TH ST, HAWTHORNE, CA 90250	0	259,599
COUNTY OF FRESNO HSG AUTH	PO BOX 11985, FRESNO, CA 93776	0	118,289
COUNTY OF LOS ANGELES HSG AUTH	2 CORAL CIR, MONTEREY PARK, CA 91754	0	1,506,116
COUNTY OF MONTEREY HSG AUTH	123 RICO ST, SALINAS, CA 93907	0	333,540
SAN DIEGO HSG COMM	1625 NEWTON AVE, SAN DIEGO, CA 92113	0	6,884
SANTA CLARA COUNTY HSG AUTH	505 WEST JULIAN ST, SAN JOSE, CA 95110	0	2,920
SANTA CRUZ COUNTY HSG AUTH	2160-41ST AVE, CAPITOLA, CA 95010	0	1,635,929
TULARE COUNTY HSG AUTH	PO BOX 791, VISALIA, CA 93279	0	55,354
COLORADO HSG FINANCE AUTH	1981 BLAKE ST, DENVER, CO 80202	0	165,694
ENFIELD HSG AUTH	17 ENFIELD TERRACE, ENFIELD TOWN, CT 06082	0	72,610
NORWALK HSG AUTH	24 ½ MONROE ST, SOUTH NORWALK, CT 06854	0	74,821
WATERBURY HSG AUTH	2 LAKEWOOD RD, WATERBURY, CT 06704	0	60,446
NEW CASTLE COUNTY	87 READ'S WAY, NEW CASTLE, DE 19720	0	581,136
CITY OF JACKSONVILLE	1300 BROAD ST, JACKSONVILLE, FL 32202	0	572,274
HA DELRAY BEACH	770 S W 12TH TERRACE, DELRAY BEACH, FL 33444.	0	1,216,783
HA FORT LAUDERDALE CITY	437 S W 4TH AVE, FORT LAUDERDALE, FL 33315	0	18,235
JEFFERSON CO SEC 8 HSG	C O CAPITAL CITY BANK OF MONTICELLO, MONTICELLO, FL 32344.	0	32,938
KEY WEST H/A	PO BOX 2476, 1400 KENNEDY DR, KEY WEST, FL 33040.	0	444,493
MIAMI DADE HSG AUTH	1401 N.W. 7TH ST, MIAMI, FL 33125	0	100,453
HA MACON	PO BOX 4928, MACON, GA 31208	0	152,434
AURORA HSG AUTH	1630 WEST PLUM ST, AURORA, IL 60506	0	225,022
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	0	1,599,762
CITY OF NORTH CHICAGO	1850 LEWIS AVE, NORTH CHICAGO, IL 60064	0	118,246
LAKE COUNTY HA	33928 N ROUTE 45, GRAYSLAKE, IL 60030	0	148,172
ANDERSON HA	528 WEST 11TH ST, ANDERSON, IN 46016	0	402,729
INDIANA DEPT OF HUMAN SERVICES	251 N. ILLINOIS P.O. BOX 7083, INDIANAPOLIS, IN 46207.	0	782,682
CUMBERLAND VALLEY REG'L HA	PO BOX 806, BARBOURVILLE, KY 40906	0	6,866
MONROE HSG AUTH	300 HARRISON ST., MONROE, LA 71201	0	66,278
RUSTON (CITY) SEC. 8 HSG AGENCY	PO BOX 280, RUSTON, LA 71273	0	34,367
SHREVEPORT HSG AUTH	623 JORDAN, SHREVEPORT, LA 71101	0	24,497
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111	0	416,515
BROCKTON HSG AUTH	45 GODDARD RD, PO BOX 340, BROCKTON, MA 02303.	0	228,531
COMM DEV PROG COMM OF MA., E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	0	116,887
WORCESTER HSG AUTH	40 BELMONT ST, WORCESTER, MA 01605	0	82,891
BALTIMORE CO. HSG OFFICE	ONE INVESTMENT PL, STE P3, TOWSON, MD 21204.	0	2,808,908
HSG AUTH PRINCE GEORGES CO	9400 PEPPERCORN PL, LANDOVER, MD 20785	0	21,103
MONTGOMERY CO HSG AUTH	10400 DETRICK AVE, KENSINGTON, MD 20895	0	25,000
MAINE STATE HSG AUTH	353 WATER ST, AUGUSTA, ME 04330	0	574,690
CITY OF GRAND RAPIDS	1420 FULLER AVE SE, GRAND RAPIDS, MI 49507	0	271,310
KIRKSVILLE HSG AUTH	PO BOX 730, KIRKSVILLE, MO 63501	0	3,257
ST. LOUIS COUNTY HSG AUTH	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121	0	39,231
MT DEPT OF COMMERCE	POB 200545, 836 FRONT ST, HELENA, MT 59620	0	718
TWIN RIVERS OPPORTUNITIES INC	PO BOX 1482, NEW BERN, NC 28563	0	69,212
NORTH DAKOTA HSG FINANCE AGENCY	PO BOX 1535, BISMARCK, ND 58502	0	14,266
DOVER HSG AUTH	62 WHITTIER ST, DOVER, NH 03820	0	6,795
NEW HAMPSHIRE HSG FINANCE AUTH	PO BOX 5087, MANCHESTER, NH 03108	0	38,266
ASBURY PARK HA	1004 COMSTOCK ST, ASBURY PARK, NJ 07712	0	111,000
ELIZABETH HA	688 MAPLE AVE, ELIZABETH, NJ 07202	0	26,563
HA OF GLOUCESTER COUNTY	223 S EVERGREEN AVE, WOODBURY, NJ 08096	0	292,595

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
LAKEWOOD HA	PO BOX 1543, LAKEWOOD, NJ 08701	0	51,726
N.J. HSG & MORTGAGE FINANCE AGCY	3625 QUAKERBRIDGE RD, CN 18550, TRENTON, NJ 08650.	0	2,947,899
PLAINFIELD HA	510 EAST FRONT ST, PLAINFIELD, NJ 07060	0	234,491
STATE OF NJ DEPT. OF COMM. AFFAIRS	101 S. BROAD ST CN800, TRENTON, NJ 08625	0	354,834
WARREN COUNTY HA	WAYNE DUMONT JR ADMIN BLDG, BELVIDERE, NJ 07823.	0	224,512
COUNTY OF DONA ANA	2407 W. PICACHO, STE A–2, LAS CRUCES, NM 88005.	0	60,656
CITY OF RENO HSG AUTH	1525 EAST NINTH ST, RENO, NV 89512	0	98,769
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO RD, LAS VEGAS, NV 89122	0	307,676
NORTH LAS VEGAS HSG AUTH	1632 YALE ST, NORTH LAS VEGAS, NV 89030	0	10,424
FORT PLAIN HSG AGENCY	3 MAIN ST, FORT PLAIN, NY 13339	0	13,304
HA OF AMSTERDAM	52 DIVISION ST, AMSTERDAM, NY 12010	0	227,000
KINGSTON COMMUNITY DEV'T AGENCY	97 BROADWAY, KINGSTON, NY 12401	0	89,450
NEW YORK STATE HSG FIN. AGENCY	ONE FORDHAM PLAZA, BRONX, NY 10458	0	166,321
TOWN OF BABYLON	281 PHELPS LANE, ROOM 9, NORTH BABYLON, NY 11703.	0	32,616
TOWN OF STILLWATER	PO BOX 700, STILLWATER, NY 12170	0	30,398
VILLAGE OF BALLLSTON SPA	66 FRONT ST, BALLSTON, NY 12020	0	185,308
VILLAGE OF CORINTH	242 UNION ST, SCHENECTADY, NY 12305	0	7,135
VILLAGE OF ELLENVILLE HSG AUTH	10 EASTWOOD AVE, ELLENVILLE, NY 12428	0	6,000
CHESTER HSG AUTH	1010 MADISON ST, CHESTER, PA 19016	0	58,222
MONTGOMERY COUNTY HSG AUTH	1875 NEW HOPE ST, NORRISTOWN, PA 19401	0	468,552
PHILADELPHIA HSG AUTH	2012–18 CHESTNUT ST, PHILADELPHIA, PA 19103	0	2,830,654
CENTRAL FALLS H A	30 WASHINGTON ST, CENTRAL FALLS, RI 02863	0	31,432
PROVIDENCE H A	100 BROAD ST, PROVIDENCE, RI 02903	0	4,670
MUNICIPALITY OF MAYAGUEZ	BOX 447, MAYAGUEZ MUNICIPIO, RQ 00709	0	87,653
HA COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204	0	28,101
HA NORTH CHARLESTON	PO BOX 70987, NORTH CHARLESTON, SC 29415	0	315,140
S C STATE HSG FINANCE & DEV	919 BLUFF RD, COLUMBIA, SC 29201	0	160,440
HA MEMPHIS	700 ADAMS AVE, MEMPHIS, TN 38105	0	22,383
KNOXVILLE COMMUNITY DEVEL CORP	PO BOX 3629, KNOXVILLE, TN 37937	0	107,420
BROWNSVILLE HSG AUTH	PO BOX 4420, BROWNSVILLE, TX 78523	0	123,683
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	0	141,085
HSG AUTH OF DALLAS	3939 N. HAMPTON RD., DALLAS, TX 75212	0	1,040,218
HSGG AUTH OF PARIS	PO BOX 688, 100 GEO. W. WRIGHT HOMES, PARIS, TX 75461.	0	1,012,363
LAREDO HSG AUTH	2000 SAN FRANCISCO AVE, LAREDO, TX 78040	0	67,274
PANHANDLE COMMUNITY SERVICES	PO BOX 32150, 1309 W. 8TH. ST., AMARILLO, TX 79120.	0	45,263
SAN ANTONIO HSG AUTH	PO DRAWER 1300, SAN ANTONIO, TX 78295	0	74,758
HSG AUTH OF THE CITY OF OGDEN	127 24TH ST STE 2, OGDEN, UT 84401	0	422,028
NORFOLK REDEV & H/A	201 GRANBY ST, NORFOLK, VA 23510	0	36,177
VIRGINIA HSG DEV'T AUTH	601 S. BELVIDERE ST, RICHMOND, VA 23225	0	348,547
Totals for Mod. Rehab. Amendments (Certificates).			$29,065,663
Family Unification (Certificates)			
HA TUSCALOOSA	PO BOX 2281, TUSCALOOSA, AL 35403	28	119,380
HOPE HSG AUTH	720 TEXAS ST, HOPE, AR 71801	25	60,930
PINE BLUFF HSG AUTH	PO BOX 8872, PINE BLUFF, AR 71611	50	220,158
CITY OF OCEANSIDE	300 N. COAST HWY, NEVADA ST ANNEX, OCEANSIDE, CA 92054.	100	587,796
CITY OF SAN LUIS OBISPO HSG AUTH	PO BOX 1289, 487 LEFF ST, SAN LUIS OBISPO, CA 93406.	25	170,735
COUNTY OF MERCED HSG AUTH	405 U ST, MERCED, CA 95340	100	594,036
COUNTY OF ORANGE HSG AUTH	1770 N BROADWAY, SANTA ANA, CA 92706	50	369,408
D.C HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002.	100	1,140,792
ORLANDO H/A	300 REEVES CT, ORLANDO, FL 32801	100	421,343
GUAM HSG AND URBAN RENEWAL AUTH	117 BIEN VENIDA AVE, SINAJANA, GU 96926	67	654,582
CITY OF IOWA CITY	410 E. WASHINGTON ST., IOWA CITY, IA 52240	100	642,912
WICHITA HSG AUTH	455 N MAIN CITY HALL 11TH FLO, WICHITA, KS 67202.	100	586,032
HSG AUTH OF JEFFERSON COUNTY	801 VINE ST, LOUISVILLE, KY 40204	100	501,660
IBERIA PH. GOVERNMENT, SEC. 8 PROG	300 IBERIA ST, STE 400, NEW IBERIA, LA 70560	50	139,578
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111	100	866,257
CITY OF WESTMINSTER	56 WEST MAIN ST, WESTMINSTER, MD 21158	15	91,944

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
HSG AUTH OF BALTIMORE CITY	417 E FAYETTE ST, BALTIMORE, MD 21202	50	418,080
MONTGOMERY CO HSG AUTH	10400 DETRICK AVE, KENSINGTON, MD 20895	100	1,185,132
ST MARY'S COUNTY COMMISSIONERS	P O BOX 653, GOVT CENTER, LEONARDTOWN, MD 20650.	25	168,579
ST PAUL PHA	480 CEDAR ST, STE 600, ST. PAUL, MN 55101	50	307,539
HSG AUTH OF KANSAS CITY, MO	712 BROADWAY, KANSAS CITY, MO 64105	50	315,180
LINCOLN COUNTY PUB HSG AGENCY	16 NORTH CT, BOWLING GREEN, MO 63334	100	402,265
HA OF THE TOWN OF LAURINBURG	P O BOX 1437, LAURINBURG, NC 28352	50	201,636
HA THOMASVILLE	201 JAMES AVE, THOMASVILLE, NC 27360	50	267,877
MONMOUTH COUNTY HA	PO BOX 3000, FREEHOLD, NJ 07728	75	663,045
NEW YORK STATE HSG FIN. AGENCY	ONE FORDHAM PLAZA, BRONX, NY 10458	100	986,955
TOWN OF AMHERST	5583 MAIN ST., WILLIAMSVILLE, NY 14221	100	530,256
CAMBRIDGE METROPOLITAN HSG AUTH	P O BOX 1388, CAMBRIDGE, OH 43725	50	156,005
HAMILTON COUNTY	138 EAST CT ST, ROOM 507, CINCINNATI, OH 45202.	100	573,708
OKLAHOMA CITY HSG AUTH	1700 N E FOURTH ST, OKLAHOMA CITY, OK 73117.	50	213,732
H.A. OF YAMHILL COUNTY	414 N EVANS, MCMINNVILLE, OR 97128	60	376,186
ALLEGHENY COUNTY HSG AUTH	341 FOURTH AVE FIDELITY BL, PITTSBURGH, PA 15222.	100	654,948
WESTMORELAND COUNTY HSG AUTH	R.D. #6, BOX 223, S. GREENGATE RD, GREENSBURG, PA 15601.	30	150,227
RHODE ISLAND HSG MORT FIN CORP	44 WASHINGTON ST, PROVIDENCE, RI 02903	101	655,404
MEADE COUNTY HSG & REDEV COMM	1220 CEDAR ST #113, STURGIS, SD 57785	50	267,863
FORT WORTH HSG AUTH	P O BOX 430, 1201 E. 13TH. ST., FORT WORTH, TX 76101.	100	694,524
SAN ANTONIO HSG AUTH	P O DRAWER 1300, SAN ANTONIO, TX 78295	100	547,464
TEXOMA COUNCIL OF GOVERNMENTS	3201 TEXOMA PKWY, STE 240, SHERMAN, TX 75090.	25	115,197
HSG AUTH OF SALT LAKE CITY	1776 SW TEMPLE, SALT LAKE CITY, UT 84115	36	199,225
BURLINGTON HSG AUTH	230 ST PAUL ST, BURLINGTON, VT 05401	100	697,368
HA COUNTY OF KING	15455 65TH AVE SO, TUKWILA, WA 98188	100	779,292
HA OF CITY OF SEATTLE	120 SIXTH AVE NORTH, SEATTLE, WA 98109	25	208,204
HUNTINGTON WV HSG AUTH	P.O. BOX 2183, HUNTINGTON, WV 25722	50	223,044
Totals for Family Unification (Certificates)		2,937	$19,126,478
FSS Coordinators (Certificates)			
AK HSG FINANCE CORP	PO BOX 101020, ANCHORAGE, AK 99510	0	45,000
DOTHAN H/A	P O BOX 1727, DOTHAN, AL 36302	0	14,878
FLORENCE H/A	303 NORTH PINE ST, FLORENCE, AL 35630	0	38,385
H/A CITY OF MONTGOMERY	1020 BELL ST, MONTGOMERY, AL 36104	0	32.400
HA ALBERTVILLE	P O BOX 1126, ALBERTVILLE, AL 35950	0	33,585
HA BESSEMER	1100 5TH AVE NORTH, BESSEMER, AL 35020	0	31,402
HA DECATUR	P O BOX 878, DECATUR, AL 35602	0	29,120
HA HUNTSVILLE	P O BOX 486, HUNTSVILLE, AL 35804	0	27,882
HA JACKSONVILLE	895 GARDNER DR, JACKSONVILLE, AL 36265	0	28,114
HA JEFFERSON COUNTY	3700 INDUSTRIAL PKWY, BIRMINGHAM, AL 35217	0	30,517
HA LEEDS	P O BOX 513, LEEDS, AL 35094	0	26,048
HA OZARK	P O BOX 566, OZARK, AL 36361	0	32,357
HA PRICHARD	P O BOX 10307, PRICHARD, AL 36610	0	35,305
HA TUSCALOOSA	P O BOX 2281, TUSCALOOSA, AL 35403	0	39,273
CONWAY HSG AUTH	360 C H A, CONWAY, AR 72032	0	24,825
FORT SMITH	2100 NORTH 31ST ST, FORT SMITH, AR 72904	0	28,474
HARRISON HSG AGENCY	P O BOX 1715, HARRISON, AR 72601	0	34,479
HOPE HSG AUTH	720 TEXAS ST, HOPE, AR 71801	0	16,458
JONESBORO URBAN RENEWAL HA	804 SOUTH GEE ST, JONESBORO, AR 72401	0	20,561
LEE COUNTY HSG AUTH	100 W. MAIN, MARIANNA, AR 72360	0	20,140
LITTLE ROCK HSG AUTH	1000 WOLFE ST, LITTLE ROCK, AR 72202	0	26,000
MISSISSIPPI COUNTY PFB	808 W KEISER, OSCEOLA, AR 72370	0	30,236
NORTH LITTLE ROCK HSG AUTH	P O BOX 516, NORTH LITTLE ROCK, AR 72115	0	33,684
NW REGIONAL HSG AUTH	P O BOX 699, HARRISON, AR 72602	0	34,479
PINE BLUFF HSG AUTH	P O BOX 8872, PINE BLUFF, AR 71611	0	22,955
PULASKI COUNTY HSG AGENCY	201 S BROADWAY STE 440, LITTLE ROCK, AR 72201.	0	18,540
SILOAM SPRINGS HSG AUTH	P O BOX 280, SILOAM SPRINGS, AR 72761	0	29,673
ST FRANCIS COUNTY HSG AUTH	P O BOX 310, FORREST CITY, AR 72335	0	18,000
WHITE RIVER REGIONAL HSG AUTH	P O BOX 650, MELBOURNE, AR 72556	0	44,954
CITY OF BULLHEAD CITY	1255 MARINA BLVD, BULLHEAD CITY, AZ 86442	0	30,955
CITY OF CHANDLER	99 N. DELAWARE ST, CHANDLER, AZ 85225	0	38,137

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
CITY OF SCOTTSDALE	7522 E FIRST ST, SCOTTSDALE, AZ 85251	0	45,000
CITY OF YUMA HSG AUTH	1350 W. COLORADO ST, YUMA, AZ 85364	0	38,185
CALIFORNIA DEPT OF HSG & COMM DEV	P O BOX 952050, SACRAMENTO, CA 94252	0	43,992
CITY OF ALAMEDA HSG AUTH	701 ATLANTIC AVE, ALAMEDA, CA 94501	0	22,500
CITY OF BENICIA HSG AUTH	28 RIVERHILL DR, P O BOX 549, BENICIA, CA 94510.	0	45,000
CITY OF CARLSBAD HSG & REDEV	2965 ROOSEVELT ST STE B, CARLSBAD, CA 92008.	0	45,000
CITY OF FAIRFIELD	823–B JEFFERSON ST, FAIRFIELD, CA 94533	0	45,000
CITY OF GLENDALE HSG AUTH	141 NORTH GLENDALE AVE #202, GLENDALE, CA 91206.	0	43,876
CITY OF LAKEWOOD	5050 N. CLARK AVE, LAKEWOOD, CA 90712	0	45,000
CITY OF OCEANSIDE	300 N. COAST HWY, NEVADA ST ANNEX, OCEANSIDE, CA 92054.	0	45,000
CITY OF OXNARD HSG AUTH	1470 COLONIA RD, OXNARD, CA 93030	0	45,000
CITY OF REDDING HSG AUTH	P O BOX 496071, REDDING, CA 96049	0	45,000
CITY OF ROSEVILLE	405 VERNON ST, ROSEVILLE, CA 95678	0	43,166
CITY OF SAN BUENAVENTURA HSG AUTH	P O BOX 1648, 995 RIVERSIDE ST, VENTURA, CA 93002.	0	41,290
CITY OF SANTA BARBARA H/A	808 LAGUNA ST, SANTA BARBARA, CA 93101	0	45,000
CITY OF SANTA MONICA	2121 CLOVERFIELD BLVD STE131, SANTA MONICA, CA 90404.	0	45,000
CITY OF VACAVILLE	40 ELDRIDGE AVE, STES 1–5, VACAVILLE, CA 95687.	0	45,000
COMM SERVICE DEPT EL DORADO COUNTY	937 SPRING ST, PLRVILLE, CA 95667	0	45,000
COUNTY OF BUTTE HSG AUTH	580 VALLOMBROSA AVE, CHICO, CA 95926	0	37,705
COUNTY OF MERCED HSG AUTH	405 U ST, MERCED, CA 95340	0	36,195
COUNTY OF SHASTA HSG AUTH	1670 MARKET ST STE 300, REDDING, CA 96001	0	37,486
COUNTY OF SOLANO HSG AUTH	601 WEST TEXAS ST, FAIRFIELD, CA 94533	0	43,858
CULVER CITY PUBLIC HSG AGENCY	9770 CULVER BLVD, P O BOX 507, CULVER CITY, CA 90232.	0	25,600
H/A OF THE CITY OF SANTA PAULA	P O BOX 404, 15500 W. TELEGRAPH RD B–11, SANTA PAULA, CA 93060.	0	42,385
HSG AUTH CITY OF NAPA	P O BOX 660, NAPA, CA 94559	0	45,000
KINGS COUNTY HSG AUTH	P O BOX 355, HANFORD, CA 93232	0	40,491
NEVADA COUNTY HSG AUTH	10433 WILLOW VALLEY RD., NEVADA, CA 95959	0	30,856
NORWALK HSG AUTH	12035 FIRESTONE BLVD, NORWALK, CA 90650	0	45,000
YOLO COUNTY HSG AUTH	P O BOX 1867, WOODLAND, CA 95695	0	30,584
YUBA COUNTY HSG AUTH	938 14TH ST, MARYSVILLE, CA 95901	0	42,543
ADAMS COUNTY HSG AUTH	7190 COLORADO BLVD, 6TH FL, COMMERCE CITY, CO 80022.	0	40,120
ARVADA HSG AUTH	8101 RALSTON RD, ARVADA, CO 80002	0	34,373
AURORA HSG AUTH	10745 E KENTUCKY AVE, AURORA, CO 80012	0	34,560
BOULDER COUNTY HSG AUTH	2040 14TH ST, PO BOX 471, BOULDER, CO 80306	0	39,542
COLORADO DIVISION OF HSG	1313 SHERMAN ST R00M 323, DENVER, CO 80203	0	45,000
COLORADO SPRINGS HSG AUTH	P O BOX 1575, COLORADO SPRINGS, CO 80903	0	39,200
FORT COLLINS HSG AUTH	1715 W. MOUNTAIN AVE., FORT COLLINS, CO 80521.	0	34,612
GRAND JUNCTION HSG AUTH	805 MAIN ST, GRAND JUNCTION, CO 81501	0	27,648
HSG AUTH OF PUEBLO	1414 NO. SANTA FE AVE, PUEBLO, CO 81003	0	30,000
HSG AUTH OF THE CITY OF LAKEWOOD	445 S. ALLISON PKWY, LAKEWOOD, CO 80226	0	34,373
JEFFERSON COUNTY HSG AUTH	6025 WEST 38TH AVE, WHEATRIDGE, CO 80033	0	34,373
LOVELAND HSG AUTH	2105 MAPLE DR, LOVELAND, CO 80538	0	23,135
MONTROSE COUNTY HSG AUTH	222 HAP CT, OKATHE, CO 81425	0	30,565
ANSONIA HSG AUTH	36 MAIN ST, ANSONIA, CT 06401	0	43,481
HARTFORD HSG AUTH	475 FLATBUSH AVE, HARTFORD, CT 06106	0	42,985
MERIDEN HSG AUTH	22 CHURCH ST, MERIDEN, CT 06450	0	44,982
NORWALK HSG AUTH	24 1/2 MONROE ST, SOUTH NORWALK, CT 06854	0	34,940
DELAWARE STATE HSG AUTH	820 SILVER LAKE BLVD, DOVER, DE 19904	0	40,000
DOVER HSG AUTH	1266–76 WHITE OAK RD, DOVER, DE 19901	0	31,001
WILMINGTON HSG AUTH	400 WALNUT ST, WILMINGTON, DE 19801	0	43,193
CITY OF FORT MYERS	P. O. DRAWER 2217, FORT MYERS, FL 33902	0	45,000
COLLIER COUNTY HA	1800 FARM WORKER WAY, IMMOKALEE, FL 33934.	0	37,575
HA BOCA RATON	201 WEST PALMETTO PARK RD, BOCA RATON, FL 33432.	0	27,804
HA DELAND	300 SUNFLOWER CIR, DE LAND, FL 32724	0	41,169
HA HOLLYWOOD	7300 NORTH DAVIE RD EXTENSIO, HOLLYWOOD, FL 33024.	0	12,854
HA PASCO COUNTY	522 AUTUMN DR, DADE CITY, FL 33525	0	37,025
HA RIVIERA BEACH	2014 WEST 17TH CT, RIVIERA BEACH, FL 33404	0	38,991

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
WALTON CO BD OF CO COMM	P O BOX 1258, DE FUNIAK SPRINGS, FL 32433	0	35,956
CITY OF MARIETTA	SECTION 8 HSG PROGRAM, P O BOX 609, MARIETTA, GA 30061.	0	44,000
HA BRUNSWICK	P O BOX 1118, BRUNSWICK, GA 31521	0	29,264
HA JONESBORO	P O BOX 458, JONESBORO, GA 30237	0	31,000
GUAM HSG & URBAN RENEWAL AUTH	117 BIEN VENIDA AVE, SINAJANA, GU 96926	0	35,511
COUNTY OF KAUAI	4193 HARDY ST, LIHUE, HI 96766	0	44,993
CENTRAL IOWA REG'L HSG AUTH	1111 NINTH ST, STE 390, DES MOINES, IA 50314	0	45,000
CITY OF CEDAR RAPIDS	CITY HALL, CEDAR RAPIDS, IA 52401	0	45,000
CITY OF IOWA CITY	410 E. WASHINGTON ST., IOWA CITY, IA 52240	0	42,326
DUBUQUE DEPT OF HUMAN RIGHTS	CITY HALL, DUBUQUE, IA 52001	0	29,759
EASTERN IOWA REG'L HSG AUTH	330 NESLER CENTRE, P O BOX 1140, DUBUQUE, IA 52001.	0	41,672
FORT DODGE HSG AGENCY	700 SOUTH 17TH ST, FORT DODGE, IA 50501	0	45,000
IOWA NORTHLAND R'L HSG AUTH	2530 UNIVERSITY AVE., STE #5, WATERLOO, IA 50701.	0	37,132
MUNICIPAL HSG AGENCY	119 SOUTH MAIN ST, STE #200, COUNCIL BLUFFS, IA 51503.	0	31,759
NORTH IOWA REG'L HSG AUTH	121 THIRD ST NW, MASON CITY, IA 50401	0	45,000
NORTHEAST NEBRASKA JOINT HSG AUTH	P O BOX 447, SIOUX CITY, IA 51102	0	28,825
NORTHWEST IOWA REG'L HSG AUTH	P O BOX 6207, SPENCER, IA 51301	0	34,469
OTTUMWA HSG AUTH	102 WEST FINLEY AVE, OTTUMWA, IA 52501	0	33,821
REGIONAL HSG AUTH—VOUCHER XII	108 WEST 6TH ST, P O BOX 663, CARROLL, IA 51401.	0	44,802
SIOUX CITY HSG SERVICES DIVISION	BOX 447, 520 ORPHEUM BUILDING, SIOUX CITY, IA 51102.	0	45,000
SOUTHERN IOWA REG'L HSG AUTH	219 N PINE, CRESTON, IA 50801	0	31,842
UPPER EXPLORERLAND REG'L HSG AUTH	134 W. GREENE ST., POSTVILLE, IA 52162	0	38,511
WATERLOO HSG AUTH	CARNEGIE ANNEX, STE 102, 620 MULBERRY ST, WATERLOO, IA 50703.	0	27,626
BOISE CITY HA	680 CUNNINGHAM PL, BOISE, ID 83702	0	41,278
IDAHO HSG AND FINANCE ASSOC	565 W MYRTLE ST, POB 7899, BOISE, ID 83707	0	44,379
SW IDAHO COOPERATIVE HSG AUTH	1108 WEST FINCH DR, NAMPA, ID 83651	0	28,110
CHAMPAIGN HA	102 EAST UNIVERSITY AVE., CHAMPAIGN, IL 61820.	0	28,220
DECATUR HA	1808 EAST LOCUST ST, DECATUR, IL 62521	0	33,333
EAST ST LOUIS HA	700 N. 20TH. ST, EAST ST LOUIS, IL 62205	0	27,829
GREATER MET. HA ROCK IS	325 SECOND ST, SILVIS, IL 61282	0	37,800
HA BLOOMINGTON	104 EAST WOOD, BLOOMINGTON, IL 61701	0	38,634
HA ROCKFORD	223 SOUTH WINNEBAGO ST, ROCKFORD, IL 61102.	0	43,740
HA WAUKEGAN	215 SOUTH UTICA ST, WAUKEGAN, IL 60085	0	42,400
KENDALL COUNTY HSG AUTH	500 A—COUNTRYSIDE CENTER, YORKVILLE, IL 60560.	0	8,996
MADISON HA	1609 OLIVE ST, COLLINSVILLE, IL 62234	0	35,979
MCHENRY COUNTY HSG AUTH	1108 NORTH SEMINARY, WOODSTOCK, IL 60098	0	37,583
PEORIA HA	100 S. SHERIDAN RD, PEORIA, IL 61605	0	30,824
SPRINGFIELD HSG AUTH	200 N. ELEVENTH ST, SPRINGFIELD, IL 62705	0	41,400
WILLIAMSON CO. HSG AUTH	300 HICKORY P O BOX 45, CARTERVILLE, IL 62918.	0	32,722
BLOOMINGTON HSG AUTH	1007 N SUMMIT, P O BOX 1815, BLOOMINGTON, IN 47402.	0	31,400
GARY HA	578 BROADWAY, GARY, IN 46402	0	30,521
HA CITY OF EVANSVILLE	P O BOX 3605, 500 CT ST, EVANSVILLE, IN 47735	0	35,000
HA COLUMBUS	799 MCCLURE RD, COLUMBUS, IN 47201	0	38,357
HA KOKOMO	P.O. BOX 1207, KOKOMO, IN 46901	0	28,028
HA PERU	701 E MAIN ST, PERU, IN 46970	0	26,869
HAMMOND HA	7329 COLUMBIA CIR WEST, HAMMOND, IN 46324	0	34,790
HSG AUTH CITY OF ELKHART	1396 BENHAM AVE, ELKHART, IN 46516	0	32,500
HSG AUTH OF THE CITY OF TERRE HAUTE	P O BOX 3086, TERRE HAUTE, IN 47803	0	44,800
HSG AUTH OF THE CITY OF MARION	601 SOUTH ADAMS ST, MARION, IN 46953	0	30,771
INDIANA DEPT OF HUMAN SERVICES	251 N. ILLINOIS P.O. BOX 7083, INDIANAPOLIS, IN 46207.	0	45,000
LOGANSPORT HSG AUTH	CITY BUILDING RM 207, LOGANSPORT, IN 46947	0	23,700
MUNCIE HA	402 E. SECOND ST., MUNCIE, IN 47302	0	23,920
SOUTH BEND HA	PO BOX 11057, SOUTH BEND, IN 46010	0	32,000
THE HSG AUTH OF THE CITY OF GOSHEN	302 S 5TH ST, GOSHEN, IN 46526	0	37,446
ECKAN	P O BOX 100, OTTAWA, KS 66067	0	28,175
FORD COUNTY HSG AUTH	C/O SWKAAA, INC., P O BOX 1636, DODGE CITY, KS 67801.	0	29,281

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
FORT SCOTT HSG AUTH	315 SCOTT AVE P O BOX 269, FORT SCOTT, KS 66701.	0	11,882
LAWRENCE HSG AUTH	1600 HASKELL AVE, LAWRENCE, KS 66044	0	29,325
MANHATTAN HSG AUTH	P O BOX 1024 300 N 5TH, MANHATTAN, KS 66502	0	31,774
APPALACHIAN FOOTHILLS HSG AGENCY	1448 DIEDERICH BLVD, RUSSELL, KY 41169	0	42,433
BOONE CT FISCAL CT AHD	P O BOX 577, FLORENCE, KY 41005	0	33,065
CITY OF BOWLING GREEN	P O BOX 430, BOWLING GREEN, KY 42102	0	37,694
CITY OF PADUCAH	P O BOX 2267, PADUCAH, KY 42002	0	31,661
CUMBERLAND VALLEY REG'L HA	P O BOX 806, BARBOURVILLE, KY 40906	0	47,149
H A SOMERSET	P O BOX 449, SOMERSET, KY 42501	0	31,509
HA CYNTHIANA	P O BOX 351, CYNTHIANA, KY 41031	0	28,619
HA FLOYD COUNTY	P O BOX 687, PRESTONSBURG, KY 41653	0	26,128
HA NEWPORT	P O BOX 459, NEWPORT, KY 41072	0	27,900
HENDERSON HSG AUTH	901 DIXON ST, HENDERSON, KY 42420	0	29,900
HSG AUTH OF LOUISVILLE	420 S. 8TH ST., LOUISVILLE, KY 40203	0	44,995
KENTUCKY HSG CORPORATION	1231 LOUISVILLE RD, FRANKFORT, KY 40601	0	35,800
LEXINGTON-FAYETTE UR CO H/A	635 BALLARD ST, LEXINGTON-FAYETTE U, KY 40508.	0	39,937
PIKE COUNTY HSG AUTH	P O BOX 1468, PIKEVILLE, KY 41501	0	43,749
PINEVILLE/BELL CO UR & CD AGENCY	P O BOX 460, PINEVILLE, KY 40977	0	14,400
CALCASIEU PH. POLICE JURY	P O DRAWER 3287, LAKE CHARLES, LA 70602	0	20,786
LAKE CHARLES HSG AUTH	P O BOX 1206, LAKE CHARLES, LA 70602	0	13,978
ACTON HSG AUTH	P O BOX 681, ACTON, MA 01720	0	31,302
AMHERST HSG AUTH	33 KELLOGG AVE, AMHERST, MA 01002	0	24,394
ANDOVER HSG AUTH	100 MORTON ST, ANDOVER, MA 01810	0	45,000
ARLINGTON HSG AUTH	4 WINSLOW ST, ARLINGTON, MA 02174	0	28,111
AVON HSG AUTH	1 FELLOWSHIP CIR, AVON, MA 02322	0	24,700
BRAINTREE HSG AUTH	25 ROOSEVELT ST, BRAINTREE, MA 02184	0	13,520
BROCKTON HSG AUTH	45 GODDARD RD, PO BOX 340, BROCKTON, MA 02303.	0	43,800
BROOKLINE HSG AUTH	90 LONGWOOD AVE, BROOKLINE, MA 02146	0	40,992
CHELMSFORD HSG AUTH	10 WILSON ST, CHELMSFORD, MA 01824	0	20,280
COMM DEV PROG COMM OF MA.,E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	0	45,000
DANVERS HSG AUTH	14 STONE ST, DANVERS, MA 01923	0	22,343
DEDHAM HSG AUTH	163 DEDHAM BLVD, DEDHAM, MA 02026	0	41,960
DENNIS HSG AUTH	167 CENTER ST, DENNIS TOWN, MA 02660	0	33,307
EVERETT HSG AUTH	90 CHELSEA ST, EVERETT, MA 02149	0	45,000
FRAMINGHAM HSG AUTH	1 JOHN J. BRADY DR, FRAMINGHAM, MA 01702	0	45,000
GARDNER HSG AUTH	116 CHURCH ST, GARDNER, MA 01440	0	41,641
GLOUCESTER HSG AUTH	P O BOX 1599, GLOUCESTER, MA 01931	0	34,239
GREENFIELD HSG AUTH	ONE ELM TERRACE, GREENFIELD TOWN, MA 01301.	0	29,000
HANSON HSG AUTH	MEETINGHOUSE LANE, HANSON, MA 02341	0	23,684
HOLBROOK HSG AUTH	ONE HOLBROOK CT, HOLBROOK, MA 02243	0	28,507
LEOMINSTER HSG AUTH	100 MAIN ST, LEOMINSTER, MA 01453	0	40,425
LOWELL HSG AUTH	350 MOODY ST, LOWELL, MA 01854	0	45,000
LYNN HSG AUTH	174 SOUTH COMMON ST, LYNN, MA 01905	0	44,558
MANSFIELD HSG AUTH	22 BICENTENNIAL CT, MANSFIELD TOWN, MA 02048.	0	24,122
MEDFORD HSG AUTH	121 RIVERSIDE AVE, MEDFORD, MA 02155	0	37,990
MELROSE HSG AUTH	910 MAIN ST, MELROSE, MA 02176	0	26,281
MILFORD HSG AUTH	45 BIRMINGHAM CT, MILFORD, MA 01757	0	13,240
NORTH ANDOVER HSG AUTH	P O BOX 373, NORTH ANDOVER, MA 01845	0	24,700
NORTH ATTLEBOROUGH HSG AUTH	P O BOX 668, NORTH ATTLEBOROUGH, MA 02761	0	29,054
NORWOOD HSG AUTH	40 WILLIAM SHYNE CIR, NORWOOD, MA 02062	0	39,570
PEABODY HSG AUTH	75—81 CENTRAL ST, PEABODY, MA 01960	0	34,720
PLYMOUTH HSG AUTH	P O BOX 3537, PLYMOUTH, MA 02361	0	33,003
QUINCY HSG AUTH	80 CLAY ST, QUINCY, MA 02170	0	45,000
READING HSG AUTH	22 FRANK D TANNER DR, READING, MA 01867	0	26,496
SALEM HSG AUTH	27 CHARTER ST, SALEM, MA 01970	0	43,763
SAUGUS HSG AUTH	19 TALBOT ST, SAUGUS, MA 01906	0	33,590
SHREWSBURY HSG AUTH	36 NORTH QUINSIGAMOND AVE, SHREWSBURY, MA 01545.	0	24,050
SOMERVILLE HSG AUTH	30 MEMORIAL RD, SOMERVILLE, MA 02145	0	42,000
WAKEFIELD H A	26 CRESCENT ST, WAKEFIELD, MA 01880	0	24,163
WAYLAND HOUSING AUTH	106 MAIN ST, WAYLAND, MA 01778	0	18,360
WOBURN HSG AUTH	59 CAMPBELL ST, WOBURN, MA 01801	0	45,000
ANNE ARUNDEL COUNTY HSG AUTH	7885 GORDON CT, P O BOX 817, GLEN BURNIE, MD 21060.	0	32,063
CARROLL COUNTY HSG & COMM DEV	10 DISTILLERY DR, STE 101, WESTMINSTER, MD 21157.	0	32,355

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
CECIL COUNTY HSG AGENCY	COUNTY OFFICE BUILDING, ROOM 122, ELKTON, MD 21921.	0	41,419
HAGERSTOWN HSG AUTH	P O BOX 2859, HAGERSTOWN, MD 21741	0	28,092
HARFORD COUNTY HSG AGENCY	15 SOUTH MAIN ST, STE 106, BEL AIR, MD 21014	0	41,496
HSG AUTH OF THE CITY OF ROCKVILLE	14 MOORE DR, ROCKVILLE, MD 20850	0	45,000
ST MARY'S COUNTY COMMISSIONERS	P O BOX 653, GOVT CENTER, LEONARDTOWN, MD 20650.	0	45,000
WASHINGTON COUNTY HSG AUTH	33 WEST WASHINGTON ST, HAGERSTOWN, MD 21740.	0	22,853
AUGUSTA HSG AUTH	16 CONY ST, CITY CENTER PLAZA, AUGUSTA, ME 04330.	0	23,795
BANGOR HSG AUTH	161 DAVIS RD, BANGOR, ME 04401	0	34,948
CARIBOU HSG AUTH	25 HIGH ST, CARIBOU, ME 04736	0	35,086
MAINE STATE HSG AUTH	353 WATER ST, AUGUSTA, ME 04330	0	45,000
MOUNT DESERT HSG AUTH	15 EAGLE LAKE RD, BAR HARBOR, ME 04609	0	33,933
PORTLAND HSG AUTH	14 BAXTER BLVD, PORTLAND, ME 04101	0	45,000
WESTBROOK HSG AUTH	30 LIZA HARMON DR, WESTBROOK, ME 04092	0	45,000
CITY OF GRAND RAPIDS	1420 FULLER AVE SE, GRAND RAPIDS, MI 49507	0	45,000
CITY OF JACKSON	301 STEWARD AVE, JACKSON, MI 49201	0	23,567
CITY OF PLYMOUTH HSG COMM	1160 SHERIDAN, PLYMOUTH, MI 48170	0	40,674
CITY OF WYOMING	2450 36TH ST, WYOMING, MI 49509	0	35,571
COUNTY OF KENT	741 EAST BELTLINE AVE, GRAND RAPIDS, MI 49505.	0	40,961
TOWNSHIP OF REDFORD	12121 HEMINGWAY, REDFORD TWP, MI 48239	0	28,644
TRAVERSE CITY HC	150 PINE ST, TRAVERSE CITY, MI 49684	0	26,000
BRAINERD HRA	410 EAST RIVER RD, STE 2, BRAINERD, MN 56401.	0	40,536
DULUTH HRA	222 EAST 2ND ST, P O BOX 16900, DULUTH, MN 55816.	0	45,000
HRA OF COLUMBIA HEIGHTS	590 40TH AVE NORTHEAST, COLUMBIA HEIGHTS, MN 55421.	0	36,371
KANDIYOHI COUNTY HRA	HEARTLAND CAA, BOX 1359, WILLMAR, MN 56201	0	43,087
NW MN MULTI-COUNTY HRA	P O BOX 128, MENTOR, MN 56736	0	31,827
PLYMOUTH HRA	3400 PLYMOUTH BLVD, PLYMOUTH, MN 55441	0	14,133
RICE COUNTY HRA	208 FIRST AVE NORTHWEST, FARIBAULT, MN 55021.	0	32,365
SCOTT COUNTY HRA	16049 FRANKLIN TRAIL S.E., PRIOR LAKE, MN 55372.	0	15,479
SOUTH ST PAUL HRA	125 SOUTH THIRD AVE, SOUTH ST. PAUL, MN 55075.	0	38,913
SOUTHEAST MN MULTI-COUNTY HRA	134 EAST SECOND ST, WABASHA, MN 55981	0	29,525
ST LOUIS PARK HRA	5005 MINNETONKA BLVD., ST. LOUIS PARK, MN 55416.	0	20,819
VIRGINIA HRA	442 PINE MILL CT, P O BOX 1146, VIRGINIA, MN 55792.	0	45,000
WASHINGTON COUNTY HRA	321 BROADWAY AVE., ST. PAUL PARK, MN 55071	0	23,344
WINONA HRA	1756 KRAEMER DR, STE #100, WINONA, MN 55987.	0	11,825
FRANKLIN COUNTY PUBLIC HSG AGENCY	P O BOX 920, HILLSBORO, MO 63050	0	29,175
INDEPENDENCE HSG AUTH	2600 HUB DR NORTH, INDEPENDENCE, MO 64055	0	39,000
JASPER COUNTY PUBLIC HSG AUTH	P O BOX 207, JOPLIN, MO 64802	0	22,837
LIBERTY HSG AUTH	P O BOX 159, 101 E. KANSAS, LIBERTY, MO 64068.	0	32,125
LINCOLN COUNTY PUB HSG AGENCY	16 NORTH CT, BOWLING GREEN, MO 63334	0	24,795
MISSOURI HSG DEV'T COMMISSION	3435 BROADWAY, KANSAS CITY, MO 64111	0	35,306
PHA OF THE COUNTY OF RAY	302 NORTH CAMDEN, RICHMOND, MO 64085	0	10,095
PHELPS COUNTY PHA	101 W. 10TH ST, ROLLA, MO 65401	0	22,871
RIPLEY COUNTY PHA	3019 FAIR ST, P O BOX 1183, POPLAR BLUFF, MO 63901.	0	25,158
SPRINGFIELD HSG AUTH	421 WEST MADISON, SPRINGFIELD, MO 65806	0	23,585
ST CHARLES HSG AUTH	1014 OLIVE ST, ST CHARLES, MO 63301	0	29,892
ST. CLAIR CO. HSG AUTH	P O BOX 125, APPLETON CITY, MO 64724	0	28,512
ST. FRANCOIS COUNTY PH AGENCY	P O BOX N, FLAT RIVER, MO 63601	0	24,381
HA MISSISSIPPI REG'L NO 5	P O BOX 419, NEWTON, MS 39345	0	27,265
HA MISSISSIPPI REG'L NO 7	P O BOX 886, MC COMB, MS 39648	0	23,931
HA TENNESSEE VALLEY	P O BOX 1338, CORINTH, MS 38834	0	23,478
MISS REGIONAL H/A VIII	P O BOX 2347, GULFPORT, MS 39505	0	37,050
GREAT FALLS HSG AUTH	1500 SIXTH AVE. SOUTH, GREAT FALLS, MT 59405.	0	31,549
HELENA HSG AUTH	812 ABBEY ST, HELENA, MT 59601	0	44,658
HSG AUTH OF BILLINGS	2415 1ST AVE NORTH, BILLINGS, MT 59101	0	37,524

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
BRUNSWICK COUNTY GEN FUND	P O BOX 9, BOLIVIA, NC 28422	0	27,918
CHATHAM COUNTY HSG AUT	P O BOX 637, PITTSBORO, NC 27312	0	12,740
CITY OF CONCORD	P O BOX 308, CONCORD, NC 28026	0	13,428
ECONOMIC IMP COUNCIL	P O BOX 549, EDENTON, NC 27932	0	27,735
H A GRAHAM	P O BOX 88, GRAHAM, NC 27253	0	21,218
HA ASHEBORO	P O BOX 609, ASHEBORO, NC 27204	0	31,620
HA DURHAM	P O BOX 1726, DURHAM, NC 27702	0	44,761
HA GREENSBORO	P O BOX 21287, GREENSBORO, NC 27420	0	45,000
HA HIGH POINT	P O BOX 1779, HIGH POINT, NC 27261	0	29,695
HA MIDEAST REGIONAL	P O BOX 474, WASHINGTON, NC 27889	0	22,599
HA NORTHWESTERN REG'L	P O BOX 2510, BOONE, NC 28607	0	33,150
HA OF THE TOWN OF LAURINBURG	P O BOX 1437, LAURINBURG, NC 28352	0	38,774
HA ROWAN COUNTY	310 LONG MEADOW DR, SALISBURY, NC 28147	0	31,264
HA SANFORD	P O BOX 636, SANFORD, NC 27331	0	31,558
HA STATESVILLE	110 W. ALLISON ST., STATESVILLE, NC 28677	0	40,213
HSG AUTH OF THE CITY OF WILMINGTON	P O BOX 899, WILMINGTON, NC 28402	0	34,552
MOUNTAIN PROJECTS, INC	RT. 1 BOX 732, WAYNESVILLE, NC 28786	0	28,203
SANDHILLS COMM ACTION PROG INC	P O BOX 937, CARTHAGE, NC 28327	0	45,000
TOWN OF EAST SPENCER	P O BOX 367, EAST SPENCER, NC 28039	0	35,926
WESTERN CAROLINA COMM ACTION	P O BOX 685, HENDERSONVILLE, NC 28793	0	28,416
FARGO HSG AUTH	PO BOX 430, 325 BROADWAY, FARGO, ND 58107	0	27,107
MINOT HSG AUTH	310 2ND ST SE, MINOT, ND 58701	0	20,085
BELLEVUE HSG AUTH	8214 ARMSTRONG CIR, OMAHA, NE 68147	0	26,539
CENTRAL NEBRASKA JOINT HSG AUTH	P O BOX 509, LOUP CITY, NE 68853	0	24,681
GOLDENROD JOINT HSG AUTH	P O BOX 280, WISNER, NE 68791	0	27,501
KEARNEY HSG AUTH	2715 AVE I, KEARNEY, NE 68847	0	28,127
NORFOLK HSG AUTH	111 S. FIRST ST, NORFOLK, NE 68701	0	31,827
DOVER HSG AUTH	62 WHITTIER ST, DOVER, NH 03820	0	12,133
KEENE HSG AUTH	105 CASTLE ST, KEENE, NH 03431	0	35,296
LACONIA HSG & REDEV'T AUTH	25 UNION AVE, LACONIA, NH 03246	0	36,400
MANCHESTER HSG AUTH	198 HANOVER ST, MANCHESTER, NH 03104	0	44,794
NASHUA HSG AUTH	101 MAJOR DR, NASHUA, NH 03060	0	33,538
ASBURY PARK HA	1004 COMSTOCK ST, ASBURY PARK, NJ 07712	0	44,000
ATLANTIC CITY HA	227 NO VERMONT AVE, ATLANTIC CITY, NJ 08404	0	35,000
BERKELEY TOWNSHIP HSG AUTH	44 FREDERICK DR., BAYVILLE, NJ 08721	0	38,235
BOONTON HA	125 CHESTNUT ST, BOONTON, NJ 07005	0	44,558
BRICK HA	165 CHAMBERS BRIDGE RD, BRICK, NJ 08723	0	44,758
DOVER HA	215 EAST BLACKWELL ST, DOVER, NJ 07801	0	44,082
EAST ORANGE HA	160 HALSTED ST, EAST ORANGE, NJ 07018	0	45,000
FORT LEE HA	1403 TERESA DR, FORT LEE, NJ 07024	0	44,133
GLASSBORO HA	737 LINCOLN BLVD P O BOX 563, GLASSBORO, NJ 08028.	0	29,937
HUNTERDON COUNTY HA	8 GAUNTT PL. RT. 31, FLEMINGTON, NJ 08822	0	44,982
LAKEWOOD HA	P O BOX 1543, LAKEWOOD, NJ 08701	0	45,000
LAKEWOOD TOWNSHIP	231 THIRD ST, LAKEWOOD, NJ 08701	0	45,000
MILLVILLE HA	P O BOX 803 122 E MAIN ST, MILLVILLE, NJ 08332	0	38,372
MONMOUTH COUNTY HA	PO BOX 3000, FREEHOLD, NJ 07728	0	45,000
NEPTUNE HA	BOX 726, NEPTUNE, NJ 07753	0	36,071
PASSAIC COUNTY HA	317 PENNSYLVANIA AVE, PATERSON, NJ 07503	0	35,488
PATERSON HA	60 VAN HOUTEN ST, PATERSON, NJ 07509	0	33,000
PATERSON HA	CITY HALL 155 MARKET ST, PATERSON, NJ 07505.	0	28,000
PERTH AMBOY HA	881 AMBOY AVE PO BOX 390, PERTH AMBOY, NJ 08862.	0	45,000
PLAINFIELD HA	510 EAST FRONT ST, PLAINFIELD, NJ 07060	0	42,967
STATE OF NJ DEPT. OF COMM. AFFAIRS	101 S. BROAD ST CN800, TRENTON, NJ 08625	0	44,072
TOWNSHIP OF MONTCLAIR HA	205 CLAREMONT AVE, MONTCLAIR, NJ 07042	0	44,982
VINELAND HA	191 CHESTNUT AVE, VINELAND, NJ 08360	0	41,000
WARREN COUNTY HA	WAYNE DUMONT JR ADMIN BLDG, BELVIDERE, NJ 07823.	0	45,000
WEEHAWKEN HA	525 GREGORY AVE, WEEHAWKEN, NJ 07087	0	44,471
ALAMOGORDO (CITY OF) HA	P O BOX 336, ALAMOGORDO, NM 83311	0	45,000
BERNALILLO COUNTY HSG DEPT	620 LOMAS BLVD NW, ALBUQUERQUE, NM 87102	0	39,636
CLOVIS HSG AUTH	P O BOX 1240, CLOVIS, NM 88101	0	29,599
COUNTY OF DONA ANA	2407 W. PICACHO, STE A–2, LAS CRUCES, NM 88005.	0	34,953
LAS CRUCES HSG AUTH	926 S SAN PEDRO, LAS CRUCES, NM 88001	0	28,722
REGION IV HSG AUTH	418 N. MAIN ST, CLOVIS, NM 88101	0	31,827
SANTA FE CIVIC HSG AUTH	PO BOX 4039, SANTA FE, NM 87502	0	38,000
SANTA FE COUNTY HSG AUTH	52 CAMINO DE JACOBO, SANTA FE, NM 87505	0	37,662
TAOS COUNTY HSG AUTH BOX	4239, TAOS, NM 87571	0	34,225

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
TRUTH OR CONSEQUENCES HSG AUTH	108 SOUTH CEDAR ST, TRUTH OR CONSEQUENC, NM 87901.	0	45,000
NORTH LAS VEGAS HSG AUTH	1632 YALE ST, NORTH LAS VEGAS, NV 89030	0	44,844
ALBANY HSG AUTH	4 LINCOLN SQUARE, ALBANY, NY 12202	0	27,095
CITY OF FULTON	MUNICIPAL BUILDING, FULTON, NY 13069	0	27,849
CITY OF UTICA	ONE KENNEDY PLAZA, UTICA, NY 13502	0	24,142
HA OF AMSTERDAM	52 DIVISION ST, AMSTERDAM, NY 12010	0	23,581
HA OF COHOES	DR JAY MCDONALD TOWERS REMSEN, COHES, NY 12047.	0	36,282
HA OF GLOVERSVILLE	181 WEST ST, GLOVERSVILLE, NY 12078	0	26,596
HA OF HUNTINGTON	5 LOWNDES AVE, HUNTINGTION STA, NY 11746	0	19,033
HA OF ITHACA	800 S PLAIN ST, ITHACA, NY 14850	0	45,000
HA OF MONTICELLO	76 EVERGREEN DR, MONTICELLO, NY 12701	0	44,982
HA OF NEW ROCHELLE	50 SICKLES AVE, NEW ROCHELLE, NY 10801	0	34,861
HA OF PLATTSBURGH	19 OAK ST, PLATTSBURGH, NY 12901	0	30,624
HA OF SCHENECTADY	375 BROADWAY, SCHENECTADY, NY 12305	0	30,694
HSG AUTH OF NORTH SYRACUSE	201 SOUTH MAIN ST, STE 205A, NORTH SYRACUSE, NY 13212.	0	30,030
HSG AUTH OF SPRING VALLEY	200 NORTH MAIN ST, SPRING VALLEY, NY 10977	0	39,140
TOWN OF BABYLON	281 PHELPS LANE, ROOM 9, NORTH BABYLON, NY 11703.	0	44,590
TOWN OF COLONIE	MEMORIAL TOWN HALL, NEWTONVILLE, COLONIE, NY 12128.	0	43,158
TOWN OF GUILDERLAND	242 UNION ST, SCHENECTADY, NY 12305	0	35,192
TOWN OF SMITHTOWN	99 WEST MAIN ST, P O BOX 5, SMITHTOWN, NY 11787.	0	43,295
TOWN OF UNION COMMUNITY DEV'T	3111 EAST MAIN ST, ENDWELL, NY 13760	0	25,308
TOWN OF YORKTOWN	P O BOX 703, 363 UNDERHILL AVE, YORKTOWN HEIGHTS, NY 10598.	0	35,986
VILLAGE OF KIRYAS JOEL HSG AUTH	500 FOREST RD, STE 202, MONROE, NY 10950	0	45,000
ALLEN MHA 160001003 A/C#	600 SOUTH MAIN ST., 041201198, LIMA, OH 45804	0	28,753
BUTLER MET.HA	4110 HAMILTON-MIDDTOWN RD, P O BOX 357, HAMILTON, OH 45012.	0	13,650
CAMBRIDGE METROPOLITAN HSG AUTH	P O BOX 1388, CAMBRIDGE, OH 43725	0	26,132
CHILLICOTHE MET HA	178 WEST FOURTH ST, CHILLICOTHE, OH 45601	0	14,742
CITY OF MARIETTA	301 PUTNAM ST, MARIETTA, OH 45750	0	34,424
CITY OF MIDDLETOWN	128 CITY CENTRE PLAZA, MIDDLETOWN, OH 45042.	0	21,515
CLINTON METROPOLITAN HSG AUTH	478 THORNE AVE, WILMINGTON, OH 45177	0	25,308
DELAWARE METRO HSG AUTH	27 1/2 N. UNION ST, PO BOX 1293, DELAWARE, OH 43015.	0	38,192
FAYETTE METRO HSG AUTH	101 E. EAST ST, WASHINGTON C.H., OH 43160	0	26,018
JEFFERSON MHA	815 NORTH SIXTH AVE, STEUBENVILLE, OH 43952.	0	42,815
LOGAN COUNTY MHA	116 NORTH EVERETT ST, BELLEFONTAINE, OH 43311.	0	34,203
MEDINA MHA	850 WALTER RD, MEDINA, OH 44256	0	30,184
MORROW METRO. HSG AUT	298 EAST CENTER ST, MORROW, OH 43302	0	30,554
PICKAWAY METROPOLITAN HSG AUTH	176 RUSTIC DR, CIRVILLE, OH 43113	0	23,390
PORTAGE MHA	2832 STATE ROUTE 59, RAVENNA, OH 44266	0	37,110
SPRINGFIELD MET.HA	437 EAST JOHN ST, SPRINGFIELD, OH 45505	0	45,000
TUSCARAWAS MHA	134 2ND ST SW, NEW PHILADELPHIA, OH 44663	0	44,934
WARREN MET.HA	990 EAST RIDGE DR, PO BOX 308, LEBANON, OH 45036.	0	27,754
YOUNGSTOWN MHA	131 WEST BOARDMAN ST, YOUNGSTOWN, OH 44503.	0	32,400
ZANESVILLE MET HA	407 PERSHING RD, ZANESVILLE, OH 43701	0	42,000
BROKEN BOW HSG AUTH	P O BOX 177, BROKEN BOW, OK 74728	0	17,284
HUGO HSG AUTH	P O BOX 727, HUGO, OK 74743	0	26,891
MUSKOGEE HSG AUTH	200 N 40TH, MUSKOGEE, OK 74401	0	34,320
NORMAN HSG AUTH	700 NORTH BERRY RD, NORMAN, OK 73069	0	35,627
OKLAHOMA HSG FINANCE AGENCY	P O BOX 26720, OKLAHOMA CITY, OK 73126	0	37,492
SHAWNEE HSG AUTH	P O BOX 3427, SHAWNEE, OK 74802	0	38,169
STILLWATER HSG AUTH	807 S. LOWRY, STILLWATER, OK 74074	0	31,827
CENTRAL ORE REG HA	2445 SW CANAL BLVD, REDMOND, OR 97756	0	30,698
CLACKAMAS COUNTY HA	13930 S. GAIN ST, OREGON CITY, OR 97045	0	41,767
H.A. OF LINCOLN COUNTY	1039 NW NYE ST, NEWPORT, OR 97365	0	28,129
H.A. OF MALHEUR CO.	959 FORTNER ST, ONTARIO, OR 97914	0	20,559
H.A. OF YAMHILL COUNTY	414 N EVANS, MCMINNVILLE, OR 97128	0	33,971
HSG AUTH OF DOUGLAS COUNTY	P O BOX 966, ROSEBURG, OR 97470	0	27,987
HSG AUTH OF JACKSON COUNTY	2231 TABLE ROCK RD, MEDFORD, OR 97501	0	28,965

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
LINN-BENTON HSG AUTH	1250 SE QUEEN AVE, ALBANY, OR 97321	0	38,624
MARION COUNTY HSG AUTH	4660 PORTLAND RD. NE, SALEM, OR 97305	0	32,384
MID COLUMBIA HSG AGENCY	506 E 2ND, THE DALLES, OR 97058	0	28,652
NE OREGON H.A.	2602 MAY ST, LA GRANDE, OR 97850	0	28,099
NORTHWEST OREGON HSG ASSOC	1508 EXCHANGE, ASTORIA, OR 97103	0	26,629
ADAMS COUNTY HSG AUTH	139 CARLISLE ST, GETTYSBURG, PA 17325	0	36,389
ALTOONA HSG AUTH	2700 PLEASANT VALLEY BLVD, ALTOONA, PA 16601.	0	45,000
ARMSTRONG COUNTY HSG AUTH	350 S. JEFFERSON ST, KITTANNING, PA 16201	0	18,596
CENTRE COUNTY HSG AUTH	602 E. HOWARD ST, BELLEFONTE, PA 16823	0	10,400
CUMBERLAND COUNTY HSG AUTH	114 NORTH HANOVER ST, CARLISLE, PA 17013	0	14,322
DAUPHIN COUNTY HSG AUTH	501 MOHN ST, P O BOX 7598, STEELTON, PA 17113.	0	37,727
HARRISBURG HSG AUTH	351 CHESTNUT ST, P O BOX 3461, HARRISBURG, PA 17105.	0	40,686
HSG AUTH OF THE CO OF CHESTER	222 NORTH CHURCH ST, WEST CHESTER, PA 19380.	0	42,196
HSG AUTH OF UNION COUNTY	1610 INDUSTRIAL BLVD., STE 400, LEWISBURG, PA 17837.	0	40,000
INDIANA COUNTY HSG AUTH	104 PHILADELPHIA ST, INDIANA, PA 15701	0	16,374
LANCASTER HSG AUTH	325 CHURCH ST, LANCASTER, PA 17602	0	42,578
MONTOUR COUNTY HSG AUTH	ONE BEAVER PL, DANVILLE, PA 17821	0	45,000
NORTHUMBERLAND COUNTY HSG AUTH	50 MAHONING ST, MILTON, PA 17847	0	27,633
SUNBURY HSG AUTH	705 MARKET, ST P O BOX 458, SUNBURY, PA 17801.	0	27,633
WILKES BARRE HSG AUTH	50 LINCOLN PLAZA, S. WILKES-BARRE BLVD., WILKES BARRE, PA 18702.	0	43,410
WILLIAMSPORT HSG AUTH	505 CENTER ST, WILLIAMSPORT, PA 17701	0	33,828
YORK CITY HSG AUTH	31 S. BROAD ST, P O BOX 1, YORK, PA 17405	0	37,317
MUNICIPALITY OF ADJUNTAS	PO BOX 1009, ADJUNTAS, PR 00601	0	17,700
MUNICIPALITY OF CAROLINA	P O BOX 8, CAROLINA, PR 00985	0	23,311
MUNICIPALITY OF ISABELA	P O BOX 507, ISABELA, PR 00662	0	12,962
MUNICIPALITY OF PONCE	P O BOX 1709, PONCE, PR 00733	0	22,751
MUNICIPALITY OF YABUCOA	P O BOX 97, YABUCOA, PR 00767	0	45,000
CENTRAL FALLS H A	30 WASHINGTON ST, CENTRAL FALLS, RI 02863	0	29,054
CUMBERLAND HSG AUTH	ONE MENDON RD, CUMBERLAND, RI 02864	0	39,900
EAST GREENWICH H A	146 FIRST AVE, EAST GREENWICH, RI 02818	0	27,300
EAST PROVIDENCE H A	99 GOLDSMITH AVE, EAST PROVIDENCE, RI 02914.	0	29,611
NARRAGANSETT HSG AUTH	P.O. BOX 388, 25 FIFTH AVE, NARRAGANSETT, RI 02882.	0	36,602
NORTH PROVIDENCE HSG AUTH	945 CHARLES ST, NORTH PROVIDENCE, RI 02904	0	34,479
PAWTUCKET H A	214 ROOSEVELT AVE, PO BOX 1303, PAWTUCKET, RI 02862.	0	36,115
WOONSOCKET H A	679 SOCIAL ST, WOONSOCKET, RI 02895	0	10,000
MUNICIPALITY OF AGUAS BUENAS	BOX 128, AGUAS BUENAS MUNICI, RQ 00607	0	17,486
MUNICIPALITY OF BAYAMON	P O BOX 2988, BAYAMON MUNICIPIO, RQ 00620	0	17,330
CHARLESTON COUNTY HSG REDEV AUTH	P O BOX 6188, CHARLESTON, SC 29405	0	29,601
H/A OF CHARLESTON	20 FRANKLIN ST, CHARLESTON, SC 29401	0	39,900
HA ANDERSON	1335 EAST RIVER ST, ANDERSON, SC 29624	0	30,882
HA BEAUFORT	P O BOX 1104, BEAUFORT, SC 29901	0	20,592
HA CONWAY	2303 LEONARD AVE, CONWAY, SC 29527	0	24,873
HA FLORENCE	P O DRAWER 969, FLORENCE, SC 29503	0	27,758
HA GREENWOOD	P O BOX 973, GREENWOOD, SC 29648	0	31,827
HA NORTH CHARLESTON	P O BOX 70987, NORTH CHARLESTON, SC 29415	0	45,000
HSG AUTH OF MYRTLE BEACH	P O BOX 2468, MYRTLE BEACH, SC 29578	0	38,823
S C STATE HSG FINANCE & DEV	919 BLUFF RD, COLUMBIA, SC 29201	0	39,991
BROOKINGS HSG & REDEV COMM	1310 MAIN AVE. SOUTH, BROOKINGS, SD 57006	0	20,242
MOBRIDGE HSG & REDEV COMM	111 SECOND ST E, MOBRIDGE, SD 57601	0	31,097
PENNINGTON COUNTY HSG & REDEV COMM	1805 WEST FULTON ST, RAPID CITY, SD 57702	0	8,044
EAST TN HUMAN RESOURCE AGENCY	408 N CEDAR BLUFF RD, STE 400, KNOXVILLE, TN 37923.	0	29,440
HA CROSSVILLE	202 IRWIN AVE, CROSSVILLE, TN 38555	0	34,821
HA JACKSON	P O BOX 3188, JACKSON, TN 38303	0	37,800
HA KINGSPORT	P O BOX 44, KINGSPORT, TN 37662	0	43,183
HA OAK RIDGE	10 VAN HICKS LANE, OAK RIDGE, TN 37830	0	29,500
SE TN HUMAN RESOURCE AGENCY	P O BOX 805, DUNLAP, TN 37327	0	37,551
BAYTOWN HSG AUTH	805 NAZRO ST, BAYTOWN, TX 77520	0	35,404
BRAZOS VALLEY DEV'T COUNCIL	P O DRAWER 4128, BRYAN, TX 77805	0	35,000
BROWNSVILLE HSG AUTH	P O BOX 4420, BROWNSVILLE, TX 78523	0	21,674
CAMERON COUNTY HSG AUTH	P O BOX 5806, BROWNSVILLE, TX 78520	0	36,378

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
CORPUS CHRISTI HSG AUTH	P O BOX 7019, CORPUS CHRISTI, TX 78467	0	28,686
CORSICANA HSG AUTH	P O BOX 1090, 1360 NORTHWEST AVE., CORSICANA, TX 75151.	0	40,397
EDINBURG HSG AUTH	P O BOX 295, EDINBURG, TX 78540	0	33,948
GALVESTON HSG AUTH	920 53RD ST, GALVESTON, TX 77550	0	33,250
GARLAND HSG AUTH	P O BOX 469002, 701 CLARK ST., GARLAND, TX 75046.	0	35,086
GRAND PRAIRIE HSNG & COMM DEV.	201 NW. 2ND. ST, STE 150, GRAND PRAIRIE, TX 75053.	0	39,588
HARLINGEN HSG AUTH	P O BOX 1669, HARLINGEN, TX 78551	0	31,312
HARRIS COUNTY HSG & COMM DEV.	3100 TIMMONS LANE STE 200, HOUSTON, TX 77027.	0	39,432
HIDALGO COUNTY HSG AUTH	1800 N. TEXAS BLVD., WESLACO, TX 78596	0	35,715
HSG AUTH OF ANTHONY	P.O. DRAWER 1710, 1007 FRANKLIN, ANTHONY, TX 79821.	0	24,285
HSG AUTH OF BEAUMONT	P O BOX 1312, 4925 CONCORD RD., BEAUMONT, TX 77704.	0	32,120
HSG AUTH OF PLANO	1111 AVE H, BLDG. A, PLANO, TX 75074	0	31,298
HSG AUTH OF SAN ANGELO	P O BOX 1751, 115 W. FIRST ST., SAN ANGELO, TX 76902.	0	29,923
KINGSVILLE HSG AUTH	1000 W CORRAL, KINGSVILLE, TX 78363	0	44,214
LONGVIEW HSG AUTH	P O BOX 1952, 119 W. TYLER, STE 286, LONGVIEW, TX 75606.	0	36,164
MESQUITE HSG AUTH	P O BOX 850137, 720 N. EBRITE, MESQUITE, TX 75185.	0	21,704
MIDLAND COUNTY HSG AUTH	600 N. BAIRD, STE B, MIDLAND, TX 79701	0	34,810
MONTGOMERY COUNTY HA	515 B NORTH MAIN, CONROE, TX 77301	0	27,185
PHARR HSG AUTH	211 W AUDREY, PHARR, TX 78577	0	39,995
TARRANT COUNTY HSG ASSIST PROG	1200 CIR DR., #100, FORT WORTH, TX 76119	0	40,475
TEXOMA COUNCIL OF GOVERNMENTS	3201 TEXOMA PKWY, STE 240, SHERMAN, TX 75090.	0	32,039
TRAVIS COUNTY HSG AUTH	P O BOX 1748, AUSTIN, TX 78767	0	33,418
CEDAR CITY HSG AUTH	2390 W. HWY 56, STE 7, CEDAR CITY, UT 84720	0	39,169
DAVIS COUNTY HSG AUTH	P O BOX 328, FARMINGTON, UT 84025	0	35,002
HSG AUTH OF SALT LAKE CITY	1776 SW TEMPLE, SALT LAKE CITY, UT 84115	0	23,376
HSG AUTH OF THE CITY OF PROVO	650 WEST 100 NORTH, PROVO, UT 84601	0	37,422
HSG AUTH OF THE COUNTY OF SALT LAKE	3595 S. MAIN ST, SALT LAKE CITY, UT 84115	0	38,730
HSG AUTH OF UTAH COUNTY	240 EAST CENTER, PROVO, UT 84606	0	36,299
WEST VALLEY CITY HSG AUTH	3600 CONSTITUTION BLVD, WEST VALLEY CITY, UT 84119.	0	30,685
CHESAPEAKE REDEV & H/A	P O BOX 1304, CHESAPEAKE, VA 23320	0	36,141
CITY OF VIRGINIA BEACH	MUNICIPAL CENTER, VIRGINIA BEACH, VA 23456	0	32,156
COUNTY OF ALBEMARLE/DEPT.OF FINANCE	401 MCINTIRE RD, CHARLOTTESVILLE, VA 22902	0	40,078
CUMBERLAND PLATEAU REGIONAL H/A	P O BOX 1328, MEMORIAL DR, LEBANON, VA 24266.	0	32,215
HAMPTON REDEV'T & HSG AUTH	P O BOX 280, HAMPTON, VA 23669	0	32,588
LEE COUNTY HSG AUTH	P O BOX 665, JONESVILLE, VA 24263	0	30,779
PETERSBURG REDEV'T & H/A	128 S. SYCAMORE ST, PETERSBURG, VA 23804	0	32,817
PORTSMOUTH REDEV'T & H/A	339 HIGH ST P O BOX 1098, PORTSMOUTH, VA 23705.	0	35,546
SUFFOLK REDEV & H/A	P O BOX 3079, SUFFOLK, VA 23434	0	33,240
VIRGINIA HSG DEV'T AUTH	601 S. BELVIDERE ST, RICHMOND, VA 23220	0	45,000
BARRE HSG AUTH	4 HUMBERT ST, BARRE, VT 05641	0	23,390
BURLINGTON HSG AUTH	230 ST PAUL ST, BURLINGTON, VT 05401	0	34,005
VERMONT STATE HSG AUTH	ONE PROSPECT ST, MONTPELIER, VT 05602	0	41,523
BELLINGHAM HSG AUTH	208 UNITY ST LOWER LEVEL, BELLINGHAM, WA 98225.	0	35,638
HA CITY OF KENNEWICK	P O BOX 6737, KENNEWICK, WA 99336	0	44,558
HA CITY OF SPOKANE	W. 55TH MISSION, STE 104, SPOKANE, WA 99201	0	45,000
HA CITY OF VANCOUVER	500 OMAHA WAY, VANCOUVER, WA 98661	0	38,510
HA COUNTY OF CLALLAM	2603 SOUTH FRANCIS, PORT ANGELES, WA 98362.	0	39,780
HA OF GRANT COUNTY	1139 LARSON BLVD, MOSES LAKE, WA 98837	0	40,034
HSG AUTH CITY OF RICHLAND	650 GEORGE WASHINGTON WAY, RICHLAND, WA 99352.	0	41,321
HSG AUTH OF JEFFERSON COUNTY	P O BOX 1540, PORT TOWNSEND, WA 98368	0	27,144
HSG AUTH OF LONGVIEW	1207 COMMERCE AVE, LONGVIEW, WA 98632	0	28,200
KITSAP COUNTY CONSOLIDATED H. A.	9265 BAYSHORE DR NW, SILVERDALE, WA 98383	0	42,592
THURSTON COUNTY	505 WEST FOURTH AVE, OLYMPIA, WA 98501	0	45,000
WENATCHEE HSG AUTH	1555 SOUTH METHOW, WENATCHEE, WA 98801	0	33,134
DUNN COUNTY HSG AUTH	1421 STOUT RD, STE 100, MENOMONIE, WI 54751	0	32,914

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
EAU CLAIRE COUNTY HA	721 OXFORD AVE., ROOM 1590, EAU CLAIRE, WI 54703.	0	33,281
HSG AUTH OF THE CITY OF APPLETON	525 NORTH ONEIDA ST, APPLETON, WI 54911	0	32,117
HSG AUTHCITY OF SUPERIOR	1219 N.8TH ST, SUPERIOR, WI 54880	0	36,400
KENOSHA HSG AUTH	625 52ND ST, KENOSHA, WI 53140	0	38,619
MILWAUKEE CO HA	COURTHOUSE ANNEX RM 310, 907 N 10TH ST, MILWAUKEE, WI 53233.	0	43,946
RACINE COUNTY HA	837 MAIN ST, RACINE, WI 53403	0	37,893
WALWORTH COUNTY HSG AUTH	COURTHOUSE ANNEX, RM 204, W3929 CO. HWY NN, ELKHORN, WI 53121.	0	32,411
WAUKESHA COUNTY HA	120 CORRINA BLVD, WAUKESHA, WI 53186	0	40,134
WAUKESHA HSG AUTH	120 CORRINA BLVD, WAUKESHA, WI 53186	0	45,000
BENWOOD HSG AUTH	13TH AND HIGH STS, BENWOOD, WV 26031	0	31,223
HSG AUTH OF RALEIGH CO	P O BOX BD, BECKLEY, WV 25802	0	28,599
HUNTINGTON WV HSG AUTH	P.O. BOS 2183, HUNTINGTON, WV 25722	0	30,065
KANAWHA CO. HSG AUTH	P O BOX 3826, CHARLESTON, WV 25338	0	31,827
THE CITY OF FAIRMONT HNG AUTH	517 FAIRMONT AVE, FAIRMONT, WV 26554	0	22,000
WEIRTON HSG AUTH	525 COVE RD, WEIRTON, WV 26062	0	17,498
HSG AUTH OF THE CITY OF CASPER	1607 CY AVE, #301, CASPER, WY 82604	0	19,676
HSG AUTH OF THE CITY OF CHEYENNE	3304 SHERIDAN AVE, CHEYENNE, WY 82009	0	19,501
Totals for FSS Coordinators (Certificates)			$17,348,754
FSS Coordinators (Vouchers)			
HA UNIONTOWN	P O BOX 1160, UNIONTOWN, AL 36786	0	23,246
HA ALBANY	P O BOX 485, ALBANY, GA 31702	0	27,014
ATCHISON HSG AUTH	103 SOUTH 7TH ST MALL TOW, ATCHISON, KS 66002.	0	13,251
NEK-CAP, INC	P O BOX 380, HIAWATHA, KS 66434	0	30,616
WINN PARISH POLICE JURY	301 WEST MAIN ST., WINNFIELD, LA 71483	0	27,138
ATTLEBORO HSG AUTH	37 CARLON ST, ATTLEBORO, MA 02703	0	24,384
DEARBORN HEIGHTS HSG COMM	26155 RICHARDSON ST., DEARBORN HEIGHTS, MI 48127.	0	30,408
MISSOULA HSG AUTH	1319 E. BROADWAY, MISSOULA, MT 59802	0	29,731
HA COUNTY OF WAKE	P O BOX 399, ZEBULON, NC 27597	0	27,401
HA ROCKY MOUNT	P O BOX 4717, ROCKY MOUNT, NC 27803	0	30,242
BLAIR HSG AUTH	758 SOUTH 16TH ST, BLAIR, NE 68008	0	14,844
BOWLING GREEN HA	304 NORTH CHURCH ST, BOWLING GREEN, OH 43402.	0	29,811
HANCOCK MHA	129 W. SANDUSKY ST, FINDLAY, OH 45840	0	18,928
THE MEIGS MHA	39350 UNION AVE, POMEROY, OH 45769	0	11,280
VINTON METROPOLITAN H. A.	103 SOUTH SUGAR ST, PO BOX 487, MCARTHUR, OH 45651.	0	31,777
WAYNESBORO REDEV'T & H/A	1700 NEW HOPE RD, WAYNESBORO, VA 22980	0	29,071
HA OF ISLAND COUNTY	7 NORTHWEST 6TH ST, COUPEVILLE, WA 98239	0	42,000
Totals for FSS Coordinators (Vouchers)			$441,142
Litigation (Certificates)			
COMM DEV PROG COMM OF MA., E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	50	$1,089,644
ALLEGHENY COUNTY HSG AUTH	341 FOURTH AVE FIDELITY BL, PITTSBURGH, PA 15222.	459	5,771,282
Totals for Litigation (Certificates)		509	$6,860,926
Litigation (Vouchers)			
HSG AUTH OF DALLAS	3939 N. HAMPTON RD., DALLAS, TX 75212	320	$5,363,432
HSG AUTH OF PORT ARTHUR	P O BOX 2295, 920 DEQUEEN BLVD., PORT ARTHUR, TX 77643.	200	1,704,816
Totals for Litigation (Vouchers)		520	$7,068,248
Mainstream Program (Certificates)			
HA JEFFERSON COUNTY	3700 INDUSTRIAL PKWY, BIRMINGHAM, AL 35217	18	$499,296
CITY OF GARDEN GROVE	11400 STANFORD AVE, P O BOX 3070, GARDEN GROVE, CA 92842.	50	337,008
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., LOS ANGELES, CA 90057	100	629,496

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
CITY OF OCEANSIDE	300 N. COAST HWY, NEVADA ST ANNEX, OCEANSIDE, CA 92054.	50	240,809
CITY OF REDDING HSG AUTH	P O BOX 496071, REDDING, CA 96049	15	52,584
COUNTY OF LOS ANGELES HSG AUTH	2 CORAL CIR, MONTEREY PARK, CA 91754	100	839,016
COUNTY OF SAN BERNARDINO HSG AUTH	1053 NORTH D ST, SAN BERNARDINO, CA 92410	50	1,723,375
OAKLAND HSG AUTH	1619 HARRISON ST, OAKLAND, CA 94612	100	3,964,580
COLORADO DEPT OF HUMAN SERVICES	4131 S. JULIAN WAY, DENVER, CO 80236	100	474,791
COLORADO DIVISION OF HSG	1313 SHERMAN ST R00M 323, DENVER, CO 80203	150	619,746
FORT COLLINS HSG AUTH	1715 W. MOUNTAIN AVE., FORT COLLINS, CO 80521.	50	263,244
JEFFERSON COUNTY HSG AUTH	6025 WEST 38TH AVE, WHEATRIDGE, CO 80033	50	246,066
CONN DEPT OF SOCIAL SERVICES	25 SIGOURNEY ST, 9TH FL, HARTFORD, CT 06105.	100	571,563
WINDSOR H A	40 HENRY ST, WINDSOR TOWN, CT 06095	20	74,624
D.C HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002.	100	671,771
CITY OF PENSACOLA	180 GOVERNMENTAL CENTER, PENSACOLA, FL 32501.	50	217,519
HA PUNTA GORDA	420 MYRTLE ST, P O BOX 51–1146, PUNTA GORDA, FL 33951.	12	78,937
HA WEST PALM BEACH GENERAL FUND	3801 GEORGIA AVE., WEST PALM BEACH, FL 33405.	100	576,253
HILLSBOROUGH COUNTY-BOCC	P O BOX 1110, TAMPA, FL 33601	50	221,364
HA ATLANTA GA	739 WEST PEACHTREE ST NE, ATLANTA, GA 30365.	100	638,172
HSG AUTH OF THE CITY OF ROME, GA	800 NORTH FIFTH AVE., ROME, GA 30162	100	293,819
GUAM HSG AND URBAN RENEWAL AUTH	117 BIEN VENIDA AVE, SINAJANA, GU 96926	100	875,148
HAWAII HSG AND COMM DEV CORP	677 QUEEN ST, STE 3000, HONOLULU, HI 96813	100	812,016
LAKE COUNTY HA	33928 N ROUTE 45, GRAYSLAKE, IL 60030	100	585,528
HA CITY OF EVANSVILLE	P O BOX 3605, 500 CT ST, EVANSVILLE, IN 47735	36	96,372
INDIANA DEPT OF HUMAN SERVICES	251 N. ILLINOIS P.O. BOX 7083, INDIANAPOLIS, IN 46207.	200	703,272
JOHNSON COUNTY HSG AUTH	HUMAN SERVICES AND AGING, 9307 W. 74TH ST, MERRIAM, KS 66204.	12	41,479
GRAYSON-CARTER CO HSG AUTH	1448 DIEDERICH BLVD, RUSSELL, KY 41169	10	39,250
ACTON HSG AUTH	P O BOX 681, ACTON, MA 01720	15	100,431
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111	80	574,086
COMM DEV PROG COMM OF MA., E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	100	804,755
DEDHAM HSG AUTH	163 DEDHAM BLVD, DEDHAM, MA 02026	10	65,706
PLYMOUTH HSG AUTH	P O BOX 3537, PLYMOUTH, MA 02361	20	154,452
COUNTY COMMISSIONERS CHARLES CO.	STAR ROUTE 1, BOX 1144, PORT TOBACCO, MD 20677.	100	753,468
FREDERICK HSG AUTH	209 MADISON ST, FREDERICK, MD 21701	50	323,569
HSG AUTH OF BALTIMORE CITY	417 E FAYETTE ST, BALTIMORE, MD 21202	100	674,040
ST MARY'S COUNTY COMMISSIONERS	P O BOX 653, GOVT CENTER, LEONARDTOWN, MD 20650.	75	395,577
AUGUSTA HSG AUTH	16 CONY ST, CITY CENTER PLAZA, AUGUSTA, ME 04330.	100	402,540
MAINE STATE HSG AUTH	353 WATER ST, AUGUSTA, ME 04330	100	545,076
CITY OF ANN ARBOR COMM DEV'T	100 NORTH FIFTH AVE, ANN ARBOR, MI 48107	72	382,864
CITY OF GRAND RAPIDS	1420 FULLER AVE SE, GRAND RAPIDS, MI 49507	100	404,892
INGHAM COUNTY HSG COMM	3882 DODIE RD, OKEMOS, MI 48864	48	1,207,955
PLYMOUTH HRA	3400 PLYMOUTH BLVD, PLYMOUTH, MN 55441	15	62,337
FRANKLIN COUNTY PUB HSG AGENCY	P O BOX 920, HILLSBORO, MO 63050	25	104,036
RIPLEY COUNTY PHA	3019 FAIR ST, P O BOX 1183, POPLAR BLUFF, MO 63901.	20	55,915
COASTAL COMMUNITY ACTION, INC.	PO BOX 90, BEAUFORT, NC 28516	50	168,216
FRANKLIN VANCE WARREN OPP'TY INC	P O BOX 1453, HENDERSON, NC 27536	75	414,937
TOWN OF EAST SPENCER	P O BOX 367, EAST SPENCER, NC 28039	50	294,900
DOUGLAS COUNTY HSG AUTH	5404 NORTH 107TH PLAZA, OMAHA, NE 68134	50	1,146,030
BERGEN COUNTY HA	21 MAIN ST, ROOM 307W, HACKENSACK, NJ 07601.	60	432,343
CARTERET HA	96 ROOSEVELT AVE, CARTERET, NJ 07008	100	764,868
COUNTY OF MIDDLESEX	ADMINISTRATION BUILDING, NEW BRUNSWICK, NJ 08901.	50	316,236
ELIZABETH HA	688 MAPLE AVE, ELIZABETH, NJ 07202	50	343,614
HUNTERDON COUNTY HA	8 GAUNTT PL. RT. 31, FLEMINGTON, NJ 08822	50	1,813,420
JERSEY CITY HA	400 US HWY 1, JERSEY CITY, NJ 07306	100	4,724,560
MONMOUTH COUNTY HA	PO BOX 3000, FREEHOLD, NJ 07728	48	347,086
CITY OF LAS VEGAS HSG AUTH	P O BOX 1897, LAS VEGAS, NV 89125	50	307,452
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO RD, LAS VEGAS, NV 89122	51	314,601

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
CITY OF NEW YORK	100 GOLD ST ROOM 8Q3, NEW YORK, NY 10038 ..	100	879,600
CITY OF UTICA	SECTION 8 PROGRAM, ONE KENNEDY PLAZA, UTICA, NY 13502.	40	167,738
HA OF AMSTERDAM	52 DIVISION ST, AMSTERDAM, NY 12010	25	780,620
HA OF NORWICH	13 BROWN ST, NORWICH, NY 13815	15	51,848
HA OF SCHENECTADY	375 BROADWAY, SCHENECTADY, NY 12305	100	413,904
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	100	810,180
NEW YORK STATE HSG FIN. AGENCY	ONE FORDHAM PLAZA, BRONX, NY 10458	146	828,932
PORT JERVIS	20 FRONT ST, PORT JERVIS, NY 12771	15	100,317
TOWN OF COEYMANS	242 UNION ST, SCHENECTADY, NY 12305	10	52,350
VILLAGE OF KIRYAS JOEL HSG AUTH	500 FOREST RD STE 202, MONROE, NY 10950	25	306,996
DAYTON METROPOLITAN HA	400 WAYNE AVE, DAYTON, OH 45410	100	392,424
MEDINA MHA	850 WALTER RD, MEDINA, OH 44256	5	18,514
MORROW METRO. HSG AUT	298 EAST CENTER ST, MORROW, OH 43302	20	68,008
STARK METROPOLITAN HSG AUTH	400 EAST TUSCARAWAS ST, CANTON, OH 44702	100	290,226
ZANESVILLE MET HA	407 PERSHING RD, ZANESVILLE, OH 43701	10	27,224
H.A. OF YAMHILL COUNTY	414 N EVANS, MCMINNVILLE, OR 97128	100	542,281
HSG AUTH OF DOUGLAS COUNTY	PO BOX 966, ROSEBURG, OR 97470	25	81,612
BUTLER COUNTY HSG AUTH	111 SOUTH CLIFF ST, BUTLER, PA 16003	50	200,179
HSG AUTH OF UNION COUNTY	1610 INDUSTRIAL BLVD., STE 400, LEWISBURG, PA 17837.	25	85,695
LEHIGH COUNTY HSG AUTH	333 RIDGE ST, EMMAUS, PA 18049	50	242,232
PHILADELPHIA HSG AUTH	2012–18 CHESTNUT ST, PHILADELPHIA, PA 19103	100	738,876
WARREN COUNTY HSG AUTH	108 OAK ST, WARREN, PA 16365	25	94,788
COVENTRY HSG AUTH	14 MANCHESTER CIR, COVENTRY, RI 02816	50	265,913
CUMBERLAND HSG AUTH	ONE MENDON RD, CUMBERLAND, RI 02864	52	310,889
EAST PROVIDENCE H A	99 GOLDSMITH AVE, EAST PROVIDENCE, RI 02914.	10	62,579
NEWPORT HSG AUTH	ONE YORK AVE, NEWPORT, RI 02840	100	565,668
S C STATE HSG FINANCE & DEV	919 BLUFF RD, COLUMBIA, SC 29201	200	1,011,216
BUTTE COUNTY HSG & REDEV COMM	1220 CEDAR ST, STURGIS, SD 57785	12	42,190
HURON HSG AUTH	PO BOX 283, HURON, SD 57350	27	55,424
SIOUX FALLS HSG & REDEV COMM	804 S. MINNESOTA, SIOUX FALLS, SD 57104	50	212,532
YANKTON HSG & REDEV COMM	PO BOX 176, YANKTON, SD 57078	38	98,163
CORPUS CHRISTI HSG AUTH	PO BOX 7019, CORPUS CHRISTI, TX 78467	86	470,008
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	75	317,035
HSG AUTH OF LUBBOCK	PO BOX 2568, 1301 BROADWAY, LUBBOCK, TX 79408.	100	598,464
MONTGOMERY COUNTY HA	515 B NORTH MAIN, CONROE, TX 77301	75	439,337
WALKER COUNTY HSG AUTH	PO BOX 1411, HUNTSVILLE, TX 77342	35	153,146
CEDAR CITY HSG AUTH	2390 W. HWY 56, STE 7, CEDAR CITY, UT 84720 ..	15	55,157
HSG AUTH OF SALT LAKE CITY	1776 SW TEMPLE, SALT LAKE CITY, UT 84115	100	358,764
HSG AUTH OF UTAH COUNTY	240 EAST CENTER, PROVO, UT 84606	50	236,112
WEST VALLEY CITY HSG AUTH	3600 CONSTITUTION BLVD, WEST VALLEY CITY, UT 84119.	50	228,383
FAIRFAX CO RED AND HNG AUTH	3700 PENDER DR, FAIRFAX, VA 22030	100	672,755
HARRISONBURG REDEV & H/A	PO BOX 1071, HARRISONBURG, VA 22801	70	222,770
VIRGINIA HSG DEV'T AUTH	601 S. BELVIDERE ST, RICHMOND, VA 23220	66	487,952
WINOOSKI HSG AUTH	83 BARLOW ST, WINOOSKI, VT 05404	4	26,922
KITSAP COUNTY CONSOLIDATED H. A.	9265 BAYSHORE DR NW, SILVERDALE, WA 98383	25	116,025
KENOSHA HSG AUTH	625 52ND ST, KENOSHA, WI 53140	100	384,263
HSG AUTH OF MINGO COUNTY	PO BOX 2239, WILLIAMSON, WV 25661	100	362,844
HUNTINGTON WV HSG AUTH	PO BOX 2183, HUNTINGTON, WV 25722	30	89,619
Totals for Mainstream Program (Certificates)		6,725	49,805,734
Mainstream Program (Vouchers)			
HA WALKER COUNTY	PO BOX Q, DORA, AL 35062	34	118,985
JONESBORO URBAN RENEWAL HA	804 SOUTH GEE ST, JONESBORO, AR 72401	100	271,884
WHITE RIVER REG'L HSG AUTH	PO BOX 650, MELBOURNE, AR 72556	100	243,732
CITY OF ENCINITAS	505 S. VULCAN AVE, ENCINITAS, CA 92024	50	244,265
CITY OF GARDEN GROVE	11400 STANFORD AVE, P O BOX 3070, GARDEN GROVE, CA 92842.	50	333,936
CITY OF OCEANSIDE	300 N. COAST HWY, NEVADA ST ANNEX, OCEANSIDE, CA 92054.	50	245,898
CITY OF REDDING HSG AUTH	PO BOX 496071, REDDING, CA 96049	19	68,570
CITY OF SANTA ANA HSG AUTH	20 CIVIC CENTER PLAZA, P O BOX 1988 M–27, SANTA ANA, CA 92702.	100	788,616
COUNTY OF SAN BERNARDINO HSG AUTH	1053 NORTH D ST, SAN BERNARDINO, CA 92410	50	1,766,175
SANTA CLARA COUNTY HSG AUTH	505 WEST JULIAN ST, SAN JOSE, CA 95110	100	834,217

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
BOULDER COUNTY HSG AUTH	2040 14TH ST, PO BOX 471, BOULDER, CO 80306	35	195,220
COLORADO DEPT OF HUMAN SERVICES	4131 S. JULIAN WAY, DENVER, CO 80236	100	447,804
FORT COLLINS HSG AUTH	1715 W. MOUNTAIN AVE., FORT COLLINS, CO 80521.	50	263,244
GRAND JUNCTION HSG AUTH	805 MAIN ST, GRAND JUNCTION, CO 81501	75	280,524
JEFFERSON COUNTY HSG AUTH	6025 WEST 38TH AVE, WHEATRIDGE, CO 80033	50	231,366
WEST HAVEN HSG AUTH	15 GLADE ST, WEST HAVEN, CT 06516	100	551,508
HA PUNTA GORDA	420 MYRTLE ST, PO BOX 51–1146, PUNTA GORDA, FL 33951.	13	77,167
HILLSBOROUGH COUNTY–BOCC	PO BOX 1110, TAMPA, FL 33601	50	221,064
ORLANDO H/A	300 REEVES CT, ORLANDO, FL 32801	100	421,343
CITY AND COUNTY OF HONOLULU	715 SOUTH KING ST, HONOLULU, HI 96813	100	4,304,695
CITY OF CEDAR RAPIDS	CITY HALL, CEDAR RAPIDS, IA 52401	100	269,497
CITY OF IOWA CITY	410 E. WASHINGTON ST., IOWA CITY, IA 52240	100	399,252
DUBUQUE DEPT OF HUMAN RIGHTS	CITY HALL, DUBUQUE, IA 52001	40	69,691
NORTHWEST IOWA REG'L HSG AUTH	PO BOX 6207, SPENCER, IA 51301	35	83,838
WATERLOO HSG AUTH	CARNEGIE ANNEX, STE 102, 620 MULBERRY ST, WATERLOO, IA 50703.	50	134,797
ADA COUNTY HA	680 CUNNINGHAM PL, BOISE, ID 83702	100	458,101
BOISE CITY HA	680 CUNNINGHAM PL, BOISE, ID 83702	100	411,708
IDAHO HSG AND FINANCE ASSOC	565 W MYRTLE ST, POB 7899, BOISE, ID 83707	200	624,708
SW IDAHO COOPERATIVE HSG AUTH	1108 WEST FINCH DR, NAMPA, ID 83651	30	120,960
PEORIA HA	100 S. SHERIDAN RD, PEORIA, IL 61605	100	397,693
HA CITY OF EVANSVILLE	PO BOX 3605, 500 CT ST, EVANSVILLE, IN 47735	64	152,005
LOGANSPORT HSG AUTH	CITY BUILDING RM 207, LOGANSPORT, IN 46947	31	77,714
PLYMOUTH HSG AUTH	2124 WESTERN AVE, PLYMOUTH, IN 46563	100	276,757
JOHNSON COUNTY HSG AUTH	9307 W. 74TH ST, MERRIAM, KS 66204	13	45,587
LAWRENCE HSG AUTH	1600 HASKELL AVE, LAWRENCE, KS 66044	50	218,585
WICHITA HSG AUTH	455 N MAIN CITY HALL 11TH FLO, WICHITA, KS 67202.	15	38,201
CITY OF BOWLING GREEN	PO BOX 430, BOWLING GREEN, KY 42102	50	137,665
CITY OF LOUISVILLE	601 WEST JEFFERSON ST, LOUISVILLE, KY 40202	100	351,576
HA FLOYD COUNTY	PO BOX 687, PRESTONSBURG, KY 41653	25	376,865
HSG AUTH OF JEFFERSON COUNTY	801 VINE ST, LOUISVILLE, KY 40204	100	351,540
KENTUCKY HSG CORPORATION	1231 LOUISVILLE RD, FRANKFORT, KY 40601	200	673,620
PEARL RIVER (TOWN OF) HSG AUTH	PO BOX 1363, PEARL RIVER, LA 70452	25	105,948
TERREBONNE PARISH COUNCIL	PO BOX 6097, HOUMA, LA 70361	75	259,368
JEFFERSON PARISH HSG AUTH SEC. 8 PROG	1718 BETTY ST, MARRERO, LA 70072	75	1,465,965
LAWRENCE HSG AUTH	353 ELM ST, LAWRENCE, MA 01842	25	717,825
ATTLEBORO HSG AUTH	37 CARLON ST, ATTLEBORO, MA 02703	35	212,558
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111	20	136,292
COMM DEV PROG COMM OF MA., E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	100	2,886,585
DEDHAM HSG AUTH	163 DEDHAM BLVD, DEDHAM, MA 02026	90	591,354
METHUEN HSG AUTH	24 MYSTIC ST, METHUEN, MA 01844	25	67,015
PLYMOUTH HSG AUTH	P O BOX 3537, PLYMOUTH, MA 02361	20	154,452
SOMERVILLE HSG AUTH	30 MEMORIAL RD, SOMERVILLE, MA 02145	100	680,676
TAUNTON HSG AUTH	30 OLNEY ST, TAUNTON, MA 02780	100	649,500
WAKEFIELD H A	26 CRESCENT ST, WAKEFIELD, MA 01880	36	242,523
WESTFIELD HSG AUTH	ALICE BURKE WAY, P O BOX 99, WESTFIELD, MA 01086.	25	577,925
BALTIMORE CO. HSG OFFICE	ONE INVESTMENT PL, STE P3, TOWSON, MD 21204.	100	443,340
HOWARD CO. HSG COMM	6751 COLUMBIA GATEWAY DR, COLUMBIA, MD 21044.	25	104,100
HSG AUTH OF THE CITY OF ROCKVILLE	14 MOORE DR, ROCKVILLE, MD 20850	50	2,231,775
ST MARY'S COUNTY COMMISSIONERS	P O BOX 653, GOVT CENTER, LEONARDTOWN, MD 20650.	25	229,059
MAINE STATE HSG AUTH	353 WATER ST, AUGUSTA, ME 04330	100	549,636
CITY OF ANN ARBOR COMM DEV	100 NORTH FIFTH AVE, ANN ARBOR, MI 48107	28	200,767
CITY OF PLYMOUTH HSG COMM	1160 SHERIDAN, PLYMOUTH, MI 48170	100	600,372
CITY OF WYOMING	2450 36TH ST, WYOMING, MI 49509	100	525,852
DEARBORN HEIGHTS HSG COMM	26155 RICHARDSON ST., DEARBORN HEIGHTS, MI 48127.	100	627,876
GREENVILLE HSG COMM	320 EAST OAK ST, GREENVILLE, MI 48838	45	276,636
INGHAM COUNTY HSG COMM	3882 DODIE RD, OKEMOS, MI 48864	52	1,385,540
MICHIGAN STATE HSG DEV'T	401 S WASHINGTON SQUARE P.O.BO, LANSING, MI 48909.	100	518,418
MICHIGAN STATE HSG DEV'T	401 S. WASHINGTON SQUARE, LANSING, MI 48909.	100	594,036
MONTCALM COUNTY HSG COMM	120 MULBERRY ST, BOX 249, HOWARD CITY, MI 49329.	50	156,492

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
TOWNSHIP OF REDFORD	12121 HEMINGWAY, REDFORD TWP, MI 48239	50	332,790
METROPOLITAN COUNCIL	MEARS PARK CENTRE, 230 E. FIFTH ST, ST. PAUL, MN 55101.	200	674,424
ST PAUL PHA	480 CEDAR ST, STE 600, ST. PAUL, MN 55101	100	4,290,640
FRANKLIN COUNTY PUBLIC HSG AGENCY	P O BOX 920, HILLSBORO, MO 63050	21	79,360
LINCOLN COUNTY PUB HSG AGENCY	16 NORTH CT, BOWLING GREEN, MO 63334	100	237,864
RIPLEY COUNTY PHA	3019 FAIR ST, P O BOX 1183, POPLAR BLUFF, MO 63901.	30	70,336
ST. LOUIS COUNTY HSG AUTH	8865 NATURAL BRIDGE, ST. LOUIS, MO 63121	100	403,620
FRANKLIN VANCE WARREN OPP'TY INC	P O BOX 1453, HENDERSON, NC 27536	75	369,451
HA COUNTY OF WAKE	P O BOX 399, ZEBULON, NC 27597	100	591,060
HA NORTHWESTERN REGIONAL	P O BOX 2510, BOONE, NC 28607	64	194,704
HA WINSTON-SALEM	901 CLEVELAND AVE, WINSTON-SALEM, NC 28101.	100	408,732
WESTERN CAROLINA COMM ACTION	P O BOX 685, HENDERSONVILLE, NC 28793	30	124,884
BERGEN COUNTY HA	21 MAIN ST, ROOM 307W, HACKENSACK, NJ 07601.	40	270,569
COUNTY OF MIDDLESEX	ADMINISTRATION BUILDING, NEW BRUNSWICK, NJ 08901.	50	322,536
MONMOUTH COUNTY HA	PO BOX 3000, FREEHOLD, NJ 07728	52	383,518
LAS CRUCES HSG AUTH	926 S SAN PEDRO, LAS CRUCES, NM 88001	100	233,785
TRUTH OR CONSEQUENCES HSG AUTH	108 SOUTH CEDAR ST, TRUTH OR CONSEQUENC, NM 87901.	28	91,971
CITY OF LAS VEGAS HSG AUTH	P O BOX 1897, LAS VEGAS, NV 89125	50	301,249
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO RD, LAS VEGAS, NV 89122	49	296,442
CITY OF UTICA	SECTION 8 PROGRAM, ONE KENNEDY PLAZA, UTICA, NY 13502.	60	179,698
HA OF NORWICH	13 BROWN ST, NORWICH, NY 13815	5	13,712
HA OF SYRACUSE	516 BURT ST, SYRACUSE, NY 13202	100	485,304
NEW YORK STATE HSG FIN. AGENCY	ONE FORDHAM PLAZA, BRONX, NY 10458	54	359,907
TOWN OF AMHERST	5583 MAIN ST., WILLIAMSVILLE, NY 14221	100	2,250,730
TOWN OF BETHELEM	230 UNION ST, SCHENECTADY, NY 12305	10	46,182
TOWN OF COLONIE	MEMORIAL TOWN HALL, NEWTONVILLE, COLONIE, NY 12128.	10	176,960
TOWN OF GUILDERLAND	242 UNION ST, SCHENECTADY, NY 12305	10	38,118
TOWN OF NISKAYUNA	230 UNION ST, SCHENECTADY, NY 12305	10	39,773
TOWN OF ROTTERDAM	242 UNION ST, SCHENECTADY, NY 12305	20	82,164
TOWN OF STILLWATER	P O BOX 700, STILLWATER, NY 12170	10	46,255
VILLAGE OF KIRYAS JOEL HSG AUTH	500 FOREST RD STE 202, MONROE, NY 10950	25	306,996
BOWLING GREEN HA	304 NORTH CHURCH ST, BOWLING GREEN, OH 43402.	20	68,559
BUTLER MET. HA	4110 HAMILTON-MIDDTOWN RD, PO BOX 357, HAMILTON, OH 45012.	100	358,944
CHILLICOTHE MET HA	178 WEST FOURTH ST, CHILLICOTHE, OH 45601	50	136,002
COLUMBUS METRO. HA	960 EAST FIFTH AVE., COLUMBUS, OH 43201	100	403,908
DELAWARE METRO HSG AUTH	27½ N. UNION ST, PO BOX 1293, DELAWARE, OH 43015.	70	273,344
FAIRFIELD MHA	1506 AMHERST PL, LANCASTER, OH 43130	20	91,005
LICKING METRO HA	PO BOX 1029, MANSFIELD, OHIO, OH 44901	100	306,161
MARION METRO HSG AUTH	P.O.BOX 1029, MANSFIELD, OH 44901	50	154,781
MEDINA MHA	850 WALTER RD, MEDINA, OH 44256	5	17,434
TUSCARAWAS MHA	134 2ND ST SW, NEW PHILADELPHIA, OH 44663	30	92,125
ZANESVILLE MET HA	407 PERSHING RD, ZANESVILLE, OH 43701	40	93,597
OKLAHOMA CITY HSG AUTH	1700 N E FOURTH ST, OKLAHOMA CITY, OK 73117.	25	91,266
TULSA HSG AUTH	P O BOX 6369, TULSA, OK 74148	100	445,728
CENTRAL ORE REG HA	2445 SW CANAL BLVD, REDMOND, OR 97756	50	132,972
HA CITY OF SALEM	PO BOX 808, SALEM, OR 97308	100	364,260
HSG AUTH OF JACKSON COUNTY	2231 TABLE ROCK RD, MEDFORD, OR 97501	100	461,436
HSG AUTH OF PORTLAND	135 SW ASH ST, PORTLAND, OR 97204	100	505,475
LINN-BENTON HSG AUTH	1250 SE QUEEN AVE, ALBANY, OR 97321	100	380,604
BLAIR COUNTY HSG AUTH	1407 BLAIR ST VILLAGE, P O BOX 167, HOLLIDAYSBURG, PA 16648.	25	108,735
BUTLER COUNTY HSG AUTH	111 SOUTH CLIFF ST, BUTLER, PA 16003	50	195,379
LANCASTER HSG AUTH	325 CHURCH ST, LANCASTER, PA 17602	50	177,300
LEHIGH COUNTY HSG AUTH	333 RIDGE ST, EMMAUS, PA 18049	50	268,512
PHILADELPHIA HSG AUTH	2012–18 CHESTNUT ST, PHILADELPHIA, PA 19103	100	565,536
VENANGO COUNTY HSG AUTH	P O BOX 988, CHERRY HILL APTS, OIL CITY, PA 16301.	50	227,118
COVENTRY HSG AUTH	14 MANCHESTER CIR, COVENTRY, RI 02816	50	258,533
RHODE ISLAND HSG MORT FIN CORP	44 WASHINGTON ST, PROVIDENCE, RI 02903	200	1,386,960

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
HA BEAUFORT	P O BOX 1104, BEAUFORT, SC 29901	10	40,227
HA COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204	100	366,972
BUTTE COUNTY HSG & REDEV COMM	1220 CEDAR ST, STURGIS, SD 57785	8	27,811
HURON HSG AUTH	PO BOX 283, HURON, SD 57350	15	33,874
SIOUX FALLS HSG & REDEV COMM	804 S. MINNESOTA, SIOUX FALLS, SD 57104	50	193,368
YANKTON HSG & REDEV COMM	P O BOX 176, YANKTON, SD 57078	19	48,637
CHATTANOOGA H/A	P O BOX 1486, CHATTANOOGA, TN 37401	100	398,964
HA OAK RIDGE	10 VAN HICKS LANE, OAK RIDGE, TN 37830	40	125,190
KNOXVILLE COMMUNITY DEV'T CORP	P O BOX 3629, KNOXVILLE, TN 37937	90	334,020
AMARILLO HSG AUTH	P O BOX 1971, 509 E. 7TH., AMARILLO, TX 79186	30	521,250
ARLINGTON HSG AUTH	501 W. SANFORD, STE 20, ARLINGTON, TX 76011	100	601,116
CORPUS CHRISTI HSG AUTH	P O BOX 7019, CORPUS CHRISTI, TX 78467	14	78,250
FORT WORTH HSG AUTH	PO BOX 430, 1201 E. 13TH. ST., FORT WORTH< TX 76101.	100	2,538,230
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	25	142,453
HSG AUTH OF DALLAS	3939 N. Hampton RD., DALLAS, TX 75212	100	768,817
HSG AUTH OF SAN ANGELO	PO BOX 1751, 115 W. FIRST ST., SAN ANGELO. TX 76902.	20	69,939
FORT WORTH HSG AUTH	P O BOX 430, 1201 E. 13TH. ST., FORT WORTH, TX 76101.	100	2,538,230
TARRANT COUNTY HSG ASSIST PROG	1200 CIR DR., #100, FORT WORTH, TX 76119	100	422,016
TEXOMA COUNCIL OF GOVERNMENTS	3201 TEXOMA PKWY, STE 240, SHERMAN, TX 75090.	50	179,082
WALKER COUNTY HSG AUTH	P O BOX 1411, HUNTSVILLE, TX 77342	10	44,858
SAN ANTONIO HSG AUTH	P O DRAWER 1300, SAN ANTONIO, TX 78295	100	2,224,280
HSG AUTH OF THE COUNTY OF SALT LAKE	3595 S. MAIN ST, SALT LAKE CITY, UT 84115	25	93,951
HSG AUTH OF UTAH COUNTY	240 EAST CENTER, PROVO, UT 84606	50	218,100
WEST VALLEY CITY HSG AUTH	3600 CONSTITUTION BLVD, WEST VALLEY CITY, UT 84119.	50	157,775
CITY OF VIRGINIA BEACH	MUNICIPAL CENTER, VIRGINIA BEACH, VA 23456	100	472,500
WAYNESBORO REDEV & H/A	1700 NEW HOPE RD, WAYNESBORO, VA 22980	10	26,874
BURLINGTON HSG AUTH	230 ST PAUL ST, BURLINGTON, VT 05401	102	638,640
VERMONT STATE HSG AUTH	ONE PROSPECT ST, MONTPELIER, VT 05602	200	5,412,880
WINOOSKI HSG AUTH	83 BARLOW ST, WINOOSKI, VT 05404	66	303,188
HA CITY OF KENNEWICK	P O BOX 6737, KENNEWICK, WA 99336	50	268,680
HA CITY OF SPOKANE	W. 55TH MISSION, STE 104, SPOKANE, WA 99201	111	380,044
HA COUNTY OF KING	15455 65TH AVE SO, TUKWILA, WA 98188	100	2,886,585
HA OF CITY OF SEATTLE	120 SIXTH AVE NORTH, SEATTLE, WA 98109	100	505,332
HA OF ISLAND COUNTY	7 NORTHWEST 6TH ST, COUPEVILLE, WA 98239	15	72,353
HSG AUTH CITY OF RICHLAND	650 GEORGE WASHINGTON WAY, RICHLAND, WA 99352.	100	579,780
HSG AUTH OF SNOHOMISH COUNTY	12625 4TH AVE W. STE 200, EVERETT, WA 98204	100	521,472
MARSHFIELD HA	601 S. CEDAR, MARSHFIELD, WI 54449	45	124,743
WEST BEND HSG AUTH	475 MEADOWBROOK DR., WEST BEND, WI 53095	50	182,544
CHARLESTON HSG AUTH	P O BOX 86, CHARLESTON, WV 25321	100	440,676
HSG AUTH OF MINGO COUNTY	P O BOX 2239, WILLIAMSON, WV 25661	100	369,444
HUNTINGTON WV HSG AUTH	P.O. BOX 2183, HUNTINGTON, WV 25722	70	252,310
Totals for Mainstream Program (Vouchers)		10,537	$76,986,900
Mixed Population (Certificates)			
CITY OF PHOENIX	251 W. WASHINGTON ST., 4TH FL, PHOENIX, AZ 85034.	175	$1,615,964
COUNTY OF CONTRA COSTA HSG AUTH	3133 ESTUDILLO ST, P O BOX 2759, MARTINEZ, CA 94553.	200	2,970,944
HSG AUTH COUNTY OF KERN	525 ROBERTS LANE, BAKERSFIELD, CA 93308	45	379,152
CITY OF JACKSONVILLE	1300 BROAD ST, JACKSONVILLE, FL 32202	75	615,096
HA DAYTONA BEACH	118 CEDAR ST, DAYTONA BEACH, FL 32114	30	244,550
BROCKTON HSG AUTH	45 GODDARD RD, P O BOX 340, BROCKTON, MA 02303.	50	521,784
SOMERVILLE HSG AUTH	30 MEMORIAL RD, SOMERVILLE, MA 02145	150	2,151,228
WORCESTER HSG AUTH	40 BELMONT ST, WORCESTER, MA 01605	100	1,039,040
HSG AUTH OF BALTIMORE CITY	417 E FAYETTE ST, BALTIMORE, MD 21202	200	2,220,496
HA OF ROCHESTER	140 WEST AVE, ROCHESTER, NY 14611	20	172,130
LACKAWANNA COUNTY HSG AUTH	2019 WEST PINE ST, DUNMORE, PA 18512	100	921,862
PHILADELPHIA HSG AUTH	2012–18 CHESTNUT ST, PHILADELPHIA, PA 19103	200	1,839,496
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	50	490,790
BRATTLEBORO HSG AUTH	P O BOX 2275, BRATTLEBORO, VT 05301	75	617,364

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
Totals for Mixed Population (Certificates)		1,470	$15,799,896
Mixed Population (Vouchers)			
CITY OF PHOENIX	251 W. WASHINGTON ST., 4TH FL, PHOENIX, AZ 85034.	25	$237,202
HSG AUTH COUNTY OF KERN	525 ROBERTS LANE, BAKERSFIELD, CA 93308	105	775,578
NORWALK HSG AUTH	24½ MONROE ST, SOUTH NORWALK, CT 06854	50	917,982
BROCKTON HSG AUTH	45 GODDARD RD, P O BOX 340, BROCKTON, MA 02303.	50	529,384
BATTLE CREEK HSG COMM	250 CHAMPION ST, BATTLE CREEK, MI 49017	100	711,692
HA OF ROCHESTER	140 WEST AVE, ROCHESTER, NY 14611	20	162,450
WAYNESBORO REDEV & H/A	1700 NEW HOPE RD, WAYNESBORO, VA 22980	25	128,596
Totals for Mixed Population (Vouchers)		375	$3,462,884
Preservations/Prepayments (Certificates)			
ST FRANCIS COUNTY HSG AUTH	P O BOX 310, FORREST CITY, AR 72335	1	$21,060
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., LOS ANGELES, CA 90057	195	757,162
CITY OF HARTFORD	10 PROSPECT ST, HARTFORD, CT 06103	6	3,336
HA BRUNSWICK	P O BOX 1118, BRUNSWICK, GA 31521	72	185,865
WARREN COUNTY HSG AUTH	217 WEST SALEM, P O BOX 456, INDIANOLA, IA 50125.	12	18,852
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	17	38,328
VILLAGE OF PARK FOREST	301 CENTRE, PARK FOREST, IL 60466	81	208,717
INDIANA DEPT OF HUMAN SERVICES	251 N. ILLINOIS P.O. BOX 7083, INDIANAPOLIS, IN 46207.	0	264
THE HSG AUTH OF THE CITY OF GOSHEN,	CITY OF GOSHEN 302 S 5TH ST, GOSHEN, IN 46526.	0	4,308
AMHERST HSG AUTH	33 KELLOGG AVE, AMHERST, MA 01002	0	28,212
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111	48	104,916
COMM DEV PROG COMM OF MA., E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	10	22,752
MILFORD HSG AUTH	45 BIRMINGHAM CT, MILFORD, MA 01757	0	9,792
NEW BEDFORD HSG AUTH	P O BOX A–2081, NEW BEDFORD, MA 02741	1	68,772
NORTHAMPTON HSG AUTH	49 OLD SOUTH ST, NORTHAMPTON, MA 01060	168	1,277,998
PORTLAND HSG AUTH	14 BAXTER BLVD, PORTLAND, ME 04101	1	26,208
LANSING HSG COMMISSION	310 SEYMOUR, LANSING, MI 48933	0	11,040
MICHIGAN STATE HSG DEV'T	401 S WASHINGTON SQUARE P.O. BOX, LANSING, MI 48909.	0	5,640
ST. CLOUD HRA	619 MALL GERMAIN, STE 212, ST. CLOUD, MN 56301.	12	17,414
NORTHAMPTON COUNTY HSG AUTH	P O BOX 252, 15 S. WOOD ST, NAZARETH, PA 18064.	0	144
CENTRAL TEXAS COUNCIL OF GOVTS	P O BOX 729, 302 E. CENTRAL, BELTON, TX 76513.	15	10,416
VIRGINIA HSG DEV'T AUTH	601 S. BELVIDERE ST, RICHMOND, VA 23225	30	118,974
OKANOGAN COUNTY HSG AUTH	P O BOX 1306, OKANOGAN, WA 98840	20	50,103
Totals for Preservations/Prepayments (Certificates).		687	$2,990,273
Preservations/Prepayments (Vouchers)			
ST FRANCIS COUNTY HSG AUTH	P O BOX 310, FORREST CITY, AR 72335	35	$82,673
CITY OF PHOENIX	251 W. WASHINGTON ST., 4TH FL, PHOENIX, AZ 85034.	71	285,685
CITY OF TUCSON	1501 N. ORACLE RD, STE 115, P O BOX 27210, TUCSON, AZ 85726.	91	284,729
ALAMEDA COUNTY HSG AUTH	22941 ATHERTON ST, HAYWARD, CA 94541	209	1,411,034
CITY OF BALDWIN PARK HSG AUTH	14403 E PACIFIC AVE, BALDWIN PARK, CA 91706	36	164,214
CITY OF GARDEN GROVE	11400 STANFORD AVE, P O BOX 3070, GARDEN GROVE, CA 92842.	25	136,367
CITY OF OXNARD HSG AUTH	1470 COLONIA RD, OXNARD, CA 93030	151	832,364
CITY OF ROSEVILLE	ROSEVILLE HSG AUTH, 405 VERNON ST, ROSEVILLE, CA 95678.	45	148,071
CITY OF SACRAMENTO	P O BOX 1834, SACRAMENTO, CA 95812	389	1,306,317
CITY OF VACAVILLE	40 ELDRIDGE AVE, STES 1–5, VACAVILLE, CA 95687.	41	93,708
CITY OF VALLEJO	555 SANTA CLARA ST, VALLEJO, CA 94590	14	46,087
COUNTY OF BUTTE HSG AUTH	580 VALLOMBROSA AVE, CHICO, CA 95926	82	208,061
COUNTY OF LOS ANGELES HSG AUTH	2 CORAL CIR, MONTEREY PARK, CA 91754	1	2,336

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
COUNTY OF ORANGE HSG AUTH	1770 N BROADWAY, SANTA ANA, CA 92706	13	90,928
COUNTY OF SACRAMENTO	P O BOX 1834, SACRAMENTO, CA 95812	160	679,601
COUNTY OF SAN BERNARDINO HSG AUTH	1053 NORTH D ST, SAN BERNARDINO, CA 92410	3	7,731
COUNTY OF SAN DIEGO	3989 RUFFIN RD, SAN DIEGO, CA 92123	44	163,007
COUNTY OF SAN JOAQUIN HSG AUTH	P O BOX 447, STOCKTON, CA 95201	123	301,534
COUNTY OF SANTA CLARA HSG AUTH	505 WEST JULIAN ST, SAN JOSE, CA 95110	287	433,176
HSG AUTH COUNTY OF KERN	525 ROBERTS LANE, BAKERSFIELD, CA 93308	7	17,650
PLACER COUNTY HSG AUTH	11481 B AVE., STE 6, AUBURN, CA 95603	42	122,791
ARVADA HSG AUTH	8101 RALSTON RD, ARVADA, CO 80002	47	176,618
COLORADO SPRINGS HSG AUTH	P O BOX 1575, COLORADO SPRINGS, CO 80903	88	116,129
EL PASO COUNTY HSG AUTH	30 SOUTH NEVADA, STE 304, COLORADO SPRINGS, CO 80903.	78	425,091
GREELEY HSG AUTH	2448 1ST AVE, GREELEY, CO 80631	27	106,436
HSG AUTH OF THE CITY OF LAKEWOOD	445 S. ALLISON PKWY, LAKEWOOD, CO 80226	12	21,704
CITY OF HARTFORD	10 PROSPECT ST, HARTFORD, CT 06103	48	143,358
WATERBURY HSG AUTH	2 LAKEWOOD RD, WATERBURY, CT 06704	106	384,452
WEST HARTFORD HSG AUTH	759 FARMINGTON AVE, WEST HARTFORD, CT 06119.	50	136,836
WINCHESTER HSG AUTH	80 CHESTNUT ST, WINSTED, CT 06098	38	98,861
FORT WALTON BEACH H/A	27 ROBINWOOD DR. SW, FORT WALTON BEACH, FL 32548.	42	236,717
HA TAMPA	1514 UNION ST, TAMPA, FL 33607	174	544,628
MIAMI DADE HSG AUTH	1401 N.W. 7TH ST, MIAMI, FL 33125	168	426,691
ORLANDO H/A	300 REEVES CT, ORLANDO, FL 32801	175	728,381
CITY OF MARIETTA	P O BOX 609, MARIETTA, GA 30061	87	421,830
H/A DEKALB COUNTY	P O BOX 1627, DECATUR, GA 30031	153	630,518
HA ATLANTA GA	739 WEST PEACHTREE ST NE, ATLANTA, GA 30365.	64	260,518
HA COLUMBUS GA GEN FUND ACCT CONSL	P O BOX 630, COLUMBUS, GA 31902	49	124,300
HA MARIETTA	P O DRAWER K, MARIETTA, GA 30061	36	77,831
CITY AND COUNTY OF HONOLULU	715 SOUTH KING ST, HONOLULU, HI 96813	38	276,591
CITY OF CEDAR RAPIDS	CITY HALL, CEDAR RAPIDS, IA 52401	48	80,355
MUNICIPAL HSG AGENCY	119 SOUTH MAIN ST, STE #200, COUNCIL BLUFFS, IA 51503.	25	82,945
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	261	1,175,526
DUPAGE COUNTY ILLINOIS	128A S. COUNTY FARM RD, WHEATON, IL 60187	156	499,677
HA ROCKFORD	223 SOUTH WINNEBAGO ST, ROCKFORD, IL 61102.	6	13,081
BLOOMINGTON HSG AUTH	1007 N SUMMIT, P O BOX 1815, BLOOMINGTON, IN 47402.	5	62,416
CITY OF INDIANAPOLIS	FIVE INDIANA SQ., SECOND FL; INDIANAPOLIS, IN 46204.	172	448,768
FORT WAYNE HA	P O BOX 13489, FORT WAYNE, IN 46869	50	104,238
HSG AUTH CITY OF ELKHART	1396 BENHAM AVE, ELKHART, IN 46516	43	83,314
INDIANA DEPT OF HUMAN SERVICES	251 N. ILLINOIS P.O.BOX 7083, INDIANAPOLIS, IN 46207.	41	60,372
PLYMOUTH HSG AUTH	2124 WESTERN AVE, PLYMOUTH, IN 46563	9	35,799
THE HSG AUTH OF THE CITY OF GOSHEN	302 S 5TH ST, GOSHEN, IN 46526	32	75,860
KENTUCKY HSG CORPORATION	1231 LOUISVILLE RD, FRANKFORT, KY 40601	5	8,743
JEFFERSON PARISH HSG AUTH. SEC.8 PROG	1718 BETTY ST, MARRERO, LA 70072	47	69,656
LAFAYETTE (CITY) HSG AUTH	100 C O CIR, LAFAYETTE, LA 70501	80	190,570
AMHERST HSG AUTH	33 KELLOGG AVE, AMHERST, MA 01002	113	549,623
COMM DEV PROG COMM OF MA.,E.O.C.D	100 CAMBRIDGE ST, BOSTON, MA 02202	137	1,017,576
GREENFIELD HSG AUTH	ONE ELM TERRACE, GREENFIELD TOWN, MA 01301.	72	274,870
MILFORD HSG AUTH	45 BIRMINGHAM CT, MILFORD, MA 01757	153	920,641
NEW BEDFORD HSG AUTH	P O BOX A–2081, NEW BEDFORD, MA 02741	198	926,050
BALTIMORE CO. HSG OFFICE	ONE INVESTMENT PL, STE P3, TOWSON, MD 21204.	264	1,144,303
HNG AUTH PRINCE GEORGES CO	9400 PEPPERCORN PL, LANDOVER, MD 20785	173	678,896
PORTLAND HSG AUTH	14 BAXTER BLVD, PORTLAND, ME 04101	84	168,703
CITY OF ANN ARBOR-COMM DEV'T	100 NORTH FIFTH AVE, ANN ARBOR, MI 48107	0	600
CITY OF LIVONIA	19300 PURLINGBROOK, LIVONIA, MI 48152	0	10,824
CITY OF PLYMOUTH HSG COMM	1160 SHERIDAN, PLYMOUTH, MI 48170	0	10,800
CITY OF WESTLAND	32175 DORSEY RD, WESTLAND, MI 48185	0	11,400
INKSTER HSG COMM	4500 INKSTER RD, INKSTER, MI 48141	0	2,400
LANSING HSG COMM	310 SEYMOUR, LANSING, MI 48933	148	627,292
LINCOLN PARK HSG COMM	1356 ELECTRIC, LINCOLN PARK, MI 48146	0	1,188
MICHIGAN STATE HSG DEV'T	401 S WASHINGTON SQUARE P.O.BO, LANSING, MI 48909.	25	74,153

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
MICHIGAN STATE HSG DEV'T	401 S. WASHINGTON SQUARE, LANSING, MI 48909.	97	244,612
TOWNSHIP OF REDFORD	12121 HEMINGWAY, REDFORD TWP, MI 48239	0	9,000
METROPOLITAN COUNCIL	MEARS PARK CENTRE, 230 E. FIFTH ST, ST. PAUL, MN 55101.	73	219,021
HA SOUTH DELTA	P O BOX 5458, GREENVILLE, MS 38704	17	23,540
MT DEPT OF COMMERCE	POB 200545, 836 FRONT ST, HELENA, MT 59620	19	11,864
HA WILSON	P O BOX 3876, WILSON, NC 27895	64	139,630
KINSTON H/A	P O BOX 697, KINSTON, NC 28502	35	80,309
NASH EDGECOMBE ECON	P O BOX 2346, ROCKY MOUNT, NC 27802	6	9,190
NC COMM OF INDIAN AFRS	217 W. JONES ST, RALEIGH, NC 27603	2	1,278
RALEIGH HA	P O BOX 28007, RALEIGH, NC 27611	118	503,921
HSG AUTH OF CASS COUNTY	230 8TH AVE WEST, WEST FARGO, ND 58078	21	82,097
NEW HAMPSHIRE HSG FINANCE AUTH	P O BOX 5087, MANCHESTER, NH 03108	24	81,084
ALBUQUERQUE HSG AUTH	1840 UNIVERSITY BLVD. SE, ALBUQUERQUE, NM 87106.	62	218,533
BERNALILLO COUNTY HSG DEPT	620 LOMAS BLVD NW, ALBUQUERQUE, NM 87102	48	178,013
CITY OF RENO HSG AUTH	1525 EAST NINTH ST, RENO, NV 89512	166	656,485
NORTH LAS VEGAS HSG AUTH	1632 YALE ST, NORTH LAS VEGAS, NV 89030	32	97,759
NEW YORK STATE HSG FIN. AGENCY	ONE FORDHAM PLAZA, BRONX, NY 10458	38	177,178
COLUMBUS METRO HSG AUTH	960 EAST FIFTH AVE., COLUMBUS, OH 43201	226	802,748
H.A. OF YAMHILL COUNTY	414 N EVANS, MCMINNVILLE, OR 97128	3	8,840
HA WASHINGTON COUNTY	111 NE LINCOLN ST, STE 200–L, HILLSBORO, OR 97124.	9	23,381
LINN-BENTON HSG AUTH	1250 SE QUEEN AVE, ALBANY, OR 97321	9	8,853
MID COLUMBIA HSG AGENCY	506 E 2ND, THE DALLES, OR 97058	3	3,231
NORTHWEST OREGON HSG ASSOC	1508 EXCHANGE, ASTORIA, OR 97103	14	32,608
BERKS COUNTY HSG AUTH	1803 BUTTER LANE, READING, PA 19606	127	224,161
NORTHAMPTON COUNTY HSG AUTH	P O BOX 252, 15 S. WOOD ST, NAZARETH, PA 18064.	165	299,752
WESTMORELAND COUNTY HSG AUTH	R.D. #6, BOX 223, SOUTH GREENGATE RD, GREENSBURG, PA 15601.	93	299,719
CITY OF SPARTANBURG H/A	P O BOX 2828, SPARTANBURG, SC 29304	159	396,194
HA FLORENCE	P O DRAWER 969, FLORENCE, SC 29503	54	122,543
PENNINGTON COUNTY HSG & REDEV COMM	1805 WEST FULTON ST, RAPID CITY, SD 57702	1	6,912
KNOXVILLE COMMUNITY DEV'T CORP	P O BOX 3629, KNOXVILLE, TN 37937	0	105,930
METROPOLITAN DEV'T & HSG AGENCY	701 SIXTH ST, NASHVILLE-DAVIDSON, TN 37206	49	274,425
ARLINGTON HSG AUTH	501 W. SANFORD, STE 20, ARLINGTON, TX 76011	63	265,322
CENTRAL TEXAS COUNCIL OF GOVTS	P O BOX 729, 302 E. CENTRAL, BELTON, TX 76513.	1	624
DENTON HSG AUTH	308 S RUDDELL, DENTON, TX 76205	75	315,864
HSG AUTH OF DALLAS	3939 N. HAMPTON RD., DALLAS, TX 75212	44	147,664
HSG AUTH OF KILLEEN	731 WOLF ST., KILLEEN, TX 76541	72	181,380
LANCASTER HSG AUTH	P O BOX 310, 246 E. FIRST ST., LANCASTER, TX 75146.	112	456,440
SAN ANTONIO HSG AUTH	P O DRAWER 1300, SAN ANTONIO, TX 78295	54	94,167
SCHERTZ HSG AUTH	204 SCHERTZ PKWY, SCHERTZ, TX 78154	10	23,155
TARRANT COUNTY HSG ASSIST PROG	1200 CIR DR., #100, FORT WORTH, TX 76119	105	211,209
HSG AUTH OF THE COUNTY OF SALT LAKE	3595 S. MAIN ST, SALT LAKE CITY, UT 84115	39	54,628
ALEXANDRIA REDEV'T & H/A	600 N FAIRFAX ST, ALEXANDRIA, VA 22314	215	849,985
CHESAPEAKE REDEV'T & H/A	P O BOX 1304, CHESAPEAKE, VA 23320	178	347,264
CITY OF VIRGINIA BEACH	MUNICIPAL CENTER, VIRGINIA BEACH, VA 23456	390	902,656
FAIRFAX CO REDEV'T & HSG AUTH	3700 PENDER DR, FAIRFAX, VA 22030	88	315,060
HAMPTON REDEV'T & HSG AUTH	P O BOX 280, HAMPTON, VA 23669	79	191,663
NORFOLK REDEV'T & H/A	201 GRANBY ST, NORFOLK, VA 23510	205	766,252
PORTSMOUTH REDEV'T & H/A	339 HIGH ST P O BOX 1098, PORTSMOUTH, VA 23705.	123	274,472
ROANOKE REDEV'T & H/A	P O BOX 6359, ROANOKE, VA 24017	2	5,266
VIRGINIA HSG DEV'T AUTH	601 S. BELVIDERE ST, RICHMOND, VA 23220	120	600,914
HA CITY OF SPOKANE	W. 55TH MISSION, STE 104, SPOKANE, WA 99201	13	20,086
HA CITY OF VANCOUVER	500 OMAHA WAY, VANCOUVER, WA 98661	16	69,985
HA COUNTY OF KING	15455 65TH AVE SO, TUKWILA, WA 98188	62	286,421
HA OF CITY OF SEATTLE	120 SIXTH AVE NORTH, SEATTLE, WA 98109	3	13,659
WENATCHEE HSG AUTH	1555 SOUTH METHOW, WENATCHEE, WA 98801	17	31,158
BROWN COUNTY HSG AUTH	100 N JEFFERSON ST, ROOM 6, GREEN BAY, WI 54301.	1	1,041
HSG AUTH OF THE CITY OF APPLETON	525 NORTH ONEIDA ST, APPLETON, WI 54911	4	4,338
MILWAUKEE CO HA	COURTHOUSE ANNEX RM 310, 907 N 10TH ST, MILWAUKEE, WI 53233.	45	62,842
WISCONSIN HSG & ECONOMIC DEV'T AUTH	P O BOX 1728, MADISON, WI 53701	40	120,886

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
Totals for Preservations/Prepayments (Vouchers)		9,606	$33,523,405
Property Disposition Relocation (Certificates)			
HSG AUTH OF BIRMINGHAM DISTRICT	1826 3RD AVE SOUTH, BIRMINGHAM, AL 35233	107	$464,853
CITY OF HARTFORD	10 PROSPECT ST, HARTFORD, CT 06103	91	748,931
D.C. HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002.	19	172,008
HNG AUTH PRINCE GEORGES CO	9400 PEPPERCORN PL, LANDOVER, MD 20785	29	179,176
MONTGOMERY CO HSG AUTH	10400 DETRICK AVE, KENSINGTON, MD 20895	16	84,074
MISSISSIPPI REG'L HSG AUTH VI	P O DRAWER 8746, JACKSON, MS 39284	120	456,048
ALBANY HSG AUTH	4 LINCOLN SQUARE, ALBANY, NY 12202	83	343,271
CUYAHOGA MHA	1441 WEST 25TH ST, CLEVELAND, OH 44113	291	1,554,542
LORAIN MHA	1600 KANSAS AVE, LORAIN, OH 44052	417	1,781,113
S C STATE HSG FINANCE & DEV'T	919 BLUFF RD, COLUMBIA, SC 29201	122	540,733
TERRELL HSG AUTH	P O BOX 310, 201 E. NASH ST., TERRELL, TX 75160.	232	1,661,760
CITY OF VIRGINIA BEACH	MUNICIPAL CENTER, VIRGINIA BEACH, VA 23456	125	709,290
Totals for Property Disposition Relocation		1,652	$8,695,799
Property Disposition Relocation (Vouchers)			
MISSISSIPPI COUNTY PFB	808 W KEISER, OSCEOLA, AR 72370	44	180,724
WHITE RIVER REG'L HSG AUTH	P O BOX 650, MELBOURNE, AR 72556	9	21,532
CITY OF HARTFORD	10 PROSPECT ST, HARTFORD, CT 06103	139	1,076,077
ORANGE CO COMM	P O BOX 1393, ORLANDO, FL 32802	36	198,389
HA ATLANTA GA	739 WEST PEACHTREE ST NE, ATLANTA, GA 30365.	19	142,349
CHAMPAIGN HA	102 EAST UNIVERSITY AVE., CHAMPAIGN, IL 61820.	131	648,607
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	215	1,190,984
EAST ST LOUIS HA	700 N. 20TH. ST, EAST ST LOUIS, IL 62205	55	307,538
CITY OF INDIANAPOLIS	FIVE INDIANA SQ., SECOND FL, INDIANAPOLIS, IN 46204.	156	715,852
HSG AUTH OF JEFFERSON COUNTY	801 VINE ST, LOUISVILLE, KY 40204	99	684,509
HAMMOND HSG AUTH	411 WEST COLEMAN, HAMMOND, LA 70403	105	525,806
HSG AUTH OF KANSAS CITY, MO	712 BROADWAY, KANSAS CITY, MO 64105	24	96,783
MO HSG DEV'T COMM	3435 BROADWAY, KANSAS CITY, MO 64111	203	1,108,739
ST. LOUIS HSG AUTH	4100 LINDELL BLVD, ST. LOUIS, MO 63108	39	136,171
HA SOUTH DELTA	P O BOX 5458, GREENVILLE, MS 38704	43	174,118
DAYTON METROPOLITAN HA	400 WAYNE AVE, DAYTON, OH 45410	36	151,655
HUGO HSG AUTH	P O BOX 727, HUGO, OK 74743	17	62,003
PUERTO RICO HSG FINANCE CORP	CALL BOX 71361-GPO, SAN JUAN, PR 00936	262	1,184,015
BRAZOS VALLEY DEV'T COUNCIL	P O DRAWER 4128, BRYAN, TX 77805	82	499,202
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	89	439,127
HSG AUTH OF DALLAS	3939 N. HAMPTON RD., DALLAS, TX 75212	44	277,226
Totals for Property Disposition Relocation (Vouchers).		1,847	$9,821,406
Relocation/Replacement (Certificates)			
H/A CITY OF MONTGOMERY	1020 BELL ST, MONTGOMERY, AL 36104	8	$67,998
HA DECATUR	P O BOX 878, DECATUR, AL 35602	16	118,878
HA ATLANTA GA	739 WEST PEACHTREE ST NE, ATLANTA, GA 30365.	90	1,247,606
HOLYOKE HSG AUTH	475 MAPLE ST, HOLYOKE, MA 01040	119	1,455,210
ST. LOUIS HSG AUTH	4100 LINDELL BLVD, ST. LOUIS, MO 63108	12	187,490
HA MIDEAST REGIONAL	PO BOX 474, WASHINGTON, NC 27889	20	241,900
CARTERET HA	96 ROOSEVELT AVE, CARTERET, NJ 07008	10	190,070
CITY OF LAS VEGAS HSG AUTH	PO BOX 1897, LAS VEGAS, NV 89125	38	587,578
METROPOLITAN DEV'T & HSG AGENCY	701 SIXTH ST, NASHVILLE-DAVIDSON, TN 37206	43	481,730
BOONE COUNTY HSG AUTH	BLACK DIAMOND ARBORS, LICK CREEK RD, DANVILLE, WV 25053.	17	74,896
Totals for Relocation/Replacement (Certificates)		373	$4,653,356
Relocation/Replacement (Vouchers)			
HA JASPER	PO BOX 582, JASPER, AL 35501	24	$165,152

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
HSG AUTH OF BIRMINGHAM DISTRICT	1826 3RD AVE SOUTH, BIRMINGHAM, AL 35233	405	3,126,286
D.C. HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002.	139	3,734,422
WILMINGTON HSG AUTH	400 WALNUT ST, WILMINGTON, DE 19801	1	16,460
HA TAMPA	1514 UNION ST, TAMPA, FL 33607	400	6,893,448
CITY OF INDIANAPOLIS	FIVE INDIANA SQ., SECOND FL, INDIANAPOLIS, IN 46204.	81	721,652
HA CITY OF EVANSVILLE	PO BOX 3605, 500 CT ST, EVANSVILLE, IN 47735	185	1,530,958
MICHIGAN CITY HA	621 EAST MICHIGAN BLVD, MICHIGAN, IN 46360	87	761,758
CITY OF TOPEKA CITY HALL	2010 SE CALIFORNIA, TOPEKA, KS 66607	100	1,024,274
CITY OF PONTIAC	1600 WEST WIDE TRACK DR, PONTIAC, MI 48058	50	685,560
DAKOTA COUNTY HRA	2496 145TH ST. WEST, ROSEMOUNT, MN 55068	3	53,504
DULUTH HRA	222 EAST 2ND ST, P O BOX 16900, DULUTH, MN 55816.	8	59,552
HA OF THE CITY OF CHARLOTTE	PO BOX 36795, CHARLOTTE, NC 28236	24	328,264
CITY OF LAS VEGAS HSG AUTH	PO BOX 1897, LAS VEGAS, NV 89125	38	596,968
CHATTANOOGA H/A	PO BOX 1486, CHATTANOOGA, TN 37401	22	209,534
HSG AUTH OF BEAUMONT	PO BOX 1312, 4925 CONCORD RD., BEAUMONT, TX 77704.	23	201,896
HSG AUTH OF CITY OF KEYSER	440 VIRGINIA ST, KEYSER, WV 26726	4	16,710
Totals for Relocation/Replacement (Vouchers)		1,594	$20,126,398
Section 8 Counseling (Certificates)			
HARTFORD HSG AUTH	475 FLATBUSH AVE, HARTFORD, CT 06106	0	$300,000
CITY OF GRAND RAPIDS	1420 FULLER AVE SE, GRAND RAPIDS, MI 49507	0	300,000
ALLEGHENY COUNTY HSG AUTH	341 FOURTH AVE FIDELITY BL, PITTSBURGH, PA 15222.	0	409,000
Totals for Section 8 Counseling (Certificates)			$1,009,000
Section 811 Disabled (Certificates)			
CITY OF LAKELAND H/A	PO BOX 1009, LAKELAND, FL 33802	25	$491,880
HA OF GENEVA	PO BOX 153, GENEVA, NY 14456	30	664,945
Totals for Section 811 Disabled (Certificates)		55	$1,156,825
Section 811 Disabled (Vouchers)			
BURLINGTON HSG AUTH	230 ST PAUL ST, BURLINGTON, VT 05401	100	$2,436,840
HA COUNTY OF KING	15455 65TH AVE SO, TUKWILA, WA 98188	200	5,921,120
Totals for Section 811 Disabled (Vouchers)		300	$8,357,960
Terminations/Opt-outs (Certificates)			
CITY OF PHOENIX	251 W. WASHINGTON ST., 4TH FL, PHOENIX, AZ 85034.	22	$92,764
HSG AUTH OF THE COUNTY OF VENTURA	1400 W HILLCREST DR, NEWBURY PARK, CA 91320.	4	31,556
CITY OF BALDWIN PARK HSG AUTH	14403 E PACIFIC AVE, BALDWIN PARK, CA 91706	8	60,258
CITY OF HAWTHORNE	4455 W 126TH ST, HAWTHORNE, CA 90250	4	18,752
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD., LOS ANGELES, CA 90057	1	10,665
COUNTY OF LOS ANGELES HSG AUTH	2 CORAL CIR, MONTEREY PARK, CA 91754	112	604,272
COUNTY OF RIVERSIDE HSG AUTH	5555 ARLINGTON AVE, RIVERSIDE, CA 92504	185	830,816
COUNTY OF SAN BERNARDINO HSG AUTH	1053 NORTH D ST, SAN BERNARDINO, CA 92410	113	603,023
HSG AUTH OF PUEBLO	1414 NO. SANTA FE AVE, PUEBLO, CO 81003	140	852,514
BRIDGEPORT HSG AUTH	150 HIGHLAND AVE, BRIDGEPORT, CT 06604	176	1,319,779
HSG AUTH OF CITY OF NEW HAVEN	360 ORANGE ST, NEW HAVEN, CT 06511	33	244,944
WILMINGTON HSG AUTH	400 WALNUT ST, WILMINGTON, DE 19801	22	126,598
BROWARD COUNTY HSG AUTH	1773 NORTH STATE RD 7, LAUDERHILL, FL 33313	87	614,632
CITY OF MARIETTA	PO BOX 609, MARIETTA, GA 30061	45	326,734
HA ATLANTA GA	739 WEST PEACHTREE ST NE, ATLANTA, GA 30365.	54	356,219
HA JONESBORO	PO BOX 458, JONESBORO, GA 30237	237	1,437,298
HA MARIETTA	PO DRAWER K, MARIETTA, GA 30061	27	174,047
BLOOMINGTON HSG AUTH	1007 N SUMMIT, PO BOX 1815, BLOOMINGTON, IN 47402.	26	145,803
HSG AUTH OF BALTIMORE CITY	417 E FAYETTE ST, BALTIMORE, MD 21202	42	343,822
MONTGOMERY CO HSG AUTH	10400 DETRICK AVE, KENSINGTON, MD 20895	88	869,459

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
INDEPENDENCE HSG AUTH	2600 HUB DR NORTH, INDEPENDENCE, MO 64055	5	25,158
HELENA HSG AUTH	812 ABBEY ST, HELENA, MT 59601	38	213,450
TOWNER COUNTY HSG AUTH	808 E. 6TH ST, CANDO, ND 58324	14	18,447
DOVER HSG AUTH	62 WHITTIER ST, DOVER, NH 03820	20	163,190
STATE OF NJ DEPT. OF COMM. AFFAIRS	101 S. BROAD ST CN800, TRENTON, NJ 08625	42	339,927
NEW YORK STATE HSG FIN. AGENCY	ONE FORDHAM PLAZA, BRONX, NY 10458	380	2,680,284
HSG AUTH OF JACKSON COUNTY	2231 TABLE ROCK RD, MEDFORD, OR 97501	7	40,901
NORTHWEST OREGON HSG ASSOC	1508 EXCHANGE, ASTORIA, OR 97103	66	365,091
PHILADELPHIA HSG AUTH	2012–18 CHESTNUT ST, PHILADELPHIA, PA 19103	32	231,448
PUERTO RICO HSG FINANCE CORP	CALL BOX 71361-GPO, SAN JUAN, PR 00936	46	242,004
SAN ANTONIO HSG AUTH	P O DRAWER 1300, SAN ANTONIO, TX 78295	38	123,386
WEATHERFORD HSG AUTH	P O BOX 700, 1128 FORT WORTH HWY, WEATHERFORD, TX 76086.	6	27,588
OKANOGAN COUNTY HSG AUTH	P O BOX 1306, OKANOGAN, WA 98840	6	25,392
BROWN COUNTY HSG AUTH	100 N JEFFERSON ST, ROOM 6, GREEN BAY, WI 54301.	49	213,956
Totals for Terminations/Opt-outs (Certificates)		2,175	$13,774,177
Terminations/Opt-outs (Vouchers)			
HOT SPRINGS HSG AUTH	P O BOX 1257, HOT SPRINGS, AR 71902	69	$232,572
RUSSELLVILLE HSG AUTH(CITY	P O BOX 825, RUSSELLVILLE, AR 72801	100	443,016
ST FRANCIS COUNTY HSG AUTH	P O BOX 310, FORREST CITY, AR 72335	19	40,835
CITY OF MESA	415 N. PASADENA ST, MESA, AZ 85201	40	221,914
CITY OF PHOENIX	251 W. WASHINGTON ST., 4TH FL, PHOENIX, AZ 85034.	170	1,070,494
CITY OF SCOTTSDALE	7522 E FIRST ST, SCOTTSDALE, AZ 85251	132	744,353
CITY OF TUCSON	1501 N. ORACLE RD, STE 115, P O BOX 27210, TUCSON, AZ 85726.	32	136,721
MARICOPA COUNTY HSG AUTH	2024 N 7TH ST., STE 101, PHOENIX, AZ 85006	57	327,068
ALAMEDA COUNTY HSG AUTH	22941 ATHERTON ST, HAYWARD, CA 94541	26	142,928
CITY OF FAIRFIELD	823-B JEFFERSON ST, FAIRFIELD, CA 94533	36	166,168
CITY OF SACRAMENTO	P O BOX 1834, SACRAMENTO, CA 95812	382	1,828,931
CITY OF VACAVILLE	40 ELDRIDGE AVE, STES 1–5, VACAVILLE, CA 95687.	13	68,793
CITY OF VALLEJO	CLARITA SACOTE, 555 SANTA CLARA ST, VALLEJO, CA 94590.	28	190,899
COUNTY OF LOS ANGELES HSG AUTH	2 CORAL CIR, MONTEREY PARK, CA 91754	48	232,279
COUNTY OF SANTA CLARA HSG AUTH	505 WEST JULIAN ST, SAN JOSE, CA 95110	367	2,726,106
HSG AUTH OF THE CITY OF LIVERMORE	3203 LEAHY WAY, LIVERMORE, CA 94550	10	101,902
SAN DIEGO HSG COMM	1625 NEWTON AVE, SAN DIEGO, CA 92113	24	134,200
SANTA CLARA COUNTY HSG AUTH	505 WEST JULIAN ST, SAN JOSE, CA 95110	13	139,246
ADAMS COUNTY HSG AUTH	7190 COLORADO BLVD, 6TH FL, COMMERCE CITY, CO 80022.	169	754,255
ARVADA HSG AUTH	8101 RALSTON RD, ARVADA, CO 80002	87	521,190
AURORA HSG AUTH	10745 E KENTUCKY AVE, AURORA, CO 80012	100	578,653
COLORADO SPRINGS HSG AUTH	P O BOX 1575, COLORADO SPRINGS, CO 80903	69	296,527
EL PASO COUNTY HSG AUTH	30 SOUTH NEVADA, STE 304, COLORADO SPRINGS, CO 80903.	25	181,740
FORT COLLINS HSG AUTH	1715 W. MOUNTAIN AVE., FORT COLLINS, CO 80521.	11	77,144
GRAND JUNCTION HSG AUTH	805 MAIN ST, GRAND JUNCTION, CO 81501	62	271,247
GREELEY HSG AUTH	2448 1ST AVE, GREELEY, CO 80631	8	46,976
HSG AUTH OF THE CITY & CO OF DENVER	P O BOX 40305-MILE HI STN, DENVER, CO 80204	22	146,609
HSG AUTH OF THE CITY OF LAKEWOOD	445 S. ALLISON PKWY, LAKEWOOD, CO 80226	96	602,435
JEFFERSON COUNTY HSG AUTH	6025 WEST 38TH AVE, WHEATRIDGE, CO 80033	24	147,714
LOVELAND HSG AUTH	2105 MAPLE DR, LOVELAND, CO 80538	56	343,818
CITY OF HARTFORD	10 PROSPECT ST, HARTFORD, CT 06103	49	352,257
WEST HARTFORD HSG AUTH	759 FARMINGTON AVE, WEST HARTFORD, CT 06119.	38	117,671
COLLIER COUNTY HA	1800 FARM WORKER WAY, IMMOKALEE, FL 33934.	91	703,744
FORT WALTON BEACH H/A	27 ROBINWOOD DR. SW, FORT WALTON BEACH, FL 32548.	19	100,745
HA TAMPA	1514 UNION ST, TAMPA, FL 33607	51	253,476
ORLANDO H/A	300 REEVES CT, ORLANDO, FL 32801	16	77,089
HA ATLANTA GA	739 WEST PEACHTREE ST NE, ATLANTA, GA 30365.	25	182,142
HA SAVANNAH	P O BOX 1179, SAVANNAH, GA 31402	10	50,155

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
HSG AUTH CITY OF POCATELLO	711 NORTH 6TH AVE, PO BOX 4161, POCATELLO, ID 83201.	3	11,180
IDAHO HSG AND FINANCE ASSOC	565 W MYRTLE ST, POB 7899, BOISE, ID 83707	29	78,700
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	331	2,685,953
EAST ST LOUIS HA	700 N. 20TH. ST, EAST ST LOUIS, IL 62205	55	307,538
HSG AUTH OF THE COUNTY OF COOK	59 E VAN BUREN STE 1802, CHICAGO, IL 60605	55	357,368
PEORIA HA	100 S. SHERIDAN RD, PEORIA, IL 61605	48	215,670
BLOOMINGTON HSG AUTH	1007 N SUMMIT, P O BOX 1815, BLOOMINGTON, IN 47402.	223	1,190,603
CITY OF INDIANAPOLIS	FIVE INDIANA SQ., SECOND FL, INDIANAPOLIS, IN 46204.	124	554,608
FORT WAYNE HA	P O BOX 13489, FORT WAYNE, IN 46869	62	225,703
HSG AUTH CITY OF ELKHART	1396 BENHAM AVE, ELKHART, IN 46516	56	213,878
INDIANA DEPT OF HUMAN SERVICES	251 N. ILLINOIS P.O. BOX 7083, INDIANAPOLIS, IN 46207.	19	63,588
PLYMOUTH HSG AUTH	2124 WESTERN AVE, PLYMOUTH, IN 46563	32	80,778
THE HSG AUTH OF THE CITY OF GOSHEN	302 S 5TH ST, GOSHEN, IN 46526	37	133,990
WICHITA HSG AUTH	455 N MAIN CITY HALL 11TH FLO, WICHITA, KS 67202.	43	295,016
HA MAYSVILLE	P O BOX 446, MAYSVILLE, KY 41056	34	105,695
KENTUCKY HSG CORPORATION	1231 LOUISVILLE RD, FRANKFORT, KY 40601	50	147,288
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111	3	50,642
COMM DEV PROG COMM OF MA.,E.O.C.D.	100 CAMBRIDGE ST, BOSTON, MA 02202	18	177,525
DEPT. OF HSG & COMMUNITY DEV'T	100 COMMUNITY PL, CROWNSVILLE, MD 21032	56	232,573
HNG AUTH PRINCE GEORGES CO	9400 PEPPERCORN PL, LANDOVER, MD 20785	36	306,100
CITY OF LIVONIA	19300 PURLINGBROOK, LIVONIA, MI 48152	59	274,596
CITY OF TAYLOR HSG COMM	15270 PLAZA S. DR, TAYLOR, MI 48180	29	169,765
DETROIT HSG DEPT	2211 ORLEANS, DETROIT, MI 48207	112	492,833
MICHIGAN STATE HSG DEV'T AUTH	401 S. WASHINGTON SQUARE, LANSING, MI 48909.	28	132,598
ST CLAIR SHORES HSG COMM	1000 BLOSSOM HEATH BLVD, ST CLAIR SHORES, MI 48080.	16	81,249
METROPOLITAN COUNCIL	MEARS PARK CENTRE, 230 E. FIFTH ST, ST. PAUL, MN 55101.	52	273,771
NW MN MULTI-COUNTY HRA	P O BOX 128, MENTOR, MN 56736	11	34,452
HSG AUTH OF KANSAS CITY, MO	712 BROADWAY, KANSAS CITY, MO 64105	41	163,692
MARIANA ISLANDS HSG AUTH	P O BOX 514, SAIPAN, MP 96950	20	243,972
HA SOUTH DELTA	P O BOX 5458, GREENVILLE, MS 38704	49	172,937
MISSOULA HSG AUTH	1319 E. BROADWAY, MISSOULA, MT 59802	58	170,875
MT DEPT OF COMMERCE	POB 200545, 836 FRONT ST, HELENA, MT 59620	70	189,206
CITY OF CONCORD	P O BOX 308, CONCORD, NC 28026	32	159,421
GASTONIA H/A	P O BOX 2398, GASTONIA, NC 28053	13	74,469
HA DURHAM	P O BOX 1726, DURHAM, NC 27702	26	125,207
HA GREENSBORO	P O BOX 21287, GREENSBORO, NC 27420	8	35,721
HA HIGH POINT	P O BOX 1779, HIGH POINT, NC 27261	28	120,610
HA OF THE CITY OF CHARLOTTE	P O BOX 36795, CHARLOTTE, NC 28236	46	175,668
HSG AUTH OF THE CITY OF WILMINGTON	P O BOX 899, WILMINGTON, NC 28402	343	2,257,334
KINSTON H/A	P O BOX 697, KINSTON, NC 28502	13	42,582
NC COMM OF INDIAN AFFAIRS	217 W. JONES ST, RALEIGH, NC 27603	29	74,868
EDDY COUNTY HSG AUTH	524 CENTRAL AVE, NEW ROCKFORD, ND 58356	9	16,117
HSG AUTH OF CASS COUNTY	230 8TH AVE WEST, WEST FARGO, ND 58078	30	181,368
HSG AUTH OF LINCOLN	5700 "R" ST, P O BOX 5327, LINCOLN, NE 68505	12	39,277
NEW HAMPSHIRE HSG FINANCE AUTH	PO BOX 5087, MANCHESTER, NH 03108	24	83,100
ALBUQUERQUE HSG AUTH	1840 UNIVERSITY BLVD. SE, ALBUQUERQUE, NM 87106.	167	925,231
BERNALILLO COUNTY HSG DEPT	620 LOMAS BLVD NW, ALBUQUERQUE, NM 87102	167	840,555
CITY OF LAS VEGAS HSG AUTH	P O BOX 1897, LAS VEGAS, NV 89125	15	116,064
CITY OF RENO HSG AUTH	1525 EAST NINTH ST, RENO, NV 89512	63	364,945
COUNTY OF CLARK HSG AUTH	5390 EAST FLAMINGO RD, LAS VEGAS, NV 89122	14	71,030
HA OF ROCHESTER	140 WEST AVE, ROCHESTER, NY 14611	124	661,974
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007	142	1,163,716
CHILLICOTHE MET HA	178 WEST FOURTH ST, CHILLICOTHE, OH 45601	28	87,639
CINCINNATI METRO. HSG AUTH	16 WEST CENTRAL PKWY, CINCINNATI, OH 45210	39	175,853
COLUMBUS METRO. HSG AUTH	960 EAST FIFTH AVE., COLUMBUS, OH 43201	301	1,226,486
DAYTON METROPOLITAN HA	400 WAYNE AVE, DAYTON, OH 45410	33	151,516
GREENE MET HA	538 NORTH DETROIT ST., XENIA, OH 45385	88	456,618
HURON MHA	P O BOX 1029, 150 PARK AVE WEST, MANSFIELD, OH 44901.	65	166,819
MARION METRO HSG AUTH	P.O. BOX 1029, MANSFIELD, OH 44901	9	27,665
OKLAHOMA CITY HSG AUTH	1700 N E FOURTH ST, OKLAHOMA CITY, OK 73117.	89	501,106

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1998—Continued

Housing agency	Address	Units	Award
H.A. OF YAMHILL COUNTY	414 N EVANS, MCMINNVILLE, OR 97128	20	109,765
HA & COMMUNITY SVS AGENCY LANE CO.	177 DAY ISLAND RD, EUGENE, OR 97401	30	102,168
LINN-BENTON HSG AUTH	1250 SE QUEEN AVE, ALBANY, OR 97321	34	151,123
MID COLUMBIA HSG AGENCY	506 E 2ND, THE DALLES, OR 97058	29	135,430
NORTHWEST OREGON HSG ASSOC	1508 EXCHANGE, ASTORIA, OR 97103	24	62,237
HSG AUTH CITY OF PITTSBURGH	200 ROSS ST, PITTSBURGH, PA 15219	107	379,325
CITY OF ROCK HILL	P O BOX 11579, ROCK HILL, SC 29731	21	68,508
CITY OF SPARTANBURG H/A	P O BOX 2828, SPARTANBURG, SC 29304	148	617,168
HA FLORENCE	P O DRAWER 969, FLORENCE, SC 29503	57	209,511
HA GREENVILLE	P O BOX 10047, GREENVILLE, SC 29603	289	1,201,463
PENNINGTON COUNTY HSG & REDEV COMM	1805 WEST FULTON ST, RAPID CITY, SD 57702	29	149,623
VERMILLION HSG & REDEV COMM	PO BOX 362, VERMILLION, SD 57069	5	10,987
HA JOHNSON CITY	P O BOX 59, JOHNSON CITY, TN 37605	15	49,711
KNOXVILLE COMMUNITY DEV'T CORP	P O BOX 3629, KNOXVILLE, TN 37937	206	519,848
TENNESSEE HSG DEV AGENCY	404 J. ROBERTSON PKWY, STE 1114, NASHVILLE-DAVIDSON, TN 37243.	6	13,887
ALAMO AREA COUNCIL OF GOV'T	118 BROADWAY, STE 400, SAN ANTONIO, TX 78205.	80	368,976
DALLAS COUNTY HSG ASSIST PROG	2377 N. STEMMONS FREEWAY, STE 201, DALLAS, TX 75207.	243	1,986,226
FORT WORTH HSG AUTH	P O BOX 430, 1201 E. 13TH. ST., FORT WORTH, TX 76101.	12	64,037
GALVESTON HSG AUTH	920 53RD ST, GALVESTON, TX 77550	48	198,851
GARLAND HSG AUTH	P O BOX 469002, 701 CLARK ST., GARLAND, TX 75046.	60	429,624
HARRIS COUNTY HSG & COMM DEV'T AGENCY	3100 TIMMONS LANE STE 200, HOUSTON, TX 77027.	86	405,645
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	18	88,856
HSG AUTH OF BEAUMONT	P O BOX 1312, 4925 CONCORD RD., BEAUMONT, TX 77704.	47	195,168
HSG AUTH OF DALLAS	3939 N. HAMPTON RD., DALLAS, TX 75212	248	1,646,636
HSG AUTH OF PLANO	1111 AVE H, BLDG. A, PLANO, TX 75074	40	220,584
HSG AUTH OF PORT ARTHUR	P O BOX 2295, 920 DEQUEEN BLVD., PORT ARTHUR, TX 77643.	4	16,520
MESQUITE HSG AUTH	P O BOX 850137, 720 N. EBRITE, MESQUITE, TX 75185.	268	1,375,675
PASADENA (CITY OF)	P O BOX 672, PASADENA, TX 77501	35	157,308
WICHITA FALLS HSG ASSIST PROG	P O BOX 1431, 1300 SEVENTH ST., WICHITA FALLS, TX 76307.	20	76,924
DAVIS COUNTY HSG AUTH	P O BOX 328, FARMINGTON, UT 84025	14	53,518
HSG AUTH OF THE COUNTY OF SALT LAKE	3595 S. MAIN ST, SALT LAKE CITY, UT 84115	99	456,845
VIRGINIA HSG DEV'T AUTH	601 S. BELVIDERE ST, RICHMOND, VA 23220	248	2,282,234
HA CITY OF SPOKANE	W. 55TH MISSION, STE 104, SPOKANE, WA 99201	12	63,700
HA CITY OF TACOMA	902 SOUTH "L" ST, TACOMA, WA 98405	191	772,580
HA CITY OF VANCOUVER	500 OMAHA WAY, VANCOUVER, WA 98661	90	393,785
HA CITY OF WALLA WALLA	411 W. MAIN ST, WALLA WALLA, WA 99362	12	34,409
HA OF CITY OF SEATTLE	120 SIXTH AVE NORTH, SEATTLE, WA 98109	3	15,063
HSG AUTH CITY OF EVERETT	3107 COLBY AVE, EVERETT, WA 98206	158	906,596
HSG AUTH OF LONGVIEW	1207 COMMERCE AVE, LONGVIEW, WA 98632	42	104,076
HSG AUTH OF SNOHOMISH COUNTY	12625 4TH AVE W. STE 200, EVERETT, WA 98204	40	202,205
CHIPPEWA CO. HSG AUTH	711 NORTH BRIDGE ST, CHIPPEWA, WI 54729	12	22,880
HSG AUTH OF THE CITY OF APPLETON	525 NORTH ONEIDA ST, APPLETON, WI 54911	64	287,516
MILWAUKEE CO HA	COURTHOUSE ANNEX RM 310, 907 N 10TH ST, MILWAUKEE, WI 53233.	59	226,254
WISCONSIN HSG & ECONOMIC DEV AUTH	P O BOX 1728, MADISON, WI 53701	44	173,813
HSG AUTH OF THE CITY OF CHEYENNE	3304 SHERIDAN AVE, CHEYENNE, WY 82009	75	227,952
Totals for Terminations/Opt-outs (Vouchers)		9,802	$52,146,523
Grand Total		52,784	$424,249,176

[FR Doc. 99–2054 Filed 1–28–99; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–04]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD by suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 21, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–1859 Filed 1–28–99; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Agency Information Collection Activities Under OMB Review

AGENCY: Office of American Indian Trust, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501. *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. Specifically, the Department of the Interior invites comments by the public on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have a practical use; the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, usefulness, and clarity of the information to be collected; and minimizing the burden of collection on those who are to respond.

DATES: OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days; therefore, public comments should be submitted to OMB on or before March 1, 1999.

ADDRESSES: Comments should be sent to: Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Copies of any comments should be sent to: Director, Office of American Indian Trust, United States Department of the Interior, 1849 C Street, NW, MS 2472 MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lohah Homer, Director, Office of American Indian Trust, United States Department of the Interior, 1849 C Street, NW, MS 2472 MIB, Washington, D.C.20240. Telephone: (202) 208–3338.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the Performance of Trust Functions Performed by Tribes under Self-Governance Compacts (OMB Control No. 1076–0146). This is a request for an extension of a currently approved information collection.

Abstract: This collection of information will be made to ensure compliance with 25 U.S.C. 458cc(d) which requires that the Secretary of the Interior monitor the performance of trust functions which have been assumed under Self-Governance funding agreements negotiated between the Secretary and an Indian Tribe/Consortia (hereinafter the respondent).

This information collection addresses those statutory and regulatory performance requirements imposed upon the respondent through the assumption of a particular trust function, through a formal Self-Governance agreement pursuant to the Self-Governance Act (P.L. 103–413) which, if not performed properly, may create imminent jeopardy to a trust asset. The information will be used by the Department of the Interior to determine if there is imminent jeopardy to any asset held in trust by the United States for an Indian Tribe or individual Indian that are being managed by a Tribe/Consortium on behalf of the United States pursuant to a Self-Governance agreement.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1076–0146. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 6, 1998 (Vol. 63, No. 215, Page 60016). There were no comments received.

Burden Statement: There is no preliminary work nor is any follow-up work required of the respondents. There are no forms to complete. The annual hour burden is calculated by the amount of time that the reviewer spends at each program site interviewing the respondents and collecting file information. Currently there are 63 respondents. The time required ranges from 4 person/hours to 80 person/hours. Based on the size and complexity of the current programs, the average hours spent for each annual evaluation is estimated at 24 person/hours. 63 × 24 = 1,512 person/hours per year for the collection of information.

Dated: January 25, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–2179 Filed 1–28–99; 8:45 am]
BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The collection of information described below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific

information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before March 1, 1999. OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Comments and suggestions on the requirement should be sent to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 860—ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). On Monday, August 24, 1998, the U.S. Fish and Wildlife Service (Service) was given emergency approval by OMB for collection of information in order to continue the grants programs currently conducted under the North American Wetlands Conservation Act (Pub. L. 101–233, as amended; December 13, 1989). The assigned OMB information collection control number is 1018–0100, and temporary approval expires in February 1999. The Service is requesting a three year term of approval for this information collection activity. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Service previously published a 60-day notice on the information collections associated with these grants programs (63 FR 49706; Thursday, September 17, 1998). The comment period for this notice expired on November 16, 1998, and the Service is in this notice requesting comment for the 30-day period following the date of publication in the **Federal Register**. No comments were provided to the Service Information Collection Clearance Officer as a result of the September 17 notice.

Comments are invited on : (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents.

Title: Information Collection In Support of Grant Programs Authorized by the North American Wetlands Conservation Act of 1989 (NAWCA).

Approval Number: 1018–0100.

Service Form Number(s): N/A.

Description and Use: The North American Waterfowl Management Plan (NAWMP), first signed in 1986, is a tripartite agreement among Canada, Mexico and the United States to enhance, restore and otherwise protect continental wetlands to benefit waterfowl and other wetland associated wildlife through partnerships between and among the private and public sectors. Because the 1986 NAWMP did not carry with it a mechanism to provide for broadly-based and sustained financial support for wetland conservation activities, Congress passed and the President signed into law the NAWCA to fill that funding need. The purpose of NAWCA, as amended, is to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat through partnerships. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

As well as providing for a continuing and stable funding base, NAWCA establishes an administrative body, made up of a State representative from each of the four Flyways, three representatives from wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This administrative body is chartered, under the Federal Advisory Committee Act, by the U.S. Department of the Interior as the North American Wetlands Conservation Council (Council). As such, the purpose of the Council is to recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for funding.

Subsection (c) of Section 5 (Council Procedures) provides that the ". . . Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section . . ." which are consideration of projects and recommendations to the MBCC, respectively. The means by which the Council decides which project proposals are important to recommend to the MBCC is through grants programs that are coordinated through the Council Coordinator's office (NAWWO) within the Service.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations and other characteristics, to meet the standards established by the Council and the requirements of NAWCA. The Council Coordinator's office publishes and distributes Standard and Small Grants instructional booklets that assist the applicants in formulating project proposals for Council consideration. The instructional booklets and other instruments, e.g., **Federal Register** notices on request for proposals, are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), grant agreements, budget reports and justifications, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by NAWCA, etc.

In summary, information collection under these programs is required to obtain a benefit, i.e., a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Occasional. The Small Grants program has one project proposal submissions window per year and the Standard Grants program has two per year.

Description of Respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: The reporting burden, or time involved in writing project proposals, is estimated to be 80 hours for a Small Grants submission and 400 hours for a Standard Grants submission.

Number of Respondents: It is estimated that 150 proposals will be submitted each year, 70 for the Small Grants program and 80 for the Standard Grants program.

Dated: January 13, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–2164 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

Permit No.: TE–007200.

Applicant: Bryan G. Carey, Riverside, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout each species' range for the purpose of enhancing their survival.

Permit No.: TE–834489.

Applicant: Stacie Tennant, Costa Mesa, California.

The applicant requests a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout Riverside, Orange, and San Diego Counties, California for the purpose of enhancing its survival.

Permit No.: TE–007216.

Applicant: Kenneth J. Halama, Irvine, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout Riverside, Orange, and San Diego Counties, California for the purpose of enhancing its survival.

Permit No.: TE–787645.

Applicant: Thomas Olsen Associates, Incorporated, Hemet, California.

The applicant requests a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout Riverside and San Diego Counties, California for the purpose of enhancing its survival.

Permit No.: TE–007277.

Applicant: Carol A. Hertzog, Vista, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the range of the species range for the purpose of enhancing its survival.

Permit No.: TE–004939.

Applicant: Gordon Pratt, Riverside, California.

The applicant requests a permit to take (harass by survey, collect for captive propagation, handle, and release) the Quino checkerspot butterfly (*Euphydryas editha quino*) and take (harass by survey) the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) in conjunction with presence and absence surveys and scientific research throughout each species' range for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received by March 1, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Recovery, Planning and Permits, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: January 25, 1999.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–2212 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–99–1610–00; G9–0080]

Notice of Prohibited Acts

AGENCY: Bureau of Land Management, Lakeview District.

ACTION: Notice of Prohibited Acts.

SUMMARY: The Lakeview District is publishing certain closures and restrictions for the purpose of establishing a supplemental rule for the protection of persons and resources. Pursuant to 43 CFR 1610.7–2 and 8364.1, the following restriction was issued and published as an emergency closure to firewood gathering and cutting in the Lost Forest/Sand Dunes Area of Critical Environmental Concern (ACEC) in the **Federal Register**: October 20, 1998 (Volume 63, Number 202, Page 56042). Pursuant to 43 CFR 8364.1, this notice establishes the emergency closure as a supplemental rule.

PENALTIES: Violation of this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Authority for this penalty is found in 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Scott R. Florence, Manager, Lakeview Resource Area, P.O. Box 151, Lakeview, OR 97639, or telephone (541) 947–2177.

Dated: January 14, 1999.

Scott R. Florence,

Acting District Manager.

[FR Doc. 99–2076 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1110–04; GP90083]

Seasonal Closure (Dec 1 to May 1) of BLM Road 6578 South Boundary Forest Management Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given that BLM Road 6578, located in Crook County, Oregon (Township 15 South, Range 21 East, Sections 25 and 36; Township 15 South, Range 22 East, Sections 30 and 31; Township 16 South, Range 21 East,

Sections 1, 2, 3, 8, 9, 10, and 11; Township 16 South, Range 22 East, Section 6) is closed to motorized vehicles from December 1 to May 1, effective immediately.

The aforementioned lands located in Crook County, Oregon, are seasonally closed to motor vehicles from December 1 to May 1 each year. The purpose of the closure is to minimize harassment and poaching of wildlife and to protect soil and watershed resources from vehicle damage.

Exemptions to this closure will apply to administrative and law enforcement personnel of the BLM, Forest Service, affected landowners who may require access, Oregon Department of Fish and Wildlife, and personnel performing law enforcement, firefighting, or other emergency duties.

This decision is part of the implementation of the South Boundary Forest Management Project, Environmental Assessment and Decision Notice (EA tOregon–054–98–049) signed by Harry R. Cosgriffe, Area Manager, BLM Central Oregon Resource Area, on February 8, 1996.

The Authority for this closure also comes from 43 CFR 8364.1 (a): Closure and restriction orders. Violation of this closure order is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

A more specific location of public lands under this closure can be obtained at the BLM Prineville District Office.

FOR ADDITIONAL INFORMATION CONTACT: Mark Lesko, National Resources Specialist, or Jan Hanf, Wildlife Biologist, BLM Prineville District Office, P.O. Box 550, Prineville, OR 97754, telephone number 541–416–6700.

Dated: January 19, 1999.

Harry R. Cosgriffe,

Area Manager, Central Oregon Resource Area.

[FR Doc. 99–2103 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–932–4120–05; OKNM 101735]

Invitation To Participate; Exploration for Coal in Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Farrell Cooper Mining Company on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located in Haskell and Sequoyah Counties, Oklahoma, and are described as follows:

T. 11 N., R. 21 E., Indian Meridian
Sec. 25, SE¼, E½NE¼, SW¼NE¼;
Sec. 36, E½, SW¼, E½NW¼;
T. 11 N., R. 22 E., Indian Meridian
Sec. 19, Lot 4, SE¼SW¼, S½SE¼;
Sec. 29, NW¼, N½SW¼;
Sec. 30, Lots 1–4, E½, E½W½;
Sec. 31, Lots 1–4, E½W½, NE¼NE¼, W½NE¼, SW¼SE¼;
Containing 2,342.16 acres more or less.

Interested parties may obtain a complete description of the lands covered in the license application by contacting Farrell Cooper Mining Company, or the Bureau of Land Management New Mexico State Office, Solid Minerals Adjudication, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Any parties electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, and Farrell Cooper Mining Company, P.O. Box 11050, Fort Smith, Arkansas 72917. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30-calendar days after the publication of this notice in the **Federal Register**.

This proposed exploration program is for the purpose of determining the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Farrell Cooper Mining Company may be examined at the Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502, and the Tulsa Field Office, 7906 East 33rd Street, Suite 101, Tulsa, Oklahoma 74145.

Dated: January 19, 1999.

Richard A. Whitley,

Associate State Director.

[FR Doc. 99–2074 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–078–99–1310–00]

Notice of Availability of the Final Supplemental Environmental Impact Statement (SEIS) on Oil and Gas Leasing in the Glenwood Springs Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to sec. 202 of the Federal Land Policy and Management Act of 1976 and Bureau of Land Management (BLM) regulations in CFR 1610.5–5, BLM proposes to amend the Resource Management Plan (RMP) for its Glenwood Springs Resource Area (GSRA). As described in a Notice of Intent published on April 21, 1997 (62 FR 19349), BLM has prepared a supplemental EIS on the impacts of oil and gas development in the GSRA. On March 17, 1998, an additional Notice of Intent (63 FR 13068) expressed BLM's intent to include lands in the Naval Oil Shale Reserves (NOSR) in the SEIS and the RMP amendment. On June 18, 1998, a Notice of Availability of the Draft supplemental EIS was published (63 FR 33385). Review of the Draft continued through November 23, 1998. The Final SEIS is now available.

Copies of the Final SEIS will be available at the following BLM offices: the Glenwood Springs Resource Area Office, 50629 Highway 6 & 24, Glenwood Springs, Colorado, 81602; the Grand Junction District Office, 2815 H Road, Grand Junction, Colorado, 81506; and the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215.

DATES: Comments will be accepted until March 1, 1999. Should you choose to comment, please indicate whether BLM is free to release copies of your comment for public review. BLM planning regulations provide for administrative review by the BLM Director for those who participated in the planning process and who would be adversely affected by selection of the Preferred Alternative and approval of the Proposed RMP Amendment. Those who wish to protest to the BLM Director must do so my March 1, 1999.

ADDRESSES: Comments should be sent to the Area Manager, Glenwood Springs Resource Area, Bureau of Land Management, P.O. Box 1009, Glenwood Springs, CO 81602, ATTN: Oil and Gas SEIS.

FOR FURTHER INFORMATION CONTACT: Steve Moore, (970) 947–2824.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare a supplemental EIS on oil and gas leasing and development in the GSRA was published on April 21, 1997 (62 FR 19349). The EIS process indicated that some changes in the leasing decisions are necessary and that an RMP amendment will be required. After publication of that notice, the Department of Defense Authorization Act of 1998 (November 18, 1997) transferred management authority for the Naval Oil Shale Reserves (NOSR) from the Department of Energy to BLM. In addition to transferring management authority to BLM, the Act directs BLM to lease approximately 10,000 acres in the NOSR for oil and gas development by November 18, 1998. On March 17, 1998, BLM published an additional Notice of Intent (63 FR 13068) expressing its intent to include lands in the Naval Oil Shale Reserves (NOSR) in the oil and gas leasing SEIS and RMP amendment. On June 18, 1998, a Notice of Availability of the Draft supplemental EIS was published (63 FR 33385). Review of the Draft continued through November 23, 1998.

Mark T. Morse,

District Manager.

[FR Doc. 99–2108 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[(CO–017–9–1330–00) (DES–98–57)]

Notice of Availability of Draft Environmental Impact Statement; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management published a document in the **Federal Register** of January 12, 1999, concerning the availability of a draft Environmental Impact Statement for the Colorado Sodium Products Development Project located in Rio Blanco County and Garfield County, Colorado. The document contained an incorrect public meeting location.

FOR FURTHER INFORMATION CONTACT: Larry Shults, 970–878–3501.

Correction

In the **Federal Register** of January 12, 1999, in FR Doc. 99–605, on page 1819, in the third column, correct the second location, Town Hall Council Chambers, 222 Grand Valley Way, Parachute, Colorado to read Grand Valley High School, 100 E. 2nd Street, Parachute, Colorado.

Dated: January 20, 1999.

John J. Mehlhoff,

Resource Area Manager, White River Resource Area.

[FR Doc. 99–2101 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

National Park Service

60 Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Yukon-Charley Rivers National Preserve.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies is proposing in 1999 to conduct surveys of persons using selected Alaskan Military Operations Areas where Air Force training occurs. In one of these surveys, visitors to Harding Lake and Chena River State Recreation Areas will be asked about their expectation concerning Air Force training and the impacts of reported overflights on their activities and experiences.

	Estimated number of	
	Responses	Burden hours
Alaskan Military Operations Areas On-Site Visitor Survey	1890	630

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed surveys. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

DATES: Public comments will be accepted on or before March 30, 1999.

SEND COMMENTS TO: Darryll R. Johnson, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100; or Mark E. Vande Kamp, USGS/BRD/FRESC/UWFS, College of Forest Resources, Box 352100, University of Washington, Seattle, WA 98195–2100.

FOR FURTHER INFORMATION CONTACT: Darryll R. Johnson. Voice: 206–685–7404, Email: <darryllj@u.washington.edu>; Mark E. Vande Kamp. Voice: 206–543–0378, Email: <mevk@u.washington.edu>.

SUPPLEMENTARY INFORMATION:

Titles: Alaskan Military Operations Areas On-Site Visitor Survey.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service (in conjunction with a natural resource protection council including members from the Air Force and a number of state and federal land management agencies) needs information to assess the effectiveness of current mitigation efforts in limiting impacts of Air Force training activity on human users of Alaskan Military Operations Areas.

Automated data collection: At the present time, there is no automated way to gather this information because it includes expectations and evaluations visitors associate with their experiences in Harding Lake and Chena River State Recreation Areas.

Description of respondents: A sample of individuals who use Harding Lake and Chena River State Recreation Areas for recreation purposes.

Estimated average number of respondents: 1890.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: 20 minutes.

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 630 hours.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 99–2127 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR 705, Restriction on financial interests of State employees.

DATES: Comments on the proposed information collection must be received by March 30, 1999, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)). This notice identifies an information collection activity that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR 705, Restriction on financial interests of State employees.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Restrictions on financial interests of State employees, 30 CFR 705.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any state regulatory authority employee or member of advisory boards or commissions established in accordance with state law or regulation to represent multiple interests who performs any function or duty under the Act.

Total Annual Response: 3,321.

Total Annual Burden Hours: 1,111.

Dated: January 26, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–2216 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Draft Petition Evaluation Document/ Environmental Impact Statement; Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Reopening of the pubic comment period for the draft petition evaluation document/environmental impact statement (PED/EIS) for Fall Creek Falls State Park, Tennessee.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is reopening the public comment period for the draft PED/EIS on the Fall Creek Falls State Park Unsuitability Petition. Substantial public comments received during the previous comment periods expressed serious concerns regarding potential environmental and economics impacts to Fall Creek Falls State Park and Natural Area resulting from surface coal mining operations if conducted within the petition area. Consequently, OSM has decided to reopen the comment period to provide the public an additional opportunity to submit information to OSM for consideration in the evaluation of the Fall Creek Falls State Park Unsuitability Petition.

DATES: *Comments:* OSM will accept written comments until 5:00 p.m. Eastern time on April 29, 1999.

ADDRESSES: *Electronic or written comments:* Submit electronic comments to bbrock@osmre.gov. Written comments may be hand-delivered or mailed to Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, SW, Suite 500, Knoxville, Tennessee 37902. Telephone: (423) 545–4103, ext. 146.

SUPPLEMENTARY INFORMATION: OSM has been petitioned by Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, and forty-nine citizens to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Tennessee, as unsuitable for all types of surface coal mining operations. OSM prepared and distributed a draft PED/EIS as required by Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 and the National Environmental Policy Act of 1969. The draft PED/EIS evaluates the potential coal resources of the area, the demand for coal resources, and the impacts of alternative unsuitability decisions on the human environment, the economy, and the supply of coal.

On May 1, 1998, OSM announced, via **Federal Register** notice (63 FR 24192), the availability of the draft PED/EIS and that written comments on the draft PED/EIS would be accepted until July 30, 1998. Subsequently, OSM reopened the comment period from August 21 to September 16, 1998 (63 FR 44925), because of the public's continuing interest and concerns regarding the environmental and economic issues addressed in the PED/EIS. As a result of

OSM receiving substantial public comments on the potential environmental impacts to Fall Creek Falls State Park and Natural Area from surface coal mining operations, OSM is reopening the public comment period until 5:00 p.m. Eastern time on April 29, 1999.

Dated: January 25, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–2215 Filed 1–28–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–68]

Lamb Meat; Import Investigations

AGENCY: United States International Trade Commission.

ACTION: Scheduling of time for vote on injury, and reasons for finding the investigation is "extraordinarily complicated."

EFFECTIVE DATE: January 26, 1999.

SUMMARY: The Commission has scheduled its vote in the injury phase of this investigation for February 9, 1999, at 2 p.m., in the Main Hearing Room, U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. The Commission is publishing a separate Government in the Sunshine Act notice for the February 9 meeting. The Commission's reasons for finding the investigation to be extraordinarily complicated are set forth in the "background" section below.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background: On January 15, 1999, the Commission determined that investigation No. TA–201–68, *Lamb Meat*, is "extraordinarily complicated" within the meaning of section 202(b)(2)(B) of the Trade Act of 1974 (19 U.S.C. 2252(b)(2)(B)). This determination allows the Commission to take up to 30 additional days to make its injury determination in this investigation—that is, the Commission must make its injury determination before the 150th day after the filing of the petition, as opposed to the 120th day. Under a 120-day schedule, the Commission would have been required to make its injury determination by February 4, 1999. However, the Commission plans to take only 5 additional days, and has scheduled its vote in the injury phase for February 9. The time and place for the hearing in the remedy phase, should this phase be necessary, and the deadlines for filing prehearing and posthearing briefs and other submissions relating to remedy, remain the same as previously announced.

The Commission's decision to designate this investigation "extraordinarily complicated" is based on the complexity of the issues and the size of the record, which will include a substantial amount of factual information developed late in the investigation and after the Commission's January 12 public hearing. Because the schedule for consideration of remedy issues does not change, the 5-day extension will not impair the Commission's ability to give such issues sufficient consideration.

Notice of institution of the investigation and scheduling was published in the **Federal Register** of October 23, 1998 (63 FR 56940), and notice of the Commission's determination that the investigation is extraordinarily complicated was published in the **Federal Register** of January 25, 1999 (64 FR 3715).

Issued: January 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2315 Filed 1–28–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 9, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1 . Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–201–68 (Lamb Meat)(Injury)—briefing and vote.
5. Outstanding action jackets:
(1) Document No. GC–98–069: APO matters.
(2) Document No. GC–98–071: APO matters.
(3) Document No. GC–98–073: Disposition of respondents' petition to amend protective order in previous investigation Inv. No. 337–TA–345 (Certain Anistropically Etched One Megabit and Greater DRAMs, Components Thereof, and Products Containing Such DRAMs) in Inv. No. 337–TA–414 (Certain Semiconductor Memory Devices and Products Containing Same).
(4) Document No. GC–99–003: Initial determination terminating the investigation on the basis of withdrawal of the complaint in Inv. No. 337–TA–411 (Certain Organic Photoconductor Drums and Products Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2314 Filed 1–27–99; 1:05 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Regional Community Policing Institute Surveys: Pre-test and Post-test.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register**. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance

Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments may also be submitted to the COPS Office, PPSE Division, 1100 Vermont Avenue, N.W., Washington, D.C. 20530, or via facsimile at (202) 633–1386.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The proposed collection is listed below:

(1) *Type of information collection.* New collection.

(2) *The title of the form/collection.* Regional Community Policing Institute Surveys: Pre-test and Post-test.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection.* Form: COPS 30/01. Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract.* A sample of local law enforcement officers and community members receiving training on community policing from a COPS funded RCPI will be surveyed regarding their attitudes toward the RCPI training experience and the impact of training on the delivery of police services and police-citizen relations. The surveys will also capture information on the respondents' training histories, including training taken prior to RCPI participation and a description of the RCPI training program in which they enrolled.

To uphold its mandate to enhance and advance community policing and to foster training and education on community policing, the COPS Office has provided continued funding to 30 Regional Community Policing Institutes (RCPI). The RCPIs are a mechanism to provide training and technical assistance on community policing to law enforcement agencies and the communities they serve. RCPIs are charged with providing comprehensive and innovative education, training, and technical assistance to COPS grantees and other departments throughout a designated region. The geographic distribution of RCPIs has resulted in the availability of training to law enforcement agencies and communities throughout the nation.

Innovations in traditional training methods are necessary to continue the advancement of community policing in law enforcement agencies throughout the United States. In turn, it is necessary to understand and document the impact of these innovative training programs. The evaluation of the RCPI program will provide vital information on the impact of these training endeavors by closely examining the outcomes of training programs and by assessing police officer and community members' attitudes and behaviors related to the training opportunities. The Regional Community Policing Institute Surveys: Pre-test and Post-test will provide essential information on the impact of training on the behavior and attitudes of police officers and a sample of citizen trainees. The pre-test survey will be administered to officers and community members prior to receiving training from a RCPI and the post-test will be administered to the same group of trainees three months after they receive training.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* This collection includes pre- and post-test surveys. Approximately 3,000 respondents will be surveyed pre and post. Estimated time to complete each survey is 45 minutes with no preparation time.

(6) *An estimate of the total public burden (in hours) associated with the collection.* Approximately 4,500 hours.

Public comment on this proposed information collection is strongly encouraged.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–2130 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States and State of Vermont* v. *Bennington Potters, Inc., et al.*, Civil Action Nos. 2:98–CV–421 and 2:98–CV–422 was lodged on December 31, 1998, with the United States District Court for the District of Vermont.

The complaint in this action seeks to recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et al.*, response costs incurred and to be incurred by EPA at the Bennington Landfill Superfund Site located in the Town of Bennington, Vermont ("Site"). The defendants are Bennington Potters, Inc., EHH Realty Corp., Graphitek of Vermont, Inc. and Lauzon Machine & Engineering, Inc.

The proposed Consent Decree embodies an agreement with four potentially responsible parties ("PRPs") at the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. 9622(g), to pay $175,000, in aggregate, in settlement of claims for past and future response costs at the Site and claims for natural resource damages. Of this total, $36,750 will be paid to the United States and $138,250 will be paid to five parties who are performing a remedial action at the Site. The monies paid to the five performing parties will be used to partially fund the remedial action and a natural resource damages restoration project being performed by the five performing parties.

The Consent Decree provides the settling defendants with a release for civil liability for EPA's and the State of Vermont's ("State's") past and future CERCLA response costs and natural resource damages at the Site for resources under the trusteeship of the Secretary of the Interior and the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and under the trusteeship of the State.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station,

Washington, D.C. 20044, and should refer to *United States and State of Vermont* v. *Bennington Potters, Inc., et al.*, DOJ Ref. No. 90–11–3–868A/1.

The proposed consent decree may be examined at the Office of the United States Attorney, 11 Elmwood Avenue, Burlington Vermont 05401; the Region I Office of the Environmental Protection Agency, Region I Records Center, 90 Canal Street, First Floor, Boston, MA 02203; and at the Consent Decree Library, 1120 G Street NW, Fourth Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library 1120 G Street NW, Fourth Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–2076 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on January 7, 1999 a proposed Consent Decree ("Decree") in *United States* v. *Anne Zabel, et al,* Civil Action No. CIV98–4162, was lodged with the United States District Court for the District of South Dakota. The United States filed this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601, et seq., to recover the past response costs incurred at or in connection with the Zabel Battery Site in Sioux Falls, South Dakota.

The proposed Consent Decree resolves claims against Anne Zabel and the City of Sioux Falls. The proposed Consent Decree will recover response costs of $201,350.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *Anne Zabel* Civil Action No. CIV98–4162, and D.J. Ref. #90–11–2–1205.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202 and the U.S. EPA Region VIII, 999 18th Street, Superfund Records Center, Suite 500, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.75 for the Decrees (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–2077 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium ("ALABC")

Notice is hereby given that, on October 13, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Advanced Lead-Acid Battery Consortium ("ALABC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Matsushita Battery Industrial Co., Ltd., Osaka, JAPAN has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Lead-Acid Battery Consortium ("ALABC") intends to file additional written notification disclosing all changes in membership.

On June 15, 1992, Advanced Lead-Aid battery Consortium ("ALABC") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on July 13, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 1998 (63 FR 51952).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–2085 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation ("BRDC")

Notice is hereby given that, on November 5, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Biotechnology Research and Development Corporation ("BRDC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Maxygen, Inc., Santa Clara, CA has been added as a party to this venture.

On September 18, 1998, BRDC issued to Maxygen, Inc. ("Maxygen") and Maxygen purchased from BRDC, 746⅔ shares of common stock, without par value, of BRDC. Simultaneously, with the issuance and purchase of the shares of the common stock, BRDC and Maxygen entered into an Agreement to be bound by BRDC Master Agreement effective as of June 10, 1988, by and among BRDC and its common stockholders. Maxygen has the rights set forth in the BRDC Master Agreement in all project technology made, discovered, conceived, developed, learned or acquired by or on behalf of BRDC in connection with, or arising out of, or as the result of, a research project in existence while Maxygen is a common stockholder of BRDC.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research

project remains open, and Biotechnology Research and Development Corporation ("BRDC") intends to file additional written notification disclosing all changes in membership.

On April 12, 1988, biotechnology Research and Development Corporation ("BRDC") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on March 9, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 1998 (63 FR 51953).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–2084 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research And Production Act of 1993—CNgroup

Notice is hereby given that, on October 7, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CNgroup has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are CommerceNet, Palo Alto, CA; CNgroup, Palo Alto, CA; Tesserae Information Systems, Palo Alto, CA; and BusinessBots, Palo Alto, CA. The nature and objectives of the venture are cooperative research and development to develop and demonstrate component-based commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2095 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CNgroup

Notice is hereby given that, on September 18, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), CNgroup has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CNgroup, Palo Alto, CA has changed its name to Veo Systems, Inc., Mountain View, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CNgroup intends to file additional written notification disclosing all changes in membership.

On October 7, 1997, CNgroup filed its original notification pursuant to Section 6(a) of the Act. The notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2096 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—Consortium For Plasma Science, LLC

Notice is hereby given that, on November 5, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Consortium For Plasma Science, LLC has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Nabi, a Delaware corporation has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Consortium For Plasma Science, LLC intends to file additional written notification disclosing all changes in membership.

On February 5, 1997, Consortium for Plasma Science, LLC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 7, 1997 (62 FR 10584).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–2088 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—Digital Imaging Group

Notice is hereby given that, on September 16, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Digital Imaging Group has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Busy Box Productions, San Francisco, CA; Questra Corporation, Rochester, NY; Skrudland Photo, Inc., Austin, TX; Sonnetech, Ltd., San Francisco, CA; and Sound Vision, Inc., Framingham, MA have been added as parties to this venture. Also, Infinite Pictures, Inc., Portland, OR; and Visioneer, Fremont, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Digital Imaging Group intends to file additional written notification disclosing all changes in membership.

On September 25, 1997, Digital Imaging Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60530).

The last notification was filed with the Department on June 19, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2092 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—The Dow Chemical Company ("DOW")

Notice is hereby given that, on March 16, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), The Dow Chemical Company ("DOW") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are The Dow Chemical Company, Midland, MI; and Magna International of America, Inc., Farmington Hills, MI. The nature and objectives of the venture are to effectively and efficiently engage in the research and development of a process to produce composite parts reinforced with nano-sized fillers to decrease both the cost of manufacture and weight of vehicles. This research and development is being undertaken with the intent of developing technology for the manufacture of automobile parts having lower cost of manufacture and to reduce the weight of automobiles and other models of vehicular transportation.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2080 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum

Notice is hereby given that, on March 20, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Enterprise Computer Telephony Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aspect Telecommunications, San Jose, CA; Compaq Computer Corporation, Houston, TX; Centigram Communications, San Jose, CA; Lernout & Hauspie, Ieper, BELGIUM; Picazo Communications, Palo Alto, CA; Alcatel Data Networks, Paris, FRANCE; Artesyn Communications Products, Madison, WI; Blue Wave Systems, Leicestershire, UNITED KINGDOM; CallWare Technologies, Sandy, UT; CAPI Association, Berlin, GERMANY; Daimler-Benz Aerospace, Stuttgart, GERMANY; Datakinetics Ltd., Hants, UNITED KINGDOM; ETRI, Terjon, KOREA; Frequentis Nachrichtentecknik, Vienna, AUSTRIA; GTE Communications Systems, Taunton, MA; Industrial Technology Research Institute, Chutung, TAIWAN; Intervoice, Dallas, TX; Nokia Telecommunications, Helsinki, FINLAND; Nuera Communications, San Diego, CA; Racal Recorders, Hampshire, UNITED KINGDOM; Spectrum Signal Processing, Burnaby, BC, CANADA; Syntellect, Phoenix, AZ; and Telesoft Design, Dorest, UNITED KINGDOM have been added as parties to this venture. Also, Brite Voice Systems, Wichita, KS; COM2001 Technologies, Inc., San Diego, CA; Tandem Computers, Austin, TX; Dictaphone, Stratford, CT; and Heurikon Corporation, Madison, WI have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Enterprise Computer Telephony Forum intends to file additional written notification disclosing all changes in membership.

On February 20, 1996, Enterprise Computer Telephony Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on June 25, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 1998 (63 FR 33418).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2100 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Frame Relay Forum

Notice is hereby given that, on October 9, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Frame Relay Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its memberships status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accesslan, San Jose, CA; Hekimian Laboratories, Rockville, MD; JTEC PTY, Ltd., Meadowbank, AUSTRALIA; Negtscout, Westford, MA; and Wandel & Goltermann, Research Triangle Park, NC have joined as worldwide members. OMSI, Newark, CA and University of Hawaii, Honolulu, HI have joined as auditing members. Distributed Networking, Greensboro, NC has downgraded to auditing membership. The following members have changed their names: MCI to MCI Worldcom, Tulsa, OK and Northern Telecom. Inc. to Nortel Networks, Research Park, NC. Also, Bay Networks, Billerica, MA; Castleton Network Systems Corp., Burnaby, British Columbia, CANADA; Worldcom, Tulsa, OK and Yurie Systems, Landover, MD have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Frame Relay Forum intends to file additional written

notification disclosing all changes in membership.

On April 10, 1992, Frame Relay Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act of July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on July 2, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–2086 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on December 29, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), The Frame Relay Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Castleton Network Systems Corp., Burnaby, British Columbia, CANADA; Cegetel Enterprises, Puteux, FRANCE; Deutshe Telekom, Darmstadt, GERMANY; France Telecom/Transpac, Issy Les Moulingaux, FRANCE; Hi/fn, Carlsbad, CA; Hitachi Telecom (USA) Inc., Norcross, GA; Kaspia Systems, Inc., Beaverton, OR; Network General Corp., Oakbrook Terrace, IL; OLICOM, Gdansk, POLAND; Siemens AG, Munich, GERMANY; SHIVA, Edinburgh, SCOTLAND; Trend Communications, Chantilly, VA; Yurie Systems, Inc., Landover, MD have joined as worldwide members. Chair for Computer Networks, Dresden, GERMANY; Mantis Technology, Ltd., New York, NY; MobileComm, Irving, TX; and RD6, Inc., Montreal, PQ, CANADA have been added as auditing members to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Frame Relay Forum intends to file additional written notification disclosing all changes in membership.

On April 10, 1992, The Frame Relay Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on August 1, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 30, 1997 (62 FR 58748).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–2087 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on November 30, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Inter Company Collaboration for AIDS Drug Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bayer AG has been dropped as a party to this venture. Also, the members of the Collaboration have decided to extend the Collaboration for a five year period, up to and including December 31, 2003. The Collaboration will continue the activities in which it has been engaged since its initial formation, including new activities added after its founding, as described in its initial and subsequent filings. In addition, the members have decided to extend the activities of the Collaboration to include activities involving substances that may enhance the immune function in HIV-infected individuals.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Inter Company Collaboration for AIDS Drug Development intends to file additional written notification disclosing all changes in membership.

On May 27, 1993, Inter Company Collaboration for AIDS Drug Development filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on July 13, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 1998 (63 FR 51955).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2097 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Electrical Manufacturers Association ("NEMA")

Notice is hereby given that, on September 9, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Electrical Manufacturers Association ("NEMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TomTec GmbH, Munich, GERMANY; and Esaote SpA, Genoa, ITALY have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NEMA intends to file additional written notification disclosing all changes in membership.

On November 14, 1997, NEMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 30, 1998 (63 FR 52292).

The last notification was filed with the Department on March 5, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on September 29, 1998 (63 FR 51955).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2079 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Electronics Manufacturing Initiative ("NEMI")

Notice is hereby given that, on October 8, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Electronics Manufacturing Initiative ("NEMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Industrial Computer Corporation, Atlanta, GA; Thermoset Plastics, Indianapolis, IN; Lambda Technologies, Morrisville, NC; and Unicam Software, Inc., Portsmouth, NH have been added as parties to this venture. The following member has changed its address: Cimetrix, Inc., Salt Lake City, UT. CAM/LOT/Electrovert/MPM, Haverhill, MA has been acquired by Speedline Fluids Dispensing Systems, Haverhill, MA. Also, IBM Corporation, Hopewell Junction, NY; Lawrence Livermore National Laboratory, Livermore, CA; Texas Instruments Incorporated, Temple, TX; Three-Five Systems, Inc., Tempe, AZ; MCNC, Raleigh, NC; and Sheldahl, Inc., Northfield, MN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NEMI intends to file additional written notification disclosing all changes in membership.

On June 6, 1996, NEMI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 28, 1996 (61 FR 33774).

The last notification was filed with the Department on June 25, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 10, 1997 (62 FR 47691).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2099 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—The National Shipbuilding Research Program ("NSRP")

Notice is hereby given that, on March 13, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Shipbuilding Research Program ("NSRP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Atlantic Marine Holding Company, Jacksonville, FL; Avondale Industries, Incorporated, New Orleans, LA; Bath Iron Works Corporation, Bath, ME; Electric Boat Corporation, Groton, CT; Halter Marine, Incorporated, Gulfport, MS; Ingalls Shipbulding, Incorporated, Pascaguala, MS; National Steel and Shipbuilding Company, San Diego, CA; Newport News Shipbuilding and Dry Dock Company, Newport News, VA; and Todd Pacific Shipyard Corporation, Seattle, WA. The nature and objectives of the venture are the utilization of complementary research interest, talent and experience to obtain, manage and focus national shipbuilding funding on technologies to reduce costs to the United States Navy and/or promote United States international shipbulding competitiveness.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2098 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on October 28, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Open Group, L.L.C. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Association for Retail Technology Standards (ARTS), Reading, PA; Distributed Systems Technology Centre (DSTC Pty Ltd.), St. Lucia, AUSTRALIA; ESIGETEL, Avon, FRANCE; France Telecom, Paris, FRANCE; Moscow State Engineering Physics Institute (MEPHI), Moscow, RUSSIA; NORTEL Northern Telecom, Ltd., Alpharetta, CA; Sandia National Laboratories, Albuquerque, NM; Saudi Distributed Systems Agency, Makkah, SAUDI ARABIA; SCSSI (Service Central de la Securite et des Systems d'Information), Moulineaux, FRANCE; Security Dynamics Technologies, Inc. including RSA Securities, Redwood City, CA; Sequel Technology Corporation, Bellevue, WA; and The Dairy Farm Group, Causeway Bay, HONG KONG have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Open Group, L.L.C. intends to file additional written notification disclosing all changes in membership.

On April 21, 1997, The Open Group, L.L.C. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on July 16, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 6, 1997 (62 FR 52153).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2089 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act Of 1993—Optical Internetworking Forum

Notice is hereby given that, on October 5, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Optical Internetworking Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Dynarc, Kista, SWEDEN; E.O.S.T., Jerusalem, ISRAEL; Epitaxx, West Trenton, NJ; FORE Systems, Warrendale, PA; Furukawa Electric, Santa Clara, CA; Indiana University, Bloomington, IN; Net Insight AB, Stockholm, SWEDEN; New Focus, Santa Clara, CA; Open Networks Engineering, Ann Arbor, MI; PMC Sierra, Burnaby, CANADA; Ryan Hankin Kent, South San Francisco, CA; Stratum One Communications, Santa Clara, CA; Tektronix, Beaverton, OR; USC, Arlington, VA; 3 Com, Boxboro, MA; ADC Telecommunications, Minneapolis, MN; Allied Signal, Morristown, NJ; AMCC, San Diego, CA; America Online, Reston, VA; AMP, Harrisburg, PA; Applied Fiber Optics, Fremont, CA; Argon Networks, Littleton, MA; Artel Video Systems, Marlboro, MA; Ascend Communications, Waterford, MA; Astral Point Communications, North Reading, MA; AT&T, Holmdel, NJ; Atmosphere Networks, Cupertino, CA; Bay Networks, Billerica, MA; Bellcore, Red Bank, NJ; BNed, Inc., San Francisco, CA; Bookham Technology, Oxfordshire, ENGLAND; Cerent Corporation, Petaluma, CA; Chromatis Networks, Chevy Chase, MD; Ciena, Palo Alto, CA; Cisco Systems, San Jose, CA; Corning, Inc., Corning, NY; CSELT, Torino, Italy; Deutsche Telekom, Berlin, GERMANY; Ditech, Sunnyvale, CA; DSC Communications, Ballerup, DENMARK; Enron Communications, Portland, OR; Ericsson, Richardson, TX; Frances Telecom, Lannion, FRANCE; Frontier Corporation, Rochester, NY; Fujitsu Network Communication, Richardson, TX; GPT Ltd., Coventry, ENGLAND; Helsinki Telephone Corporation, Helsinki, FINLAND; Hermes Europe Railtel, Hoeilaart, BELGIUM; Hewlett-Packard, San Jose, CA; Hitachi, Ltd., Yokohama, JAPAN; JDS Fitel, Nepean, Ontario, CANADA; Juniper Networks, Mountain View, CA; Lightera Networks, Cupertino, CA; Lucent Technologies, Holmdel, NJ; LYNX, Rosh Háayin, ISRAEL; Marconi S.P.A., Genova, ITALY; Molecular OptoElectronics Corporation, Watervliet, NY; Monterey Networks, Richardson, TX; MRV Communications, Chatsworth, CA; NEC, Herndon, VA; Nexabit Networks, Marlborough, MA; Nokia Telecommunications, Espoo, FINLAND; Nortel, Nepean, Ontario, CANADA; Northchurch Communications, Andover, MA; NOVA Telecommunications, Columbia, MD; NTT, Tokyo, JAPAN; OKI Electric Industry, Tokyo, JAPAN; Optical Networks, Inc., San Jose, CA; Pipelinks, Santa Clara, CA; Pirelli Cables and Systems, Lexington, SC; Pluris, Inc., Cupertino, CA; Qwest Communications International, Denver, CO; RELTEC Corporation, Bedford, TX; Santec Corporation, Komaki, Aichi, JAPAN; Siemens AG, Muenchen, GERMANY; Sprint, Overland Parks, KS; Sumitomo Electric, Santa Clara, CA; Sycamore Networks, Tewksbury, MA; Tellabs, Lisle, IL; Tellium, Oceanport, NJ; Tyco Submarine Systems, Holmdel, NJ; Williams Network, Tulsa, OK; and Worldcom, Tulsa, OK. The nature and objectives of the venture are to promote the acceptance and implementation of interoperable products and services for data switching and routing using optical internetworking technologies and to support the rapid advancement of an efficient and compatible technology base that promotes a competitive marketplace.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2090 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association ("PCA")

Notice is hereby given that, on October 7, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Southeast Cement Promotion Association, Snellville, GA has been added as a party to this venture. Also, Southeastern Cement Shippers Association, Snellville, GA; Medusa Corporation, Cleveland, OH; Canadian Medusa Cement, Owen Sound, Ontario, CANADA; and CBR Cement Corporation, Allentown, PA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association ("PCA") intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association ("PCA") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015).

The last notification was filed with the Department on February 25, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 24, 1998 (63 FR 39903).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2091 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation ("SRC")

Notice is hereby given that, on December 1, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Research Corporation ("SRC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Physical Electronics Inc., Eden Prairie, MN; Synopsis, Inc., Mountain View, CA; and ULTRATECH Stepper, San Jose, CA have been added as parties to this venture. Also, SiBond L.L.C., Hopewell Junction, NY; and Solid State Measurements, Inc., Pittsburgh, PA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Research Corporation ("SRC") intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Semiconductor Research Corporation ("SRC") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281).

The last notification was filed with the Department on March 12, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 1998 (63 FR 51957).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2094 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc.

Notice is hereby given that, on March 6, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Silicon Integration Initiative, Inc. ("SI2") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, QuestLink Technology, Inc., Austin, TX; Philips Semiconductors International B.V., Eindhoven, The Netherlands; and Aspect Development, Inc., Mountain View, CA have been added as parties to this venture. Also, Engineering DataXpress, San Jose, CA; CADIS, Inc., Boulder, CO; and Viewlogic Systems, Inc., Marlboro, MA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Silicon Integration Initiative, Inc. intends to file additional written notifications disclosing all changes in membership.

On December 30, 1998, Silicon Integration Initiative, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456).

The last notification was filed with the Department on September 5, 1997. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on November 10, 1997 (62 FR 60532).

Constance K. Robinson,

Antitrust Division.

[FR Doc. 99–2083 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—Supercomputer Automotive Applications Partnership

Notice is hereby given that, on October 6, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Supercomputer Automotive Applications Partnership has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the nature and objectives of the venture. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the parties have agreed to add the following as an additional research objective for the group: to develop vehicle component models and first generation analytical tools, and then use those tools to (1) perform first order trade-off studies to rank major components and (2) conduct computer simulations to evaluate various vehicle configurations. These analytical tools are needed to plan for the most efficient deployment of resources to reach the goals of the Partnership for a New Generation of Vehicle, the USCAR program designed to improve vehicle technology and vehicle manufacturing processes, as well as develop a prototype next generation vehicle. The tolls will also be useful in program management and vehicle integration as the PNGV program moves forward. If successful, PNGV will develop commercially-viable vehicle technology that, over the long-term, can preserve personal mobility while further reducing the impact of cars and light trucks on the environment and reducing the nation's dependence on imported petroleum.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Supercomputer Automotive Applications Partnership intends to file additional written notification disclosing all changes in membership.

On July 6, 1993, Supercomputer Automotive Applications Partnership filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 27, 1994 (59 FR 27580).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2093 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 28, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ambit Design Systems, Austin, TX; AMS Group International, Erfurt, Thuringia, GERMANY; Angeles Design Systems, San Jose, CA; ChipIdea Microelectronics, Ltd., Oeiras, PORTUGAL; DNP Corporation USA, Santa Clara, CA; Frontier Design, Inc., Leuven, BELGIUM; Fuji Electric Co., Ltd., Tokyo, JAPAN; IMS Integrated Measurement Systems, Inc., Beaverton,

OR; Intel, Chandler, AZ; LEDA S.A., Meylan, FRANCE; Scientific and Engineering Software, Inc., Austin, TX; Seagate Technology, Scotts Valley, CA; SmartSand, Inc., Sunnyvale, CA; Synthesis Corporation, Osaka, JAPAN; Taveren Technology, Inc., Austin, TX; United Microelectronics Corporation, Sunnyvale, CA; Virtual Silicon Technology, Inc., Sunnyvale, CA; and Wipro Ltd., Global Products, Santa Clara, CA have been added as parties to this venture. Also, Credence Systems Corporation, Fremont, CA; Diagonal Systems, Mountain View, CA; Hyundai Electronics Industries Co., Ltd., Ichon, Kyoungki-Do, KOREA; OMI Management Office, Brussels, BELGIUM; Sebring Systems, Los Gatos, CA; Tseng Labs, Inc., Newton, PA; and Victor Company of Japan, Yokohama, Kanagawa, JAPAN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 27, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on May 6, 1998. A notice has not yet been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2081 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on October 28, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A Priori Microsystems, Inc., Fukuoka, JAPAN; Artest Corporation, Sunnyvale, CA; Co-Design Automation, Inc., Milton Common, Oxon, UNITED KINGDOM; Lee Dilley (individual), Doylestown, PA; IMMS, Ilmenau, GERMANY; Intellitech Corporation, Durham, NH; Iprias Ltd., Bristol, UNITED KINGDOM; MayaSoft Corporation, Sunnyvale, CA; Metis Associates, Inc., Sunnyvale, CA; Modelware, Inc., Tinton Falls, NJ; Silicon Systems Limited, Dublin, IRELAND; Prab Varma (individual), Mountain View, CA; and Glenn Vinogradov (individual), Newton, PA have been added as parties to this venture. Also, Advanced Logic Corporation, San Jose, CA; Chip Express Corporation, Manotick, Ontario, CANADA; Enablix Design, Inc., San Jose, CA; and Zoran Compcore, Santa Clara, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 27, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on July 28, 1998. A notice has not yet been published.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–2082 Filed 1–28–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,155; Rocky Mount Instruments, Inc., Rocky Mount, NC
TA–W–35,216; Camp-Hill Corp., McKeesport, PA
TA–W–35,221; Spinnerin, Inc., South Hackensack, NJ
TA–W–35,223; LTV Steel Co., Oliquippa Tin Mill, Aliquippa, PA
TA–W–35,246; Active Quilting Div. of Rockville Fabrics, Plains, PA
TA–W–35,236; Artistic Weaving Co., Clinton, NC
TA–W–35,430; Rice Logging, Council, ID

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,323; Blackhawk Services, Inc., Odessa, TX
TA–W–35,291; Prophecy Limited, Div. Of American Eagle Outfitter, New York, NY
TA–W–35,168; Nortel Networks, Repair Center, Nashville, TN
TA–W–35,352; Phoenix Dye Works, Cleveland, OH

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–35,162; Thomaston Mills, Griffin Div., Griffin, GA
TA–W–35,188; Greif Bros. Corp., Westfield, MA
TA–W–35,247; Cooper Tubocompressor, Buffalo, NY
TA–W–35,047; Beacon Looms, Inc., Teaneck, NJ
TA–W–35,305; Rayonier, Inc., Inland Wood Products Div., Plummer, ID
TA–W–34,981; Forman Box & Display Co., New York, NY

TA–W–35,263; The Wallet Works, Inc., A Subsidiary of AR Accessories, West Bend, WI

TA–W–35,233; Harbison-Walker Refractories Co., Fulton, MO

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–35,260; Belden Wire and Cable Co., Cord Products Div., Franklin, NC: November 4, 1997.

TA–W–34,861; Oryx Energy Co., Headquartered in Dallas, TX & at Various Locations in the State of Texas: August 5, 1997.

TA–W–35,104; W. Seitchik & Sons, Philadelphia, PA: October 7, 1997.

TA–W–35,129; Pioneer Oil Co., Lawrenceville, IL: September 8, 1997

TA–W–35,407; Sonoco Products Co., Amsterdam, NY: December 11, 1997.

TA–W–35,187; Fruit of the Loom Corporate Headquarters, Bowling Green, KY: All workers of Corporate Headquarters excluding workers of contract Business and Customer Service Dept: November 22, 1997.

TA–W–35,143; Savage Zine, Inc., Clinch Valley Mine, Thorn Hill, TN: October 16, 1997.

TA–W–35,278; Molycorp. Inc., Questa Div., Questa, NM: November 4, 1997.

TA–W–35,256; U.S. Steel Mining Co. L.L.C., Pinnacle System, Pineville, WV: November 4, 1997.

TA–W–35,316; Weirton Steel Corp., Weirton, WV: November 12, 1997.

TA–W–35,085; Integrated Circuit Systems, Inc., Norristown, PA: November 10, 1997.

TA–W–35,241; L & D Dress Co., Inc., Ridgewood, NY: November 8, 1997.

TA–W–35,340; Chasam, Inc., Sylva, NC: December 2, 1997.

TA–W–35,329; Philips Consumer Communications, Including All Leased Workers of Sharp Technical Service, Piscataway, NJ: November 18, 1997

TA–W–35,362; Battle Mountain Gold Co., Battle Mountain Nevada Project, Copper Canyon, NV: November 27, 1997.

TA–W–35,109; MKE Quantum Components, Shrewsbury, MA: September 21, 1997.

TA–W–35,051 & A; Merix Corp., Forest Grove, OR and Loveland, CO: September 5, 1997.

TA–W–35,197 & A; Frank Ix & Sons, Inc., New York, NY and Charlottesville, VA: November 23, 1997.

TA–W–35,321; Tokyo Electron Oregon, Inc., Hillsboro, OR: December 1, 1997.

TA–W–35,383; Swaco, A Division of M–I, L.L.C., Williston, ND: December 1, 1997.

TA–W–35,371; Hamilton Beach/Proctor Silex, Inc., Washington, NC: February 8, 1999.

TA–W–35,439; Southwest Fashion, Inc., El Paso, TX: October 28, 1998.

TA–W–35,161; Weatherford International, Inc., (formerly Weatherford Enterra), Andrews, TX: October 13, 1997.

TA–W–35,199; Hercules, Inc., Aqualon Div., Parlin, NJ: November 30, 1998.

TA–W–35,448 & A; Private Line Group, Inc., Franklin, GA and Bowman, GA: December 14, 1997.

TA–W–35,087; Crown Crok & Seal, Arlington, TX: September 29, 1997.

TA–W–35,242; National Garment Co., Chanute, KS: November 16, 1997.

TA–W–35,208; A & J Design Corp., West New York, NJ: November 2, 1997.

TA–W–35,237; J.M. Huber Corp., Headquartered in Houston, TX and Operating in The Following States: A; TX and B; CO: Novmber 7, 1997.

TA–W–35,280; Lenox, Inc., Kirk Stieff Div., Baltimore, MD: November 16, 1997.

TA–W–35,417; Stanley Fastening Systems, E. Greewnwick, RI and N. Kingstown, RI: December 10, 1997.

TA–W–35,458; Thomas & Betts Diamond Communication Products, Inc., Garwood, NJ: December 11, 1997.

TA–W–35,211; Wilkens, Kaiser & Olsen, Inc., Carson, WA: November 4, 1997.

TA–W–35,160; Golden Books Publishing Co., Formerly Western Publishing Co., Inc., Sturtevant, WI: October 6, 1997.

TA–W–35,354; Inland Production Co., Myton, UT: December 3, 1997.

TA–W–35,373; Sooner Drilling & Exploration Trust, Konawa, OK: December 2, 1997.

TA–W–35,048; Beacon Looms, Inc., Beacon, NY: September 18, 1997.

TA–W–35,205; Northwest Alloys, Inc., Addy, WA: September 26, 1998.

TA–W–35,192; Rockwell Semiconductor Systems—Colorado Springs, Inc., Colorado Springs, CO: October 28, 1997.

TA–W–35,253; Hubbell Lighting, Inc., Christiansburg, VA: November 9, 1997.

TA–W–34,989; Babbie Casuals Co., Pacoima, CA: September 3, 1997.

TA–W–35,299; Union Oil Co Of California, D.B.A. Unocal, Headquartered in Sugar Land, TX and Operating in the Following States: A; AL, B; LA, C; MI, D; MS, E; N.M, F; OK, G; TX, H; UT: December 7, 1998.

TA–W–35,164; Tickle Me, Inc., Long Island, NY: October 21, 1997.

TA–W–35411; Dreiling Oil, Inc., Hays, KS: December 9, 1997.

TA–W–35,139; Kellwood Co., Sportswear Div., Morgantown, KY: October 14, 1997.

TA–W–35,286; Cyclone Drilling, Headquartered in Gillette, WY & Operating in The Following States: A; CO, B; MT, C; NM, D; ND: November 17, 1997.

TA–W–35,281; National Garment Co., Corporate Office, St. Louis, MO: November 16, 1997.

TA–W–35,361: The Trane Co, A Div. Of American Standard, Inc., Tyler, TX: December 1, 1997.

TA–W–35,348 & TA–W–35,349; WCI Steel, Inc., Including Leased Workers of Harsco Corp. A Heckett Multiserv Div., Warren, OH & Youngstown Sinter Plant, Youngstown, OH: November 30, 1997.

TA–W–35,343; Papillon Ribbon & Bow Co., New York NY: November 30, 1997.

TA–W–35,415; Doyon Drilling, Inc., Anchorage, AK: December 10, 1997.

TA–W–35,262; Inter-National Childrenswear, L.L.C., Ohatchee, AL: November 13, 1997.

TA–W–35,400; Kichler Lighting Group, Cleveland, OH: December 8, 1997.

TA–W–35,295; Intervascular, Inc., Clearwater, FL: November 17, 1997.

TA–W–35,310 & A; A.L. Gebhardt, Bruce Street Split Tannery, Milwaukee, WI and Greves Street Grain Tannery, Milwaukee, WI: November 25, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determination NAFTA-TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA-TAA-02855; Boise Cascade, Medford Plywood, Medford, OR
NAFTA-TAA-02768; Rayonier, Inc., Inland Wood Products Div., Plummer, ID
NAFTA-TAA-02759; Tokyo Electron Oregon, Inc., Hillsboro, OR
NAFTA-TAA-02784 & A; Private Line Group, Inc., Franklin, GA & Bowman, GA
NAFTA-TAA-02805; Rice Logging, Council, ID
NAFTA-TAA-02740; Active Quilting, Div. of Rockville Fabrics, Plains, PA
NAFTA-TAA-02793; Williamete Industries, Dallas Sawmill, Dallas, OR
NAFTA-TAA-02652; Gibeck, Inc., Indianapolis, IN
NAFTA-TAA-02770; Harbison-Walker Refractories Co., Fulton, MO
NAFTA-TAA-02774; A.P. Green Refractories, a/k/a/ Harbison-Walker Refractories, Sulphur Springs, TX:
NAFTA-TAA-02739; Pittsfield Woolen Yarns Co., Inc., Pittsfield, ME.

The investigation revealed that the criteria for eligibility have not been met for reasons specified.

NAFTA-TAA-02750; National Garment Co., Corporate Office, St. Louis, MO
NAFTA-TAA-02751; The Wallet Works, A Subsidiary of AR Accessories, West Bend, WI
NAFTA-TAA-02753; Nortel Networks, Repair Center, Nashville, TN

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA-TAA-02807; Komatsu Silicon America, Inc., Hillsboro, OR
NAFTA-TAA-02806; Waterford Irish Stoves, Inc., West Lebanon, NH

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) did not become totally or partially separated from employment as required for certification.

Affirmative Determinations NAFTA-TAA

NAFTA-TAA-02824; Flex-O-Lite, Elwood, IN: December 28, 1997.
NAFTA-TAA-02814; Southwest Fashion, Inc., El Paso, TX: December 28, 1997.
NAFTA-TAA-02789; The Trane Co., A Div. Of American Standard, Inc., Tyler, TX: December 1, 1997.
NAFTA-TAA-02810; Cyclone Drilling, Headquartered in Gillette, WY and Operating in The Following States: A; CO, B; MT, C; NM, D; ND: December 18, 1997.
NAFTA-TAA-02827; Pee Dee Apparel, Inc., Timmonsville, SC: December 21, 1997.
NAFTA-TAA-02728; Hubbell Lighting, Inc., Christiansburg, VA: November 9, 1997.
NAFTA-TAA-02687; Babbie Casuals Co., Pacoima, CA: October 1, 1997.
NAFTA-TAA-02755, A & B; J.M. Huber Corp., Headquartered in Houston, TX and Operating Throughout the States of TX and CO: November 23, 1997.
NAFTA-TAA-02771; Chasam, Inc., Sylva, NC: December 2, 1997.
NAFTA-TAA-02654; Crown, Cork and Seal, Arlington, TX: September 29, 1997.
NAFTA-TAA-02781; Battle Mountain Gold Co., Battle Mountain Nevada Project, Copper Canyon, NE: November 27, 1997.
NAFTA-TAA-02767; Hamilton Beach/ Proctor Silex, Inc., Washington, NC: January 25, 1999.
NAFTA-TAA-02746; Georgia Pacific Corp., CNS/Softwood Lumber Div., Baileyville, ME: November 10, 1997
NAFTA-TAA-02765; Eutectic Corp., Chicago, IL: November 30, 1997.
NAFTA-TAA-02790; J.A. Lamy Manufacturing Co., Sedalia, MO: December 10, 1997.
NAFTA-TAA-02795; Union Pacific Fuels, Inc., A Subsidiary of Union Pacific Resources Co and Union Pacific Resources Co., A Div. of Union Pacific Resources Group, Inc., Headquartered in Fort Worth, TX & Operating in The Following States: A; CO, B; LA, C; OK, D; TX, E; UT, F; WY: December 14, 1997.
NAFTA-TAA-02852; Borden Chemical, Inc., Borden P&IP—Kent Plant, Kent, WA: January 8, 1998.
NAFTA-TAA-02668; Wolverine Worldwide, Inc., Rockford, MI: September 22, 1997.
NAFTA-TAA-02792; Zenith Electronics Corp., Consumer Electronics Engineering Department, Glenview, IL: December 8, 1997.
NAFTA-TAA-02840; Texfi Industries, Inc., Fayetteville, NC: December 11, 1997.

I hereby certify that the aforementioned determinations were issued during the months of January, 1999. Copies of these determinations are available for inspection in Room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 25, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99-2137 Filed 1-28-99; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-34, 806 and 806B]

Donnkenny Apparel, Inc. Rural Retreat, Virginia and Fabric Cutters Plant, Floyd, Virginia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 22, 1998, applicable to all workers of Donnkenny Apparel, Inc. Located in Rural Retreat, Virginia. The notice was published in the **Federal Register** on November 10, 1998 (63 FR 63078).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Fabric Cutters Plant, Floyd, Virginia location on Donnkenny Apparel, Inc. The Floyd, Virginia location produces fabric for Donnkenny Apparel's production plants including Rural Retreat, Virginia.

The intent of the Department's certification is to include all workers of Donnkenny Apparel, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Donnkenny Apparel, Inc., Fabric Cutters Plant, Floyd, Virginia.

The amended notice applicable to TA–W–34, 806 is hereby issued as follows:

All workers of Donnkenny Apparel, Inc., Rural Retreat, Virginia (TA–W–34, 806), and Fabric Cutters Plant, Floyd, Virginia (TA–W–34, 806B) who became totally or partially separated from employment on or after July 21, 1997 through October 22, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–2143 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,379]

Harsco Corporation, Heckett Multiserv Division, Warren, Ohio; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 14, 1998 in response to a worker petition which was filed November 30, 1998 on behalf of workers at Heckett Multiserv, a Division of Harsco Corporation, Warren, Ohio.

The petitioning group of workers are included in an existing Trade Adjustment Assistance petition investigation (TA–W–35,348). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 20th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–2140 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 783 and 783B]

Huber Lace and Embroidery Incorporated; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 1998, applicable to workers of Huber Lace and Embroidery Incorporated. The notice was published in the **Federal Register** on November 11, 1998 (63 FR 63078).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that it was their intent to include the workers of Huber Lace and Embroidery Incorporated separated from employment in New York City. The workers of the subject firm in New York City are engaged in employment related to the production of lace and embroidery trimmings, including administrative support services and shipping.

The intent of the Department's certification is to provide coverage to all workers of the subject firm adversely affected by increased imports. According, the Department is amending the certification to expand coverage to workers of Huber Lace and Embroidery Incorporated, New York, New York.

The amended notice applicable to TA–W–34, 783 is hereby issued as follows:

All workers of Huber Lace and Embroidery Incorporated, West New York, New Jersey (TA–W–34, 783) and New York, New York (TA–W–34,783B), who became totally or partially separated from employment on or after July 6, 1997 through October 23, 2000, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–2144 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,389]

John Deere Consumer Products; Gastonia, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 21, 1998 in response to a worker petition which was filed on behalf of all workers at John Deere Consumer Products, located in Gastonia, North Carolina (TA–W–35,389).

The petitioner has requested that the petition be withdrawn.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 21st day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–2141 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,388]

John Deere Consumer Products, Greer, South Carolina; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 21, 1998 in response to a worker petition which was filed on behalf of workers and former workers at John Deere Consumer Products, located at Greer, South Carolina (TA–W–35,388).

The petitioner has requested that the petition be withdrawn.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 21st day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–2142 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and training Administration

[TA–W–35, 356]

Rayonier, Incorporated Inland Wood Products Division Plummer, Idaho; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 14, 1998 in response to a worker petition which was filed November 30, 1998 on behalf of workers at Rayonier, Incorporated, Inland Wood Products Division, Plummer, Idaho.

The petitioning group of workers are covered under an existing Trade Adjustment Assistance investigation (TA–W–35, 305). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–2145 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Acting Director of OTAA not later than February 8, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than February 8, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 20th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Automotive Logistics Services (IBT)	Brownstown, MI	11/05/1998	NAFTA–2,763	Warehousing & shipping operation.
Fashions International (UNTIE)	Scranton, PA	12/02/1998	NAFTA–2,764	Mens sport, dress & suit coats & jackets.
Eutectic (Co.)	Charlotte, NC	12/03/1998	NAFTA–2,765	Metal articles.
Walls Industries (Co.)	Ashville, AL	12/02/1998	NAFTA–2,766	Non-insulated bib overalls.
Hamilton Beach/Proctor Silex (Co.)	Washingotn, NC	12/03/1998	NAFTA–2,767	Electric household appliances.
Rayonier (Wkrs)	Plummer, ID	11/30/1998	NAFTA–2,768	Dimension lumber.
Zenith Electronics (Wkrs)	Melrose Park, IL	12/04/1998	NAFTA–2,769	T.V. picture tubes.
Harbison Walker Refractories (USWA)	Fulton, MO	12/07/1998	NAFTA–2,770	Refractory products.
Chasam (Co.)	Sylva, NC	12/04/1998	NAFTA–2,771	Chilidren blanketsleepers.
International Paper (Wkrs)	Ticonderoga, NY	12/07/1998	NAFTA–2,772	Reprographic copy paper.
Royal Brands International (Wkrs)	Los Angeles, CA	11/19/1998	NAFTA–2,773	Yogurt, milk, milk containers equipment.
A.P. Green Refractories (USWA)	Sulphur Springs, TX	12/07/1998	NAFTA–2,774	Brick shapes, castable products.
Magnetek (Co.)	Prairie Grove, AR	12/07/1998	NAFTA–2,775	Electric motors.
Co Steel Raritan (Wkrs)	Perth Amboy, NJ	12/01/1998	NAFTA–2,776	Billets and steel wire rob.
Dresser—Rand (IAMAW)	Wellsville, NY	12/07/1998	NAFTA–2,777	Castings and patterns for foundries.
LaBlanc (Co.)	Sioux City, IA	11/23/1998	NAFTA–2,778	Communication towers.
Komatsu America International (Co.)	Galton, OH	12/08/1998	NAFTA–2,779	Motor graders—hydraulic crans.
Westark Garment (Wkrs)	Magazine, AR	12/08/1998	NAFTA–2,780	Outterwear.
Battle Mountain Gold (Wkrs)	Cooper Canyon, NV	12/08/1998	NAFTA–2,781	Gold ingots.
General Electric (Co.)	Hickory, NC	12/08/1998	NAFTA–2,782	Transformers.
Bonny Products (Comp)	Washington, NC	12/14/1998	NAFTA–2,783	Kitchen Tools and Gadgets.
Private Line Group (Co.)	Franklin, GA	12/07/1998	NAFTA–2,784	Men's coats.
Private Line Group (Co.)	Bowman, GA	12/07/1998	NAFTA–2,784	Men's coats.
GSM Enterprises (Wkrs)	Los Angeles, CA	12/04/1998	NAFTA–2,785	Sportswear.
Bellwether (Wkrs)	San Francisco, CA	12/14/1998	NAFTA–2,786	Shorts and Jerseys.
Plynetics Express (Wrks)	Beaverton, OR	12/10/1998	NAFTA–2,787	Prototype Products.
Schneider Mills (Wrks)	Alexander Mills, NC	12/11/1998	NAFTA–2,788	Ladies' Apparel.
Trane Company (The) (IUE)	Tyler, TX	12/11/1998	NAFTA–2,789	Air conditioning units.
J.A. Lamy Mfg. Co. ( )	Sedalia, MO	12/10/1998	NAFTA–2,790	Levi Blue Jeans & Cargo Pants.
Jinkerson Services (Wrks)	El Paso, TX	12/10/1998	NAFTA–2,791	Jeanswear Fabric Cutting.
Zenith Electronics Corp (Comp)	Glenview, IL	12/10/1998	NAFTA–2,792	Engineering.
Willamette Industries (WCIW)	Dallas, OR	12/14/1998	NAFTA–2,793	Dimension lumber.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
A. Schulman (OCAW)	Orange, TX	12/16/1998	NAFTA–2,794	Polyurathane.
Union Pacific Resources (Co.)	Forth Worth, TX	12/18/1998	NAFTA–2,795	Oil and gas exploration and production.
U.S. Can (Wkrs)	Green Bay, WI	12/17/1998	NAFTA–2,796	Aerosol cans.
Graphic Packaging (Wkrs)	Franklin, OH	12/16/1998	NAFTA–2,797	Flexographic presses.
Am West Petroleum (Co.)	Upton, WY	12/15/1998	NAFTA–2,798	Oil.
Elec-Tech (Co.)	Hulette, WY	12/15/1998	NAFTA–2,799	Electrical work.
Cross Creek Apparel (Co.)	Floyd, VA	12/01/1998	NAFTA–2,800	Shirts, t-shirts fleece sweatshirts.
Chestnut Hill Marketing (Co.)	Fall River, MA	12/17/1998	NAFTA–2,801	Childrens Apparel.
Santa's Best—Tinsel Division (Co.)	Manitowoc, WI	12/18/1998	NAFTA–2,802	Christmas decorations.
Thomas and Betts (IBT)	Garwood, NJ	12/16/1998	NAFTA–2,803	Drop & pole line CATV hardware.
Texfi (Wrks)	Fayetteville, NC	12/21/1998	NAFTA–2,804	Fabric.
Rice Logging (Co.)	Council, ID	12/21/1998	NAFTA–2,805	Loggins.
Waterford Irish Stoves (Wrks)	West Lebanon, NH	12/18/1998	NAFTA–2,806	Wood, gas and pellet stoves.
Komatsu Silicon America Inc. (Wrks)	Hillsboro, OR	12/21/1998	NAFTA–2,807	Silicon wafers.
John Deere Consumer Products (Comp)	Gastonia, NC	12/16/1998	NAFTA–2,808	Hand-held lawn and garden equipment.
Fiskars, Inc. (Wrks)	Wheaton, MN	12/18/1998	NAFTA–2,809	Electrical strips and Surge Protection.
Cyclone Drilling (Wkrs)	Gillette, WY	12/21/1998	NAFTA–2,810	Crude oil and natural gas.
Cyclone Drilling (Wkrs)	Operating in the State of, CO.	12/21/1998	NAFTA–2,810	Crude oil and natural gas.
Cyclone Drilling (Wkrs)	Operating in the State of, MT.	12/21/1998	NAFTA–2,810	Crude oil and natural gas.
Cyclone Drilling (Wkrs)	Operating in the State of, NM.	12/21/1998	NAFTA–2,810	Crude oil and natural gas.
Cyclone Drilling (Wkrs)	Operating in the State of, ND.	12/21/1998	NAFTA–2,810	Crude oil and natural gas.
Marquip, Inc. (Wrks)	Phillips, WI	12/23/1998	NAFTA–2,811	Corregated Material Handling Machines.
Vastar Resources (Wrks)	Houston, TX	12/23/1998	NAFTA–2,812	Natural Gas.
Fleming Companies, Inc. (Comp)	Portland, OR	12/24/1998	NAFTA–2,813	Grocery—Dry, Frozen.
Southwest Fashion (Wkrs)	El Paso, TX	12/28/1998	NAFTA–2,814	Men's jeans.
Ausco Products (Co.)	Benton Harbor, MI	11/25/1998	NAFTA–2,815	Screw & mechanics jacks for auto.
Blount (Wkrs)	Prentice, WI	12/28/1998	NAFTA–2,816	Forestry and Industrial equipment.
MAE Garment Finishers (Wkrs)	El Paso, TX	12/30/1998	NAFTA–2,817	Jean pants.
84 Mining (UMWA)	Eighty-Four, PA	01/04/1999	NAFTA–2,818	Coal.
Triquint Semiconductor (Wkrs)	Hillsboro, OR	01/04/1999	NAFTA–2,819	Semiconductor and related devices.
Ardney Leather and Sheepakin Company (Wkrs).	Milwaukee, WI	12/29/1998	NAFTA–2,820	Shearling coats.
Footwear Mgt. Co., Justin Boot (Wkrs)	El Paso, TX	12/30/1998	NAFTA–2,821	Boots, leather products, accessories.
Southern Container (UAW)	Dayton, NJ	12/18/1998	NAFTA–2,822	Preprinted liner for containers.
Fasco Motors and Blowers (Co.)	LaGrande, GA	12/21/1998	NAFTA–2,823	Electric motors and blowers.
Flex-O-Lite (USWA)	Elwood, IN	12/28/1998	NAFTA–2,824	Safety cones, sewing of signs and flags.
General Electric (Wkrs)	Mebane, NC	12/29/1998	NAFTA–2,825	Switchboards power panels.
Washington Public Power Supply System (IBEW).	Elma, WA	12/29/1998	NAFTA–2,826	Electricity.
Pee Dee Apparel (Co.)	Timmionsville, SC	12/21/1998	NAFTA–2,827	Men's and ladies activewear.
Illinois Glove (UNITE)	Effingham, IL	12/23/1998	NAFTA–2,828	Gloves.
Curtis Sportswear (Co.)	Etowah, TN	01/04/1999	NAFTA–2,829	Jeans.
Angelica Image Apparel (Co.)	Linden, TN	12/22/1998	NAFTA–2,830	Uniform and healthcare products.
Sanyo Audio (Co.)	Milroy, PA	01/11/1999	NAFTA–2,831	Hi-fi stereo speaker systems.
Rock-Tenn (Wkrs)	Taylorsville, NC	01/11/1998	NAFTA–2,832	Folding cartons.
M/D Totco Instrumentation (Co.)	Casper, WY	01/11/1999	NAFTA–2,833	Technical oil field equipment.
Asarco (Co.)	El Paso, TX	01/11/1999	NAFTA–2,834	Cooper anodes.
Clevenger Industries (Co.)	Marion, NC	01/06/1999	NAFTA–2,835	Men's Women's children's socks & hoise.
Linville Hosiery (Co.)	Marion, NC	01/06/1999	NAFTA–2,836	Men's women's childrens socks & hosiery.
Sun Studs (Co.)	Roseburg, OR	01/07/1999	NAFTA–2,837	Softwood veneer.
Beulaville Garments (Wkrs)	Beulaville, NC	01/11/1999	NAFTA–2,838	Polo shirts.
Fair Rite Products (Wkrs)	Springfield, VT	01/12/1999	NAFTA–2,839	Noise suppressors.
Graham Field Health Products (Co.)	Hauppauge, NY	01/11/1999	NAFTA–2,840	Walkers, canes, wheelchairs, commodes.
Bend Wood Products (Wkrs)	Bend, OR	01/12/1999	NAFTA–2,841	Wood products.
All Technologies (CBO)	El Paso, TX	01/19/1999	NAFTA–2,842	Computers.
Boston Precision (Co.)	Hyde Park, MA	01/11/1999	NAFTA–2,843	Precision components.
Pluma (Co.)	Rocky Mount, VA	01/13/1999	NAFTA–2,844	Fleecewear and jersey t-shirts.
Tecos Fashions (Wkrs)	El Paso, TX	01/13/1999	NAFTA–2,845	Jean products—cutting.
Emerson Motor ()	Independence, KS	01/11/1999	NAFTA–2,846	
Sun Apparel of Texas (Co.)	El Paso, TX	01/13/1999	NAFTA–2,847	Cutting of garments.
Great Northern Paper (Co.)	Millinocket, ME	01/13/1999	NAFTA–2,848	Sawlogs, pulpwood, wood chips, hardwood.
Stitches (Wkrs)	El Paso, TX	01/13/1999	NAFTA–2,849	Jeans products—cutting.
UCAR Carbon (Wkrs)	Columbia, TN	01/15/1999	NAFTA–2,850	Graphite electrodes and connecting pins.
Ithaca Industries (Co.)	Gastinia, NC	01/15/1999	NAFTA–2,851	Nosiery.

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Borden Chemical (Wkrs)	Kent, WA	01/13/1999	NAFTA–2,852	Formaldehyde.
Manufacturing and Technical Enterprises (Wkrs).	Wilton, ME	01/14/1999	NAFTA–2,853	Cable harnesses for electrical products.
Porcelantie (Co.)	Lexington, NC	01/14/1999	NAFTA–2,854	Glazed ceramic wall tile.
Boise Cascade (Wkrs)	Medford, OR	01/14/1999	NAFTA–2,855	Plywood.
Fourmost Garment (Wkrs)	Briston, VA	01/15/1999	NAFTA–2,856	Clothing.

[FR Doc. 99–2139 Filed 1–28–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02808]

John Deere Consumer Products, Gastonia, North Carolina; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 16, 1998 in response to a petition filed on behalf of workers at John Deere Consumer Products, located in Gastonia, North Carolina (NAFTA–02808).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 21st day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–2138 Filed 1–28–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provision of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York N990012 (Jan. 29, 1999)

Volume II

None

Volume III

None

Volume IV

Michigan
MI9900007 (Jan. 29, 1999)

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

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Signed at Washington, DC, this 22nd day of January 1999.

John Frank,

Acting Chief, Branch, of Construction Wage Determinations.

[FR Doc. 99–1862 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Report on Occupational Employment." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 30, 1999.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz. BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE, Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Employment Statistics (OES) survey is a Federal/State establishment survey of wage and salary workers designed to produce data on current occupational employment and wages. OES survey data assist in the development of employment and training programs established by the Workforce Investment Act of 1998, Job Training Partnership Act (JTPA) of 1982, and the Perkins Vocational Education Act of 1984.

The OES program operates a periodic mail survey of a sample of non-farm establishments conducted by all fifty States, Guam, Puerto Rico, the District of Columbia, and the Virgin Islands. Over three-year periods, data on occupational employment and wages are collected by industry at the two- and three-digit Standard Industrial Classification (SIC) levels. The Department of Labor uses OES data in the administration of the Alien Labor Certification process under the Immigration Act of 1990.

II. Current Actions

BLS plans to make a major change to occupations surveyed in 1999 by incorporating the 1998 edition of the Standard Occupational Classification (SOC) manual in place of the OES Dictionary. Research also is underway to evaluate any changes needed to specific industry forms to prepare for the North American Industry Classification System (NAICS) to be introduced in the 2002 OES survey. This research may result in the reduction of the number of industry forms and the introduction of an unstructured form (a form without occupations listed, sent to small establishments only) for the 1999 survey. BLS and the States are considering changes to the mail questionnaire in order to reduce respondent burden, including the addition or deletion of requests for certain survey items. Research is being conducted on the collection of OES data by electronic means, including the Internet. BLS plans to conduct a Response Analysis Survey (RAS) to examine data collection procedures. This will be the first examination of such procedures since 1989.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Report on Occupational Employment.

OMB Number: 1220–0042.

Affected Public: Business or other for-profit; not-for-profit institutions; and State, Local or Tribal Government.

Frequency: Annual.

Forms	Number of responding units	Response time (minutes)	Annual burden hours	Annual burden hours three-year average
BLS 2877:				
FY 2000	340,000		255,000	
FY 2001	340,000	45	255,000	255,000
FY 2002	340,000		255,000	
BLS 2877 RAS:				
FY 2000	4,000		933	
FY 2001	4,000	14	933	622
FY 2002	0		0	
Total:				
FY 2000	344,000	59	255,933	
FY 2001	344,000		255,933	255,622
FY 2002	340,000	45	255,000	

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 25th day of January 1999.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 99–2146 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program—Shipyards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. This notice announces grant availability for training in safety and health programs for shipyards. The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice.

Section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) authorizes this program.

DATES: Applications must be received by March 26, 1999.

ADDRESSES: Submit grant applications to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Don Guerra, Program Analyst, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810, e-mail don.guerra@oti.osha.gov.

GRANTS CONFERENCE: The OSHA Office of Training and Education will hold a grants conference to assist potential applicants to understand the grant topic and answer questions pertaining to completing an application. The grants conference will be held from 9:30 a.m. to 12:00 p.m. on February 18, 1999, at the OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018. Persons interested in attending this conference should contact Ronald Mouw, Chief, Division of Training and Educational Programs, or Don Guerra, Program Analyst, at (847) 297–4810, or e-mail don.guerra@oti.osha.gov to obtain information about local hotel accommodations and transportation. It is not necessary to register for this conference.

SUPPLEMENTARY INFORMATION:

What is the Purpose of the Program

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through the priority planning process or otherwise, or as part of an OSHA special emphasis program.

Grantees are expected to develop training and/or educational programs that address topics named by OSHA, recruit workers and employers for the training, and conduct the training. Grantees will also be expected to follow-up with people who have been trained to find out what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What is the Training Topic

The purpose of this notice is to announce that funds are available for grants. The topic is recognition and avoidance of shipyard-related safety and health hazards. Each grant application must address one of the following shipyard safety and health topics:

1. Shipbuilding and ship repair. Safety and health hazards affecting workers in Standard Industrial Classification (SIC) 3731 who build or repair ocean-going vessels.

2. Shipbreaking/ship scrapping. Safety and health hazards affecting workers in SIC 4499 who are involved with Navy ship scrapping contracts or other shipbreaking/ship scrapping contracts involving ocean-going vessels.

In both the shipyard safety and health topics, the areas of primary concern are confined space entry, respiratory protection, welding, fire protection, fall protection, crane safety, asbestos removal, lead abatement, electrical safety, and hazard communication. It is permissible to cover other safety and health topics, but grants should emphasize the topics of primary concern.

Who is Eligible to Apply for a Grant

Any nonprofit organization that is not an agency of a State or local government is eligible to apply. However, State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the IRS.

What can Grant Funds be Spent on

Grant funds can be spent on the following.

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement.
- Developing educational materials for use in the training.

Are There Restrictions on How Grant Funds can be Spent

OSHA will not provide funding for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include state and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.

3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 7(c)(1) of the Occupational Safety and Health Act.

7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

What Other Grant Requirements are There

1. OSHA review of educational materials. OSHA will review educational materials produced by the grantee for technical accuracy during development and before final publication. OSHA will also review curriculums and purchased training materials for accuracy before they are used.

When grant recipients produce training materials, they will provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Grant recipients' audiovisual materials will be included in this lending program. In addition, all materials produced by grantees may be placed on the Internet by OSHA.

2. OMB and regulatory requirements. Grantees will be required to comply with the following documents.

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.
- OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.
- OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.
- OMB Circular A–133, which provides information about audit requirements.

3. Certifications. All applicants will be required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. Matching share. The program requires the grantee to provide a matching share. Grant recipients are to provide a minimum of 20% of the total grant budget. This match may be in-kind, rather than a cash contribution. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.

How are Applications Reviewed and Rated

- OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants.
- OSHA will give preference to applications which:
- Address multiple shipyard safety and health subjects. For example, an application which addresses respiratory protection, welding, and fire protection would be preferred over one that only addresses welding.
- Plan train-the-trainer programs.
- Train managers and/or supervisors.
- Serve multiple employers. OSHA is interested in reaching more than one employer with each grant awarded.

The following factors will be considered in evaluating grant applications.

1. Program Design

a. The proposed training and education program addresses shipyards.

b. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained.

c. The proposal contains a train-the-trainer program, and the numbers to be trained by these trainers are clearly estimated.

d. The planned activities are appropriate for the workers and/or employers to be trained.

e. There is a plan to recruit trainees for the program.

f. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

g. There is a plan to evaluate the program's effectiveness and this includes plans to follow-up with trainees to see if the training resulted in workplace change.

h. The planned work can be accomplished in one year.

i. There is a description of the target population, the hazards that will be addressed, the barriers which have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

2. Program Experience

a. The organization applying for the grant demonstrates experience with occupational safety and health.

b. The organization applying for the grant demonstrates experience training adults in work-related subjects.

c. The staff to be assigned to the project have experience with (1) occupational safety and health, (2) shipyards, and (3) training adults.

d. The organization applying for the grant demonstrates experience in recruiting and training the population it proposes to serve under the grant.

3. Administrative Capability

a. The applicant organization demonstrates experience managing a variety of programs.

b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

a. The budgeted costs are reasonable.

b. The proposed non-Federal share is at least 20% of the total budget.

c. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

d. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Much Money is Available for Grants

There is approximately $500,000 available for this program.

How Long are Grants Awarded for?

Grants are awarded for a twelve-month period. If first year performance is satisfactory, grants will be renewed for an additional twelve-month period.

How do I get a Grant Application Package

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at http://www.osha-slc.gov/Training/sharwood/sharwood.html.

When and Where are Applications To Be Sent

The application deadline is 4:30 p.m. Central Time, March 26, 1999.

Applications are to be mailed to the Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018. Applications may be sent by fax to (847) 297–4874.

How Will I be Told if My Application was Selected

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 20th day of January 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–2068 Filed 1–28–99; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–021]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Sun-Earth Connection Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Sun-Earth Connection Advisory Subcommittee.

DATES: Monday, February 22, 1999, 8:30 a.m. to 5:00 p.m., and Tuesday, February 23, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, Florida.

FOR FURTHER INFORMATION CONTACT: Dr. George Withbroe, Code S, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The Agenda for the meeting is as follows:

—Review of Grand Challenges
—Roadmap Committee Report
—Key Technologies and Implementation
—Plenary Meeting
—Strategic Plan
—Scientific Goals

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–2190 Filed 1–28–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–022]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Monday, February 22, 1999, 8:30 a.m. to 5:00 p.m.; and Tuesday, February 23, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Jamaica Room, Radisson Resort at the Port Hotel, 8701 Astronaut Boulevard, Cape Canaveral, Florida 32970.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code SA, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting includes the following topics:

—State of Space Science
—Theme Updates
—Current Programs and Mission Updates
—Technology Programs and Reviews
—Strategic Planning
—Public Outreach
—Other Issues Facing the Subcommittee

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 22, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–2191 Filed 1–28–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–023]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (ORIGINS) Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, ORIGINS Subcommittee.

DATES: Monday, February 22, 1999, 8:30 a.m. to 5:00 p.m.; and Tuesday, February 23, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Burmuda Room, Radisson Resort at the Port Hotel, 8701 Astronaut Boulevard, Cape Canaveral, Florida 32920.

FOR FURTHER INFORMATION CONTACT: Dr. Harley Thronson, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0362.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—ORIGINS Programmatic Update
—NGST Status
—OSS Theme Report
—Reports From Other Themes
—New Strategic Plan

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 22, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–2192 Filed 1–28–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–024]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee.

DATES: Wednesday, February 24, 1999, 9:00 a.m. to 5:30 p.m.; Thursday, February 25, 1999, 8:00 a.m. to 5:45 p.m.; Friday, February 26, 1999, 8:30 a.m. to 12:00 p.m.

ADDRESSES: Salon 1, Radisson Resort at the Port, 8701 Astronaut Boulevard, Cape Canaveral, Florida 32920.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Rosendhal, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2470.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—OSS Program and Budget Status
—Theme Status Reports/Reports from Subcommittees
—Technology Program Update
—Plans for Developing the FY 2000 Strategic Plan
—Research Program Update
—Science Operations Management Office Update

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: January 22, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–2193 Filed 1–28–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Approval of Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of class III gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

FOR FURTHER INFORMATION CONTACT: Ms. Frances Fragua at the National Indian Gaming Commission, (202) 632–7003, or by facsimile at (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The IGRA established the National Indian Gaming Commission (Commission). Section 2710 of the IGRA authorizes the Commission to approve class II and class III tribal gaming ordinances. Section 2710(d) (2) (B) of the IGRA as implemented by 25 C.F.R. Section 522.8 (58 FR 5811 (January 22, 1993)), requires the Commission to publish, in the **Federal Register**, approved class III gaming ordinances.

The IGRA requires all tribal gaming ordinances to contain the same requirements concerning ownership of the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. The Commission believes that publishing a notice of approval of each class III gaming ordinance is sufficient to meet the requirements of 25 U.S.C. Section 2710(d)(2)(B). Also, the Commission will make copies of approved class III ordinances available to the public upon request. Requests can be made in writing to the: National Indian Gaming Commission, 1441 L Street, N.W., Suite 9100, Washington, D.C. 20005.

The Chairman has approved tribal gaming ordinances authorizing class III gaming for the following tribes:

1. Agua Caliente Band of Cahuilla Indians
2. Apache Tribe of Oklahoma
3. Auberry Big Sandy Rancheria
4. Augustine Band of Mission Indians
5. Band River Band of Lake Superior Tribe of Chippewa Indians
6. Bay Mills Indian Community
7. Bear River Band of the Rohnerville Rancheria

8. Blackfeet Tribe of Indians
9. Bridgeport Indian Colony
10. Buena Vista Rancheria of Me-Wuk Indians
11. Burns Paiute Tribe
12. Cahto Tribe of the Laytonville Rancheria
13. Cahuilla Band of Mission Indians
14. Cherokee Nation of Oklahoma
15. Chicken Ranch Band of Me-Wuk Indians
16. Chippewa Cree Tribe of the Rocky Boy's Reservation
17. Chitimacha Tribe of Louisiana
18. Choctaw Nation of Oklahoma
19. Confederated Salish & Kootenai Tribes of the Flathead Nation
20. Cow Creek Band of Umpqua Indians
21. Dry Creek Rancheria
22. Forest County Potawatomi Community
23. Grand Portage Band of Chippewa Indians
24. Hoopa Valley Tribe
25. Iowa Tribe of Kansas and Nebraska
26. Jackson Rancheria Band of Miwuk Indians
27. Jamul Band of Mission Indians
28. Kalispel Tribe of Indians
29. Kaw Nation of Oklahoma
30. Kialegee Tribal Town Business Committee
31. Kickapoo Traditional Tribe of Texas
32. Little Traverse Bay Bands of Odawa Indians
33. Lower Elwha S'Klallam Tribe
34. Lower Sioux Indian Community
35. Makah Indian Tribe of the Makah Indian Rancheria
36. Metlakatla Indian Community
37. Miccosukee Business Committee
38. Mississippi Band of Choctaw Indians
39. Nooksack Indian Tribe
40. Osage Nation
41. Otoe-Missouria Tribe of Oklahoma
42. Ottawa Tribe of Oklahoma
43. Pascua Yaqui Tribe of Arizona
44. Passamaquoddy Tribe
45. Poarch Band of Creek Indians
46. Pueblo of San Ildefonso
47. Pueblo of Santa Clara
48. Redding Rancheria
49. Reno-Sparks Indian Colony
50. Rumsey Indian Rancheria
51. Sac & Fox Nation of Oklahoma
52. Santa Ysabel Band of Mission Indians
53. Santee Sioux Tribe of Nebraska
54. Seminole Nation of Oklahoma
55. Seneca Nation of Indians
56. Seneca-Cayuga Tribe of Oklahoma
57. Shakopee Mdewakanton Sioux Community
58. Shoalwater Bay Indian Tribe
59. Skokomish Indian Tribe
60. Soboba Band of Mission Indians
61. Sokaogon Chippewa Community
62. Standing Rock Sioux Tribe
63. Stockbridge-Munsee Community
64. Table Mountain Rancheria
65. Thlopthlocco Tribal Town
66. Tohono O'odham Nation
67. Tonto Apache Tribe
68. Trinidad Rancheria
69. United Keetoowah Band of Cherokee Indians
70. Viejas Band of Mission Indians
71. Washoe Tribe of Nevada and California
72. White Earth Band of Chippewa Indians
73. White Mountain Apache Tribe
74. Yavapai Apache Tribe
75. Ysleta De Sur Pueblo Indian Tribe

Barry Brandon,

General Counsel.

[FR Doc. 99–2218 Filed 1–28–99; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–17711 License No. 52–19438–01 EA–98–014]

In the Matter of NDT Services, Inc., Caguas, Puerto Rico; Order Modifying License (Effective Immediately)

I

NDT Services, Inc. (Licensee or NDTS) is the holder of Material License No. 52–19438–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of up to 100 curies of Iridium 192 in sealed radiography sources and up to 20 curies of Cobalt 60 in sealed sources for performing radiography. The license was originally issued on August 21, 1980, was most recently amended on December 12, 1995, and is due to expire on January 31, 2002.

II

On March 27, 1998, the NRC issued an Order Suspending License (Effective Immediately) to NDTS based on the seriousness of issues identified during inspections conducted on August 6 and October 4, 1997, and February 6, 1998, and the initial evidence gathered during an investigation conducted by the NRC Office of Investigations (OI). The Order of March 27, 1998, required, among other things, that NDTS immediately suspend all radiographic operations authorized by its license and ensure that the licensed material was placed in locked, safe storage.

In response to the Order of March 27, 1998, NDTS immediately suspended all radiographic operations and secured all licensed material in locked, safe storage at the location specified in Condition 10 of the license. This facility is owned by Crossland Boilers Sales and Service, Inc. (Crossland Boilers).

Pertinent to this issue is the current corporate status of NDTS and Crossland Boilers. Although no corporate relationship exists between NDTS and Crossland Boilers, they have a common owner, Mr. Thomas B. Crossland. On July 24, 1998, the NRC Region II Office received information that Crossland Boilers had filed for Chapter 11 Bankruptcy on May 22, 1998. First Bank of Puerto Rico, a secured lender of Crossland Boilers, provided security to protect some of the assets of Crossland Boilers, which are subject to liquidation in favor of the Bank. The licensed material is in the same building as these assets.

The security of the sources and continued compliance with the Order of March 27, 1998, was verified during NRC inspections conducted on March 30, June 3, July 16, and August 19, 1998. These inspections confirmed that the licensed material was being maintained inside a fenced building. The fence contained a gate to allow access, and access to the building interior was controlled by a door with a lock. The building contained a vault located on the second floor which has a metal cabinet with three cubicles. Each cubicle possessed a separate lock, and contained two radiographic exposure devices containing Iridium 192 per cubicle (six radiographic exposure devices in total). An additional radiographic exposure device containing a Cobalt 60 source was also located inside the vault (not inside a cubicle). Each radiographic exposure device also contained its own locking device to control licensed material removal and exposure. NRC inspections confirmed that the licensed material and locking devices, including all keys, were under the control of Clarence David Vaughn, President and Radiation Safety Officer (RSO) of NDTS. The inspection of August 19, 1998, confirmed that representatives of First Bank had arranged for a contractor to provide for 24-hour security at the facility. The RSO indicated during the June 3, 1998, inspection his understanding and willingness to contact the NRC should the RSO determine that he can no longer maintain adequate control of the licensed material.

On January 11, 1999, an NRC inspector, accompanied by the RSO, attempted to determine the security of the sources and continued compliance with the Order of March 27, 1998. The RSO informed the inspector at that time that on September 24, 1998, in response to Hurricane Georges, he had conducted an inspection of the facility and confirmed the security and safe storage of the licensed material. During the January 11, 1999 inspection, the NRC and the RSO were unable to gain access to the building as the lock which secured access to the building had been changed. The NRC learned shortly thereafter that a representative of First Bank maintained the key to this lock. After subsequent contact with a First Bank representative, on January 14, 1999, the NRC, the RSO, and Mr. Sergio Olivero, Assistant Vice President for

First Bank, gained access to the building. The NRC determined the status and security of the licensed material on January 14, 1999 to be as follows:

The building perimeter was accessible via the building yard gate. A building truck bay door, used to load and unload equipment/materials, was observed to be significantly damaged such that access to the building interior could easily be accomplished through the bay door. After entry through the building access door, the NRC noted that someone had entered the building previously and had vandalized and ransacked the building interior. The security lock to the vault that housed the licensed material was sheared. A new lock had been placed on the vault; however, the key to the new lock was in close proximity, was visible, and accessible to anyone desiring to gain entry. The NRC, RSO, and the First Bank representative accessed the vault with the key, and found that the locks for the three cubicles which housed the six radiographic devices containing the Iridium 192 licensed material were also sheared. The radiographic device containing the Cobalt 60 licensed material was found to be inside the vault, where the RSO had last verified this device to be (during his September 24, 1998 inspection in the aftermath of Hurricane Georges). The NRC confirmed that all seven radiographic devices remained intact and verified the position of the radiation sources inside the devices by taking local radiation readings. The NRC recommended that the RSO obtain a new lock for the vault and a new lock for the building yard gate. The First Bank representative obtained two new locks. As of January 15, 1999, the NRC has confirmed that these locks were in place. The RSO only has control of the vault lock key, while the RSO and a First Bank representative have control of the building yard gate lock key.

The NRC also observed during the January 14, 1999, inspection that a security guard, who was onsite to monitor the facility, was inattentive to duties and appeared to be sleeping. The NRC subsequently learned that 24-hour security for the building was not maintained, but rather security was provided by First Bank on Mondays through Saturdays, from 7:00 a.m. to 3:00 p.m.

The NRC also learned that the RSO did not have knowledge or accountability of the new vault lock, was unaware that the vault cubicle locks had been sheared, was unaware that the building interior could be easily accessed, and was unaware that the building interior had been vandalized since his inspection of September 24, 1998.

Discussions with the RSO during the NRC inspections of January 11 and 14, 1999, and during previous NRC inspections as discussed above, identified the following pertinent information:

—The RSO is not currently and has not been financially compensated by Mr. Crossland for his efforts in controlling the security and access to the licensed material, although he has made a good faith effort to do so.
—The RSO does not have access to NDTS corporate monies to initiate transfer of the sources to an authorized recipient.
—The RSO is not authorized by Mr. Crossland to transfer and/or dispose of the sources.
—The RSO has indicated that he may not remain in the Commonwealth of Puerto Rico much longer.
—The RSO, though aware of his inability to access the facility, failed to notify the NRC of his inability to verify the status of the licensed materials.
—NDTS is not currently performing any income generating work.
—Actions initiated following the January 14, 1999, inspection to ensure the security of the licensed material were at the initiative of the NRC, not the RSO.

Mr. Crossland currently is not present in the Commonwealth of Puerto Rico. As of the date of this Order, attempts to contact Mr. Crossland to discuss the status and security of licensed material have been unsuccessful.

III

The observed lack of security of licensed material presents a hazard to public health and safety and is in violation of Section V.A of the March 27, 1998, Order Suspending License (Effectively Immediately) and 10 CFR 20.1801, which requires that the licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. In addition, the corporate and financial status of the licensee, and the uncertainties associated with the ability of the RSO to continue to maintain adequate control over the licensed material, call into question the ability of the licensee to maintain adequate long-term security controls of the licensed material.

Consequently, I lack the requisite reasonable assurance that the Licensee's current operations can be conducted under License No. 52–19438–01 in compliance with the Commission's requirements and that the health and safety of the public will be protected. Therefore, the public, health, safety and interest require that License No. 52–19438–01 be modified immediately to require both the relocation of the licensed material to a location where acceptable security can be maintained, and subsequent transfer of the licensed material to an authorized recipient. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the conditions described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81,161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.3, 10 CFR Parts 30 and 34, *It is hereby ordered, Effective immediately*, That LICENSE NO. 52–19438–01 Is modified as follows:

A. Within 24 hours of receipt of this Order, the Licensee shall, (1) take immediate measures to maintain and ensure adequate security of licensed material stored at your facility located at Rio Cañas Industrial Park, Lots 1 and 2, Caguas, Puerto Rico; and (2) identify an interim safe storage location within NDTS control to which the licensed material will be transferred. Within the same 24 hours, the licensee shall contact Mr. Douglas Collins, Director, Division of Nuclear Materials Safety, NRC Region II, at telephone number (404) 562–4700 or through the NRC Operations Center (24-hours a day) at 301–816–5100, to inform him of the actions which have been taken in response to Item (1) above and the proposed interim storage location identified in response to Item (2). Items (1) and (2) are subject to NRC approval. A written response documenting this information shall be submitted under oath or affirmation to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, SW, Suite 23T85, Atlanta, Georgia within 10 days of this Order.

B. Within seven days of receiving NRC approval of the proposed storage location, the Licensee shall: (1) complete leak tests pursuant to 10 CFR Part 34.27(c), to confirm the absence of leakage of radioactive materials and to establish the levels of residual radioactive contamination; (2) submit the results of the leak tests in writing to the NRC Region II office; and (3) transfer the licensed material to the approved storage location. Mr. Douglas Collins, or

his designee, shall be notified immediately following the transfer.

C. Within 30 days of the date of this Order, the Licensee shall cause all licensed material in its possession to be transferred to an authorized recipient in accordance with 10 CFR 30.41 and submit for NRC approval a completed Form NRC 314. This information should be submitted to the Regional Administrator, NRC Region II, at the address given in Paragraph A above.

D. At least two working days prior to the date of the transfer of the licensed material, the License shall notify Mr. Douglas M. Collins, NRC Region II, at one of the telephone numbers given in Paragraph A above, so that the NRC may observe the transfer of the material to the authorized recipient.

The Regional Administrator, Region II, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and set forth the matters of fact and law on which the Licensee or any persons adversely affected relies and the reason as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Deputy Assistant General Counsel for Enforcement at the same address, and to the Regional Administrator, NRC Region II, Atlanta Federal Center, 61 Forsyth Street, S.W., Suite 23T85, Atlanta, Georgia 30303–3415 and to the Licensee if the answer or hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this Order.*

Dated at Rockville, Maryland this 15th day of January 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–2134 Filed 1–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–508]

Washington Public Power Supply System, Washington Nuclear Project Unit 3; Order Revoking Construction Permit No. CPPR–154

Construction Permit No. CPPR–154 issued to Washington Public Power Supply System (the Supply System) on April 11, 1978, authorized the construction of the Washington Nuclear Project Unit 3 (WNP–3) located at the Satsop site, approximately 5 miles south of the town of Elma in Grays Harbor County, Washington. On November 2, 1984 and March 10, 1986, the Supply System filed timely requests to extend the completion date to July 1, 1999, which request was granted on May 16, 1998. The Supply System also held a second construction permit, CPPR–155, issued on April 11, 1978, for the construction of WNP–5 on the same site as Unit 3. The NRC allowed the construction permit for Unit 5 to expire, with the responsibility for site restoration to be subsumed under the construction permit for WNP–3.

On March 28, 1995, the Supply System submitted a site restoration plan, for WNP–1 and WNP–3, as well as for the previously terminated projects, WNP–4 and WNP–5. In a letter dated June 15, 1998, the Supply System submitted additional information concerning the termination of the construction permit for WNP–3 (the Satsop site).

On August 16, 1996, the Supply System filed a motion for withdrawal of application for an operating license (OL) and for termination of the proceeding before the Atomic Safety and Licensing Board (ASLB). On October 16, 1996, the ASLB issued an order granting the motion, and noted that the NRC staff would terminate the construction permit. 44 NRC 134 (1996). The staff conducted an inspection to verify that the Supply System has maintained the site in an environmentally stable condition and that the facilities are not capable of being operated as utilization facilities (Inspection Report No. 50–508/98-201 dated November 2, 1998). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on January 11, 1999 (64 FR 1644).

Pursuant to 10 CFR 51.32, the Commission has determined that the revocation of this construction permit will have no significant impact on the environment.

For the reasons given above, it is hereby ordered that Construction Permit No. CPPR–154 is terminated. This order is effective upon its date of issuance.

Dated at Rockville, Maryland, this 22nd day of January 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2133 Filed 1–28–99; 8:45 am]

BILLING CODE 7590–01–P

VOL 64 ISS 19 JA 29 1999 JMI

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation, Wolf Creek Generating Station; Notice of Consideration of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the transfer of Facility Operating License No. NPF–42 for the Wolf Creek Generating Station (WCGS) to the extent held by Kansas Gas and Electric Company (KGE) and Kansas City Power & Light Company (KCPL). The transfer would be to NKC, Inc., which will later be renamed Westar Energy, Inc. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

As described in an application for approval submitted by KGE, KCPL, NKC, Inc., and Wolf Creek Nuclear Operating Corporation (WCNOC), which is the exclusive licensed operator of WCGS, KGE, KCPL, and Western Resources, Inc., the parent of KGE, are planning a merger under which a new company will be established, Westar Energy, Inc. At the completion of the merger, Westar Energy will be approximately 80 percent owned by Western Resources, and will have acquired the assets and liabilities of KGE and KCPL. Specifically, it is planned that Westar Energy will succeed to the rights and obligations of KGE and KCPL as owners and licensees of WCGS. Presently, KGE and KCPL each hold a 47% ownership interest in WCGS, with Kansas Electric Power Cooperative, Inc. (KEP) holding a 6% ownership interest. According to the application, WCNOC will continue to be the exclusive operator of WCGS following the proposed merger, while KEP's ownership interest will not change. In addition, no physical changes are being proposed to WCGS in connection with the proposed transfer of the interests of KGE and KCPL in the WCGS license to Westar Energy, and there will be no change in the management organization of WCNOC or the qualifications of its technical personnel. In addition to seeking approval of the transfer of the WCGS license, to the extent held by KGE and KCPL, to Westar Energy, the application requests amendment of the WCGS license, for administrative purposes, to reflect the transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By March 1, 1999, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by 1999, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record.

Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated October 27, 1998, and supplement dated November 10, 1998, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801, and at the Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 25th day of January 1999.

For the Nuclear Regulatory Commission.

Chet Poslusny,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2132 Filed 1–28–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600, Rev. 1]

Revision of NRC Enforcement Policy; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement: Modification; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on January 6, 1999 (64 FR 915), that addresses enforcement discretion in cases involving natural events. This action is necessary to preserve previous revisions to the Enforcement Policy in a notice that appeared in the **Federal Register** on December 24, 1998 (63 FR 71314), that addresses enforcement discretion for fuel cycle facilities.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2741.

SUPPLEMENTARY INFORMATION: On page 916, in the second column, replace the complete paragraph under "C. Exercise of Enforcement Discretion," with the following two paragraphs:

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant (GDP), circumstances may arise where compliance with a Technical Safety Requirement (TSR) or technical specification or other certificate condition would unnecessarily call for a total plant shutdown or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

In these circumstances, the NRC staff may choose not to enforce the applicable TS, TSR, or other license or certificate condition. This enforcement discretion, designated as a Notice of Enforcement Discretion (NOED), will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. The staff may also grant enforcement discretion in cases involving severe weather or other natural phenomena, based upon balancing the public health and safety or common defense and security of not operating, against the potential radiological or other hazards associated with continued operation, and a determination that safety will not be impacted unacceptably by exercising this discretion. The Commission is to be informed expeditiously following the granting of an NOED in such situations. A licensee or certificate holder seeking the issuance of a NOED must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether to issue a NOED.

Dated at Rockville, MD, this 26th day of January 1999.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 99–2209 Filed 1–28–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review, Comment Request for Review; of a Revised Information Collection SF 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for review of a revised information collection. SF 2809, Federal Employees Health Benefits Election Form, is used by Federal employees, certain separated former Federal employees, and former dependents of Federal employees, to enroll for health insurance coverage under the FEHB Program. Certain former spouses or former Federal employees who are eligible for enrollment under the Spouse Equity Act of 1984 (Pub. L. 98–615), and former spouse employees and former dependents who are eligible for enrollment under the Temporary Continuation of Coverage (TCC) provisions of FEHB law (5 U.S.C. 8905a) also use this form.

Approximately 9,000 SF 2809 forms are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 4,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received by March 1, 1999.

ADDRESSES: Send or deliver comments to—

Abby L. Block, Chief, Insurance Policy and Information Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3425, Washington, DC 20415–0001.

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Donna G. Lease, Budget and Administrative Services Division, (202) 606–0623.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–2069 Filed 1–28–99; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Publication of a Proposed New Routine Use

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice of a proposed new routine use.

SUMMARY: This notice proposes to add a new routine use to an existing Internal System of Records.

DATES: This proposed routine use will be effective without further notice March 10, 1999, unless comments received dictate otherwise.

ADDRESSES: Send written comments to Office of Personnel Management, Attn: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: OPM finds that it is in the Government's interest to

add a new routine use to OPM's Internal System of Records, OPM/Internal-5, Pay, Leave, and Travel Records. The new routine use will facilitate OPM's disclosure of information in compliance with orders, interrogatories, and other requests relating to garnishment orders that OPM is required to comply with in accordance with 42 U.S.C. 659 (support garnishment) and 5 U.S.C. 5520a (commercial garnishment).

The new routine use is added to the following Internal System of Records:

OPM/Internal–5

SYSTEM NAME:

Pay, Leave, and Travel Records

* * * * *

l. To disclose information in compliance with orders, interrogatories, and other information requests relevant to garnishment orders that the Office of Personnel Management is required to comply with in accordance with 42 U.S.C. 659 (support garnishment) and 5 U.S.C. 5520a (commercial garnishment) to a court of competent jurisdiction, an authorized official, or to an authorized state agency as defined in 5 CFR parts 581 and 582.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–2070 Filed 1–28–99; 8:45 am]

BILLING CODE 6325–01–P

POSTAL SERVICE

Information-Based Indicia Program (IBIP) Performance Criteria for Information-Based Indicia and Security Architecture for Closed IBI Postage Metering Systems (PCIBI–C)

AGENCY: Postal Service.

ACTION: Notice of availability of Performance Criteria, with request for comments.

SUMMARY: The Postal Service has compiled a set of draft functional Performance Criteria for closed systems of the IBI program, as defined in this release. The current release contains the performance criteria for the indicium and the Postal Security Device (PSD) components of a closed IBI system. The performance criteria for the Host System and Public Key Infrastructure components will be released at a later date.

The Postal Service also seeks comments on intellectual property issues raised by IBIP Performance Criteria, policy, and procedures if adopted in present form. If an intellectual property issue includes patents or patent applications covering any implementations of the Performance Criteria, the comment should include a listing of such patents and applications and the license terms available for such patents and applications.

ADDRESSES: Copies of the Performance Criteria noted above may be downloaded from the IBIP website at http://www.usps.com/ibip/welcome.htm, or obtained from Edmund Zelickman, United States Postal Service, 475 L'Enfant Plaza SW, Room 1P–801, Washington, DC 20260–2444. Copies of all written comments may be inspected, by appointment, between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

DATES: All written comments must be received on or before March 30, 1999.

FOR FURTHER INFORMATION CONTACT: Dan Lord, 202–268–4599.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–2163 Filed 1–26–99; 1:07 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26968]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 22, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 16, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After February 16, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Unitil Corporation (70–9429)

Until Corporation ("Unitil"), 6 Liberty Lane West, Hampton, New Hampshire 03833, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 54 under the Act.

The Unitil board of directors has adopted the Unitil Corporation 1998 stock option plan ("Plan"). Unitil proposes to grant stock options ("Stock Options") through March 1, 2004 under the Plan to certain employees and directors, for the purchase of up to 350,000 shares of Unitil common stock ("Common Stock"). In addition, Unitil proposes to issue and sell up to 350,000 shares of Common Stock through March 1, 2004 upon the exercise of Stock Options.

The purpose of the Plan is to provide an incentive to key employees and directors of Unitil and its affiliates who are in a position to contribute materially to the long-term success of Unitil and/or its affiliates, to increase their interest in the welfare of Unitil and its affiliates and to attract and retain employees and directors of outstanding ability. A committee ("Committee"), made up of Unitil board members, will administer the Plan. The Committee will have authority to interpret the Plan and to designate the recipients of the Stock Options.

Stock Options granted under the Plan will entitle the holders of those options to purchase up to the number of shares of Common Stock specified in the grant at a price established by the Committee. Under the Plan, Stock Options for shares constituting not more than five percent of the Common Stock may be issued in any one year.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2105 Filed 1–28–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40968; File No. SR–NASD–98–98]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Pre-Trading Quotation Period for Initial Public Offerings

January 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD, through its wholly-owned subsidiary Nasdaq, is proposing to revise its practices concerning market maker quotations in Nasdaq securities that are being quoted for the first time after an initial public offering ("IPO"). Under the proposal, the pre-opening period for the initial display of market maker quotes will be extended to 15 minutes prior to the commencement of trading to permit the development of orderly quotations, with provision for a single additional fifteen minute extension of the pre-opening period of the market is locked or crossed at the conclusion of the first fifteen minute period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1994, Nasdaq established a five minute quotation-only time period for market makers to enter and adjust their first quotations for securities newly released for trading in its market.[3] This period, similar to the daily pre-opening display of quotations allowed for Nasdaq securities already trading in the secondary market,[4] was created to facilitate the opening of trading for IPOs and replaced the previous practice of only allowing immediate and simultaneous initial quotation and trading of Nasdaq IPO securities.

Recently, significant increased volatility has been observed in the opening of IPOs for secondary market trading on Nasdaq. This volatility appears to be the result of many converging factors, including the recent popularity of internet-related stocks, an increase in the influx of retail orders through on-line trading linkages, investor perceptions and expectations as well as other technological and economic factors. Nasdaq believes this excessive volatility has inhibited the smooth functioning of the Nasdaq market during the initial trading of these IPOs to the detriment of all market participants, including public investors.

In response, Nasdaq proposes to extend the current five minute pre-trading quotation period for all IPOs to fifteen minutes, with the potential for a single, further extension of an additional fifteen minute pre-trade quotation period if the issue is locked or crossed at the conclusion of the first fifteen minute period.[5] Nasdaq believes that these extended time periods will allow the market participants to better digest and respond to market price indications before an IPO is released for trading and thus provide better information upon which to make trading decisions. Nasdaq also believes that its proposal provides a modicum of opportunity in volatile, fast-paced markets to review and react to dramatic market movements that may manifest themselves in pricing anomalies. While this proposal represents an initial response, Nasdaq notes that it will continue to monitor and review trading activity and market practices with a view towards developing additional proposals to further mitigate excessive volatility in all areas of Nasdaq trading.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6) and 15A(b)(11)[6] of the Act in that the proposal is designed to facilitate transactions in securities as well as produce fair and informative quotations and prevent fictitious or misleading quotations.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Nasdaq did not solicit or receive written comments with respect to the proposed rule change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34254 (June 24, 1994), 59 FR 33808 (June 30, 1994). When an IPO is first authorized for inclusion in Nasdaq, the system displays the time of day when quoting in the issue may begin and the time of day when trading in that issue may begin. Specifically, when a new security is released for trading, the window for quotations has been set to allow market makers a period of five minutes to enter and adjust their quotations prior to the commencement of trading.

[4] Nasdaq has represented that its practices of providing a pre-trading, quotation-only period for IPO securities is related to Nasdaq Rule 4120, "Trading Halts," and Nasdaq Rule 4613, "Character of Quotations." Nasdaq stated that this practice, like the objectives in Nasdaq Rule 4120, is designed to ensure that markets are not open for trading when unusual circumstances may prevent such markets from remaining fair and orderly. Nasdaq also stated that its current practice is similar to Nasdaq Rule 4613(c) and (e) in that market maker quotations are required to be reasonably related to the prevailing market, and market makers are prohibited from locking or crossing markets. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission; Robert E. Aber, Senior Vice President and General Counsel; and Thomas P. Moran, Senior Attorney, Office of General Counsel, Nasdaq (Jan. 22, 1999).

[5] Nasdaq's MarketWatch Department will determine whether an additional fifteen minute quotation-only period is necessary before trading in an IPO security may begin. The determination of MarketWatch will be based solely upon whether a market is locked or crossed to such an extent that releasing the IPO security for trading would be detrimental to the market or investors. Although MarketWatch will closely monitor pre-trading quotation activity during the entire fifteen minute period, the determination of MarketWatch will be predicated on the status of the market at the expiration of the initial fifteen minute period. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission; Robert E. Aber, Senior Vice President and General Counsel; and Thomas P. Moran, Senior Attorney, Office of General Counsel, Nasdaq (Jan. 22, 1999).

[6] 15 U.S.C. 78o-3(b)(6) and 78o-3(b)(11).

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–98 and should be submitted by February 19, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has carefully reviewed Nasdaq's proposed rule change and believes the proposal is consistent with the requirements of Section 15A(b) of the Act[7] and the rules and regulations thereunder applicable to a national securities association. Specifically, the Commission believes the proposal is consistent with Sections 15A(b)(6) and 15A(b)(11) of the Act[8] which require, among other things, that a national securities association's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, facilitate transactions in securities, produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.[9]

Under current Nasdaq practice, market makers are permitted to enter and adjust their first quotations for IPO securities during a pre-trading, quotation-only time period that lasts five minutes. Nasdaq created this quotation-only time period to facilitate the opening of trading for IPOs. Previously, when an IPO was authorized for trading on Nasdaq, market makers were permitted to immediately and simultaneously enter quotations and trade on the subject security.[10]

The Commission recognizes that it may be difficult at times to accurately gauge interest in an IPO, and that as a result, the opening of secondary market trading for Nasdaq IPO securities may be subject to increased volatility. As Nasdaq notes, such excessive volatility could impede the smooth functioning of the Nasdaq market during the initial trading of IPOs to the detriment of all market participants, including public investors.

The Nasdaq proposal was designed to address the increased volatility associated with the opening of IPOs for secondary market trading on Nasdaq. The proposal would extend the current five minute pre-trading quotation period for all IPOs to fifteen minutes, and provide the potential for an additional fifteen minute pre-trade quotation period if an IPO issue was locked or crossed at the conclusion of the first fifteen minute period. The Commission believes that this additional time should assist market participants in gauging the likely interest in an IPO and adjusting their quotes accordingly.

Pursuant to Section 19(b)(2) of the Act,[11] the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The Commission recognizes that increased investor demand for the securities of high-technology companies, especially those offered through IPOs, may be contributing to greater volatility of Nasdaq securities. The Commission believes it is important that before trading in an IPO security commences, Nasdaq market makers be provided sufficient time to determine an appropriate opening price that accurately reflects market interest in the IPO security. Setting a more accurate opening price for an IPO could help to reduce volatility in those securities as trading begins.

The Commission further believes that the availability of an additional fifteen minute quotation-only time period is an appropriate response to those instances where the market may be locked or crossed at the conclusion of the first fifteen minute period. Finally, the Commission notes that the proposal to extend the pre-trading quotation period represents one element of Nasdaq's response to excessive volatility, and encourages Nasdaq to continue to develop additional proposals as part of its ongoing review of trading activity and Nasdaq market practices.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, SR–NASD–98–98, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2104 Filed 1–28–99; 8:45 am]

BILLING CODE 8010–01–M

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[7] 15 U.S.C. 78o–3(b).

[8] 15 U.S.C. 78o–3(b)(6) and 78o–3(b)(11).

[9] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See* Securities Exchange Act Release No. 34254 (June 24, 1994), 59 FR 33808 (June 30, 1994).

[11] 15 U.S.C. 78s(b)(2).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9A81]

State of California

Fresno and Tulare Counties and the contiguous counties, Inyo, Kern, Kings, Madera, Merced, Mono, Monterey, and San Benito in the State of California constitute an economic injury disaster loan area as a result of extremely low temperatures and sub-freezing conditions beginning on December 20, 1998 and continuing. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on October 15, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, PO Box 13795, Sacramento, CA 95853–4795.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for this disaster is 9A8100.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: January 15, 1999.

Mary Kristine Swedin,

Acting Administrator.

[FR Doc. 99–2166 Filed 1–28–99; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3152]

State of New York

Queens County and the contiguous Counties of Bronx, Kings, Nassau, and New York in the State of New York constitute a disaster area as a result of damages caused by heavy rain and flooding that occurred on January 3, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 19, 1999 and for economic injury until the close of business on October 15, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Boulevard South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 315206 for physical damage and 9A8200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 15, 1999.

Mary Kristine Swedin,

Acting Administrator.

[FR Doc. 99–2167 Filed 1–28–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region X Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Portland, OR, will hold a public meeting at 9:00 A.M. to 2:00 P.M. on Thursday, February 04, 1999, at the Atwater's Restaurant, Adams Room, 30th Floor, 111 SW Fifth Avenue, Portland, Oregon, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Write or call Mr. Phillip E. Gentry, District Director, U.S. Small Business Administration, 1515 SW Fifth Avenue, Suite 1050, Portland, Oregon 97201–5494, (503) 326–5210.

Dated: January 20, 1999.

Shirl Thoms,

Director, External Affairs.

[FR Doc. 99–2168 Filed 1–28–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 2969]

Certain Foreign Passports Validity

In accordance with section 212(a)(7)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)(B)), a nonimmigrant alien who makes an application for a visa or for admission into the United States is required to possess a passport that: (1) is valid for a minimum of six months beyond the date of the expiration of the initial period of the alien's admission into the United States or contemplated initial period of stay and, (2) authorizes the alien to return to the country from which he or she came, or to proceed to and enter some other country during such period. Because of the foregoing requirement, certain competent authorities have agreed that their passports will be recognized as valid for the return of the bearer for a period of six months beyond the expiration date specified in the passport, thereby effectively extending the validity period of the foreign passport an additional six months beyond its expiration date, see 22 CFR 41.104(b).

This public notice adds Russia to the list of competent authorities that have provided the necessary assurances to the Government of the United States. The updated list of competent authorities who have made the necessary assurances is shown below:

Table of Foreign Passports Recognized for Extended Validity

ALGERIA
ANTIGUA & BARBUDA
ARGENTINA
AUSTRALIA
AUSTRIA
BAHAMAS, THE
BANGLADESH
BARBADOS
BELGIUM
BRAZIL
CANADA
CHILE
COLOMBIA
COSTA RICA
COTE D'IVOIRE
CUBA
CYPRUS
CZECH REPUBLIC
DENMARK
DOMINICA
DOMINICAN REPUBLIC
ECUADOR
EGYPT
EL SALVADOR
ETHIOPIA
FINLAND
FRANCE
GERMANY
GREECE
GRENADA
GUINEA
HONG KONG (Certificates of identity & passports)
HUNGARY
ICELAND
INDIA
IRELAND
ISRAEL
ITALY
JAMAICA
JAPAN
JORDAN
KOREA
KUWAIT
LAOS
LEBANON
LIECHTENSTEIN
LUXEMBOURG
MADAGASCAR
MALAYSIA
MALTA
MAURITIUS
MEXICO
MONACO
NETHERLANDS
NEW ZEALAND
NICARAGUA (Diplomatic & official only)
NIGERIA
NORWAY
OMAN
PAKISTAN
PANAMA
PARAGUAY
PERU
PHILIPPINES
POLAND
PORTUGAL
QATAR
RUSSIA
SENEGAL
SINGAPORE
SLOVAK REPUBLIC
SLOVENIA
SOUTH AFRICA
SPAIN
SRI LANKA
ST. KITTS & NEVIS
ST. LUCIA
ST. VINCENT & THE GRENADINES
SUDAN
SURINAME
SWEDEN
SWITZERLAND
SYRIA
TAIWAN
THAILAND

TOGO
TRINIDAD & TOBAGO
TUNISIA
TURKEY
UNITED ARAB EMIRATES
UNITED KINGDOM
URUGUAY
VENEZUELA

Public Notice 2920 of October 24, 1998 published at 63 FR 60436 is hereby superseded.

Dated: January 16, 1999.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 99–2075 Filed 1–28–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice No. 2962]

Advisory Committee on International Economic Policy; Notice of Partially Closed Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 9:00 a.m. to 1:00 p.m. on Wednesday, February 10, 1999, in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. Shorter notification was necessitated by changes in the agenda and scheduling conflicts. The meeting will be hosted by Committee Chairman R. Michael Gadbaw and by Assistant Secretary of State for Economic and Business Affairs Alan P. Larson.

The ACIEP will first meet in closed session, which will be devoted to State and Local Sanctions. The closed briefing involves discussion of classified information, pursuant to section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. 552b(c)(1), 5 U.S.C. 442b(c)(4), and 5 U.S.C. 552b(c)(9)(B). Open session topics will be: the Global Economic Crisis: Proposals for Reform; Combating Corruption in Commercial Transactions; Y2K: the International Challenge; Civil Society and Economic Agreements; and Human Rights and the International Economy. Members of the public may attend the open session beginning at approximately 10:00 a.m. as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting should notify the ACIEP Executive Secretariat by phone at (202) 647–5968 or fax (202) 647–5713 (Attn: Sharon Rogers) by Wednesday, February 5, 1999. Each person should provide his or her name, company or organization affiliation, date of birth, and social security number. On the date of the meeting, persons who have registered should bring a valid photo ID for entry into the State Department. A list will be made up for Diplomatic Security and the Reception personnel will direct them to Room 1107.

For further information, contact Sharon Rogers, ACIEP Secretariat, U.S. Department of State, Bureau of Economic and Business Affairs, Room 6828, Main State, Washington, DC 20520.

Dated: January 25, 1999.

Alan P. Larson,

Assistant Secretary for Economic and Business Affairs.

[FR Doc. 99–2241 Filed 1–28–99; 8:45 am]

BILLING CODE 4710–27–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Imports Statistics Relating to Competitive Need Limitations; Invitation for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; invitation or public comment.

SUMMARY: The Trade Policy Staff Committee (TPSC) is informing the public of interim 1998 import statistics relating to Competitive Need Limitations (CNLs) under the Generalized System of Preferences (GSP) program. The TPSC also invites public comments by 5:00 p.m. March 19, 1999, regarding possible de minimis CNL waivers with respect to particular articles, and possible redesignations under the GSP program of articles currently subject to CNLs.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

Section 503(c)(2)(A) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2463(c)(2)(A)), provides for Competitive Need Limitations on duty-free treatment under the GSP program. When the President determines that a beneficiary developing country exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($85 million for 1998), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the "50 percent" CNL), the President shall terminate GSP duty-free treatment for that article from that beneficiary developing country by no later than July 1 of the next calendar year.

II. Discretionary Decisions

A. De Minimis Waivers

Section 503(c)(2)(F) of the 1974 Act provides the President with discretion to waive the 50 percent CNL with respect to an eligible article imported from a beneficiary developing country if the value of total imports of that article from all countries during the calendar year did not exceed the applicable amount for that year ($14 million for 1998).

B. Redesignation of Eligible Articles

Where an eligible article from a beneficiary developing country ceased to receive duty-free treatment due to exceeding the CNLs in a prior year, Section 503(c)(2)(C) of the 1974 Act provides the President with discretion to redesignate such an article for duty-free treatment if imports in the most recently completed calendar year did not exceed the CNLs.

III. Implementation of Competitive Need Limitations, Waivers, and Redesignations

Exclusions from GSP duty-free treatment where CNLs have been exceeded, as well as the return of GSP duty-free treatment to products for which the President has used this discretionary authority to grant redesignations, will be effective July 1, 1999. Decisions on these matters, as well as decisions with respect to de minimis waivers, will be based on full 1998 calendar year import statistics.

IV. Interim 1998 Import Statistics

In order to provide advance indication of possible changes in the list of eligible articles pursuant to exceeding CNLs, and to afford an earlier opportunity for comment regarding possible de minimis waivers and redesignations, interim import statistics covering the first 10 months of 1998 are included with this notice.

The following lists contains the HTS subheadings and beneficiary country of origin for GSP-eligible articles, the value of imports of such articles for the first ten months of 1998, and their percentage of total imports of that product from all countries. The flags indicate that status of GSP eligibility.

Articles marked with an "*" are those that have been excluded from GSP eligibility for the entire past calendar year. Flags "1" or "2" indicate products that were not eligible for duty-free

treatment under GSP for the first six months or last six months, respectively, of 1998.

The flag "D" identifies articles with total U.S. imports from all countries, based on interim 1998 data, less than the applicable amount ($14 million in 1998) for eligibility for a de minimis waiver of the 50 percent CNL.

List I shows GSP-eligible articles from beneficiary developing countries that already have exceeded the CNL of $85 million based on interim 1998 data. None of these articles were receiving duty-free treatment as of December 31, 1998. The listed articles did not receive GSP-duty free treatment either during all of 1998 or during the second half of 1998 (denoted with flags "*" or "2", respectively).

List II shows GSP-eligible articles from beneficiary developing countries that (1) have not yet exceeded, but are approaching, the $85 million CNL during the period from January through October 1998, or (2) are close to or above the 50 percent CNL. Depending on final calendar year 1998 import data, these products stand to lose GSP duty-free treatment on July 1, 1999.

List III is a subset of List II. List III identifies GSP-eligible articles from beneficiary developing countries that are near or above the 50 percent CNL, but that may be eligible for a de minimis waiver of the 50 percent CNL. Actual eligibility for de minimis waivers will depend on final calendar year 1998 import data.

List IV shows GSP articles from beneficiary developing countries which are currently not receiving GSP duty-free treatment, but which have import levels (based on interim 1998 data) below the $85 million CNL. Depending on whether such articles meet both the $85 million CNL and the 50 percent CNL based on full 1998 data, such articles might be eligible for redesignation pursuant to the President's discretionary authority. Articles with a "D" flag exceed the 50 percent CNL (based on interim 1998 data) but might be eligible for a de minimis waiver. The list may contain articles that may not be redesignation until certain conditions are fulfilled, as for example, where GSP eligibility for articles was suspended because of deficiencies in beneficiary countries' protection of the rights of workers or owners of intellectual property. This list does not include articles from India which do not receive GSP treatment as a result of Presidential Proclamation 6425 of April 29, 1992 (57 FR 19067).

Each list is followed by a summary table that indicates the number of products cited from each beneficiary developing country and the total value of imports of those products from the beneficiary developing country.

The lists appended to this notice are provided for informational purposes only. The attached lists are computer-generated, based on interim 1998 data, and may not include all articles that might be affected by the GSP CNLs. Regardless of whether or not an article is included on the list, all determinations and decisions regarding the CNLs of the GSP program will depend on full calendar year 1998 import data with respect to each GSP eligible article. Each interested party is advised to conduct its own review of 1998 import data with regard to the possible application of GSP CNLs.

V. Public Comments

All written comments with regard to the matters discussed above should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 518, Washington, DC 20508. All submissions must be in English and should conform to the information requirements of 15 CFR 2007. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant Harmonized Tariff Schedule subheading(s), the beneficiary country or territory of interest, and the type of action (e.g., the use of the President's de minimis waiver authority, etc.) in which the party is interested.

A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Friday, March 19, 1999. Comments received after the deadline will not be accepted. If the comments contain business confidential information, fourteen copies of non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public verion" or "non-confidential".

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room ((202) 395–6186). Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6972.

Frederick L.Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190–01–M

LIST I : ITEMS GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	0603.10.70	Colombia	118,938,014	88.4%
*	1701.11.10	Dominican Republic	107,017,629	18.1%
*	1701.11.10	Brazil	94,287,225	15.9%
*	2402.10.80	Dominican Republic	186,086,324	64.3%
*	2603.00.00	Chile	96,182,829	61.0%
*	4015.11.00	Thailand	156,749,125	22.4%
2	4104.39.40	Argentina	156,426,989	71.1%
2	4409.10.40	Chile	97,024,100	38.7%
*	6406.10.65	Dominican Republic	163,568,604	59.7%
*	7113.11.50	Thailand	108,869,276	28.3%
*	7113.19.50	Dominican Republic	110,994,909	5.3%
2	7113.19.50	Turkey	86,972,128	4.1%
*	7113.19.50	India	243,879,524	11.6%
*	7403.11.00	Peru	153,887,780	16.6%
*	7403.11.00	Chile	87,544,886	9.4%
*	8471.60.35	Indonesia	94,878,867	1.7%
*	8516.50.00	Thailand	115,267,066	15.5%
*	8517.21.00	Thailand	126,271,929	20.0%
*	8544.30.00	Thailand	134,637,150	3.6%
*	8802.30.00	Brazil	672,434,722	21.3%
*	9009.12.00	Thailand	105,885,895	5.5%
*	9018.90.80	Dominican Republic	267,908,298	30.9%
*	9403.60.80	Indonesia	101,856,470	5.4%

FLAGS: '*'=Excluded full yr; '1'=Excluded January/June; '2'=Excluded July/December

LIST I : ITEMS GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	156,426,989	1
Brazil	766,721,947	2
Chile	280,751,815	3
Colombia	118,938,014	1
Dominican Republic	835,575,764	5
India	243,879,524	1
Indonesia	196,735,337	2
Peru	153,887,780	1
Thailand	747,680,441	6
Turkey	86,972,128	1
TOTAL	3,587,569,739	23

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0210.20.00	Uruguay	1,026,710	50.1%
D	0306.24.20	Venezuela	3,486,953	52.0%
D	0703.10.20	Argentina	664,560	52.2%
D	0710.29.30	Dominican Republic	1,368,415	56.6%
1 D	0711.40.00	India	1,671,264	50.2%
D	0712.90.30	Peru	58,493	58.5%
D	0712.90.70	Egypt	297,265	84.7%
	0712.90.80	Chile	11,745,551	46.8%
D	0713.33.20	El Salvador	402,902	55.1%
D	0713.90.60	India	26,475	52.7%
D	0714.20.10	Dominican Republic	6,670	73.2%
	0714.90.20	Costa Rica	9,510,661	47.0%
D	0714.90.45	Costa Rica	820,823	45.2%
D	0802.31.00	India	45,500	100.0%
D	0802.50.40	Turkey	201,509	52.6%
D	0804.50.80	Thailand	1,335,426	49.7%
D	0805.90.00	Turkey	695,721	63.3%
D	0813.40.10	Thailand	1,034,049	90.3%
D	0904.20.76	India	3,519,356	59.3%
D	0910.10.40	India	342,301	74.2%
D	1102.30.00	Thailand	2,317,908	76.9%
D	1104.23.00	Peru	87,468	44.5%
	1509.90.40	Turkey	6,009,552	42.2%
D	1510.00.60	Morocco	1,327,565	52.9%
D	1601.00.40	Brazil	128,500	65.6%
	1602.50.20	Brazil	32,362,434	45.7%
D	1604.14.50	Colombia	652,890	58.9%
D	1605.90.10	Thailand	2,877,712	67.5%
D	1701.91.05	India	11,610	100.0%
D	1701.91.10	Philippines	63,765	62.9%
D	1702.30.22	Argentina	68,570	80.3%
D	1702.90.35	Brazil	2,901,294	90.9%
	1702.90.40	Brazil	20,465,117	73.3%
D	1703.10.30	Brazil	958,313	49.1%
D	1703.90.30	Lebanon	14,172	51.5%
	1703.90.50	Poland	8,748,687	54.7%
D	1806.10.22	Colombia	27,324	93.3%
D	1806.20.22	Turkey	6,300	100.0%
D	1806.90.01	Croatia	94,416	60.0%
D	2005.10.00	Guatemala	73,405	45.6%
D	2005.10.00	Turkey	81,728	50.8%
D	2006.00.70	Thailand	1,859,901	49.7%
D	2008.19.15	Dominican Republic	5,962,130	46.0%
D	2008.50.20	Republic of South Af	27,065	53.4%
D	2008.99.35	Thailand	2,931,201	90.3%
D	2008.99.45	Dominican Republic	86,492	51.1%
D	2008.99.50	Thailand	1,596,982	49.1%
D	2106.90.52	El Salvador	5,775	100.0%
D	2208.60.50	Russia	15,348	59.5%
D	2309.90.70	Hungary	174,420	89.8%
D	2401.20.57	India	113,664	45.2%
D	2516.12.00	India	2,533,987	50.9%
D	2619.00.30	Venezuela	585,969	50.7%
D	2811.29.50	Brazil	4,976,748	47.7%
D	2819.10.00	Kazakhstan	5,297,437	79.5%
D	2820.90.00	Republic of South Af	504,768	42.9%
D	2825.70.00	Chile	7,657,362	92.2%
D	2841.61.00	Czech Republic	970,442	49.2%
D	2841.70.10	Chile	4,716,876	59.9%
D	2902.90.40	Hungary	51,163	81.0%
D	2903.51.00	Romania	2,205,456	51.7%
D	2914.12.00	Republic of South Af	2,563,736	47.8%
D	2914.22.10	Slovakia	495,884	75.7%
1 D	2916.31.15	Estonia	5,525,768	45.2%
D	2917.19.10	Hungary	1,301,939	70.1%
D	2918.21.50	Brazil	3,758,552	76.6%
D	2922.12.00	Brazil	1,485,383	47.5%
D	2931.00.25	Brazil	3,179,589	91.3%
D	2933.40.08	Hungary	387,103	100.0%
D	2935.00.05	Czech Republic	29,942	49.4%
D	2938.10.00	Brazil	896,319	47.9%
	3212.90.00	Colombia	38,247,537	50.4%
D	3603.00.30	Brazil	1,438,127	46.9%
D	3808.30.20	Brazil	457,176	76.4%
D	3824.90.32	Thailand	17,983	42.0%
D	3920.63.20	India	1,114,309	68.1%
D	4202.22.35	Philippines	445,850	94.8%
D	4205.00.60	Panama	288,860	48.0%
D	4302.20.90	Republic of South Af	20,420	46.1%
D	4409.10.60	Honduras	787,283	43.4%
D	4412.13.25	Brazil	2,308,827	73.6%
	4412.14.05	Russia	50,207,257	44.2%
D	4412.14.25	Brazil	6,087,858	96.0%
D	4412.19.10	Chile	1,064,874	63.7%
D	4412.29.15	Russia	2,284,056	64.1%
D	4412.92.50	Guyana	139,245	59.9%
D	4412.99.15	Brazil	230,102	98.8%
D	4412.99.45	Brazil	236,475	59.8%
D	4602.10.23	Philippines	3,256	55.3%
D	4802.51.10	Venezuela	18,369	42.5%
D	4810.11.20	Brazil	1,592,428	60.5%
D	5007.10.30	India	2,394,166	47.5%
D	5102.10.60	Republic of South Af	50,872	54.9%
D	5607.30.20	Philippines	3,705,380	78.1%
D	5904.92.00	Guatemala	704	57.7%
D	5904.92.00	Thailand	514	42.2%
	6116.10.08	Thailand	10,536,960	46.6%
D	6501.00.30	Czech Republic	1,451,570	48.7%
D	6814.90.00	India	1,187,111	67.0%
	7018.10.50	Czech Republic	9,918,181	46.2%
D	7113.20.29	India	1,757,083	66.9%
D	7113.20.30	Mauritius	601,749	60.0%

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

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LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
	7114.19.00	Peru	46,532,063	97.0%
	7115.90.30	Colombia	42,353,290	90.9%
D	7202.21.10	Macedonia (Skopje)	3,587,646	85.1%
	7202.49.50	Russia	24,830,073	43.7%
D	7202.80.00	Russia	2,004,248	52.6%
	7206.90.00	Venezuela	24,369,876	98.2%
	7403.12.00	Russia	17,327,397	96.5%
D	7405.00.60	Russia	990,133	80.2%
D	7409.31.10	Poland	1,376,789	79.9%
D	7418.19.10	India	4,997,068	48.6%
	7418.19.20	India	22,556,476	47.7%
D	7604.10.30	Slovenia	5,995,829	59.4%
	7604.10.50	Russia	28,265,311	49.4%
D	7801.99.30	Dominican Republic	271,140	100.0%
D	8112.19.00	Kazakhstan	771,529	94.5%
D	8112.91.50	Chile	7,898,383	85.2%
D	8308.10.00	Philippines	5,886,293	47.1%
D	8410.13.00	Egypt	800,000	95.5%
	8414.51.00	Thailand	59,515,386	8.7%
	8483.10.30	Brazil	68,301,720	26.0%
	8517.19.80	Indonesia	75,555,880	9.3%
	8517.90.24	Costa Rica	71,342,816	28.8%
	8525.20.05	Thailand	8,405,881	52.8%
D	8525.20.28	Thailand	4,046,435	42.8%
D	8540.12.10	India	432,995	84.7%
D	8543.81.00	Philippines	2,595,801	45.9%
D	8708.99.31	Bosnia-Hercegovina	30,760	63.4%
	8708.99.67	Venezuela	59,952,366	4.3%
D	9013.10.30	Ukraine	2,583,865	65.9%
D	9401.90.15	Czech Republic	1,052,341	56.8%
D	9403.50.60	Indonesia	4,212	60.0%
D	9506.19.40	Czech Republic	1,224,272	63.0%
D	9606.30.80	Ecuador	952,104	44.1%

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST II : ITEMS APPROACHING COMPETITIVE NEED LIMITS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	733,130	2
Bosnia-Hercegovina	30,760	1
Brazil	151,764,962	18
Chile	33,083,046	5
Colombia	81,281,041	4
Costa Rica	81,674,300	3
Croatia	94,416	1
Czech Republic	14,646,748	6
Dominican Republic	7,694,847	5
Ecuador	952,104	1
Egypt	1,097,265	2
El Salvador	408,677	2
Estonia	5,525,768	1
Guatemala	74,109	2
Guyana	139,245	1
Honduras	787,283	1
Hungary	1,914,625	4
India	42,703,365	15
Indonesia	75,560,092	2
Kazakhstan	6,068,966	2
Lebanon	14,172	1
Macedonia (Skopje)	3,587,646	1
Mauritius	601,749	1
Morocco	1,327,565	1
Panama	288,860	1
Peru	46,678,024	3
Philippines	12,700,345	6
Poland	10,125,476	2
Republic of South Af	3,166,861	5
Romania	2,205,456	1
Russia	125,923,823	8
Slovakia	495,884	1
Slovenia	5,995,829	1
Thailand	96,476,338	13
Turkey	6,994,810	5
Ukraine	2,583,865	1
Uruguay	1,026,710	1
Venezuela	88,413,533	5
TOTAL	914,841,695	135

LIST III : POSSIBLE de MINIMIS ITEMS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0210.20.00	Uruguay	1,026,710	50.1%
D	0306.24.20	Venezuela	3,486,953	52.0%
D	0703.10.20	Argentina	664,560	52.2%
D	0710.29.30	Dominican Republic	1,368,415	56.6%
1 D	0711.40.00	India	1,671,264	50.2%
D	0712.90.30	Peru	58,493	58.5%
D	0712.90.70	Egypt	297,265	84.7%
D	0713.33.20	El Salvador	402,902	55.1%
D	0713.90.60	India	26,475	52.7%
D	0714.20.10	Dominican Republic	6,670	73.2%
D	0714.90.45	Costa Rica	820,823	45.2%
D	0802.31.00	India	45,500	100.0%
D	0802.50.40	Turkey	201,509	52.6%
D	0804.50.80	Thailand	1,335,426	49.7%
D	0805.90.00	Turkey	695,721	63.3%
D	0813.40.10	Thailand	1,034,049	90.3%
D	0904.20.76	India	3,519,356	59.3%
D	0910.10.40	India	342,301	74.2%
D	1102.30.00	Thailand	2,317,908	76.9%
D	1104.23.00	Peru	87,468	44.5%
D	1510.00.60	Morocco	1,327,565	52.9%
D	1601.00.40	Brazil	128,500	65.6%
D	1604.14.50	Colombia	652,890	58.9%
D	1605.90.10	Thailand	2,877,712	67.5%
D	1701.91.05	India	11,610	100.0%
D	1701.91.10	Philippines	63,765	62.9%
D	1702.30.22	Argentina	68,570	80.3%
D	1702.90.35	Brazil	2,901,294	90.9%
D	1703.10.30	Brazil	958,313	49.1%
D	1703.90.30	Lebanon	14,172	51.5%
D	1806.10.22	Colombia	27,324	93.3%
D	1806.20.22	Turkey	6,300	100.0%
D	1806.90.01	Croatia	94,416	60.0%
D	2005.10.00	Guatemala	73,405	45.6%
D	2005.10.00	Turkey	81,728	50.8%
D	2006.00.70	Thailand	1,859,901	49.7%
D	2008.19.15	Dominican Republic	5,962,130	46.0%
D	2008.50.20	Republic of South Af	27,065	53.4%
D	2008.99.35	Thailand	2,931,201	90.3%
D	2008.99.45	Dominican Republic	86,492	51.1%
D	2008.99.50	Thailand	1,596,982	49.1%
D	2106.90.52	El Salvador	5,775	100.0%
D	2208.60.50	Russia	15,348	59.5%
D	2309.90.70	Hungary	174,420	89.8%
D	2401.20.57	India	113,664	45.2%
D	2516.12.00	India	2,533,987	50.9%
D	2619.00.30	Venezuela	585,969	50.7%
D	2811.29.50	Brazil	4,976,748	47.7%
D	2819.10.00	Kazakhstan	5,297,437	79.5%
D	2820.90.00	Republic of South Af	504,768	42.9%
D	2825.70.00	Chile	7,657,362	92.2%
D	2841.61.00	Czech Republic	970,442	49.2%
D	2841.70.10	Chile	4,716,876	59.9%
D	2902.90.40	Hungary	51,163	81.0%
D	2903.51.00	Romania	2,205,456	51.7%
D	2914.12.00	Republic of South Af	2,563,736	47.8%
D	2914.22.10	Slovakia	495,884	75.7%
1 D	2916.31.15	Estonia	5,525,768	45.2%
D	2917.19.10	Hungary	1,301,939	70.1%
D	2918.21.50	Brazil	3,758,552	76.6%
D	2922.12.00	Brazil	1,485,383	47.5%
D	2931.00.25	Brazil	3,179,589	91.3%
D	2933.40.08	Hungary	387,103	100.0%
D	2935.00.05	Czech Republic	29,942	49.4%
D	2938.10.00	Brazil	896,319	47.9%
D	3603.00.30	Brazil	1,438,127	46.9%
D	3808.30.20	Brazil	457,176	76.4%
D	3824.90.32	Thailand	17,983	42.0%
D	3920.63.20	India	1,114,309	68.1%
D	4202.22.35	Philippines	445,850	94.8%
D	4205.00.60	Panama	288,860	48.0%
D	4302.20.90	Republic of South Af	20,420	46.1%
D	4409.10.60	Honduras	787,283	43.4%
D	4412.13.25	Brazil	2,308,827	73.6%
D	4412.14.25	Brazil	6,087,858	96.0%
D	4412.19.10	Chile	1,064,874	63.7%
D	4412.29.15	Russia	2,284,056	64.1%
D	4412.92.50	Guyana	139,245	59.9%
D	4412.99.15	Brazil	230,102	98.8%
D	4412.99.45	Brazil	236,475	59.8%
D	4602.10.23	Philippines	3,256	55.3%
D	4802.51.10	Venezuela	18,369	42.5%
D	4810.11.20	Brazil	1,592,428	60.5%
D	5007.10.30	India	2,394,166	47.5%
D	5102.10.60	Republic of South Af	50,872	54.9%
D	5607.30.20	Philippines	3,705,380	78.1%
D	5904.92.00	Guatemala	704	57.7%
D	5904.92.00	Thailand	514	42.2%
D	6501.00.30	Czech Republic	1,451,570	48.7%
D	6814.90.00	India	1,187,111	67.0%
D	7113.20.29	India	1,757,083	66.9%
D	7113.20.30	Mauritius	601,749	60.0%
D	7202.21.10	Macedonia (Skopje)	3,587,646	85.1%
D	7202.80.00	Russia	2,004,248	52.6%
D	7405.00.60	Russia	990,133	80.2%
D	7409.31.10	Poland	1,376,789	79.9%
D	7418.19.10	India	4,997,068	48.6%
D	7604.10.30	Slovenia	5,995,829	59.4%
D	7801.99.30	Dominican Republic	271,140	100.0%
D	8112.19.00	Kazakhstan	771,529	94.5%
D	8112.91.50	Chile	7,898,383	85.2%
D	8308.10.00	Philippines	5,886,293	47.1%

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	8410.13.00	Egypt	800,000	95.5%
D	8525.20.28	Thailand	4,046,435	42.8%
D	8540.12.10	India	432,995	84.7%
D	8543.81.00	Philippines	2,595,801	45.9%
D	8708.99.31	Bosnia-Hercegovina	30,760	63.4%
D	9013.10.30	Ukraine	2,583,865	65.9%
D	9401.90.15	Czech Republic	1,052,341	56.8%
D	9403.50.60	Indonesia	4,212	60.0%
D	9506.19.40	Czech Republic	1,224,272	63.0%
D	9606.30.80	Ecuador	952,104	44.1%

FLAGS: '1'=Excluded January/June; 'D'=De minimis;

LIST III : POSSIBLE de MINIMIS ITEMS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	733,130	2
Bosnia-Hercegovina	30,760	1
Brazil	30,635,691	15
Chile	21,337,495	4
Colombia	680,214	2
Costa Rica	820,823	1
Croatia	94,416	1
Czech Republic	4,728,567	5
Dominican Republic	7,694,847	5
Ecuador	952,104	1
Egypt	1,097,265	2
El Salvador	408,677	2
Estonia	5,525,768	1
Guatemala	74,109	2
Guyana	139,245	1
Honduras	787,283	1
Hungary	1,914,625	4
India	20,146,889	14
Indonesia	4,212	1
Kazakhstan	6,068,966	2
Lebenon	14,172	1
Macedonia (Skopje)	3,587,646	1
Mauritius	601,749	1
Morocco	1,327,565	1
Panama	288,860	1
Peru	145,961	2
Philippines	12,700,345	6
Poland	1,376,789	1
Republic of South Af	3,166,861	5
Romania	2,205,456	1
Russia	5,293,785	4
Slovakia	495,884	1
Slovenia	5,995,829	1
Thailand	18,018,111	10
Turkey	985,258	4
Ukraine	2,583,865	1
Uruguay	1,026,710	1
Venezuela	4,091,291	3
TOTAL	167,781,223	112

LIST IV : POSSIBLE REDESIGNATION ITEMS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
2 D	0202.30.10	Argentina	1,066,788	99.8%
*	0303.77.00	Argentina	3,088,321	36.6%
*	0304.20.50	Argentina	33,750	2.8%
*	0404.90.10	Argentina	0	0.0%
*	0703.10.20	Chile	0	0.0%
*	0703.20.00	Argentina	7,610,894	21.0%
* D	0708.10.20	Guatemala	1,232,462	57.3%
2 D	0708.90.30	Ecuador	197,862	59.7%
*	0709.10.00	Chile	60,963	3.1%
* D	0709.20.10	Peru	5,223,377	64.1%
2	0710.29.30	Ecuador	290,984	12.0%
*	0710.80.70	Guatemala	845,773	13.2%
* D	0710.80.93	Guatemala	2,067,771	58.7%
2 D	0711.30.00	Turkey	746,886	56.5%
2	0712.90.74	Turkey	337,315	13.3%
*	0713.90.10	Peru	148,906	25.4%
* D	0714.10.10	Costa Rica	5,785,674	85.3%
* D	0714.10.20	Costa Rica	13,359,058	97.4%
* D	0714.20.20	Dominican Republic	3,282,482	94.0%
2 D	0802.50.20	Turkey	153,107	69.5%
2	0802.90.80	Guatemala	222,920	16.7%
*	0811.20.40	Chile	30,358	4.9%
* D	0811.90.10	Costa Rica	2,268,855	45.5%
* D	0811.90.50	Costa Rica	1,467,397	59.1%
*	0813.10.00	Turkey	25,099,477	96.7%
* D	0813.30.00	Argentina	3,162,156	55.9%
*	1005.90.20	Argentina	0	0.0%
*	1005.90.40	Argentina	13,790	0.3%
* D	1007.00.00	Argentina	145,317	67.2%
*	1106.30.20	Ecuador	26,238	35.7%
*	1301.90.40	Indonesia	978,667	37.8%
*	1403.90.40	India	839,590	41.8%
2 D	1602.50.09	Argentina	8,004,044	88.8%
*	1602.50.20	Argentina	34,700,752	49.0%
*	1604.14.50	Thailand	372,351	33.6%
2	1604.14.50	Indonesia	57,079	5.1%
2 D	1604.15.00	Chile	6,012,007	63.8%
*	1604.16.10	Argentina	288,000	1.8%
* D	1605.90.55	Indonesia	1,269,975	55.5%
*	1701.11.05	Brazil	0	0.0%
*	1701.11.10	Argentina	28,074,701	4.7%
*	1701.11.20	Guatemala	12,139,325	19.4%
*	1701.11.20	Brazil	239,985	0.3%
*	1701.12.10	Brazil	0	0.0%
*	1701.91.05	Brazil	0	0.0%
*	1701.91.10	Brazil	0	0.0%
2	1701.91.42	Jamaica	0	0.0%
*	1701.99.05	Brazil	0	0.0%
*	1701.99.10	Brazil	230,000	1.7%
*	1702.90.35	Belize	0	0.0%
*	1702.90.40	Dominican Republic	0	0.0%
*	1703.10.30	Dominican Republic	411,132	21.0%
*	1806.10.65	Brazil	0	0.0%
* D	1806.32.55	Colombia	110,400	52.4%
2	2002.90.40	Turkey	0	0.0%
* D	2004.10.40	Colombia	9,774	49.8%
*	2007.99.48	Argentina	29,272	11.2%
*	2007.99.50	Brazil	480,724	5.2%
* D	2008.30.10	Dominican Republic	134,510	64.8%
*	2008.50.20	Argentina	8,881	17.5%
* D	2008.99.13	Costa Rica	3,525,470	56.7%
* D	2008.99.23	Dominican Republic	237,356	89.9%
2	2009.30.10	Honduras	54,000	17.8%
2 D	2106.90.06	Colombia	5,194	100.0%
*	2106.90.12	Dominican Republic	0	0.0%
*	2202.90.36	Dominican Republic	11,904	2.1%
2 D	2208.90.05	Trinidad and Tobago	2,820,769	95.7%
2	2401.20.57	Indonesia	0	0.0%
2 D	2516.90.00	Republic of South Af	2,410,459	46.4%
*	2603.00.00	Indonesia	24,531,564	15.5%
*	2608.00.00	Peru	11,078,656	57.8%
*	2804.69.10	Brazil	4,212,883	6.8%
*	2805.40.00	Argentina	0	0.0%
*	2813.90.50	Argentina	12,400	0.9%
2 D	2825.30.00	Republic of South Af	12,488,249	99.1%
*	2832.30.10	Argentina	54,517	20.0%
*	2839.90.00	Argentina	745,101	11.2%
2 D	2840.11.00	Turkey	69,203	70.6%
2 D	2840.19.00	Turkey	4,989,172	99.5%
*	2841.30.00	Argentina	250,556	4.2%
*	2841.50.00	Argentina	0	0.0%
2 D	2841.90.10	Republic of South Af	777,548	67.5%
2	2843.30.00	Colombia	27,742,540	94.5%
*	2843.30.00	Chile	0	0.0%
*	2843.30.00	Argentina	0	0.0%
*	2849.10.00	Argentina	202,432	12.4%
2	2849.90.50	Republic of South Af	25,767,044	61.3%
*	2850.00.50	Argentina	0	0.0%
2	2901.29.50	Republic of South Af	20,345,103	89.6%
* D	2902.11.00	Argentina	2,912,769	95.7%
*	2905.11.20	Trinidad and Tobago	48,937,846	34.8%
*	2905.12.00	Argentina	1,652,459	5.5%
*	2905.13.00	Argentina	0	0.0%
*	2905.22.50	Argentina	4,950	0.0%
*	2906.11.00	Brazil	2,114,265	7.6%
*	2906.14.00	Argentina	0	0.0%
*	2907.23.00	Brazil	185,637	1.8%
2 D	2907.29.25	Republic of South Af	213,602	66.3%
* D	2909.50.40	Indonesia	3,550,214	63.4%
*	2914.12.00	Argentina	548,705	10.2%
*	2914.13.00	Argentina	299,278	3.5%
*	2915.31.00	Brazil	0	0.0%

FLAGS: '*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	2915.70.00	Argentina	49,875	0.1%
*	2917.14.50	Argentina	0	0.0%
*	2918.21.50	Argentina	0	0.0%
*	2918.22.10	Argentina	1,245,018	20.1%
*	2918.22.10	Turkey	0	0.0%
*	2918.22.50	Argentina	0	0.0%
*	2921.42.23	Guatemala	0	0.0%
*	2929.10.15	Argentina	0	0.0%
*	2932.99.90	Argentina	38,538	0.0%
*	2933.40.30	Argentina	0	0.0%
*	2933.90.55	Argentina	0	0.0%
*	2934.90.15	Brazil	1,151,607	4.1%
2	3204.12.20	Argentina	117,803	0.6%
2	3204.12.30	Argentina	0	0.0%
2	3204.12.45	Argentina	125,302	0.6%
2	3204.12.50	Argentina	2,205	0.0%
*	3209.90.00	Argentina	320,686	0.8%
*	3301.12.00	Brazil	14,966,509	75.1%
*	3301.19.10	Argentina	58,408	3.7%
*	3301.90.10	Argentina	0	0.0%
*	3302.10.10	Argentina	53,528	0.1%
*	3302.10.20	Argentina	97,112	1.4%
*	3302.90.10	Argentina	0	0.0%
*	3303.00.30	Argentina	35,788	0.0%
*	3304.20.00	Argentina	0	0.0%
*	3304.99.50	Argentina	57,924	0.0%
*	3305.10.00	Argentina	14,302	0.0%
*	3305.90.00	Argentina	70,364	0.1%
*	3307.20.00	Argentina	0	0.0%
*	3307.49.00	Argentina	0	0.0%
*	3401.11.10	Argentina	0	0.0%
*	3504.00.50	Argentina	0	0.0%
*	3506.99.00	Argentina	0	0.0%
*	3701.10.00	Argentina	99,604	0.0%
*	3702.10.00	Argentina	0	0.0%
*	3706.10.30	Argentina	0	0.0%
*	3707.90.32	Argentina	0	0.0%
*	3806.30.00	Argentina	0	0.0%
2	3817.10.50	Indonesia	858,694	7.4%
*	3822.00.50	Argentina	30,000	0.0%
*	3824.60.00	Indonesia	0	0.0%
*	3824.90.40	Brazil	982,835	2.3%
*	3901.90.90	Argentina	0	0.0%
*	3902.10.00	Argentina	0	0.0%
*	3902.20.50	Argentina	2,807,631	27.9%
*	3902.90.00	Argentina	1,598,162	3.7%
*	3903.90.50	Argentina	0	0.0%
*	3904.21.00	Brazil	0	0.0%
*	3904.40.00	Argentina	0	0.0%
*	3906.10.00	Argentina	0	0.0%
*	3906.90.50	Argentina	0	0.0%
*	3907.30.00	Argentina	0	0.0%
*	3907.60.00	Argentina	0	0.0%
*	3907.99.00	Argentina	410	0.0%
*	3909.10.00	Argentina	0	0.0%
*	3909.50.50	Argentina	0	0.0%
*	3913.90.20	Argentina	971,972	1.3%
* D	3920.59.80	Dominican Republic	732,523	62.6%
*	3921.90.50	Argentina	194,235	0.2%
*	3923.90.00	Argentina	122,255	0.0%
*	3926.20.30	Pakistan	667,810	18.6%
*	4006.10.00	Brazil	69,081	19.2%
*	4011.10.10	Brazil	58,531,025	4.6%
*	4011.10.10	Argentina	6,307,887	0.4%
*	4011.10.50	Brazil	776,980	2.0%
*	4011.20.10	Brazil	67,298,079	5.3%
*	4011.20.50	Brazil	19,985	0.0%
*	4016.99.30	Thailand	469,663	2.5%
*	4016.99.35	Thailand	5,334,205	31.3%
*	4104.21.00	Argentina	3,520,662	14.5%
*	4104.22.00	Brazil	977,175	9.4%
*	4104.22.00	Argentina	1,486,097	14.3%
*	4104.29.50	Argentina	41,768	2.5%
*	4104.29.90	Argentina	7,700	0.0%
*	4104.31.40	Argentina	43,266,638	18.3%
*	4104.31.50	Argentina	498,875	1.3%
*	4104.31.60	Argentina	422,315	1.5%
*	4104.31.80	Argentina	8,841,357	9.4%
*	4104.39.50	Argentina	4,154	0.1%
*	4104.39.60	Argentina	2,828,717	29.6%
*	4104.39.80	Argentina	3,572,291	7.7%
*	4105.20.60	Argentina	34,089	0.1%
*	4106.12.00	India	85,131	7.9%
2 D	4106.12.00	Pakistan	843,279	78.7%
*	4106.19.30	Pakistan	37,699	11.5%
*	4106.20.30	India	864,065	28.4%
*	4106.20.60	India	2,313,857	26.9%
* D	4106.20.60	Pakistan	5,363,049	62.3%
*	4107.21.00	Argentina	0	0.0%
*	4107.29.30	Argentina	170,798	4.7%
*	4107.29.60	Argentina	199,741	2.5%
*	4107.90.60	Argentina	23,019	0.1%
*	4109.00.70	Argentina	0	0.0%
*	4201.00.60	Argentina	3,022,248	5.3%
*	4203.21.20	Pakistan	412,219	2.2%
*	4203.21.55	Pakistan	337,202	19.1%
*	4203.21.60	Pakistan	975,507	17.4%
*	4203.21.80	Pakistan	5,965,257	7.1%
*	4205.00.60	Argentina	2,800	0.4%
*	4303.10.00	Argentina	546,151	0.5%
*	4303.90.00	Argentina	12,885	0.0%
*	4410.11.00	Argentina	0	0.0%

FLAGS: '*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

LIST IV : POSSIBLE REDESIGNATION ITEMS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	4410.19.00	Argentina	127,173	0.0%
*	4411.11.00	Brazil	21,943,490	40.5%
*	4411.11.00	Argentina	1,568,003	2.8%
* D	4411.19.20	Brazil	4,202,723	49.2%
*	4411.21.00	Brazil	22,602	0.0%
*	4411.29.60	Brazil	0	0.0%
*	4411.29.90	Brazil	0	0.0%
* D	4412.13.05	Indonesia	7,436,501	60.5%
*	4412.13.25	Indonesia	50,048	1.5%
*	4412.14.30	Brazil	8,438,247	8.4%
*	4412.14.30	Indonesia	30,307,476	30.4%
*	4412.14.55	Brazil	17,251	0.0%
*	4412.14.55	Indonesia	612,306	3.5%
* D	4412.22.40	Colombia	194,777	61.3%
*	4412.22.40	Brazil	0	0.0%
2	4412.22.50	Indonesia	1,210,956	31.6%
2 D	4412.29.45	Ecuador	1,086,182	52.4%
*	4412.92.50	Indonesia	0	0.0%
*	4412.99.55	Colombia	0	0.0%
*	4421.90.50	Brazil	0	0.0%
*	4602.10.23	Indonesia	2,281	38.7%
*	4802.52.10	Argentina	0	0.0%
2	4809.10.20	Guatemala	0	0.0%
*	4823.20.10	Brazil	0	0.0%
* D	4823.90.20	Philippines	7,539,477	60.8%
* D	5701.10.13	Pakistan	215,103	59.3%
*	5702.10.10	Pakistan	3,312	0.6%
* D	5702.49.15	India	952,870	62.1%
*	5702.91.20	Pakistan	35,751	13.4%
*	5805.00.20	Pakistan	0	0.0%
*	6304.99.10	Pakistan	0	0.0%
*	6304.99.40	Pakistan	0	0.0%
*	6406.10.65	Brazil	807,489	0.2%
*	6406.99.60	Argentina	3,259,604	16.8%
2	6501.00.60	Colombia	0	0.0%
*	6908.10.20	Thailand	362,897	4.2%
*	6910.10.00	Brazil	731,072	1.5%
*	6910.90.00	Brazil	1,446	0.0%
*	6910.90.00	Argentina	570,758	0.3%
*	6911.90.00	Brazil	107,938	0.6%
*	6912.00.44	Brazil	2,932	0.0%
*	7007.11.00	Argentina	0	0.0%
*	7106.92.50	Chile	0	0.0%
* D	7109.00.00	Peru	4,595,305	90.8%
*	7113.19.21	Peru	4,579,444	15.0%
*	7114.11.60	Argentina	0	0.0%
*	7115.90.30	Argentina	0	0.0%
*	7115.90.40	Argentina	0	0.0%
*	7116.10.10	Thailand	17,622	2.1%
*	7116.20.05	Thailand	5,373,907	27.8%
*	7116.20.15	Thailand	1,032,203	6.7%
2 D	7117.90.55	Peru	2,680,396	63.4%
*	7202.21.50	Argentina	0	0.0%
*	7202.30.00	Argentina	6,776,089	4.9%
*	7202.30.00	Brazil	0	0.0%
2	7202.50.00	Russia	2,914,775	23.9%
2	7206.90.00	Trinidad and Tobago	0	0.0%
2 D	7307.91.30	Brazil	3,672,182	54.0%
*	7308.90.95	Argentina	209,592	0.1%
*	7315.90.00	Argentina	178,300	1.1%
*	7402.00.00	Chile	35,740,021	11.5%
*	7403.12.00	Peru	610,673	3.4%
*	7403.12.00	Chile	0	0.0%
*	7403.13.00	Chile	235,480	2.2%
*	7403.19.00	Chile	29,591,242	35.5%
*	7403.21.00	Chile	0	0.0%
*	7403.22.00	Chile	0	0.0%
*	7403.23.00	Chile	0	0.0%
*	7403.29.00	Chile	0	0.0%
*	7407.21.90	Brazil	1,258,188	1.5%
2	7407.22.30	Russia	83,791	32.0%
*	7409.11.50	Argentina	92,860	0.1%
*	7409.21.00	Argentina	158,363	0.5%
2	7409.39.50	Hungary	0	0.0%
2	7411.21.50	Trinidad and Tobago	0	0.0%
*	7419.99.50	Argentina	105,187	0.0%
*	7604.29.30	Venezuela	0	0.0%
*	7605.11.00	Venezuela	0	0.0%
2 D	7614.90.20	Venezuela	5,670,423	46.9%
*	7614.90.50	Venezuela	0	0.0%
*	7901.11.00	Argentina	4,235,583	0.7%
*	7901.12.50	Argentina	0	0.0%
2	7904.00.00	Republic of South Af	680,503	27.0%
* D	7905.00.00	Peru	10,505,481	82.7%
*	8104.11.00	Russia	30,021,168	48.2%
*	8112.30.60	Russia	950,962	34.3%
*	8207.20.00	Argentina	0	0.0%
* D	8211.92.60	Pakistan	2,070,883	49.7%
*	8408.20.20	Brazil	19,322,429	11.2%
*	8408.20.90	Brazil	12,666	0.0%
*	8409.91.50	Brazil	25,795,339	2.1%
*	8409.91.50	Argentina	3,937,525	0.3%
*	8409.91.99	Argentina	1,659,846	0.5%
*	8409.99.91	Argentina	1,990,084	0.6%
*	8412.10.00	Russia	0	0.0%
*	8413.30.10	Brazil	12,382,811	5.7%
*	8413.91.90	Argentina	1,191,998	0.2%
*	8414.30.80	Brazil	25,624,323	6.6%
*	8419.90.20	Brazil	282,186	1.5%
*	8422.30.90	Argentina	844,783	0.2%
*	8429.11.00	Brazil	31,558,897	16.3%
*	8429.20.00	Brazil	54,251,507	50.9%

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LIST IV : POSSIBLE REDESIGNATION ITEMS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	8429.30.00	Brazil	14,332,646	44.1%
*	8431.49.10	Argentina	13,804	0.0%
*	8431.49.90	Brazil	49,749,374	4.9%
*	8471.49.29	Thailand	48,815	0.8%
*	8471.60.45	Thailand	135,723	0.0%
*	8477.51.00	Argentina	0	0.0%
*	8479.20.00	Argentina	47,858	1.3%
*	8480.30.00	Argentina	1,650	0.0%
*	8481.30.20	Argentina	0	0.0%
*	8481.80.30	Argentina	637,876	0.1%
*	8481.80.90	Argentina	1,261,464	0.1%
*	8481.90.30	Argentina	74,420	0.1%
*	8503.00.65	Argentina	15,282	0.0%
*	8517.80.10	Indonesia	6,812,717	2.8%
*	8521.10.60	Thailand	82,533,027	4.0%
*	8524.31.00	Argentina	45,674	0.0%
*	8524.32.00	Argentina	536,006	0.2%
*	8524.52.10	Argentina	12,755	0.1%
*	8524.60.00	Argentina	0	0.0%
*	8524.91.00	Argentina	9,900	0.0%
*	8524.99.60	Argentina	0	0.0%
*	8524.99.90	Argentina	29,491	0.0%
2	8525.20.05	Philippines	2,389,138	15.0%
*	8528.12.04	Indonesia	82,286,632	98.5%
2	8528.12.16	Thailand	72,888,866	32.8%
*	8531.20.00	Thailand	41,576,425	5.0%
2	8531.20.00	Philippines	50,783,349	6.2%
2	8534.00.00	Thailand	60,378,139	3.5%
*	8535.40.00	Dominican Republic	425,004	0.8%
*	8536.90.40	Argentina	0	0.0%
*	8536.90.80	Argentina	0	0.0%
*	8538.90.80	Argentina	3,500	0.0%
*	8708.39.50	Brazil	68,688,914	4.6%
2	8708.40.50	Brazil	13,053	0.0%
*	8708.60.80	Argentina	68,414	0.0%
*	8708.70.60	Argentina	0	0.0%
*	8708.99.80	Argentina	3,517,063	0.1%
*	8716.90.50	Argentina	6,000	0.0%
2	9001.30.00	Indonesia	69,032,477	58.7%
*	9003.90.00	Argentina	0	0.0%
* D	9006.62.00	Thailand	10,806,277	91.8%
*	9018.11.60	Argentina	0	0.0%
* D	9018.90.10	Argentina	802,328	54.5%
*	9018.90.80	Pakistan	18,736,524	2.1%
* D	9025.11.20	India	1,126,810	44.0%
*	9105.19.10	Brazil	0	0.0%
*	9105.19.40	Brazil	26,189	0.4%
*	9113.10.00	Argentina	0	0.0%
*	9113.20.60	Argentina	0	0.0%
*	9401.30.40	Croatia	0	0.0%
*	9401.30.40	Slovenia	0	0.0%
*	9401.69.40	Indonesia	11,322,693	59.9%
*	9403.20.00	Argentina	214,018	0.0%
*	9403.50.90	Argentina	665,139	0.0%
*	9403.60.80	Argentina	2,491,938	0.1%
*	9405.30.00	Thailand	13,926,705	3.1%
* D	9506.61.00	Philippines	4,932,328	60.1%
*	9506.62.80	Pakistan	1,522,612	2.0%
*	9506.91.00	Pakistan	287,478	0.0%
2 D	9614.20.60	Turkey	71,325	87.4%

LIST IV : POSSIBLE REDESIGNATION ITEMS

1998 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	213,189,475	160
Belize	0	1
Brazil	495,482,664	55
Chile	71,670,051	14
Colombia	28,062,685	7
Costa Rica	26,406,454	5
Croatia	0	1
Dominican Republic	5,234,911	9
Ecuador	1,601,266	4
Guatemala	16,508,251	7
Honduras	54,000	1
Hungary	0	1
India	6,182,323	6
Indonesia	240,320,280	19
Jamaica	0	1
Pakistan	37,473,685	18
Peru	39,422,238	8
Philippines	65,644,292	4
Republic of South Af	62,682,508	7
Russia	33,970,696	5
Slovenia	0	1
Thailand	295,256,825	15
Trinided and Tobago	51,758,615	4
Turkey	31,466,485	9
Venezuela	5,670,423	4
TOTAL	1,728,058,127	366

FLAGS: '*'=Excluded full year; '2'=Excluded July/December; 'D'=De minimis;

[FR Doc. 99-2071 Filed 1-28-99; 8:45 am]
BILLING CODE 3190-01-C

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–1998–4538; Order 99–1–13]

Application of National Airlines, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 99–1–13) Docket OST–1998–4538.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding National Airlines, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than February 10, 1999.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–1998–4538 and addressed to Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, SW., Rm. PL–401, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–2340.

Dated: January 26, 1999.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–2214 Filed 1–28–99; 8:45 am]

BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20941]

Groendyke Transport, Inc., Manfredi Motor Transit Co., Miller Transporters, Inc., Superior Carriers, Incorporated, and Trimac Transportation, Inc.—Pooling Agreement

AGENCY: Surface Transportation Board.

ACTION: Request for comments from interested parties and order of suspension.

SUMMARY: Pursuant to 49 U.S.C. 14302(c)(3), we are (1) requesting public comments on an application filed by nine motor carriers of bulk commodities to pool some of their services, traffic, and revenues and (2) suspending operation of the pooling agreement pending a final decision on the application.

DATES: Comments must be filed by March 1, 1999. Applicant's reply to the comments is due by March 22, 1999.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20941 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: James A. Calderwood, Zuckert, Scoutt & Rasenberger, 888 17th Street, N.W., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: By application filed on November 20, 1998, nine motor carriers [1] seek authority to pool some of their services, traffic, and revenues pursuant to 49 U.S.C. 14302 and our regulations to implement this provision at 49 CFR 1184. The carriers are all licensed by the United States Department of Transportation (DOT) to carry bulk commodities that are often classified as "hazardous materials" by DOT. In general, the bulk commodities transported by applicants are chemical products that cannot be mixed with other cargo in the same load and require specialized equipment and handling procedures. The equipment must usually be cleaned after each delivery.

By their pooling agreement, applicants plan to establish a "joint venture corporation" (JVC) that will (1) coordinate their operations so as to avoid traffic imbalances and empty mileage and (2) share and coordinate their acquisition, use, and cleaning of the specialized cleaning equipment required for their operations. The pooling agreement has no expiration date. Each of the five owners of the JVC will have a 20% equity interest in it, and representation on the JVC's Board of Directors will be equal among the five owners.[2] Each of the five owners will make an initial contribution to the JVC to cover expenses associated with its formation and initial operations. The JVC's board will hire its own staff.

The operations of the JVC can be summarized in their essential aspects as follows:

1. *Load Balancing.* Each carrier will regularly notify the JVC about the points where it will have empty equipment or need loads and the points where it cannot handle the loads offered to it. The JVC will endeavor to reconcile available equipment with needs "in a fair and equitable manner." Not less than monthly, the JVC will report to its carrier members as to "the number of loads transported under the joint venture corporation arrangement along with the volumes and points served."

2. *Cleaning equipment.* The carrier members will assist each other in the provision of cleaning equipment, make cleaning facilities available on an equal basis, establish procedures for the use and cleaning of such equipment, and share information and compile records concerning such use. In addition, "[m]ember carriers owning or controlling particular cleaning facilities will be responsible for the safe and efficient operation of such facilities * * *"

3. *Funding.* The JVC may establish charges to its member carriers to fund its operations.

4. *Participation.* A carrier member may terminate its participation by giving 30 days notice, subject to fulfillment of its prior obligations, and, if its permit is revoked by DOT, its operational participation will be automatically suspended.

5. *Shippers.* The carriers certify that the rates set under the agreement do not contravene the restrictions on collective ratemaking in 49 U.S.C. Subtitle IV and our regulations.[3] Each carrier member will deal separately with shippers as to rates, contracts, and service. Rates will not be set by the JVC or its staff and will not be subject to discussion or agreements between JVC members.

Under the pooling agreement, carriers will sometimes have to collect charges from their customers for services that will actually be performed by other carriers. The particular carrier member responsible for contractual

[1] The nine motor carriers are: Groendyke Transport, Inc.; Manfredi Motor Transit Co.; Miller Transporters, Inc.; Superior Carriers, Inc., and Central Transport, Inc., both wholly owned subsidiaries of Superior Carriers, Incorporated, a noncarrier; and Liquid Transporters, Inc., Quality Services Tanklines, Inc., Trimac Transportation Services (Western), Inc., and Universal Transport, Inc., all four of which are wholly owned subsidiaries of Trimac Transportation, Inc., a noncarrier.

[2] The parent owners will act on behalf of their subsidiary regulated carriers: see n.1 herein.

[3] The last sentence of numbered paragraph 7 of the pooling agreement provides: "The joint venture corporation will establish a uniform rate structure applicable to transportation services rendered through the joint venture corporation." We presume that this provision concerns payment for services that the carriers will render to each other and would not allow the JVC to provide regulated transportation services to be billed to shippers. Applicants should notify us if we are incorrect in this presumption.

arrangements with a particular shipper will collect charges from the shipper and compensate the carriers that actually perform the services. The JVC will facilitate such compensation, acting as a clearinghouse and record keeper.

On January 7, 1999, Schneider National Bulk Carriers, Inc. (Schneider) filed a letter reply in opposition to the agreement, urging us to set the matter for hearing. Schneider asserts that the agreement is too vague; that it would unduly concentrate the market; that it would allow the participants to function as a de facto rate bureau; that it would permit improper "signals" of price movements; that uniform equipment costs could improperly influence carrier rates; and that the agreement would improperly allow division of the market. Interested persons may obtain a copy of Schneider's letter reply by contacting counsel for Schneider, Mr. Stephen M. Ferris, Esq., who may be reached at (920) 592–3896.

On January 15, 1999, Liquid Transport Corporation (LTC) filed a petition urging us to reject the agreement or to request comments from the public. LTC asserts that the proposal, which it concludes is not a pooling agreement but is instead a "Return Loads Bureau" and equipment cleaning service, is of major transportation importance because it will adversely affect the ability of other carriers to compete for this traffic; that the proposal will restrain competition and effectively constitute collective ratemaking; and that any benefits it may produce will not justify the harm it will cause. Interested persons may obtain a copy of LTC's petition by contacting counsel for LTC, Mr. Terry G. Fewell, Esq., who may be reached at (317) 637–1777.

Under 49 U.S.C. 14302(c)(2), the Board must determine whether the proposed pool is of major transportation importance and whether there is a substantial likelihood that the agreement will unduly restrain competition. If we determine that neither of these two factors exists, we are required to approve the agreement without a hearing. Before we attempt to make those determinations, we will seek public comments on the application and on the issues raised by Schneider and LTC.

So that we may issue a final decision on the application after the comments are analyzed, commenters should also address whether, even if the agreement is of major transportation importance or there is a substantial likelihood that the agreement will unduly restrain competition, the agreement should nevertheless be approved under 49 U.S.C. 14302(c)(3) because it would foster better service to the public or operational economies.

Because the applicant carriers bear the burden of proof, we will allow them to respond to the public comments.

Under 49 U.S.C. 14302(c)(3), we are required to suspend operation of the proposed agreement pending a final decision, and we hereby do so.

Board decisions and notices are available at our website at "WWW.STB.DOT.GOV."

This notice and order will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A hearing on the pooling application is commenced as described in this notice.

2. Effective on the date of publication, the operation of the proposed pooling agreement is suspended pending completion of this hearing and issuance of a final decision.

3. A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: January 25, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams.

Secretary.

[FR Doc. 99–2224 Filed 1–28–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board, Transportation.

ACTION: Proposed adoption of a Railroad Cost Recovery Procedures productivity adjustment.

SUMMARY: The Surface Transportation Board proposes to adopt 1.057 (5.7%) as the measure of average growth in railroad productivity for the 1993–1997 (5-year) period. The current value of 9.7% was developed for the 1992 to 1996 period.

DATES: Comments are due by February 16, 1999.

EFFECTIVE DATE: The proposed productivity adjustment is effective February 28, 1999.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 290 (Sub-No. 4) to: Office of the Secretary, Case Control Branch, 1925 K Street, NW, Washington, DC 20423–0001. Parties should submit all pleading and attachments on a 3.5-inch diskette in WordPerfect 6.0 or 6.1 compatible format.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1549. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: January 22, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2225 Filed 1–28–99; 8:45 am]

BILLING CODE 4915–00–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Collecting Impressionism"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit, "Collecting Impressionism," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the High Museum of Art in Atlanta, Georgia from February 27 through May 16, 1999, at the Seattle Art Museum in Seattle, Washington from

June 12 through August 29, 1999, and at the Denver Art Museum in Denver, Colorado from September 25 through December 12, 1999, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information contact Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 22, 1999.

[FR Doc. 99–2152 Filed 1–28–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0047]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed by the agency when a purchaser assumes a veteran's home in release of liability cases.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0047" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Financial Statement, VA Form 26–6807.

OMB Control Number: 2900–0047.

Type of Review: Extension of a currently approved collection.

Abstract: This form provides information needed by the agency when a purchaser assumes a veteran's home in release of liability cases.

Affected Public: Individuals or households.

Estimated Annual Burden: 30,000 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 40,000.

Dated: December 2, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2119 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0320]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to allow veterans to gain occupancy of property even though exterior improvements must be postponed because of bad weather.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0320" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Escrow Agreement for Postponed Exterior Onsite Improvements, VA Form 26–1849.

OMB Control Number: 2900–0320.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected is used to allow a veteran to gain occupancy of a property when specified exterior onsite

improvements must be postponed because of delays such as bad weather.

Affected Public: Individuals or households and business or other for-profit.

Estimated Annual Burden: 1 hour.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 10,000.

Dated: December 2, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2120 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0507]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0507."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Medical Information for Reinstatement, VA Form Letter 29–762.

OMB Control Number: 2900–0507.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form letter is used by the veteran's attending physician to supply medical information that is required to determine eligibility for reinstatement of insurance and/or Total Disability Income Provision. The information on the form is required by 38 CFR 8.12.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 24, 1998, 1998 at page 34503.

Affected Public: Individuals or households.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 480.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–4650. Please refer to "OMB Control No. 2900–0507" in any correspondence.

Dated: November 23, 1998.

By direction of the Secretary.

Genie McCully,

Program Analyst, Information Management Service.

[FR Doc. 99–2118 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0362]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information which is essential to VA determinations concerning the amount owed the holder when there is a default on a VA guaranteed home loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0362" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Claim under Loan Guaranty and Supplemental Claim Form—Adjustable Rate Mortgages, VA Form 26–1874 and VA Form 26–1874a.

OMB Control Number: 2900–0362.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected is essential to VA determinations concerning the amount owed the holder under the guaranty.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 26,139 hours.

Estimated Average Burden Per Respondent: 59 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 26,806.

Dated: December 2, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2121 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0383]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information necessary to determine eligibility for and entitlement to Educational Assistance Test Program benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0383" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Educational Assistance Test Program Benefits, VA Form 22–8889.

OMB Control Number: 2900–0383.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected is used to determine eligibility for and entitlement to Educational Assistance Test Program benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 100 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 200.

Dated: December 3, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2122 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0405]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to confirm the continued entitlement of a beneficiary under the Restored Entitlement Program for Survivors (REPS) program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0405" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: REPS Annual Eligibility Report, VA Form 21–8941.

OMB Control Number: 2900–0405.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to confirm the continued entitlement of a beneficiary under the REPS program.

Affected Public: Individuals or households.

Estimated Annual Burden: 550 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 2,200.

By direction of the Secretary.

Dated: December 3, 1998.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2123 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0408]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine claim payment to holders of terminated VA guaranteed manufactured home unit loans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0408" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit Only) and Manufactured Home Loan Claim Under Loan Guaranty (Combination Loan—Manufactured Home Unit and Lot or Lot Only), VA Form 26–8629 and VA Form 26–8630.

OMB Control Number: 2900–0408.

Type of Review: Extension of a currently approved collection.

Abstract: This notice solicits comments for information needed to determine claim payment to holders of terminated VA guaranteed manufactured home unit loans.

Affected Public: Business or other for-profit, and Individuals or households.

Estimated Annual Burden: 36 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 110.

By direction of the Secretary.

Dated: December 2, 1998.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2124 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0509]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether the applicant meets the health requirements for granting Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 30, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0509" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Veterans Mortgage Life Insurance Health Statement, VA Form 29–0562.

OMB Control Number: 2900–0509.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by VA to obtain health information from veterans applying for Veterans Mortgage Life Insurance. The information requested is required by law, Title 38, U.S.C., Section 2106, and is used by VA in determining whether the applicant meets the health requirements for granting Veterans Mortgage Life Insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 240.

Dated: December 2, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2125 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0043]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before March 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0043."

SUPPLEMENTARY INFORMATION:

Title: Declaration of Status of Dependents, VA Form 21–686c.

OMB Control Number: 2900–0043.

Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.

Abstract: The form is used to obtain the necessary information to confirm marital status and existence of any dependent child(ren). The information is used by VA to determine eligibility to benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 1998 at page 51637.

Affected Public: Individuals or households.

Estimated Annual Burden: 56,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 226,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0043" in any correspondence.

Dated: November 23, 1998.

By direction of the Secretary.

Genie McCully,

Program Analyst, Information Management Service.

[FR Doc. 99–2112 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0060."

SUPPLEMENTARY INFORMATION:

Titles and Form Numbers

a. Claim for Life Insurance Proceeds (NSLI & USGLI), VA Form 29–4125.

b. Claim for Monthly Installments (NSLI), VA Form 29–4125a.

c. Claim for One Sum Payment (NSLI & USGLI),VA Form 29–4125b.

d. Claim for Monthly Installments (USGLI), VA Form 29–4125k.

e. Invitation and Claim for One Sum Payment (NSLI & USGLI), VA Form Letter 29–764.

OMB Control Number: 2900–0060.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The forms and form letter are used by beneficiaries applying for proceeds of Government Insurance policies. The information is used by VA to process the beneficiaries claim for payment of the insurance proceeds.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 13, 1998 at page 37625.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,938 hours.

a. VA Form 29–4125—8,200 hours.
b. VA Form 29–4125a—463 hours.
c. VA Form 29–4125b—50 hours.
d. VA Form 29–4125k—125 hours.
e. FL 29–764—100 hours.

Estimated Average Burden Per Respondent

a. VA Form 29–4125—6 minutes.
b. VA Form 29–4125a—15 minutes.
c. VA Form 29–4125b—6 minutes.
d. VA Form 29–4125k—15 minutes.
e. FL 29–764—6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 85,850.

a. VA Form 29–4125—82,000
b. VA Form 29–4125a—1,850
c. VA Form 29–4125b—500
d. VA Form 29–4125k—500
e. FL 29–764—1,000

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0060" in any correspondence.

Dated: November 3, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2113 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0094."

SUPPLEMENTARY INFORMATION:

Title: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

OMB Control Number: 2900–0094.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38, U.S.C., sections 101 and 6104 requires VA to ascertain from certain applicants service information, place of residence, evidence held by the applicant to prove service, and whether the applicant was a member of pro-Japanese, pro-German, or anti-American Filipino organizations. The information collected is used in determining eligibility for benefits based on Commonwealth Army or recognized guerrilla service.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 11, 1998 at page 48787.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time for most beneficiaries.

Estimated Number of Respondents: 1,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0094" in any correspondence.

Dated: November 18, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2114 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0111]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0111."

SUPPLEMENTARY INFORMATION:

Title and Form Number: Statement of Purchaser or Owner Assuming Seller's Loan, VA Form 26–6382.

OMB Control Number: 2900–0111.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 26–6382 is completed by purchasers who are assuming veterans' guaranteed, insured, and direct home loans. The data furnished on the form is essential to determinations for release of liability and substitution of entitlement in accordance with Title 38, U.S.C., sections 7313(a) (release of liability) and 3702(b)(2) (substitution of entitlement).

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 14, 1998 at page 49157.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,000 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 9,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0111" in any correspondence.

Dated: November 23, 1998.

By direction of the Secretary.

Genie McCully,

Program Analyst, Information Management Service.

[FR Doc. 99–2115 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0148]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and

its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0148."

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Notice of Past Due Payment, VA Form 29–389e.

OMB Control Number: 2900–0148.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used by veterans who have applied for National Service Life Insurance as a temporary measure to restore continuous protection until a final decision is made by VA to establish the insured's eligibility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 14, 1998 at page 49157.

Affected Public: Individuals or households.

Estimated Annual Burden: 484 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,936.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0148" in any correspondence.

Dated: November 23, 1998.

By direction of the Secretary.

Genie McCully,

Program Analyst, Information Management Service.

[FR Doc. 99–2116 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0188]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0188."

SUPPLEMENTARY INFORMATION:

Title: Prescription, Authorization, Application, Procurement, Repair and Loan of Prosthetic Items.

Form Numbers

a. VA Form 10–2421, Prosthetic Authorization for Items or Service.
b. VA Form 10–2520, Prosthetic Service Card Invoice.
c. VA Form 10–2914, Prescription and Authorization for Eyeglasses.
d. Form Letter 10–90, Request to Submit Estimate.
e. Form Letter 10–426, Loan Follow-up Letter.
f. VA Form 10–1394, Loan Follow-up Letter.
g. VA Form 10–0103, Application for Assistance in Acquiring Home Improvement and Structural Alterations.

OMB Control Number: 2900–0188.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract

a. VA Form 10–2421 is used for the direct procurement of new prosthetic appliances and/or services and standardizes the direct procurement authorization process. The form eliminates the need for separate purchase orders, expedites patient treatment and improves the delivery of prosthetic services. Without this form the delivery time for prosthetic appliances and services would be drastically increased.

b. VA Form 10–2520 is used by the commercial vendors, after completing repairs authorized for veterans, to request payment by VA. The use of the form standardizes repair/treatment invoices for prosthetic services rendered and standardizes the verification of these invoices. The veteran certifies that the repairs were necessary and satisfactory. This form is furnished to vendors upon request.

c. VA Form 10–2914 is used as a combination prescription, authorization and invoice. It allows veterans to purchase their eyeglasses directly. If the form is not used, the provisions of providing eyeglasses to eligible veterans may be delayed.

d. Form Letter 10–90 is issued to a contractor of the veteran's choice in order to solicit a price quote for a prosthetic device.

e. Form Letter 10–426 is used for the issuance of prosthetic devices that are loaned to eligible veterans. If the information is not collected or maintained, VA would have no information regarding equipment loaned to veterans; i.e., status, recovery, replacement and disposition.

f. VA Form 10–1394 is used to determine eligibility/entitlement and reimbursement of individual claims for automotive adaptive equipment.

g. VA Form 10–0103 is used to determine eligibility/entitlement and reimbursement of individual claims for home improvement and structural alterations.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 31, 1997 at page 68359.

Affected Public: Business or other for-profit—Individuals or households.

Estimated Total Annual Burden: 37,079 hours.

a. VA Form 10–2421—16,667 hours.
b. VA Form 10–2520—3,334 hours.
c. VA Form 10–2914—11,667 hours.
d. Form Letter 10–90—1,875 hours.
e. Form Letter 10–426—242 hours.
f. VA Form 10–1394—2,711 hours.
g. VA Form 10–0103—583 hours.

Estimated Average Burden Per Respondent

a. VA Form 10–2421—4 minutes.
b. VA Form 10–2520—5 minutes.
c. VA Form 10–2914—4 minutes.
d. Form Letter 10–90—5 minutes.
e. Form Letter 10–426—1 minute.
f. VA Form 10–1394—15 minutes.
g. VA Form 10–0103—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 519,844.

a. VA Form 10–2421—250,000.
b. VA Form 10–2520—40,000.
c. VA Form 10–2914—175,000.
d. Form Letter 10–90—22,500.
e. Form Letter 10–426—14,500.
f. VA Form 10–1394—10,844.
g. VA Form 10–0103—7,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0188" in any correspondence.

Dated: November 3, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–2117 Filed 1–28–99; 8:45 am]

BILLING CODE 8320–01–P

federal register

Friday
January 29, 1999

Part II

Department of the Treasury

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Technical Assistance Component; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

[No. 982–0154]

Notice of Funds Availability (NOFA) Inviting Applications for the Community Development Financial Institutions Program—Technical Assistance Component

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) (the "Act") authorizes the Community Development Financial Institutions Fund (the "Fund") to select and provide assistance to eligible applicants under the Community Development Financial Institutions ("CDFI") Program. Such assistance may include financial assistance and technical assistance. Technical assistance ("TA") may be used for activities that enhance the capacity of both CDFIs and entities proposing to become CDFIs, such as the training of management and other personnel, the use of consulting services for the development of programs, loan or investment products, improving financial management and internal operations, enhancing a CDFI's community impact, the acquisition of technology to increase operating efficiencies and other activities deemed appropriate by the Fund.

Since the advent of the CDFI Program, the Fund has issued NOFAs inviting applications for both TA and financial assistance. This NOFA is for a TA only component ("TA Component") of the CDFI Program to enable the Fund to address more effectively the unmet capacity needs of CDFIs and entities proposing to become CDFIs. This NOFA is intended to award grants to eligible applicants with capacity needs and potential for increasing their community development impact if such capacity needs are addressed. This NOFA provides guidance on the contents of the necessary application materials and program requirements. Subject to funding availability, the Fund intends to award up to $5 million in appropriated funds under this NOFA. The Fund reserves the right to award in excess of $5 million in appropriated funds under this NOFA provided that the funds are available and the Fund deems it appropriate. It is anticipated that 80 to 100 awards will be made under this NOFA. The anticipated maximum award amount per applicant is $50,000. However, the Fund in its sole discretion, reserves the right to award amounts in excess of $50,000 if an applicant demonstrates, to the satisfaction of the Fund, the need for such additional amounts and the added potential community development impact resulting from such additional amounts.

DATES: The original and three copies of the application may be submitted at any time following January 29, 1999. The deadline for receipt of the original and three copies of the application for TA Component funds is 6 p.m. EST on April 27, 1999. Applications received in the Fund's office after that date and time will be rejected and returned to the sender.

ADDRESSES: Applications must be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th St., NW., Suite 200 South, Washington, DC 20005. Applications sent electronically or by facsimile will not be accepted.

FOR FURTHER INFORMATION CONTACT: If you have any questions about the programmatic requirements of the TA Component contact the Technical Assistance Program Manager. If you wish to request an application package or have questions regarding application procedures, contact the Awards Manager. They can be reached by phone at (202) 622–8662, by facsimile at (202) 622–7754 or by mail at CDFI Fund, U.S. Department of the Treasury, 601 13th St., NW., Suite 200 South, Washington, DC 20005. (The phone and facsimile numbers are not toll free.) Allow at least one to two weeks for the receipt of the application package. Applications and other information regarding the Fund and its programs may be downloaded from the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION:

I. Background

Credit and investment capital are essential ingredients for creating and retaining jobs, developing affordable housing, starting or expanding businesses, revitalizing neighborhoods, and empowering people. As a key urban and rural policy initiative, the CDFI Program is fostering the creation of a national network of financial institutions that are specifically dedicated to community development. CDFIs make loans, investments and provide development services to economically distressed investment areas and disadvantaged targeted populations. In order to facilitate the development of a national network of CDFIs, the Fund is seeking to support the efforts of such entities to build their organizational capacity to make loans and investments and provide development services. In order to use the TA funds strategically, it is the Fund's intention to target such funds to CDFIs and entities proposing to become CDFIs that have demonstrated capacity needs and possess significant potential for increasing their community development impact with the assistance of a limited amount of TA. The anticipated maximum award per applicant under this NOFA is $50,000. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $50,000 if an applicant demonstrates, to the satisfaction of the Fund, the need for such additional amounts and the added potential community development impact resulting from such additional amounts.

On October 26, 1998, the Fund published in the **Federal Register** a NOFA for financial assistance under the CDFI Program Intermediary Component and a NOFA for financial assistance and TA under the CDFI Program Core Component. Under the Intermediary Component NOFA, the Fund is making available up to $7.5 million in appropriated funds to CDFIs that provide financing primarily to other CDFIs or to support the formation of CDFIs. Under the Core Component NOFA, the Fund is making available up to $50 million in appropriated funds to CDFIs that serve their target markets directly. Applicants under that Core Component NOFA may apply for both financial assistance and TA. All applications for financial assistance, TA or both under the Core Component will be evaluated separately and apart from the applications under this TA Component. Moreover, the application requirements and the selection criteria under the Core Component NOFA differ from those contained in this TA Component NOFA, because the TA Component NOFA is singularly focused on providing TA to enhance the capacity of CDFIs and entities proposing to become CDFIs. Interested applicants are encouraged to apply for TA under one NOFA or the other; however, applicants are not prohibited from applying for TA under both NOFAs.

II. Eligibility

The Act and the interim rule governing the CDFI Program (12 CFR part 1805), which was published in the **Federal Register** on April 4, 1997 (62 FR 16444), specify the requirements that

each applicant must meet to be eligible to apply for TA. At the time an entity submits its application, the entity must meet or propose to meet the CDFI certification requirements under § 1805.200. In general, a CDFI must have a primary mission of promoting community development, provide loans or development investments, serve an investment area or a targeted population, provide development services, maintain community accountability, and be a nongovernment entity. At the time an entity submits its application, the entity must be duly organized and validly existing under the laws of the jurisdiction in which it is incorporated or otherwise established. The details regarding these requirements and other program requirements are described in the interim rule and the application packet.

III. Form of Assistance

An applicant under this NOFA may only submit an application for a TA grant.

IV. Application Packet

Section 1805.701 of the interim rule provides that unless otherwise specified in an applicable NOFA, each application must contain the information specified in the application packet, including the items described in §§ 1805.701(a)–(j). For purposes of this NOFA, the Fund is specially tailoring the collection of information requirements. Specifically, applicants need only submit the information required by the TA Component application packet. The TA Component application packet requires the submission of the following information:

(a) Applicant Information. The applicant's name, address and name and telephone number of the applicant's authorized representative and contact person.

(b) Award Request. The dollar amount of the TA grant requested by the applicant.

(c) Eligibility Verification. If the Fund has not certified an applicant as a CDFI and an applicant does not have an application for certification pending with the Fund, the applicant must provide information necessary to establish that it is, or will be, a CDFI. An applicant must demonstrate whether it meets the CDFI eligibility requirements by providing the information described in §§ 1805.701(b)(1)–(8). If an applicant is currently certified by the Fund as a CDFI, it may submit a copy of the Fund's letter of certification and the Certification of Material Changes form contained within the application in lieu of the information described in §§ 1805.701(b)(1)–(8). However, an applicant may include in its application for a TA grant information that it believes is otherwise relevant to the Fund's evaluation of the application under the criteria set forth in this NOFA. An entity that proposes to become a CDFI is eligible to apply for a TA grant if the Fund determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in §§ 1805.200(b)–(h) within two years of entering into an Assistance Agreement with the Fund.

(d) Comprehensive Business Plan. An applicant must submit a five-year Comprehensive Business Plan that addresses the items described in this paragraph (d) (the TA Component Comprehensive Business Plan is an abbreviated version of what is required under the Core Component NOFA). The Comprehensive Business Plan should, to the maximum extent practical, be limited to ten pages or less (applicants may provide attachments, including supplemental documents, as appropriate, on items referenced in the Comprehensive Business Plan).

(1) Management capacity. An applicant must provide a narrative description of its current management capacity, including detailed information on the background and capacity of the applicant's management team, key personnel and governing board members as appropriate.

(2) Track Record and Historical Financial Performance. An applicant must provide information on its historical and current financial condition, including a copy of audited financial statements, financial statements that have been reviewed by a certified public accountant, or financial statements that have been reviewed by the applicant's Appropriate Federal Banking Agency (its Federal regulator) for the last three completed fiscal years, and the most recent internal financial statements since the beginning of the applicant's current fiscal year. The applicant must also provide information on its loans and Development Investments for the three most recent fiscal years, including information on the total number and dollar amount of such loans and Development Investments during each fiscal year during this time frame. If an applicant has been in operation for less than three years, the applicant must describe such activities for each fiscal year since inception. The applicant must provide information necessary to assess trends in its financial and operating performance (such as, portfolio delinquencies, defaults and charge-offs).

(3) Market Analysis and Strategy. An applicant must provide an analysis of its target markets, including a description of the needs of the Investment Area(s) and Targeted Population(s), as applicable. An applicant must also describe its five-year strategy for meeting the demand for loans or Development Investments generated by the needs of its target market(s) through its products and services. The strategy description may include plans for growth of lending volume and lending products, expansion of Development Services, staffing and management appropriate to meet such growth and growth of the operating budget. Projected changes in overall capital structure (asset and liability composition) may also be described. The narrative discussion may be supplemented with quantitative projections.

(4) Coordination Strategy. An applicant must describe:

(i) Its plan to coordinate use of assistance from the Fund with existing Federal, State, local, and tribal government assistance programs and private sector resources;

(ii) How its proposed activities are consistent with existing economic, community, and housing development plans adopted for an Investment Area(s) or Targeted Population(s); and

(iii) How it will coordinate with community organizations, financial institutions, and Community Partners (if applicable) that will provide loans, equity investments, secondary markets, or other services to an Investment Area(s) or a Targeted Population(s).

(5) Funding Sources. An applicant must provide information:

(i) On its current and projected sources of capital and other financial support. Such projections must relate to and be consistent with the strategy description provided under paragraph (3); and

(ii) To demonstrate that it has a plan for achieving or maintaining financial viability within the five-year period. Such information must demonstrate that the applicant will not be dependent on future awards of assistance from the Fund for its continued viability.

(6) Community Partnership. In the case of an applicant submitting an application with a Community Partner, the applicant must include in its application the information described in § 1805.701(d)(12).

(e) Technical Assistance Proposal. An applicant must provide a Technical

Assistance Proposal ("TAP") that includes information on the TA needed to enhance the capacity of the organization to carry out its Comprehensive Business Plan. Such information must include the items described in this paragraph (e). The TAP should, to the maximum extent practicable, be limited to ten pages or less (applicants may provide attachments, including supplemental documents, as appropriate, on items referenced in the TAP). An applicant must provide:

(1) An evaluation of its capacity needs (this may be a self-evaluation);

(2) A detailed description of the type(s) of TA needed to meet the identified capacity needs. Eligible types of TA may include, but need not be limited to, the following: (i) consulting services; (ii) technology items; and (iii) training for staff or management. The Fund will not consider requests under this NOFA for expenses that, in the interpretation of the Fund, are deemed to be ongoing operating expenses rather than non-recurring expenses (for example, the cost of design of marketing materials for a loan product through a consulting contract is a non-recurring expense but the cost of production or distribution of printed marketing materials is an ongoing expense; salary expenses for staff are ongoing but the cost of a consulting contract for a discrete scope of services is a non-recurring expense);

(3) A detailed description of the strategy for obtaining such TA, including proposed providers of TA and their qualifications or the specific technology items to be acquired. If an applicant cannot identify specific providers of TA in its application, it must identify the requisite qualifications that it will seek for such TA providers;

(4) An estimate of the cost to obtain the TA for each year that will include use of TA funds. This cost estimate must include expense projections for each of the specific activities to be funded with TA funds; and

(5) A projection of the benefits expected to be created within its Investment Area(s) or for its Targeted Population(s) with the enhanced capacity resulting from the TA.

(f) Conflict of Interest. An applicant must submit a copy of its conflict of interest policies, consistent with the requirements of § 1805.906.

(g) Lobbying Disclosure Act of 1995. An applicant must identify whether the Internal Revenue Service (IRS) has recognized it as exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code.

(h) Miscellaneous. An applicant must indicate and describe the circumstances underlying any back taxes due to the IRS, any delinquent debts owed to Federal, State or local governments, and whether it has ever filed for bankruptcy.

(i) Environmental Information. An applicant must review and complete the Environmental Review Form contained in the application.

(j) Applicant Certification. An applicant and Community Partner (if applicable) must review and complete the assurances and certifications form contained in Appendix A of the application.

(k) Previous Awardees. In the case of an applicant that has previously received assistance under the CDFI Program, the applicant must demonstrate that it:

(1) Has substantially met its performance goals and other requirements described in its previous Assistance Agreement(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

(l) Previous History. In the case of an applicant with a prior history of serving Investment Area(s) or Targeted Population(s), the applicant must demonstrate that it:

(1) Has a record of success in serving Investment Area(s) or Targeted Population(s); and

(2) Will expand its operations into a new Investment Area(s), serve a new Targeted Population(s), offer more products or services, or increase the volume of its activities.

V. Evaluation and Selection

In evaluating and selecting applicants, the Fund will use the evaluation criteria found in § 1805.802(b), except that the Fund will not consider the evaluation criteria relating to matching funds in §§ 1805.802(b)(2)(i), (ii) and (iv). Under the Act, the Fund has express authority to consider evaluation criteria in addition to those set forth in 12 U.S.C. 4706 and 1805.802(b). The Fund also has broad discretion in evaluating the relative importance of each such criterion. For purposes of this TA Component NOFA, the Fund has added as an additional evaluation criterion the extent of the applicant's demonstrated capacity needs.

In conducting its substantive review of applications, the Fund will initially evaluate applications using a 100 point maximum point scale. In selecting applicants for TA grant awards, the Fund will accord predominant weight to the following two evaluation criteria:

(a) The extent of the applicant's demonstrated capacity needs, 30 points; and

(b) The extent and nature of the potential community development impact that will be achieved by the applicant with the assistance of the Fund's TA, relative to the amount of TA to be provided by the Fund, 30 points.

The Fund will continue to evaluate applications using the remaining applicable criteria set forth in § 1805.802(b) described below; however, such evaluation criteria will receive less weight than the two criteria set forth above:

(a) The capacity, skills and experience of the applicant's management team and other key personnel (overall organizational structure, lending/investing activities, community development involvement), 14 points for established applicants and 24 points for start-ups;

(b) The applicant's track record, financial strength and current operations (including its general financial operations and lending/investment operations), 10 points for established applicants and no points for start-ups;

(c) The market analysis, strategy and (if applicable) Community Partnerships, 12 points;

(d) Coordination strategy, 2 points; and

(e) Funding sources, 2 points.

As shown above, the Fund will utilize two different 100 point scales for the application evaluation, depending on whether an applicant is deemed by the Fund to be a start-up organization or an established organization. The Fund defines a start-up organization as an entity that has been in operation for less than two years. The Fund will find an organization to be a start-up if it began incurring operating expenses after January 29, 1997, based on a review of submitted income and expense statements and/or other information by an applicant as part of its application. In evaluating applications of start-up organizations, the Fund will place greater emphasis on the experience, strength and background of an applicant's management team and key personnel than on the breadth and depth of its financial resources and its trends in operating performance.

Once the initial evaluation is completed, the Fund will determine which applications will receive further consideration for funding based on the application scores (standardized if deemed appropriate), the recommendations of the individuals performing the initial reviews and the amount of funds available. Applicants

selected for further review or a second stage evaluation may be contacted for purposes of obtaining clarifying or confirming information. A final review panel will consider the results of the initial and second stage evaluations and the geographic and institutional diversity of those applicants being considered for funding in accordance with 12 CFR 1805.801 and 1805.802(b)(5). The final review panel will make recommendations to the Fund's selecting official.

In assessing the extent of demonstrated capacity need, the Fund will consider the extent of funding previously awarded by the Fund to the applicant. While previous awardees are eligible to apply under this NOFA, given the focus on applicants with demonstrated unmet capacity building needs, it is the expectation of the Fund that a substantial majority of the funds awarded under this NOFA will be to applicants that are not previous awardees. On the other hand, success in a previous funding round will not prevent an applicant from receiving a TA grant under this NOFA provided that it is consistent with the Act and the interim rule governing the CDFI Program (12 CFR part 1805).

The Fund has exclusive discretion in the selection of applications for assistance. The anticipated maximum award per applicant under this NOFA is $50,000. However, the Fund, in its sole discretion, reserves the right to award amounts in excess of $50,000 if it deems it appropriate.

VI. Workshops

The Fund expects to host workshops during the period from March 1 to March 19, 1999, to disseminate information to organizations interested in applying for assistance under this NOFA. If you wish to be on the mailing list to receive information about such workshops, please fax your request to the Fund. Information about these workshops will also be available on the Fund's website at http://www.treas.gov/cdfi.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717, 4718; 12 CFR part 1805.

Dated: January 22, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–2024 Filed 1–28–99; 8:45 am]

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Friday
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Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Interest and Other Financial Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 98–006]

RIN 9000–AI24

Federal Acquisition Regulation; Interest and Other Financial Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to add interest charges or other amounts as a consequence of late contractor payments to the list of unallowable costs in the "Interest and Other Financial Costs" cost principle, and to make several editorial revisions.

DATES: Comments should be submitted on or before March 30, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–006@gsa.gov.

Please cite FAR case 98–006 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 98–006.

SUPPLEMENTARY INFORMATION:

A. Background

A ruling by the Court of Appeals for the Federal Circuit has raised a significant issue regarding the allowability of interest charges paid as a consequence of late contractor payments. In *Lockheed Corporation* v. *Secretary of the Air Force*, 113 F.3d 1225 (Fed. Cir. 1997), the court ruled that interest paid on an underpayment of State taxes is not "interest on borrowings" within the meaning of FAR 31.205–20, Interest and Other Financial Costs, and its predecessor provision, Defense Acquisition Regulation (DAR) 15–205.17, and, therefore, is an allowable cost.

It is Government policy to encourage contractors to pay their financial obligations on time. Government reimbursement of contractor interest charges for underpayment of taxes or other expenses resulting from late contractor payments of legal obligations is counter to this policy and an inappropriate expenditure of public funds. Therefore, the rule proposes to revise FAR 31.205–20, Interest and Other Financial Costs, to add interest charges or other amounts paid as a consequence of late contractor payments to the list of unallowable costs.

In addition, the rule proposes several editorial revisions, including the deletion of "and directly associated costs." This phrase is unnecessary since FAR 31.201–6(a) indicates that when "an unallowable cost is incurred, its directly associated costs are also unallowable."

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: January 21, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–20 is revised to read as follows:

31.205–20 Interest and other financial costs.

The following types of costs are unallowable—

(a) Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, costs of preparing and issuing stock rights (but see 31.205–28); and

(b) Interest charges and other amounts paid as a consequence of late contractor payments (except for interest assessed by State or local taxing authorities under the conditions specified in 31.205–41(a)(3)).

[FR Doc. 99–1997 Filed 1–28–99; 8:45 am]

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Friday
January 29, 1999

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 225

Acceptance of Bonds Secured By Government Obligations in Lieu of Bonds With Sureties; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 225

RIN–1510–AA36

Acceptance of Bonds Secured By Government Obligations in Lieu of Bonds With Sureties

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Management Service (Service) is issuing this final rule to revise 31 CFR Part 225, which governs the acceptance of bonds secured by Government obligations in lieu of bonds with sureties. This final rule specifically addresses the mechanics of pledging book-entry Government obligations, and clarifies existing requirements for accepting bonds secured with Government obligations. These revisions are intended to provide greater clarity and flexibility by replacing obsolete references and unnecessary requirements with current references and requirements. In addition, the rule expands the use to which the proceeds of pledged Government obligations may be applied in the event of a default in performance.

EFFECTIVE DATE: March 1, 1999.

ADDRESSES: Cash Management Policy and Planning Division, Financial Management Service, Room 420, 401 14th St., S.W., Washington, D.C. 20227.

FOR FURTHER INFORMATION CONTACT: Mary Bailey, Financial Program Specialist, at (202) 874–6749; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Marc I. Seldin, Principal Attorney, at (202) 874–6680. A copy of this final rule is available on the Service's web site at the following address: http://www.fms.treas.gov/regs.html.

SUPPLEMENTARY INFORMATION:

Background

Persons required by Federal law to give an agency a surety bond instead may provide a bond secured by Government obligations. To assist agencies in reviewing and accepting such bonds, the Secretary of the Treasury (the Secretary) promulgated regulations codified at 31 CFR Part 225, which set forth requirements applicable to bonds secured by Government obligations.

The regulations originally covered bonds secured by Government obligations in definitive (paper) form. However, since the regulations were last revised, the form of newly issued Government obligations pledged under this part has changed from definitive to book-entry. This revision covers these newly issued book-entry Government obligations and updates, clarifies and simplifies the requirements dealing with existing definitive Government obligations.

In addition, this revision provides that in the event of a default, the proceeds from the sale of pledged Government obligations generally will be available to satisfy any claim of the United States. The current rule limits the application of the proceeds to damages arising out of the default.

On November 15, 1996, the Service published in the **Federal Register** a notice of proposed rulemaking (NPRM) addressing these changes (61 FR 58493). This final rule was delayed to allow coordination and ensure consistency with other provisions of Title 31, some of which were in the process of being revised.

In addition, the Bureau of the Public Debt (Public Debt), a component of the Department of the Treasury's Fiscal Service, has the regulatory and procedural responsibility for establishing acceptable collateral and determining the collateral valuation for all Fiscal Service collateral programs, including collateral acceptability and valuation for this part. Public Debt intends to issue a regulation as a new part in Title 31 addressing collateral eligibility and valuation matters which will directly impact the Government obligations eligible for use under this part. A subsection in this part (§ 225.3(e)) has been reserved to insert the appropriate references to the new Public Debt Part.

Comments on the Proposed Rule

The Service received one comment letter on the NPRM from a component of a Federal agency questioning the NPRM's provision that in the event of a default, the proceeds from the sale of pledged Government obligations will be available to satisfy any claim of the United States against the obligor. The commenter stated that such a policy would conflict with its agency's authorities.

The NPRM provision is an expansion of the current rule, which limits the application of such proceeds to damages arising out of the default. The expansion is supported by Federal common law, the Debt Collection Act of 1982, as amended, and the Federal Claims Collection Standards, which provide the Government a right of offset. For example, upon default, in the event the bond official receives excess proceeds from the sale of pledged Government obligations, remittance of such proceeds to the obligor would constitute a Federal payment subject to administrative offset. In response to the commenter's concerns, however, the provision has been modified to apply only when not otherwise provided by law.

Section-by-Section Analysis

Editorial changes have been made throughout the part. Substantive changes that were made to portions of §§ 225.2, 225.3, 225.4, and 225.5 are explained below.

Section 225.2—Definitions

Changes have been made in the Definitions section to standardize terms used throughout Title 31 of the Code of Federal Regulations.

In the definitions of "*Bearer*" and "*Definitive*," the term "Government" has been inserted before the term "obligation" to mirror the underlying statutory definition contained in 31 U.S.C. 9301, as amended.

The definition for "*Book-entry*" now mirrors the definition of the same term in 31 CFR Part 356 at § 356.2 since the term is used in the same sense in both parts.

A definition for "*Depositary*" has been added since the term is used in this part.

The definition for "*Government obligation*" now mirrors the underlying statutory definition contained in 31 U.S.C. 9301, as amended.

A definition for "*Person*" has been added which mirrors the definition in the underlying statute, 31 U.S.C. 9301, as amended.

The definition for "*Pledge*" has been updated to be consistent with related regulations, such as Public Debt's TRADES (Treasury/Reserve Automated Debt Entry System) regulations codified at 31 CFR Part 357.

Section 225.3—Pledge of Government obligations in lieu of a bond with surety or sureties

The first sentence of § 225.3(a) now refers to the underlying statute defining the term "Government obligation," 31 U.S.C. 9301, as amended.

The statutes underlying this rule, 31 U.S.C. 9301 and 9303, as amended, define the characteristics of acceptable Government obligations without providing additional information. Further clarification has been added to the end of § 225.3(a) stating that the Secretary will designate classes of acceptable Government obligations. Such designation will occur in a

rulemaking to be published by Public Debt in a new part to Title 31.

The term "par" has been replaced in § 225.3(c) by a reference to the underlying statute, 31 U.S.C. 9303, as amended.

Subsection 225.3(e) has been reserved for reference to the new Public Debt regulations regarding collateral valuation.

Section 225.4—Pledge of book-entry Government obligations

The first sentence of § 225.4(a) has been modified for consistency with the Public Debt's TRADES regulations (*see* 31 CFR Part 357). Clarification is added by referring to a depositary (defined in § 225.2) since it is generally only depositaries that may have Government obligation accounts on the books of a Federal Reserve Bank.

In § 225.4(a), a phrase, "or the bond official," has been added to the list of who shall arrange a pledge. This has been done to reflect account structures at the Federal Reserve. Section 225.4(b) has been modified for the same reason with the addition of the phrase "or a depositary acting as agent or sub-agent for the obligor."

In §§ 225.4(a), (b), and (c), the phrase "make an appropriate entry in the records" and similar phrases has been replaced with "transfer Government obligations to an account for the benefit of the bond official" and similar phrases. This change is made to reflect the operations of the Federal Reserve's Book-Entry System.

The reference in § 225.4(c) has been revised for consistency with Public Debt's TRADES regulations (*see, e.g.*, 31 CFR § 357.12).

Section 225.5—Pledge of definitive Government obligations

In § 225.5(e), the reference to the Public Debt regulation, Part 306, has been updated consistent with other conforming changes related to Public Debt's TRADES regulations.

Rulemaking Analysis

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small entities. These regulations authorize persons to pledge bonds secured by Government obligations in lieu of bonds with sureties. Consequently, these regulations provide additional options to persons pledging collateral, as well as a flexible regulatory scheme. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 225

Fiscal Service, Government obligations, Surety bonds.

For the reasons set forth in the preamble, 31 CFR Part 225 is revised to read as follows:

Part 225—ACCEPTANCE OF BONDS SECURED BY GOVERNMENT OBLIGATIONS IN LIEU OF BONDS WITH SURETIES.

Sec.

225.1 Scope.
225.2 Definitions.
225.3 Pledge of Government obligations in lieu of a bond with surety or sureties.
225.4 Pledge of book-entry Government obligations.
225.5 Pledge of definitive Government obligations.
225.6 Payment of interest.
225.7 Custodian duties and responsibilities.
225.8 Bond official duties and responsibilities.
225.9 Return of Government obligations to obligor.
225.10 Other agency practices and authorities.
225.11 Courts.

Authority: 12 U.S.C. 391; 31 U.S.C. 321; 31 U.S.C. 9301; 31 U.S.C. 9303.

§ 225.1 Scope.

The regulation in this part applies to Government agencies accepting bonds secured by Government obligations in lieu of bonds with sureties. The Financial Management Service (FMS) is the representative of the Secretary of the Treasury (Secretary) in all matters concerning this part unless otherwise specified. The Commissioner of the FMS may issue procedural instructions implementing this regulation.

§ 225.2 Definitions.

For purposes of this part:

Agency means a department, agency, or instrumentality of the United States Government.

Authenticate instructions means to verify that the instructions received are from a bond official.

Bearer means that ownership of a Government obligation is not recorded. Title to such an obligation passes by delivery without endorsement and without notice. A bearer obligation is payable on its face to the holder at either maturity or call.

Bond means an executed written instrument, which guarantees the fulfillment of an obligation to the United States and sets forth the terms, conditions, and stipulations of the obligation.

Bond official means an agency official having authority under Federal law or regulation to approve a bond with surety or sureties and to approve a bond secured by Government obligations.

Book-entry means that the issuance and maintenance of a Government obligation is represented by an accounting entry or electronic record and not by a certificate.

Custodian means a Federal Reserve Bank or an entity within the United States designated by such Federal Reserve Bank under terms and conditions prescribed by such Federal Reserve Bank, a depositary specifically designated by the Secretary of the Treasury for purposes of this part, or such other entities as the Secretary of the Treasury may designate for purposes of this part.

Definitive means that a Government obligation is issued in engraved or printed form.

Depositary includes, but is not limited to:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

Federal Reserve means a Federal Reserve Bank and its branches.

Government obligation means a public debt obligation of the United States Government and an obligation whose principal and interest is unconditionally guaranteed by the United States Government.

Obligor includes, but is not limited to, an individual, a trust, an estate, a partnership, a corporation, and a sole proprietor.

Officer authorized to certify assignment means the individual identified as a certifying individual at part 306, subpart F of this title.

Person means an individual, a trust, an estate, a partnership, and a corporation.

Pledge means a transfer of security interest in a Government obligation to a bond official's agency as collateral in lieu of a bond with a surety or sureties.

Procedural instructions means the Treasury Financial Manual, as amended, published by the Financial Management Service.

Registered means that ownership of a definitive Government obligation is listed in the issuer's records, and that the obligation is payable at maturity or call to the person in whose name the obligation is inscribed or to that person's assignee.

Secretary means the Secretary of the Treasury.

§ 225.3 Pledge of Government obligations in lieu of a bond with surety or sureties.

(a) *General.* An obligor required by Federal law or regulation to furnish a bond with surety or sureties may give in lieu thereof to a bond official any security acceptable under 31 U.S.C. 9301, as amended. The Secretary will designate classes of Government obligations acceptable under this part.

(b) *Bond.* The bond, at a minimum, shall irrevocably authorize the bond official to collect, sell, assign, or transfer such Government obligations and any interest retained therefrom in the event of the obligor's default in performing any of the terms, conditions, or stipulations of such bond. Unless otherwise provided by law, the bond shall authorize the bond official to apply the proceeds from the sale, assignment, or transfer of such Government obligations, in whole or in part, to satisfy any costs incurred by the United States related to the default, and to apply any excess proceeds to satisfy any other claim of the United States against the obligor. The bond shall not include any obligations on custodians which are inconsistent with, or in addition to, the obligations in this part. The bond will provide that the bond official may retain any interest accruing upon any Government obligations, or direct that such interest be retained by the custodian.

(c) *Amount of Government obligations.* The obligor shall pledge to the bond official Government obligations valued as required by 31 U.S.C. 9303, as amended.

(d) *Avoiding frequent substitutions.* To avoid the frequent substitution of Government obligations, the bond official may reject Government obligations which mature, or are redeemable, within one year from the date they are pledged to the bond official.

(e) *Reserved.*

§ 225.4 Pledge of book-entry Government obligations.

(a) *General.* Except as otherwise provided by the Secretary in procedural instructions, an obligor, or a depositary acting as agent or sub-agent for the obligor, or the bond official, shall arrange a pledge pursuant to the prior agreement and approval of the bond official, of book-entry Government obligations. The Government obligations must be transferred to an account for the benefit of the bond official. The custodian holding the Government obligations is not required to establish that the agreement and approval of the bond official has been obtained prior to such a transfer.

(b) *Receipt.* Upon the transfer of Government obligations to an account for the benefit of the bond official, the custodian will promptly issue a receipt or an activity statement, or both, to the bond official and to the obligor or a depositary acting as agent or sub-agent for the obligor.

(c) *Effect of the transfer.* Book-entry Government obligations credited to an account for the benefit of the bond official shall have the effect as provided in part 357 of this title, or in other applicable regulations.

§ 225.5 Pledge of definitive Government obligations.

(a) *Type and assignment.* Definitive Government obligations may be in bearer or registered form, and shall be owned by the obligor.

(1) *Bearer Government obligations.* The obligor shall pledge bearer Government obligations to the bond official with all unmatured interest coupons attached.

(2) *Registered Government obligations; assignment.* The obligor shall pledge registered Government obligations in the obligor's name to the bond official by assignment in accordance with subpart F of part 306 of this title and other codified procedures for issuers that apply to assignment of the registered Government obligations, except that, when so authorized under such procedures, all assignments shall be made in blank.

(b) *Delivery to bond official; receipt.* All deliveries of definitive Government obligations from the obligor to the bond official under this part shall be made at the risk and expense of the obligor. Upon receipt of definitive Government obligations, the bond official will issue the obligor a receipt.

(c) *Risk of loss; safekeeping.* All definitive Government obligations held by the bond official will be held at the risk of the bond official. The bond official will keep safe all definitive Government obligations and may place them with a custodian.

(d) *Delivery to custodian; receipt.* If the bond official is in receipt of definitive Government obligations, and then places those obligations with a custodian, the expense and risk of loss in delivery will rest with the bond official. Upon the placement of definitive Government obligations with a custodian, the custodian will issue the bond official a receipt. All definitive Government obligations held by the custodian will be held at the risk of the custodian.

(e) *Conversion to book-entry.* (1) Treasury bonds, notes, certificates of indebtedness, or bills deposited with a Federal Reserve Bank under this part may be converted into book-entry Treasury obligations in accordance with part 306 of this title, and the pertinent provisions of that part shall apply to such Treasury obligations.

(2) When converting definitive Government obligations to book-entry form, a Federal Reserve Bank will act pursuant to, and in accordance with, book-entry procedures for issuers that apply to the definitive Government obligations pledged to the bond official's agency, including those set forth in part 306 of this title.

§ 225.6 Payment of interest.

(a) *General.* Except as otherwise provided in this section and § 225.7(b), interest accruing upon Government obligations pledged to a bond official's agency in accordance with this part will be remitted to the obligor or a depositary acting as agent or sub-agent for the obligor.

(b) *Default.* If the bond official determines that the obligor has defaulted, the bond official will retain any interest accruing upon Government obligations pledged to the bond official's agency or direct the custodian, in accordance with this part, to retain such interest. Unless otherwise

provided by law, such interest will be available to satisfy any costs incurred by the United States related to the default, and any excess proceeds will be available to satisfy any other claim of the United States against the obligor.

§ 225.7 Custodian duties and responsibilities.

(a) *General.* A custodian shall authenticate instructions received from a bond official and shall act in accordance with such authenticated instructions. The custodian assumes no liability and is without liability of any kind for acting in accordance with such authenticated instructions, except for the custodian's failure to exercise ordinary care. By providing a bond secured by Government obligations in lieu of a bond with surety or sureties, an obligor agrees not to hold either the custodian or the Secretary liable or responsible for the actions or inactions of a bond official or for carrying out a bond official's authenticated instructions.

(b) *Interest.* Absent authenticated instructions from the bond official to retain interest, interest received by the custodian on Government obligations pledged to the bond official's agency in accordance with this part will be remitted in the regular course of business to the obligor or to a depositary acting as agent or sub-agent for the obligor.

(c) *Principal.* Absent authenticated instructions from the bond official to retain the proceeds of matured Government obligations, a custodian will release to the obligor proceeds from matured Government obligations only if the obligor has deposited Government obligations acceptable under 31 U.S.C. 9301, as amended, in substitution for those which have matured.

(d) *Liquidation of Government obligations.* A custodian will collect, sell, assign, or transfer Government obligations, including any interest therefrom, only in accordance with a bond official's authenticated instructions.

(e) *Application of proceeds of liquidated Government obligations.* A custodian will apply the proceeds from the collection, sale, assignment, or transfer of Government obligations only in accordance with a bond official's authenticated instructions.

§ 225.8 Bond official duties and responsibilities.

The bond official's duties and responsibilities are as follows:

(a) Approving the bond secured by Government obligations after determining its sufficiency;

(b) Verifying ownership of any registered definitive Government obligations given, and ensuring that those Government obligations are properly assigned;

(c) Approving establishment of a book-entry account for the benefit of the bond official;

(d) Providing the custodian, when appropriate, with clear and concise instructions;

(e) Taking all reasonable and appropriate steps to ensure that all procedures or transactions conform with the provisions of this part; and

(f) Notifying the Secretary of the Treasury, or his designee, upon an obligor's default, and, unless otherwise provided by law, applying any part of the proceeds in excess of the amount required to assure payment of any costs incurred by the United States related to the default to satisfy any claim of the United States against the obligor.

§ 225.9 Return of Government obligations to obligor.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise provided in this part, the bond official will return the Government obligations, and any interest retained therefrom, to the obligor, without written application from the obligor, when the bond official determines that the Government obligations are no longer required under the terms of the bond.

(b) *Miller Act Payment Bonds.* The bond official will not return Government obligations to an obligor who has furnished to the bond official a payment bond if:

(1) A person, who supplied the obligor with labor or materials and whom the obligor has not paid, files with the United States Government the application and affidavit provided for in the Miller Act (Act), as amended (40 U.S.C. 270a–270d), and the time provided in the Act for the person to commence suit against the obligor on the payment bond has not expired; or

(2) A person commences a suit against the obligor within the time provided for in the Act, in which case the bond official will hold the Government obligations subject to the order of the court having jurisdiction of the suit; or

(3) The bond official has actual knowledge of a claim against the obligor on the basis of the payment bond, in which case the bond official may return the Government obligations to the obligor when the bond official deems it appropriate.

(c) *Claim of the United States unaffected.* Nothing in this section shall affect or impair the priority of any claim of the United States against Government obligations, or any right or remedy granted by the Miller Act or by this part to the United States in the event of an obligor's default on any term, condition, or stipulation of a bond.

(d) *Return of definitive Government obligations; risk of loss.* Definitive Government obligations to be returned to the obligor will be forwarded at the obligor's risk and expense, either by the bond official, or by a custodian upon receipt of a bond official's authenticated instructions.

§ 225.10 Other agency practices and authorities.

(a) *Agency practices.* Nothing in this part shall be construed as modifying the existing practices or duties of agencies in handling bonds, except to the extent made necessary under the terms of this part by reason of the acceptance of bonds secured by Government obligations.

(b) *Agency authorities.* Nothing contained in this part shall affect the authority of agencies to receive Government obligations for security in cases authorized by other provisions of law.

§ 225.11 Courts.

Nothing contained in this part shall affect the authority of a court over a Government obligation given as security in a civil action.

Dated: January 26, 1999.

Richard L. Gregg,

Commissioner.

[FR Doc. 99–2165 Filed 1–28–99; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Parts 200 and 207

Electronic Submission of Required Data by Multifamily Mortgagees to Report Mortgage Delinquencies, Defaults, Reinstatements, Assignment Elections, and Withdrawals of Assignment Elections; Final Rule

VOL 64 ISS 19 JA 29 1999 JMI

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 200 and 207

[Docket No. FR–4303–F–02]

RIN 2502–AH11

Electronic Submission of Required Data by Multifamily Mortgagees To Report Mortgage Delinquencies, Defaults, Reinstatements, Assignment Elections, and Withdrawals of Assignment Elections

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule requires mortgagees that hold or service multifamily mortgages insured by HUD to submit certain data electronically to HUD in a HUD prescribed format. Electronic submission is necessary because the manual submission of HUD forms has become a burden to servicing mortgagees, as well as to HUD. This rule applies to all multifamily mortgagees in their responsibility to report mortgage delinquencies, mortgage defaults, mortgage reinstatements, elections to assign mortgages to HUD, and withdrawal of assignment elections.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD obtains data regarding the status of delinquent insured mortgage loans on multifamily projects by using Form HUD–92426, *Multifamily Default Status Report*. HUD needs the information submitted on the form in order to monitor mortgage loans for which the mortgagees are experiencing payment or other difficulties. In accordance with the requirements of 24 CFR part 207, the mortgagee must prepare and sign this form under the specified circumstances and mail it to HUD. When HUD receives the form, it must sign it and return it to the mortgagee to acknowledge receipt of the form.

To replace this burdensome paperwork process, HUD has developed a method for mortgagees to submit the data currently collected on Form HUD–92426, as well as to report the date of the mortgagees' last physical inspection of the project, using the Internet. According to this new method, the mortgagee will electronically submit the data to HUD, after which an electronic receipt will automatically be returned. HUD will provide, at no cost to mortgagees, "stand alone" software and technical support for that software, which is designed to run on IBM-compatible personal computers (PCs). Mortgagees will, however, need to provide their own PCs and Internet connections. Mortgagees that do not choose to initiate Internet access for themselves may contract with another entity or individual to act on their behalf to report the data electronically. HUD believes that this is not likely to be necessary in most cases.

One of HUD's primary concerns is the costs mortgagees may incur in establishing Internet access if they have not already done so. For this reason, HUD has decided to allow for a staggered implementation of this rulemaking, under which smaller mortgagees will have more time to comply with the new electronic reporting requirements. HUD believes, however, that electronic tracking of the default and reinstatement data generally will reduce costs for mortgagees. HUD has field-tested electronic submission of this data on a voluntary pilot basis with a number of mortgagees, and has received generally favorable responses.

While HUD hopes to begin implementing the electronic reporting requirements in this rule right away (in accordance with the staggered implementation schedule in § 200.121 of this rule), HUD encourages mortgagees to comply with these requirements voluntarily to the extent possible, in order for the mortgagees and HUD to realize an early advantage of cost savings.

II. May 13, 1998 Proposed Rule

HUD published a proposed rule on May 13, 1998 (63 FR 26702) to solicit public comments on the electronic submission of required data by multifamily mortgagees, as described above. The deadline for public comments was July 13, 1998. HUD received no public comments in response to the proposed rule. This final rule adopts, therefore, the provisions of the proposed rule without change.

III. Regulatory Amendments

This document amends the regulations in 24 CFR parts 200 and 207 related to multifamily housing mortgage insurance, in order to require mortgagees with insured multifamily mortgage loans to submit information reporting mortgage delinquencies, defaults, reinstatements, assignment elections, and withdrawals of assignment elections electronically, rather than in writing on Form HUD–92426. Specifically, this rule amends the regulations as follows:

(1) This rule adds a new subpart B to part 200, entitled "Electronic Submission of Required Data for Mortgage Defaults and Mortgage Insurance Claims for Insured Multifamily Mortgages." The provision in this new subpart B requires multifamily mortgagees to submit the data electronically, and it provides the staggered schedule of effectiveness. As mentioned above, HUD will allow smaller mortgagees (i.e., those with fewer insured mortgage loans) more time to comply with the electronic submission requirements. This new subpart also provides for an exception to the electronic submission requirements, subject to HUD approval, for very small mortgagees for which compliance would represent a financial hardship.

(2) This document also makes several conforming changes to the current requirements in part 207. In § 207.256, which requires mortgagees to notify HUD of defaults, this document requires mortgagees to notify HUD in the manner prescribed in the new subpart B of part 200, rather than in writing. This document similarly amends § 207.256a, which requires mortgagees to notify HUD if a mortgage loan is reinstated, and § 207.258, which requires mortgagees to notify HUD if they elect to assign a mortgage to HUD or to acquire a property and convey title to HUD.

IV. Other Matters

Paperwork Burden

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number *2502–0041*. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies

that this rule will not have a significant economic impact on a substantial number of small entities. The electronic submission requirements in this rule should reduce burden and costs for all mortgagees. As stated above, HUD will also reduce the burden on mortgagees by providing the software and technical support necessary to facilitate the electronic submission requirements. HUD has determined, therefore, that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule is categorically excluded from environmental review under the National Environmental Policy Act (42 U.S.C. 4321). The addition to part 200 of the new subpart B falls within the exclusion provided by 24 CFR 50.19(c)(1), in that it does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. The amendments to part 207 are categorically excluded under 24 CFR 50.19(c)(2), because they amend an existing document, and the existing document as a whole does not fall within the exclusion in 24 CFR 50.19(c)(1), but the amendments by themselves do so.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule relates only to the manner in which mortgagees submit required information to HUD, and it does not affect the federalism concerns addressed in the Order. As a result, this rule is not subject to review under the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 14.155.

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR Chapter II is amended as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. In part 200, a new subpart B, consisting of §§ 200.120 through 200.121, is added to read as follows:

Subpart B—Electronic Submission of Required Data for Mortgage Defaults and Mortgage Insurance Claims for Insured Multifamily Mortgages

Sec.
200.120 Purpose and applicability.
200.121 Requirements and effectiveness.

§ 200.120 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart B is to require mortgagees of all multifamily projects whose mortgages are insured or coinsured by HUD to submit electronically information regarding mortgage delinquencies, defaults, reinstatements, elections to assign, and withdrawals of assignment elections, and related information, as that information is required by 24 CFR part 207 and Form HUD–92426 (which is available at the Department of Housing and Urban Development, HUD Customer Service Center, 451 7th Street, SW, Room B–100, Washington, DC 20410; telephone (800) 767–7468).

(b) *Applicability.* This subpart applies to all HUD multifamily mortgage insurance and coinsurance programs.

§ 200.121 Requirements and effectiveness.

(a) Multifamily mortgagees, which are required by 24 CFR part 207 to report mortgage delinquencies, defaults, reinstatements, assignment elections, withdrawals of assignment elections, and related information, must submit this information electronically, over the Internet, in accordance with the following schedule of effectiveness:

(1) Mortgagees having 70 or more insured mortgage loans must comply with this section by no later than March 1, 1999;

(2) Mortgagees having from 26 to 69 insured mortgage loans must comply with this section by no later than January 1, 2000;

(3) Mortgagees having from 11 to 25 insured mortgage loans must comply with this section by no later than January 1, 2001;

(4) Mortgagees having 10 or fewer insured mortgage loans must comply with this section by no later than January 1, 2002.

(b) *Exception.* On or after January 1, 2002, mortgagees that hold or service fewer than 10 multifamily mortgages may continue to report mortgage delinquencies, defaults, reinstatements, assignment elections, withdrawals of assignment elections, and related information in writing on Form HUD–92426 only with specific HUD approval. HUD will grant such approval, upon application by the mortgagee, for reasons of hardship due to insufficient financial resources to purchase the required hardware and Internet access.

(c) HUD will not accept reports of information regarding defaults, reinstatements, assignment elections, and related information in a manner that is not in accordance with this section. Failure on the part of mortgagees to report this information as required by 24 CFR part 207 and this section may result in HUD's application of the sanctions and surcharges specified in 24 CFR part 207.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 207 continues to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

4. Section 207.256 is revised to read as follows:

§ 207.256 Notice.

(a) If the default as defined in § 207.255 is not cured within the 30 days grace period, the mortgagee must, within 30 days thereafter, notify the Commissioner of such default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) Notwithstanding § 207.255(a)(2), the mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the failure of the mortgagor to comply with such covenant, regardless of the fact the mortgagee may not have elected to accelerate the debt.

5. Section 207.256a is revised to read as follows:

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

6. Section 207.258 is amended by revising paragraphs (a) and (b)(1), to read as follows:

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), it must, within 45 days thereafter, give the Commissioner notice, in the manner prescribed in 24 CFR part 200, subpart B, of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section.

(b) * * *

(1) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee must notify the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of such assignment, and must also notify the FHA Comptroller by telegram of such recordation.

* * * * *

Dated: January 22, 1999.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner

[FR Doc. 99–2182 Filed 1–28–99; 8:45 am]

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Part VI

Department of Transportation

Federal Transit Administration

Urban Magnetic Levitation Transit Technology Development Program; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Urban Magnetic Levitation Transit Technology Development Program

AGENCY: Federal Transit Administration (FTA).

ACTION: Notice and solicitation of proposals.

SUMMARY: This Notice announces establishment of a new urban magnetic levitation transit technology development program ("Urban Maglev Program") in the Federal Transit Administration (FTA), describes the statutory bases of the program, solicits proposals from eligible entities, and solicits comments on the overall program design. Sections 1218 and 3015(c) of the Transportation Equity Act for the 21st Century ("TEA–21"), signed into law by President Clinton on June 9, 1998, create two new sections in Titles 23 and 49 of the United States Code (322 and 3015, respectively) authorizing the FTA to support further development of magnetic levitation technologies for potential application in the U.S. mass transit industry. Section 1218 authorizes a total of $5 million dollars over the six year life of TEA–21 to research and develop low speed superconductive Maglev technology. Subsection 3015(c) authorizes $5 million per year for the 6 years to carry out a broad Maglev technology development program. [Note that TEA–21 also adds provisions in 23 U.S.C. Section 1218 for a high speed Maglev program, which is being managed by the Federal Railroad Administration (FRA).]

DATES: Proposals (8 copies) must be received by March 15, 1999.

ADDRESSES: Proposals shall be submitted to: Office of Research, Demonstration, and Innovation (TRI–1), Federal Transit Administration, 400 Seventh Street, SW, Room 9401, Washington, DC 20590, Attn: Edward Thomas, Associate Administrator, and shall reference Urban Maglev.

PUBLIC MEETING: A public meeting will be held, open to all interested parties, to discuss and comment on the FTA's Urban Maglev Program. The purpose of the meeting is to outline the Urban Maglev Program, to receive comments and suggestions on the program from meeting attendees, and to answer questions. The meeting will take place on February 3, 1999, from 9 a.m. to 12 noon. The meeting will be held in room 2201 at the Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Tony Yen, Deputy Associate Administrator, Office of Research, Demonstration, and Innovation, (TRI–2), at (202) 366–4047, or Timothy J. Johnson, Office of Technology, (TRI–20) at (202) 366–0212.

The public is invited to submit written comments on this notice. Written comments should refer to the docket number appearing at the top of this notice and be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. All comments received will be available at the above address. Docket hours at the Nassif Building are Monday through Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the univeral resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communication software from Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://access.gpo.gov/nara.

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I. Introduction

The overall objective of the program is to develop magnetic levitation technology that is a cost effective, reliable, and environmentally sound transit option for urban mass transportation in the United States. It is expected that Federal funding would be used to develop U.S. components and technology. It is envisioned that funded projects will include the design of an Urban Maglev system and the development and demonstration of advanced hardware subsystems to verify advanced technology aspects of proposed system concepts. The system design can be derived from integrating existing subsystem technologies (to create a new system) or by improving an existing system using advanced technologies. Foreign technology transfer from abroad is permitted, if it ultimately results in a U.S. technology system. FTA views a total Maglev system as composed of six principal subsystems, namely: levitation, propulsion, power collection, communications & control, guideway design, and vehicle design. While funded projects must retain a research and development purpose to overcome critical technology gaps, the emphasis is on funding deployable technologies, including the ultimate participation of an end-user.

FTA's Urban Maglev Program will combine the two statutory provisions into a single program to consider all applicable Maglev technologies. The program will be undertaken in phases to ensure that proposed system concepts have been thoroughly evaluated before further FTA financial support for system development and deployment phases is committed. Any deployment activity will be consistent with the Metro Planning Process as stated in 49 U.S.C. 5303–5 and 23 CFR 450.

The Urban Maglev Program will be organized, funded, and undertaken in discrete phases which consist of: (1) Evaluation of Proposed System Concept, (2) Prototype Subsystems Development, and (3) System Integration and Deployment Planning. After the completion of each project phase, FTA will conduct an evaluation to ensure that all milestones and deliverables stated by the funding recipient have been met and that the project remains consistent with the overall objectives of FTA's Urban Maglev Program. To the maximum extent practicable, evaluations will involve peer review, including staff from potential end users. Given the different state of Maglev technology development of potential offerors, the amount of time needed to complete each phase of the program may vary. The current funding level is estimated to be sufficient to accomplish phases 1, 2 and 3. However, an adjustment to the requirements of the program phases may need to be made depending on the offeror's proposal, the number of projects funded, and future funding appropriations. Decisions to proceed with phases 2 and 3 will be based on successful completion of phase 1 project milestones, availability of program funds, and approval by the FTA Administrator (see section VI for

proposal requirements for phases 1, 2, and 3).

II. Background

Magnetic Levitation (Maglev) is an advanced transport technology in which magnetic forces lift, propel, and guide a vehicle over a specially designed guideway. Maglev systems reduce the need for many mechanical parts, thereby minimizing maintenance costs, reducing noise, and improving reliability. Further, since the vehicle does not physically touch the guideway, Maglev systems appear to have the potential to perform well in areas where snow and icy conditions occur. In these conditions, Maglev systems may be able to negotiate steeper grades than a conventional type of fixed guideway system. These performance characteristics enable Maglev to provide safe, efficient, and environmentally sound mass transit services in areas where conventional technology may not perform as well.

Many Maglev concepts exist. Design options exist for most of the critical subsystems including: levitation, propulsion, power systems, guideway structure, vehicle structure, and communication and control subsystems. The two principal means of levitation are electromagnetic suspension (EMS), which uses attractive magnetic forces to hold the vehicle close to the underside of its guideway, and electrodynamic suspension (EDS), which uses repulsive magnetic forces to hold the vehicle just above its guideway. EMS systems have virtually no magnetic flux radiation, whereas EDS systems have more due to the higher magnetic field strengths needed for the "repulsive" levitation approach. Among these two means of levitation, there are several design choices, which include: type of magnet (superconductive, permanent magnet, or resistive electromagnets), magnet core material (air vs. iron), and type of current excitation of coil (DC vs. AC).

Maglev system concepts have undergone varying degrees of research and development both in the United States and abroad with most research focusing on high speed applications. Several high speed technologies appear ready for deployment. While there are no high or low speed systems currently operating in the United States, it appears that several viable technologies exist in this country. The existence of these technologies, coupled with the need to relieve congestion in highly populated urban and surrounding metropolitan areas, appears to offer significant partnership opportunities for both the private and public sectors.

III. TEA–21 Authorized Projects

Low Speed Project

Section 1218 of TEA–21 (as amended by section 9003 of the TEA–21 Restoration Act) establishes a "Low Speed Project" in subsection 322(i) of Title 23 U.S.C. (Highways), focusing on low-speed technology development. Subsection 322(i) authorizes $5 million in funding to be made available for the research and development of low-speed superconductivity magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits. In addition, 322(i)(2)(A) states: "there are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection such sums as are necessary for each of fiscal years 2000 through 2003."

Advanced Technology Pilot Project

Section 3015 of TEA–21 (as amended by section 9009 of the TEA–21 Restoration Act) defines a project similar to the low-speed project defined above. The main difference is that superconductivity need not be used, but is not excluded. TEA–21 makes available for Fiscal Years 1998 through 2003, $5,000,000 per fiscal year to develop low speed magnetic levitation technology for public transportation purposes in urban areas to demonstrate energy efficiency, congestion mitigation, and safety benefits.

FTA intends to combine these two statutory efforts into a comprehensive Urban Maglev Program that includes research, development and assessment of applicable Maglev technologies.

IV. Program Vision, Goal, and Objectives

Vision

Develop American magnetic levitation technology to improve urban mass transportation.

Strategic Goals

Develop an advanced technology Urban Maglev system that will advance mobility and accessibility strengthen America's economic growth and trade.

In support of this strategic goal, specific outcome goals of the Urban Maglev Program include: encouraging regional and local development through joint activity, and developing the latest technology for the Nation's transit systems.

Technical Objectives

(1) Develop a base of knowledge on Urban Maglev low speed technology supportive of eventual deployment, including a full system design and advanced technology hardware development and demonstration;

(2) Enhance one or more of the following critical Maglev subsystems using advanced technologies:

- Levitation
- Propulsion
- Power Supply and Delivery
- Communication & Control
- Guideway design
- Vehicle design
- Other critical vehicle and/or guideway subsystems as identified

(3) Integration of a Maglev system design, including fleet operations, safety, inter-vehicle communication and control systems, and subsystems integration;

(4) Evaluate and optimize a full scale demonstration system design with respect to:

- Cost (both construction and operation)
- System Reliability
- Maintenance and other operational requirements
- Safety Benefits and Congestion Mitigation Potential
- Energy efficiency
- Other critical evaluation criteria as identified

(5) Demonstrate low speed magnetic levitation technologies:

- Demonstrate the feasibility of a low speed Urban Maglev system
- Application identification and end user participation
- Deployment Site Identification/ Planning

V. Program Description

Project Phases

The Urban Maglev program is a deployment-oriented technology development program. The emphasis will be on funding a project or projects that incorporate advanced technologies in a Maglev system design, but yet retain the attractive characteristics needed for deployment including low cost, high reliability, energy efficiency, congestion mitigation, and safety.

It is envisioned that the majority of effort for funded project groups would be spent in phases 2 and/or 3. Phase 1 is intended to be a concept evaluation phase and should take no more than one year to complete. Note however, that decisions to proceed with subsequent phases is at the option of the FTA, and will be based on successful completion of project milestones, availability of program funds, and approval of the FTA Administrator.

The amount of time spent on phase 2 and 3 activities is expected to be

significant, probably on the order of 2 to 3 years for each phase. Exactly how much time is spent in phase 2 versus phase 3 will depend on the scope of work of the funded proposal(s). For groups upgrading an existing system concept with advanced technologies, more time may be spent in phase 2—Prototype Subsystem(s) Development. For a project attempting to integrate existing advanced technology subsystems, more time might be spent in phase 3, System Integration. FTA's intent is to design a program that is flexible enough to accommodate various approaches to designing, developing, and demonstrating Maglev system technologies.

Phase 1: Evaluation of Proposed System Concept

In phase 1, funding recipients will perform further development of their proposed Maglev system such that the proposed system concept can be fully evaluated by the FTA. Note that the phrase "proposed Maglev system" means the complete full-scale demonstration system concept that is planned for development by the funding recipient, not just the improved advanced technology portions. The emphasis in this phase would be to bring the proposed Maglev system concept to the point where it could be presented, studied and assessed by FTA and others involved in the program such as a peer review group. In addition, an end-user would be identified.

It is envisioned that phase 1 activities would include:

- A projection of overall system performance and a preliminary design for the proposed full scale demonstration system concept. System performance is to be estimated in the areas of: energy efficiency, safety, congestion mitigation, reliability, maintainability, power requirements, total system cost (design and construction), and other critical performance measures as defined. The preliminary design should include the guideway and vehicle systems, and other subsystems as defined. It is envisioned that computer modeling and simulation would be used by the funding recipient to estimate and project overall system performance and to present the preliminary design for the overall system.
- Documentation (for evaluation purposes) of all assumptions and methodology used to project and estimate the system performance and in forming the preliminary design for the proposed system concept.
- Identification and analysis of key risk elements (technical) associated with the proposed project.
- Provide a "letter of interest" from end-user(s)

Phase 2: Prototype Subsystem(s) Development

In phase 2, funding recipients will complete the development of proposed advanced technology portions of the overall Maglev system design. For example, if the funding recipient proposed an improved Maglev system using superconductive technology, the principal subsystem and all other subsystems affected by this new advanced technology would be developed during this Phase of the program. Appropriate demonstration hardware would be completed during this program phase. In addition, a Commercialization Plan explaining the proposed application and market for the overall system will be required.

Key activities of this phase would include:

- Completion of a functional specification of the prototype advanced technology subsystem(s)
- Completion of advanced technology hardware subsystem(s) where improvements are proposed and warrant prototypes for testing and verification
- Demonstration of advanced hardware subsystem(s) technology
- Commercialization Plan with potential end-user(s) involvements

Phase 3: System Integration and Deployment Planning

In phase 3, funding recipients will integrate the completed advanced technology portions of their proposed design to form an overall Maglev system. In addition, deployment planning activities would commence in this phase. A specific deployment site would be identified and environmental assessment activities would be initiated. It is envisioned that the end-user, identified in phase 1, would take an active role, working with funding recipients to further advance the project in these areas.

Key activities for phase 3 include:

- Completion of functional specifications for a full-scale demonstration system whereby a potential user can commit itself to procure the system
- Full-scale computer modeling and simulation to demonstrate and verify system operations
- Identification of a specific deployment site
- Environmental Assessment

Potential Future Program Activities: Demonstration System Deployment. The end-user would continue working with a funding recipient to further advance the project. The designated operator/user would oversee efforts to advance the selected project, complete detailed engineering designs, complete site-specific deployment and planning activities, finance, equip, and construct a full-scale project.

Additional Program Activities

Technology Assessment

FTA will conduct a technology assessment of existing Maglev technologies. The results of the assessment will be used by FTA to guide its program and as an aid in evaluating technologies. The assessment will review the critical subsystems, assessing their state of development as well as evaluating these subsystems as to their applicability for low speed applications. There are many possible systems that can be conceptualized. The technologies of interest for this program are those that are partially or fully developed, such that a demonstration system could be initiated within the timeframe covered by TEA–21.

Generic technologies will be assessed with certain urban applications in mind, i.e., it is envisioned that the system designed will either be a short distance automated type intra-city shuttle, edge city or intra-suburban shuttle, or a larger scale suburban to downtown city center type system. The technologies and associated applications that have the greatest potential to demonstrate energy efficiency, safety benefits, congestion mitigation, high reliability, environmental benefits, and cost effectiveness, within the context of these applications, will be strong candidates for further development funding.

VI. Applications

1. Eligibility Requirements

The applicant must consist of a for-profit U.S. company and may include one or more of the following:

(a) A public or private educational or research organization located in the United States, and/or

(b) A state or local public body eligible to receive FTA assistance, and/or

(c) A non-U.S company, educational or research organization.

The above entities may enter into a consortium or other type of joint venture suitable for the FTA Joint Partnership Program as stated in Section 3015 of TEA–21.

2. Content of Proposals

Each proposal should contain information detailing the Management, Technical, and Financial aspects needed to accomplish *phase 1* of the proposed project. For phases 2 and 3, the proposal should provide a detailed summary of work activities proposed for these phases. The proposal should be a comprehensive, accurate, and effective presentation. Eight (8) copies of the proposal shall be submitted. No more than 50 pages (using 12 point font or larger), each numbered at the bottom, shall be contained within the proposal. Proposals containing more than the stated number of pages may be rejected by the FTA. The proposal should be spiral bound along the left long side, without unnecessary frills, and organized in the following fashion using tabbed, numbered separators for each section. Note: No promotional literature, brochures, etc., should be included. The proposal should clearly delineate project activities occurring in phase 1. All phase 1 milestones should be clearly stated and linked to a Payment Schedule keyed to these payable milestones.

Suggested Contents of Proposal

- Cover: Containing the Project Title and Proposer's name and Address
- Executive Summary of Proposal
- Overview of Proposer
- Transportation experience record of all entities involved in the project
- Phase 1 Project Work Plan
  - —Project Plan
  - —Technical Approach
  - —Statement of Work
  - —Schedule, including clearly defined payable milestones and deliverables for Phase 1 (keyed to a payment schedule)
  - —Flow Chart (explaining the sequencing and interrelationships of the work tasks graphically for all work tasks of the project)
  - —Staffing Table (including total staff hours for the proposer and its subcontractors anticipated for each work task)
- Phase 1 Project Organization and Management Plan
  - —Identification of Project Manager and key personnel associated with each work task for the entire project.
  - —Staff Chart graphically depicting Organization and Management Plan
  - —Resumes of key project management personnel such as Project Director, Deputy Director, Project Manager, Task Leaders, etc.
- Phase 1 Financial Information
  - —Total Cost of Project
  - —Detailed information of the percentage of Federal and non-Federal cost share for the entire project. For the non-Federal share include the percentage of cash versus in-kind contributions. All in-kind contributions must be described in detail, including source(s)
  - —Provide a cost proposal for phase 1 (see Section V for phase 1 description)
- Phase 1 Milestone Payment Schedule (keyed to milestones in the project work plan for phase 1)
- Summary of work proposed for phases 2 and 3, including an estimate of the total cost for phase 2 and 3

VII. Selection Process

Evaluation

FTA anticipates multiple awards resulting from this solicitation. In selecting projects, FTA will employ the following criteria (order of criteria does not designate priority):

a. Amount and quality of non-Federal Share: (see Section VIII, Funding)

b. The correlation between the proposal and the vision, goals, technical objectives, and overall program description articulated by FTA in this notice.

c. Management capability; the applicant must demonstrate both past experience in the transportation industry, and the capability to manage the planning, designing, testing, refinement, etc. of a Maglev system.

d. The applicant must be part of a team with demonstrated capabilities in the area of mass transportation, and meet the technical requirements stated in this notice and possess experience in managing large dollar value transportation projects.

e. Demonstrate that the proposed Low Speed Urban Maglev System is feasible for deployment in an urbanized area and that the proposed Urban Maglev System will fulfill a useful public transportation need.

f. Demonstrate that all major subsystems of the proposed Urban Maglev System concept are practical to develop, particularly from a cost perspective.

VIII. Funding

(a) Non-Federal Cost Share

FTA is seeking a 50% matching cost share for projects funded under this program. The matching share provided by the performer (Federal funding recipient) may consist of a cash and/or in-kind match, cash being considered as higher quality match.

The performer pays for all of the costs of each project. The performer is reimbursed in part by the Government. The portion not reimbursed by the Government is referred to as cost share. The Government expects to share in the costs of all tasks of a project. The Government evaluates the quality of cost share in the following terms:

(b) Quality of Non-Federal Cost Share

High Quality Cost Share

These are financial resources that will be expended by the award recipients on the proposed project's Statement of Work (SOW) and will be subject to the direction of the project management team. This means the funds the non-Federal participants will spend for man-hours, materials, new equipment (prorated if appropriate), subcontractor efforts expended on the project's SOW, and restocking the parts and materials consumed. High quality cost share can include new independent research and development efforts, but only if those funds are offered by the proposers to be spent on the SOW and subject to the direction of the project management team.

Low Quality Cost Share

These are non-financial resources that will be expended on the proposed project's SOW and will be subject to the direction of the project management team. This is typically wear-and-tear on in-place capital assets like machinery or the prorated value of space used for the project.

Unacceptable Cost Share

This is a resource that either: (1) will not be expended on the proposed project's SOW, or (2) will not be subject to the direction of the management team as discussed above. Unacceptable cost share will be subtracted from the proposer's claimed total cost for the project, and the required industry cost share recalculated. Unacceptable Cost Share examples include:

- —Sunk costs, i.e., costs incurred before the start of the proposed project;
- —Foregone fees or profits;
- —Foregone general and administrative costs or cost of money applied to a base of independent research and development;
- —Bid and proposal costs;
- —Value claimed for intellectual property or prior research;
- —Parallel research or investment, i.e. research or other investments that might be related to the proposed project, but which will not be part of the SOW or subject to the direction of the project management team.

Typically, these activities will be undertaken regardless of whether the proposed project proceeds;

—Off-budget resources, i.e., resources that will not be risked by the proposer on the SOW, and should not be considered when evaluating cost share.

Joint Partnership Program (JPP)

Section 3015 of TEA–21 authorizes a new Joint Partnership Program for Deployment of Innovation (JPP). Projects determined eligible for funding under the Urban Maglev Program that meet the requirements of Section 3015 and FTA's JPP guidelines, may also be considered for inclusion under that program. For further details on the JPP see the related Federal Register Notice published October 2, 1998, Vol. 63 page 53266.

Issued on: January 26, 1999.

Gordon J. Linton,

Administrator.

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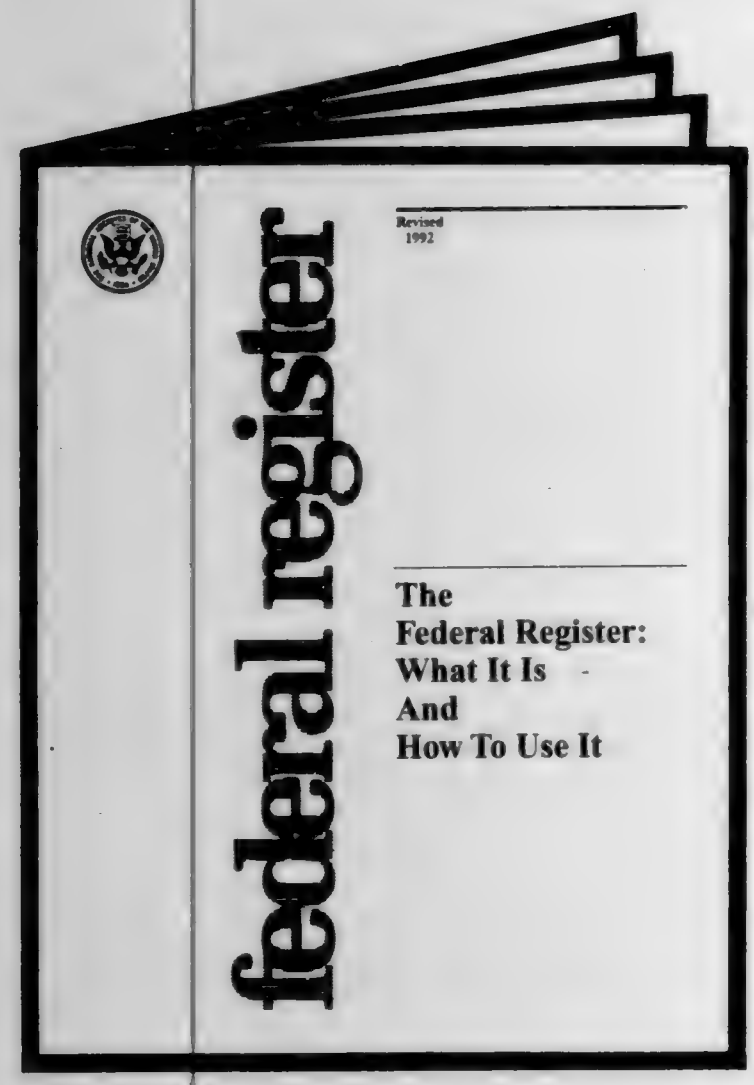

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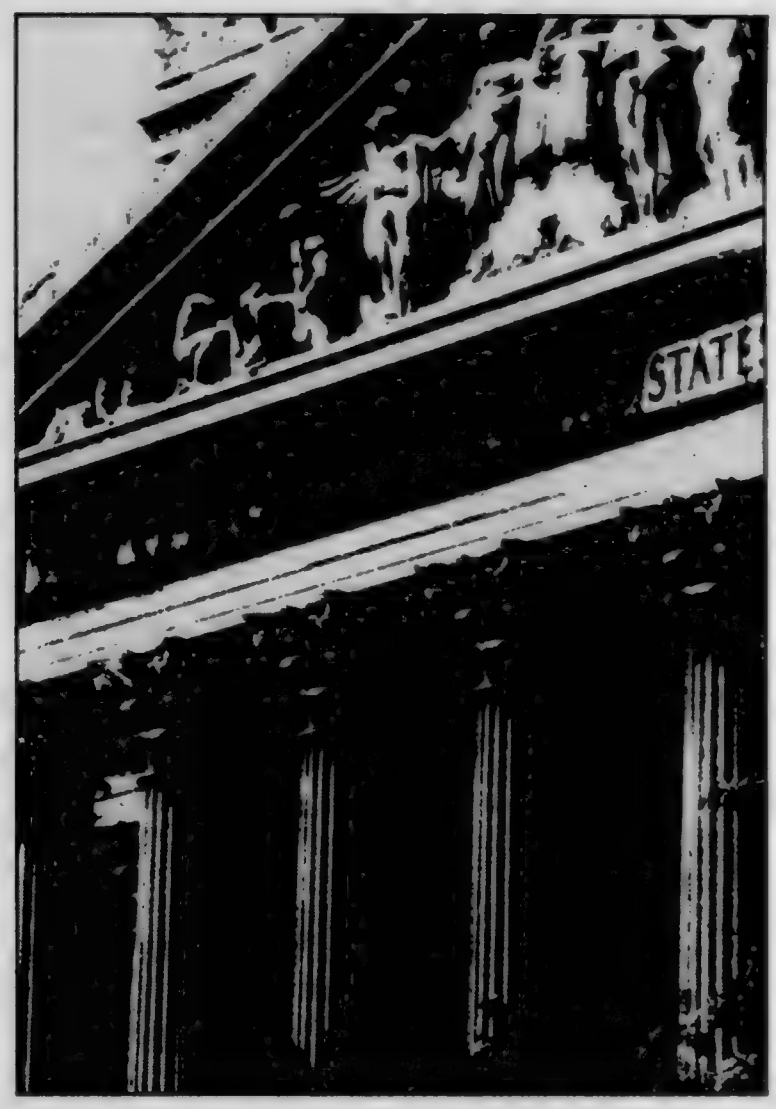

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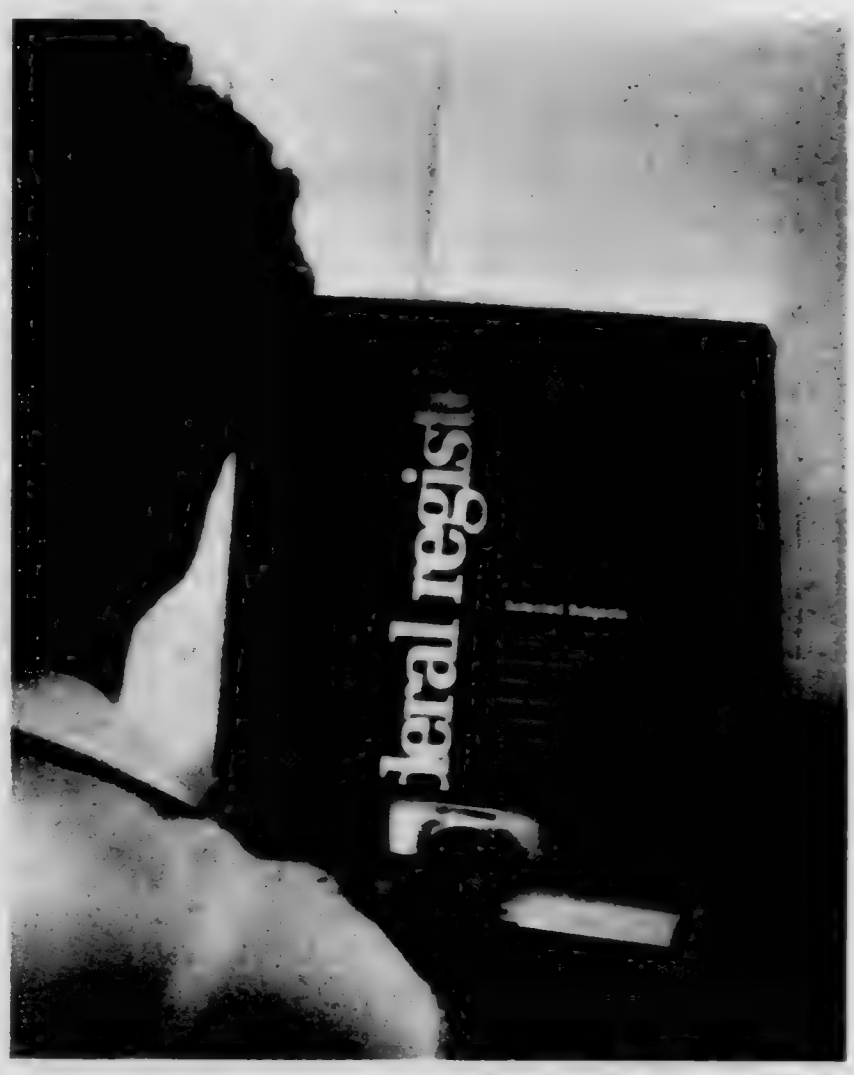

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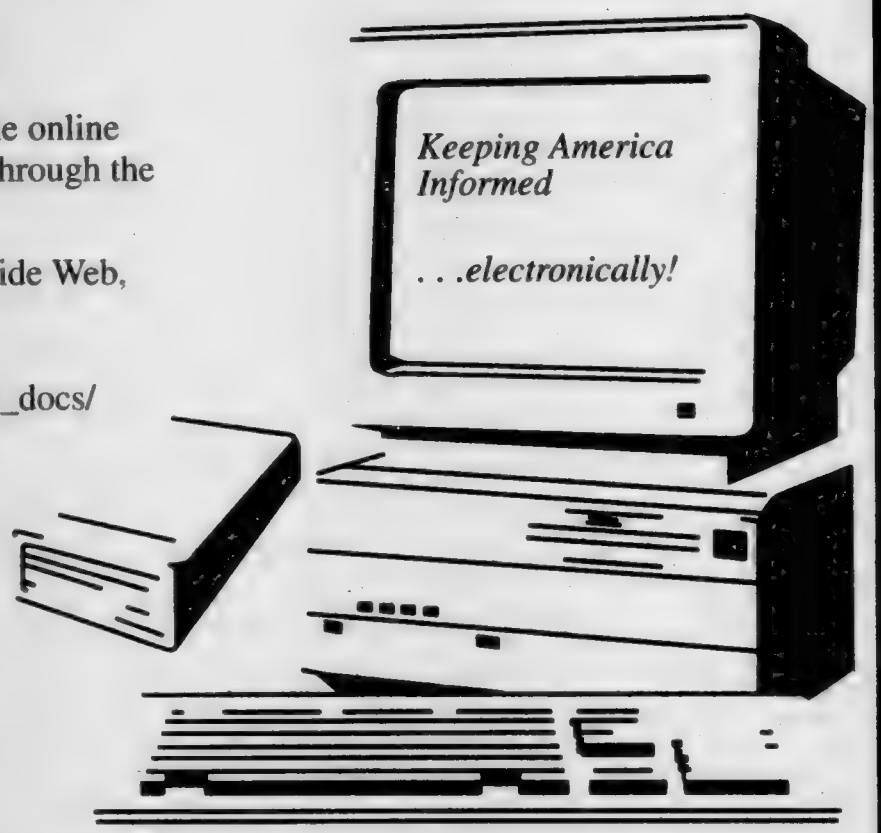

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RESERVATIONS: 202–523–4538

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–086–2]

Citrus Canker; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations by adding portions of Broward, Collier, and Manatee Counties, FL, to the list of quarantined areas and by expanding the boundaries of the quarantined area in Dade County, FL, due to the recent detections of citrus canker in those areas. This action is necessary on an emergency basis to prevent the spread of citrus canker into noninfested areas of the United States. This action imposes certain restrictions on the interstate movement of regulated articles from and through the quarantined areas.

DATES: Interim rule effective January 26, 1999. Consideration will be given only to comments received on or before April 2, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 95–086–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 95–086–2. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: Stephen.R.Poe@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which renders the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–14 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide for the designation of survey areas around quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service (APHIS) and State inspectors for citrus canker and serve as buffer zones against the disease.

Under § 301.75–4(c) of the regulations, any State or portion of a State where an infestation is detected will be designated as a quarantined area and will retain that designation until the area has been free from citrus canker for 2 years.

Section 301.75–4(d) of the regulations provides that less than an entire State will be designated as the quarantined area only if certain conditions are met. The State must, with certain specified exceptions, enforce restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those being enforced on the interstate movement of regulated articles from the quarantined area. The State must also undertake the destruction of all infected plants and trees. Under the regulations in § 301.75–6(c), within 7 days after confirmation that a plant or tree is infected, the State must provide written notice to the owner that the plant or tree must be destroyed. The owner then has 45 days in which to destroy the infected plant or tree. These State-conducted eradication activities within quarantined areas are an integral element of a cooperative State/Federal citrus canker program that, when successfully completed, will result in the eradication of citrus canker and the removal of an area's designation as a quarantined area.

In an interim rule effective on January 16, 1996, and published in the **Federal Register** on January 22, 1996 (61 FR 1519–1521, Docket No. 95–086–1), we quarantined an area of approximately 140 square miles within Dade County, FL, based on the detection of the Asiatic strain of citrus canker within a 24-square-mile residential area of the county. In that document we stated that the highly populated, residential character of the area in which citrus canker was detected led us to expect the disease might be found on additional properties in the vicinity of the original detection. Given that expectation, we opted to establish an expanded quarantined area containing what we believe to be an adequate buffer zone around the affected properties, rather than establish a quarantined area surrounded by a separate, less-restrictive survey area.

We solicited comments concerning the January 1996 interim rule for 60 days ending March 22, 1996. We received two comments by that date. They were from a State agricultural agency and an association representing citrus growers. Both of the commenters fully supported the interim rule as written.

New infestations of citrus canker have recently been detected on properties in Dade County, FL, that lie outside the previously quarantined area, and in areas of Broward, Collier, and Manatee Counties, FL, which were not previously designated as quarantined areas. The State of Florida has placed these new areas under State quarantine and is enforcing restrictions on the intrastate movement of regulated articles from these quarantined areas. We have determined that Florida's restrictions on the intrastate movement of regulated articles from the

quarantined areas are at least as stringent as those on the interstate movement of regulated articles from the quarantined areas. Therefore, as provided by § 301.75–4(d), we are designating an area less than the entire State as a quarantined area.

Specifically, we are amending the regulations by adding a 30-square-mile portion of Collier County, FL, and a 68-square-mile portion of Manatee County, FL, to the list of quarantined areas. We are also adding a combined entry for Dade and Broward Counties, FL, to the list of quarantined areas. The combined entry encompasses a 507-square-mile area of those two counties and includes that portion of Dade County that was designated as a quarantined area in our January 1996 interim rule. An exact description of the quarantined areas can be found in the rule portion of this document.

These new or revised quarantined areas include what we believe to be an adequate buffer zone around the infected properties, so no areas in any of the counties have been designated as survey areas. As we explained in the January 1996 interim rule, we believe that expanding the quarantined area to include a buffer zone, rather than establishing a separate, less-restrictive survey area, will enhance our ability to detect and control further occurrences of citrus canker in and around the infested area. Because some of the new findings of citrus canker were in highly populated residential areas, we expect there may be additional detections of citrus canker on other properties in the general vicinity of the original findings. Having an extended quarantined area will allow us to more effectively contain the spread of citrus canker and reduce the need for frequent changes to the regulations to reflect new findings of citrus canker.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent citrus canker from spreading into noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

For our January 1996 interim rule, we performed an Initial Regulatory Flexibility Analysis, in accordance with 5 U.S.C. 603, regarding the impact of that interim rule on small entities. In that Initial Regulatory Flexibility Analysis, we stated that we did not have all of the data necessary for a comprehensive analysis of the effects of the interim rule on small entities. Therefore, we invited comments on potential effects of the interim rule and specifically requested information regarding the number and kinds of small entities that may incur benefits or costs from the implementation of that interim rule. Neither of the two comments we received in response to the interim rule contained any information pertaining to potential economic effects.

For this interim rule, we have performed a second Initial Regulatory Flexibility Analysis, in accordance with 5 U.S.C. 603, regarding the impact of this interim rule on small entities. That analysis is set out below. Because we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities, we are again inviting comments on its potential effects. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from the implementation of this interim rule.

The Plant Quarantine Act, contained in 7 U.S.C. 151–165 and 167, authorizes the Secretary of Agriculture to quarantine States or portions of States and to promulgate regulations to prevent the spread of dangerous plant diseases new to or not widely prevalent in the United States.

We are amending the citrus canker regulations by adding portions of Broward, Collier, and Manatee Counties, FL, to the list of quarantined areas and by expanding the quarantined area within Dade County, FL. This action imposes certain restrictions on the interstate movement of regulated articles from and through the quarantined area.

Entities Potentially Affected

Broward and Dade Counties. We have identified approximately 3,528 entities within Broward and Dade Counties, FL, that could be affected by this interim rule. These entities consist of 78 nurseries, 6 nursery stock dealers, 200 fresh fruit retail stores, 1 fruit packer, 1 gift fruit shipper, 6 commercial groves, 3 grove maintenance services, 3 fruit harvesting contractors, and 3,230 lawn maintenance businesses.

Collier County. We have identified approximately 85 entities within Collier County, FL, that could be affected by this interim rule. These entities consist of 10 commercial groves, 10 fruit packers, 10 gift fruit shippers, 10 fruit transporters, 20 fruit harvesting contractors, and 25 grove maintenance services. The numbers provided for all entities except commercial groves include entities that are located within the quarantined area as well as entities located outside the quarantined area that could be affected.

Manatee County. We have identified approximately 443 entities within Manatee County, FL, that could be affected by this interim rule. These entities consist of 3 nurseries, 24 fresh fruit retail stores, 57 commercial groves, 2 fruit processors, 2 fruit packers, 2 gift fruit shippers, 3 fruit transporters, 20 fruit harvesting contractors, 5 grove maintenance services, 319 lawn maintenance businesses, and 6 flea markets. The numbers provided for fruit harvesting contractors and flea markets include entities that are located within the quarantined area as well as entities located outside the quarantined area that could be affected.

Number of Small Entities

The number of these entities that meet the Small Business Administration (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's annual sales) is not currently available. However, it is reasonable to assume that most of these entities are small in size because the majority of the same or similar businesses in southern Florida, as well as in the rest of the United States, are small entities by SBA standards. In 1992, for example, the average sales per establishment for all metropolitan Miami area establishments primarily engaged in selling trees, shrubs, and seed to the general public (SIC 526, which includes retail nurseries) was $340,340, which is well below the SBA's current small entity size standard for such businesses of $5 million in sales. In 1992, the average sales per establishment for all

metropolitan Miami area establishments primarily engaged in selling general food items for home consumption (SIC 541, which includes grocery stores) was $2.6 million, which is also well below the SBA's current small entity size standard for such businesses of $20 million in sales. Similarly, in 1992 the average sales per establishment for all metropolitan Miami area establishments primarily engaged in selling certain other food items for home consumption (SIC 543, 544, 545, and 549, which include fruit and vegetable markets) was $453,138, which is well below the SBA's current small entity size standard for such businesses of $5 million in sales. Finally, in 1993, the average sales per firm for all 33,301 U.S. firms primarily engaged in providing lawn and garden services (SIC 0782, which includes lawn maintenance businesses) was $222,571, which is well below the SBA's current small entity size standard for such businesses of $5 million in sales.

Fresh fruit retail stores, nurseries, and lawn maintenance companies comprise, on a combined basis, 3,860 (approximately 95 percent) of the total 4,056 entities potentially affected by this interim rule. The operations of those entities are, for the most part, local in nature; they do not typically move regulated articles outside of the State of Florida during the normal course of their business, and consumers do not generally move products purchased from those entities out of the State. The fruit sold by grocery stores and other retail food outlets is generally sold for local consumption. Retail nurseries also market their products for local consumption. Lawn maintenance businesses collect yard debris, but they do not normally transport that debris outside the State for disposal.

The fresh fruit retailers affected by this interim rule will be required to abide by restrictions on the interstate movement of regulated articles. They may be affected by this interim rule because fruit sold within the quarantined areas in retail stores cannot be moved outside of the quarantined areas. However, we expect any direct costs of compliance for fresh fruit retailers to be minimal.

The lawn maintenance companies affected by this interim rule will be required to perform additional sanitation measures when maintaining an area inside the quarantined areas. Lawn maintenance companies will have to clean and disinfect their equipment after grooming an area within the quarantined areas, and they must properly dispose of any clippings from plants or trees within the quarantined areas. These requirements will slightly increase costs for lawn maintenance companies affected by this interim rule.

Commercial citrus growers, processors, packers, and shippers within the quarantined areas will still be able to move their fruit interstate, provided the fruit is treated and not shipped to another citrus-producing State. Growers will have to bear the cost of treatment, but that cost is expected to be minimal. The prohibition on moving the fruit to other citrus-producing States is not expected to negatively affect entities within the quarantined areas because most States do not produce citrus and growers are expected to be able to find a ready market in non-citrus-producing States.

The nurseries and commercial groves affected by this interim rule will be required to undergo periodic inspections. These inspections may be inconvenient, but the inspections will not result in any additional costs for the nurseries or growers because APHIS or the State of Florida will provide the services of the inspector without cost to the nursery or grower.

Consideration of Alternatives

The alternative to this interim rule was to make no changes in the citrus canker regulations. We rejected this alternative because failure to quarantine portions of Broward, Collier, and Manatee Counties, FL, and an additional portion of Dade County, FL, could result in great economic losses for domestic citrus producers.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment considers three alternatives for citrus canker control: No action, regulatory quarantine only, and cooperation in a State/Federal program to contain and eradicate citrus canker. Under the "no action" alternative, APHIS would take no action to control and eradicate citrus canker, or to otherwise restrict the movement of articles that might spread citrus canker. This option would result in State agriculture departments, grower groups, and growers bearing the entire burden in dealing with the infestation. Under the "regulatory quarantine only" alternative, APHIS would take regulatory actions (e.g., the quarantine of a whole State, restricting the interstate movement of articles which might spread citrus canker) designed to prevent the spread of citrus canker. This option would still leave State agriculture departments, grower groups, and growers to bear the entire burden of intrastate control and eradication of the infestation. Finally, under the "cooperative agreement" alternative, which is the recommended alternative, APHIS' regulatory quarantines would be used in combination with State regulatory quarantines and control methods in a cooperative State/Federal program to contain and eradicate citrus canker.

The environmental assessment provides a basis for our conclusion that the selected citrus canker eradication program will not have a significant impact on the quality of the human environment. Based on the findings of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.75–4, paragraph (a) is revised to read as follows:

§ 301.75–4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas:

FLORIDA

Collier County. Beginning at the intersection of SR 29 and SR 858; then north along SR 29 approximately 3.5 miles to the north section line of sec. 32, T. 47, R. 30; then east along the north section lines of secs. 32, 33, 34, 35, and 36, T. 47, R. 30, to the northeast corner of sec. 36, T. 47, R. 30; then south along the east section line of sec. 36, T. 47, R. 30, and secs. 1, 12, 13, 24, and 25, T. 48, R. 30, approximately 6 miles to the southeast corner of sec. 25, T. 48, R. 30; then west along the south section line of secs. 25, 26, 27, 28, and 29, T. 48, R. 30, approximately 4.5 miles to SR 29; then north along SR 29 approximately 2.5 miles to the point of beginning.

Dade and Broward Counties. Beginning at the mouth of the Miami River in Biscayne Bay; then north along Biscayne Bay to Bal Harbor; then east along the inlet at Bal Harbor to the Atlantic Ocean; then north along the shoreline of the Atlantic Ocean to the Port Everglades Channel in Broward County; then west and south through the Port Everglades Channel to where it meets Eller Drive; then west on Eller Drive to I–595; then west on I–595 to I–75; then south on I–75 to the Florida Turnpike Homestead Extension; then south on the Florida Turnpike Homestead Extension to NW 58th Street; then west along NW 58th Street to Krome Avenue (NW 177th Avenue); then south along Krome Avenue (NW and SW 177th Avenue) to Coral Reef Drive (SW 152nd Street); then east along Coral Reef Drive to Biscayne Bay; then north along the shoreline of Biscayne Bay to the point of beginning.

Manatee County. Beginning at the intersection of the Manatee River and I–75; then west along the shoreline of the Manatee River to Terra Ceia Bay; then northeast along the shoreline of Terra Ceia Bay to the Terra Ceia River; then north along the Terra Ceia River to I–275; then east on I–275 to Bishop Harbor Road; then north and east on Bishop Harbor Road to U.S. 41; then north on U.S. 41 to Buckeye Road; then east on Buckeye Road to the eastern boundary of sec. 10, T. 33 S, R. 18 E; then south along the eastern boundary of sec. 10, T. 33 S, R. 18 E to Carter Road; then south on Carter Road to the eastern boundary of sec. 22, T. 33 S, R. 18 E; then south along the eastern boundary of sec. 22, T. 33 S, R. 18 E to Erie Road; then east and south along Erie Road to U.S. Highway 301; then southwest along U.S. Highway 301 to I–75; then south along I–75 to the point of beginning.

* * * * *

Done in Washington, DC, this 26th day of January 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–2324 Filed 1–29–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 244

[INS No. 1972–99]

RIN 1115–AF37

Temporary Protected Status: Amendments to the Requirements for Employment Authorization Fee, and Other Technical Amendments

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations by removing outdated language requiring that only certain EL Salvadorans must pay a fee for Temporary Protected Status (TPS)-related applications for employment authorization documents (EADs). Removing this language will make Service regulations conform to current Service policy as provided in the instructions to the Form I–765. The instructions on the Form I–765 instruct all applicants for TPS who desire employment authorization to pay the fee.

DATES: *Effective date:* This interim rule is effective February 1, 1999.

Comment date: Comments must be submitted on or before April 2, 1999.

ADDRESSES: Please submit written documents, original and two copies, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1972–99 on your correspondence. Comments are available for public inspections at the above address by calling (202) 514–3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW, Room 3040, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

What is Temporary Protected Status?

Under section 244 of the Immigration and Nationality Act (Act), TPS is a temporary immigration status granted by the Attorney General to eligible nationals of a designed country or part of a country. Beneficiaries of TPS are granted a stay of removal and employment authorization for the designated TPS period and for any extensions of the designations. TPS does not lead to permanent resident status.

What Language is Being Removed Regarding Application Fees for Employment Authorization Documents?

The Service is amending section 244.6 to remove outdated language requiring that only certain El Salvadorans must pay a fee for TPS-related applications for EADs. Section 244.6 currently states that "* * * the filing fee for the Form I–765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization." This language pertains to the statutory designations of EL Salvador for TPS (under section 303 of the Immigration Act of 1990) that expired June 30, 1992.

The El Salvador specific fee language has been superseded by the fee requirements contained on the instructions to the Form I–765 (last revised on April 25, 1995). The Form I–765 instructs applicants filing for initial TPS to pay the fee if they wish to receive employment authorization. The Service generally charges fees for

persons who apply for TPS (Form I–821) and who want employment authorization (Form I–765) regardless of nationality. Applicants also have the option of requesting a fee waiver for one or both of these fees in accordance with section 244.20. The Service does not charge a fee when a TPS applicant files the I–765 to comply with Service data collection purposes only and does not wish to receive employment authorization. Accordingly, section 244.6 will be amended by removing the phrase "who are nationals of El Salvador".

This interim regulation does not change the fee requirements for the Form I–821, Application for Temporary Protected Status or the related fingerprint fee.

Technical Changes

What Is Being Changed Regarding Application Filing Procedures?

The Service is amending 8 CFR part 244 to remove the word "district" when used in a reference to a "district director". Through this change, the Service will have the flexibility to determine where an applicant should submit an application for TPS and which Service personnel will adjudicate the application. In order to ensure that applicants know where to file applications, all future publications by the Service in the **Federal Register** announcing new TPS designations or extensions will contain information regarding where applicants should file.

What Is Being Changed Regarding the Duration of Employment Authorization?

A technical amendment to section 244.12 will allow the Service to issue EADS, which are valid for a period of up to eighteen (18) months. Under section 244 of the Act, the Attorney General can authorize an initial designation period for TPS from 6 to 18 months. However, section 244.12 currently limits the validity period of TPS-related EADs to 12 months. This interim rule allows the Service to provide for a period of employment authorization commensurate with the entire designation period of TPS and will eliminate the need to reissue EADs after 12 months.

Good Cause Exception

This interim rule is effective upon publication in the **Federal Register** although the Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553(b)(B) and (d)(3). The Amendments and technical changes made by this rule are administrative in nature and are necessary in order to: clarify the fee requirements for new classes of TPS eligible nationals who will be applying for employment authorization, update and standardize existing procedures, and enable the Service to more efficiently process applications for Temporary Protected Status.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule applies to individuals and has no economic effect on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined in section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

List of Subjects in 8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

Accordingly, part 244 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

1. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.1 [Amended]

2. In § 244.1, the definition for the term Register is amended by removing the word "district".

3. Section 244.6 is revised to read as follows:

§ 244.6 Application.

An application for Temporary Protected Status must be made in accordance with § 103.2 of this chapter except as provided in this section. Each application must be filed with the fee, as provided in § 103.7 of this chapter by each individual seeking temporary protected status, except that the filing fee for the Form I–765 will be charged only for those applicants between the ages of 14 and 65 (inclusive) who are requesting employment authorization. Each application must include a completed Form I–821, Application for Temporary Protected Status, Form I–765, Application for Employment Authorization, two identification photographs (1½" x 1½"), and supporting evidence as provided in § 244.9. Every applicant who is 14 years of age or older must be fingerprinted on Form FD–258, Applicant Card, as prescribed in § 103.2(e) of this chapter.

§ 244.10 [Amended]

4. In § 244.10, the section heading is amended by removing the word "district".

5. Section 244.10 is amended by removing the word "district" wherever it appears in the following paragraphs:

a. Paragraph (a);

b. Paragraph (b);

c. Paragraph (d)(2); and

d. Paragraph (f)(2)(iii).

6. In § 244.10, paragraph (f)(4)(ii) is amended by revising the phrase "District Office" to read: "district office or service center".

§ 244.12 [Amended]

7. In § 244.12, paragraph (a) is amended by removing the phrase "or twelve (12) months, whichever is shorter".

§ 244.15 [Amended]

8. In § 244.15, paragraph (a) is amended in the third sentence by removing the word "district".

§ 244.18 [Amended]

9. In § 244.18, paragraph (b) is amended in the last sentence by revising the term "district director" to read "director", and by revising the phrase "the district where" to read "the jurisdiction where".

Dated: January 26, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–2334 Filed 1–29–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–56]

Modification of Class E Airspace; Fremont, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Fremont, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 090° helicopter point in space approach has been developed for Memorial Hospital of Sandusky County Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action modifies existing controlled airspace for Fremont, OH, in order to include the point in space approach serving Memorial Hospital of Sandusky County Heliport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, November 16, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Fremont, OH (63 FR 63627). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received. The individual felt it would be safer in instrument flight conditions to have helicopters fly into the Fremont Airport rather than two separate locations, and, since the hospital is located nearby the airport, no time would be lost transporting medical emergency patients to the hospital. Air traffic control procedures require aircraft be separated and protected from other aircraft during instrument approaches. The existing instrument approach procedure into Fremont Airport is roughly parallel to, and slightly offset to the northeast of, the proposed instrument approach procedure into the Memorial Hospital of Sandusky County Heliport. Therefore, simultaneous instrument approach clearances would not issued into Fremont Airport, or Fremont Airport and the Memorial Hospital of Sandusky County Heliport; therefore whether a helicopter lands at the airport or the hospital heliport, no change in safety of flight would occur. In addition, the nature of the helicopter medical emergency flights into Memorial Hospital of Sundusky County Heliport requires the least amount of transit time possible. These procedures would eliminate the need for ground based vehicular transportation between the airport and the hospital. Minutes and seconds are crucial in life and death medical emergencies; therefore, direct access to the hospital heliport in instrument flight conditions is greatly desired.

Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Fremont, OH, to accommodate aircraft executing the proposed GPS SIAP 090° helicopter point in space approach at Memorial Hospital of Sandusky County Heliport by modifying existing controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace

Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Fremont, OH [Revised]

Fremont Airport, OH
(Lat. 41°20'03" N., long. 83°09'36"W)
Memorial Hospital of Sandusky County, OH Point In Space Coordinates
(Lat. 41°20'18" N., long. 83°08'57"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Fremont Airport, and within a 6.0-mile radius of the Point in Space serving Memorial Hospital of Sandusky County.

* * * * *

Issued in Des Plaines, Illinois on January 14, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–2345 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–20]

Establishment of Class E Airspace; Buena Vista, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Buena Vista Municipal Airport, Buena Vista, CO. The effect of this action is to provide controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS). This new SIAP requires airspace in order to contain Instrument Flight Rules (IFR) procedures.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–20, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On October 20, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by establishing the Buena Vista Class E area (63 FR 55971). This establishment of the Class E area provides the additional airspace necessary to allow the development of a GPS SIAP into the Buena Vista Municipal Airport. In the notice of proposed rulemaking action, the proposal was inadvertently listed as amended airspace action vice establishment of new airspace. The legal description remains exactly the same. These errors are corrected herein. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Buena Vista, CO, by providing a Class E airspace area around the Buena Vista Municipal Airport. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at Buena Vista Municipal Airport and between the terminal and en route transition stages.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Buena Vista, CO [New]

Buena Vista, Buena Vista Municipal Airport, CO
(Lat 38°48'51" N, long. 106°07'14" W)

That airspace extending upward from 700 feet above the surface within a 4.7-mile radius of the Buena Vista Municipal Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 39°01'35" N, long. 105°53'15" W; to lat. 38°59'40" N, long. 105°45'45" W; to lat. 38°52'40" N, long. 105°38'40" W; to lat. 38°33'50" N, long. 105'36'50" W; to lat. 38°26'30" N, long. 105°42'30" W; to lat. 38°25'20" N, long. 106°18'45" W; to lat. 38°33'20" N, long. 106°22'20" W; to lat. 38°36'10" N, long. 106°12'50" W; to lat. 38°51'25" N, long. 106°13'25" W; thence to point of beginning; excluding that airspace within Federal Airways, and the Leadville, CO, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on January 14, 1999.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–2344 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–46]

Amendment to Class E Airspace; Linden, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Linden, NJ. The development of new Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Linden Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS–A SIAP to Linden Airport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 24, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Linden, NJ, was published in the **Federal Register** (63 FR 71235). The development of a GPS–A–SIAP for Linden Airport requires the amendment of the Class E airspace at Linden, NJ. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Linden, NJ, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS–A SIAP to Linden Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NJ E5 Linden, NJ [Revised]

Linden Airport, NJ
(Lat. 40°37′04″ N., long. 74°14′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Linden Airport and within a 11-mile radius of Linden Airport extending clockwise from a 200° bearing to a 244° bearing from the airport, excluding the portion that coincides with the New York, NY, and Old Bridge, NJ, Class E airspace areas.

* * * * *

Issued in Jamaica, New York, on January 25, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–2343 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–24]

Amendment to Class E Airspace; Anaktuvuk Pass, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects the error in the geographic coordinates of a final rule that was published in the **Federal Register** on November 5, 1998 (63 FR 59705), Airspace Docket 98–AAL–16.

EFFECTIVE DATE: 0901 UTC, March 3, 1999.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–29627, Airspace Docket 98–AAL–16, published on November 5, 1998, (63 FR 59705) established the Class E airspace area at Anaktuvuk Pass, AK. The geographic coordinates for the Anaktuvuk Pass Airport are in error and the Anaktuvuk Pass Non-Directional Radio Beacon (NDB) coordinates were omitted. The coordinates listed in the Notice of Proposed Rulemaking for the airport and NDB published in the **Federal Register** on August 5, 1998, (63 FR 41751) are correct. This action corrects these errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates listed for the Anaktuvuk Pass Airport and the missing Anaktuvuk Pass NDB information as published in the **Federal Register** on November 5, 1998, (63 FR 59705), (**Federal Register** Document 98–29627, page 59705), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E2 Anaktuvuk Pass, AK [Corrected]

By removing "(Lat. 52°13′15″ N., long. 174°12′39″ W.)" and substituting "(lat. 68°08′04″ N., long. 151°44′30″ W.)."

By adding "Anaktuvuk Pass NDB (Lat. 68°08′12″ N., long. 151°44′39″ W.)."

* * * * *

Issued in Anchorage, AK, on January 22, 1999.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–2335 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F–0151]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of Nylon MXD–6 as nonfood-contact layers of multilayer films and rigid plastic containers composed of polypropylene food-contact and exterior layers. This action is in response to a petition filed on behalf of Mitsubishi Gas Chemical Co., Inc.

DATES: This regulation is effective February 1, 1999; written objections and requests for a hearing by March 3, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 19, 1993 (58 FR 29230), FDA announced that a food additive petition (FAP 3B4372) had been filed on behalf of Mitsubishi Gas Chemical Co., Inc., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 177.1390 *Laminate structures for use at temperatures of 250 °F and above* (21 CFR 177.1390) and § 177.1500 *Nylon resins* (21 CFR 177.1500) to provide for the safe use of Nylon MXD–6 as a nonfood-contact component in laminated articles for use in contact with food. However, the petition was subsequently amended to restrict the use of the subject additive to nonfood-contact layers of: (1) Multilayer films and (2) rigid plastic containers composed of polypropylene food-contact and exterior layers. This amendment is reflected in this final rule.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive as a nonfood-contact layer of: (1) Multilayer films and (2) rigid plastic containers composed of polypropylene food-contact and exterior layers is safe, that the additive will have the intended technical effect, and therefore, that the regulations in §§ 177.1390 and 177.1500 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before March 3, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1390 is amended by redesignating paragraph (c)(1)(i)(*e*) as paragraph (c)(1)(i)(*f*) and adding a new paragraph (c)(1)(i)(*e*) to read as follows:

§ 177.1390 Laminate structures for use at temperatures of 250 °F and above.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(*e*) Nylon MXD–6 resins that comply with item 10.3 of the table in § 177.1500(b) of this chapter when extracted with water and heptane under the conditions of time and temperature specified for condition of use A, as set

forth in Table 2 of § 176.170(c) of this chapter.

* * * * *

3. Section 177.1500 is amended in the table in paragraph (b) by adding item "10.3" to read as follows:

§ 177.1500 Nylon resins.

* * * * *

(b) * * *

Nylon resins	Specific gravity	Melting point (degrees Fahrenheit)	Solubility in boiling 4.2*N* HCl	Viscosity No. (mL/g)	Maximum extractable fraction in selected solvents (expressed in percent by weight of resin)			
					Water	95 percent ethyl alcohol	Ethyl acetate	Benzene
* *		*	*		*	*		*
10.3 Nylon MXD–6 resins for use only as nonfood-contact layers of: (1) Multilayer films and (2) rigid plastic containers composed of polypropylene food-contact and exterior layers, as defined in § 177.1520(c), item 1.1(a) and 1.1(b), of this chapter. The finished food-contact laminate, in the form in which it contacts food, when extracted with the food simulating solvent or solvents characterizing the conditions of the intended use as determined from Table 2 of § 176.170(c) of this chapter, shall yield not more than 0.5 micrograms of *m*-xylylenediamine-adipic acid cyclic monomer per square inch of food-contact surface, when the food simulating solvent is analyzed by any appropriate, properly validated method.	1.22±0.02	455–470	Disolves in 1 h.		1.0	1.5	0.2	0.2
* *		*	*		*	*		*

* * * * *

Dated: January 20, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–2230 Filed 1–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–004]

Drawbridge Operation Regulation; Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Dubuque Railroad Drawbridge across the Upper Mississippi River at Mile 579.9, at Dubuque, Iowa. This deviation allows the bridge to open upon 24 hours advance notice from 12:01 a.m. on January 10, 1999, through 12:01 a.m. on March 1, 1999. This action will facilitate maintenance work on the bridge.

DATES: The deviation is effective from 12:01 a.m. on January 1, 1999, through 12:01 a.m. on March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832; telephone: (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Dubuque Railroad Bridge across the Upper Mississippi River at Mile 579.9, at Dubuque Iowa, provides a vertical clearance of 19.9 feet above normal pool in the closed to navigation position. Navigation on the waterway is a mixture of recreational boats and commercial tows. A temporary deviation has been requested from the normal operation of the bridge in order to accommodate maintenance work. The work is essential for the continued safe operation of the drawbridge. The deviation was coordinated with waterway users and no objections to the deviation have been made.

This deviation allows the Dubuque Railroad Drawbridge across the Upper Mississippi River at Mile 579.9, at Dubuque, Iowa to remain closed to navigation from 12:01 a.m. on January 10, 1999, to 12:01 a.m. on March 1, 1999, with openings provided upon receipt of 24 hour advance notice.

This deviation will be effective from 12:01 a.m. on January 10, 1999, until 12:01 a.m. on March 1, 1999. Presently, the draw is required to open on signal when drawbridge operation regulations are not amended by a deviation.

Dated: January 13, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 99–2273 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–97–134]

RIN 2115–AE47

Drawbridge Operation Regulations; Passaic River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating rules for the I–280 Bridge (Stickel Memorial), mile 5.8, over the Passaic River at Harrison, New Jersey, to permit the draw to open on signal after a twenty four hour advance notice is given due to the infrequency of requests to open the draw by vessels. It is expected that this final rule will relive the bridge owner of the responsibility to have a drawtender present and still provide for the needs of navigation.

DATES: This final rule is effective March 3, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Ma. 02110–3350, between 7 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 18, 1998, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations Passaic River, New Jersey, in the **Federal Register** (63 FR 27240). The Coast Guard did not receive any comments in response to the notice of proposed rulemaking. No public hearing was request, and none was held.

On October 29, 1998, the Coast Guard published a supplemental notice of proposed rulemaking entitled Drawbridge Operation Regulations Passaic River, New Jersey, in the **Federal Register** (63 FR 57963). The Coast Guard did not receive any comments in response to the supplemental notice of proposed rulemaking. No public hearing was requested, and none was held.

Background

The Route 280 Bridge, mile 5.8, at Harrison, New Jersey, has a vertical clearance of 35 feet at mean high water and 40 feet at mean low water.

The current operating regulations in 33 CFR 117.739(h) require the bridge to open on signal if at least eight (8) hours advance notice is given. There have been only 8 requests to open this bridge since 1987. The bridge owner, the New Jersey Department of Transportation (NJDOT), has requested relief from being required to crew the bridge since there have been so few requests to open the bridge. The general operating regulations for bridges require that the bridge owner maintain the draw in good serviceable condition.

The Coast Guard originally published a notice of proposed rulemaking to allow the bridge to need not be opened for vessel traffic. The Coast Guard, after further consideration, decided to change the rule in the notice of proposed rulemaking to a twenty four hour advance notice for bridge openings in place of the need not open requirement originally proposed. This change was made because the Coast Guard believes that since the bridge owner must maintain the draw in operable condition that the draw should still open for vessels is a request is given. The Coast guard believes that a twenty four hour advance notice requirement is a reasonable amount of time for the bridge owner to have personnel at the bridge for an opening. A supplemental notice of proposed rulemaking was then published with a twenty four hour advance notice requirement for all bridge openings.

This final rule is being published with no changes from the supplemental notice of proposed rulemaking.

Discussion of Comments and Changes

No comments were received in response to the notice of proposed rulemaking and no comments were received in response to the supplemental notice of proposed rulemaking. A public hearing was not requested and none was held. No changes have been made to this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. it is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that there have been only 8 requests to open this bridge in the last ten years.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.739, redesignate paragraphs (j) and (k) as paragraphs (k) and (j); revise newly redesignated paragraph (k) by removing the number "6.9" and adding, in its place, the number "8.9"; and revise paragraph (h) to read as follows:

§ 117.739 Passaic River.

* * * * *

(h) The Route 280 Bridge, mile 5.8, at Harrison, New Jersey, shall open on signal if at least 24 hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: January 20, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–2346 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–15–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 511, 516, 542, and 552

[APD 2800.12A, CHGE 81]

RIN 3090–AG81

General Services Administration Acquisition Regulation; Streamlining Administration of Federal Supply Service (FSS) Multiple Award Schedule (MAS) Contracts and Clarifying Marking Requirements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to clarify requirements for marking deliveries under contracts that provide for delivery to both civilian and military locations, clarify the contracting activities that are authorized to place orders under Federal Supply Service (FSS) contracts, allowing Procuring Contracting Officers (PCOs) in FSS in authorize Administrative Contracting Officers (ACOs) to issue cure or show cause notices, revise the time for submission to close-out reports under FSS multiple award schedule (MAS) contracts, and simplify the process for deleting items from FSS MAS contracts.

DATES: Effective date: February 1, 1999. Comments should be submitted in writing to the address shown below on or before April 2, 1999.

ADDRESSES: Mail comments to General Services Administration, Office of Acquisition Policy, GSA Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4012, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division, (202) 208–6726.

SUPPLEMENTARY INFORMATION:

A. Background

GSA is amending the GSAR for clarification and to delete unnecessary review requirements. GSAR 511.204 is amended to clarify the applicability of the clause at GSAR 552.211–73, Marking, so that deliveries are properly labeled for delivery at military or civilian locations. GSAR 516.505 and 552.216–73 are amended to define activities authorized to place orders under an FSS schedule contract when the contract provides that ordering activities may place orders directly. They are also amended to reflect that schedule contracts may provide for either or both task and delivery orders. GSAR 542.302 is amended to allow FSS PCOs to authorize ACOs to issue show cause or cure notices. This will streamline FSS's internal processes and allow for quicker response to contractor performance problems. GSAR 552.238–72 is amended to change the time for submission to contract close-out reports to eliminate a potential conflict between the required report date and the final date of performance of delivery orders. GSAR 552.238–76 is amended to change the reference to "maximum order limit" to "maximum order threshold." This is an administrative change to make 552.238–76 consistent with Federal Acquisition Regulation (FAR) subpart 8.4. GSAR 552.243–72 is amended to allow FSS MAS contractors to delete items without prior approval. This will remove a burdensome and time-consuming procedure that does not have value for the Government. GSAR 552.243–72 is also revised to give contractors the option of publishing supplemental price lists as modifications occur or on a quarterly basis. This recognizes that many contractors now issue electronic notices of changes and that modifications occur with such frequency that grouping changes to periodic updates in paper is more efficient for both contractors and the Government. GSAR 552.243–72 is also revised to update a FAR reference and to delete a reference to an obsolete cause.

B. Executive Order 12866

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The GSA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The change will benefit all FSS MAS contractors, large and small, by streamlining administrative requirements.

—The change to the time for submission of contract close-out reports eliminates a potential conflict between the required report date and the final date of performance of delivery orders; this avoids placing a potentially impracticable requirement on FSS contractors.

—Updating the definition of activities authorized to place orders under FSS schedule contracts is necessary to accurately reflect current authority and avoid inconsistency with other order FSS solicitation and contract terms.

—Allowing FSS MAS contractors to delete items without prior approval will remove a burdensome and time-consuming procedure that does not have value for the Government. It allows contractors to provide potential customers the most current information on contract items.

—Contractors will have the option of publishing supplemental price lists as modifications occur or on a quarterly basis; letting them choose the most efficient method based on their individual circumstances.

D. Paperwork Reduction Act

The revised clause at 552.216–73 contains an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). However, the revisions to the clause made by this rule do not affect the information collection requirement which was approved previously by OMB and assigned control number 3090–0248. The revised clause at 552.238–72, Contractor's Report of Sales, also contains an information collection requirement subject to the Paperwork Reduction Act. However, the revisions to the clause made by this rule do not affect the information collection requirement which was approved

previously by OMB and assigned control number 3090–0121. The other changes in this rule do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

E. Determination To Issue an Interim Rule

Urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. GSA believes this rule will provide significant benefits to both the Federal government and GSA contractors:

—The change to 511.204 clarifies the applicability of the clause at 552.211–73, Marking, so that deliveries are properly labeled for delivery at military or civilian locations, helping to avoid delays or misdeliveries.

—Updating the definition of activities authorized to place orders under FSS schedule contracts is necessary to accurately reflect current authority and avoid inconsistency with other FSS solicitation and contract terms.

—Allowing FSS PCOs to authorize ACOs to issue show cause or cure notices streamlines FSS's internal processes and allows for quicker response to contractor performance problems.

—The change to the time for submission of contract close-out reports eliminates a potential conflict between the required report date and the final date of performance of delivery orders; this avoids placing a potentially impracticable requirement on FSS contractors.

—The change to allow FSS MAS contractors to delete items without prior approval will remove a burdensome and time-consuming procedure that does not have value for the Government. Preapproval of deletions is not necessary either for ascertaining cost reasonableness or to maintain control over the contract. Quicker notification of deletions will in fact help Federal agencies avoid ordering discontinued items.

—Giving contractors the option of publishing supplemental price lists as modifications occur or on a quarterly basis allows contractors to choose the most efficient method of notification and reduces the filing burden on Government users.

However, Pursuant to Pub. L. 98–577 and FAR 1.501, GSA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 511, 516, 542, and 552

Government procurement.

Accordingly, 48 CFR is amended as follows:

1. The authority citation for 48 CFR parts 511, 516, 542, and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 511—DESCRIBING AGENCY NEEDS

2. Section 511.204 is amended by revising paragraph (c) to read as follows:

511.204 Solicitation provisions and contract clauses.

* * * * *

(c) The contracting officer shall include the clause at 552.211–73, Marking, in solicitations and contracts for supplies when deliveries may be made to both civilian and military activities and the contract amount is expected to exceed the simplified acquisition threshold.

* * * * *

PART 516—TYPES OF CONTRACTS

3. Section 516.505 is amended by revising paragraph (a) to read as follows:

516.505 Contract clauses.

(a) The contracting officer shall insert the clause at 552.216–73. Placement of Orders, in solicitations and contracts for stock or special order program items when the contract authorizes FSS and other agencies to issue delivery orders. If only FSS will issue delivery orders under any of its supply programs, use Alternate I. If a Federal Supply Schedule contract (single or multiple award) permits other organizations to issue task or delivery orders, use Alternate II.

* * * * *

PART 542—CONTRACT ADMINISTRATION

4. Section 542.302 is amended by revising paragraph (b)(5) to read as follows:

542.302 Contract administration functions.

* * * * *

(b) * * *

* * * * *

(5) Issue cure or show cause notices (only applies to ACOs in FSS).

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 552.216–73 is amended by revising Alternate II to read as follows:

552.216–73 Placement of orders.

* * * * *

Alternate II (Feb. 1999). As prescribed in 516.505(a), substitute the following paragraph (a) for paragraph (a) of this basic clause:

(a) The organizations listed below may place orders under this contract. Questions regarding organizations authorized to use this schedule should be directed to the Contracting Officer.

(1) Executive agencies.

(2) Other Federal agencies.

(3) Mixed-ownership Government corporations.

(4) The District of Columbia.

(5) Government contractors authorized in writing by a Federal agency pursuant to 48 CFR 51.1.

(6) Other activities and organizations authorized by statute or regulation to use GSA as a source of supply.

6. Section 552.238–72 is amended by revising the date of the clause and paragraph (e) to read as follows:

552.238–72 Contractor's report of sales.

* * * * *

CONTRACTOR'S REPORT OF SALES (FEB 1999)

* * * * *

(e) The report is due 30 days following the completion of the reporting period. The Contractor must also provide a close-out report within 120 days after the expiration of the contract. The contract expires upon physical completion of the last, outstanding task or delivery order of the contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then show zero sales in the close-out report.

(End of Clause)

7. Section 552.238–76 is amended by revising the date of the clause and paragraph (d)(1) to read as follows:

552.238–76 Price reductions.

* * * * *

PRICE REDUCTIONS (FEB 1999)

* * * * *

(d) * * *

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

* * * * *

8. Section 552.243–72 is amended by revising the date of the clause and paragraphs (b)(1) (v) and (vi), the first sentence of (b)(3), (c), (d) and (e) to read as follows:

552.243–72 Modifications (Multiple Award Schedule).

* * * * *

MODIFICATIONS (MULTIPLE AWARD SCHEDULE) (FEB 1999)

* * * * *

(b) * * *

(1) * * *

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by 52.215–6, Place of Performance.

(vi) Hazardous material information (if applicable) must be submitted as required by 52.223–3 (ALT I), Hazardous Material Identification and Material Safety Data.

* * * * *

(3) Price Reduction. The Contractor shall indicate whether the price reduction falls under item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238–76.

* * *

(c) Effective Dates. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238–76.

(d) Electronic File Updates. The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the contracting officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the contracting officer as set forth in the Price Reductions clause at 552.238–76.

(e) Amendments to Paper Federal Supply Schedule Price Lists.

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 days after the effective date of each modification.

(ii) Distribute cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three months from the effective date of the earliest modification. The Contractor must distribute a cumulative supplement within 15 days from the date of the latest modification covered.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the contracting officer and one copy to the FSS Schedule Information Center.

(End of Clause)

Dated: January 21, 1999.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–1973 Filed 1–29–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8321–02; I.D. 012799A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 1999 pollock total allowable catch (TAC) for Statistical Area 630 established by the 1999 Interim Specifications and amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 27, 1999, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(2)(i) and emergency provisions implemented at § 679.20(a)(5)(ii)(c) (64 FR 3437, January 22, 1999), NMFS established the interim pollock TAC in Statistical Area 630 as 9,156 metric tons (mt).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim TAC of pollock in Statistical Area 630 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,656 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Areas 630. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 27, 1999.

Gary C. Matlock, Ph.D.,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2327 Filed 1–27–99; 1:54 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 20
Monday, February 1, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–273–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 737–200C series airplanes, that currently requires a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts. That AD also provides for an optional preventative modification that constitutes terminating action for the repetitive inspections. This action would require accomplishment of the previously optional terminating modification. This proposal is prompted by reports of cracking in the body frames between stringers 19 left and 25 left and at body stations 360 to 500B. The actions specified by the proposed AD are intended to prevent opening or loss of the cargo door during flight, and consequent rapid decompression of the airplane.

DATES: Comments must be received by March 18, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–273–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–273–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 25, 1993, the FAA issued AD 93–13–02, amendment 39–8615 (58 FR 36863, July 9, 1993), applicable to all Boeing Model 737–200C series airplanes, to require a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts. That AD also provides for an optional preventative modification that constitutes terminating action for the repetitive inspections. That action was prompted by reports of cracking in the body frames between stringers 19 left and 25 left and at body stations 360 to 500B. The requirements of that AD are intended to prevent a cargo door from opening while the airplane is in flight, which could result in rapid decompression of the airplane.

Actions Since Issuance of Previous Rule

When AD 93–13–02 was issued, it contained a provision for an optional preventative modification that involves installation of doublers on the frames located between stringers 19 left and 25 left and at body stations 360 to 500B, which, if accomplished, constitutes terminating action for the required repetitive inspections. This action proposes to require accomplishment of the previously optional terminating modification in accordance with Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. (That service bulletin was referenced as the appropriate source of service information in AD 93–13–02 for accomplishment of the modification.)

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 93–13–02 to continue to require a one-time external detailed visual inspection to detect cracks of the fuselage skin in the lower lobe cargo compartment; repetitive internal detailed visual inspections to detect cracks of the frames in the lower lobe cargo compartment; and repair of cracked parts. In addition, the proposed

AD would require accomplishment of the previously optional terminating modification.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this AD proposes to require the modification of certain fuselage frames, as described in Boeing Service Bulletin 737–53A1160, Revision 1, as terminating action for the repetitive inspections. Incorporation of this modification was classified as optional in that service bulletin.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification requirement is in consonance with these conditions.

Cost Impact

There are approximately 90 airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 93–13–02, and retained in this proposed AD, take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $12,960, or $720 per airplane, per inspection cycle.

The new modification that is proposed in this AD action would take approximately 160 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,500 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $271,800, or $15,100 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8615 (58 FR 36863, July 9, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98–NM–273–AD. Supersedes AD 93–13–02, Amendment 39–8615.

Applicability: All Model 737–200C series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent opening or loss of the cargo door during flight, and consequent rapid decompression of the airplane, accomplish the following:

Restatement of Requirements of AD 93–13–02

(a) Prior to the accumulation of 29,000 flight cycles or within 250 flight cycles after August 9, 1993 (the effective date AD 93–13–02, amendment 39–8615), whichever occurs later, accomplish an external detailed visual inspection to detect cracks of the fuselage skin between stringers 19 left and 25 left and at body stations 360 to 540, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. If any crack is found, prior to further flight, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Perform an internal detailed visual inspection to detect cracks of the frames between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with either service bulletin.

(2) Repair all cracks in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 3,000 flight cycles after completing the requirements of paragraph (a) of this AD, unless accomplished within the last 6,000 flight cycles prior to August 9, 1993, perform an internal detailed visual inspection to detect cracks of the frames between stringers 19 left and 25 left and at body stations 360 to 500B, in accordance with Boeing Alert Service Bulletin 737–53A1160, dated October 24, 1991; or Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Thereafter, repeat the internal detailed visual inspection at intervals not to exceed 9,000 flight cycles. If any crack is found, prior to further flight, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) If any crack is found that does not exceed the limits specified in the Boeing 737 Structural Repair Manual (SRM), repair the crack in accordance with the Boeing 737 SRM. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 9,000 flight cycles.

(2) If any crack is found that exceeds the limits specified in the Boeing 737 SRM, repair the crack in accordance with a method approved by the Manager, Seattle ACO. Repeat the internal detailed visual inspection thereafter at intervals not to exceed 9,000 flight cycles.

New Requirements of This AD

(c) Prior to the accumulation of 75,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, install doublers on the frames located between stringers 19 left and 25 left

and at body stations 360 to 500B, in accordance with Boeing Service Bulletin 737–53A1160, Revision 1, dated April 29, 1993. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(d)(2) Alternative methods of compliance approved previously in accordance with AD 93–13–02, amendment 39–8615, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on January 26, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2271 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–1]

Proposed Revision of Class D Airspace; Fairbanks, Eielson Air Force Base (AFB), AK; Proposed Revision and Establishment of Class E Airspace; Fairbanks, Eielson AFB, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class D airspace operational times, revise current Class E airspace, and establish additional Class E airspace at Eielson AFB, AK. The United States Air Force (USAF) has requested this action in response to a critical Air Traffic Control (ATC) controller shortage throughout the USAF and an airspace review after redesigning their instrument approaches. Adoption of this proposal would result in the provision of a part time operation of the Class D airspace; revision of the current Class E airspace; and when the tower is closed, establishment of additional Class E airspace for Instrument Flight Rules (IFR) and Special Visual Flight Rules (VFR) operations at Eielson AFB, AK.

DATES: Comments must be received on or before March 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–1, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, Operations Branch, AAL–535, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: Derril.Bergt@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AAL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su__docs/aces/aces140.html.

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulleting board service (telephone: 202–512–1661).

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising the Class D airspace operational times at Eielson AFB, AK, due to a critical ATC controller shortage. Currently, the Class D airspace is operational 24 hours a day, seven days a week. This action proposes to decrease the physical dimensions of the Class D airspace from a 5.2 mile radius to a 4.7 mile radius. The following phraseology would be added to the end of the Class D airspace description: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." This action would allow part time operation of the Airport Traffic Control Tower (ATCT) at Eielson AFB, AK. The USAF has proposed the Eielson AFB tower be closed between 2300 and 0700 (local times). During this closure, the Class D airspace would convert to Class E airspace which this proposal is establishing for IFR and Special VFR operations. The existing Class E airspace

would be revised to eliminate extensions and would result in a single 7.2 mile radius circle of Eielson AFB.

The Eielson AFB mission has changed in recent years. Present flight operations rarely exceed 16 hours per day, and quiet hours are in effect from 2200 to 0700 local times. Less than one percent of annual flight traffic occurs during the proposed closure times. Eielson AFB base operations and the runway will remain a 24-hour facility. Eielson Tower will retain sufficient personnel to revert to 24-hour operations in the event of a contingency. Air traffic controllers will be on a standby schedule to provide on-call services to North American Defense (NORAD) missions, approved arrivals and departures, and emergency diverts. The USAF intends to meet all criteria to remain a viable alternate airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class D airspace areas are published in paragraph 5000, Class E airspace areas designated as a surface area are published in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class D and Class E airspace listed in this document would be revised and published in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AAL AK D Fairbanks, Eielson AFB, AK [Revised]

Fairbanks, Eielson AFB, AK
(Lat. 64°39'56" N., long. 147°06'05" W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.7-mile radius of Eielson AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AAL AK E2 Fairbanks, Eielson AFB, AK [New]

Fairbanks, Eielson AFB, AK
(Lat. 64°39'56" N., long. 147°06'05" W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.7-mile radius of Eielson AFB.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Fairbanks, Eielson AFB, AK [Revised]

Fairbanks, Eielson AFB, AK
(Lat. 64°39'56" N., long. 147°06'05" W.)

That airspace extending upward from 700 feet above the surface within a 7.2-mile radius of Eielson AFB.

* * * * *

Issued in Anchorage, AK, on January 22, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–2338 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–1]

Proposed Modification of the Legal Description of the Class E Airspace; Sault Ste Marie, ON

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the legal description Class E airspace at Sault Ste Marie, ON. The airspace description for the Sault Ste Marie Airport, ON, Canada, incorrectly describes the northwest extension of the controlled airspace as the northeast extension. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. This action proposes to correct the legal description of the existing controlled airspace for this airport in order to eliminate confusion regarding the actual configuration of the airspace.

DATES: Comments must be received on or before March 15, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–1, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which described the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the legal description of the Class E airspace at Sault Ste Marie, ON, to correctly identify the northwest extension of the existing controlled airspace. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace designated as an extension to a Class D surface area are published in paragraph 6004 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D airspace area.

* * * * *

AGL ON E4 Sault Ste Marie, ON [Revised]

Sault Ste Marie Airport, ON, Canada
(Lat. 46°29'06" N., long. 84°30'34" W.)

That airspace in the United States extending upward from the surface within 1.6 miles north of the 108° bearing from the airport extending from the 4.4-mile radius of Sault Ste Marie Airport to 4.8 miles southeast of the airport, and within 1.6 miles each side of the 118° bearing from the airport extending from the 4.4-mile radius to 9.6 miles southeast of the airport, and within 1.6 miles each side of the 293° bearing from the airport extending from the 4.4-mile radius to 4.8 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on January 14, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–2342 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–81]

Proposed Modification of Class E Airspace; Pontiac, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Pontiac, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 24, has been developed for Pontiac Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 15, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–81, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An

informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–81." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Pontiac, IL, to accommodate aircraft executing the proposed GPS Rwy 24 SIAP, at Pontiac Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Pontiac, IL [Revised]

Pontiac Municipal Airport, IL
(Lat. 40°55′25″ N., long. 88°37′32″ W.)

That airspace extending upward from 700 feet above the surface within an 7.2-mile radius of the Pontiac Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on January 14, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–2341 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–3]

Proposed Modification of Class E Airspace; Auburn, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Auburn, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, and a GPS SIAP to Rwy 27, have been developed for De Kalb County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 15, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–3, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Auburn, IN, to accommodate aircraft executing the proposed GPS Rwy 09 SIAP, and the GPS RWY 27 SIAP, at De Kalb County Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Auburn, IN [Revised]

Auburn, De Kalb County Airport, IN
(Lat. 41°18′26″ N., long. 85°03′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the De Kalb County Airport, excluding the airspace within the Ft. Wayne, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on January 14, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–2340 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 99–AGL–2]

Proposed Modification of Class E Airspace; Watertown, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Watertown, WI. A Transponder Landing System

(TLS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 05 has been developed for Watertown Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before March 15, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–2, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Watertown, WI, to accommodate aircraft executing the proposed TLS Rwy 05 SIAP at Watertown Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Watertown, WI [Revised]

Watertown Municipal Airport, WI
(Lat. 43°10′11″N., long. 88°43′24″W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of the Watertown Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on January 14, 1999.

John A. Clayborn,

Acting Manager, Air Traffic Division.

[FR Doc. 99–2339 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–20]

Proposed Revision of Class E Airspace; Gambell, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Gambell, AK. The establishment of the Global Positioning System (GPS) instrument approaches to runway (RWY) 16 and RWY 34 and the modification of the Non-directional Radio Beacon (NDB) instrument approaches to RWY 16 and RWY 34 at Gambell, AK, have made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Gambell, AK.

DATES: Comments must be received on or before March 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 98–AAL–20, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AAL–20." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising the Class E airspace at Gambell, AK, through the establishment of GPS instrument approaches and modifications to the NDB instrument approaches to RWY 16 and RWY 34. The area would be depicted on aeronautical charts for pilot reference. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Gambell, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designation listed in this document would be revised and published subsequently in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Gambell, AK

Gambell Airport, AK
(Lat. 63°46'00" N., long. 171°43'58" W.)
Gambell NDB/DME
(Lat. 63°46'55" N., long. 171°44'12" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Gambell Airport and within 4 miles each side of the 174° bearing of the Gambell NDB/DME extending from the NDB/DME to 23 miles south of the NDB/DME and within 4 miles each side of the Gambell NDB/DME 354° bearing extending from the 6.4-mile radius to 10.6 miles north of the airport; and that airspace extending upward from 1,200 feet above the surface within 8 miles west and 4 miles east of the 354° bearing of the Gambell NDB/DME extending from the NDB/DME to 16 miles north of the NDB/DME and within 25 miles of the NDB/DME clockwise between the 006° and 227° bearings of the NDB/DME.

* * * * *

Issued in Anchorage, AK, on January 22, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–2337 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–25]

Proposed Revision of Class E Airspace; Port Heiden, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Port Heiden, AK. The establishment of a new Microwave Landing System (MLS) instrument approach to runway (RWY) 05 at Port Heiden, AK, has made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Port Heiden, AK.

DATES: Comments must be received on or before March 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 98–AAL–25, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14; Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AAL–25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Port Heiden, AK, through the establishment of a new MLS instrument approach to RWY 05. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Port Heiden, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas, are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace listed in this document would be revised and published in the Order.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and

routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Port Heiden, AK

Port Heiden Airport, AK
(Lat. 56°57′32″ N., long. 158°37′57″ W.)
Port Heiden NDB
(Lat. 56°57′15″ N., long. 158°38′56″ W.)
Turnbull VOR/DME
(Lat. 56°57′04″ N., long. 158°38′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Port Heiden Airport, and within 4 miles north and 8 miles south of the Port Heiden NDB 248° bearing extending from the NDB to 20 miles west, and within 8 miles west and 4 miles east of the Port Heiden NDB 339° bearing extending from the NDB to 20 miles northwest; and that airspace extending upward from 1200 feet above the surface within 13 miles west and 4 miles east of the Port Heiden NDB 339° bearing extending from the NDB to 25 miles north, and within 17 miles of the Turnbull VOR/DME extending clockwise from the 213° radial to the 074° radial, and within 9 miles north of the Port Heiden NDB 248° bearing extending from the NDB to 24 miles west.

* * * * *

Issued in Anchorage, AK, on January 22, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–2336 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209619–93]

RIN 1545–AR82

Escrow Funds and Other Similar Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the designation of the person required to report the income earned on qualified settlement funds and certain other funds, trusts, and escrow accounts, and other related rules. The proposed regulations would affect qualified settlement funds, qualified escrow accounts and qualified trusts established in connection with deferred like-kind exchanges, escrow accounts established in connection with sales of property, disputed ownership funds, and parties to these escrow accounts, trusts, and funds. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by May 3, 1999. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for May 12, 1999, at 10 a.m., must be received by April 21, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–209619–93), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–209619–93), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the INTERNET by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS INTERNET site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael L. Gompertz of the Office of Assistant Chief Counsel (Income Tax & Accounting), (202) 622–4910; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by April 2, 1999. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in §§ 1.468B–

1(k)(2), 1.468B–1(k)(3)(iv), 1.468B–6(e)(1), 1.468B–6(f), 1.468B–7(d), 1.468B–8(f), 1.468B–8(g)(1), 1.468B-9(c)(1), and 1.468B–9(f)(3).

The collections of information in §§ 1.468B–1(k)(3)(iv), 1.468B–6(e)(1), 1.468B–7(d), 1.468B–8(g)(1), and 1.468B–9(c)(1) are satisfied by including the required information on Forms 1099, 1041, 1120, or 1120–SF. The burden for these requirements is reflected in the burden estimates for these forms.

The other collections of information in this proposed regulation (in §§ 1.468B–1(k)(2), 1.468B–6(f), 1.468B–8(f), and 1.468B–9(f)(3)) are discussed below.

The collection of information in § 1.468B–1(k)(2) is an election statement attached to a tax return filed for a qualified settlement fund (QSF). The statement notifies the IRS that the transferor to the QSF has elected grantor trust treatment for the QSF. This collection is required to obtain a benefit.

The collections of information in §§ 1.468B–6(f) and 1.468B–8(f) are statements that third parties must provide to an escrow holder, trustee, or administrator to enable the escrow holder, trustee, or administrator to properly report the income of an escrow account or trust on Form 1099. These collections are mandatory.

The collection of information in § 1.468B–9(f)(3) is a statement that a transferor must provide with respect to the transfer of cash or property to a disputed ownership fund. This collection is mandatory.

The likely respondents are individuals, business or other for-profit institutions, small businesses or organizations, nonprofit institutions, and government entities.

Estimated total annual reporting burden: *4,650* hours.

Estimated average annual burden per respondent: *.5* hours.

Estimated number of respondents: *9,300.*

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This notice contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 468B of the Internal Revenue Code. Section 468B was added to the Code by section 1807(a)(7)(A) of the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2814) and was amended by section 1018(f) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647, 102 Stat. 3582). Section 468B(g) provides that nothing in any provision of law shall be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax. Section 468B(g) further provides that the Secretary shall prescribe regulations providing for the taxation of any such account or fund whether as a grantor trust or otherwise.

On December 23, 1992, final regulations (TD 8459) under section 468B(g) were published in the **Federal Register** (57 FR 60983). The regulations provide guidance concerning qualified settlement funds, but do not address other types of funds, escrow accounts, or trusts subject to current taxation under section 468B(g).

Section 1.468B–1(c) defines a qualified settlement fund (QSF) as a fund, account, or trust meeting three requirements. A QSF is a separate taxpayer subject to tax on its modified gross income. QSF classification is not elective. The preamble to the QSF regulations (see 1993–1 C.B. 69) states that the IRS and the Treasury Department rejected an elective approach because it would result in inconsistent tax treatment for similar funds, claimants, or transferors, and accompanying complexity.

The preamble to the QSF regulations also states (see 1993–1 C.B. 73) that future regulations will address the tax treatment of funds, accounts, or trusts other than QSFs, specifically, escrow accounts used in the sale of property and section 1031 qualified escrow accounts.

Section 1031(a)(3) was added to the Internal Revenue Code by section 77 of the Tax Reform Act of 1984 (Public Law 98–369, 98 Stat. 595). On May 1, 1991, final regulations (TD 8346) under section 1031(a)(3) were published in the **Federal Register** (56 FR 19933). These regulations were amended by final regulations (TD 8535) published in the **Federal Register** for April 20, 1994 (59 FR 18747). The regulations provide four safe harbors, the use of any of which will result in a determination that the taxpayer (i.e., the party transferring the property in the exchange) is not in actual or constructive receipt of money or other property for purposes of section 1031. In particular, the regulations provide that the taxpayer is not in actual or constructive receipt of money or other property held in a *qualified escrow account* or *qualified trust.* Section 1.1031(k)–1(g)(3) defines *qualified escrow account* and *qualified trust.*

The regulations under section 1031(a)(3) do not address the taxation of income earned on a qualified escrow or qualified trust. The preamble to these regulations (see 1991–1 C.B. 154) states that this issue will be addressed in future regulations.

Explanation of Provisions

1. Election To Treat a QSF as a Grantor Trust Under § 1.468B–1(k) of the Proposed Regulations

The proposed regulations provide that if there is only one transferor to a QSF, the transferor is allowed to make an election that results in the QSF being treated as a grantor trust all of which is treated as owned by the transferor. In general, the election is made on a statement attached to the first Form 1041 filed on behalf of the QSF. The transferor may make a grantor trust election whether or not the requirements are otherwise satisfied for classification of the QSF as a grantor trust.

In general, grantor trust treatment for a QSF is available under the proposed regulations only if the QSF is established after the date final regulations are published in the **Federal Register**. However, the proposed regulations provide a narrow exception applicable to any QSF established by the U.S. government on or before the date final regulations are published if the QSF would otherwise have been classified as a grantor trust in the absence of the QSF regulations (see Rev. Rul. 77–230 (1977–2 C.B. 214)). Under the exception, such a QSF will be automatically treated as a grantor trust for all taxable years and a grantor trust election is thus unnecessary. If a QSF is established after the date final regulations are published, a grantor trust election will be required in order for the QSF to be treated as a grantor trust. This rule applies whether or not the U.S. government is the grantor.

2. Section 1031 Qualified Escrow Accounts and Qualified Trusts Under § 1.468B–6 of the Proposed Regulations

In general, the proposed regulations treat the assets of a qualified escrow account or qualified trust established in connection with a deferred exchange

under section 1031(a)(3) as owned by the taxpayer, i.e., the party that transfers the relinquished property. Thus, the taxpayer is taxable on the income earned on these assets. However, if the transferee or the qualified intermediary has all the beneficial use and enjoyment of the assets of a qualified escrow account or qualified trust, then the assets of the escrow account or trust are treated as owned by the transferee or qualified intermediary, and the income earned on the assets is taxable to the transferee or qualified intermediary.

Further, the proposed regulations require the escrow holder of a qualified escrow account or trustee of a qualified trust to report the income of the escrow account or trust on Forms 1099 to the extent the information reporting provisions of the Code otherwise require the filing of Forms 1099. In general, the taxpayer is treated as the payee of the income of the escrow account or trust unless the parties to the transaction provide a statement to the escrow holder or trustee indicating that the transferee or qualified intermediary is the payee. Such a statement must be provided if the transferee or qualified intermediary has all the beneficial use and enjoyment of the assets of the escrow account or trust.

The proposed regulations provide that the escrow holder or trustee is not liable for penalties under sections 6721 and 6722 if the escrow holder or trustee relies on an incorrect statement provided to the escrow holder or trustee (see above) or relies on the parties' failure to provide such a statement.

The proposed regulations also provide that if the transferee or the qualified intermediary has all the beneficial use and enjoyment of the assets of a qualified escrow account or trust, the deferred exchange may involve a below-market loan of these assets from the taxpayer to the transferee or qualified intermediary subject to the provisions of section 7872.

3. Pre-closing Escrows Under § 1.468B–7 of the Proposed Regulations

A pre-closing escrow is an escrow account, trust, or fund that satisfies five requirements. First, it must be established in connection with a sale or exchange of real or personal property. Second, it must be funded with a down payment, earnest money, or similar payment prior to the sale or exchange of the property (as determined for federal income tax purposes). Third, its assets must be used to secure the purchaser's obligation to pay the purchase price (in the case of an exchange of property, the term *purchaser* means the transferee of the property and the term *purchase price* means the required consideration for the property). Fourth, its assets (including income earned thereon) must be paid to the purchaser or otherwise used for the purchaser's benefit, for example, as a credit against the purchase price. Fifth, it must not be a qualified escrow or qualified trust established in connection with a deferred section 1031 exchange.

The proposed regulations treat the assets of a pre-closing escrow as owned by the purchaser for federal income tax purposes. Thus, the income earned on the assets is taxable to the purchaser. The escrow holder, trustee, or other person responsible for administering a pre-closing escrow must report the income of the escrow on Forms 1099 to the extent the information reporting provisions of the Code otherwise require the filing of Forms 1099.

4. Contingent At-closing Escrows Under § 1.468B–8 of the Proposed Regulations

The proposed regulations provide rules for taxing the income of a contingent at-closing escrow, which is an escrow account, trust, or fund satisfying three requirements. First, a contingent at-closing escrow must be established in connection with the sale or exchange of real or personal property used in a trade or business or held for investment (other than an exchange to which section 354, 355, or 356 applies). Second, the assets of the escrow must be distributable to the purchaser or seller based on bona fide contingencies that will be resolved after the sale or exchange (as determined for federal income tax purposes). (If a contingent at-closing escrow is established in connection with an exchange of property, rather than a sale, the term *purchaser* refers to the transferee of the property and the term *seller* refers to the transferor of the property.) Thus, for example, the agreement between the parties may provide that all or a portion of the assets of the escrow are distributable to the purchaser if specified liabilities associated with the property arise within a specified period of time after closing or if certain earnings targets are not met by a specified date. Third, the escrow must not be a qualified escrow account or qualified trust established in connection with a deferred section 1031 exchange.

Prior to the date (called the determination date) on which the specified events occur or fail to occur, thereby fixing the amounts payable from the escrow to the purchaser and seller, the proposed regulations provide that the assets of the escrow are treated as owned by the purchaser, and the income earned on the assets is thus taxable to the purchaser.

Beginning on the determination date, the proposed regulations provide that the purchaser and the seller are taxable on the income of the escrow corresponding to their respective ownership interests in each asset of the escrow. Further, the proposed regulations require the purchaser and seller to provide the escrow holder, trustee, or other administrator of the escrow with a statement within 30 days of the determination date indicating what these ownership interests are. Also, the escrow holder, trustee, or other administrator is required to prepare Forms 1099 to report the income of a contingent at-closing escrow to the extent the information reporting provisions of the Code otherwise require the filing of Forms 1099.

In preparing the Forms 1099, the escrow holder, trustee, or other administrator may rely on the statement (discussed above) provided to the administrator within 30 days of the determination date. Also, if the statement is not provided, the escrow holder, trustee, or other administrator may rely on the parties' failure to provide a statement and continue to treat the purchaser as the owner. The administrator's ability to rely on a statement, or its absence, protects the administrator from liability for penalties under sections 6721 and 6722.

5. Disputed Ownership Funds Under § 1.468B–9 of the Proposed Regulations

A disputed ownership fund (DOF) is an escrow account, trust, or fund other than a QSF that satisfies three requirements. First, a DOF must be established to hold money or property subject to conflicting claims of ownership. Second, a DOF must be subject to the continuing jurisdiction of a court of law or equity. Third, money or property cannot be paid or distributed from a DOF to a claimant without court approval. An interpleader fund may qualify as a DOF.

In general, a DOF is taxed under the proposed regulations as if it were a qualified settlement fund if all the DOF's assets are passive investment assets, for example, cash or cash equivalents, stock, and debt obligations. However, if the DOF holds assets other than passive investment assets (for example, real estate or business property the ownership of which is in dispute), the DOF is taxed as if it were a C corporation. The claimants to the fund may, however, submit a letter ruling request proposing an alternative method of taxation if they believe that

there is a more appropriate method of taxing a DOF than under the rules stated above.

In addition to providing rules for the taxation of the income of a DOF, the proposed regulations also provide rules concerning the transfer of property to and from a DOF. In particular, a transfer of property to a DOF is not a sale or other disposition by the transferor under section 1001(a) if the transferor claims ownership of the transferred property. Also, a DOF is not allowed a deduction for a distribution of disputed property to a claimant and the distribution is not a taxable event to the DOF.

6. Request for Comments

Comments are requested on the appropriate tax treatment of a fund, account, or trust that meets the requirements for more than one type of entity subject to the proposed regulations. Comments are also requested on the appropriate tax treatment of a fund, account, or trust that changes over time so that a different portion of the proposed regulations would apply to it. For example, an escrow initially may meet the requirements for a contingent at-closing escrow, but may subsequently satisfy the requirements for a DOF. This could occur if a dispute were to arise between the purchaser and the seller concerning their respective interests in the escrow after the determination date and the administrator of the DOF files an interpleader action to resolve the dispute.

Comments are also requested concerning the appropriate tax treatment of a contingent-at-closing escrow if multiple contingencies are specified in the agreement between the purchaser and the seller. The proposed regulations provide that (1) the income of a contingent at-closing escrow is taxable entirely to the purchaser prior to the determination date, and (2) the determination date is the date on which (or by which) the last of the contingent events has either occurred or failed to occur. Therefore, if multiple contingencies are provided for in the agreement between the parties and some, but not all, of the contingencies have been resolved, the proposed regulations provide that the income of the escrow is taxable entirely to the purchaser (because the determination date has not yet occurred) regardless of the effect of the contingencies that have been resolved. The purchaser is thus taxed on all the income earned on the escrow even though it may be known (based on the resolution of one or more contingencies) that a fixed portion of the escrowed assets will be distributed to the seller. The proposed rule is simple and easy to administer because it treats the escrow in a unitary manner and avoids the need for multiple determination dates. Arguably, however, a more complex approach should be adopted involving a separate determination date for each contingency. Under the more complex approach, as each contingency is resolved, a new determination would be made concerning the taxation of the fund's income. The income earned on the fund's assets would be taxable to the purchaser and seller in accordance with their ownership interests as determined on each determination date as each separate contingency is resolved.

Comments are also requested on the requirement that the assets of a contingent at-closing escrow must be distributable to the purchaser or seller based on bona fide contingencies that are resolved after the sale or exchange. Issues may arise as to whether a particular contingency is bona fide in at least two ways: whether the outcome is sufficiently in doubt and whether the effect of the outcome on the fund is significant. A contingency may not be bona fide if the parties can reasonably be expected to know the outcome, e.g., a contingency based on whether, in ten years, the consumer price index will be at least equal to the consumer price index today. In addition, a contingency may not be bona fide if the effect on the fund is minimal even though the outcome is uncertain.

Finally, comments are requested regarding whether there are other types of funds for which rules under section 468B are required.

7. Proposed Effective Date

In general, the regulations are proposed to be applicable for QSFs, qualified escrow accounts and qualified trusts, pre-closing escrows, contingent at-closing escrows, and DOFs established after the date final regulations are published in the **Federal Register**. However, the proposed regulations contain transition rules.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. An initial regulatory flexibility analysis has been prepared for the collections of information contained in this notice of proposed rulemaking under 5 U.S.C. 603. The analysis is set forth below.

Initial Regulatory Flexibility Act Analysis

The objective of the proposed regulations is to ensure that the income of certain escrow accounts, trusts, and funds is subject to current taxation by identifying the proper party or parties subject to tax and by requiring appropriate information reporting for the income of the escrow account, trust, or fund. Section 468B(g) provides the legal basis for the requirements of the proposed regulations. The IRS and Treasury Department are not aware of any federal rules that may duplicate, overlap, or conflict with the proposed regulations.

An explanation is provided below of the burdens on small entities resulting from the requirements of the proposed regulations. Also, a description is provided of alternative rules that were considered by the IRS and the Treasury Department but rejected as too burdensome.

1. Grantor Trust Election Under § 1.468B–1(k)

Under § 1.468B–1(k), the transferor to a QSF may elect to have the QSF treated as a grantor trust all of which is treated as owned by the transferor (grantor trust election). If the transferor makes the grantor trust election, the administrator of the QSF must file Form 1041 rather than the QSF income tax return, Form 1120–SF.

Approximately 900 QSF returns are filed each year. Only a small number of these returns are filed for newly created QSFs. Because a grantor trust election may be made only for the year in which a QSF is established, and may only be made for a QSF that has one transferor, the IRS and Treasury Department believe that a very small number of grantor trust elections will be made each year.

Because of the availability of the grantor trust election, the proposed regulations provide a choice of filing Form 1041 or Form 1120–SF in certain situations. Small entities may choose the filing requirement that is less burdensome.

The alternative to the proposed regulations is to retain the current rules for QSFs and not provide qualifying taxpayers with the opportunity to make a grantor trust election.

2. Qualified Escrow Accounts and Qualified Trusts Established in Connection With Deferred Exchanges; Pre-closing Escrows; and Contingent At-Closing Escrows

Sections 1.468B–6(e)(1), 1.468B–7(d), and 1.468B–8(g)(1) require specified escrow holders, trustees, and administrators to file Forms 1099 with the IRS and furnish payee statements in accordance with the information reporting requirements of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code.

Also, § 1.468B–6(f) requires the parties to a qualified escrow account or qualified trust to provide a statement to the escrow holder or trustee if the qualified intermediary or transferee has all the beneficial use and enjoyment of the assets of the escrow account or trust. This statement facilitates the filing of Forms 1099 by the escrow holder or trustee.

Similarly, § 1.468B–8(f) requires the parties to a contingent at-closing escrow to provide statements to the escrow holder or other administrator. These statements facilitate the filing of Forms 1099 by the escrow holder or other administrator.

The IRS and Treasury Department estimate that annually there are approximately 16,000 deferred exchange transactions involving the creation of a qualified escrow account or qualified trust; approximately 200,000 transactions involving the creation of a pre-closing escrow; and approximately 10,000 transactions involving the creation of a contingent at-closing escrow.

As an alternative to the proposed regulations, the IRS and the Treasury Department considered, but rejected as too burdensome, a rule that would have required the filing of grantor trust returns (Form 1041) for qualified escrow accounts and qualified trusts, pre-closing escrows, and contingent at-closing escrows. Instead of requiring grantor trust returns, the proposed regulations require the filing of Forms 1099. This is less burdensome on small entities because, unlike Form 1041, Form 1099 is simple, does not require a signature, and requires only the reporting of gross income.

Further, the IRS and the Treasury Department considered an alternative rule for contingent at-closing escrows under which the income of the escrow for the period before the determination date would have been taxable to the purchaser or the seller depending on the required tax treatment by the purchaser and seller of the principal amount deposited into the escrow. This alternative rule would not have provided certainty, would have required a difficult legal analysis (namely, the determination of the required tax treatment of the principal amount deposited into the escrow), and would have required the purchaser and seller to provide a signed statement to the administrator of the escrow identifying the party to whom the administrator should report the income for the period before the determination date. Under the proposed regulations, the income of the escrow is always taxable to the purchaser for the period before the determination date, thereby eliminating the need for a signed statement to be provided to the administrator and the need to determine the required tax treatment of the principal amount deposited into the escrow. This rule is simpler than the alternative.

3. Disputed Ownership Funds (DOFs)

Section 1.468B–9(c)(1) of the proposed regulations generally provides that a DOF is taxable as a QSF if all its assets are passive investment assets or taxable as a C corporation in all other cases. However, the regulations also provide that if there is a more appropriate method of taxing a DOF, the claimants to the fund may request a private letter ruling to permit the use of that method.

Section 1.468B–9(f)(3) of the proposed regulations requires that a transferor provide a statement to the administrator of a DOF that itemizes the cash or property transferred to the DOF during the calendar year. The statement must also indicate the DOF's basis and holding period in the property.

The IRS and the Treasury Department estimate that annually there are approximately 5,000 transactions involving the creation of a disputed ownership fund.

As an alternative to the proposed regulations, the IRS and the Treasury Department considered, but rejected as too burdensome, a rule that would have required all DOFs to file corporate income tax returns (Form 1120) regardless of the nature of the assets held by the DOF. This alternative was rejected because it was concluded that a QSF return (Form 1120–SF) is more appropriate than a corporate income tax return if all the assets of the DOF are passive investment assets. The proposed regulations thus impose less of an administrative burden on small entities than would have resulted from the alternative rule as Form 1120–SF is generally easier to prepare than Form 1120. Only DOFs that hold assets other than passive investment assets will be required to file Form 1120 under the proposed regulations. In addition, the proposed regulations provide taxpayers with the additional flexibility of being able to request an alternative method of taxation if that method is more appropriate than QSF or C corporation treatment as provided under the general rule.

There are no known alternative rules that are less burdensome to small entities but that accomplish the purpose of the statute. The IRS and Treasury Department request comments from small entities concerning possible alternatives to these rules.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely (in the manner described in the **ADDRESSES** portion of the preamble) to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing is scheduled for May 12, 1999, at 10 a.m. in Room 2615, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by May 3, 1999 and submit an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by April 21, 1999.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Michael L. Gompertz of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.468B–6 also issued under 26 U.S.C. 468B.

§ 1.468B–7 also issued under 26 U.S.C. 468B.

§ 1.468B–8 also issued under 26 U.S.C. 468B.

§ 1.468B–9 also issued under 26 U.S.C. 468B. * * *

Par. 2. Section 1.468B–0 is amended as follows:

1. The introductory text is revised.
2. The entry for § 1.468B–1, paragraph (k), is redesignated as paragraph (l).
3. A new entry for § 1.468B–1, paragraph (k), is added.
4. The section heading in the entry for § 1.468B–5 is revised.
5. New entries are added for §§ 1.468B–5, paragraph (c), 1.468B–6, 1.468B–7, 1.468B–8, and 1.468B–9.
6. The revised and added provisions read as follows:

§ 1.468B–0 Table of contents.

This section lists the table of contents for §§ 1.468B–1 through 1.468B–9.

§ 1.468B–1 Qualified settlement funds.

* * * * *

(k) Election to treat a qualified settlement fund as a subpart E trust.
(1) In general.
(2) Manner of making grantor trust election.
(i) In general.
(ii) Requirements for election statement.
(3) Effect of making the election.

* * * * *

§ 1.468B–5 Effective dates and transition rules applicable to qualified settlement funds.

* * * * *

(c) Grantor trust elections under § 1.468B–1(k).
(1) In general.
(2) Qualified settlement funds established by the U.S. government on or before the date of publication of final regulations in the **Federal Register**.

§ 1.468B–6 Qualified escrow accounts and qualified trusts used in deferred exchanges of like-kind property under section 1031(a)(3).

(a) Scope.
(b) Definitions.
(c) Income of qualified escrow account or qualified trust.
(1) In general.
(2) Transferee or qualified intermediary has all the beneficial use and enjoyment of assets of a qualified escrow account or qualified trust.
(d) Application of section 7872.
(e) Reporting obligations of the escrow holder or trustee.
(1) In general.
(2) Person treated as payee.
(3) Relief from penalties for filing incorrect information return or payee statement.
(f) Statement provided to escrow holder or trustee.
(g) Effective date.
(1) In general.
(2) Transition rule.
(h) Examples.

§ 1.468B–7 Pre-closing escrows.

(a) Scope.
(b) Definition.
(c) Taxation of pre-closing escrows.
(d) Reporting obligations of the administrator.
(e) Effective date.
(1) In general.
(2) Transition rule.
(f) Example.

§ 1.468B–8 Contingent at-closing escrows.

(a) Scope.
(b) Definitions.
(c) Tax liability of purchaser and seller for the period prior to the determination date.
(d) Transfer of interest in the assets of the escrow on the determination date.
(e) Tax liability of purchaser and seller for the period beginning on the determination date.
(f) Statement required to be provided to administrator within 30 days after the determination date.
(g) Reporting obligations of the administrator.
(1) In general.
(2) Person treated as payee.
(3) Relief from penalties for filing incorrect information return or payee statement.
(h) Effective date.
(1) In general.
(2) Transition rule.
(i) [Reserved]
(j) Example.

§ 1.468B–9 Disputed ownership funds.

(a) In general.
(b) Definitions.
(c) Taxation of a disputed ownership fund.
(1) In general.
(2) Exception.
(3) Special rules.
(d) Basis of property held by a disputed ownership fund.
(e) Request for prompt assessment.
(f) Rules applicable to the transferor.
(1) Transfer of property.
(i) In general.
(ii) Exceptions.
(2) Economic performance.
(i) In general.
(ii) Obligations of the transferor.
(3) Statement to the disputed ownership fund and the Internal Revenue Service.
(i) In general.
(ii) Information required on statement.
(A) In general.
(B) Combined statements.
(4) Distributions to transferors.
(i) In general.
(ii) Exception.
(iii) Deemed distributions.
(g) Distribution to a claimant other than a transferor.
(h) Effective date.
(1) In general.
(2) Transition rule.
(i) [Reserved].
(j) Examples.

Par. 3. Section 1.468B–1 is amended by redesignating paragraph (k) as paragraph (l) and adding a new paragraph (k) to read as follows:

§ 1.468B–1 Qualified settlement funds.

* * * * *

(k) *Election to treat a qualified settlement fund as a subpart E trust*—(1) *In general.* If a qualified settlement fund has only one transferor (see paragraph (d)(1) of this section for the definition of transferor), the transferor may make an irrevocable election (grantor trust election) to treat the qualified settlement fund as a trust all of which is treated as owned by the transferor under section 671 and the regulations thereunder. A grantor trust election may be made whether or not the qualified settlement fund would be classified, in the absence of paragraph (b) of this section, as a trust all of which is treated as owned by the transferor under section 671 and the regulations thereunder.

(2) *Manner of making grantor trust election*—(i) *In general.* To make a grantor trust election, a transferor must attach an election statement satisfying the requirements of paragraph (k)(2)(ii) of this section to a timely filed (including extensions) Form 1041 that the administrator files on behalf of the qualified settlement fund for the taxable year in which the qualified settlement fund is established. However, if a Form 1041 would not otherwise be required to be filed (for example, because the provisions of § 1.671–4(b) are applicable), then the transferor makes a grantor trust election by attaching an election statement satisfying the requirements of paragraph (k)(2)(ii) of this section to a timely filed (including extensions) income tax return of the transferor for the taxable year in which the qualified settlement fund is established.

(ii) *Requirements for election statement.* The election statement must include a statement by the transferor that the transferor will treat the qualified settlement fund as a grantor trust. The election statement must also include the transferor's name, signature, address, taxpayer identification number, and the legend, "§ 1.468B–1(k) Election". The election statement and the statement described in § 1.671–4(a) may be combined into a single statement.

(3) *Effect of making the election.* If a grantor trust election is made—

(i) Paragraph (b) of this section, and §§ 1.468B–2, 1.468B–3, and 1.468B–5 do not apply to the qualified settlement fund. However, this section (except for paragraph (b) of this section) and § 1.468B–4 apply to the qualified settlement fund;

(ii) The qualified settlement fund is treated for federal income tax purposes as a trust all of which is treated as owned by the transferor under section 671 and the regulations thereunder;

(iii) The transferor must take into account in computing the transferor's income tax liability all items of income, deduction, and credit (including capital gains and losses) of the qualified settlement fund in accordance with § 1.671–3(a)(1); and

(iv) The reporting obligations imposed by § 1.671–4 on the trustee of a trust apply to the administrator.

* * * * *

Par. 4. Section 1.468B–5 is amended by revising the section heading and adding paragraph (c) to read as follows:

§ 1.468B–5 Effective dates and transition rules applicable to qualified settlement funds.

* * * * *

(c) *Grantor trust elections under § 1.468B–1(k)*—(1) *In general.* A transferor may make a grantor trust election under § 1.468B–1(k) only if the qualified settlement fund is established after the date of publication of final regulations in the **Federal Register**.

(2) *Qualified settlement funds established by the U.S. government on or before the date of publication of final regulations in the* **Federal Register**. If the U.S. government, or any agency or instrumentality thereof, establishes a qualified settlement fund on or before the date of publication of final regulations in the **Federal Register**, and the fund would have been classified as a trust all of which is treated as owned by the U.S. government under section 671 and the regulations thereunder without regard to the regulations under section 468B, then the U.S. government is deemed to have made a grantor trust election under § 1.468B–1(k), and the election is effective for all taxable years of the fund.

Par. 5. Sections 1.468B–6 through 1.468B–9 are added to read as follows:

§ 1.468B–6 Qualified escrow accounts and qualified trusts used in deferred exchanges of like-kind property under section 1031(a)(3).

(a) *Scope.* This section provides rules under section 468B(g) relating to the current taxation of income of a qualified escrow account or qualified trust established in connection with a deferred exchange under section 1031(a)(3).

(b) *Definitions.* As used in this section, *deferred exchange, relinquished property, replacement property, qualified escrow account, qualified trust, qualified intermediary, exchange period,* and *escrow holder* have the same meanings as in § 1.1031(k)–1. Also, as used in this section, *taxpayer* means the transferor of the relinquished property, and *transferee* means the person who is treated as owning the relinquished property for federal income tax purposes after its transfer by the taxpayer. Further, *owner* means the person treated as owning the assets of the qualified escrow account or qualified trust under paragraph (c) of this section.

(c) *Income of qualified escrow account or qualified trust*—(1) *In general.* Except as otherwise provided in paragraph (c)(2) of this section, and except for purposes of determining whether a transaction qualifies as a deferred exchange, the taxpayer is the owner. Thus, the taxpayer must take into account in computing the taxpayer's income tax liability all items of income, deduction, and credit (including capital gains and losses) of the qualified escrow account or qualified trust.

(2) *Transferee or qualified intermediary has all the beneficial use and enjoyment of assets of a qualified escrow account or qualified trust.* If the transferee or the qualified intermediary has all the beneficial use and enjoyment of assets of a qualified escrow account or qualified trust, the transferee or qualified intermediary is the owner. Thus, the transferee or qualified intermediary must take into account in computing its income tax liability all items of income, deduction, and credit (including capital gains and losses) of the account or trust. The following factors, and other relevant facts and circumstances in a particular case, will be considered in determining whether the transferee or the qualified intermediary, rather than the taxpayer, has the beneficial use and enjoyment of assets of an account or trust and thus is the owner—

(i) Which person enjoys the use of the earnings of the account or trust;

(ii) Which person receives the benefit from appreciation, if any, in the value of the assets of the account or trust; and

(iii) Which person is subject to a risk of loss from a decline, if any, in the value of the assets of the account or trust.

(d) *Application of section 7872.* If the transferee or the qualified intermediary is the owner under paragraph (c)(2) of this section, section 7872 may apply if the deferred exchange involves a below-market loan from the taxpayer to the owner. See section 7872(c)(1) for the loans to which section 7872 applies.

(e) *Reporting obligations of the escrow holder or trustee*— (1) *In general.* The escrow holder of a qualified escrow account and the trustee of a qualified trust must, for each calendar year (or portion thereof) that the account or trust is in existence, report the income of the account or trust on Forms 1099 in accordance with the information reporting requirements of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code. The Forms 1099 must show the escrow holder or trustee as the payor and must show the proper payee. See paragraph (e)(2) of this section for the determination of the proper payee.

(2) *Person treated as payee.* In satisfying the reporting obligations of paragraph (e)(1) of this section, the following rules apply to the escrow holder of a qualified escrow account and the trustee of a qualified trust—

(i) If no written statement described in paragraph (f) of this section is provided to the escrow holder or trustee, the escrow holder or trustee must treat the taxpayer as the owner and the payee of the income of the account or trust; and

(ii) If a written statement described in paragraph (f) of this section is provided to the escrow holder or trustee, the escrow holder or trustee must treat the person specified on the statement (see paragraph (f)(3) of this section) as the owner and the payee of the income of the account or trust.

(3) *Relief from penalties for filing incorrect information return or payee statement.* For purposes of sections 6721 and 6722, the escrow holder of a qualified escrow account or trustee of a qualified trust will not be treated as failing to file or furnish a correct information return or payee statement solely because, in preparing a Form 1099, the escrow holder or trustee relies on a statement described in paragraph (f) of this section and therefore treats the

person specified on the statement (see paragraph (f)(3) of this section) as the owner and the payee of the income of the account or trust. If a statement described in paragraph (f) of this section is not provided to the escrow holder or trustee, the escrow holder or trustee will not be treated as failing to file or furnish a correct information return or payee statement solely because, in preparing a Form 1099, the escrow holder or trustee relies on the absence of the statement and therefore treats the taxpayer as the owner and the payee of the income of the account or trust.

(f) *Statement provided to escrow holder or trustee.* If under paragraph (c)(2) of this section, the qualified intermediary or transferee is the owner, the taxpayer and the owner must furnish to the escrow holder or trustee a statement that—

(1) Is signed by the taxpayer and the owner;

(2) Is furnished to the escrow holder or trustee within 30 days after the taxpayer transfers the relinquished property; and

(3) Specifies the person treated as the owner and thus as the payee of the income of the account or trust.

(g) *Effective date*—(1) *In general.* This section applies to qualified escrow accounts and qualified trusts established after the date of publication of final regulations in the **Federal Register**.

(2) *Transition rule.* With respect to a qualified escrow account or qualified trust established after August 16, 1986, but on or before the date of publication of final regulations in the **Federal Register**, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the account or trust. The Internal Revenue Service will also not challenge a reasonable, consistently applied method for reporting such income.

(h) *Examples.* The provisions of this section may be illustrated by the following examples in which T is the taxpayer, B is the transferee, and QI is the qualified intermediary:

Example 1. (i) T uses the calendar year as the taxable year and the cash receipts and disbursements method of accounting. T enters into a deferred exchange agreement with B. Under the agreement, T will transfer property (the relinquished property) to B, and B must transfer to T within the exchange period consideration (cash or replacement property or both) having the same market value as that of the relinquished property. B's obligations under the agreement are secured by the assets of a qualified escrow account. The deferred exchange does not involve the use of a qualified intermediary.

(ii) Under the agreement, B must deposit cash into the qualified escrow account equal to the agreed upon fair market value of the relinquished property on the date the property is transferred to B. The agreement provides that the cash deposited into the escrow account must be invested in a money market fund.

(iii) The agreement provides that B is entitled to receive the interest earned on the escrow account in consideration for B's performance of services in connection with the exchange.

(iv) On September 1, 1999, T transfers the relinquished property to B. The property is unencumbered and has a fair market value of $100,000 on September 1, 1999. B deposits $100,000 into a qualified escrow account. The $100,000 is invested in accordance with the exchange agreement in a money market fund. During 1999, $2,000 of interest is earned on the escrow account. During January 2000, an additional $400 of interest is earned on the escrow account. On February 1, 2000, B uses $100,000 of the funds in the escrow account to purchase replacement property identified by T, and on this same date B transfers the replacement property to T. The interest earned on the escrow account, $2,400, is paid to B from the escrow account in consideration for B's performance of services.

(v) Paragraph (c)(1) of this section applies and T must take into account in computing T's income tax liability for 1999 and 2000 the $2400 of interest earned on the escrow account in those years even though the interest is paid to B as compensation for B's services. Paragraph (c)(1) of this section applies for the following reasons. T, rather than B, enjoys the use of the earnings of the escrow account since the earnings are used to discharge T's obligation to pay B for B's services. B is not considered to have all the beneficial use and enjoyment of the assets of the escrow account merely because the compensation that B is entitled to receive is based on the earnings of the escrow account.

(vi) The escrow holder must file Forms 1099 for 1999 and 2000 and furnish T with payee statements with respect to the interest earned on the escrow in 1999 and 2000. See paragraph (e)(1) of this section.

Example 2. (i) The facts are the same as in *Example 1* except that the agreement between B and T requires B to pay $100,000 to QI; under the agreement between T and QI, QI is obligated to transfer to T within the exchange period consideration (cash or replacement property or both) equal to $100,000 plus interest thereon at 4 percent compounded semiannually; QI's obligation to transfer this consideration is secured by the $100,000 received from B, which QI must deposit into a qualified escrow account; the assets of the escrow account must be invested in a money market fund; and, as compensation for QI's performance of services to facilitate the deferred exchange, QI is entitled to receive the excess of the interest earned on the escrow account over the amount of interest (computed at 4 percent compounded semiannually) payable to T in cash or property.

(ii) QI deposits the $100,000 received from B into a qualified escrow account, and the $100,000 is invested in a money market fund earning interest at 4.8 percent compounded semiannually. During 1999, $1,600 of interest is earned on the escrow account. During January 2000, an additional $400 of interest is earned on the escrow account. On February 1, 2000, QI uses $101,667 of the funds in the escrow account to purchase replacement property, which is transferred to T. This transfer satisfies QI's obligations under the agreement because $1,667 is the amount of interest that is earned on $100,000 at 4 percent compounded semiannually for 5 months. Of the $2,000 in interest earned on the escrow account in 1999 and 2000, $1,667 is used to purchase replacement property, and the remaining $333 is paid in cash to QI as compensation for QI's services.

(iii) Paragraph (c)(1) of this section applies and T must take into account in computing T's income tax liability for 1999 and 2000 the $2000 of interest earned on the escrow account in those years even though $333 of the interest is paid to QI as compensation for QI's services.

(iv) The escrow holder must file Forms 1099 and furnish T with payee statements with respect to the $2000 of interest earned on the escrow in 1999 and 2000. See paragraph (e)(1) of this section.

§ 1.468B–7 Pre-closing escrows.

(a) *Scope.* This section provides rules under section 468B(g) for the taxation of income earned on pre-closing escrows.

(b) *Definition.* A *pre-closing escrow* is an escrow account, trust, or fund—

(1) Established in connection with the sale or exchange of real or personal property;

(2) Funded with a down payment, earnest money, or similar payment that is deposited into the escrow prior to the sale or exchange of the property;

(3) Used to secure the obligation of the purchaser to pay the purchase price for the property (in the case of an exchange, *purchaser* means the transferee of the property, and *purchase price* means the required consideration for the property);

(4) The assets of which, including the income earned thereon, will be paid to the purchaser or otherwise distributed for the purchaser's benefit when the property is sold or exchanged (for example, by being distributed to the seller as a credit against the purchase price); and

(5) Which is not a qualified escrow account or qualified trust established in connection with a deferred exchange under section 1031(a)(3).

(c) *Taxation of pre-closing escrows.* The purchaser is treated for federal income tax purposes as owning the assets of a pre-closing escrow. Thus, the purchaser must take into account in computing the purchaser's income tax liability all items of income, deduction, and credit (including capital gains and losses) of the escrow.

(d) *Reporting obligations of the administrator.* For each calendar year (or portion thereof) that a pre-closing escrow is in existence, the escrow agent, escrow holder, trustee, or other person responsible for administering the escrow (the *administrator*) must report the income of the escrow on Forms 1099 in accordance with the information reporting requirements of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code. The Form 1099 must show the administrator as the payor and the purchaser as the payee.

(e) *Effective date*—(1) *In general.* The provisions of this section apply to pre-closing escrows established after the date of publication of final regulations in the **Federal Register**.

(2) *Transition rule.* With respect to a pre-closing escrow established after August 16, 1986, but on or before the date of publication of final regulations in the **Federal Register**, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the escrow. The Internal Revenue Service will also not challenge a reasonable, consistently applied method for reporting such income.

(f) *Example.* The provisions of this section may be illustrated by the following example:

Example. P enters into a contract with S for the purchase of residential property owned by S for the price of $200,000. P is required to deposit $10,000 of earnest money into an escrow. At closing, the $10,000 and the interest earned thereon will be credited against the purchase price of the property. The escrow is a pre-closing escrow. P is treated as owning the assets of the escrow, and P is taxable on the interest earned on the escrow prior to closing. The escrow holder must report the income earned on the escrow on Forms 1099 and furnish payee statements to P. The Forms 1099 must show the escrow holder as the payor and P as the payee.

§ 1.468B–8 Contingent at-closing escrows.

(a) *Scope.* This section provides rules under section 468B(g) for the taxation of income earned on a contingent at-closing escrow, which is defined in paragraph (b) of this section. No inference should be drawn from this section concerning the tax treatment of a contingent at-closing escrow, or of parties to the escrow, under sections of the Internal Revenue Code other than section 468B. See also paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, the following definitions apply—

Administrator means an escrow agent, escrow holder, trustee, or other person responsible for administering an escrow account, trust, or fund (the purchaser or the seller may be the administrator);

Contingent at-closing escrow means an escrow account, trust, or fund that satisfies the following requirements—

(1) The escrow is established in connection with the sale or exchange (other than an exchange to which section 354, 355, or 356 applies) of real or personal property used in a trade or business or held for investment (including stock in a corporation or an interest in a partnership);

(2) Depending on whether events specified in the agreement between the purchaser and the seller that are subject to bona fide contingencies (not including events that are certain, or reasonably certain, to occur, such as the passage of time, or that are certain, or reasonably certain, not to occur) either occur or fail to occur, the escrow's assets (except for assets set aside for taxes or expenses) will be distributable—

(i) Entirely to the purchaser;

(ii) Entirely to the seller; or

(iii) In part, to the purchaser with the remainder to the seller; and

(3) The escrow is not a qualified escrow account or qualified trust established in connection with a deferred exchange under section 1031(a)(3);

Determination date means the date on which (or by which) the last of the events subject to a bona fide contingency specified in the agreement between the purchaser and the seller (referred to in the definition of *contingent at-closing escrow*) has either occurred or failed to occur;

Purchaser means, in the case of an exchange of property, the transferee of the property; and

Seller means, in the case of an exchange of property, the transferor of the property.

(c) *Tax liability of purchaser and seller for the period prior to the determination date.* For the period prior to the determination date, the purchaser is treated as owning the assets of the contingent at-closing escrow for federal income tax purposes. Thus, in computing the purchaser's income tax liability, the purchaser must take into account all items of income, deduction, and credit (including capital gains and losses) of the escrow until the determination date.

(d) *Transfer of interest in the assets of the escrow on the determination date.* No inference should be drawn from this section whether, for purposes of Internal Revenue Code sections other than 468B, there is a transfer of ownership of the assets of a contingent at-closing escrow on the determination date from the purchaser to the seller or from the seller to the purchaser, or the tax consequences of such a transfer. Thus, for example, if there is a transfer of ownership of the assets of the escrow from the purchaser to the seller on the determination date for purposes of other Code sections, no inference should be drawn from this section whether any portion of the amount transferred is unstated interest. See § 1.483–4.

(e) *Tax liability of purchaser and seller for the period beginning on the determination date.* For the period beginning on the determination date, the purchaser and the seller must each take into account in determining their income tax liabilities the income, deductions, and credits (including capital gains and losses) corresponding to their ownership interests in the assets of the escrow.

(f) *Statement required to be provided to administrator within 30 days after the determination date.* Within 30 days after the determination date, the purchaser and the seller must provide the administrator with a written statement that—

(1) Is signed by the purchaser and the seller;

(2) Specifies the determination date; and

(3) Specifies the purchaser's and seller's ownership interests in each asset of the escrow.

(g) *Reporting obligations of the administrator*—(1) *In general.* The administrator of a contingent at-closing escrow must, for each calendar year (or portion thereof) that the escrow is in existence, report the income of the escrow on Forms 1099 in accordance with the information reporting requirements of subpart B, Part III, subchapter A, chapter 61, Subtitle F of the Internal Revenue Code. The Forms 1099 must show as payor the administrator of the escrow and as payee the person (or persons) treated as the payee (or payees) under paragraph (g)(2) of this section.

(2) *Person treated as payee.* In satisfying the reporting obligations of paragraph (g)(1) of this section, the following rules apply to the administrator—

(i) For the period prior to the determination date, the administrator must treat the purchaser as the payee of the income of the escrow;

(ii) For the period beginning on the determination date, if the written statement described in paragraph (f) of this section is timely provided to the administrator, the administrator must treat as the payee (or payees) of the income of the escrow the purchaser or seller (or both) in accordance with their

respective ownership interests as shown on the statement; and

(iii) If the written statement described in paragraph (f) of this section is not provided to the administrator, the administrator must continue to treat the purchaser as the payee of the income of the escrow.

(3) *Relief from penalties for filing incorrect information return or payee statement.* For purposes of sections 6721 and 6722, the administrator will not be treated as failing to file or furnish a correct information return or payee statement solely because, in preparing a Form 1099, the administrator relies on a statement described in paragraph (f) of this section and therefore treats the purchaser or seller (or both) as the payee (or payees) of the income of the escrow in accordance with their respective ownership interests in the assets of the escrow as shown on the statement. If a statement described in paragraph (f) of this section is not provided to the administrator, the administrator will not be treated as failing to file or furnish a correct information return or payee statement solely because, in preparing a Form 1099, the administrator relies on the absence of the statement and therefore treats the purchaser as the payee.

(h) *Effective date*—(1) *In general.* The provisions of this section apply to contingent at-closing escrows that are established after the date of publication of final regulations in the **Federal Register**.

(2) *Transition rule.* With respect to a contingent at-closing escrow established after August 16, 1986, but on or before the date of publication of final regulations in the **Federal Register**, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the escrow. The Internal Revenue Service will also not challenge a reasonable, consistently applied method for reporting such income.

(i) [Reserved]

(j) *Example.* The provisions of this section may be illustrated by the following example:

Example. (i) P and S are corporations. In 1999, P enters into a contract with S for the purchase of rental real estate. On October 1, 1999, the date of sale, S transfers the real estate to P, and P pays S a portion of the purchase price, $9,000,000. P deposits the remaining portion of the purchase price, $850,000, into an escrow account as required by the contract. H is the escrow holder.

(ii) The contract provides that the escrow balance as of November 1, 2000, is payable entirely to P, entirely to S, or partially to P and partially to S depending on the amount, if any, by which the average rental income from the real estate during a specified testing period ending on September 30, 2000, exceeds one or more specified earnings targets.

(iii) According to the terms of the contract, the income earned on the escrow must be accumulated and is not currently distributable to P or S during the period prior to November 1, 2000.

(iv) During the testing period specified in the contract between P and S, the average rental income earned on the property exceeds one (but not all) of the specified earnings targets. As a result, on September 30, 2000, the end of the testing period, P became entitled to 40% of the escrow assets and S became entitled to 60% of the escrow assets.

(v) On October 30, 2000, P and S provide H with the written statement described in paragraph (f) of this section. The written statement is thus provided within 30 days of September 30, 2000. The statement indicates that P's ownership interest in each asset of the escrow is 40 percent and S's ownership interest in each asset is 60 percent.

(vi) The escrow is a contingent at-closing escrow. September 30, 2000, is the determination date because this is the date on which the testing period ends. As of this date, all contingencies specified in the contract are resolved.

(vii) P must take into account all of the income, deductions, and credits (including capital gains and losses) of the escrow in computing P's income tax liability for the period prior to September 30, 2000. See paragraph (c) of this section.

(viii) For the period beginning on September 30, 2000, P must take into account in computing P's income tax liability 40 percent of each item of income, deduction, and credit of the escrow (including capital gains and losses), and S must take into account in computing S's income tax liability 60 percent of these items. See paragraph (e) of this section.

(ix) H is subject to the information reporting requirements of paragraph (g)(1) of this section. H must file Forms 1099 and furnish payee statements to reflect the fact that prior to September 30, 2000, P is the payee of all the income of the escrow, and for the period beginning on September 30, 2000, P is the payee of 40 percent of the income, and S is the payee of 60 percent of the income.

§ 1.468B–9 Disputed ownership funds.

(a) *In general.* An escrow account, trust, or fund that is not a qualified settlement fund is a disputed ownership fund if—

(1) It is established to hold money or property subject to conflicting claims of ownership;

(2) The escrow account, trust, or fund is subject to the continuing jurisdiction of a court; and

(3) Money or property cannot be paid or distributed from the escrow account, trust, or fund to, or on behalf of, a claimant or a transferor without the approval of the court.

(b) *Definitions.* For purposes of this section—

(1) *Administrator* means the person designated as such by the court having jurisdiction over a disputed ownership fund. If no person is designated, the administrator is the escrow agent, escrow holder, trustee, receiver, or other person responsible for administering the fund;

(2) *Claimant* means a person, including a transferor, who claims ownership of, or a legal or equitable interest in, money or property held by a disputed ownership fund;

(3) *Court* means a court of law or equity of the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof;

(4) *Related person* means any person who is related to the transferor within the meaning of section 267(b) or 707(b)(1);

(5) *Transferor* means, in general, a person that transfers to a disputed ownership fund money or property that is subject to conflicting claims of claimants. However, a payor of interest or other income earned by a disputed ownership fund is not a transferor (unless the payor is also a claimant). A transferor may also be a claimant.

(c) *Taxation of a disputed ownership fund*—(1) *In general.* For federal income tax purposes, a disputed ownership fund is treated as the owner of all assets that it holds. A disputed ownership fund is treated as a C corporation for purposes of subtitle F of the Internal Revenue Code, and the administrator of the fund must obtain an employer identification number for the fund, make all required income tax and information returns, and deposit all payments of tax. Also, except as otherwise provided in this section, a disputed ownership fund is taxable as if it were either—

(i) A qualified settlement fund under § 1.468B–2 if all the assets transferred to the fund by or on behalf of transferors are passive investment assets, for example, cash or cash equivalents, stock, and debt obligations; or

(ii) A C corporation in all other cases.

(2) *Exception.* If there is a more appropriate method of taxing a disputed ownership fund than as provided in paragraph (c)(1) of this section, the claimants to the fund may submit a private letter ruling request proposing an alternative method of taxation.

(3) *Special rules.* (i) In general, money or property subject to conflicting claims of claimants (disputed property) that is transferred to a disputed ownership fund by, or on behalf of, a transferor is excluded from the gross income of the fund. However, this exclusion does not

apply to income earned on assets of the fund such as—

(A) Payments to a disputed ownership fund made in compensation for late or delayed transfers of money or property;

(B) Dividends on stock of a transferor (or a related person) held by the fund; and

(C) Interest on debt of a transferor (or a related person) held by the fund.

(ii) A distribution to a claimant of disputed property by a disputed ownership fund is not a taxable event to the fund.

(iii) A disputed ownership fund is not allowed a deduction for a distribution of disputed property to, or on behalf of, a transferor or a claimant.

(iv) Upon the termination of a disputed ownership fund, if the fund has an unused net operating loss carryover under section 172, an unused capital loss carryover under section 1212, or an unused tax credit carryover, or if the fund has, for its last taxable year, deductions in excess of gross income, the claimant to whom the fund's net assets are distributable will succeed to and take into account the fund's unused net operating loss carryover, unused capital loss carryover, unused tax credit carryover, or excess of deductions over gross income for the last taxable year of the fund. If the fund's net assets are distributable to more than one claimant, the unused net operating loss carryover, unused capital loss carryover, unused tax credit carryover, or excess of deductions over gross income for the last taxable year must be allocated among the claimants in proportion to the value of the assets distributable to each claimant from the fund.

(v) In the case of a disputed ownership fund taxable as if it were a C corporation under paragraph (c)(1)(ii) of this section, this section does not, in general, restrict the fund's use of an otherwise allowable method of accounting or taxable year.

(vi) Appropriate adjustments must be made by a disputed ownership fund or transferors to the fund to prevent the fund and the transferors from taking into account the same item of income, deduction, gain, loss, or credit more than once or from omitting such items.

(d) *Basis of property held by a disputed ownership fund.* In general, the initial basis of property transferred by, or on behalf of, a transferor to a disputed ownership fund is the fair market value of the property on the date of transfer to the fund as determined by the transferor for purposes of the rules in paragraph (f)(1)(i) of this section. However, if paragraph (f)(1)(ii) of this section applies, the fund's initial basis in the property is the same as the basis of the transferor immediately before the transfer to the fund.

(e) *Request for prompt assessment.* A disputed ownership fund is eligible to request the prompt assessment of tax under section 6501(d). For purposes of section 6501(d), a disputed ownership fund is treated as dissolving on the date the fund no longer has any assets (other than a reasonable reserve for potential tax liabilities and related professional fees) and will not receive any more transfers.

(f) *Rules applicable to the transferor*—(1) *Transfer of property*—(i) *In general.* A transferor must treat a transfer of property to a disputed ownership fund as a sale or other disposition of that property for purposes of section 1001(a). In computing the gain or loss, the amount realized by the transferor is the fair market value of the property on the date the transfer is made to the disputed ownership fund.

(ii) *Exceptions.* A transfer of property to a disputed ownership fund is not a sale or other disposition of the property for purposes of section 1001(a) if—

(A) The transferor claims ownership of the transferred property immediately before and immediately after the transfer to the fund; or

(B) The transferor is an agent, fiduciary, or other person acting in a similar capacity acting on behalf of a person claiming ownership of the transferred property immediately before and immediately after the transfer to the fund.

(2) *Economic performance*—(i) *In general.* For purposes of section 461(h), if a transferor has a liability to one or more claimants for which economic performance would otherwise occur under § 1.461–4(g) when the transferor makes a payment to the claimant or claimants, economic performance occurs with respect to the liability to the extent the transferor makes a transfer to a disputed ownership fund to resolve or satisfy that liability, but only if the transferor and related persons are not claimants and have no right to receive payments or distributions from the fund.

(ii) *Obligations of the transferor.* With respect to a transferor described in paragraph (f)(2)(i) of this section, economic performance does not occur when the transferor transfers to a disputed ownership fund its debt (or the debt of a related person). Instead, economic performance occurs as the transferor (or related person) makes principal payments on the debt. Similarly, economic performance does not occur when the transferor transfers to a disputed ownership fund its obligation (or the obligation of a related person) to provide property in the future or to make a payment described in § 1.461–4(g). Instead, economic performance occurs with respect to such an obligation as property or payments are provided or made to the disputed ownership fund or a claimant.

(3) *Statement to the disputed ownership fund and the Internal Revenue Service*—(i) *In general.* By February 15 of the year following each calendar year in which a transferor (or other person acting on behalf of a transferor) makes a transfer to a disputed ownership fund, the transferor (or other person) must provide a statement to the administrator of the fund setting forth the information described in paragraph (f)(3)(ii) of this section. The transferor must attach a copy of the statement to (and as part of) its timely filed income tax return (including extensions) for the taxable year of the transferor in which the transfer is made.

(ii) *Information required on statement*—(A) *In general.* The statement required by paragraph (f)(3)(i) of this section must include the following information—

(*1*) A legend, "§ 1.468B–9(f) Statement", at the top of the first page;

(*2*) The transferor's name, address, and taxpayer identification number;

(*3*) The disputed ownership fund's name, address, and employer identification number;

(*4*) The date of each transfer;

(*5*) The amount of cash transferred;

(*6*) A description of property transferred, the disputed ownership fund's basis in the property as provided in paragraph (d) of this section, and, if the rules of paragraph (f)(1)(ii) of this section apply, the fund's holding period on the date of transfer; and

(*7*) Whether or not the transferor is also a claimant.

(B) *Combined statements.* If a disputed ownership fund has more than one transferor, any two or more of the transferors may provide a combined statement to the administrator that does not identify the amount of cash or the property transferred by a particular transferor. If a combined statement is used, however, each transferor must include with its copy of the statement that is attached to its income tax return a schedule describing each asset that the transferor transferred to the disputed ownership fund.

(4) *Distributions to transferors*—(i) *In general.* A transferor must include in gross income any distribution to a transferor (including a deemed distribution described in paragraph (f)(4)(iii) of this section) from a disputed

ownership fund. If property is distributed, the amount includible in gross income and the basis in that property is generally the fair market value of the property on the date of distribution.

(ii) *Exception.* The gross income of a transferor does not include a distribution to the transferor of property from a disputed ownership fund if the transferor previously transferred the property to the fund and paragraph (f)(1)(ii) of this section applied to that transfer. Also, the transferor's gross income does not include a distribution of money from the disputed ownership fund equal to the net income earned on that property while it was held by the fund. Further, the transferor's basis in the property is the same as the disputed ownership fund's basis in the property immediately before the distribution to the transferor.

(iii) *Deemed distributions.* If a disputed ownership fund makes a distribution on behalf of a transferor to a person that is not a claimant, the distribution is deemed made by the fund to the transferor. The transferor, in turn, is deemed to have made a payment to the actual recipient.

(g) *Distribution to a claimant other than a transferor.* Whether a claimant other than a transferor must include in gross income a distribution of money or property from a disputed ownership fund is generally determined by reference to the claim in respect of which the distribution is made. If a disputed ownership fund distributes property to a claimant other than a transferor in satisfaction of the claimant's claim of ownership to that property, the claimant's basis in the property must be adjusted to reflect the adjustments to the basis of the property required under section 1016 for the period the property was held by the fund.

(h) *Effective date*—(1) *In general.* This section applies to disputed ownership funds established after the date of publication of final regulations in the **Federal Register**.

(2) *Transition rule.* With respect to a disputed ownership fund established after August 16, 1986, but on or before the date of publication of final regulations in the **Federal Register**, the Internal Revenue Service will not challenge a reasonable, consistently applied method of taxation for income earned by the fund, transfers to the fund, and distributions made by the fund.

(i) [Reserved].

(j) *Examples.* The following examples illustrate the rules of this section:

Example 1. (i) Prior to A's death, A was the insured under a life insurance contract (policy) issued by X, an insurance company. A's current spouse and A's former spouse each claim to be the beneficiary under the policy and thus entitled to the policy proceeds ($1 million). In 1999, X files an interpleader action and deposits the policy proceeds into the registry of the court. On June 1, 2000, a final determination is made that A's current spouse is the beneficiary under the policy and thus entitled to the funds held in the registry of the court. These funds are distributed to A's current spouse.

(ii) The funds held in the registry of the court consisting of the policy proceeds and the earnings thereon are a disputed ownership fund taxable as if it were a qualified settlement fund. See paragraph (c)(1)(i) of this section. The fund's gross income does not include the $1 million transferred to the fund by X.

Example 2. (i) Two unrelated individuals, A and B, claim ownership of certain rental property. A claims to have purchased the property from B's father. However, B asserts that the purported sale to A was ineffective and that B acquired ownership of the property through intestate succession upon the death of B's father. For several years, A has maintained the property and received the rent from the property.

(ii) Pending the resolution of the title dispute between A and B, the title to the property is transferred into a court-supervised escrow on February 1, 2000. Also, on that date the court appoints R as receiver for the property. R collects the rent earned on the property and hires employees necessary for the maintenance of the property. The rents paid to R cannot be distributed to A or B without the court's approval.

(iii) On June 1, 2001, the court makes a final determination that the rental property is owned by B. The court orders B to refund to A the purchase price paid by A to B's father plus interest on that amount from February 1, 2000. Also, the court orders that a distribution be made to B of all funds held in the court registry consisting of the rent collected by R and the income earned thereon. In addition, title to the property is returned to B.

(iv) The rental property and the funds held by the court registry are held in a disputed ownership fund.

(v) A is the transferor to the fund. A does not realize gain or loss under section 1001(a) on A's transfer of the property to the disputed ownership fund.

(vi) The fund is taxable as if it were a C corporation because the rental property is not a passive investment asset. See paragraph (c)(1)(ii) of this section. The fund is not taxable upon receipt of the property. The fund's initial basis in the property is the same as A's adjusted basis immediately before the transfer to the fund. The fund's gross income includes the rents paid to R and the income earned thereon. For the period between February 1, 2000, and June 1, 2001, the fund may be allowed deductions for depreciation and for the costs of maintenance of the property because the fund is treated as owning the property during this period. See sections 162, 167, and 168.

(vii) The fund is not allowed a deduction for the distribution to B of the rent earned on the property while held by the fund (or the income earned thereon). No tax consequences to the fund result from this distribution or from the fund's transfer of the rental property to B pursuant to the court's determination that B owns the property.

Par. 6. Section 1.1031(k)–1 is amended by adding a sentence at the end of paragraphs (g)(3)(i) and (h)(2) to read as follows:

§ 1.1031(k)–1 Treatment of deferred exchanges.

* * * * *

(g) * * *

(3) * * * (i) * * * For rules under section 468B(g) relating to the current taxation of income of a qualified escrow account or qualified trust, see § 1.468B–6.

* * * * *

(h) * * *

(2) * * * For rules under section 468B(g) relating to the current taxation of income of a qualified escrow account or qualified trust, see § 1.468B–6.

* * * * *

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1515 Filed 1–29–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–155]

RIN 2115–AE46

Special Local Regulations: Hudson Valley Triathlon, Hudson River, Kingston, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the annual Hudson Valley Triathlon. This action is necessary to provide for the safety of life on navigable waters during the event. This event is intended to restrict vessel traffic in the Hudson River, in the vicinity of Kingston Point Reach.

DATES: Comments must be received on or before April 2, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–98–155), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m.,

Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–155) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The New York Triathlon Club sponsors this annual triathlon with approximately 500 swimmers competing in this event. The sponsor expects no spectator craft for this event. The race will take place on the Hudson River in the vicinity of Kingston Point Reach. The regulated area encompasses all waters of the Hudson River within a 1000 yard radius of approximate position 41°56′06″ N 073°57′57″ W (NAD 1983). This area encompasses approximately 1,800 yards of Kingston Point Reach, from just south of Lighted Buoy 74 (LLNR 38285) north to Lighted Buoy 77 (LLNR 38300). The proposed regulation is effective annually from 7 a.m. until 9 a.m. on the first Sunday after July 4th. The proposed regulation prohibits all vessels, swimmers, and personal watercraft not participating in the event from transiting this portion of the Hudson River during the race. It is needed to protect swimmers and boaters from the hazards associated with 500 swimmers competing in a confined area of the Hudson River. Recreational vessels are not precluded from transiting the Hudson River in the vicinity of the regulated area because an alternate route is available. They can transit on the east side of the Hudson River and return to the west side at Ulster Landing or Turkey Point to the north, or at the mouth of Rondout Creek to the south of the local regulated area. Recreational vessels can not simply transit around the area because there are many mid-river shoals, with depths less then 3 feet, north of the local regulated area. Commercial vessels will be precluded from transiting the area because the local regulated area encompasses 1,800 yards of Kingston Point Reach and there is no viable alternative route.

Discussion of Proposed Rule

The proposed special local regulation is for the annual Hudson Valley Triathlon held on the Hudson River in the vicinity of Kingston Point Reach. This event is held annually on the first Sunday after July 4th. This rule is being proposed to provide for the safety of life on navigable waters during the event, to give the marine community the opportunity to comment on the regulated area, and to decrease the amount of annual paperwork required for this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Hudson River during the race, the effect of this regulation will not be significant for several reasons: the limited duration on a Sunday morning that the regulated area will be in effect, recreational vessels will be able to transit to the east of the regulated area, commercial vessels can plan their transits up the river around the time the regulated area is in effect as they will have advance notice of the event, it is an annual event with local support, and advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal

governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.121 to read as follows:

§ 100.121 Hudson Valley Triathlon, Hudson River, Kingston, New York.

(a) *Regulated Area.* All waters of the Hudson River within a 1000 yard radius of approximate position 41°56′06″ N 073°57′57″ W (NAD 1983). This area encompasses approximately 1,800 yards of Kingston Point Reach, from just south of Lighted Buoy 74 (LLNR 38285) north to Lighted Buoy 77 (LLNR 38300).

(b) *Regulations.* (1) Vessels, swimmers, and personal watercraft of any nature not participating in this event are prohibited from entering or moving within the regulated area unless authorized by the Patrol Commander.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* This section is in effect annually from 7 a.m. until 9 a.m. on the first Sunday after July 4th.

Dated: January 20, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–2275 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–163]

Special Local Regulations: Fleet's Albany Riverfest, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposed to establish permanent special local regulations for the annual Fleet's Albany Riverfest. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Hudson River, in the vicinity of Albany, New York.

DATES: Comments must be received on or before April 2, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–98–163), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutentant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–163) and the specific section of this document to which each comment applies, and give the reason for each comment. please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The city of Albany sponsors this annual festival which includes a water ski show, speedboat demonstration, and other marine activities on the Hudson River. The sponsor expects no spectator craft for this event. The regulated area for this festival encompasses all waters of the Hudson River from the Dunn Memorial Bridge (river mile 145.4) to the Albany Rensselaer Swing Bridge (river mile 146.2). The proposed regulation is effective annually from 12 p.m. until 4 p.m. on the third Saturday and Sunday of July. The proposed regulation prohibits all vessels, swimmers, and personal watercraft not participating in the event from transiting this portion of the Hudson River during the festival. It is needed to protect boaters from the hazards associated with a water ski show, speedboat demonstration, and other marine activities being held in the area. Marine traffic will be able to transit through the regulated area for 30 minutes during the event. Public notifications for the transit time will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

Discussion of Proposed Rule

The proposed special local regulation is for the annual Fleet's Albany Riverfest held on the Hudson River in the vicinity of Albany, New York. This event is held annually on the third Saturday and Sunday of July. This rule is being proposed to provide for the safety of life on navigable waters during the event, to give the marine community the opportunity to comment on the regulated area, and to decrease the amount of annual paperwork required for this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Hudson River during the event, the effect of this regulation will not be significant for several reasons: the limited duration that the regulated area will be in effect, marine traffic will be able to transit through the regulated area for 30 minutes during the event, the Port Commissioner's office for the Port of Albany has stated there is infrequent commercial traffic north of the Dunn Memorial Bridge (river mile 145.4), commercial vessels can plan their transits up the river around the time the regulated area is in effect as they will have advance notice of the event, it is an annual event with local support, and advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate cost of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.122 to read as follows:

§ 100.122 Fleet's Albany Riverfest, Hudson River, New York.

(a) *Regulated Area.* All waters of the Hudson River from the Dunn Memorial Bridge (river mile 145.4) to the Albany Rensselaer Swing Bridge (river mile 146.2).

(b) *Regulations.* (1) Vessels, swimmers, and personal watercraft of any nature not participating in this event are prohibited from entering or moving within the regulated area unless authorized by the Patrol Commander.

(2) Marine traffic will be able to transit through the regulated area for 30 minutes during the event. Public notifications for the transit time will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* This section is in effect annually from 12 p.m. until 4 p.m. on the third Saturday and Sunday of July.

Dated: January 20, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–2274 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 173

[USCG 98–3386]

RIN 2115–AF62

Adjustment of Fees for Issuing Numbers to Undocumented Vessels in Alaska

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to increase the fees it charges for issuing numbers to undocumented vessels in Alaska, to a rate enabling full-cost recovery. It proposes this measure because the fees it now charges fall far short of covering the cost of issuing numbers there. This measure should bring it into full compliance with the general Federal statute on user fees and, not incidentally, should increase convenience to the public by allowing more means of payment.

DATES: Comments must reach the Docket Management Facility on or before April 2, 1999.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG 1998–3323), U. S. Department of Transportation, room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001, or deliver them to room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and documents, as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov*. You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647, or read it on the Internet, at the Web Site for the Office of Boating Safety, at http://www.uscgboating.org or at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this rulemaking, contact Mrs. Janice B. Giles, Program Development and Implementation Division, Office of Boating Safety, Coast Guard, telephone 202–267–0911 (email: jgiles@comdt.uscg.mil), or Sue Hargis, Seventeenth Coast Guard District (Alaska) Boating Safety Specialist, (907) 463–2297 (email: shargis@cgalaska.uscg.mil). For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [USCG 1998–3386] and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public meeting. Persons may request a public hearing by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Title 33, Part 173, of the Code of Federal Regulations (CFR) governs the issuance of certificates of number to owners of vessels that need not be documented (generally, recreational boats). The issuing and reporting authority for these certificates is the State where the vessel is principally operated, with one exception: Alaska does not act as this authority. Under sub-section 12301(a) of Title 46, United States Code (U.S.C.), when a State does not act as the issuing authority, the Coast Guard must.

This proposed rule would raise the fees the Coast Guard charges for numbering undocumented vessels in Alaska, as well as revise the methods of payment of the fees. The current fees, promulgated in 1972 (33 CFR 173.85, CGD 72–54R, 37 FR 21399, October 7, 1972), fall far short of covering costs the Coast Guard incurs on numbering vessels. The Coast Guard must set these fees in accordance with the criteria specified in section 9701 of Title 31, U.S.C., and Revised OMB Circular A–25, which establishes guidelines by which Federal agencies are to assess fees for Government services and for the sale or use of Government property or resources. The current fees have not affected Coast Guard appropriations from year to year. They have gone into the general fund of the U. S. Treasury as offsetting receipts of the department in which the Coast Guard is operating, and are ascribed to activities of the Coast Guard. Under the provisions of 46 U.S.C. 2110, the new fees proposed would become available to reimburse the Coast Guard for most, if not all, of the costs of collection. The proposed rule should result in an increased fee that more nearly approximates the current costs for the Coast Guard to issue numbers to vessels in Alaska.

Discussion of Proposed Rule

The issuance of numbers by the Coast Guard to undocumented vessels is unique to the State of Alaska and the 17th Coast Guard District. In all other parts of the nation, State or Territorial authorities act as the issuing authorities. The Coast Guard retains the responsibility for Alaska under 33 CFR part 173, because the government of Alaska has not sought Coast Guard approval of a system for numbering vessels.

This proposed rule would amend 33 CFR 173.85 so that the fees charged would cover the costs incurred for the number-issuing service the Coast Guard must provide in Alaska. The increased fees would affect those people who own vessels to which 33 CFR 173.11 applies (undocumented vessels) and which are principally operated in Alaska.

Discussion of fees. The current fee, set in 1972, is $6.00 for a three-year vessel number. Under the general Federal statute on user fees (31 U.S.C. 9701), Federal agencies required to charge user fees for services must charge fees sufficient to enable recovery of the full cost of providing the services. 46 U.S.C. 2110 mandated the establishment of a fee or charge for a service or thing of value provided by the Secretary under this subtitle, in accordance with section 9701 of title 31. Since the issuance of numbers to vessels is a labor-intensive service, and since the Coast Guard receives no appropriated funds for it, the Coast Guard has diverted resources from other programs to provide this service to the Alaskan boating public. The fee that the Coast Guard collects

does not accrue to the Coast Guard; it goes into miscellaneous receipts of the Federal Treasury. But even if it did accrue to the Coast Guard it would cover barely 25 percent of the cost of providing the service. It has remained unchanged for 26 years.

The Coast Guard recently employed KPMG Peat Marwick LLP, through a contract with Computer Sciences Corporation of Falls Church, Virginia, to analyze the processes associated with all user fees collected by the Coast Guard, including the issuance of certificates of number in Alaska, and to develop a methodology for determining user fees that would enable the Coast Guard to fully recover its costs for providing these services. A copy of the analysis is in the docket for this rulemaking.

The analysis concluded that the Coast Guard was not applying the resources needed to efficiently provide the Alaskan boating public with this service and that, at the 26-year-old rate, it could never recover the cost of providing the service. Based on that analysis, the report proposed a rationale and methodology for calculating the appropriate user fees that would allow it to fully recover its cost for providing this unique service in Alaska.

Cost methodology. Acting on the recommendations of KPMG, the Coast Guard adopted a costing methodology that is based in part on Activity-Based Costing (ABC). ABC differs from traditional cost accounting in that it assigns costs according to the activities required to produce an output, rather than according to categories of expenses. In addition, the staff of the 17th Coast Guard District conducted a study of its costs for issuing certificates of number: direct labor hours for providing these services, plus costs of material such as forms, validation stickers (decals), mailing, office equipment, and other supplies.

Fee calculations. No automated system of the Coast Guard distinctly records direct hours of labor spent on issuance of certificates of number. The Coast Guard calculated its indirect costs for general and administrative (G&A) expenses and allocated these costs based on resource labor hours used to process the four types of transactions comprising undocumented vessel numbering (certificates issued or transferred, certificates renewed, certificates duplicated; and decals replaced). District staff reconstructed the numbers of each of these types of transactions, using data consistently recorded in worksheets.

The steps employed to calculate the user fees for numbering undocumented vessels are as follows:

1. Determine the annual hours of labor spent on numbering undocumented vessels. Staff determined these by using the Personnel Allowance List (PAL) for the District and conducting interviews with personnel of the District.

2. Determine the percentage of annual hours of labor spent providing each of the four types of transactions comprising this numbering. Staff multiplied the annual number of each of the transactions by the average time required to perform each of those transactions to determine the total annual time spent performing each transaction. Staff determined the annual time to perform each of the four transactions by the percentage of the total annual time attributable to each transaction type.

3. Determine the annual labor cost for each of the four types of transactions by prorating the annual salary of the numbers and grades of personnel of the Coast Guard employed in direct support of vessel numbering. Staff prorated salaries using the factors developed in steps 1 and 2.

4. Determine the total direct costs of undocumented vessel numbering. Again, staff provided detailed information on direct costs incurred for numbering undocumented vessels that no system of the Coast Guard distinctly records. These direct costs comprise labor (as determined in steps 1–3, above), the cost for vessel numbering materials used, and mailing expenses.

5. Determine the general and administrative (G&A) costs attributable to issuing undocumented vessels numbers. These indirect costs comprise the Coast Guard's general and administrative expenses for administering the services, and were allocated based upon labor hours.

6. Determine the amount for each user fee by dividing the annual cost for each of the four types of transactions by the number of transactions accomplished. Figure 1 outlines the number of transactions, and the direct and indirect costs associated with each of the four types of transactions comprising undocumented vessels' numbering, provided in Alaska during fiscal year 1997, as well as the user fee derived with this methodology.

FIGURE 1.—DERIVED USER FEES FOR VESSEL NUMBERING

Service	Transactions	Direct costs	G&A costs	Total cost	Computed fee
Certificates issued or transferred	6,377	129,066	28,774	157,840	24.75
Certificates renewed	5,053	68,087	15,179	83,266	16.48
Certificates duplicated or decals replaced	602	4,766	1,062	5,828	9.68

We have rounded the fees proposed down to the nearest whole dollar amount to simplify collection and accounting and to conform with 46 U.S.C. 2110(a)(3).

Changes to 33 CFR 173.85

The three-year fee for original and transferred certificates of number would increase from $6.00 to $24.00. The fee for renewal of a certificate of number would increase from $6.00 to $16.00. The fee for a duplicate certificate of number would increase from $1.00 to $9.00. The fee for replacement of a lost or destroyed Validation Sticker would increase from $0.25 to $9.00. The Coast Guard would accept payment of fees by check, money-order, major credit card (MasterCard or Visa), or cash.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The prospective increase in number-issuing fees (which are paid by owners of recreational boats only once every three years) would be less than $25.00, and would affect a minority of the State's population.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard

considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Records of the Coast Guard indicate that as of December 31, 1997, there were 32,414 undocumented vessels numbered by the Coast Guard in Alaska. Of those, 7,107 vessels (23 percent) are owned by commercial entities (4,945 commercial fishing vessels, 1,656 commercial passenger-carrying vessels, and 506 rental or livery vessels), some of which may qualify as "small entities." Also, in 1997, the Coast Guard issued 6,377 original certificates of number, 5,053 renewal certificates of number, and 601 duplicate certificates of number or replacement validation stickers. The proposed fees would increase the cost of three-year original and renewal certificates of number by $18.00 and $10.00, respectively, for an annual rise in cost of about $6.00 and $3.33, respectively, where the fees applied at all. The fees would increase the cost of duplicate certificates of number and replacement validation stickers by $8.00 and $8.75, respectively, when needed. The Coast Guard estimates that the fees could increase costs about $36,000, or about $12,000 annually, for the entire fleet of currently numbered commercial-use vessels in Alaska. Again, however, under the general Federal statute on user fees, the Coast Guard is bound to recover its costs. But, under 5 U.S.C. 610 and Circular A–25, the Coast Guard is bound to review these fees every two years.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this rule would have a significant economic impact on your business or organization, please submit a comment to the Docket Management Facility explaining why you think it qualifies and in what way and to what degree this rule would economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. The Coast Guard is complying with the general Federal statute on user fees, and the specific Federal statute for services provided under subtitle II of title 46.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. The rulemaking merely adjusts the fee amounts charged to owners of undocumented vessels for issuing vessel numbers and validation stickers. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 173

Marine Safety, Reporting and Recordkeeping Requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 173 as follows:

PART 173—VESSEL NUMBERING AND CASUALTY AND ACCIDENT REPORTING

1. Revise the authority citation for Part 173 to read as follows:

Authority: 5 U.S.C. 610; 31 U.S.C. 9701; 46 U.S.C. 2110, 6101, 12301, 12302; OMB Circular A–25; 49 CFR 1.46.

2. Revise § 173.85 to read as follows:

§ 173.85 Fees levied by the Coast Guard.

(a) In a State where the Coast Guard is the issuing authority, the fees for issuing certificates of number are:

(1) Original or transferred certificate of number and two validation stickers—$24.00;

(2) Renewal of certificate of number and two validation stickers—$16.00;

(3) Duplicate certificate of number—$9.00; and

(4) Replacement of lost or destroyed validation stickers—$9.00.

(b) Fees are payable by check or money-order made payable to the "U.S. Coast Guard"; by major credit card (MasterCard or Visa); or, when the owner applies in person, in cash.

Dated: January 13, 1999.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 99–1986 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Facility Standards; Notice of Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of meeting.

SUMMARY: NARA will hold a public meeting to discuss its plans to revise regulations on facility standards for records centers used to store Federal records (36 CFR part 1228, subpart K). Additional background information on the planned regulation may be found in the October 1998 Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions, at page 61388 of the November 9, 1998, **Federal Register** (63 FR 61388).

DATES: The meeting will be held on February 18, 10 a.m. to noon.

ADDRESSES: The meeting will be held in Lecture Rooms B, C, and D, in NARA's College Park facility at 8601 Adelphi Road, College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Nancy Allard (301) 713–7360.

Dated: January 27, 1999.

Richard L. Claypoole,

Assistant Archivist for Regional Records Services.

[FR Doc. 99–2355 Filed 1–29–99; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 262

[FRL–6227–8]

RIN 2050–AE60

180-Day Accumulation Time for Waste Water Treatment Sludges From the Metal Finishing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: As part of the Common Sense Initiative (CSI), the Environmental Protection Agency (EPA) is today proposing a cleaner, cheaper, and smarter opportunity for environmental

protection for the Metal Finishing Industry. EPA is proposing to allow generators of F006 waste (sludges from the treatment of electroplating wastewaters) up to 180 days (or up to 270 days, if applicable) to accumulate F006 waste without a hazardous waste storage permit or interim status, provided that these generators meet certain conditions. The first condition is that F006 waste generators have implemented pollution prevention practices that reduce the volume or toxicity of the F006 waste or that make it more amenable for metals recovery. The second condition is that they recycle the F006 waste by metals recovery. The third condition is that they accumulate no more than 16,000 kilograms of F006 waste at any one time. The final condition is that they comply with the applicable management standards. EPA believes that the 180-day accumulation time for F006 waste is protective of human health and the environment. The 180-day accumulation time would minimize economic barriers to the recycling of F006 waste through metals recovery, thus providing generators of F006 waste with an incentive to choose metals recovery over treatment and land disposal as their waste management option for F006 waste.

DATES: Written comments on this proposed rule should be submitted on or before April 2, 1999.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–1999–F06P–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–1999–F06P–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305G), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway One, First Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $0.15 per page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Jeffery S. Hannapel (5304–W), Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–8826, hannapel.jeff@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The index and some supporting materials are available on the Internet. Follow these instructions to access the information electronically: www: http://www.epa.gov/oswer/hazwaste/gener/f006acum.htm

FTP: ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/oswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

I. Authority

This proposed rule is issued under authority of sections 2002, 3001, 3002, 3003, 3004 and 3005 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, and as amended by the Hazardous and Solid Waste Amendments of 1984. 42 U.S.C. 6906, 6912, 6921–6925, 6937 and 6938.

II. Background

A. Purpose and Context for Proposed Rule

The Resource Conservation and Recovery Act (RCRA) directs EPA to promulgate standards for generation of hazardous waste as necessary to protect human health and the environment. RCRA Section 3002. Section 1003 of RCRA establishes a national objective of "minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitutions, materials recovery, properly conducted recycling and reuse, and treatment." In response to these provisions, EPA has endeavored to develop regulations that promote legitimate recycling of solid and hazardous waste while protecting human health and the environment against the development and use of unsafe or sham recycling practices. Today's proposed rule is an effort to promote the legitimate metals recovery of F006 wastes and to reduce the volume of F006 wastes that is land disposed. The Agency is proposing to provide flexibility in the RCRA regulations governing accumulation time limits for generators who accumulate wastewater treatment sludges from electroplating operations (*i.e.*, the listed hazardous waste, F006) and process these sludges for metals recovery.

Today's proposed rule would allow generators of F006 waste up to 180 days to accumulate F006 waste on site, without a RCRA permit or interim status, as an incentive to encourage metals recovery and pollution prevention practices for this waste. Under the rule as proposed today, F006 wastes that are not recycled by metals recovery would not be eligible for the 180-day accumulation time. In order to ensure that on-site accumulation of F006 waste is protective of human health and the environment, the management standards for 180-day on-site accumulation of F006 waste would be the same as those that currently apply to 90-day on-site accumulation.

This proposed rule is limited to generators of F006 waste. In 40 CFR 261.31, F006 waste is defined as:

> Wastewater treatment sludges generated from electroplating operations, except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated

basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.

In listing electroplating wastewater treatment sludges as hazardous waste, EPA identified several hazardous constituents, including cadmium, hexavalent chromium, nickel, and complexed cyanides that could pose a substantial hazard to human health or the environment if the sludge was mismanaged. The potential hazards associated with the constituents of concern in the sludge and the potential for improper management of the electroplating wastewater treatment sludges served as the basis for listing the sludge as the hazardous waste, F006. The listing status of the waste would not be affected by this proposed rule.

The physical form of F006 waste can generally be described as a mixed metal hydroxide wastewater treatment precipitate, which is 24 to 50 percent solids by weight. Other physical forms of this material can include spent ion exchange columns or iron precipitation solids. F006 sludges may contain metals with commercial value that can be recovered from the sludges. The metals recovered from these sludges are most often concentrates and intermediate materials that require further processing before a commercially usable metal is produced. Often, the metals contained in these industrial sludges are recovered in the form of a metal oxide or salt (*e.g.*, lead oxide, lead chloride, lead sulfate) through High Temperature Metals Recovery (HTMR), such as smelting operations.

Currently, generators who generate greater than 1,000 kilograms of hazardous waste in a calendar month (*i.e.*, large quantity generators) may accumulate hazardous waste on-site, without having to obtain a RCRA permit for the on-site accumulation activities, for a period of up to 90 days. Many generators of F006 wastewater treatment sludges indicate that this 90-day accumulation limit restricts their ability to generate a large enough volume of F006 sludge to make recycling more economically feasible when compared to treatment and land disposal. This is principally because of: (1) The relatively high cost of transportation of the hazardous sludge from a generator's establishment to a recycling or smelting facility (due, in part, to the longer distances to metals recovery facilities and the fact that generators are shipping partial truck loads) and (2) the surcharge that metals recovery facilities generally charge generators and waste brokers for managing small quantities of F006 waste.

In today's proposed rule, EPA is proposing to allow generators of F006 electroplating sludge to accumulate F006 waste on site for up to 180 days in tanks, containers or containment buildings without a RCRA permit, if the generator: (1) Has implemented pollution prevention practices that reduce the volume or toxicity of the F006 waste or that make the F006 waste more amenable for metals recovery, (2) recycles the F006 waste through metals recovery, (3) accumulates no more than 16,000 kilograms of F006 waste at any one time, and (4) complies with the applicable management standards in the rule. This proposal would not change any other requirements applicable to generators of hazardous waste. EPA believes that the 180-day accumulation period will allow generators of F006 waste to ship the waste off site less frequently (*e.g.*, twice a year rather than four times a year under the existing 90-day accumulation rule), and thereby, reduce the costs associated with transporting F006 sludges to metals recovery facilities. Because generators can accumulate F006 waste on site for 180 days only if the waste is sent off site for metals recovery, EPA expects that the quantities of F006 waste that are recycled, rather than treated and land disposed, will increase. F006 waste metals recovery also promotes resource conservation because metals recovered from the sludges may serve as alternative feedstocks for primary metals in production and manufacturing processes.

EPA is basing this proposal, in part, on discussions under the Agency's Common Sense Initiative for the Metal Finishing Industry. The Common Sense Initiative, as well as broader changes in the regulation of F006 waste being considered as part of the Common Sense Initiative, are discussed in more detail below. The Agency notes that today's proposed rule only affects the amount of time generators of F006 waste may accumulate that waste on site, without a RCRA permit, prior to having it processed for metals recovery. At this time, EPA is proposing no other changes to the hazardous waste management standards governing generator activities. All other provisions governing hazardous waste management activities for large quantity generators under 40 CFR part 262 (*e.g.*, unit specific standards, recordkeeping and reporting, and manifesting requirements) would remain unchanged and in effect with respect to large quantity generators of F006 waste.

B. Common Sense Initiative (CSI) for Metal Finishing Industry

Today's proposal is an outgrowth of activities conducted under the EPA's Common Sense Initiative (CSI), an innovative approach to environmental protection and pollution prevention. The CSI was established on October 17, 1994, through a charter pursuant to the Federal Advisory Committee Act (FACA). The goal of the CSI is to use consensus decision-making to recommend policy and program changes to the CSI Council and the EPA Administrator. EPA selected six industries to serve as CSI pilot industries: automobile manufacturing, computer and electronics, iron and steel, metal finishing, petroleum refining, and printing. These six industries comprise over 11 percent of the U.S. Gross Domestic Product, employ over 4 million people, and account for over 12 percent of the toxic releases reported by United States industry. As such, they offer excellent opportunities to test and refine CSI concepts, to create environmental solutions that can operate across industries, and to identify opportunities to expand CSI concepts to other relevant industries.

CSI is organized through an advisory committee referred to as the "CSI Council," that is comprised of high-level representatives from various stakeholder groups, including all involved industries. For each industry, known as a "sector" in CSI, the CSI Council establishes a subcommittee of stakeholders to look for cleaner, cheaper, and smarter opportunities for environmental protection in that sector. Sector subcommittees and work groups meet frequently to develop and discuss progress in various projects, policy considerations, and other issues. Team options, proposals, issues, and data are forwarded to the CSI Council for further action. The CSI Council considers matters from the sector subcommittees and makes recommendations to the Administrator. The CSI process is producing better, more applicable environmental protection strategies that are developed, in part, by the regulated community, and in concert with regulatory agencies and public interest groups.

Since beginning their work in January 1995, the sector subcommittees have developed nearly 40 projects involving more than 150 stakeholders who actively participate in sector subcommittees and subcommittee workgroups. Some of the projects are specific to individual sectors. Other projects explore solutions to common

issues such as alternative flexible regulatory systems, pollution prevention, reporting, compliance, permitting, and environmental technology.

Today's proposal stems primarily from CSI efforts in the metal finishing industry sector. The metal finishing industry consists of more than three thousand "job shops" (*i.e.*, independent metal plating firms that complete jobs on contract), which are mostly small businesses with limited capital and personnel, and more than eight thousand "captive" metal finishing operations within larger manufacturing facilities. The industry is geographically diverse, but concentrated in heavily industrialized states. Because of the cross-media impacts of their operations, metal finishers face a broad range of federal, state, and local environmental requirements (especially with regard to water use and waste disposal).

The CSI metal finishing subcommittee has 24 members representing metal finishing companies, trade associations, suppliers, environmental and community groups, organized labor, and state and local governments. Some of the representative organizations include the American Electroplaters and Surface Finishers Society, the National Association of Metal Finishers, the Natural Resources Defense Council, the AFL–CIO, the Barrio Planners of Los Angeles, the Water Environment Federation, and the Association of Metropolitan Sewerage Agencies. As part of its work under CSI, the metal finishing sector has developed a set of ambitious voluntary performance goals to promote pollution prevention and environmental management beyond what is currently required for the industry under federal regulations (*i.e.*, the Strategic Goals Program). The goals address resource utilization, hazardous emissions, economic pay backs, and compliance costs.

As a means towards meeting these goals, the metal finishing subcommittee has endorsed 14 projects, and supports an additional CSI small business sector project. In addition to these 14 projects, the action plan also contains "enabling actions" that all stakeholders have committed to undertake to help the industry meet the Strategic Goals. Allowing generators of F006 waste to accumulate the sludge for up to 180 days is one of the enabling actions to help remove unnecessary barriers to recycling and to promote the goals of the CSI effort.

Another one of the enabling actions includes a study conducted by EPA to examine whether the physical nature of F006 waste has changed as a result of process improvements in the last twenty years, and if so, whether some type of regulatory, administrative, or other relief for the management of F006 waste is warranted. Phase I of this study (*i.e.*, sampling of F006 sludge from 30 metal finishing facilities in three cities) is expected to be completed shortly with the issuance of a report. Phase II of the study (*i.e.*, identifying additional data needs, if any, and examining potential regulatory and administrative strategies that may promote metals recovery of F006 waste, encourage pollution prevention practices related to the generation of F006 waste, and reduce or remove possible RCRA barriers to metals recovery of F006 waste) is now in process.

C. Current Accumulation Time for Large Quantity Generators

The current standards under 40 CFR part 262 for generators of hazardous waste who generate greater than 1,000 kilograms of hazardous waste per month limit the amount of time hazardous waste can be accumulated without a RCRA permit at the generator's site. Under the existing 40 CFR 262.34, generators of greater than 1,000 kilograms of hazardous waste per month may accumulate hazardous waste on site for up to 90 days without having to obtain a RCRA permit. This provision was established to provide generators sufficient time in all reasonable situations for waste accumulation to occur prior to waste management, without interfering with generator manufacturing processes. 51 FR 25487 (July 14, 1986).

Under the existing 90-day accumulation rule, the generator must comply with certain unit-specific standards (*e.g.*, tank, container, containment building, and drip pad standards) for accumulation units, marking and labeling requirements, preparedness and emergency procedure requirements, and release response requirements. 40 CFR 262.34(a). Generators may also petition the EPA Regional Administrator to grant an extension, up to 30 days, to the 90-day accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis under 40 CFR 262.34(b).

As outlined above, and explained below in Section III, the Agency is proposing to allow generators of F006 wastewater treatment sludges to accumulate the waste prior to metals recovery for up to 180 days without a RCRA permit, provided the generators comply with certain conditions, as explained below. For the reasons explained below, the Agency believes that the proposed 180-day accumulation time is appropriate for generators of F006 waste, without interfering with the generator's manufacturing processes. Today's proposed rule makes no changes to the requirements for 90-day accumulation under the current regulations.

D. Current Accumulation Time for Small Quantity Generators

The current federal RCRA regulations governing waste management requirements for hazardous waste generators provide for accumulation time limits for generators who generate more than 100 kilograms of hazardous waste, but less than 1,000 kilograms of hazardous waste in a calendar month, who are known as small quantity generators (SQGs). Section 262.34(d) of 40 CFR provides that SQGs may accumulate hazardous waste on site for 180 days or less without a permit or without having interim status, provided that the generator complies with certain provisions. These existing provisions include a restriction that the generator never accumulates more than 6,000 kilograms of hazardous waste on site. In addition, the generator must comply with certain unit-specific standards (*e.g.*, tank and container standards) for accumulation units, marking and labeling requirements, preparedness and emergency procedure requirements, and release response requirements. The Agency is not proposing in this action to change the current provisions governing the accumulation time periods for SQGs.

1. Transport More Than 200 Miles

Section 262.34(e) of 40 CFR provides that SQGs who must transport the waste, or offer the waste for transport, over a distance of 200 miles or more for off-site treatment, storage, disposal or recycling may accumulate hazardous waste on site for 270 days or less, without a permit or having interim status. Again, the generator must comply with certain unit-specific standards for accumulation units (*e.g.*, tank and container standards), marking and labeling requirements, preparedness and emergency procedure requirements, and release response requirements.

The Agency is not proposing, as part of today's proposal, to change the current provisions governing the accumulation time periods for SQGs that must transport the waste greater than 200 miles for treatment, storage, disposal, or recycling.

2. Unforeseen, Temporary, and Uncontrollable Circumstances

There may be instances, due to unforeseen, temporary, and uncontrollable circumstances, in which SQGs may need to accumulate hazardous wastes on site for a greater period of time than 180 days (or 270 days if the generator must transport waste more than 200 miles for off-site management). In such cases, the generator may petition the EPA Regional Administrator to grant an extension, up to 30 days, to the accumulation time limit due to unforeseen, temporary, and uncontrollable circumstances, on a case-by-case basis under 40 CFR 262.34(f). Today's proposed rule makes no changes to this provision for SQGs.

III. Discussion

A. Overview of Proposed Rule

1. Proposed Approach

Under the current regulatory scheme (*i.e.*, the 90-day accumulation time limit), many generators of F006 waste do not send their F006 waste off site for metals recovery due to economic reasons. Today's rule provides generators of F006 waste with incentives to minimize costs associated with off-site metals recovery so that these generators will be more likely to choose metals recovery over treatment and land disposal as their management option for F006 waste.

Of the approximately 6,000 generators of F006 waste in the metal finishing industry, at least an estimated 1,317 generators produce F006 waste in amounts that exceed the regulatory requirements for small quantity generators. Nonetheless, the amounts generated by this group of 1,317 metal finishers are generally not enough for a full truck load within 90 days. These generators are required to ship the F006 waste off site within 90 days (otherwise a RCRA storage permit would be required for the facility), so their shipments are partial truck loads. The transportation costs for these partial loads are disproportionately higher than they would be for full loads. There is generally some fixed cost associated with having a truck pick up a load of F006 waste regardless of whether the truck is picking up a partial or full load. For the fixed cost portion of the truck, the cost per unit of F006 waste for shipping the waste is more for partial loads than full loads (*e.g.*, the cost per unit of F006 waste for the fixed cost portion of the truck is twice as much for a half-filled truck compared to a full truck). Allowing generators of F006 waste to accumulate a full truck load of F006 waste would, therefore, decrease the cost per unit of F006 waste associated with shipping F006 waste off site for metals recovery.

Similarly, smelters often charge generators proportionately more for small loads of F006 waste (due, in part, to the fixed administrative and transportation costs associated with handling such small loads).[1] Accordingly, the cost per unit of F006 waste sent to a smelter is more for small loads of F006 waste than for larger loads. Allowing generators of F006 waste to accumulate more F006 waste would, therefore, decrease the cost per unit of F006 associated with sending F006 waste to a smelter for metals recovery.

In addition, because of the usual per mile charge for transportation, transporting wastes longer distances costs more. Accordingly, many facilities seek to minimize shipping costs by finding the nearest RCRA permitted treatment, storage or disposal facility, which is most often a landfill. In the United States, there are significantly more landfills than metals recovery facilities that handle F006 wastes. Because there are fewer recycling facilities in the U.S. that can recover metals from F006 waste than landfills that accept F006 waste for disposal, the distances from generator's facilities to metals recovery facilities are generally greater than to landfills. Thus, many generators may not choose metals recovery for their F006 waste due to the higher costs associated with having to transport these wastes longer distances to recycling facilities as compared to landfills.

Under this proposed rule, generators of F006 waste would be allowed to accumulate the waste on site in tanks, containers, or containment buildings for 180 days or less without a RCRA permit, only if they meet the pollution prevention, metals recovery, and 16,000 kilogram accumulation limit conditions of the rule. An accumulation time of 180 days was chosen because it provided sufficient time for most of the F006 waste generators affected by this proposed rule to accumulate a full truck load of F006 waste. Metal finishing stakeholders in the CSI process also indicated that the 180-day (or the 270-day, if applicable) accumulation time would be sufficient time to accumulate F006 waste on site and make metals recovery a more cost effective management option for F006 waste. EPA requests comments on whether 180 days (or 270 days, if applicable) is the appropriate accumulation time for F006 waste. The proposed rule would reduce a generator's overall hazardous waste transportation costs associated with shipping F006 waste off site for metals recovery. If a generator can accumulate enough F006 waste to fill a truck load, then its relative transportation costs would be less. Specifically, if the generator can store the F006 waste for twice as long as before (*i.e.*, 180 days as opposed to 90 days), then it would only have to ship the waste half as many times, thereby decreasing the associated transportation costs. Thus, with today's proposed rule generators of F006 waste would have an incentive to send the F006 waste off site for metals recovery (because generators can accumulate up to 180 days only if the F006 waste is sent off site for metals recovery).

In today's proposed rule, generators of F006 waste would be allowed up to 180 days (or up to 270 days, if applicable) time to accumulate F006 waste on site in tanks, containers or containment buildings without a RCRA permit, provided that the generator: (1) Has implemented pollution prevention practices that reduce the volume or toxicity of the F006 waste or that make it more amenable for metals recovery, (2) recycles the F006 waste by metals recovery, (3) accumulates no more than 16,000 kilograms of F006 waste at any one time, and (4) complies with the applicable management standards in this rule. A brief discussion of these conditions is provided below.

a. Pollution Prevention Practices

As part of the proposed rule, generators must implement pollution prevention practices that reduce the volume or toxicity of the F006 waste or that make it more amenable for metals recovery. Within the metal finishing industry, facilities have implemented a variety of pollution prevention practices including: product substitution, drag-out and counter-current flow rinse systems, flow restrictors, evaporation recovery systems, plating bath reuse, filter press, sludge drying systems, ion exchange systems, and segregation of wastewater streams. Many companies have implemented pollution prevention measures to improve process efficiency, cut waste generation and waste management costs, and improve compliance. Table 1 summarizes several categories of pollution prevention practices that are commonly used within the metal finishing industry. These practices reduce the volume and toxicity of the F006 waste generated or make the F006 waste more amenable for metals recovery, albeit in varying degrees.

[1] NCMS/NAMF Pollution Control Assessment, ¶ 4 (1993).

Individual pollution prevention measures may reduce the toxicity or the volume of F006 waste generated from wastewater treatment. For example, rinse water reduction techniques reduce the volume of effluents discharged from metal finishing process. Drag-out reduction measures reduce the volume and can reduce the toxicity of effluents discharged from metal finishing processes. Implementation of these pollution prevention practices is protective of human health and the environment because the F006 sludge produced is reduced in volume or toxicity. Pollution prevention measures such as these may, however, also increase the concentration of pollutants in F006 sludge, including recyclable metals (*e.g.*, copper, zinc, nickel) and non-recyclable toxic pollutants (*e.g.*, cyanide, cadmium). Increasing the concentration of recoverable metals in F006 sludge can increase the sludge's value as a secondary material, but increasing the concentration of non-recyclable pollutants (*e.g.*, cyanide, cadmium), which pass through the recovery process and must be properly managed and disposed in the environment, can pose potential problems for the management and handling of recycling residues.

Chemical substitution pollution prevention measures reduce or eliminate toxic substances used in the plating process and found in the wastes, and therefore, are desirable from an environmental perspective, wherever they can appropriately be applied. For example, trivalent chromium can be substituted for highly toxic hexavalent chromium in a few applications. In many applications, this substitution may not be possible. Many metal finishers have reduced or eliminated cyanide and cadmium use by substituting other materials, or by ceasing certain plating operations. Chemical substitution pollution prevention practices are generally more protective of human health and the environment because they eliminate or reduce the amount of toxic pollutants in the sludge, and produce sludge that is more amenable for metals recovery (by reducing the amount of non-recyclable toxic pollutants in the sludge).

Pollution prevention practices protect human health and the environment because they reduce the volume and toxicity of F006 sludge and make it more amenable for metals recovery. For example, dewatering F006 sludge makes the waste safer to manage (reduction in free liquids in waste reduces the potential for releases into the environment in the event of a spill) and more amenable for metals recovery (because smelters generally have a moisture limit for incoming secondary materials such as F006 waste). In addition, chemical substitution pollution prevention measures can reduce, or eliminate, the toxic substances that do not get recycled in the metals recovery processes.

Based on available data, EPA believes that most metal finishing facilities have implemented at least one pollution prevention measure and many facilities have implemented several. The number and category of pollution prevention measures used at individual facilities vary broadly. The most common pollution prevention measures include drag-out and rinse water reduction methods, which may improve effluent quality and the amount of metals recovered from F006 sludge. The data available to EPA suggest that chemical substitution pollution prevention measures are used less frequently than rinse water and drag-out reduction techniques.

Today's proposed rule provides an incentive to encourage more metals recovery and less land disposal of F006 wastes by allowing 180 days to accumulate F006 waste, but only for those generators of F006 waste who recycle the F006 waste by metals recovery and have implemented pollution prevention practices that reduce the volume or toxicity of F006 waste or that make it more amenable for metals recovery. At the same time, EPA wishes to encourage facilities to make greater progress in reducing the quantity of non-recyclable toxic pollutants that pass through recovery processes and are ultimately disposed of in landfills. The Agency, therefore, urges facilities (although not specifically required by the proposed rule) to implement at least one chemical substitution pollution prevention measure that reduces or eliminates the amount of toxic pollutants (*e.g.*, cadmium, cyanide, arsenic, hexavalent chromium, or halogenated or chlorinated solvents) contained in F006 sludge that are not economically recoverable from F006 waste. Nonetheless, any facility that already has pollution prevention practices in place that meet the requirements of this proposed rule would not be required to implement additional pollution prevention practices.

The Agency believes that a general condition requiring pollution prevention practices as part of the proposed rule is preferable to a more specific pollution prevention requirement. The technical and economic variables that affect the feasibility of using one or more specific pollution prevention practices at a particular facility are so broad and complex that it would not be possible to specify by rule the best approach for all facilities. Accordingly, the Agency believes that it is appropriate to allow the facilities that want the 180-day accumulation time to implement pollution prevention practices that are best suited to individual facilities, based on their specific metal finishing processes and plating operations. With this approach, facilities can implement those pollution prevention practices that best facilitate metals recovery and protect human health and the environment. EPA requests comments on the general condition requiring pollution prevention practices and whether more specific pollution prevention requirements should be part of this rule.

The proposed rule requires both metals recovery and pollution prevention practices as conditions to accumulate F006 waste on site for up to 180 days without a RCRA storage permit. The rationale for the pollution prevention requirement is to encourage generators to make the F006 waste less hazardous for subsequent management and more amenable for metals recovery. While both pollution prevention and metals recovery are laudable goals, there is a potential tension between pollution prevention practices and metals recovery. For example, if a pollution prevention practice is successful in eliminating, or significantly reducing, the metals in the metal finishing waste stream, then the resulting F006 sludge could have relatively low metal values and could be less amenable to metals recovery. Of course, this tension between pollution prevention practices and metals recovery is highly dependent on the specific pollution prevention practice that is employed. For example, some recovery technologies such as ion exchange work better on dilute wastewaters than on wastewaters with higher metal content.

As alluded to above, the metal finishing industry can implement a wide variety of pollution prevention practices. Some pollution prevention practices can actually enhance the metals recovery process by concentrating metals in the F006 waste or by segregating waste streams into mono-metal or bi-metal sludges that can be more amenable to metals recovery. The use of several pollution prevention measures such as rinse water reduction techniques, chemical substitution, and waste stream separation can produce a sludge that is less hazardous to manage and more amenable to metals recovery. The Agency believes that requiring both

pollution prevention practices and metals recovery as conditions for the 180-day accumulation time is compatible with environmentally responsible metal finishing, is consistent with efforts of the metal finishing industry to improve F006 sludge quality (*i.e.*, reduce the toxicity of the sludge and make it more amenable to metals recovery), and is protective of human health and the environment. The Agency requests comments on how pollution prevention practices and metals recovery can best be used together to promote environmentally sound metals recovery and to protect human health and the environment.

TABLE 1.—EXAMPLES OF POLLUTION PREVENTION MEASURES

Method	Pollution prevention benefits
Improved Operating Practices	
Remove cadmium and zinc anodes from bath when it is idle. Anode baskets can be placed on removable anode bars that are lifted from tank by an overhead hoist.	• Eliminates cadmium/zinc buildup causing decanting of solution due to galvanic cell set up between steel anode basket and cadmium/zinc anodes. • Maintains bath within narrow Cd/Zn concentration providing more predictable plating results.
Eliminate obsolete processes and/or unused or infrequently used processes.	• Reduces risks associated with hazardous chemicals. • Creates floor space to add countercurrent rinses or other P2 methods. • Creates safer and cleaner working environment.
Waste stream segregation of contact and non-contact wastewaters	• Eliminates dilution of process water prior to treatment which can increase treatment efficiency. • Reduces treatment reagent usage and operating costs.
Establish written procedures for bath make-up and additions. Limit chemical handling to trained personnel. Keep tank addition logs.	• Prevents discarding process solutions due to incorrect formulations or contamination. • Improves plating solution and work quality consistency.
Install overflow alarms on all process tanks to prevent tank overflow when adding water to make up for evaporative losses.	• Improves shop safety. • Minimizes potential for catastrophic loss of process solution via overflow.
Conductivity and pH measurement instruments and alarm system for detecting significant chemical losses.	• Prevents loss of expensive chemicals. • Identifies process solution overflows and leaks before total loss occurs. • Alerts treatment operators to potential upset condition.
Control material purchases to minimize obsolete material disposal	• Reduces losses of expensive plating solutions. • Reduces hazardous waste generation. • Reduces chemical purchases.
Use process baths to maximum extent possible before discarding. Eliminate dump schedules. Perform more frequent chemical analysis.	• Prevents discarding of solutions prematurely. • Reduces chemical costs. • Improves work quality with chemical adjustments of baths.
Reduce bath dumps by using filtration to remove suspended solids contamination.	• Extends bath life. • Reduces solid waste generation by reusing filter cartridges. • Improves bath performance.
Process/Chemical Substitution	
Substitute cyanide baths with alkaline baths when possible	• Eliminates use of CN.
Substitute trivalent chromium for hexavalent chromium when product specifications allow.	• Reduces/eliminates use of hexavalent chromium.
Eliminate use of cadmium plating if product specifications allow	• Eliminates the use of cadmium.
Drag-Out Reduction Methods That Reduce Waste Generation	
Install fog rinses or sprays over process tanks to remove drag out as rack/part exits bath. Minimize the formation of drag out by: redesigning parts and racks/barrels to avoid cup shapes, etc. that hold solution; properly racking parts; and reducing rack/part withdraw speed.	• Can inexpensively recover a substantial portion of drag out and does not require additional tankage. • Reduces pollutant mass loading on treatment processes, treatment reagent usage, and resultant sludge generation. • May improve treatment operation/removal efficiency. • Reduces chemical purchases and overall operating costs.
Rinse Water Reduction Methods That Reduce Waste Generation	
Install flow restrictors to control the flow rate of water	• Reduces water use and aids in reducing variability in wastewater flow. • Is very inexpensive to purchase and install.
Install conductivity or timer rinse controls to match rinse water needs with use.	• Coordinates water use and production when properly implemented. • Provides automatic control of water use.
Use counter-current rinse arrangement with two to four tanks in series depending on drag-out rate.	• Can achieve major water reduction. • Has high impact on water bills.

TABLE 1.—EXAMPLES OF POLLUTION PREVENTION MEASURES—Continued

Method	Pollution prevention benefits
Track water use with flow meters and accumulators. Keep logs on water use for individual operations.	• May reduce the size of recovery/treatment equipment that is needed. • Identifies problem areas including inefficient processes or personnel. • Helps management to determine cost for individual plating processes.

Source: NCMS/NAMF. *Pollution Prevention and Control Technology for Plating Operations.* 1994

b. Metals Recovery

Today's rule would allow the 180-day accumulation time for generators who store F006 waste on site and recycle F006 waste by metals recovery off site. Accordingly, the proposed rule supports a preference of metals recovery over treatment and land disposal for F006 waste by allowing up to 180 days accumulation time only for those generators who engage in F006 waste metals recovery. The benefit of this provision would be available only if the accumulated F006 waste is sent off site for metals recovery, thereby providing an incentive for recycling of F006 waste over treatment and land disposal. The Agency requests comments on whether the 180-day accumulation time should be available only to those F006 waste generators that pursue F006 waste metals recovery and not to those who manage their F006 waste through treatment and land disposal.

Today's proposed rule distinguishes between metals recovery that is done on site or off site. If the metals recovery is done on site, the generator would not need additional time to accumulate the waste to reduce shipping costs associated with metals recovery. It may, however, be necessary to accumulate enough F006 waste to make some type of on-site batch metals recovery process or other type of on-site metals recovery more cost effective. Furthermore, if accumulating F006 waste for 180 days poses little, if any, potential harm to human health and the environment, as the damage incident history of F006 storage would suggest (a copy of which is in the docket for this rulemaking), then allowing 180-day accumulation for both on-site and off-site metals recovery could be justified. The Agency requests comments on whether the additional accumulation time should be allowed for both on-site and off-site metals recovery or, if so, under what circumstances would a generator need more than 90 days to accumulate F006 waste prior to on-site metals recovery.

c. Limit on the Amount of F006 Waste That Can Be Accumulated

As stated above, one rationale for allowing the 180-day accumulation time for F006 waste is to allow generators to accumulate a full truck load before having to ship it off site. Accordingly, the proposed rule sets a limit of 16,000 kilograms (approximately 17.6 tons) of F006 waste that can be accumulated on site at any one time. This amount is equivalent to slightly more than a full truck load of F006 waste. Once a generator has accumulated a truck load of F006 waste (regardless of whether the waste has been accumulated for less than 180 days), the generator would be required to ship the F006 waste off site for metals or to obtain a RCRA storage permit. EPA believes that it is appropriate to set a quantity limit for accumulation because the permit exemption should be for the shortest time reasonably necessary to advance the recycling objectives of the proposal. Also, this is consistent with the underlying rationale of the land disposal restrictions (LDR) storage prohibition provision in which generators may store LDR restricted hazardous wastes in "tanks, containers or containment buildings [on site] solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment or disposal. * * *." (emphasis added) 40 CFR 268.50. In today's proposed rule, EPA has identified the quantity of F006 waste necessary to facilitate metals recovery to be one full truck load (*i.e.*, 16,000 kilograms). The Agency requests comments on whether a limit on the amount of F006 waste that can be accumulated is an appropriate condition and, if so, whether the 16,000 kilogram limit is the appropriate limit (as opposed to a different amount).

Furthermore, generators of F006 waste may implement pollution prevention practices whereby the metal constituents in the F006 sludge are isolated in separate waste streams (as opposed to an F006 sludge with several metals which is generally the case). Generating such mono-metal sludges makes the F006 waste more amenable to metals recovery, but each of the mono-metal sludges would need to go to different metals recovery facilities (*e.g.*, chromium F006 sludge to a chromium recovery facility and copper F006 sludge to a copper smelter). Accordingly, the Agency asks whether a generator of F006 waste should be allowed to accumulate quantities of mono-metal F006 sludges that are necessary to facilitate proper metals recovery of that mono-metal sludge (*i.e.*, up to 16,000 kilograms of each mono-metal sludge). The Agency requests comments on whether the 16,000 kilogram accumulation limit should apply to the total quantity of F006 waste accumulated on site or to the quantity of separate F006 waste streams such as mono-metal sludges that must be sent off site to separate metals recovery facilities.

2. Additional Accumulation Time Under Certain Circumstances

a. 200 Miles or More

Under today's proposal, generators of F006 waste would have up to 270 days to accumulate F006 waste on site without a RCRA permit under certain conditions. If the generator must transport the waste, or offer the waste for transport, over a distance of 200 miles or more for off-site metals recovery, the generator would be able to accumulate the F006 waste on site for up to 270 days without a permit or without having interim status, provided the generator has implemented pollution prevention practices that reduce the volume or toxicity of the F006 waste or that make it more amenable for metals recovery, recycles the F006 waste by metals recovery, does not accumulate more than 16,000 kilograms of F006 waste at any one time, and complies with the applicable management standards in the proposed rule. This provision is analogous to the provision for small quantity generators in the existing generator accumulation regulations at 40 CFR 262.34(e).

As with the rest of the proposed provisions of this rule, this requirement is intended to allow generators sufficient time to accumulate enough F006 waste to make shipment of this waste off site more cost effective. Shipping F006 waste to a metals recovery facility that is located more than 200 miles away would cost more than shipping F006 waste to a local (*i.e.*,

less than 200 miles away) hazardous waste landfill. For those generators of F006 waste that do not accumulate enough F006 waste to fill a truck load (*i.e.*, 16,000 kilograms of F006 waste) within 180 days and are located more than 200 miles from a metals recovery facility, treatment and disposal of the F006 waste in the local hazardous waste landfill may be the generator's preferred management option over metals recovery. For those generators of F006 waste that are located long distances from an appropriate metals recovery facility, the 270-day accumulation period is reasonable to allow generators to accumulate more F006 waste for a larger load being shipped off site. The generator would, however, still be subject to the pollution prevention condition, the metals recovery requirement, and the accumulation limit of 16,000 kilograms in this proposed rule. Accordingly, the 270-day accumulation period will be particularly helpful for generators of relatively small amounts of F006 waste (*i.e.*, those that do not accumulate more than 16,000 kilograms of F006 waste in 180 days and that must ship the F006 off site more than 200 miles to a metals recovery facility) and may allow them to send their F006 waste to a metals recovery facility rather than to a treatment and disposal facility. The Agency requests comments on whether this additional accumulation time is warranted and appropriate for generators of F006 waste who must ship their F006 waste 200 miles or more to an off-site metals recovery facility.

b. Unforeseen, Temporary, and Uncontrollable Circumstances

This proposed rule also provides for an extension of the accumulation period, if the generator's F006 waste must remain on site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. The generator would be able to, under these circumstances, request that the EPA Regional Administrator or authorized state grant an extension up to 30 days. This provision is intended to provide the generator with some temporary relief until the unforeseen, temporary, and uncontrollable circumstances can be rectified. The Agency has previously identified the following circumstances as possible rationales for granting this extension: facility's refusal to accept waste, transportation delays, or labor strikes. *See* 47 FR 1248, 1249 (January 11, 1982). These extensions may, however, be granted at the discretion of the EPA Regional Administrator or the authorized state on a case-by-case basis. This provision is analogous to the provision for other generators in the existing regulations at 40 CFR 262.34(b).

Because the proposed rule sets an accumulation limit of 16,000 kilograms of F006 waste that can be accumulated on site at any one time, the proposed rule would also allow a generator to request permission to accumulate more than 16,000 kilograms of F006 waste, if more than 16,000 kilograms must remain on site due to unforeseen, temporary, and uncontrollable circumstances. The rationale that is applicable for needing additional time to accumulate F006 waste on site due to unforeseen, temporary, and uncontrollable circumstances would be equally applicable for accumulating more than the set accumulation limit of 16,000 kilograms under certain conditions. EPA requests comments on these extensions due to unforeseen, temporary, and uncontrollable circumstances.

B. Rationale for Proposed Accumulation Rule for F006 Waste

In today's proposed rule, EPA is allowing only generators of F006 waste up to 180 days (or up to 270 days, if applicable) to accumulate F006 waste on site without a RCRA permit or interim status, provided that the generator has complied with the requirements of the rule. As part of the CSI for the Metal Finishing Industry, EPA and the other participating stakeholders have been examining the generation and management of F006 waste. Today's proposed rule is a product of the CSI stakeholders' efforts, has the support of the participating stakeholders, and is designed to encourage more recycling of F006 waste through metals recovery.

Given the large number of smaller waste generators in the metal finishing industry and the fact that F006 waste has recoverable amounts of metals, the Agency believes that today's proposal will encourage more recycling of F006 waste. While most F006 sludge contains recoverable amounts of metals, approximately only 20% of F006 sludge is currently being recycled through metals recovery. In addition, F006 waste is a diverse waste stream in which a number of different metals can be found, depending on the plating operations at a facility. The different metals are often subject to different economic factors (*e.g.*, market value of metals) and technical feasibility issues that can impact metals recovery of F006 waste. Based on the information presented to the Agency on this matter, EPA believes that metals recovery will increase if metal finishers are given sufficient time to accumulate full truck loads of F006 waste on site. Allowing the 180-day accumulation time for generators of F006 waste should help minimize economic barriers posed by the existing accumulation rule and is, therefore, likely to increase F006 waste recycling through metals recovery.

The 180-day accumulation time proposed in today's rule may be particularly helpful for generators of relatively small amounts of F006 waste, many of whom are small businesses. These small businesses, however, generate more than the regulatory limits for small quantity generators, and therefore, cannot take advantage of the 180-day accumulation provided for small quantity generators under the existing federal regulations. In many instances, it is these small businesses that are not recycling their F006 waste through metals recovery due, in part, to economic factors (e.g., increased costs associated with metals recovery). The 180-day accumulation time can make F006 waste metals recovery more cost effective, particularly for the small businesses that may generate smaller amounts of F006 waste.

In order to facilitate more F006 waste metals recovery, EPA has, in this proposed rule, set an accumulation limit (i.e., 16,000 kilograms of F006 waste) that would, based on waste generation patterns in the industry, allow generators of F006 waste to accumulate a full truck load for transport. Having a full load of F006 waste for transport will make F006 waste metals recovery more cost effective, thereby encouraging more F006 waste metals recovery. Although the 180-day accumulation time may allow individual F006 waste generators to accumulate more F006 waste on site at any one time, the total cumulative amount of F006 waste that is accumulated on site nationally at any one time will not increase substantially because of the accumulation limit. Based on F006 waste generation data, the Agency expects a slight increase in the cumulative amount of F006 waste accumulated on site nationally just after 90 days. Many generators will accumulate a full truck load of F006 waste shortly after 90 days. As individual generators accumulate the proposed limit of F006 waste (i.e., 16,000 kilograms), the F006 waste generator would have to ship that amount off site for metals recovery. At that point (i.e., just after 90 days) the amount of F006 waste accumulated on site nationally at any one time would remain relatively constant because the amount of F006 waste being shipped off site would be roughly equivalent to the additional amount of F006 waste being

generated and accumulated during the 180-day (or 270-day, if applicable) accumulation period. The accumulation limit is designed to encourage more F006 waste metals recovery (e.g., by allowing accumulation of a full truck load) and to ensure that the amount of F006 waste accumulated on site nationally at any one time does not increase significantly. Accordingly, the 180-day accumulation time, with the 16,000 kilogram accumulation limit, would not significantly increase the potential cumulative harm to human health and the environment resulting from the on-site accumulation of F006 waste.

The F006 waste would have to be accumulated on site in tanks, containers, or containment buildings that meet the applicable management standards.[2] These units are designed to minimize loss of hazardous waste to the environment. These are the same requirements that currently apply to generators under the existing accumulation rule. Most F006 waste generators accumulate the F006 waste in super sacks (sacks that are reinforced woven resin and designed to accommodate bulk shipments) or bulk storage containers. These super sack containers are designed to minimize loss to the environment. *See* 62 FR 25998, 26013 (1997). Allowing generators of F006 waste to accumulate the waste for a longer period of time in such containers does not pose any significantly increased potential harm to human health or the environment.

In addition, the 180-day accumulation time is expected to decrease the potential for releases of hazardous constituents from the handling of F006 waste. A recent review of damage incidents associated with the management of F006 waste (the damage incidents report was prepared as background for this proposed rulemaking) suggested that most of the reported incidents of releases of F006 waste were associated with the transfer of F006 waste from accumulation to transport vehicle, from transport vehicle to receiving facility, or while in transport. Because the 180-day accumulation time will mean that the F006 waste is transferred from generator to transporter to receiving facility less often and that fewer shipments of F006 waste will be made, today's rule should decrease the potential for releases of F006 waste into the environment. Similarly, workers will be required to handle the F006 waste less often (because transfers will occur less often), thereby decreasing their potential exposure to the F006 waste.

In the event of a spill of a dewatered F006 sludge during the 180-day accumulation period (e.g., release caused by a rip or tear in a super sack), the potential risk of harm to human health and the environment would appear to be minimal as compared to a spill of a free liquid or dust. First, with the low moisture content of F006 sludge (a cake-like material resulting from dewatering), a spill of F006 waste could be contained relatively easily. Spilled F006 waste generally retains its shape and is not likely to run off as a free liquid or disperse in the wind like a dust. Second, the metals recovery requirement in today's rule would act as an incentive to recover any spilled F006 waste so that the material can be processed for metals recovery. Third, under the management standards applicable to the accumulation units in today's rule, spills and releases of F006 waste must be contained and remedied as soon as practicable. Accordingly, today's proposed rule includes sufficient safeguards to minimize the potential harm to human health and the environment that may be associated with spills of F006 waste during the 180-day accumulation period.

When more F006 waste is accumulated at a facility, the potential exists for bigger releases of F006 waste at a facility. Bigger releases of F006 waste during the proposed accumulation period would not be expected because F006 waste is generally accumulated in super sacks. A bigger release of F006 waste would, therefore, occur only if several super sacks failed (i.e., ripped or tore) at the same time. The likelihood of multiple failures of super sacks occurring simultaneously is fairly remote. In addition, the potential for a bigger release of F006 waste during the 180-day accumulation period is limited because the amount of F006 waste that can be accumulated at a facility under today's rule is restricted to 16,000 kilograms. In contrast, the existing 90-day accumulation rule has no limit on the amount of hazardous waste that can be accumulated (and, therefore, no limit on the amount of hazardous waste that could potentially be released during the 90-day accumulation period). Accordingly, the potential for bigger releases of F006 waste during the 180-day accumulation period would appear to be minimal.

Finally, the 180-day accumulation time in today's rule is consistent with the rationale for the 90-day accumulation rule. In promulgating the 90-day accumulation rule, EPA allowed generators to accumulate waste on site without a RCRA permit or interim status, in part, because such activity was consistent with typical generator activities. The 180-day accumulation time in today's proposed rule would facilitate generators of F006 waste in appropriately managing the F006 waste off site for metals recovery. EPA believes that accumulating F006 waste on site up to 180 days (to encourage more recycling through metals recovery) is more like typical generator activity than typical treatment, storage, or disposal facility activities, because the 180-day accumulation is an on-site accumulation activity, prior to waste management activities. Today's proposed rule maintains the rationale of the 90-day accumulation rule.

C. Applicable Management Standards

Under today's proposed rule, the same hazardous waste management requirements governing 90-day on-site accumulation of hazardous waste under 40 CFR 262.34, other than the length of time that generators of F006 waste can accumulate the waste on site without a RCRA permit,[3] would apply to 180-day accumulation of F006 waste. These requirements include technical standards for units used to accumulate hazardous wastes, recordkeeping standards to document the length of time hazardous wastes are accumulated and stored on site, and preparedness and emergency response procedures. The existing management standards as they would apply to generators of F006 waste under this proposed rule are summarized below. The Agency requests comments on these standards only as they apply to 180-day on-site accumulation of F006 waste.

1. Accumulation Units

A generator of F006 waste may accumulate the hazardous waste on site for up to 180 days in specified units without obtaining a RCRA permit. These accumulation units must comply with the unit-specific technical standards of 40 CFR Part 265 for containers (subpart I), tanks (subpart J), and containment buildings (subpart DD).

The unit-specific standards in 40 CFR Part 265 include provisions for the design, installation and general condition of each unit. The

[2] Today's proposed rule does not allow accumulation of F006 waste in drip pads (as is provided in the existing accumulation regulations in 40 CFR 262.34) because F006 waste is not managed in drip pads, nor does the Agency believe that it would be appropriate to accumulate F006 waste in drip pads.

[3] Today's proposed rule would not affect any RCRA Subtitle C requirements for generators of F006 waste, other than the changes to 40 CFR § 262.34 specified in this proposed rule.

requirements governing each type of unit include standards for ensuring the compatibility of the waste and the unit and special requirements for ignitable, reactive or incompatible wastes. In addition, there are provisions for performing inspections to monitor for leaks and deterioration of the unit and for proper response to and containment of releases. Generators of F006 waste that comply with the applicable regulatory requirements may also treat the waste in the accumulation unit without a RCRA permit during the 180-day accumulation period that is proposed in today's rule.

2. Documentation of Accumulation Time

Generators of F006 waste must also comply with documentation requirements to indicate the length of time that wastes remain on site in accumulation units and to ensure that wastes remain on site for no more than 180 days from the date the waste is generated. Today's proposal does not impose documentation requirements for generators of F006 waste in addition to those already required for generators accumulating F006 waste up to 90 days under the existing regulations.

3. Labeling and Marking Accumulation Units

Generators of F006 waste are required to mark or label all units used to accumulate F006 wastes to indicate that the units contain hazardous waste and to document the date upon which the period of accumulation began. The labeling and marking requirements specify that the date upon which accumulation begins must be clearly marked on each tank or container and that each tank or container used to accumulate hazardous waste must be labeled with the words "Hazardous Waste." The Agency is not proposing any changes or amendments for accumulation units, other than clarifying that these requirements apply to generators of F006 waste accumulating the waste up to 180 days.

4. Preparedness and Prevention (40 CFR Part 265, Subpart C)

Under today's proposed rule, generators of F006 waste who accumulate F006 waste on site for up to 180 days must comply with subpart C of Part 265 which contains requirements for facility preparedness and prevention. These generator facilities must be maintained and operated in a manner that minimizes the possibility of fire, explosion, or any unplanned release of hazardous waste or hazardous waste constituents to the environment. The requirements specify that generator facilities must generally be equipped with emergency devices, such as an internal communications or alarm system, a telephone or other device capable of summoning emergency assistance, and appropriate fire control equipment, unless none of the wastes handled at the facility require a particular kind of equipment. Equipment must be tested and maintained, as necessary, to assure its proper functioning. All persons involved in hazardous waste handling operations must have immediate access to either an internal or external alarm or communications equipment, unless such a device is not required.

Additionally, the generator is also required to maintain sufficient aisle space to allow for the unobstructed movement of personnel and equipment to any area of the facility operations in an emergency, unless aisle space is not needed for any of these purposes. Generators also must attempt to make arrangements with police, fire departments, state emergency response teams, and hospitals, as appropriate, to familiarize these officials with the layout of the generator's site and the properties of each type of waste handled at the facility in preparation for the potential need for the services of these organizations. If state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal.

The Agency is not proposing any changes or amendments to the existing preparedness and prevention requirements, other than clarifying that the existing requirements apply to generators of F006 waste accumulating the waste on site up to 180 days.

5. Contingency Plan and Emergency Procedures (40 CFR Part 265, Subpart D)

Generators of F006 waste who accumulate that waste on site for up to 180 days under today's proposed rule must comply with the contingency plan and emergency procedures provisions of 40 CFR part 265, subpart D. A generator's contingency plan must include, where necessary: a description of the generator's planned response to emergencies at the facility, any arrangements with local and state agencies to provide emergency response support, a list of the facility's emergency response coordinators, a list of the facility's emergency equipment, and an evacuation plan. Requirements for distributing and amending the contingency plan are specified. In addition, a facility emergency coordinator must be either present, or on call, whenever the facility is in operation.

Provisions for emergency procedures specified in subpart D of Part 265 include: immediate notification of employees and local, state, and Federal authorities of any imminent or actual emergencies, measures to preclude the spread of fires and explosions to other wastes, proper management of residues, rehabilitation of emergency equipment and notification of authorities before operations are resumed, and record keeping and reporting to EPA on the nature and consequences of any incident that requires implementing the contingency plan.

The Agency is not proposing any changes or amendments to the existing contingency plans and emergency procedure requirements, other than clarifying that the existing requirements apply to generators of F006 waste accumulating the waste on site up to 180 days.

6. Personnel Training (40 CFR 265.16)

As proposed in today's rule, generators of F006 waste who accumulate on site for up to 180 days are subject to the provisions for personnel training in 40 CFR 265.16. These requirements are designed to ensure that personnel are adequately prepared to manage hazardous waste and respond to any emergencies that are likely to arise. Personnel training can be in the form of on-the-job or classroom training, but must be performed by an instructor who is trained in hazardous waste management procedures. Personnel training must be performed within six months of initial employment and must be renewed annually. The owner or operator of a facility also must maintain records in accordance with 40 CFR 265.16(d) to document completion of the training requirements for employees. The Agency is not proposing any changes or amendments to the existing personnel training requirements, other than clarifying that the existing requirements apply to generators of F006 waste accumulating the waste on site for up to 180 days.

7. Waste Analysis and Record Keeping (40 CFR 268.7(a)(4))

Under today's proposed rule, generators of F006 wastes who accumulate F006 waste on site for up to 180 days and treat their wastes in an accumulation tank, container, or containment building, located at the generator's site to meet the applicable land disposal treatment standards under 40 CFR part 268, subpart D, must prepare and follow a written waste analysis plan. The waste analysis plan

must describe the procedures the generator will use to comply with the treatment standards for the waste. The waste analysis plan must be based upon a chemical and physical analysis of a representative sample of the generator's waste stream. Hazardous waste generators are required to submit a copy of their waste analysis plans for hazardous wastes treated in 180-day accumulation units to either the authorized state or EPA Regional office prior to conducting treatment. Generators also are required to retain a copy of the waste analysis plan in the generator's files.

The Agency is not proposing any changes or amendments to the generator waste analysis plan or record keeping requirements, other than clarifying that such standards apply to generators of F006 waste accumulating the waste on site for up to 180 days.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments (HSWA) of 1984, a state with final authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state and EPA could not issue permits for any facility in the state that the state was authorized to permit. When new, more stringent federal requirements were promulgated or enacted, the state was obliged to enact equivalent authority within specified time frames. New federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed under the HSWA take effect in authorized states at the same time that they take effect in non-authorized states. EPA is directed to implement HSWA requirements and prohibitions in an authorized state, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as state law to retain final authorization, HSWA applies in authorized states until the states revise their programs and receive authorization for the new provision.

B. Effect of State Authorizations

Today's proposal, if finalized, will promulgate regulations that are not effective under HSWA in authorized states. This rule would, therefore, be applicable only in those states that do not have final authorization.

Authorized states are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent than the federal programs, states are not required to modify their programs. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the federal program. Today's proposal for additional accumulation time for generators of F006 waste would be considered less stringent than the existing federal regulations because it allows more than the existing 90 days of accumulation time that is in the existing regulations. Authorized states are not, therefore, required to modify their programs to adopt regulations consistent with, and equivalent to, today's proposal.

Even though states are not required to adopt the additional accumulation time for generators of F006 waste in today's proposal, EPA strongly encourages states to do so as quickly as possible. As discussed above, the proposed rule is intended to encourage and facilitate recycling of F006 waste. In addition, states have been participating as stakeholders in the CSI process and efforts are being made to get as many states as possible to join in on the CSI goals and implementation programs. States are, therefore, urged to consider the adoption of today's proposal, when promulgated, and EPA is committed to making efforts to expedite review of authorized state program revision applications that incorporate today's proposal.

V. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that "is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. The analysis considered compliance costs and economic impacts for F006 wastes affected by this rule. EPA estimates the total cost of the rule to be a savings in the range of $3.9 to $4.9 million annually, and concludes that this rule is not economically significant according to the definition in E.O. 12866. Moreover, the Agency believes that this rule is not significant because it does not create serious inconsistency with actions taken or planned by another agency, materially alter budgetary impact or rights and obligations of recipients. The Office of Management and Budget, however, has deemed this rule to be significant for novel policy reasons and has reviewed this rule.

Detailed discussions of the methodology used for estimating the costs, economic impacts and the benefits attributable to today's proposed rule for on-site accumulation of F006 wastes, followed by a presentation of the cost, economic impact and benefit results, may be found in the background document: "Regulatory Impact Analysis of the Proposed Rule for a 180-Day Accumulation Time for F006 Wastewater Treatment Sludges," which was placed in the docket for today's proposed rule.

1. Methodology Section

The Agency examined reported values for F006 waste generation from the 1995 Biennial Reporting Systems (BRS) database to estimate the volumes of F006 waste affected by today's rule, to determine the national level incremental costs (for both the baseline and post-regulatory scenarios), economic impacts (including first-order measures such as the estimated percentage of compliance cost to industry or firm revenues), and benefits.

2. Results

a. Volume Results

The BRS database reports that in 1995 there were 1,317 metal finishing firms potentially affected by today's rule. The data report that these firms generated 24,000 tons of F006 waste annually that are eligible to benefit from today's proposed rule. EPA is aware that this estimate on the number of firms that could benefit from today's proposal probably underestimates the total number of firms affected by today's rulemaking. In 1994, EPA estimated that there were approximately 13,400 metal finishing establishments in the United States.[4] Of the total, approximately 10,000 metal finishing facilities are estimated to be "captive" shops where the metal finishing operation is contained inside a larger manufacturing operation. The balance of 3,400 metal finishing facilities are "job shops" or "independent" metal finishing operations. Job shops are usually small businesses that operate on a contract basis. In contrast, the most recent BRS data only account for about three thousand of this total. Thus, it is likely that cost savings and benefits associated with this rulemaking are greater than estimated below.

b. Cost Results

For today's proposed rule, EPA has estimated a cost savings associated with a 180-day accumulation time for large quantity generators of F006 waste. The total incremental savings estimated is between $3.9 million and $4.9 million per year. These savings result from being able to reduce the total number of shipments of F006 waste off-site for recycling. Savings also result from a lower cost per ton of transportation because generators are able to accumulate more F006 waste for a shipment off site and the cost per unit of F006 waste transportation (for the fixed cost portion of the transportation) is less for a full truck as compared to a partial truck load. In addition, literature reviewed in the development of this rulemaking indicates that recyclers sometimes assess a surcharge for small volumes of material due to increased handling and administrative costs.[5] It is possible that a 180-day (or 270-day, if applicable) accumulation time will allow some F006 waste generators to reduce this surcharge.

c. Economic Impact Results

To estimate potential economic impacts resulting from today's proposed rule, EPA has used first order economic impacts measures such as the estimated cost savings of today's proposed rule as a percentage of sales/revenues. EPA has applied this measure to affected F006 waste generators. For affected F006 waste generators, EPA has estimated the cost savings to be less than one percent of a typical metal finisher's sales or revenues. More detailed information on this estimate can be found in the regulatory impact analysis placed into today's docket.

d. Benefits Assessment

The Agency has performed a qualitative benefits assessment for today's proposed rule. EPA believes that a relatively small, but significant percentage of total F006 waste generated would be diverted from land disposal to off-site recycling. This shift from land disposal to recycling should result in a conservation of natural resources associated with primary mineral extraction including reduced water, energy inputs as well as reduced solid waste (e.g., slag, tailings, overburden) outputs. Other benefits expected from today's proposed rule include conservation of hazardous waste landfill capacity, reduced balance of payments for nonferrous mineral commodities, and conservation of strategic metals[6].

B. Regulatory Flexibility

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

Data indicate that virtually all independent electroplaters or job shops are small entities.[7] Captive shops contain both large and small entities. Data on captive plating operations are, however, more limited. The regulatory impact analysis completed for this proposed rule indicated that of 3,296 job shops, all but 2 are small entities. BRS data indicate that a total of 1,934 plating facilities including both captive and independent operations generate F006 waste with 1,317 of these firms affected by this proposed rule. Although the BRS data do not indicate what proportion of these affected facilities are small entities, it is likely that the majority of these affected facilities are small entities, because the plating firms affected by this proposed rule generate the smallest quantities of F006 (which is related to both facility size and product output). This proposed rule would not have a significant economic impact on a substantial number of small entities because today's proposed rule would relieve regulatory burden for metal finishers and captive operations by allowing them up to 180 days (instead of 90 days) to accumulate F006 wastes on site. In addition, the Agency estimates that this proposed rule would lead to an overall cost savings in the range of $3.9 to $4.9 million annually. The rule does not impose new burdens on small entities. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal

[4] U.S.E.P.A., Office of Policy, Planning and Evaluation, IEc, *SUSTAINABLE INDUSTRY: Promoting Environmental Protection in the Industrial Sector, Phase 1 Report*, June 1994, pp. 4–7, 4–8.

[5] George C. Cushnie Jr., National Center for Manufacturing Sciences & National Association of Metal Finishers, *Pollution Prevention and Control Technology for Plating Operations* (Ann Arbor, MI: National Center for Manufacturing Sciences, 1994), p. 312.

[6] For more information on balance of trade for nonferrous minerals and conservation of strategic metals, see U.S. Environmental Protection Agency, *Report to Congress on Metal Recovery, Environmental Regulation and Hazardous Wastes* (Washington DC, U.S.EPA, 1994), Chapter 7.

[7] See Small Business Size Standards, 61 FR 3280, 3289 (January 31, 1996) stating that manufacturing firms with less than 500 employees are considered to be small entities. See also U.S.E.P.A. Office of Solid Waste and Emergency Response, Regulatory Impact Analysis of Extending 90 Day Accumulation Rule for F006 Wastewater Treatment Sludges, May 22, 1998, pp.5–10.

governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon state, tribal or local governments. States, tribes and local governments would have no compliance costs under this rule. It is expected that states will adopt similar rules, and submit those rules for inclusion in their authorized RCRA programs, but they have no legally enforceable duty to do so. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

For the reasons described above, today's proposed rule would not impose any enforceable duty or contain any unfunded mandate upon any state, local, or tribal government; therefore Executive Order 12875 does not apply to this action.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

For the reasons described above, today's proposed rule does not create a mandate on State, local or tribal governments, nor does it impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Executive Order 13045 : Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that (1) is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to E.O. 13045, because this is not an economically significant regulatory action as defined by E.O. 12866. The Agency does not have reason to believe the environmental health risks or safety risks addressed by this action concern a disproportionate risk to children.

Because this rulemaking retains current container standards for generators accumulating hazardous wastes on site without a permit (40 CFR 262.34), EPA believes that the extended 180-day accumulation period will not result in increased exposures to children. Generators that accumulate F006 waste on site typically place the waste in containers such as 55-gallon drums or "super sacks" (sacks that are reinforced woven resin and designed to accommodate bulk shipments). The current container standards (40 CFR part 265, Subpart I) referenced in the generator regulations (40 CFR 262.34) require that waste handlers, including generators, to keep containers in good condition (subject to remedial action if leaks are found), have containers closed during usage except when adding or removing waste and inspect the containers at least weekly. In addition, for these containers, waste handlers are required under Subpart I to comply with Subpart CC air emission standards for containers. 40 CFR 265.178, 265.1087. EPA believes that these container requirements are protective to minimize the likelihood of exposure to hazardous waste managed in these units.

G. Executive Order 12898: Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

Today's proposed rule covers F006 wastes from metal finishing operations. It is not certain whether the environmental problems addressed by this rule could disproportionately affect minority or low-income communities, due to the location of some metal finishing operations. Metal finishing operations are distributed throughout the country and many are located within highly populated areas. Because today's proposed rule retains requirements for F006 waste generators to store F006 waste in protective Subpart J tanks, Subpart I containers or Subpart DD container buildings, the Agency does not believe that today's rule will increase risks from F006 waste. It is, therefore, not expected to have any disproportionately high adverse human health or environmental effects on minority or low-income communities relative to affluent or non-minority communities.

H. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0035. An Information Collection Request (ICR) document has been prepared by EPA (ICR Control Number 0820.07) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW., Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

EPA believes the changes in this proposed rule to the information collection do not constitute a substantive or material modification. This proposed rule would not change any of the information collection requirements that are currently applicable to generators of F006 waste that accumulate the waste on site. The recordkeeping and reporting requirements of this rule are identical to requirements already promulgated and covered under the existing Information Collection Request (ICR). There is no net increase in recordkeeping and reporting requirements. As a result, the reporting, notification, or recordkeeping (information) provisions of this rule will not need to be submitted for approval to the Office of Management and Budget (OMB) under section 3504(b) of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq.

The Agency estimates total projected burden hours associated with the information collection requirements of this propped rule to be approximately 13.19 hours per year for each generator. This is the same burden associated with the information collection requirements for large quantity generators who currently accumulate waste on site for less than 90 days under the existing regulations. These information collection requirements include: (1) Pre-transport informational requirements specific to large quantity generators (*e.g.*, personnel training, contingency planning and emergency procedures, tank systems, containment buildings, and requests for extension of accumulation period); (2) air emission standards for process vents; (3) air emission standards for equipment leaks; and (4) record keeping and reporting. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. EPA is not, therefore, considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 262

Environmental protection, Hazardous waste, Labeling, Packaging and containers, Waste treatment and disposal.

Dated: January 22, 1999.

Carol M. Browner,

Administrator.

For reasons set forth in the preamble, EPA proposes to amend 40 CFR part 262 as follows:

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

1. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

2. In § 262.34, add paragraphs (g), (h), and (i) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(g) A generator who generates wastewater treatment sludges from electroplating operations that meet the listing description for the RCRA hazardous waste code F006 waste may accumulate F006 waste on site for 180 days or less without a permit or without having interim status provided that the generator complies with the following requirements:

(1) The generator has implemented pollution prevention practices that reduce the volume or toxicity of the F006 waste or that make it more amenable for metals recovery;

(2) The F006 waste is sent off site for metals recovery;

(3) No more than 16,000 kilograms of F006 waste is accumulated on site at any one time; and

(4) The F006 waste is managed in accordance with the following requirements:

(i) The F006 waste is placed:

(A) In containers and the generator complies with subpart I of 40 CFR part 265; and/or

(B) In tanks and the generator complies with subpart J of 40 CFR part 265, except §§ 265.197(c) and 265.200; and/or

(C) In containment buildings and the generator complies with subpart DD of 40 CFR part 265, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(*1*) A written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the procedures are complied with; or

(*2*) Documentation that the unit is emptied at least once every 180 days.

(ii) In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114.

(iii) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(iv) While being accumulated on site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste;" and

(v) The generator complies with the requirements for owners or operators in subparts C and D in 40 CFR part 265, with 40 CFR 265.16, and with 40 CFR 268.7(a)(4).

(h) A generator who generates wastewater treatment sludges from electroplating operations, RCRA hazardous waste code F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery may accumulate F006 waste on site for 270 days or less without a permit or without having interim status provided that the generator complies with the requirements of paragraph (g) of this section.

(i) A generator who generates wastewater treatment sludges from electroplating operations, RCRA hazardous waste code F006, who accumulates F006 waste on site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more) or who accumulates more than 16,000 kilograms of F006 waste on site is an operator of a storage facility and is subject to the requirements of 40 CFR parts 264 and 265 and the permit requirements of 40 CFR part 270 unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or the 16,000 kilogram accumulation limit. Such extensions may be granted by EPA if F006 waste must remain on site for longer than 180 days (or 270 days if applicable) or if more than 16,000 kilograms of F006 waste must remain on site due to unforeseen, temporary, and uncontrollable circumstances. An extension of the accumulation time up to 30 days or the accumulation limit of more than 16,000 kilograms of F006 waste may be granted at the discretion of the Regional Administrator on a case-by-case basis.

[FR Doc. 99–2323 Filed 1–29–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 244

[FRA Docket No. FRA–1999–4985, Notice No. 2]

RIN 2130–AB24

Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start Up Operations; Correction

AGENCY: Federal Railroad Administration, DOT.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Railroad Administration (FRA) corrects the docket number entry identified in the proposed rule that was published in the **Federal Register** on December 31, 1998, 63 FR 72225, Dec. 31, 1998, regarding Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control, and Start Up Operations. The previous docket number for the agency's proposed rule was "FRA Docket No. SIP–1." The new docket number is "FRA–1999–4985." FRA informs the public that it will nevertheless receive and file comments from interested persons in the administrative record for this rulemaking action that identified the proposed rule as FRA Docket No. SIP–1. FRA also advises the regulated community that this notice does not affect the Surface Transportation Board's (STB or Board) docket number for comments on the Board's proposed rule in the joint rulemaking proceeding.

FOR FURTHER INFORMATION CONTACT: Jon Kaplan, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mailstop 10, Washington, DC 20590 (telephone: (202) 493–6053).

SUPPLEMENTARY INFORMATION: On December 18, 1998, FRA and the STB issued a joint rule proposing regulations for the development and implementation of safety integration plans (SIPs) by railroads seeking to engage in certain specified merger, consolidation, or acquisition of control transactions with another railroad. 63 FR 72225, Dec. 31, 1998. FRA identified the docket number corresponding to its rulemaking action as "FRA Docket No. SIP–1" in the caption and address section of the document. Due to consolidation of FRA's docket facilities with those of other DOT operating administrations into a centralized docket management system, however, FRA's docket numbering system has changed. The central docket facility styles dockets received in its electronic docket system as, for example, "FRA–1999–xxxx." For this reason, the docket number assigned to FRA's portion of the SIP rule is now "FRA–1999–4985," and commenters should use this docket number when commenting on FRA's proposed rule. (Interested parties should continue to refer to STB Ex Parte No. 574 when commenting on the Board's proposed rule.) FRA will, however, receive and docket comments filed by interested persons responding to the agency's proposed rule that identified the action as "FRA Docket No. SIP–1."

Issued in Washington, DC on January 26, 1999.

Michael T. Haley,

Deputy Chief Counsel.

[FR Doc. 99–2253 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–99–5025]

Federal Motor Vehicle Safety Standards (FMVSS); Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Request for public comments.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is conducting a review of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, Child Restraint Systems, in order to determine, consistent with Executive Order 12866, Regulatory Planning and Review, and Section 610 of the Regulatory Flexibility Act, whether this rule [1] should be maintained without change, rescinded, or modified in order to make it more effective or less burdensome in achieving its objectives. This review also is being conducted to determine whether the rule can become more consistent with the objectives of the Regulatory Flexibility Act to achieve regulatory goals while imposing as few burdens as possible on small entities.

DATES: Comments must be received on or before April 2, 1999.

ADDRESSES: Comments must refer to the docket number cited at the beginning of this notice and be submitted to the Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that one original plus two copies of the comments be provided. The Docket hours are from 10:00 a.m. to 5:00 p.m., Monday through Friday (telephone 202–366–9324).

FOR FURTHER INFORMATION CONTACT: Nita Kavalauskas, Office of Regulatory Analysis and Evaluation, Office of Plans and Policy, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590, (telephone 202-366–2584, fax 202–366–2559).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 213 (49 CFR 571.213) ("the rule") specifies minimum performance requirements for child restraint systems (both built-in and add-on) used in motor vehicles and aircraft. The purpose of the rule is to reduce the number of children killed or injured in motor vehicle and aircraft crashes. The rule applies to passenger cars, multipurpose passenger vehicles, trucks and buses, and to child restraint systems for use in motor vehicles and aircraft.

The rule evaluates the performance of child restraint systems in dynamic tests performed in a simulated 30-mph frontal impact system. The rule tests built-in child restraints either in the specific vehicles or in the specific vehicle shell. Add-on child restraint systems are tested on a standard test seat, restrained either by a lap belt or (in the case of a belt positioning seat) by a lap/shoulder belt. In addition, the rule requires labeling both belt-positioning booster seats and shield-type booster seats to indicate which type of belt system (lap belt only or lap/shoulder belt) can be used with that particular booster seat.[2]

The rule sets specific dummy testing requirements by weight and height, so that an add-on or a built-in child restraint recommended for a specific weight/height class will be tested using dummies representative of that weight/height class. The rule also establishes other requirements for child restraints with respect to such factors as the height and width of the seat back surface, padding on surfaces contacted by the child's head, the locations of fixed or movable surfaces in front of the seated child, belt buckles and their releases, seat belt material, and labeling requirements.

The rule requires child restraint manufacturers to state on a label the heights and weights of children for whom the system is designed to protect. The rule also requires manufacturers of child restraints to provide warning labels on rear-facing child restraints to alert parents of the potential negative consequences of using rear-facing child restraint systems in the front seat of vehicles with passenger-side air bags.

Also included in the rule is a requirement that child restraint manufacturers supply, at the time of sale of the child restraint, a postage-paid registration card that the purchaser can fill in with his/her name and address and mail back to the manufacturer so that the purchaser could be notified in the event of a recall. Providing this information on the label allows subsequent owners of child restraints to register their restraints with the manufacturer so that they can be contacted in the event of a recall. Manufacturers must record a list or maintain records of the owners in a form suitable for inspection, such as computer information storage devices or card files. Manufacturers are required to retain the records of owners for six years from the date of manufacture of the child restraint. The rule also requires that each child restraint be permanently labeled with the manufacturer's address or toll-free telephone number and the U.S. Government's Auto Safety Hotline toll-free telephone number.

At the present time, NHTSA has selected FMVSS No. 213 for review in accordance with the regulatory review provisions at Section 5 of the Executive Order 12866 on Regulatory Planning and Review (58 FR 51735, 51739, Oct. 4, 1993) and the directive of Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Section 610(a) of the Regulatory Flexibility Act requires the periodic review of rules to determine which ones have a significant economic impact on a substantial number of small businesses. The agency determined in August 1998 that FMVSS No. 213 (the rule) may have a significant economic impact on a substantial number of small businesses and pursuant to section 610(c) is conducting this review of FMVSS No. 213. The purpose of the review is to determine whether the rule should be continued without change, rescinded, or amended to make it more effective or less burdensome in achieving its objectives, and to bring it into better alignment with the objectives of the Regulatory Flexibility Act to achieve regulatory goals while imposing as little burden as possible on small entities. In the event the Agency determines, based on the results of this review, that the rule should be rescinded or modified, appropriate rulemaking will be initiated.

An important step in the review process involves the gathering and analysis of information from affected parties about their experience with the rule and any material changes in circumstances since issuance of the standard. This notice provides an opportunity for interested parties to comment on the continuing need for, adequacy or inadequacy of, and small business impacts of the rule. Comments concerning the following subjects would assist the Agency in determining

[1] This document refers to FMVSS No. 213 as a "rule" consistent with Section 610 of the Regulatory Flexibility Act, Public Law 96–354, September 19, 1980 (see Section 601(2)).

[2] The agency has issued a proposal to standardize child restraint anchorages. The agency would prefer not to receive comments on this issue unless they relate to small business impacts.

whether to retain the rule unchanged or to initiate rulemaking for purposes of revision or rescission:

1. The benefits and utility of the rule in its current form and, if amended, in its amended form;
2. The continued need for the rule;
3. The complexity of the rule;
4. Whether and to what extent the rule overlaps, duplicates or conflicts with other Federal, State, and local governmental rules;
5. Information on any new developments in technology, economic conditions, or other factors affecting the ability of affected firms to comply with the rule;
6. Alternatives to the rule or portions of the rule that would minimize significant impacts on small businesses while achieving the objectives of the National Highway Traffic Safety Administration.

In essence, the agency would like to know what sections of FMVSS No. 213 significantly affect small business costs, unnecessarily affect costs, are particularly burdensome for small entities, or could be rewritten to minimize burdens on small entities. In addition, NHTSA would like to know which sections of the rule could be written more clearly and in plain English.

Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.**

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512.)

Will the agency consider late comments?

We will consider all comments that Docket Management received before the close of business on the comment closing date indicated above under **DATES.** To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given above under **ADDRESSES.** The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).
2. On that page, click on "search."
3. On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments.

You may download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

William H. Walsh,

Associate Administrator for Plans and Policy.

[FR Doc. 99–2313 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 64, No. 20
Monday, February 1, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Market Access Program for Fiscal Year 1999

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of funds for the Fiscal Year 1999 Market Access Program (MAP).

DATES: All applications must be received by 5:00 p.m. Eastern Standard Time, March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Commodity Credit Corporation (CCC) announces that applications are being accepted for participation in the Fiscal Year 1999 MAP. The MAP is designed to encourage the development, maintenance, and expansion of commercial export markets for U.S. agricultural commodities and products. Cost share assistance is provided to eligible applicants to implement approved market development programs. Financial assistance under the MAP will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

Under the MAP, CCC enters into agreements with eligible participants to share the costs of certain overseas marketing and promotion activities. MAP participants may receive assistance for either generic or brand promotion activities. The MAP generally operates on a reimbursement basis.

Authority

The MAP is authorized under section 203 of the Agricultural Trade Act of 1978, as amended, and MAP regulations are set forth in 7 CFR part 1485.

Eligible Applicants

To participate in the MAP, an applicant must be: A nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (an association of State Departments of Agriculture), a U.S. agricultural cooperative, a State agency, or a small-sized U.S. commercial entity (other than a cooperative or producer association).

Available Funds

$90 million of cost-share assistance may be obligated under this announcement to eligible applicants.

Application Process

In order to be considered for the MAP, an applicant must submit to FAS information required by the MAP regulations set forth in 7 CFR part 1485. The FAS administers various agricultural export assistance programs, including the MAP, the Foreign Market Development Cooperator (Cooperator) Program, Cochran Fellowships, the Emerging Markets Program, Section 108, Pub. L. 480 and several Export Credit Guarantee programs. Organizations which are interested in applying for MAP funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. This allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format.

Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to FAS through data entry screens at a specially designed UES application Internet site. FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Also, by using the Internet, applicants currently participating in the 1998 MAP will not need to enter certain historical information as it will appear automatically in the data entry screens. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to FAS on diskette.

The Internet-based application, including the step-by-step instructions for its use, is located at the following URL address: http://www.fas.usda.gov/cooperators.html. Applicants planning to use the Internet-based system must contact the Marketing Operations Staff of FAS at (202) 720–4327 to obtain site access information.

Applicants who choose to submit applications on diskette can download the UES handbook, including the suggested application format and instruction, from the following URL address http://www.fas.usda.gov/mos/ues/unified.html. A UES handbook may also be obtained by contacting the Marketing Operations Staff at (202) 720–4327.

All MAP applicants, whether or not utilizing the UES format or applying via the Internet or diskette, must also submit by the March 26, 1999, deadline, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR 1485.13(a)(2)(i)(G). The UES handbook contains an acceptable certification format. Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

Any organization which is not interested in applying for the MAP but would like to request assistance through one of the other programs mentioned, should contact the Marketing Operations Staff at (202) 720–4327.

Review Process and Allocation Criteria

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign

markets, FAS seeks to identify a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. These performance indicators are part of FAS' resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan, consistent with the strategic objectives of the United States Department of Agriculture, and address the performance measurement objectives of the GPRA.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase 1—Sufficiency Committee Review

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at § 1485.12 and § 1485.13 of the MAP regulations.

(2) Phase 2—FAS Divisional Review

Applications which meet the application procedures will then be further evaluated by the applicable FAS Commodity Division. The Divisions will review each application against the criteria listed in § 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(3) Phase 3—Competitive Review

Meritorious applications will then be passed on to the office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following evaluation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

- The applicant's 4-year average share (1996–99) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities may be considered in the allocation process as part of the applicant's contribution and should be reported separately from the applicant's contributions) compared to
- The applicant's 4-year average share (1996–99) of the funding level for all MAP participants.

(b) Past Performance (30)

- The 3-year average share (1996–98) of the value of exports promoted by the applicant compared to
- The applicant's 2-year average share (1997–98) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program, the 2-year average share (1998–99) of Cooperator marketing plan budgets and the 2-year average share (1997–98) of foreign overhead provided for co-location within a U.S. agricultural office;

(c) Projected Export Goals (15)

- The total dollar value of projected exports promoted by the applicant for 1999 compared to
- The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

- Actual exports for 1997 as reported in the 1999 MAP application compared to
- Past projections of exports for 1997 as specified in the 1997 MAP application.

The Commodity Divisions' recommended funding level for each applicant is converted to a percentage of the total MAP funds available and multiplied by the total weight factor as described above to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All Internet-based applications must be properly submitted by 5:00 p.m. Eastern Standard Time, March 26, 1999. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other applications must be received by 5:00 p.m. Eastern Standard Time, March 26, 1999, at one of the following addresses:

Hand Delivery (including FedEx, DHL, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, SW, Washington, DC 20250–1042.

U.S. Postal Delivery: Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW, Washington, DC 20250–1042.

Mary T. Chambliss,

Acting Administrator, Foreign Agricultural Service, and Acting Vice President, Commodity Credit Corporation.

[FR Doc. 99–2255 Filed 1–29–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

RIN 0551–AA26

Announcement of the Foreign Market Development Cooperator Program for Fiscal Year 2000

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of funds for the Fiscal Year 2000 Foreign Market Development Cooperator (Cooperator) Program.

DATES: All applications must be received by 5:00 p.m. Eastern Standard Time, March 26, 1999.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, STOP 1042, 1400 Independence Ave., SW, Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

The Foreign Agricultural Service (FAS) announces that applications are being accepted for participation in the Fiscal Year 2000 Cooperator program. The program is intended to create, expand, and maintain foreign markets for United States agricultural commodities and products. FAS administers the Cooperator program and provides cost share assistance to eligible trade organizations to implement approved market development activities. Financial assistance under this program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein.

Background

Under the Cooperator program, FAS enters into Market Development Project Agreements with nonprofit U.S. trade organizations. FAS enters into these agreements with nonprofit U.S. trade organizations that have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations that are nationwide in membership and scope. Program participants may not, during

the term of their agreements with FAS, make export sales of agricultural commodities being promoted or charge fees for facilitating export sales if promotional activities designed to result in such sales are supported by Cooperator program funds.

Market Development project Agreements involve the promotion of agricultural commodities on a generic basis and, therefore, do not involve activities targeted directly toward individual consumers. Approved activities contribute to the maintenance or growth of demand for the agricultural commodities and generally address long-term foreign import constraints by focusing on matters such as:

- Reducing infra-structural or historical market impediments;
- Improving processing capabilities;
- Modifying codes and standards; and
- Identifying new markets or new applications or uses for agricultural commodities or products in foreign markets.

Authority

The Cooperator program is authorized by Title VII of the Agricultural Trade Act of 1978, 7 U.S.C. 5721, et seq. Program regulations appear at 7 CFR part 1550.

Application Process

To be considered, an applicant must submit to FAS information related to the allocation criteria considered by FAS as described in this notice. The FAS administers various agricultural export assistance programs, including the Cooperator Program, the Market Access Program (MAP), Cochran Fellowships, the Emerging Markets Program, section 108, Pub. L. 480 and several Export Credit Guarantee programs. Organizations which are interested in applying for Cooperator program funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. This allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade they face, identify activities which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format.

Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to FAS through data entry screens at a specially designed UES application Internet site. FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Also, by using the Internet, applicants currently participating in the 1999 Cooperator program will not need to enter certain historical information as it will appear automatically in the data entry screens. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to FAS on diskette.

The Internet-based application, including the step-by-step instructions for its use, is located at the following URL address: http://www.fas.usda.gov/cooperators.html. Applicants planning to use the Internet-based system must contact the Marketing Operations Staff of FAS at (202) 720–4327 to obtain site access information.

Applicants who choose to submit applications on diskette can download the UES handbook, including the suggested application format and instructions, from the following URL address: http://www.fas.usda.gov/mos/ues/unified.html. A UES handbook may also be obtained by contacting the Marketing Operations Staff at (202) 720–4327. Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review.

Any organization which is not interested in applying for the Cooperator program but would like to request assistance through one of the other programs mentioned, should contact the Marketing Operations Staff at (202) 720–4327.

Review Process and Allocation Criteria

FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993. In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, FAS seeks to identify a clear, long-term agricultural trade strategy by market or product and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. These performance indicators are part of FAS resource allocation strategy to fund applicants which can demonstrate performance based on a long-term strategic plan, consistent with the strategic objectives of the United States Department of Agriculture, and address the performance measurement objectives of the GPRA.

FAS considers a number of factors when reviewing proposed projects. These factors include:

- The ability of the organization to provide an experienced U.S.-based staff with technical and international trade expertise to ensure adequate development, supervision, and execution of the proposed project;
- The organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties;
- The conditions or constraints affecting the level of U.S. exports and market share for the agricultural commodities and products;
- The degree to which the proposed project is likely to contribute to the creation, expansion, or maintenance of foreign markets; and
- The degree to which the strategic plan is coordinated with other private or U.S. government-funded market development projects.

Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator program funds.

(1) Phase 1—Sufficiency Committee Review

Applications received by the closing date will be reviewed by FAS to determine the eligibility of the applicants and the completeness of the applications.

(2) Phase 2—FAS Divisional Review

Applications which meet the application procedures will then be further evaluated by the applicable FAS Commodity Division. The Divisions will review each application against the factors described above. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these factors.

(3) Phase 3—Competitive Review

Meritorious applications will then be passed on to the office of the Deputy Administrator, Commodity and Marketing Programs, for the purpose of allocating available funds among the applicants. Applications which pass the Divisional Review will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor). Data used in the calculations for contribution levels, past export performance and past demand expansion performance will cover not

more than a 6-year period, to the extent such data is available.

(a) Contribution Level (40)

- The applicant's 6-year average share (1995–2000) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to
- The applicant's 6-year average share (1995–2000) of all Cooperator marketing plan budgets.

(b) Past Export Performance (20)

- The 6-year average share (1994–99) of the value of exports promoted by the applicant compared to
- The applicant's 6-year average share (1994–99) of all Cooperator marketing plan budgets plus a 6-year average share (1993–98) of MAP program ceiling levels and a 6-year average share (1993–98) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(c) Past Demand Expansion Performance (20)

- The 6-year average share (1994–99) of the total value of world trade of the commodities promoted by the applicant compared to
- The applicant's 6-year average share (1994–99) of all Cooperator marketing plan budgets plus a 6-year average share (1993–98) of MAP program ceiling levels and a 6-year average share (1993–98) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(d) Future Demand Expansion Goals (10)

- The total dollar value of the applicant's projected increase in world trade of the commodities being promoted by the applicant for the year 2005 compared to
- The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

- The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 1998 compared to
- The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 1998, as specified in the 1998 Cooperator program application.

The Commodity Divisions' recommended funding level for each applicant is converted to a percentage of the total Cooperator program funds available and multiplied by the total weight factor to determine the amount of funds allocated to each applicant.

Closing Date for Applications

All Internet-based applications must be properly submitted by 5:00 p.m. Eastern Standard Time, March 26, 1999. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on diskette (with two accompanying paper copies and a signed certification statement) and any other applications must be received by 5:00 p.m. Eastern Standard Time, March 26, 1999, at one of the following addresses:

Hand Delivery (including FedEx, DHL, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Marketing Operations Staff, Room 4932–S, 14th and Independence Avenue, SW, Washington, DC 20250–1042.

U.S. Postal Delivery: Marketing Operations Staff, STOP 1042, 1400 Independence Ave., SW, Washington, DC 20250–1042.

Mary T. Chambliss,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 99–2254 Filed 1–29–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deadman Creek Timber Sales, Colville National Forest, Ferry County, Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On November 12, 1996, the Forest Service, USDA, published a Notice of Intent (NOI) in the **Federal Register** (61 FR 58029–30). The notice stated that the proposed action was to harvest and regenerate timber for twenty million board feet on one or more timber sales and to construct and reconstruct roads in the Deadman Creek area. The sales were to be implemented in fiscal year 1999.

This revised NOI changes the name of this project to "Deadman Creek Ecosystem Management Projects" with the proposed action changed to implement ecosystem management projects using timber sales, prescribed fire, as well as road construction, reconstruction, and road closure.

The revised proposed action includes timber harvest and subsequent post harvest activities on approximately 4,254 acres with 16.8 miles of new road construction and 13.9 miles of road reconstruction. The initial timber harvest portion of the project is now proposed to sell in fiscal year 2000. Burning treatments would occur over a seven year window starting in calendar year 2002.

The draft environmental impact statement (DEIS) will be tiered to the Forest Land and Resource Management Plan as amended by Regional Forester's Forest Plan Amendments for Eastside Forests, dated May 24, 1994, and June 12, 1995. The revised date of filing the Draft EIS is April 1999 and the revised filing of the Final EIS is planned in August 1999.

DATES: Comments concerning the scope of the revised analysis should be received in writing by April 1, 1999.

ADDRESSES: Send written comments and suggestions concerning the proposed project to Meredith Webster, District Ranger, Kettle Falls Ranger District, 255 W. 11th St., Kettle Falls, WA 99141.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Meredith Webster, District Ranger, Dan Len, Planning Assistant, or Mike Picard, Project Planner, at Kettle Falls Ranger District, 255 W. 11th St., Kettle Falls, WA 99141, or call 509–738–6111.

Dated: January 20, 1999.

George T. Buckingham,

Acting Forest Supervisor, Colville National Forest.

[FR Doc. 99–2265 Filed 1–29–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Annual Capital Expenditures Survey.

Form Number(s): ACE–1, ACE–1(S), ACE–1(I), ACE–2, ACE–2(I), ACE-2(B), ACE–2(B)(I).

Agency Approval Number: 0607–0782.

Type of Request: Revision of a currently approved collection.

Burden: 114,000 hours.

Number of Respondents: 53,000.

Avg Hours Per Response: 2 hours and 9 minutes.

Needs and Uses: The Census Bureau plans the continuing information collection for the 1998 Annual Capital Expenditures Survey (ACES). The

annual survey collects data on fixed assets and depreciation, sales and receipts, and capital expenditures for new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending by domestic, private, nonfarm businesses operating in the United States. Business spending data are used to evaluate the quality of estimates of gross domestic product, develop monetary policy, analyze business asset depreciation, and improve estimates of capital stock for productivity analysis. Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

The major changes from the previous ACES is the collection of detailed capital expenditures by type of structure and type of equipment for the 1998 ACES from employer companies and the collection of information from a sample of potential new (birth) single-establishment businesses concerning their business expenditures. Beginning with the 1998 ACES, type of structures and type of equipment data will be collected together once every five years. These data are critical to evaluate the comprehensiveness of capital expenditures statistics collected in years for which type of structures and equipment detail are not collected. The detailed structures data will provide a 5-year benchmark for estimates of new construction put in place. The detailed equipment data will provide a periodic measure of expenditures by type of equipment and assist in evaluating estimates of Producer's Durable Equipment in nonresidential fixed investment.

We plan to collect business investment information from a sample of 7,000 potential new single-establishment businesses in order to determine the chronology of events that relate to the start-up of businesses with employees. This research is extremely important because we believe businesses make capital expenditures before hiring employees or paying payroll taxes, and these expenditures may not be fully reflected in the ACES estimates. This research will allow us to estimate the amount (if any) of capital expenditures not currently captured in the ACES.

Affected Public: Businesses or other for-profit organizations, Not-for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 182, 224, and 225.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 25, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–2330 Filed 1–29–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Census Advisory Committee. The Committee will discuss with the Secretary of Commerce its recommendations for Census 2000 based on its review and evaluation of Dress Rehearsal plans and operations. Last minute changes to the schedule are possible, and they could prevent us from giving advance notice.

DATES: On Friday, February 19, 1999, the meeting will begin at 9 a.m. and adjourn at approximately 2 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington, DC 20233; telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Committee is composed of a Chair, Vice-Chair, and up to 35 member organizations, all appointed by the Secretary of Commerce. The Committee will consider the goals of Census 2000 and user needs for information provided by that census. The Committee will provide an outside user perspective about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee shall consider all aspects of the conduct of the 2000 Census of Population and Housing and shall make recommendations for improving that census.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer on 301–457–2308, TDD 301–457–2540.

Dated: January 26, 1999.

Robert J. Shapiro,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 99–2331 Filed 1–29–99; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year ("Sunset") Reviews

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202)

482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders:

DOC Case No.	ITC Case No.	Country	Product
A–570–506	A–298	China, PR	Procelain-on-steel cooking ware.
A–201–504	A–297	Mexico	Porcelain-on-steel cooking ware.
A–583–508	A–299	Taiwan	Porcelain-on-steel cooking ware.
C–201–505	C–265	Mexico	Procelain-on-steel cooking ware.
A–580–601	A–304	South Korea	Top-of-the-stove stainless steel cooking ware.
C–580–602	C–267	South Korea	Top-of-the-stove stainless steel cooking ware.
C–583–604	C–268	Taiwan	Top-of-the-stove stainless steel cooking ware.
A–583–603	A–305	Taiwan	Top-of-the-stove stainless steel cooking ware.
C–421–601	C–278	Netherlands	Standard chrysanthemums.
A–301–602	A–329	Colombia	Fresh cut flowers.
A–331–602	A–331	Ecuador	Fresh cut flowers.
C–337–601	C–276	Chile	Standard carnations.
A–337–602	A–328	Chile	Standard carnations.
A–779–602	A–332	Kenya	Standard carnations.
A–201–601	A–333	Mexico	Fresh cut flowers.
C–333–601	C3–18	Peru	Pompon chrysanthemums.
C–351–604	C–269	Brazil	Brass sheet & strip.
A–351–603	A–311	Brazil	Brass sheet & strip.
A–122–601	A–312	Canada	Brass sheet & strip.
A–580–603	A–315	South Korea	Brass sheet & strip.
C–427–603	C–270	France	Brass sheet & strip.
A–427–602	A–313	France	Brass sheet & strip.
A–428–602	A–317	Germany	Brass sheet & strip.
A–475–601	A–314	Italy	Brass sheet & strip.
A–401–601	A–316	Sweden	Brass sheet & strip.
A–588–704	A–379	Japan	Brass sheet & strip.
A–421–701	A–380	Netherlands	Brass sheet & strip.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: http://www.ita.doc.gov/import_admin/records/sunset/. All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we

urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required from Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: January 22, 1999.

Robert LaRussa,

Assistant Secretary for Import Administration

[FR Doc. 99–2350 Filed 1–29–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping administrative review.

SUMMARY: The Department of Commerce (the Department) has received a request from Zunyi Titanium Plant (ZTP) to conduct a new shipper administrative review of the antidumping duty order on silicon metal from the People's Republic of China (PRC), which has a June anniversary date. In accordance with the Department's current regulations, we are initiating this administrative review.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Nulman or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4052 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27296 (1998).

Background

On December 7, 1998, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Act, and section 351.214(c) of the Department's regulations, for a new shipper review of this antidumping duty order which has a June anniversary date.

Initiation of Review

In its December 7, 1998 request for review, ZTP certified that it did not export the subject merchandise to the United States during the period of investigation (POI), and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. ZTP also certified that its export activities are not controlled by the central government of the PRC. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), ZTP submitted documentation establishing the date on which the merchandise was first entered for consumption in the United States, the volume of that shipment, and the date of first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on silicon metal from the PRC. We intend to issue the final results of this review no later than 270 days from the publication of this notice.

The standard period of review (POR) in a new shipper review initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this new shipper review is June 1, 1998 through November 30, 1998.

Concurrent with publication of this notice and in accordance with CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: January 25, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–2347 Filed 1–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Ames Laboratory, Et Al. Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 98–057. *Applicant:* Ames Laboratory, U.S. Department of Energy, Ames, IA 50011–3020. *Instrument:* Auger Microprobe, Model JAMP–7800F. *Manufacturer:* JEOL Ltd., Japan.

Intended Use: See notice at 63 FR 65751, November 30, 1998.

Reasons: The foreign instrument provides highest energy resolution of 0.05% with 1.0 nm for secondary electrons and 35nm for Auger analysis. *Advice received from:* National Institute of Standards and Technology, January 13, 1999.

Docket Number: 98–063. *Applicant:* University of Maryland, College Park, MD 20742. *Instrument:* Electron Microprobe, Model JXA–8900R. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 63 FR 69264, December 16, 1998. *Reasons:* The foreign instrument provides characterization of elemental composition and structure in surfaces with resolution down to 1 μm. Advice received from: National Institute of Standards and Technology, January 13, 1999.

The National Institute of Standards and Technology advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–2348 Filed 1–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–067. Applicant: Johns Hopkins University, 3400 N. Charles Street, Baltimore, MD 21218. Instrument: Electron Microscope, Model CM300. Manufacturer: Philips, The Netherlands. Intended Use: The instrument will be used in an electron microscopy laboratory that has been designed to benefit researchers in biomedical engineering, chemical engineering, chemistry, earth and planetary sciences, environmental engineering, materials science and engineering, mechanical engineering and physics. Examples of specific research projects which will be conducted include: (a) Processing and characterization of nanoscale materials, (b) dislocation of core structures in intermetallic alloys, (c) environmental chemistry, (d) development and characterization of rare-earth magnetostictive materials, (e) nanoscale observations of porous semiconductors, (f) identification of failure mechanisms in materials with applications to manufacturing processes and (g) investigations in crystal chemistry and geochemistry. In addition, the instrument will be used to supplement and expand course offerings on electron microscopy, especially analytical based electron microscopy. Application accepted by Commissioner of Customs: January 4, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–2349 Filed 1–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export

Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 99–00001." A summary of the application follows:

Summary of the Application

Applicant: C-Shore International, 1102 Brand Blvd, Suite 63, Glendale, California 91202.

Contact: Jacques Issac, Owner\Export Manager.

Telephone: (818) 909–4654.

Application No.: 99–00001.

Date Deemed Submitted: January 20, 1999.

Members (in addition to applicant): None.

C-Shore International, an Export Intermediary, seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

C-Shore International may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Markets;

3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;

4. Enter into exclusive or non-exclusive licensing, and/or sales agreements with Suppliers, Export Intermediaries, or other persons for the transfer of title to Products, Services, and/or Technology Rights in Export Markets;

5. Allocate export orders among suppliers;

6. Allocate the sales, export orders and/or divide Export Markets, among Suppliers, Export Intermediaries, or other persons for the sale, licensing and/or transfer of title to Products, Services, and/or Technology Rights;

7. Establish the price of Products, Services, and or Technology Rights for sale and/or licensing in Export Markets; and

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

Definitions

1. *Export Intermediary* means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. *Supplier* means a person who produces, provides, or sells a Product and/or Service.

Dated: January 26, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–2258 Filed 1–29–99; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 981228327–8327–01]

Proposed Voluntary Product Standard DOC PS 20–99 "American Softwood Lumber Standard"

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: This is to advise the public that the National Institute of Standards and Technology (NIST) is distributing a proposed revision of Voluntary Product Standard DOC PS 20–94 "American Softwood Lumber Standard," for review and comment. DOC PS 20–94 serves the procurement and regulatory needs of numerous federal, state, and local government agencies by providing for uniform, industry-wide grade-marking and inspection requirements for softwood lumber. The proposed revision, DOC PS 20–99 "American Softwood Lumber Standard," has been developed and is being processed in accordance with the provisions of the "Procedures for the Development of Voluntary Product Standards" of the Department of Commerce (15 CFR Part 10; as amended; published June 20, 1986).

DATES: Written comments regarding the proposed revision, DOC PS 20–99, should be submitted to the Technical Standards Activities Program, NIST, by no later than April 19, 1999.

ADDRESSES: Requests for copies of the proposed revision, DOC PS 20–99, and written comments on the proposed revision should be submitted to the Technical Standards Activities Program, NIST, 100 Bureau Drive Stop 2150, Gaithersburg, MD 20899–2150. The text of the proposed revision, DOC PS 20–99 (including a copy of DOC PS 20–94 that has been marked up to show proposed changes to the standard), may be viewed on the World Wide Web (as an Adobe Acrobat File) by clicking onto the "DOC Voluntary Product Standards Program" at the web site: http://ts.nist.gov/tsap.

FOR FURTHER INFORMATION CONTACT: Barbara M. Meigs, Technical Standards Activities Program, National Institute of Standards and Technology, telephone: 301–975–4025; fax: 301–926–1559, e-mail: barbara.meigs@nist.gov.

SUPPLEMENTARY INFORMATION: The proposed revision, DOC PS 20–99 "American Softwood Lumber Standard," was developed by the American Lumber Standard Committee, the Standing Committee for DOC PS 20–

94. The Committee has responsibility for maintaining and interpreting the standard and is composed of representatives of producers, distributors, consumers, and others with an interest in the standard.

DOC PS 20–94 established standard sizes and requirements for developing and coordinating the lumber grades of the various species of softwood lumber, the assignment of design values, and the preparation of grading rules applicable to each species. Its provisions include implementation of the Standard through an accreditation and certification program; establishment of principal trade classifications and lumber sizes for yard, structural, factory/shop use; classification, measurement, grading and grade-marking of lumber; definitions of terms and procedures to provide a basis for the use of uniform methods in the grading inspection, measurement and description of softwood lumber; commercial names of the principal softwood species; definitions of terms used in describing standard grades of lumber; and commonly used industry abbreviations. The Standard also includes the organization and functions of the American Lumber Standard Committee, the Board of Review, and the National Grading Rule Committee.

The Standing Committee met on November 6, 1998, to discuss and vote upon the draft revision of DOC PS 20–94. The draft had been developed by an ALSC Task Group after considering comments received from Committee members and other interested parties who responded to NIST's announcement of March 30, 1998, in the *NIST Update*. In that announcement, NIST indicated that as part of the Department's 5-year review, mandated by the DOC procedures, it was seeking comments regarding DOC PS 20–94 to determine its technical adequacy, the level of acceptability the standard has among the various segments of the softwood lumber industry, the standard's compatibility with existing law and established public policy, and the benefits that would be derived from PS 20–94 versus any alternatives. Following a period of discussion of the draft and the comments that had been received from the public and members of the Committee, all members present at the meeting unanimously approved the draft, with minor changes, and recommended that the proposed revision, DOC PS 20–99, be submitted to NIST to be processed to supersede DOC PS 20–94.

Among the changes to DOC PS 20–94 and incorporated in the proposed revision are the following: metric units are shown first followed by conventional units, language regarding remanufactured lumber is added to the text, standards referenced in DOC PS 20–94 are replaced by current editions of those standards, commercial names of additional principal softwood species are listed in Appendix A, and some definitions of terms used in describing standard grades of lumber are clarified in Appendix B. The basic sizes, technical requirements for softwood lumber, and administrative structure for implementing and enforcing the Standard have been retained.

Authority: 15 U.S.C. 272.

Dated: January 26, 1999.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 99–2354 Filed 1–29–99; 8:45 am]

BILLING CODE 3510–13–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Futures Contracts in Corn and Soybeans; Order Approving Proposed Rules and Amending Orders of May 7, 1998, and November 7, 1997

AGENCY: Commodity Futures Trading Commission.

ACTION: Final order to the Chicago Board of Trade.

SUMMARY: The Commodity Futures Trading Commission (Commission), on January 25, 1999, issued an Order to the Board of Trade of the City of Chicago (CBT) under sections 5a(a)(12) and 5a(a)(10) of the Commodity Exchange Act (Act), 7 U.S.C. 7a(a)(12) and (10), approving amendments to the CBT's corn and soybean futures contracts and amending the Commission's Orders under section 5a(a)(10) of the Act of November 7, 1997, and May 7, 1998, to effectuate the approved rule amendments.

On January 25, 1999, the Commission approved for the CBT corn and soybean futures contracts, beginning on January 3, 2000: (1) Deletion of provisions relating to in-loading of the commodities at regular warehouses; (2) rules extending a preference for load-out by regular warehouse or shipping station operators of deliveries on futures contracts over their cash commitments until meeting their daily load-out requirement that is currently in effect for delivery by barge to other modes of transportation; and (3) rules requiring regular shipping stations, at a minimum, to load at the highest loading rate applicable for the commodities in a loading line-up which includes both wheat and corn or soybeans or both oats and corn or soybeans. The Commission, by its Order, amended its Orders of November 7, 1997, and May 7, 1998, to effectuate the above approvals relating to the CBT corn and soybean futures contracts.

The Commission has determined that publication of this Order is in the public interest, will provide the public with notice of its action, and is consistent with the purposes of the Act.

DATES: This Order became effective on January 25, 1999.

ADDRESSES: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: John Mielke, Acting Director, or Paul Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5260, or electronically, Mr. Architzel at PArchitzel@cftc.gov.

SUPPLEMENTARY INFORMATION: The Commission, on January 25, 1999, issued an Order to the CBT approving amendments to the CBT's corn and soybean futures contracts under sections 5a(a)(12) and 5a(a)(10) of the Act and amending the Commission's Orders under section 5a(a)(10) of the Act of November 7, 1997, and May 7, 1998, to effectuate the approved rule amendments.

The text of the Commission's Order is as follows:

In the Matter of the Amendment: of the Terms and Conditions of the Chicago Board of Trade Corn and Soybean Futures Contracts.

Order of the Commodity Futures Trading Commission Approving Proposed Amendments to the Board of Trade of the City of Chicago Corn and Soybean Futures Contracts and Amending Commission Orders of May 7, 1998, and November 7, 1997.

The Commodity Futures Trading Commission (Commission) hereby approves under sections 5a(a)(12) and 5a(a)(10) of the Commodity Exchange Act (Act), 7 U.S.C. 7a(a)(12) and (10), amendments to the Board of Trade of the City of Chicago's (CBT) corn and soybean futures contracts submitted by the CBT for Commission approval on October 22, 1998, and January 20, 1999, and amends the Commission's Orders of May 7, 1998, and November 7, 1997, under section 5a(a)(10) of the Act, making all changes necessary effect the above approval. Specifically, the Commission approves for the CBT corn and soybean futures contracts, beginning on January 3, 2000:

(1) Deletion of provisions relating to in-loading of the commodities at regular Chicago shipping stations;

(2) Rules extending a preference for load-out by regular shipping station operators of commodity for futures delivery over their cash commitments until meeting their daily load-out requirement that is currently in effect for Chicago delivery by barge to delivery by other modes of transportation; and,

(3) Rules requiring shipping stations, at a minimum, to load at the highest loading rate applicable for the commodities in a loading line-up which includes both wheat and corn or soybeans or both oats and corn or soybeans.

I. Background

The CBT corn and soybean futures contracts were the subject of a notification and proceeding under section 5a(a)(10) of the Act. Under that proceeding, the Commission on November 7, 1997, issued an Order to the CBT amending the CBT's corn and soybean futures contracts, 62 FR 60831 (November 13, 1997) (section 5a(a)(10) Order), and on May 7, 1998, the Commission issued a second, amending Order designating new CBT corn and soybean futures contracts with revised contract terms. 63 FR 26575 (May 13, 1998) (Amending Order) (together, "section 5a(a)(10) Orders").

The CBT on October 21, 1998, and January 20, 1999, submitted to the Commission for its review proposed amendments to its corn and soybean futures contracts. The Commission on November 25, 1998, requested public comment on the exchange rule amendments. 63 FR 65175. The Commission's request for public comment noted that, to the extent these proposed rule amendments differ from the provisions of the Commission's Order of May 7, 1998, the CBT's requested approval also constituted a request to the Commission to amend its Order and that the request for comment also constituted notice of the proposed amendment of the Commission's Order consistent with the proposed rule amendments.[1] Id. at 65176. It also raised a number of specific issues for response, including whether the proposed load-out preference was consistent with cash market practice and, if not, to what extent the proposal would limit deliverable supplies on the contracts. The Commission also requested comment on the likely effect on deliverable supplies which might result from the increasing concentration of control over delivery facilities.[2] 63 FR 65175, 65177 (November 25, 1998).

II. The CBT Proposal

The CBT is proposing to amend its corn and soybean futures contracts by requiring Chicago shipping station operators to give preference to orders for vessel or rail load-out of corn or soybeans for futures delivery over their cash commitments until shipping stations operators meet their daily load-out requirement. CBT rules already extend such a preference to receivers of corn and soybeans for delivery by barge. In addition, the CBT is proposing to require that the regular shipper not give preference to one commodity over another in making delivery and that, when different commodities are to be loaded out, the applicable load-out rate is the higher of the two. Finally, the CBT is proposing to delete provisions relating to the in-loading of corn and soybeans at the Chicago delivery location.

III. Standard of Review

The Commission has reviewed the CBT proposals to determine whether they would impermissibly reduce the level of deliverable supplies provided for by the Commission's section 5a(a)(10) Orders or would violate any other provision of the Act or Commission rules or policies.

IV. Proposed Amendment of Loading Rules

Under the current delivery procedures for the corn and soybean futures contracts, shipping certificate holders for delivery at the Chicago delivery location may require load-out from regular elevators into vessels, rail cars or barges on a first-come first-served basis. Regular warehouse operators must load the commodity at least at specified daily rates, which differ depending upon the mode of transportation provided by the shipping certificate holder. However, takers of futures delivery by barge are provided a preference over the shipping station operator's cash commitments until the shipping station/warehouse has met its daily load-out requirements.[3] *See*, section 5a(a)(10) Order, 62 FR 60850.

The CBT is proposing to amend these provisions by providing all takers of futures deliveries in Chicago a preference over the shipping station's cash loading commitments until the shipping station has met its daily load-out requirements. The CBT's proposed preferential load-out requirements are contrary to cash market practice, where customers generally are accommodated on a first-come, first-served basis.

Nevertheless, the Commission approved such a preference in its section 5a(a)(10) Orders for barge load-out. In doing so, it noted that the effect of this departure from cash market practice on deliverable supplies was difficult to measure in advance and required the CBT to report to the Commission on experience with deliveries for a five year period. Whatever the preference's overall effect, in light of the diminished importance of Chicago as a delivery point, the effect of extending the preference to Chicago vessel and rail delivery takers likely will be minor. In any event, the CBT is required under the section 5a(a)(10) Orders to report on delivery experience. Such reports will provide better information on what effect, if any, extending the preference to Chicago vessel and rail delivery takers has on deliverable supplies.[4]

V. Concentration of Ownership of Delivery Facilities

Section 15 of the Act requires the Commission, when reviewing exchange rule proposals or amendments, to consider the public interest to be protected by the antitrust laws and to endeavor to take the least anti-competitive means of achieving the

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[1] The CBT also proposed amendments to its wheat and oats futures contracts in its October 22 and January 20 submissions. Those contracts are not subject to Commission section 5a(a)(10) Orders and are being reviewed separately for Commission approval under section 5a(a)(12) of the Act.

[2] Five commenters—the CBT, a flour miller, two grain merchants and an association—responded. However, none of the commenters specifically addressed issues related to the corn and soybean futures markets. Instead their comments were addressed to associated rules applicable to the CBT wheat and oats futures contracts.

[3] Similarly, regular warehouse/shipping station operators at the Chicago delivery point currently are required to in-load corn or soybeans consecutively without giving preference to products owned by the operator over the products of others and without giving preference to one depositor over another. The operator must in-load products into the warehouse/shipping station consecutively in the order in which they arrive at specified minimum daily rates pursuant to in-loading orders previously received, to the extent that the warehouse capacity for grain and grade permits. The CBT is proposing to delete these rules relating to in-loading for corn and soybeans.

[4] Similarly, in light of Chicago's diminished importance as a delivery point, deletion of the in-loading requirement would have little impact on overall deliverable supplies on the corn or soybeans futures contracts.

The CBT also proposes a clarifying amendment that specifies that, if a lineup for loading out grain into barges from a particular regular warehouse/shipping station includes both wheat and corn or soybeans or both oats and corn or soybeans, then the minimum daily rate for loading shall be the highest of the applicable rates. According to trade sources, barge loading rates do not vary substantially among these commodities. Accordingly, the proposed amendments would not create any impediment to deliveries and are hereby approved by the Commission.

objectives of the Act. Guideline No. 1 requires exchanges to justify the contract's delivery specifications in light of the number and total capacity of facilities meeting contract requirements and the extent to which ownership and control of such facilities is dispersed or concentrated. 17 CFR part 5, Appendix A(a)(2)(C)(1) and (4). These proposed rule amendments do not raise particular issues under section 15.

However, on November 10, 1998, Cargill announced that it had signed an agreement to acquire Continental Grain Company's (Continental) commodity marketing business, including Continental's grain storage facilities in the United States. If this announced acquisition is consummated, Cargill potentially will own and operate both of the two delivery warehouse/shipping stations in the Chicago area and will take over one of the three delivery shipping stations in St. Louis. Under the agreement, Cargill also will acquire six barge loading facilities on the northern Illinois River and two facilities on the southern Illinois River. Cargill's ownership of potential delivery capacity on the new corn contract will increase from 13% to 34% and on the new soybean contract from 13% to 38%. This increased concentration potentially could raise significant issues under section 15 and could have a negative impact on the corn and soybean futures contracts.

The Cargill acquisition is under review by the United States Department of Justice. Until the Department of Justice acts to approve, disapprove or modify the terms of the acquisition, the acquisition will not be consummated. The Commission does not currently have sufficient information to determine its actual effect on the contract. The Commission will consider further this issue at such time as the acquisition occurs. However, in order to assist it in its analysis of this issue, the Commission directs the CBT carefully to monitor the 1999 corn and soybean futures contract expirations at all of its delivery locations to assess the impact of concentration of ownership or control of approved delivery facilities on the price convergence of the contracts. In addition, the CBT is directed to include such an analysis in its reports to the Commission on the revised corn and soybean futures contracts which are required under the section 5a(a)(10) Orders.

VI. Implementation

The CBT plans to apply the proposed amendments to the load-out provision to all corn and soybeans loaded out against shipping certificates delivered on the corn and soybean futures contracts on and after January 3, 2000. The CBT also proposes to apply the amendments to all corn and soybean warehouse receipts that are outstanding on January 3, 2000.

In reviewing whether proposed amendments can be applied to the terms of existing contracts, the Commission considers the effect any such amendments may have on the value of existing positions. In this regard, the proposed amendments to the soybean and corn futures contracts are proposed to apply to shipping certificates delivered against futures positions in certain currently-listed contract months that expire after January 3, 2000, and to all corn and soybean warehouse receipts that are outstanding on that date. The Commission specifically requested public comment on what effect, if any, the proposed amendments would have on the value of existing positions. 63 FR 65175. None of the commenters addressed this issue.

As discussed above, the proposed loading provisions would require the warehouse/shipping station operator to standardize loading requirements in Chicago for all deliveries regardless of mode of transport presented or commodity. They would not have an impact on the value of existing positions, and the Commission therefore approves the CBT's implementation plan under section 5a(a)(12) of the Act.

For the reasons discussed above, the Commission finds that none of the rule amendments proposed by the CBT would have a discernable impact on the level of deliverable supplies provided under the Commission's section 5a(a)(10) Orders or otherwise would violate the Act or Commission rules or policies.

Based on this finding, the Commission hereby approves under sections 5a(a)(12) and 5a(a)(10) of the Act, 7 U.S.C. 7a(a)(12) and 7a(a)(10), amendments to the CBT's corn and soybean futures contracts as shown in attachment 1 to this Order and amends the Commission's Orders under section 5a(a)(10) of the Act of May 7, 1998, and November 7, 1997, making all changes necessary to effect the above approval.

Further, the Commission hereby directs the CBT carefully to monitor the 1999 corn and soybean futures contract expirations to assess the impact of concentration of ownership or control of approved delivery facilities on the price convergence of the contracts. In addition, the CBT is directed to include such an analysis in its reports to the Commission on the revised corn and soybean futures contracts which are required under the section 5a(a)(10) Orders.

Dated: January 25, 1999.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

Attachment 1.—Rules and Regulations Approved by the Commission for the Chicago Board of Trade's Corn and Soybean Futures Contracts

Corn
- 1009.00
- 1009.01
- 1049.03
- 1052.00
- 1052.00(d)
- 1052.00A
- 1081.00(11)
- 1081.01(12)A.
- 1081.01(12)B.
- 1081.01(12)C.
- 1081.01(12)E.
- 1081.01(12)H.
- 1085.01

Soybeans
- 1009.00
- 1049.03
- 1052.00
- 1052.00(d)
- 1052.00A
- 1081.00(11)
- 1081.01(12)A.
- 1081.01(12)B.
- 1081.01(12)C.
- 1081.01(12)E.
- 1081.01(12)H.
- 1085.01

Issued in Washington, DC, this 25th day of January, 1999, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–2303 Filed 1–29–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Suspension of the Price Evaluation Adjustment for Small Disadvantaged Businesses

AGENCY: Department of Defense (DoD).

ACTION: Notice of 1-year suspension of the price evaluation adjustment for small disadvantaged businesses.

SUMMARY: The Director of Defense Procurement has suspended the use of the price evaluation adjustment for small disadvantaged businesses (SDBs) in DoD procurements as required by 10 U.S.C. 2323(e)(2), as amended by section 801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, because DoD exceeded its 5 percent contract goal for awards to SDBs in fiscal year 1998. The suspension will be in effect for 1 year and will be reevaluated based on the

level of DoD contract awards to SDBs achieved in fiscal year 1999.

DATES: Effective Date: February 24, 1999.

Applicability Date: This suspension applies to all solicitations issued during the period from February 24, 1999, to February 23, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, PDUSD (A&T), Director of Defense Procurement, Defense Acquisition Regulations Council, 3060, Defense Pentagon, Washington, DC 20301–30962, telephone (703) 602–0131.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 10 U.S.C. 2323(e), DoD has previously granted SDBs a 10 percent price preference in certain acquisitions. This price preference was initially implemented in the Defense Federal Acquisition Regulation Supplement, Subpart 219.70. Beginning October 1, 1998, the price preference program was removed from the Defense Federal Acquisition Regulation Supplement and was implemented, in revised form, for all agencies subject to the Federal Acquisition Regulation in Subpart 19.11 of that regulation.

Section 801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261) amended 10 U.S.C. 2323(e)(3) to prohibit DoD from granting such a price preference for a 1-year period following a fiscal year in which DoD achieved the 5 percent goal for contract awards established in 10 U.S.C. 2323(a). Since, in fiscal year 1998, DoD exceeded this 5 percent goal, use of this price preference in DoD acquisitions must be suspended for a 1-year period.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 99–2234 Filed 1–29–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Implementation of the Defense Table of Official Distances (DTOD) in the DoD Freight Program

AGENCY: Military Traffic Management Command, DoD.

ACTION: Final notice (policy statement).

SUMMARY: The Department of Defense (DoD) has decided as a matter of procurement policy and internal agency procedure to change the distance calculation source for payment and audit under DoD freight program. Beginning on the effective date set forth below, the DoD will use the DTOD for computing highway distances for freight shipments, hazardous material shipments, and overweight/overdimensional shipments. Carriers and providers participating in the DoD freight program must agree to be bound by the DTOD distance calculation for payment and audit purposes in all procurements using mileage-based rates. This policy decision is in furtherance of DoD's goal to use a single integrated, electronic distance calculation source for its travel entitlement, passenger traffic, personal property, and freight programs.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Dickerson (703) 681–6870 or Ms. Patty Maloney (703) 681–6586, Military Traffic Management Command, ATTN: MTTM-O, Room 108, 5611 Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION:

1. Background

In furtherance of DoD's goal of making its transportation programs, including travel entitlement, passenger traffic, personal property, and freight, more standard, economical and efficient, the DoD Comptroller tasked MTMC to find a commercially available, integrated, automated distance calculation source capable of supporting all DoD transportation and travel related requirements. After an extensive proof-of-concept and market analysis phase, MTMC contracted for delivery and installation of a commercial-off-the-shelf distance calculation system adaptable to DoD transportation and entitlement programs. The DTOD, commercially known as PC*MILER by ALK Associates, Inc., will become the DoD standard, automated source for surface vehicular distance information worldwide. A notice of proposed implementation of DTOD in the DoD freight transportation program was published in the **Federal Register**, vol. 63, no. 178, pages 49338–49339, Tuesday, September 15, 1998. In response to this notice, 14 comments were received; of which 10 were from freight carriers, three from carrier associations, and one from Rand McNally. The comments and responses are as follows:

Comment: ALK's PC*MILER is a cost-effective database and would benefit small businesses.

Response: MTMC is aware that DTOD's commercial counterpart, ALK's PC*MILER, is currently used successfully in the commercial sector by shippers and carriers of various sizes and business objectives. MTMC believes that DTOD can be fully integrated with existing commercial transportation systems and can be used by DoD shippers and carriers with equal success.

Comment: The cost to purchase and maintain a separate distance calculation product for DoD shipments is too high.

Response: MTMC is aware of the economic impact implementation of DTOD may have on freight carriers, particularly small businesses. Therefore, MTMC did not mandate that carriers purchase and maintain DTOD in order to participate in the DoD freight program. Instead, MTMC only requires that participating carriers agree to be bound by DTOD mileage for payment and audit purposes. MTMC believes that carriers may choose to adapt to the DTOD implementation in a variety of ways, to include:

(1) Carriers not purchasing DTOD may rely on the payment process to identify the distance used for payment; (2) Carriers may subscribe to the DTOD-compliant commercial product (PC*MILER) through the Internet for an estimated $375 per 500 lookups; (3) Carriers may purchase and install ALK's PC*MILER in a manner best suited to their own business strategies and computer operations; (4) Carriers may explore the possibility of acquiring hard copy versions of PC*MILER; (5) Carriers may rely on the comparison of variances between Rand McNally's Milemaker and ALK's PC*MILER distances for the 124 busiest traffic lanes. Copies of the comparison are available on request. Additionally, MTMC is exploring automated methods of annotating all GBL's to reflect the DTOD distance.

Comment: Serving the commercial market and participating in the DoD freight program will require carriers to purchase and maintain two different systms—one for DoD and another for commercial customers.

Response: MTMC does not require carriers to purchase PC*MILER and maintain two different distance systems. Carriers may continue to use the mileage software they are currently using. However, for DoD shipments, payment and audit will be based on the DTOD distance calculations. Carriers will have the options listed in the first comment or other options suited to each carrier's business strategy/business relationship and market situation.

Comment: DTOD is a DoD-unique product and not the commercial standard in the freight industry.

Response: DTOD is a commercial product and is, therefore, consistent with commercial business practices. DTOD is based on ALK's PC*MILER,

which is a commercial-off-the-shelf product modified to include DoD standards point of location codes (SPLC) and several locations within CONUS and overseas. Use of DTOD will move DoD closer to a single, automated, and widely used commercial standard for all its various transportation programs. DTOD and PC*MILER will be subject to the same version control process and will feature delivery systems compatible with current commercial usage for like products.

Comment: Carrier information systems use AS400 and Unix operating systems. It is not clear whether DTOD will run on these larger systems.

Response: DoD has chosen to use a Windows NT operating system. However, carriers are free to license a PC*MILER version that will run on an operating system of their choice. ALK currently has versions of PC*MILER for AS400 and Unix operating systems.

Comment: Many small businesses do not have updated computer capability or do not use computers.

Response: MTMC realizes that all carriers do not operate their businesses in the same way. However, current and future business practices are centered on the use of computers in one way or another. As the business process changes to embrace principles of electronic commerce (e.g., electronic data interchange and electronic funds transfer), MTMC is anxious to capitalize on the economies and efficiencies those changes represent. MTMC is confident that commercial shippers and transportation providers are moving in the same direction.

Comment: PC*MILER is unproven in industry and lacks version control.

Response: Currently, over 9500 shippers and carriers in commercial transportation are using PC*MILER. The DTOD project office, in conjunction with the software vendor, will maintain precise versions control of the distance software to ensure all parties (finance centers, audit agencies, shippers, and carriers) have the same version of DTOD/PC*MILER at the same time.

Comment: DoD's proposed implementation of DTOD in its freight program violates the Regulatory Flexibility Act by failing to include an initial regulatory flexibility analysis.

Response: DoD's decision to adopt and implement a single, integrated mileage calculation source is a procurement policy decision that is directly related to the basis DoD will use to pay for commercial transportation services. The decision and steps taken to implement DTOD in DoD's freight program relate to public contracts and are exempt from the Regulatory Flexibility Act, 5 U.S.C. 601–612. This policy decision to implement a single distance calculation source for internal agency travel entitlement and procurement purposes is not considered rule making within the meaning of the Administrative Procedure Act or the Regulatory Flexibility Act.

2. Regulatory Flexibility Act

Implementation of this policy change in DoD's freight program involves public contracts and is designed to standardize distance calculation in the payment and audit process. This change is not considered rule making within the meaning of the Administrative Procedures Act or the Regulatory Flexibility Act, 5 U.S.C. 601–612.

3. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051, et seq., does not apply because no information collection reporting or records keeping responsibilities are imposed on offerors, contractors, or members of the public.

David E. Cook,

Col, USAF, Director, JTMO.

[FR Doc. 99–2325 Filed 1–29–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Web-Based Education Commission; Notice of Establishment

AGENCY: Office of the Secretary, Education.

ACTION: Notice of Establishment of the Web-Based Education Commission.

SUMMARY: The Secretary of Education announces his intention to establish the Web-Based Education Commission under the authority of the Higher Education Act of 1998 (Pub. L. 105–244) and the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C.A. Appendix 2).

PURPOSE: The Secretary has determined that the establishment of the Web-Based Education Commission is necessary and in the public interest in connection with the performance of duties imposed on the Department by law. This Commission is required to conduct a thorough study to assess the educational software available in retail markets for secondary and postsecondary students who choose to use such software. The Commission will hold public hearings throughout the United States to produce this study. The Commission will issue a final report to the President and Congress, not later than six months after the first meeting. This report shall contain a detailed statement of the findings and conclusions together with its recommendations. The recommendations shall address what legislation and administrative actions they consider appropriate; and what they regard as the appropriate Federal role in determining the quality of the educational software products. The Commission shall consist of Fourteen members, appointed by the President, Secretary, and Congress, who have expertise in the Internet technology industry, in accreditation, establishing statewide curricula, and establishing information technology networks pertaining to education curricula.

RESPONSIBLE OFFICIAL: Maureen McLaughlin, Deputy Assistant Secretary for Policy, Planning, and Innovation, U.S. Department of Education, Washington, DC 20202 Telephone: (202) 205–2987.

Dated: January 26, 1999.

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–2332 Filed 1–29–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation

Date and Time: Thursday, March 4, 1999, 9:30 a.m. until 12:30 p.m.

Place: The Latham Hotel, 3000 M Street, NW, Washington, DC 20037, (202) 726–5000. The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an accommodation to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested accommodations may not be available because of insufficient time to arrange them.

Status:

Parts of this meeting will be open to the public.

Parts of this meeting will be closed to the public.

Matters to be Considered: The standard of accreditation applied to medical schools by several foreign countries and the comparability of those standards to the standards of accreditation applied to United States medical schools. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific

determination of comparability are closed to the public in order that each country may be properly notified of the decision.

Supplementary Information: Pursuant to section 481 of the Higher Education Act of 1965, as amended in 1992 (20 U.S.C. 1088), the Secretary established within the Department of Education the National Committee on Foreign Medical Education and Accreditation. The Committee's responsibilities are to (1) evaluate the standards of accreditation applied to applicant foreign medical schools; and (2) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

For Further Information Contact: Bonnie LeBold, Executive Director, National Committee on Foreign Medical Education and Accreditation, 7th and D Streets, SW, Room 3082, ROB #3, Washington, DC 20202–7563. Telephone: (202) 260–3636. Beginning February 22, 1999, you may call to obtain the identity of the countries whose standards are to be evaluated during this meeting.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance Programs.

[FR Doc. 99–2235 Filed 1–29–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–03; Environmental Meteorology Program—Vertical Transport and Mixing

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Extension of Application Due Date.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), published a Notice in the **Federal Register** on December 22, 1998, announcing its interest in receiving applications for the Environmental Meteorology Program (EMP), Vertical Transport and Mixing (VTMX) Science Team. Since the publication of the Notice and due to unforeseen circumstances, OBER is changing the date that formal applications are due.

In the **Federal Register** of December 22, 1998, in FR Doc. 98–33858, on page 70758 under the **DATES** heading, formal applications in response to this notice were requested by 4:30 p.m., E.S.T., March 12, 1999. With this Notice of Extension, OBER is changing the due date for formal applications from March 12, 1999, to 4:30 p.m., E.S.T., March 30, 1999. Also, stated in the original notice, applicants were urged to access web site http://www.pnl.gov/VTMX to review abstracts of proposals from DOE laboratory scientists that will be tentatively selected for funding. These abstracts were to be posted there by February 12, 1999. This date is being changed to February 26, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Lunn, telephone: (303) 903–4819.

Issued in Washington, DC, on January 22, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–2309 Filed 1–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–14; Low Dose Radiation Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Offices of Science (SC) and Environmental Management (EM), U.S. Department of Energy (DOE), hereby announce their interest in receiving applications for research that supports the Low Dose Radiation Research Program. Research is sought in the following areas:

(1) Low dose radiation vs. endogenous oxidative damage—the same or different?

(2) Understanding biological responses to radiation and oxidative damage.

(3) Thresholds for low dose radiation—fact or fiction?

(4) Genetic factors that affect individual susceptibility to low dose radiation.

(5) Communication of research results.

This Program uses modern molecular tools to develop a better scientific basis for understanding exposures and risks to humans from low dose radiation that can be used to achieve acceptable levels of human health protection at the lowest possible cost. Proposed basic research should contribute to EM needs by decreasing health risks to the public and workers from low dose radiation, providing opportunities for major cost reductions in cleaning up DOE's environmental problems, and reducing the time required to achieve EM's mission goals.

DATES: Potential applicants should submit a one page preapplication referencing Program Notice 99–14 by 4:30 P.M. E.S.T., February 23, 1999. A response to preapplications discussing the potential program relevance of a formal application generally will be communicated within 7 days of receipt.

The deadline for receipt of formal applications is 4:30 P.M., E.D.T., April 13, 1999, in order to be accepted for merit review and to permit timely consideration for award in FY 1999 and FY 2000.

ADDRESSES: Preapplications referencing Program Notice 99–14, should be sent by E-mail to joanne.corcoran@science.doe.gov. Preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 99–14, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–14. This address must be used when submitting applications by U.S. Postal Service Express, commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, telephone: (301) 903–9817, E-mail: david.thomassen@science.doe.gov, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290 or Mr. Mark Gilbertson, Office of Science and Risk Policy, Office of Science and Technology, Office of Environmental Management, 1000 Independence Avenue, SW, Washington, D.C. 20585, telephone: (202) 586–7150, E-mail: mark.gilbertson@em.doe.gov.

SUPPLEMENTARY INFORMATION:

Low Dose Radiation Research Program

Background and Overview

Each and every cell in the human body is constantly engaged in a life and death struggle to survive "in spite of itself." Normal physiological processes needed for cell survival generate toxic oxidative products that are damaging, even mutagenic, and potentially carcinogenic. Yet cells and people survive because of the cell's remarkable capacity to repair the majority, if not all, of this oxidative damage. We don't know, however, the relationship

between this normal oxidative damage and the high frequency of cancers that exist in all human populations. Is cancer a price we pay for the very biological processes that keep us alive?

We are also constantly exposed to low levels of natural background radiation from cosmic radiation and from naturally occurring radioactive materials in soils, water, and even living things. Research has taught us that while even low levels of radiation induce biological damage, the damage is very similar to the oxidative damage induced by normal cellular processes. Thus a critical, yet unanswered, question in radiobiology is whether the biological damage induced by low doses and low dose rates of radiation is repaired by the same cellular processes and with the same efficiency as normal oxidative damage that is a way of life for every living cell.

The Low Dose Radiation Research Program will conduct research to determine if low dose and low dose-rate radiation present a health risk to people that is the same as or greater than the health risk resulting from the oxidative by-products of normal physiological processes. This information is a key determinant in decisions that are made to protect people from adverse health risks from exposure to radiation.

Extensive research on the health effects of radiation using standard epidemiological and toxicological approaches has been used for decades to characterize responses of populations and individuals to high radiation doses, and to set exposure standards to protect both the public and the workforce. These standards were set by extrapolating from the biological effects observed in high-dose radiation studies to predicted, *but unmeasurable effects,* at low radiation doses, using modeling approaches. This approach was chosen because of our inability to detect changes in cancer incidence following low doses of radiation. Thus, the historic approach has been the Linear-no-Threshold model that assumes each unit of radiation, no matter how small, can cause cancer. As a result, radiation-induced cancers are predicted from low doses of radiation for which it has not been possible to directly demonstrate cancer induction.

Most of the projected radiation exposures associated with human activity over the next 100 years will be to low dose and low dose-rate radiation from medical tests, waste clean-up, and environmental isolation of materials associated with nuclear weapons and nuclear power production. The major type of radiation exposures will be low Linear Energy Transfer (LET) ionizing radiation from fission products. The DOE Low Dose Radiation Research Program will thus concentrate on studies of low-LET exposures delivered at low total doses and dose-rates.

The overriding goal of this program is to ensure that human health is adequately and appropriately protected. It currently costs billions of dollars to protect workers and the public from exposure to man-made radiation, often at exposure levels lower than the natural background levels of radiation. If it could be demonstrated that there is no increased risk associated with these exposures, these resources could be directed toward more critical health related issues.

The research program will build on advances in modern molecular biology and instrumentation, not available during the previous 50 years of radiation biology research, to address the effects of very low levels of exposure to ionizing radiation. It will concentrate on understanding the relationships that exist between normal endogenous processes that deal with oxidative damage and processes responsible for the detection and repair of low levels of radiation-induced damage.

Research will focus on understanding the normal cellular processes responsible for recognizing and repairing normal oxidative damage and radiation-induced damage. If the damage and repair induced by low dose radiation is the same as for normal oxidative damage, it is possible that there are thresholds of damage that the body can handle. In contrast, if the damage from ionizing radiation is different from normal oxidative damage, then its repair, and the hazard associated with it, may be unique.

Research conducted in this program will help determine health risks from exposures to low levels of radiation, information that is critical to adequately and appropriately protect people and to make the most effective use of our national resources.

Research Needs

To understand the relationship between normal oxidative damage and radiation-induced damage, studies will be conducted at very low, doses and dose-rates and the perturbation of the normal physiological processes will be characterized at all levels of biological organization—from genes to cells to tissues to organisms. Research needs are identified in interrelated five areas:

1. Low dose radiation vs. endogenous oxidative damage—the same or different?

A key element of this research program will be to understand the similarities and differences between endogenous oxidative damage, damage induced by low levels of ionizing radiation, and the health risks from both.

Research is needed to understand and quantify real, *not calculated,* differences or similarities in DNA damage induced by normal oxidative processes versus low doses or low dose rates of ionizing radiation. This information is the foundation for the entire low dose radiation research program. Although always needed, it was not previously attainable because critical resources and technologies were not available. Today, technologies and resources such as those developed as part of the human genome program, e.g., coupled capillary electrophoresis and mass spectrometry systems and DNA sequence information, have the potential to detect and characterize small differences in damage induced by normal oxidative processes and low doses of radiation.

A significant investment in technology development will be required to expand current capabilities for identifying and quantifying small amounts of oxidative or radiation. Radically new technologies are likely not needed but current technologies will need to be modified. Methodologies having high sensitivity as well as high signal-to-noise ratio will be critical in this effort.

A significant research effort will also be required to characterize and quantify normal oxidative damage in cells and the incremental increases induced by low doses of ionizing radiation. Partnerships are encouraged between laboratories involved in characterization and quantification of radiation and oxidative damage and groups with expertise in or developing new technology to facilitate progress in both areas simultaneously.

A critical goal of the research component of this program is to quantify levels of damage induced by normal oxidative processes and the incremental increases due to low dose radiation. Qualitative descriptions of differences and/or similarities between the types of damage induced under both conditions are useful in the design and interpretation of experiments in other parts of the Low Dose Radiation Research Program. To be most useful in risk models and for regulators these differences or similarities must be quantified.

2. Understanding biological responses to radiation and endogenous damage.

Molecular, cellular, and tissue responses modify the processing of radiation induced damage and/or determine whether or not damaged cells

are eliminated, inhibited, or expressed. These responses impact cancer risks from radiation.

Research is needed to understand and quantify real, *not extrapolated or assumed,* differences or similarities in biological changes and responses observed following exposures to low doses or low dose rates of ionizing radiation. This research covers the breadth of radiation and cancer biology from the initial recognition and processing of radiation damage by a cell to the potential development of cancer. Not all research, no matter how important to our understanding of the mechanisms of cellular responses to low dose radiation or of cancer development, will necessarily be useful for estimating health risks from low dose radiation or in choosing low dose radiation risk models. However, understanding and quantifying key aspects of the biological changes and responses induced by low dose radiation is likely to have dramatic impacts on our ability to efficiently and effectively protect people from unnecessary and avoidable health risks.

Research will benefit from the rapidly increasing availability of DNA sequence data from humans and other model organisms including mouse, yeast, fruit fly, etc. Recently developed technologies for characterizing and quantifying gene expression should be exploited. In some cases, further improvements in these technologies will be needed, such as increases in the sensitivity for detecting and quantifying gene expression. Cytogenetic techniques that couple traditional cytogenetic approaches with advances in molecular biology and automation will likely be useful in efforts to determine how accurately low dose radiation damage is repaired. Advances in the use and development of model organisms and of advanced systems for studying "normal" cells in culture should also be exploited to study the more complex interactions of cells and tissues in determining the biological effects of low dose radiation.

Research is needed that addresses the following six key questions:

Do cells recognize and respond to low doses of ionizing radiation the same way that they do to high doses of radiation? Much of the damage induced by radiation and normal oxidative processes is the same. Research should concentrate on damage that is unique to low doses of radiation and on differences or similarities between biological responses following high versus low doses of radiation. It must be determined which genes and proteins are specifically induced in response to low doses of ionizing radiation, how these relate to other oxidative stresses, and importantly, how the induced genes and proteins affect endpoints relevant to radiation-induced cancer. It must also be determined if the ability and efficacy of cells to recognize and repair radiation damage is affected by the radiation dose.

Do cells repair DNA damage induced by low doses of ionizing radiation the same way that they do damage induced by high doses of radiation? The repair or misrepair of radiation-induced DNA damage is of fundamental importance to all aspects of a cell and/or an organism's responses to radiation exposure. The fidelity of the repair and damage processing systems will significantly affect the dose response curve for cancer induction, particularly at low doses. Ineffective repair or misrepair of radiation damage and subsequent processing of this unrepaired or misrepaired damage can significantly impact genomic integrity resulting in radiation-induced mutations, chromosomal aberrations, chromosomal stability, and cancer. Quite simply, if radiation-induced damage is faithfully repaired and processed, a threshold is expected. On the other hand, if repair and subsequent processing can lead to errors at low doses but not at high doses, an expectation of a threshold is not warranted.

Additional understanding of the molecular mechanisms involved and in the closely linked damage signaling pathways will provide information relevant to the faithful repair of specific lesions, the molecular responses of cells to specific lesions and the consequences of cellular processing of radiation-induced damage compared to that of endogenous damage. Many of these consequences can be assessed using rapidly developing molecular cytogenetic technology such as combinatorial fluorescence in situ hybridization (FISH). Because cytogenetic effects represent the synthesis of damage induction, repair and processing, these new technologies provide the opportunity to directly test certain key predictions of models of radiation effects at low doses. Substantially more information is also need on (1) the underlying repair processes; (2) the role of DNA sequence and chromatin structure in determining radiation response and target size for biological endpoints relevant to cancer; and (3) how and if the processing of damage induced by low doses of radiation leads to mutations, chromosomal aberrations, and genomic instability.

How much do low doses of radiation "protect" cells against subsequent low doses of ionizing radiation? If low doses of radiation regularly and predictably induce a protective response in cells to subsequent low doses of radiation this could have a substantial impact on estimates of adverse health risk from low dose radiation. The generality and the extent of this apparent adaptive response in cells irradiated with small doses of ionizing radiation needs to be quantified.

Are the potentially damaging effects of low dose radiation amplified by interactions between cells? It is important for this program to determine if these so-called by-stander effects can be induced by exposure to low LET radiation delivered at low total doses or dose-rates. If such an effect is demonstrated and quantifiable, it could, potentially, increase estimates of risk from low dose radiation. This by-stander effect, in essence, "amplifies" the biological effects of a low dose exposure by effectively increasing the number of cells that experience adverse effects to a number greater than the number of cells directly exposed to radiation.

Is genetic instability, a key step in the development of cancer, induced or initiated by low doses of radiation? Current evidence suggests that DNA repair and processing of radiation damage can lead to instability in the progeny of irradiated cells and that susceptibility to instability is under genetic control. However, there is virtually no information on the underlying mechanisms and how the processing of damage leads to instability in the progeny of irradiated cells several generations later. Further, while there has been considerable speculation about the role of such instability in radiation-induced cancer, its role in this process remains to be determined.

Is the development of cancer induced by low (versus high) doses of radiation affected by the unirradiated normal tissues that surround the potential cancer cells? The ability of an irradiated cell to escape normal tissue regulatory processes or of a tissue to inhibit the further progression of precancerous cells may be differentially affected by high versus low doses of radiation. Exposure- and dose-response studies should be conducted to determine if the basic mechanisms of radiation action change as a function of total radiation dose and dose rate. High doses of ionizing radiation induce matrix and tissue disorganization, cell killing, changes in cell proliferation kinetics, induction of a multitude of genes and growth factors, and extensive chromosome and genetic damage. It is important to determine if low doses of

ionizing radiation can induce these biological changes. It will also be important to determine if cancer can be induced by doses that are too low to produce such changes.

3. Thresholds for low dose radiation—fact or fiction?

We don't know if there are radiation doses or energies below which there is no significant biological change or below which the damage induced can be effectively dealt with by normal cellular processes. If there are, then there should be no regulatory concern for exposures below these thresholds since there will be no increase in risk.

The principal focus of research in this component of the Low Dose Radiation Research Plan is to develop methods to synthesize or model new molecular level information on low dose radiation induced damage and biological responses to that damage into a low dose radiation risk model. The goal of this research program is to develop scientifically defensible tools and approaches for determining risk that are widely used, accepted, and understood. Research should include, but not be limited to development of computational techniques, e.g., algorithms and advanced mathematical approaches, for use in determining risk, that model new information from cellular and molecular studies together with available data from epidemiologic and animal studies.

A secondary, but essential component of this component of the Low Dose Radiation Research Plan, will be the design and conduct of additional biological experiments to address specific questions or predictions made by these new computational approaches. These biological experiments, though likely complementary to research described above, will be designed and conducted in collaboration with modelers.

4. Genetic factors that affect individual susceptibility to low dose radiation.

Do genetic differences exist making some individuals more sensitive to radiation-induced damage? Such genetic differences could result in sensitive individuals or sub-populations that are at increased risk for radiation-induced cancer.

The Low Dose Radiation Research Program should have three main goals in terms of genetic susceptibility to low dose radiation: (1) Identify genes involved in the recognition, repair, and processing of damage induced by ionizing radiation, (2) determine the frequencies of polymorphisms in these genes in the population, and (3) determine the biological significance of these polymorphisms with respect to cancer and radiation sensitivity.

Research in these three areas will strongly complement ongoing initiatives at the National Institutes of Health (NIH). DOE staff will work with staff at the NIH to ensure that research in the Low Dose Radiation Research Program is complementary to and not duplicative of research funded by NIH programs.

The National Human Genome Research Institute (NHGRI) is funding research to identify common variants in the coding regions of the majority of human genes identified during the next five years with the goal of developing a catalog of all common variants in all. The NHGRI is also working to create a map of at least 100,000 single nucleotide polymorphisms, the most common polymorphisms in the human genome representing single base-pair differences between two copies of the same gene. These so-called SNPs will be a boon for mapping complex such as cancer, cancer susceptibility, and susceptibility to low dose radiation.

The National Institute of Environmental Health Science (NIEHS) is funding research as part of its Environmental Genome Project to understand the impact and interaction of environmental exposures on human disease. The NIEHS project includes efforts to understand genetic susceptibility to environmental agents that will allow more precise identification of the environmental agents that cause disease and the true risks of exposures. The principal focus of NIEHS research will be on chemicals so the focus on radiation in the Low Dose Radiation Research Program is highly complementary. Initially, the Environmental Genome Project will focus on categories of genes including: xenobiotic metabolism and detoxification genes; hormone metabolic genes; receptor genes; DNA repair genes; cell cycle genes; cell death control genes; genes mediating immune and inflammatory responses; genes mediating nutritional factors; genes involved in oxidative processes and, genes for signal transduction systems.

Identification of potential susceptibility genes and polymorphisms in those genes is only the first (and perhaps the easiest) step in the program to characterize and understand genetic susceptibility. Determining the biological significance of these genetic polymorphisms with respect to cancer and radiation sensitivity is the ultimate goal and the more difficult task. The international human genome project, structural biology research, and the NHGRI and NIEHS efforts described above play important roles determining which polymorphisms are most likely to influence gene function. Population genetics and computational biology approaches will be required to estimate the potential impact on estimates of population and individual risk. Genetic epidemiology approaches will also be needed to relate specific polymorphisms and combinations of polymorphisms with cancer risk. Inbred mouse strains and other model organisms with well-characterized differences in susceptibility to radiation-induced cancer are also important tools for identifying significant polymorphisms. Direct assessment of the biological significance of candidate "susceptibility genes" can also be undertaken using animal models such as knock-out and knock-in mice, mice with specific genes removed or added.

5. Communication of research results.

This research program will only be a success if the science it generates is useful to policy makers, standard setters, and the public. Research results must be effectively communicated so that current thinking reflects sound science.

The Low Dose Radiation Research Program should have two main research goals for communicating the Program's research results: (1) develop a public communication program based on principles of risk communication and (2) develop a public education program based on principles of risk communication science.

Communication with the public about low dose management, requires a well-developed plan based on strong basic social science research. The goal of communication research in this program should be to understand the likely public responses to scientific findings from the Low Dose Radiation Research Program and responses to the plans that might result to modify existing standards based on these scientific findings. The following topics should be included in determining public responses to issues regarding low dose radiation exposures: (i) public perceptions of risk from exposure to radiation; (ii) the perceived importance of the activities and conditions that produce low dose radiation; (iii) trust and confidence in risk managers, regulators, and decision makers; (iv) the role of the media in characterizing different positions on risk controversies; (v) the role of advocacy groups; (vi) the manner by which risk is characterized and assessed; and (vii) procedures by which decisions are made.

To present developments from this program in a form that is useful and easily understood by the public, the education program would develop web

pages, written resources for public schools, and coordinate multimedia coverage of research results and public meetings. Public meetings would provide opportunities for the public to meet with scientists and regulators involved in policy making, facilitating public input into the decision making process.

Radiation Doses of Interest

The focus of research in the Low Dose Radiation Research Program should be on doses of low linear energy transfer (LET) radiation that are at or below current workplace exposure limits. In general, research in this program should focus *on total radiation doses that are less than or equal to 10 rads.* Some experiments will likely involve selected exposures to higher doses of radiation for comparisons with previous experiments or for determining the validity of extrapolation methods previously used to estimate the effects of low doses of radiation from observations made at high doses.

Supplementary Materials

A draft of the DOE Low Dose Radiation Research Program Plan is available on the World Wide Web at http://www.er.doe.gov/production/ober/berac/draftld.pdf. This research plan outlines a ten-year research strategy to help determine the risks to human health from exposure to low doses of ionizing radiation.

Success of the Low Dose Radiation Research Program depends on maintaining a diverse and balanced set of research projects that span the research needs outlined above. A list and a brief description of projects currently funded as part of the Low Dose Radiation Research Program is available at http://www.er.doe.gov/production/ober/ldprojlist.html on the World Wide Web. These projects were funded as part of solicitation number 98–11 that can be found on the World Wide Web at http://www.er.doe.gov/production/grants/fr98__11.html.

Program Funding

It is anticipated that up to $4.0 million will be available for new grant awards during FY 1999, contingent upon the availability of funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of appropriated funds, progress of the research, and continuing program need. It is expected that most awards will be from 1 to 3 years and will range from $200,000 to $400,000 per year (total costs).

Preapplication

A preapplication should be submitted. The Preapplication should contain a title, list of investigators, address, telephone, fax and E-mail address of the Principal Investigator, and no more than a one page summary of the proposed research, including project objectives and methods of accomplishment. Preapplications will be reviewed by program managers from SC and EM relative to the scope and research needs of the DOE Low Dose Radiation Research Program and the Environmental Management Science Program (EMSP). Responses to the preapplications, encouraging or discouraging formal applications, will generally be communicated within 7 days of receipt. Notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications

(Please Note Critical Information Below on Page Limits)

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html.

The Project Description must be 25 pages or less, exclusive of attachments. *Applications with Project Descriptions longer than 25 pages will be returned to applicants and will not be reviewed.* The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitaes consistent with NIH guidelines.

Adherence to type size and line spacing requirements is necessary for several reasons. No applicants should have the advantage, or by using small type, of providing more text in their applications. Small type may also make it difficult for reviewers to read the application. Applications must have 1-inch margins at the top, bottom, and on each side. Type sizes must be 10 point or larger. Line spacing is at the discretion of the applicant but there must be no more than 6 lines per vertical inch of text. Pages should be standard 8½" x 11" (or metric A4, i.e., 210 mm x 297 mm).

Applicants are expected to use the following ordered format to prepare Applications in addition to following instructions in the Application Guide for the Office of Science Financial Assistance Program. Applications must be written in English, with all budgets in U.S. dollars.

- Face Page (DOE F 4650.2 (10–91)).
- Project Abstract (no more than one page).
- Relevance to EM needs (Applicants should use no more than one page to describe how the proposed basic research contributes to EM needs by decreasing health risks to the public and workers from low dose radiation, providing opportunities for major cost reductions in cleaning up DOE's environmental problems, or reducing the time required to achieve EM's mission goals.).
- Budgets for each year and a summary budget page for the entire project period (using DOE F 4620.1).
- Budget Explanation.
- Budgets and Budget explanation for each collaborative subproject, if any.
- Project Description (The Project Description must be 25 pages or less, exclusive of attachments. *Applications with Project Descriptions longer than 25 pages will be returned to applicants and will not be reviewed.*).
- Goals.
- Significance of Project to EM needs.
- Background.
- Research Plan.
- Preliminary Studies (if applicable).
- Research Design and Methodologies.
- Literature Cited.
- Collaborative Arrangements (if applicable).
- Biographical Sketches (limit 2 pages per senior investigator).
- Description of Facilities and Resources.
- Current and Pending Support for each senior investigator.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as universities,

industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible.

Merit and Relevance Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the Department's programmatic needs. External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Subsequent to the formal scientific merit review, applications that are judged to be scientifically meritorious will be evaluated by DOE for relevance to the objectives of the EMSP which include protecting the health of the populations that live near or work at DOE sites. Additional information on the EMSP can be obtained at http://www.em.doe.gov/science; on the World Wide Web.

Environmental Management Science Program Overview

Purpose

The need to build a stronger scientific basis for the Environmental Management effort has been established in a number of recent studies and reports. The Galvin Commission report ("Alternative Futures for the Department of Energy National Laboratories," February 1995) also provided the following observations and recommendations:

> There is a particular need for long term, basic research in disciplines related to environmental cleanup . . . Adopting a science-based approach that includes supporting development of technologies and expertise . . . could lead to both reduced cleanup costs and smaller environmental impacts at existing sites and to the development of a scientific foundation for advances in environmental technologies.

The Environmental Management Advisory Board Science Committee (Resolution on the EMSP, May 2, 1997) made the following observations:

> EMSP results are likely to be of significant value to EM . . . Early program benefits, include: improved understanding of EM science needs, linkage with technology needs, and expansion of the cadre of scientific personnel working on EM problems . . . Science program has the potential to lead to significant improvement in future risk reduction and cost and time savings.

The objectives of the EMSP are to:

- Provide scientific knowledge that will revolutionize technologies and clean-up approaches to significantly reduce future costs, schedules, and risks;
- "Bridge the gap" between broad fundamental research that has wide-ranging applicability such as that performed in DOE's Office of Science and needs-driven applied technology development that is conducted in EM's Office of Science and Technology; and
- Focus the Nation's science infrastructure on critical DOE environmental management problems.

Representative Research Areas

The EMSP solicits basic research in all areas of science that have the potential for addressing one or more of the areas of concern to the Department's Environmental Management Program. Overall, the scientific disciplines relevant to the EMSP include, but are not limited to:

- Biology (including cellular and molecular biology, ecology, bioremediation, genetics, biochemistry, and structural biology).
- Chemistry (including analytical chemistry, catalysis, heavy element chemistry, inorganic chemistry, organic chemistry, physical chemistry, and separations chemistry).
- Computational sciences (including research and development of mathematical/numerical, informatics, and communication procedures and software technology, e.g., for deterministic simulations and optimization).
- Engineering sciences (including control systems and optimization, diagnostics, transport processes, thermophysical properties and bioengineering).
- Geosciences (including geophysical imaging, physicochemical dynamics and chemical transport in fluid-rock systems, and hydrogeology).
- Health sciences.
- Materials science (including condensed matter physics, metallurgy, ceramics, waste minimization, welding and joining, degradation mechanisms, and remote sensing and monitoring).
- Physics (including atomic, molecular, optical, and fluid physics).
- Plant science (including mechanisms of mineral uptake, intercellular transport, and concentration and sequestration).

Major Environmental Management Challenges.

This research notice is part of a long-term program within Environmental Management to provide continuity in scientific knowledge that will more effectively protect workers and the public and revolutionize approaches for solving DOE's most complex environmental problems. The following is an overview of the major technical challenges facing the Environmental Management Program. More detailed descriptions of the specific technical work performed at DOE sites can be found in the background section of this Notice.

The Department is the guardian of over 300 large storage tanks containing over 100 million gallons of highly radioactive wastes, that include organic and inorganic chemical compounds, in solid, colloidal, slurry, and liquid phases. The environment within the tanks is highly radioactive and chemically harsh. A few of the tanks have leaked to the environment while others are corroding. The contents of these tanks need to be characterized, removed from the tanks, treated, and converted to safe forms for disposal.

The Department is the custodian of several thousand metric tons of spent nuclear reactor fuels, resulting primarily from weapons fabrication activities during the Cold War, but also including fuel from research and naval reactors. The long-term containment performance of the fuel under storage and disposal conditions is uncertain. Such uncertainties affect the ability to license disposal methods.

The Office of Environmental Management is the custodian of large quantities of fissile materials which were left in the manufacturing and processing facilities after the United States halted its nuclear weapons production activities. These materials include plutonium solutions, plutonium metals and oxides, plutonium residues and compounds, highly enriched uranium, and nuclides of other actinides. Additional scientific information is required to choose

processes for converting these materials to stable forms.

The Department currently has on its sites over one hundred sixty thousand cubic meters of waste containing both radioactive and hazardous materials. This mixed waste contains a wide variety of materials, as varied as protective clothing, machining products and wastes, packaging materials, and process liquids. Fundamental scientific data are needed to improve processes associated with treatment systems, such as characterization, pre-treatment, and monitoring.

The Department is committed to the safe disposal of all radioactive wastes, including high-level wastes, mixed wastes, and fissile materials. Safe disposal of these materials requires that the wide range of potential waste streams be converted into insoluble materials for long term storage. Some radioactive material-containing forms have been successfully developed and are being produced; however, at present, research challenges still exist in developing suitable forms for each material to be stored.

The Department is currently conducting cleanup activities at many of its sites, and is preparing plans for additional remediation work. There is much scientific uncertainty about the levels of risk to human health at the end stages of the DOE clean-up effort. This notice for new research in FY 1999 is intended to address these uncertainties.

Background

The United States involvement in nuclear weapons development for the last 50 years has resulted in the development of a vast research, production, and testing network known as the nuclear weapons complex. The Department has begun the environmental remediation of the complex encompassing radiological and nonradiological hazards, vast volumes of contaminated water and soil, and over 7,000 contaminated structures. The Department must characterize, treat, and dispose of hazardous and radioactive wastes that have been accumulating for more than 50 years at 120 sites in 36 states and territories.

By 1995, the Department had spent about $23 billion in identifying and characterizing its waste, managing it, and assessing the remediation necessary for its sites and facilities. Over the next ten years at current budget projections, another $60 billion will be spent. The DOE cleanup of the Cold War legacy is the largest cleanup program in the Federal Government, even larger than that of the Department of Defense legacy.

The Office of Environmental Management is responsible for waste management and cleanup of DOE sites. The EM operations have been historically compliance-based and driven to meet established goals in the shortest time possible using either existing technologies or those that could be developed and demonstrated within a few years. Environmental Management is also responsible for conducting the program for waste minimization and pollution prevention for the Department.

The variety and volume of the Department's current activities make this effort a challenge itself. In some cases, fundamental science questions will have to be addressed before a technology or process can be engineered. There is a need to involve more basic science researchers in the challenges of the Department's remediation effort. The Office of Science addresses fundamental, frequently long-term, research issues related to the many missions of the Department. The EMSP uses SC's experience in managing fundamental research to address the needs of technology breakthroughs in EM's programs.

Details of the programs of the Office of Environmental Management and the technologies currently under development or in use by Environmental Management Program can be found on the World Wide Web at http://www.em.doe.gov; and at the extensive links contained therein. These programs and technologies should be used to obtain a better understanding of the missions and challenges in environmental management in DOE when considering areas of research to be proposed.

References for Background Information

Note: World Wide Web locations of these documents are provided where possible. For those without access to the World Wide Web, hard copies of these references may be obtained by writing Mr. Mark A. Gilbertson at the address listed in the **FOR FURTHER INFORMATION CONTACT** section.

DOE 1998. Accelerating Cleanup: Paths to Closure
http://www.em.doe.gov

DOE 1998. Report to Congress on the U.S. Department of Energy's EMSP: Research Funded and Its Linkages to Environmental Cleanup Problems.
http://www.doe.gov/em52

DOE 1998. EMSP Workshop.
http://www.doe.gov/em52

DOE 1997. Research Needs Collected for the EM Science Program—June 1997.
http://www.doe.gov/em52/needs.html

DOE 1997. U.S. Department of Energy Strategic Plan
http://www.doe.gov/policy/doeplan.html

DOE 1998. Office of Science and Risk Policy EM–52 and EMSP.
http://www.em.doe.gov/science/

DOE 1998. Office of Science and Technology EM–50.
http://em-50.em.doe.gov/

DOE 1998. Office of Science and Risk Policy, Risk Policy Program.
http://www.em.doe.gov/irm/index.html

DOE 1998. Office of Environment, Safety, and Health.
http://www.eh.doe.gov/

DOE 1995. Closing the Circle on the Splitting of the Atom: The Environmental Legacy of Nuclear Weapons Production in the United States and What the Department of Energy is Doing About It. The U.S. Department of Energy, Office of Environmental Management, Office of Strategic Planning and Analysis, Washington, DC
http://www.em.doe.gov/circle/index.html

National Research Council 1997. Building an EMSP: Final Assessment. National Academy Press, Washington, DC.
http://www.nap.edu/readingroom/books/envmanage/

National Research Council 1995. Improving the Environment: An Evaluation of DOE's Environmental Management Program. National Academy Press, Washington, DC
http://www.nap.edu/readingroom/books/doeemp/

Secretary of Energy Advisory Board. Alternative Futures for the Department of Energy National Laboratories. February 1995. Task Force on alternative Futures for the Department of Energy National Laboratories, Washington, DC
http://www.doe.gov/html/doe/whatsnew/galvin/tf-rpt.html

U.S. Congress, Office of Technology Assessment. Complex Cleanup: The Environmental Legacy of Nuclear Weapons Production, February 1991. U.S. Government Printing Office, Washington, DC NTIS Order number: PB91143743. To order, call the NTIS sales desk at (703) 487–4650.
http://www.wws.princeton.edu:80/~ota/disk1/1991/9113__n.html

National Science and Technology Council 1996. Assessing Fundamental Science, Council on Fundamental Science.
http://www.nsf.gov/sbe/srs/ostp/assess/

The Catalog of Federal Domestic Assistance Number for this program is

81.049, and the solicitation control number is ERFAP 10 CRF part 605.

Issued in Washington, DC January 22, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–2310 Filed 1–29–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1079–000]

California Power Exchange Corporation; Notice of Filing

January 25, 1999.

Take notice that on January 13, 1999, California Power Exchange Corporation (PX), tendered for filing Amendment No. 7, to the PX FERC Electric Service Tariff in the above-referenced Docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 4, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2283 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–167–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

January 26, 1999.

Take notice that on January 20, 1999, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77252–1188, filed a prior notice request with the Commission in Docket No. CP99–167–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate an existing delivery point in East Baton Rouge Parish, Louisiana, originally installed under Section 311 of the Natural Gas Policy Act of 1978, as a jurisdictional facility under Florida Gas' blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Florida Gas proposes to operate the existing delivery point located near mile post 552.2 on its 24-inch mainline in East Baton Rouge Parish as a delivery point for natural gas transportation services under Subpart G of Part 284 of the Commission's Regulations. Florida Gas states that it placed the delivery point in service for transportation services under Subpart B of Part 284 of the Regulations on January 1, 1999, to serve Exxon Corporation (Exxon), on behalf of Mid-Louisiana Gas Transmission Company, an intrastate pipeline. Florida Gas further states that it would deliver up to 67,000 MMBtu equivalent of natural gas per day and up to 24,455,000 MMBtu equivalent of natural gas yearly on an interruptible basis to satisfy Exxon's primarily industrial fuel requirements. Florida Gas states that the delivery point consists of approximately 75 feet of 8-inch diameter connecting pipe and other minor appurtenant facilities.

Florida Gas states that it has sufficient capacity to accomplish the deliveries of the requested gas volumes without detriment or disadvantage to Florida Gas' other existing customers and that Florida Gas' FERC Gas Tariff does not prohibit the addition of new delivery points.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2288 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DG99–37–000]

FPL Energy Wyman LLC; Notice of Supplement to Application for Commission Determination of Exempt Wholesale Generator Status

January 26, 1999.

Take notice that on January 26, 1999, FPL Energy Wyman LLC, 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission a supplement to an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

FPL Energy Wyman LLC, a Delaware limited liability company, proposes to own and operate the W.F. Wyman Station, Units 1, 2 and 3, located in Yarmouth, Maine. The units are being purchased from Central Maine Power Company. FPL Energy Wyman LLC filed its application for EWG status on December 11, 1998. It is supplementing that application for the limited purpose of providing additional discussion regarding incidental activities that are in proximity to the plant site.

Any person desiring to be heard concerning the supplemented Application for Exempt Wholesale Generator Status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the supplemented application. All such motions and comments should be filed on or before Febraury 3, 1999, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2282 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–75–002]

MIGC, Inc.; Notice of Tariff Filing

January 26, 1999.

Take notice that on January 22, 1999, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 51 with a proposed effective date of November 2, 1998.

MIGC states that the purpose of the filing is to comply with Order No. 587–H issued in Docket No. RM96–1–008.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2292 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–42–000]

Morgan Generation Company LLC and Brush Generation Company LLC; Notice of Filing

January 26, 1999.

Take notice that on January 15, 1999, Morgan Generation Company LLC (Morgan) and Brush Generation Company LLC (collectively, Applicants), filed an amendment to their Application for Determination of Exempt Wholesale Generator Status that was filed with the Commission on December 15, 1998.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before February 10, 1999, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2281 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–180–001]

National Fuel Gas Supply Corporation, Notice of Compliance Filing

January 26, 1999.

Take notice that on January 19, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub. First Revised Sheet No. 389 and Alt. Sub. First Revised Sheet No. 389, both bearing a proposed effective date of January 1, 1999.

National Fuel states that this filing is being made in compliance with the Commission's Letter Order issued on December 30, 1998, in the above-referenced docket. National Fuel further states that the revise tariff language on its primary tariff sheet provides that cash-out of imbalance volumes will be accomplished by using the index price for the month in which the imbalance was incurred. National Fuel's filing also includes an alternate tariff sheet that provides that cash-out of imbalance volumes will be accomplished by using the index price applicable to the month that includes the time period for which the Shipper last made a nomination for service. National Fuel urges the Commission to accept its alternate tariff sheet.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2294 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1394–000]

Ocean State Power and Ocean State Power II; Notice of Filing

January 26, 1999.

Take notice that on January 15, 1999, Ocean State Power and Ocean State Power II (Ocean State) tendered for filing their compliance filing of an executed Assignment and Release Agreement to replace the unexecuted Form of Agreement previously accepted by the Commission in Docket No. ER98–4499–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed, on or before February 5, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to interevene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2284 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–206–000]

Panhandle Eastern Pipe Line Company; Notice of Filing Reconciliation Report

January 26, 1999.

Take notice that on January 20, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its reconciliation report in accordance with Article I, Section 3(d)(ii) of the February 12, 1997 Stipulation and Agreement in Docket No. RP96–260–000 (Settlement). The Settlement required the filing of a reconciliation report as soon as practicable following the termination of the Firm Docket No. RP96–260–000 Settlement surcharges.

Panhandle states that on October 30, 1998, it filed in Docket No. RP99–107–000 to suspend the Docket No. RP96–260–000 Settlement Reservation Surcharge applicable to firm transportation services provided under Rate Schedules FT, EFT, and LFT and the Docket No. RP96–260–000 Settlement Volumetric Surcharge applicable to services provided under Rate Schedule SCT effective December 1, 1998. Panhandle's filing was approved by Commission letter order issued November 27, 1998.

Panhandle states that copies of this filing are being served on all parties to the proceeding in Docket No. RP96–260–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2295 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–207–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

January 26, 1999.

Take notice that on January 22, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Fourth Revised Sheet No. 55 and Second Revised Sheet No. 55A, to be effective March 1, 1999.

PG&E GT–NW asserts the purpose of this filing is to revise its tariff to specify that shippers may make voluntary contributions to support the Gas Research Institute through a "check the box" procedure on PG&E GT–NW's invoices.

PG&E GT–NW further states a copy of this filing has been served upon its jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2296 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–13–002]

Steuben Gas Storage Company; Notice of Compliance Filing

January 26, 1999.

Take notice that on January 20, 1999, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 2, 1998.

Steuben states the attached tariff sheets are being filed in compliance with the Commission's Order issued on January 13, 1999, in the above captioned docket.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2290 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–56–002]

Stingray Pipeline Company; Notice of Compliance Filing

January 26, 1999.

Take notice that on January 15, 1999, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective November 2, 1998.

Stingray states that these tariff sheets were filed in compliance with the Commission's order issued January 4, 1999, in Docket No. RP99–56–001.

Stingray requests waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Stingray states that copies of the filing are being mailed to its customers and interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–56.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426, in accordance with Section

385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2291 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–131–002]

Sumas International Pipeline Inc.; Notice of Request for Waivers

January 26, 1999.

Take notice that on January 19, 1999, Sumas International Pipeline Inc. (SIPI), filed a request for waiver and for an additional extension of time to comply with Gas Industry Standards Board (GISB) requirements related to Internet, EDM, and EDI electronic requirements.

SIPI states that copies of the filing were mailed to all customers of SIPI and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 2, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2289 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–002]

TransColorado Gas Transmission Company; Notice of Tariff Filing

January 26, 1999.

Take notice that on January 19, 1999, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance, to be effective on the date its Phase II facilities are placed into service, Third Revised Sheet No. 102, Second Revised Sheet No. 112, Second Revised Sheet No. 247 and Original Sheet No. 247A to Original Volume No. 1 of its FERC Gas Tariff. The proposed tariff sheets show an initial Fuel Gas Reimbursement Percentage (FGRP) of 1.0%.

TransColorado states that in compliance with the Commission's December 18, 1998 order in this proceeding, it has revised Sections 3.1(c) and 3.1(b) of Rate Schedules FT and IT of its FERC Gas Tariff so that they refer to a generally applicable fuel reimbursement provision in § 12.8 of the General Terms and Conditions of its Tariff that meets the requirements of § 154.403 of the Commission's Regulations. TransColorado has stated the initial fuel reimbursement percentage in both tariff provisions and clearly stated how the fuel reimbursement percentage will be calculated and applied to each shipper.

TransColorado states that a copy of this filing has been provided to TransColorado jurisdictional customers, the official service list in Docket No. RP99–106, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2293 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–11–000]

Transcontinental Gas Pipe Line Corp.; Notice of Filing

January 26, 1999.

Take notice that on January 21, 1999, Transcontinental Gas Pipe Line Corp. (Transco) submitted revised standards of conduct under Order Nos. 497, *et seq.*[1] Order Nos. 566 *et seq.*[2] and Order No. 599.[3]

Transco states that it served copies of its filing to its affected customers, State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before February 10, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. ¶31,064 (July 30, 1998).

file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2287 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–158–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

January 26, 1999.

Take notice that on January 19, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismark, North Dakota 58501, filed in Docket No. CP99–158–000 a request pursuant to sections 157.205 and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. For other than right-of-way grantor use, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

The tap is located in Golden Valley County, North Dakota. Williston Basin states that the right-of-way grantor tap was constructed in 1998 pursuant to section 157.211(a) of the Commission's Regulations. Williston Basin states that the proposed service will have no significant effect on Williston Basin's peak day or annual requirements. Williston Basin also states that their FERC Gas Tariff does not prohibit the addition of new delivery points and the volumes to be delivered are within the contractual entitlements of the customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2285 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–8–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

January 26, 1999.

Take notice that on January 21, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective January 21, 1999:

Second Revised Sheet No. 375
Eleventh Revised Sheet No. 775
Sixteenth Revised Sheet No. 776
Twentieth Revised Sheet No. 777
Twenty-first Revised Sheet No. 827
Fifteenth Revised Sheet No. 828
Twenty-second Revised Sheet No. 829
Twenty-first Revised Sheet No. 830
Thirtieth Revised Sheet No. 831
Twenty-eighth Revised Sheet No. 832
Twenty-seventh Revised Sheet No. 833
Second Revised Sheet No. 834

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List and to reflect the addition of Receipt Point ID No. 00955 to its Cedar Creek Pool.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2286 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–149–004, et al.]

Dartmouth Power Association Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

January 25, 1999.

Take notice that the following filings have been made with the Commission:

1. Dartmouth Power Associates Limited Partnership

[Docket No. ER96–149–004]

Take notice that on January 19, 1999, Dartmouth Power Associates Limited Partnership (Dartmouth), tendered for filing an updated market analysis as required by the Commission's Order approving market based rates for Dartmouth.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–237–001]

Take notice that on January 19, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company tendered for filing a compliance filing regarding Amendment No. 2, to the Allegheny Power Pro Forma Open Access Transmission Tariff. This filing is intended to comply with the Commission's order issued on December 17, 1998 in Docket No. ER99–237–000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power, a division of Duke Energy Corporation

[Docket No. ER99–1350–000]

Take notice that on January 19, 1999, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Transmission Service Agreement(s) between Duke and PECO Energy Company.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER99–1351–000]

Take notice that on January 19, 1999, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with FirstEnergy Trading & Power Marketing, Incorporated pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the party to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under this agreement is January 1, 1999.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company) Northern States Power Company (Wisconsin Company)

[Docket No. ER99–1352–000]

Take notice that on January 19, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Tennessee Valley Authority (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on December 28, 1998.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Mississippi Power Company

[Docket No. ER99–1353–000]

Take notice that January 19, 1999, Mississippi Power Company and Southern Company Services, Inc., tendered for filing a Service Agreement, pursuant to the Southern Companies Electric Tariff Volume No. 4—Market Based Rate Tariff, with South Mississippi Electric Power Association for the Martin Bluff Road Delivery Point to Singing River Electric Power Association. The agreement will permit Mississippi Power to provide wholesale electric service to South Mississippi Electric Power Association at a new service delivery point.

Copies of the filing were served South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Montana-Dakota Utilities Co., a Division of MDU Resources Group

[Docket No. ER99–1354–000]

Take notice that on January 18, 1999, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) provided notice to the Commission that Montana-Dakota adopts the Mid-Continent Area Power Pool's Line Loading Relief Procedures (LLR) as amended to comply with the Commission's orders in Docket No. ER98–3709–000. Montana-Dakota attached to its notice (i) LLR and (ii) modifications to its open access transmission tariff to incorporate LLR.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER99–1355–000]

Take notice that on January 19, 1999, the American Electric Power Service Corporation (AEPSC), on behalf of Indiana Michigan Power Company (I&M), tendered for filing an executed Operating and Facilities Agreement between I&M and Indiana Municipal Power Agency (IMPA). The agreement was filed as a supplement to I&M FERC Rate Schedules No. 70 and 74, and Service Agreement No. 26 under the AEP Companies' Open Access Transmission Service Tariff (OATT).

The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Agreement to be made effective upon closure of the interconnections between the IMPA facilities at Anderson and Richmond, Indiana, with the system of I&M and the transmission system jointly owned by IMPA, PSI Energy, Inc., and Wabash Valley Power Association, which could be completed as early as March 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Public Service Company

[Docket No. ER99–1356–000]

Take notice that on January 19, 1999, Arizona Public Service Company (APS), tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3, for service to the United States Department of Interior, Bureau of Indian Affairs, San Carlos Irrigation Project (SCIP).

A copy of this filing has been served on the Arizona Corporation Commission and SCIP.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Central Illinois Light Company

[Docket No. ER99–1358–000]

Take notice that on January 19, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Strategic Energy, Ltd., and NorAm Energy Services, Inc.

CILCO requested an effective date of January 7, 1999.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Kansas City Power & Light Company

[Docket No. ER99–1359–000]

Take notice that on January 19, 1999, Kansas City Power & Light Company (KCPL), tendered for filing as an amendment to its Open Access Transmission Tariff notice that KCPL is incorporating the transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) approved by the Commission in Docket No. EL98–52–000.

KCPL requests an effective date coincident with its filing, and therefore respectfully requests waiver of the Commission's notice requirements.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Ohio Valley Electric Corporation

[Docket No. ER99–1360–000]

Take notice that on January 19, 1999, Ohio Valley Electric Corporation (OVEC), in accordance with the Commission's order in *Northern American Electric Reliability Council*, 85 FERC ¶ 61,353 (1998), tendered for filing a notice informing the Commission that OVEC uses the North American Electric Reliability Council (NERC) Transmission Loading Relief (TLR) procedures. OVEC requests that the Commission accept, as an amendment of OVEC's Open Access Transmission Tariff, the generic tariff amendment proffered by NERC and accepted by the Commission in the above order. OVEC requests an effective date coincident with its filing, and therefore respectfully requests waiver of the Commission's notice requirements.

Copies of this filing were served upon OVEC's jurisdictional customers and upon each state public service commission that, to the best of OVEC's knowledge, has retail rate jurisdiction over such customers.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New Century Services, Inc.

[Docket No. ER99–1361–000]

Take notice that on January 19, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and TransAlta Energy Marketing (U.S.), Inc.

The Companies request that the Agreement be made effective on January 15, 1999.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New Century Services, Inc.

[Docket No. ER99–1362–000]

Take notice that on January 19, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and TransAlta Energy Marketing (U.S.), Inc.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. New Century Services, Inc.

[Docket No. ER99–1363–000]

Take notice that on January 19, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and New Energy Ventures, L.L.C.

The Companies request that the Agreement be made effective on January 15, 1999.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. NGE Generation, Inc.

[Docket No. ER99–1364–000]

Take notice that on January 19, 1999, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, service agreements (the Service Agreements) under which NGE Gen may provide capacity and/or energy to Amerada Hess Corporation (Amerada) and Con Ed Energy, Inc. (Con Ed Energy) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreements with Amerada and Con Ed Energy become effective as of January 16, 1999.

NGE Gen's filing of the Service Agreements is subject to NGE Gen's pending application for approval of transfer filed in Docket EC99–22–000 on December 31, 1998.

NGE Gen has served copies of the filing upon the New York State Public Service Commission, Amerada, and Con Ed Energy.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER99–1366–000]

Take notice that on January 19, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and South Mississippi Electric Power Association.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER99–1367–000]

Take notice that on January 19, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and PEC Energy Marketing, Inc.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER99–1368–000]

Take notice that on January 19, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the "Entergy Operating Companies"), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Oneok Power Marketing Company.

Entergy Services requests that the TSA's be made effective as rate schedules no later than January 4, 1999.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Oklahoma Gas and Electric Co.

[Docket No. ER99–1369–000]

Take notice that on January 19, 1999, Oklahoma Gas and Electric Company (OG&E), tendered for filing with the Federal Energy Regulatory Commission an executed long-term Service Agreement for Power Sales with the Oklahoma Municipal Power Authority (OMPA), under OG&E's Market-Based Rate Power Sales Tariff, Original Volume No. 3, Sheet Nos. 1–6.

OG&E requests that the Commission permit its service agreement with OMPA to go into effect as of January 1, 1999, or upon such later date as the Commission authorizes effectiveness of the Notice of Cancellation, which has been simultaneously filed by OG&E, for the Amended Power Sales Agreement contained in Rate Schedule FERC No. 126.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Delmarva Power & Light Company

[Docket No. ER99–1370–000]

Take notice that on January 19, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Vitol Gas & Electric, LLC, under Delmarva's market rate sales tariff.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER99–1372–000]

Take notice that January 19, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing notice that effective January 23, 1999, Rate Schedule FERC No. 210, effective date October 26, 1994, and any supplements thereto, filed with the Federal Energy Regulatory Commission by Niagara Mohawk is to be canceled.

Notice of the proposed cancellation has been served upon Vitol Gas & Electric, LLC.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Pool

[Docket No. ER99–1374–000]

Take notice that on January 19, 1999, the New England Power Pool (NEPOOL), Executive Committee tendered for filing changes to Market Rules that had previously been submitted to the Commission and new Market Rules not previously submitted.

The NEPOOL Executive Committee has requested that the changes and new Market Rules become effective on March 20, 1999, to apply for all NEPOOL market transactions occurring after the Second Effective Date, which the Committee indicates is now projected to occur April 1, 1999.

The NEPOOL Executive Committee states that the Market Rules are being filed in compliance with the Commission's December 17, 1998, order regarding the NEPOOL restructuring, *New England Power Pool*, 85 FERC ¶ 61,379, and that changes have been made to Market Rules in compliance with that order.

The NEPOOL Executive Committee states further that copies of these materials were sent to all persons identified in the Commission's official service lists for the captioned dockets, the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Southwest Power Pool

[Docket No. ER99–1375–000]

Take notice that on January 19, 1999, Southwest Power Pool (SPP), tendered for filing revised tariff sheets to its Open Access Transmission Tariff (Tariff) in the dockets captioned above. SPP states that it filed revised tariff sheets in order to implement changes to the provisions of the Tariff concerning the payment of transmission losses.

Copies of this filing were served upon each of the parties on the Commission's official service lists in Docket Nos. ER98–3888 and ER99–783, as well as on all SPP customers and state commission in the SPP region.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Oklahoma Gas and Electric Company

[Docket No. ER99–1376–000]

Take notice that on January 19, 1999, Oklahoma Gas and Electric Company (OG&E), tendered for filing Notice of Cancellation of the Amended Power Sales Agreement with the Oklahoma Municipal Power Authority contained in Rate Schedule FERC No. 126, pursuant to Section 35.15 of the Federal Energy Regulatory Commission's (Commission) Regulations.

OG&E requests acceptance of its notice and waiver of the 60-day notice requirement to permit the cancellation to become effective January 1, 1999, or such later date as authorized by the Commission.

This filing has been served upon the affected purchaser.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Company

[Docket No. ER99–1377–000]

Take notice that on January 19, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company and Holyoke Water Power Company, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Westfield Gas and Electric Light Department (Westfield).

NUSCO states that a copy of this filing has been mailed to Westfield.

NUSCO requests that the rate schedule change become effective on April 1, 1999.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Alliant Services Company

[Docket No. ER99–1378–000]

Take notice that on January 19, 1999, Alliant Services Company tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, establishing MidAmerican Energy as a Network Customer under the terms of the Alliant Services Company transmission tariff.

Alliant Services Company requests an effective date of January 1, 1999, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin, the Iowa Utilities Board, the Illinois Commerce Commission and the Minnesota Public Utilities Commission.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. New Century Services, Inc.

[Docket No. ER99–1379–000]

Take notice that on January 19, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel, and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively the New Century Operating Companies), tendered for filing an amendment to the joint open access transmission tariff of the New Century Operating Companies. The amendment will allow the New Century Operating Companies to waive, on a non-discriminatory basis, the deposit on transmission service applications.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Illinois Power Company

[Docket No. ER99–1393–000]

Take notice that on January 19, 1999, Illinois Power Company (Illinois

Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing Point-To-Point Transmission Service Agreements under which Tenneco Packaging, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1999.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Gregory Power Partners, L.P.

[Docket No. QF99–32–000]

Take notice that on January 19, 1999, Gregory Power Partners, L.P. (Applicant), tendered for filing a supplement to its October 30, 1998, Application for Commission Certification of Qualifying Status of a Cogeneration Facility. The supplement contains additional technical and ownership information regarding Applicant's proposed cogeneration facility.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2239 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1338–000, et al.]

Eastern Utilities Associates, et al.; Electric Rate and Corporate Regulation Filings

January 22, 1999.

Take notice that the following filings have been made with the Commission:

1. Eastern Utilities Associates

[Docket No. ER99–1338–000]

Take notice that on January 15, 1999, Eastern Utilities Associates tendered for filing notification that the ISO-New England, Inc., and the New England Power Pool are responsible for TLR procedures referred to in the above-captioned docket.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Resale Power Group of Iowa, Inc. v. IES Utilities, Inc.

[Docket No. EL97–17–001]

Take notice that on January 8, 1999, IES Utilities, Inc. (IES) filed a Joint Transmission Agreement pursuant to the Commission's December 23, 1998 Order issued in Docket No. EL97–17–000.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Vermont Electric Power Company, Inc.

[Docket No. ER99–1339–000]

Take notice that on January 15, 1999, Vermont Electric Power Company, Inc. (VELCO), tendered for filing an amendment to its Open Access Transmission Service Tariff to explicitly incorporate the transmission loading relief (TLR) procedures developed by the North American Electric Reliability Council (NERC) approved by the Commission in Docket No. EL98–52–000.

VELCO requests an effective date coincident with its filing, and therefore respectfully requests waiver of the Commission's notice requirements.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–1340–000]

Take notice that on January 15, 1999, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO), and Southwestern Electric Power Company (SWEPCO) (collectively, the CSW Operating Companies) tendered for filing with the Commission notice indicating that the CSW Operating Companies will adopt the transmission loading relief (TLR), procedures set forth in Appendix B to the North American Electric Reliability Council's (NERC) Petition for Declaratory Order in Docket No. EL98–52–000, approved by the Commission. The TLR procedures will apply to those portions of the CSW Operating Companies' transmission systems that are located in the Eastern Interconnection.

The CSW Operating Companies request an effective date coincident with their filing, and therefore respectfully request waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of their filing was served on all customers under the CSW Operating Companies' Open Access Transmission Service Tariff and on the Public Utility Commission of Texas, the Arkansas Public Service Commission, the Louisiana Public Service Commission, and the Oklahoma Corporation Commission.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power, a division of Duke Energy Corporation

[Docket No. ER99–1341–000]

Take notice that on January 15, 1999, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Firm Transmission Service Agreement (TSA's), between Duke and Louisville Gas and Electric Company, dated as of October 21, 1998.

Duke requests that the TSA's be made effective as rate schedules as of January 1, 1999.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Duke Energy Corporation

[Docket No. ER99–1342–000]

Take notice that on January 15, 1999, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Service Agreement for Market Rate Sales under Rate Schedule MR, FERC Electric Tariff First Revised Volume No. 3 (the MRSAs), between Duke and Entergy Power Marketing Corp.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Energy Corporation

[Docket No. ER99–1343–000]

Take notice that on January 15, 1999, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Service Agreement for Market Rate Sales under Rate Schedule MR, FERC Electric Tariff First Revised Volume No. 3 (the MRSAs), between Duke and OGE Energy Resources, Inc.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. MidAmerican Energy Company

[Docket No. ER99–1344–000]

Take notice that on January 15, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309 tendered for filling notice of its adoption of the Line Loading Relief Procedure of Mid-Continent Area Power Pool (MAPP) and changes to MidAmerican's Open Access Transmission Tariff (OATT) to reflect the adoption of such procedures. MidAmerican states that this filing is made in accordance with the Commission's December 16, 1998, order in North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998) (Docket No. EL98–52–000).

MidAmerican proposes an effective date of January 16, 1999, for the OATT changes.

Copies of the filing were served upon representatives of MAPP, the Iowa Utilities Board, the Illinois Commerce Commission, the South Dakota Public Utilities Commission and all customers having service agreements with MidAmerican under the OATT.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Delmarva Power & Light Company and Atlantic City Electric Company

[Docket No. ER99–1345–000]

Take notice that on January 15, 1999, Delmarva Power & Light Company (Delmarva) and Atlantic City Electric Company (Atlantic) filed revisions to their market-based rate tariffs. The revisions were made to reflect the consummation of the merger involving Delmarva and Atlantic and to allow Delmarva and Atlantic to engage in power sales transactions with one another pursuant to their market-based rate tariffs. In particular, the revisions would allow Delmarva and Atlantic to transact with one another at the market clearing prices established by the PJM Power Exchange.

Delmarva and Atlantic state that copies of this filing have been served upon all the customers under their market-based rate tariffs.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PJM Interconnection, L.L.C.

[Docket No. ER99–1346–000]

Take notice that on January 15, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing notice of amendment of the PJM Interconnection L.L.C., Tariff to adopt NERC Transmission Loading Relief Procedures.

Copies of this filing were served upon all PJM members and all state electrical regulatory commissions in the PJM control area.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Detroit Edison Company and Consumers Energy Company

[Docket No. ER99–1347–000]

Take notice that on January 15, 1999, Detroit Edison Company and Consumers Energy Company tendered for filing notice that they adopt and will use the NERC TLR procedures accepted by the Commission in Docket No. EL98–52–000 for their joint open access transmission tariff.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER99–1348–000]

Take notice that on January 15, 1999, Consumers Energy Company tendered for filing notice that it adopts and will use the NERC TLR procedures accepted by the Commission in Docket No. EL98–52–000.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Detroit Edison Company

[Docket No. ER99–1349–000]

Take notice that on January 15, 1999, Detroit Edison Company tendered for filing notice that it adopts and will use the NERC TLR procedures accepted by the Commission in Docket No. EL98–52–000.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Constellation Energy Source, Inc.

[Docket No. ER99–1357–000]

Take notice that on January 15, 1999, Constellation Energy Source, Inc., tendered for filing Notice of Cancellation of Constellation Energy Source's Rate Schedule FERC No. 1.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Central Hudson Gas & Electric Corp., Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corp., Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corp.)

[Docket No. ER99–1365–000]

Take notice that on January 15, 1999, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., LIPA, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation tendered for filing a letter notifying FERC that their Open Access Transmission Tariffs shall be considered to be modified by the incorporation of the Transmission Loading Relief (TLR) procedures of the North American Electric Reliability Council (NERC) as specified in NERC's generic amendment (Attachment B to the NERC filing of June 5, 1998).

As indicated in the filing, LIPA is not a "public utility" under Part II of the Federal Power Act and does not have a transmission tariff on file with the FERC. As a Member System of the New York Power Pool, however, its curtailment policy is synchronized with other Member Systems. Therefore, by its inclusion in the filing, LIPA notifies FERC that its open access transmission tariff shall be considered to be modified to incorporate NERC's TLR procedure in accordance with the action of the other Member Systems. NYPA is also not a "public utility" under Part II of the Federal Power Act, but also notifies FERC that its open access tariff shall be considered to be modified accordingly.

Copies of the filing were served on the official service lists in each of the companies open access tariff proceedings.

Comment date: February 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2238 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–P

Federal Energy Regulatory Commission

Notice of Surrender of Conduit Exemption

January 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Conduit Exemption.

b. *Project No.:* 8310–006.

c. *Date filed:* October 29, 1998.

d. *Applicant:* City of El Segundo.

e. *Name of Project:* WB–28 Hydroelectric Project.

f. *Location:* At the WB–28 turnout of the Metropolitan Water Dist. of Southern California's water conveyance system, in Los Angeles County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Bellur K. Devaraj, City Engineer, Public Works Department, City of El Segundo, 350 Main Street, El Segundo, CA 90245.

i. *FERC Contact:* Ahmad Mushtaq, (202) 219–2672.

j. *Comment Date:* March 1, 1999.

k. *Description of Proposed Action:* The existing project, for which the exemption is being surrendered, consists of: (1) a generating unit with a 500 hp (375 kw) turbine connected to a 522 kw generator and a 150-foot-long tap into the existing Southern California Edison Co.'s 16-kv transmission at the project site.

The exemptee is requesting surrender of the exemption because of the reduction in the water supply to the project.

l. This notice also consists of the following standard paragraph: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2279 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

January 26, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No:* 10819–004.

c. *Date Filed:* January 8, 1999.

d. *Applicant:* Idaho Water Resources Board.

e. *Name of Project:* Dworshak Small Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' (Corps) Dworshak Dam, on the North Fork Clearwater River, on 3.8 acres of federal land: 0.9 acre administered by the Corps, and 2.9 acres administered by the U.S. Department of Interior's Bureau of Land Management within the external boundary of the Nez Perce Indian Reservation, in Clearwater County, Idaho.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Ralph Mellin, Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720–0098, Phone: (208) 327–7991.

i. *FERC Contact:* J.W. Flint, (202) 219–2667.

j. *Comment Date:* March 5, 1999.

k. *Description of Amendment:* The licensee requests a change to the generator capacity from 2000-kW to 2500-kW to pass the higher flow requested by the fish hatcheries and to maximize the energy potential of the system.

The licensee also proposes to change the delivery point of the generated power from their overhead power lines located adjacent to the Dworshak National Fish Hatchery to their near-by underground vault for connecting underground power lines. This vault will be located on the south side of the Ahsahka Bridge over the North Fork Clearwater River. The vault over the bridge will be approximately 30 feet west of the present project boundary.

The new access road and turn around area shown on exhibit F–5 will not be built.

m. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original

and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2280 Filed 1–29–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6225–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants (CTEPP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB).

TITLE: Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants (CTEPP).

EPA ICR Number: 1892.01.

Before submitting this ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 2, 1999.

ADDRESSES: Public comments should be submitted to: Ms. Shari Pricer, US EPA (MD–78A), Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of this ICR without charge by contacting Ms. Shari Pricer, 919–541–2198. Fax: 919–541–1111. E-mail: pricer.shari@epamail.epa.gov. For technical information on the proposed study, contact the Co-Principal Investigator, Gary F. Evans, 919–541–3124. FAX: 919–541–1486. E-mail: evans.gary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are children of age 2–5 years and their adult caregivers at either home, day care, or preschool.

Title: Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants (CTEPP), EPA ICR No. 1892.01.

Abstract: The National Exposure Research Laboratory of the Office of Research and Development (ORD) at EPA plans to conduct a research study investigating preschool children's exposure to persistent pesticides and other persistent organic pollutants. This study is necessary to respond to the Food Quality Protection Act (FQPA) of 1996 which requires that EPA evaluate non-occupational sources (e.g., food, water, air, dust, soil, etc.) of exposures to pesticides when constructing risk assessments, consider the cumulative health impact of pesticides, and provide particular attention to young children such that "there is reasonable certainty that no harm will result to infants and children from aggregate exposure to pesticide chemical residue."

Study respondents will be children between the ages of 2–5 and their adult caregivers in approximately 260 households. Participation will be entirely voluntary. The participants' exposures will be estimated by collection and analysis of samples of food, beverages, air, house dust, soil; hand wipes, and urine in conjunction with information from questionnaires including activity diaries. Young children, especially those of the preschool ages, are believed to have greater exposures than do older children or adults to persistent organic pesticides, including some compounds that may have endocrine-disrupting effects or developmental toxicity. These greater exposures may result from what children eat and drink, where they spend their time, and what they do there. The impact of the exposures may be greater on young children because of their smaller body masses, immature body systems, and rapid physical development.

The data will be used by scientists within ORD and external to the Agency to refine and validate exposure models which, in turn, will be used to reduce the uncertainty in the health risk estimates of young children to these toxic pollutants. The information will also be used by the EPA Office of Children's Health Protection and the EPA Office of Prevention, Pesticides, and Toxic Substances in their consideration of children's risk assessment and risk management options. The information will appear in the form of final EPA reports, journal articles, and will also be made publicly available in an electronic data base.

The total cost of the study is estimated to be $4.5M over a period of three years.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The average respondent burden is estimated to be 6 hours. This time includes training time, time the respondent will spend collecting personal and environmental samples, and time spent completing interviewer- or self-administered questionnaires. Each respondent is sampled for a single time during a three-day time period, which consists of one day for recruitment and instruction and a two-day sample and information collection period. The total burden is estimated to be 1560 hours for 260 respondents. The field data collection is scheduled to occur over a two-year period; therefore, the annual burden is estimated to be 780 hours for 130 respondents per year, or 6 hours per respondent per year.

There are no direct respondent costs for this data collection. Participants will

be reimbursed for the costs of electricity used and food collected. An incentive payment of $100 will be offered to defray the burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 14, 1999.

Gary J. Foley,

Director, (MD–75).

[FR Doc. 99–2318 Filed 1–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–4]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epamail.epa.gov," and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1367.05; Regulation of Fuel and Fuel Additives, Gasoline Volatility Rule; in 40 CFR part 80.27; was approved 12/08/98; OMB No. 2060–0178; expires 12/31/2001.

EPA ICR No. 0107.06; Source Compliance and State Action Reporting; in 40 CFR part 51, Subpart Q; was approved 12/16/98; OMB No. 2060–0096; expires 12/31/2001.

EPA ICR No. 0559.06; Revision, Application for Reference and Equivalent Method Determination; in 40 CFR part 53; was approved 12/15/98; OMB No. 2080–0005; expires 12/31/2001.

EPA ICR No. 1284.05; Standard of Performance for New Stationary Sources, Polymeric Coating of Supporting Substrates; in 40 CFR part 60, Subpart VVV; was approved 12/17/98; OMB No. 2060–0181; expires 12/31/2001.

EPA ICR No. 1841.01; Land Disposal Restrictions Surface Impoundment Study; was approved 12/29/98; OMB No. 2050–0157; expires 12/31/2001.

EPA ICR No. 1828.02; Industry Screener Questionnaire: Phase 1 Cooling Water Intake Structures; was approved 12/24/98; OMB No. 2040–0203; expires 04/30/99.

EPA ICR No. 0783.38; Motor Vehicle Emission Certification and Fuel Economy Compliance; in 40 CFR parts 86 and 600; was approved 12/22/98; OMB No. 2060–0104; expires 12/31/2001.

EPA ICR No. 1750.02; National Volatile Organic Compound Emission Standards for Architectural Coatings; in 40 CFR part 59, Subpart D; was approved 01/08/99; OMB No. 2060–0393; expires 01/31/2002.

EPA ICR No. 1863.01; Small System Survey; was approved 01/08/99; OMB No. 2040–0206; expires 01/31/2001.

EPA ICR No. 1853.01; Environmental Information Customer Survey; was approved 01/15/99; OMB No. 2010–0029; expires 01/31/2001.

EPA ICR No. 0226.14; National Pollution Elimination System Permit Application Requirements—Forms 2A and 2S (Final Rule); in 40 CFR part 122; was approved 01/13/99; OMB No. 2040–0086; expires 03/31/99.

EPA ICR No. 1877.01; Milestones Plan for the Bleached Paper Grade Kraft and Soda Subcategory of the Pulp, Paper, and Paperboard Point Source Category; in 40 CFR part 430, was approved 01/13/99; OMB No. 2040–0202; expires 01/31/2002.

OMB Disapproval

EPA ICR No. 1170.06; Collection of Economic and Program Support Data: Request for Generic Clearance; OMB No. 2070–0034; was disapproved by OMB 12/22/98.

OMB's Comments Filed

EPA ICR No. 1822.01; Lead Management and Disposal of Lead-Based Paint Debris (Proposed Rule); OMB filed comments 12/16/98.

EPA ICR No. 1886.01; NESHAP for Nutritional Yeast Manufacturing; in 40 CFR part 63, Subpart CCC; OMB filed comments 12/16/98.

EPA ICR No. 1873.01; Revisions to the Underground Injection Control Regulations for Class V Injection Wells—Option 1; in 40 CFR part 144; OMB filed comments 01/08/99.

EPA ICR No. 1874.01; Revisions to the Underground Injection Control Regulations for Class V Injection Wells—Option 2; in 40 CFR part 144; OMB filed comments 01/08/99.

EPA ICR No. 1697.02; NSPS for Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry Wastewater; in 40 CFR part 60, Subpart YYY; OMB filed comments 01/08/99.

EPA ICR No. 1854.01; Reporting and Record Keeping Requirements of the Consolidated Federal Air Rule for the Synthetic Organic Chemical Manufacturing Industry; in 40 CFR Part 60, Subparts A, Ka, Kb, VV, DDD, III, NNN, and RRR, part 61, Subparts A, V, Y, and BB, and part 63, Subparts A, F, G, and H; OMB filed comments 12/21/98.

EPA ICR No. 1869.01; NESHAP for Hazardous Air Pollutants for Manufacture of Amino/Phenolic Resin; in 40 CFR part 63; OMB filed comments 01/11/99.

EPA ICR No. 1871.01; Record Keeping and Reporting Requirements for Source Categories: Generic Maximum Achievable Control Technology (MACT) National Emission Standards for Hazardous Air Pollution (NESHAP); in 40 CFR part 63, Subpart YY; OMB filed comments 01/11/99.

Extensions of Expiration Dates

EPA ICR No. 0012.09; Motor Vehicle and Non-Road Engine Exclusion Determination; in 40 CFR part 91, Subpart K; OMB No. 2060–0124; on 12/21/98 OMB extended the expiration date through 03/31/99.

EPA ICR No. 1842.01; Notice of Intent of Storm Water Discharges Associated with Construction Activity under an NPDES General Permit; in 40 CFR part 122; OMB No. 2040–0188; on 12/23/98

OMB extended the expiration date through 03/31/99.

EPA ICR No. 0827.04; Construction Grants Program Information Collection Request; in 40 CFR part 35, Subpart I; OMB No. 2040–0027; on 01/13/99 OMB extended the expiration date through 03/31/99.

Dated: January 26, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–2321 Filed 1–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–3]

Announcement of Opportunity: EMPACT Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for applications.

SUMMARY: This document provides information on the availability of the 1999 investigator-initiated grants program announcement of opportunity on Environmental Monitoring for Public Access and Community Tracking (EMPACT). The areas of interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: The deadline for receipt of applications is April 8, 1999.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington DC 20460, telephone (800) 490–9194. The complete announcement of opportunity can be accessed on the Internet from the EPA home page: http://www.epa.gov/empact.

SUPPLEMENTARY INFORMATION: In its Announcement of Opportunity the U.S. Environmental Protection Agency (EPA) invites grant applications from partnerships between local and state governments, research institutions, non-governmental organizations (NGOs), the private sector, and/or the federal government. The goal of EMPACT is to assist communities to provide sustainable public access to environmental monitoring data and information that are clearly-communicated, time-relevant, useful, and accurate in the largest U.S. metropolitan areas. Applications must be received by April 8, 1999. The full Announcement provides relevant background information, summarize EPA's interest in the topic area, and describe the application and review process.

Contact persons for additional information are Dr. Barbara Karn (karn.barbara@epamail.epa.gov), telephone 202–564–6820 and Dr. Charlotte Cottrill (cottrill.charlotte@epamail.epa.gov), telephone 202–564–6771.

Dated: January 20, 1999.

Henry Longest III,

Acting Assistant Administrator for Research and Development.

[FR Doc. 99–2320 Filed 1–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–2]

Proposed CERCLA Administrative Settlement; Rosen Brothers Superfund Site, Cortland, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given of a proposed administrative settlement concerning the Rosen Brothers Superfund Site in Cortland, New York with the City of Cortland and the New York, Susquehanna and Western Railway Corporation. The settlement is a prospective purchaser agreement and it requires the settling parties to perform certain response actions, including operation and maintenance of a portion of the final cleanup remedy following the purchase of the real property. The settlement includes a covenant not to sue the settling parties pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before March 3, 1999.

ADDRESSES: Comments should be sent to the individual listed below. Comments should reference the Rosen Brothers Superfund Site and EPA Index No. II–CERCLA–98–0202. For a copy of the settlement, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: Brian E. Carr, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway, 17th Floor, New York, New York, 10007–1866, Telephone: (212) 637–3170.

Dated: December 31, 1998.

Jeanne M. Fox,

Regional Administrator, Region 2.

[FR Doc. 99–2319 Filed 1–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–5; CWA–HQ–99–001]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding United States Cellular Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has filed a civil administrative complaint against United States Cellular Corporation ("U.S. Cellular") for failure to prepare a Spill Prevention Control and Countermeasure ("SPCC") plan for one facility where it stored diesel oil in two above ground tanks in violation of the Clean Water Act ("CWA") and its implementing regulations. EPA, pursuant to CWA section 311, has proposed to assess a civil penalty and provided notice to U.S. Cellular of its right to request a hearing. The Administrator, as required by CWA section 311, is providing public notice and opportunity for interested persons to comment on the complaint and the final proposed order.

DATES: Comments on the complaint and the proposed order are due on or before March 3, 1999.

ADDRESSES: Mail written comments to Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–1999–01, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Enforcement & Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC. Comments may also be submitted electronically to: docket.oeca@epa.gov. Comments may be submitted on disk in

WordPerfect 8.0 or earlier version. Electronic comments on the complaint and this proposed order may be filed online at many Federal Depository Libraries.

The complaint, consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement & Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC. Persons interested in reviewing these materials must make advance arrangements to do so by calling 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials.

The public record of the administrative enforcement proceeding is located in the Office of the EPA Headquarters Hearing Clerk, Ms. Bessie Hammiel, Rm. C–400, 401 M St., SW., Washington, DC, Monday through Friday, excluding legal holidays from 8 a.m. to 4:30 p.m.; telephone (202) 260–4865.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Milton, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 564–2235; fax (202) 564–0010; e-mail: milton.philip@epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the **Federal Register**—Environmental Documents entry (http://www.epa.gov/fedrgstr/).

I. Background

U.S. Cellular, 8410 W. Bryn Mawr Ave., Chicago IL 60631, self-disclosed to EPA that it had failed to prepare a SPCC plan for one facility where it stored diesel oil in two above ground tanks in violation of Section 311 of the CWA and 40 CFR Part 112. The disclosure was made pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations' ("Audit Policy"), 60 FR 66,706, (December 22, 1995). EPA filed an administrative civil complaint against U.S. Cellular on January 25, 1999 (In the matter of United States Cellular Corporation, Docket No. CWA–HQ–99–001). The CWA administrative penalty proposed in the complaint is $14,127. EPA intends to settle this action pursuant to the Audit Policy. Using the criteria set forth in the policy, EPA intends to waive any gravity based penalty and collect the economic benefit gained by the Respondent because of delayed compliance with the SPCC regulations. The proposed settlement figure for this CWA violation is $1,127. This settlement is subject to public notice and comment under CWA section 311, 33 U.S.C. 1321.

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j) may be administratively assessed a civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR Part 22.

The procedures by which the public may submit written comments on the complaint and on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in 40 CFR 22.38. The deadline for submitting public comment on the complaint and this proposed Class II order is March 3, 1999. All comments will be transferred to the Environmental Appeals Board (EAB) for consideration and/or incorporation into the final order. The powers and duties of the EAB are outlined in 40 CFR 22.04(a).

In order to provide an opportunity for public comment, EPA will not take final action in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental protection.

Dated: January 27, 1999.

Melissa P. Marshall,

Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 99–2316 Filed 1–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–6; CWA–HQ–99–002]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity to Comment Regarding Southwestern Bell Telephone Company

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has filed a civil administrative complaint against Southwestern Bell Telephone Company (SWBT) for failure to prepare a Spill Prevention Control and Countermeasure (SPCC) plan for 117 facilities where it stored diesel oil in above ground tanks in violation of the Clean Water Act (CWA) and its implementing regulations. EPA, pursuant to CWA section 311, has proposed to assess a civil penalty and provided notice to SWBT of its right to request a hearing. The Administrator, as required by CWA section 311, is providing public notice and opportunity for interested persons to comment on the complaint and the final proposed order.

DATES: Comments on the complaint and proposed order are due on or before March 3, 1999.

ADDRESSES: Mail written comments to Enforcement & Compliance Docket and Information Center (2201A), Docket Number EC–1999–02, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to Enforcement & Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC. Comments may also be submitted electronically to: docket.oeca@epa.gov. Comments may be submitted on disk in WordPerfect 8.0 or earlier version. Electronic comments on the complaint and proposed order may be filed online at many Federal Depository Libraries.

The complaint, the consent agreement, the proposed final order, and public comments, if any, may be reviewed at the Enforcement & Compliance Docket Information Center, U.S. Environmental Protection Agency, Rm. 4033, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC. Persons interested in reviewing the materials must make advance arrangements to do so by calling 202–564–2614. A reasonable fee may be charged by EPA for copying docket materials.

The public record of the administrative enforcement proceeding is located in the Office of the EPA Headquarters Hearing Clerk, Ms. Bessie Hammiel, Rm. C–400, 401 M St., SW., Washington, DC, Monday through Friday, excluding legal holidays from 8 a.m. to 4:30 p.m.; telephone (202) 260–4865.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Milton, Multimedia Enforcement Division (2248–A), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 564–2235; fax (202) 564–0010; e-mail: milton.philip@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page under the link "Laws and Regulations" at the **Federal Register**—Environmental Documents entry (http://www.epa.gov/fedrgstr/).

I. Background

Southwestern Bell Telephone Company ("SWBT"), 530 McCullough, Room 1460, San Antonio, TX 78215, self-disclosed to EPA that it had failed to prepare Spill Prevention Control and Countermeasure ("SPCC") plans for 117 facilities where it stored diesel oil in above ground storage tanks in violation of Section 311 of the Clean Water Act ("CWA") and 40 CFR Part 112. The disclosure was made pursuant to the EPA "Incentives for Self-Policing: Discovery, Disclosures, Correction and Prevention of Violations' ("Audit Policy"), 60 FR 66,706, (December 22, 1995). EPA filed an administrative civil complaint against SWBT on January 25, 1999 (In the Matter of Southwestern Bell Telephone Company, Docket No. CWA–HQ–99–002). The CWA administrative penalty proposed in the complaint is $137,500. EPA intends to settle this action pursuant to the Audit Policy. Using the criteria set forth in the policy, EPA intends to waive any gravity based penalty and to assess a penalty equivalent to the economic benefit gained by the Respondent because of delayed compliance with the SPCC regulations. The proposed settlement figure for this matter is $48,453. This settlement is subject to public notice and comment under CWA section 311, 33 U.S.C. 1321.

Under CWA section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA section 311(j), 33 U.S.C. 1321(j) may be administratively assessed a civil penalty of up to $137,500 by EPA. Class II proceedings under CWA section 311(b)(6) are conducted in accordance with 40 CFR Part 22.

The procedures by which the public may submit written comments on the complaint and on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in 40 CFR 22.38. The deadline for submitting public comment on the complaint and this proposed Class II order is March 3, 1999. All comments will be transferred to the Environmental Appeals Board ("EAB") of EPA for consideration and/or incorporation into the final order. The powers and duties of the EAB are outlined in 40 CFR 22.04(a).

In order to provide an opportunity for public comment, EPA will not take final action in this proceeding prior to the close of the public comment period.

List of Subjects

Environmental protection.

Dated: January 27, 1999.

Melissa P. Marshall,

Director, Multimedia Enforcement Division, Office of Enforcement and Compliance Assurance.

[FR Doc. 99–2317 Filed 1–29–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 224–002758–017
Title: Supplemental Agreement Between Port of Oakland and American President Lines, Ltd.
Parties:
Port of Oakland
American President Lines, Ltd.
Synopsis: The proposed agreement amendment extends the last effective date of an earlier amendment relating to primary and secondary usage of certain facilities at the port.

Agreement No.: 224–003038–007
Title: Supplemental Agreement Between Port of Oakland and American President Lines, Ltd.
Parties:
Port of Oakland
American President Lines, Ltd.
Synopsis: The proposed agreement amendment extends the last effective date of an earlier amendment relating to primary and secondary usage of certain facilities at the port.

Agreement No.: 203–011432–008
Title: Pacific Latin America Agreement
Parties:
A.P. Moller-Maersk Line
Sea-Land Service, Inc.
Synopsis: The proposed modification authorizes the member lines to enter into individual service contracts. It would also delete the prohibition on individual service contracts and the taking of independent action with respect to loyalty or service contracts.

Agreement No.: 203–011432–002
Title: East Coast North America to West Coast of South America and Caribbean Cooperative Working Agreement
Parties:
APL Co. PTE Ltd.
Crowley American Transport, Inc.
Compania Chilena de Navegacion Interoceanica S.A.
Compania Sud Americana de Vapores S.A.
Synopsis: The proposed modification adds APL Co. PTE Ltd. and Crowley American Transport, Inc. as parties to the agreement, provides that the parties will initially deploy six vessels of about 1,700 TEUs per vessel, and makes other administrative and conforming amendments.

Dated: January 26, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–2259 Filed 1–29–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 a.m.—February 3, 1999.

PLACE: 800 North Capitol Street, NW, First Floor Hearing Room, Washington, DC.

STATUS: OPEN.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 98–21—Miscellaneous Amendments to Rules of Practice and Procedure—Consideration of Comment.
2. Docket No. 98–25—Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers—Consideration of Comments.
3. Docket No. 98–27—Marine Terminal Operator Schedules—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–2363 Filed 1–27–99; 4:36 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First Banking Company of Southeast Georgia, Statesboro, Georgia; to merge with Wayne Bancorp, Inc., Jesup, Georgia.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Hometown Independent Bancorp, Inc., Morton, Illinois; to acquire 100 percent of the voting shares of Sunstar Bank, Washington, Illinois.

2. The Morton Community Bank Employee Stock Ownership Plan and Trust, Morton, Illinois; to become a bank holding company by acquiring 33.70 percent of the voting shares of Hometown Independent Bancorp, Inc., Morton, Illinois, and thereby indirectly acquire Morton Community Bank, Morton, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Franklin Bancshares, Inc., Franklin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Franklin Bank, Franklin, Illinois.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. CNB, Inc. Walker, Minnesota; to become a bank holding company by acquiring at least 95 percent of the voting shares of Centennial National Bank, Walker, Minnesota.

2. Otto Bremer Foundation, St. Paul, Minnesota; and Bremer Financial Corporation, St. Paul, Minnesota; to acquire 100 percent of the voting shares of Dean Financial Services, Inc., St. Paul, Minnesota, and thereby indirectly acquire First National Corporation of Aitkin, Inc., Aitkin, Minnesota, First National Bank of Aitkin, Aitkin, Minnesota, Mid-Continent Financial Services, Inc., St. Paul, Minnesota, State Bank of Edgerton, Edgerton, Minnesota, First State Bank of Eden Prairie, Eden Prairie, Minnesota, and Princeton Bank, Princeton, Minnesota.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. La Plata Bancshares, Inc., Hereford, Texas, and La Plata Delaware Bancshares, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The First National Bank of Hereford, Hereford, Texas.

2. Bauer Management, Inc., Port Lavaca, Texas; to acquire 1 percent of the voting shares of Bauer Investments, Ltd., Port Lavaca, Texas, and thereby acquire 60.30 percent of the voting shares of The First National Bank, Port Lavaca, Texas, and thereby indirectly acquire 63.5 percent of the voting shares of Seaport Bank, Seadrift, Texas.

Board of Governors of the Federal Reserve System, January 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2237 Filed 1–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 15, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California, Norwest Mortgage, Inc., Des Moines, Iowa, Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* in a joint venture through its subsidiary, RWF Mortgage Company, Riverside, California, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, January 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2236 Filed 1–29–99; 8:45 am]

BILLING CODE 2236–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program; National Toxicology Program Special Emphasis Panel; Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Toxicology Program (NTP), announces the establishment of the National Toxicology Program Special Emphasis Panel (NTPSEP) by the Secretary, DHHS.

The NTP Center for the Evaluation of Alternative Toxicological Methods (Center), on an as needed basis, will convene a group of expert scientists to accomplish the independent peer review of new test methods or evaluate existing test methods for toxicological assessments. Peer review panels will be asked to develop scientific consensus on the usefulness of test methods to generate information for specific human health and/or ecological risk assessment purposes. They will address the biological relevance of the new test to the toxicity of interest, and address how and when the new test method can partially or fully replace existing methods or approaches. When appropriate, panels will be asked to identify additional validation studies necessary to adequately evaluate a method, and to identify additional research necessary to support the development of mechanism-based test methods. It is anticipated that expert review panels will also be convened to evaluate the adequacy of current methods, and to evaluate proposed validation studies. Agencies will use this information to establish priorities for appropriate research, development, and validation efforts in collaboration with interested parties.

Duration of this Committee is continuing unless formally determined by the Secretary, DHHS, that termination would be in the best public interest.

Dated: January 21, 1999.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 99–2247 Filed 1–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13¾% for the quarter ended December 21, 1998. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: January 26, 1999.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 99–2311 Filed 1–29–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–142]

Availability of Chemical Specific Consultation

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), section 104(i)(4) [42 U.S.C. 9604(i)(4)] directs the Administrator of ATSDR to provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, State officials, and local officials. This notice announces the availability of a chemical specific public health consultation titled "Hazardous Substance Exposures and Autism" that ATSDR has prepared for public comment. The consultation is a review of the available scientific literature pertaining to what is known about the association between exposure to hazardous substances and autism.

DATES: In order to be considered, comments on this draft consultation must be received on or before March 3, 1999. Comments received after the close of the public comment period will be considered at the discretion of ATSDR based upon what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for copies of the draft public health consultation should be sent to the ATSDR Information Center, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–57, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Written comments regarding the draft public health consultation should be sent to the same address. ATSDR reserves the right to provide only one copy of the draft consultation, free of charge.

Written comments submitted in response to this notice should bear the docket control number ATSDR–142. Because all public comments regarding ATSDR public health consultations are available for public inspection [after the consultation is published in final], no confidential business information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: ATSDR Information Center, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–57, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (404) 639–6357.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for the ATSDR and the Environmental Protection Agency (EPA) with regard to hazardous substances which are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these responsibilities is that the Administrator of ATSDR prepare consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available

information, to the Administrator of EPA, State officials, and local officials. A public health consultation provides advice on a specific public health issue related to real or possible human exposure to toxic material and is a way for ATSDR to respond rapidly to requests for assistance.

ATSDR has prepared this document titled "Hazardous Substance Exposures and Autism" in response to a request from U.S. Representative Christopher Smith and residents of Brick Township, New Jersey who are concerned that hazardous substances may be present in the environment of Brick Township and that an increase in the number of children with autism may be attributable to exposure to these substances. This document was placed in a repository in Brick, New Jersey and released to the public via a mail-out on December 18, 1998.

Dated: January 26, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–2267 Filed 1–29–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–08]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. An Evaluation Study Of An HIV/STD Prevention Curriculum For Youth Attending Alternative Schools To Be Conducted From 1999 To 2002—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) Division of Adolescent and School Health. The purpose of this request is to obtain OMB clearance to conduct a randomized trial of a curriculum to reduce behaviors related to HIV/STD transmission among 14 to 18 year old students in 30 court and community schools in Northern California. Participants will respond to surveys of attitudes, knowledge, and behavior related to HIV/STD transmission and prevention at baseline and at 6, 12, and 18 month post-tests. Reduction of behaviors among adolescents related to HIV and STD transmission, and reduction of the prevalence of STDs is the focus of at least seven objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions.* There have been few studies assessing the effectiveness of curricula to reduce HIV/STD related risk behaviors in this high-risk adolescent population. Data gathered from this study will provide information about how HIV/STD risk behavior may be effectively reduced among alternative school students.

The total cost to respondents is estimated at $50,400 assuming a minimum wage for students of $5.25 in the study period.

Respondents	Number of respondents	Number of responses per respondent	Burden per response	Total burden hours
Alternative school students	2400	4	1.0	9600
Total				9600

2. Use of Laboratory Information Systems (LIS) to Transmit Infectious Diseases Test Results (HL7 Messages) to Public Health Agencies— New—Public Health Program Office (PHPPO), Division of Laboratory Systems. CDC proposes to gather data through the use of a mail/telephone survey of all United States vendors of LIS used for recording and processing microbiology data. The use of a mail/telephone-assisted survey instrument will be an efficient, cost-effective approach for performing the data collection. No computerized data collection systems have been developed for this survey because the number of respondents is small. Instead, trained telephone interviewers knowledgeable about LIS and about the specific messages that CDC is interested in transmitting will gather data. The interviewers will have the flexibility to answer technical questions, probe for further information and provide explanations of coding vocabularies, security needs and other issues that may not be readily understood by the LIS vendors.

The data will provide the government, LIS vendors, laboratory practitioners, committees that make recommendations regarding messaging and other stakeholders with information about the projected costs to vendors and laboratories and about the time frames required for and the barriers to implementation.

CDC will use the survey to gauge the technological readiness and the cost factors affecting secure electronic transmission of infectious disease data to government agencies. These transmissions will act as part of an early warning system leading to more timely response to infectious disease outbreaks. This survey responds to President Clinton's request for the increased use of modern technology to identify and

prevent outbreaks of food-borne illness. The total cost to respondents is estimated at $0.

Respondents	Number of respondents	Average number of responses/respondent	Average burden/response (in hrs.)	Average total burden (in hrs.)
Mail survey (including initial contact)	56	2	0.50	1
Telephone follow-up	56	2	0.50	1
Total				112

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2266 Filed 1–29–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99032]

Epidemiology and Laboratory Capacity for Infectious Diseases; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to promote adequate capacity of local, State, and national efforts for epidemiologic and laboratory surveillance and response for infectious diseases. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases.

The purpose of the Epidemiology and Laboratory Capacity in Infectious Diseases (ELC) program is to assist State and eligible local public health agencies in strengthening basic epidemiologic and laboratory capacity to address infectious disease threats with a focus on notifiable diseases, food-, water-, and vector-borne diseases, vaccine-preventable diseases, and drug-resistant infections. Awards are intended to support activities that enhance the ability of a program to identify and monitor the occurrence of infectious diseases of public health importance in a community, characterize disease determinants, identify and respond to disease outbreaks and other infectious disease emergencies, use public health data for priority setting and policy development, and assess the effectiveness of activities. Strengthening collaboration between laboratory and epidemiology practice is seen as a crucial component of this program.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In addition, official public health agencies of city governments with jurisdictional populations greater than 1,500,000 or county governments with jurisdictional populations greater than 8,000,000 (based on 1990 census data) are eligible to apply.

The ELC program was initiated in 1995 with Program Announcement 543 and expanded in 1997 with Program Announcement 720. A total of 30 grantees has been funded to date. This announcement is a further expansion of the ELC program and is intended to add new States, counties, and/or cities not already funded in the program and to competitively renew those current grantees with project periods expiring in 1999. Thus, the following current ELC grantees, which do not have project periods expiring in 1999, are ineligible to apply for funds under this announcement: Illinois, Indiana, Kentucky, Michigan, Montana, Nebraska, New Mexico, Ohio, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, and Wisconsin.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $4,600,000 is available in FY 1999 to fund approximately fifteen competing continuation and three new awards. Although only three new awards are currently projected for FY 1999, should additional funding become available, CDC may fund additional new awards from this competition. All eligible applicants are, therefore, encouraged to submit an application. It is expected that the average award (total direct and indirect costs) will be $255,000, ranging from $100,000 to $300,000. It is expected that the awards will begin on or about July 1, 1999, and will be made for a 12-month budget period within a project period of up to four years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Funding preference will be given to competing continuation applications over new applications. Current grantees have implemented important capacity-building activities and continued cooperative agreement support is required to continue building and for maintaining these capacities.

Recipient Financial Participation

Although a requirement for matching funds is not a condition for receiving an award under this cooperative agreement program, applicants must document the non-Federal human and fiscal resources that will be available to conduct activities outlined in the proposal. Federal funds cannot be used to replace or supplant existing State and local support. See Evaluation Criteria (paragraph 6: Budget) for additional information.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under Recipient Activities and CDC shall be responsible for the activities under CDC Activities below:

Recipient Activities

1. Enhance local capacity for gathering and evaluating infectious disease surveillance data, detecting and investigating outbreaks, and using surveillance data for public health practice and clinical follow-up.

2. Ensure appropriate representation to planning and priority-setting meetings organized for recipients of this cooperative agreement.

CDC Activities

1. Provide consultation and assistance in enhancing local epidemiologic and laboratory capacity for surveillance and response for infectious diseases.

2. Assist in monitoring and evaluating scientific and operational accomplishments and progress in achieving the purpose of this program.

3. Provide national coordination of activities where appropriate.

A. Application Content

Information in the Program Requirements, Other Requirements, and Evaluation Criteria sections should be used to develop the application content. Applications will be evaluated on the criteria listed in Section G., below, so it is important that narratives follow the criteria in the order presented.

Provide a brief (no more than two pages) abstract of the application. The narrative should be no more than 12 double-spaced pages (excluding abstract, budget, and appendices), printed on one side, with one inch margins and unreduced font on white 8.5″ × 11″ paper. All pages must be clearly numbered, a complete index to the application and its appendices must be included, and the required original and two copies must be submitted unstapled and unbound.

A detailed budget with a line-item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of this cooperative agreement program.

Although matching funds are not a condition for receiving an award under this program, include in the budget, a separate line-item accounting of non-Federal contributions (funding, personnel, and other resources) that will be directly allocated to the proposed activities. Identify any non-applicant sources of these contributions.

If requesting funds for any contractual activities, provide the following information for each contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

This program is designed to support core epidemiologic and laboratory capacity in a variety of ways. In health departments where gaps in personnel and equipment are identified as major barriers to effective surveillance and response, the program can provide resources to hire staff or purchase necessary equipment. Funds can also be used to initiate or enhance ongoing activities. Examples of such activities are provided below. These examples are not meant to serve as templates for proposals. Rather, recipients are urged to analyze their current surveillance infrastructure, identify gaps in core epidemiologic and laboratory capacity, and develop proposals that address the needs of their respective health jurisdictions.

Examples

1. Enhanced communicable disease surveillance and response. Activities would include improving surveillance in such areas as foodborne diseases, influenza, antimicrobial resistant organisms and vaccine-preventable diseases. Applicants are encouraged to discuss proposed activities in advance with relevant branches within CDC and, where appropriate, to coordinate those activities with CDC or other public health agencies.

2. Acquisition of molecular diagnostic and subtyping technologies. Activities might include:

(a) purchasing necessary equipment and supplies;

(b) training of laboratory personnel; and

(c) support of personnel to perform these activities. Recipients should plan to adhere to existing standards where appropriate, such as in PFGE-subtyping of E. coli O157:H7 isolates. Recipients should clearly specify how they plan to use information gained from these technologies to augment their existing surveillance activities.

3. Training of epidemiology and laboratory personnel.

4. Improved use of information technology. Activities could include:

(a) development of innovative methods of communicating public health information to clinicians, public health practitioners, and the public;

(b) development of local area networks (LANs) or wide area networks (WANs) to improve communications between divisions of a health department (e.g., between the epidemiology and laboratory divisions) or between local, county, and State health departments; or

(c) development of electronic laboratory-based reporting systems to automate communicable disease reporting from clinical laboratories. State and local health jurisdictions developing electronic laboratory-based reporting are encouraged to develop systems that are compliant with emerging standards and to work with CDC and with other States that are in the process of developing such systems.

F. Submission and Deadline

Letter of Intent (LOI)

In order to assist CDC in planning for and executing the evaluation of applications submitted under this program announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so at their earliest convenience prior to the application due date. Notification should include name and address of the institution and name, address, and telephone number of the contact person. Notification can be provided by facsimile, postal mail, or E-mail to Deborah A. Deppe, M.P.A., National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, N.E., Mailstop C–12, Atlanta, Georgia 30333, Facsimile: (404) 639–4197 E-mail address: <dad1@cdc.gov>.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189) on or before April 1, 1998. (Forms are in the application kit.) Submit all applications to: Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99032, Centers for Disease Control and Prevention (CDC), 2929 Brandywine Road, Mailstop E–18, Atlanta, Georgia 30341.

Applications that do not arrive in time for submission to the independent review group, will not be considered in the current competition unless proof is provided package was mailed on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Description of the population under surveillance, either the State or other appropriate jurisdiction (if an applicant is a county, city, or other agency) (5 points). Extent to which the application provides information on the population size, demographic characteristics, geographic distribution, racial/ethnic makeup, and health care delivery systems.

2. Description of existing public health infectious disease epidemiology and laboratory capacity (15 points).

Extent to which the applicant:

1. Describes existing infectious disease surveillance and response activities, including reporting requirements, spectrum of laboratory specimen testing performed, degree of automation of laboratory and epidemiologic information management, and public health response capacity.

b. Provides information on existing staffing, management, material and equipment investment, training, space, and financial support of laboratory and epidemiologic capacity for public health surveillance and response for infectious diseases.

c. Describes current collaboration between its epidemiology and laboratory programs in surveillance and response including the existence of, or potential for, integrated uses of surveillance data;

d. Describes current or previous collaborative relationships with clinical laboratories, local health agencies, academic medicine groups, and health care practitioners, including Health Maintenance Organizations (HMOs) or managed care providers; and demonstrates the potential of these relationships for enhanced surveillance and public health response activities.

3. Identification of areas of need (gaps) in surveillance and response for infectious diseases and understanding of the objectives of this cooperative agreement program (20 points).

Extent to which the application:

a. Outlines State and local needs in epidemiology and laboratory capacity for public health surveillance and response for infectious diseases.

b. Identifies specific important diseases or conditions (e.g., notifiable diseases, foodborne and waterborne diseases, vaccine-preventable diseases and drug-resistant infections) which will be addressed and outlines why these are important.

4. Operational Plan (Note: Provide a detailed description of first year activities only and briefly describe future year activities) (45 points). Extent to which the proposed plan:

a. Outlines activities that clearly address the identified needs in capacity and the specific diseases and conditions to be addressed.

b. Describes steps to be taken to facilitate and strengthen collaboration between epidemiology and laboratory practice.

c. Includes current letters of support from participating agencies, institutions, and organizations indicating their willingness to participate in the activities.

d. Is consistent with, and adequate to achieve, the needs identified and the purpose and objectives of this program.

e. If any research involving human subjects is proposed, has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in any proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Plan for monitoring and evaluation (15 points). The extent to which the applicant describes a detailed plan for monitoring the implementation of the activities and evaluating the extent to which the proposed activities strengthen local and national epidemiologic and laboratory capacity for infectious diseases.

6. Budget (not scored).

The extent to which the budget request is clearly explained, adequately justified, reasonable, and sufficient for the proposed project activities.

7. Human Subjects: (Not Scored).

If any research involving human subjects is proposed, does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

_____ Yes _____ No

Comments: _____ _____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. annual progress reports, no more than 90 days after the end of the budget period;

2. annual Financial Status Report (FSR), no more than 90 days after the end of the budget period; and

3. Final FSR and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2929 Brandywine Road, Mailstop E–18, Atlanta, Georgia 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2000

AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act Sections 301(a)[42 U.S.C. 241(a)], 317(k)(1)[42 U.S.C. 247b(k)(1)], and 317(k)(2)[42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

Please refer to Program Announcement 99032 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact Oppie Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 99032, Centers for Disease Control and Prevention (CDC), 2929 Brandywine Road, Mailstop E–18, Atlanta, GA 30341, Telephone: (404) 842–6546, E-mail Address: **<oxb3@cdc.gov>**. See also the CDC home page on the Internet: **<http://www.cdc.gov>.**

For program technical assistance, contact Deborah A. Deppe, M.P.A., National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop C–12, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, Telephone: (404) 639–4668, E-mail Address: **<dad1@cdc.gov>.**

For written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. (Application forms are also available on the CDC Home Page of the Internet.)

Dated: January 25, 1999.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2150 Filed 1–29–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99016]

National Minority Organizations Immunization Projects Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for National Minority Organizations Immunization Projects. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases.

The purpose of this Cooperative Agreement is to assist National Minority Organizations (NMOs) with the promotion and improvement of childhood, adolescent, and adult immunization coverage levels.

B. Eligible Applicants

Assistance will be provided only to National Minority Organizations that provide documented proof that they meet the following criteria. The applicant must provide this documentation under the "Eligibility" section found in the front of the application. The applicant must:

1. Be an established, tax-exempt organization (a nongovernmental, tax-exempt corporation or association whose net earnings in no way lawfully accrue to the benefit of private shareholders or individuals). Tax-exempt status may be confirmed by either providing a copy of the pages from the Internal Revenue Service's (IRS) most recent list of 501(c)(3) of tax-exempt organizations or a copy of the current IRS Determination Letter. Proof of tax-exempt status must be provided in the application.

2. Have a specific charge from its Articles of Incorporation or Bylaws or a resolution from its governing body or board to operate nationally within the United States and its Territories.

3. Have at least three years documented experience in operating and centrally administering a coordinated public health or related program serving racial or ethnic minority populations within a major portion or region (multistate or multiterritory) of the United States through its own offices or organizational affiliates.

4. Have a governing body or board whose membership is composed of at least 51 percent racial or ethnic minority members and who represent the population to be served. Groups recognized as racial and ethnic minorities include, but are not limited to: African Americans, Alaskan Natives, Asian Americans, Caribbean Americans, Latinos/Hispanics, Native Americans, and Pacific Islanders. Proof of minority status consisting of a list of board members, their race and ethnicity, the address and telephone number of each member, a description of each role on the board, and a description of constituents (the population, group(s) and/or organization for which they are advocates) must be included in the application. Documentation must also be provided giving assurance that the governing board is composed of more than 50 percent racial or ethnic minority group members who are representative of the population to be served.

5. Document that each of the affiliates or chapters that will be participating in the project as subcontractors have a governing body or board whose membership is composed of more than 50 percent racial or ethnic minority group members.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1 million will be available to fund up to five cooperative agreements. It is expected that the average award (including direct and indirect costs) will be $200,000. Awards will not exceed $300,000. It is expected that the awards will begin on or about July 1, 1999 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Applicants must allocate a percentage of the funds awarded under this program announcement to subcontract with affiliate, chapter, and/or other minority Community Based Organizations (CBOs). Awards to these agencies must be done through a competitive review process conducted by the applicant. Activities performed by the subcontractors must be toward specific program objectives of the applicant. Applicants should describe in the "Collaborating Activities" section under "Application Content" the plan of action for the objective review process to be used to review and select subcontractors.

Funds cannot be used for construction or renovation; to purchase or lease vehicles or vans; to purchase a facility to house project staff or carry out project activities; or to substitute new activities and expenditures for current ones.

Funding Preference

Preference for funding will be given to: (1) Supporting projects for the following racial and ethnic minority populations listed here in alphabetical order: African Americans, Alaskan Natives, American Indians, Asian Americans, Caribbean Americans, Hispanics/Latinos, and Pacific Islanders; (2) supporting activities which are targeted toward high-risk populations including but not limited to families living at poverty levels, migrant farm workers, homeless persons, immigrants, etc.; and (3) ensuring a geographic and racial/ethnic balance of funded NMOs which serve under-immunized rural populations and population groups of low socioeconomic status who reside in densely populated urban areas.

D. Programmatic Interest

Applicants may focus on any or all of the three program interest areas:

1. Increase immunization coverage levels among children, birth to 10 years of age.

2. Increase immunization coverage levels among adolescents, ages 11 to 21 years.

3. Increase immunization coverage levels among adults older than 21 years of age.

E. Cooperative Activities

In conducting activities to achieve the purpose of the Cooperative Agreements, the recipient will be responsible for achieving the activities under Item 1. below. CDC will be responsible for activities under Item 2. below.

1. Recipient Activities (Childhood, Adolescent, and/or Adult). Recipient shall undertake certain activities, regardless of the age group(s) targeted. In conducting those certain activities, each recipient should:

a. Provide technical assistance and training to affiliate organizations, private providers, and other agencies serving racial and ethnic minorities, as well as collaborate with State and local health departments. Technical assistance and training should focus on developing and implementing effective intervention strategies to raise coverage levels; educating providers about cultural sensitivity issues and effective

strategies that can be implemented in their practice; developing, disseminating, and marketing health communication messages that are culturally sensitive and linguistically appropriate; and building organizational capacity to sustain immunization activities, information management, and technology.

b. Identify and document effective models of collaboration of local affiliates with State and local health departments in achieving specific objectives to improve immunization levels among racial and ethnic minorities.

c. Disseminate educational products developed and share information with other national organizations, State and local health agencies, provider organizations, coalitions, and community-based organizations.

d. Develop and implement strategies to educate members of racial and ethnic minority communities about community-based immunization registries, by explaining their benefits, operations, and limitations, and by addressing misinformation and misconceptions.

e. Provide training, information and education at the national, State, and local levels, community norms that dispel uncertainties about the safety of vaccines versus the risk of contracting a vaccine-preventable disease.

f. Develop and implement a plan to ensure sustainability of program activities conducted through this cooperative agreement and to ensure its continuation after the end of the project period.

g. Evaluate all major program objectives and activities to determine programmatic and economic effectiveness.

h. Develop, implement, and evaluate affiliate organizations' activities under this Program Announcement in their respective communities.

The following are additional recipient activities for targeted program areas:

i. When childhood immunization is the program area chosen or among those chosen, a recipient should undertake activities to:

a. Develop and implement immunization initiatives with affiliates, State and local health departments, and other collaborating partners to enhance delivery of immunization services to the target populations using the "Standards for Pediatric Immunization Practices."

b. Identify and document effective programs that provide parents information explaining the immunization schedule and where to go for immunizations to protect their children against vaccine-preventable diseases.

j. When adolescent immunization is the program area chosen or among those chosen, a recipient should undertake activities to:

a. Develop and implement immunization initiatives with affiliates, State and local health departments, and other collaborating partners to enhance delivery of immunization services to the target populations using the National Coalition for Adult Immunization's "Standards for Adult Immunization Practice."

b. Identify and document effective programs to increase the positive response of adolescents in racial and ethnic minority communities to seek out and obtain hepatitis B, MMR, and varicella vaccines.

k. When adult immunization is the program area chosen or among those chosen, a recipient should additionally undertake activities to:

(1) Develop and implement immunization initiatives with affiliates, State and local health departments and other collaborating partners to enhance delivery of immunization services to the target population using the National Coalition for Adult Immunization's "Standards for Adult Immunization Practice."

(2) Work with national and local partners to identify, implement, and document effective programs to increase vaccine coverage for influenza and pneumococcal vaccines among racial and ethnic minorities.

2. CDC Activities

b. Provide technical assistance in interpreting risk factors for contracting vaccine-preventable diseases.

c. Provide assistance in the evaluation of each plan component (process and outcome) through the analysis and interpretation of coverage and other relevant data.

d. Facilitate the transfer of successful prevention interventions and program models to other areas through meetings of grantees, workshops, conferences, newsletters, and communications with project officers.

e. Facilitate partnering to enhance the exchange of program information and technical assistance between community organizations, State and local health departments, coalitions, and national and regional organizations.

F. Application Content

Use the information in the Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and 12 point font.

Organization Profile (maximum six pages)

1: Provide a narrative, including background information and information on the applicant organization, evidence of relevant experience in coordinating activities among constituents, and a clear understanding of the purpose of the project.

2. Include details of past experiences working with the target population(s). Provide information on organizational capability to conduct proposed project activities.

3. Profile qualified and experienced personnel who are available to work on the project and provide evidence of an organizational structure that can meet the terms of the project. Include an organizational chart of the applicant organization specifying the location and staffing plan for the proposed project.

Program Plan (Maximum 10 pages)

For each program area under Recipient Activities:

1. Provide a needs assessment and program rationale that defines the target population using specific information including population size, geographic location, density, racial, ethnic distribution, income levels, current immunization services and resources available, gaps in services, and magnitude of under-immunization.

2. Include goals and measurable impact and process objectives that are specific, realistic, measurable, and time-phased. Include an explanation of how the objectives contribute to the purposes of the request for assistance and evidence that demonstrates the potential effectiveness of the proposed objectives.

3. Detail an action plan, including a timeline of activities and personnel responsible for implementing each segment of the plan.

4. Prepare an evaluation plan to include impact, process quantitative and qualitative measures for the achievement of program objectives to determine the health effect on the population, and monitor the implementation of proposed activities. Indicate how the quality of services provided will be ensured.

5. Provide a plan for disseminating project results indicating when, to whom, and in what format the material will be presented.

6. Provide a plan for obtaining additional resources from non-federal sources to supplement program activities and ensure continuation of the activities after the end of the project period.

Collaboration Activities

1. Obtain and include letters of support, written in the last 12 to 24 months, from local organizations and constituents.

2. Provide any memoranda of agreement from collaborating organizations indicating a willingness to participate in the project, the nature of their participation, period of performance, names and titles of individuals who will be involved in the project, and the process of collaboration. Each memorandum should also show an understanding and endorsement of immunization activities.

3. Provide evidence of collaborative efforts with health departments, provider organizations, coalitions, and other local organizations.

4. Provide evidence of plans to subcontract a portion of project activities to affiliate, chapter, and community-based organizations. Include a description of the review process to be used to review and select applications.

Budget Information

1. Provide a detailed budget with justification. The budget proposal should be consistent with the purpose and program plan of the proposed project.

2. Provide an itemized (line-item) budget categorized by objective.

G. Submission and Deadline

Submit the original and two copies of the application PHS 5161–1, (OMB Number 0937–0189). Forms are in the application kit. On or before April 1, 1999, submit the application to: Sharron P. Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number 99016, Centers for Disease Control and Prevention, 2929 Brandywine Road, M/S E–13, Atlanta, GA 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in 1 or 2 above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need: The extent to which the applicant understands the problem of underimmunization and proposes a plan to address the issues specific to their constituents. (15 points)

2. Capability: The extent to which the applicant appears likely to succeed in implementing proposed activities as measured by relevant past experience, a sound management structure, and staff qualifications, including the appropriateness of their proposed roles and responsibilities and job descriptions. (25 points)

3. Program Plan: The feasibility and appropriateness of the applicant's action plan to enhance immunization services delivery among constituencies and increase coverage levels. (30 points)

4. Coordination and collaboration: The extent to which the applicant proposes to coordinate activities with affiliate and chapter organizations, State and local immunization programs, coalitions, provider organizations, and other appropriate agencies. (10 points)

5. Evaluation Plan: The extent to which the applicant proposes to evaluate the proposed plan including impact and process evaluation as well as quantitative and qualitative measures for achievement of program objectives, determining the health effect on the population, and monitoring the implementation of proposed activities. (20 points)

6. Budget and Justification: The extent to which the proposed budget is adequately justified, reasonable, and consistent with proposed project activities and this program announcement. (Not Scored)

I. Other Requirements

Technical Reporting Requirements

Subject to Office of Management and Budget approval under the Paperwork Reduction Act, semi-annual narrative progress reports will be required 30 days after the end of each 6 months. The reports should document services provided and problems encountered. CDC will provide specific guidelines for documenting and reporting on program activities. Provide CDC with original plus two copies of:

1. Progress reports (semiannual);

2. Financial Status Reports, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to Sharron P. Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2929 Brandywine Road, Mailstop E–13, Atlanta, GA 30341.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–08—Public Health System Reporting Requirements
AR–09—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace
AR–11—Healthy People 2000
AR–12—Lobbying Restriction
AR–14—Accounting System Requirements
AR–15—Proof of Non-Profit Status
AR–20—Conference Support

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 311 [42 U.S.C. 243] and 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act as amended. The Catalog of Federal Domestic Assistance number is 93.185.

K. Where to Obtain Additional Information

Please refer to Program Announcement Number 99016 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron P. Orum, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2929 Brandywine Road, M/S E–13, Atlanta, GA 30341, Telephone: (404) 842–6817, Email Address: *spo2@cdc.gov*.

See also the CDC home page on the Internet: *http://www.cdc.gov*

For program technical assistance, contact: Duane M. Kilgus, Community Outreach and Planning Branch, Immunization Services Division, National Immunization Program,

Centers for Disease Control and Prevention, 1600 Clifton Road, M/S E–52, Atlanta, Georgia 30333, Telephone: (404) 639–8375, Email address—*dgk9@cdc.gov*.

Copies of the "Standards for Pediatric Immunization Practices" and the National Coalition for Adult Immunization's "Standards for Adult Immunization Practices" may be obtained from the National Immunization Program, Immunization Services Division, Community Outreach and Planning Branch, Mailstop E–52, 1600 Clifton Road, NE, Atlanta, GA 30333. Telephone: (404) 639–8375.

Dated: January 25, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2149 Filed 1–29–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Employment Sites of Nursing Graduates Supported by the Professional Nurse Traineeship Program (HRSA 98–141)—New.

Under Section 830 of Title VIII of the Public Health Service Act, Professional Nurse Traineeship (PNT) grants are awarded to eligible institutions for the support of students in advanced nursing education. Traineeships are then awarded by the institutions to individuals enrolled in graduate programs to prepare for practice as advanced practice nurses. These funds are distributed to institutions based on a formula that incorporates three statutory funding factors. The factor to be studied is the funding preference which is given to institutions that can demonstrate either a high rate of placing graduates in medically underserved communities (MUCs), or achieving a significant increase in the rate of placing graduates in such settings.

This study is intended to assess the influence of funding preference on program performance and to determine program success in placing PNT graduates in MUCs. Approximately 5,000 graduates who received Master's or Doctoral degrees in academic years 1996–1997 and 1997–1998, including 1,200 who received PNT funds but were not graduates of the schools receiving the preference, will be included in this survey. Data will be obtained on the graduates place of residence and place of employment before, during and after their program of study. The study will examine various measures associated with the career paths chosen by these graduates and by comparing these measures within and between the two groups of graduates. Comparisons of employment sites of graduates in schools receiving the preference with those of graduates in schools not receiving the preference will indicate the significance of funding preference in promoting program objectives of increasing access to care in underserved communities. Information on both the nursing-specialty of graduates and their current employment setting will be analyzed for each of the two groups.

The estimated burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response (minutes)	Total burden hours
Survey	5000	1	20	1667

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–36, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 26, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–2232 Filed 1–29–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Grantee Reporting Requirements for the Rural Health Network Development Grant Program (OMB No. 0915–0218)—Revision.

This is a request for extension of the reporting requirements for the Rural Network Development Grant Program authorized by section 330A of the Public Health Service Act as amended by the Health Centers Consolidation Act of 1996 (Public Law 104–229). The purpose of the program is to assist in the development of vertically integrated

networks of health care providers in rural communities. Grantees will be working to change the delivery system in their service areas and will be using the Federal funds to develop network capabilities.

Grantees submit annual reports which provide information on progress towards goals and objectives of the network, progress toward developing the governance and organizational arrangements for the network, specific network activities, certain financial data related to the grant budget, and health care services provided by the network. The information is used to evaluate progress on the grants, to understand barriers to network development in rural areas, to identify grantees in need of technical assistance, and to identify best practices in the development of provider networks in rural communities. The information is also used to begin to evaluate the impact of networks on access to care. To minimize the burden on grantees, the reports will are submitted electronically. The estimated burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Baseline	16	1	2	32
Tracking	50	1	1	50
Total	50			82

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 26, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–2231 Filed 1–29–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Regulations and Forms, OMB No. 0915–0126: Extension.

The National Practitioner Data Bank (Data Bank) was established through Title IV of Public Law 99–660, the Health Care Quality Improvement Act of 1986, as amended. Final Regulations governing the Data Bank are codified at 45 CFR part 60. Responsibility for Data Bank implementation and operation resides in the Bureau of Health Professions, Health Resources and Services Administration, U.S. Department of Health and Human Services (DHHS). The Data Bank began operation on September 1, 1990.

The intent of Title IV of Public Law 99–660 is to improve the quality of health care by encouraging hospitals, State licensing boards, professional societies, and other entities providing health care services, to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure of the practitioners' previous damaging or incompetent performance.

The Data Bank acts primarily as a flagging system; its principal purpose is to facilitate comprehensive review of practitioners' professional credentials and background. Information on medical malpractice payments, adverse licensure actions, adverse clinical privileging actions, and adverse professional society actions is collected from, and disseminated to eligible entities. It is intended that Data Bank information should be considered with other relevant information in evaluating a practitioner's credentials.

This request is for an extension of reporting and querying forms previously approved in February 1996. The reporting forms and the request for information forms (query forms) may be accessed, completed, and submitted to the Data Bank electronically through the use of a program designated QPRAC 4 which is provided by the DHHS. The DHHS has developed a separate query form for practitioners making self-queries. This request also includes several administrative forms which have been developed since the last clearance.

The following estimates of burden are based on actual Data Bank operational experience:

Type of activity—45 CFR 60.0	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Reporting:				
Reports Correcting Errors and Omissions—60.6(a)	1,600	1.06	.25	424
Reports of Revision to Actions Previously Reported—60.6(b)	390	1.04	.75	304
Report of Medical Malpractice Payments—60.7(b)	525	27.3285	.75	10,760
Reports of Adverse Actions by State Medical and Dental Boards—60.8(b)	125	32.56	.75	3,053
Reports of Adverse Action Regarding Clinical Privileges and Professional Society Memberships—60.9(a)3.	975	1.03	.75	753
Entity Hearings:				
Requests for Hearing by Entities—60.9(c)	*1	1	8.0	8

Type of activity—45 CFR 60.0	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Requests for Information Disclosure (Query):				
Queries by Hospitals for Practitioner Applications—60.10(a)(1)	6,000	40	.083 5 Minutes	20,000
Queries by Hospitals—Two Year Cycle—60.10(a)(2)	6,000	160	.083	80,000
Queries by Hospitals—Peer Review—60.11(a)(1)	(**)			
Queries by Practitioners (Self-Query)—60.11(a)(2)	60,000	1	.50	30,000
Queries by Licensure Boards—60.11(a)(3)	125	120	.083	1,245
Queries by Non-Hospital Health Care Entities—60.11(a)(4)	3,250	690	.083	186,874
Queries by Plaintiff's Attorneys—60.11(a)(5)	***1	1	.30	.5
Queries by Non-Hospital Health Care Entities—Peer Review—60.11(a)(6)	***			
Requests by Researchers for Aggregate Information—60.11(a)(7)	100	1	.50	50
Disputes:				
Practitioner Places a Dispute in His/Her Data Bank Report—60.14(b)	1,200	1	.5	600
Practitioner Places a Statement in His/Her Data Bank Report—60.14(b)	1,350	1	1.0	1,350
Practitioner Requests Review of the Disputed Report by The Secretary DHHS—60.14(b).	135	1	8.0	1,080
Administrative forms used in operating the National Practitioner Data Bank;				
Entity Registration Form	150	1	1.0	150
Entity Registration Update Form	100	1	.25	25
Authorized Agent Designation Form	25	1	.25	6.25
Authorized Agent Designation Update	5	1	.083	.42
Account Discrepancy Report	200	1	.25	50
Electronic Transfer of Funds Authorization	25	1	.25	6.25
Entity Reactivation	50	1	.25	12.5
Total				336,757

*There have been no hearing requests from reporting entities since the opening of the Data Bank.
**We are unable to distinguish between these and other types of queries made by hospitals and other health care entities.
***There have been approximately 12 attorney requests since the opening of the Data Bank; of these, one has been granted.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: January 26, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–2233 Filed 1–29–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Human Cancer Antigen, NY ESO–1/CAG–3, and Gene Encoding Same

R Wang, SA Rosenberg (NCI)
DHHS Reference No. E–265–97/1 filed 21 Sep 98
Licensing Contact: Elaine Gese; 301/496–7056 ext. 282; e-mail: eg46t@nih.gov

The current invention embodies the identification, isolation and cloning of a gene encoding a novel tumor antigen, NY ESO–1/CAG–3, as well as cancer peptides thereof an antigenic cancer epitopes contained within the cancer peptides. This novel antigen is recognized by cytotoxic T lymphocyte clones derived from the TIL586 (tumor infiltrating lymphocyte) cell line in an HLA restricted manner.

The inventors believe that cancer peptides which are encoded by the NY ESO–1/CAG–3 gene represent potential cancer vaccines, protecting an individual from development of cancer by inhibiting the growth of cells or tumors which express the NY ESO–1/CAG–3 antigen. Also embodied in the invention are pharmaceutical compositions comprising the NY ESO–1/CAG–3 antigen, peptide, or an antigenic cancer epitope thereof in combination with one or more immunostimulatory molecules. These compositions represent potential anticancer therapeutics, stimulating NY ESO–1/CAG–3–specific T cells to elicit an anti-cancer immunogenic response and thereby eliminating or reducing the cancer. While these vaccines and pharmaceutical compositions may be developed for use against a variety of cancers, data obtained to date indicate that they may be of particular value for use against melanoma.

Methods for diagnosing cancer via the detection of NY ESO–1/CAG–3 are also embodied in the invention.

Mouse Models for Huntington's Disease

D. Tagle (NHGRI)
DHHS Reference No. E–101–98/0
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: ms482m@nih.gov

Huntington's Disease (HD) is one of a number of neurological diseases in which excessive repetition of the CAG nucleotide sequence, which codes for glutamines, causes an abnormally shaped HD protein. This protein then interacts with other proteins produced by the cell thus preventing their normal functions. HD afflicts 1 in every 10,000 individuals in the United States, however HD's pathogenesis and mechanistic action is relevant to at least 13 other neurodegenerative diseases.

The mouse lines which are available for licensing show progressive neurobehavioral and neuropathological changes that resemble clinical findings found in HD patients. These include behavior such as running in circles, performing backflips and other abnormal movements which correlate with the loss of neurons in the striatum, cortex, and other brain regions. The transgenic mice have been genetically engineered to show widespread expression of full length human HD cDNA with either 16, 48, or 89 CAG repeats. It is the mice containing the 48 or 89 CAG repeats which manifest the HD symptoms, the other modified mice are useful as controls. The mouse lines are able to model the early events that occur in Huntington's Disease and how these events ultimately result in neurological cell death. The utility of these mouse lines can be found in screening potential pharmaceutical treatments for HD and other neurodegenerative diseases, as well as testing therapies, including those used to assist neuronal survival.

Inhibition of T-Type Voltage-Gated Calcium Channels by a New Scorpion Toxin

K Swartz, H Jaffe (NINDS)
Serial No. 60/101,158 filed 21 Aug 98
Licensing Contact: Marlene Shinn, 301/496–7056 ext. 285; e-mail: ms482m@nih.gov

The T-Type calcium channel is found in neurons, cardiac and vascular smooth muscle and is thought to be important for generative specific patterns of electrical activity. We have identified, isolated, and determined the chemical composition of an inhibitor (named Kurtoxin-1) of the T-type calcium channel. Kurtoxin-1 (or drugs developed using it as a probe) may be useful therapeutic reagents to control heart rate (e.g., antiarrhythmic drugs), vascular smooth muscle tone (e.g., controlling blood pressure) or epileptic discharges in the central nervous system. T-type calcium channels may also be important for transmission of pain stimuli and therefore inhibitors of these channels may have analgestic properties.

Kurtoxin is from the venom of the *Parabuthus transvaalicus* scorpion. It binds to the α_{1G} T-type Ca^{2+} channel with high affinity and inhibits the channel by modifying voltage-dependent gating. The biophysical properties of T-type voltage-gated Ca^{2+} channels make them well suited to serve important pacemaking roles, and to support c flux near the resting membrane potential in both excitable and non-excitable cells. Until now, no selective high affinity ligands were available for T-type Ca^{2+} channels. Kurtoxin distinguishes between the α_{1G} T-type Ca^{2+} channels and other types of voltage-gated Ca^{2+} channels, such as α_{1E}, α_{1C}, α_{1B} and α_{1A}. Its primary amino acid sequence indicates it belongs to a family of ł-scorpion toxins that slow inactivation of Na^+ channels. It is foreseen that kurtoxin will facilitate characterization of the molecular composition of T-type Ca^{2+} channels and will help delineate their involvement in electrical and biochemical signaling.

Composition and Methods for Identifying and Testing Tyrosine Kinase Substrates and Their Agonists and Antagonists

LE Samelson, W Zhang (NICHD)
Serial No. 60/068,690 filed 23 Dec 97
Licensing Contact: Susan S. Rucker; 301/496–7056 ext. 245; e-mail: sr156v@nih.gov

This application relates to T cell receptors (TCRs) and TCR mediated signal transduction. More particularly, the application describes the isolation, purification and cloning of an integral membrane protein, Linker for Activation of T cells (LAT), a tyrosine kinase substrate for ZAP–70/Syk protein tyrosine kinases (PTKs). LAT is phosphorylated by ZAP–70/Syk and this phosphorylation is necessary for the recruitment of multiple signaling molecules, such as Grb2, PLC-γ1, the p85 subunit of PI3K and other critical signaling molecules. Thus, LAT plays a role in linking the TCR to cellular activation. Tissues which express LAT are limited to the thymus, peripheral blood, and at low levels, the spleen. Cells, found in these tissues, which express LAT and T cells, NK cells and mast cells. In addition recent work has also demonstrated that LAT is expressed in megakarocytes. B cells and monocytes do not express LAT. This pattern of expression and its role in cell signaling suggest that LAT may be a specific target for the development of drugs for allergy and other T cell associated diseases. Such drugs may include antibodies which recognize LAT and inhibit its action.

In addition to the isolation, purification and cloning of LAT the application describes antibodies which specifically recognize LAT. Recent work has shown that LAT is palmitoylated and this palmitoylated LAT localizes to glycolipid-enriched microdomains (GEMs). The palmitoylation of LAT is necessary for the tyrosine phosporylation of LAT and for the targeting of LAT to the GEMs. Other recent work includes the generation of LAT knockout mice.

This research has been published in *Cell* 92(1): 83–92 (Jan 9, 1998) and *Immunity* 9(2): 239–46 (Aug 1998).

Probe To Identify Enteroinvasive *E. coli* and *Shigella* Species

KA Lampel, JA Jagow (FDA)
Serial No. 07/266,038 filed 02 Nov 88; U.S. Patent 5,041,372 issued 20 Aug 91
Licensing Contact: Carol Salata, 301/496–7735 ext. 232; e-mail: cs253n@nih.gov

Standard means for detecting pathogenic organisms in food or clinical specimens rely on animals or large DNA fragments, such as the 17 kb *Eco*RI fragment of Boileau. These methods are expensive, time-consuming, difficult to use, and have not been able to distinguish between nonvirulent enteroinvasive *E. coli* and *Shigella*. This invention described DNA probes for enteroinvasive *E. coli* and *Shigella* species, including the sequence of the 2.5 kb fragment (*Sma*II and Falkow's) on which the probe is based.

The probe is more reliable, more sensitive, and less expensive than methods now is use.

Dated: January 25, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–2245 Filed 1–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of

federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Broad Spectrum Chemokine Antagonist and Uses Thereof

B Moss, I Damon-Armstrong (NIAID)
DHHS Reference No. E–065–98/1 filed 08 Jan 99 (based on Provisional U.S. Patent Application No. 60/070,945 filed 10 Jan 98)
Licensing Contact: Leopold Luberecki, Jr.; 301/496–7735 ext. 223; e-mail: 1187a@nih.gov

Chemokines are the small proteins involved in recruitment of leukocytes (white blood cells) to areas of tissue injury or infection, so they are also in part responsible for inflammation. There are two major classes of chemokines: CXC (α) and CC (β). Chemokines elicit leukocyte movement by binding to a receptor on the cell surface. Typically, CXC chemokines direct the movement of neutrophils and CC chemokines direct the movement of other types of leukocytes. Previously, the open reading frame of the recently sequenced molluscum contagiosum viral genome was predicted to encode a protein that would function as a CC chemokine antagonist by mimicking the chemokine and thus diverting it from its receptor. The inventors have cloned, expressed, purified, and demonstrated the broad-spectrum ability of this viral protein to inhibit chemotaxis of multiple different leukocyte classes to different chemokines in both the CXC and CC classes. Thus, the protein has potential use as an anti-inflammatory agent and as an antiviral agent to treat HIV.

Cell Expansion System for Use in Neural Transplantation

L Studer, V Tabar, J Yan, R McKay (NINDS)
Serial No. 60/093,991 filed 24 Jul 98
Licensing Contact: Leopold Luberecki, Jr.; 301/496–7735 ext. 223; e-mail: 1187a@nih.gov

Cell transplantation therapy typically involves transplanting primary cells or immortalized cells into patients. The promising but still inconsistent data stemming from those clinical trials using primary cells in Parkinson's disease are believed to be due to an insufficient number, function and uniformity of the transplanted cells. In an effort to overcome these problems an improved method for isolating, growing and differentiating precursor cells into dopaminergic neurons has been developed. The process described provides for an expansion of the cell number of primary cells by up to 1000 fold. This technique could assist in solving the problem of obtaining sufficient cells for a reliable, effective cell transplantation therapy. The process consists essentially in the isolation and in vitro numerical expansion of an early mesencephalic precursor population, the use of serum, cAMP, dopamine and ascorbic acid during differentiation and the development of an aggregation technique during cell differentiation that allows convenient grafting of dopaminergic neurons.

Real-Time Interactive Functional Magnetic Resonance Imaging

JA Frank, J Ostuni, JH Duyn (CC)
Serial No. 09/090,166 filed 04 Jun 98
Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; e-mail: jf35z@nih.gov

The present disclosure describes a device and methods for capturing whole brain raw data image files as they are being produced from a magnetic resonance (MR) system. The invention performs reconstruction of the data, registration, statistical analysis, and then displays the results within seconds after completion of the MR image acquisition. This invention provides the ability to have a quick look at the image maps produced of brain activity or brain perfusion. It gives the clinician or researcher performing the diagnosis or study, the flexibility to modify the procedure "on the fly" to produce a more meaningful image or data set.

Method of Reducing Perivascular Lesions Using Insulin-Like Growth Factor I

HD Webster, S Komoly, D Yao, X Liu, LD Hudson (NINDS)
Serial No. 08/705,820 filed 30 Aug 96 (based on Provisional U.S. Patent Application No. 60/003,055 filed 31 Aug 95)
Licensing Contact: Leopold Luberecki, Jr.; 301/496–7735 ext. 223; e-mail: 1187a@nih.gov

A perivascular lesion is a site near or surrounding a lesion in the blood vessel system that is accompanied by an accumulation of inflammatory leukocytes and/or damage to perivascular tissue. Although it is unclear how a perivascular lesion originates, the sequence of events leading to such lesions induce increased vascular endothelial permeability and induce toxic effects on the nervous system, which may lead to myelin injury. Myelin is a protein-lipid composite that insulates axons, which are the cellular processes by which electrical impulses travel through the nervous system. When myelin sheaths sustain injury, entire segments of myelin degenerate, thus affecting the ability of impulses to travel. Typically, perivascular lesions occur after or during: brain or spinal cord trauma, ischemic injury or insult; certain inflammatory diseases affecting the musculo-skeletal system, central nervous system, and peripheral nervous system; and certain autoimmune disorders. The application claims a method to reduce perivascular lesions by administering an effective amount of insulin-like growth factor I to treat diseases or disorders associated with demyelination, such as multiple sclerosis, experimental autoimmune encephalomyelitis, neuromyelitis optica, optic neuritis, acute encephalomyelitis, cervical myelopathy, and spinal cord injury.

Dated: January 25, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–2246 Filed 1–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 17–18, 1999.

Open: February 17, 1999, 8:30 AM to 12:00 PM.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10.

Closed: February 17, 1999, 2:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10.

Closed: February 18, 1999, 10:15 AM to 10:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10.

Open: February 18, 1999, 10:30 AM to 12:00 PM.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10.

Contact Person: Walter S. Stolz, PHD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Instituts of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrine and Metabolic Diseases Subcommittee.

Date: February 17–18, 1999.

Open: February 17, 1999, 1:00 PM to 2:00 PM.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10.

Closed: February 17, 1999, 2:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10.

Closed: February 18, 1999, 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 10.

Contact Person: Walter S. Stolz, PHD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: February 17–18, 1999.

Open: February 17, 1999, 1:00 PM to 2:00 PM.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 9A51.

Closed: February 17, 1999, 2:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 9A51.

Closed: February 18, 1999, 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 9A51.

Contact Person: Walter S. Stolz, PHD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Digestive Diseases and Nutrition Subcommittee.

Date: February 17–18, 1999.

Open: February 17, 1999, 1:00 PM to 2:00 PM.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville, Pike, Building 31C, Conference Room 7.

Closed: February 17, 1999, 2:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 7.

Closed: February 18, 1999, 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 7.

Contact Person: Walter S. Stolz, PHD., Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2240 Filed 1–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel.

Date: February 3, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD., Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2243 Filed 1–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: February 4, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: George M. Barnas, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities/NIDCD, 6120 Executive Blvd, Bethesda, MD 20892, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institutes on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: February 10, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: George M. Barnas, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities/NIDCD, 6120 Executive Blvd, Bethesda, MD 20892, 301–496–8683.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: January 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2244 Filed 1–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent To Negotiate Contract(s) Between the Central Utah Water Conservancy District and Department of the Interior for Completion of the Diamond Fork System of the Central Utah Project, Utah

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of intent to negotiate contract(s) between the Central Utah Water Conservancy District (District) and Department of the Interior (DOI) for completion of the Diamond Fork System of the Central Utah Project, Utah.

SUMMARY: The Diamond Fork System is one of the components of the Bonneville Unit of the Central Utah Project. The Diamond Fork System will allow for the transbasin diversion of Bonneville Unit water from Strawberry Reservoir in the Colorado River drainage basin to the Bonneville Basin. Public Law 102–575, Section 202(a)(6) authorizes the completion of the Diamond Fork System and specifies that it will be constructed under the guidelines of the Drainage Facilities and Minor Construction Act. Also, article V(A) of the August 11, 1993 Compliance Agreement (Compliance Agreement) between the District and DOI states: "The Secretary shall not provide funds for construction, nor shall the District commence construction on any feature authorized in Title II of the Act until the District and the Secretary have executed an agreement in accordance with the Drainage and Minor Construction Act for the purpose of establishing terms and conditions for the proper conduct and execution of construction of such feature by the District." Negotiated contract(s) between the District and DOI will comply with sections 202(a)(1)(D) and 202(a)(6)(B) of Public Law 102–575 and the Compliance Agreement.

DATES: Dates for public negotiation sessions will be announced in local newspapers.

FOR FURTHER INFORMATION: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed R. Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov.

Dated: January 26, 1999.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 99–2270 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–006559

Applicant: Dale Powell, Riverside, California

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout each species' range for the purpose of enhancing their survival.

Permit No. TE–821401

Applicant: Brian E. Daniels, Long Beach, California

The applicant requests an amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species' range for the purpose of enhancing its survival.

Permit No. TE–838015

Applicant: Stephen Sprague, Anaheim, California

The applicant requests an amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout the species' range for the purpose of enhancing its survival.

Permit No. TE–006333

Applicant: Douglas F. Markle, Corvallis, Oregon

The applicant requests an amendment to take (capture, handle, tag, transport, and sacrifice) the shortnose sucker (*Chasmistes brevirostris*) and the Lost River sucker (*Deltistes luxatus*) in conjunction with population and ecological studies throughout each species' range for the purpose of enhancing their survival. Some of the above activities were previously authorized under subpermit MARKDF–7.

Permit No. TE–837448

Applicant: Douglas W. Allen, San Diego, California

The applicant requests an amendment to: take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys; take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with population studies and removal of brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests; and take (harass by survey; locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with presence or absence surveys, population studies, and removal of brown-headed cowbird eggs and chicks from parasitized nests of these species throughout San Diego, Imperial, Orange, Riverside, San Bernardino, Los Angeles, and Ventura Counties, California, for the purpose of enhancing their survival.

Permit No. TE–006745

Applicant: Yvonne C. Moore, Riverside, California

The applicant requests a permit to take (capture and harass by marking) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with surveys and scientific research in Riverside, San Bernardino, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No's. TE–006112, TE–007074

Applicant: Gretchen Flohr, Fremont, California; Ellen Piazza, Fair Oaks, California

The applicants are requesting permits to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys throughout the species' range in California, for the purpose of enhancing their survival.

Permit No. TE–006953

Applicant: Moore Biological Consultants, Lodi, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the species' range in California, for the purpose of enhancing their survival. The applicant was previously authorized to conduct these activities under PRT–795929.

Permit No. TE–005687

Applicant: Anthony Cario, San Diego, California

The applicant requests a permit to take (harass by survey, collect and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys in San Diego County, California, for the purpose of enhancing their survival.

Permit No. TE–005956–9

Applicant: National Biological Service, Reno, Nevada

The applicant requests a renewal to take (capture, measure, weigh, release, and sacrifice) the Cui-ui (*Chasmistes cujus*), Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*), Moapa dace (*Moapa coriacea*), Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*), Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*), White River spinedace (*Lepidomeda albivallis*), White River springfish (*Crenichthys baileyi baileyi*), Hiko White River springfish (*Crenichtys baileyi grandis*), Lost River sucker (*Deltistes luxatus*), shortnose sucker (*Chasmistes brevirostris*), Borax Lake chub (*Gila boraxobius*), Independence Valley speckled dace (*Rhinichthys osculus lethoporus*), and Pahranagat roundtail chub (*Gila robusta jordani*) in conjunction with scientific research in specific areas where the species occur in the States of Oregon, Nevada, and California for the purpose of enhancing their survival. These activities were previously authorized under subpermit NBSRFS–9.

Permit No. TE–007011

Applicant: John H. Burke, Oceanside, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillil extimus*) and take (capture and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) and Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with presence or absence surveys where each species occurs in San Diego, Imperial, Orange, Los Angeles, Riverside, San Bernardino, and Ventura Counties, California for the purpose of enhancing their survival.

Permit No. TE–725726

Applicant: Dennis D. Murphy, Reno, Nevada

The applicant requests an amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys in Orange, Riverside, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. TE–787645

Applicant: Thomas Olsen Associates, Incorporated, Hemet, California

The applicant requests an amendment to take (harass by survey) the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cantorum*) and the Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*) in conjunction with presence or absence surveys in Pima, Pinal, and Maricopa Counties, Arizona for the purpose of enhancing their survival.

Permit No. TE–006328

Applicant: Michael Brian Drake, Nuevo, California

The applicant requests an amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) and the Delhi Sands flower-loving fly (*Raphiomidas terminatus abdominalis*) in conjunction with presence or absence surveys throughout each species' range for the purpose of enhancing their survival.

Permit No. TE–829554

Applicant: Barbara Kus, San Diego, California

The applicant requests an amendment to take (harass by survey; locate and monitor nests; and capture, band, and release) the southwestern willow flycatcher (*Empidonax traillil extimus*) in conjunction with scientific studies throughout the species range in California and New Mexico for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before March 3, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Recovery, Planning and Permits, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each

application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: January 21, 1999.

Thomas J. Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–2131 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Recommended Survey Protocol for the Endangered Quino Checkerspot Butterfly (Euphydryas editha quino) for the 1999 Field Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability; Survey Protocol.

SUMMARY: The Fish and Wildlife Service (Service) announces the availability of its recommended survey protocol for the 1999 field season for determining the presence/absence of the endangered Quino checkerspot butterfly. Using information gathered during the 1998 field survey season, we revised the "Interim General Survey Protocols and Mitigation Guidelines for the Endangered Quino Checkerspot Butterfly (*Euphydryas editha quino*)" dated November 4, 1997. The current recommended protocol entitled "Survey Protocol for the Endangered Quino Checkerspot Butterfly (*Euphydryas editha quino*) for the 1999 Field Season" dated January 25, 1999, incorporates those modifications found to be appropriate and replaces the 1997 interim protocol. We intend to annually review and modify this survey protocol to ensure that the best scientific information is incorporated into the prescribed methodology.

DATES: Data, and comments on the 1999 field season protocol received by August 2, 1999, will be considered in the development of the year 2000 field season protocol.

ADDRESSES: Copies of this protocol may be obtained from the Service's Region 1 World Wide Web Home Page at http://www.r1.fws.gov/text/species.html or from the Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Ave. West, Carlsbad California 92008. Comments and materials concerning the survey protocol should be sent to the Field Supervisor at the above address.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta or Paul Barrett at the above address (telephone 760/431–9440, facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The Quino checkerspot butterfly was listed as an endangered species on January 16, 1997 (62 FR 2313) as result of loss and degradation of habitat, invasion by alien species, overgrazing, poorly planned fire management practices, and off-road vehicle use. The historic range of the Quino checkerspot butterfly extended from the Santa Monica Mountains east and south along the foothills of the Transverse and Peninsular Ranges in California, and south into northwest Baja California, Mexico. Adults have been found from sea level to approximately 1,500 meters (5,000 feet) and populations can be found today in southern San Diego County and southwestern Riverside County, California in association with grasslands, and open areas in coastal sage scrub, chaparral, and sparse native woodlands. Adult butterflies can be observed from mid-February to mid-May depending on weather and are most easily detected on open or sparsely vegetated rounded hilltops, ridgelines, and occasionally rocky outcrops.

We are seeking additional information to more adequately understand the occurrence and biology of the Quino checkerspot butterfly throughout its range. Because we intend to annually review and modify the recommended survey protocol to ensure that the best scientific information is incorporated into the prescribed methodology, data and comments on the 1999 field season protocol received by August 2, 1999, will be considered in the development of the year 2000 field season protocol.

Dated: January 22, 1999.

Michael J. Spear,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–2264 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendments to Approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Forest County Potawatomi Community of Wisconsin and the State of Wisconsin Gaming Compact of 1992, which were executed on December 11, 1998.

DATES: This action is effective February 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 22, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–2277 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendments to Approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Ho-Chunk Nation and the State of Wisconsin Gaming Compact of 1992, which were executed on December 11, 1998.

DATES: This action is effective February 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 22, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–2278 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendments to Approved Tribal-State Compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Menominee Indian Tribe of Wisconsin and the State of Wisconsin Gaming Compact, which were executed on November 25, 1998.

DATES: This action is effective February 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 21, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–2276 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability, etc.: Colonial National Historical Park, VA; Meetings

AGENCY: National Park Service; Interior

ACTION: Notice of meetings for public review of progress on the General Management Plan Amendment/ Environmental Impact Statement being prepared for the Green Spring unit of Colonial National Historical Park.

SUMMARY: This notice announces upcoming public meetings to solicit input on alternative management concepts for the Green Spring Unit of Colonial National Historical Park. This is a preliminary step in the preparation of a General Management Plan Amendment/ Environmental Impact Statement (GMPA/EIS) for this site. The draft GMPA/EIS will be published in the Spring of 1999.

Public Meetings

Date and Time: Thursday, February 18, 1999 from 1:00 to 4:30 pm; again Thursday, February 18, 1999 from 7:00–10:30.

Address: Jamestown Visitor Center on Jamestown Island, 1368 Colonial Parkway, Jamestown, VA 23081.

The purpose of the meetings is to present the alternative management concepts being proposed for Green Spring and to solicit input from the public on the advantages and disadvantages of each different approach. The agenda for the meetings consists of an overview of the project, a review of possible conceptual approaches to site management developed to date, and an open discussion of citizen concerns.

We encourage all who have an interest in Green Spring's future to attend or to contact the park superintendent by letter, telephone or e-mail.

FOR FURTHER INFORMATION CONTACT: Superintendent Colonial National Historical Park, Post Office Box 210, Yorktown, Virginia 23690, TEL: (757) 898–3400, E MAIL: karen__rehm@nps.gov.

Dated: January 25, 1999.

Keith J. Everett,

Superintendent, Philadelphia Support Office, National Park Service.

[FR Doc. 99–2260 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability, etc.; Little River Canyon National Preserve, AL

ACTION: Notice of Availability of a Draft Environmental Impact Statement (EIS) on a General Management Plan (GMP) for Little River Canyon National Preserve, Alabama.

SUMMARY: Little River Canyon National Preserve was established by Congress in 1992 to preserve the area's natural, scenic, recreational, and cultural resources and provide for public enjoyment of those resources.

This is the first general management plan for the preserve. This plan presents only broad strategies for resource management and visitor use. Two alternatives are presented: a proposal and a "no action" alternative representing a general continuation of existing conditions.

DATES: A series of public meetings will be held in surrounding communities in the winter of 1999. Please consult with local newspapers for the times and locations or call the park for this information.

FOR FURTHER INFORMATION CONTACT: Superintendent, Little River Canyon National Preserve, 2141 Gault Avenue, North, Ft. Payne, Alabama 35967, Telephone: (256) 845–9605.

SUPPLEMENTARY INFORMATION: Copies of the document may be obtained from the Superintendent at the above address. Comments on this Draft EIS and GMP are solicited at this time. Comments may be provided at the public meetings or to the Superintendent at the above address.

Dated: January 21, 1999.

Daniel W. Brown,

Regional Director, Southeast Region.

[FR Doc. 99–2261 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order. (Chairman)

(2) SRC Roll call; confirmation of quorum. (Chairman)

(3) Welcome and introductions. (Public, agency staff, others)

(4) Review and adopt agenda. (SRC)

(5) Review and adopt minutes from the October 1998 meeting.

(6) Review commission's role and purpose.

(7) Status of commission membership.

(8) Public and agency comments.

(9) Old business:

a. 1998 NPS/SRC Chairs Workshop Report

b. Status of Aniakchak National Preserve hunting guide prospectus.

c. Aniakchak National Monument and Preserve Wildlife Report.

d. Review 1998 NPS/Secretary's response to final subsistence hunting program recommendations.

e. Implementation of approved hunting program recommendations.

f. Status of draft subsistence hunting program recommendations.

(1) 97–1: Establish a one-year residency requirement for the resident zone communities.

(2) 97–2: Establish a special registration permit requirement for non-subsistence (sport) hunting, trapping, and fishing activities within the Aniakchak National Preserve.

(3) Designate Ivanoff Bay and Perryville as resident zone communities.

(10) New business:

a. Federal Subsistence Program update.

(1) Bristol Bay Regional Council report.

(2) Review Unit 9E proposals/special actions.

(3) Federal Subsistence Fisheries update.

b. ORV C&T Team Progress Report (Coordinator).

c. Draft Aniakchak Subsistence Management Plan.

(11) Public and agency comments.

(12) SRC work session (draft proposals, letters, and recommendations).

(13) Set time and place of next SRC meeting.

(14) Adjournment.

DATES: The meeting will begin at 8 a.m. on Tuesday, February 9, 1999, and conclude at approximately 7 p.m. The meeting will reconvene at 8 a.m. on Wednesday, February 10, 1998, and adjourn at approximately 1 p.m.

LOCATION: The meeting location is: Community Subsistence Building, Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Deb Ligget, Acting Superintendent, or Donald Mike, Resource Specialist, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 99–2262 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–25 (Review)]

Anhydrous Sodium Metasilicate From France

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on anhydrous sodium metasilicate from France.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on anhydrous sodium metasilicate from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On January 7, 1999, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent group interested party responses to its notice of institution (63 FR 52748, Oct. 1, 1998) were inadequate. The Commission also found that other circumstances warranted conducting a full review.[1] A record of the Commissioners' votes and statements are available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2228 Filed 1–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–311–317 and 379–380 (Review) (Investigations Nos. 701–TA–269–270 (Review))]

Brass Sheet and Strip From Brazil and France; Brass Sheet and Strip From Brazil, Canada, France, Italy, Korea, Sweden, Germany, Japan, and the Netherlands

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty orders on brass sheet and strip from Brazil and France and the antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Italy, Korea, Sweden, Germany, Japan, and the Netherlands.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty orders on brass sheet and strip from Brazil and France and the antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Italy, Korea, Sweden, Germany, Japan, and the Netherlands would be likely to lead to continuation

[1] Chairman Bragg and Commissioners Crawford and Askey dissenting.

or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is March 23, 1999. Comments on the adequacy of responses may be filed with the Commission by April 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On January 8, 1987, the Department of Commerce issued a countervailing duty order on imports of brass sheet and strip from Brazil (52 FR 698). On January 12, 1987, the Department of Commerce issued antidumping duty orders on imports of brass sheet and strip from Brazil, Canada, and Korea (52 FR 1214). On March 6, 1987, the Department of Commerce issued a countervailing duty order on imports of brass sheet and strip from France and antidumping duty orders on imports of brass sheet and strip from France, Germany, Italy, and Sweden (52 FR 6995; Italy amended at 52 FR 11299 (April 8, 1987)). On August 12, 1988, the Department of Commerce issued antidumping duty orders on imports of brass sheet and strip from Japan and the Netherlands (53 FR 30454). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original countervailing duty determinations concerning brass sheet and strip from Brazil and France and antidumping duty determinations concerning brass sheet and strip from Brazil, Canada, France, Germany, Italy, Korea, and Sweden, the Commission defined the Domestic Like Product to include brass material to be rerolled (reroll) and finished brass sheet and strip (finished products). In its original antidumping duty determinations and the remand determinations concerning brass sheet and strip from Japan and the Netherlands, the Commission defined the Domestic Like Product to be all Unified Numbering System C20000 domestically produced brass sheet and strip. One Commissioner defined the Domestic Like Product differently. For purposes of this notice, the Domestic Like Product is all Unified Numbering System C20000 domestically produced brass sheet and strip.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original countervailing duty determination concerning brass sheet and strip from Brazil and France and antidumping duty determinations concerning brass sheet and strip from Brazil, Canada, France, Germany, Italy, Korea, and Sweden, the Commission defined the Domestic Industry to include primary mills with casting capabilities and rerollers. In its original antidumping duty determinations and the remand determinations concerning brass sheet and strip from Japan and the Netherlands, the Commission defined the Domestic Industry as producers of the corresponding Domestic Like Product. One Commissioner defined the Domestic Industry differently. For purposes of this notice, the Domestic Industry is producers of all Unified Numbering System C20000 domestically produced brass sheet and strip.

(5) The Order Dates are the dates that the antidumping and countervailing duty orders under review became effective. In the review concerning the countervailing duty order on brass sheet and strip from Brazil, the Order Date is January 8, 1987. In the review concerning the antidumping duty orders on brass sheet and strip from Brazil, Canada, and Korea, the Order Date is January 12, 1987. In the review concerning the countervailing duty order on brass sheet and strip from France and the antidumping duty orders on brass sheet and strip from France, Germany, Italy and Sweden, the Order Date is March 6, 1987. In the review concerning the antidumping duty orders on brass sheet and strip from Japan and the Netherlands, the Order Date is August 12, 1988.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any

person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 16, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Brazil, Canada, France, Germany, Italy, Korea, and Sweden that currently export or have exported Subject Merchandise to the United States or other countries since 1986. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Japan and the Netherlands that currently export or have exported Subject Merchandise to the United States or other countries since 1987.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of pounds and value data in thousands of

U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2351 Filed 1–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–395]

In the Matter of Certain EPROM, EEPROM, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same; Notice of Commission Decision to Reconsider Portions of Final Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to reconsider certain portions of its final determination in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: John A. Wasleff, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3094.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 18, 1997, based on a complaint filed by Atmel Corporation. 62 FR 13706. The complaint named five respondents: Sanyo Electric Co., Ltd., Winbond Electronics Corporation and Winbond Electronics North America Corporation (collectively Winbond), Macronix International Co., Ltd., and Macronix America, Inc. (collectively Macronix). Silicon Storage Technology, Inc. (SST) was permitted to intervene.

In its complaint, Atmel alleged, *inter alia*, that respondents violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and/or selling in the United States after importation certain electronic products and/or components that infringe claim 1 of U.S. Letters Patent 4,451,903 (the '903 patent).

On July 2, 1998, the Commission determined that the 903 patent was unenforceable for failure to name an inventor, and hence that there was no violation of section 337 with respect to that patent. On August 11, 1998, Atmel filed a petition to correct the inventorship of the 903 patent with the U.S. Patent and Trademark Office (PTO). The PTO granted that petition on August 18, 1998, and issued a Certificate of Correction on October 6, 1998. On September 8, 1998, Atmel filed with the Commission a Petition For Relief From Final Determination Finding U.S. Patent No. 4,415,903 Unenforceable. Respondents and the Commission's Office of Unfair import Investigations filed responses to the petition. The Commission granted Atmel's motion to file a reply brief and respondents' motions to file surreplies.

On August 28, 1998, Atmel filed a notice of appeal of the Commission's final determination in this investigation with the United States Court of Appeals for the Federal Circuit. On October 26, 1998, Atmel identified as an appellate issue the Commission's determination that the '903 patent is unenforceable for failure to name an inventor. On November 6, 1998, respondents Sanyo and Winbond filed motions to dismiss the inventorship issue as moot. The Commission took no position on those motions in order not to prejudice its deliberations on Atmel's petition for relief. On December 8, 1998, the Federal Circuit stayed the appeal pending the Commission's disposition of Atmel's petition.

Having examined the petition, the briefs in opposition, the reply brief, and the surreplies, the Commission has determined to reconsider its determination that the '903 patent is unenforceable for failure to name an inventor, and its consequent finding of no violation of section 337 with respect to the '903 patent. On reconsideration, the record will be reopened and the investigation remanded to the presiding administrative law judge, Judge Paul J. Luckern, for the limited purpose of resolving the issues arising from the issuance of the Certificate of Correction to the '903 patent.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.47 of the Commission's Rules of Practice and Procedure (19 CFR 210.47). The Commission waived the 14-day limit under rule 210.47 pursuant to rule 210.4(b) (19 CFR 210.4(b)).

Copies of Atmel's petition and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: January 25, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2227 Filed 1–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–298–299 (Review)]

Porcelain-on-Steel Cooking Ware From China and Taiwan

Porcelain-on-Steel Cooking Ware From Mexico (Investigations Nos. 701–TA–265 and 731–TA–297 (Review))

Top-of-the-Stove Stainless Steel Cooking Ware From Korea (Investigations Nos. 701–TA–267 and 731–TA–304 (Review))

Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (Investigations Nos. 701–TA–268 and 731–TA–305 (Review))

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty orders on porcelain-on-steel cooking ware from Mexico and top-of-the-stove stainless steel cooking ware from Korea and Taiwan and the antidumping duty orders on porcelain-on-steel cooking ware from China, Mexico, and Taiwan and top-of-the-stove stainless steel cooking ware from Korea and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty orders on porcelain-on-steel cooking ware from Mexico and top-of-the-stove stainless steel cooking ware from Korea and Taiwan and the antidumping duty orders on porcelain-on-steel cooking ware from China, Mexico, and Taiwan and top-of-the-stove stainless steel cooking ware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is March 23, 1999. Comments on the adequacy of responses may be filed with the Commission by April 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On December 2, 1986, the Department of Commerce issued antidumping duty orders on imports of porcelain-on-steel cooking ware from China, Mexico, and Taiwan (51 FR 43414). On December 12, 1986, the Department of Commerce issued a countervailing duty order on imports of porcelain-on-steel cooking ware from Mexico (51 FR 44827). On January 20, 1987, the Department of Commerce issued antidumping and countervailing duty orders on imports of top-of-the-stove stainless steel cooking ware from Korea and Taiwan (52 FR 2138). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are China, Korea, Mexico, and Taiwan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations concerning porcelain-on-steel cooking ware from China, Mexico, and Taiwan, the Commission defined the Domestic Like Product as all porcelain-on-steel cooking ware, including teakettles. One Commissioner defined the Domestic Like Product differently in the original antidumping and countervailing duty determinations concerning porcelain-on-steel cooking ware from China, Mexico, and Taiwan. In the original antidumping and countervailing duty determinations concerning top-of-the-stove stainless steel cooking ware from Korea and Taiwan, the Commission defined the Domestic Like Product to correspond with the Subject Merchandise, that is, all top-of-the-stove stainless steel cooking ware, excluding teakettles, ovenware, and kitchen ware.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations concerning porcelain-on-steel cooking ware from China, Mexico, and Taiwan, the Commission defined the Domestic Industry as producers of porcelain-on-steel cooking ware, including teakettles. One Commissioner defined the Domestic Industry differently in the original antidumping and countervailing duty determinations concerning porcelain-on-steel cooking ware from China, Mexico, and Taiwan. In the original antidumping and countervailing duty determinations concerning top-of-the-stove stainless steel cooking ware from Korea and Taiwan, the Commission defined the Domestic Industry as producers of top-of-the-stove stainless steel cooking ware.

(5) The Order Dates are the dates that the antidumping and countervailing duty orders under review became effective. In the reviews concerning the antidumping duty orders on porcelain-on-steel cooking ware from China, Mexico, and Taiwan, the Order Date is December 2, 1986. In the review concerning the countervailing duty order on porcelain-on-steel cooking ware from Mexico, the Order Date is December 12, 1986. In the reviews concerning the antidumping and countervailing duty orders on top-of-the-stove stainless steel cooking ware from Korea and Taiwan, the Order Date is January 20, 1987.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the

Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 16, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its original determinations, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of porcelain-on-steel cooking ware and producers of porcelain-on-steel cooking ware in China, Mexico, and Taiwan that currently export or have exported Subject Merchandise to the United States or other countries since 1985. A list of all known and currently operating U.S. importers of top-of-the-stove stainless steel cooking ware and producers of top-of-the-stove stainless steel cooking ware in Korea and Taiwan that currently export or have exported Subject Merchandise to the United States or other countries since 1986.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2353 Filed 1–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–278 (Review), etc.]

Standard Chrysanthemums From the Netherlands, et al.

Fresh Cut Flowers From Colombia, Ecuador, and Mexico (Investigations Nos. 731–TA–329, 331, and 333 (Review))
Standard Carnations From Chile (Investigations Nos. 701–TA–276 and 731–TA–328 (Review))
Standard Carnations From Kenya (Investigation No. 731–TA–332 (Review))
Pompon Chrysanthemums From Peru (Investigation No. 303–TA–18 (Review))

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty orders on standard chrysanthemums from the Netherlands, standard carnations from Chile, and pompon chrysanthemums from Peru and the antidumping duty orders on fresh cut flowers from Colombia, Ecuador, and Mexico and standard carnations from Chile and Kenya.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty orders on standard chrysanthemums from the Netherlands, standard carnations from Chile, and pompon chrysanthemums from Peru and the antidumping duty orders on fresh cut flowers from Colombia, Ecuador, and Mexico and standard carnations from Chile and Kenya would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; the deadline for responses is March 23, 1999. Comments on the adequacy of responses may be filed with the Commission by April 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On the dates listed below, the Department of Commerce issued orders on the subject imports:

Date	Product/country	Investigation No.	FEDERAL REGISTER cite
3/12/87	Standard chrysanthemums/Netherlands	701–TA–278	52 F.R. 7646.
3/18/87	Fresh cut flowers [1]/Colombia	731–TA–329	52 F.R. 8492.
3/18/87	Fresh cut flowers [2]/Ecuador	731–TA–331	52 F.R. 8494.
3/19/87	Standard carnations/Chile	701–TA–276	52 F.R. 8635.
3/20/87	Standard carnations/Chile	731–TA–328	52 F.R. 8939.
4/23/87	Standard carnations/Kenya	731–TA–332	52 F.R. 13490.
4/23/87	Fresh cut flowers [3]/Mexico	731–TA–333	52 F.R. 13491.
4/23/87	Pompon chrysanthemums/Peru	303–TA–18	52 F.R. 13491.

[1] Consists of standard carnations, miniature carnations, standard chrysanthemums, and pompon chrysanthemums.
[2] Consists of standard carnations, standard chrysanthemums, and pompon chrysanthemums.
[3] Consists of standard carnations, standard chrysanthemums, and pompon chrysanthemums.

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Chile, Colombia, Ecuador, Kenya, Mexico, the Netherlands, and Peru.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, consistent with the remand from the Court of International Trade, the Commission defined separate like products based on the types of subject flowers. The Commission made affirmative determinations with respect to each of four like products: standard carnations, miniature carnations, standard chrysanthemums, and pompon chrysanthemums. Certain Commissioners defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, consistent with the remand from the Court of International Trade, the Commission defined four separate Domestic Industries, each devoted to the production of one of the four Domestic Like Products, as defined above. The Domestic Like Products and the corresponding Domestic Industries and subject countries for which affirmative determinations were made are listed below:

Domestic like product	Domestic industry	Subject country
Standard carnations	Standard carnations	Chile, Colombia, Ecuador, Kenya, and Mexico.
Miniature carnations	Miniature carnations	Colombia.
Standard chrysanthemums	Standard chrysanthemums	Colombia, Ecuador, Mexico, and the Netherlands.
Pompon chrysanthemums	Pompon chrysanthemums	Colombia, Ecuador, Mexico, and Peru.

Certain Commissioners defined the Domestic Industry differently.

(5) The Order Dates are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews, the Order Dates are as follows:

Order date	Product/country	Investigation No.
3/12/87	Standard chrysanthemums/Netherlands	701–TA–278.
3/18/87	Fresh cut flowers/Colombia	731–TA–329.
3/18/87	Fresh cut flowers/Ecuador	731–TA–331.
3/19/87	Standard carnations/Chile	701–TA–276.
3/20/87	Standard carnations/Chile	731–TA–328.
4/23/87	Standard carnations/Kenya	731–TA–332.
4/23/87	Fresh cut flowers/Mexico	731–TA–333.
4/23/87	Pompon chrysanthemums/Peru	303–TA–18.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the

application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is March 23, 1999. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is April 16, 1999. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: Please provide the requested information separately for each Domestic Like Product, as defined by the Commission in its original determinations, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1986.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in thousands of stems for standard carnations and standard chrysanthemums and thousands of bunches for miniature carnations and pompon chrysanthemums; report value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of stems for standard carnations and standard chrysanthemums and thousands of bunches for miniature carnations and pompon chrysanthemums; report value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an

estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in thousands of stems for standard carnations and standard chrysanthemums and thousands of bunches for miniature carnations and pompon chrysanthemums; report value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2352 Filed 1–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 104–TAA–7 (Review), AA1921–198–200 (Review), and 731–TA–3 (Review)]

Sugar From the European Union; Sugar From Belgium, France, and Germany; and Sugar and Syrups From Canada (Investigation No. 731–TA–3 (Review))

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty order on sugar from the European Union, the antidumping duty orders on sugar from Belgium, France, and Germany, and the antidumping duty order on sugar and syrups from Canada.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on sugar from the European Union, the antidumping duty orders on sugar from Belgium, France, and Germany, and the antidumping duty order on sugar and syrups from Canada would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On January 7, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission, in consultation with the Department of Commerce, grouped these reviews because they involve similar domestic like products. See 19 U.S.C. 1675(c)(5)(D); 63 FR 29372, 29374 (May 29, 1998).

With regard to sugar and syrups from Canada, Inv. No. 731–TA–3 (Review), the Commission determined that both domestic and respondent group responses to its notice of institution [1] were adequate and voted to conduct a full review.

With regard to sugar from the European Union, Inv. No. 104–TAA–7 (Review), the Commission determined that the domestic interested party group response was adequate,[2] and that the respondent interested party group response was inadequate. The Commission further determined that other circumstances warranted a full review.[3]

With regard to sugar from Belgium, France, and Germany, Invs. Nos. AA1921–198–200 (Review), the Commission determined that the domestic interested party group

[1] The notice of institution for all of the subject reviews was published in the **Federal Register** on Oct. 1, 1998 (63 FR 52759).

[2] Commissioner Askey dissenting.

[3] Commissioner Crawford dissenting.

response was inadequate,[4] and that the respondent interested party group response was inadequate. The Commission further determined that other circumstances warranted full reviews.[5]

A record of the Commissioners' votes and statements are available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2229 Filed 1–29–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Justice Management Division; Information Resources Management/ Telecommunications Services Staff Meeting of the Global Criminal Justice Information Network Ad Hoc Bylaws Committee

AGENCY: Justice Management Division, Information Resources Management, Telecommunications Services, Justice.

ACTION: Notice of meeting of the Global Criminal Justice Information Network Ad Hoc Bylaws Committee.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Global Criminal Justice Information Network Ad Hoc Bylaws Committee will be held on February 10, 1999. The Group will meet from 8:30 a.m.–1 p.m. at the Grand Hyatt Washington Hotel, located at 1000 H Street, NW., Washington, DC 20001. The Bylaws Committee will meet to determine the internal structure of the Global Advisory Committee in order to facilitate the accomplishment of its activities as identified under the National Performance Review's "Access America" Initiative A07. This meeting will be open to the public. Any interested person must register two (2) weeks in advance of the meeting. Registrations will then be accepted on a space available basis. For information on how to register, contact Kathy Albert, the Designated Federal Employee (DFE), 901 E Street, NW, Suite 510, Washington, DC 20530, or call (202) 514–3337. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the DFE.

If you need special accommodations due to a disability, please contact Komita Primalani at (202) 637–4927 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Kathy Albert, the DFE, 901 E Street, NW, Suite 510, Washington, DC 20530, or call (202) 514–3337.

Dated: January 27, 1999.

Kathy Albert,

Global Network Coordinator, Telecommunications Services Staff, Information Resources Management, Justice Management Division, Department of Justice.

[FR Doc. 99–2333 Filed 1–29–99; 8:45 am]

BILLING CODE 4410–AR–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–160]

Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission Georgia Institute of Technology Georgia Tech Research Reactor

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the Georgia Institute of Technology dated July 1, 1998, for a license amendment approving its proposed decommissioning plan for the Georgia Tech Research Reactor (Facility License No. R–97) located in the Neely Nuclear Research Center on the campus of the Georgia Institute of Technology in Atlanta, Georgia.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which requires publication in the **Federal Register** and in a forum such as local newspapers, letters to State or local organizations, or other appropriate forum that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 60 days of the date of this notice in accordance with 10 CFR 20.1007, "Communications," to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street NW, Washington, D.C. 20037.

Dated at Rockville, Maryland, this 25th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2305 Filed 1–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331]

IES Utilities Inc.; Central Iowa Power Cooperative, Corn Belt Power Cooperative; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49, issued to IES Utilities Inc., Central Iowa Power Cooperative, and Corn Belt Power Cooperative (the licensees), for operation of the Duane Arnold Energy Center (DAEC) located in Linn County, Iowa.

The proposed amendment would revise Technical Specification (TS) Surveillance Requirement (SR) 3.8.1.7 to better match plant conditions during testing by clarifying which voltage and frequency limits are applicable during the transient and steady state portions of the diesel generator start.

The licensee requested that this proposed amendment be processed as an exigent request, pursuant to 10 CFR 50.91(a)(6). The exigency is created by the existing TS surveillance, SR 3.8.1.7,

[4] Chairman Bragg dissenting.

[5] Commissioners Crawford and Askey dissenting.

containing inappropriate acceptance criteria that the diesel generator (DG) is not designed to meet and which is overly conservative with respect to the DAEC Updated Final Safety Analysis Report (UFSAR) requirements for the DGs. This acceptance criteria was incorporated into the TS just prior to the approval of DAEC's conversion to Improved Standard TS (NUREG 1433). The licensee did not intend that the basic requirements of this testing be different from those contained in the former custom TS (CTS 4.8.A.2.a.2). However, a significant change was introduced due to the adoption of the wording of NUREG–1433. Because this change was not recognized at that time, the plant procedure for the new SR did not correctly implement the TS. It was only recently, during the review of the BASES for this SR for another issue, that this error was recognized.

Based on the circumstances described above, the NRC verbally issued a Notice of Enforcement Discretion (NOED) on January 20, 1999. The NOED was documented by letter dated January 22, 1999. The NOED expressed the NRC's intention to exercise discretion not to enforce compliance with SR 3.8.1.7 until the exigent TS amendment request to revise SR 3.8.1.7, which the licensee submitted on January 22, 1999, is processed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

After reviewing this proposed amendment, the licensee concluded:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety function of the DG is to provide AC power to required safety systems during any Loss of Offsite Power (LOOP) event. The limiting design basis accident is the Loss of Coolant Accident with concurrent LOOP (LOOP-LOCA). This proposed amendment modifies a DG surveillance requirement and does not impact the off-site AC distribution system; therefore the probability of any LOOP event, including the LOOP-LOCA is not significantly increased.

This proposed change revises the SR to better match the plant conditions during the test. SR 3.8.1.7 is performed with the DG unloaded. As a result, the DG initially over-shoots its target nominal voltage and frequency during testing. In an actual event, the DG would be almost immediately loaded once minimum voltage and frequency requirements are met, thereby limiting the over-shoot.

To ensure the DGs are able to fulfill their safety function, the proposed SR requires DG voltage and frequency to achieve the specified minimum acceptable values within 10 seconds and settle to a steady state voltage and frequency within the specified minimum and maximum values. That is, the upper limits are only applicable for steady state operation and do not apply during the transient portion of the DG start. The revision changes the SR 3.8.1.7 criteria to clarify which voltage and frequency limits are applicable during the transient and steady state portions of the DG start.

This change does not affect the DG's ability to supply the minimum voltage and frequency required within 10 seconds or the steady state voltage and frequency required by the UFSAR. The DGs will continue to perform their intended safety function, in accordance with the DAEC accident analysis. Thus, the consequences of any previously-analyzed event are not significantly increased by this change.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The revision changes the SR 3.8.1.7 criteria to clarify which voltage and frequency limits are applicable during the transient and steady state portions of the DG start. No changes are being made in how the system actually operates or is physically tested.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

The margin of safety is not significantly reduced. The DGs will perform their intended safety function, in accordance with the DAEC accident analysis. The revised test criteria are a better match for the tested condition (unloaded). The performance of other TS Surveillances (in particular, SRs 3.8.1.9, 3.8.1.12 and 3.8.1.13) demonstrate DG Operability in conditions which are more representative of postulated accident conditions (loaded in the actual time sequence assumed in the accident analysis). The DGs will continue to perform their intended safety function in accordance with the DAEC accident analysis and UFSAR requirements. Therefore, the proposed amendment will not involve a significant reduction in a margin of safety.

Based upon the above, the licensee determined that the proposed amendment will not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 3, 1999, the licensee may file a request for a hearing with respect

to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Cedar Rapids Public Library, 500 First Street SE, Cedar Rapids, Iowa 52401. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Al Gutterman; Morgan, Lewis & Bockius, 1800 M Street NW, Washington, D.C. 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 22, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Cedar Rapids Public Library, 500 First Street SE, Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 26th day of January 1999.

For the Nuclear Regulatory Commission.

Richard J. Laufer,

Project Manager, Project Directorate III–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2304 Filed 1–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–388]

PP&L, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. 22 issued to PP&L, Inc. (the licensee) for operation of the Susquehanna Steam Electric Station (SSES), Unit 2, located in Luzerne County, Pennsylvania.

This notice supersedes the previous notice published on Spetember 9, 1998, (63 FR 48263) in its entirety. The proposed amendment would change the allowable values for both the core spray system and low pressure coolant injection system reactor steam dome pressure low functions.

Before issuance of the proposed license amendment, the Commission will have made findings required by the

Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed amendment changes the "Reactor Steam Dome Pressure-Low" Allowable Values so to provide further assurance that the Core Spray and RHR systems will perform their LOCA design basis function.

The functional design basis of the Core Spray and LPCI is to inject water into the reactor vessel to cool the core during a LOCA by opening the Core Spray and LPCI injection valves when reactor pressure drops below the reactor vessel low pressure permissive. The upper analytical limit for the permissive is the Core Spray and LPCI systems' maximum design pressure, and the lower analytical limit is the lowest pressure which allows injection to prevent exceeding the fuel cladding temperature limit. The new allowable values were selected to lie within the upper and lower limits to ensure there will be no change in the required logic or functions of the Core Spray and LPCI systems. These new values do not affect the LOCA or its "limiting fault" frequency of occurrence and do not introduce any new accidents or malfunctions of equipment important to safety. Since they do not affect the LOCA, they do not change the probability of occurrence of the LOCA. The new allowable values do not change the logic or function of the reactor vessel low pressure permissive. These new allowable values simply provide the basis for which the associated pressure instruments are to be set to ensure proper operation of Core Spray and LPCI within the design pressures as described above. Therefore, the change in allowable values does not increase the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety.

Based upon the analysis presented above, PP&L concludes that the proposed action does not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not create the probability of a new or different type of accident from any accident previously evaluated. The new allowable values do not change any plant systems, structures, or components, nor do they change any existing or create any new Core Spray and LPCI logic or functions. The new allowable values were selected to ensure the required operation of the Core Spray and LPCI systems within the design pressures described above.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The change does not involve a reduction in the margin of safety. Technical Specification Bases Section B3.3.5.1 9 (ECCS Instrumentation) identifies that the low reactor steam dome pressure signals are used as permissives for operation of the low pressure ECCS subsystems. The new allowable values were selected so to not impact the logic, redundancy, operability or surveillance requirements for these subsystems. The new allowable values maintain the margin requirements that the Core Spray and LPCI system pressures such that they do not exceed their system maximum design pressures and that system pressures are high enough to ensure that the ECCS injection prevents the fuel peak cladding temperature from exceeding the limits of 10CFR50.46.

The margin of safety is unaffected by the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 3, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition

should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 23, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 27th day of January, 1999.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2306 Filed 1–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–440]

Firstenergy Nuclear Operating Company (Perry Nuclear Power Plant, Unit No. 1); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 19 to FirstEnergy Nuclear Operating Company (the licensee), for the Perry Nuclear Power Plant, Unit No. 1 (PNPP) located in Lake County, Ohio.

Environmental Assessment

Identification of the Proposed Action

By application dated December 3, 1998, the licensee requested an exemption from the control room dose acceptance criterion of 10 CFR part 50, Appendix A, General Design Criterion (GDC) 19, "Control Room." The proposed action would permit use of a 5 rem total effective dose equivalent (TEDE) control room dose acceptance criterion in lieu of "5 rem whole body, or its equivalent to any part of the body" as currently stated in GDC 19.

The Need for the Proposed Action

The NRC has established control room dose acceptance criteria in 10 CFR part 50, Appendix A, GDC 19 for all light-water power reactors. GDC 19 requires, in part, that, "Adequate radiation protection shall be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident."

As described in SECY–96–242, "Use of the NUREG–1465 Source Term at Operating Reactors," the staff informed the Commission of its approach to allow the use of the revised accident source term described in NUREG–1465, "Accident Source Terms for Light-Water Nuclear Power Plants," at operating plants. In the SECY paper, the staff described its plans to review plant applications implementing this source term and that the TEDE methodology would be incorporated in these reviews. The Commission approved these plans and directed the staff to commence rulemaking and requested the use of a TEDE dose methodology in the implementation of the revised accident source term. The TEDE dose guidelines,

which are needed to support revised accident source term applications, are not currently provided in regulations governing operating reactors.

By letter dated December 3, 1998, the licensee submitted an exemption request to the control room dose acceptance criteria of 10 CFR part 50, Appendix A, General Design Criterion (GDC) 19. The exemption request would permit use of a 5 rem total effective dose equivalent (TEDE) dose acceptance criterion in place of the "5 rem whole body, or its equivalent to any part of the body" dose acceptance criterion that is currently specified in GDC 19.

Environmental Impacts of the Proposed Action

The staff has completed its evaluation of the proposed action and concludes that it is acceptable because the staff has concluded that the TEDE methodology provides an alternate means of meeting the current regulatory requirement. The proposed action will not increase the probability or consequences of accidents, no significant changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable occupational or public radiation exposure. The staff has concluded that there is no significant radiological environmental impact associated with the proposed action.

The proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the staff has concluded that there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the action (no-action alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement which was issued August 1982.

Agencies and Persons Consulted

In accordance with its stated policy, the Ohio State official was contacted regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the staff has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 3, 1998, which is available for public inspection at the Commission's Public Document room, The Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the Perry Public Library, 3753 Main Street, Perry, OH 44081.

Dated at Rockville, Maryland, this 26th day of January 1999.

For the Nuclear Regulatory Commission.

Douglas V. Pickett,

Senior Project Manager, Project Directorate III–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2307 Filed 1–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on February 23, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

Portions of this meeting will be closed to public attendance to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Tuesday, February 23, 1999—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the application of Westinghouse Electric Company's WCOBRA/TRAC best-estimate large-break LOCA code to Westinghouse plants with Upper Plenum Injection (UPI). The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Company, the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: January 26, 1999.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 99–2308 Filed 1–29–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40961; File No. 10–100]

Exempted Exchanges; AZX, Inc.; Amendment to Application for Exemption From Registration as an Exchange Under Section 5 of the Securities Exchange Act of 1934; Request for Comments

January 22, 1999.

I. Introduction and Summary

AZX, Inc. operates the Arizona Stock Exchange ("AZX"), a computerized, single-price auction system that facilitates trading of registered equity securities by broker-dealers and institutions. AZX operates three off-hours auctions in Nasdaq National Market ("NNM") and exchange listed securities, at 9:15 a.m., 4:20 p.m., and 5:00 p.m. (ET), each trading day. AZX also operates one auction during regular trading hours,[1] at 10:30 a.m. (ET), for NNM securities only. AZX operates pursuant to the terms and conditions of a Commission order granting AZX a "limited volume" exemption from registration as a national securities exchange[2] and a staff no-action letter with respect to the nonregistration of AZX as a broker-dealer, clearing agency, transfer agent, and exclusive securities information processor.[3] Under the terms of its exemption, AZX trades only NNM securities during regular trading hours.[4] Although the statute provides no guidelines as to what level of volume qualifies as "limited," the Exemption Order stated that the Commission may rescind the exemption and require AZX to register as a national securities exchange if AZX's volume exceeds that of any of the registered stock exchanges.

On July 30, 1998, AZX, Inc. filed with the Commission pursuant to Rule 6a–1 under the Securities Exchange Act of 1934 ("Act"),[5] an amendment to its application for exemption from registration as a national securities exchange. In its amendment, AZX proposes to operate two additional auctions during regular trading hours, at 12:30 p.m. and 2:30 p.m. (ET) each trading day. AZX also proposes to trade exchange-listed and NNM securities during all three regular hours auctions. In addition, AZX proposes to consolidate its two evening after-hours auctions into one after-hours auction ending at 4:30 p.m. (ET).

If the proposal is approved, there will be five AZX auction—two off-hours and three regular hours. All five auctions will be permitted to trade both exchange-listed and NNM securities, and will be subject to real-time transaction reporting under the National Association of Securities Dealers, Inc. ("NASD") rules.[6]

The Commission is soliciting public comment on whether it is appropriate to amend the Exemption Order to reflect AZX's proposal to add two auction sessions during regular trading hours for exchange-listed and NNM securities, trade exchange-listed securities at all day auctions, and consolidate AZX's two off-hours evening auctions.[7]

II. Additional Trading Sessions

The proposed regular trading hours auctions are to be operated in the same manner as the morning auction held during regular trading hours. However, the proposal would allow exchange-listed securities, as well as NNM securities, to be traded during all three regular trading hours auctions. Commenters are invited to express their views on whether trading listed securities during regular trading hours is consistent with the language of Section 5 of the Act[8] governing limited volume exemptions or whether it will affect AZX's ability to comply with the terms and conditions of its Exemption Order.[9] Commenters may also wish to express their views on whether (1) the Commission should impose additional conditions on AZX in light of the proposed changes, (2) the proposal affects AZX participants' obligations under the order handling rules,[10] or (3) the proposal raises issues regarding surveillance by AZX of trading activity in listed securities. In this regard, in connection with its current regular hours auction for NNM Securities, AZX undertook to implement surveillance procedures to detect possible market manipulation and insider trading. These procedures require AZX to compare auction prices and bids and offers entered into AZX with activity in the primary market, and to monitor the effects of an order cancellation or revision on the primary market. Commenters may wish to comment on whether these surveillance procedures are sufficient for monitoring both NNM and exchange-listed securities.

III. Solicitation of Comments

The Commission is soliciting public comment on whether to amend the AZX Exemption Order to reflect the trading sessions during regular trading hours for exchange listed and NNM securities, the trading of exchange listed securities at its 10:30 (ET) auction, and the consolidation of its two after hours evening auctions. Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. 10–100. Copies will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. All submissions should refer to the file number in the caption above and should be submitted by March 3, 1999.

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[1] "Regular trading hours" refers to the time period in which the New York Stock Exchange, Inc. permits trading, which is 9:30 a.m. to 4:00 p.m. (ET) each trading day.

[2] Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377 (February 28, 1991), amended by Securities Exchange Act Release No. 37272 (June 3, 1996), 61 FR 29145 (June 7, 1996) (collectively "Exemption Order").

[3] Letter regarding Wunsch Auction Systems, Inc., predecessor to AZX, Inc., (February 28, 1991). The no-action letter also provided AZX's original crossing broker, Bankers Trust Brokerage Corporation ("BTBC") with relief with respect to non-registration as an exchange, clearing agency, transfer agent, and exclusive securities information processor. BTBC was replaced as AZX's crossing broker by Investment Technology Group, Inc. ("ITG") in February 1995. ITG is a registered broker-dealer.

[4] *See* Securities Exchange Act Release No. 37272, *supra* note 2.

[5] 17 CFR 240.6a–1

[6] *See* NASD Rules 4630, 4631, 4632, 6400, 6410 and 6420.

[7] Notwithstanding a statement to the contrary contained in the application, the Commission has not previously approved any portion of AZX's proposal.

[8] 15 U.S.C. 78(e).

[9] The most significant terms and conditions include: (1) the continued registration of AZX's crossing-broker as a broker-dealer under Section 15(b) of the Act and the continued membership of AZX's crossing-broker in at least one self-regulatory organization; (2) the effective registration of any security traded on AZX under Sections 12(b) or 12(g) of the Act, or the provision of information with respect to a security pursuant to Section 15(d) of the Act, or an exemption from registration because the security is a "government security" as defined in Section 3(a)(42)(A), (B), or (C) of the Act; (3) the submission of activity reports to the Commission; (4) the adoption and implementation of procedures to conduct surveillance of trading by AZX employees and to detect possible insider trading or manipulative abuses; (5) continued compliance with the capacity, security and contingency plan requirements of the Commission's Automation Review Policy; and (6) the provision of 30 days prior notice of any material changes in the operation of the auction.

[10] The Division of Market Regulation ("Division") previously issued a letter confirming that AZX is not an electronic communications network ("ECN") as defined in Rule 11Ac1–1 under the Act (17 CFR 240.11Ac1–1). Letter from Richard R. Lindsey, Director, Division, SEC, to R. Steven Wunsch, President, AZX, Inc., dated January 14, 1997. Because AZX is not an ECN, market maker participants entering priced orders into AZX will not be required to update their market maker quotes to reflect their AZX orders under the amendments to the Quote Rule.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2252 Filed 1–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23662; 812–10916]

The Victory Portfolios, et al.; Notice of Application

Janury 25, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit The Victory Portfolios to deposit uninvested cash balances in joint accounts investing in short-term investments, and to permit Key Trust Company of Ohio, N.A. ("Key Trust") to accept fees for acting as securities lending agent.

Applicants: The Victory Portfolios (consisting of Victory Balanced Fund, Victory Convertible Securities Fund, Victory Diversified Stock Fund, Victory Established Value Fund, Victory Federal Money Market Fund, Victory Financial Reserves Fund, Victory Fund for Income, Victory Government Mortgage Fund, Victory Gradison Government Reserves Fund, Victory Growth Fund, Victory Institutional Money Market Fund, Victory Intermediate Income Fund, Victory International Growth Fund, Victory Investment Quality Bond Fund, Victory Lakefront Fund, Victory LifeChoice Conservative Investor Fund, Victory LifeChoice Growth Investor Fund, Victory LifeChoice Moderate Investor Fund, Victory Limited Term Income Fund, Victory National Municipal Bond Fund, Victory New York Tax-Free Fund, Victory Ohio Municipal Bond Fund, Victory Ohio Municipal Money Market Fund, Victory Ohio Regional Stock Fund, Victory Prime Obligations Fund, Victory Real Estate Investment Fund, Victory Special Growth Fund, Victory Special Value Fund, Victory Stock Index Fund, Victory Tax-Free Money Market Fund, Victory U.S. Government Obligations Fund, Victory Value Fund (each a "Fund")), Key Asset Management Inc. ("KAM"), and Key Trust.[1]

Filing Dates: The application was filed on December 22, 1997, and amended on October 5, 1998, and on December 14, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 18, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 3435 Stelzer Road, Columbus, OH 43219.

FOR FURTHER INFORMATION CONTACT: Lisa McCrea, Attorney Adviser, at (202) 942–0562, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street NW, Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. The Victory Portfolios is an open-end management investment company registered under the Act, currently consisting of thirty-two Funds. KAM is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as investment adviser to the Funds. Both KAM and Key Trust are subsidiaries of KeyCorp.

2. All of the Funds are authorized by their investment policies to invest in short-term liquid assets including repurchase agreements, United States government securities, or other short-term debt obligations. The investment objectives, policies and restrictions of most Funds permit them to engage in securities lending transactions. No Fund will engage in securities lending unless so permitted.

3. Applicants propose to deposit uninvested cash balances of participating Funds ("Participants") that remain at the end of the trading day and/or cash for investment purposes ("Uninvested Cash") into one or more joint accounts (the "Joint Investment Account"). Applicants also propose to deposit the cash received as collateral in a securities lending transaction ("Cash Collateral") in a joint account ("Joint Collateral Account", together with the Joint Investment Account, the "Joint Accounts").

4. The Joint Accounts will be established at Key Trust, the Funds' custodian, and the daily balance of the Joint Accounts will be invested in the following short-term investments: (a) Repurchase agreements that are collateralized fully within the meaning of rule 2a–7 under the Act;[2] (b) interest-bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers; and (c) any other short-term taxable and tax-exempt money market instruments, including variable rate demand notes, that constitute "Eligible Securities" within the meaning of rule 2a–7 under the Act (collectively, "Short-Term Investments").

5. Applicants also propose to permit Key Trust to act as the Funds' securities lending agent, to invest the Cash Collateral at the direction of KAM in Short-Term Investments, and to enter into a fee splitting arrangement with the Funds whereby Key Trust would receive a fee based on a percentage of the net returns generated by the lending transactions. Under the proposed arrangement, Key Trust would receive a pre-negotiated percentage of the net earnings on the investment of the Cash Collateral.

6. A Participant's decision to use a Joint Account would be based on the same factors as its decision to make any other Short-Term Investment. Key Trust, at the direction of KAM, would be responsible for investing funds held by the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts in accordance with the procedures discussed below, and ensuring fair treatment of Participants. KAM (or Key Trust at KAM's direction) would manage investments in the Joint Accounts in essentially the same manner as if it had invested in the instruments on an individual basis for each Participant. All purchases through

[1] Applicants request that the relief apply to all existing and future series of The Victory Portfolios and any other registered management investment companies for which KAM or any entity controlling, controlled by, or under common control with KAM acts as investment adviser. Each existing registered management investment company that currently intends to rely on the requested order has been named as an applicant. Any other existing or future registered investment companies that subsequently rely on the order will comply with the terms and conditions in the application.

[2] Applicants will not invest in hold-in-custody repurchase agreements.

the Joint Accounts will comply with all present and future SEC staff positions relating to the investment of cash collateral in connection with securities lending activities.

7. Any repurchase agreements entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (February 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the Commission's published statements on repurchase agreements, and represent that repurchase agreement transactions would comply with future positions of the Commission to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the Commission sets forth guidelines with respect to other Short-Term Investments, all such investments made through the Joint Accounts would comply with those guidelines.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of that person, acting as principal, from participating in any joint arrangement or profit-sharing plan with the investment company unless the SEC has issued an order authorizing the arrangement. In passing on such applications, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which that participation is on a basis different from, or less advantageous than, that of other participants.

2. Section 2(a) (3) of the Act defines an affiliated person of an investment company to include any investment adviser of the investment company and any person directly or indirectly controlling, controlled by, or under common control with such investment adviser. Applicants state that the Funds may be deemed to be affiliated persons of each other because they are under the common control of KAM. Applicants further state that KAM and Key Trust may be deemed to be under the common control of KeyCorp, and Key Trust therefore may be deemed an affiliated person of an affiliated person of the Funds.

3. Applicants state that the Participants, by participating in the proposed Joint Accounts, and Key Trust, managing the proposed Joint Accounts, could be deemed "joint participants" in a transaction within the meaning of section 17(d) of the Act. Applicants further state that the proposed Joint Accounts also could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1. In addition, applicants state that the Funds' securities lending fee arrangement with Key Trust may be deemed a joint enterprise or profit sharing plan within the meaning of rule 17d–1.

4. Applicants state that the proposed operation of the Joint Accounts, and Key Trust's activities as securities lending agent, are consistent with the standards of section 17(d) and rule 17d–1 under the Act. Applicants also assert that Key Trust is the most advantageous choice for the Funds to use as lending agent because, as the Funds' custodian, it can administer the lending program efficiently.

5. Applicants state that Participants may earn a higher rate of return on investments through the Joint Accounts. Applicants also state that the Joint Accounts may increase the number of dealers and issuers willing to enter into Short-Term Investments with Participants. Applicants assert that no Participant would be in a less favorable position as a result of participating in the Joint Accounts. Each Participant's liability on any Short-Term Investment would be limited to its interest in such investment; no Participant would be jointly liable for the investments of any other Participant.

6. Applicants agree to implement the following procedural safeguards to ensure that the fee arrangement and other terms governing the Funds' relationship with Key Trust, as lending agent, will be fair:

(a) In connection with the approval of Key Trust as lending agent to a Fund and implementation of the proposed fee arrangement, a majority of the board of trustees (the "Board") (including a majority of the trustees who are not "interested persons" of the Funds within the meaning of section 2(a)(19) of the Act (the "Disinterested Trustees")), will determine that (i) the contract with Key Trust is in the best interests of the Fund and its shareholders; (ii) the services to be performed by Key Trust are required by the Fund; (iii) the nature and quality of the services provided by Key Trust are at least equal to those provided by others offering the same or similar services; and (iv) the fees for Key Trust's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) In connection with the approval of Key Trust as lending agent to a Fund and implementation of the proposed fee arrangement, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(c) Each Fund's contract with Key Trust for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested Trustees) makes the findings referred to in paragraph (a) above.

(d) The Board (including a majority of the Disinterested Trustees), will (i) determine at each quarterly meeting, that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application, and (ii) review no less frequently than annually the conditions and procedures set forth in the application for continuing appropriateness.

(e) The Funds will maintain and preserve permanently in an easily accessible place a written copy of the conditions and procedures (and any modifications thereto) described in the application or otherwise followed in connection with lending securities and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each such loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that the requested order will be subject to the following conditions:

Joint Accounts

1. The Joint Accounts would not be distinguishable from any other accounts maintained by Participants at their custodian, except that monies from Participants will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management of Uninvested Cash or Cash Collateral.

2. Cash in the Joint Accounts would be invested in Short-Term Investments as directed by KAM (or, in the case of Cash Collateral, Key Trust, at the direction of KAM). Short-Term Investments that are repurchase agreements would have a remaining maturity of 60 days or less and other Short-Term Investments would have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments that have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a–7 under the Act.

3. All assets held in the Joint Investment Account would be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules or orders.

4. Each Participant valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Investment Account in which such Participant has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Investment Account on that day.

5. In order to assure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant would be permitted to draw down its entire balance at any time. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets in the Joint Account.

6. KAM would administer the investment of cash balances in and operation of the Joint Accounts as part of its general duties under its existing or any future investment advisory or sub-advisory agreements with Participants and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of Joint Accounts would be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

8. The Board will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of the application will be met. The Board will make and approve such changes as it deems necessary to ensure that such procedures are followed. In addition, the Board will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the proposed procedures and will permit a Fund to continue to participate therein only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

9. Any Short-Term Investments made through the Joint Accounts will satisfy the investment criteria of all Participants in that investment.

10. KAM and/or the custodian of each Participant will maintain records documenting, for any given day, each Participant's aggregate investment in a Joint Account and each Participant's pro rata share of each investment made through such Joint Account. The records maintained for each Participant shall be maintained in conformity with section 31 of the Act and rules and regulations thereunder.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (i) KAM believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Participants in the investment because of a downgrading or otherwise; or (iii) in the case of a repurchase agreement, the counterparty defaults. KAM may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all Participants prior to the maturity of the investment if the cost of such transaction will be borne solely by the selling Participants and the transaction will not adversely affect other Participants in the Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, would be considered illiquid and would be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either such case, such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if KAM cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition, or if such investment would otherwise be considered illiquid if held by a money market fund.

13. Not every Participant participating in the Joint Accounts will necessarily have its cash invested in every Joint Account. However, to the extent a Participant's cash is applied to a particular Joint Account, the Participant will participate in and own a proportionate share of the investment in such Joint Account, and the income earned or accrued thereon, based upon the percentage of such investment in such Joint Account purchased with monies contributed by the Participant.

Securities Lending

14. The securities lending program of each Fund will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

15. The approval of the Board, including a majority of the Disinterested Trustees, shall be required for the initial and subsequent approvals of Key Trust's service as lending agent for each Fund, for the institution of all procedures relating to the securities lending program of the Funds, and for any periodic review of loan transactions for which Key Trust acted as lending agent.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2250 Filed 1–29–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40969; File No. SR–CBOE–98–23]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2 and 3 Relating to an Elimination of Position and Exercise Limits for Certain Broad-Based Index Options

January 22, 1999.

I. Introduction

On June 11, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section

19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a two year pilot program eliminating position and exercise limits for certain broad-based index options.

The proposed rule change was published for comment in the **Federal Register** on July 9, 1998.[3] CBOE filed amendments to the proposed rule change on August 19, 1998, November 13, 1998, and January 21, 1999, respectively.[4] One comment letter was received on the proposal.[5] This order approves the proposal, as amended.

II. Description

CBOE proposes to eliminate position and exercise limits for certain broad-based index options on a two year pilot basis. Specifically, CBOE proposes to eliminate position and exercise limits for SPX, OEX, and DJX options.[6] The proposal would also apply to FLEX broad-based index options on SPX, OEX, and DJX. These indexes will be subject to new reporting thresholds.[7] OEX, SPX and all FLEX broad-based index options will be subject to a 100,000 contract reporting requirement and DJX options, which are 1/10th the size of a full value index contract, will be subject to a 1 million contract reporting threshold. These reporting thresholds reflect an increase from the current levels (*i.e.*, 45,000 for SPX and 65,000 for OEX).[8] The proposal also reiterates that the Exchange has the authority, pursuant to CBOE Rule 12.10, to impose additional margin as it deems necessary upon an account maintaining an under-hedged option position in SPX, OEX, DJX or FLEX options on these indexes. Finally, three months prior to completion of the pilot program, CBOE will provide a report to the Commission, including data for the first eighteen months of the pilot. The report will detail the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. The report will also discuss whether any problems resulted from the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[9] Specifically, the Commission believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

Position limits serve as a regulatory tool designed to address potential manipulative schemes and adverse market impact surrounding the use of options. In the past, the Commission has stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[10]

In general, the Commission has taken a gradual, evolutionary approach toward expansion of position and exercise limits.[11] The Commission has been careful to balance two competing concerns when considering the appropriate level at which to set option position and exercise limits. The Commission has recognized that the limits must be sufficient to prevent investors from disrupting the market in the component securities comprising

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 40158 (July 1, 1998), 63 FR 37193.

[4] *See* Letter to Christine Richardson, Attorney, Division of Market Regulation, Commission, from Timothy Thompson, CBOE, dated August 18, 1998 ("Amendment No. 1"). CBOE's original submission proposed to eliminate position and exercise limits for all broad-based index options on a permanent basis. Amendment No. 1 limited the proposal to a two year pilot program. Amendment No. 1 also limited the proposal to those broad-based indexes meeting the following criteria: (1) a total capitalization of at least $2 trillion or (2) an average capitalization of at least $15 billion. Amendment No. 1 also stated that, near the end of the program, CBOE would provide a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. The report would also indicate whether any problems resulted from the no limit approach and provide any other information that may be useful in evaluating the effectiveness of the pilot program.

See Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from Mary Bender, CBOE, dated October 28, 1998 ("Amendment No. 2"). Superseding the index criteria set forth in Amendment No. 1, Amendment No. 2 limited the proposal to three specific broad-based indexes. Specifically, the proposal was limited to options on the S&P 500 ("SPX"), options on the S&P 100 ("OEX"), and options on the Dow Jones Industrial Average ("DJX"). Amendment No. 2 also clarified that OEX and SPX options would be subject to a 100,000 contract reporting threshold requirement and DJX options, 1/10th the size of a full value index contract, would be subject to a 1 million contract reporting threshold requirement. Amendment No. 2 also stated that the contract thresholds, which would trigger an inquiry into whether additional margin should be imposed, were being changed to 100,000 contracts for OEX and SPX options and 1 million contracts for DJX options.

See Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, from Mary Bender, CBOE, dated January 20, 1999 ("Amendment No. 3"). Amendment No. 3 deleted the margin review thresholds proposed in Amendment No. 2. Amendment No. 3 also clarified that the elimination of position limits for FLEX broad-based index options will apply only to FLEX options on the SPX, OEX and DJX, and not to all broad-based index options as originally proposed. Furthermore, SPX, OEX and DJX FLEX options contracts will be subject to a 100,000 reporting requirement, and DJX will be subject to a 1 million contract reporting thresholds. Language was also added to reflect that the Exchange has the authority, pursuant to CBOE Rule 12.10, to impose additional margin upon and account maintaining an underhedged FLEX SPX, OEX or DJX option position. Finally, Amendment No. 3 specified that that CBOE would provide a report to the Commission detailing the impact of the pilot program no later than three months prior to the expiration of the two year pilot program, containing certain data from the first eighteen month period of the pilot.

[5] *See* Letter to Jonathan G. Katz, Secretary, Commission, from Kathryn N. Natale, Deputy General Counsel/Director of Compliance-Americas, Credit Suisse First Boston, dated September 23, 1998 ("CSFB Letter"). CSFB general supported the proposal.

[6] The current position limits for SPX, OEX and DJX are 100,000 contracts, 150,000 contracts, and 1,000,000 contracts, respectively. *See* CBOE Rule 24.4.

[7] Reporting thresholds are the contract levels at which members are required to report certain information regarding customer positions to the Exchange.

[8] Currently, DJX is not subject to an index reporting requirement. Because DJX is part of the proposal, CBOE is imposing new reporting requirement for DJX options.

[9] *See* 15 U.S.C. 78f(b). In approving this rule change, the commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. *Id.* at 78c(f).

[10] Exchange Act Release Nos. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (order approving an increase in OEX position and exercise limits); 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992) (SR–Amex–91–13) (order approving an increase in Institutional Index Options position and exercise limits).

[11] This gradual approach to increasing position limits is evident with both the SPX and OEX. *See* Exchange Act Release Nos. 37676 (September 13, 1996), 61 FR 49508 (September 20, 1996) (order approving SR–CBOE–96–01; increasing position limits for the SPX from 45,000 to 100,000 contracts); 39789 (December 24, 1997), 63 FR 276 (January 5, 1998) (order approving SR–CBOE–97–11; increasing position limits for the OEX from 75,000 to 150,000 contracts).

the indexes. At the same time, the Commission has determined that limits must not be established at levels that are so low as to discourage participation in the options market by institutions and other investors with substantial hedging needs or to prevent specialists and market-makers from adequately meeting their obligations to maintain a fair and orderly market.[12]

The Commission has carefully considered the CBOE's proposal. At the outset, the Commission notes that it still believes the fundamental purposes of position and exercise limits are being served by their existence. Nevertheless, the Commission believes that the current experience with the trading of index options as well as the surveillance capabilities of the CBOE have made it permissible to consider other, less prophylactic alternatives to regulating the index options market while still ensuring that large positions in such index options will not unduly disrupt the options or underlying cash markets. At this time, the Commission believes that it is appropriate to allow for an elimination of position and exercise limits for certain broad-based index options on a two-year pilot basis.

The Commission believes that an elimination of position and exercise limits for certain broad-based index options on a pilot basis is appropriate for several reasons. Overall, the Commission believes that the pilot will allow the CBOE to allocate certain of its surveillance resources differently, focusing on enhanced reporting and surveillance of trading to detect potential manipulation and risky positions that may unduly affect the cash market, rather than focusing on the strict enforcement of position limits. Although this regulatory approach deviates from the current structure that has been in place since the beginning of index options trading, the Commission believes that the enhanced reporting and surveillance CBOE is providing, as well as the fact that the pilot is limited to the CBOE's three most highly capitalized and actively traded index options, provides a sound basis for approving a two year pilot program eliminating position and exercise limits.

The Commission notes first that the proposal is limited to options on three broad-based indexes, the SPX, OEX, DJX, and FLEX options on those indexes. The Commission believes that the enormous capitalization of and deep, liquid markets for the underlying securities contained in these indexes significantly reduces concerns regarding market manipulation or disruption in the underlying market.[13] Removing position and exercise limits for these index options may also bring additional depth and liquidity, in terms of both volume and open interest, to the affected index options classes without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.

Second, eliminating position and exercise limits for these specified indexes should better serve the hedging needs of institutions that engage in trading strategies different from those covered under the index hedge exemption policy (*e.g.*, delta hedges, OTC vs. listed hedges).[4] Furthermore, eliminating position and exercise limits for the SPEX, OEX and DJX options will alleviate the regulatory burdens related to the current index hedge exemption, which involves a daily monitoring of positions and reports to the Exchange at the current levels.

Third, the Commission believes that financial requirements imposed by CBOE and by the Commission adequately address concerns that a CBOE member or its customer may try to maintain an inordinately large unhedged position in a broad-based index option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer.[15] CBOE also has the authority under its rules to impose a higher margin requirement upon the member or member organization when it determines a higher requirement is warranted. Monitoring accounts maintaining large positions should provide the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon a member organization carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Exchange Act, imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement. The significant increases in unhedged options capital charges resulting from the September 1997 adoption of risk-based haircuts and CBOE's margin requirements applicable to these products under Exchange rules serves as an additional form of protection.[16] The Commission also notes that the OCC will serve as the counter-party guarantor in every exchange-traded transaction.

Fourth, the Commission notes that the index options and other types of index-based derivatives (*e.g.*, forwards and swaps) are not subject to position and exercise limits in the OTC market. The Commission believes that eliminating position and exercise limits for the SPX, OEX, and DJX options on a two-year pilot basis will better allow CBOE to compete with the OTC market.

Fifth, the Commission believes that CBOE has adopted important enhanced surveillance and reporting safeguards that will allow it to detect and deter trading abuses arising from the elimination of position and exercise limits for SPX, OEX, DJX, and FLEX options on those indexes. These safeguards will also allow CBOE to monitor large positions in order to identify instances of potential risk and to assess additional margin and/or capital charges, if deemed necessary. Specifically, CBOE will subject SPX, OEX and FLEX options on those indexes to a 100,000 contract hedge reporting requirement, and DJX, which is one-tenth the size of a full value index contract, and FLEX options on the DJX will be subject to a 1 million contract

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[12] *See* H.R. No. IFC–3, 96th Cong., 1st Sess. at 189–91 (Comm. Print 1978).

[13] SPX is a capitalization-weighted index composed of 500 stocks from a broad range of industries. As of August 1998, the total market capitalization value for SPX was $8.5 trillion. *See* Amendment No. 1. OEX is a capitalization-weighted index composed of 100 stocks from a broad range of industries. As of August 1998, the total market capitalization value for OEX was $3.8 trillion. *Id.* DJX is a price-weighted index composed of 30 of the largest, most liquid New York Stock Exchange-listed stocks. As of August 1998, the total market capitalization value for DJX was $2.2 trillion. *Id.*

In addition, the average trading volume for the underlying components of these indexes for the six months preceding January 20, 1999, demonstrates the substantial liquidity of the index components as a group. The average trading share volume underlying the SPX is 757.5 million shares. The average trading share volume underlying the OEX is 244.3 million shares. Finally, the average trading share volume underlying the DJX is 94.77 million shares. Telephone call between Patricia Cerny, CBOE, and Christine Richardson, Commission, on January 21, 1999.

[14] CSFB notes that many institutional traders conduct substantial hedging activity similar to that of the listed options market in other markets that are not restricted by position and exercise limits, *e.g.*, by trading off-shore or in the U.S. treasury bond futures and Eurodollar futures market. *See* CSFB Letter.

[15] Exchange Act Rule 15c3–1 requires a capital charge equal to the maximum potential loss on a broker-dealer's aggregate index position over a +(–) 10% market move. Exchange margin rules require margin on naked index options which are in or at-the-money equal to a 15% move in the underlying index; and a minimum 10% charge for naked out-of-the money contracts. At an index value of 9,000 this approximates to a $135,000 to $90,000 requirement per each unhedged contract.

[16] *See* Exchange Act Release No. 38248 (February 6, 1997), 62 FR 6474 (February 12, 1997)(adopting Risk Based Haircuts), and CBOE Rule 24.11 *Margins.*

hedge reporting threshold.[17] Each member or member organization that maintains a position on the same side of the market in excess of these contract thresholds for its own account of for the account of a customer must file a report that includes, but is not limited to, data related to the option position, whether such position is hedged and if so, a description of the hedge. If applicable, the report must contain information concerning collateral used to carry the position. Exchange market makers would continue to be exempt from this reporting requirement. Although the new reporting thresholds are higher for SPX and OEX, the new levels will enable CBOE to allocate its surveillance resources on those accounts maintaining larger, potentially riskier, positions. CBOE has submitted to the Commission a detailed description of enhanced surveillance procedures the Exchange will implement in order to monitor accounts maintaining large positions. The Commission also believes that CBOE's new surveillance procedures should enable the Exchange to assess and respond to market concerns at an early stage. Although it is inappropriate to discuss the details of CBOE's enhanced surveillance program, the Commission notes that these enhanced procedures were critical in its determination to approve the proposed rule change.[18]

Finally, the Commission notes the lack of any discernible problems at existing levels. Although it is difficult to compare a market with position limits and one without, the Commission notes that the lack of any significant problems at existing levels, which are relatively high for these three index options compared to other similar products does provide some basis for going forward with the CBOE's proposal. The Commission further believes that, if problems were to occur during the pilot period, the enhanced market surveillance of large positions should help CBOE to take the appropriate action in order to avoid any manipulation or market risk concerns.

With regard to the elimination of position and exercise limits for FLEX options on the SPX, OEX and DJX, the Commission believes that, given the size and sophisticated nature of the FLEX options market for these indexes, along with the reporting requirements, eliminating position and exercise limits for FLEX options on the SPX, OEX and DJX for a two-year pilot period should not substantially increase manipulative concerns.

Notwithstanding the protections that have been built into CBOE's proposal, the Commission believes a prudent approach is warranted with respect to the elimination of position limits for these indexes. In this regard, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying the effected broad-based indexes. To address this concern, the Commission is approving the proposal for a two-year pilot period and limiting the proposal to SPX, OEX, DJX options, and FLEX options on those indexes.[19] Furthermore, three months prior to the end of the pilot program, CBOE will provide the Commission with a report detailing the size and different types of strategies employed with respect to positions established in those classes not subject to position limits. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the pilot program.[20] The Commission expects that CBOE will take prompt action, including timely communication with the Commission and other marketplace self-regulatory organizations responsible for oversight of trading in component stocks, should any unanticipated adverse market effects develop.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, by restricting the elimination of position and exercise limits for certain broadbased index options to a two-year pilot period, the proposed rule change is more restrictive than the original proposal, which was published for the entire twenty-one day comment period and generated only one response.[21] Amendment No. 1 also stated that CBOE will provide a report to the Commission three months prior to the end of the pilot period,[22] detailing any resulting problems, as well as the size and different types of strategies employed with respect to positions established in those classes of options not subject to position limits. This report will help CBOE and the Commission to assess the effects of eliminating position and exercise limits on the effected index options. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.[23]

The Commission finds good cause to approve Amendment No. 2 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, Amendment No. 2 limited the proposal to three specific broad-based indexes—SPX, OEX, and DJX options. By restricting the elimination of position and exercise limits to SPX, OEX, and DJX options, the proposed rule change is more restrictive than the original proposal, which was published for the entire twenty-one day comment period and generated only one response.[24] Amendment No. 2 also imposed new reporting thresholds on members holding large positions in the effected options. These reporting requirements will better enable CBOE to detect and deter trading abuses arising from the elimination of position and exercise limits. In addition, the Commission notes that CBOE's proposal reiterates the Exchange's ability to impose margin and/or assess capital charges an important safeguard to address concerns regarding potential manipulation or other market disruptions. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

The Commission finds good cause to approve Amendment No. 3 to the proposed rule filing prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Specifically, the Commission believes that deleting the proposed margin review thresholds of 100,000 contracts for SPX and OEX and 1 million for DJX is appropriate to avoid possible a misinterpretation that the

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[17] The current hedge reporting thresholds for SPX and OEX are 45,000 contracts and 65,000 contracts, respectively. DJX is not currently subject to a reporting requirement.

[18] Disclosure of specific surveillance procedures could provide market participants with information that could aid potential attempts at avoiding regulatory detection of inappropriate trading activity.

[19] *Cf.* Exchange Act Release No. 30932 (September 9, 1997), 62 FR 48683 (September 16, 1997) (order approving the elimination of position and exercise limits for FLEX equity options on a two year pilot basis).

[20] *See* Amendment No. 1.

[21] *See* CSFB Letter.

[22] *See* Amendment No. 3.

[23] The Commission notes that Amendment No. 1 also limited the proposal to all broad-based indexes meeting the following criteria: (1) a total capitalization of at least $2 trillion or (2) an average capitalization of at least $15 billion. Although this provision narrowed the application of the proposed rule change, at the request of the Commission, CBOE filed Amendment No. 2 which replaced this provision and further narrowed application of the proposed rule change to SPX, OEX, and DJX options.

[24] *See* CSFB Letter.

Exchange may only impose additional margin under CBOE Rule 12.10 when these thresholds are reached. Amendment No. 3 clarifies that the Exchange may impose additional margin as it deems necessary. The Commission also believes that narrowing the elimination of position and exercise limits to FLEX options on the SPX, OEX, and DJX, rather than all FLEX broad-based index options is appropriate because it is more restrictive than the original proposal and it will allow the Exchange to focus initially on a smaller number of accounts maintaining positions in FLEX SPX, OEX and DJX options. Amendment No. 3 also appropriately clarifies when the CBOE will provide the Commission with a report concerning the impact of the pilot program. Accordingly, the Commission believes that good cause exists, consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 3 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 1, 2 and 3, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspecting and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–23 and should be submitted by February 22, 1999.

V. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–CBOE–98–23) is approved, as amended, on a two-year pilot basis until January 22, 2001.

[25] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2251 Filed 1–29–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40973; File No. SR–CBOE–98–55]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Exchange Fees for CBOT Exercisers.

January 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 30, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On January 13, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain fees so that these fees are charged to Chicago Board of Trade ("CBOT") exercise members of CBOE in the same manner that they are charged to other CBOE members. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[26] 17 CFR 200.30–3(a)(12).

[1] 17 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Richard Strasser, Assistant Director, SEC, dated January 12, 1999. ("Amendment No. 1"). In Amendment No. 1, CBOE described the amount of CBOE dues and the technology fee which the rule change imposes on CBOT Exercisers. Additionally, CBOE summarized the fee waiver provisions of CBOE Rule 3.16(c) and the Agreement entered into on September 1, 1992, between the Chicago Board of Trade and CBOE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend certain fees so that these fees are charged to CBOE members that are also members of the CBOT ("CBOT Exercisers") in the same manner they are charged to the other CBOE members.

Article Five(b) of the CBOE Certificate of Incorporation provides that:

> [E]very present and future member of the [the Board of Trade of the City of Chicago] who applies for membership in the [CBOE] and who otherwise qualifies qualifies shall, so long as he remains a member of said Board of Trade, be entitled to be a member of the [CBOE] notwithstanding any such limitation on the number of members and without the necessity of acquiring such membership for consideration or value from the [CBOE], its members, or elsewhere. Members of the [CBOE] admitted pursuant to this paragraph (b) shall, as a condition of membership in the [CBOE], be subject to fees, dues, assessments and other like charges, and shall otherwise be vested with all rights and privileges and subject to all obligations of membership, as provided in the by-laws.

CBOE Rule 3.16(c) further provides that for the purpose of entitlement to membership on the CBOE in accordance with Article Fifth(b), the term "member of the Board of Trade of the City of Chicago" is interpreted to mean an individual who is either an "Eligible CBOT Full Member" or an "Eligible CBOT Full Member Delegate" as those terms are defined in the Agreement entered into on September 1, 1992, between CBOT and CBOE ("1992 Agreement"), and shall not mean any other person.

On February 12, 1988, CBOE and CBOT entered into a Joint Venture Agreement ("JV Agreement"). The JV Agreement provided, among other things, that the CBOE would waive dues in a given quarter for CBOT Exercisers who made no trades in CBOE contracts

for the immediate previous quarter and that the access/exerciser fee for CBOT Exercisers would be zero for the duration of the joint venture. The JV Agreement terminated on December 29, 1998. As a result, CBOE dues will no longer be waived for CBOT Exercisers who make no trades in CBOE contracts in the immediate previous quarter, and all CBOT Exercisers will be charged CBOE dues to the same extent that other CBOE members are charged CBOE dues. Accordingly, each person who is an effective CBOT Exerciser member of CBOE at the end of the first business day of a calendar quarter will be charged the applicable CBOE dues for that quarter.[4]

Similarly, the CBOE technology fee will no longer be waived for CBOT Exercisers who make no trades in CBOE contracts in the immediate previous month. As a result, each person who is an effective CBOT Exerciser member of CBOE at the end of the first business day of a month will be charged the technology fee for that month.[5] CBOE began assessing dues and the technology fee to CBOT Exercisers on January 4, 1999.

Due to the termination of the JV Agreement, the CBOE membership application fees will also no longer be waived for CBOT Exercisers. Accordingly, commencing on December 29, 1998, each CBOT Exerciser membership applicant will be charged CBOE membership application fees to the same extent that other CBOE membership applicants are charged CBOE membership application fees. These membership application fees include, but are not limited to, the $2,000 fee for new membership applicants and the $100 renewal/change of status fee. These amendments to CBOE's membership application fees will be incorporated into CBOE's Membership Fee Circular.

Prior to the JV Agreement, CBOT Exerciser applicants were charged a $500 CBOT Exerciser application fee. Because CBOT Exerciser applicants will now be charged the same membership application fees as other CBOE membership applicants, the $500 CBOT Exerciser application fee will be eliminated.

[4] Amendment No. 1 states that CBOE dues are currently $625.00 per quarter, subject to a 25% discount if CBOE average daily volume on a fiscal year-to-date basis ("ADV") is between 800,001–850,000 contracts, a 50% discount if CBOE ADV is between 850,001–875,000 contracts, a 75% discount if CBOE ADV is between 875,001–900,000 contracts, and a 100% discount if CBOE ADV exceeds 900,000 contracts. *See* note 3, *supra*.

[5] According to Amendment No. 1, the technology fee is $200.00 a month. *See* note 3, *supra*.

The Exchange believes that it is appropriate to charge CBOT Exerciser applicants the same membership application fees as other CBOE membership applicants because CBOT Exerciser applications require the same staff resources and effort to process as applications submitted by other CBOE membership applicants. Finally, it should be noted that this rule filing is not intended to affect the fee waiver provisions that are set forth in the 1992 Agreement and Rule 3.16(c).[6]

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[7] of the Act in general and furthers the objectives of Section 6(b)(4)[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited not received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge imposed by the Exchange, has become effective pursuant to section 19(b)(3)(A) of the Act[10] and subparagraph (e)(2) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] Amendment No. 1 explains that Rule 3.16(c) and the 1992 Agreement provide for CBOE to waive all membership dues, fees, and other charges and all qualification requirements, other than those imposed by law, in order to permit Eligible CBOT Full Members and Eligible CBOT Full Member Delegates to participate in certain CBOE offers, distributions, and redemptions defined by the 1992 Agreement. *See* note 3, *supra*.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] In reviewing the proposed rule change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(e)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–55 and should be submitted by February 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40971; File No. SR–CBOE–98–11)

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Adjustments in Market Maker Equity

January 25, 1999.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission ("SEC" or "Commission") a proposal to amend CBOE Rule 12.3, "Margin Requirements" by adopting Interpretation and Policy .06, which will allow a clearing broker to adjust the equity in the account of a market maker whose net liquidating equity is in deficit and permit the clearing broker to extend credit for opening transactions. Specifically, Interpretation and Policy .06 will allow a clearing broker to adjust the equity in the account of a market maker whose account is in deficit because the dissemination of the last sale price of a stock after the options close at 3:02 p.m.[3] has resulted in a discrepancy between the last sale price of the stock and the closing quotes and last sale price of the overlying options series. Under these circumstances, Interpretation and Policy .06 will permit the clearing broker to recalculate the value of the options position in the market maker's account to reflect the movement in the price of the underlying stock.

On May 7, 1998, the CBOE filed Amendment No. 1 to the proposal.[4] On August 18, 1998, the CBOE filed Amendment No. 2 to the proposal.[5] In Amendment No. 2, the CBOE indicated that without the adjustment permitted under the proposal, Exchange Act Rule 15c3–1 would prohibit a clearing firm from extending credit to a market maker whose account is in deficit and would require the clearing firm to take steps to liquidate the positions in the market maker's account.[6] In addition, the CBOE represented that the Exchange would ascertain at the end of the business day following the adjustment whether any market maker whose equity was adjusted pursuant to Interpretation and Policy .06 continued to experience difficulty in maintaining positive equity in its account.[7]

Notice of the proposed rule change and Amendment No. 1 to the proposed rule change was published for comment in the **Federal Register** on May 28, 1998.[8] The Commission received no comments regarding the proposal. This notice and order solicits comments on Amendment No. 2 to the proposal from interested persons and approves the proposed rule change, as amended.

II. Description of the Proposal

CBOE Rule 12.3(f)(3)(C)(3) prohibits a clearing firm from extending credit to a market maker for opening transactions when the market maker's account fails to maintain positive net liquidating equity.[9] In addition, Exchange Act Rule 15c3–1(c)(2)(x)(D) prohibits a clearing broker from extending credit to a specialist whose market maker account is in deficit and would require the clearing broker to take steps to liquidate existing positions in the market maker account.[10] The Commission has taken a no-action position with regard to the application of Exchange Act Rule 15c3–1(c)(2)(x)(D) under the circumstances described in the proposal.[11]

The CBOE proposes to add Interpretation and Policy .06 to CBOE Rule 12.3 to permit a clearing broker to adjust the equity in the account of a market maker whose net liquidating equity is in deficit and allow the clearing broker to extend credit for opening transactions. Specifically, Interpretation and Policy .06 will allow a clearing broker to adjust the equity in the account of a market maker whose account is in deficit because the dissemination of the last sale price of a stock after the options close at 3:02 p.m. has resulted in a discrepancy between the last sale price of the stock and the closing quotes and last sale price of the overlying options series. Under these circumstances, Interpretation and Policy .06 will permit the clearing broker to recalculate the value of the options position in the market maker's account to reflect the movement in the price of the underlying stock.

According to the CBOE, the closing price for a stock may be disseminated after 3:02 p.m. when news announced near the close of trading results in heavy trading in the stock and a late trade tape. Under these circumstances, the last sale price for the stock may incorporate information that is not reflected in the closing price for the overlying options. As a result, the closing price of the underlying stock may be out of line with the closing quotes and last sale price of the overlying options series.[12]

The discrepancy between the closing prices of the underlying stock and the overlying options series may result in deficit equity in the account of an options market maker.[13] As noted above, CBOE Rule 12.3(f)(3)(C)(3) requires a clearing broker to request additional equity on any business day when a market maker does not maintain positive net liquidating equity and prohibits a clearing broker from extending additional credit to a market maker when the market maker's account is in deficit. Interpretation and Policy .06 will permit a clearing broker to adjust the market maker's equity when the late dissemination of the closing price for a stock results in a discrepancy between the closing price of the stock and the closing quotes and last sale price of the overlying options.[14] If the adjustment eliminates the deficit in the market maker's account, the clearing broker may extend credit to the market maker for opening transactions.

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[3] All time references are in Central Time.

[4] *See* Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Yvonne Fraticelli, Division of Market Regulation ("Division"), Commission, dated May 6, 1998 ("Amendment No. 1"). Amendment No. 1 made technical revisions to the proposal, deleted an incorrect reference to Regulation X of the Board of Governors of the Federal Reserve System, and explained the circumstances under which it might be necessary for a clearing broker to adjust a market maker's account equity.

[5] *See* Letter from Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, to Yvonne Fraticelli, Division, Commission, dated August 18, 1998 ("Amendment No. 2").

[6] Subsequent to the filing of this proposal, the Division has granted the CBOE's request for a no-action position with regard to the application of SEC Rule 15c3–1(c)(2)(x)(D) under the circumstances described in the proposal. *See* Letter from Michael A. Macchiaroli, Associate Director, Division, Commission, to Richard Lewandowski, Vice President, Department of Financial and Sales Practice Compliance, Regulatory Division, CBOE, dated January 19, 1999 ("January 19 Letter"). The CBOE's request for no-action relief and the Division's response are attached as Exhibit A.

[7] *See* Amendment No. 2, *supra* note 5.

[8] *See* Securities Exchange Act Release No. 40015 (May 20, 1998), 63 FR 29274.

[9] Specifically, CBOE Rule 12.3(f)(3)(C)(3) states that on any day when a market maker does not maintain positive net liquidating equity is his or her account(s), the carrying member must request additional equity at least equal to the deficit and may not extend further credit in the account(s) until the account(s) maintains a positive net liquidating equity. If the market maker fails to meet the call for additional equity, the carrying member should promptly take steps to liquidate the positions in the account(s).

[10] Specifically, Exchange Act Rule 15c3–1(c)(2)(x)(D) prohibits a broker or dealer guaranteeing, endorsing, or carrying listed options transactions in a specialist's market maker account from extending any further credit if at any time there is a liquidating deficit in the account. Among other things, the broker or dealer also must take steps to liquidate promptly existing positions in the account.

[11] *See* January 19 Letter, *supra* note 6.

[12] In 1997, the CBOE and the other options exchanges changed the closing time for trading equity options and certain narrow-based index options from 3:10 p.m. to 3:02 p.m. *See e.g.*, Securities Exchange Act Release No. 38543 (May 14, 1997), 62 FR 28082 (May 22, 1997) (order approving File No. SR–CBOE–96–71). According to the CBOE, this pricing discrepancy rarely arose when the options markets closed at 3:10 p.m. because final stock prices generally were disseminated by the time the options markets closed, thereby allowing options market makers to adjust their quotes to reflect the last sale price of the underlying stock.

[13] According to the CBOE, this deficit equity condition may occur even though the market maker is hedged in terms of market risk.

[14] To adjust the market maker's equity, the clearing broker will recalculate the value of the options position to reflect the price movement of the underlying stock. In recalculating the value of the options position, the clearing broker will use the same methodology as that used by the Options Clearing Corporation to reprice the options assuming different prices for the underlying securities. *See* January 19 Letter, *supra* note 6.

Interpretation and Policy .06 requires the clearing broker to document any adjustment to a market maker's equity and file it with the CBOE's Department of Financial and Sales Practice Compliance ("Department"). The clearing broker should file the adjustment with the Department before the next day's opening, but in any case before the clearing broker extends credit to the market maker for opening transactions. The Department must approve any adjustment before the clearing broker may finance opening trades. All information regarding the adjustments must be retained by the clearing broker and by the CBOE. In addition, the CBOE will ascertain at the end of the business day following the adjustment whether any market maker whose equity was adjusted pursuant to Interpretation and Policy .06 continues to experience difficulty in maintaining positive equity in his or her account.[15] If a market maker fails to maintain positive equity in its account at the end of the business day following the adjustment, the requirements of Exchange Act Rule 15c3–1(c)(2)(x)(D) and CBOE Rule 12.3(f)(3)(C)(3) will apply to the account.[16] The CBOE estimates that the pricing discrepancy described in Interpretation and Policy .06 occurs, on average, approximately once each quarter.[17]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b) of the Act.[18] Specifically, the Commission finds that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[19]

CBOE Rule 12.3(f)(3)(C)(3) requires a clearing broker carrying a market maker's account to call for additional equity on any business day on which the market maker's account fails to maintain positive net liquidating equity. In addition, that rule prohibits a clearing broker from extending additional credit to a market maker whose account does not maintain positive net liquidating equity and requires the clearing broker to take steps to liquidate the market maker's account if the market maker fails to satisfy the clearing broker's call for additional equity. Interpretation and Policy .06 will allow a clearing broker to adjust the equity in the account of a market maker whose account is in deficit because the last sale price of a stock is disseminated after the overlying options cease trading at 3:03 p.m., resulting in a discrepancy between the last sale price of a stock and the closing quotations and last sale price of the overlying options. The adjustments will permit the clearing broker to extend credit to the market maker for opening transactions.

The Commission believes that it is appropriate for the CBOE to adopt Interpretation and Policy .06. In this regard, the Commission notes that Interpretation and Policy .06 will allow a clearing broker to adjust the equity of a market maker whose account is in deficit only in the limited circumstances described in Interpretation and Policy .06, *i.e.*, when a market maker's account liquidates to a deficit because the last sale price of a stock is disseminated after the overlying options cease trading and the late dissemination of the closing stock price results in a discrepancy between the closing stock price and the closing quotations and last sale price of the overlying options. In such narrow instances, the adjusted equity should provide a more accurate picture of the market maker's financial condition than would be provided by using last sale numbers for the options in the market maker's account (at last with respect to those options). By allowing the clearing broker to extend credit for opening transactions under these limited circumstances, Interpretation and Policy .06 will permit the market maker to continue to operate with CBOE 12.3(f)(3)(C)(3) otherwise would require the clearing broker to take steps to liquidate the positions in the market maker's account unless the market maker provided additional equity.

The Commission notes that the proposal contains several safeguards that should help to ensure appropriate use of the extension of credit permitted under Interpretation and Policy .06. Specifically, Interpretation and Policy .06 requires a clearing broker to document and file with the CBOE any adjustment to a market maker's equity prior to the next day's opening, or at least before the firm may extend credit for opening transactions. Accordingly, the CBOE must approve the adjustment before a clearing broker may finance opening transactions. The clearing broker and the CBOE must retain all information regarding the adjustments. In additions, at the end of the business day following the adjustment, the CBOE will determine whether any market maker whose account was adjusted pursuant to Interpretation and Policy .06 continues to experience difficulty in maintaining positive equity in its account.[20] If the market maker fails to maintain positive equity in its account at the end of the business day following the adjustment, the requirements of Exchange Act Rule 15c3–1(c)(2)(x)(D) and CBOE Rule 12.3(f)(3)(C)(3), which would prohibit the clearing broker from extending additional credit to the market maker and require the liquidation of positions in the market maker's account, will apply to the account.[21] These procedures should help to ensure that CBOE market makers experiencing financial difficulties are monitored closely and are not permitted to continue to obtain credit from clearing firms if their financial difficulties appear to be chronic.

Finally, the Commission notes that the adjustment permitted under Interpretation and Policy .06 should occur infrequently. In this regard, the CBOE has estimated that the pricing discrepancy described in Interpretation and Policy .06 occurs, on average, approximately once each quarter.[22] The Commission expects that should this issue arise more frequently than the average in two consecutive quarters that the CBOE will advise the Commission staff and consider whether the adjustment should be discontinued or limited.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. As discussed above, Amendment No. 2 clarifies the CBOE's reasons for adopting Interpretation and Policy .06 and indicates that the CBOE will determine at the end of the business day following an adjustment whether a market maker whose account equity was adjusted pursuant to Interpretation and Policy .06 continues to experience difficulties in maintaining positive

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[15] *See* Amendment No. 2, *supra* note 5.

[16] Telephone conversation among Timothy H. Thompson, Director, Regulatory Affairs, Legal Department, CBOE, Richard Lewandowski, Vice President, Department of Financial and Sales Practice Compliance, Regulatory Division, CBOE, and Yvonne Fraticelli, Special Counsel, Division, Commission, on January 20, 1999 ("January 20 Conversation").

[17] *See* January 20 Conversation, *supra note 16.*

[18] 15 U.S.C. 78f(b).

[19] In approving the rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *See* Amendment No., *supra* note 5.

[21] *See* January 20 Conversation, *supra* note 16.

[22] *See* January 20 Conservation, *supra* note 16.

equity in its account. The Amendment does not raise new regulatory issues. Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 2 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–11 and should be submitted by February 20, 1999.

V. Conclusion

It is Therefore *Ordered*, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (File No. SR–CBOE–98–11), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

January 19, 1999.

Mr. Richard Lewandowski,
Vice President,
Department of Financial and Sales Practice Compliance,
Regulatory Division,
The Chicago Board Options Exchange,
400 South LaSalle Street,
Chicago, Illinois 60605.

Re: Computation of Equity by Broker-Dealers Carrying Market-Maker Accounts of Listed Options Specialists

Dear Mr. Lewandowski: This is in response to your letter dated January 11, 1999, in which you request that broker-dealers, in computing equity in specialist market-maker accounts for purposes of Rule 15c3–1 of the Securities Exchange Act of 1934 ("Exchange Act") (17 CFR 240.15c3–1), be permitted to adjust the value of options positions to reflect substantial price movements of the underlying common stock when closing price information for the common stock is reported after closing quotations for the options series are established.

Based on your letter and subsequent discussions with the staff of the Division of Market Regulation ("Division"), I understand the following facts to be pertinent to your request. A specialist in listed options on The Chicago Board Options Exchange ("CBOE" or "Exchange") maintains in a market-maker account, carried by a broker-dealer, positions in listed equity options and common stock underlying those options. In certain situations, last sale information for the common stock is reported after closing quotations and last sale information for the options series overlying the common stock are established.[1] In these situations, the closing price of the common stock may not be reflected in the closing quotation information for the options series. Because of the discrepancy between the last sale price of the underlying common stock and the closing quotations of the options series, the net liquidating equity in the specialist's market-maker account may be valued at a liquidating deficit.

Pursuant to Rule 15c3–1(c)(2)(x)(D), a broker-dealer guaranteeing, endorsing, or carrying listed options transactions in a specialist market-maker account is prohibited from extending any further credit if at any time there is a liquidating deficit in the account. The broker-dealer is also required to take steps to liquidate promptly existing positions in the account and to transmit telegraphic facsimile notice of the deficit and its amount by the close of business of the following business day to its Designated Examining Authority and the Designated Examining Authority of the specialist, if different from its own. The broker-dealer, upon approval by the broker-dealer's Designated Examining Authority, is permitted to enter into hedging positions in the specialist's market-maker account

Rule 15c3–1(c)(2)(x)(B)(2) provides the formula for computing equity in market-maker accounts for listed option specialists. Broker-dealers carrying accounts of listed options specialists must (i) mark all securities positions long or short in the account to their respective current market values; (ii) add (deduct in the case of a debit balance) the credit balance carried in such specialist's market-maker account; and (iii) add (deduct in the case of short positions) the market value of positions long in such account.

Recalculation of the closing price would be done by the carrying broker-dealer using in the same methodology as that used by the Options Clearing Corporation to reprice options assuming different prices for the underlying securities. You believe that it is unduly harsh to use a closing price for the option which does not reflect the strong market movement of the underlying stop when there was a reporting delay in that price.

Based upon the facts set forth above, the Division will not recommend enforcement action to the Securities and Exchange Commission ("Commission") if, for the purpose of determining whether a net liquidating deficit exists in a specialist market-maker account under Rule 15c3–(c)(2)(x)(D) a broker-dealer carrying market-maker accounts for listed options specialists adjusts the value of options positions in the specialist market-maker account, long or short, to reflect substantial price movement of the underlying common stock when the closing price of the common stock is reported after closing prices for the options series are established and a liquidating deficit results. Any broker-dealer adjusting equity in a specialist market-maker account must provide documentation to the Exchange for such adjustments before the opening of trading the next business day (or before the broker-dealer may extend credit for opening transactions). In situations where the deficit is eliminated by the adjustment and the adjustment is approved by the Exchange's Department of Financial and Sales Practice Compliance, the specialist will be permitted to continue trading.

You should be aware that this is a staff position with respect to enforcement only and does not purport to express any legal conclusions. This position is based solely on the foregoing description. Factual variations could warrant a different response, and any material change in the facts must be brought to the Division's attention. This position may be withdrawn or modified if the staff determines that such action is necessary for the protection of investors, in the public interest, or otherwise in furtherance of the purposes of the securities laws.

Sincerely,

Michael A. Macchiaroli,

Associate Director.

January 11, 1999.

Mr. Michael Macchiaroli,
Associate Director, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Re: Adjustment of Closing Option Prices for Purposes of Calculating Equity in Accounts of Options Market-Makers

Dear Mr. Macchiaroli: Often, a situation arises wherein, due to heavy volume just prior to the close of trading, last sale information for transactions in a common stock will continue to be reported past the time that trading in listed options on the common stock has ceased. When this occurs, the closing price established for the options is not adjusted to reflect the actual last sale price for the stock. The closing option prices are used to calculate equity in the accounts

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

[1] CBOE Rule 6.1 Interpretation .01 permits transactions in options on individual stocks to be effect on the Exchange until two minutes after the normal time set for the close of trading of the underlying stock on its primary exchange. See File No. SR–CBOE–96–71 approved in Securities Exchange Act Release No. 34–38543 (May 14, 1997), 62 FR 28082 (May 22, 1997). CBOE has discovered that when news of a stock underlying a CBOE option is disseminated near the close, heavy trading often results in dissemination of last sale information for the common stock well after the overlying options stop trading.

of options market-makers. If the equity in a market-maker's account calculates to a deficit in this situation, adjusting the closing option prices to reflect the underlying stock's true last sale price and recalculating the equity can alleviate a deficit situation in many instances. This can allow the market-maker to continue trading whereas in the deficit situation, further market-making activity is prohibited.

Market-makers on the Chicago Board Options Exchange are generally not self-clearing. They maintain market-maker accounts with other broker-dealer firms that specialize in clearing and carrying such accounts. If the equity in the account of an options market-maker calculates to a deficit, Rule 15c3–1(c)(2)(x)(D) of the Securities and Exchange Act of 1934 prohibits the clearing broker-dealer from extending any further credit to the market-maker account. The clearing broker-dealer must promptly liquidate existing positions in the account. Although, the clearing broker-dealer may, upon approval of its Designated Examining Authority, itself effect or allow the market-maker to effect, opening hedging transactions in the options market-maker's account. The clearing broker-dealer is also required to send telegraphic or facsimile notice of a deficit and its amount to its Designated Examining Authority and the market-maker's Designated Examining Authority, if different, by the close of business of the following business day.

Equity in an options market-maker's account is calculated pursuant to a formula found in Rule 15c3–1(c)(2)(x)(B)(2) of the Securities and Exchange Act of 1934. In calculating equity in an options market-maker's account, all securities positions are marked to their current market value. Equity is equal to the market value of all long positions, less the market value of all short positions, plus the credit (or minus the debit) balance in the account.

The Exchange requests that the Division of Market Regulation not recommend enforcement action to the Securities and Exchange Commission if broker-dealers clearing and carrying the accounts of options market-makers adjust the equity value of the market-maker's option positions to reflect a substantial move in the price of the underlying stock when the closing price of the stock is reported after closing quotations for the options are established and a liquidating deficit results. Any broker-dealer adjusting equity in a market-maker's account under these circumstances would be required to provide documentation to the Exchange's Department of Financial and Sales Practice Compliance for such adjustments before the opening of trading the next business day or before extending further credit to the market-maker for opening transactions. If the Exchange approves the adjustments and the adjustments eliminate the deficit, the market-maker will be permitted to continue trading.

The Exchange greatly appreciates the attention you and your staff have given to this matter. Please feel free to contact me should you have any questions or require further information.

Sincerely,

Richard Lewandowski.

cc:

Mary Bender—CBOE
Douglas Beck—CBOE
Timothy Thompson—CBOE

[FR Doc. 99–2298 Filed 1–29–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40975; File No. SR–NSCC–98–16]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees

January 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 28, 1998, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies NSCC's fee schedule with regard to its Annuities Processing Service ("APS").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 16, 1998, the Commission approved a proposed rule change that allowed NSCC to implement phase two of APS.[3] Phase two enables multiple insurance product distribution channels such as insurance agencies, broker-dealers, and other trading partners (collectively, "distributors") to transmit to insurance carriers information with respect to an initial annuity application and premium transfers on the sale of an annuity and subsequent annuity activity, as well as the related money settlement between the distributors and insurance carriers. In addition, insurance carriers can transmit to distributors a financial activity report ("FAR") that provides information relating to events and transactions occurring with respect to existing annuity contracts that have been issued by the insurance carriers.

Currently, no fees are being charged to users of these new APS services. With respect to use of these services on or after January 1, 1999, NSCC will charge its members as follows. NSCC will charge members that submit or receive information relating to the initial application or premium transfer a fee of $7.50 for each submission or receipt. NSCC will charge members that submit or receive information on subsequent annuity activity a fee of $0.50 for each such transaction. NSCC will charge members that submit or receive a FAR a fee of $0.50 for each FAR transmitted or received.[4]

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Securities Exchange Act Release No. 40799 (December 16, 1998), 63 FR 71175 [File No. SR–NSCC–98–07]. *See also* Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 [File No. SR–NSCC–96–21] (order approving the establishment of APS and the implementation of phase one of APS). For a more detailed description of APS, refer to the foregoing releases.

[4] The text of the proposed amendments to NSCC's fee schedule is attached as an exhibit to NSCC's filing, which is available for inspection and copying in the Commission's Public Reference Room and through NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [5] and pursuant to Rule 19b–4 (e)(2) [6] thereunder because the proposal establishes or changes a due, fee, or other charge imposed by NSCC. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–98–16 and should be submitted by February 22, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2299 Filed 1–29–99; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40963; File No. SR–Phlx–98–42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Increasing Maximum OTX AUTO–X Order Size Eligibility

January 22, 1999.

I. Introduction

On October 6, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 1080 increasing to 100 contracts the maximum order size for eligibility for public customer market and marketable limit orders for OTC Prime Index ("OTX") options contracts to be executed on AUTO–X, the automatic execution feature of the Phlx's Automated Options Market ("AUTOM") system. Notice of the proposed rule change appeared in the **Federal Register** on December 23, 1998.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposed to amend Phlx Rule 1080 to increase the maximum order size for eligibility for public customer market and marketable limit orders for OTC [4] options contracts to be executed on AUTO–X. AUTO–X is the automatic execution feature of AUTOM, the Phlx's electronic order routing, delivery, and reporting system for options. Orders are routed from member firms directly to the appropriate specialist on the Phlx's trading floor. Certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. These AUTO–X orders are automatically executed at the disseminated quotation price on the Exchange and reported to the originating firm. Those orders not eligible for AUTO–X are manually handled by the specialist. The Phlx proposed to increase the maximum order size eligible for AUTO–X from 50 to 100 contracts.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] The Commission believes the proposal is consistent with the requirements of Sections 6 and 11A of the Act [6] in general, and in particular, with Sections 6(b)(5) and 11A(a)(1)(C)(i) of the Act.[7] The Commission notes that the development and implementation to date of the AUTOM system has provided for more efficient handling and reporting or orders in PHLX equity and index options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. At this time, the Commission consents to extending the benefits available through the use of an automated system to larger-size customer OTX options orders of up to 100 contracts.

Public customers may benefit from the proposal because public customer orders for up to 100 OTX option contracts may be executed automatically and guaranteed by the specialist at the displayed market quote. Additionally, public customers will have the benefit of receiving immediate executions and nearly instantaneous confirmations for orders of up to 100 contracts. The Commission also believes, based on representations by the Exchange, that expanding the order eligibility size of OTX AUTO–X options to 100 contracts will not expose the Phlx's AUTOM system to risk of failure or operational break-down. The Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade and to facilitate transactions in securities, as well as to protect investors and the public interest, by extending the benefits of AUTO–X to a larger number of customer orders. Further, the proposal is consistent with Section 11A(a)(1)(C)(i) of the Act because increasing the maximum OTX option order size eligible for automatic execution should provide for more efficient handling and reporting of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40802 (December 17, 1998), 63 FR 71183 (December 23, 1998).

[4] The OTC Prime Index is composed of the fifteen stocks which had the largest trading volume on the Nasdaq during the preceding year. *See* Securities Exchange Act Release No. 40058 (June 2, 1998), 63 FR 31543 (June 9, 1998).

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f and 78k–1.

[7] 15 U.S.C. 78f(b)(5) and 78k–1(a)(1)(C)(i).

orders, thereby promoting the economically efficient execution of transactions.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PHLX–98–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2249 Filed 1–29–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40970; File No. SR–Phlx–98–44]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc. to Amend Exchange Rule 1080 To Permit Automatic Execution of U.S. Top 100 Index Options Orders for the Accounts of Broker-Dealers

January 25, 1999.

I. Introduction

On October 20, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] In its proposal, the Phlx seeks to allow automatic execution of broker-dealer orders in U.S. Top 100 Index ("TPX") options through the Phlx's AUTO–X system. Notice of the proposal was published in the **Federal Register** on November 23, 1998.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

AUTOM is Phlx's electronic order routing system for options orders. Until 1995, only public customer orders were eligible for routing through AUTOM.[4] For purposes of AUTOM eligibility, public customer orders do not include any order entered for the account of a broker-dealer or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. In 1995, however, the Commission approved the Exchange's proposal to route Phlx member and non-member broker-dealer orders for TPX options through AUTOM.[5] The Phlx limits AUTOM routed public customer and broker-dealer TPX orders to 500 contracts.[6] Currently, when a broker-dealer TPX order is entered into AUTOM, the order is executed manually by the specialist.

AUTO–X is a feature of AUTOM that automatically executes public customer orders. AUTO–X currently is limited to public customer orders. AUTO–X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Presently, public customer orders for up to 50 contracts can be automatically executed through AUTO–X.[7]

The Phlx seeks to amend Rule 1080 to allow broker-dealer orders for TPX options contracts to be automatically executed through AUTO–X. In making this change, the Phlx will still limit the size of orders that can be automatically executed through AUTO–X to 50 contracts. The Phlx believes that the change will help attract more broker-dealer orders in TPX options. According to the Phlx, TPX options appeal more to broker-dealers because these options are high-priced.[8] Further, the Phlx believes that permitting broker-dealer TPX orders to be executed via AUTO–X will allow broker-dealers to benefit from prompt and efficient automatic execution and reporting.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 and 11A.[9] Specifically, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[10] which requires that the rules of an Exchange be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Moreover, the Commission believes that the proposal is consistent with section 11A(a)(1)(C)(i) of the Act,[11] stating Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure economically efficient execution of securities transactions.

The Commission believes that allowing broker-dealers to use AUTO–X for TPX options orders may facilitate the efficient handling and reporting of broker-dealer orders in TPX options, thereby improving TPX order processing and turnaround time. In addition, by providing prompt execution for broker-dealer TPX orders, the proposal may help to attract broker-dealer TPX orders, and thus help to improve the depth and liquidity of the market for TPX options.

The Phlx has represented to the Commission that the Exchange anticipates that its systems are capable of processing potential resulting increased order flow through the AUTO–X system and that public customer TPX orders will continue to be executed efficiently through the AUTO–X system.[12] According to the Exchange, TPX options appeal more to broker-dealers because these options are high-priced relative to other options.[13] The Commission believes that it is reasonable for the Phlx to allow automatic execution of broker-dealer orders in TPX option contracts as long as retail customers are not adversely affected. The Commission anticipates that the Exchange will monitor its AUTO–X system in light of the addition of broker-dealer TPX orders and will implement necessary systems enhancement should they be necessary to accommodate any increase in volume resulting from this proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–98–44) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2300 Filed 1–29–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40681 (Nov. 16, 1998), 63 FR 64751 (File No. SR–Phlx–98–44).

[4] *See* Securities Exchange Act Release No. 36429 (Oct. 27, 1995), 60 FR 55874 (Nov. 3, 1995) (File No. SR–Phlx–95–35) (order approving the Phlx's proposal seeking to route broker-dealer TPX options orders through AUTOM).

[5] Pursuant to Phlx Rule 1080(b)(i), with the exception of orders for TPX options contracts, broker-dealer orders are not eligible for AUTOM.

[6] Phlx Rule 1080(b)(ii).

[7] Phlx Rule 1080(c).

[8] *See* letter from Richard Rudolph, Counsel, Phlx, to Joe Corcoran, Attorney, Division of Market Regulation, Commission, dated December 22, 1998 ("Phlx Letter"). According to the Phlx, the average price for a TPX option contract during the third quarter of 1998 was $4,165.62.

[9] 15 U.S.C. 78f and 78k–1.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1)(C)(i).

[12] *See* Phlx Letter, *supra* note 8.

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before April 2, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, SW, Suite 5000, Washington, DC 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Verification of Damaged Property".

Type of Request: Revision of a currently approved collection.

Form No's: 5C, 739, 1632.

Description of Respondents: Applicants requesting SBA Disaster Home Loans.

Annual Responses: 63,205.

Annual Burden: 115,665.

Comments: Send all comments regarding this information collection to, Bridget Dusenbury, Disaster Resource Specialist, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW, Suite 6500, Washington, DC 20416. Phone No: 202–205–6734.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: January 27, 1999.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–2312 Filed 1–29–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 99–1(2)]

Florez on Behalf of Wallace v. Callahan; Supplemental Security Income—Deeming of Income From a Stepparent to a Child When the Natural Parent Is Not Living in the Same Household—Title XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 99-1(2).

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1695.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 522(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Second Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after February 1, 1999. If we made a determination or decision on your application for benefits between September 29, 1998, the date of the Court of Appeals' decision, and February 1, 1999, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to your claim if you first demonstrate, pursuant to 416.1485(b), that application of the Ruling could change our prior determination or decision. If you file a request for application of an Acquiescence Ruling within the 60-day appeal period for requesting administrative review and we deny that request, we shall extend the time to file an appeal on the merits of the claim to 60 days after the date that we deny the request for readjudication.

Additionally, after we receive a precedential circuit court decision and determine that an Acquiescence Ruling may be required, we will begin to identify those claims that are pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling is subsequently issued. When an Acquiescence Ruling is published, we will send a notice to those individuals whose claims we have identified which may be affected by the Acquiescence Ruling. It is not necessary for an individual to receive a notice in order to request application of an Acquiescence Ruling to their claim.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 416.1485(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001 Social Security - Disability Insurance; 96.006 - Supplemental Security Income.)

Dated: January 21, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 99-1(2)

Florez on Behalf of Wallace v. *Callahan*, 156 F.3d 438 (2d Cir. 1998)—Supplemental Security Income—Deeming of Income From a Stepparent to a Child When the Natural Parent is Not Living in the Same Household—Title XVI of the Social Security Act.

Issue: Whether a stepparent is considered an ineligible parent whose income is subject to deeming to a child eligible for Supplemental Security Income (SSI) when the natural or adoptive parent is not living in the same household.

Statute/Regulation/Ruling Citation: Section 1614 of the Social Security Act (42 U.S.C. 1382c), 20 CFR 416.1101, 416.1160, 416.1806.

Circuit: Second (Connecticut, New York and Vermont).

Florez on Behalf of Wallace v. *Callahan*, 156 F.3d 438 (2d Cir. 1998).

Applicability of Ruling: This Ruling applies to all determinations, including all post-eligibility determinations, or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: Raul Wallace was born on October 28, 1982. His natural father is deceased. His natural mother is married to Jorge Florez, the plaintiff, but she abandoned her husband and children in 1985. Mr. Florez later obtained full custody of Raul and an order of protection against Raul's mother that instructed her to stay away from the family residence and the plaintiff's place of business. Mr. Florez has unsuccessfully attempted to obtain a divorce from Raul's mother and remains married to her. Raul lived with

his stepfather until July 31, 1991, when Raul voluntarily began inpatient psychiatric treatments on a weekly basis from Monday afternoon through Friday morning. During the weekends he lived at the Florez apartment.

Mr. Florez filed an application, on behalf of Raul, for SSI based on disability on March 24, 1992. The Social Security Administration (SSA) determined that Raul satisfied the disability requirements of the Social Security Act (the Act) retroactive to August 1, 1989, based on an earlier application. SSA also determined that Raul was not eligible for any payments for the 16-month period between August 1989 and December 1990 because Mr. Florez' income was too high. Mr. Florez requested reconsideration of the benefit amount, which was denied on the grounds that his income as a stepparent was deemable to Raul. The plaintiff requested and received a hearing before an ALJ who found that SSA had correctly calculated the SSI benefits. After the Appeals Council denied the claimant's request for review, he sought judicial review but the district court affirmed SSA's application of the regulations providing for deeming a stepparent's income. Mr. Florez appealed this decision to the United States Court of Appeals for the Second Circuit.

Holding: The Second Circuit reversed in part the judgment of the district court and remanded the case with instructions to recalculate Raul's SSI benefits excluding the income earned by his stepfather. After reviewing SSA's regulations governing deeming of income and defining who is the spouse of a natural or adoptive parent, the court held that 20 CFR 416.1101 creates a two-part test for determining whether a spouse, who lives with a child eligible for SSI, is an ineligible parent for deeming purposes under 20 CFR 416.1160:

(1) the spouse must live with the natural or adoptive parent; and

(2) the relationship must be as husband or wife, as further defined in 20 CFR 416.1806.

Under the Second Circuit's construction of this regulation, it found that Mr. Florez's marriage to Raul's mother ended, for all intents and purposes, when she abandoned the family home. Although the court recognized SSA's concern about holding a natural parent financially responsible for contributing to the care of a child eligible for SSI, the court believed that SSA should not discourage a stepparent from voluntarily accepting such financial responsibility, when the natural parent has abandoned the child, by reducing the stepchild's SSI benefits. The court concluded that the plain language of the regulations (20 CFR 416.1101 and 416.1806), supported by the legislative history of the Act, required SSA to exclude a stepparent's income from the calculations used to determine the amount of a child's SSI benefits when the natural parent no longer lives in the family home.

Statement as to How Florez Differs From SSA's Interpretation of the Regulations

Section 1614(f) of the Act, as implemented by the regulations, provides that, when determining SSI eligibility and the benefit amount of a child under age 18, the child's income shall be deemed to include the income of a parent (or the spouse of such parent) who is ineligible for SSI benefits and is living in the same household as the child. Under SSA's regulations, 20 CFR 416.1160 defines an ineligible parent as "a natural or adoptive parent, or the spouse (as defined in §416.1101) of a natural or adoptive parent, who lives with [the child] and is not eligible for SSI benefits." Spouse is defined in 20 CFR 416.1101 as "someone who lives with another person as that person's husband or wife. (See §416.1806)" Under 20 CFR 416.1806(a)(1), SSA considers someone to be a person's spouse for SSI purposes if they are legally married under State law.

SSA considers 20 CFR 416.1806 to be the controlling regulation for determining who is a person's spouse for SSI purposes and for deeming of income. Accordingly, SSA deems the income of a stepparent to a child eligible for SSI benefits living in the same household when the stepparent is legally married under State law to that child's natural or adoptive parent, even if the natural or adoptive parent is not living in the same household.

The Second Circuit held that 20 CFR 416.1101 is the controlling regulation for the purpose of determining who is a person's spouse under the deeming regulations. The court concluded that, under the two-part test created by this regulation, a stepparent is not an ineligible spouse and deeming of income does not apply when the natural parent no longer lives in the family home.

Explanation of How SSA Will Apply The Florez Decision Within the Circuit

This Ruling applies only where the SSI claimant is an eligible child who resides in Connecticut, New York or Vermont at the time of the determination (including all post-eligibility determinations) or decision at any administrative level of review, i.e., initial, reconsideration, ALJ hearing or Appeals Council.

When deeming income from an ineligible parent who is a stepparent to reduce a child's SSI benefit, adjudicators must exclude the income of the stepparent from the deeming calculation if the natural or adoptive parent is not living in the same household with that child and stepparent. Adjudicators will continue to apply SSA's other rules for applying and calculating deeming of income, including the rules regarding temporary absences.

[FR Doc. 99–2302 Filed 1–29–99; 8:45 am]
BILLING CODE 4190–29–F

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published 26 January 1999 (Docket No. 991804).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m. (EST), Wednesday, January 27, 1999.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: Chattanooga Office Complex, 110 Market Street, Chattanooga, Tennessee.

CHANGES IN THE MEETING: Each member of the TVA Board of Directors has approved the addition of the following items to be previously announced agenda:

Agenda Items: F—Unclassified

F1. Authority to license TVA intellectual property.

F2. Participation in capital funding entities.

CONTACT PERSON FOR MORE INFORMATION: Please call TVA Media Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available through TVA's Washington Office at (202) 898–2999.

Edward S. Christenbury,

General Counsel and Secretary to the Board.

[FR Doc. 99–2466 Filed 1–28–99; 3:34 pm]
BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending January 22, 1999

The following Agreements were filed with the Department of Transportation

under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5015.

Date Filed: January 19, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC31 Telex Mail Vote 985, Japan-Hawaii Spouse Fares—Reso 091p, Intended effective date: April 1, 1999.

Docket Number: OST–99–5017.

Date Filed: January 19, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC1 Telex Mail Vote 984, PEX fares between Argentina and Paraguay, Intended effective date: February 1, 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–2328 Filed 1–29–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending January 22, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–97–3187.

Date Filed: January 22, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: February 19, 1999.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V. pursuant to 49 U.S.C. Section 41302 and Subpart Q, applies for amendment and re-issuance of its foreign air carrier permit issued to it by Order 95–3–11 to permit TAESA to engage in scheduled air transportation of property and mail on the following Mexico-United States scheduled all-cargo routes Cancun, Mexico-Los Angeles, California; Cancun, Mexico-Miami, Florida.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–2329 Filed 1–29–99; 8:45 am]

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February 1, 1999

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 956

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Order Amending Marketing Agreement and Order No. 956; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket Nos. 98AMA–FV–956–1; FV98–956–1]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Order Amending Marketing Agreement and Order No. 956

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order (order) for sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The amendments were submitted by the Walla Walla Sweet Onion Committee (committee), the agency responsible for local administration of the order. The changes broaden the scope of the order by adding authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, a minor change is made in the committee's name. These changes were favored by Walla Walla Sweet Onion growers in a mail referendum and will improve the operation and functioning of the Walla Walla Sweet Onion marketing order program.

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Curry, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, or Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, DC 20250–0200; telephone: (202) 720–2491, or Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 205–6632.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 25, 1998, and published in the April 1, 1998, issue of the **Federal Register** (63 FR 15787). Recommended Decision and Opportunity to File Written Exceptions issued on September 17, 1998, and published in the **Federal Register** on September 23, 1998 (63 FR 50802). Secretary's Decision and Referendum Order issued November 13, 1998, and published in the **Federal Register** on November 19, 1998 (63 FR 64215).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Walla Walla, Washington, on April 7, 1998, to consider the proposed amendment of Marketing Agreement and Order No. 956, regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the committee and the U.S. Department of Agriculture.

The committee's proposals pertained to adding authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, the committee proposed changing its name from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposed to allow such changes as may be necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on September 17, 1998, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by October 23, 1998. None were received.

A Secretary's Decision and Referendum Order was issued on November 13, 1998, directing that a referendum be conducted during the period November 25 through December 10, 1998, among growers of Walla Walla sweet onions to determine whether they favored the proposed amendments to the order. In the referendum, both amendments were favored by more than two-thirds of the growers voting in the referendum by number and volume.

The amended marketing agreement was subsequently mailed to all Walla Walla sweet onion handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of Walla Walla sweet onions handled by all handlers during the representative period of June 1, 1997, through May 31, 1998.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that growers and handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1996–97 crop year, approximately 33 handlers were regulated under Marketing Order No. 956. In addition, there were about 64 producers of Walla Walla sweet onions in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Twenty-four of the 33 handlers are also producers who handle their own onions. There are seven commercial packinghouses that pack approximately 90 percent of all Walla Walla sweet onions. In the 1996–97 season, the average f.o.b. price for Walla Walla sweet onions was $8.70 per 50-pound sack. Total production for the 1996–97 season was 666,000 50-pound containers. A handler who packed over 550,000 50-pound units would exceed the SBA definition of a small handler. According to record evidence, there are two dominant handlers in the industry and at least one of these handlers could be considered a large handler under this definition. The record revealed that all Walla Walla sweet onion growers would be considered small producers. Therefore, it can be concluded that the majority of growers and handlers would be considered small businesses.

The marketing order, promulgated in 1995, currently defines the production area where onions must be grown to be designated as Walla Walla sweet onions. It also provides the authority to fund research and promotion activities through assessments on handlers, as well as establish container regulations. Although the marketing order as currently written addresses some of the marketing problems facing the industry, the Walla Walla sweet onion industry continues to experience marketing problems.

Economic data presented on the record indicates that the acres planted have decreased from 1,800 in 1988 to 900 acres planted in 1997. This is a 50% decrease since 1988. Similarly, acres harvested have decreased from 1,600 in 1988 to 900 in 1997.

In addition, the data shows production has decreased dramatically from 1,280,000 50-pound containers in 1988 to 666,000 50-pound containers in 1997. This is a 48% decrease in production in the last 10 years.

Total crop values have declined from $9,345,000 in 1989 to $5,794,000 in 1997. This is a 38% decrease in total crop values in 9 years.

U.S. per capita consumption of fresh onions has increased from 10.7 pounds per year in 1981 to 17.5 pounds per year in 1997. This is a 64% increase in per capita use of fresh onions, while the production of Walla Walla sweet onions has decreased. This increased consumption shows that this industry has the potential to improve.

In addition, economic data shows that competition from other sweet onion producing areas has increased dramatically. Producers of Walla Walla sweet onions have lost market share to other sweet onions such as Georgia Vidalia onions, California Imperial onions, Hawaii Maui Sweets, New Mex. Sweets from New Mexico, and Texas hybrid 1015Y's.

The acres harvested and production of Vidalia onions have increased by 236% and 447%, respectively, since 1989. The Vidalia sweet onion industry's normal harvesting and shipping season begins in the middle of April and ends in late July. The Vidalia onion industry has been successful in extending its shipping season into September and October by establishing controlled atmosphere storage capabilities. This may be having a price dampening effect on Walla Walla sweet onions because of the overlap of shipping seasons and direct competition caused by the extended season of Vidalia onions.

Of the six sweet onion-producing areas in the U.S., Walla Walla sweet onion prices are lower than Maui, Vidalia and Texas onions. In addition, the economic report presented on the record shows that Vidalia onions always receive higher prices than Walla Walla sweet onions with an average price differential of $5 per 50-pound container.

The Walla Walla sweet onion season begins in middle or late June and continues until the end of July. The shipping season lasts for approximately six weeks. Prices for Walla Walla sweet onions at the beginning of the season start relatively high. As the season progresses, prices generally fall. This seasonal price behavior has resulted in producers harvesting onions before they are fully matured. This has led to poor quality onions being sold on the market that make an unfavorable impression on consumers, supermarkets, and other outlets that handle Walla Walla sweet onions. In addition, this situation appears to have shortened the marketing season.

The quality at the beginning of the season has a tendency to set the market tone for the remainder of the season. If quality is high at the beginning of the season, this makes a favorable impression on buyers as well as consumers. With high quality onions at the start of the season, consumers are likely to become repeat customers. However, if quality is low at the beginning of the season, receivers as well as consumers are disappointed. Initial low quality will result in consumers shopping for alternative sweet onions and they will not be repeat purchasers.

Minimum quality and size requirements are established under marketing orders to ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns. The objective of implementing quality control and size provisions under marketing orders is to make the markets work more efficiently, improve quality, and to market preferred sizes. The use of quality and size standards through a grading scheme benefits consumers by assuring the buyers that they are getting high quality produce of desirable size. This helps build consumer demand in the long run. Minimum quality and size standards are deemed desirable because they prevent the shipment of poor quality produce, which ends up harming producers' ability to sell their product and consumers' willingness to buy.

The reputation of Walla Walla sweet onions has deteriorated over the recent years due to the poor quality of some of the onions marketed. Record evidence indicated that a surveillance project conducted during the 1997 harvest season by the Washington State Department of Agriculture on behalf of the committee noted that a significant amount of onions sold within the immediate Walla Walla area did not meet minimum U.S. standards. Walla Walla sweet onions usually meet at least U.S. No. 2 grade, but only a small volume meets U.S. No. 1 grade.

Establishing quality and size provisions under the Walla Walla sweet onion marketing order would provide an incentive for producers to allow their onions to fully mature, resulting in a higher quality of onion marketed. Establishing quality and size requirements would ensure consistent quality and acceptable sizes of onions throughout the season. This tends to benefit consumers through a higher quality of onion and benefits producers with a higher demand for their product. In the long run, high quality, seasonal produce builds name recognition and helps enhance demand.

The Walla Walla sweet onion industry has attempted to voluntarily implement quality control. Prior to implementation of the marketing order, the Walla Walla Sweet Onion Commission, a voluntary organization composed of producers and handlers, implemented quality rules for its members. These rules restricted the sale of U.S. No. 2 grade onions and culls from fresh market use, and included random inspections. Common defects that caused the onions to fail to meet these requirements were seed stems, immaturity, and decay. Because of the voluntary nature of these imposed regulations, this project was unsuccessful.

Currently, the marketing order allows only onions grown in the designated production area to be marketed as Walla

Walla sweet onions. Research activities as well as promotional activities are also authorized under the current order. Broadening the scope of the order by authorizing minimum quality and size requirements will add another marketing tool to help the industry solve marketing problems, especially those related to quality. Minimum quality and size requirements would allow the industry to improve their name recognition with a quality product. Amending the order by authorizing the establishment of minimum quality and size requirements will help to expand markets and deliver a more consistent quality product of desirable size to the consumer.

Without any quality and size provisions in place, industry members can place substandard product on the market that is severely impacting the credibility and marketability of all Walla Walla sweet onions. Because of these current practices, the industry is experiencing problems establishing and maintaining markets in areas that have traditionally been strong. The industry has lost markets due to poor quality, short shelf life and increased competition from other sweet onion producing areas.

Minimum quality and size requirements would help alleviate some of these problems and work to improve producer returns by strengthening consumer and retail demand. Mandatory inspection requirements would make all producers and handlers responsible for the quality of the industry's output. Poor quality would not be mixed with better quality. The record revealed that most handlers are already sorting by size. The Department's Market News Service reports prices for jumbo and medium onions, which further indicates that handlers are sorting by size. Most handlers also pack to a certain quality standards, usually based on U.S. grade standards. Therefore, handlers would not be required to drastically modify their packing operations or purchase new equipment. The committee considered grower and handler costs very seriously and even discussed the cost burden between larger and smaller handlers. The minimum quantity exemption should address such concerns.

Growers may be faced with a potential cost item related to improved equipment that could be needed in order to meet minimum quality or size standards. A handler testified that growers could update their mechanical seeders so that the seeds could be planted equidistant from each other, which would result in onions with better shape, more uniformity and larger size. There are increasingly more growers that are purchasing this equipment or contracting with other growers that have the seeders. Seed coating or pelleting is another alternative for better seed placement, which is less expensive than the purchase of a highly advanced seeder. The seed coating adds a clay-like material to the exterior of the seed, so that the seeders do not cause two or three seeds to drop at the same time. It appears that costs associated with growers modifying their cultural practices to abide by minimum quality and size standards would be minimal and offset by improved producer returns.

A witness for the committee testified that the benefits of including the authority for minimum quality and size standards would far outweigh any negative impact to producers and handlers and the industry could start rebuilding markets and creating new ones.

The Federal-State Inspection Service Office that is responsible for inspecting Walla Walla sweet onions is currently located in Pasco, Washington, less than 50 miles from Walla Walla. According to record testimony, inspectors would be staffed in Walla Walla during the season if mandatory inspection was implemented.

Inspection costs in the State of Washington are computed on an hourly basis or a per unit basis, whichever is greater. If the hourly rate is used, the rate applies to the total number of the inspector's hours, including travel time. Depending upon the workload, inspectors could be based in Walla Walla during the season, which would lessen travel costs. Record testimony indicated that the hourly inspection rate is $26, with a two-hour minimum, or $52, for inspection or $208 for an eight-hour day. However, the State of Washington Agriculture Code regulations appearing at Chapter 16–400–210 WAC provide that the hourly inspection rate is $23, with no minimum time required. In accordance with the Rules of Practice and Procedure governing the formulation of marketing agreements and orders (7 CFR Part 900), official notice has been taken of the fees set forth in the State of Washington regulations at Chapter 16–400–210 WAC. The fee schedule will be used in our analysis. On a per unit basis, the inspection fee is $.04 per 50-pound unit.

As stated above, inspection costs are computed on an hourly basis or a per unit basis, whichever is greater. For example, if an inspection was requested on 100 50-pound containers and the inspection lasted one hour, the per unit cost for inspecting the lot would be $4, and the per hour cost would be $23. Under this scenario, the handler would be charged $23 for the inspection, the greater amount. This would average $.23 per unit.

Under the current fee schedule, it would be necessary for the inspection office to inspect over 4,600 50-pound units of onions per day in order to maintain the fee at $.04 per 50-pound unit. If handlers do not handle over 4,600 50-pound units per day, their inspection costs would be computed at the hourly rate. Even for handlers who normally handle that volume, there would be times during the season, particularly in the beginning and end of the season, where the volume of onions inspected would not be at a level where the $.04 per 50-pound unit could be used. The fees would convert to the hourly rate.

Record testimony indicated that the committee is concerned with increased costs associated with these proposals, particularly, the costs of inspection. The committee discussed options to address these concerns and developed two remedies intended to alleviate the cost burdens on small handlers. First, the committee recommended adding authority in the order for the committee to contract with the Federal-State Inspection Service and pay for all inspections of Walla Walla sweet onions. Second, the committee recommended an exemption from inspection for handlers of small lots of onions.

Under the scenario of contracting with the inspection service, each handler would pay a separate assessment for inspection costs at a per unit price. All handlers would pay the same price per bag for inspection, whether exempt or not. Under such a contract, the larger volume handlers would pay more of the inspection costs because they handle so many more units of onions. In this manner, the burden of inspection costs for smaller volume handlers could be minimized. This was discussed with representatives of the inspection service.

A Washington State inspector confirmed that travel costs would be lessened if an inspector was based in Walla Walla. However, the inspector indicated that $.04 per 50-pound unit would be the minimum cost for the inspection. Costs could increase depending on the workload. If the workload was light, such as late in the season when the quantities of onions are diminishing, it could be more costly for an inspector to conduct inspections on

smaller lots. It could be necessary to convert the cost to an hourly cost, which would exceed $.04 per 50-pound unit.

There have been discussions regarding contractual relationships with the inspection service but factors such as inspection of small quantities would need to be addressed in the contract. The inspector testified that the inspection office must cover the cost of inspectors and if there was not a full days work in Walla Walla, the inspector would need to travel elsewhere. These situations would need to be factored into any contractual agreements. A witness for the proposals testified that because of the variables associated with inspecting Walla Walla sweet onions, it is estimated the cost of inspection would range between $.04 and $.06 per 50-pound unit if the per unit price were used in a contractual agreement. The committee could consider only contracting with the inspection service during the busiest parts of the season in order to keep the inspection cost lower. The committee could also consider only regulating for part of the season.

Another option the committee developed to address the issues of costs on small handlers would provide an exemption for handlers who handle up to, but not more than 2,000 pounds of Walla Walla sweet onions per shipment. These handlers would be exempt from inspection requirements, but these exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. Handlers could make more than one exempt shipment per day as long as each shipment was at or below the 2,000-pound exemption. These exempt onions would not be exempt from assessments. The committee would be able to recommend modification of the minimum quantity exemption through informal rulemaking, if necessary. The committee would be responsible for monitoring compliance with this proposal. If necessary, the committee would conduct spot inspections at the committee's expense to ensure that inspection-exempt onions were meeting the established quality and size regulations.

Record testimony indicated the implementation of these amendments could necessitate that the committee increase the manager's work hours in order to monitor compliance with these provisions. This could result in the need to recommend an increase in the marketing order assessment rate. However, an increase is not expected because the increased production, demand, and expanded markets would help to supply ample funds to administer the program without increasing the assessment rate.

When the committee was considering amending the marketing order to include quality and size requirements, a compliance subcommittee was appointed to address concerns of small producers and handlers. The subcommittee is composed of producers and handlers who developed the minimum quantity exemption provisions of the committee's proposals. The subcommittee considered different options during their deliberations and determined that the amendments set forth in this rule are the most advantageous to small growers and handlers while still allowing quality objectives to be met.

Inspection requirements would not apply to shipments of Walla Walla sweet onions that are 2,000 pounds or less. However, these onions would be required to meet any minimum requirements in effect at the time of shipment. This would be enforced through periodic spot examinations conducted by the committee. A general consensus among industry members was that establishing a minimum quantity exemption was necessary to relieve any undue financial burden on small volume handlers. The committee would be responsible for monitoring compliance by conducting spot inspections, if necessary, at the committee's expense. It is estimated that compliance activities could increase administrative costs for the committee by $3,000, or a 3 percent increase in the current committee budget.

As previously stated, 7 commercial handlers pack 90 percent of the industry's crop. Approximately 26 handlers handle the remaining 10 percent. With the 2,000 pound inspection exemption implemented, it is estimated that 50 percent of the remaining 26 handlers would be exempt from mandatory inspection. This represents approximately 42 acres or 25,000 50-lb. units, which is 5 percent of the crop. Therefore, it appears that at least 13 handlers would be exempt from inspection, while 95 percent of the production would still be inspected. This amendment would minimize the impact on small handlers without jeopardizing quality objectives.

These exempt onions would not be exempt from assessments. In addition, exempt onions would still be required to meet the minimum quality and size requirements established by the committee and approved by the Secretary. Committee staff would conduct spot inspections to monitor the exempt handlers' activities. The amendment allows for modification of this provision depending on industry needs. The committee does not believe it would ever recommend not having a minimum quantity exemption.

A witness for the amendments testified that the only cost increase would be the cost of inspection. He further stated that the cost of inspection is a minor cost item, compared to labor and growing costs. Walla Walla sweet onion production is labor-intensive and high cost. A premium price is necessary for the onions to pay the costs of production.

This witness testified that a grower normally has $1,800 to $2,000 an acre invested in production prior to harvest. Using this estimate and assuming a yield of 190 50-pound units per acre, inspection costs (estimated at $.04 to $.06 per 50-pound unit) are estimated to be $7.60 to $11.40 per acre, or an estimated 0.4 to 0.6 percent increase of pre-harvest cost.

Following is an example of possible costs associated with implementing quality and size standards. Testimony revealed that if a U.S. Commercial grade were established as a minimum quality standard, 5 to 10 percent of the onions would not meet that grade and would have to be disposed of in secondary outlets. Using last year's production figures (1996–97), 666,000 50-pound containers were produced for sale. If 10 percent would not make U.S. Commercial grade, 66,600 50-pound containers would need to be disposed in secondary outlets. It is estimated that 5 percent of the crop, or 33,300 pounds, would be exempt from inspection. Therefore, approximately 566,100 50-pound containers would need to be inspected. Using the high inspection cost estimate of $.06 per container, inspection costs for the entire crop would be $33,966. Seven commercial packing houses pack 90 percent of the crop which would account for $30,569.40 of the costs. The remaining 26 small handlers would be responsible for the remaining inspection costs of $3,396.60, or approximately $131 per handler for inspection fees for that season.

Minimum quality and size standards would maintain the integrity of the product so that the commodities' overall quality image is not diminished by a low quality sample. The principle objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty

between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns.

The ability of producers of Walla Walla sweet onions to increase the demand for their product depends on their ability to differentiate their product and to create a favorable image (including quality) with consumers. In recent years, this favorable image has deteriorated. Culling out low quality produce of undesirable size, even though the demand for it may be elastic, may increase total returns. The price increase from the higher quality sold is expected to be large enough to offset the effect of the reduced quantity sold, even after the costs of culling are covered.

Record evidence also shows that the collection of information under the marketing order would not be effected by these amendments to the marketing order. No increase in information collection will occur with the adoption of the amendments alone. However, if these amendments are implemented and the committee recommends regulations to impose quality and size requirements, it is possible that additional information would be needed from handlers to aid in administering the program effectively. It is also possible that because inspection certificates would be received by the committee, needed information could be collected from the certificates and the information collection requirements could be reduced. Whatever information collection changes result from any regulations, the committee and the Department would submit such changes to the Office of Management and Budget (OMB) for approval. Current information collection requirements for Part 956 are approved by OMB under OMB number 0581–0172.

The amendment to modify the name of the committee from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee will have no regulatory impact on handlers or growers.

Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

While the implementation of quality and size requirements may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of these costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the meetings regarding these amendments as well as the hearing date were widely publicized throughout the Walla Walla sweet onion production area industry and all interested persons were invited to attend the meetings and the hearing and participate in committee deliberations on all issues. All committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

Civil Justice Reform

The amendments contained in this rule have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 956 (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby amended, regulate the handling of sweet onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as hereby amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as hereby amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of sweet onions grown in the production area; and

(5) All handling of sweet onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make these order amendments effective one day after publication. A later effective date would unnecessarily delay the implementation of the amendments and the improvement in operation of the marketing order program. The committee, producers and handlers need as much time as possible to make plans to implement the amended order and discuss any needed changes to the regulations and committee operating procedures. Furthermore, the fiscal period for 1999 begins on June 1.

In view of the foregoing, it is hereby found and determined that good causes exists for making these amendments effective one day after publication, and that it would be contrary to the public interest to delay the effective date of these amendments for 30 days after publication in the **Federal Register** (5 U.S.C. 553).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping Walla Walla sweet onions covered by the order as hereby amended) who, during the period June 1, 1997, through May 31, 1998, handled 50 percent or more of the volume of such onions covered by said order, as hereby amended, have signed an amended marketing agreement; and

(2) The issuance of this amendatory order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period June 1, 1997, through May 31, 1998 (which has been deemed to be a representative period), have been engaged within the production area in the production of such onions for fresh market.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order amendments contained in the Secretary's Decision issued by the Administrator on November 13, 1998, and published in the **Federal Register** on November 19, 1998, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 956 is amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 956, § 956.14 is added and reserved, and new §§ 956.15 and 956.16 are added to read as follows:

§ 956.15 Grade and size.

Grade means any of the officially established grades of onions, including maturity requirements and *size* means any of the officially established sizes of onions as set forth in the United States standards for grades of onions or amendments thereto, or modifications thereof, or variations based thereon, or States of Washington or Oregon standards of onions or amendments thereto or modifications thereof or variations based thereon, recommended by the committee and approved by the Secretary.

§ 956.16 Pack.

Pack means a quantity of Walla Walla Sweet Onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

§ 956.20 [Amended]

3. In § 956.20, paragraph (a) is amended by adding the word "Marketing" immediately following the word "Onion" in the first sentence.

4. In part 956, a new § 956.60 is added to read as follows:

§ 956.60 Marketing policy.

(a) *Preparation.* Prior to each marketing season, the committee shall consider and prepare a proposed policy for the marketing of Walla Walla Sweet Onions. In developing its marketing policy, the committee shall investigate relevant supply and demand conditions for Walla Walla Sweet Onions. In such investigations, the committee shall give appropriate consideration to the following:

(1) Market prices for sweet onions, including prices by variety, grade, size, quality, and maturity, and by different packs;

(2) Supply of sweet onions by grade, size, quality, maturity, and variety in the production area and in other sweet onion producing sections;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for Walla Walla Sweet Onions;

(5) Orderly marketing of Walla Walla Sweet Onions as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy, and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare an amended or revised marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

5. Section 956.62 is revised to read as follows:

§ 956.62 Issuance of regulations.

(a) Except as otherwise provided in this part, the Secretary shall limit the shipment of Walla Walla Sweet Onions by any one or more of the methods hereinafter set forth whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities of any or all varieties of Walla Walla Sweet Onions, or combinations thereof, during any period or periods;

(2) Regulate the handling of particular grades, sizes, qualities, or maturities of Walla Walla Sweet Onions differently, for different varieties or packs, or for any combination of the foregoing, during any period or periods;

(3) Provide a method, through rules and regulations issued pursuant to this part, for fixing the size, capacity, weight, dimensions, markings or pack of the container or containers, which may

be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof;

(4) Regulate the handling of Walla Walla Sweet Onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this part whenever the Secretary finds that such amendment would tend to effectuate the declared policy of the Act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever the Secretary finds that such regulation or amendment obstructs or no longer tends to effectuate the declared policy of the Act.

6. Section 956.64 is revised to read as follows:

§ 956.64 Minimum quantities.

During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this part, each handler may handle up to, but not to exceed, 2,000 pounds of Walla Walla Sweet Onions per shipment without regard to the inspection requirements of this part: *Provided*, That such Walla Walla Sweet Onion shipments meet the minimum requirements in effect at the time of the shipment pursuant to § 956.62. The committee, with the approval of the Secretary, may recommend modifications to this section and the establishment of such other minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, 956.63, and 956.70, or any combination thereof.

7. In part 956, a new center heading and § 956.70 are added to read as follows:

Inspection

§ 956.70 Inspection and certification.

(a) During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this subpart, no handler shall handle Walla Walla Sweet Onions unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to §§ 956.63 or 956.64, or both. Upon recommendation of the committee, with approval of the Secretary, inspection providers and certification requirements may be modified to facilitate the handling of Walla Walla Sweet Onions.

(b) Regrading, resorting, or repacking any lot of Walla Walla Sweet Onions shall invalidate prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship Walla Walla Sweet Onions after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided*, That such inspection requirements on regraded, resorted, or repacked Walla Walla Sweet Onions may be modified, suspended, or terminated under rules and regulations recommended by the committee, and approved by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, all Walla Walla Sweet Onions that are required to be inspected and certified in accordance with this section shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of the Federal-State or Federal inspector, or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When Walla Walla Sweet Onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may enter into an agreement with an inspection service with respect to the costs of the inspection as provided by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

Dated: January 26, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

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Part III

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 1999–2000 for a Center and Certain Projects.

SUMMARY: The Secretary proposes funding priorities for one Rehabilitation Research and Training Center (RRTC) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1999–2000. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before March 3, 1999.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3418, Switzer Building, Washington, DC 20202–2645. Comments may also be sent through the Internet: comments@ed.gov

You must include the term "NIDRR Center and Projects Proposed Priorities" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains proposed priorities under the Disability and Rehabilitation Research Projects and Centers Program for one RRTC related to health and wellness for persons with long-term disabilities, and two DRRPs related to: health care services for persons with disabilities; and medical rehabilitation services for persons with disabilities. There are references in the proposed priorities to NIDRR's proposed Long-Range Plan (LRP). The proposed LRP can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/announcements/1998-4/102698a.html

These proposed priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following the publication of the notice of final priorities.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this priority.

Proposed Priority 1: Health and Wellness for Persons With Long-term Disabilities

Introduction

Chapter Four of NIDRR's proposed LRP (63 FR 57190–57219) focuses on maximizing health and function for persons with disabilities. Health maintenance for persons with disabilities includes not only access to care for routine health problems and appropriate specialty care including medical rehabilitation, but also participation in health promotion and wellness activities.

The National Center for Health Statistics defined long-term disabilities as "long-term reduction in activity resulting from chronic disease or impairment." For the purpose of this priority, long-term disabilities include cerebral palsy, multiple sclerosis, post-polio, amputation, and spinal cord injury. This center will assess the health maintenance and promotion practices of persons with long-term disabilities. NIDRR expects this research to clarify whether specialized assessment and health promotion activities are required for persons with long-term disabilities, and how health promotion activities affect the incidence of secondary conditions.

For the purpose of this priority, health promotion strategies include alternative therapies (e.g., therapeutic massage, acupuncture), stress management practices, physical exercise, nutrition, and other activities designed to promote healthy lifestyle and social well-being. These strategies are vitally important in maintaining health and wellness. NIDRR expects the RRTC, through its training and dissemination activities, to encourage self-directed health promotion activities.

Proposed Priority

The Secretary proposes to establish an RRTC for the purpose of developing strategies for health maintenance and reducing secondary conditions for persons with long-term disabilities. The RRTC must:

(1) Evaluate health assessment definitions, policies and practices, and measurement methodologies and instruments, and describe their impact on health promotion activities for persons with long-term disabilities;

(2) Evaluate the impact of selected health maintenance strategies on the incidence and severity of secondary conditions and other outcomes such as function, independence, general health status, and quality of life;

(3) Identify and evaluate best practices in health promotion activities for persons with long-term disabilities;

(4) Provide training on: (i) research methodology and applied research experience; and (ii) knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other parties, as appropriate;

(5) Develop informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties;

(6) Involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;

(7) Conduct a conference on the findings of the RRTC and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant; and

(8) Coordinate with other entities carrying out related research or training activities.

In carrying out these purposes, the RRTC must coordinate with health and wellness research and demonstration activities sponsored by the National Center on Medical Rehabilitation Research, the Department of Veterans Affairs, and the Centers for Disease Control and Prevention.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Proposed Research Priorities in Health Care and Medical Rehabilitation Services for Persons With Disabilities

Introduction

Chapter 4 of NIDRR's proposed LRP (63 FR 57202) discusses the health care service and medical rehabilitation service needs of persons with disabilities. The demand for these services is expected to continue to grow in the coming decades because of increased potential for survival after trauma and disease, prevalence of disability related to the general aging of the population, and the incidence of persons with disabilities acquiring secondary disabilities or chronic conditions. NIDRR proposes to establish a research agenda that examines access to the continuum of health care services, and changes in medical rehabilitation service systems, including demands that new populations of persons with disabilities are placing on medical rehabilitation service systems.

There has been insufficient research on the access of persons with disabilities to the continuum of health care services. Access to this continuum, including primary, acute, and long-term health care services over the course of a lifetime, bears directly on quality of life issues. By developing new knowledge about access to the continuum of health care services for persons with disability, NIDRR expects the DRRP on health care services to contribute to persons with disabilities maintaining their health and decreasing the occurrence of secondary conditions.

Medical rehabilitation service systems are changing in response to a number of factors. One major factor is the rise of managed care as the dominant form of organization and payment for health care services, including medical rehabilitation services. In addition, as discussed in the proposed LRP, new populations of persons with disabilities are emerging and placing new demands on medical rehabilitation service systems. NIDRR expects the DRRP on medical rehabilitation services to generate new knowledge about these changes in order to assist service providers and consumers to achieve desired rehabilitation outcomes. For the purpose of the proposed priority, emergent disabilities include, but are not limited to, AIDS, Attention Deficit Hyperactivity Disorder, violence-induced neurological damage, repetitive motion syndromes, childhood asthma,

drug addiction, and environmental illnesses.

Proposed Priority 2: Health Care Services for Persons With Disabilities

The Secretary proposes to fund a DRRP to improve the continuum of health care services for persons with disabilities over their lifetime. The DRRP must:

(1) Analyze the access of persons with disabilities to the continuum of health care services and identify successful service delivery strategies and barriers to access to the continuum; and

(2) Based on paragraph (1), develop strategies to improve access to the continuum of health care services.

In carrying out the purposes of the priority, the project must:

- Address the health care needs of persons with disabilities of all ages; and
- Coordinate with the RRTC on Managed Care for Persons with Disabilities.

Proposed Priority 3: Medical Rehabilitation Services for Persons With Disabilities

The Secretary proposes to establish a DRRP to improve medical rehabilitation services for persons with disabilities, especially those with emergent disabilities. The DRRP must:

(1) Describe the changes taking place in the delivery of medical rehabilitation services including, but not limited to, those related to the setting where services are provided, length of stay, qualifications of personnel, and payment systems; and

(2) Develop a methodology to analyze the impact of these changes on outcomes;

(3) Identify the nature and extent of the need for medical rehabilitation services by persons with emergent disabilities;

(4) Analyze persons with emergent disabilities' access to medical rehabilitation services; and

(5) Identify strategies to improve access by persons with emergent disabilities to medical rehabilitation services.

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Note: The official version of this document is the document published in the **Federal Register**.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3424, Switzer Building, 330 C Street S.W., Washington, D.C., between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

Dated: January 26, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–2248 Filed 1–29–99; 8:45 am]

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Monday
February 1, 1999

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Proposed Comprehensive Plan for Fiscal Year 1999; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1204]

Proposed Comprehensive Plan for Fiscal Year 1999

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of proposed program plan for fiscal year 1999.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Comprehensive Plan for fiscal year (FY) 1999.

DATES: Comments must be received on or before March 18, 1999.

ADDRESSES: Comments may be mailed to Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 800 K Street, NW., Third Floor, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Eileen M. Garry, Director, Information Dissemination Unit, at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), the Administrator of OJJDP is publishing for public comment a Proposed Comprehensive Plan describing the program activities that OJJDP proposes to carry out during Fiscal Year (FY) 1999. The Proposed Comprehensive Plan includes activities authorized in Parts C and D of Title II of the JJDP Act, codified at 42 U.S.C. 5651–5665a, 5667, 5667a. Taking into consideration comments received on this Proposed Comprehensive Plan, the Administrator will develop and publish a Final Comprehensive Plan describing the particular program activities that OJJDP intends to fund during FY 1999, using in whole or in part funds appropriated under Parts C and D of Title II of the JJDP Act.

Notice of the official solicitation of grant or cooperative agreement applications for competitive programs to be funded under the Final Comprehensive Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Overview

After a steady climb in the rates of juvenile violent crime arrests, resulting in an increase of 60 percent between 1988 and 1994, the Nation experienced a substantial, 23 percent, decline in the 3 years between 1994 and 1997. More notable were the trends in the juvenile arrest rate for murder, which, after doubling between 1987 and 1993, dropped by more than 40 percent between 1993 and 1997. In addition, in the discussion of trends, it is important to note that in any given year less than ½ of 1 percent of this country's juveniles ages 10 to 17 are arrested for violent crime. Even though rates have been dropping, however, they are still more than 20 percent higher than the average rate of the years between 1980 and 1988.

The serious concerns engendered by the increase in violent juvenile crime in the 1980's led many States to enact legislation to address the changing nature of juvenile delinquency and to use a more accountability-based approach in dealing with serious violent juvenile offenders. At the same time, a national dialog began over how best to reform the juvenile justice system to make it more effective in preventing and intervening with juvenile delinquency and victimization and in protecting the public. In order to see this become a reality, the positive achievements of recent years should lead not to complacency, but to a renewed commitment to continue to pursue the research-based, comprehensive approach to problems of delinquency, violence, and victimization that OJJDP inaugurated with the publication in December 1993 of its Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.

It is encouraging that in recent years communities have begun to take on this work and make the commitment needed to make a comprehensive strategy a reality. More and more communities are coming to the understanding that a long-term, consistent commitment will be required to reduce juvenile delinquency, violence, and victimization and to ensure public safety.

This Proposed Comprehensive Plan describes OJJDP's plans for funding activities authorized under Part C (National Programs) and Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention) of Title II of the Juvenile Justice and Delinquency Prevention (JJDP) Act. The activities authorized under Parts C and D make up part of OJJDP's overall responsibilities under the JJDP Act. These responsibilities are outlined briefly below.

In 1974, the JJDP Act established OJJDP as the Federal agency responsible for providing national leadership, coordination, and resources to develop and implement effective methods to prevent and reduce juvenile delinquency and improve the quality of juvenile justice in the United States. OJJDP administers State Formula Grants under Part B of Title II, State Challenge Grants under Part E of Title II, and Community Prevention Grants under Title V of the JJDP Act to assist States and territories to fund a range of delinquency prevention, control, and juvenile justice system improvement activities. OJJDP provides support activities for these and other programs under statutory set-asides that are used to provide related research, evaluation, statistics, demonstration, and training and technical assistance services. OJJDP also funds Special Emphasis programs authorized under Part C; school and community-based gang prevention, intervention, and suppression programs under Part D; and mentoring programs under Part G of Title II of the JJDP Act; funds numerous research, evaluation, statistics, demonstration, training and technical assistance, and information dissemination activities through its National Institute for Juvenile Justice and Delinquency Prevention; administers the Drug Prevention Program, the Underage Drinking Program, the Safe Schools Initiative, a Native American discretionary grants program, the Safe Start: Children Exposed to Violence Initiative, and the Juvenile Accountability Incentive Block Grants program. OJJDP also coordinates Federal activities related to juvenile justice and delinquency prevention.

OJJDP serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention, coordinates the Concentration of Federal Efforts Program, and administers both the Title IV Missing and Exploited Children's Program and programs under the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. 13001 *et seq.*

OJJDP focuses its assistance on the development and implementation of programs with the greatest potential for reducing juvenile delinquency and improving the juvenile justice system by establishing partnerships with State and local governments, American Indian and Alaska Native jurisdictions, and public and private agencies and organizations. OJJDP performs its role of national leadership in juvenile justice and delinquency prevention through a cycle of activities. These include

collecting data and statistics to determine the extent and nature of issues affecting juveniles; funding research that can lead to demonstrations funded by discretionary grants; evaluating demonstration projects; sharing lessons learned from the field with practitioners through a range of information dissemination vehicles; providing seed money to States through formula and block grants to implement projects or reform efforts; and providing training and technical assistance to assist States and local governments to implement programs effectively and to maintain the integrity of model programs as they are being replicated.

It is important to note that OJJDP emphasizes coordination with other Office of Justice Program (OJP) components and other Federal agencies whenever possible to concentrate Federal resources to achieve maximum results from its programs and initiatives. This coordination, which is evidenced in many of the program descriptions that follow, includes joint funding, interagency agreements, and partnerships to develop, implement, and evaluate projects. More important, it is critical that the reader become familiar with the program activities of the other OJP Bureaus and Offices as reflected in the Office of Justice Programs Fiscal Year 1999 Program Plan. The work undertaken in OJP in many instances cuts across components and areas of practice; therefore, the work undertaken by OJJDP should be viewed as part of a larger OJP composite.

Considering all the factors discussed above, OJJDP has prepared this Proposed Comprehensive Plan for FY 1999 for activities authorized under Part C (National Programs) and Part D (Gang-Free Schools and Communities; Community-Based Gang Intervention) of Title II of the JJDP Act, as described in the following pages.

Fiscal Year 1999 Program Planning Activities

The OJJDP program planning process for FY 1999 is being coordinated with the Assistant Attorney General, Office of Justice Programs (OJP), and all OJP components. The program planning process involves the following steps:

- Internal review of existing programs by OJJDP staff.
- Internal review of proposed programs by OJP bureaus and Department of Justice components.
- Review of information and data from OJJDP grantees and contractors.
- Review of information contained in State comprehensive plans.
- Review of comments from youth service providers, juvenile justice practitioners, and researchers who provide input in proposed new program areas.
- Consideration of suggestions made by juvenile justice policymakers concerning State and local needs.
- Consideration of all comments received during the period of public comment on this Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed on the following pages continuation projects currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in FY 1999, either within an existing project period or through an extension for an additional project period. A grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives. The amount of award is based on prior projections, demonstrated need, and fund availability.

The only projects described in this Proposed Program Plan are those that would receive Part C or Part D FY 1999 continuation funding under project period or discretionary continuation assistance awards and programs that OJJDP is considering for new awards in FY 1999. Readers should note that they will not find descriptions of other OJJDP programs, including mentoring programs under Part G of Title II of the JJDP Act, the Drug Prevention Program, the Underage Drinking Program, the Safe Schools Initiative, the Native American discretionary grants program, the Safe Start: Children Exposed to Violence Initiative, and the Juvenile Accountability Incentive Block Grants program. When appropriate, separate solicitations are issued for applications for funding for programs that are not authorized under Parts C and D.

Consideration for continuation funding for an additional project period for previously funded discretionary grant programs will be based upon several factors, including the following:

- The extent to which the project responds to the applicable requirements of the JJDP Act.
- Responsiveness to OJJDP and Department of Justice FY 1999 program priorities.
- Compliance with performance requirements of prior grant years.
- Compliance with fiscal and regulatory requirements.
- Compliance with any special conditions of the award.
- Availability of funds (based on appropriations and program priority determinations).

In accordance with section 262 (d)(1)(B) of the JJDP Act, as amended, 42 U.S.C. 5665a, the competitive process for the award of Part C funds is not required if the Administrator makes a written determination waiving the competitive process:

1. With respect to programs to be carried out in areas in which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act codified at 42 U.S.C. 5121 *et seq.* that a major disaster or emergency exists, or
2. With respect to a particular program described in Part C that is uniquely qualified.

Program Goals

The three goals listed below constitute the major elements of a sound policy that ensures public safety and security while establishing effective juvenile justice and delinquency prevention programs. Underlying each of the goals is the overarching premise that their achievement is vital to protecting the long-term safety of the public from juvenile delinquency and violence.

- *Delinquency Prevention and Early Intervention.* OJJDP promotes delinquency prevention and early intervention efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers. While removing serious and violent juvenile offenders from the street serves to protect the public, long-term solutions lie primarily in taking aggressive steps to stop delinquency before it starts or becomes a pattern of behavior.
- *Improvement of the Juvenile Justice System.* OJJDP seeks to improve the juvenile justice system and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.
- *Corrections, Detention, and Community-Based Alternatives.* OJJDP supports efforts to preserve the public safety through the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders.

In pursuing these broad goals, OJJDP divides its programs into four categories: public safety and law enforcement; strengthening the juvenile

justice system; delinquency prevention and intervention; and child abuse and neglect and dependency courts. A fifth category, overarching programs, contains programs that have significant elements common to more than one of the other four categories. Following the introductory section below, the programs that OJJDP proposes to fund in FY 1999 are listed and summarized within these five categories.

Introduction to Fiscal Year 1999 Program Plan

Since 1993, when it published the *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*, OJJDP has been advocating that States, local governments, and communities adopt this research-based comprehensive strategy approach to address the problems of juvenile crime and victimization. OJJDP has synthesized decades of research and practice from practitioners and established a framework for implementing an effective juvenile justice system. Through support of research, demonstration programs, and training and technical assistance, OJJDP encourages States, local governments, and communities to use the Comprehensive Strategy to develop coordinated, communitywide approaches to preventing and intervening with juvenile delinquency and victimization. OJJDP focuses its support on programs and initiatives that further one or more of the basic principles of the Comprehensive Strategy:

- Strengthen families in their role of guiding, disciplining, and instilling sound values in their children.
- Support core social institutions and their role in supporting families and helping children develop to their maximum potential.
- Promote prevention strategies and activities that reduce the impact of negative (risk) factors and enhance the influence of positive (protective) factors in the lives of youth at greatest risk of delinquency.
- Intervene immediately and appropriately at the first signs of trouble in a child's life and establish a system of graduated sanctions and a continuum of services to respond appropriately to the needs of each juvenile offender.
- Protect the public from the most serious, violent, and chronic juvenile offenders by providing for their incapacitation while at the same time addressing their treatment needs.

For the fourth consecutive year, OJJDP proposes a Program Plan rooted in its Comprehensive Strategy. The Plan also supports the Coordinating Council's National Juvenile Justice Action Plan released in 1996. This Action Plan, which grew out of the Comprehensive Strategy, provides eight objectives to reduce juvenile violence and describes ways to meet these objectives. OJJDP proposes to continue to support development and refinement of the Comprehensive Strategy and training and technical assistance to help jurisdictions begin to implement it by developing a continuum of care to deal with both juvenile offenders and juveniles at risk of becoming offenders. Development, dissemination, and support of the Comprehensive Strategy and the Action Plan are prime examples of how OJJDP's national leadership is instrumental in moving the field from innovation to infrastructure.

OJJDP-funded programs that emphasize early prevention and family involve a variety of approaches, including parent training, nurse-based home visitation for at-risk first-time mothers, problem solving, parent support groups led by parents themselves, multisystemic therapy, and training and technical assistance for replicating exemplary programs. Other prevention programs reach out to youth in the schools and the community. They include youth development, conflict resolution, mentoring, career preparation, truancy reduction, drug prevention, violence prevention, and antigang outreach programs.

Efforts involving intervention, accountability, and sanctions include dissemination of the principles of balanced and restorative justice, emphasis on reducing overcrowding and disproportionate minority confinement in secure facilities, gender-specific services targeted to female juvenile offenders, intensive aftercare services, services for chemically involved young people, and a communitywide approach to preventing and suppressing gangs. Funds are also provided for collaborations between police and health services agencies and for appropriate training for legislators, prosecutors, and line staff in secure facilities.

Research and evaluation can assure policymakers, practitioners, and the public that juvenile justice is moving in the right direction and that programs being supported do indeed work. OJJDP proposes to continue supporting a range of research studies, including its landmark study of the causes and correlates of delinquency; studies of very young offenders and of the origins of and pathways to youth violence; a cost-benefit analysis of juvenile justice programs; analyses of a range of juvenile justice data; development of a juvenile sex offender typology; studies of risk reduction for delinquency, substance abuse, and school failure in school children and of delinquency and attention deficit/hyperactivity disorder; and censuses and surveys related to confinement and probation. Continued support would be provided for evaluations of the SafeFutures initiative, Safe Kids/Safe Streets, Partnerships To Reduce Juvenile Gun Violence, Intensive Community-Based Aftercare, teen court training and technical assistance, and several gang-related programs.

OJJDP is also considering support for new programs in several areas related to emerging issues facing the juvenile justice system. This Proposed Plan does not include descriptions of any specific new programs. Ideas for possible programming are discussed generally below. It must be emphasized that this wide range of possibilities exceeds OJJDP's ability to provide new funding. OJJDP wants to consider comments from policymakers, researchers, practitioners, and other concerned citizens about the broad areas it is considering before prioritizing those areas and identifying new programs to be supported with the discretionary funding that is available.

Dissemination of information to the field is an important OJJDP function. Information dissemination support under consideration would focus on events, programs, and activities relating to the 1999 centennial of the juvenile court; on findings from summits, policy forums, centers, and education campaigns devoted to preventing crime and violence, including gun violence, whether deliberate or accidental; on public outreach, especially to youth, via television programming, public service announcements, videos, and CD-ROMS that encourage and model development of life skills and decisionmaking abilities in regard to key issues. Dissemination efforts would also be directed toward supporting various critical partners with juvenile justice system responsibilities, such as city and county officials, legislators, and Governors, to inform them of effective strategies and approaches to prevent delinquency and improve the juvenile justice system.

OJJDP is considering providing funding to increase existing training and technical assistance capacity in the area of jobs and vocational training for juveniles involved in the justice system. The purpose would be to enable them to gain skills, knowledge, and experience that would help them succeed in the workplace.

Effective use of information sharing and the design and implementation of

management information systems (MIS) are important issues for juvenile justice practitioners. OJJDP proposes to support training and technical assistance efforts to model information sharing and to replicate best practices in MIS.

In the area of child abuse and neglect, OJJDP is considering support for a program that helps older foster children make the transition from foster care to independent adult living. Another approach to reducing child abuse and neglect is to support the efforts of community-based organizations to build their capacity to respond appropriately to abused and neglected children. OJJDP also proposes to evaluate the effectiveness of children's advocacy centers, which are designed to prevent the inadvertent revictimization of an abused child by the judicial and social service systems in their efforts to protect the child.

Recognizing that school failure is a risk factor for delinquency and a barrier to positive development, OJJDP proposes to join with the U.S. Department of Education to sponsor a center for students with learning disabilities in the juvenile justice system. Interagency coordination between the Departments of Justice and Education would enhance justice system knowledge and use of research-based strategies and practices and the provisions of the Individuals with Disabilities Education Act. The center would provide guidance and assistance to States, schools, justice programs, families, and communities to design, implement, and evaluate comprehensive educational programs based on research-validated practices, for students with disabilities within the juvenile justice system.

As communities seek to adopt effective methods of dealing with juvenile offenders, OJJDP proposes to continue to support efforts to develop community justice and balanced and restorative justice approaches to enhance the effectiveness of the juvenile justice system.

Mental health issues are an integral part of juvenile justice concerns. OJJDP is considering funding research to systematically review, summarize, and assess what is known about mentally disordered youth in the juvenile justice system and programs that address general and managed mental health care for juvenile justice system involved juveniles.

OJJDP proposes to explore the critical operational issue of risk and needs assessments. What instruments exist, how are they being used, and what is their impact? What do communities need to do to promote the use of valid risk and needs assessments?

In the broad area of prevention, OJJDP would focus on supporting programs that offer positive growth experiences to youth. Examples would include afterschool programs targeted at high-risk youth, model recreation and parks programs, and other types of programs and services that promote delinquency prevention and positive youth development.

Finally, in the area of research, OJJDP is interested in studies that concentrate on the needs of at-risk female juveniles and girls involved in the juvenile justice system. Demonstration programs focusing on girls would also be considered for funding.

Together, the programs in this Proposed Plan constitute a practical, multifaceted, and comprehensive approach to effectively preventing juvenile delinquency and victimization.

Fiscal Year 1999 Programs

The following are brief summaries of each of the new and continuation programs proposed to receive Part C and Part D funding in FY 1999. As indicated above, the program categories are public safety and law enforcement; strengthening the juvenile justice system; delinquency prevention and intervention; and child abuse and neglect and dependency courts. However, because many programs have significant elements of more than one of these program categories or generally support all of OJJDP's programs, they are listed in an initial program category, called overarching programs. With regard to implementation sites and other descriptive data and information, program priorities within each category will be determined based on grantee performance, application quality, fund availability, and other factors. Programs are listed alphabetically within each category.

A number of OJJDP programs have been identified for funding consideration by Congress with regard to the grantee(s), the amount of funds, or both. These programs, which are listed below, are not included in the program descriptions that follow.

National Council of Juvenile and Family Court Judges
Teens, Crime, and the Community
Parents Anonymous, Inc.
Juvenile Offender Transition Program
Suffolk University Center for Juvenile Justice
Center for Crimes and Violence Against Children
Metro Denver Gang Coalition
L.A. Best Youth
Intensive Services for Juveniles and Families
Delancy Street
Juvenile Justice Program in Alaska
National Association of State Fire Marshals
Syracuse-Onondaga County Drug and Alcohol Abuse Commission
Law-Related Education
Hamilton Fish National Institute on School and Community Violence

In addition, OJJDP has been directed to examine each of the following, provide assistance if warranted, and report to the Committees on Appropriations of both the House and the Senate on its intention for each proposal:

Low Country Children's Center
Center for Prevention of Juvenile Crime and Delinquency at Prairie View University
Project O.A.S.I.S.
Consortium on Children, Families, and Law
Women of Vision Program for Youthful Female Offenders
Violence Institute of New Jersey
L.A. Bridges Youth Programs
Compton Youth Intervention Center for AfterSchool Programs
Kids With a Promise Program
Operation Quality Time
Achievable Dream Program
Secure School Pilot Program
Youth Advocates Program
Camden Urban Science Enrichment Program
Juvenile Crime Reduction Strategies Pilot Program
School Security Technology Center
New Mexico Cooperative Service Extension 4-H Youth Development Program
Adolescent Residential Treatment Program
Coalition for Drug-Free Lanai
Youth Courts in Alaska
Sioux Falls, South Dakota School District for Youth Programs
South Dakota Unified Judicial System
Nebraska Commission for Law Enforcement for Youth Programs
Chicago Public Schools Substance Abuse Program
Minnehaha, South Dakota, County Sheriff's Office for Youth Programs
Essex Teen Center and other Vermont Coalition for Teen Center's Members
Comprehensive Juvenile Justice Crime Prevention Initiative in Gainesville
Multistate Youth Violence Prevention Network
State of Hawaii to combat teen prostitution
Safe Places for Kids

The FY 1999 Omnibus Appropriations Conference agreement also urges OJJDP to work with the Head

Start Bureau and other Federal agencies to coordinate an effort to increase public/private partnerships, such as Free to Grow, aimed at strengthening families and communities in their efforts to reduce the negative effect of substance abuse and use on the development of young children.

Fiscal Year 1999 Program Listing

Overarching

Coalition for Juvenile Justice
Cost-Benefit Analysis of Juvenile Justice Programs
Evaluation of SafeFutures
Insular Area Support
Intergenerational Transmission of Antisocial Behavior Project
Juvenile Justice Clearinghouse
Juvenile Justice Statistics and Systems Development
OJJDP Management Evaluation Contract
OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center
Program of Research on the Causes and Correlates of Delinquency
SafeFutures: Partnerships To Reduce Youth Violence and Delinquency
Study Group on Very Young Offenders
Technical Assistance for State Legislatures
Telecommunications Assistance
Training and Technical Assistance Coordination for the SafeFutures and Safe Kids/Safe Streets Initiatives

Public Safety and Law Enforcement

The Chicago Project for Violence Prevention
Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program
Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)
National Youth Gang Center
Partnerships To Reduce Juvenile Gun Violence
Safe Start—Child Development-Community-Oriented Policing (CD–CP)
Survey of School-Based Gang Prevention and Intervention Programs
Training and Technical Assistance for the Rural Gang Initiative

Delinquency Prevention and Intervention

Advertising Campaign—Investing in Youth for a Safer Future
Assessing Alcohol, Drug, and Mental Health Disorders
The CETARY Project
Communities in Schools—Federal Interagency Partnership
Community Anti-Drug Abuse Technical Assistance Voucher Project
The Congress of National Black Churches: National Anti-Drug Abuse/Violence Campaign (NADVC)
A Demonstration Afterschool Program
Diffusion of State Risk- and Protective-Factor Focused Prevention
Hate Crime
Home Visitation
Multisite, Multimodal Treatment Study of Children With Attention Deficit/Hyperactivity Disorder
National Center for Conflict Resolution Education
No Hope in Dope Project
Partnerships for Preventing Violence
Proactive Youth Program
Risk Reduction Via Promotion of Youth Development
The SAGE Project and PRIDE Center Afterschool Program
Strengthening Services for Chemically Involved Children, Youth, and Families
Technical Assistance to Title V
Training and Technical Assistance for Family Strengthening Programs

Strengthening the Juvenile Justice System

Balanced and Restorative Justice Project (BARJ)
Blueprints for Violence Prevention: Training and Technical Assistance
Building Blocks for Youth
Census of Juveniles in Residential Placement
Circles of Care Program
Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Evaluation of the Intensive Community-Based Aftercare Program
Evaluation of Teen Courts
Gender-Specific Programming for Female Juvenile Offenders
Intensive Community-Based Aftercare Demonstration and Technical Assistance Program
Intensive Treatment Family Programs (ITF)
The Juvenile Justice Prosecution Unit
Juvenile Residential Facility Census
Juvenile Sex Offender Typology
Juvenile Transfers to Criminal Court Studies
Linking Balanced and Restorative Justice and Adolescents (LIBRA)
National Academy of Sciences Study of Juvenile Justice
National Juvenile Justice Program Directory
The National Longitudinal Survey of Youth 97
Performance-Based Standards for Juvenile Correction and Detention Facilities
Quantum Opportunities Program (QOP) Evaluation
Survey of Juvenile Probation
Technical Assistance to Juvenile Corrections and Detention (The James E. Gould Memorial Program)
Technical Assistance to Native Americans
TeenSupreme Career Preparation Initiative
Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (The Deborah Ann Wysinger Memorial Program)
Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

Child Abuse and Neglect and Dependency Courts

National Evaluation of the Safe Kids/Safe Streets Program
Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency

Overarching

Coalition for Juvenile Justice

This project supports the Coalition in its efforts to meet the statutory mandates through the development of a technical assistance capability that provides training, technical assistance, and information to the State Juvenile Justice Advisory Groups. This will be accomplished through a series of regional training and information workshops and a national conference designed to address the needs of the membership of the Coalition.

This project would be implemented by the current grantee, the Coalition for Juvenile Justice. No additional applications would be solicited in FY 1999.

Cost-Benefit Analysis of Juvenile Justice Programs

The University of Texas and the Dallas County Juvenile Department are working together to perform a substantive cost-benefit analysis of juvenile adjudications in the county to explore the extent to which the method can provide better answers to increasingly urgent questions by decisionmakers. The work, funded under an FY 1997 competitive grant, is examining several important methodological and practical issues, including methods of determining alternative measures for and the extent of beneficial program effects and estimating and allocating unit costs-

benefit relationships of different programs. Through the process of addressing these and related matters under the guidance of an advisory board composed of individuals directly engaged in the juvenile justice field at the local and State level, the project will also show how the method can be made immediately useful to decisionmakers.

This program will be implemented by the current grantee, the University of Texas—Dallas. No additional applications will be solicited in FY 1999.

Evaluation of SafeFutures

A national evaluation competitively awarded with FY 1995 funds is being conducted by the Urban Institute to determine the success of the SafeFutures initiative in creating a comprehensive continuum of care for youth in six participating sites (Boston, Massachusetts; Contra Costa County and Imperial County, California; Fort Belknap, Montana; Seattle, Washington; and St. Louis, Missouri). The evaluation addresses the program implementation process and measures performance outcomes and lessons learned about the challenges and accomplishments across the six sites. A cross-site report will document the process of program implementation and community outcomes for use by other funding agencies or communities that want to develop and implement a comprehensive community-based strategy to address serious, violent, and chronic delinquency.

The evaluation will be implemented by the current grantee, the Urban Institute. No additional applications will be solicited in FY 1999.

Insular Area Support

The purpose of this statutorily required program is to provide support to the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by Section 261(e) of the JJDP Act of 1974, as amended, 42 U.S.C. § 5665(e).

Intergenerational Transmission of Antisocial Behavior Project

The purpose of this project is to expand on the Rochester Youth Development Study by examining the development of antisocial behavior and delinquency in the children of the original Rochester, New York, subjects of OJJDP's Program of Research on the Causes and Correlates of Delinquency. By age 21, 40 percent of the original Rochester subjects were parents. This provides a unique opportunity to examine and track the development of delinquent behavior across three generations in a particularly high-risk sample. Results of the study should provide useful findings with policy implications for prevention programs. The program is being funded under an FY 1998 interagency agreement between OJJDP and the National Institute of Mental Health.

The project will be implemented by the current grantee, SUNY Research Foundation. No additional applications will be solicited in FY 1999.

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) collects, synthesizes, and disseminates information on all aspects of juvenile justice. OJJDP established the Clearinghouse in 1979 to serve the juvenile justice community, legislators, the media, and the public. JJC offers toll-free telephone access to information; prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and database; and administers several electronic information resources. NCJRS is administered by the National Institute of Justice (NIJ) under a competitively awarded contract to Aspen Systems Corporation.

This program will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 1999.

Juvenile Justice Statistics and Systems Development

The Juvenile Justice Statistics and Systems Development (SSD) program was competitively awarded in FY 1990 to the National Center for Juvenile Justice (NCJJ) to improve national, State, and local statistics on juveniles as victims and offenders. The project has focused on three major tasks: (1) Assessing how current information needs are being met with existing data collection efforts and recommending options for improving national level statistics; (2) analyzing data and disseminating information gathered from existing Federal statistical series and national studies; and (3) providing training and technical assistance tools for local agencies in developing or enhancing management information systems.

This project would be implemented by the current grantee, NCJJ. No additional applications would be solicited in FY 1999.

OJJDP Management Evaluation Contract

This contract was competitively awarded in FY 1995 for a period of 3 years to provide OJJDP with an expert resource to perform independent program evaluations and assist in implementing evaluation activities. Evaluations may be conducted on OJJDP-funded programs and on other programs designed to prevent and treat juvenile delinquency. The time and cost of each evaluation depends on program complexity, availability of data, and purpose of the evaluation. Because the purpose of many evaluations is to inform management decisions, the completion of an evaluation and submission of a report may be required in a specific and, often, short time period.

This contract will be implemented by the current contractor, Caliber Associates. However, a new competitive contract solicitation will also be issued and a new contract awarded in FY 1999.

OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center

This contract has been competitively awarded since the mid-1980's when OJJDP identified the need for technical assistance support in carrying out its mission. The Juvenile Justice Resource Center (JJRC) provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. With assistance from expert consultants, JJRC coordinates the peer review process for OJJDP grant applications and grantee reports, conducts research and prepares reports on current juvenile justice issues, plans meetings and conferences, and provides administrative support to various Federal councils and boards.

This contract will be implemented by the current contractor, Aspen Systems Corporation. No additional applications will be solicited in FY 1999.

Program of Research on the Causes and Correlates of Delinquency

Since 1986, this longitudinal study has addressed a variety of issues related to juvenile violence and delinquency and has produced a massive amount of information on the causes and correlates of delinquent behavior. Three project sites participate: Institute of Behavioral Science, University of Colorado at Boulder; Western Psychiatric Institute

and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. The sites pursue both collaborative research efforts and site-specific research. Results from the study have been used extensively in the field of juvenile justice and contributed significantly to the development of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and other program initiatives.

This program would be implemented by the current grantees. No additional applications would be solicited in FY 1999.

SafeFutures: Partnerships To Reduce Youth Violence and Delinquency

Since FY 1995, this 5-year project has awarded grants of up to $1.4 million annually to each of six communities (Boston, Massachusetts; Contra Costa County and Imperial County, California; Fort Belknap, Montana; Seattle, Washington; and St. Louis, Missouri) to assist in implementing comprehensive community programs designed to reduce youth violence, delinquency, and victimization through the creation of a continuum of care in communities. This continuum enables communities to respond to the needs of youth at critical stages of their development through a range of prevention, intervention, treatment, and sanctions programs.

SafeFutures activities will be carried out by the current grantees. No additional applications will be solicited in FY 1999.

Study Group on Very Young Offenders

Modeled after the OJJDP Study Group on Serious and Violent Juvenile Offenders, this program is exploring what is known about the prevalence and frequency of very young (under the age of 13) offending. In FY 1998, OJJDP supplemented a grant to the University of Pittsburgh, the grantee for the Study Group on Serious and Violent Juvenile Offenders. The Study Group on Very Young Offenders is examining whether such offending predicts future delinquent or criminal careers, how these youth are handled by various systems including juvenile justice, mental health, and social services; and what methods are best for preventing very young offending and persistence of offending. This project will disseminate the results of its research to the public, policymakers, and practitioners. The Study Group is also assisting OJJDP in formulating a 5-year research agenda for OJJDP and the juvenile justice field.

This program will be implemented by the current grantee, the Western Psychiatric Institute and Clinic at the University of Pittsburgh. No additional applications will be solicited in FY 1999.

Technical Assistance for State Legislatures

Since FY 1995, OJJDP has awarded annual grants to the National Conference of State Legislatures (NCSL) to provide relevant, timely information on comprehensive approaches in juvenile justice to aid State legislators in improving State juvenile justice systems. Nearly every State has enacted, or is considering, statutory changes affecting the juvenile justice system. This project has helped policymakers understand the ramifications and nuances of juvenile justice reform. The grant has improved capacity for the delivery of information services to legislatures. The project also supports increased communication between State legislators and State and local leaders who influence decisionmaking regarding juvenile justice issues.

The project will be implemented by the current grantee, NCSL. No additional applications will be solicited in FY 1999.

Telecommunications Assistance

OJJDP uses information technology and distance training to facilitate access to information and training for juvenile justice professionals. This cost-effective medium enhances OJJDP's ability to share with the field salient elements of the most effective or promising approaches to various juvenile justice issues. In FY 1995, OJJDP awarded a competitive grant to Eastern Kentucky University (EKU) to produce live satellite teleconferences. In FY 1998, OJJDP continued the cooperative agreement with EKU to provide program support and technical assistance for a variety of information technologies. The grantee also explored linkages with key constituent groups to advance mutual information goals and objectives. During the past year, EKU has experimented with cybercasting "live" satellite videoconferences on the Internet.

This project would be implemented by the current grantee, EKU. No additional applications would be solicited in FY 1999.

Training and Technical Assistance Coordination for the SafeFutures and Safe Kids/Safe Streets Initiatives

OJJDP proposes to continue to provide funding for long-term training and technical assistance to the SafeFutures and Safe Kids/Safe Streets initiatives. This coordination effort builds local capacity for implementing and sustaining effective continuum of care and systems change approaches in six SafeFutures and five Safe Kids/Safe Streets sites. Project activities include assessment, identification, and coordination of the implementation of training and technical assistance needs at each of the sites and administration of cross-site training.

This program will be implemented by the current grantee, Patricia Donahue. No additional applications will be solicited in FY 1999.

Public Safety and Law Enforcement

The Chicago Project for Violence Prevention

The Chicago Project for Violence Prevention is a citywide, long-term effort to reduce violence. Objectives include reductions in homicide, physical injury, disability and emotional harm from assault, domestic abuse, sexual abuse and rape, and child abuse and neglect. A partnership among the Chicago Department of Public Health, the Illinois Council for the Prevention of Violence, the University of Illinois, and Chicago communities, the project began in 1995 with joint funding from OJJDP and the Centers for Disease Control and Prevention, the National Center for Injury Prevention and Control, the Bureau of Justice Assistance, and the U.S. Department of Housing and Urban Development. The project provides technical assistance to a variety of community-based and citywide organizations involved in violence prevention planning.

The Chicago Project for Violence Prevention would be implemented by the current grantee, the University of Illinois, School of Public Health. No additional applications would be solicited in FY 1999.

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

This program supports implementation of a comprehensive gang program model in five jurisdictions (Bloomington, Illinois; Mesa, Arizona; Riverside, California; San Antonio, Texas; and Tucson, Arizona). OJJDP proposes to continue funding for the program, which was competitively awarded with FY 1994 funds. The demonstration sites are implementing a model developed by the University of Chicago with OJJDP funding support. Implementation requires the mobilization of the community to address gang-related violence by making available and coordinating social interventions, providing social/academic/vocational and other

opportunities, and supporting gang suppression through law enforcement, probation, and other community control mechanisms. Each site has established a multidisciplinary team to coordinate the services that project youth receive. Included in the service mix is accountability or social control. Demonstration sites also receive training and technical assistance.

This project would be implemented by the current demonstration sites. No additional applications would be solicited in FY 1999.

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

OJJDP proposes to continue funding this evaluation. Under a 4-year competitive cooperative agreement awarded in FY 1995, the evaluation grantee assisted the five program sites (Bloomington, Illinois; Mesa, Arizona; Riverside, California; San Antonio, Texas; and Tucson, Arizona) in establishing realistic and measurable objectives, documenting program implementation, and measuring the impact of this comprehensive approach. It has also provided interim feedback to the program implementors and trained the local site interviewers. The grantee will continue to gather and analyze data required to evaluate the program; monitor and oversee the quality control of data; provide assistance for completion of interviews; and provide ongoing feedback to project sites.

This project would be implemented by the current grantee, the University of Chicago, School of Social Service Administration. No additional applications would be solicited in FY 1999.

Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program

This 3-year project began with a competitive award in FY 1997 to document and evaluate the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing gun violence involving juveniles. The Partnerships to Reduce Juvenile Gun Violence Program is being implemented in four sites: Baton Rouge and Shreveport, Louisiana; Oakland, California: and Syracuse, New York. In addition to working with these sites, the grantee will also identify additional promising or effective programs underway in communities across the country and evaluate a select number of these programs. An expanded base of youth gun violence programs offers greater opportunity to identify sites that are employing similar strategies with different populations.

This evaluation will be implemented by the current grantee, COSMOS Corporation. No additional applications will be solicited in FY 1999.

Gang Prevention Through Targeted Outreach (Boys & Girls Clubs)

The purpose of this program is to enable local Boys & Girls Clubs to prevent youth from entering gangs, intervene with gang members in the early stages of gang involvement, and divert youth from gang activities into more constructive programs. This program reflects the ongoing pattern of cooperation between OJJDP and the Boys & Girls Clubs to reduce problems of juvenile delinquency and violence. The Boys & Girls Clubs of America provides training and technical assistance to local gang prevention and intervention sites, including some at SafeFutures and OJJDP Comprehensive Gang sites. The project includes funds for local clubs to implement the Targeted Outreach program. A national evaluation of this program is being implemented by Public/Private Ventures.

This program would be implemented by the current grantee, the Boys & Girls Clubs of America. No additional applications would be solicited in FY 1999.

National Youth Gang Center

The proliferation of gang problems over the past two decades led OJJDP to develop a comprehensive, coordinated response to America's gang problem. This response involved five program components, one of which was implementation and operation of the National Youth Gang Center (NYGC), competitively funded with FY 1994 funds, to expand and maintain the body of critical knowledge about youth gangs and effective responses to them. NYGC provides support services to the National Youth Gang Consortium, composed of Federal agencies with responsibilities in this area. NYGC is also providing technical assistance for the Rural Gang Initiative planning and assessment phase. OJJDP proposes to extend the NYGC project an additional year and provide FY 1999 funds to NYGC to conduct more indepth analyses of the National Youth Gang Survey results that track changes in gang membership and gang-related crime, produce timely information on the nature and scope of the youth gang problem, and continue its efforts to foster integration of gang-related items into other relevant surveys and national data collection efforts.

This program would be implemented by the current grantee, the Institute for Intergovernmental Research. No additional applications would be solicited in FY 1999.

Partnerships To Reduce Juvenile Gun Violence

OJJDP will award continuation grants to each of three competitively selected communities that initially received funds in FY 1997 to increase the effectiveness of existing youth gun violence reduction strategies by enhancing and coordinating prevention, intervention, and suppression strategies and strengthening linkages between community residents, law enforcement, and the juvenile justice system. Baton Rouge, Louisiana; Oakland, California: and Syracuse, New York, were selected to receive 3-year awards. The goals of this initiative are to reduce juveniles' illegal access to guns and address the reasons they carry and use guns in violent exchanges. A national evaluation currently underway will document the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing juvenile gun violence.

The Partnerships To Reduce Juvenile Gun Violence program will be carried out by the three current grantees. No additional applications will be solicited in FY 1999.

Safe Start—Child Development-Community-Oriented Policing (CD–CP)

The Child Development-Community-Oriented Policing (CD–CP) program is an innovative partnership between the New Haven Department of Police Services and the Child Study Center at the Yale University School of Medicine that addresses the psychological burdens on children, families, and the broader community of children witnessing increasing levels of community violence. In FY 1993, OJJDP provided support to document Yale—New Haven's child-centered, community-oriented policing model. The model consists of interrelated training of police officers, consultation, and teaming mental health clinicians with law enforcement in intervening onsite with children and families who witness violence. OJJDP, with first-year support from the Bureau of Justice Assistance, funded a 3-year replication of the model in Buffalo, New York; Charlotte, North Carolina; Nashville, Tennessee; and Portland, Oregon. Other OJP components joined OJJDP in funding an expansion of CD–CP in FY 1998 under the Safe Start Initiative. This expansion moved the project into

school-based activities and the area of addressing exposure to violence in domestic violence settings and will continue to do so in FY 1999.

This project would be continued by the current grantee, the Yale University School of Medicine, in collaboration with the New Haven Department of Police Services. No additional applications would be solicited in FY 1999.

Survey of School-Based Gang Prevention and Intervention Programs

Under a competitively awarded FY 1997 grant, this project is classifying and describing approaches used by schools to prevent or reduce gang involvement among students in a large sample of urban, suburban, and rural schools. In addition, a search and review of activities undertaken by States to identify and evaluate school-based gang prevention and intervention programs will be completed. Based on a review of programs identified in a national survey currently under way, a small number of promising programs will be examined more closely and described. Technical reports will describe the full range of gang prevention and intervention currently being implemented in the United States, and they will compare program types and quality of implementation across different school levels and locations. A report will highlight promising programs and practices and include guidelines on program development.

This project will be implemented by the current grantee, Gottfredson Associates, Inc. No additional applications will be solicited in FY 1999.

Training and Technical Assistance for the Rural Gang Initiative

In FY 1998, OJJDP provided supplemental funding support to the National Youth Gang Center to provide training and technical assistance to demonstration sites under OJJDP's Rural Gang Initiative. In FY 1999, training and technical assistance will continue to be provided to those sites chosen to implement the OJJDP Comprehensive Gang model. Training and technical assistance will focus on adapting the OJJDP model to rural jurisdictions and on implementing the model in a theoretically sound manner. Assistance will be delivered through onsite visits, conferences, meetings, and other means such as telephone and electronic media.

This initiative will be implemented by the current grantee, the National Youth Gang Center. No additional applications will be solicited in FY 1999.

Delinquency Prevention and Intervention

Advertising Campaign—Investing in Youth for a Safer Future

OJJDP proposes to continue its support, which began in FY 1997, of the National Crime Prevention Council's (NCPC's) ad campaign, "Investing in Youth for A Safer Future," through the transfer of funds to the Bureau of Justice Assistance (BJA) under an Intra-agency Agreement. OJJDP and BJA are working with the NCPC Media Unit to produce, disseminate, and support effective public service advertising and related media to inform the public of effective solutions to juvenile crime and to motivate young people and adults to get involved and support these solutions. The featured solutions include effective prevention programs and intervention strategies.

The program would be administered by BJA through its existing grant to NCPC. No additional applications would be solicited in FY 1999.

Assessing Alcohol, Drug, and Mental Health Disorders

This project supplements an ongoing National Institute of Mental Health study assessing alcohol, drug, and mental health disorders among juveniles in detention in Cook County, Illinois. The project has three primary goals: (1) To determine how alcohol, drug, and mental disorders develop over time among juvenile detainees; (2) to investigate whether juvenile detainees receive needed psychiatric services after their cases reach disposition (and they are back in the community or serving sentences); and (3) to study the development of dangerous and risky behaviors. The study will investigate how violence, drug use, and HIV/AIDS risk behaviors develop over time, what the antecedents of these behaviors are, and how these behaviors are interrelated. This project is unique because the sample is so large: it includes 1,833 youth from Chicago who were arrested and interviewed between 1996 and 1998. The sample is stratified by gender, race (African American, non-Hispanic white, Hispanic), age (10–13, 14–17), and severity of charge. The investigators will reinterview subjects whether they are back in the community or incarcerated. Because the sample is so large, there will be sufficient statistical power to study rarer disorders (especially comorbidity), patterns of drug use, and risky, life-threatening behaviors. OJJDP funding for this project began in FY 1998.

The project would be implemented by the current grantee, Northwestern University. No additional applications would be solicited in FY 1999.

The CETARY Project

The goals of this project are to provide 20 second-time juvenile offenders, up to age 18, an opportunity to enroll in an intense and structured culinary arts training program; develop and maintain linkage and employment opportunities for the youth; and place a minimum of 18 youth in an accredited continuing education program and/or in the workplace with full-time employment. Funded in FY 1998, the project also provides a counseling specialist who helps the youth establish job readiness and who coordinates placement between career development and employment. General educational development (GED) classes are also offered. Continuous progress evaluations and needs assessments are implemented and enforced for each youth.

This project will be implemented by the current grantee, Johnson & Wales University. No additional applications will be solicited in FY 1999.

Communities In Schools—Federal Interagency Partnership

This program would continue an ongoing national school dropout prevention model developed and implemented by Communities In Schools, Inc. (CIS). CIS, Inc., provides training and technical assistance in adapting and implementing the CIS model in States and local communities. The model brings social, employment, mental health, drug prevention, entrepreneurship, and other resources to high-risk youth and their families in the school setting. Where they exist, CIS State organizations assume primary responsibility for local program replication during the Federal Interagency Partnership. The Partnership is based on enhancing (1) CIS, Inc., training and technical assistance capabilities; (2) its capability to introduce selected initiatives to youth at the local level; (3) its information dissemination capability; and (4) its capability to network with Federal agencies on behalf of State and local CIS programs.

The program would be implemented by the current grantee, Communities In Schools, Inc. No additional applications would be solicited in FY 1999.

Community Anti-Drug Abuse Technical Assistance Voucher Project

Through the Community Anti-Drug Abuse Technical Assistance Voucher Project, the National Center for Neighborhood Enterprise (NCNE) has

been awarding vouchers for several years to grassroots organizations to purchase technical assistance and training to effectively address the problem of juvenile drug abuse. NCNE has established a clearinghouse featuring more than 1,200 promising and proven anti-drug programs. The impact of technical assistance vouchers includes enhanced organizational visibility, larger grant awards for indigenous groups, and expanded and increased services resulting from technical assistance in program development and staff training. In addition to awarding vouchers for technical assistance, NCNE provides technical assistance to applicants regarding the development of their mission, goals, and objectives.

The Community Anti-Drug Abuse Technical Assistance Voucher Project would be implemented by the current grantee, the National Center for Neighborhood Enterprise. No additional applications would be solicited in FY 1999.

The Congress of National Black Churches: National Anti-Drug Abuse/ Violence Campaign (NADVC)

The Congress of National Black Churches (CNBC) addresses the problems of juvenile drug abuse, violence, and hate crime through its national public awareness and mobilization strategy. The strategy coordinates the black religious leadership, in cooperation with the U.S. Department of Justice and other Federal agencies and organizations, to mobilize community residents to combat juvenile drug abuse and drug-related violence. The CNBC National Anti-Drug Abuse/ Violence Campaign (NADVC) is a partner in the Education Development Center's (EDC) Juvenile Hate Crime Initiative. NADVC's training and technical assistance have helped sites leverage funds from public and private sources. The NADVC model for the development of prevention programs is easily tailored to the local community's assessment of its drug, delinquency, violence, and hate crime problems.

The program would be implemented by the current grantee, the Congress of National Black Churches. No additional applications would be solicited in FY 1999.

A Demonstration Afterschool Program

This project, known as Estrella, is using FY 1998 funds to design and evaluate a pilot afterschool program to reduce juvenile delinquency and increase educational retention at Gadsden Independent School District in Dona Ana County, New Mexico. Through a curriculum of hands-on science and reading projects and supervised recreation, Estrella is providing a constructive alternative to afternoons of unsupervised free time. New Mexico Mathematics, Engineering, Science Achievement (NM MESA) will provide the academic component of the program. Middle school students will mentor elementary students in a highly interactive learning environment developed through the use of the nationally recognized MESA curriculums. The New Mexico Police Athletic League (PAL) will provide a sports component to round out the program. The University of New Mexico's Institute for Social Research will evaluate the program using both qualitative and quantitative methods.

This project will be implemented by the current grantee, the University of New Mexico—Regents. No additional applications will be solicited in FY 1999.

Diffusion of State Risk- and Protective-Factor Focused Prevention

Since FY 1997, OJJDP has provided funds to the National Institute on Drug Abuse, through an interagency agreement, to support this 5-year study of the public health approach to prevention, focusing on risk and protective factors for substance abuse at the State and community levels. The study will identify factors that influence the adoption of the public health approach and assess the association between this approach and the levels of risk and protective factors and substance abuse among adolescents. The study will also examine State substance abuse data gathered from 1988 through 2001 and use interviews to describe the process of implementing the epidemiological risk- and protective-factor approach in Colorado, Kansas, Illinois, Maine, Oregon, Utah, and Washington.

This project will be implemented by the current grantee, the Social Development Research Group at the University of Washington School of Social Work. No additional applications will be solicited in FY 1999.

Hate Crime

Under an OJJDP grant competitively awarded in FY 1993, the Education Development Center (EDC) developed *Healing the Hate*, a multipurpose curriculum for hate crime prevention in middle schools and other classroom settings. OJJDP expanded this grant to allow EDC to provide training and technical assistance to youth, educators, juvenile justice and law enforcement professionals, and representatives of local public/private community agencies and organizations and the faith community. In FY 1999, EDC would expand its training and technical assistance to new sites and further disseminate the products through the education and juvenile justice networks. In addition, EDC would provide onsite, short-term technical assistance to practitioners interested in hate crime issues. EDC would also assist State juvenile justice agencies to formulate hate crime prevention components for their juvenile delinquency prevention plans.

The project would be implemented, in partnership with the U.S. Department of Education, by the current grantee, Education Development Center. No additional applications would be solicited in FY 1999.

Home Visitation

This program integrates prenatal and early childhood nurse home visitation into five sites of Operation Weed and Seed (Clearwater, Florida; Fresno, Los Angeles, and Oakland, CA; and Oklahoma City, OK) and one SafeFutures site (St. Louis, MO). Operation Weed and Seed is a national initiative to make communities safe through law enforcement activities and to rebuild the community through social services and economic redevelopment in crime-ridden communities across the country. SafeFutures is an initiative to assist in implementing comprehensive community programs designed to reduce youth violence, delinquency, and victimization through the creation of a continuum of care in communities. The nurse home visitation program addresses three major goals: (1) preparation of clear, comprehensive home visitation materials to facilitate dissemination and accurate replication of the program; (2) dissemination of the program to the six sites and provision of technical support and training to local staff; and (3) an evaluation of the program with a significant research focus on the dissemination process.

The project would be implemented by the current grantee, the University of Colorado Health Services Center. No additional applications would be solicited in FY 1999.

Multisite, Multimodal Treatment Study of Children With Attention Deficit/ Hyperactivity Disorder

OJJDP will transfer funds under an interagency agreement with the National Institute of Mental Health (NIMH) to support this research, funded principally by NIMH. In 1992, NIMH began a study of the long-term efficacy of stimulant medication and intensive

behavioral and educational treatment for children with attention deficit/hyperactivity disorder (ADHD). Although ADHD is classified as a childhood disorder, up to 70 percent of afflicted children continue to experience symptoms in adolescence and adulthood. The study will continue through 2000 and will follow the original families and a comparison group. OJJDP's participation, which began in FY 1998, will allow for investigation into the subjects' delinquent behavior and contact with the legal system, including arrests and court referrals.

OJJDP will support this study through an interagency agreement with NIMH. No additional applications will be solicited in FY 1999.

National Center for Conflict Resolution Education

Funded under a competitively awarded cooperative agreement in FY 1995, the National Center for Conflict Resolution Education works to integrate conflict resolution education (CRE) programming into all levels of education in schools, juvenile facilities, and youth-serving organizations. In FY 1998, OJJDP entered into a partnership with the U.S. Department of Education to expand and enhance this project. The grantee provides training and technical assistance through onsite training and consultation for teams from schools, communities, and juvenile facilities; by providing resource materials including the guide to implementing conflict resolution programs; and by partnering with State-level agencies to establish State training institutes and otherwise build local capacity to implement successful CRE programs for youth. The Center also facilitates peer-to-peer mentoring.

The project would be implemented by the current grantee, Illinois Institute for Dispute Resolution. No additional applications would be solicited in FY 1999.

No Hope in Dope Project

The goal of the No Hope in Dope (NHID) program, funded under an FY 1998 OJJDP grant, is to prevent, reduce, or delay the onset of substance abuse in elementary, intermediate, and high school students in Hawaii's Windward Oaho area. This goal will be accomplished by using a community-based approach that makes antidrug norms clear, salient, and useful as guides for behavior. The program uses opinion-leading student athletes, the No Hope in Dope seminar, and the Officer Honolulu Safety Program. NHID is a program of Project Hope in coordination with the Kahuku and Castle School complexes of the Windward Oahu School District and the Honolulu Police Department. The program will be evaluated with a pre/post intervention design that will allow conclusions about the effectiveness of this community- and school-level intervention.

This project will be implemented by the current grantee, Operation Hope. No additional applications will be solicited in FY 1999.

Partnerships for Preventing Violence

This program would continue for a second year in a multiple funding agreement among OJJDP, the U.S. Department of Education, and the U.S. Department of Health and Human Services to provide support for distance training using satellite video conferencing as the medium. The project, funded under a 3-year grant, consists of a series of six live, interactive satellite training broadcasts that focus on violence prevention programs and strategies that have proven promising or effective. The training is targeted to school and community violence prevention personnel, health care providers, law enforcement officials, and other service providers representing a variety of community-based and youth-serving organizations. To date, two events have been held; the third telecast is scheduled for April 16, 1999.

The project would be implemented by the current grantee, Harvard University School of Public Health. No additional applications would be solicited in FY 1999.

Proactive Youth Program

The New Mexico Police Activities League (PAL) is implementing a statewide prevention project consisting of recreational, educational, and cultural activities for families and youth between the ages of 5 and 18, but focused on at-risk youth and their families. The Albuquerque PAL will provide the initial model for the organization and implementation of the New Mexico PAL project. Local PAL programs will be initiated in at least 12 other New Mexico communities. Schedules for core programs will be coordinated, and a system of regional and statewide activities will be established. The overall goal of the project, which received an FY 1998 OJJDP grant, is to reduce negative behavior and promote healthy behavioral patterns among New Mexico's youth by providing activities that unite youth with law enforcement officers, educators, and other positive adult role models.

This project will be implemented by the current grantee, the University of New Mexico—Regents. No additional applications will be solicited in FY 1999.

Risk Reduction Via Promotion of Youth Development

This program, also known as Early Alliance, is a large-scale prevention study involving hundreds of African-American and Caucasian children in several elementary schools in lower socioeconomic neighborhoods of Columbia, SC. This project is designed to promote coping-competence and reduce risk for conduct problems, aggression, substance use, delinquency and violence, and school failure beginning in early elementary school. Children are being followed longitudinally throughout the 5 years of the project. The program is funded through an interagency agreement with the National Institute of Mental Health (NIMH). NIMH's grantee is the University of South Carolina. Funding has also been provided by the Centers for Disease Control and Prevention and the National Institute on Drug Abuse.

Funded initially in FY 1997 through a fund transfer to NIMH under an interagency agreement, support will be continued for an additional 3 years. No additional applications will be solicited in FY 1999.

The SAGE Project and PRIDE Center Afterschool Program

The SAGE project is continuing development of a project to prevent and reduce juvenile delinquency and school violence. The long-term goal of the PRIDE Center is to provide a comprehensive, year-round juvenile delinquency prevention and intervention program that supports the youth objectives of the SAGE Secondary School and the youth and community objectives of the SAGE project as a whole. Under an FY 1998 grant, the project is providing the collaborating organizations with the means to (1) expand and enhance adult-mentored and supervised, structured educational opportunities to court-involved and high-risk youth; (2) involve additional city agencies and community-based organizations through the PRIDE Center; and (3) continue to evaluate and disseminate findings on the project's success for replication in other urban areas.

This project will be implemented by the current grantee, Springfield College. No additional applications will be solicited in FY 1999.

Strengthening Services for Chemically Involved Children, Youth, and Families

The U.S. Departments of Justice and Health and Human Services and the Office of National Drug Control Policy (ONDCP) provide services to children affected by parental substance use or abuse. OJJDP administers this training and technical assistance program, which began in FY 1998, with funds transferred to OJJDP by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, through a cooperative agreement to the Child Welfare League of America (CWLA), a nonprofit organization. CWLA is assisting child welfare personnel to provide appropriate intervention services for children impacted by the abuse of alcohol and other drugs (AOD) and for their caregivers. CWLA is producing a comprehensive assessment tool and decisionmaking guidelines for child welfare workers and supervisors. CWLA training and technical assistance will help to develop innovative and effective approaches to meeting the needs of children in the child welfare system whose parents are AOD abusers. ONDCP is considering transferring funds for this project in FY 1999.

This jointly funded project would be implemented by CWLA. No additional applications would be solicited in FY 1999.

Technical Assistance to Title V

The purpose of this continuation contract is to provide OJJDP with training support for the Title V program. This training, which the grantee has developed and refined over several years, will continue to introduce key community leaders to data-based risk- and resiliency-focused delinquency prevention strategies and provide localities with the knowledge and skills to assess risk factors and resources in their communities. This contract will also increase the capacity of States to conduct data-based risk and resiliency focused training without Federal support.

This project will be implemented by the current grantee, Developmental Research and Programs, Inc. No additional applications will be solicited in FY 1999.

Training and Technical Assistance for Family Strengthening Programs

OJJDP proposes to continue funding a cooperative agreement competitively awarded in FY 1995 to the University of Utah's Department of Health Education (DHE) to provide training and technical assistance to communities interested in establishing or enhancing a continuum of family strengthening efforts. After a literature review, the grantee convened regional training conferences to showcase selected exemplary and promising family strengthening programs; developed a process for sites to receive followup training on specific program models; conducted program-specific workshops; produced and then updated user and training-of-trainers guides; and distributed videos of several family strengthening workshops. The grantee's technical assistance delivery system and the overall impact of the project are being assessed. In FY 1999, this program would expand its surveys and research on effective practices and assist in replication of identified programs.

This program would be implemented by the current grantee, the University of Utah's DHE. No additional applications would be solicited in FY 1999.

Strengthening the Juvenile Justice System

Balanced and Restorative Justice Project (BARJ)

OJJDP has supported development and improvement of juvenile restitution programs since 1977. The purpose of the BARJ project is to enhance the development of restitution programs as part of systemwide juvenile justice improvement using balanced approach concepts and restorative justice principles. The BARJ program model was first described in a 1994 OJJDP Program Summary, *Balanced and Restorative Justice,* which became a reference source for BARJ training. The BARJ project has provided intensive training, technical assistance, and guideline materials to three selected sites (Allegheny County, Pennsylvania; Dakota County, Minnesota; and West Palm Beach County, Florida), which have been implementing major systemic change in accordance with the BARJ model. The BARJ Project also offers technical assistance and training to other jurisdictions nationwide.

This project would be implemented by the current grantee, Florida Atlantic University. No additional applications would be solicited in FY 1999.

Blueprints for Violence Prevention: Training and Technical Assistance

OJJDP will continue to fund an FY 1998 cooperative agreement with the Center for the Study and Prevention of Violence (CSPV) at the University of Colorado. Under this grant, CSPV provides intensive training and technical assistance to community organizations and units of local government to replicate 10 "Blueprint" model programs. These are programs that CSPV identified as meeting a rigorous scientific standard of proven program effectiveness and replicability for reducing adolescent violence, crime, and substance abuse. CSPV will help communities determine the feasibility of program development and also monitor and assist in the replication of these Blueprint programs for 2 years.

This project will be implemented by the current grantee, CSPV. No additional applications will be solicited in FY 1999.

Building Blocks for Youth

The goals of this initiative are to protect minority youth in the justice system and promote rational and effective juvenile justice policies. These goals are accomplished by the following components: (1) Conducting research on issues such as the impact on minority youth of new State laws and the implications of privatization of juvenile facilities by profit-making corporations; (2) undertaking an analysis of decisionmaking in the justice system and development of model decisionmaking criteria that reduce or eliminate disproportionate impact of the system on minority youth; (3) building a constituency for change at the national, State, and local levels; and (4) developing communication strategies for dissemination of information. A fifth component, direct advocacy for minority youth is funded by other sources, not by OJJDP. Funding by OJJDP began in FY 1998.

This initiative will be implemented by the current grantee, the Youth Law Center. No additional applications will be solicited in FY 1999.

Census of Juveniles in Residential Placement

In FY 1998, the Census of Juveniles in Residential Placement (CJRP) replaced the biennial Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities, known as the Children in Custody census. CJRP collects detailed information on the population of juveniles who are in juvenile residential placement facilities as a result of contact with the juvenile justice system. New methods developed for CJRP are expected to produce more accurate, timely, and useful data on the juvenile population, with less reporting burden for facility respondents.

This program would be implemented through an existing interagency agreement with the Bureau of the Census. No additional applications would be solicited in FY 1999.

Circles of Care Program

In FY 1998, OJJDP and the Center for Mental Health Services (CMHS) entered into an interagency agreement to have OJJDP provide support to the Circles of Care Program, which CMHS had developed. OJJDP transferred funds to CMHS to support the funding of an additional site. The Circles of Care Program is designed to facilitate the planning and implementation of a continuum of care for Native American youth at risk of mental health, substance abuse, and delinquency problems. CMHS funded nine sites in FY 1998 and will continue these sites in FY 1999, based on availability of funds and project performance. OJJDP will transfer additional funds in FY 1999 to continue support for this program.

The currently funded projects will continue in FY 1999. No new applications will be solicited in FY 1999.

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

OJJDP has been providing support for development of its Comprehensive Strategy for several years. This project will complete ongoing strategic planning efforts in six States and expand to two additional States, Oregon and Wisconsin. In each State, up to six jurisdictions have been identified to receive Comprehensive Strategy planning training and technical assistance. OJJDP internal technical assistance capacity will be developed during this time to further assist States through training and technical assistance, including States planning on developing a Comprehensive Strategy planning framework. Implementation support will be developed and provided to the six States and one pilot site scheduled to complete Comprehensive Strategy plans in 1999. Further development and updates of the *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* will also occur in FY 1999.

This project will be implemented by the current grantees, the National Council on Crime and Delinquency and Developmental Research and Programs, Inc. No additional applications will be solicited in FY 1999.

Evaluation of the Intensive Community-Based Aftercare Program

In FY 1995, OJJDP competitively awarded a grant to the National Council on Crime and Delinquency (NCCD) to perform a process evaluation and design an outcome evaluation of the Intensive Community-Based Aftercare Demonstration and Technical Assistance program. In FY 1998, the project was supplemented and extended for an additional 2 years to continue the outcome evaluation. The outcome evaluation seeks to determine the extent of the differences between the Intensive Community-Based Aftercare Program (IAP) participants and the "regular" parolees, the supervision and services provided to both groups, and the cost-effectiveness of IAP. Data collection is being accomplished using several methods including searches of State police records to measure recidivism and analyzing State agency and juvenile court data to estimate costs.

This project will be implemented by the current grantee, NCCD. No additional applications will be solicited in FY 1999.

Evaluation of Teen Courts

This project, which OJJDP began in FY 1997, is measuring the effect of handling young, relatively nonserious law violators in teen courts rather than in traditional juvenile or family courts. Researchers are collecting data on several dimensions of program outcomes, including postprogram recidivism, changes in teens' perceptions of justice, and their ability to make more mature judgements. Analyses of these dimensions will be used to compare youth handled in at least three separate teen court programs with those processed by the traditional juvenile justice system. In addition, the study will conduct a process evaluation of the teen court programs, exploring legal, administrative, and case processing factors that affect the ability of the programs to achieve their goals.

This evaluation will be implemented by the current grantee, the Urban Institute. No additional applications will be solicited in FY 1999.

Gender-Specific Programming for Female Juvenile Offenders

Using a FY 1995 competitive OJJDP grant, Cook County has built a network of support for juvenile female offenders. The county has developed gender-specific needs, strengths, and risk assessments for juvenile female offenders; provided training in implementing gender-appropriate programming; and designed a pilot program with a community-based continuum of care and a unique case management system. In FY 1998, OJJDP provided continuation funding to the Cook County gender-specific program and began providing funding to the State of Connecticut to develop specialized programs for girls from prevention to detention. Connecticut's objectives and activities also include planning, implementing, and demonstrating a program that will develop a hierarchy of sanctions with specific emphasis on females up to age 18 and incorporating systemic changes. The primary emphasis of the Connecticut program is on the needs of pregnant girls and those who are mothers. Technical assistance is being provided to both Cook County and the State of Connecticut by Greene, Peters, and Associates, OJJDP's gender-specific training and technical assistance grantee.

The project will be implemented, in partnership with the Bureau of Justice Assistance, by the current grantee, the Cook County Bureau of Public Safety and Judicial Coordination, and by the State of Connecticut's Office of Alternative Sanctions. No additional applications will be solicited in FY 1999.

Intensive Community-Based Aftercare Demonstration and Technical Assistance Program

This initiative supports implementation, training and technical assistance, and an independent evaluation of an intensive community-based aftercare model in three competitively selected demonstration sites. The overall goal of the intensive aftercare model is to identify and assist high-risk juvenile offenders to make a gradual transition from secure confinement back into the community. The Intensive Aftercare Program (IAP) model has three distinct, yet overlapping segments: (1) Prerelease and preparatory planning activities during incarceration; (2) structured transitioning involving the participation of institutional and aftercare staffs both prior to and following community reentry; and (3) long-term reintegrative activities to ensure adequate service delivery and the required level of social control. The grantee provides continuing training and technical assistance to administrators, managers, and line staff at the intensive community-based aftercare sites. The grant was competitively awarded in FY 1995

The IAP project would be implemented by the current grantee, the Johns Hopkins University. No additional applications would be solicited in FY 1999.

Intensive Treatment Family Programs (ITF)

The purpose of KidsPeace is to provide individualized foster care (IFC) to seriously disturbed children and

adolescents in a therapeutic family setting. KidsPeace proposes to expand their program to additional sites, with the assistance of OJJDP's funding, first provided in FY 1997. KidsPeace has established four sites (Union, New Jersey; Orchard Park and Albany, New York; and Muncie, Indiana). A fifth site is currently under development.

This project will be implemented by the current grantee, KidsPeace National Centers for Kids in Crisis of North America. No additional applications will be solicited in FY 1999.

The Juvenile Justice Prosecution Unit

Under an FY 1996 OJJDP grant, the American Prosecutors Research Institute, the research and technical assistance affiliate of the National District Attorneys Association, established the Juvenile Justice Prosecution Unit (JJPU) to promote prosecutor training. JJPU holds workshops on juvenile-related policy, leadership, and management for chief prosecutors and juvenile unit chiefs and also provides prosecutors with background information on juvenile justice issues, programs, training, and technical assistance. The project solicits planning and other advisory input from prosecutors familiar with juvenile justice system and prosecutor needs. It draws on the expertise of working groups of elected or appointed prosecutors and juvenile unit chiefs to support project staff in providing technical assistance, juvenile justice-related research, program information, and training to practitioners nationwide.

This project would be implemented by the current grantee, the American Prosecutors Research Institute. No additional applications would be solicited in FY 1999.

Juvenile Residential Facility Census

As part of a long-term relationship with the Bureau of the Census, OJJDP proposes to continue to fund the development and testing of a new census of juvenile residential facilities. This census would focus on those facilities that are authorized to hold juveniles based on contact with the juvenile justice system. From interviews with facility administrators and staff at 20 locations, project staff have produced a detailed report discussing how best to capture information on education, mental health and substance abuse treatment, health services, conditions of custody, staffing, and facility capacity. Project staff have also drafted and tested a questionnaire based on the interview results. The questionnaire will be finalized in 1999. The first full implementaiton will take place in October 2000.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division and Statistical Research Division. No new applications would be solicited in FY 1999.

Juvenile Sex Offender Typology

In FY 1998, OJJDP competitively funded two feasibility studies in an effort to develop a juvenile sex offender typology. One study is being conducted by the University of Illinois-Springfield, the other by Health Related Research. Efforts to effectively address issues related to juvenile sex offenders' dangerousness, the most appropriate level of placement restrictiveness, the potential for rehabilitation, assessment requirements, and intervention needs have been hampered by the lack of an empirically based system for classifying this heterogeneous population into meaningful subgroups. These initial studies will determine specific methodologies best suited to generate an empirically validated typology of the juvenile sex offender. Based on the results of these initial studies, OJJDP will determine the feasibility of developing a juvenile sex offender typology or the desirability of continuing in the specific directions suggested by Phase I of this work.

An expansion of this work would be implemented by one or both of the current grantees, University of Illinois-Springfield and Health Related Research. No additional applications would be solicited in FY 1999.

Juvenile Transfers to Criminal Court Studies

This study explores the impact of the 1994 changes in Florida law by contrasting transfer policies and practices and sentences received for 1993 with those for 1995. Postsentencing recidivism of the 400 transferred youth in 1993 will be examined. Detailed data on the role of the offender in the commission of the offense; the involvement of gangs, guns, and drugs; and prior offense histories will be used in analyzing sentencing outcomes and postrelease offending. Predictions will be made on rearrest and time to failure in multivariate models with variables reflecting characteristics of offenses, offenders, and offense histories. Cross-group recidivism analyses are planned to compare the recidivism of youth transferred to adult court with that of those retained in the juvenile justice system.

The project would be implemented by the current grantee, the Florida Juvenile Justice Accountability Board. No additional applications would be solicited in FY 1999.

Linking Balanced and Restorative Justice and Adolescents (LIBRA)

The goal of this program is to continue development of a comprehensive, integrated, balanced and restorative system of justice for youthful offenders that holds them accountable to victims, protects the community, builds offender skills and competencies, and offers opportunities for positive connections to community members. OJJDP funding for the program began in FY 1998. To hold youth accountable, the project will establish a network of accountability boards. The project will also pilot Community Justice Centers, which will demonstrate that the community is the core of the justice process and recognizes youth as a vital part of the community.

This program will be implemented by the current grantee, the Vermont Department of Social and Rehabilitation Services. No additional applications will be solicited in FY 1999.

National Academy of Sciences Study of Juvenile Justice

In FY 1997, OJJDP initiated support for a 2-year study by the National Academy of Sciences to draw upon expertise from relevant disciplines in the scientific and practitioner communities to develop a synthesis of the relevant scientific research and expert opinion regarding the prevention, treatment, and control of juvenile crime. Following an examination of empirical and clinical research relevant to the origin of and pathways to youth violence and justice system treatment of juveniles, the review will be supplemented by two workshops and site visits to selected programs. These activities will help to identify (1) the elements of settings, with a particular emphasis on family and school, that inhibit or contribute to the ways in which serious delinquency develops; (2) juvenile and criminal justice system concerns regarding the shifts in youth crime prevention and control policies; and (3) juvenile violence and policing practices in public and federally assisted housing. The study will identify key elements of current efforts and policies that appear to either contribute to or inhibit the development of effective interventions and control mechanisms for youth violence and delinquency. The project is also being supported by the U.S. Department of Education.

This program will be implemented by the current grantee, the National Academy of Sciences. No additional applications will be solicited in FY 1999.

National Juvenile Justice Program Directory

In FY 1995, OJJDP initiated development of this program directory. To conduct its statistical functions, OJJDP must maintain a current and accurate list of all entities surveyed either in the various censuses or in surveys. This list currently entails a complete list of juvenile residential facilities and a list of juvenile probation offices. As OJJDP expands its statistical work, it will need to expand this listing as well. The list needs to contain contact information for the various facilities or agencies and appropriate information for sampling.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division. No additional applications would be solicited in FY 1999.

The National Longitudinal Survey of Youth 97

OJJDP proposes to continue supporting the second round of data collection under the National Longitudinal Survey of Youth 97 (NLSY97) through an interagency agreement with the Bureau of Labor Statistics (BLS). OJJDP funding began in FY 1997. NLSY97 is studying school-to-work transition in a nationally representative sample of 8,700 youth ages 12 to 16 years old. BLS is also collecting data on the involvement of these youth in antisocial and other behavior that may affect their transition to productive work careers. This survey provides information about risk and protective factors related to the initiation, persistence, and desistance of delinquent and criminal behavior and provides an opportunity to determine the generalizability of findings from OJJDP's Program of Research on the Causes and Correlates of Delinquency and other longitudinal studies across a nationally representative population of youth.

The program would be implemented by the BLS under an interagency agreement. No additional applications would be solicited in FY 1999.

Performance-Based Standards for Juvenile Correction and Detention Facilities

This program, which began with a competitive OJJDP cooperative agreement awarded in FY 1995, is in its third phase. Goals for this phase are to (1) introduce concepts, tools, and principles of performance-based standards and accountability in 25 to 30 facilities nationwide; (2) complete the collection of baseline measures of performance on 22 standards covering six critical areas of facility operations in all participating facilities using uniform data collection instruments and protocols; (3) assist the management team in developing appropriate strategies to respond to problem areas based on the performance data; (4) facilitate access to OJJDP/OJP resources for training and technical assistance and related support services needed to carry out the facility improvement plan; (5) monitor results of interventions through reassessment and analysis of progress; and (6) refine the measurement processes and build database performance benchmarks.

This program will be implemented by the current grantee, Council of Juvenile Correctional Administrators. No additional applications will be solicited in FY 1999.

Quantum Opportunities Program (QOP) Evaluation

OJJDP proposes to continue funding an impact evaluation of the Quantum Opportunities Program (QOP) through an interagency fund transfer to the U.S. Department of Labor (DOL). OJJDP began funding this evaluation in FY 1997. QOP, designed by the Ford Foundation and Opportunities Industrialization Centers of America, is a career enrichment program using a model providing basic education, personal and cultural development, community service, and mentoring. The evaluation will determine whether QOP reduces the likelihood that inner-city youth at educational risk will enter the criminal or juvenile justice system. Outcomes to be examined include academic achievement in high school; misbehavior in school; self-esteem and sense of control over one's life; educational and career goals; and personal decisions such as teenage parenthood, substance abuse, and criminal activity. Data on criminal activity are being collected from individual student interviews.

This program would be implemented through an interagency agreement with the U.S. Department of Labor. No additional applications would be solicited in FY 1999.

Survey of Juvenile Probation

OJJDP proposes to continue to support development of a survey of juvenile probation offices in an effort to determine the number of juveniles under some form of community supervision. The exact nature and extent of this survey depends greatly on the results of various development efforts OJJDP is pursuing currently. This project would fund the Bureau of the Census to establish standard procedures for the implementation of this survey. Funding for this project began in FY 1996.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division. No new applications would be solicited in FY 1999.

Technical Assistance to Juvenile Corrections and Detention (The James E. Gould Memorial Program)

The primary purpose of this program is to provide specialized technical assistance to juvenile corrections, detention, and community residential service providers. The grantee also plans and convenes an annual Juvenile Corrections and Detention Forum, which provides an opportunity for juvenile corrections and detention leaders to meet and discuss issues, problems, and solutions to emerging corrections and detention problems. The grantee also provides workshops and conferences on current and emerging national issues in the field of juvenile corrections and detention, conducts surveys, and offers technical assistance through document dissemination. OJJDP proposes to continue this program, which began in FY 1995 under competitive grant for a 3-year period.

The project would be implemented by the current grantee, the American Correctional Association. No additional applications would be solicited in FY 1999.

Technical Assistance to Native Americans

The goal of this program is to build the capacity of the Gila River Indian community, the Pueblo of Jemez, the Navajo Nation, the Red Band of Chippewa Indians, other Native American and Alaskan Native communities, and urban jurisdictions where tribal people reside to address Indian youth crime, delinquency, violence and victimization. Project funds support the development of comprehensive, systemwide responses to these problems in tribal communities. In FY 1999, OJJDP will continue to provide technical assistance to Native Americans to enable tribes to further develop alternatives to detention, specifically targeting juveniles who are first or nonviolent offenders; design guidebooks for the tribal peacemaking process to be used in addressing juvenile delinquency issues that are

reported to Family District Court systems; design and implement juvenile justice needs assessments to assist tribes in responding to juvenile detention and alternatives to detention needs; develop protocols to implement State Children's Code provisions that affect Native American Children; and establish sustainable, comprehensive community-based planning processes that focus on the needs of tribal youth. In FY 1997, American Indian Development Associates (AIDA) was selected to implement OJJDP's national technical assistance program for tribes and urban tribal programs across the country for a 3-year period.

This program will be implemented by the current grantee, the American Indian Development Associates. No additional applications will be solicited in FY 1999.

TeenSupreme Career Preparation Initiative

In FY 1998, OJJDP, in partnership with the U.S. Department of Labor's (DOL's) Employment and Training Administration, provided funding support to the Boys & Girls Clubs of America for demonstration and evaluation of the TeenSupreme Career Preparation Initiative. This initiative provides employment training and other related services to at-risk youth through local Boys & Girls Clubs with TeenSupreme Centers. In FY 1998, DOL funds supported program staffing in the existing 41 TeenSupreme Centers, provided intensive training and technical assistance to each site, and provided administrative and staffing support to this program from the national office. OJJDP funds supported the evaluation component of the program, which is to be implemented by an independent evaluator.

This jointly funded Department of Labor and OJJDP initiative will be implemented by the Boys & Girls Clubs of America. No additional applications will be solicited in FY 1999.

Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (The Deborah Ann Wysinger Memorial Program)

In FY 1997, recognizing the continued need to improve the ability of States and local jurisdictions to address disproportionate confinement of minority juveniles, OJJDP awarded a competitive grant to Cygnus Corporation to implement a 3-year national training, technical assistance, and information dissemination initiative. Since the 1988 reauthorization of the JJDP Act, State Formula Grants program plans have addressed disproportionate minority confinement (DMC). OJJDP's DMC funding efforts have included a competitive award to demonstrate model approaches in five State pilot sites (Arizona, Florida, Iowa, North Carolina, and Oregon) and an award to a national contractor to provide technical assistance to the pilot sites and other States. In addition, OJJDP made funds available to nonpilot States that had completed data gathering and assessment to use for innovative DMC projects.

This project will be implemented by the current grantee, Cygnus Corporation, Inc. No additional applications will be solicited in FY 1999.

Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

Through systemic change within local juvenile detention systems or statewide juvenile corrections systems, this project seeks to reduce overcrowding in facilities where juveniles are held. Competitively awarded in FY 1994 to the National Juvenile Detention Association (NJDA), in partnership with the San Francisco Youth Law Center, the project provides training and technical assistance materials for use by State and local jurisdictional teams. NJDA selected three jurisdictions (Camden, New Jersey; Oklahoma City, Oklahoma; and the Rhode Island Juvenile Corrections System) for onsite development, implementation, and testing of procedures to reduce crowding. Of the original sites selected, Oklahoma City has completed its work. The grantee is exploring additional sites for comprehensive training and technical assistance in FY 1999.

This project will be implemented by the current grantee, the National Juvenile Detention Association. No additional applications will be solicited in FY 1999.

Child Abuse and Neglect and Dependency Courts

National Evaluation of the Safe Kids/Safe Streets Program

OJJDP will continue funding the grant competitively awarded in FY 1997 to Westat, Inc., Rockville, MD, for a national evaluation to document and explicate the process of community mobilization, planning, and collaboration that has taken place before and during the Safe Kids/Safe Streets awards; to inform program staff of performance levels on an ongoing basis; and to determine the effectiveness of the implemented programs in achieving the goals of the Safe Kids/Safe Streets program. The initial 18-month grant began a process evaluation and determined the feasibility of an impact evaluation.

This evaluation will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 1999.

Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency

This 5½ year demonstration program is designed to foster coordinated community responses to child abuse and neglect. Several components of the Office of Justice Programs joined in FY 1996 to develop this coordinated program response to break the cycle of early childhood victimization and later criminality and to reduce child abuse and neglect and resulting child fatalities. OJJDP awarded competitive cooperative agreements in FY 1997 to five sites (National Children's Advocacy Center, Huntsville, Alabama; the Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan; Heart of America United Way, Kansas City, Missouri; Toledo Hospital Children's Medical Center, Toledo, Ohio; and the Community Network for Children, Youth and Family Services, Chittenden County, Vermont). Funds were provided by OJJDP, the Executive Office for Weed and Seed, and the Violence Against Women Grants Office.

In FY 1999, continuation awards will be made to each of the current demonstration sites. No additional applications will be solicited in FY 1999.

Dated: January 27, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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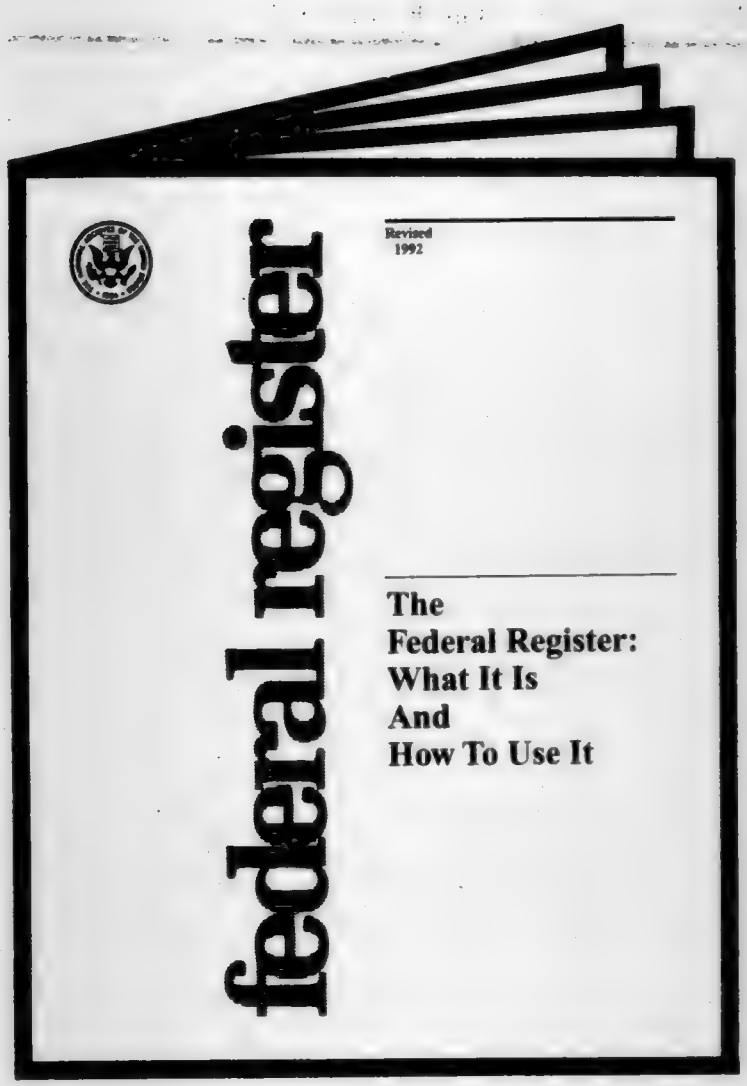

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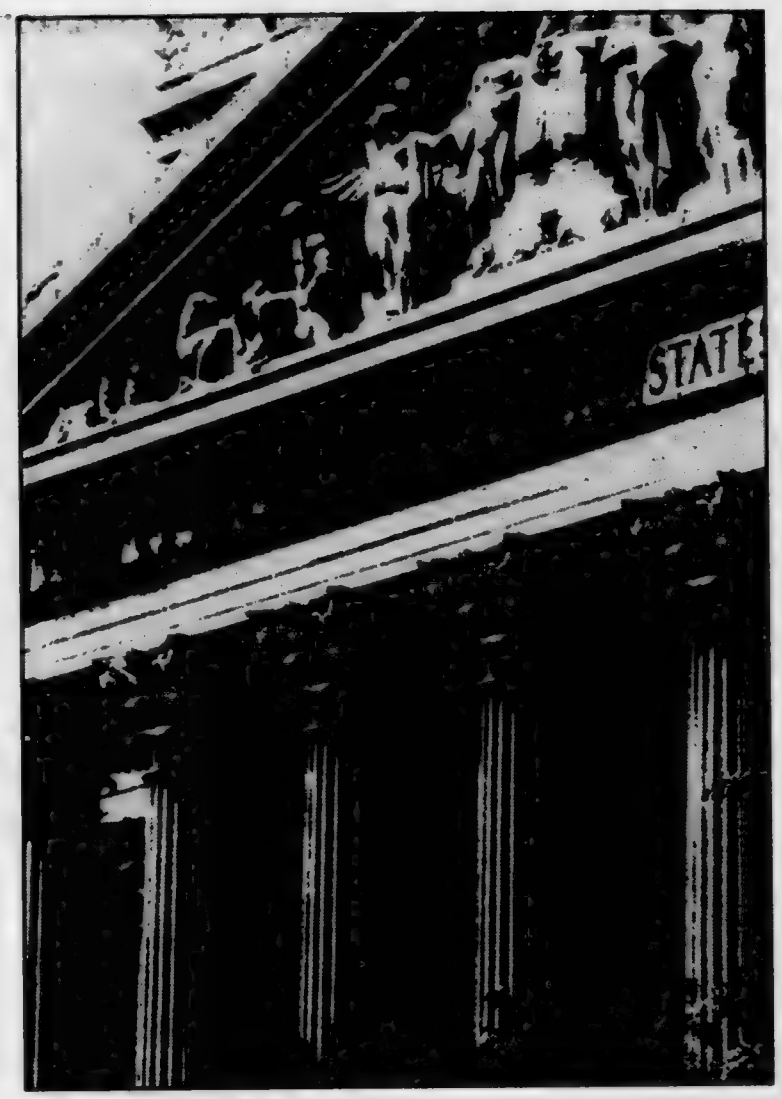

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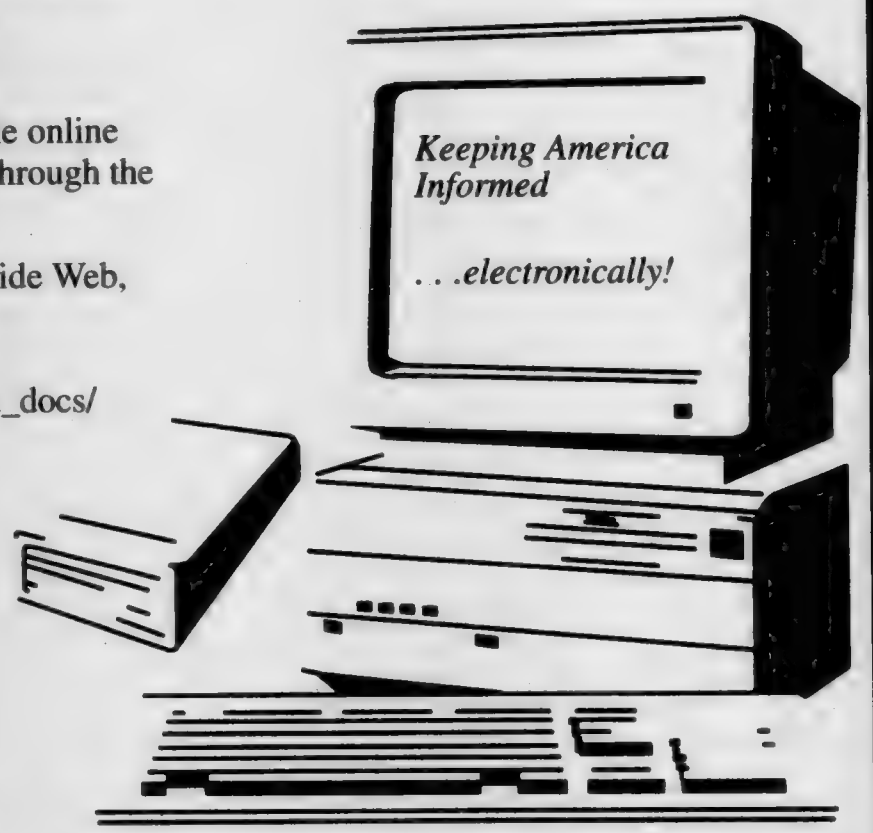

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

[DA–98–10]

Milk in the Nebraska-Western Iowa Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends 11 counties from the marketing area definition of the Nebraska-Western Iowa Federal milk marketing order (Order 65) beginning on February 1, 1999, and extending for an indefinite period until the implementation of a final rule consolidating Federal milk orders, as required by the 1996 Farm Bill, or an action to subsequently terminate the suspension. The action was requested by Gillette Dairy (Gillette) of Rapid City, South Dakota, which contends the suspension is necessary to maintain its milk supply and to remain competitive in selling fluid milk products in the marketing area.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–9368; e-mail address: clifford__m__carman@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued September 23, 1998; published October 9, 1998 (63 FR 54383).

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of April 1998, which is the most recent representative month with data including Gillette Dairy, 1,649 dairy farmers were producers under Order 65. Of these producers, 1,573 producers (i.e., 95 percent) were considered small businesses having monthly milk production under 326,000 pounds. A further breakdown of the monthly milk production of the producers on the order during April 1998 was as follows: 1,001 produced less than 100,000 pounds of milk; 445 produced between 100,000 and 200,000; 127 produced between 200,000 and 326,000; and 76 produced over 326,000 pounds. During the same month, 8 handlers were pooled under the order. One was considered a small business.

Pursuant to authority contained in the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), this suspension will remove 11 counties in the western panhandle of Nebraska from the marketing area definition of Order 65. The Nebraska counties are Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux.

Gillette, the proponent of this suspension, estimates that its sales in the counties represent 65 to 70 percent of total fluid milk sales in the 11 counties. Gillette explains that a loss of sales in an unregulated marketing area has resulted in its regulation under Order 65 without any appreciable increase in sales in the Order's marketing area. The handler contends the suspension is necessary to maintain its milk supply and to remain competitive in selling fluid milk products in the marketing area.

The July 1996 population estimate and the December 1992 fluid milk per capita consumption data show that the 11 Nebraska counties represent a small amount of the population and fluid milk consumption in the State of Nebraska and in the entire Order 65 marketing area. The 11 counties represent about 6 percent of the population and fluid milk consumption in the State of Nebraska and about 5 percent of the population and fluid milk consumption in the Order 65 marketing area.

There are three handlers other than Gillette that possibly have sales into the 11 Nebraska counties. The handlers are

Meadow Gold of Lincoln, Nebraska; Roberts Dairy in Omaha, Nebraska; and Meadow Gold in Greeley, Colorado. Roberts Dairy hauls milk for Nebraska Dairy, Inc., which is a distribution facility that is owned by the same principal company that owns Gillette. However, the dairy appears to be a separate entity from Gillette. Market information indicates that if these three handlers have sales into the 11 counties the volume is relatively small.

The suspension should not have a significant economic impact on handlers because of the relatively small number of sales by handlers other than Gillette in this 11-county area. In addition, the population in the 11-county area constitutes a small percentage of the population and fluid milk consumption in the State of Nebraska. This milk has not been historically associated with Order 65. Therefore, the removal of the 11 counties from the marketing area definition of Order 65 should not have a significant adverse impact on other order producers and other handlers.

A review of the current reporting requirements was completed pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and it was determined that this suspension will have little impact on reporting, recordkeeping, or other compliance requirements because these would remain almost identical to the current system. No new forms will need to be proposed.

No other burdens are expected to fall upon the dairy industry as a result of overlapping Federal rules. This regulation does not duplicate, overlap or conflict with any existing Federal rules.

Statement of Consideration

This suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area. The action suspends 11 counties in the western panhandle of Nebraska from the marketing area definition of Order 65. The Nebraska counties are Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux.

The July 1996 population estimate, which represents the most recent population statistics, shows that the total population for the Order 65 marketing area is 2,000,529 (i.e., 412,167 for Iowa counties and 1,588,362 for Nebraska counties). The population estimate for the entire State of Nebraska is 1,652,093, while the population for the 11 Nebraska counties is 91,194. In addition, the *December 1992 Federal Milk Order Statistics Report* (Per Capita Sales of Fluid Milk Products in Federal Order Markets) indicates that the Nebraska fluid milk per capita consumption is about 20 pounds per person per month. It is estimated that the fluid milk consumption per month within the 11 Nebraska counties is 1,823,880 (20 lbs. * 91,194).

The July 1996 population estimate and the December 1992 fluid milk per capita consumption data show that the 11 Nebraska counties represent about 6 percent of the population and fluid milk consumption in the State of Nebraska and about 5 percent of the population and fluid milk consumption in the Order 65 marketing area.

Gillette Dairy, the proponent of this suspension, was a fully regulated handler under the Black Hills, South Dakota, Federal milk marketing order prior to its termination (effective October 1, 1996) at the request of the Black Hills Milk Producers. After termination of the Black Hills order, Gillette for some time was a partially regulated handler under 3 Federal milk marketing orders: Eastern South Dakota (Order 76), Eastern Colorado (Order 137), and Order 65. From January 1998 through May 1998, Gillette was a fully regulated handler under Order 65 because its fluid milk sales in the marketing area represented more than 15 percent of its receipts. In recent months (i.e., June through November 1998), Gillette has been a partially regulated plant under Order 65 due to an increase in total milk receipts. During this period, Gillette has reduced its distribution in the 11-county area in an effort to avoid reducing the amount it pays its supplier, the Black Hills Milk Producers.

As a partially regulated handler, Gillette pays to the producers supplying its plant at least the full class-use value of its milk each month. Thus, Gillette has no further obligation to the producer-settlement fund of the orders under which it was a partially regulated handler. However, as a fully regulated handler, Gillette is required to pay the difference between its class-use value and the marketwide class-use value to the Order 65 producer-settlement fund. This payment, Gillette contends, increases its cost for milk and reduces the amount it can pay its producers.

Gillette was pooled under Order 65 during the months of January through May 1998. For the period of February through May 1998, Order 65 price data shows that the average uniform price to producers was $13.34 per hundredweight. If Gillette had not been a regulated handler under Order 65 during this period, the average uniform price to producers would have been about $13.31 per hundredweight. Thus, the regulation of Gillette for the February through May 1998 period resulted in an increase in the average uniform price of 3 to 4 cents per hundredweight.

According to Gillette, marketing conditions in Order 65 have changed significantly since the order was promulgated. Gillette estimates that its sales in the 11 counties represent 65 to 70 percent of total fluid milk sales in the counties. Gillette explains that a loss of sales in an unregulated marketing area has resulted in its regulation under Order 65 because such sales represented at least 15 percent of its receipts, but without any appreciable increase in sales in the Order's marketing area. Furthermore, the handler states that since its milk supply comes from the Black Hills Milk Producers there is no balancing of milk supply for the plant from Order 65 or any other Federal milk marketing order.

Black Hills Milk Producers also requested that the counties be removed from the Order 65 marketing area definition. The cooperative representing the producers explained that it is dependent on Gillette's survival. It states that the regulation of Gillette under Order 65 has caused its producers hardship by costing them as much as $1.00 per hundredweight during some months. According to the cooperative, this cost results from an agreement that it has with Gillette in which it refunds to Gillette an amount equal to half of the handler's obligation to the producer-settlement fund when Gillette is fully regulated. Although the producers pay this amount to Gillette, Order 65 price data for the February through May 1998 period indicates that their monthly pay prices were above the Order 65 uniform price.

Notice was published in the **Federal Register** on October 9, 1998 (63 FR 54383) concerning the proposed suspension of part of the marketing area definition of Order 65. Interested persons were afforded an opportunity to file written data, views, and arguments thereon. Six comments were received in support of the proposed suspension; two were received in opposition to it.

Gillette and Black Hills Milk Producers reiterated their support for the proposed suspension. Gillette anticipates that in the months ahead, as milk prices decline and milk production increases seasonally, the price spread between the Class I price and the blend price will increase. The handler states the impact will cause it to pay more into the producer-settlement fund while reducing its payment to Black Hills Milk

Producers. The cooperative states that the sharing of the cost of regulation with Gillette in addition to the low milk prices and high feed costs has caused several dairymen to discontinue dairying.

Associated Milk Producers, Inc. (North Central Region), in its comment letter, stated that because population, consumption, and milk supply in the 11 counties is fairly evenly balanced the proposed action would have a marginal effect on Order 65 blend prices. In addition, the other supporters who filed comments (i.e, the South Dakota Department of Agriculture, 5 United States Senators, and the Rapid City Area Chamber of Commerce) state that the action would eliminate the payments by Gillette into the producer-settlement fund (i.e., $500,000 during the first 6 months of 1998 or $83,000 per month) when regulated under Order 65. Thus, they claim that this cost directly affects the producers supplying the dairy and has been a contributing factor to producers discontinuing their dairy farm operations.

Dairy Farmers of America (DFA) and Meadow Gold Dairies expressed opposition to the proposed action and contend that it would create an inequitable marketing situation between handlers and producers. DFA is a cooperative that represents about 39 percent of the producers on Order 65 and 927 producers in other affected markets. DFA argues that the proposal would lower the returns of DFA member producers supplying the handlers affected by this action. The cooperative also contends that the proposal would lower the blend prices to these DFA producers in Order 65.

According to DFA, the proposal would provide Gillette with a financial advantage over competing handlers because Gillette competes with handlers over a broad geographic area (in counties in Nebraska, Colorado, and Wyoming). DFA asserts that the action would prohibit the sharing of revenues from the sale of milk by Gillette to DFA members and the Federal Order 65 producers. In addition, the cooperative claims that the action would assist Gillette in expanding its business further into Order 65 and the Eastern Colorado order (Order 137). The proposed action, it concludes, would adversely impact cooperatives' ability to negotiate over-order premiums in the future due to the perceived inequity in the marketplace.

Two additional letters were submitted after the comment period ended. Sinton Dairy filed a comment in opposition to the proposed action and Gillette submitted another letter in response to the issues addressed by DFA. Both comment letters were dated and received after the comment expiration date and cannot be given due consideration.

After careful consideration of the comments submitted, it is concluded that there is sufficient basis to grant the request for suspension of the 11 counties from the Order 65 marketing area for an indefinite period of time until the implementation of Federal order reform. Statistics clearly show that the majority (i.e., 65 to 70 percent) of the fluid milk sales into the 11-county area is by Gillette. Moreover, the 11 counties represent about 6 percent of the population and fluid milk consumption in the State of Nebraska and about 5 percent of the population and fluid milk consumption in the Order 65 marketing area. In addition, this milk has not been historically associated with the Order 65. Therefore, the removal of the 11 counties from the marketing area definition of Order 65 should not have an adverse impact on other order producers and other handlers. However, if the counties were to remain as part of the Order 65 marketing area definition, the effect could be severely disruptive for the Black Hills Milk Producers.

At this time, the Federal order reform process is expected to be completed by October 1, 1999. In the proposed federal order reform rule that was issued on January 21, 1998 (63 FR 4802), the proposed Central order marketing area, which included most of the existing Order 65 marketing area, did not include the 11 counties suspended in this action. However, this recommendation, together with all of the provisions in the proposed rule, is currently under consideration.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the period of February 1, 1999, and extending for an indefinite period until the implementation of a final rule consolidating Federal milk orders as required by the 1996 Farm Bill, or a subsequent action to terminate the suspension, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1065.2(a), the words "Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux."

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed suspension was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Several comments supporting the suspension, and one comment opposing it, were received.

Therefore, good cause exists for making this suspension effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1065 is amended as follows:

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1065.2 [Suspended in part]

2. In § 1065.2(a), the words "Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, Sioux" are suspended.

Dated: January 26, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–2430 Filed 2–1–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–50–AD; Amendment 39–11018; AD 99–03–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that requires installation of

components to provide shielding and separation of the fuel system wiring (that is routed to the fuel tanks) from adjacent wiring. This amendment also requires installation of flame arrestors and pressure relief valves in the fuel vent system. This amendment is prompted by testing results, obtained in support of an accident investigation, and by re-examination of possible causes of a similar accident. The actions specified by this AD are intended to prevent possible ignition of fuel vapors in the fuel tanks, and external ignition of fuel vapor exiting the fuel vent system and consequent propagation of a flame front into the fuel tanks.

EFFECTIVE DATE: March 9, 1999.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Hartonas, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2864; fax (425) 227–1181; or Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes was published in the **Federal Register** on April 22, 1998 (63 FR 19852). [An action to reopen the comment period for the proposal was issued on July 8, 1998 (63 FR 38524, July 17, 1998).] That action proposed to require installation of components for the suppression of electrical transients, and/or installation of components to provide shielding and separation of the fuel system wiring (that is routed to the fuel tanks) from adjacent wiring. That action also proposed to require installation of flame arrestors and pressure relief valves in the fuel vent system.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request To Withdraw or Delay the Release of the AD

Two commenters, the airplane manufacturer and a supplier of fuel quantity indication system (FQIS) components, indicate that the current fuel system wiring configuration is safe when properly maintained, and that modifications are not necessary or, at the very minimum, should be delayed until further testing can be completed. Both commenters stress that the safety record regarding the existing FQIS for Boeing Model 737–100 through –500 series airplanes is excellent and exceeds all regulatory requirements. In addition, the commenters note there is no proof that the FQIS contributed to the center fuel tank explosions on a Model 737–300 series airplane in 1990 and on a Model 747–100 series airplane in 1996. The commenters further note that the data gathered to date relative to electromagnetic interference (EMI) testing of the FQIS do not clearly support the contention that an unsafe condition exists. The airplane manufacturer also states that additional data should be gathered on potential ignition threats, in order to reach a regulatory and industry consensus regarding the adequacy of the current FQIS. The features of the existing FQIS that are intended to prevent an ignition source from entering the fuel tank are also extensively discussed by the airplane manufacturer.

The FAA does not concur with the request to withdraw or delay the release of the final rule. The FAA has determined that sufficient data currently are available to support a requirement to incorporate shielding and separation of the fuel system wiring on Model 737–100 through –500 series airplanes to protect against hot shorts or EMI transients, which may result in in-tank energy levels of sufficient magnitude to ignite fuel vapor. Therefore, the current fuel system wiring configuration on Model 737–100 through –500 series airplanes must be modified. In addition, the FAA has determined that delaying publication of the final rule to accommodate further testing is not in the best interest of the public or industry. No change to the AD in this regard is necessary.

Regarding safety of the existing FQIS and compliance with 14 CFR part 25 ("Airworthiness Standards: Transport Category Airplanes"), the FAA notes that the current regulations do not explicitly address the unsafe condition that is or may be present in the fuel tanks of Model 737–100 through –500 series airplanes. Therefore, the fact that the existing FQIS was determined to be in compliance with part 25 when these airplane models were certificated is not relevant. In addition, the FAA is currently working on a proposal to amend part 25 that would explicitly require demonstrating that ignition sources could not be present in fuel tanks when failure conditions and aging are considered. The FAA agrees with the commenters that no conclusive evidence exists to indicate that the FQIS contributed to the two accidents referred to by the commenters. However, it is the nature of such accidents that they often destroy the evidence that could lead to a conclusive identification of the cause of the accident. Even without the destruction caused by the accident, there often is no specific physical evidence of low energy electrical arcing.

The FAA does not concur that the final rule should be delayed until further EMI testing and data gathering can be completed. The FAA recognizes the value of further testing; however, the final rule should not be delayed for this purpose. Though further testing may be used to better understand possible scenarios that may lead to excessive voltage reaching the fuel tanks, the FAA has determined that separation and shielding is the most practical and reliable method to eliminate or minimize this hazard. An explanation of how the FAA reached this determination follows.

The FAA has developed the requirement for fuel system wiring separation and shielding as a result of investigation into the 1996 accident referred to by the commenter. During the investigation, the National Transportation Safety Board (NTSB) used systems analysis methods to determine what systems on the Model 747 series airplane are most likely to have been the source of ignition energy in the center fuel tank. That analysis included examinations of system failure modes and effects, service history, and similar airplanes.

The FAA notes that more than one failure would be required to create an ignition source inside the tank. The fact that fuel tank explosions on Model 737 and 747 series airplanes are rare would seem to support a claim that single failures have not been causing fuel tank explosions. However, during the 1996 Model 747 accident investigation, the fuel system wiring safety analysis and the examinations of Model 747 series airplanes performed by the NTSB revealed several scenarios in which a

combination of a latent failure or aging condition within the fuel tank and a subsequent single failure or electrical interference condition outside the tank can cause an ignition source to occur inside a fuel tank.

Examples of these in-tank and out-of-tank conditions that can contribute to a multiple failure ignition scenario were found in airplane service records and on Model 747 series airplanes that were inspected by the FAA and the NTSB. Various center wing fuel tanks were found to have conductive debris in the tanks, damaged FQIS wire insulation at the fuel probes, and contamination of probes and in-tank wiring by conductive copper/sulfur or silver/sulfur films. Each of these conditions can create latent potential ignition sources inside the fuel tank.

During the investigation into the 1990 accident involving a Model 737–300 series airplane, examination of the fuel system float switch wiring revealed damaged insulation and exposed conductor material of several wires. Further examination of wire bundles for other systems revealed numerous areas in which wire insulation had been damaged. The wire insulation damage may have resulted during a modification after the airplane was delivered to the airline. However, because other wires were found to have damage not related to any post-delivery modifications, the wire insulation damage may have resulted from the installation of the wire bundle at the factory. Recent inspections of the final assembly revealed wiring damage during out-of-sequence production on Model 737 series airplanes.

In addition, several conditions have been identified that can lead to sufficient energy in the fuel system wiring to create an ignition source if combined with one of the latent conditions described above. For example, direct short circuit conditions can occur in wire bundles containing FQIS wiring. Model 737 series airplanes have recently been observed with aluminum drill shavings on and inside various wire bundles in several locations between the flight deck and the fuel tank. Such shavings can, with vibration or other motion, cut through wire insulation and provide a conductive path between wires in a bundle. Service history contains records of wire bundle fires, which may have been due to such conditions. Also, electromagnetic coupling can occur between systems routed together in bundles.

When the fuel system wiring practices used on other manufacturers' transport airplanes certificated in the same time period as the Model 737 series airplane are examined, the FAA finds that those other airplanes incorporated wiring features (shielding and separation from other systems) that preclude the multiple failure scenarios discussed above. An examination of the service history for those other airplane manufacturers' models also shows that significantly fewer fuel tank fire/explosion events have occurred (a tabulation of transport airplane fuel tank fires was included in the FAA Notice of Request for Comments on NTSB Safety Recommendations published in the **Federal Register** on April 3, 1997). The two most recent fuel tank explosion accidents (in 1990 and 1996, as referred to previously) remain unsolved, and both airplane types involved in those accidents follow the wiring practices addressed by this AD. Therefore, the FAA has determined that, to address the potential for fuel tank ignition due to a latent failure plus one subsequent failure, the type design of Model 737–100 through –500 series airplanes must be brought up to the same wiring standards as other transport airplanes certificated during the same time period the Model 737 was certificated. No change to the final rule is necessary in this regard.

Request To Extend Compliance Time

Five commenters, comprising the airplane manufacturer, a supplier of FQIS components, two operators of Model 737 series airplanes, and an association of airlines operating in the U.S., request an extension of the compliance period for incorporation of fuel system wiring modifications and installation of fuel vent system flame arrestors. In general, the commenters consider the 12-month compliance period to be too short.

One commenter recommends a 24-month compliance time for both actions, to ease the demand on hangar space and to spread the cost out over two fiscal years instead of one. In addition, one commenter is concerned that service instructions are not yet available.

Two of the commenters, including the airplane manufacturer, recommend a longer compliance period for modification of fuel system wiring. One commenter recommends 36 months because of the lack of immediate safety concern associated with the existing wiring configuration and because of logistical considerations for accomplishing the modification. In addition, this commenter notes that the fuel system modification for Model 737–100 through –500 series airplanes required by this AD, as well as the modification for Model 747 series airplanes required by AD 98–20–40, amendment 39–10808 (63 FR 52147, September 30, 1998), will affect up to 3,500 airplanes, and the requirements for manpower and hangar space will require that the work be spread out over several years. The other commenter recommends that the compliance time for the fuel system wiring modification be extended to 72 months, adding that such an extension would accommodate a flow time of 12 months to develop service instructions and 36 months to fabricate the required parts, as well as a projected incorporation rate that allows operators to complete the modification during a normal "D" check interval.

Two of the commenters state that the proposed compliance period for installation of vent system flame arrestors is too short, based on anticipated parts availability. The airplane manufacturer recommends a 3-year compliance period for that action, based on anticipated availability of parts and service instructions.

The FAA concurs with the request to extend the compliance period for accomplishment of the actions required by this AD. Generally, the commenters recommend that the compliance period for the wiring modification be different from that for the flame arrestor installation. The FAA concurs with this approach and has revised the final rule to extend the compliance period from 12 months to 48 months for modification of the fuel system wiring, and from 12 months to 36 months for installation of fuel vent system flame arrestors and pressure relief valves. These extensions are intended to allow sufficient time for the fabrication of required parts and subsequent modification of most of the affected airplanes during scheduled maintenance visits. The FAA has determined that these extensions will not have a significant adverse effect on the safety of the fleet of Model 737–100 through –500 series airplanes.

The FAA also agrees that, as these modifications are spread out over several years, the cost per year is reduced and the demand for hangar space and manpower is reduced. The FAA finds that both compliance periods allow ample time for development of service instructions and the fabrication of parts. The FAA has taken into account the size of the fleet in determining appropriate compliance times. The airplane manufacturer recommends a 72-month compliance time to accomplish fuel system wiring modifications. However, the FAA has determined that this activity may be completed in 48 months. This

determination was made by accepting the maximum compliance period requested from commenters (other than the manufacturer) and allowing 12 months for development of service instructions and retrofit kits. The manufacturer indicates that service information will be available within 12 months, and sufficient parts to support all U.S.-registered airplanes will be available within 24 months. In addition, the manufacturer predicts an incorporation rate of 50 airplanes per month. In light of these numbers (all of which the FAA considers to be conservative), wiring modifications on the U.S.-registered fleet can be accomplished in a total of 36 months. Recognizing that non-U.S.-registered airplanes will also be requiring parts, which will delay incorporation on U.S.-registered airplanes, the FAA believes it is sufficient to extend the compliance period for an additional 12 months for a total of 48 months.

Request To Delay Issuance of the AD Pending Release of Service Information

Two commenters, comprising an association of airlines operating in the United States and an operator of U.S.-registered airplanes, note that detailed compliance methods for the fuel system wiring modification and flame arrestor installation must be developed before the AD is released. The commenters indicate that, without such detailed instructions, the operators will have to be reactive instead of proactive; therefore, design and implementation errors may be introduced. One of the commenters stresses that the compliance methods must be based on results from EMI tests conducted on Model 737 FQIS's and that caution should be taken because wiring modifications may cause damage to existing wiring. The other commenter stresses that, because of the fleet size and the relatively short proposed compliance times, the rule should not be released until compliance methods are available.

The FAA concurs partially. The FAA does not concur that delaying this action until after the release of the manufacturer's planned service instructions is warranted, because sufficient technology currently exists to devise and install the required features within reasonable compliance times. However, as discussed previously, the final rule has been modified to allow 36 months to install fuel vent system flame arrestors and 48 months to modify fuel system wiring.

The FAA has taken into account the size of the fleet in determining appropriate compliance times and has adopted the recommendation of the airplane manufacturer relative to the compliance period for the installation of fuel vent system flame arrestors. The selection of a 48-month compliance time for fuel system wiring modification also has taken into account the fleet size (explained in detail under the heading "Request to Extend Compliance Time," above).

The FAA does not concur with the request to delay release of the rule to complete further EMI testing on additional Model 737 series airplanes. The airplane manufacturer has completed testing on one Model 737 series airplane to date. The FAA has determined that the test procedures used during the EMI testing are not representative of the many possible conditions on an airplane in operation. Specifically, no attempt was made to represent any system failure conditions or compromise shielding/grounding provisions on the systems that were powered and switched. Also, because of the way airplane wire bundles are manufactured and installed, significant variation in levels of coupling between systems has been seen in the past and would be expected on Model 737 series airplanes.

Moreover, the FAA's determination of the existence of an unsafe condition is not wholly dependent on the results of the EMI testing. In the Model 747 fuel system wiring safety analysis and airplane inspections performed by the NTSB during the investigation of the 1996 accident, several tank ignition scenarios were identified involving a combination of a latent failure or aging condition inside the fuel tank and a subsequent failure or electromagnetic coupling outside the tank. Various FAA and NTSB activities identified actual examples of the specific potential for each of those types of contributing conditions on Model 747 series airplanes. In addition, the FAA has determined that these same types of scenarios are applicable to Model 737–100 through –500 series airplanes.

The FAA shares the commenters' concern that modification of fuel system wiring may damage existing wiring, and the airplane manufacturer has carefully considered this concern as well. To minimize possible damage, the manufacturer's service instructions will not specify removal of any of the existing wiring; instead, this wiring will be terminated properly and retained in the airplane. In addition, newly installed shielded wiring will be spatially separated from all other airplane wiring.

Preference for a Specific Design Solution

Two commenters discuss application of transient suppression devices as they relate to the proposed AD. Responses to these comments have not been included in this AD because the optional requirement for installation of transient suppression devices has been removed from the final rule.

Based on comments from the airplane manufacturer, and on its own further analysis, the FAA has determined that installation of transient suppression devices alone would not meet the intent of the rule. The FAA has concerns that transient suppression devices may have latent failure modes that would render the transient suppression function inoperative, or may have failure modes that would cause introduction of high voltage signals into the fuel tank that otherwise would not have occurred. Therefore, paragraph (a) of the final rule has been revised to eliminate the general requirement for transient suppression components and to delete the reference to "install components." Operators that have specific design changes other than those required by the AD that may provide an acceptable level of safety may request approval of an alternative method of compliance in accordance with paragraph (c) of this AD.

Request To Separate the Proposed Rule Into Two AD's

One commenter, an operator of U.S.-registered airplanes, requests that the AD be divided into two AD's. The commenter points out that the corrective actions cannot be done in one maintenance visit.

The FAA does not concur with the request to separate the rule. Although both required actions most likely will not be accomplished during the same shop visit, the FAA notes that more than one shop visit to accomplish the actions required by an AD is not uncommon. The manufacturer plans to issue service information for each modification separately, which will allow the actions to be readily performed at different maintenance visits. No change to the AD in this regard is required.

Request To Revise Cost Estimate for Wiring Modification

Two commenters, an operator of U.S.-registered airplanes and the airplane manufacturer, discuss work hour and cost estimates regarding modification of fuel system wiring. One commenter questions how the FAA determined the work hour and cost estimates for wiring changes in the proposed rule. The other

commenter provides its own specific work hour and cost estimates for wiring modifications.

The FAA infers that the commenters request a revision of the work hour and cost estimates for the wiring modification. The FAA concurs. In the absence of specific instructions addressing wiring modifications, the FAA based its original work hour estimate (40 work hours) and cost estimate ($12,400 per airplane) on similar modifications accomplished on other airplane models. The cost impact information, below, has been revised in this regard, based on the information provided by the manufacturer.

Request To Revise Cost Estimate for Installation of Flame Arrestor

Three commenters, comprising an operator of U.S.-registered airplanes, an association of airlines operating in the U.S., and the airplane manufacturer, discuss work hour and cost estimates regarding installation of fuel vent system flame arrestors and pressure relief valves. One commenter suggests that the FAA's determination of 48 work hours to install flame arrestors is underestimated. Another commenter questions the method the FAA used to estimate the work hours and parts necessary to install the flame arrestors. A third commenter provides its own specific work hour and cost estimates.

The FAA infers that the commenters request a revision of the cost estimate for this installation. The FAA concurs partially. The FAA considers the cost estimates provided in the proposed rule to be generally representative of the actual costs associated with this modification. The FAA's estimated work hours and costs are based on previously released service instructions from the airplane manufacturer that detailed installation of fuel vent system flame arrestors and pressure relief valves on Model 737–200 series airplanes. The airplane manufacturer's labor cost estimate is comparable to the FAA's estimate and its parts cost estimate is actually lower than that of the FAA. The cost impact information, below, has been revised in this regard, based on the information provided by the manufacturer.

Request To Maintain Minimum FQIS Performance Requirements

One commenter, a manufacturer of fuel system components, requests that the minimum performance requirements for FQIS's regarding maximum allowable energy into the fuel tank not be changed as a result of this AD. The commenter states that a change to the minimum performance requirements implies the currently certified FQIS is not safe.

The FAA concurs with the request and finds that the changes that result from this AD do not directly affect the minimum performance requirements for fuel system wiring and components in the future. Though the AD does not specifically address the performance requirements, the FAA notes studies are in progress that may address the currently accepted maximum allowable energy levels in fuel tanks. If, as part of this study activity, it is determined that the currently recognized levels need to be adjusted, then the FAA may consider further rulemaking to address that. As stated previously, the fact that two unexplained center fuel tank explosions have occurred in the last eight years on Boeing airplanes leads the FAA to conclude that modifications to the fuel system wiring are necessary. The FAA has determined that wire separation and shielding is the appropriate action to take at this time. These modifications do not directly affect the minimum performance requirements for fuel system wiring. Therefore, no change to the AD in this regard is required.

Concerns Regarding Flame Arrestor Qualification Tests

One commenter expresses concern that flame arrestor qualification tests are not sufficiently defined and that the installation of fuel vent system flame arrestors would not have prevented the 1990 center fuel tank explosion on a Model 737–300 series airplane.

The FAA recognizes there are credible explanations for the accident that do not involve an external flame front traveling through the vent system into the center fuel tank. Regardless of the role a fuel vent system flame arrestor may have played in that specific accident, the FAA has determined that the lack of fuel vent system flame arrestors in Model 737–100 through –500 series airplanes creates an unacceptable risk of fuel tank explosion and constitutes an unsafe condition. Based on comments received on the NPRM, this opinion appears to be held by a number of commenters (including the airplane manufacturer) as well. The sufficiency of qualification testing for flame arrestors does not have a specific bearing on this AD.

However, the FAA is interested in obtaining more information regarding this commenter's concerns. The FAA has asked the commenter to submit additional detailed information on this concern to the Seattle Aircraft Certification Office for consideration.

Concerns Regarding Detection of Wire Chafing

One commenter, a manufacturer of electronic test equipment, states it believes that electrical coupling between adjacent wires is not plausible as a cause for either accident referred to previously. The commenter notes these wires have been adjacent to other wires for years with no apparent problems. In addition, the commenter suggests the test equipment utilized by industry is not sophisticated enough to detect the types of wire damage that may be present in the fuel system wiring. The commenter also details the benefits of utilizing more advanced test equipment for detection of wire damage. The commenter further indicates that it manufactures this advanced equipment.

The FAA does not agree with the commenter's opinion that electrical coupling between adjacent wires could not be a factor in either the 737–300 or the 747–100 fuel tank explosion. As noted in the proposed rule, the FAA participated in testing of fuel system wiring in which electrical coupling was induced in combination with an aging condition or a latent failure of the FQIS probes, which resulted in energy in excess of that required to ignite fuel vapor. The fact that the wires had been adjacent for years with no apparent problems prior to the tank ignition may only indicate that neither the aging condition nor the latent failure inside the tank was present during that time to allow the induced voltage to cause an ignition source inside the fuel tank.

Regarding the advanced test equipment discussed by the commenter, the FAA cannot dictate the types of electrical equipment that industry utilizes in conducting airplane wiring tests. This AD is based on the determination that separation and shielding of the fuel system wiring is currently the only practical method to ensure that induced transients or wire-to-wire hot shorts do not cause an ignition source inside the fuel tank. No change to the AD in this regard is required.

Clarification of Systems Affected

Since the issuance of the NPRM, the FAA recognized the proposed AD may be unclear with respect to which electrical circuits were intended to be affected by the proposed AD. The NPRM proposed, and the final rule requires, providing shielding and separation of the fuel system wiring (that is routed to the fuel tanks) from adjacent wiring. The FAA considers "fuel system wiring" to include all electrical circuits associated with the control or indication

of the fuel quantity on the airplane. This would include, but not be limited to, the FQIS tank probe circuits, the volumetric shutoff compensator circuits, densitometer circuits, and float switch circuits. The term "circuits" is considered by the FAA to include airplane wiring as well as wiring within electrical equipment.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,780 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,140 airplanes of U.S. registry will be affected by this AD.

It will take approximately 278 work hours per airplane to accomplish the required installation of shielding/separation components, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,500 per airplane. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $24,145,200, or $21,180 per airplane.

It will take approximately 48 work hours per airplane to accomplish the required installation of flame arrestors, at an average labor rate of $60 per work hour. Required parts will cost approximately $17,100 per airplane. Based on these figures, the cost impact of this action on U.S. operators is estimated to be $22,777,200, or $19,980 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–03–04 Boeing: Amendment 39–11018. Docket 98–NM–50–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible ignition of fuel vapors in the fuel tanks, and external ignition of fuel vapor exiting the fuel vent system and consequent propagation of a flame front into the fuel tanks, accomplish the following:

(a) Within 48 months after the effective date of this AD, provide shielding and separation of the fuel system wiring (that is routed to the fuel tanks) from adjacent wiring, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) Within 36 months after the effective date of this AD, install flame arrestors and pressure relief valves in the fuel vent system, in accordance with a method approved by the Manager, Seattle ACO.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on March 9, 1999.

Issued in Renton, Washington, on January 26, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2272 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to reflect redelegations to other officials within the Center for Devices and Radiological Health (CDRH) pertaining to: Certifying true copies and using the Department seal, disclosing official records, issuing reports of minor violations, and medical device reporting procedures. This amendment is intended to reflect those redelegations.

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT:

Deb A. Baclawski, Center for Devices and Radiological Health (HFZ–026), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–1060, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the delegations of authority under § 5.22 *Certification of true copies and use of the Department seal* (21 CFR 5.22); § 5.23 *Disclosure of official records* (21 CFR 5.23); § 5.37 *Issuance of reports of minor violations* (21 CFR 5.37); and § 5.98 *Authority relating to medical device reporting procedures* (21 CFR 5.98) to reflect redelegations to other officials within CDRH. These redelegations will improve the efficiency of operations for the center.

Further redelegation of the authorities delegated is not authorized at this time. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.22 is amended by revising paragraph (a)(10)(v) and by adding paragraph (a)(10)(vi) to read as follows:

§ 5.22 Certification of true copies and use of Department seal.

(a) * * *

(10) * * *

(v) The Director and Deputy Director, Office of Surveillance and Biometrics (OSB), CDRH, and the Director and Deputy Director, Division of Surveillance Systems (DSS), OSB, CDRH.

(vi) Freedom of Information Officers, CDRH.

* * * * *

3. Section 5.23 is amended by adding paragraph (c)(5) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(c) * * *

(5) The Director and Deputy Director, Office of Surveillance and Biometrics (OSB), CDRH, the Director and Deputy Director, Division of Surveillance Systems (DSS), OSB, CDRH, and the Chief Reporting Systems Monitoring Branch, DSS, OSB, CDRH.

* * * * *

3. Section 5.37 is amended by adding paragraphs (a)(2)(iv) and (b)(4) to read as follows:

§ 5.37 Issuance of reports of minor violations.

(a) * * *

(2) * * *

(iv) The Director and Deputy Director, Office of Surveillance and Biometrics (OSB), CDRH, and the Director and Deputy Director, Division of Surveillance Systems (DSS), OSB, CDRH.

* * * * *

(b) * * *

(4) The Director and Deputy Director, OSB, CDRH, and the Director and Deputy Director, DSS, OSB, CDRH.

* * * * *

5. Section 5.98 is revised to read as follows:

§ 5.98 Authority relating to medical device reporting procedures.

(a) The Director and Deputy Directors, Center for Devices and Radiological Health (CDRH), the Director and Deputy Director, Office of Surveillance and Biometrics, (OSB), CDRH and the Director and Deputy Director, Division of Surveillance Systems (DSS), OSB, CDRH, are authorized to approve electronic reporting under § 803.14 of this chapter.

(b) The Director and Deputy Directors, CDRH, the Director and Deputy Director, OSB, CDRH, and the Director and Deputy Director, DSS, OSB, CDRH, are authorized to request the submission of additional information under § 803.15 of this chapter.

(c) The Director and Deputy Directors, CDRH, the Director and Deputy Director, OSB, CDRH, and the Director and Deputy Director, DSS, OSB, CDRH, are authorized to grant or revoke exemptions and variances from reporting requirements under § 803.19 of this chapter.

Dated: January 22, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2357 Filed 2–1–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Narasin and Nicarbazin With Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Elanco Animal Health, a Division of Eli Lilly & Co. The NADA provides for combining approved narasin/nicarbazin (1:1 fixed ratio) and bacitracin methylene disalicylate (BMD) Type A medicated articles to make combination drug Type C medicated broiler chicken feeds for prevention of certain forms of coccidiosis and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, a Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed NADA 140–926 that provides for combining approved narasin/nicarbazin (1:1 fixed ratio) Maxiban® and BMD Type A medicated articles to make combination drug Type C medicated broiler chicken feeds. The feeds contain 27 to 45 grams per ton (g/t) each of narasin and nicarbazin and 4 to 50 g/t BMD. The feeds are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and for increased rate of weight gain and improved feed efficiency. The NADA is approved as of January 4, 1999, and the regulations are amended in 21 CFR 558.76, 558.363, and 558.366 to reflect the approval

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

This approval is for use of approved Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, nicarbazin, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required for making a Type B or C medicated feed as in this application. Under 21 U.S.C. 360b(m), as amended by the Animal Drug Availability Act of 1996 (Pub. L. 104–250), medicated feed applications have been replaced by a requirement for manufacture in a licensed feed mill. Therefore, use of narasin/nicarbazin and BMD Type A medicated articles to make Type C medicated feeds as in NADA 140–926 requires manufacture in a licensed feed mill.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.76 is amended by adding paragraph (d)(3)(xix) to read as follows:

§ 558.76 Bacitracin methylene disalicylate.

* * * * *

(d) * * *

(3) * * *

(xix) Narasin and nicarbazin as in § 558.366.

3. Section 558.363 is amended by adding paragraph (d)(2)(ii) to read as follows:

§ 558.363 Narasin.

* * * * *

(d) * * *

(2) * * *

(ii) Nicarbazin and bacitracin methylene disalicylate as in § 558.366.

4. Section 558.366 is amended in the table in paragraph (c) under entry "27 to 45" by alphabetically adding an entry for "Narasin 27 to 45 and bacitracin methylene disalicylate 4 to 50" to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(c) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
27 to 45	Narasin 27 to 45 and bacitracin methylene disalicylate 4 to 50	Broiler chickens; prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti, E. mivati*; for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Withdraw 5 days before slaughter. Do not allow turkeys, horses, or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Do not feed to laying hens. Narasin and nicarbazin as provided by 000986, bacitracin methylene disalicylate by 046573.	000986

Dated: January 22, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–2411 Filed 2–1–99; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA11

Minimum Internal Control Standards

AGENCY: National Indian Gaming commission.

ACTION: Final Rule; Correction.

SUMMARY: The National Indian Gaming Commission published the Final Rule on Minimum Internal Control Standards (MICS) on January 5, 1999. The compliance dates stated in the preamble under "Dates" were incorrect. This publication is to correct the mistakes.

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Mai Dinh, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005. Telephone: 202–632–7003.

SUPPLEMENTARY INFORMATION: The Final Rule on Minimum Internal Control Standards, published on January 5, 1999, in Part III of the **Federal Register**, should be corrected as follows. On page

590 in the first column, the paragraphs under "Dates" should be:

Effective Date: February 4, 1999.

Compliance Date: Tribal MICS must be developed by August 4, 1999. Gaming operations operating on or before March 31, 1999, must be in full compliance no later than February 4, 2000. Gaming operations which commence operation after March 31, 1999, must be in full compliance prior to commencement of operations.

Authority and Signature

This Final Rule Correction was prepared under the direction of Barry W. Brandon, General Counsel, National Indian Gaming Commission, 1441 L Street, NW, Suite 9100, Washington, DC 20005.

Signed at Washington, DC this 25th day of January, 1999.

Barry W. Brandon,

General Counsel.

[FR Doc. 99–2219 Filed 2–1–99; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[TD 8813]

RIN 1545–AU74

Residence of Trusts and Estates—7701

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations providing guidance regarding the definition of a trust as a United States person (domestic trust) or a foreign trust. This document also provides guidance regarding the election for certain trusts to remain domestic trusts for taxable years beginning after December 31, 1996. The regulations incorporate changes to the law made by the Small Business Job Protection Act of 1996 and by the Taxpayer Relief Act of 1997. The final regulations affect the determination of the residency of trusts as foreign or domestic for federal tax purposes.

DATES: *Effective date:* These regulations are effective February 2, 1999.

Dates of applicability: See § 301.7701–7(e).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, James A. Quinn at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1600.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these final regulations are in § 301.7701–7 (d)(2)(ii) and (f). This information is required by the IRS to assure compliance with the provisions of the Small Business Job Protection Act of 1996 and by the Taxpayer Relief Act of 1997 for trusts seeking to retain their residency as domestic or foreign trusts in the event of an inadvertent change and for trusts electing to remain domestic trusts. The likely respondents are trusts. The estimated average annual burden per respondent is 0.5 hours.

Comments concerning the accuracy of this burden estimate should be sent to the *Internal Revenue Service,* Attn.: IRS Reports Clearance Officer. OP:FS:FP, Washington, DC 20224, and to the *Office of Management and Budget,* Attn.: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 5, 1997, the IRS published in the **Federal Register** a notice of proposed rulemaking (62 FR 30796) to provide guidance on the definition of a foreign trust and a domestic trust under section 7701(a) (30) and (31), as amended by section 1907 of the Small Business Job Protection Act of 1996 (SBJP Act), Public Law 104–188, 110 Stat. 1755 (August 20, 1996).

Written comments responding to the notice of proposed rulemaking were received, and a public hearing was held on September 16, 1997. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision.

Section 1161(a) of the Taxpayer Relief Act of 1997 (TRA 1997), Public Law 105–34, 111 Stat. 788 (August 5, 1997), provides that, to the extent prescribed in regulations by the Secretary of the Treasury or his delegate, a trust that was in existence on August 20, 1996 (other than a trust treated as owned by the grantor under subpart E of part I of subchapter J of chapter 1 of the Internal Revenue Code of 1986 (Code)), and that was treated as a United States person on August 19, 1996, may elect to continue to be treated as a United States person notwithstanding the enactment of section 7701(a)(30)(E). Notice 98–25 (1998–18 I.R.B. 11) provides guidance regarding the election to remain a domestic trust. The IRS and the Treasury Department are incorporating the guidance contained in Notice 98–25 concerning the election to remain a domestic trust in these final regulations. The final regulations also provide guidance regarding the circumstances that cause a termination of the election and guidance concerning revocation of the election to remain a domestic trust.

In addition, section 1601(i)(3)(A) of TRA 1997 amended section 7701(a)(30)(E)(ii) by striking the word "fiduciaries" and inserting "persons" in its place. The final regulations have been drafted consistent with this change.

Explanation of Provisions

A. Court Test and Safe Harbor Issues

1. Foreign Classification Bias and Safe Harbor

Some commentators point out generally that the Code and the proposed regulations are biased in favor of trusts being treated as foreign trusts. The commentators recommend that the regulations should reduce the bias in favor of foreign treatment. The safe harbor in the proposed regulations provides that a trust is a domestic trust if, pursuant to the terms of a trust instrument, the trust has only United States fiduciaries, such fiduciaries are administering the trust exclusively in the United States, and the trust is not subject to an automatic migration provision. One commentator recommends that the safe harbor be made clearly applicable in the case of any trust if a majority of the trustees are United States persons and the other requirements are met.

The IRS and the Treasury Department agree with the commentator that the safe harbor should not be limited to trusts with only United States fiduciaries. Since the primary concern addressed by the safe harbor is the difficulty in determining whether the court of a particular state would assert primary supervision over the administration of a trust if that trust had never appeared before a court, the final regulations

provide a safe harbor only for the court test. A trust that satisfies the safe harbor, therefore, would also need to meet the control test in order to be a domestic trust. In addition, an example has been added to the control test illustrating that the control test is satisfied if United States persons control all substantial decisions by a majority vote.

Commentators note that many trust instruments do not direct where the trust is to be administered. Therefore, they suggest that a trust should satisfy the safe harbor if the trust is in fact administered in the United States (regardless of whether this is mandated by the trust document).

The IRS and the Treasury Department believe that, if a trust is administered exclusively in the United States, it is not necessary that the trust instrument actually direct that the trust be administered in the United States. Accordingly, the final regulations provide that a trust satisfies the safe harbor if the trust instrument does not direct that the trust be administered in a jurisdiction outside the United States, and the trust is in fact administered in the United States.

These changes in the final regulations will allow more trusts to fall within the safe harbor.

2. Automatic Migration or Flee Clauses

The proposed regulations provide that a trust will not satisfy the court test if the trust instrument contains an automatic migration clause that would cause the trust to migrate from the United States if a United States court attempts to assert jurisdiction or otherwise supervise the administration of the trust. Commentators argue that the rule in the proposed regulations concerning automatic migration clauses is too broad. They argue that an automatic migration clause should not cause a trust to be treated as a foreign trust if migration is triggered only by events that are not particular to a given trust, its trustees, beneficiaries, or grantors. For example, if a trust will migrate because of foreign invasion of the United States, the residency of the trust should not be affected.

The final regulations adopt the suggestion and provide that a trust will not fail the court test if the trust instrument provides that the trust will migrate from the United States only in the case of foreign invasion of the United States or widespread confiscation or nationalization of property in the United States.

3. Clarify That the List of Specific Situations for Meeting the Court Test Is Not an Exclusive List

Commentators recommend that the regulations be clarified to provide that the situations set forth in § 301.7701–7(d)(2) of the proposed regulations that meet the court test are not the exclusive ways to meet the court test.

The purpose of setting forth specific situations that meet the court test was to provide bright-line rules that would give taxpayers certainty of treatment to the extent possible. These rules, however, are not exclusive. The court test will also be satisfied by meeting the requirements set forth in the final regulations in § 301.7701–7(c).

4. Disregard State Law

A commentator recommends that the regulations should establish bright-line rules for the court test without reference to state law.

The IRS and the Treasury Department believe that the proper interpretation of section 7701(a)(30)(E) requires that state law be applied under the court test. In addition, the proposed regulations provide bright-line rules for both the court test and the control test to the extent permitted by the statute. For example, the regulations provide a safe harbor and provide for specific cases where the court test is satisfied. Therefore, the final regulations remain unchanged in this regard.

5. Court Test Excessively Broad

One commentator argues that the court test is excessively broad because many trusts that are, in the commentator's view, foreign trusts will potentially be deemed domestic trusts. Specifically, the commentator is concerned about a trust in which the only domestic aspect is a single United States trustee who controls all substantial decisions of the trust. Another commentator recommends that the regulations should make clear that trustee meetings and other trustee activities in the United States will not cause the court test to be met.

The IRS and the Treasury Department do not believe that there is statutory authority for modifying the court test as suggested and, therefore, the final regulations remain unchanged. Furthermore, trustee meetings and activities in the United States may be a relevant factor to be taken into account in determining whether the court test has been met.

6. Petition of Court by a Single Beneficiary

A commentator recommends that § 301.7701–7(d)(2)(iii) of the proposed regulations should be clarified to provide that the court test is met only if either (i) a court within the United States actually exercises primary supervision over the trust, or (ii) a majority of beneficiaries take steps to cause a United States court to exercise primary supervision. The commentator expresses concern about a possible situation where, under the commentator's interpretation of the regulations, a single beneficiary of a foreign trust takes steps with a United States court petitioning it to assume primary supervision of the trust and, regardless of whether the court does in fact exercise primary supervision of the trust, the foreign trust becomes a domestic trust.

While § 301.7701–7(d)(2)(iii) of the proposed regulations permits the trustees and/or beneficiaries of a trust to take steps to ensure that the court test is satisfied, taking preliminary steps with a United States court without in fact causing the administration of the trust to be subject to the primary supervision of the United States court would not satisfy the court test. Thus, the concern about a single beneficiary altering the residence of the trust by merely taking preliminary steps is unwarranted.

B. Control Test Issues

1. Who Counts for Purposes of the Control Test

The proposed regulations provide that substantial decisions do not include decisions exercisable by a grantor or by a beneficiary of the trust that affect solely the beneficiary's interest in the trust, unless the grantor or beneficiary is acting in a fiduciary capacity. The proposed regulations provide this rule because the statute prior to amendment by TRA 1997 provided that United States *fiduciaries* must control all substantial decisions of a domestic trust. Therefore, the proposed regulations exclude decisions by those who are not holding powers in a fiduciary capacity.

As noted, TRA 1997 substituted "persons" for "fiduciaries" in the control test. In light of the change in the statute, commentators point out that there is no statutory basis for ignoring the powers held by grantors and beneficiaries for purposes of the control test.

Therefore, the final regulations change the rule set forth in the proposed regulations and, for purposes of the control test, count all powers held by grantors and powers held by beneficiaries including those that affect solely the portion of the trust in which the beneficiary has an interest.

Accordingly, all persons with any power over substantial decisions of the trust, whether acting in a fiduciary capacity or not, must be counted for purposes of the control test.

Under the proposed regulations, excluding grantors (and beneficiaries) from the control test would have allowed certain individual retirement accounts (IRAs) and other tax-exempt trusts to continue to be treated as domestic trusts and thus retain their tax-exempt status even if the grantor/beneficiary of the trust is a foreign person. The IRS and the Treasury Department believe that Congress did not intend the TRA 1997 changes to affect the tax-exempt status of IRAs and other tax-exempt trusts whose tax-exempt status depends on their being domestic trusts. Because these trusts are required to be created or organized in the United States, and are subject to other detailed requirements for qualification under the Code, the final regulations provide that these trusts satisfy the control test, provided that United States fiduciaries control all of the substantial decisions of the trust that are made by trust fiduciaries. This provision of the final regulations generally reaches the same result as the provision in the proposed regulations.

2. Time to Correct Inadvertent Changes in Fiduciaries

The proposed regulations provide that in the event of an inadvertent change in the fiduciaries that would cause a change in the residency of a trust, the trust is allowed six months from the date of change in the fiduciaries to adjust either the fiduciaries or the residence of the fiduciaries so as to avoid a change in the residence of the trust.

Commentators recommend that trusts be given more time to take corrective action to avoid a change in residency or, alternatively, the regulations should give the IRS discretionary authority to continue treating a trust that inadvertently fails the control test as a domestic trust even if the control test is not met within six months.

The final regulations extend the period of time to 12 months from the date of the change to complete corrective action. The final regulations also provide that the district director may grant an extension of time to make the modification if the failure to make the modification within the 12-month period was due to reasonable cause. In addition, the final regulations define the term *inadvertent change* to mean a change with respect to a person who has a power to make a substantial decision of the trust, if such change (if not corrected) would cause an unintended change to the foreign or domestic residency of the trust.

3. Effect of Power To Veto Decisions

The proposed regulations define control to mean having the power, by vote or otherwise, to make all of the substantial decisions of the trust, with no other person having the power to veto any of the substantial decisions. Thus, if United States fiduciaries have the power to make all the substantial decisions of the trust, but a foreign person could veto one of the decisions, the trust would fail the control test and would be a foreign trust. A commentator disagrees with the conclusion that the power to veto decisions may be determinative of who has control.

The final regulations retain the definition of control set forth in the proposed regulations. The effect of a veto power is specifically noted in the legislative history. H.R. Rep. No. 542, Part 2, 104th Cong., 2d Sess. 31 (1996). Furthermore, control should be defined to mean full power over the trust consistent with a trustee's traditional role in trust administration. Accordingly, if a United States person only has the power to veto the decisions of a foreign trustee, the control test is not satisfied. Likewise, if a foreign person has the power to veto the decisions of a United States trustee, the control test is not satisfied. Thus, in both cases, the trust would be a foreign trust.

4. Power To Remove, Add, or Replace a Trustee

Some commentators disagree with treating a decision to remove, add, or replace a trustee as a substantial decision. Commentators also argue that the proposed regulations are not consistent with the rules that apply for determining the ownership of grantor trusts or with the rules for determining whether property is included in a decedent's estate for estate tax purposes. A commentator recommends that the final regulations provide that a decision to appoint a trustee to succeed a trustee who has died, resigned, or otherwise ceased to act as a trustee, without the power to remove the trustee, is not a substantial decision.

The IRS and the Treasury Department believe that the purpose of the control test is to determine the residence of a trust and therefore is different from the purpose of the rules for grantor trusts and for estate taxes. The final regulations continue to treat the decision to remove, add, or replace a trustee as a substantial decision. In addition, the final regulations provide that the decision to appoint a successor fiduciary to succeed a fiduciary who has died, resigned, or otherwise ceased to act as a trustee, even if it is not accompanied by an unrestricted power to remove a trustee, is a substantial decision, unless this power is limited such that it cannot be exercised in a manner that would change the trust's residency from foreign to domestic, or vice versa.

5. Investment Decisions

Commentators argue that investment decisions should not be treated as substantial decisions.

The final regulations continue to treat investment decisions as substantial decisions. However, the final regulations provide that if a United States fiduciary contracts for the services of an investment advisor, and the advisor's power to make investment decisions can be terminated at the will of the United States fiduciary, the United States fiduciary will be treated as retaining control over the investment decisions made by the investment advisor, whether the investment advisor is foreign or domestic.

C. Transition Rule and Grandfathering Issues

1. Pre-existing Foreign Trusts

Commentators recommend various grandfathering rules for pre-existing foreign trusts that would allow them to remain treated as foreign trusts. A commentator recommends that a trust would be deemed to be a foreign trust prior to the effective date of section 7701(a) (30) and (31), as amended by the SBJP Act (new law), if the trust is treated as a foreign trust under the new law. In particular, the commentator expresses concern that some trusts believed to be foreign trusts under section 7701(a) (30) and (31), prior to amendment by the SBJP Act (prior law), may have in fact been domestic trusts under prior law. If such trusts qualify as foreign trusts under the new law, they will be considered to have changed their classification from domestic to foreign on January 1, 1997. Trusts that change from domestic to foreign may be subject to tax for the deemed transfer to a foreign trust under section 1491 (as in effect prior to its repeal by TRA 1997) and subject to penalties for failure to report such transfer under section 6677 if they continue to treat themselves as foreign trusts.

In addition, a commentator recommends that trusts that were formed prior to August 20, 1996, as group trust arrangements exempt from tax under sections 501(a) and 408(e) and

described in Rev. Rul. 81–100 (1981–1 C.B. 326) not be subject to section 7701(a) (30) and (31) as amended by the SBJP Act, but should be subject to section 7701(a) (30) and (31) as in effect prior to August 20, 1996.

The IRS and the Treasury Department do not believe that there is statutory authority for adopting the requested grandfathering rules for pre-existing foreign trusts or for applying prior law to group trust arrangements described in Rev. Rul. 81–100. The election provision included in TRA 1997 provides specific transition relief only for trusts that treated themselves as domestic trusts prior to August 20, 1996, not for trusts that treated themselves as foreign trusts. Therefore, the final regulations do not include the recommended transition rules.

2. Foreign Trust Safe Harbor

A commentator recommends that newly-created trusts established under foreign law should benefit from a foreign trust safe harbor. The commentator suggests a safe harbor that would provide that a trust established under foreign law, which does not by its terms provide for administration in the United States, and which does not file United States federal income tax returns as a United States trust will fail the court test and will be treated as a foreign trust unless the trust is described in § 301.7701–7(d)(2) (i) or (ii) of the proposed regulations (situations that meet the court test).

Given the statutory bias towards foreign trust classification, the IRS and Treasury Department do not agree that a safe harbor for foreign trusts is necessary because sufficient guidance is given as to the circumstances that will cause a trust to be foreign. Therefore, the final regulations do not include the recommended rules.

D. Puerto Rico Trusts

The statute uses the term *the United States* in a geographical sense and thus, for purposes of the court test, the United States includes only the States and the District of Columbia. See Section 7701(a)(9). Accordingly, a court within a territory or possession of the United States is not a court within the United States and all trusts subject to the supervision of such a court are thereby foreign. That rule was stated explicitly in the proposed regulations.

Some commentators argue that adverse tax consequences result from this rule. Therefore, they recommend that the final regulations provide, contrary to what the statute implies, that Puerto Rico courts are "courts within the United States" for purposes of section 7701(a)(30)(E)(i) and, therefore, that Puerto Rico trusts will meet the court test.

The final regulations do not adopt the suggestion. Rather, the final regulations continue to provide that a trust that is subject to the primary supervision of the Puerto Rico courts will be treated as a foreign trust for federal tax purposes.

E. Effective Date

The proposed regulations provide that the regulations would be applicable to trusts for taxable years beginning after December 31, 1996, and to trusts whose trustees have elected to apply sections 7701(a)(30) and (31) to the trusts for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the SBJP Act.

The final regulations modify the effective date in the proposed regulations. Except for § 301.7701–7(f) of the final regulations, which applies beginning February 2, 1999, the final regulations are applicable to trusts for taxable years ending after February 2, 1999. In addition, trusts may rely on the final regulations (i) for taxable years of the trusts beginning after December 31, 1996, and (ii) for taxable years ending after August 20, 1996, in the case of trusts electing under section 1907(a)(3)(B) of the SBJP Act.

If a trust is created after August 19, 1996, and before April 5, 1999, and the trust satisfies the control test set forth in the proposed regulations published under section 7701(a)(30) and (31) (62 FR 30796, June 5, 1997), but does not satisfy the control test set forth in the final regulations, the trust may be modified to satisfy the control test of the final regulations by December 31, 1999. If the modification is completed by December 31, 1999, the trust will be treated as satisfying the control test of the final regulations for taxable years beginning after December 31, 1996 (and for taxable years ending after August 20, 1996, if the election under section 1907(a)(3)(B) of the SBJP Act has been made for the trust).

Effect on Other Documents

Notice 98–25 (1998–18 I.R.B. 11) is obsolete as of February 2, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the estimated average burden per trust in complying with the collection of information in § 301.7701–7(d)(2)(ii) and (f) is 0.5 hours. In addition, each trust will only have to file the election statement to remain a domestic trust once. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is James A. Quinn of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 301.7701–5 [Amended]

Par. 2. The last sentence of § 301.7701–5 is removed.

Par. 3. Section 301.7701–7 is added to read as follows:

§ 301.7701–7 Trusts—domestic and foreign.

(a) *In general.* (1) A trust is a United States person if—

(i) A court within the United States is able to exercise primary supervision over the administration of the trust (court test); and

(ii) One or more United States persons have the authority to control all substantial decisions of the trust (control test).

(2) A trust is a United States person for purposes of the Internal Revenue Code (Code) on any day that the trust meets both the court test and the control

test. For purposes of the regulations in this chapter, the term *domestic trust* means a trust that is a United States person. The term *foreign trust* means any trust other than a domestic trust.

(3) Except as otherwise provided in part I, subchapter J, chapter 1 of the Code, the taxable income of a foreign trust is computed in the same manner as the taxable income of a nonresident alien individual who is not present in the United States at any time. Section 641(b). Section 7701(b) is not applicable to trusts because it only applies to individuals. In addition, a foreign trust is not considered to be present in the United States at any time for purposes of section 871(a)(2), which deals with capital gains of nonresident aliens present in the United States for 183 days or more.

(b) *Applicable law.* The terms of the trust instrument and applicable law must be applied to determine whether the court test and the control test are met.

(c) *The court test*—(1) *Safe harbor.* A trust satisfies the court test if—

(i) The trust instrument does not direct that the trust be administered outside of the United States;

(ii) The trust in fact is administered exclusively in the United States; and

(iii) The trust is not subject to an automatic migration provision described in paragraph (c)(4)(ii) of this section.

(2) *Example.* The following example illustrates the rule of paragraph (c)(1) of this section:

Example. A creates a trust for the equal benefit of *A*'s two children, *B* and *C*. The trust instrument provides that *DC*, a State *Y* corporation, is the trustee of the trust. State *Y* is a state within the United States. *DC* administers the trust exclusively in State *Y* and the trust instrument is silent as to where the trust is to be administered. The trust is not subject to an automatic migration provision described in paragraph (c)(4)(ii) of this section. The trust satisfies the safe harbor of paragraph (c)(1) of this section and the court test.

(3) *Definitions.* The following definitions apply for purposes of this section:

(i) *Court.* The term *court* includes any federal, state, or local court.

(ii) *The United States.* The term *the United States* is used in this section in a geographical sense. Thus, for purposes of the court test, the United States includes only the States and the District of Columbia. See section 7701(a)(9). Accordingly, a court within a territory or possession of the United States or within a foreign country is not a court within the United States.

(iii) *Is able to exercise.* The term *is able to exercise* means that a court has or would have the authority under applicable law to render orders or judgments resolving issues concerning administration of the trust.

(iv) *Primary supervision.* The term *primary supervision* means that a court has or would have the authority to determine substantially all issues regarding the administration of the entire trust. A court may have primary supervision under this paragraph (c)(3)(iv) notwithstanding the fact that another court has jurisdiction over a trustee, a beneficiary, or trust property.

(v) *Administration.* The term *administration* of the trust means the carrying out of the duties imposed by the terms of the trust instrument and applicable law, including maintaining the books and records of the trust, filing tax returns, managing and investing the assets of the trust, defending the trust from suits by creditors, and determining the amount and timing of distributions.

(4) *Situations that cause a trust to satisfy or fail to satisfy the court test.* (i) Except as provided in paragraph (c)(4)(ii) of this section, paragraphs (c)(4)(i) (A) through (D) of this section set forth some specific situations in which a trust satisfies the court test. The four situations described are not intended to be an exclusive list.

(A) *Uniform Probate Code.* A trust meets the court test if the trust is registered by an authorized fiduciary or fiduciaries of the trust in a court within the United States pursuant to a state statute that has provisions substantially similar to Article VII, *Trust Administration*, of the Uniform Probate Code, 8 Uniform Laws Annotated 1 (West Supp. 1998), available from the National Conference of Commissioners on Uniform State Laws, 676 North St. Clair Street, Suite 1700, Chicago, Illinois 60611.

(B) *Testamentary trust.* In the case of a trust created pursuant to the terms of a will probated within the United States (other than an ancillary probate), if all fiduciaries of the trust have been qualified as trustees of the trust by a court within the United States, the trust meets the court test.

(C) *Inter vivos trust.* In the case of a trust other than a testamentary trust, if the fiduciaries and/or beneficiaries take steps with a court within the United States that cause the administration of the trust to be subject to the primary supervision of the court, the trust meets the court test.

(D) *A United States court and a foreign court are able to exercise primary supervision over the administration of the trust.* If both a United States court and a foreign court are able to exercise primary supervision over the administration of the trust, the trust meets the court test.

(ii) *Automatic migration provisions.* Notwithstanding any other provision in this section, a court within the United States is not considered to have primary supervision over the administration of the trust if the trust instrument provides that a United States court's attempt to assert jurisdiction or otherwise supervise the administration of the trust directly or indirectly would cause the trust to migrate from the United States. However, this paragraph (c)(4)(ii) will not apply if the trust instrument provides that the trust will migrate from the United States only in the case of foreign invasion of the United States or widespread confiscation or nationalization of property in the United States.

(5) *Examples.* The following examples illustrate the rules of this paragraph (c):

Example 1. A, a United States citizen, creates a trust for the equal benefit of *A*'s two children, both of whom are United States citizens. The trust instrument provides that *DC*, a domestic corporation, is to act as trustee of the trust and that the trust is to be administered in Country *X*, a foreign country. *DC* maintains a branch office in Country *X* with personnel authorized to act as trustees in Country *X*. The trust instrument provides that the law of State *Y*, a state within the United States, is to govern the interpretation of the trust. Under the law of Country *X*, a court within Country *X* is able to exercise primary supervision over the administration of the trust. Pursuant to the trust instrument, the Country *X* court applies the law of State *Y* to the trust. Under the terms of the trust instrument the trust is administered in Country *X*. No court within the United States is able to exercise primary supervision over the administration of the trust. The trust fails to satisfy the court test and therefore is a foreign trust.

Example 2. A, a United States citizen, creates a trust for *A*'s own benefit and the benefit of *A*'s spouse, *B*, a United States citizen. The trust instrument provides that the trust is to be administered in State *Y*, a state within the United States, by *DC*, a State *Y* corporation. The trust instrument further provides that in the event that a creditor sues the trustee in a United States court, the trust will automatically migrate from State *Y* to Country *Z*, a foreign country, so that no United States court will have jurisdiction over the trust. A court within the United States is not able to exercise primary supervision over the administration of the trust because the United States court's jurisdiction over the administration of the trust is automatically terminated in the event the court attempts to assert jurisdiction. Therefore, the trust fails to satisfy the court test from the time of its creation and is a foreign trust.

(d) *Control test*—(1) *Definitions*—(i) *United States person.* The term *United States person* means a United States

person within the meaning of section 7701(a)(30). For example, a domestic corporation is a United States person, regardless of whether its shareholders are United States persons.

(ii) *Substantial decisions.* The term *substantial decisions* means those decisions that persons are authorized or required to make under the terms of the trust instrument and applicable law and that are not ministerial. Decisions that are ministerial include decisions regarding details such as the bookkeeping, the collection of rents, and the execution of investment decisions. Substantial decisions include, but are not limited to, decisions concerning—

(A) Whether and when to distribute income or corpus;

(B) The amount of any distributions;

(C) The selection of a beneficiary;

(D) Whether a receipt is allocable to income or principal;

(E) Whether to terminate the trust;

(F) Whether to compromise, arbitrate, or abandon claims of the trust;

(G) Whether to sue on behalf of the trust or to defend suits against the trust;

(H) Whether to remove, add, or replace a trustee;

(I) Whether to appoint a successor trustee to succeed a trustee who has died, resigned, or otherwise ceased to act as a trustee, even if the power to make such a decision is not accompanied by an unrestricted power to remove a trustee, unless the power to make such a decision is limited such that it cannot be exercised in a manner that would change the trust's residency from foreign to domestic, or vice versa; and

(J) Investment decisions; however, if a United States person under section 7701(a)(30) hires an investment advisor for the trust, investment decisions made by the investment advisor will be considered substantial decisions controlled by the United States person if the United States person can terminate the investment advisor's power to make investment decisions at will.

(iii) *Control.* The term *control* means having the power, by vote or otherwise, to make all of the substantial decisions of the trust, with no other person having the power to veto any of the substantial decisions. To determine whether United States persons have control, it is necessary to consider all persons who have authority to make a substantial decision of the trust, not only the trust fiduciaries.

(iv) *Treatment of certain employee benefit trusts.* Provided that United States fiduciaries control all of the substantial decisions made by the trustees or fiduciaries, the following types of trusts are deemed to satisfy the control test set forth in paragraph (a)(1)(ii) of this section—

(A) A qualified trust described in section 401(a);

(B) A trust described in section 457(g);

(C) A trust that is an individual retirement account described in section 408(a);

(D) A trust that is an individual retirement account described in section 408(k) or 408(p);

(E) A trust that is a Roth IRA described in section 408A;

(F) A trust that is an education individual retirement account described in section 530;

(G) A trust that is a voluntary employees' beneficiary association described in section 501(c)(9);

(H) Such additional categories of trusts as the Commissioner may designate in revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(*b*)).

(v) *Examples.* The following examples illustrate the rules of paragraph (d)(1) of this section:

Example 1. Trust has three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. No persons except the fiduciaries have authority to make any decisions of the trust. The trust instrument provides that no substantial decisions of the trust can be made unless there is unanimity among the fiduciaries. The control test is not satisfied because United States persons do not control all the substantial decisions of the trust. No substantial decisions can be made without *C*'s agreement.

Example 2. Assume the same facts as in *Example 1*, except that the trust instrument provides that all substantial decisions of the trust are to be decided by a majority vote among the fiduciaries. The control test is satisfied because a majority of the fiduciaries are United States persons and therefore United States persons control all the substantial decisions of the trust.

Example 3. Assume the same facts as in *Example 2*, except that the trust instrument directs that *C* is to make all of the trust's investment decisions, but that *A* and *B* may veto *C*'s investment decisions. *A* and *B* cannot act to make the investment decisions on their own. The control test is not satisfied because the United States persons, *A* and *B*, do not have the power to make all of the substantial decisions of the trust.

Example 4. Assume the same facts as in *Example 3*, except *A* and *B* may accept or veto *C*'s investment decisions and can make investments that *C* has not recommended. The control test is satisfied because the United States persons control all substantial decisions of the trust.

(2) *Replacement of any person who had authority to make a substantial decision of the trust*—(i) *Replacement within 12 months.* In the event of an inadvertent change in any person that has the power to make a substantial decision of the trust that would cause the domestic or foreign residency of the trust to change, the trust is allowed 12 months from the date of the change to make necessary changes either with respect to the persons who control the substantial decisions or with respect to the residence of such persons to avoid a change in the trust's residency. For purposes of this section, an inadvertent change means the death, incapacity, resignation, change in residency or other change with respect to a person that has a power to make a substantial decision of the trust that would cause a change to the residency of the trust but that was not intended to change the residency of the trust. If the necessary change is made within 12 months, the trust is treated as retaining its pre-change residency during the 12-month period. If the necessary change is not made within 12 months, the trust's residency changes as of the date of the inadvertent change.

(ii) *Request for extension of time.* If reasonable actions have been taken to make the necessary change to prevent a change in trust residency, but due to circumstances beyond the trust's control the trust is unable to make the modification within 12 months, the trust may provide a written statement to the district director having jurisdiction over the trust's return setting forth the reasons for failing to make the necessary change within the required time period. If the district director determines that the failure was due to reasonable cause, the district director may grant the trust an extension of time to make the necessary change. Whether an extension of time is granted is in the sole discretion of the district director and, if granted, may contain such terms with respect to assessment as may be necessary to ensure that the correct amount of tax will be collected from the trust, its owners, and its beneficiaries. If the district director does not grant an extension, the trust's residency changes as of the date of the inadvertent change.

(iii) *Examples.* The following examples illustrate the rules of paragraphs (d)(2)(i) and (ii) of this section:

Example 1. A trust that satisfies the court test has three fiduciaries, *A*, *B*, and *C*. *A* and *B* are United States citizens and *C* is a nonresident alien. All decisions of the trust are made by majority vote of the fiduciaries. The trust instrument provides that upon the death or resignation of any of the fiduciaries, *D*, is the successor fiduciary. *A* dies and *D* automatically becomes a fiduciary of the trust. When *D* becomes a fiduciary of the trust, *D* is a nonresident alien. Two months

after *A* dies, *B* replaces *D* with *E*, a United States person. Because *D* was replaced with *E* within 12 months after the date of *A*'s death, during the period after *A*'s death and before *E* begins to serve, the trust satisfies the control test and remains a domestic trust.

Example 2. Assume the same facts as in *Example 1* except that at the end of the 12-month period after *A*'s death, *D* has not been replaced and remains a fiduciary of the trust. The trust becomes a foreign trust on the date *A* died unless the district director grants an extension of the time period to make the necessary change.

(3) *Automatic migration provisions.* Notwithstanding any other provision in this section, United States persons are not considered to control all substantial decisions of the trust if an attempt by any governmental agency or creditor to collect information from or assert a claim against the trust would cause one or more substantial decisions of the trust to no longer be controlled by United States persons.

(4) *Examples.* The following examples illustrate the rules of this paragraph (d):

Example 1. A, a nonresident alien individual, is the grantor and, during *A*'s lifetime, the sole beneficiary of a trust that qualifies as an individual retirement account (IRA). *A* has the exclusive power to make decisions regarding withdrawals from the IRA and to direct its investments. The IRA's sole trustee is a United States person within the meaning of section 7701(a)(30). The control test is satisfied with respect to this trust because the special rule of paragraph (d)(1)(iv) of this section applies.

Example 2. A, a nonresident alien individual, is the grantor of a trust and has the power to revoke the trust, in whole or in part, and revest assets in *A*. *A* is treated as the owner of the trust under sections 672(f) and 676. *A* is not a fiduciary of the trust. The trust has one trustee, *B*, a United States person, and the trust has one beneficiary, *C*. *B* has the discretion to distribute corpus or income to *C*. In this case, decisions exercisable by *A* to have trust assets distributed to *A* are substantial decisions. Therefore, the trust is a foreign trust because *B* does not control all substantial decisions of the trust.

Example 3. A trust, Trust T, has two fiduciaries, *A* and *B*. Both *A* and *B* are United States persons. *A* and *B* hire *C*, an investment advisor who is a foreign person, and may terminate *C*'s employment at will. The investment advisor makes the investment decisions for the trust. *A* and *B* control all other decisions of the trust. Although *C* has the power to make investment decisions, *A* and *B* are treated as controlling these decisions. Therefore, the control test is satisfied.

Example 4. G, a United States citizen, creates a trust. The trust provides for income to *A* and *B* for life, remainder to *A*'s and *B*'s descendants. *A* is a nonresident alien and *B* is a United States person. The trustee of the trust is a United States person. The trust instrument authorizes *A* to replace the trustee. The power to replace the trustee is a substantial decision. Because *A*, a nonresident alien, controls a substantial decision, the control test is not satisfied.

(e) *Effective date*—(1) *General rule.* Except for the election to remain a domestic trust provided in paragraph (f) of this section, this section is applicable to trusts for taxable years ending after February 2, 1999. This section may be relied on by trusts for taxable years beginning after December 31, 1996, and also may be relied on by trusts whose trustees have elected to apply sections 7701(a)(30) and (31) to the trusts for taxable years ending after August 20, 1996, under section 1907(a)(3)(B) of the Small Business Job Protection Act of 1996, (the SBJP Act) Public Law 104–188, 110 Stat. 1755 (26 U.S.C. 7701 note).

(2) *Trusts created after August 19, 1996.* If a trust is created after August 19, 1996, and before April 5, 1999, and the trust satisfies the control test set forth in the regulations project REG–251703–96 published under section 7701(a)(30) and (31) (1997–1 C.B. 795) (See § 601.601(d)(2) of this chapter), but does not satisfy the control test set forth in paragraph (d) of this section, the trust may be modified to satisfy the control test of paragraph (d) by December 31, 1999. If the modification is completed by December 31, 1999, the trust will be treated as satisfying the control test of paragraph (d) for taxable years beginning after December 31, 1996, (and for taxable years ending after August 20, 1996, if the election under section 1907(a)(3)(B) of the SBJP Act has been made for the trust).

(f) *Election to remain a domestic trust*—(1) *Trusts eligible to make the election to remain domestic.* A trust that was in existence on August 20, 1996, and that was treated as a domestic trust on August 19, 1996, as provided in paragraph (f)(2) of this section, may elect to continue treatment as a domestic trust notwithstanding section 7701(a)(30)(E). This election is not available to a trust that was wholly-owned by its grantor under subpart E, part I, subchapter J, chapter 1, of the Code on August 20, 1996. The election is available to a trust if only a portion of the trust was treated as owned by the grantor under subpart E on August 20, 1996. If a partially-owned grantor trust makes the election, the election is effective for the entire trust. Also, a trust may not make the election if the trust has made an election pursuant to section 1907(a)(3)(B) of the SBJP Act to apply the new trust criteria to the first taxable year of the trust ending after August 20, 1996, because that election, once made, is irrevocable.

(2) *Determining whether a trust was treated as a domestic trust on August 19, 1996*—(i) *Trusts filing Form 1041 for the taxable year that includes August 19, 1996.* For purposes of the election, a trust is considered to have been treated as a domestic trust on August 19, 1996, if: the trustee filed a Form 1041, "U.S. Income Tax Return for Estates and Trusts," for the trust for the period that includes August 19, 1996 (and did not file a Form 1040NR, "U.S. Nonresident Alien Income Tax Return," for that year); and the trust had a reasonable basis (within the meaning of section 6662) under section 7701(a)(30) prior to amendment by the SBJP Act (prior law) for reporting as a domestic trust for that period.

(ii) *Trusts not filing a Form 1041.* Some domestic trusts are not required to file Form 1041. For example, certain group trusts described in Rev. Rul. 81–100 (1981–1 C.B. 326) (See § 601.601(d)(2) of this chapter) consisting of trusts that are parts of qualified retirement plans and individual retirement accounts are not required to file Form 1041. Also, a domestic trust whose gross income for the taxable year is less than the amount required for filing an income tax return and that has no taxable income is not required to file a Form 1041. Section 6012(a)(4). For purposes of the election, a trust that filed neither a Form 1041 nor a Form 1040NR for the period that includes August 19, 1996, will be considered to have been treated as a domestic trust on August 19, 1996, if the trust had a reasonable basis (within the meaning of section 6662) under prior law for being treated as a domestic trust for that period and for filing neither a Form 1041 nor a Form 1040NR for that period.

(3) *Procedure for making the election to remain domestic*—(i) *Required Statement.* To make the election, a statement must be filed with the Internal Revenue Service in the manner and time described in this section. The statement must be entitled "Election to Remain a Domestic Trust under Section 1161 of the Taxpayer Relief Act of 1997," be signed under penalties of perjury by at least one trustee of the trust, and contain the following information—

(A) A statement that the trust is electing to continue to be treated as a domestic trust under section 1161 of the Taxpayer Relief Act of 1997;

(B) A statement that the trustee had a reasonable basis (within the meaning of section 6662) under prior law for treating the trust as a domestic trust on August 19, 1996. (The trustee need not

explain the reasonable basis on the election statement.);

(C) A statement either that the trust filed a Form 1041 treating the trust as a domestic trust for the period that includes August 19, 1996, (and that the trust did not file a Form 1040NR for that period), or that the trust was not required to file a Form 1041 or a Form 1040NR for the period that includes August 19, 1996, with an accompanying brief explanation as to why a Form 1041 was not required to be filed; and

(D) The name, address, and employer identification number of the trust.

(ii) *Filing the required statement with the Internal Revenue Service.* (A) Except as provided in paragraphs (f)(3)(ii)(E) through (G) of this section, the trust must attach the statement to a Form 1041. The statement may be attached to either the Form 1041 that is filed for the first taxable year of the trust beginning after December 31, 1996 (1997 taxable year), or to the Form 1041 filed for the first taxable year of the trust beginning after December 31, 1997 (1998 taxable year). The statement, however, must be filed no later than the due date for filing a Form 1041 for the 1998 taxable year, plus extensions. The election will be effective for the 1997 taxable year, and thereafter, until revoked or terminated. If the trust filed a Form 1041 for the 1997 taxable year without the statement attached, the statement should be attached to the Form 1041 filed for the 1998 taxable year.

(B) If the trust has insufficient gross income and no taxable income for its 1997 or 1998 taxable year, or both, and therefore is not required to file a Form 1041 for either or both years, the trust must make the election by filing a Form 1041 for either the 1997 or 1998 taxable year with the statement attached (even though not otherwise required to file a Form 1041 for that year). The trust should only provide on the Form 1041 the trust's name, name and title of fiduciary, address, employer identification number, date created, and type of entity. The statement must be attached to a Form 1041 that is filed no later than October 15, 1999.

(C) If the trust files a Form 1040NR for the 1997 taxable year based on application of new section 7701(a)(30)(E) to the trust, and satisfies paragraph (f)(1) of this section, in order for the trust to make the election the trust must file an amended Form 1040NR return for the 1997 taxable year. The trust must note on the amended Form 1040NR that it is making an election under section 1161 of the Taxpayer Relief Act of 1997. The trust must attach to the amended Form 1040NR the statement required by paragraph (f)(3)(i) of this section and a completed Form 1041 for the 1997 taxable year. The items of income, deduction and credit of the trust must be excluded from the amended Form 1040NR and reported on the Form 1041. The amended Form 1040NR for the 1997 taxable year, with the statement and the Form 1041 attached, must be filed with the Philadelphia Service Center no later than the due date, plus extensions, for filing a Form 1041 for the 1998 taxable year.

(D) If a trust has made estimated tax payments as a foreign trust based on application of section 7701(a)(30)(E) to the trust, but has not yet filed a Form 1040NR for the 1997 taxable year, when the trust files its Form 1041 for the 1997 taxable year it must note on its Form 1041 that it made estimated tax payments based on treatment as a foreign trust. The Form 1041 must be filed with the Philadelphia Service Center (and not with the service center where the trust ordinarily would file its Form 1041).

(E) If a trust forms part of a qualified stock bonus, pension, or profit sharing plan, the election provided by this paragraph (f) must be made by attaching the statement to the plan's annual return required under section 6058 (information return) for the first plan year beginning after December 31, 1996, or to the plan's information return for the first plan year beginning after December 31, 1997. The statement must be attached to the plan's information return that is filed no later than the due date for filing the plan's information return for the first plan year beginning after December 31, 1997, plus extensions. The election will be effective for the first plan year beginning after December 31, 1996, and thereafter, until revoked or terminated.

(F) Any other type of trust that is not required to file a Form 1041 for the taxable year, but that is required to file an information return (for example, Form 5227) for the 1997 or 1998 taxable year must attach the statement to the trust's information return for the 1997 or 1998 taxable year. However, the statement must be attached to an information return that is filed no later than the due date for filing the trust's information return for the 1998 taxable year, plus extensions. The election will be effective for the 1997 taxable year, and thereafter, until revoked or terminated.

(G) A group trust described in Rev. Rul. 81–100 consisting of trusts that are parts of qualified retirement plans and individual retirement accounts (and any other trust that is not described above and that is not required to file a Form 1041 or an information return) need not attach the statement to any return and should file the statement with the Philadelphia Service Center. The trust must make the election provided by this paragraph (f) by filing the statement by October 15, 1999. The election will be effective for the 1997 taxable year, and thereafter, until revoked or terminated.

(iii) *Failure to file the statement in the required manner and time.* If a trust fails to file the statement in the manner or time provided in paragraphs (f)(3)(i) and (ii) of this section, the trustee may provide a written statement to the district director having jurisdiction over the trust setting forth the reasons for failing to file the statement in the required manner or time. If the district director determines that the failure to file the statement in the required manner or time was due to reasonable cause, the district director may grant the trust an extension of time to file the statement. Whether an extension of time is granted shall be in the sole discretion of the district director. However, the relief provided by this paragraph (f)(3)(iii) is not ordinarily available if the statute of limitations for the trust's 1997 taxable year has expired. Additionally, if the district director grants an extension of time, it may contain terms with respect to assessment as may be necessary to ensure that the correct amount of tax will be collected from the trust, its owners, and its beneficiaries.

(4) *Revocation or termination of the election*—(i) *Revocation of election.* The election provided by this paragraph (f) to be treated as a domestic trust may only be revoked with the consent of the Commissioner. See sections 684, 6048, and 6677 for the federal tax consequences and reporting requirements related to the change in trust residence.

(ii) *Termination of the election.* An election under this paragraph (f) to remain a domestic trust terminates if changes are made to the trust subsequent to the effective date of the election that result in the trust no longer having any reasonable basis (within the meaning of section 6662) for being treated as a domestic trust under section 7701(a)(30) prior to its amendment by the SBJP Act. The termination of the election will result in the trust changing its residency from a domestic trust to a foreign trust on the effective date of the termination of the election. See sections 684, 6048, and 6677 for the federal tax consequences and reporting requirements related to the change in trust residence.

(5) *Effective date.* This paragraph (f) is applicable beginning on February 2, 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part of section where identified and described	Current OMB control No.
* * * * *	
301.7701–7	1545–1600
* * * * *	

Dated: January 13, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–1892 Filed 2–1–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–6227–4]

Whole Effluent Toxicity: Guidelines Establishing Test Procedures for the Analysis of Pollutants; Final Rule, Technical Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, technical corrections.

SUMMARY: EPA is amending the "Guideline Establishing Test Procedures for the Analysis of Pollutants" at 40 CFR part 136 for whole effluent toxicity (WET) testing under the Clean Water Act, and also is amending three technical documents incorporated by reference in those regulations. The amendments correct minor errors and omissions, provide technical clarifications, and establish consistency among the technical documents.

DATES: These corrections are effective March 4, 1999. The incorporation by reference of the publication dates listed in this rule is approved by the Director of the Office of the Federal Register on March 4, 1999. In accordance with 40 CFR 23.2, this rule shall be considered issued for the purposes of judicial review February 16, 1999, at 1:00 pm EST.

FOR FURTHER INFORMATION CONTACT: Marion Thompson, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, Office of Science and Technology, 401 M Street, SW, Washington, DC 20460, or call (202) 260–7117; or Teresa J. Norberg-King, National Health and Environmental Effects Research Laboratory, Mid-Continent Ecology Division, Office of Research and Development, U.S. Environmental Protection Agency, 6201 Congdon Boulevard, Duluth, MN 55804, or call (218) 529–5163.

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, EPA amended the "Guidelines Establishing Test Procedures for the Analysis of Pollutants," 40 CFR part 136, to add whole effluent toxicity (WET) testing methods to the list of Agency approved methods in Tables IA and II, for data gathering and compliance monitoring under the Clean Water Act (60 FR 53529, October 16, 1995). This "WET final rule" amended 40 CFR 136.3 by adding methods that employ standardized freshwater, marine, and estuarine vertebrates, invertebrates, and plants to directly measure the acute and short-term chronic toxicity of effluents and receiving waters. The WET final rule incorporated the following three technical documents by reference: Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms; Fourth Edition, August 1993 (EPA/600/4-90/027F); Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Freshwater Organisms, Third Edition, July 1994 (EPA/600/4–91/002); and Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Water to Marine and Estuarine Organisms, Second Edition, July 1994 (EPA/600/4–91/003).

The WET final rule and the aquatic toxicity test manuals contained various minor errors; today's amendments correct typographical errors and minor omissions. These amendments also provide technical clarifications and changes for consistency among the three test manuals.

The Administrative Procedure Act, 5 U.S.C. 553, states that when an Agency finds good cause, it may issue a rule without first providing for notice and comment. This rule corrects typographical errors and minor omissions, and provides consistency among the WET final rule and the aquatic toxicity test manuals incorporated by reference at 40 CFR 136.3. Today's revisions eliminate confusion and provide clarification. The revisions are not substantive. Most of these minor, non-substantive corrections were brought to the Agency's attention by the public. Therefore, prior notice and public opportunity for comment is unnecessary.

II. Corrections to the Regulation

This rule corrects typographical errors and minor omissions and provides consistency in the regulatory language and the three aquatic toxicity test manuals incorporated by reference in the WET final rule. Corrections include replacing or amending text with appropriate wording for clarification and consistency.

Specifically, this rule corrects a typographical error in the regulatory language for the WET final rule in Table II at § 136.3(e) by changing the "maximum holding time" for aquatic toxicity tests from 6 hours to 36 hours. Despite the inclusion of the correct 36 hour maximum holding time in the aquatic toxicity test manuals, 6 hours was inadvertently listed in the regulatory language for the WET final rule. The Agency's intention was to include the 36 hour maximum holding time in the regulatory language for the WET final rule.

This rule also incorporates by reference an "errata" document that lists specific corrections to each aquatic toxicity test manual incorporated by reference in the WET final rule. The following three paragraphs (A, B, and C) describe the errata for each aquatic toxicity methods manual and address specific corrections included in each manual that the Agency believes require further explanation. The title of the errata document is: Errata for the Effluent and Receiving Water Toxicity Testing Manuals: Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms; Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms; and Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (EPA–600/R–98/182, January 1999). A listing of the reference for this errata document and where it can be viewed or obtained is provided in Sections IV and V of this notice.

A. Corrections to Acute Manual

There are eight items in the errata: Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms (hereinafter, acute manual). Four items (Items 1, 2, 3 and 7) establish consistent language among the three test manuals to prevent confusion. When the WET rule was promulgated in 1995, the language in the acute manual should have been the same as the language included in the other two manuals. Upon close consideration after rulemaking, it became apparent that the acute manual (published in 1993) did not include portions of the other manuals (published in 1994). Today's amendments, by incorporation of the errata document, correct those omissions. Items 4 and 8 correct typographical errors and minor omissions. Items 5 and 6 correct typographical errors to avoid confusion regarding the supplemental test species list (Appendix B) and the recommended test conditions for *Cyprinella leedsi* and *Holmesimysis costata*. The name change of the species *Notropis leedsi* to *Cyprinella leedsi* occurred after publication of acute manual and the correct reference for this change is now cited.

B. Corrections to Freshwater Chronic Manual

There are 10 items in the errata: Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms (hereinafter, freshwater chronic manual). For Item 1, the section regarding effluent sampling in the freshwater chronic manual are identical to those included in the acute manual. This language is inappropriate and not intended for chronic tests because excessive testing would be done and flow-through tests are not conducted for the short-term tests in the freshwater chronic manual. Items 2 and 3 clarify the wording that describes the handling and feeding of nauplii. Items 4, 5, 6, 7, and 9 are minor typographical corrections. Item 8 provides consistency in terminology and prevents confusion in the reporting of survival values in the test controls and the mean number of young per female for the *Ceriodaphnia dubia* test. Item 10 corrects errors made in presenting the LC_{50} value.

C. Corrections to Marine and Estuarine Chronic Manual

There are nine items in the errata: Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms (hereinafter, marine and estuarine chronic manual). For Item 1, the section regarding effluent sampling in the marine and estuarine chronic manual are identical to those included in the acute manual. This language is inappropriate and not intended for chronic tests and would, therefore, cause excessive testing because flow-through tests are not included for the short-term chronic tests included in the marine and estuarine chronic manual. Items 2, 4, 5, 6, 7, 8 and 9 correct typographical errors. Item 3 corrects an inconsistency between the tabulated data and the probit analysis of that data.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 23, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This action contains no information collection requirements. Therefore, no information collection request has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 4, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

IV. Materials Incorporated by Reference Into 40 CFR Part 136

USEPA, 1999. Errata for the Effluent and Receiving Water Toxicity Testing Manuals: Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms; Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms; and Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. January 1999. U.S. Environmental Protection Agency, Office of Research and Development, Duluth, MN. EPA–600/R–98/182.

V. Public Availability of Materials To Be Incorporated by Reference

The full text of the errata document incorporated by reference in today's rulemaking will be available to the general public from the following sources:

Water Docket: Paper version of the errata document, along with the public record for this rule and the WET final rule, are available from the U.S. Environmental Protection Agency, Water Docket, 401 M Street SW, Washington, DC 20460. For access to these materials, call 202–260–3027 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment.

Internet: Electronic version is available via the Internet at http://www.epa.gov/OST.

National Center for Environmental Publications and Information (NCEPI): Electronic or paper version is available from the U.S. Environmental Protection Agency, National Center for Environmental Publications and Information (NCEPI), P.O. Box 42419, Cincinnati, OH 45242 by phone at 1–800/490–9198, fax at (513) 489–8695, or via the Internet at http://www.epa.gov/ncepihom.

EPA Office of Water Resource Center: Electronic or paper version is available from the Water Resource Center, 401 M Street, SW, Washington, DC 20460 by phone at (202) 260–7786.

EPA Regional Office Libraries: EPA has 10 Regional offices around the country, each with a publicly accessible library. Copies of the errata document can be viewed and copied at these EPA Regional libraries: EPA Region I, JFK Federal Building, One Congress Street, Boston, MA 02203–0001, (617) 918–1111; EPA Region 2, 290 Broadway, New York, NY 10007, (212) 637–3185; EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5000; EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsythe Street SW, Atlanta, GA 30303, (404) 562–8190; EPA Region 5, 77 West Jackson Blvd., Chicago, IL 60604–3507, (312) 353–2022; EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202–2733, (214) 665–6424; EPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7003; EPA Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6312; EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1570; EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1200.

Public Libraries: A summary of this rule and the errata document have been placed in the combined catalogues of the Online Computer Library Center (OCLC) in Columbus, Ohio, available to all member libraries across the country (approximately 13,000). This summary will facilitate public access through interlibrary loans from the Regional EPA libraries. Through OCLC, EPA has placed the summary and access information in the Online Library System. Finally, EPA has provided the national association of public libraries with a summary of this rule and the errata document as a way of emphasizing their availability.

The errata document will also be available for viewing and copying through the following state library associations: Alabama Library Association, 400 S. Union Street, Suite 140, Montgomery, AL 36104; Alaska Library Association, PO Box 81084, Fairbanks, AL 99708–1084; Arizona State Library Association, 14449 North 73rd Street, Scottsdale, AZ 85260–7838; Arkansas Library Association, 9 Shackleford Plaza, Suite 1, Little Rock, AR 72203; California Library Association, 717 K. Street, Suite 300, Sacramento, CA 95814–3477; Colorado Library Association, 4350 Wadsworth Boulevard, #340, Wheat Ridge, CO 80033; Connecticut Library Association, Franklin Commons, 106 Route 32, Franklin, CT 06254; Delaware Library Association, PO Box 816, Wilmington, DE 19903; District of Columbia Library Association, PO Box 14177, Benjamin Franklin Station, Washington, DC 20044; Florida Library Association, 1133 W. Morse Blvd., Winter Park, FL 32789–3788; Georgia Library Association, c/o SOLINET, 1438 West Peachtree Street NW, Atlanta, GA 30309–2955; Guam Library Association, PO Box 22515 GFM, Barrigada, GU 96921; Hawaii Library Association, PO Box 4441, Honolulu, HI 96813; Idaho Library Association, 3577 East Pecan, Boise, ID 83716–7115; Illinois Library Association, 33 W. Grand Avenue, #301, Chicago, IL 60610; Indiana Library Federation 6408 Carrollton Avenue, Indianapolis, IN 46220–1615; Iowa Library Association, 505 Fifth Avenue, Suite 823, Des Moines, IA 50309; Kansas Library Association, South Central Kansas Library System, 901 N. Main, Hutchinson, KS 67501–4401; Kentucky Library Association, 1501 Twilight Tr., Frankfort, KY 40601; Louisiana Library Association, PO Box 3058, Baton Rouge, LA 70821; Maine Library Association, Community Drive, Augusta, ME 04330; Maryland Library Association, 400 Cathedral Street, 3rd Floor, Baltimore, MD 21201; Massachusetts Library Association, Countryside Offices 707 Turnpike St., North Andover, MA 08145; Michigan Library Association, 6810 S. Cedar, Suite 6, Lansing, MI 48911; Minnesota Library Association, 1315 Lowrey Avenue, N. Minneapolis, MN 55411–1398; Mississippi Library Association, PO Box 20488, Jackson, MS 39289–1448; Missouri Library Association, 1306 Business 63 South, Suite B, Columbia, MO 65201; Montana Library Association, 507 Fifth Avenue, Helena, MT 59601–4359; Nebraska Library Association, 1422 Boswell Avenue, Box 98, Crete, NE 68333; Nevada Library Association, 100 Stewart Street, Carson City, NV 89710; New Hampshire Library Association, PO Box 2322, Concord, NH 03235; New Jersey Library Association, Box 1534, Trenton, NJ 08607; New Mexico Library Association, PO Box 26074, Albuquerque, NM 87125; New York Library Association, 252 Hudson Avenue, Albany, NY 12210; North Carolina Library Association, State Library of North Carolina, 109 East Jones Street, Raleigh, NC 27601; North Dakota Library Association, University of North Dakota-Lake Region, 1800 N. College Drive, Devil's Lake, ND 58301; Ohio Library Council, 35 E. Gay Street, Suite 305, Columbus, OH 43215; Oklahoma Library Association, 300 Hardy Drive, Edmond, OK 73013; Oregon Library Association, PO Box 2042, Salem, OR 97308; Pennsylvania Library Association, 1919 N. Front Street, Harrisburg, PA 17110; Rhode Island Library Association, PO Box 7858, Warwick, RI 02887–7858; South Carolina Library Association, PO Box 219, Goose Creek, SC 29445; South Dakota Library Association, PO Box 673, Pierre, SD 57501; Tennessee Library Association, PO Box 158417, Nashville, TN 37215–8417; Texas Library Association, 3355 Bee Cave Road, #401, Austin, TX 78746; Utah Library Association, PO Box 711789, Salt Lake City, UT 84171–1789; Vermont Library Association, Box 803, Burlington, VT 05402–0803; St. Thomas/St. John Library Association, University of Virgin Islands, St. Thomas, VI 00802; St. Croix Library Association, PO Box 306164, Veterans Drive Station, Charlotte Amalie, VI 00803; Virginia Library Association, PO Box 8277, Norfolk, VA 23503–0277; Washington Library Association, 4016 First Avenue NE, Seattle, WA 98105–6502; West Virginia Library Association, PO Box 5221, Charleston, WV 25361; Wisconsin Library Association, 5250 East Terrace Drive, Suite A, Madison, WI 53718–8345; Wyoming Library Association, Sweetwater County Library, PO Box 550, Green River, WY 82935.

A limited number of copies of the errata document incorporated by reference will be available from the EPA Regional offices and the State NPDES permitting offices. Finally, after first printing, copies will be available from the National Technical Information Service (NTIS), Springfield, VA by phone at (703) 487–4650, by fax at (703) 321–8547, or via the Internet at http://www.ntis.gov. NTIS is an organization within the U.S. Department of Commerce.

EPA is also notifying the following groups of the availability of these documents: International Association of Environmental Testing Laboratories; American Society of Testing Materials; Society of Environmental Toxicology

and Chemistry; American Chemical Society; Water Environment Federation; Association of Metropolitan Sewerage Agencies; AOAC International; and EPA's Discharge Monitoring Requirement Quality Assurance Program.

List of Subjects in 40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Monitoring, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: January 22, 1999.

J. Charles Fox,

Assistant Administrator, Office of Water.

For the reasons set out in the preamble, Part 136, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

2. Section 136.3 is amended by adding paragraph (b)(41) and revising the entry for "Table IA—Aquatic Toxicity Tests" in paragraph (e) Table II as follows:

§ 136.3 Identification of test procedures.

* * * * *

(b) * * *

(41) USEPA, January 1999 Errata for the Effluent and Receiving Water Testing Manuals: Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms; Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms; and Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms. U.S. Environmental Protection Agency, Office of Research and Development, Duluth, MN. EPA–600/R–98/182.

* * * * *

(e) * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter No./name	Container [1]	Preservation [2,3]	Maximum holding time [4]
* * * * *			
Table IA—Aquatic Toxicity Tests: 6–10 Toxicity, acute and chronic	P,G.	Cool, 4 °C [16]	36 hours.
* * * * *			

[1] Polyethylene (P) or glass (G). For microbiology, plastic sample containers must be made of sterilizable materials (polypropylene or other autoclavable plastic).

[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples, each aliquot should be preserved at the time of collection. When use of an automatic sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4C until compositing and sample splitting is completed.

[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR Part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Transportation Bureau, Department of Transportation, has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric Acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric Acid (HNO_3) in water solutions of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric Acid (H_2SO_4) in water solutions of 0.35% less (pH about 1.15 or greater); and Sodium Hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed in the table are the maximum times that samples may be held before analyses and still be considered valid. Samples used for toxicity tests are to be used for test initiation or for renewal of test solutions within 36h of collection as grab samples, or within 36 hours of the collection of the last sample of the composite. Samples for bacteria or chemical analysis may be held for longer periods than specified in this table only if the permittee or monitoring laboratory has data on file to show that the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under Para. 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the samples for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. See Para. 136.3(e) for details. The term "analyze immediately" usually means within 15 minutes or less of sample collection.

* * * * * * * * *

[16] Sufficient ice should be placed with the samples in the shipping container to ensure that ice is still present when the samples arrive at the laboratory. However, even if ice is present when the samples arrive, it is necessary to immediately measure the temperature of the samples and confirm that the 4C temperature maximum has not been exceeded. In the isolated cases where it can be documented that this holding temperature can not be met, the permittee can be given the option of on-site testing or can request a variance. The request for a variance should include supportive data which show that the toxicity of the effluent samples is not reduced because of the increased holding temperature.

[FR Doc. 99–2197 Filed 2–1–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7706]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase

flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program:			
Iowa:.			
Imogene, city of, Fremont County	190391	December 3, 1998	October 29, 1976.
Westfield, city of, Plymouth County	190482	.....do	August 13, 1976.
Kentucky: Elkton, city of, Todd County	210381	December 4, 1998..	
South Dakota: Potter County, unincorporated areas	460285	December 10, 1998.	
Texas: Ranger, city of, Eastland County	480205	December 15, 1998	April 23, 1976.
Illinois: Davis Junction, village of, Ogle County	171076	December 16, 1998.	
Missouri: Shelbina, city of, Shelby county	290665	December 30, 1998	April 25, 1975.
NEW ELIGIBLES—Regular Program:			
Georgia: Appling County, unincorporated areas	130001	December 3, 1998	May 3, 1990.
Tennessee: Lawrence County, unincorporated areas	470354	December 10, 1998	December 16, 1988.
North Carolina:			
Marvin, village of, Union County [1]	370514	December 28, 1998	January 17, 1997.
Walstonburg, town of, Greene County [2]	370515	.....do	January 6, 1983.
Waxhaw, town of, Union County	370473	.....do	NSFHA.
Missouri:			
Dutchtown, village of, Cape Girardeau County [3]	290927	December 30, 1998	August 15, 1989.
Huntleigh, city of, St. Louis County	290359	.....do	August 2, 1995.
REINSTATEMENTS:			
Tennessee: Hardin County, unincorporated areas	470082	April 16, 1976, Emerg; September 1, 1986, Reg.; April 2, 1991, Susp; December 3, 1998 Rein.	April 2, 1991.
Wisconsin: Wyeville, village of, Monroe County	550293	July 18, 1975, Emerg; March 1, 1984, Reg; March 1, 1984, Susp; December 3, 1998, Rein.	March 1, 1984.

State/location	Community No.	Effective date of eligibility	Current effective map date
Pennsylvania: West Pikeland, township of, Chester County	420051	April 10, 1974, Emerg; June 1, 1983, Reg; November 20, 1996, Susp; December 17, 1998, Rein.	November 20, 1996.
REGULAR PROGRAM CONVERSIONS:			
Region I:			
Maine: Portland, city of, Cumberland County	230051	December 8, 1998, Suspension Withdrawn.	December 8, 1998.
Region II:			
New Jersey: Allendale, borough of, Bergen County	340019	.....do	Do.
Fair Lawn, borough of, Bergen County	340033	.....do	Do.
Glen Rock, borough of, Bergen County	340038	.....do	Do.
Ho-Ho-Kus, borough of, Bergen County	340044	.....do	Do.
Mahwah, township of, Bergen County	340049	.....do	Do.
Midland Park, borough of, Bergen County	340051	.....do	Do.
Montvale, borough of, Bergen County	340052	.....do	Do.
Park Ridge, borough of, Bergen County	340063	.....do	Do.
Ramsey, borough of, Bergen County	340064	.....do	Do.
Ridgewood, village of, Bergen County	340067	.....do	Do.
Saddle River, borough of, Bergen County	340073	.....do	Do.
Upper Saddle River, borough of, Bergen County	340077	.....do	Do.
Waldwick, borough of, Bergen County	340078	.....do	Do.
Woodcliff Lake, borough of, Bergen County	340082	.....do	Do.
Wyckoff, township of, Bergen County	340084	.....do	Do.
Region V:			
Ohio: Tipp City, city of, Miami County	390401	.....do	Do.
Region VI:			
Louisiana:			
Natchez, village of, Natchitoches Parish	220370	.....do	Do.
Natchitoches Parish, unincorporated areas	220129	.....do	Do.
Richland Parish, unincorporated areas	220154	.....do	Do.
Texas:			
Bastrop County, unincorporated areas	481193	.....do	Do.
Luling, city of, Caldwell County	480096	.....do	Do.
Martindale, town of, Caldwell County	481587	.....do	Do.
Region IX:			
California:			
Menlo Park, city of, San Mateo County	060321	.....do	Do.
Palo Alto, city of, Santa Clara County	060348	.....do	Do.
Region X:			
Washington: Mason County, unincorporated areas	530115	.....do	Do.
Region II:			
New Jersey: Highlands, borough of, Monmouth County	345297	December 22, 1998 Suspension Withdrawn.	December 22, 1998
Region III:			
Pennsylvania: Reynoldsville, borough of, Jefferson County	420513	.....do	Do.
Region IX:			
Arizona: Quartzsite, town of, La Paz County	040134	.....do	Do.
California:			
Morgan Hill, city of, Santa Clara County	060346	.....do	Do.
Region X:			
Oregon:			
Burns, city of, Harney County	410084	.....do	Do.
Harney County, unincorporated areas	410083	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

[1] The Village of Marvin has adopted the Union County (CID #370234) Flood Insurance Rate Map dated January 17, 1997.

[2] The Town of Walstonburg has adopted the Greene County (CID #370378) Flood Insurance Rate Map dated January 6, 1983.

[3] The Village of Dutchtown has adopted the Cape Girardeau County (CID #290790) Flood Insurance Rate Map dated August 15, 1989 (panel 125B).

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: January 21, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–2432 Filed 2–1–99; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1 and 10

[USCG–1998–3824]

RIN 2115–AF58

Maritime Course Approval Procedures

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard issues a final rule revising the regulations that govern Maritime Course Approval Procedures. The rule streamlines the process by which courses are submitted to and reviewed by the Coast Guard. The rule also adds a mechanism to allow us to suspend or withdraw approvals for courses. Although the current regulations govern training schools with approved courses, only a methodology for course approval is provided. Revising the regulations to include suspension and withdrawal procedures will motivate schools to maintain a uniformly high standard, improve compliance with course approval regulations, and ultimately promote public safety.

DATES: This final rule is effective on March 4, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1998–3824), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact James Cavo, National Maritime Center (NMC), 703–235–0018. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 13, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Maritime Course Approval Procedures" in the **Federal Register** (63 FR 26566). The Coast Guard received eight comments in response to the proposed rulemaking.

Background and Purpose

Regulations for merchant mariner course approvals have been in place for several years and are found in 46 CFR part 10. Courses were first approved for education mandated by regulation such as radar observer, fire-fighting, and first aid. Courses were then approved for formal training instead of required sea service for both renewal and raise in grade of a license or an endorsement, and to substitute for a Coast Guard examination.

With the publication of a Focus Group Study, *Licensing 2000 and Beyond* in 1993, the Coast Guard began approving courses to substitute for certain modules of examination, especially for lower level licenses. Now, with the implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) of the International Maritime Organization (IMO), requirements for basic entry-level education, structured shipboard training programs, and specific assessment protocols, the course approval burden has increased considerably.

Presently, the Coast Guard has approved in excess of 700 courses presented by over 225 schools and the number is growing weekly. As part of a Quality Standard System (QSS), Coast Guard Regional Examination Centers (RECs) are charged with oversight of these widespread training institutions.

The majority of schools consistently operate according to the regulations governing course approvals. There are times, however, when audits of a particular school show evidence of infractions ranging from incomplete recordkeeping to major deficiencies dealing with examination tampering, operating outside the conditions of the course approval, and outright misrepresentation of course material. Some primary reasons for suspending or withdrawing a course approval include (but are not limited to):

- Failure to comply with the provisions of the course approval.
- Failure to comply with the provisions of parts 10, 12, 13 or 15 of Title 46, Code of Federal Regulations (46 CFR) especially Part 10, Subpart C.
- Scheduling and teaching an approved course at a location other than the site requested in the application for approval and authorized in the approval letter unless prior site approval is requested of and granted by the Officer in Charge, Marine Inspection (OCMI) of the Regional Exam Center in whose area of responsibility the "remote site" is located.
- Not adhering to the approved length of the course; cutting short instructional time on a daily or weekly basis. Substituting "homework" or "preparation time," either on computer-based questions or artificially drawn-out plotting exercises for quality classroom instructional contact hours.
- Using unqualified instructors, substandard facilities or otherwise presenting the course in a manner that is not sufficient for or conducive to achieving the learning objectives of the course.
- Not giving a final (end-of-course) exam equal in scope and difficulty to the Coast Guard exam for that particular license or endorsement. Also, for not giving a final exam or a "re-take" exam which is totally different than any homework, classroom "practice exercise" or exam previously viewed by the student.
- Issuing certificates of course completion to students who have not demonstrated competency or who have not otherwise met the course requirements.
- Advertising, holding a course, or issuing certificates of course completion to students as having passed a course of instruction for which the school does not hold a valid Coast Guard approval.
- Assisting a student in passing the final (end-of-course) exam by either directly or indirectly providing any assistance including, but not limited to, supplying answers, hinting at the correct answer, grading and returning the exam for completion and indicating that certain answers or choices are incorrect prior to grading.
- Giving a student a final (end-of-course) exam orally. The authority to give an oral examination rests with the OCMI per 46 CFR 10.205.
- Allowing a student to enroll or join the course after the beginning of course instruction.

In order to prevent these infractions, and ensure the integrity of Coast Guard approved courses, the Coast Guard is issuing this rule to establish suspension, withdrawal, and appeal provisions in our regulations.

Discussion of Comments and Changes

The Coast Guard is substituting the words "withdraw," "withdrawn," and "withdrawal" wherever the words "revoke," "revoked," and "revocation" were used in the NPRM and in the regulatory text of sections 1.03–15, 1.03–45, and 10.302. This is being done for clarity and to avoid any confusion with the suspension and revocation

provisions of 46 CFR 1.10–20, which are not applicable to maritime course approvals. This does not substantively change the regulatory text.

The Coast Guard received a total of eight comment letters responding to the NPRM, of these, two letters were identical in content and filed by the same entity and were considered as a single comment letter. Two comments recommended public meetings citing potential impact on maritime educators. As only four maritime educators commented on the NPRM, no public meetings were held. Following is a discussion of comments received.

1. General Comments

The majority of the comments supported the NPRM and did not recommend major changes. Two comments expressed strong support and felt that the "suspension and revocation" provisions (now labeled withdrawal) were necessary to ensure the quality and integrity of mariner training. One comment felt the Coast Guard should use this rulemaking to change the way in which it administers Merchant Marine license examinations. Such an undertaking is beyond the scope of this rulemaking.

2. Course Expiration

Four comments expressed confusion or concern regarding the expiration of a course approval when the school no longer offers the course. Two comments suggested that this apply only when the training organization informs the Coast Guard that it would no longer be offering the course or that the school be provided an opportunity to confirm that it no longer will offer the course. The Coast Guard agrees that the proposed language was potentially confusing and has revised section 10.302, paragraphs (c) and (d), to indicate that a course approval will terminate when the school notifies the Coast Guard that it will no longer offer the course.

One comment suggested that section 10.302, paragraphs (c) and (d), be amended to provide for revocation when a school is acquired by another school, but continues to offer its courses using the same facilities and instructors. Because Section 10.302, paragraphs (c) and (d), already provide that a course approval or renewal of approval expire upon any change in ownership of the school, no changes were made in response to this comment.

One comment suggested the rulemaking be expanded to specifically address procedures to be followed when adding instructors and facilities to a course approval, selling approved courses, or franchising approved courses. These issues are beyond the scope of this rulemaking.

3. Suspension and Withdrawal of Course Approvals

One comment suggested deleting the provision in the proposed rule that a course approval be suspended for failure to comply with applicable portions of the Code of Federal Regulations if the Coast Guard fails to ensure that the course meets parts 10, 12, 13 or 15 of Title 46, Code of Federal Regulations (46 CFR) prior to approval, noting that the school would not be able to bring the course into compliance without violating the terms of the course approval. The Coast Guard disagrees. If a training organization wishes to make changes to an approved course, for any reason, it must obtain written approval from the National Maritime Center to do so. If the Coast Guard becomes aware that a course that does not meet applicable regulations was erroneously approved, the approval holder will be given a reasonable time period to make any required changes before the approval is suspended. If changes to regulations impact on an already approved course, the approval holder would also be given a reasonable period in which to modify the course to bring it into compliance with the regulations.

One comment suggested that section 10.302, paragraph (e), identify the specific office of the Coast Guard that will determine whether a course is not in compliance with applicable regulations. The Coast Guard disagrees. Such a determination may be made by a number of Coast Guard offices, including an OCMI, the National Maritime Center or their representatives. Whether or not suspension or withdrawal action will be taken will be determined by the cognizant OCMI or the National Maritime Center, as provided for by this rule.

Two comments stated that the determination that a course is being presented in a manner that is insufficient to achieve learning objectives be made by person(s) with expertise in the subject area. The Coast Guard agrees, but does not feel a change to the proposed rule is necessary. The decision to suspend or withdraw a course approval will be made with input from subject matter experts at the National Maritime Center.

Three comments stated that a training organization should be given an opportunity to correct any deficiencies prior to suspension. The Coast Guard agrees, but does not believe that a change to the proposed rule is needed. The rule clearly provides that an approval holder will be given an opportunity to correct deficiencies before suspension by the OCMI. Upon suspension by the OCMI, the NMC may also grant the approval holder an opportunity to correct the problem(s).

Three comments felt the OCMI should only have the authority to issue warnings or to place a school on probation. The Coast Guard disagrees. As previously discussed, a warning and the opportunity to correct deficiencies will be given before the OCMI suspends a course approval. Two of the comments expressed concern over the "nationwide" impact a suspension by an OCMI would have on an approval holder. This is a necessary safeguard to ensure the integrity of training. The authority to suspend a course approval should not be confined only to the OCMI's zone.

One comment stated that the specific examples given in the NPRM that might result in a suspension or withdrawal of a course approval were misleading as the examples were all different examples of not following the course curriculum. The Coast Guard disagrees. The examples given are intended to provide guidance on what action by a training organization would be considered grounds for suspension. The Coast Guard does not believe a change to the proposed rule is necessary and considers the cited examples to be indicative of, but not exclusive of, the conduct that might result in a suspension or withdrawal of course approval.

One comment suggested that students be permitted to join a course in progress if they will make up the lost hours. The Coast Guard may permit this for "modular" courses if doing so will not compromise the achievement of learning objectives. However, this is a determination that must be made after a review of the specific course. Such a provision may be proposed by a training organization in its original course approval request or by a request to modify an existing approved course.

One comment stated that a course approval should not be suspended or withdrawn for scheduling and teaching a course at an unapproved location as this does not effect the content of the course. The Coast Guard disagrees. Site approvals are given after an inspection of the proposed facility and only if the proposed facility is adequate for the proposed use and the achievement of a course's learning objectives. Schools are required to obtain written approval for any change in facilities or to conduct the course at a new or remote location as a requirement of the course approval. Failure to follow any condition

specified in the course approval may lead to suspension.

One comment felt that withdrawal of all of a school's course approvals when there is a demonstrated history of failing to comply with course approval requirements is a necessary safeguard to protect the quality of mariner training, while another felt this authority had too much potential abuse. The Coast Guard believes that the appeal mechanism provides adequate safeguards against abuse. The Coast Guard considers this an appropriate action when an approval holder has consistently failed to comply with requirements. As another comment noted, this action is only for extraordinary circumstances. The situations in which this action would be used will be specified in National Maritime Center Policy Letters and/or the Coast Guard *Marine Safety Manual.*

4. Changes to Approved Course Curriculum

One comment suggested that a request to modify the curriculum of an approved course be deemed approved if the National Maritime Center fails to respond to the request within 3 weeks. The Coast Guard disagrees. The National Maritime Center has established a program goal of responding to all requests for course approval, renewal of approval or modifications to an approved course in a timely manner. A training organization may not change its approved curriculum, facilities or instructors without written approval from the Commanding Officer, National Maritime Center.

5. Suspensions and Withdrawal Procedures and Appeals

Two comments suggested that the suspension and withdrawal process be amended to include an impartial arbiter such as a district hearing officer or administrative law judge. The Coast Guard disagrees. The rule gives the cognizant OCMI the authority to suspend a course approval, and the Commanding Officer of the National Maritime Center the authority to withdraw a course approval. The National Maritime Center provides oversight, establishes guidelines and determines policy for Coast Guard approved courses, and the OCMI monitors the various courses offered by the schools. The National Maritime Center and the OCMI are in the best position to determine when a school is failing to meet its obligations and can work with a school to ensure the highest standards are maintained. Most schools operate within our regulations, and suspension and withdrawal procedures are initiated only in those rare instances when a school deviates from the norm. No changes were made to the rule in response to these comments.

One comment suggested that appeals of course approval decisions to the Commandant be addressed to the Commandant (G–MO) so that the Commanding Officer, National Maritime Center is not the recipient for these appeals. The Coast Guard does not feel a change to the proposed rule is necessary. This rule provides that appeals of course approval issues are to be made *to* the Commandant (G–MO) *via* the Commanding Officer, National Maritime Center. The recipient of appeals under this section is the Commandant (G–MO). As addressee, National Maritime Center will forward the appeal and all relevant documents from its files, and provide other assistance as requested.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Course approval suspensions, withdrawals, or expirations do not impose specific requirements on any course holder. Rather, this rule establishes a standard enforcement method for the rare number of course approval holders who do not comply with applicable statutes, regulations, and the terms of course approval.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule, if adopted, would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The small entities affected by this rule are privately owned and operated schools with one to several employees, community colleges, and maritime labor union owned and operated schools. Suspension or withdrawal of an approval for a course or courses depends on the nature and severity of the infraction.

We realize that most schools operate within the confines of course approval regulations, guidelines and letters. This rule would provide a standard mechanism, in regulation, for the rare instances when a school might deviate from those course approval regulations, guidelines and letters. Also, this rule would provide an opportunity for the approval holder to correct any deficiencies prior to revocation.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard will provide assistance to small entities to determine how this rule applies to them. If you are a small business and need assistance understanding the provisions of this rule, please contact James Cavo, 703–235–0018.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no new collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(a) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with paragraph (a), concerning regulations

that are procedural. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 1 and 10 as follows:

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

2. In § 1.03–15, revise paragraph (h)(3) to read as follows:

§ 1.03–15 General.

* * * * *

(h) * * *

(3) Commanding Officer, National Maritime Center, for appeals involving vessel documentation issues, tonnage issues, and suspension or withdrawal of course approvals.

* * * * *

3. Revise § 1.03–45 to read as follows:

§ 1.03–45 Appeals from decisions or actions involving documentation of vessels and suspension or withdrawal of course approvals.

Any person directly affected by a decision or action of an officer or employee of the Coast Guard acting on or in regard to the documentation of a vessel under part 67 or suspension or withdrawal of course approvals under part 10 of this chapter, may make a formal appeal of that decision or action to the Commandant (G–MO) via the Commanding Officer, National Maritime Center, in accordance with procedures contained in §§ 1.03–15 through 1.03–25 of this subpart.

PART 10—LICENSING OF MARITIME PERSONNEL

4. The authority citation for part 10 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

5. In § 10.302, in paragraphs (c) and (d), remove the word "revoked" and add, in its place, the word "withdrawn"; immediately preceding the words "or on the date of", add the words "when the school closes, when the school gives notice that it will no longer offer the course,"; revise paragraph (a) introductory text; and add paragraphs (e), (f), and (g) to read as follows:

§ 10.302 Course approval.

(a) The Coast Guard approves courses satisfying regulatory requirements and those that substitute for a Coast Guard examination or a portion of a sea service requirement. The owner or operator of a training school desiring to have a course approved by the Coast Guard shall submit a written request to the Commanding Officer, National Maritime Center, NMC–4B, 4200 Wilson Boulevard, Suite 510, Arlington, VA 22203–1804, that contains:

* * * * *

(e) *Suspension of approval.* If the Coast Guard determines that a specific course does not comply with the provisions of 46 CFR parts 10, 12, 13 or 15, or the requirements specified in the course approval; or substantially deviates from the course curriculum package as submitted for approval; or if the course is being presented in a manner that is insufficient to achieve learning objectives; the cognizant OCMI may suspend the approval, may require the holder to surrender the certificate of approval, if any, and may direct the holder to cease claiming the course is Coast Guard approved. The Cognizant OCMI will notify the approval holder in writing of its intention to suspend the approval and the reasons for suspension. If the approval holder fails to correct the reasons for suspension, the course will be suspended and the matter referred to the Commanding Officer, National Maritime Center. The Commanding Officer, National Maritime Center, will notify the approval holder that the specific course fails to meet applicable requirements, and explain how those deficiencies can be corrected. The Commanding Officer, National Maritime Center, may grant the approval holder up to 60 days in which to correct the deficiencies.

(f) *Withdrawal of approval.* (1) The Commanding Officer, National Maritime Center, may withdraw approval for any course when the approval holder fails to correct the deficiency(ies) of a suspended course within a time period allowed under paragraph (e) of this section.

(2) The Commanding Officer, National Maritime Center, may withdraw approval of any or all courses by an approval holder upon a determination that the approval holder has demonstrated a pattern or history of:

(i) Failing to comply with the applicable regulations or the requirements of course approvals;

(ii) Substantial deviations from their approved course curricula; or

(iii) Presenting courses in a manner that is insufficient to achieve learning objectives.

(g) *Appeals of suspension or withdrawal of approval.* Anyone directly affected by a decision to suspend or withdraw an approval may appeal the decision to the Commandant via the Commanding Officer, National Maritime Center, as provided in § 1.03–45 of this chapter.

6. In § 10.303, revise paragraph (e) to read as follows:

§ 10.303 General standards.

* * * * *

(e) Not change its approved curriculum unless approved, in writing, after the request for change has been submitted in writing to the Commanding Officer, National Maritime Center (NMC–4B).

* * * * *

Dated: January 20, 1999.

Robert C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–2359 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 2, 15, 25, and 68

[GEN Docket No. 98–68; FCC 98–338]

Streamlining the Equipment Authorization Process; Implementation of Mutual Recognition Agreements and the GMPCS MOU

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. It is also adopting rule changes to implement a Mutual Recognition Agreement (MRA) for product approvals with the European Community (EC), the Asia Pacific Economic Cooperation (APEC) and to allow for similar agreements with other foreign trade partners. These actions will eliminate the need for

manufacturers to wait for approval from the Commission before marketing equipment in the United States, thereby reducing the time needed to bring a product to market. The Commission is also adopting an interim procedure to issue equipment approvals for Global Mobile Personal Communication by Satellite (GMPCS) terminals prior to domestic implementation of the GMPCS–MoU Arrangements. That action will benefit manufacturers of GMPCS terminals by allowing greater worldwide acceptance of their products.

DATE: *Effective* May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Hugh L. Van Tuyl, (202) 418–7506, Office of Engineering and Technology. For part 68 specific questions, contact Vincent M. Paladini, (202) 418–2332, Common Carrier Bureau. For part 25 specific questions, contact Tracey Weisler at 202–418–0744.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, GEN Docket 98–68, FCC 98–338, adopted December 17, 1998, and released December 23, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Report and Order

1. In this order, we adopt measures to reduce the burden of the equipment authorization program on manufacturers, ensure market access and promote competition in the provision of telecommunication and electronic equipment, and allow greater worldwide acceptance of GMPCS equipment. We address the comments filed in response to our proposals to recognize private entities to certify equipment as complying with Commission rules. The program we adopt will be used both to streamline our domestic equipment approval programs and satisfy the United States' obligations to implement MRAs.

Telecommunications Certification Bodies (TCBs)

2. In the *Notice of Proposed Rule Making* ("NPRM") 63 FR 31685, June 10, 1998, we proposed to allow designated private entities to issue equipment approvals in essentially the same manner as the Commission. Under this proposal, private entities in the U.S. and designated entities in other countries would certify that equipment intended for use within the U.S. complies with Commission requirements. We proposed that these certifying organizations be called "Telecommunication Certification Bodies", or TCBs, since their purpose will be to grant certification to telecommunications equipment. This approach would provide manufacturers with alternatives where they could possibly obtain certification faster than with the Commission and from a facility in a more convenient location. We also anticipated that the TCB program would result in a reduction of applications filed with the Commission, thus enabling the Commission to redirect resources toward enforcement of the rules. Finally, allowing equipment to be certified by parties in other countries is an essential step in implementing MRAs, and using private entities for domestic certification purposes would parallel our MRA obligations.

3. In ET Docket 97–94, we recently examined the part 2 authorization program, relaxing the authorization requirements for many types of equipment to permit manufacturer's self-approval (verification or DoC). We estimate that our actions in Docket 97–94 will reduce by approximately half the number of applications required to be filed with us. The equipment for which we relaxed the authorization requirement includes receivers, which is the only type of equipment that was suggested be placed under the DoC program. We determined in Docket 97–94 that a certain "core group" of equipment requires a higher level of oversight than manufacturer's self-approval, due to a high risk of non-compliance, the potential to create significant interference to safety and other communication services, and the need to ensure compliance with the requirements to protect against radio frequency exposure. Accordingly, we decline to expand further the DoC program for equipment subject to a part 2 authorization requirement at this time.

4. Since the *NPRM* did not propose to place terminal equipment subject to the part 68 registration program under DoC, the record does not yet contain sufficient information or analysis to ensure that it would be fair and equitable to do so. Accordingly, we decline to expand further the DoC program to equipment subject to part 68 registration at this time. We may, however, consider this possibility in the context of future proceedings where we may more fully investigate and resolve the relevant issues.

5. By carefully specifying the qualification criteria for TCBs, as well as exerting the proper oversight, we intend to ensure the TCB system will be as fair and impartial as the current system. The TCB system also may be significantly faster than the Commission's current system, since manufacturers should have more than one approval body to choose from and can select one with a shorter processing time. We expect TCBs to function much like the Commission by certifying a product based on the test results of one representative sample. Further, competition among TCBs, as well as expectations of manufacturers, should encourage TCBs to process applications quickly and at reasonable expense. TCBs should provide conveniently located expertise and "one stop shopping" for manufacturers, thereby eliminating the uncertainty and delay in assembling and forwarding applications to the Commission inherent in the current system. We also recognize and agree with commenters that the integrity of the TCB program must be based on our ability to enforce our rules effectively. As we stated in the *NPRM*, we intend to redirect resources toward enforcement of the rules. Further, we intend to review and revise our rules and procedures, as necessary, to ensure that we fulfill our responsibilities to ensure credible rule enforcement. We recognize that there will be initial start-up problems and we plan to work with industry and the National Institute of Standards and Technology (NIST) to facilitate the training and implementation of TCBs. Accordingly, we find it is in the public interest to adopt the TCB system as proposed in the *NPRM*, for equipment authorized under both parts 2 and 68 of our rules.

TCB Qualification Criteria

6. In the *NPRM*, we tentatively concluded that the International Organization for Standardization (ISO) / International Electrotechnical Commission (IEC) Guide 65 (1996), General requirements for bodies operating product certification systems ("Guide 65"), sets forth the requirements that must be used to establish the primary qualification criteria for TCBs. TCB equipment certification would be based on type testing, which is the option listed in subclause 1.2(a) of Guide 65. We also proposed that TCBs:

- Demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation, including knowledge of all applicable technical regulations, administrative provisions or requirements, as well as the relevant policies and procedures.

- Be accredited in accordance with ISO/IEC Guide 25, General Requirements for the Competence of Calibration and Testing Laboratories ("Guide 25"), in order to demonstrate that they are competent to perform testing of the products they will certify.
- Have the ability to recognize when interpretations of the rules or test procedures are necessary and demonstrate a knowledge of how to obtain current and correct interpretations.
- Participate in consultative activities identified by the Commission to establish a common understanding and interpretation of the regulations.

7. We find that Guide 65, an existing international standard, establishes appropriate qualifications for product certifiers. Guide 65 will be used as the primary qualification criteria for TCBs under MRAs, so use of this document for domestic purposes as well will facilitate acceptance of U.S. certifications internationally, and thereby promote U.S. trade abroad. We also find that TCBs should have the expertise and capability to test equipment they certify, since they will either perform measurements themselves or will use this expertise and capability to correctly review test data from other parties and perform audit testing as required. Thus, we also find that TCBs must be accredited to Guide 25 to demonstrate appropriate knowledge and capability to perform product testing. Accordingly, we require TCBs to be both Guide 65 and 25 accredited.

8. CCL requests that the Commission recognize current accreditation schemes for testing laboratories, such as the National Voluntary Laboratory Accreditation Program (NVLAP) and the American Association for Laboratory Accreditation (A2LA). Laboratories that perform testing of equipment approved under DoC must be accredited through NVLAP, A2LA or other parties recognized by the Commission, *see* 47 CFR 2.948(d). These accreditations are based on Guide 25 and cover testing of certain devices subject to part 15 of the rules. We find that these accreditations would satisfy our requirement for a TCB to be Guide 25 accredited. Accordingly, a prospective TCB which is already accredited by A2LA, NVLAP or another recognized party, based on Guide 25, will not have to obtain another Guide 25 accreditation, provided the equipment it certifies is covered by the scope of the accreditation.

9. We also adopt the additional qualification criteria that we proposed, i.e., TCBs must demonstrate expert knowledge of the regulations for each product with respect to which they seek designation; recognize when interpretations of the rules or test procedures are necessary and demonstrate knowledge of how to obtain current and correct interpretations; and participate in consultative activities identified by the Commission to establish a common understanding and interpretation of the regulations. The MRAs, for example, identify regulations and requirements that are applicable to certifying equipment intended for import into the United States.[1] Since such regulations and requirements may be modified in the future, we delegate authority to the Chief, Office of Engineering and Technology (OET), and to the Chief, Common Carrier Bureau (CCB), to identify specific regulations and requirements for which TCBs certifying equipment for use within the United States shall demonstrate expert knowledge. Both OET and CCB shall provide public notice of the specific regulations and requirements identified for this purpose, to ensure that prospective TCBs will know for which specific regulations and requirements they must demonstrate expert knowledge as required under our qualifying criteria.

10. *Subcontractors.* Several parties address the issue of whether subcontractors to TCBs (e.g., test laboratories) should also be Guide 25 accredited. Under Guide 65, a TCB may use a subcontractor to perform certain tasks (e.g., testing or inspection).[2] Guide 65 further states that a TCB shall take full responsibility for subcontracted work, and shall "ensure that the subcontracted body or person is competent and complies with the applicable provisions of [Guide 65] and other standards and guides relevant to testing, inspection or other technical activities." Thus, TCBs must ensure that subcontractors, which perform their work under the direction of, and generally with compensation from, the TCB, are competent and in compliance. We do not interpret Guide 65 as requiring subcontractors to be Guide 25 accredited. We expect that as a result of our requirement that TCBs must be accredited to Guides 65 and 25, TCBs will have the expertise to determine whether a manufacturer or independent laboratory that is a subcontractor is competent to correctly measure the equipment being tested. We will allow TCBs to use any reasonable means, including requiring Guide 25 accreditation, to determine whether a subcontractor is competent and in compliance with relevant standards or guidelines.

11. *Manufacturers.* Retlif, Rockwell and Kenwood request that the Commission confirm that a manufacturer can be a TCB, provided it meets the Guide 65 requirement for impartiality. ACIL, CCL and Intertek want the Commission to provide a clear definition of "independence" for TCBs, and propose a definition based on the language in European Directives, which would exclude manufacturers from being TCBs.

12. Guide 65 clearly requires that the certifying body be impartial. More specifically, clause 4.2 of Guide 65 requires that the certifying body "not supply or design products of the type it certifies," nor "provide any product or service which could compromise the confidentiality, objectivity or impartiality of the certification process and decisions." We interpret these guidelines to effectively preclude manufacturers from becoming TCBs. Thus, we do not find it necessary to adopt a specific definition of independence in order to preclude manufacturers from TCB designation. On the other hand, we find Guide 65 less restrictive regarding subcontractors. Clause 4.4 of Guide 65 states that the certifying body is to ensure that the subcontractor "is not involved either directly or through the person's employer with the design or production of the product in such a way that impartiality would be compromised." Thus, manufacturers satisfying the conditions of clause 4.4 of Guide 65 could be used as subcontractors, provided the TCB is satisfied that its own impartiality would not be compromised. Since the TCB is the party whose impartiality must be maintained, the TCB is in the best position to determine whether the use of a particular subcontractor would in any way jeopardize that requirement. We expect, nonetheless, that a manufacturer would not be used as a subcontractor to test its own products or similar products made by a competing manufacturer.

Designation Procedure

13. The *NPRM* proposed that TCBs be accredited by NIST under its National Voluntary Conformity Assessment System Evaluation (NVCASE) program. In accordance with our proposal, we

[1] The US/EC MRA contains a non-exclusive list for telecommunications equipment. The model APEC MRA provides that countries will identify the relevant regulations and requirements at the time they enter into bilateral agreements.

[2] See Guide 65, clause 4.4. Although a TCB might use a subcontractor to perform certain tasks related to the certification process, a TCB is precluded by Guide 65 from delegating to a third party, such as a subcontractor, any authority for granting certifications. See Guide 65, clauses 4.4(a) and 12.2.

designate NIST as the entity with primary responsibility for accrediting TCBs. NIST may directly accredit TCBs or may, in consultation with the Commission, designate additional accreditation bodies who will, in turn, accredit TCBs. We will work directly with NIST to develop the many administrative details of the criteria and processes for accreditation of TCBs. The Commission will identify for NIST, for example, the specific types of tests that need to be done for telecommunications equipment and the types of measurements that should be done to demonstrate compliance with our rules; identify processes that TCBs will use to obtain current and correct interpretations of rules or test procedures; and identify consultative activities requiring TCB participation. The Commission will provide public notice of the methods that NIST will use to accredit TCBs consistent with the qualification criteria adopted herein.

14. We will designate as a TCB any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor. An organization may seek accreditation and designation as a TCB for all or only some equipment requiring authorization under parts 2 and 68. The Commission will issue a public notice listing each accredited entity that it designates as a TCB and maintain a current list of all designated TCBs. We will not limit the number of TCBs that will be designated, nor will we limit the time period during which an organization must be accredited and designated. We will not require periodic renewals of a TCB designation, but we note that under international standards, accreditations are only valid for a specific number of years. The Commission will withdraw the designation of a TCB if the TCB's accreditation by NIST or its recognized accreditor is withdrawn or expires, if the Commission otherwise determines there is just cause for withdrawing the designation, or if the TCB requests that it no longer hold the designation. The Commission will provide a TCB with 30 days notice of its intention to withdraw TCB designation and provide the TCB with an opportunity to respond. Withdrawal of designation will be announced by public notice.

15. There are many details of the qualification and accreditation process that remain to be worked out between the Commission and NIST. Therefore, we delegate authority to the Chief, OET and the Chief, CCB to identify the specific methods that will be used by NIST to accredit TCBs, consistent with the qualification criteria adopted herein, and to enter into a memorandum of understanding with NIST on the accreditation process for TCBs. We also delegate authority to the Chief, OET and the Chief, CCB to designate and withdraw the designation of TCBs, consistent with the terms of this *Report and Order*.

Implementation Matters

16. In the *NPRM*, we proposed to allow TCBs to certify equipment under parts 2 and 68 of our rules, performing the same application processing functions as used by the Commission. In particular, the following requirements were proposed for TCBs.

(a) Certification must be based on the submittal to the TCB of an application that contains all the information required under the Commission's rules.

(b) TCBs will be required to issue a written grant of certification.

(c) The grantee of certification will remain the party responsible to the Commission for compliance of the product.

(d) The type testing as defined in Guide 65 should normally be done on only one unmodified sample of the equipment for which approval is sought.

(e) There is no restriction on the fees that TCBs may charge for certification.

(f) TCBs may either perform the required compliance testing themselves, or may accept and review the test data from manufacturers or other laboratories. TCBs may also subcontract with others to perform the testing. However, the TCB remains responsible for ensuring that the tests were performed as required and in this regard TCBs are expected to perform periodic audits to ensure that the data they may receive from others is indeed reliable.

(g) Equipment certified by a TCB must meet all the Commission's labelling requirements, including the use of an FCC Identifier.

(h) TCBs must submit an electronic copy of each granted application to the Commission using the new electronic filing system for equipment authorization applications. This will allow us to easily verify whether a piece of equipment has been approved without having to locate the TCB which approved it and obtain the records. It will also allow us to monitor the activities of the TCBs to determine how many approvals are issued and for what types of equipment. Finally, this would create a common database that all parties can use to verify approvals and obtain copies of applications. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets.

(i) TCBs may approve requests for permissive changes to certified equipment, irrespective of who originally certified the equipment.

(j) TCBs must periodically perform audits of equipment on the market that they have certified to ensure continued compliance.

17. In the *NPRM*, we tentatively concluded that some functions not be performed by TCBs but, rather, by the Commission. In particular, we tentatively concluded that TCBs not grant waivers of Commission rules and regulations; not certify new or unique equipment for which Commission rules or requirements do not exist or for which application of the rules or requirements is not clear; not take enforcement action but rather report rule violations to the Commission; and not grant transfers of control or assignments of certifications. Finally, we proposed that any action of a TCB be subject to review by the Commission.

18. Commenters were generally supportive of the implementation requirements. Some specific concerns were expressed. In light of the comments, we adopt these requirements as modified and clarified below.

19. *Scope of responsibility.* Consistent with section 302(e) of the Communications Act, as well as the terms of the MRAs, we will use TCBs to test and certify equipment as complying with our technical rules and requirements. Under this authority, TCBs are to certify equipment in accordance with Commission rules and policies. It is important that applicants are treated fairly and equitably regardless of where their equipment is certified, since a certification granted by a TCB will be treated the same as one issued by the Commission. In that regard, should equipment manufacturers take issue with a TCB's decision, they may seek Commission review of such decision. Thus, TCBs are not to impose their own requirements, and must conform their testing and certification processes and procedures to comply with any changes the Commission makes in its rules and requirements. We recognize that changes to the Commission's technical rules may require TCBs to be re-accredited in order to continue to be qualified to test and certify certain equipment. Finally, we anticipate that TCBs will test and certify a broad range of equipment, and we do not intend to preclude TCBs from certifying any class of equipment at this time. We would, however, only designate a TCB to test and certify equipment requiring routine evaluation for RF exposure if it demonstrates that it has the appropriate

knowledge and expertise. Any concerns that TCBs may have about specific test procedures for RF exposure will be addressed by the Office of Engineering and Technology during the TCB program implementation.

20. Although we intend to use TCBs to certify a broad range of equipment, we find that certain functions regarding certifying equipment should continue to be performed by the Commission. Specifically, TCBs will not be permitted to waive the rules, nor to certify new or unique equipment for which Commission rules or requirements do not exist or for which application of the rules or requirements is not clear. The Commission in the first instance will determine whether and under what conditions rules may be waived, and provide interpretations of novel issues concerning the Commission's technical standards, testing requirements or certification procedures. We expect that in many instances the Commission's decisions can provide adequate guidance to TCBs to allow them to certify equipment that is similarly situated. In some instances, the Commission may have to develop new rules. We find that by reserving for the Commission all waiver requests and new and novel rule applications and interpretations, we can ensure that all TCBs will certify equipment in a uniform manner, consistent with Commission policies.

21. We also conclude that TCBs should not take any enforcement actions, but rather report apparent violations of rules to the Commission. Enforcement actions that the Commission may undertake include, for example, revocation of an authorization and imposing a fine and forfeiture. Neither section 302(e) of the Communications Act of 1934, as amended, nor the MRAs contemplate using TCBs as enforcement agents. Moreover, the Commission has specific statutory obligations that it must satisfy in this area.[3]

22. We will not permit TCBs to authorize transfers of control of part 2 grants of certification, however, because the Commission's rule on these transfers requires that we make a determination on a case-by-case basis as to whether new equipment authorization applications are required.[4] We will continue to perform that function to ensure that the rule is applied in a consistent manner. We determine, however, that TCBs may authorize transfers of part 68 certifications. Commission approval of such transfers is not required, although the Commission requires notification of such transfers.[5] We intend to develop an electronic filing system to accommodate part 68. We expect that the electronic filing system will permit TCBs to notify the Commission of transfers of control. In the interim, we will accept part 68 transfers of control by utilizing the same means of communication we employ during the TCB program implementation period.[6]

23. *Written grant of certification.* Several parties would like the Commission to ensure that grants issued by TCBs are exactly equivalent to grants issued by the FCC. ACIL, Intertek and TIA suggest that TCB-issued grants indicate that the TCB is FCC designated, and that the FCC publish the list of TCBs under its letterhead. Motorola and PCTEST recommend that the FCC standardize the format of TCB grants. We find that the first two suggestions have merit. We believe the success of the TCB program will depend in part on our ensuring that TCB certifications are truly equivalent to those issued by the Commission. Accordingly, we will require a TCB grant to indicate that the TCB is designated to grant the certification, citing the source of authority (e.g., the rules that we are adopting in this *Report and Order*). We will not require a specific format for TCB grants, but the certification must include the same information as contained in one issued by the Commission. We will make samples of the Commission's format available to TCBs that wish to follow it.

24. Consistent with the Commission's rules,[7] a TCB may set aside a grant on its own motion within 30 days of the effective date of the grant in the event of administrative errors, e.g., the application was not complete. The TCB will be required to provide notice of such action to the applicant and to the Commission. After the 30 day period, only the Commission may revoke a grant if, for example, we discover misrepresentations in the application or failure of the equipment to conform to the applicable technical standards.[8]

25. *Unmodified sample for type testing.* Curtis-Strauss requests clarification on what constitutes an "unmodified" sample for testing. Curtis-Strauss points out that manufacturers often apply for certification during product development, and product modifications are often needed for compliance. In proposing this requirement, we intended that TCBs use the same standards that we currently use in certifying equipment (i.e., the sample of the equipment for which certification is being obtained must be representative of what will actually be marketed). In the event modifications to a sample are required during compliance testing[9] to make a product comply with the standards, those modifications must be incorporated into the finished marketed product.[10]

26. *Test data.* Some commenters express concern that TCBs will not accept test data from manufacturers or independent labs, preferring instead to conduct compliance testing themselves. Under the Commission's current certification process, manufacturers and independent laboratories may test products and submit applications to the Commission for certification. Under the TCB system we are adopting, manufacturers and independent labs may continue to test products as they do now, except applications can be submitted to a TCB rather than the Commission.[11] Thus, a manufacturer or a test lab does not have to be a subcontractor in order to test products and submit applications to a TCB. We agree with Motorola that a TCB will want a manufacturer to demonstrate a basis for confidence in the manufacturer's test procedures and results. Consistent with our decision regarding subcontractor's competence, a TCB can establish confidence in a manufacturer's or independent lab's test results by any reasonable means, but we will not require accreditation of the test lab under Guide 25. We expect that a TCB will examine a test report for completeness of data and documentation; notify applicants in writing of any deficiencies in the test report; request additional information to address the deficiencies; and not retest or duplicate testing for minor equipment changes that do not affect compliance with technical requirements. Our oversight of TCBs should identify any abusive practices concerning the acceptance of test data.

27. *Common Database of Certified Equipment.* We conclude that it is necessary to maintain a common

[3] See, e.g., Title V of the Communications Act.

[4] See 47 CFR 2.929(d).

[5] See 47 CFR 68.214(b).

[6] We will accept FCC form 730 for transfer of control purposes until we have developed and implemented an electronic filing system for part 68. We may utilize interim filing procedures as necessary during the development and implementation of the electronic filing system. We will provide public notice of any changes in our filing procedures.

[7] See 47 CFR 1.108.

[8] See 47 CFR 2.939(a).

[9] "Compliance testing" and "type testing" mean the same thing.

[10] See 47 CFR 2.907(b) (equipment marketed by a grantee must be identical to the sample tested).

[11] A TCB is required to make its services available to all applicants. See clause 4.1.2 of Guide 65.

database of certified equipment by having all TCBs send an electronic copy of each granted application, including the certification the TCB issued, to the Commission using the electronic filing system for part 2 applications. As we explained in the NPRM, a common database will allow the Commission to verify whether a piece of equipment was approved without having to locate the TCB that approved it and obtaining their records; to monitor the activities of TCBs to determine how many approvals are issued and for what types of equipment; and to provide one location which all parties can use to verify approvals and obtain copies of applications. However, requiring submission of a copy of the complete application to the database, including all the photographs, user manuals and test reports would be an unnecessary burden on TCBs. We will only require submission of the application Form 731 and an electronic copy of the TCB's grant of equipment authorization. In the event we need additional information about a particular piece of equipment, we can obtain it from the TCB. We are amending our rules to require TCBs to provide a copy of the application file within 30 days of a request by the Commission, or to provide an explanation as to why the file cannot be provided. Where appropriate, the TCB will provide a copy of any request for confidentiality for any material in the application file that qualifies as trade secrets, to ensure appropriate handling. OET will notify TCBs of the specific information it will need about a TCB grant and in what electronic format it should be provided.

28. We recognize that we have not yet developed an electronic filing system to accommodate part 68, but intend to do so in the future. We will utilize conventional means for collecting information in the interim.[12] We will authorize submission of part 68 certification information into a common database, and describe the information that must be filed for part 68 purposes, after we have developed an electronic filing system to accommodate that information.

29. *Surveillance Activities.* ISO/IEC Guide 65 requires TCBs to perform surveillance on products they have approved. It does not specify the number or percentage of products that need to be examined. The Commission will continue to perform its own surveillance of products on the market, by periodically conducting random product testing as well as by investigating allegations of non-compliance. However, we find that surveillance is an appropriate activity for TCBs to supplement the Commission's efforts. Under clause 13 of Guide 65, a TCB is obligated to ensure that products that it has certified continue to comply with Commission requirements, particularly after a manufacturer notifies a TCB that the product has been modified. We will not specify a specific number or percentage of products that a TCB should test to satisfy this guideline, since our experience has shown that different levels of scrutiny are required for different products to ensure compliance.[13] We will rely on TCBs to use their judgment in complying with this guideline. In addition, we may periodically require a TCB to test for continued compliance certain types of products that the TCB certified and which are already being marketed (post-market surveillance). We do not view post-market surveillance by TCBs as an abdication of our enforcement responsibilities, since the TCB will report apparent violations to the Commission and not take action on its own against the manufacturer. To ensure that TCBs conduct audits impartially, the Commission will devise procedures that TCBs will use for post-market surveillance, and we delegate authority to the Chief, OET and the Chief, CCB to develop procedures that TCBs will use for conducting post-market surveillance. These procedures will address, for example, conducting field audits or acquiring samples for testing. The TCB will test the products under the Commission guidelines and report the results to us. TCBs will be able to check the Commission's common database, described above, to avoid reporting as non-compliant products that actually were subsequently re-certified by another TCB. By using the TCBs to conduct audits, the Commission will be able to secure information quickly from a variety of sources about ongoing compliance, while focusing its own resources on investigating specific problem cases. Based on the TCBs' reports, the Commission may conduct further investigations and take appropriate enforcement action against companies found to be marketing non-compliant products. The Commission will also continue to perform post-market surveillance in cases where we deem it warranted, and to audit the performance of TCBs. These actions will help ensure that TCBs act in a fair, impartial manner. We expect that TCBs will take the cost of post-market surveillance into account when setting their fees. As previously stated, we are not regulating the fees that TCBs charge, but we expect that competitive pressures in the market will prevent a TCB from charging excessive fees.

30. *Consultative Activities.* Several parties suggest that the Commission develop a joint public-private sector working group to address implementation issues as they arise. Commenters recommend that this working group include all interested parties, such as TCBs, test labs and manufacturers. We refrain from establishing a new formal organization at this time, and choose to rely instead on existing voluntary industry consensus groups. For example, for part 68 issues, we intend to continue our cooperative association with TIA's TR.41 committees. Moreover, we intend to work with all interested parties to implement the TCB program and to ensure its success.

Continued Certification by the Commission

31. We solicited comments on whether the Commission should eventually stop certifying equipment once TCBs are designated. We received mixed comments on this issue. Our goal in this proceeding is to discontinue granting routine, non-controversial applications under parts 2 and 68 of our rules when TCBs are available to perform the work, but we do not at this time set a date when the Commission will cease to issue authorizations. We conclude that the Commission should continue approving equipment, including processing routine applications, during the implementation of the TCB program. This will help smooth the transition to the new system and ensure that at least one organization is available to certify all types of equipment. After we have some experience with the new system, we will assess the effectiveness of the TCB program and determine when the Commission should discontinue approving products. After the TCB program is initiated, however, the Commission will continue to be the authorizing body if no TCB is available to authorize a given type of equipment and to process applications raising novel issues regarding application of our rules.

[12] We will accept FCC form 730 during the development and implementation of the electronic filing system.

[13] For example, low-power, unlicensed transmitters such as cordless telephones and baby monitors have frequently been a source of compliance problems because of pressures in the marketplace to build them as cheaply as possible, or to increase their operating range by increasing their transmitter power above the legal limit.

32. We conclude that it is unnecessary for the Commission to continue approving certification applications for personal computers and peripherals, since that equipment can be authorized through the DoC procedure. We find that processing these voluntarily filed applications is not an efficient use of the Commission's resources. Accordingly, once domestic TCBs are available to process applications for personal computer equipment for those applicants who choose to use the certification process rather than DoC, the Commission will stop accepting these applications a reasonable time thereafter. The Commission will announce by public notice when it will cease to accept these applications. We amend § 15.101 of the rules to reflect this change.

Implementation Dates and Transition Periods

33. We proposed that a transition period of 24 months elapse before any TCBs would be allowed to certify equipment. This time period was proposed because it is similar to the provision of the US/EC MRA, which specifies a 24 month transition period after the MRA effective date, so that countries have time to modify requirements and procedures to meet the MRA's obligations. Some commenters suggest that a transition period be no more than 24 months, and perhaps less. Upon further consideration, we do not find it necessary to delay the introduction of the TCB system for a 24 month period, and we would rather implement the TCB system as soon as practicable. Nonetheless, we cannot implement the TCB system immediately because of a number of tasks which need to be completed first. For example, we need to specify the documentation necessary to meet the qualification criteria for TCBs, as discussed above, and we need to develop with NIST the accreditation and designation procedures. Although we will immediately begin taking the necessary steps to implement the TCB system, we recognize that it is difficult to specify a fixed date when TCBs will begin to certify equipment. We also conclude that a fixed date would not serve the ongoing accreditation and implementation processes. For example, TCBs may be identified readily for some equipment, but not for others, accreditation compliance dates may vary, and TCBs can enter and exit the system at different times. Thus, we conclude that we will authorize the use of TCBs as they are designated by the Chief, OET and the Chief, CCB in a public notice.

Part 68 Issues

34. *Terminology.* In the *NPRM*, we discussed the use of the terms "certification" and "registration" as they apply to the part 68 program. Commenters suggest that the two terms are functional equivalents, and recommend that we expand our use of the term "certification" to include our part 68 program. Commenters point out that such usage would be consistent with various other parts of the **Federal Register**, the norms of international terminology, and specifically the language of the MRAs. We agree with commenters that the use of common terminology benefit clarity and consistency, and determine that the terms "registration" and "certification" are equivalent for the purposes of our part 68 rules. To the extent practicable, we will implement this change in the course of future rule makings and administrative actions affecting part 68.

35. *FCC Form 730.* The part 68 program currently utilizes FCC Form 730 to transmit information from test labs and manufacturers to the Commission. In the *NPRM*, we sought comment on whether we could utilize that form to transmit test data to the Commission from TCB candidates during the transition period. Although commenters support the use of a common format for recording and transmitting information among TCBs and the Commission, they do not support the use of FCC Form 730 for this purpose. We agree that FCC Form 730 is not the optimal format for use among TCBs and the Commission, intend to develop an electronic filing system and common database to fulfill that purpose. In the mean time, however, we find that it would be a waste of resources to create an interim solution. Thus, we determine that we will utilize FCC Form 730 as the initial information transmission format for the purposes of implementing the TCB program. We will, however, update this requirement pursuant to further TCB program implementation activities.

Mutual Recognition Agreements (MRAs)

United States/European Community MRA

36. The Office of the United States Trade Representative and the Department of Commerce have participated in negotiations over the past several years to develop a mutual recognition agreement for product approvals with the European Community (EC). The Commission has also participated in these negotiations, as have industry representatives from both the United States and Europe. These negotiations culminated on June 21, 1997 when the US/EC MRA was finalized by the United States Trade Representative and a representative of the European Community. The Agreement was signed on May 18, 1998, and entered into force on December 1, 1998.

37. The US/EC MRA addresses conformity assessment activities in six industrial sectors: telecommunications equipment, electromagnetic compatibility, electrical safety, recreational craft, pharmaceutical good manufacturing practice, and medical devices. The Commission's regulations apply directly to two industry sectors, telecommunications equipment and electromagnetic compatibility ("EMC"), among the six specifically addressed by the US/EC MRA. The telecommunications sector addresses terminal equipment covered by part 68 of the rules, and transmitters covered by part 2 and other parts of the Commission's rules. The EMC sector applies to equipment addressed by parts 15 and 18 of the Commission's rules.[14]

38. Under the US/EC MRA, products can be tested and certified in the United States for conformance with EC member states' technical requirements. The certified products may be shipped directly to Europe without any further testing or certification. In return, the MRA obligates the United States to permit parties in Europe to test and authorize equipment based on the United States technical requirements. The US/EC MRA thereby promotes bilateral market access and competition in the provision of telecommunications products and electronic equipment. The US/EC MRA also will reduce industry burdens and delays caused by testing and approval requirements for products marketed in the United States and Europe.

39. The US/EC MRA provides a 24 month transitional period that will be used to implement the regulatory or legislative changes necessary for both parties to implement the US/EC MRA. The period began on the effective date of the MRA, which is December 1, 1998. At the end of the transition period, the parties should be prepared for full mutual recognition of product certifications and registrations. To ensure parity between U.S. and EC manufacturers, we will not permit parties in an EC country to test and approve products to U.S. requirements until that country permits U.S. parties to test and approve products to its requirements.

[14] See 47 CFR 2, 15, 18, and 68.

Asia-Pacific Economic Cooperation (APEC) MRA

40. The Office of the United States Trade Representative, at the request of the United States telecommunication industry, has negotiated a Mutual Recognition Arrangement (MRA) for Conformity Assessment for Telecommunication products in the Asia-Pacific Economic Cooperation (APEC), which is intended to facilitate trade in telecommunications and radio equipment among the APEC economies. APEC is a trade cooperative of twenty-one economies along the Pacific Rim. Commission staff and representatives of the United States telecommunications industry have been participating in a Task Force Group under the Telecom Working Group of APEC, which was established in March, 1997 to facilitate the development of the APEC Telecom MRA.

41. The text of the model APEC Telecom MRA was finalized on April 30, 1998 and was endorsed at the APEC Ministerial Meeting on June 5, 1998. Unlike the US/EC MRA, the APEC Telecom MRA is a voluntary model agreement. To enact the agreement, each APEC member economy must adopt the agreement with each of its APEC trade partners, such as the United States, through a bilateral exchange of letters. Participation in the APEC Telecom MRA is voluntary; however, if a member economy chooses to participate, the model text becomes the governing document for conformity assessment between the participating member economies. The MRA is expected to take effect on July 1, 1999, although individual parties may agree to apply it bilaterally before that date. The key elements of the APEC Telecom MRA text are substantially similar to the key elements of the US/EC MRA text, with the following exceptions: the APEC Telecom MRA has specific designation procedures for conformity assessment bodies (CABs); when parties agree to participate in activities with one another, the transition period will normally be twelve months from the date of mutual agreement; and implementation occurs in two phases—the first for accepting test results and the second for accepting product approvals. As in the case of the US/EC MRA, we will not permit parties in an APEC member economy to test and approve products to U.S. requirements unless that member economy permits parties in the U.S. to test and approve products to its requirements. We adopt the tentative conclusion in the NPRM that the rules proposed in this proceeding to implement the US/EC MRA are sufficient to implement the APEC Telecom MRA.

Other MRAs

42. We anticipate that the United States may develop or participate in additional mutual recognition agreements that involve other regions of the world. For example, the Interamerican Telecommunications Committee (CITEL) of the Organization of American States is considering developing an MRA for the Americas region.

Designation of TCBs for Equipment Imported Into the United States

43. The *NPRM* proposed to amend our rules as required to permit parties in MRA partner economies to certify radio frequency devices for conformance with parts 2, 15, 18 and other rule parts and to test and certify telecommunications equipment for conformance with part 68. We proposed that these privileges should only be granted subject to the terms and conditions specified in the MRA. No parties disagreed with this proposal. Accordingly, we are amending parts 2 and 68 of our rules to allow parties in MRA partner economies to certify equipment under applicable MRA terms and conditions.

44. In accordance with the US/EC and APEC MRAs, the United States and each MRA partner will identify a "Designating Authority" in its territory. A Designating Authority is a body with power to designate, monitor, suspend, remove suspension of or withdraw conformity assessment bodies (CABs) in accordance with the MRAs. The Designating Authorities must meet the requirements of ISO/IEC Guide 61. Designating Authorities will in turn designate CABs, also within each country's territory, that will be empowered to approve products for conformity with the technical requirements of countries to which the equipment is exported. As used in the APEC and US/EC MRAs, "conformity assessment body" is a general term that refers to a body, which may include a third party testing laboratory or a certification body, that performs conformity assessment to specific technical regulations. Consequently, the MRAs cover two types of product approvals under the Commission's rules: certification, which is approval granted by a certification body, such as a TCB, and declaration of conformity, which requires product testing by an accredited testing laboratory.[15] The MRAs state that the designation of CABs is based on international standards, specifically ISO/IEC Guides 65 and 25.

45. Because CABs in exporting countries will be certifying equipment for import into the United States, we expect that those CABs will follow all relevant Commission requirements for certification, including those requirements adopted in the *Report and Order*. Thus, CABs will follow the implementation guidelines discussed. The MRAs contain provisions to remove the designation of foreign certifiers that do not comply with the applicable requirements. Those provisions are discussed below.

Designation of TCBs for Equipment Exported From the United States

46. The US/EC and APEC MRAs identify the Designating Authorities for the United States as NIST and the Federal Communications Commission. NIST will designate conformity assessment bodies, such as TCBs, in the United States for equipment that will be exported through its National Voluntary Conformity Assessment System Evaluation (NVCASE) program. NIST will oversee the United States conformity assessment bodies on an ongoing basis to ensure that they are performing in a satisfactory manner. We stated in the *NPRM* that it would be unnecessary for the Commission to play a direct role in designating or supervising TCBs with respect to equipment being exported. However, the Commission would provide assistance and guidance to NIST as may be necessary. For example, if questions arise as to the performance of a United States-based CAB, the Commission would make its expertise in testing and measurements available as needed to resolve such matters.

47. We adopt the approach described in the NPRM for designating conformity assessment bodies, such as TCBs, in the United States for equipment that will be exported to countries pursuant to MRAs. TCBs designated to certify equipment for export to a specific country shall meet the qualification criteria specified in the relevant MRA. We conclude that NIST has sufficient resources and experience to assume responsibility for designating and overseeing the performance of TCBs certifying equipment for export, in

[15] See 47 CFR 2.948(d). Laboratories that perform testing for a declaration of conformity must be Guide 25 accredited. The accreditation of laboratories located outside the U.S. is acceptable only if (1) there is an MRA between that country and the U.S., and the laboratory is covered by the agreement; (2) there is an agreement between accrediting bodies that permits similar accreditation of U.S. facilities to perform testing for products marketed in that country; or (3) the country already accepts the accreditation of U.S. laboratories.

conformance with MRA obligations. Thus, the Commission will not perform designation and oversight functions for TCBs certifying equipment for export, but will provide assistance and guidance to NIST as necessary.

48. We received several comments on the MRA provisions for equipment being exported from the United States. Some of the concerns raised are already addressed by provisions of the MRAs. For example, the EC requirements for telecommunications equipment are covered by three separate directives—EMC, Low Voltage and Telephone Terminal Equipment (TTE) Directives. Each directive has distinct conformity assessment requirements. Under the EMC Directive most equipment is subject to supplier's declaration, except that when standards are not harmonized within the EC or the equipment is too large for remote testing, the supplier must use what is called the Technical Construction File (TCF) route to market, requiring the use of a CAB called a Competent Body. NIST will be able to designate a U.S. entity to serve as a Competent Body, provided the entity is accredited to Guide 25 and meets the appropriate technical requirements in the EMC Directive. Radio transmitters and telephone terminal equipment subject to the TTE Directive, which is the most frequently used route to market, must be approved by a CAB called a Notified Body, which is accredited to Guide 65. In either case, NIST will accredit and designate the U.S. TCBs to the appropriate directives. Under the MRAs, parties are to accept test results and product certifications prepared by CABs in other countries. The APEC MRA, for example, clarifies that an importing party is to accept test reports on terms no less favorable than those it accords to those produced by its own CABs and that re-testing or duplicate testing is to be avoided. Because technical standards vary by country, a U.S. CAB may be found qualified to certify equipment intended for export to some countries but not others. The US/EC MRA, for example, does not require that CABs in this country be capable of approving equipment to all of the EC member states requirements, and we find no basis for imposing such a requirement. We expect that CABs will be able to provide certification for multiple countries because manufacturers will expect this level of service from CABs.

Administration of the MRAs

49. The US/EC MRA provides for oversight of implementation by a Joint Committee and Joint Sectorial Committees ("JSC"). The MRA provides that Commission representatives will participate in both committees for the United States with regard to telecommunications equipment and electromagnetic compatibility sectors. The APEC MRA has similar provisions for a Joint Committee consisting of representatives of each party, with subcommittees including persons from the business/private sector. We conclude that Commission participation in the Joint Committees and JSCs will be important to ensure the successful administration and implementation of the US/EC and APEC MRAs. For example, the Commission may serve as an independent authority to evaluate claims of performance deficiencies by United States TCBs or the noncompliance of specific equipment with European technical requirements.

50. With regard to ensuring the ongoing compliance of TCBs, the US/EC MRA provides that if a particular TCB does not appear to be performing satisfactorily, the Commission may request that the noncompliant TCB take corrective actions. The Commission may also present appropriate evidence to the JSCs and/or Joint Committee and request removal of the TCB from the list of designated Certification Bodies. The APEC MRA also has provisions for contesting a TCB's technical competence, and provides a framework to limit or remove the recognition of TCBs when necessary. The Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes that arise under an MRA.[16]

Global Mobile Personal Communications by Satellite (GMPCS)

51. The *NPRM* proposed to adopt an interim equipment authorization procedure for GMPCS terminals prior to full implementation of the GMPCS Arrangements. The Commission will be undertaking a separate proceeding to propose rules to implement fully the GMPCS Arrangements. Because one GMPCS operator was providing service prior to the NPRM and another system was scheduled to commence service before final rules implementing the Arrangements could be adopted, we proposed a set of interim standards under which applicants could request equipment certification. We believe that certification of GMPCS terminals will be a major benefit to the global satellite industry. A Commission equipment authorization, and the subsequent placement of the "GMPCS-MoU ITU Registry" mark on the terminals, would potentially be recognized by many foreign countries as sufficient to allow the equipment to transit borders more easily and without additional type approvals, equipment testing, or imposition of fees or delay for the user.

52. The *NPRM* proposed a voluntary equipment authorization procedure that would apply to GMPCS terminals as defined by the 1996 World Telecommunications Policy Forum held under the auspices of the ITU. The terminals would be certified in accordance with the requirements in parts 1, 2 and 25 of the rules.[17] In addition, we proposed that terminals operating in the 1610–1626.5 MHz band would also have to meet the out-of-band emission limits recommended for implementation by the year 2000 by the National Telecommunications and Information Administration (NTIA) in their September 1997 petition for rule making.[18]

53. A number of parties expressed concern about the out-of-band emission limits proposed. LSC, Raytheon and the GPS Council state that the proposed NTIA limits are not stringent enough to protect GPS and GLONASS. However, AMSC and CCI state that the NTIA limits are too stringent. CCI objects to the fact that they have not been adopted through a rule making. Moreover, MCHI believes that the Commission should wait to approve equipment until final standards are adopted, since there may be difficulties in recalling or retrofitting noncompliant equipment if the final standards adopted are more stringent than the interim ones. TIA in their comments, and Globalstar/Airtouch, Iridium, MCHI, Motorola and ORBCOMM in their reply comments, all state that the issue of out-of-band limits should be addressed in a separate rule-making proceeding.

54. In addition to uniform support expressed for the Commission's intention to rapidly implement the GMPCS-MoU Arrangements, we also received comments concerning other issues related to the interim GMPCS equipment certification. Primary among these was an indication by several

[16] See the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988). Section 1377 requires the USTR to conduct a review to determine whether any act, policy, or practice of a foreign country that has entered into a telecommunications-related agreement with the U.S. (1) is not in compliance with the terms of the agreement; or (2) otherwise denies, within the context of the agreement, mutually advantageous market opportunities to telecommunications products and services of U.S. firms in that country.

[17] See 47 CFR, 1, 2 and 25. Part 25 contains the technical requirements for satellite communications. Part 1 contains the requirements for RF safety, and part 2 contains the equipment authorization requirements.

[18] See RM–9165.

parties that the Commission was limiting the interim authorization procedure to "Big Leos" [19] in the *NPRM*. Final Analysis, ICO, Lockheed, ORBCOMM and Iridium all state that the interim authorization procedure should apply to other mobile satellite terminals.

55. In the *NPRM*, we specifically proposed to apply an interim procedure for certifying all GMPCS-related terminal equipment where we have authorized service and which demonstrates compliance with the Commission's relevant parts 1 and 25 standards, including emission limits for "Little Leos" [20] contained in 25.202(f). In light of the comments, we adopt the voluntary interim procedures for all GMPCS terminal equipment.

56. For terminals operating in the 1610–1626.5 MHz band, we proposed to add a requirement that the out-of-band emission limit of -70 dBW/MHz averaged over any 20 millisecond period for wide band emissions occurring between 1559–1605 MHz and -80 dBW/700 Hz for narrow band emissions occurring between 1559–1605 MHz would also need to be met. We find that, for the following reasons, use of the proposed out-of-band emission standards for terminals operating in the 1610–1626.5 MHz band will facilitate the authorization process for this equipment. First, the International Telecommunication Union's Radio Sector (ITU–R) Study Group WP 8D has adopted the proposed wideband standard as a recommendation for suppression of spurious emissions for MSS systems with mobile earth terminals. Similarly, the European Commission/CEPT adopted a European Testing and Standards Institute (ETSI) standard late last year for both CDMA and TDMA-type Mobile Satellite Service (MSS) systems based on this ITU–R recommendation. Second, NTIA proposed both the wide and narrowband standards cited in its recent petition for rule making concerning out-of-band emissions standards for protection of radionavigation devices. By using the most stringent requirement currently under review, we will ensure that MCHI's concern over the recall or retrofit of non-compliant equipment in the future is minimized. Since the Commission will consider the NTIA petition for rule making in conjunction with full implementation of the GMPCS Arrangements, any further concerns about the proposed NTIA out-of-band emission limits are best addressed in the future, separate proceeding.

57. In adopting this standard for voluntary interim certification, we are not prejudging the standards that we will ultimately adopt in our future GMPCS proceeding. Rather, we are establishing here a voluntary certification process designed to facilitate the circulation of GMPCS terminals across borders, aiding system operators, manufacturers and users of GMPCS service. If the standards we adopt in the GMPCS proceeding are more stringent than the ones used for interim certification, we will require the terminals to meet the stricter standards, in accordance with any associated implementation provisions adopted in that proceeding. In order to be used, the terminals must be operated with a satellite system or service provider authorized to provide mobile satellite service in the United States. Subsequent to receiving a blanket authorization under part 25 of the rules, terminals may be authorized under part 2 of the rules.

58. Accordingly, we amend part 25 of the rules to allow for the voluntary equipment authorization of all GMPCS terminals meeting the requirements set forth in our *NPRM*. Authorizations granted under this interim provision will be conditioned on the equipment meeting all final standards eventually adopted for GMPCS-related equipment.

59. Accordingly, *It is ordered* that parts 0, 2, 15, 25 and 68 of the Commission's Rules and Regulations *are amended* as specified in the Rule Changes attachment and are effective May 3, 1999. This action is taken pursuant to sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

60. *It is further ordered* that, pursuant to Section 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(1), authority is delegated to the copy Chief, Office of Engineering and Technology (OET) and the Chief, Common Carrier Bureau (CCB) to develop specific methods that will be used by the National Institute for Standards and Technology (NIST) to accredit TCBs, consistent with the qualification criteria herein, to enter into a memorandum of understanding with NIST on the accreditation process for TCBs, to designate and withdraw the designation of TCBs, and to develop procedures that TCBs will use for performing post-market surveillance.

Final Regulatory Flexibility Analysis

61. As required by the Regulatory Flexibility Act (RFA),[21] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* in GEN Docket 98–68.[22] The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[23]

Need for, and Objectives of, This Report and Order

62. The Commission is amending parts 2, 15, 25 and 68 of the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. We are also adopting rule changes to implement a Mutual Recognition Agreement (MRA) for product approvals with the European Community (EC), the Asia Pacific Economic Cooperation (APEC) and other foreign trade parties. These actions will eliminate the need for manufacturers to wait for approval from the Commission before marketing equipment in the United States, thereby reducing the time needed to bring a product to market. We are also adopting an interim procedure to issue equipment approvals for Global Mobile Personal Communication for Satellite (GMPCS) terminals prior to domestic implementation of the GMPCS–MoU Arrangements.[24] [25] That action will benefit manufacturers of GMPCS terminals by allowing greater worldwide acceptance of their products.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

63. Several parties commented on the IRFA. ACIL, Acme, ICS and Retlif noted

[19] "Big Leo" systems provide voice and data Mobile-Satellite Service via a constellation of one or more non-geostationary orbit satellites operating in the band of 1610–1626.5 MHz.

[20] "Little Leo" systems provide data-only Mobile-Satellite Service via a constellation of non-geostationary orbit satellites operating below 1 GHz.

[21] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[22] See Notice of Proposed Rule Making in GEN Docket 98–68, 13 FCC Rcd 10683, 10711 (1998), 63 FR 31685, June 10, 1998.

[23] See 5 U.S.C. 604.

[24] "Global Mobile Personal Communications by Satellite" (GMPCS) service is defined in the 1996 Final Report of the World Telecommunications Policy Forum as: "any satellite system, (i.e., fixed or mobile, broadband or narrow-band, global or regional, geostationary or non-geostationary, existing or planned) providing telecommunication services directly to end users from a constellation of satellites."

[25] The GMPCS MoU and Arrangements are intended to allow the worldwide transport and use of GMPCS equipment. They are described in more detail in the NPRM.

that the IRFA only focuses on the costs to small manufacturers and not to small test laboratories. Acme stated that small testing laboratories may not have the resources to become TCBs and may be forced to exit the testing business. Retlif stated that the rules will add another assessment fee to test laboratories who wish to become TCBs or subcontract with TCBs. SEA does not believe the benefits of the rules described in the IRFA outweigh the increased expenses and paperwork burdens that will fall on RF equipment manufacturers.[26] However, in its reply comments, TIA disagreed with SEA, stating that the increased number of TCBs would benefit small companies because of their global reach. TIA further stated that the vast majority of its 900 members are small and medium companies that support the Commission's proposed changes.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

64. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). This standard also applies in determining whether an entity is a small business for purposes of the RFA.

65. Regulatory Flexibility Analyses need only address the impact of rules on small entities *directly regulated* by those rules. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327, 342–43 (D.C. Cir. 1985). The Commission's equipment authorization rules directly regulate only manufacturers of equipment, which must satisfy the Commission's product approval requirements, and not test laboratories. Therefore, we disagree with ACIL, Acme, ICS and Retlif that the IRFA should have addressed the impact of the rules on small test laboratories.

66. The Commission has not developed a definition of small entities applicable to RF Equipment Manufacturers. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business.[27] Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[28] We believe that many of the companies that manufacture RF equipment may qualify as small entities.

67. The Commission has not developed a definition of small manufacturers of telephone terminal equipment. The closest applicable definition under SBA rules is for manufacturers of telephone and telegraph apparatus (SIC 3661), which defines a small manufacturer as one having 1,000 or fewer employees.[29] According to 1992 Census Bureau data, there were 479 such manufacturers, and of those, 436 had 999 or fewer employees, and 7 had between 1,000 and 1,499 employees.[30] We estimate that there are fewer than 443 small manufacturers of terminal equipment that may be affected by the proposed rules.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

68. We are allowing designated Telecommunication Certification Bodies (TCBs) in the United States to issue equipment approvals. Applicants for equipment authorization may apply either to the FCC or to a TCB, and they will be required to submit the same application data and exhibits to either that the rules currently require. Therefore, there will be no increase in the paperwork burden on manufacturers.

69. We are adopting changes to implement mutual recognition agreements with the European Community and the Asia Pacific Economic Cooperation that will permit certain equipment currently required to be authorized by the FCC to be authorized instead by TCBs in Europe or Asia. As with TCBs in the United States, applicants would be required to submit to a foreign TCB the same application data and exhibits they now submit to the Commission.

70. We are requiring that TCBs submit a copy of certain parts of each approved application to the FCC. Applications for equipment authorization under part 2 of the rules will be sent and stored electronically using the new OET electronic filing system. Paper copies of part 68 applications will be required, since there is not yet an electronic filing system for those applications.

71. We are also allowing a voluntary equipment authorization for mobile transmitters used in the Global Mobile Personal Communications by Satellite (GMPCS) service. This will require manufacturers who want to use the voluntary procedure to file an application and technical exhibits with the FCC and wait for an approval before the equipment can be marketed. While using the procedure would require an additional filing with the FCC, it will ultimately reduce the burden on manufacturers. Under the terms of the GMPCS–MoU and Arrangements, the single approval obtained in the United States could eliminate the need to obtain approvals from multiple other countries.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

72. Certain equipment that uses radio frequencies or is connected to the public switched telecommunications network must be approved by the Commission before it can be marketed. Allowing parties other than the Commission to certify equipment will have the following benefits:

(a) It will provide manufacturers with alternatives where they could possibly obtain certification faster than available from the Commission.

(b) Manufacturers will have the option of obtaining certification from a facility in a more convenient location.

(c) It will reduce the number of applications filed with the Commission, which will enable the Commission to redirect resources to enforcement of the rules. This will ensure a "level playing field" for all manufacturers.

(d) Allowing equipment to be certified by parties located in other countries is

[26] See SEA Regulatory Flexibility comments at 3. The four benefits to manufacturers we listed in the IRFA are (1) providing manufacturers with alternatives where they could possibly obtain certification faster than available from the Commission; (2) providing the option of obtaining certification from a facility in a more convenient location; (3) reducing the number of applications filed with the Commission, thereby enabling the Commission to redirect resources to enforcement of the rules; and (4) allowing equipment to be certified in other countries is a necessary step for concluding mutual recognition agreements.

[27] See 13 CFR 121.201, Standard Industrial Classification (SIC) Code 3663.

[28] See U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities (issued may 1995), SIC category 3663.

[29] 13 CFR 121.201, SIC 3661.

[30] 1992 Economic Census, Industry and Employment Size of Firm, Table 1D (data prepared by U.S. Census Bureau under contract to the U.S. Small Business Administration).

an essential and necessary step for concluding mutual recognition agreements (MRAs). MRAs benefit manufacturers by improving access to foreign markets.

73. As previously stated, SEA argued that these four benefits do not outweigh the significant increased expenses and greater paperwork burden that will fall on RF equipment manufacturers as a result of the rules. TIA disagreed with SEA, stating that the increased number of TCBs would benefit small companies because of their global reach, and that the vast majority of its members are small and medium companies that support the changes proposed in the *NPRM*.

74. The Report and Order allows parties other than the Commission to certify equipment, but it does not change the information required to obtain a grant of certification. Therefore, there will not be an increase in the paperwork burden on manufacturers. SEA does not provide any data to justify its claim of significantly higher expenses to manufacturers. Further, the Commission will continue to grant certifications, and these manufacturers have the option to use a TCB, but are not required to do so. The Commission will not regulate the fees that TCBs can charge. However, as we stated in the Report and Order, we expect that competition between TCBs should encourage them to process applications at a reasonable expense.

75. *Report to Congress:* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Reporting and recordkeeping requirements.

47 CFR Part 2

Radio, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment.

47 CFR Part 25 and 68

Communications equipment, report and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 2, 15, 25 and 68 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225 unless otherwise noted.

2. Section 0.241 is amended by adding paragraph (g) to read as follows:

§ 0.241 Authority delegated.

* * * * *

(g) The Chief of the Office of Engineering and Technology is delegated authority to enter into agreements with the National Institute of Standards and Technology to perform accreditation of Telecommunication Certification Bodies (TCBs) pursuant to §§ 2.960 and 2.962 of this chapter. In addition, the Chief is delegated authority to develop specific methods that will be used to accredit TCBs, to designate TCBs, to make determinations regarding the continued acceptability of individual TCBs, and to develop procedures that TCBs will use for performing post-market surveillance.

3. Section 0.291 is amended by adding paragraph (i) to read as follows:

§ 0.291 Authority delegated.

* * * * *

(i) The Chief, Common Carrier Bureau, is delegated authority to enter into agreements with the National Institute of Standards and Technology to perform accreditation of Telecommunication Certification Bodies (TCBs) pursuant to §§ 68.160 and 68.162 of this chapter. In addition, the Chief is delegated authority to develop specific methods that will be used to accredit TCBs, to designate TCBs, to make determinations regarding the continued acceptability of individual TCBs and to develop procedures that TCBs will use for performing post-market surveillance.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

4. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307 and 336, unless otherwise noted.

5. Section 2.960 is added to read as follows:

§ 2.960 Designation of Telecommunication Certification Bodies (TCBs).

(a) The Commission may designate Telecommunication Certification Bodies (TCBs) to approve equipment as required under this part. Certification of equipment by a TCB shall be based on an application with all the information specified in this part. The TCB shall process the application to determine whether the product meets the Commission's requirements and shall issue a written grant of equipment authorization. The grant shall identify the TCB and the source of authority for issuing it.

(b) The Federal Communications Commission shall designate TCBs in the United States to approve equipment subject to certification under the Commission's rules. TCBs shall be accredited by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program, or other recognized programs based on ISO/IEC Guide 65, to comply with the Commission's qualification criteria for TCBs. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories. TCBs shall comply with the requirements in § 2.962 of this part.

(c) In accordance with the terms of an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, bodies outside the United States shall be permitted to authorize equipment in lieu of the Commission. A body in an MRA partner economy may authorize equipment to U.S. requirements only if that economy permits bodies in the United States to authorize equipment to its requirements. The authority designating these telecommunication certification bodies shall meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to, electromagnetic compatibility and telecommunications equipment (wired and wireless).

6. Section 2.962 is added to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

(a) Telecommunication certification bodies (TCBs) designated by the Commission, or designated by another authority pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement to which the United States is a party, shall comply with the following requirements.

(b) *Certification methodology.* (1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as when certain tests are likely to render a sample inoperative.

(c) *Criteria for Designation.* (1) To be designated as a TCB under this section, an entity shall, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it will certify. The accreditation shall specify the group of equipment to be certified and the applicable regulations for product evaluation.

(2) The TCB shall demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise shall include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations, as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65, shall be taken into consideration.

(5) A TCB shall participate in any consultative activities, identified by the Commission or NIST, to facilitate a common understanding and interpretation of applicable regulations.

(6) The Commission will provide public notice of the specific methods that will be used to accredit TCBs, consistent with these qualification criteria.

(d) *Sub-contractors.* (1) In accordance with the provisions of sub-clause 4.4 of ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated TCB, provided the laboratory has been assessed by the TCB as competent and in compliance with the applicable provisions of ISO/IEC Guide 65 and other relevant standards and guides.

(2) When a subcontractor is used, the TCB shall be responsible for the test results and shall maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight shall include periodic audits of products that have been tested.

(e) *Designation of TCBs.* (1) The Commission will designate as a TCB any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor.

(2) The Commission will withdraw the designation of a TCB if the TCB's accreditation by NIST or its recognized accreditor is withdrawn, if the Commission determines there is just cause for withdrawing the designation, or if the TCB requests that it no longer hold the designation. The Commission will provide a TCB with 30 days notice of its intention to withdraw the designation and provide the TCB with an opportunity to respond.

(3) A list of designated TCBs will be published by the Commission.

(f) *Scope of responsibility.* (1) TCBs shall certify equipment in accordance with the Commission's rules and policies.

(2) A TCB shall accept test data from any source, subject to the requirements in ISO/IEC Guide 65, and shall not unnecessarily repeat tests.

(3) TCBs may establish and assess fees for processing certification applications and other tasks as required by the Commission.

(4) A TCB may rescind a grant of certification within 30 days of grant for administrative errors. After that time, a grant can only be revoked by the Commission through the procedures in § 2.939 of this part. A TCB shall notify both the applicant and the Commission when a grant is rescinded.

(5) A TCB may not:

(i) Grant a waiver of the rules, or certify equipment for which the Commission rules or requirements do not exist or for which the application of the rules or requirements is unclear.

(ii) Take enforcement actions; or

(iii) Authorize a transfer of control of a grantee.

(6) All TCB actions are subject to Commission review.

(g) *Post-certification requirements.* (1) A TCB shall supply an electronic copy of each approved application form and grant of certification to the Commission.

(2) In accordance with ISO/IEC Guide 65, a TCB is required to conduct appropriate post-market surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The Commission may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports. The Commission may also request that a TCB perform post-market surveillance, under Commission guidelines, of a specific product it has certified.

(3) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the grantee and the Commission. A follow-up report shall also be provided within thirty days of the action taken by the grantee to correct the situation.

(4) Where concerns arise, the TCB shall provide a copy of the application file within 30 calendar days upon request by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

(h) In case of a dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded at least 30 days to comment before a decision is reached. In the case of a TCB designated or recognized, or a product certified pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, the Commission may limit or withdraw its recognition of a TCB

designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB. The Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

PART 15—RADIO FREQUENCY DEVICES

7. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

8. Section 15.101, is amended by revising paragraph (a) to read as follows:

§ 15.101 Equipment authorization of unintentional radiators.

(a) Except as otherwise exempted in §§ 15.23, 15.103, and 15.113, unintentional radiators shall be authorized prior to the initiation of marketing, as follows:

Type of device	Equipment authorization required
TV broadcast receiver	Verification.
FM broadcast receiver	Verification.
CB receiver	Declaration of Conformity or Certification.
Superregenerative receiver	Declaration of Conformity or Certification.
Scanning receiver	Certification.
All other receivers subject to part 15	Declaration of Conformity or Certification.
TV interface device	Declaration of Conformity or Certification.
Cable system terminal device	Declaration of Conformity.
Stand-alone cable input selector switch	Verification.
Class B personal computers and peripherals	Declaration of Conformity or Certification.[1]
CPU boards and internal power supplies used with Class B personal computers	Declaration of Conformity or Certification.[1]
Class B personal computers assembled using authorized CPU boards or power supplies	Declaration of Conformity.
Class B external switching power supplies	Verification.
Other Class B digital devices and peripherals	Verification.
Class A digital devices, peripherals and external switching power supplies	Verification.
All other devices	Verification.

Note to table: Where the above table indicates more than one category of authorization for a device, the party responsible for compliance has the option to select the type of authorization.

[1] Applications for this equipment will no longer be accepted by the Commission once domestic Telecommunication Certification Bodies are available to certificate the equipment. See § 2.960 of this chapter.

* * * * *

PART 25—SATELLITE COMMUNICATIONS

9. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies sec. 303, 47 U.S.C. 303. 47 U.S.C. sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

10. Section 25.200 is added to read as follows:

§ 25.200 Interim equipment authorization.

(a) For purposes of this section, a "GMPCS system" is defined as "any satellite system, (i.e., fixed or mobile, broadband or narrow-band, global or regional, geostationary or non-geostationary, existing or planned) providing telecommunication services directly to end users from a constellation of satellites."

(b) Subsequent to receiving a blanket authorization under this part, terminals used in conjunction with GMPCS systems, as defined under § 25.200 (a) of this part, may also obtain an equipment authorization from the Commission in accordance with the certification procedure for use under this part. The certification procedure is found in part 2, subpart J of this chapter.

(c) In order to be granted certification, a transmitter shall comply with the technical specifications in this part. In addition, mobile earth satellite terminals for use in the band of 1610–1626.5 MHz shall meet a specific out-of-band emissions limit. Emissions in the band 1559–1605 MHz shall be limited to −70 dBW/MHz averaged over any 20 millisecond period for wideband signals, and a standard of −80 dBW across within the measurement bandwidth of 700 Hz or less for narrowband signals.

(d) Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of mobile or portable devices operating under this section shall contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement shall be submitted to the Commission upon request.

(e) Equipment authorizations issued pursuant to this section will be conditioned on the equipment meeting all relevant technical requirements that are adopted by the Commission in implementing the GMPCS Arrangements.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

11. The authority citation for part 68 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

12. Section 68.160 is added to read as follows:

§ 68.160 Designation of Telecommunication Certification Bodies (TCBs).

(a) The Commission may designate Telecommunication Certification Bodies (TCBs) to approve equipment as required under this part. Certification of equipment by a TCB shall be based on an application with all the information specified in this part. The TCB shall process the application to determine whether the product meets the Commission's requirements and shall issue a written grant of equipment authorization. The grant shall identify the TCB and the source of authority for issuing it.

(b) The Federal Communications Commission shall designate TCBs in the United States to approve equipment subject to certification under the Commission's rules. TCBs shall be accredited by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE)

program or other recognized programs based on ISO/IEC Guide 65, to comply with the Commission's qualification criteria for TCBs. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs and testing laboratories. TCBs shall comply with the requirements in § 68.162 of this part.

(c) In accordance with the terms of an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, bodies outside the United States shall be permitted to authorize equipment in lieu of the Commission. A body in an MRA partner economy may authorize equipment to U.S. requirements only if that economy permits bodies in the United States to authorize equipment to its requirements. The authority designating these telecommunication certification bodies shall meet the following criteria.

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61.

(2) The organization assessing the telecommunication certification body shall appoint a team of qualified experts to perform the assessment covering all of the elements within the scope of accreditation. For assessment of telecommunications equipment, the areas of expertise to be used during the assessment shall include, but not be limited to, electromagnetic compatibility and telecommunications equipment (wired and wireless).

13. Section 68.162 is added to read as follows:

§ 68.162 Requirements for Telecommunication Certification Bodies.

(a) Telecommunication certification bodies (TCBs) designated by the Commission, or designated by another authority pursuant to an effective mutual recognition agreement or arrangement to which the United States is a party, shall comply with the following requirements.

(b) *Certification methodology.* (1) The certification system shall be based on type testing as identified in sub-clause 1.2(a) of ISO/IEC Guide 65.

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as when certain tests are likely to render a sample inoperative.

(c) *Criteria for designation.* (1) To be designated as a TCB under this section, an entity shall, by means of accreditation, meet all the appropriate specifications in ISO/IEC Guide 65 for the scope of equipment it will certify. The accreditation shall specify the group of equipment to be certified and the applicable regulations for product evaluation.

(2) The TCB shall demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise shall include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC Guide 25 to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate a knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations, as well as compliance with applicable parts of the ISO/IEC Guides 25 and 65, shall be taken into consideration.

(5) A TCB shall participate in any consultative activities, identified by the Commission or NIST, to facilitate a common understanding and interpretation of applicable regulations.

(6) The Commission will provide public notice of specific elements of these qualification criteria that will be used to accredit TCBs.

(d) *Sub-contractors.* (1) In accordance with the provisions of sub-clause 4.4 of ISO/IEC Guide 65, the testing of a product, or a portion thereof, may be performed by a sub-contractor of a designated TCB, provided the laboratory has been assessed by the TCB as competent and in compliance with the applicable provisions of ISO/IEC Guide 65 and other relevant standards and guides.

(2) When a subcontractor is used, the TCB shall be responsible for the test results and shall maintain appropriate oversight of the subcontractor to ensure reliability of the test results. Such oversight shall include periodic audits of products that have been tested.

(e) *Designation of TCBs.* (1) The Commission will designate as a TCB any organization that meets the qualification criteria and is accredited by NIST or its recognized accreditor.

(2) The Commission will withdraw the designation of a TCB if the TCB's accreditation by NIST or its recognized accreditor is withdrawn, if the Commission determines there is just cause for withdrawing the designation, or if the TCB requests that it no longer hold the designation. The Commission will provide a TCB with 30 days notice of its intention to withdraw the designation and provide the TCB with an opportunity to respond.

(3) A list of designated TCBs will be published by the Commission.

(f) *Scope of responsibility.* (1) TCBs shall certify equipment in accordance with the Commission's rules and policies.

(2) A TCB shall accept test data from any source, subject to the requirements in ISO/IEC Guide 65, and shall not unnecessarily repeat tests.

(3) TCBs may establish and assess fees for processing certification applications and other tasks as required by the Commission.

(4) A TCB may rescind a grant of certification within 30 days of grant for administrative errors. After that time, a grant can only be revoked by the Commission. A TCB shall notify both the applicant and the Commission when a grant is rescinded.

(5) A TCB may not:

(i) Grant a waiver of the rules, or certify equipment for which the Commission rules or requirements do not exist or for which the application of the rules or requirements is unclear.

(ii) Take enforcement actions.

(6) All TCB actions are subject to Commission review.

(g) *Post-certification requirements.* (1) A TCB shall supply a copy of each approved application form and grant of certification to the Commission.

(2) In accordance with ISO/IEC Guide 65, a TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted, provided they are no more onerous than testing type. The Commission may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports. The Commission may also request that a TCB perform post-market surveillance, under Commission

guidelines, of a specific product it has certified.

(3) If during post market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the grantee and the Commission. A follow-up report shall also be provided within thirty days of the action taken by the grantee to correct the situation.

(4) Where concerns arise, the TCB shall provide a copy of the application file within 30 calendar days upon request by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that qualifies as trade secrets. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

(h) In case of a dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and designated TCBs will be afforded at least 30 days to comment before a decision is reached. In the case of a TCB designated or recognized, or a product certified pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, the Commission may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the certification of products using testing or certification provided by such a TCB. The Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with under the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 96–61; FCC 98–347]

Implementation of the Rate Integration Requirement of the Communications Act, Petitions for Forbearance

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: By this Memorandum Opinion and Order (Order), the Commission reaffirms its earlier determination that the rate integration requirement of the Communications Act apply to interstate, interexchange services offered by commercial mobile radio service (CMRS) providers, and therefore denied the petitions for reconsideration of that determination. The Commission clarified that CMRS traffic within a major trading area (MTA)(intra-MTA traffic) is not "interexchange" traffic and thus not subject to the rate integration requirements of section 254(g). The Commission denied the petitions seeking forbearance from the application of rate integration to CMRS providers. This carries out the intent of Congress that providers of interstate, interexchange services offer such services at integrated rates.

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: Douglas L. Slotten, Attorney, Common Carrier Bureau, Competitive Pricing Division, at (202) 418–1572 or via the Internet at dslotten@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order* in the matter of *Implementation of Section 254(g) of the Communications Act of 1934,as Amended, Petitions for Forbearance*, CC Docket No. 96–61, adopted December 31, 1998, and released December 31, 1998. The complete text of this *Order* is available for inspection and copying during normal business hours in the Commission's Reference Center, Room 239, 1919 M Street N.W., Washington, DC. The Order is available through the Internet at http://www.fcc.gov/Bureaus/Common_ Carrier/orders/1998/fcc98347.wp. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.), at 1231 20th Street NW., Washington, DC 20036, (202) 857–3800.

SYNOPSIS OF MEMORANDUM OPINION AND ORDER

I. Introduction

1. We address seven petitions for reconsideration or, in the alternative, petitions for forbearance, of the Commission's *Rate Integration Reconsideration Order*, Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11,812 (1997), 62 FR 46447 (September 3, 1997) *(Rate Integration Reconsideration Order)*, in which the Commission found that the rate integration requirements of section 254(g) of the Communications Act of 1934, as amended ("Act"), apply to the interstate, interexchange services of Commercial Mobile Radio Service ("CMRS") providers. The petitioners request that the Commission reconsider that determination. In the alternative, if the Commission finds that section 254(g) applies to CMRS providers, the petitioners request that the Commission forbear from applying section 254(g) to the interstate, interexchange services offered by CMRS providers pursuant to section 10 of the Act.

2. We also state our intent to issue a Further Notice seeking comment on issues relating to airtime and roaming charges associated with interstate, interexchange calls for which a separate charge is stated; wide-area CMRS calling plans; and the affiliation requirements that should be applicable to services subject to the rate integration requirement. Pending further rulemaking, we keep in place the Order adopted by the Commission on October 2, 1997, in which the Commission stayed the application of the requirement that providers of interstate, interexchange services integrate rates across affiliates, as well as application of rate integration requirements with respect to wide-area rate plans offered by CMRS providers. *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96–61, Order, 12 FCC Rcd 15,739 (1997) *(Rate Integration Stay Order)*.

II. Petitions for Reconsideration

3. We decline to reconsider our determination that the rate integration requirement of section 254(g) applies to CMRS providers. Section 254(g) requires that "[a] provider of interstate interexchange services shall provide its services to subscribers in a state at rates no higher than provided to subscribers in any other state." The language of section 254(g) on its face unambiguously applies to all providers of interstate, interexchange services. Thus, section 254 (g) applies to the interstate, interexchange services offered by CMRS providers. If Congress had intended to exempt CMRS providers, it presumably would have done so expressly as it did in other sections of the Act. Thus, we reaffirm our earlier determinations that the rate

integration language of section 254(g) applies to all providers of interstate, interexchange services, including CMRS providers. We conclude that any reference to the existing rate integration policy by Congress or by this Commission merely identified the overarching policy under consideration, and was not intended to exempt from application of that policy any carrier or class of carriers, as the petitioning parties suggest.

4. Because the language of the statute is unambiguous and plainly applies to CMRS providers, we need not examine the legislative history of section 254(g). Assuming, arguendo, some ambiguity in the statutory language, thus requiring an examination of the legislative history, we find nothing in that legislative history that unambiguously indicates that CMRS providers are exempted from section 254(g). The language referenced by the CMRS providers could readily be read as identifying the policy to be applied to all providers of interstate, interexchange services as reasonably as it could be read to suggest the codification of rate integration as applied to the wireline industry.

5. Similarly, we reject the argument raised by AirTouch that Congress did not intend rate integration to apply to CMRS providers because rate integration is unnecessary to achieve the policy goals underlying section 254(g). AirTouch states that rate integration is designed to enable subscribers in rural and offshore areas to obtain some of the benefits of rate decreases created by competitive pressures on access charges and long-distance rates in more urban areas, and to protect customers in those areas from bearing the full burden of higher local exchange costs. AirTouch appears to conflate rate integration with rate averaging. Rate averaging, which is also required by section 254(g), does have the described effect of protecting customers in high cost local exchange areas from bearing the full burden of those costs. Rate integration, on the other hand, generally focuses on the distance-sensitive aspects of the rate structures for interexchange services. It protects noncontiguous parts of the United States, such as Alaska and Hawaii, from being discriminated against because they are not part of the contiguous 48 states. AirTouch's focus on exchange cost differences is, therefore, misplaced and we disagree with its interpretation of the statute.

6. Although CMRS providers may be characterized as providers of exchange and exchange access services, that characterization does not preclude a finding that some of a CMRS provider's service offerings are interstate, interexchange services. While CMRS providers do not pay access charges for originating or terminating local exchange calls, CMRS providers do pay access charges when an interexchange call originates or terminates on landline facilities. Similarly, that, in some instances, CMRS providers are regulated in a manner different from other carriers, does not compel a conclusion that the interstate, interexchange services of CMRS providers are not subject to the rate integration requirements of section 254(g).

7. We also reject the argument that applying section 254(g) to CMRS providers is inconsistent with section 332 of the Act because it allegedly undermines the distinct deregulatory paradigm applicable to CMRS providers. Bell Atlantic Mobile asserts that the price regulation required by section 254(g) is precisely that which the Commission and Congress have deemed unnecessary and harmful to the public interest in the CMRS context. Section 332(c), however, expressly provides that sections 201 and 202 of the Act shall continue to apply to CMRS providers. Section 201(b) requires just and reasonable rates and 202(a) prohibits rates that are unreasonably discriminatory. These requirements necessarily imply some degree of regulatory concern with prices; section 332 cannot, therefore, be read to bar every form of oversight over CMRS rates. Furthermore, the rate integration policy codified in section 254(g) derived from section 202(a) the requirement that rates not be unreasonably discriminatory. Finally, we note that other provisions of Title II of the Act apply to CMRS providers. For example, the interconnection requirements of section 251(a) clearly apply to CMRS providers; CMRS providers are as capable as any other carrier of invoking the protections of section 253; and, CMRS providers are among the providers of interstate services who are required to make universal service contributions pursuant to section 254(d). Thus, we conclude that the application of section 254(g) to CMRS providers is not inconsistent with section 332.

8. We find unpersuasive the argument that, because we held that CMRS rates did not have to be integrated with the rates of affiliated long-distance providers, we did not intend rate integration to apply to CMRS providers. Rather, that decision addresses the issue of how rate integration should be applied to different interstate, interexchange services, and was consistent with the long-standing Commission practice of applying rate integration on a service-by-service basis. That decision does not address the question of whether rate integration should apply to CMRS providers at all. Similarly, CMRS providers' exemption from the equal access requirements applicable to incumbent LECs does not, as some CMRS providers suggest, address whether CMRS providers provide interstate, interexchange services and thus whether rate integration should apply to CMRS providers.

9. Several petitioners allege that the Commission gave inadequate notice to permit application of section 254(g) to CMRS providers. As we stated in the *Rate Integration Stay Order*, we do not agree that inadequate notice was given to hold that the rate integration requirements of section 254(g) apply to CMRS providers. The language of section 254(g) applies to providers of interexchange telecommunications services with no exceptions enumerated. Elsewhere in the Act, as we noted above, when Congress wanted to exempt CMRS providers from a requirement of the Act, it did so expressly. The words of the statute clearly encompass CMRS providers and legally obligate them to integrate their interstate, interexchange services. Our rule, implementing section 254(g), merely reiterated the precise terms of the statute. Further, we note that in *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Notice of Proposed Rulemaking, CC Docket No. 96–61, 11 FCC Rcd 7141 (1996), 61 FR 14717 (April 3, 1996), we stated that an interexchange call includes all means of connecting two points, "wireline or wireless." Specific notice of our intent to apply the plain language of the statute was not required. We, therefore, find no relevant lack of notice regarding the application of rate integration requirements to providers of CMRS services.

10. Our conclusion that adequate notice was given of the application of section 254(g) to CMRS providers is not altered by the fact that no party commented on the application of rate integration to CMRS providers. As noted above, section 254(g), by its own terms, applies to providers of interexchange services. CMRS providers, therefore, should have been on notice that the rulemaking proceeding could affect their interests. Although rate integration had not previously been applied to CMRS providers, the CMRS industry had been subject to the rate regulation of section 202(a) of the Act and, thus, the industry should have been alert to the broad scope of section 254(g), which has its origins in section 202(a).

Moreover, section 254(g) was enacted as part of the 1996 Act; therefore, the application of that section to the CMRS industry does not represent a change in Commission policy requiring more specific notice. Finally, we conclude that because we only codified the language of section 254(g), we find no issue concerning the adequacy of the record to support adoption of the rule.

11. In any event, we find that the present reconsideration record supports the conclusion that section 254(g) applies to CMRS providers. We note that we stayed application of the affiliation requirement and application of rate integration to wide-area plans, the two cases in which we believe we would benefit from a fuller record. We continue to believe a fuller record on these two issues would be beneficial and, therefore, will seek further comment on those issues to develop a better record in a separate proceeding.

12. AirTouch notes that CMRS carriers are not mentioned in the regulatory flexibility analysis assessing the administrative burden of regulations on industry, and asserts that this reflects a lack of intent that section 254(g) be applied to CMRS providers. While the Final Regulatory Flexibility Act analysis in the *Rate Integration Order, Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96–61, Report and Order, 11 FCC Rcd 9564 (1996), 61 FR 42558 (August 16, 1996) (*Rate Integration Order*), did not assess the administrative burden of regulations on CMRS providers, as AirTouch indicates, the omission does not evidence a lack of intent to apply section 254(g) to CMRS providers. We have prepared a Supplemental Final Regulatory Flexibility Act analysis to redress our inadvertent oversight. No party has claimed that the omission caused material harm. Indeed, in the Rate Integration Stay Order, we stayed application of the rate integration requirement to wide-area plans and across affiliates. Accordingly, those requirements had no impact on small entities.

13. We conclude that treating intra-MTA (major trading area) calls as not being subject to rate integration is consistent with the definition of "telephone exchange service." The Act defines "telephone exchange service" as "service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area * * * and which is covered by the exchange service charge, or * * * comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." 47 U.S.C. 153(47). In *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98, First Report and Order, 11 FCC Rcd 15499, 15998–16000 (1996), 61 FR 45476 (August 29, 1996) (*Local Competition Order*), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), 61 FR 52706 (October 8, 1998), *vacated in part sub nom. Iowa Utils. Bd.* v. *FCC*, 120 F.3d 753 (8th Cir. 1997), *cert. granted sub nom. AT&T Corp.* v. *Iowa Utils. Bd.*, 118 S.Ct. 879 (1998), we concluded that cellular, broadband PCS, and covered SMR providers fall within at least the second part of this definition because they provide "comparable service" to telephone exchange service. Our determination was based on the finding that, as a general matter, CMRS carriers provide local, two-way switched voice service as a principal part of their business. Cellular and PCS providers, however, are not LECs, as that term is defined in section 3(26) of the Act. Treating intra-MTA CMRS calls as local also is consistent with our conclusion in the *Local Competition Order*, 11 FCC Rcd 16,014, that MTAs defined the area in which reciprocal compensation applies to interconnections between incumbent LECs and CMRS providers. Because of the mobility of CMRS customers, the MTA, rather than a smaller area, such as the CMRS provider's license area or a wireline exchange area, reflects the minimum area in which customers may be expected to travel and within which they would expect not to pay toll charges. Pursuant to this approach, calls within an MTA that would be interstate will not be treated as interexchange.

14. We provide two further clarifications that follow from the finding that traffic that originates and terminates within an MTA does not constitute interexchange service. First, we clarify that when a customer is roaming, a call within the MTA of the roamed upon CMRS provider is not "interexchange." This clarification ensures that intra-MTA calls are not "interexchange" service, thus triggering rate integration, regardless of the location of the customer. Second, we clarify that when a CMRS provider performs only an exchange access function, and an unaffiliated interexchange carrier transports and bills for the call to a destination in a different state outside the MTA, that exchange access function is not "interstate, interexchange" for purposes of section 254(g). We conclude that this clarification is necessary to ensure that our treatment here is akin to our treatment of incumbent LEC access charges, which are not required to be integrated.

15. Several CMRS providers seek clarification or reconsideration of the application of rate integration to roaming and airtime charges. We plan to seek additional comment on these issues in a Further Notice. Two additional sets of issues remain: (1) The treatment of wide-area calling plans; and, (2) the affiliation requirements applicable to CMRS providers for purposes of determining compliance with rate integration. We will resolve these issues on the basis of the more complete record developed in response to the Further Notice.

III. Petitions for Forbearance

16. The petitions for forbearance generally request that we forbear from applying the rate integration provisions of section 254(g) to interstate, interexchange services offered by CMRS providers, if the Commission concludes that section 254(g) applies to those services. Section 10(a) of the Act sets forth a three-part standard to be applied in addressing petitions for forbearance: a carrier may petition the Commission for forbearance from any statutory provision or regulation, and the Commission shall grant such petition if it determines that: (1) Enforcement of the requirement is not necessary to ensure that rates are just and reasonable, and are not unjustly and unreasonably discriminatory; (2) the regulation is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. Section 10(b) further provides that the Commission "shall consider whether forbearance from enforcing the regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services." As fully discussed below, we conclude that the petitioners have not met the standard for the grant of forbearance and, for this reason, we must deny their petitions.

17. We conclude that the petitioners have not met their burden with respect to the first and second prongs of the forbearance standard. We are concerned that, without rate integration, CMRS providers would, when consistent with their economic interests, discriminate against the offshore points. Our concerns are not eliminated by the CMRS providers' claims that CMRS rates are falling, or that PCS rates are

lower than cellular rates. Similarly, CMRS providers' few cited anecdotal instances of the offering of rates that comply with the rate integration requirement of section 254(g) do not ensure that such rates will be offered by all CMRS providers in the future. Moreover, although CMRS providers contend generally that rate integration would interfere with competition, resulting in less consumer choice, we find no specific persuasive arguments on this record to support those contentions.

18. Specifically, we find that the petitioners have not shown that, in the absence of rate integration, CMRS rates will be just and reasonable and not unjustly or unreasonably discriminatory. Indeed, we conclude that rate integration is necessary to ensure that nondiscriminatory charges and practices are offered with respect to CMRS services to and from the offshore points. Moreover, as noted by Alaska, even if rate integrated service plans are available in all parts of the United States, nothing in the record suggests that the existence of the rate integration requirement is not a significant cause of that condition. We also agree that there is no evidence to show that rate integration is not necessary for the protection of consumers. Alaska notes, for example, that Bell Atlantic Mobile's argument that consumers benefit from its plan offering one long-distance rate is misplaced because Bell Atlantic Mobile does not offer service to subscribers in Alaska and Hawaii. Thus, although the cost to a Bell Atlantic Mobile customer calling Alaska or Hawaii might be the same as the cost of a call elsewhere in the continental United States, that fact does not protect the interests of consumers in Alaska or Hawaii because they generally would not be paying the long distance charges.

19. We also agree with Hawaii and Alaska that a broad grant of forbearance would not be consistent with the public interest, as required by the third prong of the forbearance standard. The public interest here, as reflected by the inclusion of CMRS providers in section 254(g), is the integration of offshore points into the interexchange rate patterns of CMRS services to prevent discrimination against those locations. Therefore, in order to satisfy the public interest, CMRS providers must explain how the benefits of section 254(g) can be attained if we forbear from applying the rate integration requirement of section 254(g) to the interstate, interexchange services of CMRS providers. We conclude that the petitioners have not made the required demonstration.

20. The argument against forbearance is particularly compelling with respect to separately-stated long distance charges. Many CMRS providers offer service plans that include a toll charge assessed for a long-distance call that is separate from the airtime charge. When the CMRS provider provides the link to the distant location, either through its own facilities or through the resale of a long-distance provider's service, and bills separately for that service, we find that the CMRS provider is providing an interexchange service. If that call terminates in a state different from the state in which the call originates, the service is an interstate, interexchange service covered by the rate integration requirement of section 254(g).

21. We conclude that it would not be consistent with just and reasonable rates, the protection of consumers, and the public interest to forbear from applying the rate integration requirement of section 254(g) to separately-stated toll charges for interstate, interexchange services provided by CMRS providers. For separately stated CMRS toll charges, we do not see how the policy considerations regarding rate integration differ materially from those in the non-CMRS context. Applying rate integration of separately-stated toll charges appears to be at the heart of the congressional policy of section 254(g)), which was enacted despite the existence of multiple interexchange carriers.

22. Pursuant to section 10(b), we also have considered whether forbearance from enforcing the rate integration requirement of section 254(g) will promote competitive market conditions. Although CMRS providers contend that rate integration would interfere with competition, we find no persuasive record evidence to support that contention or, conversely, that competitive conditions will be promoted in the absence of rate integration. Moreover, we agree that forbearance from rate integration cannot be justified on competitive conditions alone. Hawaii correctly notes we have previously rejected this argument. Prior to the enactment of section 254(g), we already had determined that all IXCs were non-dominant in the domestic market and had found that most major segments of the interexchange market were subject to substantial competition. Nothing suggests that Congress was unaware of the state of competition in the interexchange market in enacting section 254(g). Indeed, we find that Congress's enactment of section 254(g), even after the Commission's determination that major segments of the interexchange market were subject to substantial competition, establishes the importance Congress placed on a nationwide policy of rate integration that was applicable to all providers of interstate, interexchange services.

23. Contrary to the assertions of several CMRS providers, our finding in *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, Second Report and Order, GN Docket No. 93–252, 9 FCC Rcd 1411 (1994), 59 FR 18493 (April 14, 1994) (*CMRS Forbearance Order*), that there was sufficient competition in the CMRS market to justify forbearance from, *inter alia*, the tariffing requirements of section 203–205, do not require forbearance with respect to section 254(g). The *CMRS Forbearance Order*, adopted pursuant to section 332, primarily addressed the tariff filing requirement and its competitive implications. The rate integration requirement of section 254(g) creates a substantive pricing requirement which raises different competitive considerations than do tariff requirements. Moreover, section 332(c), by its terms, prohibits forbearance from application of section 202(a) to the CMRS industry. We note that 254(g) has its origins in section 202(a). Accordingly, we find that our forbearance in the tariffing context has no relevance to the question of forbearance here.

24. In sum, we conclude that the petitioners have not demonstrated that forbearance from applying the rate integration requirements of section 254(g) is consistent with just and reasonable or not unjustly or unreasonably discriminatory rates in the CMRS context, the protection of consumers, and the public interest. Similarly, we have not found that forbearance from enforcing the rate integration requirement of section 254(g) would promote competitive market conditions. Accordingly, we cannot grant the forbearance requests. In a separate proceeding, we will seek further comment on ways in which the rate integration requirement of section 254(g) should be applied to CMRS offerings. The expanded record evidence about the nature of CMRS services and the ownership arrangements within the industry will permit us to more fully evaluate rate integration in the CMRS context, develop rules specific to CMRS services, or, if appropriate, forbear in some instances.

25. The forbearance petitions generally sought forbearance from the application of rate integration to all interstate, interexchange services

offered by CMRS providers. In addition, several CMRS providers argue that, if we do not forbear totally from applying rate integration to interstate, interexchange offerings of CMRS providers, we should apply rate integration only to services for which the long-distance charges are separately billed. We conclude that the present record does not establish that the forbearance standard of section 10 of the Act has been met with respect to this matter. For example, the record does not establish that forbearance would be consistent with the public interest. In addition, the record does not provide sufficient information to determine whether certain types of airtime or roaming charges, or some wide-area calling plans, fall within the definition of interexchange services to which rate integration would apply; and, how different affiliation requirements would affect the CMRS industry. We seek comment on these issues in a separate rulemaking proceeding that will permit us to develop rules specific to CMRS services. Accordingly, we deny the remaining requests of the petitions for forbearance as inconsistent with just and reasonable rates or not unjustly or reasonably discriminatory rates; the protection of consumers; and the public interest.

IV. Ordering Clauses

26. Accordingly, *It is ordered*, that the Petitions for Reconsideration filed by AirTouch Communications, Cellular Telecommunications Industry Association, PrimeCo Personal Communications, L.P., Personal Communications Industry Association, Telephone and Data Systems, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc. *Are denied to the extent indicated herein.*

27. *It is further ordered* that the Petitions for Forbearance filed by AirTouch Communications, Cellular Telecommunications Industry Association, PrimeCo Personal Communications, L.P., Personal Communications Industry Association, Telephone and Data Systems, Inc., BellSouth Corporation, and Bell Atlantic Mobile, Inc. Are denied.

28. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this Memorandum Opinion and Order, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Supplemental Final Regulatory Flexibility Act Analysis

29. As required by the Regulatory Flexibility Act (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Rate Integration and Rate Averaging Notice* in this docket. The Commission sought written public comment on the proposals in the *Rate Integration and Rate Averaging Notice*, including comment on the IRFA. The Commission prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact the *Rate Integration Order* might have on small entities. The FRFA did not, however, analyze the possible significant economic impact the Rate Integration Order might have on CMRS providers that were small entities. The Commission has prepared this supplemental FRFA of the possible significant economic impact the *Rate Integration Order* might have on CMRS providers that are small entities, in conformance with the RFA.

A. Need for and Objectives of Rules

30. In the 1996 Act, Congress directed the Commission to develop rules implementing the provisions of section 254(g) within six months of its enactment. The Commission adopted rules implementing the provisions of section 254(g) in the *Rate Integration Order*. The objective of these rules is to incorporate the policies of geographic rate averaging and rate integration of interexchange services in order to ensure that subscribers in rural and high cost areas throughout the Nation are able to continue to receive both intrastate and interstate interexchange services at rates no higher than those paid by urban subscribers.

B. Summary of Significant Issues Raised by the Public Comments to the IRFA

31. The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. No comments were submitted directly in response to the IRFA. We have, however, kept small entities in mind as we considered the more general comments filed in this proceeding, as discussed below.

C. Description and Estimate of Number of Small Entities to Which the Rules Will Apply

32. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

(a) *Cellular Radio Telephone Service*

33. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the 1992 census, which is the most recent information available, only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder were small businesses under the SBA's definition. We assume that, for purposes of our evaluations and conclusions in this Supplemental FRFA, all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, we do not know the number of cellular licensees, since a cellular licensee may own several licenses.

(b) *Broadband Personal Communications Service*

34. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to § 24.720(b) of the Commission's Rules, the Commission has defined "small entity" for Block C and Block F licensees as firms that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.

35. The Commission has auctioned broadband PCS licenses in all of its spectrum blocks A through F. We do not have sufficient data to determine how many small businesses under the Commission's definition bid successfully for licenses in Blocks A and B. As of now, there are 90 non-defaulting winning bidders that qualify as small entities in the Block C auction

and 93 non-defaulting winning bidders that qualify as small entities in the D, E, and F Block auctions. Based on this information, we conclude that the number of broadband PCS licensees that would be affected by the evaluations and conclusions in this Supplemental FRFA includes the 183 non-defaulting winning bidders that qualify as small entities in the C, D, E, and F Block broadband PCS auctions.

(c) *Specialized Mobile Radio*

36. Pursuant to Section 90.814(b)(1) of the Commission's Rules, the Commission has defined "small entity" for geographic area 800 MHz and 900 MHz SMR licenses as firms that had average gross revenues of no more than $15 million in the three previous calendar years. This regulation defining "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.

37. The section 254(g) requirements apply to SMR providers in the 800 MHz and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service, nor how many of these providers have annual revenues no more than $15 million.

38. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities under the Commission's definition in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by section 254(g) includes these 60 small entities.

39. A total of 525 licenses were auctioned for the upper 200 channels in the 800 MHz geographic area SMR auction. There were 62 qualifying bidders, of which 52 were small businesses. The Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis to estimate, moreover, how many small entities within the SBA's definition will win these lower channel licenses. Given the facts that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz SMR licensees can be made, we assume, for purposes of our evaluations and conclusions in this Supplemental FRFA, that all of the licenses for the lower 230 channels will be awarded to small entities, as that term is defined by the SBA.

(d) *220 MHz Service*

The Commission has classified providers of 220 MHz service into Phase I and Phase II licensees. There are approximately 2,800 non-nationwide Phase I licensees and 4 nationwide licensees currently authorized to operate in the 220 MHz band. The Commission recently conducted the Phase II auction. There were 54 qualified bidders, of which 47 were small businesses.

41. At this time, however, there is no basis upon which to estimate definitively the number of phase I 220 MHz service licensees that are small businesses. To estimate the number of such entities that are small businesses, we apply the definition of a small entity under SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. According to the 1992 Census, which is the most recent information available, only 12 out of a total 1,178 radiotelephone firms which operated during 1992 had 1,000 or more employees—and these may or may not be small entities, depending on whether they employed more or less than 1,500 employees. But 1,166 radiotelephone firms had fewer than 1,000 employees and therefore, under the SBA definition, are small entities. However, we do not know how many of these 1,166 firms are likely to be involved in the phase I 220 MHz service.

(e) *Mobile Satellite Services (MSS)*

42. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services, NEC in operation in 1992, and a total of 775 had annual receipts of less than $9.999 million.

43. Mobile Satellite Services or Mobile Satellite Earth Stations are intended to be used while in motion or during halts at unspecified points. These stations operate as part of a network that includes a fixed hub or stations. The stations that are capable of transmitting while a platform is moving are included under Section 20.7(c) of the Commission's Rules as mobile services within the meaning of Sections 3(27) and 332 of the Communications Act. Those MSS services are treated as CMRS if they connect to the Public Switched Network (PSN) and also satisfy other criteria of Section 332. Facilities provided through a transportable platform that cannot move when the communications service is offered are excluded from Section 20.7(c).

44. The MSS networks may provide a variety of land, maritime and aeronautical voice and data services. There are eight mobile satellite licensees. At this time, we are unable to make a precise estimate of the number of small businesses that are mobile satellite earth station licensees.

(f) *Paging Service*

45. The Commission has adopted a two-tier definition of small businesses in the context of auctioning licenses in the paging service. A small business is defined as either: (1) An entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA has approved this definition for paging companies.

46. The Commission estimates that the total current number of paging carriers is approximately 600. In addition, the Commission anticipates that a total of 16,630 non-nationwide geographic area licenses will be granted or auctioned. The geographic area licenses will consist of 2,550 Major Trading Area (MTA) licenses and 14,080 Economic Area (EA) licenses. In addition to the 47 Rand McNally MTAs, the Commission is licensing Alaska as a separate MTA and adding three MTAs for the U.S. territories, for a total of 51 MTAs. No auctions of paging licenses have been held yet, and there is no basis to determine the number of licenses that will be awarded to small entities. Given the fact that no reliable estimate of the number of paging licensees can be made, we assume, for purposes of this Supplemental FRFA, that all of the current licensees and the 16,630 geographic area paging licensees either are or will consist of small entities, as that term is defined by the SBA.

(g) *Narrowband PCS*

47. The Commission has auctioned nationwide and regional licenses for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition. At present, there have been no auctions held for the MTA and Basic Trading Area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licensees and 2,958 BTA licensees will be awarded in the auctions. Those auctions, however, have

not yet been scheduled. Given that nearly all radiotelephone companies have fewer than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, that all of the licensees will be awarded to small entities, as that term is defined by the SBA.

(h) *Air-Ground Radiotelephone Service*

48. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service, which is defined in Section 22.99 of the Commission's rules. Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

49. In the *Rate Integration Order*, and the *Rate Integration Reconsideration Order*, we determined that section 254(g) applied to interstate, interexchange services offered by CMRS providers. We expect that those orders impose no significant new reporting or recordkeeping requirements on CMRS providers. Those orders, however, require CMRS providers to comply with the rate averaging and rate integration requirement of section 254(g) in their service offerings. CMRS providers, however, do not file tariffs except on some international routes.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

50. Section 254(g) reflects a congressional determination that the country's higher-cost, lower-volume markets should share in the technological advances and increased competition characteristic of the nation's telecommunications industry as a whole, and that interexchange rates should be provided throughout the nation on a geographically averaged and rate-integrated basis. We have decided that the statutory objectives of section 254(g) require us to apply our rules to all providers of interexchange service, including small ones. We have chosen, however, to allow carriers to offer private line service and temporary promotions on a de-averaged basis. In so doing, we have minimized the impact our rules might otherwise have had, and enable carriers to use such devices to enter new markets.

51. In addition, the Commission considered reducing the burdens on small carriers by exempting them from compliance through forbearance. However, we do not believe that forbearing at this time would be consistent with the Congressional goals that underlie Section 254(g). We could also have reduced burdens on small carriers by establishing cost-support mechanisms. However, the present record does not justify any such cost-support mechanisms. Accordingly, we decline to adopt these alternative measures for small carriers.

F. Report to Congress

52. The Commission will send a copy of this order, including the supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. A summary of this Memorandum Opinion and Order and this Supplemental FRFA will also be published in the **Federal Register**, and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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BILLING CODE 5712–01–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency For International Development

48 CFR Parts 705, 706, 709, 716, 722, 731, 732, 745, 747, and 752

[AIDAR Notice 98–3]

RIN 0412–AA39

Miscellaneous Amendments to Acquisition Regulations

AGENCY: U.S. Agency for International Development (USAID), IDCA.

ACITON: Final rule.

SUMMARY: The USAID Acquisition Regulation (AIDAR) is being amended to bring its organizational conflicts of interest coverage into conformance with the FAR; to implement the August 19, 1997 revisions to Office of Federal Contract Compliance Programs (OFCCP) regulations (41 CFR Parts 60–1, 60–60) and corresponding amendments to FAR Subpart 22.8 contained in Federal Acquisition Circular 97–10, effective in February 1999; to allow for advances to for-profit organizations who award grants under their contracts; to clarify the application of USAID's salary policy to fixed-price contracts; and to update corresponding clauses in Part 752, as needed. The AIDAR is also being amended to incorporate provisions of various Contract Information Bulletins (CIBs) issued in the past few years that established contracting policies or procedures, and to make administrative changes or corrections.

EFFECTIVE DATE: March 4, 1999.

FOR ADDITIONAL INFORMATION CONTACT: M/OP/P, Ms. Diane M. Howard, (202) 712–0206.

SUPPLEMENTARY INFORMATION: The specific changes being made to the USAID Acquisition Regulation (AIDAR) in this amendment are:

A. Contract Information Bulletin 91–3 provided the written authorization of the Procurement Executive, as the Head of the Agency and as required by FAR 5.502(a), to USAID Contracting Officers to place advertisements and notices in newspapers and periodicals. We are formally incorporating that authorization into the AIDAR at new section 705.502.

B. In January 1997, FAC 90–45 removed the Conflict of Interest clauses at FAR sections 52.209–7 and 52.209–8. Because AIDAR sections 709.507–2 and 752.209–71 make reference to these FAR clauses, both sections are amended to remove the references and to reflect the current FAR language.

C. USAID decided to codify an award fee clause in the AIDAR, in accordance with FAR 16.406(e), rather than establish a procedure for review and approval of individual clauses. Already in use through CIB 97–12, the new clause at 752.216–70 is purposefully minimalist and resembles FAR 52.216–8, Fixed Fee, rather than FAR 52.216–10, Incentive Fee. This approach gives Contracting Officers the flexibility to design their own award fee evaluation methods and specify the implementation details elsewhere in the contract schedule.

D. In CIB 97–26, USAID implemented on an interim basis the revisions in EEO compliance procedures made by the Department of Labor to their regulations (41 CFR Ch. 60) in 1997 (62 FR 44173). On December 18, 1998, the FAR Councils published FAC 97–10 (63 FR 70264), containing a Final Rule at Item III entitled "Office of Federal Contract Compliance Programs National Pre-Award Registry" to implement the DOL changes into the FAR. AIDAR Subpart 722.8 is revised to reflect the FAR revisions in 48 CFR 22.8 (i.e., for other than construction contracts, the increase in the threshold for OFCCP verification from $1,000,000 to $10 million and the availability of OFCCP's National Pre-Award Registry), and to clarify and simplify the internal Agency procedures

for verifying compliance at any dollar level.

E. The applicability of USAID's salary policy, found in Chapter 302 of the Agency's internal Automated Directives System (ADS), to salaries under fixed price-type contracts (including but not limited to time-and-materials, labor-hour, or USAID's indefinite quantity contracts) is ambiguous. We are amending sections 731.205–6 and 731.371 to clarify that the salary approval policies in ADS 302, which are being revised to clarify their applicability under different kinds of contract types, will determine the allowability of employee compensation in USAID contracts. ADS 302 will specify that the approval requirements only apply when an individual's salary must be used in order to determine the contract cost or price.

F. Under certain circumstances, USAID programs may authorize contractors to award and administer small value grants under their contracts. The current AIDAR language in section 732.402 requires special approval for for-profit firms to receive advances, but does not take into consideration the cash flow implications to the contractor in a grants-under-contracts arrangement. We are amending 732.402 to allow for-profit contractors to receive advances for immediate disbursement to grantees, subject to the terms of this section. We are also adding a new paragraph to section 732.406–73 to ensure that contracting officers include a FAR payment clause in addition to the USAID Letter of Credit clause (in AIDAR 752.232–70), in the event that the Letter of Credit is revoked and an alternate payment clause is needed.

G. AIDAR 752.245–71 was written when most of USAID's overseas programs used funds already obligated in bilateral project agreements in which both USAID and the cooperating country agreed that non-expendable property purchased with project funds would be titled to and turned over to the cooperating country at the end of the project. However, in recent years, an increasing number of our programs are being carried out without a formal agreement between USAID and the cooperating country, rendering the prescription for the clause inappropriate since there is no underlying agreement to turn the property over to the cooperating country. We are adding a new Part 745 and amending the prescription to AIDAR clause 745.245–71 to clarify when this clause is to be used, and when the applicable FAR clauses, as prescribed in FAR 45.106, are to be used. The revised clause prescription was already implemented through CIB 96–26.

H. USAID processed a class deviation to FAR clause 752.247–64, Preference for Privately Owned U.S.-Flag Commercial Vessels, and implemented it through Contract Information Bulletin 96–28. The deviation provides for the use of an alternate prescription and clause in certain circumstances, as described in the clause prescription. We are amending the AIDAR to add a new Part 747 and clause at section 752.247–70 to implement this deviation.

I. Section 752.7003, Documentation for Payment, is amended to reflect changes the Agency has made in processing contractor invoices involving electronic vouchering and the use of Contract Line Items (CLINS).

J. CIB 97–27 implemented a new AIDAR clause requiring contractors to submit Development Experience Documents, as defined in ADS 540, produced in the course of contract performance to the Center for Development Information and Evaluation (PPC/CDIE/DI) in the Bureau for Policy and Program Coordination. This submission requirement was previously included in the various versions of the "Reports" clause (AIDAR 752.7026 and subsequent revisions issued through CIBs), but because of changes we are making to progress reporting requirements, we believe that this submission requirement should be a stand-alone requirement and therefore are adding a new clause to the AIDAR.

K. Sections 752.7018 and 752.7019, both related to USAID's participant training program, are amended to update the language to incorporate changes to the policies and procedures in the program.

The changes being made by this notice are not considered "significant" under FAR 1.301 or FAR 1.501, and public comments have not been solicited. This Notice will not have an impact on a substantial number of small entities nor does it establish a new collection of information as contemplated by the Regulatory Flexibility Act and the Paperwork Reduction Act. Because of the nature and subject matter of this Notice, use of the proposed rule/public comment approach was not considered necessary. We decided to issue as a final rule; however, we welcome public comment on the material covered by this Notice or any other part of the AIDAR at anytime. Comments or questions may be addressed as specified in the **FOR FURTHER INFORMATION CONTACT** section of the Preamble.

List of Subjects, in 48 CFR Parts 705, 706, 709, 716, 722, 731, 732, 745, 747, and 752.

Government procurement.

For the reasons set out in the Preamble, 48 CFR Chapter 7 is amended as set forth below.

1. The authority citations in Parts 705, 706, 709, 716, 722, 731, 732, and 752 continue to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

PART 705—PUBLICIZING CONTRACT ACTIONS

705.502 [Added]

2. New section 705.502 is added to read as follows:

705.502 Authority.

(a) The Procurement Executive, acting as head of the Agency under the authority of 702.170–13(c)(4), hereby authorizes USAID contracting officers to place paid advertisements and notices in newspapers and periodicals. Contracting officers shall document the contract file to reflect consideration of the requirements of (48 CFR) FAR 5.101(b)(4).

PART 706—COMPETITION REQUIREMENTS

706.501 [Amended]

3. Section 706.501 is amended by removing "(or equivalent)" in the second sentence and "or equivalent" in the fourth sentence.

PART 709—CONTRACTOR QUALIFICATIONS

709.503 [Amended]

4. The second sentence in section 709.503 is amended by revising "had" to read "has" and by revising "acitivites" to read "activities".

709.507–2 [Amended]

5. Section 709.507–2 is amended by revising paragraph (c) to read as follows:

709.507–2 Contract clause.

* * * * *

(c) In order to avoid problems from organizational conflicts of interest that may be discovered after award of a contract, the clause found at 752.209–71 shall be inserted in all contracts whenever the solicitation or resulting contract or both include a provision in accordance with (48 CFR) FAR 9.507–1, or a clause in accordance with (48 CFR) FAR 9.507–2, establishing a restraint on the contractor's eligibility for future contracts.

PART 716—TYPES OF CONTRACTS

716.406 [Added]

6. A new section 716.406 is added to read as follows:

716.406 Contract clauses.

The Contracting Officer shall include the clause at 752.216–70, Award Fee, in solicitations and contracts when an award-fee contract is contemplated.

PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

722.8 [Revised]

7. Subpart 722.8 is revised to read as follows:

Subpart 722.8—Equal Employment Opportunity

722.805–70 Procedures.

(a) The procedures in this section apply, as appropriate, for all contracts excluding construction, which shall be handled in accordance with (48 CFR) FAR 22.804–2. Contracting officers are responsible for ensuring that the requirements of (48 CFR) FAR 22.8 and related clauses are met before awarding any contracts or consenting to subcontracts subject to these requirements.

(b) Representations and Certifications. The first step in ensuring compliance with these requirements is to obtain all necessary representations and certifications (Reps and Certs) required by FAR 22.810. The contracting officer must review the Reps and Certs to determine whether they have been completed and signed as required, and are acceptable.

(1) If any of these Reps and Certs are incomplete or unsigned, the contracting officer must request that the offeror(s) complete and sign them, as necessary, unless the initial evaluation of the offeror's proposal results in the contracting officer's concluding that the offeror would not, in any event, be within a competitive range determined in accordance with (48 CFR) FAR 15.306(c), or would not be selected if award is to be made without discussions. A request as described in this paragraph (b)(1) constitutes either a clarification per (48 CFR) FAR 15.306(a) ("resolving minor or clerical errors", paragraph (a)(2)), or a communication before establishment of competitive range per (48 CFR) FAR 15.306(b), not a discussion per (48 CFR) FAR 15.306(d).

(2) If completed and signed Reps and Certs raise questions concerning the offeror's compliance with EEO requirements, or if the contracting officer has information from any other source which calls into question the offeror's eligibility for award based on this section and (48 CFR) FAR 22.8, the contracting officer must refer the matter to the cognizant regional Department of Labor Office of Federal Contract Compliance Programs (OFCCP) regardless of the estimated value of the contract; only OFCCP may make a determination of non-compliance with EEO requirements.

(c) OFCCP's National Preaward Registry. If the Reps and Certs are complete, signed, and deemed acceptable, and the contracting officer has no reason to doubt their accuracy, the contracting officer must then consult the OFCCP's National Preaward Registry at the internet website in 48 CFR 22.805(a)(4) (i) to see if the offeror is listed.

(1) If the conditions stated in FAR 22.805(a) (4) are met (including the contract file documentation requirement in paragraph (a)(4)(iii)), then the Contracting Officer does not need to take any further action in verifying the offeror's compliance with the requirements of this subpart and (48 CFR) FAR 22.8.

(2) If the offeror does not appear in the National Preaward Registry, and the estimated amount of the contract or subcontract is expected to be under $10 million then the contracting officer may rely on the Reps and Certs as sufficient verification of the offeror's compliance.

(3) If the offeror does not appear in the National Preaward Registry and the estimated amount of the contract or subcontract is $10 million or more, then the contracting officer must request a preaward clearance from the appropriate OFCCP regional office, in accordance with 48 CFR 22.805(a). If the initial contact with OFCCP is by telephone, the contracting officer and OFCCP are to mutually determine what information is to be included in the written verification request. The contracting officer may need to provide the following information in addition to the items listed in FAR 22.805(a)(5), if so requested by the OFCCP regional office:

(i) Name, title, address, and telephone number of a contract person for the prospective contractor;

(ii) A description of the type of organization (university, nonprofit, etc.) and its ownership (private, foreign, state, etc.).

(iii) Names and addresses of the organizations in a joint venture (if any).

(iv) Type of procurement (new contract—RFP or IFB, amendment, etc.) and the period of the contract.

(v) Copy of approved Reps and Certs.

(d) In the event that OFCCP reports that the offeror is not in compliance, negotiations with the offeror shall be terminated.

(e) documentation for the contract file. Every contract file must contain completed and signed Reps and Certs. The file must clearly show the these documents have been reviewed and accepted by the contracting officer. If the Reps and Certs were revised to make them acceptable (see paragraph (b) of this section), the file must also document what changes were required and why, and verify that the changes were made. The contracting officer shall also document the OFCCP National Preaward Registry review (see paragraph (c)(1) of this section), and, if the Registry does not include the offeror:

(1) For contracts or modifications over $10,000 but less than $10 million, the file must contain a statement from the contracting officer that the contractor is considered in compliance with EEO requirements, and giving the basis for this statement (see paragraph (c)(2) of this section). This statement may be in a separate memorandum to the file or in the memorandum of negotiation.

(2) For contracts or modifications of $10 million or more, the file must document all communications with OFCCP regarding the offeror's compliance. Such documentation includes copies of any written correspondence and a record of telephone conversations, specifying the name, address, and telephone number of the person contacted, a summary of the information presented, and any advice given by OFCCP.

(f) Documentation in the event of non-compliance. In the event OFCCP determines that a prospective contractor is not in compliance, a copy of OFCCP's written determination, and a summary of resultant action taken (termination of negotiations, notification of offeror and cognizant technical officer, negotiation with next offeror in competitive range, resolicitation, etc.) will be placed in the contract file for any contract which may result, together with other records related to unsuccessful offers, and retained for at least six months following award.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

731.205–6 [Amended]

8. Section 731.205–6 is amended by adding a new paragraph (b) and removing and reserving paragraph (d), to read as follows:

731.205–6 Compensation for personal services.

* * * * *

(b) *Reasonableness.* ADS Chapter 302.5.3 states USAID policy regarding personnel compensation exceeding the maximum annual rate for an Executive Service level ES–6. Consistent with this policy, any employee's or consultant's base salary plus overseas recruitment incentive, if any (see 731.205–70), subject to this policy will be allowable under USAID-direct contracts only if approved in accordance with the essential procedures in ADS chapter E302.5.3. USAID policies on compensation of third country national or cooperating country national employees are set forth in AIDAR 722.170.

* * * * *

731.371 [Amended]

9. Section 731.371 is amended by revising paragraph (b)(1) to read as follows:

731.371 Compensation for personal services.

* * * * *

(b) Salaries and wages. (1) ADS Chapter 302.5.3 states USAID policy regarding personnel compensation exceeding the maximum annual rate for an Executive Service level ES–6. Consistent with this policy, any employee's or consultant's base salary plus overseas recruitment incentive, if any (see 731.205–70), subject to this policy will be allowable under USAID-direct contracts only if approved in accordance with the essential procedures in ADS chapter E302.5.3.

* * * * *

PART 732—CONTRACT FINANCING

732.402 [Amended]

10. Section 732.402 is amended by revising paragraph (e)(1) to read as follows:

732.402 General.

* * * * *

(e)(1)(i) Except as provided in (e)(1)(ii) of this section, all U.S. Dollar advances to for-profit organizations require the approval of the Procurement Executive; all such approvals are subject to prior consultation with the Agency's Chief Financial Officer.

(ii) Approval of the Procurement Executive is not required if advance payments are limited exclusively to monies advanced for immediate (within seven days) disbursement to grantees, as provided for in a contract. Prior consultation with the AID/W or Mission Controller is required for including such provision for advances in a contract.

* * * * *

732.406–73 [Amended]

11. Section 732.406–73 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

732.406–73 LOC contract clause.

* * * * *

(b) Contracting offices shall ensure that an appropriate (48 CFR) FAR payment clause is also included in the contract, in the event that the LOC is revoked pursuant to 732.406–74.

12. A new Part 745 is added to read as follows:

PART 745—GOVERNMENT PROPERTY

Subpart 745.1—General

745.106 Contract clauses.

Authority: Sec. 621, Pub. L. 787–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 745.1—General

745.106 Contract clauses.

(a) The contracting officer shall insert the clause at 752.245–71 in all contracts under which the contractor will acquire property for use overseas and the contract funds were obligated under a Strategic Objective agreement (or similar agreement) with the cooperating country.

(b) The contracting officer shall insert the applicable clause as required in (48 CFR) FAR 45.106 in all contracts under which the contractor will acquire property with funds not already obligated under a Strategic Objective agreement (or similar agreement) with the cooperating country.

13. A new Part 747 is added to read as follows:

PART 747—TRANSPORTATION

Subpart 747.5—Ocean Transportation by U.S.-Flag Vessels

747.507 Contract clauses.

Authority: Sec. 621, Pub. L. 98–195, 75 Stat. 445 (22 U.S.C. 2381), as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR 1979 Comp., p. 435.

Subpart 747.5—Ocean Transportation by U.S.-Flag Vessels

747.507 Contract clauses.

Contracting officers shall insert the clause at 752.247–70 in solicitations and contracts solely for ocean transportation services, and in solicitations and contracts for goods and ocean transportation services when the ocean transportation will be fixed at the time the contract is awarded. Contracting Officers shall use (48 CFR) FAR 52.247–64 as prescribed in (48 CFR) FAR 27.507(a) in other situations.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

752.204–2 [Amended]

14. Section 752.204–2 is amended by removing "704.405" in the first paragraph and replacing it with "704.404".

752.209–71 [Amended]

15. Section 752.209–71 is amended by revising the introductory text to read as follows:

752.209–71 Organizational conflicts of interest discovered after award.

As prescribed in 709.507–2, include the following clause in any solicitation containing a provision in accordance with (48 CFR) FAR 9.507–1, or a clause in accordance with (48 CFR) FAR 9.507–2, establishing a restraint on the contractor's eligibility for future contracts.

* * * * *

752.216–70 [Added]

16. Section 752.216–70 is added to read as follows:

752.216–70 Award fee.

As prescribed in 716.406, insert the following clause in solicitations and contracts in which an award-fee contract is contemplated.

Award Fee (May 1997)

(a) The Government shall pay the Contractor for performing this contract such base fee and such additional fee as may be awarded, as provided in the Schedule.

(b) Payment of the base fee and award fee shall be made as specified in the Schedule; provided, that after payment of 85 percent of the base fee and potential award fee, the Contracting Officer may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on

the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(c) Award fee determinations made by the Government under this contract are not subject to the Disputes clause.

(End of clause)

752.245–71 [Amended]

17. Section 752.245–71 is amended by revising the prescription to read as follows:

752.245–71 Title to and care of property.

As prescribed in 745.106(a), the following clause shall be included in all contracts when the contractor will acquire property under the contract for use overseas and the contract funds were obligated under a Strategic Objective agreement (or similar agreement) with the cooperating country.

* * * * *

752.247–70 [Added]

18. A new section 752.247–70 is added to read as follows:

752.247–70 Preference for privately owned U.S.-flag commercial vessels.

As prescribed in 747.507, insert the following clause:

Preference for Privately Owned U.S.-Flag Commercial Vessels (Oct. 1996)

(a) Under the provisions of the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) at least 50 percent of the gross tonnage of equipment, materials, or commodities financed by USAID, or furnished without provision for reimbursement, or at least 75 percent of the gross tonnage of cargo moving under P.L. 480 financed by the U.S. Department of Agriculture, that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers) shall be transported in privately owned U.S.-flag commercial vessels.

(b) In accordance with USAID regulations and consistent with the regulations of the Maritime Administration, USAID applies Cargo Preference requirements on the basis of programs or activities that generally include more than one contract. Thus, the amount of cargo fixed on privately owned U.S.-flag vessels under this contract may be more or less than the required 50 or 75 percent, depending on current compliance with Cargo Preference requirements. If freight under the contract is fixed on a U.S. flag vessel, Alternate I of this clause shall apply.

(c)(1) The contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both the Division of National Cargo, Office of Cargo Preference, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590, and the Transportation Division, Office of Procurement, USAID, Washington, DC 20523–7900.

(2) The contractor shall furnish these bill of lading copies within 20 working days of the date of loading for shipments originating in the United States, or within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

(i) Sponsoring U.S. Government agency.
(ii) Name of vessel.
(iii) Vessel flag registry.
(iv) Date of loading.
(v) Port of loading.
(vi) Port of final discharge.
(vii) Description of commodity.
(viii) Gross weight in pounds and cubic feet if available.
(ix) Total ocean freight revenue in U.S. dollars.

Alternate I

(d) If freight is fixed on a U.S. flag vessel, except as provided in paragraph (e) of this clause, the contractor shall use privately owned U.S. flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(e) If such vessels are not available, or not available at rates that are fair and reasonable for privately owned U.S. flag commercial vessels, the Contractor shall notify the contracting officer and request either authorization to ship in foreign-flag vessels or designation of available U.S.-flag vessels. If the Contractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the suppliers in privately owned U.S.-flag commercial vessels and foreign-flag vessels.

752.7003 [Amended]

19. The clause in section 752.7003 is amended by revising the introductory paragraph, the date in the clause heading, paragraph (a), and paragraph (d) to read as follows:

752.7003 Documentation for payment.

The following clause is required in all USAID direct contracts, excluding fixed price contracts:

Documentation for Payment (Nov. 1998)

(a) Claims for reimbursement or payment under this contract must be submitted to the Paying Office indicated in the schedule of this contract. The cognizant technical officer (CTO) is the authorized representative of the Government to approve vouchers under this contract. The Contractor must submit either paper or fax versions of the SF–1034—Public Voucher for Purchases and Services Other Than Personal. Each voucher shall be identified by the appropriate USAID contract number, in the amount of dollar expenditures made during the period covered.

(1) The SF 1034 provides space to report by line item for products or services provided. The form provides for the information to be reported with the following elements:

TOTAL EXPENDITURES

[Document Number: XXX–X–XX–XXXX–XX]

Line item No.	Description	Amt. vouchered to date	Amt. vouchered this period
001	Product/Service Desc. for Line Item 001	$XXXX.XX	$ XXXX.XX
002	Product/Service Desc. for Line Item 002	XXXX.XX	XXXX.XX
Total		XXXX.XX	XXXX.XX

(2) The fiscal report shall include the following certification signed by an authorized representative of the Contractor:

The undersigned hereby certifies to the best of my knowledge and belief that the fiscal report and any attachments have been prepared from the books and records of the Contractor in accordance with the terms of this contract and are correct: the sum claimed under this contract is proper and due, and all the costs of contract performance (except as herewith reported in writing) have been paid, or to the extent allowed under the applicable payment clause, will be paid currently by the Contractor when due in the ordinary course of business; the work reflected by these costs has been performed, and the quantities and amounts involved are consistent with the requirements of this Contract; all required Contracting Officer approvals have been obtained; and appropriate refund to USAID will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of this contract.

BY: _____

TITLE: _____

DATE: _____

* * * * *

(d) The Contractor agrees that all approvals of the Mission Director and the Contracting Officer which are required by the provisions of this contract shall be preserved and made available as part of the Contractor's records which are required to be presented and made available by the clause of this contract entitled "Audit and Records—Negotiation".

752.7005 [Added]

20. A new section 752.7005 is added to read as follows:

752.7005 Submission requirements for development experience documents.

The following clause shall be included in all USAID professional/technical contracts in which development experience documents are likely to be produced.

Submission Requirements for Development Experience Documents (Oct. 1997)

(a) Contract Reports and Information/Intellectual Products.

(1) The Contractor shall submit to the Development Experience Information Division of the Center for Development Information and Evaluation (PPC/DCIE/DI) in the Bureau for Policy and Program Coordination, copies of reports and information products which describe, communicate or organize program/project development assistance activities, methods, technologies, management, research, results and experience as outlined in the Agency's ADS Chapter 540, section E540.5.2b(3). Information may be obtained from the Cognizant Technical Officer (CTO). These reports include: assessments, evaluations, studies, development experience documents, technical reports and annual reports. The Contractor shall also submit to PPC/CDIE/DI copies of information products including training materials, publications, databases, computer software programs, videos and other intellectual deliverable materials required under the Contract Schedule. Time-sensitive materials such as newsletters, brochures, bulletins or periodic reports covering periods of less than a year are not to be submitted.

(2) Upon contract completion, the contractor shall submit to PPC/CDIE/DI an index of all reports and information/intellectual products referenced in paragraph (a)(1) of this clause.

(b) *Submission requirements.*

(1) *Distribution.* (i) The contractor shall submit contract reports and information/intellectual products (referenced in paragraph (a)(1) of this clause) in electronic format and hard copy (one copy) to U.S. Agency for International Development PPC/CDIE/DI, Attn: ACQUISITIONS, Washington D.C. 20523 at the same time submission is made to the CTO.

(ii) The contractor shall submit the reports index referenced in paragraph (a)(2) of this clause and any reports referenced in paragraph (a)(1) of this clause that have not been previously submitted to PPC/CDIE/DI, within 30 days after completion of the contract to the address cited in paragraph (b)(1)(i) of this clause.

(2) *Format.* (i) Descriptive information is required for all Contractor products submitted. The title page of all reports and information products shall include the contract number(s), contractor name(s), name of the USAID cognizant technical office, the publication or issuance date of the document, document title, author name(s), and strategic objective or activity title and associated number. In addition, all materials submitted in accordance with this clause shall have attached on a separate cover sheet the name, organization, address, telephone number, fax number, and Internet address of the submitting party.

(ii) The hard copy report shall be prepared using non-glossy paper (preferably recycled and white or off-white) using black ink. Elaborate art work, multicolor printing and expensive bindings are not to be used. Whenever possible, pages shall be printed on both sides.

(iii) The electronic document submitted shall consist of only one electronic file which comprises the complete and final equivalent of the hard copy submitted.

(iv) Acceptable software formats for electronic documents include WordPerfect, Microsoft Word, ASCII, and Portable Document Format (PDF). Submission in Portable Document format is encouraged.

(v) The electronic document submission shall include the following descriptive information:

(A) Name and version of the application software used to create the file, e.g., WordPerfect Version 6.1 or ASCII or PDF.

(B) The format for any graphic and/or image file submitted, e.g., TIFF-compatible.

(C) Any other necessary information, e.g. special backup or data compression routines, software used for storing/retrieving submitted data, or program installation instructions.

752.7018 [Revised]

21. Section 752.7018 is revised to read as follows:

752.7018 Health and accident coverage for USAID participant trainees.

For use in any USAID contract under which USAID participants are trained.

Health and Accident Coverage for USAID Participant Trainees (Jan. 1999)

(a) In accordance with the requirements of USAID Automated Directive System (ADS) 253.5.6b, the Contractor shall enroll all non-U.S. trainees (hereinafter referred to as "participants"), whose training in the U.S. is financed by USAID under this contract, in USAID's Health and Accident Coverage (HAC) program. Sponsored trainees enrolled in third-country or in-country training events are not eligible for USAID's HAC program, but the Contractor may obtain alternative local medical and accident insurance at contract expense, provided the cost is consistent with the cost principles in FAR 31.2

(b) When enrollment in the HAC program is required per paragraph (a) of this clause, the Contractor must enroll each participant in the HAC program through one of two designated contractors prior to the initiation of travel by the participant. USAID has developed an Agency-wide database training management system, the Training Results and Information Network ("TraiNet"), which is the preferred system for managing USAID's participant training program, including enrollment in the HAC program. However, until such time as the USAID sponsoring unit (as defined in ADS 253) has given the Contractor access to USAID's "TraiNet" software for trainee tracking and HAC enrollment, the Contractor must fill out and mail the Participant Data Form (PDF) (Form USAID 1381–4) to USAID. The Contractor can obtain information regarding each HAC program contractor, including contact information, and a supply of the PDF forms and instructions for completing and submitting them, by contacting the data base contractor serving the Global Center for Human Capacity Development (G/HCD).

(c) The Contractor must ensure that HAC enrollment begins immediately upon the participant's departure for the United States for the purpose of participating in a training program financed by USAID, and that enrollment continues in full force and effect until the participant returns to his/her country of origin, or is released from USAID's responsibility, whichever is the sooner.

(1) The HAC insurance provider, not the Contractor, shall be responsible for paying all reasonable and necessary medical reimbursement charges not otherwise covered by student health service or other insurance programs, subject to the availability of funds for such purposes, in accordance with the standards of coverage established by USAID under its HAC program and by the HAC providers' contracts.

(2) After HAC enrollment, upon receipt of HAC services invoice from the selected HAC provider, the Contractor shall submit payment directly to the HAC provider.

(3) The Contractor is responsible for ensuring that participants and any stakeholders (as defined in ADS 253) are advised that USAID is not responsible for any medical claims in excess of the coverages provided by the HAC program, or for medical claims not eligible for coverage under the HAC program, or not otherwise covered in this section.

(d) The Contractor, to the extent that it is an educational institution with a mandatory student health service program, shall also enroll participants in that institution's student health service program. Medical costs which are covered under the institution's student health service shall not be eligible for payment under USAID's HAC program.

(e) If the Contractor has a mandatory, non-waivable health and accident insurance program for students, the costs of such insurance will be allowable under this contract. Any claims eligible under such insurance will not be payable under USAID's HAC plan or under this contract. Even though the participant is covered by the Contractor's mandatory, non-waivable health and accident insurance program, the participant MUST be enrolled in USAID's more comprehensive HAC program.

(f) Medical conditions pre-existing to the participant's sponsorship for training by USAID, discovered during the required pre-departure medical examination, are grounds for ineligibility for sponsorship unless specifically waived by the sponsoring unit, and covered through a separate insurance policy maintained by the participant or his employer, or a letter of guarantee from the participant or the employer (which thereby

assumes liability for any related charges that might materialize. See ADS 253).

752.7019 [Revised]

22. Section 752.7019 is revised to read as follows:

752.7019 Participant training.

For use in any USAID direct contract involving training of USAID participants.

Participant Training (Jan. 1999)

(a) *Definitions.*

(1) Participant training is the training of any foreign national outside of his or her home country, using USAID funds.

(2) A Participant is any foreign national being trained under this contract outside of his or her country.

(b) *Applicable regulations.* Participant training conducted under this contract shall comply with the policies and essential procedures pertaining to training-related services contained in USAID Automated Directive System (ADS) Ch. 253 "Training for Development Impact". Any exceptions to ADS 253 requirements are specified as such within this contract. The current version of Chapter 253 may be obtained directly from the USAID website at http://www.info.usaid.gov/pubs/ads/200.

(c) The contractor shall be reimbursed for the reasonable and allocable costs incurred in providing training to participants in the United States or other approved location provided such costs do not exceed the limitations in, or have been waived in accordance with, ADS 253.5.5.

Note: Academic rates are available through a special website monitored by the United States Information Agency. The website for academic programs is: http://www.iie.org/fulbright/posts/restrict. U.S.-based participants receive the standardized U.S. travel per diem rates maintained by GSA for short-term training (website:http://policyworks.gov).

Dated: January 13, 1999.

Kathryn Y. Cunningham,

Acting Procurement Executive.

[FR Doc. 99–2032 Filed 2–1–99; 8:45 am]

BILLING CODE 6116–01–M

Proposed Rules

Federal Register
Vol. 64, No. 21
Tuesday, February 2, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113744–98]

RIN 1545–AW69

Passive Foreign Investment Companies; Definition of Marketable Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the new mark to market election for stock of a passive foreign investment company (PFIC). The proposed regulations interpret changes made by the Taxpayer Relief Act of 1997. The proposed regulations affect persons holding PFIC stock that is regularly traded on certain U.S. or foreign exchanges or markets or holding stock in certain PFICs comparable to U.S. regulated investment companies (RICs). The proposed regulations also reserve treatment of and request comments on making the mark to market election for options on marketable stock.

DATES: Written comments or requests for a public hearing must be received by May 3, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–113744–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–110524–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robert Laudeman, (202) 622–3840; concerning submissions, LaNita VanDyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This notice contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) regarding the taxation of U.S. holders of PFIC stock.

Since the enactment of the Tax Reform Act of 1986, U.S. holders of PFIC stock have been subject to two alternative sets of inclusion rules: the interest charge rules under section 1291 of the Internal Revenue Code and the qualified electing fund (QEF) rules under section 1293.

The interest charge rules apply to shareholders of PFICs that are not QEFs or for which a QEF election is unavailable. Under the interest charge rules, the PFIC shareholders pay tax and an interest charge that is attributable to the value of deferral on receipt of certain distributions and on disposition of the PFIC stock. By contrast, PFIC shareholders who make a QEF election include currently in gross income their respective shares of the PFIC's total earnings, with a separate election to defer payment of tax, subject to an interest charge, on income not currently received.

Congress recognized that the interest charge rules are a substantial source of complexity for PFIC shareholders and that some shareholders would prefer the current inclusion method afforded by the QEF election, but are unable to make the election because they cannot obtain the necessary information from the PFIC. Congress accordingly enacted new section 1296 in the Tax Reform Act of 1997 to provide PFIC shareholders with an alternative method to include income currently with respect to their interests in a PFIC by allowing PFIC shareholders to elect to mark to market PFIC stock that qualifies as marketable stock.

In general, a PFIC shareholder who elects under section 1296 to mark to market the marketable stock of a PFIC includes in income each year an amount equal to the excess, if any, of the fair market value of the PFIC stock as of the close of the taxable year over the shareholder's adjusted basis in such stock.

A shareholder is also generally allowed a deduction for the excess, if any, of the adjusted basis of the PFIC stock over the fair market value as of the close of the taxable year. Deductions under this rule, however, are allowable only to the extent of any net mark to market gains with respect to the stock included by the shareholder for prior taxable years.

Section 1296(e)(1) defines *marketable stock* as including several categories of stock. First, section 1296(e)(1)(A) states that marketable stock includes any stock which is regularly traded on (i) a national securities exchange which is registered with the Securities and Exchange Commission (SEC) or the national market system established pursuant to section 11A of the Securities Exchange Act of 1934, or (ii) any exchange or other market which the Secretary determines has rules adequate to carry out the purposes of the PFIC provisions. With respect to (ii) above, the conference report specifies that "PFIC stock is considered marketable if it is regularly traded on any exchange or market that the Secretary of the Treasury determines has rules sufficient to ensure that the market price represents a legitimate and sound fair market value." H.R. Conf. Rep. No. 2014, 105th Cong., 1st Sess. 625 (1997). Second, section 1296(e)(1)(B) states that, to the extent provided in regulations, stock in any foreign corporation which is comparable to a RIC and which offers for sale or has outstanding any stock of which it is the issuer and which is redeemable at its net asset value will be marketable stock. Third, section 1296(e)(1)(C) states that, to the extent provided in regulations, any option on stock described in section 1296(e)(1)(A) or (B) will constitute marketable stock.

Section 1296(e)(2) provides that in the case of any RIC which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at net asset value, all stock in a PFIC which it owns directly or indirectly shall be treated as marketable stock for purposes of section 1296. Section 1296(e)(2) further provides that except as provided in regulations, similar treatment as marketable stock shall apply in the case of any other RIC which

publishes net asset valuations at least annually.

The proposed regulations define marketable stock for purposes of section 1296. Specifically, the proposed regulations define regularly traded and list attributes that a foreign exchange or market must have in order for PFIC stock traded on such an exchange or market to be eligible for the mark to market election. The definition of regularly traded and the attributes required of foreign exchanges or markets are intended to ensure that the prices of PFIC shares listed on the exchange or market represent legitimate and sound fair market values. The proposed regulations also list the attributes that a foreign corporation must satisfy to be comparable to a RIC, and thus for its stock to be marketable stock. The attributes are intended to ensure that the foreign corporation is an investment vehicle similar in relevant respects to a U.S. mutual fund and that its representations of net asset value represent a legitimate fair market value.

Explanation of Provisions

Regularly Traded

Under the proposed regulations, the class of PFIC stock held by the shareholder must be traded, other than in de minimis quantities, on at least 15 days during each calendar quarter. The proposed regulations also include an anti-abuse rule to prevent persons from manipulating the number of trades in order to meet this test.

Exchange or Other Market

The proposed regulations require that a foreign exchange or market be regulated or supervised by a governmental authority of the country in which the market is located. This requirement will help to ensure that the prices of the stock listed by the exchange are legitimate and sound fair market values. Because the degree of governmental regulation or supervision for each foreign exchange or market may vary by exchange or market or country, the proposed regulations also list additional characteristics that the foreign exchange or market must have for stock that is regularly traded on the exchange or market to be considered marketable stock for purposes of section 1296.

First, the exchange must have trading volume, listing, financial disclosure and other requirements, designed to prevent fraud, perfect the mechanism of a free and open market, and protect investors. See section 6 of the Securities Exchange Act of 1934, 15 U.S.C. 78f. There must be actual enforcement of these requirements by the exchange and government of the country in which the exchange is located.

Second, the rules of the exchange must ensure active trading of listed stocks.

Finally, the IRS and Treasury Department invite comments on whether PFIC stock that is regularly traded on any other type of exchange or market, such as an over-the-counter market, should be considered marketable stock. Additional comments are requested about what features those exchanges or markets should have to ensure that the stock prices quoted on such markets are legitimate and sound fair market values.

Stock in Certain PFICs

The proposed regulations provide that stock in certain PFICs will be *marketable stock* if the PFIC is a corporation described in section 1296(e)(1)(B) (foreign corporations comparable to RICs) and if the PFIC offers for sale or has outstanding stock of which it is the issuer and which is redeemable at its net asset value. A PFIC will be a corporation described in section 1296(e)(1)(B) if the PFIC satisfies the conditions listed in the proposed regulations and described below, with respect to the class of shares held by the electing taxpayer. These conditions are intended to describe PFICs that are comparable to U.S. RICs in relevant respects and to implement the intent of the statute by ensuring that the net asset valuations of such companies represent legitimate and sound fair market values for the companies' stock.

First, the class of stock held by an electing shareholder must be held by one hundred or more unrelated shareholders. The relationships set forth in section 267(b) are used to define related shareholders that are excluded from satisfying this test. This condition is consistent with the requirements for RICs under section 851(a) and § 1.851–1 of the income tax regulations.

Second, the applicable class of shares of the foreign corporation must be regularly available for purchase by the general public at its net asset value in initial amounts not greater than $10,000 (U.S.). The IRS and Treasury Department invite comments on whether $10,000 is the appropriate ceiling to ensure that the shares of the company will be widely available to the general public. The IRS and Treasury Department also invite comments on whether and under what conditions the regulations should allow shares of a foreign corporation to be purchased at amounts different from their net asset value, such as for a price that includes a sales load. Additional comments are requested about whether the regulations should cover foreign corporations that otherwise qualify but are closed to new investors.

Third, the proposed regulations require that quotations for the class of shares of the foreign corporation be determined and published on a daily basis in a widely-available medium, such as a newspaper of general circulation. This requirement approximates the practice of U.S. RICs and is intended to ensure that shareholders and prospective purchasers have regular access to publicly available price information.

Fourth, financial statements of the foreign corporation prepared by independent auditors that include balance sheets (statements of assets, liabilities, and net assets) and statements of income and expenses, must be prepared and made available to the public no less frequently than annually. This requirement approximates the requirements imposed on U.S. mutual funds by the SEC and is intended to ensure that shareholders and prospective purchasers have regular access to financial information for the foreign corporation.

Fifth, the foreign corporation must be supervised or regulated as an investment company by a foreign government or an agency or instrumentality thereof. This condition is intended to approximate the SEC's regulation of U.S. RICs while taking into account the variety of regulatory regimes used by different governments.

Sixth, the foreign corporation may not have any senior securities authorized or outstanding, including any debt other than de minimis amounts. This requirement is similar to the requirement imposed on U.S. RICs by the SEC.

Finally, the foreign corporation must meet the PFIC income and asset tests in sections 1297(a)(1) and (2) with the requisite percentages increased from 75 percent to 90 percent and from 50 percent to 90 percent respectively. This condition is intended to approximate the characteristic of U.S. RICs as passive investment vehicles.

The proposed regulations also include an anti-abuse rule to prevent a foreign corporation from improperly manipulating its net asset valuations to reduce the U.S. tax under section 1296 of one or more shareholders of the corporation.

Options on Marketable Stock

The proposed regulations reserve the paragraph for defining how and when options on marketable stock, as defined

by these regulations, will be eligible for mark to market treatment. The IRS and Treasury Department invite comments regarding the conditions under which the regulations should define options on marketable stock to be marketable stock.

Special Rules for RICs

The proposed regulations clarify that shares in a PFIC that are owned directly or indirectly by a U.S. RIC, which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at net asset value, shall be treated as marketable stock for purposes of section 1296. The IRS and Treasury Department invite comments regarding situations where PFIC stock held by other U.S. RICs that publish asset valuations at least annually should not be treated as marketable stock for purposes of section 1296.

Proposed Effective Date

The regulations are proposed to be applicable for shareholders whose taxable years end on or after the date these regulations are published as final regulations in the **Federal Register.** In addition, it is proposed that shareholders may elect to apply these regulations to taxable years beginning after December 31, 1997.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a requirement for the collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Robert Laudeman, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1296(e)–1 also issued under 26 U.S.C. 1296(e). * * *

Par. 2. Section 1.1296(e)–1 is added to read as follows:

§ 1.1296(e)–1 Definition of marketable stock.

(a) *General rule.* For purposes of section 1296, the term *marketable stock* means—

(1) Passive foreign investment company (PFIC) stock that is regularly traded, as defined in paragraph (b) of this section, on a qualified exchange or other market, as defined in paragraph (c) of this section;

(2) Stock in certain PFICs, as described in paragraph (d) of this section; and

(3) Options on stock that is described in paragraph (a)(1) or (2) of this section, to the extent provided in paragraph (e) of this section.

(b) *Regularly traded*—(1) *General rule.* For purposes of paragraph (a)(1) of this section, a class of stock that is traded on one or more qualified exchanges or other markets, as defined in paragraph (c) of this section, is considered to be regularly traded on such exchanges or markets for any calendar year during which such class of stock is traded, other than in de minimis quantities, on at least 15 days during each calendar quarter.

(2) *Anti-abuse rule.* Trades that have as one of their principal purposes the meeting of the trading requirement of paragraph (b)(1) of this section shall be disregarded. Further, a class of stock shall not be treated as meeting the trading requirement of paragraph (b)(1) of this section if there is a pattern of trades conducted to meet the requirement of that paragraph.

(c) *Qualified exchange or other market*—(1) *General rule.* For purposes of paragraph (a)(1) of this section, the term *qualified exchange or other market* means, for any taxable year—

(i) A national securities exchange which is registered with the Securities and Exchange Commission or the national market system established pursuant to section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78f); or

(ii) A foreign securities exchange that is regulated or supervised by a governmental authority of the country in which the market is located and which has the following characteristics—

(A) The exchange has trading volume, listing, financial disclosure, and other requirements designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors; and the laws of the country in which the exchange is located and the rules of the exchange ensure that such requirements are actually enforced; and

(B) The rules of the exchange ensure active trading of listed stocks.

(2) *Exchange with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(d) *Stock in certain PFICs*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, a foreign corporation will be a corporation described in section 1296(e)(1)(B), and paragraph (a)(2) of this section, if the foreign corporation offers for sale or has outstanding stock of which it is the issuer and which is redeemable at its net asset value and if the foreign corporation satisfies the following conditions with respect to the class of shares held by the electing taxpayer—

(i) The foreign corporation has one hundred or more shareholders with respect to the class, other than shareholders who are related under section 267(b);

(ii) The class of shares of the foreign corporation is readily available for purchase by the general public at its net asset value by new investors in initial amounts not greater than $10,000 (U.S.);

(iii) Quotations for the class of shares of the foreign corporation are

determined and published on a daily basis in a widely-available medium, such as a newspaper of general circulation;

(iv) No less frequently than annually, independent auditors must prepare financial statements of the foreign corporation that include balance sheets (statements of assets, liabilities, and net assets) and statements of income and expenses, and those statements must be made available to the public;

(v) The foreign corporation is supervised or regulated as an investment company by a foreign government or an agency or instrumentality thereof;

(vi) The foreign corporation has no senior securities authorized or outstanding, including any debt other than in de minimis amounts;

(vii) Ninety percent or more of the gross income of the foreign corporation for its taxable year is passive income, as defined in section 1297(a)(1) and the regulations thereunder; and

(viii) The average percentage of assets held by the foreign corporation during its taxable year which produce passive income or which are held for the production of passive income, as defined in section 1297(a)(2) and the regulations thereunder, is at least 90 percent.

(2) *Anti-abuse rule.* If a foreign corporation undertakes any action with a principal purpose of manipulating the net asset value of a class of its shares in order to reduce the United States tax under section 1296 of one or more of its shareholders, the class of shares will not qualify as marketable stock for purposes of paragraph (d)(1) of this section.

(e) [Reserved]

(f) *Special rules for regulated investment companies (RICs)*—(1) *General rule.* In the case of any RIC which is offering for sale or has outstanding any stock of which it is the issuer and which is redeemable at net asset value, its stock in any passive foreign investment company which it owns directly or indirectly, as defined in sections 958(a) (1) and (2), shall be treated as marketable stock owned by that RIC for purposes of section 1296.

(2) [Reserved]

(g) *Effective date.* This section applies to shareholders whose taxable year ends on or after the date these regulations are published as final regulations in the **Federal Register** for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year. In addition, shareholders may elect to apply these regulations to any taxable year beginning after December 31, 1997, for stock in a foreign corporation whose taxable year ends with or within the shareholder's taxable year.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1666 Filed 2–1–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–941–86]

RIN 1545–AI33

Withdrawal of Guidance Under Section 1291 Relating to Mark to Market Elections for RICs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of proposed regulations.

SUMMARY: This document withdraws § 1.1291–8 of the notice of proposed rulemaking that was published in the **Federal Register** on April 1, 1992, providing guidance under the passive foreign investment company (PFIC) rules relating to the mark to market election for regulated investment companies (RICs) that are shareholders of PFICs.

DATES: Section 1.1291–8 of the proposed regulations published at 57 FR 11024 (April 1, 1992) is withdrawn February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Laudeman of the Office of Associate Chief Counsel (International), Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224. Telephone (202) 622–3840, not a toll-free number.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 1992 (57 FR 11024), the IRS issued proposed regulations providing, in part, an election under which certain RICs could mark to market their stock in certain PFICs. In the Taxpayer Relief Act of 1997 Congress enacted section 1296(e)(2) of the Internal Revenue Code, which allows certain RICs to elect to mark to market their PFIC stock. Accordingly, the IRS is withdrawing proposed regulations § 1.1291–8. Future guidance will be issued providing rules for all PFIC shareholders, including RICs, on how to mark to market certain PFIC stock.

Drafting Information

The principal author of this withdrawal notice is Robert Laudeman, Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in developing the withdrawal notice.

List of Subjects in Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, § 1.1291–8 of the proposed amendments to 26 CFR part 1 published at 57 FR 11024, April 1, 1992, is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1665 Filed 2–1–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA112–4084; FRL–6229–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Nitrogen Oxides Allowance Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision implements Pennsylvania's portion of the Ozone Transport Commission's (OTC) September 27, 1994 Memorandum of Understanding (MOU) including a regional nitrogen oxides (NO_X) cap and trade program that will significantly reduce NO_X emissions generated within the Ozone Transport Region (OTR). The intended effect of this action is to propose approval of Pennsylvania's regulations implementing Phase II of the OTC's MOU to reduce nitrogen oxides.

DATES: Written comments must be received on or before March 4, 1999.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air

Protection Division, EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103 and Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at fernandez.cristina@epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On December 19, 1997, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its State Implementation Plan (SIP). The revision consists of amendments to Title 25 of the Pennsylvania Code including Chapter 121.01—Definitions and Chapter 123—NO_X Allowance Requirements.

I. Background

The Ozone Transport Commission (OTC) adopted a Memorandum of Understanding (MOU) on September 27, 1994, committing the signatory states to the development and proposal of a two phase region-wide reduction in nitrogen oxides (NO_X) emissions by 1999 and 2003, respectively. As reasonably available control technology (RACT) to reduce NO_X emissions was required to be implemented by May of 1995, the MOU refers to the reduction in NO_X emissions to be achieved by 1999 as Phase II; and the reduction in NO_X emissions to be achieved by 2003 as Phase III. The OTC states include Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, the northern counties of Virginia and the District of Columbia. All of the OTC states, with the exception of the Commonwealth of Virginia, signed the September 27, 1994 MOU. The OTC MOU requires a reduction in ozone season NO_X emissions from utility and large industrial combustion facilities 2 within the Ozone Transport Region (OTR) in order to further the effort to achieve the health-based National Ambient Air Quality Standard (NAAQS) for ozone. In the MOU, the OTC states agreed to propose regulations for the control of NO_X emissions in accordance with the following guidelines:

1. The level of NO_X required would be established from a 1990 baseline emissions level.

2. The reduction would vary by location, or zone, and would be implemented in two phases utilizing a region wide trading program.

3. The reduction would be determined based on the less stringent of each of the following:

a. By May 1, 1999, the affected facilities in the inner zone shall reduce their rate of NO_X emissions by 65% from baseline, or emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is a Phase II requirement.)

b. By May 1, 1999, the affected facilities in the outer zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is a Phase II requirement.)

c. By May 1, 2003, the affected facilities in the inner and outer zones shall reduce their rate of NO_X emissions by 75% from baseline, or shall emit NO_X at a rate no greater than 0.15 pounds per million Btu. (This is a Phase III requirement.)

d. By May 1, 2003, the affected facilities in the Northern zone shall reduce their rate of NO_X emissions by 55% from baseline, or shall emit NO_X at a rate no greater than 0.20 pounds per million Btu. (This is a Phase III requirement.)

A Task Force of representatives from the OTC states, organized through the Northeast States for Coordinated Air Use Management (NESCAUM) and the Mid-Atlantic Regional Air Management Association (MARAMA), was charged with the task of developing a Model Rule that would implement the program defined by the OTC MOU. During 1995 and 1996, the NESCAUM/MARAMA NO_X Budget Task Force worked with EPA and developed a model rule as a template for OTC states to adopt their own rules to implement the OTC MOU. The model was issued May 1, 1996. The model rule was developed for the OTC states to implement the Phase II reductions called for in the MOU to be achieved by May 1, 1999. The model rule does not include the implementation of Phase III.

II. Summary of SIP Revision

Pennsylvania's Chapters 121.01 Definitions and 123—Nitrogen Oxides Allowance Requirements are based upon and are consistent with the "NESCAUM/MARAMA NO_X Budget Rule" issued in May 1, 1996. The model rule was developed by the states in the OTR using the EPA's economic incentive rules (59 FR 16690) which were published on April 7, 1994, as the general regulatory framework.

Pennsylvania Chapter 121.01 has been amended to include definitions for the terms used in Chapter 123—NO_X Allowances Requirements. Chapter 123—NO_X Allowances Requirements and its Appendix A include reduction requirements to implement Phase II of the OTC's MOU. The regulations include provisions for a regional cap and trade program, and establish NO_X emission allowances for each NO_X control period beginning May 1, 1999 through the NO_X control period ending September 30, 2002. The budgeted sources and their NO_X allowances allocations are identified. Pennsylvania Chapter 123—NO_X Allowances Requirements is divided into twenty sections: (1) Purpose; (2) Source NO_X allowance requirements and NO_X allowance control period; (3) General NO_X allowance provisions; (4) Source authorized account representative requirements; (5) Allowance Tracking System (NATS) provisions; (6) NO_X allowance transfer protocol; (7) NO_X allowance transfer procedures; (8) Source emissions monitoring requirements; (9) Source emissions reporting requirements; (10) Source compliance requirements; (11) Failure to meet source compliance requirements; (12) Source operating permit provision requirements; (13) source recordkeeping requirements; (14) General NO_X allocation provisions; (15) Initial NO_X allowance NO_X allocations; (16) Source opt-in provisions; (17) New NO_X affected source provisions; (18) Emission reduction credit provisions; (19) Bonus NO_X allowance awards; (20) Audit. Appendix A to Chapter 123 is where the budgeted sources and their NO_X allowance allocations are identified.

III. Proposed Action

EPA is proposing to approve the Pennsylvania SIP revision for Chapter 121.01—Definitions and Chapter 123—NO_X Allowance Requirements, submitted on December 19, 1997 implementing Phase II of the OTC's MOU to reduce nitrogen oxides. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available upon request from the EPA Regional Office listed in the **ADDRESSES** section of this document.

IV. Administrative Requirements

A. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the proposed approval action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action to approve Pennsylvania's NO_X Allowance Requirements regulations to implement Phase II of the OTC MOU.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 22, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–2445 Filed 2–1–99; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–98–3783; Notice 9]

RIN 2137–AB38

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the next meeting of the negotiated rulemaking committee on qualification of pipeline personnel. In January 1998 this committee concluded a negotiated rulemaking to develop a proposed rule on qualification of pipeline employees performing certain functions on pipelines subject to the pipeline safety regulations. The advisory committee is composed of persons who represent the interests that would be affected by the rule, such as gas pipeline operators, hazardous liquid pipeline operators, representatives of state and federal governments, labor organizations, and other interested parties.

DATES: The Committee will meet from 1:00 pm to 5:00 pm on February 22, 1999, and from 9:00 am to 5:00 pm on February 23, 1999.

ADDRESSES: The Committee will meet at the American Gas Association, 1515 Wilson Boulevard, 11th floor, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail (eben.wyman@rspa.dot.gov) regarding the subject matter of this Notice; or the Dockets Unit, (202) 366-4453, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION: On October 27, 1999, OPS published a Notice of Proposed Rulemaking (NPRM), Qualification of Pipeline Personnel (63 FR 57269). The comment period ended on December 28, 1998. The negotiated rulemaking advisory committee that developed this NPRM will reconvene at this meeting to discuss comments received regarding the NPRM, and will work to prepare the final rule. This meeting is open to the public. RSPA expects this will be the final meeting of the advisory committee on operator personnel qualification.

Issued in Washington, DC on January 27, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–2415 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 64, No. 21
Tuesday, February 2, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Continental Grain Company of Chicago, Illinois, an exclusive license to U.S. Patent No. 5,807,546 issued on September 15, 1998, entitled "Livestock Mucosal Competitive Exclusion Culture to Reduce Enteropathogenic Bacteria." Notice of Availability was published in the **Federal Register** on August 7, 1997.

DATES: Comments must be received on or before April 5, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Continental Grain Company submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 99–2429 Filed 2–1–99; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Duck-Sheriff Project, Allegheny National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Allegheny National Forest (ANF), will prepare an Environmental Impact Statement to disclose the environmental consequences of the proposed Duck-Sheriff project.

The purpose of this project is to move the ANF from the existing condition towards the desired future condition (DFC) as detailed in the Allegheny National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan allocates land to management where wood production is one of the featured objectives (Management Area [MA] 3.0). Equally important, the Forest Plan allocates land to management that emphasizes wildlife and recreation (MA 6.1). The Duck-Sheriff project contains both of these management areas.

In order to move toward the DFC, the acres in early successional age class (0–20 year age) need to increase; healthy forested stands capable of producing high quality, high value sawtimber need to be maintained; and understories dominated by fern, grass or undesirable vegetation need to develop desirable seedlings. Project proposals include timber harvesting as a means for making desired changes to forest vegetation and satisfying the demonstrated public need for wood products. Management actions necessary to meet the purpose and need include: 1,364 acres of regeneration harvest to ensure future forests; herbicide, fertilizer, fencing, mechanical site preparation, and/or planting to ensure seedling establishment and growth in understories. An additional 1,842 acres of intermediate harvests are planned to reduce the competition for light and nutrients, thereby improving the health, vigor, and growth of residual trees and to restore the understory within mature forests. Activities associated with these silvicultural practices include 3 miles of new road construction, 28 miles of road restoration, 9 miles of road betterment, and 7 acres of stone pit development to provide an adequate long-term transportation system.

Additional areas need to be designated for management of late successional values, riparian areas need protection and enhancement, sections of the North Country Trail need improvement, water borne recreation needs enhancement, wildlife habitat needs improvement, and interpretation of wildland heritage needs to be increased. Project proposals (management actions) were designed to address these needs.

During project analysis issues will be identified that focus on the management of the area. Alternatives will be developed to show various ways to address the issues. This process is driven by comments received from the public, other agencies, and internal Forest Service concerns. To assist in commenting, a scoping letter providing more detailed information on the project proposal has been prepared and is available to interested parties.

After analysis, the responsible official will select an alternative that maximizes net public benefits for the Duck-Sheriff Project area.

DATES: Comments, suggestions, and recommendations for achieving the purpose and need for the Duck-Sheriff Project are now being accepted. The public comment period will be for 30 days from the date this notice is published in the **Federal Register**. Comments and suggestions should be submitted in writing and postmarked by March 4, 1999 to ensure timely consideration.

CONTACT PERSONS & ADDRESSES: Submit written comments and suggestions concerning the proposed action to: "Duck-Sheriff Project", attention Sue Wingate—ID Team Leader, Bradford Ranger District, HC1 Box 88, Bradford, PA 16701. For further information, contact Sue Wingate @ (814) 362–4613. The responsible official for this project is John R. Schultz, District Ranger,

Bradford Ranger District, HC1 Box 88, Bradford, PA 16701.

SUPPLEMENTARY INFORMATION: The analysis of the Duck-Sheriff project is conducted under the guidance of the National Environmental Policy Act and the Allegheny National Forest Land and Resource Management Plan. Preliminary issues were developed based on past public involvement on other projects, known concerns of other agencies, interdisciplinary team identification of Forest Service concerns, and identified opportunities in the project area. The following issues will be carried forward in the project analysis. They will be modified as additional issues are identified during scoping: (1) Road management and new access; (2) deer densities and investments to restore desireable understory vegetation; (3) vegetation treatments along the North Country Trail; (4) uneven-aged timber management; and (5) old-growth forest and contiguous canopy.

Preliminary alternatives were developed to display management opportunities in response to the known issues. Management actions within the alternatives respond to the issues in different ways by varying the size and intensity of the treatments and projects proposed. The amount of even and uneven-aged management, wildlife, recreation development, road management, watershed rehabilitation and other activities differ within the alternatives. The combinations of proposed activities are likely to be adjusted after all comments are reviewed.

Comments considered beyond the scope of this project which will *not* be evaluated. This includes whether or not commercial timber harvest should occur on National Forest System lands; the validity of the science of silviculture and forest management; and whether or not to allow the use of herbicides on the Allegheny National Forest on a programmatic level.

Commenting

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. In a recent legal opinion, the Forest Service's Office of General Council (OGC) has determined that names and addresses of people who respond to a Forest Service solicitation are not protected by the Privacy Act and can be released to the public. The Forest Service routinely gives notice of and requests comments on proposed land and resource management actions accompanied by environmental documents, as well as on proposed rules and policies. Comments received in response to such solicitations, including names and addresses of those who comment, will be considered part of the public record and will be available for such inspection, upon request. Any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. The opinion states that such confidentiality may be granted in only very limited circumstances, such as to protect trade secrets.

The Draft EIS is expected to be filed with the Environmental Protection Agency and to be available for public review by May 15, 1999. At that time the Environmental Protection Agency will publish a notice of availability of the document in the Federal Register. A public comment period on the Draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the Draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement. The Final EIS is scheduled to be completed by September 15, 1999. The decision will be subject to appeal under 36 CFR 215.

Dated: January 27, 1999.

John R. Schultz,

District Ranger.

[FR Doc. 99–2377 Filed 2–1–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Douglas-Fir Beetle Project; Idaho Panhandle National Forests, Bonner, Kootenai, Shoshone Counties, Idaho and Pend Oreille County, Washington; Colville National Forest, Pend Oreille County, Washington

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service published in the **Federal Register**/Vol. 63, No. 221/, Tuesday, November 17, 1998, pages 63830 to 63833 two notices of intent to prepare an environmental impact statement (EIS) to disclose the potential environmental effects of proposed activities in forest stands infested with Douglas-fir beetles. This revision changes the designation of the responsible officials. Also the two EIS projects, Pend Oreille Priest Beetle (63880–63831) and Coeur d'Alene Beetle (63831–63833), published in the **Federal Register**, November 17, 1998 have been consolidated into one EIS designated, Douglas-fir Beetle Project. No other changes to the two published notices of intent are being made with this revision.

We are the responsible officials for this environmental impact statement and will decide which projects will be implemented Addresses are: Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, ID 83817–8363 and Colville National

Forest, 765 S. Main Street, Colville, WA 99114.

Dated: January 6, 1999.

David J. Wright,

Forest Supervisor, Idaho Panhandle National Forests.

Dated: January 6, 1999.

Robert L. Vaught,

Forest Supervisor, Colville National Forest.

[FR Doc. 99–2387 Filed 2–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth Ridge Trail and Improvement Project, Okanogan and Wenatchee National Forests, Okanogan and Chelan Counties, Washington

AGENCY: Forest Service, USDA.

ACTION: Cancellation of an environmental impact statement.

SUMMARY: On December 29, 1997, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Sawtooth Ridge Trail and Improvement Project in the Sawtooth non-wilderness backcountry of the Okanogan and Wenatchee National Forests was published in the **Federal Register** (62 FR 67616). The Forest Service will not be conducting this environmental analysis for this proposed action; therefore, the NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this cancellation to Jim Archambeault, Project Coordinator, Methow Valley Ranger District, P.O. Box 188, Twisp, Washington 98856, phone 509–997–9738.

Dated: January 20, 1999.

Sam Gehr,

Forest Supervisor, Okanogan National Forest.

Dated: January 25, 1999.

Sonny O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 99–2378 Filed 2–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Committee of Scientists is changing the date of a public teleconference call previously scheduled for February 4, 1999 (64 FR 3063, January 20, 1999). This telephone conference call will take place instead on Tuesday, February 9, beginning at noon (12:00 p.m.) and ending at 3:00 p.m. (eastern standard time). The purpose of the telephone conference call is for the Committee of Scientists to continue discussion of its report and recommendations to the Secretary of Agriculture and the Chief of the Forest Service concerning improvements to the National Forest System land and resource management planning process. The public is invited to attend the teleconference call and may be provided an opportunity to comment on the Committee of Scientists' deliberations during the teleconference call, only at the request of the Committee.

DATES: The teleconference call will be held on Tuesday, February 9, from noon (12:00 p.m.) to 3:00 p.m. (eastern standard time).

ADDRESSES: The teleconference call will be held at the USDA Forest Service headquarters, Sidney R. Yates Federal Building, 201 14th Street, S.W., Washington, D.C., in the Chief's Conference Room on February 9. The teleconference call can be accessed at all Regional Offices of the Forest Service, which are listed in the table under **SUPPLEMENTARY INFORMATION.**

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339, or via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the teleconference, contact Bob Cunningham, Designated Federal Official to the Committee of Scientists, by telephone (202) 205–1523.

SUPPLEMENTARY INFORMATION: The public may attend the teleconference at the following field locations:

USDA FOREST SERVICE REGIONAL OFFICE LOCATIONS

Region 1, Northern Region	Federal Building, 200 E Broadway	Missoula, MT.
Region 2, Rocky Mountain Region	740 Simms St	Golden, CO.
Region 3, Southwestern Region	Federal Building, 517 Gold Ave., SW	Albuquerque, NM.
Region 4, Intermountain Region	Federal Building, 324 25th St	Ogden, UT.
Region 5, Pacific Southwest Region	630 Sansome St	San Francisco, CA.
Region 6, Pacific Northwest Region	333 SW 1st Ave	Portland, OR.
Region 8, Southern Region	1720 Peachtree Rd. NW	Atlanta, GA.
Region 9, Eastern Region	310 W. Wisconsin Ave., Room 500	Milwaukee, WI.
Region 10, Alaska Region (office will open early)	Federal Office Building, 709 W. 9th St	Juneau, AK.

The Committee of Scientists was chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997 (62 FR 65795).

Dated: January 27, 1999.

Gloria Manning,

Acting Deputy Chief for National Forest System.

[FR Doc. 99–2386 Filed 2–1–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality Meeting

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of meeting.

SUMMARY: The reestablished Task Force on Agricultural Air Quality will meet for the first time to discuss the relationship between agricultural

production and air quality. Special emphasis will be placed on promoting a greater understanding of agriculture's impact on air quality and the role it plays in the local and national economy. The meeting is open to the public.

DATES: The meeting will convene Wednesday, March 3, 1999 at 9:00 a.m. and continue until 4:00 p.m. The meeting will resume Thursday, March 4, 1999 from 9:00 a.m. to 3:00 p.m. Written material and requests to make oral presentations should reach the Natural Resources Conservation Service on or before February 26, 1999.

ADDRESSES: The meeting will be held at the U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC, telephone (202) 720–4525. Written material and requests to make oral presentations should be sent to George Bluhm, University of California, Land, Air, Water Resources, 151 Hoagland Hall, Davis, CA 95616–6827.

FOR FURTHER INFORMATION: Questions or comments should be directed to George Bluhm, Designated Federal Official, telephone (530) 752–1018, fax (530) 752–1552, email bluhm@crocker.ucdavis.edu.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the March 3–4, 1999 meeting that may appear after this **Federal Register** Notice is published, may be found on the World Wide Web at http://www.nhq.nrcs.usda.gov/faca/aaqtf.html.

Draft Agenda of the March 3–4, 1999 Meeting

A. Introduction to the Task Force
1. Member introductions
2. Task Force charge
3. FACA rules

B. Plenary
1. Agricultural air quality issues
2. Organization of the Task Force

C. Old business
1. Minutes of the August 18, 1998 AAQTF meeting
2. Recommendations to the Secretary of Agriculture on the voluntary program and research priorities
3. Subcommittee on Agricultural Burning report to the AAQTF

D. New business
1. EPA's draft implementation guidance for the revised ground-level ozone and particulate matter NAAQS and a regional haze program

E. Set date and location for next meetings

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may present oral presentations during the March 3–4, 1999 meeting. Persons wishing to make oral presentations should notify George Bluhm no later than February 26, 1999. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 25 copies to George Bluhm no later than February 26, 1999.

Information on Services For Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact George Bluhm as soon as possible.

Dated: January 27, 1999.

Lawrence E. Clark,

Deputy Chief for Science and Technology, Natural Resources Conservation Service.

[FR Doc. 99–2362 Filed 2–1–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1999 Knowledge, Attitudes, and Perception Survey.

Form Number(s): KAP–1.

Agency Approval Number: Not available.

Type of Request: New collection.

Burden: 167 hours.

Number of Respondents: 1,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The Census Bureau plans to conduct the 1999 Knowledge, Attitudes, and Perception (KAP) Survey to gather and benchmark useful and fundamental data about the public's perception of government information collection, our dissemination, and the use of the statistics collected. This research will be used by the Census Bureau to improve communications with the public, in general, and to reduce barriers to census or survey response. The information about the public's knowledge, attitudes, and perceptions will be evaluated and communications transformed to dispel myths, appropriately address issues, and to increase awareness. A contractor will survey 1,000 residents of households in the United States through random-digit-dialed telephone interviews. The questionnaire will contain tested questions asked in earlier and similar Census Bureau sponsored surveys. Individuals will be asked their knowledge, opinions, and ideas about various government agencies and their programs, with emphasis on the Census Bureau and the decennial censuses and surveys.

Affected Public: Individuals or households.

Frequency: One-time collection.

Respondent's Obligation: Voluntary.

Legal Authority: Title 15, United States Code, Sections 1515, 1516, and 1516a.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 28, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–2406 Filed 2–1–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 12/16/98–1/21/99

Firm name	Address	Date petition accepted	Product
Electro-Chem Etching Co., Inc	5706 Green Ash Dr., Houston, TX 77081	12/28/98	Multi-Layered Printed Circuit Boards.
Corey Associates, Inc	P.O. Box E, Greentown, PA 18426	12/31/98	Thermister Sensors; Electronic Cable Harness.
Tingstol Company	1600 Busse Road, Elk Grove Village, IL 60007	12/31/98	Printed Circuit Boards.
Vivan Alexander, Inc	6165 Picard Lane, Maurice, LA 70555	12/31/98	Gold Plated Decorative Boxes.
Burley Design Cooperative	4020 Steward Road, Eugene, OR 97402	01/04/99	Bicycle Trailers.
Dowcraft Corporation	221 Lister Avenue	01/12/99	Metal Partitions; Metal Doors.
Hawaii Nurseries, Inc	P.O. Box 4142, Hilo, HI 96720	01/15/99	Potted Plants and Foliage.
Tropical J'S, Inc	5 Sand Island Access Rd., Honolulu, HI 96819	01/12/99	Outdoor Umbrellas and Awnings.
The Worcester Company, Inc	1 Greystone Avenue, N. Providence, RI 02911	01/15/99	Woven Wool Fabric.
MRA Laboratories, Inc	96 Marshall Street, North Adams, MA 01247	01/19/99	Ceramic Powder and Electrode Conductor Links.
Atlas Tool and Die Company, Inc	42 Marway Circle, Rochester, NY 14624	01/14/99	Transmission Shafts, Cranks, Cranks and Torque Converters.
American Fittings, Inc	P.O. Box 1007, Travelers Rest, SC 29690	01/21/99	Flanges and Fittings for Pipes and Tubing.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: January 25, 1999.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 99–2379 Filed 2–1–99; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Francisco Javier Ferreiro-Parga; Order Denying Permission To Apply for or Use Export Licenses

On December 12, 1997, Francisco Ferreiro-Paraga (Ferreiro-Pargo) was convicted in the United States District Court for the Southern District of Florida on, *inter alia*, one count of violating the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 (1991 & Supp. 1998)) (IEEPA). Ferreiro-Parga was convicted of knowingly, willfully, and unlawfully exporting and causing to be exported two containers of goods, to Ria Haina, Dominican Republic, under a false bill of lading, from where the containers of goods were transshipped to Havana, Cuba, without the required export license.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. §§ 2401–2420 (1991 & Supp. 1998)) (the Act),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of violating the IEEPA, or certain other provisions of the United States Code, shall be eligible to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act or the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (1998)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any license issued pursuant to the Act in which such a person had any interest at the time of conviction may be revoked.

Pursuant to Sections 766.25 and 750.8(a) of the Regulations, upon notification that a person has been convicted of violating the IEEPA, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, and shall also determine whether to revoke any license previously issued to such a person.

Having received notice of Ferreiro-Parga's conviction for violating the IEEPA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Ferreiro-Parga permission to apply for or use any license, including any License Exception, issued pursuant to, or provided by, the Act and the Regulations, for a period of 10 years

[1] The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)), and August 13, 1998 (63 Fed. Reg. 44121, August 17, 1998), continued the Export Administration Regulations in effect under the IEEPA.

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

from the date of his conviction. The 10-year period ends on December 12, 2007. I have also decided to revoke all licenses issued pursuant to the Act in which Ferreiro-Parga had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until December 12, 2007, Francisco Javier Ferreiro-Parga, Plaza de Maria Pita 21, Piso 2d, La Coruna, Spain, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Ferreiro-Parga by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until December 12, 2007.

VI. A copy of this Order shall be delivered to Ferreiro-Parga. This Order shall be published in the **Federal Register**.

Dated: January 25, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–2434 Filed 2–1–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation of Changed Circumstances Review of the Antidumping Duty Order, Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke order in part.

SUMMARY: In accordance with 19 CFR 351.216(b), Uchiyama America, Inc ("Uchiyama"), an interested party in this proceeding, requested a changed circumstances review. In response to Uchiyama's request, the Department of Commerce (the Department) is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Doreen Chen or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0408, (202) 482–3818, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997)).

SUPPLEMENTARY INFORMATION:

Background

On December 11, 1998, Uchiyama requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Uchiyama requested that the Department revoke the order with respect to imports of the following subject merchandise: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate. Uchiyama, a domestic manufacturer of rubber seals and metal inserts for ball bearings, is an importer of the products in question. On

January 19, 1999, Bethlehem Steel Corporation (Bethlehem), Inland Steel Industries, Inc. (Inland), LTV Steel Company (LTV), National Steel Corporation (National), and U.S. Steel Group, A Unit of USX Corporation (U.S. Steel), domestic interested parties in this case, submitted a letter indicating that they have no objection to the initiation of this changed circumstances review and no interest in maintaining the antidumping duty order on corrosion-resistant carbon steel flat products from Japan with respect to products having the dimensions indicated above. Based on the fact that this portion of this order is no longer of interest to domestic parties, we intend to partially revoke this order.

Initiation of Changed Circumstances Antidumping Duty Review, and Intent To Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may partially revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances administrative review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements of no interest by Bethlehem, Inland, LTV, National, and U.S. Steel in continuing the order with respect to corrosion-resistant carbon steel flat products with (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate, we are initiating this changed circumstances review. Furthermore, we determine that expedited action is warranted, and we preliminarily determine that the continued relief provided by the order with respect to corrosion-resistant carbon steel flat products within the width and thickness range mentioned above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order with respect to imports of corrosion-resistant carbon steel flat products of the above-mentioned width, thickness, coating range, and coating composition from Japan.

If final revocation in part occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to antidumping duties, and to refund any estimated antidumping duties collected for all entries of corrosion-resistant carbon steel flat products, with the dimensions indicated above, made on or after the date of publication in the **Federal Register** of the final results of this review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on corrosion-resistant carbon steel flat products, with the dimensions indicated above, will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request disclosure within 5 days of the date of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held no later than 28 days after the date of publication of this notice, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than 21 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments. This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: January 25, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–2456 Filed 2–1–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–815]

Preliminary Determination of Sales at Less Than Fair Value and Preliminary Negative Critical Circumstances Determination: Elastic Rubber Tape from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai, Craig W. Matney, or Alysia Wilson, Office 1, Group I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4087, (202) 482–1778, or (202) 482–0108, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations

to the Department of Commerce's ("the Department's") regulations are to the regulations at 19 CFR part 351 (April 1, 1998).

Preliminary Determination

We preliminarily determine that elastic rubber tape ("ERT") from India is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on September 8, 1998 (*see Notice of Initiation of Antidumping Duty Investigation: Elastic Rubber Tape from India*, 63 FR 49546 (September 16, 1998) ("*Notice of Initiation*")), the following events have occurred:

On October 15, 1998, the International Trade Commission ("ITC") published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from India of the subject merchandise (63 FR 55407).

On October 9, 1998, the Department issued the antidumping duty questionnaire to Garware Elastomerics Limited ("GEL"), the only producer/exporter of ERT in India. GEL submitted its responses to Section A on November 6, 1998, and then Sections B and C of the questionnaire on November 23, 1998. Also on November 23, 1998, the Department requested that GEL report the value and volume of its imports into the United States during the period of April through December 1998 in connection with the petitioners' allegation of critical circumstances. GEL submitted this information to the Department on December 9, 1998, and additional export data on December 29, 1998.

On December 17, 1998, the Department issued a supplemental questionnaire to GEL. GEL submitted part of its supplemental response on December 29, 1998, and the remainder on January 11, 1999.

On December 23, 1998, the Department received a timely allegation by Fulflex, Inc., Elastomer Technologies Group, Inc., and RM Engineered Products, Inc., (referred to hereinafter as "the petitioners") that GEL made sales in its home market below the cost of production. On the basis of the information contained in the petitioners' allegation, we initiated a sales-below-cost investigation (see Memorandum to Susan Kuhbach, January 26, 1999):

Scope of the Investigation

For purposes of this investigation, the product covered is elastic rubber tape. Elastic rubber tape is defined as vulcanized, non-cellular rubber strips, of either natural or synthetic rubber, 0.006 inches to 0.100 inches (0.15 mm to 2.54 mm) in thickness and ⅛ inches to 1⅝ inches (3 mm to 42 mm) in width. Such product is generally used in swim wear and underwear.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 4008.21.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is July 1, 1997, through June 30, 1998.

Adverse Facts Available

On October 9, 1998, the Department issued a questionnaire to GEL requesting, among other things, the variable cost-of-manufacture data and total unit cost of manufacture for the U.S. and home market sales. GEL requested an extension for the due date of the questionnaire response. The Department granted the extension. However, GEL did not supply the variable cost data and total unit cost data in its response nor did it indicate that it was unable to compile this information within the deadline or otherwise. On December 17, 1998, the Department issued a supplemental questionnaire requesting this data and additional data. GEL requested an extension of this questionnaire deadline, which the Department granted. However, GEL did not submit the variable cost data and total unit cost data by the extended deadline. For more information, see Memo to the File, "Time Extension for Supplemental Questionnaire and Variable Cost of Manufacture Data," dated January 4, 1999 and Memo to the File "Missing Variable Cost of Manufacture Data," dated January 12, 1999.

Because GEL failed to respond to our requests for the variable cost-of-manufacture and total unit cost data as requested in the original and supplemental questionnaires, we are unable to calculate a difference-in-merchandise adjustment to use in our price-to-price comparison when there are no sales of identical products in the home market to compare to U.S. sales. Accordingly, we must resort to facts available for this information. Section 776(a) of the Act states that (a) in general, if an interested party or any other person, fails to provide information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, the Department shall, subject to 782(d), use the facts otherwise available in reaching the applicable determination under this title. Because GEL failed to provide the necessary variable cost-of-manufacture data, under section 776(a)(2)(B) of the Act, the Department is required to apply, subject to sections 782(c)(1), (d) and (e), the facts otherwise available.

Section 782(c)(1) of the Act provides that, if an interested party, promptly after receiving a request from the Department for information, notifies the Department that it is unable to submit the information in the requested form and manner and submits a full explanation and suggested alternative forms in which such party is able to submit the information, the Department shall consider the ability of the interested party to submit the information in the requested form and manner, and it may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party. In the instant proceeding, GEL did not indicate that it could not submit the variable and total cost-of-manufacture data in the form or manner requested.

Nevertheless, in accordance with section 782(d) of the Act, we again asked GEL to provide this information in our December 17, 1998, supplemental questionnaire. GEL did not provide the requested data in its response to the supplemental questionnaire, even though we granted an extension of the due date for the response. We notified the respondent that its request to extend further the due date for this material to January 29, 1999, was unacceptable because this information was necessary to perform calculations for a preliminary determination due three days prior to GEL's proposed date. For more information, see Memo to the File, "Time Extension for Supplemental Questionnaire and Variable Cost of Manufacture Data," dated January 4, 1999. Thus, in accordance with section 782(d) of the Act, we provided GEL an opportunity to remedy or explain its deficiencies.

Finally, section 782(e) of the Act provides that the Department, when reaching its determination, shall not decline to consider information provided by the respondent that is

already on the record. Accordingly, the Department used the information GEL submitted to calculate the preliminary dumping margin on sales with identical matches and has applied facts available only to U.S. sales with non-identical matches.

Therefore, in accordance with section 776(a) of the Act, the use of facts available for GEL's variable cost-of-manufacture and total unit cost data is required in this case. In selecting the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with requests for information. See also, Statement of Administrative Action accompanying the URAA, H. Rep. No. 103–316 ("SAA"), at 870.

GEL did not provide the information as requested in our questionnaires, despite various extensions of the deadlines for the submission of this information. Therefore, we have determined that GEL has failed to cooperate by not acting to the best of its ability to comply with our request for information. In its response to our first request for this information, GEL indicated that it was not providing the variable and total cost information as requested. GEL's offer to submit this information in response to the possible initiation of a cost-of-production ("COP") investigation does not excuse its failure to provide the data in the time and manner requested. This information was needed to perform calculations for the preliminary determination. The cost allegation was not made until December 14, 1998, and the Department did not initiate a cost investigation until January 26, 1999. Therefore, at the time GEL completed its original response to the Department, it was unaware that a COP questionnaire would be issued. We find that GEL did not cooperate to the best of its ability and, therefore, pursuant to section 776(b) of the Act, we have used an adverse inference when selecting from among the facts otherwise available. As adverse facts available, we are assigning a dumping margin of 66.51 percent, derived from the petition, for those U.S. sales which did not have identical matches in the home market. See, the *Notice of Initiation*.

Section 776(c) of the Act directs that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. When analyzing the petition prior to the initiation of this investigation, we reviewed all of the data upon which the petitioners relied in calculating the estimated dumping margins, and we adjusted those calculations where necessary. *See* Initiation Checklist dated September 8, 1998. The estimated dumping margin of 66.51 percent was based on the highest price-to-price margin contained in the petition, as adjusted by the Department. For purposes of this preliminary determination, we have corroborated that estimated margin. *See, Notice of Initiation* and Memorandum from Team to Susan Kuhbach, dated January 26, 1999, for a detailed explanation of corroboration of the information in the petition.

Date of Sale

In their December 9, 1998 submission, the petitioners objected to GEL's use of date of invoice as the date of sale. The petitioners argued that, given the fact that GEL begins production of subject merchandise pursuant to a purchase order, the purchase-order date is the date when the material terms of sale are set and, thus, the appropriate date to use as the date of sale. They further argue that the Department's dumping margin calculation would be distorted by using GEL's reported date of sale due to the significant fluctuations in the exchange rate during the POI.

After a review of the petitioners' comments and the method by which GEL made sales in both the home market and U.S. market, we preliminarily determine that the date of invoice is the appropriate date of sale in this investigation.

Section 351.401(i) of our regulations states that, in identifying the date of sale,

> [t]he Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

According to GEL's response, product mix, product specifications, destination, and the quantity of a customer's original order can change until the date of shipment, which is the same as the company's date of invoice. Additionally, GEL indicated that the order can be canceled as late as the date of shipment or invoice date. Consequently, we have used the invoice date as the date of sale for GEL for purposes of this preliminary determination.

We intend to verify GEL's claims concerning changes between the date of shipment and the date of invoice. Based upon the outcome of our verification, we will determine whether it is appropriate to continue to use the date of invoice as the date of sale. We will consider whether, in fact, there were any changes to the material terms between the original order and the date of invoice. *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand*, 63 FR 7392 at 7394–7395 (February 13, 1998).

Critical Circumstances

The petitioners alleged in the petition that critical circumstances exist with respect to imports of ERT from India. In accordance with 19 CFR 351.206(c)(2)(i), since this allegation was filed at least 20 days prior to our preliminary determination, we must issue our preliminary critical circumstances determination not later than the preliminary determination.

Section 733(e)(1) of the Act provides that, if a petitioner alleges critical circumstances, the Department will determine whether there is a reasonable basis to believe or suspect that (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

With respect to the second criterion, whether imports of ERT have been massive over a relatively short period, GEL submitted its U.S. sales import data for subject merchandise for an eight-month period beginning with April 1998 and ending with November 1998. Section 351.206(h) states that, unless the imports during a "relatively short period" have increased by at least 15 percent over the imports during a period immediately preceding the filing of the petition, the Secretary will not consider the imports massive. Furthermore, the Secretary will normally consider a "relatively short period" the period beginning on the date the proceeding begins and ending at least three months later. We compared GEL's exports in the three-month period September through November 1998 (post-petition period) to its exports in the three months prior to the filing of the petition, June through August 1998. This comparison indicates that there was a decrease in GEL's

exports to the United States in the post-petition period.

Based on these facts, we determine that the second criterion for finding that critical circumstances exist is not satisfied. Therefore, we preliminarily determine that critical circumstances do not exist with respect to exports of ERT from India by GEL. As a result, we have not analyzed information pertaining to the first criterion. We will make a final determination concerning critical circumstances when we make our final determination in this investigation.

Affiliation

For the purposes of this preliminary determination, the Department finds that GEL and Elastomer Inc. (EI), a U.S. reseller of subject merchandise, are affiliated parties. Section 771 (33)(G) of the Act states that "(a)ny person who controls any other person * * *" is affiliated with that person. The statute explains further that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." In determining control, the Department considers the following factors, among others: debt financing; franchise or joint venture agreements; corporate or family groupings; close supplier relationship in which the supplier or buyer becomes reliant upon the other. However, control will not exist on the basis of these factors unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. *See* 19 CFR 351.102(b).

In the instant proceeding, information on the record indicates that GEL's relationship with EI has the potential to affect decisions regarding the pricing of subject merchandise. Additionally, the nature of the relationship calls into question whether EI has a distinct operating personality outside its relationship with GEL. Specific information supporting our conclusion cannot be addressed in the notice due to its proprietary nature. For more information, *see* Memorandum to Richard W. Moreland From Case Team "Affiliation of GEL and Elastomer," dated January 20, 1999.

Fair Value Comparisons

To determine whether sales of ERT from India to the United States were made at less than fair value, we compared the export price ("EP") or the constructed export price ("CEP") to the normal value ("NV"), as described below in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice where the products were identical. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs. Where there were no home market sales of merchandise identical to the merchandise being sold in the United States, we applied the 66.51 percent rate described above in the "Adverse Facts Available" section of this notice.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We reviewed information from GEL regarding the marketing stage involved in the reported home market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the SAA at 827, in identifying LOTs for EP and home market sales, we considered the selling functions reflected in the starting prices before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. We expect that, if claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Based on an analysis of the selling functions, class of customers, and level of selling expenses for GEL's EP and CEP sales, we found that sales were made at a single stage in the marketing process in both the home market and the United States. However, we found that the stage of the marketing process in the home market and that in the United States were substantially dissimilar. In particular, we found GEL's home market sales involved greater selling activities than its U.S. sales. Some of the activities that GEL performs for its home market sales in excess of those its performs for U.S. sales include calling on new customers, making site visits to existing clients and the provision of post-sale services. We also note that GEL sells to end-users in the home market while its U.S. EP customers and its U.S. importer for its CEP sales are all resellers. Therefore, we have preliminarily found that sales in both markets are at different LOTs.

While we have found GEL's home market and U.S. sales to be at different levels of trade, there is no information on the record of this investigation to provide an appropriate basis for determining a LOT adjustment. In addition, as described above, we have preliminarily found the LOT in the home market to be more remote than that in the United States. Based on the foregoing, we are granting GEL a CEP offset pursuant to section 773(a)(7)(B) of the Act.

United States Price

GEL claimed an upward adjustment to its U.S. price for a "duty drawback" program. As stated in *Certain Welded Carbon Standard Steel Pipes and Tubes from India* (62 FR 47632 at 47635), September 10, 1997, we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent meets both parts of our two-part test. There must be (1) a sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product. Because GEL has not provided adequate information to meet either part of the test, we have not made an adjustment to EP or CEP. We will issue a supplemental questionnaire seeking additional documentation regarding

whether GEL's use of this program meets our two-part test, and we will revisit this issue for our final determination.

Export Price

For GEL's sales not made through its affiliate, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and because CEP methodology was not otherwise indicated. We based EP on the packed prices to the unaffiliated purchaser in the United States. In accordance with section 772(c)(2)(A) of the Act, we made deductions, where appropriate, from the starting price for foreign inland freight, international freight, marine insurance, U.S. customs duty, and brokerage and handling. We also made a deduction, where appropriate, for rebates.

Constructed Export Price

For GEL's sales through its U.S. affiliate, we used CEP methodology, in accordance with section 772(b) of the Act, because the first sale of subject merchandise to an unaffiliated purchaser was made by GEL's affiliate in the United States. We based CEP on the packed, delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made deductions for discounts. We also made deductions for the following movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act: foreign inland freight, brokerage and handling, international freight, marine insurance, U.S. customs duties, U.S. inland freight, and U.S. warehouse expenses. In accordance with section 772(d)(1) of the Act, we deducted selling expenses associated with economic activities occurring in the United States, including direct selling expenses, inventory carrying costs, and other indirect selling expenses. Section 772(d)(3) of the Act directs the Department to deduct profit allocated to the CEP sale. However, we note that GEL did not make a profit during the POI. Therefore, no profit was deducted.

Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared GEL's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise. As respondent's aggregate volume of home market sales of the foreign like product exceeded five percent of its aggregate volume of U.S. sales for the subject merchandise, we have determined that the home market is viable for GEL, in accordance with section 773(a)(1)(C) of the Act.

Normal Value

We based NV on packed, delivered prices to unaffiliated customers in the home market. We made deductions, where appropriate, from the starting price for inland freight, inland insurance, pursuant to section 773(a)(6)(B) of the Act.

We also made deductions, where appropriate, for discounts. We made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on home market sales. Since GEL had no U.S. direct selling expenses other than those we deducted from the starting price in calculating CEP pursuant to section 772(d) of the Act, we made no additions to NV in making COS adjustments. We also made adjustments, where applicable, to offset commissions in CEP calculations in accordance with 19 CFR 351.410(e). Where commissions were paid on sales of a particular U.S. product but not on the home market comparison product, we made our adjustments by subtracting commissions from U.S. price and then deducting from NV the lesser of the amount of commissions paid on the U.S. product or the amount of indirect selling expenses incurred on home market sales of the comparison product, including inventory carrying costs. Conversely, where commissions were paid on sales of the home market comparison product but not on the U.S. product, we subtracted commissions from NV and then deducted from U.S. price the amount of indirect selling expenses, including inventory carrying costs. In addition, pursuant to sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Cost of Production

Based on a timely allegation by the petitioners on December 23, 1998, we initiated an investigation of sales below COP with respect to GEL's home market sales pursuant to section 773(b) of the Act (*see* January 26, 1999, *Memorandum to Susan Kuhbach from Team).* As a result of the Department's COP investigation, the Department requested that GEL answer Section D of the original questionnaire concerning the COP of merchandise sold in the home market. Due to the timing of the initiation of our COP investigation, we are unable to include a COP analysis in this preliminary determination. However, we intend to issue a COP analysis memorandum for GEL prior to verification and we will conduct a cost verification.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773(A) of the Act.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export or constructed export price. We preliminarily determine that the weighted-average margin for GEL is 62.01 percent. Because we only investigated one producer/exporter, GEL's rate will also serve as the "all others" rate. The suspension-of-liquidation instructions will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than March 5, 1999, and rebuttal briefs no later than March 10, 1999. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such

summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on March 15, 1999, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination no later than April 12, 1999.

This determination is issued and published in accordance with sections 733(d) and 777(i)(1) of the Act.

Dated: January 26, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–2455 Filed 2–1–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Initiation of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper antidumping duty administrative review.

SUMMARY: The Department of Commerce has received a request for a new shipper review of the antidumping duty order on polyethylene terephthalate, film, sheet,and strip (PET film) from the Republic of Korea issued on June 5, 1991. In accordance with our regulations, we are initiating a new shipper review covering Hyosung Corporation (Hyosung).

EFFECTIVE DATE: February 2, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (62 FR 27295, May 19, 1997).

Background

The Department received a timely request, in accordance with section 751(a)(2)(B) of the Tariff Act and 19 CFR 351.214(b) of the Department's regulations, for a new shipper review of the antidumping duty order on PET film Korea, which has a June anniversary date. (*See* Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; 56 FR 25669 (June 5, 1991).)

Initiation of Review

Pursuant to the Department's regulations at 19 CFR 351.214(b), Hyosung certified in its December 30, 1998 submission that it did not export merchandise to the United States during the period of the investigation (POI) (November 1, 1989 through April 30, 1990), and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. Hyosung submitted documentation establishing the date on which the merchandise was first entered for consumption in the United States, the volume of the shipments to the United States, and the date of the first sale to an unaffiliated purchaser in the United States.

In accordance with section 751(a)(2)(B) of the Tariff Act and section 351.214(d) of the Department's regulations, we are initiating a new shipper review of Hyosung for the antidumping duty order on PET film from the Republic of Korea. This reviews covers the period July 1, 1998 through December 31, 1998. We intend to issue the final results of the review no later than 270 days from the date of publication of this notice.

We will instruct the Customs Service to allow, at the option of the importer, the posting, until completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Hyosung, in accordance with 19 CFR 351.214(e).

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 353.305(b).

This initiation and this notice are in accordance with section 751(a) of the Tariff Act (19 U.S.C. 1675(a)) and section 351.214 of the Department's regulations (19 CFR 351.214).

Dated: January 27, 1999.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–2457 Filed 2–1–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012599C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1193, 1197, 1198) and modifications to scientific research permits (1058, 1130)

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from: Fish Passage Center in Portland, OR (FPC) (1193), Mr. John Crutchfield, of Harris Energy & Environmental Center of Carolina Power and Light Company (HEEC-CPL) (1197), and J. Alan Huff, Florida Department of Environmental Protection (FDEP) (1198); and NMFS has received applications for modifications to existing permits from: U.S. Fish and Wildlife Service in Ahsahka, ID (FWS) (1058) and U.S. Geological Survey in Cook, WA (USGS) (1130).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before March 4, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1197 and 1198: Protected Resources Division, F/SEO3, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432 (813–570–5312).

For permits 1058, 1130, and 1193: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permit 1197: Terri Jordan, Silver Spring, MD (301–713–1401).

For permit 1198: Michelle Rogers, Silver Spring, MD (301–713–1401).

For permits 1058, 1130, and 1193: Leslie Schaeffer, Portland, OR (503–230–5433).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in This Notice

The following species and populations are covered in this notice: Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (*Dermochelys coriacea*), Loggerhead turtle (*Caretta caretta*), Shortnose sturgeon (*Acipenser brevirostrum*).

Sockeye salmon (*Oncorhynchus nerka*): Snake River (SnR).

Chinook salmon (*Oncorhynchus tshawytscha*): SnR fall, SnR spring/summer, Upper Columbia River (UCR) spring.

Steelhead trout (*Oncorhynchus mykiss*): SnR, UCR, Lower Columbia River (LCR)

To date, a listing determination for UCR spring chinook salmon under the ESA has not been promulgated by NMFS. To date, protective regulations for threatened SnR and threatened LCR steelhead under section 4(d)of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues an UCR spring chinook salmon listing determination and/or SnR and LCR steelhead protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of UCR spring chinook salmon and/or SnR and LCR steelhead, does not presuppose a listing determination or the contents of the eventual protective regulations, respectively.

New Applications Received

FPC (1193) requests a 5-year permit that would authorize annual direct takes of juvenile, endangered, SnR sockeye salmon; juvenile, threatened, SnR fall chinook salmon; juvenile, threatened, artificially propagated and naturally produced, SnR spring/summer chinook salmon; juvenile, threatened, SnR steelhead; juvenile, endangered, artificially propagated and naturally produced, UCR steelhead; and juvenile, threatened, LCR steelhead associated with the Smolt Monitoring Program (SMP). Takes of juvenile UCR spring chinook salmon are also requested in anticipation of a possible listing decision of this species by NMFS. The permit is proposed to replace permit 822 which expired on December 31, 1998. The objective of the SMP is to generate information on the migrational characteristics of various salmon and steelhead stocks in the Columbia River Basin, to provide advice on the implementation of flow and spill measures to improve fish passage conditions in the Snake and Columbia Rivers, to provide a long-term consistent database for year-to-year comparisons, and to monitor gas bubble trauma as required by the states' water quality agencies. ESA-listed fish are proposed to be captured, sampled for biological data and/or tagged with passive integrated transponder tags, and released. A study of resident fish species in the Clearwater River, Idaho using electrofishing as a collection method is also included in this permit application. ESA-listed juvenile fish indirect mortalities are also requested.

HEEC-CPL (1197) requests a 3-year permit to take endangered shortnose sturgeon while conducting original research regarding the population of fishes in the Pee Dee River, North Carolina. The Pee Dee River has been historically included in the shortnose sturgeon's native range. The applicant will be performing a baseline assessments of the resident and migratory fish species inhabiting the river below the Blewett Hydroelectric Plant. To ensure compliance with the Endangered Species Act, the applicant requests a permit to capture, handle and release shortnose sturgeon that may be taken during this study.

FDEP requests a 5-year scientific research permit to take up to 700 loggerhead, 250 green, 5 leatherback, 25 hawksbill, and 100 Kemp's ridley sea turtles annually from Florida waters. Turtles captured will include all life history stages from post-hatchling through adult. Of the 700 loggerheads requested annually, 400 will be hatchlings. This research will further the understanding of life histories, habitat requirements, migratory behaviors, and threats to these five species of sea turtles occurring in Florida waters. The turtles will be captured by tended, straight-set, large-mesh tangle nets; tended, drifting large-mesh tangle nets; tended, encircling (strike) large-meshed nets; dip nets; and hand-capture. Captured turtles will be weighed, measured, photographed, and flipper and PIT tagged. Select turtles will be blood sampled, lavaged, and will receive radio, sonic, and/or satellite transmitters. Additionally, laparoscopy and tumor collection will be performed on selected turtles. This work is a continuation of research permitted under scientific research permit #878, which expires on February 28,1999.

Modification Requests Received

FWS requests modification 2 to permit 1058, which authorizes annual direct takes of adult, threatened, SnR fall chinook salmon associated with research designed to monitor and evaluate adult returns of hatchery-origin fall chinook salmon released as juveniles above Lower Granite Dam on the Snake River in the Pacific Northwest. For modification 2, FWS requests annual direct takes juvenile, threatened, SnR steelhead and juvenile, threatened, SnR fall chinook salmon associated with an additional study designed to examine steelhead residualism in the Clearwater River Basin in Idaho. The purpose of the research is to gain a better understanding of factors leading to residualism and interactions between residuals and wild or natural stocks of fish. ESA-listed juvenile fish are proposed to be captured using electrofishing equipment, handled, and released. ESA-listed juvenile fish indirect mortalities are requested. An incidental take of ESA-listed adult steelhead is also requested. The additional study is requested to be valid

through 2001. Permit 1058 expires on December 31, 2002.

USGS requests modification 1 to permit 1130, which authorizes takes of juvenile, threatened, artificially propagated and naturally produced, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; and juvenile, endangered, artificially propagated, UCR steelhead associated with research designed to determine the movement, distribution, and passage behavior of radio-tagged juvenile salmonids at Bonneville, The Dalles, and John Day Dams on the Columbia River. For modification 1, USGS requests to rearrange the distribution of authorized fish takes across collection sites. Also for modification 1, USGS requests annual takes of juvenile UCR spring chinook salmon in anticipation of a possible listing decision of this species by NMFS. Modification 1 is requested to be valid for the duration of permit 1130, which expires on December 31, 2002.

Dated: January 26, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–2438 Filed 2–1–99; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Review; Comment Request

The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following two public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paper Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, National Service Trust, Attn: Levon Buller, (202) 606–5000, Extension 383. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (1–800) 833–3722 between the hours of 9:00 am and 5:00 pm Eastern Time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Danny Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose to enhance the quality, utility and clarity of the information to be collected; and
- Propose to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Two ICR documents have been submitted to OMB for consideration. The first, *Forbearance Request for National Service,* is a proposed revision to an earlier form approved by OMB under a different name (OMB Number 3045–0030). The second document, *Interest Accrued During National Service,* is a new form. Both forms are important for AmeriCorps members who have outstanding qualified student loans during the period they are involved in national service.

The two documents were published in the **Federal Register** on April 2, 1998, for a 60-day pre-clearance public comment period. Two organizations responded to the notice: one was a student loan holder/servicer and the other was an association that represents student loan holders/servicers. Most of their suggestions have been incorporated into the versions now being presented for consideration by OMB. The Corporation contacted representatives from both organizations to discuss their comments, especially those suggestions that were not incorporated into this version of the forms. Each form is discussed separately below. Since most of the comments that were received as a result of the 60-day public comment period are related to both forms, all comments are discussed together in the Analysis of Comments Received section.

Forbearance Request for National Service

Type of Review: Renewal/Revision.

Agency: Corporation for National and Community Service.

Title: Forbearance Request for National Service (form is currently titled *Federal Education Loan Forbearance Request*).

OMB Number: OMB #3045–0030.

Agency Number: None.

Affected Public: AmeriCorps participants and the holders of their qualified student loans.

Total Respondents: 6,000 annually.

Frequency: Average of once per year per loan.

Average Time Per Response: 10 minutes for the AmeriCorps member to complete the form (it will take student loan holders time to process the request for forbearance once they receive the form).

Estimated Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): N/A.

Total Burden Cost (operating/maintenance): N/A.

Description: By law, AmeriCorps members are eligible for a forbearance on the repayment of their qualified student loans while they are serving in an approved national service position. This form will serve as both the member's official request to the loan holders for the forbearance and the Corporation's verification that the borrower is serving in an approved national service position.

Currently, AmeriCorps members use an OMB-approved form titled *Federal Education Loan Forbearance Request* to request a forbearance and to obtain certification that they are eligible for a forbearance based on their service. Forbearance can be granted only by the loan holder and not the Corporation. The Corporation's role is to verify that the borrower is an AmeriCorps member and is eligible for this mandatory forbearance on qualified student loans. An AmeriCorps member completes one part of the form, requesting forbearance, and sends it to the office of the National Service Trust. The Trust completes a second part verifying service dates and sends it to the loan holder at the address provided by the AmeriCorps member. The loan holder then acts upon the request.

The form currently in use has been adopted by many of the larger loan holders (e.g., Sallie Mae) and is given to their borrowers with the loan holders' own logos at the top of the form. The form was originally developed with the assistance of representatives of several student loan associations. Having a separate form for forbearance based on AmeriCorps service clearly distinguishes it from forbearance requests based on one of the other conditions for which a borrower may be

eligible—e.g., military service, employment in certain low income areas, student status.

Several other loan holders have chosen to modify their own forbearance request forms by including an additional option—"AmeriCorps service" or "national service"—with the choices already available. The Corporation verifies national service participation using all types of forms presented to it, be it a loan holder's unique form or the Corporation's OMB approved form.

The Corporation seeks to continue using this particular form, although in a revised version. The form needs some minor revisions. First, the Corporation proposes changing the name of the form to better reflect its actual purpose—it is a form used by a borrower to request forbearance on a qualified student loan based on involvement in national service. Experience has shown that the existing form could use a better set of instructions for explaining the process for requesting forbearance and for completing the form.

This is a voluntary form. It is one way to provide verification to a loan holder that one of their borrowers is eligible for the mandatory forbearance, at the same time allowing the borrower to request the forbearance of the loan company. The Corporation will continue its policy of verifying AmeriCorps participation on any form the loan holder wishes to use.

Interest Accrued During Nation Service

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Interest Accrued During National Service.

OMB Number: None yet.

Agency Number: N/A.

Affected Public: AmeriCorps members and the holders of their qualified student loans.

Total Respondents: 6,000 annually.

Frequency: Average of once per year per loan.

Average Time Per Response: 10 minutes, total (three minutes for the AmeriCorps member to complete the form and seven minutes for the loan holder to report the amount of interest accrued).

Estimated Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): N/A.

Total Burden Cost (operating/maintenance): N/A.

Description: The Corporation pays all or a portion of the interest that accrues during a period of national service for those who successfully complete their service and have had their loans in forbearance during the service. Currently, AmeriCorps members ask their loan holders to report to the Corporation the amount of interest that accrued on their qualified student loans while they were in their national service position. When the Corporation receives this information, it is reviewed for accuracy and is either paid or returned to the member or loan holder for additional information.

This information comes to the Corporation in many formats, such as letters, statements, and printouts, with varying degrees of clarity and accuracy. Frequently, an amount of interest is reported without any accompanying dates—there is no indication of the period of time upon which the calculation was based. The Corporation can only pay interest that accrued while the borrower was in the AmeriCorps program; sometimes the amount of interest the loan holder reports includes interest that began accruing well before or well after the national service period. Many times the Corporation receives from a loan holder a printout of the member's account, from which it is difficult or impossible to determine the amount of interest that accrued during the service period. All of these have to be returned to obtain the correct information and this takes time—time, during which the unpaid loan continues to accrue additional interest.

This proposed form is intended to obtain clear and accurate information from loan holders in order to expedite the interest payments for AmeriCorps members. Members will complete the top section and indicate their dates of service. They will then mail the form to their loan holders where the loan company will indicate the total amount of interest that accrued between those dates or indicate a daily accrual amount. The loan holder will fill in the address where the payment should be sent, and return the form to the National Service Trust for payment.

Analysis of Comments Received During the Public Comment Period

The bulk of the comments received from the commentors were related to increasing the consistency between these two forms—using the same format, font, and terminology. The Corporation concurred and adopted these changes into the forms being presented to OMB. Both commentors questioned the Corporation's original estimated time to complete the forms. The Corporation agrees and changed the estimated time to a mutually accepted 10 minutes for each form.

Both commentors suggested making the interest accrual form one which could be filled out once for several loan holders, rather than the originally proposed one form for each loan holder. This would significantly reduce the burden for members who have multiple student loans. The Corporation agrees and has made space on the front of the form for two loan holders with directions to include additional loan holders on the back side of the form, if necessary. An attempt was made to include four loan holders on the front of the form rather than two, but the form appeared too cluttered.

One commentor suggested not providing an option for the loan holder to give a daily interest accrual rate. The argument being that if a loan holder knows the daily interest accrual rate and the forbearance period, using simple multiplication they should be able to provide the total amount accrued. While the Corporation agrees with this logic, when this form was developed originally, some members of the loan community argued to include this option. It is also useful information when incorrect service dates are included on the form. Rather than having to return the form for correct information, the Corporation's database will calculate the accrued interest using the daily rate. The other commentor had no opinion on the matter and the first, after discussion, had no problem including it. So it remains on the form as an option. Both commentors had suggestions for including additional language in the top section of the forbearance form that explained to the member the availability of an administrative forbearance to resolve any delinquency that might exist prior to the mandatory forbearance for national service. The Corporation agreed and included a version of the language suggested by the commentors that included both their thoughts.

Both commentors questioned the instructions directing the forms to be sent through the local AmeriCorps projects to the Trust for verification rather than instructing the members to send them directly and individually to the Trust. Due to timing issues related to when the Trust receives official enrollment information from the various

projects, the Corporation believes this is the best way to facilitate the prompt processing of these requests. The commentors agreed that if this is the fastest and most accurate way to obtain verification, it should be used. The Corporation will continue its practice of processing all forms, regardless if they came to the Trust through the projects or directly from members.

Both commentors suggested moving the item which asks for service dates from the section to be completed by the member to the section to be completed by the Corporation. The concern was that an AmeriCorps member may use incorrect dates. However, if a member enters an incorrect date, the Corporation can correct it. When the Corporation signs the form it is verifying that the dates are correct, regardless of who enters them. The commentors agreed to this.

Dated: January 27, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–2384 Filed 2–1–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Grant of Exclusive, or Partially Exclusive Licenses

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Patent No: 5,657,601
Title: Method and Apparatus for Micro Modeling the Sediment Transport Characteristics of a River
Issue Date: 08/15/97

Patent No: 5,657,601
Title: Multiple Sensor Fish Surrogate for Acoustic and Hydraulic Data Collection
Issue Date: 10/07/97

Patent No: 5,683,344
Title: Method for Solidification and Stabilization of Soils Contaminated with Heavy Metals and Organic Compounds Including Explosive Compounds
Issue Date: 11/04/97

Patent No: 5,702,203
Title: Floating "V" Shaped Breakwater
Issue Date: 12/30/97

Patent No: 5,702,651
Title: Use of Oriented Tabular Aggregate in Manufacture of High-Flexural-Strength Concrete
Issue Date: 12/30/97

Patent No: 5,706,018
Title: Multi-Band Variable, High-Frequency Antenna
Issue Date: 01/06/98

Patent No: 5,796,679
Title: Doppler Velocimeter for Monitoring Groundwater Flow
Issue Date: 08/18/98

Patent No: 5,804,721
Title: Capacitor for Water Leak Detection in Roofing Structures
Issue Date: 09/08/98

Patent No: 5,815,064
Title: Snow Temperature and Depth Probe
Issue Date: 09/29/98

Patent No: 5,813,340
Title: Roof Moisture Sensing System and Method for Determining Presence of Moisture in a Roof Structure
Issue Date: 10/06/98

Patent No: 5,828,220
Title: Method and System Utilizing Radio Frequency for Testing The Electromagnetic Shielding Effectiveness of an Electromagnetically Shielded Enclosure
Issue Date: 10/27/98

Patent No: 5,835,025
Title: Portable Battery Operated Power Managed Event Recorder and Interrogator System
Issue Date: 11/10/98

Patent No: 5,841,289
Title: System and Method for Detecting Accretion of Frazil Ice on the Underwater Grating
Issue Date: 11/24/98

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, Virginia 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until 90 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland (703) 428–6672 or Alease J. Berry, (703) 428–8160.

SUPPLEMENTARY INFORMATION: USP 5,653,592 Apparatus for modeling the sediment transport characteristics of a selected section of a river or the like includes an elevated inclined platform adapted to receive and insert representing a scaled model of the section of river to be studied and a water source for delivering water containing a simulated sediment to the model. As the water flows over the model, the sediment is transported so as to simulate the sedimentary characteristics of the modeled portion of the river. The apparatus is provided with a function generator which allows the water to be delivered to the model in accordance with a specified hydrograph and is also provided with a sliding digital micrometer survey system which allow accurate survey to be taken at selected increments along the model. Method for modeling the sediment transport characteristics of a river is also described.

USP 5,657,601 An apparatus for assembling two cement board stay-in-place form panels for making concrete-filled walls that is cost-effective and forms a uniform precise composite wall construction. The assembly includes a coextensive corrugated spacer panels are secured in place with a notched tie rod that penetrates the spacer and both wall panels, this assembly allows for rapid form installation. The spacer panel has two embodiments, viz. (i) a preformed rigid corrugated panel and (ii) a flattened unassembled panel with precut fold lines that are folded at the building site and then secured with a dowel-rod bracing component. The apparatus preferably uses fiber-glass-reinforced cement board for the say-in place forms. The final composite wall construction typically is made up of 4 feet wide by 8 feet high by 6.5-inch thick composite wall sections. The form walls use standard 4 feet by 8 feet by half-inch thick concrete or cement bard. Assembly of composite wall form requires erecting the corrugated spacer panel first and then attaching two form panels to the spacer panel's corrugations thereby forming a series of vertical compartments that are then filled with concrete of foam concrete with proper reinforcement.

USP 5,575,555 The apparatus of the invention are multiple fish surrogates that each have a plurality of piezoelectric and triaxial accelerometer sensors for emulating sensory organs of a particular fish. The multiple fish surrogates are immersed in flowing water intakes of a hydraulic structure such as: Intakes, intake bypasses, and diversion structures: Or also natural geological formation such as riffles, shoal areas, and pools. The invention is used for acquisition of acoustic and fluid dynamic data in or near these hydraulic structures and natural formations. To accomplish this, multiple sensors in multiple fish-shaped physical enclosures are deployed at same time to describe a fish's aquatic

environment at locations such as in proximity to a dam's intake. Since such an intake exhibits turbulent and high energy flow fields that cannot be characterized by a single sensor, many sensor bodies are required for a complete characterization of the environment. Similar deployment of the multiple sensor fish bodies can be made in complex natural channels to describe their acoustic fields and hydrodynamic fields. Such data are correlated with fish behavior for the purpose of developing methods of diverting fish from such areas of danger of a water intake or to attract them to a water bypass entrance system.

USP 5,683,344 A method for solidification and stabilization of soils contaminated with heavy metals and organic compounds removable by activated carbon includes the steps of placing a selected weight of the contaminated soil in a vessel, adding water to the contaminated soil in the vessel, mixing the soil, water and carbon in the vessel, adding cement and fly ash to the soil, water, carbon, cement and fly ash in the vessel and pouring the mixture of soil, water carbon, cement and fly ash into a mold and curing the mixture therein.

USP 5,702,203 The present invention pertains to a floating breakwater structure in the shape "V". This breakwater design allows for a wide range of wave periods, unlike previous floating breakwater. The construction of the instant invention is that of a suspended curtain which deflects and redirects the waves that are incident thereto rather than absorb or reflect incoming wave energy. This design results in a substantially smaller structure with reduced mooring loads. Moreover, the floating breakwater of the instant invention allows for fast deployment that can be either shipped in sections and assembled on site or assembled in sheltered waters and towed to a site for deployment. The breakwater of the instant invention is intended for temporary coastal operations such as military force projection and sustainment, dredging, coastal civil construction and repair, oil spill recovery, and search/rescue relief missions.

USP 5,702,651 High-flexural-strength concrete is produced by mixing wet hydraulic cement-sand mixture with coarse, flat, tabular aggregate, pouring the resulting mixture into a form in a shallow layer, vibrating the form containing the mixture, thereby orienting the coarse aggregate particles, pouring another shallow layer of the mixture into the form, again vibrating the form, and repeating these processes until the form has been filled to the desired level. The mixture then is allowed to cure. Cast-in-place items are prepared by placing thin layers or lifts of oriented, tabular-aggregate concrete into conventional forms and vibrating each lift using flat-plate vibrators.

USP 5,706,018 A multi-band, variable, high-frequency antenna comprises a pair of transmission lines for conveyance of signal from and to a transceiver, and a pair of braided copper conductor and elements, each in electrical communication at a proximal end thereof with one of the transmission lines. Each of the braided copper conductor elements is mounted on a nonconductive support cord, the braided copper conductor elements being expandable and retractable along the support cords on which the conductor elements are mounted. A cord lock is proximate a distal end of each of the conductor elements for releasable locking the distal end of the conductor element at a selected position on the support cord on which the conductor elements, and locking the cord locks is operative to lock the conductor elements in place on the support cords selectively fix a length of each of the conductor elements.

USP 5,796,679 Groundwater velocity and direction of flow are determined by insertion in a borehole below the water table of a sound source and plurality of sound sensors. A periodic sound signal is emitted by the sound source. Which is submerged in groundwater at the bottom of the borehole. The sound signals are sensed by the sound sensors, which are also submerged in the water in the vicinity of the sound source. Owing to the Doppler effect there is a shift in the frequency of the sound signal observed by the different sound sensors. The differences in frequency are determined by pulse counters and used to compute the components of groundwater velocity along north-south and east-west axes. The velocity of groundwater flow and its direction are determined by vector addition of the groundwater velocity components. These computational processes are carried out by an appropriately programmed microprocessor.

USP 5,804,721 A pair of mental plates having a space therebetween are surrounded by a flexible enclosure which is waterproof and which is filled with a dry gas. A pair of electrical conductors connected to the plates extend through and are water-tight sealed to the enclosure. A water-deformable element which expands in the presence of moisture is disposed around the enclosure, and a rigid housing having holes therethrough is disposed around the water-deformable element so that moisture passing through the holes into the water-deformable element causes it to expand to move the enclosure and at least one plate so as to reduce the space between the plates to change the capacitance of the capacitor.

USP 5,804,721 A pair of metal plates having a space therebetween are surrounded by a flexible enclosure which is waterproof and which is filled with a dry gas. A pair of electrical conductors connected to the plates extended through and are water-tight sealed to the enclosure. A water-deformable element which expands in the presence of moisture is disposed around the enclosure, and a rigid housing having holes therethrough is disposed around the water-deformable element so that moisture passing through the holes into the water-deformable element causes it to expand to move the enclosure and at least one plate so as to reduce the space between the plates to change the capacitance of the capacitor.

USP 5,815,064 A temperature and depth probe for accurate temperature measurements in snow contains a temperature sensing element such as a thermistor placed in a protective cap affixed to the end of a hollow carbon fiber tube. Wires connected to the output terminals of the temperature sensing element pass through the hollow tube to the input terminal of a temperature indicating instrument. The depth of insertion of the probe into the snow is read from depth markings on the side of the hollow tube.

USP 5,818,340 A roof moisture sensing system includes (1) a radio frequency pulse transmitter, (2) a moisture sensor disposed on a roof, and (3) a radio receiver adapted to monitor resonance of the moisture sensor activated by a pulse transmitted by the pulse transmitter. The receiver is adapted to analyze the resonance of the sensor to determine the presence of moisture in the sensor. The transmitter and the receiver can be remote from the sensor and the roof.

USP 5,828,220 A system and method for continuously monitoring the shielding effectiveness of an electromagnetically shielded enclosure is disclosed including an RF transmitter positioned remote from the shielded enclosure. RF signals received by both an enclosure receiver positioned inside of the enclosure and simultaneously by a reference receiver having its antenna positioned outside of the shielded enclosure. These two received signals are mixed so as to produce IF signals which are subsequently forwarded to a

synchronous detector which determines the ratio of the two signal levels by comparing their strengths. This ratio is indicative of the enclosure's electromagnetic shielding effectiveness. If the effectiveness drops below a predetermined or threshold limit, such is determined by a comparator position within the enclosure and an alarm may be sounded so as to indicate that the shield is failing. Accordingly, the effectiveness of the electromagnetic shield may be monitored twenty-four hours a day. It is also noted that the remotely positioned transmitter may be that of an existing radio station according to certain embodiments of this invention.

USP 5,835,025 A data acquisition apparatus that includes a recorder device of an event's time and date signified by the opening of an external trigger switching circuit in combination with a complimentary interrogator device for collecting data from the recorder device. The recorder device's components comprise a battery powered source with a power regulator, a processor, a dip-switch identifier, a programmable read only memory, a timing/control subcircuit interface that connects to the external trigger switching circuit. The interrogator device is portable and has multiple functional capabilities. This interrogator comprise a regulated battery power source, a processor, a programmable ROM, an event storage RAM, a clock/calender subcircuit, an optional liquid crystal display and an input/output interface port to communicate with the recorder device.

USP 5,841,289 A system for detecting accretion of frazil ice on underwater grating comprises a pair of parallel electrically conductive bars mounted side-by-side, for disposition beneath a water surface and spaced from but proximate an underwater intake grating. The system further includes a coaxial transmission line connected at a first end to the pair of bars for extension from the bars upwardly above the water surface, and a time domain reflectometer disposed above the water surface for generating electromagnetic pulses and having a second end of the transmission line fixed thereto. The transmission line facilitates propagation of the pulses to the bars for further travel time in the bars and to compute changes in the round trip travel time, from which can be determined absence, presence, and build-up of frazil ice on the bars providing an indication of same on the grating. The invention further contemplates a method for detecting accretion of frazil ice on underwater gratings, utilizing the above-described system.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–2184 Filed 2–1–99; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for Draft Environmental Impact Statement for the Improved Ordnance Storage for Marine Corps Air Station Yuma, Arizona

AGENCY: Department of the Navy, DOD.

ACTION: Announcement of public hearing.

SUMMARY: The United States Marine Corps has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Improved Ordnance Storage for Marine Corps Air Station Yuma, Arizona. Two public hearings will be held to inform the public of the DEIS findings and to solicit oral and written comments. Federal, state and local agencies, and interested parties are invited to be present or represented at the hearings.

DATES: Hearing dates are as follows:

(1) February 17, 1999, 1:00 p.m., Yuma, AZ.

(2) February 23, 1999, 7:00 p.m., Yuma, AZ.

ADDRESSES: Hearing locations are:

(1) February 17, 1999, at the Ramada Inn Chilton Conference Center, Maya Room, 300 East 32nd Street, Yuma, AZ 85364.

(2) February 23, 1999, at the Ramada Inn Chilton Conference Center, Maya Room, 300 East 32nd Street, Yuma, AZ 85364.

FOR FURTHER INFORMATION CONTACT: Ms. Deb Theroux, (619) 532–2058.

SUPPLEMENTARY INFORMATION: Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act, the United States Marine Corps has prepared and filed with the U.S. Environmental Protection Agency the Draft Environmental Impact Statement (DEIS) for the Improved Ordnance Storage for Marine Corps Air Station Yuma, Arizona.

The proposed action includes constructing a new Combat Aircraft Loading Area (CALA), constructing a new station ordnance area, and acquiring land for the elimination of safety waivers and the relocation of facilities at MCAS Yuma.

The Marine Corps has analyzed the environmental effects of the proposed action. The environmental studies were based on reasonable alternatives for accomplishing the proposed action, taking into account sites identified through the scoping process. Four potential alternatives have been identified: (1) the preferred alternative, acquiring 1,641 acres of nonmilitary land south of MCAS Yuma and constructing new ordnance storage magazines and other military facilities in that area; (2) acquiring 1,069 acres of nonmilitary land south of MCAS Yuma and constructing new ordnance storage magazines and other military facilities in that area; (3) acquiring 482 acres of nonmilitary land south of MCAS Yuma and constructing military facilities in that area, along with constructing ordnance storage magazines on the nearby Barry M. Goldwater U.S. Air Force Range; and (4) taking no action (No Action Alternative).

No decision on the proposed action will be made until the National Environmental Policy Act process has been completed and the Secretary of the Navy, or a designated representative, releases the Record of Decision (ROD).

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups. Two copies of the DEIS are available for review at each of the following libraries: Yuma County Library District—Main Library, 350 S. 3rd Avenue, Yuma, AZ 85364; and Foothills Branch Library, 11279 S. Glenwood, Yuma, AZ 85367. A limited number of single copies are available from Mr. Richard Samrah, Planning Supervisor, Building 888, Box 99140, Marine Corps Air Station, Yuma, AZ 85369–9110.

The two public hearings will be conducted by the Marine Corps to receive oral and written comments. Federal, state and local agencies, and interested parties are invited and urged to be present or represented at the hearings. Oral statements will be heard and transcribed by a stenographer; however, to assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record on this study. Equal weight will be given to both oral and written statements. In the interest of available time, speakers will be asked to limit their oral comments to five minutes. If longer statements are to be presented, they should be summarized at the public hearings and submitted in writing either at the hearings or mailed to Mr. Richard Samrah, Planning Supervisor, Building 888, Box 99140,

Marine Corps Air Station, Yuma, AZ 85369–9110. All written statements must be received by Monday, March 15, 1999, to become part of the official record. A Spanish/English interpreter will be present at the February 23 hearing.

Dated: Janaury 29, 1999.

Lawrence L. Larson,

Colonel, USMC, Head, Land Use and Military Construction Branch, Facilities and Services Division, Installations and Logistics Department, Headquarters, U.S. Marine Corps.

[FR Doc. 99–2546 Filed 2–1–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 4, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 27, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.
Title: Reporting Requirements for the Education Flexibility Partnership Demonstration Program.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 12.
Burden Hours: 240.
Abstract: Section 311(e)(6) of the Goals 2000: Educate America Act requires states participating in the Education Flexibility Partnership Demonstration Program to annually report to the Secretary on the monitoring of waivers it grants through this program.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: National Education Longitudinal Study: 1988–2000.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 457.
Burden Hours: 214.
Abstract: The National Education Longitudinal Study: 1988–2000 (NELS: 88/2000) is designed to provide data about critical transitions experienced by students as they progress through high school and into postsecondary institutions or the work force.

NELS:88/2000, the fourth follow-up to this longitudinal data collection initiated with the 8th grade class of 1988, will provide important information about young adults' experiences after high school, including postsecondary education and training, labor force participation, and family formation.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: Data Collection for Third International Mathematics and Science Study—Report (TIMSS–R).
Frequency: One-Time Student Assessment.
Affected Public: Individuals or households; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 11,250.
Burden Hours: 24,583.
Abstract: In order to provide international benchmarks against which to measure the performance of American students in mathematics and science, with comparisons of data for 1995 and 1999, and to measure progress toward the U.S. national goal of being first in the world in mathematics and science in the year 2000, the National Center for Education Statistics (NCES) wishes to repeat TIMSS for the 8th grade in U.S. schools in 1999.

Office of Educational Research and Improvement

Type of Review: Reinstatement.
Title: National Postsecondary Student Aid Study: 2000 (NPSAS: 2000).
Frequency: On occasion.
Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 1,964.
Burden Hours: 1,898.
Abstract: The NPSAS is a comprehensive study that examines how students and their families pay for postsecondary education. It includes nationally representative samples of undergraduates, graduates, and first-professional students; students attending public and private less-than-2-year institutions, community colleges, 4-year colleges, and major universities. Students who receive financial aid as well as those who do not receive

financial aid participate in NPSAS. Comprehensive student interviews and administrative records, with exceptional detail concerning student financial aid, are available for academic years 1986–87, 1989–90, 1992–93, and 1995–96.

[FR Doc. 99–2372 Filed 2–1–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 4, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 29, 1999.

Joseph Schubart,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education.

Type of Review: Reinstatement.

Title: Parental Assistance Program Grant Application.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 200.

Burden Hours: 8,000.

Abstract: The Department of Education analyzes these applications to determine which application is most likely to conduct effective projects. Without this information, that judgement could not be objectively made and the appropriate funds could not be awarded.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 99–2491 Filed 2–1–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, February 16, 1999. 6:30 p.m.-9:30 p.m.

ADDRESSES: College Hill Library, (Front Range Community College), 3705 West 112th Avenue Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Conduct a follow-up discussion on building rubble, based on the presentation received at its February 4 work session.
2. Review and discuss waste disposition pathways.
3. Presentation and discussion on developing an offsite disposal alternative for low-level waste.
4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading

Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on January 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–2425 Filed 2–1–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah Gaseous Diffusion Plant. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, February 18, 1999: 5:30 p.m.–10:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m. Call to Order
5:45 p.m. Approve Meeting Minutes
6:00 p.m. Public Comment/Questions
6:30 p.m. Presentations
7:30 p.m. Break
7:45 p.m. Presentations
9:00 p.m. Public Comment
9:30 p.m. Administrative Issues
10:00 p.m. Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item on the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday through Friday, or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, or by calling him at (502) 441–6804.

Issued at Washington, DC, on January 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–2426 Filed 2–1–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science, High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, March 1, 1999; 9:00 a.m. to 6:00 p.m.; and Tuesday, March 2, 1999; 8:30 a.m. to 4:00 p.m.

ADDRESSES: Stanford Linear Accelerator Center; Central Laboratory; Building 40; Orange Room; Stanford, California 94309.

FOR FURTHER INFORMATION CONTACT: John Metzler, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–2979.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Monday, March 1, 1999 and Tuesday, March 2, 1999

- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of the Use of Networks and Computing in High Energy Physics.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on the Stanford Linear Accelerator Center Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact John Metzler at 301–903–5079 (fax) or john.e.metzler@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW; Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–2424 Filed 2–1–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–168–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 28, 1999.

Take notice that on January 21, 1999, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030 filed in Docket No. CP99–168–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) seeking NGA Section 7 certification for an existing point of delivery to Mountaineer Gas Company (MGC) in West Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with Commission and open to public inspection.

Columbia requests certification to provide this service at an existing point of delivery which was originally authorized under Section 311 of the Natural Gas Policy Act (NGPA) for transportation service. The maximum daily quantity for MGC is 1,500 Dth and the estimated annual quantity is 547,500 Dth and the end use of gas will be industrial.

Columbia constructed the existing point of delivery to MGC in Upshur County, West Virginia, and placed it in service on June 15, 1998. Interconnecting facilities installed by Columbia included a 4-inch tap and valve, 20 feet of 4-inch pipeline, a filter separator and a meter. The cost of constructing the existing point of delivery was $18,129.

Columbia states that the quantities of natural gas to be provided through the existing point will be within Columbia's authorized level of service. Therefore, there is no impact on Columbia's existing point of delivery for transportation service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2394 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 271]

Entergy Arkansas, Inc; Notice of Availability of Study Reports and Request for Additional Scientific Studies

January 28, 1999.

Entergy Arkansas, Inc. (Entergy) is preparing an application to obtain a new license from the Federal Energy Regulatory Commission (FERC) for the Carpenter-Remmel Hydroelectric Project (FERC No. 271). The project is located on the Ouachita River in Garland and Hot Spring Counties, Arkansas.

The Carpenter-Remmel Project's existing license expires on February 28, 2003. Under FERC's regulations, Entergy must file an application for a new license on or before February 28, 2001. Entergy is using FERC's alternative licensing procedures, pursuant to 18 CFR § 4.34(i), and is preparing the license application and applicant prepared environmental assessment (APEA) in cooperation with a term of federal, state and local agencies, non-governmental organizations (NGO), and the public.

Entergy held a public meeting on March 23–24, 1998 to discuss the project, and solicit information from resource agencies and other stakeholders on project issues and alternatives that should be evaluated in the APEA. Following the March meetings, Entergy formed a Relicensing Team, consisting of federal, state and local resource agencies, NGOs, and the public, to help identify and develop study plans for the project issues. Based on the information gathered at the March 1998 meetings and subsequent Relicensing Team meetings, Entergy developed study scopes in cooperation with the Relicensing Team and conducted the resource studies during the summer and fall of 1998.

On August 17, 1998, Entergy published Scoping Document 1 (SD1) and issued a notice of scoping meetings, pursuant to the National Environmental Policy Act (NEPA). On September 22, 1998, Entergy held a public NEPA scoping meeting at the Clarion Hotel in Hot Springs, Arkansas, to solicit input on any further issues and project alternatives for evaluation in the APEA. Following the comment period for SD1, Entergy conducted a whitewater boating study on November 7–8, 1998.

The study reports for the studies conducted in the summer and fall 1998 are now available for review and comment. These reports can be reviewed at Entergy's Jones Mill office and the Hot Spring and Garland County Public Libraries from January 27, 1999 to March 27, 1999. A copy of all reports is also available at FERC's Public Reference Room at 888 First Street, NE, Washington, D.C.

The public is invited to review these documents and to file comments on the adequacy of these studies in addressing issues raised in the March 1998 public meeting and the September 22, 1998, NEPA scoping meeting. Comments on these studies and requests for any additional studies are due by March 27, 1999. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

If any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete application and APEA on its merits, the resource agency, Indian tribe, or person must file a request for the study with the Secretary of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 by March 27, 1999. A copy of the request must also be sent to Mr. Henry Jones, Entergy, P.O. Box 218, Jones Mill, AR 72105.

Any comments or recommendations for further studies should include a detailed description of the recommended study and the basis for the study, including the study objectives and how the study and information sought will be useful in furthering the resource goals that are affected by the project. The request should include the amount of time needed for the recommended study and an explanation of why the existing data cannot be used to achieve the study objectives.

For further information, please contact Ed Lee, (202) 219–2809 or E-

mail address at Ed.Lee@FERC.fed.us or Henry Jones, Entergy, at (501) 844–2148.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2396 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–162–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

January 28, 1999.

Take notice that on January 19, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP99–162–000 a request pursuant to Sections 157.205, and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a tap, a meter station, approximately 1.6 miles of 16-inch pipe (to connect the tap and meter station), and appurtenant facilities to establish a delivery point (the China Township Delivery point) for service to The Detroit Edison Company (Detroit Edison), a new end-use shipper on its system, in St. Clair County, Michigan, under the blanket certificate issued in Docket No. CP90–2053–000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Great Lakes states that the proposed tap will consist of a below-grade 16-inch tap off of its mainline loop (the 200 line), a below-grade valve, a riser, and above-grade manual valve operator, and interconnecting piping. Great Lakes notes that permanent fencing will enclose the above-grade facilities. Great Lakes proposes to construct and operate an above-grade, 8-inch meter station (which will consist of a single 8-inch meter run and turbine meter, a pressure regulator, gas heater, and appurtenant facilities) adjacent to the location where Detroit Edison will house three new gas-fired 72 megawatt generating units.

According to Great Lakes once the proposed facilities are completed, they will enable Detroit Edison to receive gas to fuel three new gas-fired peak load electric generating units, which will be capable of producing a total of 216 megawatts of electricity per hour. Great Lakes contends that Detroit Edison will use this power to increase reserve capacity levels, which will thereby alleviate potential shortfalls in meeting its peak power requirements. Great Lakes claims that Detroit Edison will require transportation service for these three units as of May 1, 1999, without service by this date the units will not be available to generate the power required under peak load conditions.

Accoding to Great Lakes, SEMCO Gas Company (SEMCO), a shipper on Great Lakes' system, currently provides retail gas distribution service in this area. Great Lakes states that SEMCO provides Detroit Edison with minimal gas volumes at the Belle River location and that those volumes are not associated with the generation of power. According to Great Lakes the Detroit Edison's base load power generation at the Belle River location is coal-fired. Thus, Great Lakes alleges that the service which it will provide to Detroit Edison is for new gas-fired generating facilities, which will not displace any service presently provided by SEMCO to Detroit Edison. Great Lakes states that Detroit Edison executed a precedent agreement providing for deliveries of up to 3,384 dth per hour.

Great Lakes states that Detroit Edison will acquire its own natural supplies and utilize the seller's existing transportation service on Great Lakes' system upstream of the proposed line tap, or utilize a backhaul transportation service on Great Lakes' mainline, to receive gas at the delivery point. Therefore, Great Lakes states that it will be able to provide the service without impacting upon its system-wide peak day and annual deliveries. According to Great Lakes, the transportation of gas for Detroit Edison's account will occur under Rate Schedule FT of its FERC Gas Tariff. Great Lakes claims that the parties will execute a ten-year firm transportation agreement under Rate Schedule FT. Great Lakes estimates that the cost of constructing the new facilities will be approximately $2.3 million.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2393 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–178–008, CP96–809–007, and CP97–238–008]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Amendment

January 27, 1999.

Take notice that on January 22, 1999, Maritimes & Northeast Pipeline, L.L.C. (Maritimes), filed in Docket Nos. CP96–178–008, CP96–809–007, and CP97–238–008, an application pursuant to Section 7(c) of the Natural Gas Act for an amendment to the certificates previously issued to Maritimes to construct, install, own, operate, and maintain the Maritimes Phase I and Phase II facilities from Dracut, Massachusetts to a point at the international border between the United Stats and Canada near Woodland, Maine. Maritimes's proposal is more fully set forth in the application for amendment which is on file with the Commission and open to public inspection.

Maritimes is a limited liability company, organized and existing under the laws of the state of Delaware, Maritimes' members are M&N Management Company, an indirect, wholly owned subsidiary of Duke Energy Corporation; Westcoast Energy (U.S.) Inc., an indirect, wholly owned subsidiary of Westcoast Energy, Inc.; Mobil Midstream Natural Gas Investments Inc., an indirect, wholly owned subsidiary of Mobil Corporation; and Scotia Power U.S., Ltd., an indirect, wholly subsidiary of NS Power Holdings, Inc.

Maritimes requests that its certificates be amended as they apply to Phases I and II service:

(1) To phase the in-service date of certain of its lateral line facilities;

(2) To defer, subject to further market commitments, certain other laterals;

(3) To eliminate one compressor unit at the Baileyville, Maine compressor station;

(4) To install one compressor unit at Richmond, Maine on a back up basis;

(5) To uprate each of the three compressor units to be installed (two at Richmond, one at Baileyville) to 8311

horsepower (HP) to reflect the manufacturer's current rating;

(6) To construct, install and operate minor delivery facilities, including about 250 feet of 10-inch diameter pipeline in Haverhill, Massachusetts;

(7) To revise its initial rates to reflect changed cost estimates and revised billing determinants;

(8) To revise certain of its initial tariff sheets, including those tariff sheets addressing creditworthiness standards;

(9) To the extent authorization is required, to implement certain non-conforming provisions in its executed service and backstop agreements that differ from the *pro forma* service agreements in Maritimes' tariff.

Maritimes states that as markets in Maine, Massachusetts, and Canada are changing, there have been changes in the contracts between Maritimes and its shippers. Maritimes has included in its amendment its new agreements, totaling 360,575 Dth/d, including backstop arrangements for 20 years equal to 360,000 Dth/d of firm capacity. Maritimes says that it is fully contracted under these executed service and backstop agreements. Maritimes notes that there are some provisions in the service and backstop agreements reached with the shippers that deviate from its tariff and asks that the Commission, to the extent required, grant authorization for such deviations.

Maritimes says that market changes have led to a proposed phasing of the construction of Maritimess' laterals. Thus, Maritimes proposes to defer construction of one of the originally proposed Phase II laterals—the Bucksport lateral—with the in-service date to be within two years of the date of the order approving the amendment, subject to the receipt of firm service agreements. Also, Maritimes proposes to defer other laterals proposed in the original Phase II application, subject to obtaining additional market commitments.

Maritimes proposes to eliminate one compressor unit at Baileyville, Maine; to install one of the compressor units at Richmond, Maine on a back up basis; and to uprate the three compressor units to be installed to 8,311 HP to reflect current manufacturer ratings. Maritimes proposes to construct other minor delivery facilities. In particular, Maritimes proposes the construction and operation of the Haverhill Spur and the Essex Gas Company meter station located near Haverhill. The Haverhill Spur will be about 250 feet of 10-inch diameter pipeline located in an area currently dedicated to natural gas facility use. Also, Maritimes proposes to install and operate a new meter to be wholly located within the already approved Dracut, Massachusetts meter station site as a new delivery point for Boston Gas Company.

Maritimes proposes to revise its initial rates to reflect the increased cost of its mainline facilities and revised billing determinants. Maritimes says that these increased costs are due to the receipt of construction contract bids, which reflect cost increases related to schedule extensions, environmental agency requirements, cathodic protection, material transportation, and wage increases; costs associated with reroutes and route refinements; and additional mainline pipeline mileage of 3.3 miles. The revised billing determinants reflect the firm contractual commitments of 360,575 Dth/d.

The initial rates for mainline service under Rate Schedule NM365 are proposed to be $0.715 per Dth (on a 100% load factor basis). This is based on a total gas plant of $619.5 million and an annual cost allocation to Rate Schedule MN365 of about $94.1 million and a modified/levelized depreciation method for the first four years of operation. Also, $10.3 million has been allocated to interruptible mainline service under Rate Schedule MNIT. Rates for other mainline services are derivative of the Rate Schedule MN365 rate.

Maritimes also proposes incremental rates for three laterals (Newington, New Hampshire, Westbrook, Maine, and Haverhill) under Rate Schedule MNLFT, the approval of which is pending in Docket No. CP98–797–000.[1] A total gas plant of $6.9 million is proposed to be allocated incrementally among the above three laterals as more fully set forth in Exhibit P of Maritimes' application.

Maritimes also proposes certain amendments to its tariff. It proposes to revise its creditworthiness provisions to reflect provisions typical of other project-financed pipelines. Also, in order to promote seamless service, Maritimes proposes an agency arrangement reflected in its tariff.

Any person desiring to be heard or making any protest with reference to said amendment should on or before February 12, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protests provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will not be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

[1] In Docket No. CP98–797–000, Maritimes is proposing another lateral near Veazie, Maine with a cost of $5.6 million that is also proposed to be incrementally priced under Rate Schedule MNLFT.

convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Maritimes to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary

[FR Doc. 99–2365 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–161–000]

Natural Gas Pipeline Company of America; Notice of Application

January 28, 1999.

Take notice that on January 19, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP99–161–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon by sale to MidCon Gas Products Corp. (MGP), a non-jurisdictional gathering affiliate, certain certificated facilities located in Carson, Gray, Hutchinson, Moore and Roberts Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that the facilities for which it is seeking abandonment authority are located in two separate gathering areas—the Panhandle Gathering Area and the Quinduno Gathering Area. Natural states that it requests permission to abandon from the Panhandle Gathering Area, nine compressor units located at Compressor Station 112 in Moore County, Texas, totaling 11,250 horsepower; and Booster Stations 52 and 53, both located in Carson County, Texas, each housing one 660 horsepower compressor unit, for a total of 1,320 horsepower. Also, Natural states that it requests permission to abandon from the Quinduno Gathering Area, 37 miles of pipe ranging from 6-inches to 16-inches in diameter, six compressor units at Booster Station 149 and twelve wellhead meters.

Natural states that all of the facilities, included certificated and non-certificated facilities, in the Panhandle Gathering Area and the Quinduno Gathering Area comprise Natural's West Panhandle Gathering System (WPGS). Natural states that the WPGS consists of 527 miles of pipe (main trunklines and laterals) ranging in diameter from 2 inches to 24 inches, compression, field booster stations, meters, taps and appurtenant facilities. It is stated that due to the fact that Natural no longer provides a bundled sales service, there is no need for Natural to purchase gas along the WPGS for its system supply. Therefore, Natural is seeking in the subject filing, to abandon by sale to MGP, the certificated laterals, compression, field booster stations and associated meters and equipment that are located in the WPGS.

Natural states that it intends to transfer the entire WPGS to MGP. In addition, Natural states that it will sell the WPGS to MGP at its net book value. Natural states that as of September 30, 1998, the net book value of the certificated facilities was $0 and the net book value of the non-certificated facilities was $7.6 million.

Natural states that there is one firm transportation agreement under Rate Schedule FTS with a primary receipt point in the WPGS that will need to be terminated in connected with the proposed sale to MGP. Natural states that the shipper is KN Marketing, Inc. (KNM), an affiliate of Natural. Natural further states that it has been transporting up to 70,000 MMBtu per day for KNM under the agreement and will continue to provide such service until the facilities are transferred to MGP, at which time, MGP has agreed to provide the service for KNM.

Natural requests that the order state that the facilities in the WPGS that are being abandoned will be exempt from the Commission's jurisdiction after such facilities are transferred to MGP and operated by MGP as a non-jurisdictional gathering system.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2392 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1459–000]

Northeast Utilities Service Company; Notice of Filing

January 27, 1999.

Take notice that on January 19, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, its response to the Commission's December 16, 1998, Order regarding the North American Electric Reliability Council Transmission Loading Relief (TLR) Procedures.

NUSCO states that because it has been informed by the New England Power Pool that the TLR Procedures would not apply to the NEPOOL Control area, the Northeast Utilities System Companies are not adopting the TLR Procedures.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 8, 1999. Protests will be considered by the Commission to determine the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2389 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–399–002]

Northern Border Pipeline Company; Notice of Compliance Filing

January 27, 1999.

Take notice that on January 22, 1999, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective November 1, 1998:

First Revised Sheet Number 248C.02

Northern Border states that the purpose of this filing is to comply with the Commission's letter order issued January 12, 1999 in Docket No. RP98–399–001. The Commission's January 12, 1999 letter order required Northern Border to either replicate in its tariff the Timely Nomination/Intra-day Nomination diagramed at GISB Standard 1.3.2(vi) or incorporate this standard model in its tariff by specifically referring to this standard by number and version. The proposed change incorporates by reference this standard by number and version.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2369 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP909–157–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

January 28, 1999.

Take notice that on January 19, 1999, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP99–157–000, pursuant to Sections 157.205, 157,211 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon in place its existing Byford tap. Northwest additionally requests authorization to construct and operate a relocated, replacement Byford tap authorized in blanket certificate issued in Docket No. CP82–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to abandon in place its existing Byford tap consisting of a 2-inch tap and appurtenances for delivery of natural gas to Avista's Corporation (Avista's) distribution facilities. Northwest additionally proposes to construct and operate a relocated, replacement Byford tap on its Coeur d'Alene Lateral located in Spokane County, Washington. Northwest states this project is necessary to accommodate a request by Avista, formerly the Washington Power Company, to relocate the Byford tap.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the authorized time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99-2391 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–164–000]

Panhandle Eastern Pipe Line Company; Notice of Request Under Blanket Authorization

January 27, 1999.

Take notice that on January 19, 1999, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP99–164–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own and operate certain facilities to be located in Scott County, Illinois, in order to establish a new delivery point for Soyland Power Cooperative, Inc. (Soyland), under Panhandle's blanket certificate issued in Docket No. CP83–83–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to install two 10-inch hot taps, check valves and associated facilities on Panhandle's mainline facilities. Panhandle states that it will also install electronic gas measurement equipment on the proposed metering facilities to be constructed and installed by Soyland. Panhandle states that the proposed interconnection will be utilized to provide transportation service to Soyland and that the new interconnection will be designed to deliver up to 96,000 Dth/day of natural gas. Panhandle states that the estimated cost of the proposed facilities is approximately $252,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2367 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–0–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Refund Report

January 27, 1999.

Take notice that on January 25, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) filed a Refund Report for interruptible transportation revenue credits on its Coyote Springs Extension.

PG&E GT–NW states that it refunded $1,102.03 to Portland General Electric Company, the sole eligible firm shipper on the Coyote Springs Extension, by credit billing adjustment on January 12, 1999.

PG&E GT–NW further states that a copy of this filing has been served on all affected customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 3, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–2368 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–208–000]

Sea Robin Pipeline Company; Notice of Flowthrough Crediting Report

January 27, 1999.

Take notice that on January 21, 1999, Sea Robin Pipeline Company (Sea Robin) submitted its Annual Flowthrough Crediting Mechanism Filing. Sea Robin states that this filing was made pursuant to Section 27 of the General Terms and Conditions of Sea Robin's FERC Gas Tariff which requires the crediting of certain amounts received as a result of resolving monthly imbalances between its gas and liquefiables shippers and under its operational balancing agreements, and imposing scheduling penalties during the 12 month period ending October 31, 1998.

Sea Robin reports that it paid $442,911.56 in excess of amounts received from Shippers. Accordingly, this year there is no amount to be credited to shippers. Sea Robin requested for good cause the Commission accept this filing out-of-time.

Sea Robin states that copies of Sea Robins's filing will be served upon all of Sea Robin's shippers, interested commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 3, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–2370 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–582–001]

Texas Gas Transmission Corporation; Notice of Petition To Amend

January 28, 1999.

Take notice that on January 19, 1999, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42304, filed in Docket No. CP96–582–001, a petition to amend the authorizations issued on December 4, 1996 in Docket No. CP96–582–000, pursuant to Section 7 of the Natural Gas Act and Part 157 of the Commission's (Commission) Regulations, in order to perform remedial work on 35 wells and five associated tank batteries at the Dixie Storage Field, all as more fully described in the application which is on file with the Commission and open for public inspection.

In Docket No. CP96–582–000, the Commission authorized Texas Gas to expand the storage boundary at the Dixie Storage Field located in Henderson County, Kentucky. In the instant application, Texas Gas seeks Commission authorization to proceed with remedial activity on 35 wells and 5 associated tank batteries, all within the approved 837-acre storage expansion zone which was authorized in Docket No. CP96–582–000. Texas Gas says the aforementioned wells are all abandoned oil wells that have been non-productive for many years. Further, Texas Gas says the original well operator failed to properly plug and abandon these wells when they were abandoned.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 18, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by other intervenors. An intervenor can file for rehearing of any Commission order and can petition for a court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as

filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by Commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2390 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–170–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 28, 1999.

Take notice that on January 22, 1999, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP99–170–000 a request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon the existing measurement facilities at its LaFourche No. 1 Delivery Meter Station located on Texas Gas' Bayou Chevreuil-Trahan 10-Inch Pipeline in LaFourche Parish, Louisiana, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that it currently delivers gas to Trans Louisiana Gas Company, a Division of Atmos Energy Corporation, (TransLa) at the LaFourche No. 1 Delivery Meter Station. TransLa has requested that Texas Gas permit it to render gas service at this meter site, and Texas Gas has agreed to allow TransLa to be the custody transfer provider at this location. To accomplish this change in delivery of gas, Texas Gas agreed to file for approval to retire its existing measurement facilities at the LaFourche No. 1 Delivery Meter Station.

Thereafter, TransLa will install, own, operate and maintain measurement, regulation, odorization and other related facilities necessary to provide service at this meter site on Texas Gas' existing meter lot.

Texas Gas has agreed to pay to TransLa up to a maximum of $13,880 as a contribution in aid for the costs relative to the installation of the above-mentioned facilities. No new facilities are required to be constructed by Texas Gas to provide service to TransLa.

Texas Gas states that the abandonment of facilities will not result in any termination of currently provided service. Texas Gas states that its existing tariff does not prohibit this activity and that there is sufficient capacity to accommodate the proposed changes without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective in the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2395 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–67–000, et al.]

Lake Road Generating Company, L.P., et al.; Electric Rate and Corporate Regulation Filings

January 26, 1999.

Take notice that the following filings have been made with the Commission:

1. Lake Road Generating Company, L.P.

[Docket No. EG99–67–000]

Take notice that on January 22, 1999, Lake Road Generating Company, L.P. (Lake Road), a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission, an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Lake Road proposed to construct, own and operate a nominally rated 792 MW natural gas-fired combined cycle power plant in the Town of Killingly, Connecticut. The proposed power plant is expected to commence commercial operation in the year 2001. All capacity and energy from the plant will be sold exclusively at wholesale.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. MEG Marketing, LLC and Sempra Energy Trading Corp.

[Docket No. EC99–28–000]

Take notice that on January 22, 1999, MEG Marketing, LLC (MEG) and Sempra Energy Trading Corp. (SET), both marketers of electric power, filed a request for approval of the disposition of all of the member interests in MEG to a new entity and subsequent purchase of 40 percent of the member interests in the new entity by SET.

Comment date: February 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Empresa de Generacion Electrica Fortuna, S.A.

[Docket No. EG99–66–000]

Take notice that on January 20, 1999, Empresa de Generacion Electrica Fortuna, S.A. (Applicant), Chiriquicito Distrito de Gualaca, Provincia de Chiriqui, Republica Panama, filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Applicant, a Panamanian sociedad anonima, owns certain power generating facilities in Panama. These facilities consist of an approximately 300 MW hydroelectric power generating facility in Chiriqui province, Panama.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Americas Generation Corp.

[Docket No. EG99–68–000]

Take notice that on January 22, 1999, Americas Generation Corp. (Applicant), Dresdner Bank Tower, Ninth Floor, 50th Street, Panama City, P.O. Box 8376, Panama 7, Republic of Panama, filed with the Federal Energy Regulatory Commission, an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Applicant, a Panamanian sociedad anonima, intends to operate and manage certain power generating facilities in Panama. These facilities will consist of an approximately 300 MW hydroelectric power generating facility in Chiriqui province, Panama.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Wolverine Power Supply Cooperative, Inc.

[Docket No. EL99–29–000]

Take notice that on January 19, 1999, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing an application to waive the Commission's requirement that Wolverine file a joint pool-wide open access transmission pro form tariff for the 1991 Municipal/ Cooperative Coordinated Pool Agreement (MCCP Agreement) between Wolverine and the Michigan Public Power Agency (MPPA).

Copies of the filing were served upon the Michigan Public Power Agency and the Public Utility Commission of Michigan.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER99–635–000]

Take notice that on January 20, 1999, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Gulf States, Inc., tendered for filing an amendment to the filing of three Letter Amendments to the Agreements for Wholesale Electric Service between Entergy Gulf States, Inc., and the Cities of Caldwell, Kirbyville and Newton, Texas.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas City Power & Light Company

[Docket No. ER99–1005–000]

Take notice that on January 20, 1999, Kansas City Power & Light Company (KCPL), tendered for filing an amendment to its original filing made on December 24, 1998 in the above-captioned docket.

A copy of this filing was served on customers presently taking service under FERC Electric Tariff, Original Volume No. 4, the Kansas Corporation Commission and the Missouri Public Service Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Pool

[Docket No. ER99–1142–000]

Take notice that on January 19, 1999, the New England Power Pool (NEPOOL), Executive Committee tendered for filing a supplemental filing to the Fortieth Agreement Amending New England Power Pool Agreement (the Fortieth Agreement), including an affidavit and updated exhibits thereto and addressing issues raised by the Commission's December 30, 1998, order in FERC Docket Number ER98–3554–000 with respect to Schedule 3 of the ISO New England Inc., tariff for Transmission Dispatch and Power Administration Services and Section 1.13 of the Fortieth Agreement.

The NEPOOL Executive Committee states that copies of these materials were sent to all entities on the service lists in the captioned docket, to all entities on the service lists in FERC Docket Numbers OA97–237–000, ER97–1079–000, ER97–3574–000, OA97–608–000, ER97–4421–000, and ER98–499–000, to the participants in the New England Power Pool, and to the New England state governors and regulatory commissions.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER99–1205–000]

Take notice that on January 20, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a Notice of Withdrawal applicable to the executed Service Agreement it filed on January 7, 1999 on behalf of PECO Energy Company—Power Team under its proposed Scheduling and Balancing Services Tariff. The Commission's Order Rejecting Scheduling And Balancing Tariff, And Accepting In Part And Rejecting In Part (As Modified) Proposed Amendment To Open Access Tariff (issued January 11, 1999) mandates the withdrawal of the PECO Service Agreement.

Copies of the filing were served upon PECO Energy Company—Power Team and the New York Public Service Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Rochester Gas and Electric Corporation

[Docket No. ER99–1371–000]

Take notice that on January 19, 1999, Rochester Gas and Electric Corporation (RG&E), tendered a Market-Based Service Agreement between RG&E and Coral Power L.L.C. (Customer) with the Federal Energy Regulatory Commission (Commission). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Tariff, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553 (80 FERC ¶61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of

January 6, 1999, for the Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: February 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Morro Bay LLC

[Docket No. ER99–1380–000]

Take notice that on January 20, 1999, Duke Energy Morro Bay LLC (DEMB), tendered for filing an unexecuted service agreement establishing the California Independent System Operator Corporation (ISO) as a customer under DEMB's Amended FERC Electric Rate Schedule No. 2.

DEMB requests an effective date of March 22, 1999.

DEMB states that a copy of the filing was served on the ISO.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Moss Landing LLC

[Docket No. ER99–1381–000]

Take notice that on January 20, 1999, Duke Energy Moss Landing LLC (DEML), tendered for filing an unexecuted service agreement establishing the California Independent System Operator Corporation (ISO) as a customer under DEML's Amended FERC Electric Rate Schedule No. 3.

DEML requests an effective date of December 22, 1998, the date upon which service commenced.

DEML states that a copy of the filing was served on the ISO.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Oakland LLC

[Docket No. ER99–1382–000]

Take notice that on January 20, 1999 Duke Energy Oakland LLC (DEO), tendered for filing an unexecuted service agreement establishing the California Independent System Operator Corporation (ISO) as a customer under DEO's Amended FERC Electric Rate Schedule No. 3.

DEO requests an effective date of March 22, 1999.

DEO states that a copy of the filing was served on the ISO.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1383–000]

Take notice that on January 20, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 14, to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of January 19, 1999, to FirstEnergy Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket No. ER99–1384–000]

Take notice that on January 20, 1999, the Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 12, to its service agreement with Consolidated Water Power Company (CWPCO). Supplement No. 12, provides CWPCo's contract demand nominations for January 1999–December 2003, under WPSC's W–3 tariff and CWPCo's applicable service agreement.

The company states that copies of this filing have been served upon CWPCO and to the State Commissions where WPSC serves at retail.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Wisconsin Public Service Corporation

[Docket No. ER99–1385–000]

Take notice that on January 20, 1999, the Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 1, to its partial requirements service agreement with Upper Peninsula Power Company (UPPCo). Supplement No. 1, provides UPPCo's contract demand nominations for January 2000–December 2002, under WPSC's W–2A partial requirements tariff and UPPCo's applicable service agreement.

The company states that copies of this filing have been served upon UPPCo and to the State Commissions where WPSC serves at retail.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Public Service Corporation

[Docket No. ER99–1386–000]

Take notice that on January 20, 1999, the Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 12, to its partial requirements service agreement with Manitowoc Public Utilities (MPU). Supplement No. 12, provides MPU's contract demand nominations for January 1999—December 2003, under WPSC's W–2A partial requirements tariff and MPU's applicable service agreement.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. PP&L, Inc.

[Docket No. ER99–1387–000]

Take notice that on January 20, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement for Sale of Capacity Credits, dated December 29, 1998, with DTE Edison America, Inc. (DTE), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds DTE as an eligible customer under the Tariff.

PP&L requests an effective date of January 20, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to DTE and to the Pennsylvania Public Utility Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PP&L, Inc.

[Docket No. ER99–1388–000]

Take notice that on January 20, 1999, PP&L, Inc. (PP&L) tendered for filing a Service Agreement for Sale of Capacity Credits, dated December 31, 1999, with Horizon Energy d/b/a Exelon Energy (Exelon) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Exelon as an eligible customer under the Tariff.

PP&L requests an effective date of January 20, 1999, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Exelon and to the Pennsylvania Public Utility Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Niagara Mohawk Power Corporation

[Docket No. ER99–1390–000]

Take notice that on January 20, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Niagara Mohawk Energy Marketing, Inc. This Transmission Service Agreement specifies that NMEM has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of March 1, 1999. Niagara Mohawk has requested waiver of the Commission's 60-day notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NMEM.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER99–1391–000]

Take notice that on January 20, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Niagara Mohawk Energy Marketing, Inc. This Transmission Service Agreement specifies that NMEM has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of March 1, 1999. Niagara Mohawk has requested waiver of the Commission's 60-day notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NMEM.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas Gas and Electric

[Docket No. ER99–1392–000]

Take notice that on January 20, 1999, Western Resources, Inc. (Western Resources), on behalf of its wholly owned subsidiary, Kansas Gas and Electric Company, tendered for filing a proposed change to its Rate Schedule FERC No. 198. Western Resources states that the change is to add a new point of delivery under the generating municipal electric service agreement with the City of Winfield, Kansas.

The change is proposed to become effective May 1, 1999.

Copies of the filing were served upon the City of Winfield, Kansas, and the Kansas Corporation Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Florida Power & Light Company

[Docket No. ER99–1395–000]

Take notice that on January 21, 1999, Florida Power & Light Company (FPL), tendered for filing a proposed service agreement with Georgia Transmission Corporation for long-term firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on January 1, 1999.

FPL states that this filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power & Light Company

[Docket No. ER99–1396–000]

Take notice that on January 21, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with City of Lakeland, Department of Electric and Water Utilities for Short-Term Firm under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on January 1, 1999.

FPL states that this filing is in accordance with Section 35 of the Commission's Regulations.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Virginia Electric and Power Company

[Docket No. ER99–1397–000]

Take notice that on January 21, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with Morgan Stanley Capital Group, Inc. (Transmission Customer), under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of January 1, 1999, the date of the first transaction under the Service Agreement.

Copies of the filing were served upon Morgan Stanley Capital Group, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. ER99–1403–000]

Take notice that on January 20, 1999, Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU) tendered for filing with the Federal Energy Regulatory Commission (Commission) the Form of Service Agreement for Market-Based Sales Service (Rate MBSS), which was accepted by the Commission for filing without hearing or suspension in Louisville Gas and Electric Co., 85 FERC ¶ 61,215 (1998), together with a list of customers of LG&E and KU for whom new service will be provided under Rate MBSS as of January 1, 1999.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1407–000]

Take notice that on January 20, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 45, to add ConAgra Energy Services, Inc., and Entergy Power Marketing Corporation to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date under the Service Agreements is January 19, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Pool and ISO New England Inc.

[Docket No. ER99–1414–000]

Take notice that on January 15, 1999, the New England Power Pool and ISO New England Inc. filed a response with respect to the Commission's December 16, 1998 Order in Docket No. EL98–52–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Public Service Company of New Mexico

[Docket Nos. OA96–202–001 and OA97–655–000]

Take notice that on January 22, 1999, Public Service Company of New Mexico (PNM) submitted for filing a corrected page 2 (correcting a typographical error), of Ancillary Service Schedule 3, "Regulation and Frequency Response Service", to its Open Access Transmission Tariff, submitted as a component of contemporaneous filings made on July 27, 1998, in association with the above captioned dockets.

A copy of the corrected page has been sent to all parties on the Official Service List of the above captioned dockets, as well as to the New Mexico Public Regulation Commission. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: February 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2364 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–151–000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 100 Line and Line 1–100 Replacement Project and Request for Comments on Environmental Issues

January 27, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the 100 Line and Line 1–100 Replacement Project by ANR Pipeline Company (ANR), in Porter County, Indiana.[1] These facilities would consist of abut 1.63 miles of 22-inch-diameter pipeline and 1.63 miles of 30-inch-diameter loop. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

ANR wants to replace 1.63 miles of 22-inch-diameter pipeline and 1.63 miles of 30-inch-diameter loop in Porter County, Indiana. The replacements are required for ANR to remain compliant with U.S. Department of Transportation regulations, pursuant to Title 49, Code of Federal Regulations, Part 192, as a result of increased human population density in the vicinity of ANR's existing pipeline right-of-way (ROW).

The location of the project facilities is shown in appendix 2.

Land Requirements for Construction

Construction of the proposed facilities would require about 33.7 acres of land, including 24.1 acres of existing permanent ROW, 0.8 acre of new permanent ROW, and 8.8 acres of temporary construction ROW that would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

[1] ANR's application was filed with the Commission under Section 7(c) of the Natural Gas Act.

[2] The appendices reference in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation and wildlife;
- Public safety;
- Land use;
- Cultural resources;
- Endangered and threatened species.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resources areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified the following issue that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

- Four residences in the project area would be within 50 feet of the construction ROW.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP99–151–000; and
- Mail your comments so that they will be received in Washington, DC on or before February 26, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision. You do not need intervenor status to have your nenvironmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2366 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; Ready for Environmental Analysis; and Soliciting Motions To Intervene and Protests, Comments, Recommendations, Terms and Conditions, and Prescriptions

January 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Major Water Power Project, 5 Megawatts or Less (Subsequent License).

b. Project No.: 2964–006.

c. Date filed: March 31, 1998.

d. Applicant: City of Sturgis, Michigan.

e. Name of Project: Sturgis Project.

f. Location: On the St. Joseph River, near the Town of Centreville, St. Joseph County, Michigan.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. John J. Griffith, P.E., Electric Department Superintendent, City of Sturgis, 130 North Nottawa, P.O. Box 280, Sturgis, Michigan 49091, (616) 651–2321.

i. FERC Contact: Any questions on this notice should be addressed to Patrick Murphy, E-mail address patrick.murphy@ferc.fed.us or telephone (202) 219–2659.

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission, relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of environmental analysis: This application has been accepted for filing and is ready for environmental analysis at this time.

l. Description of Project: The existing project consists of: (1) an 800-foot long

dam, comprised of a 300-foot-long spillway and a 500-foot-long earthen portion; (2) two powerhouses (old & new); and (3) an 18-mile-long 14.4/24.9–kV transmission line. The old powerhouse houses two turbine-generator units (each 550 Kilowatts (KW)); the new powerhouse houses two units (each 750 KW) totaling 2,600–kW generating capacity. The Sturgis Project reservoir has a surface area of 580 acres and a storage volume of approximately 6,550 acre-feet at 825 feet surface elevation.

m. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference, located at 888 First Street N.E., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address shown in item h above.

n. This notice also consists of the following standard paragraphs: B and D6.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, term and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2397 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of Exemption

January 28, 1999.

Take notice that on the following hydroelectric application has been filed with the Commission and is available for pubic inspection:

a. Type of Application: Surrender of Exemption.

b. Project No.: 8083–005.

c. Date Filed: August 29, 1996.

d. Applicant: George and Arminda Briggs.

e. Name of Project: Briggs Hydroelectric

f. Location: On the Teton River, in Fremont County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: George and Arminda Briggs, 149 N. 2 W. Box 62, Teton, ID 83451, (208) 458–4548.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Comment Date: March 12, 1999.

k. Description of Proposed Action: The exemptee requests to surrender its exemption because the project is no longer operable.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2398 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction

January 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Filing: Request for Extension of Time to Commence and Complete Project Construction.

b. Applicant: Town of Telluride, Colorado.

c. Project No.: The proposed San Miguel Hydroelectric Project, FERC No. 9248–014 is located on the San Miguel River in San Miguel County, Colorado.

d. Date Filed: November 24, 1998.

e. Pursuant to: Public Law 105–212.

f. Applicant Contact: Sandra M. Stuller, Town Attorney, Town of Telluride, Colorado, 113 Columbia Avenue, P.O. Box 397, Telluride, CO 81435, (970) 728–3071.

g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

h. Comment Date: March 5, 1999.

i. Description of the Request: The licensee requests that the deadline for commencement of construction for FERC Project No. 9248–014 be extended to January 30, 2002. The deadline for completion of construction would be extended to January 30, 2004. Public Law 105–212 directs the Commission to reinstate the project license as of January 30, 1996.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2399 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction

January 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Filing: Request for Extension of Time to Commence and Complete Project Construction.

b. Applicant: JDJ Energy Company.

c. Project No.: The proposed River Mountain Pumped Storage Hydroelectric Project, FERC No. 10455 is to be located on the Arkansas River in Logan County, near Dardanelle, Arkansas.

d. Date Filed: November 2, 1998.

e. Pursuant to: Public Law 105–283.

f. Applicant Contact: Donald H. Clarke, Esquire, Wilkinson, Barker, Knauer & Quinn, LLP, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037–1128, (202) 783–4141.

g. FERC Contact: Mr. Lynn R. Miles, (202) 219–2671.

h. Comment Date: March 7, 1999.

i. Description of the Request: The licensee requests that the deadline for commencement of construction for FERC Project No. 10455 be extended an additional two years. The deadline to commence project construction would be extended to October 17, 2000. The deadline for completion of construction would be extended to October 17, 2006.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions To Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2400 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

January 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11649–000.

c. Date filed: December 18, 1998.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Dierks Dam Hydroelectric Project.

f. Location: At the existing U.S. Army Corps of Engineers' Dierks Dam on the Saline River, near the Town of Provo, Sevier County, Arkansas.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us

j. Comment Date: March 24, 1999.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Dierks Dam and Reservoir, and would consist of the following facilities: (1) a powerhouse downstream of the dam having an installed capacity of 1,000 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 5.5 gigawatthours. The cost of the studies under the permit will not exceed $800,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commisison on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2401 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

January 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11650–000.

c. Date filed: December 18, 1998.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Jennings Randolph Dam Hydroelectric Project.

f. Location: At the existing U.S. Army Corps of Engineers' Jennings Randolph Dam on the North Branch of the Potomac River, near the Town of Bloomington, MD and Garrett, MD and Mineral, WV counties.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Susan Tseng (202) 219–2798 or E-mail address at susan.teseng@FERC.fed.us

j. Comment Date: March 24, 1999.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Jennings Randolph Dam and Reservoir, and would consist of the following facilities: (1) a powerhouse downstream of the dam having an installed capacity of 2,570 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 8.4 gigawatthours. The cost of the studies under the permit will not exceed $1,000,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, NE, Room 2–A, Washington, D.C. 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Any one desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the completing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2402 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

January 28, 1999.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: P–11652–000.

c. Date filed: December 28, 1998.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Muskingum L&D #7 Hydroelectric Project.

f. Location: At the existing U.S. Army Corps of Engineers' Muskingum Lock and Dam 7 on the Muskingum River, near the Town of McConnelsville, Morgan County, Ohio.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. Comment Date: March 24, 1999.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Muskingum Lock and Dam #7 and Reservoir, and would consist of the following facilities: (1) a powerhouse downstream of the dam having an installed capacity of 3,140 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 20 gigawatt hours. The cost of the studies under the permit will not exceed $1,500,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and files Maintenance Branch, located at 888 North Capitol Street, NE, Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115 A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed the have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2403 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

January 28, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection;

a. Type of Application: Preliminary Permit.

b. Project No.: P–11653–000.

c. Date filed: December 28, 1998.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Muskingum L&D #10 Hydroelectric Project.

f. Location: At the existing U.S. Army Corps of Engineers' Muskingum Lock and Dam #10 on the Muskingum River,

near the Town of Zanesville, Muskingum County, Ohio.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. Comment Date: March 24, 1999.

k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Muskingum Lock and Dam #10 and Reservoir, and would consist of the following facilities: (1) a powerhouse downstream of the dam having an installed capacity of 4,000 kilowatts; (2) a new transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 26 gigawatthours. The cost of the studies under the permit will not exceed $1,750,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 North Capitol Street, NE., room 2–A, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Universal Electric Power Corp., Mr. Ronald S. Feltenberger, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned addressed. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2404 Filed 2–1–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; StarTrack Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: StarTrack Program, EPA ICR Number 1825.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 4, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1825.01.

SUPPLEMENTARY INFORMATION:

Title: StarTrack Program, EPA ICR No. 1825.01. This is a new collection.

Abstract: U.S. EPA's New England Region office (Boston, MA), in conjunction with participating states and, in some cases, local agencies, is developing a third-party certification system for environmental performance as part of its StarTrack Program. Participants in StarTrack will develop, demonstrate, and/or test compliance tools and principles associated with third-party certification of environmental performance. The goal of the program is to expand the use of compliance and environmental management systems to improve protection of the environment, increase the public's understanding of a company's environmental performance, and further promote efficient use of public and private resources.

StarTrack is one of many reinvention initiatives within EPA. EPA's reinvention philosophy is focused on improving environmental results while allowing flexibility in how the improved results are achieved; sharing information and decision-making with all stakeholders; creating marketplace incentives for compliance with environmental requirements; and lessening the red-tape and paperwork burden of complying with environmental requirements.

Reinventing environmental protection means addressing the everyday inefficiencies and limitations associated with environmental regulations and managing for better environmental results. It includes designing and testing fundamentally new systems, such as those encouraged in StarTrack, and considering alternative approaches to address environmental challenges.

In each year of participation in StarTrack, a company agrees to audit its environmental compliance and management system and to prepare and publish a comprehensive environmental performance report. During every third year of participation, the company will have its compliance and management system audit results reviewed and certified by an independent third party. Follow-up certification may be required on a more frequent basis for facilities not meeting full certification requirements.

To participate, a company must have an established compliance auditing program and a demonstrated commitment to compliance, pollution prevention, and continuous improvement of environmental performance.

Applicants to the program must submit information addressing the selection factors (commitment to compliance, continuous improvement, and pollution prevention), using examples, quantitative data, and existing documentation, where applicable. An applicant may submit information such as a compliance audit protocol, auditors' qualifications, and a sample of previous audit findings and corrective action plans to support a claim to an established compliance auditing program. The facility should have an acceptable compliance history including no open or recent major enforcement actions.

Upon acceptance to the program, the participant will sign a Letter of Commitment with the EPA Region, participating state regulatory agencies, and participating local regulatory agencies. Facilities renewing their status as a StarTrack company after their first year will not need to re-apply to the program, but will need to sign a Letter of Commitment for the new year of participation. The participant will be required to submit several reports documenting required StarTrack activities throughout the 12-month period of participation. It is ultimately the responsibility of the StarTrack facility to ensure that the following required documents are submitted to EPA in a timely fashion: audit workplans, reports and corrective action plans for all compliance and EMS audits; third party certifier reports and certifications; the facility improvement plan (in response to the certification report); and an annual environmental performance report.

Application to StarTrack is voluntary. Information submitted as part of the requirements for ongoing participation in the program (e.g., EMS and compliance audits, status reports, etc.) is mandatory to maintain StarTrack participatory status and to obtain the Program benefits.

EPA shall treat information claimed as confidential business information (CBI) in accordance with the requirements of 40 CFR part 2. If the participant fails to claim the information as confidential upon submission, it may be made available to the public without further notice. EPA cannot guarantee that information submitted pursuant to this agreement and claimed as confidential will be immune from disclosure to a requester under the Freedom of Information Act (FOIA). Participating state agencies will maintain CBI confidentiality to the extent allowed by relevant state law. Note that some state laws provide for a greater degree of access to and narrower protections for information considered confidential under federal law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on September 11, 1998 (63 FR 48725); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 36 hours per response for application to the program; 156 hours per response for program participation; and 67 hours per response for third-party auditor activities. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Businesses, State Governments.

Estimated Number of Respondents: 68.

Frequency of Response: Annually

Estimated Total Annual Hour Burden: 11,391 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to the EPA ICR number in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for

EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 26, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–2448 Filed 2–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6229–1]

Notice of Open Meeting of the Environmental Financial Advisory Board on March 2–3, 1999

The Environmental Protection Agency's (EPA) Environmental Financial Advisory Board (EFAB) will hold an open meeting of the full Board in Washington, DC on March 2–3, 1999. The meeting will be held at the National Press Club, 13th Floor in the Holeman Lounge, 14th and F Street, NW, Washington, DC. The Tuesday, March 2 session will run from 8:45 a.m. to 5:00 p.m. and the Wednesday, March 3 session will begin at 8:15 a.m. and end at approximately 11:30 a.m.

EFAB is chartered with providing analysis and advice to the EPA Administrator on environmental finance. The purpose of this meeting is to discuss progress with work products under EFAB's current strategic action agenda. Environmental financing topics expected to be discussed include: Clean Water Plan, environmental and multi-state revolving funds, cost-effective environmental management, community-based environmental protection, brownfields redevelopment, and small business access to capital.

The meeting will be open to the public, but seating is limited. For further information, please contact Alecia Crichlow, EFAB Coordinator, U.S. EPA on (202) 564–5188, or Joanne Lynch, U.S. EPA on (202) 564–4999.

Dated: January 26, 1999.

Joseph Dillon,

Acting Comptroller.

[FR Doc. 99–2446 Filed 2–1–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–9]

Environmental Laboratory Advisory Board, Meeting Dates and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meetings.

SUMMARY: The Environmental Protection Agency (EPA) will convene two open meetings of the Environmental Laboratory Advisory Board (ELAB) on March 1, 1999, from 2:00 p.m. to 4:00 p.m. and on March 9, 1999 from 10:00 a.m. to 12:00 p.m. Both meetings will be conducted by teleconference. The public is invited to join Ms. Ramona Trovato in Room 911, West Tower, Waterside Mall, 401 M Street, SW, Washington, D.C.

Topics for discussion will include at a minimum consistency of laboratory assessments from multiple accrediting authorities and assessors, the identity of the proficiency testing oversight board/proficiency testing provider accreditor in Chapter 2 of the National Environmental Laboratory Accreditation Conference (NELAC) standards and the role the National Institute of Standards and Technology serves, confidentiality of laboratory inspections when State laboratory staff serve on inspection teams of private laboratories, harmonization of the NELAC standards and EPA's quality guidance, and clarification of calibration issues.

The public is encouraged to attend. Time will be allotted for public comment. Written comments are encouraged and should be directed to Ms. Elizabeth Dutrow; Designated Federal Officer; USEPA; 401 M Street, SW (8724R); Washington, DC 20460. If questions arise, please contact Ms. Dutrow by phone at (202) 564–9061, by facsimile at (202) 565–2441 or by email at dutrow.elizabeth@epamail.epa.gov.

Dated: January 26, 1999.

Thomas E. Dixon,

Acting Director, Quality Assurance Division.

[FR Doc. 99–2449 Filed 2–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6229–3]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Tar Lake Superfund Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice; request for public comment on proposed CERCLA 122(h)(1) agreement with 56th Century Antrim Iron Works, Inc. ("the Respondent") for the Tar Lake Superfund Site.

SUMMARY: In accordance with section 122(I)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA") and section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), notification is hereby given of a proposed administrative agreement concerning the Tar Lake Company hazardous waste site at 1010 Elder Road, Mancelona, Michigan (the "Site"). EPA proposes to enter into this agreement under the authority of sections 106, 107 and 122 of CERCLA. The proposed agreement has not yet been executed by the Respondent or by EPA or the United States.

Under the proposed agreement, the Respondent will agree to pay oversight costs incurred by the U.S. EPA pursuant to the Administrative Order on Consent dated March 9, 1993, as amended at the Tar Lake Site, in Mancelona, Michigan. In addition, the Respondent will agree to reimburse the United States for $3.5 million for the tar removal underway at the Site and to pay one-half of the tar removal costs, if any, that exceed $10 million. EPA will agree not to take action against 56th Century for tar removal costs that do not exceed $10 million or other future response costs, that when combined with the tar removal costs, do not exceed $10 million.

For thirty days following the date of publication of this document, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public hearing in the affected area.

DATES: Comments on the proposed agreement must be received on or before March 4, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Tar Lake Site, Chicago, Illinois, U.S. EPA Docket No. V–W–98–C–471.

FOR FURTHER INFORMATION CONTACT: Mary L. Fulghum, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–4683.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77

West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–2453 Filed 2–1–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–254]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 28, 1999, the Commission released a public notice announcing the February 17–18, 1999, meeting and agenda of the North American Numbering Council (NANC).

FOR FURTHER INFORMATION CONTACT: Linda Simms at (202) 418–2330 or via the Internet at lsimms@fcc.gov or Jeannie Grimes at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20554. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. Participation on the conference call is limited. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda

Wednesday, February 17, 1999

1. Approval of meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report.
3. Industry Numbering Committee (INC) Report.
4. Numbering Resource Optimization (NRO) Working Group Report.
5. Cost Recovery Working Group Report. NBANC Board Report, NANPA Billing and Collection Agent activities.
6. Issue Management Group Report. Discussion and final resolution of NANC policy statement regarding scope of requirements of NANPA for Central Office Code Administration and NPA relief activities. NANC will reach resolution on NPA relief planning issue regarding California's requirement for court reporters at public meetings.
7. North American Numbering Plan Administration Report. Investigation of the unauthorized use of central office code by carriers lacking certification by a state public utilities commission, and other issues raised by the Colorado Public Utilities Commission's letter of January 27, 1999.

Thursday, February 18, 1999

8. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Presentation of work plan, and other related issues, to meet April NANC deliverable for the first level of NANPA performance evaluation.
9. Steering Group Report. Progress report on interim (temporary) audit requirements for use by NANPA to perform audit of Central Office Code Administration holders and NANPA progress in defining methods to identify code holders.
10. Other Business.

Federal Communications Commission.

Blaise A. Scinto,

Deputy Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–2458 Filed 2–1–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Items From January 28th Open Meeting

January 27, 1999.

The following items have been deleted from the list of agenda items scheduled for consideration at the January 28, 1999, Open Meeting and previously listed in the Commission's Notice of January 21, 1999.

Item No.	Bureau	Subject
2	COMMON CARRIER	TITLE: Deployment of Wireline Services Offering Advanced Telecommunications Capability (CC Docket No. 98–147); and Request by Bell Atlantic-West Virginia for Interim Relief Under Section 706 or, in the Alternative, a LATA Boundary Modification (NSD–L–98–99). SUMMARY: The Commission will consider action concerning the availability and deployment of advanced services.
3	COMMON CARRIER	TITLE: Inter-Carrier Compensation for ISP-Bound Traffic. SUMMARY: The Commission will consider issues related to the jurisdictional nature of dial-up traffic delivered to internet service providers.
5	COMMON CARRIER	TITLE: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended. Third Order on Reconsideration, (CC Docket No. 96–149). SUMMARY: The Commission will reconsider its rules implementing the non-accounting safeguard provisions of Section 272 of the Communications Act of 1934, as amended.
7	COMMON CARRIER	TITLE: Defining Primary Lines (CC Docket No. 97–181). SUMMARY: The Commission will consider action to define "primary residential line" and "single line business line" to ensure uniformity in the way price-cap local exchange carriers assess subscriber line charges (SLCs) and presubscribed interexchange carrier charges. (PIICs).

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–2492 Filed 1–29–99; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applicants for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reasons why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

LK Shipping, 1012 W. Beverly Blvd., #138 Montebello, CA 90640, Eric Kwong, Sole Proprietor

International Freight Services, Inc., 10125 N.W., 116th Way #18, Miami, FL 33178, Officers: Margaret Mouttet, President, Kirk Camacho, Vice President

The Hawken Group, Inc., 13126 S. Broadway, Los Angeles, CA 90061, Officers: Ricardo A. Campos, President, Imelda Galindo Post, Secretary.

Dated: January 28, 1999.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 99–2409 Filed 2–1–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 17, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Harold V. Willis Family Trust, Manchester, Tennessee; to acquire voting shares of Peoples Bancorp, Inc., Manchester, Tennessee, and thereby indirectly acquire voting shares of Peoples Bank & Trust Company, Manchester, Tennessee.

Board of Governors of the Federal Reserve System, January 28, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–2443 Filed 2–1–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Deutsche Bank AG, Frankfurt, Germany (Deutsche Bank), to become a bank holding company by acquiring Bankers Trust Corporation, New York, New York (Bankers Trust); and thereby indirectly acquire Bankers Trust Company, New York, New York; Bankers Trust (Delaware), Wilmington, Delaware; and Bankers Trust Florida, N.A., Palm Beach, Florida. Deutsche Bank also may form one or more intermediate bank holding companies.

In connection with the proposed transaction, Deutsche Bank also has provided notice to acquire all of the nonbank subsidiaries of Bankers Trust and to engage, directly or indirectly through the nonbank subsidiaries of Deutsche Bank and Bankers Trust, in a variety of nonbanking activities that have been previously determined to be permissible for bank holding companies. These nonbanking activities and companies are described in the notice filed with the Board. Deutsche Bank proposes to engage in most of the activities authorized for bank holding companies under 12 CFR 225.28(b), and in all activities that Bankers Trust currently is authorized by Board Order to conduct. Included among the nonbanking companies that Deutsche Bank will operate after consummation of the proposal are BT Futures Corp., New York, New York, which engages in, among other things, investing and trading activities, and Deutsche Bank Securities Inc., New York, New York, and BT Alex. Brown Incorporated, New York, New York, which engage in, among other things, a limited amount of underwriting and dealing in all types of debt and equity securities (other than ownership interests in open-end investment companies), in accordance with previous Board decisions. These activities will be conducted on a worldwide basis.

In connection with the proposed transaction, Deutsche Bank also has applied to acquire an option to purchase up to 19.9 percent of the outstanding shares of Bankers Trust's common stock. The option would expire upon consummation of the merger.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Community Financial Corporation, Burlington, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Community Savings Bank, Inc., SSB, Burlington, North Carolina.

Board of Governors of the Federal Reserve System, January 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2441 Filed 2–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the world.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Fortis (B), Brussels, Belgium, Fortis (NL) N.V., Utrecht, the Netherlands, Fortis SA/NV, Brussels, Belgium and Generale de Banque, Brussels, Belgium; to engage *de novo* through its subsidiary, Generale (USA) Finance LLC and Generale (USA) Financial Markets LLC, both of New York, New York, in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; in leasing personal or real property, pursuant to § 225.28(b)(3) of Regulation Y; in investing and trading activities, pursuant to § 225.28(b)(8)(ii) of Regulation Y; and in buying and selling bullion, and related activities, pursuant to § 225.28(b)(8)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2442 Filed 2–1–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, February 8, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2573 Filed 1–29–99; 3:27 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Workshop: U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace

AGENCY: Federal Trade Commission.

ACTION: Notice announcing dates of workshop, extending deadline for public comments, and modifying comment submission procedure.

SUMMARY: The Federal Trade Commission has: (1) set June 8–9, 1999 as the dates for its public workshop examining U.S. perspectives on consumer protection in the global electronic marketplace announced in 63 **Federal Register** 69289 (December 16, 1998); (2) extended its deadline for receipt of comments to March 26, 1999; and (3) modified the procedure for comment submission to allow for electronic submissions.

DATES: The deadline for papers and written comments has been extended to March 26, 1999. The workshop will be held June 8 and June 9, 1999.

Comment Submission Procedure:

Written comments should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW, Washington, DC, 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and accessibility to the public, papers and comments also should be submitted, if possible, in electronic form, on either one 5¼ or one 3½ inch computer disk, with a disk label stating the name of the submitter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) Alternatively, the Commission will accept comments submitted to the following e-mail address <EMarketplace@ftc.gov>. All submissions should be captioned: "U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace—Comment, P994312."

FOR FURTHER INFORMATION CONTACT:

A workshop agenda and information about participation will be published closer to the date of the workshop. For questions about the workshop, contact either: *Lisa Rosenthal*, Legal Advisor for International Consumer Protection, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, telephone 202–326–2249, e-mail <lrosenthal@ftc.gov>; or *Jonathan Smollen*, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580, telephone 202–326–3457, e-mail <jsmollen@ftc.gov>.

Authority: 15 U.S.C. section 41 et seq.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–2437 Filed 2–1–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting on February 25 and 26; schedule of meetings in 1999.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a two-day meeting on Thursday, February 25 and Friday, February 26, 1999 from 9:00 A.M. to 4:00 P.M. in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office building, 441 G St., NW., Washington, DC.

Agenda

The agenda for the meetings includes:

- Administrative Matters,
- Discussion of exposure drafts on:

—Proposed Amendments to SFFAS No. 2—Accounting for Direct Loans and Loan Guarantees
—Draft Recommended Accounting Standards—Amendments to National Defense PP&E Reporting Requirements
—Draft Interpretation on Accounting for Roadbed Costs in Timber Sales Program
—Management's Discussion and Analysis—Review of comments on the exposure drafts and draft recommendations
—Social Insurance—Issues related to responses to the ED and draft recommended standards
—Deferred Maintenance—Review of comment letters and draft recommendation

Schedule of Meetings

Remaining scheduled meetings dates in 1999 are as follows:
April 12–13
July 1–2
September 16–17
October 28–29
December 13–14.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: January 28, 1999.

Wendy M. Comes,

Executive Director.

[FR Doc. 99–2454 Filed 2–1–99; 8:45 am]

BILLING CODE 1610–01–M

GENERAL ACCOUNTING OFFICE

Advisory Council on Government Auditing Standards; Notice of Meeting

The Advisory Council on Government Auditing Standards will meet Monday, February 22, 1999, from 9:00 a.m. to 4:45 p.m., and Tuesday, February 23, 1999, from 8:30 a.m. to 11:00 a.m., in room 7C13 of the General Accounting Office building, 441 G St., NW., Washington, DC.

The Advisory Council on Government Auditing Standards will hold a meeting to discuss issues that may impact Government Auditing Standards. Any interested persons may attend the meeting as an observer. Council discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Marcia Buchanan, Assistant Director, Government Auditing Standards, AIMD, 202–512–9321.

Dated: February 5, 1999.

Marcia B. Buchanan,

Assistant Director.

[FR Doc. 99–2436 Filed 2–1–99; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Invitation To Comment on Child Welfare Outcomes and Measures

AGENCY: Administration on Children, Youth and Families, ACF, HHS.

ACTION: Notice of plan to report on outcomes and performance of State child welfare programs, and invitation to comment.

SUMMARY: Section 203 of the Adoption and Safe Families Act (ASFA), signed into law in November 1997, requires the Secretary of the Department of Health and Human Services (DHHS) "* * * in consultation with Governors, State legislatures, State and local public officials responsible for administering child welfare programs, and child welfare advocates * * * to develop a set of outcome measures (including length of stay in foster care, number of foster care placements, and number of adoptions) that can be used to assess the performance of States in operating child protection and child welfare programs * * *." In addition, the law requires that "* * * to the maximum extent possible, the outcome measures should be developed from data available from the Adoption and Foster Care Analysis and Reporting System." Section 203 of ASFA also directs the Secretary to prepare and submit to Congress a report on the performance of each State on each outcome measure on May 1, 1999, and annually thereafter.

To meet these requirements, the Children's Bureau, the Federal agency charged with the task of implementing ASFA, engaged in a consultation process with various stakeholders. The outcomes presented in this notice are the result of the Children's Bureau's consultation process and reflect widely-held performance objectives for child welfare program practice. This notice is to advise the public of DHHS's plan to report on these outcomes for State child welfare programs and to invite public comment on them. This notice can be found at http://www.acf.dhhs.gov/programs/cb/special/index.htm.

DATES: Written comments must be submitted to the office listed in the **ADDRESS** section below on or before March 4, 1999.

ADDRESS: Mail written comments (in duplicate) to Marianne Rufty at the address below.

FOR FURTHER INFORMATION CONTACT: Marianne Rufty, Children's Bureau, 330 C Street, SW, Washington, DC 20447.

SUPPLEMENTARY INFORMATION: The Nation's child welfare systems are designed to protect children who have suffered maltreatment, who are at risk for maltreatment, or who are under the care and placement responsibility of the State because their families are unable to care for them. These systems also focus on securing permanent living arrangements for children who are unable to return home. The Children's Bureau is the agency within the Federal Government that is responsible for assisting State child welfare systems by promoting continuous improvement in the delivery of child welfare services.

The Adoption and Safe Families Act (ASFA) represents a significant effort on the part of the Federal Government to improve child welfare service systems. The ASFA establishes clear goals for children served by the Nation's child welfare systems—safety, permanency, and well-being. It calls on the Department of Health and Human Services (DHHS), State officials, advocates, and other experts in the field to work together to identify useful outcome measures to gauge State and

national progress in reaching those goals.

The ASFA also requires that DHHS prepare and submit to Congress a Report on the performance of each State on each outcome measure on May 1, 1999, and annually thereafter. This Report is intended to encourage continued improvements in State child welfare systems. It will provide an overview of system effectiveness by focusing on performance related to particular outcome measures. Additional data will be presented that pertain to system characteristics, some of which were requested in Section 203 of ASFA, to provide a context for the outcome measures. These data will address characteristics of a State's child welfare system such as the number of children reported for abuse or neglect, the number of children found to be victims of maltreatment, the number of children in out-of-home care, the number of adoptions, etc.

The first Report to Congress will include outcome measures that are based on data already available through the Adoption and Foster Care Analysis and Reporting System (AFCARS) and the National Child Abuse and Neglect Data Systems (NCANDS) to avoid additional reporting by the States. The AFCARS, which was implemented in December 1993, is the first federally--mandated data collection program for the collection of foster care and adoption data. The data are case-level data representing children in foster care under the responsibility of the State child welfare agencies and those children adopted with the involvement of those agencies. A list of the AFCARS data elements for foster care and adoption can be found at *http://www.acf.dhhs.gov/programs/cb/special/elements.htm*.

The NCANDS, which is a voluntary data collection system established in 1990, is the primary source of national information on abused and neglected children known to State child protective services agencies. The NCANDS is comprised of two parts: (1) A Summary Data Component, which is a compilation of key aggregate indicators of State child abuse and neglect statistics, and (2) a Detailed Case Data Component, which is a compilation of case-level data about individual children who are are the subjects of child maltreatment reports. A list of the data elements for the Summary Data Component can be found at *http://www.acf.dhhs.gov.programs/cb/special/ncands.htm*. The data elements for the Detailed Case Data Component can be found at *http://www.acf.dhhs.gov.programs/cb/special/casedata.htm*.

One consequence of focusing on outcomes that can be measured through AFCARS and NCANDS is that the outcomes to be included in the first Annual Report do not address the goal of child well-being. In the first Annual Report to the Congress, the Children's Bureau intends to discuss issues pertaining to the development of future child well-being outcomes and possible procedures for collecting data pertaining to those outcomes. It is anticipated that these outcomes will relate to the educational and health status of children served by the foster care system.

Because of the extensive variation among State child welfare systems with respect to policies, definitions, resources, capacities, and demographic characteristics, future Annual Reports to the Congress will assess State performance by recording changes in each State's performance on each outcome measure. The ultimate objective will be to document either a pattern of continuous improvement or performance problems relevant to particular outcomes.

In order to ensure that the outcomes presented in the Annual Report would be meaningful with respect to the performance of a child welfare system, the Children's Bureau engaged in a consultation process to assist in developing the outcome measures. This consultation process included:

- Establishing a Consultation Group comprised of representatives from State, Tribal, county, and municipal child welfare agencies; private non-profit child and family services agencies; State legislatures; State Governors' offices; juvenile and family courts; local child advocacy organizations; and a public employee organization;
- Inviting national organizations to serve as resources to the Consultation Group, including the American Bar Association Center on Children and the Law, the American Public Human Services Association, the Child Welfare League of America, the Children's Defense Fund, the National Association of Child Advocates, the National Center for Juvenile Justice, the National Child Welfare Resource Center for Organizational Improvement, the National Conference of State Legislatures, the National Council of Juvenile and Family Court Judges, and the National Governors's Association;
- Convening a meeting of the Consultation Group in September 1998 during which multiple outcomes were proposed and discussed;
- Conducting a review of the outcomes proposed during the Consultation Group meeting by a Children's Bureau staff to identify those outcomes that reflect desired goals and objectives and could be measured using data from the AFCARS and the NCANDS;
- Preparing and disseminating a report on the outcome measures to the Consultation Group and resource organization representatives for their review and comment;
- Convening telephone conference calls and meetings to obtain feedback on the outcome measures from Consultation Group members and resource organization representatives;
- Presenting the outcome measures to participants of three focus groups at the 12th National Conference on Child Abuse and Neglect in Cincinnati, Ohio, to obtain feedback from the larger child welfare community;
- Conducting a review of comments from reviewers and focus group participants to determine areas for revision; and
- Disseminating the revised outcome measures to Consultation Group members and resource organization representatives for review and comment during the second meeting of the Consultation Group in December 1998.

The following outcome measures are the result of this consultation process. The Children's Bureau of DHHS invites your comment on these outcome measures. Revisions resulting from the comment process will be reflected in the final list of outcome measures, which will be used as the basis for the first and subsequent Annual Reports to the Congress on the performance of each State in meeting the goals and objectives of the child welfare system.

Safety-Related Outcome 1: Reduce Recurrence of Child Abuse and/or Neglect

During a specified reporting period:

—Of all children who were victims of substantiated child abuse and/or neglect, what percentage had another substantiated report within 12-month period?

—Of all children who were victims of substantiated child abuse and/or neglect, who were not placed in foster care, and whose families received services from the agency, what percentage had another substantiated report within a 12-month period?

—Of all children who were victims of substantiated child abuse and/or neglect, who were not placed in foster care, and whose families did not receive services from the agency, what

percentage had another substantiated report within a 12-month period?

Note: This outcome addresses a primary objective of all child welfare systems-to prevent the recurrence of child abuse or neglect once it has come to the attention of the system. It is acknowledged that recurrence is the result of multiple factors and that child welfare interventions cannot prevent all recurrence. This outcome may be modified or expanded in the future to include a measure that addresses all reports referred for investigation, not solely those that are substantiated. In the current measure, "substantiated" reports include those that are classified by some States as "indicated."

Safety-Related Outcome 2: Reduce Child Fatalities Due to Child Maltreatment

During a specified reporting period:

—Of all child fatalities resulting from abuse or neglect, what percentage of child victims had been the subject of a substantiated report of child abuse or neglect within 12 (24) months prior to the reported fatality?

Note: This outcome reflects a fundamental goal of child welfare systems—to prevent child fatalities as a result of abuse or neglect. The measure focuses on fatalities among children who were known to the child welfare system.

Safety-Related Outcome 3: Improve the Child Welfare System's Response Time To Investigate Abuse or Neglect Reports

During a specified reporting period:

—Of all child protection investigations initiated, what was the mean length of time between the report and the initiation of the investigation?

Note: The selection of this outcome was based on the assumption that a rapid response to an abuse or neglect report can be used as at least one measure of a system's performance in protecting children. The outcome may be modified in the future to incorporate State response standards for various types of maltreatment reports. The Summary Data Component of NCANDS recently incorporated data elements pertaining to response time information for different categories of reports.

Permanency-Related Outcome 1: Reduce Time in Foster Care To Reunification Without Increasing the Rate of Foster Care Re-Entry

During a specified reporting period:

—Of all children who were reunified with their parents or caretakers from foster care placements, what percentage was reunified in less than 12 months from the time of latest removal from home?

—Of all children who were reunified with their parents or caretakers from foster care placements, what percentage was reunified in 12 to 24 months from the time of latest removal from home?

—Of all children who were reunified with their parents or caretakers from foster care placements in less than 12 months from the time of removal, what percentage re-entered foster care in less than 12 months from the time of reunification?

Note: The term "foster care" as used in this outcome refers to all out-of-home care arrangements for children for whom the State child welfare agency has responsibility for placement, care, or supervision. The term "reunification" refers to children who are returned to their parents as well as those who are discharged to other relatives (i.e., the child's case is closed, but the relatives are not the child's legal guardians).

This outcome reflects the objective of returning children in foster care to their families as soon as possible. The third measure is designed to address the concern that by expediting reunifications a child welfare system may risk increasing re-entries into foster care. Distribution of time-in-care information for all children in foster care may be provided as context information.

Permanency-Related Outcome 2: Reduce Time in Foster Care to Adoption Finalization Without Increasing the Number of Adopted Children Who Re-Enter Foster Care

During a specified reporting period:

—Of all children who were younger than age 3 at the time of foster care entry and who exited foster care to finalized adoptions, what percentage exited to finalized adoptions in less than 24 months from entry?

—Of all children who were age 3 or older at the time of foster care entry and who exited foster care to finalized adoptions, what percentage exited to finalized adoptions in less than 36 months from entry?

—Of all children entering foster care, what percentage had been previously adopted when they were older than 2 years of age?

Note: This outcome addresses the objective that children who cannot be reunified with their families should be adopted as quickly as possible. The first two measures reflect a decision to track adoptions of children younger than 3 years of age separately from adoptions of older children. Research findings indicate that adoptions can be achieved more frequently and quickly for children who are under age 3 at the time of entry into care than for children who enter foster care at age 3 or older. The third measure is designed to reflect concerns that expedited adoptions may result in re-entries into the foster care system. By only including children older that age 2 at the time of adoption, we expect to reduce the number of private agency or international adoptions that may be included in the data.

Permanency-Related Outcome 3: Reduce Time in Foster Care to Legal Guardianship

During a specified reporting period:

—Of all children who were discharged with a legal guardianship, what percentage was discharged in less than 24 months from time of removal?

Note: This outcome reflects the objective of establishing a timely permanency option for children when reunification and adoption have been ruled out as permanency options.

Permanency-Related Outcome 4: Reduce the Disparity of Length of Time in Foster Care Between Children of Color and Caucasian Children

During a specified reporting period:

—For children in non-relative foster care who exited care, what was the median length of time in care for African American children, American Indian/Alaska Native children, Asian and Pacific Islander children, Caucasian children, and Hispanic children?

—For children in relative foster care who exited care, what was the median length of time in care for African American children, American Indian/Alaska Native children, Asian and Pacific Islander children, Caucasian children, and Hispanic children?

Note: This outcome reflects concerns that children of color may receive differential treatment in many of National's foster care systems. The measures are designed to track both the disparity of length of time in foster care and the impact of relative foster care on length of time in care.

Permanency-Related Outcome 5: Increase Permanency for Disabled and Older Children

During a specified reporting period:

—For all children who were identified as disabled and who exited care, what percentage exited to reunification, adoption, or legal guardianship?

—For all children who were 12 years of age or older at the time of their most recent entry into care and who exited care, what percentage exited to reunification, adoption, or legal guardianship?

—For all children exiting care through emancipation, what percentage was younger than 12 years of age at the time of their most recent entry into care?

Note: These measures address general concerns in the field about permanency for disabled children, children who enter care when they are adolescents, and older children for who efforts to achieve permanent homes are lacking or ineffective.

Permanency-Related Outcome 6: Increase Placement Stability

During a specified reporting period:

—For all children who had been in foster care for longer than 3 months, what percentage had not more than two placement settings during their most recent episode?

Note: This outcome addresses the objective of reducing the number of placement settings in a single-foster care episode. The measure acknowledges that in many States a large percentage of children will experience at least two placements because of the use of emergency foster care services at the time of removing a child from the home.

Permanency-Related Outcome 7: Reduce Placements of Children in Group Homes, Institutions, and Out-of-State Care

During a specified reporting period:

—For all children who were younger than age 12 when they were placed in their current foster care settings, what percentage had a current placement in a group home? What percentage had a current placement in an institution?

—For all children who were 12 years of older when they were placed in their current foster care settings, what percentage had a current placement in a group home? What percentage had a current placement in an institution?

—For all children whose current placement settings are group homes or institutions, what percentage is placed out of State?

Note: This outcome reflects the objective of placing most children in family foster homes and in placements that are in close proximity to their families. It is acknowledged that for some children, particularly adolescents, group homes, institutions, or out-of-State placements may be appropriate.

Dated: January 26, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–2361 Filed 1–29–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1999.

Name: National Advisory Council (NAC) on the National Health Service Corps (NHSC).

Date and Time: February 18, 1999; 6:00 p.m.–9:00 p.m., February 19, 1999; 9:00 a.m.–4:30 p.m., February 20, 1999; 9:00 a.m.–5:00 p.m., February 21, 1999; 8:30 a.m.–11:00 a.m.

Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, Maryland 20814, Phone: (301) 718–0200.

Agenda: In preparation for the year 2000 reauthorization, the NAC has developed a draft position paper, "The National Health Service Corps for the 21st Century." Agenda items include staff from Capitol Hill and representatives from HRSA field offices convening separate panels to provide comments. Representatives from the central office will present their comments to the Council as well. Other agenda items include updates on the NHSC program. Copies of the draft paper will be available at the meeting.

The meeting is open to the public. For further information, call Ms. Eve Morrow, Division of National Health Service Corps, at (301) 594–4144.

Dated: January 28, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–2412 Filed 2–1–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the San Benito Evening-Primrose for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Recovery Plan for the San Benito evening-primrose (*Camissonia benitensis*). This California plant occurs mostly on stream terraces whose soils are derived from serpentine rock near San Benito Mountain in southern San Benito County and western Fresno County.

DATES: Comments on the draft recovery plan received by April 5, 1999 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Diane K. Noda, Field Supervisor, at the above Ventura address.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, at the above Ventura address (phone: 805/644–1766).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

This annual herb is listed as endangered. It occurs largely on lands managed by the U.S. Bureau of Land Management, where it is threatened by off-highway vehicle recreation and the resultant accelerated erosion in its habitat. Its habitat consists of mostly alluvial terraces in areas of serpentine rock. This rock type is rather toxic to most plants because it provides an unusual balance of plant nutrients. Serpentine areas generally have sparse vegetation. Serpentine dust is toxic to people because it contains asbestos.

The objective of this plan is to conserve the plant so that protection by the Act is no longer necessary. Actions necessary to accomplish this objective include prevention of additional degradation and loss of the plant's habitat, partly by developing and

implementing an off-highway vehicle management plan. The plan also seeks to protect populations of the plant on private lands, protect populations from activities other than off-highway vehicular recreation, and to develop a public awareness program.

Public Comments Solicited

The Service solicits written comments on this draft recovery plan. All comments received by the date specified above will be considered prior to final approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 25, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 99–2375 Filed 2–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the La Rue Housing/Bowley Center Projects, Yolo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability and Receipt of Application.

SUMMARY: This notice advises the public that the University of California, Davis (University), has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The proposed permit would authorize the incidental take of the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), federally listed as threatened, and modification of its habitat during construction of a new student housing facility and a greenhouse/education facility on the University campus in Yolo County, California. The permit would be in effect for 10 years.

The Service announces the receipt of the University's incidental take permit application which includes the proposed "Low-Effect Habitat Conservation Plan for the Valley Elderberry Longhorn Beetle at the La Rue Student Housing and Bowley Center Projects, University of California, Davis." The proposed habitat conservation plan (Plan) is available for public comment. The Plan fully describes the proposed project and the measures the University would undertake to minimize and mitigate project impacts to the valley elderberry longhorn beetle. The Service has made a preliminary determination that the University's Plan qualifies as a "low-effect" habitat conservation plan eligible for categorical exclusion under the National Environmental Policy Act. We explain the basis for this determination in an Environmental Action Statement, which is also available for public review. This notice is provided pursuant to section 10(c) of the Act.

DATES: Written comments on the permit application and Plan should be received on or before March 4, 1999.

ADDRESSES: Comments regarding the permit application or the Plan should be addressed to Wayne White, Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Comments may be sent by facsimile to (916) 979–2744.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Twedt or Mr. William Lehman, Fish and Wildlife Biologists, Sacramento Fish and Wildlife Office; telephone (916) 979–2129.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the Plan and associated documents for review should immediately contact the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Act and Federal regulation prohibit the "take" of a species listed as endangered or threatened, respectively (take is defined under the Act, in part, as to kill, harm, or harass a federally listed species). However, the Service may issue permits to authorize "incidental take" (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity) of listed species under limited circumstances. Regulations governing permits for threatened species are promulgated in 50 CFR 17.32; regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

The La Rue Student Housing Project would be located in the western portion of the University's Central Campus and composed of four or more "neighborhoods." Approximately 16 studio, 40 one-bedroom, 64 two-bedroom, 52 three-bedroom, and 20 four-bedroom units would be divided among the "neighborhoods." Buildings would range from one to three stories in height. This project would provide housing for between 550 and 750 students.

The Bowley Center would consist of a Plant Science Teaching Center and would include laboratories, greenhouses, offices, and a lecture room. This facility would be located in the western portion of the Central Campus. It would integrate lecture, greenhouse, field, and dry lab facilities in a single site, allowing for a more efficient use of time.

In May, 1997, the proposed project area was surveyed for potential habitat for rare, threatened, or endangered species and other biological features that could be affected by the project. Only one federally listed species, the threatened valley elderberry longhorn beetle (beetle), has the potential to occur on the project site and to be directly impacted by the proposed project. The University has agreed to implement the following measures to minimize and mitigate impacts that may result from incidental take of the beetle: (1) mitigation and monitoring of transplanted elderberry shrubs and supplemental plantings would be conducted according to the Service's Mitigation Guidelines for the Valley Elderberry Longhorn Beetle, dated September 19, 1996; (2) 14 affected elderberry shrubs would be transplanted to a mitigation site along Putah Creek on Russel Ranch, on property owned by the University; (3) 336 additional elderberry cuttings would be planted to compensate for any adverse impacts to the 14 elderberry shrubs resulting from the proposed project; and (4) the mitigation area would be managed for the purpose of long-term protection of valley elderberry longhorn beetle habitat.

The Service has made a preliminary determination that the University's Plan qualifies as a "low-effect" habitat conservation plan as defined by the Service's Habitat Conservation Planning Handbook (November 1996). Low-effect habitat conservation plans are those involving: (1) minor or negligible effects on federally listed and candidate species and their habitats; and (2) minor or negligible effects on other environmental values or resources. The La Rue Housing/Bowley Center Plan qualifies as a low-effect habitat conservation plan for the following reasons:

1. Approval of the Plan would result in minor or negligible effects on the beetle and its habitat. The Plan may, in fact, result in a beneficial effect to the

beetle, since the fourteen affected shrubs would be transplanted from a relatively disturbed area to a protected environment. The Service does not anticipate significant direct or cumulative effects to the beetle resulting from construction of the new student housing or greenhouse/educational facilities.

2. Approval of the Plan would not have adverse effects on unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the Plan would not result in any cumulative or growth inducing impacts and, therefore, would not result in significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a federal, state, local, or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has preliminarily determined that approval of the Plan qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. The Service will evaluate the permit application, the Plan, and comments submitted therein to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that those requirements are met, a permit will be issued for the incidental take of the valley elderberry longhorn beetle in conjunction with implementation of the La Rue Student Housing and Bowley Center projects. The final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: January 26, 1999.

Elizabeth H. Stevens,

Manager, California/Nevada Operations Office, Fish and Wildlife Service, Region 1, Sacramento, California.

[FR Doc. 99–2376 Filed 2–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath Fishery Management Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. This objectives of this meeting are to hear technical reports, review the 1998 fishery season, and discuss and plan management of the 1999 season, including fish allocation. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 10:00 a.m. to 5:00 p.m. on Tuesday, February 23, 1999; from 8:00 a.m. to 5:00 p.m. on Wednesday, February 24, 1999; and from 8:00 a.m. to 3:00 p.m. on Friday, February 25, 1999.

PLACE: The meeting will be held at the Doubletree Hotel, 1929 Fourth Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: This meeting will be held jointly with the Klamath Fishery Management Council meeting on the morning of Wednesday, February 24, 1999. The Klamath Fishery Management Council was also established under the authority of the Klamath River Basin Fishery Resources Restoration Act.

For background information on the Klamath River Basin Fisheries Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: January 27, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 99–2380 Filed 2–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 8:00 a.m. to 5:00 p.m. on Wednesday, February 24, 1999 and Thursday, February 25, 1999, and from 8:00 a.m. to 10:00 a.m. on Friday, February 26, 1999.

PLACE: The meeting will be held at the Doubletree Hotel (1929 Fourth Street), Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

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Dated: January 27, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 99–2381 Filed 2–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau of Indian Affairs

Status of Red Lake Tribal Indian Lands in Minnesota

AGENCIES: Bureau of Land Management, Interior; Bureau of Indian Affairs, Interior.

ACTION: Notice identifying lands subject to Secretarial Order of Restoration of February 22, 1945.

SUMMARY: On February 22, 1945, the Secretary of the Interior issued an Order restoring to the Red Lake Band of Chippewa Indians of Minnesota ("Tribe") certain lands that the Tribe had previously ceded to the United States for use by non-Indians. The lands restored to the Tribe by the 1945 Order are lands that were continuously held in trust by the United States since the cessions, that were never sold or otherwise disposed of, and for which the Tribe was never paid. This notice provides a partial list of the lands restored to the Tribe by the 1945 Order.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, State Director, Eastern States Office, *or* Walter Rewinski, Deputy State Director, Resources Planning, Use and Protection, Eastern States Office, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153.

SUPPLEMENTARY INFORMATION: The Nelson Act, Act of Jan. 14, 1889, ch. 24, 25 Stat. 642, created and authorized a federal commission to negotiate a cession of lands in northern Minnesota from the Red Lake Band of Chippewa Indians of Minnesota ("Tribe") to the United States. By agreement dated July 8, 1889, 2.9 million acres of land known as "Royce 706" was ceded by the Tribe to the United States to be held in trust, subject to sale by the United States for the benefit of the Tribe. The Tribe retained a much smaller area known as "Royce 707."

On March 10, 1902, another agreement was negotiated between the Tribe and the United States for the cession of an additional 256,152 acres of land in the western portion of Royce 707. This agreement was approved by Congress. Act of Feb. 20, 1904, ch. 161, 33 Stat. 46. The Tribe's present-day reservation is composed of land remaining after the 1889 and 1902 cessions. Consistent with the provisions of the Nelson Act, the lands the Tribe ceded to the United States were opened for timber sales and homesteading, and most of the lands were disposed of by the 1930s.

The Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. §§ 461 *et seq.*, authorized the Secretary of the Interior, if he found it to be in the public interest, "to restore to tribal ownership the remaining surplus lands of any Indian reservation [that prior to June 18, 1934 were] opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public land laws of the United States[.]" 25 U.S.C. § 463(a).

On February 22, 1945, exercising this authority granted by the IRA, the Secretary of the Interior issued an Order of Restoration ("1945 Order"), 10 Fed. Reg. 2448 (1945). The 1945 Order "restore[d] to tribal ownership all those lands of the Red Lake Indian Reservation which were ceded by the Indians under [the Nelson Act and the Act of Feb. 20, 1904] and which were opened for sale or entry but for which the Indians have not been paid and which now are or hereafter may be classified as undisposed of[.]" 10 Fed. Reg. at 2449. *See also* Act of Dec. 4, 1942, ch. 673, 56 Stat. 1039 ("[A]ll right, title, and interest of the Minnesota Chippewa Tribe in and to the so-called Red Lake Indian ceded lands, including any administrative reserves, is hereby declared extinguished and title thereto vested in the Red Lake Band of Chippewa Indians[.]").

On May 28, 1945, the Acting Commissioner of the General Land Office forwarded to the Commissioner of the Office of Indian Affairs a list of lands that satisfied the criteria of the 1945 Order and could be returned to the Band. On April 29, 1946 and January 9, 1947, amendments to the list of lands were made. The list of May 28, 1945 and the amendments of April 29, 1946 and January 9, 1947 (collectively, the "1945 List") totaled approximately 157,499 acres of non-contiguous lands. The 1945 List was to have been published in the **Federal Register** to provide public notice of which lands were subject to the 1945 Order. However, shortly after the 1945 List was completed, several title and legal description problems with lands on it were discovered, and the 1945 List was never published in the **Federal Register**.

From 1945 until 1988, the Department attempted to resolve many of the vexing title and legal description problems with the lands on the 1945 List. On December 22, 1988, the Acting State Director of the Eastern States Office, Bureau of Land Management ("BLM"), forwarded to the Bureau of Indian Affairs a comprehensive listing of lands totaling approximately 186,533 acres ("1988 List") that the BLM had determined qualified for restoration to the Band under the 1945 Order. Many of the lands on the 1945 List were on the 1988 List. However, shortly after the 1988 List was completed, several further title and legal description problems were manifested and the 1988 List was never published in the Federal **Register**.

In December, 1997, the Department initiated a review of the lands on the 1945 and 1988 Lists. The Department has determined that the following lands that were ceded by the Tribe to the United States in 1889 and 1902, that were held in trust by the United States, subject to sale for the benefit of the Tribe, and that were not disposed of by the United States, were restored to the Tribe by the 1945 Order. This list does not represent a final list of all those lands restored to tribal ownership under the 1945 Order. Descriptions of any additional lands that were restored by the 1945 Order may be published as they are confirmed.

Description	Acreage
T. 157 N., R. 25 W.	
Sec. 3, Lot 7	3.08
T. 158 N., R. 26 W.	
Sec. 16, NE4, NW4, SW4, SE4	640
T. 157 N., R. 27 W.	
Sec. 16, NW4, NW4NE4	200
T. 158 N., R. 27 W.	
Sec. 16, NE4, NW4	320
T. 156 N., R. 28 W	
Sec. 16, NE4, NW4, SW4, SE4	640
T. 157 N., R. 28 W	
Sec. 1, Lot 1, SE4NE4, E2SE4	162.76
Sec. 4, Lots 1,2,3,4, S2NW4	255.40
Sec. 6, NE4SW4	40
Sec. 7, SE4SE4	40
Sec. 8, SW4SW4	40
Sec. 9, NE4, NW4, SW4, SE4	640
Sec. 10, NW4, NE4SW4, W2SW4,	280
Sec. 12, NE4, E2SW4, SE4	400
Sec. 13, N2NE4	80
Sec. 15, NW4NW4, SE4NW4, SW4SW4	120
Sec. 16, NE4, NW4, S2SW4, S2SE4	480
Sec. 21, NE4, NW4, SW4, SE4	640
Sec. 22, SW4NE4, NW4, N2SW4, SW4SW4	320
Sec. 24, NE4NE4, S2NE4, SE4	280
Sec. 25, NE4, NW4, SW4, SE4	640
Sec. 28, NE4, NW4, SW4, SE4	640
Sec. 33, Lots 1,2,3,4, NE4, NW4, N2SW4, N2SE4	637.16

Description	Acreage
Sec. 36, NE4, NW4, SW4, SE4	640
T. 158 N., R. 28 W.	
Sec. 33, NE4, NW4, SW4, SE4	640
Sec. 34, SW4NE4, NW4, SE4SW4	240
Sec. 36, S2SE4	80
T. 159 N., R. 28 W.	
Sec. 3, S2NE4, SE4NW4, N2SW4	200
Sec. 4, S2SW4	80
Sec. 5, SE4SE4	40
Sec. 36, NE4NE4	40
T. 153 N., R. 29 W.	
Sec. 7, Lot 2	0.31
T. 158 N., R. 29 W.	
Sec. 5, N2SW4, SE4SW4	120
Sec. 6, Lot 6	41.81
T. 159 N., R. 29 W.	
Sec. 2, E2SE4	80
Sec. 3, Lots 3,4,	81.96
Sec. 18, Lot 2	33.64
T. 154 N., R. 30 W.	
Sec. 36, N2NW4	80
T. 151 N., R. 31 W.	
Sec. 16, Lot 8	1.18
T. 152 N., R. 31 W.	
Sec. 16, SE4SE4	40
T. 158 N., R. 31 W.	
Sec. 3, Lot 1	40.14
T. 158 N., R. 32 W.	
Sec. 6, Lots 1 thru 7, S2NE4, SE4NW4, E2SW4, SE4	631.85
Sec. 7, Lots 1,2, NE4, E2NW4, N2SE4	396
Sec. 13, Lot 2, S2NW4	112
Sec. 18, Lot 4, SE4NE4, SE4SW4, SE4	278.16
Sec. 19, NE4NE4, S2NE4, N2SE4, SE4SE4	240
Sec. 30, Lots 2,3, 4, NE4NE4, E2SW4, SE4	399.01
Sec. 31, Lots 1,2,3,4, NE4, E2NW4, E2SW4,NW4SE4	519.08
T. 159 N., R. 32 W.	
Sec. 7, SE4SE4	40
T. 160 N., R. 32 W.	
Sec. 31, SE4NW4	40
T. 166 N., R. 32 W.	
Sec. 7, Lot 1	28.90
Sec. 18, Lot 2	17.50
T. 150 N., R. 33 W.	
Sec. 14, Lots 7, 8, 9	2.71
Sec. 15, Lot 11	2.99
T. 158 N., R. 33 W.	
Sec. 1, Lots 1, 2, 3, 4, S2NE4, S2NW4, N2SW4, SE4SW4, SE4	594.04
Sec. 2, Lots 1, 2, 3, 4, S2NE4, N2SE4	308.88
Sec. 3, Lots 1, 4	77.56
Sec. 4, Lots 1, 2, 3, 4, SW4NE4, S2NW4, N2SE4	360
Sec. 5, Lots 1, 2, 3, S2NE4, SE4NW4, N2SW4, NW4SE4	358.44
Sec. 6, Lots 3, 5, SE4NW4	117.20
Sec. 7, SW4NE4, SE4NW4, E2SW4, SE4	320
Sec. 8, SE4NE4, E2SW4, NE4SE4, S2SE4	240
Sec. 9, W2SW4	80
Sec. 10, W2SW4	80
Sec. 11, N2NE4, NE4NW4	120
Sec. 12, S2NE4, NW4, NE4SW4, N2SE4	360
Sec. 13, N2SW4	80
Sec. 14, N2NE4, NW4NW4, NE4SE4	160
Sec. 15, E2NE4, W2NW4, SW4, N2SE4	400
Sec. 16, S2NE4, S2NW4, SW4, SE4	480
Sec. 17, W2NE4, NW4, SW4, SE4	560
Sec. 18, Lots 1, 2, 3, 4, NE4, NE4NW4, SE4SW4, NE4SE4, S2SE4	516.20
Sec. 19, N2NE4, SE4NE4, NE4SE4, S2SE4	240
Sec. 20, NE4, NW4, SW4, W2SE4	560
Sec. 21, W2NE4, NW4, N2SE4	320
Sec. 22, SW4NE4, E2NW4	120
Sec. 25, S2NE4, SE4NW4, NE4SW4, S2SW4, SE4	400
Sec. 26, SE4SW4	40
Sec. 28, NW4NE4	40
Sec. 29, NE4NE4	40
Sec. 30, E2NE4, E2SW4	160
Sec. 31, S2SE4	80
Sec. 32, W2NE4, S2NW4, SW4, SE4	480
Sec. 33, SW4, SE4	320
Sec. 34, S2NE4, SE4NW4, SW4, N2SE4, SW4SE4	400
Sec. 35, NE4, NW4, E2SW4, SE4	560
Sec. 36, NE4, NW4, SW4, SE4	640
T. 159 N., R. 33 W.	
Sec. 9, W2SW4, SE4SW4	120
Sec. 16, SW4NE4, N2NW4, W2SE4, SE4SE4	240
Sec. 19, SE4SE4	40
Sec. 26, SE4	160
Sec. 27, NW4NE4, E2SW4, W2SE4	200
Sec. 28, NE4NE4, S2NE4, NW4, NE4SW4, S2SW4, NW4SE4, S2SE4	520
Sec. 29, NE4NE4, SE4SE4	80
Sec. 30, NE4	160
Sec. 31, Lots 3, 4, E2SW4	166.85
Sec. 32, N2NE4	80
Sec. 33, SE4NE4, N2NW4, SE4NW4, NE4SW4, S2SW4, N2SE4, SW4SE4	400
Sec. 34, W2NE4, W2NW4, SE4NW4, SW4, N2SE4, SE4SE4	480
Sec. 35, W2SW4, SE4SW4	120
Sec. 36, NE4, E2NW4	240
T. 166 N., R. 33 W.	
Sec. 6, Lots 2, 3, 6, NE4NW4	159.25
Sec. 25, Lot 2	35.75
T. 167 N., R. 33 W.	
Sec. 1, SE4NW4	40
Sec. 2, SW4SE4	40
Sec. 3, SE4NW4	40
Sec. 4, Lots 2, 6	6.85
Sec. 5, Lot 5	7.55
Sec. 7, N2NW4	80
Sec. 11, N2NE4, NE4NW4	122.40
Sec. 12, Lot 6, N2NW4	80.15
Sec. 13, Lot 1	0.90
Sec. 17, W2SW4	80
Sec. 18, S2NE4, S2NW4, SW4, N2SE4, SW4SE4,	440
Sec. 19, W2NE4, NW4, SW4SW4	280
Sec. 26, Lots 2, 3	10.44
Sec. 27, Lot 2	4.87
Sec. 30, W2NW4, SE4NW4,SW4	280
Sec. 31, NW4, SW4	320
Sec. 36, Lot 5	0.33
T. 150 N., R. 34 W.	
Sec. 29, Lot 8	0.56
T. 158 N., R. 34 W.	
Sec. 1, Lot 3, S2NW4, NE4SW4, NW4SE4	199.51
Sec. 2, Lot 4, SW4NE4, S2NW4, NE4SW4, W2SE4	279.37
Sec. 3, Lots 1, 2, 3, 4, S2NE4, S2NW4	318.72
Sec. 4, Lots 1, 2, 4, S2NE4, SW4NW4, N2SE4, SE4SE4	361.32
Sec. 5, Lots 1, 2, S2NE4, S2NW4	242.34
Sec. 6, Lots 5, 6, SW4NE4, SE4NW4, NE4SW4, SE4	342.53
Sec. 7, Lot 3, NW4NE4, E2SW4, N2SE4, SW4SE4	271.80
Sec. 8, S2NE4, NE4NW4, S2NW4, SW4, SE4	520
Sec. 9, NE4NE4, S2NE4, E2NW4, SW4	360
Sec. 10, NE4, W2NW4, SE4SW4	280
Sec. 11, NW4NE4, N2NW4	120
Sec. 12, SW4SE4	40
Sec. 13, NE4, S2NW4, SW4, SE4	560
Sec. 14, SE4NE4, SW4SW4, SE4SE4	120
Sec. 15, SE4	160
Sec. 16, SW4	160
Sec. 17, N2NW4, SW4NW4, W2SW4, SE4SW4, SE4	400

Description	Acreage
Sec. 18, Lots 2, 3, 4, NE4, E2NW4, E2SW4, SE4	577.84
Sec. 19, Lots 1, 2, 3, 4, NE4, E2NW4, E2SW4, SE4	612.08
Sec. 20, N2NE4, SE4NE4, SW4NW4, SW4, NW4SE4, S2SE4	440
Sec. 21, S2SW4	80
Sec. 22, NE4NE4, SW4, SE4	360
Sec. 23, NW4NW4, S2SW4	120
Sec. 24, N2NE4, SW4NE4, N2NW4	200
Sec. 25, NW4SW4, SE4SE4	80
Sec. 26, SW4, SW4SE4	200
Sec. 27, NW4, NW4SW4, E2SE	280
Sec. 28, NE4, NW4, NE4SW4, N2SE4	440
Sec. 29, NE4, NW4, SW4, SE4	640
Sec. 30, Lots 1, 2, 3, 4, NE4, E2NW4, E2SW4, SE4	612.52
Sec. 33, NW4NE4, S2NE4, N2NW4, SW4, SE4	520
Sec. 34, NE4, NE4NW4, S2NW4, NW4SW4, S2SW4, NE4SE4	440
Sec. 35, S2NE4, N2SW4, SW4SW4, SE4SE4	240
Sec. 36, SW4NW4, NW4SW4, S2SW4, S2SE4	240
T. 159 N., R. 34 W.	
Sec. 3, SW4NE4, S2NW4, NW4SE4	160
Sec. 34, S2SW4	80
T. 166 N., R. 34 W.	
Sec. 1, NE4, NW4, SW4, SE4	640
Sec. 2, NE4NE4, S2NE4, NW4, SW4, SE4	600
Sec. 3, NE4, NW4, SW4, SE4	640
Sec. 4, NE4, NW4, SW4, SE4	640
Sec. 5, NE4, NW4, SW4, SE4	640
Sec. 6, Lots 2, 4, NE4, E2NW4, SE4SW4, S2SE4	437.93
Sec. 7, Lots 1, 2, 3, 4, NE4, E2NW4, E2SW4, SE4	634.56
Sec. 8, NE4, NW4, SW4, SE4	640
Sec. 9, NE4, NW4, SW4, SE4	640
Sec. 10, NE4, NW4, SW4, SE4	640
Sec. 11, NE4, NW4, SW4, SE4	640
Sec. 12, NW4NE4, SW4NE4, NW4, SW4	400
Sec. 13, NW4NW4	40
Sec. 14, NE4, NW4, N2SW4, SW4SW4, NW4SE4	480
Sec. 15, NE4, NW4, SW4, SE4	640
Sec. 17, NE4, SW4, SE4,	480
Sec. 18, Lots 1, 2, 3, 4, NE4, E2NW4, E2SW4, SE4	634.56
Sec. 19, Lots 1, 2, 3, NE4, E2NW4, NE4SW4, NW4SE4	435.94
Sec. 20, SW4NE4, NW4	200
Sec. 21, N2NE4, N2NW4	160
Sec. 22, N2NE4, N2NW4, SW4SW4	200
T. 167 N., R. 34 W.	
Sec. 1, Lots 3, 4, S2NW4, NW4SW4, S2SW4	281.05
Sec. 2, Lots 1, 2, 3, 4, S2NE4, SE4NW4, S2SW4, NE4SE4	403.20
Sec. 6, Lots 1 thru 7, S2NE4, SE4NW4, E2SW4, SE4	641.32
Sec. 7, Lots 1, 2, 3, 4, NE4, E2NW4, E2SW4, SE4	641.92
Sec. 8, NE4, NW4, SW4, SE4	640
Sec. 9, NE4, NW4, SW4, SE4	640
Sec. 10, NE4, NW4, SW4, N2SE4, SE4SE4	600
Sec. 11, NW4, SW4, NW4SE4, S2SE4	440
Sec. 12, NE4NW4, SE4SW4, NW4SE4, S2SE4	200
Sec. 13, SE4NW4, SW4, SE4	360
Sec. 14, NE4, NW4, SW4, SE4	640
Sec. 15, E2NE4, NW4, SW4, SE4	560
Sec. 16, NE4, SW4NW4, SW4, SE4,	520
Sec. 17, W2NW4, W2SW4, SE4SW4, NE4SE4, S2SE4	320
Sec. 18, Lots 1, 2, 3, 4, W2NE4, E2NW4, E2SW4, SE4	561.20
Sec. 19, Lots 2, 3, 4, NE4, E2NW4, E2SW4, SE4	598.88
Sec. 20, NE4, NW4, SW4, SE4	640
Sec. 21, NE4, NW4, SW4, SE4	640
Sec. 22, NE4, NW4, SW4, SE4	640
Sec. 23, NE4, NW4, SW4, SE4	640
Sec. 24, NE4, NW4, SW4, SE4	640
Sec. 25, NE4, NW4, SW4, SE4	640
Sec. 26, NE4, NW4, SW4, SE4	640
Sec. 27, NE4, NW4, SW4, SE4	640
Sec. 28, NE4, NW4, SW4, SE4	640
Sec. 29, NE4, NW4, N2SW4, SE4	560
Sec. 30, Lots 1, 2, 3, 4, NE4, E2NW4, E2SW4, SE4	638.48
Sec. 31, Lot 1, NE4, E2NW4, E2SW4, SE4	519.80
Sec. 32, NE4, S2NW4, SW4, SE4	560
Sec. 33, NE4, NW4, SW4, SE4	640
Sec. 34, NE4, NW4, SW4, SE4	640
Sec. 35, NE4, NW4, W2SW4, N2SE4, SE4SE4	520
Sec. 36, NE4, NW4, SW4, SE4	640
T. 168 N., R. 34 W.	
Sec. 25, SW4NW4	40
Sec. 26, SE4NE4, SW4, W2SE4	280
Sec. 27, S2SW4, S2SE4	160
Sec. 29, S2SE4	80
Sec. 32, N2NE4, SW4NE4, SE4NW4, SW4	320
Sec. 34, NE4, NE4NW4, S2SW4, SE4	440
Sec. 35, W2NE4, NW4, SW4, SE4	560
Sec. 36, S2NW4, SW4	240
T. 148 N., R. 35 W.	
Sec. 36, Lot 4	0.95
T. 149 N., R. 35 W.	
Sec. 26, Lot 1	0.30
T. 150 N., R. 35 W.	
Sec. 32, NW4SW4	40
T. 166 N., R 35 W.	
Sec. 1, Lots 1, 2, 3, 4, NE4SW4, S2SW4, SW4SE4	320
Sec. 2, Lots 1, 2, 3, 4, S2NE4, S2NW4, SE4	480
Sec. 3, E2NW4, E2SW4, SE4	312.72
Sec. 10, NE4, E2NW4, E2SW4, SE4	472.72
Sec. 11, N2NE4, SE4NE4, NW4, NW4SW4, E2SE4	400
Sec. 12, NE4, NW4, SW4, SE4	640
Sec. 13, NE4, NW4, SW4, SE4	640
Sec. 14, E2SE4	80
Sec. 15, NE4, E2NW4, E2SW4, NE4SE4, W2SE4	432.72
Sec. 24, NE4, NW4, SW4, SE4	640
Sec. 27, NE4NW4	23.13
Sec. 35, Lot 2	49.80
T. 167 N., R. 35 W.	
Sec. 1, Lots 1, 2, 3, 4, S2NE4, S2NW4, SW4, SE4	640.68
Sec. 2, Lots 1, 2, 3, 4, S2NE4, S2NW4, SW4, SE4	641.68
Sec. 3, Lots 1, 2, 9, 10, S2NE4, SE4	397.78
Sec. 10, Lots 5, 6, 7, 8, NE4, SE4	475.64
Sec. 11, NE4, NW4, SW4, SE4	640

Description	Acreage
Sec. 12, NE4, NW4, SW4, SE4	640
Sec. 13, NE4, NW4, SW4, N2SE4, SW4SE4	600
Sec. 14, NW4, SE4	320
Sec. 15, Lots 1, 2, 3, 4, NE4, SE4	482.93
Sec. 22, Lots 1, 2, 3, 4, NE4, SE4	482.92
Sec. 23, N2NE4, SW4NE4, SW4, SW4SE4	320
Sec. 24, NW4, SW4, SE4	480
Sec. 25, NE4, NW4, SW4, SE4	640
Sec. 26, NE4, NW4, N2SW4, N2SE4	480
Sec. 27, Lots 1, 2, 3, 4, NE4, N2SE4, SW4SE4	442.92
Sec. 34, Lots 1, 2, 3, 4, S2NE4, SE4	402.92
Sec. 35, NW4NW4, S2NW4, SW4, SE4	440
Sec. 36, NE4, E2NW4, E2SW4, SE4	480
T. 168 N., R. 35 W.	
Sec. 22, SE4SE4	40
Sec. 23, S2SW4	80
Sec. 24, NW4SE4, S2SE4	120
Sec. 25, S2NE4, SW4, SE4	400
Sec. 26, NW4NW4, SE4	200
Sec. 27, Lots 7, 8, E2NE4, SE4	316.69
Sec. 34, Lots 5, 6, 7, 8, NE4, SE4	473.16
Sec. 35, NE4, NW4, SW4, SE4	640
Sec. 36, NE4, NW4, SW4, SE4	640
T. 148 N., R. 35 W.	
Sec. 9, Lot 8	0.45
T. 156 N., R. 36 W.	
Sec. 1, Lot 4	22.28
T. 158 N., R. 35 W.	
Sec. 1, Lots 3, 4, 5, 6, 7, SW4NE4, S2NW4, SW4, W2SE4	550.67
Sec. 2, Lots 1, 2, 3, 4, 5, 6, S2NE4, N2SW4, SE4	542.42
Sec. 3, Lots 1, 2, 3, 4, 5, 6	227.44
Sec. 4, Lots 1, 2	102.41
T. 158 N., R. 37 W.	
Sec. 28, E2NE4,	80
T. 159 N., R. 37 W.	
Sec. 4, S2NW4	80
Sec. 6, NE4NE4	40
Sec. 8, NE4	160
Sec. 23, SW4	160
Sec. 24, W2SW4, SE4SW4	120
Sec. 25, SE4NW4	40
Sec. 27, N2NE4	80
Sec. 30, Lots 1, 2, 3, E2NW4, NE4SW4	229.90
Sec. 31, Lots 2, 6, 7, SE4NW4, N2SE4	241.22
Sec. 32, NE4SE4	40
T. 160 N., R. 37 W.	
Sec. 5, SW4SE4	40
Sec. 7, Lots 1, 2, NE4, E2NW4	307.77
Sec. 19, SE4SW4	40
T. 151 N., R. 38W	
Sec. 36, Lots 1, 2	3.15
T. 159 N., R 38 W.	
Sec. 8, W2NW4	80
Sec. 9, NE4SW4, N2SE4	120
Sec. 10, SW4SE4	40
Sec. 24, SW4SW4, SE4SE4	80
Sec. 35, Lot 4	47.60
Sec. 36 Lot 1, NE4NE4	87.11
T. 160 N., R. 38 W.	
Sec. 13, NW4NW4, NW4SW4	80
Sec. 28, NW4SE4	40
Sec. 33, NE4NE4	40
T. 152 N., R. 39 W.	
Sec. 8, Lot 2	0.20
Sec. 9, Lot 1	1.00
Sec. 10, Lot 5	27.15
T. 153 N., R. 39 W.	
Sec. 23, N2SE4	80
T. 159 N., R. 39 W.	
Sec. 28, N2NE4	80
T. 159 N., R. 40 W.	
Sec. 13, SW4SW4	40
T. 152 N., R. 41 W.	
Sec. 22, SW4NW4	40
Sec. 36, Lots 1, 8	10.90

Dated: January 12, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

Dated: January 14, 1999.

Kevin Gover,

Assistant Secretary, Indian Affairs.

[FR Doc. 99–2360 Filed 1–29–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–090–1210–00]

AGENCY: Bureau of Land Management (BLM).

Off Road Vehicle (ORV) Designations; San Juan Resource Management Plan (RMP)

ACTION: Notice of Implementation of Off Road Vehicle (ORV) Designations within the San Juan Resource Management Plan (RMP)

SUMMARY: This notice implements ORV use designations made in the 1991 Record of Decision for the San Juan RMP. The RMP identifies open, closed and limited ORV use areas for BLM-managed public lands in San Juan County, Utah, as identified on a map that was incorporated in the draft RMP, entitled "ORV Designations" and dated December, 1988. The limited category includes three types of ORV use designations: (1) limited by seasonal restrictions; (2) limited to existing roads and trails; and (3) limited to designated roads and trails. Within the upcoming year, additional actions will be carried out to fully implement these designations. Areas and routes will be signed and barriers may be located as necessary. Also, BLM will identify appropriate routes within the areas designated as "limited to existing roads and trails" or "limited to designated roads and trails," and will produce a map that identifies such routes. In order to do this, BLM will inventory routes within these areas and will hold public meetings (to be announced) and work with local government officials in order to gather information necessary for decision-making. Any need for additional environmental analysis will be considered at the time that specific implementing actions are undertaken. ORV designations are implemented under the authority of 43 CFR 8342.

DATES: Implementation of the San Juan RMP ORV designations begins immediately.

ADDRESS: Information regarding ORV designations discussed in this notice is available at the following BLM office: Monticello Field Office, P.O. Box 7, 435 North Main, Monticello, Utah.

FOR FURTHER INFORMATION CONTACT: Kent E. Walter, Monticello Field Office, Utah at (435) 587–1500.

SUPPLEMENTARY INFORMATION: Implementation of the ORV designations made in the San Juan RMP does not supersede emergency ORV use restrictions made for the Lockhart Basin area (**Federal Register** Notice: January 2, 1998, Volume 63, Number 1) and the Comb Wash area (**Federal Register** Notice: June 20, 1990, Volume 55, Number 119). Those ORV use restrictions will remain in place until such time as the purposes provided in the notices are completed. Grand Gulch and Dark Canyon were closed to ORV use in 1970 when they were formally designated as primitive areas, and they remain closed.

G. William Lamb,

State Director, Utah.

[FR Doc. 99–2382 Filed 2–1–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Revision of Form MMS–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act

ACTION: Extension of comment period.

SUMMARY: On November 9, 1998 (63 FR 60380), the Minerals Management Service (MMS) published in the **Federal Register**, a proposed revision to Form

MMS–2005, Oil and Gas Lease of Submerged Lands Under the Outer Continental Shelf Lands Act. MMS conducted two workshops to fully understand the public's concerns with the proposed changes. The workshops were held on December 10, 1998 and January 21, 1999, in New Orleans, Louisiana. A transcript from the first workshop is available on the MMS homepage (www.mms.gov) under the What's New icon. A transcript from the second workshop will be posted on the web as soon as it is available. This notice is to extend the comment period to February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Terry Holman, 202–208–3822 or e-mail to Terry.Holman@mms.gov. Comments may be send to Terry Holman, Minerals Management Service, Mail Stop 4230, 1849 C Street, N.W., Washington, D.C. 20240 or faxed to her at 202–208–4891.

Dated: January 27, 1999.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 99–2358 Filed 2–1–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for the Proposed Air Force Memorial Preliminary Design and Park Improvements, Arlington, VA

ACTION: Availability of the Environmental Assessment for the proposed Air Force Memorial preliminary design and park improvements, Arlington, Virginia.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service announces the availability of an Environmental Assessment for the proposed Air Force Memorial (Memorial) preliminary design and park improvements, in Arlington, Virginia. The Environmental Assessment examines the Memorial's preliminary design and the associated improvements to 25 acres of parkland in an area which contains the Iwo Jima Memorial and the Netherlands Carillon, known as Arlington Ridge Park within the George Washington Memorial Parkway. The National Park Service is soliciting comments on this Environmental Assessment. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act (NEPA).

DATES: The Environmental Assessment will remain available for public comment through March 22, 1999. Written comments should be received no later than March 22, 1999. Additionally, the National Park Service will hold a public meeting to discuss the Environmental Assessment on February 17, 1999, at which the public will be provided an opportunity to speak. The meeting will be held in the Arlington County Central Library auditorium, 1015 North Quincy Street, Arlington, Virginia, from 7 p.m. to 9:30 p.m. Following presentations by Federal, State, and local agencies, individuals and representatives of community and civic organizations will be able to present their comments in the order in which their requests to speak are received. Commenters may either sign up at the meeting or register in advance by calling Ms. Nancy Young at (202) 619–7097. Individuals will be allowed 3 minutes to present their comments; representatives of community and civic groups will be allowed 5 minutes. Presentation refers solely to oral comments; video and other multimedia materials will not be permitted. At the time commenters are recognized to speak, they are requested to provide three copies of their comments in writing, if possible.

ADDRESSES: Comments on the Environmental Assessment should be submitted to: Mr. John G. Parsons, Associate for Lands, Resources, and Planning, National Capital Region, National Park Service, 1100 Ohio Drive, SW, Room 220, Washington, DC, 20242. A limited number of copies of the Environmental Assessment are available on request. Public reading copies of the Environmental Assessment will be available at the following locations: National Capital Region, National Park Service, 1100 Ohio Drive, SW, First Floor Lobby, Washington, DC 20242; and the Air Force Memorial Foundation, 1501 Lee Highway, Arlington, Virginia 22209–1198.

SUPPLEMENTARY INFORMATION: On December 2, 1993, the Air Force Memorial Foundation was authorized by Federal law to establish a memorial on Federal land in the District of Columbia or its environs to honor the men and women who have served in the U.S. Air Force and its predecessor organizations. It is being established pursuant to the Commemorative Works Act, 40 U.S.C. 1001 *et seq.*

This Environmental Assessment examines the Memorial's preliminary design and the associated improvements to 25 acres of parkland. It contains alternatives including a Preferred Alternative and a No Action Alternative. Possible mitigation measures are also described. This Environmental Assessment considers visitor use, vehicular and pedestrian circulation, and existing periodic uses of the park. Potential impacts assessed include those to the park's cultural resources: Iwo Jima Memorial and the Netherlands Carillon and related activities conducted at these locations. National Park Service requirements for this site during memorial construction and operation are also considered.

A public meeting was held December 17, 1997, and public comment was requested on draft design scenarios for this memorial (62 FR 63382) to assist the National Park Service in identifying issues to be analyzed in this Environmental Assessment. Additional subjects considered in this Environmental Assessment were generated by the National Capital Memorial Commission, the Commission of Fine Arts, and the National Capital Planning Commission in their deliberations on this memorial and during the site selection process.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Nancy Young, (202) 619–7097.

Dated: January 27, 1999.

Joseph M. Lawler,

Acting Regional Director, National Capital Region.

[FR Doc. 99–2373 Filed 2–1–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 23, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by February 17, 1999.

Carol D. Shull

Keeper of the National Register.

ARKANSAS

Bradley County

Davis—Adams House, 509 N. Myrtle St., Warren, 99000224

Desha County

Arkansas City Commercial District, Roughly along the jct. of Desoto Ave. and Sprague St., Arkansas, 99000227

Franklin County

Bristow Hotel, 112 S. 2nd St., Ozark vicinity, 99000225

Hempstead County

Southwestern Proving Ground Airport Historic District, Hope Municipal Airport, Airport Rd., Hope, 99000230

Izard County

Jumbo Church of Christ, Approx. 4 mi. NW of jct. of Sylamore Rd. and Jumbo Rd., Melbourne vicinity, 99000222

Johnson County

Lutherville School, Cty Rd. 418, Lamar vicinity, 99000228

Pulaski County

Abrams House, 300 S. Pulaski St., Little Rock, 99000221
Philander Smith College Historic District, Roughly bounded by 13th, 11th, Izard, and State Sts., Little Rock, 99000229
Vaughn House, 104 Rosetta, Little Rock vicinity, 99000226
Wallace Building, 101–111 Main St., Little Rock, 99000223

FLORIDA

Broward County

Hollywood Boulevard Historic Business District, Along Hollywood Blvd., bet. 21st Ave. and Young Circle, Hollywood, 99000231

IOWA

Jefferson County

Louden, William and Mary Jane, House (Louden Machinery Company, Fairfield Iowa MPS) 501 W. Washington Ave., Fairfield, 99000220

LOUISIANA

Concordia Parish

Killarney, 3908 LA 569, Ferriday vicinity, 99000235
Zappe Boarding House, 107 Virginia Ave., Ferriday, 99000232

East Baton Rouge Parish

LSU Campus Mounds, Jct. of Dalrymple Dr. and Fieldhouse Dr. on LSU campus, Baton Rouge, 99000236

Iberia Parish

Evangeline Theater, 129 E. Main St., New Iberia, 99000234

Orleans Parish

Beauregard, Gen., Equestrain Statue, Jct. of Esplanade Ave. and Wisner Blvd., New Orleans, 99000233

MASSACHUSETTS

Berkshire County

South Lee Historic District, 1365–1710 Pleasant—1120–1140 Fairview St.—15–80 Willow St., Lee, 99000237

OHIO

Cuyahoga County

Brooklyn Centre Historic District (Brooklyn Centre MRA) Roughly bounded by I–71, Pearl Rd., and Big Creek Valley, Cleveland, 99000238

SOUTH DAKOTA

Minnehaha County

Thompson Farmstead, 47339 248th St., Dell Rapids vicinity, 99000239

WISCONSIN

Columbia County

South Dickason Boulevard Residential Historic District, Roughly along S. Dickason Blvd., from W. School St. to W. Harrison, also along S. Ludington St., Columbus, 99000240

Eau Claire County

First Methodist Episcopal Church, 421 S. Farwell St., Eau Claire, 99000241

Oconto County

Mathey Building, 126 W. Main St., Lena, 99000242

A request for REMOVAL has been received for the following resource:

Williamson County

Grace Episcopal Church 1314 East University, Georgetown, 86000986

[FR Doc. 99–2356 Filed 2–1–99; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting Flow Objectives for the San Joaquin River Agreement, 1999–2010, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement/ Final Environmental Impact Report (FEIS/FEIR) INT # FES 99–7.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the San Joaquin River Group Authority (SJRGA) have prepared a joint FEIS/FEIR on a proposed program to acquire water identified in the San Joaquin River Agreement (SJRA) to be used to provide protective measures for fall-run chinook salmon in the San Joaquin River system and to support the San Joaquin River flow objectives of the 1995 Water Quality Control Plan for the San Francisco Bay/ Sacramento-San Joaquin Delta Estuary. The water would be used to provide:

- A pulse flow for a 31-day period at Vernalis during April and May in support of the Vernalis Adaptive Management Program, and
- Other flows to facilitate migration and attraction of anadromous fish, including fall attraction flows.

The affected portions of the San Joaquin River and its tributaries (Stanislaus, Tuolumne, and Merced rivers) are located in the Central Valley of California. The rivers and related storage and conveyance facilities are located in the following counties: Fresno, Madera, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne.

Reclamation and the SJRGA prepared a Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) and circulated it on September 25, 1998, for a 45-day review. The FEIS/FEIR presents and describes the environmental effects of three alternatives, including no action, and it includes all comments received on the DEIS/DEIR and responses to those comments.

DATES: No Federal decision will be made on the proposed action until March 5, 1999. After the 30-day waiting period, Reclamation will complete a Record of Decision. It is expected that the Board of Directors of the SJRGA will certify the EIS/EIR and approve the project on February 19, 1999, following completion of the 10-day responsible agency review period.

ADDRESSES: Copies of the FEIS/FEIR may be obtained from Mr. Michael Delamore, Bureau of Reclamation, 2666 N. Grove Industrial Drive, Suite 106, Fresno, CA 93727, or by calling (209) 487-5039. See **SUPPLEMENTARY INFORMATION** section for a list of the locations where copies of the FEIS/FEIR are available for public inspection and review.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Delamore, Bureau of Reclamation, at (209) 487–5039; or Mr. Dan Fults, Friant Water Users Authority, at (916) 441–1931.

SUPPLEMENTARY INFORMATION: The proposed action involves providing water supplies to meet flow requirements for fall-run chinook salmon and other environmental needs on the San Joaquin River. The SJRGA, consisting of several water districts in the San Joaquin River basin, is working with State and Federal Government agencies to address needs on the San Joaquin River system, including increased instream flows. The SJRA provides protective measures equivalent to the Vernalis flow objectives of the State Water Resources Control Board's 1995 Water Quality Control Plan. Debate over the flow objectives led to a proactive problem-solving process to

develop an adaptive fishery management plan [the Vernalis Adaptive Management Program (VAMP)] and the water supplies (from willing sellers on the San Joaquin River system) to support the plan. The SJRA identifies where the water to support the VAMP and other flow needs would be obtained, specifically from the SJRGA whose members are making the water available. The water would be used during the period 1999–2010; the flows would vary, depending on hydrologic conditions.

The water supply program consists of three components:

(1) A 31-day pulse flow in April-May to support the VAMP that would require up to 110,000 acre-feet annually;

(2) Additional water for a fall attraction flow for salmon in October (12,500 acre-feet) from Merced Irrigation District; and

(3) Additional water from Oakdale Irrigation District (26,000 acre-feet less up to 11,000 acre-feet contributed by Oakdale to the 31-day pulse flow). This additional water would be used for such purposes as ramping around the pulse flows, temperature control, water quality, and protection of salmon redds during periods of low flow.

A total of 137,500 acre-feet of water per year could be provided, and most of this (up to 92 percent) is expected to come directly from surface water sources, including reservoir storage, changes in diversions, and release patterns from reservoirs. Other sources of the water include groundwater, tailwater recovery, and conservation.

Copies of FEIS/FEIR are available for public inspection and review at the following locations:

- Modesto Irrigation District, 1234 Eleventh Street, Modesto, CA 95252; telephone (209) 526–7360.
- Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street, NW, Washington, DC 20240; telephone (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone (303) 445–2072.
- Bureau of Reclamation, Attention: MP–140, 2800 Cottage Way, Sacramento, CA 95825–1898; telephone (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW, Main Interior Building, Washington, DC 20240–0001.
- California State Library at 914 Capitol Mall in Sacramento, CA 94237.
- Fresno County Public Library at 2420 Mariposa Street in Fresno, CA 93721.
- Merced County Library at 2100 O Street in Merced, CA 95340–3637.
- Merced County, Los Banos Branch Library at 1312 South Seventh Street in Los Banos, CA 93635.
- Modesto City Library at 1500 I Street in Modesto, CA 95354–1220.
- Sacramento Public Library at 828 I Street in Sacramento, CA 95814–2589.
- Stockton-San Joaquin County Public Library at 605 North El Dorado Street in Stockton, CA 95202–1999.
- University of California Berkeley, Government Documents Library at 350 Library Annex in Berkeley, CA 94720.
- University of California Davis at Shields Library in Davis, CA 95616.

Dated: January 25, 1999.

Roger K. Patterson,

Regional Director.

[FR Doc. 99–2431 Filed 2–1–99; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–44 (Review)]

SORBITOL FROM FRANCE

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on sorbitol from France.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on sorbitol from France would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On January 7, 1999, the Commission determined that the domestic interested party group response to its notice of institution (63 F.R. 52757, Oct. 1, 1998) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on February 11, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before February 16, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by February 16, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3,

[1] A record of the Commissioners' votes and statements are available from the Office of the Secretary and at the Commission's web site.

[2] Commissioner Koplan dissenting.

[3] The Commission has found the responses submitted by Archer Daniels Midland Co. and SPI Polyols to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2374 Filed 2–1–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Criminal Justice Information Services (CJIS) Division; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of Information Collection Under Review: Age, Sex, and Race of Persons Arrested (18 Years of Age and Over) and Age, Sex, and Race of Persons Arrested (18 Years of Age).

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 5, 1999.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Greg Scarbro (phone number and address listed below). Additional information as well as copies of the proposed information collection instrument with instructions are available by contacting Greg Scarbro, Unit Chief, telephone 304–625–4830, FBI, CJIS Division, Statistical Unit, E–3, 1000 Custer Hollow Road, Clarksburg, WV 26306.

Overview of this information collection:

(1) Type of information collection: Extension of Current Collection.

(2) The title of the form/collection: Age, Sex, and Race of Persons Arrested (18 Years of Age and Over) and Age, Sex, and Race of Persons Arrested (Under 18 Years of Age).

(3) The agency form number, if any, and applicable component of the department sponsoring the collection. Form: 1–708; 1–708a. Federal Bureau of Investigation, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: Local and State Law Enforcement Agencies. This collection is needed to collect information on the age, sex, and race of all persons arrested throughout the United States. Data are tabulated and published in the annual *Crime in the United States.*

(5) The FBI UCR Program is currently reviewing its race and ethnicity data collection in compliance with the Office of Management and Budget's *Revisions for the Standards for the Classification of Federal Data on Race and Ethnicity.*

(6) An estimate of the total number of respondents and the amount of time estimated for an average respondent to reply: 17,145 agencies with 411,480 responses (including zero reports); and with an average of 30 minutes a month devoted to compilation of data for this information collection.

(7) An estimate of the total public burden (in hours) associated with this collection: 205,740 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: January 28, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–2439 Filed 2–1–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs, Bureau of Justice Statistics

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information Collection Under Review; National Crime Victimization Survey, Police Public Contact Survey (Revision of a currently approved collection).

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until April 5, 1999.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lawrence Greenfeld, (202) 616–3281, Bureau of Justice Statistics, Office of Justice Statistics, U.S. Department of Justice, 810 7th Street, NW, Washington, DC 20531. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Regular collection. (Revision of a currently approved collection).

(2) *The title of the form/collection:* National Crime Victimization Survey, Police Public Contact Supplement.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* PPCS–1.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Eligible respondents to the survey must be age 12 or older. The Police Public Contract Supplement fulfills the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of the excessive force by law enforcement personnel. The survey will be conducted as a supplement to the National Crime Victimization Survey in all sample households for a six (6) month period.

Other: None.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 94,500 respondents at an average of 0.05 hours (1 minute each) in addition to the 55 minutes to answer the NCVS questionnaire.

(6) An estimate of the total public burden (in hours) associated with the collection: 4,734 total hours for the Police Contact questionnaire and 88,282 total hours for the NCVS for a grand total of 93,016 hours.

If additional information is required, contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: January 28, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–2440 Filed 2–1–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1207]

RIN 1121–ZB42

National Institute of Justice Announcement of the Fourth Meeting of the National Commission on the Future of DNA Evidence

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of meeting.

SUMMARY: Announcement of the fourth meeting of the National Commission on the Future of DNA Evidence.

SUPPLEMENTARY INFORMATION: The fourth meeting of the National Commission on the Future of DNA Evidence will take place beginning on Sunday, February 28, 1999, from 1:00 PM–6:00 PM CST and will continue on Monday, March 1, 1999, beginning at 9:00 AM CST and ending at 4:00 PM CST. The meeting will take place at the Hotel Adolphus, 1321 Commerce, Dallas, TX 75202, Phone: 214–742–8200.

The National Commission on the Future of DNA Evidence, established pursuant to Section 3(2)A of the Federal Advisory Committee Act, 5 U.S.C. App. 2, will meet to carry out its advisory functions under Sections 201–202 of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. This meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Christopher H. Asplen, AUSA, Executive Director (202) 616–8123.

Authority: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–02, as amended, 42 U.S.C. 3721–23 (1994).

Background

The purpose of the National Commission on the Future of DNA Evidence is to provide the Attorney General with recommendations on the use of current and future DNA methods, applications and technologies in the operation of the criminal justice system, from the Crime scene to the courtroom. Over the course of its Charter, the Commission will review critical policy issues regarding DNA evidence and provide recommended courses of action to improve its use as a tool of investigation and adjudication in criminal cases.

The Commission will address issues in five specific areas: (1) the use of DNA in postconviction relief cases, (2) legal concerns including *Daubert* challenges and the scope of discovery in DNA cases, (3) criteria for training and technical assistance for criminal justice professionals involved in the identification, collection and preservation of DNA evidence at the crime scene, (4) essential laboratory capabilities in the face of emerging technologies, and (5) the impact of future technological developments in the use of DNA in the criminal justice system. Each topic will be the focus of the in-depth analysis by separate working groups comprised of prominent professionals who will report back to the Commission.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–2444 Filed 2–1–99; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement To Be Submitted

1. *The title of the information collection:* NRC Form 241, "Report of Proposed Activities in Non-Agreement States."

2. *Current OMB approval number:* 3150–0013.

3. How often the collection is required: NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a person engaging in activities under the general license.

4. *Who is required or asked to report:* Any persons who hold a specific license from an Agreement State and want to conduct the same activity in non-Agreement States under the general license in 10 CFR 150.20.

5. *The number of annual respondents:* The NRC annually receives approximately 4,600 responses from Agreement States associated with NRC Form 241. These responses include 200 initial reciprocity requests on NRC Form 241, and 1,100 revisions and 3,300 clarifications of the information submitted on the forms.

6. *The number of hours needed annually to complete the requirement or request:* 1,200 hours.

7. *Abstract:* Under the reciprocity provisions of 10 CFR Part 150, any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States under the general license in Section 150.20 is required to file four copies of NRC Form 241, "Report of Proposed Activities in Non-Agreement States," and four copies of its Agreement State license at least 3 days before engaging in each such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

Submit, by April 5, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 27th day of January 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–2422 Filed 2–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining To the Requirement To Be Submitted

1. *The title of the information collection:* NRC Form 483, "Registration Certificate—*In Vitro* Testing with Byproduct Material under General License."

2. *Current OMB approval number:* 3150–0038.

3. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30 days after the effective date of such change.

4. *Who is required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

5. *The number of annual respondents:* 364 respondents (104 registration certificates from NRC licensees and 260 registration certificates from Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 42 hours or approximately 7 minutes per NRC or Agreement State licensee.

7. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation therefrom to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

Submit, by April 5, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 27th day of January 1999.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–2423 Filed 2–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–34318, License No. 06–30361–01, EA 98–521]

Special Testing Laboratories, Inc., P.O. Box 200, Bethel, Connecticut 06801–0200; Confirmatory Order Modifying License and Rescinding Order of December 23, 1998 (Effective Immediately)

I

Special Testing Laboratories, Inc. (Special Testing or Licensee) is the holder of Byproduct Nuclear Material License No. 06–30361–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License authorizes possession and use of Troxler Electronics Laboratories, Campbell Pacific Nuclear, Humbolt Scientific, Seamen Nuclear, or Soiltest nuclear gauges. Mr. Richard A. Speciale (Mr. Speciale) is the President and Radiation Safety Officer of Special Testing Laboratories. The License was issued on August 6, 1997, and is due to expire on August 31, 2007. However, by Order Suspending License dated December 23, 1998, the License was suspended by the NRC for violations of the Commission's requirements as described therein.

II

By Letter dated December 23, 1998, the Licensee requested an enforcement hearing and moved to set aside the immediate effectiveness of the Order Suspending License. Further, during several telephone conversations with the NRC between December 23, 1998 and January 8, 1999, the Licensee requested that the Order Suspending License be relaxed. By a letter dated December 31, 1998, Mr. Richard A. Speciale, the Licensee's Director and Radiation Safety Officer, voluntarily relinquished his position of Radiation Safety Officer to Mr. Richard C. Speciale, the Licensee's current President, and committed not to speak to or direct Licensee employees involved in NRC-licensed activities. In a letter dated January 4, 1999, Mr. Richard C. Speciale informed the NRC that he understood the License requirements, that he would comply with the License requirements, and that audits would be performed by an auditor independent of the Licensee.

Based on the Licensee's commitments and the circumstances in this case, the NRC has concluded that the Order Suspending License may be rescinded provided that a series of conditions, as described in Section IV below, are agreed upon and implemented by the Licensee. By letter dated January 8, 1999, the NRC sent the Licensee a list of the specific conditions and formally requested the Licensee's consent to confirming the commitments through an Order. On January 11, 1999, the Licensee, by its Director, Richard A. Speciale, and its President, Richard C. Speciale, signed and returned its consent to issuance of this Order agreeing that: (1) its request for a hearing on the Order Suspending License be withdrawn; (2) the conditions, as described in Section IV below, be incorporated into the License; (3) this Order be immediately effective; (4) its right to a hearing on this Order be waived; and (5) nothing in this Order shall preclude the NRC from taking further enforcement action against the Licensee and/or Richard A. Speciale as an individual, upon completion of the ongoing NRC investigation.

III

Implementation of the commitments will provide assurance that sufficient resources will be applied to the radiation safety program, and that the program will be conducted safely and in accordance with NRC requirements. I find that the Licensee's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that the Licensee's commitments be confirmed by this Order and that the NRC's Order Suspending License be rescinded. Based on the above and the Licensee's consent, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 2.202, *It is hereby ordered, effective immediately, that license no. 06–30361–01 is modified as follows:*

A. The NRC's Order Suspending License dated December 23, 1998, shall be rescinded.

B. Mr. Richard C. Speciale shall replace Mr. Richard A. Speciale as the Licensee's Radiation Safety Officer. As evidence of this Licensee management change, the Licensee shall provide the NRC with written documentation, as follows:

1. A delegation of authority from Mr. Richard A. Speciale to Mr. Richard C. Speciale, which states that Mr. Richard C. Speciale has the requisite and unqualified authority to communicate with, and direct, Licensee employees regarding NRC regulations and License provisions and to enforce these requirements, including the ability to terminate any unsafe operation involving the use of NRC-licensed material or activities that violate the License or NRC requirements.

2. A directive to all current employees that they are not to look for or take direction from Mr. Richard A. Speciale regarding NRC-licensed activities, and that any and all direction is to be provided solely by Richard C. Speciale. Within 7 days of providing the directive, the Licensee shall confirm that all current employees have received the directive.

3. A signed statement as to how Mr. Richard A. Speciale will effectively be removed from control of NRC-licensed activities, including his agreement to refrain from any efforts to direct, control or influence in any way and to any extent, directly or indirectly, the conduct of licensed activities.

4. A signed statement, under oath or affirmation, from Mr. Richard C. Speciale certifying that:

a. He will direct NRC-licensed operations independent from any involvement or interference by Mr. Richard A. Speciale;

b. He understands the License conditions and all NRC requirements relating to the License, including the NRC's deliberate misconduct rule;

c. He understands that the NRC expects meticulous compliance with its requirements; and

d. He intends to comply with License conditions and all NRC requirements in every respect.

5. A signed statement describing how Mr. Richard C. Speciale will inform all gauge users of NRC and License requirements and direct them to comply with such requirements. Within 7 days of providing the signed statement, the Licensee will confirm that Richard C. Speciale has so informed and directed all employees.

C. The Licensee shall notify the NRC immediately if Mr. Richard A. Speciale attempts to influence Mr. Richard C. Speciale or any other Licensee employee in the conduct of NRC-licensed activities.

D. The Licensee shall fully cooperate with the NRC with regard to inspection or investigation of NRC-licensed activities, including the provision of complete and accurate records and responding to the NRC Office of Investigations subpoena dated November 18, 1998. In addition, all records related to licensed activities shall be maintained in their original

form and shall not be removed or altered in any way.

E. The Licensee shall retain the services of an independent individual or organization (consultant) to perform eight quarterly audits of the Licensee's radiation safety program. After conducting four audits, the Regional Administrator, NRC Region I, may consider, at the request of the Licensee, relief of the audit requirements based on Licensee performance. The consultant shall be independent of the Licensee's organization and is to be experienced in, or capable of, evaluating the effectiveness of management and the implementation of a radiation safety program for gauging operations. NRC has approved the use of Q/C Resource as a consultant; however, if the Licensee chooses to change the consultant, the Licensee shall notify the NRC seven days in advance of a change. At a minimum, each audit shall:

1. Evaluate the effectiveness of the Licensee's radiation safety program and compliance with NRC requirements;
2. Evaluate the understanding of the Licensee's Radiation Safety Officer of radiation safety and NRC requirements;
3. Evaluate the adequacy of the Licensee's corrective actions for any violations or audit findings previously identified by the NRC or consultant;
4. Make recommendations as necessary for improvements in management oversight of NRC-licensed activities;
5. Physically observe gauging operations in the field; and
6. Evaluate whether Mr. Richard A. Speciale is or has been involved in NRC-licensed activities since the effective date of this Order.

F. Within 7 days of the date of this Confirmatory Order, the Licensee shall provide a copy of this Order to the consultant, to all current, and, for the duration of these commitments, to all future Licensee employees.

G. Within 30 days of the date of this Confirmatory Order, the first audit shall be completed. The Licensee shall ensure that the consultant submits the results of the audit, including any deficiencies identified, to NRC Region I at the same time the consultant provides the results to the Licensee.

H. Within every three months thereafter, an audit shall be completed. The Licensee shall ensure that the consultant submits the results of the audit, including any deficiencies identified, to NRC Region I at the same time the consultant provides the results to the Licensee.

I. Within 30 days of the completion of each audit, the Licensee shall submit to NRC Region I its corrective actions for any identified deficiencies in the audit reports. Alternatively, if the Licensee does not believe that corrective actions should be taken, the Licensee shall provide justification for its position to the NRC.

J. For purposes of the above conditions, the Licensee shall send all documents, and provide notifications and confirmations, required by this modification to the Director, Division of Nuclear Material Safety, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415.

K. The Regional Administrator, Region I, may relax the above conditions for good cause.

V

Nothing in this Order will be deemed to preclude the NRC from taking further enforcement action against the Licensee and/or Richard A. Speciale as an individual, upon the completion of the ongoing NRC investigation. In addition, if the Deputy Executive Director for Regulatory Effectiveness concludes that a substantial breach of any conditions of the Confirmatory Order has occurred, the NRC may issue an Order Suspending License.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement, and Administrations at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415, and to the Licensee. If such a person requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

Dated this 22nd day of January, 1999.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 99–2421 Filed 2–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 1, 8, 15, and 22, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 1

Tuesday, February 2

11:30 a.m.—Discussion of Intergovernmental issues (Closed-Ex. 9b).

Wednesday, February 3

9:30 a.m.—Affirmation Session (Public Meeting) (if needed).

1:00 p.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

Week of February 8—Tentative

Monday, February 8

2:00 p.m.—Briefing on HLW Program Viability Assessment (Public Meeting).

Tuesday, February 9

9:00 a.m.—Briefing on Fire Protection Issues (Public Meeting).

12:00 m.—Affirmation Session (Public Meeting) (if needed).

Thursday, February 11

9:00 a.m.—Briefing on Y2K Issues (Public Meeting).

Week of February 15—Tentative

There are no meetings scheduled for the Week of February 15.

Week of February 22—Tentative

There are no meetings scheduled for the Week of February 22.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 29, 1999.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 99–2547 Filed 1–29–99; 2:52 pm]

BILLING CODE 7590–01–M

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1:30 p.m., February 10, 1999.

PLACE: OPM Conference Center, Room 1350, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The conference center is located on the first floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council will hear a presentation by the U.S. Forest Service on the status of their partnership and partnership activities. The meeting will also consider any necessary administrative items in line with the NPC 1999 Strategic Plan and Calendar.

CONTACT PERSON FOR MORE INFORMATION: Jeff Sumberg, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–2000, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–2405 Filed 2–1–99; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are Invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Employee Non-Covered Service Pension Questionnaire; OMB 3220–0154. Section 215(a)(7) of the Social Security Act provides for a reduction in social security benefits based on employment not covered under the Social Security Act or the Railroad Retirement Act (RRA). This provision applies a different social security benefit formula to most workers who are first eligible after 1985 to both a pension based in whole or in part on noncovered employment and a social security retirement or disability benefit. There is a guarantee provision that limits the reduction in the social security benefit to one-half of the portion of the pension based on noncovered employment after 1956. Section 8011 of Pub. L. 100–647 changed the effective date of the onset from the first month of eligibility to the first month of concurrent entitlement to the noncovered service benefit and the RRA benefit.

Section 3(a)(1) of the RRA provides that the Tier I benefit of an employee annuity will be equal to the amount (before any reduction for age or deduction for work) the employee would receive if he or she would have been entitled to a like benefit under the Social Security Act. The reduction for a noncovered service pension also applies to a Tier I portion of employees under the RRA where the annuity or noncovered service pension begins after 1985. Since the amount of a Tier I benefit of a spouse is one-half of the employee's Tier I, the spouse annuity is also affected by the employee's noncovered service pension reduction of his or her Tier I benefit.

The RRB utilizes Form G–209, Employee Noncovered Service Pension Questionnaire, to obtain needed information from railroad retirement employee applicants or annuitants about the receipt of a pension based on employment not covered under the Railroad Retirement Act or the Social Security Act. It is used as both a supplement to the employee annuity application, and as an independent questionnaire to be completed when an individual who is already receiving an employee annuity becomes entitled to a pension. One response is requested of each respondent. Completion is required to obtain or retain benefits. The RRB proposes a minor non-burden impacting editorial change to Form G–209.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (Min)	Burden (Hrs)
G–209 (partial questionnaire)	100	1	2

Form #(s)	Annual responses	Time (Min)	Burden (Hrs)
G–209 (full questionnaire)	400	8	53
Total	500		55

Additional information or comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–2433 Filed 2–1–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23668; 812–11264]

Nasdaq-100 Trust, Series 1, Nasdaq-Amex Investment Product Services, Inc., and Alps Mutual Funds Services, Inc.; Notice of Application

January 27, 1999.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice of application for an order under (i) section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 4(2) 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act an rule 22c–1 under the Act; (ii) sections 6(c) and 17(b) of the Act for an exemption from sections (17(a) (1) and (2) of the Act; and (iii) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

APPLICANTS: Nasdaq-100 Trust, Series 1 ("Trust"), Nasdaq-Amex Investment Product Services, Inc. (together with its successors in interest [1] and with any person, directly or indirectly, controlling, controlled by, or under common control with, Nasdaq-Amex Investment Product Services, Inc., "Sponsor"), and ALPS Mutual Funds Services, Inc. ("Distributor").

SUMMARY OF APPLICATION: Applicants request an order that would (i) permit the Trust, a unit investment trust whose portfolio will consist of the component stocks of the Nasdaq-100 Index ("Index"), to issue non-redeemable securities ("Nasdaq-100 Shares"); (ii) permit secondary market transactions in Nasdaq-100 Shares at negotiated prices; (iii) permit dealers to sell Nasdaq-100 Shares to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (iv) permit certain expenses associated with the creation and maintenance of the Trust to be borne by the Trust rather than the Sponsor; (v) exempt the Sponsor from the Act's requirement that it purchase, or place with others, $100,000 worth of Nasdaq-100 Shares; (vi) permit affiliated persons of the trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of Nasdaq-100 Shares; and (vii) permit the Trust to reimburse the Sponsor for payment of an annual licensing fee the The Nasdaq Stock Market, Inc. ("Nasdaq").

FILLING DATES: the application was filed on August 19, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 19, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Trust and Sponsor, c/o John L. Jacobs, Vice President, The Nasdaq Stock Market, Inc., 1735 K Street, N.W., Washington, D.C. 20006–1500; and Distributor, c/o James V. Hyatt, General Counsel, 370 17th Street, Suite 3100, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Timothy R. Kane, Senior Counsel, at (202) 942–0651, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust is a unit investment trust ("UIT") that will be organized under the laws of the State of New York. The Sponsor is a wholly-owned subsidiary of Nasdaq. The Bank of New York will act as trustee to the Trust ("Trustee"). The Distributor, a registered broker-dealer, will serve as principal underwriter of the Trust on an agency basis.

2. The Trust will hold a portfolio of securities (the "Portfolio Securities") consisting of substantially all of the securities in substantially the same weighting as the component securities of the Nasdaq-100 Index (the "Index Securities"). The Index is a "modified capitalization-weighted" index of securities issued by the 100 largest and most actively traded non-financial companies listed on the Nasdaq National Market Tier. The Index was first published in 1985.

3. Nasdaq-100 Shares, units of beneficial interest in the Trust, are designed to provide investors with an instrument that closely tracks the Index, trades like a share of common stock, and pays periodic dividends proportionate to those paid by the Portfolio Securities.[2] Applicant believe that Nasdaq-100 Shares will afford significant benefits in the public interest. Applicants expect the Trust to be able to track the Index more closely than certain other index products and, unlike open-end index funds, trade at negotiated prices throughout the business day. Applicants also state that Nasdaq-100 Shares will compete with comparable products available on

[1] "Successors in interest" means any entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The Trust will make quarterly distribution of an amount representing the dividends accumulated on Portfolio Securities during each quarter, net of fees and expenses, if any.

foreign exchanges and attract capital to the U.S. equity markets.

4. The Trustees will make adjustments to the Portfolio Securities to reflect changes made by Nasdaq to the composition and weighting of the Index Securities.[3] All adjustments to the Portfolio Securities made by the Trustee will be set forth in the trust agreement and will be non-discretionary.

5. The Trustee will be paid a "Trustee's Fee" ranging from 0.06% to 0.10% of the net asset value ("NAV") of the Trust on an annualized basis, with the minimum fee amount not to fall below $180,000.[4] The Sponsor has undertaken, up to and including the fiscal year of the Trust ending on September 30, 2000, to reimburse the Trust or assume payment on behalf of the Trust for ordinary operating expenses of the Trust that exceed 0.18% of the daily NAV of the Trust.[5] The Sponsor retains the ability to be repaid by the Trust to the extent that subsequently during the fiscal year expenses fall below the 0.18% per year level on any given day. Trust fees and expenses will be paid first out of income received by the Trust in the form of dividends and other distributions on the Portfolio Securities.[6] Nasdaq has granted the Sponsor a license to use the Index and certain trademarks of Nasdaq. The Sponsor will pay Nasdaq an annual licensing fee and will, after September 30, 1999, seek reimbursement from the Trust for this fee. The Sponsor will pay the Distributor a flat annual fee. The Sponsor will not seek from the Trust reimbursement for this annual fee without obtaining prior exemptive relief from the Commission.

6. Nasdaq-100 Shares will be issued in aggregations of 50,000 shares ("Creation Units"). The price of a Creation Unit would be approximately $4,035,000 (based on the value of the Index on December 14, 1998). All orders to purchase Creation Units must be delivered through a party that has executed a Nasdaq-100 participant agreement with the Distributor and Trustee and is either (i) a participant in the Continuous Net Settlement ("CNS") System of the National Securities Clearing Corporation ("NSCC") ("Nasdaq-100 Clearing Process") or (ii) a Depository Trust Company ("DTC") participant.

7. An investor wishing to purchase a Creation Unit from the Trust will have to transfer to the Trustee a "Portfolio Deposit" consisting of: (i) A portfolio of securities substantially similar in composition and weighting to the Index Securities ("Deposit Securities"); (ii) a cash payment equal to the dividends accrued on the Portfolio Securities since the last divided payment on the Portfolio Securities, net of expenses and liabilities ("Income Net of Expense Amount"); and (iii) a cash payment or credit to equalize any differences between the market value of the Deposit Securities and the NAV of the Trust on a per Creation Unit basis (the "Balancing Amount").[7] (The Balancing Amount and the Income Net of Expense Amount together constitute the "Cash Component.") An investor making a Portfolio Deposit will be charged a service fee ("Transaction Fee"), paid to the Trustee, to defray the Trustee's costs in processing securities deposited into the Trust.[8]

8. Orders to purchase Creation Units will be placed with the Distributor, who will be responsible for transmitting the orders to the Trustee.[9] The Distributor will issue confirmations of acceptance, issue delivery instructions to the Trustee to implement the delivery of Creation Units, and maintain records of the orders and the confirmations. The Distributor also will be responsible for delivering prospectuses to purchasers of Creation Units and may provide certain other administrative services, such as those related to state securities law compliance.

9. Persons purchasing Creation Units from the Trust may hold the Nasdaq-100 Shares or sell some or all of them in the secondary market. Nasdaq-100 Shares will be listed on the American Stock Exchange, LLC ("AMEX") and traded in the secondary market as individual units (i.e., in less than Creation Unit size aggregations) in the same manner as other equity securities. An AMEX specialist will be assigned to make a market in Nasdaq-100 Shares. The price of Nasdaq-100 Shares on the AMEX will be based on a current bid/offer market and would be approximately $80.70 per Nasdaq-100 Share (based on the value of the Index as of December 14, 1998). Transactions involving the sale of Nasdaq-100 Shares will be subject to customary brokerage commissions and charges. Applicants expect that the price at which Nasdaq-100 Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that Nasdaq-100 Shares will not trade at a material discount or premium in relation to their NAV.

10. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market for Nasdaq-100 Shares, also may purchase Nasdaq-100 Shares for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of Nasdaq-100 Shares will include both institutional and retail investors.[10]

11. Applicants will make available a standard Nasdaq-100 Shares product

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[3] Nasdaq determines, comprises, and calculates the Index without regard to the Trust.

[4] To the extent that the amount of the Trustee's compensation is less than the minimum annual fee, the Sponsor will pay the amount of the shortfall.

[5] For purposes of this undertaking, "ordinary operating expenses" will not include taxes, brokerage commissions, and extraordinary non-recurring expenses.

[6] Applicants expect that the income of the Trust may be insufficient to pay the fees and expenses of the Trust. In such circumstances, the Trustee will sell Portfolio Securities to generate sufficient cash to pay the Trust fees and expenses in excess of Trust income. The Trustee is ordinarily required to sell Portfolio Securities whenever the Trustee determines that accrued fees and expenses exceed dividends and other Trust accrued income on a projected basis by more than 0.01% of the NAV of the Trust.

[7] At the close the market on each business day, the Trustee will calculate the NAV of the Trust and then divide the NAV by the number of outstanding Nasdaq-100 Shares in Creation Unit size aggregations, resulting in an NAV per Creation Unit. The Trustee will then calculate the required number of shares of the Index Securities, and the amount of cash, comprising a Portfolio Deposit for the Following business day.

The Sponsor will make available each business day a list of the names and the required number of shares for each of the Deposit Securities in the current Portfolio Deposit, as well as the Income Net of Expense Amount effective through and including the previous business day, per outstanding Nasdaq-100 Share.

The cash equivalent of an Index Security may be included in the Cash Component of a Portfolio Deposit in lieu of the security if (i) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit (for example, when the security is subject to a trading halt or stop order, or the subject of a tender offer), or (ii) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves, or when the investor is a broker-dealer and the security is on its "restricted list").

[8] The Transaction Fee will be $1,000 per day, regardless of the number of Creation Units purchased on that day by the investor. The Transaction Fee may be subsequently changed by the Trustee with the Sponsor's consent, but it will not exceed 0.10% of the value of a Creation Unit. For purchases of Creation Units outside the Nasdaq-100 Clearing Process, the Transaction Fee will be one to four times greater. The amount of the Transaction Fee will be disclosed in the prospectus for the Trust.

[9] The procedures for processing a purchase order will depend upon whether the transaction is settled through NSCC or DTC.

[10] Nasdaq-100 Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Nasdaq-100 Shares. Records reflecting the beneficial owners of Nasdaq-100 Shares will be maintained by DTC or its participants.

description ("Product Description") to AMEX members and member organizations for distribution to investors purchasing Nasdaq-100 Shares in accordance with AMEX Rule 1000. The purpose of the Product Description is to provide a brief and readily understandable description of the salient aspects of Nasdaq-100 Shares. The Product Description will advise investors that a prospectus for Nasdaq-100 Shares is available without charge upon request from the investor's account executive. Applicants expect that purchases of Nasdaq-100 Shares through a non-member broker-dealer in a transaction away from the AMEX would not constitute a significant portion of the market activity in Nasdaq-100 Shares.

12. Nasdaq-100 Shares will not be individually redeemable, except upon termination of the Trust. Nasdaq-100 Shares will only be redeemable in Creation Unit-size aggregations through the Trust. To redeem, an investor will have to accumulate enough Nasdaq-100 Shares to constitute a Creation Unit. An investor redeeming a Creation Unit will receive a portfolio of securities typically identical in composition and weighting to the securities portion of a Portfolio Deposit as of the date the redemption request was made. An investor may receive the cash equivalent of an Index Security (i) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for delivery by the Trust; (ii) upon the request of the redeeming investor; or (iii) upon notice of the termination of the Trust. A redeeming investor may receive or may pay an amount equal to the Income Net of Expense Amount, plus or minus the Balancing Amount. A redeeming investor will pay a Transaction Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.[11] The Trustee will transfer the securities and cash to the redeeming investor within three business days of receipt of the request for redemption.

13. Because the Trust will ordinarily redeem Creation Units in kind, the Trust will not have to maintain cash reserves for redemptions. This will allow the assets of the Trust to be committed as fully as possible to tracking the Index, enabling the Trust to track the Index more closely than other investment products that must allocate a greater portion of their assets for cash redemptions.

14. The Trust will terminate on the earlier of (i) 125 years from the date the initial Portfolio Deposit is received by the Trustee for deposit into the corpus of the Trust, or (ii) the date 20 years after the death of the last survivor of fifteen persons named in the trust agreement. The Trust will also terminate if (i) Nasdaq-100 Shares are de-listed from the AMEX and are not subsequently re-listed on a national securities exchange registered under the Securities Exchange Act of 1934 or a quotation medium operated by a national securities association; or (ii) either the Sponsor or the Trustee resigns or is removed, and a successor is not appointed. The Trust may terminate if: (i) 66⅔% of the holders of the outstanding Nasdaq-100 Shares agree to terminate it; (ii) the DTC is unable or unwilling to continue to perform its functions and a comparable replacement is unavailable; (iii) NSCC no longer provides clearance services with respect to the Nasdaq-100 Shares, or if the Trustee is no longer a participant in NSCC; (iv) Nasdaq ceases to publish the Index; or (v) the license agreement is terminated. In addition, the Sponsor will have the discretionary right to direct the Trustee to terminate the Trust if at any time (i) after six months following and prior to three years following the initial receipt of Portfolio Deposits by the Trust, the NAV of the Trust falls below $150,000,000; or (ii) after three years, the NAV is less than $350,000,000, adjusted annually for inflation. The Sponsor may also direct the Trustee to terminate the Trust if within 90 days from the initial receipt of Portfolio Deposits the NAV of the Trust is less than $100,000.

15. Within a reasonable time after the Trust's termination, the Trustee will use its best efforts to sell all Portfolio Securities not previously distributed to investors redeeming Creation Units. Nasdaq-100 Shares not redeemed prior to termination will be redeemed in cash at NAV based on the proceeds from the sale of the Portfolio Securities.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 4(2), 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c–1 under the Act; under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act; and under rule 17d–1 under the Act to permit certain joint transactions.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 4(2) of the Act

3. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Because Nasdaq-100 Shares will not be individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants state that investors may purchase Nasdaq-100 Shares in Creation Units from the Trust and redeem Creation Units. Applicants further state that because the market price of Creation Units will be disciplined by arbitrage opportunities, investors should be able to sell Nasdaq-100 Shares in the secondary market at approximately their NAV.

Section 14(a) of the Act

4. Section 14(a) of the Act provides, in pertinent part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of at least $100,000, or provision is made in connection with the registration of its securities that (i) firm agreements to purchase $100,000 of its securities will have been made by not more than 25 persons, and (ii) all proceeds, including sales loads, will be refunded to investors if the investment company's net worth is less than $100,000 within 90 days after the effective date of the registration statement. Applicants state that section 14(a) was designed to address the formation of undercapitalized investment companies.

5. Rule 14a–3 under the Act exempts from section 14(a) UITs that invest only in "eligible trust securities," which do not include equity securities, subject to certain safeguards, including the refund of any sales load collected from investors. Applicants will comply in all respects with rule 14a–3, except that the Trust will not restrict its investments to eligible trust securities and the Trustee will not refund the Transaction Fee. Applicants contend that the Trust's investment in equity securities does not negate the effectiveness of the rule's safeguards nor subject investors to any greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants assert that it is not a sales load, and therefore is not covered by the rule's refund provision. Applicants note that the Transaction Fee will be paid not by retail investors, but by institutional and other

[11] See note 8, supra.

sophisticated, well-capitalized investors who can afford the approximately $4,035,000 purchase price of a Creation Unit and who do not require the protections of section 14(a) of the Act.

Section 22(d) of the Act and Rule 22c–1 Under the Act

6. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV next computed after receipt of a tender of the security for redemption or of an order to purchase or sell the security. Applicants state that secondary market trading in Nasdaq-100 Shares will take place at negotiated prices, not at a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Nasdaq-100 Shares in the secondary market will not comply with section 22(d) and rule 22c–1. Applicants request an exemption from these provisions.

7. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Nasdaq-100 Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers; (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices; and (iii) assure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

8. Applicants believe that none of these purposes will be thwarted by permitting Nasdaq-100 Shares to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in Nasdaq-100 Shares does not involve the Trust as a party and cannot result in dilution of an investment in Nasdaq-100 Shares; and (ii) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Nasdaq-100 Shares will not lead to discrimination or preferential treatment among purchases. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Nasdaq-100 Shares and their NAV remains narrow.

Section 24(d) of the Act

9. Section 24(d) of the Act provides, in pertinent part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. Applicants request an exemption from section 24(d) to permit dealers in Nasdaq-100 Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[12] Applicants state that the imposition of prospectus delivery requirements on dealers in the secondary market will materially impede the success of Nasdaq-100 Shares.

10. Applicants state that the secondary market for Nasdaq-100 Shares is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor. Nasdaq-100 Shares will be listed on a national securities exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

11. Applicants contend that Nasdaq-100 Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Nasdaq-100 Shares will be exchange-listed, prospective investors will have access to several types of market information about the product. Applicants state that quotations, last sale price, and volume information will be continually available on a real time basis through the consolidated tape and will be available throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information also will be published in the financial section of newspapers. The Sponsor also will publish daily, on a per Nasdaq-100 Shares basis, the amount of accumulated dividends, net of accrued expenses.

12. Investors also will receive the Product Description. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain pertinent information about Nasdaq-100 Shares. Applicants also note that Nasdaq-100 Shares will be readily understandable to retail investors as a product that tracks the Nasdaq-100 Index, which is well known to most investors and widely recognized.

Section 26(a)(2)(C) of the Act

13. Section 26(a)(2)(C) of the Act requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of the Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit the Trust to reimburse the Sponsor for certain licensing, registration, and marketing expenses.

14. Applicants state that, ordinarily, a sponsor of a UIT has several sources of income in connection with the creation of the trust. Applicants assert, however, that under the proposed structure of the Trust, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities into the Trust. Although AMEX, an affiliate of the Sponsor, will earn some income on the trading fees imposed on transactions on that exchange, applicants expect that the fees will generate substantially less

[12] Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent Nasdaq-100 Shares, and sells Nasdaq-100 Shares directly to its customers; or if chooses to couple the creation of a supply of new Nasdaq-100 Shares with an active selling effort involving solicitation of secondary market demand for Nasdaq-100 Shares. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus also will state that broker-dealer firms should also note that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with Nasdaq-100 Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

revenue than what would have been generated by a normal sales charge on secondary market trades of Nasdaq-100 Shares.[13] Applicants contend that the abuse sought to be remedied by section 26(a)(2)(C) of the Act—"double dipping" by UIT sponsors collecting money from their captive trusts as well as the profits already generated by sales charges and other sources—will not be present if the requested exemption is granted.

15. Applicants contend that permitting the Trust to reimburse the Sponsor for the Trust's expenses (discussed above) would be no more disadvantageous to the holders of Nasdaq-100 Shares than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants state that the Trust will pay the Sponsor only its actual out-of-pocket expenses and no component of profit will be included. Finally, applicants state that the payment is capped at 20 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount absorbed by the Sponsor.

Section 17(a) of the Act

16. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units will be "in kind" rather than cash transactions, section 17(a) may prohibit affiliated persons of the Trust from purchasing or redeeming Creation Units. Because the definition of "affiliated person" of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Trust so long as fewer than twenty Creation Units are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the Trust to purchase and redeem Creation Units.

17. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of the Trust from purchasing or redeeming Creation Units. The composition of a Portfolio Deposit made by a purchaser or given to a redeeming investor will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Portfolio Securities. Therefore, applicants state that "in kind" purchases and redemptions will afford no opportunity for an affiliated person of the Trust to effect a transaction detrimental to the other holders of Nasdaq-100 Shares. Applicants also believe that "in kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

Section 17(d) of the Act and Rule 17d–1 Under the Act

18. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of the affiliated person or the principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d–1, in passing upon such applications, the Commission considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different or less advantageous than that of other participants.

19. Section 2(a)(3)(F) of the Act defines an "affiliated person" of another person to include, in the case of an unincorporated investment company not having a board of directors, its depositor. Applicants state that the Sponsor may be deemed an affiliated person of the Trust because it has borne all aspects of the role of depositor in structuring and creating the Trust other than actually depositing the Index Securities into the Trust. Moreover, because the Sponsor is a wholly-owned subsidiary of Nasdaq, the Nasdaq may be deemed to be an affiliated person of an affiliated person of the Trust.

20. Applicants request an order under rule 17d–1 that would permit the Trust to reimburse the Sponsor for the payment to Nasdaq of an annual license fee under a license agreement. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor might be deemed a joint enterprise or other joint arrangement in which the Trust is a participant, in contravention of section 17(d) of the Act and rule 17d–1.

21. the license agreement allows applicants to use the Index as a basis for Nasdaq-100 Shares and to use certain of Nasdaq's trade name and trademark rights. Applicants believe that Nasdaq is a valuable name that is well-known to investors and that investors will desire to invest in an instrument that closely mirrors the Index. In view of this, applicants state that it is necessary to obtain from Nasdaq the above-mentioned license agreement so that appropriate reference to Nasdaq and Nasdaq-100 Shares may be made in materials describing Nasdaq-100 Shares and the Trust. Applicants assert that the terms and provisions of the license agreement are comparable to the terms and provisions of other similar license agreements and that the annual license fee is for fair value, is in an amount comparable to that which would be charged by Nasdaq for similar arrangements, and is in an amount comparable to that charged by licensors in connection with the formation of other UITs based on other indices. For these reasons, applicants state that the proposed license fee arrangement satisfies the standards of section 17(d) and rule 17d–1.

Applicant's Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new series of the Trust, whether identical or similar to the Nasdaq-100 Trust, Series 1, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such new series, either exemptive relief from the Commission or a no-action position from the Division of Investment Management of the Commission.

2. The Trust prospectus and the Product Description will clearly disclose that, for purposes of the Act, Nasdaq-100 Shares are issued by the Trust and that the acquisition of Nasdaq-100 Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

[13] Effective November 2, 1998, Nasdaq (the Sponsor's parent) and the AMEX became separate subsidiaries of the Nasdaq-Amex Market Group, Inc., a newly-created subsidiary of the National Association of Securities Dealers, Inc.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2410 Filed 2–1–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

USA Talks.com, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of USA Talks.com, Inc. ("USA Talks") because of questions regarding the accuracy of assertions by USA Talks in statements made to the market makers of the stock of USA Talks, to other broker-dealers, and to investors concerning, among other things, the status and extent of USA Talks' business operations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999, through 11:59 p.m. EST, February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2521 Filed 1–29–99; 2:25 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Citron, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Citron, Inc. ("Citron"), a Texas corporation that purports to be an internet marketing company. Questions have been raised about the adequacy and accuracy of publicly-disseminated information concerning, among other things, the business prospects and future earnings of Citron.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999 through 11:59 p.m. EST, on February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2522 Filed 1–29–99; 2:25 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Electronic Transfer Associates, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Electronic Transfer Associates, Inc. ("ETA"), a Colorado corporation that purports to be an internet-related sales company. Questions have been raised about the adequacy and accuracy of publicly-disseminated information concerning, among other things, the business prospects and future earnings of ETA.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999 through 11:59 p.m. EST, on February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2523 Filed 1–29–99; 2:25 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Invest Holdings Group, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Invest Holdings Group, Inc. ("IHG"), a Colorado corporation that purports to develop and sell health maintenance products. Questions have been raised about the adequacy and accuracy of publicly-disseminated information concerning, among other things, the efficacy of IHG's products and its business relationship with Citron, Inc.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999 through 11:59 p.m. EST, on February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2524 Filed 1–29–99; 2:25 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Polus, Inc.; Order of Suspension of Trading

January 29, 1999.

It appears to the Securities and Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Polus, Inc. ("Polus"), a Colorado corporation that has no apparent operations. Questions have been raised about (1) the lack of meaningful publicly-available financial information, and (2) the adequacy and accuracy of publicly-disseminated information concerning, among other things, a merger involving Smartek, Inc., of which it is the majority owner.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, January 29, 1999 through 11:59 p.m. EST, on February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2525 Filed 1–29–99; 2:25 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Smartek, Inc., Order of Suspension of Trading

January 29, 1999.

It appears to the Securities of Exchange Commission that there is a lack of adequate and accurate current information concerning the securities of Smartek, Inc. ("Smartek"), and Idaho corporation involved in wholesale men swear and federally subsidized housing. Questions have been raised about (1) the lack of meaningful publicly-available financial information, and (2) the adequacy and accuracy of publicly-disseminated information concerning, among other things, a merger.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m., EST, January 29, 1999 through 11:59 p.m. EST, on February 11, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2526 Filed 1–29–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Request for Emergency Review

In compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collection packages that require submission to the Office of Management and Budget (OMB).

I. Following is a list of information collections for which we are seeking OMB approval.

1. *Employee Work Activity Report—0960–0483.* The data collected by the Social Security Administration on Form SSA–3033 is reviewed and evaluated to determine if the claimant meets the disability requirements of the law, when the claimant returns to work after the alleged or established onset date. When a possible unsuccessful work attempt or nonspecific subsidy is involved (and the information cannot be obtained through telephone contact), Form SSA–3033 will be used to request a description, by mail, of the employee's work effort. The respondents are employers of Old-Age, Survivors and Disability Insurance and Supplemental Security Income disability applicants and beneficiaries.

Number of Respondents: 12,500.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 3,125 hours.

2. *Talking and Listening to Customers (Customer Comment System)—0960-NEW.* SSA is developing a customer feedback system to capture customer complaints and compliments. To develop a system that is most useful, we need to collect opinions from all of SSA's market segments, including SSA customers and potential customers. SSA will conduct focus groups to solicit opinions on the proposed Customer Comment System. SSA needs this information to ensure that customer concerns and expectations are considered in the design of the Customer Comment System.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 90 minutes.

Estimated Annual Burden: 150 hours.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding these information collections should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the address listed at the end of the notices.

II. The information collection listed below has been submitted to OMB for emergency clearance. OMB approval has been requested by February 19, 1998.

0960–NEW. Pub. L. 105–277 authorizes SSA to conduct a Medicare buy-in demonstration project to evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act. A lack of awareness about the Medicare buy-in programs appears to be one of the major obstacles to enrollments. Other obstacles to enrollment include the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local Medicaid offices.

SSA will screen respondents voluntarily for potential Medicare Part B buy-in eligibility using a screening guide developed for this purpose. The screening guide will collect information from SSA beneficiaries regarding income, resources, marital status and living arrangements and also ask questions about their awareness of Medicare Part B buy-in programs. SSA will gather this information to identify and overcome obstacles to Medicare Part B buy-in enrollments and to screen for potential eligibility for Medicare Part B benefits. The screening guide will be in use from March 1, 1999 through December 31, 1999.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 43,334 hours.

Written comments and recommendations regarding the emergency clearance should be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB)

Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

You can obtain a copy of the collection instruments and/or the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145 or by writing to him at the address listed above.

Dated: January 27, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–2413 Filed 2–1–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2964]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:00 p.m., on Friday, February 12, 1999, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to prepare for a Diplomatic Conference on the International Maritime Organization's Draft Convention on Arrest of Ships, which will be held March 01–12, 1999, in Geneva. This meeting will be a further opportunity for interested members of the public to express their views on the Draft Convention.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information, or to submit views in advance of the meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant William G. Respires, U.S. Coast Guard (G–LMI), 2100 Second Street, SW, Washington, D.C. 20593; telephone (202) 267–1527; fax (202) 267–4496.

Dated: January 27, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–2464 Filed 1–28–99; 4:44 pm]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from April 19–22, 1999, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held in the MacCraken room, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Harrell, Executive Director, ATPAC, En Route/Terminal Operations and Procedures Division, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3725.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held April 19 through April 22, 1999, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than April 16, 1999. The next quarterly meeting of the FAA ATPAC is planned to be held from July 26–29, 1999, in Osh Kosh, Wisconsin.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Eric Harrell,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 99–2420 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviaton Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues.

DATES: The meeting will be held on February 24, 1999, 11 a.m. CST.

ADDRESSES: The meeting will be held at the Wyndham Anatole, Miro Room, 2201 Stemmons Freeway, Dallas TX 75207, telephone 214–748–1200.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, Office of Rulemaking, ARM–200, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9681.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

Status reports for the following.

a. Rotorcraft External Load Combination Safety Requirements.

b. Normal Category Gross Weight and Passenger Issues.

c. Critical Parts.

d. Performance and Handling Qualities Working Group.

Attendance is open to the public but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, on January 26, 1999.

Mark R. Schilling,

Assistant Executive Director for Rotorcraft Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–2418 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Hearing To Receive Public Comments Concerning the Implementation of the Noise Abatement Measures in the Part 150 Noise Compatibility Plan Update and Aviation Related Industrial Development for Toledo Express Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearing.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Public Hearing will be held concerning the environmental impact of implementing the Noise Abatement Measures described in the Part 150 Noise Compatibility Plan Update and aviation related industrial development for Toledo Express Airport. The Part 150 is currently under review. This hearing is being held pursuant to the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and other laws as applicable.

DATES: March 10, 1999, 5:00 p.m.–8:00 p.m.

ADDRESSES: Angola Gardens, 7001 Angola Road, Holland OH.

POINT OF CONTACT: Mr. Wally Welter, Environmental Specialist, FAA Great Lakes Region, Air Traffic Division, AGL–520.V, 2300 East Devon Avenue, Des Plaines, IL 60018.

SUPPLEMENTARY INFORMATION: A Draft Environmental Impact Statement (DEIS) has been prepared and will be available for public review and comment. This document will be available 30 days prior to the hearing at the following locations.

(1) Federal Aviation Administration, Air Traffic Division Office, 2300 East Devon Avenue, Des Plaines, IL 60018,

(2) Toledo-Lucas County Port Authority, Toledo Express Airport, 11013 Airport Highway, Swanton, OH 43558,

(3) Toledo-Lucas County Port Authority, One Maritime Plaza, Toledo, OH 43604,

(4) Toledo-Lucas County Public Library, 1032 South McCord Road, Holland, OH 43528,

(5) Swanton Public Library, 305 Chestnut Street, Swanton, OH 43558.

The purpose of the hearing is to consider the social, economic, and environmental effects of the proposed actions. The public will be afforded the opportunity to present, for the official record, oral and/or written testimony pertinent to the intent of the hearing. Additional written comments should be submitted no later than March 12, 1999. Written statements should be submitted to Mr. Wally Welter, Environmental Specialist, FAA Great Lakes Region, AGL–520V, Air Traffic Division, 2300 East Devon Avenue, Des Plaines, IL 60018.

Issued in Des Plaines, Illinois on January 22, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–2419 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Easterwood Airport, College Station, TX

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Easterwood Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harry Raisor, Director of Aviation, at the following address: Mr. Harry Raisor, Director of Aviation, Texas A&M University, 1 McKenzie Terminal Blvd, Suite 112, College Station, Texas 77845–1583.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Forth Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Easterwood Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 19, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 15, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 2000.

Proposed charge expiration date: May 1, 2004.

Total estimated PFC revenue: $951,400.00.

PFC application number: 99–03–C–00–CLL.

Brief description of proposed projects:

Projects To Impose and Use PFC'S

Airfield Safety Improvement, Terminal Roof Replacement, Perimeter Road (Phase 1), and PFC Administrative Costs.

Proposed class or classes of air carriers to be exempted from collecting PFC's:

None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Easterwood Airport.

Issued in Forth Worth, Texas on January 19, 1999.

Edward N. Agnew,

Acting Manager, Airports Division.

[FR Doc. 99–2417 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4957; Notice 2]

Request for Comments and OMB Approval

AGENCY: Research and Special Programs Administration, DOT.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA is publishing this notice in the **Federal Register** to announce the Research and Special Programs Administration's (RSPA) intention to request renewal of an information collection in support of the Office of Pipeline Safety (OPS) for Excess Flow Valves (EFV) Customer Notification.

DATES: Comments on this notice must be received on or before April 5, 1999 to ensure consideration.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20950, telephone (202) 366–1640 or e-mail marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Excess Flow Valves, Customer Notification.

OMB Number: 2137–0593.

Abstract: 49 U.S.C. 60110 directed DOT to prescribe regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and the costs associated with installation. The regulations provide that, except where installation is already required, the operator will install an EFV that meet prescribed performance criteria at the customer's request, if the customer pays for the installation.

Estimate of Burden: The average burden hours per response is.

Respondents: Gas Distribution Pipeline Operators.

Estimated Number of Respondents: 1,590.

Estimated Total Annual Burden on Respondents: 82,500 hours.

ADDRESSES: Copies of this information collection can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC, 10:00 A.M. to 4:00 P.M. Monday through Friday excluding Federal holidays.

Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Send comments to Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001 or by e-mail to ops.comments@rspa.dot.gov. All comments to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

Issued in Washington, DC, on January 27, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–2414 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–98–4034; Notice 17]

Pipeline Safety: Natural Gas Pipeline Company of America Approved for Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice; Correction.

SUMMARY: RSPA published a document in the **Federal Register** of January 7, 1999, regarding approval of Natural Gas Pipe Line Company of America for the Pipeline Risk Management Demonstration Program. The document contained errors in reference to the Notice Number and the title of the project evaluation document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 355–4572.

Correction

In the **Federal Register** issue of January 7, 1999, in FR Doc. 99–291, the corrections are as follows:

On page 1067, in the fourth line of the title, correct the Notice number to read: Notice 17.

On page 1068, second paragraph, correct item (4) to read:

"OPS Project Review Team Evaluation of Natural Gas Pipeline Company Demonstration Project".

Issued in Washington, DC, on January 25, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–2416 Filed 2–1–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0496]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 3, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0496."

SUPPLEMENTARY INFORMATION:

Title: Claim for Veterans Mortgage Life Insurance, VA Form 29–0549.

OMB Control Number: 2900–0496.

Type of Review: Extension of currently approved collection.

Abstract: The form is used by the mortgage holder to claim the proceeds of Veterans Mortgage Life Insurance and to provide the information needed to authorize payment of the insurance. The information requested is required by law, Title 38, U.S.C., Section 2106, and is used by VA to process the mortgage holder's claim.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 22, 1998 at pages 56702–56703.

Affected Public: Individuals or Households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0496" in any correspondence.

Dated: December 31, 1998.

By direction of the Secretary.

Genie McCully,

Program Analyst, Information Management Service.

[FR Doc. 99–2385 Filed 2–1–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 64, No. 21

Tuesday, February 2, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333-8333-01; I.D. 121498A]

RIN 0648-AM12

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

Correction

In rule document 98–34851, beginning on page 1316, in the issue of Friday, January 8, 1999, make the following corrections:

1. On page 1336, in the table 5, in the "Cumulative trip limit" column, under the fifth entry add "8,618 kg".

2. On page 1336, in the third table, the heading "Table 6--TDS Complext" should read "Table 6--DTS Complex".

3. On page 1337, in table 6, the heading "TDS Complex--Continued" should read "DTS Complext--Continued".

[FR Doc. C8–34851 Filed 2-1-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-ANE-01-AD; Amendment 39-10947; AD 98-26-07]

RIN 2120-AA64

Airworthiness Directives; Rolls-Royce Limited, Bristol Engines Division, Viper Models Mk.521 and Mk.522 Turbojet Engines

Correction

In rule document 98–33243 beginning on page 7001 in the issue of Friday, December 18, 1998, make the following correction:

§ 39.13 [Corrected]

On page 70002, in the first column, in the last line, "1998" should read "1999".

[FR Doc. C8–33243 Filed 2–1–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ANM-19]

Proposed Establishment of Class D Airspace and Modification of Class E Airspace; Bozeman, MT

Correction

In proposed rule document 99–385 beginning on page 1142 in the issue of January 8, 1999, make the following correction:

§ 71.1 [Corrected]

On page 1143, in the first column, in the airspace designations for **ANM MT D Bozeman, MT[New]**, in the fifth line, "44-mile" should read "4.4-mile".

[FR Doc. C9–385 Filed 2–1–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-AGL-70]

Proposed Modification of Class E Airspace; Tiffin, OH

Correction

In proposed rule document 99–501 beginning on page 1559 in the issue of Monday, January 11, 1999, make the following correction:

§ 71.1 [Corrected]

On page 1560, in the first column, in the airspace designations for **AGL OH E5 Tiffin, OH [Revised]**, in the second line, "(Lat. 40°05′35″N., long. 83°12′46″W)" should read "(Lat. 41°05′38″N., long. 83°12′46″W)".

[FR Doc. C9–501 Filed 2–1–99; 8:45 am]

BILLING CODE 1505–01–D

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federal register

Tuesday
February 2, 1999

Part II

Department of Transportation

Office of the Secretary

49 CFR Parts 23 and 26
Participation by Disadvantaged Business Enterprises in Department of Transportation Programs; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 23 and 26

[Docket OST–97–2550; Notice 97–5]

RIN 2105–AB92

Participation by Disadvantaged Business Enterprises in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the Department of Transportation's regulations for its disadvantaged business enterprise (DBE) program. The DBE program is intended to remedy past and current discrimination against disadvantaged business enterprises, ensure a "level playing field" and foster equal opportunity in DOT-assisted contracts, improve the flexibility and efficiency of the DBE program, and reduce burdens on small businesses. This final rule replaces the former DBE regulation, which now contains only the rules for the separate DBE program for airport concessions, with a new regulation. The new regulation reflects President Clinton's policy to mend, not end, affirmative action programs. It modifies the Department's DBE program in light of developments in case law requiring "narrow tailoring" of such programs and last year's Congressional debate concerning the continuation of the DBE program. It responds to comments on the Department's December 1992 notice of proposed rulemaking (NPRM) and its May 1997 supplemental notice of proposed rulemaking (SNPRM).

DATES: This rule is effective March 4, 1999. Comments on Paperwork Reduction Act matters should be received by April 5, 1999; however, late-filed comments will be considered to the extent practicable.

ADDRESSES: Persons wishing to comment on Paperwork Reduction Act matters (see discussion at end of preamble) should send comments to Docket Clerk, Docket No. OST–97–2550, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590. We emphasize that the docket is open only with respect to Paperwork Reduction Act matters, and the Department is not accepting comments on other aspects of the regulation. We request that, in order to minimize burdens on the docket clerk's staff, commenters send three copies of their comments to the docket. Commenters wishing to have their submissions acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the commenter. Comments will be available for inspection at the above address from 10 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9306 (voice), (202) 366–9313 (fax), (202) 755–7687 (TDD), bob.ashby@ost.dot.gov (email); or David J. Goldberg, Office of Environmental, Civil Rights and General Law, Department of Transportation, 400 7th Street, SW., Room 5432, Washington, DC 20590, phone number (202) 366–8023 (voice), (202) 366–8536 (fax).

SUPPLEMENTARY INFORMATION:

Background

The Department has the important responsibility of ensuring that firms competing for DOT-assisted contracts are not disadvantaged by unlawful discrimination. For eighteen years, the Department's most important tool for meeting this responsibility has been its Disadvantaged Business Enterprise (DBE) program. This program began in 1980. Originally, the program was a minority/women's business enterprise program established by regulation under the authority of Title VI of the Civil Rights Act of 1964 and other nondiscrimination statutes that apply to DOT financial assistance programs. See 49 CFR part 23.

In 1983, Congress enacted, and President Reagan signed, the first statutory DBE provision. This statute applied primarily to small firms owned and controlled by minorities in the Department's highway and transit programs. Firms owned and controlled by women, and the Department's airport program, remained under the original 1980 regulatory provisions. In 1987, Congress enacted, and President Reagan signed, statutes expanding the program to airports and to women-owned firms. In 1991 (for highway and transit programs) and 1992 (for airport programs), Congress enacted, and President Bush signed, statutes reauthorizing the expanded DBE program.

After each statutory amendment, and at other times to resolve program issues, the Department amended part 23. The result has been that part 23 has become a patchwork quilt of a regulation. In addition, years of interpretation by various grantees and different DOT offices has created confusion and inconsistency in program administration. These problems, particularly in the area of certification, were criticized in General Accounting Office reports. The Department's desire to improve program administration and make the rule a more unified whole led to our publication of a December 1992 notice of proposed rulemaking (NPRM).

The Department received about 600 comments on this NPRM. The Department carefully reviewed these comments and, by early 1995, had prepared a draft final rule responding to them. However, in light of the Supreme Court's June 1995 decision in *Adarand* v. *Peña* and the Administration's review of affirmative action programs, the Department conducted further review of the DBE program. As a result, rather than issuing a final rule, we issued a supplemental notice of proposed rulemaking (SNPRM) in May 1997. This SNPRM incorporated responses to the comments on the 1992 NPRM and proposed further changes in the program, primarily in response to the "narrow tailoring" requirements of *Adarand*. We received about 300 comments on the SNPRM. The Department has carefully considered these comments, and the final rule responds to them. The final rule also specifically complies with the requirements that the courts have established for a narrowly tailored affirmative action program.

At the same time that the Department was working on this final rule, Congress once again considered reauthorization of the DBE program. In both the House and the Senate, opponents of affirmative action sponsored amendments that would have effectively ended the program. In both cases, bipartisan majorities defeated the amendments. The final highway/transit authorization legislation, known as the Transportation Equity Act for the 21st Century (TEA–21), retains the DBE program. In shaping this final rule, the Department has listened carefully to what both supporters and opponents of the program have said in Congressional debates.

Key Points of the Final Rule

This discussion reviews and responds to the SNPRM comments and the Congressional debates on certain key issues. Congressional debate references are to the *Congressional Record* for March 5 and 6, 1998, for the Senate debate and April 1, 1998, for the House debate, unless otherwise noted.

1. Quotas and Set-Asides

SNPRM Comments: Most comments on this issue came from non-DBE contractors, who argued that the program was a *de facto* quota program. Many of these contractors said that recipients insisted that they meet numerical goals regardless of other considerations, and that the recipients did not take showings of good faith efforts seriously. Some non-DBE contractor organizations argued, in addition, that the program was a quota program because it was based on a statute that had a 10 percent target for the use of businesses defined by a racial classification.

Congressional Debate: Opponents of the DBE program generally asserted that it created quotas or set-asides. Senator McConnell described the entire program, particularly the provision that "not less than 10 percent" of authorized funds go to DBEs, as

> * * * a $17.3 billion quota. In other words, if the government decides that you are the preferred race and gender, then you are able to compete for $17.3 billion of taxpayer-funded highway contracts. But, if you are the wrong race and gender, then—too bad—you can't compete for that $17 billion pot. (S1936).

The "not less than 10 percent" language also led opponents, such as Senator Ashcroft, to label the program a "set-aside," (S1405), a term also employed in testimony provided by a law professor from California who said that the statute "imposes a set-aside that's required regardless of the availability of race-neutral solutions." (S1407). Senator Gorton said that the DBE statute provides that "those not defined as disadvantaged in our society are absolutely barred and prohibited from getting certain governmental contracts." (S1415).

On the other hand, supporters of the program were adamant that it was not a quota program. Senator Baucus argued that the program, as implemented by DOT, allows substantial flexibility to recipients and contractors. Recipients could have an overall goal other than 10 percent under current rules, he pointed out. Senator Kerry of Massachusetts added that what the statute does is to "set a national goal. And it is appropriate in this country to set national goals for what we will do to try to break down the walls of discrimination. * * *" (S1408). He also alluded to the flexibility of the Secretary to permit overall goals of less than 10 percent. Senator Robb stated:

> I want to stress at the outset that this program is not a "quota program," as some have suggested. There is a great difference [between] an aspirational goal and a rigid numerical requirement. Quotas utilize rigid numerical requirements as a means of implementing a program. The DBE program uses aspirational goals. (S1425).

With respect to individual contract goals, Senator Baucus said, "once a goal is established for a contract, each contractor must make a good-faith effort to meet the goal—not mathematically required, not quota required, but a good faith effort to meet it." (S1402). Senator Baucus pointed to provisions of the SNPRM concerning overall goals, means of meeting them, and good-faith efforts as further narrowly tailoring the program. The SNPRM confirms, he said, that "contract goals are not binding. If a contractor makes good faith efforts to find qualified women or minority-owned subcontractors, but fails to meet the goal, there is no penalty." (S1403). Senator Robb added that "Contract goals are not operated as quotas because they require that the prime contractor make 'good faith efforts' to find DBEs. If a prime contractor cannot find qualified and competitive DBEs, the goal can be waived." (S1425).

One of the Senators who addressed the quota/set-side issue in the most detail was Senator Domenici. He concluded that "I do not agree that this minority business program we have in this ISTEA bill before us is a program that mandates quotas and mandates set-asides." (S1426). He made this statement, in part, on the basis of March 5, 1998, letter to him signed by Secretary of Transportation Rodney Slater and Attorney General Janet Reno. In relevant part, this letter (which Senator Domenici inserted into the record) read as follows:

> The 10 percent figure contained in the statute is not a mandatory set aside or rigid quota. First, the statute explicitly provides that the Secretary of Transportation may waive the goal for any reason * * * Second, in no way is the 10 percent figure imposed on any state or locality * * * Moreover, state agencies are permitted to waive goals when achievement on a particular contract or even for a specific year is not possible. The DBE program does not set aside a certain percentage of contracts or dollars for a specific set of contractors. Nor does the DBE program require recipients to use set-asides. The DBE program is a goals program which encourages participation without imposing rigid requirements of any type. Neither the Department's current nor proposed regulations permit the use of quotas. The DBE program does not use any rigid numerical requirements that would mandate a fixed number of dollars or contracts for DBEs. (S1427).

The debate in the House proceeded in similar terms. Opponents of the DBE program, such as Representative Roukema (H2000), Representative Cox (H2004) and Speaker Gingrich (H2009) said the legislation constituted a quota, while proponents, such as Representatives Tauscher (H2001), Poshard (H2003), Bonior (H2004) and Menendez (H2004) said the program did not involve quotas or set-asides.

DOT Response: The DOT DBE program is not a quota or set-aside program, and it is not intended to operate as one. To make this point unmistakably clear, the Department has added explicitly worded new or amended provisions to the rule.

Section 26.41 makes clear that the 10 percent statutory goal contained in ISTEA and TEA–21 is an aspirational goal at the national level. It does not set any funds aside for any person or group. It does not require any recipient or contractor to have 10 percent (or any other percentage) DBE goals or participation. Unlike former part 23, it does not require recipients to take any special administrative steps (e.g., providing a special justification to DOT) if their annual overall goal is less than 10 percent. Recipients must set goals consistent with their own circumstances (see § 26.45). There is no direct link between the national 10 percent aspirational goal and the way a recipient operates its program. The Department will use the 10 percent goal as a means of evaluating the overall performance of the DBE program nationwide. For example, if nationwide DBE participation were to drop precipitously, the Department would reevaluate its efforts to ensure nondiscriminatory access to DOT-assisted contracting opportunities.

Section 26.43 states flatly that recipients are prohibited from using quotas under any circumstances. The section also prohibits set-asides except in the most extreme circumstances where no other approach could be expected to redress egregious discrimination. Section 26.45 makes clear that in setting overall goals, recipients aspire to achieving only the amount of DBE participation that would be obtained in a nondiscriminatory market. Recipients are not to simply pick a number representing a policy objective or responding to any particular constituency.

Section 26.53 also outlines what bidders must do to be responsive and responsible on DOT-assisted contracts having contract goals. They must make good faith efforts to meet these goals. Bidders can meet this requirement either by having enough DBE participation to meet the goal or by documenting good faith efforts, even if those efforts did not actually achieve the

goal. These means of meeting contract goal requirements are fully equivalent. Recipients are prohibited from denying a contract to a bidder simply because it did not obtain enough DBE participation to meet the goal. Recipients must seriously consider bidders' documentation of good faith efforts. To make certain that bidders' showings are taken seriously, the rule requires recipients to offer administrative reconsideration to bidders whose good faith efforts showings are initially rejected.

These provisions leave no room for doubt: there is no place for quotas in the DOT DBE program. In the Department's oversight, we will take care to ensure that recipients implement the program consistent with the intent of Congress and these regulatory prohibitions.

2. Sanctions for Recipients Who Fail To Meet Overall Goals

SNPRM Comments: The issue of sanctions for recipients who fail to meet overall goals was not a subject of comments on the SNPRM. Since the Department has never imposed such sanctions, this absence of comment is not surprising.

Congressional Debate: DBE program opponents asserted, in connection with their argument that the DBE program is a quota program, that the Department could impose sanctions for failure to meet goals. "The goals have requirements and the real threat of sanctions," Senator McConnell said. (S1488). Citing a provision of a Federal Highway Administration (FHWA) manual saying that if "a state has violated or failed to comply with Federal laws or * * * regulations," FHWA could withhold Federal funding, Senator McConnell said,

> In other words, there are sanctions. The same threats appear in * * * the Federal transportation regulations * * * When the Federal government is wielding that kind of weapon from on high, it does not have to punish them. A 10 percent quota is still a quota, even if the States always comply and no one is formally punished. (Id.)

Defenders of the DBE program pointed out that the Department had never punished a recipient for failing to meet an overall goal (e.g., Rep. Tauscher, H2001; Senator Boxer, S1433). Senator Domenici asked Secretary Slater and Attorney General Reno whether there are sanctions, penalties, or fines that may be (or ever have been) imposed on a recipient who does not meet DBE program goals. He entered the following reply in the record:

> No state has ever been sanctioned by DOT for not meeting its goals. Nothing in the statute or regulations imposes sanctions on any state recipient that has attempted in good faith, but failed, to meet its self-imposed goals. (S1427).

Senator Lieberman added that if states fail to meet their own goals, "there is no Federal sanction or enforcement mechanism." (S1493).

DOT Response: The Department has never sanctioned a recipient for failing to meet an overall goal. We do not intend to do so. To eliminate any confusion, we have added a new provision (§ 26.47) that explicitly states that a recipient cannot be penalized, or treated by the Department as being in noncompliance with the rule, simply because its DBE participation falls short of its overall goal. For example, if a recipient's overall goal is 12 percent, and its participation is 8 percent, the Department cannot and will not penalize the recipient simply because its actual DBE participation rate was less than its goal.

Overall goals are not quotas, and the Department does not sanction recipients because their participation levels fall short of their overall goals. Of course, if a recipient does not have a DBE program, does not set a DBE goal, does not implement its DBE program in good faith, or discriminates in the way it operates its program, it can be found in noncompliance. But its noncompliance would never be having failed to "make a number."

3. Economic Disadvantage

SNPRM Comments: Some commenters favored eliminating the presumption of economic disadvantage, saying that applicants should have to prove their economic disadvantage. Other commenters favored obtaining additional financial information from applicants so that, even if the presumption remained in force, recipients would have a better idea of whether applicants really were disadvantaged. The question of the standard for determining disadvantage generated substantial comment, with some commenters favoring, and others objecting to, the proposed use of a personal net worth standard to assist recipients in determining whether an applicant was economically disadvantaged. There was also disagreement among commenters concerning the level at which such a standard should be set (e.g., $750,000, or something higher or lower). These comments, and the Department's response to them, are further discussed in the section-by-section analysis for § 26.67.

Congressional Debate: The Congress debated the topic of who is regarded as economically disadvantaged under the statute. DBE opponents, including Senators Ashcroft (S1405) and McConnell (S1418) and Representative Cox (H2004), asserted that outrageously rich people could be eligible to participate as DBEs, frequently using the Sultan of Brunei as an example. The basic thrust of their argument was that if the program does not exclude wealthy members of the designated groups—meaning those who are not, in fact, disadvantaged—then it is "overinclusive" and therefore not narrowly tailored. Senator McConnell added that, because the Department's SNPRM did not include a specific dollar amount for a cap on personal net worth, it would not be effective. (S1486). On the other hand, DBE program supporters cited the SNPRM's proposed net worth cap as an effective device to stop wealthy people from participating in the program. These included Minority Leader Daschle (with a reference to a letter from the Associate Attorney General, S1413), Senator Baucus (S1414, S1423), Senator Lieberman (S1493), Senator Boxer (S1433), and Senator Moseley-Braun, who responded to the Sultan of Brunei example by noting that the program was directed primarily at U.S. citizens (S1420).

DOT Response: The final rule (§ 26.67) specifically imposes a personal net worth cap of $750,000. This means that, regardless of race, gender or the size of their business, any individual whose personal net worth exceeds $750,000 is not considered economically disadvantaged and is not eligible for the DBE program. The provision also makes it much easier for recipients to determine whether an individual's net worth exceeds the cap. Applicants will have to submit a statement of personal net worth and supporting documentation to the recipient with their applications. If the information shows net worth above the cap, the recipient would rebut the presumption based on the information in the application itself and the individual would not be eligible for the program. In such a case, it would not be necessary for a third party to challenge the economic disadvantage of an applicant in order to rebut the presumption. While there have been very few documented cases of wealthy individuals seeking to take advantage of the Department's program, the revised provisions of part 26 virtually eliminate even the possibility of this type of abuse.

4. Social Disadvantage

SNPRM Comments: A few commenters suggested that the

presumption of social disadvantage, as well as that of economic disadvantage, be eliminated, so that applicants would have to demonstrate both elements of disadvantage. Any presumption of disadvantage tied to a racial classification, in the view of some of these commenters, undermined the constitutionality of the program. Other commenters noted that persons who are not members of the presumptively disadvantaged groups can be eligible and, in some cases, suggested that the criteria for evaluating such applications be clarified.

Congressional Debate: The presumption of social disadvantage drew fire from DBE program opponents because it was allegedly overinclusive. For example, Senator McConnell produced a map illustrating the over 100 countries of origin leading to inclusion in one of the presumed socially disadvantaged groups, pointing out that people from some countries (e.g., Pakistan) are presumed to be socially disadvantaged while those from other countries (e.g., Poland) are not. (S1418). Senator McConnell said that there was no basis for selecting this definition over any other. (Id.) Senator Hatch also listed the countries from which Asian-Pacific Americans and Subcontinent Asian-Americans can originate, suggesting that it was inappropriate to create "all kinds of special interest groups who are vying for these programs." (S1411).

DBE proponents responded that discrimination against minorities and women in general, and against specific minorities in particular (e.g., African Americans) was very real and formed a basis for the presumption of social disadvantage (see discussion below concerning the existence of discrimination). Senator Baucus also noted that this presumption could be overcome. (S1402).

Opponents also charged that the presumption of social disadvantage was underinclusive; that is, "you underinclude people who have a right to be included in the bid process." (Senator McConnell, S1399). The people who are not included who have a right to be, in the view of opponents, are white males (e.g., Senator Sessions' reference to testimony from Adarand Constructors' owner, S1400). Senator Kennedy disagreed with this assertion, saying

> Of course, this program doesn't just help women and minorities. It extends a helping hand to firms owned by white males, as well. They can be certified to [participate] if they prove that they have been disadvantaged. Just ask Randy Pech—owner of the Adarand Construction Firm—because he is currently seeking certification. (S1482).

Senator Domenici was interested in the same question, and entered into the record the following response from Secretary Slater and Attorney General Reno:

> Any individual owning a business may demonstrate that he is socially and economically disadvantaged, even if that individual is not a woman or a minority. Both the current and proposed regulations provide detailed guidance to recipients to assist them in making individual determinations of disadvantaged status. And, in fact, businesses owned by white males have qualified for DBE status. (S1427).

DOT Response: By having passed the DBE statutory provision, after lengthy and specific debate, Congress has once again determined that members of the designated groups should be presumed socially disadvantaged. All of these groups are specifically incorporated by reference in the legislation that Congress debated and approved. This presumption (i.e., a determination that it is not necessary for group members to prove individually that they have been the subject of discrimination or disadvantage) is based on the understanding of Members of Congress about the discrimination that members of these groups have faced. The presumption is rebuttable in the DOT program. If a recipient or third party determines that there is a reasonable basis for concluding that an individual from one of the designated groups is not socially disadvantaged, it can pursue a proceeding under § 26.87 to remove the presumption. Likewise, a white male, or anyone else who is not presumed to be disadvantaged, can make an individual showing of social and economic disadvantage and participate in the program on the same basis as any other disadvantaged individual (see § 26.67).

5. The "Low-Bid System"

SNPRM Comments: Non-DBE contractors expressed concern that a variety of provisions under the program and the SNPRM adversely affected the low-bid system, including contract goals, evaluation credits, and good faith efforts guidance concerning prime contractors' handling of subcontractor prices and consideration of other bidders' success in meeting goals.

Congressional Debate: Opponents of the DBE program assert that the program results in white male contractors not receiving contracts they would otherwise expect to receive. Senator Sessions cited the statement of the Adarand company to this effect. (S1400). Senator Ashcroft said that "if two bids come in from two subcontractors, one owned by a white male and the other by a racial minority, and the bids are the same, or even close, the job will go to the minority-owned company, not the low bidder." (S1405). Senator Gorton inserted into the record letters from a Spokane subcontractor asserting that, in a number of cases, it had lost subcontracts to DBE firms despite having a lower quote. (S1415–16). Representative Roukema also cited examples of firms who made similar assertions. (H2000).

In contrast, DBE program proponents argued that the program was about leveling the playing field for DBEs. Senator Moseley-Braun cited letters from her constituents for the point that

> * * * the DBE program is not about taking away contracts from qualified male-owned businesses and handing them over to unqualified female-owned firms. The program is not about denying contracts to Caucasian low bidders in favor of higher bids that happen to have been submitted by Hispanics or African Americans or Asians or women. (S1420).

Without such a program, her constituents' letters said, they would lose the chance to compete. (Id.). Citing testimony from a Judiciary Committee hearing, Senator Kennedy noted that it was the experience of some DBEs that white male prime contractors had accepted higher bids from other firms to avoid working with DBEs. (S1430).

> Why would a general contractor accept a higher bid? It doesn't make sense unless you remember that the traditional business network doesn't include women or minorities * * * [A woman business owner testified] that some general contractors would rather lose money than deal with female contractors. (Id.)

DOT Response: For the most part, statutory low-bid requirements exist only at the prime contracting level. That is, state and local governments, in awarding prime contracts, must select the low bidder in many procurements (there may be exceptions in some types of purchases). Nothing in this regulation requires, under any circumstances, a recipient to accept a higher bid for a prime contract from a DBE when a non-DBE has presented a lower bid. This rule does not interfere with recipients' implementation of state and local low-bid legislation.

The selection of subcontractors by a prime contractor is typically not subject to any low-bid requirements under state or local law. Prime contractors have unfettered discretion to select any subcontractor they wish. Price is clearly a key factor, but nothing legally compels a prime contractor to hire the subcontractor who makes the lowest quote. Other factors, such as the prime

contractor's familiarity and experience with a subcontractor, the quality of a subcontractor's work, the word-of-mouth reputation of the subcontractor in the prime contracting community, or the prime's comfort or discomfort with dealing with a particular subcontractor can be as or more important than price in some situations. It is in this context that § 26.53 requires that prime contractors make good faith efforts to achieve DBE contract goals. The rule does not require that recipients ignore price or quality, let alone obtain a certain amount of DBE participation without regard to other considerations. The good faith efforts requirements are intended to ensure that prime contractors cannot simply refuse to consider qualified, competitive DBE subcontractors. At the same time, the good faith efforts waiver of contract goals serves as a safeguard to ensure that prime contractors will not be forced into accepting an unreasonable or excessive quote from a DBE subcontractor.

6. Constitutionality

SNPRM Comments: Non-DBE contractors and their groups argued that the SNPRM proposals, particularly with respect to overall goals and the use of race-conscious measures, failed to meet the *Adarand* narrow tailoring test. Many of these commenters said that the overall goals were suspect because they did not adequately consider the capacity of DBEs to perform contracts and *Adarand* requires that race-conscious measures may be used only after a recipient has demonstrated that race-neutral means have failed. The use of presumptions based on racial classifications was viewed as intrinsically unconstitutional by these commenters, many of whom cited the language of Judge Kane's decision in the *Adarand* remand to this effect. Some commenters also contended that, absent recipient-specific findings of compelling need, the program could not be constitutional. They said that existing information alleging compelling interest—such as various disparity studies or information compiled by the Department of Justice—was inadequate to meet the compelling interest test. DBEs and recipients who commented defended the constitutionality of the program, often citing experience with discrimination in the marketplace and contending that the SNPRM succeeded in narrowly tailoring the program.

Congressional Debate: Proponents and opponents of the DBE program extensively debated the constitutionality of the DBE statutory provision and the entire DBE program. Generally, opponents argued that the Supreme Court and District Court decisions in *Adarand* rendered the program unconstitutional, while proponents said that the decisions did not have that effect.

Proponents and opponents of the DBE program agreed that the Supreme Court's *Adarand* decision established a two-part test for the constitutionality of a program that uses a racial classification. The program must be based on a compelling governmental interest and be narrowly tailored to further that interest (e.g., Senator McConnell, S1396; Senator Baucus, S1403). Opponents relied on the finding of a Colorado district court on remand that the program was not narrowly tailored and was thus unconstitutional (Senator McConnell, S 1396; Senator Ashcroft, S1405). Proponents replied that the remand decision represented the views of only one district court (Senator Baucus, S1403), that it failed to properly apply the reasoning of the Supreme Court decision with respect to narrow tailoring (Senator Domenici, S1425), and that the Department's forthcoming regulations would ensure that the program was narrowly tailored (see discussion below).

A. Compelling Interest

(1) *Existence of Discrimination.* Proponents (and some opponents) of the DBE provision said that discrimination and/or disadvantage with respect to minorities and/or women persists. In the House, these included Representative Roukema (H2000–01), Representative Norton (H2003), Representative Poshard (H2003), Representative Menendez (H2004), Representative Davis of Illinois (H2005), Representative Boswell (H2005), Representative Lampson (H2006), Representative Kennedy (H2006), Representative Jackson-Lee (H2006), Representative Edwards (H2007), Representative Andrews (H2007), Representative Rodriguez (H2008), Representative Towns (H2010), Representative Dixon (H2010), and Representative Millender-McDonald (H2011). DBE opponents typically remained silent on this point, neither affirming nor denying the existence of discrimination against women and minorities.

There was a similar pattern in the Senate debates. Opponents typically did not address the present existence of discrimination or disadvantage with respect to minorities and women or its continuing effects, spoke of such discrimination as something that existed in the past (Senator Sessions, S1399; Senator Hatch, S1411), or asserted that race-based disadvantage or discrimination no longer exists (Senator Ashcroft, S1406).

The Senators who said that such discrimination persists included Senator Baucus (S1403, S1413, S1496), Senator Warner (S1403), Senator Kerry (S1408), Senator Wellstone (S1410), Senator Moseley-Braun (S1419–20), Senator Robb (S1422); Senator Brownback (S1423–24), Senator Domenici (S1425–26), Senator Kennedy (S1429–30, S1482), Senator Specter (S1485), Senator McCain (S1489), Senator Lautenberg (S1490), Senator Durbin (S1491), Senator Daschle (S1492), Senator Lieberman (S1493), Senator Bingaman (S1494), Senator Murray (S1495), and Senator Dorgan (S1495).

(2) *Evidence of discrimination or disadvantage.* In comments on the passage of the TEA–21 conference report in the Senate, Senator Chafee noted a Colorado Department of Transportation disparity study that found a disproportionately small number of women- and minority-owned contractors participating in that state's highway construction industry. More than 99 percent of contracts went to firms owned by white men. (Congressional Record, May 22, 1998; S5413). In the House discussion of the conference report, Representative Norton presented an extensive summary of relevant evidence of discrimination forming the basis for a compelling need for the DBE program. (H3957).

Throughout the debate, the Members who affirmed the existence of discrimination and/or disadvantage asserted a number of factual bases for concluding that the DBE program was necessary. This information is largely drawn from the Senate debate; the briefer House debate contains less detail.

Senator Baucus cited disparities between the earnings of women and men and between the percentage of small businesses women own and the percentage of Federal procurement dollars they receive. He also noted that minorities make up 20 percent of the population, own 9 percent of construction businesses, and get only 4 percent of construction receipts. (S1403). Finally, Senator Baucus, via a letter from the Associate Attorney General, cited to numerous Congressional findings concerning the effects of discrimination in the construction industry and in DOT-assisted programs. (S1413).

Senator Kerry added that women own 9.2 percent of the nation's construction firms but their companies earn only about half of what is earned by male-owned firms. (S1409). Senator Robb

commented that the evidence of racially based disadvantage is "compelling and disturbing." He continued, stating that, "White-owned construction firms receive 50 times as many loan dollars as African-American owned firms that have identical equity." (S1422). Senator Kennedy said that the playing field for women and minorities and other victims of discrimination was still not level. Job discrimination against minorities and the "glass ceiling" for women still persisted, he said, adding that "Nowhere is the deck stacked more heavily against women and minorities than in the construction industry." (S1429). He cited a number of instances in which minority or female contractors encountered overt discrimination in trying to get work. (S1429–30).

Senator Lautenberg said that, for transportation-related contracts, minority-owned firms get only 61 cents for every dollar of work that white male-owned businesses receive. The comparable figure for women-owned firms was 48 cents. He also mentioned that "women-owned businesses have a lower rate of loan delinquency, yet still have far greater difficulty in obtaining loans." (S1490). He then spoke of the continuing effects of past discrimination:

> Jim Crow laws were wiped off the books over 30 years ago. However, their pernicious effects on the construction industry remain. Transportation construction has historically relied on the old boy network which, until the last decade, was almost exclusively a white, old boy network. * * * This is an industry that relies heavily on business friendships and relationships established decades, sometimes generations, ago—years before minority-owned firms were even allowed to compete. (Id.)

Senator Durbin referred to recent studies concerning job bias against minorities and women. (S1491). Senator Lieberman referred generally to previous Congressional committee findings and testimony concerning still-existing barriers to full participation for minorities and women. (S1493). He also cited the May 1996 Department of Justice survey of discrimination and its effects in business and contracting. He referred to a recent study in Denver showing that African Americans were 3 times, and Hispanics 1.5 times, more likely than whites to be rejected for business loans. Senator Daschle summed up by saying, "[t]here is clearly a compelling interest in addressing the pervasive discrimination that has characterized the highway construction industry." (S1492).

Throughout the portion of the debate described above, many of the Members stressed that goal-based programs like the DBE program were the only effective way to combat the continuing effects of discrimination.

Senator Baucus cited the experience of Michigan, in which DBE participation in the state-funded portion of the highway program fell to zero in a nine-month period after the state terminated its DBE program, while the Federal DBE program in Michigan was able to maintain 12.7 percent participation. (S1404). Senator Kerry also raised the Michigan example, and went on to cite similar sharp decreases in DBE participation when Louisiana, Hillsborough County, Florida, and San Jose, California, eliminated affirmative action programs covering state- and locally-funded programs. Senator Kerry asked rhetorically:

> * * * is that just the economy of our country speaking, an economy at one moment that is capable of having 12 percent and at another moment, where they lose the incentive to do so, to drop down to zero, to drop down by 99 percent, to drop down by 80 percent, to have .4 at the State level while at the Federal level there are 12 percent? You could not have a more compelling interest if you tried. * * * (S1409–10).

Senator Moseley-Braun added the examples of Arizona, Arkansas, Rhode Island, and Delaware to the jurisdictions cited by other members where state-funded projects without a DBE program have significantly less DBE participation than Federally funded projects subject to the DBE program. She added, "Where there are no DBE programs, women- and minority-owned small businesses are shut out of highway construction." (S1420–21). Senator Kennedy added Nebraska, Missouri, Tampa and Philadelphia to the list of jurisdictions that experienced precipitous drops in DBE participation after goals programs ended. (S1429–30; S1482). He also cited comments from DBE companies that goal programs were needed to surmount discrimination-related barriers. (S1482). Senator Domenici repeated many of the same points as previous DBE proponents concerning the basis for concluding that the program was needed (S1426), as did Senator Kempthorne. (S1494).

Senator Robb emphasized that the DBE program was essential to combating discrimination and ensuring economic opportunity, explicitly linking the fall-off in DBE participation to continuing discrimination:

> Where DBE programs at the State level have been eliminated, participation by qualified women and qualified minorities in government transportation contracts has plummeted. There is no way to know whether this discrimination is intentional or subconscious, but the effect is the same. This experience demonstrates the sad but inescapable truth that, when it comes to providing economic opportunities to women and minorities, passivity equals inequality. (S1422).

3. *Narrow tailoring.*—DBE proponents cited the Department's proposed DBE rule as the vehicle that would ensure that the DBE program would be narrowly tailored. They cited features of the SNPRM including a new mechanism for calculation of overall goals, giving priority to race-neutral measures in meeting goals, a greater emphasis on good faith efforts, DBE diversification, added flexibility for recipients, net worth provisions, ability to challenge presumptions of social and economic disadvantage, and flexibility in goal-setting. In comments on the Senate consideration of the TEA–21 conference report, Senator Baucus concluded by saying:

> As I explained in my statements during the debate on the McConnell amendment * * * the program is narrowly tailored, both under the current and the new regulations, which emphasize flexible goals tied to the capacity of firms in the local market, the use of race-neutral measures, and the appropriate use of waivers for good faith efforts. (Congressional Record, May 22, 1998; S5414).

Following Senator Baucus' remarks, Senator Chafee, Chairman of the committee of jurisdiction, requested that he be associated with Senator Baucus' remarks on constitutionality. (S5414).

DBE opponents denied that regulatory change could result in a narrowly tailored program. Senator Smith said "The administration's attempt to comply with the Court's decision by fiddling around with the DOT regulations does not meet the constitutional litmus test." (S1398). The most frequent argument against the efficacy of regulatory change was that a racial classification is inherently unable to be narrowly tailored. (Senator Sessions, S1399–1400; Senator Ashcroft, S1407).

DOT Response: The 1998 debate over DBE legislation was the most thorough in which Congress has engaged since the beginning of the program. The record of this debate clearly supports the Department's view that there is a compelling governmental interest in remedying discrimination and its effects in DOT-assisted contracting. Congress clearly determined that real, pervasive, and injurious discrimination exists. Congress backed up that determination with reference to a wide range of factual material, including private and public contracting, DOT-assisted and state-and locally-funded programs and the financing of the contracting industry. By retaining the DBE statutory provisions

against this factual background, Congress clearly found that there was a compelling governmental interest in having the program.

The courts, including the court in the *Adarand Constructors Inc.* v. *Peña*, 965 F.Supp. 1556 (D. Colo., 1997) and the court in *In re: Sherbrooke Sodding*, 6–96–CV–41 (D. Minn. 1998), agree that Congress has the power to legislate on a nationwide basis to address nationwide problems. Congress has a unique role as the national legislature to look at the whole of the United States for the basis to find a compelling governmental interest supporting the use of race-based remedies. Congress is not required to make particularized findings of discrimination in individual localities to which a nationwide program may apply. Nor is Congress required to find that the Federal government itself has discriminated before applying a race-conscious remedy. (Id. at 1573).

Having reviewed the extensive evidence of discrimination and its relationship to DOT-assisted contracting, the District Court in *Adarand* determined that current and previous DBE provisions were a "considered response by Congress to the effects of discrimination on the ability of minorities to participate in the mainstream of federal contracting." (Id. at 1576). The court stated that "Congress has a strong basis in evidence for enacting the challenged statutes, which thus serve a 'compelling governmental interest.'" (Id. at 1577). The extensive Congressional debate and information supporting the enactment of the 1998 DBE provision significantly strengthens the existing basis for declaring that this program serves a compelling governmental interest.

The basis for District Court's view that the program at issue in *Adarand* is unconstitutional is stated most clearly in the following passage:

> Contrary to the [Supreme] Court's pronouncement that strict scrutiny is not 'fatal in fact,' I find it difficult to envisage a race-based classification that is narrowly tailored. By its very nature, such [a] program is both underinclusive and overinclusive. (Id. at 1580).

By underinclusive, the court said it meant that caucasians and members of non-designated minority groups are excluded. By overinclusive, it said it meant that all the members of the designated groups are presumed to be economically and/or socially disadvantaged, without Congress having inquired whether a particular entity seeking a racial preference has suffered from the effects of past discrimination (citing the Supreme Court's *Croson* decision, which concerned the powers of state and local governments to use race-based remedies). (Id.)

As Senator Domenici pointed out (S1425), the key words in the District Court's opinion are "Contrary to the [Supreme] Court's pronouncement. * * *" The District Court's analysis departs markedly from the controlling decision of the Supreme Court on this issue (*Adarand* v. *Peña*, 515 U.S. 200 (1995)). The Supreme Court's language with which the District Court disagreed is the following:

> Finally, we wish to dispel the notion that strict scrutiny is "strict in theory, but fatal in fact." [citation omitted] The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it * * * When race-based action is necessary to further a compelling interest, such action is within constitutional constraints if it satisfies the "narrow tailoring" test this Court has set out in previous cases. (515 U.S. at 237).

The Supreme Court evidently considers the "not fatal in fact" language to have continuing vitality, having cited it in a subsequent case (*U.S.* v. *Virginia*, 518 U.S. 515, note 6 (1996)).

Under the District Court's analysis, Congress could never use a race-based classification, no matter how compelling the need, because any such classification would intrinsically fail to be narrowly tailored. This approach effectively moots the determination of whether there is a compelling governmental interest. The Supreme Court's approach, by contrast, permits a racial classification to be used, given the existence of a compelling interest, if it is narrowly tailored.

What is the test for narrow tailoring? As set forth in *United States* v. *Paradise*, 480 U.S. 149, 171 (1987), the test includes several factors: "the necessity for relief and the efficacy of alternative remedies; the flexibility and duration of the relief, including the availability of waiver provisions; the relationship of the goals to the relevant labor market; and the impact of the relief on the rights of third parties." In *Adarand*, the Supreme Court specifically invited inquiry into whether there was any consideration of the use of race-neutral means to increase minority business participation (related to the efficacy of alternative remedies) and whether the program was appropriately limited so that it will not last longer than the discrimination it is designed to eliminate (related to the duration of relief). (515 U.S. at 238).

This final rule successfully addresses each element of this test:

- *The necessity of relief.* Throughout the debate on the compelling governmental interest, the bipartisan majority of both houses of Congress repeatedly described the necessity of the DBE program's goal-based approach to remedying the effects of discrimination in DOT-assisted contracting. The most significant evidence demonstrating the necessity of a goal-oriented program is the evidence cited of the fall-off in DBE participation in state contracting when goal-oriented programs end, compared to participation rates in the Federal DBE program.
- *Efficacy of alternative remedies.* This element of the narrow tailoring standard is related to the Supreme Court's inquiry concerning race-neutral programs. Under § 26.51 of this rule, recipients are required to meet the maximum feasible portion of their overall goals by using race-neutral measures. Recipients are not required to have contract goals on each contract. Instead, they are instructed to use contract goals only for any portion of their overall goal they cannot meet through race-neutral measures. Contract goals are intended as a safety net to be used when race-neutral means are not effective to ensure that a recipient can achieve "level playing field." Moreover, the regulations provide that recipients must reduce the use of contract goals when other means are sufficient to meet their overall goals. This ensures that race-conscious relief is used only to the extent necessary and is replaced by race-neutral as quickly as possible.
- *Flexibility of relief.* Flexibility is built into the program in a variety of ways. Recipients set their own goals, based on local market conditions; their goals are not imposed by the federal government nor do recipients have to tie them to any uniform national percentage. (§ 26.45). Recipients also choose their own method for goal setting and can choose to base the goal on the evidence that they believe best reflects their market conditions. (§ 26.45). Recipients have broad discretion to choose whether or not to use a goal on any given contract, and if they do choose to use a contract goal, they are free to set it at any level they believe is appropriate for the type and location of the specific work involved. (§ 26.51). The rule also ensures flexibility for contractors by requiring that any contract goal be waived entirely for a prime contractor that demonstrates that it made good faith efforts but was still unable to meet the goal. (§ 26.53). The rule also allows recipients that believe they can achieve equal opportunity for DBEs through different approaches to get waivers releasing

them from almost any of the specific requirements of the rule. (§ 26.103). Recipients can also get exemptions from the rule if they have unique circumstances that make complying with the rule impractical. (§ 26.103).

• *Duration of relief.* The TEA–21 DBE program will end in 2004 unless reauthorized by the Congress. In each successive reauthorization bill for the surface transportation and airport programs, Congress will have the opportunity to examine the current state of transportation contracting and determine whether the DBE program statutes are still necessary to remedy the continuing effects of discrimination. In addition, the duration of relief for individuals and firms are limited by the personal net worth threshold and business size caps. When an individual's personal wealth grows beyond the threshold, he or she will lose the presumption of disadvantage. (§ 26.67). Similarly, when a firm's receipts grows beyond the small business size standards, it loses its eligibility to participate in the program. (§ 26.65). Finally, to ensure that race-conscious remedies are not used any longer than absolutely necessary, § 26.51 requires recipients to reduce the use of contract goals and rely on race-neutral measures to the extent that they are effective.

• *Relationship of goals to the relevant market.* The overall goal setting provisions of § 26.45 require that recipient set overall goals based on demonstrable evidence of the relative availability of ready, willing and able DBEs in the areas from which each recipient obtains contractors. These provisions ensure that there is as close a fit as possible between the goals set by each recipient and the realities of its relevant market. When a recipient sets contract goals, § 26.51 provides that these goals are to be set realistically in relation to the availability of DBEs for the type and location of work involved.

• *Impact of relief on the rights of third parties.* The legitimate interests of third parties (e.g., prime contractors, non-DBE subcontractors) are only minimally impacted by the DBE program, since the program is aimed at replicating a market in which there are no effects of discrimination and the program affects only a relatively small percentage of total federal-aid funds. The design of the overall and contract goal provisions ensures that the use of race-conscious remedies having the potential to affect the interests of third parties is limited to the extent necessary to counter the effects of discrimination. Individual prime contractors are further protected from suffering any undue burdens by § 26.51, which prevents a prime contractor from losing a contract if it made good faith efforts but was still unable to meet a goal. Non-DBE firms are also protected by § 26.33, which directs recipients to take appropriate steps to address areas of overconcentration of DBE firms in certain types of work that could unduly burden non-DBE firms seeking the same type of work.

• *Inclusion of appropriate beneficiaries.* The certification provisions of Subparts D and E, and particularly the social and economic disadvantage provisions of § 26.67, ensure that only firms owned and controlled by individuals who are in fact socially and economically disadvantaged can participate in the program. Eligibility provisions guard against overinclusiveness by ensuring that individuals with too great net worth are not presumed disadvantaged and by permitting the recipient—on its own initiative or as the result of a complaint—to follow procedures to rebut the presumption of social and/or economic disadvantage. They guard against underinclusiveness by permitting any business owner, including a white male, to demonstrate social and economic disadvantage on an individual basis.

Section-by-Section Analysis

Section 26.1 What Are the Objectives of This Part?

There were relatively few comments on this section of the SNPRM, most of which agreed with the proposed language. We have adopted the suggestion of some commenters that specific reference be made to the role of the DBE program in helping DBEs overcome barriers (e.g., access to capital and bonding) to equal participation. We have also added a specific reference to the role of the program in creating a level playing field on which DBEs can compete fairly for DOT-assisted contracts. Some non-DBE contractors urged that language be added to explicitly oppose "reverse discrimination." The rule clearly states that nondiscrimination is the program's first objective and the Department reiterates here that it opposes unlawful discrimination of any kind.

Section 26.3 To Whom Does This Part Apply?

This provision is unchanged from the SNPRM, except for references to the new TEA–21 statutory provisions. A few commenters wanted this provision to apply to Federal Railroad Administration (FRA) programs, as did the original version of former part 23. However, FRA does not have specific statutory authority for a DBE program parallel to the TEA–21 language. One commenter asked if the language saying that DBE requirements do not apply to contracts without any DOT funding is inconsistent with Federal Transit Administration (FTA) guidance on applicability. While the structure of the FTA program is such that FTA funds are commingled with local funds in many transit authority contracts (e.g., any contract involving FTA operating assistance funds), to which DBE requirements would apply, a contract which is funded entirely with local funds—and without any Federal funds—would not be subject to requirements under this rule.

Section 26.5 What Do The Terms Used in This Part Mean?

There were relatively few comments on the definitions proposed in the SNPRM. One commenter wanted to substitute the term "historically underutilized business" for DBE. Given the continued use of the DBE term in Congressional consideration of the program, the continued use of the "socially and economically disadvantaged individuals" language in the statute, and the familiarity of concerned parties with the DBE term, we do not believe changing the term would be a good idea.

A few commenters asked for additional definitions or elaboration of existing definitions (e.g., "form of arrangement," "financial assistance program," "commercially useful function"). These terms are either already defined sufficiently or are best understood in context of the operational sections in which they are embedded, and abstract definitions in this section would not add much to anyone's ability to make the program work well. Consequently, we are not adding them. Otherwise the final rule adopts the SNPRM proposals for definitions with only minor editorial changes.

The Department has added, for the sake of clarity and consistency with other Federal programs, definitions of the terms Alaskan native, Alaskan native corporation (ANC), Indian tribe, immediate family member, Native Hawaiian, Native Hawaiian organization, principal place of business, primary industry classification, and tribally-owned concern. These definitions are taken from the SBA's new small disadvantaged business program regulation (13 CFR § 124.3). The definitions of the designated groups included in the definition of "socially

and economically disadvantaged individual" also derive from the SBA regulations, as the Department's DBE statutes require. We believe these will be useful terms of art in implementing the DBE program.

A few commenters requested definitions for the terms "race-conscious" and "race-neutral," and we have provided definitions. A race-conscious program is one that focuses on, and provides benefits only for, DBEs. The use of contract goals is the primary example of a race-conscious measure in the DBE program. A race-neutral program is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can assist a wide variety of small businesses, not just DBEs.

Section 26.7 What Discriminatory Actions Are Forbidden?

One commenter wanted to add prohibitions of discrimination based on age, disability and religion. The Department is not doing so, because discrimination on these grounds is already prohibited by other statutes (e.g., the Americans with Disabilities Act with respect to disability). Also, statutes which form the basis for this rule focus on race, color, national origin, and sex. Congress determined that remedial action focused on these areas is necessary. These grounds for discrimination are also most relevant to problems in the DBE program that have been alleged to exist (e.g., disparate treatment of DBE certification applicants by race or sex). Some opponents of the program said that the DBE program discriminates against non-DBEs. However, the Department believes that the program is constitutional and does not violate equal protection requirements. A reference to DOT Title VI regulations has been deleted as unnecessary; otherwise, this provision is the same as in the SNPRM.

Section 26.9 How Does the Department Issue Guidance and Interpretations Under This Part?

Commenters, most of whom were recipients, focused on two issues in this section. First, a majority of the comments favored the "coordination mechanism" concept for ensuring consistent DOT guidance and interpretations. The few that disagreed with this approach did so out of a concern that the mechanism would add delays to the process. These commenters favored additional training or an 800 number hot line to speed up the process.

We believe that proper coordination of interpretations and guidance is vital to the successful implementation of this rule. As the preambles to the 1992 and 1997 proposed rules mentioned, inconsistent implementation of part 23 has been a continuing problem, which has been criticized by a General Accounting Office report and which has created unnecessary difficulty for recipients, contractors, and the Department itself. A process for ensuring that the Department speaks with one voice on DBE implementation matters, and for letting the public know when DOT has spoken, will greatly improve the service we give our customers.

We do not believe this coordination process will result in significant delays in providing guidance. Nor will it inhibit the ability of DOT staff and customers to communicate with one another. For example, the process does not apply to informal advice provided by staff to recipients or contractors over the phone or in a letter or e-mail. It does maintain, however, the important distinction between informal staff assistance on one hand and a binding institutional position on the other.

For clarity in the process, we have modified the language of the rule text to make clear that interpretations and guidance are binding, official Departmental positions if the Secretary signs them or if the document includes a statement that they have been reviewed and approved by the General Counsel. The General Counsel will consult fully with all concerned offices as part of this review process.

We intend to post significant guidance documents and interpretations on the Department's web site to make them widely and quickly available. As some commenters suggested, we are also continuing to consider forming an advisory committee (or working group of an existing committee) to facilitate customer input into DBE program matters. This is separate from the coordination mechanism, however, which is an internal DOT process.

The rule's provisions regarding exemptions and waivers, previously found in the SNPRM's § 26.9 (c) and (d), are now included as a separate section at § 26.15.

Section 26.11 What Records do Recipients Keep and Report?

The Department asked, in the SNPRM, whether it would be advisable to have one standard reporting form for information about the DBE program. Currently, each operating administration (OA) has its own reporting form and requirements. Virtually all the commenters that addressed this issue favored a single, DOT-wide reporting form. Commenters also had a wide variety of suggestions for what data should be reported, formats, and retention periods.

The Department is adopting the suggestion of having a single reporting form, which we believe will reduce administrative burdens for recipients, particularly those who receive funds from more than one OA. Because we do not want to delay the issuance of this rule while a form is being developed, we are reserving the date on which this single form requirement will go into effect. We will take comments on the specifics of reporting into account and consult with interested parties as we devise the form, which will be published subsequently in Appendix B to this rule. The Appendix will also address the issues of reporting frequency and record retention periods. Meanwhile, recipients will continue to report as directed by the concerned OA(s), using existing reporting forms.

The rule is also adding a requirement that recipients develop and maintain a "bidders" list. The bidders list is intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts. The list must include all firms that bid on prime contracts or bid or quote subcontracts on DOT-assisted projects, including both DBEs and non-DBEs. Bidders lists appear to be a promising method for accurately determining the availability of DBE and non-DBE firms and the Department believes that developing bidders data will be useful for recipients. Creating and maintaining a bidders list will give recipients another valuable way to measure the relative availability of ready, willing and able DBEs when setting their overall goals. (See § 26.45). We realize that identifying subcontractors, particularly non-DBEs and all subcontractors that were unsuccessful in their attempts to obtain contracts, may well be a difficult task for many recipients. Mindful of that potential burden, the rule will not impose any procedural requirements for how the data is collected. Recipients are free to choose whether or not they wish to gather this data through their existing bidding and reporting processes. Recipients are encouraged to make use of all of the data already available to them and all methods of reporting and communication with their contracting community that they already have in place. In addition, the Department suggests that recipients consider using a widely publicized public notice or a

widely disseminated survey to encourage all firms that have bid or quoted contracts to make themselves known to recipients.

Once recipients have created the list of bidders, they will have to supplement that information with the age of each firm (since establishment) and the annual gross receipts of the firm (or an average of its annual gross receipts). Recipients can gather this additional information by sending a questionnaire to the firms on the list, or by any other means that the recipient believes will yield reliable information. The recipient's plan for how to create and maintain the list and gather the required information must be included in its DBE program.

Section 26.13 What Assurances Must Recipients and Contractors Make?

There were few comments on this section. Most of these supported the proposal. One comment suggested specific mention of prompt payment, but in view of the substantive requirements on this subject, we do not believe such a mention is needed. Some commenters favored requiring additional public participation as part of the assurance for recipients. Again, given substantive provisions of this rule concerning public participation, we do not believe that repetition here is needed. One commenter said that incorporating the requirements of part 26 in the contract was confusing, since many provisions of part 26 apply only to recipients. We have rewritten the assurance for contractors in response to this concern, specifying that contractors are responsible only for carrying out the requirements of part 26 that apply to them.

Section 26.15 How Can Recipients Apply for Exemptions or Waivers?

There has been some confusion as to this rule's distinction between exemption and waiver. Put simply, exemptions are for unique situations that are most likely not to be either generally applicable to all recipients or to have been contemplated in the rulemaking process. If such a situation occurs and it makes it impractical for a particular recipient to comply with a provision of part 26, the recipient should apply for an exemption from that provision. The waiver provision, by contrast, is not designed for extraordinary circumstances where a recipient may not be able to comply with part 26. Waiver is for a situation where a recipient believes that it can better accomplish the objectives of the DBE program through means other than the specific provisions of part 26.

There were a number of comments about the proposed program waiver provision. Most commenters on this issue favored the proposal, believing it could add flexibility to the way recipients implement the DBE program. A few commenters were concerned that too liberal use of the waiver provision might undermine the goals of the rule.

The Department believes that the waiver provision is an important aspect of the DBE program. The provision ensures that the Department and a recipient can work together to respond to any unique local circumstances. Recipients are encouraged to carefully review the circumstances in their own jurisdictions to determine what mechanisms are best suited to achieving compliance with the overall objectives of the DBE program. If a recipient believes it is appropriate to operate its program differently from the way that a provision of Subpart B or C provides, including, but not limited to, any provisions regarding administrative requirements, overall or contract goals, good faith efforts or counting provisions, it can apply for a waiver. For example, waiver requests could pertain to such subjects as the use of a race-conscious measure other than a contract goal, different ways of counting DBE participation in certain industries, use of separate overall or contract goals to address demonstrated discrimination against specific categories of socially and economically disadvantaged individuals, the use or wording of assurances, differences in information collection requirements and methods, etc.

The Department will, of course, carefully review any applications for waivers to make sure that innovative state or local programs are able to meet the objectives of the statutes and regulation. Decisions on waiver requests are made by the Secretary. This authority has not been delegated to other officials. The waiver provision, which the Department believes will help assist recipients to "narrowly tailor" the program to state and local circumstances and ensure nondiscrimination, remains in the final rule.

Section 26.21 Who Must Have a DBE Program?

The only substantive comment concerning this provision asked that Federal Railroad Administration (FRA) programs be included. The Department is not including FRA programs under this rule because FRA does not have a specific DBE program statute parallel to those covering the Federal Aviation Administration (FAA), FTA, and FHWA. FRA could consider issuing a rule similar to part 26 under its own, separate statutory authority. The Department shortened paragraph (b)(1) to make it easier to understand. Within 180 days of the effective date of this rule, all recipients with existing programs must submit revised programs to the relevant OA for approval. The only changes from existing programs that recipients would have to make are changes needed to accommodate differences between former part 23 and part 26. Future new recipients would, of course, submit a DBE program as part of the approval process for financial assistance.

Section 26.23 What is the Requirement for a Policy Statement?

Section 26.25 What is the Requirement for a Liaison Officer?

Section 26.27 What Efforts Must Recipients Make Concerning DBE Financial Institutions?

There were no substantive comments concerning §§ 26.23–26.27, and the Department is adopting them as proposed.

Section 26.29 What Prompt Payment Mechanisms Must Recipients Have?

There was substantial comment on the issue of prompt payment. A majority of commenters supported the concept of prompt payment provisions. Some recipients pointed out that they already had prompt payment provisions on the books. DBEs generally supported mandating prompt payment provisions though they, as well as other commenters, recognized that slow payment is a problem affecting many subcontractors, not just DBEs. Some of these comments suggested making prompt payment requirements applicable to subcontracts in general, not just DBE subcontracts. Some recipients were concerned about getting in the middle of disputes between prime contractors and subcontractors. Some commenters wanted the Department to mandate prompt payment provisions, while others preferred that their use by recipients remain optional.

Having considered the variety of views expressed on this subject, the Department believes that prompt payment provisions are an important race-neutral mechanism that can benefit DBEs and all other small businesses. Under part 26, all recipients must include a provision in their contracts requiring prime contractors to make prompt payments to their subcontractors, DBE and non-DBE alike. It is clear that DBE subcontractors are significantly—and, to the extent that

they tend to be smaller than non-DBEs, disproportionately—affected by late payments from prime contractors. Lack of prompt payment constitutes a very real barrier to the ability of DBEs to compete in the marketplace. It is appropriate for the Department to require recipients to take reasonable steps to deal with this barrier. We recognize that delayed payments do not affect only DBE contractors; a prompt payment requirement applying to all subcontracts is an excellent example of a race-neutral measure that will assist DBEs, and we are therefore requiring that recipients' prompt payment mechanisms apply to all subcontracts on Federally-assisted contracts.

Paragraph (a) of this section requires recipients to put into their DBE programs a requirement for a prompt payment contract clause. This clause would appear in every prime contract on which there are subcontracting possibilities, and it would obligate the prime contractor to pay subcontractors within a given number of days from the receipt of each payment the recipient makes to the prime contractor. Payment is required only for satisfactory completion of the subcontractor's work. The clause would also apply to the return of retainage from the prime to the subcontractor. Retainage would have to be returned within a given number of days from the time the subcontractor's work had been satisfactorily completed, even if the prime contract had not yet been completed. A majority of commenters on the retainage issue favored a requirement of this kind.

The number of days involved would be selected by the recipient, subject to OA approval as part of the recipient's DBE program. In approving these time frames, the OAs will consider whether they are realistic and sufficiently brief to ensure genuinely prompt payment. Recipients who already operate under prompt payment statutes may use their existing authority in implementing this requirement. It may be necessary to add to existing contract clauses in some cases (e.g., if existing prompt payment requirements do not cover retainage).

Paragraph (b) lists a series of additional measures that the regulation authorizes, but does not require, recipients to use. These include alternative dispute resolution, holding of payments to primes until subcontractors are paid, and other mechanisms that the recipient may devise. All these mechanisms could be made part of the recipient's DBE programs.

Section 26.31 What Requirements Pertain to the DBE Directory?

Recipients maintain directories listing certified DBEs. The issue most discussed by commenters on this section was whether the directory should include material concerning the qualifications of the firm to do various sorts of work. For example, has the firm been pre-qualified by the recipient? Can it do creditable work? What kinds of work does the firm prefer to do? Some commenters also asked that the directory should list the geographical areas in which the firm is willing to work. Other commenters opposed the idea of including this kind of information in the directory.

The Department believes that the directory and the certification process are closely intertwined. The primary purpose of the directory is to show the results of the certification process. Consequently, the directory should list all firms that the recipient has certified, along with basic identifying information for the firm. Since certification under this rule pertains to the various kinds of work a firm's disadvantaged owners can control, it is important to list those kinds of work in the directory. For example, if a firm seeks to work in fields A, B, and C, but the recipient has determined that its disadvantaged owners can control its operations only with respect to A and B, then the directory would recite that the firm is certified to perform work as a DBE in fields A and B.

The focus of the directory is intended to be eligibility. A directory is a list of firms that have been certified as eligible DBEs, with sufficient identifying information to permit interested firms to contact the DBEs. We do not intend to turn a recipient's directory into a comprehensive business resource manual. For example, information about firms' qualifications, geographical preferences for work, performance track record, capitalization, etc. are not required to be part of the directory. Some commenters favored including one or more of these elements, but we are concerned that other business information—however useful in its own right—could clutter up the directory and dilute its focus on certification.

Section 26.33 What Steps Must a Recipient Take to Address Overconcentration of DBEs in Certain Types of Work?

For some time, the Department has heard allegations that DBEs are overconcentrated in certain fields of highway construction work (e.g., guardrail, fencing, landscaping, traffic control, striping). The concern expressed is that there are so many DBEs in these areas that non-DBEs are frozen out of the opportunity to work. In an attempt to respond to these concerns, the SNPRM asked for comment on a series of options for "diversification" mechanisms, various incentives and disincentives designed to shift DBE participation to other types of work.

The Department received a great deal of comment on these proposals, almost all of it negative. There were few comments suggesting that overconcentration was a serious problem, and many comments said that the alleged problem was not real. Some FTA and FAA recipients said that if there was a problem with overconcentration, it was limited to the highway construction program. As a general matter, recipients said that the proposed mechanisms were costly, cumbersome, and too prescriptive.

Prime contractors opposed the provisions because they would make it more difficult for them to find DBEs with which to meet their goals, while DBEs opposed them because they felt the provisions would penalize success and force them out of areas of business in which they were experienced. Many commenters suggested using outreach or business development plans as ways of assisting DBEs to move into additional areas of work.

The Department does not have data from commenters or other sources to support a finding that "overconcentration" is a serious, nationwide problem. However, as part of the narrow tailoring of the DBE program, we believe it would be useful to give recipients the authority to address overconcentration problems where they may occur. In keeping with the increased flexibility that this rule provides recipients, we give recipients discretion to identify situations where overconcentration is unduly burdening non-DBE firms. If a recipient finds an area of overconcentration, it would have to devise means of addressing the problem that work in their local situations. Possible means of dealing with the problem could include assisting prime contractors to find DBEs in non-traditional fields or varying the use of contract goals to lessen any burden on particular types of non-DBE specialty contractors. While recipients would have to obtain DOT approval of determinations of overconcentration and measures for dealing with them, the Department is not prescribing any specific mechanisms for doing so.

Section 26.35 What Role do Business Development and Mentor-Protégé Programs Have in the DBE Program?

In the SNPRM, both mentor-protégé programs and business development programs (BDPs) were cast as tools to use for diversification. They still may be used for that purpose, as noted in § 26.33. However, the Department believes that they may have a broader application, and their use in the final rule is not limited to diversification purposes. BDPs, in particular, are good examples of race-neutral methods recipients can use to promote the participation of DBEs and other small businesses in their contracting programs.

There were few comments on these provisions. Recipients wanted flexibility, and suggested that these kinds of programs should be optional. Their comments said that such programs were resource-intensive, and that Federal financial assistance for them would be welcome. One contractors' organization offered its own mentor-protégé plan as a model. A few comments voiced suspicion of mentor-protégé plans, on the basis that they allowed fronts and frauds into the program.

The final rule makes the use of BDPs and mentor-protégé programs optional for recipients. An operating administration can direct a particular recipient to institute a BDP, but BDPs are not mandatory across the board. The operating administration would negotiate with the recipient before mandating a BDP.

One feature added to this provision allows recipients to establish a kind of mini-graduation requirement for firms that voluntarily participate in BDPs. One of the purposes of a BDP is to equip DBE firms to compete in the market outside the DBE program. Therefore, a recipient could ask BDP participants to agree—as a condition of receiving BDP assistance—to agree to leave the DBE program after a certain number of years, or after certain business development objectives had been achieved.

Standing alone, mentor-protégé programs are not an adequate substitute for the DBE program. While they can be an important tool to help selected firms, they cannot be counted on to level the playing field for DBEs in general. An effective mentor-protégé program requires close monitoring to guard against abuse, which further limits the number of DBEs they can assist. Even with these limits, a mentor-protégé program that has safeguards to prevent large non-DBE firms from circumventing the DBE program can be a useful component of a recipient's overall strategy to ensure equal opportunities for DBEs.

The final rule includes safeguards intended to prevent the misuse of mentor-protégé programs. Only firms that a recipient has already certified as DBEs (necessarily including a determination that they are independent firms) can participate as protégés. This is intended to preclude non-DBE firms from creating captive DBE firms to serve as protégés. A non-DBE mentor firm cannot get credit for more than half its goal on any contract by using its own protégé. Moreover, a non-DBE mentor firm cannot get DBE credit for using its own protégé on more than every other contract performed by the protégé. That is, if Mentor Firm X uses Protégé Firm Y to perform a subcontract, X cannot get DBE credit for using Y on another subcontract until Y had first worked on an intervening prime contract or subcontract with a different prime contractor.

To make mentor-protégé relationships feasible, the rule provides that mentors and protégés are not treated as affiliates of one another for size determination purposes. Mentor-protégé programs and BDPs must be approved by the concerned operating administration before they take effect. Recipients who already have such programs in place would make them part of their revised DBE programs sent to the concerned OA within 180 days of the effective date of part 26.

Section 26.37 What Are a Recipient's Responsibilities for Monitoring the Performance of Other Program Participants?

The few comments on this section asked for more detail and clarification. In the interest of flexibility, the Department is reluctant to be prescriptive in the matter of monitoring and enforcement mechanisms. What we are looking for is a strong and effective set of monitoring and compliance provisions in each recipient's DBE program. These mechanisms could be most anything available to the recipient under Federal, state, or local law (e.g., liquidated damages provisions, responsibility determinations, suspension and debarment rules, etc.)

One of the main purposes of these provisions is to make sure that DBEs actually perform work committed to them at contract award. The results that recipients must measure consist of payments actually made to DBEs, not just promises at the award stage. Credit toward goals can be awarded only when payments (including, for example, the return of retainage payments) are actually made to DBEs. Under the final rule, recipients would keep a running tally of the extent to which, on each contract, performance had matched promises. Prime contractors whose performance fell short of original commitments would be subject to the compliance mechanisms the recipient had made applicable.

Section 26.41 What Is the Role of the Statutory 10 Percent Goal in This Program?

This is a new section, intended to explain what role the 10 percent statutory goal plays in the DBE program. Under former part 23, the 10 percent figure derived from the statute had a role in the setting of overall goals by recipients. For example, if recipients had a goal of less than 10 percent, the rule required them to make a special justification.

This section makes clear that the 10 percent goal is an aspirational goal that applies to the Department of Transportation on a national level, not to individual recipients. It is a goal that the Department can use to evaluate its overall national success in achieving the objectives that Congress has established for this program. However, the national 10 percent goal is not tied to recipients' goal-setting decisions. Recipients set goals based on what will achieve a level playing field for DBEs in their own programs, without regard to the national goal. Recipients are not required to set their overall or contract goals at 10 percent or any other particular level. Recipients are no longer required to make a special justification if their overall goals are less than 10 percent.

As discussed in connection with the Congressional debate on the TEA–21 DBE provision, Congress viewed flexibility concerning the statutory 10 percent goal as an important feature of narrow tailoring and made clear that it was setting a national goal, not a goal for any individual recipient. The Department wants to ensure that state and local programs have sufficient flexibility to implement their programs in a narrowly tailored way. This section is part of the Department's effort toward that end.

Section 26.43 Can Recipients Use Quotas or Set-Asides as Part of This Program?

The DBE program has often been labeled as a "quota" or "set-aside" program, especially, though not exclusively, by its opponents. This label is, and always has been, incorrect. Fifteen years ago, in the preamble to the Department's first rule implementing a DBE statute, the Department carefully

specified that neither quotas nor set-asides were required (see 48 FR 33437–38; July 21, 1983). This remains true today. However, in light of *Adarand* and this year's Congressional debates on the DBE statutes, we believe this point deserves additional emphasis. This regulation prohibits quotas under any circumstances and makes clear that set-asides can only be used as a means of last resort for redressing egregious discrimination.

A number of non-DBE contractors and their organizations continued to assert, in comments on the SNPRM, that the DBE program operates as a quota program. This section makes clear that recipients cannot use quotas on DOT-assisted contracts under any circumstances. A quota is a simple numerical requirement that a recipient or contractor must meet, without consideration of other factors. For example, if a recipient sets a 12 percent goal on a particular contract and refuses to award the contract to any bidder who does not have 12 percent DBE participation, either refusing to look at showings of good faith efforts or arbitrarily disregarding them, then the recipient has used a quota. The Department's regulations have never endorsed this practice. The issue of good faith efforts is discussed further below in connection with § 26.51.

A set-aside is a very specific tool. A contracting agency sets a contract aside for DBEs if it permits no one but DBEs to compete for the contract. Firms other than DBEs are not eligible to bid. The Department's DBE program has never required the use of set-asides and has allowed recipients to use set-asides only under very limited circumstances.

Under the SNPRM, a recipient could use a set-aside on a DOT-assisted contract only if other methods of meeting overall goals were demonstrated to be unavailing *and* the recipient had legal authority independent of part 26. Comments were divided concerning the use of set-asides. A number of non-DBE contractors opposed the use of set-asides, some of them saying that set-asides might be something they could live with if their use were balanced by the elimination of DBE contract goals on other contracts in the same field. Some recipients and DBEs said, however, that set-asides were a useful tool to achieve goals, particularly for start-up contractors or small contracts.

The Department has carefully reviewed these comments and continues to believe that set-asides should not be used in the DBE program unless they are absolutely necessary to address a specific problem when no other means would suffice. If a recipient has been unable to remedy the effects of egregious discrimination through other means, it may, as a last resort, make limited use of set-asides to the extent necessary to resolve the problem.

Section 26.45 How Do Recipients Set Overall Goals?

Since its inception, the recipient's overall goal has been the heart of the DBE program. Responding to *Adarand*, DOT clarified the theory and purpose of the overall goal in the SNPRM. In the proposed rule, the Department made clear that the purpose of the overall goal—and, in fact, the DBE program as a whole—is to achieve a "level playing field" for DBEs seeking to participate in federal-aid transportation contracting. To reach a level playing field, recipients need to examine their programs and their markets and determine the amount of participation they would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination. The focus of the goal section of the SNPRM was to propose ways to measure what a level playing field would look like and to seek input on the availability of data to make such a measurement.

The Proposed Rule and Comments

The Department proposed several options that recipients might use for setting overall goals, including three alternative formulas for measuring the availability of ready, willing and able DBEs in local markets. The specific formulas will be discussed below, but generally, they each called for setting a goal that reflected the percentage of locally available firms that were DBEs (i.e. dividing the number of DBEs by the number of all businesses). On all of the alternatives, the SNPRM sought comments on both the feasibility and practical value of the options, as well as the prospects for combining any of the approaches and the question of whether to mandate a single approach or allow each recipient to choose amongst the options. We invited commenters to propose changes to any of the details of the options or to devise entirely new ones. Finally, we asked commenters for their input on the availability of reliable data for use with each of the options.

Hundreds of commenters of all types—including DBEs and non-DBEs, prime and subcontractors, state and local recipients, industry and interest groups and private individuals—responded with a wealth of feedback, opinions and data. It is an understatement to say that there was no consensus among commenters as to the best way to set overall goals. Support for the proposed options was almost evenly spread over the choices presented, with many commenters firmly against all of the options. Still more suggested that the current, non-formulaic method was the best way to ensure the flexibility to respond to local market conditions. Similarly, among those who expressed an opinion, commenters were split between the propriety of choosing a single "best" method and imposing it on all recipients and allowing recipients to choose amongst all the options. One of the few universal themes in the goal-setting comments was the problem of the availability of reliable data on the number of DBE and non-DBE contractors.

There were a few common threads that different groups of commenters tended to apply to all of the formulas. Among recipients, many comments focused on the lack of data about non-DBE contractors, especially subcontractors. Recipients often noted that they would not have the information needed for the denominator of any of the formulas (i.e. the total number of available businesses). Non-DBE contractors—and industry groups representing them—generally believed that there should be a capacity measure built into any goal setting mechanism. Finally, DBEs—and their industry associations—were concerned that all of the formulas would create goals based only on the current number of DBEs, locking in the effects of past discrimination by ignoring the fact that the lack of opportunities in the past has suppressed the number of DBE firms available today.

Under the proposed rule's Alternative 1, recipients would calculate the percentage of DBE firms in their directories among all firms available to work on their DOT-assisted contracts. Under Alternative 2, recipients would calculate the percentage of all minority- and women-owned firms in certain SIC codes in their areas among all firms in these SIC codes in the same areas. Under Alternative 3, recipients would calculate a percentage based on the average number of DBE firms that had worked on their DOT-assisted contracts in recent years divided by the average number of all firms that had worked on their DOT-assisted contracts in the same period. The SNPRM also proposed that recipients could use other means, such a disparity studies or goals developed by other recipients serving the same area, as a basis for their goals.

Each of the three proposed alternatives received some support, though this was often the rather tepid endorsement of commenters who felt that one or another alternative was the

best of a bad lot. Non-DBE contractors often claimed that the alternatives would unfairly increase goals, while DBE contractors often claimed that the same proposals would unfairly decrease goals.

Commenters said that data for determining the denominators of the equations in Alternatives 1 and 2, as well as the numerator in Alternative 2, did not exist and that it would be a major, time-consuming job to begin to obtain the data. Adaptation of existing information from other sources (e.g., Census data) was said to have significant statistical difficulties. The difficulty of getting data on out-of-state firms was emphasized in some comments.

Commenters looked on the alternatives as cumbersome, creating unreasonable administrative burdens, and as producing statistical results that were skewed in various ways. The use of DBE directories as the source of the numerator in Alternative 1 was criticized on the basis that directories may contain firms that never actually participate in DOT-assisted contracts. It was suggested that the number of firms bidding rather than the number of firms certified would be a more reliable guide, but it was also pointed out that, because subcontractors seldom formally bid for work, this data would be hard to obtain. Some commenters proposed adding overall population statistics to the mix.

A significant number of commenters—primarily non-DBE contractors, but including some recipients and other commenters as well—emphasized the need to take "capacity" into account. Most popular among these comments was using a capacity version of Alternative 3. These comments did not propose a method of determining the capacity of the firms contracting with the recipient.

The Final Rule

In view of the complexity and importance of the goal setting process and the many issues raised by commenters, the Department has decided to adopt a two step process for goal setting. The process is intended to provide the maximum flexibility for recipients while ensuring that goals are based on the availability of ready, willing and able DBEs in each recipient's relevant market. The Department believes that this approach is critical to meeting our constitutional obligation to ensure that the program is narrowly tailored to remedy the effects of discrimination. The first step of the process will be to create a baseline figure for the relative availability of ready, willing and able DBEs in each recipient's market. The second step will be to make adjustments from the base figure, relying on an examination of additional evidence, past experience, local expertise and anticipated changes in DOT-assisted contracting over the coming year.

Step 1: Determining a Base Figure for the Overall Goal

The base figure is intended to be a measurement of the current percentage of ready, willing and able businesses that are DBEs. Ensuring that this figure is based on demonstrable evidence of each recipient's relevant market conditions will help to ensure that the program remains narrowly tailored. To be explicit, recipients cannot simply use the 10 percent national goal, their goal from the previous year, or their DBE participation level from the previous year as their base figure. Instead, all recipients must take an actual measurement of their marketplace, using the best evidence they have available, and derive a base figure that is as fair and accurate a representation as possible of the percentage of available businesses that are DBEs.

There are many different ways to measure the contracting market and assess the relative availability of DBEs. As discussed above, the SNPRM proposed three alternate formulas to measure relative availability, none of which were particularly popular with commenters. In this final rule, the Department is placing primary emphasis on the principles underlying the measurement, mandating only that a measurement of the relative availability of DBEs be made on the basis of demonstrable evidence of relevant market conditions, rather than requiring that any particular procedure or formula be used. The final rule contains a number of examples of how to create a base figure which recipients are free to adopt in their entirety or to use as guidelines for how to devise their own measurement.

There are several reasons we have taken this approach. First, the Department is aware of the differences in available data in various markets across the nation. The flexibility inherent in this approach will ensure that all recipients can use the procedure to set a reasonable goal and allow each recipient to use the best data available to it. As discussed in another section, this rule will also provide for the development of more standard data for future goal setting. Second, for many recipients, setting goals in this way will be a new exercise. By fixing only the basic principle, but allowing the methodology to change, recipients will have the opportunity to fine tune the process each year as their experience grows and the data available to them improve. Finally, the rule makes sure that every recipient will have at least one reasonable and practical goal setting method available to them.

The first example for setting a base figure relies on data sources that are immediately available to all recipients: their DBE directories, and a Census Bureau database that DOT and the Census Bureau will make available to all recipients that wish to use it. This example has its roots in the first two goal setting formulas proposed in the SNPRM. Recipients would first assess the number of ready, willing and able DBEs based on their own directories. For some recipients this will be as simple as counting the number of firms in their directory. For others, particularly those using directories maintained by other agencies, the directories will have to be "filtered" for firms involved in transportation contracting. The resulting number of DBEs would become the numerator. The denominator would then be derived from the Census Bureau's County Business Pattern (CBP) database. We will provide user-friendly electronic access to the database via the internet to allow recipients to input the geographic area and SIC codes in which they contract and receive a number for the availability of all businesses.

There are several issues that must be addressed when comparing numbers derived from two different data sources, some of which were raised in the comments on the SNPRM. Recipients will need to ensure that the scope of businesses included in the numerator is as close as possible to the scope included in the denominator. Using as close as possible to the same SIC codes and geographic base is very important. A recipient using its own DBE directory, particularly one that contains only firms in the fields in which it contracts, will still need to determine what fields it will use for the denominator when sorting through the CBP database. The best way to do this would be to examine their contracting program and determine the SIC codes in which they let the substantial majority of their contracts and subcontracts. The geographic area used for both the numerator and the denominator should cover the area from which the recipient draws the substantial majority of its contractors. While it may be sufficient for some state recipients to use their state borders as their contracting area, local transit and airport recipients will rarely have such an obvious choice. Those recipients will need to more carefully examine the

geographic area from which they draw contractors and base their calculation of both the numerator and denominator of the equation on the same area.

The Department and the Census Bureau will make the CBP data available in a format that gives recipients as much flexibility as possible to tailor the data to their contracting programs. Recipients will be able to extract the data in one block for all of the SIC codes they expect to contract in, or by individual SIC codes, allowing them to weight the relative availability of DBEs in various fields, giving more weight to the fields in which they spend more money. For example, let us assume a recipient estimates that it will expend 10% of its federal aid funds within SIC code 15, 40% in SIC code 16, 25% in SIC code 17, and the remaining 25% on contracting spread over SIC codes 07, 42 and 87. The recipient could separately determine the relative availability of DBEs for each of the three major construction SIC codes (i.e., 15, 16 and 17) and the relative availability of DBEs in the other three SIC codes grouped together and weight each according to the amount of money to be spent in each area. In this example, the recipient could calculate its weighted base figure by first determining the number of DBEs in its directory for each of the groups, then extracting the availability of CBP businesses for the same groups. It would then perform the following calculation to arrive at a base figure for step one of the goal setting process:

$$\text{Base Figure} = \left[.10 \frac{(\text{DBEs in SIC 15})}{\text{CBPs in SIC 15}} + .40 \frac{(\text{DBEs in 16})}{\text{CBPs in 16}} + .25 \frac{(\text{DBEs in 17})}{\text{CBPs in 17}} + .25 \frac{(\text{DBEs in 07,42,87})}{\text{CBPs in 07,42,87}} \right] \times 100$$

As has been stated generally, this formula is offered only as an example of a way that a recipient could choose to use the CBP database. Recipients using the CBP data should choose whether to weight their calculation, and whether to do so by individual SIC codes or by groups of SIC codes, based on their own assessment of what method will best fit their spending pattern.[1]

Finally, there is still the question of the propriety of comparing data from two sources as different as DBE directories and the CBP. As mentioned above, some commenters asserted that the directories may contain firms that do not normally perform DOT-assisted contracts. This problem is greatest, of course, for directories maintained by other agencies for purposes beyond DOT-assisted contracting. We believe that the recipient's knowledge of its contracting needs and the contents of its DBE directory will allow it to solve this problem by sorting the directories by SIC code to extract only the firms likely to be interested in DOT-assisted contracting. Any remaining effect from DBEs that are certified in the relevant SIC codes but still do not intend to compete for DOT-assisted contracts will be more than offset by the hurdles involved in actually becoming a DBE. It is important to note here that the certification process itself, with its paperwork, review and on-site inspection, create a filter on the number of existing firms that will be counted in the numerator without there being any equivalent filter culling firms out of the denominator. Ultimately, the Department chose these two data sources for the example because; while they may not be perfect, they represent the best universally available current data on both the presence of DBEs and the presence of all businesses in local markets. Any recipient that believes it has available to it better sources of local data from which to make a similar calculation for its base figure is encouraged to use them.

The second example for calculating a base figure is using a bidders list to determine the relative availability of DBEs. The concept is similar to the one described above. The recipient would divide the number of available ready, willing and able DBEs by the number for all firms. The difference is that instead of measuring availability by DBE certifications and Census data, the recipient would measure availability by the number of firms that have directly participated in, or attempted to participate in, DOT-assisted contracting in the recent past. This approach has its roots in Alternative 3 from the SNPRM. Of fundamental importance to this approach is that the recipient would need to include all firms that have sought DOT-assisted contracts, regardless of whether they did so by bidding on a prime contract or quoting a job as a subcontractor. Because most DOT recipients derive the substantial majority of their DBE participation through subcontracting, it is absolutely essential that all DBE and non-DBE firms that quote subcontracts be included in the bidders list.[2] Bidders lists are a very focussed measure of ready, willing and able firms because they filter the pool of available firms by requiring a demonstration of their ability to participate in the process through tracking and identifying contracting opportunities, understanding the requirements of a particular job and assembling a bid for it. Another attractive feature of the bidding "filter" is that it applies equally to both DBEs and non-DBEs.

The third example included in the final rule for setting a base figure is using data derived from a disparity study. As was discussed in the SNPRM, the Department is not requiring recipients to do a disparity study, but is only making clear that use of disparity study data by recipients that have them or choose to conduct them is a valid means of setting a goal. Disparity studies generally contain a wide array of statistical data, as well as anecdotal data and analysis that can be particularly useful in the goal setting process. We list disparity studies here, not because they are needed to justify operating the DBE program—Congress has already established the compelling need for the DBE program—but because the data a good disparity study provides can be an excellent guide for a recipient to use to set a narrowly tailored goal.

The Department will not set out specific requirements for what data or analysis is required before a disparity study can be used for setting a goal, because we believe that the design and conduct of the study is best left to the local officials and the professional organizations with which they contract to conduct the studies. Instead, we again offer simple general principles that should apply to all studies used for goal setting. Any study data relied on in the goal setting process should be as recent as possible and be focussed on the transportation contracting industry. When setting the goal, first use the study's statistical evidence to set a base figure for the relative availability of DBEs. Other study information, whether it is anecdotal data, analysis or statistical information about related

[1] While it is not statistically necessary to account for 100% of program dollars when performing this type of weighting, the greater the percentage accounted for, the more accurate the resulting calculation will be.

[2] To prevent any confusion, it is important to note that the DBE program does not use the so-called "benchmarking" system employed in direct Federal procurement. The benchmarking system relies on a unique database created specifically for use in the federal procurement program.

fields, should be included when making adjustments to the base figure (discussed in more detail below), but not included in the base figure for the relative availability of DBEs.

The last specific example included in the rule is using the goal of another recipient as the base figure for goal setting. This option was also included in the SNPRM. It is intended to avoid duplicative work and to lighten the burden the goal setting process might put on smaller recipients. It is important to note that a recipient could only use another recipient's goal if it was set in accordance with this rule and the other recipient performed similar contracting in a similar market area. Using another recipient's approved goal would only satisfy the first step of the goal setting process. It would serve as the base figure, and could not be used to skip over step two of the process. The recipient would need to examine the same additional evidence it would otherwise use to determine whether to adjust its goal from the base figure, as well as being required to make adjustments to account for differences in its local market or contracting program.

The final rule also maintains the option of devising an alternative method of calculating a base figure for the goal setting process. Explicitly listing this option serves to emphasize the point that the options in the rule are examples meant as guidelines intended to ensure maximum flexibility for recipients. Recipients can use this option to take advantage of their unique expertise or any unique source of data that they have that may not be available to other recipients. The concerned operating administration will review and approve the proposals of recipients that believe they can calculate a base figure that will better reflect their relevant market than any of the examples provided in this rule. Approval will be contingent on the proposals following the same principles that apply to any recipient: the methodology must be based on demonstrable data of relevant market conditions and be designed to reach a goal that the recipient would expect DBEs to achieve in the absence of discrimination.

Step 2: Adjusting the Base Figure

As alluded to above, measuring the relative availability of DBEs to derive a base figure is only the first step of the goal setting process. To ensure that they arrive at goals that truly and accurately reflect the participation they would expect absent the effects of discrimination, recipients must go beyond the formulaic measurement of current availability to account for other evidence of conditions affecting DBEs. To accomplish this second step, recipients must first survey their jurisdiction to determine what types of relevant evidence is available to them. Then, relying on their own knowledge of their contracting markets they must review the evidence to determine whether either an up or down adjustment from the base figure is needed.

One universally available form of evidence that all recipients should consider is the proven capacity of DBEs to perform work on DOT-assisted contracts. All recipients have been tracking and reporting the dollar volume of work that is contracted and subcontracted to DBEs each year. Viewed in isolation, the past achievements of DBEs do not reflect the availability of DBEs relative to all available businesses, but it is an important and current measure of the ability of DBEs to perform on DOT-assisted contracts.

Though not universally available, there are hundreds of existing disparity studies that contain a wealth of statistical and anecdotal evidence on the utilization of disadvantaged businesses. In addition to being a possible source of data for Step 1 of the goal setting process, disparity studies should be considered during Step 2 of the process. The base figure from Step 1 is intended to determine the relative availability of DBEs. The data and analysis in a disparity study can help a recipient determine whether those existing businesses are under- or over-utilized. If a recipient has a study with disparity ratios showing that existing DBEs are receiving significantly less work than expected, an upward adjustment from the base figure is called for. Similarly, if the disparity ratio shows overutilization, a downward adjustment to the base figure would be warranted. The anecdotal evidence and analysis of contracting requirements and conditions that may have a discriminatory impact on DBEs are also important sources that should be examined when determining what adjustment to make to the base figure.[3] Finally, disparity studies that are conducted within a recipient's jurisdiction should be examined even if they were not done specifically for the recipient. For example, a state highway agency may find useful data and analysis in either a statewide disparity study covering other agencies or in a disparity study examining contracting in a county or city within the state.

If a recipient uses another recipient's goal as its base figure under Step 1 of the goal setting process, it will have to make additional adjustments to ensure that its final goal is narrowly tailored to its market and contracting program. For example, if a local transit or airport authority adopts a statewide goal as its base figure, it must determine the extent that local relative availability of DBEs differs from the relative availability of DBEs in the contracting area relied on by the state. The local recipient would also need to examine the differences in the type of contracting work in its program and determine whether there are significant differences in the relative availability of DBEs in any fields that are unique to its program—or unique to the program of the other recipient. Similarly, if one local recipient used the goal of another local recipient in the same market as its base figure, it would also need to adjust for differences in the contracting fields used by the two programs.

Finally, the rule contains a brief list of other types of data a recipient could consider when adjusting its base figure to arrive at an overall goal. The list is by no means intended to be exhaustive. Instead, it is meant as a guide to the types of information a recipient should look for in Step 2 of the goal setting process. There is a wide array of relevant local, regional and national information about the utilization of disadvantaged businesses. Recipients are encouraged to cast as wide a net as they can to carefully examine their contracting programs and the public and private markets in which they operate.

Additional Goal Setting Issues

The Department proposed, in both the 1992 NPRM and the 1997 SNPRM, that overall goals be calculated as a percentage of DOT funds a recipient expects to expend in DOT-assisted contracts. This is different from the existing part 23 rule, which asked recipients to set overall goals on the basis of all funds, including state and local funds, to be expended in DOT-assisted contracts. This change is for accounting and administrative convenience and is not intended to have a substantive effect on the program. While not the subject of many comments, those who did comment on the proposal favored the change. The final rule adopts this approach.

A few recipients commented that public participation concerning goal setting was bothersome. Nevertheless,

[3] It is important to note that adjusting the goal is only part of the response a recipient should make to evidence of discriminatory barriers for DBEs. All recipients have a primary responsibility to ensure non-discrimination in their progrms and should act aggressively to remove any discriminatory barriers in their programs.

we view it as an essential part of the goal setting process. There are many stakeholders involved in setting goals, and it is reasonable that they should be involved in the process and have an opportunity for comment. The part 23 provision requiring getting a state governor's approval of a goal of less than 10 percent has been eliminated, both because overall goals are no longer tied to the national 10 percent goal and to reduce administrative burdens.

The goal setting provision of the final rule continues to direct recipients to set one annual overall goal for DBEs, rather than group-specific goals separating minority and women-owned businesses.

Section 26.47 Can Recipients Be Penalized for Failing To Meet Overall Goals?

This is a new section of the regulation, the purpose of which is to clarify the Department's views on the situations in which it is appropriate to impose sanctions on recipients with respect to goals. The provision states explicitly what has long been the Department's policy: no recipient is sanctioned, or found in noncompliance, simply because it fails to meet its overall goal. In fact, through the history of the DBE program, the Department never has sanctioned a recipient for failing to obtain a particular amount of DBE participation.

On the other hand, if a recipient fails to set an overall goal which the concerned operating administration approves, or fails to operate its program in good faith toward the objective of meeting the goal, it is subject to a finding of noncompliance and possible sanctions. For example, if a recipient refuses to establish a goal or, having established one, does little or nothing to work toward attaining it, it would be reasonable for the Department to find the recipient in noncompliance. Like all compliance provisions of the rule, this provision is subject to the "court order" exception recently created by statute (see § 26.101(b)).

Section 26.49 How Are Overall Goals Established for Transit Vehicle Manufacturers?

This provision basically continues in effect the existing transit vehicle manufacturer (TVM) provisions of the rule. The SNPRM proposed to change the existing rule in two respects. FHWA or FAA recipients could avail themselves of similar provisions, if they chose. The final rule retains this flexibility. Also, it was proposed that FTA, rather than manufacturers, would set TVM goals. The few comments we received on this section objected to the latter change. Consequently, we will not adopt the proposed change and will continue to require the TVMs themselves to set their own goals based on the principles outlined in § 26.45 of this rule.

Section 26.51 What Means Do Recipients Use To Meet Overall Goals?

One of the key points of both the SNPRM and this final rule is that, in meeting overall goals, recipients have to give priority to race-neutral means. By race-neutral means (a term which, for purposes of this rule, includes gender neutrality), we mean outreach, technical assistance, procurement process modification, etc.—measures which can be used to increase opportunities for all small businesses, not just DBEs, and do not involve setting specific goals for the use of DBEs on individual contracts. Contract goals, on the other hand, are race-conscious measures.

In the context of these definitions, it is important to note that awards of contracts to DBEs are not necessarily race-conscious actions. Whenever a DBE receives a prime contract because it is the lowest responsible bidder, the resulting DBE participation was achieved through race-neutral means. Similarly, when a DBE receives a subcontract on a project that does not have a contract goal, its participation was also achieved through race-neutral means. Finally, even on projects that do carry contract goals, when a prime awards a particular subcontract to a DBE because it has proven in the past that it does the best or quickest work, or because it submitted the lowest quote, the resulting DBE participation has, in fact, been achieved through race-neutral means. We also note that the use of race-neutral measures (e.g., outreach, technical assistance) specifically to increase the participation of DBEs does not convert these measures into race-conscious measures.

A number of non-DBE contractors commented that race-neutral measures should not only be given priority, but must be tried and fail before any use of contract goals can occur. This, they asserted, is essential for a program to be narrowly tailored. The law on this point is fairly clear, and does not support the commenters' contention. The extent to which race-neutral alternatives were considered and deemed inadequate to remedy the problem is the relevant narrow tailoring question. Both in past legislation and when considering TEA–21, Congress did consider race-neutral alternatives. In fact, as described above, throughout the debate, Member after Member gave examples of how state and local race-neutral programs without goals fail to overcome the discriminatory barriers that face DBEs. Congress' careful consideration and conclusion that race-neutral means are insufficient, buttressed by this rule's emphasis on achieving as much of the goal as possible through race-neutral means, satisfies this part of the narrow tailoring requirement.

No one opposed the use of race-neutral means, though a number of DBEs and recipients stressed that these means, standing alone, were insufficient to address discrimination and its effects. Most recipients and non-DBE contractors supported the use of race-neutral measures, though some recipients said that increased use of these measures would require additional resources.

The relationship between race-conscious and race-neutral measures in the final rule is very important. The recipient establishes an overall goal. The recipient estimates, in advance, what part of that goal it can meet through the use of race-neutral means. This projection, and the basis for it, would be provided to the concerned operating administration at the same time as the overall goal, and is subject to OA approval.

The requirement of the rule is that the recipient get the maximum feasible DBE participation through race-neutral means. The recipient uses race-conscious measures (e.g., sets contract goals) to get the remainder of the DBE participation it needs to meet the overall goal. If the recipient expects to be able to meet its entire overall goal through race-neutral means, it could, with OA approval, implement its program without any use of contract goals.

For example, suppose Recipient X establishes an 11 percent overall goal for Fiscal Year 2000. This is the amount of DBE participation that X has determined it would have if the playing field were level. Recipient X projects that, using a combination of race-neutral means, it can achieve 5 percent DBE participation. Recipient X then sets contract goals on some of its contracts throughout the year to bring in an additional 6 percent DBE participation. Recipients would keep data separately on the DBE participation obtained through those contracts that either did or did not involve the use of contract goals. Recipients would use this and other data to adjust their use of race-neutral means and contract goals during the remainder of the year and in future years. For example, if Recipient X projected being able to attain 5 percent DBE participation through race-neutral measures, but was only able to obtain 1 percent from the race-neutral measures

it used, Recipient X would increase its future use of contract goals. On the other hand, if Recipient X exceeded its prediction that it would get 5 percent DBE participation from race-neutral measures and actually obtained 10 percent DBE participation from the contracts on which there were no contract goals, it would reduce its future use of contract goals. A recipient that was consistently able to meet its overall goal using only race-neutral measures would never need to use contract goals.

Most recipients and non-DBE contractors agreed with the SNPRM's proposal that (contrary to the part 23 provision on this subject) contract goals not be required on all contracts. This provision is retained in the final rule. We believe that this provision provides recipients the ability to achieve the objective of a narrowly tailored program. The rule also reiterates that the contract goal need not be set at the same level as the overall goal. To express this more clearly, let us return to the above example of Recipient X. Just because Recipient X has an overall goal of 11 percent, it does not have to set a contract goal on each contract. Nor does it have to establish an 11 percent goal on each contract on which it does set a contract goal. Indeed, since X has projected that it can achieve almost half of its overall goal through race-neutral means, it would most likely set contract goals on some contracts but not on others. On contracts with a contract goal, the goal might be 4 percent one time, 18 percent another time, 9 percent another time, depending on the actual work involved in each contract, the location of the work and the subcontracting opportunities available. The idea is for X to set contract goals that, cumulatively over the year, bring in 6 percent DBE participation, which, added to the 5 percent participation X projects achieving from race-neutral measures, ends up meeting the 11 percent overall goal.

The SNPRM asked for comment on evaluation credits as an additional race-conscious measure that recipients could use to meet overall goals. The vast majority of the many comments on this subject opposed the use of evaluation credits, on both legal (e.g., as contrary to narrow tailoring) and policy (e.g., as confusing and subjective) grounds. A smaller number of commenters favored at least giving recipients discretion to use this tool. While the Department does not agree with the contention that evaluation credits are legally suspect, we do agree with much of the sentiment against using them in the DBE program, particularly the practical difficulties they might involve when applied to subcontracting (which constitutes the main source of DBE participation in the program). As a result, the final rule does not contain an evaluation credits provision.

The SNPRM proposed certain mechanisms for determining when it was appropriate to ratchet back the use of contract goals. Most commenters said they found these particular mechanisms complicated and confusing. The Department believes that, as a matter of narrow tailoring, it is important to have concrete mechanisms in place to ensure that race-conscious measures like contract goals are used only to the extent necessary to ensure a level playing field. The final rule contains examples of four such mechanisms.

The first mechanism applies to a situation in which a recipient estimates that it can meet its overall goal exclusively through the use of race-neutral goals. In this case, the recipient simply does not set contract goals during the year. The second mechanism takes this approach one step further. If the recipient meets its overall goal two years in a row using *only* race-neutral measures, the recipient continues to use only race-neutral measures in future years, without having to project each year how much of its overall goal it anticipates meeting through race-neutral and race-conscious means, respectively. However, if in any year the recipient does not meet its overall goal, the recipient must make the projection for the following year, using race-conscious means as needed to meet the goal.

The third mechanism applies to recipients who exceed their overall goals for two years in a row while using contract goals. In the third year, when setting their overall goal and making their projection of the amount of DBE participation they will achieve through race-neutral means, they would determine the average percentage by which they exceeded their overall goals in the two previous years. They would then use that percentage to reduce their reliance on contract goals in the coming year, as noted in the regulatory text example. The rationale for this reduction is that the recipient's overall goal represents its best estimation of the participation level expected for DBEs in the absence of discrimination. By exceeding that goal consistently, the recipient may be relying too heavily on race-conscious measures. Scaling back the use of contract goals—while keeping careful track of DBE participation rates on projects without contract goals—will ensure that the recipient's DBE program remains narrowly tailored to overcoming the continuing effects of discrimination.

The fourth mechanism operates within a given year. If a recipient determines part way through the year that it will exceed (or fall short of) its overall goal, and it is using contract goals during that year, it would scale back its use of contract goals (or increase it use of race-neutral means and/or contract goals) during the remainder of the year to ensure that it is using an appropriate balance of means to meet its "level playing field" objectives.

There were also a number of comments on how contract goals should be expressed. Most favored continuing the existing practice of adding together the Federal and local shares of a contract and expressing the contract goal as a percentage of the sum because it works well and avoids confusion. A few comments favored expressing contract goals as a percentage of only the Federal share of a contract. Ultimately, we believe that it is not necessary for the Department to dictate which method to use. Recipients may continue to use whichever method they feel works best and allows them to accurately track the participation of DBEs in their program. Recipients need only ensure that they are consistent and clearly express the method they are using, and report to the Department the total federal aid dollars spent and the federal aid dollars spent with DBEs.

As a last note on this topic, FAA recipients are reminded that funds derived from passenger facility charges (PFCs) are not covered by this part and should not be counted as part of the Federal share in any goal calculation. If a recipient chooses to express its contract goals as a percentage of the combined Federal and local share, it may include the PFC funds as part of the local share.

Section 26.53 What Are the Good Faith Efforts Procedures Recipients Follow in Situations Where There Are Contract Goals?

There was little disagreement about the main point of this section. When a recipient sets a contract goal, the basic obligation of bidders is to make good faith efforts (GFE) to meet it. They can demonstrate these efforts in either of two ways, which are equally valid. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet the goal. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. The Department emphasizes strongly that this requirement is an important and serious one. A refusal by a recipient to accept valid showings of

good faith is not acceptable under this rule.

Appendix A discusses in greater detail the kinds of good faith efforts bidders are expected to make. There was a good deal of comment concerning its contents. Non-minority contractors recited that good faith efforts standards should be "objective, measurable, realistically achievable, and standardized." Not one of these comments provided any examples or suggestions of what "objective, measurable, realistically achievable, and standardized" standards would look like, however. Certainly a one-size-fits-all checklist is neither desirable nor possible. What constitutes a showing of adequate good faith efforts in a particular procurement is an intrinsically fact-specific judgment that recipients must make. Circumstances of procurements vary widely, and GFE determinations must fit each individual situation as closely as possible.

The proposed good faith efforts appendix suggested that one of the factors recipients could take into account is the behavior of bidders other than the apparent successful bidder. For example, if the latter failed to meet the contract goal, but other bidders did, that could suggest that the apparent successful bidder had not exerted sufficient efforts to get DBE participation. Recipients who commented on this issue favored the concept; non-DBE contractors opposed it. The final rule's Appendix A makes clear that recipients are not to use a "conclusive presumption" approach, in which the apparent successful bidder is summarily found to have failed to make good faith efforts simply because another bidder was able to meet the goal. However, the track record of other bidders can be a relevant factor in a GFE determination, in more than one way. If other bidders have met the goal, and the apparent successful bidder has not, this at least raises the question of whether the apparent successful bidder's efforts were adequate. It does not, by itself, prove that the apparent successful bidder did not make a good faith effort to get DBE participation, however. On the other hand, if the apparent successful bidder—even if it failed to meet the goal—got as much or more DBE participation than other bidders, then this fact would support the apparent successful bidder's showing of GFE. The revised Appendix makes these points.

The proposed good faith efforts appendix also expanded on language in part 23 concerning price-based decisions by prime contractors. The existing language provides that a recipient can use, as evidence of a bidder's failure to make good faith efforts, the recipient's rejection of a DBE subcontractor's "reasonable price" offer. The SNPRM added that a recipient could set a price differential from 1–10 percent to evaluate bidders' efforts. If a bidder did not meet the goal and rejected a DBE offer within the range, the recipient could view the bidder as not making good faith efforts. This was an attempt to provide additional, quantified, guidance to recipients on this issue.

Comment was mixed on this issue. Non-DBE prime contractors generally opposed the price differential idea, saying that it encouraged deviations from the traditional low bid system. It should be noted, however, that subcontracts are typically awarded outside any formal low bid system. Some recipients thought that it was a bad idea to designate a range, because it would limit their discretion, while others liked the additional definiteness of the range. Most recipients supported the "reasonable price" concept in general, even if they had their doubts about the value of a range. Some DBE organizations favored the range approach.

Taking all the comments into consideration, the Department has decided to retain language similar to that of part 23, without reference to any specific range. Appendix A now provides that the fact that some additional costs may be involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet a DBE contract goal, as long as such costs are reasonable. Along with this emphasis on the reasonableness of the cost necessarily comes the fact that prime contractors are not expected to bear unreasonable costs. The availability of a good faith efforts waiver of the contract goal helps to ensure that a prime contractor will not be in a position where it has to accept an excessive or unreasonable bid from a DBE subcontractor. At the same time, any burden that a non-DBE subcontractor might face is also limited by the reasonableness of competing bids. This approach retains flexibility for recipients while avoiding the concerns commenters expressed about a particular range.

The SNPRM proposed that recipients would have to provide for an administrative review of decisions that a bidder's GFE showing was inadequate. The purpose of the provision was to ensure that recipients did not arbitrarily dismiss bidders' attempts to show that they made good faith efforts. The provision was meant to emphasize the seriousness with which the Department takes the GFE requirement and to help respond to allegations that some recipients administered the program in a quota-like fashion. The SNPRM also asked whether such a mechanism should be operated entirely by the recipient or whether a committee including representatives of DBE and non-DBE contractors should be involved.

A number of recipients, and a few contractors, opposed the idea on the basis of concern about administrative burdens on recipients and potential delays in the procurement process. A greater number of commenters, largely non-DBE contractors but also including recipients and DBEs, supported the proposal as ensuring greater fairness in the process. A significant majority of all commenters said that the recipient should operate the system on its own, because a committee would make the process more cumbersome and raise conflict of interest issues.

The Department will adopt this proposal, which should add to the fairness of the system and make allegations of *de facto* quota operations less likely. The Department intends that reconsideration be administered by recipients. The regulation does not call for a committee involving non-recipient personnel. The Department intends that the process be informal and timely. The recipient could ensure that the process be completed within a brief period (e.g., 5–10 days) to minimize any potential delay in procurements. The bidder would have an opportunity to meet with the reconsideration official, but a formal hearing is not required. To ensure fairness, the reconsideration official must be someone who did not participate in the original decision to reject the bidder's showing. The recipient would have to provide a written decision on reconsideration, but there would be no provision for administrative appeals to DOT.

A point raised by several non-DBE commenters was that DBEs should have to make good faith efforts (even when they were not acting as prime contractors). The commenters suggested things like providing capacity statements and documenting that they have bid on contracts. This point is unrelated to the subject of this section, which has to do with what efforts bidders for prime contracts have to make to show that they have made to obtain DBE subcontractors. It is difficult to see what purpose the additional paperwork burdens these commenters' requests would serve.

One of the most hotly debated issues among commenters was whether DBE

firms bidding on prime contracts should have to meet goals and make good faith efforts to employ DBE subcontractors. Under part 23, DBE prime contractors did not have to meet goals or make good faith efforts. The rationale for this position was that, as DBEs, 100 percent of the work of these contractors counted toward recipients' contract goals, which the firms automatically met.

A significant majority of commenters on this issue—particularly non-DBE contractors but also including some recipients and a few DBEs—argued that DBE primes should meet goals and make GFE the same as other contractors. Failing to do so, they said, went beyond providing a level playing field to the point of providing an unfair advantage for DBE bidders for prime contracts. This change would also increase opportunities for DBE subcontractors, they said. One comment suggested requiring DBE prime contractors to meet goals or make GFE, but stressed that work they performed with their own forces as well as work awarded to DBE subcontractors should count toward goals.

Supporters of the current system said that many prime contracts performed by DBEs are too small to permit subcontracting (of course, goals need be set only on contracts with subcontracting possibilities). Moreover, these commenters—mostly DBEs and recipients—said that there was already inequity as between DBEs and non-DBEs, and requiring DBEs to meet the same requirements simply maintained the inequity. There was also some support for a third option the Department included in the SNPRM, in which DBEs would have to meet goals and make GFE to the extent that work they proposed to perform with their own forces was insufficient to meet goals.

The Department believes that, in a rule aimed at providing a level playing field for DBEs, it is appropriate to impose the same requirements on all bidders for prime contracts. Consequently, part 26 will depart from the part 23 approach and require DBE prime contractors to meet goals and make good faith efforts on the same basis as other prime contractors. However, in recognition of the DBE bidders' status as DBEs, we will permit them to count toward goals the work that they commit to performing with their own forces, as well as the work that they commit to be performed by DBE subcontractors. DBE bidders on prime contracts will be expected to make the same outreach efforts as other bidders and to document good faith efforts in situations where they do not fully meet contract goals.

Under part 23 and the SNPRM, recipients have a choice between handling bidder compliance with contract goals and good faith efforts requirements as a matter of responsiveness or responsibility. Some recipients and other contractors recounted successful experience with one approach or the other, and suggested reasons why everyone should follow each approach (e.g., responsiveness as a deterrent to bid-shopping; responsibility as a more flexible and cost-effective approach). Both approaches have their merits, and the Department believes the best course is to maintain the existing recipient discretion on this issue.

Some recipients use so-called "design-build" or "turnkey" contracts, in which the design and construction of an entire project is contracted out to a master contractor. The master contractor then lets subcontracts, which are often equivalent to the prime contracts that the recipient would let if it were designing and building the project directly. In a sense, the master contractor stands in the shoes of the recipient.

On design-build contracts, the normal process for setting contract goals does not fit the contract award process well. At the time of the award of the master contract, neither the recipient nor the master contractor knows in detail what the project will look like or exactly what contracting opportunities there will be, let alone the identity of DBEs who may subsequently be involved. In these situations, the recipient may alter the normal process, setting a project goal to which the master contractor commits. Later, when the master contractor is letting subcontracts, it will set contract goals as appropriate, standing in the shoes of the recipient. The recipient will exercise oversight of this process.

The final issue in this section has to do with replacement of DBEs that drop out of a contract. What actions, if any, should a prime contractor have to take when a DBE is unable to complete a subcontract, for whatever reason? Should it matter whether or not the DBE's participation is needed to achieve the prime contractor's goal?

Comment on this issue came mostly from recipients, with some non-DBE contractors and a few DBEs providing their views. A majority of the commenters believed that replacement of a fallen-away DBE with another DBE (or making a good faith effort toward that end) should be required only when needed to ensure that the prime contractor continued to meet its contract goal. Others said that, since using DBEs to which the prime had committed at the time of award was a contractual requirement, replacement or good faith efforts should be required regardless of the prime's ability to meet the goal without the lost DBE's participation.

The Department believes that, in a narrowly tailored rule, it is not appropriate to require DBE participation at a level exceeding that needed to ensure a level playing field. Consequently, we will require a prime contractor to replace a fallen-away DBE (or to demonstrate that it has made good faith efforts toward that end) only to the extent needed to ensure that the prime contractor is able to achieve the contract goal established by the recipient for the procurement. The Department will also retain the SNPRM provision—supported by most commenters who mentioned it—that a prime contractor may not terminate a DBE firm for convenience and then perform the work with its own forces without the recipient's written consent. This provision is intended to prevent abuse of the program by a prime contractor who would commit to using a DBE and then bump the DBE off the project in favor of doing the work itself.

Section 26.55 How Is DBE Participation Counted Toward Goals?

In a narrowly tailored program, it is important that DBE credit be awarded only for work actually being performed by DBEs themselves. The necessary implication of this principle is that when a DBE prime contractor or subcontractor subcontracts work to another firm, the work counts toward DBE goals only if the other firm is itself a DBE. This represents a change from the existing rule and the SNPRM, which said that all the work of a DBE's contract (implicitly including work subcontracted to non-DBEs) counts toward goals. A few comments urged such a change. The new language is also consistent with the way that the final rule treats goals for DBE prime contractors.

The value of work performed by DBEs themselves is deemed to include the cost of materials and supplies purchased, and equipment leased, by the DBE from non-DBE sources. For example, if a DBE steel erection firm buys steel from a non-DBE manufacturer, or leases a crane from a non-DBE construction firm, these costs count toward DBE goals. There is one exception: if a DBE subcontractor buys supplies or leases equipment from the prime contractor on its contract, these costs do not count toward DBE goals. Several comments from prime contractors suggested these costs should

count, but this situation is too problematic, in our view, from an independence and commercially useful function (CUF) point of view to permit DBE credit.

One of the most difficult issues in this section concerns how to count DBE credit for the services of DBE trucking firms. The SNPRM proposed that, to be performing a CUF, a DBE trucking firm had to own 50 percent of the trucks it used in connection with a contract. A number of comments said that this requirement was out of step with industry practice, which commonly involves companies leasing trucks from owner-operators and other sources for purposes of a project. In response to these comments, the Department revisited this issue and reviewed the trucking CUF policies of a number of states. The resulting provision requires DBEs to have overall control of trucking operations and own at least one truck, but permits leasing from a variety of sources under controlled conditions, with varying consequences for DBE credit awarded.

A DBE need not provide all the trucks on a contract to receive credit for transportation services, but it must control the trucking operations for which it seeks credit. It must have at least one truck and driver of its own, but it can lease the trucks of others, both DBEs and non-DBEs, including owner operators. For work done with its own trucks and drivers, and for work with DBE lessees, the firm receives credit for all transportation services provided. For work done with non-DBE lessees, the firm gets credit only for the fees or commissions it receives for arranging the transportation services, since the services themselves are being performed by non-DBEs.

When we say that a DBE firm must own at least one of the trucks it uses on a contract, we intend for recipients to have a certain amount of discretion for handling unexpected circumstances, beyond the control of the firm. For example, suppose firm X starts the contract with one truck it owns. The truck is disabled by an accident or mechanical problem part way through the contract. Recipients need not conclude that the firm has ceased to perform a commercially useful function.

Most commenters who addressed the issue agreed with the SNPRM proposal that a DBE does not perform a CUF unless if performs at least 30 percent of the work of a contract with its own forces (a few commenters suggested 50 percent). This provision has been retained. A commenter suggested that the use of two-party checks by a DBE and another firm should not automatically preclude there being a CUF. While we do not believe it is necessary to include rule text language on this point, we agree with the commenter. As long as the other party acts solely as a guarantor, and the funds do not come from the other party, we do not object to this practice where it is a commonly-recognized way of doing business. Recipients who accept this practice should monitor its use closely to avoid abuse.

One commenter noted an apparent inconsistency between counting 100 percent of the value of materials and supplies used by a DBE construction contractor (e.g., in the context of a furnish and install contract) and counting only 60 percent of the value of goods obtained by a non-DBE contractor from a DBE regular dealer. The two situations are treated differently, but there is a policy reason for the difference. There is a continuing concern in the program that, if non-DBEs are able to meet DBE goals readily by doing nothing more than obtaining supplies made by non-DBE manufacturers through DBE regular dealers, the non-DBEs will be less likely to hire DBE subcontractors for other purposes. As a policy matter, the Department does not want to reduce incentives to use DBE subcontractors, so we have not permitted 100 percent credit for supplies in this situation. Giving 100 percent credit for materials and supplies when a DBE contractor performs a furnish and install contract does not create the same type of disincentive, so the policy concern does not apply. In our experience, the 60 percent credit has been an effective incentive for the use of DBE regular dealers, so those firms are not unduly burdened.

Section 26.61 How Are Burdens of Proof Allocated in the Certification Process?

This section, which states a "preponderance of evidence" standard for applicants' demonstration to recipients concerning group membership, ownership, control, and business size, received favorable comment from all commenters who addressed it. We are retaining it with only one change, a reference to the fact that, in the final rule, recipients will collect information concerning the economic status of prospective DBE owners.

Section 26.63 What Rules Govern Group Membership Determinations?

There were several comments on details of this provision. One commenter suggested that tribal registration be used as an identifier for Native Americans. The suggestion is consistent with long-standing DOT guidance; however this section of the regulation is meant to set out general rules applicable to all determinations of group membership, not to enumerate means of making the determination for specific groups. The same commenter suggested that if someone knowingly misrepresents himself as a group member, he should not be given further consideration for eligibility. Misrepresentation of any kind on an application is a serious matter. Indeed, misrepresentation of material facts in an application can be grounds for debarment or even criminal prosecution. While it would certainly be appropriate for recipients to take action against someone who so misrepresented himself, the regulatory text on group membership is not the place to make a general point about the consequences of misrepresentation.

Some commenters wanted further definition of what "a long period of time" means. We believe it would be counterproductive to designate a number of years that would apply in all cases, since circumstances are likely to differ. The point is to avoid "certification conversions" in which an individual suddenly discovers, not long before the application process, ancestry or culture with which he previously has had little involvement.

We are adopting the SNPRM provision without substantive change.

Section 26.65 What Rules Govern Business Size Determinations?

By statute, the Department is mandated to apply SBA small business size standards to determining whether a firm is a small business. The Department is also mandated to apply the statutory size cap ($16.6 million in the current legislation, which the Department adjusts for inflation from time to time). Consequently, the Department cannot adopt the variety of comments we received to adjust size standards or the gross receipts cap to take differences among industries or regions into account. We are adopting the proposed language, using the new statutory gross receipts cap. As under part 23, a firm must fit under both the relevant SBA size standard and the generally applicable DOT statutory cap to be eligible for certification.

A few commenters asked for additional guidance for situations in which a firm is working in more than one SIC code, and the SBA size standards for the different SIC codes are different. First, size determinations are made for the firm as a whole, not for one

division or another. Second, suppose the size of Firm X (e.g., determined through looking at the firm's gross receipts) is $5 million, and X is seeking certification as a DBE in SIC code yyyy and zzzz, whose SBA small business size standards are $3.5 and $7 million, respectively. Firm X would be a small business that could be certified as a DBE, and that could receive DBE credit toward goals, in SIC code zzzz but not in SIC code yyyy. This approach to the issue of differing standards being involved with the same firm fits in well with the general requirement of part 26 that certification be for work in particular SIC codes.

Section 26.67 What Rules Determine Social and Economic Disadvantage?

The statutes governing the DBE program continue to state that members of certain designated groups are presumed to be both socially and economically disadvantaged. Therefore, the Department is not adopting comments suggesting that one or both of the presumptions be eliminated from the DBE rule. While the rule does specify that applicants who are members of the designated groups do have to submit a signed certification that they are, in fact, socially and economically disadvantaged, this requirement should not be read as making simple "self-certification" sufficient to establish disadvantage. As has been the case since the beginning of the DBE program, the presumptions of social and economic disadvantage are rebuttable.

The Department is making an important change in this provision in response to comments about how to rebut the presumption of economic disadvantage. Recipient comments unanimously said that recipients should collect financial information, such as statements of personal net worth (PNW) and income tax returns, in order to determine whether the presumption of economic disadvantage really applies to individual applicants. Particularly in the context of a narrowly tailored program, in which it is important to ensure that the benefits are focussed on genuinely disadvantaged people (not just anyone who is a member of a designated group), we believe that these comments have merit. While charges by opponents of the program that fabulously wealthy persons could readily participate under part 23 have been exceedingly hyperbolic and inaccurate (e.g., references to the Sultan of Brunei as a potential DBE), it is appropriate to give recipients this tool to make sure that non-disadvantaged persons do not participate.

For this reason, part 26 requires recipients to obtain a signed and notarized statement of personal net worth from all persons who claim to own and control a firm applying for DBE certification *and* whose ownership and control are relied upon for DBE certification. These statements must be accompanied by appropriate supporting documentation (e.g., tax returns, where relevant). The rule does not prescribe the exact supporting documentation that should be provided, and recipients should strive for a good balance between the need for thorough examination of applicants' PNW and the need to limit paperwork burdens on applicants. For reasons of avoiding a retroactive paperwork burden on firms that are now certified, the rule does not require recipients to obtain this information from currently certified firms. These firms would submit the information the next time they apply for renewal or recertification. The final rule's provisions on calculating personal net worth are derived directly from SBA regulations on this subject (see 13 CFR § 124.104(c)(2), as amended on June 30, 1998).

One of the primary concerns of DBE firms commenting about submitting personal financial information is ensuring that the information remains confidential. In response to this concern, the rule explicitly requires that this material be kept confidential. It may be provided to a third party only with the written consent of the individual to whom the information pertains. This provision is specifically intended to pre-empt any contrary application of state or local law (e.g., a state freedom of information act that might be interpreted to require a state transportation agency to provide to a requesting party the personal income tax return of a DBE applicant who had provided the return as supporting documentation for his PNW statement). There is one exception to this confidentiality requirement. If there is a certification appeal in which the economic disadvantage of an individual is at issue (e.g., the recipient has determined that he or she is not economically disadvantaged and the individual seeks DOT review of the decision), the personal financial information would have to be provided to DOT as part of the administrative record. The Department would treat the information as confidential.

Creating a clear and definitive standard for determining when an individual has overcome the economic disadvantage that the DBE program is meant to remedy has long been a contentious issue. In 1992, the Department proposed to use a personal net worth standard of $750,000 to rebut the presumption of disadvantage for members of the designated groups. In 1997, the Department proposed a similar idea, though rather than use the $750,000 figure, the SNPRM asked the public for input on what the specific amount should be. Finally, as discussed in detail above, the issue of ensuring that wealthy individuals do not participate in the DBE program was a central part of the 1998 Congressional debate.

Public comment on both proposals was sharply divided. Roughly equal numbers of commenters thought $750,000 was too high as thought it was too low. Commenters proposed figures ranging from $250,000 to $2 million. Others supported the $750,000 level, which is based on the SBA's threshold for participation in the SDB program (it is also the retention level for the 8(a) program). One theme running through a number of comments was that recipients should have discretion to vary the threshold depending on such factors as the local economy or the type of firms involved. Some comments opposed the idea of a PNW threshold altogether or suggested an alternative approach (e.g., based on Census data about the distribution of wealth).

Others commented that rebutting the presumption did not go far enough, pointing out that the only way to ensure that wealthy people did not participate in the program was for the threshold to act as a complete bar on the eligibility of an individual to participate in the program. Congress appears to share this concern. While they differed on the effectiveness of past DOT efforts, both proponents and opponents of the program agreed that preventing the participation of wealthy individuals was central to ensuring the constitutionality of the DBE program.

The Department agrees and, in light of the comments and the intervening TEA–21 debate, is adopting the clearest and most effective standard available: when an individual's personal net worth exceeds the $750,000 threshold, the presumption of economic disadvantage is conclusively rebutted and the individual is no longer eligible to participate in the DBE program. The Department is using the $750,000 figure because it is a well established and effective part of the SBA programs and is a reasonable middle ground in view of the wide range of comments calling for higher or lower thresholds. Using a figure any lower, as some commenters noted, could penalize success and make growth for DBEs difficult (since, for example, banks and insurers frequently

look to the personal assets of small business owners in making lending and bonding decisions). Operating the threshold as a cap on eligibility for all applicants also serves to treat men and women, minorities and non-minorities equally.

When a recipient determines, from the PNW statement and supporting information, that an individual's personal net worth exceeds $750,000, the recipient must deem the individual's presumption of economic disadvantage to have been conclusively rebutted. No hearing or other proceeding is called for in this case. When this happens in the course of an application for DBE eligibility, the certification process for the applicant firm stops, unless other socially and economically disadvantaged owners can account for the required 51 percent ownership and control. A recipient cannot count the participation of the owner whose presumption of economic disadvantage has been conclusively rebutted toward the ownership and control requirements for DBE eligibility.

There may be other situations in which a recipient has a reasonable basis (e.g., from information in its own files, as the result of a complaint from a third party) for believing that an individual who benefits from the statutory presumptions is not really socially and/or economically disadvantaged. In these cases, the recipient may begin a proceeding to rebut the presumptions. For example, if a recipient had reason to believe that the owner of a currently-certified firm had accumulated personal assets well in excess of $750,000, it might begin such a proceeding. The recipient has the burden of proving, by a preponderance of evidence, that the individual is not disadvantaged. However, the recipient may require the individual to produce relevant information.

It is possible that, at some time in the future, SBA may consider changing the $750,000 cap amount. The Department anticipates working closely with SBA on any such matter and seeking comment on any potential changes to this rule that would be coordinated with changes SBA proposes for Federal procurement programs in this area.

Under part 23, recipients had to accept 8(a)-certified firms (except for those who exceeded the statutory gross receipts cap). The SNPRM proposed some modifications of this requirement. Recipients were concerned that in some situations information used for 8(a) certification could be inaccurate or out of date. They noted differences between 8(a) and DBE certification standards and procedures. They asked for the ability to look behind 8(a) certifications and make their own certification decisions.

In response to these comments, the Department is providing greater discretion to recipients. Under part 26, recipients can treat 8(a) certifications as they do certifications made by other DOT recipients. A recipient can accept such a certification in lieu of conducting its own certification process or it can require the firm to go through part or all of its own application process. Because SBA is beginning a certification process for firms participating in the small and disadvantaged business (SDB) program, we will treat certified SDB firms in the same way. If an SDB firm is certified by SBA or an organization recognized by SBA as a certifying authority, a recipient may accept this certification instead of doing its own certification. (This does not apply to firms whose participation in the SDB program is based on a self-certification.) We note that this way of handling SBA program certifications is in the context of the development by DOT recipients of uniform certification programs. If a unified certification program (UCP) accepts a firm's 8(a) or 8(d) certification, then the firm will be certified for all DOT recipients in the state.

People who are not presumed socially and economically disadvantaged can still apply for DBE certification. To do so, they must demonstrate to the recipient that they are disadvantaged as individuals. Using the guidance provided in Appendix E, recipients must make case-by-case decisions concerning such applications. It should be emphasized that the DBE program is a disadvantage-based program, not one limited to members of certain designated groups. For this reason, recipients must take these applications seriously and consider them fairly. The applicant has the burden of proof concerning disadvantage, however.

Section 26.69 What Rules Govern Determinations of Ownership?

Commenters on the ownership provisions of the SNPRM addressed a variety of points. Most commenters agreed that the general burden of proof on applicants should be the preponderance of the evidence. A few commenters thought that this burden should also apply in situations where a firm was formerly owned by a non-disadvantaged individual. For some of these situations, the SNPRM proposed the higher "clear and convincing evidence" standard, because of the heightened opportunities for abuse involved. The Department believes this safeguard is necessary, and we will retain the higher standard in these situations.

Commenters asked for more guidance in evaluating claims that a contribution of expertise from disadvantaged owners should count toward the required 51 percent ownership. They cited the potential for abuse. The Department believes that there may be circumstances in which expertise can be legitimately counted toward the ownership requirement. For example, suppose someone with a great deal of expertise in a computer-related field, without whom the success of his or her high-tech start-up business would not be feasible, receives substantial capital from a non-disadvantaged source.

We have modified the final rule provision to reflect a number of considerations. Situations in which expertise must be recognized for this purpose are limited. The expertise must be outstanding and in a specialized field: everyday experience in administration, construction, or a professional field is unlikely to meet this test. (This is not a "sweat equity" provision.) We believe that it is fair that the critical expertise of this individual be recognized in terms of the ownership determination. At the same time, the individual must have a significant financial stake in the company. This program focuses on entrepreneurial activity, not simply expertise. While we will not designate a specific percentage of ownership that such an individual must have, entrepreneurship without a reasonable degree of financial risk is inconceivable.

The SNPRM's proposals on how to treat assets obtained through inheritance, divorce, and gifts were somewhat controversial. Most comments agreed with the proposal that assets acquired through death or divorce be counted. One commenter objected to the provision that such assets always be counted, saying that the owner should have to make an additional demonstration that it truly owned the assets before the recipient counted them. We do not see the point of such an additional showing. If a white male business owner dies, and his widow inherits the business, the assets are clearly hers, and the deceased husband will play no further role in operating the firm. Likewise, assets a woman obtains through a divorce settlement are unquestionably hers. Absent a term of a divorce settlement or decree that limits the customary incidents of ownership of the assets or business (a contingency for which the proposed provision provided), there is no problem for which an additional showing of some

sort by the owner would be a useful remedy.

A majority of comments on the issue of gifts opposed the SNPRM proposal, saying that gifts should not be counted toward ownership at all. The main reason was that allowing gifts would make it easier for fronts to infiltrate the program. Some comments also had a flavor of opposition to counting what commenters saw as unearned assets. The Department understands these concerns. If a non-disadvantaged individual who provides a gift is no longer connected with the business, or a disadvantaged individual makes the gift, the issue of the firm being a potential front is much reduced. Where a non-disadvantaged individual makes a gift and remains involved with the business, the concern about potential fronts is greater.

For this reason, the SNPRM erected a presumption that assets acquired by gift in this situation would not count. The applicant could overcome this presumption only by showing, through clear and convincing evidence—a high standard of proof—that the transfer was not for the purpose of gaining DBE certification and that the disadvantaged owner really controls the company. This provides effective safeguards against fraud, without going to the unfair extreme of creating a conclusive presumption that all gifts are illegitimate. Also, for purposes of ownership, all assets are created equal. If the money that one invests in a company is really one's own, it does not matter whether it comes from the sweat of one's brow, a bank loan, a gift or inheritance, or hitting the lottery. As long as there are sufficient safeguards in place to protect against fronts—and we believe the rule provides them—the origin of the assets is unimportant. We are adopting the proposed provisions without change.

Commenters were divided about how to handle marital property, especially in community property states. Some commenters believed that such assets should not be counted at all. This was based, in part, on the concern that allowing such assets to be counted could make it difficult to screen out interspousal gifts designed to set up fronts, even if irrevocable transfers of assets were made. Other commenters said they thought the proposal was appropriate, and some of these thought the requirement for irrevocable transfers was unfair.

The Department is adopting the proposed language. In a community property state, or elsewhere where property is jointly held between spouses, the wife has a legal interest in a portion of the property. It is really hers. It would be inappropriate to treat this genuine property interest as if it did not exist for purposes of DBE ownership.

To ensure the integrity of the program, it is necessary to put safeguards in place. The regulation does so. First, recipients would not count more assets toward DBE ownership than state law treats as belonging to the wife (the final rule provision adds language to this effect). Second, the irrevocable transfer requirement prevents the husband from being in a position to continue to claim any ownership rights in the assets. If an irrevocable transfer of assets constitutes a gift from a non-disadvantaged spouse who remains involved in the business, then the presumption/clear and convincing evidence mechanism discussed above for gifts would apply to the transaction. If recipients in community property states wanted to establish a mechanism for allocating assets between spouses that was consistent with state law, but did not require court involvement or other more formal procedures, they could propose doing so as part of their DBE programs, subject to operating administration approval.

Most commenters supported the SNPRM's proposal concerning trusts, particularly the distinction drawn between revocable living and irrevocable trusts. One commenter favored counting revocable living trusts when the same disadvantaged individual is both the grantor and beneficiary. The Department believes there is merit in making this exception. If the same disadvantaged individual is grantor, beneficiary, and trustee (i.e., an individual puts his own money in a revocable living trust for tax planning or other legitimate purposes and he alone plays the roles of grantor, beneficiary, and trustee), the situation seems indistinguishable for DBE program purposes from the situation of the same individual controlling his assets without the trust. In all other situations, revocable living trusts would not count.

Some comments asked for clarification of the 51 percent ownership requirement, a subject on which the Department has received a number of questions over the years. The Department has clarified this requirement, with respect to corporations, by stating that socially and economically disadvantaged individuals must own 51 percent of each class of voting stock of a corporation, as well as 51 percent of the aggregate stock. A similar point applies to partnerships and limited liability companies. This latter type of company was not mentioned in the SNPRM, but a commenter specifically requested clarification concerning it. (We have also noted, in § 26.83, that limited liability companies must report changes in management responsibility to recipients. This is intended to include situations where management responsibility is rotated among members.) These clarifications are consistent with SBA regulations.

There are some ownership issues (e.g., concerning stock options and distribution of dividends) that SBA addresses in some detail in its regulations (see 13 CFR § 124.105 (c), (e), (f)) that were not the subject of comments to the DOT SNPRM. These issues have not been prominent in DOT certification practice, to the best of our knowledge, so we are not adding them to the rule. However, we would use the SBA provisions as guidance in the event such issues arise.

Section 26.71 What Rules Govern Determinations Concerning Control?

Commenters generally agreed with the proposed provisions concerning expertise and delegation of responsibilities, 51 percent control of voting stock, and differences in remuneration. A few commenters expressed concern about having to make judgments concerning expertise. However, this expertise standard, as a matter of interpretation, has been part of the DBE program since the mid-1980s. We do not believe that articulating it in the regulatory text should cause problems, and we believe it is a very reasonable and understandable approach to expertise issues. The provision concerning 51 percent ownership of voting stock, as discussed above, has been relocated in the ownership section of the rule. The Department has added three useful clarifications of the general requirement that disadvantaged owners must control the firm (e.g., by serving as president or CEO, controlling a corporate board). These clarifications are based on SBA's regulations (see 13 CFR § 124.106(a)(2), (b), (d)(1)). The Department intends to use other material in 13 CFR § 124.106 as guidance on control matters, when applicable. Otherwise, the Department is adopting these provisions as proposed.

There was some concern about the proposal concerning licensing. Some recipients thought that it would be better to require a license as proof of control in the case of all licensed occupations. We do not think it is justifiable for the DBE program to require more than state law does. If state law allows someone to run a certain

type of business (e.g., electrical contractors, engineers) without personally having a license in that occupation, then we do not think it is appropriate for the recipient to refuse to consider that someone without a license may be able to control the business. The rule is very explicit in saying that the recipient can consider the presence or absence of a license in determining whether someone really has sufficient ability to control a firm.

Family-owned firms have long been a concern in the program. The SNPRM provided explicitly that if the threads of control in a family-run business cannot be disentangled, such that the recipient can specifically find that a woman or other disadvantaged individual independently controls the business, the recipient may not certify the firm. A business that is controlled by the family as a group, as distinct from controlled individually by disadvantaged individuals, is not eligible. Notwithstanding this provision, a few recipients commented that certifying any businesses in which non-disadvantaged family members participate would open the program to fronts. We do not agree. Non-disadvantaged individuals can participate in any DBE firm, as long as disadvantaged individuals control the firm. It is not fair and does not achieve any reasonable program objective to say that an unrelated white male may perform functions in a DBE while the owner's brother may never do so.

Commenters generally supported the provision calling for recipients to certify firms only for types of work in which disadvantaged owners had the ability to control the firm's operations. One commenter suggested that recipients, while not requiring recertification of firms seeking to perform additional types of work as DBEs (e.g., work in other than their primary industrial classification), should have to approve a written request from firms in this position. We do believe it is necessary for recipients to verify that disadvantaged owners can control work in an additional area, and we have added language to this effect. Recipients will have discretion about how to administer this verification process.

Commenters asked for additional clarification about the eligibility of people who work only part-time in a firm. We have done so by adding examples of situations that do not lead to eligibility (part-time involvement in a full-time firm and absentee ownership) and a situation that may, depending on circumstances, be compatible with eligibility (running a part-time firm all the time it is operating). It should be noted that this provision does not preclude someone running a full-time firm from having outside employment. Outside employment is incompatible with eligibility only when it interferes with the individual's ability to control the DBE firm on a full-time basis.

One commenter brought to the Department's attention the situation of DBEs who use "employee leasing companies." According to the commenter, employee leasing companies fill a number of administrative functions for employers, such as payroll, personnel, forwarding of taxes to governmental entities, and drug testing. Typically, the employees of the underlying firm are transferred to the payroll of the employee leasing firm, which in turn leases them back to the underlying employer. The underlying employer continues to hire, fire, train, assign, direct, control etc. the employees with respect to their on-the-job duties. While the employee leasing firm sends payments to the IRS, Social Security, and state tax authorities on behalf of the underlying employer, it is the latter who is remains responsible for paying the taxes.

For practical and legal purposes, the underlying employer retains an employer-employee relationship with the leased employees. The employee leasing company does not get involved in the operations of the underlying employer. In this situation, the use of an employee leasing company by a DBE does not preclude the DBE from meeting the control requirements of this rule. Nor does the employee leasing company become an affiliate of the DBE for business size purposes. Case-by-case judgement, of course, remains necessary. Should an employee leasing company in fact exercise control over the on-the-job activities of employees of the DBE, then the ability of the DBE to meet control requirements would be compromised.

One commenter said, as a general matter, that independence and control should be considered separately. We view independence as an aspect of control: If a firm is not independent of some other business, then the other firm, not the disadvantaged owners, exercise control. While independence is an aspect of control that recipients must review, we do not see any benefit in separating consideration of the two concepts.

A recent court decision (*Jack Wood Construction Co., Inc.* v. *U.S. Department of Transportation*, 12 F. Supp. 2d 25 (D.D.C., 1998)) overturned a DOT Office of Civil Rights certification appeal decision that upheld a denial of certification based on lack of control. The court, reading existing part 23 closely, said that a non-disadvantaged individual who was an employee, but not an owner, of a firm could disproportionately control the affairs of a firm without making it ineligible. The court also said that the existing rule language did not make it necessary for a disadvantaged owner to have both technical and managerial competence to control a firm. Part 26 solves both problems that the court found to exist in part 23's control provisions (see § 26.71(e)–(g)).

Section 26.73 What Are Other Rules Affecting Certification?

There were relatively few comments on this section. One commenter disagreed with the proposal to continue the provision that a firm owned by a DBE firm, rather than by socially and economically disadvantaged individuals, was not eligible. The argument against this provision, as we understand it, is that precluding a DBE firm from being owned by, for example, a holding company that is in turn owned by disadvantaged individuals would deny those individuals a financing and tax planning tool available to other businesses.

This argument has merit in some circumstances. The purpose of the DBE program is to help create a level playing field for DBEs. It would be inconsistent with the program's intent to deny DBEs a financial tool that is generally available to other businesses. The Department will allow this exception. Recipients must be careful, however, to ensure that certifying a firm under this exception does not have the effect of allowing the firm, or its parent company, to evade any of the requirements or restrictions of the certification process. The arrangement must be consistent with local business practices and must not have the effect of diluting actual ownership by disadvantaged individuals below the 51 percent requirement. All other certification requirements, including control by disadvantaged individuals and size limits, would continue to apply.

Another commenter suggested a firm should not be certified as a DBE if its owners have interests in non-DBE businesses. We believe that a *per se* rule to this effect would be too draconian. If owners of a DBE—whether disadvantaged individuals or not—also have interests in other businesses, the recipient can look at the relationships among the businesses to determine if the DBE is really independent.

One commenter opposed basing certification on the present status of

firms, seeking discretion to deny certification based on the history of the firm. We believe there is no rational or legal basis for denying certification to a firm on the basis of what it was in the past. Is it a small business presently owned and controlled by socially and economically disadvantaged individuals? If so, it would be contrary to the statute, and to the intent of the program, to deny certification because at some time—perhaps years—in the past, it was not owned and controlled by such individuals. The rule specifies that recipients may consider whether a firm has engaged in a pattern of conduct evincing an intent to evade or subvert the program.

The final provision of this section concerns firms owned by Alaska Native Corporations (ANCs), Indian tribes, and Native Hawaiian Organizations. Like the NPRM, it provides that firms owned by these entities can be eligible DBEs, even though their ownership does not reside, as such, in disadvantaged *individuals*. These firms must meet the size standards applicable to other firms, including affiliation (lest large combinations of tribal or ANC-owned corporations put other DBEs at a strong competitive disadvantage). Also, they must be controlled by socially and economically disadvantaged individuals. For example, if a tribe or ANC owns a company, but its daily business operations are controlled by a non-disadvantaged white male, the firm would not be eligible.

Commenters pointed us to the following provision of the Alaska Native Claims Settlement Act (ANCSA):

(e) Minority and economically disadvantaged status—

(1) For all purposes of Federal law, a Native Corporation shall be considered to be a corporation owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the Settlement Common Stock of the corporation and other stock of the corporation held by holders of Settlement Common Stock and by Natives and descendants of Natives, represents a majority of both the total equity of the corporation and the total voting power of the corporation for the purposes of electing directors.

(2) For all purposes of Federal law, direct and indirect subsidiary corporations, joint ventures, and partnerships of a Native Corporation qualifying pursuant to paragraph (1) shall be considered to be entities owned and controlled by Natives and a minority and economically disadvantaged business enterprise if the shares of stock or other units of ownership interest in any such entity held by such Native Corporation and by the holders of its Settlement Common Stock represent a majority of both—

(A) The total equity of the subsidiary corporation, joint venture, or partnership; and

(B) The total voting power of the subsidiary corporation, joint venture, or partnership for the purpose of electing directors, the general partner, or principal officers. (43 U.S.C. 1626(e)).

The question for the Department is whether, reading this language together with the language of the Department's DBE statutes, DOT must alter these provisions.

The DOT DBE statute (TEA–21 version) provides as follows:

(b) Disadvantaged Business Enterprises.—

(1) General rule.—Except to the extent that the Secretary determines otherwise, not less than 10 percent of the amounts made available for any program under titles I, III, and V of this Act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) Definitions.—In this subsection, the following definitions apply:

(A) Small business concern.—The term "small business concern" has the meaning such term has under section 3 of the Small Business Act (15 U.S.C. 632); except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding 3 fiscal years in excess of $16,600,000, as adjusted by the Secretary for inflation.

(B) Socially and economically disadvantaged individuals.—The term "socially and economically disadvantaged individuals" has the meaning such term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for purposes of this subsection.

* * * * *

(4) Uniform certification.—The Secretary shall establish minimum uniform criteria for State governments to use in certifying whether a concern qualifies for purposes of this subsection. Such minimum uniform criteria shall include but not be limited to on-site visits, personal interviews, licenses, analysis of stock ownership, listing of equipment, analysis of bonding capacity, listing of work completed, resume of principal owners, financial capacity, and type of work preferred.

While the language § 1626(e) is broad, the terms used in the two statutes are not identical. Section 1626(e) refers to "minority and economically disadvantaged business enterprise[s]", while the Department's statutes refer to "small business concerns owned and controlled by socially and economically disadvantaged individuals." Requirements applicable to the former need not necessarily apply to the latter.

The legislative history of § 1626(e) lends support to distinguishing the two statutes. The following excerpt from House Report 102–673 suggests that the intent of Congress in enacting this provision was to focus on direct Federal procurement programs:

[The statute] amends section [1626(e)] of ANCSA to clarify that Alaska Native Corporations are minority and economically disadvantaged business enterprises for the purposes of implementing the SBA programs * * * This section would further clarify that Alaska Native Corporations and their subsidiary companies are minority and economically disadvantaged business enterprises for purposes of qualifying for participation in federal contracting and subcontracting programs, the largest of which include the SBA 8(a) program and the Department of Defense Small and Disadvantaged Business Program. These programs were established to increase the participation of certain segments of the population that have historically been denied access to Federal procurement activities. While this section eliminates the need for Alaska Native Corporations or their subsidiaries to prove their "economic" disadvantage the corporations would still be required to meet size requirements as small businesses. This will continue to be determined on a case-by-case basis. (Id. at 19.)

This statute, in other words, was meant to apply to direct Federal procurement programs like the 8(a) program or the DOD SBD program, rather than a program involving state and local procurements reimbursed by DOT financial assistance.

The TEA–21 program is a more recent, more specific statute governing DOT recipients' programs. In contrast, the older, more general section 1626(e) evinces no specific intent to govern the DOT DBE program. There is no evidence that Congress, in enacting section 1626(e), had any awareness of or intent to alter the DOT DBE program.

A number of provisions of the TEA–21 statute suggest that Congress intended to impose specific requirements for the DOT program, without regard to other more general statutory references. For example, the $16.6 million size cap and the uniform certification requirements suggest that Congress wanted the eligibility for the DOT program to be determined in very specific ways, giving no hint that they intended these specific requirements to be overridden in the case of ANCs.

The Department concludes that section 1626(e) is distinguishable from the DOT DBE statutes, and that the latter govern the implementation of the DBE program. The Department is not compelled to alter its approach to certification in the case of ANCs.

Section 26.81 What Are the Requirements for Unified Certification Programs?

As was the case following the 1992 NPRM, a significant majority of the large number of commenters addressing the issue favored implementing the proposed UCP requirement, which the final rule retains largely as proposed. A few commenters suggested that airports be included in UCPs for concession purposes as well as for FAA-assisted contracting, because there are not any significant differences between the certification standards for concessionaires and contractors (the only exception is size standards, which are easy to apply). We agree, and the final rule does not make an exception for concessions (regardless of the CFR part in which the concessions provisions appear). Some commenters wanted either a longer or shorter implementation period than the SNPRM proposed, but we believe the proposal is a good middle ground between the goal of establishing UCPs as soon as possible and the time recipients will need to resolve organizational, operational, and funding issues.

There were a number of comments and questions about details of the UCP provision. One recipient wondered whether a UCP may or must be separate from a recipient and what the legal liability implications of various arrangements might be. As far as the rule is concerned, a UCP can either be situated within a recipient's organization or elsewhere. Recipients can take state law concerning liability into account in determining how best to structure a UCP in their state. Another recipient asked if existing UCPs could be exempted from submitting plans for approval. Rather than being exempted, we believe that it would be appropriate for such UCPs to submit their existing plans. They would have to change them only to the extent needed to conform to the requirements of the rule.

Some commenters asked about the relationship of UCPs to recipients. For example, should a recipient be able to certify a firm that the UCP had not certified (or whose application the UCP had not yet acted on) or refuse to recognize the UCP certification of a firm the recipient did not think should be eligible? In both cases, the answer is no. Allowing this kind of discretion would fatally undermine the "one-stop shopping" rationale of UCPs. However, a recipient could, like any other party, initiate a third-party challenge to a UCP certification action, the result of which could be appealed to DOT.

We would emphasize that the form of the UCP is a matter for negotiation among DOT recipients in a state, and this regulation does not prescribe its organization. A number of models are available, including single state agencies, consortia of recipients that hire a contractor or share the workload among themselves, mandatory reciprocity among recipients, etc. It might be conceivable for a UCP to be a "virtual entity" that is not resident in any particular location. What matters is that the UCP meet the functional requirements of this rule and actually provide one-stop shopping service to applicants. The final rule adds a provision to clarify that UCPs—even when not part of a recipient's own organization—must comply with all provisions of this rule concerning certification and nondiscrimination. Recipients cannot use a UCP that does not do so. For example, if a UCP fails to comply with part 26 certification standards and procedures, or discriminates against certain applicants, the Secretary reserves the right to direct recipients not to use the UCP, effectively "decertifying" the UCP for purposes of DOT-assisted programs. In this case, which we hope will never happen, the Department would work with recipients in the state on interim measures and replacement of the erring UCP.

The SNPRM proposed "pre-certification." That is, the UCP would have to certify a firm before the firm became eligible to participate as a DBE in a contract. The application could not be submitted as a last-minute request in connection with a procurement action, which could lead to hasty and inaccurate certification decisions. Commenters were divided on this issue, with most expressing doubts about the concept. The Department believes that avoiding last-minute (and especially post-bid opening) applications is important to an orderly and accurate certification process, so we are retaining this requirement. However, we are modifying the timing of the requirement, by requiring that certification take place before the bid/offer due date, rather than before the issuance of the solicitation. The certification action must be *completed* by this date in order for the firm's proposed work on the particular contract to be credited toward DBE goals. It is not enough for the application to have been submitted by the deadline.

The SNPRM proposed that, once UCPs were up and running, a UCP in State A would not have to process an application from a firm whose principal place of business was in State B unless State B had first certified the firm. Most commenters supported this proposal, one noting that it would help eliminate problems of having to make costly out-of-state site visits. It would also potentially reduce confusion caused by multiple, and potentially conflicting, outcomes in certification decisions. One commenter was concerned that this provision would lead to "free-rider" problems among recipients. The Department will be alert to this possibility, but we do not see it as precluding going forward with this provision. We have added a provision making explicit that when State B has certified a firm, it would have an obligation to send copies of the information and documents it had on the firm to State A when the firm applied there.

All save one of the comments on mandatory reciprocity opposed the concept. That is, commenters favored UCPs being able to choose whether or not to accept certification decisions made by other UCPs. The Department urges UCPs to band together in multi-state or regional alliances, but we believe that it is best to leave reciprocity discretionary. Mandatory reciprocity, even among UCPs, could lead to forum shopping problems.

UCPs will have a common directory, which will have to be maintained in electronic form (i.e., on the internet). One commenter suggested that this electronic directory be updated daily. We think this comment has merit, and the final rule will require recipients to keep a running update of the electronic directory, making changes as they occur.

Section 26.83 What Procedures Do Recipients Follow in Making Certification Decisions?

Commenters generally supported this certification process section, and we are adopting it with only minor changes. Commenters suggested that provision for electronic filing of applications be discretionary rather than mandatory. We agree, and the final rule does not mandate development of electronic filing systems. Some commenters remained concerned about site visits and asked for more guidance on the subject. We intend to provide future guidance on this subject.

Most commenters who addressed the subject favored the development of a mandatory, nationwide, standard DOT application form for DBE eligibility. A number of commenters supplied the forms they use as examples. We believe that this is a good idea, which will help avoid confusion among applicants in a nationwide program. However, we have

not yet developed a form for this purpose. The final rule reserves a requirement for recipients to use a uniform form. We intend to work on developing such a form during the next year, in consultation with recipients and applicants. Meanwhile, recipients can continue to use existing forms, modified as necessary to conform to the requirements of this part.

The SNPRM said recipients could charge a reasonable fee to applicants. A majority of commenters, both recipients and DBEs, opposed the idea of a fee or said it should be capped at a low figure. Fees are not mandatory, and they would be limited, under the final rule, to modest application fees (not intended to recover the cost of the certification process). However, if a recipient wants to charge a modest application fee, we do not see that it is inconsistent with the nature of the program to allow it to do so. Fee waivers would be required if necessary (i.e., a firm who showed they could not afford it). All fees would have to be approved by the concerned OA as part of the DBE program approval process, which would preclude excessive fees.

Given that reciprocity is discretionary among recipients, we thought it would be useful to spell out the options a recipient has when presented by an applicant with the information that another recipient has certified the firm. The recipient may accept the other recipient's certification without any additional procedures. The recipient can make an independent decision based, in whole or in part, on the information developed by the first recipient (e.g., application forms, supporting documents, reports of site visits). The recipient may make the applicant start an entire new application process. The choice among these options is up to the recipient. (As noted above, UCPs will have these same options.)

Most commenters on the subject supported the three-year term for certifications. Some wanted a shorter or longer period. We believe the three-year term is appropriate, particularly given the safeguards of annual and update affidavits that the rule provides. In response to a few comments that recipients should have longer than the proposed 21 days after a change in circumstances to submit an update affidavit, we have extended the period to 30 days. If recipients want to have a longer term in their DBE programs than the three years provided in the rule, they can do so, with the Department's approval, as part of their DBE programs.

A few recipients said that the 90-day period for making decisions on applications (with the possibility of a 60-day extension) was too short. Particularly since this clock does not begin ticking until a *complete* application, including necessary supporting documentation, is received from the applicant, we do not think this time frame is unreasonable. We would urge recipients and applicants to work together to resolve minor errors or data gaps during the assembly of the package, before this time period begins to run.

Section 26.85 What Rules Govern Recipients' Denials of Initial Requests for Certification?

A modest number of commenters addressed this section, most of whom supported it as proposed. One commenter noted that it was appropriate to permit minor errors to be corrected in an application without invoking the 12-month reapplication waiting period. We agree, and we urge recipients to follow such a policy. Most commenters thought 12 months was a good length for a reapplication period. A few opposed the idea of a waiting period or thought a shorter period was appropriate. The rule keeps 12 months, but permits recipients to seek DOT approval, through the DBE program review process, for shorter periods.

Section 26.87 What Procedures Does a Recipient Use To Remove a DBE's Eligibility?

As long ago as 1983, the Department (in the preamble to the first DBE rule) strongly urged recipients to use appropriate due process procedures for decertification actions. Recipient procedures are still inconsistent and, in some cases, inadequate, in this respect. Quite recently, for example, litigation forced one recipient to rescind a decertification of an apparently ineligible firm because it had failed to provide administrative due process. We believe that proper due process procedures are crucial to maintaining the integrity of this program. The majority of commenters agreed, though a number of commenters had concerns about particular provisions of the SNPRM proposal.

Some recipients, for example, thought separation of functions was an unnecessary requirement, or too burdensome, particularly for small recipients. We believe separation of functions is essential: there cannot be a fair proceeding if the same party acts as prosecutor and judge. We believe that the burdens are modest, particularly in the context of state DOTs and statewide UCPs. We acknowledge that for small recipients, like small airports and transit authorities, small staffs may create problems in establishing separation of functions (e.g., if there is only one person in the organization who is knowledgeable about the DBE program). For this reason, the rule will permit small recipients to comply with this requirement to the extent feasible until UCPs are in operation (at which time the UCPs would have to ensure separation of functions in all such cases). The organizational scheme for providing separation of functions will be part of each recipient's DBE program. In the case of a small recipient, if the DBE program showed that other alternatives (e.g., the airport using the transit authority's DBE officer as the decisionmaker in decertification actions, and vice-versa) were unavailable, the Department could approve something less than ideal separation of functions for the short term before the UCP becomes operational. In reviewing certification appeals from such recipients, the Department would take into account the absence of separation of functions.

It is very important that the decisionmaker be someone who is familiar with the DBE certification requirements of this part. The decisionmaker need not be an administrative law judge or some similar official; a knowledgeable program official is preferable to an ALJ who lacks familiarity with the program.

Another aspect of the due process requirements that commenters addressed was the requirement for a record of the hearing, which some commenters found to be burdensome. We want to emphasize that, while recipients have to keep a hearing record (including a verbatim record of the hearing), they do not need to produce a transcript unless there is an appeal. A hearing record is essential, because DOT appellate review is a review of the administrative record.

Some commenters suggested deleting two provisions. One of these allowed recipients to impose a sort of administrative temporary restraining order on firms pending a final decertification decision. The other allowed the effect of a decertification decision to be retroactive to the date of the complaint. The Department agrees that these two provisions could lead to unfairness, and so we have deleted them.

Section 26.89 What Is the Process for Certification Appeals to the Department of Transportation?

Several commenters addressed this section, supporting it with a few requests for modification. Some

commenters wanted a time limit for DOT consideration of appeals. We have added a provision saying that if DOT takes longer than 180 days from the time we receive a complete package, we will write everyone concerned with an explanation of the delay and a new target date for completion. Some commenters thought a different time limit for appeals to the Department (e.g., 180 days) would be beneficial. We believe that 90 days is enough time for someone to decide whether a decision of a recipient or UCP should be appealed and write a letter to DOT. This time period starts to run from the date of the final recipient decision on the matter. DOT can accept late-filed appeals on the basis of a showing of good cause (e.g., factors beyond the control of the appellant). Some recipients thought that more time might be necessary to compile an administrative record, so we have permitted DOT to grant extensions for good cause. Generally, however, the Department will adhere to the 90-day time period in order to prevent delays in the appeals process. As a clarification, we have added a provision that all recipients involved must provide administrative record material to DOT when there is an appeal. For example, State A has relied on the information gathered by State B to certify Firm X. A competitor files an ineligibility complaint with State A, which decertifies the firm. Firm X appeals to the Department. Both State A and State B must provide their administrative record materials to DOT for purposes of the appeal. (The material would be provided to the Departmental Office of Civil Rights.)

Section 26.91 What Actions Do Recipients Take Following DOT Certification Appeal Decisions?

There were few comments concerning this section. Some comments suggested DOT appeal decisions should have mandatory nationwide effect. That is if DOT upheld the decertification action of Recipient A, Recipients B, C, D, E, etc. should automatically decertify the firm. This approach is inconsistent with the administrative review of the record approach this rule takes for appeals to DOT.

A DOT decision that A's decertification was supported by substantial evidence is not a DOT decision that the firm is ineligible. It is only a finding that A had enough evidence to decertify the firm. Other results might also be supported by substantial evidence. Nevertheless, when the Department takes action on an appeal, other recipients would be well advised to review their own decisions to see if any new proceedings are appropriate. One comment suggested the Department should explain a refusal to accept a complaint. This is already the Department's practice.

The SNPRM included a proposal to permit direct third-party complaints to the Department. There were few comments on this proposal, which would have continued an existing DOT practice. Some of these comments suggested dropping this provision, saying it made more sense to have all certification matters handled at the recipient level in the first instance. Others raised procedural issues (e.g., the possibility of the Department holding *de novo* hearings). The Department has reconsidered this proposal, and we have decided to delete it. We believe it will avoid administrative confusion and simplify procedures for everyone if all certification actions begin at the recipient level, with DOT appellate review on the administrative record.

Subpart F—Compliance and Enforcement

There were very few comments concerning this subpart, which we are adopting as proposed. One section has been added to reflect language in TEA–21 that prohibits sanctions against recipients for noncompliance in situations where compliance is precluded by a final Federal court order finding the program unconstitutional.

DBE Participation in Airport Concessions

The Department proposed a number of changes to its airport concessions DBE program rule in the 1997 SNPRM. We received a substantial number of comments on these proposals. The Department is continuing to work on its responses to these comments, as well as on refinements of the rule to ensure that it is narrowly tailored. This work is not complete. Rather than postpone issuance of the rest of the rule pending completion of this work, we are not issuing final concessions provisions at this time. The existing concessions provisions of 49 CFR part 23 will remain in place pending completion of the revised rule.

Regulatory Analyses and Notices

Executive Order 12866

This rule is a significant rule under Executive Order 12866, because of the substantial public interest concerning and policy importance of programs to ensure nondiscrimination in Federally-assisted contracting. It also affects a wide variety of parties, including recipients in three important DOT financial assistance programs and the DBE and non-DBE contractors that work for them. It has been reviewed by the Office of Management and Budget. It is also a significant rule for purposes of the Department's Regulatory Policies and Procedures.

We do not believe that the rule will have significant economic impacts, however. In evaluating the potential economic impact of this rule, we begin by noting that it does not create a new program. It simply revises the rule governing an existing program. The economic impacts of the DBE program are created by the existing regulation and the statutes that mandate it, not by these revisions. The changes that we propose in this program are likely to have some positive economic impacts. For example, "one-stop shopping" and clearer standards in certification are likely to reduce costs for small businesses applying for DBE certification, as well as reducing administrative burdens on recipients.

The rule's "narrow tailoring" changes are likely to be neutral in terms of their overall economic impact. These could have some distributive impacts (e.g., if the proposed goal-setting mechanism results in changes in DBE goals, a different mix of firms may work on recipients' contracts), but there would probably not be net gains or losses to the economy. There could be some short-term costs to recipients owing to changes in program administration resulting from "narrow tailoring," however.

In any event, the economic impacts are quite speculative and appear nearly impossible to quantify. Comments did not provide, and the Department does not have, any significant information that would allow the Department to estimate any such impacts.

Regulatory Flexibility Act Analysis

The DBE program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals. Virtually all the businesses it affects are small entities. There is no doubt that a DBE rule always affects a substantial number of small entities.

This rule, while improving program administration and facilitating DBE participation (e.g., by making the certification process clearer) and responding to legal developments, appears essentially cost-neutral with respect to small entities in general (as noted above, the one-stop shopping feature is intended to benefit small entities seeking to participate). It does

not impose new burdens or costs on small entities, compared to the existing rule. It does not affect the total funds or business opportunities available to small businesses that seek to work in DOT financial assistance programs. To the extent that the proposals in this rule (e.g., with respect to changes in the methods used to set overall goals) lead to different goals than the existing rule, some small firms may gain, and others lose, business.

There is no data of which the Department is aware that would permit us, at this time, to measure the distributive effects of the revisions on various types of small entities. It is likely that any attempt to gauge these effects would be highly speculative. For this reason, we are not able to make a quantitative, or even a precise qualitative, estimate of these effects.

Paperwork Reduction Act

A number of provisions of this rule involve information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA). One of these provisions, concerning a report of DBE achievements that recipients make to the Department, is the subject of an existing OMB approval under the PRA.

With one exception, the other information collection requirements of the rule continue existing part 23 requirements, major elements of the DBE program that recipients and contractors have been implementing since 1980 or 1983. While the final rule modifies these requirements in some ways, the Department believes the overall burden of these requirements will remain the same or shrink. These requirements are the following:

- Firms applying for DBE certification must provide information to recipients to allow them to make eligibility decisions. Currently certified firms must provide information to recipients to allow them to review the firms' continuing eligibility. (After the UCP requirements of the rule are implemented, the burdens of the certification provisions should be substantially reduced.)
- When contractors bid on prime contracts that have contract goals, they must document their DBE participation and/or the good faith efforts they have made to meet the contract goals. (Given the final rule's emphasis on race-neutral measures, it is likely the burden in this area will be reduced.)
- Recipients must maintain a directory of certified DBE firms. (Once UCPs are implemented, there will be 52 consolidated directories rather than the hundreds now required, reducing burdens substantially.)
- Recipients must calculate overall goals and transmit them to the Department for approval. (The process of setting overall goals is more flexible, but may also be more complex, than under part 23. As they make their transition to the final rule's goal-setting process during the first years of implementation, recipients may temporarily expend more hours than in the past on information-related tasks.)
- Recipients must have a DBE program approved by the Department. (The final rule includes a one-time requirement to submit a revised program document making changes to conform to the new regulation.)

The Department estimates that these program elements will result in a total of approximately 1.58 million burden hours to recipients and contractors combined during the first year of implementation and approximately 1.47 million annual burden hours thereafter.

The final rule also includes one new information collection element. It calls for recipients to collect and maintain data concerning both DBE and non-DBE bidders on DOT-assisted contracts. This information is intended to assist recipients in making more precise determinations of the availability of DBEs and the shape of the "level playing field" the maintenance of which is a major objective of the rule. The Department estimates that this requirement will add 254,595 burden hours in the first year of implementation. This figure is projected to decline to 193,261 hours in the second year and to 161,218 hours in the third and subsequent years.

Both as the result of comments and what the Department learns as it implements the DBE program under part 26, it is possible for the Department's information needs and the way we meet them to change. Sometimes the way we collect information can be changed informally (e.g., by guidance telling recipients they need not repeat information that does not change significantly from year to year). In other circumstances, a technical amendment to the regulation may be needed. In any case, the Department will remain sensitive to situations in which modifying information collection requirements becomes appropriate.

As required by the PRA, the Department has submitted an information collection approval request to OMB. Organizations and individuals desiring to submit comments on information collection requirements should direct them to the Department's docket for this rulemaking. You may also submit copies of your comments to the Office of Information and Regulatory Affairs (OIRA), OMB, Room 10235, New Executive Office Building, Washington, DC, 20503; Attention: Desk Officer for U.S. Department of Transportation.

The Department considers comments by the public on information collections for several purposes:

- Evaluating the necessity of information collections for the proper performance of the Department's functions, including whether the information has practical utility.
- Evaluating the accuracy of the Department's estimate of the burden of the information collections, including the validity of the methods and assumptions used.
- Enhancing the quality, usefulness, and clarity of the information to be collected.
- Minimizing the burden of the collection of information on respondents, including through the use of electronic and other methods.

The Department points out that, with the exception of the bid data collection, all the information collection elements discussed in this section of the preamble have not only been part of the Department's DBE program for many years, but have also been the subject of extensive public comment following the 1992 NPRM and 1997 SNPRM. Among the over 900 comments received in response to these notices were a number addressing administrative burden issues surrounding these program elements. In this final rule, the Department has responded to these comments.

OMB is required to make a decision concerning information collections within 30–60 days of the publication of this notice. Therefore, for best effect, comments should be received by DOT/OMB within 30 days of publication. Following receipt of OMB approval, the Department will publish a **Federal Register** notice containing the applicable OMB approval numbers.

Federalism

The rule does not have sufficient Federalism impacts to warrant the preparation of a Federalism assessment. While the rule concerns the activities of state and local governments in DOT financial assistance programs, the rule does not significantly alter the role of state and local governments vis-a-vis DOT from the present part 23. The availability of program waivers could allow greater flexibility for state and local participants, however.

List of Subjects

49 CFR Part 23

Administrative practice and procedure, Airports, Civil rights,

Concessions, Government contracts, Grant programs—transportation, Minority businesses, Reporting and recordkeeping requirements.

49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Highways and roads, Mass transportation, Minority businesses, Reporting and recordkeeping requirements.

Issued this 8th day of January, 1999, at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR subtitle A as follows:

PART 23—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

1. Revise the heading of 49 CFR part 23 as set forth above.

2. Revise the authority citation for 49 CFR part 23 to read as follows:

Authority: 42 U.S.C. 200d *et seq.*; 49 U.S.C. 47107 and 47123; Executive Order 12138, 3 CFR, 1979 Comp., p. 393.

Subparts A, C, D, and E—[Removed and Reserved]

3. Remove and reserve subparts A, C, D, and E of part 23.

§ 23.89 [Amended]

4. Amend § 23.89 as follows:

a. In the definition of "disadvantaged business," remove the words "§ 23.61 of subpart D of this part" and add the words "49 CFR part 26"; and remove the words "§ 23.61" in the last line of the definition and add the words "49 CFR part 26".

b. In the definition of "small business concern," paragraph (b), remove the words "§ 23.43(d)" and add the words "§ 23.43(d) in effect prior to March 4, 1999 (See 49 CFR Parts 1 to 99 revised as of October 1, 1998.)".

c. In the definition of "socially and economically disadvantaged individuals," remove the words "§ 23.61 of subpart D of this part" and add "49 CFR part 26".

§ 23.93 [Amended]

5. Amend § 23.93(a) introductory text by removing the words "§ 23.7" and adding the words "§ 26.7".

§ 23.95 [Amended]

6. Amend § 23.95(a)(1) by removing the words "based on the factors listed in § 23.45(g)(5)" and adding the words "consistent with the process for setting overall goals set forth in 49 CFR 26.45".

7. In addition, amend § 23.95 as follows:

a. In paragraph (f)(1), remove the words "§ 23.51" and add the words "49 CFR part 26, subpart E";

b. In paragraph (f)(2), remove the words "Except as provided in § 23.51(c), each" and add "Each";

c. Remove paragraph (f)(5);

d. In paragraph (g)(1), remove the words "§ 23.53" and add the words "49 CFR part 26, subpart D".

§ 23.97 [Amended]

8. Amend § 23.97 by removing the words "§ 23.55" and adding the words "49 CFR 26.89".

§ 23.11 [Removed]

9. Remove § 23.111.

10. Add a new 49 CFR part 26, to read as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Subpart A—General

Sec.

26.1 What are the objectives of this part?
26.3 To whom does this part apply?
26.5 What do the terms used in this part mean?
26.7 What discriminatory actions are forbidden?
26.9 How does the Department issue guidance and interpretations under this part?
26.11 What records do recipients keep and report?
26.13 What assurances must recipients and contractors make?
26.15 How can recipients apply for exemptions or waivers?

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

26.21 Who must have a DBE program?
26.23 What is the requirement for a policy statement?
26.25 What is the requirement for a liaison officer?
26.27 What efforts must recipients make concerning DBE financial institutions?
26.29 What prompt payment mechanisms may recipients have?
26.31 What requirements pertain to the DBE directory?
26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
26.35 What role do business development and mentor-protégé programs have in the DBE program?
26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

Subpart C—Goals, Good Faith Efforts, and Counting

26.41 What is the role of the statutory 10 percent goal in this program?
26.43 Can recipients use set-asides or quotas as part of this program?
26.45 How do recipients set overall goals?
26.47 Can recipients be penalized for failing to meet overall goals?
26.49 How are overall goals established for transit vehicle manufacturers?
26.51 What means do recipients use to meet overall goals?
26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?
26.55 How is DBE participation counted toward goals?

Subpart D—Certification Standards

26.61 How are burdens of proof allocated in the certification process?
26.63 What rules govern group membership determinations?
26.65 What rules govern business size determinations?
26.67 What rules govern determinations of social and economic disadvantage?
26.69 What rules govern determinations of ownership?
26.71 What rules govern determinations concerning control?
26.73 What are other rules affecting certification?

Subpart E—Certification Procedures

26.81 What are the requirements for Unified Certification Programs?
26.83 What procedures do recipients follow in making certification decisions?
26.85 What rules govern recipients' denials of initial requests for certification?
26.87 What procedures does a recipient use to remove a DBE's eligibility?
26.89 What is the process for certification appeals to the Department of Transportation?
26.91 What actions do recipients take following DOT certification appeal decisions?

Subpart F—Compliance and Enforcement

26.101 What compliance procedures apply to recipients?
26.103 What enforcement actions apply in FHWA and FTA programs?
26.105 What enforcement actions apply in FAA Programs?
26.107 What enforcement actions apply to firms participating in the DBE program?
26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?
Appendix A to part 26—Guidance Concerning Good Faith Efforts
Appendix B to part 26—Forms [Reserved]
Appendix C to part 26—DBE Business Development Program Guidelines
Appendix D to part 26—Mentor-Protégé Program Guidelines
Appendix E to part 26—Individual Determinations of Social and Economic Disadvantage

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d *et seq.*); 49 U.S.C 1615, 47107, 47113, 47123;

Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

(a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;

(b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;

(c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

(e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;

(f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

(g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102–240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA–21, Pub. L. 105–178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

§ 26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

§ 26.9 How does the Department issue guidance and interpretations under this part?

(a) This part applies instead of subparts A and C through E of 49 CFR part 23 in effect prior to March 4, 1999. (See 49 CFR Parts 1 to 99, revised as of October 1, 1998.) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 have definitive, binding effect in implementing the provisions of this part and constitute the official position of the Department of Transportation.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid and binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

§ 26.11 What records do recipients keep and report?

(a) [Reserved]

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects. For every firm, the following information must be included:

(1) Firm name;

(2) Firm address;

(3) Firm's status as a DBE or non-DBE;

(4) The age of the firm; and

(5) The annual gross receipts of the firm.

§ Section 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

§ 26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients that receive $250,000 or more in FTA planning, capital, and/or operating assistance in a Federal fiscal year;

(3) FAA recipients that receive a grant of $250,000 or more for airport planning or development.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed and approved by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has

approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than a specific number of days from receipt of each payment you make to the prime contractor. This clause must also require the prompt return of retainage payments from the prime contractor to the subcontractor within a specific number of days after the subcontractor's work is satisfactorily completed.

(1) This clause may provide for appropriate penalties for failure to comply, the terms and conditions of which you set.

(2) This clause may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(b) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

§ 26.31 What requirements pertain to the DBE directory?

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to unsure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to verify that the work committed to DBEs at contract award is

actually performed by the DBEs. This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) and include a provision ensuring that DBE participation is credited toward overall or contract goals only when payments are actually made to DBE firms.

Subpart C—Goals, Good Faith Efforts, and Counting

§ 26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

(a) You must set an overall goal for DBE participation in your DOT-assisted contracts.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same SIC codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* Subject to the approval of the DOT operating administration, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) You may also consider available evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.

(2) If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see § 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific

contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

Example to Paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to Paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to Paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to Paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/

offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

(2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(3) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(g) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

§ 26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities

by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i)).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or your overall goal until the amount being counted toward the goal has been paid to the DBE.

Subpart D—Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups

identified in § 26.67(a) are socially and economically disadvantaged. This means that they do not have the burden of proving to you that they are socially and economically disadvantaged. However, applicants have the obligation to provide you information concerning their economic disadvantage (see § 26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

§ 26.63 What rules govern group membership determinations?

(a) If you have reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, you must require the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of $16.6 million. The Secretary adjusts this amount for inflation from time to time.

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation.

(ii) In determining net worth, you must exclude an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). A contingent liability does not reduce an individual's net worth. The personal net worth of an individual claiming to be an Alaska Native will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation: cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed $2,000 per individual per annum; stock (including stock issued or distributed by an ANC as a dividend or distribution on stock); a partnership interest; land or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock); and an interest in a settlement trust.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds $750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) *8(a) and SDB Firms.* If a firm applying for certification has a current, valid certification from or recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an SDB certification based on the firm's self-certification as an SDB), you may accept the firm's 8(a) or SDB certification in lieu of conducting your own certification proceeding, just as you may accept the certification of another DOT recipient for this purpose. You are not required to do so, however.

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE

certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds $750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§ 26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in § 26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that

owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

§ 26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of § 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of § 26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by § 26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

§ 26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form.

(i) *Uniform form.* [Reserved]

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:

(1) Certify the firm in reliance on the certification decision of the other recipient;

(2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or

(3) Require the applicant to go through your application process without regard to the action of the other recipient.

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of § 26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be

deemed to have failed to cooperate under § 26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89.

§ 26.85 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(c) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendancy of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(i) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(j) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm which is denied certification or whose eligibility is removed by a recipient, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 2401, Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by

substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in

noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§ 26.105 What enforcement actions apply in FAA Programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) If you are a recipient, you shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, state, and local law.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took

all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call; meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Appendix B to Part 26—Forms [Reserved]

Appendix C to Part 26—DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

(1) Profitability;

(2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;

(3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(4) Ability to obtain bonding;

(5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

Social Disadvantage

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

Economic Disadvantage

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) When married, an individual claiming economic disadvantage also must submit separate financial information for his or her spouse, unless the individual and the spouse are legally separated.

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

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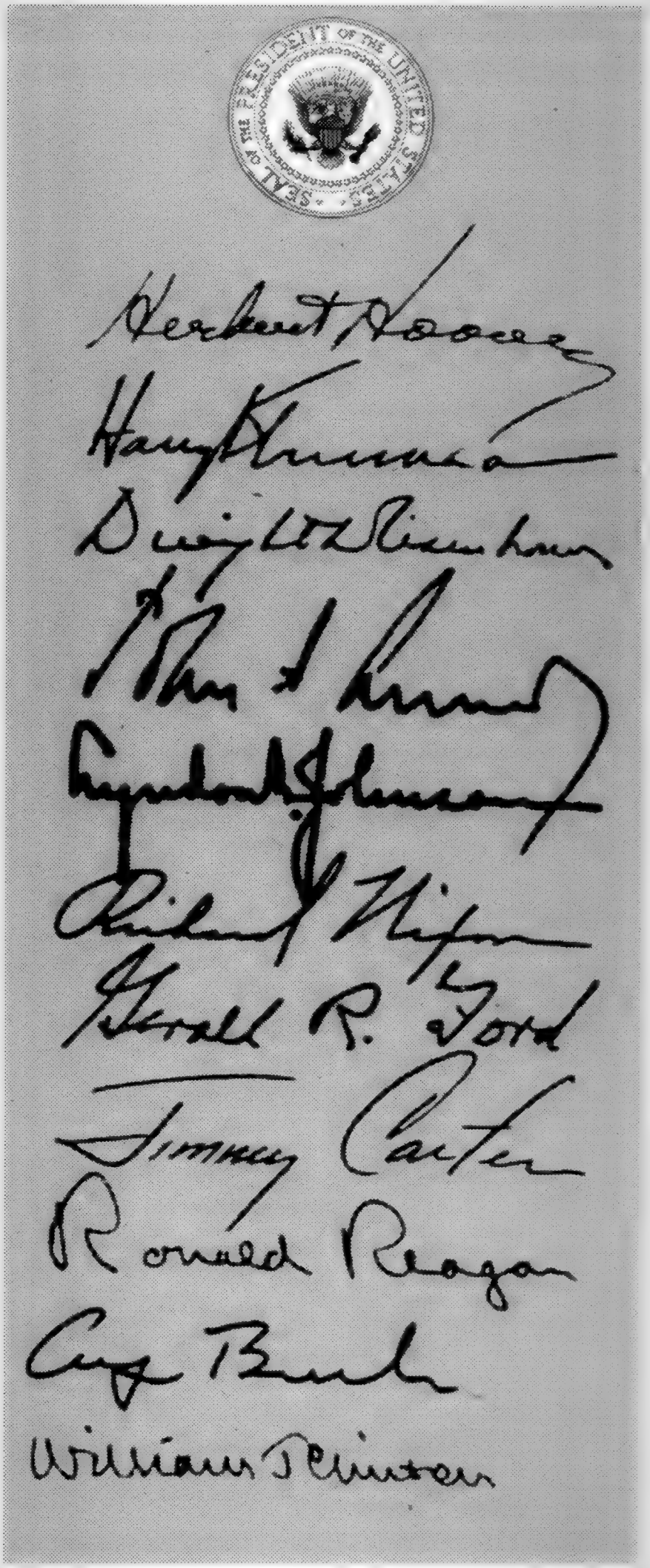

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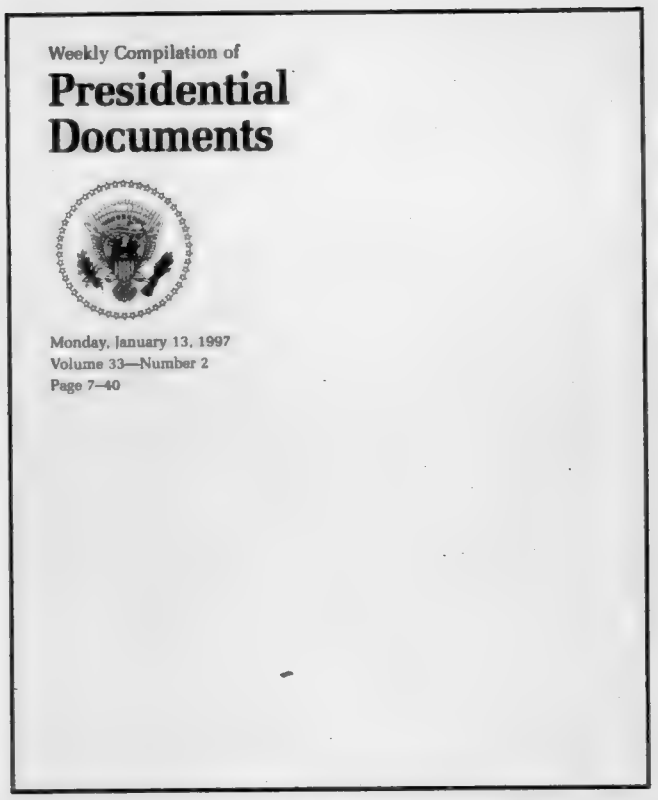

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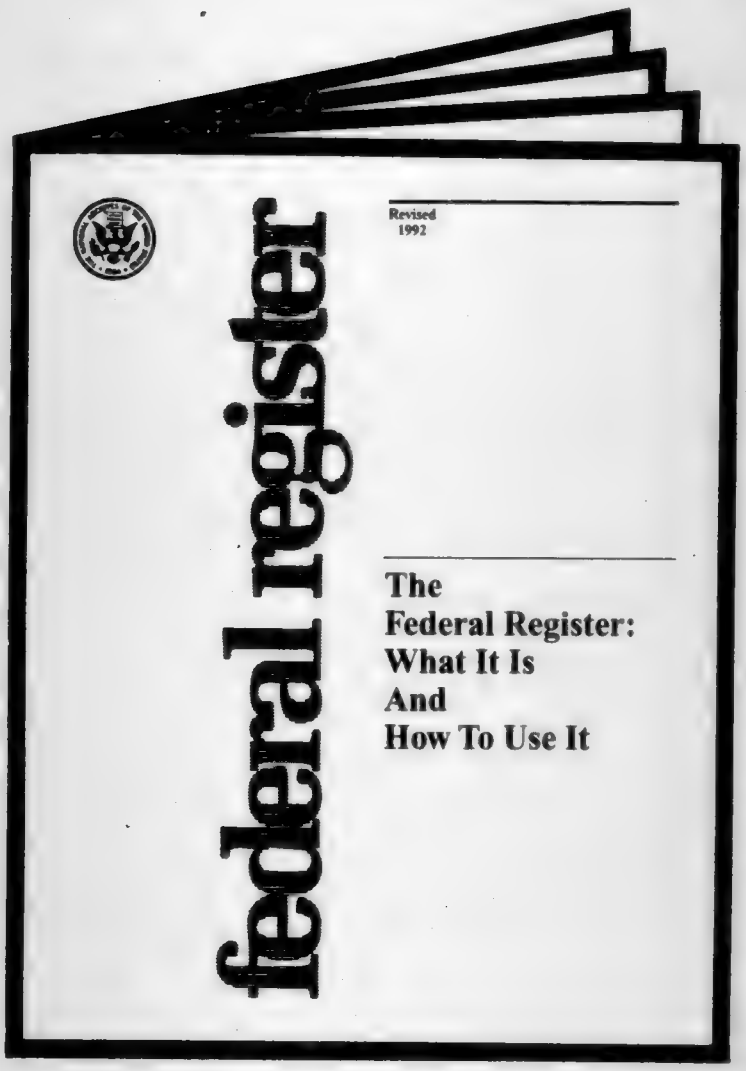

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Federal Register
Vol. 64, No. 22
Wednesday, February 3, 1999

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–73–AD; Amendment 39–11019; AD 99–03–05]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Model O–540–F1B5 Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Textron Lycoming Model O–540–F1B5 reciprocating engines. This action requires the removal and replacement of the crankshaft gear retaining bolts. This amendment is prompted by 2 reported failures of the crankshaft gear retaining bolts. The actions specified in this AD are intended to prevent failure of the crankshaft gear retaining bolts, which can result in engine failure and subsequent autorotation and forced landing.

DATES: Effective February 18, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–73–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

Information regarding this AD may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., 3rd Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7531, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of 2 failures of the crankshaft gear retaining bolts on Textron Lycoming Model O–540–F1B5 reciprocating engines, installed on Robinson R44 series rotorcraft. The investigation revealed that the head of the retaining bolts sheared off allowing the crankshaft gear to disengage. The crankshaft gear drives both magnetos and the camshaft. Failure of the retaining bolt results in total loss of power without prior warning. The FAA has determined that the 2 crankshaft gear bolts to fail in service failed from a condition known as hydrogen embrittlement. This condition results from the underbaking process during manufacturing, which leads to incomplete hydrogen relief, and as such, the bolts can be susceptible to hydrogen embrittlement. Therefore, the FAA has determined that this condition affects only a specific population of retaining bolts, and has identified by serial number the specific engines that require replacement of the suspect bolts. This condition, if not corrected, could result in failure of the crankshaft gear retaining bolts, which can result in engine failure and subsequent autorotation and forced landing.

The suspect crankshaft gear retaining bolts must be replaced by either Textron Lycoming or Robinson Helicopter company maintenance personnel. In order to allow the removal and replacement of the suspect bolts without removing the engine from the helicopter, a complex procedure is required. This procedure requires removal of the accessory gear case without removal of the oil sump, which is beyond the scope of current engine service instructions.

Since an unsafe condition has been identified that is likely to exist or develop on engines of the same type design, this AD is being issued to prevent crankshaft gear retaining bolt failure. This AD requires removal and replacement of the crankshaft gear retaining bolts. The actions are required to be accomplished in accordance with the service documents described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–73–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–03–05 Textron Lycoming: Amendment 39–11019. Docket 98–ANE–73–AD.

Applicability: Textron Lycoming Model O–540–F1B5 reciprocating engines, with the following Textron Lycoming Engine Serial Numbers, installed on but not limited to Robinson Helicopters Co. Model R–44 rotorcraft.

L–24545–40A	L–24628–40A
L–24766–40A	L–24772–40A
L–25050–40A	L–25052–40A
L–25053–40A	L–25054–40A
L–25063–40A	L–25064–40A
L–25065–40A	L–25066–40A
L–25067–40A	L–25068–40A
L–25069–40A	L–25070–40A
L–25071–40A	L–25072–40A
L–25073–40A	L–25074–40A
L–25075–40A	L–25076–40A
L–25077–40A	L–25078–40A
L–25080–40A	L–25081–40A
L–25083–40A	L–25084–40A
L–25085–40A	L–25086–40A
L–25087–40A	L–25088–40A
L–25089–40A	L–25090–40A
L–25091–40A	L–25092–40A
L–25093–40A	L–25094–40A
L–25095–40A	L–25096–40A
L–25097–40A	L–25098–40A
L–25099–40A	L–25100–40A
L–25101–40A	L–25102–40A
L–25103–40A	L–25104–40A
L–25105–40A	L–25106–40A
L–25116–40A	L–25117–40A
L–25118–40A	L–25119–40A
L–25120–40A	L–25121–40A
L–25122–40A	L–25123–40A
L–25124–40A	L–25125–40A
L–25126–40A	L–25127–40A
L–25128–40A	L–25129–40A
L–25130–40A	L–25131–40A
L–25132–40A	L–25133–40A
L–25134–40A	L–25135–40A
L–25136–40A	L–25137–40A
L–25138–40A	L–25139–40A
L–25140–40A	L–25141–40A
L–25142–40A	L–25143–40A
L–25144–40A	L–25145–40A
L–25146–40A	L–25149–40A
L–25150–40A	L–25154–40A
L–25155–40A	L–25156–40A
L–25157–40A	L–25158–40A
L–25159–40A	L–25160–40A
L–25161–40A	L–25162–40A
L–25164–40A	L–25166–40A
L–25167–40A	L–25168–40A
L–25169–40A	L–25170–40A
L–25171–40A	L–25172–40A
L–25173–40A	L–25174–40A
L–25175–40A	L–25176–40A
L–25177–40A	L–25178–40A
L–25179–40A	L–25180–40A
L–25181–40A	L–25182–40A
L–25183–40A	L–25184–40A
L–25185–40A	L–25186–40A
L–25188–40A	L–25189–40A
L–25190–40A	L–25191–40A
L–25192–40A	L–25193–40A
L–25198–40A	L–25200–40A
L–25201–40A	L–25202–40A
L–25204–40A	L–25206–40A
L–25207–40A	L–25208–40A
L–25211–40A	L–25212–40A
L–25213–40A	L–25214–40A
L–25216–40A	L–25217–40A
L–25218–40A	L–25219–40A
L–25221–40A	L–25222–40A
L–25223–40A	L–25228–40A
L–25229–40A	L–25230–40A
L–25231–40A	L–25232–40A
L–25233–40A	L–25234–40A
L–25235–40A	L–25236–40A
L–25237–40A	L–25238–40A
L–25239–40A	L–25240–40A
L–25242–40A	L–25243–40A
L–25244–40A	L–25246–40A
L–25249–40A	L–25250–40A
L–25251–40A	L–25252–40A
L–25257–40A	

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the crankshaft gear retaining bolts, which can result in engine failure and subsequent autorotation and forced landing, accomplish the following:

(a) Within 10 hours time in service, or 3 days after the effective date of this AD, whichever occurs first, have the crankshaft gear retaining bolt, part number STD–2209, replaced by Textron Lycoming or Robinson Helicopter Company.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on February 18, 1999.

Issued in Burlington, Massachusetts, on January 27, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–2474 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–10]

Establishment of Class E Airspace; Oroville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Oroville, CA. The establishment of a Global Positioning

System (GPS) Standard Instrument Approach Procedure (SIAP) To Runway (RWY) 1 at Oroville Municipal Airport has made this action necessary. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 1 SIAP to Oroville Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Oroville Municipal Airport, Oroville, CA.

EFFECTIVE DATE: 0901 UTC March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1998, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Oroville, CA (63 FR 242). Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY I SIAP at Oroville Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Oroville Municipal Airport, Oroville, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace at Oroville, CA. Controlled airspace extending upward from 700 feet above the surface is required for aircraft executing the GPS RWY 1 SIAP at Oroville Municipal Airport. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 1 SIAP at Oroville Municipal Airport, Oroville, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120: E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWB CA E5 Oroville, CA [New]

Oroville Municipal Airport, CA
(Lat. 39°29'16" N, long. 121°37'19" W)
Richvale Airport, CA
(Lat. 39°29'52" N, long. 121°46'17" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Oroville Municipal Airport, excluding the Maryville, CA, Class E airspace area, and excluding that airspace within a 1-mile radius of the Richvale Airport.

* * * * *

Issued in Los Angeles, California on January 25, 1999.

Harvey R. Riebel,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–2502 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–22]

Establishment of Class E Airspace; Metropolitan Oakland International Airport, CA; Correction

AGENCY: Federal Aviation Administration.

ACTION: Final rule; correction.

SUMMARY: On December 24, 1998, the FAA published a final rule in the **Federal Register** that established E3 airspace at Metropolitan Oakland International Airport, CA. The airspace description contained two inadvertent errors. This document corrects those errors, and has no substantive effect on the action.

EFFECTIVE DATE: This correction is effective on March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Specialist, AWP–520.11, Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Lawndale, CA 90261; telephone: (310) 725–6611.

SUPPLEMENTARY INFORMATION: The following correction is an editorial change.

Correction to Final Rule

In FR Doc. 98–34167, on page 71217 in the **Federal Register** issue of Thursday, December 24, 1998 make the following correction in the last section of the third column: "AWPCA E3" should read "AWP CA E3", and "8.5" should read "9.0".

Issued in Los Angeles, California on January 22, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–2501 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; SFAR–50–2; Amendment 93–76]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On December 31, 1996, the FAA published a final rule that codified the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modified the dimensions of GCNP Special Flight Rules Area (SFRA); established new and modified existing flight-free zones; established new and modified existing flight corridors; established reporting requirements for commercial sightseeing companies operating in the SFRA; prohibited commercial sightseeing operations during certain time periods; and limited the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. On February 21, 1997, the FAA delayed the implementation of certain portions of that final rule. Specifically, that action delayed the effective date for 14 CFR 93.301, 93.305, and 93.307 of the final rule and reinstated portions of and amended the expiration date of SFAR No. 50–2. However, that action did not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or the other portions of the rule. This amendment will delay the effective date for 14 CFR 93.301, 93.305, and 93.307 of the December 31, 1996 final rule until January 31, 2000. Additionally, this rule will amend the expiration date of those portions of SFAR No. 52–2 that were reinstated in the February 21, 1997 final rule and extended in the rule published on December 17, 1997.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking (NPRM), and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to further reduce the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amended part 93 of the Federal Aviation Regulations and added a new subpart to codify the provisions of SFAR No. 50–2, modified the dimensions of the GCNP Special Flight Rules Area; established new and modifies existing flight-free zones (FFZ's); established new and modifies existing flight corridors; and established reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibited commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. These provisions originally were to become effective on May 1, 1997.

On February 21, 1997, the FAA issued a final rule and request for comments that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26, 1997). Specifically, that action delayed the implementation date, until January 31, 1998, of those sections of the rule that address the Special Flight Rules Area, flight-free zones, and flight corridors, respectively sections 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated and the expiration date was extended. With the goal to address concerns about the air tour routes possible, implementation was delayed to allow the FAA and the Department of the Interior (DOI) to consider comments and suggestions to improve the proposed route structure. This latter action did not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule. This delay was subsequently extended until January 31, 1999 (62 FR 66248; December 17, 1997).

By Notice No. 98–18 (63 FR 67544; December 7, 1998) the FAA proposed to further extend the effective date for certain portions of the final rule until January 31, 2000.

Discussion of Comments

The FAA received four comments on the proposed extension. The Grand Canyon Air Tour Council (GCATC) comments that the rulemaking effort would require operators to undertake extensive aerial investigation and operational and environmental familiarization, by January 31, 2000, on routes that have not yet been announced. For a typical fixed wing operator this would require 60 plus training flights. Operators would also have to develop and disseminate new marketing information, programs, and promotion with little advance notice. GCATC describes the FAA's record of rulemaking in GCNP as a "four year environment of regulatory uncertainty and exclusion." GCATC recommends that FAA reschedule the implementation of the final rule to January 31, 2001, and that the FAA undertake a stakeholders' negotiated rulemaking for 60–90 days.

United States Air Tour Association (USATA) supports GCATC's comments and argues that the FAA and NPS have expended far more resources in its patchwork of rulemaking than it would on a 60–90 day negotiated rulemaking effort. USATA notes that impending, yet unannounced additional rulemaking efforts will force small business entities with the choice of meeting impossible time frames for readiness and compliance or simply not being able to prepare and face serious economic harm to their businesses. USATA recommends that the FAA hold in abeyance the implementation of the final rules on the air tour routes, flight free zones, and flight corridors, and instead a formal Aviation Rulemaking Advisory Committee process with a limit of 60–90 days.

Clark County Department of Aviation and the Las Vegas Convention and Visitors Authority (Clark County) comment that a stay of the effective date is necessary to ensure that the new flight-free zones are implemented without serious risks to aviation safety and the many direct and indirect jobs that impact GCNP air tour opportunities. This commenter notes that without other proposed routes, the implementation of the FFZ's would leave operators only with a choice between the unscenic Blue Direct route and the Blue 2 route that will quickly become oversaturated. Without a replacement route, Clark County argues that the ability of air tour operators to market a product that brings millions of dollars to the Las Vegas economy will be seriously reduced.

Clark County also questions the FAA's ability to validate or predict noise levels in the Grand Canyon, saying that the noise modeling may do a poor job of reflecting actual conditions. This places an uncertainty around the actual need for additional

control measures. The commenter sees, as essential, the need to possess validated noise models prior to promulgating extensive new regulations; otherwise, the regulations are at risk for being deemed arbitrary and capricious by the courts. Clark County urges that the FAA initiate a stakeholder-based negotiated rulemaking, and comments that the FAA's excuses for not doing so are neither compelling nor with substance.

Eagle Jet Charter, Inc. (EJC) supports the 1-year delay in the effective date of the final rule. EJC asks that the FAA incorporate its comments filed January 23, 1998, that an amendment for operations conducted under IFR above 15,000 feet MSL be proposed and adopted concurrently with other modifications to the GCNP airspace.

FAA Response

As stated in the notice, the FAA continues to believe that substantial progress has been made in restoring natural quiet to the GCNP. This has been accomplished through the curfew and a limit on the number of aircraft that can be operated in the SFRA. In addition, the reporting requirement has given the FAA and NPS valuable data on the actual number of operations that currently exist in GCNP.

Although commenters suggest that a 60–90 day negotiated rulemaking effort would bring about a successful conclusion to the many issues and competing interests, it has been the FAA's experience that controversial negotiated rulemaking efforts may take years rather than months to reach a conclusion. Both the FAA and NPS are unwilling to incur this type of additional delay for GCNP. However, if all affected parties agree to a proposal, then the proposal should be forwarded to FAA and NPS. Although commenters are correct in pointing out that the regulatory process for GCNP has been time consuming, the lessons learned in the process are not inconsiderable, and should make future work efficient.

It is reasonable for air tour operators to expect that the FAA must propose an air tour route system for the west end of GCNP that safely replaces the Blue 1 route, and that this must be done in a timely manner for purposes of training and marketing. A route proposal and corresponding rulemaking effort is underway.

In response to Clark County's comment on the need for validated noise models, the Integrated Noise Model (INM), as refined by FAA to reflect the terrain and expanded to reflect the size of the area surrounding the Grand Canyon, produces reasonably accurate predictions of the aircraft noise exposure in the GCNP. The INM, as refined and applied, complies with all recommended practices for the prediction of aircraft noise. The FAA verified the reasonableness of the predicted noise levels using data obtained from actual measurements in the Grand Canyon. See, December 1996 Final Environmental Assessment at p. 4–5 and Appendix C. Actual measured data correlated closely with the results predicted using the INM.

NPS, however, uses a newer, different computer model for analyzing audibility of aircraft in park environments, called the National Park Service Overflight Decision Support System. To address NPS concerns about the differences between the two models, both agencies have agreed to jointly conduct a noise model validation study. A group of experts will be convened to develop a plan for evaluating and validating models to be followed by field verification.

Immediate Effective Date

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become final rule upon issuance. The FAA and NPS must implement new air tour routes, flight-free zones, and flight corridors at the same time in order to transition to a new operating environment in GCNP. Currently, the effective date for the Grand Canyon final rule (62 FR 69301; December 31, 1996) is extended until January 31, 1999. If this final rule had not been issued, and made effective, by that date, the new flight-free zones and flight corridors would go into effect, resulting in considerable chaos, as some air tour routes would disappear. This would not only be burdensome to air tour operators and the traveling public, but it could also impose possible safety problems in GCNP. To preclude these conflicts, this amendment is effective upon issuance.

Economic Evaluation

In issuing the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket Number 28537. That economic evaluation was later revised based on new information received on the number of aircraft being operated in the SFRA. The reevaluation of the economic data, including alternatives considered, was published in the Notice of Clarification (62 FR 58898). In the notice, the FAA concluded that the rule is still cost beneficial. This extension of the effective date for the final rule will not affect that reevaluation, although the delay in the implementation of the FFZs will be temporarily cost relieving for air tour operators.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This analysis was also reevaluated and revised findings were published in the Notice of Clarification referenced above, as a Supplemental Regulatory Flexibility Analysis. This extended delay of the compliance date will not affect that supplemental analysis.

Federalism Implications

This amendment will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Amendment

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec. 9. *Termination date.* Sections 1. Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 2000.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new §§ 93.301, 93.305, and 93.307 to be added to 14 CFR Chapter 1, is delayed until 0901 UTC, January 31, 2000.

Issued in Washington, DC, on January 29, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–2493 Filed 1–29–99; 11:46 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29455; Amdt. No. 1912]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 22, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 1.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC Number	SIAP
01/07/99	TX.	JACKSONVILLE	CHEROKEE COUNTY	FDC 9/0127	NDB RWY 13, AMDT 5...
01/11/99	TX.	JACKSONVILLE	CHEROKEE COUNTY	FDC 9/0169	VOR/DME OR GPS RWY 13, AMDT 3...
01/12/99	NJ.	ROBBINSVILLE	TRENTON-ROBBINSVILLE	FDC 9/0195	VOR RWY 29 AMDT 10A...
01/13/99	IN.	SULLIVAN	SULLIVAN COUNTY	FDC 9/0233	VOR/DME OR GPS–A, AMDT 1...
01/13/99	IN.	SULLIVAN	SULLIVAN COUNTY	FDC 9/0234	NDB RWY 36, AMDT 6...
01/13/99	MO.	CAMERON	CAMERON MEMORIAL	FDC 9/0215	NDB OR GPS RWY 35, AMDT 1A...
01/13/99	NE.	LINCOLN	LINCOLN MUNI	FDC 9/0231	VOR OR GPS RWY 17L, AMDT 6A...
01/14/99	NE.	SCOTTSBLUFF	WILLIAM B. HEILIG	FDC 9/0245	LOC BC RWY 12, AMDT 8A...
01/14/99	WI.	MANITOWOC	MANITOWOC COUNTY	FDC 9/0246	VOR OR GPS RWY 17, AMDT 14A...
01/19/99	TX.	AUSTIN	ROBERT MUELLER MUNI	FDC 9/0332	GPS RWY 13R, ORIG...
01/20/99	AL.	HUNTSVILLE	HUNTSVILLE INTL–CARL T. JONES FIELD.	FDC 9/0203	ILS RWY 18L AMDT 2...
01/20/99	AL.	MONTGOMERY	MONTGOMERY REGIONAL (DANNELLY FIELD).	FDC 9/0353	ILS RWY 28, AMDT 8B...
01/20/99	NC.	MOUNT AIRY	MOUNT AIRY/SURRY COUNTY	FDC 9/0360	NDB RWY 36, ORIG...
01/20/99	NC.	MOUNT AIRY	MOUNT AIRY/SURRY COUNTY	FDC 9/0361	GPS RWY 36, ORIG...
01/20/99	TN.	SMYRNA	SMYRNA	FDC 9/0359	NDB RWY 32 AMDT 8...
11/26/98	NJ.	TETERBORO	TETERBORO	FDC 8/8263	VOR/DME RWY 6 ORIG...
11/26/98	NJ.	TETERBORO	TETERBORO	FDC 8/8264	NDB OR GPS RWY 6 AMDT 17B...

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC Number	SIAP
01/07/99	TX.	JACKSONVILLE	CHEROKEE COUNTY	FDC 9/0127	NDB RWY 13, AMDT 5...
01/11/99	TX.	JACKSONVILLE	CHEROKEE COUNTY	FDC 9/0169	VOR/DME OR GPS RWY 13, AMDT 3...
01/12/99	NJ.	ROBBINSVILLE	TRENTON-ROBBINSVILLE	FDC 9/0195	VOR RWY 29 AMDT 10A...
01/13/99	IN.	SULLIVAN	SULLIVAN COUNTY	FDC 9/0233	VOR/DME OR GPS–A, AMDT 1...
01/13/99	IN.	SULLIVAN	SULLIVAN COUNTY	FDC 9/0234	NDB RWY 36, AMDT 6...
01/13/99	MO.	CAMERON	CAMERON MEMORIAL	FDC 9/0215	NDB OR GPS RWY 35, AMDT 1A...
01/13/99	NE.	LINCOLN	LINCOLN MUNI	FDC 9/0231	VOR OR GPS RWY 17L, AMDT 6A...
01/14/99	NE.	SCOTTSBLUFF	WILLIAM B. HEILIG	FDC 9/0245	LOC BC RWY 12, AMDT 8A...
01/14/99	WI.	MANITOWOC	MANITOWOC COUNTY	FDC 9/0246	VOR OR GPS RWY 17, AMDT 14A...
01/19/99	TX.	AUSTIN	ROBERT MUELLER MUNI	FDC 9/0332	GPS RWY 13R, ORIG...

FDC Date	State	City	Airport	FDC Number	SIAP
01/20/99	AL.	HUNTSVILLE	HUNTSVILLE INTL–CARL T. JONES FIELD.	FDC 9/0203	ILS RWY 18L AMDT 2...
01/20/99	AL.	MONTGOMERY	MONTGOMERY REGIONAL (DANNELLY FIELD).	FDC 9/0353	ILS RWY 28, AMDT 8B...
01/20/99	NC.	MOUNT AIRY	MOUNT AIRY/SURRY COUNTY	FDC 9/0360	NDB RWY 36, ORIG...
01/20/99	NC.	MOUNT AIRY	MOUNT AIRY/SURRY COUNTY	FDC 9/0361	GPS RWY 36, ORIG...
01/20/99	TN.	SMYRNA	SMYRNA	FDC 9/0359	NDB RWY 32 AMDT 8...
11/26/98	NJ.	TETERBORO	TETERBORO	FDC 8/8263	VOR/DME RWY 6 ORIG...
11/26/98	NJ.	TETERBORO	TETERBORO	FDC 8/8264	NDB OR GPS RWY 6 AMDT 17B...

[FR Doc. 99–2504 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–23670; IS–1179; File No. S7–23–95]

RIN 3235–AE98

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Commission is extending the compliance date for certain amendments to the rule under the Investment Company Act that governs the custody of investment company assets outside the United States.

EFFECTIVE DATES: The *effective* date of the rule amendments published on May 16, 1997 (62 FR 26923) remains June 16, 1997. Effective February 1, 1999, the *compliance* date for the rule amendments, except for the amended definition of an "eligible foreign custodian," is extended from February 1, 1999, to May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas M.J. Kerwin, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, at (202) 942–0690, in the Division of Investment Management, Mail Stop 5–6, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is extending the compliance date for certain amendments to rule 17f–5 [17 CFR 270.17f–5] under the Investment Company Act of 1940 [15 U.S.C. 80a].

I. Discussion

The Commission adopted amendments to rule 17f–5 under the Investment Company Act in 1997 (the "1997 Amendments").[1] The release that adopted the 1997 Amendments provided that the amendments would become effective on June 16, 1997, and that registered management investment companies ("funds") must bring their foreign custody arrangements into compliance with the amended rule by June 16, 1998.[2] In May 1998, in anticipation that funds and custodian banks would recommend additional amendments to the rule, the Commission extended the compliance date for certain of the 1997 Amendments to February 1, 1999.[3]

On June 30, 1998, representatives of funds and of custodian banks submitted to the Commission a joint proposal to further amend rule 17f–5.[4] The Commission's staff has studied the joint proposal and continues to gather information about related issues. The staff is preparing recommendations to the Commission on whether to propose further amendments to rule 17f–5 based on the joint proposal or other possible approaches. Additional time beyond February 1, 1999 will be necessary for the staff to complete its analysis and make its recommendations. The Commission therefore is extending until May 1, 1999 the compliance date for certain of the 1997 Amendments.[5] In the interim, a fund may continue to operate its foreign custody arrangements either under the 1997 Amendments, or under rule 17f–5 as it existed prior to the 1997 Amendments, but subject to the amended definition of eligible foreign custodian.[6]

II. Certain Findings

The Commission for good cause finds that, based on the reasons cited above, notice and solicitation of comment regarding the extension of the compliance date for certain of the 1997 Amendments is impracticable, unnecessary, and contrary to the public interest.[7] The Commission notes that the February 1, 1999 compliance date is imminent, that many funds may not be in a position to comply with the 1997 Amendments, and that a limited extension will aid the Commission in considering whether additional amendments are necessary. Fund representatives have stated that if the compliance date is not extended, some funds may have to withdraw assets from foreign custodians or sell foreign assets, which could increase costs for investors or otherwise harm investors.[8] The Commission notes that the 1997 Amendments were submitted for public notice and comment, and that any amendments that may be considered in the future will be submitted for notice and comment.

In analyzing the costs and benefits of this action, the Commission believes that the extension of the compliance date for certain of the 1997 Amendments will not impose costs on funds, but will enable funds to avoid the costs of attempting to comply with certain rule provisions that they assert may be unworkable. The Commission

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[1] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997) [62 FR 26923 (May 16, 1997)].

[2] *Id.* at text following n.86.

[3] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 23201 (May 21, 1998) [63 FR 29345 (May 29, 1998)].

[4] *See* Letter to Barry P. Barbash, Director, Division of Investment Management, from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute and Daniel L. Goelzer, Baker & McKenzie (June 30, 1998) (placed in File No. S7–23–95).

[5] The compliance date for the amended definition of an "eligible foreign custodian" was June 16, 1998. *See* Investment Company Act Release No. 23201, *supra* note 3, at n.7 and accompanying text. The extension of the compliance date for the other 1997 Amendments is effective without 30-day advance notice because the extension "grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

[6] *See* Investment Company Act Release No. 23201, *supra* note 3, at text preceding n.9. The fund may apply either of these alternative frameworks separately to each foreign custodian or subcustodian it uses. The fund's arrangement with a particular foreign custodian or subcustodian should comply in its entirety either with old rule 17f–5 (subject to the amended definition of eligible foreign custodian), or with the rule as amended by all of the 1997 Amendments.

[7] *See* section 553(b)(3)(B) of the Administrative Procedure Act [U.S.C. 553(b)(3)(B)] (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest").

[8] *See* Investment Company Act Release No. 23201, *supra* note , at nn.4–6 and accompanying text.

believes that the extension will produce potential benefits by continuing to permit funds to choose between two alternative ways to comply with the rule.

Dated: January 28, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2531 Filed 2–2–99; 8:45 am]

BILLING CODE 6010–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–010; Order No. 587–J]

Standards For Business Practices of Interstate Natural Gas Pipelines

Issued January 28, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is granting rehearing and clarification of Order No. 587–I, 63 FR 53565, with respect to the procedures pipelines must follow in maintaining parity between transactions offered on interactive Internet web sites and transactions provided using electronic file transfer.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426. The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

Order No. 587–J; Order Granting Rehearing and Clarification

On October 29, 1998, the Interstate Natural Gas Association of America (INGAA) filed a request for clarification or rehearing of Order No. 587–I [1] with respect to the policy for achieving parity between interactive Internet web sites and electronic file transfers. The Commission grants rehearing and provides clarification as discussed below.

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sep. 29, 1998).

Background

In Order No. 587–I, the Commission, in relevant part, adopted a dual approach to communications with interstate pipelines. Shippers were given the choice of transacting business with pipelines either through an interactive Internet web site [2] or through standardized computer-to-computer file transfers. The Commission has incorporated by reference into its regulations standards governing electronic file transfers promulgated by the Gas Industry Standards Board (GISB).[3] These standards employ a format using ASC X12 electronic data interchange (EDI).[4] To ensure a level playing field for those using interactive web sites and EDI file transfers, the Commission sought to ensure that shippers could conduct the same transactions and receive the same response priority regardless of the format used.[5]

The Commission further recognized that pipelines might have a need to update and offer new services on their interactive web sites. In order to maintain equality between interactive web sites and EDI file transfers, the Commission established a process to ensure that, whenever feasible, newly-developed transactions available on interactive web sites will also be available through EDI file transfers:

> when pipelines are developing new services for their interactive web sites, they must also consider the method for implementing the business practice using EDI and, in compliance with standard 1.2.2, provide advance notice of their proposed EDI solution to GISB for review. Before initiating the new service, pipelines should file under section 4 of the NGA at least 30 days prior to the proposed implementation date detailing the efforts they have made to develop a standardized file transfer. If the pipeline has complied with the requirement to provide GISB with advance notice of their proposed EDI solution, it would be permitted to implement its new service on schedule. This approach should not inhibit development of new interactive solutions while at the same time helping to ensure that those using file transfers are not denied a

[2] Interactive web sites permit shippers to view information on-line and transmit information to the pipelines by filling in on-line forms.

[3] GISB is a private, not-for-profit standards organization with membership drawn from all segments of the natural gas industry, including pipelines, local distribution companies, producers, end-users, and service providers (including gas marketers). Its standards must be approved by a consensus of the industry segments.

[4] Standards for EDI are promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12.

[5] Order No. 587–I, 63 FR at 53571, III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 at 30,740.

reasonable opportunity to obtain the same service.[6]

INGAA contends the Commission has established a new procedural requirement for pipeline filings and seeks clarification of the advance notice requirement. INGAA maintains that the Commission introduced this new procedure without seeking industry comment. It further argues that the new procedure is unworkable because it may require pipelines to provide special notice to GISB prior to making a filing under section 4 of the Natural Gas Act (NGA). INGAA maintains that providing advance notice only to some customers could be discriminatory. INGAA requests clarification that pipelines should provide notice to GISB within a reasonable time after they file a notice of a new service with the Commission under section 4 of the NGA. In the alternative, INGAA requests rehearing of the advance notice requirement.

Discussion

In Order No. 587-I, the Commission's goal was to provide shippers with the ability to choose the communication methodology that best fits their business needs. The Commission, therefore, required pipelines to permit shippers to conduct transactions either through on-line transactions via the pipelines' proprietary interactive web site or by using computer-to-computer standardized EDI file transfers. To ensure that both types of shippers are treated without discrimination, the Commission required that all transactions conducted on the pipelines' interactive web site must, whenever feasible, also be available through EDI file transfers. As described in Order No. 587-I, the Commission and GISB already have started a process to ensure that all current transactions that are conducted on pipeline web sites can be accomplished, when feasible, through interactive file transfers.[7]

But that leaves the procedure to be followed when pipelines, in the future, develop new electronic transactions to be conducted on their interactive web sites. The Commission's policy, as articulated in Order No. 587-I, is that whenever pipelines begin to develop new interactive transactions, they must at the same time develop a method by which the transactions can be accomplished using EDI file transfer so that shippers using EDI are given a comparable opportunity to accomplish the transactions electronically. Moreover, in order to ensure consistency in the standardized EDI file transfers, pipelines must keep GISB informed of the pipelines' proposed EDI solutions during the course of development, so that GISB can review the pipelines' proposed approaches to ensure that they are consistent with GISB's standards.

In Order No. 587–I, the Commission stated that the pipelines should file, pursuant to section 4 of the Natural Gas Act, whenever they propose to implement a new electronic transaction. Upon reconsideration, however, the Commission has determined that it is not necessary for pipelines to make a section 4 filing to effectuate the Commission's policy. Instead, pipelines must post on their interactive web sites a notice of the new transaction along with the method of accomplishing that transaction using EDI file transfer. Pipelines also must make an informational filing with the Commission when they implement the new transaction and should, in that filing, detail the efforts they have made to develop an acceptable EDI file transfer capability, including the amount of advance notice they have provided to GISB of the file transfer capability they have proposed.

The Commission can use this informational filing to monitor the pipelines' compliance with Commission policy to determine whether the policy is working or whether further Commission action is necessary. In addition, shippers who are unable to use, or are having difficulty with, pipeline EDI file transfers can make use of the Commission's Enforcement Hotline or the complaint process to bring these to the Commission's attention.

In its rehearing request, INGAA contends that providing GISB with notice of a pipeline's electronic transactions before the pipeline makes its section 4 filing is improper because it would prematurely disclose to certain parties the contents of the section 4 filing. Since the Commission is no longer requiring pipelines to make section 4 filings to implement new electronic transactions, INGAA's concern about premature disclosure of a pipeline's section 4 filing is no longer material.

INGAA further contends that GISB, not the pipelines, should be responsible for developing EDI file transfers. The Commission disagrees. Pipelines must be actively involved in developing file transfer capability and cannot leave that process solely in GISB's hands. When a pipeline is developing a new transaction for its Internet web site, it is responsible for reviewing the current file transfer datasets and determining how its proposed transaction can best be handled through EDI file transfer. The pipeline is the most familiar with its new electronic offering and, therefore, is in the best position to develop a file transfer approach to handling that transaction. The pipeline would then inform GISB of its proposed solution so that GISB can review the pipeline's approach to ensure the approach is the most effective means of integrating the transaction into the standardized datasets.[8]

The Commission Orders

Rehearing is granted and clarification is provided as discussed in the body of the order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2528 Filed 2–2–99; 8:45 am]

BILLING CODE 6717–01–P

[6] Order No. 587–I, 63 FR at 53571, III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 at 30,740.

[7] Order No. 587–I, 63 FR at 53570–71, III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 at 30,738, 30,740.

[8] This is similar to the process under GISB standard 1.2.2, where the pipeline and a shipper mutually agreed to datasets which they then submit to GISB for review and implementation. 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.2.2.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lilly & Co. The supplemental NADA provides for use of monensin Type A medicated articles to make Type B and C medicated cattle feeds to be fed at 0.14 to 0.42 milligram per pound (mg/lb) of body weight per day, to revise feeding directions, to provide added uses for monensin Type C medicated feeds for prevention and control of coccidiosis, and to amend the residue tolerances for monensin residues.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7575.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 95–735 that provides for using Rumensin® (20, 30, 45, 60, 80, and 90.7 grams per pound (g/lb) monensin sodium) Type A medicated articles to make monensin Type B and C medicated cattle feeds. The monensin Type B and C medicated feeds are fed to cattle at 0.14 to 0.42 mg/lb of body weight per day, for feedlot cattle at a maximum of 360 mg/head/day for prevention and control of coccidiosis, for pasture cattle at 50 to 200 mg/head/day for increased rate of weight gain, for mature reproducing beef cattle at 50 to 200 mg/head/day for improved feed efficiency, and for nonveal calves at 50 to 200 mg/head/day for prevention and control of coccidiosis. The supplemental NADA is approved as of December 16, 1998, and the regulations are amended in 21 CFR 558.355(d)(7)(ii), (f)(3)(iii), (f)(3)(vi), and (f)(3)(vii), and by adding (f)(3)(xi), to reflect the approval.

In addition, an acceptable daily intake (ADI) for residues of monensin in edible tissues of cattle has not been previously established, therefore, 21 CFR 556.420 is amended to provide an ADI for monensin residues.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 U.S.C. 360b(c)(2)(F)(iii), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning December 16, 1998, because the supplement contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, for food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to use for prevention and control of coccidiosis in pasture cattle, mature reproducing beef cows, and nonveal calves.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.420 is revised to read as follows:

§ 556.420 Monensin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of monensin is 12.5 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle and goats.* A tolerance of 0.05 part per million is established for negligible residues of monensin in edible tissues of cattle and goats.

(2) *Chickens, turkeys, and quail.* A tolerance for residues of monensin in chickens, turkeys, and quail is not needed.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

4. Section 558.355 is amended by revising paragraphs (d)(7)(ii), (f)(3)(iii)(*a*) and (f)(3)(iii)(*b*), (f)(3)(vi)(*a*) and (f)(3)(vi)(*b*), (f)(3)(vii)(*a*) and (f)(3)(vii)(*b*), and by adding paragraph (f)(3)(xi) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(7) * * *

(ii) Feeding undiluted or mixing errors resulting in high concentrations of monensin has been fatal to cattle.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(*a*) *Indications for use.* For increased rate of weight gain; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*.

(*b*) *Limitations.* Feed to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers). For increased rate of weight gain, feed at a rate of 50 to 200 milligrams monensin per head per day in not less than 1 pound of feed or, after the 5th day, feed at a rate of 400 milligrams per head per day every other day in not less than 2 pounds of feed. For prevention and control of coccidiosis, feed at a rate of 0.14 to 0.42 milligram per pound of body weight per day, depending on severity of challenge, up to 200 milligrams per head per day. During first 5 days of feeding, cattle should receive no more than 100 milligrams per day in not less than 1 pound of feed.

* * * * *

(vi) * * *

(*a*) *Indications for use.* For improved feed efficiency; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*.

(*b*) *Limitations.* Feed to mature reproducing beef cows. Feed as supplemental feed, either hand-fed in a minimum of 1 pound of feed or mixed in a total ration. For improved feed efficiency, feed continuously at a rate of 50 to 200 milligrams monensin per head per day. For prevention and control of coccidiosis, feed at a rate of 0.14 to 0.42 milligram per pound of body weight per day, depending upon severity of challenge, up to a maximum of 200 milligrams per head per day. During first 5 days of feeding, cattle should receive no more than 100 milligrams per head per day.

(vii) * * *

(*a*) *Indications for use.* For improved feed efficiency; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*.

(*b*) *Limitations.* For feedlot cattle, feed continuously to provide 50 to 360 milligrams monensin per head per day. For prevention and control of coccidiosis, feed at a rate of 0.14 to 0.42 milligram per pound of body weight per day, depending upon the severity of challenge, up to maximum of 360 milligrams per head per day.

* * * * *

(xi) *Amount per ton.* Monensin, 10 to 200 grams.

(*a*) *Indications for use.* For prevention and control of coccidiosis due to *E. bovis* and *E. zuernii*.

(*b*) *Limitations.* For calves excluding veal calves. Feed at a rate of 0.14 to 1.0

milligram monensin per pound of body weight per day, depending upon the severity of challenge, up to maximum of 200 milligrams per head per day.

* * * * *

Dated: January 13, 1999.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–2507 Filed 2-2-99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 54 and 602

[TD 8812]

RIN 1545–AI93

Continuation Coverage Requirements Applicable to Group Health Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) added health care continuation requirements that apply to group health plans. Coverage required to be provided under those requirements is referred to as COBRA continuation coverage. Proposed regulations interpreting the COBRA continuation coverage requirements were published in the **Federal Register** of June 15, 1987 and of January 7, 1998. This document contains final regulations based on these two sets of proposed regulations. The final regulations also reflect statutory amendments to the COBRA continuation coverage requirements since COBRA was enacted. A new set of proposed regulations addressing additional issues under the COBRA continuation coverage provisions is being published elsewhere in this issue of the **Federal Register**. The regulations will generally affect sponsors of and participants in group health plans, and they provide plan sponsors and plan administrators with guidance necessary to comply with the law.

DATES: *Effective Date:* These regulations are effective February 3, 1999.

Applicability Dates: Sections 54.4980B–1 through 54.4980B–8 apply to group health plans with respect to qualifying events occurring in plan years beginning on or after January 1, 2000. See the *Effective Date* portion of this preamble and Q&A–2 of § 54.4980B–1.

FOR FURTHER INFORMATION CONTACT: Yurlinda Mathis, 202–622–4695. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1581. Responses to these collections of information are mandatory in some cases and required in order to obtain a benefit in other cases. Group health plans are required to provide certain individuals a notice of their COBRA continuation coverage rights when certain qualifying events occur and are required to inform health care providers who contact the plan to confirm the coverage of certain individuals of the individuals' complete rights to coverage. To obtain COBRA continuation coverage or extended coverage, certain individuals are required to notify the plan administrator of certain events or that they are electing COBRA continuation coverage, and plans are required to notify certain individuals of insignificant underpayments if the plan wishes to require the individuals to pay the deficiency. This information will be used to advise employers and plan administrators of their obligation to offer COBRA continuation coverage, or an extended period of such coverage; to advise qualified beneficiaries of their right to elect COBRA continuation coverage and of insignificant errors in payment; and to inform health care providers of individuals' rights to COBRA continuation coverage.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per respondent varies from 30 seconds to 330 hours, depending on individual circumstances, with an estimated average of 14 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 15, 1987, proposed regulations (EE–143–86) relating to continuation coverage requirements applicable to group health plans were published in the **Federal Register** (52 FR 22716). A public hearing was held on November 4, 1987. Written comments were also received. A supplemental set of proposed regulations (REG–209485–86) was published in the **Federal Register** of January 7, 1998 (63 FR 708). No public hearing was requested or held after the publication of the supplemental proposed regulations; written comments were received. After consideration of these comments, after review of the reported court decisions under the parallel COBRA continuation coverage provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act, and based on the experience of the IRS in administering the COBRA continuation coverage requirements, a portion of the regulations proposed by EE–143–86 and REG–209485–86 is adopted as revised by this Treasury decision. The revisions are summarized in the explanation below. Also being published elsewhere in this issue of the **Federal Register** is a new set of proposed regulations, which addresses additional issues.

Explanation of Provisions

Overview

The regulations are intended to provide clear, administrable rules regarding COBRA continuation coverage. The regulations give comprehensive guidance on many questions under COBRA, with a view to enhancing the certainty and reliance available to all parties—including employees, qualified beneficiaries, employers, employee organizations, and group health plans—in determining their COBRA rights and obligations. The guidance is designed to further the protective purposes of COBRA without undue administrative burdens or costs on employers, employee organizations, or group health plans.

For example, the regulations:

- Prevent group health plans from terminating COBRA continuation coverage on the basis of other coverage that a qualified beneficiary had prior to electing COBRA continuation coverage, in accordance with the Supreme Court's

decision in *Geissal* v. *Moore Medical Corp.*

- Give employers and employee organizations significant flexibility in determining, for purposes of COBRA, the number of group health plans they maintain. This will reduce burdens on employers and employee organizations by permitting them to structure their group health plans in an efficient and cost-effective manner and to satisfy their COBRA obligations based upon that structure.
- Provide baseline rules for determining the COBRA liabilities of buyers and sellers of corporate stock and corporate assets and permit buyers and sellers to reallocate and carry out those liabilities by agreement. This will significantly enhance employers' ability to negotiate and to plan appropriately for the treatment of qualified beneficiaries in connection with mergers and acquisitions, while protecting the rights of qualified beneficiaries affected by the transactions.
- Limit the application of COBRA for most health flexible spending arrangements. This will ensure that COBRA continuation coverage under health flexible spending arrangements is available in appropriate cases without requiring continuation coverage where that would not serve the statutory purposes.
- Eliminate the requirement that group health plans offer qualified beneficiaries the option to elect only core (health) coverage under a group health plan that otherwise provides both core and noncore (vision and dental) coverage.
- Give employers, in determining whether the small-employer plan exception applies, the option of counting by pay period rather than by every business day, and provide, for that exception, for the consistent treatment of part-time employees through the use of full-time equivalents.

The COBRA continuation coverage requirements enacted on April 7, 1986 have been amended by the Omnibus Budget Reconciliation Act of 1986 (OBRA 1986), the Tax Reform Act of 1986 (TRA 1986), the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), the Small Business Job Protection Act of 1996 (SBJPA), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA).[1] These amendments made numerous clarifications and modifications to the COBRA continuation coverage requirements, moved the requirements from section 162(k) to section 4980B, added various other features, such as the disability extension to the required period of coverage, and significantly altered the sanctions imposed on employers and plans for failing to comply with the requirements. The specific changes made by these amendments are discussed below in connection with the provisions of the regulations that relate to them.

The legislative history of COBRA provides that the Department of the Treasury has the authority to interpret the coverage and tax sanction provisions of COBRA and that the Department of Labor has the authority to interpret the reporting and disclosure provisions. Accordingly, these regulations apply in interpreting the coverage provisions of COBRA in Title I of ERISA, as well as those in the Internal Revenue Code. With minor exceptions, the final regulations and the new proposed regulations being published today do not address the notice provisions of the COBRA continuation coverage requirements.

Organization

The final regulations being published today follow the structure of the 1987 proposed regulations, with related questions-and-answers grouped into topics. Each topic is now in a separate section, and sections have been added to the new proposed regulations being published today for (1) business reorganizations and employer withdrawals from multiemployer plans and (2) the interaction of the Family and Medical Leave Act of 1993 (FMLA) and COBRA. The substance of the 1998 proposed regulations has been integrated into the questions-and-answers of the 1987 proposed regulations. The ordering of some of the questions-and-answers has changed, and all of the questions-and-answers relating to the original statutory effective date have been deleted. In addition, in a few cases, the content of two separate questions-and-answers in the 1987 proposed regulations has been combined into a single question-and-answer; in other cases the content of a single question-and-answer has been expanded to two or more questions-and-answers. These changes have resulted in the renumbering of the questions-and-answers. The new proposed regulations being published today are designed to fill gaps designated in the final regulations as reserved.

Effective Date

The 1987 proposed regulations provide that they will be effective upon publication as final regulations. Some commenters suggested that the final regulations should have a delayed effective date. The final regulations follow this suggestion; they apply with respect to qualifying events occurring in plan years beginning on or after January 1, 2000. For any period before the effective date of the final regulations, the plan and the employer must operate in good faith compliance with a reasonable interpretation of the requirements in section 4980B. For the period before the effective date of the final regulations, the IRS will consider compliance with the proposed regulations in § 1.162–26 (the 1987 proposed regulations) and § 54.4980B–1 (the 1998 proposed regulations) to constitute good faith compliance with a reasonable interpretation of the statutory requirements for the topics that those proposed regulations address, except to the extent inconsistent with a statutory amendment adopted after the dates the proposed regulations were issued, during the period the amendment is effective, or with a decision of the United States Supreme Court released after the proposed regulations were issued, during the period after the decision is released. For any period beginning on or after the effective date of the final regulations with respect to topics not addressed in the final regulations, such as how to calculate the applicable premium, the plan and the employer must operate in good faith compliance with a reasonable interpretation of the requirements in section 4980B.

Compliance with the new proposed regulations will constitute good faith compliance with a reasonable interpretation of the statutory requirements addressed in the new proposed regulations until the new proposed regulations are finalized. In addition, actions inconsistent with the terms of the new proposed regulations will not necessarily constitute a lack of good faith compliance with a reasonable interpretation of the statutory requirements addressed in the new proposed regulations; whether there has been good faith compliance with a reasonable interpretation of the statutory requirements will depend on

[1] The COBRA continuation coverage requirements have also been affected by an amendment made to the definition of group health plan by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). OBRA 1993 amended the definition of group health plan in section 5000(b)(1), which the COBRA continuation coverage provisions of the International Revenue Code incorporate by reference.

all the facts and circumstances of each case.

The IRS will not assess the excise tax with respect to a plan that operates in good faith compliance with a reasonable interpretation of the statutory requirements, as described in the preceding two paragraphs. Note, however, that in the case of lawsuits brought by qualified beneficiaries to enforce their COBRA continuation coverage rights under ERISA or the Public Health Service Act, the courts generally have not applied any good faith compliance standard.

Plans That Must Comply

The final regulations provide rules regarding which group health plans are subject to COBRA. These rules are generally similar to those set forth in the 1987 proposed regulations. However, the rules for determining, for purposes of the COBRA continuation coverage requirements, the number of group health plans maintained by an employer have been deleted, and the new proposed regulations set forth substantially different rules, which provide that employers and employee organizations generally have broad discretion to determine the number of group health plans that they maintain. Other significant changes to the 1987 proposed regulations on this point (some of which are set forth in the 1998 proposed regulations) include exceptions for long-term care services and medical savings accounts and new rules regarding the small-employer plan exception.

As in the 1987 proposed regulations, the final regulations provide that, in general, all group health plans are subject to the COBRA continuation coverage requirements. However, small-employer plans (discussed below), church plans (within the meaning of section 414(e)), and governmental plans (within the meaning of section 414(d)) are not subject to COBRA. (The final regulations refer to these as plans excepted from COBRA.) Plans excepted from COBRA are generally not subject to the COBRA continuation coverage requirements or the COBRA excise tax, although group health plans maintained by state or local governments are subject to parallel continuation coverage requirements in the Public Health Service Act (which is administered by the Department of Health and Human Services). Also, the Federal Employees Health Benefit Program is subject to generally similar, although not parallel, temporary continuation of coverage provisions under the Federal Employees Health Benefits Amendments Act of 1988.

The final regulations define *group health plan* in a manner generally similar to that in the 1987 proposed regulations. However, certain changes in terminology have been made to reflect the statutory cross-reference to section 5000(b)(1) set forth in section 4980B(g)(2) (such as the use of the term *health care* and the definition of *employee*). Additionally, the final regulations, in accordance with section 4980B(g)(2), provide that a plan is not a group health plan if substantially all the coverage provided under the plan is for qualified long-term care services (as defined in section 7702B(c)). The final regulations allow plans to use any reasonable method in determining whether a plan satisfies this exception. The final regulations also provide, in accordance with section 106(b)(5), that amounts contributed by an employer to a medical savings account (as defined in section 220(d)) are not considered part of a group health plan for purposes of COBRA (although a high-deductible health plan will not fail to be a group health plan simply because it covers a holder of a medical savings account).

Under the final regulations, a *group health plan* is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to the families of such individuals. In accordance with section 5000(b)(1), these individuals include employees, former employees, the employer, and others associated or formerly associated with the employer or employee organization in a business relationship. The final regulations generally refer to all individuals covered under a plan by virtue of the performance of services or by virtue of membership in an employee organization as employees. (As discussed below, the term *employee* has a narrower meaning for purposes of the small-employer plan exception.) The final regulations use the term *employer* to refer to a person for whom an individual performs services. Pursuant to section 414(t), the term *employer* also includes, with respect to such a person, any member of a group described in section 414(b), (c), (m), or (o) that includes the person (a controlled group) as well as any successor of the person or of a member of the controlled group.

Under the final regulations, as under the 1987 proposed regulations, a plan generally is considered to provide health care whether it does so directly or through insurance, reimbursement, or other means and whether it does so through an on-site facility or a cafeteria or other flexible benefit arrangement. Insurance includes group insurance policies and one or more individual policies under an arrangement maintained by the employer or employee organization to provide health care to two or more employees. Under the final regulations, as under the 1987 proposed regulations, in the case of a cafeteria plan or other flexible benefit arrangement, the COBRA continuation coverage requirements apply only to the health care benefits under the cafeteria plan or other flexible benefit arrangement that an employee has actually chosen to receive.

Many commenters on the 1987 proposed regulations requested clarification of the application of COBRA to health care benefits provided under flexible spending arrangements (health FSAs). Some commentators argued that health FSAs should not be subject to COBRA. Health FSAs satisfy the definition of group health plan in section 5000(b)(1) and, accordingly, are generally subject to the COBRA continuation coverage requirements. However, COBRA is intended to ensure that a qualified beneficiary has guaranteed access to coverage under a group health plan and that the cost of that coverage is no greater than 102 percent of the applicable premium.

The IRS and Treasury believe that the purposes of COBRA are not furthered by requiring an employer to offer COBRA for a plan year if the amount that the employer could require to be paid for the COBRA coverage for the plan year would exceed the maximum benefit that the qualified beneficiary could receive under the FSA for that plan year and if the qualified beneficiary could not avoid a break in coverage, for purposes of the HIPAA portability provisions,[2] by electing COBRA coverage under the FSA. Accordingly, the new proposed regulations contain a rule limiting the application of the COBRA continuation coverage requirements in the case of health FSAs.

Under this rule, if the health FSA satisfies two conditions, the health FSA need not make COBRA continuation coverage available to a qualified beneficiary for any plan year after the plan year in which the qualifying event occurs. The first condition that the health FSA must satisfy for this exception to apply is that the health FSA is not subject to the HIPAA portability provisions in sections 9801

[2] Under HIPAA, a qualified beneficiary who maintains coverage after termination of employment under a group health plan that is subject to HIPAA can avoid a break in coverage and thereby avoid becoming subject to a preexisting condition exclusion upon later becoming covered by another group health plan.

though 9833 because the benefits provided under the health FSA are excepted benefits. (See sections 9831 and 9832.)[3] The second condition is that, in the plan year in which the qualifying event of a qualified beneficiary occurs, the maximum amount that the health FSA could require to be paid for a full plan year of COBRA continuation coverage equals or exceeds the maximum benefit available under the health FSA for the year. It is contemplated that this second condition will be satisfied in most cases.

Moreover, if a third condition is satisfied, the health FSA need not make COBRA continuation coverage available with respect to a qualified beneficiary at all. This third condition is satisfied if, as of the date of the qualifying event, the maximum benefit available to the qualified beneficiary under the health FSA for the remainder of the plan year is not more than the maximum amount that the plan could require as payment for the remainder of that year to maintain coverage under the health FSA.

A plan is maintained by an employer or employee organization even if the employer or employee organization does not directly or indirectly contribute to it if coverage under the plan would not be available to an individual at the same cost if the individual did not have an employment-related connection to the employer or employee organization. The final regulations, for purposes of the definition of a group health plan, use the term *health care* instead of the term *medical care* (which was used in the 1987 proposed regulations). This change reflects the change in the definition of group health plan made by OBRA 1989. However, the final regulations provide that *health care* has the same meaning as the term *medical care* under section 213(d). Like the 1987 proposed regulations, the final regulations set forth a summary of items that do and do not constitute health care.

The final regulations, generally following the 1987 proposed regulations, set forth rules for determining whether a group health plan is a small-employer plan. In general, a group health plan other than a multiemployer plan is a small-employer plan if it is maintained for a calendar year by an employer that normally employed fewer than 20 employees during the preceding calendar year, and a group health plan that is a multiemployer plan is a small-employer plan if each of the employers contributing to the plan for a calendar year normally employed fewer than 20 employees during the preceding calendar year. Whether the plan is a multiemployer plan or not, the term *employer* includes all members of a controlled group. An example in the final regulations clarifies that the controlled group includes foreign members, and thus a U.S. subsidiary with fewer than 20 employees is subject to COBRA if the controlled group has 20 or more employees world-wide. The final regulations set forth additional rules for the application of the small-employer plan exception to multiemployer plans, and the new proposed regulations contain the same definition of multiemployer plan that is in section 414(f).

Under the final regulations, an employer is considered to have normally employed fewer than 20 employees during a particular calendar year if it had fewer than 20 employees on at least 50 percent of its typical business days during that year. This rule differs from the rule in the 1987 proposed regulations in two ways. First, the 1987 proposed regulations use the term *working days*, whereas the final regulations use the statutory term *typical business days*.

The second difference relates to the term *employee*. Under the 1987 proposed regulations, self-employed individuals and independent contractors are counted as employees for purposes of the small-employer plan exception if they are covered under a plan of the employer. Commenters argued that only common law employees should be counted for this purpose. Unlike the definition of *covered employee* (amended by OBRA 1989 to make clear that individuals who are not common law employees but who are covered under the group health plan of an employer or employee organization by virtue of the performance of services are still considered covered employees) and the definition of *group health plan* (amended by OBRA 1993 to make clear that a health plan covering individuals who are not common law employees of the employer or employee organization, and who are not family members of common law employees, is still a group health plan) the reference to employees for purposes of the small-employer plan exception have not been amended to include individuals who are not common law employees. Consequently, under the final regulations, only common law employees are taken into account for purposes of the small-employer plan exception; self-employed individuals, independent contractors, and directors are not counted.

Although a small-employer plan is generally excepted from COBRA, a plan that is not a small-employer plan for a period remains subject to COBRA for qualifying events that occurred during that period, even if it subsequently becomes a small-employer plan.

In determining whether a plan is eligible for the small-employer plan exception, part-time employees, as well as full-time employees, must be taken into account. Several commenters on the 1987 proposed regulations requested clarification of how to count part-time employees for the small-employer plan exception, and the new proposed regulations provide guidance on this issue. Under the new proposed regulations, instead of each part-time employee counting as a full employee, each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee works for the employer divided by the number of hours that an employee must work in order to be considered a full-time employee. The number of hours that must be worked to be considered a full-time employee is determined in a manner consistent with the employer's general employment practices, although for this purpose not more than eight hours a day or 40 hours a week may be used. An employer may count employees for each typical business day or may count employees for a pay period and attribute the total number of employees for that pay period to each typical business day that falls within the pay period. The employer must use the same method for all employees and for the entire year for which the small-employer plan determination is made.

In determining whether a multiemployer plan satisfies the requirements for the small-employer plan exception, the 1987 proposed regulations provide a special rule permitting the multiemployer plan to be considered a small-employer plan for a year if any contributing employer that grew to be too large to qualify for the exception during the preceding year ceases to contribute to the plan by February 1 of the current year. Questions have been raised about the need for and the authority for this special rule, and one commenter pointed out the uncertainty of how to

[3] The IRS and Treasury, together with the U.S. Department of Labor and the U.S. Department of Health and Human Services, have issued a notice (62 FR 67688) holding that a health FSA is exempt from HIPAA because the benefits provided under it are excepted benefits under sections 9831 and 9832 if the employer also provides another group health plan, the benefits under the other plan are not limited to excepted benefits, and the maximum reimbursement under the health FSA is not greater than two times the employee's salary reduction election (or if greater, the employee's salary reduction election plus five hundred dollars.)

deal with a qualified beneficiary experiencing a qualifying event under such a plan in January of the current year if the qualified beneficiary needed confirmation of coverage for urgent services before it was clear that the too-large employer would cease contributing to the multiemployer plan by February 1. Based on these concerns, the final regulations eliminate this special rule for multiemployer plans.

The new proposed regulations provide guidance, for purposes of the COBRA continuation coverage requirements, on how to determine the number of group health plans that an employer or employee organization maintains. Under these rules, the employer or employee organization is generally permitted to establish the separate identity and number of group health plans under which it provides health care benefits to employees. Thus, if an employer or employee organization provides a variety of health care benefits to employees, it generally may aggregate the benefits into a single group health plan or disaggregate benefits into separate group health plans. The status of health care benefits as part of a single group health plan or as separate plans is determined by reference to the instruments governing those arrangements. If it is not clear from the instruments governing an arrangement or arrangements to provide health care benefits whether the benefits are provided under one plan or more than one plan, or if there are no instruments governing the arrangement or arrangements, all such health care benefits (other than those for qualified long-term care services) provided by a single entity (determined without regard to the controlled group) constitute a single group health plan.

Under the new proposed regulations, a multiemployer plan and a plan other than a multiemployer plan are always separate plans. In addition, any treatment of health care benefits as constituting separate group health plans will be disregarded if a principal purpose of the treatment is to evade any requirement of law. Of course, an employer's flexibility to treat benefits as part of separate plans may be limited by the operation of other laws, such as the prohibition in section 9802 on conditioning eligibility to enroll in a group health plan on the basis of any health factor of an individual.

The final regulations modify the rules set forth in the 1987 proposed regulations for determining the plan year of a group health plan under COBRA. These modifications are made to be consistent with the rules in the temporary regulations under HIPAA. The definition of plan year is important in applying, for example, the effective date provisions under the final regulations and the rules for health FSAs under the new proposed regulations. Under the final regulations, the plan year is the year designated as such in the plan documents. If the plan documents do not designate a plan year (or if there are no plan documents), the plan year is the deductible/limit year used by the plan. If the plan does not impose deductibles or limits on an annual basis, the plan year is the policy year. If the plan does not impose deductibles or limits on an annual basis and the plan is not insured (or the insurance policy is not renewed annually), the plan year is the taxable year of the employer. In any other case, the plan year is the calendar year.

The final regulations reflect the statutory provisions that provide for the imposition of an excise tax in the event of a failure by a group health plan to comply with the COBRA continuation coverage requirements of section 4980B(f). In the case of a multiemployer plan, the excise tax is imposed on the plan;[4] in the case of any other plan, the excise tax is imposed on the employer maintaining the plan. In certain circumstances, the excise tax can be imposed on other persons involved with the provision of benefits under the plan, such as an insurer providing benefits under the plan or a third party administrator administering claims under the plan. Separate, non-tax remedies may be available in the case of a plan that fails to comply with the COBRA continuation coverage requirements in ERISA.

Qualified Beneficiaries

The rules in the final regulations for determining who is a qualified beneficiary generally follow those set forth in the 1987 proposed regulations, as well as those set forth in the 1998 proposed regulations regarding the status of newborn and adopted children as qualified beneficiaries. However, certain provisions have been added to the final regulations to reflect the special statutory rules that apply in the case of bankruptcy of the employer as a qualifying event. Modifications have also been made to reflect the decision of the Supreme Court in *Geissal* v. *Moore Medical Corp.*, 118 S. Ct. 1869 (1998), which held that an individual covered under another group health plan at the time she or he elects COBRA continuation coverage cannot be denied COBRA continuation coverage on the basis of that other coverage.

Under the final regulations, a qualified beneficiary is, in general: (1) any individual who, on the day before a qualifying event, is covered under a group health plan either as a covered employee, the spouse of a covered employee, or the dependent child of a covered employee; or (2) any child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage. (The final regulations retain the definitions of the terms *placement for adoption* and *being placed for adoption* that were in the 1998 proposed regulations.) For a qualifying event that is the bankruptcy of the employer, any covered employee who retired on or before the date of any substantial elimination of group health plan coverage is a qualified beneficiary; the spouse, surviving spouse, or dependent child of the retired covered employee is also a qualified beneficiary if the spouse, surviving spouse, or dependent child was a beneficiary under the plan on the day before the bankruptcy qualifying event. The final regulations add a provision clarifying that if an individual is denied coverage under a group health plan in violation of applicable law (including HIPAA) and experiences an event that would be a qualifying event if the coverage had not been wrongfully denied, the individual is considered a qualified beneficiary.

A covered employee can be a qualified beneficiary only in connection with a qualifying event that is the termination (or reduction of hours) of the covered employee's employment or the employer's bankruptcy. As under the 1987 proposed regulations, the final regulations provide that a covered employee is not a qualified beneficiary if her or his status as a covered employee is attributable to certain periods in which she or he was a nonresident alien (in which case the covered employee's spouse and dependent children are also not qualified beneficiaries). Although a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is a qualified beneficiary, a child born to or placed for adoption with a qualified beneficiary other than the covered employee after a qualifying event, or a person who becomes the spouse of a qualified beneficiary (regardless of whether the qualified beneficiary is the covered employee) after a qualifying event is not a qualified

[4] In this regard, the U.S. Department of labor has advised the IRS and Treasury that to the extent a plan fiduciary subjects a plan to liability for the COBRA excise tax on account of her or his imprudent actions, the plan fiduciary may be held personally liable under Title I of ERISA for the amount of the tax.

beneficiary. The final regulations retain the rule of the 1987 proposed regulations under which an individual is not a qualified beneficiary if, on the day before the qualifying event, the individual is covered under the group health plan solely because of another individual's election of COBRA continuation coverage. However, consistent with *Geissal*, the final regulations eliminate the rule in the 1987 proposed regulations that an individual is not a qualified beneficiary if, on the day before the qualifying event, the individual was entitled to Medicare benefits.

An individual ceases to be a qualified beneficiary if she or he does not elect COBRA continuation coverage by the end of the election period (discussed below). The final regulations clarify that an individual who elects COBRA continuation coverage ceases to be a qualified beneficiary once the plan's obligation to provide COBRA continuation coverage has ended.

The term *covered employee* is defined in the final regulations in a manner substantially the same as in the 1987 proposed regulations. Although some commenters on the 1987 proposed regulations objected to the inclusion in this definition of individuals other than common law employees, the statutory definition was amended by OBRA 1989 to include such individuals.

Under the final regulations, a covered employee generally includes any individual who is or has been provided coverage under a group health plan (other than one excepted from COBRA as of the date of what would otherwise be a qualifying event) because of her or his present or past performance of services for the employer maintaining the group health plan (or by reason of membership in the employee organization maintaining the plan). Thus, retirees and former employees covered by a group health plan are covered employees if the coverage is provided in whole or in part because of the previous employment. Any individual who performs services for the employer maintaining the plan or who is a member of the employee organization maintaining the plan may be a covered employee. Thus, common law employees, self-employed individuals, independent contractors, and corporate directors can be covered employees. Generally, mere eligibility for coverage—as opposed to actual coverage—does not make an individual a covered employee. However, if an individual who otherwise would be a covered employee is denied coverage under a group health plan in violation of applicable law (including HIPAA), the individual is considered a covered employee.

Qualifying Events

The rules regarding qualifying events under the final regulations generally are the same as those in the 1987 proposed regulations. Under the final regulations, a qualifying event is any of a set of specified events that occurs while a group health plan is subject to COBRA and that causes a covered employee (or the spouse or dependent child of the covered employee) to lose coverage under the plan. These specified events are: the death of a covered employee; the termination (other than by reason of gross misconduct), or reduction of hours, of a covered employee's employment; the divorce or legal separation of a covered employee from the covered employee's spouse; a covered employee's becoming entitled to Medicare benefits under Title XVIII of the Social Security Act; a dependent child's ceasing to be a dependent child of the covered employee under the plan; and a proceeding in bankruptcy under Title 11 of the United States Code with respect to an employer from whose employment a covered employee retired at any time. The addition of employer bankruptcy as a qualifying event reflects the amendments made to COBRA by OBRA 1986.

The reasons for which an employee has a termination of employment or a reduction of hours of employment generally are not relevant in determining whether the termination or reduction of hours is a qualifying event. Thus, a voluntary termination, a strike, a lockout, a layoff, or an involuntary discharge each may constitute a qualifying event. However, if an employee is discharged for gross misconduct, the termination of employment does not constitute a qualifying event. The final regulations clarify that a reduction of hours of a covered employee's employment includes any decrease in the number of hours that a covered employee works or is required to work that does not constitute a termination of employment. Thus, if a covered employee takes a leave of absence, is laid off, or otherwise performs no hours of work during a period, the covered employee has experienced a reduction in hours that, if the other applicable requirements are satisfied, constitutes a qualifying event. (But see Notice 94–103 (1994–2 C.B. 569) and the new proposed regulations, described below, for special rules regarding FMLA leave.) A covered employee's loss of coverage by reason of a failure to work the minimum number of hours required for coverage constitutes a reduction of hours of employment.

Under the final regulations, *to lose coverage* means to cease to be covered under the same terms and conditions as in effect immediately before the event. The final regulations clarify that a loss of coverage includes an increase in an employee premium or contribution resulting from one of the events described above. The loss of coverage need not be concurrent with the event; it is enough that the loss of coverage occur at any time before the end of the maximum coverage period (described below). For employer bankruptcies, the term *to lose coverage* also includes a substantial elimination of coverage that occurs within 12 months before or after the date on which the bankruptcy proceeding begins.

Under the final regulations, as under the 1987 proposed regulations, reductions or eliminations in coverage in anticipation of an event are disregarded in determining whether the event results in a loss of coverage. Although several commenters objected to this rule, the final regulations retain the provision in order to protect qualified beneficiaries from being deprived of their COBRA rights because an employer or employee organization transposes a loss or reduction of coverage to a time before the qualifying event. This rule also applies in cases where a covered employee discontinues the coverage of a spouse in anticipation of a divorce or legal separation. In such a case, upon receiving notice of the divorce or legal separation, a plan is required to make COBRA continuation coverage available, effective on the date of the divorce or legal separation (but not for any period before the date of the divorce or legal separation).

Under the final regulations, as under the 1987 proposed regulations, an event must occur while the group health plan is subject to COBRA in order to constitute a qualifying event. A plan that is excepted from COBRA (for example, by reason of the small-employer plan exception) and that later becomes subject to COBRA is not required to provide COBRA continuation coverage to individuals who experienced what would otherwise be a qualifying event during the period when the plan was not subject to COBRA.

Finally, in the case of a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the qualifying event that gives rise to that period of COBRA continuation coverage is the qualifying event applicable to that child. Thus, if a second qualifying event has

occurred before such a child is born (for example, if the covered employee dies), the second qualifying event also applies to the newborn child.

COBRA Continuation Coverage

The 1987 proposed regulations generally refer to the coverage that a qualified beneficiary is entitled to as the coverage that was in effect on the day before the qualifying event. While that is generally true, the final regulations have been revised to incorporate the statutory standard that a qualified beneficiary is entitled to the coverage made available to similarly situated beneficiaries with respect to whom a qualifying event has not occurred. The final regulations generally use as a shorthand for this statutory language the phrase "similarly situated nonCOBRA beneficiaries" instead of the phrase "similarly situated active employees" used in the 1987 proposed regulations. In certain contexts in the final regulations, though, the phrase "similarly situated active employees" is still used because in those contexts—such as the right to make an independent election for COBRA continuation coverage—qualified beneficiaries who are spouses and dependent children of covered employees are entitled to the rights that employees have (and in those contexts, spouses and dependent children who are not qualified beneficiaries typically do not have the rights that employees have).

The 1987 proposed regulations address in a separate question-and-answer the type of coverage that must be made available to qualified beneficiaries if a change is made in the coverage provided to similarly situated nonCOBRA beneficiaries. The final regulations include this rule in the question-and-answer that defines COBRA continuation coverage. In doing so, the final regulations delete several specific requirements in the 1987 proposed regulations. For example, if coverage for the similarly situated nonCOBRA beneficiaries is changed or eliminated, the 1987 proposed regulations require that qualified beneficiaries be permitted to elect coverage under any remaining plan made available to the similarly situated active employees. Many commenters objected that in the case of a mere change in benefits, the requirement to give qualified beneficiaries an election among other plans would give them greater rights than those active employees might have. The final regulations follow the suggestion of the commenters in providing that the general principle—that qualified beneficiaries have the same rights as similarly situated nonCOBRA beneficiaries—applies in this situation. The same principle also applies in determining whether credit for deductibles must be carried over from a discontinued plan to a new plan. Nevertheless, if an employer or employee organization providing more than one plan to a group of similarly situated nonCOBRA beneficiaries eliminates benefits under one plan without giving the similarly situated nonCOBRA beneficiaries the right to enroll in another plan, that option would still have to be made available to qualified beneficiaries if the employer continued to maintain a group health plan because of the employer's obligation to continue to make COBRA continuation coverage available.

The 1987 proposed regulations include detailed rules requiring that qualified beneficiaries generally be offered the option of electing only core coverage or both core and noncore coverage. These rules were based on a reference in the conference report to the Tax Reform Act of 1986. Many commenters expressed the opinion that the reference in the conference report is an insufficient basis for including this concept in the regulations when nothing in the statute itself suggests a distinction between core and noncore coverage. Commenters also contended that the core/noncore distinction would create undue administrative complexity and promote adverse selection. After careful consideration, the IRS and Treasury have decided not to include in either the final or the new proposed regulations any such requirement to offer for core coverage separately. However, comments are invited on whether such a requirement should be adopted.

The 1987 proposed regulations establish standards for determining the deductibles and limits that apply to COBRA continuation coverage in a period in which an individual or a group of family members has coverage that is not COBRA continuation coverage and then elects COBRA continuation coverage. (Of course, during a period in which an individual or group of family members had only COBRA continuation coverage, the rules for deductibles and limits would apply to them in the same manner as they would to similarly situated nonCOBRA beneficiaries.) Some commenters objected to the provisions of the 1987 proposed regulations for computing deductibles or limits on a family basis in the case of a qualifying event (such as divorce) that splits a family into two (or more) units. The 1987 proposed regulations would require that each resulting family unit be credited with all the expenses incurred by the entire family before the qualifying event. The final regulations revise this rule. Under the final regulations, in computing deductibles and limits for the family unit receiving COBRA coverage, the plan is required to take into account only those expenses incurred before the qualifying event by family members who are part of the resulting family unit after the qualifying event.

The 1987 proposed regulations provide that qualified beneficiaries moving outside the area served by a region-specific plan must be given the right to obtain other coverage from the employer maintaining the region-specific plan. The rule conditions the right to other coverage on the employer having employees in the area to which the qualified beneficiary is moving. This proposed rule unduly limits the application of the rule in the case of an employer or employee organization that could provide other coverage to the qualified beneficiary without having to establish a new plan or enter into a new group insurance contract even though the employer did not have employees or the employee organization did not have members in the area that the qualified beneficiary was moving to. This might be the case, for example, if the employer or employee organization maintained a self-insured plan or maintained an insured plan through an insurance company licensed to provide that same product in the area that the qualified beneficiary was moving to. The final regulations eliminate the condition that an employer have employees in the area to which the qualified beneficiary is moving and instead require that coverage be made available to the qualified beneficiary if the employer or employee organization would be able to provide coverage to the qualified beneficiary under one of its existing plans. Generally the coverage that must be made available is that made available to the similarly situated nonCOBRA beneficiaries. If, however, the coverage made available to the similarly situated nonCOBRA beneficiaries cannot be made available in the area that the qualified beneficiary is moving to, then the coverage that must be made available is coverage provided to other employees.

The 1987 proposed regulations require, in the case of a plan providing open enrollment rights, that open enrollment rights be extended to qualified beneficiaries if an employer maintains two or more plans. Thus, that rule, by its terms, does not require that open enrollment rights be given if an

employer maintains a single plan and allows active employees during open enrollment to switch between categories of coverage such as single and family or among categories such as employee-only, employee-plus-one-dependent, or employee-plus-two-or-more-dependents. The final regulations eliminate the condition that an employer or employee organization maintain two or more plans for a qualified beneficiary to have open enrollment rights. Thus, open enrollment rights must be extended to qualified beneficiaries in any case in which they are extended to similarly situated active employees. (Note that the open enrollment right of employees to enroll when not previously enrolled would not have to be extended to individuals who previously did not elect to receive COBRA continuation coverage because an individual ceases to be a qualified beneficiary if COBRA continuation coverage is not elected.)

The 1987 proposed regulations require that qualified beneficiaries be given the same right to add new family members that similarly situated active employees have. Many commenters objected to this rule, arguing that it requires more than a mere continuation of coverage. However, COBRA continuation coverage is more than just a continuation of the coverage a qualified beneficiary had before the qualifying event; it includes the same procedural rights to expand or change coverage that similarly situated active employees have. Moreover, the policy behind the 1987 proposed regulations is reflected in the HIPAA amendment to COBRA creating special qualified beneficiary status for certain newborn and adopted children as well as in the HIPAA special enrollment rights in section 9801(f) for new spouses and for newborn and adopted children. Accordingly, the final regulations provide guidance on the application of the HIPAA special enrollment rights to qualified beneficiaries and retain the rule in the 1987 proposed regulations regarding the right of qualified beneficiaries to add new family members (even though not eligible for the HIPAA special enrollment rights) to the same extent that active employees are permitted to add new family members.

Electing COBRA Continuation Coverage

The final regulations set forth rules regarding elections of COBRA continuation coverage by qualified beneficiaries. In general, a group health plan is required to offer a qualified beneficiary the opportunity to elect COBRA continuation coverage at any time during the election period. The election period begins not later than the date the qualified beneficiary would lose coverage by reason of a qualifying event and ends not earlier than 60 days after the later of that date or 60 days after the date on which the qualified beneficiary is provided notice of her or his right to elect COBRA continuation coverage. For purposes of determining whether a qualified beneficiary's election of COBRA continuation coverage is timely, the election is deemed to be made on the date it is sent to the employer or plan administrator. The final regulations clarify that a qualified beneficiary need not herself or himself elect COBRA continuation coverage; that election can be made on behalf of the qualified beneficiary by a third party (including a third party that is not a qualified beneficiary).

Generally, the employer or plan administrator must determine when a qualifying event has occurred, and a qualified beneficiary is not required to give notice of the event. However, a covered employee or qualified beneficiary is required to notify the plan administrator of a qualifying event that is a divorce or legal separation of the covered employee or a dependent child's ceasing to be a dependent child under the plan terms. The 1987 proposed regulations prescribe that the notification should be given to the employer or other plan administrator. The final regulations simply require that the notice be provided to the plan administrator.

The notice must be provided within 60 days after the date of the qualifying event or the date on which the qualified beneficiary would lose coverage because of the qualifying event, whichever is later. If the notice is not provided, the group health plan is not required to make COBRA continuation coverage available to the qualified beneficiary.[5] In the case of the covered employee's divorce or legal separation, a single notice sent by or on behalf of the covered employee or any one of the qualified beneficiaries (that is, the spouse or a dependent child) satisfies the notice requirement for all those who become qualified beneficiaries as a result of the divorce or legal separation.

The group health plan must make COBRA continuation coverage available for the entire election period if the qualified beneficiary elects coverage prior to the end of the period (except in the case of a revoked waiver, as discussed below). An employer or employee organization maintaining a group health plan using an indemnity or reimbursement arrangement can satisfy this requirement by continuing the qualified beneficiary's coverage during the election period or by discontinuing the coverage until the qualified beneficiary elects COBRA and then retroactively reinstating the qualified beneficiary's coverage. Under the final regulations, as under the 1987 proposed regulations, the date of the qualifying event (and thus, the beginning of the maximum coverage period) is not delayed merely because a plan provides coverage during the election period. Claims incurred by the qualified beneficiary during the election period do not have to be paid until COBRA continuation coverage is elected and any payment required for coverage is made.

For a group health plan providing health services—including a health maintenance organization or a walk-in clinic—a qualified beneficiary who has not elected and paid for COBRA continuation coverage can be required to choose either to elect and to pay for coverage or to pay a reasonable and customary charge for plan services (but only if the qualified beneficiary will be reimbursed for that charge within 30 days after she or he elects COBRA continuation coverage and makes any payment for coverage). Alternatively, the plan can treat the qualified beneficiary's use of the plan's health services as a constructive election of COBRA continuation coverage and, if it so notifies the qualified beneficiary prior to the use of services, can require payment for COBRA continuation coverage.

The final regulations adopt the position in *Communications Workers of America* v. *NYNEX Corp.*, 898 F.2d 887 (2d Cir. 1989), regarding the responses that a group health plan must make with respect to the rights of a qualified beneficiary during that qualified beneficiary's election period. Specifically, the final regulations require that the plan make a complete response to any inquiry from a health care provider regarding the qualified beneficiary's right to coverage under the plan during the election period. Thus, if the qualified beneficiary has not yet elected COBRA continuation coverage

[5] The U.S. Department of Labor has advised the IRS and Treasury that, if a covered employee or qualified beneficiary has not been adequately informed of the obligation to provide notice in the case of a qualifying event that is the divorce or legal separation of the covered employee or that is a dependent child's ceasing to be covered under the generally applicable requirements of the plan, the covered employee's or qualified beneficiary's failure to provide timely notice to the plan administrator will not affect the plan's obligation to make continuation coverage available upon receiving notice of such event.

but remains covered under the plan during the election period (subject to retroactive cancellation if no election is made), the plan must so inform the health care provider. Conversely, if the qualified beneficiary is not covered during the election period prior to her or his election, the plan must inform the health care provider that the qualified beneficiary does not have current coverage but will have retroactive coverage if COBRA continuation coverage is elected. (The final regulations also include similar requirements with respect to inquiries made by health care providers during the 30- and 45-day grace periods for paying for COBRA continuation coverage.)

A qualified beneficiary who waives COBRA continuation coverage during the election period can revoke the waiver before the end of the election period, but the group health plan is not then required to provide coverage as of any date prior to the revocation. Although several commenters objected to the rule in the 1987 proposed regulations allowing the revocation during the election period of any previous waiver, the final regulations retain this rule. If the rule permitted irrevocable waivers, plans might induce qualified beneficiaries to execute waivers hastily before becoming fully informed of their rights and having the opportunity to carefully consider whether to elect COBRA. As with the election of COBRA continuation coverage, a waiver or a revocation of a waiver is deemed to be made on the date sent. The employer or employee organization maintaining the group health plan is not permitted to withhold money, benefits, or anything else to which the qualified beneficiary is entitled under any law or agreement in order to induce a qualified beneficiary to make payment for COBRA continuation coverage or to surrender any rights under COBRA. Any waiver of COBRA continuation coverage rights obtained through such means will be invalid. However, the general rules for coverage during the election period apply in the case of waivers and revocations of waivers. Thus, in the case of an indemnity arrangement, the plan can deny coverage for claims until payment for the coverage has been made (as can also be done with those health maintenance organizations or walk-in clinics that adopt this method for complying with the COBRA continuation coverage requirements during the election period).

A group health plan must offer each qualified beneficiary the opportunity to make an independent election to receive COBRA continuation coverage and, during an open enrollment period, to choose among any options available to similarly situated active employees. This requirement also applies to any child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage. (An election for a minor child may be made by the child's parent or legal guardian.) If a covered employee or the spouse of a covered employee elects COBRA continuation coverage and the election does not specify whether the election is for self-only coverage, the election is deemed to include an election of COBRA continuation coverage on behalf of other qualified beneficiaries with respect to that qualifying event.

Duration of COBRA Continuation Coverage

The 1987 proposed regulations incorporate the statutory bases for terminating COBRA continuation coverage except the rule (added by OBRA 1989 and amended by HIPAA) that COBRA coverage can be terminated in the month that is more than 30 days after a final determination that a qualified beneficiary is no longer disabled. The new proposed regulations add this statutory basis for terminating COBRA coverage, with two clarifications. First, the new proposed regulations clarify that a determination that a qualified beneficiary is no longer disabled allows termination of COBRA continuation coverage for all qualified beneficiaries who were entitled to the disability extension by reason of the disability of the qualified beneficiary who has been determined to no longer be disabled. Second, the new proposed regulations clarify that such a determination does not allow termination of the COBRA continuation coverage of a qualified beneficiary before the end of the maximum coverage period that would apply without regard to the disability extension.

Section 4980B(f)(2)(B)(iv) provides that a qualified beneficiary's right to COBRA continuation coverage may be terminated when the qualified beneficiary "first becomes," after the date of the COBRA election, covered under another group health plan (subject to certain additional conditions) or entitled to Medicare benefits. The final regulations add two new questions-and-answers that provide guidance on this provision.

The 1987 proposed regulations substitute "is" for the statutory phrase "first becomes." The effect of this substitution was to permit an employer to cut off a qualified beneficiary's right to COBRA continuation coverage based upon other group health plan coverage that the qualified beneficiary first became covered under before she or he elected COBRA coverage. In the case of entitlement to Medicare benefits, the 1987 proposed regulations not only shift the statutory "becomes" to "is," they also exclude from the definition of *qualified beneficiary* anyone who is entitled to Medicare benefits on the day before the qualifying event. After careful consideration, the IRS and Treasury concluded that the better interpretation of the statute is that other group health plan coverage that a qualified beneficiary has before the COBRA election is not a basis for cutting off the qualified beneficiary's right to COBRA continuation coverage. (The same rule applies for entitlement to Medicare benefits.)

Based upon the recommendation of the IRS, the Solicitor General filed an amicus brief before the Supreme Court urging this position, which was unanimously adopted by the Supreme Court in *Geissal* v. *Moore Medical Corp.*, 118 S. Ct. 1869 (1998). The final regulations adopt the position urged by the IRS and Treasury and adopted by the Court in *Geissal*. They provide that an employer may cut off the right to COBRA continuation coverage based upon other group health plan coverage or entitlement to Medicare benefits only if the qualified beneficiary first becomes covered under the other group health plan coverage or entitled to the Medicare benefits after the date of the COBRA election.

The statutory rule allowing a plan to discontinue COBRA continuation coverage on account of coverage under another group health plan was amended by OBRA 1989 to prohibit the discontinuance if the qualified beneficiary's other coverage was subject to a preexisting condition exclusion. This amendment was further modified by HIPAA to allow discontinuance of COBRA continuation coverage if the preexisting condition exclusion does not apply or is satisfied by reason of the limitations on preexisting condition exclusions in section 9801. The final regulations reflect this amendment and clarify that coverage under another group health plan includes coverage under a governmental plan.

Many commenters asked whether mere eligibility for Medicare justifies a discontinuance of COBRA continuation coverage. In addition, many inquiries have been received that ask whether the qualified beneficiary must be entitled to both Part A and B of Medicare. The final regulations clarify that entitlement to Medicare benefits means being enrolled

in Medicare and does not mean merely being eligible to enroll in Medicare. The final regulations also clarify that being entitled to either Part A or B is sufficient for the plan to discontinue COBRA continuation coverage (assuming that the entitlement to Medicare benefits first arises after COBRA continuation coverage has been elected).

The 1987 proposed regulations allow a plan to discontinue providing COBRA continuation coverage to a qualified beneficiary for cause on the same basis that the plan could terminate for cause the coverage of a similarly situated active employee (except for payments that would be untimely if made by a nonCOBRA beneficiary but that are made within the grace periods provided by COBRA). The final regulations provide that, for example, if a plan terminates the coverage of similarly situated active employees for the submission of a fraudulent claim, then the COBRA continuation coverage of a qualified beneficiary can also be terminated for the submission of a fraudulent claim.

The 1987 proposed regulations reflect the statutory rules that were then in effect for the maximum period that a plan is required to make COBRA continuation coverage available. Since then the statute has been amended to add the disability extension, to permit plans to extend the notice period if the maximum coverage period is also extended (referred to as the optional extension of the required periods), and to add a special rule in the case of Medicare entitlement preceding a qualifying event that is the termination or reduction of hours of employment. The new proposed regulations reflect these statutory changes. The maximum coverage period for a qualifying event that is the bankruptcy of the employer has also been added to the new proposed regulations.

The 1998 proposed regulations set forth the requirements for a disability extension to apply to a qualified beneficiary. Those requirements have been incorporated into the final regulations, with one clarification. One of the conditions for a disability extension to apply is that the qualified beneficiary be disabled during the first 60 days of COBRA continuation coverage. In the case of a qualified beneficiary who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the final regulations clarify that the 60-day period is measured from the date of the child's birth or placement for adoption.

The 1987 proposed regulations set forth standards for expanding the maximum coverage period in the case of multiple qualifying events. Since 1987, the statutory rules for multiple qualifying events have been affected by the addition of the disability extension and the optional extension of required periods. The final regulations reflect the statutory changes.

In addition, the final regulations clarify that a termination of employment following a qualifying event that is a reduction of hours of employment does not expand the maximum coverage period. *Accord, Burgess* v. *Adams Tool & Engineering, Inc.*, 908 F. Supp. 473 (W.D. Mich. 1995); *contra, Gibbs* v. *Anchorage School District*, 1995 U.S. LEXIS 6290 (D. Ark. 1995). The underlying pattern in the statute is generally to require 18 months (or 29 months, in the case of a disability extension) of coverage for qualifying events that are the termination or reduction of hours of a covered employee's employment and 36 months for other qualifying events. The statutory provision for expansion of the 18-month period to 36 months upon the occurrence of a second qualifying event generally follows this pattern by allowing a qualified beneficiary who would have been entitled to 36 months of coverage if the second qualifying event had occurred first to get a total of 36 months of COBRA continuation coverage. The statute lists six categories of qualifying events, and termination of employment and reduction of hours of employment are in the same category (just as divorce and legal separation are in the same category of qualifying event). Treating a reduction of hours of employment and a termination of employment as variations of a single qualifying event rather than as two distinct qualifying events is consistent with the overall design of the statute.

The 1987 proposed regulations address situations in which, following a qualifying event, an employer provides alternative coverage, rather than COBRA continuation coverage, to a former employee and her or his spouse and dependent children. The 1987 proposed regulations provide that if the alternative coverage does not satisfy the requirements for COBRA continuation coverage, each qualified beneficiary must be given the opportunity to elect COBRA continuation coverage instead of the alternative coverage. If, however, the alternative coverage would satisfy the requirements for COBRA continuation coverage, the 1987 proposed regulations provide that, at the time of the original qualifying event, the employee, spouse, and dependent children need not be provided with the opportunity to elect COBRA continuation coverage. The final regulations generally retain these rules but also clarify that if the employer increases the employee share of premiums upon the occurrence of a qualifying event, the qualified beneficiaries must be offered the opportunity to elect COBRA continuation coverage.

The 1987 proposed regulations further provide that, if the alternative coverage does not satisfy the requirements for COBRA continuation coverage and if, after the original qualifying event, a qualifying event occurs that would cause a spouse or dependent child to lose the alternative coverage, the spouse or child must be offered COBRA continuation coverage. However, if the alternative coverage satisfies the requirements for COBRA continuation coverage, and if another qualifying event that causes the spouse or dependent child to lose the alternative coverage occurs more than 18 months after the original qualifying event, the 1987 proposed regulations provide that the spouse or dependent child need not be offered COBRA continuation coverage. The final regulations modify the 1987 proposed regulations and provide that if an event such as the death of or divorce from the covered employee would end the right of a spouse or dependent child to receive the alternative coverage (whether during or after the first 18 months of COBRA continuation coverage), then that event is a qualifying event, regardless of whether the alternative coverage would satisfy the requirements for COBRA continuation coverage.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) gives certain members of the military reserves the right to up to 18 months of continuation coverage when they are called to active duty. Many people have asked if the USERRA and COBRA periods of continuation coverage run concurrently or consecutively. The final regulations clarify that USERRA coverage is alternative coverage. Thus, the periods run concurrently.

The 1987 proposed regulations include the statutory rule requiring that a conversion option otherwise made available under the plan be made available within 180 days before the end of the maximum coverage period. The final regulations adopt this rule without change.

Paying for COBRA Continuation Coverage

The 1987 proposed regulations identify the qualified beneficiary as the person that can be required to pay the

applicable premium. Many plans and employers have asked whether they must accept payment on behalf of a qualified beneficiary from third parties, such as a hospital or a new employer. Nothing in the statute requires the qualified beneficiary to pay the amount required by the plan; the statute merely permits the plan to require that payment be made. In order to make clear that any person may make the required payment on behalf of a qualified beneficiary, the final regulations modify the rule in the 1987 proposed regulations to refer to the payment requirement without identifying the person who makes the payment.

The 1998 proposed regulations address the amount that a plan can require to be paid for COBRA continuation coverage during the disability extension. This amount is 150 percent of the applicable premium instead of the limit of 102 percent of the applicable premium that applies for coverage outside the disability extension. The 1998 proposed regulations specifically reserve the issue of the amount a plan could require to be paid in a case where only nondisabled family members of the disabled individual receive COBRA continuation coverage during the disability extension. The preamble to the 1998 proposed regulations solicited comments on this issue. Commenters suggested that the 150 percent rate could be required if the disabled individual was part of the coverage group but that the limit could be the 102 percent rate if only nondisabled qualified beneficiaries were in the coverage group. The final regulations adopt this suggestion.

The 1987 proposed regulations provide that the amount required to be paid for a qualified beneficiary's COBRA continuation coverage must be fixed in advance for each 12-month determination period. Many commenters suggested exceptions that could be made to this general rule. Section 4980B(f)(4)(C) explicitly requires that the determination of the applicable premium be made for a period of 12 months and that the determination be made before the beginning. Therefore, the final regulations do not permit an increase in the applicable premium during the 12-month determination period. However, the final regulations do revise the general rule from the 1987 proposed regulations to recognize the difference between the applicable premium (which may not be increased during a 12-month determination period and which is the basis for calculating the maximum amount that the plan can require to be paid for COBRA continuation coverage) and the maximum amount that the plan can require to be paid for COBRA continuation coverage. Thus, the final regulations permit a plan to increase the amount it requires to be paid for COBRA continuation coverage during a determination period to take into account the permitted increases during the disability extension, to explicitly permit a plan that is requiring payment of less than the maximum permissible amount to increase the amount required to be paid during the 12-month determination period, and to permit an increase if a qualified beneficiary changes to more expensive coverage (but also to require a reduction if the qualified beneficiary changes to less expensive coverage).

The 1987 proposed regulations set forth the statutory requirement that qualified beneficiaries be allowed to pay for COBRA coverage in monthly installments. The 1987 proposed regulations add that plans may allow payment to be made at other intervals, and specifically mention quarterly or semiannual payment as examples. The final regulations adopt the rule in the 1987 proposed regulations, but the final regulations add weekly payment as an example to make clear that shorter than monthly installments are also permitted.

The 1987 proposed regulations provide that the first payment for COBRA continuation coverage does not apply prospectively only. In order to make clear that a plan is not precluded from allowing a qualified beneficiary to apply the first payment prospectively only, the final regulations provide that qualified beneficiaries need not be given the option of having the first payment for COBRA continuation coverage apply prospectively only.

The 1987 proposed regulations address the issue of timely payment for COBRA continuation coverage, including an interpretation of the statutory grace periods of 45 days for the initial payment and 30 days for all other payments. Commenters pointed out that the application of the statutory grace period rules could produce an anomalous result in some situations, such as allowing a plan to require payment for the third month of COBRA continuation coverage earlier than the plan could require payment for the first two months. OBRA 1989 amended the 45-day grace period rule to prevent this, and the final regulations conform to the OBRA 1989 change. The final regulations also clarify that payment is considered made on the date it is sent.

The final regulations also add a requirement (similar to the one described above for the election period) relating to the response that a plan must give when a health care provider, such as a physician, a hospital, or a pharmacy, contacts the plan to confirm coverage of a qualified beneficiary with respect to whom the required payment has not been made for the current period (but for whom any applicable grace period has not expired). In such a case, the plan is required to inform the health care provider of all of the details of the qualified beneficiary's right to coverage during the applicable grace periods.

Many individuals have inquired about a plan's right to discontinue their COBRA continuation coverage because the amount of the payment made was short by an amount that is not significant. Sometimes the error has been clearly one of transposed digits on a check tendered for payment; in other instances, payment has been short by such a small amount that it would be unreasonable to attribute the shortfall to anything other than mistake. The final regulations establish a mechanism for the treatment of payments that are short by an insignificant amount. Either the plan must treat the payment as satisfying the plan's payment requirement or it must notify the qualified beneficiary of the amount of the deficiency and grant the qualified beneficiary a reasonable period of time for the deficiency to be paid. The final regulations provide that, as a safe harbor, a period of 30 days is deemed to be a reasonable period for this purpose.

Business Reorganizations

The 1987 proposed regulations provide little direct guidance on the allocation of responsibility for COBRA continuation coverage in the event of corporate transactions, such as a sale of stock of a subsidiary or a sale of substantial assets. Commenters on the 1987 proposed regulations requested further guidance on corporate transactions, pointing out that the existing degree of uncertainty tends to drive up the costs and risks of a transaction to both buyers and sellers. The IRS and Treasury share this view and believe also that greater certainty helps to protect the rights of qualified beneficiaries in these transactions. The IRS has been contacted by many qualified beneficiaries whose COBRA continuation coverage has been dropped or denied in the context of a corporate transaction. In many cases, these qualified beneficiaries have been told by each of the buyer and the seller that the other party is the one responsible for providing them with COBRA continuation coverage.

The preamble to the 1998 proposed regulations requested comments on a possible approach to allocating responsibility for COBRA continuation coverage in corporate transactions. Commenters suggested that, in a stock sale, as in an asset sale, it would be consistent with standard commercial practice to provide that the seller retains liability for all existing qualified beneficiaries, including those formerly associated with the subsidiary being sold. The IRS and Treasury have studied the comments and given consideration to several alternatives with a view to establishing rules that will minimize the administrative burden and transaction costs for the parties to transactions while protecting the rights of qualified beneficiaries and maintaining consistency with the statute.

Accordingly, the new proposed regulations make clear that the parties to a transaction are free to allocate the responsibility for providing COBRA continuation coverage by contract, even if the contract imposes responsibility on a different party than would the new proposed regulations. So long as the party to whom the contract allocates responsibility performs its obligations, the other party will have no responsibility for providing COBRA continuation coverage. If, however, the party allocated responsibility under the contract defaults on its obligation, and if, under the new proposed regulations, the other party would have the obligation to provide COBRA continuation coverage in the absence of a contractual provision, then the other party would retain that obligation. This approach would avoid prejudicing the rights of qualified beneficiaries to COBRA continuation coverage based upon the provisions of a contract to which they were not a party and under which the employer with the underlying obligation under the regulations to provide COBRA continuation coverage could otherwise contract away that obligation to a party that fails to perform. Moreover, the party with the underlying responsibility under the regulations can insist on appropriate security and, of course, could pursue contractual remedies against the defaulting party.

The new proposed regulations provide, for both sales of stock and sales of substantial assets, such as a division or plant or substantially all the assets of a trade or business, that the seller retains the obligation to make COBRA continuation coverage available to existing qualified beneficiaries. In addition, in situations in which the seller ceases to provide any group health plan to any employee in connection with the sale whether such a cessation is in connection with the sale is determined on the basis of the facts and circumstances of each case and thus is not responsible for providing COBRA continuation coverage, the new proposed regulations provide that the buyer is responsible for providing COBRA continuation coverage to existing qualified beneficiaries. This secondary liability for the buyer applies in all stock sales and in all sales of substantial assets in which the buyer continues the business operations associated with the assets without interruption or substantial change.

A particular type of asset sale raises issues for which the new proposed regulations do not provide any special rules. (Thus, the general rules in the new proposed regulations for business reorganizations would apply to this type of transaction.) This type of asset sale is one in which, after purchasing a business as a going concern, the buyer continues to employ the employees of that business and continues to provide those employees exactly the same health coverage that they had before the sale (either by providing coverage through the same insurance contract or by establishing a plan that mirrors the one that provided benefits before the sale). The application of the rules in the new proposed regulations to this type of asset sale would require the seller to make COBRA continuation coverage available to the employees continuing in employment with the buyer (and to other family members who are qualified beneficiaries). Ordinarily, the continuing employees (or their family members) would be very unlikely to elect COBRA continuation coverage from the seller when they can receive the same coverage (usually at much lower cost) as active employees of the buyer.

Consideration is being given to whether, under appropriate circumstances, such an asset sale would be considered not to result in a loss of coverage for those employees who continue in employment with the buyer after the sale. A countervailing concern, however, relates to those qualified beneficiaries who might have a reason to elect COBRA continuation coverage from the seller. An example of such a qualified beneficiary would be an employee who continues in employment with the buyer, whose family is likely to have medical expenses that exceed the cost of COBRA coverage, and who has significant questions about the solvency of the buyer or other concerns about how long the buyer might continue to provide the same health coverage.

Under one possible approach, a loss of coverage would be considered not to have occurred so long as the purchasing employer in an asset sale continued to maintain the same group health plan coverage that the seller maintained before the sale without charging the employees any greater percentage of the total cost of coverage than the seller had charged before the sale. For this purpose, the coverage would be considered unchanged if there was no obligation to provide a summary of material modifications within 60 days after the change due to a material reduction in covered services or benefits under the rules that apply under Title I of ERISA. If these conditions were satisfied for the maximum coverage period that would otherwise apply to the seller's termination of employment of the continuing employees (generally 18 months from the date of the sale), then those terminations of employment would never be considered qualifying events. If the conditions were not satisfied for the full maximum coverage period, then on the date when they ceased to be satisfied the seller would be obligated to make COBRA continuation coverage available for the balance of the maximum coverage period.

Comments are invited on the utility of such a rule, either in situations in which the seller retains an ownership interest in the buyer after the sale (for example, a sale of assets from a 100-percent owned subsidiary to a 75-percent owned subsidiary) or, more generally, in situations in which the seller and the buyer are unrelated. Suggestions are also solicited for other rules that would protect qualified beneficiaries while providing relief to employers in these situations.

Although the new proposed regulations address how COBRA obligations are affected by a sale of stock (and a sale of substantial assets), the new proposed regulations do not address how the obligation to make COBRA continuation coverage available is affected by the transfer of an ownership interest in a noncorporate entity that causes the noncorporate entity to cease to be a member of a group of trades or businesses under common control (whether or not it becomes a member of a different group of trades or business under common control). Comments are invited on this issue.

Employer Withdrawals From Multiemployer Plans

The new proposed regulations also address COBRA obligations in connection with an employer's cessation of contributions to a multiemployer group health plan. The new proposed regulations provide that the multiemployer plan generally continues to have the obligation to make COBRA continuation coverage available to qualified beneficiaries associated with that employer. (There generally would not be any obligation to make COBRA continuation coverage available to continuing employees in this situation because a cessation of contributions is not a qualifying event.) However, once the employer provides group health coverage to a significant number of employees who were formerly covered under the multiemployer plan, or starts contributing to another multiemployer plan on their behalf, the employer's plan (or the new multiemployer plan) would have the obligation to make COBRA continuation coverage available to the existing qualified beneficiaries. This rule is contrary to the holding in *In re Appletree Markets, Inc.*, 19 F.3d 969 (5th Cir. 1994), which held that the multiemployer plan continued to have the COBRA obligations with respect to existing qualified beneficiaries after the withdrawing employer established a plan for the same class of employees previously covered under the multiemployer plan.

Interaction of FMLA and COBRA

The new proposed regulations set forth rules regarding the interaction of the COBRA continuation coverage requirements with the provisions of the Family and Medical Leave Act of 1993 (FMLA). The rules under the new proposed regulations are substantially the same as those set forth in Notice 94–103. The last two questions-and-answers in that notice have not been included in the new proposed regulations because they relate to general subject matter that is addressed elsewhere in the regulations.

Under the new proposed regulations, the taking of FMLA leave by a covered employee is not itself a qualifying event. Instead, a qualifying event occurs when an employee who is covered under a group health plan immediately prior to FMLA leave (or who becomes covered under a group health plan during FMLA leave) does not return to work with the employer at the end of FMLA leave and would, but for COBRA continuation coverage, lose coverage under the group health plan. (As under the general rules of COBRA, this would also constitute a qualifying event with respect to the spouse or any dependent child of the employee.) The qualifying event is deemed to occur on the last day of the employee's FMLA leave, and the maximum coverage period generally begins on that day. (The new proposed regulations provide a special rule for cases where coverage is not lost until a later date and the plan provides for the optional extension of the required periods.) In the case of such a qualifying event, the employer cannot condition the employee's rights to COBRA continuation coverage on the employee's reimbursement of any premiums paid by the employer to maintain the employee's group health plan coverage during the period of FMLA leave.

Any lapse of coverage under the group health plan during the period of FMLA leave and any state or local law requiring that group health plan coverage be provided for a period longer than that required by the FMLA are disregarded in determining whether the employee has a qualifying event on the last day of that leave. However, the employee's loss of coverage at the end of FMLA leave will not constitute a qualifying event if, prior to the employee's return from FMLA leave, the employer has eliminated group health plan coverage for the class of employees to which the employee would have belonged if she or he had not taken FMLA leave.

Special Analyses.

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that employers with fewer than 20 employees are not subject to the requirements set forth in the final regulations and, thus, the very smallest employers are not affected by the collection of information requirements. Moreover, even for small entities with 20 or more employees who maintain group health plans and who, thus, are subject to the requirements of COBRA, the collections of information will not impose a substantial economic impact. The only collections of information imposed on small entities by the regulations are (1) to notify qualified beneficiaries of their right to elect COBRA continuation coverage upon the occurrence of a qualifying event and (2) to notify certain qualified beneficiaries that make insignificant payment errors of those errors. With respect to this first notice requirement, it is estimated that, on average, in a given year, qualifying events will occur with respect to approximately 10 percent of all covered employees. Thus, an employer with 100 employees would be required to send 10 notices to qualified beneficiaries each year. The average cost of sending such a notice is estimated to be $.50. Thus, the total estimated cost for 10 notices is $5.00, which is the estimated annual average burden on an employer with 100 employees. With respect to the second notice requirement, it is estimated that, on average, at any time, the number of qualified beneficiaries is approximately equal to two percent of an employer's workforce. Of that number, approximately 1 in 10 will make an insignificant error in payment each year that requires the employer to send such a notice. For example, an employer with 100 employees will have an average of two qualified beneficiaries at any time. Thus, the employer will receive an insignificant underpayment about once every five years. Even if the employer chose to send out a notice each time such an insignificant underpayment occurred, this would amount to only one notice every five years. The average cost of sending such a notice is estimated to be $5.00, resulting in an average annual burden of $1.00 for an employer with 100 employees. Thus, the total annual cost of these two notice requirements for an employer with 100 employees is $6.00, which is not a significant economic impact. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, the 1998 notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Russ Weinheimer, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 54 and 602 are amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.4980B–1 also issued under 26 U.S.C. 4980B.

Section 54.4980B–2 also issued under 26 U.S.C. 4980B.

Section 54.4980B–3 also issued under 26 U.S.C. 4980B.

Section 54.4980B–4 also issued under 26 U.S.C. 4980B.

Section 54.4980B–5 also issued under 26 U.S.C. 4980B.

Section 54.4980B–6 also issued under 26 U.S.C. 4980B.

Section 54.4980B–7 also issued under 26 U.S.C. 4980B.

Section 54.4980B–8 also issued under 26 U.S.C. 4980B. * * *

Par. 2. Sections 54.4980B–0, 54.4980B–1, 54.4980B–2, 54.4980B–3, 54.4980B–4, 54.4980B–5, 54.4980B–6, 54.4980B–7, and 54.4980B–8 are added to read as follows:

§ 54.4980B–0 Table of contents.

This section contains first a list of the section headings and then a list of the questions in each section in §§ 54.4980B–1 through 54.4980B–8.

List of Sections

§ 54.4980B–1 COBRA in general.
§ 54.4980B–2 Plans that must comply.
§ 54.4980B–3 Qualified beneficiaries.
§ 54.4980B–4 Qualifying events.
§ 54.4980B–5 COBRA continuation coverage.
§ 54.4980B–6 Electing COBRA continuation coverage.
§ 54.4980B–7 Duration of COBRA continuation coverage.
§ 54.4980B–8 Paying for COBRA continuation coverage.

List of Questions

§ 54.4980B–1 COBRA in general.

Q–1: What are the health care continuation coverage requirements contained in section 4980B of the Internal Revenue Code and in ERISA?

Q–2: What is the effective date of §§ 54.4980B–1 through 54.4980B–8?

§ 54.4980B–2 Plans that must comply.

Q–1: For purposes of section 4980B, what is a group health plan?

Q–2: For purposes of section 4980B, what is the employer?

Q–3: [Reserved]

Q–4: What group health plans are subject to COBRA?

Q–5: What is a small-employer plan?

Q–6: [Reserved]

Q–7: What is the plan year?

Q–8: How do the COBRA continuation coverage requirements apply to cafeteria plans and other flexible benefit arrangements?

Q–9: What is the effect of a group health plan's failure to comply with the requirements of section 4980B(f)?

Q–10: Who is liable for the excise tax if a group health plan fails to comply with the requirements of section 4980B(f)?

§ 54.4980B–3 Qualified beneficiaries.

Q–1: Who is a qualified beneficiary?

Q–2: Who is an employee and who is a covered employee?

Q–3: Who are the similarly situated nonCOBRA beneficiaries?

§ 54.4980B–4 Qualifying events.

Q–1: What is a qualifying event?

Q–2: Are the facts surrounding a termination of employment (such as whether it was voluntary or involuntary) relevant in determining whether the termination of employment is a qualifying event?

§ 54.4980B–5 COBRA continuation coverage.

Q–1: What is COBRA continuation coverage?

Q–2: What deductibles apply if COBRA continuation coverage is elected?

Q–3: How do a plan's limits apply to COBRA continuation coverage?

Q–4: Can a qualified beneficiary who elects COBRA continuation coverage ever change from the coverage received by that individual immediately before the qualifying event?

Q–5: Aside from open enrollment periods, can a qualified beneficiary who has elected COBRA continuation coverage choose to cover individuals (such as newborn children, adopted children, or new spouses) who join the qualified beneficiary's family on or after the date of the qualifying event?

4.4980B–6 Electing COBRA continuation coverage.

Q–1: What is the election period and how long must it last?

Q–2: Is a covered employee or qualified beneficiary responsible for informing the plan administrator of the occurrence of a qualifying event?

Q–3: During the election period and before the qualified beneficiary has made an election, must coverage be provided?

Q–4: Is a waiver before the end of the election period effective to end a qualified beneficiary's election rights?

Q–5: Can an employer or employee organization withhold money or other benefits owed to a qualified beneficiary until the qualified beneficiary either waives COBRA continuation coverage, elects and pays for such coverage, or allows the election period to expire?

Q–6: Can each qualified beneficiary make an independent election under COBRA?

54.4980B–7 Duration of COBRA continuation coverage.

Q–1: How long must COBRA continuation coverage be made available to a qualified beneficiary?

Q–2: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to coverage under another group health plan?

Q–3: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to the qualified beneficiary's entitlement to Medicare benefits?

Q–4: [Reserved]

Q–5: How does a qualified beneficiary become entitled to a disability extension?

Q–6: Under what circumstances can the maximum coverage period be expanded?

Q–7: If health coverage is provided to a qualified beneficiary after a qualifying event without regard to COBRA continuation coverage (for example, as a result of state or local law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. 4315), industry practice, a collective bargaining agreement, severance agreement, or plan procedure), will such alternative coverage extend the maximum coverage period?

Q–8: Must a qualified beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?

54.4980B–8 Paying for COBRA continuation coverage.

Q–1: Can a group health plan require payment for COBRA continuation coverage?

Q–2: When is the applicable premium determined and when can a group health plan increase the amount it requires to be paid for COBRA continuation coverage?

Q–3: Must a plan allow payment for COBRA continuation coverage to be made in monthly installments?

Q–4: Is a plan required to allow a qualified beneficiary to choose to have the first payment for COBRA continuation coverage applied prospectively only?

Q–5: What is timely payment for COBRA continuation coverage?

§ 54.4980B–1 COBRA in general.

The COBRA continuation coverage requirements are described in general in the following questions-and-answers:

Q–1: What are the health care continuation coverage requirements contained in section 4980B of the Internal Revenue Code and in ERISA?

A–1: (a) Section 4980B provides generally that a group health plan must offer each qualified beneficiary who would otherwise lose coverage under the plan as a result of a qualifying event an opportunity to elect, within the election period, continuation coverage under the plan. The continuation coverage requirements were added to section 162 by the Consolidated

Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272 (100 Stat. 222), and moved to section 4980B by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342). Continuation coverage required under section 4980B is referred to in §§ 54.4980B–1 through 54.4980B–8 as COBRA continuation coverage.

(b) COBRA also added parallel continuation coverage requirements to Part 6 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1161–1168), which is administered by the U.S. Department of Labor. If a plan does not comply with the COBRA continuation coverage requirements, the Internal Revenue Code imposes an excise tax on the employer maintaining the plan (or on the plan itself), whereas ERISA gives certain parties—including qualified beneficiaries who are participants or beneficiaries within the meaning of Title I of ERISA, as well as the Department of Labor—the right to file a lawsuit to redress the noncompliance. The rules in §§ 54.4980B–1 through 54.4980B–8 apply for purposes of section 4980B and generally also for purposes of the COBRA continuation coverage requirements in Title I of ERISA. However, certain provisions of the COBRA continuation coverage requirements (such as the definitions of group health plan, employee, and employer) are not identical in the Internal Revenue Code and Title I of ERISA. In those cases in which the statutory language is not identical, the rules in §§ 54.4980B–1 though 54.4980B–8 nonetheless apply to the COBRA continuation coverage requirements of Title I of ERISA, except to the extent those rules are inconsistent with the statutory language of Title I of ERISA.

(c) A group health plan that is subject to section 4980B (or the parallel provisions under ERISA) is referred to as being subject to COBRA. (See Q&A–4 of § 54.4980B–2). A qualified beneficiary can be required to pay for COBRA continuation coverage. The term *qualified beneficiary* is defined in Q&A–1 of § 54.4980B–3. The term *qualifying event* is defined in Q&A–1 of § 54.4980B–4. COBRA continuation coverage is described in § 54.4980B–5. The election procedures are described in § 54.4980B–6. Duration of COBRA continuation coverage is addressed in § 54.4980B–7, and payment for COBRA continuation coverage is addressed in § 54.4980B–8. Unless the context indicates otherwise, any reference in §§ 54.4980B–1 through 54.4980B–8 to COBRA refers to section 4980B (as amended) and to the parallel provisions of ERISA.

Q–2: What is the effective date of §§ 54.4980B–1 through 54.4980B–8?

A–2: Sections 54.4980B–1 through 54.4980B–8 apply with respect to qualifying events occurring in plan years beginning on or after January 1, 2000. For purposes of section 4980B, with respect to qualifying events that occur in plan years beginning before that date, and with respect to qualifying events that occur in plan years beginning on or after that date for topics relating to the COBRA continuation coverage requirements of section 4980B that are not addressed in §§ 54.4980B–1 through 54.4980B–8 (such as methods for calculating the applicable premium), plans and employers must operate in good faith compliance with a reasonable interpretation of the statutory requirements in section 4980B.

§ 54.4980B–2 Plans that must comply.

The following questions-and-answers apply in determining which plans must comply with the COBRA continuation coverage requirements:

Q–1: For purposes of section 4980B, what is a group health plan?

A–1: (a) For purposes of section 4980B, a group health plan is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to their families. Individuals who have an employment-related connection to the employer or employee organization consist of employees, former employees, the employer, and others associated or formerly associated with the employer or employee organization in a business relationship (including members of a union who are not currently employees). Health care is provided under a plan whether provided directly or through insurance, reimbursement, or otherwise, and whether or not provided through an on-site facility (except as set forth in paragraph (d) of this Q&A–1), or through a cafeteria plan (as defined in section 125) or other flexible benefit arrangement. For purposes of this Q&A–1, insurance includes not only group insurance policies but also one or more individual insurance policies in any arrangement that involves the provision of health care to two or more employees. A plan maintained by an employer or employee organization is any plan of, or contributed to (directly or indirectly) by, an employer or employee organization. Thus, a group health plan is maintained by an employer or employee organization even if the employer or employee organization does not contribute to it if coverage under the plan would not be available at the same cost to an individual but for the individual's employment-related connection to the employer or employee organization. These rules are further explained in paragraphs (b) through (d) of this Q&A–1. An exception for qualified long-term care services is set forth in paragraph (e) of this Q&A–1, and for medical savings accounts in paragraph (f) of this Q&A–1.

(b) For purposes of §§ 54.4980B–1 through 54.4980B–8, *health care* has the same meaning as *medical care* under section 213(d). Thus, health care generally includes the diagnosis, cure, mitigation, treatment, or prevention of disease, and any other undertaking for the purpose of affecting any structure or function of the body. Health care also includes transportation primarily for and essential to health care as described in the preceding sentence. However, health care does not include anything that is merely beneficial to the general health of an individual, such as a vacation. Thus, if an employer or employee organization maintains a program that furthers general good health, but the program does not relate to the relief or alleviation of health or medical problems and is generally accessible to and used by employees without regard to their physical condition or state of health, that program is not considered a program that provides health care and so is not a group health plan. For example, if an employer maintains a spa, swimming pool, gymnasium, or other exercise/fitness program or facility that is normally accessible to and used by employees for reasons other than relief of health or medical problems, such a facility does not constitute a program that provides health care and thus is not a group health plan. In contrast, if an employer maintains a drug or alcohol treatment program or a health clinic, or any other facility or program that is intended to relieve or alleviate a physical condition or health problem, the facility or program is considered to be the provision of health care and so is considered a group health plan.

(c) Whether a benefit provided to employees constitutes health care is not affected by whether the benefit is excludable from income under section 132 (relating to certain fringe benefits). For example, if a department store provides its employees discounted prices on all merchandise, including health care items such as drugs or eyeglasses, the mere fact that the discounted prices also apply to health care items will not cause the program to

be a plan providing health care, so long as the discount program would normally be accessible to and used by employees without regard to health needs or physical condition. If, however, the employer maintaining the discount program is a health clinic, so that the program is used exclusively by employees with health or medical needs, the program is considered to be a plan providing health care and so is considered to be a group health plan.

(d) The provision of health care at a facility that is located on the premises of an employer or employee organization does not constitute a group health plan if—

(1) The health care consists primarily of first aid that is provided during the employer's working hours for treatment of a health condition, illness, or injury that occurs during those working hours;

(2) The health care is available only to current employees; and

(3) Employees are not charged for the use of the facility.

(e) A plan does not constitute a group health plan subject to COBRA if substantially all of the coverage provided under the plan is for qualified long-term care services (as defined in section 7702B(c)). For this purpose, a plan is permitted to use any reasonable method in determining whether substantially all of the coverage provided under the plan is for qualified long-term care services.

(f) Under section 106(b)(5), amounts contributed by an employer to a medical savings account (as defined in section 220(d)) are not considered part of a group health plan subject to COBRA. Thus, a plan is not required to make COBRA continuation coverage available with respect to amounts contributed by an employer to a medical savings account. A high deductible health plan does not fail to be a group health plan subject to COBRA merely because it covers a medical savings account holder.

Q–2: For purposes of section 4980B, what is the employer?

A–2: For purposes of section 4980B, *employer* refers to—

(a) A person for whom services are performed;

(b) Any other person that is a member of a group described in section 414(b), (c), (m), or (o) that includes a person described in paragraph (a) of this Q&A–2; and

(c) Any successor of a person described in paragraph (a) or (b) of this Q&A–2.

Q–3: [Reserved]

A–3: [Reserved]

Q–4: What group health plans are subject to COBRA?

A–4: (a) All group health plans are subject to COBRA except group health plans described in paragraph (b) of this Q&A–4. Group health plans described in paragraph (b) of this Q&A–4 are referred to in §§ 54.4980B–1 through 54.4980B–8 as excepted from COBRA.

(b) The following group health plans are excepted from COBRA—

(1) Small-employer plans (see Q&A–5 of this section);

(2) Church plans (within the meaning of section 414(e)); and

(3) Governmental plans (within the meaning of section 414(d)).

(c) The COBRA continuation coverage requirements generally do not apply to group health plans that are excepted from COBRA. However, a small-employer plan otherwise excepted from COBRA is nonetheless subject to COBRA with respect to qualified beneficiaries who experience a qualifying event during a period when the plan is not a small-employer plan (see paragraph (g) of Q&A–5 of this section).

(d) Although governmental plans are not subject to the COBRA continuation coverage requirements, group health plans maintained by state or local governments are generally subject to parallel continuation coverage requirements that were added by section 10003 of COBRA to the Public Health Service Act (42 U.S.C. 300bb–1 through 300bb–8), which is administered by the U.S. Department of Health and Human Services. Federal employees and their family members covered under the Federal Employees Health Benefit Program are covered by generally similar, but not parallel, temporary continuation of coverage provisions enacted by the Federal Employees Health Benefits Amendments Act of 1988. See 5 U.S.C. 8905a.

Q–5: What is a small-employer plan?

A–5: (a) Except in the case of a multiemployer plan, a *small-employer plan* is a group health plan maintained by an employer (within the meaning of Q&A–2 of this section) that normally employed fewer than 20 employees (within the meaning of paragraph (c) of this Q&A–5) during the preceding calendar year. In the case of a multiemployer plan, a *small-employer plan* is a group health plan under which each of the employers contributing to the plan for a calendar year normally employed fewer than 20 employees during the preceding calendar year. The rules of this paragraph (a) are illustrated in the following example:

Example. (i) Corporation *S* employs 12 employees, all of whom work and reside in the United States. *S* maintains a group health plan for its employees and their families. *S* is a wholly-owned subsidiary of *P*. In the previous calendar year, the controlled group of corporations including *P* and *S* employed more than 19 employees, although the only employees in the United States of the controlled group that includes *P* and *S* are the 12 employees of *S*.

(ii) Under § 1.414(b)-1 of this chapter, foreign corporations are not excluded from membership in a controlled group of corporations. Consequently, the group health plan maintained by *S* is not a small-employer plan during the current calendar year because the controlled group including *S* normally employed at least 20 employees in the preceding calendar year.

(b) An employer is considered to have normally employed fewer than 20 employees during a particular calendar year if, and only if, it had fewer than 20 employees on at least 50 percent of its typical business days during that year.

(c) All full-time and part-time common law employees of an employer are taken into account in determining whether an employer had fewer than 20 employees; however, an individual who is not a common law employee of the employer is not taken into account. Thus, the following individuals are not counted as employees for purposes of this Q&A–5 even though they are referred to as employees for all other purposes of §§ 54.4980B–1 through 54.4980B–8—

(1) Self-employed individuals (within the meaning of section 401(c)(1));

(2) Independent contractors (and their employees and independent contractors); and

(3) Directors (in the case of a corporation).

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

(g) A small-employer plan is generally excepted from COBRA. If, however, a plan that has been subject to COBRA (that is, was not a small-employer plan) becomes a small-employer plan, the plan remains subject to COBRA for qualifying events that occurred during the period when the plan was subject to COBRA. The rules of this paragraph (g) are illustrated by the following examples:

Example 1. An employer maintains a group health plan. The employer employed 20 employees on more than 50 percent of its working days during 2001, and consequently the plan is not excepted from COBRA during 2002. Employee *E* resigns and does not work for the employer after January 31, 2002. Under the terms of the plan, *E* is no longer eligible for coverage upon the effective date of the resignation, that is, February 1, 2002. The employer does not hire a replacement for *E*. *E* timely elects and pays for COBRA continuation coverage. The employer

employs 19 employees for the remainder of 2002, and consequently the plan is not subject to COBRA in 2003. The plan must nevertheless continue to make COBRA continuation coverage available to *E* during 2003 until the obligation to make COBRA continuation coverage available ceases under the rules of § 54.4980B–7. The obligation could continue until August 1, 2003, the date that is 18 months after the date of *E*'s qualifying event, or longer if *E* is eligible for a disability extension.

Example 2. The facts are the same as in *Example 1*. The employer continues to employ 19 employees throughout 2003 and 2004 and consequently the plan continues to be excepted from COBRA during 2004 and 2005. Spouse *S* is covered under the plan because *S* is married to one of the employer's employees. On April 1, 2002, *S* is divorced from that employee and ceases to be eligible for coverage under the plan. The plan is subject to COBRA during 2002 because *X* normally employed 20 employees during 2001. *S* timely notifies the plan administrator of the divorce and timely elects and pays for COBRA continuation coverage. Even though the plan is generally excepted from COBRA during 2003, 2004, and 2005, it must nevertheless continue to make COBRA continuation coverage available to *S* during those years until the obligation to make COBRA continuation coverage available ceases under the rules of § 54.4980B–7. The obligation could continue until April 1, 2005, the date that is 36 months after the date of *S*'s qualifying event.

Example 3. The facts are the same as in *Example 2*. *C* is a dependent child of one of the employer's employees and is covered under the plan. A dependent child is no longer eligible for coverage under the plan upon the attainment of age 23. *C* attains age 23 on November 16, 2005. The plan is excepted from COBRA with respect to *C* during 2005 because the employer normally employed fewer than 20 employees during 2004. Consequently, the plan is not obligated to make COBRA continuation coverage available to *C* (and would not be obligated to make COBRA continuation coverage available to *C* even if the plan later became subject to COBRA again).

Q–6: [Reserved]

A–6: [Reserved]

Q–7: What is the plan year?

A–7: (a) The *plan year* is the year that is designated as the plan year in the plan documents.

(b) If the plan documents do not designate a plan year (or if there are no plan documents), then the plan year is determined in accordance with this paragraph (b).

(1) The plan year is the deductible/limit year used under the plan.

(2) If the plan does not impose deductibles or limits on an annual basis, then the plan year is the policy year.

(3) If the plan does not impose deductibles or limits on an annual basis, and either the plan is not insured or the insurance policy is not renewed on an annual basis, then the plan year is the employer's taxable year.

(4) In any other case, the plan year is the calendar year.

Q–8: How do the COBRA continuation coverage requirements apply to cafeteria plans and other flexible benefit arrangements?

A–8: The provision of health care benefits does not fail to be a group health plan merely because those benefits are offered under a cafeteria plan (as defined in section 125) or under any other arrangement under which an employee is offered a choice between health care benefits and other taxable or nontaxable benefits. However, the COBRA continuation coverage requirements apply only to the type and level of coverage under the cafeteria plan or other flexible benefit arrangement that a qualified beneficiary is actually receiving on the day before the qualifying event. The rules of this Q&A–8 are illustrated by the following example:

Example: (i) Under the terms of a cafeteria plan, employees can choose among life insurance coverage, membership in a health maintenance organization (HMO), coverage for medical expenses under an indemnity arrangement, and cash compensation. Of these available choices, the HMO and the indemnity arrangement are the arrangements providing health care. The instruments governing the HMO and indemnity arrangements indicate that they are separate group health plans. These group health plans are subject to COBRA. The employer does not provide any group health plan outside of the cafeteria plan. *B* and *C* are unmarried employees. *B* has chosen the life insurance coverage, and *C* has chosen the indemnity arrangement.

(ii) *B* does not have to be offered COBRA continuation coverage upon terminating employment, nor is a subsequent open enrollment period for active employees required to be made available to *B*. However, if *C* terminates employment and the termination constitutes a qualifying event, *C* must be offered an opportunity to elect COBRA continuation coverage under the indemnity arrangement. If *C* makes such an election and an open enrollment period for active employees occurs while *C* is still receiving the COBRA continuation coverage, *C* must be offered the opportunity to switch from the indemnity arrangement to the HMO (but not to the life insurance coverage because that does not constitute coverage provided under a group health plan).

Q–9: What is the effect of a group health plan's failure to comply with the requirements of section 4980B(f)?

A–9: Under section 4980B(a), if a group health plan subject to COBRA fails to comply with section 4980B(f), an excise tax is imposed. Moreover, non-tax remedies may be available if the plan fails to comply with the parallel requirements in ERISA, which are administered by the Department of Labor.

Q–10: Who is liable for the excise tax if a group health plan fails to comply with the requirements of section 4980B(f)?

A–10: (a) In general, the excise tax is imposed on the employer maintaining the plan, except that in the case of a multiemployer plan the excise tax is imposed on the plan.

(b) In certain circumstances, the excise tax is also imposed on a person involved with the provision of benefits under the plan (other than in the capacity of an employee), such as an insurer providing benefits under the plan or a third party administrator administering claims under the plan. In general, such a person will be liable for the excise tax if the person assumes, under a legally enforceable written agreement, the responsibility for performing the act to which the failure to comply with the COBRA continuation coverage requirements relates. Such a person will be liable for the excise tax notwithstanding the absence of a written agreement assuming responsibility for complying with COBRA if the person provides coverage under the plan to a similarly situated nonCOBRA beneficiary (see Q&A–3 of § 54.4980B–3 for a definition of similarly situated nonCOBRA beneficiaries) and the employer or plan administrator submits a written request to the person to provide to a qualified beneficiary the same coverage that the person provides to the similarly situated nonCOBRA beneficiary. If the person providing coverage under the plan to a similarly situated nonCOBRA beneficiary is the plan administrator and the qualifying event is a divorce or legal separation or a dependent child's ceasing to be covered under the generally applicable requirements of the plan, the plan administrator will also be liable for the excise tax if the qualified beneficiary submits a written request for coverage.

§ 54.4980B–3 Qualified beneficiaries.

The determination of who is a qualified beneficiary, an employee, or a covered employee, and of who are the similarly situated nonCOBRA beneficiaries is addressed in the following questions-and-answers:

Q–1: Who is a qualified beneficiary?

A–1: (a)(1) Except as set forth in paragraphs (c) through (f) of this Q&A–1, a qualified beneficiary is—

(i) Any individual who, on the day before a qualifying event, is covered under a group health plan by virtue of being on that day either a covered

employee, the spouse of a covered employee, or a dependent child of the covered employee; or

(ii) Any child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage.

(2) In the case of a qualifying event that is the bankruptcy of the employer, a covered employee who had retired on or before the date of substantial elimination of group health plan coverage is also a qualified beneficiary, as is any spouse, surviving spouse, or dependent child of such a covered employee if, on the day before the bankruptcy qualifying event, the spouse, surviving spouse, or dependent child is a beneficiary under the plan.

(3) In general, an individual (other than a child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage) who is not covered under a plan on the day before the qualifying event cannot be a qualified beneficiary with respect to that qualifying event, and the reason for the individual's lack of actual coverage (such as the individual's having declined participation in the plan or failed to satisfy the plan's conditions for participation) is not relevant for this purpose. However, if the individual is denied or not offered coverage under a plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law (such as the Americans with Disabilities Act, 42 U.S.C. 12101–12213, the special enrollment rules of section 9801, or the requirements of section 9802 prohibiting discrimination in eligibility to enroll in a group health plan based on health status), then, for purposes of §§ 54.4980B–1 through 54.4980B–8, the individual will be considered to have had the coverage that was wrongfully denied or not offered.

(4) Paragraph (b) of this Q&A–1 describes how certain family members are not qualified beneficiaries even if they become covered under the plan; paragraphs (c), (d), and (e) of this Q&A–1 place limits on the general rules of this paragraph (a) concerning who is a qualified beneficiary; paragraph (f) of this Q&A–1 provides when an individual who has been a qualified beneficiary ceases to be a qualified beneficiary; paragraph (g) of this Q&A–1 defines *placed for adoption*; and paragraph (h) of this Q&A–1 contains examples.

(b) In contrast to a child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, an individual who marries any qualified beneficiary on or after the date of the qualifying event and a newborn or adopted child (other than one born to or placed for adoption with a covered employee) are not qualified beneficiaries by virtue of the marriage, birth, or placement for adoption or by virtue of the individual's status as the spouse or the child's status as a dependent of the qualified beneficiary. These new family members do not themselves become qualified beneficiaries even if they become covered under the plan. (For situations in which a plan is required to make coverage available to new family members of a qualified beneficiary who is receiving COBRA continuation coverage, see Q&A–5 of § 54.4980B–5, paragraph (c) in Q&A–4 of § 54.4980B–5, section 9801(f)(2), and § 54.9801–6T(b).)

(c) An individual is not a qualified beneficiary if, on the day before the qualifying event referred to in paragraph (a) of this Q&A–1, the individual is covered under the group health plan by reason of another individual's election of COBRA continuation coverage and is not already a qualified beneficiary by reason of a prior qualifying event.

(d) A covered employee can be a qualified beneficiary only in connection with a qualifying event that is the termination, or reduction of hours, of the covered employee's employment, or that is the bankruptcy of the employer.

(e) An individual is not a qualified beneficiary if the individual's status as a covered employee is attributable to a period in which the individual was a nonresident alien who received from the individual's employer no earned income (within the meaning of section 911(d)(2)) that constituted income from sources within the United States (within the meaning of section 861(a)(3)). If, pursuant to the preceding sentence, an individual is not a qualified beneficiary, then a spouse or dependent child of the individual is not considered a qualified beneficiary by virtue of the relationship to the individual.

(f) A qualified beneficiary who does not elect COBRA continuation coverage in connection with a qualifying event ceases to be a qualified beneficiary at the end of the election period (see Q&A–1 of § 54.4980B–6). Thus, for example, if such a former qualified beneficiary is later added to a covered employee's coverage (e.g., during an open enrollment period) and then another qualifying event occurs with respect to the covered employee, the former qualified beneficiary does not become a qualified beneficiary by reason of the second qualifying event. If a covered employee who is a qualified beneficiary does not elect COBRA continuation coverage during the election period, then any child born to or placed for adoption with the covered employee on or after the date of the qualifying event is not a qualified beneficiary. Once a plan's obligation to make COBRA continuation coverage available to an individual who has been a qualified beneficiary ceases under the rules of § 54.4980B–7, the individual ceases to be a qualified beneficiary.

(g) For purposes of §§ 54.4980B–1 through 54.4980B–8, *placement for adoption* or *being placed for adoption* means the assumption and retention by the covered employee of a legal obligation for total or partial support of a child in anticipation of the adoption of the child. The child's placement for adoption with the covered employee terminates upon the termination of the legal obligation for total or partial support. A child who is immediately adopted by the covered employee without a preceding placement for adoption is considered to be placed for adoption on the date of the adoption.

(h) The rules of this Q&A–1 are illustrated by the following examples:

Example 1. (i) *B* is a single employee who voluntarily terminates employment and elects COBRA continuation coverage under a group health plan. To comply with the requirements of section 9801(f) and § 54.9801–6T(b), the plan permits a covered employee who marries to have her or his spouse covered under the plan. One month after electing COBRA continuation coverage, *B* marries and chooses to have *B*'s spouse covered under the plan.

(ii) *B*'s spouse is not a qualified beneficiary. Thus, if *B* dies during the period of COBRA continuation coverage, the plan does not have to offer *B*'s surviving spouse an opportunity to elect COBRA continuation coverage.

Example 2. (i) *C* is a married employee who terminates employment. *C* elects COBRA continuation coverage for *C* but not *C*'s spouse, and *C*'s spouse declines to elect such coverage. *C*'s spouse thus ceases to be a qualified beneficiary. At the next open enrollment period, *C* adds the spouse as a beneficiary under the plan.

(ii) The addition of the spouse during the open enrollment period does not make the spouse a qualified beneficiary. The plan thus will not have to offer the spouse an opportunity to elect COBRA continuation coverage upon a later divorce from or death of *C*.

Example 3. (i) Under the terms of a group health plan, a covered employee's child, upon attaining age 19, ceases to be a dependent eligible for coverage.

(ii) At that time, the child must be offered an opportunity to elect COBRA continuation coverage. If the child elects COBRA continuation coverage, the child marries during the period of the COBRA continuation coverage, and the child's spouse becomes covered under the group health plan, the child's spouse is not a qualified beneficiary.

Example 4. (i) *D* is a single employee who, upon retirement, is given the opportunity to elect COBRA continuation coverage but declines it in favor of an alternative offer of 12 months of employer-paid retiree health benefits. At the end of the election period, *D* ceases to be a qualified beneficiary and will not have to be given another opportunity to elect COBRA continuation coverage (at the end of those 12 months or at any other time). *D* marries *E* during the period of retiree health coverage and, under the terms of that coverage, *E* becomes covered under the plan.

(ii) If a divorce from or death of *D* will result in *E*'s losing coverage, *E* will be a qualified beneficiary because *E*'s coverage under the plan on the day before the qualifying event (that is, the divorce or death) will have been by reason of *D*'s acceptance of 12 months of employer-paid coverage after the prior qualifying event (*D*'s retirement) rather than by reason of an election of COBRA continuation coverage.

Example 5. (i) The facts are the same as in Example 4, except that, under the terms of the plan, the divorce or death does not cause *E* to lose coverage so that *E* continues to be covered for the balance of the original 12-month period.

(ii) *E* does not have to be allowed to elect COBRA continuation coverage because the loss of coverage at the end of the 12-month period is not caused by the divorce or death, and thus the divorce or death does not constitute a qualifying event. See Q&A–1 of § 54.4980B–4.

Q–2: Who is an employee and who is a covered employee?

A–2: (a)(1) For purposes of §§ 54.4980B–1 through 54.4980B–8 (except for purposes of Q&A–5 in § 54.4980B–2, relating to the exception from COBRA for plans maintained by an employer with fewer than 20 employees), an *employee* is any individual who is eligible to be covered under a group health plan by virtue of the performance of services for the employer maintaining the plan or by virtue of membership in the employee organization maintaining the plan. Thus, for purposes of §§ 54.4980B–1 through 54.4980B–8 (except for purposes of Q&A–5 in § 54.4980B–2), the following individuals are employees if their relationship to the employer maintaining the plan makes them eligible to be covered under the plan—

(i) Self-employed individuals (within the meaning of section 401(c)(1));

(ii) Independent contractors (and their employees and independent contractors); and

(iii) Directors (in the case of a corporation).

(2) Similarly, whenever reference is made in §§ 54.4980B–1 through 54.4980B–8 (except in Q&A–5 of § 54.4980B–2) to an employment relationship (such as by referring to the termination of employment of an employee or to an employee's being employed by an employer), the reference includes the relationship of those individuals who are employees within the meaning of this paragraph (a). See paragraph (c) in Q&A–5 of § 54.4980B–2 for a narrower meaning of employee solely for purposes of Q&A–5 of § 54.4980B–2.

(b) For purposes of §§ 54.4980B–1 through 54.4980B–8, a *covered employee* is any individual who is (or was) provided coverage under a group health plan (other than a plan that is excepted from COBRA on the date of the qualifying event; see Q&A–4 of § 54.4980B–2) by virtue of being or having been an employee. For example, a retiree or former employee who is covered by a group health plan is a covered employee if the coverage results in whole or in part from her or his previous employment. An employee (or former employee) who is merely eligible for coverage under a group health plan is generally not a covered employee if the employee (or former employee) is not actually covered under the plan. In general, the reason for the employee's (or former employee's) lack of actual coverage (such as having declined participation in the plan or having failed to satisfy the plan's conditions for participation) is not relevant for this purpose. However, if the employee (or former employee) is denied or not offered coverage under circumstances in which the denial or failure to offer constitutes a violation of applicable law (such as the Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, the special enrollment rules of section 9801, or the requirements of section 9802 prohibiting discrimination in eligibility to enroll in a group health plan based on health status), then, for purposes of §§ 54.4980B–1 through 54.4980B–8, the employee (or former employee) will be considered to have had the coverage that was wrongfully denied or not offered.

Q–3: Who are the similarly situated non-COBRA beneficiaries?

A–3: For purposes of §§ 54.4980B–1 through 54.4980B–8, *similarly situated non-COBRA beneficiaries* means the group of covered employees, spouses of covered employees, or dependent children of covered employees receiving coverage under a group health plan maintained by the employer or employee organization who are receiving that coverage for a reason other than the rights provided under the COBRA continuation coverage requirements and who, based on all of the facts and circumstances, are most similarly situated to the situation of the qualified beneficiary immediately before the qualifying event.

§ 54.4980B–4 Qualifying events.

The determination of what constitutes a qualifying event is addressed in the following questions and answers:

Q–1: What is a qualifying event?

A–1: (a) A *qualifying event* is an event that satisfies paragraphs (b), (c), and (d) of this Q&A–1. Paragraph (e) of this Q&A–1 further explains a reduction of hours of employment, paragraph (f) of this Q&A–1 describes the treatment of children born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, and paragraph (g) of this Q&A–1 contains examples.

(b) An event satisfies this paragraph (b) if the event is any of the following—

(1) The death of a covered employee;

(2) The termination (other than by reason of the employee's gross misconduct), or reduction of hours, of a covered employee's employment;

(3) The divorce or legal separation of a covered employee from the employee's spouse;

(4) A covered employee's becoming entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg);

(5) A dependent child's ceasing to be a dependent child of a covered employee under the generally applicable requirements of the plan; or

(6) A proceeding in bankruptcy under Title 11 of the United States Code with respect to an employer from whose employment a covered employee retired at any time.

(c) An event satisfies this paragraph (c) if, under the terms of the group health plan, the event causes the covered employee, or the spouse or a dependent child of the covered employee, to lose coverage under the plan. For this purpose, to lose coverage means to cease to be covered under the same terms and conditions as in effect immediately before the qualifying event. Any increase in the premium or contribution that must be paid by a covered employee (or the spouse or dependent child of a covered employee) for coverage under a group health plan that results from the occurrence of one of the events listed in paragraph (b) of this Q&A–1 is a loss of coverage. In the case of an event that is the bankruptcy of the employer, lose coverage also means any substantial elimination of coverage under the plan, occurring within 12 months before or after the date the bankruptcy proceeding commences, for a covered employee who had retired on or before the date of the substantial elimination of group health plan coverage or for any spouse, surviving spouse, or dependent child of such a covered employee if, on the day

before the bankruptcy qualifying event, the spouse, surviving spouse, or dependent child is a beneficiary under the plan. For purposes of this paragraph (c), a loss of coverage need not occur immediately after the event, so long as the loss of coverage occurs before the end of the maximum coverage period (see Q&A–1 and Q&A–6 of § 54.4980B–7). However, if neither the covered employee nor the spouse or a dependent child of the covered employee loses coverage before the end of what would be the maximum coverage period, the event does not satisfy this paragraph (c). If coverage is reduced or eliminated in anticipation of an event (for example, an employer's eliminating an employee's coverage in anticipation of the termination of the employee's employment, or an employee's eliminating the coverage of the employee's spouse in anticipation of a divorce or legal separation), the reduction or elimination is disregarded in determining whether the event causes a loss of coverage.

(d) An event satisfies this paragraph (d) if it occurs while the plan is subject to COBRA. Thus, an event will not satisfy this paragraph (d) if it occurs while the plan is excepted from COBRA (see Q&A–4 of § 54.4980B–2). Even if the plan later becomes subject to COBRA, it is not required to make COBRA continuation coverage available to anyone whose coverage ends as a result of an event during a year in which the plan is excepted from COBRA. For example, if a group health plan is excepted from COBRA as a small-employer plan during the year 2001 (see Q&A–5 of § 54.4980B–2) and an employee terminates employment on December 31, 2001, the termination is not a qualifying event and the plan is not required to permit the employee to elect COBRA continuation coverage. This is the case even if the plan ceases to be a small-employer plan as of January 1, 2002. Also, the same result will follow even if the employee is given three months of coverage beyond December 31 (that is, through March of 2002), because there will be no qualifying event as of the termination of coverage in March. However, if the employee's spouse is initially provided with the three-month coverage through March 2002, but the spouse divorces the employee before the end of the three months and loses coverage as a result of the divorce, the divorce will constitute a qualifying event during 2002 and so entitle the spouse to elect COBRA continuation coverage. See Q&A–7 of § 54.4980B–7 regarding the maximum coverage period in such a case.

(e) A reduction of hours of a covered employee's employment occurs whenever there is a decrease in the hours that a covered employee is required to work or actually works, but only if the decrease is not accompanied by an immediate termination of employment. This is true regardless of whether the covered employee continues to perform services following the reduction of hours of employment. For example, an absence from work due to disability, a temporary layoff, or any other reason is a reduction of hours of a covered employee's employment if there is not an immediate termination of employment. If a group health plan measures eligibility for the coverage of employees by the number of hours worked in a given time period, such as the preceding month or quarter, and an employee covered under the plan fails to work the minimum number of hours during that time period, the failure to work the minimum number of required hours is a reduction of hours of that covered employee's employment.

(f) The qualifying event of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is the qualifying event giving rise to the period of COBRA continuation coverage during which the child is born or placed for adoption. If a second qualifying event has occurred before the child is born or placed for adoption (such as the death of the covered employee), then the second qualifying event also applies to the newborn or adopted child. See Q&A–6 of § 54.4980B–7.

(g) The rules of this Q&A–1 are illustrated by the following examples, in each of which the group health plan is subject to COBRA:

Example 1. (i) An employee who is covered by a group health plan terminates employment (other than by reason of the employee's gross misconduct) and, beginning with the day after the last day of employment, is given 3 months of employer-paid coverage under the same terms and conditions as before that date. At the end of the three months, the coverage terminates.

(ii) The loss of coverage at the end of the three months results from the termination of employment and, thus, the termination of employment is a qualifying event.

Example 2. (i) An employee who is covered by a group health plan retires (which is a termination of employment other than by reason of the employee's gross misconduct) and, upon retirement, is required to pay an increased amount for the same group health coverage that the employee had before retirement.

(ii) The increase in the premium or contribution required for coverage is a loss of coverage under paragraph (c) of this Q&A–1 and, thus, the retirement is a qualifying event.

Example 3. (i) An employee and the employee's spouse are covered under an employer's group health plan. The employee retires and is given identical coverage for life. However, the plan provides that the spousal coverage will not be continued beyond six months unless a higher premium for the spouse is paid to the plan.

(ii) The requirement for the spouse to pay a higher premium at the end of the six months is a loss of coverage under paragraph (c) of this Q&A–1. Thus, the retirement is a qualifying event and the spouse must be given an opportunity to elect COBRA continuation coverage.

Example 4. (i) *F* is a covered employee who is married to *G*, and both are covered under a group health plan maintained by *F*'s employer. *F* and *G* are divorced. Under the terms of the plan, the divorce causes *G* to lose coverage. The divorce is a qualifying event, and *G* elects COBRA continuation coverage, remarries during the period of COBRA continuation coverage, and *G*'s new spouse becomes covered under the plan. (See Q&A–5 in § 54.4980B–5, paragraph (c) in Q&A–4 of § 54.4980B–5, section 9801(f)(2), and § 54.9801–6T(b).) *G* dies. Under the terms of the plan, the death causes *G*'s new spouse to lose coverage under the plan.

(ii) *G*'s death is not a qualifying event because *G* is not a covered employee.

Example 5. (i) An employer maintains a group health plan for both active employees and retired employees (and their families). The coverage for active employees and retired employees is identical, and the employer does not require retirees to pay more for coverage than active employees. The plan does not make COBRA continuation coverage available when an employee retires (and is not required to because the retired employee has not lost coverage under the plan). The employer amends the plan to eliminate coverage for retired employees effective January 1, 2002. On that date, several retired employees (and their spouses and dependent children) have been covered under the plan since their retirement for less than the maximum coverage period that would apply to them in connection with their retirement.

(ii) The elimination of retiree coverage under these circumstances is a deferred loss of coverage for those retirees (and their spouses and dependent children) under paragraph (c) of this Q&A–1 and, thus, the retirement is a qualifying event. The plan must make COBRA continuation coverage available to them for the balance of the maximum coverage period that applies to them in connection with the retirement.

Q–2: Are the facts surrounding a termination of employment (such as whether it was voluntary or involuntary) relevant in determining whether the termination of employment is a qualifying event?

A–2: Apart from facts constituting gross misconduct, the facts surrounding the termination or reduction of hours are irrelevant in determining whether a qualifying event has occurred. Thus, it

does not matter whether the employee voluntarily terminated or was discharged. For example, a strike or a lockout is a termination or reduction of hours that constitutes a qualifying event if the strike or lockout results in a loss of coverage as described in paragraph (c) of Q&A–1 of this section. Similarly, a layoff that results in such a loss of coverage is a qualifying event.

§ 54.4980B–5 COBRA continuation coverage.

The following questions-and-answers address the requirements for coverage to constitute COBRA continuation coverage:

Q–1: What is COBRA continuation coverage?

A–1: (a) If a qualifying event occurs, each qualified beneficiary (other than a qualified beneficiary for whom the qualifying event will not result in any immediate or deferred loss of coverage) must be offered an opportunity to elect to receive the group health plan coverage that is provided to similarly situated nonCOBRA beneficiaries (ordinarily, the same coverage that the qualified beneficiary had on the day before the qualifying event). See Q&A–3 of § 54.4980B–3 for the definition of similarly situated nonCOBRA beneficiaries. This coverage is COBRA continuation coverage. If coverage under the plan is modified for similarly situated nonCOBRA beneficiaries, then the coverage made available to qualified beneficiaries is modified in the same way. If the continuation coverage offered differs in any way from the coverage made available to similarly situated nonCOBRA beneficiaries, the coverage offered does not constitute COBRA continuation coverage and the group health plan is not in compliance with COBRA unless other coverage that does constitute COBRA continuation coverage is also offered. Any elimination or reduction of coverage in anticipation of an event described in paragraph (b) of Q&A–1 of § 54.4980B–4 is disregarded for purposes of this Q&A–1 and for purposes of any other reference in §§ 54.4980B–1 through 54.4980B–8 to coverage in effect immediately before (or on the day before) a qualifying event. COBRA continuation coverage must not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(b) In the case of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the child is generally entitled to elect immediately to have the same coverage that dependent children of active employees receive under the benefit packages under which the covered employee has coverage at the time of the birth or placement for adoption. Such a child would be entitled to elect coverage different from that elected by the covered employee during the next available open enrollment period under the plan. See Q&A–4 of this section.

Q–2: What deductibles apply if COBRA continuation coverage is elected?

A–2: (a) Qualified beneficiaries electing COBRA continuation coverage generally are subject to the same deductibles as similarly situated nonCOBRA beneficiaries. If a qualified beneficiary's COBRA continuation coverage begins before the end of a period prescribed for accumulating amounts toward deductibles, the qualified beneficiary must retain credit for expenses incurred toward those deductibles before the beginning of COBRA continuation coverage as though the qualifying event had not occurred. The specific application of this rule depends on the type of deductible, as set forth in paragraphs (b) through (d) of this Q&A–2. Special rules are set forth in paragraph (e) of this Q&A–2, and examples appear in paragraph (f) of this Q&A–2.

(b) If a deductible is computed separately for each individual receiving coverage under the plan, each individual's remaining deductible amount (if any) on the date COBRA continuation coverage begins is equal to that individual's remaining deductible amount immediately before that date.

(c) If a deductible is computed on a family basis, the remaining deductible for the family on the date that COBRA continuation coverage begins depends on the members of the family electing COBRA continuation coverage. In computing the family deductible that remains on the date COBRA continuation coverage begins, only the expenses of those family members receiving COBRA continuation coverage need be taken into account. If the qualifying event results in there being more than one family unit (for example, because of a divorce), the family deductible may be computed separately for each resulting family unit based on the members in each unit. These rules apply regardless of whether the plan provides that the family deductible is an alternative to individual deductibles or an additional requirement.

(d) Deductibles that are not described in paragraph (b) or (c) of this Q&A–2 must be treated in a manner consistent with the principles set forth in those paragraphs.

(e) If a deductible is computed on the basis of a covered employee's compensation instead of being a fixed dollar amount and the employee remains employed during the period of COBRA continuation coverage, the plan is permitted to choose whether to apply the deductible by treating the employee's compensation as continuing without change for the duration of the COBRA continuation coverage at the level that was used to compute the deductible in effect immediately before the COBRA continuation coverage began, or to apply the deductible by taking the employee's actual compensation into account. In applying a deductible that is computed on the basis of the covered employee's compensation instead of being a fixed dollar amount, for periods of COBRA continuation coverage in which the employee is not employed by the employer, the plan is required to compute the deductible by treating the employee's compensation as continuing without change for the duration of the COBRA continuation coverage either at the level that was used to compute the deductible in effect immediately before the COBRA continuation coverage began or at the level that was used to compute the deductible in effect immediately before the employee's employment was terminated.

(f) The rules of this Q&A–2 are illustrated by the following examples; in each example, deductibles under the plan are determined on a calendar year basis:

Example 1. (i) A group health plan applies a separate $100 annual deductible to each individual it covers. The plan provides that the spouse and dependent children of a covered employee will lose coverage on the last day of the month after the month of the covered employee's death. A covered employee dies on June 11, 2001. The spouse and the two dependent children elect COBRA continuation coverage, which will begin on August 1, 2001. As of July 31, 2001, the spouse has incurred $80 of covered expenses, the older child has incurred no covered expenses, and the younger one has incurred $120 of covered expenses (and therefore has already satisfied the deductible).

(ii) At the beginning of COBRA continuation coverage on August 1, the spouse has a remaining deductible of $20, the older child still has the full $100 deductible, and the younger one has no further deductible.

Example 2. (i) A group health plan applies a separate $200 annual deductible to each individual it covers, except that each family member is treated as having satisfied the individual deductible once the family has incurred $500 of covered expenses during the year. The plan provides that upon the divorce of a covered employee, coverage will

end immediately for the employee's spouse and any children who do not remain in the employee's custody. A covered employee with four dependent children is divorced, the spouse obtains custody of the two oldest children, and the spouse and those children all elect COBRA continuation coverage to begin immediately. The family had accumulated $420 of covered expenses before the divorce, as follows: $70 by each parent, $200 by the oldest child, $80 by the youngest child, and none by the other two children.

(ii) The resulting family consisting of the spouse and the two oldest children accumulated a total of $270 of covered expenses, and thus the remaining deductible for that family could be as high as $230 (because the plan would not have to count the incurred expenses of the covered employee and the youngest child). The remaining deductible for the resulting family consisting of the covered employee and the two youngest children is not subject to the rules of this Q&A–2 because their coverage is not COBRA continuation coverage.

Example 3. Each year a group health plan pays 70 percent of the cost of an individual's psychotherapy after that individual's first three visits during the year. A qualified beneficiary whose election of COBRA continuation coverage takes effect beginning August 1, 2001 and who has already made two visits as of that date need only pay for one more visit before the plan must begin to pay 70 percent of the cost of the remaining visits during 2001.

Example 4. (i) A group health plan has a $250 annual deductible per covered individual. The plan provides that if the deductible is not satisfied in a particular year, expenses incurred during October through December of that year are credited toward satisfaction of the deductible in the next year. A qualified beneficiary who has incurred covered expenses of $150 from January through September of 2001 and $40 during October elects COBRA continuation coverage beginning November 1, 2001.

(ii) The remaining deductible amount for this qualified beneficiary is $60 at the beginning of the COBRA continuation coverage. If this individual incurs covered expenses of $50 in November and December of 2001 combined (so that the $250 deductible for 2001 is not satisfied), the $90 incurred from October through December of 2001 are credited toward satisfaction of the deductible amount for 2002.

Q–3: How do a plan's limits apply to COBRA continuation coverage?

A–3: (a) Limits are treated in the same way as deductibles (see Q&A–2 of this section).

This rule applies both to limits on plan benefits (such as a maximum number of hospital days or dollar amount of reimbursable expenses) and limits on out-of-pocket expenses (such as a limit on copayments, a limit on deductibles plus copayments, or a catastrophic limit). This rule applies equally to annual and lifetime limits and applies equally to limits on specific benefits and limits on benefits in the aggregate under the plan.

(b) The rule of this Q&A–3 is illustrated by the following examples; in each example limits are determined on a calendar year basis:

Example 1. (i) A group health plan pays for a maximum of 150 days of hospital confinement per individual per year. A covered employee who has had 20 days of hospital confinement as of May 1, 2001 terminates employment and elects COBRA continuation coverage as of that date.

(ii) During the remainder of the year 2001 the plan need only pay for a maximum of 130 days of hospital confinement for this individual.

Example 2. (i) A group health plan reimburses a maximum of $20,000 of covered expenses per family per year, and the same $20,000 limit applies to unmarried covered employees. A covered employee and spouse who have no children divorce on May 1, 2001, and the spouse elects COBRA continuation coverage as of that date. In 2001, the employee had incurred $5,000 of expenses and the spouse had incurred $8,000 before May 1.

(ii) The plan can limit its reimbursement of the amount of expenses incurred by the spouse on and after May 1 for the remainder of the year to $12,000 ($20,000 − $8,000 = $12,000). The remaining limit for the employee is not subject to the rules of this Q&A–3 because the employee's coverage is not COBRA continuation coverage.

Example 3. (i) A group health plan pays for 80 percent of covered expenses after satisfaction of a $100-per-individual deductible, and the plan pays for 100 percent of covered expenses after a family has incurred out-of-pocket costs of $2,000. The plan provides that upon the divorce of a covered employee, coverage will end immediately for the employee's spouse and any children who do not remain in the employee's custody. An employee and spouse with three dependent children divorce on June 1, 2001, and one of the children remains with the employee. The spouse elects COBRA continuation coverage as of that date for the spouse and the other two children. During January through May of 2001, the spouse incurred $600 of covered expenses and each of the two children in the spouse's custody after the divorce incurred covered expenses of $1,100. This resulted in total out-of-pocket costs for these three individuals of $800 ($300 total for the three deductibles, plus $500 for 20 percent of the other $2,500 in incurred expenses [$600 + $1,100 + $1,100 = $2,800; $2,800 − $300 = $2,500]).

(ii) For the remainder of 2001, the resulting family consisting of the spouse and two children has an out-of-pocket limit of $1,200 ($2,000 − $800 = $1,200) . The remaining out-of-pocket limit for the resulting family consisting of the employee and one child is not subject to the rules of this Q&A–3 because their coverage is not COBRA continuation coverage.

Q–4: Can a qualified beneficiary who elects COBRA continuation coverage ever change from the coverage received by that individual immediately before the qualifying event?

A–4: (a) In general, a qualified beneficiary need only be given an opportunity to continue the coverage that she or he was receiving immediately before the qualifying event. This is true regardless of whether the coverage received by the qualified beneficiary before the qualifying event ceases to be of value to the qualified beneficiary, such as in the case of a qualified beneficiary covered under a region-specific health maintenance organization (HMO) who leaves the HMO's service region. The only situations in which a qualified beneficiary must be allowed to change from the coverage received immediately before the qualifying event are as set forth in paragraphs (b) and (c) of this Q&A–4 and in Q&A–1 of this section (regarding changes to or elimination of the coverage provided to similarly situated nonCOBRA beneficiaries).

(b) If a qualified beneficiary participates in a region-specific benefit package (such as an HMO or an on-site clinic) that will not service her or his health needs in the area to which she or he is relocating (regardless of the reason for the relocation), the qualified beneficiary must be given an opportunity to elect alternative coverage that the employer or employee organization makes available to active employees. If the employer or employee organization makes group health plan coverage available to similarly situated nonCOBRA beneficiaries that can be extended in the area to which the qualified beneficiary is relocating, then that coverage is the alternative coverage that must be made available to the relocating qualified beneficiary. If the employer or employee organization does not make group health plan coverage available to similarly situated nonCOBRA beneficiaries that can be extended in the area to which the qualified beneficiary is relocating but makes coverage available to other employees that can be extended in that area, then the coverage made available to those other employees must be made available to the relocating qualified beneficiary. However, the employer or employee organization is not required to make any other coverage available to the relocating qualified beneficiary if the only coverage the employer or employee organization makes available to active employees is not available in the area to which the qualified beneficiary relocates (because all such coverage is region-specific and does not service individuals in that area).

(c) If an employer or employee organization makes an open enrollment period available to similarly situated active employees with respect to whom a qualifying event has not occurred, the same open enrollment period rights

must be made available to each qualified beneficiary receiving COBRA continuation coverage. An open enrollment period means a period during which an employee covered under a plan can choose to be covered under another group health plan or under another benefit package within the same plan, or to add or eliminate coverage of family members.

(d) The rules of this Q&A–4 are illustrated by the following examples:

Example 1. (i) *E* is an employee who works for an employer that maintains several group health plans. Under the terms of the plans, if an employee chooses to cover any family members under a plan, all family members must be covered by the same plan and that plan must be the same as the plan covering the employee. Immediately before *E*'s termination of employment (for reasons other than gross misconduct), *E* is covered along with *E*'s spouse and children by a plan. The coverage under that plan will end as a result of the termination of employment.

(ii) Upon *E*'s termination of employment, each of the four family members is a qualified beneficiary. Even though the employer maintains various other plans and options, it is not necessary for the qualified beneficiaries to be allowed to switch to a new plan when *E* terminates employment.

(iii) COBRA continuation coverage is elected for each of the four family members. Three months after *E*'s termination of employment there is an open enrollment period during which similarly situated active employees are offered an opportunity to choose to be covered under a new plan or to add or eliminate family coverage.

(iv) During the open enrollment period, each of the four qualified beneficiaries must be offered the opportunity to switch to another plan (as though each qualified beneficiary were an individual employee). For example, each member of *E*'s family could choose coverage under a separate plan, even though the family members of employed individuals could not choose coverage under separate plans. Of course, if each family member chooses COBRA continuation coverage under a separate plan, the plan can require payment for each family member that is based on the applicable premium for individual coverage under that separate plan. See Q&A–1 of § 54.4980B–8.

Example 2. (i) The facts are the same as in *Example 1*, except that *E*'s family members are not covered under *E*'s group health plan when *E* terminates employment.

(ii) Although the family members do not have to be given an opportunity to elect COBRA continuation coverage, *E* must be allowed to add them to *E*'s COBRA continuation coverage during the open enrollment period. This is true even though the family members are not, and cannot become, qualified beneficiaries (see Q&A–1 of § 54.4980B–3).

Q–5: Aside from open enrollment periods, can a qualified beneficiary who has elected COBRA continuation coverage choose to cover individuals (such as newborn children, adopted children, or new spouses) who join the qualified beneficiary's family on or after the date of the qualifying event?

A–5: (a) Yes. Under section 9801 and § 54.9801–6T, employees eligible to participate in a group health plan (whether or not participating), as well as former employees participating in a plan (referred to in those rules as participants), are entitled to special enrollment rights for certain family members upon the loss of other group health plan coverage or upon the acquisition by the employee or participant of a new spouse or of a new dependent through birth, adoption, or placement for adoption, if certain requirements are satisfied. Employees not participating in the plan also can obtain rights for self-enrollment under those rules. Once a qualified beneficiary is receiving COBRA continuation coverage (that is, has timely elected and made timely payment for COBRA continuation coverage), the qualified beneficiary has the same right to enroll family members under those special enrollment rules as if the qualified beneficiary were an employee or participant within the meaning of those rules. However, neither a qualified beneficiary who is not receiving COBRA continuation coverage nor a former qualified beneficiary has any special enrollment rights under those rules.

(b) In addition to the special enrollment rights described in paragraph (a) of this Q&A–5, if the plan covering the qualified beneficiary provides that new family members of active employees can become covered (either automatically or upon an appropriate election) before the next open enrollment period, then the same right must be extended to the new family members of a qualified beneficiary.

(c) If the addition of a new family member will result in a higher applicable premium (for example, if the qualified beneficiary was previously receiving COBRA continuation coverage as an individual, or if the applicable premium for family coverage depends on family size), the plan can require the payment of a correspondingly higher amount for the COBRA continuation coverage. See Q&A–1 of § 54.4980B–8.

(d) The right to add new family members under this Q&A–5 is in addition to the rights that newborn and adopted children of covered employees may have as qualified beneficiaries; see Q&A–1 in § 54.4980B–3.

§ 54.4980B–6 Electing COBRA continuation coverage.

The following questions-and-answers address the manner in which COBRA continuation coverage is elected:

Q–1: What is the election period and how long must it last?

A–1: (a) A group health plan can condition the availability of COBRA continuation coverage upon the timely election of such coverage. An election of COBRA continuation coverage is a timely election if it is made during the election period. The election period must begin not later than the date the qualified beneficiary would lose coverage on account of the qualifying event. (See paragraph (c) of Q&A–1 of § 54.4980B–4 for the meaning of *lose coverage*.) The election period must not end before the date that is 60 days after the later of—

(1) The date the qualified beneficiary would lose coverage on account of the qualifying event; or

(2) The date notice is provided to the qualified beneficiary of her or his right to elect COBRA continuation coverage.

(b) An election is considered to be made on the date it is sent to the plan administrator.

(c) The rules of this Q&A–1 are illustrated by the following example:

Example. (i) An unmarried employee without children who is receiving employer-paid coverage under a group health plan voluntarily terminates employment on June 1, 2001. The employee is not disabled at the time of the termination of employment nor at any time thereafter, and the plan does not provide for the extension of the required periods (as is permitted under section 4980B(f)(8)).

(ii) *Case 1:* If the plan provides that the employer-paid coverage ends immediately upon the termination of employment, the election period must begin not later than June 1, 2001, and must not end earlier than July 31, 2001. If notice of the right to elect COBRA continuation coverage is not provided to the employee until June 15, 2001, the election period must not end earlier than August 14, 2001.

(iii) *Case 2:* If the plan provides that the employer-paid coverage does not end until 6 months after the termination of employment, the employee does not lose coverage until December 1, 2001. The election period can therefore begin as late as December 1, 2001, and must not end before January 30, 2002.

(iv) *Case 3:* If employer-paid coverage for 6 months after the termination of employment is offered only to those qualified beneficiaries who waive COBRA continuation coverage, the employee loses coverage on June 1, 2001, so the election period is the same as in Case 1. The difference between Case 2 and Case 3 is that in Case 2 the employee can receive 6 months of employer-paid coverage and then elect to pay for up to an additional 12 months of COBRA continuation coverage, while in Case

3 the employee must choose between 6 months of employer-paid coverage and paying for up to 18 months of COBRA continuation coverage. In all three cases, COBRA continuation coverage need not be provided for more than 18 months after the termination of employment, and in certain circumstances might be provided for a shorter period (see Q&A–1 of § 54.4980B–7).

Q–2: Is a covered employee or qualified beneficiary responsible for informing the plan administrator of the occurrence of a qualifying event?

A–2: (a) In general, the employer or plan administrator must determine when a qualifying event has occurred. However, each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of a qualifying event that is either a dependent child's ceasing to be a dependent child under the generally applicable requirements of the plan or a divorce or legal separation of a covered employee. The group health plan is not required to offer the qualified beneficiary an opportunity to elect COBRA continuation coverage if the notice is not provided to the plan administrator within 60 days after the later of—

(1) The date of the qualifying event; or

(2) The date the qualified beneficiary would lose coverage on account of the qualifying event.

(b) For purposes of this Q&A–2, if more than one qualified beneficiary would lose coverage on account of a divorce or legal separation of a covered employee, a timely notice of the divorce or legal separation that is provided by the covered employee or any one of those qualified beneficiaries will be sufficient to preserve the election rights of all of the qualified beneficiaries.

Q–3: During the election period and before the qualified beneficiary has made an election, must coverage be provided?

A–3: (a) In general, each qualified beneficiary has until 60 days after the later of the date the qualifying event would cause her or him to lose coverage or the date notice is provided to the qualified beneficiary of her or his right to elect COBRA continuation coverage to decide whether to elect COBRA continuation coverage. If the election is made during that period, coverage must be provided from the date that coverage would otherwise have been lost (but see Q&A–4 of this section). This can be accomplished as described in paragraph (b) or (c) of this Q&A–3.

(b) In the case of an indemnity or reimbursement arrangement, the employer or employee organization can provide for plan coverage during the election period or, if the plan allows retroactive reinstatement, the employer or employee organization can terminate the coverage of the qualified beneficiary and reinstate her or him when the election is made. Claims incurred by a qualified beneficiary during the election period do not have to be paid before the election (and, if applicable, payment for the coverage) is made. If a provider of health care (such as a physician, hospital, or pharmacy) contacts the plan to confirm coverage of a qualified beneficiary during the election period, the plan must give a complete response to the health care provider about the qualified beneficiary's COBRA continuation coverage rights during the election period. For example, if the plan provides coverage during the election period but cancels coverage retroactively if COBRA continuation coverage is not elected, then the plan must inform a provider that a qualified beneficiary for whom coverage has not been elected is covered but that the coverage is subject to retroactive termination. Similarly, if the plan cancels coverage but then retroactively reinstates it once COBRA continuation coverage is elected, then the plan must inform the provider that the qualified beneficiary currently does not have coverage but will have coverage retroactively to the date coverage was lost if COBRA continuation coverage is elected. (See paragraph (c) of Q&A–5 in § 54.4980B–8 for similar rules that a plan must follow in confirming coverage during a period when the plan has not received payment but that is still within the grace period for a qualified beneficiary for whom COBRA continuation coverage has been elected.)

(c)(1) In the case of a group health plan that provides health services (such as a health maintenance organization or a walk-in clinic), the plan can require with respect to a qualified beneficiary who has not elected and paid for COBRA continuation coverage that the qualified beneficiary choose between—

(i) Electing and paying for the coverage; or

(ii) Paying the reasonable and customary charge for the plan's services, but only if a qualified beneficiary who chooses to pay for the services will be reimbursed for that payment within 30 days after the election of COBRA continuation coverage (and, if applicable, the payment of any balance due for the coverage).

(2) In the alternative, the plan can provide continued coverage and treat the qualified beneficiary's use of the facility as a constructive election. In such a case, the qualified beneficiary is obligated to pay any applicable charge for the coverage, but only if the qualified beneficiary is informed that use of the facility will be a constructive election before using the facility.

Q–4: Is a waiver before the end of the election period effective to end a qualified beneficiary's election rights?

A–4: If, during the election period, a qualified beneficiary waives COBRA continuation coverage, the waiver can be revoked at any time before the end of the election period. Revocation of the waiver is an election of COBRA continuation coverage. However, if a waiver of COBRA continuation coverage is later revoked, coverage need not be provided retroactively (that is, from the date of the loss of coverage until the waiver is revoked). Waivers and revocations of waivers are considered made on the date they are sent to the employer, employee organization, or plan administrator, as applicable.

Q–5: Can an employer or employee organization withhold money or other benefits owed to a qualified beneficiary until the qualified beneficiary either waives COBRA continuation coverage, elects and pays for such coverage, or allows the election period to expire?

A–5: No. An employer, and an employee organization, must not withhold anything to which a qualified beneficiary is otherwise entitled (by operation of law or other agreement) in order to compel payment for COBRA continuation coverage or to coerce the qualified beneficiary to give up rights to COBRA continuation coverage (including the right to use the full election period to decide whether to elect such coverage). Such a withholding constitutes a failure to comply with the COBRA continuation coverage requirements. Furthermore, any purported waiver obtained by means of such a withholding is invalid.

Q–6: Can each qualified beneficiary make an independent election under COBRA?

A–6: Yes. Each qualified beneficiary (including a child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage) must be offered the opportunity to make an independent election to receive COBRA continuation coverage. If the plan allows similarly situated active employees with respect to whom a qualifying event has not occurred to choose among several options during an open enrollment period (for example, to switch to another group health plan or to another benefit package under the same group health plan), then each qualified beneficiary must also be offered an independent election to choose during an open enrollment period among the

options made available to similarly situated active employees with respect to whom a qualifying event has not occurred. If a qualified beneficiary who is either a covered employee or the spouse of a covered employee elects COBRA continuation coverage and the election does not specify whether the election is for self-only coverage, the election is deemed to include an election of COBRA continuation coverage on behalf of all other qualified beneficiaries with respect to that qualifying event. An election on behalf of a minor child can be made by the child's parent or legal guardian. An election on behalf of a qualified beneficiary who is incapacitated or dies can be made by the legal representative of the qualified beneficiary or the qualified beneficiary's estate, as determined under applicable state law, or by the spouse of the qualified beneficiary. (See also Q&A–5 of § 54.4980B–7 relating to the independent right of each qualified beneficiary with respect to the same qualifying event to receive COBRA continuation coverage during the disability extension.) The rules of this Q&A–6 are illustrated by the following examples; in each example each group health plan is subject to COBRA:

Example 1. (i) Employee *H* and *H*'s spouse are covered under a group health plan immediately before *H*'s termination of employment (for reasons other than gross misconduct). Coverage under the plan will end as a result of the termination of employment.

(ii) Upon *H*'s termination of employment, both *H* and *H*'s spouse are qualified beneficiaries and each must be allowed to elect COBRA continuation coverage. Thus, *H* might elect COBRA continuation coverage while the spouse declines to elect such coverage, or *H* might elect COBRA continuation coverage for both of them. In contrast, *H* cannot decline COBRA continuation coverage on behalf of *H*'s spouse. Thus, if *H* does not elect COBRA continuation coverage on behalf of the spouse, the spouse must still be allowed to elect COBRA continuation coverage.

Example 2. (i) An employer maintains a group health plan under which all employees receive employer-paid coverage. Employees can arrange to cover their families by paying an additional amount. The employer also maintains a cafeteria plan, under which one of the options is to pay part or all of the employee share of the cost for family coverage under the group health plan. Thus, an employee might pay for family coverage under the group health plan partly with before-tax dollars and partly with after-tax dollars.

(ii) If an employee's family is receiving coverage under the group health plan when a qualifying event occurs, each of the qualified beneficiaries must be offered an opportunity to elect COBRA continuation coverage, regardless of how that qualified beneficiary's coverage was paid for before the qualifying event.

§ 54.4980B–7 Duration of COBRA continuation coverage.

The following questions-and-answers address the duration of COBRA continuation coverage:

Q–1: How long must COBRA continuation coverage be made available to a qualified beneficiary?

A–1: (a) Except for an interruption of coverage in connection with a waiver, as described in Q&A–4 of § 54.4980B–6, COBRA continuation coverage that has been elected for a qualified beneficiary must extend for at least the period beginning on the date of the qualifying event and ending not before the earliest of the following dates—

(1) The last day of the maximum required period under section 4980B(f)(2)(B)(i) (the maximum coverage period) and, if applicable, section 4980B(f)(8) (relating to the optional extension of required periods in a case where coverage is lost after the date of, instead of on the date of, the qualifying event);

(2) The first day for which timely payment is not made to the plan with respect to the qualified beneficiary (see Q&A–5 in § 54.4980B–8);

(3) The date upon which the employer or employee organization ceases to provide any group health plan (including successor plans) to any employee;

(4) The date, after the date of the election, upon which the qualified beneficiary first becomes covered under any other group health plan, as described in Q&A–2 of this section; and

(5) The date, after the date of the election, upon which the qualified beneficiary first becomes entitled to Medicare benefits, as described in Q&A–3 of this section.

(b) However, a group health plan can terminate for cause the coverage of a qualified beneficiary receiving COBRA continuation coverage on the same basis that the plan terminates for cause the coverage of similarly situated nonCOBRA beneficiaries. For example, if a group health plan terminates the coverage of active employees for the submission of a fraudulent claim, then the coverage of a qualified beneficiary can also be terminated for the submission of a fraudulent claim. Notwithstanding the preceding two sentences, the coverage of a qualified beneficiary can be terminated for failure to make timely payment to the plan only if payment is not timely under the rules of Q&A–5 in § 54.4980B–8.

(c) In the case of an individual who is not a qualified beneficiary and who is receiving coverage under a group health plan solely because of the individual's relationship to a qualified beneficiary, if the plan's obligation to make COBRA continuation coverage available to the qualified beneficiary ceases under this section, the plan is not obligated to make coverage available to the individual who is not a qualified beneficiary.

Q–2: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to coverage under another group health plan?

A–2: (a) If a qualified beneficiary first becomes covered under another group health plan (including for this purpose any group health plan of a governmental employer or employee organization) after the date on which COBRA continuation coverage is elected for the qualified beneficiary and the other coverage satisfies the requirements of paragraphs (b), (c), and (d) of this Q&A–2, then the plan may terminate the qualified beneficiary's COBRA continuation coverage upon the date on which the qualified beneficiary first becomes covered under the other group health plan (even if the other coverage is less valuable to the qualified beneficiary). By contrast, if a qualified beneficiary first becomes covered under another group health plan on or before the date on which COBRA continuation coverage is elected, then the other coverage cannot be a basis for terminating the qualified beneficiary's COBRA continuation coverage.

(b) The requirement of this paragraph (b) is satisfied if the qualified beneficiary is actually covered, rather than merely eligible to be covered, under the other group health plan.

(c) The requirement of this paragraph (c) is satisfied if the other group health plan is a plan that is not maintained by the employer or employee organization that maintains the plan under which COBRA continuation coverage must otherwise be made available.

(d) The requirement of this paragraph (d) is satisfied if the other group health plan does not contain any exclusion or limitation with respect to any preexisting condition of the qualified beneficiary (other than such an exclusion or limitation that does not apply to, or is satisfied by, the qualified beneficiary by reason of the provisions in section 9801 (relating to limitations on preexisting condition exclusion periods in group health plans)).

(e) The rules of this Q&A–2 are illustrated by the following examples:

Example 1. (i) Employer *X* maintains a group health plan subject to COBRA. *C* is an employee covered under the plan. *C* is also covered under a group health plan

maintained by Employer *Y*, the employer of *C*'s spouse. *C* terminates employment (for reasons other than gross misconduct), and the termination of employment causes *C* to lose coverage under *X*'s plan (and, thus, is a qualifying event). *C* elects to receive COBRA continuation coverage under *X*'s plan.

(ii) Under these facts, *X*'s plan cannot terminate *C*'s COBRA continuation coverage on the basis of *C*'s coverage under *Y*'s plan.

Example 2. (i) Employer *W* maintains a group health plan subject to COBRA. *D* is an employee covered under the plan. *D* terminates employment (for reasons other than gross misconduct), and the termination of employment causes *D* to lose coverage under *W*'s plan (and, thus, is a qualifying event). *D* elects to receive COBRA continuation coverage under *W*'s plan. Later *D* becomes employed by Employer *V* and is covered under *V*'s group health plan. *D*'s coverage under *V*'s plan is not subject to any exclusion or limitation with respect to any preexisting condition of *D*.

(ii) Under these facts, *W* can terminate *D*'s COBRA continuation coverage on the date *D* becomes covered under *V*'s plan.

Example 3. (i) The facts are the same as in *Example 2*, except that *D* becomes employed by *V* and becomes covered under *V*'s group health plan before *D* elects COBRA continuation coverage under *W*'s plan.

(ii) Because the termination of employment is a qualifying event, *D* must be offered COBRA continuation coverage under *W*'s plan, and *W* is not permitted to terminate *D*'s COBRA continuation coverage on account of *D*'s coverage under *V*'s plan because *D* first became covered under *V*'s plan before COBRA continuation coverage was elected for *D*.

Q–3: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to the qualified beneficiary's entitlement to Medicare benefits?

A–3: (a) If a qualified beneficiary first becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg) after the date on which COBRA continuation coverage is elected for the qualified beneficiary, then the plan may terminate the qualified beneficiary's COBRA continuation coverage upon the date on which the qualified beneficiary becomes so entitled. By contrast, if a qualified beneficiary first becomes entitled to Medicare benefits on or before the date that COBRA continuation coverage is elected, then the qualified beneficiary's entitlement to Medicare benefits cannot be a basis for terminating the qualified beneficiary's COBRA continuation coverage.

(b) A qualified beneficiary becomes entitled to Medicare benefits upon the effective date of enrollment in either part A or B, whichever occurs earlier. Thus, merely being eligible to enroll in Medicare does not constitute being entitled to Medicare benefits.

Q–4: [Reserved]

A–4: [Reserved]

Q–5: How does a qualified beneficiary become entitled to a disability extension?

A–5: (a) A qualified beneficiary becomes entitled to a disability extension if the requirements of paragraphs (b), (c), and (d) of this Q&A–5 are satisfied with respect to the qualified beneficiary. If the disability extension applies with respect to a qualifying event, it applies with respect to each qualified beneficiary entitled to COBRA continuation coverage because of that qualifying event. Thus, for example, the 29-month maximum coverage period applies to each qualified beneficiary who is not disabled as well as to the qualified beneficiary who is disabled, and it applies independently with respect to each of the qualified beneficiaries. See Q&A–1 in § 54.4980B–8, which permits a plan to require payment of an increased amount during the disability extension.

(b) The requirement of this paragraph (b) is satisfied if a qualifying event occurs that is a termination, or reduction of hours, of a covered employee's employment.

(c) The requirement of this paragraph (c) is satisfied if an individual (whether or not the covered employee) who is a qualified beneficiary in connection with the qualifying event described in paragraph (b) of this Q&A–5 is determined under Title II or XVI of the Social Security Act (42 U.S.C. 401–433 or 1381–1385) to have been disabled at any time during the first 60 days of COBRA continuation coverage. For this purpose, the period of the first 60 days of COBRA continuation coverage is measured from the date of the qualifying event described in paragraph (b) of this Q&A–5 (except that if a loss of coverage would occur at a later date in the absence of an election for COBRA continuation coverage and if the plan provides for the extension of the required periods in accordance with section 4980B(f)(8), then the period of the first 60 days of COBRA continuation coverage is measured from the date on which the coverage would be lost). However, in the case of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the period of the first 60 days of COBRA continuation coverage is measured from the date of birth or placement for adoption. For purposes of this paragraph (c), an individual is determined to be disabled within the first 60 days of COBRA continuation coverage if the individual has been determined under Title II or XVI of the Social Security Act to have been disabled before the first day of COBRA continuation coverage and has not been determined to be no longer disabled at any time between the date of that disability determination and the first day of COBRA continuation coverage.

(d) The requirement of this paragraph (d) is satisfied if any of the qualified beneficiaries affected by the qualifying event described in paragraph (b) of this Q&A–5 provides notice to the plan administrator of the disability determination on a date that is both within 60 days after the date the determination is issued and before the end of the original 18-month maximum coverage period that applies to the qualifying event.

Q–6: Under what circumstances can the maximum coverage period be expanded?

A–6: (a) The maximum coverage period can be expanded if the requirements of Q&A–5 of this section (relating to the disability extension) or paragraph (b) of this Q&A–6 are satisfied.

(b) The requirements of this paragraph (b) are satisfied if a qualifying event that gives rise to an 18-month maximum coverage period (or a 29-month maximum coverage period in the case of a disability extension) is followed, within that 18-month period (or within that 29-month period, in the case of a disability extension), by a second qualifying event (for example, a death or a divorce) that gives rise to a 36-month maximum coverage period. (Thus, a termination of employment following a qualifying event that is a reduction of hours of employment cannot be a second qualifying event that expands the maximum coverage period; the bankruptcy of the employer also cannot be a second qualifying event that expands the maximum coverage period.) In such a case, the original 18-month period (or 29-month period, in the case of a disability extension) is expanded to 36 months, but only for those individuals who were qualified beneficiaries under the group health plan in connection with the first qualifying event and who are still qualified beneficiaries at the time of the second qualifying event. No qualifying event (other than a qualifying event that is the bankruptcy of the employer) can give rise to a maximum coverage period that ends more than 36 months after the date of the first qualifying event (or more than 36 months after the date of the loss of coverage, in the case of a plan that provides for the extension of the required periods). For example, if an

employee covered by a group health plan that is subject to COBRA terminates employment (for reasons other than gross misconduct) on December 31, 2000, the termination is a qualifying event giving rise to a maximum coverage period that extends for 18 months to June 30, 2002. If the employee dies after the employee and the employee's spouse and dependent children have elected COBRA continuation coverage and on or before June 30, 2002, the spouse and dependent children (except anyone among them whose COBRA continuation coverage had already ended for some other reason) will be able to receive COBRA continuation coverage through December 31, 2003.

Q–7: If health coverage is provided to a qualified beneficiary after a qualifying event without regard to COBRA continuation coverage (for example, as a result of state or local law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. 4315), industry practice, a collective bargaining agreement, severance agreement, or plan procedure), will such alternative coverage extend the maximum coverage period?

A–7: (a) No. The end of the maximum coverage period is measured solely as described in Q&A–1 and Q&A–6 of this section, which is generally from the date of the qualifying event.

(b) If the alternative coverage does not satisfy all the requirements for COBRA continuation coverage, or if the amount that the group health plan requires to be paid for the alternative coverage is greater than the amount required to be paid by similarly situated nonCOBRA beneficiaries for the coverage that the qualified beneficiary can elect to receive as COBRA continuation coverage, the plan covering the qualified beneficiary immediately before the qualifying event must offer the qualified beneficiary receiving the alternative coverage the opportunity to elect COBRA continuation coverage. See Q&A–1 of § 54.4980B–6.

(c) If an individual rejects COBRA continuation coverage in favor of alternative coverage, then, at the expiration of the alternative coverage period, the individual need not be offered a COBRA election. However, if the individual receiving alternative coverage is a covered employee and the spouse or a dependent child of the individual would lose that alternative coverage as a result of a qualifying event (such as the death of the covered employee), the spouse or dependent child must be given an opportunity to elect to continue that alternative coverage, with a maximum coverage period of 36 months measured from the date of that qualifying event.

Q–8: Must a qualified beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?

A–8: If a qualified beneficiary's COBRA continuation coverage under a group health plan ends as a result of the expiration of the maximum coverage period, the group health plan must, during the 180-day period that ends on that expiration date, provide the qualified beneficiary the option of enrolling under a conversion health plan if such an option is otherwise generally available to similarly situated nonCOBRA beneficiaries under the group health plan. If such a conversion option is not otherwise generally available, it need not be made available to qualified beneficiaries.

§ 54.4980B–8 Paying for COBRA continuation coverage.

The following questions-and-answers address paying for COBRA continuation coverage:

Q–1: Can a group health plan require payment for COBRA continuation coverage?

A–1: (a) Yes. For any period of COBRA continuation coverage, a group health plan can require the payment of an amount that does not exceed 102 percent of the *applicable premium* for that period. (See paragraph (b) of this Q&A–1 for a rule permitting a plan to require payment of an increased amount due to the disability extension.) The *applicable premium* is defined in section 4980B(f)(4). A group health plan can terminate a qualified beneficiary's COBRA continuation coverage as of the first day of any period for which timely payment is not made to the plan with respect to that qualified beneficiary (see Q&A–1 of § 54.4980B–7). For the meaning of *timely payment*, see Q&A–5 of this section.

(b) A group health plan is permitted to require the payment of an amount that does not exceed 150 percent of the applicable premium for any period of COBRA continuation coverage covering a disabled qualified beneficiary (for example, whether single or family coverage) if the coverage would not be required to be made available in the absence of a disability extension. (See Q&A–5 of § 54.4980B–7 for rules to determine whether a qualified beneficiary is entitled to a disability extension.) A plan is not permitted to require the payment of an amount that exceeds 102 percent of the applicable premium for any period of COBRA continuation coverage to which a qualified beneficiary is entitled without regard to the disability extension. Thus, if a qualified beneficiary entitled to a disability extension experiences a second qualifying event within the original 18-month maximum coverage period, then the plan is not permitted to require the payment of an amount that exceeds 102 percent of the applicable premium for any period of COBRA continuation coverage. By contrast, if a qualified beneficiary entitled to a disability extension experiences a second qualifying event after the end of the original 18-month maximum coverage period, then the plan may require the payment of an amount that is up to 150 percent of the applicable premium for the remainder of the period of COBRA continuation coverage (that is, from the beginning of the 19th month through the end of the 36th month) as long as the disabled qualified beneficiary is included in that coverage. The rules of this paragraph (b) are illustrated by the following examples; in each example the group health plan is subject to COBRA:

Example 1. (i) An employer maintains a group health plan. The plan determines the cost of covering individuals under the plan by reference to two categories, individual coverage and family coverage, and the applicable premium is determined for those two categories. An employee and members of the employee's family are covered under the plan. The employee experiences a qualifying event that is the termination of the employee's employment. The employee's family qualifies for the disability extension because of the disability of the employee's spouse. (Timely notice of the disability is provided to the plan administrator.) Timely payment of the amount required by the plan for COBRA continuation coverage for the family (which does not exceed 102 percent of the cost of family coverage under the plan) was made to the plan with respect to the employee's family for the first 18 months of COBRA continuation coverage, and the disabled spouse and the rest of the family continue to receive COBRA continuation coverage through the 29th month.

(ii) Under these facts, the plan may require payment of up to 150 percent of the applicable premium for family coverage in order for the family to receive COBRA continuation coverage from the 19th month through the 29th month. If the plan determined the cost of coverage by reference to three categories (such as employee, employee-plus-one-dependent, employee-plus-two-or-more-dependents) or more than three categories, instead of two categories, the plan could still require, from the 19th month through the 29th month of COBRA continuation coverage, the payment of 150 percent of the cost of coverage for the category of coverage that included the disabled spouse.

Example 2. (i) The facts are the same as in *Example 1*, except that only the covered

employee elects and pays for the first 18 months of COBRA continuation coverage.

(ii) Even though the employee's disabled spouse does not elect or pay for COBRA continuation coverage, the employee satisfies the requirements for the disability extension to apply with respect to the employee's qualifying event. Under these facts, the plan may not require the payment of more than 102 percent of the applicable premium for individual coverage for the entire period of the employee's COBRA continuation coverage, including the period from the 19th month through the 29th month. If COBRA continuation coverage had been elected and paid for with respect to other nondisabled members of the employee's family, then the plan could not require the payment of more than 102 percent of the applicable premium for family coverage (or for any other appropriate category of coverage that might apply to that group of qualified beneficiaries under the plan, such as employee-plus-one-dependent or employee-plus-two-or-more-dependents) for those family members to continue their coverage from the 19th month through the 29th month.

(c) A group health plan does not fail to comply with section 9802(b) and § 54.9802–1T(b) (which generally prohibit an individual from being charged, on the basis of health status, a higher premium than that charged for similarly situated individuals enrolled in the plan) with respect to a qualified beneficiary entitled to the disability extension merely because the plan requires payment of an amount permitted under paragraph (b) of this Q&A–1.

Q–2: When is the applicable premium determined and when can a group health plan increase the amount it requires to be paid for COBRA continuation coverage?

A–2: (a) The applicable premium for each determination period must be computed and fixed by a group health plan before the determination period begins. A determination period is any 12-month period selected by the plan, but it must be applied consistently from year to year. The determination period is a single period for any benefit package. Thus, each qualified beneficiary does not have a separate determination period beginning on the date (or anniversaries of the date) that COBRA continuation coverage begins for that qualified beneficiary.

(b) During a determination period, a plan can increase the amount it requires to be paid for a qualified beneficiary's COBRA continuation coverage only in the following three cases:

(1) The plan has previously charged less than the maximum amount permitted under Q&A–1 of this section and the increased amount required to be paid does not exceed the maximum amount permitted under Q&A–1 of this section;

(2) The increase occurs during the disability extension and the increased amount required to be paid does not exceed the maximum amount permitted under paragraph (b) of Q&A–1 of this section; or

(3) A qualified beneficiary changes the coverage being received (see paragraph (c) of this Q&A–2 for rules on how the amount the plan requires to be paid may or must change when a qualified beneficiary changes the coverage being received).

(c) If a plan allows similarly situated active employees who have not experienced a qualifying event to change the coverage they are receiving, then the plan must also allow each qualified beneficiary to change the coverage being received on the same terms as the similarly situated active employees. (See Q&A–4 in § 54.4980B–5.) If a qualified beneficiary changes coverage from one benefit package (or a group of benefit packages) to another benefit package (or another group of benefit packages), or adds or eliminates coverage for family members, then the following rules apply. If the change in coverage is to a benefit package, group of benefit packages, or coverage unit (such as family coverage, self-plus-one-dependent, or self-plus-two-or-more-dependents) for which the applicable premium is higher, then the plan may increase the amount that it requires to be paid for COBRA continuation coverage to an amount that does not exceed the amount permitted under Q&A–1 of this section as applied to the new coverage. If the change in coverage is to a benefit package, group of benefit packages, or coverage unit (such as individual or self-plus-one-dependent) for which the applicable premium is lower, then the plan cannot require the payment of an amount that exceeds the amount permitted under Q&A–1 of this section as applied to the new coverage.

Q–3: Must a plan allow payment for COBRA continuation coverage to be made in monthly installments?

A–3: Yes. A group health plan must allow payment for COBRA continuation coverage to be made in monthly installments. A group health plan is permitted to also allow the alternative of payment for COBRA continuation coverage being made at other intervals (for example, weekly, quarterly, or semiannually).

Q–4: Is a plan required to allow a qualified beneficiary to choose to have the first payment for COBRA continuation coverage applied prospectively only?

A–4: No. A plan is permitted to apply the first payment for COBRA continuation coverage to the period of coverage beginning immediately after the date on which coverage under the plan would have been lost on account of the qualifying event. Of course, if the group health plan allows a qualified beneficiary to waive COBRA continuation coverage for any period before electing to receive COBRA continuation coverage, the first payment is not applied to the period of the waiver.

Q–5: What is timely payment for COBRA continuation coverage?

A–5: (a) Except as provided in this paragraph (a) or in paragraph (b) or (d) of this Q&A–5, timely payment for a period of COBRA continuation coverage under a group health plan means payment that is made to the plan by the date that is 30 days after the first day of that period. Payment that is made to the plan by a later date is also considered timely payment if either—

(1) Under the terms of the plan, covered employees or qualified beneficiaries are allowed until that later date to pay for their coverage for the period; or

(2) Under the terms of an arrangement between the employer or employee organization and an insurance company, health maintenance organization, or other entity that provides plan benefits on the employer's or employee organization's behalf, the employer or employee organization is allowed until that later date to pay for coverage of similarly situated nonCOBRA beneficiaries for the period.

(b) Notwithstanding paragraph (a) of this Q&A–5, a plan cannot require payment for any period of COBRA continuation coverage for a qualified beneficiary earlier than 45 days after the date on which the election of COBRA continuation coverage is made for that qualified beneficiary.

(c) If, after COBRA continuation coverage has been elected for a qualified beneficiary, a provider of health care (such as a physician, hospital, or pharmacy) contacts the plan to confirm coverage of a qualified beneficiary for a period for which the plan has not yet received payment, the plan must give a complete response to the health care provider about the qualified beneficiary's COBRA continuation coverage rights, if any, described in paragraphs (a), (b), and (d) of this Q&A–5. For example, if the plan provides coverage during the 30- and 45-day grace periods described in paragraphs (a) and (b) of this Q&A–5 but cancels coverage retroactively if payment is not made by the end of the applicable grace

period, then the plan must inform a provider with respect to a qualified beneficiary for whom payment has not been received that the qualified beneficiary is covered but that the coverage is subject to retroactive termination if timely payment is not made. Similarly, if the plan cancels coverage if it has not received payment by the first day of a period of coverage but retroactively reinstates coverage if payment is made by the end of the grace period for that period of coverage, then the plan must inform the provider that the qualified beneficiary currently does not have coverage but will have coverage retroactively to the first date of the period if timely payment is made. (See paragraph (b) of Q&A–3 in § 54.4980B–6 for similar rules that the plan must follow in confirming coverage during the election period.)

(d) If timely payment is made to the plan in an amount that is not significantly less than the amount the plan requires to be paid for a period of coverage, then the amount paid is deemed to satisfy the plan's requirement for the amount that must be paid, unless the plan notifies the qualified beneficiary of the amount of the deficiency and grants a reasonable period of time for payment of the deficiency to be made. For this purpose, as a safe harbor, 30 days after the date the notice is provided is deemed to be a reasonable period of time.

(e) Payment is considered made on the date on which it is sent to the plan.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

PAR. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

PAR. 4. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
54.4980B–6	1545–1581
54.4980B–7	1545–1581
54.4980B–8	1545–1581
* * * * *	

Approved: December 28, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–1520 Filed 2–2–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

Recommended Test Methods for State Implementation Plans

40 CFR Part 51

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 50 to 51, revised as of July 1, 1998, the text appearing on page 345 duplicates the text on page 344 and should be removed. As corrected the text on page 345 should read as follows:

* * * * *

high level of precision and accuracy for the purposes of this test. This method is not meant to replace the calibration requirements of test methods. In addition to the requirements in this method, all the calibration requirements of the applicable test method must also be met.

3.2.1 Prepare the gas dilution system according to the manufacturer's instructions. Using the high-level supply gas, prepare, at a minimum, two dilutions within the range of each dilution device utilized in the dilution system (unless, as in critical orifice systems, each dilution device is used to make only one dilution; in that case, prepare one dilution for each dilution device). Dilution device in this method refers to each mass flow controller, critical orifice, capillary tube, positive displacement pump, or any other device which is used to achieve gas dilution.

3.2.2 Calculate the predicted concentration for each of the dilutions based on the flow rates through the gas dilution system (or the dilution ratios) and the certified concentration of the high-level supply gas.

3.2.3 Introduce each of the dilutions from Section 3.2.1 into the analyzer or monitor one at a time and determine the instrument response for each of the dilutions.

3.2.4 Repeat the procedure in Section 3.2.3 two times, i.e., until three injections are made at each dilution level. Calculate the average instrument response for each triplicate injection at each dilution level. No single injection shall differ by more than ±2 percent from the average instrument response for that dilution.

3.2.5 For each level of dilution, calculate the difference between the average concentration output recorded by the analyzer and the predicted concentration calculated in Section 3.2.2. The average concentration output from the analyzer shall be within ±2 percent of the predicted value.

3.2.6 Introduce the mid-level supply gas directly into the analyzer, bypassing the gas dilution system. Repeat the procedure twice more, for a total of three mid-level supply gas injections. Calculate the average analyzer output concentration for the mid-level supply gas. The difference between the certified concentration of the mid-level supply gas and the average instrument response shall be within ±2 percent.

3.3 If the gas dilution system meets the criteria listed in Section 3.2, the gas dilution system may be used throughout that field test. If the gas dilution system fails any of the criteria listed in Section 3.2, and the tester corrects the problem with the gas dilution system, the procedure in Section 3.2 must be repeated in its entirety and all the criteria in Section 3.2 must be met in order for the gas dilution system to be utilized in the test.

4. References

1. "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards," EPA–600/R93/224, Revised September 1993.

[55 FR 14249, Apr. 17, 1990; 55 FR 24687, June 18, 1990, as amended at 55 FR 37606, Sept. 12, 1990; 56 FR 6278, Feb. 15, 1991; 56 FR 65435, Dec. 17, 1991; 60 FR 28054, May 30, 1995; 62 FR 32502, June 16, 1997]

Appendixes N–O [Reserved]

Appendix P to Part 51—Minimum Emission Monitoring Requirements

1.0 *Purpose.* This appendix P sets forth the minimum requirements for continuous emission monitoring and recording that each State Implementation Plan must include in order to be approved under the provisions of 40 CFR 51.165(b). These requirements include the source categories to be affected; emission monitoring, recording, and reporting requirements for those sources; performance specifications for accuracy, reliability, and durability of acceptable monitoring systems; and techniques to convert emission data to units of the applicable State emission standard. Such data must be reported to the State as an indication of whether proper maintenance and operating procedures are being utilized by source operators to maintain emission levels at or below emission standards. Such data may be used directly or indirectly for compliance determination or any other purpose deemed appropriate by the State. Though the monitoring requirements are specified in detail, States are given some flexibility to resolve difficulties that may arise during the implementation of these regulations.

1.1 *Applicability.* The State plan shall require the owner or operator of an emission source in a category listed in this appendix to: (1) Install, calibrate, operate, and maintain all monitoring equipment necessary for continuously monitoring the pollutants specified in this appendix for the applicable source category; and (2) complete the installation and performance tests of such equipment and begin monitoring and recording within 18 months of plan approval or promulgation. The source categories and the respective monitoring requirements are listed below.

1.1.1 Fossil fuel-fired steam generators, as specified in paragraph 2.1 of this appendix,

shall be monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.

1.1.2 Fluid bed catalytic cracking unit catalyst regenerators, as specified in paragraph 2.4 of this appendix, shall be monitored for opacity.

* * * * *

[FR Doc. 99–55507 Filed 2–2–99; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6229–9]

Section 112(l) Approval of the State of Florida's Construction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule: Clarification.

SUMMARY: On February 1, 1996 (61 FR 3572), the Environmental Protection Agency published in the **Federal Register** a direct final rule for State Implementation Plan (SIP) and section 112(l) approval of the State of Florida's minor source operating permit program so that Florida could begin to issue federally-enforceable operating permits on a source's potential emissions and thereby avoid major source applicability. Today's action is taken to clarify that EPA's section 112(l) approval of the Florida minor source operating permit program be extended to the State's minor source preconstruction permitting program as well as the operating permit program to allow Florida to issue both Federally-enforceable construction permits and Federally-enforceable operating permits pursuant to section 112 of the Clean Air Act (CAA) as amended in 1990.

DATES: This direct final rule clarification is effective April 5, 1999 without further notice, unless EPA receives adverse comment by March 5, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909; page.lee@epamail.epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303, Phone: (404) 562–9131; page.lee@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1994, the State of Florida, through the Florida Department of Environmental Protection (FDEP) submitted a SIP revision designed to make certain permits issued under the State's existing minor source operating permit program Federally-enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules," (see 54 FR 22274, June 28, 1989). Additional materials were provided by the FDEP to EPA in a supplemental submittal on April 24, 1995.

The intent of Florida's December 21, 1994, submittal was to request SIP approval and 112(l) approval of certain operating permits issued under the State's existing minor source operating permit program and also to request 112(l) approval of certain construction permits issued under the same minor source operating permit program. However, the EPA approval of the state's construction permit program was not addressed in the February 1, 1996, FR notice.

Florida will continue to issue permits which are not Federally-enforceable under its existing minor source operating permit program and the minor source construction permit program as it has done in the past. Today's action clarifies that certain operating and construction permits issued under the State's minor source permitting program that has been approved under section 112(l), provide Federally-enforceable permit limits to sources of hazardous air pollutants pursuant to section 112 of the CAA.

Eligibility for Federally-enforceable construction permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's current rule after February 1, 1996. For minor source construction permits issued in a manner consistent with both State regulations and established federal criteria, EPA considers all such construction permits as federally-enforceable as of February 1, 1996.

II. Final Action

In this action, EPA is clarifying that previous section 112(l) approve of the State of Florida's minor source operating permit program be extended to the State's minor source preconstruction permitting program as well as the operating permit program to allow Florida to issue both Federally-enforceable construction permits and Federally-enforceable operating permits pursuant to section 112 of the Clean Air Act as amended in 1990.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the section 112(l) revision should adverse comments be filed. This rule will be effective April 5, 1999 without further notice unless the Agency receives adverse comments by March 5, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 5, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to

issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because section 112(l) approvals of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the section 112(l) approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: November 13, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–2555 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300733A; FRL–6043–7]

RIN 2070–AB78

Revocation of Tolerances for Canceled Food Uses; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of October 26, 1998, a document announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. The amendatory language for two of the

sections was incorrect. This document corrects that language.

DATES: This correction becomes effective January 25, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location: Special Review Branch, Crystal Mall #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a document on October 26, 1998 (63 FR 57067) (FRL–6035–6), announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. As part of that final rule, the Agency amended §§ 180.410 and 180.416. However, amendments to paragraphs (b), (c), and (d) within those two sections had already been properly addressed at a previous time, so these changes were redundant. Moreover, the final rule incorrectly reserved paragraph (b) for both sections. This document will correct those errors. Therefore, this document rectifies the original tolerance final rule by retaining only that portion of the amendatory language that is correct for those two sections; i.e., retaining only the amendments to paragraphs (a) within §§ 180.410 and 180.416.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is a technical corection to the **Federal Register** and is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: January 20, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division; Office of Pesticide Programs.

In FR Doc. 98–28485 published on October 26, 1998 (63 FR 57067), make the following corrections:

§ 180.410 [Corrected]

1. On page 57077, in the second column, the amendatory language for § 180.410 is corrected to read as follows:

yy. In § 180.410, by amending paragraph (a) in the table, by removing the entries for "almonds"; "almond, hulls"; "apricots"; "peaches"; and "plums (fresh prunes)".

§ 180.416 [Corrected]

2. On page 57077, in the third column, the amendatory language for § 180.416 is corrected to read as follows:

zz. In § 180.416, by amending paragraph (a) in the table, by removing the entries for "cattle, fat", "cattle, meat", "cattle, mbyp", "eggs", "hogs, fat", "hogs, meat", "hogs, mbyp", horses, fat", "horses, meat", "horses, mbyp", "milk", "poultry, fat", "poultry, meat", "poultry, mbyp", "sheep, fat", "sheep, meat", and "sheep, mbyp".

[FR Doc. 99–2226 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 3)]

Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services—1999 Update

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Board adopts its 1999 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 1999 Government salary increases plus increases to its **Federal Register** publication costs.

EFFECTIVE DATE: These rules are effective on March 5, 1999.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1652. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulations in 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

Because Board employees received a salary increase of 3.68% in January 1999, we are updating our user fees to recover the increased personnel cost.

We also are increasing the fees to take into account a 12.7% increase in our publication costs. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d).

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services-1987 Update*, 4 I.C.C.2d 137 (1987). Therefore, we believe that notice and comment is unnecessary for this proceeding. *See Regulations Governing Fees For Services-1990 Update*, 7 I.C.C.2d 3 (1990), *Regulations Governing Fees For Services-1991 Update*, 8 I.C.C.2d 13 (1991), and *Regulations Governing Fees For Services-1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes being adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Suite 210, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: January 27, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.1 is amended by revising paragraphs (b) through (d) and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $26.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $18.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of $0.90 per letter or legal size exposure. A minimum charge of $5.00 will be made for this service.

* * * * *

(e) * * *

(1) A fee of $46.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$7.83
GS–2	8.52
GS–3	9.60
GS–4	10.78
GS–5	12.06
GS–6	13.44
GS–7	14.94
GS–8	16.54
GS–9	18.27
GS–10	20.12
GS–11	22.11
GS–12	26.50
GS–13	31.51
GS–14	37.24
GS–15 and over	43.80

* * * * *

2. In § 1002.2 paragraph (f) is revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic	$2,900
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303	1,300
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	18,100
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	3,000
(ii) Minor amendment	60
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	300
(6)–(10) [Reserved]	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings	
(11):	
(i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	4,700
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	1,200
(iii) Petition for exemption under 49 U.S.C. 10502	8,200
(12):	
(i) An application involving the construction of a rail line	48,800
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	1,200
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	48,800
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	2,600
(14):	
(i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	4,100
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	1,200
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	4,300
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,100
(16)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings	
(21):	
(i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments)	14,500
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	2,500
(iii) A petition for exemption under 49 U.S.C. 10502	4,100

Type of proceeding	Fee
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act	300
(23) Abandonments filed by bankrupt railroads	1,200
(24) A request for waiver of filing requirements for abandonment application proceedings	1,100
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment	1,000
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	14,800
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d)	150
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	12,400
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	6,700
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	976,500
(ii) Significant transaction	195,300
(iii) Minor transaction	5,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,100
(v) Responsive application	5,200
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	976,500
(ii) Significant transaction	195,300
(iii) Minor transaction	5,200
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	900
(v) Responsive application	5,200
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	976,500
(ii) Significant transaction	195,300
(iii) Minor transaction	5,200
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	800
(v) Responsive application	5,200
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	976,500
(ii) Significant transaction	195,300
(iii) Minor transaction	5,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	950
(v) Responsive application	5,200
(vi) Petition for exemption under 49 U.S.C. 10502	4,300
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	1,600
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	45,700
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	8,500
(ii) Minor amendment	60
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	500
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered	5,200
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	150
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act	150
(49)–(55) [Reserved]	
PART V: Formal Proceedings	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1)	54,500
(ii) All other formal complaints (except competitive access complaints)	5,400
(iii) Competitive access complaints	150
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705	5,800.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding	1,000
(ii) All other petitions for declaratory order	1,400
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	4,600
(60) Labor arbitration proceedings	150
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d)	150
(62) Motor carrier undercharge proceedings	150
(63)–(75) [Reserved]	
PART VI: Informal Proceedings	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706	800
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	80
(78):	
(i) The filing of tariffs, including supplements, or contract summaries (per page, $16 minimum charge)	1
(ii) Tariffs transmitted by fax (per page)	1
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	50
(ii) Applications involving over $25,000	100
(80) Informal complaint about rail rate applications	400
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	50
(ii) Petitions involving over $25,000	100
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3)	150
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c) (per document)	26
(84) Informal opinions about rate applications (all modes)	150
(85) A railroad accounting interpretation	700
(86) An operational interpretation	950
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(iii) Third Party Complaint	75

Type of proceeding	Fee
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	150
(88)–(95) [Reserved]	
PART VII: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent (per delivery)	21
(97) Request for service or pleading list for proceedings (per list)	16
(98):	
(i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a **Federal Register** notice	200
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a **Federal Register** notice	400
(99):	
(i) Application fee for the Surface Transportation Board's Practitioners' Exam	100
(ii) Practitioners' Exam Information Package	25
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor	10
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board	20
(iv) Public requests for *Source Codes* to the PC version URCS Phase III	500
(v) PC version or mainframe version URCS Phase II	400
(vi) PC version or mainframe version Updated Phase II databases	50
(vii) Public requests for *Source Codes* to PC version URCS Phase II	1,500
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—First Year	450
(ii) Requests for Public Use File on R–CD Each Additional Year	150
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year	650
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD	450
(v) Waybill—Surface Transportation Board or State proceeding on R–CD—Second Year on different R–CD	500
(vi) User Guide for latest available Carload Waybill Sample	450

[FR Doc. 99–2428 Filed 2–2–99; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1312

[STB Ex Parte No. 580]

Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or With a Water Carrier in the Noncontiguous Domestic Trade

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board) revises its tariff filing regulations to eliminate the option of filing tariffs with the Board electronically through the Federal Maritime Commission's (FMC) Automated Tariff Filing and Information System (ATFI), which is being phased out effective May 1, 1999. The Board will, however, entertain special tariff authority requests by individual carriers seeking to file their tariffs in alternative electronic formats.

EFFECTIVE DATE: These rules are effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 565–1578. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served on December 2, 1998, and published at 63 FR 66521, the Board proposed to revise its tariff filing regulations to eliminate the option to file tariffs with the Board electronically through the FMC's ATFI system. The action was proposed because the Ocean Shipping Reform Act of 1998, Pub. L. No. 105–258, 112 Stat. 1902 (1998) (OSRA) will eliminate the requirement that ocean carriers file their tariffs with the FMC effective May 1, 1999, and, in these circumstances, the FMC will not be accepting new ATFI tariff filings on or after that date. As explained in the NPR, the use of ATFI to file tariffs with the Board has always been predicated upon the basic system being operated and maintained by the FMC to support its own tariff filing requirements, and, with FMC's discontinuance of the system, it will no longer be available for carriers to use to file their tariffs with the Board.

Comments in response to the NPR were received from South Seas Steamship Line (South Seas) and Tropical Shipping & Construction Co. Ltd. (Tropical).[1] Both commenters note that, while OSRA eliminates FMC's tariff filing requirements, it continues to mandate that carriers publish their tariffs in private, automated systems which must comport with requirements to be established by the FMC. They suggest that the Board delay taking any action to revise its regulations until the FMC adopts final rules for the automated systems, in order to facilitate as much commonality as possible between the respective agencies' requirements. South Seas acknowledges that the "publication of tariffs" is not equivalent to the "filing of tariffs with a government agency" but it suggest that the publication requirements to be adopted by the FMC might assist the Board in connection with amending its rules.

Upon consideration of the comments, we have determined to finalize the regulations as proposed. The revisions do not establish requirements for future electronic tariff filings; rather, they merely eliminate the option to use ATFI, and there is no disagreement that ATFI will cease to be available for new filings effective May 1, 1999. As we stated in the NPR, we encourage electronic tariff filing and we will be receptive to alternative electronic tariff filing proposals from interested carriers. Further, we share the commenters' concerns that tariff filing and publishing burdens be minimized, and we will relax those burdens to the extent possible. However, termination of the ATFI system for noncontiguous domestic trade filings, which is all that our proposal contemplates, will have no effect on our ability to meet our objectives.

For several reasons, we do not believe that we should postpone any new rules we issue pending adoption of final rules by the FMC. First, there could be some differences in future FMC and Board

[1] South Seas currently files its tariffs with the Board electronically through ATFI, and Tropical currently files printed tariffs with the Board.

tariff requirements. Indeed, the statutory requirement to file noncontiguous domestic trade tariffs with the Board will continue, whereas the requirement to file foreign tariffs with the FMC will be eliminated, and, in fact, FMC's new regulations will no longer even address tariff filing. Second, unlike FMC's existing regulations, which require all carriers to file tariffs through ATFI, FMC's proposed regulations will permit carriers to design and use whatever private tariff publishing systems they choose, so long as minimum requirements are met, and it is unclear at this point how much commonality may exist among the various individual carrier systems. Thus, while we understand the commenters' point about facilitating commonality, we also believe that we should provide carriers with the flexibility to design the tariff filing systems that will best meet their needs, and the needs of their customers, by inviting special tariff authority requests for appropriate proposals individual carriers wish to pursue. It may become desirable to adopt specific regulations governing electronic tariff filings at some point in the future, but adoption of formal regulations at this point could prove to be more limiting than helpful. Finally, as we indicated in our earlier notice, we are not planning to adopt rules, but rather to address electronic tariff requests on a case-by-case basis. Thus, any procedure allowed under the FMC's rules can, if appropriate, be approved for use in the noncontiguous domestic trade through a grant of special tariff authority.

II Entities

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. The rules eliminate the option to file tariffs electronically through the FMC's ATFI system, but many carriers already opt to file printed tariffs, and any cost differences for alternative tariff filing methodologies that carriers may propose are unlikely to be significant.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1312

Motor carriers, Noncontiguous domestic trade, Tariffs, Water carriers.

Decided: January 26, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Board amends part 1312 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NONCONTIGUOUS DOMESTIC TRADE

1. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 721(a), 13702(a), 13702(b) and 13702(d).

2. In § 1312.1(c), the definition of "ATFI" is removed.

3. Section 1312.6 is amended by revising paragraph (c) to read as follows:

§ 1312.6 Advance notice required.

* * * * *

(c) *Receipt of tariffs by the Board.* The Board will receive tariff filings between the hours of 8:30 A.M. and 5:00 P.M. Eastern Time on workdays. Tariff filings delivered to the Board on other than a workday, or after 5:00 P.M. on a workday, will be considered as received the next workday.

* * * * *

§ 1312.17 [Removed]

4. Section 1312.17 is removed.

[FR Doc. 99–2558 Filed 2–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 012999A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, January 30, 1999, through June 30, 1999, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast subzone of 1.17 million lb (0.53 million kg). That quota was further divided into two equal quotas of 585,000 lb (265,352 kg) for vessels in each of two groups by gear types—vessels using run-around gillnets and vessels using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*), (63 FR 8353, February 19, 1998)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected or until the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone was reached on January 28, 1999. Accordingly, a 500–lb (227 kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast subzone effective 12:01 a.m., local time, January 30, 1999.

The Florida west coast subzone extends from 87°31'06" W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL boundary) through March 31, 1999; and (2) 25°48' N. lat. (due west of the Monroe/Collier

County, FL boundary) from April 1, 1999, through October 31, 1999.

Classification

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2543 Filed 1-29-99; 3:08 pm]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 012299B]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 1999 Summer Flounder Commercial Quota; Commercial Quota Harvested for Delaware

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota adjustment, notice of commercial quota harvest.

SUMMARY: NMFS issues this notification announcing preliminary adjustments to the 1999 summer flounder commercial quotas. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) and that require that landings in excess of a state's individual quota be deducted from a state's respective quota for the following year. The public is advised that preliminary adjustments have been made and is informed of the revised quotas for the affected states. This action also notifies the public that there is no 1999 commercial summer flounder quota available to the State of Delaware.

DATES: This rule is effective January 28, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary M. Grim, Fisheries Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION: Regulations implementing summer flounder management measures are found at 50 CFR part 648, Subparts A and G. The regulations require annual specification of a quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100. The final specifications for the 1999 summer flounder fishery, adopted to ensure achievement of a fishing mortality rate (F) of 0.24 for 1999, set a commercial quota equal to 11.11 million lb (5.04 million kg) (63 FR 72203, December 31, 1998).

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. NMFS published final specifications and noted that it would adjust each state's 1999 quota as a result of 1998 overages. The adjustment in this notification is preliminary because it is likely that additional data will be received from the states that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers.

Based on dealer reports and other information available through December 31, 1998, NMFS has determined that the States of Delaware, Maine, New York, New Jersey, Maryland, and Virginia exceeded their 1998 quotas. The remaining States of New Hampshire, Massachusetts, Rhode Island, Connecticut, and North Carolina have not exceeded their 1998 quotas. The preliminary 1998 landings and resulting overages for all states are given in Table 1 to the preamble of this document. The resulting adjusted 1999 commercial quota for each state is given in Table 2 to the preamble of this document. In Table 3 to the preamble of this document, the adjustment has been made to maintain the incidental component of the commercial quota at 32.7 percent of the total (as recommended in the final specifications).

This notification also corrects errors for Rhode Island's commercial summer flounder allocation specified in the preamble to Table 1.—1999 State Commercial Quotas published on December 31, 1998 (63 FR 72203).

In FR Doc. 98–34511, on page 72204, in Table 1.—1999 State Commercial Quotas, the commercial state allocation for Rhode Island is corrected to read as follows:

In the third column of the table, under the heading Directed, and under the subheading Lb, in the fourth line, "1,171,379" is corrected to read "1,172,758"; in the last line, the total "7,468,107" is corrected to read "1,742,583" and in the fourth column of the table, under the same heading, and under the subheading KG, "53,133" is corrected to read "531,954"; in the last line, the total "3,387,476" is corrected to read "790,422."

In the fifth column of the table, under the heading Incidental catch, under the subheading Lb, in the fourth line, "571,204" is corrected to read "569,825" and in the sixth column, under the same heading, under the subheading KG, "259,094" is corrected to read "258,468."

In the seventh column, under the heading Total, under the subheading Lb, in the fourth line, "1,741,583" is corrected to read "1,742,583"; and under the same heading, under the same subheading, in the last line, "11,111,191" is corrected to read "11,110,300." These corrections are reflected in Tables 2 and 3 of this document. In addition, Tables 2 and 3 reflect a quota transfer of 5,000 lb (2,268 kg) from North Carolina to Virginia (64 FR 2600, January 15, 1999).

TABLE 1.—SUMMER FLOUNDER PRELIMINARY 1998 LANDINGS BY STATE

State	1998 quota		Preliminary 1998 landings		1998 overage	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
ME	4,791	2,173	5,168	2,344	377	171
NH	51	23	0	0	0	0
MA	721,899	327,448	695,994	315,698	0	0
RI	1,742,583	790,422	1,729,643	784,553	0	0
CT	250,457	113,605	246,642	111,875	0	0
NY	763,419	346,281	819,351	371,651	55,932	25,370
NJ	1,858,363	842,939	1,864,089	845,537	5,726	2,597

TABLE 1.—SUMMER FLOUNDER PRELIMINARY 1998 LANDINGS BY STATE—Continued

State	1998 quota		Preliminary 1998 landings		1998 overage	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
DE	[2](14,534)	[2](6,593)	10,637	4,825	25,171	11,417
MD	199,876	90,662	203,322	92,225	3,446	1,563
VA	2,362,877	1,071,783	2,526,177	1,145,855	163,300	74,072
NC	3,049,589	1,383,270	2,936,623	1,332,030	0	0
Total[3]	10,933,871	4,959,518	11,037,646	5,006,592	253,952	115,191

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 2.—SUMMER FLOUNDER PRELIMINARY ADJUSTED 1999 QUOTAS

State	1999 initial quota		1999 adjusted quota	
	Lb	Kg[1]	Lb	Kg[1]
ME	5,285	2,397	4,908	2,226
NH	51	23	51	23
MA	757,842	343,751	757,842	343,751
RI	1,742,583	790,422	1,742,583	790,422
CT	250,791	113,757	250,791	113,757
NY	849,680	385,408	793,748	360,038
NJ	1,858,363	842,939	1,852,637	840,342
DE	1,977	897	[2](23,194)	[2](10,521)
MD	226,570	102,770	223,124	101,207
VA	2,373,569	1,076,633	2,210,269	935,561
NC	3,044,589	1,381,002	3,044,589	1,381,002
Total	11,111,300	5,040,001	10,857,348	4,924,810

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

TABLE 3.—SUMMER FLOUNDER 1999 STATE QUOTAS AND INCIDENTAL CATCH ALLOCATIONS

State	Percent share	Directed		Incidental Catch		Total	
		Lb	Kg[1]	Lb	Kg	Lb	Kg
ME	0.04756	3,303	1,498	1,605	728	4,908	2,226
NH	0.00046	34	16	17	8	51	23
MA	6.82046	510,028	231,345	247,814	112,407	757,842	343,751
RI	15.68298	1,172,758	531,954	569,825	258,468	1,742,583	790,422
CT	2.25708	168,782	76,558	82,009	37,199	250,791	113,757
NY	7.64699	534,192	242,305	259,556	117,733	793,748	360,075
NJ	16.72499	1,246,825	565,550	605,812	274,792	1,852,637	840,342
DE	0.01779	[2](15,610)	[2](7,080)	[2](7,584)	[2](3,440)	[2](23,194)	[2](10,521)
MD	2.03910	150,162	68,113	72,962	33,095	223,124	101,207
VA	21.31676	1,487,511	674,724	722,758	327,837	2,210,269	935,561
NC	27.44584	2,049,008	929,415	995,581	451,588	3,044,589	1,381,002
Total	100.00000	7,306,993	3,314,396	3,550,355	1,610,414	10,857,348	4,924,810

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

In 1998, the State of Delaware was closed to the landing of summer flounder by Federal permit holders as a result of deductions to the 1998 quota for overages in 1997 (62 FR 66304, December 18, 1997). As a result of those deductions and further quota reductions as published in the **Federal Register** on April 28, 1998 (63 FR 23227, April 28, 1998), the 1998 quota allocation to the State of Delaware was –14,534 lb (–6,593 kg). Further, an additional 10,591 lb of summer flounder were landed in Delaware in 1998. The 1999 quota for Delaware is not sufficient to offset this negative 1998 allocation and the additional landings in 1998. Consequently, Delaware will have no commercial quota for 1999. To prevent landings in Delaware by Federal permit holders, the State is closed to the landing of summer flounder by Federal permit holders for 1999. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that, according to the Regional Administrator, no longer has commercial quota available for harvest. Therefore, effective January 28, 1999, through December 31, 1999, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1999 calender year, unless additional quota becomes available

through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the remainder of the 1999 calender year, or until additional quota becomes available through a transfer. If additional landings should be reported for 1998, the commercial quota for the State of Delaware will be re-adjusted pursuant to § 648.100(d)(2).

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2465 Filed 1–28–99; 4:44 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 012899A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 interim harvest specification of Atka mackerel.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 29, 1999, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP at Subpart H of 50 CFR part 600 and CFR part 679.

The Interim 1999 Harvest Specifications (64 FR 50 January 4, 1999) as amended by the final rule implementing season and area apportionment of Atka Mackerel total allowable catch (TAC) (64 FR 3446, January 22, 1999) established the Interim 1999 Harvest Specifications for non-jig gear as 6,269 metric tons (mt) in the Eastern Aleutian District and the Bering Sea subarea. See § 679.20(c)(2)(ii) and 679.20(a)(8)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 interim specification for non-jig gear Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea will be reached. The Regional Administrator is establishing a directed fishing allowance of 5,769 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the Interim 1999 Harvest Specifications for groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 1999 interim specification of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2544 Filed 1-29-99; 3:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8321–02; I.D. 012999B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 1999 pollock total allowable catch (TAC) for Statistical Area 610 established by the 1999 Interim Specifications and amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 31, 1999, until 1200 hrs, A.l.t., June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 1999 pollock TAC in Statistical Area 610 as amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska (64 FR 3437, January 22, 1999) is 6,936 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim TAC of pollock in Statistical Area 610 will soon

be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,436 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Areas 610. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1999.

Gary C. Matlock.

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2542 Filed 1–29–99; 3:08 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 22
Wednesday, February 3, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[NOTICE 1999–2]

Rulemaking Petition: Definition of "Express Advocacy"; Notice of Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of Availability.

SUMMARY: On January 11, 1999, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the Virginia Society for Human Life. The Petition urges the Commission to revise its rules defining "express advocacy" to conform with recent court decisions. The Petition is available for inspection in the Commission's Public Records Office and through its FAXLINE service.

DATES: Statements in support of or in opposition to the Petition must be filed on or before March 5, 1999.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to expressad@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The petitioner is requesting the Commission to revise the definition of "express advocacy" set forth in its rules at 11 CFR 100.22 to reflect the decisions in *Maine Right to Life Committee* v. *FEC*, 914 F.Supp. 8 (D.Me. 1995), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 118 S.Ct. 52 (U.S. 1997), and in *Right to Life of Dutches Co.* v. *FEC*, 6 F.Supp.2d 248 (S.D.N.Y. 1998) ("*Dutchess County*"). Specifically, the Petition urges repeal of 11 CFR 100.22(b), which was held invalid in those cases. The challenged paragraph defines "express advocacy" to include communications in which the electoral portion is "unmistakable, unambiguous, and suggestive of only one meaning, and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action."

The "express advocacy" standard is used to determine if a disbursement qualifies as an independent expenditure for purposes of the Federal Election Campaign Act; if independent communications by corporation and labor organizations are prohibited under the Act; and if campaign communications require a disclaimer. *See* 2 U.S.C. 431(17), 441b, 441d; *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S.C. 238 (1986).

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW, Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons may also obtain a copy of the Petition by dialing the Commission's FAXLINE service at (202) 501–3413 and following its instructions, at any time of the day and week. Request document #237.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: January 29, 1999.

Scott E. Thomas,

Chairman.

[FR Doc. 99–2500 Filed 2–2–99; 8:45 am]

BILLING CODE 6715–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15 and 17

Changes in Reporting Levels for Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rulemaking.

SUMMARY: As part of its regulatory reform initiative, the Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend Parts 15 and 17 of its rules, 17 CFR Parts 15 and 17. The proposed amendments to Part 15 would raise the reporting levels at which futures commission merchants (FCMs), clearing members, foreign brokers,[1] and traders must file large trader reports in certain commodities. The Commission is also proposing to delete the requirement that where an independent account controller trades for a number of commodity pools, the carrying firm must identify separately each such commodity pool. In addition, the proposed amendments would delete current reporting Rule 17.01(c) under which a reporting firm must identify the number and name of other accounts not included in the special account that are controlled or owned by the trader.

The Commission is also proposing to reorganize the identifying information reported by large traders on CFTC Form 40 "Statement of Reporting Trader" to obtain and present data more useful to the Commission's market surveillance activities. The proposed amendments would streamline the reporting process and would substantially lessen the burden on persons reporting, as well as the processing workload of the Commission, without compromising the integrity of the Commission's large trader reporting system, its market surveillance activities or its oversight responsibilities.

DATES: Comments on this proposed rulemaking should be submitted on or before April 5, 1999.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention:

[1] FCMs, clearing members and foreign brokers are referred to herein collectively as "firms."

Office of the Secretariat; transmitted by facsimile at (202) 418-5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to "Large Trader Reporting Rules."

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, or Kimberly A. Browning, Attorney/Advisor, Division of Economic Analysis, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, telephone (202) 418–5600, or electronically [lreese@cftc.gov] or [kbrowning@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

Over the past two years, the Commission has implemented a program of regulatory reform and modernization to reduce unnecessary burdens on the futures industry while maintaining the important public protections embodied in the Commodity Exchange Act. In particular, the Commission has eliminated duplicative regulatory requirements, reduced unnecessary paperwork burdens and updated its regulatory scheme to reflect changes in the market place. In doing so, the Commission has sought to maintain the regulatory safeguards relied upon by the public. The rule reform initiatives have included a fast-track procedure for Commission review and approval of new contract market designations and exchange rule amendments, 62 FR 10434 (March 7, 1997). The Commission is also considering a proposal to streamline designation applications and to modify its speculative position limits. See, 63 FR 38537 (July 17, 1998) and 63 FR 38525 (July 17, 1998), respectively. As part of its regulatory reform program, the Commission has re-examined its rules regarding its large-trader reporting system. The Commission's large-trader reporting system is an important Commission oversight tool. These rules require FCMs to report to the Commission position information of the largest futures and options traders and require the traders themselves to provide certain identifying information. Reporting levels are set in the designated futures and option markets under the authority of sections 4i and 4c of the Act to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent market congestion and price manipulation and to enforce speculative position limits. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures markets and other matters of public interest. Generally, large trader reports are filed by the firm carrying the reportable trader's position.[2]

The Commission periodically reviews information concerning trading volume, open interest, and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage of open interest is adequate for effective market surveillance. In this regard, the Commission also is mindful of the paperwork burden associated with these reporting requirements and reviews them with an eye to streamlining that burden to the extent compatible with its responsibilities for rigorous surveillance of the futures and option markets. The Commission's most recent review of reporting levels indicates that the size of trading volume, open interest, and position of individual traders would enable the Commission to raise reporting levels as follows: (1) Lean Hogs from 50 to 100 contracts, (2) Rough Rice from 25 to 50 contracts, (3) Goldman Sachs Commodity Index from 25 to 100 contracts, (4) Soybean Oil from 175 to 200 contracts, (5) Soybean Meal from 175 to 200 contracts, (6) 1-Month LIBOR from 100 to 300 contracts, (7) 30-Day Fed Funds from 100 to 300 contracts, (8) 3-Month Eurodollars from 850 to 1000 contracts, (9) 3-Month Euroyen from 25 to 100 contracts, (10) 2-Year US Treasury Notes from 200 to 500 contracts, (11) 5-Year US Treasury Notes from 300 to 800 contracts, (12) 10-Year US Treasury Notes from 500 to 1000 contracts, (13) 30-Year US Treasury Bonds from 500 to 1000 contracts, (14) Municipal Bond Index from 100 to 300 contracts, (15) Dow Jones Industrial Average Index from 25 to 100 contracts, (16) NASDAQ 100 Stock Index from 25 to 100 contracts, (17) NIKKEI Stock Average from 50 to 100 contracts, (18) Russell 2000 Stock Index from 25 to 100 contracts, (19) S&P 400 Midcap Stock Index from 25 to 100 contracts, (20) S&P 500 Stock Index from 600 to 1000 contracts, (21) Crude Oil from 300 to 350 contracts, (22) Natural Gas from 100 to 175 contracts, and (23) Sugar 11 from 300 to 400 contracts.[3]

Reporting levels for foreign currencies would also be modified. Currently, Commission Rule 15.03 does not distinguish among foreign currencies, setting a uniform standard for all. However, surveillance of contracts on currencies of the major economies requires fewer large trader reports than for contracts on the currencies of the emerging markets. Accordingly, the Commission is proposing to amend Rule 15.03 to classify the European currency unit (and its successor, the Euro) and the currencies of Japan, Germany, the UK, France, Italy, Canada, Australia, Switzerland, Sweden, Belgium, and the Netherlands as "Major Foreign Currencies" and to raise the reporting level applicable to them to 400 from the current level of 200 contracts.

In addition, the Commission is proposing to lower the reporting level for all other foreign currencies[4] to 100 contracts in order to obtain needed information in surveilling these contracts.[5] In addition, the Commission is proposing a 100 contract reporting level for any contract having one of the other foreign currencies as a constituent part of a crossrate contract.[6]

The Commission is also proposing to list the reporting levels for the grains and soybeans in terms of contracts rather than bushels. Prior to January 1998, it was industry practice to express open interest and volume data, as well as required position reports, for the

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[2] Specifically, Parts 17 and 18 of the regulations require reports from firms and traders, respectively, when a trader holds a "reportable position." A reportable position is any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in Commission Rule 15.03 in either: (1) Any one future of any commodity on any one contract market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market; or (2) Long or short put or call options that exercise into the same future of any commodity on any one contract market. 17 CFR 15.00 and Part 150.

The firms which carry accounts for traders holding "reportable positions" are required to identify those accounts by filing a CFTC Form 102, discussed *infra*, and to report all reportable positions in the accounts to the Commission. The individual trader who holds or controls the reportable position, however, is required to report to the Commission only in response to a special call.

[3] The Commission also is proposing to delete Rule 15.03's separate reference to "GNMA," a contract that is now currently dormant. See, 17 CFR 5.2(a). Under this proposal, if trading in GNMAs were to be reactivated, the reporting level would be 25 contracts.

[4] Futures contracts classified in "Other Foreign Currencies" with open interest during the first two weeks in December 1998 included the Mexican Peso, Russian Ruble, Brazilian Real, New Zealand Dollar and the South African Rand. All currencies had positions reportable at the current, 200-contract level.

[5] Because exchange large trader reporting levels for these currencies presently are either at or below 100 contracts, the Commission anticipates that there will be a small additional cost to reporting firms to provide the information to the Commission. The Commission specifically invites comments from interested persons on the extent of this additional reporting burden.

[6] Cross-rate contracts which are composed of two major currencies would also be considered to be a major currency.

grain and soybean futures contracts, in terms of thousands of bushels. Beginning in 1998, however, industry practice for the grains and soybean contracts changed to express data for these contracts in contract units, which is consistent with the data for all other futures and option contracts. The Commission is proposing to conform its reporting levels to this practice.

The Commission's long-standing administrative practice has been to set reporting levels by commodity and not by individual contract market. Consistent with this long-standing policy, although contracts on the MidAmerica Commodity Exchange (MACE) are smaller in size than those traded on other exchanges,[7] the Commission is not proposing to adjust the reporting level for MACE contracts to compensate for the smaller bushel-size of its contracts. This will result in a MACE trader's reporting level being set at a lower absolute number of bushels than the number of bushels underlying a reportable position on the exchanges that trade larger-sized contracts.[8] Although the number of reporting traders on MACE contracts may increase by expressing the reporting level in contracts rather than bushels, existing data cannot precisely gauge whether, or to what degree, the reporting burden will be changed as a result. Of course, the Commission would propose to amend these reporting levels if, based upon actual experience after their adoption, the proposed MACE levels resulted in too many or too few reports. The Commission specifically invites comments on this matter from interested persons.

The Commission estimates that these proposed amendments to adjust reporting levels will decrease the number of daily position reports (*i.e.*, CFTC Series '01 Reports and CFTC Form 102s) required to be filed by reporting firms by about 14 percent. (The number of CFTC Form 40s required to be filed by large traders will also decrease). However, the percent of total market open interest reported through the large trader system would remain at the level deemed sufficient for rigorous market surveillance based upon the Commission's administrative experience.

Not all reporting firms may elect to avail themselves of this relief. In this regard, the exchanges also maintain large trader reporting systems that are similar in most respects to the Commission's. The exchanges set their own reporting level, which for particular contracts may vary from Commission levels. When exchange levels are lower than the Commission's, firms may report to the Commission at the lower exchange level, thereby saving any cost associated with reprogramming their reporting systems to reflect the proposed increases to the Commission's levels. The Commission, however, accepts information on CFTC Forms 40 and 102 only for positions that exceed its levels. Since these forms are filed manually, raising the reporting levels will always result in reducing firm costs by reducing the amount of paperwork firms must generate.

II. Proposed Amendments to Special Account Information (CFTC Form 102)

In addition to the daily large trade position data discussed above, Part 17 of the Commission's regulations requires that firms report to the Commission when an account first becomes reportable. When a trade first exceeds a reporting level, the firm labels the account a "special account."[9] The firm must also file with the Commission Form 102.[10] CFTC Form 102 identifies persons who have a financial interest in or trading control of a special account, informs the Commission of the type of account that is being reported and gives preliminary information whether positions and transactions are commercial or noncommercial in nature. Certain information included on the Form 102 no longer is needed for the operation of the Commission's surveillance data systems or by routine report from firms.

Specifically, Commission Rule 17.01(b)(3) provides that a firm identify on Form 102 each pool, the pool's account number and name, as well as the name and location of the commodity pool for which the account controller trades. In addition, Commission Rule 17.01(c) requires that a trader identify on a Form 102 the names and account numbers of all other separate accounts that the reporting trader controls or in which the trader has a ten percent or greater financial interest. ("other accounts").[11]

These requirements are duplicative of more complete information on account ownership and control filed by the traders themselves on CFTC Form 40, as required by Commission rule § 18.04. Based upon the information reported on the Form 40, the Commission's compliance programs are able to make the necessary account aggregations without the need for firms to furnish the above information, as well. Because neither of these categories of information, as reported routinely by firms, any longer facilitates the Commission's market surveillance program in any significant respect, and their deletion may substantially reduce the over all burden of the firm's required reporting on the Form 102, the Commission is proposing to streamline the reporting process by deleting the requirements under 17.01(b)(3) and (c) as described above. Of course, the proposed deletion of these routine requirements will not in any way affect the Commission's authority to obtain complete account information from either or both the firm and the individual trader in those individual cases where additional information is necessary to the Commission's conduct of market surveillance or to the enforcement of its rules. Nor does it affect the manner in which accounts are aggregated for calculation of compliance with speculative position limits and for other compliance purposes. Accordingly, the Commission is proposing that § 17.01 be amended by deleting those sections of the rule requiring that special account data reflected on Form 102s must include specific information on commodity pools and pool operators, as well as "other account" data required by § 17.01(c). The Commission believes that these proposed amendments to streamline § 17.01 would reduce the reporting burden on the public and the processing workload of the Commission.

III. Proposed Changes to Statement of Reporting Trader (CFTC Form 40)

Under Part 18 of the Commission's regulations, traders who own or control reportable positions are required to file a CFTC Form 40 on call by the Commission or its delegee disclosing information about the ownership or

[7] Specifically, for example, the contract size for wheat, corn, oats and soybean futures contracts traded on MACE is 1,000 bushels, rather than the 5,000 bushel size contract traded on other exchanges.

[8] The current convention of expressing reporting levels for all of the contract markets in bushels does not raise this issue.

[9] The firm assigns a reporting number to the special account and reports all information to the Commission using this number.

[10] Commission Rule 17.01, 17 CFR 17.01. The CFTC Form 102 must also be updated when information concerning financial interest in, or control of, the special account changes. 17 CFR 17.02.

[11] For example, when an individual shares control of and has a financial interest in an account with one or more persons, and that individual also has his or her own account that he or she solely controls, these accounts would not be reported as a single account for special account/Form 102 reporting purposes. *See*, Commission Rule 17.00(b)(ii).

control of their futures and option positions.

The Commission is proposing to reorganize the Form 40 to present data in a more useful manner. In particular, the commission is proposing to redesign "Schedule 1" to clarify information regarding the reporting trader's hedging activities. This information includes the types of futures or options contracts used to hedge, the commercial occupations or merchandising activities of traders and the futures or option markets used for hedging. Although the information required would remain essentially the same, the Commission is proposing that the data reflected on Schedule 1 be reorganized to emphasize occupations and merchandising activities of the traders rather than the markets in which they trade.[12] In addition, the Commission is proposing to divide the Schedule 1 "Investment Groups" category, which currently includes all professionally managed funds, into distinct, more descriptive subcategories. These subcategories would include hedge funds, college endowments, managed accounts and commodity pools, trusts, foundations, pension funds, mutual funds and insurance companies. This proposed reorganization would provide information of greater use for surveillance activities. The proposed Schedule 1 is included below and the Commission invites comments from the public regarding its readability and overall structure:

[12] Slight changes would also be made to the list of merchandising activities to reflect those of greater surveillance importance to the Commission.

BILLING CODE 6351-01-M

SCHEDULE 1: To be completed only by traders who checked "Yes" to question 3 of part B or question 4 of part C. (1) Complete each section that pertains to the types of futures/options in which you hedge or cover a risk exposure. (2) List or check your merchandising or marketing activity(ies). (3) List all futures/option markets used. (4) List all cash commodities hedged or risk exposure covered. [Use a continuation sheet if necessary.]

FINANCIAL FUTURES/OPTIONS (e.g., Bonds, Notes, Bills, Eurodollars, Stock Indices & Foreign Currencies) (Check each activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Markets Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	CASH MARKETS HEDGED
☐ ARBITRAGEUR, BROKER/DEALER, MARKET MAKER (A) ☐ U.S. COMMERCIAL BANK (C) ☐ CORPORATE TREASURY (T) ☐ NON-U.S. COMMERCIAL BANK (B) ☐ PENSION FUND (F) ☐ SWAPS/DERIVATIVES DEALER (S) ☐ INSURANCE COMPANY (G) ☐ MORTGAGE ORIGINATOR (M) ☐ HEDGE FUNDS (H) ☐ COLLEGE ENDOWMENT, TRUST, FOUNDATION (D) ☐ MUTUAL FUND (E) ☐ MANAGED ACCOUNTS AND COMMODITY POOLS (P) ☐ OTHER (O): Specify _____ (e.g., Central Bank, savings & loan)		

AGRICULTURAL AND NATURAL RESOURCE FUTURES/OPTIONS (Other Than Livestock/Meat) (Check each commercial activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Commodities Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	CASH COMMODITIES HEDGED
☐ PRODUCER (P): Specify _____ (e.g., farmer, miner)		
☐ MANUFACTURER (M): Specify _____ (e.g., refiner, miller, crusher, fabricator, sawmill, coffee roaster, cocoa grinder)		
☐ DEALER/MERCHANT (D): Specify _____ (e.g., wholesaler, exporter/importer, shipper, grain elevator operator, crude oil marketer)		
☐ SWAPS/DERIVATIVES (S): Specify _____		
☐ OTHER (O): Specify _____ (e.g., end user, restaurant chain)		

LIVESTOCK/MEAT FUTURES/OPTIONS (Check each commercial activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Commodities Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	CASH COMMODITIES HEDGED
☐ LIVESTOCK FEEDER (F): Specify _____ (e.g., cattle feeder, hog feeder, poultry feeder)		
☐ LIVESTOCK SLAUGHTERER (S): Specify _____		
☐ OTHER (O): Specify _____ (e.g., cow/calf operator, meat processor, bacon slicer, warehouseman, restaurant chain, swaps/derivatives dealer)		

BILLING CODE 6351-01-C

IV. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that large traders and FCMs are not "small entities" for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). The proposed amendments to reporting requirements fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. In addition, these proposed amendments relieve a regulatory burden. Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The Commission invites comments from any firm believing that these rules would have a significant economic impact upon its operations.

B. Paperwork Reduction Act

When publicizing proposed rules, the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission through these rule proposals solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission responses.

The Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burdens associated with this entire collection (3038–0009), including these proposed rules, is as follows:

Average Burden Hours Per Response: 0.35
Number of Respondents: 5391
Frequency of Response: Daily

Persons wishing to comment on the information which would be required by these proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

Copies of the OMB-approved information collection package associated with the rulemaking may be obtained from the Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects

17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the act, and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1994), the Commission hereby proposes to amend Parts 15 and 17 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c, (a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

2. Section 15.03 is revised to read as follows:

§ 15.03 Reporting Levels.

(a) Definitions. For purposes of this section, the term *major foreign currency* means the currencies and cross-rates between the currencies of Japan, Germany, the U.K., France, Italy, Canada, Australia, Switzerland, Sweden, Belgium, and the Netherlands and the Euro.

(b) The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	100
Corn	150
Oats	60
Soybeans	100
Soybean Oil	200
Soybean Meal	200
Cotton	50
Frozen Concentrated Orange Juice	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	400
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50

Commodity	Number of contracts
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	175
Financial:	
Municipal Bond Index	300
3-month (13-Week) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,000
10-Year U.S. Treasury Notes	1,000
5-Year U.S. Treasury Notes	800
2-Year U.S. Treasury Notes	500
3-Month Eurodollar Time Deposit Rates	1,000
30-Day Fed Funds	300
1-month LIBOR Rates	300
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
S&P 500 Stock Price Index	1,000
E-Mini S&P Stock Price Index	300
S&P 400 Midcap Stock Index	100
Dow Jones Industrial Average Index	100
New York Stock Exchange Composite Index	50
Amex Major Market Index, Maxi	100
NASDAQ 100 Stock Index	100
Russell 2000 Stock Index	100
Value Line Average Index	50
NIKKEI Stock Index	100
Goldman Sachs Commodity Index	100
All Other Commodities	25

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

3. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a unless otherwise noted.

4. Section 17.01 is proposed to be amended by removing and reserving paragraphs (b)(3)(ii) and (c) and by revising paragraph (b)(3)(iii) to read as follows:

§ 17.01 Special account designation and identification.

* * * * *

(b) * * *

(3) * * *

(iii) If fewer than ten accounts are under control of the independent advisor, for each account the account number and the name and location of each person having a ten percent or more financial interest in the account; and

* * * * *

Issued in Washington, D.C., this 28th day of January, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–2485 Filed 2–2–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95–9–003]

Open Access Same-Time Information System and Standards of Conduct

January 27, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (the Commission) proposes to adopt a set of uniform business practices implementing the Commission's policies on transmission service price negotiation and improving interactions between transmission providers and customers over OASIS nodes and proposes to revise 18 CFR 37.5 to require compliance with these practices. In addition, the Commission proposes a consistent naming convention for path names, proposes to replace the Data Dictionary Element "ANC_SERVICE_TYPE" in the OASIS Standards and Communication Protocols Document (Version 1.3) with the term "AS_TYPE," and proposes to clarify the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in § 4.2.10.2 of that same document and in the Data Dictionary Element.

DATES: Written comments (an original and 14 paper copies) must be received by April 5, 1999. In addition, the Commission encourages the filing of a copy of the comments on computer diskette or by E-Mail by the same date.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1283.

Paul Robb (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2702.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0321.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to

inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

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I. Introduction

In this notice of proposed rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes a set of uniform business practices implementing the Commission's policies on transmission service price negotiation and improving interactions between transmission providers and customers over Open Access Same-Time Information System (OASIS) nodes and proposes to revise 18 CFR 37.5 to require compliance with these practices. In addition, we propose a consistent naming convention for path names, propose to replace the Data Dictionary Element "ANC_SERVICE_TYPE" in the OASIS Standards and Communication Protocols Document, Version 1.3 (S&CP Document) with the term "AS_TYPE," and propose to clarify the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in the Data Dictionary Element and in section 4.2.10.2 of the S&CP Document.[1]

II. Public Reporting Burden

The proposed rule would require a transmission provider to comply with a set of uniform business practices to implement the Commission's policies on transmission service price negotiation and improve interactions between transmission providers and customers over OASIS nodes. The proposed business practices are divided between mandatory standards and voluntary best practice guides. Under this proposal, the best practice guides would not be mandatory; but a transmission provider electing to follow them would be bound to follow them on a consistent non-discriminatory basis. By necessity, a transmission provider already follows business practices in the operation of its OASIS node. The NOPR merely proposes to make these practices more uniform across the industry.

On December 1, 1998, the Commission issued a proposed information collection and request for comments in Docket No. IC99–717–000 that covered all information collected under the requirements of FERC–717 "Open Access Same-Time Information System and Standards of Conduct" (OMB No. 1902–0173) over the next three years, including the implementation of OASIS Phase IA and any information collected under this NOPR.[2] The burden estimate submitted on December 1, 1998 for all OASIS requirements was as follows: "*Burden Statement:* Public reporting burden for this collection is estimated as:

[1] See attached "Business Practice Standards and Guides for OASIS Transactions" (BPS&G). We expect that, with assistance from the industry, we will make improvements in these business practices over time, in the same way that we have made changes to the S&CP Document since its original issuance in 1995.

[2] See note 11, *infra*, where we elaborate on matters covered by OASIS Phase IA.

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
140	1	1,418	198,520

The estimated total cost to respondents is $21,157,500."[3]

We are not preparing a separate estimate covering this NOPR only, because we find that the NOPR would not significantly alter the estimate contained in the December 1, 1998 notice. The December 1, 1998 burden estimate gave the Commission's estimate of OASIS-related information requirements over the next three years, and this estimate contemplated the Commission's issuance of uniform business practices during this time frame. In any event, if a separate estimate were prepared, it would not be substantial, because the proposal in this NOPR, if promulgated, would not create any direct information collection requirements and because transmission providers already will need to have business practices in place to conduct OASIS transactions under the Phase IA S&CP Document that becomes effective on March 1, 1999. By announcing this proposal before March 1, 1999, the burden of making changes from already established business practices will be minimized.

The following collection of information contained in this NOPR has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202–208–1415.

Internal Review

The Commission has conducted an internal review of this conclusion and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information proposed by this NOPR and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.[4]

III. Discussion

A. Overview

In this NOPR, we propose a set of uniform business practices, set out in the attached BPS&G document, for use by transmission providers in conjunction with OASIS transactions. Moreover, to ensure compliance, we are proposing a revision to 18 CFR 37.5(b) proposing that responsible parties must comply with the requirements set out in the BPS&G document. In main part, the uniform business practices we propose are those recommended by an industry group in two recent filings. However, as discussed below, we have made certain revisions to those recommendations, to reflect Commission policy, add clarity, and address initial comments received from interested persons.[5] In addition, the Commission proposes a consistent naming convention for path names, proposes to replace the Data Dictionary Element "ANC_SERVICE_TYPE" in the S&CP Document with the term "AS_TYPE," and proposes to clarify the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in the Data Dictionary Element and in section 4.2.10.2 of the S&CP Document.

B. Background

The OASIS rulemaking process began with the Commission's issuance of a notice of technical conference and request for comments (RIN Notice)[6] in conjunction with the Commission's previously proposed Open Access Rule.[7] The RIN Notice announced that the Commission was considering establishing rules to effectuate the non-discrimination goals of the Open Access NOPR, through the creation of a real-time information network (RIN) or other options to ensure that potential and actual transmission service customers would receive adequate access to pertinent information.

The Commission's staff held a technical conference on RINs (RINs Technical Conference) in Washington, D.C. on July 27 and 28, 1995.

During the discussion at the RINs Technical Conference, a consensus developed that two industry working groups should be formed, one dealing with "what" information should be posted on a RIN and the other dealing with "how" to design a RIN to communicate this information to the industry and what, if any, national standards this would require.[8] The "what" group would be facilitated by the North American Electric Reliability Council (NERC) and the "how" group would be facilitated by the Electric Power Research Institute (EPRI).

On October 16, 1995, both working groups submitted their reports to the Commission. The Commission used the two industry reports and associated comments as the starting point for a notice of proposed rulemaking (RIN NOPR).[9] Under the RIN NOPR, each public utility that owned and/or controlled facilities used for the transmission of electric energy in interstate commerce would be required to develop and/or participate in a RIN.

Subsequently, the Commission issued Order No. 889, a final rule establishing the OASIS requirements.[10] This order required jurisdictional public utilities that own or control transmission systems (transmission providers) to set up an OASIS. It also established standards of conduct designed to ensure that a public utility's employees (or any of its affiliates' employees) engaged in transmission system operations function independently of the public utility's employees (or of any of its affiliates' employees) who are engaged in wholesale merchant functions. Finally, the order issued a set of communication standards and protocols to ensure that

[3] The estimated total cost of $21,157,500 was computed as follows:

The Commission has assumed that 4.5 personnel are necessary for staffing and using a total personnel cost of $109,889, the result is $494,501. To get the total cost, add annual ongoing costs of $110,000 plus staffing costs [$110,000 + $494,501] for a total of $604,501 divided by 4 = $151,125). The estimated total cost of the OASIS requirement is 140 respondents × $151,125 or $21,157,500.

[4] *See* 44 U.S.C. § 3506(c).

[5] Throughout this document we have shown additions and recommended revisions with italics and boldface and deletions and recommended deletions with [italics and brackets].

[6] Real-Time Information Networks, Notice of Technical Conference and Request for Comments, FERC Stats. & Regs. ¶35,026 (1995).

[7] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶32,514 (1995).

[8] Real-Time Information Networks, Notice of Timetable and Opportunity for Participation in Industry Working Groups, FERC Stats. & Regs. ¶35,029 (1995).

[9] *Id.*

[10] Open Access Same-Time Information System and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996).

the OASIS system presents information in a consistent and uniform manner.

The rules established in Order No. 889 were for a basic (Phase I) OASIS. The Order also contemplated that an enhanced (Phase II) OASIS would be established in the future. The current Phase IA rules improve the operations of the basic Phase I OASIS prior to the development of the enhanced OASIS Phase II system.[11]

In Order No. 889–A, the Commission addressed the requests for rehearing of Order No. 889 and requested that the industry prepare a report on Phase II issues.[12] In response to this request, on November 3, 1997, the Commercial Practices Working Group (CPWG), together with the How Group (jointly "CPWG/How Group"), submitted a document entitled "Industry Report to the Federal Energy Regulatory Commission on the Future of OASIS" (November 1997 Report). The November 1997 Report stated:

> [t]here are inconsistencies in business practices across the nodes. In fact, OASIS serves to underscore the differences in practices as customers try to access information and reserve transmission in a familiar way, but find procedures vary from provider to provider. Some of the variations . . . include packaging of ancillary services, application of discounts, use of "sliding windows" of transmission service, and customer confirmation time limits.

The November 1997 Report contained an action plan that included a commitment to file a report with the Commission proposing draft guidelines to clarify OASIS Phase IA business practices. Consistent with this commitment, on June 19, 1998, CPWG/How Group tendered for filing a report entitled "Industry Report to the Federal Energy Regulatory Commission on OASIS Phase IA Business Practices" (June 19 Report). CPWG/How Group state that the recommendations in the June 19 Report are based on a consensus among participants from various industry segments with diverse interests and viewpoints who chose to participate in the CPWG/How Group process. The June 19 Report offers for Commission adoption a set of business practice standards and guidelines.

The June 19 Report states that the recommended business practice standards and guides are intended to enable the Commission to implement its policy directives related to on-line price negotiation and to improve the commercial operation of OASIS. It also is stated that the recommended standards and guides are intended to support FERC regulations, the *pro forma* tariff, and the S&CP Document. Finally, the June 19 Report maintains that, in a few instances, revisions to the *pro forma* tariff are required to support the recommended business practices and offers recommended tariff changes consistent with the recommended business practices for Commission review and approval.

The June 19 Report describes how many OASIS-related business practice implementation details were left for transmission providers to determine for themselves, based on their interpretations of Order Nos. 888 and 889, the S&CP Document, and individual tariffs. The June 19 Report contends that this flexibility has resulted in significant variation among business practices across OASIS nodes that influence the development of markets.

CPWG/How Group argue that the recommended "Phase IA Business Practice Standards and Guides" (Business Practices) in the June 19 Report provide an important step toward achieving greater consistency in the implementation of the Commission's open access policy and OASIS. CPWG/How Group request that the Commission adopt the recommended Business Practices to support the implementation of Phase IA OASIS. CPWG/How Group maintain that the recommended Business Practices are consistent with existing FERC regulations, the *pro forma* tariff, and the Phase IA S&CP Document, except where specific tariff revisions are requested.

On July 6, 1998, the Commission issued a notice of the filing of the June 19 Report that invited interested persons to comment on the CPWG/How Group recommendations on or before July 31, 1998.[13] Timely comments were filed by Electric Clearinghouse, Inc. (ECI), Cinergy Services, Inc. (Cinergy), and Enron Power Marketing Inc. (EPMI).

On August 11, 1998, CPWG/How Group filed a letter with the Commission requesting implementation of the recommended Business Practices on March 1, 1999.

On September 15, 1998, CPWG/How Group filed a letter with the Commission recommending standards for transmission path naming and requesting Commission approval coincident with the start of OASIS Phase IA (to begin on March 1, 1999). On October 14, 1998, the Commission issued a notice of the filing of the proposed standards for transmission path naming that invited comments by interested persons on or before October 28, 1998.[14] Timely comments were filed by American Public Power Association (APPA).

C. Composition of CPWG Membership

In previous orders,[15] we have noted that the Commission would heed recommendations from industry working groups only to the extent that the views of those groups reflected an open process with input from diverse industry segments.

Comments

ECI argues that even though the CPWG has made valuable contributions, that group is not a forum "with balanced industry segment representation."[16] ECI disagrees with the statement in the June 19 Report that the CPWG "is an independent forum with balanced industry segment representation."[17] In ECI's experience, the composition of the CPWG is unbalanced and is heavily dominated by transmission providers. ECI argues that the unbalanced composition of CPWG membership has resulted in the group functioning more effectively as a barometer for, and not as the definitive statement of, electric power industry views. ECI also argues that claims of CPWG consensus should be viewed with skepticism and that the heavy representation of public utility organizations (estimated by ECI as 68 of 78 representatives) in the process encourages resolution of problems through a least common denominator approach. Thus, ECI argues that recommendations from the CPWG do not deserve the Commission's unqualified deference.

Discussion

We agree with ECI that unqualified deference should not be given to the recommendations of any industry group whose decisions are not made in an open inclusive process with balanced

[11] OASIS "Phase IA" is a label devised by the industry to refer to revisions to the OASIS Phase I requirements that the Commission asked industry to devise to implement the Commission's findings in the OASIS Final Rule requiring the on-line negotiation of discounts. *See* Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 at 62,452 (1998) (June 18 Order).

[12] Open Access Same-Time Information System and Standards of Conduct, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,549, n.8 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[13] 63 FR 38641 (1998).

[14] 63 FR 56022 (1998).

[15] *See, e.g.*, RIN NOPR, FERC Stats. & Regs. ¶ 32,516 at 33,173–74; Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,589, n.13; Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,549, n.7.

[16] ECI Comments at 5–7.

[17] June 19 Report at 2.

representation reflecting a broad consensus of views from all industry segments. Moreover, rather than giving "unqualified deference" to recommendations from the CPWG, we here are issuing a NOPR that invites comment from any interested person before taking any further action on this matter. Further, we recently have been informed that the CPWG has been reconstituted and its functions taken over by a replacement industry group, the Interim Market Interface Committee (IMIC), sponsored by NERC.[18]

If, in the future, IMIC (or any other industry group) would like the Commission to consider its recommendations to reflect the views of the entire industry, then it is incumbent on it to demonstrate to the Commission that: (1) its membership is drawn from all industry segments in an open inclusive process; (2) it makes its decisions in a manner that gives fair voice to participants with diverse viewpoints from all industry segments; and (3) its activities are conducted in an open inclusive manner.

D. Business Practices for OASIS Phase IA Transactions

1. Recommended Voluntary Guides and Recommended Mandatory Standards

The June 19 Report distinguishes between recommended OASIS business practice "standards" and best practices "guides." The June 19 Report states that while the "standards" are offered to the Commission for adoption as mandatory requirements, the "guides" are recommended as voluntary best practices. The CPWG/How Group advances several reasons why some practices have been offered as guides instead of as standards. First, they argue there may be majority support for the practice, but not an overwhelming consensus. Second, they argue reasonable alternatives may exist. Third, they argue customers and providers need time to adapt computer systems and processes. Fourth, they argue adoption of a practice as a standard may conflict with existing tariffs and require tariff changes prior to adoption as a standard. Fifth, they argue the practice may be a suggested, but not required, action. CPWG/How Group stated that it plans to file additional recommendations for standards and guides over time and, as appropriate, request that existing guides be upgraded to mandatory standards.

Comments

ECI argues that "voluntary best practices" must be enforceable standards.[19] Otherwise, ECI argues, these "voluntary best practices" will foster the problem that CPWG identified in its November 1997 report to the Commission.

> There are inconsistencies in business practices across the nodes. In fact, OASIS serves to underscore the differences in practices as customers try to access information and reserve transmission in a familiar way, but find procedures vary from provider to provider.

ECI argues that the recommendation of "voluntary best practices" defeats the chief objective of the June 19 Report—to impose a uniform and consistent set of business practices across the board in the electric power industry.[20]

Moreover, as discussed below, both EPMI and Cinergy argue that specific recommended guides (recommended Guides 4.2 and 4.3—cited by EPMI, and recommended Guide 4.1—cited by Cinergy) should be adopted as mandatory standards for all transmission providers and not merely as discretionary "best practice" guides.

Discussion

Notwithstanding concerns about the fairness and representativeness of CPWG's decision making process, the distinction between mandatory standards and voluntary guides helped the participants in its process reach agreement on the issues. Similarly, we propose to maintain the same distinction between standards and guides in this NOPR, although (as discussed further below) we invite comment on this issue.

However, we agree with Cinergy that uniform and consistent business practices across the board in the electric power industry are a desired result, and that consistency can best be achieved through mandatory standards rather than suggested guidelines.

Accordingly, although this NOPR proposes to follow the June 19 Report's general recommendation—that we distinguish between mandatory standards and voluntary "best practice" guides—we invite commenters to this NOPR to address whether particular proposals should be adopted as standards or guidelines and whether the commenter recommends the adoption of any additional standards or guides not contained in the June 19 Report. Specifically, we invite those who agree with the tentative classification of guideline vs. standard, as proposed in this NOPR, to present their arguments as to why those classifications should be retained (in the final rule) and invite those that disagree with the current classifications to present their arguments as to why those classifications should be changed (in the final rule). Commenters should be aware that we are considering making *all* of the recommendations mandatory standards, including those now proposed as guidelines in this NOPR.

As written, the proposed guidelines would only apply to transmission providers that choose to follow them, even where words such as "must" or "shall" are used. However, a transmission provider choosing to follow the guidelines is bound to apply them on a uniform non-discriminatory basis.

2. Need for Standard Terminology (Section 2A of the June 19 Report)

In the November 1997 Report, CPWG/How Group identified inconsistent use of terminology as an area for improvement in OASIS. In the June 19 Report, CPWG/How Group recommend that we establish a standard set of attribute values to provide clarity and consistency in the labeling of transmission services.

Comments

Comments were received from ECI, Cinergy, and EPMI in support of standard attributes. However, as discussed in detail below, ECI finds fault with several of the specific proposals put forth in the June 19 Report. Cinergy supports the needs of the marketplace to give flexibility for individual transmission providers to use non-standard attributes if they are clearly defined by the provider on the OASIS. EPMI generally supports standardization and formulation of practices that improve consistency of customer-provider interactions across OASIS nodes, but suggests revisions to particular provisions.[21]

Discussion

Section 2.A of the June 19 Report does not recommend any specific guides or standards. It argues, however, that standard attribute values should be used in OASIS transactions to the greatest extent possible. All of the comments addressing this issue support this approach and we agree. ECI and EPMI oppose the authorization of non-standard attributes, because they fear that they will be compelled to purchase services they do not want.[22] However,

[18] Minutes of September 22–23, 1998 CPWG Meeting, p.2.

[19] ECI Comments at 7.

[20] *Id.*

[21] EPMI Comments at 3.

[22] *Id.* and ECI Comments at 9.

there is an important distinction that must be drawn between allowing a service to be offered and compelling a customer to purchase that service. Providers are encouraged to offer new products within the marketplace that are permitted within approved tariffs (*i.e.*, services that are consistent with or superior to the *pro forma* tariff services). However, this does not mean that customers are required to purchase these products. The non-standard attributes only describe the products so that OASIS users will be better informed of available services. Allowing the use of non-standard attributes would not by itself constitute approval for a transmission provider offering a particular services to its customers or compel its purchase.

3. Attribute Values Defining the Period of Service (Section 2B of the June 19 Report)

On September 29, 1998, the Commission issued a revised OASIS S&CP Document for Phase IA implementation.[23] The Phase IA S&CP Document developed data templates, but did not provide a definition for each attribute value. CPWG/How Group recommend standards and guides for service attribute value definitions to be implemented with Phase IA.

In the June 19 Report, CPWG/How Group recommended that the Commission establish a standard set of attribute values (*i.e.*, service characteristics) to provide clarity and consistency in the labeling of transmission services. Table 1–1 of the June 19 Report identifies the definitions that are recommended as standard terminology in Phase IA for the attributes SERVICE_INCREMENT (Hourly, Daily, Weekly, Monthly, and Yearly) and WINDOW (Fixed, Sliding, and Extended).[24] Recommended Table 1–1 provides as follows:

TABLE 1–1—STANDARD SERVICE ATTRIBUTE DEFINITIONS REQUIRED IN PHASE IA

	Fixed	Sliding	Extended
Hourly	X	N/A	N/A
Daily	X	X	X
Weekly	X	X	X
Monthly	X	X	X
Yearly	X	X	X

[footnote omitted, *see* note 21, *infra*].

CPWG/How Group argue that a definition is required for each combination of SERVICE_INCREMENT and WINDOW, except "Hourly Sliding" and "Hourly Extended," which are not considered by the CPWG to be sufficiently common in the market to require standard definitions. CPWG/How Group advocate that the Commission add the characteristic "Extended" as a permissible value for WINDOW, which at the time the report was submitted, would have required a modification to the S&CP Document.[25]

The June 19 Report provides that the existence of a definition in this table does not imply the services must be offered by a transmission provider. It further provides that requirements as to which services must be offered are defined by regulation and tariffs and are not addressed by this report. Nor does the report imply that there is an implication as to the curtailment priority or price caps for these services. CPWG/How Group also suggest that transmission providers offer new products that meet the needs of transmission customers, when an appropriate standard attribute is not available.

CPWG/How Group recommend the terms "fixed," "sliding," and "extended" to describe periods of service. "Fixed" defines service periods that align with calendar periods such as a day, week, or month. "Sliding" defines service periods that are fixed in duration, such as a week or month, but the start and stop time may slide. For example, a "sliding" week could start on a Tuesday and end on the following Monday. "Extended" defines service periods for which the start time may "slide" and with a longer than standard duration. For example, an "extended" week of service could be nine consecutive days. These definitions are contained in recommended Standards 2.1–2.1.13, which provide as follows:

Standard 2.1: A Transmission Provider shall use the values and definitions below for the attributes Service_Increment and Window for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use existing attribute values and definitions posted by other Transmission Providers. (See Section 3 of this report for registration requirements.)

2.1.1: Fixed Hourly—The service starts at the beginning of a clock hour and stops at the end of a clock hour.

2.1.2: Fixed Daily—The service starts at 00:00 and stops at 24:00 of the same calendar date (same as 00:00 of the next consecutive calendar date).

2.1.3: Fixed Weekly—The service starts at 00:00 on Monday and stops at 24:00 of the following Sunday (same as 00:00 of the following Monday).

2.1.4: Fixed Monthly—The service starts at 00:00 on the first date of a calendar month and stops at 24:00 on the last date of the same calendar month (same as 00:00 of the first date of the next consecutive month).

2.1.5: Fixed Yearly—The service starts at 00:00 on the first date of a calendar year and ends at 24:00 on the last date of the same calendar year (same as 00:00 of the first date of the next consecutive year).

2.1.6: Sliding Daily—The service starts at the beginning of any hour of the day and stops exactly 24 hours later at the same time on the next day.

2.1.7: Sliding Weekly—The service starts at 00:00 of any date and stops exactly 168 hours later at 00:00 on the same day of the next week.

2.1.8: Sliding Monthly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the next month (28–31 days later). If there is no corresponding date in the following month, the service stops at 24:00 on the last day of the next month.

For example: Sliding Monthly starting at 00:00 on January 30 would stop at 24:00 on February 28 (same as 00:00 March 1).

[23] Open Access Same-Time Information System and Standards of Conduct, 84 FERC ¶ 61,329 (1998) (September 29 Order). Version 1.3 of the S&CP Document is posted on the Commission Issuance Posting System (accessed through the Commission's Internet Home Page at http://ferc.fed.us) or may be inspected in the Commission's Public Reference Room.

[24] What is referred to here as "WINDOW" is referred to as "TS_WINDOW" in the S&CP Data Dictionary.

[25] Subsequent to the submittal of the June 19 Report, the Commission incorporated a value for "EXTENDED" under the definition of TS_WINDOW in Version 1.3 of the S&CP Document. *See* S&CP Document, Version 1.3, Data Element Dictionary at A–18. For this reason, we have omitted a footnote from the recommended Table 1–1 suggesting that this change is needed.

2.1.9: Sliding Yearly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the following year. If there is no corresponding date in the following year, the service stops at 24:00 on the last day of the same month in the following year.

For example Sliding Yearly service starting on February 29 would stop on February 28 of the following year.

2.1.10: Extended Daily—The service starts at any hour of a day and stops more than 24 hours later and less than 48 hours later.

2.1.11: Extended Weekly—The service starts at 00:00 of any date and stops at 00:00 more than one week later, but less than two weeks later.

2.1.12: Extended Monthly—The service starts at 00:00 of any date and stops at 00:00 more than one month later but less than two months later.

2.1.13: Extended Yearly—The service starts at 00:00 of any date and stops at 00:00 more than one year calendar year later but less than two calendar years later.

Definitions are recommended as standard terminology in Phase IA for the attributes SERVICE__INCREMENT (Hourly, Daily, Weekly, Monthly, and Yearly) and WINDOW (Fixed, Sliding, and Extended). A definition is recommended for each combination of SERVICE__INCREMENT and WINDOW. The September 29 Order includes "EXTENDED" as a permissible value of the data element "TS__WINDOW."[26]

Comments

ECI and Cinergy filed comments on this issue. ECI disagrees with the term "extended" and states that this term is not contained in the *pro forma* tariff. ECI also asserts that the term "sliding" is appropriate while the term "fixed" is unnecessary. Cinergy argues that non pro-forma rate designs approved by the Commission should have service attribute definitions defined for Table 1–1.[27] For example, it argues the information provided in Table 1–1 should include service attribute definitions for locational marginal pricing and megawatt-mile pricing.[28]

Discussion

We propose that Standards 2.1 through 2.1.13, as shown in the attached BPS&G document, be adopted. While the term "extended" is not included in the *pro forma* tariff, the marketplace is evolving to the point where offerings of extended daily, extended weekly, and extended monthly services are products that can serve a useful market niche. While not covered by the *pro forma* tariff, there is no prohibition against these services being provided under transmission providers' individual open access tariffs. This being the case, it is appropriate that the standards proposed in this NOPR should provide such definitions. Furthermore, the terms "sliding" and "fixed" also help to improve communications in the contracting for transmission services. We note that the Phase IA S&CP Document, approved in the September 29 Order, provided for the inclusion of "fixed," "sliding," and "extended" transmission service period definitions.

Cinergy has not persuaded us that the definitions of "fixed," "sliding," and "extended" should be expanded to include service attribute definitions for locational marginal pricing and megawatt-mile pricing, since these attributes are intended to describe types of services, not prices or rate designs for services. However, we invite additional comment on this issue in the comments to this NOPR.

4. Attribute Values Defining Service Class and Type (Section 2C of the June 19 Report)

The Phase IA S&CP Document issued in the September 29 Order included data templates that refer to service class and type, but do not define these attributes. CPWG/How Group recommend definitions for Service Class (recommended Standard 2.2) (*i.e.*, Firm Transmission Service (recommended Standard 2.2.1) and Non-Firm Transmission Service (recommended Standard 2.2.2)) and for Service Type (recommended Standard 2.3) (*i.e.*, Point-to-Point Transmission Service (recommended Standard 2.3.1) and Network Integration Transmission Service (recommended Standard 2.3.2)). These recommended definitions provide as follows:

Standard 2.2: A Transmission Provider shall use the values and definitions below to describe the service CLASS for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

2.2.1: Firm—Transmission service that always has a priority over Non-Firm transmission service and has equal priority with Native Load Customers and Network Customers, in accordance with FERC regulations.

2.2.2: Non-Firm—Transmission service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm transmission service, Native Load Customers, and Network Customers.

Standard 2.3: A Transmission Provider shall use the values and definitions below to describe the service TYPE for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

2.3.1: Point-to-point—Transmission service that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of the FERC *pro forma* tariff.

2.3.2: Network—Network Integration Transmission Service that is reserved and/or scheduled to serve a Network Customer load pursuant to Part III of the FERC *pro forma* Tariff.

Comments

Comments were offered by ECI and EPMI. ECI comments that the recommended definitions are unnecessary because the terms are defined in the *pro forma* tariff. EPMI offers a revised definition to indicate that there should be no differing priorities within the firm classes of service.

Discussion

In general, we believe that these recommended definitions (2.2.1, 2.2.2, 2.3.1, and 2.3.2) should be included in the standards. However, to avoid any misunderstanding, we propose to add a disclaimer to each definition stating in each instance that the service is to be offered "in accordance with the definitions in the *pro forma* tariff."

We do not find ECI's argument, that the recommended definitions are unnecessary (because they are included in the *pro forma* tariff), to be persuasive. In instances where a term is defined in the *pro forma* tariff, we will incorporate—verbatim—the definition from the *pro forma* tariff—into the BPS&G document. In instances where the term is not defined in the *pro forma* tariff, we will use the recommended definitions, so long as we find them consistent with the definitions of related terms in the *pro forma* tariff.

The standards proposed herein have been proposed to improve the communications in conducting business on the OASIS. Therefore, terminology used in communications over the OASIS should clearly be defined in the BPS&G document, so long as those definitions are consistent with those in the *pro forma* tariff. We propose to adopt the suggested revision offered by EPMI to recommended Standard 2.2.1 because it clarifies the definition of Firm Transmission Service. As revised, Standard 2.2.1 will read as follows:

Standard 2.2.1: FIRM—Transmission service that always has [a] priority over NON-

[26] As noted above, *supra* note 25, the Commission incorporated a value for "EXTENDED" under the definition of TS__WINDOW in Version 1.3 of the S&CP Document.

[27] Cinergy Comments at 2.

[28] *Id.*

FIRM transmission service [and has equal priority with] and includes Native Load Customers, [and] Network Customers, and any transmission service not classified as non-firm in accordance with the definitions in the *pro forma* tariff [FERC regulations].

Moreover, we find the definitions in sections 2.2–2.3.2, as revised, to be consistent with the *pro forma* tariff.

5. Curtailment Priorities (Section 2D of the June 19 Report)

Included in the S&CP Document for Phase IA implementation is a data dictionary element entitled "Curtailment Procedures." A business practice has not previously been defined for this data element. Recommended Standard 2.4 on curtailment policies provides as follows:

Standard 2.4: A Transmission Provider shall use the curtailment priority definitions in NERC Policy 9 Security Coordinator Procedures for NERC CURTAILMENT PRIORITY (1–7) for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Provider. (See Section 3 for registration requirements.)

Comments

ECI objects to the CPWG/How Group's proposal, on the basis that the Commission in its *pro forma* tariff has established the curtailment priorities for transmission service. ECI comments that the curtailment priorities under NERC procedures are unreasonable and anticompetitive. To the extent the Commission intends to address the merits of NERC's proposal here, ECI incorporates by reference its July 20, 1998 protest filed in Docket No. EL98–52–000.[29]

EPMI offers revisions to the recommended standard to remove the option of posting alternative attribute values and definitions.

Discussion

We have not been persuaded to propose the adoption of Standard 2.4 as recommended in the June 19 Report in the NOPR. There is still considerable work to be accomplished in the area of developing procedures/definitions for establishing curtailment policy.

The Commission recently ruled on a petition for declaratory order (Petition) filed by NERC regarding NERC's proposed Transmission Loading Relief (TLR) procedures.[30] The Commission found that these procedures, which address multi-system transactions and unscheduled flows, are generally consistent with or superior to the *pro forma* tariff curtailment provisions, but that further efforts by NERC and industry participants are necessary. The Commission also found that the TLR procedures must be on file with the Commission, and adopted NERC's suggestion to establish an efficient mechanism for public utilities to incorporate the TLR procedures into their individual open access tariffs.[31] As policies evolve, we can revisit the notion of adding a curtailment definition at a later date.

To prevent confusion, this NOPR reserves section 2.4 for future use (in the numbering of sections in the attached BPS&G document) so that we do not have to renumber sections 2.5–2.5.9 and so that the section numbers in the NOPR will continue to match up with the section numbers used in the June 19 report.

6. Other Service Attribute Values (Section 2E of the June 19 Report)

In Order No. 888, the Commission concluded that six ancillary services must be included in an open access tariff.[32] Other services may be offered pursuant to filed tariffs, or as specified in a customer's service agreement with the transmission provider.[33]

The June 19 Report recommends the data element ANCILLARY__SERVICE__TYPE in the S&CP Document be changed to AS__TYPE. This name is less restrictive and may be used to denote ancillary or additional services that are not *pro forma* tariff ancillary services. This name is also comparable to the use for transmission service of TS, for example TS__TYPE. Consistent with this recommendation, the June 19 Report recommends Standard 2.5, to describe the AS__TYPES offered on OASIS.

Recommended Standard 2.5 provides as follows:

Standard 2.5: A Transmission Provider shall use the definitions below to describe the AS__TYPES offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Provider. (See Section 3 for registration requirements.)

In addition, the June 19 Report recommends FERC Ancillary Services Definitions for: Scheduling, System Control, and Dispatch Service; Reactive Supply and Voltage Control from Generation Sources Service; Regulation and Frequency Response Service; Energy Imbalance Service; Operating Reserve—Spinning Reserve Service; Operating Reserve—Supplemental Reserve Service; and other services which may be offered to transmission customers such as Dynamic Transfer, Real Power Transmission Losses, and System Black Start Capability. Specifically, recommended sections 2.5.1–2.5.9 provide the following definitions:

Ancillary Services Definitions

2.5.1: Scheduling, System Control and Dispatch Service (SC)—is the provision of (i) interchange schedule confirmation and implementation with other control areas, including intermediary control areas that are providing transmission service, and (ii) actions to ensure the operational security during interchange transaction.

2.5.2: Reactive Supply and Voltage Control from Generation Sources Service (RV)—is the provision of reactive power and voltage control by generating facilities.

2.5.3: Regulation and Frequency Response Service (RF)—is the provision of resources to follow a Transmission Customer's load changes and to supply power to meet any difference between a Customer's actual and scheduled generation.

2.5.4: Energy Imbalance Service (EI)—supplies any hourly mismatch between a Transmission Customer's energy supply and the load being served in the control area. This service makes up for any net mismatch over an hour between the scheduled delivery of energy and the actual load that the energy serves in the control area.

2.5.5: Operating Reserve—Spinning Reserve Service (SP)—is the provision of resources, which are on-line and loaded at less than maximum output, to serve load in case there is an unplanned event such as loss of generation.

2.5.6: Operating Reserve—Supplemental Reserve Service (SU)—is the provision of resources that may not be available instantaneously, including generating units that are on-line, quick start units, and customer-interrupted load, to serve load in case there is an unplanned event such as loss of generation.

2.5.7: Dynamic Transfer (DT)—is the provision of the real-time monitoring,

[29] ECI's protest argues, among other things, that: (1) NERC's Tagging requirements must be applied to all transactions; (2) NERC's proposed revisions to Policy 9 (on curtailment) are contrary to the *pro forma* tariff; and (3) NERC security coordinators must be subject to enforceable Standards of Conduct.

[30] North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998) (NERC Order).

[31] By contrast, in Mid-Continent Area Power Pool, 85 FERC ¶ 61,352 (1998), *reh'g pending* (MAPP Order), the Commission rejected line load relief procedures that were not consistent with or superior to the *pro forma* tariff. *See Coalition Against Private Tariffs*, 83 FERC ¶ 61,015 at 61,039, *reh'g denied*, 84 FERC ¶ 61,050 at 61,235–36 (1998).

[32] The six ancillary services defined in the *pro forma* tariff are: (1) Scheduling, System Control, and Dispatch Service; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve—Spinning Reserve Service; and (6) Operating Reserve—Supplemental Reserve Service. *See* §§ 3.1–3.6 of the *pro forma* tariff.

[33] FERC Stats. & Regs. ¶31,036 at 31,705.

telemetering, computer software, hardware, communications, engineering, and administration required to electronically move all or a portion of the real energy services associated with a generator or load out of its Host Control Area into a different Electronic Control Area.

2.5.8: Real Power Transmission Losses (TL)—is the provision of capacity and energy to replace energy losses associated with transmission service on the Transmission Provider's system.

2.5.9: System Black Start Capability (BS)—is the provision of generating equipment that, following a system blackout, is able to start without an outside electrical supply. Furthermore, Black Start Capability is capable of being synchronized to the transmission system such that it can provide a startup supply source for other system capacity that can then be likewise synchronized to the transmission system to supply load as part of a process of re-energizing the transmission system.

Comments

ECI objects to the recommended change on the basis that ancillary services are defined in the *pro forma* tariff. Cinergy comments that, for clarity, the words "according to FERC pro forma tariff" or "pursuant to the transmission provider's open access transmission tariff" should be included when addressing ancillary services. As an alternate approach, Cinergy suggests including a blanket introductory statement indicating that the ancillary services definitions refer to those services offered pursuant to the transmission provider's open access transmission tariff.

EPMI comments that the Commission should not authorize unspecified "alternative attribute values," and that the Commission must approve ancillary services.[34]

Discussion

We agree with ECI that, in instances where terms are defined in the *pro forma* tariff, we should use that same definition for conducting OASIS-related business. Accordingly, we will revise the definitions in recommended sections 2.5.1–2.5.6 to match those in the *pro forma* tariff. We therefore propose as follows:

FERC Ancillary Services Definitions

2.5.1: Scheduling, System Control and Dispatch Service (SC)—is necessary to the provision of basic transmission service within every control area. This service can be provided only by the operator of the control area in which the transmission facilities used are located. This is because the service is to schedule the movement of power through, out of, within, or into the control area.[35] This service also includes the dispatch of generating resources to maintain generation/load balance and maintain security during the transaction and in accordance with section 3.1 (and Schedule 1) of the *pro forma* tariff.[36] [(i) interchange schedule confirmation and implementation with other control areas, including intermediary control areas that are providing transmission service, and (ii) actions to ensure the operational security during interchange transaction.]

2.5.2: Reactive Supply and Voltage Control from Generation Sources Service (RV)—is the provision of reactive power and voltage control by generating facilities under the control of the control area operator.[37] This service is necessary to the provision of basic transmission service within every control area and in accordance with section 3.2 (and Schedule 2) of the *pro forma* tariff.[38]

2.5.3: Regulation and Frequency Response Service (RF)—is provided for transmission within or into the transmission provider's control area to serve load in the area. Customers may be able to satisfy the regulation service obligation by providing generation with automatic generation control capabilities to the control area in which the load resides and in accordance with section 3.3 (and Schedule 3) of the *pro forma* tariff.[39] [the provision of resources to follow a Transmission Customer's load changes and to supply power to meet any difference between a Customer's actual and scheduled generation.]

2.5.4: Energy Imbalance Service (EI) [supplies any hourly mismatch between a Transmission Customer's energy supply and the load being served in the control area. This service makes up for any net mismatch over an hour between the scheduled delivery of energy and the actual load that the energy serves in the control area.] is the service for transmission within and into the transmission provider's control area to serve load in the area. Energy imbalance represents the deviation between the scheduled and actual delivery of energy to a load in the local control area over a single hour and in accordance with section 3.4 (and Schedule 4) of the *pro forma* tariff.[40]

2.5.5: Operating Reserve—Spinning Reserve Service (SP)—[is the provision of resources, which are on-line and loaded at less than maximum output, to serve load in case there is an unplanned event such as loss of generation.] is provided by generating units that are on-line and loaded at less than maximum output. They are available to serve load immediately in an unexpected contingency, such as an unplanned outage of a generating unit and in accordance with section 3.5 (and Schedule 5) of the *pro forma* tariff.[41]

2.5.6: Operating Reserve—Supplemental Reserve Service (SU)—[is the provision of resources that may not be available instantaneously, including generating units that are on-line, quick start units, and customer-interrupted load, to serve load in case there is an unplanned event such as loss of generation.] is generating capacity that can be used to respond to contingency situations. Supplemental reserve, is not available instantaneously, but rather within a short period (usually ten minutes). It is provided by generating units that are on-line but unloaded, by quick-start generation, and by customer interrupted load and in accordance with section 3.6 (and Schedule 6) of the *pro forma* tariff.[42]

We agree with Cinergy's suggestion that we add the blanket statement "ancillary service definitions may be offered pursuant to an individual transmission provider's specific tariff filings" and will add language to this effect to the paragraph about "other service definitions" preceding Standard 2.5.7 in the attached BPS&G Document.

We propose to adopt recommended Standard 2.5, because we agree that the term "AS_TYPE" is less restrictive than the term "ANC_SERVICE_TYPE" and would allow this data element to be used to offer additional services (beyond the six ancillary services denoted in the *pro forma* tariff) if the services are authorized by a transmission provider's individual open access tariff. We also propose to add a qualifier to Standards 2.5.1–2.5.6 clarifying that the various ancillary services are in accordance with the definitions of ancillary services in the *pro forma* tariff. Consistent with this proposal, we also propose to replace the Data Dictionary Element "ANC_SERVICE_TYPE" in the S&CP Document with the term "AS_TYPE." The comments to this NOPR should identify specifically all of the places in the S&CP Document where this change should be made.

7. Scheduling Period (Section 2F of the June 19 Report)

Recommended Guides 2.6, 2.6.1, and 2.6.2 are recommended by the June 19 Report as business practice guides, related to on-line price negotiations and bumping rules in short-term markets, SAME-DAY (2.6.1) and NEXT-HOUR (2.6.2). They provide as follows:

Guide 2.6: A Transmission Provider should use the definitions below to describe the scheduling period leading up to the start time of a transaction:

2.6.1: Same-day is (i) after 2 p.m. of the preceding day and (ii) more than one hour prior to the service start time.

2.6.2: Next-hour is one hour or less prior to the service start time.

These definitions do not apply to a specific data element in the Phase IA S&CP Document.

[34] EPMI Comments at 3–4.

[35] FERC Stats. & Regs., Regulations Preambles, January 1991–June 1996 at 31,716.

[36] Order No. 888–A, FERC Stats. & Regs. ¶31,048 at 30,227.

[37] *Id.* at 30,228.

[38] FERC Stats. & Regs. ¶31,036 at 31,716.

[39] *Id.* at 31,717.

[40] *Id.*

[41] *Id.* at 31,708.

[42] *Id.*

Comments

No comments were offered on these definitions.

Discussion

Recommended Guides 2.6, 2.6.1, and 2.6.2 refer to definitions established for the next-hour experiment, which begins November 1, 1998 and terminates March 1, 1999, with a report due to the Commission by March 31, 1999. It is premature to propose the adoption of these guides at this time, pending the outcome of the industry experiment.

8. Maintenance of Industry Home Page (Section 3A of the June 19 Report)

The June 19 Report would require all users of individual OASIS sites to register with the industry-wide OASIS Home Page (www.tsin.com) to obtain access to any individual OASIS site (Standard 3.1). The June 19 Report also recommends that the Commission permit a nominal registration fee to be charged to defray the cost of the registration process and to cover the maintenance of the site. In addition, the industry-wide Home Page is referenced in recommended Standards 2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.4, and 3.5 and in recommended Guides 3.3 and 6.4. However, the June 19 Report does not identify the party who will operate and maintain the industry-wide OASIS Home Page. Nor does the proposal discuss how the Commission can ensure that it is maintained in accordance with Commission regulations.

Comments

ECI agrees with the June 19 Report that all users of OASIS should register their identity at the "OASIS Home Page." However, ECI disagrees with the June 19 Report's proposal to charge a registration fee to defray the registration and maintenance costs of the OASIS Home Page. ECI argues that a "nominal" fee is ambiguous and questions whether such a fee is FERC jurisdictional and whether it would be cost-based. It asserts that, consistent with Order No. 889, the costs associated with the OASIS Home Page should be collected through a transmission provider's cost of service.[43]

Discussion

We are concerned that the proposal could have a non-public utility setting fees for the use of the industry-wide OASIS home page (in contrast to fees for individual transmission provider OASIS sites). We are concerned that this proposal would allow an unidentified, non-public utility to be the sole gatekeeper of who may use individual OASIS sites.[44] We cannot allow access to individual OASIS sites to be controlled by an unidentified, possibly non-public utility party. However, this concern would be alleviated if the relationship between the industry-wide OASIS Home Page and the individual OASIS sites operated or controlled by public utilities is such that: (1) The operator of the industry-wide OASIS Home Page acts as an agent for the individual transmission providers on whose behalf it acts; and (2) in the event that a user or potential user fails to comply with the registration procedures followed by the industry-wide OASIS Home Page, the operator of the industry-wide OASIS Home Page would take no independent action denying access to any individual OASIS site, but would merely pass along this assessment to the operators of the individual OASIS sites, who would then determine whether to deny access to their individual OASIS sites. The user or potential user could then file a complaint with the Commission if dissatisfied with this action.

Under this scenario, the individual transmission providers, could collectively contribute to the operation and maintenance of an industry-wide OASIS Home Page, but this would not diminish their responsibility to provide access to their individual OASIS site to users and potential users who comply with applicable registration requirements. Such a contractual arrangement would also permit transmission providers to recover reasonable fees they paid for the operation and maintenance of the industry-wide OASIS Home Page.

We, therefore, propose to allow the use of an industry-wide OASIS Home Page at www.tsin.com, keeping in mind that the operator of the Home Page may only act as an agent of the transmission providers, and that this provision in no way undermines the responsibilities of individual transmission providers to make their individual OASIS sites accessible to users and potential users and to operate their OASIS sites in compliance with all applicable Commission orders and regulations. As long as transmission providers pay reasonable fees to the third party for operating and maintaining the industry-wide OASIS Home Page, they will be able to recover these fees in their transmission rates.[45]

9. Identification of Parties (Section 3A of the June 19 Report)

The OASIS S&CP Document specifies what information is necessary to communicate among the parties, and how the information must be communicated, for the Commission's Open Access program to work. The June 19 Report identifies instances where the information requirements are not always sufficiently defined. For example, transactions generally require the identification of receipt and delivery points, but it is left to each transmission provider to name the receipt and delivery points on their system. The lack of standardized transmission path names and service points often causes confusion when customers attempt to reserve service.

The June 19 Report states that, for OASIS to succeed, there must be an unambiguous identification of the parties to a transaction. Further, it contends that factors such as mergers, reorganizations, and name changes often result in confusion as to the identification of parties. The June 19 Report recommends, in Standard 3.1, to keep parties informed about parties' name changes by requiring all transmission providers and users of OASIS to register at an Internet web site, www.tsin.com, and to renew the registration annually. Recommended Standard 3.1 provides as follows:

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization or person at the OASIS Home Page at www.tsin.com. Registration shall be completed prior to the commencement of Phase 1-A and renewed annually thereafter.

Comment

ECI agrees that all OASIS users should register their identity at the industry-wide OASIS Home Page.

Discussion

The June 19 Report proposal discusses how name changes and the use of ambiguous names caused by mergers can make the identification of parties difficult. The June 19 Report recommends eliminating the problem by requiring each entity to annually renew its registration. We believe this proposal for annual renewal may not be sufficient to avoid ambiguity. Thus, we propose to require that registration be renewed within 48 hours of any changes in

[43] ECI Comments at 11.

[44] This is distinguishable from an individual transmission provider using a nonjurisdictional entity as its agent to operate its OASIS site because, in that instance, the transmission provider ultimately still is responsible for the actions of its agent.

[45] As provided in 18 CFR 37.5(c), access to OASIS is to be provided to Commission staff and the staffs of State regulatory authorities at no cost. This provision governs access to both individual OASIS sites and to any industry-wide OASIS Home Page.

identification and propose a specific date each year by which registration must be accomplished.[46] Accordingly, we propose to adopt recommended Standard 3.1 as modified below:

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization (including DUNS number) or person at the OASIS Home Page at www.tsin.com. Registration shall be completed prior to the commencement of Phase IA and renewed annually by January 1st of each year thereafter and within 48 hours of any changes in identification.

10. Registering Non-Standard Service Attributes (Section 3B of the June 19 Report)

The June 19 Report also maintains that standardized identification of service products is needed. It maintains that inconsistencies in the names of services can inhibit moving power across the power grid. For example, if three transmission providers offer weekly firm service that can begin on any day of the week and one calls its service "sliding weekly firm", and the second calls it "enhanced weekly firm" and the third calls it "moveable weekly firm", customers can become confused. The S&CP Document defines standard services using attributes. However, the S&CP Document does not define the attributes. The June 19 Report proposes standard attribute definitions.[47] Sections III.D.2–D.4 and III.D.6–D.7 above address the proposed standard definitions. The June 19 Report also provides for instances where standardized attributes and definitions are not appropriate. Specifically, recommended Standard 3.2 and recommended Guide 3.3 provide as follows:

Standard 3.2: Providers of transmission and ancillary services shall use only attribute values and definitions that have been registered on the OASIS Home Page at www.tsin.com for all transmission and ancillary services offered on their OASIS.

Guide 3.3: Providers of transmission and ancillary services may use on their OASIS attribute values and definitions that have been posted by other Providers on the OASIS Home Page at www.tsin.com.

Under this proposal, transmission providers register new attributes and definitions on the industry-wide home page (www.tsin.com). Transmission providers would be free to use attributes and definitions developed by other transmission providers.[48]

The June 19 Report states that the CPWG will monitor the registration process to "ensure the attributes and definitions do not undermine the goal of promoting consistent terminology."[49]

Comments

EPMI recommends that monitoring of the attribute registration process not be left to the CPWG as it is not clear that the CPWG will even exist in the future.[50] Cinergy expresses concern that there may be real or perceived conflicts if the CPWG monitors the attribute registration process. Cinergy proposes that the process be monitored by the Commission or an organization that is not so involved in the process.[51]

Discussion

The Commission agrees with the June 19 Report that monitoring is needed to ensure that the non-standard attribute naming process is not abused. The CPWG has volunteered to monitor the process, but as discussed above and as predicted by EPMI, the IMIC, a group we are not yet familiar with, has taken over the functions of the CPWG.[52] Although, we continue to believe that an industry group is the logical body to monitor the process, the proper group to undertake this task needs to be identified.

Accordingly, we invite comment on which group would be the proper group to perform this function, whether that group would be agreeable to performing this function, how it organizes itself, and how it conducts its business, before deciding whether it would be able to perform this function in a fair evenhanded manner. We will consider these comments before deciding who should perform this monitoring function.

We propose to adopt recommended Standard 3.2, and recommended Guide 3.3, with modifications. Recommended Guide 3.3 states that transmission providers may use attribute values and definitions that have been posted by other transmission providers. We believe that in order to minimize the number of attribute values and definitions, transmission providers should use attribute values and definitions that have been posted by other transmission providers whenever possible. Accordingly, we propose a modified Guide 3.3 that would read as follows:

Guide 3.3: Providers of transmission and ancillary services [may] should endeavor to use on their OASIS attribute values and definitions that have been posted by other Providers on the OASIS Home Page at www.tsin.com whenever possible.

These revisions would more strongly encourage transmission providers to use attribute values posted by other providers.

11. Registering Points of Receipt and Delivery (Section 3C of the June 19 Report)

OASIS Phase I requires transmission providers to define and post, on their OASIS sites, transmission paths and associated transfer capabilities. The June 19 Report recommends Standards 3.4 and 3.5 and Guide 3.6 as follows:[53]

Standard 3.4: A Transmission Provider shall register and thereafter maintain on the OASIS Home Page at www.tsin.com all Points of Receipt and Delivery to and from which a Transmission Customer may reserve and schedule transmission service.

Standard 3.5: For each reservable Path posted on their OASIS node, Transmission Providers shall indicate the available Point(s) of Receipt and Delivery for that Path. These Points of Receipt and Delivery shall be from the list registered on the OASIS Home Page at www.tsin.com.

Guide 3.6: When two or more Transmission Providers share a common Points of Receipt or Delivery, or when a Path connects Points of Receipt and Delivery in neighboring systems, the Transmission Providers owning and/or operating those facilities should apply consistent names for those connecting or common Paths on OASIS.

The June 19 Report maintains that for the most part, paths and service points have been defined from each individual transmission provider's perspective. The June 19 Report states that the lack of standards results in confusion about the feasibility of connecting paths to move power from one system and region to another. The June 19 Report recommends the following business practices to improve coordination of path naming and enhance identification of commercially available connection points between transmission providers and regions:

- Transmission Providers register (at the industry-wide OASIS home page) all service points (Points of Receipt and Delivery) for which transmission service is available over OASIS.

[46] The change in identification includes both name and DUNS number of a party. DUNS numbers, a proprietary service of DUN & Bradstreet, are a means of uniquely identifying commercial entities and their use is required by the S&CP Document.

[47] *See* June 19 Report at Section 2.

[48] June 19 Report at 10. However, changes to filed rates would require a filing under section 205.

[49] *Id.*

[50] EPMI Comments at 4.

[51] Cinergy Comments at 4.

[52] This makes moot Cinergy's argument that it would be inappropriate for the CPWG to monitor the process because of real or perceived conflicts of interests.

[53] The subject of path names is also the subject of a separate September 15, 1998 submittal from CPWG/How Group, discussed below in section III.F, *infra.*

• Each Provider would indicate on its OASIS node, for each Path posted on its OASIS node, the Points of Receipt and Delivery to which each Path is connected.

These principles are incorporated in recommended Standards 3.4 and 3.5, and recommended Guide 3.6.[54]

Comments

No comments were received on this issue.

Discussion

With a slight revision, we propose to adopt Standards 3.4 and 3.5 and Guide 3.6 as recommended.[55] We agree with the principle behind Guide 3.6, that transmission providers should be encouraged to apply consistent names for connecting paths or common paths and request that transmission providers do so whenever possible. We also request that the comments to this NOPR address what would be the proper entity to monitor this process and whether this function should be performed in tandem with the monitoring of the registration of standard attributes (as discussed above).

12. On-line Price Negotiation in Short-term Markets (Section 4A of the June 19 Report)

Negotiations on the OASIS. Order No. 889–A requires negotiations between transmission providers and potential customers to take place on the OASIS and be visible to all market participants. The OASIS Phase IA S&CP Document specifies the information needed for negotiations and how the information will be communicated between the parties. With the exception of reservations for next-hour service (which it separately discusses in recommended Guide 4.2 and 4.3, discussed below), the June 19 Report incorporates the requirement in Order No. 889–A that all reservations and price negotiations be made directly on the OASIS. This is stated explicitly in recommended Guide 4.1 as follows:

Guide 4.1: Consistent with FERC policy and regulations, all reservations and price negotiations should be conducted on OASIS.

Comments

Cinergy argues that recommended Guide 4.1 should be a standard because the guide implements the Commission policy that all reservations and price negotiations be conducted on the OASIS.[56]

Discussion

We agree with Cinergy that this provision merely restates existing Commission policy. Accordingly, we propose adoption of recommended Guide 4.1 as Standard 4.1.

Next-Hour Transactions and Electronic Entry of Reservation and Scheduling Requests. At the industry's request, to permit development of the next-hour market, the Commission issued an order on December 27, 1996,[57] clarifying how reservations for next-hour service would be made during OASIS Phase I. The Commission stated:

A request for transmission service made after 2:00 p.m. of the day preceding the commencement of such service, will be "made on the OASIS" if it is made directly on the OASIS or, if it is made by facsimile or telephone and promptly (within one hour) posted on the OASIS by the Transmission Provider.[58]

While it is Commission policy that all reservation requests be made on the OASIS, the clarification allows any request made after 2:00 p.m. on the day preceding the start of service to be made by telephone or facsimile as long as the request is posted on the OASIS within one hour of receipt. However, the June 19 Report expresses the fear that next-hour transactions will have to be treated differently from other same-day transactions.[59] Therefore, the June 19 Report recommends Guides 4.2 and 4.3, which provide as follows:

Guide 4.2: The following is considered "on the OASIS" during Phase 1–A: For a transmission service of hourly duration, requested within the next-hour, a Customer should have the option, subject to the exception allowed by Guide 4.3, of entering a reservation and schedule request electronically on the Provider's OASIS and scheduling system (if such electronic transactions are allowed on the Provider's scheduling system), or arranging the reservation and schedule verbally with the Provider. If a transmission reservation is confirmed verbally, the Provider should have the option of requiring the Customer to enter the reservation on OASIS electronically within one hour after the start of the reservation.

Guide 4.3: If a Provider's OASIS and scheduling processes allow that a Customer's reservation and scheduling requests will be accepted or refused within 15 minutes of the queue time, then the Provider may require that reservations and schedules be entered electronically by the Customer prior to the established scheduling deadline. If in any case the Provider has not responded to the reservation and schedule request within 15 minutes, the Customer has the option of calling the Provider to verbally confirm the reservation and schedule.

Comments

EPMI recommends that recommended Guides 4.2 and 4.3 be made mandatory standards and not merely voluntary best practice guides.[60] However, EPMI sees an inconsistency between the time limits recommended in Guide 4.3 and those in Table 4–2 and recommends that this discrepancy be resolved.[61]

Discussion

The June 19 Report's proposal is essentially the same as the proposal made in the June 1998 CPWG/How Group letter to the Commission requesting a four-month next-hour experiment and approved by the Commission in the September 29 Order. We will defer a decision on this issue until we have had an opportunity to evaluate the outcome of that experiment. Consistent with our practice elsewhere in this NOPR, we will reserve the applicable section numbers (4.2 and 4.3) so that the references in Attachment A will continue to match-up with the June 19 report.

13. Diagram Depicting the Negotiation Process (Section 4B of the June 19 Report)

The June 19 Report recommends a process state diagram, Guide 4.4, that defines transmission provider and customer interactions when negotiating for transmission service. The diagram defines allowable steps in the reservation request, negotiation, approval, and confirmation processes. The June 19 Report also recommends a table, Guide 4.5, that defines the terms used in the diagram. Recommended Guides 4.4 and 4.5 provide as follows:

Guide 4.4: The following state transitions in Figure 4–1 are recommended practice in OASIS Phase 1–A.

[54] *Id.*

[55] As shown in Attachment A to this NOPR, we are making a grammatical correction to recommended Guide 3.6.

[56] Cinergy Comments at 3.

[57] Open Access Same-Time Information System and Standards of Conduct, 77 FERC ¶ 61,335 (1996) (December 27, 1996 Order).

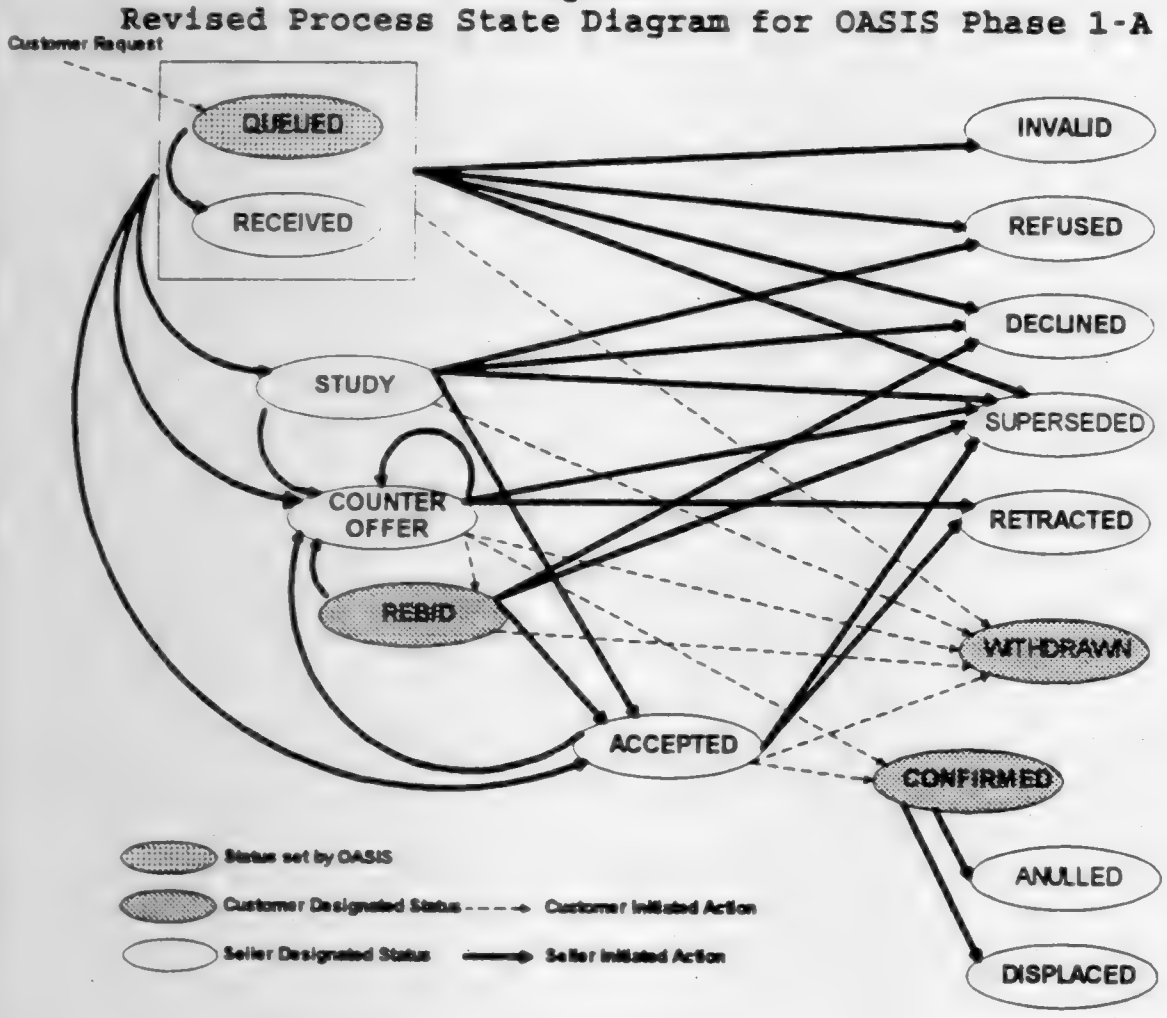
[58] December 27, 1996 Order, 77 FERC at 62,492.

[59] June 19 Report at 12.

[60] EPMI Comments at 5.

[61] Table 4–2 also is discussed in section III.D.14 below, *infra*.

Figure 4-1
Revised Process State Diagram for OASIS Phase 1-A

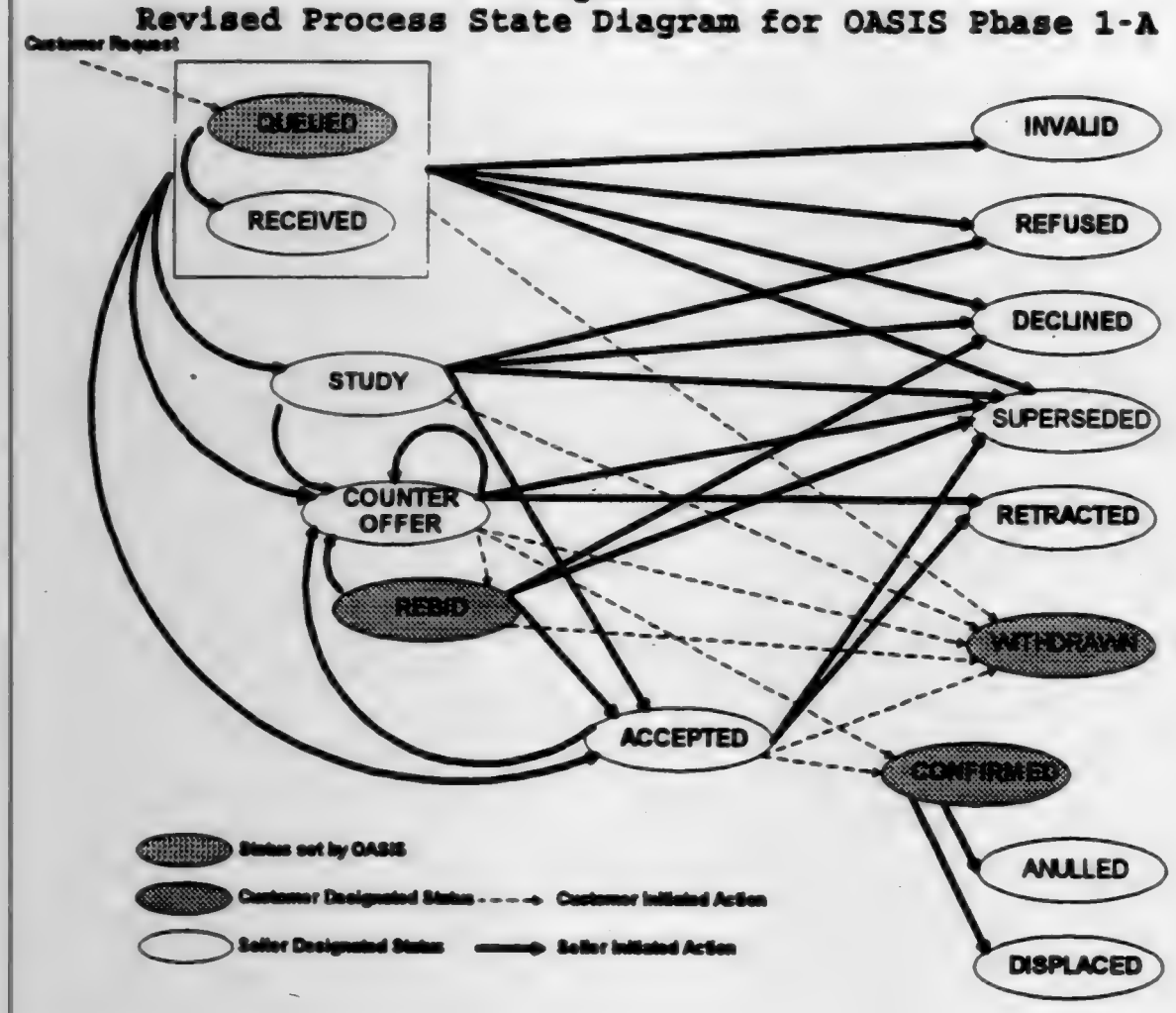


Guide 4.5: The following definitions in Table 4–1 should be applied to the process states in OASIS Phase 1–A.

Table 4–1—OASIS Phase 1-A State Definitions

Queued	The request has been received by OASIS
Invalid	An invalid request (improper POR, POD, source, sink, increment, combination of duration and increment, etc.). (Final state.)
Received	The request has been received by Provider/Seller.
Study	The request is being evaluated by the Provider/Seller.
Accepted	The Provider has determined that the request is valid, there is sufficient transfer capability, and the price is acceptable.
Refused	The request is denied due to lack of availability of transfer capability. (Final state.)
Declined	The Provider has determined that the price being proposed by the Customer is unacceptable and that negotiations are terminated. (Final state.)
Counteroffer	The Provider/Seller is proposing a different price than was bid by the Customer.
Rebid	The Customer responds to a Provider's ACCEPTED or COUNTEROFFER price with a new bid price.
Retracted	The Provider has (prior to Customer confirmation) determined that the Customer's time limit has expired. (Final state.)
Superseded	A request which has not yet been CONFIRMED is preempted by another reservation request. (Final state.)
Withdrawn	The Customer withdraws the request (prior to confirmation). (Final state.)
Confirmed	The Customer consummates the reservation which has been ACCEPTED or is in COUNTEROFFER by the Provider. (Final state unless later ANNULLED or DISPLACED.)
Annulled	The request is terminated after reaching the CONFIRMED state. This can only be done if both the Customer and Provider agree. The annulment should be confirmed on OASIS by both the Provider/Seller and Customer. (Final state.)
Displaced	A CONFIRMED reservation has been terminated because a reservation of higher priority has preempted it. (Final state.)

Figure 4-1
Revised Process State Diagram for OASIS Phase 1-A



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Counteroffer	The Provider/Seller is proposing a different price than was bid by the Customer.
Rebid	The Customer responds to a Provider's ACCEPTED or COUNTEROFFER price with a new bid price.
Retracted	The Provider has (prior to Customer confirmation) determined that the Customer's time limit has expired. (Final state.)
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Withdrawn	The Customer withdraws the request (prior to confirmation). (Final state.)
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Annulled	The request is terminated after reaching the CONFIRMED state. This can only be done if both the Customer and Provider agree. The annulment should be confirmed on OASIS by both the Provider/Seller and Customer. (Final state.)
Displaced	A CONFIRMED reservation has been terminated because a reservation of higher priority has preempted it. (Final state.)

Comments

Cinergy argues that the definition of "REBID", in recommended Guide 4.5, which provides that "[t]he customer responds to a Provider's ACCEPTED or COUNTEROFFER price with a new bid price", is confusing. Cinergy contends that the confusion arises from defining "REBID" in terms of "ACCEPTED". It asserts that once a transmission provider "accepts" a customer's offer, a customer would have no reason to rebid.[62]

Cinergy also argues that there is an inconsistency between the definition of "rebid" recommended in Guide 4.5 and the statement recommended in Guide 4.26 that if, during the negotiation process (*i.e.*, before confirmation of the deal by the customer), the transmission provider receives a pre-confirmed request with a higher bid price, the transmission provider may counteroffer the price and potentially prompt a rebid.[63] Cinergy requests either that: (1) the language be clarified; or (2) a cross reference be made.

ECI argues that the June 19 Report proposal would revise the process state diagram appearing in the S&CP Document by adding SUPERSEDED to indicate that a request is preempted prior to confirmation by the customer. ECI further argues that this change results in a contradiction between June 19 Report's process state diagram in Guide 4.4 (Figure 4–1), and an order issued by the Commission on July 17, 1998.[64] ECI argues that the July 17 Order holds that "there is no right to supersede while engaged in negotiations (*i.e.*, pending), until there is a refusal to match."[65]

ECI also argues that the definition of SUPERSEDED recommended in Guide 4.5 (Table 4–1) is inconsistent with findings in the July 17 Order regarding section 13.2 of the *proforma* tariff.[66] ECI states,

[i]n the complaint, ECI asserted that PJM violated Section 13.2 of its open access transmission tariff when it granted a transmission customer (PP&L), who had made a request for service that had not been confirmed, a right of first refusal to match a subsequent longer-term request for service that ECI had made.[67]

On this same point, ECI further argues that the Commission found, in the July 17 Order, that ECI's interpretation of the tariff is erroneous. ECI quotes from the July 17 Order:

For purposes of section 13.2, reservations are considered to have been made when the request for service is made. PP&L had a conditional reservation for one-week service that was made when it requested service via PJM's OASIS. As such, it had the right of first refusal to match any later longer-term reservation before losing its reservation priority.[68]

ECI also argues that the process state diagram's treatment of counteroffers needs revision. In discussing this change, the June 19 Report states:

These state changes are necessary in the event the Provider needs to change a price during negotiation prior to hearing a response from the Customer. For example, a discount may be given to another Customer after negotiations started with a first Customer (price is lowered by the Provider without a response from the first Customer) or the Provider may allow the Customer to match a competing bid that would preempt the current price being negotiated (price is raised by the Provider).[69]

ECI argues that, in order to be consistent with the Commission's first-come-first-served and right to match processes, the diagram should reflect a right to match a subsequent acceptable request for service.[70]

Discussion

Cinergy sees a conflict or inconsistency between associating REBID with ACCEPTED in recommended Guide 4.4 and recommended Guide 4.26. We disagree. In our view, the pairing of REBID with ACCEPTED is not inconsistent with recommended Guide 4.26. Once a transmission provider accepts a customer's offer (but before confirmation) a transmission provider can make a counteroffer based on a new higher offer it receives from another customer. Under these circumstances, a customer might wish to rebid.[71]

ECI has raised a number of objections to Part 4B of the June 19 Report (*i.e.*, "Phase IA Negotiation Process State Transition Diagram"). One of ECI's objections is that the proposal in the June 19 Report would revise the process state diagram in the S&CP Document. While this was true at the time when ECI filed its comments, it is true no longer. Subsequent to the filing of ECI's comments, the Commission approved a revised S&CP Document that contains the same process state diagram recommended by the June 19 Report.[72]

Second, ECI contends that the addition of "SUPERSEDED" to the report's process state transition diagram (at Figure 4–1) is inconsistent with the Commission's denial of ECI's complaint against PJM in the July 17 Order,[73] because ECI maintains that the July 17 Order held that "there is no right to supersede [a pending request for service] while engaged in negotiations (*i.e.*, pending) until there is a refusal to match."[74]

ECI misapprehends the holding of the July 17 Order.[75] The Commission's findings in the July 17 Order conformed to determinations in Order No. 888-A, that: (1) Long-term firm point-to-point service is available on a first-come-first-served basis; (2) as to requests for short-term non-firm transmission service, those requesting service for a longer duration have priority over requests for short-term non-firm transmission service over a shorter duration;[76] and (3) in dealing with requests for short-term firm point-to-point transmission service, a customer should be given an opportunity to match a subsequent request for short-term firm point-to-point transmission service for a longer time period before being preempted.[77] However, the July 17 Order did not make any finding that requests for service could not be superseded for other reasons. In fact, the July 17 Order did not address this issue. Thus, the June 19 Report's addition of "SUPERSEDED" to the process state transition diagram is not inconsistent with the Commission's precedent on this issue.[78]

Next, ECI argues that the report's treatment of counteroffers needs revision to allow a right to match a subsequent request for service. We disagree. A review of Table 4–1's REBID definition discloses that a customer may respond to a transmission provider's

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[62] Cinergy Comments at 3.

[63] Guide 4.26 is quoted below at section III.D.15, *infra*.

[64] Electric Clearinghouse, Inc. v. PJM Interconnection, L.L.C., 84 FERC ¶ 61,045 (1998) (July 17 Order).

[65] ECI Comments at 13.

[66] For convenience, Section 13.2 of the *pro forma* tariff is quoted in full in Attachment B to this NOPR.

[67] ECI Comments at 14.

[68] 84 FERC at 61,196.

[69] June 19 Report at 14.

[70] ECI Comments at 13.

[71] In the comments to this NOPR, we invite comment on whether rebid should be limited to price, as proposed in this NOPR, or whether it would be feasible and/or desirable to allow a rebid lengthening the duration of the requested service or a rebid wtih both a higher price and longer duration.

[72] *See* note 23, *supra*.

[73] *See* 84 FERC at 61,196.

[74] ECI Comments at 13.

[75] ECI raises its argument about alleged inconsistencies between the July 17 Order and the June 19 Report's proposals in a number of contexts. We will address these arguments as they apply in various contexts.

[76] *See pro forma* tariff at §§ 13.2 and 14.2.

[77] Order No. 888–A, FERC Stats. & Regs. § 31,048 at 30,277–78.

[78] *See* June 19 Report, Guide 4.4, Figure 4–1, shown in Section III.D.13 above, *supra*.

counteroffer with a new bid price.[79] This mechanism meets the concerns raised by ECI's comments on this issue.

Third, ECI argues that the report's definition of "SUPERSEDED" should be rejected because it does not state, as ECI argues is required by the July 17 Order, that a customer has a right to match subsequent longer-term requests for service before a requester loses its reservation priority. In our view, the findings in the July 17 Order need not be restated in the BPS&G to remain in effect. Table 4–1 is not incorporated into the proposed BPS&G document (*see* Attachment A at Section 4.2) and, in any event, Table 4–1's definition of SUPERSEDED is silent as to why and when an unconfirmed request might be preempted. It neither confers nor denies a customer's right to match. When a request for transmission service has been superseded, this occurs before the customer's confirmation.[80] Therefore, the customer has no right to match.[81] Additionally, a customer whose request for transmission service has been superseded may make a new request for service.

Upon review, the definition of "SUPERSEDED" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document could be improved. We propose to revise the definition by substituting the word "preempted" in place of "displaced." We invite the comments to this NOPR to address this issue.

Version 1.3 of the S&CP Document, adopted by the Commission in the September 29 Order, currently contains the same process state diagram contained in recommended Guide 4.4 of the June 19 Report.[82] To avoid any possible future conflict between the two documents, we will incorporate by reference Exhibit 4–1 of the S&CP Document into the attached BPS&G, rather than proposing to adopt the recommended diagram itself as part of the attached BPS&G. This will assure that any changes to this diagram in the S&CP Document automatically will be reflected in the BPS&G document.

Recommended Guide 4.5 (Table 4–1) of the June 19 Report contains definitions of the process states appearing in Guide 4.4. These definitions differ slightly from the definitions of the same terms appearing at Section 4.2.10.2 of the S&CP Document.[83] To avoid any inconsistency between these definitions, and because the definitions in the S&CP Document are more complete, we will incorporate by reference the definitions in Section 4.2.10.2 of the S&CP Document in the attached BPS&G.

Because we are incorporating by reference the version of Table 4–1 that appears in S&CP Document, we are not including Table 4–1 from the June 19 Report in the attached BPS&G. However, as we did with section 2.4, we will reserve for future use a blank Table 4–1, so that Tables 4–2 and 4–3 as shown in the attached BPS&G will continue to have the same designations as in the June 19 Report without any renumbering.

14. Negotiations Without Competing Bids (Section 4C of July 19 Report)

In our June 18, 1998 order on OASIS-related issues, we asked the CPWG to examine the development of predetermined deadlines for acceptances by transmission providers of transmission service requests and confirmation by customers of acceptances of their requests.[84] We did this because comments received from PECO and NRECA convinced us that the parties to negotiations require decisions to be made quickly and in a known time frame. The CPWG/How Group responded to this concern by proposing Recommended Guide 4.6 that provides as follows:

Guide 4.6: A Transmission Provider/Seller shall respond to a Customer's service request, consistent with filed tariffs, within the "Provider Response Time Limit" defined in Table 4–2 Reservation Timing Requirements. The time limit is measured from the time the request is QUEUED. A Provider may respond by setting the state of the reservation request to one of the following:

- INVALID
- DECLINED
- REFUSED
- COUNTEROFFER
- ACCEPTED
- STUDY (when the tariff allows), leading to REFUSED, COUNTEROFFER, or ACCEPTED

This provision provides that, consistent with filed tariffs, transmission providers/sellers shall respond to customer requests within the time limits appearing in Table 4–2, contained in recommended Guide 4.13. Recommended Table 4–2 specifies how long transmission providers may take to respond to a request for service and how long customers may take to confirm the transmission provider's acceptance. In addition, the June 19 Report recommends reservation timing guidelines in Guide 4.13 as follows:

Guide 4.13: The following timing requirements should apply to all reservation requests:

TABLE 4–2—RESERVATION TIMING GUIDELINES

Class	Service increment	Time QUEUED prior to start	Provider evaluation time limit [1]	Customer confirmation time limit after ACCEPTED or COUNTEROFFER [2]	Provider counter time limit after REBID [3]
Non-Firm	Hourly	<1 hour	Best effort	5 minutes	5 minutes.
Non-Firm	Hourly	>1 hour	30 minutes	5 minutes	5 minutes.
Non-Firm	Daily	N/A	30 minutes	2 hours	10 minutes.
Non-Firm	Weekly	N/A	4 hours	24 hours	4 hours.
Non-Firm	Monthly	N/A	2 days	24 hours	4 hours.
Firm	Daily	< 24 hours	Best effort	2 hours	30 minutes.
Firm	Daily	N/A	30 days[4]	24 hours	4 hours.
Firm	Weekly	N/A	30 days[4]	48 hours	4 hours.
Firm	Monthly	N/A	30 days[4]	4 days	4 hours.
Firm	Yearly	N/A	30 days	15 days	4 hours.

Notes for Table 4–2:
[1] Consistent with regulations and filed tariffs, measurement starts at the time the request is QUEUED.

[79] We note that as a REBID is only made on the basis of price, *see* definition in Guide 4.5, Table 4–1, the time limits in Guide 4.13, Table 4–2 ought to be adequate. Any objections to these time limits should be raised in comments to this NOPR. *See* note 72, *supra*.

[80] After requests for transmission are confirmed, they may be preempted under Table 4–3.

[81] *See* § 14.2 of the *pro forma* tariff.

[82] S&CP Document, Version 1.3, Exhibit 4–1, State Diagram of Purchase Transactions.

[83] For convenience, these provisions are quoted in Attachment C to this NOPR.

[84] June 18 Order at 62, 464–65.

[2] Measurement starts at the time the request is first moved to either ACCEPTED or COUNTEROFFER. The time limit does not reset on subsequent changes of state.

[3] Measurement starts at the time the Transmission Customer changes the state to REBID. The measurement resets each time the request is changed to REBID.

[4] Subject to expedited time requirements of Section 17.1 of the pro forma tariff. Transmission Providers should make best efforts to respond within 72 hours, or prior to the scheduling deadline, whichever is earlier, to a request for Daily Firm Service received during period 2–30 days ahead of the service start time.

The report also contains several guides (recommended Guides 4.7–4.12) dealing with the rights and obligations of the parties during negotiations. Recommended Guides 4.7–4.12 provide as follows:

Guide 4.7: Prior to setting a request to ACCEPTED, COUNTEROFFER, or REFUSED a Provider shall evaluate the appropriate resources and ascertain that the requested transfer capability is (or is not) available.

Guide 4.8: For any request that is REFUSED or INVALID, the Transmission Provider should indicate in the COMMENTS field the reason the request was refused or invalid.

Guide 4.9: The Customer may change a request to WITHDRAWN at any time prior to CONFIRMED.

Guide 4.10: From ACCEPTED or COUNTEROFFER, a Customer may change the status to CONFIRMED, WITHDRAWN, or REBID. The Customer has the amount of time designated as "Customer Confirmation Time Limit" in Table 4–2 Reservation Timing Requirements to change the state of the request to CONFIRMED. The Customer time limit is measured from the first time the request is moved to ACCEPTED or COUNTEROFFER, and is not reset with subsequent iterations of negotiation.

Guide 4.11: After expiration of the "Customer Confirmation Time Limit," specified in Table 4–2 Reservation Timing Requirements, the Provider has a right to move the request to the RETRACTED state.

Guide 4.12: Should the Customer elect to respond to a Provider's COUNTEROFFER by moving a reservation request to REBID, the Provider shall respond by taking the request to a DECLINED, ACCEPTED, or COUNTEROFFER state within the "Provider Counter Time Limit," specified in Table 4–2 Reservation Timing Requirements. The Provider response time is measured from the most recent REBID time.

Comments

Recommended Guide 4.8 suggests that when a request is REFUSED or INVALID the transmission provider should indicate in the COMMENTS field the reason the request was refused or found invalid. Cinergy argues that a transmission provider should not be required to enter a special reason in the comment section for a "REFUSED" response, since the definition of "REFUSED" means that the request is denied due to lack of availability of transfer capability.[85]

ECI supports recommended Guide 4.9, which states that a customer may change a request to WITHDRAWN at any time prior to confirmation. It asserts that this concept should be incorporated into the *pro forma* tariff.[86]

Discussion

Recommended Guide 4.8 would have transmission providers give an explanation of why a request is refused. Cinergy argues that no reason other than REFUSED is needed to explain why a service request is rejected. We disagree. Even though backup information is available upon request to the customer,[87] there is a delay before this information is provided. Any timely information from the transmission provider which can explain the reason(s) for refusal will be useful to the customer in assessing the competitiveness of the bid, establishing a level of confidence in the transmission provider's ATC posting, and detecting any instances of undue discrimination.[88] For example, the reason for the lack of ATC may be that another customer has made a simultaneous bid for a longer duration short-term transmission service. Having this information available in a timely manner would allow the first customer to make a revised request for service that might be accepted. Another example would be where a transmission provider had not yet updated its ATC posting and thus its OASIS node would still show available ATC even though this was no longer true.

ECI agrees with recommended Guide 4.9 of the June 19 Report that, in the absence of competing bids, a customer may change a request to WITHDRAWN any time prior to it being confirmed. However, ECI contends that, under the July 17 Order, this may require a revision to § 13.2 of the *pro forma* tariff because this provision is silent as to the withdrawal of a request for transmission.

We disagree. When we addressed the issue of reservation time limits in the June 18 Order, we agreed with commenters that on-line negotiation of discounts requires predetermined time limits on responses by transmission providers and customers.[89] We asked the CPWG to examine the development of such deadlines and to make recommendations to us. The deadlines appearing in recommended Guide 4.13 on the time limits for customers and transmission providers at different stages of the reservation process reflects the recommendations of the CPWG/How Group and appear to us to be reasonable. Any objections to these proposed time limits should be raised in comments to this NOPR.

We disagree with ECI that the timing requirements in Table 4–2 of Guide 4.13 are inconsistent with section 17.5 of the *pro forma* tariff. Section 17.5 requires a response to a completed application "as soon as practicable." In our view, Guide 4.13 sets forth the practicable time limits for responses to various reservation requests. We find this provision to be consistent with the *pro forma* tariff.[90]

We also find unpersuasive ECI's argument that the statement, in recommended Guide 4.13, that,

> it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED). For this to occur, the subsequent request would be of higher priority or of greater price * * *[91]

is inconsistent with the July 17 Order and needs revision to include a right to match the subsequent request. As discussed above, the silence of recommended Guide 4.13 and Table 4.1 on this point do not abrogate the Commission's findings in the July 17 Order. These findings still hold.

Accordingly, we propose to adopt the June 19 Report's recommended Guides 4.6–4.13 in the attached BPS&G.

15. Negotiations With Competing Bids for Constrained Resources (When Customer Has Not Yet Confirmed a Provider's Acceptance) (Section 4D of June 19 Report)

Section 4D of the June 19 Report contains recommended sections 4.14–

[85] *Id.*

[86] ECI Comments at 15.

[87] A NOPR on expanding the availability of this back-up information is pending in Docket No. RM98–3–000. *See* Open Access Same-Time Information System and Standards of Conduct, FERC Stats. & Regs. ¶ 32,531 (1998).

[88] Upon review, the definition of "REFUSED" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document is unclear. We propose to clarify the definition by inserting the words "lack of" before the word "availability." We invite the comments to this NOPR to address this issue.

[89] 83 FERC at 62,464.

[90] We also note that in the Wisconsin Electric case cited in note 89, *supra*, the Commission approved a revision to WEPCO's individual open access tariff setting a time limit on customer confirmations.

[91] June 19, Report at 18.

4.27 dealing with the procedures for negotiations over the OASIS when there are competing bids for constrained resources prior to a customer confirming the transmission provider's acceptance. For the reasons stated below, we propose to adopt recommended Guides 4.14—4.26, with certain modifications, and to reject recommended Guide 4.27.

When competing bids for reservations on constrained resources are received, the June 19 Report generally recommends awarding the reservation on a first-come-first-served basis. Exceptions to this rule are recommended for competing bids for short-term transmission service that have a higher priority,[92] solely because they request service for a longer duration, and in the case of non-firm point-to-point transmission service, requests that are of the same duration, but at a higher price. In some situations, the right of first refusal is permitted. We will now discuss the provisions on negotiations for competing bids for constrained resources on a section-by-section basis.

Section 4.14—Service Request Priority Tiers

Consistent with regulations and filed tariffs, Guide 4.14 divides transmission service into five tiers of successive priority when competing bids are negotiating for transmission service.[93] Highest priority is given to native load, network, or long-term firm service (subsection 4.4.1). Second highest priority is given to short-term firm service (subsection 4.4.2). Third highest priority is given to network service on non-designated resources (subsection 4.4.3). Fourth highest priority is given to non-firm service (subsection 4.4.4). Fifth highest priority is given to service over secondary receipt and delivery points (subsection 4.4.5).

Comments

None of the comments take issue with these priorities.

Discussion

We propose to adopt the priorities laid out in Guide 4.14 as recommended.

Section 4.15—First-Come First-Served

Consistent with regulations and filed tariffs, recommended Guide 4.15 provides that reservation requests should be handled on a first-come-first-served basis based on queue time.

Comments

EPMI notes that under the June 19 Report's proposal, requests for capacity will no longer be pro-rated if there is a lack of available transmission capacity. Instead, requests will be evaluated on a first-come-first-served basis. EPMI supports this change, but is concerned about affiliate transactions. EPMI fears that an affiliate of the transmission provider could obtain all of the available transmission capacity, rather than having it pro-rated if there is a constraint.[94]

Discussion

EPMI's argument is based on an incorrect premise. Currently, under the *pro forma* tariff, transmission is allocated on a first-come-first-served basis and is not pro-rated.

Nor, for two reasons, do we find persuasive EPMI's contention that the allocation of capacity on a first-come-first-served basis would allow an affiliate of a transmission provider to obtain all available transmission capacity. First, the S&CP Document TRANSSTATUS template contains the queue time of a request. Customers can monitor requests and detect any undue discrimination. Suspected violations can be reported to the Commission. As long as capacity is awarded on a non-discriminatory basis, which gives the affiliate no undue preference, the award of capacity should not be an issue. Second, EPMI's prediction is contradicted by the fact that transmission already is allocated on a first-come-first-served basis and it does not appear that EPMI's scenario has come to pass.

Section 4.16—Priorities for Competing Reservation Requests

Recommended Guide 4.16, which includes Table 4–3, describes the relative priorities of competing service requests and rules for offering a right of first refusal, consistent with Commission regulations and filed tariffs. Specifically, it states:

Guide 4.16: Consistent with regulations and filed tariffs, Table 4–3 describes the relative priorities of competing service requests and rules for offering right-of-first-refusal. While the table indicates the relative priorities of two competing requests, it is intended to also be applied in the more general case of more than two competing requests.

TABLE 4–3 [95]—Priorities for Competing Reservation Requests

Row	Request 1	Is preempted by request 2	Right of first refusal
1	Tier 1: Long-term Firm, Native Load, and Network Firm.	N/A—Not preempted by a subsequent request	N/A.
2	Tier 2: Short-term Firm	Tier 1: Long-term Firm, Native Load, and Network Firm), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	No.
3	Tier 2: Short-term Firm	Tier 2: Short-term Firm of longer term (duration), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	Yes, while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted and right of first refusal is not applicable.
4	Tier 3: Network Service From Non-Designated Resources.	Tiers 1 and 2: All Firm (including Network)	No.
5	Tier 4: All Non-Firm PTP	Tiers 1 and 2: All Firm (including Network)	No.
6	Tier 4: All Non-Firm PTP	Tier 3: Network Service from Non-Designated Resources.	No.
7	Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of a longer term (duration) [1]. Except in the last hour prior to start (see Standard 4.23).	Yes.

[92] Recommended Guide 4.14 specifies the service request priority tiers.

[93] These priorities are not meant to govern curtailments.

[94] EPMI Comments at 6.

TABLE 4–3 [95]—Priorities for Competing Reservation Requests—Continued

Row	Request 1	Is preempted by request 2	Right of first refusal
8	Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of equal term (duration) [1] and higher price, when Request 1 is still unconfirmed and Request 2 is received pre-confirmed. A confirmed non-firm PTP may not be preempted for another non-firm request of equal duration. (See Standards 4.22 and 4.25.).	No.
9	Tier 5: PTP Service over secondary receipt and delivery points.	Tier 5 can be preempted by Tiers 1 through 4	No.

[1] Longer duration, in addition to being higher SERVICE_INCREMENT (i.e., WEEKLY has priority over DAILY), also may mean more multiples of the same SERVICE_INCREMENT (i.e., 3 Days may have priority over 2 Days).
[95] For clarity, we have identified the rows in Table 4–3.

Guide 4.16 would allocate requests for Tier 1 services (native load, network, long-term firm) and Tier 2 services (short-term firm) on a first-come-first-served basis. A request for Tier 1 service could not be preempted. A request for Tier 2 service that is "conditional" could be preempted by a request for Tier 1 service without any right of first refusal.[96] A request for Tier 2 service that is "conditional" could also be preempted by a request for longer term Tier 2 service but, under this circumstance, it would receive the right of first refusal.[97]

Tier 3 service (network service from non-designated resources) could be preempted by requests for either Tier 1 or Tier 2 service and would not receive the right of first refusal. Tier 4 service (all non-firm PTP) could be preempted by requests for Tier 1, 2, or 3 service and would receive the right of first refusal. A Tier 4 request could be preempted (except in the hour before service begins) by a longer duration Tier 4 service and would receive the right of first refusal. Until a Tier 4 request is confirmed, it could be preempted by a preconfirmed Tier 4 request of equal duration and higher price.[98] The request would not receive the right of first refusal.

Comments

Cinergy asks how the terms "conditional" and "unconditional" appearing in Table 4–3 should be defined.[99]

ECI asserts that the concept in recommended Guide 4.16 (footnote 2 to Table 4–3), that "[l]onger duration, in addition to being higher SERVICE_INCREMENT (*i.e.*, WEEKLY has priority over DAILY), also may mean more multiples of the same SERVICE_INCREMENT (*i.e.*, 3 Days may have priority over 2 Days)," should also apply to firm service.

Discussion

Recommended Guide 4.16 defines the priorities of longer duration for non-firm PTP service to include both a higher service increment (weekly service has priority over daily service) and multiples of the same service increment (three day service has priority over two day service). ECI requests that this definition also be applied to firm service. We agree with ECI that multiple service increments should have similar priority for short-term firm service.[100] Accordingly, we will revise Table 4–3 of recommended Guide 4.16 so that the footnote, now referencing rows 7 and 8 of column 2 of Table 4–3, will also refer to row 3, column 2 of the table. Moreover, we find these reservation priorities to be consistent with section 14.2 of the *pro forma* tariff, which, by its terms, applies only to non-firm point-to-point transmission service. Accordingly, we propose to adopt Guide 4.16 as revised.

We find unpersuasive Cinergy's argument that Table 4–3 should define "conditional" and "unconditional." As seen in note 100, the concepts of conditional and unconditional service are complicated and would be cumbersome to define in a table.

Section 4.17—Required Posting When a Reservation Request Is Preempted

This section provides that when a reservation request is preempted, the transmission provider must post the assignment reference number of the reservation that preempts the reservation request.

Comments

None of the comments take issue with this recommendation.

Discussion

We propose to adopt Guide 4.17 as recommended.

Section 4.18—Displaced and Superseded Pending Requests for Transmission Service

This section lays out the circumstances when a transmission provider may displace or supersede pending requests for service based on the priorities laid out in Table 4–3 (Guide 4.16). Recommended Guide 4.18, which addresses counteroffers, provides as follows:

Guide 4.18: Given competing requests for a limited resource and a right-of-first-refusal is not required to be offered, the Provider may immediately move requests in the CONFIRMED state to DISPLACED, or from an ACCEPTED or COUNTEROFFER state to SUPERSEDED, if the competing request is of

[96] The distinction between conditional and unconditional service, as related to firm point-to-point service, is discussed in Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,746, where we stated:

Accordingly, the Final Rule pro forma tariff provides a mechanism to address this concern while safeguarding the rights of potential customers to obtain access to unused capacity. The tariff provides that reservations for short-term firm point-to-point service (less than one year) will be conditional until one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. These conditional reservations may be displaced by competing requests for longer-term firm point-to-point service. For example, a reservation for daily firm point-to-point service could be displaced by a request for weekly firm point-to-point service during an overlapping period. Before the applicable reservation deadline, a holder of a conditional firm point-to-point reservation would have the right of first refusal to match any longer-term firm point-to-point reservation before being displaced. After the deadline, the reservation becomes unconditional, and the service would be entitled to the same priorities as any long-term point-to-point or network firm service.

Conditional reservations also are discussed in Madison Gas & Electric Company v. Wisconsin Power & Light Company, 80 FERC ¶ 61,331 at 62,102–03 (1997), *reh'g denied*, 82 FERC ¶ 61,099 at 61,372–73(1998).

[97] The rights of first refusal shown in Table 4–3 should not be confused with the right of first refusal available to a customer with a pre-existing expiring contract under Order No. 888, *see* FERC Stats. & Regs. ¶ 31,036 at 31,745.

[98] Under Table 4–3, requests for transmission service may be superseded before they are confirmed. After they are confirmed, they may be preempted (as provided).

[99] Cinergy Comments at 5.

[100] Except in cases where firm service becomes unconditional.

higher priority, based on the rules represented in Table 4–3. These state changes require dynamic notification to the Customer if the Customer has requested dynamic notification on OASIS.

Comments

Cinergy states that, under recommended Guide 4.18, when there are competing requests for constrained resources, a provider may change a confirmed reservation from the CONFIRMED status to DISPLACED status, if the competing request is of higher priority, based on the rules represented in Table 4–3. Cinergy asks—when does the transmission provider displace a request? Is it when the transmission provider accepts the offer from a second customer or when the second customer confirms the deal? Cinergy's suggested answer is that the transmission provider should displace a request at the time the second customer confirms the deal.[101] Cinergy also questions when ATC should be decremented. Cinergy argues that ATC should not be decremented until the customer confirms acceptance of the transmission provider's award of its capacity. It argues that a customer should not have rights to a transmission path or an amount of capacity until the customer commits to pay for it.[102]

Recommended Guide 4.18 would have transmission providers voluntarily use dynamic notification to notify their customers of changes in their requests from the CONFIRMED state to DISPLACED or from the ACCEPTED or COUNTEROFFER to SUPERSEDED.[103] ECI would require transmission providers to use dynamic notification to notify their customers of these events.[104]

In addition, ECI cites the statement in the June 19 Report that,

> it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED). For this to occur, the subsequent request would be of higher priority or of greater price.

ECI argues that the Commission's ruling in the July 17 Order requires that customers get the right of first refusal in this situation. Otherwise, ECI argues, this proposal is inconsistent with the Commission's decision in its complaint against PJM.[105]

[101] Cinergy Comments at 4.

[102] Cinergy Comments at 4.

[103] In OASIS Phase IA, transmission providers use the Internet to notify customers automatically of when the status of a reservation request has changed.

[104] ECI Comments at 15.

[105] *See* discussion of PJM complaint in Section III.D.13, *supra*.

Discussion

First, Cinergy, referring to recommended Guide 4.18, asks when an accepted request for service is displaced by a transmission provider. Guide 4.18 states that, when there are competing requests for constrained resources, a provider may change a confirmed reservation from the CONFIRMED status to DISPLACED status, if the competing request is of higher priority, based on the priorities laid out in Table 4–3. Cinergy's view is that the first request should be displaced when the displacing customer confirms the deal. We agree. Otherwise, the displacing customer can walk away from a transaction, leaving the first customer with no service and the transmission provider with unused capacity.

Second, Cinergy also maintains that a customer should not have rights to capacity until it commits to pay for it. We agree. A customer's confirmation already is a commitment to pay and a customer's confirmation is what gives the customer its rights to capacity. After reviewing recommended Guide 4.18, we do not believe that any revision is needed to accommodate Cinergy's concern.

Third, as to Cinergy's specific question as to when ATC is decremented (when there are competing bids for constrained resources), we propose that the transmission provider decrement ATC when it accepts a request (without waiting for the customer's confirmation). Otherwise, a transmission provider could be placed in the awkward position of having accepted 10 requests for the same constrained capacity and having several customers confirm the deal at the same time. Nevertheless, we also invite specific comment on whether ATC should be decremented upon acceptance by a transmission provider of the customer's request or upon the customer's confirmation of its request, following acceptance.

Consistent with our findings in Order No. 889, however, ATC postings should be updated when the transmission service is reserved (after confirmation).[106] In Order No. 889, we stated,

> [a] posting for a constrained posted path must be updated when transmission service on the path is reserved or service ends or when the path's TTC changes by more than 10 percent.[107]

[106] The transmission provider adjusts its calculation of ATC internally before it is required to post a revised ATC on the OASIS.

[107] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,606.

ECI reads recommended Guide 4.18 to allow transmission providers to provide customers with dynamic notification of changes in the status of their reservation requests on a "best practice" basis. It requests that such notification be made mandatory. We note that dynamic notification of changes in reservation status is required by the June 18 Order for customers requesting such notification.[108] It is not mandatory for those who do not make such a request. We believe that our finding in the June 18 Order is sufficient to address ECI's concern and are not proposing in this NOPR any extension of dynamic notification beyond that contained in Guide 4.18 as recommended by the June 19 Report.

ECI argues that the statement in the June 19 Report that "it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED)," is inconsistent with the Commission's findings in the July 17 Order. As discussed above, although the July 17 Order held that a customer making a request for short-term firm point-to-point service is to be afforded an opportunity to match a reservation for short-term firm point-to-point service of a longer duration, before losing its reservation priority, that order did not address other circumstances under which an unconfirmed request may be preempted.[109] Thus, ECI's comments provide no basis to reject Guide 4.18 and we propose its adoption as recommended.[110]

Section 4.19—Counteroffers When Right of First Refusal Is Required

Section 4.19 provides that, in instances where the customer is entitled to a right of first refusal, the transmission provider is to notify the customer through the use of a COUNTEROFFER of the opportunity to match the subsequent offer.

Comments

None of the comments address this issue.

Discussion

We propose to adopt Guide 4.19 as recommended.

[108] 83 FERC at 62,463.

[109] 84 FERC at 61,196.

[110] Upon review, the definition of "DISPLACED" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document is unclear. We propose to clarify the definition by inserting the words "if any" after the word "refusal" to make clear that the existence of a status value for "DISPLACED" in the S&CP Document is not meant to confer any right of first refusal. In addition, we propose to substitute the word "replaced" for the word "displaced" in the text of the definition. We invite the comments to this NOPR to address this issue.

Section 4.20—Time Limits for Right of First Refusal

When we addressed the issue of reservation time limits in the June 18 Order, we agreed with commenters that on-line negotiation of discounts requires predetermined time limits on responses by transmission providers and customers.[111] We asked the CPWG to examine the development of such deadlines and to make recommendations to us. The deadlines appearing in recommended Guides 4.13 and 4.20 reflect the recommendations of the CPWG/How Group.[112]

Comments

ECI argues that the confirmation time limits in recommended Guide 4.20 are inconsistent with the 24-hour time limit in the *pro forma* tariff. ECI argues that the *pro forma* tariff should be revised to match recommended Guide 4.20. Recommended Guide 4.20 provides as follows:

Guide 4.20: A Customer who has been extended a right-of-first-refusal should have a confirmation time limit equal to the lesser of a) the Customer Confirmation Time Limit in Table 4–2 or b) 24 hours.

ECI reports that section 4.2 of the *pro forma* tariff provides a confirmation time limit of 24 hours and suggests that the tariff be revised in accordance with recommended Guide 4.20.

Discussion

ECI identifies what it asserts is an inconsistency between recommended Guide 4.20 and the *pro forma* tariff. Recommended Guide 4.20 provides that a customer who has been given the right of first refusal must respond in a time period equal to the lesser of the confirmation time in Guide 4.13 (Table 4–2) or 24 hours. The *pro forma* tariff provides, at section 17.5, that a response to a completed application be made "as soon as possible."

We already addressed this issue in connection with our discussion of Guide 4.13 and Table 4–2. As we explained above,[113] we find the time limits prescribed in Guide 4.13 to be both reasonable and consistent with the *pro forma* tariff.

Section 4.21—Non-discriminatory Right of First Refusal Comments

This recommended standard requires transmission providers to apply all rights of first refusal in a non-discriminatory and open manner.

Comments

None of the comments address this issue.

Discussion

This provision is entirely consistent with the provisions in 18 CFR 37.4(b)(5) that require transmission providers to operate their OASIS sites in an even handed non-discriminatory manner. We propose the adoption of Standard 4.21 as recommended.

Sections 4.22 & 4.23—When Confirmed Requests Shall Not Be Displaced

Recommended Standards 4.22 and 4.23 provide as follows:

Standard 4.22: Once a non-firm PTP request has been confirmed, it shall not be displaced by a subsequent non-firm PTP request of equal duration and higher price.

Standard 4.23: A confirmed, non-firm PTP reservation for the next hour shall not be displaced within one hour of the start of the reservation by a subsequent non-firm PTP reservation request of longer duration.

This section does not distinguish between requests that are pre-confirmed and requests that are confirmed after acceptance. Once confirmed, both requests are treated alike.

Comments

None of the comments address this issue.

Discussion

We propose to adopt Standards 4.22 and 4.23 as recommended.

Section 4.24—Requests on Unconstrained Paths

Recommended Guide 4.24 provides as follows:

Guide 4.24: A Transmission Provider should honor any reservation request submitted for an unconstrained Path if the Customer's bid price is equal to or greater than the Provider's posted offer price at the time the request was queued, even if later requests are submitted at a higher price. This guide applies even when the first request is still unconfirmed, unless the Customer Confirmation Time Limit has expired for the first request.

Comments

None of the comments address this issue.

Discussion

We propose to adopt Guide 4.24 as recommended.

Section 4.25—Pre-Confirmation and Pre-Emption

Recommended Guide 4.25 would permit Tier 4 (non-firm point-to-point) service of equal term with a higher bid price to preempt a request for the same term and lower bid price, as long as the lower bid request is not confirmed and the higher bid request is preconfirmed. Specifically, the provision provides as follows:

Guide 4.25: Once an offer to provide non-firm PTP transmission service at a given price is extended to a Customer by the Provider, and while this first request is still unconfirmed but within the Customer Confirmation Time Limit, the Provider should not preempt or otherwise alter the status of that first request on receipt of a subsequent request of the same Tier and equal duration at a higher price, unless the subsequent request is submitted as pre-confirmed.

Comments

ECI asks that recommended Guide 4.25 be rejected for two reasons. First, it argues the guide introduces the concept of pre-confirmed requests for transmission service, a concept that does not appear in the *pro forma* tariff.[114] Second, it argues that the concept violates the first-come-first-served principle.

Discussion

ECI requests that we reject recommended Guide 4.25 because the concept of pre-confirmed requests for transmission service is not addressed in the *pro forma* tariff and because it violates the principle of first-come-first-served. We disagree for two reasons. First, the first-come-first-served reservation priority of section 14.2 of the *pro forma* tariff applies from the time when a request for transmission service is made, *not* from the time when a request is confirmed. Thus, the recommended confirmation policy in Guide 4.25 would not change any reservation priorities under section 14.2 of the *pro forma* tariff. Second, we find the concept of pre-confirmed requests in Guide 4.25 to be consistent with the reservation priorities in section 14.2 of the *pro forma* tariff. If approved, the recommended pre-confirmation policy advocated by the CPWG/How Group would, however, have an impact on the displacement of requests for service by subsequent requests for service at a higher price or for a longer duration.[115]

[111] 83 FERC at 62,464.

[112] Recommended Guide 4.13 (Table 4–2) is discussed above in Section III.D.14, *supra*.

[113] *See* discussion in Section III.D.14 above, *supra*.

[114] Under this concept, customers would be able to make pre-confirmed requests for service that would lock them into automatically confirming their requests for service (and committing them to take service) in the event transmission providers accept their requests for service. A pre-confirmed reservation would be finalized when the transmission provider accepts the customer's request for service, without the need (or opportunity) for subsequent customer confirmation.

[115] *Id.*

Section 4.26—Right of Customer Making Pre-Confirmed Request To Match a Subsequent Pre-Confirmed Request at Higher Price

Recommended Guide 4.26 provides as follows:

Guide 4.26: If during a negotiation of service (i.e., prior to Customer confirmation) a subsequent pre-confirmed request for service over the same limited resource of equal duration but higher price is received, the Provider *may* COUNTEROFFER the price of service on the prior COUNTEROFFER or ACCEPTED price to match the competing offer, in order to give the first Customer an opportunity to match the offer. This practice must be implemented in a non-discriminatory manner. [Emphasis in original.]

Comments

ECI suggests a wording change in recommended Guide 4.26.[116] ECI argues that to be consistent with the first-come-first-served and right of first refusal process, transmission providers electing to follow this guide *must* be required to offer a COUNTEROFFER.

Discussion

ECI requests that the word "may" in recommended Guide 4.26 be changed to "must." Recommended Guide 4.26 states that under certain circumstances, "the Provider *may* COUNTEROFFER the price of service on the prior COUNTEROFFER or ACCEPTED price to match the competing offer, in order to give the first Customer an opportunity to match the offer." ECI argues that, to achieve consistency with the first-come-first-served and right to match process, transmission providers must be *required* to offer a COUNTEROFFER. We agree with ECI for two reasons. First, customers must know what to expect from a transmission provider. If a transmission provider allows some customers the right to match, it must allow all customers the right to match. Second, even though the recommended guide provides that the "practice must be implemented in a non-discriminatory manner," there is too much room for discrimination if providing the right to match is optional.

As we are proposing that Guide 4.26 be adopted as a guide rather than as a standard, a transmission provider would have the option not to follow this guideline. However, by proposing to adopt the suggested language change, we seek to assure that if the transmission provider elects to follow this guide, it will do so uniformly and not selectively.

[116] ECI Comments at 16.

Section 4.27—Curtailment of Nonfirm PTP Service

Recommended Guide 4.27 provides that curtailment of non-firm point-to-point transmission service should not be based on price. Specifically, it provides as follows:

Guide 4.27: Curtailment of non-firm PTP should not consider price.

Comments

Cinergy argues that curtailments are not within the scope of the Business Practices Report.

Discussion

Cinergy notes that recommended Guide 4.27, which recommends that curtailment of non-firm PTP not be based on price, is outside the scope of Phase IA business practices. We agree that the definition of curtailment practices is beyond the scope of this proceeding. In the June 18 Order, we agreed to displaying curtailment priority information in certain templates contained in the S&CP Document.[117] However, we specifically cautioned that,

our adoption of a place on the OASIS for these data elements does not constitute an approval of the NERC or other curtailment priorities.[118]

As we stated in *Coalition Against Private Tariffs*,[119] curtailment priorities are governed by the *pro forma* tariff.

Accordingly, we do not propose to adopt recommended Guide 4.27 for the reasons discussed above. Commenters disagreeing with this view should address this matter in their comments to this NOPR.

16. *Transmission Provider Requirements (Section 5B) of June 19 Report)*

Phase IA OASIS data templates allow the coupling of ancillary service arrangements with the purchase of transmission service for the purpose of simplifying the overall process for customers. Transmission providers must indicate (consistent with filed tariffs) what services are MANDATORY (must be taken from the Primary Provider), REQUIRED (must be provided for but may be procured from alternative sources), or OPTIONAL (not required as a condition of transmission service). While these interactions are available in the Phase IA S&CP Document, there is a need to clarify the associated BPS&G. The associated recommended Standards and Guides 5.1, 5.2, 5.3, and 5.4 apply to services defined in filed tariffs. Recommended Standards 5.1 and 5.3, and recommended Guides 5.2 and 5.4, provide as follows:

Standard 5.1: The Transmission Provider shall designate which ancillary services are MANDATORY, REQUIRED, or OPTIONAL for each offered transmission service to the extent these requirements can be determined in advance of the submittal of a reservation request on a specific Path by a Transmission Customer.

Guide 5.2: A Transmission Provider may modify a Transmission Customer's service request to indicate the Transmission Provider as the SELLER of any ancillary service, which is MANDATORY, to be taken from the Transmission Provider.

Standard 5.3: For REQUIRED and OPTIONAL services, the Transmission Provider shall *not* select a SELLER of ancillary service without the Transmission Customer first selecting that SELLER.

Guide 5.4: A Transmission Provider may accept a Transmission Customer's request for an ancillary service, which is not MANDATORY or REQUIRED, but shall indicate to the Transmission Customer at the time of acceptance under PROVIDER COMMENTS that the service is not MANDATORY or REQUIRED.

Comments

With regard to section 5B of the June 19 Report, Cinergy asserts that ancillary services cannot be easily categorized as "MANDATORY," "REQUIRED," or "OPTIONAL" on the basis of transmission service. Instead, it suggests that services be categorized on the basis of path because different ancillary services are required depending on whether the service is into, out of, or across, a system.[120]

Discussion

We propose to adopt recommended Standards 5.1 and 5.3 and recommended Guides 5.2 and 5.4. Cinergy's concern that services be categorized on the basis of path would add undue complexity at this time and has not been shown to be needed since only Cinergy is seeking such information. Thus, no modification of these recommended Standards and Guides is warranted. Moreover, ancillary services are an essential part of a transmission service contract. Therefore, the process for making transmission contracts on the OASIS is improved through the proposed definitions and processes that spell out the mandatory, required, and optional ancillary services related to the transmission reservation.

[117] 83 FERC at 62,462.

[118] *Id.*

[119] 83 FERC at 61,043. *See* discussion of NERC and MAPP Orders in Section III.D.6 and notes 27–28, above, *supra.*

[120] Cinergy Comments at 5.

17. Transmission Customer Requirements (Section 5C of June 19 Report)

The June 19 Report recommends that the transmission customer should make known to the transmission provider (at the time of the reservation request) certain options related to arrangement of ancillary services, including taking all the MANDATORY and REQUIRED ancillary services from the primary provider, taking REQUIRED ancillary services from a third party seller, purchasing OPTIONAL services, and arranging for ancillary services in the future (prior to scheduling). The June 19 Report then recommends Guides 5.5 and 5.6. Recommended Guides 5.5 and 5.6 provide as follows:

> Guide 5.5: The Transmission Customer should indicate with the submittal of a transmission reservation request, the preferred options for provision of ancillary services, such as the desire to use an alternative resource.
>
> Guide 5.6: A Transmission Customer may, but is not required to, indicate a third party SELLER of ancillary services, if these services are arranged by the Transmission Customer off the OASIS and if such arrangements are permitted by the Transmission Provider's tariff.

Comments

No specific comments were filed on these guides.

Discussion

We propose to adopt recommended Guides 5.5 and 5.6.

E. Recommended Revisions to Pro Forma Tariff (Appendix A of the June 19 Report)

Based on the business practices recommended above, the June 19 Report recommends that we modify three sections, 14.2, 14.7 and 17.5, of the *pro forma* tariff.[121] As discussed below, we view the recommended revisions as either unwarranted or unnecessary and are not persuaded to make any modifications to the *pro forma* tariff at this time.

1. Section 14.2—Reservation Priority

Section 14.2 of the *pro forma* tariff provides, in pertinent part:

> A higher priority will be assigned to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted.[122]

The CPWG/How Group argues that this creates problems. While not disputing that requests for service of greater duration or for a higher price should have priority over requests for shorter duration or lower price, the June 19 Report expresses a concern that a last-minute subsequent request for non-firm transmission service could displace an earlier request for non-firm transmission service without leaving the first bidder time to make alternate arrangements. CPWG/How Group recommends that customers be allowed to make pre-confirmed requests for service, locking themselves into automatically confirming their requests for service (and committing them to take service) in the event the transmission provider accepts their request for service. Although transmission providers could reject the request if a competing bid at a higher price or for a longer duration is received before the transmission provider accepts the request from the first customer, it is recommended that,

> once an Eligible Customer confirms a reservation at a given price, a subsequent request of equal duration but at a higher price will not be allowed to displace the confirmed reservation.[123]

As to subsequent requests for a longer duration, it is recommended that,

> once an Eligible Customer confirms a reservation, a subsequent request of longer duration made within an hour of the scheduled start of the confirmed reservation will not be allowed to displace the confirmed reservation for that next hour.[124]

Thus, under these proposals, if a customer makes a pre-confirmed reservation, it would obtain protection from displacement from competing bids earlier than if it waits to confirm its request after the transmission provider accepts the request. However, even without pre-confirmation, after confirmation, any customer confirming its request would receive the same protection against displacement from subsequent requests for service.

CPWG/How Group also recommends that the right to match subsequent requests for service (first refusal), currently guaranteed by § 14.2 of the *pro forma* tariff (to match subsequent requests for hourly non-firm transmission service of longer duration if matched "immediately"), be extended to allow matching within five minutes.[125]

To implement these proposals, CPWG advocates revising § 14.2 of the *pro forma* tariff to read as follows:

> 14.2 Reservation Priority: Non-Firm Point-To-Point Transmission Service shall be available from transmission capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned to reservations with a longer duration of service, except that once an Eligible Customer confirms a reservation, a subsequent request of longer duration made within an hour of the scheduled start of the confirmed reservation will not be allowed to displace the confirmed reservation for that next hour. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service, except that once an Eligible Customer confirms a reservation at a given price, a subsequent request of equal duration but at a higher price will not be allowed to displace the confirmed reservation. Eligible Customers that have already reserved shorter-term service have the right of first refusal to match any longer-term reservation before being preempted. A longer-term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) immediately within five minutes for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in § 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

Comments

ECI argues that this provision needs to be reconciled with the Commission's findings in the July 17 Order.

Discussion

We agree with CPWG/How Group that it might be beneficial to allow customers to "hedge" their requests for service by making pre-confirmed requests for service. However, we disagree that this

[121] For convenience, sections 14.2, 14.7, and 17.5 of the *pro forma* tariff are provided in Attachment B to this NOPR.

[122] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,518.

[123] This proposal stems from recommended Standard 4.22 and recommended Guide 4.25 and the priorities appearing on row 8, Table 4–3 (recommended Guide 4.16).

[124] This proposal stems from recommended Standard 4.23 and the priorities appearing on row 7, Table 4–3 (recommended Guide 4.16).

[125] This change stems from the reservation timing guidelines appearing on row 1, Table 4–2 (recommended Guide 4.13).

requires any modification to § 14.2 of the *pro forma* tariff.

Section 14.2 creates reservation priorities based on price and duration that we have no inclination to revise. However, nothing in § 14.2 either condones or condemns the use of pre-confirmed reservations. In evaluating competing requests for transmission service, we believe that § 14.2 properly directs the transmission provider to give priority to requests for service at a higher price or for a longer duration. However, § 14.2 does not address displacement of an accepted and confirmed request for transmission service upon receipt of a subsequent request for service.

The remaining question, therefore, is whether transmission providers need to file a revision to their individual open access tariff to implement the pre-confirmation proposals outlined in CPWG/How Group's recommended revisions to § 14.2 of the *pro forma* tariff. Given the silence of § 14.2 on this subject, to the extent that a transmission provider seeks to add a pre-confirmation procedure, it would need to file, for Commission approval, a revision to its individual open access tariff.

As to the proposal that we revise section 14.2 of the *pro forma* tariff to allow a matching response to a competing request for hourly non-firm point-to-point transmission service within five minutes of notification by the transmission provider, we find this recommended revision unnecessary. Currently, section 14.2 requires an eligible customer with the right of first refusal to match the competing request immediately for non-firm point-to-point transmission service. A matching response required within five minutes of notification by the transmission provider would satisfy the intent of section 14.2 that a matching response be made immediately.

As to ECI's argument that the recommended revisions to section 14.2 of the *pro forma* tariff need to be reconciled with the Commission's findings in the July 17 Order,[126] we find that these concerns are moot in light of our determination to leave section 14.2 unchanged.[127]

2. Section 14.7—Curtailment or Interruption of Service

The June 19 Report recommends that we revise section 14.7 of the *pro forma* tariff to prevent the interruption of non-firm transmission service in favor of non-firm transmission service of the same duration, but at a higher price (for the same reasons advanced regarding similar changes to section 14.2). Specifically, the June 19 Report recommends that we revise section 14.7 of the *pro forma* tariff to provide as follows:

14.7 Curtailment or Interruption of Service: The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, or (3) [a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4)] transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest-term (*e.g.*, hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

Comments

Cinergy recommends that the recommended change not be made.[128]

Discussion

We agree with Cinergy that the recommended change should not be made. We reach this conclusion for several reasons. First, the June 19 Report (*see* pages A–4 and A–5) fails to provide any support for the proposal. Second, as discussed above, we have not been persuaded to revise the reservation priorities in section 14.2 and thus there is no need to revise section 14.7, for consistency. Third, in any event, curtailments and reservation priorities are completely distinct subjects. Thus, even if we were to revise the reservation priorities in section 14.2, we would need more of a reason than that to revise the curtailment priorities in section 14.7. Moreover, as we discussed in Section III.D.5 above, this order does not disturb the curtailment priorities of section 14.7 of the *pro forma* tariff.

3. Section 17.5—Response to a Completed Application

The recommended change to Section 17.5 would require transmission providers to use best efforts to respond promptly to applications for daily firm service made within 24 hours of start of the transaction. The June 19 Report recommends that section 17.5 of the *pro forma* tariff be revised to provide as follows:

17.5 Response to a Completed Application: Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. [The] Except for a Completed Application for Daily Firm service received less than 24 hours prior to the commencement of the transmission service, the Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (I) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. For a Completed Application for Daily Firm service received less than 24 hours prior to the commencement of the transmission service, the Transmission Provider shall use its best efforts to respond promptly to notify the Eligible Customer if it will be able to provide the service. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

Comments

No comments were received on this issue.

Discussion

We do not agree that any revision to the *pro forma* tariff is needed to accommodate this proposal. Section 17.5 requires a response as soon as practicable. It would not be reasonable to interpret "as soon as practicable," in

[126] Discussed in Section III.D.13 above, *supra*.

[127] As discussed in Section III.D.13, *supra*, we also find that ECI misinterprets the July 17 Order.

[128] Cinergy Comments at 6. Cinergy gives no reason for this comment.

dealing with a response for daily service, as allowing a transmission provider to take up to thirty days in responding to a request for service. The "not longer than thirty (30) days" language was not intended to allow transmission providers to stall in giving timely responses to requests for shorter duration services. The analysis needed to respond to requests for shorter duration service is simpler and can be accomplished much faster. We need not revise section 17.5 to require "best efforts" to respond promptly to customers requesting daily service, because that requirement already is implicit in the requirement to respond "as soon as practicable."

F. September 15th Filing of Standards for Naming Transmission Paths

In its July 1998 OASIS order, the Commission requested that CPWG/How Group recommend a consistent naming convention for transmission paths. On September 15, 1998, CPWG/How Group made a joint filing proposing such standards.

The existing S&CP Document contains a path naming convention. Paths are designated using a 50-character alphanumeric string:

RegionCode/transmissionProviderCode/PathName/Optional From-to (POR-POD)/Spare

CPWG/How Group asserts that the structure of the string is appropriate, but that more specificity is needed to assure consistency among transmission providers in the designation of path names. Since a single transaction may span multiple providers, consistent names will make it easier to move power across the systems of several transmission providers.

Specifically, CPWG/How Group recommend:

Standard 6.1: A transmission provider shall use the path naming convention defined in the S&CP Data Dictionary for the naming of all reservable paths posted on OASIS.

Standard 6.2: A transmission provider shall use the third field in the path name to indicate the sending and receiving control areas. The control areas shall be designated using standard NERC codes for the control areas, separated by a hyphen. For example, the first three fields of the path name will be:

RR/TPTP/CAXX-CAYY/

Standard 6.3: A transmission provider shall use the fourth field of the path name to indicate POR and POD separated by a hyphen. For example, a path with a specific POR/POD would be shown as:

RR/TPTP/CAXX-CAYY/ PORPORPORPOR-PODPODPODPOD/

If the POR and POD are designated as control areas, then the fourth field may be left blank (as per the example in 6.2).

Guide 6.4: A transmission provider may designate a sub-level for Points of Receipt and Delivery. For example, a customer reserves a path to POD AAAA. The ultimate load may be indeterminate at the time. Later, the customer schedules energy to flow to a particular load that may be designated by the transmission provider as a sub-level Point of Delivery. This option is necessary to ensure certain providers are not precluded from using more specific service points by the inclusion of the POR/POD in the path name. All sub-level PORs and PODs must be registered as such on *www.tsin.com*.

Comments

APPA was the only commenter. While APPA has some reservations about the recommended standards, it recommends that the standards be adopted. APPA's qualms are due to its fear that the standards could be used to impose anticompetitive burdens on market participants by requiring a higher degree of POR-POD specificity for customers than for the transmission providers' own use of their systems. APPA requests that the Commission remain vigilant and hear customer complaints if the standard is used to disadvantage competitors.[129]

Discussion

We propose to adopt the standards (6.1, 6.2, and 6.3) and guide (6.4) on this subject recommended by CPWG/How Group in their September 15, 1998 submittal. The approach which has been in use permitted flexibility in the use of optional fields, but has resulted in inconsistent path naming. The recommended standards and guides, which use the previously optional fields to specify control area codes for Point of Receipt and Point of Delivery, will provide consistency in path naming, and improve efficiency in the reservation process. There were no commenters objecting to the recommended standards and guides. We acknowledge APPA's concerns about the potential for abuse, and we will be responsive to complaints about possible abuses which might result from the requirement to specify control areas for POR-POD when making transmission reservations.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[130] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

[129] APPA Comments at 2–3.

[130] 5 U.S.C. 601–612.

The mandatory standards and voluntary best practices guides proposed in this NOPR would be applicable to the same entities subject to the requirements of the OASIS Final Rule (*i.e.*, public utilities).[131] As we explained in Order No. 889–A, however, under appropriate circumstances the Commission will grant waiver of the OASIS Final Rule requirements to small public utilities. We further explained that the Commission's waiver policy follows the SBA definition of small electric utility[132] and that 34 small entities had received waivers of the requirement to establish and maintain an OASIS and five small entities had received waivers of the OASIS Standards of Conduct requirements.[133] These decisions show that the Commission carefully evaluates the effect of the OASIS Final Rule on small electric utilities and is granting waivers where appropriate, thus mitigating the effect of that rule on small public and non-public utilities.

The rules here proposed would merely increase the uniformity of the business practices public utilities would have to adopt in any event to comply with Order Nos. 888 and 889 and other Commission orders. This being the case, under section 605(b) of RFA, the Commission hereby certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities within the meaning of RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of RFA.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the

[131] In the OASIS Final Rule, we noted that the entities that would have to comply with the OASIS Final Rule are public utilities. *See* Order No. 889–A, FERC Stats. & Regs ¶ 31,049 at 30,578.

[132] *See* 5 U.S.C. §§ 601(3) and 601(6) and 15 U.S.C. § 632(a). The RFA defines a small entity as one that is independently owned and not dominant in its field of operation. *See* 15 U.S.C. § 632(a). The Small Business Administration defines a small electric utility as one that disposes of 4 million MWh or less of electric energy in a given year. See 13 CFR 121.601 (Major Group 49—Electric, Gas and Sanitary Services).

In the Open Access Final Rule, we concluded that, under these definitions, the Open Access Final Rule and the OASIS Final Rule would not have a significant economic impact on a substantial number of small entities. We reaffirmed that conclusion in Order Nos. 888–A and 889–A.

[133] *See* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,578.

human environment.[134] In the Commission's view, the environmental impact of this proposal is negligible. Transmission providers necessarily already follow business practices in conducting their OASIS transactions. This proposal merely adds some uniformity to the process. Accordingly, we find that this NOPR does not propose any action that may have a significant effect on the human environment and that no environmental impact statement is required.

VI. Information Collection Statement

Based on our experience in OASIS implementation over the past four years, the Commission refined the estimate of reporting entities covered by OASIS regulations. Our latest estimate is that 140 respondents are required to collect information under the OASIS regulations. However, as discussed above, this NOPR does not impose any new information collection burdens. Collectively, the OASIS rulemaking information collection is covered by FERC–717 as covered by our December 1, 1998 proposed information collection and request for comments in Docket No. IC99–717–000 as follows:

Information Collection Statement:

Title: FERC–717, Open Access Same-time Information Systems and Standards of Conduct.

Action: Proposed Collection.

OMB Control No: 1902–0173.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On Occasion.

Necessity of the information: The Notice of Proposed Rulemaking solicits public comments to respond to the proposed issuance of uniform business practices for OASIS Phase IA transactions and path name conventions, on replacing the Data Dictionary Element "ANC_SERVICE_TYPE" in the OASIS Standards and Communication Protocols Document (Version 1.3) with the term "AS_TYPE," and on clarifying the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in the Data Dictionary Element and § 4.2.10.2. These requirements would support arrangements made for wholesale sales and purchases for third parties. Public utilities and/or their agents would operate under more uniform business practices. This would improve the operation of OASIS sites.

The Office of Management and Budget's (OMB) regulations,[135] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in the proposed rule will be reported directly to transmission users and will be subject to subsequent audit by the Commission. The distribution of these data will help the Commission carry out its responsibilities under Part II of the FPA.

The Commission is submitting notification of this proposed rule to OMB. Persons wishing to comment on the collections of information proposed by this NOPR should direct their comments to the Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile 202–395–7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208–1415.

VII. Public Comment Procedure

This NOPR gives notice of our intention to issue a set of uniform business practices implementing the Commission's policies on transmission service price negotiation and improving interactions between transmission providers and customers over Open Access Same-Time Information System (OASIS) nodes. In addition, we propose a consistent naming convention for path names, propose to replace the Data Dictionary Element "ANC_SERVICE_TYPE" in the OASIS Standards and Communication Protocols Document (Version 1.3) with the term "AS_TYPE," and propose to clarify the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in the Data Dictionary Element and in section 4.2.10.2. of the S&CP Document.

Prior to taking final action on this proposed rulemaking, we are inviting comments from interested persons on the proposals discussed in this preamble and compiled in Attachment A to this NOPR. Additionally, the Commission specifically invites comments on whether any of the best practice guides proposed in this NOPR should instead be issued as mandatory standards and whether any mandatory standards proposed in this NOPR should instead be issued as best practice guides. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission by [insert date 60 days after publication in the **Federal Register**]. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM95–9–003.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 6.1 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM95–9–003; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to "comment.rm@ferc.fed.us" in the following format. On the subject line, specify Docket No. RM95–9–003. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Home Page using the RIMS link or the Energy Information

[134] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); 1986–90 Regs. Preambles FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[135] 5 CFR 1320.11.

Online icon. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR Part 37

Conflict of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to adopt the attached "Business Practice Standards and Guides for Open Access Same-time Information System (OASIS) Transactions" and to amend Part 37 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 37.5 is amended by revising paragraph (b) to read as follows:

§ 37.5 Obligations of Transmission Providers and Responsible Parties.

* * * * *

(b) A Responsible Party must: (1) Provide access to an OASIS providing standardized information relevant to the availability of transmission capacity, prices, and other information (as described in this part) pertaining to the transmission system for which it is responsible;

(2) Operate the OASIS in compliance with the standardized procedures and protocols found in *OASIS Standards and Communication Protocols*, which can be obtained from the Public Reference and Files Maintenance Branch, Room 2A, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426; and

(3) Operate the OASIS in compliance with the *Business Practice Standards and Guides for Open Access Same-time Information System (OASIS) Transactions*, which can be obtained at the same address as provided in paragraph (b)(2) of this section.

* * * * *

[Note: This attachment will not appear in the Code of Federal Regulations.]

Attachment A—Federal Energy Regulatory Commission, business practice standards and guides for open access same-time information system (oasis) transactions draft, version 1.0 (January 27, 1999)

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Section 1—Introduction

This document contains business practice standards and guides designed to implement the Commission's policy related to on-line price negotiation and to improve the commercial operation of the Open Access Same-Time Information System (OASIS).

Section 1.1 Business Practice Standards and Guides

This document distinguishes between OASIS business practice standards and "best practices" guides. The standards are adopted as mandatory requirements, while the guides are offered as voluntary best practices. However, in the event that a transmission provider elects to follow the voluntary practice guides, it must do so on a uniform, non-discriminatory basis.

Section 2—Standard Terminology for Transmission and Ancillary Services

Section 2.1 Attribute Values Defining the Period of Service

The data templates of the Phase IA Standards & Communication Protocols (S&CP) Document have been developed with the use of standard service attributes in mind. What the Phase IA S&CP Document does not offer are specific definitions for each attribute value. This section offers standards and guides for these service attribute definitions to be used in conjunction with the Phase IA data templates.

"Fixed" services are associated with transmission services whose periods align with calendar periods such as a day, week, or month. "Sliding" services are fixed in duration, such as a week or month, but the start and stop time may slide. For example a "sliding" week could start on Tuesday and end on the following Monday. "Extended" allows for services in which the start time may "slide" and also the duration may be longer than a standard length. For example an "extended" week of service could be nine consecutive days. Various transmission service offerings using these terms are defined in Standards 2.1.1 through 2.1.13 below.

Table 1–1 identifies the definitions that are proposed as standard terminology in OASIS Phase IA for the attributes SERVICE_INCREMENT (Hourly, Daily, Weekly, Monthly, and Yearly) and WINDOW (Fixed, Sliding, and Extended). A definition is required for each combination of SERVICE_INCREMENT and WINDOW, except Hourly Sliding and Hourly Extended, which, at the present, are not sufficiently common in the market to require standard definitions.

TABLE 1–1.—STANDARD SERVICE ATTRIBUTE DEFINITIONS REQUIRED IN PHASE IA

	Fixed	Sliding	Extended*
Hourly	X	N/A	N/A
Daily	X	X	X
Weekly	X	X	X
Monthly	X	X	X
Yearly	X	X	X

* Included in the Phase IA S&CP Data Dictionary, Version 1.3, issued September 29, 1998.

The existence of a definition in this table does not imply the services must be offered by a Transmission Provider. Requirements as to which services must be offered are defined by regulation and tariffs.

Each definition assumes a single time zone specified by the Transmission Provider. It is recognized that daylight time switches must be accommodated in practice, but they have been omitted in the definitions for the purpose of simplicity.

Standard 2.1: A Transmission Provider shall use the values and definitions below for the attributes Service_Increment and Window for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use existing attribute values and definitions posted by other Transmission Providers. (See Section 3 for registration requirements.)

Standard 2.1.1: Fixed Hourly—The service starts at the beginning of a clock hour and stops at the end of a clock hour.

Standard 2.1.2: Fixed Daily—The service starts at 00:00 and stops at 24:00 of the same calendar date (same as 00:00 of the next consecutive calendar date).

Standard 2.1.3: Fixed Weekly—The service starts at 00:00 on Monday and stops at 24:00 of the following Sunday (same as 00:00 of the following Monday).

Standard 2.1.4: Fixed Monthly—The service starts at 00:00 on the first date of a calendar month and stops at 24:00 on the last date of the same calendar month (same as 00:00 of the first date of the next consecutive month).

Standard 2.1.5: Fixed Yearly—The service starts at 00:00 on the first date of a calendar year and ends at 24:00 on the last date of the same calendar year (same as 00:00 of the first date of the next consecutive year).

Standard 2.1.6: Sliding Daily—The service starts at the beginning of any hour of the day and stops exactly 24 hours later at the same time on the next day.

Standard 2.1.7: Sliding Weekly—The service starts at 00:00 of any date and stops exactly 168 hours later at 00:00 on the same day of the next week.

Standard 2.1.8: Sliding Monthly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the next month (28–31 days later). If there is no corresponding date in the following month, the service stops at 24:00 on the last day of the next month.

For example: Sliding Monthly starting at 00:00 on January 30 would stop at 24:00 on February 28 (same as 00:00 March 1).

Standard 2.1.9: Sliding Yearly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the following year. If there is no corresponding date in the following year, the service stops at 24:00 on the last day of the same month in the following year.

For example Sliding Yearly service starting on February 29 would stop on February 28 of the following year.

Standard 2.1.10: Extended Daily—The service starts at any hour of a day and stops more than 24 hours later and less than 48 hours later.

Standard 2.1.11: Extended Weekly—The service starts at 00:00 of any date and stops at 00:00 more than one week later, but less than two weeks later.

Standard 2.1.12: Extended Monthly—The service starts at 00:00 of any date and stops at 00:00 more than one month later but less than two months later.

Standard 2.1.13: Extended Yearly—The service starts at 00:00 of any date and stops at 00:00 more than one calendar year later but less than two calendar years later.

Section 2.2 Attribute Values Defining Service Class

Standard 2.2: A Transmission Provider shall use the values and definitions below to describe the service CLASS for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

Standard 2.2.1: Firm—Transmission service that always has priority over NON-FIRM transmission service and includes Native Load Customers, Network Customers, and any transmission service not classified as non-firm in accordance with the definitions in the *pro forma* tariff.

Standard 2.2.2: Non-Firm—Transmission service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm transmission service, Native Load Customers, and Network Customers in accordance with the definitions in the *pro forma* tariff.

Section 2.3 Attribute Values Defining Service Types

Standard 2.3: A Transmission Provider shall use the values and definitions below to describe the service TYPE for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

Standard 2.3.1: Point-to-point—Transmission service that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of the *pro forma* tariff and in accordance with the definitions in the *pro forma* tariff.

Standard 2.3.2: Network—Network Integration Transmission Service that is provided to serve a Network Customer load pursuant to Part III of the *pro forma* tariff and in accordance with the definitions in the *pro forma* tariff.

Section 2.4

Reserved for Future Use.

Section 2.5 Other Service Attribute Values

The Commission has defined six ancillary services in Order No. 888. Other services may be offered pursuant to filed tariffs.

Standard 2.5: A Transmission Provider shall use the definitions below to describe the AS_TYPEs offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Provider. (See Section 3 for registration requirements.)

FERC Ancillary Services Definitions

Standard 2.5.1: Scheduling, System Control and Dispatch Service (SC)—is necessary to the provision of basic transmission service within every control area. This service can be provided only by the operator of the control area in which the transmission facilities used are located. This is because the service is to schedule the movement of power through, out of, within, or into the control area. This service also includes the dispatch of generating resources to maintain generation/load balance and maintain security during the transaction and in accordance with section 3.1 (and Schedule 1) of the *pro forma* tariff.

Standard 2.5.2: Reactive Supply and Voltage Control from Generation Sources Service (RV)—is the provision of reactive power and voltage control by generating facilities under the control of the control area operator. This service is necessary to the provision of basic transmission service within every control area and in accordance with section 3.2 (and Schedule 2) of the *pro forma* tariff.

Standard 2.5.3: Regulation and Frequency Response Service (RF)—is provided for transmission within or into the transmission provider's control area to serve load in the area. Customers may be able to satisfy the regulation service obligation by providing generation with automatic generation control capabilities to the control area in which the load resides and in accordance with section 3.3 (and Schedule 3) of the *pro forma* tariff.

Standard 2.5.4: Energy Imbalance Service (EI)—is the service for transmission within and into the transmission provider's control area to serve load in the area. Energy imbalance represents the deviation between the scheduled and actual delivery of energy to a load in the local control area over a single hour and in accordance with section 3.4 (and Schedule 4) of the *pro forma* tariff.

Standard 2.5.5: Operating Reserve-Spinning Reserve Service (SP)—is provided by generating units that are on-line and loaded at less than maximum output. They are available to serve load immediately in an unexpected contingency, such as an unplanned outage of a generating unit and in accordance with section 3.5 (and Schedule 5) of the *pro forma* tariff.

Standard 2.5.6: Operating Reserve-Supplemental Reserve Service (SU)—is generating capacity that can be used to respond to contingency situations. Supplemental reserve, is not available instantaneously, but rather within a short period (usually ten minutes). It is provided by generating units that are on-line but unloaded, by quick-start generation, and by customer interrupted load and in accordance with section 3.6 (and Schedule 6) of the *pro forma* tariff.

Other Service Definitions

Other services may be offered to Transmission Customers through individual filed tariffs. Examples of other services that may be offered include the Interconnected Operations Services described below in Guides 2.5.7, 2.5.8, and 2.5.9. Ancillary service definitions may be offered pursuant to an individual transmission provider's specific tariff filings.

Guide 2.5.7: Dynamic Transfer (DT)—is the provision of the real-time monitoring, telemetering, computer software, hardware, communications, engineering, and administration required to electronically move all or a portion of the real energy services associated with a generator or load out of its Host Control Area into a different Electronic Control Area.

Guide 2.5.8: Real Power Transmission Losses (TL)—is the provision of capacity and energy to replace energy losses associated with transmission service on the Transmission Provider's system.

Guide 2.5.9: System Black Start Capability (BS)—is the provision of generating equipment that, following a system blackout, is able to start without an outside electrical supply. Furthermore, Black Start Capability is capable of being synchronized to the transmission system such that it can provide a startup supply source for other system capacity that can then be likewise synchronized to the transmission system to supply load as part of a process of re-energizing the transmission system.

Section 3—OASIS Registration Procedures

Section 3.1 Entity Registration

Operation of OASIS requires unambiguous identification of parties.

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization (including DUNS number) or person at the OASIS Home Page at www.tsin.com. Registration shall be completed prior to the commencement of Phase IA and renewed annually and whenever changes in identification occur and thereafter. An entity or person not complying with this requirement may be denied access by a provider to that provider's OASIS node.

The registration requirement applies to any entity logging onto OASIS for the purpose of using or updating information, including Transmission Providers, Transmission Customers, Observers, Control Areas, Security Coordinators, and Independent System Operators.

Section 3.2 Process to Register Non-Standard Service Attribute Values

Section 2 of the OASIS business practice standards and guides addresses the use of standard terminology in defining services on OASIS. These standard definitions for service attribute values will be posted publicly on the OASIS Home Page at www.tsin.com and may be used by all Providers to offer transmission and ancillary services on OASIS. If the Provider determines that the standard definitions are not applicable, the Provider may register new attribute values and definitions on the OASIS Home Page. Any Provider may use the attribute values and definitions posted by another Provider.

Standard 3.2: Providers of transmission and ancillary services shall use only attribute values and definitions that have been registered on the OASIS Home Page at www.tsin.com for all transmission and ancillary services offered on their OASIS.

Guide 3.3: Providers of transmission and ancillary services should endeavor to use on their OASIS nodes attribute values and definitions that have been posted by other Providers on the OASIS Home Page at www.tsin.com whenever possible.

Section 3.3 Registration of Points of Receipt and Delivery

In order to improve coordination of path naming and to enhance the identification of commercially available connection points between Providers and regions, the business practice for Phase IA OASIS requires that:

- Transmission Providers register at the OASIS Home Page at www.tsin.com, all service points (Points of Receipt and Delivery) for which transmission service is available over the OASIS.
- Each Provider would then indicate on its OASIS node, for each Path posted on its OASIS node, the Points of Receipt and Delivery to which each Path is connected.

A Transmission Provider is not required to register specific generating stations as Points of Receipt, unless they were available as service points for the purposes of reserving transmission service on OASIS. The requirement also does not include registration of regional flowgates, unless they are service points for the purposes of reserving transmission on OASIS.

Standard 3.4: A Transmission Provider shall register and thereafter maintain on the OASIS Home Page at www.tsin.com all Points of Receipt and Delivery to and from which a Transmission Customer may reserve and schedule transmission service.

Standard 3.5: For each reservable Path posted on their OASIS nodes, Transmission Providers shall indicate the available Point(s) of Receipt and Delivery for that Path. These Points of Receipt and Delivery shall be from the list registered on the OASIS Home Page at www.tsin.com.

Guide 3.6: When two or more Transmission Providers share common Points of Receipt or Delivery, or when a Path connects Points of Receipt and Delivery in neighboring systems, the Transmission Providers owning and/or operating those facilities should apply consistent names for those connecting paths or common paths on the OASIS.

Section 4—On-Line Negotiation and Confirmation Process

Section 4.1 On-Line Price Negotiation in Short-Term Markets

Standard 4.1: Consistent with FERC policy and regulations, all reservations and price negotiations should be conducted on OASIS.

Guide 4.2: Reserved.

Guide 4.3: Reserved.

Section 4.2 Phase IA Negotiation Process State Transition Diagram

The Phase IA S&CP Document provides a process state diagram to define the Customer and Provider interactions for negotiating transmission service. This diagram defines allowable steps in the reservation request, negotiation, approval and confirmation.

Guide 4.4: The state diagram appearing in Exhibit 4–1 in Section 4.2.10.2 of the Version 1.3 of the S&CP Document constitutes a recommended business practice in OASIS Phase IA.

Guide 4.5: The definitions in Section 4.2.10.2 of the Version 1.3 of the S&CP Document (status values) should be applied to the process states in OASIS Phase IA.

Table 4–1—Reserved.

Section 4.3 Negotiations—Without Competing Bids

The following practices are defined in order to enhance consistency of the reservation process across OASIS Phase IA nodes.

Guide 4.6: A Transmission Provider/Seller shall respond to a Customer's service request, consistent with filed tariffs, within the "Provider Response Time Limit" defined in Table 4–2 "Reservation Timing Requirements". The time limit is measured from the time the request is QUEUED. A Provider may respond by setting the state of the reservation request to one of the following:

- INVALID
- DECLINED
- REFUSED
- COUNTEROFFER
- ACCEPTED
- STUDY (when the tariff allows), leading to REFUSED, COUNTEROFFER, or ACCEPTED

Guide 4.7: Prior to setting a request to ACCEPTED, COUNTEROFFER, or REFUSED a Provider shall evaluate the appropriate resources and ascertain that the requested transfer capability is (or is not) available.

Guide 4.8: For any request that is REFUSED or INVALID, the Transmission Provider should indicate in the COMMENTS field the reason the request was refused or invalid.

Guide 4.9: The Customer may change a request to WITHDRAWN at any time prior to it being CONFIRMED.

Guide 4.10: From ACCEPTED or COUNTEROFFER, a Customer may change the status to CONFIRMED, WITHDRAWN, or REBID. The Customer has the amount of time designated as "Customer Confirmation Time Limit" in Table 4–2 "Reservation Timing Requirements" to change the state of the request to CONFIRMED. The Customer time limit is measured from the first time the request is moved to ACCEPTED or COUNTEROFFER, and is not reset with subsequent iterations of negotiation.

Guide 4.11: After expiration of the "Customer Confirmation Time Limit," specified in Table 4–2 "Reservation Timing Requirements", the Provider has a right to move the request to the RETRACTED state.

Guide 4.12: Should the Customer elect to respond to a Provider's COUNTEROFFER by moving a reservation request to REBID, the Provider shall respond by taking the request to a DECLINED, ACCEPTED, or COUNTEROFFER state within the "Provider Counter Time Limit," specified in Table 4–2 "Reservation Timing Requirements". The Provider response time is measured from the most recent REBID time.

Guide 4.13: The following timing requirements should apply to all reservation requests:

TABLE 4–2.—RESERVATION TIMING GUIDELINES

Class	Service increment	Time QUEUED prior to start	Provider evaluation time limit [1]	Customer confirmation time limit after ACCEPTED or COUNTEROFFER [2]	Provider counter time limit after REBID [3]
Non-Firm	Hourly	<1 hour	Best effort	5 minutes	5 minutes
Non-Firm	Hourly	>1 hour	30 minutes	5 minutes	5 minutes
Non-Firm	Daily	N/A	30 minutes	2 hours	10 minutes
Non-Firm	Weekly	N/A	4 hours	24 hours	4 hours
Non-Firm	Monthly	N/A	2 days	24 hours	4 hours
Firm	Daily	<24 hours	Best effort	2 hours	30 minutes
Firm	Daily	N/A	30 days [4]	24 hours	4 hours
Firm	Weekly	N/A	30 days [4]	48 hours	4 hours
Firm	Monthly	N/A	30 days [4]	4 days	4 hours
Firm	Yearly	N/A	30 days	15 days	4 hours

[1] Consistent with regulations and filed tariffs, measurement starts at the time the request is QUEUED.
[2] Measurement starts at the time the request is first moved to either ACCEPTED or COUNTEROFFER. The time limit does not reset on subsequent changes of state.
[3] Measurement starts at the time the Transmission Customer changes the state to REBID. The measurement resets each time the request is changed to REBID.
[4] Subject to expedited time requirements of Section 17.1 of the *pro forma* tariff. Transmission Providers should make best efforts to respond within 72 hours, or prior to the scheduling deadline, whichever is earlier, to a request for Daily Firm Service received during period 2–30 days ahead of the service start time.

Section 4.4 Negotiations—With Competing Bids for Constrained Resources

Competing bids exist when multiple requests cannot be accommodated due to a lack of available transmission capacity. One general rule is that OASIS requests should be evaluated and granted priority on a first-come-first-served basis established by OASIS QUEUED time. Thus, the first to request service should get it, all else being equal.

Exceptions to this first-come-first-served basis occur when there are competing requests for limited resources and the requests have different priorities established by FERC regulations and filed tariffs. Prior to the introduction of price negotiations, the attribute values that have served as a basis for determining priority include:

- Type (Network, Point-to-point)
- Class (Firm, Non-Firm)
- Increment (Hourly, Daily, Weekly, Monthly, Yearly)
- Duration (the amount of time between the Start Date and the Stop Date)
- Amount (the MW amount)

Under a negotiation model, price can also be used as an attribute for determining priority. The negotiation process increases the possibility that a Provider will be evaluating multiple requests that cannot all be accommodated due to limited resources. In this scenario, it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED). For this to occur, the subsequent request would be of higher priority or of greater price.

Guide 4.14: Consistent with regulations and filed tariffs, the following are recommended relative priorities of Service Request Tiers.[1] Specific exceptions may exist in accordance with filed tariffs. The priorities refer only to negotiation of service and do not refer to curtailment priority.

4.4.1. Service Request Tier 1: Native load, Network, or Long-term Firm
4.4.2. Service Request Tier 2: Short-term Firm
4.4.3. Service Request Tier 3: Network on Non-designated Resources
4.4.4. Service Request Tier 4: Non-firm
4.4.5. Service Request Tier 5: Service over secondary receipt and delivery points

Guide 4.15: Consistent with regulations and filed tariffs, reservation requests should be handled in a first-come-first-served order based on QUEUE_TIME.

Guide 4.16: Consistent with regulations and filed tariffs, Table 4–3 describes the relative priorities of competing service requests and rules for offering right-of-first-refusal. While the table indicates the relative priorities of two competing requests, it also is intended to be applied in the more general case of more than two competing requests.

TABLE 4–3.—PRIORITIES FOR COMPETING RESERVATION REQUESTS

Request 1	Is preempted by request 2	Right of first refusal
Tier 1: Long-term Firm, Native Load, and Network Firm.	N/A—Not preempted by a subsequent request	N/A.
Tier 2: Short-term Firm	Tier 1: Long-term Firm, Native Load, and Network Firm), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	No.
Tier 2: Short-term Firm	Tier 2: Short-term Firm of longer term (duration) [2], while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	Yes, while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted and right of first refusal is not applicable.
Tier 3: Network Service From Non-Designated Resources.	Tiers 1 and 2: All Firm (including Network)	No.
Tier 4: All Non-Firm PTP	Tiers 1 and 2: All Firm (including Network)	No.
Tier 4: All Non-Firm PTP	Tier 3: Network Service from Non-Designated Resources	No.
Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of a longer term (duration) [2]. Except in the last hour prior to start (see Standard 4.23).	Yes.

[1] Note: The term Tier is introduced to avoid confusion with existing terms such as TS_CLASS.

TABLE 4–3.—PRIORITIES FOR COMPETING RESERVATION REQUESTS—Continued

Request 1	Is preempted by request 2	Right of first refusal
Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of equal term (duration)[2] and higher price, when Request 1 is still unconfirmed and Request 2 is received pre-confirmed. A confirmed non-firm PTP may not be preempted for another non-firm request of equal duration. (See Standards 4.22 and 4.25.).	No.
Tier 5: PTP Service over secondary receipt and delivery points.	Tier 5 can be preempted by Tiers 1 through 4	No.

[2] Longer duration, in addition to being higher SERVICE_INCREMENT (*i.e.*, WEEKLY has priority over DAILY), also may mean more multiples of the same SERVICE_INCREMENT (*i.e.*, 3 Days may have priority over 2 Days).

Guide 4.17: For a reservation request that is preempted, the Transmission Provider should indicate the Assignment Reference Number of the reservation that preempted the reservation request.

Guide 4.18: Given competing requests for a limited resource and a right-of-first-refusal is not required to be offered, the Provider may immediately move requests in the CONFIRMED state to DISPLACED, or from an ACCEPTED or COUNTEROFFER state to SUPERSEDED, if the competing request is of higher priority, based on the rules represented in Table 4–3. These state changes require dynamic notification to the Customer if the Customer has requested dynamic notification on OASIS.

Guide 4.19: In those cases where right-of-first-refusal is required to be offered, the Provider shall notify the Customer, through the use of a COUNTEROFFER, of the opportunity to match the subsequent offer.

Guide 4.20: A Customer who has been extended a right-of-first-refusal should have a confirmation time limit equal to the lesser of a) the Customer Confirmation Time Limit in Table 4–2 or b) 24 hours.

Standard 4.21: A Transmission Provider shall apply all rights-of-first-refusal in a non-discriminatory and open manner for all Customers.

Standard 4.22: Once a non-firm PTP request has been confirmed, it shall not be displaced by a subsequent non-firm PTP request of equal duration and higher price.

Standard 4.23: A confirmed, non-firm PTP reservation for the next hour shall not be displaced within one hour of the start of the reservation by a subsequent non-firm PTP reservation request of longer duration.

Guide 4.24: A Transmission Provider should honor any reservation request submitted for an unconstrained Path if the Customer's bid price is equal to or greater than the Provider's posted offer price at the time the request was queued, even if later requests are submitted at a higher price. This guide applies even when the first request is still unconfirmed, unless the Customer Confirmation Time Limit has expired for the first request.

Guide 4.25: Once an offer to provide non-firm PTP transmission service at a given price is extended to a Customer by the Provider, and while this first request is still unconfirmed but within the Customer Confirmation Time Limit, the Provider should not preempt or otherwise alter the status of that first request on receipt of a subsequent request of the same Tier and equal duration at a higher price, unless the subsequent request is submitted as pre-confirmed.

Guide 4.26: If during a negotiation of service (*i.e.*, prior to Customer confirmation) a subsequent pre-confirmed request for service over the same limited resource of equal duration but higher price is received, the Provider *must* COUNTEROFFER the price of service on the prior COUNTEROFFER or ACCEPTED price to match the competing offer, in order to give the first Customer an opportunity to match the offer. This practice must be implemented in a non-discriminatory manner.

Section 5—Procurement of Ancillary and Other Services

Section 5.1 Introduction

Phase IA OASIS data templates allow the coupling of ancillary service arrangements with the purchase of transmission service for the purpose of simplifying the overall process for Customers. Transmission Providers must indicate (consistent with filed tariffs), which services are MANDATORY (must be taken from the Primary Provider), REQUIRED (must be provided for but may be procured from alternative sources), or OPTIONAL (not required as a condition of transmission service).

The Transmission Customer should make known to the Transmission Provider at the time of the reservation request certain options related to arrangement of ancillary services. The Transmission Customer may indicate:

- I will take all the MANDATORY and REQUIRED ancillary services from the Primary Provider.
- I will take REQUIRED ancillary services from Third Party Seller "X".
- I would like to purchase OPTIONAL services.
- I will self provide ancillary services.
- I will arrange for ancillary services in the future (prior to scheduling).

While these interactions are available in the Phase IA S&CP Document, there is a need to clarify the associated business practices. The standards in Section 5 apply to services defined in filed tariffs.

Section 5.2 Transmission Provider Requirements

Standard 5.1: The Transmission Provider shall designate which ancillary services are MANDATORY, REQUIRED, or OPTIONAL for each offered transmission service to the extent these requirements can be determined in advance of the submittal of a reservation request on a specific Path by a Transmission Customer.

Guide 5.2: A Transmission Provider may modify a Transmission Customer's service request to indicate the Transmission Provider as the SELLER of any ancillary service, which is MANDATORY, to be taken from the Transmission Provider.

Standard 5.3: For REQUIRED and OPTIONAL services, the Transmission Provider shall *not* select a SELLER of ancillary service without the Transmission Customer first selecting that SELLER.

Guide 5.4: A Transmission Provider may accept a Transmission Customer's request for an ancillary service, which is not MANDATORY or REQUIRED, but shall indicate to the Transmission Customer at the time of acceptance under PROVIDER COMMENTS that the service is not MANDATORY or REQUIRED.

Section 5.3 Transmission Customer Requirements

Guide 5.5: The Transmission Customer should indicate with the submittal of a transmission reservation request, the preferred options for provision of ancillary services, such as the desire to use an alternative resource.

Guide 5.6: A Transmission Customer may, but is not required to, indicate a third party SELLER of ancillary services, if these services are arranged by the Transmission Customer off the OASIS and if such arrangements are permitted by the Transmission Provider's tariff.

Section 6—Pathnaming Standards

Section 6.1 Introduction

The Data Element Dictionary of the OASIS S&CP Document, Version 1.3, defines a path name in terms of a 50-character alphanumeric string:

RR/TPTP/PATHPATHPATH/
OPTIONALFROM-OPTIONALTOTO/SPR

RegionCode/TransmissionProviderCode/
PathName/OptionalFrom–To(POR-POD)/
Spare

This definition leaves it to the Transmission Providers to name the paths from their own perspective. The following standards provide an unambiguous convention for naming paths and will produce more consistent path names.

Section 6.2 Transmission Provider Requirements

Standard 6.1: A transmission provider shall use the path naming convention defined in the S&CP Data Dictionary for the naming of all reservable paths posted on OASIS.

Standard 6.2: A transmission provider shall use the third field in the path name to indicate the sending and receiving control areas. The control areas shall be designated using standard NERC codes for the control areas, separated by a hyphen. For example, the first three fields of the path name will be:

RR/TPTP/CAXX-CAYY/

Standard 6.3: A transmission provider shall use the fourth field of the path name to indicate POR and POD separated by a hyphen. For example, a path with a specific POR/POD would be shown as:

RR/TPTP/CAXX-CAYY/PORPORPORPOR-PODPODPODPOD/

If the POR and POD are designated as control areas, then the fourth field may be left blank (as per the example in 6.2).

Guide 6.4: A transmission provider may designate a sub-level for Points of Receipt and Delivery. For example, a customer reserves a path to POD AAAA. The ultimate load may be indeterminate at the time. Later, the customer schedules energy to flow to a particular load that may be designated by the transmission provider as a sub-level Point of Delivery. This option is necessary to ensure certain providers are not precluded from using more specific service points by the inclusion of the POR/POD in the path name. All sub-level PORs and PODs must be registered as such on www.tsin.com.

[**Note:** This attachment will not appear in the Code of Federal Regulations.]

Sections 13.2, 14.2, 14.7, and 17.5 of the *pro forma* tariff provide as follows:

13.2 Reservation Priority: Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis i.e., in the chronological sequence in which each Transmission Customer has reserved service. Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction. If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to the following deadlines; one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transmission capability is insufficient to satisfy all Applications, an Eligible Customer with a reservation for shorter term service has the right of first refusal to match any longer term reservation before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff. Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff. All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in Section 2.2.

14.2 Reservation Priority: Non-Firm Point-To-Point Transmission Service shall be available from transmission capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted. A longer-term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.7 Curtailment or Interruption of Service: The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4) transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (*e.g.*, hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

17.5 Response to a Completed Application: Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

[**Note:** This attachment will not appear in the Code of Federal Regulations.]

Section 4.2.10.2 of the S&CP Document provides as follows:

4.2.10.2 Status Values: The possible STATUS values are:

QUEUED = initial status assigned by TSIP on receipt of "customer services purchase request".

INVALID = assigned by TSIP or Provider indicating an invalid field in the request, such as improper POR, POD, source, sink, etc. (Final state).

RECEIVED = assigned by Provider or Seller to acknowledge QUEUED requests and indicate the service request is being evaluated, including for completing the required ancillary services.

STUDY = assigned by Provider or Seller to indicate some level of study is required or being performed to evaluate service request.

REFUSED = assigned by Provider or Seller to indicate service request has been denied

due to availability of transmission capability. SELLER__COMMENTS should be used to communicate details for denial of service. (Final state).

COUNTEROFFER = assigned by Provider or Seller to indicate that a new OFFER__PRICE is being proposed.

REBID = assigned by Customer to indicate that a new BID__PRICE is being proposed.

SUPERSEDED = assigned by Provider or Seller when a request which has not yet been confirmed is displaced by another reservation request. (Final state).

ACCEPTED = assigned by Provider or Seller to indicate the service request at the designated OFFER__PRICE has been approved/accepted. If the reservation request was submitted PRECONFIRMED the OASIS Node shall immediately set the reservation status to CONFIRMED. Depending upon the type of ancillary services required, the Seller may or may not require all ancillary service reservations to be completed before accepting a request.

DECLINED = assigned by Provider or Seller to indicate that the BID__PRICE is unacceptable and that negotiations are terminated. SELLER__COMMENTS should be used to communicate reason for denial of service. (Final state).

CONFIRMED = assigned by Customer in response to Provider or Seller posting "ACCEPTED" status, to confirm service. Once a request has been "CONFIRMED", a transmission service reservation exists. (Final state, unless overridden by DISPLACED or ANNULLED state).

WITHDRAWN = assigned by Customer at any point in request evaluation to withdraw the request from any further action. (Final state).

DISPLACED = assigned by Provider or Seller when a "CONFIRMED" reservation from a Customer is displaced by a longer term reservation and the Customer has exercised right of first refusal (i.e., refused to match terms of new request). (Final state).

ANNULLED = assigned by Provider or Seller when, by mutual agreement with the Customer, a confirmed reservation is to be voided. (Final state).

RETRACTED = assigned by Provider or Seller when the Customer fails to confirm or withdraw the request within the required time period. (Final state).

[FR Doc. 99–2388 Filed 2–2–99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–121865–98]

RIN 1545–AW94

Continuation Coverage Requirements Applicable to Group Health Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance under section 4980B of the Internal Revenue Code relating to the COBRA continuation coverage requirements applicable to group health plans. The proposed regulations in this document supplement final regulations being published elsewhere in this issue of the **Federal Register**. The regulations will generally affect sponsors of and participants in group health plans, and they provide plan sponsors and plan administrators with guidance necessary to comply with the law.

DATES: Written or electronic comments and outlines of topics to be discussed at the public hearing scheduled for June 8, 1999 at 10 a.m. must be received by May 14, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–121865–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–121865–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.ustreas.gov/prod/tax__regs/comments.html*.

The public hearing scheduled for June 8, 1999 will be held in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Yurlinda Mathis at 202–622–4695; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, LaNita Van Dyke at 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amended the Internal Revenue Code (Code) to add health care continuation coverage requirements. These provisions, now set forth in section 4980B,[1] generally apply to a group health plan maintained by an employer or employee organization, with certain exceptions, and require such a plan to offer each qualified beneficiary who would otherwise lose coverage as a result of a qualifying event an opportunity to elect, within the applicable election period, COBRA continuation coverage. The COBRA continuation coverage requirements were amended on various occasions,[2] most recently under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Proposed regulations providing guidance under the continuation coverage requirements as originally enacted by COBRA, and as amended by the Tax Reform Act of 1986, were published as proposed Treasury Regulation § 1.162–26 in the **Federal Register** of June 15, 1987 (52 FR 22716). Supplemental proposed regulations were published as proposed Treasury Regulation § 54.4980B–1 in the **Federal Register** of January 7, 1998 (63 FR 708). Final regulations are being published elsewhere in this issue of the **Federal Register**.

The new set of proposed regulations being published in this notice of proposed rulemaking addresses how the COBRA continuation coverage requirements apply in business reorganizations. Also proposed are rules relating to the interaction of the COBRA continuation coverage requirements and the Family and Medical Leave Act of 1993, which were previously published as Notice 94–103 (1994–2 C.B. 569), and certain other issues. These provisions in the new set of proposed regulations are summarized in the explanation below. For a summary of the new proposed regulations integrated with a summary of the final regulations, see the "Explanation of Provisions" section of the preamble to the final regulations published elsewhere in this issue of the **Federal Register**.

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[1] The COBRA continuation coverage requirements were initially set forth in section 162(k), but were moved to section 4980B by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). TAMRA changed the sanction for failure to comply with the continuation coverage requirements of the Internal Revenue Code from disallowance of certain employer deductions under section 162 (and denial of the income exclusion under section 106(a) to certain highly compensated employees of the employer) to an excise tax under section 4980B.

[2] Changes affecting the COBRA continuation coverage provisions were made under the Omnibus Budget Reconciliation Act of 1986, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, the Small Business Job Protection Act of 1996, and the Health Insurance Portability and Accountability Act of 1996. The statutory continuation coverage requirements have also been affected by an amendment made to the definition of group health plan in section 5000(b)(1) by the Omnibus Budget Reconciliation Act of 1993; that definition is incorporated by reference in section 4980B(g)(2).

Explanation of Provisions

Plans That Must Comply

The new proposed regulations would make a number of changes to the section in the final regulations that addresses which plans must comply with the COBRA continuation coverage requirements. The principal changes being proposed are to add rules simplifying the determination of whether the small-employer plan exception applies, giving employers and employee organizations broad discretion to determine the number of group health plans that they maintain, and providing an exception for certain health flexible spending accounts.

In determining whether a plan is eligible for the small-employer plan exception, part-time employees, as well as full-time employees, must be taken into account. Several commenters on the 1987 proposed regulations requested clarification of how to count part-time employees for the small-employer plan exception, and the new proposed regulations provide guidance on this issue. Under the new proposed regulations, instead of each part-time employee counting as a full employee, each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee works for the employer divided by the number of hours that an employee must work in order to be considered a full-time employee. The number of hours that must be worked to be considered a full-time employee is determined in a manner consistent with the employer's general employment practices, although for this purpose not more than eight hours a day or 40 hours a week may be used. An employer may count employees for each typical business day or may count employees for a pay period and attribute the total number of employees for that pay period to each typical business day that falls within the pay period. The employer must use the same method for all employees and for the entire year for which the small-employer plan determination is made.

The new proposed regulations provide guidance, for purposes of the COBRA continuation coverage requirements, on how to determine the number of group health plans that an employer or employee organization maintains. Under these rules, the employer or employee organization is generally permitted to establish the separate identity and number of group health plans under which it provides health care benefits to employees. Thus, if an employer or employee organization provides a variety of health care benefits to employees, it generally may aggregate the benefits into a single group health plan or disaggregate benefits into separate group health plans. The status of health care benefits as part of a single group health plan or as separate plans is determined by reference to the instruments governing those arrangements. If it is not clear from the instruments governing an arrangement or arrangements to provide health care benefits whether the benefits are provided under one plan or more than one plan, or if there are no instruments governing the arrangement or arrangements, all such health care benefits (other than those for qualified long-term care services) provided by a single entity (determined without regard to the controlled group rules) constitute a single group health plan.

Under the new proposed regulations, a multiemployer plan and a plan other than a multiemployer plan are always separate plans. In addition, any treatment of health care benefits as constituting separate group health plans will be disregarded if a principal purpose of the treatment is to evade any requirement of law. Of course, an employer's flexibility to treat benefits as part of separate plans may be limited by the operation of other laws, such as the prohibition in section 9802 on conditioning eligibility to enroll in a group health plan on the basis of any health factor of an individual.

Many commenters on the 1987 proposed regulations requested clarification of the application of COBRA to health care benefits provided under flexible spending arrangements (health FSAs). Some commentators argued that health FSAs should not be subject to COBRA. Health FSAs satisfy the definition of group health plan in section 5000(b)(1) and, accordingly, are generally subject to the COBRA continuation coverage requirements. However, COBRA is intended to ensure that a qualified beneficiary has guaranteed access to coverage under a group health plan and that the cost of that coverage is no greater than 102 percent of the applicable premium.

The IRS and Treasury believe that the purposes of COBRA are not furthered by requiring an employer to offer COBRA for a plan year if the amount that the employer could require to be paid for the COBRA coverage for the plan year would exceed the maximum benefit that the qualified beneficiary could receive under the FSA for that plan year and if the qualified beneficiary could not avoid a break in coverage, for purposes of the HIPAA portability provisions,[3] by electing COBRA coverage under the FSA. Accordingly, the new proposed regulations contain a rule limiting the application of the COBRA continuation coverage requirements in the case of health FSAs.

Under this proposed rule, if the health FSA satisfies two conditions, the health FSA need not make COBRA continuation coverage available to a qualified beneficiary for any plan year after the plan year in which the qualifying event occurs. The first condition that the health FSA must satisfy for this exception to apply is that the health FSA is not subject to the HIPAA portability provisions in sections 9801 though 9833 because the benefits provided under the health FSA are excepted benefits. (See sections 9831 and 9832.)[4] The second condition is that, in the plan year in which the qualifying event of a qualified beneficiary occurs, the maximum amount that the health FSA could require to be paid for a full plan year of COBRA continuation coverage equals or exceeds the maximum benefit available under the health FSA for the year. It is contemplated that this second condition will be satisfied in most cases.

Moreover, if a third condition is satisfied, the health FSA need not make COBRA continuation coverage available with respect to a qualified beneficiary at all. This third condition is satisfied if, as of the date of the qualifying event, the maximum benefit available to the qualified beneficiary under the health FSA for the remainder of the plan year is not more than the maximum amount that the plan could require as payment for the remainder of that year to maintain coverage under the health FSA.

Duration of COBRA Continuation Coverage

The new proposed regulations would make two principal changes to the section in the final regulations

[3] Under HIPAA, a qualified beneficiary who maintains coverage after termination of employment under a group health plan that is subject to HIPAA can avoid a break in coverage and thereby avoid becoming subject to a preexisting condition exclusion upon later becoming covered by another group health plan.

[4] The IRS and Treasury, together with the U.S. Department of Labor and the U.S. Department of Health and Human Services, have issued a notice (62 FR 67688) holding that a health FSA is exempt from HIPAA because the benefits provided under it are excepted benefits under sections 9831 and 9832 if the employer also provides another group health plan, the benefits under the other plan are not limited to excepted benefits, and the maximum reimbursement under the health FSA is not greater than two times the employee's salary reduction election (or if greater, the employee's salary reduction election plus five hundred dollars).

addressing the duration of COBRA continuation coverage.

The 1987 proposed regulations reflect the statutory rules that were then in effect for the maximum period that a plan is required to make COBRA continuation coverage available. Since then the statute has been amended to add the disability extension, to permit plans to extend the notice period if the maximum coverage period is also extended (referred to as the optional extension of the required periods), and to add a special rule in the case of Medicare entitlement preceding a qualifying event that is the termination or reduction of hours of employment. The new proposed regulations reflect these statutory changes. The maximum coverage period for a qualifying event that is the bankruptcy of the employer has also been added to the new proposed regulations.

The 1987 proposed regulations incorporate the statutory bases for terminating COBRA continuation coverage except the rule (added in 1989 and amended in 1996) that COBRA coverage can be terminated in the month that is more than 30 days after a final determination that a qualified beneficiary is no longer disabled. The new proposed regulations add this statutory basis for terminating COBRA coverage, with two clarifications. First, the new proposed regulations clarify that a determination that a qualified beneficiary is no longer disabled allows termination of COBRA continuation coverage for all qualified beneficiaries who were entitled to the disability extension by reason of the disability of the qualified beneficiary who has been determined to no longer be disabled. Second, the new proposed regulations clarify that such a determination does not allow termination of the COBRA continuation coverage of a qualified beneficiary before the end of the maximum coverage period that would apply without regard to the disability extension.

Business Reorganizations

The 1987 proposed regulations provide little direct guidance on the allocation of responsibility for COBRA continuation coverage in the event of corporate transactions, such as a sale of stock of a subsidiary or a sale of substantial assets. Commenters on the 1987 proposed regulations requested further guidance on corporate transactions, pointing out that the existing degree of uncertainty tends to drive up the costs and risks of a transaction to both buyers and sellers. The IRS and Treasury share this view and believe also that greater certainty helps to protect the rights of qualified beneficiaries in these transactions. The IRS has been contacted by many qualified beneficiaries whose COBRA continuation coverage has been dropped or denied in the context of a corporate transaction. In many cases, these qualified beneficiaries have been told by each of the buyer and the seller that the other party is the one responsible for providing them with COBRA continuation coverage.

The preamble to the 1998 proposed regulations requested comments on a possible approach to allocating responsibility for COBRA continuation coverage in corporate transactions. Commenters suggested that, in a stock sale, as in an asset sale, it would be consistent with standard commercial practice to provide that the seller retains liability for all existing qualified beneficiaries, including those formerly associated with the subsidiary being sold. The IRS and Treasury have studied the comments and given consideration to several alternatives with a view to establishing rules that will minimize the administrative burden and transaction costs for the parties to transactions while protecting the rights of qualified beneficiaries and maintaining consistency with the statute.

Accordingly, the new proposed regulations make clear that the parties to a transaction are free to allocate the responsibility for providing COBRA continuation coverage by contract, even if the contract imposes responsibility on a different party than would the new proposed regulations. So long as the party to whom the contract allocates responsibility performs its obligations, the other party will have no responsibility for providing COBRA continuation coverage. If, however, the party allocated responsibility under the contract defaults on its obligation, and if, under the new proposed regulations, the other party would have the obligation to provide COBRA continuation coverage in the absence of a contractual provision, then the other party would retain that obligation. This approach would avoid prejudicing the rights of qualified beneficiaries to COBRA continuation coverage based upon the provisions of a contract to which they were not a party and under which the employer with the underlying obligation under the regulations to provide COBRA continuation coverage could otherwise contract away that obligation to a party that fails to perform. Moreover, the party with the underlying responsibility under the regulations can insist on appropriate security and, of course, could pursue contractual remedies against the defaulting party.

The new proposed regulations provide, for both sales of stock and sales of substantial assets, such as a division or plant or substantially all the assets of a trade or business, that the seller retains the obligation to make COBRA continuation coverage available to existing qualified beneficiaries. In addition, in situations in which the seller ceases to provide any group health plan to any employee in connection with the sale—whether such a cessation is in connection with the sale is determined on the basis of the facts and circumstances of each case—and thus is not responsible for providing COBRA continuation coverage, the new proposed regulations provide that the buyer is responsible for providing COBRA continuation coverage to existing qualified beneficiaries. This secondary liability for the buyer applies in all stock sales and in all sales of substantial assets in which the buyer continues the business operations associated with the assets without interruption or substantial change.

A particular type of asset sale raises issues for which the new proposed regulations do not provide any special rules. (Thus, the general rules in the new proposed regulations for business reorganizations would apply to this type of transaction.) This type of asset sale is one in which, after purchasing a business as a going concern, the buyer continues to employ the employees of that business and continues to provide those employees exactly the same health coverage that they had before the sale (either by providing coverage through the same insurance contract or by establishing a plan that mirrors the one that provided benefits before the sale). The application of the rules in the new proposed regulations to this type of asset sale would require the seller to make COBRA continuation coverage available to the employees continuing in employment with the buyer (and to other family members who are qualified beneficiaries). Ordinarily, the continuing employees (or their family members) would be very unlikely to elect COBRA continuation coverage from the seller when they can receive the same coverage (usually at much lower cost) as active employees of the buyer.

Consideration is being given to whether, under appropriate circumstances, such an asset sale would be considered not to result in a loss of coverage for those employees who continue in employment with the buyer after the sale. A countervailing concern,

however, relates to those qualified beneficiaries who might have a reason to elect COBRA continuation coverage from the seller. An example of such a qualified beneficiary would be an employee who continues in employment with the buyer, whose family is likely to have medical expenses that exceed the cost of COBRA coverage, and who has significant questions about the solvency of the buyer or other concerns about how long the buyer might continue to provide the same health coverage.

Under one possible approach, a loss of coverage would be considered not to have occurred so long as the purchasing employer in an asset sale continued to maintain the same group health plan coverage that the seller maintained before the sale without charging the employees any greater percentage of the total cost of coverage than the seller had charged before the sale. For this purpose, the coverage would be considered unchanged if there was no obligation to provide a summary of material modifications within 60 days after the change due to a material reduction in covered services or benefits under the rules that apply under Title I of ERISA. If these conditions were satisfied for the maximum coverage period that would otherwise apply to the seller's termination of employment of the continuing employees (generally 18 months from the date of the sale), then those terminations of employment would never be considered qualifying events. If the conditions were not satisfied for the full maximum coverage period, then on the date when they ceased to be satisfied the seller would be obligated to make COBRA continuation coverage available for the balance of the maximum coverage period.

Comments are invited on the utility of such a rule, either in situations in which the seller retains an ownership interest in the buyer after the sale (for example, a sale of assets from a 100-percent owned subsidiary to a 75-percent owned subsidiary) or, more generally, in situations in which the seller and the buyer are unrelated. Suggestions are also solicited for other rules that would protect qualified beneficiaries while providing relief to employers in these situations.

Although the new proposed regulations address how COBRA obligations are affected by a sale of stock (and a sale of substantial assets), the new proposed regulations do not address how the obligation to make COBRA continuation coverage available is affected by the transfer of an ownership interest in a noncorporate entity that causes the noncorporate entity to cease to be a member of a group of trades or businesses under common control (whether or not it becomes a member of a different group of trades or business under common control). Comments are invited on this issue.

Employer Withdrawals From Multiemployer Plans

The new proposed regulations also address COBRA obligations in connection with an employer's cessation of contributions to a multiemployer group health plan. The new proposed regulations provide that the multiemployer plan generally continues to have the obligation to make COBRA continuation coverage available to qualified beneficiaries associated with that employer. (There generally would not be any obligation to make COBRA continuation coverage available to continuing employees in this situation because a cessation of contributions is not a qualifying event.) However, once the employer provides group health coverage to a significant number of employees who were formerly covered under the multiemployer plan, or starts contributing to another multiemployer plan on their behalf, the employer's plan (or the new multiemployer plan) would have the obligation to make COBRA continuation coverage available to the existing qualified beneficiaries. This rule is contrary to the holding in *In re Appletree Markets, Inc.*, 19 F.3d 969 (5th Cir. 1994), which held that the multiemployer plan continued to have the COBRA obligations with respect to existing qualified beneficiaries after the withdrawing employer established a plan for the same class of employees previously covered under the multiemployer plan.

Interaction of FMLA and COBRA

The new proposed regulations set forth rules regarding the interaction of the COBRA continuation coverage requirements with the provisions of the Family and Medical Leave Act of 1993 (FMLA). The rules under the new proposed regulations are substantially the same as those set forth in Notice 94–103. The last two questions-and-answers in that notice have not been included in the new proposed regulations because they relate to general subject matter that is addressed elsewhere in the regulations.

Under the new proposed regulations, the taking of FMLA leave by a covered employee is not itself a qualifying event. Instead, a qualifying event occurs when an employee who is covered under a group health plan immediately prior to FMLA leave (or who becomes covered under a group health plan during FMLA leave) does not return to work with the employer at the end of FMLA leave and would, but for COBRA continuation coverage, lose coverage under the group health plan. (As under the general rules of COBRA, this would also constitute a qualifying event with respect to the spouse or any dependent child of the employee.) The qualifying event is deemed to occur on the last day of the employee's FMLA leave, and the maximum coverage period generally begins on that day. (The new proposed regulations provide a special rule for cases where coverage is not lost until a later date and the plan provides for the optional extension of the required periods.) In the case of such a qualifying event, the employer cannot condition the employee's rights to COBRA continuation coverage on the employee's reimbursement of any premiums paid by the employer to maintain the employee's group health plan coverage during the period of FMLA leave.

Any lapse of coverage under the group health plan during the period of FMLA leave and any state or local law requiring that group health plan coverage be provided for a period longer than that required by the FMLA are disregarded in determining whether the employee has a qualifying event on the last day of that leave. However, the employee's loss of coverage at the end of FMLA leave will not constitute a qualifying event if, prior to the employee's return from FMLA leave, the employer has eliminated group health plan coverage for the class of employees to which the employee would have belonged if she or he had not taken FMLA leave.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for

Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 8, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 14, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these proposed regulations is Russ Weinheimer, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended in part by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.4980B–9 also issued under 26 U.S.C. 4980B.

Section 54.4980B–10 also issued under 26 U.S.C. 4980B. * * *

Par. 2. Section 54.4980B–0 is amended by:

1. Revising the introductory text.
2. Adding entries for §§ 54.4980B–9 and 54.4980B–10 at the end of the list of sections.
3. Revising the entries for Q–3 and Q–6 of § 54.4980B–2 in the list of questions.
4. Revising the entry for Q–4 of § 54.4980B–7 in the list of questions.
5. Adding an entry for the section heading for § 54.4980B–9 in the list of questions.
6. Adding an entry for the section heading for § 54.4980B–10 in the list of questions.

The additions and revisions read as follows:

§ 54.4980B–0 Table of contents.

This section contains first a list of the section headings and then a list of the questions in each section in §§ 54.4980B–1 through 54.4980B–10.

List of Sections

* * * * *

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

§ 54.4980B–10 Interaction of FMLA and COBRA.

List of Questions

* * * * *

§ 54.4980B–2 Plans that must comply.

* * * * *

Q–3: What is a multiemployer plan?

* * * * *

Q–6: For purposes of COBRA, how is the number of group health plans that an employer or employee organization maintains determined?

* * * * *

§ 54.4980B–7 Duration of COBRA continuation coverage.

* * * * *

Q–4: When does the maximum coverage period end?

* * * * *

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

Q–1: For purposes of this section, what are a business reorganization, a stock sale, and an asset sale?

Q–2: In the case of a stock sale, what are the selling group, the acquired organization, and the buying group?

Q–3: In the case of an asset sale, what are the selling group and the buying group?

Q–4: Who is an M&A qualified beneficiary?

Q–5: In the case of a stock sale, is the sale a qualifying event with respect to a covered employee who is employed by the acquired organization before the sale and who continues to be employed by the acquired organization after the sale, or with respect to the spouse or dependent children of such a covered employee?

Q–6: In the case of an asset sale, is the sale a qualifying event with respect to a covered employee whose employment immediately before the sale was associated with the purchased assets, or with respect to the spouse or dependent children of such a covered employee who are covered under a group health plan of the selling group immediately before the sale?

Q–7: In a business reorganization, are the buying group and the selling group permitted to allocate by contract the responsibility to make COBRA continuation coverage available to M&A qualified beneficiaries?

Q–8: Which group health plan has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries in a business reorganization?

Q–9: Can the cessation of contributions by an employer to a multiemployer group health plan be a qualifying event?

Q–10: If an employer stops contributing to a multiemployer group health plan, does the multiemployer plan have the obligation to make COBRA continuation coverage available to a qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer that has stopped contributing to the multiemployer plan?

§ 54.4980B–10 Interaction of FMLA and COBRA.

Q–1: In what circumstances does a qualifying event occur if an employee does not return from leave taken under FMLA?

Q–2: If a qualifying event described in Q&A–1 of this section occurs, when does it occur, and how is the maximum coverage period measured?

Q–3: If an employee fails to pay the employee portion of premiums for coverage under a group health plan during FMLA leave or declines coverage under a group health plan during FMLA leave, does this affect the determination of whether or when the employee has experienced a qualifying event?

Q–4: Is the application of the rules in Q&A–1 through Q&A–3 of this section affected by a requirement of state or local law to provide a period of coverage longer than that required under FMLA?

Q–5: May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage

under a group health plan during FMLA leave?

Par. 3. Section 54.4980B–1, A–1 is amended by:

1. Removing the language "54.4980B–8" and adding "54.4980B–10" in its place in the last sentence of paragraph (a).

2. Removing the language "54.4980B–8" and adding "54.4980B–10" in its place in the third sentence and last sentence of paragraph (b).

3. Removing the last sentence of paragraph (c) and adding two sentences in its place to read as follows:

§ 54.4980B–1 COBRA in general.

* * * * *

A–1: * * *

(c) * * * Section 54.4980B–9 contains special rules for how COBRA applies in connection with business reorganizations and employer withdrawals from a multiemployer plan, and § 54.4980B–10 addresses how COBRA applies for individuals who take leave under the Family and Medical Leave Act of 1993. Unless the context indicates otherwise, any reference in §§ 54.4980B–1 through § 54.4980B–10 to COBRA refers to section 4980B (as amended) and to the parallel provisions of ERISA.

* * * * *

Par. 4. Section 54.4980B–2 is amended by:

1. Revising paragraph (a) in A–1.

2. Removing the language "54.4980B–8" and adding "54.4980B–10" in its place in the first sentence of paragraph (b) in A–1.

3. Revising A–2.

4. Adding Q&A–3.

5. Removing the language "54.4980B–8" and adding "54.4980B–10" in its place in the last sentence of paragraph (a) in A–4.

6. Adding a sentence immediately before the last sentence of the introductory text of paragraph (a) in A–5.

7. Removing the language "54.4980B–8" and adding "54.4980B–10" in its place in the last sentence of paragraph (c) in A–5.

8. Adding paragraphs (d), (e), and (f) in A–5.

9. Adding Q&A–6.

10. Revising A–8.

11. Revising paragraph (a) in A–10.

The additions and revisions read as follows:

§ 54.4980B–2 Plans that must comply.

* * * * *

A–1: (a) For purposes of section 4980B, a group health plan is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to their families. Individuals who have an employment-related connection to the employer or employee organization consist of employees, former employees, the employer, and others associated or formerly associated with the employer or employee organization in a business relationship (including members of a union who are not currently employees). Health care is provided under a plan whether provided directly or through insurance, reimbursement, or otherwise, and whether or not provided through an on-site facility (except as set forth in paragraph (d) of this Q&A–1), or through a cafeteria plan (as defined in section 125) or other flexible benefit arrangement. (See paragraphs (b) through (e) in Q&A–8 of this section for rules regarding the application of the COBRA continuation coverage requirements to certain health flexible spending arrangements.) For purposes of this Q&A–1, insurance includes not only group insurance policies but also one or more individual insurance policies in any arrangement that involves the provision of health care to two or more employees. A plan maintained by an employer or employee organization is any plan of, or contributed to (directly or indirectly) by, an employer or employee organization. Thus, a group health plan is maintained by an employer or employee organization even if the employer or employee organization does not contribute to it if coverage under the plan would not be available at the same cost to an individual but for the individual's employment-related connection to the employer or employee organization. These rules are further explained in paragraphs (b) through (d) of this Q&A–1. An exception for qualified long-term care services is set forth in paragraph (e) of this Q&A–1, and for medical savings accounts in paragraph (f) of this Q&A–1. See Q&A–6 of this section for rules to determine the number of group health plans that an employer or employee organization maintains.

* * * * *

A–2: (a) For purposes of section 4980B, *employer* refers to—

(1) A person for whom services are performed;

(2) Any other person that is a member of a group described in section 414(b), (c), (m), or (o) that includes a person described in paragraph (a)(1) of this Q&A–2; and

(3) Any successor of a person described in paragraph (a)(1) or (2) of this Q&A–2.

(b) An employer is a successor employer if it results from a consolidation, merger, or similar restructuring of the employer or if it is a mere continuation of the employer. See paragraph (c) in Q&A–8 of § 54.4980B–9 for rules describing the circumstances in which a purchaser of substantial assets is a successor employer to the employer selling the assets.

Q–3: What is a multiemployer plan?

A–3: For purposes of §§ 54.4980B–1 through 54.4980B–10, a multiemployer plan is a plan to which more than one employer is required to contribute, that is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and that satisfies such other requirements as the Secretary of Labor may prescribe by regulation. Whenever reference is made in §§ 54.4980B–1 through 54.4980B–10 to a plan of or maintained by an employer or employee organization, the reference includes a multiemployer plan.

* * * * *

A–5: (a) * * * See Q&A–6 of this section for rules to determine the number of plans that an employer or employee organization maintains. * * *

* * * * *

(d) In determining the number of the employees of an employer, each full-time employee is counted as one employee and each part-time employee is counted as a fraction of an employee, determined in accordance with paragraph (e) of this Q&A–5.

(e) An employer may determine the number of its employees on a daily basis or a pay period basis. The basis used by the employer must be used with respect to all employees of the employer and must be used for the entire year for which the number of employees is being determined. If an employer determines the number of its employees on a daily basis, it must determine the actual number of full-time employees on each typical business day and the actual number of part-time employees and the hours worked by each of those part-time employees on each typical business day. Each full-time employee counts as one employee on each typical business day and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee and the denominator equal to the number of hours that must be worked on a typical business day in order to be considered

a full-time employee. If an employer determines the number of its employees on a pay period basis, it must determine the actual number of full-time employees employed during that pay period and the actual number of part-time employees employed and the hours worked by each of those part-time employees during the pay period. For each day of that pay period, each full-time employee counts as one employee and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee during that pay period and the denominator equal to the number of hours that must be worked during that pay period in order to be considered a full-time employee. The determination of the number of hours required to be considered a full-time employee is based upon the employer's employment practices, except that in no event may the hours required to be considered a full-time employee exceed eight hours for any day or 40 hours for any week.

(f) In the case of a multiemployer plan, the determination of whether the plan is a small-employer plan on any particular date depends on which employers are contributing to the plan on that date and on the workforce of those employers during the preceding calendar year. If a plan that is otherwise subject to COBRA ceases to be a small-employer plan because of the addition during a calendar year of an employer that did not normally employ fewer than 20 employees on a typical business day during the preceding calendar year, the plan ceases to be excepted from COBRA immediately upon the addition of the new employer. In contrast, if the plan ceases to be a small-employer plan by reason of an increase during a calendar year in the workforce of an employer contributing to the plan, the plan ceases to be excepted from COBRA on the January 1 immediately following the calendar year in which the employer's workforce increased.

* * * * *

Q–6: For purposes of COBRA, how is the number of group health plans that an employer or employee organization maintains determined?

A–6: (a) The rules of this Q&A–6 apply, for purposes of COBRA, in determining the number of group health plans that an employer or employee organization maintains. Except as provided in paragraph (c) of this Q&A–6, in the case of health care benefits provided under an arrangement or arrangements of an employer or employee organization, the number of group health plans pursuant to which those benefits are provided is determined by the instruments governing the arrangement or arrangements. However, a multiemployer plan and a nonmultiemployer plan are always separate plans. All references elsewhere in §§ 54.4980B–1 through 54.4980B–10 to a group health plan are references to a group health plan as determined under Q&A–1 of this section and this Q&A–6.

(b) If it is not clear from the instruments governing an arrangement or arrangements to provide health care benefits whether the benefits are provided under one plan or more than one plan, or if there are no instruments governing the arrangement or arrangements, all such health care benefits, except benefits for qualified long-term care services (as defined in section 7702B(c)), provided by a corporation, partnership, or other entity or trade or business, or by an employee organization, constitute one group health plan.

(c) Notwithstanding paragraph (a) of this Q&A–6, if a principal purpose of establishing separate plans is to evade any requirement of law, then the separate plans will be considered a single plan to the extent necessary to prevent the evasion.

(d) The significance of treating an arrangement as two or more separate group health plans is illustrated by the following examples:

Example 1. (i) Employer *X* maintains a single group health plan, which provides major medical and prescription drug benefits. Employer *Y* maintains two group health plans; one provides major medical benefits and the other provides prescription drug benefits.

(ii) *X*'s plan could comply with the COBRA continuation coverage requirements by giving a qualified beneficiary experiencing a qualifying event with respect to *X*'s plan the choice of either electing both major medical and prescription drug benefits or not receiving any COBRA continuation coverage under *X*'s plan. By contrast, for *Y*'s plans to comply with the COBRA continuation coverage requirements, a qualified beneficiary experiencing a qualifying event with respect to each of *Y*'s plans must be given the choice of electing COBRA continuation coverage under either the major medical plan or the prescription drug plan or both.

Example 2. If a joint board of trustees administers one multiemployer plan, that plan will fail to qualify for the small-employer plan exception if any one of the employers whose employees are covered under the plan normally employed 20 or more employees during the preceding calendar year. However, if the joint board of trustees maintains two or more multiemployer plans, then the exception would be available with respect to each of those plans in which each of the employers whose employees are covered under the plan normally employed fewer than 20 employees during the preceding calendar year.

* * * * *

A–8: (a) The provision of health care benefits does not fail to be a group health plan merely because those benefits are offered under a cafeteria plan (as defined in section 125) or under any other arrangement under which an employee is offered a choice between health care benefits and other taxable or nontaxable benefits. However, the COBRA continuation coverage requirements apply only to the type and level of coverage under the cafeteria plan or other flexible benefit arrangement that a qualified beneficiary is actually receiving on the day before the qualifying event. See paragraphs (b) through (e) of this Q&A–8 for rules limiting the obligations of certain health flexible spending arrangements. The rules of this paragraph (a) are illustrated by the following example:

Example: (i) Under the terms of a cafeteria plan, employees can choose among life insurance coverage, membership in a health maintenance organization (HMO), coverage for medical expenses under an indemnity arrangement, and cash compensation. Of these available choices, the HMO and the indemnity arrangement are the arrangements providing health care. The instruments governing the HMO and indemnity arrangements indicate that they are separate group health plans. These group health plans are subject to COBRA. The employer does not provide any group health plan outside of the cafeteria plan. *B* and *C* are unmarried employees. *B* has chosen the life insurance coverage, and *C* has chosen the indemnity arrangement.

(ii) *B* does not have to be offered COBRA continuation coverage upon terminating employment, nor is a subsequent open enrollment period for active employees required to be made available to *B*. However, if *C* terminates employment and the termination constitutes a qualifying event, *C* must be offered an opportunity to elect COBRA continuation coverage under the indemnity arrangement. If *C* makes such an election and an open enrollment period for active employees occurs while *C* is still receiving the COBRA continuation coverage, *C* must be offered the opportunity to switch from the indemnity arrangement to the HMO (but not to the life insurance coverage because that does not constitute coverage provided under a group health plan).

(b) If a health flexible spending arrangement (health FSA), within the meaning of regulations project EE–130–86 (1989–1 C.B. 944, 986) (see § 601.601(d)(2) of this chapter), satisfies the two conditions in paragraph (c) of this Q&A–8 for a plan year, the obligation of the health FSA to make COBRA continuation coverage available to a qualified beneficiary who

experiences a qualifying event in that plan year is limited in accordance with paragraphs (d) and (e) of this Q&A–8, as illustrated by an example in paragraph (f) of this Q&A–8.

(c) The conditions of this paragraph (c) are satisfied if—

(1) Benefits provided under the health FSA are excepted benefits within the meaning of sections 9831 and 9832; and

(2) The maximum amount that the health FSA can require to be paid for a year of COBRA continuation coverage under Q&A–1 of § 54.4980B–8 equals or exceeds the maximum benefit available under the health FSA for the year.

(d) If the conditions in paragraph (c) of this Q&A–8 are satisfied for a plan year, then the health FSA is not obligated to make COBRA continuation coverage available for any subsequent plan year to any qualified beneficiary who experiences a qualifying event during that plan year.

(e) If the conditions in paragraph (c) of this Q&A–8 are satisfied for a plan year, the health FSA is not obligated to make COBRA continuation coverage available for that plan year to any qualified beneficiary who experiences a qualifying event during that plan year unless, as of the date of the qualifying event, the qualified beneficiary can become entitled to receive during the remainder of the plan year a benefit that exceeds the maximum amount that the health FSA is permitted to require to be paid for COBRA continuation coverage for the remainder of the plan year. In determining the amount of the benefit that a qualified beneficiary can become entitled to receive during the remainder of the plan year, the health FSA may deduct from the maximum benefit available to that qualified beneficiary for the year (based on the election made under the health FSA for that qualified beneficiary before the date of the qualifying event) any reimbursable claims submitted to the health FSA for that plan year before the date of the qualifying event.

(f) The rules of paragraphs (b), (c), (d), and (e) of this Q&A–8 are illustrated by the following example:

Example: (i) An employer maintains a group health plan providing major medical benefits and a group health plan that is a health FSA, and the plan year for each plan is the calendar year. Both the plan providing major medical benefits and the health FSA are subject to COBRA. Under the health FSA, during an open season before the beginning of each calendar year, employees can elect to reduce their compensation during the upcoming year by up to $1200 per year and have that same amount contributed to a health flexible spending account. The employer contributes an additional amount to the account equal to the employee's salary reduction election for the year. Thus, the maximum amount available to an employee under the health FSA for a year is two times the amount of the employee's salary reduction election for the year. This amount may be paid to the employee during the year as reimbursement for health expenses not covered by the employer's major medical plan (such as deductibles, copayments, prescription drugs, or eyeglasses). The employer determined, in accordance with section 4980B(f)(4), that a reasonable estimate of the cost of providing coverage for similarly situated nonCOBRA beneficiaries for 2002 under this health FSA is equal to two times their salary reduction election for 2002 and, thus, that two times the salary reduction election is the applicable premium for 2002.

(ii) Because the employer provides major medical benefits under another group health plan, and because the maximum benefit that any employee can receive under the health FSA is not greater than two times the employee's salary reduction election for the plan year, benefits under this health FSA are excepted benefits within the meaning of sections 9831 and 9832. Thus, the first condition of paragraph (c) of this Q&A–8 is satisfied for the year. The maximum amount that a plan can require to be paid for coverage (outside of coverage required to be made available due to a disability extension) under Q&A–1 of § 54.4980B–8 is 102 percent of the applicable premium. Thus, the maximum amount that the health FSA can require to be paid for coverage for the 2002 plan year is 2.04 times the employee's salary reduction election for the plan year. Because the maximum benefit available under the health FSA is 2.0 times the employee's salary reduction election for the year, the maximum benefit available under the health FSA for the year is less than the maximum amount that the health FSA can require to be paid for coverage for the year. Thus, the second condition in paragraph (c) of this Q&A–8 is also satisfied for the 2002 plan year. Because both conditions in paragraph (c) of this Q&A–8 are satisfied for 2002, with respect to any qualifying event occurring in 2002, the health FSA is not obligated to make COBRA continuation coverage available for any year after 2002.

(iii) Whether the health FSA is obligated to make COBRA continuation coverage available in 2002 to a qualified beneficiary with respect to a qualifying event that occurs in 2002 depends upon the maximum benefit that would be available to the qualified beneficiary under COBRA continuation coverage for that plan year. *Case 1:* Employee *B* has elected to reduce *B*'s salary by $1200 for 2002. Thus, the maximum benefit that *B* can become entitled to receive under the health FSA during the entire year is $2400. *B* experiences a qualifying event that is the termination of *B*'s employment on May 31, 2002. As of that date, *B* had submitted $300 of reimbursable expenses under the health FSA. Thus, the maximum benefit that *B* could become entitled to receive for the remainder of 2002 is $2100. The maximum amount that the health FSA can require to be paid for COBRA continuation coverage for the remainder of 2002 is 102 percent times 1/12 of the applicable premium for 2002 times the number of months remaining in 2002 after the date of the qualifying event. In *B*'s case, the maximum amount that the health FSA can require to be paid for COBRA continuation coverage for 2002 is 2.04 times $1200, or $2448. One-twelfth of $2448 is $204. Because seven months remain in the plan year, the maximum amount that the health FSA can require to be paid for *B*'s coverage for the remainder of the year is seven times $204, or $1428. Because $1428 is less than the maximum benefit that *B* could become entitled to receive for the remainder of the year ($2100), the health FSA is required to make COBRA continuation coverage available to *B* for the remainder of 2002 (but not for any subsequent year).

(iv) *Case 2:* The facts are the same as in *Case 1* except that *B* had submitted $1000 of reimbursable expenses as of the date of the qualifying event. In that case, the maximum benefit available to *B* for the remainder of the year would be $1400 instead of $2100. Because the maximum amount that the health FSA can require to be paid for *B*'s coverage is $1428, and because the $1400 maximum benefit for the remainder of the year does not exceed $1428, the health FSA is not obligated to make COBRA continuation coverage available to *B* in 2002 (or any later year). (Of course, the administrator of the health FSA is permitted to make COBRA continuation coverage available to every qualified beneficiary in the year that the qualified beneficiary's qualifying event occurs in order to avoid having to determine the maximum benefit available for each qualified beneficiary for the remainder of the plan year.)

* * * * *

A–10: (a) In general, the excise tax is imposed on the employer maintaining the plan, except that in the case of a multiemployer plan (see Q&A–3 of this section for a definition of multiemployer plan) the excise tax is imposed on the plan.

* * * * *

§ 54.4980 B–3 [Amended]

Par. 5. In § 54.4980B–3, the language "54.4980B–8" is removed and "54.4980B–10" is added in its place in the last sentence of paragraph (a)(3) and the first sentence of paragraph (g) in A–1; in the first and second sentences of paragraph (a)(1), the first sentence of paragraph (a)(2), and the first and last sentences in paragraph (b) in A–2; and in A–3.

Par. 6. Section 54.4980B–4 is amended by:

1. Adding a sentence at the end of paragraph (a) in A–1.

2. Removing the language "Q&A–1" and adding "Q&A–4" in its place in the fifth sentence of paragraph (c) of A–1.

3. Revising the third sentence in paragraph (e) of A–1.

The addition and revision read as follows:

§ 54.4980B–4 Qualifying events.

* * * * *

A–1: (a) * * * See Q&A–1 through Q&A–3 of § 54.4980B–10 for special rules in the case of leave taken under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601–2619).

* * * * *

(e) * * * For example, an absence from work due to disability, a temporary layoff, or any other reason (other than due to leave that is FMLA leave; see § 54.4980B–10) is a reduction of hours of a covered employee's employment if there is not an immediate termination of employment. * * *

* * * * *

§ 54.4980B–5 [Amended]

Par. 7. In § 54.4980B–5, the penultimate sentence in paragraph (a) of A–1 is amended by removing the language "54.4980B–8" and adding "54.4980B–10" in its place.

Par. 8. In § 54.4980B–6, the *Example* in paragraph (c) of A–1 is revised to read as follows:

§ 54.4980B–6 Electing COBRA continuation coverage.

* * * * *

A–1: * * *

Example. (i) An unmarried employee without children who is receiving employer-paid coverage under a group health plan voluntarily terminates employment on June 1, 2001. The employee is not disabled at the time of the termination of employment nor at any time thereafter, and the plan does not provide for the extension of the required periods (as is permitted under paragraph (b) of Q&A–4 of § 54.4980B–7).

(ii) *Case 1:* If the plan provides that the employer-paid coverage ends immediately upon the termination of employment, the election period must begin not later than June 1, 2001, and must not end earlier than July 31, 2001. If notice of the right to elect COBRA continuation coverage is not provided to the employee until June 15, 2001, the election period must not end earlier than August 14, 2001.

(iii) *Case 2:* If the plan provides that the employer-paid coverage does not end until 6 months after the termination of employment, the employee does not lose coverage until December 1, 2001. The election period can therefore begin as late as December 1, 2001, and must not end before January 30, 2002.

(iv) *Case 3:* If employer-paid coverage for 6 months after the termination of employment is offered only to those qualified beneficiaries who waive COBRA continuation coverage, the employee loses coverage on June 1, 2001, so the election period is the same as in Case 1. The difference between Case 2 and Case 3 is that in Case 2 the employee can receive 6 months of employer-paid coverage and then elect to pay for up to an additional 12 months of COBRA continuation coverage, while in Case 3 the employee must choose between 6 months of employer-paid coverage and paying for up to 18 months of COBRA continuation coverage. In all three cases, COBRA continuation coverage need not be provided for more than 18 months after the termination of employment (see Q&A–4 of § 54.4980B–7), and in certain circumstances might be provided for a shorter period (see Q&A–1 of § 54.4980B–7).

* * * * *

Par. 9. Section 54.4980B–7 is amended by:

1. Revising paragraph (a) of A–1.
2. Adding Q&A–4.
3. Revising the second sentence in paragraph (c) of A–5.
4. Revising paragraph (b) of Q&A–6.
5. Removing the language "Q&A–1" and adding "Q&A–4" in its place in paragraph (a) of A–7.

The addition and revisions read as follows:

§ 54.4980B–7 Duration of COBRA continuation coverage.

* * * * *

A–1: (a) Except for an interruption of coverage in connection with a waiver, as described in Q&A–4 of § 54.4980B–6, COBRA continuation coverage that has been elected for a qualified beneficiary must extend for at least the period beginning on the date of the qualifying event and ending not before the earliest of the following dates—

(1) The last day of the maximum coverage period (see Q&A–4 of this section);

(2) The first day for which timely payment is not made to the plan with respect to the qualified beneficiary (see Q&A–5 in § 54.4980B–8);

(3) The date upon which the employer or employee organization ceases to provide any group health plan (including successor plans) to any employee;

(4) The date, after the date of the election, upon which the qualified beneficiary first becomes covered under any other group health plan, as described in Q&A–2 of this section;

(5) The date, after the date of the election, upon which the qualified beneficiary first becomes entitled to Medicare benefits, as described in Q&A–3 of this section; and

(6) In the case of a qualified beneficiary entitled to a disability extension (see Q&A–5 of this section), the later of—

(i) Either 29 months after the date of the qualifying event, or the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act (42 U.S.C. 401–433 or 1381–1385) that the disabled qualified beneficiary whose disability resulted in the qualified beneficiary's being entitled to the disability extension is no longer disabled, whichever is earlier; or

(ii) The end of the maximum coverage period that applies to the qualified beneficiary without regard to the disability extension.

* * * * *

Q–4: When does the maximum coverage period end?

A–4: (a) Except as otherwise provided in this Q&A–4, the maximum coverage period ends 36 months after the qualifying event. The maximum coverage period for a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is the maximum coverage period for the qualifying event giving rise to the period of COBRA continuation coverage during which the child was born or placed for adoption. Paragraph (b) of this Q&A–4 describes the starting point from which the end of the maximum coverage period is measured. The date that the maximum coverage period ends is described in paragraph (c) of this Q&A–4 in a case where the qualifying event is a termination of employment or reduction of hours of employment, in paragraph (d) of this Q&A–4 in a case where a covered employee becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg) before experiencing a qualifying event that is a termination of employment or reduction of hours of employment, and in paragraph (e) of this Q&A–4 in the case of a qualifying event that is the bankruptcy of the employer. See Q&A–8 of § 54.4980B–2 for limitations that apply to certain health flexible spending arrangements. See also Q&A–6 of this section in the case of multiple qualifying events. Nothing in §§ 54.4980B–1 through 54.4980B–10 prohibits a group health plan from providing coverage that continues beyond the end of the maximum coverage period.

(b)(1) The end of the maximum coverage period is measured from the date of the qualifying event even if the qualifying event does not result in a loss of coverage under the plan until a later date. If, however, coverage under the plan is lost at a later date and the plan provides for the extension of the required periods, then the maximum coverage period is measured from the date when coverage is lost. A plan provides for the extension of the required periods if it provides both—

(i) That the 30-day notice period (during which the employer is required to notify the plan administrator of the occurrence of certain qualifying events

such as the death of the covered employee or the termination of employment or reduction of hours of employment of the covered employee) begins on the date of the loss of coverage rather than on the date of the qualifying event; and

(ii) That the end of the maximum coverage period is measured from the date of the loss of coverage rather than from the date of the qualifying event.

(2) In the case of a plan that provides for the extension of the required periods, whenever the rules of §§ 54.4980B–1 through 54.4980B–10 refer to the measurement of a period from the date of the qualifying event, those rules apply in such a case by measuring the period instead from the date of the loss of coverage.

(c) In the case of a qualifying event that is a termination of employment or reduction of hours of employment, the maximum coverage period ends 18 months after the qualifying event if there is no disability extension, and 29 months after the qualifying event if there is a disability extension. See Q&A–5 of this section for rules to determine if there is a disability extension. If there is a disability extension and the disabled qualified beneficiary is later determined to no longer be disabled, then a plan may terminate the COBRA continuation coverage of an affected qualified beneficiary before the end of the disability extension; see paragraph (a)(6) in Q&A–1 of this section.

(d)(1) If a covered employee becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg) before experiencing a qualifying event that is a termination of employment or reduction of hours of employment, the maximum coverage period for qualified beneficiaries other than the covered employee ends on the later of—

(i) 36 months after the date the covered employee became entitled to Medicare benefits; or

(ii) 18 months (or 29 months, if there is a disability extension) after the date of the covered employee's termination of employment or reduction of hours of employment.

(2) See paragraph (b) of Q&A–3 of this section regarding when a covered employee becomes entitled to Medicare benefits.

(e) In the case of a qualifying event that is the bankruptcy of the employer, the maximum coverage period for a qualified beneficiary who is the retired covered employee ends on the date of the retired covered employee's death. The maximum coverage period for a qualified beneficiary who is the spouse, surviving spouse, or dependent child of the retired covered employee ends on the earlier of—

(1) The date of the qualified beneficiary's death; or

(2) The date that is 36 months after the death of the retired covered employee.

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A–5: * * *

(c) * * * For this purpose, the period of the first 60 days of COBRA continuation coverage is measured from the date of the qualifying event described in paragraph (b) of this Q&A–5 (except that if a loss of coverage would occur at a later date in the absence of an election for COBRA continuation coverage and if the plan provides for the extension of the required periods (as described in paragraph (b) of Q&A–4 of this section) then the period of the first 60 days of COBRA continuation coverage is measured from the date on which the coverage would be lost).

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A–6: * * *

(b) The requirements of this paragraph (b) are satisfied if a qualifying event that gives rise to an 18-month maximum coverage period (or a 29-month maximum coverage period in the case of a disability extension) is followed, within that 18-month period (or within that 29-month period, in the case of a disability extension), by a second qualifying event (for example, a death or a divorce) that gives rise to a 36-month maximum coverage period. (Thus, a termination of employment following a qualifying event that is a reduction of hours of employment cannot be a second qualifying event that expands the maximum coverage period; the bankruptcy of an employer also cannot be a second qualifying event that expands the maximum coverage period.) In such a case, the original 18-month period (or 29-month period, in the case of a disability extension) is expanded to 36 months, but only for those individuals who were qualified beneficiaries under the group health plan in connection with the first qualifying event and who are still qualified beneficiaries at the time of the second qualifying event. No qualifying event (other than a qualifying event that is the bankruptcy of the employer) can give rise to a maximum coverage period that ends more than 36 months after the date of the first qualifying event (or more than 36 months after the date of the loss of coverage, in the case of a plan that provides for the extension of the required periods; see paragraph (b) in Q&A–4 of this section). For example, if an employee covered by a group health plan that is subject to COBRA terminates employment (for reasons other than gross misconduct) on December 31, 2000, the termination is a qualifying event giving rise to a maximum coverage period that extends for 18 months to June 30, 2002. If the employee dies after the employee and the employee's spouse and dependent children have elected COBRA continuation coverage and on or before June 30, 2002, the spouse and dependent children (except anyone among them whose COBRA continuation coverage had already ended for some other reason) will be able to receive COBRA continuation coverage through December 31. 2003. See Q&A–8(b) of § 54.4980B–2 for a special rule that applies to certain health flexible spending arrangements.

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Par. 10. Sections 54.4980B–9 and 54.4980B–10 are added to read as follows:

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

The following questions-and-answers address who has the obligation to make COBRA continuation coverage available to affected qualified beneficiaries in the context of business reorganizations and employer withdrawals from multiemployer plans:

Q–1: For purposes of this section, what are a business reorganization, a stock sale, and an asset sale?

A–1: For purposes of this section:

(a) A *business reorganization* is a stock sale or an asset sale.

(b) A *stock sale* is a transfer of stock in a corporation that causes the corporation to become a different employer or a member of a different employer. (See Q&A–2 of § 54.4980B–2, which defines *employer* to include all members of a controlled group of corporations.) Thus, for example, a sale or distribution of stock in a corporation that causes the corporation to cease to be a member of one controlled group of corporations, whether or not it becomes a member of another controlled group of corporations, is a stock sale.

(c) An *asset sale* is a sale of substantial assets, such as a plant or division or substantially all the assets of a trade or business.

(d) The rules of § 1.414(b)–1 of this chapter apply in determining what constitutes a controlled group of corporations, and the rules of §§ 1.414(c)–1 through 1.414(c)–5 of this chapter apply in determining what constitutes a group of trades or businesses under common control.

Q–2: In the case of a stock sale, what are the selling group, the acquired organization, and the buying group?

A–2: In the case of a stock sale—

(a) The *selling group* is the controlled group of corporations, or the group of trades or businesses under common control, of which a corporation ceases to be a member as a result of the stock sale;

(b) The *acquired organization* is the corporation that ceases to be a member of the selling group as a result of the stock sale; and

(c) The *buying group* is the controlled group of corporations, or the group of trades or businesses under common control, of which the acquired organization becomes a member as a result of the stock sale. If the acquired organization does not become a member of such a group, the *buying group* is the acquired organization.

Q–3: In the case of an asset sale, what are the selling group and the buying group?

A–3: In the case of an asset sale—

(a) The *selling group* is the controlled group of corporations or the group of trades or businesses under common control that includes the corporation or other trade or business that is selling the assets; and

(b) The *buying group* is the controlled group of corporations or the group of trades or businesses under common control that includes the corporation or other trade or business that is buying the assets.

Q–4: Who is an M&A qualified beneficiary?

A–4: (a) Asset sales: In the case of an asset sale, an individual is an M&A qualified beneficiary if the individual is a qualified beneficiary whose qualifying event occurred prior to or in connection with the sale and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was associated with the assets being sold.

(b) Stock sales: In the case of a stock sale, an individual is an M&A qualified beneficiary if the individual is a qualified beneficiary whose qualifying event occurred prior to or in connection with the sale and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the acquired organization.

(c) In the case of a qualified beneficiary who has experienced more than one qualifying event with respect to her or his current right to COBRA continuation coverage, the qualifying event referred to in paragraphs (a) and (b) of this Q&A–4 is the first qualifying event.

Q–5: In the case of a stock sale, is the sale a qualifying event with respect to a covered employee who is employed by the acquired organization before the sale and who continues to be employed by the acquired organization after the sale, or with respect to the spouse or dependent children of such a covered employee?

A–5: No. A covered employee who continues to be employed by the acquired organization after the sale does not experience a termination of employment as a result of the sale. Accordingly, the sale is not a qualifying event with respect to the covered employee, or with respect to the covered employee's spouse or dependent children, regardless of whether they are provided with group health coverage after the sale, and neither the covered employee, nor the covered employee's spouse or dependent children, become qualified beneficiaries as a result of the sale.

Q–6: In the case of an asset sale, is the sale a qualifying event with respect to a covered employee whose employment immediately before the sale was associated with the purchased assets, or with respect to the spouse or dependent children of such a covered employee who are covered under a group health plan of the selling group immediately before the sale?

A–6: (a) Yes, unless—

(1) The buying group is a successor employer under paragraph (c) of Q&A–8 of this section or Q&A–2 of § 54.4980B–2, and the covered employee is employed by the buying group immediately after the sale; or

(2) The covered employee (or the spouse or any dependent child of the covered employee) does not lose coverage (within the meaning of paragraph (c) in Q&A–1 of § 54.4980B–4) under a group health plan of the selling group after the sale.

(b) Unless the conditions in paragraph (a)(1) or (2) of this Q&A–6 are satisfied, such a covered employee experiences a termination of employment with the selling group as a result of the asset sale, regardless of whether the covered employee is employed by the buying group or whether the covered employee's employment is associated with the purchased assets after the sale. Accordingly, the covered employee, and the spouse and dependent children of the covered employee who lose coverage under a plan of the selling group in connection with the sale, are M&A qualified beneficiaries in connection with the sale.

Q–7: In a business reorganization, are the buying group and the selling group permitted to allocate by contract the responsibility to make COBRA continuation coverage available to M&A qualified beneficiaries?

A–7: Yes. Nothing in this section prohibits a selling group and a buying group from allocating to one or the other of the parties in a purchase agreement the responsibility to provide the coverage required under §§ 54.4980B–1 through 54.4980B–10. However, if and to the extent that the party assigned this responsibility under the terms of the contract fails to perform, the party who has the obligation under Q&A–8 of this section to make COBRA continuation coverage available to M&A qualified beneficiaries continues to have that obligation.

Q–8: Which group health plan has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries in a business reorganization?

A–8: (a) In the case of a business reorganization (whether a stock sale or an asset sale), so long as the selling group maintains a group health plan after the sale, a group health plan maintained by the selling group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that sale. This Q&A–8 prescribes rules for cases in which the selling group ceases to provide any group health plan to any employee in connection with the sale. Paragraph (b) of this Q&A–8 contains these rules for stock sales, and paragraph (c) of this Q&A–8 contains these rules for asset sales. Neither a stock sale nor an asset sale has any effect on the COBRA continuation coverage requirements applicable to any group health plan for any period before the sale.

(b)(1) In the case of a stock sale, if the selling group ceases to provide any group health plan to any employee in connection with the sale, a group health plan maintained by the buying group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that stock sale. A group health plan of the buying group has this obligation beginning on the later of the following two dates and continuing as long as the buying group continues to maintain a group health plan (but subject to the rules in § 54.4980B–7, relating to the duration of COBRA continuation coverage)—

(i) The date the selling group ceases to provide any group health plan to any employee; or

(ii) The date of the stock sale.

(2) The determination of whether the selling group's cessation of providing any group health plan to any employee is in connection with the stock sale is based on all of the relevant facts and circumstances. A group health plan of the buying group does not, as a result of the stock sale, have an obligation to make COBRA continuation coverage available to those qualified beneficiaries of the selling group who are not M&A qualified beneficiaries with respect to that sale.

(c)(1) In the case of an asset sale, if the selling group ceases to provide any group health plan to any employee in connection with the sale and if the buying group continues the business operations associated with the assets purchased from the selling group without interruption or substantial change, then the buying group is a successor employer to the selling group in connection with that asset sale. If the buying group is a successor employer, a group health plan maintained by the buying group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that asset sale. A group health plan of the buying group has this obligation beginning on the later of the following two dates and continuing as long as the buying group continues to maintain a group health plan (but subject to the rules in § 54.4980B–7, relating to the duration of COBRA continuation coverage)—

(i) The date the selling group ceases to provide any group health plan to any employee; or

(ii) The date of the asset sale.

(2) The determination of whether the selling group's cessation of providing any group health plan to any employee is in connection with the asset sale is based on all of the relevant facts and circumstances. A group health plan of the buying group does not, as a result of the asset sale, have an obligation to make COBRA continuation coverage available to those qualified beneficiaries of the selling group who are not M&A qualified beneficiaries with respect to that sale.

(d) The rules of Q&A–1 through Q&A–7 of this section and this Q&A–8 are illustrated by the following examples; in each example, each group health plan is subject to COBRA:

Stock Sale Examples

Example 1. (i) Selling Group *S* consists of three corporations, *A*, *B*, and *C*. Buying Group *P* consists of two corporations, *D* and *E*. *P* enters into a contract to purchase all the stock of *C* from *S* effective July 1, 2002. Before the sale of *C*, *S* maintains a single group health plan for the employees of *A*, *B*, and *C* (and their families). *P* maintains a single group health plan for the employees of *D* and *E* (and their families). Effective July 1, 2002, the employees of *C* (and their families) become covered under *P*'s plan. On June 30, 2002, there are 48 qualified beneficiaries receiving COBRA continuation coverage under *S*'s plan, 15 of whom are M&A qualified beneficiaries with respect to the sale of *C*. (The other 33 qualified beneficiaries had qualifying events in connection with a covered employee whose last employment before the qualifying event was with either *A* or *B*.)

(ii) Under these facts, *S*'s plan continues to have the obligation to make COBRA continuation coverage available to the 15 M&A qualified beneficiaries under *S*'s plan after the sale of *C* to *P*. The employees who continue in employment with *C* do not experience a qualifying event by virtue of *P*'s acquisition of *C*. If they experience a qualifying event after the sale, then the group health plan of *P* has the obligation to make COBRA continuation coverage available to them.

Example 2. (i) Selling Group *S* consists of three corporations, *A*, *B*, and *C*. Each of *A*, *B*, and *C* maintains a group health plan for its employees (and their families). Buying Group *P* consists of two corporations, *D* and *E*. *P* enters into a contract to purchase all of the stock of *C* from *S* effective July 1, 2002. As of June 30, 2002, there are 14 qualified beneficiaries receiving COBRA continuation coverage under *C*'s plan. *C* continues to employ all of its employees and continues to maintain its group health plan after being acquired by *P* on July 1, 2002.

(ii) Under these facts, *C* is an acquired organization and the 14 qualified beneficiaries under *C*'s plan are M&A qualified beneficiaries. A group health plan of *S* (that is, either the plan maintained by *A* or the plan maintained by *B*) has the obligation to make COBRA continuation coverage available to the 14 M&A qualified beneficiaries. *S* and *P* could negotiate to have *C*'s plan continue to make COBRA continuation coverage available to the 14 M&A qualified beneficiaries. In such a case, neither *A*'s plan nor *B*'s plan would make COBRA continuation coverage available to the 14 M&A qualified beneficiaries unless *C*'s plan failed to fulfill its contractual responsibility to make COBRA continuation coverage available to the M&A qualified beneficiaries. *C*'s employees (and their spouses and dependent children) do not experience a qualifying event in connection with *P*'s acquisition of *C*, and consequently no plan maintained by either *P* or *S* has any obligation to make COBRA continuation coverage available to *C*'s employees (or their spouses or dependent children) in connection with the transfer of stock in *C* from *S* to *P*.

Example 3. (i) The facts are the same as in *Example 2*, except that *C* ceases to employ two employees on June 30, 2002, and those two employees never become covered under *P*'s plan.

(ii) Under these facts, the two employees experience a qualifying event on June 30, 2002 because their termination of employment causes a loss of group health coverage. A group health plan of *S* (that is, either the plan maintained by *A* or the plan maintained by *B*) has the obligation to make COBRA continuation coverage available to the two employees (and to any spouse or dependent child of the two employees who loses coverage under *C*'s plan in connection with the termination of employment of the two employees) because they are M&A qualified beneficiaries with respect to the sale of *C*.

Example 4. (i) Selling Group S consists of three corporations, *A*, *B*, and *C*. Buying Group *P* consists of two corporations, *D* and *E*. *P* enters into a contract to purchase all of the stock of *C* from *S* effective July 1, 2002. Before the sale of *C*, *S* maintains a single group health plan for the employees of *A*, *B*, and *C* (and their families). *P* maintains a single group health plan for the employees of *D* and *E* (and their families). Effective July 1, 2002, the employees of *C* (and their families) become covered under *P*'s plan. On June 30, 2002, there are 25 qualified beneficiaries receiving COBRA continuation coverage under *S*'s plan, 20 of whom are M&A qualified beneficiaries with respect to the sale of *C*. (The other five qualified beneficiaries had qualifying events in connection with a covered employee whose last employment before the qualifying event was with either *A* or *B*.) *S* terminates its group health plan effective June 30, 2002 and begins to liquidate the assets of *A* and *B* and to lay off the employees of *A* and *B*.

(ii) Under these facts, *S* ceases to provide a group health plan to any employee in connection with the sale of *C* to *P*. Thus, beginning July 1, 2002 *P*'s plan has the obligation to make COBRA continuation coverage available to the 20 M&A qualified beneficiaries, but *P* is not obligated to make COBRA continuation coverage available to the other 5 qualified beneficiaries with respect to *S*'s plan as of June 30, 2002 or to any of the employees of *A* or *B* whose employment is terminated by *S* (or to any of those employees' spouses or dependent children).

Asset Sale Examples

Example 5. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells the assets of one of its divisions to Buying Group *P*. Under the terms of the group health plan covering the employees at the division being sold, their coverage will end on the date of the sale. *P* hires all but one of those employees, gives them the same positions that they had with *S* before the sale, and provides them with coverage under a group health plan. Immediately before the sale, there are two qualified beneficiaries receiving COBRA continuation coverage under a group health plan of *S* whose qualifying events occurred in connection with a covered employee whose last employment prior to the qualifying event was associated with the assets sold to *P*.

(ii) These two qualified beneficiaries are M&A qualified beneficiaries with respect to the asset sale to *P*. Under these facts, a group health plan of *S* retains the obligation to make COBRA continuation coverage available to these two M&A qualified

beneficiaries. In addition, the one employee *P* does not hire as well as all of the employees *P* hires (and the spouses and dependent children of these employees) who were covered under a group health plan of *S* on the day before the sale are M&A qualified beneficiaries with respect to the sale. A group health plan of *S* also has the obligation to make COBRA continuation coverage available to these M&A qualified beneficiaries.

Example 6. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells substantially all of the assets of all of its divisions to Buying Group *P*, and *S* ceases to provide any group health plan to any employee on the date of the sale. *P* hires all but one of *S*'s employees on the date of the asset sale by *S*, gives those employees the same positions that they had with *S* before the sale, and continues the business operations of those divisions without substantial change or interruption. *P* provides these employees with coverage under a group health plan. Immediately before the sale, there are 10 qualified beneficiaries receiving COBRA continuation coverage under a group health plan of *S* whose qualifying events occurred in connection with a covered employee whose last employment prior to the qualifying event was associated with the assets sold to *P*.

(ii) These 10 qualified beneficiaries are M&A qualified beneficiaries with respect to the asset sale to *P*. Under these facts, *P* is a successor employer described in paragraph (c) of this Q&A–8. Thus, a group health plan of *P* has the obligation to make COBRA continuation coverage available to these 10 M&A qualified beneficiaries.

(iii) The one employee that *P* does not hire and the family members of that employee are also M&A qualified beneficiaries with respect to the sale. A group health plan of *P* also has the obligation to make COBRA continuation coverage available to these M&A qualified beneficiaries.

(iv) The employees who continue in employment in connection with the asset sale (and their family members) and who were covered under a group health plan of *S* on the day before the sale are not M&A qualified beneficiaries because *P* is a successor employer to *S* in connection with the asset sale. Thus, no group health plan of *P* has any obligation to make COBRA continuation coverage available to these continuing employees with respect to the qualifying event that resulted from their losing coverage under *S*'s plan in connection with the asset sale.

Example 7. (i) Selling Group *S* provides group health plan coverage to employees at each of its two operating divisions. *S* sells the assets of one of its divisions to Buying Group *P1*. Under the terms of the group health plan covering the employees at the division being sold, their coverage will end on the date of the sale. *P1* hires all but one of those employees, gives them the same positions that they had with *S* before the sale, and provides them with coverage under a group health plan.

(ii) Under these facts, a group health plan of *S* has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the sale to *P1*. (If an M&A qualified beneficiary first became covered under *P1*'s plan after electing COBRA continuation coverage under *S*'s plan, then *S*'s plan could terminate the COBRA continuation coverage once the M&A qualified beneficiary became covered under *P1*'s plan, provided that the remaining conditions of Q&A–2 of § 54.4980B–7 were satisfied.)

(iii) Several months after the sale to *P1*, *S* sells the assets of its remaining division to Buying Group *P2*, and *S* ceases to provide any group health plan to any employee on the date of that sale. Thus, under Q&A–1 of § 54.4980B–7, *S* ceases to have an obligation to make COBRA continuation coverage available to any qualified beneficiary on the date of the sale to *P2*. *P1* and *P2* are unrelated organizations.

(iv) Even if it was foreseeable that *S* would sell its remaining division to an unrelated third party after the sale to *P1*, under these facts the cessation of *S* to provide any group health plan to any employee on the date of the sale to *P2* is not in connection with the asset sale to *P1*. Thus, even after the date *S* ceases to provide any group health plan to any employee, no group health plan of *P1* has any obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1* by *S*. If *P2* is a successor employer under the rules of paragraph (c) of this Q&A–8 and maintains one or more group health plans after the sale, then a group health plan of *P2* would have an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P2* by *S* (but in such a case employees of *S* before the sale who continued working for *P2* after the sale would not be M&A qualified beneficiaries). However, even in such a case, no group health plan of *P2* would have an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1* by *S*. Thus, under these facts, after *S* has ceased to provide any group health plan to any employee, no plan has an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1*.

Example 8. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells substantially all of the assets of all of its divisions to Buying Group *P*. *P* hires most of *S*'s employees on the date of the purchase of *S*'s assets, retains those employees in the same positions that they had with *S* before the purchase, and continues the business operations of those divisions without substantial change or interruption. *P* provides these employees with coverage under a group health plan. *S* continues to employ a few employees for the principal purpose of winding up the affairs of *S* in preparation for liquidation. *S* continues to provide coverage under a group health plan to these few remaining employees for several weeks after the date of the sale and then ceases to provide any group health plan to any employee.

(ii) Under these facts, the cessation by *S* to provide any group health plan to any employee is in connection with the asset sale to *P*. Because of this, and because *P* continued the business operations associated with those assets without substantial change or interruption, *P* is a successor employer to *S* with respect to the asset sale. Thus, a group health plan of *P* has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the sale beginning on the date that *S* ceases to provide any group health plan to any employee. (A group health plan of *S* retains this obligation for the several weeks after the date of the sale until *S* ceases to provide any group health plan to any employee.)

Q–9: Can the cessation of contributions by an employer to a multiemployer group health plan be a qualifying event?

A–9: The cessation of contributions by an employer to a multiemployer group health plan is not itself a qualifying event, even though the cessation of contributions may cause current employees (and their spouses and dependent children) to lose coverage under the multiemployer plan. An event coinciding with the employer's cessation of contributions (such as a reduction of hours of employment in the case of striking employees) will constitute a qualifying event if it otherwise satisfies the requirements of Q&A–1 of § 54.4980B–4.

Q–10: If an employer stops contributing to a multiemployer group health plan, does the multiemployer plan have the obligation to make COBRA continuation coverage available to a qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer that has stopped contributing to the multiemployer plan?

A–10: (a) In general, yes. (See Q&A–3 of § 54.4980B–2 for a definition of *multiemployer* plan.) If, however, the employer that stops contributing to the multiemployer plan establishes one or more group health plans (or starts contributing to another multiemployer plan that is a group health plan) covering a significant number of the employer's employees formerly covered under the multiemployer plan, the plan established by the employer (or the other multiemployer plan) has the obligation to make COBRA continuation coverage available to any qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions

and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer.

(b) The rules of Q&A–9 of this section and this Q&A–10 are illustrated by the following examples; in each example, each group health plan is subject to COBRA:

Example 1. (i) Employer *Z* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *Z* has been making contributions to *M*. *Z* experiences financial difficulties and stops making contributions to *M* but continues to employ all of the employees covered by the collective bargaining agreement. *Z*'s cessation of contributions to *M* causes those employees (and their spouses and dependent children) to lose coverage under *M*. *Z* does not establish any group health plan covering any of the employees covered by the collective bargaining agreement.

(ii) After *Z* stops contributing to *M*, *M* continues to have the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *Z*. The loss of coverage under *M* for those employees of *Z* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

Example 2. (i) Employer *Y* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *Y* has been making contributions to *M*. *Y* experiences financial difficulties and is forced into bankruptcy by its creditors. *Y* continues to employ all of the employees covered by the collective bargaining agreement. *Y* also continues to make contributions to *M* until the current collective bargaining agreement expires, on June 30, 2001, and then *Y* stops making contributions to *M*. *Y*'s employees (and their spouses and dependent children) lose coverage under *M* effective July 1, 2001. *Y* does not enter into another collective bargaining agreement covering the class of employees covered by the expired collective bargaining agreement. Effective September 1, 2001, *Y* establishes a group health plan covering the class of employees formerly covered by the collective bargaining agreement. The group health plan also covers their spouses and dependent children.

(ii) Under these facts, *M* has the obligation to make COBRA continuation coverage available from July 1, 2001 until August 31, 2001, and the group health plan established by *Y* has the obligation to make COBRA continuation coverage available from September 1, 2001 until the obligation ends (see Q&A–1 of § 54.4980B–7) to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *Y*. The loss of coverage under *M* for those employees of *Y* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

Example 3. (i) Employer *X* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *X* has been making contributions to *M*. The employees covered by the collective bargaining agreement vote to decertify their current employee representative effective January 1, 2002 and vote to certify a new employee representative effective the same date. As a consequence, on January 1, 2002 they cease to be covered under *M* and commence to be covered under multiemployer group health plan *N*.

(ii) Effective January 1, 2002, *N* has the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *X*. The loss of coverage under *M* for those employees of *X* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

§ 54.4980B–10 Interaction of FMLA and COBRA.

The following questions-and-answers address how the taking of leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601–2619) affects the COBRA continuation coverage requirements:

Q–1: In what circumstances does a qualifying event occur if an employee does not return from leave taken under FMLA?

A–1: (a) The taking of leave under FMLA does not constitute a qualifying event. A qualifying event under Q&A–1 of § 54.4980B–4 occurs, however, if—

(1) An employee (or the spouse or a dependent child of the employee) is covered on the day before the first day of FMLA leave (or becomes covered during the FMLA leave) under a group health plan of the employee's employer;

(2) The employee does not return to employment with the employer at the end of the FMLA leave; and

(3) The employee (or the spouse or a dependent child of the employee) would, in the absence of COBRA continuation coverage, lose coverage under the group health plan before the end of the maximum coverage period.

(b) However, the satisfaction of the three conditions in paragraph (a) of this Q&A–1 does not constitute a qualifying event if the employer eliminates, on or before the last day of the employee's FMLA leave, coverage under a group health plan for the class of employees (while continuing to employ that class of employees) to which the employee would have belonged if the employee had not taken FMLA leave.

Q–2: If a qualifying event described in Q&A–1 of this section occurs, when does it occur, and how is the maximum coverage period measured?

A–2: A qualifying event described in Q&A–1 of this section occurs on the last day of FMLA leave. The maximum coverage period (see Q&A–4 of § 54.4980B–7) is measured from the date of the qualifying event (that is, the last day of FMLA leave). If, however, coverage under the group health plan is lost at a later date and the plan provides for the extension of the required periods (see paragraph (b) of Q&A–4 of § 54.4980B–7), then the maximum coverage period is measured from the date when coverage is lost. The rules of this Q&A–2 are illustrated by the following examples:

Example 1. (i) Employee *B* is covered under the group health plan of Employer *X* on January 31, 2001. *B* takes FMLA leave beginning February 1, 2001. *B*'s last day of FMLA leave is 12 weeks later, on April 25, 2001, and *B* does not return to work with *X* at the end of the FMLA leave. If *B* does not elect COBRA continuation coverage, *B* will not be covered under the group health plan of *X* as of April 26, 2001.

(ii) *B* experiences a qualifying event on April 25, 2001, and the maximum coverage period is measured from that date. (This is the case even if, for part or all of the FMLA leave, *B* fails to pay the employee portion of premiums for coverage under the group health plan of *X* and is not covered under *X*'s plan. See Q&A–3 of this section.)

Example 2. (i) Employee *C* and *C*'s spouse are covered under the group health plan of Employer *Y* on August 15, 2001. *C* takes FMLA leave beginning August 16, 2001. *C* informs *Y* less than 12 weeks later, on September 28, 2001, that *C* will not be returning to work. Under the FMLA regulations, 29 CFR Part 825 (§§ 825.100–825.800), *C*'s last day of FMLA leave is September 28, 2001. *C* does not return to work with *Y* at the end of the FMLA leave. If *C* and *C*'s spouse do not elect COBRA continuation coverage, they will not be covered under the group health plan of *Y* as of September 29, 2001.

(ii) *C* and *C*'s spouse experience a qualifying event on September 28, 2001, and the maximum coverage period (generally 18 months) is measured from that date. (This is the case even if, for part or all of the FMLA leave, *C* fails to pay the employee portion of premiums for coverage under the group health plan of *Y* and *C* or *C*'s spouse is not covered under *Y*'s plan. See Q&A–3 of this section.)

Q–3: If an employee fails to pay the employee portion of premiums for

coverage under a group health plan during FMLA leave or declines coverage under a group health plan during FMLA leave, does this affect the determination of whether or when the employee has experienced a qualifying event?

A–3: No. Any lapse of coverage under a group health plan during FMLA leave is irrelevant in determining whether a set of circumstances constitutes a qualifying event under Q&A–1 of this section or when such a qualifying event occurs under Q&A–2 of this section.

Q–4: Is the application of the rules in Q&A–1 through Q&A–3 of this section affected by a requirement of state or local law to provide a period of coverage longer than that required under FMLA?

A–4: No. Any state or local law that requires coverage under a group health plan to be maintained during a leave of absence for a period longer than that required under FMLA (for example, for 16 weeks of leave rather than for the 12 weeks required under FMLA) is disregarded for purposes of determining when a qualifying event occurs under Q&A–1 through Q&A–3 of this section.

Q–5: May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage under a group health plan during FMLA leave?

A–5: No. The U.S. Department of Labor has published rules describing the circumstances in which an employer may recover premiums it pays to maintain coverage, including family coverage, under a group health plan during FMLA leave from an employee who fails to return from leave. See 29 CFR 825.213. Even if recovery of premiums is permitted under 29 CFR 825.213, the right to COBRA continuation coverage cannot be conditioned upon the employee's reimbursement of the employer for premiums the employer paid to maintain coverage under a group health plan during FMLA leave.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1519 Filed 2–2–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[FRL–6230–1]

Section 112(l) Approval of the State of Florida's Construction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: Clarification.

SUMMARY: On February 1, 1996 (61 FR 3572), the Environmental Protection Agency published in the **Federal Register** a direct final rule for State Implementation Plan (SIP) and section 112(l) approval of the State of Florida's minor source operating permit program so that Florida could begin to issue federally-enforceable operating permits on a source's potential emissions and thereby avoid major source applicability. Today's action is taken to clarify that EPA's section 112(l) approval of the Florida minor source operating permit program extended to the State's minor source preconstruction permitting program as well as the operating permit program to allow Florida to issue both Federally-enforceable construction permits and Federally-enforceable operating permits pursuant to section 112 of the Clean Air Act (CAA) as amended in 1990. In the Final Rules Section of this **Federal Register**, the EPA is clarifying that the section 112(l) approval of the Florida minor source operating permit program extended to the State's minor source preconstruction permitting program as well as the operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 5, 1999.

ADDRESSES: All comments should be addressed to: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303; page.lee@epamail.epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303, Phone: (404) 562–9131; page.lee@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: November 13, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–2556 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 90 and 91

[FRL–6229–3]

Control of Air Pollution: Minor Amendments to Emission Requirements Applicable to Small Nonroad Spark Ignition Engines and Marine Spark Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend provisions of two existing rules applicable to nonroad engines. This document proposes amendments to regulations applicable to small spark-ignition (Small SI) engines under 19 kilowatts (kW) and proposes specifically to revise the applicability of that rule to certain engines used in recreational applications and to revise the applicability of the handheld emission standards to accommodate cleaner but heavier four stroke engines. This document also proposes to amend regulations applicable to marine spark ignition (Marine SI) engines to provide compliance flexibility for small volume engine manufacturers during the standards phase in period. Lastly, this proposal contains a minor revision to the existing replacement engine provisions for Small SI and Marine SI engines to address issues that may arise concerning the importation of such engines. No significant air quality impact is expected from these amendments.

DATES: Written comments on this NPRM must be submitted on or before April 5, 1999. EPA will hold a public hearing on March 5, 1999 starting at 10:00 am; requests to present oral testimony must be received on or before March 1, 1999. The Agency will cancel this hearing if no one requests to testify. Members of the public should call the contact person indicated below to notify EPA of their interest in testifying at the hearing.

Interested persons may call the contact person after March 1, 1999 to determine whether and where the hearing will be held.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–98–16, Room M–1500, (mail code 6102), 401 M Street, SW, Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be viewed from 8:00 a.m. to 5:30 p.m. weekdays. The docket may be reached by telephone at 202–260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held in Washington, DC at a location to be determined; call 202–564–9276 for further information.

FOR FURTHER INFORMATION CONTACT: Beverly Brennan, Office of Mobile Sources, Engine Programs and Compliance Division. 202–564–9302. FAX 202–565–2057. E-mail: *brennan.beverly@epamail.epa.gov*

SUPPLEMENTARY INFORMATION:

Obtaining Electronic Copies of This Document

Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find Nonroad Engines and Vehicles information and documents through the following path once they have accessed the OMS Home Page: "Nonroad Engines and Vehicles," "Equipment" or "Marine".

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I. Regulated Entities

Entities potentially affected by this action are those that manufacture or introduce into commerce new small spark-ignition nonroad engines or equipment, new marine spark ignition engines or equipment, and new large compression ignition engines or equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers, importers and users of nonroad small (at or below 19 kW) spark ignition engines and equipment.
	Manufacturers, importers and users of marine spark ignition outboard, personal watercraft and jetboat engines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in §§ 90.1 and 91.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority and Background

A. Statutory Authority

Authority for the actions in this document is granted to EPA by sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

B. Background

EPA promulgated final regulations applicable to spark-ignition nonroad engines at or below 19kW (Small SI engines) on July 3, 1995 (60 FR 34582, codified at 40 CFR Part 90) and final regulations applicable to spark-ignition marine outboard and personal watercraft (including jetboat) engines (Marine SI engines) on October 4, 1996 (61 FR 52088, codified at 40 CFR Part 91).[1]

The Small SI regulations took effect with model year 1997 for the majority of covered engines and in the 1998 model year for certain higher displacement handheld engines. The Marine SI rule takes effect with 1998 or 1999 engines, depending upon their usage, and involves a corporate average standard which tightens each year through 2006. Both rules prohibit engine manufacturers from introducing into commerce any engine not covered by a certificate of conformity issued by EPA under the regulations (40 CFR 90.1003(a)(1)(i); 40 CFR 91.1103(a)(1)(i)). The rules also prohibit equipment and vessel manufacturers from introducing new nonroad equipment and vessels into commerce unless the engine in the equipment or vessel is certified to comply with the applicable nonroad emission requirements (40 CFR 90.1003(a)(5); 40 CFR 91.1103(a)(5)).[2]

Provisions to allow engine manufacturers to produce replacement engines that were not certified to current standards were added to each of the two rules described above by a direct final rule issued August 7, 1997 (62 FR 42638).

A Notice of Proposed Rulemaking (NPRMs) to adopt Phase 2 standards for Small SI engines has been published (63 FR 3950, January 27, 1998). No Phase 2 program is contemplated at this time for the Marine SI rule. The amendments proposed below would apply to the Phase 1 programs of both rules and be carried forward into the future program for Small SI engines.

III. Description of Proposed Revisions

A. Revision to the Definition of Handheld To Accommodate Four Stroke Engines

The Small SI rule contains separate sets of exhaust emission standards for handheld and nonhandheld engines. The handheld standards were set at levels considerably less stringent than the nonhandheld standards to accommodate the lightweight, but high emission, two stroke engines that have

[1] The preamble to the final Marine SI rule (61 FR 52090) explains that for purposes of the Marine SI rule, jetboats are considered as personal watercraft, except where their engines are derived from sterndrive or inboard type marinized automotive blocks.

[2] The regulations also prohibit, in the case of any person, the importation of uncertified Small SI engines and Marine SI engines manufactured after the applicable implementation date for the engine. The regulations also prohibit the importation of equipment containing Small SI engines unless the engine is covered by a certificate of conformity. (40 CFR 90.1003(a)(1)(ii) and 40 CFR 91.1103(a)(1)(ii)).

historically been used in handheld equipment.

To limit the use of two stroke engines to that equipment that really require the weight advantage and multipositional capability afforded by two stroke technology, the criteria under which a piece of equipment may be deemed "handheld" are strictly defined by § 90.103(a)(2). Equipment must meet at least one of the following to be considered "handheld":

(i) The engine must be used in a piece of equipment that is carried by the operator throughout the performance of its intended function(s);

(ii) The engine must be used in a piece of equipment that must operate multipositionally, such as upside down or sideways, to complete its intended function(s);

(iii) The engine must be used in a piece of equipment for which the combined engine and equipment dry weight is under 14 kilograms, no more than two wheels are present on the equipment and at least one of the following attributes is also present:

(A) The operator must alternately provide support or carry the equipment throughout the performance of its intended function(s); (B) The operator must provide support or attitudinal control for the equipment throughout the performance of its intended function(s); and (C) The engine must be used in a generator or pump;

(iv) The engine must be used to power one-person augers, with a combined engine and equipment dry weight under 20 kilograms.

Since the Small SI rule was finalized, a few manufacturers have introduced lightweight four stroke engines that have multipositional capabilities and that have begun to be used in certain handheld products. These engines are somewhat heavier than two stroke engines but have exhaust emission levels that are much lower. One manufacturer of lightweight equipment, has proposed a portable pump, historically powered by a two stroke engine, that would exceed the 14 kilogram weight limit at 40 CFR 90.103(a)(2)(iii) because it would be built with a small, lightweight four stroke engine. The engine would be much cleaner than the alternative two stroke, but because of the weight limitation, the equipment could not be considered "handheld". The lightweight four stroke engines, while much cleaner than required by the handheld standards, can not yet meet the nonhandheld standards which were set based on the capabilities of other four stroke engines. In theory, a heavier four stroke engine certified to nonhandheld standards, could be used in these applications. However, EPA believes that the added weight would be a marketing problem and would cause the manufacturers to stick with higher emitting two stroke engines. To avoid the undesirable situation where the regulations encourage an equipment manufacturer to use a higher emitting engine, we are today proposing an amendment to both weight limits described above (14 kilograms in (iii) and 20 kilograms in (iv)) that would permit an equipment manufacturer to exceed the weight limits in cases where the manufacturer could demonstrate that the extra weight was the result of using a four stroke engine or other technology cleaner than the otherwise allowed two stroke.

EPA considered whether to simply raise the weight limits across the board, but believes that they are appropriate as promulgated, needing only to be raised where needed to cover the incremental weight of cleaner technologies. Further, raising the weight limits across the board could, in the long run, encourage manufacturers to convert four stroke nonhandheld equipment to two stroke power. EPA requests comment on whether there are other facets to the criteria surrounding the term "handheld" that could impede adoption of cleaner technology engines on these tools.

B. Applicability of the Small SI Rule to Engines Used in Certain Recreational Applications

The Small SI rule as currently written covers all nonroad spark ignition engines at or below 19 kW "used for any purpose", subject to certain exclusions. Specific exclusions are provided for certain engines used in underground mining, for engines used in motorcycles that are subject to emission regulation under 40 CFR Part 86, for engines used in passenger aircraft, and for engines used in recreational vehicles which meet certain prescribed criteria.

Those criteria which serve to define an engine as an engine used in a recreational vehicle are: (i) The engine's rated speed is greater than or equal to 5,000 rpm; (ii) the engine has no installed speed governor; (iii) the engine is not used for the propulsion of a marine "vessel" as that term is defined by the U.S. Coast Guard; and (iv) the engine does not meet the criteria cited above in Section A of this preamble to be categorized as a Class III, IV or V engine (i.e., the criteria by which an engine is determined to be "handheld"). Criteria (i) and (ii) reflect the Agency's belief that engines used to operate recreational vehicles will operate at high rated speeds and will differ significantly in design and operation from those used to power nonhandheld equipment such as lawn, garden and construction equipment. Recreational vehicles also typically have a variable throttle that is held open by the operator to achieve speeds above idle and returns to idle when released. These vehicles experience extremely transient operation. Further, these vehicles do not have the types of governors commonly present on nonhandheld lawn and garden type engines which serve to automatically open the throttle farther when the engine experiences increased loading as is encountered when, for example, moving a lawnmower from an area of short grass into an area of long grass. Finally, EPA stated that the steady-state test procedures being adopted for the Small SI rule would not be appropriate for these more transient applications.

The criteria which serve to define an engine as "handheld" were established to restrict the use of the more lenient Class III, IV or V standards to engines in equipment that needed to be extremely light in weight so that it may be easily carried or easily supported during its operation, and/or which needed to be able to operate multipositionally. The need for very low weight has historically been addressed through the use of two stroke technology, which produces greater power for a given weight and size (but higher emissions) than a four stroke engine and does so without the need for a sump full of oil at the bottom of the engine.

The Small SI rule was written without the knowledge that approximately 8,000 Small SI engines per year are built by a variety of companies (including a number of very small entities) for specific application in model boats, aircraft and cars. These engines were not included in any calculations of emission inventories, nor were reductions from these engines or costs of compliance considered in the development of the Phase 1 Small SI rule or the Phase 2 NPRM. EPA has no emission data from these engines and does not have data appropriate to determine whether the test cycle used for handheld (or nonhandheld) engines is appropriate for these engines. These vehicles are predominantly radio controlled model airplanes and as such are clearly "recreational" in nature as that term is generally understood. However, according to the definition of that term in the Small SI rule, such engines could be considered handheld because of their multi positional capabilities and therefore fall outside of

coverage under the term "recreational".[3] EPA believes that these engines would be better addressed by a future rulemaking intended specifically to address recreational engines. EPA is therefore proposing in this rulemaking to amend the existing regulations to consider these vehicles and engines as recreational and therefore excluded from coverage under the Small SI rule. Thus, engines used to propel vehicles in flight through air provided those engines meet the other existing criteria to be categorized as recreational, would be excluded from the scope of the rule. EPA believes that model cars and boats are not required to operate "multipositionally" to complete their intended function so that the spark ignition engines used in model cars and boats are therefore considered "recreational" by the existing regulatory text and are already excluded from the Small SI rule. EPA requests comment on all aspects of this proposed change.

C. The Addition of Provisions to the Marine SI Rule To Provide Phase-In Flexibility for Small Volume Manufacturers

The emission requirements for Marine SI engines were promulgated on October 4, 1996 and took effect with the 1998 model year for outboard engines and the 1999 model year for personal watercraft and jetboats. The Marine SI rule was written with considerable input from large volume marine engine manufacturers and their association, the National Marine Manufacturers Association. This rule results in a 75% reduction in exhaust hydrocarbons when calculated from uncontrolled engines. The standards phase in via incremental reductions each year through 2006. The standards will result in considerable shifts in technology away from high emitting two stroke technology to cleaner four stroke or direct injection two stroke designs.

The standards are "averaging standards" in that some engine families are expected to be below the standards and generate emission credits while some are expected to be above the standards and use credits. Similar to other mobile source programs, these credits may be banked for future use or traded between manufacturers.

The phase in of the standards was designed to permit marine engine manufacturers to introduce new technology engines and phase out old technology engines in an orderly and cost effective fashion. In addition, flexible certification testing requirements and exemptions from production line and in-use testing requirements were implemented for old technology engines to reduce the compliance costs of the rule for engines destined for phase out.

The development of the Marine SI rule took several years and involved numerous meetings with manufacturers. Both an NPRM (59 FR 55930, November 9, 1994) and SNPRM (Supplemental Notice of Proposed Rulemaking, 61 FR 4600, February 7, 1996) were published. Both EPA and NMMA did considerable outreach to marine engine manufacturers during this period to inform them of progress and likely requirements of various proposals. Despite this process, there was no input from small volume outboard and personal watercraft engine manufacturers until after the closing date of the comment period for the SNPRM. In this one comment,[4] Tanaka expressed concerns about the appropriateness of the averaging standards on an engine manufacturer with likely only one engine family. Tanaka also expressed doubts that credits would be available in the marketplace and whether, even if available, they would be affordable to a manufacturer with a very small annual sales volume. EPA's Response to Comments[5] document addresses small volume concerns by pointing out that the final rule provided reduced production line and in-use testing requirements, simplified certification procedures and administrative flexibilities for existing technology engines [the likely products of small volume manufacturers]. Beyond those flexibilities, the Response to Comments document explains that:

> For smaller volume manufacturers the final regulation allows these manufacturers to purchase emission credits from the market place as an alternative to employing control technologies to meet the standard.

Since implementation of the Marine SI rule began, EPA has received further correspondence from Tanaka petitioning EPA to amend the rule[6] on the basis that the rule's fleet averaging concept provides benefits to manufacturers with diverse product lines but not to a company like Tanaka, which has only one engine family—a very low production, low powered engine. Tanaka argues that its competitors could sell similar engines with higher emissions because they could offset those emissions with credits from larger engines. Tanaka desires flexibility to continue production of its engine until the final phase-in of the standards at which time it will exit the market. Tanaka believes it can comply with the Marine SI requirements through about the 2002 model year through engine improvement and credits it plans to generate in earlier years. After that, it desires flexibility to stage an orderly exit from the market. It does not wish to commit the funds necessary to meet the final phase in standards for its low level of U.S. sales.

EPA has also been contacted by Inboard Marine Corporation, a low volume manufacturer of personal watercraft engines. This company maintains that it is dependent upon "off-the-shelf" technology to reduce its emissions. Like Tanaka, it has a narrow product line and argues that the averaging, banking and trading program in the Marine SI rule can not be counted on to provide credits through trading, nor to provide them at a reasonable price. Inboard Marine believes it can comply in the early years of the Marine SI rule but may need relief in the late years of the standard phase-in. It intends to discontinue its current engine by the final phase-in year (2005) and meet the ultimate standards of 2006 with a redesigned engine.

EPA recognizes that the Marine SI standards are technology forcing. Thus, it was appropriate to include averaging, banking and trading (ABT) provisions to facilitate their economical implementation. However, ABT is most useful to manufacturers with diverse product offerings. The two companies mentioned above appear to be at a disadvantage to their competitors because of their limited offerings. Further, EPA can not provide any certainty that credits will be available to them. EPA notes that in the on-highway heavy-duty engine program, there were no credit transactions between manufacturers until approximately seven years after the ABT provisions were added to the rules.

In rules proposed since the Marine SI rule was promulgated, EPA has gone to considerable lengths to provide mechanisms to ease the implementation of new standards and requirements for low volume producers. Both the Small SI Phase 2 NPRM and the Nonroad CI Phase 2 and 3 NPRM contain numerous

[3] A few of these vehicles may be controlled by flexible tether lines, but in any case they are not held in hand during operation.

[4] Letter of May 13, 1996 from Randy W. Haslam, Vice-President, Tanaka International Sales and Marketing. Contained in the docket for this rulemaking. (Docket No. A–98–16.)

[5] EPA's Response To Comments document prepared for the final Marine SI rule can be found in the docket for this rulemaking. (Docket No. A–98–16.)

[6] Letter of June 30, 1997 from Randy W. Haslam, Vice-President, Tanaka International Sales and Marketing. Contained in the docket for this rulemaking. (Docket No. A–98–16.)

special provisions to delay or otherwise ease the impact of the standards on low volume engine families, low volume equipment manufacturers or low volume engine manufacturers. By contrast, the Marine SI rule contains no such provisions.

In this document, EPA proposes to add provisions to the Marine SI rule to permit small volume engine manufacturers to have family emission limits (FELs) in excess of applicable standards where credits are not available to cover such excess. This provision would be limited to one period of four consecutive model years which could not begin until the 2000 model year. EPA believes that the affected manufacturers can likely make changes to the affected engines to achieve compliance with standards in the early years and even bank a few credits, but may have more difficulty as the standards tighten later in the phase-in. This flexibility would expire at the end of the 2009 model year. EPA believes this expiration date will provide adequate time for small volume engine manufacturers to adapt off the shelf technology to their engines, if available, or to redesign their engines to comply with the final standards. EPA believes that the inclusion of this provision is consistent with its approach in other rules, and that it will meet the needs of small volume manufacturers without creating adverse impacts on air quality or adverse competitive situations. Further, EPA believes that the way this provision is structured may lead the affected manufacturers to clean up their engines more in the early years than their competitors. EPA proposes that the applicability of this provision be limited to engine manufacturers who sell no more than 1000 marine outboards and personal watercraft engines per year in the United States.

Based on the technological limitations that these small volume manufacturers have, and their limited abilities to use flexibilities offered by averaging, banking, and trading to avoid increased costs, EPA believes additional flexibility is appropriate. The implementation of this additional flexibility does not change EPA's overall conclusion that the category of Marine SI engines will allow the greatest achievable emission reduction considering technology and cost. EPA requests comment on the appropriate quantitative limit for this provision and on all other aspects of this proposal.

D. Revisions of Rules Involving Replacement Engines To Address Issues Related to Imported Engines

In a recent direct final rule, EPA modified its regulations applicable to Small SI and Marine SI engines (62 FR 42638, August 7, 1997) to permit the sale of uncertified engines for replacement purposes. The direct final rule addressed limited instances involving equipment built before EPA regulations went into effect where engine replacement is a more economical alternative than engine repair and certified engines are not available to fit.

Under the direct final rule, the engine manufacturer being approached to sell an uncertified engine for replacement purposes is required to first ascertain that no certified engine produced by itself or the manufacturer of the original engine (if different) is available with suitable physical or performance characteristics to repower the equipment. When the manufacturer ascertains that no certified engine is available that will fit or perform adequately, it can sell an uncertified engine subject to certain controls, e.g. it must take the old engine in exchange and the new engine must be clearly labeled for replacement purposes only.

EPA's Small SI and Marine SI engines regulations adopt the Clean Air Act definition for the term "manufacturer." EPA has become concerned that the term "manufacturer" by definition in the Clean Air Act can include an importer who may have had nothing to do with the actual production of the engine.[7] In such a case the requirement to ascertain whether a certified engine produced by itself has suitable physical or performance characteristics could lead to abuse. EPA is concerned that importers could misinterpret this provision to permit, for example, an equipment operator to import an uncertified engine and determine, since the importer does not make engines, that no certified engines are available from itself to appropriately power the vehicle. EPA proposes to amend the replacement engine provisions in both rules to require that, in cases where a replacement engine might be imported, the determination be made by the manufacturer's U.S. representative that holds a current certificate of conformity from EPA for the make of engine requiring replacement. As an alternative and especially if no such entity exists, such as may happen in a piece of imported equipment built prior to the effective date of EPA's regulations whose engine manufacturer has not certified, the equipment operator could approach other engine manufacturers to obtain a suitable replacement engine under the existing replacement engine provisions. EPA requests comment on this proposed amendment.

[7] Section 216(1) of the Clean Air Act defines *manufacturer* as "any person engaged in the manufacturing or assembling of new * * * nonroad engines or importing such * * * engines for resale * * * but shall not include any dealer with respect to * * * new nonroad engines received by him in commerce".

IV. Environmental Benefit Assessment

This rule is being proposed to reduce the burden or prevent abuse of various provisions of several existing rules. No significant air quality impacts one way or the other are expected. The provisions applicable to Small SI handheld engines to accommodate cleaner but heavier engines remove a barrier to the incorporation of cleaner engine technology in handheld equipment. The provisions applicable to recreational engines will have no significant impact on air quality. The subject engines were not included in Small SI inventory calculations or in benefits attributed to the Small SI rule. The revisions to provide phase-in flexibility to very small marine engine manufacturers will also have no impact on air quality. The marine rule revisions are designed to encourage these companies to clean up their engines as much as possible in the early phase-in years and may actually result in the production of small quantities of engines that are cleaner than those of similar power built by larger competitors using credits. Lastly, the revisions to replacement engine provisions will reduce the likelihood of abuse in cases where older design engines may be desired for replacement needs.

V. Economic Impacts

The revisions contained in this rulemaking are not expected to increase costs for any entity. In fact, the revisions to the recreational provisions in the Small SI rule will eliminate potential costs under the Small SI rule for affected manufacturers. The revisions affecting the weight of handheld equipment provide greater flexibility in engine choice to handheld equipment manufacturers. The revisions to the Marine SI rule are intended to reduce adverse economic impacts of that rule on small entities. The revisions to replacement engine provisions serve only to remove a potential unintended benefit that would accrue only to importers of replacement engines who were not also engine producers. Therefore, because this notice proposes to alter existing provisions, and that

alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific proposal.

The costs and emission reductions associated with the Small SI rule were developed for the July 3, 1995 final rulemaking. The costs and emission reductions associated with the Marine SI rule were developed for the October 4, 1996 rulemaking. Costs for future programs for Small SI engines were developed for the proposal of January 27, 1998. We do not believe the changes being implemented today affect the costs and emission reductions published as part of those rulemakings.

VI. Public Participation

This rulemaking action is being prepared largely as a result of letters that have been received from engine manufacturers concerning the various nonroad rules that are addressed by these revisions. Copies of all such letters are available in the docket. EPA expects to provide copies of this NPRM to trade groups representing Small SI and Marine SI engine and equipment manufacturers as well as to environmental groups and state organizations. EPA welcomes written comment on any aspect of the revisions and issues discussed in this document. EPA will hold a public hearing on this rulemaking if anyone requests to speak at such a forum.

EPA welcomes comment on any aspect of these revisions and will consider all comments presented at a public hearing (if one occurs) as well as all written comments received before the deadline described above.

VII. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or, (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. The Paperwork Reduction Act

This action does not add any new requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements that apply to the Small SI final rulemaking or the Small SI Phase 2 NPRM (60 FR 34582, July 3, 1995 and 63 FR 3950, January 27, 1998, respectively) or submitted to OMB in association with the Marine SI final rulemaking (61 FR 52088, October 4, 1996).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant adverse economic impact on a substantial number of small entities. This is because today's document will provide regulatory relief to both large and small volume engine and equipment manufacturers by excluding them from regulation or by permitting greater flexibility in engine choices in equipment or by providing additional time to comply. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, EPA has not prepared a budgetary impact statement for this document. Moreover, no small governments will be significantly or uniquely impacted by this rule.

E. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal

governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule changes do not create a mandate on State, local or tribal governments. The rule changes do not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complied by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule changes do not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule changes do not create a mandate for any tribal governments. The rule changes do not impose any enforceable duties on these entities. Today's proposed rule changes will affect only those small spark-ignition (Small SI) engines under 19 kilowatts (kW) used in recreational applications, cleaner four stroke small SI engines, existing replacement engine provisions for Small SI and marine spark ignition (Marine SI) engines, and Marine SI small volume engine manufacturers during the standards phase in period. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Parts 90 and 91

Environmental protection, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research.

Dated: January 27, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, is proposed to be amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation of part 90 is revised to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).)

2. Section 90.1(b)(5)(iv) is revised to read as follows:

§ 90.1 Applicability.

* * * * *

(b) * * *

(5) * * *

(iv) The engine does not meet the criteria to be categorized as a Class III, IV or V engine, as indicated in § 90.103, except for cases where the engine will be used only to propel a flying vehicle forward, sideways, up, down or backward through air.

* * * * *

3. Section 90.3 is amended by revising the definition of Handheld equipment engine to read as follows:

§ 90.3 Definitions.

* * * * *

Handheld equipment engine means a nonroad engine that meets the requirements specified in § 90.103(a)(2)(i) through (v).

* * * * *

4. Section 90.103 is amended by adding paragraph (a)(2)(v) to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

(2) * * *

(v) Where a piece of equipment otherwise meeting the requirements of paragraphs (a)(2)(iii) or (a)(2)(iv) of this section exceeds the applicable weight limit, emission standards for class III, IV or V, as applicable, may still apply if the equipment exceeds the weight limit by no more than the extent necessary to allow for the incremental weight of a four stroke engine or the incremental weight of a two stroke engine having enhanced emission control acceptable to the Administrator. Any manufacturer utilizing this provision to exceed the subject weight limitations shall maintain and make available to the Administrator upon request, documentation to substantiate that the exceedence of either weight limitation is a direct result of application of a four stroke or enhanced two stroke engine having the same, less or very similar power to two stroke engines that could otherwise be used to power the equipment and remain within the weight limitations.

* * * * *

5. Section 90.1003 is amended by adding and reserving paragraphs (b)(5)(iv) through (b)(5)(vii) and adding paragraph (b)(5)(viii) to read as follows:

§ 90.1003 Prohibited acts.

* * * * *

(b) * * *

(5) * * *

(iv) [Reserved].

(v) [Reserved].

(vi) [Reserved].

(vii) [Reserved].

(viii) In cases where an engine is to be imported for replacement purposes

under the provisions of this paragraph (b), the term "engine manufacturer" shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK-IGNITION ENGINES

6. The authority citation of part 91 is revised to read as follows:

Authority: Secs. 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).)

7. Section 91.207 is amended by adding paragraph (e) to read as follows:

§ 91.207 Credit calculation and manufacturer compliance with emission standards.

* * * * *

(e) Notwithstanding other provisions of this part, for model years beginning with MY 2000, a manufacturer having a negative credit balance during one period of up to four consecutive model years will not be considered to be in noncompliance in a model year up through and including model year 2009 where:

(1) The manufacturer has a total annual production of engines subject to regulation under this part of 1000 or less; and

(2) The manufacturer has not had a negative credit balance other than in three immediately preceding model years, except as permitted under paragraph (c) of this section; and

(3) The FEL (FELs) of the family or families produced by the manufacturer are no higher than those of the corresponding family or families in the previous model year, except as allowed by the Administrator; and

(4) The manufacturer submits a plan acceptable to the Administrator for coming into compliance with future model year standards including projected dates for the introduction or increased sales of engine families having FELs below standard and projected dates for discontinuing or reducing sales of engines having FELs above standard; and

(5)(i) The manufacturer has set its FEL using emission testing as prescribed in subpart E of this part; or

(ii) The manufacturer has set its FEL based on the equation and provisions of § 91.118(h)(1)(i) and the manufacturer has submitted appropriate test data and revised its FEL(s) and recalculated its credits pursuant to the provisions of § 91.118(h)(1); or

(iii) The manufacturer has set its FEL using good engineering judgement, pursuant to the provisions of § 91.118(h)(1)(ii) and (h)(2).

8. Section 91.1103 is amended by adding paragraph (b)(4)(v) to read as follows:

§ 91.1103 Prohibited acts.

* * * * *

(b) * * *

(4) * * *

(v) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b), the term "engine manufacturer" shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

[FR Doc. 99–2450 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62156G; FRL–6060–9]

RIN 2070–AC63

Lead; Identification of Dangerous Levels of Lead; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public meeting.

SUMMARY: EPA will be holding a public meeting on a proposed rule for managing lead in paint, dust, and soil in residences and child-occupied facilities. This public meeting is in response to requests from various parties to provide for additional participation by the environmental justice community in the development of the proposed rule.

DATES: The public meeting will be held on February 16, 1999, from 9 a.m. to 12 noon. Written comments on the proposed rule must be received on or before March 1, 1999.

ADDRESSES: The meeting will be held at the Hyatt Regency Washington—Capitol Hill, 400 New Jersey Ave., NW., Washington D.C.

Each written comment must bear the docket control number OPPTS–62156G. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Written comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions in Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All written comments which contain information claimed as CBI must be clearly marked as such. Three copies, sanitized of any comments containing information claimed as CBI, must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For general information:* National Lead Information Center's Clearinghouse, 1–800–424–LEAD (5323). *For technical and policy questions*: Jonathan Jacobson; telephone: (202) 260–3779; e-mail address: jacobson.jonathan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 3, 1998 (63 FR 30302) (FRL–5791–9), EPA published a proposed rule under section 403 of TSCA (15 U.S.C. 2683). This proposed rule identifies lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil in residences and child-occupied facilities. Section 402 of TSCA (15 U.S.C. 2682) directs EPA to promulgate regulations governing lead-based paint activities. Section 404 of TSCA (15 U.S.C. 2684) requires that any State that seeks to administer and enforce the requirements established by the Agency under section 402 of TSCA must submit to the Administrator a request for authorization of such a program.

On October 1 and November 5, 1998, EPA announced in the **Federal Register** two extensions to the comment period for this proposed rule (63 FR 52662 (FRL–6037–7) and 63 FR 59754 (FRL–6044–9), respectively). The latest extension was until December 31, 1998. EPA has received additional comments from various parties involved with environmental justice to extend the comment period and to provide additional participation by this community in the development of the

proposed rule. In response, EPA reopened the public comment period until March 1, 1999, in order to ensure that all parties, including those that may lack access to the various publications in which EPA has publicized the issuance of the proposal, have sufficient opportunity to submit their comments. Notice of this extension was published in the **Federal Register** of January 14, 1999 (43 FR 2460) (FRL–6056–1).

EPA has also decided to hold a public meeting with interested members of the Agency's National Environmental Justice Advisory Council (NEJAC) and the public to offer additional opportunity for representatives of the environmental justice community to participate in the rulemaking process. During the first hour of the meeting, EPA officials will provide an overview of the proposal, focusing on environmental justice-related. In the second hour of the meeting, NEJAC members will have the opportunity to offer oral comments on the proposed rule. Other members of the public may offer oral comment on a first come, first served basis. Individuals interested in speaking must register at the meeting and are requested to limit their presentations to 3 minutes in order to allow as many persons as possible a fair chance to participate.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–62156G (including comments and data submitted electronically as described in this unit). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–62156G. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: January 28, 1999.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–2674 Filed 2–1–99; 2:55 pm]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 99–5045]

RIN 2127–AH11

Federal Motor Vehicle Safety Standards: Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking; partial grant/partial denial of petition for rulemaking.

SUMMARY: Pursuant to the agency's partial grant of a petition for rulemaking from the Truck Manufacturers Association, NHTSA proposes to amend the air brake standard to correct an inconsistency between two provisions concerning emergency brake stops, provide that single-unit truck axles should not be overloaded, clarify the wheel-lock provisions by adding a definition of "tandem axle," and permit the use of roll bars on vehicles undergoing brake testing.

NHTSA denies requests by the petitioner to amend the standard by revising the braking test sequence, changing the provisions regarding manual brake adjustments, changing the burnish procedure, specifying application of the service brake prior to applying the parking brake, and clarifying that emergency brake requirements for trucks and buses do not become effective until March 1, 1998.

DATES: Comment closing date: Comments on this notice must be received by NHTSA not later than April 5, 1999.

Proposed effective date: If adopted, the amendments proposed in this notice would become effective 30 days after publication of the final rule. Optional early compliance would be permitted on and after the date of publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number for this rule noted above and be submitted to: Docket Management Room, PL–401, 400 Seventh Street, SW, Washington, DC 20590. Docket Room hours are from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Joseph Scott, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–2720, fax (202) 493–2739.

For legal issues: Mr. Walter Myers, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–2992, fax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

1. Background

Federal Motor Vehicle Safety Standard (Standard) No. 121, *Air brake systems,* specifies performance and equipment requirements for trucks, buses, and trailers equipped with air brake systems to ensure safe braking performance under normal and emergency conditions.

Pursuant to the March 4, 1995 directive entitled "Regulatory Reinvention Initiative" from the President to the heads of departments and agencies of the Federal government, NHTSA reviewed its standards and regulations to identify superseded or unneeded regulations as well as to amend and update regulations as appropriate. One such regulation identified by NHTSA for revising and upgrading was Standard No. 121. Consequently, on May 31, 1996, NHTSA published a revision of Standard No. 121 in the **Federal Register** to remove obsolete provisions and update and reorganize the standard (61 FR 27288). The revision substantially clarified and simplified the standard without changing any of its substantive requirements. The effective date of this revision was March 1, 1997. Optional early compliance with the revised standard was permitted for vehicles manufactured prior to that date.

2. The Petition

The Truck Manufacturers Association (TMA) submitted a petition for rulemaking to NHTSA dated January 6, 1997. The TMA is a trade association

whose members include all the major U.S. manufacturers of medium and heavy trucks, i.e., those trucks with a gross vehicle weight rating (GVWR) greater than 8,845 kilograms (19,500 pounds). The petition was a followup to TMA's comments submitted in connection with the rulemaking action culminating with the final rule of May 31, 1996, discussed above.

In its petition, the TMA stated that it, through a Society of Automotive Engineers (SAE) task force, reviewed Standard No. 121 in detail. As a result of that evaluation, SAE developed a recommended practice, J1626, *Braking, Stability, and Control Performance Test Procedures for Air-Brake Equipped Trucks (REV APR96)*, to provide a process for verifying vehicle compliance while minimizing test variability. TMA commended NHTSA for its efforts to update and reorganize Standard No. 121, but stated that some inconsistencies remain. TMA stated that Standard No. 121 and SAE J1626 should be aligned to improve test efficiency and decrease testing costs to the industry with no detrimental impact on motor vehicle safety. Accordingly, TMA suggested amending Standard No. 121 as follows:

a. Test sequence. Change the braking test sequence to perform the unloaded straight line stops and then the loaded straight line stops immediately following the braking-in-a-curve test. TMA asserted that the standard currently allows the truck tractor braking-in-a-curve control and stability tests to be performed loaded and unloaded (bobtail) on a surface with 0.5 coefficient of friction. This simplifies the logistics of moving vehicles from one test site to another and limits the need to water the test track to only a single time. TMA asserted, however, that the test sequence has little impact on the test results as long as the burnish procedure is performed first and final inspection follows all other required tests. The number of times that a vehicle must be loaded and unloaded has a significant impact on the time and effort to complete the sequence of tests. Thus, the suggestion to conduct the unloaded straight line stops before the loaded straight line stops would eliminate one loading/unloading sequence, thereby simplifying the test sequence to that extent.

b. Brake adjustments. Adopt the following language of SAE J1626: "(O)ther than during the burnish, brakes can be adjusted per the vehicle manufacturer's procedure at any time." Although automatic brake adjusters are required by the standard, TMA stated that some automatic brake adjusters overadjust during Standard No. 121 testing, but not in normal service. SAE J1626 recognizes this and would allow brakes to be adjusted in accordance with the manufacturer's procedure at any time to reduce brake performance variability.

c. Brake test and burnish procedure. Require that the entire brake test procedure, including the burnish procedure, be conducted with the transmission in neutral or with the clutch disengaged. Standard No. 121 specifies that tests are conducted with the vehicle's transmission in neutral or with the clutch disengaged. This minimizes the effect of engine and driveline drag on stopping distance test results and also relieves the manufacturer of the burden of having to test every engine and driveline package offered on a given chassis. TMA asserts that engine and driveline drag can also affect burnish temperatures and the conditioning that brake linings receive. Thus, TMA argues that conducting the entire test sequence as well as the burnish procedure with the transmission in neutral or the clutch disengaged would eliminate variability in the burnish and the need to test with numerous combinations of engines and drivelines that are offered with each chassis.

d. Service brake application prior to parking brake application. Permit a full service brake application prior to applying the parking brakes, and clarify S5.6.3.1 to provide that it applies to the case in which a single leakage failure occurs in the service brake system after the parking brakes are applied. As a practical matter, when parking on a hill, the vehicle operator first applies the service brakes to hold the vehicle in place, then applies the parking brake before releasing the service brakes. TMA stated that it is not clear whether S5.6 permits this procedure. It argues that Standard 105, *Hydraulic and electric brake systems*, clearly permits a procedure in which the service brake is applied prior to application of the parking brake. Further, that standard permits reapplication of the service brake and parking brake up to two additional times if the vehicle does not hold on the grade. Thus, TMA requests that NHTSA clarify the parking brake requirements of Standard No. 121 to make them more consistent with those of Standard No. 105 in permitting a full application of the service brakes prior to application of the parking brake, with reservoirs at compressor cut-out pressure.

e. Clarify that emergency brake requirements for trucks and buses do not become effective until March 1, 1998. Section S5.3 of the standard specifies a schedule of effective dates for service brake stopping distance requirements, which indicates that trucks and buses have until March 1, 1998 to comply. Section S5.7 does not contain such a schedule for emergency brake requirements. TMA considers that an oversight on the agency's part that should be clarified.

f. Correction of inconsistency. TMA stated that the rulemaking process confirmed that emergency brake stops for loaded tractors with unbraked control trailers (item 4(b), Table I) are "inappropriate." Subsection S5.7.3(b), however, retained the loaded tractor emergency test that was in effect earlier. Therefore, TMA requested that NHTSA delete S5.7.3(b) to correct the inconsistency.

g. Roll bar provision. Permit the use of a roll bar for any vehicle conducting the brake test sequence, including the 60-mile-per-hour (mph) straight-line stops and the 30-mph stops in a curve. TMA asserted that the safety of drivers and technicians is a primary concern during vehicle testing, and that use of a roll bar would protect them in the event of a vehicle rollover. TMA pointed out that truck tractors are permitted to be so equipped during the braking-in-a-curve stability and control tests. It said that this protection is just as important for short-wheelbase, high center of gravity trucks. A roll bar would ensure the safety of the driver in all tests and would eliminate the need to remove the roll bar after completing the braking-in-a-curve test sequence.

h. Single-unit truck axles should not be overloaded. Paragraph 6.1.10.4 of the standard provides for loading the tractor control trailer in such a manner as to avoid overloading the tractor's axles. The axles of a single-unit truck should likewise not be overloaded to achieve GVWR. Thus, the same provision should be incorporated into paragraph S5.3.1.1.

i. Need for additional clarification of the wheel lock provisions. TMA stated that the wheel lock provisions are not consistent with the ABS provisions. Specifically, TMA pointed out that paragraph S5.1.6.1(b) provides that "the wheels of at least one rear axle" of a truck tractor must be equipped with an antilock brake system (ABS) that directly controls the wheels on that axle. On the other hand, TMA stated that subparagraph S5.3.1(a) places wheel lock restrictions on 2 rear axles, and that S5.3.1(b) allows one of those 2 axles to lock up both of its wheels, but only if it is a tandem axle. TMA believes that the wheel lock provisions were originally written for the stopping

distance NPRM, when it was not clear that ABS would be mandatory. When the ABS and stopping distance proposals were combined for the final rule, however, the conflict developed but went unnoticed until recently.

By way of illustration of the suggested inconsistency between the ABS and wheel lock requirements, TMA gives the example of a 3-axle truck, bus or tractor. If the vehicle had 2 driven rear axles in tandem, known as a 6x4 configuration, the wheels on both sides of one rear axle might lock up during an entire stopping distance test. Conversely, if one of the two rear axles were a nonliftable tag or pusher axle, known as a 6x2 arrangement, then neither of the rear axles could lock up on both its wheels. Thus, TMA argues that the 6x4 vehicle needs ABS control on only one of its rear axles, while the 6x2 must have ABS control on both rear axles.

TMA stated that drive axles are the most logical location on the vehicle's rear for ABS, regardless of the number of axles trailing behind. These axles have the greatest rolling inertia, are the heaviest loaded, and are the only axles that can be used for traction control. The wheel lockup provisions, however, discourage this approach on vehicles with nonliftable tag axles. TMA therefore requested that the wheel lockup provisions of S5.3.1(a) through (d) be rescinded, and that S5.3.1 be redrafted to read:

S5.3.1 Stopping distance—trucks and buses. When stopped six times * * * without any part of the vehicle leaving the roadway.

j. Typographical errors. TMA pointed out 2 typographical errors:

- Paragraph S6.1.8, line 23, "* * * in 1 mph* * *" should read "* * * in 1 mile * * *;" and
- Paragraph S6.2.5, line 2, "* * * dynamometer or responding * * *" should read "* * * dynamometer corresponding * * *."

3. Denials of Certain Requests by the Petitioner

a. Test sequence (see 2a above). TMA suggested allowing the tester to "perform the unloaded straight line stops and then the loaded straight line stops immediately following the braking-in-a-curve tests." The following table shows the current test sequence and TMA's proposed sequence:

Current sequence	TMA's proposed sequence
1. Burnish (GVWR) ...	1. Burnish (GVWR)
2. a. Braking-in-Curve (GVWR); b. Braking-in-Curve (LLVW).	2. a. Braking-in-Curve (GVWR); b. Braking-in-Curve (LLVW)
3. Service Brake (GVWR); Emergency Brake (GVWR).	3. Service Brake (LLVW); Emergency Brake (LLVW)
4. Parking Brake (GVWR).	4. Parking Brake (LLVW)
5. Service Brake (LLVW).	5. Service Brake (GVWR)
6. Emergency Brake (LLVW).	6. Emergency Brake (GVWR)
7. Parking Brake (LLVW).	7. Parking Brake (GVWR)
8. Final Inspection	8. Final Inspection

This request is denied because—

(1) The current GVWR/LLVW (lightly-loaded vehicle weight) is consistent with the other tests in the overall test sequence.

(2) Flat-spotting of tires is minimized when GVWR tests are conducted first. Since not all wheels are required to be ABS-controlled and are therefore permitted to lock up, conducting the LLVW tests first, particularly for the 60-mph stopping distance tests, could result in severe flat-spotting of the tires on the non-ABS-controlled axles. Subsequent vehicle test runs would be difficult with the tires in that condition.

(3) The TMA proposal would eliminate one loading/unloading sequence for truck tractors, but it would necessitate an additional unloading sequence for single unit trucks and buses. The current test sequence for single unit trucks and buses does not necessitate any load change before the stopping distance tests are conducted since these vehicles are not currently required to be tested to the braking-in-a-curve test procedure. For these vehicles, TMA's proposed sequence would require the next test after the burnish, which is conducted at GVWR, to be the 60-mph stopping distance test at LLVW. TMA did not address this issue.

(4) Not all vehicle manufacturers have the necessary test facility to conduct the braking-in-a-curve test. Some manufacturers must transfer their vehicles to a different site for testing. Therefore, if TMA's test sequence were adopted, overall test efficiency would not necessarily improve, particularly for these manufacturers.

b. Brake adjustments (see 2b above). The TMA request that the agency permit brake adjustments at any time, other than during burnish, is denied. Standard No. 121 requires air-braked vehicles to be equipped with automatic brake adjusters. The potential for over-adjustment by automatic brake adjusters during the series of full-treadle brake applications required for braking-in-a-curve tests does exist. However, the agency believes that it is important to specify when manual adjustments are allowed since this enhances repeatability for compliance testing.

The agency further believes that manual adjustment of the brakes after each test sequence is inappropriate because it would be less representative of real-world braking conditions. Standard No. 121 allows some brake adjustment during testing. For example, two manual brake adjustments are allowed, one at the end of the braking-in-a-curve test and the other at the end of the GVWR parking brake test. For single unit trucks and buses, one manual brake adjustment is allowed at the end of the GVWR parking brake test. NHTSA believes that current limitations on the number of manual brake adjustments during the test sequence sufficiently addresses the potential for brake over-adjustment while preserving a well-defined test procedure.

c. Brake test and burnish procedure (see 2c above). The TMA request that the entire brake test procedure, including the burnish procedure, be conducted with the transmission in neutral or with the clutch disengaged is denied.

Before a vehicle's brakes are tested for compliance with Standard No. 121, the vehicle's brakes are burnished, also known as "break-in," by a series of brake applications called "snubs". The burnish procedure is intended to simulate the break-in period that a vehicle's brakes will receive when it is initially used on the public roads. The current burnish procedures, which became effective in September, 1993 (53 FR 8190, March 14, 1988) specified that the brakes on heavy vehicles be burnished without regard to the brake temperatures generated during the burnish. The agency believes that this burnish procedure is more realistic and representative of the break-in that the vehicle brakes receive in actual service without favoring one brake design over another.

The burnish procedure is required to be conducted with the vehicle in gear. The agency believes that TMA's proposal to allow the vehicle's brakes to be burnished with the clutch disengaged or the transmission in neutral will result in a higher temperature burnish similar to the old burnish procedure. The burnish procedure rulemaking rejected this temperature-based approach to burnishing brake linings on heavy vehicles. The current burnish procedure allows the brakes to reach whatever temperatures they are designed to reach when driven in typical stop-and-go driving. Therefore, any braking system

design will be conditioned fairly under this approach.

In addition, the procedure described in S7 of Standard No. 105, when testing a vehicle in neutral, requires a four-part procedure that is appropriate for a performance requirement, but would be very time-consuming if applied to a 500-snub burnish procedure. The agency believes that using this method in conducting the burnish procedure would not be in the interest of testing efficiency that manufacturers are striving to achieve.

TMA is also concerned about the burden on manufacturers to test every engine and driveline package offered on a given chassis. The agency notes that vehicle manufacturers are not required to and currently do not test every combination of engine and drivetrain that is offered on each vehicle. The legal requirement is that a manufacturer exercise due care in assuring itself that its vehicle is capable of meeting the performance requirements of applicable standards when tested as prescribed in the standards.

d. Service brake application prior to parking brake application (see 2d above). TMA's request that a full service brake application be permitted prior to applying the parking brake is denied. The agency has no test data comparing the grade holding ability of heavy truck air brake systems using full service brake application prior to engaging the parking brakes, nor did TMA supply such data.

The agency is concerned that, by allowing a full treadle application prior to engaging the parking brake, colloquially referred to as "compounding," some vehicles may have reduced grade holding ability. For example, in some applications, such as the construction industry, trucks are often stopped on a grade in the unloaded condition by a partial treadle application, after which the driver applies the parking brake. In the lightly-loaded condition, a full treadle application may not be needed to stop the vehicle on the grade. If the vehicle were then loaded, however, it is possible that the parking brake would not hold and the vehicle would roll away.

NHTSA is also concerned about the effects of full service brake applications prior to engaging the parking brake on the durability of foundation brake components such as brake chamber support brackets. For a brief time when the air-applied service brakes and the mechanical spring brakes both exert a braking force on the slack adjusters and other foundation brake components, these additive forces can cause damage to these brake components. Another concern is the effect on foundation brake components when vehicles are parked with their brakes at high temperatures. As those brake drums cool, they would impose greater loads on the foundation brakes which could lead to permanent deformation of some components.

The agency notes that this issue is an ongoing concern to the industry in certifying vehicles to Standard No. 121. However, since NHTSA has no test data with which to evaluate the feasibility of this proposal and TMA did not provide any data to support its proposal, the agency has decided to conduct vehicle research to evaluate the issue of brake compounding. Since this research is not expected to be completed until mid-1999, the agency denies this portion of the petition. However, when our research has been completed and the test results analyzed, it is the agency's intent to propose a clarification of the test procedure or a revision of the regulatory language in S5.6.2 of Standard No. 121.

e. Clarify that emergency brake requirements for trucks and buses do not become effective until March 1, 1998 (see 2e above). This TMA request is denied as being moot. Emergency brake requirements are now in effect for all air braked vehicles as of March 1, 1998. Thus, subsection S5.7 of Standard No. 121 will not now be amended to state the effective dates of applicable requirements for the emergency brakes of trucks and buses. The following table, however, is shown here for information purposes:

EMERGENCY BRAKE REQUIREMENTS FOR TRUCKS AND BUSES: EFFECTIVE DATES

(by vehicle and brake configuration)

March 1:	
1997 (Air)	New Truck Tractors.
1998 (Air)	New air-braked trailers & single-unit trucks, buses.
1999 (Hydraulic).	New single-unit trucks and buses with hydraulic brakes.

4. Grants of Certain Requests by Petitioner; Agency Proposals

a. Correction of inconsistency (see 2f above). TMA suggested that emergency brake stops for loaded tractors with unbraked control trailers are inappropriate. TMA is correct. The agency grants the request and proposes to delete S5.7.3(b) since there is no longer a requirement for emergency brake stops for truck tractors in the loaded condition.

b. Roll bar provision (see 2g above). TMA suggested permitting the use of a roll bar for any vehicle in this test sequence, including the 60-mph straight line stops and the 30-mph stops in a curve. The agency grants the request and, in order to provide adequate protection for test vehicle drivers in the event of a rollover during testing, proposes to permit the use of roll bars in all test vehicles utilized in the braking-in-a-curve tests and the straight line stopping distance tests. Further, for the 60-mph straight line stops in the unloaded condition, NHTSA proposes to include an allowance of up to 1,500 pounds for driver, instrumentation, and roll bar. This allowance is not applicable to tests in the loaded condition since the weight of these items would be included as part of the load.

c. Single-unit truck axles should not be overloaded (see 2h above). TMA suggested that paragraph S5.3.1.1 be amended to provide that single-unit trucks should not be overloaded to achieve GVWR. The agency grants the request and proposes to amend paragraph S5.3.1.1 to so provide.

d. Need for additional clarification of the wheel lock provisions (see 2i above). TMA suggested that the wheel lockup provisions be clarified by rescinding the provisions of S5.3.1(a) through (d) (see b(9) above). Although NHTSA does not agree with TMA's rationale for deleting the wheel lock provision, the agency proposes to clarify any misconceptions about the wheel lock provisions with respect to vehicles with tandem axles.

The agency believes that the lack of a definition for "tandem axle" is a primary cause for the misunderstanding of the wheel lock restrictions of S5.3.1. The industry considers a tandem to be two or more drive axles that are placed in a close arrangement one behind the other, whereas NHTSA considers a tandem to be two or more axles (driven or non-driven) placed in a close arrangement one behind the other. Accordingly, NHTSA believes that for a 2-axle rear tandem with one driven axle and one pusher axle, if ABS is on the driven axle and not on the pusher axle, the two wheels on the pusher axle are permitted to lock up for the duration of the stop, while the 2 ABS-controlled wheels on the driven axle are allowed to lock up for only a duration of 1 second or less.

If, as TMA assumes, the two rear axles in the configuration of one driven and one tag or pusher axle are not considered a tandem, TMA would be correct that the lockup restriction of one wheel per axle would apply and prevent both wheels on any one of the axles

from locking simultaneously. However, NHTSA believes that TMA is incorrect in its statement that "neither of the rear axles can have lockup on both its wheels" because NHTSA considers the 2-axle configuration to be a tandem.

The agency believes that a definition of "tandem axle" is needed in the standard to clarify the wheel lock provisions. That definition would not include a requirement that all axles in a tandem be driven. That should resolve the issue of having implied differences in the stringency of the ABS requirements for heavy vehicles with 3 or more axles based on the drivetrain configuration. Thus, a 6x2 single truck (3-axle truck with one drive axle) could comply with the wheel lock provisions using a 4-sensor/2-modulator antilock system since the two rear axles would be defined as a tandem. That would allow any two wheels on the tandem, that is either the tag or the pusher axle, to lock for the duration of the test, if the axle is not ABS-controlled. This definition has recently been included in Standard No. 105, *Hydraulic and electric brake systems*, and NHTSA proposes adding it to Standard No. 121 at this time.

e. Typographical errors (see 2j above). TMA is correct that 2 typographical errors appear in S6.1.8 and S6.2.5 respectively. NHTSA will correct the 2 typographical errors identified by TMA, namely line 23 of the first paragraph of S6.1.8 which now reads "1 mph" will be corrected to read "1 mile." Similarly, line 2 of S6.2.5 that now reads "dynamometer or responding" will be corrected to read "dynamometer corresponding."

5. Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review*.

NHTSA has analyzed the impact of this rulemaking action and has determined that it is not "significant" within the meaning of DOT's regulatory policies and procedures. This action proposes to clarify and amend certain provisions of Federal Motor Vehicle Safety Standard No. 121, *Air brake systems*, to permit the addition of a rollbar on test vehicles when undergoing brake testing, clarify when wheel lockup is permitted when brake testing, provide that single-unit truck axles should not be overloaded when brake testing, and delete an obsolete requirement. The amendments proposed herein would not impose any additional costs on manufacturers of medium and heavy trucks. Although the installation of roll bars on test vehicles would involve additional costs, that provision is optional to manufacturers who may voluntarily want to install them. Further, even if manufacturers chose to install the bars on their test vehicles, the number of affected vehicles would be very small. Thus, the agency estimates that implementation of the proposals herein would not result in any increased costs to manufacturers, distributors, or consumers. Accordingly, a full regulatory evaluation was not prepared.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments proposed herein would primarily affect manufacturers of medium and heavy trucks. The Small Business Administration (SBA) regulation at 13 CFR part 121 defines a small business as a business entity which operates primarily within the United States (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies*, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories*, prescribes a small business size standard of 750 or fewer employees.

The amendments proposed in this rulemaking action would amend Standard No. 121 to permit the addition of a rollbar on test vehicles when undergoing brake testing, clarify when wheel lockup is permitted when brake testing, provide that single-unit truck axles should not be overloaded when brake testing, and delete an obsolete requirement. These proposed amendments were requested by the trade organization that represents the major manufacturers of medium and heavy trucks in the U.S. The proposed amendments, if adopted, would not mandate any increased costs or other burdens on truck manufacturers, most if not all of which would not qualify as small businesses under SBA guidelines. Neither would the proposed amendments result in any increased costs for small businesses or consumers. Accordingly, there would be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

c. Executive Order No. 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria of E.O. 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

d. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

e. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub. L. 96–511, NHTSA states that there are no information collection requirements associated with this rulemaking action.

f. Civil Justice Reform

The amendments proposed herein would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. Section 30161 of Title 49, U.S. Code sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

6. Comments

Interested persons are invited to submit comments on the amendments proposed herein. It is requested but not required that any such comments be submitted in duplicate (original and 1 copy).

Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary

arguments in concise fashion. Necessary attachments, however, may be appended to those comments without regard to the 15-page limit.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address noted above, and 1 copy from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information called for in 49 CFR part 512, *Confidential Business Information.*

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received after the closing date will be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on today's proposal will be available for public inspection in the docket. NHTSA will continue to file relevant information in the docket after the comment closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rule docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 would be amended in S4 by adding a definition of "tandem axle" in alphabetical order; by revising S5.3.1.1 (a) through (c) and S5.7.3(b); by removing and reserving S5.7.3(c); and by revising S6.1.8 and S6.2.5, to read as follows:

§ 571.121 Air brake systems.

* * * * *

S4. *Definitions.*

* * * * *

Tandem axle means a group or set of two or more axles placed in a close arrangement, one behind the other, with the centerlines of adjacent axles not more than 72 inches apart.

* * * * *

S5.3.1.1 * * *

(a) Loaded to its GVWR so that the load on each axle, measured at the tire-ground interface, is most nearly proportional to the axles' respective GAWRs, without exceeding the GAWR of any axle.

(b) In the truck tractor only configuration plus up to 500 lbs. or, at the manufacturer's option, at its unloaded weight plus up to 500 lbs. (including driver and instrumentation) and plus not more than an additional 1,000 lbs. for a roll bar structure on the vehicle, and

(c) At its unloaded vehicle weight (except for truck tractors) plus up to 500 lbs. (including driver and instrumentation) or, at the manufacturer's option, at its unloaded weight plus up to 500 lbs. (including driver and instrumentation) plus not more than an additional 1,000 lbs. for a roll bar structure on the vehicle. If the speed attainable in two miles is less than 60 mph, the vehicle shall stop from a speed in Table II that is four to eight mph less than the speed attainable in two miles.

* * * * *

S5.7.3 * * *

(b) Be capable of modulating the air in the supply or control line to the trailer by means of the service brake control with a single failure in the towing vehicle service brake system as specified in S5.7.1.

(c) [Removed and reserved]

* * * * *

S6.1.8 For vehicles with parking brake systems not utilizing the service brake friction elements, burnish the friction elements of such systems prior to the parking brake test according to the manufacturer's recommendations. For vehicles with parking brake systems utilizing the service brake friction elements, burnish the brakes as follows: With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 f.p.s.p.s., or at the vehicle's maximum deceleration rate if less than 10 f.p.s.p.s. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mile, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. Any automatic pressure limiting valve is in use to limit pressure as designed. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendation.

* * * * *

S6.2.5 The rate of brake drum or disc rotation on a dynamometer corresponding to the rate of rotation on a vehicle at a given speed is calculated by assuming a tire radius equal to the static loaded radius specified by the tire manufacturer.

* * * * *

Issued on January 26, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–2486 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 64, No. 22
Wednesday, February 3, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–506]

Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has received a request from Atlas Tube, Inc., to conduct a new shipper review of the antidumping duty order on oil country tubular goods from Canada (51 FR 21782, June 16, 1986). In accordance with the Department of Commerce's regulations, we are initiating this new shipper review.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4114 or (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (April 1998).

Background

The Department of Commerce (Department) has received a timely request from Atlas Tube, Inc. (Atlas), to conduct a new shipper administrative review of the antidumping duty order on oil country tubular goods from Canada in accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(b) of the Department's regulations.

Initiation of Review

In its request of December 30, 1998, Atlas certified that it did not export the subject merchandise to the United States during the period of investigation (POI), and it has not been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. Accompanying its request, Atlas provided certifications which indicate the date the merchandise was first entered for consumption in the United States, the volume of the first and the subsequent shipments and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on oil country tubular goods from Canada. Since this new shipper review was requested in the six-month period following the anniversary month of the order and is being initiated in the month immediately following the semiannual anniversary month, the period of review will be June 1, 1998 to November 30, 1998. *See* 19 CFR 351.214(g)(1). We intend to issue the preliminary results of the review not later than 180 days from the publication of this notice.

Antidumping duty proceeding	Period to be reviewed
Canada: Oil Country Tubular Goods, A–122–506: Atlas Tube Inc	06/01/98–11/30/98

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, in accordance with 19 CFR 351.214(e).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: January 28, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–2560 Filed 2–2–99; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Custodianship Certificate to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces; DD Form 2790; OMB Number 0730–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 300.

Responses Per Respondent: 1.

Annual Responses: 300.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 60.

Needs and Uses: The information is used by the Directorate of Annuity Pay, Defense Finance and Accounting Service, Denver Center (DFAS–DE), to pay the annuity to the correct person on behalf of a child under the age of majority. The annuity for a minor child is paid to the legal guardian, or if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. The annuity cannot be paid until the custodian certifies that he/she has the care and custody of the child(ren).

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required To Obtain or Maintain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–2470 Filed 2–2–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Due to the unforeseen specific scheduling for finalizing this meeting date unable to allow the 15 day notification as required by law. Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463.

As amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting Of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 2–3 February 1999 (800am to 1600pm).

ADDRESSES: Air Force Technical Applications Center, Patrick Air Force Base, FL 32925.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: January 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–2468 Filed 2–2–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 17 February 1999 (900am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: January 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–2469 Filed 2–2–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Battle Space Infosphere Study Kickoff Meeting in support of the HQ USAF Scientific Advisory Board will meet at Hurlburt AFB, FL on February 23, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to kick off the 1999 Battle Space Infosphere Study.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

FOR FURTHER INFORMATION CONTACT: The HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–2480 Filed 2–2–99; 8:45 am]

BILLING CODE 5000–05–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Notice of Proposed Solicitation for Cooperative Agreement Applications

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed Solicitation for Cost Sharing Cooperative Agreement Applications.

SUMMARY: The Defense Logistics Agency (DLA) intends to issue a solicitation for cooperative agreement applications (SCAA) to assist state and local governments and other nonprofit eligible entities in establishing or maintaining procurement technical assistance centers (PTACs). These centers help business firms market their goods and service to the Department of Defense (DoD), other federal agencies, and state and/or local government agencies. This solicitation, when issued, governs the submission of applications for calendar years 1999, 2000, 2001, and 2002. The Defense Logistics Agency will be issuing a similar solicitation for cooperative agreement proposals to assist Indian-owned economic enterprises and tribal organizations.

The proposed SCAA is available for review on the Internet Website: **http://www.dla.mil/ddas.** Printed copies are not available for distribution.

You are requested to post any comments, questions, or concerns that you might have with this proposed SCAA directly to the above-cited Website. All comments must be received by February 28, 1999. Both solicitations will be advertised, on this Website in early March 1999. Information on the pre-solicitation conferences as well as how to obtain the required access codes will be provided after the solicitation has been formally advertised.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth G. Dougherty, at (703) 767–1657.

Kenneth G. Dougherty,

Grants Officer.

[FR Doc. 99–2478 Filed 2–2–99; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 10, 1999 . The regular collection will be submitted through the discretionary streamlined process (1890–0001). Interested persons are invited to submit comments on or before April 5, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 28, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Even Start Statewide Family Literacy Initiative Grants (84.314B).

Abstract: The Even Start Statewide Family Literacy Initiative is designed for States to plan and implement Statewide family literacy initiatives, coordinate and, where appropriate, integrate existing Federal, State, and local literacy resources for the purpose of strengthening and expanding family literacy services in the State. The Department will use the information to make awards.

Additional Information: The Department is seeking emergency clearance by February 10, 1999 to ensure that States pursue a coordinated approach to family literacy and avoid the public harm that otherwise might occur from separate planning processes. If normal clearance procedures were followed, potential grantees would not receive State-level Reading Excellence Act (REA) awards.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52. Burden Hours: 624.

[FR Doc. 99–2490 Filed 2–2–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 99–13; Complex and Collective Phenomena

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for innovative research on the topic of complex and collective phenomena. Opportunities exist for research covering the entire range of disciplines supported by the BES program, including research in the materials sciences, chemical sciences, engineering sciences, geosciences and energy biosciences.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–13, should be received by DOE by 4:30 P.M., E.S.T., March 2, 1999. A response to the preapplications encouraging or discouraging a formal application generally will be communicated to the applicant within 21 days of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., April 21, 1999, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1999.

ADDRESSES: All preapplications, referencing Program Notice 99–13,

should be sent to Dr. Jerry J. Smith, Division of Materials Sciences, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown MD 20874–1290.

Formal applications referencing Program Notice 99–13 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 99–13. This address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For questions concerning research topics in specific technical areas, contact the following individuals in the appropriate division of interest:

Dr. Jerry J. Smith, Division of Materials Sciences, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4269, e-mail: (jerry.smith@oer.doe.gov).

Dr. William S. Millman, Division of Chemical Sciences, SC–14, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–5805, e-mail: (william.millman@oer.doe.gov).

Dr. James Tavares, Division of Energy Biosciences, SC–17, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903-6190, e-mail: (jim.tavares@oer.doe.gov).

Dr. Robert Price, Division of Engineering, SC–15, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–3565, e-mail: (bob.price@oer.doe.gov).

Dr. Nick Woodward, Division of Geosciences, SC–15, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4061, e-mail: (nick.woodward@oer.doe.gov).

SUPPLEMENTARY INFORMATION: Much of the research supported by the BES program and its predecessor organizations during the past 50 years has been devoted to solving very difficult problems in idealized, simple systems. The challenge now is to use that knowledge to understand complex systems. This program will support work at the frontiers of basic research. Work is intended to be revolutionary rather than evolutionary, and it is expected that it may involve multidisciplinary and/or interdisciplinary efforts. Further it is expected to strengthen the basis for understanding complex and collective phenomena currently viewed from a single domain such as the atomic level (reductionist view) or continuum mechanics (classical view). The program is open to the entire range of disciplines supported by the BES program. Additional information on the BES Research Program is available at the following web site address: http://www.er.doe.gov/production/bes/bes.html.

Some important categories of studies that might be included within the initiative in Complex and Collective Phenomena are:

- Materials that are beyond binary; that lack stoichiometry; that are far from equilibrium; that have little or no symmetry or low dimensionality. Often desired properties and behaviors exist only in "non-ideal compounds," i.e., those that are made from more than a few elements, made in non-stoichiometric combinations, made far from equilibrium; or made in one or two dimensions. As examples, high-temperature superconductors are complex compounds of four or more elements that are not stoichiometric with respect to oxygen; the glassy metal state, which has many desirable properties, has no long range order or symmetry; and many interesting and useful properties exist in atomic and molecular arrangements that have only one or two dimensions, such as is found in thin films, membranes, and quantum dots. These classes of materials, which will dominate the next generation of energy technologies, pose new challenges and opportunities because of their complexity.
- Functional synthesis. Although chemists routinely synthesize molecules to desired elemental composition and structure, the ability to predict structure/function relationships remains elusive. Because function can be exquisitely sensitive to even minor changes in both composition and structure and because the number of combinations is virtually boundless, we are unable to predict what combinations of elements and arrangements of atoms give rise to desired properties such as superconductivity, magnetism, ductility, toughness, strength, resistance, catalytic function, or enzymatic function.
- The control of entropy. To a scientist, entropy has a precise mathematical definition; however, to a nonscientist, entropy can be viewed as synonymous with disorder. A standard maxim in physics is that "the entropy of the universe tends to increase," i.e., things become increasingly disordered with time. Interestingly, most of our energy now comes from fossil fuels that were derived from photosynthesis—the ability of plants to reduce entropy locally by absorbing sunlight and converting carbon dioxide to lower-entropy hydrocarbons, polysaccharides, and other compounds. However, even though photosynthesis has been studied for decades, we still do not completely understand it nor have we been able to duplicate or improve on it. This one example of the control of entropy—the ability to mimic the functions of plants—remains one of the outstanding challenges in the natural sciences.
- Phenomena beyond the independent particle approximation. Phenomena beyond the independent particle model—that by their nature are collective—challenge our understanding of the natural world and require major advances in theory, modeling, computing, and experiment. Collective phenomena include widely diverse phenomena in the gas and condensed phases, including Bose-Einstein condensation, high-temperature superconductivity, and electron correlation.
- Scaling in space and time. Research in chemistry, materials, engineering, geosciences, and biosciences covers lengths from the atomic scale to the cellular scale to the hundreds of kilometers scale and times from femtoseconds to millennia. We understand single atoms, molecules, and pure crystals fairly well; but, when we go beyond these simple systems to larger more complex systems, our understanding is limited. The relationships between constituent and collective properties and behavior of systems over a wide range of spatial scales, and their response to processes operating over a wide range of time scales, are not well understood. Improving our understanding of phenomena over wide time scales—from femtoseconds in spectroscopy to decades in the regulatory system of plants to thousands of years in radioactive waste disposal—and over spatial scales from atomic to geologic is important.

Program Funding

It is anticipated that an estimated $1.5 million will be available for grant awards during FY 1999, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, also contingent upon the availability of appropriated funds, progress of the research and continuing program need. Applications received by the Office of Science, Office of Basic Energy Sciences, under its

current competitive application mechanisms may be deemed appropriate for consideration under this notice and may be funded under this program.

Preapplications

A brief preapplication may be submitted. The preapplication should identify, on the cover sheet, the institution, principal investigator name, address, telephone, fax and e-mail address, title of the project, and the field of scientific research. The preapplication should consist of no more than a three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Complex and Collective Phenomena initiative.

Preapplications are strongly encouraged but not required prior to submission of a formal application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel announcement with a similar potential total amount of funds will be issued to DOE FFRDCs. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. On the grant face page, form DOE F 4650.2, block 15, provide the principal investigator's phone number, fax number and e-mail address. The research description must be 20 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on January 27, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–2540 Filed 2–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Golden Field Office; Hydrogen-Fuel-Cell Mining Vehicle

AGENCY: The Department of Energy (DOE).

ACTION: Notice of Supplemental Announcement (09) to the Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development, and Demonstration for Renewable Energy and Energy Efficiency Technologies, DE–PS36–99GO10383.

SUMMARY: The Hydrogen Program of the Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is issuing a Supplemental Announcement to EERE's Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–99GO10383, dated November 9, 1998. Under this Supplemental Announcement, DOE is seeking research and development (R&D) proposals that can advance the use of fuel cell technology in hydrogen-powered, mobile, underground mining equipment.

Awards under this Supplemental Announcement will be Cooperative Agreements for Phase I research with a term of up to 12 months. Subject to availability, the total DOE funding under this Supplemental Announcement will be about $160,000. It is anticipated that only one Phase I award will be made.

All information regarding the Supplemental Announcement will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the Supplemental Announcement on January 25, 1999. The closing date of the Supplemental Announcement is March 5, 1999.

ADDRESSES: The Supplemental Announcement will be posted on the DOE Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm. It is DOE's intention not to issue hard copies of the Supplemental Announcement.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Doug Hooker, Project Officer, at 303–275–4780, e-mail doug__hooker@nrel.gov.

Issued in Golden, Colorado, on January 21, 1999.

Dated: January 23, 1999.

Ruth E. Adams,

Contracting Officer, Golden Field Office.

[FR Doc. 99–2539 Filed 2–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–363–000, ER99–374–000, ER99–423–000, ER99–424–000, ER99–425–000, ER99–426–000, ER99–427–000, ER99–428–000, ER99–429–000, ER99–430–000, ER99–431–000, ER99–432–000, ER99–433–000, ER99–434–000, ER99–435–000, ER99–447–000, ER99–448–000, ER99–796–000, and EL99–27–000]

Southern Company Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

January 28, 1999.

Take notice that on January 27, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–27–000

under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–27–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2485 Filed 2–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–122–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

January 28, 1999.

Take notice that on December 17, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an abbreviated application pursuant to Section 7(b) and Section 7(c) of the Natural Gas Act, as amended, and Part 157 of the Commission's Regulations for an order to abandon by reclaim two 230 horsepower Ajax compressor units and appurtenant facilities at the South Welda Compressor Station located in Anderson County, Kansas, and replace them with a 353 horsepower Caterpillar unit, driving a Knight KOA three-stage compressor unit and appurtenant facilities. The new unit will be located in the same site but a different building, all as more fully set forth in the application on file with the Commission and open to public inspection.

The project cost is estimated to be approximately $257,414.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2529 Filed 2–2–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6230–2]

Notice of Public Meetings

AGENCY: Environmental Protection Agency, Region III.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Environmental Protection Agency Region III Office will hold a series of six public meetings to obtain information from stakeholders regarding their use of and access to environmental information.

DATES: The 6 meetings will be held in late February and March, 1999. Specific dates and locations are listed under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane McCreary, Region III Information Systems Branch, at (215) 814–5519 or email mccreary.diane@epa.gov.

SUPPLEMENTARY INFORMATION: EPA Region III will hold a series of 6 public meetings throughout the Region to define public environmental information needs. Each meeting will focus on the needs of a particular stakeholder group. Each group represents an information intermediary, i.e., the information affects or is transferred to a larger group such as customers, students, patients, etc. Results of the meetings will be used to improve the Region's response to the public's demand for environmental information. One possible improvement, for example, would be a revised Regional website. The public is invited to attend these meetings as observers and/or to provide comment during a public comment period at the end of each meeting. Requests to attend the meetings and/or provide oral comments at the meetings must be received at least 10 working days prior to the scheduled meetings. The times and addresses of the meetings can be obtained from the EPA contact person (listed above) two weeks prior to each meeting. As presently planned, the schedule for the public meetings is as follows:

Librarians	Charlottesville, VA	February 23, 1999.
Media	Pittsburgh, PA	March 4, 1999.
Pediatric Medical Practitioners	Pittsburgh, PA	March 4, 1999.
Environmental Educators	Frederick, MD	March 9, 1999.
Local Environmental Groups	Salisbury, MD	March 11, 1999.
Small Businesses	York, PA	March 16, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–2554 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–28–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30467; FRL–6054–7]

American Cyanamid Co.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the pesticide product Chlorfenapyr 25 WP Termiticide Insecticide, containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 5, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30467] File Symbol (241–GOO) to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Registration Division (7505C), 401 M St., SW., Washington, DC 20460. Office location/telephone number and e-mail address: Rm. 212, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA, 703–305–6502; e-mail: sibold.ann@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from American Cyanamid Company, Agricultural Research Div., P.O. Box 400, Princeton, NJ 08543–0400, to register the pesticide product Chlorfenapyr 25 WP Termiticide/Insecticide (EPA file symbol 241–GOO), containing active ingredient chlorfenapyr 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile at 25.00%, an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Chlorfenapyr 25 WP is intended for use by Pest Management Professionals as a spot or crack and crevice spray for residual pest control of termite infestations in and around houses, apartments or other residential structures or commercial, institutional and warehousing establishments (such as schools, supermarkets, restaurants, and other areas). Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30467] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30467] Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: January 21, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–2201 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66263; FRL 6054–4] Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 2, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act

further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 34 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000279 WA–95–0017	Furadan CR - 10	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000499–00409	TC 73 Weed Killer	Dimethylamine 2,4-dichlorophenoxyacetate Triethylammonium triclopyr
002393–00517	Diphacinone 110 S Concentrate Rodenticide	2-(Diphenylacetyl)-1,3-indandione
002393 AZ–88–0019	Ramik Green	2-(Diphenylacetyl)-1,3-indandione
010182–00020	Talon Rodenticide Mini-Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00021	Talon Rodenticide Bait Pack (mini-Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00024	Talon Rodenticide Bait Pack (Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00025	Talon-G Rodenticide Mini-Pellets In Mouse Box	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00026	Talon Rodenticide Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00038	Talon-G Rodenticide Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00039	Talon-G Rodenticide Bait Pack (Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00040	Talon-G Rodenticide Bait Pack (Mini-Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00041	Talon-G Rodenticide Mini-Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00048	Weatherblok Bait	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00060	Havoc Rodenticide Bait Pack (Mini-Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00061	Havoc Rodenticide Bait Pack (Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00075	Havoc Rodenticide Mini-Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00076	Havoc Rodenticide Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00093	Havoc Rodenticide Bait Pack (Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00152	Eptam 6-E	*S*-Ethyl dipropylthiocarbamate
010182–00390	Flexstar Herbicide	5-(2-Chloro-4-(trifluoromethyl)phenoxy)-*N*-(methylsulfonyl)-2-nitrobenzamide, sodium
010182 LA–95–0015	Starfire Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010182 LA–96–0009	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010182 MS–95–0014	Gramoxone Super Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
041878–00002	M-100 Mosquito Repellent Solution	*N,N*-Diethyl-meta-toluamide and other isomers
042519–00013	Dorsan Insecticide	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
045639–00058	Ficam Insecticidal-Shelf + Drawer Paper	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00140	Ficam Wasp & Hornet Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00152	Ficam Plus R/S	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
056473–00002	Amerstat 10	Methylenebis(thiocyanate)
065229 WA–90–0026	Vinco Formaldehyde Solution	Formaldehyde
071176–00001	Cyfly Technical	*N*-Cyclopropyl-1,3,5-triazine-2,4,6-triamine
071176–00002	Cyfly 1% Premix	*N*-Cyclopropyl-1,3,5-triazine-2,4,6-triamine
071240–00003	Zerepel 2	3-Iodo-2-propynyl butylcarbamate

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000279	FMC Corp., Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct Industrial Blvd, St Louis, MO 63122.
002393	HACO, Inc., Box 7190, Madison, WI 53707.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
041878	LJB Laboratories, 1001 E Cass, St Johns, MI 48879.
042519	Luxembourg-Pamol, Inc., 5100 Poplar Ave., Suite 2746, Memphis, TN 38137.
045639	Agrevo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808.
056473	Drew Ameroid Marine Division, Ashland Chemical, Division of Ashland Inn, One Drew Plaza, Boonton, NJ 07005.
065229	John G. Gardner, Dba/West Shore Acres, 956 Downey Rd., Mount Vernon, WA 98273.
071176	Blue Ridge Pharmaceuticals Inc., 212 B Burgess Rd., Greensboro, NC 27409.
071240	William Zinsser & Co., Inc., 173 Belmont Drive, Somerset, NJ 08873.

III. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 2, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** June 26, 1991, (56 FR 29362) (FRL 3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 25, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–2552 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–851; FRL–6052–1]

Notice of Filing; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain

pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–851, must be received on or before March 5, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Marshall Swindell, Antimicrobial Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address:, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–6411; e-mail:swindell.marshall @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–851] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–851) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 13, 1999.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Ecolab Inc.

9F5038

EPA has received a pesticide petition (9F5038) from Ecolab Inc., 370 Wabasha Street N., St. Paul, MN 55102, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the residues of hydrogen peroxide in or on all foods when the residues are the result of the lawful application of a food contact surface sanitizer containing hydrogen peroxide up to 1,100 ppm as a sanitizing solution in food handling establishments.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Ecolab Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Ecolab Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

The request is to exempt from the requirement of a tolerance, residues of hydrogen peroxide in or on all food when such residues result from the lawful use of hydrogen peroxide as a component in a food contact surface sanitizer.

The residues which do remain are not of toxicological significance.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Residues of hydrogen peroxide are not expected because hydrogen peroxide reacts immediately on contact with materials such as food, reducing agents and catalysts and is degraded to moieties which present no toxicological concern (Reregistration Eligibility Decision, Peroxy Compounds, U.S. EPA. EPA 738-R-93-030, the "1993 RED"). The ultimate degradation products of hydrogen peroxide are water and oxygen (1993 RED). The degradation products of hydrogen peroxide are not of toxicological concern.

2. *Magnitude of residue and method used to determine the hydrogen peroxide residue.* Not applicable.

3. *A statement of why an analytical method for detecting and measuring the hydrogen peroxide levels of the pesticide residue are not needed.* Because this petition is a request for an exemption and residues are not expected on food from use of hydrogen peroxide as a component of a food

contact surface sanitizer on food contact surfaces.

C. Mammalian Toxicological Profile

Based on the current body of toxicological literature available, adverse effects are not expected when used in the proposed manner.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. There are no established U.S. food tolerances for hydrogen peroxide. The U.S. EPA established an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide hydrogen peroxide, in or on raw agricultural commodities, in processed commodities, when such residues result from the lawful use of hydrogen peroxide as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grains, herbs, and spices up to 120 ppm. According to the 1993 RED, hydrogen peroxide is used in dairy/cheese processing plants, on food-processing equipment and in pasteurizers in breweries, wineries and beverage plants. While some contact may occur between treated equipment and food, no residues are expected since only trace amounts would come in contact with food having contacted treated equipment and the compound degrades rapidly in air and in contact with organic materials to oxygen and water. In addition, hydrogen peroxide may be safely used on food-processing equipment, utensils, and other food-contact articles according to the Food and Drug Administration (FDA) (21 CFR 178.1010, Sanitizing Solutions).

Dietary exposure from these uses is possible; however, hydrogen peroxide reacts instantly upon contact with materials such as food and degrades to moieties which present no toxicological concern. The addition to dietary aggregate exposure of hydrogen peroxide as described in this petition is expected to be zero.

ii. *Drinking water*. There is no concern about the potential for transfer of hydrogen peroxide residues (both the parent compound and any degradates) to human drinking water because the use sites for hydrogen peroxide listed in the 1993 RED include indoor food, indoor non-food, indoor medical, and indoor residential. Hydrogen peroxide is approved for use as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grain, herbs, and spices. It is unlikely that residues from these uses or the proposed use will transfer hydrogen peroxide residues (both the parent and any degradates) to any sources of human drinking water. In addition, the degradation products of hydrogen peroxide in aqueous solutions are water and oxygen. These degradation products are not of toxicological concern.

Because of the physical chemistry of this pesticide, it is unlikely that any States are conducting water monitoring programs for hydrogen peroxide.

iii. *Non-dietary exposure*. The estimated non-occupational exposure to hydrogen peroxide has been evaluated based on its proposed use pattern.

According to the 1993 RED, the compound, in the form of a soluble concentrate/liquid, is used in industrial and commercial settings.

Hydrogen peroxide use in homes is medicinal and exposures are expected to be infrequent and at extremely short duration as a topical antimicrobial agent or a mouthwash.

Hydrogen peroxide is highly reactive and short-lived because of the inherent instability of the peroxide bond (O-O bond) and, because the peroxide bond is weak, transformation to water and oxygen is very highly favored thermodynamically (1993 RED). The degradation products of hydrogen peroxide in aqueous solutions are water and oxygen. The degradation products of hydrogen peroxide are not of toxicological concern.

The potential for significant non-occupational exposure under the use proposed in this petition to the general population (including infants and children) is unlikely. Hydrogen peroxide is proposed in this petition to be used only at commercial establishments (including farms) and is not to be used in or around the home.

E. Cumulative Exposure

When used as proposed, hydrogen peroxide decomposes quickly; there is no reasonable expectation that residues of these compounds will remain in human food items in accordance with 40 CFR 180.3. The mode of action of this pesticide is oxidation. Other chemicals that may share a similar mode of action are peroxyacetic acid and potassium peroxymonosulfate sulfate as listed in the 1993 RED. Combining exposures to these compounds could be appropriate; however, each degrades rapidly (due to the peroxy bond, the O-O bond) into compounds that are not toxicologically significant (including water, oxygen, and carbon dioxide).

F. Safety Determination

1. *U.S. population*. Hydrogen peroxide naturally degrades to water and oxygen which would not pose a health risk to the U.S. general population. These degradation products are not of toxicological concern.

2. *Infants and children*. Hydrogen peroxide naturally degrades to water and oxygen which would not pose a health risk to the U.S. population subgroup of infants and children. These degradation products are not of toxicological concern. Residues are not expected on food from use of hydrogen peroxide as a component of a food contact surface sanitizer on food contact surfaces. The residues do not bioaccumulate in livestock and/or poultry that consume treated feedstuffs because hydrogen peroxide is highly reactive and short-lived due to the inherent instability of the peroxide bond (O-O bond). Because the peroxide bond is weak, transformation to water and oxygen is very highly favored thermodynamically (1993 RED). The degradation products of hydrogen peroxide are water and oxygen. Therefore, exposure of the pesticide chemical (from the use proposed in this petition) to the U.S. general population should not occur.

G. Effects on the Immune and Endocrine Systems

Hydrogen peroxide is not structurally similar to any known chemical capable of producing adverse effect on the endocrine system.

H. International Tolerances

The petitioner understands that there are no current established Maximum Residue Levels (MRLs) for hydrogen peroxide.

2. Ecolab Inc.

PP 9F5039

EPA has received a pesticide petition (9F5039) from Ecolab Inc., 370 Wabasha Street, N., St. Paul, MN 55102, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the residues of peroxyacetic acid in or on all foods when the residues are the results of the lawful application of a foods contact surface sanitizer containing peroxyacetic acid up to 500 ppm as a sanitizing solution in food handling establishments.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Ecolab Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Ecolab Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the

summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

The request is to exempt from the requirement of a tolerance, residues of peroxyacetic acid in or on all food when such residues result from the lawful use of peroxyacetic acid as a component in a food contact surface sanitizer.

The residues which do remain are not of toxicological significance.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Residues of peroxyacetic acid are not expected on food because peroxyacetic acid reacts immediately on contact with materials such as food, reducing agents and catalysts and is degraded to moieties which present no toxicological concern (Reregistration Eligibility Decision, Peroxy Compounds, U.S. EPA. EPA 738-R-93-030). The ultimate degradation products of peroxyacetic acid are acetic acid (which is generally regarded as safe in food up 0.15 %, 21 CFR 184.1,005), water and oxygen. The degradation products of peroxyacetic acid are not of toxicological concern.

2. *Magnitude of residue and method used to determine the peroxyacetic acid residue.* Not Applicable.

3. *A statement of why an analytical method for detecting and measuring the peroxyacetic acid levels of the pesticide residue are not needed.* Because this petition is a request for an exemption and residues are not expected on food from use of peroxyacetic acid as a component of a food contact surface sanitizer on food contact surfaces.

C. Mammalian Toxicological Profile

Based on the current body of toxicological literature available, adverse effects are not expected when used in the proposed manner.

D. Aggregate Exposure

Dietary exposure—i. Food. There are no established U.S. food tolerances for peroxyacetic acid. The U.S. EPA established an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide peroxyacetic acid, in or on raw agricultural commodities, in processed commodities, when such residues result from the lawful use of peroxyacetic acid as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grains, herbs, and spices up to 100 ppm. According to the 1993 RED, peroxyacetic acid is used in dairy/cheese processing plants, on food-processing equipment and in pasteurizers in breweries, wineries and beverage plants. While some contact may occur between treated equipment and food, no residues are expected since only trace amounts would come in contact with food having contacted treated equipment and the compound degrades rapidly in air and in contact with organic materials to acetic acid (which is generally regarded as safe in food up 0.15 %, see 21 CFR 184.1005), oxygen and water. In addition, peroxyacetic acid may be safely used on food-processing equipment, utensils, and other food-contact articles according to the Food and Drug Administration (FDA) (21 CFR 178.1010, Sanitizing Solutions).

Dietary exposure from these uses is possible; however, peroxyacetic acid reacts immediately upon contact with materials such as food and degrades to moieties which present no toxicological concern. The addition to dietary aggregate exposure of peroxyacetic acid as described in this petition is expected to be zero.

ii. *Drinking water.* There is no concern about the potential for transfer of peroxyacetic acid residues (both the parent compound any degradates) to human drinking water because the use sites for peroxyacetic acid listed in the 1993 RED include indoor food, indoor non-food, indoor medical,and indoor residential. Peroxyacetic acid is approved for use as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grain, herbs, and spices. It is essentially impossible that residues from these uses or the proposed use will transfer peroxyacetic acid residues (both the parent and any degradates) to any sources of human drinking water. In addition, the degradation products of peroxyacetic acid in aqueous solutions are acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen. These degradation products are not of toxicological concern.

Because of the physical chemistry of this pesticide, it is unlikely that any States are conducting water monitoring programs for peroxyacetic acid.

iii. *Non-dietary exposure.* The estimated non-occupational exposure to peroxyacetic acid has been evaluated based on its proposed use pattern.

According to the 1993 RED, the compound, in the form of a soluble concentrate/liquid, is used in industrial and commercial settings.

Peroxyacetic acid is highly reactive and short-lived because of the inherent instability of the peroxide bond (O-O bond) and, because the peroxide bond is weak, transformation to acetic acid, water and oxygen is very highly favored thermodynamically (1993 RED). The degradation products of peroxyacetic acid in aqueous solutions are acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen. The degradation products of peroxyacetic acid are not of toxicological concern.

The potential for any non-occupational exposure under the use proposed in this petition to the general population (including children) is unlikely. Peroxyacetic acid is proposed in this petition to be used only at commercial establishments (including farms) and is not proposed for use in or around the home.

E. Cumulative Exposure

When used as proposed, peroxyacetic acid decomposes quickly; there is no reasonable expectation that residues of these compounds will remain in human food items in accordance with 40 CFR 180.3. The mode of action of this pesticide is oxidation. Other chemicals that may share a similar mode of action are peroxyacetic acid and potassium peroxymonosulfate sulfate as listed in the 1993 RED. Combining exposures to these compounds could be appropriate; however, each degrades rapidly (due to the peroxy bond, the O-O bond) into compounds that are not toxicologically significant (including water, oxygen, and carbon dioxide).

F. Safety Determination

1. *U.S. population.* Peroxyacetic acid naturally degrades to acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen which would not pose a health risk to the U.S. general population. These degradation products are not of toxicological concern.

2. *Infants and children.* Peroxyacetic acid naturally degrades to acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen which would not pose a health risk to the U.S. population subgroup of infants and children. These degradation products are not of toxicological concern. Residues of peroxyacetic acid are not expected on food from use of peroxyacetic acid as a component of a food contact surface sanitizer on food contact surfaces. The residues do not bioaccumulate in livestock and/or poultry that consume treated feedstuffs because peroxyacetic acid is highly reactive and short-lived due to the inherent instability of the peroxide bond (O-O bond). Because the

peroxide bond is weak, transformation to acetic acid, water and oxygen is very highly favored thermodynamically (1993 RED). The degradation products of peroxyacetic acid are acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen. Therefore, exposure of the pesticide chemical (from the use proposed in this petition) to the U.S. general population should not occur.

G. Effects on the Immune and Endocrine Systems

Peroxyacetic acid is not structurally similar to any known chemical capable of producing adverse effect on the endocrine system.

H. International Tolerances

The petitioner understands that there are no current established Maximum Residue Levels (MRL) for peroxyacetic acid.

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–7]

Response to Recommendations from the Children's Health Protection Advisory Committee Regarding Evaluation of Existing Environmental Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA asked the federal Children's Health Protection Advisory Committee (CHPAC) to recommend five existing standards that may merit reevaluation in order to further protect children's environmental health. This document includes EPA's response to the CHPAC recommendations. EPA will reevaluate the chloralkali National Emission Standard for Hazardous Air Pollutants (mercury); the implementation and enforcement of the (Farm) Worker Protection Standards; pesticide tolerances for organophosphates (chlorpyrifos, dimethoate, methyl parathion); atrazine pesticide tolerances and Maximum Contaminant Level in drinking water; and will review indoor and ambient air quality as they relate to asthma. EPA's decision to reevaluate is based in large part on recommendations from the Children's Health Protection Advisory Committee and public comments in response to a **Federal Register** document of October 3, 1997.

In September 1996, EPA issued a report on Environmental Health Threats to Children (EPA 175–F–96–001) that described how and why children are affected by an array of complex environmental threats to their health. The report included a National Agenda to Protect Children's Health from Environmental Threats in which EPA called for a national commitment to ensure a healthy future for our children. We called on national, state and local policy makers—as well as each community and family—to learn about the environmental threats our children face; to participate in an informed national policy debate on how together we can best reduce health risks for children; and to take action to protect our Nations's future by protecting our children.

The first element of the National Agenda committed the Administration to ". . . ensure, as a matter of national policy, that all standards EPA sets are protective enough to address the potentially heightened risks faced by children—so as to prevent environmental health threats wherever possible—and that the most significant current standards be reevaluated as we learn more." We further state that " . . . EPA will select—with public input and scientific peer review—five of its most significant public health and environmental standards to reissue on an expedited basis under this new policy."

Background

In order to meet our commitment to public input, EPA sought advice through two channels: formal notice and comment, and the formation of a Federal Advisory Committee composed of individuals representing diverse viewpoints. On October 3, 1997, EPA issued a document and request for comments from the public as to existing EPA standards that, if revised as a result of review and evaluation, would strengthen and increase children's environmental health protection. EPA received comments from 18 individuals and organizations. (Attachment A to this document includes the list of submitters, a summary of the comments, and EPA's response to the public comments.) Further, on September 9, 1997, EPA issued a document in the **Federal Register** that it had established a Children's Health Protection Advisory Committee (CHPAC) under the Federal Advisory Committee Act, Public Law 92–463, to advise the Administrator on various issues of children's environmental health protection.

One of the first actions undertaken by the CHPAC, at the request of EPA, was to develop a set of recommendations to the Administrator concerning which existing rules EPA should reevaluate. They started by reviewing the public comments that were submitted in response to the October 3, 1997, **Federal Register** document. Based on extensive deliberations the CHPAC submitted their recommendations in a consensus report dated May 28, 1998. (See Attachment B for the selection criteria used by the CHPAC in their deliberations.) The following section lists the CHPAC recommendations, excerpts the discussion that accompanied the recommendations in the report (in italics), and outlines EPA's response.

We congratulate the Children's Health Protection Advisory Committee for their success in deliberating and recommending actions to improve EPA's regulations. We believe that EPA's response to these recommendations advances our goal to better protect our Nation's children.

FOR FURTHER INFORMATION CONTACT: If you have a need for further information you may write to Meg Kelly, Office of Children's Health Protection, USEPA (MS1107), 401 M Street, SW, Washington, D.C. 20460; (kelly.margaret@epa.gov).

SUPPLEMENTARY INFORMATION:

CHPAC Recommendation: Reevaluate the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Chloralkali Plants

CHPAC Report Discussion: "The CHPAC recommends that EPA take a holistic approach to evaluate all sources of mercury emissions. Mercury is a relevant issue to more than one media (air, water), which contributes to its entry into the environment, for example, by electricity (coal-burning) generation, incineration and discharge into water sources. Human exposure occurs primarily through fish consumption. Mercury exposure is associated with adverse health effects in humans. Depending on dose, the effects can range from severe to less severe, most notably, neurological, developmental, and reproductive effects.

By the end of 1998, EPA is scheduled to complete a multimedia strategy addressing mercury. We support EPA's multimedia approach and schedule for the issuance of this strategy.

We encourage EPA to proceed diligently with implementation to protect children from mercury emissions, including those from municipal, medical, and hazardous waste combustion.

Although the CHPAC selected the National Emission Standard for

Hazardous Air Pollutants (NESHAP) for chloralkali plants for reevaluation, EPA resources should not be diverted from the evaluation of other larger sources of mercury emission. Important criteria for its selection are that the standard has not been re-evaluated or revised since its promulgation in 1973, children's health was not considered in the original development of the standard, and new information and data based on peer reviewed science suggest that risks to children and the persistent and bioaccumulative nature of mercury were not considered during the setting of the standard.

The CHPAC recognizes the Water Quality Criteria Standard as one means by which the EPA can regulate the prevention of contaminated fish by mercury and ensure children's protection from hazardous levels of mercury. The CHPAC recommends that EPA address the largest sources of mercury emissions expeditiously and prevent further contamination of fish by revising the Water Quality Criteria Standard. Studies have shown that once mercury enters water, either directly or through air deposition, it can bioaccumulate in fish and animal tissue at the top of the food chain in concentrations much greater than those found in water.

Another specific concern is the emission of mercury from electric (coal-burning) utility boilers (regulatory determination by the EPA is due in November 1998). Important criteria for its selection are that there is currently no regulation of hazardous air pollutant emissions, such as mercury, from electric utility boilers, and electric utility boilers are the largest contributor of overall anthropogenic sources of mercury emissions in the United States (EPA Mercury Report to Congress 1997)."

EPA's Response: EPA agrees with the CHPAC recommendation that the NESHAP for chloralkali plants be revisited and has begun a process to revise this standard. A proposed rule will include emissions limits based on control technology and on management practices. EPA projects a proposal date of November 1999, and expects to issue a final standard in November 2000. In order to ensure protection of children, the Office of Air and Radiation (OAR) will analyze the risk from chloralkali plants to support the rule making—an unusual step for a technology-based standard. However, OAR believes the risk assessment will provide us with information on potential children's risks that is important to determining the appropriate level of the standard. Results of the risk analysis may be used to justify setting a standard more stringent than the maximum achievable control technology (MACT) floor, but any standard set will be no less stringent than the floor.

Discussion: On November 16, 1998, EPA issued a draft Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic Pollutants (http://www.EPA.gov/pbt/strategy.htm). This strategy includes a multifaceted draft Action Plan for Mercury. EPA believes that this action plan addresses the concerns expressed by the CHPAC in their report. It recognizes the multimedia threat posed by methyl mercury—the compound to which mercury is transformed through natural environmental processes—and the need to control human exposure to methyl mercury, through multiple concerted approaches targeted at air, water, sediment and land. Further, EPA is proposing additional reporting of mercury releases under the Toxic Release Inventory to improve citizens' right to know about releases in their environment.

EPA has taken several important steps to reduce the levels of mercury, including reducing emissions from municipal waste combustors and medical waste incinerators. These combined actions, once fully implemented (December 2000 for municipal waste combustors; September 2002 for medical waste incinerators) will reduce mercury emissions caused by human activities by 50% from 1990 levels. EPA also entered into a partnership with the American Hospital Association whose goal is to virtually eliminate hospital mercury waste by the year 2005.

Further, final regulations for hazardous waste combustion facilities (incinerators, cement kilns, lightweight aggregate kilns) are expected to be promulgated in February 1999. The EPA is responding to extensive public comment including new emissions data and comments on the methodology used to estimate mercury emissions from these facilities. The final rule is expected to achieve a substantial overall reduction in mercury emissions from these hazardous waste combustion facilities.

The CHPAC highlighted their concern that EPA resources not be diverted from the evaluation of other larger sources of mercury emission. EPA assures the CHPAC that the Mercury Action Plan addresses all known important sources of mercury. For example, EPA is also developing regulations to limit emissions of hazardous air pollutants, including mercury, from five additional source categories—industrial, commercial, other nonhazardous solid waste combustors, gas turbines, and stationary internal combustion engines. Proposed regulations are due by the end of the year 2000. In addition, EPA will consider the impacts to children's health along with many other factors (e.g., controllability and costs) as part of the regulatory determination for coal-fired electric utility power plants.

EPA agrees with the CHPAC that we should revise water quality criteria that are used by states and tribes to establish enforceable water quality standards. EPA's Office of Water (OW) is accelerating development of a revised water quality human health criterion for mercury which will reflect two major departures from past approaches:

- A revised human health methodology will provide for use of bioaccumulation factors to estimate the build up of mercury in fish-tissue rather than using bioconcentration factors. This means that water quality criteria will now be based on biomagnification in the food chain. An improved means to estimate fish consumption is also included. A draft revised Water Quality Criteria Methodology for Human Health was published in August 1998. Although not regulations, these criteria do propose fish intake and body weights that more accurately reflect actual characteristics of women of childbearing age and children. OW is taking public comment on the proposal. A final human health criteria methodology is projected to be available by the end of 1999.
- An updated human health risk assessment will result from an interagency review of recent human data on methyl mercury. This review will concentrate on levels of exposure to mercury associated with subtle neurological endpoints and is aimed at achieving consensus among Federal agencies on estimates of human risk. A workshop was conducted in November 1998. In addition, Congress required, in the report that accompanied EPA's 1999 appropriation, a 18-month National Academy of Sciences study and recommendation on the reference dose for methyl mercury. This study will begin in January 1999. A peer review of application of the new methodology to methyl mercury is projected for completion by mid 2000.

Finally, the CHPAC report indicated concerns about emissions of mercury from electric (coal-burning) utility boilers. In order to support a regulatory determination (now required by December 15, 2000) and potential future regulatory action, EPA will gather high quality emissions data about coal-fired electric generating plants to address

current uncertainties about mercury emissions. To accomplish this, we are requiring all coal-fired power plants above 25 megawatts (MW) to provide the results of analysis to determine the mercury content of the coal they are burning. In addition, a sample of plants will be required to perform stack testing for quantity and species of mercury emissions. The information obtained from this effort will allow EPA to calculate the amount and species of mercury emitted by each coal-fired plant above 25 MW. This information will be available to the public.

CHPAC Recommendation: Reevaluate the (Farm) Worker Protection Standards

CHPAC Report Discussion: "Children may be exposed to pesticides through employment in farm work, by eating fruits and vegetables directly from the fields while at work, or by drift from field applications to neighboring residential areas and schools. Pregnant and lactating women who work in farm fields or reside in neighboring areas can also expose fetuses and neonates to pesticides. The current (farm) worker protection standard has not considered these pesticide exposures to children. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA has the authority to regulate these childhood and prenatal exposures to pesticides through the worker protection standard including labeling, reentry intervals, personal protective equipment, worker education and training, and posting and signs.

The CHPAC recommends that EPA expeditiously re-evaluate the worker protection standard in order to determine whether it adequately protects children's health. In its reevaluation, EPA should, for example, consider using standardized data on size and age-specific weight and height for modeling children's exposure when more specific data on children's exposure to individual pesticides may be lacking."

EPA's Response: EPA agrees with CHPAC that improvements are needed in its regulatory efforts to protect the health of children in agricultural areas. Because the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) gives EPA broader authority than identified by CHPAC, however, EPA intends to carry out a more comprehensive set of initiatives than recommended by CHPAC. Specifically, EPA is working, or planning work, in the following areas: consistency and effectiveness in state implementation and enforcement of the Worker Protection Standards (WPS); application of available regulatory tools; verification of national compliance; determination whether the regulation is meeting its goal; education of farmers, workers, and state regulators; reassessment of the scope, quality, and medium of safety training; and educating the medical community. In particular, we agree that we need to better address the safety needs of women and children as agricultural workers. The following discussion outlines steps that EPA is prepared to take to improve the health of farm worker children in response to the specific CHPAC recommendations.

EPA is committed to conduct an internal review of the process used to establish entry intervals for pesticides in order to affirm that the process adequately factors in the special needs of children and women employed as farm workers. The review will be conducted in 1999. However, it is not EPA's plan to repropose the Worker Protection Standard (WPS) because we believe implementation and enforcement of the standard can be improved to protect the health of children who work in agriculture without a regulatory change.

EPA's Office of Pesticide Programs is in the process of revising its exposure assessment Standard Operating Procedures. We anticipate the result will be to account for and better characterize pesticide exposure scenarios involving spray drift and other residential exposures that may occur from pesticide use in nearby agricultural areas or from agricultural workers who may carry pesticide residues into the home.

On a broader level, EPA is proposing a national assessment of implementation and enforcement of the WPS. The assessment will include the establishment of a worker protection assessment group composed of EPA, the U.S. Department of Agriculture (USDA), the Department of Labor (DOL), the Department of Health and Human Services (DHHS), state regulators, state extension service safety educators, farm worker advocacy groups, farm worker service/training associations, agricultural employer associations, farm worker clinicians' networks, and others to provide national direction to state programs. The goals of the group will be to:

- Assess the current program status;
- Generate a consortium of interests that can effect change in the programs;
- Provide a means to foster the partnerships essential to make the program work;
- And most important, to provide a continuing forum to focus and resolve worker protection issues.

The worker protection assessment group will be established and begin work in 1999. It will develop a strategic plan for the national worker protection program and issue annual reports detailing accomplishments and progress toward achieving its goals.

Discussion: EPA will also collect actual data on pesticide exposures by co-funding and providing consultation to the National Institute for Occupational Safety and Health (NIOSH) for pesticide case reporting projects (surveillance systems) in five states: California, New York, Texas, Oregon and Florida. The surveillance systems, located in the state health department, include the collection of reports on human incidents of pesticide intoxication, review of trends in disease over time and the response to outbreaks of disease. There is emphasis placed on outreach and training to involved groups within the community (industry/farmers, workers, community residents, health care providers and local government). Whenever possible, information is obtained on take-home exposures to children as well as evaluation of child or adolescent farm work. It is anticipated that preliminary data on the first year of pesticide case reports for these five states will be available in late 1999.

In April 1998, EPA held a workshop to initiate a multi agency effort to create a national plan for increasing training and awareness among health care providers of pesticide-related health conditions ("Pesticides and National Strategies for Health Care Providers"). This initiative is led by EPA in partnership with the DOL, HHS and USDA. Workshop proceedings have been distributed and working groups are developing implementation strategies. A national meeting is anticipated in late 1999 to provide a forum for public discussion of the final recommendations.

EPA will also continue its role in providing coordination and expertise to the following important activities targeted at children who work in agriculture:

- EPA initiated a study of pesticide exposure among children living along the US-Mexico border as part of the Border XXI environmental health project. Currently, the study design is being developed. EPA staff will provide medical consultation to the research team.
- In 1998, the first federally-funded research centers dedicated solely to studying children's environmental health hazards were selected. The joint EPA/HHS funding created eight "Centers of Excellence in Children's

Environmental Health Research." Two of these centers involve farm worker children: The University of California at Berkeley will evaluate pesticide exposures and related growth / developmental status in the Salinas area, and the University of Washington will study the health of children living in the farm worker community in Yakima Valley.

• EPA contributed funds and had representation on the planning committee for the Pediatric Environmental Health Conference to be held in San Francisco in September 1999. The conference will focus on pediatric environmental health and will target health care providers as well as the trainers/professors of health care providers. Sections of the conference will deal with pesticides and children's health.

CHPAC Recommendation: Reevaluate the Atrazine Drinking Water Maximum Contaminant Level (MCL) and the Atrazine Pesticide Tolerance

Contaminant Level (MCL) and the Atrazine Pesticide Tolerance

CHPAC Report Discussion: "Atrazine is a herbicide that belongs to the triazine class. Atrazine has been linked to adverse health effects including cancer and birth defects. Atrazine has been detected in drinking water throughout the Midwest and other parts of the nation. When EPA established the tolerance and 1991 drinking water standards for atrazine, children's differential exposure was not considered and children's differential susceptibility was not fully evaluated. New information has since become available to the EPA concerning the mechanism of action underlying its carcinogenic effect. Hormonal effects were further investigated and triggered the need for the reevaluation of both the carcinogenic effects of this compound as well as the developmental and reproduction studies. Reviewing the tolerances and the established drinking water standard in concert will provide EPA with an opportunity to evaluate a chemical's impact on children's health via aggregate routes of exposure. Reconsideration of the tolerances and drinking water standard for atrazine should be given top priority in EPA's implementation of the Safe Drinking Water Act and the Food Quality Protection Act."

EPA's Response: The preliminary risk assessment for atrazine will be prepared by December 1999 and published as part of a Reregistration Eligibility Document by June 2000. The public will have 60 days to comment on the Atrazine findings following publication of this document.

The drinking water standard will be based on the new risk assessment conducted by the pesticide office. Reevaluation of the atrazine Maximum Contaminant Level (MCL) should be complete approximately 18 months after the risk assessment is completed.

Discussion: The triazine pesticides are in the first tier of pesticides that EPA is re-evaluating in order to comply with the requirements of the Food Quality Protection Act. Scientific questions regarding the health effects of the triazine pesticides should be resolved by September 2000. EPA's Science Advisory Board (SAB) and Science Advisory Panel (SAP) will be examining key issues related to the risk assessment, including cancer mechanism, in the fall of 1999. Once EPA receives comment from the SAB/SAP, the Agency will complete a comprehensive review of the risks and benefits of the use of atrazine, including the following assessments:

• Evaluate the concentrations of the pesticide in water and assess risk in drinking water for infants, children, and adults;

• Assess dietary risk from ingestion in adult and children's diet;

• Determine requirements for use of personal protective equipment, re-entry time, and application method, including an evaluation of children workers and re-entry intervals;

• Assess ecological risk; and

• Consider economic factors and alternative pesticides during the analysis of benefits.

CHPAC Recommendation: Reevaluate Pesticide Tolerances for Methyl Parathion, Dimethoate, and Chlorpyrifos

CHPAC Report Discussion: "EPA scientific panels have found that organophosphate and carbamate insecticides disrupt the central nervous system via a cholinesterase inhibition mechanism of toxicity. Because children's central nervous systems continue to develop until puberty, they are particularly vulnerable to the effects of some neurotoxins. Children can be exposed to these insecticides through food, homes, schools, employment, and other sources.

Data indicate that children's patterns of dietary intake are distinct from adults' patterns. When EPA established the tolerances for these insecticides, children's differential exposure was not considered and children's differential susceptibility was not fully evaluated. Of the 39 pesticides registered for use on food, thirteen are detected in food according to FDA and USDA pesticide residue data. Five of these account for 90 percent of the dietary risk of neurotoxicity and three (methyl parathion, dimethoate, and chlorpyrifos) represent the bulk of that risk. Reconsideration of the tolerances for these three pesticides should be given top priority in terms of data collection and other necessary steps in EPA's implementation of the Food Quality Protection Act."

EPA's Response: The preliminary risk assessment for dimethoate was released for a 60-day public comment period on September 9, 1998. The next steps in the process for this pesticide include analyzing the comments received; deciding whether to revise the risk assessment based on the comments; and proposing risk mitigation measures to address any concerns, including dietary, worker, and ecological, identified in the risk assessment. By the end of January 1999, EPA will issue a revised risk assessment and any proposed risk mitigation measures for 60 days of public comment.

The preliminary risk assessment for methyl parathion has been completed, reviewed by the registrant for errors, and is now available for public comment. The public will have 60 days to comment on the risk assessment. Following public review, the assessment for methyl parathion will follow the same process as dimethoate.

The preliminary draft risk assessment for chlorpyrifos is being worked on and is expected to be completed in Spring 1999. Following completion, it will proceed in the same way as dimethoate and methyl parathion.

Discussion: Organophosphates are in the first tier of pesticides that EPA is re-evaluating in order to comply with the requirements of the Food Quality Protection Act. EPA is presently working on a methodology to assess cumulative risks posed by the organophosphate pesticides as a group, and will explicitly include data on children's risk in the risk assessments. We expect to propose such a methodology in the summer of 1999 for a 60-day public comment period. Moreover, EPA is following a process recommended by the federal Tolerance Reassessment Advisory Committee to increase the transparency of EPA's risk assessments and decisions, and allow the public to participate in the process.

CHPAC Recommendation: Review the following areas as they relate to Asthma:

• Indoor Air Quality

• Ambient Air Quality Standards (Particulate Matter, Sulfur Dioxide)

CHPAC Report Discussion: "The CHPAC recognizes the high priority in addressing childhood asthma and the need to better understand and respond to the relationship of asthma prevalence and exacerbation to indoor and ambient air quality. It also recognizes that indoor air quality, which can significantly aggravate and may contribute to the development of childhood asthma, demands timely scientific study and action. Definitive progress in these areas using a sound scientific approach will result in a significantly improved health outcome for all children. EPA's Science Advisory Board and the Presidential/ Congressional Commission on Risk Assessment and Risk Management have also identified indoor air pollution as a high human health risk warranting additional attention.

Selecting a broad area rather than a single standard was a purposeful decision by the CHPAC designed to encourage a comprehensive examination of all aspects of air quality. The CHPAC strongly desired to address asthma. The CHPAC encourages a holistic review of outdoor and indoor air quality and strongly feels that this is a more useful recommendation than the identification of a specific standard. Examples include evaluating the effectiveness of existing EPA guidance on indoor air quality relating to asthma and additional emphasis on protecting the health of children with asthma in development of PM monitoring and research programs.

By including this broad category, the CHPAC is hopeful that EPA will take a leadership role by providing impetus for action with regard to indoor air (including environmental tobacco smoke (ETS), pesticides, biological contaminants, and volatile organic chemicals) through a coordinated strategy with other federal agencies. The CHPAC recommends that EPA continue to support sound research programs on concentrations and exposure assessments of ambient air pollutants on asthma, such as PM, and to obtain timely exposure data for risk assessments in areas such as the short-term SO_2 standard.

The CHPAC recognizes that much of the value of the regulatory re-evaluation effort is identification of process improvements that can be applied to future risk assessment and rulemaking efforts. The CHPAC further recognizes that a disciplined approach in the area of air quality can have high learning value, given the breadth and diversity of the issues and the potential to promote multi-agency coordination and cooperation."

EPA's Response: EPA strongly agrees with the CHPAC's recommendation that EPA undertake a fully integrated effort to address both indoor and outdoor pollution factors that contribute to childhood asthma. As CHPAC is aware, asthma rates in the U.S. have been increasing at an alarming rate and particularly troubling is the fact that asthma has increased 160% in children less than five years of age since 1980. Approximately 5.5 million children now suffer from asthma; 150,000 are hospitalized each year; and asthma is the leading cause of school absenteeism due to chronic illness.

Efforts to integrate and expand the Agency's commitment to addressing the multifaceted asthma issue are being addressed under the President's Task Force on Children's Environmental Health Risks and Safety Risks. The Task Force has identified asthma as one of four Priority Areas to receive special emphasis. EPA, along with the Department of Health and Human Services and other Federal Agencies, is developing a comprehensive cross-government action plan to address asthma. The action plan will identify the research and surveillance activities needed to understand the causes of childhood asthma and the scope of the problem as well as identify the public health practice and outreach needs and opportunities to begin to turn the tide on childhood asthma rates. Experts on asthma-related and environmental issues from EPA, the Department of Health and Human Services, and the Department of Housing and Urban Development are collaborating in this effort.

The action plan calls for substantially increased emphasis on asthma research, asthma surveillance activities, and increased implementation of public health programs to reduce childhood asthma by reducing environmental asthma triggers. The action plan places significant emphasis on reducing the disproportionate burden of asthma on minorities and children living in poverty, on community-based programs, effective partnerships, and evaluation of programs. The action plan will contain specific recommendations and key actions to be taken in the following areas:

- Strengthening and accelerating research on environmental factors that cause or worsen asthma;
- Expanding implementation of public health programs that use the best available scientific knowledge to reduce environmental exposures to asthma triggers, including indoor and ambient air pollution;
- Establishing a nationwide surveillance system for collecting and analyzing asthma data; and,
- Identifying and eliminating inequalities in the health burden of asthma with respect to poor and minority children.

In FY99, EPA is substantially expanding its programs to address the environmental factors that affect asthma in children:

- EPA has funded eight Centers for Children's Environmental Health and Prevention Research, five of which are specifically focused on asthma.
- EPA is also developing an integrated research strategy to address ambient air pollution sources such as ozone and particulate matter that may exacerbate asthma, as well as to better understand the relationship between asthma and indoor pollutants such as dust mite and cockroach allergen, molds, and other indoor contaminants such as pesticides and VOC's.
- We are also funding a comprehensive assessment of the role of indoor allergens in the induction and exacerbation of asthma through the National Academy of Sciences Institute of Medicine.
- EPA is expanding education of physicians and other health care providers, teachers, school administrators, children and parents about those factors that are known to contribute to childhood asthma triggers such as tobacco smoke and allergens in homes, schools and day care facilities. We will place significant emphasis on evaluating existing and developing programs for effectiveness.

Attachment A—Public Comments Responding to Federal Register Document Dated October 3, 1997 (62 FR 51854–51855), "Review and Evaluation of EPA Standards Regarding Children's Health Protection From Environmental Risks"

In the October 3, 1997, **Federal Register** document EPA asked the public to submit comments to help the Agency determine which five existing standards merited reevaluation for the following reasons:

- New scientific information or data are available indicating adverse effects on children;
- There is a new understanding of routes of exposure to children;
- The regulated substance is persistent and bioaccumulative;
- New methodologies to evaluate human health risks are available;
- New epidemiology studies exist;
- New toxicity studies exist;
- New environmental monitoring studies exist.

Following is a list of the 18 organizations or individuals who commented on the document:

American Lung Association
American Water Works Association (AWWA) Government Affairs Office
California Communities Against Toxics
Chemical Manufacturers Association (CMA)
Chemical Specialties Manufacturers Association
Children's Environmental Health Network
Citizen-at-Large
City of Milwaukee Health Department
The Connecticut Agricultural Experiment Station
ESC Consulting
Florida International University
Missouri Department of Health
National Association of County and City Health Officials (NACCHO)
The National Center for Lead-Safe Housing (The Center)
Natural Resources Defense Council
Rhone-Poulenc
Seeger, Potter, Richardson, Luxton, Joselow & Brooks, L.L.P for the Lead Industries Association, Inc. (LIA)

State of Wisconsin

Following is a summary of comments submitted by the 18 organizations or individuals in response to the **Federal Register** document:

1. EPA should also include recently promulgated standards as part of the standard review.

2. EPA should select for review the national air quality standards for particulate matter, nitrogen dioxide and sulfur dioxide

3. The American Lung Association (ALA) filed a legal challenge to EPA's decision not to revise the national air quality standard for sulfur dioxide. Regardless of the court decision, ALA recommends that EPA include the sulfur dioxide standard for review and evaluation.

4. AWWA does not believe that at this time there is sufficient data to warrant a change in existing drinking water regulations.

5. The Safe Drinking Water Act (SDWA) typically considers children separately in risk assessment process.

6. The Safe Drinking Water Act (SDWA) requires EPA to review existing drinking water standards every six years which will ensure new data and information will be considered.

7. Concerned about the impact to children's health from persistent, bioaccumulative toxins (PBTs)—dioxins, PCBs and mercury.

8. PCBs are toxic to children during brain development.

9. Millions of lbs. of PCBs remain in use and dispersed into the environment through mismanagement and accidents.

10. The latest mercury study and ATSDR Toxicological Report on mercury cannot correctly quantify or locate mercury emissions due to inadequate monitoring and reporting.

11. EPA reports that 1.6 million women/children are at risk from mercury poisoning.

12. Perchlorate is an endocrine disrupting chemical that affects children's brain development; action level should be set to protect children not adults.

13. Despite the FQPA, we remain concerned about the exposure of children to pesticides through food and non-food exposures. There is evidence of increased rates of leukemia in homes with pesticide application.

14. A programmatic review of PBTs and their impact on children is absolutely necessary.

15. Many of the hazardous air pollutants, for which no emission limits are being set, are reproductive and developmental toxicants.

16. Standard as defined in the **Federal Register** document is too narrow.

17. EPA should:

(a) more closely coordinate efforts to protect children's health with other federal agencies to ensure that limited federal resources are focused on the biggest health risks to children;

(b) consider for review certain regulatory standards that due to their imposition, inadvertently increase risk to children; and

(c) clarify criteria for evaluating proposed changes to existing regulations.

18. EPA should work with the Chemical Specialties Manufacturers Association to reform/streamline registration of antimicrobial and pesticide products to assure these products are available to protect children and others from exposure to microorganisms and insect borne diseases.

19. EPA should review standards and compliance programs related to drinking water to assure drinking water is free from microorganisms caused by inadequate disinfection.

20. EPA should promote effective cleaning products as part of its indoor air quality program and its child health initiative.

21. We recommend that EPA review and discourage publications that recommend that consumers formulate their own household cleaning products, which could increase environmental risks to children and others.

22. The Network strongly urges the Agency to take a broader view of what is considered a "standard" for the purposes of this review.

23. The Agency needs to review how its risk assessments are conducted, the default assumptions used, and change them to appropriately reflect pediatric issues.

24. The Agency should evaluate the standards it is considering for review in large part based on assumptions inherent in the risk assessments (e.g., did the exposure estimates account for children's behavior; did toxicology studies include fetal and neonatal exposure; did the standard consider appropriate toxicological endpoints?)

25. The Agency needs to look at chemicals by class or by mechanism of action as "one standard" rather than a chemical-by-chemical approach.

26. The Agency should use this exercise as an Agency-wide education opportunity to further the goals of the child health protection initiative and to expedite the universal adoption of similar practices throughout the Agency.

27. The five standards selected should be from a variety of different program offices or across program offices.

28. The Agency should move expeditiously, set aggressive deadlines and follow them.

29. The Agency must review all standards and should publicly announce the process and schedule by which it will conduct the review.

30. Persistent toxic substances are too dangerous to the biosphere and environment, deleterious to the human condition and should not be released in the environment in any quantity.

31. Risk assessment and chemical-by-chemical regulation undermine pollution prevention efforts—elimination of persistent toxic substances should not be subject to a risk benefit calculation.

32. Although fluoride is often not considered a toxic substance, it is suspected to impact the mental development of children.

33. We propose addressing the cumulative effects of various pathways of exposure.

34. The specific recommendations are based on problems evident in our urban environments—children of these families may be especially vulnerable because of conditions associated with poverty:

(a) Persistent toxins in the drinking water supply (cadmium and compounds, chlordane, DDT/DDE, Dieldrin, Hexachlorobenzene, a-HCH, lead and compounds, Lindane, Mercury and compounds, PCBs, Polycyclic organic matter (POM), TCDD (dioxins),

TCDF (furans), Toxaphene, Nitrogen compounds);

(b) Volatile organics found in ambient air in urban areas;

(c) Lead in soil—there appear to be conflicting standards among the EPA, HUD, and U.S. Public Health Service regarding lead in soils. A universal standard would be helpful in the battle against child lead poisoning. The standards for lead do not address multiple source exposure;

(d) Aeroallergens in the household—currently no standard—EPA may want to be more proactive with the increase in childhood asthma;

(e) Fish consumption advisories—relative to mercury and PCBs current standards do not address bioaccumulation effects in children; and

(f) Common pesticides and herbicides frequently used in lawn care.

35. EPA should consider the risk of arsenic exposure to children through arsenic treated wood.

36. Children may be exposed to arsenic from treated wood products by direct hand to mouth contact with the wood or from arsenic contaminated soil under wooden decks. Soil may become contaminated by leaching, deterioration of the wood, or sawdust generated during construction.

37. Arsenic is linked to skin and bladder cancer.

38. Research links arsenic to lower IQ's.

39. 50,000,000 pounds of arsenic are imported into the U.S. every year for treating lumber.

40. Millions of treated decks and playscapes leach arsenic into the soil and children are exposed via direct contact with the wood and the soil.

41. EPA is inconsistent in the application of its policies and regulations (i.e., safety factors to protect children's health.)

42. If arsenic were evaluated today it would not stand up to the risk calculations under FQPA.

43. The arsenic MCL is 17-fold greater than the triazine MCL even though arsenic has an estimated 100-fold greater NOAEL than triazine and is a class "A" human carcinogen.

44. There is no explanation for a decade-old delay in acting to lower the arsenic MCL which may have caused harm to an entire generation of children exposed to imported arsenic in a variety of ways that are unique to children's active daily lives.

45. We propose that EPA review the standards for lead poisoning in the following areas: paint, soil, dust, and drinking water.

46. All public water systems shall be fluoridated to improve the dental health of children.

47. All public and private water system/supplies shall be safe for children to drink.

48. Children shall reside in adequate housing that is not dangerous, crowded or cost more than 30% of family income.

49. Children shall not be exposed to high concentrations of lead in their environment.

50. Recommends systematically reevaluating all standards.

51. Hope that standards are selected, reviewed, and adopted with respect to their impact at the local level.

52. Suggest that EPA consider standards for asthma hazards such as mites, mold, and cockroaches.

53. The National Center for Lead-Safe Housing (the Center) has worked with EPA in the development of standards for lead. The person submitting the comment also indicated that the Center is broadening its mission to include environmental hazards and hopes to work with EPA if the agency decided to work on standards related to children's respiratory diseases.

54. "Standard" as described in the FRN is too restrictive—all EPA standards (including existing and technology based), guidelines (risk assessment and toxicological), and unregulated threats should also be considered.

55. The following five proposals address the solicitation of the FRN but should not be seen as an endorsement of the EPA strategy, but rather an illustration of the types of threats from which children are not well protected:

(a) Review of tolerances for all pesticides which act via inhibition of acetyl cholinesterase;

(b) Review of tolerance for all triazine herbicides found in drinking water in the U.S.;

(c) Review of drinking water standards for microorganisms and disinfection byproducts;

(d) Review of all standards designed to protect children from environmental lead exposure, and issuance of the Title X lead hazard disclosure rules; and

(e) Review of the SO_2 air quality standard to protect children with asthma, issuance of standards for acid aerosols and diesel exhaust, and vigorous implementation of the new standard for ozone and fine particulates to protect the asthmatic children.

56. A variety of environmental influences are risks to children's health including intake by pregnant mothers of alcohol, cigarettes, and controlled substances. Other factors that affect children's health include diet and access to adequate medical care.

57. We encourage EPA to examine those standards which give exposure to lead, radon, and asbestos.

58. The Lead Industries Association is concerned that the mention of lead exposure in the FRN as a children's health problem gives the impression that one or more lead regulations should be tightened to adequately protect children's health. From the outset lead regulations have been developed to protect children's health.

59. Existing lead regulations are protective of children's health and should not be included in the Committee's list of regulatory standards needing reconsideration and downward revision. Children's blood lead levels are declining under the existing lead regulatory regime and there is no need or justification for costly, more stringent regulation.

60. Many serious health problems afflict our nation's children—including the need for universal immunization and prenatal care, reduction of infant mortality rates, and threats from the rising risk of HIV infection, abuse, neglect, drug use, and violence.

61. The use of water containing the action level for copper would more than double the amount of copper in an infant's diet. Infants less than two years of age have a limited ability to excrete copper.

62. Children who consume more than two servings of fish per week can develop elevated blood mercury levels.

63. Instead of a drinking water standard, EPA has a lifetime health advisory for ammonia-nitrate based on the taste/odor threshold instead of a health-based effect. Studies associate ammonia ingestion with alteration in the gastric mucosa and risk of gastric cancer neurotoxicity.

EPA Response to Federal Register Document Comments

EPA believes all the comments had merit, however, not all of them were directed at the question we asked, i.e., to identify existing standards that were worthy of reevaluation to better protect children's environmental health. Nor did they all address issues within the purview of EPA. Some of those who commented asked us to reevaluate recently promulgated standards, which we had specifically excluded from coverage in the document. In addition, standards currently in litigation were determined by EPA to be inappropriate for reevaluation at this time. However, EPA did consider all comments that recommended existing standards for reevaluation. Further, all the comments were referred to the CHPAC work group charged with submitting

recommendations to the Agency for re-evaluating existing standards.

In many instances, EPA found that there was no new information sufficient to support a decision to revise an existing standard. For example, in the case of dioxin, the Agency is revising its risk assessment, but that information is not yet available. When it is available, the Agency may re-evaluate existing standards if that is indicated by new data. Similarly, EPA is engaged in a large, multi year research and data collection effort to better define health risks, occurrence and exposure, and treatment effectiveness for microbial contaminants and disinfection byproducts in drinking water. Research areas include reproductive and developmental effects, and sensitive sub population exposures. The final Stage I Rule for Disinfectants and Disinfectant By Products was issued on December 16, 1998. A health assessment for fetuses, infants and children was conducted to support the rule.

In some cases, EPA is already engaged in re-evaluating standards identified in the public comments. Examples include the reevaluation of the organophosphate and triazine pesticides. The Agency is required by the Food Quality Protection Act (FQPA) to re-evaluate all pesticide tolerances, basing new decisions on aggregate exposures and common mechanisms of action. The FQPA requires use of an additional uncertainty factor to protect children unless reliable data demonstrate the additional factor is unnecessary. Further, the Agency issued on November 16, 1998, a Draft Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants which includes an Action Plan for Mercury. The goal of the strategy is to further reduce risks to human health and the environment from existing and future exposure to priority PBTs such as mercury, dioxins, furans, chlordane, DDT, dieldrin, toxaphene, hexachlorobenzene, alkyl-lead and PCBs. Further a draft rule for identifying lead hazards in dust, soil and paint was issued on June 3, 1998.

In summary, EPA's decisions to reevaluate the Chloralkali NESHAP (mercury); the implementation and enforcement of the (Farm) Worker Protection Standards; pesticide tolerances for the organophosphates (chlorpyrifos, dimethoate, methyl parathion); atrazine (pesticide tolerance and MCL); and to review indoor and ambient air quality as they relate to asthma are based in part and are supported by recommendations received through the **Federal Register** document and from the Children's Health Protection Advisory Committee.

Attachment B—CHPAC Screening Criteria to Select Rules for Re-Evaluation (2/24/98)

Children's health protection would be strengthened if these regulation-based standards, policies or rules were re-evaluated and subsequently changed because:

A. Children's health was not considered in the original development of the standard, such as:

- Exposure estimates did not adequately account for children's behavior;
- Toxicology studies did not include fetal, neonatal, and early childhood exposure; or
- The standard did not consider the full range of appropriate toxicological endpoints for fetal, neonatal, and early childhood exposure.

B. Children's health was considered but new information or data suggest the standard does not adequately protect children. The new information or data, based on peer-reviewed science, may include considerations such as:

- Descriptions of adverse health effects in children;
- Increased susceptibility for children to specific substances because of their unique physiology;
- New understanding of routes of exposure to children;
- Mechanisms of exposure that better reflect children's activities;
- Whether, and the extent to which the regulated substance is persistent and bioaccumulative;
- Improved methodologies for evaluating human health risks;
- Epidemiology studies; consideration of disproportionate exposures to sub-populations (e.g., geographic, racial);
- Toxicity studies;
- Environmental monitoring studies; or
- Cumulative, aggregate risks.

C. Major threats to children's health will be addressed such that a change in the regulation will result in a significant improved health outcome for children:

- Severity of health outcome of concern;
- Number of children adversely affected;
- Substances to which children are highly exposed; or
- Substances to which children are highly susceptible.

D. Revisions will have broad precedent setting impacts in terms of changing the procedures, guidelines, and overall culture of the Agency to include children's environmental health issues in all aspects of its work.

E. Children's health issues could be assigned higher priority for rules selected (e.g., how revisions to the rules fit Agency existing plans/schedules).

F. Rules will span a diverse list of hazards (e.g., variety of substances and/or media programs) and a variety of health endpoints (e.g., cancer, non-cancer).

G. Rules whose effectiveness in protecting children's health would be greatly enhanced by revisions that facilitate its implementation or improve its enforceability.

Dated: January 26, 1999.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 99–2447 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51922; FRL–6060–2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from December 17, to December 31, 1998.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51922]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All

comments and data in electronic form must be identified by the docket number [OPPTS–51922]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION" of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51922]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 80 Premanufacture Notices Received From: 12/17/98 to 12/31/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0270	12/17/98	03/17/99	CIBA Specialty Chemicals Corporation	(G) Polymer intermediate for the manufacture of optical devices	(G) Pentyl 2,5-bis[[4-[[substituted]] benzoyl]oxy]-benzoate
P–99–0271	12/17/98	03/17/99	CIBA Specialty Chemicals Corporation	(G) Polymer intermediate for the manufacture of optical devices	(G)Amidoamine
P–99–0272	12/17/98	03/17/99	CBI	(S) Curing agent for epoxy coating systems	(G) Amidoamine
P–99–0273	12/17/98	03/17/99	CBI	(S) Curing agent for epoxy coating systems	(G) Amidoamine
P–99–0274	12/17/98	03/17/99	CBI	(S) Stabilizer used in rubber compounding	(G) Alkylated phenol

I. 80 Premanufacture Notices Received From: 12/17/98 to 12/31/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0275	12/17/98	03/17/99	Protein Technologies International, Inc.	(S) Component of coating adhesive in paper and paper board industry	(G) Silane soy protein hydrolyzed
P–99–0276	12/18/98	03/18/99	Ashland Chemical Company - Environmental, Health & Safety	(G) Laminating adhesive	(G) Modified polyurethane
P–99–0277	12/18/98	03/18/99	Dystar L. P.	(S) Dyestuff for coloration of cellulose	(G) 2,7-naphthalenedisulfonic acid, 5-substituted-4-hydroxy-3-substituted azo, salt
P–99–0278	12/18/98	03/18/99	Dystar L. P.	(S) Fiber reactive dye for coloration of cellulose	(G) 2,7-naphthalenedisulfonic acid, 4-amino-6-substituted-5-hydroxy-3-substituted, salt
P–99–0279	12/18/98	03/18/99	Dystar L.P.	(S) Fiber reactive dye for coloration of cellulose	(G) Substituted naphthalenetrisulfonic acid salt
P–99–0280	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0281	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0282	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0283	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0284	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0285	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0286	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0287	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0288	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0289	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0290	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0291	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0292	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Epoxy resin
P–99–0293	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Epoxy resin
P–99–0294	12/21/98	03/21/99	Cytec Fiberite Inc. - Winona Division	(S) Resin matrix for advance composites	(S) Phenol, 4,4'-(1-methylethylidene)bis-, polymer with (chloromethyl) oxirane and ar, ar-diethyl-ar-methylbenzenediamine*
P–99–0295	12/21/98	03/21/99	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Acetylenic acetal
P–99–0296	12/21/98	03/21/99	3M Company - group compliance 3M Automotive and Chemical Markets group	(S) Chemical intermediate	(G) Fluoroalkyl derivative
P–99–0297	12/21/98	03/21/99	3M Company - Group Compliance 3M Automotive and Chemical Markets group	(S) Chemical intermediate	(G) Fluoroalkyl derivative
P–99–0298	12/21/98	03/21/99	CBI	(G) Destructive use	(G) Organo aluminium halide
P–99–0299	12/21/98	03/21/99	CBI	(G) Destructive use	(G) Organo aluminium halide
P–99–0300	12/21/98	03/21/99	CBI	(G) Destructive use	(G) Organo aluminium halide
P–99–0301	12/22/98	03/22/99	CBI	(G) Processing additive used for pvc	(G) Organotin compound
P–99–0302	12/23/98	03/23/99	Cardolite Corporation	(S) Diluent for epoxy resin	(G) Substituted phenoxy alcohol
P–99–0303	12/22/98	03/22/99	CBI	(G) Additive, open, non-dispersive use	(G) *N*-butyl, 2-ethylhexyl acrylate copolymer
P–99–0304	12/23/98	03/23/99	Marubeni Specialty Chemicals Inc	(S) Elastomer for adhesive	(G) Polyurethane elastomer
P–99–0305	12/23/98	03/23/99	CBI	(G) Toner chemical (open, non-dispersive)	(G) Bisphenol a type polyester resin
P–99–0306	12/22/98	03/22/99	CBI	(G) Starting material for polymers	(G) Dicarboxylic acid ester

I. 80 Premanufacture Notices Received From: 12/17/98 to 12/31/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0307	12/22/98	03/22/99	Dystar L. P.	(S) Fiber reactive dye for coloration of cellulose; fiber reactive dye for coloration of cellulose	(G) 2,7-naphthalenedisulfonic acid, 3-(substituted azo)-5-(substituted amino)-4-hydroxy salt
P–99–0308	12/28/98	03/28/99	CBI	(G) Component of coating formulation	(G) Modified polyester
P–99–0309	12/28/98	03/28/99	Piedmont chemical industries i, llc	(G) Dye Assist	(G) Substituted alkylphthalimide
P–99–0310	12/23/98	03/23/99	CBI	(G) Fragrance	(G) Vanillin ester
P–99–0311	12/28/98	03/28/99	CBI	(G) Commercial coating, mechanical goods	(G) Mdi polyester-prepolymer
P–99–0312	12/28/98	03/28/99	GE Silicones	(G) Coating and finishes	(G) Amino functional silicone polymer
P–99–0313	12/23/98	03/23/99	3M Company - Group Compliance 3M Automotive and Chemical Markets group	(S) Intermediate	(G) Alkylethoxylate derivative
P–99–0314	12/28/98	03/28/99	GE Silicones	(G) Textile finishnig	(G) Amino functional polyether functional silicone terpolymer
P–99–0315	12/28/98	03/28/99	Union Carbide Corporation	(G) Site intermediate	(G) Partially ethoxylated secondary alcohol
P–99–0316	12/28/98	03/28/99	CBI	(G) Surface treatment of metal	(G) Aminomethylated bisphenol a-bisphenol a epichlorohydrin polymer, phosphoric acid salt
P–99–0317	12/28/98	03/28/99	CBI	(G) Petroleum additive	(G) Organometallic sulfide complex
P–99–0318	12/28/98	03/28/99	CBI	(G) Chemical intermediate	(G) Metal sulfide ammonium salt
P–99–0319	12/28/98	03/28/99	3M Company - Group Compliance 3M Automotive and Chemical Markets group	(G) Polymer additive	(G) Perfluoroalkylsulfonamide derivative
P–99–0320	12/28/98	03/28/99	L. Brueggemann, Chemical Company	(G) Polymerisation auxiliary	(S) Acetic acid, hydroxysulfino-, diisodium salt; acetic acid, hydroxysulfo-, diisodium salt*
P–99–0321	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0322	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0323	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0324	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0325	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0326	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0327	12/21/98	03/21/99	CBI	(G) Paper additive	(G) Aliphatic acid salt
P–99–0328	12/29/98	03/29/99	CBI	(G) Open, non-dispersive (coatings)	(G) Polyester polyol
P–99–0329	12/30/98	03/30/99	CBI	(G) Component for coating in non-dispersive use	(G) Acrylate functional polyurethane resin
P–99–0330	12/30/98	03/30/99	E.I. Du Pont De Nemours & Co. Inc.	(G) Intermediate	(G) Aliphatic amine salt of aromatic polyamic acid
P–99–0331	12/30/98	03/30/99	Fabricolor, Inc.	(S) Dyeing of leather	(G) 4-amino-5-hydroxy-6-phenylazo-3-substituted phenyl azo-naphthalene disulfonic acid
P–99–0332	12/30/98	03/30/99	CBI	(G) Protective coatings	(G) Urethane modified aromatic isocyanate
P–99–0333	12/30/98	03/30/99	CBI	(G) Protective coatings	(G) Urethane modified aromatic isocyanate
P–99–0334	12/30/98	03/30/99	Hach Company	(S) Selective growth inhibitor for microbiological media	(S) 2,5-cyclohexadien-1-one, 4-[bis(4-hydroxyphenyl)methylene]*
P–99–0335	12/30/98	03/30/99	Fragrance Resources, Inc.	(S) Provided an aroma to a finished product	(S) 3-hexen-1-ol, 2-methyl-2-(3-methyl-2-butenyl)-*
P–99–0336	12/30/98	03/30/99	CBI	(G) Industrial Adhesive component for open, non-dispersive use	(G) Phenol-resorcinol-catechol resin sulfonic acid, sodium salt
P–99–0337	12/30/98	03/30/99	CBI	(G) Industrial Adhesive component for open, non-dispersive use	(G) Phenol-resin sulfonic acid, sodium salt
P–99–0338	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0339	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0340	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0341	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0342	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol

I. 80 Premanufacture Notices Received From: 12/17/98 to 12/31/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0343	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0344	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0345	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0346	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0347	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0348	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0349	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol

II. 1 Notices of Commencement Received From: 12/17/98 to 12/31/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–98–0644	12/17/98	12/04/98	(G) Grafted acrylate polymer ammonium salt

List of Subjects

Environmental protection, Premanufacture notices.

Dated: January 20, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–2551 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC office of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 217–011628–001.

Title: The Kawasaki Kisen Kaisha, Ltd. and Nippon Yusen Kaisha Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. ("KL"), Nippon Yusen Kaisha ("NYK").

Synopsis: The proposed modification requires that any unused space allocated to NYK may be used by KL without additional compensation, that all vessel operating costs shall be for the account of KL, deletes authority for the parties to enter into agreements with marine terminal and stevedore operators, and provides for agreement on other operational and termination procedures.

Agreement No.: 224–201067.

Title: Gateway Terminals Operating Agreement.

Parties: Carolina Stevedoring Company, Inc., Cooper/T. Smith Stevedoring Co. Inc., Ceres Marine Terminals, Inc.

Synopsis: The parties are to pool labor and share expenses for providing TIR functions (inspection of carrier owned containers and chassis for damage) at the port of Savannah. The proposed agreement is to operate through the entity, Gateway Terminals, L.L.C., a company jointly owned in equal shares by the three members of the agreement. The term of the agreement is open ended and the agreement will be considered active until the parties advise the Federal Maritime Commission of the termination of the agreement.

Dated: January 28, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–2475 Filed 2–2–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 4007.
Name: Bay Area Matrix, Inc.
Address: 14275 Catalina Street, San Leandro, CA 94577.
Date Revoked: January 1, 1999.
Reason: Surrendered license voluntarily.

License Number: 4446.
Name: Gunter Wegner d/b/a PACAT International.
Address: 510 Plaza Drive, Suite 2240–D, Atlanta, GA 30349.
Date Revoked: December 9, 1998.
Reason: Surrendered license voluntarily.

License Number: 4467.
Name: Ideal Consolidators, Inc.
Address: 2101 Rosecrans Ave., Suite 6250, El Segundo, CA 90245.
Date Revoked: December 5, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4200.
Name: International Freight Agency, Inc.
Address: 286 Wyandanch Road, Sayville, NY 11782.
Date Revoked: December 9, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4209.
Name: Jose Gregorio Diaz d/b/a International Frontier Forwarders.
Address: 1116 Oliver Street, Houston, TX 77007.
Date Revoked: November 30, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4006.
Name: L.A. Matrix, Inc.
Address: 16518 South Main Street, Gardena, CA 90248.
Date Revoked: January 1, 1999.
Reason: Surrendered license voluntarily.

License Number: 4051.
Name: Matrix CT., Inc.
Address: 200 Connecticut Ave., Norwalk, CT 06854.
Date Revoked: January 1, 1999.
Reason: Surrendered license voluntarily.

License Number: 4073.
Name: Miami Shuttle Express Inc.
Address: 6016 S.W. 14th Street, P.O. Box 591821, Miami, FL 33159.
Date Revoked: December 21, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 1869.
Name: Michael Levine d/b/a Empire Shipping Company.
Address: Cargo Bldg. 80, JFK International Airport, Jamaica, NY 11430.
Date Revoked: July 6, 1998.
Reason: Surrendered license voluntarily.

License Number: 3600.
Name: Sunshine Freight Forwarders, Inc.
Address: 8201 N.W. 70th Street, Miami, FL 33166.
Date Revoked: December 31, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2987.
Name: World Freight Forwarders Inc. and World Freight Forwarders Inc. d/b/a World Air Sea Transport.
Address: 635 Ramsey Ave., P.O. Box 77, Hillside, NY 07205.
Date Revoked: December 16, 1998.
Reason: Failed to maintain a valid surety bond.

Austin L. Schmitt,
Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–2476 Filed 2–2–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/Address	Date Reissued
4148	Fleura Meier d/b/a US Western Forwarders, 19528 Ventura Blvd., Ste. 380, Tarzana, CA 91356	October 27, 1998.

Austin L. Schmitt,
Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–2477 Filed 2–2–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED—EARLY TERMINATION

ET date	Transaction No.	ET requisition status	Party name
15–DEC–98	19990510	G	First Data Corporation.
		G	First Data Corporation.
		G	Unified Merchant Services.
	19990755	G	Larry A. Davis.
		G	Billing Concepts Corp.
		G	Billing Concepts Corp.
16–DEC–98	19990532	G	United Road Services, Inc.
		G	Michael A. Wysocki.
		G	MPG Transco, Ltd.
	19990561	G	Paul A. Gould.
		G	Tele-Communications Inc. (or AT&T).
		G	Tele-Communications Inc. (or AT&T).
	19990599	G	Code, Hennessy & Simmons III, L.P.
		G	May Logistics Services, Inc.
		G	May Logistics Services, Inc.
	19990629	G	Urban Brands, Inc.
		G	Petrie Retail, Inc.
		G	Petrie Retail, Inc.
		G	PSL, Inc., Bayamon-MPA Corp., Caguas Apparel Corporation.
	19990673	G	Texas Utilities Company.
		G	Newco.
		G	Newco.
	19990697	G	Blood Systems, Inc.
		G	Blood Centers of the Pacific.
		G	Blood Centers of the Pacific.
	19990698	G	Thomson S.A.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	General Electric Company.
		G	RCA Thomson Licensing Corporation.
	19990708	G	Flo-Sun Incorporated.
		G	Gerald W. Schwartz.
		G	Refined Sugars, Inc.
	19990709	G	Sugar Cane Growers Cooperative of Florida.
		G	Gerald W. Schwartz.
		G	Refined Sugars, Inc.
	19990716	G	ZF Friedrichshafen AG.
		G	ZF Lenksysteme GmbH.
		G	ZF Lenksysteme GmbH.
	19990721	G	BankAmerica Corporation.
		G	Mitsui Leasing & Development, Ltd. (a Japanese Corporation).
		G	Mitsui Vendor Leasing (U.S.A.) Inc.
	19990740	G	Parker Drilling Company.
		G	Superior Energy Services, Inc.
	19990740	G	Superior Energy Services, Inc.
	19990744	G	Charles W. Ergen.
		G	News Corporation Limited, The (an Austrailian corp.).
		G	American Sky Broadcasting LLC.
	19990745	G	Charles W. Ergen.
		G	MCI WorldCom, Inc.
		G	MCI Telecommunication Corporation.
	19990757	G	Thayer Equity Investors III, L.P.
		G	Jerome Sze.
		G	Western States Import Company, Inc.
	19990765	G	Japan Coal Development Co., Ltd.
		G	Los Angeles Export Terminal, Inc.
		G	Los Angeles Export Terminal, Inc.
	19990768	G	Northland Cranberries, Inc.
		G	Seneca Foods Corporation.
		G	Seneca Foods Corporation.
	19990775	G	Moshe Barkat.
		G	Time Warner Inc.
		G	California Video Center.
	19990776	G	Johnson & Johnson.
		G	Glaxo Wellcome plc.
		G	Glaxo Wellcome Inc.
	19990777	G	Intermet Corporation.
		G	Robert W. Carlson, Jr.
		G	Quadion Corporation.
	19990778	G	Hellman & Friedman Capital Partners III, L.P.
		G	Michael E. Bronner.
		G	Bronner Slosberg Humphrey Co.
		G	Strategic Interactive Group Co.
	19990780	G	Greenwich Street Capital Partners II, L.P.
		G	John Hancock Mutual Life Insurance Company.
		G	Unigard Security Insurance Company.
	19990784	G	Archer-Daniels-Midland Company.
		G	Diageo PLC.
		G	The Pillsbury Company.
	19990785	G	Giovanni Agnelli e C.S. a.p.az.
		G	EXOR Group S.A.
	19990785	G	EXOR Group S.A.
	19990788	G	The MONY Group, Inc.
		G	The State Teachers Retirement System of Ohio.
		G	Sagamore Financial Corporation.
	19990792	G	Citigroup Inc.
		G	John R. Porter.
		G	Niemin Porter & Co.
	19990793	G	Leo Burnett Worldwide, Inc.
		G	Leo Burnett Company, Inc.
		G	Leo Burnett Company, Inc.
	19990802	G	RSTW Partners III, L.P.
		G	Busy Body, Inc.
		G	Busy Body, Inc.
	19990805	G	Forstmann Little & Co. Equity Partnership-V, L.P.
		G	Berwick Health Care Corporation.
		G	Berwick Health Care Corporation.
17-DEC-98	19990261	G	Wm. Bolthouse Farms, Inc.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Golden Valley Produce, LLC.
		G	Golden Valley Produce, LLC.
	19990700	G	Health Care Service Corporation.
		G	Advance Paradigm, Inc.
		G	Advance Paradigm, Inc.
	19990754	G	Thomas H. Lee Equity Fund III, L.P.
		G	Robert E. Meinershagen.
		G	Columbia Diagnostics, Inc.
	19990762	G	Cooperatie Cosun U.A.
		G	BankAmerica Corporation.
		G	Custom Industries, L.P.
	19990764	G	Thayer Equity Investors IV, L.P.
		G	Tele-Communications Inc. (or AT&T).
		G	CareerTrack, Inc. and TCI CTRACK Asset Corp.
	19990786	G	The First American Financial Corporation.
		G	National Information Group.
		G	National Information Group.
18–DEC–98	19990470	G	Edison International.
		G	Energy East Corporation.
		G	New York State Electric and Gas Corporation.
		G	NCE Generation, Inc
	19990525	G	ALLTEL Corporation.
		G	BellSouth Corporation.
		G	RCTC Wholesale Corporation.
		G	Richmond Cellular Telehpone Company.
	19990534	G	Chattem, Inc.
		G	S. Daniel Abraham.
		G	Thompson Medical Company, Inc.
	19990616	G	General Electric Company.
		G	Monogram Credit Services, LLC.
		G	Monogram Credit Services, LLC.
	19990617	G	Bank One Corporation.
		G	Monogram Credit Services, LLC.
		G	Monogram Credit Services, LLC.
	19990645	G	Coca-Cola Enterprises Inc.
		G	Montgomery Coca-Cola Bottling Company, Inc.
		G	Montgomery Coca-Cola Bottling Company, Inc.
	19990653	G	The Commerce Group, Inc.
		G	The American Automobile Association, Inc.
		G	Automobile Club Insurance Company.
	19990701	G	Heywood Williams Group PLC.
		G	Estate of C.G. Mills.
		G	Pioneer International (Georgia), Inc.
	19990723	G	Fleet Financial Group, Inc.
		G	The Sanwa Bank Limited.
		G	Sanwa Business Credit Corporation.
	19990743	G	HBO & Company.
		G	Foundation Health Systems, Inc.
		G	Foundation Health Systems, Inc.
	19990774	G	Textron Inc.
		G	BankAmerica Corporation.
		G	Nations Credit Commercial Corporation.
	19990794	G	J.C. Penney Company, Inc.
		G	Genovese Drug Stores, Inc.
		G	Genovese Drug Stores, Inc.
	19990795	G	Citadel Communications Corporation.
		G	Wicks Broadcast Group Limited Partnership.
		G	Wicks Broadcast Group Limited Partnership.
	19990796	G	James R. Leininger, M.D.
		G	Don Tyson.
		G	Hudson Foods, Inc., Willow Brook Foods, Inc.
	19990799	G	Phoenix International Life Sciences Inc.
		G	Chrysalis International Corporation.
		G	Chrysalis International Corporation.
	19990806	G	Morgan Products Ltd.
		G	Adam Wholesales, Inc.
		G	Adam Wholesales, Inc.
	19990809	G	Ametek, Inc.
		G	Cortec Group Fund, L.P.
		G	NCC Holdings, Inc.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
	19990811	G	Hillenbrand Industries, Inc.
		G	Service Corporation International.
		G	Arkansas National Life Insurance Company.
	19990821	G	Allied Capital Corporation.
		G	Bankers Trust Corporation.
		G	MJB Acquisition Corporation d/b/a Wyoming Technical Institute.
	19990826	G	NEC Corporation.
		G	Steven C. Farrell.
		G	Enterprise Networking Systems, Inc.
	19990827	G	NEC Corporation.
		G	Richard Norum.
		G	Enterprise Networking Systems, Inc.
	19990838	G	WinsLoew Furniture, Inc.
		G	Leo Martin.
		G	Miami Metal Products, Inc.
	19990848	G	Cerner Corporation.
		G	Synetic Health Communications Corporation.
		G	Synetic Health Communications Corporation.
	19990849	G	Synetic, Inc.
		G	Synetic Health Communications Corporation.
		G	Synetic Health Communications Corporation.
	19990850	G	Daniel K. Frierson.
		G	Multitex Corporation of America.
		G	Multitex Corporation of America.
	19990853	G	TPS Holdings, Inc.
		G	Radnor Alloys, Inc.
		G	Radnor Alloys, Inc.
	19990856	G	Barry A. Ackerley.
		G	Wicks Broadcast Group Limited Partnership.
		G	Wicks Broadcast Group Limited Partnership.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–2488 Filed 2–2–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED—EARLY TERMINATION

ET date	Transaction No.	ET requisition status	Party name
04–JAN–99	19990972	G	Ardent Software, Inc.
		G	Prism Solutions, Inc.
		G	Prism Solutions, Inc.
	19990975	G	Ashland, Inc.
		G	Graham T. Moore, Jr.
		G	Crowell Constructors, Inc.
	19990978	G	MotivePower Industries, Inc.
		G	Gary B. and Patricia Heydorn.
		G	G & G Locotronics, Inc.
		G	G & G Maxitrax, Inc.
		G	G & G Transit, Inc.
	19990984	G	James G. Tuthill.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Paul A. Dines.
		G	Dines Industrial Group, Inc.
	19990985	G	BHB LLC.
		G	Barneys New York, Inc.
		G	Barney's Inc.
	19990999	G	OmniCell Technologies, Inc.
		G	Baxter International Inc.
		G	Baxter International Inc.
	19991003	G	Aggregate Industries, plc.
		G	Bill Smith Sand & Gravel, Inc.
		G	Bill Smith Sand & Gravel, Inc.
	19991009	G	Robert L. Fisher.
		G	Baxter International Inc.
		G	Baxter Healthcare Corporation.
	19991010	G	Apollo Investment Fund IV, L.P.
		G	United Rentals, Inc.
		G	United Rentals, Inc.
	19991011	G	Apollo Overseas Partners IV, L.P.
		G	United Rentals, Inc.
		G	United Rentals, Inc.
	19991015	G	The Coastal Corporation.
		G	LG&E Energy Corp.
		G	LG&E Westmoreland-Rensselaer.
	19991016	G	The Coastal Corporation.
		G	Westmoreland Coal Company.
		G	LG&E Westmoreland-Rensselaer.
	19991017	G	Integrated Device Technology, Inc.
		G	Quality Semiconductor, Inc.
		G	Quality Semiconductor, Inc.
		G	Quality Semiconductor, Inc.
	199990899	G	Harris Corporation.
		G	Raytheon Company.
		G	Raytheon Company.
	19990967	G	Electra Investment Trust PLC.
		G	Capital Safety Group Limited.
		G	Capital Safety Group Limited.
	19990995	G	Vivendi S.A.
		G	Terre Armee Internationale.
		G	Terre Armee Internationale.
	19991008	G	Gerald W. Schwartz.
		G	LCS Industries, Inc.
		G	LCS Industries, Inc.
	19991018	G	Mannesmann AG
		G	Cellular Communications International, Inc.
		G	Cellular Communications International, Inc.
	19991019	G	Olivetti S.p.A.
		G	Cellular Communications International, Inc.
		G	Cellular Communications International, Inc.
	19991022	G	Haggar Corp.
		G	Gerald M. Frankel.
		G	Jerell, Inc.
	19991023	G	Berkshire Fund IV, Limited Partnership.
		G	The Rival Company.
		G	The Rival Company.
	19991025	G	Kotobuki Fudosan Ltd.
		G	Blair Mohn.
		G	Cloister Spring Water Co.
	19991026	G	Sybron International Corporation.
		G	Larry Scaramella.
		G	Molecular BioProducts, Inc.
	19991036	G	Columbia Energy Group.
		G	Estate of Carlos R. Leffler.
		G	Carlos R. Leffler, Inc.
		G	Leffler Transportation Co.
		G	Carlos R. Leffler Propane, Inc.
	19991041	G	Matria Healthcare, Inc.
		G	Mark J. Gainor.
		G	Gainor Medical Acquisition Company.
	19991041	G	Gainor Medical of North America, LLC.
		G	Gainor Medical International, LLC.
		G	Gainor Medical Director, LLC.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
	19991046	G	Compagnie de Saint-Gobain.
		G	ABT Building Products Company.
		G	ABTco, Inc.
	19991052	G	Warburg, Pincus Equity Partners, L.P.
		G	EEX Corporation.
		G	EEX Corporation.
	19991054	G	Gary E. Primm.
		G	Kirk Kerkorian.
		G	MGM Grand, Inc.
	19991066	G	Johnson & Johnson
		G	H.S. Johnson Distributing Trust f/b/o Samuel C. Johnson.
		G	S.C. Johnson & Son, Inc.
	19991077	G	Smorgon Steel Group Ltd.
		G	Australian National Industries Limited.
		G	ANI America, Inc.
	19990891	G	Matthew T. Mouron.
		G	William Van Houten.
		G	Decker Transport Co., Inc.
	19990919	G	CMAC Investment Corporation.
		G	Amerin Corporation.
		G	Amerin Corporation.
	19990998	G	Resource America, Inc.
		G	Japan Leasing Corporation.
		G	JLA Credit Corporation.
	19991033	G	Sun Microsystems, Inc.
		G	MAXSTRAT Corporation.
		G	MAXSTRAT Corporation.
	19991069	G	William J. Ellison.
		G	Lee B. Morris.
		G	The Robert E. Morris Company.
07-JAN-99	19990814	G	Res-Care, Inc.
		G	Timothy F. Madden.
		G	Dungarvin, Inc., et al.
	19990890	G	Associates First Capital Corporation.
		G	Motiva Enterprises LLC.
		G	Motiva Enterprises LLC.
	19990903	G	Joseph Kruger, II.
		G	Shepherd Holdings, Inc.
		G	Shepherd Tissues, Inc.
	19991028	G	Mattel, Inc.
		G	The Learning Company, Inc.
		G	The Learning Company, Inc.
08-JAN-99	19990272	G	ABBN AG.
		G	Finmeccanica S.p.A.
		G	Elsag Bailey Process Automation N.V.
	19990273	G	ABB AB.
		G	Finmeccanica S.p.A.
		G	Elsag Bailey Process Automation N.V.
	19990954	G	The Washington Water Power Company.
		G	Vitol Holding B.V.
		G	Vitol Gas and Electric, LLC.
11-JAN-99	19990771	G	Golder, Thomas, Cressey, Rauner Fund V, L.P.
		G	Edward A. Whipp.
		G	NTF, Inc.
	19990841	G	Nextel Communications, Inc.
		G	Nextel Partners, Inc..
		G	Nextel Partners, Inc.
	19990842	G	Craig O. McCaw.
		G	Nextel Partners, Inc.
		G	Nextel Partners, Inc.
	19990843	G	Motorola, Inc.
		G	Nextel Partners, Inc.
		G	Nextel Partners, Inc.
	19990844	G	DLJ Merchant Banking Partner II, L.P.
		G	Nextel Partners, Inc.
		G	Nextel Partners, Inc.
	19990880	G	Madison Dearborn Capital Partners II, L.P.
		G	Nextel Partners, Inc.
		G	Nextel Partners, Inc.
	19991002	G	Iceberg Transport, S.A.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Total Tel USA Communications, Inc.
		G	Total Tel USA Communications, Inc.
	19991037	G	Virbac S.A.
		G	Agri-Nutrition Group Limited.
		G	Agri-Nutrition Group Limited.
	19991038	G	Green Equity Investors II, L.P.
		G	Life Printing & Publishing Co., Inc.
		G	Life Printing & Publishing Co., Inc.
	19991043	G	Group Maintenance America Corp.
		G	James T. Broyles.
		G	Pacific Rim Mechanical Contractors, Inc.
	19991057	G	Churchill ESOP Capital Partners, LP.
		G	Barney Joseph Blanchard.
		G	EIU, Inc.
		G	Electrical & Instrumentation Unlimited of Louisiana, Inc.
		G	EIU Maintenance, Inc.
		G	EIU Field Services, Inc.
		G	EIU Paymaster, Inc.
		G	Electrical Instrumentation, Inc.
	19991057	G	EIU Gulf Coast, Inc.
		G	EIU International, Inc.
	19991058	G	Churchill ESOP Capital Partners, LP.
		G	Robert Steve Lyon.
		G	EIU, Inc.
		G	EIU Maintenance, Inc.
		G	EIU Field Services, Inc.
		G	EIU Paymaster, Inc.
		G	Electrical Instrumentation, Inc.
		G	EIU Gulf Coast, Inc.
		G	EIU International, Inc.
		G	Electrical & Instrumentation Unlimited of Louisiana, Inc.
	19991078	G	J.C. Penney Company, Inc.
		G	Insurance Consultants, Inc.
		G	Insurance Consultants, Inc.
	19991079	G	McKesson Corporation.
		G	KWS&P, Inc.
		G	KWS&P, Inc.
	19991082	G	Fisher Companies Inc.
		G	Retlaw Enterprises, Inc.
		G	Retlaw Enterprises/South West Oregon Television Broadcasting.
	19991084	G	John J. Rigas.
		G	Louis Pagnotti, Inc.
		G	Verto Corporation.
	19991090	G	World Color Press, Inc.
		G	Infiniti Graphics, Inc.
		G	Infiniti Graphics, Inc.
	19991091	G	Ronald N. Stern.
		G	Kamilche Company.
		G	Simpson Pasadena Paper Company.
	19991094	G	Paul G. Allen.
		G	Value America, Inc.
		G	Value America, Inc.
	19991102	G	Electro Scientific Industries, Inc.
		G	MicroVision Corp.
		G	MicroVision Corp.
	19991112	G	Media/Communications Partners III Limited Partners.
		G	Kenneth R. Thomson.
	19991112	G	The Coriolis Group, Inc.
	19991118	G	Thomas L. Gores.
		G	AMR Corporation.
		G	TeleService Resources, Inc.
12–JAN–99	19990901	G	Allied Waste Industries, Inc.
		G	James L. Watts.
		G	Watts Trucking Service Co., Inc.
	19990959	G	Sony Corporation (a Japanese company).
		G	General Instrument Corporation.
		G	General Instrument Corporation.
	19990989	G	Stephen H. Winters.
		G	Integrated Health Services, Inc.
		G	IHS Home Care, Inc.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
	19991035	G	Welsh, Carson, Anderson & Stowe VII, L.P.
		G	Select Medical Corporation.
		G	Select Medical Corporation.
	19991053	G	Pecos Student Finance Corporation.
		G	HSBC Holdings plc.
		G	Marine Midland Bank.
	19991067	G	DLJ Merchant Banking Partners II, L.P.
		G	PATS, Inc.
		G	PATS, Inc.
	19991081	G	Associates First Capital Corporation.
		G	Transport Clearings, L.L.C.
		G	Transport Clearings, L.L.C.
	19991092	G	The AES Corporation.
		G	Energy East Corporation.
		G	NGE Generation, Inc., New York State Electric.
		G	Somerset Railroad Corporation.
	19991110	G	Thomas H. Lee Equity Fund IV, L.P.
		G	David C. Pratt.
		G	United Industries Corporation.
13-JAN-99	19991096	G	Haftpflichtverband Der Deutschen Industrie V.a.G.
		G	Lion Holding, Inc.
		G	Lion Holding, Inc.
	19991103	G	ONEOK, Inc.
		G	Magnum Hunter Resources, Inc.
		G	Magnum Hunter Resources, Inc.
	19991108	G	Golder, Thoma, Cressey, Rauner Fund V, L.P.
		G	TAGTCR Acquisition, Inc.
		G	TAGTCR Acquisition, Inc.
	19991109	G	TA/Advent VIII, L.P.
		G	TAGTCR Acquisition, Inc.
		G	TAGTCR Acquisition, Inc.
	19991121	G	3Dfx Interactive, Inc.
		G	STB Systems, Inc.
		G	STB Systems, Inc.
	19991124	G	President and Fellows of Harvard College.
		G	WMF Group Ltd.
		G	WMF Group Ltd.
	19991125	G	Drug Emporium, Inc.
		G	Koninklijke Ahold NV.
		G	Koninklijke Ahold NV.
	19991132	G	James D. Thaxton.
		G	FirstPlus Financial Group, Inc.
		G	FirstPlus Consumer Finance, Inc.
	19991139	G	MST Offshore Partners, C.V.
		G	Tri-Seal International, Inc.
		G	Tri-Seal International, Inc.
14-JAN-99	19990909	G	General Mills, Inc.
		G	LFPI Main Street, LLC.
		G	Lloyd's Food Products, Inc.
	19990940	G	Spring Industries, Inc.
		G	Readicut International plc.
		G	Regal Rugs, Inc., Readicut Holdings, Inc.
	19990991	G	Fineter S.A.
		G	Marley plc.
		G	Marley plc.
	19990992	G	James Kipp.
		G	Synetic, Inc.
		G	Synetic, Inc.
	19991060	G	J.P. Morgan & Co. Incorporated.
		G	Oread, Inc.
		G	Oread, Inc.
	19991093	G	Gamma Holding N.V.
		G	Verseidag AG.
		G	Verseidag AG.
15-JAN-99	19991087	G	Health Care Service Corporation.
		G	Texas Health Resources.
		G	Harris Methodist Texas Health Plan, Inc.
		G	Harris Methodist Health Insurance Company.
	19991107	G	Alan B. Miller.
		G	Cooper Companies, Inc., (The).

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Hospital Group of America, Inc.
	19991113	G	Burmah Castrol plc.
		G	LubeCon Employee Stock Ownership Plan.
		G	LubeCon Systems, Inc.
	19991117	G	CPL Long Term Care Real Estate Investment Trust.
		G	HRPT Properties Trust.
		G	HRPT Properties Trust.
	19991123	G	Lonnie A. Pilgrim.
		G	Cargill, Inc.
		G	Plantation Foods, Inc.
	19991140	G	Travel Services International, Inc.
		G	Richard D. & Arlene P. Small.
		G	AHI International Corporation.
	19991141	G	CBRL Group, Inc.
		G	Logan's Roadhouse, Inc.
		G	Logan's Roadhouse Inc.
	19991145	G	San Diego Gas & Electric Company.
		G	SEMCO Energy, Inc.
		G	SEMCO Energy Services, Inc.
	19991146	G	Pon Holdings B.V.
		G	W&O Supply, Inc.
		G	W&O Supply, Inc.
	19991149	G	Renal Care Group, Inc.
		G	Dialysis Centers of America, Inc.
		G	Dialysis Centers of America, Inc.
	19991151	G	Rhone Capital LLC.
		G	Car Component Technologies, Inc.
		G	Car Component Technologies, Inc.
	19991152	G	Randy Long.
		G	Tosco Corporation.
		G	Circle K Stores Inc.
	19991153	G	Mail-Well, Inc.
		G	Daryl R. Borneman.
		G	Colorhouse.
	19991155	G	Whitehall Associates, L.P.
		G	Spurlock Industries, Inc.
		G	Spurlock Industries, Inc.
	19991156	G	Mail-Well, Inc.
		G	Jeffrey D. Borneman.
		G	Colorhouse.
	19991161	G	Anglo American.
		G	Minorco.
		G	Minorco (U.S.A.) Inc.
	19991167	G	O. Bruton Smith.
		G	Thomas P. Williams, Sr.
		G	Tom Williams Buick, Inc.
		G	Williams Cadillac, Inc.
		G	Tom Williams Motors, Inc.
		G	Tom Williams Imports, Inc.
	19991168	G	Scotsman Holdings, Inc.
		G	Roland O. Undi.
		G	Evergreen Mobile Company.
	19991173	G	RAG Aktiengesellschaft.
		G	Mannesmann A. G.
		G	FLT Holding Company, Inc.
	19991181	G	Hubert G. Phipps.
		G	JoEllen Multack.
		G	Fedco, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, contact representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–2489 Filed 2–2–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 982 3005]

Apple Computer, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 5, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Matthew D. Gold or Linda K. Badger, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5275 or 356–5276.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 26, 1999), on the World Wide Web, at **http://www.ftc.gov/os/actions97.htm.** A paper copy can be obtained from the FTC Public Reference Room, H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Apple Computer, Inc. (hereinafter "Apple" or "respondent"). Apple is a major manufacturer and marketer of personal computer hardware and software products.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter has focused on Apple's advertisements for its "Apple Assurance" program. Under Apple Assurance, which Apple offered on most of its hardware products from September 1992 to April 1996, consumers who purchased Apple products in the United States were entitled to free access to technical support personnel for as long as they owned their Apple product. In October 1997, however, Apple began charging Apple Assurance consumers $35 for such access. Accordingly, the proposed complaint alleges that the company falsely claimed that Apple Assurance customers would have access to Apple technical support personnel, at no charge, for as long as that customer owns the product.

The proposed order contains cease and desist provisions as well as complete redress for consumers harmed by Apple's conduct. Part I of the proposed order would prevent Apple from misrepresenting the terms of any technical support service offered in conjunction with any product.

Part II would require that the company reinstate its promise to Apple Assurance customers, and provide live, free technical support for as long as they own their computers. Specifically, this provision requires that the company provide access to complimentary technical support personnel, toll-free, to each "eligible person" who provides the valid serial number of a "covered product" for as long as such person owns the covered product. The order defines "eligible person" as any original owners, or member of the owner's immediate family, who purchased a "covered product." A "covered product" is an Apple product sold in the United States between September 1992 and April 1996. Appendix A to the order includes a list of all models sold during this period of time. Under the terms of Part II of the order, Apple would be permitted to suggest that an eligible person seek answers to questions via less expensive means (such as through pre-recorded phone trees, the Internet, or product manuals), as long as the person always has the option of speaking to live technical support personnel.

Part III of the proposed order would require Apple to reimburse each eligible person who has wrongly paid any fee for technical support as a result of Apple's actions. Pursuant to the order, Apple must send a "Notice of Refund" to each such person within 20 days of service of the order. The Notice of Refund must include either a refund check or a notification of a credit to the customer's credit card account for the full amount paid for technical support services. Further, the Notice informs these customers of their continuing right to free, live, technical support for as long as these customers, or members of their immediate families, own their Apple products.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to provide a copy of the consent agreement to all employees or representatives with duties affecting compliance with the terms of the order; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–2487 Filed 2–2–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Ms. Janell Bodily, B.S., M.S.W., University of Utah: Based on the report of an investigation conducted by the University of Utah and information obtained by ORI during its oversight review, ORI finds that Ms. Bodily, former interviewer, Health Education

Department, College of Health, University of Utah, engaged in scientific misconduct in research supported by a National Institute of Mental Health (NIMH), National Institutes of Health (NIH) grant.

Specifically, Ms. Bodily intentionally falsified patient signatures and responses to questions for at least 75 patient interviews for an NIMH-funded research project, "Evaluation of the Utah Prepaid Mental Health Plan," which involved indigent patients. The study required annual interviews of the participating subjects. The falsified information was damaging to the research project because researchers had to expend substantial time and additional money to re-interview patients. Because the data for the previous year could not be recollected, the response rate for that year was substantially below the response rate for other years of the study and may have reduced the overall statistical reliability of the multi-year study.

None of the questioned data has been included in publications.

ORI has implemented the following administrative actions for the three (3) year period beginning January 25, 1999:

(1) Ms. Bodily is prohibited from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations); and

(2) Ms. Bodily is prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–2510 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Federal Case Registry Family Violence State Practices Survey.

OMB No.: New.

Description: Public Law 104–193, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," requires the Office of Child Support Enforcement (OCSE) to develop a Federal Case Registry to improve the ability of State child support agencies to locate noncustodial parents and collect child support across State lines. This Federal Case Registry includes an indicator for Family Violence, meant to ensure a higher level of confidentiality on cases with the indicator. This indicator is provided by the State submitting the case information. OCSE would like to conduct a brief telephone survey to determine the methods used by States to place the indicator, so that the information may be shared with the other States.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
States	54	1	2	108

Estimated Total Annual Burden Hours: 108.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 29, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–2516 Filed 2–2–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0126]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N,N''*-[1,2-ethanediylbis [[[4,6-bis [butyl (1,2,2,6,6-pentamethyl-4-piperidinyl) amino]-1,3,5-triazin-2-yl]imino]-3,1-propanediyl]] bis[*N',N''-dibutyl-N',N''*-bis (1,2,2,6,6-pentamethyl-4-

piperidinyl)-1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4639) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of *N,N*″-[1,2-ethanediylbis[[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazin-2-yl]imino]-3,1-propanediyl]]bis[*N*′,*N*″-dibutyl-*N*′,*N*″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)-1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in olefin polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 20, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–2506 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0127]

GEO Specialty Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that GEO Specialty Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of trimethylolethane as a dispersant for pigments used as components of food-contact articles.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4635) has been filed by GEO Specialty Chemicals, C/O Keller and Heckman, 1001 G St., NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3725 *Pigment dispersants* (21 CFR 178.3725) to provide for the safe use of trimethylolethane as a dispersant for pigments used as components of food-contact articles.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 20, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–2505 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0396]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing thata collection of information entitled "Medical Devices; Reports of Corrections and Removals" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 25, 1998 (63 FR 65210), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–359. The approval expires on January 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: January 28, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2563 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1232]

Points To Consider Guidance Document on Assayed and Unassayed Quality Control Material; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Points To Consider Guidance Document on Assayed and Unassayed Quality Control Material." This draft guidance is neither final nor is it in effect at this time. This draft guidance is intended to provide assistance to manufacturers of in vitro diagnostic quality control materials. It complements the existing guidance on labeling of these devices entitled " Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Diagnostic Device."

DATES: Written comments concerning this draft guidance must be received by May 4, 1999.

ADDRESSES: Written comments concerning this draft guidance must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies on a 3.5″ diskette of the draft guidance

document entitled "Points To Consider Guidance Document on Assayed and Unassayed Quality Control Material" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance, entitled "Points to Consider Guidance Document on Assayed and Unassayed Quality Control Materials," complements the existing guidance document published in February 1996, entitled "Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Devices." FDA believes information in this draft guidance concerning unassayed quality control materials may be useful to manufacturers making these products, even though such materials are currently exempt from premarket review. For assayed quality control materials, the intent is for this draft guidance document to eventually be cited as the basis for abbreviated 510(k)'s for processing of assayed controls.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on assayed and unassayed quality control materials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Points To Consider Guidance Document on Assayed and Unassayed Quality Control Material" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (2231) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes "Points to Consider for Guidance Document on Assayed and Unassayed Quality Control Material," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

IV. Comments

Interested persons may, on or before May 4, 1999, submit to Docket Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 1999.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 99–2508 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1224]

Guidance for Industry on FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products." The guidance considers the quality and quantity of data that may be adequate to add a new use to the prescribing information for a product used in the treatment of cancer. The guidance is part of an agency effort to encourage the submission of supplemental applications for new uses for approved drug and biological products. This guidance is consistent with the Food and Drug Administration Modernization Act of 1997 (the Modernization Act), which specifies that the agency will continue its efforts to encourage sponsors to submit supplemental applications for new uses for their products.

DATES: Written comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of this guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert L. Justice, Center for Drug

Evaluation and Research (HFD–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2473.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 1997 (62 FR 13650), FDA published a draft guidance for industry entitled "Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products" as part of efforts to encourage the submission of supplemental applications for drug and biological products. The intent of that draft guidance was to clarify what clinical evidence of effectiveness should be provided in new drug applications and supplemental applications. On that same date, the agency published a draft guidance for industry entitled "FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products," which considered the quality and quantity of data that may be adequate to add a new use to the prescribing information for a product used in the treatment of cancer. These guidances were published as part of agency efforts to expedite the development of new and supplemental uses for drug and biological products.

In November 1997, the Modernization Act (Pub. L. 105–111) was signed into law by the President. Section 403 of the Modernization Act specifies that FDA will continue its efforts to encourage sponsors to submit supplemental applications for new uses for their products. Consistent with section 403 of the Modernization Act, the agency has finalized the draft guidances it issued in March 1997. After considering comments submitted by the public, FDA announced the availability, in final form, of the guidance entitled "Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products" in the **Federal Register** of May 15, 1998 (63 FR 27093).

This notice announces the availability of the final version of the guidance entitled "FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products." This guidance focuses on the particular information to be provided when submitting an application for the approval of a supplemental new cancer treatment use for a marketed drug or therapeutic biological product. Cancer research often reveals potential new uses for already marketed drugs, and it is important to have new uses approved for inclusion in the product labeling as soon as adequate evidence of product safety and effectiveness for the new use becomes available.

Consistent with section 403(c) of the Modernization Act, CDER and CBER have designated key persons who will: (1) Encourage the prompt review of supplemental applications for approved products, and (2) work with sponsors to facilitate the development and submission of data to support supplemental applications.

Within CDER, the Associate Director for Medical Policy is fulfilling the requirements of section 403(c) of the Modernization Act by working with sponsors to facilitate the development of supplemental applications. Within the Division of Oncology Drug Products, the Special Assistant to the Division Director is working with sponsors to facilitate the development and submission of data to support supplemental applications for drug products used in cancer treatment. Efforts include: (1) Managing initiatives to seek the views of major groups and of individuals in the cancer research and treatment community, (2) managing and monitoring actions regarding possible labeling revisions, and (3) preparing regular progress reports.

Within CBER, supplemental applications are being facilitated by the Deputy Director, Medical, in accordance with section 403(c) of the Modernization Act. Review activities for most oncologic product applications are managed by the Office of Therapeutics Research and Review. The Oncology Branch of the Division of Clinical Trials Design and Analysis will work with sponsors to facilitate the development and submission of data to support supplemental applications for biologics used in cancer treatment.

This guidance represents the agency's current thinking on new cancer treatment uses for marketed drug and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public in any way. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Dated: January 27, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 99–2562 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0375]

Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA)." Under the Sectoral Annex on Medical Devices (Annex), FDA has agreed to designate conformity assessment bodies (CAB's) as third parties (i.e., organizations outside of FDA) authorized to perform premarket and quality system evaluations consistent with the Annex. This guidance will assist those who are interested in participating in this program as CAB's or as applicants pursuing premarket and quality system evaluations consistent with the Annex.

DATES: Written comments may be submitted at any time.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. If you do not have access to the World Wide Web, submit written requests for single copies of the guidance entitled "Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA)" on 3.5″ diskette to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Written comments concerning this guidance may be submitted at any time to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Division of Small Manufacturers Assistance (HFZ–220),

Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 or FAX 301–443–8818.

SUPPLEMENTARY INFORMATION:

I. Background

The United States and the European Community (EC) exchanged letters on October 30, 1998, which brought the MRA into force on December 7, 1998. FDA published a final rule on the MRA on November 6, 1998 (63 FR 60122).

In the MRA negotiations, FDA led the negotiations on the Annex to the MRA between the United States and the EC. These negotiations resulted in the drafting of the MRA, which includes a special section pertaining to medical devices that is referred to as the Annex. The Annex provides for a 3-year transition period. After the transition period FDA and the EC may normally endorse premarket and quality system evaluation reports provided by equivalent third parties, the CAB's.

In order to establish confidence in the conformity assessment process, CAB's will be required to participate in rigorous joint exercises to demonstrate their proficiency to conduct evaluations. Upon implementation of this program, CAB evaluations will be exchanged and normally endorsed by both FDA and the EC for the marketing of medical devices.

FDA is using the National Voluntary Conformity Assessment System Evaluation (NVCASE) administered by the National Institute of Standards and Technology (NIST) of the U.S. Department of Commerce to recognize one or more accreditation bodies that, in turn, will accredit potential U.S. CAB's seeking to be designated under the Annex to evaluate medical devices produced for the EC market. FDA has considered the recommendations made by the NIST under NVCASE and has designated the U.S. CAB's that meet criteria for technical competence established in the Annex, for possible participation in transition activities.

In the **Federal Register** of July 2, 1998 (63 FR 36247), FDA published information regarding the process for CAB's to become eligible for designation under the Annex. On the same date, the agency announced the availability of a draft guidance on the third party program (63 FR 3621). The agency received three comments on the draft guidance. FDA has reviewed these comments and has made no significant revisions in the guidance in response to these comments. The agency has, however, included additional information regarding conflicts of interest, including additional examples of situations that would indicate a potential conflict of interest.

II. Significance of Guidance

This guidance represents the agency's current thinking on "Guidance for Staff, Industry, and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so using the World Wide Web. CDRH maintains an entry on the World Wide Web for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH Home Page includes the "Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA)," device safety alerts, access to **Federal Register** reprints, information on premarket submissions including lists of approved applications and manufacturers' addresses, small manufacturers assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH Home Page may be accessed at "http://www.fda.gov/cdrh".

IV. Comments

Interested persons may, at any time, submit written comments regarding this guidance to the contact person listed above. Such comments will be considered when determining whether to amend the current guidance.

Dated: January 19, 1999.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 99–2509 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 3, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 2055 Harbor Boulevard, Ventura, CA 93001, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group Reproductive Biology Study Section.

Date: February 8–9, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, PHD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–SSS–W(17).

Date: February 8–10, 1999.

Time: 6:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton Hotel, 36th & Chestnut, Philadelphia, PA 19104.

Contact Person: Dharam S. Dhindsa, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr,nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 1.

Date: February 9–10, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group Pathology B Study Section.

Date: February 10–12, 1999.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Initial Review Group Visual Sciences C Study Section.

Date: February 10–11, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Carole L. Jelsema, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2564 Filed 2–2–99; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Evaluation Study of Congestive Heart Failure and Pulmonary Artery Catheterization Effectiveness in CHF Patients (Escape).

Date: February 9, 1999.

Time: 9:00 AM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise P. Corman, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Stem Cell Transplantation to Establish Allochimerism.

Date: February 24, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David T. George, PhD, Scientific Review Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Building II, Room 7188, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2570 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Discovery of Novel Drugs for Alzheimer's Disease.

Date: February 11, 1999.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: University of Florida, Gainesville, FL 32610.

Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: February 28–March 1, 1999.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William A. Kachadorian, PhD, SRA, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Pepper Center Applications.

Date: March 2–4, 1999.

Time: 6:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Longitudinal Analysis of Age Related Memory Decline.
Date: March 8, 1999.
Time: 2:30 PM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.
Date: March 8–10, 1999.
Time: 7:00 PM to 10:00 AM.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Louise L. Hsu, PhD, SRA, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, A Pilot Research Grant Program.
Date: March 9–10, 1999.
Time: 1:00 PM to 10:00 AM.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Epidemiology of Dementia in an Urban Community.
Date: March 9, 1999.
Time: 1:30 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Multicenter Vitamin E Trial in Persons with Down Syndrome.
Date: March 11, 1999.
Time: 1:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2517 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Aging, February 3, 1999, 10:30 a.m. to February 4, 1999, 12:45 p.m., National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892 which was published in the **Federal Register** on January 15, 1999, Vol. 64, No. 10.

The mtg. will be open to the public on Wed., 2/3 from 10:30 a.m. until 2 p.m., from 3–4 p.m. & again on 2/4 from 8 a.m. to adjournment. The mtg. will be closed to the public on 2/3 from 2–3 p.m. & again from 4 p.m. until recess. The meeting is partially closed to the public.

Dated: January 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2518 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.
Date: February 18, 1999.
Open: 8:30 AM to 12:00 PM.
Agenda: The meeting will be open to the public to discuss administrative details relating to Council Business and special reports.
Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
Closed: 1:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
Contact Person: Steven J. Hausman, PhD; Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32, 31 Center Dr, MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 27, 1999.

LaVerne J. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2519 Filed 2–2–99; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individual who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: March 7–9, 1999.

Closed: March 7, 1999, 8:00 PM to approximately 10:30 PM.

Agenda: To review and evaluate the Intramural Laboratory of Structural Biology—prereview.

Place: Nat. Institute of Environmental Health Sciences, Siena Hotel, 1505 E. Franklin Street, Chapel Hill, NC 27514.

Open: March 8, 1999, 8:00 AM to 4:30 PM.

Agenda: Presentation of the organization and conduct of research in the Laboratory of Structural Biology.

Place: Nat. Institute of Environmental Health Sciences Building 101, Main Conference Room, South Campus, Research Triangle Park, NC 27709.

Closed: March 9, 1999, 8:30 AM to adjournment.

Agenda: To review and evaluate the programs of the laboratory listed above.

Place: Nat. Institute of Environmental Health, Sciences, Building 101, Main Conference Room, South Campus Research Triangle Park, NC 27709.

Contact Person: J. Carl Barrett, PHD, Scientific Director/Executive Secretary, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, ((19) 541–3205.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115 Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2520 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Treatment.

Date: March 5, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Susan L. Coyle, PhD., Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Medication Development Centers.

Date: March 10–11, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD., Chief, Basic Sciences Review Branch, Office of Extraumural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, Rockville, MD 20857, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2565 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–29, Review of P01.

Date: February 1–2, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PHD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–07, Review of P01.

Date: February 2–3, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: H. George Hausch, PHD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–09, Review of RFA.

Date: February 23–24, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, Gaithersburg, MD 20873

Contact Person: H. George Hausch, PHD, Chief, Scientific Review Section, 4500 Center

Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2566 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Committee B.

Date: March 11–12, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Irene B. Glowinski, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20815, (301) 594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2567 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 19, 1999.

Time: 12:00 PM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2568 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: February 4–5, 1999.

Open: February 4, 1999, 9:00 a.m. to 10:30 a.m.

Agenda: Administrative reports and program developments.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: February 4, 1999, 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: February 5, 1999, 10:15 a.m. to 10:45 a.m..

Agenda: Administrative reports and program developments.

Closed: February 5, 1999, 10:45 a.m. to 12:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, BA, Chief, Bibliographic Services Division/Library Operations NLM, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/ Room 4N419, Bethesda, MD 20894, (301) 496–6217.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library of Assistance, National Institutes of Health, HHS)

Dated: January 29, 1999.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2569 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 2903–2904, dated January 19, 1999) is amended to reflect organizational changes within the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). The restructuring will (1) abolish the Office of Surveillance and Analysis within the Office of the Director, NCCDPHP; (2) retitle the Division of Chronic Disease Control and Community Intervention as the Division of Adult and Community Health and restructure the functions of the Division; and (3) retitle the Division of Nutrition as the Division of Nutrition and Physical Activity and restructure the functions of the Division.

Section C–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Office of the Director (CL1), National Center for Chronic Disease Prevention and Health Promotion (CL),* delete in their entirety the title and functional statement for the *Office of Surveillance and Analysis (CL11).*

After the functional statement for the *Office of the Director (CL21), Division of Adolescent and School Health (CL2),* delete the title and functional statement for the *Division of Chronic Disease Control and Community Intervention (CL3)* and insert the following:

Division of Adult and Community Health (CL3). (1) Develops and manages nationwide and State-based surveillance systems for chronic disease risk factors and health promotion activities; (2) develops and promotes community-based interventions and programs; (3) provides national and international leadership in health education and health promotion; (4) conducts studies to enhance public health activities in health services and managed care; (5) manages public health research, training, cooperative, and intervention activities and diverse settlings such as cities, universities, State health departments, and other countries; (6) promotes the understanding and improvements of the determinants and issues related to cardiovascular health, aging, and epilepsy; (7) in cooperation with other components of NCCDPHP, coordinates activities with other Federal, State, and local governmental agencies, academia, and nongovernmental organizations.

Delete the functional statement for *Office of the Director (CL31)* and insert the following:

(1) Manages, coordinates, and evaluates the activities and programs of the Division; (2) ensures that Division activities are coordinated with other components of CDC both within and outside the Center, with Federal, State, and local health agencies, and with voluntary and professional health agencies; (3) provides leadership and coordinates Division responses to requests for research, consultation, training, collaboration and technical assistance or information on managed care, health promotion, behavioral surveys, cardiovascular health, aging, epilepsy, and arthritis; (4) provides administrative, logistical, and management support for Division field staff; (5) ensures the coordination of NCCDPHP internal activities related to Prevention Health and Health Services Block Grant (PHHSBG) programs and develops and administers, guidelines, uniform reporting procedures, and evaluation criteria for programs supported by PHHSBG; (6) provides administrative and management support for the Division including guidance on the organization of personnel and the use of financial resources, and oversight of grants, cooperative agreements, contracts, and reimbursement agreements.

Behavioral Surveillance Branch (CL32). (1) Manages a nationwide program for State-specific surveillance of behavioral risk factors and other antecedents of health conditions, particularly chronic diseases; (2) provides support to build State capacity for telephone survey operations and data management, and for the analysis, dissemination, and use of the data by State agencies, and universities to set public health priorities and monitor public health programs; (3) develops guidelines and criteria for the assessment of behavioral risk factors in State and local populations; (4) analyzes and disseminates the results of analyses to policy and decision makers, public health professionals, and other relevant audiences through communication channels and formats appropriate to these constituencies; (5) coordinates analyses and use of survey methods to enhance behavioral risk factor data; (6) develops guidelines and criteria for monitoring public health policies directed at affecting behavioral and other risk factors leading to chronic diseases and other conditions; (7) promotes the broad use and application of Behavioral Risk Factors Surveillance Survey (BRFSS) results and findings through current information systems; (8) works closely with other Divisions in NCCDPHP and other CDC Centers/Institute/Offices (CIO's) to formulate a cross-cutting surveillance system for the States and CDC; (9) provides administrative and management support for the branch, including oversight of grants, cooperative agreements, contracts, and reimbursable agreements.

Delete the title and functional statement for the *Cardiovascular Health Studies Branch (CL33)* and insert the following:

Cardiovascular Health Branch (CL33). (1) Develops and evaluates effective interventions to be used by State and local health agencies and health care organizations to mitigate risk factors for cardiovascular disease; (2) conducts evaluation studies to document the efficacy and effectiveness of disease prevention and health promotion interventions; (3) provides leadership in the development of components and guidelines for effective chronic disease prevention and health promotion strategies related to cardiovascular disease; (4) provides consultation to State and local health agencies and health care delivery organizations in planning, establishing, and evaluating cardiovascular health activities; (5) carries out epidemiologic research related to the prevention of cardiovascular disease and improvement of cardiovascular health; (6) disseminates findings from research and program evaluations to policy and decision makers, public health professionals and other relevant audiences through communication channels and formats appropriate to these constituencies; (7) provides administrative and management support for the branch, including oversight of

grants, cooperative agreements, contracts, and reimbursable agreements.

Delete the title and functional statement for the *Community Health Promotion Branch (CL35)* and insert the following:

Community Health and Program Services Branch (CL35). (1) Provides technical assistance to State health agencies and other Federal, national, and international organizations to plan, implement, and evaluate community-based chronic disease prevention and health promotion programs; (2) develops, implements, and evaluates training in the area of chronic disease intervention and community health promotion for State health departments and other agencies; (3) supports health promotion and disease prevention research conducted at university-based prevention centers; (4) develops chronic disease epidemiology capacity in State health departments through training and support of chronic disease field epidemiologists and other capacity building efforts; (5) provides statistical and programming support to the Division, including assistance in design of data collection instruments, computer programming, and statistical analysis; (6) provides administrative and management support for the branch, including oversight of grants, cooperative agreements, contracts, and reimbursable agreements.

Delete in their entirety the title and functional statement for the *Statistics Branch (CL37).*

Delete the title and functional statement for the *Aging Studies Branch (CL38)* and insert the following:

Health Care and Aging Studies Branch (CL38). (1) Coordinates and fosters research and programs in managed care settings for the Center; (2) reviews and develops policy for using health care settings as a focus for public health activities related to disease prevention and health promotion; (3) examines issues related to cost effectiveness in the management and care of chronic diseases; (4) assists in setting health care standards for prevention of chronic diseases; (5) studies potentially modifiable causes of chronic disease and conditions of older adults; (6) develops and evaluates measures of public health impact concerned with such issues as quality of life and disability adjusted life years; (7) assesses the health and economic burden of chronic diseases and conditions in older adults through activities such as demographic, economic, and behavioral studies; (8) disseminates findings from research and program evaluations to policy and decision makers, public health professionals, and other relevant audiences through communication channels and formats appropriate to these constituencies; (9) provides administrative and management support for the branch, including oversight of grants, cooperative agreements, contracts, and reimbursable agreements.

Delete in their entirety the title and functional statement for the *Health Interventions and Translation Branch (CL39).*

After the functional statement for the *Office of the Director (CL41), Division of Diabetes Translation (CL4),* delete the title and functional statement for the *Division of Nutrition (CL5)* and insert the following:

Division of Nutrition and Physical Activity (CL5). (1) Provides national leadership to chronic disease prevention and maternal and child health in the areas of nutrition and physical activity; (2) implements systems to track and analyze nutrition problems, physical inactivity, and related risk factors; builds State capacity to collect and utilize surveillance data; (3) builds international, national, State, and local expertise and capacity in nutrition and physical activity through consultation and training; (4) provides technical assistance and other support to enable State and local health agencies to plan, implement, and evaluate nutrition and physical activity programs; (5) contributes to the science base by conducting epidemiologic and intervention studies related to nutrition and physical activity; (6) ensures that both scientific and programmatic efforts span the arenas of policy, environment, communications, social and behavioral interventions; (7) develops and disseminates new methods, guidelines, and criteria for effective nutrition and physical activity programs; (8) collaborates with appropriate Federal and State agencies, international/national/community organizations, and other CDC partners; (9) provides national leadership in health communications to promote nutrition and physical activity and integrate health communications efforts with overall program efforts; (10) facilitates the translation of nutrition and physical activity research findings into public health practice.

Delete the functional statement for the *Office of the Director (CL51)* and insert the following:

Office of the Director (CL51). (1) Provides direction in establishing Division priorities, strategies, programs, and policies; (2) mobilizes and coordinates partnerships and constituencies to build a national infrastructure for nutrition and physical activity promotion; (3) educates the public and key decision makers about the importance of nutrition and physical activity to public health; (4) ensures that Division activities are coordinated within NCCDPHP and with other CIOs, constituencies, and Federal agencies; (5) monitors progress toward achieving Division objectives and assesses the impact of programs; (6) provides special training and capacity building activities in support of Division programs; (7) provides administrative and management support for Division activities including guidance on the organization of personnel and the use of financial resources; (8) provides leadership to the Division and field staff on health communication efforts to promote nutrition and physical activity.

Physical Activity and Health Branch (CL52). (1) Conducts epidemiologic research related to physical activity, health, and the prevention of chronic disease; (2) develops and evaluates disease prevention and health promotion interventions involving physical activity; (3) develops monitoring and tracking systems for physical activity behaviors; (4) provides leadership in the development of guidelines for effective chronic disease prevention and health promotion strategies through physical activity; (5) develops and produces communication tools and public affairs strategies related to physical activity and health in collaboration with the Division's communications team; (6) provides technical assistance to State and local health agencies in planning, establishing, and evaluating physical activity promotion strategies; (7) translates physical activity and exercise research findings into public health practice; (8) disseminates findings from epidemiologic research and program evaluations through publications in the scientific literature; (9) collaborates with appropriate groups internal and external to CDC.

Delete the title and functional statement for the *Chronic Disease Prevention Branch (CL56)* and insert the following:

Chronic Disease Nutrition Branch (CL56). (1) Designs, implements, and evaluates surveillance activities, epidemiologic studies, and intervention projects related to chronic disease nutrition problems and risk factors; (2) develops and coordinates State-based dietary surveillance relating to chronic disease nutrition problems and risk factors, and builds State capacity to collect and utilize surveillance data; (3) provides assistance, consultation, and training to State, local, and international agencies to prevent and control chronic

disease and relevant risk factors; (4) analyzes, interprets, and disseminates data from surveys, surveillance activities, and epidemiologic studies related to chronic disease nutrition problems and related risk factors; (5) develops and disseminates guidelines for chronic disease nutrition assessment, intervention, and surveillance; (6) coordinates and/or collaborates with appropriate Federal agencies and national organizations to strengthen and extend chronic disease nutrition surveillance, epidemiology, and intervention activities; (7) develops new methods, techniques, and criteria for the assessment of chronic disease nutrition problems and related risk factors in the United States and other countries; (8) coordinates and/or collaborates with other divisions in NCCDPHP to develop and strengthen the chronic disease nutrition components of their programs, as appropriate.

Delete the title and functional statement for the *Maternal and Child Health Branch (CL57)* and insert the following:

Maternal and Child Nutrition Branch (CL57). (1) Designs, implements, and evaluates epidemiological studies and intervention projects related to nutritional and behavioral risks in maternal and child populations; (2) designs, implements, and evaluates epidemiologic studies and intervention projects related to micronutrient nutrition, especially iron; (3) develops and coordinates State-based maternal and child nutrition surveillance and surveys, and builds State capacity to carry out surveillance activities; (4) provides assistance, consultation, and training to local, State, and international agencies to prevent and control adverse maternal and child health outcomes related to nutritional and behavioral risk factors; (5) analyzes, interprets, and disseminates data from surveys, surveillance activities, and epidemiologic studies related to health and nutrition in domestic and international maternal and child populations; (6) develops and disseminates new methods, techniques, guidelines, and criteria for nutrition assessment, surveillance, and intervention in domestic and international maternal and child populations; (7) coordinates and/or collaborates with appropriate Federal agencies and national/international organizations to develop and strengthen maternal and child nutrition programs; (8) coordinates and collaborates with other divisions in NCCDPHP and other CDC CIOs to develop and strengthen the maternal and child nutrition components of their programs, as appropriate.

Dated: January 22, 1999.

Jeffrey P. Koplan,

Director.

[FR Doc. 99–2473 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention, Drug Testing Advisory Board; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in March 1999.

The first day (March 8) of the Drug Testing Advisory Board meeting will be closed from 8:30 a.m. until 1:00 p.m. and involves the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App.2, § 10(d).

The Drug Testing Advisory Board meeting will be open from 1:00 p.m. until 5:00 p.m. on March 8 and open from 8:00 a.m. until 3:30 p.m. on March 9. The open session will include a roll call, general announcements, and a discussion of the information submitted by industry representatives regarding the use of alternative matrices (hair, sweat, oral fluids) and on-site tests to test for drugs of abuse. A public comment period will be scheduled during the open session. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board

Meeting Date: March 8–9, 1999

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Closed: March 8, 1999; 8:00 a.m.–1:00 p.m.

Open: March 8, 1999; 1:00 p.m.–5:00 p.m.

Open: March 9, 1999; 8:00 a.m.–3:30 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031

Dated: January 28, 1999.

Sandi Stephens,

Extramural Activities Team Leader, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–2511 Filed 2–2–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–006180

Applicant: PE AgGen, Davis, CA,

The applicant requests a permit to import blood samples taken from captive-held and captive-hatched Komodo dragon (*Varanus komodoensis*) worldwide for the purpose of scientific research.

PRT–007309

Applicant: The Lubee Foundation, Inc., Gainesville, FL

The applicant requests a permit to export biological samples taken from captive-held and captive born specimens of Rodrigues fruit bat (*Pteropus rodricensis*) to the University of Aberdeen, Scotland, UK, for the purpose of scientific research.

PRT–007372

Applicant: San Diego Wild Animal Park, Escondido, CA

The applicant requests a permit to export two male and four female captive-held and captive born Arabian oryx (*Oryx leucoryx*) to Municipalite de Tunis, Tunisia, to enhance the survival of the species through propagation.

PRT–005794

Applicant: The Detroit Zoological Institute, Detroit, MI

The applicant requests a permit to import three male and three female captive hatched Japanese giant salamanders from the Asa Zoological Park, Hiroshima, Japan, for the purpose of enhancement of the survival of the species through conservation education, propagation, and scientific research.

PRT–004520

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to purchase in interstate commerce one female captive-held Asian elephant (*Elephas maximus*) from the Clyde Beatty-Cole Bros. Circus in Deland, Florida, for the purpose of enhancement of the survival of the species through conservation education and propagation.

PRT–004521

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to purchase in interstate commerce one female captive-held Asian elephant (*Elephas maximus*) from the American Circus Corporation in Deland, Florida, for the purpose of enhancement of the survival of the species through conservation education and propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–007280

Applicant: Michael Carpinito, Kent, WA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: January 29, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–2541 Filed 2–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–00]

Notice of Availability of Approved Plan Amendment and Decision Record; Nevada

January 25, 1999.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, Decision Record for the Approved Paradise-Denio and Sonoma-Gerlach Management Framework Plans Lands Amendment.

DATES: The Approved Paradise-Denio and Sonoma-Gerlach Management Framework Plans Lands Amendment and Decision Record will be distributed and made available to the public on or around February 16, 1999.

ADDRESS: A copy of the Approved Plan Amendment and Decision Record can be obtained from: Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445, (775) 623–1500.

SUPPLEMENTARY INFORMATION: The Approved Lands Amendment and Decision Record complete the land use planning process, and document the changes to various decisions as they pertain to the retention, acquisition, and disposal of public lands managed by the Winnemucca Field Office of the Bureau of Land Management.

Terry A. Reed,

Field Manager.

[FR Doc. 99–2479 Filed 2–2–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 88993]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 429,000 acres of National Forest System lands to preserve the area for traditional cultural purposes by Native Americans, protection of threatened and endangered species, and preservation of outstanding scenic values and roadless character. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all activities consistent with applicable Forest plans and those related to exercise of valid existing rights.

DATES: Comments and requests for a public meeting must be received by May 4, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Box 869, Great Falls, Montana 59403.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Box 869, Great Falls, Montana 59403.

SUPPLEMENTARY INFORMATION: The Forest Service has filed an application to withdraw the following-described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

All National Forest System lands in the Rocky Mountain Division of the Lewis and Clark National Forest outside of existing wilderness east of the Rocky Mountain Continental Divide. This includes Federal lands in part or all of the following townships:

Principal Meridian, Montana

Tps. 16 N., Rs. 7 and 8 W.
Tps. 17 N., Rs. 7 and 8 W.
Tps. 18 N., Rs. 8 and 9 W.
Tps. 19 N., Rs. 9 and 10 W.
Tps. 20 N., Rs. 9, 10, and 11 W.
Tps. 21 N., Rs. 9 and 10 W.
Tps. 22 N., Rs. 9 and 10 W.
T. 23 N., R. 9 W.
Tps. 24 N., Rs. 9 and 10 W.
Tps. 25 N., Rs. 9 and 10 W.
Tps. 26 N., Rs. 9 and 10 W.
Tps. 27 N., Rs. 9 and 11 W.
Tps. 28 N., Rs. 10 to 13 W.

Tps. 29 N., Rs. 10 to 13 W.
Tps. 30 N., Rs. 11, 12, and 13 W.
Tps. 31 N., Rs. 12 and 13 W.

In addition, National Forest System lands on the Lincoln Ranger District of the Helena National Forest east and outside of the Scapegoat Wilderness in part or all of the following townships:

T. 15 N., R. 7 W.
Tps. 16 N., Rs. 6, 7, and 8 W.

The areas described aggregate approximately 429,000 acres in Lewis and Clark, Teton, Flathead, Pondera, and Glacier Counties.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor, Lewis and Clark National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor, Lewis and Clark National Forest, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: January 29, 1999.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 99–2636 Filed 2–2–99; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–404]

Methyl Tertiary Butyl Ether (MTBE): Conditions Affecting the Domestic Industry

Effective Date: January 27, 1999.

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request on December 23, 1998, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–404, Methyl Tertiary Butyl Ether (MTBE): Conditions Affecting the Domestic Industry, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Ms. Elizabeth R. Nesbitt, the Project Leader (202–205–3355) or Mr. Christopher Robinson, the Deputy Project Leader (202–205–2334), Office of Industries, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The USTR requested that the Commission conduct an investigation and provide a report concerning conditions affecting the U.S. methyl tertiary butyl ether (MTBE) industry. The Commission is requested to provide the study within 9 months of receipt of the letter, or by September 23, 1999.

As requested by the USTR, the Commission will provide the following information in its report, to the extent that such information is available:

(1) an overview of the global market for MTBE, including consumption, production, capacity, and trade trends during 1994–98, emphasizing the United States and Saudi Arabia;

(2) a description of the domestic MTBE market, and the major factors affecting it, including imports of MTBE, especially from Saudi Arabia;

(3) an overview of the current MTBE production processes, with information on costs of production, including those of its major raw material components, and the principal sources of these feedstocks in the United States, as well as in Saudi Arabia; and

(4) profiles of the U.S. and Saudi Arabian MTBE industries and importers, including information on their patterns of ownership and investment, as well as government policies affecting production, investment, and trade of MTBE. Examples of such policies identified by the USTR include industrial policies, trade policies, and other governmental measures that may affect the cost of raw materials, transportation, and other relevant competitive factors.

In the request letter, the USTR notes that the United States is a significant producer and consumer of MTBE, a chemical used primarily as an oxygenate for gasoline. The USTR stated that U.S. producers of MTBE have expressed concerns about competitive conditions affecting their industry, including increased MTBE imports from Saudi Arabia, and that the producers believe that these increased imports are the indirect result of the Saudi Arabian government's provision of butane feedstock to domestic MTBE producers at a substantial discount to world market prices.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on April 1, 1999. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 17, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 19, 1999; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 14, 1999. In the event that, as of the close of business on March 17, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after March 17, 1999, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the

earliest practical date and should be received no later than the close of business on April 14, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (**http://www.usitc.gov**).

List of Subjects

Methyl tertiary butyl ether, MTBE, oxygenates, ethanol, reformulated gasoline, butane, and Saudi Arabia.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2548 Filed 2–2–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–411]

Certain Organic Photo-Conductor Drums and Products Containing the Same; Notice of Decision To Extend the Deadline for Determining Whether To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by three weeks, or until February 17, 1999, the deadline for determining whether to review an initial determination (ID) (Order No. 12) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3104. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 4, 1998, based on a complaint filed by Mitsubishi Chemical Corporation of Japan and Mitsubishi Chemical Corporation America of White Plains, New York (collectively, Mitsubishi). 58 FR 30513. Twelve firms were named as respondents. Only respondents Dainippon Ink & Chemicals, Inc. and DIC Trading (USA) Inc. remain active in the investigation. The other respondents have either been terminated from the investigation or have sought termination based on consent orders or withdrawal of the complaint as to them. On December 7, 1998, the ALJ issued an ID terminating the investigation based on withdrawal of Mitsubishi's complaint. The deadline for determining whether to review this ID was previously extended on December 23, 1998. 63 FR 72327 (December 31, 1998).

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.42(h)(3) of the Commission Rules of Practice and Procedure, 19 CFR § 210.42(h)(3).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2549 Filed 2–2–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Wendell Leondrus Chestnut, M.D. Revocation of Registration

On July 23, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Wendell Leondrus Chestnut, M.D., of Philadelphia, Pennsylvania, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC2513972 under 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania. The order also notified Dr. Chestnut that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

Dr. Chestnut was ultimately served with the Order to Show Cause on January 23, 1998. No request for a hearing or any other reply was received by the DEA from Dr. Chestnut or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Chestnut is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46

The Deputy Administrator finds that effective October 22, 1996, the Commonwealth of Pennsylvania, State Board of Medicine indefinitely suspended Dr. Chestnut's license to practice medicine and surgery in Pennsylvania based upon his failure to purchase professional liability insurance and to pay annual surcharges since January 1992. Dr. Chestnut did not present any evidence to indicate that he is licensed to practice medicine in Pennsylvania.

The Deputy Administrator finds that Dr. Chestnut is not currently licensed to practice medicine in the Commonwealth of Pennsylvania and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Chestnut is not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania. As a result, Dr. Chestnut is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement

Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC2513972, previously issued to Wendell Leondrus Chestnut, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 5, 1999.

Dated: January 5, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–2467 Filed 2–2–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–38]

Daniel Family Pharmacy; Continuation of Registration With Restrictions

On June 24, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Daniel Family Pharmacy (Respondent) of Galesburg, Illinois, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AD2002626, pursuant to 21 U.S.C. 824(a)(2) and (a)(4), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f).

By letter dated July 23, 1996, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Chicago, Illinois on March 11 through 14, 1997, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On July 7, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be continued subject to certain conditions. On July 27, 1998, the Government filed Exceptions to Judge Bittner's Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision. Thereafter, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator on August 11, 1998.

On September 30, 1998, Judge Bittner transmitted to the then-Acting Deputy Administrator Respondent's Motion for Leave to File its Response to Government's Objection which was filed on September 29, 1998. In its motion, Respondent's counsel represented that the Government did not object to Respondent's request for additional time to file its response to the Government's exceptions and that no party would be prejudiced by allowing Respondent the opportunity to respond.

By letter dated October 2, 1998, Government counsel indicated that it did in fact object to Respondent being given additional time to respond to the Government's exceptions. Government counsel stated that the Government attorney who agreed to Respondent's request was not an attorney of record in these proceedings and was not authorized to agree to Respondent's request. Government counsel noted that 21 CFR 1316.66 provides the parties with the opportunity to file exceptions to the Administrative Law Judge's recommended decision within 20 days of the date of the decision and that the Administrative Law Judge can grant additional time past the 20 days for the filing of a response to any exceptions. Government counsel argued that Respondent did not file any response or request for additional time to file a response within 20 days of Judge Bittner's decision. In addition, the Government argued that no good cause was given by Respondent to file a response at such a late date; that its request is tantamount to a motion to reopen the record; and that allowing Respondent to respond to the Government's exceptions at such a late date would delay the publication of a final order in this matter.

Respondent replied to the Government's letter on October 5, 1998, and forwarded its Response to the Government's Exceptions to the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. Respondent pointed out that it could not have filed anything regarding the Government's exceptions within 20 days of Judge Bittner's recommendation since the Government did not file its exceptions until the twentieth day, and that the delay in filing its response was due to the unavailability of Respondent's owner and the work schedules of Respondent's counsel. Respondent then noted that 21 CFR 1316.66 allows for extensions "for the filing of a response to the exceptions filed by another party if . . . no party will be prejudiced and . . . the ends of justice will be served thereby." Respondent argued given the delay that had already occurred in this proceeding, "it is difficult to imagine how the government will be prejudiced if Daniel Pharmacy is allowed to file its Response 41 days after the filing for the Government's Exceptions."

The Deputy Administrator recognizes that the regulations permit the granting of additional time to file a response to exceptions, however Respondent has not given any reason why it did not even request an opportunity to file a response until two months after the Government's exceptions were filed. Nevertheless, the Deputy Administrator concludes that no party will be prejudiced by consideration of Respondent's response given the length of time that it has taken to complete these proceedings.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge and includes an additional restriction. The Deputy Administrator's adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent is a pharmacy that has been in existence since 1988 and is owned by a corporation, Daniel Pharmacy, Inc. with George Daniel and his wife holding 51 and 49 percent of the shares respectively, George Daniel is also the managing pharmacist of Respondent.

In January 1993, an individual who was cooperating with law enforcement after being arrested on a burglary charge went to Respondent on two occasions and obtained Vicodin, a Schedule III controlled substance, from Mr. Daniel without a prescription. On January 5, 1993, the cooperating individual was monitored by law enforcement personnel. He indicated to Mr. Daniel that he was getting ready to move out of state and said, "Hey, I thought you might give me some Vicodin or something just for the road * * *." Mr. Daniel gave the cooperating individual some Vicodin. During this meeting, the cooperating individual gave Mr. Daniel $1,100.00 apparently to repay a personal loan. There is no evidence that the cooperating individual paid Mr. Daniel for the Vicodin.

The cooperating individual returned to Respondent on January 6, 1993. Again he was monitored by law enforcement

personnel. He indicated to Mr. Daniel that he was leaving town that day and stated that "I kind of thought you might give me a few more of that." Mr. Daniel gave the cooperating individual some Vicodin. On this occasion, the cooperating individual paid off his ex-wife's bill at the pharmacy, but did not pay for the Vicodin.

The cooperating individual was interviewed by law enforcement personnel on January 6, 1993, following his visit to Respondent. The individual stated that he had known Mr. Daniel since about 1987 and worked for Respondent delivering prescriptions. In 1989, he injured his back in an accident and was prescribed Vicodin. After his physician stopped prescribing him Vicodin in 1991, Mr. Daniel gave him Vicodin without a prescription. The cooperating individual stated that Mr. Daniel gave him Vicodin regularly and also provided him with morphine and Dilaudid, Schedule II controlled substances, and Tussionex, a Schedule III controlled substance, without prescriptions.

On January 7, 1993, a search warrant was executed at Respondent to obtain records. Mr. Daniel cooperated with law enforcement personnel during the search and consented to a search of his residence and another house next door to Respondent. During execution of the warrant, DEA investigators, assisted by one of Respondent's pharmacists, conducted a physical count of certain controlled substances for later use in an accountability audit. DEA conducted several audits of Respondent's handling of controlled substances. One audit was of selected Schedule II controlled substances for the period September 1, 1990 to January 7, 1993. The investigators used Respondent's written inventory dated September 1, 1990 for the initial inventory figure. This audit revealed that Respondent could not account for almost 2,500 dosage units of various strengths of Dilaudid and for 693 dosage units of Percodan. A separate audit was conducted for morphine sulfate covering the period August 13, 1992 to January 7, 1993 and revealed that Respondent could not account for 2.45 grams. In conducting this audit, the investigators used a zero beginning balance whereby Respondent was not held accountable for any morphine sulfate that it may have had on hand at the beginning of the audit period.

The investigators conducted a separate audit of various Schedule III and IV controlled substances. This audit covered the period February 6, 1992 to January 7, 1993, and used a zero beginning balance. The audit revealed that Respondent could not account for 15,733 dosage units of Valium 10 mg. and 2,057 dosage units of Vicodin 5 mg. Again, by using a zero beginning balance Respondent was not held accountable for any of the substances that it may have had on hand at the beginning of the audit period. Therefore, these shortages would have been greater if in fact Respondent had any of the substances in stock on February 6, 1992. The audit revealed overages for the other audited Schedule III and IV substances which most likely was the result of using a zero beginning balance.

The Illinois Department of Professional Regulation (IDPR) conducted its own audit of Respondent's controlled substances using the records that DEA had obtained during the search warrant. The results of the IDPR audit were the same as those of DEA with respect to the controlled substances that both audited. The IDPR also audited Desoxyn, a Schedule II controlled substance, for the period September 1, 1990 to December 18, 1992. The audit revealed that Respondent could not account for approximately 4,750 dosage units.

On January 21, 1993, Mr. Daniel was indicted in the United States District Court for the Central District of Illinois and charged with two felony counts of distributing hydrocodone on January 5 and 6, 1993 in violation of 21 U.S.C. 841(a)(1). According to a DEA agent who was present during Mr. Daniel's proffer in the criminal matter on November 3, 1993, Mr. Daniel stated that he and the cooperating individual were friends; in 1990 the individual injured his back and as a result he was prescribed prescription painkillers; at some point the cooperating individual's physician stopped prescribing Vicodin to the individual, yet Mr. Daniel continued to deliver approximately 500 dosage units of Vicodin to the individual without prescriptions; and he also provided the individual with Tussionex, Dilaudid and morphine without prescriptions. The agent further testified that Mr. Daniel also indicated during his proffer that sometime before January 5, 1993, he realized that the individual had a drug problem after observing him take approximately 18 times the normal dosage of Tussionex. In addition, Mr. Daniel stated that on November 2 and 7, 1992, he obtained Dilaudid from other pharmacies in order to provide it to the individual without a prescription. According to the agent, Mr. Daniel stated that the individual signed over his trailer home to him in exchange for the Dilaudid. However, at the hearing in this matter, Mr. Daniel denied that he traded Dilaudid for the individual's trailer home and that he ever indicated that this occurred during his proffer. Because of conflicting evidence regarding this issue, the Deputy Administrator does not find that Mr. Daniel gave the individual Dilaudid in exchange for the title to the individual's trailer home. Mr. Daniel further stated in his proffer that in December 1992, he gave the individual some morphine without a prescription because the individual had threatened to tell the authorities that Mr. Daniel had been giving him drugs without prescriptions. Finally during the proffer, investigators advised Mr. Daniel of the audit results. According to the agent, Mr. Daniel thought that he had given the individual approximately 500 Vicodin, and was surprised that the audit revealed a shortage of at least 2,000 dosage units.

Following his guilty plea, Mr. Daniel was convicted on October 18, 1994, regarding the unlawful distribution of Vicodin to the cooperating individual on January 5, 1993. He was sentenced to two years' probation and ordered to spend 60 days in a work release facility, to perform community service and to pay a fine.

On February 23, 1996, the IDPR and Respondent and Mr. Daniel entered into a consent order providing, among other things, that (1) Mr. Daniel's pharmacist license would be suspended for six months and then placed on probation for four years and six months; (2) during the suspension, Mr. Daniel would successfully complete 15 hours of a Board-approved pharmacy law course in addition to his continuing education requirements; (3) Mr. Daniel would pay a fine; (4) Respondent's pharmacy license would be placed on probation for 5 years; and (5) during the pharmacy's probation, Mr. Daniel would be required to maintain a perpetual inventory of Schedule II drugs, allow only authorized licensees access to the pharmacy and cause the pharmacy to submit to random IDPR inspections. It is undisputed that Respondent and Mr. Daniel have thus far complied with the terms of the consent order.

On January 17, 1997, IDPR conducted a controlled substance inspection and a pharmacy inspection at Respondent. The only violation discovered during the controlled substance inspection involved Respondent's failure to timely submit several duplicate prescription blanks to the appropriate state agency. Regarding the pharmacy inspection, Respondent failed to maintain an updated copy of a specific reference book and violated the requirements that the pharmacy technician initial hard copies of prescriptions and that

pharmacists date computer printouts. The IDPR investigator also noted that Mr. Daniel did not start the perpetual inventory of Schedule II controlled substances until January 1, 1997. Mr. Daniel testified at the hearing in this matter that no one explained exactly how a perpetual inventory should be taken, but that he is now properly maintaining a perpetual inventory after discussing the methodology with the IDPR investigator.

At the hearing in this matter, Mr. Daniel testified that he first gave the cooperating individual Vicodin without a prescription in 1991 believing that the individual's physician would authorize the dispensation. Mr. Daniel testified that "[I] made my big mistake of letting him have [Vicodin], thinking that I could call the doctor Monday morning and get it okayed." According to Mr. Daniel, he felt "very sick" after being told by the individual's physician not to give the individual any more Vicodin. Mr. Daniel further testified that the individual returned about a month later and persuaded Mr. Daniel to give him some Vicodin without a prescription. Mr. Daniel acknowledged that he gave the individual the Vicodin knowing that his physician would no longer prescribe it and that he was not threatened by the individual on this occasion. However, Mr. Daniel also testified that "[a]fter the first couple of times he started to threaten that he would go to the authorities . . .," and that "I became scared enough to the point where it seemed that my only way out was to give it to him. And I tried to resist for awhile each time, but each time he would coax me or talk me into doing it."

Mr. Daniel testified that after being told that Respondent did not have any Dilaudid, the individual threatened to "really cause big problems for you because you've got shortages more than you'd even believe." According to Mr. Daniel, the individual also threatened to "get physical," made threatening phone calls to Mr. Daniel's wife, and passed two threatening letters to him. However, Mr. Daniel testified that initially he did not believe the individual's threats and one of Respondent's pharmacists testified that he never observed Mr. Daniel acting nervous or upset when he was with the individual. Mr. Daniel testified that he gave the individual Vicodin seven or eight times, Tussionex and morphine once and Dilaudid two times, all without prescriptions.

According to one of Respondent's pharmacists who testified in this proceeding, sometime in December 1992 Mr. Daniel instructed all of Respondent's employees not to allow the cooperating individual in the pharmacy and to call the police if necessary because the individual was blackmailing him. Yet, Mr. Daniel allowed the individual in the pharmacy on January 5 and 6, 1993, and gave him Vicodin without a prescription. Mr. Daniel stated that he did so because he believed that the individual was moving out of state and "[b]ecause I was so sick and tired of what he had put myself and my family through and what I had stupidly done to start the whole thing, I just wanted him out of my life forever.* * *"

Regarding the shortages discovered during the accountability audits, Mr. Daniel testified that the controlled substances that he provided to the cooperating individual would not account for the discrepancies, noting that he did not give the individual some of the drugs that had shortages, such as Valium. Mr. Daniel testified that following his arrest, he received information that the cooperating individual as well as one of Respondent's pharmacy technicians were stealing controlled substances from Respondent. Respondent introduced into evidence an affidavit from a woman who indicated that between 1987 and 1993 the cooperating individual frequently contacted her then-husband and offered to sell him drugs, including Valium, Vicodin and Dilaudid that the individual admitted stealing from Respondent. According to the woman, some of the bottles the individual brought to her home "were the bottles that pharmacists keep behind their counters and from which they fill prescriptions." She further stated that according to the individual he usually stole drugs from Respondent on Thursdays when the pharmacy received its drug shipments. According to Mr. and Mrs. Daniel, controlled substance orders were usually delivered on Thursdays and Mr. Daniel usually took Thursdays off.

At the hearing, Mr. Daniel conceded that although the cooperating individual told him that there were shortages at Respondent, he did not conduct any audit to verify whether the individual's assertions were accurate. He also testified that had he performed an audit he would have known that Respondent could not account for 15,000 dosage units of Valium. However, Mr. Daniel also acknowledged that he conducted a biennial inventory of controlled substances on December 18, 1992, and it does not appear that he noticed that such a large quantity of Valium was missing. One of Respondent's pharmacists testified at the hearing that he considered the shortages revealed by the audit to be of serious concern.

According to Mr. Daniel and another of Respondent's pharmacists there are new security measures in place to prevent unauthorized access to controlled substances. After Mr. Daniel was arrested, the cabinet containing Schedule II controlled substances was sealed with a headlock and the key was put in an area where the registered pharmacist could get it, and that only staff personnel were allowed in the prescription filling area. Yet, Mr. Daniel conceded that all of the employees knew where the key to the Schedule II cabinet is kept, but that the pharmacy is so small that "it would be about impossible for someone to get into the cabinet without the pharmacist knowing." However, Mr. Daniel also conceded that Respondent is the same size as it was when controlled substances were allegedly stolen and no one saw either the pharmacy technician nor the cooperating individual taking any controlled substances.

According to Respondent's pharmacist who testified at the hearing, he conducted a physical inventory of Respondent's controlled substances on March 2, 1997 and found no discrepancies with respect to Schedule II controlled substances and only minor shortages with respect to Schedules III, IV and V controlled substances. The pharmacist indicated that these shortages could be the result of miscounting, outdated items in process for return, and/or broken tablets. He also testified that Respondent is now doing more frequent inventories and audits.

Both Mr. Daniel and Respondent's other pharmacist who testified at the hearing indicated that unlike chain pharmacies in the area, Respondent offers its customers drive-up window service, prescription compounding, nutritional co-therapy, free local and out-of-town delivery, monthly charge accounts and after hours service. Mr. Daniel testified that other independent pharmacises may offer similar services, however no other pharmacy within 50 miles offers prescription compounding which is a service that is especially needed by senior citizens.

A former director of the Illinois Pharmacists Association (IPA), and a member of the Illinois Board of Pharmacy (Board), who is also a former president of the IPA, testified that in evaluating this case they would defer to the action taken by the Board, which did not take any action against Respondent's Illinois controlled substances license. The former IPA director also testified that if Respondent's DEA registration is revoked, the pharmacy will close because controlled substances are such

a substantial part of a pharmacy's business. He further expressed his concern with the impact on small towns when independent pharmacies go out of business, but conceded that he would also be concerned if a pharmacy maintains sloppy records and has significant shortages and thefts.

Both Mr. Daniel and Respondent's other pharmacist testified Respondent would go out of business if it loses its DEA registration. Controlled substances account for approximately 30 percent of Respondent's business and in their opinion customers will not patronize a pharmacy unless they can have all of their prescriptions filled there. Mrs. Daniel testified that they have received offers to buy Respondent however the offers have been substantially less than what was paid for the pharmacy.

Mr. Daniel testified that if permitted to keep Respondent's DEA registration, he would be willing to conduct regular physical inventories of controlled substances, to submit records of such inventories and computer records to DEA or the IDPR, to have DEA perform random inspections, to pay for a third party to perform physical counts and submit records to DEA, and to hire a pharmacist other than himself to be Respondent's pharmacist in charge. Mr. Daniel further testified that he would never again engage in the same type of misconduct that he did with the cooperating individual, and that "I will never put myself and my family and my business and everybody in that kind of position, no."

Finally, Respondent introduced into evidence letters that were submitted on Mr. Daniel's behalf during the criminal proceedings to the United States District Court for the Central District of Illinois. These letters essentially state that Mr. Daniel was active and well-regarded in the community, concerned for his family, and responsible in practicing his profession.

Pursuant to 21 U.S.C. 824(a)(2), the Deputy Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant "has been convicted of a felony * * * relating to any substance defined * * * as a controlled substance. * * *" In addition, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

First, the Deputy Administrator must determine whether 21 U.S.C. 824(a)(2) is a basis for revocation in these proceedings. While the Order to Show Cause raised both 21 U.S.C. 824(a)(2) and (a)(4) as grounds for the proposed revocation, the issue as proposed in the Government's Prehearing Statement and framed in the Prehearing Ruling issued by Judge Bittner referred only to whether Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4).

Throughout the prehearing proceedings, Respondent argued in various filings that there is no basis for the revocation of Respondent's DEA registration since the statute refers to acts and convictions of the registrant to support such action, and the registrant in this case is the pharmacy, not Mr. Daniel. Respondent argued that the acts and conviction of Mr. Daniel should not be imputed to Respondent. The Government argued that DEA has consistently held that the actions and/or conviction of a natural person who is an owner, officer or key employee, or has some responsibility for the operation of the registrant's controlled substances business are considered in determining whether a pharmacy's registration should be revoked. The Government cited, among others, Maxicare Pharmacy, 61 FR 27,368 (1996) and Farmacia Ortiz, 61 FR 726 (1996) for this proposition.

Subsequent to the issuance of the Prehearing Ruling, on February 25, 1997, Judge Bittner issued a Memorandum to Counsel finding that Mr. Daniel's conduct is relevant to the issue of whether Respondent's continued registration is inconsistent with the public interest.

Thereafter, on March 5, 1997, Respondent moved to strike the Order to Show Cause to the extent that it referred to 21 U.S.C. 824(a)(2) as a basis for revocation and again argued that the section refers to a registrant's felony conviction and since Mr. Daniel is not the registrant, this provision does not apply. In a Memorandum to Counsel and Rulings dated March 7, 1997, Judge Bittner noted that the parameters of a proceeding are established by the Prehearing Ruling and since the issue framed in the Prehearing Ruling referred only to 21 U.S.C. 824(a)(4) as a basis for revocation, 21 U.S.C. 824(a)(2) is not at issue in this proceeding.

However, the Deputy Administrator agrees with Judge Bittner that had the Government not waived reliance on 21 U.S.C. 824(a)(2) in its Prehearing Statement, Mr. Daniel's conviction would constitute grounds for revoking Respondent's registration pursuant to that section. DEA has consistently held that a corporate registrant's registration may be revoked based upon the controlled substance-related felony conviction of an officer, agent or employee. As Judge Bittner noted, the then-Administrator found in Lynnfield Drug, Inc., 42 FR 8435 (1977), "[t]o hold otherwise would result in the revocation of the registration of a feloniously violative sole proprietor while denying the same sanction to an equally violative registrant, merely because the latter had adopted a corporate or partnership form. Such a result would not only be not equitable, but would be contrary to the legislative intent behind the enactment of sections 303 and 304 of the Controlled Substances Act."

Notwithstanding that 21 U.S.C. 824(a)(2) cannot be relied upon as a basis for revocation in this proceeding, the Deputy Administrator concurs with Judge Bittner that Mr. Daniel's conduct and his conviction may be considered under 21 U.S.C. 823(f) and 824(a)(4). DEA has consistently held since 1984, when 21 U.S.C. 824(a)(4) was added as a ground for revocation, that the conduct of owners, agents and/or key employees constitute a basis for revoking the registrations of corporate registrants upon a finding that the continued registration would be inconsistent with the public interest. *See, Dobson Drug Co., Inc.* 56 FR 46,445 (1991).

In evaluating the factors listed in 21 U.S.C. 823(f), the Deputy Administrator finds that while no action has been taken by the State of Illinois against Respondent's controlled substance license, the Board has required Respondent to maintain a perpetual inventory of its Schedule II controlled

substances. Therefore, Respondent's handling of controlled substances has been affected by the Board's action. But, Respondent is currently authorized to handle controlled substances in Illinois. As Judge Bittner noted, "[i]nasmuch as state authorization to handle controlled substances is a necessary but not sufficient condition for DEA registration * * * this factor is not dispositive."

As to factors two and four, it is undisputed that Mr. Daniel dispensed Vicodin and other controlled substances without a prescription in violation of 21 U.S.C. 841(a)(1). The Deputy Administrator finds that Mr. Daniel's explanation that he was being threatened by the cooperating individual does not justify or excuse his behavior. First, Mr. Daniel himself admitted that initially he did not take the cooperating individual's threats seriously. Second, the other pharmacist at Respondent testified that Mr. Daniel did not appear nervous or upset when he observed Mr. Daniel with the cooperating individual. Finally, if in fact Mr. Daniel felt threatened by the cooperating individual he should have reported it to the proper authorities rather than continuing to unlawfully dispense controlled substances to him for over a year.

In addition, the significant shortages revealed by the audits indicate that Respondent did not maintain complete and accurate records of its handling of controlled substances as required by 21 U.S.C. 827. While there is some evidence that controlled substances were being stolen from Respondent, this does not minimize Respondent's responsibility for the shortages. It is quite disturbing that Mr. Daniel did not detect that over 17,000 dosage units were missing from Respondent in less than a one year period. As a DEA registrant, Respondent must ensure that controlled substances are properly dispensed. Respondent clearly abrogated this responsibility.

The Deputy Administrator notes that according to Respondent's pharmacists, more frequent inventories are now being conducted at Respondent and access to the controlled substances has been limited.

Regarding factor three, it is undisputed that Mr. Daniel was convicted of a felony relating to controlled substances, and as discussed above, Mr. Daniel's conviction is properly considered in determining what action to take against Respondent's registration.

The Deputy Administer agrees with Judge Bittner that there was no evidence presented of other conduct by Mr. Daniel or Respondent that would threaten the public health and safety.

Judge Bittner concluded that the Government made a prima facie case for revoking Respondent's DEA Certificate of Registration. However, she recommended that Respondent should nonetheless be permitted to remain registered. While expressing extreme concern regarding Mr. Daniel's "egregious abuse of his responsibilities as a pharmacist and as a DEA registrant," Judge Bittner also found that "Mr. Daniel seemed genuinely remorseful and that * * * he now understands the enormity of his misconduct." Judge Bittner recommended that Respondent's continued registration be subject to the conditions that:

(1) Respondent maintain a perpetual inventory of all controlled substances for at least three years following issuance of a final order in this proceeding;

(2) Respondent verify the perpetual inventory by a physical count, reduced to writing, of all controlled substances for each calendar quarter of that three year period;

(3) Respondent submit the perpetual inventory and quarterly verification to the Special Agent in Charge of the DEA field office having jurisdiction over Respondent; and

(4) Respondent consent to undergo unannounced inspections by DEA diversion investigators, without an administrative inspection warrant.

The Government filed exceptions to Judge Bittner's recommended decision objecting to the continuation of Respondent's registration on the sole basis that George Daniel appears remorseful. The Government argued that Mr. Daniel was remorseful to the extent that he got caught and that his DEA registration is now threatened with revocation; that Mr. Daniel refused to take any responsibility for the shortages; and that Mr. Daniel's contention that he was threatened into unlawfully dispensing controlled substances is hard to believe. In its response to the Government's exceptions, Respondent argued that Judge Bittner's assessment of George Daniel's credibility should control and that there is substantial evidence in the record to support her finding that Mr. Daniel is remorseful. In addition, Respondent again indicated that it is agreeable to even stricter conditions being imposed on its registration than those recommended by Judge Bittner.

The Deputy Administrator is deeply concerned by the egregious conduct of Respondent and Mr. Daniel. Mr. Daniel actively diverted controlled substances by dispensing them without a prescription and allowed additional significant diversion to occur as evidenced by the shortages revealed during the audits. However, the Deputy Administrator notes that this conduct occurred in January 1993. Had this case been adjudicated at that time, or even right after his criminal conviction in October 1994, the Deputy Administrator would have revoked Respondent's DEA Certificate of Registration. But, in the subsequent six years, Respondent has maintained its DEA registration and available evidence indicates that it has acted in a responsible manner as demonstrated by the January 1997 state inspection which revealed only minor violations. In addition, the Deputy Administrator concurs with Judge Bittner's conclusion that Mr. Daniel has exhibited remorse for his actions, and finds it significant that Respondent is the only pharmacy in the area that performs prescription compounding. Therefore, the Deputy Administrator concludes that it would not be in the public interest to revoke Respondent's registration at this time. This decision however, should in no way be interpreted as an endorsement of the past illegal behavior of Mr. Daniel and Respondent. Mr. Daniel's remorse and the fact that available evidence indicates that the pharmacy has acted responsibly in the past six years provide adequate assurance that the prior illegal activity at Respondent will not be repeated.

However, the Deputy Administrator agrees with Judge Bittner that some restrictions must be placed on Respondent's registration to adequately monitor Respondent's handling of controlled substances and to protect the public health and safety. Therefore, Respondent's registration shall be continued subject to the following restrictions for three years:

(1) Respondent shall maintain a perpetual inventory of all controlled substances.

(2) Respondent shall verify the perpetual inventory by a physical count, reduced to writing, of all controlled substances for each calendar quarter of the three year period.

(3) Respondent shall submit the perpetual inventory and quarterly verification to the Special Agent in Charge of the DEA Chicago Field Division or his designee.

(4) Respondent shall arrange for audits to be conducted two times per year by an independent auditor at Respondent's expense with the results submitted to the Special Agent in Charge of the DEA Chicago Field Division or his designee.

(5) Respondent shall consent to unannounced inspections by DEA personnel without requiring an administrative inspection warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD2002626, previously issued to Daniel Family Pharmacy, be and it hereby is continued, subject to the above described restrictions. This order is effective March 5, 1999.

Dated: January 28, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–2561 Filed 2–2–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 22, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2. nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail:records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force (N1–AFU–99–5, 5 items, 2 temporary items). Architectural and engineering drawings pertaining to Air Force facilities and structures in Panama that were not long-lasting or historically significant. Records relating to structures of historical or architectural significance are proposed for permanent retention.

2. Department of the Army, Army Reserve (N1–AU–98–3, 2 items, 2 temporary items). Records pertaining to the Individual Mobilization Augmentation Program under which selected individuals may be mobilized to support the President. Included are administrative reference files relating to such matters as exceptions to policy, budget and annual training and supervisors' files on individual designees.

3. Department of the Army (N1–AU–98–13, 46 items, 46 temporary items). Short-term, temporary records accumulated by U.S. Army South (USARSO). The records were previously approved for disposal and consist of such files as pharmacy stock inventory reports, household shipment bills of lading, prisoner personal property reports, and military police reports. Records are proposed for immediate disposal upon USARSO's relocation from Panama to Puerto Rico. Electronic copies of documents created using electronic mail and word processing are also proposed for disposal.

4. Department of Health and Human Services, National Institutes of Health (N1–443–98–3, 3 items, 2 temporary items). Files relating to procedures governing budget generation, including electronic copies created using electronic mail, word processing, spreadsheet applications and database management applications. Recordkeeping copies of budget

estimates and justification files are proposed for permanent retention; electronic copies of these records created using electronic mail, word processing, spreadsheet applications and database management applications are proposed for disposal.

5. Central Intelligence Agency (N1–263–99–1, 13 items, 5 temporary items). Security name check records, accounting and administrative files, commercially available phonograph records, reading file of reports prepared by other agencies, and unintelligible audio recordings relating to Guatemala, 1952–1954. Records relating to overall development, coordination, and implementation of policies and plans are proposed for permanent retention.

6. Environmental Protection Agency, Office of Pesticide Programs (N1–412–98–3, 6 items, 4 temporary items). Copies of records that document the review processes relating to the registration of pesticides, including electronic copies of documents created using electronic mail, word processing, and a document management system. Paper records created after June 1996 and microform copies created from 1963 to 1996 are proposed for permanent retention.

7. Environmental Protection Agency (N1–412–98–5, 2 items, 2 temporary items). Permit Appeals Files including electronic copies of documents created using electronic mail and word processing. These records document appeals to EPA regional administrators concerning permit decisions. Landmark or precedent-setting appeals and all decisions of the Administrative Law Judge were previously approved for permanent retention.

8. General Accounting Office (N1–217–99–1, 24 items, 14 temporary items). Older records of the Accounting Officers of the Department of Treasury dating approximately from 1815–1948, which were transferred to the General Accounting Office upon its establishment in 1921. Records proposed for disposal consist of indexes, ledgers, registers, bound volumes, claim files, contract records, and account abstracts relating to such matters as claims by Spanish-American War veterans, taxes on national banks, U.S. loans to foreign nations during World War I, purchases of bonds by Navy personnel during World War I, payments made to Civil War and Spanish-American War officers, and Soldiers' Home expense accounts. In most instances, records proposed for disposal are duplicates of records which have previously been accessioned into the National Archives of the United States. Records proposed for permanent retention include registers of Black Hawk War Claims, 1833–1835; records of fishing vessel allowances, 1837–1857; state and Indian claims, 1861–1926; Indian settlements, 1875–1880; water rights applications, 1907–1922; selected ledgers and fiscal records, 1861–1922; selected ordnance and construction contracts, 1886–1918; and contracts for mail service, 1913–1921.

9. General Accounting Office (N1–411–99–1, 12 items, 4 temporary items). Older records of the General Accounting Office, dating primarily from 1887–1947. Records proposed for disposal include National Guard pay cards, 1929–1936; a general account journal for the years, 1926–1932; miscellaneous ledgers, 1887–1944; and copies of General Court-Martial Orders, 1922–1927. Indian Claim Warrants, 1924–1925; World War I Unsettled Loan Files and Indexes, 1914–1930; selected ledgers, journals, and fiscal records, 1887–1944; Ledgers for Indian Warrants and Settlements, 1924–1935; Pay Warrants Issued, 1923–1925; World War II Contract Hardship Claims, 1946–1947; and Indian Claims Settlement Files, 1922–1924, are proposed for permanent retention.

10. Tennessee Valley Authority, Office of Communications (N1–142–97–10, 1 item, 1 temporary item). Correspondence relating to requests for information or action from outside TVA that are handled by lower level managers. Correspondence signed by the vice president, chief operating officer or Board members was previously approved for permanent retention.

11. U.S. Nuclear Regulatory Commission (N1–431–96–2, 1 item, 1 temporary item). Files relating to cases heard by the agency panel which reviews allegations made by individuals against specific utilities or other organizations which are regulated by the NRC. The case files include allegations, minutes and summaries of allegation review panel meetings, correspondence with allegers and licensees, referral memoranda to the Office of Investigations, inspection reports, staff safety evaluations, automated system printouts, documents showing staff resolution, and closure documents sent to allegers.

Dated: January 26, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–2471 Filed 2–2–99; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–29]

Yankee Atomic Electric Company; Yankee Nuclear Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of an amendment to Possession Only License (POL) No. DPR–3 issued to the Yankee Atomic Electric Company (YAEC or licensee) for the Yankee Nuclear Power Station (YNPS or plant). The plant is located in Rowe Township, Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the POL through the following three changes to the Technical Specifications (TS) by (1) deletion of the definition of SITE BOUNDARY, (2) moving the Site Boundary and Plant Exclusion Area map from the TS to the Final Safety Analysis Report (FSAR) and (3) Deletion of TS 5.1.1—EXCLUSION AREA.

The proposed action is in accordance with the licensee's application for amendment dated August 20, 1998.

The Need for the Proposed Action

The proposed action would, for item (1) above, remove an obsolete and unneeded definition from the TS. For Item (2), the TS that is being relocated to a licensee controlled document, the FSAR, is not required to be in the TS under 10 CFR 50.36 requirements. The licensee may revise the FSAR under the provisions of 10 CFR 50.59, which provides appropriate procedural means to control such revisions. Furthermore, this change is consistent with the NRC guidance in NUREG–1625, Proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants. Item (3) would delete an unneeded section of the TS as its only function was to reference the map being moved to the FSAR.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not have any impact on the environment as the proposed changes are administrative in nature. The licensee does not propose any disposal nor relocation of fuel by this action. This action is considered administrative in nature.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not evaluated in previous environmental reviews for the YNPS.

Agencies and Persons Consulted

In accordance with its stated policy, on December 15, 1998, the staff consulted with the Commonwealth of Massachusetts State liaison officer, Jim Muckerheide of the Massachusetts Civil Defense Agency, regarding the environmental impact of the proposed action. The Commonwealth official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the YAEC's letter of August 20, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the Local Public Document Room located in the Library of the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 28th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2514 Filed 2–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene two sub-committee meetings of the Advisory Committee on the Medical Uses of Isotopes as follows: The Diagnostic Sub-Committee Meeting will be held on February 23 and 24, 1999; the Therapeutic Sub-Committee meeting will be held on February 25 and 26, 1999. Both meetings, which are open to the public, will take place at the address provided below. The discussions will be focused on resolution of comments received on the proposed revision to 10 CFR part 35 (Medical Use of Byproduct Material) that was published in the **Federal Register** for comment on August 13, 1998 (63 FR 43580). The Diagnostic Sub-Committee will focus on comments pertaining to uses of unsealed byproduct material in medicine (§§ 35.100, 35.200, and 35.300). The Therapeutic Sub-Committee will focus on comments pertaining to therapeutic uses of sealed sources (§§ 35.400 and 35.600).

DATES: The Diagnostic Sub-Committee meeting will be held on February 23, 1999, from 8:00 a.m. to 5:00 p.m. and on February 24, 1999, from 8:00 a.m. to 12:00 p.m. The Therapeutic Sub-Committee meeting will be held on February 25, 1999, from 8:00 a.m. to 5:00 p.m. and on February 26, 1999, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: U.S Nuclear Regulatory Commission, One White Flint North Building, 11555 Rockville Pike, Room 04B6, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Mary Louise Roe, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T9F31, Washington, DC, 20555, Telephone (301) 415–7809.

Conduct of the Meetings

The Diagnostic Sub-Committee meeting will be chaired by Mr. Dennis Swanson. Dr. Judith Stitt will chair the Therapeutic Sub-Committee meeting. Each sub-committee meeting will be conducted in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meetings:

1. Persons who wish to provide a written statement should submit a reproducible copy to Mary Louise Roe (address listed previously), by February 19, 1999. Statements must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meetings at the discretion of the Chairmen.

3. The meeting summaries and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street, N.W., Lower Level, Washington, DC 20555, telephone (202) 634–3273, on or about April 1, 1999.

4. Seating for the public will be on a first-come, first-served basis.

These meetings will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations*, Part 7.

Dated: January 28, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–2512 Filed 2–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1620]

Draft Standard Review Plan; Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act; Draft Standard Review Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; Opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments on a Draft Standard Review Plan for Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act (NUREG–1620) from interested parties. An NRC source and byproduct material license is required

under the provisions of Title 10 of the Code of Federal Regulations, Part 40 (10 CFR Part 40), Domestic Licensing of Source Material, in conjunction with uranium or thorium milling, or with byproduct material at sites formerly associated with such milling. An applicant for a new reclamation plan, or for the renewal or amendment of an existing license, is required to provide detailed information on the facilities, and procedures to be used, and if appropriate, an environmental report that discusses the effect of proposed operations on public health and safety and on the environment. This information is used by Nuclear Regulatory Commission staff to determine whether the proposed activities will be protective of public health and safety and be environmentally acceptable. The purpose of this standard review plan is to provide NRC staff with specific guidance on the review of this information and will be used to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR Chapter I. The review plan is also intended to improve the understanding of the staff review process by interested members of the public and the uranium recovery industry. The draft was developed using input from staff review precedents; staff inspection experiences; and public meetings with the industry.

Review plan for Surface Water Hydrology and Erosion Protection for Long-Term Stabilization, as presented in NUREG–1620, references NUREG–1623, "Design of Erosion Protection for Long-Term Stabilization," for details on the design methodology acceptable to the NRC staff. The draft of NUREG–1623 will be available for public comments in approximately 2 weeks.

Opportunity to Comment: Interested parties are invited to comment on the review plan. These areas include radon attenuation and long-term stability of the reclaimed site, soil cleanup, and groundwater restoration reviews. A final review plan will be prepared after the NRC staff has evaluated public comments received on the draft review plan.

DATES: Written comments must be received prior to May 4, 1999.

ADDRESSES: Comments on the draft review plan should be sent to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. A copy of the Draft Standard Review Plan (NUREG–1620) may be obtained by writing to the Printing and Graphics Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

FOR FURTHER INFORMATION CONTACT: Banad Jagannath at 301–415–6653.

Dated at Rockville, Maryland, this 28th day of January, 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–2515 Filed 2–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison Company et al., San Onofre Nuclear Generating Station, Unit 1; Notice of Public Meeting

The NRC will conduct a public meeting to discuss plans developed by Southern California Edison Company (SCE, the licensee) to decommission the San Onofre Nuclear Generating Station, Unit 1, near San Clemente, California. The meeting is scheduled for 7:00 p.m.–9:00 p.m., on February 25, 1999, at the San Clemente Community Center, Ole Hanson Room, 100 N. Calle Seville, San Clemente, and will be chaired by Ms. Lois Berg, Mayor, City of San Clemente. The meeting will include a short presentation by the NRC staff on the decommissioning process and NRC programs for monitoring decommissioning activities, with attention being given to the licensee's updated Post-Shutdown Decommissioning Activities Report (PSDAR) dated December 15, 1998. There will be a presentation by SCE on their planned decommissioning activities, and there will be an opportunity for members of the public to make comments and question the NRC staff and SCE representatives. The meeting will be transcribed.

The licensee's update to the PSDAR provides a short discussion of the plant history, and a description and schedule of planned decommissioning activities. The PSDAR update also comments briefly on anticipated decommissioning costs and environmental impacts.

The PSDAR update is available for public inspection at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713, and the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20037. The NRC document accession number is 9812170038.

For more information, contact Mr. Ronald A. Burrows, Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (301) 415–2497.

Dated at Rockville, Maryland, this 28th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2513 Filed 2–2–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23669; 813–196]

NationsBanc Coinvest Fund 1999, L.P. and BankAmerica Corporation; Notice of Application

January 27, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

Summary of Application: Applicants request an order to exempt certain limited partnerships and limited liability companies ("Partnerships") formed for the benefit of key employees of BankAmerica Corporation ("BankAmerica") and certain of its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" as defined in section 2(a)(13) of the Act.

Applicants: NationsBanc Coinvest Fund 1999, L.P. (the "Initial Partnership"), and BankAmerica, on behalf of other Partnerships which have been or may in the future be formed.

Filing Dates: The application was filed on August 12, 1998, and amended on October 14, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 100 North Tyson Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. BankAmerica, the largest bank in the United States, was created by the merger of NationsBank Corporation and BankAmerica Corporation on September 30, 1998. BankAmerica and its affiliates, as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the "Exchange Act"), ("Affiliates") are referred to in this notice collectively as "BankAmerica Group" and individually as a "BankAmerica entity."

2. BankAmerica Group offers various investment programs for the benefit of certain key employees. These programs may be structured as different Partnerships or as separate plans within a Partnership. Each Partnership will be a limited partnership or limited liability company formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of BankAmerica Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary. The Initial Partnership will invest exclusively in one or more limited partnerships formed by BankAmerica to make private entity investments (the "BankAmerica Funds").

3. NB Coinvest GP, Inc., a North Carolina corporation, will act as the general partner of the Initial Partnership (together with any Affiliate of BankAmerica that acts as a Partnership's general partner, the "General Partner"). The General Partner of the Initial Partnership will not be registered under the Investment Advisers Act of 1940 ("Advisers Act") pursuant to section 203(b)(3) of the Advisers Act and rule 203(b)(3)–1 thereunder. The General Partner will manage, operate, and control each of the Partnerships. However, the General Partner will be authorized to delegate to another BankAmerica Group affiliate or to a committee of BankAmerica Group employees such management responsibility (including, without limitation, the managers of the other Partnerships which have been or may in the future be formed).

4. Limited partner interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act") or similar exemption and will be sold only to "Eligible Employees" and "Qualified Participants" (collectively, "Participants"). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that an Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (i) an individual who is a current or former employee, officer, director, or "Consultant" of BankAmerica Group and, except for certain individuals who manage the day-to-day affairs of the Partnership in question ("Managing Employees"), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (ii) an entity that is a current or former "Consultant" of BankAmerica Group and meets the standards of an accredited investor under rule 501(a) of Regulation D.[1] Eligible Employees will be experienced professionals in the banking, investment banking and securities, investment management or financial services businesses, or in the related administrative, financial, accounting, legal, or operational activities.

5. Managing Employees will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the limited partners, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions. Each Managing Employee will: (a) be closely involved with, and knowledgeable with respect to, the affairs and the status of the Partnership, (b) be an officer or employee of BankAmerica Group and (c) have reportable income from all sources (including any profit shares and bonuses) in the calendar year immediately preceding the Employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the Employee invests in a Partnership.

6. A Qualified Participant (i) is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee, and, (ii) if the individual or entity is purchasing on Interest from a Partner or directly from the Partnership, comes within one of the categories of an "accredited investor" under rule 501(a) of Regulation D. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A "Qualified Entity" is (i) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (ii) a partnership, corporation, or other entity controlled by an Eligible Employee;[2] or (iii) a trust or other entity

[1] A *Consultant* is a person or entity whom BankAmerica Group has engaged in retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with BankAmerica Group and BankAmerica Group employees.

[2] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of "Qualified Entities" is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between BankAmerica Group

Continued

established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, reductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a BankAmerica entity. No sales load will be charged in connection with the sale of a limited partnership interest.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (i) the Eligible Employee's relationship with BankAmerica Group is terminated for cause; (ii) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of BankAmerica Group; or (iii) the Eligible Employee voluntarily resigns from employment with BankAmerica Group. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (i) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), and (ii) the fair market value of the Interest as determined at the time of repurchase by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Limited Partnership Agreement, a Partnership will be permitted to enter into transactions involving (i) a BankAmerica entity, (ii) a portfolio company, (iii) any Partner or any person or entity affiliated with a Partner, (iv) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with and over which a BankAmerica entity will exercise investment discretion (a "Third Party Fund"), or (v) any partner or other investor of a Third Party Fund that is not affiliated with BankAmerica Group (a "Third Party Investor"). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any BankAmerica entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. A BankAmerica entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are "reasonable and customary." Fees or other compensation will be deemed "reasonable and customary" only if (i) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (ii) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (iii) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. A BankAmerica entity (including the General Partner) also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities that conflict with the interests of the Partnerships.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to (i) permit a BankAmerica entity (including, without limitation, a BankAmerica Fund) or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (ii) permit any Partnership to invest in or engage in any transaction with any BankAmerica entity (including without limitation, acting as principal), (a) in which the Partnership, any company controlled by the Partnership, or any BankAmerica entity (including, without limitation, a BankAmerica Fund) or Third Party Fund has invested or will invest, or (b) with which the Partnership, any company controlled by

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and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an "accredited investor" under rule 501(a)(6) of Regulation D and who will have access to the General Partner or BankAmerica Group.

the Partnership, or any BankAmerica entity (including, without limitation, a BankAmerica Fund) or Third Party Fund is or will become otherwise affiliated; and (iii) permit any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with BankAmerica Group. Applicants also state that, as professionals employed in the investment banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and BankAmerica Group will provide the best protection against any risk of abuse.

5. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with BankAmerica Group, BankAmerica Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of employee participants as an incentive for them to remain with BankAmerica Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with BankAmerica Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of BankAmerica Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by BankAmerica Group will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by BankAmerica Group and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the fact that BankAmerica Group will be acutely concerned with its relationship with the personnel who invest in such partnership and the fact that senior officers and directors of BankAmerica Group entities will be investing in such Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of such person) made a similar investment. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, a BankAmerica entity.

8. Co-investments with Third Party Funds, or by a BankAmerica entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that BankAmerica Group invest its own capital in Third Party Fund investments, and that the BankAmerica Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to BankAmerica Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by BankAmerica Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships vis-a-vis a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a BankAmerica entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed "usual and customary." Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a BankAmerica entity will be deemed "usual and customary" only if (i) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (ii) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (iii) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because BankAmerica Group does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a BankAmerica entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors of the General Partner who are not "interested

persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the General Partner take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit a BankAmerica entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between BankAmerica Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will company with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the "Section 17 Transaction") will be effected only if the General Partner determines that: (i) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of the Partnership and do not involve overreaching of the Partnership or its Participants on the part of any person concerned; and (ii) the transaction is consistent with the interests of the Participants in the Partnership, and the Partnership's organizational documents and reports to its Participants. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[3]

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the Transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of the affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a "Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all or part of its investment, (i) gives the General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment; and (ii) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" with respect to any Partnership means any person who is: (i) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

Fund); (ii) BankAmerica Group; (iii) an officer or director of BankAmerica Group; or (iv) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (i) to its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (iii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (iv) when the investment if comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; or (v) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the SEC and its staff.[4]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a BankAmerica director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2481 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40985; File No. SR–AMEX–98–45]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Margin Treatment of Grand Exchange-Traded Fund Share Options Contracts

January 27, 1999.

I. Introduction

On November 25, 1998, The American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit each "Grand" Exchange-Traded Fund Share (Fund Share)[3] option contract to be recognized to the same extent that 10 ordinary Fund Share option contracts would be recognized under Amex Rule 462—Minimum Margins.

The proposed rule change was published for comment in the **Federal Register** on December 24, 1998.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The rule proposal clarifies that the margin requirements set forth in Amex Rule 462—Minimum Margins[5] apply to an option contract overlying 1000 Exchange-Traded Fund Shares (the "Grand option contract").[6] The Amex represents that the Grand option contract is the economic equivalent of holding 10 ordinary Fund Share option contracts, each of which overlies 100 shares of an underlying Fund Share. The Exchange notes that, specifically, the provisions of Amex Rule 462(d)(2)(D)(ii) have applicability to an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term Exchange-Traded Fund Share includes securities representing interests in unit investment trusts or open-end management investment companies that hold securities based on an index or portfolio of securities. Currently, the Exchange trades unit investment trust securities known as Portfolio Depositary Receipts℠ ("PDRs") based on the Standard & Poor's 500® Composite Stock Price Index, the Standard & Poor's MidCap 400 Index, and the Dow Jones Industrial Average. In addition, the Exchange trades Fund Shares which are issued by an open-end management investment company consisting of seventeen separate series known as World Equity Benchmark Shares℠ (WEBs) based on seventeen foreign equity market indexes. The Exchange also trades nine Fund Shares known as Select Sector SPDRs℠, each of which is offered by the Select Sector SPDR℠ Trust, an open-end management investment company. PDRs and WEBS are listed on the Amex pursuant to Rule 1000, *et seq.* and Rule 1000A *et seq.*, respectively, and trade like shares of common stock.

[4] Securities Exchange Act Release No. 40803 (December 17, 1998), 63 FR 71310 (File No. SR–AMEX–98–45).

[5] Amex Rule 462 states: "In the case of a put or call dealt in on a registered national securities exchange or a registered securities association and issued by The Options Clearing Corporation, and representing options on equity securities, 100% of the option premium plus 20% of the market value of the equivalent number of shares of the underlying security, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put, (except that in the case of such options on Exchange-Traded Fund Shares or other securities that represent an interest in a registered investment company that satisfies the criteria set forth in Rule 915; Commentary .06, margin must equal at least 100% of the current market value of the contract plus (1) 15% of the market value of equivalent units of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or (2) 20% of the market value of equivalent units of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio)." Amex Rule 462(d)(2)(D)(ii); Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) ("July 1998 Release").

[6] On July 1, 1998, the Exchange received approval to trade both options overlying Exchange-Traded Fund Share and Grand option contract. *See* July 1998 Release, supra note 5.

account holding a "straddle" or a "spread" position, as discussed below.

Amex Rules 462(d)(2)(F) and (G) recognize the reduced risk associated with an account holding a "straddle" or a "spread" position by providing for margin requirements specific to the particular strategy (straddle or spread). For example, in the case of a spread strategy (*i.e.*, where an account holding a short call also holds a long call, or where an account holding a short put also holds a long put (provided the long positions expire on or after the expiration of the short positions)), Amex Rule 462(d)(2)(G) requires margin for a call spread equal to the lesser of (1) 100% of the option premium plus 15% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or 20% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put or (2) the amount, if any, by which the exercise price of the "long" call exceeds the exercise price of the "short" call. In the case of a put spread, Amex Rule 462(d)(2)(G) requires margin equal to the lesser of (1) 100% of the option premium plus 15% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or 20% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put or (2) the amount, if any, by which the exercise price of the "short" put exceeds the exercise price of the "long" put. In these contexts, the Exchange proposes that the required margin under Amex Rule 462(d)(2)(G) be applicable for each short Grand Fund Share call (put) option contract offset by 10 long ordinary Fund Share call (put) option contracts.

In the case of a straddle (*i.e.*, where an account holding both a put and a call for the same number of shares of the same equity security), guaranteed or carried "short" for a customer, the amount of margin required under Amex Rule 462(d)(2)(F) is the margin on the put or the call whichever is greater (under Amex Rule 462(d)(2)(D)), plus 100% of the premium on the other option. In this context, the Exchange proposes that the reduced margin under Amex Rule 462(d)(2)(D) be applicable for each Grand Fund Share call (put) option contract offset by 10 ordinary Fund Share put (call) option contracts. The Exchange believes the proposed margin offsets are appropriate given that the Grand contract is the economic equivalent of 10 ordinary Fund Share option contracts. In addition, the Exchange believes that by providing the same margin treatment for Grand Fund Share option contracts and 10 ordinary Fund Share option contracts, any potential investor confusion concerning the margin treatment of Grand contracts will be eliminated.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[8]

The Commission believes that it is reasonable and appropriate for the Exchange to apply the margin requirements of Amex Rule 462 to a Grand option contract.[9] Specifically, the Commission believes it is appropriate to require minimum margin of 100% of the current market value of the option plus 15% of the market value of the underlying security value ("broad-based margin") for Grand option contracts based on a broad-based index or portfolio. In this respect, the margin requirements for Grand option contracts are comparable to those that currently apply to broad-based index options.[10]

Further, the Commission believes that requiring minimum margin of 100% of the current market value of the option plus 20% of the market value of the underlying security value ("narrow-based margin") for Grand option contracts based on a narrow-based index or portfolio is also appropriate. In this respect, the margin requirements for Grand option contracts are comparable to those that currently apply to narrow-based index options. In addition, this requirement should help to ensure that purchasers of Grand option contracts based on a narrow-based index or portfolio post sufficient margin to address any concerns associated with the potentially increased volatility inherent in a narrow-based index product.

For the foregoing reasons, the Commission finds that the Exchange's proposal to apply Amex Rule 462 regarding margin treatment to Grand Fund Share option contracts is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–AMEX–98–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2537 Filed 2–2–99; 8:45 am]

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[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] The Commission notes that the Exchange currently applies the margin requirements of Amex Rule 462 to the economic equivalent of a Grand option contract (*i.e.*, 10 ordinary Fund Share option contracts). *See* July 1998 release, supra note 5.

[10] The Commission notes that the portfolios or indexes comprising WEBS Have not been designated as broad-based by the Commission. In this order, the Commission is only determining that board-based margin treatment for these WEBS is appropriate, without addressing the issue of whether such WEBS are based. *See* July 1998 Release, supra note 5.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40989; File No. SR–EMCC–99–1]

Self-Regulatory Organizations; the Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges for Pairing-Off

January 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 6, 1999, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change expands the fees charged by EMCC for pairing-off services provided.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Addendum H to EMCC's Rules allows EMCC to pair-off fail receive and deliver obligations relating to EMCC eligible instruments.[3] When EMCC conducted its first pairing-off of fail receive and deliver obligations of EMCC eligible instruments, it only charged for the pairing-off of obligations related to warrants. EMCC charges a fee of $2.00 per warrant fail receive or deliver obligation eliminated as a result of any pairing-off. The proposed rule change expands the $2.00 fee to cover the pairing-off of all fail receive and deliver obligations regardless of the type of EMCC eligible instruments to which they relate.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by EMCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–1 and should be submitted by February 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2532 Filed 2–2–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Prior to the approval of Addendum H, EMCC only had the authority to pair-off fail receive and deliver obligations relating to warrants.

[4] The complete text of the proposed amendments to EMCC's rules and procedures is attached to EMCC's filing as Exhibit A, which is available for inspection and copying at the Commission's Public Reference Room and through EMCC.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40983; File No. SR–NASD–98–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Fee to Provide Proprietary Regulatory and Trading Data to NASD Members via NasdaqTrader.com

January 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 1998,[3] the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as describe in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the NASD under Section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 with the Commission on January 21, 1999. The amendment corrects an inaccurate reference to the Act. *See* Letter from Thomas P. Moran, Senior Attorney, The Nasdaq Stock Market, Inc., to Mignon McLemore, Division of Market Regulation, SEC, dated January 21, 1999.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

upon filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Rule 7010 of the NASD Rules, to establish a fee for a compliance and trading data report distribution facility accessible to NASD members through its "NasdaqTrader.com" website. Below is the text of the proposed rule change. Proposed new language is italicized.

Rule 7010 System Services

(a)–(n) No Changes

(o) NasdaqTrader.com Trading and Compliance Data Package Fee

The charge to be paid by an NASD Member Firm for each entitled user receiving Nasdaq Trading and Compliance Data Package via NasdaqTrader.com is $75 per month (monthly maximum of 25 Historical Research Reports) or $100 per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

(1) Daily Share Volume Report for a Broker/Dealer (Member Firm's information only)

(2) Monthly Compliance Report Cards (Member Firm's information only)

(3) Monthly Summaries

(4) Historical Research Reports

(i) Market Maker Price Movement Report

(ii) Equity Trade Journal (Member Firm's information only)

The Association may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to establish a fee for a trading and compliance data distribution facility accessible to NASD members through its "NasdaqTrader.com" website. Under the proposal, NASD member firms will be able to obtain data regarding their own trading volume in securities in which they report volume as well as information concerning their compliance with NASD rules. Use of this service will be voluntary, and fees from NASD members who subscribe will be used to offset the costs associated with the maintenance of the secured content as well as the product's portion of the ongoing maintenance and administration of the Nasdaq web-security infrastructure.

Specifically, NASD member firms who elect to receive Nasdaq's Trading and Compliance Data Package ("Data Package") will be able to obtain the following: (1) Daily Share Volume Reports displaying the firm's own T+1 daily trading volume for each issue in which the firm reports volume; (2) Monthly Compliance Report Cards outlining the firm's own compliance status in the areas of trade reporting, firm quote compliance and best execution obligations; (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trading (*e.g.*, block or total); and (4) Historical Research Reports consisting of Market Maker Price Movement Reports ("MMPMR"), which show all of a Market Maker's quote updates (*i.e.*, price, size and inside quote at time of update) for a security on a specified date, and Equity Trade Journals ("ETJs") detailing all trades reported through the Automated Confirmation Transaction Service by the NASD member firm for a selected security and date. Due to capacity restrictions, Data Package users seeking Historical Research Reports will be limited to either 25 or 100 monthly reports depending on the subscription fee paid.

Recognizing the proprietary and confidential nature of the data contained in the Data Package, Nasdaq has established a secure information display and retrieval environment through the combined use of user IDs, passwords and digital certificates. To further protect NASD member firms' proprietary data, the service is designed so that firm-specific reports regarding compliance and trading activity will only be made available to the member firm itself. Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[5] of the Act in that the Data Package fee provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (e) of Rule 19b–4 thereunder[8] in that it establishes or changes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[5] 15 U.S.C. 78o–3(b)(5).

[6] Initially, the proposal inaccurately referenced another Section of the Act. Amendment No. 1 corrected this mistake. *See supra* note 3.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19(b–4(e).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2484 Filed 2–2–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40988; File No. SR–NASD–98–79]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Issuer Responsibilities When Using the Internet; Updating MarketWatch Contact Information and Other Matters

January 28, 1999.

On October 21, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule IM–4120–1 with respect to the use of the Internet for dissemination of issuer disclosures.

The proposed rule change appeared in the **Federal Register** on December 17, 1998.[3] The Commission received no comments concerning the proposed rule change. This Order approves the proposed rule change for the reasons discussed below.

I. Description of Proposal

Increased use of the Internet to provide access to corporate information for shareholders has resulted in questions regarding the timing of news releases over the Internet and the use of issuers' Internet sites as replacements for traditional dissemination of news. While Nasdaq believes that it is generally in the public interest to encourage widespread dissemination of information to investors through the Internet, it also believes that it must maintain a level playing field for all investors, including those who do not have Internet access or who may not generally rely on the Internet as their primary source of material corporate news. Consequently, Nasdaq proposes permitting issuers to publicize news over the Internet, but only as a supplement to its ongoing requirement that news be disseminated through traditional news services. These include Dow Jones News Service, Reuters, Bloomberg Business News, Business Wire, PR Newswire, The Wall Street Journal, and *The New York Times*.[4]

Accordingly, Nasdaq is proposing to amend NASD Interpretation IM–4120–1 to state that it fully supports companies' use of Internet home pages to disseminate information to shareholders, but that the Internet must be a substitute for the dissemination of news through traditional news services. In the interests of maintaining a level playing field for all investors and to avoid situations of potential selective disclosure, the Nasdaq policy will be amended to indicate that dissemination of news over the Internet is appropriate as long as it is *not* made available over the Internet before the same information is transmitted to, and received by, the traditional news services. Furthermore, the amended policy will reiterate that issuers must still notify Nasdaq at least ten minutes prior to any release of material information to traditional news services or over the Internet, consistent with the existing policy.[5]

II. Discussion

Upon review, the Commission finds that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder applicable to a registered securities association. In particular, the Commission believes the proposal is consistent with Sections 15A(b)(6)[6] and 11A(a)(1)(B)[7] of the Act.[8] Section 15A(b)(6) requires that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.[9] Section 11A(a)(1)(B) recognizes that new data processing and communications techniques create the opportunity for more efficient and effective market operations. Increasing the available outlets through which material information is circulated, as proposed, increases market transparency and furthers the goals of this section.

A free and open national market system requires the timely and thorough dissemination of information to market participants. Since its advent, the Internet's popularity has grown rapidly. The Commission believes that the Internet is a viable method to disseminate information to market participants. With its relatively low cost of operation, easy accessibility, and potential for rapid dissemination, it represents an effective and timely method for issuers to disseminate information to investors and the general public. The Commission agrees with Nasdaq that the Internet is an acceptable method for issuers to communicate with investors; its use to publicize material information should promote rapid and wide-spread dissemination of Company information, specifically enhancing the openness and fairness of the national market system generally.

The Commission further notes that the proposed rule change should adequately protect investors who rely on traditional news services to obtain information on issuers. As proposed, issuers who are required to disseminate information under NASD rules must use Nasdaq-approved traditional news services regardless of whether the issuers post the information on the Internet. This should protect investors who do not have Internet access or who still rely on traditional news services for their corporate news. In addition, the proposal provides that material news may not be released on the Internet prior to its receipt by traditional news services thereby helping to ensure that material news is not selectively disseminated.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 40771 (December 10, 1998), 63 FR 56055.

[4] A complete list of appropriate news services is available from Nasdaq's Market Watch Department by telephone 1–800–537–3929 or (301) 590–6411. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number.

[5] In addition, this Order also approves several technical corrections to cross references contained in NASD Rule 4120 and IM–4120–1, as well as eliminating several footnote references to an outdated phone number used to contact MarketWatch, which are contained in NASD Rules 4120, 4310, and 4320.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78k–1.

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–NASD–98–79) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2536 Filed 2–2–99; 8:45am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40979; File No. SR–NYSE–99–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program Relating to the Listing Eligibility Criteria for Closed-End Management Investment Companies Registered Under The Investment Company Act of 1940

January 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposal instituting a pilot program relating to the listing eligibility criteria for closed-end investment companies registered under the Investment Company Act of 1940.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a pilot program ("Pilot") amending Section 1 of its *Listed Company Manual* ("Manual") to codify the specific eligibility listing criteria as applied to certain investment companies registered under the Investment Company Act of 1940. The proposed three-month Pilot would expire on April 29, 1999, or such earlier time as the Commission approves the Exchange's request for permanent approval of the program.[3] The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposed to codify a policy regarding the listing of newly organized closed-end management investment companies ("Funds"). The Exchange generally lists Funds either in connection with an initial public offering or shortly thereafter, when the Fund does not have a three-year operating history and is thus considered newly formed.

If the Fund has at least $60 million in net assets, as evidenced by a firm underwriting commitment, the Exchange will generally authorize the listing of the Fund. In this regard, the Exchange notes that this requirement is the minimum net asset requirement for listing. The Exchange retains the discretion to deny listing to a Fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the particular Fund will be able to maintain its financial status. Any Fund with less than $60 million in net assets will not be considered for listing.

In applying this test, the Exchange recognizes that in most cases the applicant Fund is not a traditional operating entity. Thus, it would not be possible to apply the earnings standards specified in the *Listed Company Manual* at the time of listing. Of course, Funds are subject to continued financial listing criteria, as are all NYSE-listed companies. In this regard, an exception report is generated monthly to identify companies below the Exchange's continued listing standards. If a Fund is so identified by the Exchange's Financial Compliance Department, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company so identified.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2)[5] of the Act, for approving the establishment of the Pilot for a three-month period ending on April 29, 1999 (or until such earlier time as the Commission grants the Exchange's request for permanent approval of the program), prior to the thirtieth day after publication in the **Federal Register**.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Richard Strasser, Assistant Director, Division of Market Regulation, SEC, on January 26, 1999.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–02 and should be submitted by February 24, 1999.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change relating to the establishment of the Pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public.[7]

The Commission finds good cause for approving the Pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that the Exchange's listing standard serves as a means for a marketplace to screen Funds and to provide listed status only to bona fide Funds with sufficient net assets. The Commission further believes that the proposed Pilot strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market and the Exchange's obligation to perfect the mechanism of a free and open market by listing Funds on the Exchange. In addition, the Commission believes that accelerated approval of the Pilot will enable the Exchange to minimize the interruption in its listing of these securities while allowing the Commission adequate time to consider the Exchange's proposal seeking permanent approval of the Pilot.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the Pilot program proposed by the Exchange (File No. SR–NYSE–99–02) is approved until April 29, 1999, or until the Commission approves the proposal permanently.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2534 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] Approval of the three-month Pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40976; File No. SR–OCC–98–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding the Calculation of the Short Option Adjustment

January 27, 1999.

On September 10, 1998, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–98–11) pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 23, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends Rules 601 and 602 to enable OCC to use a "sliding scale" to calculate the short option adjustment contained in OCC's Theoretical Intermarket Margin System ("TIMS").[3] The short option adjustment is a component of the additional margin calculation in TIMS that imposes a minimum margin amount on deep out of the money short options.

A. Additional Margin Calculation

OCC requires its clearing members to adjust their margin deposits with OCC in the morning of every business day based on OCC's overnight calculations. OCC imposes a margin requirement on short positions in each clearing member account and gives margin credit for unsegregated long positions.[4] Under TIMS, margin for positions in a class group is based on premium levels at the close of trading on the preceding day and is increased or decreased by the additional margin amount for that class group.[5]

TIMS calculates additional margin amounts using options price theory. TIMS first calculates the theoretical liquidating value for the positions in each class group by assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable margin interval. The margin interval is the maximum one day price movement that OCC wants to protect against in the price of the underlying asset.[6] Margin intervals are determined separately for each underlying interest to reflect the volatility in the price of the underlying interest.

TIMS then selects the theoretical liquidating value that represents the greatest decrease (where the actual

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40800 (December 16, 1998), 63 FR 71179.

[3] OCC Rule 601 describes TIMS as it applies to equity options ("equity TIMS") and OCC Rule 602 describes TIMS as it applies to non-equity options ("non-equity TIMS").

[4] A long position is unsegregated for OCC's purposes if OCC has a lien on the position (*i.e.*, has recourse to the value of the position in the event that the clearing member does not perform an obligation to OCC). Long positions in firm accounts and market-maker accounts are unsegregated. Long positions in the clearing member's customers' account are unsegregated only if the clearing member submits instructions to that effect in accordance with Rule 611.

[5] For purposes of equity TIMS, a class group consists of all put and call options, all BOUNDS, and all stock loan and borrow positions relating to the same underlying security. For purposes of non-equity TIMS, a class group consists of all put and call options, certain market baskets, and commodity options and futures (that are subject to margin at OCC because of a cross-margining program with a commodity clearing organization) that relate to the same underlying asset. A non-equity TIMS class group may also contain stock loan baskets and stock borrow baskets.

[6] Some combinations of positions can present a greater net theoretical liquidating value at an intermediate value that at either of the endpoint values. As a result, TIMS also calculates the theoretical liquidating value for the positions in each class group assuming intermediate market values of the underlying asset.

liquidating value is positive) or increase (where the actual liquidating value is negative) in liquidating value compared with the actual liquidating value based on the premium levels at the close of trading on the preceding day. The difference between that theoretical liquidating value and the actual liquidating value is the additional margin amount for that class group unless the class group is subject to the short option adjustment.

B. Short Option Adjustment

For net short positions [7] in deep out of the money options, little or no change in value would be predicted given a change in value of the underlying interest equal to the applicable margin interval. As a result, TIMS normally would calculate additional margin amounts of zero or close to zero for deep out of the money short options. However, volatile markets could cause such positions to become near to or in the money and thereby could create increased risk to OCC. OCC protects against this risk with an adjustment to the additional margin calculation known as the short option adjustment.[8]

Currently, the short option adjustment requires a minimum additional margin amount equal to twenty-five percent of the applicable margin interval for all unpaired [9] net short positions in options series for which the ordinary calculation of the additional margin requirement would be less than twenty-five percent of the applicable margin interval. As a result, clearing members are required to deposit margin in excess of the risk presented by some unpaired net short positions in out of the money options.

To address these situations, the rule change establishes a sliding scale short option adjustment methodology. Using the sliding scale, the short option adjustment percentage will be applied to a particular series according to the extent to which the series is out of the money. In addition, OCC will use different sliding scales for put options and for call options.

The proposed rule change modifies Rules 601 and 602 to provide that the short option adjustment to be applied to any unpaired short position will be determined using a percentage that OCC deems to be appropriate.[10]

II. Discussion

Section 17A(b)(3)(F) of the Act [11] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because it should reduce overcollateralization of OCC's clearing members' positions without impairing OCC's overall protection against member default.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act [12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–98–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2482 Filed 2–2–99; 8:45 am]

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[7] A net position in an option series in an account is the position resulting from offsetting the gross unsegregated long position in that series against the gross short position in that series. After netting, an account will reflect a net short position or a net long position for each series of options held in the account.

[8] The short option adjustment is described in Rule 601(c)(1)(C)(1) for equity options and Rule 602(c)(1)(ii)(C)(1) for non-equity options. OCC recently amended Interpretation .06 to Rule 602 so that net short non-equity option positions can be paired off against net long non-equity positions whose underlying interests exhibit price correlation of at least seventy percent. Securities Exchange Act Release No. 40515 (September 30, 1998), 63 FR 53970.

[9] The term unpaired is defined in Interpretation .04 to Rule 601 for equity options and Interpretation .06 to Rule 602 for non-equity options.

[10] A schedule of the sliding scales that OCC intends to use is attached as Exhibit A to its filing, which is available for inspection at the Commission's Public Reference Room and through OCC. OCC will always specify a minimum short option adjustment percentage. OCC will inform its members of the initial schedule of the sliding scales through an Important Notice and will notify its members of any changes to the schedule.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40981; File No. SR–OCC 98–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of Stock Fund Shares

January 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 16, 1998, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies the definition of "stock fund shares."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify the definition of "stock fund shares" as currently defined in Section 1 of Article 1 of OCC's By-laws [3] by replacing the term "common

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] This definition was introduced in a recently approved rule change. Securities Exchange Act Release No. 40595 (October 23, 1998), 63 FR 58438 [File No. SR–OCC–98–08] (order approving rule change relating to OCC's rules and by-laws which govern options on publicly traded interests in unit investment trusts, investment companies, or similar entities holding portfolios or baskets of common stock).

stocks" with the phrase "equity securities" in the definition. When the definition was originally drafted, the term "common stock" was intended to be interpreted broadly enough to include other equity securities such as ADRs.[4] The substitution of the term "equity securities" will make it clear that stock fund shares includes interests in entities holding portfolios or buckets of equity securities other than common stocks.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in stock fund options by eliminating any potential ambiguity as to the definition of "stock fund shares."

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[6] of the Act and pursuant to Rule 19b–4(e)(1)[7] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–98–15 and should be submitted by February 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2483 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[4] The intention to cover ADRs was apparent in the original filing which approved a rule change permitting OCC to issue, clear, and settle options on unit investment trust interests and investment company shares that hold portfolios or baskets of common stock. The filing noted that underlying stock fund shares would include World Equity Benchmark Shares ("WEBs"). WEBs represent interests in funds whose holdings consist of or include ADRs. Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 [File No. SR–OCC–97–02].

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(e)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40980; File No. SR–PCX–98–55]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Relating to Crossed Market Adjustments

January 26, 1999.

I. Introduction

On November 5, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify its rules on the automatic execution of options orders. Amendment No. 1 was submitted to the Commission on November 30, 1998.[3] The proposed rule change was published for comment in the **Federal Register** on December 9, 1998.[4] The Commission did not receive any comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange proposes to clarify its rules on the automatic execution of orders when the PCX market and the market of a competition exchange are crossed or locked (*i.e.*, the bid disseminated through the facilities of one exchange is higher than or equal to the offer disseminated through the facilities of another exchange. The Exchange believes the proposal will make consistent the handling of electronic orders in such circumstances.

On September 8, 1998, the Commission approved a PCX proposal to amend PCX Rule 6.87(d) regarding the automatic execution of options orders.[5] The rule change provided that the Exchange's Options Floor Trading Committee ("OFTC") may designate electronic orders in an option issue to receive automatic executions at prices reflecting the National Best Bid or Offer ("NBBO"). The rule change further provided that the OFTC may designate a customer order to exit the automatic execution system and receive floor broker representation in the trading crowd if the NBBO is crossed (*e.g.* 6⅛ bid, 6 asked) or locked (*e.g.* 6 bid, 6 asked).

After the Commission approved the amendment to PCX Rule 6.87(d), the Exchange became aware that the rule implied that the OFTC could designate an option issue for floor broker representation in crossed or locked markets only if the issue was eligible to receive automatic execution at the NBBO. The Exchange's intention was to allow OFTC the discretion to designate orders in an option issue for floor broker representation if the NBBO is crossed or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was originally filed pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated November 27, 1998 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 40734 (December 1, 1998), 63 FR 67971 (December 9, 1998).

[5] Securities Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (File No. SR–PCX–98–27).

locked, regardless of whether the orders are eligible for automatic execution at the NBBO. Accordingly, the Exchange is now proposing to amend PCX Rule 6.87 to clarify that the OFTC may designate customer orders, for any option issue, to default to floor broker representation in the trading crowd if the NBBO is crossed or locked, regardless of whether the Exchange's Auto-Ex system is set to execute orders at prices reflecting the NBBO.

The Exchange stated that the proposal should prevent customer orders from being executed at inferior prices. The Exchange illustrated this potential problem as follows. If the PCX market is 5 bid, 5¼ asked, and exchange B's market is 4 bid, 4¼ asked, the NBBO would be 5 bid, 4¼ asked. If the 5 bid is based on a public order for 10 contracts, and the order is automatically executed, the customer would be deprived of an opportunity to cancel the order at 5 and buy 10 contracts at exchange B at 4¼. This result would occur regardless of whether the PCX Auto-Ex system is using the NBBO or PCX quotes.

The Exchange also explained that in many cases crossed or locked markets occur because of communications or systems problems, or due to keystroke errors, or quotation dissemination delays. The Exchange stated that it believes that the proposal allow floor brokers to determine if the locked or crossed market is actually a true market. The Exchange stated that it plans to implement a systems change to accommodate the potential for floor broker representation of options orders during crossed or locked markets after this proposal is approved.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.[7]

Section 6(b)(5) of the Act[8] requires, among other things, that the rules of an exchange be designed to facilitate transactions in securities and, in general, to protect investors and the public interest. The proposed rule change should protect customer orders from being executed at inferior prices. Currently if the NBBO is crossed or locked, a customer's order could potentially be executed at an inferior price. If an order is placed for an option issue that is not eligible for automatic execution at the NBBO, the order would be automatically executed at a price that may be inferior to a price listed on another market. The proposed amendment to PCX Rule 6.87 would prevent this situation from occurring. The customer order would default to the PCX floor brokers who would then handle that order consistent with their best execution obligations.

The proposed rule change provides floor brokers with the opportunity to determine if the crossed or locked markets are true markets. As explained by the Exchange, a locked or crossed market may be caused by external factors unrelated to the option issue. The default provision will allow floor brokers to ascertain whether the crossed or locked market is in fact a true market, before assessing what the best execution would be for a particular customer's order.

Accordingly, the Commission believes the proposed rule change will facilitate transactions when markets are crossed or locked and will protect investors and the public interest consistent with the requirements of Section 6(b)(5) of the Act.[9]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–98–55) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2533 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[6] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] *Id.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40959; File No. SR–PCX–98–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rescission of Fee Assessment for New Facilities

January 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to rescind the special assessment that was approved in January 1998. The assessment, which applied to each of the 552 PCX memberships, was intended to provide an equity base to fund new facilities to house the Exchange's new trading floor, technology facilities, associated office space and equipment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of, and basis for, the fee change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The filing was submitted January 4, 1999, however, the PCX amended the filing after it was submitted. Therefore the effective date of the filing is January 15, 1999. *See* letter from Robert P. Pacileo, Staff Attorney, PCX, to Mike Walinskas, Deputy Associate Director, SEC, dated January 14, 1999.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background: The Exchange received approval by the Commission to assess the 552 PCX memberships $36,000, to be paid by each membership in monthly installments of $1,000 per month.[4] In the original proposal, the Exchange stated that "the purpose of the assessment is to provide an equity base to finance land and facilities to house the Exchange's new trading floors, technology facilities, associated office space and equipment." In addition, the Exchange proposed that the amount raised would serve as an equity base to aid in the process of obtaining additional financing.

Proposed Fees: The Exchange proposes to rescind its $36,000 special assessment of each of its 552 memberships. The Exchange proposes this rescission for several reasons including: significant and rapid changes in the industry, the entry of new, well-capitalized competitors, the introduction of electronic trading, and other technological enhancements. The Exchange believes that it must use its technological, staff, and financial resources to aggressively respond to competitive pressures, but it has been able to alter its facility requirements. Although the Exchange still needs to expand and renovate its trading facilities, technological enhancements will allow it to do so in a less costly manner than the facilities proposed in the original filing.[5] In conjunction with rescinding the assessment, the Exchange intends to refund all payments collected as part of the assessment from the owners of its 552 memberships.

2. Statutory Basis

The fee change is consistent with Section 6(b)[6] of the Act in general and furthers the objectives of Section 6(b)(4)[7] in particular because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] *See* Securities Exchange Act Release No. 39945 (May 1, 1998), 63 FR 25891 (May 11, 1998).

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PCX has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act,[8] and subparagraph (e)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the rule change that are filed with the Commission, and all written communications relating to the rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–65 and should be submitted by February 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2535 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(e)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2964]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:00 p.m., on Friday, February 12, 1999, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to prepare for a Diplomatic Conference on the International Maritime Organization's Draft Convention on Arrest of Ships, which will be held March 01–12, 1999, in Geneva. This meeting will be a further opportunity for interested members of the public to express their views on the Draft Convention.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information, or to submit views in advance of the meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant William G. Respires, U.S. Coast Guard (G–LMI), 2100 Second Street, SW, Washington, D.C. 20593; telephone (202) 267–1527; fax (202) 267–4496.

Dated: January 28, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–2643 Filed 2–1–99; 1:34 pm]

BILLING CODE 4710–7–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Stand-Alone Airborne Navigation Equipment Using the Global Positioning System Augmented by the Wide Area Augmentation System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to stand-alone airborne navigation equipment using the Global Positioning System (GPS) Augmented by the Wide Area Augmentation System (WAAS). The proposed TSO prescribes the minimum operational performance standards that stand-alone airborne navigation equipment must meet to be identified with the marking "TSO–C146."

DATES: Comments must be received on or before April 16, 1999.

ADDRESSES: Send all comments on the proposed technical standard order to: Avionics Systems Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration (FAA), Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Swearingen, Avionics Systems Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 267–3817, FAX No. (202) 493–5173.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, D.C. 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service before issuing the final TSO.

Background

The Wide Area Augmentation System (WAAS) is an augmentation to GPS that calculates GPS integrity and correction data on the ground and uses geostationary satellites to broadcast GPS integrity and correction data to GPS/WAAS users and to provide ranging signals. It is a safety critical system consisting of a ground network of reference and integrity monitor data processing sites to assess current GPS performance, as well as a space segment which broadcasts that assessment to Global Navigation Satellite System users to support enroute through precision approach navigation. Users of the system include all aircraft applying the WAAS data and ranging signal.

Wide area reference stations and integrity monitors are widely dispersed data collection sites that contain GPS/WAAS ranging receivers which monitor all signals from the GPS, as well as the WAAS geostationary satellites. The reference stations collect measurements from the GPS and WAAS satellites so that differential corrections, ionospheric delay information, GPS/WAAS accuracy, WAAS network time, GPS time, and UTC can be determined. The standards of this TSO apply to equipment designed to accept a desired flight path and provide deviation commands referenced to that path. These deviations will be used by the pilot or autopilot to guide the aircraft.

How To Obtain Copies

A copy of the proposed TSO–C146 may be obtained via Internet (http://www.faa.gov/avr/air/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT.** RTCA Document No. 229A, "Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Equipment," dated June 8, 1998, RTCA Document No. DO–160D, "Environmental Conditions and Test Procedures for Airborne Equipment," dated July 29, 1997; and RTCA Document No. DO–178B, "Software Considerations in Airborne Systems and Equipment Certification," dated December 1, 1992, RTCA Documents No. DO–200A, "Standards for Processing Aeronautical Data," may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, D.C. 22036.

Copies of the RTCA documents may be inspected at the FAA at the location listed under **ADDRESSES.** However, RTCA documents are copyrighted and may not be copied without the written consent of RTCA, Inc.

Issued in Washington, DC, on January 28, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–2503 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards Program Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on Thursday, March 18, 1999, beginning at 9:45 a.m. and ending at approximately 12:30 p.m., at the Clarion Hotel, Romulus, MI. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Thursday, February 22, 1999, to the address shown below or by e-mail. If sufficient time is available, questions received after February 22 may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by February 22, 1999, and the issuers to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Monday, March 15, 1999, and will be available at the meeting. The next NHTSA vehicle regulatory program meeting will take place on Wednesday, June 16, 1999 at the Clarion Hotel, Romulus, MI.

ADDRESSES: Questions for the March 18, NHTSA Rulemaking Status Meeting relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, FAX Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the Clarion Hotel 9191 Wickham Road, Romulus, MI.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh

Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. Rulemaking
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB February 22, 1999.

Issued: January 26, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–2530 Filed 2–2–99; 8:45am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 30186 (Sub-No. 3)]

Tongue River Railroad Company, Construction and Operation of the Western Alignment in Rosebud and Big Horn Counties, Montana

AGENCY: Surface Transportation Board, DOT.

ACTION: Final scope of the Supplement.

SUMMARY: On April 27, 1998, the Tongue River Railroad Company (TRRC) filed an application with the Surface Transportation Board (Board) under U.S.C. 10901 and 49 CFR 1150.1 through 1150.10 seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana, known as the "Western Alignment." The line that is the subject of this application is an alternative routing for the portion of the 41-mile Ashland to Decker, Montana rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), referred to as the "Four Mile Creek Alternative."

On July 10, 1998, the Board's Section of Environmental Analysis (SEA) served as Notice of Intent to prepare a Supplement to the Final Environmental Impact Statement in Finance Docket No. 30186 (Sub-No. 2) (Supplement) to evaluate and consider the potential environmental impacts that might result from the construction and operation of the Western Alignment, and requested comments on the scope of the Supplement. SEA reviewed and considered all of the comments in preparing the final scope of the Supplement, which is discussed below.

FOR FURTHER INFORMATION CONTACT: Dana White, (202) 565–1552 (TDD for the hearing impaired: (202) 565–1695).

SUPPLEMENTARY INFORMATION:

Proposed Action and Background

On April 27, 1998, TRRC filed an application with the Board in Finance Docket No. 30186 (Sub-No. 3) seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana (MT), known as the Western Alignment and subsequently referred to as *Tongue River III*. The line that is the subject of this application is an alternative routing for the southernmost portion of the 41-mile Ashland to Decker, MT rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), via the Four Mile Creek Alternative and subsequently referred to as *Tognue River II*.[1]

The TRRC rail line project has been considered by the Board in two separate proceedings. In its original application filed in 1983, TRRC sought approval from the Interstate Commerce Commission (ICC, the Board's predecessor agency) to construct and operate 89 miles of railroad between Miles City, MT and two termini located near Ashland, MT in Finance Docket No. 30186 (Sub-No. 1), and subsequently referred to as *Tognue River I*. In a decision served May 9, 1986, the ICC approved *Tongue River I*. TRRC then sought in *Tongue River II*, approval to extend the line another 41 miles from Ashland to Decker, MT. As discussed above, the Board approved *Tongue River II*, via the Four Mile Creek Alternative, in November 1996.

The ICC/Board's environmental staff, now the Section of Environmental Analysis (SEA), prepared environmental impact statements (EIS) for both *Tongue River I* and *Tongue River II*.[2] TRRC has reported to the Board that it has conducted various preconstruction activities on both segments but actual construction has not yet begun.

In *Tongue River I* and *Tongue River II*, the Board determined that the public convenience and necessity required or permitted TRRC's proposed rail line construction and operation, in accordance with former 49 U.S.C. 10901, and the Board does not intend to reopen the merits of the authority granted in these proceedings. The action proposed to be taken here is predicated on TRRC's proposed change to its previously approved construction authorizations, which necessitates SEA's review of associated potential environmental impacts and a subsequent decision by the Board as to whether the proposed Western Alignment satisfies the criteria of current 49 U.S.C. 10901.

Environmental Review Process

On July 10, 1998, the Board served a Notice of Intent (NOI) to prepare a Supplement to the Final EIS (Supplement) in *Tongue River III* to consider the potential environmental impacts of the proposed Western Alignment. The NOI also sought comments on the scope of the Supplement from TRRC and all interested persons, and specifically requested comments on whether the analysis of the Supplement should be limited to the Western Alignment. SEA received 34 comments from Federal, state, and local agencies, as well as TRRC, individual property owners, and community representatives. SEA has prepared this scope for the Supplement based on a careful review of all the comments to the NOI, consultations with appropriate Federal and state agencies, and review of the environmental documents and studies previously prepared in *Tongue River I* and *Tongue River II*. Assisting in the preparation of the Supplement is SEA's independent third-party contractor, Public Affairs Management of San Francisco, CA.

The scope of this Supplement in *Tongue River III* has been developed in consultation with three agencies that have requested cooperating agency status: (1) the U.S. Army Corps of Engineers (Corps); (2) U.S. Department

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[1] Petitions for review of *Tongue River II* are pending in the Ninth Circuit. These cases are being held in abeyance until this case is decided.

[2] In *Tongue River I, Tongue River Railroad Company—Rail Construction And Operation—In Custer, Powder River, And Rosebud Counties, Montana*, Finance Docket No. 30186 (Miles City to Ashland), the Draft Environmental Impact Statement was served July 15, 1983; the Supplement to the Draft Environmnetal Impact Statement was served January 19, 1984; and the Final Environmental Impact Statement was served August 23, 1985. In *Tongue River II, Tongue River Railroad Company—Rail Construction and Operation Of An Additional Rail line From Ashland To Decker, Montana*, Finance Docket No 30186 (Sub No. 2), the Draft Environmental Impact Statement was served July 17, 1992; the Supplement to the Draft Environmental Impact Statement was served March 17, 1994; and the Final Environmental Impact Statement was served April 11, 1996.

of the Interior, Bureau of Land Management (BLM); and (3) the Montana Department of Natural Resources and Conservation (MT DNRC), acting as lead agency for other Montana state agencies. These three agencies also have decision making authority independent of the Board and are the three principal agencies from whom TRRC must obtain separate approvals. To help these agencies fulfill their regulatory responsibilities and functions, and to avoid duplicative environmental analysis, SEA will include in this Supplement environmental review of certain issues specifically requested by the cooperating agencies and outlined below. SEA met with these agencies and sought their comments on the scope of this Supplement. A detailed description of the Supplement, which the three cooperating agencies have generally agreed upon and which includes the scope of the analysis for the Western Alignment and those portions of *Tongue River I* and *Tongue River II* that will be analyzed, is set forth below.

SEA will serve a Draft Supplement on all the names on its service list and on appropriate Federal, state, and local agencies, and will publish notice of this document in the **Federal Register**. The public will be invited to comment. SEA will carefully consider all the comments received on the Draft Supplement, conduct any further environmental review that may be necessary, and will then prepare a Final Supplement that will also be served on the parties to the proceeding. A notice of the Final Supplement will also be published in the **Federal Register**. The Board will then take into account the Draft Supplement, the Final Supplement, and all comments received in issuing its final written decision in *Tongue River III*.

Proposed Scope for the Supplement

Tongue River III

The scope of the Supplement for the Western Alignment in *Tongue River III* will involve a detailed environmental review of the proposed 17.3 miles of new rail line. The Supplement will assess environmental impacts associated with construction and operation of the proposed Western Alignment and will recommend environmental mitigation where feasible and appropriate. The Supplement will discuss alternatives to the proposal and will compare the effects of the Western Alignment to the approved Four Mile Creek Alternative, and the No-Build Alternative. The analysis will include discussion of the following topics: biological and aquatic resources, land use, cultural resources, water quality, socioeconomics, environmental justice, transportation and safety, soils and geology, air quality, aesthetics, noise and vibration effects, recreation, and cumulative effects. Impacts on Native Americans, including sites of importance to them, will be addressed.

Tongue River I and Tongue River II

The scope of the Supplement will also include a limited review of certain portions of the environmental documents prepared in *Tongue River I* and *Tongue River II*. Based on careful review of all the comments to the NOI and consultation will the three cooperating agencies, SEA and the cooperating agencies believe additional analysis beyond the Western Alignment is justified in these areas: (1) where environmental circumstances or requirements have changed in a manner warranting the updating and augmenting of analysis for *Tongue River I* or *Tongue River II*; (2) where there have been refinements to the alignment previously considered in the *Tongue River I* and *Tongue River II* EISs requiring additional environmental analysis because they might result in significant environmental impacts not addressed in those previous EISs; and (3) where further environmental analysis is appropriate to assist the cooperating agencies in their environmental review and permitting processes, as specifically requested by these agencies.

Although the comments in response to the NOI referred to possible changes to the alignment previously considered, they did not identify significant changed physical circumstances within the project area that would warrant a complete environmental re-analysis of either *Tongue River I* or *Tongue River II*. However, TRRC submitted information in response to the NOI indicating that the alignment of the railroad has been refined somewhat from that analyzed in *Tongue River I* and *Tongue River II*. In addition, the Montana state agencies have raised the issue of whether or not a particular corridor was analyzed and approved as part of the previous Board approvals. In response to this information, SEA and the cooperating agencies have determined that the scope of the Supplement should be broadened to include a comparative analysis to determine if any of the changes from the previously considered alignments in *Tongue River I* and *Tongue River II* would result in significant environmental effects not previously considered.

Cooperating Agencies' Jurisdiction

The proposed TRRC rail construction and operation project in *Tongue River I* and *Tongue River II* has spanned a number of years and has been considered by the Board in separate proceedings. TRRC has sought various separate easements and/or permits that are required by other Federal and state agencies before it can begin to construct and operate its proposed rail line, some of which have been granted but have now expired. As stated earlier, principal among these other permitting agencies are the three agencies that have asked for cooperating agency status in the preparation of this Supplement. In processing their easements and/or permits, the three cooperating agencies will utilize the Supplement to reach their own conclusions regarding the environmental effects of the proposed rail line and have advised SEA that they will now view TRRC's proposed project as a single line from Miles City to Decker, MT for these permitting purposes. After consulting with these agencies, SEA has agreed to provide specific additional analysis in the Supplement regarding environmental issues related to *Tongue River I* and *Tongue River II* to assist them in their permitting processes. The agencies may require an independent assessment to validate any data in question.

The Board has already taken actions approving the construction of a rail line pursuant to the applications of *Tongue River I* and *Tongue River II*. However, the cooperating agencies have not completed their separate review processes. Each of the cooperating agencies will issue their own Record of Decision, and any necessary easements and permits [3] that would be required by their separate processes as a condition to the construction of the rail line in

[3] Permits to be issued by cooperating agencies.

Army Corps of Engineers: Section 404 permit for the placement of fill in wetlands and waters of the U.S.

Bureau of Land Management: Granting of easements across BLM owned and/or managed lands.

State of Montana: Temporary Water Use (Form 600), Floodplain Development Permit, Navigable Rivers LUL/Easement (Form DS–432), LUL for Access to State Lands (Form DS–401), Right-of-Way Easement for Crossing State Land, Notice of Settlement of Damages Form (DS–457), MDT Encroachment Permits, Storm Water Discharge (MPDES)—General Permit MTR 100000, MPDES (construction related discharge)—Project specific permit, 310 Permit (county permit), Short Term Exemption from Surface Water Quality Standards (3A), 401 Certification to the Army Corps of Engineers, Easement for Crossing Fish Hatchery, Approval for private easements across existing DFWP conservation easements.

Tongue River I, Tongue River II, and *Tongue River III.*

BLM and the MT DNRC will hold public scoping meetings on TRRC's application for construction and operation TRRC's proposed rail line from Miles City to Decker, MT. Both agencies stated that these public scoping meetings are necessary in order to fulfill their separate permitting requirements. To the extent possible, SEA will address any new environmental issues raised at these scoping meetings that are relevant to the scope outlined here, and incorporate these issues in the Supplement.

Cumulative Effects

SEA will include in the Supplement a discussion of cumulative environmental impacts for the entire line from Ashland to Decker, MT for both the Four Mile Creek Alternative and the Western Alignment. This cumulative impacts discussion will update the previous information contained in *Tongue River I* and *Tongue River II* to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments. In addition, more general information will be provided regarding future development of the coal mines in the Ashland, MT area and air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

Format of the Supplement

The Supplement will be organized into three separate sections. The first section will evaluate the potential impacts associated with the proposed Western Alignment in *Tongue River III.* The second section will provide, as appropriate, updated analysis relating to *Tongue River I* and *Tongue River II.* A third section will discuss cumulative effects that would be associated with the construction and operation of the entire line from Miles City to Decker, MT from both the Four Mile Creek Alternative and the Western Alignment. At their request, and to assist the cooperating agencies in their permitting processes, SEA will provide appendices that address further environmental issues for the individual cooperating agencies. The information outlined in this scope will be found either in the body of the Supplement or in an appendix provided for each cooperating agency.

Assumptions

- To avoid duplication, the Supplement will refer to and utilize the environmental analyses prepared for *Tongue River I* and *Tongue River II,* if appropriate.
- The Supplement will evaluate the impacts of the proposed Western Alignment in *Tongue River III,* and will compare those impacts to the impacts related to the Four Mile Creek Alternative, the No-Build Alternative.

Section I

Tongue River III

Potential Environmental Impacts Associated With the Construction and Operation of the Western Alignment

1. Land Use

The Supplement will:

A. Evaluate impacts to property owners along the Western Alignment in terms of property acquisition, agricultural productivity, and recreational activities.

B. Evaluate the impact to parcels with a future potential for mechanical irrigation.

C. Evaluate indirect or secondary impacts to land uses such as homes located upstream from creek and river crossing.

D. Evaluate the impact of sidings as well as the rail line itself.

E. Develop appropriate mitigation to address issues such as fencing, weed protection, cattle passes, and compensation for livestock killed by trains.

2. Biological and Aquatic Resources

The Supplement will:

A. Establish a baseline for water quality and diversity of species for the Tongue River Region. The Supplement will map existing habitats using aerial photography and will describe the existing resources in the Tongue River Valley including vegetative communities, wildlife and wildlife movement (especially pronghorn and deer migration, and also the impact to the movement of smaller species such as turtles and other amphibians), fisheries, and Federally threatened or endangered species.

B. Include a biological assessment of species, updating information from *Tongue River II* as appropriate. Specifically, the assessment will investigate species identified by the U.S. Fish and Wildlife Service in the species list provided for this project.

C. Include a delineation of all prairie dog colonies to assist in determining the presence of Black-Footed Ferret.

D. Include a survey of sensitive plant species including the Woolly Twinpod, and Barr's Milkvetch.

E. Include wetland analysis for all wetlands and waters of the U.S. including creek and river crossings.

F. Develop appropriate mitigation to ensure adequate protection from the introduction and spread of noxious weeds.

G. Develop an appropriate mitigation plan for all wetlands and waters of the United States.

H. Develop appropriate mitigation plans for erosion control, riverbank stabilization, and the reclamation and replanting of cut/fill slopes.

3. Soils and Geology

The Supplement will:

A. Evaluate the potential for soil erosion during construction and long-term operation.

B. Evaluate soil composition and the need for blasting.

C. Evaluate the effect of blasting on the Tongue River Reservoir dam, and require a mitigation blasting plan if such activity is found to be necessary.

D. Evaluate the effect of topography changes on runoff and flooding.

E. Evaluate proposed engineering of bridges and culverts.

F. Develop any appropriate mitigation.

4. Water Quality

The Supplement will:

A. Include a hydrological analysis of the Tongue River and the potential impact of the construction and operation of *Tongue River III* upon it.

B. Evaluate the specific potential of erosion from cut/fill slopes to degrade the current water quality of the Tongue River and tributary streams.

C. Develop any appropriate mitigation.

5. Cultural Resources

The Supplement will:

A. Evaluate potential impacts to cultural and paleontological resources.

B. Include the final terms of the Programmatic Agreement currently under review by the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, Corps, the Board, and TRRC. The Programmatic Agreement will provide a means for identifying and addressing impacts on cultural resources, including Native American resources.

C. Discuss the results of consultation with Native American tribes, specifically the Northern Cheyenne and the Crow, taking into consideration the following regulatory provisions and directives: The National Historic Preservation Act (amended 1992); The American Indian Religious Freedom Act (amended 1993); The Religious Freedom Restoration Act (enacted in 1993); The Sacred Sites Executive Order (released in 1996).

D. Provide the results of consultation with representatives from the Northern

Cheyenne and Crow tribes to solicit information about known properties, burials, or traditional use areas on or adjacent to *Tongue River III.*

E. Discuss the eligibility of the Spring Creek Archaeological District for the National Register of Historic Places, and potential impacts to this resource resulting from construction and operation of *Tongue River III.*

6. Transportation and Safety

The Supplement will:

A. Evaluate the safety aspects of proposed crossings of the County Road at Four Mile Creek (proposed as a grade separated crossing), and where the Western Alignment would connect with the approved *Tongue River II* route at the north end (proposed as an at-grade crossing).

B. Assess the potential for hazardous materials transport through the corridor, and the potential for the movement of more trains and coal than was envisioned in the prior EIS for *Tongue River II.*

C. Assess the potential for train derailments and grade crossing accidents.

D. Assess the safety, operational, and maintenance advantages submitted by TRRC regarding the Western Alignment when compared to the Four Mile Creek Alternative including TRRC's improved overall grade, shorter travel distance, reduced long-term operating and maintenance costs, and reduced need for helper engines.

E. Assess the opportunities for access by local property owners.

F. Evaluate concerns regarding fire prevention and suppression.

G. Discuss the terms of the Memorandum of Agreement between the Montana Department of Transportation and TRRC that relate to potential environmental impacts and the implementation of mitigation measures.

H. Develop any appropriate mitigation.

7. Energy

The Supplement will evaluate potential impacts to energy resources, and develop any appropriate mitigation.

8. Air Quality

The Supplement will:

A. Evaluate construction-permit dust emissions from project construction.

B. Evaluate the effect of dust emissions from the long-term operation of the railroad on local recreation areas, farms, and homes.

C. Evaluate particulate emission from locomotive operation.

D. Develop any appropriate mitigation.

9. Noise and Vibration Effects

The Supplement will:

A. Evaluate the project's effect on local property owners, residences, and ranch operations.

B. Evaluate the project's effect on local recreational activities.

C. Evaluate the project's effect on livestock and wildlife.

D. Evaluate the effect of blasting and vibration for the project on the Tongue River Reservoir dam if blasting is necessary for construction.

E. Develop any appropriate mitigation.

10. Socioeconomics

The Supplement will:

A. Evaluate potential impacts of *Tongue River III* on local social and economic patterns derived from physical changes. More detailed analysis of socioeconomics can be addressed by the cooperating agencies in their own review process. This could include, as appropriate, potential impacts of the project on local population changes in terms of short-term and long-term employment; impacts of new students generated as a result of construction workers moving into the region; increase in Taxable Value for each of the alternatives; any additional analysis conducted by BLM.

B. Develop any appropriate mitigation.

11. Recreation

The Supplement will evaluate impacts to the Tongue River State Recreation Area, and develop any appropriate mitigation.

12. Aesthetics

The Supplement will:

A. Evaluate the visibility of the project from the Tongue River State Recreation Area.

B. Evaluate the visibility of the project from county roads in the area.

C. Evaluate the visibility of the project to local residents, Native Americans, hunters, recreational users, sightseers, etc.

D. Develop any appropriate mitigation.

13. Environmental Justice

The Supplement will include analysis as required of potential environmental justice effects from construction and operation of the Western Alignment, particularly focused on impacts to Native Americans, including the Northern Cheyenne, and develop any appropriate mitigation.

Section II

Tongue River I and Tongue River II

Additional Environmental Review

As discussed earlier, the following section outlines additional analysis of certain limited portions of the environmental analysis in *Tongue River I* and *Tongue River II* that will be undertaken in the Supplement. Based on careful review of all the comments to the NOI and consultation with the three cooperating agencies, SEA and the cooperating agencies believe that additional analysis beyond *Tongue River III* is justified in three areas: (1) Where environmental circumstances or requirements have changed in a manner warranting the updating and augmenting of analysis for *Tongue River I* or *Tongue River II*; (2) where there have been refinements to the alignment previously considered in the *Tongue River I* and *Tongue River II* EISs requiring additional environmental analysis because they might result in significant environmental impacts not addressed in those previous EISs; and (3) where further environmental analysis is appropriate to assist the cooperating agencies in their environmental review and permitting processes, as specifically requested by these agencies.

The information required to address these three areas will be included either in the body of the Supplement, or in an appendix provided for each cooperating agency. The additional analysis will include appropriate mitigation.

Again, the applicable assumptions are:

- To avoid duplication, the Supplement will refer to and utilize the environmental analyses contained in the prior environmental documents for *Tongue River I* and *Tongue River II,* where possible.
- The Supplement will evaluate refinements to the alignment previously considered in *Tongue River I* and *Tongue River II* to determine if environmental impacts would occur that were not identified in the prior EISs for *Tongue River I* and *Tongue River II.*

Tongue River I

Tongue River I is TRRC's original application for construction and operation of 89 miles of railroad between Miles City, MT, and two termini in Ashland, MT, which was approved by the Board's predecessor in 1986.

The Supplement will:

A. Include a wetland analysis for all wetlands and waters of the U.S. including creek and river crossings

because there was no requirement that one be done when the EIS in *Tongue River I* was prepared.

B. Update biological assessment information based on consultation with the U.S. Fish and Wildlife Service.

C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, MT.

D. As requested by MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited additional analysis of water quality to include a discussion of the designation of Otter Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Evaluate effects on BLM property in the areas of wildlife habitat; vegetation; riparian/wetlands; livestock grazing; soil, water, and air; cultural resources; recreation; socioeconomic; access; wilderness; and, environmental justice.

F. Include an analysis of potential impacts to the Sturgeon Chub, and the Sicklefin Chub, and include mitigation to avoid construction during spawning/incubation periods.

G. Include additional analysis related to the proposed changes in the alignment that may result in potential impacts to the Miles City Fish Hatchery.

Tongue River II

TRRC sought in *Tongue River II* to extend the rail line approved in *Tongue River I* another 41 miles from Ashland to Decker, MT. In 1996, the Board approved *Tongue River II* via the Four Mile Creek Alternative.

The Supplement will:

A. Based on consultation with the Corps, update the existing wetland delineation and functional analysis information for all creek and river crossings to the extent necessary in connection with the Corps' permitting process.

B. Based on consultation with the U.S. Fish and Wildlife Service, update biological assessment information to the extent deemed necessary.

C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC, finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, MT.

D. As requested by the MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited analysis of water quality to include a discussion of the designation of Hanging Woman Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Include additional analysis as required of potential environmental justice effects from construction and operation of *Tongue River II* on *Tongue River III* and the Four Mile Creek Alternative, particularly focused on impacts to Native Americans, including the Northern Cheyenne.

Section III

Cumulative Effects

Cumulative effects of the construction and operation of the entire line from Miles City to Decker, MT will be discussed. This cumulative impacts discussion will update the previous information contained in *Tongue River I* and *Tongue River II* to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments. In addition, more general information will be provided regarding future coal mine development in the Ashland, MT area and the air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2557 Filed 2–2–99; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–246 (Sub–No. 2X)] [1]

Yreka Western Railroad Company—Abandonment Exemption—In Siskiyou County, CA

On January 14, 1999, Yreka Western Railroad Company (YW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its entire 8.9-mile line of railroad extending between milepost 0.0 in Montague and milepost 8.9 near Yreka, in Siskiyou County, CA. The line traverses U.S. Postal Service Zip Codes 96064 and 96097 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in YW's possession will be made available promptly to those requesting it.

In this proceeding, YW is proposing to abandon a line that constitutes its entire rail system. When issuing abandonment authority for a railroad line that constitutes the carrier's entire system, the Board does not impose labor protection, except in specifically enumerated circumstances. *See Northampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784, 785–86 (1978) *(Northampton)*. Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions would be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 4, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 23, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–246 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, and (2) Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005–3934. Replies to the YW petition are due on or before February 23, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis

[1] This petition for exemption was originally docketed as AB–246 (Sub-No. 1X) and has been redocketed to AB–246 (Sub-No. 2X), same title. A previous YW abandonment application was denied in *Yreka Western Railroad Company—Abandonment—In Siskiyou County, CA*, Docket No. AB–246 (Sub-No. 1) (ICC served Nov. 6, 1987).

(SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 27, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2427 Filed 2–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Assignment for U.S. Registered Definitive Securities.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1535–0059.

Form Number: PD F 1832.

Abstract: The information is requested to complete transaction involving the assignment of U.S. Registered Definitive Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 2,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2459 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Disclaimer and Consent with Respect to United States Savings Bonds/Notes.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1535–0113.

Form Number: PD F 1849.

Abstract: The information is requested when the requested savings bonds/notes transaction would appear to affect the right, title or interest of some other person.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 700.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2460 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Release.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Release.

OMB Number: 1535–0114.

Form Number: PD F 2001.

Abstract: The information is requested to ratify payment of savings bonds/notes and release the United States of America from any liability.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 20.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2461 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Stop Payment/Replacement Check Request.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Stop Payment/Replacement Check Request.

OMB Number: 1535–0070.

Form Number: PD F 5192.

Abstract: The information is requested to place a stop payment on a Treasury Direct check and request a replacement check.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2462 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Payroll Savings Report.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Payroll Savings Report.
OMB Number: 1535–0001.
Form Number: SB–60 and SB–60A.
Abstract: The information is requested as a measure of the effectiveness of the payroll savings program.
Current Actions: None.
Type of Review: Extension.
Affected Public: Businesses.
Estimated Number of Respondents: 25,910.
Estimated Time Per Respondent: 41 minutes.
Estimated Total Annual Burden Hours: 17,871.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2463 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Monet and Bazille: A Collaboration"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Monet and Bazille: A Collaboration", imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the High Museum of Art, Atlanta, Georgia, from on or about February 27, 1999, to on or about May 16, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6084, or USIA, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: January 29, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–2527 Filed 2–2–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Wednesday
February 3, 1999

Part II

Department of Commerce

Economic Development Administration

13 CFR Chapter III

Economic Development Administration Regulations; Revision To Implement the Economic Development Reform Act of 1998; Interim Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No. 990106003–9003–01]

RIN 0610–AA56

Economic Development Administration Regulations; Revision To Implement the Economic Development Reform Act of 1998

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of this interim-final rule is to revise regulations of the Economic Development Administration (EDA) to implement the comprehensive amendment to the Public Works and Economic Development Act of 1965, as amended, by the Economic Development Administration Reform Act of 1998 (Pub. L.105–393).

DATES: Effective date: February 11, 1999.

Comment date: Comments are due on or before April 5, 1999.

ADDRESSES: Send comments to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230

FOR FURTHER INFORMATION CONTACT: Edward M. Levin, Chief Counsel, Telephone Number 202–482–4687, fax 202–482–5671, and e-mail ELevin@doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Economic Development Administration (EDA) was reauthorized for a five-year period by legislation enacted on November 13, 1998. Congress had not authorized the agency since 1982. This legislative accomplishment will create stability and opportunities for EDA to better serve economically distressed communities across the country.

EDA continues to take steps toward improving its program delivery, policies and procedures, and to be more responsive to those whom it serves. In step with the National Performance Review and Paperwork Reduction Act, EDA had completely revised its regulations, thereby creating fewer burdens on and making them more accessible to the public. This interim-final rule continues EDA's efforts in this regard.

Description of Major Changes

This interim-final rule removes, adds, redesignates and revises parts and sections of EDA's regulations at 13 CFR Chapter III to implement Pub. L. 105–393 and to continue the streamlining and plain language initiatives of this administration. Significant changes are described below.

Removals of Parts and Sections

Certain parts and sections have been removed because the programs to which these regulations apply were deleted by Pub. L. 105–393 as follows: Part 302 Economic Development Districts, Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers and Subpart C, Financial and Other Assistance to Economic Development Centers and Districts; part 312, Supplemental and Basic Assistance Under Section 304 of the Act; references to and requirements under the Public Works Impact Program in parts 301 and 305 and § 316.3; § 305.10 Construction cost increases; § 316.2 Certification as to waste treatment, and § 316.5 Electric and gas facilities.

Other parts and sections were removed to streamline and simplify the rules such as: § 302.1 Authorization of Economic Development Districts, and § 305.12 Variance in cost of grant projects.

New Parts and Sections

New parts and sections have been added to implement Pub. L. 105–393 as follows: Pursuant to sec. 302 of Pub. L. 105–393, new language has been added in §§ 301.3, 305.3 and 308.5 on requirements for strategies for public works and economic adjustment projects (except for planning); pursuant to sec. 601 of Pub. L. 105–393, with EDA's prior written approval EDA may release its grant related property interests 20 years after the grant award, and § 314.11(b) releases all real and personal property in projects funded under Pub. L. 94–369, as amended by Pub. L. 95–28. Other sections have been added in light of new provisions in Pub. L. 105–393, such as § 316.13 Economic development information clearinghouse, § 316.17 Acceptance of certifications by applicants, and § 316.18 Reports by recipients, and part 318 Evaluations of Economic Development Districts and University Centers.

New parts of sections have been added for other reasons, for example, § 314.3(c) defines "adequate consideration" to distinguish it from fair market value; and § 314.7(c) provides exceptions to the title requirement when for example, a railroad or state or local highway is part of the EDA funded project.

Significant Revisions

Part 301—Designation of Areas has been substantially rewritten because under Pub. L. 105–393 areas designated by EDA prior to the effective date of Pub. L. 105–393 will no longer be so designated and areas thereafter will be determined on a project by project basis (for public works and economic adjustment projects, except for planning activities); and § 316.2 has been redesignated and substantially changed to more accurately reflect statutory intent and practices and procedures for determining if a project would result in excess capacity.

Other significant changes—Grant rates have been modified at § 301.4 to cover all EDA grants (not just public works awards) and to reflect changed unemployment conditions; and § 308.3 has been changed to revise area criteria for economic adjustment projects to emphasize unique economic adjustment tools.

Note

- EDA has recently established a task force to examine its Revolving Loan Fund (RLF) program as described in part 308 of these rules. The results of this task force may lead to changes in EDA's RLF program.
- An interest rate buy down program (see § 308.3), is being considered under EDA's Economic Adjustment program. Suggestions on structuring and implementing such a program are welcome.
- As part of the economic development clearinghouse described in § 316.14, EDA's Office of Economic Development Information is accessible on the internet web sites at http://www.doc.gov/eda and http://netsite.esa.doc.gov/oeci.

TABLE OF CHANGES

Old section	New section	Description of change
§ 300.1	§ 300.1	Renamed and changed for Plain Language purposes.

TABLE OF CHANGES—Continued

Old section	New section	Description of change
Part 301—Designation of areas	Part 301—General eligibility and grant rate requirements.	Renamed.
§§ 301.1–301.16		Removed since under Pub. L. 105–393 there is no longer area designation except on a project-by-project basis.
	§§ 301.1–301.4	New §§ include information and requirements about applicants, area eligibility, strategy required and grant rates.
§ 302.1		Removed.
§ 302.2	§ 302.1	Redesignated and modified for Plain Language purposes.
§ 302.3	§ 302.2	Redesignated and modified for Plain Language purposes.
§ 302.4	§ 302.3	Redesignated and modified for Plain Language purposes.
§ 302.5	§ 302.4	Redesignated and modified for Plain Language purposes.
§ 302.6	§ 302.4	Made part of this new section.
§ 302.7	§ 302.5	Redesignated and streamlined.
§ 302.8	§ 302.6	Redesignated, modified and streamlined.
§ 302.9	§ 301.4(d)	Redesignated, terminology modified, and portions removed since Economic Development Centers are no longer part of PWEDA
	§ 302.7	New under Pub. L. 105–393.
§§ 302.10–302.19		Removed since Economic Development Centers are no longer part of PWEDA.
Part 303—Overall Economic Development Program.	Part 303—Planning Process and Strategies for District and Other Planning Organizations Supported by EDA.	Renamed.
§ 303.1	§ 303.1	Renamed and modified to add definitions and streamlined.
§§ 303.2, 303.3		Removed.
§§ 303.4, 303.5, 303.6	§§ 303.2, 303.3	Renamed and revised for Plain Language purposes and consistent with Pub. L. 105–393.
§ 304.1	§§ 304.1, 304.2	Renamed and revised to make more accessible to reader.
§ 304.2	§§ 307.11, 307.14	Renamed and redesignated to implement Pub. L. 105–393.
Part 305—Public Works and Development Facilities Program.		Part 305—Grants for Public Works and Development Facilities Renamed.
§ 305.2	§ 300.2	Renamed and applicable to all programs.
	§ 305.3	Application requirements.
§§ 305.3, 305.4	§ 305.2	Renamed, merged and modified to implement Pub. L. 105–393.
§§ 305.5, 305.6	§ 305.4	Renamed, combined and modified to implement Pub. L. 105–393.
§ 305.7		Removed.
§§ 305.8, 305.9	§ 301.4	Renamed and applicable to all programs.
§ 305.10		Removed.
§ 305.11	§ 305.5	Redesignated and revised to make more accessible to reader.
§ 305.12		Removed.
§ 305.13	§ 305.6	Redesignated.
	§ 305.7	Added for guidelines and reports.
Part 306 [Reserved]; Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning—Subpart E—Economic Development Districts American Indian Tribes and Redevelopment Areas Economic Development Planning Grants and Subpart F—State and Urban Development Planning Grants.	Part 306—Planning Assistance	Renamed and revised under Pub. L. 105–393 and for Plain Language purposes.
Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning.	Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Training, Research and Evaluation.	Renamed consistent with Pub. L. 105–393.
§ 307.2	§ 300.2	Redesignated to apply to all programs and this program in particular.
§§ 307.3, 307.4	§ 307.2	Renamed, merged and revised to make more accessible to reader.

TABLE OF CHANGES—Continued

Old section	New section	Description of change
§ 307.5	§ 307.3	Renamed, redesignated and revised to make more accessible to reader and in accordance with Pub. L. 105–393.
§ 307.6	§ 307.4	Redesignated.
§ 307.7	§ 300.2	Redesignated to apply to all programs and this program in particular.
§§ 307.8, 307.9	§ 307.5	Renamed, merged and revised to make more accessible to reader.
§ 307.10	§ 307.6	Renamed, redesignated and revised to make more accessible to reader and in accordance with Pub. L. 105–393.
Subpart C—National Technical Assistance, Subpart D—Research and Evaluation.	Subpart C—National Technical Assistance, Training, Research, and Evaluation.	Renamed, merged and redesignated to be consistent with Pub. L. 105–393.
§§ 307.11, 307.16	§ 307.7	Redesignated, merged and revised to make more accessible to reader.
§§ 307.12, 307.17	§ 300.2	Renamed and merged as applicable to all programs and to this program in particular.
§§ 307.13, 307.14, 307.18, 307.19	§ 307.8	Renamed, merged and revised to make more accessible to reader.
§§ 307.15, 307.21	§ 307.9	Renamed, revised and modified for Plain Language purposes.
§ 307.20		Removed—will be in Notice(s) of Funding Availability—Request for Proposals.
§§ 307.22	§ 306.1	Redesignated, merged and revised consistent with Pub. L. 105–393.
§ 307.23		Removed.
§§ 307.24, 307.30	§ 300.2	Applicable to all programs.
§§ 307.25, 307.26, 307.31, 307.32	§ 306.2	Renamed, merged, streamlined and modified for Plain Language purposes.
§§ 307.27, 307.33	§§ 306.3, 306.4	Redesignated and made consistent with Pub. L. 105–393.
§ 307.28	§ 302.3	Part of new provision on District Organizations.
Part 308—Requirements for Grants Under the Title IX Economic Adjustment Program.	Part 308—Requirements for Economic Adjustment Grants.	Renamed consistent with Pub. L. 105–393.
§ 308.2	§ 308.3	Renamed and revised to make more accessible to reader.
§ 308.3	§§ 308.5, 300.2	Renamed and revised to be more accessible to readers and applicable to all programs.
§ 308.4	§ 308.2	Renamed and revised for consistency with Pub. L. 105–393.
§§ 308.5, 308.6	§ 308.4	Renamed, merged and modified to implement Pub. L. 105–393 and to be more accessible to readers.
§ 308.7	§ 308.6	Renamed and streamlined.
Part 312—Supplemental and Basic Assistance Under.	Section 304 of the Act	Removed as no longer in effect.
Part 314—Property	Part 314—Property Management Standards	Renamed.
§ 314.9	§ 314.9	Renamed and expanded to refer to title requirements.
	Subpart D—Release of EDA's Property Interest.	Added to implement provision of Pub. L. 105–393 and to clarify EDA's property release requirements.
§ 316.2		Removed as no longer in effect.
§ 316.3	§ 316.2	Redesignated and clarified.
§ 316.4	§ 316.3	Redesignated.
§ 316.5		Removed as no longer in effect.
§ 316.6	§ 316.4	Redesignated.
§ 316.7	§ 316.5	Redesignated.
§ 316.8	§ 316.6	Redesignated.
§ 316.9	§ 316.7	Redesignated.
§ 316.10	§ 316.8	Redesignated and clarified.
§ 316.11	§ 316.9	Redesignated.
§ 316.12		Removed as included in § 316.8.
§ 316.13	§ 316.10	Renamed and modified.
	§§ 316.11–316.18	Added to implement provisions of Pub. L. 105–393.
	§ 316.19	Added to replace current procedures and requirements.
	Part 318—Evaluations of Economic Development Districts and University Centers.	Added to implement provisions of Pub. L. 105–393.

Savings Clause

The rights, duties, and obligations of all the parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule shall continue in effect, except that EDA may waive administrative or procedural requirements of provisions removed by this rule.

Executive Orders 12866 and 12875

This rule has been determined to be significant for the purposes of E.O. 12866, Regulatory Planning and Review. In addition, it has been determined that, consistent with the requirements of E.O. 12875, Enhancing Intergovernmental Partnership, this interim final rule will not impose any unfunded mandates upon State, local, and tribal governments.

Notice and Comment

This rule is not subject to the rulemaking requirements of 5 U.S.C. 553 because it relates to public property, loans, grants, benefits, and contracts, 5 U.S.C. 553(c)(2), including the provision of prior notice and an opportunity for public comment and delayed effective date.

No other law requires that notice and opportunity for comments be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendments, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address or numbers listed in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections above. Comments received by April 5, 1999 will be considered in promulgating a final rule.

Note: EDA is particularly interested in comments relating to its use of Plain Language in order to make these requirements more readily accessible to the public.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This regulation imposes new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), as amended, but has been cleared under OMB's Emergency Clearances process under OMB approval numbers: 0610–0093; 0610–0094; 0610–0095; 0610–0096 and will expire on July 31, 1999. To remain effective after such expiration date, EDA must receive OMB's final clearance and display a currently valid OMB control number. If such final clearance is not obtained after the expiration date of the Emergency Clearance so that a currently valid OMB control number is not displayed, applicants and recipients will not thereafter be required to submit information requested pursuant to this rule.

The information is needed to determine eligibility of those applicants and projects and to monitor projects for compliance with EDA's construction or Revolving Loan Fund requirements, as applicable. EDA then uses information obtained in these collections to help carry out its mission to aid economically distressed areas of the Nation. Responses to requests for information are necessary under Pub. Law 105–393 for obtaining and for keeping benefits. The reporting burden for this collection is estimated to be approximately 7 burden hours for the Proposal; approximately 50 burden hours for the Application; approximately 18 burden hours for Requirements for Approved Construction Projects; approximately 240 burden hours for the CED Strategy Guidelines; and approximately 76 burden hours for the series of Guidelines for the Revolving Loan program, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspects of the collection of information, including suggestions for reducing the burdens, should be forwarded to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention EDA Desk Officer).

Administrative Procedure Act and Regulatory Flexibility Act

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in E.O. 12612. It has been determined that this interim final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in E.O. 12612.

List of Subjects

13 CFR Part 300

Reporting and recordkeeping requirements; Non-profit organizations; American Indians.

13 CFR Part 301

Grant Programs; Community Development; American Indians.

13 CFR Part 302

Community Development; Grant programs-community development; Technical assistance.

13 CFR Part 303

Community Development; Grant programs-community development.

13 CFR Part 304

Selection and evaluation.

13 CFR Part 305

Community development; Community facilities; Grant programs-community development.

13 CFR Part 306

Community development; Grant programs-community development.

13 CFR Part 307

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; Research; Technical Assistance.

13 CFR Part 308

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; American Indians; Manpower training programs; Mortgages; Research; Technical assistance.

13 CFR Part 314

Community development; Grant programs-community development.

13 CFR Part 315

Administrative practice and procedure; Community development; Grant programs-business; Technical assistance; Trade adjustment assistance.

13 CFR Part 316

Community development; Grant programs-community development; Freedom of Information; Uniform Relocation Act; Loan programs-business; Loan programs-community development; Environmental protection; Record retention; Records.

13 CFR Part 317

Civil rights; sex discrimination.

13 CFR Part 318

Colleges and universities.

For the reasons set forth in the preamble, 13 CFR Chapter III is revised to read as follows:

CHAPTER III—DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION

Part
300 General Information.
301 General Eligibility and Grant Rate Requirements.
302 Economic Development Districts; standards for designation, modification and termination.
303 Planning Process and Strategies for District and Other Planning Organizations Supported by EDA.
304 General Selection Process and Evaluation Criteria.
305 Grants for Public Works and Development Facilities.
306 Planning Assistance.
307 Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Training, Research, and Evaluation.
308 Requirements for Economic Adjustment Grants.
309–313 [Reserved].
314 Property.
315 Certification and Adjustment Assistance for Firms.
316 General Requirements for Financial Assistance.
317 Civil Rights.
318 Evaluations of University Centers and Economic Development Districts.

PART 300—GENERAL INFORMATION

Sec.
300.1 Introduction and purpose.
300.2 Definitions.
300.3 OMB control numbers.
300.4 Economic Development Administration—Washington, DC, Regional and Economic Development Representatives.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 300.1 Introduction and Purpose.

(a) *Introduction.* Is your community suffering from severe economic distress (e.g., high unemployment, low income, sudden economic changes, etc.)? Are you a representative of a State or local unit of government, Indian tribe, public or private nonprofit organization, educational institution, or community development corporation looking for grant assistance to enhance your opportunities for economic development? If so, these regulations of the Economic Development Administration (EDA) of the U.S. Department of Commerce may be of help. These regulations tell you the purpose of EDA and outline the program requirements, project selection process, project evaluation criteria, and other relevant matters. The information in these regulations covers grant programs of EDA that provide financial awards for the following:

- Public Works and Development Facilities;
- Planning;
- Research, Evaluation, Training and Technical Assistance;
- Trade Adjustment Assistance; and
- Economic Adjustment Assistance.

(b) What is the Purpose of the Economic Development Administration?

(1) Many communities lag behind and suffer economic distress in one form or another, such as:

- High unemployment;
- Low income;
- Underemployment;
- Outmigration;
- Sudden economic changes due to the restructuring or relocation of industrial firms;
- Closing or realignment of defense bases or cutbacks in defense procurement;
- Economic impact of natural disasters or other emergencies;
- Actions of the Federal government (such as environmental requirements) that curtail or remove economic activities; and
- Impacts of foreign trade.

(2) The purpose of the Economic Development Administration is to address economic problems affecting economically distressed rural and urban communities; by helping them:

(i) Develop and strengthen their economic development planning and institutional capacity to design and implement business outreach and development programs; and

(ii) Develop or expand public works and other facilities, financing tools, and resources that will create new job opportunities, save existing jobs, retain existing businesses, and support the development of new businesses.

(3) To promote a strong and growing economy throughout the United States, EDA works in partnership with State and local governments, Indian tribes and local, regional, and State public and private nonprofit organizations. With them EDA develops and carries out comprehensive economic development strategies that address the economic problems of distressed communities. EDA helps such communities increase their economic development capacities so that they can take advantage of existing resources and development opportunities.

§ 300.2 Definitions.

Unless otherwise defined in other parts or sections of this Chapter, the terms listed are defined as follows:

Comprehensive Economic Development Strategy, CED Strategy, or *strategy* means a strategy approved by EDA under § 301.3 of these regulations.

Department means the Department of Commerce.

Economic Development District or *district:*

(1) Means any area in the United States that has been designated by EDA as an Economic Development District under § 302.1 of these regulations; and

(2) Includes any Economic Development District designated by EDA under sec. 403 of the Public Works and Economic Development Act of 1965, as amended, as in effect on the day before the effective date of Public Law 105–393.

EDA means the Economic Development Administration in the U.S. Department of Commerce when a place or agency is intended, and refers to the headquarters office in Washington, D.C., or a regional office, as appropriate; or it means the Assistant Secretary of Commerce for Economic Development or his/her designee when a person is intended. The locations of EDA's offices are listed each year in a Notice of Funding Availability (NOFA). The general information telephone number for EDA is (202) 482–2309.

Eligible applicant means:

(1) In general,—

(i) An entity qualified to be an eligible recipient, or

(ii) Its authorized representative.

(2) Except in the case of Research, Evaluation, Training, or Technical Assistance grants under part 307, a private individual or for-profit organization cannot be an eligible applicant.

Eligible recipient means

(1) In general,—

(i) An area described in § 301.2 of these regulations;

(ii) An Economic Development District;

(iii) An Indian tribe or a consortium of Indian tribes;

(iv) A State;

(v) A city or other political subdivision of a State or a consortium of political subdivisions;

(vi) An institution of higher education or a consortium of institutions of higher education; or

(vii) A public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a State.

(2) In the case of Research, Evaluation, Training, and Technical Assistance grants under part 307, eligible recipient also includes private individuals and for-profit organizations.

Federal agency means a department, agency, or instrumentality of the United States.

Financial assistance means grant.

Grant means the non-procurement award of EDA funds to an eligible recipient under PWEDA or the Trade Act, as applicable. The term includes a cooperative agreement, within the meaning of chapter 63 of title 31, United States Code.

Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term includes: The governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other nonprofit tribal organization or entity, provided that the tribal organization or entity is wholly owned by, and established for the benefit of, the tribe or Alaska Native Village.

Local share, matching share or *local share match* are used interchangeably to mean non-Federal funds or goods and services provided by recipients or third parties that are required as a condition of a grant, and includes funds from other Federal agencies only if there is statutory authority allowing such use.

Notice of Funding Availability or *NOFA*, refers to the notice or notices EDA publishes each year in the **Federal Register** and on EDA's internet web site, *http://www.doc.gov/eda*, describing the available amounts, particular procedures, priorities, and special circumstances for the EDA grant programs for that year.

OEDP (Overall Economic Development Program), as the term is used in part 317 (Civil Rights) of this chapter, means CED Strategy developed in accordance with part 303 of this chapter.

PWEDA means the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105–393). (The term "PWEDA" was used to refer to EDA's authorizing legislation as it was in effect before the effective date of Public Law 105–393, signed into law on November 13, 1998. In these regulations, the term "PWEDA" refers to the legislation as currently amended by the 1998 law.)

Project means the activity or activities the purpose of which fulfills EDA program requirements and that EDA funds in whole or in part.

Proposed District means a geographic entity composed of one or more eligible areas proposed for designation as an Economic Development District.

Recipient and *grantee* are used interchangeably to mean an entity receiving funds from EDA under PWEDA or the Trade Act, as applicable, and includes any EDA approved successor to such recipient.

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

The Trade Act means Title II, Chapters 3 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341, *et seq.*).

United States means all of the States.

§ 300.3 OMB Control Numbers.

(a) This table displays control numbers assigned to EDA's information collection requirements by the Office of Management and Budget ("OMB") pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. EDA intends that this table comply with Section 3507(f) of the Paperwork Reduction Act, requiring agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control Number Table:

13 CFR part or section where identified and described	Current OMB control No.
301	0610–0094.
302	0610–0094.
303	0610–0093.
304	0610–0094.
305	0610–0094 and 0610–0096.
306	0610–0094.
307	0610–0094.
308	0610–0094 and 0610–0095.
314	0610–0094.
315	0610–0094.
316	0610–0094.

§ 300.4 Economic Development Administration-Washington, D.C., Regional and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., Regional and Field Offices and Economic Development Representatives, refer to EDA's annual Fiscal Year (FY) Notice of Funding Availability (NOFA).

PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

Sec.

301.1 Applicants.
301.2 Area eligibility.
301.3 Strategy required.
301.4 Grant rates.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 301.1 Applicants.

(a) Eligible applicants are defined in § 300.2 of this chapter.

(b) Except as otherwise provided in part 307, a public or private nonprofit organization applicant must include in its application for assistance, a resolution passed by, or a letter signed by an authorized representative of, a political subdivision of a State or an Indian tribe, acknowledging that the applicant is acting in cooperation with officials of the political subdivision or Indian tribe, as applicable.

§ 301.2 Area eligibility.

(a) EDA awards public works and development facilities grants under part 305 and economic adjustment grants under part 308 for projects to enhance economic development in economically distressed areas.

(b) An area is eligible for a project grant under part 305 or 308 if it has one of the following:

(1) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate. For example, if the national average unemployment rate is 6 percent, an area is eligible under this provision if it has an unemployment rate of 7 percent.

(2) Per capita income that is, for the most recent period for which data are

available, 80 percent or less of the national average per capita income.

(3) A special need, as determined by EDA, arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, for example:

(i) Substantial outmigration or population loss;

(ii) Underemployment, that is, employment of workers at less than full time or at less skilled tasks than their training or abilities permit;

(iii) Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions;

(iv) Natural or other major disasters or emergencies;

(v) Extraordinary depletion of natural resources;

(vi) Closure or restructuring of industrial firms, essential to area economies; or

(vii) Destructive impacts of foreign trade.

(c) A non-distressed area [i.e., an area that does not meet the criteria of paragraph (b) of this section] within an Economic Development District is also eligible, provided the project will be of a substantial direct benefit to an area that meets at least one of the criteria of paragraph (b) of this section. A project provides substantial direct benefit if it provides significant employment opportunities for unemployed, underemployed or low income residents.

(d) Normally an area is defined by geographical/political boundaries, e.g., city, county, Indian reservation. However, a smaller area (without regard to political boundaries) is also eligible even though it may be part of a larger community that overall is experiencing low distress. When the boundaries of the project area differ from established political boundaries, the project area must be of sufficient size appropriate to the proposed project, and the applicant must justify the proposed boundaries in relation to the project's benefits to the area.

(e) Eligibility is determined at the time that EDA receives an application and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located.

(f) EDA may reject any documentation of eligibility that it determines is inaccurate.

(g) There is no area eligibility requirement for a project grant under part 306 or 307.

(h) EDA will describe special needs criteria under paragraph (b)(3) of this section in a NOFA.

§ 301.3 Strategy Required.

(a) To be eligible for a project grant under part 305 or 308, the application for assistance must include a CED Strategy acceptable to EDA. The applicant may, however, incorporate by reference a current strategy previously approved by EDA, as an alternative to including the strategy in the application. (Exception: A strategy is not required when a funding request is for planning assistance, i.e., a strategy grant, under part 308.) The strategy must:

(1) Be the result of a continuing economic development planning process;

(2) Identify the economic development problems to be addressed using the assistance;

(3) Identify past, present, and projected future economic development investments in the area receiving the assistance;

(4) Identify the public and private participants in the investments and the sources of the funding for them;

(5) Describe how the problems identified under paragraph (a) (2) of this section will be addressed, in a manner that promotes economic development and opportunity, fosters effective transportation access, enhances and protects the environment, and balances resources through sound management of development; and

(6) Describe how the activities described under paragraph (a) (5) of this section will contribute to the solution of the problems.

(b) EDA will approve as acceptable a strategy that it determines meets the requirements of paragraph (a) of this section. The strategy may be one developed:

(1) With EDA assistance,

(2) Under another Federally supported program, or

(3) Through a local, regional, or State process.

(c) In determining acceptability of a strategy, EDA will take into consideration the circumstances of the application, so that for instance a strategy accompanying an application for assistance immediately following a natural disaster will require less depth and detail than would be the case in other circumstances.

(d) To be acceptable, a strategy must be approved by the applicant's governing body within one year prior to the date of application.

§ 301.4 Grant Rates.

(a) Except as otherwise provided for in this chapter, the amount of the EDA grant may not exceed 50 percent of the cost of the project. Cash or in-kind contributions, fairly evaluated by EDA, including contributions of space, equipment, and services, may provide the non-Federal share of the project cost. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements.

(b) EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. It is not necessary for an applicant to prove that it would be impossible to provide a full 50 percent non-Federal share, but it must show circumstances warranting any reduction. In determining whether to provide a Federal share greater than 50 percent for a project, EDA will give due consideration to the applicant's economic situation and the relative needs of the area. In the case of Indian tribes, EDA may reduce or waive the non-Federal share, and in other cases EDA may reduce the non-Federal share of the cost of the project below 50 percent, in accordance with the following table, showing the maximum Federal grant rate, including the supplement:

Projects	Maximum grant rates (percentage)
Projects of Indian tribes where EDA has made a determination to waive the non-Federal share of the cost of the project	100
Projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent	100
Projects of Indian tribes where EDA has made a determination to reduce the non-Federal share of the cost of the project	(1)

Projects	Maximum grant rates (percentage)
Projects of States or political subdivisions of States that have exhausted their effective taxing and/or borrowing capacity, or non-profit organizations that have exhausted their borrowing capacity	(1)
Projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, unless the applicant or the area is otherwise eligible for a higher rate of Federal participation under another provision of this section	80
Projects located in eligible areas where: (1) the 24-month unemployment rate is at least 11 percent and is at least 225% of the national average or (2) the per capita income (PCI) is not more than 50% of the national average	80
Projects located in eligible areas that are not eligible for a higher rate, where: (1) the 24-month unemployment rate is at least 9 percent and is at least 180% of the national average or (2) the PCI is not more than 60% of the national average	70
Projects located in eligible areas that are not eligible for a higher rate, where: (1) the 24-month unemployment rate is at least 7.5 percent and is at least 150% of the national average or (2) the PCI is not more than 70% of the national average	60
Projects in all other eligible areas	50

[1] Less than 100.

(c) Projects under part 306 or 307 are eligible for maximum grant rates as provided in those parts.

(d) Projects located in designated Economic Development Districts are eligible for an amount of additional Federal grant assistance not to exceed 10 percent of the estimated cost of the project, provided

(1) The project applicant is actively participating in the economic development activities of the district;

(2) The project is consistent with the strategy of the district; and

(3) The non-Federal share of the project is not less than 20 percent.

(e) EDA may make grants to supplement grants awarded in other Federal grant programs.

(1) Supplemental grants under paragraph (e) of this section are only available for projects:

(i) Under Federal grant programs that

(A) Provide assistance in the construction or equipping of public works, public service, or development facilities, and

(B) Are designated by EDA as eligible for supplemental EDA grants, and

(ii) Are consistent with a strategy.

(2) EDA's funds combined with funds from another Federal grant program may be at the maximum EDA grant rate, as set forth above, even if the other Federal program has a lower grant rate. If the other Federal program has a grant rate higher than the maximum EDA grant rate as set forth above, the combination of funds may exceed the EDA rate provided the EDA share does not exceed the EDA rate.

(f) An applicant is eligible for the highest applicable maximum grant rate, as set forth above, in effect between the time EDA invites the application and the time the project is approved. The Federal share of a project receiving EDA grant assistance may be (and often is) less than the maximum grant rate for which the recipient is eligible.

(g) EDA's NOFA will provide additional criteria to ensure that the level of economic distress of an area, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating assistance.

PART 302—ECONOMIC DEVELOPMENT DISTRICTS; STANDARDS FOR DESIGNATION, MODIFICATION AND TERMINATION

Sec.

302.1 Designation of economic development districts.
302.2 Designation of nonfunded districts.
302.3 District organizations.
302.4 District organization functions and responsibilities.
302.5 Modification of district boundaries.
302.6 Termination and suspension of district designation.
302.7 Eligibility of non-distressed areas.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 302.1 Designation of Economic Development Districts.

EDA will designate a proposed district as an Economic Development District with the concurrence of the State or States in which the District will be wholly or partially located, when the proposed district meets the following requirements:

(a) It is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single eligible area;

(b) It has an EDA approved strategy which:

(1) Contains a specific program for intra-district cooperation, self-help, and public investment;

(2) Is approved by each affected State;

(3) Identifies problems, and conditions underlying economic distress in the district; and

(4) Promotes economic development opportunities, plans for transportation access, enhancement and protection of the environment and balances resources through sound management of development;

(c) It contains at least one area, eligible for assistance under § 301.2, that has been identified in an approved strategy;

(d) At least a majority of the counties, or other areas as determined by EDA, within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district;

(e) A district organization has been established in the proposed district which meets the requirements of § 302.4; and

(f) The proposed district organization requests such designation.

§ 302.2 Designation of nonfunded districts.

The continuing designation of any Economic Development District is subject to the criteria and organization requirements of this part whether or not the Economic Development District organization receives any EDA financial assistance.

§ 302.3 District organizations.

(a) The district shall be organized in one of the following ways:

(1) As a public organization through an intergovernmental agreement for the joint exercise of local government powers; or

(2) As a public organization established under State enabling legislation for the creation of multi-jurisdictional area wide planning organizations; or

(3) As a non-profit organization incorporated under the laws of the State in which it is located.

(b) Each district organization must meet EDA requirements concerning membership composition [§ 302.3(c)], the maintenance of adequate staff support to perform its economic development functions [§ 302.3(d)], and its authorities and responsibilities for

carrying out economic development functions [§ 302.4]. Such requirements must also be met by the board of directors (or other governing body of the organization) as a whole.

(c) The district organization shall demonstrate that its governing body meets all of the following requirements:

(1) It is broadly representative of the principal economic interests of the district area including the interests of its minority and low-income populations;

(2) There is at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government; and

(3) At least 20 percent of its membership who are private citizens, i.e., neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government.

(d) The district organization shall be assisted by a professional staff drawn from qualified persons in economic development, planning or related disciplines. EDA may provide planning grants to Economic Development Districts to employ professional staff in accordance with part 306 of this chapter.

(e) The governing bodies of district organizations shall provide access for persons who are not members to make their views known concerning ongoing and proposed district activities in accordance with the following requirements:

(1) The economic development district organization must hold meetings open to the public at least once a year and shall also publish the date and agenda of the meeting enough in advance to allow the public a reasonable time to prepare to participate effectively.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and others have access to and an effective opportunity to participate in the affairs of the district.

(3) Information should be provided sufficiently in advance of public decisions to give the public adequate opportunity to review and react to proposals. District organizations should seek to relate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.

§ 302.4 District organization functions and responsibilities.

(a) All Economic Development District organizations are responsible for seeing that the following are provided on a continuing basis, consistent with the requirements of § 302.3:

(1) Organizational actions, including:

(i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the governing body to meet § 302.3 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) Contracting for services to carry out district functions;

(vi) Establishing and directing activities of economic development subcommittees; and

(vii) Submitting reports as determined by EDA to comply with civil rights requirements under part 317 of this chapter.

(2) Actions to develop and maintain the required district strategy, and any subsequent supplements or revisions, including:

(i) Preparing the analytic, strategic and implementation components of the strategy;

(ii) Adopting the strategy by formal action of the Economic Development District governing board;

(iii) Submitting the strategy, any supplements or revisions and annual reports for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(iv) Submitting to EDA an approvable strategy.

(b) Organizations receiving EDA financial assistance for the development and implementation of Comprehensive Economic Development Strategies must also:

(1) Coordinate and implement economic development activities in the district, including:

(i) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(ii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary to the development and implementation of the strategy;

(2) Coordinate the development and implementation of the strategy with other local, State, Federal and private organizations (including minority organizations);

(3) Carry out the annual strategy for implementation; and

(4) Comply with the requirement of part 303.

§ 302.5 Modification of district boundaries.

EDA, at the request of a district and with concurrence of the State or States affected (unless such concurrence is waived by the Assistant Secretary), may modify the boundaries of a district, if it determines that such modification will contribute to a more effective program for economic development.

§ 302.6 Termination and suspension of district designation.

EDA may, upon 30 days prior written notice, terminate the designation status of an Economic Development District:

(a) When the district no longer meets the standards for designation as set forth above;

(b) When a district has not maintained a currently approved strategy in accordance with part 303 of this chapter; or

(c) When a district has requested termination (with the approval of the State or States affected).

§ 302.7 Eligibility of non-distressed areas.

Areas in districts which are not themselves eligible for assistance under parts 305 or 308 may be eligible, as provided in § 301.2(c).

PART 303—PLANNING PROCESS AND STRATEGIES FOR DISTRICT AND OTHER PLANNING ORGANIZATIONS SUPPORTED BY EDA

Sec.

303.1 Definitions, purpose and scope.
303.2 Planning process.
303.3 Requirements for a strategy.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 303.1 Definitions, Purpose and Scope.

(a) As used in this part 303.

(1) *Planning organization* means an Economic Development District organization, Indian tribe, or other recipient of an EDA grant under part 306 which grant is awarded in whole or in part to develop, update, or replace a CED Strategy, and

(2) *Strategy committee* means that committee or other entity identified by the planning organization as responsible for developing, updating, or replacing a strategy.

(b) This part describes the planning process of and requirements for strategies developed and implemented by planning organizations supported by EDA. The requirements for a strategy in this part 303 exceed the requirements of § 301.3.

§ 303.2 Planning Process.

(a) The strategy committee must be inclusive and representative of the main economic interests of the area covered by the strategy. Such interests include public officials, community leaders, private individuals, business leaders, labor groups, minorities, and others who can contribute to and benefit from improved economic development in the area covered.

(b) The planning organization must support the strategy committee with a staff skilled in economic planning or related fields.

(c) The planning organization must conduct an initial and continuous study and analysis of the opportunities for economic development and of problems contributing to economic and related distress in the area covered, such as, for example, unemployment, underemployment, outmigration, or low per capita income, and possible solutions to such problems.

(d) Planning organizations covered by this part 303 must submit an initial strategy to EDA in compliance with the requirements of § 303.3, as determined by EDA. Each year thereafter, the planning organization must submit an annual strategy report, acceptable to EDA.

(e) A new or revised strategy is required at least every five years, or sooner if EDA or the planning organization determines that the strategy is inadequate due to changed circumstances. Each strategy must be available for review and comment by appropriate government bodies and interest groups in the area covered. Strategies submitted by Districts require concurrence by the State or States in which they are located, prior to EDA approval. If EDA identifies any deficiencies, it will notify the organization in writing and provide the organization a reasonable opportunity to remedy such deficiencies.

§ 303.3 Requirements for a strategy.

A strategy must contain the following:

(a) An analysis of economic and community development problems and opportunities including incorporation of any relevant material or suggestions from other government sponsored or supported plans;

(b) Background and history of the economic development situation of the area covered, with a discussion of the economy, including geography, population, labor force, resources, and the environment;

(c) A discussion of community participation in the planning efforts;

(d) A section setting forth goals and objectives for taking advantage of the opportunities of and solving the economic development problems of the area serviced;

(e) A plan of action, including suggested projects to implement objectives and goals set forth in the strategy; and

(f) Performance measures that will be used to evaluate whether and to what extent goals and objectives have been or are being met.

PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

Sec.

304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

(a) *Local projects.* Parties eligible as applicants who are interested in a public works, economic adjustment, planning, local technical assistance or university center project grant should contact the appropriate Economic Development Representative (EDR) (or EDA Regional or headquarters office), identified in the NOFA. The EDR or other EDA official is available to provide program information, including the current published NOFA; provide a proposal form approved by the U.S. Office of Management and Budget (OMB), and provide assistance as needed in filling out the proposal form.

(1) After submission of the proposal to the appropriate EDR or Regional Office of EDA, the appropriate Regional Office Project Review Committee (PRC), consisting of at least three EDA officials, will review the proposal. The EDR or other appropriate EDA official will evaluate the proposal under § 304.2, program specific sections of this rule, and the NOFA, if applicable, before submitting it to the EDA Regional Office for its review.

(2) After review by the PRC, EDA will send a letter in a timely manner to each submitter advising either that:

(i) EDA invites the submitter to prepare and present a formal application on a standard application form, with attachments for the type of grant being requested; or

(ii) EDA returns the proposal because of specified deficiencies and suggests resubmission when the deficiencies are cured; or

(iii) EDA denies the proposal for specifically stated reasons.

(b) *National Technical Assistance Research, Evaluation, or Training Projects.* Parties eligible as applicants who are interested in a national technical assistance, research, evaluation, or training project under PWEDA, should make initial contact with EDA in Washington, D.C., at locations identified in the NOFA, for information and assistance concerning proposals and to obtain program information, including a copy of the current NOFA, and OMB approved proposal form. After submission of the proposal to the appropriate EDA Washington, D.C. office, generally, three or more technically knowledgeable EDA officials will review the proposal for relevance and quality.

(1) If EDA determines that the proposal is acceptable under § 304.2, program specific sections of this rule, and the NOFA, if applicable, EDA may by letter invite the submitter to provide an application with a more detailed and comprehensive project narrative. EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter.

(2) If EDA determines that the proposal is not acceptable because of specified deficiencies, EDA will so notify the submitter in writing in a timely manner.

(c) EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter. EDA's invitation to submit an application does not assure EDA funding.

§ 304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

(a) General proposal and application evaluation criteria for projects funded under PWEDA are as follows: EDA will screen all proposals/applications for:

(1) Conformance to statutory and regulatory requirements,

(2) The relative severity of the economic problem of the area,

(3) The quality of the scope of work proposed to address the problem,

(4) The merits of the activity(ies) for which funding is requested, and

(5) The ability of the prospective applicant to carry out the proposed activity(ies) successfully.

(b) EDA will also review applications for conformance with any additional program specific evaluation criteria as stated in applicable sections of these rules or the NOFA.

(c) The NOFA may identify special areas of interest or priority consideration for the period of such NOFA.

PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

Subpart A—General

Sec.
305.1 Purpose and scope.
305.2 Criteria.
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Appendix A to Part 305—Requirements for Approved Construction Projects.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—General

§ 305.1 Purpose and scope.

The purpose of Public Works and Development Facilities grants is to help the Nation's distressed communities revitalize and expand their physical and economic infrastructure and thereby provide support for the creation or retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of distressed areas. The primary focus is on the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by high unemployment, low income, or a special need arising from actual or threatened severe unemployment or severe changes in local economic conditions. These grants are intended to help communities achieve sustainable economic development by developing and expanding new and existing public works and other infrastructure facilities that will help generate long-term jobs and economic growth, improve economic conditions or otherwise enhance and promote the economic recovery of the area.

§ 305.2 Criteria.

(a) A grant may be made under part 305 for the following purposes:

(1) For the acquisition or development of land and improvements for use for a public works, public service or other type of development facility; or

(2) For the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) A grant may be made under part 305 only when:

(1) The project for which the grant is applied for will, directly or indirectly—

(i) Improve the opportunities, in the area where the project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

(ii) Assist in the creation of additional long-term employment opportunities in the area; or

(iii) Primarily benefit the long-term unemployed and members of low-income families;

(2) The project for which the grant is applied for will fulfill a pressing need of the area, or a part of the area, in which the project is or will be located; and

(3) The area for which the project is to be carried out has a strategy and the project is consistent with the strategy.

(c) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

(d) Maximum assistance for each State. Not more than 15 percent of the annual appropriations available to carry out this part may be expended in any one State.

§ 305.3 Application requirements.

Each application for a grant under part 305 must:

(a) Include evidence of area and applicant eligibility;

(b) Include, or incorporate by reference, a strategy, as provided in § 301.3;

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 305.2.

§ 305.4 Selection and Evaluation.

(a) Projects will be selected in accordance with the application evaluation criteria set forth in § 304.2 of this chapter.

(b) In addition to the evaluation criteria set forth in part 304 of this chapter, project selection and evaluation will be made on the basis of whether, and to what extent, the proposed project will:

(1) Assist in creating new or retaining existing private sector jobs and assist in the creation of additional long-term employment opportunities rather than merely transferring jobs from one area of the country to another;

(2) Be supported by significant private sector investment;

(3) Leverage or be a catalyst for the effective use of private, local government, State or other Federal funding that is available;

(4) Likely be started and completed in a timely fashion; and

(5) If the project is located in an area with a stable economy and low distress, provide employment opportunities for residents of nearby areas of high distress.

Subpart B—Other Requirements

§ 305.5 Disbursements of funds for grants.

(a) Disbursements of funds for construction grants are generally made on a reimbursable basis on request of the recipient for reimbursement. Disbursements may be made only:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) On the basis of the work accomplished and the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds is on deposit;

(5) After a determination by EDA that all applicable terms and conditions of the grant have been met; and

(6) After meeting such other requirements as EDA may establish in accordance with other Federal laws, rules and regulations.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

(c) Advances of funds are allowable when disbursement on a reimbursable basis would impose an undue burden, as determined by EDA, upon the recipient.

§ 305.6 Final inspection.

A final inspection will be scheduled by the recipient and appropriate notification given to EDA, when the project has been completed and all deficiencies have been corrected. EDA personnel may attend and participate in the final inspection and, in any event, EDA must be advised of the outcome of such final inspection and the recipient's acceptance of the work.

§ 305.7 Requirements for Approved Projects.

(a) The requirements for approved projects are set forth in this part and the EDA publication, *Requirements for Approved Construction Projects,* Appendix A to this part displayed at EDA's web site, **http://www.doc.gov/eda.** A copy of this publication is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

(b) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

Appendix A to Part 305—Requirements For Approved Construction Projects

OMB Approval No. 0610–0096
Approval Expires 07/31/99

Burden Statement for REQUIREMENTS FOR APPROVED CONSTRUCTION PROJECTS INTERIM NINTH EDITION, OCTOBER 1998:

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. The reason for collecting this information is to enable the Economic Development Administration to monitor construction projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 18 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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Section I—General and Pre-Construction Requirements

1. Basis for Economic Development Administration (EDA) Requirements

A. These Requirements for Approved Projects apply to all awards for construction projects and they are based on Office of Management and Budget (OMB) administrative requirements for Federal grants as set forth in OMB Circulars and on regulations set forth in the Code of Federal Regulations (CFR) Section 13 Chapter III, Section 15 Part 24 and Section 15 Part 14 as they may be amended.

B. These Requirements for Approved Projects are intended to organize and explain the various requirements that apply to Federally-assisted construction programs. They are not intended to derogate, replace, or negate the above cited Federal requirements. Conflicts between these Requirements for Approved Projects and the documents referred to above should be brought to the attention of EDA immediately. Any inconsistences or conflicts shall be resolved in favor of such Federal requirements.

C. EDA, as a Federal agency, is obligated to promulgate policies and procedures applicable to Recipients of EDA grants to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds in accomplishing the purpose for which they

were granted. Pursuant to this obligation, grant terms and conditions require Recipients to comply with changes in regulations and other requirements and policies EDA may issue from time to time. Such changes apply to actions taken by all Recipients of EDA grants, existing and prospective, after the effective date of the changes.

D. EDA's policy is to administer grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic development problems, requests for variances to the requirements of this Requirements for Approved Projects will be considered if they are consistent with the goals of EDA programs, make sound and financial sense, and do not conflict with applicable Federal and regulatory requirements.

2. The EDA Grant Award

The EDA grant award contains mandatory requirements and information vital to the accomplishment of the project. It should be read carefully with particular attention paid to:

A. The description of the project. This description and the corresponding scope of work must be adhered to. Proposed changes to EDA approved projects will be permitted by EDA only if they are necessary to the proper functioning of the project. Enhancements to the project that were not envisioned in the grant award will not be approved for EDA participation.

B. The Standard Terms and Conditions for Title I Public Works and Development Facilities and Title IX Economic Adjustment Construction Projects. The Standard Terms and Conditions contain, by reference or substance, a summary of the pertinent statutes, regulations published in the **Federal Register** or Code of Federal Regulations, Executive Orders or OMB Circulars.

C. The Special Conditions of the grant award. The Special Conditions generally contain two types of information. The first type relates specifically to the grant being awarded. The second type relates to all approved grants and are of recent origin and therefore have not yet been incorporated into the Standard Terms and Conditions. Special attention should be paid to the Project Development Time Schedule. The time schedule can only be extended as a result of a written request from the Recipient and a written approval by EDA. Failure to meet the time schedule is considered a violation of the grant award and may result in action by EDA to suspend and/or terminate the grant. No disbursement of EDA grant funds is permitted when a project has exceeded the time schedule in the grant award unless EDA has given written approval to a time schedule extension.

D. Please note that, unless otherwise stated, EDA funds are available for a period beginning at the time the project is approved and ending five years after the end of the fiscal year in which the project was approved. Any funds not disbursed to the Recipient before the end of that period are automatically canceled and will be deobligated and will no longer be available for payment of costs incurred by the Recipient.

E. Combination construction and nonconstruction grants. If the EDA grant award is for both construction and nonconstruction, the Recipient must obtain prior written approval from EDA before making any fund or budget transfer from nonconstruction to construction or vice versa.

F. Performance Measures. The Standard Terms and Conditions of the EDA grant award make reference to "Core Performance Measures" that require post-construction reports to be submitted to EDA. The first report will be due at the completion of construction of the project. The due dates for the submission of the second and third reports are 3 years and six years after the completion of construction. Questions regarding the content or submission of these reports should be directed to EDA.

3. Initial Actions

A. After the Grant Award has been affirmed, the EDA Regional Office will mail a pre-construction package to the Recipient that includes a copy of "Requirements for Approved Projects", and a list of items that need special attention (such as the project development time schedule), and a list of any unresolved problems identified during the preapproval review process. The EDA Project Manager will then contact the Recipient to offer assistance and guidance, to arrange for an updated schedule of the Recipient's proposed activities and to arrange a Project Management Conference.

B. Because it is the policy of EDA to discourage the undertaking of any construction prior to the submission of an application for financial assistance, special consideration and judgment must be executed if it becomes necessary for a project to proceed prior to award of the EDA grant. Commencement of a project prior to approval of the application for assistance is not prohibited, but it may jeopardize the favorable consideration of such application since, among other things, it raises a rebuttable presumption that funds necessary for the accomplishment of the project are otherwise available and that proper contracting procedures and labor standards may not have been followed.

C. If construction of the project was begun before affirmation of the grant award, the Recipient will be required to document to EDA's satisfaction that it has complied with all EDA requirements, including but not limited to the payment of Davis-Bacon wages from the start of construction and environmental requirements, in order to qualify for EDA reimbursement of costs incurred, if agreed to in the grant award.

4. Project Management Conference

Whenever practical, the Project Management Conference will be held at the Recipient's location; however, if necessary and required for appropriate EDA personnel to be present, it may be held at another location including in the Regional Office. The Recipient's Authorized Representative, Architect/Engineer, attorney and possibly the Recipient's financial representative should be in attendance. Reasonable costs for transportation, meals and lodging for these individuals are an authorized cost under the administrative line item in the project budget. Per diem costs eligible for EDA reimbursement may not exceed the current Federal per diem rate.

5. Selection of the Architect/Engineer

A. If an Architect/Engineer has been selected by the Recipient prior to EDA approval of the grant award and the contract between the Recipient and the Architect/Engineer has not been previously submitted to EDA, it should be submitted as soon after the grant award as possible. If the selection has not been made at the time of grant award the contract should be sent to the EDA Regional Office as soon as possible after its execution by both parties.

B. For EDA to participate in the cost for architect/engineer services the Architect/Engineer must be selected competitively by sealed bids (formal advertising) or by competitive proposals. If the selection is made by competitive proposal the following requirements apply:

(1) Requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources (normally sufficient to secure at least three proposals from qualified proposers);

(3) The Recipient will have a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered;

(4) The Recipient will determine the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Competitor's qualifications will be evaluated and the most qualified competitor will be selected, subject to negotiation of fair and reasonable compensation.

6. The Architect/Engineer Contract for Services

A. The architect/engineer agreement shall provide for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

B. The Architect/Engineer's fee for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on a determination, subject to audit, that the compensation is reasonable.

C. The use of the cost-plus-a-percentage-of-cost and percentage of construction cost forms of compensation are specifically prohibited.

D. The Architect/Engineer's fee shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. The basic fee shall not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services shall be identified in the agreement. Such additional charges may be approved for grant participation by EDA if they:

(1) Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;

(2) Are a proper charge against the project cost; and

(3) Are reasonable for the extra services to be rendered.

E. Regardless of who furnishes the construction inspector, the Architect/Engineer shall be held responsible for making sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

F. All negotiated Architect/Engineer contracts (except those of $100,000 or less awarded under small purchase procedures) awarded by Recipients shall include a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant project) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

G. EDA requirements for the agreement for Architect/Engineer services are contained in Exhibit A–1 to these "Requirements for Approved Projects".

7. Multiple Contracts and Phasing

A. The Recipient is strongly urged to award all contracts for the project construction at one time. Where compelling reasons justify phasing the project, the Recipient must secure the approval of EDA for phasing prior to advertising any portion for bid. The Recipient's request for approval of phasing must include:

(1) Valid reasons justifying the request, and

(2) A statement from the Recipient that it can, and will, fund any overrun that arises in the later phases.

B. Normally EDA will not disburse funds until all construction contracts have been awarded (an exception is the development of a water source when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as called for in the Grant Agreement). Disbursement of grant funds by phases must be approved by EDA. Such approvals will be given only if the Recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time. The Recipient must be capable of meeting incurred costs prior to the first disbursement of EDA grant funds.

8. Recipient Furnished Equipment and/or Materials

The Recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts. It is the responsibility of the Recipient to assure that such equipment and/or materials are adequate for the proposed use. The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participation. The Recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs. Acquisitions of Recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR Part 24 or OMB Circular A–110 (or any DOC rule implementing such Circular, as applicable). The Recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value.

9. Services Performed by the Recipient's Own Forces

A. The Recipient may have a portion or all of the design, construction, inspection, legal services, or other work and/or services in connection with the project performed by personnel who are employed by the Recipient either full-time or part-time (in-house), subject to the following conditions:

(1) EDA must review and approve the Recipient's plan if this method is to be elected by the Recipient.

(2) Such work or services performed by in-house personnel may be considered an eligible cost for EDA reimbursement if in conformance with Office of Management and Budget Circulars A–87, A–21 or A–122, as appropriate.

(3) If a portion of the architect/engineer services is to be performed by in-house forces, the Recipient will submit a statement listing the services to be so performed. This statement should accompany the architect/engineer agreement when it is submitted to EDA for approval.

B. Due to the difficulty in monitoring force account construction and the limited EDA staff available to perform the monitoring, force account construction is strongly discouraged. The force account method of construction may be approved only if:

(1) The Recipient has a special skill required for the construction, e.g., construction of unique Indian structures, or

(2) Substantial cost savings can be demonstrated, or

(3) The Regional Office is satisfied that the Recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors, such as the remoteness of the site combined with a small contract or an overabundance of construction work in the project area, or

(4) It has been determined by EDA that special circumstances require its use to successfully complete the project.

(5) EDA has available the publication, "Guidelines for Force Account Projects", which can be secured from the EDA Regional Office. This publication can be very helpful in ensuring that this type of project activity would be an eligible project cost.

10. Construction Management Services

A. For the purposes of this document, Construction Management is defined as the services of a firm with competent and experienced staff to act as the Recipient's agent to perform all or part of the following:

(1) Aid the project designer to find expedited or less costly methods of construction (Value Engineering).

(2) Monitor the contracting process. This may vary in scope from giving advice to the Recipient to complete control of the contracting process.

(3) Inspection or supervision of inspection of the construction work.

(4) Controlling the expenditure of project funds on a multi-faceted or highly complex project.

(5) Controlling unusual methods of contracting such as "fast track" or "turn-key".

B. EDA will not normally approve the use of a Construction Management firm for projects costing less than $5 million.

C. If the Recipient wishes to use a Construction Manager, EDA will participate in such costs only if EDA approves the proposed or actual contract for such services between the Recipient and the Construction Manager.

D. The compensation for Construction Management services is subject to the same rules as those for architect/engineer services.

E. The Construction Management Agreement must spell out who is responsible for construction inspection, approval of construction and supply contracts, change orders and other areas of possible conflicts (i.e., the division of responsibility and authority between the Recipient, the Architect/Engineer and the Construction Manager).

11. Certification of Acquisition of Land, Easements and Rights-of-Way

A. As required in the Financial Assistance Award the Recipient must furnish evidence satisfactory to the EDA that it has good and merchantable title to the tracts or parcels of land on which buildings, structures, or other project improvements will be located, with any liens or encumbrances noted, and that it has obtained all necessary easements, permits, rights-of-way, franchises, condemnations, and all Federal, State and local approvals necessary to the completion of the project.

B. To aid EDA in making its determination, the Recipient must furnish a description of the sites and rights-of-way on which the project will be located. Exhibit C of this

document is a "Certificate as to Project Site, Rights-of-Way, and Easements," which is a format acceptable to EDA as evidence of the Recipient's title to the real property necessary for the project. The Recipient has the option to prepare the title opinion in a format that meets local law or custom. Any title opinion submitted must be approved by EDA. EDA may require additional documentation.

C. If land acquisition is a part of the project, the EDA project file must be documented to show the basis for determining that the amount of land acquired and the cost of the land is reasonable. If an appraisal is required, a professional appraiser(s) should perform the service. An appraiser registered with a national society and/or licensed by the State will normally be required.

D. Any significant change in the amount and cost of land from that upon which the project approval was based must be approved by EDA to be eligible for EDA reimbursement.

E. No financial assistance under the Act will be approved for a project involving public or privately owned land adjacent to or in the vicinity of a federally owned or operated airfield, unless the Recipient can demonstrate that the proposed project is compatible with the airfield land use plan prepared for that facility.

12. Relocation Assistance

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646), as amended, are applicable to all States and political subdivisions of States and non-profits which are recipients of EDA funding assistance. This Act requires financial and other assistance to persons, businesses, or farm operations displaced from real property acquired for a project financed wholly or in part with Federal funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of this Act.

13. Certification of Adequacy of Treatment of Sewage and Other Waste

A. EDA will not provide financial assistance for projects involving sewer or other waste disposal facilities unless a State permit has been obtained by the Recipient in those States where EPA has delegated authority to the State to certify adequacy of treatment. In those States where EPA has not delegated such authority, a certificate of adequacy of treatment must be obtained from EPA in addition to a State permit.

B. Certification of adequacy of treatment is not normally required under the following conditions:

(1) For single service connections unless an unusual effluent is expected.

(2) For replacement of portions of an existing sewer system where sewage flow resulting from the project is not increased.

(3) For projects which will include only storm drainage as the component and the flow from the storm sewer is not introduced in the existing sanitary sewer system.

C. If EPA certification is required, EDA will not authorize the advertising, bid opening nor a disbursement of grant funds until an unconditional certificate has been obtained. The EDA Project Manager will prepare all EDA requests to EPA for Certificates of Adequacy of Treatment for projects which involve sewage and/or storm drainage facilities. The certification should be obtained as early as practicable after acceptance of the project application by EDA. The Recipient must provide as much of the following information as is required to obtain the certification:

(1) For sanitary sewer system.

a. A general descriptive statement of the project explaining the problem to be eliminated and the proposed method of elimination.

b. A vicinity map of the complete project area showing the location and size of all existing and proposed sanitary and storm sewer lines in plan view, the street system, topographical features, overflows and bypasses.

c. Project design criteria, including the following data:

(i) Industrial and domestic contribution. (Type of industrial contribution should be stated).

(ii) Line and treatment facility sizing and design criteria used therefor.

(iii) Population figures used.

(iv) Number of existing and planned sewer connections.

d. Design criteria to be used for the new treatment facilities. This should include the following data:

(i) Type and extent of existing treatment.

(ii) Industrial and domestic contribution. (Type of industrial contribution should be stated).

(iii) Peak and average flow data.

(iv) Component sizing and design criteria used therefor.

e. For existing treatment facilities to be affected by the proposed project submit the design criteria, permit number and effluent limitations.

f. If available, as-built drawings of existing treatment facilities showing the location, type, number and size of the treatment facilities. If as-built drawings are not available a single line drawing of the existing structures such as lift stations, manholes, pumping stations, etc., will be accepted.

g. Agreements, if any, for treatment by other entities.

(2) For projects involving only storm sewer facilities submit the following dated statement, signed by the Recipient's authorized representative; "This proposed storm water sewer system will be constructed and operated so as to exclude the introduction of domestic sewage and industrial or agricultural waste and will not be connected in any way to a sanitary sewer system."

(3) Upon receipt by EDA, the certification of adequacy of treatment will be reviewed to assure that the certification is unconditional. EDA will not accept a conditional certification (defined as an approval conditioned on the occurrence of a future event such as the future construction of a sewage treatment plant).

14. Project Financing

Prior to obtaining EDA approval of the project's final plans and specifications, the Recipient should furnish evidence to the EDA Project Manager that the Recipient has its share of matching funds either on hand or firmly committed. Any change in the amount or availability of the Recipient's share must be made known to EDA at this time. This is equally true of the interim financing amount and availability.

15. Safeguarding Funds

A. Checks drawn to pay project costs will be signed by the Authorized Representative of the Recipient and may be counter-signed by other representatives of the Recipient if he/she so designates. The Recipient shall retain all bank statements, deposit slips, canceled checks, and related invoices pertaining to these project costs to facilitate final audit.

B. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks as the depository for project funds.

C. Although a separate bank account is not required by EDA, the Recipient is urged to use one for the EDA project as it will be helpful to audit project costs claimed by the Recipient at project closeout.

D. For non-governmental Recipients EDA requires that the Recipient furnish evidence that the custodian of the project funds is bonded in an amount not less than the amount of the EDA grant. If subject to 15 CFR Part 24, the Recipient must furnish assurances that the Recipient's financial management system meets the requirements of 15 CFR Part 24.20, Financial Administration, if this was not accomplished prior to approval of the grant award.

16. Department of Commerce Metric Program

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce.

17. Seasonality

It is EDA policy to promote construction of projects continuously throughout the year. Recipients and their Architect/Engineers are encouraged to design projects so that construction will not be unreasonably curtailed by weather.

18. Design for the Handicapped

A. Any building or facility financed in whole or in part with assistance under the Act must be designed, constructed, or altered, so as to insure ready access to, and use of, such building or facility by the physically handicapped, as required by P.L. 90–480 (42 U.S.C. 4151–4156) and the regulations promulgated thereunder (41 CFR Subpart 101–19.6).

B. Except as otherwise provided in paragraph C of this section, every building, except a residential structure, shall be designed, constructed, or altered in accordance with the minimum standards contained in the "American National Standard Specifications for Making Buildings

and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A 117.1 (1971) approved by and available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

C. The standards established in paragraph (B) of this section shall not apply to:

(1) The design, construction, or alteration of any portion of a building or facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installations or improvements to accommodate the physically handicapped;

(3) The alteration of an existing building or facility, or of such portions thereof, to which application of the standards is not structurally possible.

D. The standards established in paragraph (B) of this section may be modified or waived on a case-by-case basis, provided that the Administrator of the General Services Administration determines that such waiver or modification is clearly necessary.

19. Reporting of Project Progress

A. Recipients are required to constantly monitor project progress to assure that time schedules are being met, project work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity as set forth in the approved grant application.

B. The Recipient is required to submit a project performance report for each calendar quarter. The report will cover the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the timetable established in the Grant Award;

(2) Reasons for delays in those cases where the time table approved by EDA was not met;

(3) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;

(4) All change orders issued up to the date of the report and not previously reported to EDA, and

(5) Other pertinent information including, when appropriate, an analysis and explanation of and cost overruns or high unit costs.

C. The project performance report will be due not later than January 15, April 15, July 15 and October 15 for the immediate previous quarter year. This requirement shall begin with the Recipient's acceptance of the EDA Grant Award and shall end when EDA approves the final grant disbursement.

D. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the Recipient will be required to inform EDA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability of the Recipient to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work than originally projected; or

(3) If any performance review conducted by the Recipient discloses the need for change in the budget estimates, the Recipient is required to submit a request for budget revision.

E. A sample format for the required project performance report is included herein as Exhibit J. The report will be sent to the EDA Regional Office. The Recipient may use a format other than the EDA sample, provided that the information called for in this section is furnished.

F. EDA does not normally permit grant advances. However, where EDA determines that grant advances are necessary and in the best interest of the Government and the Recipient, the Recipient will be required to submit with the project performance report a Report of Federal Cash Transactions. The EDA Regional Office shall furnish the required forms for this report.

G. EDA will not process any requests for grant disbursement from Recipients with delinquent performance reports.

20. Environmental Requirements

A. EDA is required by law to insure that proper environmental review of its actions take place; that there is a proper balance between the goals of economic development and environmental enhancement in its actions; and, that adverse environmental impacts from its actions are mitigated or avoided to the extent possible.

B. Environmental assessments of EDA actions are conducted in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et. seq.), the Environmental Quality Improvement Act (42 U.S.C. 4371 et. seq.), The Clean Air Act, as amended (42 U.S.C. 7401 et. seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.), The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271 et. seq.), the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4002 et. seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Section 1500–1508), as specified in EDA Directives 17.02–2, 17.02–7, and 17.04, as hereafter amended or superseded. Directives are available from any EDA office.

C. EDA recipients are subject to Federal, state and local requirements concerning hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Public Law 96–510 (1980), as amended by Public Law 99–499 (1986), 42 U.S.C. 9601–9675; and the Resource Conservation and Recovery Act (RCRA), Public Law 89–272 (1965), as amended by Public Law 94–580 (1976), Public Law 96–482 (1980) and Public Law 98–616 (1984), 42 U.S.C. 6901–6991.

21. Project Revisions

After Recipient acceptance of the EDA grant award, any change to the project as described in the grant award must be reviewed and approved by EDA. To be eligible for EDA financial participation the proposed revision must meet certain conditions. See Section V of this document for guidelines on securing EDA approval of proposed project revisions.

Section II—Contracting For Project Construction

1. Contracting Standards

A. For States: If a State is the recipient of the EDA grant award, the State may follow the same policies and procedures it uses for procurements from its non-Federal funds provided that the State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A–87 will be applicable.

B. For Other than States: Recipients of EDA grants other than States may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards contained in these "Requirements for Approved Projects". Recipients may request EDA to approve self-certification of their procurement system. Such self-certification shall not limit EDA's right to survey the system. The Recipient must cite specific procedures, regulations, standards, etc. as being in compliance with EDA and other Federal requirements and have its system available for review. In the absence of written procurement regulations issued by the Recipient which meet the following requirements, applicable federal procurement standards shall govern.

C. Contract Administration System: Recipients will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

D. Standards of Conduct: Recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the Recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firms elected for award:

(1) an employee, officer or agent

(2) any member of his/her immediate family

(3) his or her partner

(4) an organization which employs, or is about to employ, any of the above.

The Recipient's officers, employees or agents shall neither solicit nor accept

gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements except that Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Recipient's officers, employees, or agent, or by contractors or their agents.

E. State and Local Agreements: To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

F. Surplus Property: Recipients are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

G. Value Engineering: Recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. EDA will not normally approve value engineering costs for construction contracts with estimated costs of less than $1,000,000. Value engineering is defined for the purposes of this paragraph as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. Value engineering, as a function, is done separately from the architect/engineer design by a person or firm not controlled by the architect/engineer.

H. Awards to Responsible Contractors: Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.

I. Maintenance of Records: Recipients will maintain records sufficient to detail the significant history of each procurement affecting the EDA assisted project. These records will include, but are not necessarily limited to, the rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price.

J. Time and Material Contracts: Recipients will use time and material type contracts only:

(1) After a determination that no other type of contract is suitable, and

(2) If the contract includes a ceiling price that the contractor exceeds at its own risk.

K. Settlement of Issues: Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims. These standards do not relieve the Recipient of any contractual responsibilities under its contracts. EDA will not substitute its judgment for that of the Recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

L. Protest Procedures: Recipients will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to EDA. A protestor must exhaust all administrative remedies with the Recipient before pursuing a protest with EDA. Reviews of protests by EDA will be limited to:

(1) Violations of Federal law or regulations (violations of State or local law will be under the jurisdiction of State or local authorities); and

(2) Violations of the Recipient's protest procedures for failure to review a complaint or protest. Protests received by EDA other than those specified above will be referred to the Recipient for resolution.

2. Competition in Procurement

A. All procurement transactions affecting the EDA project will be conducted in a manner providing full and open competition consistent with the standards contained herein. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business,

(2) Requiring unnecessary experience and excessive bonding,

(3) Noncompetitive pricing practices between firms or between affiliated companies,

(4) Noncompetitive awards to consultants that are on retainer contracts,

(5) Organizational conflicts of interest,

(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(7) Any arbitrary action in the procurement process.

B. Recipients will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in these Requirements for Approved Projects preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographical location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

C. Recipients will have written selection procedures for procurement actions. These procedures will ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

D. Recipients will ensure that all lists of prequalified persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, Recipients will not preclude potential bidders from qualifying during the solicitation period.

3. Acceptable Methods of Procurement

A. Procurement by Small Purchase Procedures: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000) in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources (normally at least three quotes will be required).

B. Procurement by Sealed Bids (formal advertising): Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction. In order for sealed bidding to be feasible, the following conditions should be present:

(1) A complete, adequate and realistic specification or purchase description approved by EDA is available,

(2) Two or more responsible bidders are willing and able to compete effectively for the business, and

(3) The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

C. If sealed bids are used, the following requirements apply:

(1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids.

(2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

(3) All bids will be publicly opened at the time and place prescribed in the invitation for bids.

(4) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

(5) Any or all bids may be rejected if there is a sound and properly documented reason.

D. Procurement by Competitive Proposals: The technique of competitive proposals may be used on EDA projects to secure architect/engineer services and is conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals will be publicized and will identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.

(2) Proposals will be solicited from an adequate number of qualified sources (normally EDA requires responses from at least three responsible firms).

(3) Recipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees.

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

(5) Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

E. Procurement by Noncompetitive Proposals: This technique requires EDA prior written concurrence and is conducted by solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(1) The item is available only from a single source; or

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or

(3) After solicitation of a number of sources, competition is determined inadequate.

4. Unacceptable Method of Procurement

The cost-plus-a-percentage-of-cost method of contracting is unacceptable for use on EDA assisted projects. EDA grant funds may not be used to reimburse costs incurred under such a contract.

5. Contracting with Disadvantaged Firms

A. The Recipient shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises;

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

6. Contract Cost and Price Analysis

A. Recipients must perform a cost or price analysis in connection with every procurement action including contract modifications (change orders). The method and degree of analysis is dependent upon the facts surrounding the particular procurement situation, but as a starting point, Recipients must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural/engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

B. Recipients will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates in the surrounding geographical area for similar work.

C. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see OMB Circulars A–21, A–87 or A–122 as applicable). Recipients may reference their own cost principles that comply with the applicable Federal cost principles.

D. The cost-plus-a-percentage of cost and percentage of construction cost methods of contracting shall not be used.

7. Advertising for Bids

A. In the absence of State or local law to the contrary, the advertisement for bids should appear in publications of general circulation a minimum of four times within a 30 day period prior to the opening of bids.

B. When the estimated construction cost exceeds one million dollars, the advertisement for bids should appear in publication(s) with national circulation a minimum of four times within the 30-day period prior to the opening of bids.

C. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids.

D. Generally, a minimum of 30 days should be allowed for submission of bids.

8. Bonding and Insurance Requirements

A. For construction or facility improvement contracts or subcontracts exceeding $100,000 the following minimum bonding requirements apply:

(1) The bonding company selected must be listed in U.S. Treasury Department Circular 570.

(2) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(3) A performance bond on the part of the contractor for 100 percent of the contract price.

(4) A payment bond on the part of the contractor for 100 percent of the contract provisions.

B. The Recipient shall require that each construction contractor and all subcontractors maintain, during the life of its contract, Workmen's Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by the nature of the work and State and local law. When appropriate, the Recipient shall require the prime contractor to provide Builder's Risk Insurance as part of the construction contract. In any case, the responsibility for seeing that coverage is obtained and kept in force remains with the Recipient. Such coverage is an eligible project cost, when obtained by the Recipient directly.

9. Bid Schedules for Alternative Materials

A. Should the Recipient, acting upon the advice of his/her consultant Architect/Engineer desire to obtain competitive prices for differing materials, such bids should be requested on the basis of "Bid Schedule A", "Bid Schedule B", etc. Bid Schedules, as used herein, refer to the method used to obtain bids on more than one material to be used for the same purpose. As an example, if 2,000 linear feet of sewer line were to be installed, Bid Schedule A might call for the pipe material to be cast iron. Bid Schedule B might call for the pipe material to be ductile iron. Bid Schedule C might call for the material to be asbestos cement, etc.

B. If bids are asked for on the basis of two or more Bid Schedules as set forth above, the bid documents must clearly set forth that the contract will be awarded to the bidder having proposed the lowest responsive bid within the amount of funds announced as available by the Recipient to finance the contract and including the Bid Schedule upon which that Contractor bid the lowest price.

C. If the Recipient wishes to use a bid material which will result in increased cost, EDA may permit the use of the material chosen, but the amount of grant participation by EDA shall remain based on the lowest responsive bid. The contract must be awarded to the lowest bidder determined in accordance with the procedure described above unless a deviation is specifically allowed in applicable State and local law.

10. Non-EDA Work

A. If the Recipient plans to add work that is an addition to the approved EDA project, the following will apply:

(1) The advertisement for bids, all bid documents, and contract documents shall clearly define and separate the EDA portion of the work from the non-EDA portion.

(2) The Recipient may offer for bid and award work in addition to the EDA portion, provided:

a. the Recipient understands that EDA will participate in the EDA portion only;

b. the additional work does not adversely affect the original intent of the EDA project or its economic impact, as approved.

(3) Contracts shall be so drawn that the EDA-assisted portion of the work is clearly identifiable at all times during construction.

(4) Underruns in the EDA project cannot be applied to assist the Recipient in funding work which is not a part of the EDA project. It is the responsibility of the Recipient to pay for all added work in full.

(5) In the event of an overrun on the EDA portion of the work, it is the Recipient's responsibility to supply the necessary additional funds and to deposit such funds in the project account. A revised project budget estimate will then be prepared which will clearly show the portion of project cost to be shared by EDA and the portion the Recipient must fund in its entirety. In addition, the overall percentage participation of EDA in the project shall be clearly identified.

B. When the EDA project is included with non-EDA assisted work, the Recipient will normally award to the lowest bidder on all the work. However, EDA participation will be based on the lowest bid for the EDA-assisted portion. When this occurs, the Recipient will prepare a memorandum to EDA, which will clearly present the details of the award.

11. EDA Review of Proposed Procurement Documents

A. If a Recipient wishes to have its procurement system certified by EDA, it should follow the procedures in Section II 1 B of these "Requirements for Approved Projects". If EDA certifies the Recipient's procurement system, the Recipient may not have to submit proposed bid documents to EDA for approval if instead it submits an executed copy of the Checklist for Construction Contracts (see Exhibit A–2).

B. EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the EDA grant award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

C. A pre-bid review of proposed construction bid documents by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently $100,000) and the Recipient's procurement procedures and operations have not been certified by EDA and/or do not comply with the procurement standards of this document, or

(2) The scope of the work as approved in the EDA grant award has changed, or

(3) The proposed bid documents specify one or more "brand name" products.

D. A pre-award review by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently $100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation, or

(2) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement, or

(3) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold, or

(4) The Recipient's procurement procedures or operation fails to comply with the procurement standards in this Requirement for Approved Construction Projects, or

(5) The procurement, which is expected to exceed the simplified acquisition threshhold, specifies a "brand name" product.

E. It will greatly expedite EDA's review of the proposed bid documents if the Recipient completes the Checklist for Construction Contracts (Exhibit A–2), has it signed by the Recipient's authorized representative and submits it to the EDA regional office with the proposed construction bid package for approval. EDA review and approval of the proposed contract documents will also be expedited if the Recipient uses standardized documents such as "Contract Documents for Construction of Federally Assisted Water and Sewer Projects" jointly prepared, endorsed by, and available from, the Environmental Protection Agency, the Rural Development Agency, the Department of Housing and Urban Development, the Associated General Contractors of America, the Consulting Engineers Council and the National Society of Professional Engineers. Standardized contract forms available from the American Institute of Architects are also acceptable to EDA.

F. Until EDA has reviewed and approved the Recipient's proposed contracts and related procurement documents, the Recipient will be proceeding at its own risk regarding the eligibility of costs incurred.

12. Construction and Services Contract Provisions

A. The proposed contract documents to be part of the invitation for bids should contain at least the following:

(1) An Index.
(2) Advertisement for Bids.
(3) Information for Bidders.
(4) Bid Form.
(5) Contract Form.
(6) Bid Bond.
(7) Performance Bond.
(8) Payment Bond.
(9) General Conditions.
(10) "Supplemental General Conditions" (to be furnished by EDA).
(11) Technical Specifications.
(12) Working Drawings.
(13) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246 and 41 CFR 60–4) (Exhibit E).

B. The package sent to EDA should also contain a documentation of the estimated cost for the proposed contract (see Section II 6. of these "Requirements for Approved Projects").

C. The Recipient shall include the following contract provisions or conditions in all procurement contracts and subcontracts for the EDA assisted project.

(1) Contracts in excess of the simplified acquisition threshold (currently $100,000) shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) Contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the Recipient including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of $10,000 by the Recipient and their contractors or subrecipients shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All contracts and subgrants in excess of $2,000 for construction or repair shall

include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he/she is otherwise entitled. The Recipient shall report all suspected or reported violations to EDA.

(5) All construction contracts in excess of $2,000 awarded by the Recipient and Subrecipients shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Recipient shall place a copy of the current prevailing wage determination issued for each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Recipient shall report all suspected or reported violations to EDA.

(6) Where applicable, all contracts awarded by the Recipients and Subrecipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of this Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1–½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(7) Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Grants, Contracts and Cooperative Agreements".

(9) All negotiated contracts (except those awarded by small purchases procedures) awarded by the Recipient shall include a provision to the effect that the Recipient, EDA, the Office of Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(10) The Recipient shall require contractors to maintain all required records for three years after the Recipient makes final payments and all other pending matters are closed.

(11) Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to EDA and the regional office of the Environmental Agency (EPA).

(12) Recipients and subrecipients must contain mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan, where applicable, issued in compliance with the Energy Policy and Conservation Act (P.L. 94–165).

(13) EDA may require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

(14) The EDA project number should appear on all drawings and on the face sheet of specification documents. In the case of a single sheet layout included in folders, the project number should be shown on the face of the sheet or at a point which will be outside when folded. If the layout consists of two or more sheets, all sheets should be so identified.

(15) In all cases, a reasonable time must be allowed to perform the work and the contract documents should stipulate the number of calendar days allowed for completing the work.

(16) EDA urges that a liquidated damage provision be included in all construction contracts with a specific dollar amount of daily damage to be assessed against the Contractor for each calendar day beyond the stipulated completion date. The daily amount of damages shall be a reasonable and adequate amount based upon the circumstances and estimated dollar cost of the individual contract, or the revenue-producing capacity of the project. The liquidated damages provision provides the Recipient with a feasible means of securing compensation for damages for delays in completing the work. Without such a provision, the proving of such damage is difficult and usually entails court action. In the event that the Recipient objects to the inclusion of a liquidated damages provision in construction contracts, a statement of the reasons for objecting should be submitted with the proposed contract documents.

(17) The Architect/Engineer should be encouraged to use deductive alternates which do not alter the scope of the project, affect the economic impact or project revenue, or change the project justification. Thus, should the bids exceed the cost estimate, deductive alternates may be used to reduce the cost to the extent necessary to come within the approved funds. Deductive alternates, where used, must be listed in the order to be used on the bid documents and *must* be taken in that order when awarding the contract. Deductive alternates should not be used for material. EDA recommends that unit price bidding based on quantities estimated by the Architect/Engineer so as to arrive at a total base bid be used to the greatest practical degree.

(18) The limiting of materials and/or equipment to a particular manufacturer or brand name ("sole source") must have EDA approval to be eligible for reimbursement from grant funds unless an "or equal" clause is included in the equipment specifications.

(19) EDA discourages the use of performance type specifications. If the Recipient or his/her Architect/Engineer wishes to use performance type specifications, written approval must be secured from EDA.

(20) See Section II, paragraph 8 of these "Requirements for Approved Projects" for bonding and insurance requirements.

(21) Exhibit B, "Supplemental General Conditions" found in the Exhibits section of these "Requirements for Approved Projects" must be made a part of the construction bid and contract documents unless all EDA and other Federal requirements contained therein are covered elsewhere.

(22) The bidding documents should stipulate that:

a. the Recipient may consider any bid informal which is not prepared and submitted in accordance with the provision of the bid documents and may waive any informalities or reject any and all bids;

b. any bid may be withdrawn prior to the time scheduled for the opening of bids but not afterward; and

c. any bid received after the time and date specified for the bid opening shall not be considered.

(23) Stated allowances may be used for certain items such as door and/or window hardware with the approval of EDA.

(24) All of the above documents shall be included in the sets of bidding documents to be issued to prospective bidders, with any changes or additions recommended by EDA. The responsibility for complying with all State and local laws rests with the Recipient.

(25) Exhibit E to these "Requirements for Approved Projects" is a notice which provides goals and timetables for minority and female participation in construction work. This notice must be included in all invitations for bids for construction projects for which the prime contract and any related subcontracts are in excess of $10,000. EDA shall furnish the Recipient with the appropriate goals and timetables to be inserted in the above notice. In addition, the requirements of the above notice have been provided in the "Supplemental General Conditions" (Exhibit B) as the Standard Federal Equal Employment Opportunity Construction Contract Specifications.

(26) EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the Grant

Agreement and does not imply nor attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

(27) In the absence of State or local law to the contrary, the advertisement for bids will conform to the requirements of Section II 7 of these "Requirements for Approved Projects".

(28) Only complete sets of plans and specifications should be issued to prospective contractors and/or subcontractors.

(29) Generally, a minimum of 30 days should be allowed for submission of bids.

13. Wage Rates

A. Wage rates paid for labor must not be less than the prevailing area wages as determined by the Secretary of Labor and embodied in the construction contract, pursuant to the provisions of the Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a–7). EDA will secure the wage determination for the Recipient based on the following.

B. Most areas of the United States are covered by existing Department of Labor (DOL) wage decisions published and updated at irregular intervals. If the Recipient's project is in a covered area, the EDA Regional Office will supply copies of the applicable wage decision upon the Recipient's request. If the area is not covered by an existing wage decision the following procedure will apply. Between 60 and 45 days prior to the anticipated date of advertising for bids, the Recipient shall send to the EDA Regional Office a request for a wage determination (also referred to as a wage decision) defining the type of construction category (Building, Heavy or Highway) with each feature of work listed under the appropriate category. In addition, the crafts or skills needed for each category shall be listed and any pertinent wage information available submitted, such as statements from the secretaries of the Association of General Contractors and the Building Trades Council having jurisdiction. In isolated communities, certified copies of current contractors' payrolls for similar type work in the area concerned may accompany the request. When a State wage determination is required by State law, the Recipient must secure a schedule of rates from the State Labor Department and incorporate both State and Federal schedules of rates in the contract documents. The Recipient is responsible for seeing that the wage rates shown in the contract documents reflect not less than the higher of the Federal or State rate by trade. EDA will secure the wage decision from the appropriate Department of Labor Regional Administrator.

C. Each feature of work scheduled must call for Building, Heavy, or Highway wage rates, if applicable. Where a proposed contract involves only one type of construction, the specifications shall so state. Where more than one type of construction is involved, the specification shall identify, as specifically as possible, into which category of construction each work item falls. This decision, made by the Recipient in consultation with the Architect/Engineer, shall be based on local or area practice to insure fairness to all prospective bidders on construction contracts to be awarded.

D. Wage decisions are only valid for a 120-day period and extensions of wage decisions shall not be granted. If the decision expires without being superseded prior to award of contract, a new wage decision must be secured and included in the proposed contract documents prior to award. The request for a new wage decision shall be addressed to the EDA Regional Office. If the wage rate included in the Invitation for Bids is superseded, the new wage rate must be substituted if the new wage rate decision is dated over ten days prior to the bid openings; otherwise the old wage rate shall apply.

E. Contractors and subcontractors shall be advised that upon acceptance of their bids, they are obligated to pay not less than the established wage rate unless otherwise required by law. Wage rates need not be listed for non-manual workers, including executive, supervisory, administrative and clerical employees.

F. Wage rate schedules are generally not required for contracts between Recipients and railroads and other public utilities for construction services to the extent that the services are performed by personnel employed directly by the utility concerned and paid at rates prevailing for the type of work and utility concerned.

G. EDA or the Department of Labor may cause investigation to be made as may be necessary to assure compliance with the labor standard clauses required by the regulations contained in 29 CFR, Part 5 and the applicable statutes listed therein. Complaints made to, or which come to the attention of the Recipient, shall be called to the attention of the EDA Regional Office.

H. The Recipient shall require each contractor and subcontractor to submit, in compliance with the Davis-Bacon Act, a weekly payroll record. These records shall be retained for a period of three years from the date of completion of the contract and in a manner reasonably accessible. Such payroll records shall be made available at all times for inspection by EDA, the Department of Commerce Inspector General or their authorized representative, and by authorized representatives of the Department of Labor. The Recipient shall file these records by contract number. If the Recipient wishes to use another system for maintaining these records, the EDA Regional Office shall be consulted to avoid any violations of the Privacy Act. The Recipient shall check the submitted payroll records to assure they contain the following:

(1) A properly completed payroll Form WH–347, or

(2) If another form is used, all the information required by Form WH–347, including the name, address, correct job classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid for all employees; and the Statement of Compliance, properly executed as shown on the reverse side of Department of Labor Form WH–347, "Payroll Reporting Form" containing all of the information requirements including the Statement of Compliance. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

I. Where a construction contract has been awarded and work has commenced on the EDA approved project prior to acceptance of the Grant Award, wage rates and requirements listed herein shall be retroactive to the date of start of construction.

14. The Bid Opening

A. Whether or not an EDA representative is present at the bid opening, the Recipient will furnish the following to the EDA Regional Office:

(1) a statement signed by the Authorized Representative of the Recipient, certifying that all bids were received sealed and were opened in his/her presence;

(2) copy of official minutes of the bid opening;

(3) a copy of the bid tabulation.

15. Overrun at the Bid Opening

A. If the lowest responsive bid received at the bid opening exceeds the amount of funds available to finance the contract:

(1) the Recipient may without taking deductive alternates:

a. reject all bids;

b. augment the funds available in an amount sufficient to enable award to the lowest responsive bidder.

(2) The Recipient may take deductive alternates in the order shown in the Invitation for Bids until at least one of the responsive bids less deductive alternates result in a price within the funds announced as available. Then award may be made to that bidder. It should be noted that this procedure may change the order of bidders and thus extra care must be exercised to insure that:

a. all responsive bids are considered;

b. deductive alternates have been taken in the exact order shown in the Invitation for Bids; and

c. only sufficient deductive alternates have been taken to reduce at least one of the responsible bids to or below the amount of funds announced as available.

(3) In no event, however, should the Recipient negotiate with the low bidder or other bidders in order to reduce the cost within the funds available.

B. If the low bid less all deductive alternates exceeds the funds available, the Recipient may:

(1) furnish the additional funds required. If the Recipient intends to finance the overrun from his/her own funds, he/she will furnish a written letter or statement to the EDA regional office affirming his/her intention to finance the overrun and indicating the source of funds. If such funds are to be borrowed an appropriate supplemental financial plan must be prepared by the Recipient; or

(2) reject all bids and have the Architect/Engineer redesign the project, within the approved scope, to reduce the cost to, or below the approved amount and readvertise; or

(3) request additional EDA financial assistance as a last resort. However, before the Regional Office can accept a request for additional EDA funds, it will be necessary for the Recipient to furnish the following documentation to the EDA Regional Office:

a. a written statement from the Architect/Engineer giving his/her professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and

b. a written statement from the Authorized Representative or governing body of the Recipient that the Recipient cannot furnish the additional funds required, giving the reasons plus documentation and/or statistics relative to the financial condition of the Recipient.

16. Underrun Funds at the Bid Opening

A. If the total amount of construction contract awards is less than the approved line item for construction and/or any of the other line items in the EDA approved budget experiences an underrun such that the total expected actual cost will be less than the cost estimated in the EDA approved budget, EDA must be notified.

B. Underrun funds resulting from the situation described in paragraph A above may not be used to enhance or increase the scope of the project.

17. EDA Approval of the Contract Award

A. EDA must review and approve the award of all necessary contracts in order for the cost to be eligible for EDA reimbursement. However, pending EDA approval the Recipient may issue the Notice to Proceed permitting the work to go forward.

B. To obtain approval of the contract award. the Recipient shall submit to the EDA Regional Office:

(1) those items listed in Section II, Paragraph 13A and 13B of these "Requirements for Approved Projects", if not furnished previously;

(2) evidence of bidder's qualification. Architect/Engineer must review and add his/her opinion of bidder's qualifications;

(3) evidence of publication of advertisement for bids;

(4) certified evidence of the Recipient's ability to provide the financial participation required by the Grant Agreement;

(5) evidence of ability to provide construction financing;

(6) evidence of ability to provide the movable equipment and furnishings necessary to make the project a usable facility;

(7) a résumé of Resident Engineer's or Resident Inspector's qualifications for approval if not previously furnished;

(8) evidence of establishing a project accounting system for the project; and

(9) evidence of bonding of those persons authorized to draw upon the project funds as required by State and/or local law.

C. Prior to awarding any contract the Recipient should contact the EDA Regional Office so that the contractor can be checked against the list of contractors debarred, ineligible, or suspended from dealing with the Federal government or indebted to the United States. Costs for work done by such contractors are ineligible for EDA financial participation.

18. Executed Bid Award

A. After the bid award has been made, if EDA requests it, the Recipient will submit to EDA one set of bound executed contract documents. Each set shall consist of:

(1) all documents furnished the bidder prior to receipt of bids and upon which base bids were submitted;

(2) a signed or certified copy of the contract or agreement executed between the Recipient and the Contractor, including all addenda as issued, with necessary blanks completed;

(3) a copy of performance and payment bonds, dated the same date or subsequent to the date of the contract, supported by a properly signed and dated power of attorney, issued by the Surety. The Surety must be authorized to transact a fidelity and surety business in the State where the project is located and must be on the Treasury Department's current Circular 570, as "Companies Holding Certificate of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies". The underwriting limitations provided for in the said Treasury Department listing shall be applicable. A bound set of final plans are to be submitted with each set of contract documents.

(4) copies of insurance policies and/or certificates described in paragraph 5 of Section III of these "Requirements for Approved Projects".

19. Preconstruction Conference

Before the start of construction, an EDA representative may arrange to meet with the Recipient, the Architect/Engineer, and the Prime Contractor(s) to discuss EDA requirements on such matters as project supervision, on-site inspections, progress schedules, reports, payrolls, payments to contractors, contract change orders, insurance, safety, and other items pertinent to the project. At this conference, all parties shall be prepared to discuss any anticipated problems or issues that could affect the timely completion of the project.

Section III—Construction Procedures

1. Recipient Responsibilities

A. The Recipient is responsible for expeditiously prosecuting the project to completion, for monitoring project progress, for keeping EDA advised of project progress, for adequate construction inspection, for prompt payment of costs incurred for the project and for monitoring the contractor's compliance with local, State and Federal construction requirements.

B. The Recipient, with the assistance of its architect/engineer, is responsible for the accuracy and completeness of the plans, specifications and other contract documents. The Recipient, with the assistance of its architect/engineer, is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, and compliance with applicable building codes or ordinances. EDA review of proposed and/or final contract documents does not in any way relieve the Recipient of the foregoing responsibilities.

2. Employment of Local Labor

A. The maximum feasible employment of local labor shall be made in the construction of EDA assisted public works projects. The Recipient should supply a list of the successful bidder's anticipated labor requirements to the applicable Federal/State Employment Office far enough in advance of the start of construction so that the employment office may provide the contractor with the names of suitable local personnel from its rolls.

B. The contractor shall be required to include the above requirement in every subcontract for all work on the EDA assisted project.

3. Construction Progress Schedule

A. If requested by EDA, the Recipient will secure from the contractor or Architect/Engineer, and furnish a copy to EDA, of the predicted construction progress chart and a schedule of amounts for contract payments.

B. The construction progress chart should be updated monthly by the Recipient, the Architect/Engineer or the contractor. A copy for each month will be attached to the Quarterly Performance Report. The EDA Regional Office will advise as to the content of the report. The report will be due quarterly throughout the construction of the project.

C. After a review of the project the EDA project manager may discuss with the Recipient, or the Recipient's representative, the appropriate type of progress chart. The bar graph type of chart will generally be acceptable but some type of network analysis may be more appropriate for projects with cost in excess of $1 million and with greater than average complexity. The cost for such network analysis may be an eligible project cost if EDA approves its use.

4. Construction Sign

A. The Recipient shall require the prime contractor to secure or construct, erect, and maintain in good condition throughout the construction period, a sign or signs, (specifications for the sign are included as an exhibit to this document), at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if site conditions so warrant.

B. Project signs will not be erected on public highway rights-of-way.

C. Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area if any possibility exists for obstruction to traffic line of sight.

D. Whenever EDA site sign specifications conflict with State law or local ordinance, the EDA regional director may modify such conflicting specifications so as to comply with the State law or local ordinance.

E. When appropriate, EDA may require that a bilingual project sign be used. Specifications for such a sign are contained in this document in Exhibit B.

5. Inspection of Construction

The Recipient must provide competent project inspection during the construction period. The inspector may be an employee of the Recipient, an employee of the architect/

engineer, or a person(s) under contractual control of the Recipient. The extent of the inspection and the selection of the inspector must be approved by EDA. Pertinent information regarding the proposed inspector's experience, qualifications, salary plan and the scope of his responsibilities and authorities shall be furnished to EDA for this purpose.

6. Occupancy Prior to Completion

A. If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the Recipient must:

(1) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;

(2) secure the written consent of the contractor;

(3) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and.

(4) secure permanent fire and extended coverage insurance, where applicable, including a permit to complete construction.

B. EDA may require from the Recipient an assurance to protect the EDA investment in the project, prior to the approval of occupancy and/or use of all or any part of the project before completion of the construction.

7. Contractor Payrolls

A. Each contractor and subcontractor must be required by the Recipient to maintain weekly payroll records. These records are to be retained for a period of three years from the date of project closeout. Each contractor and subcontractor must also be required to furnish a copy of each payroll to the Recipient. The Recipient is responsible to assure that the payrolls meet the following standards:

(1) Wage rates and fringe benefits paid agree with the Department of Labor wage rate, or State wage rates if they are higher.

(2) Name, address, and Social Security number and work classification is shown for all employees.

(3) The Certificate of Prime Contractor on the reverse side of the Form WH–347 has been properly executed. If EDA has approved a substitute form for the WH–347 the substitute form must contain the certification as well as all of the above standards.

B. EDA may require that copies of the weekly payroll records be furnished to the applicable EDA regional office.

8. Civil Rights Requirements

The regulations issued under Executive Order 11246 (41 CFR 60–1.7) require the submission of compliance reports regarding civil rights. Standard Form 100 is to be used for this purpose. The requirement applies to any person or entity subject to Executive Order 11246 who:

(1) has 50 or more employees; and

(2) is a prime contractor or first-tier subcontractor; and

(3) has a Federally assisted contract, subcontract or purchase order amounting to $50,000 or more.

9. Contract Change Orders

A. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the Recipient and accepted by the contractor. All contract change orders must be concurred in by EDA even if the Recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced. The work on the project may continue pending EDA review and concurrence in the change order but the Recipient should be aware that all such work is at the Recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.

B. The Recipient or its architect/engineer shall perform a cost or price analysis in connection with every change order which affects the contract price.

C. Proposed contract change orders will be prepared by the Recipient in sufficient quantity that two copies can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications, and plans will be attached. Before submission to the EDA regional office, the change order must be signed by the Recipient, the Architect/Engineer, and the contractor. The Recipient will be notified in writing of EDA concurrence if the change order is acceptable to EDA.

D. EDA will not approve change orders which change the purpose and intent (the scope) of the project. Change orders that add minimally or incidently to the cost of the project but do not change the project scope may be approved by EDA provided that either:

(1) the Recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or

(2) there are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

E. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA approved project budget. EDA approval of change orders must be based on a finding by EDA that the work called for in the change order *is within the project scope and* is necessary for the proper functioning of the project.

F. Normally change orders should be submitted to EDA for approval as the changes occur.

G. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. When actual quantities differ substantially from those estimated quantities upon which the contractor's bid was based, a "substantial variation" results. A substantial variation is usually considered to be for actual quantities in excess of 115% to 120% or less than 85% to 90% of the estimated quantities. Substantial variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity which will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract.

10. Inspection for Final Acceptance

A. A final inspection will be scheduled by the Recipient when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed.

B. The final inspection will be made by representatives of the Recipient, the architect/engineer and the contractor(s). EDA must be given advance notice of the final inspection so that an EDA representative may participate, at the option of EDA.

11. Specific Requirements for Subcontractors

A. The Recipient is responsible to ensure that the contractor(s) causes appropriate provisions to be inserted in all subcontracts to bind subcontractors to EDA contract requirements as contained herein, in 15 CFR Part 24, or in 15 CFR Part 14 as appropriate.

B. Each subcontractor must agree to comply with all applicable Federal, State, and local requirements in addition to those set forth in this section.

C. Prior to the approval of any subcontract EDA will check the proposed subcontractor against the listing of contractors debarred, ineligible, suspended or indebted to the United States from contractual dealings with Federal government departments. The work performed by any such contractor or subcontractor will be ineligible for reimbursement wholly or partially from EDA grant funds.

D. All subcontracts in excess of $10,000 shall include, or incorporate by reference, the equal opportunity clause of Executive Order 11246.

E. All subcontracts must contain a nondiscrimination clause.

F. Each subcontract must contain a requirement for compliance with the Davis-Bacon and related acts.

G. Each subcontractor must submit weekly payroll records and a weekly statement of compliance. These documents should be submitted to the prime contractor. The subcontractor can satisfy this requirement by submitting a properly executed Department of Labor Form WH–347.

H. Each subcontract with every subcontractor must contain a clause committing the subcontractor to employment of local labor to the maximum extent possible.

I. The Standard Terms and Conditions of the grant agreement impose other requirements which the Recipient will be required to have the prime contractor impose on the subcontractor.

J. All subcontractors who meet the conditions set forth in Paragraph 9B of this Section III must submit a completed Standard Form 100 by March 30 of each year.

K. Subcontractors performing work in areas covered by published goals for minorities will be required to report monthly on Form CC–257.

12. Safety

A. All contractors on EDA assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Recipient or its Architect/Engineer should periodically check the contractor's compliance.

B. The Recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA assisted project.

Section IV—Financial Administration

1. Standards for Financial Management Systems

A. A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its Subrecipients and cost-type contractors, must be sufficient to:

(1) Permit preparation of reports required by this document and applicable regulations and statutes cited herein, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

B. The financial management systems of other Recipients must meet the following standards:

(1) Financial reporting: Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records: Recipients must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal controls: Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Recipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget controls: Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable costs: Applicable OMB cost principles, agency program regulations, and the terms of grant agreements will be followed in determining the reasonableness, allowableness, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by Recipients must be followed whenever advance payment procedures are used. When advances are made by electronic transfer of funds methods, the Recipient must make drawdowns as close as possible to the time of making disbursements.

C. EDA may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

2. Grant Disbursements

A. Reimbursement. Reimbursement is the preferred method of grant disbursement. EDA will not use the percentage of completion method to pay construction grants. The Recipient may use that method to pay its construction contractor. However, EDA's payments to the Recipient will be based on the Recipient's actual rate of disbursement.

B. Effect of program income, refunds, and audit recoveries on payment. Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional grant disbursements.

C. Withholding payments. EDA will not withhold payments for proper charges incurred by Recipients unless—

(1) The Recipient has failed to comply with grant award conditions, or

(2) The Recipient is indebted to the United States.

Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the Recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with the section on enforcement contained in this document.

EDA will not make payment to Recipients for amounts that are withheld by Recipients from payment to contractors to assure satisfactory completion of work. Payments shall be made by EDA when the Recipients actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

D. Cash depositories. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230. EDA will not require the Recipient to maintain a separate bank account unless required by Federal-State agreement.

E. Interest earned on advances.

(1) For entities subject to 15 CFR Part 24: Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), Recipients shall promptly, but at least quarterly, remit interest earned on advances to EDA. The Recipient may keep interest amounts up to $100 per year for administrative expenses.

(2) For entities subject to 15 CFR Part 14 and any DOC rule implementing such Circular: Entities not subject to the Cash Management Improvement Act may keep up to $250 for administrative costs, to be remitted annually.

3. Allowable Costs

A. Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the Recipients, and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the Recipient.

B. Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

TABLE 1.—COST PRINCIPLES

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122
Educational institutions.	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to EDA.

4. Period of Availability of Funds

A. Generally, the maximum period for any EDA financial assistance that is provided is not more than 5 years from the end of the fiscal year of the award. Normally, costs incurred after the end of the funding period will not be eligible for reimbursement from the EDA grant.

B. Liquidation of obligations. A Recipient must liquidate all obligations incurred under the award not later than 90 days after the acceptance of the project from the construction contractor or before the end of the funding period, whichever occurs earlier.

5. Matching or Cost Sharing

A. Acceptable Costs and Contributions: With the qualifications and exceptions listed on the next page of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the Recipient, or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

B. Qualifications and exceptions:

(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a Recipient or Subrecipient from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in the following section on program income, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement.

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of Recipients or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

a. Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

b. Some third party in-kind contributions are goods and services that, if the Recipient, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the Recipient, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

c. A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(i) An increase in the services or property provided under the contract (without additional cost to the Recipient or Subrecipient), or

(ii) A cost savings to the Recipient or Subrecipient.

d. The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

C. Valuation of Donated Services:

(1) Volunteer services. Unpaid services provided to a Recipient by individuals will be valued at rates consistent with those ordinarily paid for similar work in the Recipient's organization. If the Recipient does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a Recipient, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph A of this section applies.

D. Valuation of Third Party Donated Supplies and Loaned Equipment or Space:

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

E. Valuation of Third Party Donated Equipment, Buildings, and Land: If a third party donates equipment, buildings, or land, and title passes to a Recipient or Subrecipient, the treatment of the donated property will depend upon the purpose of the grant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant is to assist the Recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following paragraphs of this section apply:

a. If approval is obtained from EDA, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

b. If approval is not obtained under the above paragraph, E(2)b no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the Recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in OMB Circulars A–87, A–21 and A–122, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

F. Valuation of Recipient Donated Real Property for Construction/Acquisition: If a Recipient donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

G. Appraisal of Real Property: In some cases it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, EDA may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the Recipient.

6. Program Income

A. General. Recipients are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Program income does not normally include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

B. Definition of program income. Program income means gross income received by the Recipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

C. Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incidental to the generation

of program income may be deducted from gross income to determine program income.

D. Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a Recipient are not program income unless the revenues are specifically identified in the grant agreement as program income.

E. Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a Recipient is program income only if the revenues are specifically identified in the grant agreement as program income.

F. Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Section VII of these "Requirements for Approved Projects".

G. Use of program income. Program income shall be deducted from outlays which may be both Federal and non-federal as described below, unless the grant agreement specifies another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between sources, kinds, or amounts of income. Alternative uses include:

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless EDA authorizes otherwise. Program income which the Recipient did not anticipate at the time of the award shall be used to reduce the EDA and Recipient contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by EDA and the Recipient. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

H. Income after the award period. Income earned beginning at the end of the award period (see Paragraph 4A of this Section IV) and ending at the end of the useful life of the project shall be used only for the following purposes:

(1) To satisfy any debt service (mortgage payments) existing during this time period. Note that any new encumbrances on the EDA assisted facility during this period must have EDA approval.

(2) For necessary operation, maintenance and repair services.

(3) Any excess above the costs of (1) and (2) above may be used for other economic development purposes in the same economic development area *with the concurrence of EDA.*

7. Non-Federal Audit

A. Basic rule: Recipients and Subrecipients are subject to audit requirements contained in the Single Audit Act amendments of 1996 (31 U.S.C. 7501–7) and revised OMB Circular A–133, "Audits of State, Local Governments, and Non-Profit Organizations".

Section V—Amendments to Grant Agreements

1. General Requirements

A. Between approval and closeout of an EDA construction project, one or more changes in the project may be necessary to resolve unforeseen problems or remove obstacles to the project's successful completion. In most instances, the proposed change can be effected only through a formal amendment to the project.

B. Project amendments generally fall into the following categories.

(1) Time extensions;

(2) Budget revisions;

(3) Additional funding (overrun);

(4) Permitted waiver of EDA regulations;

(5) Changes which do not involve overall funding (e.g., change of Recipient; method and schedule of financing; addition, deletion, or change affecting a line item in the approved project cost estimate);

(6) Change to the Special Conditions of the Grant Award;

(7) Termination (for cause or by mutual consent).

C. A change-of-scope determination may be necessary before a decision can be made if the requested change involves a change to the purpose, bona fide need, nature or community served of the project.

2. Changes to the Project Scope

A. Project scope is defined as the purpose, bona fide need, nature and community served of the approved grant. A project amendment which amounts to a change of scope is, in fact, the substitution of one grant for another. A change of scope modification to a project which was funded in a prior fiscal year cannot be approved by EDA. Modifications to projects funded from the current fiscal year's appropriation, or from a no-year appropriation, do not constitute a prohibited change of scope but must have the written approval of EDA. Any proposed change to an EDA assisted project which is a change of scope will be disapproved by EDA.

B. Certain types of project modifications can be approved by EDA if specified findings can be made. These include time extensions for commencement or completion of work, waivers of certain EDA requirements and some types of budget line item changes.

C. Certain types of project modifications presumptively constitute a change of scope, although the facts of a particular situation could permit such modifications to be approved. Examples are:

(1) A change of Recipient;

(2) A change of project location;

(3) Addition of a new line item to the EDA approved budget;

(4) An expansion of the activity associated with a budget line item.

D. Every proposed modification to a grant shall be considered not only in the light of the foregoing policy on change of scope, but shall also be processed in accordance with all EDA legal and technical requirements so that grants as amended will not deviate from the standards employed in initial grant approval.

3. Time Extensions

A. The Recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the Recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office. The Recipient's notice to EDA should contain the following information.

(1) An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain state or Federal approvals; or unplanned environmental mitigation required).

(2) A statement that no other changes to the project are contemplated;

(3) Documentation that demonstrates there is still a bona fide need for the project; and

(4) A statement that no further delay is anticipated and that the project can be completed within the revised time schedule.

B. EDA will advise the Recipient if a formal written request from the Recipient for a time extension will be required. The Recipient should be aware that grant disbursements may be suspended while the Recipient is not in compliance with the time schedule.

C. EDA reserves the right to suspend and/or terminate any grant if the Recipient fails to proceed with reasonable diligence to accomplish the project as intended.

4. Budget Line Item Revisions

A. The tabulation of estimated project costs contained in the EDA Grant Award is the controlling budget for the project. Budget line item revisions which do not involve a change of scope may be approved by EDA if:

(1) no new EDA funds are involved; and

(2) another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and

(3) unless the line item which is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed; and

(4) no new line items are being added to the budget.

B. Funds may be transferred to other approved budget line items from the contingencies line item provided the activity associated with the line item cannot be completed unless the line item to be supplemented is supplemented.

C. The transfer of funds from line items other than the contingencies line item may be permitted with EDA written permission provided there will be no significant adverse effect to the object of the line item from which the transfer is to be made.

D. The construction line item shall be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts shall be transferred to the contingencies line item. Recipients are reminded that contingency funds are only to be used to cover situations resulting from unknown conditions and changes required

for the fulfillment of the previously authorized project activities intended under the grant award. Underrun funds cannot be used to change the scope of the project.

E. The Recipient shall notify EDA of any proposed transfer of funds from one budget line item to another.

5. Additional EDA Funding

A. In accepting the award of an EDA grant the Recipient agreed to fund any overrun(s). Additional EDA funding for an approved project is unlikely to be approved. To be considered for approval it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will accept a formal request for additional EDA funds it will be necessary for the Recipient to furnish the following documentation to EDA:

(1) A written statement from the Recipient's Architect/Engineer giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds.

(2) A written statement from the administrative head of the Recipient's organization justifying why the Recipient cannot furnish the additional funds required. Relevant data may be in the form of an audit performed within the past two years, schedule of bonded debt, assessed property values as a percentage of market value, tax rates, and percent of collection. The statement should state why non-EDA sources of funds cannot be used.

B. Acceptance by EDA of a request for additional EDA assistance does not indicate approval. Any further action by the Recipient pending EDA's review of the Recipient's request is at the Recipient's risk.

6. Termination of the EDA Grant

A. Termination for Cause

(1) If a Recipient materially fails to comply with any term of a grant award, whether stated in a Federal statute, regulation, assurance, grant application, or notice of award, EDA may take one or more of the following actions, as appropriate in the circumstances:

a. Temporarily withhold disbursement of grant funds pending correction of the deficiency by the Recipient, or more severe enforcement action by EDA;

b. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

c. Wholly or partly suspend or terminate the current award;

d. Withhold further awards for the project or program;

e. Take other remedies that may be legally available.

(2) In taking an enforcement action, EDA will provide the Recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Recipient is entitled under any statute or regulation applicable to the action involved.

(3) Costs resulting from obligations incurred by the Recipient after notice by EDA of suspension of, or termination of, the grant, are not allowable unless EDA expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other Recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

a. The costs result from obligations which were properly incurred by the Recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are noncancellable; and,

b. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(4) The enforcement remedies identified in this section, including suspension and termination, do not preclude Recipient from being subject to "Debarment and Suspension" under E.O.s 12549 and 12689 and implementing regulations at 15 CFR Part 26.

B. Termination for Convenience

(1) Terminations for convenience have the following requirements:

a. EDA may propose the termination for convenience, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

b. The Recipient may propose the termination to EDA in writing, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, EDA determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, EDA may terminate the grant in its entirety under the termination for cause procedures or termination for convenience procedures with the consent of the Recipient. An appropriate official of the Recipient may request EDA to cancel or terminate a project. This request must be accompanied by a certified resolution or ordinance authorizing the requesting party to make such request. EDA will determine the legal sufficiency of such request.

Section VI—Project Closeout Procedures

1. Audit Requirements

A. Recipients are subject to audit requirements contained the Single Audit Act of 1984, and the amendments of 1996, (31 U.S.C. 7501–7) and revised OMB Circular A–133, "Audits of States, Local Governments, and Non-Profit Organizations". If the Recipient has no current audit performed in accordance with the Single Audit Act, EDA will advise the Recipient of the procedure for securing the required audit.

B. Normally, if the Recipient has had an audit in accordance with the Single Audit Act within the prescribed period, EDA will not require a project specific audit. However, if the documentation supplied by the Recipient is inadequate for a determination by EDA of the eligibility of claimed costs for reimbursement from the EDA grant, EDA may require such a project specific audit. EDA reserves the right to: (1) require the Recipient to secure an independent audit of the project cost, or (2) conduct an audit of project costs using Department of Commerce auditors, and (3) recover any costs previously allowed for EDA reimbursement but found by the audit to be not allowable.

C. From time to time the Department of Commerce Office of the Inspector General selects an EDA assisted project for audit. If its project is one of those selected, the Recipient will be notified in advance.

D. In arranging for audit services, Section II, Contracting for Project Construction will be followed. An independent audit arranged by the Recipient must meet the standards of the Comptroller General publication, "Standards for Audit of Government Organizations, Programs, Activities, and Functions".

2. Closeout Procedures

A. When project construction is complete, the final inspection has been completed, and the Recipient has accepted the project from the contractor, the Recipient can begin the closeout process. This should include notifying EDA of the following actions:

(1) Compliance with all Special Conditions of the EDA grant award, including but not limited to the following:

(2) Securing permanent insurance for above ground facilities.

(3) Results of a review of the project to determine that all changes to the project have been brought to the attention of EDA.

(4) Provisions have been made for the retention for three years of all records pertaining to the project.

(5) Certificate of Final Completion has been prepared, executed and a copy furnished to EDA.

(6) As-built drawings have been received from the contractor and/or the architect/engineer.

(7) A copy of a current Single Audit Act audit of the Recipient has been furnished to EDA. If no Single Audit Act audit is available but is required, the Recipient's plan to secure the audit has been furnished to EDA and approved. If no Single Audit Act audit is required, EDA has been advised and has determined whether an independent audit will be required.

(8) To the knowledge of the Recipient there are no outstanding Davis-Bacon or local labor employment violations.

(9) EDA has been notified of any change, lien, mortgage or other encumbrance relating to the ownership of the project.

(10) EDA has been notified of any unresolved contract/contractor disputes.

(11) If required, a lien or Covenant of Purpose, Use, and Ownership in favor of EDA has been executed and recorded.

(12) A record will be maintained by the Recipient of the useful life of the facility as determined by EDA during which period the Recipient may not alienate its ownership or change the use and purpose of the EDA assisted facility without EDA's written permission.

B. Recipients shall submit, within 90 calendar days after the completion of the project, all financial, performance and other reports as required by the terms and conditions of the grant award.

C. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations

incurred under the grant award no later than 90 calendar days after the funding period or the date of completion, whichever is earlier, as specified in the terms and conditions of the award.

D. When EDA is satisfied that the audit requirement has been met and the actions discussed in paragraphs A, B, and C above have been accomplished, the Recipient may request the final grant disbursement. The request will be will be prepared on EDA Form ED–113, Outlay Report and Request for Reimbursement for Construction Programs. EDA may assist with filling out the form but it is the responsibility of the Recipient to assure that the numbers on the form are correct. The following documentation should accompany the executed form ED–113 when it is sent to the EDA Regional Office unless the documentation has been previously furnished:

(1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the Form ED–113;

(2) A copy of the currently valid Single Audit Act audit if one was performed;

(3) Payroll forms, if any of the cost claimed is for work performed by in-house work forces

(4) Payroll Compliance Certificate;

(5) Civil Rights documents;

(6) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed; and

(7) Specifics of any administrative costs being claimed.

E. The Recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the Recipient, the balance will be paid by electronic transmittal. If the Recipient has received a grant amount in excess of the amount due the Recipient, the Recipient will be requested to refund the excess to EDA payable to the U.S. Treasury.

F. The closeout of an award does not affect any of the following:

(1) The right of EDA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the Recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Requirements for property management, records retention and performance measurement reports.

(4) Audit requirements.

Section VII—Post Construction Grant Requirements

1. Real Property

A. All property that is acquired or improved with EDA grant assistance shall be held in trust by the grantee for the benefit of the project purposes under which the property was acquired or improved.

B. During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance.

C. EDA may approve the substitution of an eligible entity for a grantee. The original grantee remains responsible for the period it was the grantee, and the successor grantee holds the project property with the responsibilities of an original grantee under the award.

D. The requirements contained in this part apply solely to grant and cooperative agreement award projects.

2. Definitions

A. As used in this Section VII:

(1) *Dispose* includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

(2) *Estimated useful life* means that period of years from the time of award, determined by EDA as the expected life-span of the project.

(3) *Grantee* includes any recipient, subrecipient, awardee, or subawardee of grant assistance under the Public Works and Economic Development Act of 1965.

(4) *Owner* includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold.

(5) *Personal Property* means all property other than real property.

(6) *Project* means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs "project" includes such programs.

(7) *Property* includes all forms of property, real, personal (tangible and intangible), and mixed.

(8) *Real property* means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

3. Use of Property

A. The grantee or owner shall use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project as long as it is needed during the estimated useful life of the project and such property shall not be leased, sold, disposed of or encumbered without the written authorization of EDA.

B. In the event that EDA and the grantee determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, if EDA approves such use.

C. When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination.

D. When acquiring replacement personal property of equal or greater value, the grantee may trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property.

4. Unauthorized Use

A. Except as provided in 3B, 3C, or 3D above, whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of without the approval of EDA, or no longer used for the authorized purpose of the project, the Federal Government shall be compensated by the grantee for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR Part 24 and 15 CFR Part 14 or any supplements or successors thereto, as applicable, shall apply.

B. If property is disposed of without approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs A and B of this section, except that the total amount to be recovered shall not exceed the Federal share, plus costs and interest.

5. Federal Share

A. For purposes of this Section, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale).

B. Where the grantee's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor shall be considered in determining the percentage of the Federal share.

C. If property is transferred from the grantee to another eligible entity, as provided in paragraph 1C above, the Federal Government shall be compensated the Federal share of any money paid by or on behalf of the successor grantee to or for the benefit of the original grantee, provided that EDA may first permit the recovery by the original grantee of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

D. When the Federal Government is compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use or disposition of the property.

6. Encumbrances

A. Except as provided in paragraph 6C below, grantee-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be

used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project.

B. Encumbering such property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in paragraphs 4 and 5 above.

C. EDA may waive the provisions of paragraph 6A above for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the grantee, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The lender/grantor would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/grantee will not default on its obligation.

D. The EDA Assistant Secretary or his/her designee may waive the provisions of paragraphs A and B above as to an encumbrance on property which is financed by an EDA construction grant when he/she determines that the encumbrance arises solely from the provisions of a pre-existing water, sewer or other utility encumbrance which by its terms extends to additional property connected to such facilities. EDA's determination shall make reference to the specific requirements (for example, "water system and all accessions, additions or improvements thereto") which extend the terms of the pre-existing encumbrance to the property which is financed and/or improved by the EDA construction grant.

7. Civil Rights Restriction

Among other applicable requirements, the Recipient or in the case of a transfer , the transferee, of real property, structures or improvements thereon or interests therein acquired, leased, or improved with EDA assistance may not sell, lease, or otherwise make any part of such premises available for occupancy by any person, firm, or entity unless the Recipient includes in the instrument effecting the sale, lease or transfer a covenant running with the land that assures that the purchaser, lessee or occupant will comply with the nondiscrimination provisions of the Civil Rights Act of 1964, as amended as provided in 15 CFR 8.5(b)(5)(6) and (11).

8. Performance Reports

The Government Performance and Results Act of 1993 (GPRA) requires EDA to report the outputs and outcomes of projects (e.g. actual job creation). Recipients are required to submit reports of performance to EDA at the intervals stated in Section I Paragraph 2E of these Requirements for Approved Construction Projects.

9. Record Retention

Architect/engineering records and payroll records relating to the project must be retained as described in Section I Paragraph 6 F , Section II Paragraph 14 H, and Section III Paragraph 9 A.

10. Program Income Earned After the Award Period

The uses for program income earned after the award period are described in Section IV 6 H.

Section VIII—Exhibits

This section contains a copy of the Exhibits cited elsewhere in this Volume and other items which may be helpful to the Recipient as it proceeds through project design, construction, and closeout. The EDA forms shown as exhibits herein are updated and revised as new procedures and requirements become known. Thus, the exhibit may not be the latest version of the form currently in use. The Recipient should check with the EDA regional office to be sure the correct form is being used before the initial use of any of the exhibits. The documents marked with an asterisk (*) are available from the EDA regional office, if needed.

A. Checklists for:
  (1) Architect/Engineer Contracts
  (2) Construction Contracts
  (3) Initial Grant Disbursement
  (4) Project Closeout
B. Supplemental General Conditions
C. Certificate as to Project Site, Rights-of-Way, and Easements (Form ED–152)
D. *Sample Agreement and Mortgage
E. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246)
F. *Sample Contract Documents
  (1) Advertisement for Bid
  (2) Information for Bidders
  (3) Bid for Lump Sum or Unit Price Contracts
  (4) Bid Bond
  (5) Agreement (Construction Contract)
  (6) Performance Bond
  (7) Payment Bond
  (8) General Conditions
  (9) Contractor's Application for Payment (AIA Document #G 702)
  (10) Weekly Payroll Form (use Dept. of Labor's Form WH–347)
  (11) Notice of Award
  (12) Notice to Proceed
  (13) Change Order
G. Recipient's Outlay Report and Request for Reimbursement for Construction Programs (Form ED–113)
H. ACH Vendor/Miscellaneous Payment Enrollment Form (Form SF–3881)
I. Sample Final Acceptance Inspection Report
J. Sample Quarterly Performance Report
K. Sample Architect/Engineer's Certificate
L. Sample Certificate of Grantee/Borrower's Attorney
M. Information Required for EPA Certification as to Adequacy of Treatment
N. Financial Status Report (Form SF269)

Checklist for Architect/Engineer Contracts

Although the use of this checklist is not mandatory, its use will expedite EDA's review of the architect/engineer contract. When completed by the Recipient it should be submitted to the EDA regional office soon after the grant award is approved by EDA and accepted by the Recipient if the architect/engineer contract has been previously executed. If the architect/engineer contract has not been executed prior to the Recipient's acceptance of the grant award, this checklist may be completed and sent to the appropriate regional office as soon as the architect/engineer contract is signed and prior to any request for disbursement of EDA grant funds. The appropriate responses should be circled in ink and signed by the authorized representative of the Recipient.

Y N	The Recipient has written procurement procedures with which the architect/engineer contract has been found to be in compliance.
Y N	The Architect/Engineer was selected competitively by sealed bids (formal advertising) or by competitive proposals. If not, attach an explanation of the selection method and the reason(s) for using that method.
Y N	Requests for proposals were publicized and all evaluation factors and their relative importance were identified therein. Any response to publicized requests for proposals were honored to the maximum extent practical.
Y N	Proposals were solicited from an adequate number of qualified sources (normally it is sufficient to secure at least three proposals from qualified proposers). If less than 3 qualified proposals were secured, attach an explanation to this document.
Y N	The Recipient has a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered.
Y N	The Recipient determined the responsible firm whose proposal was most advantageous to the program, with price and other factors considered. Competitor's qualifications were evaluated and the most qualified competitor was selected, subject to negotiation of fair and reasonable compensation.
Y N	The Architect/Engineer agreement provides for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

Y N The Architect/Engineer's fee for basic services is either a fixed price or a cost reimbursement with an agreed maximum. (The amount of EDA participation will be based on a determination, subject to audit, that the fee compensation is reasonable)

Y N The architect/engineer contract compensation is not based on the use of the cost-plus-a-percentage-of-cost or percentage of construction cost form of compensation. (These forms of compensation are not eligible for EDA participation).

Y N The Architect/Engineer's fee covers all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs.

Y N The basic fee does not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services are identified in the agreement. Such additional charges may be approved for grant participation by the EDA if they:

11. Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;

12. Are a proper charge against the project cost; and

c. Are reasonable for the extra services to be rendered.

Y N Regardless of who furnishes the construction inspector, the agreement requires the Architect/Engineer to make sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

Y N If the Architect/Engineer contract(s) price exceeds $100,000 (awarded under small purchase procedures), it includes a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant program) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

Y N The agreement for architect/engineer services provides an adequate basis for the Recipient to require the Architect/Engineer to:

Y N Design the project in accordance with the intent of the Grant Award;

Y N Redesign the project in the event the preliminary cost estimate, the final cost estimate, or the lowest responsive bid less deductive alternates, exceeds the funds available by an amount or percentage to be mutually agreeable to the Recipient and the Architect/Engineer;

Y N Design any sewage treatment or other sewage facility so that a certificate of adequacy of treatment can be obtained as required by Section 106 of the Public Works and Economic Development Act of 1965, as amended;

Y N Include in all contracts and subcontracts with costs in excess of $100,000 a provision which requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) and the Federal Water Pollution Act (33 USC 1251 et seq., as amended). (Violations shall be reported to EDA and to the regional office of the U.S. Environmental Protection Agency).

Y N Include in all contracts and subcontracts in excess of the small purchase threshold of $100,000, provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

Y N Include in all contracts in excess of $10,000 suitable provisions for termination by the Recipient including the manner in which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

Y N Include in all contracts in excess of $10,000 a provision requiring compliance with Executive Order 11246, entitled"Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);

Y N Include in all contracts in excess of $2,000 for construction or repair a provision for compliance with the Copeland "Anti-Kickback"Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. (The Recipient shall report all suspected or reported violations to EDA).

Y N Include in all construction contracts in excess of $2,000 a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. A copy of the current prevailing wage determination issued by the Department of Labor must be included in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. (All suspected or reported violations shall be reported to EDA. Davis-Bacon wage determinations are not applicable to Recipient employed "Force Account" workers).

Y N Include in all contracts in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers, a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Work performed by employees of the Recipient (in-house forces) on the EDA-assisted project will be subject to the following:

1. Work performed in excess of eight hours per day will be reimbursed by EDA at the normal rate of pay unless the Recipient can show that a higher rate is required by State or local law or union contract;

2. Work performed in excess of 40 hours per week may be reimbursed by EDA at a higher rate than normal if the Recipient can show that it normally pays for such work at a higher rate. In any case the rate for work in excess of 40 hours per week may not exceed one and one half times the normal hourly rate.

Y N Include a notice in all contracts involving research, developmental, experimental or demonstration work requiring that all patentable processes, discoveries or inventions which arise or are developed in the course of, or under, such contract shall be reported to EDA. The notice will state that the Government has an interest in any such patentable processes, discoveries or inventions corresponding to the percentage of total project cost funded by EDA.

Y N Include in all negotiated contracts (except those awarded by small purchase procedures) a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Y N Include in all contracts a requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor and all other pending matters are closed.

Y N State a specific timetable in the architect/engineer agreement for:

1. Completing preliminary plans and associated cost estimates;

2. Completing final plans, specifications, and cost estimates;

		3. Securing required State and local approvals; and 4. Completing proposed contract documents in a form sufficient for soliciting bids for construction of the project. (If the Recipient has executed an Architect/Engineer agreement without such a requirement for a timetable, EDA shall require that an addendum to the agreement be executed to incorporate this requirement).
Y	N	Provide surveillance of project construction to assure compliance with plans, specifications, and all other contract documents. If the Recipient chooses to use the Architect/Engineer as the project inspector, the requirements for construction inspection services shall be clearly defined and the amount the Recipient is required to pay for such services shall be stated.
Y	N	Be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector, if the inspector is furnished by the Architect/Engineer. (EDA recommends that the Architect/Engineer be required to take insurance, when available, to cover liability for such damages).
Y	N	Supervise any required subsurface explorations such as borings, soil tests, and the like, to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the Architect/Engineer or by others paid by the Recipient.
Y	N	Attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award.
Y	N	Review proof of bidder's qualifications and recommend approval or disapproval.
Y	N	Prepare and submit proposed contract change orders when applicable. There shall be no charge to the Recipient when the change order is required to correct errors or omissions by the Architect/Engineer. (To be eligible for EDA participation the specific change order must have written approval from EDA and must have some form of cost or price analysis performed by the Recipient or the Architect/Engineer).
Y	N	Submit a report not less frequently than quarterly to the Recipient covering the general progress of the job and describing any problems or factors contributing to delay.
Y	N	Review and approve the contractor's schedule of amounts for contract payment.
Y	N	Certify partial payments to contractors.
Y	N	Assure that a ten percent (10%) retainage is withheld from all payments on construction contracts until final acceptance by the Recipient and approval by the EDA Regional Office, unless State or local law provides otherwise.
Y	N	Prepare "as-built" or record drawings after completion of the project. Reproducible originals will be furnished to the Recipient within 60 days after all construction has been completed and the final inspection has been performed. (One set of copies shall be furnished to the EDA Regional Office only if requested by the Regional Office).
Y	N	Review and approve the contractor's submission of samples and shop drawings, where applicable.
Y	N	Comply with all Federal statutes relating to non-discrimination. These include but are not limited to: 1. Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color, or national origin; 2. Section 112 of PL 92–45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685–1686) which prohibits discrimination on the basis of sex; 3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) which prohibits discrimination on the basis of handicaps; 4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107) which prohibits discrimination because of age; 5. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93–255), as amended, relating to non-discrimination on the basis of drug abuse; 6. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism; 7. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; 9. Any other non-discrimination provisions in the specific statute(s) under which the application for Federal assistance is being made; and 10. The requirements of any other non-discrimination statute(s) which may apply.

Y N Incorporate into the proposed construction contract documents a designation of all of the different types of construction which will be used for the project; such as Building, Heavy or Highway in accordance with all local and State laws and practices. For this purpose either the plans, the specifications or both shall clearly delineate where each type stops and another starts.

Y N Consider in the establishment of the compensation any cost savings that may be realized through multiple use of the same design.

Y N Provide in all proposed construction contracts deductive alternates which can be taken, if necessary, to reduce the bid price so that the lowest responsive bid for construction of the project will not exceed the funds available.

Y N Design the facility to comply with the Americans with Disabilities Act (ADA) (P.L. 101–336) and the Accessibility Guidelines for Buildings and Facilities, as amended, (36 CFR Part 191 and Executive Order 12699.

Y N Design for seismic safety in accordance with Executive Order 12699 which imposes requirements that federally assisted facilities be designed and constructed in accordance with the 1991 ICBO Uniform Building Code or 1992 Supplement to the BOCA National Building Code and/or 1991 Amendments to the SBCC Standard Building Code.

Y N Provide sufficient plans, specifications, bid sheets, cost estimates, design analysis, and other contract documents required for the project. The number of copies to be furnished by the Architect/Engineer as part of his/her compensation for basic services shall be specified in the agreement.

Y N Use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond which meet EDA requirements. All proposed contract documents are subject to EDA approval. (Documents contained in "Contract Documents for Construction of Federally Assisted Water and Sewer Projects" are acceptable for this purpose).

The name and address of the Architect/Engineer is: _____

Y N The Architect/Engineer will perform project inspection services. If not, provide the name and address of the firm or person that will provide project construction inspection services:

_____

The contract price for Basic Services is $ ____
The contract price for Extra Services is $ ____
The contract price for inspection services is $. _____
The number of proposals received were ____
The number of bidders disqualified were __

_____
Recipients Authorized Representative

_____
Date

Checklist for Construction Contracts

Although the use of this checklist is not mandatory, its use by the Recipient will expedite EDA's review of the construction contract. When used by the Recipient, it should be submitted to EDA at or before the invitation for construction contract bids is published. EDA reserves the right to perform a pre-award review of the proposed procurement documents or a review of the executed contract documents at any time within the record retention time frame. The appropriate responses should be circled in ink and the authorized representative of the Recipient should sign the form where indicated.

The following documents are included in the invitation for bids:

Y N An index
Y N The advertisement for bids
Y N The information for bidders
Y N The bid form
Y N The contract form
Y N EDA's Supplemental General Conditions (to be furnished by EDA)
Y N The recipient's general conditions
Y N The technical specifications
Y N The working drawings
Y N The applicable wage rates (to be furnished by EDA)
Y N Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (to be furnished by EDA)

The bid documents contain the following provisions:

Y N Details of how the successful bidder will be selected

Y N Actions to be taken by the Recipient if the lowest bid exceeds the funds available

Y N Requirement for 5% bid bond, 100% payment bond and 100% performance bond

Y N The order in which alternates, if any, are to be taken

Y N Provisions for termination of the contract including default of the contractor and conditions beyond the control of the contractor

Y N Provisions for administrative, contractural or legal remedies for contractor breach or violation of contract terms and provision for such sanctions and penalties as may be appropriate

Y N A requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor

Y N A requirement that the bidders submit proof of qualification to do the work called for in the contract

Y N Notice that progress payments will have a 10% retainage (unless otherwise required by State or local law)

Y N A requirement for the contractor to submit all shop drawings, samples and change orders to the Architect/Engineer and Recipient for approval

Y N A requirement for a construction progress estimate and periodic progress reports from the construction contractor

Y N A procedure for the settlement of disputes between the contractor, the contractor's subcontractors, the Architect/Engineer and the Recipient

Y N A liquidated damages provision for failure of the contractor to meet the specified construction timetable. The amount specified in the proposed contract is $—— per day

Y N The proposed design contains no materials or products specified by brand name without an "or equal" provision

Y N A requirement is included for compliance with Federal regulations as listed in EDA's Supplemental General Conditions, EDA's Standard Terms and Conditions to the grant award and the Special Conditions to the grant award

Y N The bidders will be limited to those on a prequalified list maintained by the Recipient. If so, explain on an attached sheet the procedure that is used to place prospective bidders on the list.

Y N Recipient furnished materials and/or equipment will be incorporated into the projects outside the construction contract. If so, attach a list of such materials and/or equipment.

Y N No part of the project construction will be accomplished by the Recipient's own forces or by labor hired directly by the Recipient for this specific project. If so, contact the EDA regional office for further guidance

Y N The contract is solely for the EDA project. If non-EDA work is included, contact the EDA regional office for further guidance.

Y N The land, rights of way and easements required for the construction and operation of the project are owned by the Recipient or otherwise have been appropriately permitted by the responsible authorities.

Y N The Recipient's share of the project cost is on hand or immediately available.

Y N Provisions for construction inspection are in place.

Y N All applicable terms and conditions of the grant award have been satisfied. If not, please explain on an attached sheet.

Y N The scope of work for the project as described in the grant award has not changed.

The construction period specified in the proposed contract is for _____ months.

The Architect/Engineer's cost estimate for construction is $_____.

The advertising period will be from _____ to _____.

_____

Recipient's Authorized Representative

_____

Date

Checklist for Initial Grant Disbursement

Grant Recipient: _____

EDA Project # _____

Grant Recipient's Authorized Representative:

Name: _____

Title: _____

This checklist is for guidance on the information the EDA regional office will need before an initial grant disbursement can be approved. The regional office may use their own version of this checklist which may or may not be required to be sent in with the initial grant disbursement request. Use of the checklist will expedite EDA processing of the initial grant disbursement.

Y N NA The EDA grant award/offer was accepted within the 15 day after receipt time limit.

Y N NA Those Special Conditions to the grant award requiring action prior to the initial grant disbursement have been satisfied.

Y N NA An architect/engineer contract has been approved by EDA.

Y N NA An unconditional "EPA Section 106" certificate has been secured and a copy furnished to, or received from, EDA.

Y N NA All required land, easements and rights-of-way have been secured and title opinion has been approved by EDA.

Y N NA The proposed bid documents were approved by EDA.

Y N NA The final plans, specifications and contract documents have been approved by EDA.

Y N NA All contracts required for completion of the project have been executed and approved by EDA.

Y N NA If the answer to the previous question is "N", a request for phasing has been made to, and approved by, EDA.

Y N NA Bid award of the construction contract was to the lowest bidder.

Y N NA The full firm name and owner's name of all contractors have been furnished to EDA for checking against the Federal debarred and ineligible list.

Y N NA The company listed as surety for the low bidder is listed on Treasury Department Circular 570 and possesses sufficient capability to insure the project.

Y N NA Davis-Bacon wage rates have been incorporated into all construction contracts.

Y N NA EDA's Supplemental General Conditions have been incorporated into all construction contracts.

Y N NA Matching funds for the Recipient's share are on hand or immediately available.

Y N NA A first lien or Property Management Agreement has been executed, recorded and submitted to EDA.

Y N NA A relocation assistance plan as required by the Uniform Relocation Assistance Act has been approved by EDA.

Y N NA Use of force account (workmen hired by the Recipient specifically for the EDA approved project) has been approved by EDA.

Y N NA Use of in-house forces (workmen who are part of the Recipient's current workforce) has been approved by EDA.

Y N NA EDA approval of the start of construction before the award of the EDA grant has been received.

Y N NA All work accomplished by change order which is part of the claim for the initial grant disbursement has been approved by EDA.

Y N NA All proposed or actual changes to the EDA approved budget have been approved by EDA.

Y N NA All project activities to the date of the initial grant disbursement request have been accomplished within the approved time schedule or EDA approved extension.

Y N NA Currently due project performance reports have been submitted to EDA.

Y N NA Tabulation of bids, bid form of the low bidder (and bid form of any bidder to whom the Recipient has made, or proposes to make to other than the lowest bidder) and certified minutes of the bid opening have been submitted to EDA.

Checklist for Project Closeout

Grant Recipient: _____

EDA Project # _____

Grant Recipient's Authorized Representative:

Name: _____

Title: _____

This checklist is for the Recipient's guidance on the information the EDA regional office will need to close out the EDA assisted project. Although its use is not mandatory, using it will expedite EDA's processing of the final grant disbursement.

Y N NA All of the Special Conditions to the EDA grant award have been satisfied and approved by the EDA regional office.

Y N NA A final inspection was performed by the Architect/Engineer and the completion of the project with all deficiencies corrected has been accepted by the Architect/Engineer in writing.

Y N NA The Recipient has accepted the project without deficiencies from the contractor.

Y N NA All currently due project progress reports have been submitted to the EDA regional office.

Y N NA The project was completed on time or an EDA approved time extension is on file.

Y N NA As-built drawings have been received from the Architect/Engineer and are on file.

Y N NA If requested by EDA, photographs of above ground facilities have been submitted to EDA.

Y N NA The Recipient understands that a warranty inspection is to be performed before the warranty expiration date and the results submitted to EDA.

Y N NA All audit issues have been resolved.

Y N NA If occupancy of the facilities by the Recipient was obtained prior to the Recipient's or Architect/Engineer's acceptance of the facility from the contractor evidence of consent of the contractor, the insurance carrier, and the surety is on file.

Y N NA Permanent insurance on the facility has been obtained.

Y N NA The Recipient is aware that project records must be retained for a minimum of three years.

Y N NA The Recipient is aware that for the EDA determined useful life of the EDA assisted facilities, all real property must be used for originally authorized purposes and the Recipient shall not dispose of or encumber its title or other interests. When the facility is no longer needed for the orignally authorized purpose and the useful life has not expired, the Recipient will request instructions from EDA. The instructions will conform to applicable DoC and EDA regulations.

Y N NA All payments due to contractors for construction, services and supplies for the project are current except for contract retainage if project has not been accepted.

Y N NA The first Post Construction Report evaluating the achievement of the Core Performance Measures listed in the Standard Terms and Conditions to the EDA grant has been submitted to EDA.

Exhibit B—Supplemental General Conditions

These Supplemental General Conditions are intended for use by Economic Development Administration Grantees. They contain specific EDA and other Federal requirements not normally found in non-Federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with EDA funds.

Supplemental General Conditions

S1 Definitions
S2 Federally Required Contract Provisions
S3 Required Provisions Deemed Inserted
S4 Inspection by EDA Representatives
S5 Construction Schedule and Periodic Estimates
S6 Contractor's Title to Material
S7 Inspection and Testing of Materials
S8 "Or Equal" Clause
S9 Patents
S10 Claims for Extra Cost
S11 Contractor's and Subcontractor's Insurance
S12 Contract Security
S13 Safety and Health Regulations for Construction
S14 Minimum Wages
S15 Withholding of Payments
S16 Payrolls and Basic Records
S17 Apprentices and Trainees
S18 Subcontracts
S19 Termination and Debarment
S20 Overtime Requirements
S21 Equal Employment Opportunity
S22 Other Prohibited Interests
S23 Employment of Local Labor
S24 Historical and Archeological Data Preservation Act of 1974
S25 Clean Air and Federal Water Pollution Control Act
S26 Use of Lead-Based Paints on Residential Structures
S27 Signs

Supplemental General Conditions

S–1 Definitions

The following terms as used in these Supplemental General Conditions are respectively defined as follows:

a. "Contractor": A person, firm, or corporation with whom this Contract is made by the Owner.

b. "Subcontractor": A person, firm, or corporation supplying labor and materials or only labor, for work at the site of the project, for and under separate contract or agreement with the Contractor.

c. "Work on (at) the project": Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

d. "Apprentice": (1) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau; or (2) a person in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.

e. "Trainee": A person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.

S–2 Federally Required Contract Provisions

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold—currently fixed at $100,000, see 41 USC 403(11)).

b. Termination for cause and for convenience by the grantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

c. Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

d. Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

e. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees).

f. Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

g. EDA requirements and regulations pertaining to reporting.

h. EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

i. EDA requirements and regulations pertaining to copyrights and rights in data.

j. Access by the grantee, EDA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

k. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

l. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $ 100,000).

m. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub L. 94–163, 89 Stat. 871).

S–3 Required Provisions Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

S–4 Inspection by Economic Development Representatives

The authorized representatives and agents of the Economic Development Administration shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

S–5 Construction Schedule and Periodic Estimates

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver

to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

S–6 Contractor's Title to Material

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

S–7 Inspection and Testing of Materials

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended users.

S–8 "Or Equal" Clause

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties, imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

S–9 Patents

The Contractor shall hold and save the owner and its officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the contract documents.

License or Royalty Fee: License and/or royalty fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, directly by the Owner and not by or through the Contractor. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he/she shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his/her Sureties shall indemnify and hold harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract,and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

S–10 Claims for Extra Costs

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

S–11 Contractor's and Subcontractor's Insurance

The Contractor shall not commence work under this contract until he/she has obtained all the insurance required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

a. Types of insurance normally required are:

1. Workmen's Compensation.
2. Contractor's Public Liability and Property Damage.
3. Contractor's Vehicle Liability.
4. Subcontractors Public Liability, Property Damage and Vehicle Liability.
5. Builder's Risk (Fire and Extended Coverage).

b. Scope of Insurance and Special Hazards. The insurance described above shall provide adequate protection for the Contractor and his/her claims which may arise from operations under this contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazards which may be encountered in the performance of this contract.

c. Proof of Carriage of Insurance The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies.

S–12 Contract Security Bonds

If this contract is for an amount in excess of $100,000 the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and also a payment bond in an amount equal to one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, Territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance each bond must be approved by the Economic Development Administration. If this contract is for an amount less than $100,000 the Owner will specify the amount of the payment and performance bonds.

S–13 Safety and Health Regulations for Construction

In order to protect the lives and health of his/her employees under the contract, the Contractor shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act, as amended, commonly known as the Construction Safety Act as pertains to health and safety standards; and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his/her plan, equipment, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

S–14 Minimum Wages

All mechanics and laborers employed or working on the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to

such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv).

Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

The Owner shall require that any class of laborers and mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformable to the wage determination and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the questions accompanied by the recommendation of the contracting officer shall be referred to the Secretary of Labor for final determination.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, the Owner shall require an hourly cash equivalent to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Owner, shall be referred to the Secretary of Labor for determination.

If the Contractor does not make payments to a trustee or other third person, he/she may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract; provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

S–15 Withholding of Payments

The Economic Development Administration may withhold or cause to be withheld from the Contractor as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the Contractor or any subcontractor on the work, the full amount of wages required by the contract in accordance with the Davis-Bacon Act. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee employed or working on the project site or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project, all or part of the wages required by the contract, the Economic Development Administration may, after written notice to the Contractor, sponsor, applicant, or Owner, take action as may be necessary to cause the suspension of any further payment, advance, or guaranty of funds until such violations have ceased.

S–16 Payrolls and Basic Records

Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the EDA project site, or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project. Such records shall contain the name and address of each employee, his/her correct classification, rate of pay (including contributions or costs anticipated of the types described in Section 9(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan program described in Section 1(b)(2)(B) of the Davis-Bacon Act the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, plus records which show the costs anticipated or the actual cost incurred in providing such benefits.

The Contractor shall submit weekly a copy of all payrolls to the Owner on DOL Form WH–347 or equivalent. The copy shall be signed on the reverse side by the employer or his/her agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. This submission is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 20 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor shall make the records required under the labor standards clause of the contract available for inspection by authorized representatives of the Economic Development Administration and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

S–17 Apprentices and Trainees

Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his/her entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in Section S–1e herein and is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor shall be required to furnish to the Owner written evidence of the registration of his/her program and apprentices as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and when the subparagraph below is applicable, in accordance with the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations.

On contracts in excess of $10,000, the employment of all laborers and mechanics, including apprentices and trainees, as defined in Section 29 CFR 5.5 shall also be subject to the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations. Apprentices and trainees shall be hired in accordance with the requirements of Part 5, Subpart A. The provisions of Sections S–14, S–15, and S–17 shall be applicable to every invitation for bids, and to every negotiation, request for proposals, or request for quotations, for an assisted construction contract, and to every such contract entered into on the basis of such invitation or negotiation. Part 5, Subpart A, Title 29, Code of Federal Regulations shall constitute the conditions of each assisted contract in excess of $10,000, and each Owner concerned shall include these conditions or provide for their inclusion, in each such contract. These "Supplemental General Conditions" shall also be included in each such contract.

S–18 Subcontracts

The Contractor shall insert in any subcontracts these same "Supplemental General Conditions."

S–19 Termination and Debarment

A breach of any one of the Sections S–15 through S–18 may be considered by the Owner and by the Economic Development Administration as grounds for termination of the contract and for debarment as provided in 29 CFR 5.6.

S–20 Overtime Requirements

No Contractor nor any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic

rate of pay for all hours in excess of forty hours in such workweek.

In the event of any violation of the clause set forth in the subsection above, the Contractor and any subcontractor responsible therefor, shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or territory, to such District of Columbia or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth above in the sum of $10.00 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth above.

The Economic Development Administration may withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth above.

The Contractor shall insert in all subcontracts the clause set forth above in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that may, in turn, be made.

S–21 Equal Employment Opportunity

No person in the United States shall, on the grounds of race, color, national origin, age, physical handicap, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance; Reference Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and Section 112 of Public Law 92–65, Age Discrimination Act of 1975 (42 USC 6102) and Section 504 of the Rehabilitation Act of 1973 (26 USC 794).

Form ED–503. The Owner and all Contractors, subcontractors, suppliers, leasees and other parties directly participating in the Recipient's project agree that during and in connection with the associated agreement relating to the Federally assisted program, (i) they will comply, to the extent applicable, as Contractors, subcontractors, lessees, suppliers, or in any other capacity, with the applicable provisions of 13 CFR 311 and the Regulations of the United States Department of Commerce (Part 8 of Subtitle A of Title 15 of the Code of Federal Regulations) issued pursuant to Title VI of the Civil Rights Act of 1964 (P.L. 88–352), and will not thereby discriminate against any person on the grounds of race, sex, color, age, or national origin in their employment practices, in any of their own contractual agreements, in all services or accommodations which they offer to the public, and in any of their other business operations, (ii) they will provide information required by or pursuant to said Regulations to ascertain compliance with the Regulations and these assurances, and (iii) their non-compliance with the nondiscrimination requirements of said Regulations and these assurances shall constitute a breach of their contractual arrangements with the Owner whereby said agreements may be canceled, terminated or suspended in whole or in part or may be subject to enforcement otherwise by appropriate legal proceedings.

Executive Order 11246, 3 CFR 339 (1965) (Equal Opportunity Clause). During the performance of this contract, the Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, handicap, or national origin. The Contractor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Grantee setting forth the provisions of this nondiscrimination clause.

c. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

d. A notice to be provided by the Grantee shall be sent to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract of understanding, advertising the labor union or workers' representative of the Contractor's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and copies of the notice shall be posted in conspicuous places available to employees and applicants for employment.

e. The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the Economic Development Administration and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders. Each Contractor and subcontractor of federally assisted construction work is required to file an Equal Employment Opportunity Employer Information Report (EEO–1) on Standard Form 100, annually on March 31. Forms and instructions are available at the EDA Regional Offices.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed (and remedies involved) as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor shall include the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 203 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Economic Development Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Grantee/Borrower, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

i. Exemptions to Above Equal Opportunity Clause (41 CFR Chap. 60):

(1) Contracts and subcontracts not exceeding $10,000 (other than Government bills of lading) are exempt. The amount of the contract, rather than the amount of the Federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding $10,000 for standard commercial supplies or raw materials are exempt.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246 et seq)

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South

American or other Spanish Culture or origin, regardless of race);

2. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

a. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

3. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

4. If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

5. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7a through p of these specifications. The goals set for the Contractor in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

6. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

7. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

8. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Regional Director when the union or unions, with which the Contractor has a collective bargaining agreement, have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, Supervisors, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to, and discussing the Contractor's EEO policy with, other Contractors and subcontractors with whom the Contractor anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 14 CFR Part 60–3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from

minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Paragraph 7a through p). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60–4.8.

14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. The goals for minority and female participation in each trade will be furnished by the Economic Development Administration of the U.S. Department of Commerce.

S–22 Other Prohibited Interests

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

S–23 Employment of Local Labor

a. The maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct Federal grants. Accordingly, every Contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall employ, in carrying out such contract work, qualified persons who regularly reside in the designated area where such project is to be located, or in the case of Economic Development Centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the Economic Development District, except:

(1) To the extent that qualified persons regularly residing in the designated area or Economic Development District are not available.

(2) For the reasonable needs of any such Contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the Contract.

(3) For the obligation of any such Contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of non-resident persons employed under this subparagraph exceed twenty percent of the total number of employees employed by such Contractor and his/her subcontractors on such project.

b. Every such Contractor and subcontractor shall furnish the United States Employment Service Office in the area in which a public works or development facility project is located with a list of all positions for which it may from time to time require laborers, mechanics, and other employees, the estimated numbers of employees required in each classification, and the estimated dates on which such employees will be required.

c. The Contractor shall give full consideration to all qualified job applicants referred by the local employment service, but it is not required to employ any job applicants referred whom the Contractor does not consider qualified to perform the classification of work required.

d. The payrolls maintained by the Contractor shall contain the following information: full name, address, and social security number and a notation indicating whether the employee does, or does not, normally reside in the area in which the project is located, or in the case of an Economic Development Center, in such center or in an adjacent or nearby redevelopment area within the Economic Development District, as well as an indication of the ethnic background of each worker.

e. The Contractor shall include the provisions of this condition in every subcontract for work which is, or reasonably may be, done as on-site work.

S–24 Historical and Archaeological Data Preservation Act Requirements

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction, to consult

with the State Historic Preservation Officer for recovery of the items. Reference: National Historic Preservation Act of 1966 (80 Stat 915, 16 USC 470) and Executive Order No. 11593 of May 31, 1971.

S–25 Clean Air Act of 1970, Et Seq. and Federal Water Pollution Control Act as Amended by the Clean Water Act of 1977

The Contractor agrees to comply with Federal clean air and water standards during the performance of this contract and specifically agrees to the following:

a. The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations; owned, leased, or supervised; by the Contractor and the subcontractors; for the construction, supply and service contracts entered into by the Contractor;

b. Any facility to be utilized in the accomplishment of this contract is not listed on the Environmental Protection Agency's List of Violating Facilities pursuant to 40 CFR, Part 15.20;

c. In the event a facility utilized in the accomplishment of this contract becomes listed on the EPA list, this contract may be canceled, terminated, or suspended in whole or in part;

d. It will comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308, respectively, and all regulations and guidelines issued thereunder;

e. It will promptly notify the Government of the receipt of any notice from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility utilized or to be utilized in the accomplishment of this contract is under consideration for listing on the EPA List of Violating Facilities;

f. It will include the provisions of Paragraphs a. through g. in every subcontract or purchase order entered into for the purpose of accomplishing this contract, unless otherwise exempted pursuant to the EPA regulations implementing the Air or Water Acts above (40 CFR, Part 15.5), so that such provisions will be binding on each subcontractor or vendor;

g. In the event that the Contractor or the subcontractor for the construction, supply and service contracts entered into for the purpose of accomplishing this contract were exempted from complying with the above requirements under the provisions of 40 CFR, Part 15.5 (a), the exemption shall be nullified should the facility give rise to a criminal conviction (see 40 CFR 15.20) during the accomplishment of this contract. Furthermore, with the nullification of the exemption, the above requirements shall be effective. The Contractor shall notify the Government, as soon as the Contractors' or the subcontractors' facility is listed for having given rise to a criminal conviction noted in 40 CFR, Part 15.20.

S–26 Use of Lead-Based Paints on Residential Structures

If the work under this contract involves construction or rehabilitation of residential structures, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (see 42 U.S.C. 4831). The Contractor shall assure that paint used on the project on applicable surfaces does not contain lead in excess of the percentages set forth in Paragraphs (a) and (b) of this section. In determining compliance with these standards, the lead content of the paint shall be measured on the basis of the total nonvolatile content of the paint or on the basis of an equivalent measure of lead in the dried film of paint already applied.

a. For paint manufactured after June 22, 1977, paint may not contain lead in excess of 6 one-hundredths of 1 percent (.00006) lead by weight.

b. For paint manufactured on or before June 22, 1977, paint may not contain lead in excess of five-tenths of 1 percent lead by weight.

As a condition to receiving assistance under the Act, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of Federal funds.

Definitions

1. "Applicable surfaces" are those exterior surfaces which are readily accessible to children under 7 years of age.

2. "Residential structures" means houses, apartments, or other structures intended for human habitation, including institutional structures where persons reside, which are accessible to children under 7 years of age, such as day care centers, intermediate and extended care facilities, and certain community facilities.

S–27 EDA Signs

The Contractor shall supply, erect, and maintain a project sign according to the specifications set forth below:

EDA Site Sign Specifications

Size: Sign A: 4′ x 8′ x 1⅞″ Sign B: 4′ x 8′ x ¾″

Materials: Face: Sign A: ¼″ tempered Masonite; Sign B: ¾″ or greater shop sanded (exterior) Plywood (one side only)

Framing: Sign A: 2″ x 4″ nominal on four sides and center cross bracing; Sign B: 2″ x 4″ center cross bracing only

Supports: 4″ x 4″ x 12′ nominal post

Assembly: Sign A: 2″ x 4″ frame to fit 4′ x 8′ board with 2″ x 4″ cross braces; Sign B: To be mounted directly to the 4″ x 4″ post, with cross bracing

Mounting: Signs A and B are to be mounted to the 4″ x 4″ post with a ⅜″ minimum bolt and nut, four on each side of the sign. Each bolt is to have two washers, one between the sign and the head of the bolt and the other between the post and the nut.

Erection: 4″ x 4″ posts are to be set three to four feet deep into concrete 12″ in diameter.

Paint: Face: Three coats outdoor enamel (sprayed); Rear: One coat outdoor enamel (sprayed)

Colors: Crimson Red, Stark White and Royal Blue. Specifically, white background; "JOBS" in red; "for your community" in blue; "EDA" logo and "PROVIDED BY EQUAL OPPORTUNITY EMPLOYERS, in partnership with the U.S. DEPARTMENT OF COMMERCE—Economic Development Administration" in black. "By working together we can provide economic opportunities for Americans" in black.

Lettering: Silk screen enamels. Lettering sizes and positioning will be as illustrated.

Project signs will not be erected on public highway rights-of-way.

Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area, if any possibility exists for obstruction to traffic line of sight.

If, at the end of the project, the sign is reusable, it shall be disposed of as directed by the EDA Regional Office.

Whenever EDA Site Sign specifications conflict with State law or local ordinances, the EDA Regional Director may modify such conflicting specifications so as to comply with that State law or local ordinance.

BILLING CODE 3510–24–P

SAMPLE

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS

Part One
Certificate of Engineer

I, the undersigned Engineer, certify that I am familiar with the design of the

_____
(Name/Type of Facility)

being constructed by the _____
(Name of Owner)

as part of EDA Project Number _____ and that all of such facilities will be constructed wholly within the land, leasehold interest and rights-of-way hereinafter described and existing public streets and roads. I further certify that the land, leasehold interest and rights-of-way being purchased as hereinafter described are sufficient but not in excess of actual needs for the Project as planned and approved by the Owner.

1. Fee Title or a long term leasehold interest is required for the following property (Project elements constructed above ground should be on land owned in Fee. Describe each tract, whether presently owned or to be acquired, and indicate what Project element is to be constructed thereon, i.e., tank site, pumping station, treatment plant, etc.; if more space is needed use additional sheets marked 'Exhibit A"):

2. The following easements and rights-of-way will be required for this Project (Describe each easement and rightof-way, whether presently owned or to be acquired, Describe by courses and distances and by name of Owner, including area in acres; if more space is needed use additional sheets marked "Exhibit B'):

3. The following state, railroad, highway or other permits will be required (Describe location and name of permitter; if more space is needed use additional sheets marked 'Exhibit C'):

WITNESS MY HAND, this the _____ day of _____, 19___

_____
Registered Professional Engineer

Telephone No. _____

_____
Address

_____
City State

(TO BE COMPLETED BY ARCHITECT/ENGINEER AND FORWARDED TO OWNER'S ATTORNEY)

Part Two
Title Opinion

I, _____ Attorney-at-Law,

representing _____
(hereinafter the 'Owner') do hereby certify that:

1. I have examined the public record of _____ County, _____
State

from the period of _____, 19___ to _____ 19___ (which period of time should be at least 40 years). Based upon said examination, I find and am of the opinion that _____ is vested with marketable, fee simple title to the land referenced in Part One hereof as being required in fee, subject only to the following liens, encumbrances and objections (if none write 'None'):

Any encumbrances or objections to the fee simple title listed above will not, in my opinion, restrict or interfere with the contemplated construction, use or purpose of the aforesaid EDA Project.

2. This is to further certify that all easements or rights-of-way described in Part One as being needed for the noted Project have been acquired by the Owner, that all long term leases described in Part One as being needed for the noted Project have been entered into by the Owner, that I have examined the instruments creating the easements, rights-of-way, or long term leases described in Part One, and it is my opinion that said instruments are valid as to form and substance for the purposes intended and provide the Owner with sufficient interest to construct and maintain the Project facilities.

I certify that I have examined the public records for the purpose of ascertaining that said easements and/or rights-of-way have been obtained from the record owner(s).

3. The extent of said title examination,is sufficient for the purpose of establishing the validity of the title to said property and for the purpose of determining outstanding restrictions, liens, encumbrances, and ownership interests pertaining thereto.

4. All permits described in Part One as being needed for this Project have been obtained and I have examined all of said permits and am of the further opinion that said permits are valid as to form and substance for the purposes intended.

5. Remarks and Explanations:

_____ _____
Date Attorney-at-Law

Telephone No. _____

_____ _____ _____
Address City State

- It is the sole responsibility of the Recipient/Grantee of the EDA grant award to provide a legal opinion verifying that the Recipient/Grantee has good title to all property required for completion of the Project as defined by the grant award.
- A long term leasehold interest is acceptable only if held by the Recipient/Grantee of the EDA grant award for a period not less than the estimated useful life of the Project and only if lease provisions adequately safeguard EDA's interest in the Project.
- Only legal descriptions of the property described herein should be attached to this form.
- If this title opinion is based on a title insurance policy, any exceptions listed on the policy should be explained and resolved in #5 above.
- EDA relies on this title opinion and does not make independent findings regarding title to the property described herein.

BILLING CODE 3510-24-C

Notice

This attached Exhibit D, "Agreement and Mortgage" is furnished as a sample. The actual form which the Recipient may be required to sign may differ from the sample dependent upon the type of property, the form of ownership, and the intent of the EDA assisted project (Check with the Regional Attorney in the EDA regional office). Attention is called to the "useful life", stated in terms of years, during which period the "Agreement and Mortgage" will remain in effect.

Agreement and Mortgage

WHEREAS, _____ (hereinafter called "Mortgagor"), whose address is _____ has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (EDA), whose address is _____ a grant in the amount of _____ and No/100 Dollars ($) (Grant Amount) pursuant to a Grant Agreement entered into by the parties on _____, and bearing EDA Project Number ___-____-___ (the Project); and

WHEREAS, pursuant to the application filed by Mortgagor requesting said grant and pursuant to the Grant Agreement, the Grant Amount is to be used for the purpose of making improvements consisting of _____ on the real Property described in Exhibit "A," attached hereto and made a part hereof (the Property); and

WHEREAS, any transfer or conveyance of a Project by an EDA Grantee must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3121, is not authorized to permit transfer or conveyance of a Project to parties which are not eligible to receive EDA grants unless EDA is repaid its share of the fair market value of the Project or unless the authorized purpose of the EDA grant was to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the Project if certain conditions are met; and

WHEREAS, the aforesaid grant from EDA provides that the authorized purpose for which the Grant Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, *inter alia*, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, other than by a lease permitted by the Grant Agreement, or use the Property for purposes other than and different from those purposes set forth in the Grant Agreement and the application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR Part 314, or by 15 CFR Part 24 or by Office of Management and Budget Circular A–110, Attachment N (the OMB Circular); and

WHEREAS, the value of EDA's right to repayment under the terms of 15 CFR Part 24 and OMB Circular A–110 is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Grant Agreement, 15 CFR Part 24, OMB Circular A–110 or 13 CFR Part 314;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Grant Agreement or in violation of the regulations set forth in 13 CFR Part 314, 15 CFR Part 24, or OMB Circular A–110, as such Grant Agreement, regulations or Circular may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect years from the date hereof, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the Grant Amount or the amount actually disbursed or an amount determined pursuant to 13 CFR Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Grant Agreement, 15 CFR Part 24, OMB Circular A-110, or 13 CFR Part 314, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

If the Grant Application and Grant Agreement authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the grant; said lease arrangements will provide adequate employment and economic benefits for the area in which the Property is located; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed Lessee is providing adequate compensation to Mortgagor for said lease. Any lease agreements entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges; Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its grant percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage in the total cost of the grant program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage—Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagee shall be furnished a confirmed copy of this Mortgage at the time of execution, and after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant

Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the _____ day of _____19, _____.

WITNESS:

_____

_____

_____

By: _____

Mortgagor

Its: _____

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this day of _____ 19_____, by the _____ on behalf of said

_____

Notary Public

My commission expires _____

Notice of Requirements for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246 and 41 CFR Part 60–4)

The following notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of $10,000.

The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation for each trade
	* Insert goals for each year.	* Insert goals for each year.

* Goals to be furnished by EDA.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60–4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60–4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60–4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the appropriate Regional Office of the Office of Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

As used in this notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical area where the contract is to be performed giving the state, county and city, if any).

BILLING CODE 3510–24–P

ADVERTISEMENT FOR BIDS

_____

Owner

_____

Address

_____

Separate sealed BIDS for the construction of (briefly describe nature, scope, and major elements of the work)_____

_____

will be received by _____

at the office of _____

until _____, (Standard Time -- Daylight Savings Time) _____,

19____, and then at said office publicly opened and read aloud.

The CONTRACT DOCUMENTS may be examined at the following locations:

_____

_____

_____

_____

Copies of the CONTRACT DOCUMENTS may be obtained at the office of _____

_____ located at_____

upon payment of $ _____ for each set.

Any BIDDER, upon returning the CONTRACT DOCUMENTS promptly and in good condition, will be refunded his payment, and any non-bidder upon so returning the CONTRACT DOCUMENTS will be refunded $ _____.

_____ _____

Date

Exhibit F-1

BILLING CODE 3510-24-C

Information for Bidders

BIDS will be received by _____ (herein called the "OWNER"), at _____ until _____, 19_____, and then at said office publicly opened and read aloud.

Each BID must be submitted in a sealed envelope, addressed to _____ at _____. Each sealed envelope containing a BID must be plainly marked on the outside as BID for _____ and the envelope should bear on the outside the name of the BIDDER, his address, his license number if applicable and the name of the project for which the BID is submitted. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the OWNER at _____.

All BIDS must be made on the required BID form. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. Only one copy of the BID form is required.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the OWNER and the BIDDER.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The OWNER shall provide to BIDDERS prior to BIDDING, all information which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID bond payable to the OWNER for five percent of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the Agreement is executed the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the payment BOND and performance BOND have been executed and approved, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance BOND and a payment BOND, each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and obtain the performance BOND and payment BOND within ten (10) calendar days from the date when the NOTICE OF AWARD is delivered to the BIDDER. The NOTICE OF AWARD shall be accompanied by the necessary Agreement and BOND forms. In case of failure of the BIDDER to execute the Agreement, the OWNER may at his option consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the OWNER.

The OWNER within ten (10) days of receipt of acceptable performance BOND, payment BOND, and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the OWNER and the CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible BIDDER.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to his BID.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the SUPPLEMENTAL GENERAL CONDITIONS.

The low BIDDER shall supply the names and addresses of major material SUPPLIERS and SUBCONTRACTORS when requested to do so by the OWNER.

Inspection trips, for prospective BIDDERS will leave from the office of the

_____

The ENGINEER is _____. His address is _____.

Bid

Proposal of _____ (hereinafter called "BIDDER"), organized and existing under the laws of the State of _____ doing business as _____.*

To the _____ (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of _____ in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within _____ consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of $_____ for each consecutive calendar day thereafter as provided in section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

_____

_____

BILLING CODE 3510–24–P

* Insert "a corporation", "a partnership", or "an individual as applicable.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or lump sum:

BID SCHEDULE

NOTE: BIDS shall include sales tax and all other applicable taxes and fees.

NO.	ITEM	UNIT	UNIT PRICE	AMOUNT	TOTAL PRICE

TOTAL OF BID .....$_____
LUMP SUM PRICE (if applicable) .....$_____

Respectfully submitted:

_____ _____
Signature Address

_____ _____
Title Date

_____ _____
License Number (if applicable)

(SEAL -- if bid is a corporation)

Attest _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____

_____ as Principal, and

_____ as Surety, are hereby held and firmly

bound unto_____ as OWNER in the penal sum of _____

_____

for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 19_____.

The Condition of the above obligation is such that whereas the Principal has submitted to

_____ a certain BID, attached hereto and

hereby made a part hereof to enter into a contract in writing, for the

_____

_____

_____

NOW, THEREFORE,

(a) If said BID shall be rejected, or

(b) If said BID shall be accepted and the Principal shall execute and deliver a con-tract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID,

then, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____ (L.S.)
Principal

_____
Surety

By: _____

IMPORTANT -- Surety companies executing BONDS must appear on the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the project is located.

Exhibit F-4

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 19_____, by and between _____ (hereinafter called "OWNER"), (Name of Owner), (an Individual) and _____ doing business as (an individual,) or (a partnership.) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of _____

_____

2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within _____ calendar days after the date of the NOTICE TO PRO-CEED and will complete the same within _____ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR agrees to perform all of the WORK described in the CON- TRACT DOCUMENTS and comply with the terms therein for the sum of $_____, or as shown in the BID schedule.

5. The term "CONTRACT DOCUMENTS" means and includes the following:

(A) Advertisement for BIDS

(B) Information for BIDDERS

(C) BID

(D) BID BOND

(E) Agreement

(F) General Conditions

(G) SUPPLEMENTAL GENERAL CONDITIONS

(H) Payment BOND

(I) Performance BOND

(J) NOTICE OF AWARD

(K) NOTICE TO PROCEED

(L) CHANGE ORDER

(M) DRAWINGS prepared by_____ numbered____

_____through _____, and dated_____, 19____

(N) SPECIFICATIONS prepared or issued by_____

_____

dated _____, 19_____

(O) ADDENDA:

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (_____) each of which shall be deemed
(Number of Copies)
an original on the date first above written.

OWNER:

_____

BY _____

Name _____
(Please Type)

Title _____

(SEAL)

ATTEST:

_____

Name _____
(Please Type)

Title _____

CONTRACTOR:

_____

BY _____

Name _____
(Please Type)

Address _____

_____

(SEAL)

ATTEST:

_____

Name _____
(Please Type)

_____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____ (Corporation, Partnership, or Individual), hereinafter called Principal, and

_____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called OWNER, in the penal sum of _____

_____ Dollars, ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19___, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ (Number) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 19____.

ATTEST:

_____ Principal Secretary

_____ Principal

By _____ (s)

(SEAL)

_____ (Witness as to Principal)

_____ (Address)

_____ (Address)

_____ (Address)

_____ Surety

ATTEST:

_____ Surety Secretary

(SEAL)

_____ (Witness as to Surety)

_____ (Address)

By _____ Attorney-in-Fact

_____ (Address)

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

_____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called OWNER, in the penal sum of _____

_____ Dollars, ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19___, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW THEREFORE, if the Principal shall promptly make payments to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CON-TRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ (Number) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 19____.

ATTEST: _____ Principal

_____

By _____ (s) Principal Secretary

(SEAL)

_____ (Address)

_____

_____ (Witness as to Principal)

_____ (Address)

_____ _____ Surety

ATTEST: By _____ Attorney-in-Fact

_____ (Witness as to Surety) _____ Address

_____ (Address) _____

_____

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

BILLING CODE 3510-24-C

General Conditions

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1. Definitions

1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1.2 ADDENDA—Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3 BID—The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 BIDDER—Any person, firm or corporation submitting a BID for the WORK.

1.5 BONDS—Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

1.6 CHANGE ORDER—A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 CONTRACT DOCUMENTS—The contract, including Advertisement For Bids, Information for Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.8 CONTRACT PRICE—The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.9 CONTRACT TIME—The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.10 CONTRACTOR—The person, firm or corporation with whom the OWNER has executed the Agreement.

1.11 DRAWINGS—The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.12 ENGINEER—The person, firm or corporation named as such in the CONTRACT DOCUMENTS.

1.13 FIELD ORDER—A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD—The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.15 NOTICE TO PROCEED—Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

1.16 OWNER—A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

1.17 PROJECT—The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE—The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS—All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS—A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.21 SUBCONTRACTOR—An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the work at the site.

1.22 SUBSTANTIAL COMPLETION—That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.23 SUPPLEMENTAL GENERAL CONDITIONS—Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

1.24 SUPPLIER—Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.25 WORK—All labor necessary to produce the con struction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.26 WRITTEN NOTICE—Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

2. Additional Instructions and Detail Drawings

2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. Schedules, Reports and Records

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.2.1 The dates at which special detail drawings will be required; and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

4. Drawings and Specifications

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site

conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. Shop Drawings

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

5.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

6. Materials, Services and Facilities

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. Inspection and Testing

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the engineer or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.

7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. Substitutions

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. Patents

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

10. Surveys, Permits, Regulations

10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and

comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. Protection of Work, Property and Persons

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

12. Supervision by Contractor

12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. Changes in the Work

13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. Changes in Contract Price

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

(a) Unit prices previously approved.

(b) An agreed lump sum.

(c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit.

15. Time For Completion and Liquidated Damages

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather: and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. Correction of Work

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and reexecute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. Subsurface Conditions

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS: or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2 The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS

shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. Suspension of Work, Termination and Delay

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery, thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the Contract. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. Payments to Contractor

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER's title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5%) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.

19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably, stored either at or near the site.

19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached lo the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the

CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance, with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. Acceptance of Final Payment as Release

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BONDS.

21. Insurance

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

21.3 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified;

21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than, $500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than $500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than $200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than $200,000 aggregate for any such damage sustained by two or more persons in any one accident.

21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

21.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

22. Contract Security

22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. Assignments

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. Indemnification

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury sickness, disease or death, or to injury to or destruction of

tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRAC-TOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. Separate Contracts

25.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefor as provided in Sections 14 and 15.

26. Subcontracting

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

27. Engineer's Authority

27.1 The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

28. Land and Rights-of-Way

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. Guaranty

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL, COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

30. Arbitration

30.1 All claims, disputes and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 20, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

30.2 Notice of the demand for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and with the American Arbitration Association, and a copy shall be filed with the ENGINEER. Demand for arbitration shall in no event be made an any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

30.3 The CONTRACTOR will carry on the WORK and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

31. Taxes

31.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

BILLING CODE 3510-24-P

APPLICATION FOR PAYMENT

AIA DOCUMENT G702

OWNER ☐
ARCHITECT ☐
CONTRACTOR ☐
FIELD ☐
OTHER ☐

PROJECT:
(name, address)

ARCHITECT:

TO: (Owner)

DATE OF APPLICATION:
APPLICATION NO:

PERIOD FROM: TO:

State of:
County of:

The undersigned certifies that the Work herein has been completed in accordance with the Contract Documents, that all amounts have been paid for items which previous Certificates for Payment were issued and payments received, and that the current payment is now due.

Contractor

Address

By Date

Subscribed and sworn before me this day of , 19

Notary Public:

My Commission Expires:

Application is made for Payment, as shown below, in connection with this Contract.

TOTAL COMPLETED TO DATE (F below)	
STORED MATERIALS (see attached list)	
TOTAL COMPLETED & STORED	
RETAINAGE %	
TOTAL EARNED LESS RETAINAGE	
LESS PREVIOUS PAYMENTS	
CURRENT PAYMENT DUE	

ITEM NO. A	DESCRIPTION OF WORK B	SCHEDULED VALUE C	PREVIOUS APPLICATIONS D	THIS APPLICATION E	%	COMPLETED TO DATE F	BALANCE TO FINISH G
	SUB TOTAL OR TOTAL						

SAMPLE

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

Form Approved
Budget Bureau No. 44-R1093

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

Name of Contractor ☐ or Subcontractor ☐		Address	
Payroll No.	For Week Ending	Project and Location	Project or Contract No.

(1) Name, Address & SSN of Employee	(2) # of Exempt	(3) Work Classification	OT or Std	(4) Day and Date — HOURS WORKED EACH DAY	(5) Total Hours	(6) Rate of pay	(7) Gross Earned	(8) Deductions: FICA	Tax			Other	Total Ded.	(9) Net wages
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FORM WH-347 (1/68) - FORMERLY SOL 184

Date _____

I, _____, _____ do hereby state:
(Name of Signatory party) (Title)

(1) That I pay or supervise the payment of the persons employed by _____ on the _____; that during the payroll period commencing on the _____ day of _____, 19____ and ending the _____ day of _____, 19____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948; 63 Stat. 108; 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

_____

_____

_____

_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a state, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

□ -In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

□ - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

Exception (Craft)	Explanation

Remarks:

Name & Title	Signature

The wilful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 231 of Title 31 of the United States code.

NOTICE OF AWARD

To: _____

_____

_____

_____

_____

PROJECT Description: _____

_____

_____

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated _____, 19_____, and information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of $ _____.
You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.
If you fail to execute said Agreement and to furnish said BONDS, within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of you BID BOND. The OWNER will be entitled to such rights as may be granted by law.
You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 19_____.

_____
Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by _____,

this the _____ day of _____, 19_____.

By _____

Title _____

NOTICE TO PROCEED

To:_____ Date: _____

_____ Project: _____

_____

_____

_____

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 19 ____, on or before _____, 19 _____, and you are to complete the WORK within _____ consecutive calendar days thereafter. The date of completion of all WORK is therefore _____, 19_____.

_____
Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

by _____

this the _____ dayof _____, 19_____

By _____

Title _____

CHANGE ORDER

Order No. _____

Date: _____

Agreement Date: _____

NAME OF PROJECT: _____

_____

OWNER: _____

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE:

Original CONTRACT PRICE $ _____.

Current CONTRACT PRICE adjusted by previous CHANGE ORDER $ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased) (decreased)

by: $ _____.

The new CONTRACT PRICE including this CHANGE ORDER will be $ _____.

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____ calendar days.

The date for completion of all work will be _____ (Date).

Approvals Required:

To be effective this Order must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: _____

Recommended by: _____

Ordered by: _____

Accepted by: _____

Federal Agency Approval (where applicable) _____

Exhibit G—[Reserved]

Exhibit H—[Reserved]

FINAL ACCEPTANCE REPORT

EDA Award Number:_____ Contract # _____ of _____ Contracts
Contract Title:_____ Contract Award Date:_____

The following persons were present during the inspection:

Architect/Engineer:_____
Owner:_____
Contractor:_____
Economic Development Representative:_____
Other:_____

RECITAL: The work performed under this contract was inspected on _____ for the purpose of determining acceptability of construction. The Date of Acceptance is hereby established as _____.

Definition of the term "Date of Acceptance": The Date of Acceptance" is the date which the Owner may occupy and/or use the facility for the purpose for which it is intended in accordance with the contract documents and all work for the facility has been completed with the exception of minor cleanup and minor corrective action as shown in the Architect/Engineer's list made during the final inspection.

_____ _____ _____
Architect/Engineer Signature Date

The Contractor agrees that the Date of Acceptance is also the date of commencement of all warranties required by the contract documents and that he, the Contractor, has released all liens on the project, including materialmen and mechanics liens or others filed by the Contractor. The Contractor will complete the work on the Architect/Engineer's list of minor cleanup and corrective work within _____ days of the Date of Acceptance.

_____ _____ _____
Contractor Signature Date

The Owner accepts the work as complete and will assume full possession thereof at _____ (time) on _____ (date).

_____ _____ _____
Owner Signature Date

SAMPLE

QUARTERLY PERFORMANCE REPORT

This report is for:
EDA Project No._____ Date of report preparation:_____
Period covered by this report:_____ to _____
Report number _____
Grantee: _____ _____
Name Address
Grantee's Authorized Representative:_____
Name
_____
Title
Grantee's Architect/Engineer:_____
Name
_____
Address

Current status of the project:

YES	NO	
___	___	1. Is the Grantee's share of expected project cost on hand or immediately available? If not, explain in the Narrative section on the next page why funds are not available and of when the funds give an estimate here, _____ of when the funds are expected to be on hand.
___	___	2. Has all land, rights-of-way, and easements necessary for the project been acquired? If not, explain in the Narrative section on the next page what is causing the delay and give an estimate here, _____ of when the problem will be resolved.
___	___	3. Are any problems expected in meeting any of the Special Conditions to the EDA Grant Offer? If so, explain in the Narrative section on the next page giving an estimated date for satisfying each Special Condition if a delay is expected.
___	___	4. The EDA approved date for completion of design is, _____. Is the design completed? If so, give date of completion, _____. If design is not completed, give date here, _____ of expected completion. If expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.
___	___	5. The EDA approved date for start of construction is _____. Has construction started? If construction has started, the date was _____. If construction has not started, the estimated date for start of construction is _____. If the expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.
___	___	6. The EDA approved date for completion of construction is _____. Is construction complete? If construction is complete, the date of completion was _____. If construction is not complete, the estimated date for completion is _____ and the percent of completion is ____%. If the estimated date for construction completion is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.

If not previously furnished to EDA please include the following date when applicable:

Architect/Engineer Agreement executed: _____
Design started: _____ Design completed: _____
Design approved by EDA: _____
Advertisement for construction bids: _____
Construction bid opening: _____
Construction bid award: _____
Issue of Notice to Proceed: _____
Construction start: _____

Construction completion: _____
Acceptance of facility by Grantee: _____
Warranty start: _____ Warranty end: _____
Final payment request: _____

NARRATIVE

PROBLEMS BEING EXPERIENCED:

ACTION TAKEN:

ACTION RECOMMENDED:

NOTE: If more space is needed for the above narrative, attach a separate sheet.

SAMPLE

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

ARCHITECT/ENGINEER'S CERTIFICATE

Project No. _____

I, _____, Architect/Engineer for the _____ certify that the following plans and specifications (check appropriate item):

Sheets numbered

☐ **Site Plan** _____

☐ **Architectural** _____

☐ **Structural** _____

☐ **Mechanical** _____

☐ **Electrical** _____

☐ **Equipment** _____

☐ **Other (identify)** _____

(a) Are adequate and suitable for, and are in conformity with, the project contemplated in the approved application.
(b) Comply with applicable State and local laws, ordinances, and regulations pertaining to standards of construction and safety, and have been approved by:

AUTHORITYDATE OF APPROVAL

_____

_____

_____

_____

_____

Approved:

_____
Architect/EngineerOwner

_____
License NumberAddressDate

SAMPLE

Form ED-126 (Rev. 4-4-72)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CERTIFICATE OF GRANTEE/BORROWER'S ATTORNEY

I, the undersigned, _____, the duly authorized and acting legal representative of _____ do hereby certify as follows:

I have examined the attached contracts and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

_____

Date: _____

Information Normally Required for
EPA/State Certification as to Adequacy of Treatment

Applicant:_____ EDA Award No.:_____

Contact:_____ Telephone: _____

Project Description:

_____

_____

_____

Sanitary Sewage Contribution

Estimate of flows: _____

Type of sewage: _____

Storm Sewer Contribution

Estimate of flows: _____

Projection of Type of Tenants for Industrial Developments

Type of Tenants: _____

Quantity of flows: _____

Strength of flows: _____

Receiving Sewage Treatment Plant

Name of Receiving Plant: _____

NPDES Number: _____

Design Capacity: _____

Effluent Disposal Capacity: _____

Current Flows: _____

CORE PERFORMANCE MEASURES REPORT Page 1 of 2

Federal Sponsoring Agency: **Economic Development Administration**

Program: **TITLE I PUBLIC WORKS AND DEVELOPMENT FACILITIES & TITLE IX IMPLEMENTATION CONSTRUCTION PROJECTS**

*EDA Project No.:*_____. Reporting Period: ☐ Project Completion ☐3 years ☐ 6 years

*Approval Date:*_____. *Short Project Description:*_____

I. GRANTEE ORGANIZATION: *(Information in italics will be generated from OPCS - do not enter)*

1. *Grantee Name:* _____
2. *Address:* _____
3. *Telephone:* _____
4. Fax: _____
5. E-mail Address: _____
6. Contact Person: Name: _____ Title: _____
7. Project Location: _____ *County/* *State/* Zip Code
8. GIS Coordinates if available for Project Location: _____

II. EDA PROJECT BUDGET:

1. EDA Project Budget:

	Approved	*Final (Actual)*
EDA Funds	$_____	$_____
Applicant	$_____	$_____
Local Funds	$_____	$_____
State	$_____	$_____
Other Federal	$_____	$_____
Other	$_____	$_____
Total Project Dollars:	$_____	$_____

III. OUTCOMES (ACTUAL) REPORTED AT PROJECT COMPLETION ONLY:

1. Construction Schedule:	*Estimated*	*Final (Actual)*
a. Start Dates:	_____	_____
b. Completion Dates:	_____	_____
2. Construction Jobs Created:	_____	_____

CORE PERFORMANCE MEASURES REPORT
TITLE I/TITLE IX CONSTRUCTION FACILITIES *EDA Project No.:* _____

IV. OUTCOMES (ACTUAL) REPORTED AT PROJECT COMPLETION AND AT 3 YEARS AND 6 YEARS AFTER PROJECT COMPLETION.

1. Permanent Jobs	Direct	Indirect
a. Created:	_____	_____
b. Retained (saved):	_____	_____
c. Total jobs:	_____	_____

d. If you used a multiplier to determine indirect jobs, show the multiplier here: ( ).

2. Additional dollars invested:	Direct	Indirect
a. Private sector:	$_____	$_____
b. Local public:	$_____	$_____
c. State:	$_____	$_____
d. Other Federal:	$_____	$_____
e. Totals:	$_____	$_____

f. If you used a multiplier to determine indirect investment, show multiplier here: ( ).

3. Increase in Local Real or Business Property Tax Base:

a. Enter value of increase in tax base (prior to any abatement): $_____
b. If you used a multiplier to determine increased tax base show multiplier here: ( ).

4. Local Capacity Anticipated and Actual Results:

Local Capacity	Percent Anticipated:	Actual Results (Scale of 1-10, with 10 being highest):
a. Created infrastructure to support private investment:	___	___
b. Created infrastructure to stimulate economic development:	___	___
c. Stabilized and maintained the local economic base:	___	___
d. Diversified the local economy:	___	___
e. Other non-quantifiable benefits	___	___

Specify: _____:
Note: Attach brief explanation of results.

V. Please submit a good quality photograph of the EDA project and/or businesses assisted.

AUTHORIZED CERTIFYING OFFICIAL

Signature: _____ **Date Report Submitted:** _____

Typed or Printed Name & Title: _____ **Telephone:** _____

BILLING CODE 3510-24-C

Instructions for Completion of EDA'S Core Performance Measures Report for Title I/IX Construction Facilities

The instructions below are in outline form and correspond to identical items in the Core Performance Measures Report. Complete the report by filling in the spaces and responding to the questions. If there is not sufficient space on the report for a response, please respond on an attachment to the report. On page one of the Report, indicate the EDA Project Number and the Reporting Period.

Part I: Grantee Organization

1. *Grantee Name:* Enter the legal name of the Grantee.
2. *Address:* Enter the physical address of the Grantee.
3. *Telephone:* Enter the telephone number, including area code, of the Grantee.
4. *Fax:* Enter the facsimile number, including area code, of the Grantee.
5. *E-mail Address:* Enter the Internet address of the Grantee.
6. *Contact Person & Title:* Name the person to contact on matters related to this report. Also, provide the contact person's telephone number, including area code, if different from the Grantee's telephone number.
7. *Project Location:* Enter the county, state and zip code of project location.
8. *GIS Coordinates:* Provide geographic mapping coordinates for project location, if available.

Part II: EDA Project Budget

Enter the project budget as estimated at time of approval.

Enter the actual project budget at time of project completion and close-out.

Enter only dollars used as part of the EDA total project cost for the construction project (scope of work and eligible costs defined in the grant agreement).

Part III: Outcomes (Actual) Reported at Project Completion Only

1. Compliance With Construction Schedule

a. *Construction start date:* Ener the estimated date (specified in the Special Award Conditions) for starting construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for starting construction on the EDA project.

b. *Construction completion date:* Enter the estimated date (specified in the Award Conditions) for completing construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for completing construction on the EDA project.

2. Construction Jobs Created (Please provide information on construction jobs for all construction projects, not just PWIP)

a. *Construction jobs created:* Enter the estimated number of construction jobs at the time of project approval and the actual number of construction jobs at project completion (Part-time construction jobs which were created during the construction phase of the EDA project should be converted to FTE.). If estimated/actual figures are not available, please provide the average annual construction wage for your area $_____ and the proportion of total project costs allocated to labor for this or similar projects of this type _____%.

Part IV: Outcomes (Actual) Reported at Project Completion and at 3 Years and 6 Years After Project Completion.

1. Permanent Jobs:

a. *Created jobs:* Enter the number of private sector jobs created by project beneficiaries as a result of the EDA construction project. In tallying direct jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Indirect jobs should be reported separately in the space provided.

1. *Direct Jobs:* These are jobs that are created at the project site by the identified beneficiaries, and other directly-related jobs created by subsequent employers as a result of the project. For some projects (e.g., roads, water and sewer lines), direct jobs may include those created by firms that which were not originally anticipated as part of the project, but which located or expanded in the area as a result of the project.

2. *Indirect Jobs:* These are jobs that are created within the local labor market area by the EDA project through increased supplier or consumer demand—commonly referred to as spin-off jobs resulting from increased employment by local suppliers and increased commercial/retail jobs due to increased wages generated by direct jobs. (For the purpose of this report, there is no need to distinguish between indirect and induced effects).

b. *Retained (saved) jobs:* Enter the number of private sector jobs retained or saved by project beneficiaries as a result of the EDA construction project. In tallying jobs, follow the instructions for created jobs in the paragraph (IV.1.a.) above.

c. *Total jobs:* Add the number of created jobs in IV.1.a. and the number of retained jobs in IV.1.b. and enter the total jobs here in IV.1.c.

Note: A list of the employers showing the number of jobs created or saved by each should be maintained as part of the supporting data in the Grantee's project files.

2. Additional Dollars Invested:

(Note: Dollars should be separated between: (1) dollars invested in the EDA construction project; and (2) dollars directly related to, but not a part of, the EDA construction project. Dollars invested in the EDA construction project are the non-Federal matching funds that were identified at the time of EDA grant approval and are included in the total project costs for the construction project shown in Section II above. Do not double count these dollars below.)

Additional dollars invested include dollars that support project objectives, but are not included as part of the EDA project costs. Though occasionally difficult to quantify these directly-related investments, an attempt should be made to identify them on this report. Examples are investments in facilities occupied by project beneficiaries or employers that were constructed with other public or private funds as a result of the EDA project. Also include investments by firms using residual capacity of EDA-financed infrastructure (notably water and sewer services).

Indirect investments are those associated with the location or expansion of spin-off commercial business and/or wholesalers resulting from increased demand for goods and services generated by the project, or new investment in retail and consumer services.

If you cannot determine indirect jobs or investment, estimate the number of firms which located or expanded in the area as result of the increased supplier/consumer demand generated by the project below: Estimated number of firms creating indirect jobs _____ and/or investment _____.

a. *Private Sector:* Enter the total dollars from private sector investors, employers and other private sector sources such as the local financing institutions, and private donors. Include private investment in plant and equipment.

b. *Local public:* Enter the total dollars from local public sources such city/county appropriations, G.O./revenue bond issues, and economic development sales taxes.

c. *State:* Enter the total dollars from state sources such as state appropriations and CDBG funds to the state.

d. *Other Federal:* Enter the total dollars from other Federal sources as HUD, Agriculture, and Transportation funds.

e. *Totals:* Add the other dollars from IV.2.a through IV.2.d. and enter the total dollars on IV.2.e.

3. Increase in Local Tax Base:

Enter here on IV.3 the dollar increase in the local tax base (the taxable real and business personal property) attributable to the EDA project. Please check whether these are actual dollars of dollars computed using a multiplier. Please provide the multiplier, if applicable.

4. Local Capacity Anticipated and Actual Results:

An evaluation should be made regarding how well the EDA construction project has met the initial objectives listed in IV.4.a through IV.4.e below. Indicate by percentages, that portion of the project which was initially envisioned as the justification for the project under one or more of the listed categories. Individual ratings (with 10 being the "best" (i.e., the project has totally met the objective in every conceivable way) and 1 being the "worst" (i.e., the project has not met the objective in any way at all). As an example, a project may have initially been intended to support a single private business (100%), but may actually have resulted in creating jobs associated with other businesses, perhaps diversified the local economy, or provided other community benefits. Thus, a rating would be warranted for those categories as well as for the first category.

Not all objectives listed here may apply to the EDA project. Please mark "NA" if a given result was not anticipated or achieved. A narrative explaining the results or any unique situations associated with the project would also be useful.

V. Please submit a photograph of the project and/or business activity assisted by the project.

PART 306—PLANNING ASSISTANCE

Sec.
306.1 Purpose and scope.
306.2 Application evaluation criteria.
306.3 Award requirements.
306.4 Award conditions.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 306.1 Purpose and scope.

The primary objective of planning assistance is to provide funding for administrative expenses to support the formulation and implementation of economic development planning programs and for the conduct of planning activities designed to create and retain permanent jobs and increase incomes, particularly for the unemployed and underemployed in the nation's most economically distressed areas. Planning activities supported by these funds must be part of a continuous process involving the active participation of public officials and private citizens, and include the following:

(a) Analyzing local economies;

(b) Defining economic development goals;

(c) Determining project opportunities; and

(d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

§ 306.2 Application evaluation criteria.

(a) EDA uses the application evaluation criteria set forth in part 304 of this chapter. In addition, EDA evaluates applications on the following:

(1) Quality of the proposed work program;

(2) Management and staff capacity and qualifications of the applicant organization; and

(3) Extent of broad-based representation including for example, involvement of the local civic, business, leadership, labor, minority, and other community interests in the applicant's economic development activities.

(b) Previously funded grantees, in addition to the requirements of paragraph (a) of this section, will also be evaluated on the basis of the quality of their past performance.

§ 306.3 Award requirements.

(a) Planning assistance shall be used in conjunction with any other available Federal planning assistance to ensure adequate and effective planning and economical use of funds.

(b) Grant rate:

(1) The maximum Federal grant rate for a project under this part is,

(i) 50 percent, except as supplemented as provided in § 301.4(b), or

(ii) 75 percent, if that is greater than the maximum supplemented grant rate provided in § 301.4(b), and the project meets the criteria of paragraph (b)(2) of this section.

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that,

(i) The project is intended to address problems arising from actual or threatened severe unemployment, significantly low per capita income, or a special need that qualifies an area for eligibility under § 301.2(b),

(ii) The project is in substantial part devoted to activities addressing the needs of the most economically distressed parts of the total area served by the applicant,

(iii) The applicant is uniquely qualified to address the major causes of actual or threatened economic distress in the area served by the applicants, and

(iv) The applicant cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (b)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

(c) As a condition of the receipt of assistance by a State under this part 306:

(1) The State must have or develop a CED Strategy;

(2) Any State plan developed with such assistance must be developed cooperatively by the State, political subdivisions of the State, and the economic development districts located wholly or partially within the State;

(3) Any overall State economic development planning assisted under this section shall be a part of a comprehensive planning process that shall consider the provision of public works to:

(i) Promote economic development and opportunity,

(ii) Foster effective transportation access,

(iii) Enhance and protect the environment, and

(iv) Balance resources through the sound management of physical development;

(4) Upon completion of the State plan, the State must,

(i) Certify to EDA that, in the development of the State plan, local and economic development district plans were considered and, to the maximum extent practicable, the State plan is consistent with the local and economic development district plans; and

(ii) Identify any inconsistencies between the State plan and the local and economic development district plans and provide a justification for each inconsistency; and

(5) The State must submit to EDA an annual report on the planning process so assisted.

§ 306.4 Award conditions.

Financial, performance and progress reports, and project products will be as specified in the Special Award Conditions of the grant.

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND EVALUATION

Subpart A—Local Technical Assistance

Sec.
307.1 Purpose and scope.
307.2 Application evaluation criteria.
307.3 Award and grant rate requirements.

Subpart B—University Center Program

307.4 Purpose and scope.
307.5 Application evaluation criteria.
307.6 Award and grant rate requirements.

Subpart C—National Technical Assistance, Training, Research, and Evaluation

307.7 Purpose and scope.
307.8 Application evaluation criteria.
307.9 Award and grant rate requirements.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—Local Technical Assistance

§ 307.1 Purpose and scope.

Local Technical Assistance projects are intended to:

(a) Determine the causes of excessive unemployment, underemployment, low per capita income, or high poverty rates in areas and regions of the Nation;

(b) Assist in formulating and implementing new economic development tools, models, and innovative techniques that will raise employment and income levels; and

(c) Assist distressed communities in formulating and implementing new economic development programs to increase the technology and human capacity of the communities. Local Technical Assistance funds may not be used to start or expand a private business.

§ 307.2 Application evaluation criteria.

EDA selects local technical assistance projects for grant awards according to

the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Strengthens the local capacity to undertake and promote effective economic development programs targeted to people and areas of distress;

(b) Benefits distressed areas;

(c) Helps to diversify distressed economies;

(d) Demonstrates innovative approaches to stimulating economic development in distressed areas;

(e) Is consistent with the CED Strategy or other strategy accepted by EDA for the area in which the project is located; and

(f) Presents a reasonable, itemized budget.

§ 307.3 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(c) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that,

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the service area and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (d)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

Subpart B—University Center Program

§ 307.4 Purpose and scope.

The University Center technical assistance program is designed to help improve the economies of distressed areas. It helps institutions of higher education (or other applicants) use their own and other resources to address the economic development problems and opportunities of areas serviced.

§ 307.5 Application evaluation criteria.

EDA selects University Center projects for grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Has the commitment of the highest management levels of the sponsoring institution;

(b) Provides evidence of adequate non-Federal financial support, either from the sponsoring institution or other sources;

(c) Outlines activities consistent with the expertise of the proposed staff, the academic programs, and other resources available within the sponsoring institution;

(d) Presents a reasonable budget;

(e) Documents past experience of the sponsoring institution in operating technical assistance programs; and

(f) Balances the geographic distribution of University Centers across the country. Only the Assistant Secretary has the authority to approve the selection for grant assistance of a University Center that has not received University Center assistance for the previous year.

§ 307.6 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b), or

(ii) 75 percent, if that is greater, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that:

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (e)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

Subpart C—National Technical Assistance, Training, Research, and Evaluation

§ 307.7 Purpose and scope.

(a) The purposes of National Technical Assistance, Training, Research, and Evaluation projects are:

(1) To determine the causes of excessive unemployment, underemployment, outmigration or other problems indicating economic distress in areas and regions of the Nation;

(2) To assist in formulating and implementing new economic development tools and national, State, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions;

(3) To evaluate the effectiveness and economic impact of programs, projects, and techniques used to alleviate economic distress and promote economic development, and

(4) To assist in disseminating information about effective programs,

projects and techniques that alleviate economic distress and promote economic development.

(b) EDA may during the course of the year, identify specific national technical assistance, training, research or evaluation projects it wishes to have conducted. Ordinarily, EDA specifies these projects in a NOFA, which also provides the appropriate point of contact and address.

(c) National technical assistance, research, training, and evaluation funds may not be used to start or expand a private business.

§ 307.8 Application evaluation criteria.

EDA selects projects for national technical assistance, training, research or evaluation grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Does not depend upon further EDA or other Federal funding assistance to achieve results;

(b) Strengthens the capability of local, State, or national organizations and institutions, including nonprofit economic development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(c) Benefits severely distressed areas;

(d) Helps to diversify distressed economies; and

(e) Demonstrates innovative approaches to stimulating economic development in distressed areas.

§ 307.9 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work. Normally, this does not exceed twelve months.

(b) If the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 100 percent when the applicant is able to demonstrate that

(i) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(ii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

Sec.

308.1 Purpose and scope.
308.2 Criteria.
308.3 Use of economic adjustment grants.
308.4 Selection and evaluation factors.
308.5 Applicant requirements.
308.6 Post-approval requirements.

Appendix A to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund; Plan Guidelines.

Appendix B to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Standard Terms and Conditions.

Appendix C to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Administrative Manual.

Appendix D to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Audit Guidelines

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 308.1 Purpose and scope.

(a) The purpose of economic adjustment grants is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including but not limited to those caused by:

(1) Military base closures or realignments, defense contractor reductions in force, or Department of Energy defense-related funding reductions,

(2) Disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*),

(3) International trade,

(4) Fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under sec. 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)),

(5) Long-term economic deterioration, or

(6) Loss of a major community employer.

(b) Economic Adjustment grants are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help organize and carry out a CED Strategy;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the strategy;

(4) Enable communities to plan and coordinate: The use of Federal and other resources available to support economic recovery, development of regional economies, or recovery from natural or other disasters; and

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

§ 308.2 Criteria.

(a) A grant may be made under this part only when the project will help the area to meet a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe changes in economic conditions; and the area for which a project is to be carried out has a strategy and the project is consistent with the strategy, except that the strategy requirement shall not apply to planning projects.

(b) The term "special need" in paragraph (a) of this section means conditions of unemployment, per capita income, or special need that qualify an area for eligibility under § 301.2(b).

(c) Additional criteria, and/or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.3 Use of economic adjustment grants.

(a) Grants may be used to pay for developing a strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to pay for a project in implementation of such a strategy.

(1) Strategy grants may support developing, updating, or refining a strategy.

(2) Implementation grants support activities identified in an EDA-approved strategy. Specific activities may be funded as separate grants or as multiple elements of a single grant. Examples of implementation activities include:

(i) Infrastructure improvements, such as site acquisition, site preparation,

construction, rehabilitation and/or equipping of facilities;

(ii) Provision of business or infrastructure financing through the funding of locally administered Revolving Loan Funds (RLFs), which may include interest rate buy downs;

(iii) Market or industry research and analysis;

(iv) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(v) Public services;

(vi) Training (provided that it does not duplicate Department of Labor, Department of Education or other Federally-supported training programs), and

(vii) Other activities as justified by the strategy which meet statutory and regulatory requirements.

(b) Economic Adjustment grants may be spent directly by the grantee or redistributed to other entities.

(1) Redistribution in the form of grants may only be to eligible recipients of grants under part 308.

(2) Redistribution in the form of loans, loan guarantees, or equivalent assistance may be to public or private entities, including private for-profit entities.

(c) Revolving Loan Fund (RLF) applicants must submit an RLF Plan in accordance with this part and RLF guidelines, Appendix A of this part, displayed at EDA's web site, http://www.doc.gov/eda. A copy of the RLF guidelines is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

§ 308.4 Selection and evaluation factors.

(a) Projects will be selected in accordance with part 304 of this chapter and the additional criteria as provided in subsections (b) and (c), as applicable.

(b) *Strategy grants.* EDA will review strategy grant applications for:

(1) Proper authority, mandate, and capacity of the applicant to lead and manage the planning process and strategy implementation;

(2) Representation of the public and private sectors in the development of the strategy's objectives. Representation may include: Public program and service providers, trade and business associations, educational and research institutions, community development corporations, minorities, labor, low-income, etc.; and

(3) The proposed scope of work for the strategy focuses on the structural economic problem(s) and includes provisions for undertaking appropriate research and analysis to support a realistic, market-based, adjustment strategy.

(c) *Implementation Grants.*

(1) EDA will review implementation grant applications for the extent to which,

(i) The strategy shows

(A) An understanding of the economic problems being addressed;

(B) An analysis of the economic sectors that constitute the community's economic base, including particular strengths and weaknesses that contribute to or detract from a community's current and potential economic competitiveness;

(C) Strategic objectives that focus on stimulating investment in new and/or existing economic activities that offer good prospects for revitalization and growth; and

(D) Identified resources and plans for coordinating such resources to implement the overall strategy; and

(ii) The proposed project is identified as a necessary element of or consistent with the strategy.

(2) *Revolving Loan Fund (RLF) Grants.* For applicants asking to capitalize or recapitalize an RLF, EDA will review the application for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and/or locations described in the strategy;

(ii) The types of financing activities anticipated; and

(iii) The capacity of the RLF organization to manage lending, create networks between the business community and other financial providers, and contribute to the adjustment strategy.

(d) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.5 Applicant requirements.

Each application for a grant under part 308 must:

(a) Include evidence of area and applicant eligibility (see part 301);

(b) Include, or incorporate by reference, if so approved by EDA, a strategy, as provided in § 301.3 (except that a strategy is not required when a funding request is for planning assistance, i.e., a strategy grant);

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 308.2.

§ 308.6 Post-Approval requirements.

(a) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

(b) Projects involving construction shall comply with the provisions of subpart B of part 305.

(c) RLF Supplemental Requirements and Guidelines—RLF grants are subject to the requirements set forth in this part and the publications: EDA's RLF Standard Terms, EDA's RLF Administrative Manual, and EDA's RLF Audit Guidelines, Appendixes B–D of this part displayed at EDA's web site, http://www.doc.gov/eda. A copy of these documents is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

Appendix A to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund; Plan Guidelines

OMB Approval No. 0610–0095.
Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Plan

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 40 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Purpose

EDA requires Revolving Loan Fund (RLF) grantees to manage their RLFs in accordance with a plan. The Plan must be approved by EDA prior to the grant award, but may be modified subsequently, with EDA approval,

as provided for in the RLF Administrative Manual (Section X.D.). These guidelines are designed to assist grant applicants prepare and document an RLF Plan that (1) is tailored to supporting implementation of the area's Economic Adjustment Strategy, (2) provides for administrative clarity, continuity and consistency, and (3) is acceptable to EDA.

EDA Evaluation Criteria

EDA will use the following criteria in evaluating RLF Plans:

1. The Plan flows from and is consistent with the Economic Adjustment Strategy for the area, as approved by EDA.
2. It is internally consistent, i.e., it is a coherent statement of the strategic purpose of the particular RLF and the various considerations influencing the selection of its financing strategy, policies and loan selection criteria.
3. The financing strategy demonstrates a knowledgeable analysis of the local capital market and the financing needs of the targeted businesses.
4. The financing policies and portfolio standards are consistent with EDA policy and requirements.
5. The strategic objectives defined are sufficiently meaningful, though not necessarily quantified, so that progress toward them can be assessed over time.
6. The administrative procedures for operating the RLF are consistent with generally accepted prudent lending practices for public lending institutions.

Format and Content

The format for the Plan provides for two distinct parts: the Revolving Loan Fund Strategy and the Operational Procedures. Each part contains a number of sections designed to facilitate the orderly and logical presentation of the required information. However, the organization of the material and the level of detail provided in the subsections of Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

The title page of the Plan document should show the grant recipient organization's name and the date the Plan was approved. Normally, approval is required to be by resolution of the organization's governing board. States are exempted from this requirement.

Part I: The Revolving Loan Fund Strategy

The RLF strategy is the approach selected by the grant recipient organization for using RLF financing as part of the broader business development strategy designed to support achievement of the goals and objectives established through the area/community's economic adjustment or development planning process. The sequence of the subsections of this Part are designed to lead the reader from the general to the more specific, providing the reader with an understanding of how the RLF strategy was arrived at, and establishing the strategic, organizational and programmatic context for the proposed use of the RLF.

A. Economic Adjustment Program Overview

A short description of the area's economic adjustment program, i.e., the strategy and the full range of activities planned and being implemented, should be provided. The following topics must be included:

1. The nature and scale of the economic adjustment problem(s) underlying the economic distress statistics that resulted in the area becoming eligible for Section 209 assistance.
2. The process through which the Economic Adjustment Strategy was developed. Was it an outgrowth of an ongoing economic development program, such as the Overall Economic Development Program (OEDP) required for other forms of EDA assistance, or a special initiative undertaken in-house or by a consultant? What community organizations and interest groups were, and continue to be, involved in further refining the strategy and overseeing its implementation?
3. Area resources/assets (potential or actual growth industries, industries that could be more productive, work force skills, natural resources, etc.) on which the strategy is designed to build. What specific opportunities have been identified for expanding or strengthening existing economic activities and/or creating new activities?
4. The strategic adjustment goals and objectives derived from the conclusions described above and an assessment of the capacity of the community to invest in pursuing the opportunities identified.
5. The implementation programs and activities, both underway and planned, that support the strategic objectives. Note that while business development activities should be identified here, in addition to other activities, Section B requires a detailed discussion of the business development strategy.
6. The organizational structure and distribution of responsibility for managing the on-going adjustment program. What agency is responsible for maintaining the adjustment strategy, evaluating results and updating it as needed? What agencies/organizations manage or coordinate implementation of key elements in the overall strategy, in particular, the business development strategy of which the RLF is to be a component.

B. The Business Development Strategy

As emphasized in EDA's guidelines for preparing an Economic Adjustment Strategy, a key element of any community's adjustment program should be its business development strategy. A community's business development strategy will depend on the particular opportunities identified for stimulating business investment and productivity. Participation of the business community in the development of the strategy is essential, as is a firsthand knowledge of the characteristics of firms within the targetted economic sectors and their individual needs for assistance.

It is the experience of working with the business sector in designing and implementing a business development strategy that enables the community to (1) determine the need for an RLF, and (2) define the types of RLF investments that will be most effective in complementing other types of business assistance in supporting the objectives of the adjustment program.

If the business development strategy is already well documented in the community's Economic Adjustment Strategy, it need only be summarized sufficiently to provide a bridge between the adjustment strategy and the RLF financing strategy. If not well documented, it should be described in more detail. The following features of the strategy should be addressed:

1. The objectives of the business development strategy, for example, increase the capacity of local firms to supply parts and services to a major local manufacturer, encourage creation of firms to develop and commercialize products that add value to a local resource, assist small manufacturing firms incorporate new production technologies and/or develop new markets, etc.
2. The pertinent characteristics of the businesses or prospective businesses in the economic sectors targeted by the strategy; for example, their size, age, ownership, management, products, markets, competitiveness, production processes, capital, etc.
3. The types of assistance needed by these businesses and would-be entrepreneurs to take advantage of the opportunities identified; for example, access to technical information (market data, new technologies and production processes, exporting), hands-on management and technical assistance, financing, incubator space, etc. How were and are these needs being identified: surveys, on-site interviews, business forums, etc.?
4. The programs/activities being undertaken by the public sector and/or development organizations to address the identified needs. Are there other sources of assistance available; for example, a technical college, business development center, industrial extension service, SCORE program, an SBA Small Business Development Center and/or a Certified Development Corporation, etc.? Are there private sector organizations, industry and/or business associations that promote information exchange and technical support?

C. The Financing Strategy

The community's financing strategy should take into account all the sources of financing, public and private, available to support its business development objectives, and should identify the best and appropriate sources to meet the differing creditworthiness and needs of the types of businesses targeted for investment. Analysis of the characteristics of the demand for and supply of financing will determine the appropriate financing niche for the RLF. This should be discussed in terms of the following:

1. The current types of financing needs and opportunities in the targeted business sectors and specific types of firms within them. What further needs and opportunities are expected to emerge as implementation of the strategy progresses?
2. The current availability of public and private financing in the area. What are the prevailing commercial lending policies/restrictions? What role is anticipated for the public and private lenders in supporting the community's business development strategy?

3. The characteristics of the financing niche that the RLF would occupy.
a. Types of businesses/firms?
b. Types of financing?
c. Types of terms?
4. The impact RLF financing is anticipated to have on accomplishing the community's economic adjustment objectives in the next 3–5 years. For example, with respect to:
a. Restructuring/strengthening the local economy.
b. Stimulating private investment, both through leveraging commercial financing and "showing the way to other investors."
c. Enhancing job opportunities.

D. Financing Policies

Consistent with the role identified for the RLF in the community's financing strategy, and with due consideration for the need to manage and protect the RLF capital, the specific policies designed to govern RLF financing should be discussed as follows:
1. The standard lending terms, and any concessionary or special financing techniques that the RLF will entertain to accomplish the objectives of the business development strategy. Discuss the key factors that will determine how such techniques might be employed.
a. The range of allowable interest rates the RLF will charge borrowers.
b. Requirements for equity or cash injections to be provided by the RLF borrower.
(1) Will the policy be the same for new as opposed to established businesses?
(2) Will any deviations be allowed, e.g., for working capital loans?
c. The standard repayment terms for both working capital and fixed asset loans, and any deviations.
(1) If the RLF anticipates moratoria on principal payments, specify the maximum moratorium period.
(2) What key factors will determine when any deviations will be employed?
2. The types of collateral to be required of borrowers.
3. The minimum and maximum loan sizes that the RLF will entertain.

E. Portfolio Standards and Targets

RLF portfolio standards and targets are used by EDA as surrogate measures for the economic performance of an RLF. They should be established as follows:
1. The anticipated percentage of RLF investments in each of the following:
a. Industrial/commercial/Service businesses (Show any subcomponents, if significant and if identified in the business development strategy.)
b. New businesses/expansion/retention
2. The anticipated percentage of the RLF portfolio that will be targeted towards working capital loans and fixed asset loans (note that EDA allows a maximum of 50 percent for working capital loans during the grant disbursement phase of the RLF)
3. Private investment leveraging ratio for the portfolio overall. Sources of private investment that may be included are: financing from other lenders (e.g., banks, investment companies, etc.) or private investment on the part of the borrower or other firms in conjunction with the RLF financing.
4. Cost per job for the portfolio overall.

F. RLF Loan Selection Criteria

In addition to the required selection criterion that financing is not otherwise available, what "economic impact" criteria will be used to evaluate proposed loans?

G. Performance Assessment Process

Describe the process and factors that the grant recipient will use (1) to periodically assess the performance of the RLF in accomplishing its stated economic adjustment objectives, and (2) to modify the RLF Plan as needed.

Part II: Revolving Loan Fund Operational Procedures

This part of the RLF Plan is designed to cover in detail the specific operational procedures to be followed by the grant applicant/recipient in administering the RLF.

Section A requires an overview of the organizational distribution of responsibility for the key elements in operating the RLF. Sections B. through E. require, for each item indicated, a short description of (1) how it will be addressed, the procedure/requirement to be used, if any, (2) the documentation that will be used, (3) the party(ies) responsible for carrying out the requirement, and (4) the time frame within which it is to be implemented.

A. Organizational Structure

1. Provide an overview of the organizational structure within which the RLF will be operated. For each of the functions critical to the conduct of the RLF's lending activities, identify the responsible parties including any from outside the organization. Use a schematic diagram if helpful.

Critical operational functions include: identification and development of appropriate financing opportunities; provision of business assistance and advisory services to prospective and actual borrowers (identify the types and sources of services available); environmental reviews; and loan management (loan processing, credit analysis, loan write-ups and recommendations, closings, collections and servicing, handling defaulted loans and foreclosures, and compliance with grant requirements). Note that a more detailed description of how some of these functions will be handled is requested in sections below.

2. Describe the size and general composition of the organization's RLF loan board; include experience and occupational requirements. Describe its duties and responsibilities, membership terms and quorum requirements.

An RLF loan board must be responsible for approving loans, all major loan modifications (or waivers), and loan foreclosure actions. It must also be responsible for at least recommending RLF loan policy (actual approval of loan policy may take place at a higher level). The loan board should include members with business experience (representation of targeted industries and/or business sectors is desirable provided it will not cause a conflict of interest), members with financing experience, members from both the public and private sectors and minority members representative of the community. At least one member with financing experience (similar to the type of loans to be made under the RLF program) must be present for each loan decision.

B. Loan Processing Procedures

1. Standard Loan Application Requirements—include a list of items or a checklist showing the items to be required of RLF loan applicants. [It is acknowledged that not all items will apply to each loan applicant and that certain situations may require additional items not on the list.]
2. Credit Reports.
3. Appraisal Reports.
4. Environmental Reviews.
5. Standard Collateral Requirements—include requirements for personal guarantees and insurance (hazard, keyman life, flood, and title).
6. Standard Equity Requirements—when listing equity requirements, differentiate between existing and new companies, and fixed asset and working capital loans. Note that an allowable requirement for a working capital loan may simply require a borrower to have a certain net working capital position. Equity is defined as an amount or percentage of capital (or lien free assets) that is required to be added to a project from borrower or investor sources.
7. Loan Write-up—indicate the items to be addressed in the RLF loan write-up. At a minimum, a loan write-up must discuss how the proposed RLF loan is not replacing private lender funding sources—refer to Section IV.B.3. of the RLF Administrative Manual. Other items should include a summary of the firm's history, management, product, production capability, market conditions, financing, collateral, repayment ability, consistency with the RLF's financing policy and whether there are any environmental problems associated with the project. A Loan Write-up summarizes the key aspects of a loan; it is prepared by the RLF grant recipient and is usually provided to the RLF loan board prior to the loan decision.
8. Procedures for loan approvals, documentation of loan board decisions, and notification of borrowers.

C. Loan Closing and Disbursement Procedures

1. General Closing Requirements—include documentation required to confirm any needed equity injection and private lender financing.
2. Loan Closing Documentation Requirements—provide a checklist of the standard documents that will be required for the types of loans to be made under the RLF. Indicate any special timing requirements, e.g., Uniform Commercial Code (UCC) searches prior to and/or subsequent to a UCC filing on personal property.
3. Loan Disbursement Requirements—indicate borrower requirements for drawing loan funds, i.e., is a borrower required to provide any evidence (e.g., an invoice) that it has ordered an asset prior to receiving loan funds to ensure that funds are ordered only when actually needed and that they will be

used as agreed in the loan agreement, any pre-disbursement requirements for working capital loans, any special requirements for construction financing, and any other disbursement procedures that are necessary to protect RLF assets.

D. Loan Servicing Procedures

1. Loan Payment and Collection Procedures—indicate the standard method(s) of loan payment by RLF borrowers, e.g., payment coupon books, automatic payment withdrawals, or other methods. Indicate any procedures for protection and timely deposit of RLF loan payments. Note that unused RLF funds must be Federally insured if deposited in a financial institution.

2. Loan Monitoring Procedures—indicate the standard procedures for monitoring loan conditions, including requirements/ procedures for financial statements, annual insurance renewals, UCC refilings, borrower site visits, tickler files, and compliance with any Federal requirements of the grant.

3. Late Payment Follow-up Procedures—indicate the standard procedures for handling loans that are in arrears up to 90 days and discuss any late penalty requirements (which should be stated in the note).

4. Procedures for Handling Loans over 90 days in arrears.

5. Write-off Procedures—indicate how the RLF will account for loan write-offs.

E. Administrative Procedures

1. Procedures for Loan Files and Loan Closing Documentation—indicate what should be included in an RLF loan file, e.g., the application, loan commitment letters, copy of private lender loan agreement, financial statements, annual insurance certifications, annual site visit reports, general correspondence, job reports, etc. Indicate any procedures for safekeeping loan documents, particularly the loan closing documents. At a minimum, all original notes, loan agreements, personal guarantees and security agreements should be placed in a fireproof facility or container.

2. Procedures for Complying with EDA Reporting Requirements—provide an overview of how RLF loan payments and RLF Income sources will be tracked and accounted for in order to meet EDA reporting requirements. [RLF Income sources including interest from loans and from accounts holding idle RLF funds, loan fees, late payment fees, and any other sources of RLF revenue.]

3. Grantee control procedures for ensuring compliance with all grant requirements and for monitoring the RLF portfolio.

Prior to the initial grant disbursement, the grant recipient must also certify that the basic loan documents are in place and that these documents have been reviewed by counsel for adequacy to protect the interests of the RLF. The minimum documents required are:

—Note
—Loan Agreement
—Security Agreement(s)
—Deed of trust or Mortgage
—Agreement of Prior Lienholder

Appendix B to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Standard Terms and Conditions

Approval expires 07/31/99.

Burden Statement for Revolving Loan Fund Standard Terms and Conditions

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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A. Program Statement

These Standard Terms and Conditions apply to all Economic Adjustment Program awards for revolving loan fund activities funded under Section 209 of the Public Works and Economic Development Act of 1965, P.L. 89–136, as amended (42 U.S.C. 3121, *et seq.*).

For the purpose of these Standard Terms and Conditions, (a) the term "Government" refers to the Economic Development Administration (EDA); (b) the term "Recipient" refers to the undersigned recipient of Government funds under the Agreement to which this attachment is made a part; © the term "Department" refers to the Department of Commerce; (d) the term "Regional Office" refers to the appropriate Regional Office of the Economic

Development Administration; (e) the term "Federal Program Officer" refers to the Regional Director of the appropriate EDA Regional Office (the Federal Program Officer is responsible for programmatic and technical aspects of this award); (f) the term "Grants Officer" refers to the Assistant Secretary for Economic Development or his or her designated representative (the Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards); (g) the term "Project" refers to the activity for which the Government grant was awarded; and (h) "RLF" refers to this revolving loan fund grant project.

B. Overall Statutory and Executive Order Requirements

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations issued by a Federal agency and published in the Code of Federal Regulations. To the extent that it is a summary, such term or condition is not in derogation of, or an amendment to, the statute or regulation.

The Recipient shall comply, and require any contractor which provides services on behalf of the Recipient to comply with all applicable Federal, state, territorial, and local laws, in particular, the following Federal public laws, the regulations issued thereunder, Executive Orders and OMB Circulars, and the requirements listed in Section D. herein:

.01 EDA Statute and Regulations: Applicable provisions of the Public Works and Economic Development Act of 1965, P.L. 89–136, as amended (42 U.S.C. 3121, *et seq.*)and regulations in 13 CFR, Chapter III.

.02 Administrative Requirements: Administrative requirements for grants, OMB Circular No. A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and its attachments, as amended or as superseded in the Department's regulations, or those found in 15 CFR Part 24, "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments," as applicable. In the event of inconsistency or conflict between the administrative requirements and EDA's enabling legislation or regulations, the latter shall prevail;

.03 Civil Rights Requirements: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–2000d–4); 15 CFR Part 8; Executive Orders 11246 and 11375; 41 CFR Part 60–4; P.L. 92–65, Section 112, prohibiting sex discrimination on programs under the Public Works and Economic Development Act; 13 CFR Part 317 imposing civil rights requirements on recipients; regulations issued pursuant to the Age Discrimination Act of 1965 (42 U.S.C. 6101 *et seq.*) 15 CFR Part 20; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the implementing regulations of the Department of Commerce in 15 CFR 8b, prohibiting discrimination against and providing fair and equitable treatment of the handicapped under programs or activities receiving Federal financial assistance; and such other civil rights legislation, regulations, and Executive Orders as applicable;

.04 Hatch Act: Recipient will comply with the provisions of the Hatch Act (5 U.S.C. Section 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment is funded in whole or in part with Federal funds.

C. General Requirements

.01 Grant Terms and Conditions: The Recipient and any consultant/contractor providing services on behalf of the Recipient shall comply with the Grant Award and all terms and conditions thereto. The decision of the Government in interpreting the terms and conditions of this grant shall be final.

.02 Compliance with EDA Instructions: The Recipient shall comply with EDA Revolving Loan Fund guidelines, manuals and other instructions as may be issued from time to time by the Government in connection with the assistance herein offered. All such instructions are to be applied on the effective date of the award.

.03 Exclusion from Certification and Disclosure requirements: An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide (preferably in an attorney's opinion) the Government with the citation of the provision or provisions of Federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of Section 319 of Public Law No. 101–121.

.04 Duplication of Work: The purpose and scope of work for which this award is made shall not duplicate programs for which monies have been received, committed, or applied for from other sources, public or private. The Recipient shall submit full information about related programs that may be initiated within the award period. The Recipient shall immediately provide written notification to the Federal Program Officer in the event that other Federal financial assistance is received during the award period relative to the scope of work of this award.

.05 Reimbursement of Costs Prior to Award: Funds provided under this award shall not be used to pay for the cost of any work started or completed prior to the effective date of this award.

.06 Other Funding Sources: Federal-share funds budgeted or awarded for this Project shall not be used to replace any financial support previously provided or assured from any other source. The Recipient agrees that the general level of expenditure by the Recipient for the benefit of program area and/or program designated in the Special Terms and Conditions of this award, or any amendment or modification thereto, shall be maintained and not reduced as a result of the Federal-share funds received under this Project.

.07 Availability of Information: The Recipient agrees that all information resulting from its activities and not exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 522, shall be made freely available to the public. This requirement is exclusive to the Recipient and is not applicable to confidential information disclosed or obtained in the normal borrower/lender relationship.

.08 Procurement Standards & Use of Consultants/Contractors: The procurement standards and procedures set forth in 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," Section 24.36 or OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Attachment O or its implementing Department regulation, as appropriate, shall apply to all awards. For all proposals and contracts where costs are expected to exceed the simplified acquisition threshold, the scope of work (request for proposal) and the cost of such must be submitted to and approved by the Government prior to employment of such consultants or contractors. The Recipient shall ensure that any consultant or contractor paid from funds provided under this award either directly or through program income is bound by all applicable award terms and conditions. The Government shall not be liable hereunder to a third party nor to any party other than the Recipient.

.09 Program Performance Notification: The Recipient shall inform the Government as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions that materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any EDA assistance needed to resolve the situation.

b. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

.10 Attorney and Consultant Fees: The Recipient hereby agrees that no funds made available from this grant shall be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing this grant or other grants or cooperative agreements from EDA.

.11 Suspension and Termination of Grant:

a. When a Recipient has failed to comply with the grant award stipulations, standards, or conditions, EDA may, on reasonable notice to the Recipient, suspend the grant and withhold further payments, or prohibit the Recipient from incurring additional obligations of grant funds, pending corrective action by the Recipient or a decision to terminate in accordance with the following paragraphs. EDA shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension, provided they meet the provisions of applicable OMB cost principles and the grant terms and conditions.

b. Whenever the Recipient shall fail in its fiduciary responsibilities, or shall be unable

or unwilling to perform, as trustee of this grant to serve the purpose of the Economic Adjustment program for which it was made, EDA may suspend, terminate or transfer this grant to an eligible successor Recipient, with jurisdiction over the Project area, to administer it as such trustee. The Recipient shall cooperate with EDA in accomplishing the transfer of this grant to such successor Recipient.

c. EDA may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the grant (termination for cause). EDA shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the Federal sponsoring agencies under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties. Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.

d. In accordance with subsections (a) (b) and (c) above, EDA may suspend or terminate any grant for cause based on, but not limited to, the following: (1) failure to make loans in accordance with the RLF Plan, including the time-schedule fer loan closings; (2) failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF, as specified in the RLF Administrative Manual, as amended; (3) failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement; (4) failure to comply with prohibitions against conflict-of-interest for any transactions involving the use of RLF funds; (5) failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.

e. EDA or the Recipient may terminate this grant in whole or, in part, when the parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds (termination for convenience). The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the Recipient for the Federal share of the noncancelable obligations, properly incurred by the Recipient prior to termination.

f. If there is a partial termination of the EDA grant, the full amount of the original nonfederal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by the Government.

g. Other grant closeout procedures set forth in 15 CFR, Part 24, or OMB Circular No. A–110, or its implementing Department regulation, as applicable, shall also apply.

D. RLF Requirements for Recipients and Borrowers

.01 Prudent Lending Practices: The Recipient agrees to administer the RLF in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures and recovery actions. The Recipient agrees to follow local laws and filing requirements to perfect and maintain security interests in RLF collateral.

.02 Inclusion of requirements in RLF Loan Documents: The Recipient agrees to incorporate applicable Federal requirements described herein in RLF loan agreements to ensure borrower compliance.

.03 Annual RLF Plan Certifications: The Recipient agrees to certify annually to the Government that the RLF is being operated in accordance with the RLF Plan (as referenced in the Special Terms and Conditions of the grant, as amended); and that the RLF Plan is consistent with, and supports, implementation of the current Economic Adjustment Strategy for the project area.

.04 RLF Plan Modifications: The Recipient agrees, because economic conditions change and new approaches to stimulating economic adjustment may be needed, to seek EDA approval of such modifications to the RLF Plan as may be required for the RLF to continue to be fully supportive of the area's Economic Adjustment Strategy, as updated and approved by EDA. The Recipient further agrees to request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

.05 Eligible Area: The Recipient shall use the RLF only in the areas eligible for Section 209 assistance as approved by the Government and defined in the Special Terms and Conditions of the grant. To add a new eligible area to a previously awarded RLF grant, the Recipient shall obtain the prior written approval of the Government. To ensure that the economic benefits of RLF loans remain within eligible lending areas, the Recipient shall include a *provision* in RLF loan documents to call loans if the economic activity financed is moved outside the eligible lending area.

.06 Relocation: The Recipient agrees that RLF funds shall not be used to relocate jobs from one commuting area to another. The Recipient shall include a *provision* in RLF loan documents to call loans if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area or (b) the economic activity financed is moved to another commuting area to the detriment of local workers.

.07 Grant Disbursement Schedule: The Recipient agrees, unless otherwise specified in the Special Terms and Conditions of the grant award, to make loans in the initial round of lending at a rate such that no less than 50 percent of the grant funds are disbursed within 18 months, 80 percent within two years and 100 percent within three years of the date of the grant award. The Recipient acknowledges that if it fails to meet any of these disbursement deadlines, the Government will not disburse additional grant funds unless (1) the funds are required to close loans approved prior to the deadline and which will be fully disbursed to the borrower(s) within 45 days, or (2) the funds are required to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) the Government has approved in writing an extension of the deadline. In no event, will the time permitted for full disbursement of the grant funds extend beyond September 30, of the fifth year after the fiscal year of the grant award. Funds not disbursed in accordance with the foregoing will automatically be retained by the Federal Government.

.08 Capital Utilization Standard: Subsequent to full disbursement of the grant funds, the Recipient agrees to manage its repayment and lending activities to maintain 75 percent or more of the RLF capital loaned out or committed at all times, unless a different standard has been agreed to in writing by the Government. The Recipient agrees to comply with Government sanctions if the applicable capital utilization standard is not met within a reasonable time period.

.09 Civil Rights: The Recipient agrees that RLF funds will be made available on a nondiscriminatory basis and that no applicant will be denied a loan on the basis of race, color, national origin, religion, age, handicap, or sex. The Recipient agrees to market the RLF program to prospective minority and women borrowers. The Recipient shall include a *provision* in the RLF loan documents that prohibits borrowers from discriminating against employees or applicants for employment or providers of goods and services. The Recipient agrees to monitor borrower compliance with civil rights laws.

.10 Environment: The Recipient shall develop and implement an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91–190), as implemented by the "Regulations" of the President's Council on Environmental Quality (40 CFR Parts 1500–1508).

In addition, the Recipient shall indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of site(s) or construction, renovation or repair of any facility or site(s), if applicable, to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property;

The Recipient shall adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan shall provide for disapproval of any loan project which would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. In administering the RLF, the Recipient shall adopt procedures to comply with applicable laws and statutes including, but not limited to, the following:

a. The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

b. The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*);

c. The Coastal Zone Management Act of 1972, P.L. 92–583, as amended (16 U.S.C. 1451, *et seq.*);

d. Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued thereunder by the Economic Development Administration;

e. Executive Order 11990, Protection of Wetlands (May 24, 1977);

f. The Endangered Species Act of 1973 P.L. 93–205, as amended (16 U.S.C.1531, *et seq.*);

g. The Safe Drinking Water Act, P.L. 93–523, as amended (42 U.S.C. 300f–300j–9);

h. The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, *et seq.*);

I. The Resource Conservation and Recovery Act of 1976, P.L. 94–580, as amended (42 U.S.C. 6901);

j. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96–510, as amended, by Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601, *et seq.*) [As deemed necessary, the Recipient shall require compliance with EDA policy and procedures regarding the identification of hazardous and toxic waste on real property affected by RLF activities in accordance with EDA Directive 17.01, promulgated to reduce liabilities for environmental cleanup under CERCLA and SARA. This will require a certification to demonstrate a "due diligence" examination of project site(s) and for any environmental contamination that may affect real property for which EDA might be placed in the chain of title, or that is affected by EDA assisted construction activities.];

k. The National Historic Preservation Act P.L. 89–665 (16 U.S.C. 470, *et seq.*), (36 CFR Part 800);

l. Coastal Barriers Resources Act P.L. 97–348 (16 U.S.C. 3501, *et seq.*); and

m. All state and local environmental review requirements with all applicable Federal, state and local standards. The Recipient shall ensure that potential borrowers' environmental submittal is reviewed. Should a proposed RLF project require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement/Report (EIS/EIR) in response to Federal, state or local requirements, the Recipient shall be responsible for ensuring compliance with the requirement prior to providing any loan assistance under the RLF.

.11 Earthquake Requirements: For use in new building construction projects: The Recipient is aware of and intends to comply with one of three model Codes outlined by the Committee on Seismic Safety in Construction (ICSSC): 1991 ICBO Uniform Building Code; 1992 Supplement to the BUCA National Building Code; or 1991 Amendments to the SBCC Standard Building Code.

.12 Flood Hazard Insurance: Where applicable, the Recipient shall require RLF borrowers to obtain flood hazard insurance pursuant to the Flood Disaster Protection Act of 1973, P.L. 93–234, as amended (42 U.S.C. 4002, *et seq.*);

.13 Davis-Bacon: The Recipient shall require borrowers to comply with the Davis-Bacon Act, as amended [40 U.S.C. 276a–276a–5); 42 U.S.C. 3222], when construction is financed in whole or in part by the RLF and when any related construction contract exceeds $2,000.

.14 Contract Work Hours and Safety Standards Act & Anti-Kickback Act: The Recipient shall require borrowers to comply, where applicable, with the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327–333) and with the Anti-Kickback Act, as amended (40 U.S.C. 276(c); 18 U.S.C. 874);

.15 Access for the Handicapped: The Recipient shall ensure that if the RLF is used in whole or in part to finance a building or facility intended for use by the public or for the employment of physically handicapped, it must be accessible to the physically handicapped, pursuant to Public Law 90–480, as amended (42 U.S. C. 4151, *et seq.*), and the regulations issued thereunder;

.16 Conflict of Interest:

a. The Recipient shall not make RLF funds available to a business entity if the owner of such entity or any owner of an interest in such entity is related by blood, marriage, law or business arrangement to the Recipient or an employee of the Recipient or any member of the Recipient's Board of Directors, or a member of any other Board (hereinafter referred to as "other Board") which advises, approves, recommends or otherwise participates in decisions concerning loans or the use of grant funds.

b. No officer, employee, or member of the Recipient's Board of Directors, or other Board, or person related to the officer, employee, or member of the Board by blood, marriage, law, or business arrangement shall receive any benefits resulting from the use of loan or grant funds, unless the officer, employee, or Board member affected first discloses to the Recipient on the public record the proposed or potential benefit and receives the Recipient's written determination that the benefit involved is not so substantial as to affect the integrity of the Recipient's decision process and of the services of the officer, employee or board member.

c. An officer, employee or board member of the Recipient shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.

d. Former board members and/or officers are ineligible to apply for or receive loan or grant funds for a period of one year from the date of termination of his/her services.

E. Financial Requirements

.01 Budget: The line item budget for this award is found in the budget summary of the grant award. Funds budgeted under the RLF portion of a grant shall be used for loan projects and, if specified, for audit costs related to the RLF, but shall not be used for other administrative costs related to the RLF.

.02 Method of Payment: Payments will be made by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) System which transfers funds directly to a Recipient's bank account without regard to dollar amount. Initially, the Recipient must complete the Payment Information Form ACH Vendor Payment System (SF 3881) and return it to the EDA Regional Office. The award number must be included on the first line of the COMPANY INFORMATION section. The SF 3881 should first be forwarded to the Recipient's bank so that the bank can fill in the FINANCIAL INSTITUTION INFORMATION section before returning the SF 3881 to the EDA Regional Office.

The completed SF 3881 shall be submitted together with the completed Request for Advance or Reimbursement (SF 270), to the EDA Regional Office. Subsequently, only a completed SF 270 is necessary to request a transfer of funds unless information on the original SF 3881 has changed. *Note:* When completing SF 270 for an ACH/EFT transfer of funds, *type* "ACH/EFT" in Item No. 10 of the form to indicate a transfer of funds through the Automated Clearing House Electronic Funds Transfer System.

.03 Request For Budget Change: Request for budget changes must be submitted to the Federal Program Officer for approval. However, a budget change involving a reduction in the line item for audit costs for an equal increase in the RLF capital requires only written notification to the Government to be effective.

.04 Matching and Cost Sharing: a. Local Share: In affirming this award, the Recipient certifies that the non-Federal share of project costs is committed and is available as needed for the project, that the non-Federal share is from sources which can be used as match for the EDA project and that the non-Federal share is not encumbered or otherwise conditional.

b. To the extent applicable to this award, cash contributions by the Recipient are expected to be paid out at the same general rate as the Federal share, but in no event shall the Federal share be paid out at a faster rate than the Recipient's contribution. Any exceptions must be approved in writing by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash contributions.

c. The approved budget for this award is predicated normally upon a sharing of allowable costs. In the event allowable costs are less than the approved budget, the Federal share of this award will be limited to the Federal pro-rata share of the total allowable costs not to exceed the total Federal dollar amount reflected on the award document. However, consistent with Section C.11.f, the full amount of the nonfederal matching share will be expected to remain for use in the RLF unless otherwise provided for.

.05 Program Income: Program Income includes repayments of RLF loan principal and RLF Income (defined in Section E.06 below). Program Income, with the *exception* of current RLF Income, may be used only for relending and must be used by the Recipient (1) prior to requesting a disbursement of EDA grant funds, or (2) concurrently with the proceeds of such a disbursement.

.06 RLF Income: RLF Income is defined as interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The Recipient may use RLF Income only to capitalize the RLF and/or to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Special Terms and Conditions of the grant.

If RLF Income will be used to pay for RLF administrative expenses, the Recipient agrees (1) to use RLF Income only for those administrative expenses incurred during the same twelve-month period in which it is earned, and (2) to add any RLF Income remaining unexpended at the end of each period to the RLF capital base. RLF Income added to the RLF capital base may not be withdrawn, other than for lending purposes, without the prior written consent of the Government. The Recipient should refer to current EDA administrative instructions regarding specification of the twelve-month accounting period, the format for documenting income and expenses and such reporting requirements as may be applicable.

.07 Indirect Costs: a. The Recipient may use indirect costs as an eligible administrative expense chargeable against RLF Income *if* the indirect costs reflect an established indirect cost rate negotiated and approved by a cognizant Federal agency prior to the year end in which the costs are charged, subject to the limitation in subparagraph b. below.

b. The Department's acceptance of negotiated rates as provided in this section is subject to total indirect costs not to exceed 100 percent of total direct costs charged against RLF Income. Where the indirect cost rate exceeds 100 percent, a 100 percent rate shall be used to compute the dollar amount of indirect costs.

c. Excess indirect costs will not be used to offset unallowable or disallowed direct costs when the total allowable costs are determined.

d. If the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable OMB costs principles and the following subparagraphs:

1. The Office of Inspector General (OIG) is authorized to negotiate indirect cost rates on behalf of the Department for those organizations which the Department is cognizant. The OIG will negotiate only fixed rates. The Recipient is required to submit to the OIG (with a copy of its transmittal letter provided to the Grants Officer) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates 90 days prior to the year end in which indirect costs will be charged. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income for that year will not be allowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

2. When a Federal agency other than the Department of Commerce has responsibility for establishing an indirect cost rate, the Recipient is required to submit to that Federal agency (with a copy of its transmittal letter provided to the Grants Officer and the Department of Commerce OIG) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates within the Recipient's fiscal year during which indirect costs will be charged against RLF Income. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income will be unallowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

.08 Additional Funding and/or Extension of Award: The Government has no obligation to provide any additional funding in connection with this award. Any renewal of this award to increase funding or to extend the period of performance is at the sole discretion of the Government.

.09 Debts: a. Any debts determined to be owed the Federal Government shall be paid promptly by the Recipient. A debt will be considered delinquent if it is not paid within 30 days of the due date. If the debt is not paid by the stated due date, the Recipient shall be subject to late payment charges imposed by the Federal Government. The late payment charges are as follows:

1. Interest charge on the delinquent debt. As established by the Debt Collection Act of 1982, the minimum annual rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. The interest charge shall accrue from the date of the letter which notifies the debtor of the debt and the interest requirements. This rate is published in the **Federal Register** by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness;

2. A penalty charge on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent; and

3. An administrative charge to cover processing and handling of the amount due.

b. State and local governments are not subject to subparagraphs .11 a.2 and 3 above.

c. Once an account receivable has been established or a repayment agreement to pay the debt has been approved, failure to pay the debt by the due date on the billing may result in the suspension of payments to the Recipient under any current Department of Commerce awards and/or placement of the Recipient on a Reimbursement *Only* by Treasury Check method of payment until the debt is paid.

d. If a debt is over 30 days old, any Department of Commerce awards to the Recipient may be suspended and the Recipient may be suspended or debarred from further Federal financial and non financial assistance and benefits, as provided in 15 CFR Part 26, until the debt has been paid in full or until a repayment agreement has been approved and payments are made in accordance with the agreement. Failure to pay the debt or establish a repayment agreement by the due date will also result in the referral of the debt for collection action.

e. Payment of the debt may not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made during future program visits and audits.

.10 Interest-Bearing Accounts: All RLF grant funds disbursed to reimburse Recipients for loan obligations already incurred must be held in interest bearing accounts until disbursed to the borrower. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the Recipient's account. Interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of $100 per year which may be retained for administrative expenses by states, local governments and Indian tribes per 15 CFR Part 24, and $250 for those subject to OMB Circular A–110 or its implementing Department regulation) and shall be remitted promptly, but no less frequently than quarterly. All checks submitted should state "EDA" on their face and the award number followed by the word INTEREST in order to identify the check in question as remittance of interest income. Checks will be sent to the address below: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

.11 Bonding and Payment of Funds: Prior to payment of funds hereunder, the Recipient shall provide evidence to the Government that it has fidelity bond coverage of persons authorized to handle funds under this award in an amount determined by the Government sufficient to protect the interests of the RLF and the Government.

.12 Grant Violations and Ineligible Costs: The Recipient hereby agrees that the Government may, at its option, withhold disbursement of any award funds if the Government learns, or has knowledge, that the Recipient has failed to comply in any manner with any provision of the award. The Government will withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs which were paid from award funds. If a violation occurs or an ineligible expenditure is made subsequent to full disbursement of the grant, the Government, at its option, may elect to have the Recipient repay the RLF for the amount of any ineligible cost incurred. Failure to remedy an ineligible expenditure or grant violation will be grounds for suspension and/or termination.

F. Reporting Requirements

Financial and Performance Reports must be submitted according to the schedule indicated below. Failure to submit required reports in a timely manner may result in (1) withholding payments under this award, (2) deferring the processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s), (3) establishing an account receivable for the difference between the total Federal share of Outlays last reported and the amount

disbursed, and/or, (4) suspending or terminating the grant in whole, or in part.

.01 Financial and Performance Reports: The Recipient shall submit financial and status reports to the EDA Regional Office semiannually unless otherwise instructed by the Government. The reports will be in a form prescribed by the Government and shall be submitted for a minimum of one year following full disbursement of the grant. Subsequently, the Recipient may be eligible for graduation to a shortened, annual reporting format at the discretion of the Federal Program Officer. Graduation to the annual report will be based on an assessment of the Recipient's track record and on current RLF operations. The Recipient must obtain written authorization from the Government to convert to the annual reporting option.

Subsequently, the Recipient shall submit annual reports for the duration of the RLF unless the Federal Program Officer determines that more frequent and/or detailed reporting is necessary due to grant violations or other problems. Following remedial action, the Recipient may request the Federal Program Officer to convert back to annual reporting.

a. *Initial Semiannual Report:* Except for recapitalization awards, the Recipient shall submit the initial semiannual report on April 30, covering loan activity for the period ending March 31, (if the grant was awarded from April 1, through September 30), and on October 31, covering loan activity for the period ending September 30, (if the grant was awarded from October 1, through March 31).

b. *Subsequent Semiannual Reports:* Following the initial report, other than for recapitalization awards, the Recipient shall submit subsequent semiannual reports on either April 30, or October 31, covering RLF activity for the periods ending March 31, and September 30, respectively.

c. *Annual Reports:* If authorized by the Government, the Recipient shall submit annual reports in place of semiannual reports as instructed by the Government.

d. *Performance Measures:* The Recipient agrees to submit to EDA as part of the semiannual or annual reports referenced in F.01. (a.), (b.) and (c.) above, the information identified as the Core Performance Measures listed below. EDA will advise the Recipient in writing, not less than 90 days prior to the time for submission, in the event there are any modifications in the information required to be submitted.

A. Performance and Outcomes at the Completion of the Initial Round of Funding[1]

- Compliance with implementation schedule for disbursement of RLF dollars.
- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.
  1. Private sector dollars.
  2. Other dollars leveraged.
- RLF Capital Base (total RLF funding + program income − loan writeoffs).

[1] Full disbursement of the grant award.

B. Project Outcomes after Full Disbursement of Grant

- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.
  1. Private sector dollars.
  2. Other dollars leveraged.
- RLF Capital Base (total RLF funding + program income − loan writeoffs).

.02 Other Reports: The Recipient agrees to submit other reports, as may be required from time to time, to the Government.

.03 Subcontracting Reports: Recipients of awards which involve both Federal financial assistance valued at $500,000 or more and procurement of supplies, equipment, construction or services shall be required to submit the SF–334, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance." Reports shall be submitted on a quarterly basis for the period ending March 31, June 30, September 30, and December 31. Reports are due no later than 30 days following the end of the reporting period during which any procurement in excess of $10,000 is executed under this award. The report should be submitted in duplicate to the EDA Regional Office.

G. Administrative Cost and Loan Records Retention

.01 Administrative Cost Records: Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three years from the date of disposition, replacement, or transfer of the equipment.

.02 Loan Records: Loan files and related documents and records shall be retained over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties, and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

.03 General: If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year (or five-year) period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year (or five-year) period, whichever is later.

The record retention periods described in this section (Administrative Cost and Loan Records Retention) are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three years old, unless fraud is an issue.

H. Audit

The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

.01 Requirements: a. Federal Audit: Under the Inspector General Act of 1978, as amended, 5 USC App. I, section 1 *et seq.*, an audit of this award may be conducted at any time. The Office of Inspector General usually will make the arrangements to audit this award, whether the audit is performed by Inspector General personnel, an independent accountant under contract with the Department, or any other Federal, State or local audit entity.

b. Recipient Audit: 1. For awards to institutions of higher education, and other nonprofit organizations, the Recipient is subject to the audit requirements found at 15 CFR Part 29b; for awards to governmental entities, the Recipient is subject to the audit requirements found at 15 CFR Part 29a.

2. Any audit report performed in compliance with the requirements of 15 CFR Part 29a or Part 29b shall be sent to the cognizant Federal agency and to the Federal Program Officer. A copy of the transmittal letter to the cognizant Federal agency should be provided to the Grants Officer. If the Department of Commerce is the cognizant Federal agency, the audit report should be sent to the following address: Federal Audit Clearinghouse, Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

c. For awards where a special award condition stipulates that an audit be conducted of this particular award, the Recipient shall arrange for an audit of the award in accordance with Governmental auditing standards.

.02 Establishment and Collection of Audit-Related Debts: a. An audit of this award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due the Government. For this reason, a Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed and the Recipient has the opportunity to comment.

b. A Recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. Unless the Inspector General determines otherwise, the Recipient will be given 30 days from the transmittal of the *draft* audit report in which to submit written comments and documentary evidence.

2. The Recipient will be given 30 days from the transmittal of the *final* audit report in which to submit written comments and documentary evidence. There will be no

extension of this deadline. Based on all of the evidence available at the expiration of this time period, the Department will make a decision on the actions it will take as a result of the final audit report.

3. The Government's decisions to disallow costs under the award and to establish a debt (as well as its decisions on non financial issues) will be sent to the Recipient in an Audit Resolution Determination letter. The Recipient will be given 30 days from the transmittal of this letter in which to pay any debt. This letter will contain information on the procedures to be followed by the Recipient to appeal the Department's decisions. An appeal does not preclude the Recipient's obligation to pay the debt nor does the appeal preclude the accrual of interest on the debt. The appeal must be submitted to the Grants Officer and the Office of Inspector General within 30 days after receipt of the Audit Resolution Determination letter. There will be no extension of this deadline. This appeal is the last opportunity for the Recipient to submit to the Department arguments and evidence that dispute the validity of the audit-related debt.

4. After the opportunity to appeal has expired, or after the final decision on reconsideration has been made, the Department will not accept any submissions from the Recipient concerning its dispute of the Department's decisions on the settlement of costs under the award. If the debt is not paid, the Department will undertake other collection action but will not thereafter reconsider the legal validity of the debt.

c. There are no other administrative appeals available in the Department of Commerce concerning this matter.

I. Miscellaneous Items

.01 Programmatic Changes: All requests by the Recipient for programmatic changes must be submitted to the Government which will notify the Recipient in writing of the determination.

.02 Name Check Review:

a. A name check review shall be performed by the Office of Inspector General on key individuals associated with non profit organizations. b. The Department reserves the right to take any of the actions described in subparagraph H.02 c. below if one of the following occurs as a result of the name check review:

1. Any of the key individuals associated with non profit organizations who are not exempt from the name check review fails to submit the Form CD–346 and, if required, the Form FD–258;

2. The Recipient, key individual, or any other person associated with this award made an incorrect statement or omitted a material fact on the Form CD–346 or Form FD–258; or

3. Significant adverse findings result from the name check review that reflect on the integrity or responsibility of the Recipient and/or key individual.

c. In the event of significant adverse findings from the name check review, the Government, at its discretion, may take one or more of the following actions:

1. Terminate the award immediately for cause;

2. Require the removal from association with the management of and/or implementation of the Project any person or persons and, if appropriate, require that the Grants Officer be afforded the right of final approval of any person or persons to replace any individual removed as a result of this condition; and/or

3. Make appropriate provisions or revisions at the Government's discretion with respect to method of payment and/or financial reporting requirements.

.03 Prohibition Against Assignment: Notwithstanding any other provision of this award, the Recipient shall not transfer, pledge, mortgage, or otherwise assign this award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

.04 Covenant Against Contingent Fees: Unless otherwise specified in the Special Award Conditions, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial, or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of the warrant, the Government shall have the right to cancel this award without liability or, at its discretion, to deduct from the award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

.05 Officials Not To Benefit: No member of or delegate to Congress or resident Federal Commissioner shall be admitted to any share or part of this award or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this award if made to a corporation, education, or nonprofit institution for its general benefit.

.06 Sub-Award and/or Contract to Other Federal Agencies: a. The Recipient, subrecipient, contractor and/or subcontractor shall not sub-grant or subcontract the Project in whole or in any part to any agency of the Department of Commerce.

b. The Recipient, subrecipient, contractor and/or subcontractor, shall not sub-grant or subcontract any part of the Project to any other Federal department, agency or instrumentality, without the advance written approval of the Grants Officer.

.07 Property Management: The Recipient may utilize RLF Income generated from loan activities to acquire property necessary to administer the RLF. Neither grant funds nor match funds shall be used to purchase property for RLF administration. RLF Income (defined in Section E.06) can only be used to acquire necessary RLF property to the extent of the benefits received.

Eligible property for RLF activities will normally include (1) Expendable Personal Property (which includes all tangible personal property, including supplies, other than nonexpendable property), and (2) Nonexpendable Personal Property (which includes tangible personal property, including equipment).

Title to Expendable and Nonexpendable Personal Property acquired in whole or in part with RLF Income for use in the RLF shall vest with the Recipient. The Recipient shall not encumber its title or other interests in RLF property without prior written approval from the Government. The Recipient shall use and manage nonexpendable personal property as long as needed and shall maintain nonexpendable personal property records, control systems and physical inventories.

a. Disposition of Personal Property: In the ordinary course of business, the Recipient may dispose of personal property for upgrading purposes or when no longer needed for the project activity. The RLFs share of the proceeds from any disposition shall be treated as a contribution to RLF Income and may be returned to the RLF for lending or used for RLF administrative expenses.

b. Disposition of Expendable and Nonexpendable Property Under RLF Termination: If the RLF is terminated, the Recipient shall submit a request for disposition instructions to the Federal Program Officer who shall provide the Recipient with disposition instructions. Disposition may include one of the following:

1. If the total aggregate fair market value of unused personal property at the termination of the RLF is $1,000 or less for awards subject to OMB Circular A–110 or any Department rule superseding such Circular, or $5,000 or less for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain or sell the expendable personal property without compensating the Government.

2. If the total aggregate fair market value of personal property at the termination of the award exceeds $1,000 for awards subject to OMB Circular A–110 or any Department rule superseding such Circular, or $5,000 for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain, sell, or otherwise dispose of the property and shall compensate the Government for its share.

3. The following apply only to the disposition of nonexpendable personal property:

(a) The Recipient shall submit a completed form CD–281, "Report of Government Property in Possession of Contractor" along with the request for disposition instructions.

(b) The Government's disposition instructions may additionally include the following: (1) The Recipient may be instructed to ship the nonexpendable personal property elsewhere. The Recipient may receive the nonfederal share of the market value plus shipping costs; or (2) for awards subject to the provisions of OMB Circular A–110 or Department regulation superseding such Circular, the Government reserves the right to transfer title to the Federal Government or to a third party named by the awarding agency if the nonexpendable personal property had a unit acquisition cost of $1,000 or more. For awards subject to 15 CFR Part 24, the Government reserves the right to transfer title to the Federal Government or to a third party

named by the awarding agency for any nonexpendable personal property. When title is transferred, the Recipient shall be compensated for its share.

c. Disposition of Real Property Under RLF Termination: If the RLF is terminated and the Recipient holds title to real property through foreclosure or other legal actions, the Recipient shall request disposition instructions from the Regional Program Officer. Disposition may include one of the following:

1. The Recipient shall retain title after it compensates the Federal Government for its share;

2. The Recipient shall sell the property and pay the Federal Government for its share after the deduction of any actual and reasonable selling and fix-up expenses, if any, from the sales proceeds; or

3. The Recipient shall transfer title to the property to the Federal Government provided that in such cases the Recipient shall be entitled to compensation computed by applying the Recipient's percentage of participation in the cost of the project to the current fair market value of the property.

d. Debt Instruments Under RLF Termination: If the RLF is terminated, the Recipient shall request disposition instructions from the Regional Program Officer for disposition of debt instruments in the RLF portfolio.

.08 Rights to Inventions Made by Nonprofit Organizations and Small Business Firms: The policy and procedures set forth in Department of Commerce regulations 37 CFR Part 401, Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements, published in the **Federal Register** on March 18, 1987, shall apply to all grants and cooperative agreements made where the purpose is experimental, developmental, or research work.

Pursuant to Executive Order 12899, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its financial assistance Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner.

To ensure proper notification, if the Recipient uses or has used patented technology under this award without a license or permission from the owner, the Recipient must notify the Department Patent Counsel at the following address, with a copy to the Grants Officer: U.S. Department of Commerce, Office of Chief Counsel for Technology, Patent Counsel, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The notification shall include the following information:

a. The award number.

b. The name of the Department awarding agency.

c. A copy of the patent.

d. A description of how the patented technology was used.

e. The name of the Recipient contact, including an address and telephone number.

.09 Executive Order 12432, Minority Business Enterprise: In support of Executive Order 12432, signed by the President on July 14, 1983, the Department of Commerce encourages all Recipients to utilize minority firms and enterprises in contracts under grants and cooperative agreements. The Office of Program Development, Minority Business Development Agency, will assist Recipients in matching qualified minority enterprises with contract opportunities. For further information contact: U.S. Department of Commerce, Minority Business Development Agency, Office of Program Development, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

.10 Internal Revenue Service (IRS) Information: a. A Recipient classified for tax purposes as an individual, partnership, proprietorship, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number or employer identification number as applicable) on Form W–9, "Payer's Request for Taxpayer Identification Number."

Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. The Recipient should submit the form to the Grants Officer within 60 days of the effective date of award.

The Department provides the Recipient's TIN to the IRS on Form 1099–G, "Statement for Recipients of Certain Government Payments." Applicable Recipients who either fail to provide their taxpayer identification number or provide an incorrect number may not be eligible for funding or have funding suspended until the requirement is met.

b. Privacy Act Statement—Mandatory Disclosure, Authority, Purpose, and Uses: Disclosure of your social security number or employer identification number is mandatory for Federal income tax reporting purposes under the authority of 26 U.S.C., Section 6011 and 6109(d), and 26 CFR Part 301, Section 301.6109–1. This is to ensure the accuracy of income computation by the Internal Revenue Service. This information will be used to identify an individual who is compensated by funds of the Department of Commerce or paid interest under the Prompt Payment Act. A Recipient who either fails to provide the taxpayer identification number or provides an incorrect number may not be eligible for funding or have funding suspended until requirement is met. This information is being provided to the Internal Revenue Service on Form 1099.

.11 Government wide Debarment, Suspension and Other Responsibility Matters (Nonprocurement): a. This award is subject to Executive Order 12549, Debarment and Suspension, and 15 CFR Part 26, "Government wide Debarment and Suspension (Nonprocurement)." A person (as defined at 15 CFR § 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized in writing by the Department.

b. The Recipient shall provide immediate notification to the Grants Officer if at any time the Recipient learns that its certification, Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," was erroneous when submitted or has become erroneous by reason of changed circumstances. Subrecipients in lower tier transactions shall provide the same updated notice to the Recipient.

c. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§ 26.215, 26.220, and/or 26.625, the Recipient of this award shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR Part 26.215. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate.

d. The Recipient shall require each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the $100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over) at any tier under this award to file a certification, Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, for it and its principals in any proposal/solicitation submitted in connection with the lower tier covered transaction. Certifications shall be retained by the Recipient.

e. The Recipient shall include the following provisions regarding debarment and suspension in all subtier covered transactions:

1. This lower tier covered transaction is subject to Executive Order 12549, "Debarment and Suspension," and 15 CFR Part 26, "Government wide Debarment and Suspension (Nonprocurement)." Unless authorized by the Department in writing, a person (as defined at 15 CFR § 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized by the Department.

2. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§ 26.215, 26.220, and/or 26.625, the Recipient of this lower tier covered transaction shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient of this sub-award shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR § 26.215.

f. The Recipient shall include the following provision in each application and in each bid for a lower tier covered transaction at any tier under this award:

Each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the $100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over the award) at any tier under this Federal award must file Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, at the time of application/bid.

Applicants/bidders should review the instructions for certification included in the regulations before completing the certification. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Certifications shall be retained by the Recipient.

.12 Restrictions on Lobbying (applicable to awards exceeding $100,000 in Federal funding): a. This award is subject to Section 319 of Public Law 101–121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. The Recipient of this award and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

b. The Recipient shall require each person who requests or receives from the Recipient a sub-grant, contract, or subcontract exceeding $100,000 of Federal funds at any tier under this award, to file Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, and, if applicable, SF–LLL, "Disclosure of Lobbying Activities," form regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient, who shall forward all disclosure forms to the Grants Officer.

c. The Recipient shall include the following provision in all contracts, subcontracts, or sub-grants:

This contract, subcontract, or sub-grant is subject to Section 319 of Public Law 101–121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. Each bidder/applicant/recipient of this contract, subcontract, or sub-grant and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

d. The Recipient shall include the following contract clauses regarding lobbying in each application for a sub-grant and in each bid for a contract or subcontract exceeding $100,000 of Federal funds at any tier under the Federal award:

Each applicant/recipient of a subgrant and each bidder/applicant/recipient of a contract or subcontract exceeding $100,000 of Federal funds at any tier under the Federal award must file Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and Standard Form–LLL, "Disclosure of Lobbying Activities," regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the Federal award, who shall forward all disclosure forms to the Grants Officer.

Each subgrantee, contractor, or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form within 15 days of the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the Federal award (grant), who shall forward all disclosure forms to the Grants Officer.

Appendix C to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Administrative Manual

OMB Approval No. 0610–0095
Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Administrative Manual:

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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I. Purpose

This Manual describes the compliance, reporting, grant record keeping and other administrative requirements and procedures that apply to Revolving Loan Fund (RLF) grants funded by the Economic Development Administration (EDA) under Section 209 of the Public Works and Economic Development Act of 1965, as amended. These requirements apply to new RLFs and to the future actions of all RLFs funded prior to the Manual's effective date. The requirements apply to RLFs funded under the Sudden and Severe Economic Dislocation (SSED) and the Long-Term Economic Deterioration (LTED) components of Section 209. They also apply to the revolving phases of RLFs funded for the initial purpose of providing financing to one or more identified business firms.

II. Authority

A. *Grant Recipients as Trustees:* Recipients of EDA grants to operate RLFs hold RLF funds in trust to serve the purpose of the Economic Adjustment program for which the grant award was made. The grant recipient's obligation to the Federal Government continues as long as the Federal interest in EDA RLF assets, in the form of cash, receivables, personal and real property, and notes or other financial instruments developed through the use of the funds, continues to exist. If EDA determines that a grant recipient is failing to meet this obligation, the Agency will assert its equitable reversionary interest in the RLF assets. However, EDA's nonassertion of its interest does not constitute a waiver thereof.

B. *Grantor Authority to Change Policies:* EDA, as the Federal agency charged with implementing the program, is obligated to promulgate policies and procedures applicable to all RLF grant recipients to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote effective use of the funds in accomplishing the purpose for which they were granted.

Pursuant to this obligation, grant terms and conditions require grant recipients to comply with changes in regulations and other requirements and policies that EDA may issue from time-to-time. Such changes apply to actions taken by all grant recipients, existing and prospective, after the effective date of the changes. Loans made by grant recipients prior to the effective date of the changes are not affected unless so required by law.

As a matter of policy, EDA will subject proposed RLF changes to public review when practicable.

EDA's policy is to administer RLF grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic adjustment problems, requests for variances to the requirements of this Manual will be considered if they are consistent with the goals of the Section 209 program and with an RLF's strategy, make sound economic and financial sense, and do not conflict with applicable legal requirements.

C. *Precedence of Grant Documents and Published Regulations:* The Grant Award, executed by EDA and the recipient, together with the Budget, Special Terms and Conditions and the Standard Terms and Conditions, as may be amended, and the current regulations, published at 13 CFR Part 308, constitute the requirements, hereinafter referred to as "Terms and Conditions," applicable to an EDA RLF grant. This Manual is designed to clarify and administratively implement those requirements. In the event of conflict, the aforementioned documents take precedence over this Manual.

III. Grantee Responsibilities

A. *Prudent Lending Practices:* RLF grant recipients are required to operate RLFs in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, servicing and administrative procedures, as outlined in the current RLF Plan Guidelines.

B. *Protection of RLF Assets:* RLF grant recipients are required (1) to obtain adequate and appropriate collateral from borrowers, and (2) to act diligently to protect the interests of the RLF, through collection, foreclosure, or other recovery actions on defaulted loans.

C. *Federal Requirements Applicable to Grant Recipients:* Grant recipients are responsible for complying with the Federal laws and regulations, Executive Orders and Office of Management and Budget (OMB) Circulars which are referenced in the Terms and Conditions, as may be amended, for RLF grants. These include administrative and audit requirements, cost principles, and other laws, regulations and Executive Orders pertaining to requirements from civil rights to lobbying restrictions.

D. *Federal Requirements Applicable to RLF Borrowers:* Grant recipients are responsible for ensuring that prospective borrowers are aware of, and comply with, the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. The most common of these requirements relate to environmental protection, civil rights, Davis-Bacon wage rates and handicap access on construction projects, and the prohibited use of RLF funds for businesses that relocate jobs from one commuting area to another.

Grant recipients are responsible for developing an appropriate review process in accordance with the intent of the National Environmental Policy Act of 1969, (P.L. 91–190) as amended, as implemented by the "Regulations" of the President's Council on Environmental Quality. The process shall include disapproval of loan projects which would adversely (without mitigation) impact floodplains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. Grant recipients are also responsible for openly marketing the RLF to prospective minority and women borrowers, and monitoring borrower compliance with civil rights requirements that prohibit borrowers from discriminating against employees or applicants for employment, or providers of goods and services. These and the other Federal requirements described in the Terms and Conditions of each grant should be included, as applicable, in each RLF's standard loan agreement to ensure borrower compliance where necessary. Grant recipients are expected to act diligently to correct instances of noncompliance, including the recall of loans, if necessary.

IV. Revolving Loan Fund Restrictions

The following restrictions apply generally to RLFs:

A. Lending Area Restrictions

1. *Eligible Lending Area:* The economic activity and the benefits of RLF loans must be located within the eligible areas identified in the grant award.

2. *Modification of the Eligible Area:* Areas within the operational jurisdiction of the grant recipient that were not identified in the grant award, but that meet or may subsequently meet the Agency's criteria for eligibility under Section 209, may qualify to be added to an RLF's eligible lending area. To ascertain qualification, a grant recipient must make a written request to EDA to determine whether a new area is eligible for assistance under existing grant terms. Area eligibility data are updated quarterly and eligibility lists are maintained by EDA's Regional Offices. Unless stipulated otherwise in the grant award, once an area's eligibility is approved by EDA, that area retains its eligibility indefinitely.

3. *Recapitalization Rule:* If EDA funds are used to recapitalize an existing RLF, the new grant funds may be used only in areas eligible for assistance at the time the recapitalization grant is invited (and in areas that become eligible between the time of invitation and the grant award). Areas that were eligible under the previous EDA grant award but not under the new award may continue to receive RLF assistance under the previous grant award only. Areas which become eligible subsequent to the grant award require EDA approval as discussed above in Section IV.A.2.

If a grant recipient has received EDA funds to recapitalize an existing RLF and the respective grants serve different eligible lending areas, the grant recipient is responsible for maintaining adequate accounting records to substantiate that each grant is being used in the appropriate eligible lending area.

B. Borrower Restrictions

1. *Eligible Lending Area:* An RLF borrower must retain the activity financed in the eligible lending area for the term of the loan. The RLF's standard loan agreement should include a provision to call the loan if the activity financed is moved from the eligible lending area.

2. *Relocation:* RLF financing may not be used by a borrower for any activity that serves to relocate jobs from one commuting area to another. This applies both to a

business which uses RLF financing to relocate jobs into an eligible area from a different commuting area, and to a business which relocates jobs, created as a result of RLF financing, to a different commuting area. An RLF's standard loan agreement should include a provision for calling the loan if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area, or (b) the activity financed was subsequently moved to a different commuting area to the detriment of local workers. The commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.

3. *Credit Otherwise Available:* A borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions which would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The grant recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up. A loan write-up must include a discussion of the particular features of the local capital market and/or of the individual borrower or project to be financed that result in the need for RLF financing. It should also briefly describe the key aspects of the business and the loan including a discussion of the prospective borrower's ability to repay.

The grant recipient is also responsible for obtaining supplemental evidence, as appropriate, to support the need for RLF financing. This may include the following:

a. A commitment letter from a participating bank stating the loan terms, the maximum amount to be extended by the bank, and the need for the RLF's participation; and/or

b. Bank rejection letter(s), if obtainable, listing the proposed loan terms.

Exception to Credit Test: RLF financing may also be used as an incentive, through favorable loan terms, to attract a new business or a business expansion into an eligible area. The business may be credit worthy but would otherwise not locate in the area without RLF financing as an incentive. To undertake this type of project, the grant recipient must sufficiently document the need for RLF assistance and should obtain certification from the company, stating that it would not locate the proposed project at the intended location without RLF assistance. Grant recipients are cautioned that failure to document adequately the need for an RLF loan may be grounds for declaring a loan ineligible and requiring the grant recipient to repay any outstanding loan balance to the RLF, or return the Federal share to EDA.

4. *Public and Quasi-Public Borrowers:* A public or quasi-public organization is not eligible to receive RLF financial assistance unless (a) the activity financed directly benefits or will directly benefit identifiable business concerns, and (b) there is reasonable assurance that the activity financed will result in increased business activity in the near term.

5. *Private Developers:* Private developers are not eligible for RLF assistance unless the activity financed is non-speculative, consistent with the strategic and lending objectives of the RLF, and directly benefits or will directly benefit identifiable business concerns.

6. *Other:* A grant recipient shall not use its RLF to make a loan to itself or to a related organization.

C. Financing Restrictions

1. Loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF are prohibited. To preclude ineligible uses of RLF funds, the purpose of each RLF loan should be clearly stated in the RLF loan agreement.

2. For initial RLF grants, the total dollar amount of loans for working capital purposes may not exceed 50% of the total RLF capital prior to the full disbursement of grant funds, unless otherwise stipulated in the grant agreement. ("*RLF capital*" consists of the funds which capitalized the RLF plus such earnings and fees generated by RLF activities as may be added to the RLF capital base to be used for lending.) For recapitalization grants and for initial grants after the grant funds are fully disbursed, the portfolio working capital percentage may, with EDA's prior written approval, exceed 50 percent. In reviewing requests to increase the 50 percent limit on working capital loans, EDA will consider, among other things, the grant recipient's experience with working capital loans and whether the request is consistent with the area's Economic Adjustment Strategy and the RLF Plan.

3. RLF capital may not be used to:

a. Acquire an equity position in a private business;

b. Subsidize interest payments on an existing loan;

c. Provide the equity contribution required of borrowers under other Federal loan programs;

d. Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified, and documented in the loan write-up (referenced in IV.B.3 above). Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure or acquiring it to expand it with increased investment. In any case, the resulting economic benefits should be demonstrably consistent with the strategic objectives of the RLF;

e. Refinance existing debt unless:

(1) There is sound economic justification and the grant recipient sufficiently documents in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or

(2) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lienholder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within a reasonable time period (18 months) from the sale of assets sufficient to cover an RLF's expenses plus a reasonable portion of the outstanding loan obligation.

(Note: Since a grant recipient will be required to repay the amount of an ineligible loan, it is recommended that EDA be contacted for clarification or written confirmation if there is any question regarding either of the refinancing exceptions described above.)

4. Prior to full disbursement of grant funds, the grant recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full disbursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the Recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The plan for any loan guarantee activities should include the following information:

a. The maximum guarantee percentage that will be offered;

b. A certification from the RLF attorney that the guarantee agreement is acceptable by local standards. At minimum, the guarantee agreement must include the following: the maximum reserve requirement; the rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults; foreclosures; bankruptcies; collateral disposition and the call provisions of the guarantee; and interest income and loan fees, if any, which will accrue to the RLF.

D. Interest Rates

A grant recipient can make loans and loan guarantees to eligible borrowers at interest rates and under conditions determined by the Recipient to be most appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under State law, whichever is lower, but in no event may the interest rate be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if to do so would compromise the ability of the RLF to implement its financing strategy.

E. Private Leveraging

Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. This leveraging requirement applies to the portfolio as a whole rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with an RLF loan as part of the same business development project and may include (1) capital invested by the borrower or others, (2) financing from private entities, and (3) 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans. Private investments do not include equity build-up in a borrower's assets or prior capital investments by the borrower unless made within nine months of the RLF loan and with the concurrence of the RLF Recipient. If a grant recipient can

demonstrate that the 2:1 leverage requirement is too restrictive for its lending area and that it impedes the purpose for which the grant was made, it may request EDA to waive or modify the grant agreement.

V. RLF Capital

A. RLF Capitalization

The original sources of capital for EDA RLFs are normally EDA grant funds and a nonfederal cash matching share. The EDA grant funds and the nonfederal matching funds can be used only for the purpose of making loans under an RLF, unless otherwise provided for in the grant agreement and grant budget, e.g., budgeted audit costs. Costs associated with the preparation of the grant application are not eligible expenses and are not reimbursable from the funds invested as RLF capital.

B. Nonfederal Matching Share

The grant agreement specifies the amount of nonfederal cash share required for an RLF grant. This is usually not less than 25% of the total RLF capital investment. The nonfederal share funds must be loaned either before or proportionately with EDA funds. Upon repayment, the nonfederal share funds are treated the same as EDA funds, repayments of principal must be placed in the RLF for relending and interest payments must be used either for relending or for eligible RLF administrative costs. The nonfederal matching share must be available when needed for lending and must be under the control of the grant recipient (or its designee) for the duration of the RLF for use in accordance with the terms of the grant.

C. Partial Termination and Deobligation

In the event that a portion of the EDA grant is terminated and deobligated (refer to Section XII. below) and is no longer available to a grant recipient due to its failure to meet the terms of a grant, the nonfederal matching share shall remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

VI. RLF Administrative Costs

A. General Requirements

Grant recipients are responsible for the administrative costs associated with operating an RLF. Evidence of sufficient and reliable sources of funds to cover RLF administrative expenses is a key factor in project selection. As grant funds are disbursed for loans and an RLF begins to generate income from lending activities, such income (referred to as "RLF Income" and defined in Section VII.A.), as distinguished from principal repayments, may be used to cover eligible, reasonable, and documented administrative costs necessary to operate the RLF. When RLF Income is used for RLF administrative expenses, rather than added to the RLF capital base for lending, grant recipients are required to complete an RLF Income and Expense Statement as discussed in Section VII.C.2.

B. Auditing Costs

The grant budget accompanying the grant award lists the maximum amount of grant funds that may be used to defray the costs of audits required under the terms of the grant. In addition to funds budgeted in the grant award, audit costs may be reimbursed from RLF Income and from resources of the grant recipient. Audit costs are chargeable against the grant award if permitted in the grant budget and RLF Income to the extent that the costs charged are equitably distributed and reflect the benefits received. Grant funds budgeted for audit costs that are unused may be reallocated to the RLF capital base without EDA's permission. Additional information on grant audits is discussed in Section XI.B. and in EDA's Revolving Loan Funds Grants Audit Guidelines (RLF Audit Guidelines).

C. Other Eligible RLF Administrative Costs

Costs eligible for reimbursement from RLF Income must be consistent with the cost principles outlined in the appropriate OMB cost principle circular (OMB A–21, A–87 or A–122) and with the RLF Audit Guidelines. The requirements for using RLF Income are discussed in detail in Section VII.

Some of the common administrative costs that may be charged against RLF Income include RLF staff salaries and fringe benefits, RLF-related training, travel, marketing, general administration, business counseling and management assistance, portfolio management, materials and supplies, equipment rental and acquisitions prorated based on RLF usage, building rent, outside professional services, insurance, loan closing costs and the costs to protect collateral subsequent to foreclosure.

RLF administrative costs may be separated into direct and indirect costs. Direct costs are those that can be identified specifically with a particular cost objective, such as an RLF program; indirect costs are those that are incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable. All costs charged against RLF Income must be supported by formal accounting records and source documentation. All indirect and joint costs charged against RLF Income must additionally be supported by a cost allocation plan approved by the cognizant Federal agency.

VII. RLF Income

A. Definition

RLF Income includes interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. (Note that the definition of RLF Income does not include repayments of loan principal because RLF principal repayments represent the return of capital and not "income". Consequently, RLF Income is a narrower definition of income than "program income" in the Uniform Administrative Requirements For Grants And Cooperative Agreements To State And Local Governments in 15 CFR Part 24.25, which includes principal repayments).

In accounting for RLF Income, any proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be treated as repayments of RLF principal and placed in the RLF for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF Income.

B. Eligible Uses

While RLF Income can be used to pay for eligible and reasonable administrative costs as discussed above, RLF grant recipients are expected to add a reasonable percentage of RLF Income to the RLF capital base to compensate not only for loan losses and the effects of inflation over time, but also to maintain a minimum funding level for the future borrowing needs within the eligible lending area. To determine the appropriate amount of RLF Income to return to an RLF, RLF operators should consider the costs necessary to operate an RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) commitment to the RLF, and the anticipated demand for RLF loans.

(Note: RLF Income that is not used for administrative purposes during the twelve month period in which it is earned must be added to the RLF capital base for lending purposes by the end of the twelve month period (see Section VII.C.2. below for selection of the twelve month period). Only RLF Income earned during a current period may be used for current administrative expenses. RLF Income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.)

C. Administrative Requirements

Grant recipients electing to use RLF Income to cover all or part of a RLF's administrative costs must comply with the following provisions:

1. *Accounting Records:* Grant recipients must (a) maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs, and (b) comply with applicable OMB cost principles and with the RLF Audit Guidelines when charging costs against RLF Income. Records must be retained by grant recipients for at least three years. If fraud is an issue, records must be retained until the issue is resolved.

2. *RLF Income and Expense Statement:* The Recipient must complete the RLF Income and Expense Statement (RLF Income Statement) located in Exhibit A, within 90 days of the twelve month period ending either September 30 or the Recipient's fiscal year end, whichever period is selected by the Recipient. The Recipient shall notify EDA of its selection in its first report to EDA. Once the period is selected, it may not be changed without prior written permission of EDA.

In lieu of completing an RLF Income Statement, the grant recipient may substitute information contained in an independent audit report provided it is in substance and in detail comparable to that provided in the RLF Income Statement. Should an audit report be used, the grant recipient will have to provide additional information certifying certain employee information requested in the RLF Income Statement.

3. *Reporting Requirements:* Grant recipients using fifty (50) percent or more or $100,000 or more of RLF Income for RLF administrative expenses during the selected twelve month period must submit the completed RLF Income Statement to the EDA Regional Office within 90 days of the period ending date. Grant recipients whose RLF Income usage is under 50 percent and less than $100,000 shall retain the RLF Income Statement for three years. The grant recipient shall make it available to EDA personnel upon request.

4. *Ineligible Costs:* For any costs determined by EDA to have been an ineligible use of RLF Income, the grant recipient shall reimburse the RLF or EDA. EDA will notify the grant recipient of the time period allowed for, and the manner in which to make, reimbursement.

VIII. Revolving Loan Fund Plan

A. Purpose

Grant recipients are required by the terms and conditions of the grant agreement to manage RLFs in accordance with an RLF Plan (Plan) generally approved prior to the grant award. The Plan serves two purposes. First, it summarizes how the RLF will be used to support implementation of the area's economic adjustment strategy, a statutory prerequisite to award of a Section 209 Implementation grant. Second, it documents the operating procedures established by the grant recipient to ensure consistent administration of the RLF in accordance with the Terms and Conditions of the grant and prudent public lending practices.

B. Format and Content

The Plan has two distinct parts. Part I, "The RLF Strategy," summarizes the area's economic adjustment strategy, including the business development objectives, and describes the RLF's financing strategy, policies and portfolio standards. Part II, "RLF Operating Procedures," serves as the internal operating manual for the RLF. The grant recipient is required to address a number of topics specifically identified by EDA, but otherwise has considerable discretion in designing and documenting operating procedures appropriate to the relative scale and complexity of its financing function. The required format and content for the two parts of the Plan are described in EDA's RLF Plan Guidelines.

C. EDA Approval

Unless specifically otherwise permitted by EDA, the Plan must be approved by EDA prior to the grant award.

D. Annual Plan Certification

Grant recipients are required to certify annually with the submission of the program report for the period ending September 30 (see Section XI.A), that the RLF loan board and the grant recipient's governing board have reviewed the RLF's performance for the preceding year relative to the area's adjustment strategy and the RLF Plan and have determined that:

1. The RLF Plan is consistent with and supportive of the area's current economic adjustment strategy; and

2. The RLF is being operated in accordance with the policies and procedures contained in the RLF Plan, and the loan portfolio meets the standards contained therein.

With the exception of States, the certification should normally be in the form of a resolution passed by the grant recipient's governing board. Certification by State grantees should be by an authorized State official.

E. Plan Modifications

Approval of modifications to Part I of the Plan may be requested at any time the grant recipient or EDA determines that the Plan is either outdated relative to the current adjustment needs and objectives of the area or specific lending policies and/or requirements are impeding effective use of the RLF as a strategic financing tool. Prerequisites for EDA's consideration of proposed modifications to Part I of the Plan include the following:

1. When the modification request is based on a significant redirection of an area's economic adjustment strategy, it must be accompanied by a copy of the current strategy. The strategy submitted must:

a. Have been prepared or reviewed and updated, as necessary and appropriate, within the last 12 months by the grant recipient or area organization responsible for its preparation and maintenance;

b. Address, for the purposes of EDA, the same geographic/jurisdictional area covered by the original strategy, unless the eligible area has been/is being expanded as provided for by the terms and conditions of the grant;

c. Include the information specified in EDA's current guidelines for preparing and documenting an economic adjustment strategy, including evidence of the continuing need for the RLF; and

d. Provide sufficient evidence that the proposed modifications are necessary and justified.

2. When the proposed modification is designed to permit more effective use of RLF financing in support of its unchanged strategic objectives, the grant recipient must submit adequate written justification for the proposed change(s). Submission of a current adjustment strategy is not required.

3. Certification that the proposed revisions are consistent with EDA policy and do not violate the terms and conditions of the grant.

4. Certification that the purpose and scope of the RLF as a financing tool for supporting implementation of the area's economic adjustment strategy remain unchanged.

5. Certification that prudent management of the RLF assets would not be compromised.

Grant recipients funded prior to the effective date of this Manual are encouraged but not required, unless determined otherwise by EDA, to comply with the new RLF Plan format when modifying any part of their plan.

Operational procedures, as documented in Part II of the Plan, so long as consistent with EDA requirements and the terms and conditions of the grant award, may be modified with the approval of the grant recipient's governing board. A copy of any revisions to Part II should be submitted for the EDA file within 30 days of approval. For grant recipients other than States, Plan modifications should be approved by resolution of the organization's governing board.

IX. Disbursement of Grant Funds

A. Pre-Disbursement Requirements

1. The grant recipient is required to provide evidence that it has fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of EDA and the RLF. Such insurance coverage must exist at all times during the life of the RLF.

2. The grant recipient is required to provide a certification by an independent accountant familiar with the grant recipient's accounting system that its accounting system is adequate to identify, safeguard, and account for all RLF funds, including RLF Income.

3. The grant recipient is required to certify that the standard RLF loan documents necessary for lending are in place and that these documents have been reviewed by legal counsel for adequacy and compliance with the terms and conditions of the grant. The standard loan documents must include at a minimum, the following: Loan Application, Loan Agreement, Promissory Note, Security Agreement(s), Deed of Trust or Mortgage, and Agreement of Prior Lien Holder.

B. Disbursement Procedures

The grant recipient is required to draw grant funds electronically by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) system. A grant recipient may request disbursements only at the time and in the amount immediately needed to close a loan or disburse funds to a borrower. RLF grant funds are considered to be made available to grant recipients on a reimbursement basis (as an obligation is incurred by the grant recipient at the time of loan approval and loan announcement). Grant funds should be requested only for immediate use, i.e., when the intent is to disburse the funds within 14 days of receipt. If grant funds are requested and the loan disbursement is subsequently delayed, a grant recipient may hold the funds up to 30 days from the date of receipt, but should return the funds if disbursement of the grant funds is unlikely within the 30 day period. Returned funds will be normally available to the grant recipient for future drawdown. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency—"EDA" followed by the grant award number and the words "Premature Draw." The grant recipient may also indicate, if a cover letter is sent, that a credit in the amount of the check is to be made to the grant award number for future drawdown. Checks should be submitted to: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

As stated above, the nonfederal matching share must be disbursed either proportionately with the EDA grant funds or at a faster rate. Interest earned on prematurely drawn grant funds must be returned to EDA at least quarterly for deposit in the U.S. Treasury. (Note: Grantees may deduct and retain a portion of such earned

interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable). Returned interest payments should indicate on the face of the check "EDA" followed by grant award number and the word "Interest". Checks for interest should be submitted to the same Atlanta, Georgia address as above.

To request a grant disbursement by the ACH/EFT method, a grant recipient must submit a completed Request For Advance or Reimbursement, Standard Form 270 to the EDA Regional Office using the attached Special Instructions (Exhibit B) which are specific to RLF grants. Grant recipients may generally expect to have funds available for subsequent disbursement from five to ten working days after the EDA Regional Office receives the SF 270.

C. Principal Repayments During Grant Disbursement Phase

Principal repayments from active RLF loans that are received by the grant recipient must be placed immediately in the loan fund to be available for relending only. As each new loan is made, the grant recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF Income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant (refer to Section V.B. for matching fund requirements). However, RLF Income received during the current period (as defined in Section VII.C.2.) may be held for the duration of the period to cover eligible administrative expenses, and need not be disbursed in order to draw additional grant funds.

D. Loan Closing/Disbursement Schedule

RLF loan activity must be sufficient to draw down grant funds in accordance with the prescribed time schedule for loan closings and disbursements to eligible RLF borrowers. Unless otherwise stated in the grant agreement, the time schedule requires that the initial round of lending (i.e., the grant disbursement phase) be completed within three (3) years of the grant award with no less than 50 percent of the grant funds, and of the nonfederal matching share, disbursed within eighteen months and 80 percent within two years.

Should the grant recipient substantially fail to meet any of the prescribed deadlines, additional grant funds will not be disbursed unless (1) funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline, (2) funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) EDA has approved a time schedule extension.

(Note: An approved loan is defined as a loan that has been approved by the RLF loan board but has not been closed. A loan is closed when the loan agreement and note have been signed by the borrower. The full amount of a loan may be disbursed to the borrower at the time of loan closing, or may be disbursed in installments and under conditions specified in the loan agreement.)

E. Time Schedule Extensions

Grant recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet any of the required disbursement deadlines. Except under the conditions described, a grant recipient is required to submit a written request for continued use of grant funds beyond the missed deadline. Extension requests must provide good reason for the delay and demonstrate that (1) the delay was unforeseen or generally beyond the control of the Recipient, (2) the need for the RLF still exists, (3) the current or planned use, and anticipated benefits of the RLF remain consistent with the current adjustment strategy and RLF Plan, and (4) achievement of a new proposed time schedule is reasonably possible and why no further delays are foreseen. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA will deobligate (terminate) all or part of the unused portion of grant.

By law, grant funds remain available to EDA for disbursement only until September 30 of the fifth year after the fiscal year of the grant award. No time extensions will be granted beyond that time and any undisbursed funds remaining will be deobligated.

X. Capital Utilization Standard

A. Definition

During the revolving phase, grant recipients are expected to manage their repayment and lending schedules to maximize the amount of capital loaned out or committed at all times. Under normal circumstances, at least 75 percent of an RLF's capital should be in use. [RLF Income earned during the current period (as defined in Section VII.C.2) is not included as RLF capital.] EDA may recognize exceptions for RLFs whose Plan calls for making loans that are large relative to the size of the capital base. RLFs with capital bases in excess of $4 million are expected to maintain a proportionately higher percentage of their funds loaned out. The percentage will be determined by EDA on a case-by-case basis.

When the percentage of capital loaned out falls below the applicable standard, the dollar amount of the funds equivalent to the difference between the actual percentage of capital loaned out and the standard is referred to as "excess funds."

B. Deviation

In the event that there are excess funds at the time a semiannual report is due, the grant recipient must submit an explanation of the situation with the report, and if there is a significant deviation from the standard, as determined by EDA, the grant recipient must describe the remedial action to be taken.

C. Sequestration of Excess Funds

At any time subsequent to a second consecutive report showing that the applicable standard has not been met, EDA may require the grant recipient to deposit excess funds in an interest bearing account; that portion of the interest earned on that account, attributable to the EDA grant, will be remitted to the U.S. Treasury. EDA approval will be required to withdraw sequestered funds.

D. Persistent Noncompliance

EDA will normally give the grant recipient a reasonable period of time to loan the excess funds and achieve the standard. However, when a grant recipient fails to achieve the applicable standard after a reasonable period of time, as determined by EDA, the grant will be subject to sanctions for suspension and/or termination as described in Section XII of this Manual.

XI. Monitoring

EDA monitors grant recipients for compliance with the Terms and Conditions of the grant, for performance against national norms and individual portfolio standards, and for the contribution of the RLF to the area's economic adjustment process. Monitoring and performance assessments are based on periodic reports submitted by the grant recipients, organizational and Federal audits, and site visits by EDA staff.

A. Reports

1. *Grant Status Reports:* Grant recipients are required to submit standard Federal grant status reports to EDA during the grant disbursement phase as specified in the Terms and Conditions of the grant agreement. These include: (a) Standard Form 270, Request for Advance or Reimbursement, which is submitted each time a grantee needs to draw Federal funds (see Section IX.B. and Exhibit B); and (b) Standard Form 272, Federal Cash Transactions Report (Exhibit C), which is due within 15 days following the end of each calendar quarter and shows the status of grant funds. Failure to submit a Standard Form 272, when due, will prevent a grant recipient from obtaining funds until the form is submitted.

2. *Financial and Performance Reports:* All grant recipients are required to complete and submit Financial and Performance Reports (Exhibit D) semiannually unless otherwise notified by EDA.

a. Initial Report: For grants, other than recapitalizations, awarded between October 1, and March 31, the initial report due date is the following October 31. For grants awarded between April 1 and September 30, the initial report due date is the following April 30.

b. Subsequent Reports: After the initial report, the semiannual report is due on October 31, for the period of loan activity ending September 30, and April 30, for the period ending March 31.

Generally, RLF grant recipients will be required to submit reports to the EDA Regional Office every six months for a minimum of one year after disbursement of all grant funds, after which a grant recipient may be eligible for "graduation" to a shorter, annual reporting format (Exhibit E). Grant recipients must request this in writing. Recipients of recapitalization grants shall report on the full amount of their RLF funds in each subsequent semiannual or annual report submitted.

3. *Annual Reports:* For grant recipients graduated to an annual reporting schedule, the report covers the twelve month period ending September 30, and is due October 31. The annual reporting requirement continues through the life of an RLF unless EDA determines that more frequent or detailed reports are needed for closer monitoring of grant violations or other problems. Note that the annual report requires documentation of capital utilization at semiannual intervals pursuant to the requirements of Section X.

4. *Special Reports:* Special reports to enable EDA monitoring of compliance issues arising from audits, site visits, or other reviews may be requested from the grant recipient in writing on a case by case basis.

First time grant recipients may be required to submit periodic reports on their progress in initiating RLF activity, prior to the due date of the first semiannual report.

B. Audits

Grant recipients are subject to the following audit requirements for the duration of the RLF.

1. In accordance with the terms and conditions of the grant award, the grant recipient shall arrange for a Single Audit as referenced in the RLF Audit Guidelines and OMB Circular A–133. Such audits should be conducted by an independent auditor who meets the general standards specified in generally accepted government auditing standards. With the exception of newly awarded grants and limited circumstances described in the RLF Audit Guidelines, the majority of RLF grant recipients will require an annual audit.

Pursuant to the Single Audit Act Amendments of 1996 (P.L. 104–156), and OMB Circular A–133, as codified in DOC Regulations found at 15 CFR Part 29, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least $300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. The cost principles to be followed are contained in OMB Circulars A–21, A–87 or A–122, as applicable.

Audit requirements for RLF's are summarized in the EDA RLF Audit Guidelines which should be made available to the auditor prior to the audit engagement. Failure to comply with these requirements could result in an unacceptable audit.

2. The U.S. Department of Commerce Office of Inspector General (OIG) may audit, inspect, or investigate an RLF grant at any time.

C. Site Visits

EDA will periodically schedule site visits to review the grant recipient's operating procedures, monitor progress and evaluate the effectiveness of the RLF in supporting the area's economic adjustment process and strategic objectives.

XII. Noncompliance With the Grant Terms

A. Suspension

EDA may suspend RLF lending activity when EDA determines that a grant recipient has failed to comply with the grant terms. Before suspending a grant, EDA may give the grant recipient a reasonable period of time in which to take the necessary corrective action to comply with the grant terms. However, should it appear that the grant recipient had not taken or will not take the necessary action, and/or that continued operation of the RLF would place the assets at risk, EDA may suspend the grant immediately. Upon suspension, the grant recipient will be prohibited from any new lending activity, although normal loan servicing and collection efforts will continue. In addition, the grant recipient may be subject to restrictions on the use of RLF Income and specific actions to protect the RLF assets may be required.

In the event that the compliance problems are not resolved during the suspension period, EDA will attempt to resolve the issues through means including working with the Recipient to identify a successor to assume responsibility for administering the RLF in accordance with the terms of the original grant agreement. If issues cannot be resolved, EDA will initiate proceedings to terminate the grant for cause.

B. Termination for Cause

EDA may terminate an RLF grant for cause with or without prior suspension of lending activity.

C. Partial Termination

When EDA determines, after a reasonable period of time, that a grant recipient is unable or unwilling to use the full amount of the grant funds or of the RLF capital and RLF Income thereby generated, EDA may partially terminate the grant if EDA determines that the remaining capital is sufficient to support continuation of an effective RLF operation.

When a grant recipient fails to complete the initial round of lending in the time schedule provided in the grant agreement, the unused grant funds may be deobligated and the grant award amended to reflect the reduced grant amount. The nonfederal matching share will be expected to remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

Grant recipients in the revolving phase who persistently fail to make maximum use of the available RLF capital, as defined by the applicable capital utilization standard in Section X, will be required to return excess funds, in an amount determined by EDA, to the U.S. Treasury. This amount will not be greater than EDA's proportionate share of the excess funds sequestered at the time. The grant award will be amended to reflect the reduced amount of EDA's participation.

XIII. Termination for Convenience

A grant recipient has the right to request termination for convenience of the grant, in whole, or in part, at any time. Termination is undertaken without prejudice to the grant recipient upon agreement of both parties that the purpose of the grant would not be served by further expenditure of funds, and in the case of a partial termination, EDA determines that sufficient funds remain to permit an effective RLF operation. The Federal share of the funds must be returned to the U.S. Treasury as described below in Section XIV.

XIV. Recovery of EDA Interest in the RLF Assets

In case of termination, for cause or convenience, EDA has the responsibility, on behalf of the Federal Government, to recover its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EDA's fair share is the amount computed by applying the percentage of EDA participation in the total capitalization of the RLF to the current fair market value of the assets thereof; provided that with EDA's approval the Recipient may use for other economic development purposes that portion of such RLF property which EDA determines is attributable to the payment of interest on RLF loans and not used by the Recipient for administrative or other allowable expenses. In addition, EDA has the right to compensation, over and above its share of the current fair market value of the assets, when it is determined that the value of such assets has been reduced by the improper/illegal use of grant funds.

XV. Sale or Securitization of Loans

Grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or securitization of the loan portfolio to generate money to be used for additional loans as part of the RLF. A grant recipient contemplating such an action is advised to consult with EDA prior to development of a formal proposal.

In the event of the sale, collection, or liquidation of loans, any proceeds, net of repaid principal and reasonable administrative costs incurred, up to the amount of the outstanding loan principal, must be returned to the RLF for relending. Any net proceeds from loan sales above the outstanding loan principal is considered RLF Income and must either be added to the RLF capital base for lending or used to cover eligible costs for administering the RLF in accordance with the rules for use of RLF Income.

XVI. Appendix

The following reference materials and required or sample reporting formats are available from EDA:

OMB Circulars and CFR'S (List of Reprints)

15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

OMB Circular A–87, Cost Principles for State and Local Governments

15 CFR Part 29a, Audit Requirements for State and Local Governments

15 CFR Part 29b, Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations

OMB Circular A–133, Audits of States, Local Governments and Nonprofit Organizations

OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations Uniform Administrative Requirements
OMB Circular A–122, Cost Principles for Nonprofit Organizations
OMB Circular A–21, Cost Principles for Educational Institutions
48 CFR Part 31, Contract Cost Principles and Procedures
15 CFR Part 26, Governmentwide Debarment and Suspension and Governmentwide Requirements for Drug Free Workplace

EDA Reference Materials and Reporting Formats

EXHIBIT A: RLF Income and Expense Statement with Instructions
EXHIBIT B: Request for Advance or Reimbursement (SF–270) with EDA Special Instructions
EXHIBIT C: Federal Cash Transaction Report (SF–272)
EXHIBIT D: Semiannual Report for RLF Grants with Instructions
EXHIBIT E: Annual Report for RLF Grants with Instructions

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EXHIBIT A

RLF INCOME AND EXPENSE STATEMENT

For The (Most Recent) 12 Month
Period Ended: _____

	Most Recent Period	Prior Period
1. RLF INCOME	$	$
2. EXPENSES CHARGED TO RLF INCOME		
a. Employee Salaries	$	$
b. Employee Fringe Benefits	$	$
c. RLF-related Travel	$	$
d. Loan Processing/Closing Costs	$	$
e. Professional Services	$	$
f. Marketing	$	$
g. RLF Staff Training	$	$
h. Equipment - Rental	$	$
- Acquisition	$	$
I. Space (rent)	$	$
j. Audit	$	$
k. Indirect Costs	$	$
l. Other (Specify)	$	$
3. **TOTAL EXPENSES** (sum 2.a thru 2.l)	$	$
4. **NET RLF INCOME** (1 minus 3)	$	$
5. Cumulative **NET RLF INCOME**	$	$
6. EXPENSES as % of RLF INCOME (3/1)	%	%
7. For the current 12 month period, provide an estimate of projected RLF Income and the percentage expected to be used for RLF administrative expenses. Projected RLF Income: $_____ % for Administration: _____ %		
8. On a separate page, list all personnel positions which were funded partially or in full with RLF Income for the most recent period only; list the aggregate dollar amount for salaries and fringe benefits for each listed position, and the amount and percent which were funded by RLF Income.		

CERTIFICATION OF AUTHORIZED REPRESENTATIVE (designated RLF Administrator or Chief Financial Officer): I certify that the above information and any attachments thereto are complete and accurate to the best of my knowledge.

By: _____ Date: _____

Name and Position: _____

BILLING CODE 3510-24-C

Exhibit A (back)—Instructions for RLF Income and Expense Statement

The RLF INCOME AND EXPENSE STATEMENT is to be used by recipients of revolving loan fund (RLF) grants provided by the Economic Development Administration (EDA), U.S. Department of Commerce. The Statement is to be completed for each year in which a grantee uses income generated from RLF activities to pay for RLF administrative expenses. It should be completed within 90 days of a grant recipient's fiscal year end or September 30. The period will be selected by the grant recipient; once selected, it may not be changed without the prior approval of EDA. Instructions for submitting the Statement are included in the EDA Administrative Manual, Section VII. Expenses charged to RLF income sources must be eligible under the terms of the grant and must comply with applicable OMB cost principles and the EDA RLF Audit Guide. For grantees completing the Statement for the first time, or which did not charge any expenses against RLF income sources in a prior period, complete only the second column marked "Most Recent Period" and answer questions 7. And 8.

Except for the items explained below, all items on the Statement are self-explanatory or are adequately addressed in the RLF Audit Guide and applicable OMB Cost Principles.

Item and Entry

1 "RLF INCOME" includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, and loan fees and other loan-related earnings.

2d Enter the amount of grantee out-of-pocket costs which were necessary to process and close RLF loans. These costs may include such costs for credit reports, title insurance, Uniform Commercial Code searches, filing fees, appraisals, etc., which are recorded in the grantee's accounting records. Any costs not recorded in the grantee's accounting records, e.g., those paid directly by a borrower to a third party, or those that were netted against loan fees (thereby reducing reported income), need not be reported here.

2g Enter the costs charged to RLF Income for RLF-related training for employees involved in RLF operations. These costs may include training materials, textbooks, tuition and registration fees. Any training-related travel costs should be reported in Item 2c.

5 "Cumulative NET RLF INCOME" includes all RLF Income earned during the life of the RLF that was not used for RLF administrative expenses. The amount reported should be inclusive of the NET RLF INCOME reported in Item 4. (The Cumulative NET RLF INCOME for the most recent period should equal the sum of the amounts in Item 5 for the prior period and in Item 4 for the most recent period.

BILLING CODE 3510–24–P

EXHIBIT B

REQUEST FOR ADVANCE OR REIMBURSEMENT (See Instructions on back)		OMB Approval NO. 0348-0004		Page	of Pages
		1. TYPE OF PAYMENT REQUESTED	a. "X" ONE OR BOTH BOXES ☐ Advance ☐ Reimbursement b. "X" the applicable box ☐ Final ☐ Partial	2. BASIS OF REQUEST ☐ CASH ☐ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATION ELEMENT TO WHICH THIS REPORT IS SUBMITTED		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST	
6. EMPLOYER IDENTIFICATION NUMBER	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	8. PERIOD COVERED BY THIS REQUEST			
		FROM (month, day, year)		TO (month, day, year)	
9. RECIPIENT ORGANIZATION NAME NUMBER AND STREET CITY, STATE and ZIP CODE		10. PAYEE (where check is sent is different than item 9) NAME NUMBER AND STREET CITY, STATE and ZIP CODE			

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED					
PROGRAMS/FUNCTIONS/ACTIVITIES		(a)	(b)	(c)	TOTAL
a. Total Program Outlays to Date	(as of date)	$	$	$	$
b. *Less:* Cumulative program income					
c. Net program outlays (*Line* a *minus line* b)					
d. Estimated net cash outlays for advance period					
e. Total (*Sums of lines c & d*)					
f. Non-Federal share of amount on line e.					
g. Federal share of amount on line e.					
h. Federal payments previously requested					
i. Federal share now requested (*Line* g *minus line* h)					
j. Advances required by month, when requested by Federal grantor Agency for use in Making prescheduled advances	1st month				
	2nd month				
	3rd month				

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY	
a. Estimated Federal cash outlays that will be made during period covered by the advance	$
b. *Less:* Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (*Line* a *minus line* b)	$

AUTHORIZED FOR LOCAL REPRODUCTION *(Continued on Reverse)*

STANDARD FORM 270 (REV. 3-91)
PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET
Cir. NO. A-102 AND A-110

EXHIBIT B

CERTIFICATION

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

Signature of Authorized Certifying Official

Date Request Submitted

Typed or Printed Name and Title

Telephone (Area Code, Number, Extension

This Space for Agency Use

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the OFFICE of Management and Budget, Paperwork Reduction Project (0348-0004), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self explanatory; specific instructions for other items are as follows:

Item	Entry
2	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
8	Enter the month, day and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, but not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

STANDARD FORM 270 BACK (Rev. 2-92)

BILLING CODE 3510-24-P

Exhibit B (Revised 12/98)—Special Instructions for Completion of Standard Form 270 for EDA Revolving Loan Fund Grants

These instructions apply to revolving loan fund (RLF) grants funded by the Economic Development Administration (EDA). U.S. Department of Commerce, under Section 209 of the Public Works and Economic Development Act of 1965, as amended. RLF grant recipients are required to use Standard Form 270 to draw grant funds when needed to disburse to RLF borrowers. Funds may be drawn only for immediate use (i.e., when the intent is to disburse the funds within 14 days of receipt), and only to the extent that the recipient does not have funds on hand from loan repayments and certain RLF income sources to cover the proposed disbursement request. (See below and EDA's RLF Administrative Manual, Section IX, for further details.) Grant funds not disbursed within 30 days of receipt must be returned to EDA. Items 1b, 3, 9, 11c, 11e, and 11i are self-explanatory; specific instructions for other items follow:

Item and Entry

1a Indicate whether the request is for a reimbursement or an advance. (Note the RLF disbursements are normally considered reimbursement as a reimbursable obligation is created at the time of loan approval. A request for an advance may be requested under special circumstances.

2 Disregard.

4 Enter the Federal grant number or other identifying number assigned by EDA. If the reimbursement or advance is for more than one grant or other agreement, insert N/A; then show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.

5 Enter in numerical order the number of this disbursement request. Begin with the number "1" for each new grant.

6 Enter the employer identification number assigned by the US Internal Revenue Service, or the FICE (institution) code if requested by EDA.

7 This space is reserved for an account number or other identifying number that may be assigned by the grant recipient.

8 Disregard.

10 Enter "ACH/EFT" for funds disbursement by the Automated Clearing House Electronic Funds Transfer System. For further details, refer to Section E.02 of the RLF Standard Terms and Conditions.

11 The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate the page number in the space provided in upper right; if more than one column is used, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.

11a Enter in "as of date", the month, day and year of the ending of the accounting period to which this amount applies. Enter the amount of cumulative outlays for RLF loans from the following sources: EDA RLF grant funds, matching funds, and program income (defined in Section VII.A of the RLF Administrative Manual).

Include actual, pending (previous outlays requests that have not yet been disbursed) and proposed (those proposed under this request) outlays. For recapitalized RLF's—those where a subsequent EDA RLF grant was made to the same recipient—treat cumulative outlays as beginning with the inception of the RLF.

11b Cumulative Program Income, as defined below, must be used before or concurrent with the disbursement of new grant funds (pursuant to Section IX of the RLF Administrative Manual). Cumulative Program Income is a net figure computed, as follows:

+Cumulative Principal Repaid*
+Cumulative RLF Income Received**
– *Cumulative Administrative Cost Expensed to RLF Income****

Footnotes:

*This is the cumulative RLF loan principal that has been repaid from inception of the RLF.

**This includes all RLF Income earned and received from inception of the RLF. Current period RLF Income on hand may be excluded from this amount if any portion of it is anticipated to be used during the remainder of the current period. Note that failure to exclude these funds here will increase Cumulative Program Income (line 11b) which will lower the amount of grant funds to be requested for disbursement (line 11i). Any RLF Income available at the end of a period is required to be added to the RLF capital base for lending.

***Enter all administrative costs Expensed to RLF Income from Inception of the RLF.

Definitions

Program Income—is the sum of all RLF principal repayments plus RLF Income (defined below).

RLF Income—includes all RLF-generated income from loan fees, interest earned on loans and on accounts holding idle RLF funds, and other loan-related earnings.

Period—refers to the 12-month reporting period by each grant recipient; it may end on either September 30 or the grantee's fiscal year-end date. (Refer to Section VII.C.2. of RLF Administrative Manual.

11d Enter "0" unless an advance of grant funds is being requested—see Item 1a above.

11f Enter the total amount of the matching funds previously expended plus matching funds to be disbursed as part of this request (and any previous pending request, if applicable). When calculating this amount, note that the matching funds amount in 11f as a percent of the amount on line 11c may not be less than the percentage relationship between the aggregate of matching funds and of total project costs indicated in the grant award(s). Matching funds must be expended either before or at least proportionately with EDA grant funds.

11g Enter the EDA share of the amount on line 11e. This should be the difference between the amounts on lines 11e and 11f.

11h Enter the amount of EDA funds previously requested. This should be equal to the amount reported in Item 11g of the previous SF 270 submitted by the recipient.

12 Disregard.

13 In the space indicated for "agency use" or on a separate page, provide the following disbursement information:

a. Indicate whether the RLF identified in Section 4 is an "initial" or "recapitalization" RLF grant. If an initial grant, show the EDA grant funds expended as a percent of total expenditures by dividing the amount reported in Item 11g by the amount reported in Item 11e. If a recapitalization grant, show both the EDA and the matching fund dollar outlays (including actual and proposed outlays) for the grant disbursement; also show the percentage of EDA dollar outlays to total dollar outlays for the grant under disbursement.

b. If any previously requested grant funds have been received but not disbursed, list the date of receipt and the amount remaining to be disbursed. If not applicable, type "NA".

c. List the RLF borrowers and the respective RLF dollar amounts anticipated to be disbursed under this request.

BILLING CODE 3510–24–P

EXHIBIT C

FEDERAL CASH TRANSACTIONS REPORT *(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)*	OMB APPROVAL NO. 0348-0003 1. Federal sponsoring agency and organizational element to which this report is submitted.	
2. RECIPIENT ORGANIZATION *Name:* *Number and Street:* *City, State and Zip Code:*	4. Federal grant or other identification number.	5. Recipient's account number or identifying number.
	6. Letter of credit number	7. Last payment voucher number
	Give total number for this period.	
	8. Payment Vouchers credited to your account.	9. Treasury checks received *(whether or not deposited).*
	10. PERIOD COVERED BY THIS REPORT	
3. FEDERAL EMPLOYER IDENTIFICATION NO. ▶	From *(month, day, year)*	TO *(month, day, year)*

11. STATUS OF FEDERAL CASH *(See Specific Instructions On Back)*	a. Cash on hand beginning of reporting period	$
	b. Letter of credit withdrawals	
	c. Treasury check payments	
	d. Total receipts *(Sum of lines b and c)*	
	e. Total cash available *(Sum of lines a and d)*	
	f. Gross disbursements	
	g. Federal share of program income	
	h. Net disbursements *(Line f minus line g)*	
	i. Adjustments of prior periods	
	j. Cash on hand end of period	$

12. The AMOUNT SHOWN ON LINE 11j. ABOVE REPRESENTS CASH REQUIREMENTS FOR THE ENSUING DAYS	13. OTHER INFORMATION	
	a. Interest income	$
	b. Advances to subgrantees or subcontractors	$

14. REMARKS *(Attach additional sheets of plain paper, if more space is required.)*

15. CERTIFICATION

I certify to the best of my knowledge and belief that this report is true in all aspects and that all disbursements have been made for the purpose and conditions of the grant or agreement.	AUTHORIZED CERTIFYING OFFICIAL	SIGNATURE	DATE REPORT SUBMITTED
		TYPED OR PRINTED NAME AND TITLE	TELEPHONE *(Area Code, Number, Extension)*

THIS SPACE FOR AGENCY USE

NSN 7540-01-016-5435 STANDARD FORM 272 (REV. 2-92)
PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET

BILLING CODE 3510-24-C

Instructions

Public reporting burden for this collection of information is estimated to average 120 minutes per response, including timer for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0003), Washington, DC 20503.

Please *do not* return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Please type of print legibly, Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item and Entry

3 Enter employer identification number assigned by the U.S. Internal Revenue Service or the FIC (institution) code.
If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of federal Cash Transactions—Continued; otherwise;

4 Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.

5 This space reserved for an account number or other identifying number that may be assigned by the recipient.

6 Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter "NA" for not applicable and leave items 7 and 8 blank.

7 Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.

11a Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.

11b Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.

11c Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.

11f Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's Share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.

11g Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.

11i Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under "Remarks". Use plain sheets of paper if additional space is required.

11j Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line 3, less line h, plus or minus line I).

12 Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under "Remarks" as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.

13a Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under "Remarks". Do not report interest earned on advances to States.

13b Enter amount of advance to secondary recipients included in item 11h.

14 In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

BILLING CODE 3510–24–P

EXHIBIT D (Rev. 12/98)

SEMIANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

Grantee Name:	Period Ending:
Project No.:	Contact Person:
	Phone:

PART I: PORTFOLIO STATUS (000'S)

A. Status of Direct Loans

	(1) #	(2) RLF $ Loaned	(3) RLF Principal Outstanding	
1. Total Loans Made		$	$	
2. Fully Repaid		$	$	
3. Current		$	$	
4. Delinquent (<60 Days)		$	$	
5. In Default (>60 Days)		$	$	
6. Total Active Loans (Add lines 3. 4 & 5)		$	$	
7. Total Written Off		$	$	(Amount Lost)

B. Status of Loan Guarantees:

	#	RLF$ Reserved	Total Amount Guaranteed	Current Exposure
1. Total Loans Guaranteed		$	$	
2. Fully Repaid		$	$	
3. Current		$	$	$
4. Delinquent (<60 Days)		$	$	$
5. In Default (>60 Days)		$	$	$
6. Total Active Guarantees (Add lines 3. 4 & 5)		$	$	$
7. Total Written Off		$	$	$
				(Amount Lost)

EXHIBIT D (Rev. 12/98)

PART II: PORTFOLIO SUMMARY

A. Summary of Loan Activities: Provide information below on **Total Loans** and **Active Loans** closed to date. This section provides an overview of the RLF's Progress in Meeting program and grant objectives as well as identifying results of **Core Performance Measures** outlined in Section F.01. of the RLF Standard Terms and Conditions. It also shows trends by comparing the total and active loan portfolios.

	Total Loans	Active Loans
1. # RLF Loans:		
2. RLF $$ Loaned:	$	$
3. Non-RLF $$ Leveraged by RLF:		
a. Private	$	$
b. Other	$	$
c. Total Leveraged $$ (a + b)	$	$
4. Total Project Financing (2 + 3c)	$	$
5. Private Sector Jobs:		
a. Created (Actual)		
b. Saved		
c. Actual + Saved (a + b)		
6. RLF $$ Loaned for Fixed Assets:	$	$
7. RLF $$ Loaned for Working Capital:	$	$
8. RLF $$ Loaned for:		
a. Start-up	$	$
b. Expansion	$	$
c. Retention	$	$
9. RLF $$ Loaned for:		
a. Industrial	$	$
b. Commercial	$	$
c. Service	$	$
10. RLF $$ Loaned to Minority Businesses:	$	$
11. RLF $$ Loaned to Women-Owned Businesses:	$	$
12. Other Targets (Specify):	$	$

EXHIBIT D (Rev. 12/98)

B. Comparison of RLF Portfolio to RLF Plan: In column one below, fill in the spaces by providing information from the "Targeting", "Standards" and "Financing" sections of the RLF Plan. If an item is not included in the RLF Plan and therefore not applicable, indicate this by placing N/A in column one. In columns two and three, use the figures obtained in Part II.A. above to compute the ratios and percentages for Total and Active Loans, respectively. Formulas for the computations are indicated in the brackets next to each item. Discuss any significant deviations between columns one and two.

	RLF Plan	Total Loans	Active Loans
1. Cost per Job (A2/A5c)	$	$	$
2. Non-RLF Leverage Ratios:			
a. Private (A3a/A2)	:	:	:
b. Private & Other (A3c/A2)		:	:
3. % Working Capital Loans (A7/A2)	%	%	%
4. % Loans in Eligible Target Area	100 %	%	%
5. RLF Portfolio Targeting			
a. % Start-ups (A8a/A2)	%	%	%
b. % Industrial (A9a/A2)	%	%	%
c. % Minority Owned (A10/A2)	%	%	%
d. % Women-Owned (A11/A2)	%	%	%
e. % Other (A12/A2)	%	%	%

PART III: PORTFOLIO FINANCIAL STATUS

A. RLF Funding Sources	
1. EDA	$
2. Grantee	$
3. Other - Specify:	$
4. Total RLF Funding (sum of 1-3)	$
B. Program Income Earned to Date:	
5. Interest Earned on Loans:	$
6. Earnings from Accounts:	$
7. Fees Charged:	$
8. Total Program Income (sum of 5-7)	$
9. How much of Total Program Income (line 8) has been used to cover administration costs to date?	$
10. How much of Total Program Income has been added to the RLF for lending (line 8 minus line 9)?	$

EXHIBIT D (Rev. 12/98)

C. Status of RLF Capital:		
11. Total RLF Funding (line 4):	$	
12. Program Income Added to RLF for lending (line 10):	$	
13. Losses on Loans & Guarantees (amount lost from Part I.A.7 & b.7):	$	
14. Current level or RLF Base Capital (sum of lines 11 & 12, less line 13):	$	
D. Current Balance Available for New Loans:		
15. RLF Principal Outstanding on Loans (from Part I.A.6):	$	
16. RLF $$ Reserved for Loan Guarantees (from Part I.B.6):	$	
17. Current Balance Available (deduct amounts shown on lines 15 & 16 from Current level of Base Capital (line 14):	$	
18. RLF $$ committed but not disbursed:	$	
19. Current Balance Available (deduct amount on line 18 from line 17):	$	
20. Current Balance Available (line 19) as a Percent of RLF Base Capital (line 14) - applies only to fully disbursed RLFs, otherwise enter N/A:		%
21. Same calculation as in line 20 above, but for preceding six month period (see prior Semiannual Report):		%
Note: If lines 20 and 21 both exceed 25%, see instructions.		

EXHIBIT D (Rev. 12/98)

PART IV: PORTFOLIO LOAN LIST

Provide the following information for each RLF loan closed:

Loan Recipient	Loan Type & Description	Financing By Source (Specify)
1. Borrower Name 2. Location (include city, county & state) 3. SIC Code - 4 Digit 4. Minority Owned 5. Woman Owned	1. Direct/Guaranty 2. Fixed Asset/Working Capital 3. Start-up, Expansion or Retention	1. RLF $ 2. Other Public $ 3. Private $ 4. New Equity $ 5. Total $ 6. Amount Guaranteed $

Closing Date & Loan Terms	Loan Status	Repayment Status
1. Date Close 2. Term: Years 3. Interest Rate 4. Total Fees	1. Fully Repaid: Date 2. Current as of: Date 3. Delinquent: Days 4. Default: Days 5. Write-Off: Date	1. Principal Repaid 2. Interest Paid 3. Amount Delinquent 4. Amount Default 5. Amount Written-Off

Job Impact
1. Pre-Loan jobs 2. Jobs Created 3. Jobs Saved 4. Minority jobs (Created/saved) 5. Women jobs (Created/Saved)

PART V: MISCELLANEOUS INFORMATION & CERTIFICATION

A. Recent Loan Activity (Last 12 Months Only)

1. # Applications Received:	
2. # Applications Received from minority-owned firms:	
and Women-owned firms:	
3. # Loans closed:	
4. # Loans closed from Minority-owned firms:	
and Women-owned firms:	

EXHIBIT D (Rev. 12/98)

B. Capital Utilization (Section X. of RLF Administrative Manual)			
	Complete as appropriate		
5. On page 4 of this Semiannual Report. if the percentages calculated in **both** D.20 and D.21 are greater than 25%. is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand? *(Check one)*		YES	NO
6. If both D.20 and D.21 on page 4 of this Semiannual Report are greater than 25%. list the amount of excess funds subject to sequestration.	$		
7. List any amount in #6 that has been sequestered in a separate account.	$		

C. RLF Income and Expenses (Section VII of RLF Administrative Plan)			
	Complete as appropriate		
8. Enter the month and day of the accounting period which has been selected for reporting of RLF Income and Expenses in accordance with Section VII.C. of the RLF Administrative Manual.			
9 Enter the amount of RLF Income earned during the most recent 12 month period. which was designated in #8.	$		
10. Enter the amount of RLF Income that was used for administrative costs during the most recent 12-month period. which was designated in #8.	$		
11. Divide the administrative costs reported in #10 by the RLF Income reported in #9 and enter the percentage figure.			%
12. If the percentage in #11 is larger than 50%. or the amount in #10 is greater than $100.000. was an Income and Expense Statement submitted to EDA as required in Section VII.C.2. of the RLF Administrative Manual. *(Check One)* (If applicable and not sent. submit an Income and Expense Statement with this report.)	YES	NO	N/A

D. Administration			
	Complete as appropriate		
13. Any key Staff Turnover in the last 12 months? *(Check One)* List position(s):		YES	NO
14. Attach a list of the current RLF Loan Board membership by name. occupation. race and gender.			
15. Enter the ending date of the most recent independent Audit covering the recipient and indicate type of Audit. i.e., "Single" or "Program Specific".			

EXHIBIT D (Rev. 12/98)

16. Attach the Audit referenced in #15 if it was not previously submitted to EDA.			
17. If the Audit referenced in #15 did not cover either the most recent or prior fiscal year end period, is an explanation attached? *(Check One)*		YES	NO
E. ANNUAL RLF PLAN CERTIFICATION (Section VIII of the RLF Administrative Manual and Section D.03 of the Standard Terms and Conditions)			
18. Is the required ANNUAL RLF Plan Certification attached? *(Check One)* If "no," indicate the date it will be submitted:		YES	NO
F. COMPLIANCE WITH IMPLEMENTATION SCHEDULE (To be completed only if grant is not fully disbursed)			
19. Is the actual grant implementation/disbursement progress in accordance with the schedule set forth by the Implementation Special Condition (or an EDA approved amendment thereto) required as a part of this grant award? *(Check One)* If "no," attach explanation.		YES	NO

CERTIFICATION: I hereby certify on this ____ day of _____, 19 ___, that the information provided in this Semiannual Report is true and correct to the best of my knowledge.

_____

NAME AND TITLE OF AUTHORIZED OFFICIAL

_____

SIGNATURE (Authorized Official)

Check Attachments Submitted:

____ Capital Utilization (#5 above)

____ Current Loan Board Membership (#14)

____ Copy of Audit (#16)

____ Audit Explanation (#17)

____ Annual RLF Plan Certification (#18)

BILLING CODE 3510-24-C

Instructions for Completion of EDA's Semiannual Reports for Revolving Loan Fund Grants

The instructions below are in outline form and correspond to identical items in the Semiannual Report. Complete the Semiannual Report by filling in the spaces and responding to the questions. On page one of the Report, indicate the reporting period in the upper right hand corner. The reporting periods end on September 30 and March 31, and all data entries are to be effective with these ending dates. Submit completed Reports to the EDA regional office by November 1 and May 1, respectively. DO NOT INCLUDE IN PARTS 1–3 OF THE REPORT ANY DATA ON INITIAL LOANS UNDER A SECTION 209 SSED GRANT/LOAN; LIST THESE ITEMS SEPARATELY IN PART 4 ONLY.

Part I: Portfolio Status

A. *Status of Direct Loans:* Show the current status of all direct RLF loans that have been closed. DO NOT include approved loans that have not been closed. In column two, "RLF $ Loaned," include only the funds loaned by the RLF, including EDA and grantee matching funds, NOT the financing provided by other lenders.

1. *Total Loans Made:* Enter the total number and dollar amount of all RLF loans closed to date. Under column two, "RLF $ Loaned," the amount should always represent the original loan amount.

2. *Fully Repaid:* Enter the number and original dollar amount of RLF loans that have been fully repaid.

3. *Current Loans:* Enter the number and original dollar amount of RLF loans that are current on RLF loan payments. In column three, "RLF Principal Outstanding," enter the principal balance outstanding for current RLF loans.

4. *Delinquent:* Enter the number and original dollar amount of RLF loans that are delinquent. For this report, a "delinquent" loan is defined as one that is up to 60 days past due. Enter also the principal balance outstanding on the delinquent loans. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

5. *In Default:* Enter the number and original dollar amount of RLF loans that are in default. For this report, a "default" is defined as any loan that is over 60 days past due but not written off. (An RLF grantee may, at its option, classify a loan as defaulted if it is under 60 days past due. If a previously defaulted loan has been rewritten and/or the borrower is now current, the loan should be shown as current). Enter the principal balance outstanding on defaulted loans.

6. *Total Active Loans:* On line 6, enter the sum of lines 3, 4, and 5 to obtain the number, amount and principal outstanding for Total Active Loans. (Total Active Loans are defined as loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

7. *Total Written Off:* Enter the aggregate number and original amounts of defaulted loans that have been written off. Enter also the principal balance outstanding on loans written off or the actual amount lost, whichever is smaller.

B. *Status of Loan Guarantees:* The same criteria as above apply to the Status of Loan Guarantees. In column two, note that the "RLF $ Reserved" are the RLF dollars that are actually set aside and held in reserve to cover any losses on guaranteed loans. In column three, "Total Amount Guaranteed" is the amount of the original loan that is/was guaranteed by the RLF. In column four, "Current Exposure" is the dollar amount of the RLF's contingent liability as of the date of the current report; this amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

Part II: Portfolio Summary

A. *Summary of Loan Activities:* For each listed item, provide information on both Total and Active RLF loans closed to date. Total Loans include loans that are current, delinquent and in default, as well as those that have been fully repaid and written off. Active Loans include only current delinquent and defaulted loans, specifically those included in A.3–5. and B.3–5., Part I, page one, of the Semiannual Report.

1. *# RLF Loans:* Enter the number of RLF loans closed for both Total Loan (I.A.6. and I.B.6., page one) categories. Be sure to include the number of both direct and guaranteed loans closed.

2. *RLF $$ Loaned:* Enter the amount of RLF dollars loaned for both Total Loan (I.A.1. and I.B.1., page one) and Active Loan (I.A.6. and I.B.6., page one) categories. For loan guarantees, use column three, "Total Amount Guaranteed," for the RLF dollar amount loaned.

3. *Non-RLF $$ Leveraged by RLF:*

a. *Private:* Enter the Private Dollars Leveraged for both Total and Active Loan categories. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the "project" in which the RLF is an integral component. A "project" is defined as an activity consisting of interrelated components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered "leveraged dollars".

b. *Other:* Enter any Other investments Leveraged for both Total and Active Loan categories by the RLF loan in the "project", including other public financing (e.g., HUD–CDBG, USDA–IRP loans, etc.).

4. *Total Project Financing:* Enter the sum of RLF dollars loaned and non-RLF dollars leveraged by the RLF, items II.A.2. plus II.A.3.c.

5. *Private Sector Jobs:* Enter the number of jobs created and the number of saved jobs for both Total and Active loan categories. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a. *Actual Created Jobs:* A job is counted as "created (actual)" if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) as actually created. Jobs are usually verified by requesting the borrower to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. Other job data should also be requested from the borrowers in order to complete Part IV of the Report. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months. Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next semiannual reporting period.

b. *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost:* If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Semiannual Report only if they were maintained for a minimum of 18 months prior to the loss.

6. *RLF $$ Loaned for Fixed Assets:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for the purchase, installation or construction of fixed assets. If a single RLF loan was used jointly for fixed asset and working capital purposes, only the fixed asset amount should be reported on this line. For a guaranteed loan that was used jointly for fixed assets and working capital, multiply the percent of the original loan that is/was guaranteed by the amount of the loan that was used for fixed assets.

7. *RLF $$ Loaned for Working Capital:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for working capital purposes as defined by generally accepted accounting principles. Consistent with item II.A.6. above, include on this line only the amount or portion of a RLF loan that was actually used for working capital purposes. (The amounts on this line plus the amounts in II.A.6. should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively).

8. *RLF $$ Loaned for Start-up, Expansion & Retention:* Enter for both Total and Active loan categories, the amount of RLF loans that were used for Start-up loans, Expansion loans and Retention loans. Each loan in the RLF portfolio is to be categorized as either a Start-up, an Expansion or a Retention loan. A Start-up loan is one to a new business that has limited or no prior operating history. An Expansion loan involves an existing operating company that will expand operations and create jobs. A Retention loan is where the existing jobs of the company are "saved" as a direct result of the RLF assistance. [The sums of these loan categories (8.a. + 8.b. + 8.c.) should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively].

9. *RLF $$ Loaned for Industrial, Commercial & Service:* Enter for both Total and Active loan categories, the dollar amount of closed RLF loans that went to Industrial, Commercial and Service projects. All RLF loans should be placed in one of these three categories, which are defined below and which utilized the Standard Industrial Classification (SIC) Manual as a guide:

Industrial projects include manufacturing, agriculture, forestry, fishing, mining, and construction businesses—essentially businesses engaged in the production of a product.

Commercial projects include retail and wholesale trade businesses.

Service projects include businesses which provide a service to individuals or businesses, i.e., those not engaged in the production of a product or the sale of merchandise.

10. *RLF $$ Loaned for Minority Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to minority-owned businesses. To be considered minority-owned, a company must be at least 51 percent owned by African-Americans, Hispanics, Asians and/or Indians.

11. *RLF $$ Loaned for Women-owned Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to women-owned businesses. Include only firms with at least 51 percent ownership by women.

12. *Other:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to a targeted use identified in the RLF Plan but not included above.

B. *Comparison of RLF Portfolio to RLF Plan:* As indicated in the narrative in the Semiannual Report, use the RLF Plan to obtain the applicable ratios and percentages for completing the first column. For column two (Total Loans) and column three (Active Loans), use the appropriate figures from Part II.A. to compute the ratios and percentages requested. The formula for each item is listed in the brackets next to that item. [As an example, item #1—Cost per Job, is computed by dividing the figures on line A.2. by those on line A.5.d. (from Part II) for both Total and Active loans, respectively].

Part III: Portfolio Financial Status

A. *RLF Funding Sources:*

1.–3. Enter on lines one through three the total funds committed to the RLF by funding source, regardless of whether the funds have been drawn into the RLF. Outside of the EDA funds, the funding categories will include either funds provided solely by the grantee or from "other" sources, e.g., CDBG, state, or private donations for the specific use of the RLF. Specify the funding source if "other".

4. Enter the sum of all funding sources, items III.A.1. through III.A.3. inclusive.

B. *Program Income Earned to Date:*

5. Enter the total interest earned directly from RLF loans. This amount should equal the aggregate interest earned from individual loans which are listed in Part IV.

6. Enter interest earned from deposits and investments of:

a. RLF loan payments, including principal and interest;

b. RLF loan fees, including origination, servicing and processing fees, late fees and penalties; and

c. Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned thereon must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable).

7. Enter the aggregate of all fees earned from RLF loans from processing, servicing, closing, late fees and any other loan-related earnings.

8. Enter the sum of III.B.5. through III.B.7., inclusive.

9. Enter the amount from III.B.8. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). Inasmuch as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

10. Subtract the amount on line III.B.9. from III.B.8. and enter the difference here. Do not deduct amounts set aside for future administrative expenses. Lines III.B.8 less line III.B.9. should equal the amount of line III.B.10; if not, explain on separate page. Note that if the grant recipient anticipates using any of the available RLF income earned in the current period during the remainder of the period, it may deduct this from the amount otherwise reported in the space. Conversely, if the recipient is certain that it will not need any of the available RLF income during the remainder of the period, it should include this amount in the figure reported as RLF Income added to the RLF for Lending. Any RLF income on hand at the end of a period must be added to the RLF Capital Base for lending purposes.

(Note: References to Program Income in B.8. through B.10. should be interpreted to mean RLF Income as used in the RLF Administrative Manual).

C. *Status of RLF Capital:*

11. Self-explanatory (enter the amount from III.A.4.).

12. Self-explanatory (enter the amount from III.B.10.).

13. Self-explanatory (enter the sum of the amounts lost from direct loans and guaranteed loans, from I.A.7. and I.B.7., page 1 respectively).

14. Self-explanatory (enter the sum of III.C.11. and III.C.12., less III.C.13).

D. *Current Balance Available for New Loans:*

15. Self-explanatory (enter the RLF principal outstanding from I.A.6., page 1).

16. Self-explanatory (enter the total RLF dollars reserved for loan guarantees, which are not available for lending, from I.B.6., page 1).

17. Self-explanatory (deduct amounts shown in III.D.15. and III.D.16. from III.C.14.).

18. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

19. Self-explanatory (enter the amount in III.D.17. less III.D.18.).

20. Current Balance Available Percentage—applies only to RLF's that have been fully disbursed. Enter the percent that is obtained by dividing the amount in III.D.19. by the amount in III.C.14.

21. Insert the Current Balance Available Percentage (same calculation as in #20 above), but for the preceding six month period obtained from the previous Semiannual Report.

(Note: The percentages obtained in III.D.20. and III.D.21. are used to evaluate compliance with EDA's Excess Retention Policy established in 1988. If the percentages in III.D.22. and in III.D.23. both exceed 25 percent, the grantee is in violation of the policy and is required to submit an addendum to the report explaining the reasons for the violation and the steps it proposes to take to reduce the percentage below 25 percent. Subsequently, the grantee may be required to submit the EDA share of any amount over 25 percent, which normally will be made available to the grantee for a time period established by EDA. Funds not used during this time period may become permanently unavailable to the grantee).

Part IV: Portfolio Loan List

Self-explanatory.

Part V: Miscellaneous Information & Certification

A. *Recent Loan Activity:*

1.–4. Self-explanatory.

B. *Capital Utilization:* (Section X. of RLF Administrative Manual)

5.–7. Self-explanatory.

C. *RLF Income & Expenses:* (Section VII. of RLF Administrative Plan)

8.–12. Self-explanatory.

D. *Administration:*

13.–17. Self-explanatory.

E. *Annual RLF Plan Certification:* (Section VIII. of the RLF Administrative Manual and Section D.03. of the Standard Terms and Conditions)

18. Self-explanatory (Required only once a year).

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EXHIBIT E (Rev. 12/98)

ANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

Grantee Name:_____ Period Ending_____

Project No._____ Contact Person:_____

Phone:_____

A. PORTFOLIO FINANCIAL STATUS		
1. Total RLF Funding (EDA + Matching funds)	$	
2. Total RLF Income Earned	$	
3. Total RLF Income Expended for Administrative Costs	$	
4. RLF Income in #2 that is set aside for Current Period Expenses	$	
5. Total Losses on Direct and Guaranteed Loans	$	
6. RLF Capital Base [(1+2) less (3+4+5)]	$	
7. RLF Loan Principal Outstanding	$	
8. RLF $$ Reserved for Guarantees	$	
9. RLF Loan Commitments Not Disbursed	$	
10. RLF Capital Utilized [7+8+9]	$	
11. RLF Capital Utilization Rate [10 / 6]		%
12. Same as #11 but for Preceding 6-Month Period		%

B. RECENT LOAN ACTIVITY (Last 12 Months Only)	
13. # Applications Received	
14. a. # Applications Received from Minority-owned firms	
b. # Applications Received from Women-owned firms	
15. # Loans Closed	
16. a. # Loans Closed from Minority-owned Firms	
b. # Loans Closed from Women-owned Firms	

EXHIBIT E (Rev. 12/98)

C. Portfolio Status		
DIRECT LOANS:		
17. a. Total RLF $$ Loaned	$	
b. Total # Loans made by the RLF		
18. Total Active Loans	$	
19. Principal Outstanding		
a. Current Loans	$	
b. Delinquent Loans (<60 days)	$	
c. Delinquent Loans (>60 days)	$	
20. Total Written-Off	$	
21. Total Non-RLF $$ Leveraged by RLF & Leverage Ratios		
a. Private	$	
b. Other	$	
c. Total Leveraged (Private + Other)	$	
GUARANTEED LOANS:		
22. Current RLF $$ Exposed (*active loans only*)	$	
23. RLF $$ Reserved (*active loans only*)	$	
24. Total # of Actual Jobs Created and Saved		

D. ADMINISTRATION — circle or complete as appropriate	
25. Any key Staff Turnover last 12 Months? List position(s):	Yes No
26. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender.	
27. Indicate the ending period of the most recent independent Audit covering the recipient and whether Single or Program Specific Audit.	
28. Attach the Audit in #27 if it was not previously submitted to EDA	
29. If the Audit in #27 did not cover either the most recent or the prior fiscal-year period, is an explanation attached? *(Circle One)*	Yes No Not Applicable

EXHIBIT E (Rev. 12/98) Page 3 of 3

D. ADMINISTRATION	circle or complete as appropriate
30. Enter the ending date of the accounting period which has been selected to determine the amount reported in #4 above in accordance with Section VII.C. of the RLF Administrative Manual.	

E. CAPITAL UTILIZATION (Section X of RLF Administrative Manual)	circle or complete as appropriate	
31. If the percentages in both #11 and #12 above are less than 75%, is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand?	Yes	No
32. If both #11 and #12 are less than 75%, list the amount of excess funds subject to sequestration.	$	
33. List any amount in #31 that has been sequestered in a separate account.	$	

F. ANNUAL RLF PLAN CERTIFICATION (Section VIII of RLF Administrative Manual and Section D.03 of Standard Terms and Conditions)	circle or complete as appropriate	
34. Is the required *ANNUAL* RLF Plan Certification attached? If "no," indicate the date it will be submitted: _____	Yes	No

CERTIFICATION: I hereby certify on this _____ day of _____, 19___, that the information provided in this Annual Report is true and correct to the best of my knowledge.

_____

NAME AND TITLE OF AUTHORIZED OFFICIAL

_____

SIGNATURE (Authorized Official)

Check Attachments Submitted:

_____ Capital Utilization (#31 above)

_____ Current Loan Board Membership (#26)

_____ Copy of Audit (#28)

_____ Audit Explanation (#29)

_____ Annual RLF Plan Certification (#34)

BILLING CODE 3510-24-P

Instructions For Completion of EDA's Annual Reports For Revolving Loan Fund Grants

These instructions are for completion of the Annual Report form for EDA revolving loan fund (RLF) grants. The Annual Report is an abbreviated version of the Semiannual Report. RLF grantees that are reporting on a semiannual basis are eligible to apply for graduation to this streamlined report one year after full disbursement of the initial round of RLF capital.

A. Portfolio Financial Status and Capital Utilization

1. Enter the total funds committed to the RLF. Outside of EDA funds, matching funds may include funds provided solely by the grantee or from other sources, e.g., CDBG, state or private donations for the specific use of the RLF. Exclude any funding commitments that may have been removed from the RLF, as approved by EDA.

2. Enter the Total RLF Income earned by the RLF to date. RLF Income, as defined in Section VII. of the RLF Administrative Manual, includes:

a. Total interest earned directly from RLF loans.

b. Interest earned from deposits and investments of:

- RLF loan payments, including principal and interest;
- RLF loan fees, including origination, servicing and processing fees. late fees and penalties; and
- Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned therein must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable.

3. Enter the amount from A.2. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). In as much as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

4. Enter the amount of any available RLF Income earned in a current period which may be set aside for future administrative costs incurred over the remainder of the period. If, however, the selected period ends on September 30, funds can not be set aside without EDA approval since any RLF Income that is not used for administrative costs during the period in which it is earned must be added to the RLF Capital Base at the end of the period.

5. Enter the cumulative Losses on Direct and Guaranteed Loans for those loans written-off.

6. Calculate the current level of the RLF's Capital Base by adding the amounts entered in #1 and #2, and subtracting from this sum the amounts in #3, #4 and #5. The RLF Capital Base represents the aggregate amount of capital potentially available for lending.

7. Enter the amount of Loan Principal Outstanding on Direct RLF Loans.

8. Enter the amount of RLF dollars that are required to be set aside or reserved for RLF guarantees of other loans. If not applicable, enter N/A.

9. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

10. Calculate the amount of RLF Capital Utilized, i.e., RLF capital outstanding and committed, by summing the amounts in #7, #8 and #9.

11. Calculate the RLF Utilization Rate by dividing #10 (RLF Capital Utilized) by #6 (RLF Capital Base). This indicates the percentage of RLF capital in use for comparison with the Capital Utilization Standard as discussed in Section X. of the Administrative Manual. Persistent noncompliance with the Standard could require sequestration of excess funds, remittance of interest earned on sequestered funds, and eventual loss of excess funds if not placed in use within a reasonable period of time.

12. The RLF Capital Utilization Rate is calculated every six months for the periods ending March 31 and September 30, in accordance with Section X.C. of the RLF Administrative Manual.

B. Recent Loan Activity

13–16. As appropriate, enter the number of applications received and loans closed for the last 12 month period. Also enter the number of applications received and the number of loans closed from Minority-owned and Women-owned firms. Ownership is defined as controlling interest of 51% or more. A loan is considered closed when all loan documents have been signed.

C. Portfolio Status

17. Enter the total number and original dollar amount of all RLF loans made to date.

18. Enter the amount of principal outstanding for Total Active Loans. (Total Active Loans are defined as direct loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

19. For active loans only, enter the principal outstanding on direct loans that are current and those that are delinquent. Segregate delinquent loans into two categories, those less than or equal to 60 days past due and those more than 60 days past due. For this report, a "delinquent" loan is defined as one that is up to 60 days past due. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

20. Enter the total principal balance outstanding on direct loans written-off or the actual amount lost, whichever is smaller.

21. Enter the total non-RLF dollars leveraged (Private & Other) and corresponding leverage ratios in conjunction with the RLF direct loans. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the "project" in which the RLF is an integral component. A project is defined as an activity consisting of interrelated components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7 (a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered "leveraged dollars'.

Other investments leveraged by the RLF in the project may include other non-RLF dollars such as HUD–CDBG, USDA–IRP loans, etc.

22. For active loans provided by other lenders and guaranteed by the RLF, enter the contingent liability of the RLF on outstanding loan principal, i.e., the current RLF exposure on all active RLF guarantees. This amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

23. For active loans provided by other lenders and guaranteed by the RLF, enter any amounts of RLF funds that are actually set aside and held in reserve to cover any losses on guaranteed loans.

24. Enter the total number of jobs created and saved over the life of the RLF. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a: *Actual Created Jobs:* A job is counted as "created (actual)" if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months.

Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next annual reporting period.

b: *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost:* If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Annual Report only if they were maintained for a minimum of 18 months prior to the loss.

D. Administration

25–30. Self-explanatory.

E. Capital Utilization

31–33. Self-explanatory (Refer to Section X. of the RLF Administrative Manual).

F. RLF Plan Certification

34. Self-explanatory (See Section VIII. of the RLF Administrative Manual and Section D.03. of the RLF Standard Terms and Conditions for additional details).

Appendix D to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Audit Guidelines

OMB Approval No. 0610–0095 Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Audit Manual

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. The reason for collecting this information is to enable the Economic Development Administration to monitor revolving loan fund projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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Section 209 Economic Adjustment Program Revolving Loan Fund Grants Audit Guidelines

I. Purpose

This document describes the audit requirements for revolving loan fund (RLF) grants funded under the Section 209 Economic Adjustment Program of the Economic Development Administration (EDA). It provides an overview of relevant Office of Management and Budget (OMB) circulars and other Federal regulations as they relate to administrative and audit requirements for EDA RLF grants. It also discusses costs that may be eligible under an RLF grant program and requirements for records retention. It is intended to supplement applicable OMB circulars and Federal regulations. If there is a conflict between information contained in this document and the OMB circulars or Federal regulations, the latter shall prevail. In the absence of a conflict, EDA reserves the right to limit Federal standards.

This document is intended for grant recipients and for independent auditors as an aid in understanding the audit and compliance requirements for EDA RLF grants. Each recipient of an EDA RLF grant is responsible for reading this document and providing it to the independent auditor prior to the start of an audit. Failure to make this information available to the independent auditor could result in an unacceptable audit report.

II. Program Objectives

RLF grants are administered under EDA's Section 209 Program, which was created in 1974 by an amendment to the Public Works and Economic Development Act of 1965 (PWEDA), to provide grant assistance to help communities adjust to sudden and severe economic dislocations (SSED) and long-term economic deterioration (LTED). EDA Section 209 grants may be used for business development assistance, planning, research, technical assistance, training, infrastructure, and other development activities which meet the purpose of the program.

RLF grants provide capital for loan pools which finance business development activities consistent with local economic development strategies. Loan repayments, plus interest and other related income, create a revolving source of capital to finance other business enterprises. RLF loans are used to stimulate economic activity and to provide financing to businesses when private credit is unavailable to complete a project.

III. Program Procedures

Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress. Proposals are evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs, and the applicant's ability to manage the grant effectively. Each approved RLF grant is operated in accordance with an RLF Plan which is part of the grant agreement. The RLF Plan summarizes the RLF's strategic objectives and the operational procedures to carry out the purpose of the grant.

IV. Program History

EDA awarded its first RLF grant in 1975. To date, the Agency has awarded more than 700 grants aggregating in excess of $500 million for the establishment or recapitalization of RLFs nationwide. In turn, RLF grantees have made more than 7,200 loans to private sector businesses, which loans have either leveraged or have the potential for leveraging in excess of $1.9 billion private capital based on a private investment to total RLF monies loaned ratio of 3.83:1. There are generally two types of RLF grants, those established as RLFs from the initial disbursement of grant funds, and those established only after repayments are received from business loans originally funded from grants. Most RLF grants are of the first type.

RLF programs are operated by local governments, regional development corporations, States and other non-profit organizations. EDA RLF grants normally require a matching contribution from local sources. Historically, the local match contribution has averaged 25% of an RLF's capitalization, but waivers have been extended in special situations such as natural disasters. The average EDA RLF grant was

capitalized at just over $1 million in total assets. While the size of individual loans extended by these grant recipients vary markedly, the typical RLF loan has averaged $70,000 over time.

V. Frequency of Audits

Each RLF grant recipient shall have an audit performed annually for the duration of the RLF program except in the following limited circumstances which may permit biennial audits:

—A state or local government recipient that adopted a mandatory, constitutional or statutory requirement for less frequent audits prior to January 1, 1987, which requirement still remains in effect; or
—A non-profit recipient that had biennial audits for all biennial periods ending between July 1, 1992 and January 1, 1995.

VI. When an Audit Is Required

Pursuant to the Single Audit Act Amendments of 1996 (P.L 104–156) and OMB Circular A–133, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least $300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. With the exception of newly awarded grants and limited circumstances listed in Paragraph V. herein, the majority of RLF grant recipients will require an annual audit.

To calculate the total RLF expended, follow the information provided in the box below. Note that only the Federal share (exclude the matching fund share) of the amount calculated should be used for the determination of an audit. Audit procedures, however, must encompass both the Federal and any matching funds which comprise an RLF.

—The year's beginning balance of outstanding RLF loans; plus
—RLF loan expenditures during the fiscal year; plus
—The amount of RLF Income [1] earned and expended on eligible administrative expenses during the fiscal year.

VII. Types of Audits

Entities which spend $300,000 or more in Federal awards will be required to have either (I) a program-specific audit or (ii) a single audit. An entity can elect a program-specific audit if all funds expended come from only one Federal program. An entity must have a single audit in a fiscal year in which it spends funds from more than one Federal program. These guidelines are not intended to be a complete manual of procedures, nor are they intended to supplant the auditor's judgment of the work required for either the program-specific audit or a single audit which includes coverage of an EDA RLF. The auditor should refer to OMB Circular A–133 for a detailed listing of requirements for these types of audits. These guidelines are designed to discuss special considerations for audits of RLFs.

A. Program Specific Audit

A program-specific audit is an audit of one program performed in accordance with Federal laws and regulations and any audit guides available for that program. There is not a program-specific audit guide written for the RLF program. Since a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the RLF program as they would have for an audit of a major program in a single audit. Section VIII of these guidelines describes some special considerations for auditing an EDA RLF. OMB Circular A–133, Section 235 provides instructions for completing a program-specific audit.

B. Single Audit

A single audit covers all Federal awards received and expended during an organization's fiscal year. Unlike the program specific audit, this type of audit requires a financial statement audit of the grant recipient. A single audit is performed by an independent auditor who meets the general standards specified in generally accepted government auditing standards.

Attachment I provides a current list of applicable audit-related documents with which the auditor should become familiar. Since accounting requirements and reference materials are subject to periodic revisions, grant recipients and auditors are responsible for utilizing the most current reference information available.

VIII. Special Considerations for Single Audits of RLFs

A. Schedule of Expenditures of Federal Awards

The auditee is required to report certain information in this schedule including: (1) the identity of all Federal award programs by program title and by catalogue number listed in the Catalog of Federal Domestic Assistance (CFDA) and (2) the total expenditures for each Federal award program by grantor agency. For EDA RLF grants, the program title is "Special Economic Development and Assistance Programs—[either Sudden and Severe Economic Dislocation (SSED) or Long-Term Economic Deterioration (LTED)] Revolving Loan Fund." The CFDA number is "11.307" for both SSED and LTED grants. To assist program officials, it is helpful to include the number of each EDA RLF grant in the schedule. The method for calculating the total Federal expenditure amount to be reported on the schedule is shown in Section VIII.C. below.

Note that in the third and fourth digits of each grant number, an SSED grant is denoted by the number "19", and an LTED grant by the number "39". Exceptions include numerical identification of defense or disaster-related RLFs which may have several variations as determined by fiscal year or specific disaster program appropriations.

B. Criteria for Determining Major Programs

Federal award programs must be identified as Major Programs through a risk-based approach described in OMB Circular A–133. Prior to the issuance of the revised OMB Circular A–133, a Major Program was defined solely in monetary terms. The new risk-based approach also requires that the auditor consider the current and prior audit results and the inherent risk of the program in making a determination of Major Programs subject to audit. Major Programs require more extensive audit procedures than Other Federal Programs.

C. Calculating "Total Federal Expenditures" For RLF Grants

For RLF grants, "Total Federal expenditures" normally includes only the Federal share of an RLF's expenditures. It is calculated as shown in the box below using only the Federal share of each component.

Determining Total Federal Expenditures [2]:

—The year's beginning balance of outstanding RLF loans; plus
—RLF loan expenditures during the fiscal year; plus
—The amount of RLF Income [3] earned and expended on eligible administrative expenses during the fiscal year.

D. Footnote Disclosure (Schedule)

In addition to reporting the Federal expenditures for an RLF program on the schedule of expenditures of Federal awards, a footnote to the schedule should disclose the value of the loans outstanding at the end of the year.

IX. Use of Another Entity for Program Administration

A grant recipient may employ the services of another organization to perform certain duties and responsibilities under a grant. In delegating responsibilities, the grant recipient may be responsible for ensuring that the other entity is audited in accordance with OMB Circular A–133 and complies with the grant terms and conditions. The degree of responsibility delegated is the key factor in determining whether another entity is a subrecipient or vendor (and whether an audit is required). Subrecipients are normally required to have an audit performed while vendors would not usually be audited unless program compliance requirements apply to the vendor.

An organization is a subrecipient if it receives or is responsible for RLF funds, and some or all of the following characteristics exist. It is responsible for (I) applicable grant compliance requirements; (ii) programmatic decisions including, but not limited to, approving RLF lending policies, final lending decisions including eligibility determinations, major amendments to loans, and/or foreclosure actions; and/or (iii) its performance is measured against meeting objectives of the program.

[1] RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

[2] If the Federal share of an RLF's total expenditures cannot be readily determined, the total RLF expenditures (including both Federal and matching funds) may be used in lieu of "total Federal expenditures" provided the inclusion of matching funds is disclosed.

[3] Defined in footnote 1, page 3.

An organization is a vendor if it provides services in support of an RLF grant and has the following distinguishing characteristics. It provides agreed services within its normal business operations and provides similar services to other purchasers, it operates in a competitive environment, and program compliance requirements usually do not directly pertain to the services provided. If grant compliance requirements apply to the vendor's activities, the grant recipient is responsible for ensuring compliance by the vendor. This may require monitoring the vendor's activities or requiring an audit of vendor activities as may be appropriate under the circumstances. A vendor is normally responsible only for compliance within the terms of its contract.

An example of a vendor would be a bank or collection company which provides services to the grant recipient merely for the collection of loan payments. This would be considered a vendor relationship because the entity under contract would not be involved with any major program decisions. However, if this entity had expanded responsibilities, such as the final approval authority for loans and foreclosure actions, it would be considered a subrecipient due to the nature and degree of its responsibilities. It would be required to be audited in accordance with OMB Circular A–133, and to comply with the terms and conditions of the grant.

X. Reporting Entity

The definition of a financial reporting entity is based upon the concept of accountability. A reporting entity may consist of a primary unit and component units. The decision to include a component unit in the reporting entity is based on whether (1) the primary unit is financially accountable for the component unit, and (2) the nature and significance of the relationship between the primary unit and the component unit is such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

While it is management's responsibility to define the reporting entity, one of the initial tasks performed by the auditor is to independently determine whether management has properly defined the reporting entity, pursuant to the Government Accounting Standards Board's (GASB) Statement No. 14, The Financial Reporting Entity.

XI. Audit Report Due Dates

The audit must be completed and the report package submitted within 9 months following the end of the period audited, unless a longer period has been agreed to in advance. However, for fiscal years ending on or before June 30, 1998, auditees shall have 13 months after the end of the audit period to submit the reporting package. In either case, the required reporting package shall be submitted within 30 days after issuance of the auditor's report to the auditee.

XII. Distribution of the Audit Report

The reporting package should be submitted to the Federal Clearinghouse in accordance with the requirements of OMB Circular A–133, Section 320. In addition, an auditee shall submit the reporting package, leaving out the data collection form which is strictly for the Clearinghouse's use, to the EDA regional office responsible for monitoring the RLF.

XIII. Auditor Selection

In arranging for audit services, grant recipients are required to follow the administrative requirements and procurement standards prescribed in the applicable Federal administrative document found at 15 CFR, Part 24, or OMB Circular A–110. In addition, guidance in selection of an auditor is available in a document entitled "How to Avoid a Substandard Audit: Suggestions for Procuring an Audit." This document was developed by the National Intergovernmental Audit Forum and is available from the General Accounting Office at telephone number (202) 512–6000.

XIV. Compliance Guidelines

For both program specific audits and single audits, the auditor is required to determine whether the grant recipient has complied with applicable laws and regulations. Compliance testing involves (1) the testing of specific requirements for individual Federal programs, as available, and (2) the testing of general requirements which are applicable to all Federal programs. In addition, there may be other laws and regulations listed in the grant terms which may apply to both the grant recipient and to the RLF loan recipients.

OMB has issued a provisional compliance supplement for use with the revised OMB Circular A–133. The provisional compliance supplement addresses 14 types of compliance areas that are generic to all programs. It also addresses specific requirements for about 100 programs. It is not clear whether the RLF program will be included in the compliance supplement.

A. Specific Compliance Requirements

DOC's proposed compliance requirements and suggested audit procedures for EDA Section 209 RLF grants are provided in Attachment 2. Independent auditors should follow these procedures in testing for specific compliance requirements for RLF grants. Comments and suggestions on this material are welcome and should be submitted to the U.S. Department of Commerce, Office of Inspector General, 401 W. Peachtree Street, N.W., Suite 2342, Atlanta, GA 30308.

B. General Compliance Requirements—Supplemental Information

The OMB Compliance Supplements list fourteen general requirements and suggested auditing procedures which are applicable to all Federal assistance awards. For the general requirement listed as "Allowable Costs And Cost Principles," supplemental information is provided below. This information should be considered when testing general compliance requirements.

1. Background

Eligible Costs For RLF Grants: EDA grant funds and matching funds for an RLF must be used in accordance with the purposes specified in the grant agreement. Eligible uses generally include RLF loans and any specified costs listed in the grant agreement (e.g., budgeted audit costs). Unless specifically stated in the grant, the costs to administer an RLF program are not eligible for reimbursement from either the EDA grant or the matching funds.

RLF Income: RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees and other income generated from RLF activities. RLF Income may be used only for RLF loans or for eligible expenses necessary to operate an RLF program. RLF Income that is used for RLF administrative expenses is subject to applicable OMB cost principles and to the requirements described below.

Only current period expenses may be expensed against current period RLF Income. Any exceptions to this require EDA approval. The accounting period for determining compliance with this requirement is selected by the grant recipient and may be either the recipient's or the Federal fiscal year. The accounting period selected is submitted to EDA in the annual or semiannual reports. (Refer to Section VII. of the prevailing EDA RLF Administrative Manual for additional details.)

RLF program funds (including initial grant and matching funds and the repayments of loan principle and RLF Income) should be separately accounted for in the accounting system of each grant recipient. When possible, expenses charged to an RLF program should be categorized in detail at least at the level indicated in the RLF Income and Expense Statement (see Exhibit A of EDA's prevailing RLF Administrative Manual).

Cost Principles: The applicable OMB Cost Principles are found in either OMB Circular A–21, A–87, or A–122. Administrative costs that may be charged against RLF Income will be classified as either direct or indirect costs. Direct costs include those that can be identified specifically with a particular cost objective, such as an RLF program. Indirect costs are those incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable.

Cost Allocation Plans: Costs may be allocated against RLF Income only to the extent that they can be distributed in reasonable proportion to the benefits received, and are supported by a cost allocation plan and formal accounting records which will substantiate the propriety of charges. Indirect costs may not exceed 100% of allowable direct costs as reflected in the cost allocation plan.

Cost allocation plans, which include indirect cost rate proposals, normally must be approved by the cognizant Federal agency. Local governments (OMB Circular A–87 organizations) are required to retain cost allocation plans and/or indirect cost rate proposals at the local level unless the cognizant agency requests submittal for negotiation and approval. All cost allocation plans and/or indirect cost rate proposals must be approved at the local level and must be available to the cognizant agency, if requested. The independent auditor is responsible for reviewing cost allocation plans and/or indirect cost rate proposals to

determine the reasonableness and validity of costs charged against different cost objectives or programs.

The Office of Inspector General, U.S. Department of Commerce (OIG), is designated the cognizant agency responsible for the audit, approval and negotiation of cost allocation plans and/or indirect cost rate proposals for most EDA economic development districts, as defined in Title IV of PWEDA. When an EDA district organization allocates costs requiring a cost allocation plan and/or an indirect cost rate proposal, the organization is not required to submit either of these to the OIG unless the OIG is the cognizant agency and requests submittal, or the cost allocation plan and/or the indirect cost rate proposal is the initial one for the organization. Cost allocation plans and indirect cost rate proposals must be available for review upon demand, if requested.

2. Common RLF Administrative Costs

A description of common administrative costs that may be charged against RLF Income include, but are not limited to, the following:

Advertising/Marketing: Allowable costs for advertising and marketing include costs for media services to recruit RLF personnel, market the RLF program, solicit RLF loan prospects, procure RLF-related goods and services, and sell RLF assets. Eligible costs may also include the cost of printing RLF brochures and travel and other expenses directly related to the promotion of an RLF program.

Audits: The costs of audits conducted in accordance with the grant audit requirements are allowable. The charges may be treated as either direct or indirect costs consistent with the applicable OMB cost principles. Grant and matching funds may be used for audit costs only to the extent listed in the approved grant budget or grant terms. In addition, auditing costs charged against an RLF program may not exceed an RLF's equitable share of the cost.

Bonding: The costs of premiums for fidelity bonds covering employees who handle RLF funds are allowable to the extent that such costs are reasonable and distributed equitably in proportion to the RLF's share of the costs.

Building Space: Rent for building space or the utilization of depreciation or use allowances is an allowable expense subject to the provisions of the applicable OMB cost principles. Maintenance costs are eligible expenses to the extent that they are not otherwise included in rental or other charges for space. See also "Lease Transactions" below.

Capital Expenditures: In accordance with current OMB cost principles, capital expenditures for equipment and other capital assets require prior EDA approval. For state and local governments (OMB Circular A–87), equipment is defined as tangible, personal property having a useful life of more than one year and an acquisition cost which equals the lesser of the capitalization level established by the organization or $5,000. For nonprofits (OMB Circular A–122 organizations), equipment is defined as tangible, personal property having a useful life of more than two years and an acquisition cost of more than $500 per unit. The dollar amount for nonprofits is expected to increase when OMB Circular A–122 is revised. In the interim, nonprofits may request EDA to approve an amendment to the grant terms to allow for purchases of capital equipment up to the lesser of the capitalization level established by the organization or $5,000.[4]

Where appropriate, an analysis should be made of lease vs. purchase alternatives to determine which would be the most economical and practical procurement method. To be an allowable charge against RLF Income, a capital expenditure must be reasonable and essential for the operation and administration of an RLF program. Such charges must reflect an RLF's use of the equipment based upon an equitable allocation method.

Alternatively, grant recipients may be compensated for the use of equipment and other nonexpendable personal property through depreciation or use allowances subject to the provisions of the applicable OMB cost principles and the requirements herein.

Procurement transactions must be conducted in a manner which provides, to the maximum extent practical, open and free competition consistent with the procurement standards published at 15 CFR Part 24 or in OMB Circular A–110, as applicable. When acquired personal property is no longer needed for RLF activities or is disposed of for upgrading purposes, the RLF should be compensated for its share of the disposition proceeds. Procedures should be established and followed to provide for the highest possible return on property disposition.

Employee Salaries & Fringe: Allowable employee salaries and fringe includes the compensation for personal services including, but not limited to salaries, wages and fringe benefits. Payrolls must be supportable by time and attendance or equivalent records for individual employees. Salaries, wages and fringe benefits of employees chargeable to more than one grant program or other cost objective must be supportable by appropriate time distribution records, or a cost allocation plan, and distributed equitably in reasonable proportion to the benefits received. Compensation for employee services may include only those services performed during the grant period.

The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivisions thereof, are considered a cost of general government and are unallowable as an expense against RLF Income. The salary and expenses of an executive director of an EDA economic development district are allowable, provided such costs are allocated equitably relative to the benefits derived and the total costs charged against all grant programs does not exceed 100% of the cost item being allocated. Compensation of members of an RLF loan board is discussed under "RLF Loan Board Compensation" below.

Leasing Transactions: The accounting and financial reporting treatment for lease agreements depend on whether the lease is classified as a capital lease or an operating lease.

An *operating lease* is a rental agreement requiring periodic payments for the use of an asset during a given period of time. An operating lease does not transfer a material equity in the property leased. The rent payments under an operating lease are allowable to the extent that the lease rate is reasonable when compared with area market conditions.

A *capital lease* is a rental agreement where the lessee acquires a substantial portion of the rights to an asset. In substance, a capital lease represents the purchase of the asset. Financial Accounting Standards Board (FASB) Statement Number 13, Accounting for Leases, as amended, provides guidelines for capital lease transactions. The periodic payments under a capital lease are reimbursable up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed. For example, reimbursable expenses could include depreciation or use allowances, maintenance, taxes and insurance, but excluding any unallowable costs.

For lease agreements between *related parties*, a determination must be made whether the related parties are required to prepare financial reports as a single reporting entity. If reporting as a single entity is required for financial reporting purposes, the assets of the organizations shall be combined, and any reimbursable expenses between the parties shall be computed based upon the cost of ownership. Specific financial statement disclosures pertaining to related parties are required by FASB 57, Related Party Disclosures.

Materials & Supplies: The costs of materials and supplies used during the accounting period for RLF-related activities are allowable expenses.

Outside Professional Services: The costs of RLF-related services necessary and appropriate to prudently administer and protect RLF assets are allowable. Examples of professional service providers include independent accountants, attorneys, appraisers and others who advise RLF operators and who are not officers or employees of the grantee organization or part of the grantee's department (if the grantee is a governmental entity). Professional service providers generally include those who provide loan packaging, underwriting, closing, monitoring, collections, recovery, sale, and/or protection of collateral services. Costs for professional services are eligible for reimbursement provided they are consistent with the purpose of the grant and allocated equitably based on the benefits derived. (See applicable OMB cost principles for additional information on professional services.)

RLF Loan Board Compensation: RLF loan board members, including advisory board members, who are not employees of the grant

[4] A request for a grant amendment would allow the use of current period RLF Income for current purchases (up to $5,000 per unit) for equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets and which are essential for the operations and administration of the grantee's RLF program.

recipient, are not eligible for compensation from RLF Income except as may be provided for in the reimbursement of travel costs consistent with the grant recipient's travel policies or in accordance with Federal Travel Regulations (see "Travel" below). Since RLF loan board members usually serve as representatives of their profession or employer organizations, compensation for other than travel-related expenses is not normally allowed. However, if there are exceptional circumstances that warrant consideration of a waiver, EDA approval may be requested.

Training: The costs of training materials, textbooks, fees charged by educational institutions, and travel costs for part-time education of employees to improve their skills and performance in the management, administration and operation of an RLF are allowable. Extended or full-time training is unallowable except when specifically authorized by EDA in advance. Travel costs to attend meetings and professional conferences are allowable when the primary purpose of the meeting or conference is the dissemination of technical information relating to the grant program.

Travel: The costs for transportation, lodging, subsistence and related items incurred by employees who are on travel status for official business related to RLF activities are allowable. Typical travel expenses might include the costs associated with visiting or meeting potential borrowers, servicing and monitoring loan projects, and meeting with bankers, accountants, attorneys and others affiliated with existing or potential RLF borrowers. It may also include the travel costs associated with marketing the RLF program or hiring RLF program personnel.

Travel costs expensed to RLF Income must be applied consistent with the travel provisions established by the grant recipient in its regular operations and with the applicable OMB cost circular. Organizational travel provisions should be documented in a policy manual. In the absence of formal travel policies, the "Federal Travel Regulations" as published in the Code of Federal Regulations shall apply.

For additional information on allowable costs, refer to applicable OMB cost principles or contact the Office of Inspector General, U.S. Department of Commerce, or EDA's Regional or Headquarter's Office.

XV. Securitization

RLF grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or Securitization [5] of its loan portfolio. Auditors should determine whether Securitization has occurred, and if so, whether EDA consent was obtained.

XVI. Administrative Cost and Loan Records Retention

A. Administrative Cost Records

Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three (3) years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three (3) years from the date of disposition, replacement or transfer of the equipment.

B. Loan Records

Loan files and related documents and records shall be retained over the life of the loan and for a three (3) year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

C. General

If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year or five-year period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year or five-year period, whichever is later.

The record retention periods described in this section are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three (3) years old. However, if fraud is an issue, records must be retained until the issue is resolved.

Attachment 1—Circulars, Regulations & Other Documents For Audits of EDA RLF Grants

The OMB circulars and Federal regulations relevant to RLF grant recipients are listed in the table below for the different types of RLF grant recipients, i.e., governments, nonprofits or universities. Since these and the other documents listed on page ii are updated periodically, users must be careful to utilize the most current version available.

Circular or regulation	Government	Nonprofit	University
Administrative Requirements			
15 CFR Part 24	X		
OMB Circular A–110		X	X
Cost Principles			
OMB Circular A–21			X
OMB Circular A–87	X		
OMB Circular A–122		X	
Audit Requirements			
OMB Circular A–133	X	X	X

The regulations for EDA Section 209 (RLF) grants are found in Title 13 of the Code of Federal Regulations (CFR), Part 308. The Department of Commerce regulations implementing the OMB audit requirements are found in 15 CFR, Part 29.

Other duties and responsibilities of grant recipients are defined in the Special Terms and the Standard Terms and Conditions of each EDA RLF grant. Each RLF should have an RLF Plan which is included as part of the Special Terms and Conditions. The RLF Plan summarizes the RLF's lending strategy, the loan standards and the operational procedures under which an RLF will be administered.

In addition, all RLF grant recipients are required to follow policies and procedures as prescribed by EDA. The most recent are included in the prevailing EDA RLF

[5] Securitization is a financing technique of securing the investment of new capital with the stream of income generated by one or more (usually a large group of) existing loans. For EDA's purposes, the term intentionally encompasses a wide variety of techniques to access investor capital by securing those investments with the value of an existing RLF economic development loan portfolio. This deliberately broad definition covers a number of actual and potential schemes to access investor capital that appear to deviate from the more traditional definition and yet provide flexible alternatives to RLF operators for raising additional funds.

Administrative Manual and in the RLF Standard Terms and Conditions. Both documents apply to all EDA RLF grants.

Additional Guidance for State and Local Governmental Entities Audits

American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, Audits of State and Local Governmental Units, issued May 1, 1996.

AICPA Audit and Accounting Guide, The Not-for-Profit Organizations, issued June 1, 1996.

Government Auditing Standards, issued by the Comptroller General of the United States, 1994 revision (Yellow Book).

OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations, issued June 30, 1997.

OMB Provisional Compliance Supplement for Single Audits (expected to be issued in late 1997).

Additional Guidance for Non-Profit Entities Audits

AICPA, Statement of Position 92–9, Audits of Not-for-Profit Organizations Receiving Federal Awards, issued December 1992. (Note: Because of significant changes to Government Auditing Standards and OMB Circular A–133, much of this is outdated. AICPA is developing a new SOP to supersede SOP 92–9).

AICPA Statement of Auditing Standards No. 74, Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance, issued February 1995.

Attachment 2—Economic Development Administration Section 209 Revolving Loan Fund Grants (CFDA 11.307)

I. Program Objectives

Revolving loan fund (RLF) grants for business development assistance are available under Section 209 of the Public Works and Economic Development Act of 1965 (PWEDA). These grants are administered by the Economic Development Administration (EDA) to help communities adjust to sudden and severe economic dislocations and long-term economic deterioration. RLF grants provide capital to establish loan pools which finance business activities and stimulate economic development in accordance with local development strategies. RLFs typically provide financing that is not otherwise available. Loan repayments plus interest and other income replenish RLF capital to provide a revolving resource for additional loans.

II. Program Procedures

RLF grants are made to EDA designated economic development districts established under Title IV of PWEDA, Indian tribes, states, cities or other political subdivisions, consortia of political subdivisions, Community Development Corporations defined in 42 U.S.C. 9802, nonprofit organizations determined to be representative of a redevelopment area, and certain specified governments. Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress.

III. Compliance Requirements and Suggested Audit Procedures

A. Types of Services Allowed or Unallowed

Compliance Requirement

Allowed Services: RLF grant and matching funds may be used only for purposes specified in the grant budget and grant agreement. Eligible uses normally include disbursements for RLF loans and the audit costs of RLF activities. Unlike grant and matching funds, RLF Income [1] may be used for RLF loans as well as for eligible RLF administrative expenses (see Section C. Earmarking below for additional details).

Suggested Audit Procedure

Review grant budget and grant agreement, and determine whether RLF funds were used for specified purposes.

B. Eligibility

Compliance Requirement

Eligibility: Eligibility for RLF assistance is based upon the following: (1) the activity financed being located in an eligible lending area (usually defined in the Special Terms and Conditions of the grant, as may be amended); and (2) the borrower being unable to obtain credit in the private capital market on terms and conditions which would permit the completion and/or successful operation of the project to be financed.

Ineligible Recipients: The RLF grant recipient cannot make a loan to itself, to related parties, or to entities that would violate the conflict of interest provisions of the grant agreement (see Section D.16. of the Standard Terms and Conditions).

Suggested Audit Procedure

Review the Special Terms and Conditions and any amendments thereto, and scan the current addresses of selected RLF borrowers to determine whether borrowers are located within the eligible lending area.

On selected borrowers, test for borrower's inability to obtain private credit by verifying the existence of a loan write-up [2] in the grant recipient's files. If there is a potential violation, check the RLF Administrative Manual, Section IV.B.3., for exceptions; this Section also discusses the loan write-up. No other tests are necessary.

Review the conflict of interest provisions in the Standard Terms and Conditions, review any procedures that the grant recipient may have to avoid conflicts of interest, scan loan documentation, and determine whether RLF loans were made to ineligible recipients as defined above.

[1] RLF Income includes the interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

[2] A loan write-up is a written record prepared by the RLF administrator which discusses, at a minimum, the need for providing RLF financing to a borrower. It may be supported by third party supplemental evidence as applicable and obtainable.

C. Matching, Level of Effort, and/or Earmarking Requirements

Matching

Compliance Requirements

A matching share of nonfederal funds required is specified in the grant agreement. Matching funds must be loaned either before or proportionately with EDA grant funds. When loans are repaid, both the matching and the EDA funds must remain in the control of the grant recipient (or subrecipient) for the duration of the RLF.

Suggested Audit Procedures

Determine through the grant documents and recipient accounting records that required levels of matching were met.

Determine that the funds used for matching have been retained in the RLF.

Level of Effort (Capital Utilization)

Compliance Requirements

During the revolving phase [3] of an RLF grant, the grant recipient is expected to manage its RLF so at least 75 percent of the RLF's capital is in use. The size of the RLF may justify a variation from this standard percentage. Variations require EDA approval.

Suggested Audit Procedures

Determine that the percentage of outstanding loan dollars to total RLF capital complies with the prescribed usage level in the revolving phase. If the resultant percentage does not comply with the requirement, determine the duration or number of consecutive reporting periods of noncompliance. (See Section X., Capital Utilization Standard, of the EDA RLF Administrative Manual for details, and note that the reporting periods end on September 30 and March 31 of each year.)

Earmarking

Compliance Requirements

Pursuant to the prevailing EDA RLF Administrative Manual, RLF Income [4] earned in a period may be used for lending or for RLF administrative expenses of the same period only. Any RLF Income remaining at the end of a period must be permanently added to the RLF's capital base to be used for lending. Any exceptions require EDA approval.

(Note: Prior to March 15, 1993, RLF Income was not required to be added to the RLF capital base at the end of a period. The accounting period is selected by the grant recipient and ends on either its fiscal year end or the Federal fiscal year end. Repayments of loan principal may be used only for re-lending.)

Suggested Audit Procedures

Verify that any RLF Income earned within the period has been used for such period's RLF administrative expenses, for loans, or that any unexpended RLF Income earned in the period has been added to the RLF capital base.

[3] The revolving phase begins after all available grant and matching funds have been initially disbursed.

[4] Defined in Footnote 1, Page ii.

D. Special Reporting Requirements

Compliance Requirements

Grant recipients electing to use RLF Income to cover all or part of an RLF's administrative expense must annually complete an "RLF Income and Expense Statement." (If the grant recipient uses more than fifty percent or more than $100,000 of a period's RLF Income for RLF administrative expenses, the statement is submitted to EDA within 90 days of the period ending date.)

Suggested Audit Procedures

Review the procedures for preparing the report (See Section VII. of EDA RLF Administrative Manual) and evaluate for adequacy.

E. Special Tests and Provisions

Compliance Requirements

RLF grant recipients are expected to follow lending practices generally accepted as prudent for public lending programs.

Suggested Audit Procedures

Review the grant recipient's RLF Plan for loan disbursement and collection procedures. Determine whether these procedures are being followed.

During the Disbursement Phase[5] of an RLF grant, a grant recipient must demonstrate there is sufficient RLF loan activity to draw grant funds within the approved period allotted. This usually is in accordance with the following schedule: 50% of grant and matching funds disbursed within 18 months of the grant award, 80% within two (2) years, and 100% within three (3) years. Any time extensions require EDA's approval. By law, grant funds remain available for disbursement by EDA only until September 30 of the fifth year after the fiscal year of the grant award.

F. Preservation of Government's Interest in Assets

Compliance Requirements

In instances where RLF grant recipients elect to Securitize their loan portfolios, EDA's prior written consent must be obtained and the value of the Federal Government's reversionary interest in assets retained.

Suggested Audit Procedures

Review grant recipients records where Securitization may have occurred and determine whether grantee obtained EDA's written consent as required.

PARTS 309–313—[RESERVED]

PART 314—PROPERTY

Subpart A—In General

Sec.
314.1 Federal interest, applicability.
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Subpart D—Release of EDA's Property Interest

314.11 Procedures for release of EDA's property interest.

Authority: 42 U.S.C. 3211; 19 U.S.C. 2341–2355; 42 U.S.C. 6701; 42 U.S.C. 184; Department of Commerce Organization Order 10–4.

Subpart A—In General

§ 314.1 Federal interest, applicability.

(a) Property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the purposes of the project under which the property was acquired or improved. Limited exceptions to this requirement are listed in § 314.7(c).

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance, except for the exceptions listed in § 314.7(c).

(c) EDA may approve the substitution of an eligible entity for a recipient. The original recipient remains responsible for the period it was the recipient, and the successor recipient holds the project property with the responsibilities of an original recipient under the award.

§ 314.2 Definitions.

As used in this part 314 of this chapter:

Dispose includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

Estimated useful life means that period of years, determined by EDA as the expected lifespan of the project.

Owner includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold or leased.

Personal Property means all property other than real property.

Project means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs as provided in § 314.3(b), "project" includes such programs.

Property includes all forms of property, real, personal (tangible and intangible), and mixed.

Real property means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

Recipient includes any recipient of grant assistance under the Public Works and Economic Development Act of 1965, as amended, prior to or as amended by Public Law 105–393, or under Title II, Chapters 3 and 5 of the Trade Act of 1974, Title I of the Public Works Employment Act of 1976, the Public Works Employment Act of 1977, or the Community Emergency Drought Relief Act of 1977, and any EDA-approved successor to such recipient.

§ 314.3 Use of property.

(a) The recipient or owner must use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project and such property must not be leased, sold, disposed of or encumbered without the written authorization of EDA.

(b) However, in the event that EDA and the recipient determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, but only if EDA approves such use.

(c) When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided it is for adequate consideration and the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination and environmental compliance. The term "adequate consideration" means consideration that is fair and reasonable under the circumstances of the sale or lease, and may include money, services, property exchanges, contractual commitments, or acts of forbearance.

(d) When acquiring replacement personal property of equal or greater value, the recipient may, with EDA's approval, trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be

[5] The Disbursement Phase is defined as the approved time period for drawing all EDA grant funds.

subject to the same requirements as the original property.

§ 314.4 Unauthorized use.

(a) Except as provided in §§ 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Federal Government must be compensated by the recipient for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.

(b) If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.

§ 314.5 Federal share.

(a) For purposes of this part, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

(b) Where the recipient's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor will be considered in determining the percentage of the Federal share.

(c) If property is transferred from the recipient to another eligible entity, as provided in § 314.1(c), the Federal Government must be compensated the Federal share of any money or money equivalent paid by or on behalf of the successor recipient to or for the benefit of the original recipient, provided that EDA may first permit the recovery by the original recipient of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

(d) When the Federal Government is fully compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use, or disposition of the property.

§ 314.6 Encumbrances.

(a) Except as provided in § 314.6(c), recipient-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project. This provision does not prevent projects from being developed on previously encumbered property, if the requirements of § 314.7(b) are met.

(b) Encumbering project property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in §§ 314.4 and 314.5.

(c) EDA may waive the provisions of § 314.6(a) for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the recipient, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The grantor/lender would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/recipient will not default on its obligation.

(d) EDA may waive the provisions of § 314.6(a) as to an encumbrance on property which is acquired and/or improved by an EDA grant when EDA determines that the encumbrance arises solely from the requirements of a pre-existing water or sewer facility or other utility encumbrance which by its terms extends to additional property connected to such facilities.

Subpart B—Real Property

§ 314.7 Title.

(a) The recipient must hold title to the real property required for a project, except in limited cases as provided in paragraph 314.7(c) of this section. Except in those limited cases, the recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property required for a project (other than property of the United States) is vested in the recipient, and that such easements, rights-of-way, State permits, or long-term leases as are required for the project have been or will be obtained by the recipient within an acceptable time as determined by EDA.

(b)(1) The recipient must disclose to EDA all:

(i) Liens,

(ii) Mortgages,

(iii) Other encumbrances,

(iv) Reservations,

(v) Reversionary interests, or

(vi) Other restrictions on title or the recipient's interest in the property.

(2) No such encumbrance or restriction will be acceptable if, as determined by EDA, the encumbrance or restriction will interfere with the construction, use, operation or maintenance of the project during its estimated useful life.

(c) EDA may determine that a long-term leasehold interest for a period not less than the estimated useful life of the project, or an agreement for the recipient to purchase the property, will be acceptable, but only if fee title is not obtainable and the lease or purchase agreement provisions adequately safeguard the Federal Government's interest in the project. Also, EDA may permit the following exceptions to the requirement that the recipient hold title to the real property required for a project.

(1) When a project includes construction within a railroad's right-of-way or over a railroad crossing, it may be acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate and maintain that portion of the project, if required by the railroad, and provided that this is a minor but essential component of the project.

(2) When a project includes construction on a State-owned or local government-owned highway, it may be acceptable for the State or local government to own, operate and maintain that portion of the project, if required by the State or local government, provided that this is a minor but essential component of the project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA:

(i) That the State or local government will operate and maintain the improvements for the useful life of the project as determined by EDA;

(ii) That the State or local government will not sell the improvements for the useful life of the project, as determined by EDA; and

(iii) That the use of the property will be consistent with the authorized purpose of the project.

(3) When the authorized purpose of the project is to construct facilities to

serve industrial or commercial parks or sites owned by the recipient for sale or lease to private parties, such sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the recipient has title to the park or site prior to such sale or lease.

(4) When the authorized purpose of the project is to construct facilities to serve privately owned industrial or commercial parks or sites for sale or lease, such ownership, sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the private party has title to the park or site prior to such sale or lease, and may condition the award of project assistance upon assurances by the private party relating to the sale or lease that EDA determines are necessary to assure consistency with the project purposes.

§ 314.8 Recorded statement.

(a) For all projects involving the acquisition, construction or improvement of a building, as determined by EDA, the recipient shall execute a lien, covenant or other statement of EDA's interest in the property acquired or improved in whole or in part with the funds made available under the award. The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of this part 314. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with local law.

(c) Facilities in which the EDA investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

Subpart C—Personal Property

§ 314.9 Recorded statement—Title.

For all projects which EDA determines involve the acquisition or improvement of significant items of tangible personal property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, the recipient shall execute a security interest or other statement of EDA's interest in the property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with local law, with continuances refiled as appropriate. Whether or not a statement is required by EDA to be recorded, the recipient must hold title to the personal property acquired or improved as part of the project, except as otherwise provided in this part.

§ 314.10 Revolving loan funds.

(a) With EDA's consent, recipients holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such property as part of a securitization of the RLF portfolio. The net transaction proceeds must be used for additional loans as part of the RLF project;

(b) When a recipient determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the recipient must compensate the Federal Government for the Federal share of the value of the RLF property. The Federal share is that percentage of the capitalized RLF contributed by EDA applied to all RLF property, including the present value of all outstanding loans. However, with EDA's prior approval, upon termination the recipient may use for other economic development purposes that portion of such RLF property that EDA determines is attributable to the payment of interest.

Subpart D—Release of EDA's Property Interest

§ 314.11 Procedures for Release of EDA's Property Interest.

(a) Before the expiration of the estimated useful life of the grant project, EDA may release, in whole or in part, any real property interest, or tangible personal property interest, in connection with a grant after the date that is 20 years after the date on which the grant was awarded. (The term "tangible personal property" excludes debt instruments, currency, and accounts in financial institutions.) Except as provided in paragraph (b) of this section, such release is not automatic; it requires EDA's approval, which will not be withheld except for good cause. The release may be unconditional, or may be conditioned upon some activity of the recipient intended to be pursued as a consequence of the release.

(b) EDA hereby releases all of its real and tangible personal property interests in projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94–369) and under that act as amended by the Public Works Employment Act of 1977 (Pub. L. 95–28).

(c)(1) Notwithstanding §§ 314.11(a) and (b), in no event, either before or after the release of EDA's interest, may project property be used:

(i) In violation of the nondiscrimination requirements of the project award, or

(ii) For religious purposes prohibited by the holding of the U.S. Supreme Court in *Tilton* v. *Richardson*, 403 U.S. 672 (1971).

(2) Such use voids the release, and is an unauthorized use of the property, as provided in § 314.4.

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

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Subpart D—Assistance to Industries

315.14 Assistance to firms in import-impacted industries.

Authority: 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; 42 U.S.C. 5141; E.O. 12372; Department of Commerce Organization Order 10–4.

Subpart A—General provisions

§ 315.1 Purpose and scope.

The regulations in this part implement certain changes to responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et. seq.*) (Trade Act), concerning adjustment assistance for firms. The statutory authority and responsibilities of the Secretary of Commerce relating to adjustment assistance are delegated to EDA. EDA has the duties of certifying firms as eligible to apply for adjustment assistance, providing technical adjustment assistance to eligible recipients, and providing assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

As used in this part 315 of this chapter:

Adjustment assistance is technical assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

Adjustment proposal means a certified firm's plan for improving its economic situation.

Certified firm means a firm which has been determined by EDA to be eligible to apply for adjustment assistance.

Confidential business information means information submitted to EDA or TAACs by firms that concerns or relates to trade secrets for commercial or financial purposes which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

Decreased absolutely means a firm's sales or production has declined:

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the firm.

Directly competitive means:

(1) Articles which are substantially equivalent for commercial purposes, i.e., are adapted to the same function or use and are essentially interchangeable; and

(2) Oil or natural gas (exploration, drilling or otherwise produced).

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a firm owns or controls other firms as described below, for purposes of receiving benefits under this part, the firm and such other firms may be considered a single firm when they produce like or directly competitive articles or are exerting essential economic control over one or more production facilities. Such other firms include:

(1) Predecessor;

(2) Successor;

(3) Affiliate; or

(4) Subsidiary.

A group of workers threatened with total or partial separation means there is reasonable evidence that such total or partial separation is imminent.

Like articles means articles which are substantially identical in their intrinsic characteristics.

Partial separation means either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means individual, organization or group.

The record means:

(1) A petition for certification of eligibility to qualify for adjustment assistance;

(2) Any supporting information submitted by the petitioner;

(3) Report of the EDA investigation in regard to the petition; and

(4) Any information developed during the investigation or in connection with any public hearing held on the petition.

Recipient means a firm, Trade Adjustment Assistance Center or other party receiving adjustment assistance or through which adjustment assistance is provided under the Trade Act.

A significant number or proportion of workers means 5 percent of the firm's work force or 50 workers, whichever is less. An individual farmer is considered a significant number or proportion of workers.

Substantial interest means a direct, material, economic interest in the certification or noncertification of the petitioner.

Technical Assistance means assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

A totally separated worker means an employee who has been laid off or whose employment has been terminated by his/her employer for lack of work.

§ 315.3 Confidential business information.

EDA will follow the procedures set forth in 15 CFR § 4.7, and submitters should so designate any information they believe confidential.

§ 315.4 Eligible applicants.

(a) Trade Adjustment Assistance Centers (TAACs) are eligible applicants. A TAAC can be:

(1) A university affiliate;

(2) State or local government affiliate;

(3) Non-profit organization.

(b) Firms;

(c) Organizations assisting or representing industries in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under sections 223 or 251 of the Trade Act including the following:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

§ 315.5 Selection process.

(a) TAACs are selected in accordance with the following:

(1) Currently funded TAACs are invited by EDA to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous and/or current conditions in their cooperative agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a cooperative agreement does not assure funding by EDA; and

(2) New TAACs will be invited to submit proposals, and if they are acceptable, EDA will invite an application on a form approved by OMB. An application will be accompanied by a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(b) Firms are selected in accordance with the following:

(1) Firms may apply for certification generally through a TAAC by filling out a petition for certification. The TAAC will provide technical assistance to firms wishing to fill out such petitions;

(2) Once firms are certified in accordance with the procedures described in §§ 315.9 and 315.10, an adjustment proposal is usually prepared with technical assistance from a party independent of the firm, usually the TAAC, and submitted to EDA;

(3) Certified firms which have submitted acceptable adjustment proposals within the time limits described in § 315.13 below, may begin implementation of such proposal, generally through the TAAC and often with Technical Assistance from the TAAC, by submitting a request to the TAAC to provide assistance in implementing an accepted adjustment proposal; and

(4) EDA determines whether or not to provide assistance for adjustment proposals based upon § 315.6(c)(2).

(c) Organizations representing trade injured industries must meet with an EDA representative to discuss the industry problems, opportunities and assistance needs, and if invited by EDA may then submit an application as

approved by OMB, as well as a scope of work and proposed budget.

§ 315.6 Evaluation criteria.

(a) Currently funded TAACs are generally evaluated based on the following:

(1) How well they have performed under cooperative agreements with EDA and if they are in compliance with the terms and conditions of such cooperative agreements;

(2) Proposed scope of work, budget and application or amended application; and

(3) The availability of funds.

(b) New TAACs are generally evaluated on the following:

(1) Demonstrates competence in administering business assistance programs;

(2) Background and experience of staff;

(3) Proposed scope of work, budget and application; and

(4) The availability of funding.

(c) Firms are generally evaluated based on the following:

(1) For certification, firms' petitions are selected strictly on the basis of conformance with requirements set forth in § 315.9 below;

(2) An adjustment proposal is evaluated on the basis of the following:

(i) The proposal must be submitted to EDA within 2 years after the date of the certification of the firm; and

(ii) The adjustment proposal must include a description of any technical assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(A) An analysis of the firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(B) If EDA so determines, an acceptable adjustment proposal can be prepared on the basis of other available information.

(iii) The adjustment proposal must be evaluated to determine that it:

(A) Is reasonably calculated to contribute materially to the economic adjustment of the firm, i.e., that such proposal will be a constructive aid to the firm in establishing a competitive position in the same or a different industry;

(B) Gives adequate consideration to the interests of a sufficient number of separated workers of the firm, by providing for example that the firm will:

(*1*) Give a rehiring preference to such workers;

(*2*) Make efforts to find new work for a number of such workers; and

(*3*) Assist such workers in obtaining benefits under available programs.

(C) Demonstrates that the firm will make all reasonable efforts to use its own resources for economic development, though under certain circumstances, resources of related firms or major stockholders will also be considered.

(d) Organizations representing trade injured industries must demonstrate that the industry is injured by increased imports and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

(1) The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority.

(2) It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

§ 315.7 Award requirements.

(a) Award periods are as follows:

(1) TAACs are generally funded for 12 months;

(2) Firms are generally provided assistance over a 2-year period; and

(3) Organizations representing trade injured industries are generally funded for 12 months.

(b) Matching requirements are as follows:

(1) There are no matching requirements for certification assistance provided by the TAACs to firms or for administrative expenses for the TAACs;

(2) All adjustment proposals and implementation assistance must include not less than 25% nonfederal match, provided to the extent practicable, by firms being assisted; and

(3) Contributions of at least 50% of the total project cash cost, in addition to appropriate in kind contributions, are expected from organizations representing trade injured industries.

Subpart B—Trade Adjustment Assistance Centers

§ 315.8 Purpose and scope.

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas can be obtained from EDA. See the annual FY NOFA for the appropriate point of contact and address.

(b) Prior to submitting a request for technical assistance to EDA, a firm should determine the extent to which the required technical assistance can be provided through a TAAC. EDA will provide technical assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for technical assistance will normally be made through TAACs.

(c) TAACs generally provide technical assistance to a firm by providing the following:

(1) Assistance to a firm in preparing its petition for certification;

(2) Assistance to a certified firm in diagnosing its strengths and weaknesses and developing an adjustment proposal for the firm; and

(3) Assistance to a certified firm in the implementation of the adjustment proposal for the firm.

Subpart C—Certification of Firms

§ 315.9 Certification requirements.

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

(b) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(c) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports.

§ 315.10 Processing petitions for certification.

(a) Firms are encouraged to consult with a TAAC or EDA for guidance and

assistance in the preparation of their petitions for certification.

(b) A firm seeking certification shall complete a petition (OMB Control Number 0610–0091) in the form prescribed by EDA with the following information about such firm:

(1) Identification and description of the firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, subsidiaries or affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported articles like or directly competitive with those produced;

(4) Data on its sales, production and employment for the two most recent years;

(5) Copies of its audited financial statements, or if not available, unaudited financial statements and Federal income tax returns for the two most recent years;

(6) Copies of unemployment insurance reports for the two most recent years;

(7) Information concerning its major customers and their purchases; and

(8) Such other information as EDA may consider material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Immediately thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected and the resubmission will be treated as a new petition.

(d) A notice of acceptance of a petition shall be published in the **Federal Register**.

(e) An investigation shall be initiated by EDA to determine whether the petitioner meets requirements set forth in section 251(c) of the Trade Act and § 315.9 above. The investigation can be terminated at any time for failure to meet such requirements. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(f) A petitioner may withdraw a petition for certification if a request for withdrawal is received by EDA before a certification determination or denial is made. Such firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.9.

(g) Following acceptance, EDA shall decide what action to take on petitions for certification as follows:

(1) Make a determination based on the record as soon as possible after all material has been submitted. In no event may the period exceed 60 days from the date on which the petition was accepted; and

(2) Either certify the petitioner eligible to apply for adjustment assistance or deny the petition, and in either event EDA shall promptly give notice of the action in writing to the petitioner. A notice to the petitioner or any parties requesting notice as specified in § 315.10(d) of a denial of a petition shall specify the reasons upon which the denial is based. If a petition is denied, the petitioner shall not be entitled to resubmit its petition within one year from the date of the denial. At the time of the denial of a petition EDA may waive the 1-year limitation for good cause.

§ 315.11 Hearings, appeals and final determinations.

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final determination shall be determined under § 315.10(g).

(b) A firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) EDA will hold a public hearing on an accepted petition not later than 10 days after the date of publication of the Notice of Acceptance in the **Federal Register** if requested by either the petitioner or any other person found by EDA to have a substantial interest in the proceedings, under procedures, as follows:

(1) The petitioner and other interested persons shall have an opportunity to be present, to produce evidence, and to be heard;

(2) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a person other than the petitioner shall contain:

(i) The name, address, and telephone number of the person requesting the hearing; and

(ii) A complete statement of the relationship of the person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(3) If EDA determines that the requesting party does not have a substantial interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(4) EDA shall publish a notice of a public hearing in the **Federal Register**, containing the subject matter, name of petitioner, and date, time and place of hearing;

(5) EDA shall appoint the presiding officer of the hearing who shall determine all procedural questions;

(6) Procedures for requests to appear are as follows:

(i) Within 5 days after publication of the Notice of Public Hearing in the **Federal Register**, each party wishing to be heard must file a request to appear with EDA. Such request may be filed by:

(A) The party requesting such hearing;

(B) Any other party with substantial interest; or

(C) Any other party demonstrating to the satisfaction of the presiding officer that it should be allowed to be heard.

(ii) The party filing the request shall submit the names of the witnesses and a summary of the evidence it wishes to present; and

(iii) Such requests to appear may be approved as deemed appropriate by the presiding officer.

(7) Witnesses will testify in the order and for the time designated by the presiding officer, except that the petitioner shall have the opportunity to make its presentation first. After testifying, a witness may be questioned by the presiding officer or his/her designee. The presiding officer may allow any person who has been granted permission to appear to question the witnesses for the purpose of assisting him/her in obtaining relevant and material facts on the subject matter of the hearing;

(8) The presiding officer may exclude evidence which s/he deems improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but copies of such exhibits must be provided in reduced size for submission as evidence. Two

copies of all documentary evidence must be furnished to the presiding officer during the hearing;

(9) Briefs may be presented to the presiding officer by parties who have entered an appearance. Three copies of such briefs shall be filed with the presiding officer within 10 days of the completion of the hearing; and

(10) Procedures for transcripts are as follows:

(i) All hearings will be transcribed. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Commerce in Washington, D.C., or purchase copies as provided in 15 CFR part 4, Public Information; and

(ii) Confidential business information as determined by EDA shall not be a part of the transcripts. Any confidential business information may be submitted directly to the presiding officer prior to the hearing. Such information shall be labeled Confidential Business Information. For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§ 315.12 Termination of certification and procedure.

(a) Whenever EDA determines that a certified firm no longer requires adjustment assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register**. The termination will take effect on the date specified in the Notice.

(b) EDA shall immediately notify the petitioner and shall state the reasons for such termination.

§ 315.13 Loss of certification benefits.

A firm may fail to obtain benefits of certification, regardless of whether its certification is terminated for any of the following reasons:

(a) Failure to submit an acceptable adjustment proposal within 2 years after date of certification. While approval of an adjustment proposal may occur after the expiration of such 2-year period, an acceptable adjustment proposal must be submitted before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for adjustment assistance consistent with its adjustment proposal within 6 months after approval of the adjustment proposal and 2 years have elapsed since the date of certification. If the firm anticipates that a longer period will be required to submit documentation, such longer period should be indicated in its adjustment proposal. If the firm becomes unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) If the firm's request for adjustment assistance has been denied, the time period allowed for the submission of any documentation in support of such request has expired, and 2 years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved adjustment proposal, and 2 years have elapsed since the date of certification.

Subpart D—Assistance to Industries

§ 315.14 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the firms in such industry, assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such firms.

(b) EDA may provide technical assistance, on such terms and conditions as EDA deems appropriate for the establishment of industry wide programs for new product development, new process development, export development or other uses consistent with the purposes of this part.

(c) Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as EDA deems appropriate.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Sec.

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Authority: 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; Department of Commerce Organization Order 10–4.

§ 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) Requirements under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, as amended, 42 U.S.C. 4321 *et seq.* as implemented under 40 CFR parts 1500 *et seq.* including the following:

(i) The implementing regulations of NEPA require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b); and

(ii) Depending on the project location, environmental information concerning specific projects can be obtained from the Environmental Officer in the appropriate Washington, D.C. or regional office listed in the NOFA;

(2) Clean Air Act, Pub. L. 88–206 as amended, 42 U.S.C. 7401 et. seq.;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 et. seq.;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96–510, as amended, 42 U.S.C. 9601 et. seq. and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Pub.L. 94–580 as amended, 42 U.S.C. 6901 *et seq.*;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86–523, as amended, 16 U.S.C. § 469a–1 et. seq.;

(9) National Historic Preservation Act of 1966, Pub. L. 89–665, as amended, 16 U.S.C. § 470 et. seq.;

(10) Endangered Species Act of 1973, Pub. L. 93–205, as amended, 16 U.S.C. § 1531 et. seq.;

(11) Coastal Zone Management Act of 1972, Pub. L. 92–583, as amended, 16 U.S.C. § 1451 et. seq.;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, 42 U.S.C. § 4002 et seq.;

(13) Safe Drinking Water Act of 1974, Pub. L. 92–523, as amended, 42 U.S.C. § 300f-j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90–542, as amended, 16 U.S.C. § 1271 et seq.;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97–98, as amended, 7 U.S.C. § 4201 et seq.; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

§ 316.2 Excess capacity.

(a) *Definitions.* For purposes of this section only the following definitions apply:

Beneficiary means a firm or group of firms, enterprise or organization (public or private) that provides a commercial product or service and that benefits from an EDA-assisted project.

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Commercial product or service means a product or service that competes with other providers of the same kinds of product or service.

Demand means the actual quantity of a commercial product or service that users are willing to purchase in the market area served by the intended beneficiary of the EDA assisted project.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs, and technologies.

Existing competitive enterprise means an established operation which either produces or delivers the same kind of commercial product or service to all or a substantial part of the market area served by the intended beneficiary of the EDA assisted project.

Firm means any enterprise which produces or sells a commercial product or service.

Market Area means the geographic area within which commercial products or services compete for purchase by customers.

Product or service means a good, material, or commodity, or the availability of a service or facility.

Section 208 means section 208 of PWEDA.

(1) A section 208 study is a detailed economic analysis/evaluation of competitive impact.

(2) A section 208 report is a summary of supply/demand factors.

(3) A section 208 exemption may apply to a project having one or more of the characteristics listed in paragraph (e) of this section.

(b) Under section 208:

(1) No financial assistance under PWEDA shall be extended to any project when the result would be to increase the production of products or services when there is not sufficient demand for such products or services, to employ the efficient capacity of existing competitive commercial or industrial enterprises; and

(2) When EDA considers extending assistance for a project that benefits a firm or industry that provides a commercial product or service, the beneficiary is subject to a 208 report, study, or exemption, resulting in a finding that the project will or will not violate section 208. A section 208 study or report is required, except as provided in paragraph (e) of this section.

(c) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 208 study or report:

(1) The beneficiary shall submit, as early as possible, the following information with regard to each commercial product or service affected by the project:

(i) A detailed description of the commercial product or service;

(ii) Current and projected amount and value of annual sales or receipts;

(iii) Market area; and

(iv) Name of other suppliers and amount of commercial product or service presently available in the market area.

(2) If the beneficiary has conducted or commissioned a relevant market study, it shall be made available to EDA as early as possible, for possible use by EDA in the 208 study or report.

(d) A section 208 report will form an acceptable basis on which to make a section 208 compliance finding when the beneficiary's projected new or additional annual output is less than one percent of the last recorded annual output in the market area, or when it is otherwise apparent that a 208 study is not required to determine that the project will not violate section 208.

(e) Unless EDA determines that circumstances require a section 208 study or report, EDA will make a finding of compliance with section 208 without doing a section 208 report or study for those projects which have one or more of the following characteristics:

(1) The project is primarily for the use and benefit of the community as a whole without contributing to a new or significantly expanded output of commercial products or services;

(2) The project will not contribute directly to the production or distribution of new or expanded output of commercial products or services, to any significant degree;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster, without contributing to significant expansion of the previously existing supply of the same kinds of commercial products or services;

(4) The project will assure the retention of physical capacity and/or employment without significantly expanding the existing supply of commercial products or services;

(5) The project will assure the reopening of facilities closed within two years of the date of reopening, if the facility will provide the same kinds of products or services as previously provided, without a significant increase in output;

(6) The project will replace, rebuild or modernize, within the same labor market area, facilities which within the previous two years have been, or are to be, displaced by official governmental action, without a change in the kind or significant increase in output of the commercial product or service previously provided;

(7) The project assures completion of a project previously assisted by EDA, where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(8) The project is wholly or primarily for planning, technical assistance, research, evaluation, other studies, or for the training of workers, and not for the benefit of a firm or industry that produces a commercial product or service; or

(9) No firm benefitted by the project will use 50 percent or more of any EDA-financed service or facility.

§ 316.3 Nonrelocation.

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area ("area") is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of the applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

§ 316.4 Procedures in Disaster Areas.

When non-statutory EDA administrative or procedural conditions for financial assistance awards cannot be met by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

§ 316.5 Project servicing for loans and loan guarantees.

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans under any programs administered by EDA. This includes but is not limited to loans under PWEDA prior to the effective date of Public Law 105–393, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

(b) Borrowers/lenders shall submit to EDA any requests for modifications of their agreements with EDA. EDA shall, in accordance with applicable laws and policies, including the Federal Credit Reform Act of 1990 (2 U.S.C. 661c(e)), consider and respond to such modification requests.

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased, EDA may:

(1) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) Take any and all other actions determined by it to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased.

§ 316.6 Public information.

The rules and procedures regarding public access to the records of the Economic Development Administration are found at 15 CFR part 4.

§ 316.7 Relocation assistance and land acquisition policies.

Recipients of EDA financial assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits as applicable) are subject to requirements set forth at 15 CFR part 11.

§ 316.8 Additional requirements; Federal policies and procedures.

Recipients, as defined under § 314.2 of this chapter, are subject to all Federal laws and to Federal, Department of Commerce, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 15 CFR part 14, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Other Non-Profit and Commercial Organizations, whichever is applicable.

§ 316.9 Amendments and changes.

(a) Requests by recipients for amendments to a grant shall be submitted in writing to EDA for approval, and shall contain such information and documentation necessary to justify the request.

(b) Any changes made without approval by EDA are made at grantee's own risk of suspension or termination of the project.

(c) Changes of project scope after the time the project grant funds could be obligated will not be approved by EDA. In most cases, project grant funds cannot be obligated after September 30 of the fiscal year the grant is awarded.

§ 316.10 Preapproval award costs.

Project activities carried out before approval of an application by EDA are carried out at the sole risk of the applicant. Such activity could result in rejection of such project application, the disallowance of costs, or other adverse consequences as a result of non-compliance with Federal requirements, including, but not limited to, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation or related requirements.

§ 316.11 Intergovernmental review of projects under EDA's public works, economic adjustment, planning, local technical assistance, and university center programs.

(a) When the applicant is not a State, Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate general purpose local governmental authority of the area a minimum of 15 days in which to review and comment on the proposed project. The applicant shall furnish with the application a copy of such comments, or a statement of the efforts made to obtain them together with an explanation of the actions taken to address any comments received.

(b) Applicants as appropriate, must also give State and local governments a reasonable opportunity to review and comment on the proposed project if the State has a Single Point of Contact review process, including comments from areawide planning organizations in

metropolitan areas as provided for in 15 CFR part 13.

§ 316.12 Fees for paying attorneys and consultants.

Grant funds must not be used directly or indirectly to pay for attorney's or consultant's fees in connection with obtaining grants and contracts for projects funded under PWEDA.

§ 316.13 Economic development information clearinghouse.

EDA will provide assistance and information as follows:

(a) Maintain a central information clearinghouse on matters relating to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal and State governments, including political subdivisions of States;

(b) Assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal, State, and local laws in locating and applying for the assistance; and

(c) Assist areas described in § 301.2(b) and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas.

§ 316.14 Project administration, operation, and maintenance.

EDA shall approve Federal assistance under PWEDA only if satisfied that the project for which Federal assistance is granted will be properly and efficiently administered, operated, and maintained.

§ 316.15 Maintenance of standards.

In accordance with sec. 602 of PWEDA all laborers and mechanics employed by contractors or subcontractors on public projects assisted by EDA under PWEDA shall be paid in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5).

§ 316.16 Records and audits.

(a) Each recipient of Federal assistance under PWEDA shall keep such records as the Secretary shall require, including records that fully disclose—

(1) The amount and the disposition by the recipient of the proceeds of the assistance;

(2) The total cost of the project in connection with which the assistance is given or used;

(3) The amount and nature of the portion of the cost of the project provided by other sources; and

(4) Such other records as will facilitate an effective audit.

(b) Access to books for examination and audit—The Secretary, the Inspector General of the Department, and the Comptroller General of the United States, or any duly authorized representative, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that relate to assistance received under PWEDA.

§ 316.17 Acceptance of certifications by applicants.

EDA will accept an applicant's certifications, accompanied by evidence satisfactory to EDA, that the applicant meets the requirements of PWEDA. Each applicant must include in such evidence satisfactory information that any non-Federal funds (or eligible Federal funds) required to match the EDA share of project costs are committed to the project and will be available as needed.

§ 316.18 Reports by recipients.

(a) In general, each recipient of assistance under PWEDA must submit reports to EDA at such intervals and in such manner as EDA shall require, except that no report shall be required to be submitted more than 10 years after the date of closeout of the assistance award.

(b) Each report must contain an evaluation of the effectiveness of the economic assistance provided in meeting the need that the assistance was designed to address and in meeting the objectives of PWEDA

§ 316.19 Project administration by District organization.

When an Economic Development District is not a recipient or co-recipient of an award for a project involving construction, the District organization may administer the project for such recipient if the following conditions are met, as determined by EDA:

(a) The recipient has requested (either in the application or by separate written request) that the district organization for the area in which the project is located perform the project administration;

(b) The recipient certifies and EDA finds that:

(1) Administration of the project is beyond the capacity of the recipient's current staff to perform and would require hiring additional staff or contracting for such services,

(2) No local organization/business exists that would be able to administer the project in a more efficient or cost-effective manner than the staff of the district, and

(3) The staff of the district would administer the project themselves, without subcontracting the work out;

(c) EDA approves the request either by approving the application in which the request is made, or by separate specific written approval; and

(d) The allowable costs for the administration of the project by the district organization staff will not exceed the customary and reasonable amount that would be allowable if the district were the recipient.

PART 317—CIVIL RIGHTS

Sec.
317.1 Civil rights.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 317.1 Civil rights.

(a) Discrimination is prohibited in programs receiving federal financial assistance from EDA in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000d *et seq.* (proscribing discrimination on the basis of race, color, or national origin), and the Department of Commerce's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex);

(3) 29 U.S.C. 794, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 8b (proscribing discrimination on the basis of disabilities);

(4) 42 U.S.C. 6101, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 20; and

(5) Other Federal statutes, regulations and Executive Orders as applicable.

(b) Definitions:

(1) Other Parties means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(c) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with Department of Commerce and EDA regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data in such form and manner as determined by EDA;

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin, age, education and job-related criteria must be retained by employers.

(d) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects which provide service benefits, in addition to requirements listed in paragraph (c) of this section, applicants are required to submit any other information EDA may deem necessary for such determination.

(e) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and OEDP Committees to take appropriate steps to ensure that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and OEDP Committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(f) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8(b), 8(c), and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

PART 318—EVALUATIONS OF UNIVERSITY CENTERS AND ECONOMIC DEVELOPMENT DISTRICTS

Sec.

318.1 University Center performance evaluations.
318.2 Economic Development District performance evaluations.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 318.1 University Center performance evaluations.

(a) EDA will evaluate the performance of each University Center. EDA will:

(1) Evaluate each University Center at least once every three years;

(2) Assess the University Center's contribution to providing technical assistance, conducting applied research, and disseminating project results, in accordance with the scope(s) of work funded during the evaluation period; and

(3) For peer review, ensure the participation of at least one other University Center, as appropriate, in the evaluation.

(b) The purpose of the evaluations of University Centers is to determine which centers are performing well and are worthy of continued grant assistance from EDA, and which should not receive continued assistance, so that university centers that have not previously received assistance may receive EDA assistance.

§ 318.2 Economic Development District performance evaluations.

EDA will evaluate the performance of each Economic Development District. EDA will:

(a) Evaluate each Economic Development District at least once every three years;

(b) Assess the Economic Development District's management standards, financial accountability, and program performance in accordance with the current instructions for Economic Development District performance appraisals; and

(c) For peer review, ensure the participation of at least one other Economic Development District organization, as appropriate, in the evaluation.

Dated: January 20, 1999.

Phillip A. Singerman,

Assistant Secretary, Economic Development Administration.

[FR Doc. 99–1983 Filed 1–26–99; 12:31 pm]

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federal register

Wednesday
February 3, 1999

Part III

Environmental Protection Agency

40 CFR Part 435

Effluent Limitations Guidelines and New Source Performance Standards for Synthetic-Based and Other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL–6215–1]

RIN 2040–AD14

Effluent Limitations Guidelines and New Source Performance Standards for Synthetic-Based and Other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the technology-based effluent limitations guidelines for the discharge of certain pollutants into waters of the United States by existing and new facilities in portions of the offshore and coastal subcategories of the oil and gas extraction point source category.

This proposed rule would establish effluent limitations guidelines and new source performance standards (NSPS) for direct dischargers based on "best practicable control technology currently available" (BPT), "best conventional pollutant control technology" (BCT), "best available technology economically achievable" (BAT), and for new sources "best available demonstrated control technology" (BADCT). EPA is proposing to amend the regulation by providing specific requirements for the discharge of synthetic-based drilling fluids (SBFs) and other non-aqueous drilling fluids. The wastestreams that would be limited are drilling fluids and drill cuttings.

This rule would not amend the current regulations for water-based drilling fluids. Also, this rule would not amend the zero discharge requirement for drilling wastes in the coastal subcategory (except Cook Inlet, Alaska) and in the offshore subcategory within three miles from shore.

Controlling the discharge of SBFs as proposed today would reduce the discharge of SBFs by 11.7 million pounds annually. Further, allowing rather than prohibiting the discharge of SBFs would substantially reduce non-water quality environmental impacts. Compared to the zero discharge option, EPA estimates that allowing discharge will reduce air emissions of the criteria air pollutants by 450 tons per year, decrease fuel use by 29,000 barrels per year of oil equivalent, and reduce the generation of oily drill cutting wastes requiring off-site disposal by 212 million pounds per year.

DATES: Comments on the proposal must be received by May 4, 1999. A public meeting will be held during the comment period, on Friday, March 5, 1999, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: Send written comments and supporting data on this proposal to: Mr. Joseph Daly, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Please submit any references cited in your comments. EPA would appreciate an original and two copies of your comments and enclosures (including references).

The public meeting will be held at the EPA Region 6 Oklahoma Room, 1445 Ross Avenue, Dallas, TX. If you wish to present formal comments at the public meeting you should have a written copy for submittal. No meeting materials will be distributed in advance of the public meeting; all materials will be distributed at the meeting.

The public record is available for review in the EPA Water Docket, Room EB57, 401 M St. SW, Washington, DC 20460. The public record for this rulemaking has been established under docket number W–98–26, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Mr. Joseph Daly at (202) 260–7186. For additional economic information contact Mr. James Covington at (202) 260–5132.

SUPPLEMENTARY INFORMATION:

Regulated Entities: Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Facilities engaged in the drilling of wells in the oil and gas industry in areas defined as "coastal" or "offshore" and discharging in geographic areas where drilling wastes are allowed for discharge (offshore waters beyond 3 miles from the shoreline, in any Alaska offshore waters with no 3-mile restriction, and the coastal waters of Cook Inlet, Alaska). Includes certain facilities covered under Standard Industrial Classification code 13 and North American Classification System codes 211111 and 213111.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR Part 435, Subparts A and D. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

The regulations proposed today are supported by several major documents:

1. "Development Document for Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category" (EPA–821–B–98–021). Hereafter referred to as the SBF Development Document, the document presents EPA's technical conclusions concerning the proposal. This document describes, among other things, the data collection activities in support of the proposal, the wastewater treatment technology options, effluent characterization, estimate of costs to the industry, and estimate of effects on non-water quality environmental impacts.

2. "Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category" (EPA–821–B–98–020). Hereafter referred to as the SBF Economic Analysis, this document presents the analysis of compliance costs and/or savings; facility closures; changes in rate of return level. In addition, impacts on employment and affected communities, foreign trade, specific demographic groups, and new sources also are considered.

3. "Environmental Assessment of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category" (EPA–821–B–98–019). Hereafter referred to as the SBF Environmental Assessment, the document presents the analysis of relative water quality impacts for each regulatory option. EPA describes the environmental characteristics of SBF drilling wastes, types of anticipated impacts, and pollutant modeling results for water

column concentrations, pore water concentrations, and human health effects via consumption of affected seafood.

All documents are available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW, Washington, DC 20460; telephone (202) 260–7786 for the voice mail publication request. The Development Document can also be obtained through EPA's Home Page on the Internet, located at WWW.EPA.GOV/OST/GUIDE. The preamble and rule can also be obtained at this site.

Overview

This preamble includes a description of the legal authority for these rules; a summary of the proposal; background information on the industry and its processes; and a description of the technical and economic methodologies used by EPA to develop these regulations. This preamble also solicits comment and data on all aspects of this proposed rule. The definitions, acronyms, and abbreviations used in this notice are defined in Appendix A to the preamble.

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Appendix A: Definitions, Acronyms, and Abbreviations Used in This Notice

I. Legal Authority

These regulations are proposed under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

II. Purpose and Summary of the Proposed Regulation

A. Purpose of This Rulemaking

The purpose of this rulemaking is to amend the effluent limitations guidelines and standards for the control of discharges of certain pollutants associated with the use of synthetic-based drilling fluids (SBFs) and other non-aqueous drilling fluids in portions of the Offshore Subcategory and Cook Inlet portion of the Coastal Subcategory of the Oil and Gas Extraction Point Source Category. The limitations proposed today apply to wastes generated when oil and gas wells are drilled using SBFs or other non-aqueous drilling fluids (henceforth collectively referred to simply as SBFs) in coastal and offshore regions in locations where drilling wastes may be discharged. The processes and operations that comprise the offshore and coastal oil and gas subcategories are currently regulated under 40 CFR Part 435, Subparts A (offshore) and D (coastal). EPA is proposing these amendments under the authority of the CWA, as discussed in Section I of this notice. The regulations are also being proposed pursuant to a Consent Decree entered in *NRDC et al. v. Browner*, (D.D.C. No. 89–2980, January 31, 1992) and are consistent with EPA's latest Effluent Guidelines Plan under section 304(m) of the CWA. (See 63 FR 47285, September 4, 1998.) The most recent existing effluent limitations guidelines were issued on March 4, 1993 (58 FR 12454) for the Offshore Subcategory and on December 16, 1996 (61 FR 66086) for the Coastal Subcategory. This proposed rule is referred to as the Synthetic-Based Drilling Fluids Guidelines, or SBF Guidelines, throughout this preamble.

Today's proposal presents EPA's preferred technology approach and several others that are being considered in the regulation development process. The proposed rule is based on a detailed evaluation of the available data acquired during the development of the proposed limitations. EPA welcomes comment on all options and issues and encourages commenters to submit additional data during the comment period. Also, EPA is willing to meet with interested parties during the comment period to ensure that EPA has the views of all parties and the best possible data upon which to base a decision for the final regulation. EPA emphasizes that it is soliciting comments on all options discussed in this proposal and that it may adopt any

such options or combination of options in the final rule.

B. Summary of Proposed SBF Guidelines

This summary section highlights key aspects of the proposed rule. The technology descriptions discussed later in this notice are presented in abbreviated form; more detailed descriptions are included in the *Development Document for Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category*, referred to hereafter as the "SBF Development Document."

EPA proposes to establish regulations based on the "best practicable control technology currently available" (BPT), "best conventional pollutant control technology" (BCT), "best available technology economically achievable" (BAT), and the best available demonstrated control technology (BADCT) for new source performance standards (NSPS), for the wastestream of synthetic-based drilling fluids and other non-aqueous drilling fluids, and cuttings contaminated with these drilling fluids.

For certain drilling situations, such as drilling in reactive shales, high angle and/or high displacement directional drilling, and drilling in deep water, progress with water-based drilling fluids (WBFs) can be slow, costly, or even impossible, and often creates a large amount of drilling waste. In these situations, the well is normally drilled with traditional oil-based drilling fluids (OBFs), which use diesel oil or mineral oil as the base fluid. Because EPA rules require zero discharge of these wastes, they are either sent to shore for disposal in non-hazardous oil field waste (NOW) sites or injected into disposal wells.

Since about 1990, the oil and gas extraction industry has developed many new oleaginous (oil-like) base materials from which to formulate high performance drilling fluids. A general class of these are called the synthetic materials, such as the vegetable esters, poly alpha olefins, internal olefins, linear alpha olefins, synthetic paraffins, ethers, linear alkyl benzenes, and others. Other oleaginous materials have also been developed for this purpose, such as the enhanced mineral oils and non-synthetic paraffins. Industry developed SBFs with these synthetic and non-synthetic oleaginous materials as the base fluid to provide the drilling performance characteristics of traditional OBFs based on diesel and mineral oil, but with lower environmental impact and greater worker safety through lower toxicity, elimination of polynuclear aromatic hydrocarbons (PAHs), faster biodegradability, lower bioaccumulation potential, and, in some drilling situations, less drilling waste volume. EPA believes that this product substitution approach is an excellent example of pollution prevention that can be accomplished by the oil and gas industry.

EPA intends that these proposed regulations control the discharge of SBFs in a way that reflects application of appropriate levels of technology, while also encouraging their use as a replacement to the traditional mineral oil and diesel oil-based fluids. Based on EPA's information to date, the record indicates that use of SBFs and discharge of the cuttings waste with proper controls would overall be environmentally preferable to the use of OBFs. This is because OBFs are subject to zero discharge requirements, and thus, must be shipped to shore for land disposal or injected underground, resulting in higher air emissions, increased energy use, and increased land disposal of oily wastes. By contrast, the discharge of cuttings associated with SBFs would eliminate those impacts. At the same time EPA recognizes that the discharge of SBFs may have impacts to the receiving water. Because SBFs are water non-dispersible and sink to the seafloor, the primary potential environmental impacts are associated with the benthic community. EPA's information to date, including limited seabed surveys in the Gulf of Mexico, indicate that the effect zone of the discharge of certain SBFs is within a few hundred meters of the discharge point and may be significantly recovered in one to two years. EPA believes that impacts are primarily due to smothering by the drill cuttings, changes in sediment grain size and composition (physical alteration of habitat), and anoxia (absence of oxygen) caused by the decomposition of the organic base fluid. The benthic smothering and changes in grain size and composition from the cuttings are effects that are also associated with the discharge of WBFs and associated cuttings.

Based on the record to date, EPA finds that these impacts, which are believed to be of limited duration, are less harmful to the environment than the non-water quality environmental impacts associated with the zero discharge requirement applicable to OBFs. Compared to the zero discharge option EPA estimates that allowing discharge will reduce air emissions of the criteria air pollutants by 450 tons per year, decrease fuel use by 29,000 barrels per year of oil equivalent, and reduce the generation of oily drill cutting wastes requiring off-site disposal by 212 million pounds per year. In addition, EPA estimates that compliance with these proposed limitations would result in a yearly decrease in the discharge of 11.7 million pounds of toxic and nonconventional pollutants in the form of SBFs. These estimates are based on the current industry practice of discharging SBF-cuttings outside of 3 miles in the Gulf of Mexico and no discharge of SBFs in any other areas, including 3 miles offshore of California and in Cook Inlet, Alaska.

As SBFs came into commercial use, EPA determined that the current discharge monitoring methods, which were developed to control the discharge of WBFs, did not appropriately control the discharge of these new drilling fluids. Since WBFs disperse in water, oil contamination of WBFs with formation oil or other sources can be measured by the static sheen test, and any toxic components of the WBFs will disperse in the aqueous phase and be detected by the suspended particulate phase (SPP) toxicity test. With SBFs, which do not disperse in water but instead sink as a mass, formation oil contamination has been shown to be less detectible by the static sheen test. Similarly, the potential toxicity of the discharge is not apparent in the current SPP toxicity test.

EPA has therefore sought to identify methods to control the discharge of cuttings associated with SBFs (SBF-cuttings) in a way that reflects the appropriate level of technology. One way to do this is through stock limitations on the base fluids from which the drilling fluids are formulated. This would ensure that substitution of synthetic and other oleaginous base fluids for traditional mineral oil and diesel oil reflects the appropriate level of technology. In other words, EPA wants to ensure that only the SBFs formulated from the "best" base fluids are allowed for discharge. Parameters that distinguish the various base fluid are the polynuclear aromatic hydrocarbon (PAH) content, sediment toxicity, rate of biodegradation, and potential for bioaccumulation.

EPA also thinks that the SBF-cuttings should be controlled with discharge limitations, such as a limitation on the toxicity of the SBF at the point of discharge, and a limitation on the mass (as volume) or concentration of SBFs discharged. The latter type of limitation would take advantage of the solids separation efficiencies achievable with SBFs, and consequently minimize the

discharge of organic and toxic components. EPA believes that SBFs separated from drill cuttings should meet zero discharge requirements, as this is the current industry practice due to the value of these drilling fluids.

Thus, EPA is proposing limits appropriate to SBF-cuttings. EPA is proposing zero discharge of neat SBFs (not associated with cuttings), which reflects current practice. The new limitations applicable to cuttings contaminated with SBFs would be as follows:

Stock Limitations on Base Fluids: (BAT/NSPS).

- Maximum PAH content 10 ppm (wt. based on phenanthrene/wt. base fluid).
- Minimum rate of biodegradation (biodegradation equal to or faster than C_{16}–C_{18} internal olefin by solid phase test).
- Maximum sediment toxicity (as toxic or less toxic than C_{16}–C_{18} internal olefin by 10-day sediment toxicity test).

Discharge Limitations on Cuttings Contaminated with SBFs:

- No free oil by the static sheen test. (BPT/BCT/NSPS).
- Maximum formation oil contamination (95 percent of representative formation oils failing 1 percent by volume in drilling fluid). (BAT/NSPS).
- Maximum well-average retention of SBF on cuttings (percent base fluid on wet cuttings). (BAT/NSPS).

Discharges remain subject to the following requirements already applicable to all drilling waste discharges and thus these requirements are not within the scope of this rulemaking:

- Mercury limitation in stock barite of 1 mg/kg. (BAT/NSPS).
- Cadmium limitation in stock barite of 3 mg/kg. (BAT/NSPS).
- Diesel oil discharge prohibition. (BAT/NSPS).

EPA may require these additional or alternative controls as part of the discharge option based on method development and data gathering subsequent to today's notice:

- Maximum sediment toxicity of drilling fluid at point of discharge (minimum LC_{50}, mL drilling fluid/kg dry sediment by 10-day sediment toxicity test or amended test). (BAT/NSPS).
- Maximum aqueous phase toxicity of drilling fluid at point of discharge (minimum LC_{50} by SPP test or amended SPP test). (BAT/NSPS).
- Maximum potential for bioaccumulation of stock base fluid (maximum concentration in sediment-eating organisms). (BAT/NSPS).

EPA is also considering a zero discharge option in the event that EPA has an insufficient basis upon which to develop appropriate discharge controls for SBF-cuttings:

- Zero discharge of drill cuttings contaminated with SBFs and other non-aqueous drilling fluids. (BPT/BCT/BAT/NSPS).

While EPA is proposing limitations on these parameters today, many of the test methods that would be used to demonstrate attainment with the limitations are still under development at this time, or additional data needs to be gathered towards validating methods, proving the variability and appropriateness of the methods, and assessing appropriate limitations for the parameters. For example, as noted in the list above, EPA is considering limitations in addition, or as an alternative, to the limitations in today's proposal. The reason for this is that EPA has insufficient data at this time to determine how to best control toxicity and whether a bioaccumulation limitation is necessary to adequately control the SBF-cuttings wastestream.

EPA would prefer to control sediment toxicity at the point of discharge. While there is an EPA approved sediment toxicity test to do this, EPA has concerns about the uniformity of the sediment used in the toxicity test, the discriminatory power and variability of the test so applied. Since the test is 10 days long, it poses a practical problem for operators who would prefer to know immediately whether cuttings may be discharges. Applying EPA's existing sediment toxicity test to the base fluid as a stock limitation ameliorates these concerns, such that, at this stage of the development of the test, EPA thinks that it is more likely to be practically applied. As this would be the preferred method of control, EPA intends to continue research into the test as applied to the drilling fluid at the point of discharge. Industry also has been conducting research to develop a sediment toxicity test that may be applied to SBFs at the point of discharge with the cuttings. Further, EPA intends to perform research into the aquatic toxicity test to see if it can be used to adequately control the discharge through modification. EPA may then consider applying an aqueous phase toxicity test, either alone or in conjunction with a sediment toxicity test of either the stock base fluid or drilling fluid at the point of discharge.

In terms of the retention of SBF on cuttings, while EPA has enough information to propose a limitation, EPA is still evaluating methods to determine attainment of this limit. For the parameter of biodegradation, EPA is proposing a numerical limit, but the analytic method for measuring attainment of the limit has not yet been validated. EPA wishes to do additional studies to validate the method and provide public notice of any subsequently developed numerical limit.

Because EPA plans to gather significant additional information in support of the final rule, EPA intends to publish a supplemental notice for public comment providing the proposed limitations and specific test methods. These data gathering activities are summarized in Section V of today's notice. Section VI details the information gathered to support this selection of parameters, and the further information that EPA intends to gather to support the methods and limitations for the intended notice and subsequent final rule.

Therefore, the purpose of today's proposal is to request comment on the candidate requirements listed above, identify the additional work that EPA intends to perform towards promulgation of the limitations, and request comments and additional data towards the selection of parameters, methods and limitations development. EPA also intends that this proposal serve as guidance to permit writers such that the proposed methods can be incorporated into permits through best professional judgement (BPJ). Such permits can be used to gather supporting information towards selection of parameters, methods development, and appropriate limitations.

The current regulations establish the geographic areas where drilling wastes may be discharged: the offshore subcategory waters beyond 3 miles from the shoreline, and in Alaska offshore waters with no 3-mile restriction. The only coastal subcategory waters where drilling wastes may be discharged is in Cook Inlet, Alaska. EPA is retaining the zero discharge limitations in areas where discharge is currently prohibited and these requirements are not within the scope of this rulemaking.

EPA is limiting the scope of today's proposed rulemaking to locations where drilling wastes may be discharged because these are the only locations for which EPA has evaluated the non-water quality environmental impacts of zero discharge versus the environmental impacts of discharging drill cuttings associated with SBFs. For example, EPA has only assessed the non-water quality environmental impacts of zero discharge beyond three miles from shore. EPA expects these impacts to be less where

the wastes are generated closer to shore. In addition, EPA has not assessed the environmental effects of these discharges in coastal areas. The current zero discharge areas are more likely to be environmentally sensitive due to the presence of spawning grounds, wetlands, lower energy (currents), and more likely to be closer to recreational swimming and fishing areas. Further, dischargers are in compliance with the zero discharge requirement and have only expressed an interest in the use of these newer fluids where drilling wastes may be discharged today.

III. Background

A. Clean Water Act

1. Summary of Effluent Limitations Guidelines and Standards

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Direct dischargers must comply with effluent limitation guidelines and new source performance standards in National Pollutant Discharge Elimination System ("NPDES") permits; indirect dischargers must comply with pretreatment standards. EPA issues these guidelines and standards for categories of industrial dischargers based on the degree of control that can be achieved using various levels of pollution control technology. The guidelines and standards are summarized below:

a. *Best Practicable Control Technology Currently Available (BPT)—sec. 304(b)(1) of the CWA.*—Effluent limitations guidelines based on BPT apply to discharges of conventional, toxic, and non-conventional pollutants from existing sources. BPT guidelines are generally based on the average of the best existing performance by plants in a category or subcategory. In establishing BPT, EPA considers the cost of achieving effluent reductions in relation to the effluent reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors the EPA Administrator deems appropriate. CWA § 304(b)(1)(B). Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category.

b. *Best Conventional Pollutant Control Technology (BCT)—sec. 304(b)(4) of the CWA.*—The 1977 amendments to the CWA established BCT as an additional level of control for discharges of conventional pollutants from existing industrial point sources. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that BCT limitations be established in light of a two part "cost-reasonableness" test. EPA published a methodology for the development of BCT limitations which became effective August 22, 1986 (51 FR 24974, July 9, 1986).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demanding pollutants (measured as BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

c. *Best Available Technology Economically Achievable (BAT)—sec. 304(b)(2) of the CWA.*—In general, BAT effluent limitations guidelines represent the best available economically achievable performance of plants in the industrial subcategory or category. The CWA establishes BAT as a principal national means of controlling the direct discharge of toxic and nonconventional pollutants. The factors considered in assessing BAT include the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability across the subcategory. Generally, the achievability is determined on the basis of total costs to the industrial subcategory and their effect on the overall industry (or subcategory) financial health. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, such as product substitution, even when these technologies are not common industry practice. The CWA does not require a cost-benefit comparison in establishing BAT.

d. *New Source Performance Standards (NSPS)—section 306 of the CWA.*—NSPS are based on the best available demonstrated control technology (BADCT) and apply to all pollutants (conventional, nonconventional, and toxic). NSPS are at least as stringent as BAT. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Under NSPS, EPA is to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

e. *Pretreatment Standards for Existing Sources (PSES)—sec. 307(b) of the CWA—and Pretreatment Standards for New Sources (PSNS)—sec. 307(b) of the CWA.*—Pretreatment standards are designed to prevent the discharge of pollutants to a publicly-owned treatment works (POTW) which pass through, interfere, or are otherwise incompatible with the operation of the POTW. Since none of the facilities to which this rule applies discharge to a POTW, pretreatment standards are not being considered as part of this rulemaking.

f. *Best Management Practices (BMPs).*—Section 304(e) of the CWA gives the Administrator the authority to publish regulations, in addition to the effluent limitations guidelines and standards listed above, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines may contribute significant amounts of toxic and hazardous pollutants to navigable waters. Section 402(a)(1) also authorizes best management practices (BMPs) as necessary to carry out the purposes and intent of the CWA. See 40 CFR Part 122.44(k).

g. *CWA Section 304(m) Requirements.*—Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (i) reviewing and revising existing effluent limitations guidelines and standards and (ii) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised effluent guidelines for several industry

categories, including the oil and gas extraction industry. Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (NRDC *et al* v. Browner, Civ. No. 89–2980). On January 31, 1992, the Court entered a consent decree (the "304(m) Decree"), which establishes schedules for, among other things, EPA's proposal and promulgation of effluent guidelines for a number of point source categories. The most recent Effluent Guidelines Plan was published in the **Federal Register** on September 4, 1998 (63 FR 47285). This plan requires, among other things, that EPA propose the Synthetic-Based Drilling Fluids Guidelines by 1998 and promulgate the Guidelines by 2000.

2. Prior Federal Rulemakings and Other Notices

On March 4, 1993, EPA issued final effluent guidelines for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (58 FR 12454). The data and information gathering phase for this rulemaking thus corresponded to the introduction of SBFs in the Gulf of Mexico. Because of this timing, the range of drilling fluids for which data and information were available to EPA was limited to water-based drilling fluids (WBFs) and oil-based drilling fluids (OBFs) using diesel and mineral oil. Industry representatives, however, submitted information on SBFs during the comment period concerning environmental benefits of SBFs over OBFs and WBFs, and problems with false positives of free oil in the static sheen test applied to SBFs.

The requirements in the offshore rule applicable to drilling fluids and drill cuttings consist of mercury and cadmium limitations on the stock barite, a diesel oil discharge prohibition, a toxicity limitation on the suspended particulate phase (SPP) generated when the drilling fluids or drill cuttings are mixed in seawater, and no discharge of free oil as determined by the static sheen test.

While the SPP toxicity test and the static sheen test, and their limitations, were developed for use with WBF, the offshore regulation does not specify the types of drilling fluids and drill cuttings to which these limitations apply. Thus, under the rule, any drilling waste in compliance with the discharge limitations could be discharged. When the offshore rule was proposed, EPA believed that all drilling fluids, be they WBFs, OBFs, or SBFs, could be controlled by the SPP toxicity and static sheen tests. This is because OBFs based on diesel oil or mineral oil failed one or both of the SPP toxicity test and no free oil static sheen test. In addition, OBFs based on diesel oil were subject to the diesel oil discharge prohibition.

EPA thought SBFs could also be adequately controlled by the regulation based on comments received from industry. After the offshore rule was proposed, EPA received several industry comments which focused on the fact that the static sheen test could often be interpreted as giving a false positive for the presence of diesel oil, mineral oil, or formation hydrocarbons. For this reason, the industry commenters contended that SBFs should be exempt from compliance with the no free oil limitation required by the proposed offshore effluent guidelines.

In the final rulemaking in 1993, EPA's response to these comments was that the prohibition on discharges of free oil was an appropriate limitation for discharge of drill fluids and drill cuttings, including SBFs. While EPA agreed that some of the newer SBFs may be less toxic and more readily biodegradable than many of the OBFs, EPA was concerned that no alternative method was offered for determining compliance with the no free oil standard to replace the static sheen test. In other words, if EPA were to exclude certain fluids from the requirement, there would be no way to determine if at that particular facility, diesel oil, mineral oil or formation hydrocarbons were also being discharged.

Also in the final offshore rule, EPA encouraged the use of drilling fluids that were less toxic and biodegraded faster. EPA solicited data on alternative ways of monitoring for the no free oil discharge requirement, such as gas chromatography or other analytical methods. EPA also solicited information on technology issues related to the use of SBFs, any toxicity data or biodegradation data on these newer fluids, and cost information.

By focusing on the issue of false positives with the static sheen test, EPA interpreted the offshore effluent guidelines to mean that SBFs could be discharged provided they complied with the current discharge requirements. EPA did not think, however, that many, if any, SBFs would be able to meet the no free oil requirement.

In the final coastal effluent guidelines, EPA raised the issue of false negatives with the static sheen test as opposed to the issue of false positives raised during the offshore rulemaking. EPA had information indicating that the static sheen test does not adequately detect the presence of diesel, mineral, or formation oil in SBFs. In addition, EPA raised other concerns regarding the inadequacy of the current effluent guidelines to control of SBF wastestreams. Thus the final coastal effluent guidelines, published on December 16, 1996 (61 FR 66086), constitute the first time EPA identified, as part of a rulemaking, the inadequacies of the current regulations and the need for new BPT, BAT, BCT, and NSPS controls for discharges associated with SBFs.

The coastal rule adopted the offshore discharge requirements to allow discharge of drilling wastes in one geographic area of the coastal subcategory; Cook Inlet, Alaska, and prohibited the discharge of drilling wastes in all other coastal areas.

Due to the lack of information concerning appropriate controls, EPA could not provide controls specific to SBFs as a part of the coastal rule. However, the coastal rulemaking solicited comments on SBFs. In responding to these comments, EPA again identified certain environmental benefits of using SBFs, and stated that allowing the controlled discharge of SBF-cuttings would encourage their use in place of OBFs. EPA also raised the inadequacies of the current effluent guidelines to control the SBF wastestreams, and provided an outline of the parameters which EPA saw as important for adequate control. The inadequacies cited include the inability of the static sheen test to detect formation oil or other oil contamination in SBFs and the inability of the SPP toxicity test to adequately measure the toxicity of SBFs. EPA offered alternative tests of gas chromatography (GC) and a benthic toxicity test to verify the results of the static sheen and the suspended particulate phase (SPP) toxicity testing currently required. EPA also mentioned the potential need for controls on the base fluid used to formulate the SBF, based on one or more of the following parameters: PAH content, toxicity (preferably sediment toxicity), rate of biodegradation, and bioaccumulation potential.

The final coastal rule also incorporated clarifying definitions of drilling fluids for both the offshore and coastal subcategories to better differentiate between the types of drilling fluids. The rule provided guidance to permit writers needing to write limits for SBFs on a best professional judgement (BPJ) basis as using GC as a confirmation tool to assure the absence of free oil in addition to meeting the current no free oil (static sheen), toxicity, and barite limits on mercury and cadmium. EPA

recommended Method 1663 as described in EPA 821–R–92–008 as a gas chromatograph with flame ionization detection (GC/FID) method to identify an increase in n-alkanes due to crude oil contamination of the synthetic materials coating the drill cuttings. Additional tests, such as benthic toxicity conducted on the synthetic material prior to use or whole SBF prior to discharge, were also suggested for controlling the discharge of cuttings contaminated with drilling fluid.

EPA stated intentions to evaluate further the test methods for benthic toxicity and determine an appropriate limitation if this additional test is warranted. In addition, test methods and results for bioaccumulation and biodegradation, as indications of the rate of recovery of the cuttings piles on the sea floor, were to be evaluated. EPA recognized that evaluations of such new testing protocols may be beyond the technical expertise of individual permit writers, and so stated that these efforts would be coordinated as a continuing effluent guidelines effort. Today's proposal is a result of these efforts.

B. Permits

Four EPA Regions currently issue or review permits for offshore and coastal oil and gas well drilling activities in areas where drilling wastes may be discharged: Region 4 in the Eastern Gulf of Mexico (GOM), Region 6 in the Central and Western GOM, Region 9 in offshore California, and Region 10 in offshore and Cook Inlet, Alaska. Permits in Regions 4, 9 and 10 never allowed the discharge of SBFs, and those three Regions are currently preparing final general permits that either specifically disallow SBF discharges until adequate discharge controls are available to control the SBF wastestreams, or allow a limited use of SBF to facilitate information gathering.

Discharge of drill cuttings contaminated with SBF (SBF-cuttings) has occurred under the Region 6 offshore continental shelf (OCS) general permit issued in 1993 (58 FR 63964), and the general permit reissued on November 2, 1998 (63 FR 58722) again does not specifically disallow the continued discharge of SBF-cuttings. The reason for these differences between Region 6 and the other EPA Regions relates to the timing of the 1993 Region 6 general permit and the issues raised in comments during the issuance of that permit.

The previous individual and general permits of Regions 4, 9 and 10 were issued long before SBFs were developed and used. In Region 6, however, the first SBF well was drilled in June of 1992 and the development of the Region 6 OCS general permit, published December 3, 1993 (58 FR 63964), thus corresponded to the introduction of SBF use in the GOM. After proposal of this permit, industry representatives commented that the no free oil limitation as measured by the static sheen test should be waived for SBFs, due to the occurrence of false positives. They contended that a sheen was sometimes perceived when the SBF was known to be free of diesel oil, mineral oil or formation oil. These comments were basically the same as those submitted as part of the offshore rulemaking, which occurred in the same time frame. EPA responded as it had in the offshore rulemaking, maintaining the static sheen test until there existed a replacement test to determine the presence of free oil. EPA stated that if the current discharge requirements could be met then the drilling fluid and associated wastes could be discharged. This response indicated EPA's position that SBF drilling wastes could be discharged as long as the discharge met permit requirements. But again, in the context of these comments, EPA did not expect that many, if any SBFs, would be able to meet the static sheen requirements.

In addition to the requirements of the offshore guidelines, the Region 6 OCS general permit also prohibited the discharge of oil-based and inverse emulsion drilling fluids. Although SBFs are, in chemistry terms, inverse emulsion drilling fluids, the definition in the permit limited the term "inverse emulsion drilling fluids" to mean "an oil-based drilling fluid which also contains a large amount of water." Further, the permit provides a definition for oil-based drilling fluid as having "diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase." Since the SBFs clearly do not have diesel or mineral oil as the continuous phase, there was a question of whether synthetic base fluids (and more broadly, other oleaginous base fluids) used to formulate the SBFs are "some other oil." With consideration of the intent of the inverse emulsion discharge prohibition, and the known differences in polynuclear aromatic hydrocarbon content, toxicity, and biodegradation between diesel and mineral oil versus the synthetics, EPA determined that SBFs were not inverse emulsion drilling fluids as defined in the Region 6 general permit. This determination is exemplified by the separate definitions for OBFs and SBFs introduced with the Coastal Effluent Guidelines (see 61 FR 66086, December 16, 1996).

In late 1998 and early 1999, all four Regions are (re)issuing their general permits for offshore (Regions 4, 6 and 9) and coastal (Region 10) oil and gas wells. Once the effluent guidelines or guidance becomes available, EPA intends to reopen the permits to add requirements that adequately control SBF drilling wastes.

EPA intends for today's proposal to act as guidance such that the Regions do not have to wait until issuance of a final rule planned for December 2000, but may propose to add the appropriate discharge controls through best professional judgement (BPJ). In this manner, the controlled discharge of SBF may be used to further aid EPA in gathering information subsequent to today's proposal.

C. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990) "declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *" (Sec. 6602; 42 U.S.C. 13101 (b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. The PPA directs the Agency to, among other things, "review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction" (Sec. 6604; 42 U.S.C. 13103(b)(2)). EPA reviewed this effluent guideline for its incorporation of pollution prevention.

According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants, or residuals at the source, usually within a process. The term source reduction "include[s] equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. The term 'source reduction.' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a

process or activity which itself is not integral to or necessary for the production of a product or the providing of a service." 42 U.S.C. 13102(5). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

In this proposed rule, EPA supports pollution prevention technology by encouraging the use of SBFs based on certain synthetic materials and other similarly performing materials in place of traditional oil-based drilling fluids based on diesel oil and mineral oil. The waste generated from SBFs is anticipated to have lower toxicity, lower bioaccumulation potential, faster biodegradation, and elimination of polynuclear aromatic hydrocarbons, including those which are priority pollutants. With these improved characteristics, and to encourage their use in place of OBFs, EPA is proposing to allow the controlled on-site discharge of the cuttings associated with SBF. Use of SBF in place of OBF will eliminate the need to barge to shore or inject oily waste cuttings, reducing fuel use, air emissions, and land disposal. It also eliminates the risk of OBF and OBF-cuttings spills. In addition, the proposed regulatory option includes efficient closed-loop recycling systems to reduce the quantity of SBF discharged with the drill cuttings. A discussion of this pollution prevention technology is contained in Section VI of this notice and in the Development Document.

IV. Description of Process and Well Drilling Activities

A. Well Drilling Process Description

Drilling occurs in two phases: exploration and development. Exploration activities are those operations involving the drilling of wells to locate hydrocarbon bearing formations and to determine the size and production potential of hydrocarbon reserves. Development activities involve the drilling of production wells once a hydrocarbon reserve has been discovered and delineated.

Drilling for oil and gas is generally performed by rotary drilling methods which use a circularly rotating drill bit that grinds through the earth's crust as it descends. Drilling fluids are pumped down through the drill bit via a pipe that is connected to the bit, and serve to cool and lubricate the bit during drilling. The rock chips that are generated as the bit drills through the earth are termed drill cuttings. The drilling fluid also serves to transport the drill cuttings back up to the surface through the space between the drill pipe and the well wall (this space is termed the annulus), in addition to controlling downhole pressure and stabilizing the well bore.

As drilling progresses, large pipes called "casing" are inserted into the well to line the well wall. Drilling continues until the hydrocarbon bearing formations are encountered. In areas where drilling fluids and drill cuttings are allowed to be discharged under the current regulations, well depths range from approximately 4,000 to 12,000 feet deep, and it takes approximately 20 to 60 days to complete drilling.

On the surface, the drilling fluid and drill cuttings undergo an extensive separation process to remove as much fluid from the cuttings as possible. The fluid is then recycled into the system, and the cuttings become a waste product. The drill cuttings retain a certain amount of the drilling fluid that are discharged or disposed with the cuttings. Drill cuttings are discharged by the shale shakers and other solids separation equipment. Drill cuttings are also cleaned out of the mud pits and from the solid separation equipment during displacement of the drilling fluid system. Intermittently during drilling, and at the end of the drilling process, drilling fluids may become wastes if they can no longer be reused or recycled.

In the relatively new area of deepwater drilling, generally greater than 3000′ water depth, new drilling methods are evolving which can significantly improve drilling efficiencies and thereby reduce the volume of drilling fluid discharges as well as reduce non-water quality effects of fuel and steel consumption and air emissions. Subsea drilling fluid boosting, referred to as "subsea pumping", is one such technology. Rotary drilling methods are generally performed as described with the exception that the drilling fluid is energized or boosted by use of a pump at or near the seafloor. By boosting the drilling fluid, the adverse effect on the wellbore caused by the drilling fluid pressure from the seafloor to the surface is eliminated, thereby allowing wells to be drilled with as much as a 50% reduction in the number of casing strings generally required to line the well wall. Wells are drilled in less time, including less trouble time. To enable the pumping of drilling fluids and cuttings to the surface, some drill cuttings, larger than approximately one-fourth of an inch, are separated from the drilling fluid at the seafloor since these cuttings cannot reliably be pumped to the surface. The drill cuttings which are separated at the seafloor are discharged through an eductor hose at the seafloor within a 300′ radius of the well site. For purposes of monitoring, representative samples of drill cuttings discharged at the seafloor can be transported to the surface and separated from the drilling fluid in a manner similar to that employed at the seafloor. The drilling fluid, which is boosted at the seafloor and transports most of the drill cuttings back to the surface, is processed as described in the general rotary drilling methods described above in this section.

Once the target formations have been reached, and a determination made as to which have commercial potential, the well is made ready for production by a process termed "completion." Completion involves cleaning the well to remove drilling fluids and debris, perforating the casing that lines the producing formation, inserting production tubing to transport the hydrocarbon fluids to the surface, and installing the surface wellhead. The well is then ready for production, or actual extraction of hydrocarbons.

B. Location and Activity

This proposed regulation would establish discharge limitations for SBFs in areas where drilling fluids and drill cuttings are allowed for discharge. These discharge areas are the offshore waters beyond 3 miles from shore except the offshore waters of Alaska which has no 3 mile discharge restriction, and the coastal waters of Cook Inlet, Alaska. Drilling is currently active in three regions in these discharge areas: (i) the offshore waters beyond three miles from shore in the Gulf of Mexico (GOM), (ii) offshore waters beyond three miles from shore in California, and (iii) the coastal waters of Cook Inlet, Alaska. Offshore Alaska is the only other area where drilling is active and effluent guidelines allows discharge. However, drilling wastes are not currently discharged in the Alaska offshore waters.

Among these three areas, most drilling activity occurs in the GOM, where 1,302 wells were drilled in 1997, compared to 28 wells drilled in California and 7 wells drilled in Cook Inlet. In the GOM, over the last few years, there has been high growth in the number of wells drilled in the deepwater, defined as water greater than 1,000 feet deep. For example, in 1995, 84 wells were drilled in the deepwater, comprising 8.6 percent of all GOM wells drilled that year. By 1997, that number increased to 173 wells drilled and comprised over 13 percent of all GOM

wells drilled. The increased activity in the deepwater increases the usefulness of SBFs. Operators drilling in the deepwater cite the potential for riser disconnect in floating drill ships, which favors SBF over OBF; higher daily drilling cost which more easily justifies use of more expensive SBFs over WBFs; and greater distance to barge drilling wastes that may not be discharged (i.e., OBFs).

C. Drilling Wastestreams

Drilling fluids and drill cuttings are the most significant wastestreams from exploratory and development well drilling operations. This rule proposes limitations for the drilling fluid and cuttings wastestream resulting when SBFs or other non-aqueous drilling fluids are used. All other wastestreams and drilling fluids have current applicable limitations which are outside the scope of this rulemaking. A summary of the characteristics of these wastes is presented in Section VI of this notice. A more detailed discussion of the origins and characteristics of these wastes is included in the Development Document.

V. Summary of Data Gathering Efforts

A. Expedited Guidelines Approach

This regulation is being developed using an expedited rulemaking process. This process relies on stakeholder support to develop the initial technology and regulatory options. At various stages of information gathering, industry, EPA and other stakeholders present and discuss their preferred options and identify differences in opinion. This proposal, as part of the expedited process, is being presented today in a shorter developmental time period, and with less information than a typical effluent guidelines proposal. The proposed rule is then a tool to identify the candidate requirements, and request comments and additional data. EPA plans to continue this expedited rulemaking process of relying on industry, environmental groups, and other stakeholder support for the further regulatory development after proposal.

EPA encourages full public participation in developing the final SBF Guidelines. This expedited rulemaking process succeeds with more open communication between EPA, the regulated community, and other stakeholders, and relies less on formal data and information gathering mechanisms. The expedited guidelines approach is suitable when EPA, industry, and other stakeholders have a common goal on the structure of the limitations and standards. EPA believes this is the case with the SBF rulemaking; EPA is proposing to allow the controlled discharge of the SBF-cuttings wastestream to encourage the use and further development of this pollution prevention technology. Based on information to date, EPA believes that this option has better environmental results than the current use and subsequent land disposal or injection of OBFs. Through the exchange of information among the stakeholders, EPA understands the industry's interest in discharging the SBF-cuttings wastestream because discharge of SBFs is more likely to be cost effective as a replacement to the diesel and mineral oil based OBFs. EPA was able to accommodate both environmental benefits and business interests in today's proposal.

Throughout regulatory development, EPA has worked with representatives from the oil and gas industry and several trade associations, including the National Ocean Industries Association (NOIA) and the American Petroleum Institute (API), SBF vendors, solids control equipment vendors, the U.S. Department of Energy, the U.S. Department of Interior Minerals Management Service, the Texas Railroad Commission, and research and regulatory bodies of the United Kingdom and Norway, to develop effluent limitations guidelines and standards that represent the appropriate level of technology (e.g., BAT). The Agency also discussed the progress of the rulemaking with the Natural Resources Defense Council (NRDC) and invited its participation. The Cook Inlet Keepers are participating in the rulemaking as well.

As part of the expedited approach to this rulemaking, EPA has chosen not to gather data using the time consuming approach of a Clean Water Act section 308 questionnaire, but rather by using data submitted by industry, vendors, academia, and others, along with data EPA can develop in a limited period of time. Because all of the facilities affected by this proposal are direct dischargers, the Agency did not conduct an outreach survey to POTWs.

Subsequent to today's proposal, EPA intends to continue its data gathering efforts for support of the final rule. These continuing efforts are discussed below in conjunction with the information already gathered. Because of these continuing information gathering activities, EPA expects that it will publish a subsequent notice of any data either generated by EPA or submitted after this proposal that will be used to develop the final rule.

B. Identification of Information Needs

As part of the final coastal effluent guidelines, published on December 16, 1996 (61 FR 66086), EPA stated that appropriate and adequate discharge controls would be necessary to allow the discharge of SBF-cuttings under BPT, BAT, BCT, and NSPS in NPDES permits. As detailed in Section III of today's notice, in the final coastal effluent guidelines EPA recommended gas chromatography (GC) as a test for formation oil contamination, and a sediment toxicity test as a replacement for the suspended particulate phase (SPP) toxicity testing currently required. EPA also mentioned the potential need for controls on the base fluid used to formulate the SBF, controlling one or more of the following parameters: PAH content, toxicity (preferably sediment toxicity), rate of biodegradation, and bioaccumulation potential. EPA summarized the information available from seabed surveys at SBF-cuttings discharge sites.

Subsequent to the publication of the final coastal effluent guidelines, EPA continued research into the appropriate controls for the SBF-cuttings wastestream, and presented its findings to stakeholders at meetings held in Dallas, Texas, on February 19, 1998, and in Houston on May 8 and 9, 1997. EPA also presented data and information requirements to develop adequate and appropriate controls for the SBF-cuttings wastestream at four conferences, in Aberdeen, Scotland, on June 23 and 24, 1997, in Houston, Texas on February 9, 1998, again in Aberdeen Scotland on June 18 and 19, 1998, and at the Minerals Management Service Information Transfer Meeting held in New Orleans, Louisiana on December 18, 1997. The conferences in Scotland were germane because of the work that the Scottish Office Agriculture, Environment and Fisheries Department had performed on sediment toxicity testing, biodegradability testing, and seabed surveys at SBF-cuttings and OBF-cuttings discharge sites. This detailed level of work has not been performed in the United States.

EPA conducted literature reviews and in September 1997 published documents entitled "Bioaccumulation of Synthetic-Based Drilling Fluids," "Biodegradation of Synthetic-Based Drilling Fluids," "Assessment and Comparison of Available Drilling Waste Data from Wells Drilled Using Water Based Fluids and Synthetic Based Fluids," and "Seabed Survey Review and Summary." The purpose of these documents was to help direct EPA's and other stakeholder's research efforts in

defining BPT, BAT, BCT, and NSPS, and address CWA 403(c) requirements for SBFs.

Industry stakeholders, with the motivation of having SBFs addressed in NPDES permits that allow the discharge of SBF-cuttings, assisted EPA in the development of methods and data gathering to describe currently available technologies. Thus, by means of meetings, conferences, and other stakeholder meetings, EPA detailed the methods and/or types of information required in order to support BPT, BCT, BAT, and NSPS controls in NPDES permits. The past and anticipated future efforts by various stakeholder groups and the EPA are presented below.

C. Stakeholder Technical Work Groups

In order to concentrate efforts on certain technical issues, in May of 1997 industry prepared studies on the following subjects: (a) the determination of formation oil contamination in SBFs, (b) toxicity testing of SBFs and base fluids, (c) quantity of SBF discharged (retention of base fluid on cuttings), and (d) seabed surveys at SBF-cuttings discharge sites. Industry representatives formed work groups to address these issues. The sections below describe their work.

1. Formation Oil Contamination Determination (Analytical)

The goal of this work group was to define the monitoring and compliance method to determine crude oil (or other oil) contamination of SBF-cuttings. The work group has issued several reports concerning the static sheen test, and developed two replacement tests for formation oil contamination, one based on fluorescence and the other on gas chromatography with mass spectroscopy detection (GC/MS).

On September 28, 1998, the workgroup published the final draft of the Phase I report entitled "Evaluation of Static Sheen Test for Water-based Muds, Synthetic-based Muds and Enhanced Mineral Oils. The conclusions of the report are that the static sheen test is not a good indicator of oil contamination in SBFs, and that in WBFs formation oil contamination is often detected at 1.0 percent and sometimes as low as 0.5 percent.

On October 21, 1998, the work group published its final draft to the Phase II report entitled "Survey of Monitoring Approaches for the Detection of Oil Contamination in Synthetic-based Drilling Muds." This document lists thirteen methods that the work group considered as a replacement to the static sheen test. From these thirteen, EPA selected the reverse phase extraction method to be used on offshore drilling sites, and the GC/MS method for onshore baseline measurements.

On November 16, 1998, the work group published its final draft of the Phase III report entitled "Laboratory Evaluation of Static Sheen Replacements: RPE Method and GC/MS Method." This report provides the methods. The future work of the Analytical Work Group is to validate these methods.

2. Retention on Cuttings

The goals of this work group were to determine the SBF retention on cuttings using the equipment currently used in the Gulf of Mexico (GOM), and investigate ways of determining the total quantity of SBF discharged when drilling a well. To address the first goal, API reported data from GOM wells on the amount of SBF base fluid retained on drill cuttings. The results were published on August 29, 1997, in a report entitled "Retention of Synthetic-Based Drilling Material on Cuttings Discharged to the Gulf of Mexico."

To address the second goal of determining the total quantity of SBF discharged, the work group has created a spreadsheet which records information allowing two independent analyses of the SBF quantity discharged. One method is based on a mass balance of the SBF, and the other is based on retort measurements of the cuttings wastestream. Both methods of analyses carry certain benefits and drawbacks. By comparing the results from the two analyses, EPA intends to select one method as preferred for the final rule. The work group is currently gathering these comparative data. The preferred method will then be validated for inclusion in the final rule. At this time, EPA thinks that the retort measurement is preferable to implement, and therefore it is the method proposed today. As further information is gathered, however, EPA may decide that attainment of the limit in the final rule is to be determined by the mass balance method.

3. Toxicity Testing

The goal of this work group was to define the toxicity test for monitoring and compliance of SBF-cuttings. EPA has indicated that the test could be performed on either the stock base fluid, or the SBF separated from the cuttings at the point of discharge.

Through data generated by members of the work group, the work group has shown that SBF and synthetic base fluid toxicity are mainly evident in the sedimentary phase. When measured in the suspended particulate phase (SPP) in the current Mysid shrimp toxicity test, the toxicity is not evident and the results are highly variable, and are easily affected by the intensity of stirring and emulsifier content of the SBF.

Having shown that an aqueous phase test is unlikely to yield satisfactory results with SBFs and associated base fluids, the work group has been investigating sediment toxicity tests, mainly the 10-day sediment toxicity test with amphipods (ASTM E1367–92). To effect this work, API funded a currently ongoing contract to evaluate four test methods: 10-day acute sediment toxicity test with (a) *Ampelisca abdita*, (b) *Leptocheirus plumulosus*, and (c) *Mysidopsis bahia*, and (d) *microtox tests*. Main issues that the work group hopes to resolve are discriminatory power of the method and variability in results. Since the API contract work began, the work group has considered many variables to the sediment toxicity test to ameliorate these problems. The work group is investigating: organisms other than amphipods, such as Mysid shrimp and polychaetes; shortening the length of the test, *i.e.* from 10 days to 4 days; and the use of formulated sediments in place of natural sediments. Work continues to determine the most appropriate method to evaluate the toxic effect of the SBF discharged with drill cuttings.

4. Environmental Effects/Seabed Surveys

The goal of this work group was to determine the spacial and temporal recovery of the seafloor at sites where SBF-cuttings had been discharged, and compare these effects with effects caused by the discharge of WBF and WBF-cuttings discharge.

The work group performed a five-day screening cruise at three offshore oil platforms where SBFs has been used and SBF-cuttings discharged for the purpose of gathering preliminary environmental effects information. This screening cruise, and its planning, was performed in collaboration with EPA and with the use of the EPA Ocean Survey Vessel Peter W. Anderson. The study conducted a preliminary evaluation of offshore discharge locations and determine the areal extent of observable physical, chemical, and biological impact. EPA intended that this base information would provide (1) information relative to the immediate concerns on impacts, and (2) valuable preliminary information for designing future offshore assessments.

The study provided preliminary information on cuttings deposition, SBF content of nearfield marine sediments,

anoxia in nearfield sediments, qualitative information on biological communities in the area, and toxicity of field collected sediments. The results of this survey were published on October 21, 1998, in a report entitled "Joint EPA/Industry Screening Survey to Assess the Deposition of Drill Cuttings and Associated Synthetic Based Mud on the Seabed of the Louisiana Continental Shelf, Gulf of Mexico."

The ongoing effort of the work group is to address CWA 403(c) permit requirements for seabed surveys by organizing collaborative industry seabed surveys at selected SBF-discharge sites.

D. EPA Research on Toxicity, Biodegradation, Bioaccumulation

Subsequent to today's proposal, EPA plans to compare the relative environmental effects of SBFs and OBFs in terms of (i) sediment and aquatic toxicity, (ii) biodegradation, and (iii) bioaccumulation. The methods development to occur as part of this research, and the resulting data, are intended to be used towards the final stock base fluid limitations and SBF discharge limitations proposed today.

The base fluids to consider in the sediment toxicity, biodegradation, and bioaccumulation tests are the full range of synthetic and oleaginous base fluids. These include the synthetic oils such as vegetable esters, linear alpha olefins, internal olefins and poly alpha olefins, the traditional base oils of mineral oil and diesel oil, and the newer more refined and treated oils such as enhanced mineral oil and paraffinic oils. These oily base fluids are common in that they are immiscible (do not mix) with water, and form drilling fluids that do not disperse in water.

The outline of this research plan in terms of goals and considerations is as follows:

- For sediment toxicity, this plan intends to investigate the effects of base fluid, whole mud formulation, and crude oil contamination on sediment toxicity as measured by the 10-day acute sediment toxicity test performed in natural sediment with *Ampelisca abdita and Leptocheirus plumulosus.* The goals of this research are threefold:
- Amend the EPA 10-day acute sediment toxicity test for application to SBFs and base fluids.
- Determine the LC_{50} values for the base fluids by this method, potentially for determination of stock limitations values.
- Determine the effects of mud formulation and crude oil contamination on sediment toxicity by maintaining the base fluid constant. The purpose is to investigate the parameters which affect toxicity in SBFs.
- For aqueous phase toxicity, this plan intends to investigate if any correlation exists between aqueous phase toxicity to Mysid shrimp and sediment toxicity.
- For biodegradation, this plan intends to perform the solid phase test or modified solid phase test as developed by the Scottish Office Agriculture, Environment and Fisheries Department for a range of oily base fluids, and environments of the Gulf of Mexico, Offshore California, Cook Inlet Alaska, and Offshore Alaska.
- For bioaccumulation, this plan intends to test bioconcentration in *Macoma nasuta* and *Nereis virens.*

The research concerning sediment toxicity testing that API supports is seen as complementary to, and not overlapping with, this EPA plan. API's goal is to identify a bioassay test organism and protocol to accurately and reliably evaluate the toxicity of SBF and OBF in sediments. The API research is concentrating efforts on using both formulated and natural sediments, and possibly a test period shorter than the standard 10-day EPA method. Thus, while EPA is focusing on investigating the parameters that affect toxicity of SBFs, the API research is looking ahead to discharge monitoring requirements with the goal of identifying an appropriate and reliable test method.

E. EPA Investigation of Solids Control Technologies for Drilling Fluids

EPA has contacted numerous vendors of solids control equipment and requested information on performance and cost of the various solids separation units available. EPA has also received information from operators data showing the performance of the vibrating centrifuge technology. As part of its investigation of solids control equipment used on offshore drilling platforms, EPA visited Amoco's Marlin deepwater drilling project aboard the Amirante semi-submersible drilling platform located in Viosca Knoll Block 915 approximately 100 miles south of Mobile, Alabama. The primary purpose of this site visit was to observe the demonstration of the vibrating centrifuge drilling fluid recovery device heretofore used only on North Sea drilling projects. The device reportedly can produce drill cuttings containing less than 6 percent by volume synthetic drilling fluid on wet cuttings when well operated and maintained and used in conjunction with shale shakers that are well operated and maintained. The information gathered by the EPA during this trip is described in a report dated August 7, 1998, entitled "Demonstration of the 'Mud 10' Drilling Fluid Recovery Device at the Amoco Marlin Deepwater Drill Site."

F. Assistance From Other State and Federal Agencies

The United States Department of Interior Minerals Management Service (MMS) maintains data of the number of wells drilled in offshore waters under MMS jurisdiction, i.e., those that are not territorial seas. In general, this covers the offshore waters beyond 3 miles from the shoreline, which corresponds with the area were drilling wastes are currently allowed for discharge and so is the same area affected by this rule. MMS supplied data for years 1995, 1996, and 1997 of the number of wells drilled in the GOM and offshore California according to depth (less than or greater than 1000 feet water depth) and type of well (exploratory or development). Since Texas jurisdiction over oil and gas leases extends out to 10 miles, information was requested and received from the Texas Railroad Commission regarding the number of wells drilled in Texas territorial seas from 3 miles to 10 miles from shore. This is the area in the GOM that is affected by this proposed rule, but not included in the MMS data.

Information concerning the number of wells drilled in the state waters of Upper Cook Inlet, Alaska, was gathered from the Alaska Oil and Gas Commission. The Alaska Oil and Gas Commission provided information of the number of wells drilled in Upper Cook Inlet for the years 1995, 1996, and 1997, according to type of well as exploratory or development.

MMS also assisted in developing the cruise plan of the screening seabed survey mentioned in section V.C.4 above.

The United States Department of Energy (DOE) has been active in assisting EPA to gather information concerning drilling waste disposal methods and costs, and type of fuel used on offshore platforms. In November 1998 Argonne National Laboratory, under contract with DOE, published the results of this information gathering effort in a report entitled "Data Summary of Offshore Drilling Waste Disposal Practices."

Also under contract with DOE, Brookhaven National Laboratory developed a comparative risk assessment for the discharge of SBFs. The risk assessment, published November 1998, is entitled "Framework for a Comparative Environmental Assessment of Drilling Fluids."

VI. Development of Effluent Limitations Guidelines and Standards

A. Waste Generation and Characterization

Drill cuttings are produced continuously at the bottom of the hole at a rate proportionate to the advancement of the drill bit. These drill cuttings are carried to the surface by the drilling fluid, where the cuttings are separated from the drilling fluid by the solids control system. The drilling fluid is then sent back down hole, provided it still has characteristics to meet technical requirements. Various sizes of drill cuttings are separated by the solids separations equipment, and it is necessary to remove the fines (small sized cuttings) as well as the large cuttings from the drilling fluid to maintain the required flow properties.

SBFs, used or unused, are considered a valuable commodity and not a waste. It is industry practice to continuously reuse the SBF while drilling a well interval, and at the end of the well, to ship the remaining SBF back to shore for refurbishment and reuse. Compared to WBFs, SBFs are relatively easy to separate from the drill cuttings because the drill cuttings do not disperse in the drilling fluid to the same extent. With WBF, due to dispersion of the drill cuttings, drilling fluid components often need to be added to maintain the required drilling fluid properties. These additions are often in excess of what the drilling system can accommodate. The excess "dilution volume" of WBF is a resultant waste. This dilution volume waste does not occur with SBF. For these reasons, SBF is only discharged as a contaminant of the drill cuttings wastestream. It is not discharged as neat drilling fluid (drilling fluid not associated with cuttings).

The top of the well is normally drilled with a WBF. As the well becomes deeper, the performance requirements of the drilling fluid increase, and the operator may, at some point, decide that the drilling fluid system should be changed to either a traditional OBF based on diesel oil or mineral oil, or an SBF. The system, including the drill string and the solids separation equipment, must be changed entirely from the WBF to the SBF (or OBF) system, and the two do not function as a blended system. The entire system is either (a) a water dispersible drilling fluid such as a WBF, or (b) a water non-dispersible drilling fluid such as an SBF. The decision to change the system from a WBF water dispersible system to an OBF or SBF water non-dispersible system depends on many factors including:

- The operational considerations, i.e. rig type (risk of riser disconnects with floating drilling rigs), rig equipment, distance from support facilities,
- The relative drilling performance of one type fluid compared to another, e.g., rate of penetration, well angle, hole size/casing program options, horizontal deviation,
- The presence of geologic conditions that favor a particular fluid type or performance characteristic, e.g., formation stability/sensitivity, formation pore pressure vs. fracture gradient, potential for gas hydrate formation,
- Drilling fluid cost—base cost plus daily operating cost,
- Drilling operation cost—rig cost plus logistic and operation support,
- Drilling waste disposal cost.

Industry has commented that while the right combination of factors that favor the use of SBF can occur in any area, they most frequently occur with "deep water" operations. This is due to the fact that these operations are higher cost and can therefore better justify the higher initial cost of SBF use.

The volume of cuttings generated while drilling the SBF intervals of a well depends on the type of well, development or production, and the water depth. According to analyses of the model wells provided by industry representatives, wells drilled in less than 1,000 feet of water are estimated to generate 565 barrels for a development well and 1,184 barrels for an exploratory well. Wells drilled in water greater than 1,000 feet deep are estimated to generate 855 barrels for a development well, and 1,901 for an exploratory well. These values assume 7.5 percent washout, based on the rule of thumb reported by industry representatives of 5 to 10 percent washout when drilling with SBF. Washout is caving in or sluffing off of the well bore. Washout, therefore, increases hole volume and increases the amount of cuttings generated when drilling a well. Assuming no washout, the values above become, respectively, 526, 1,101, 795, and 1,768, barrels.

The drill cuttings range in size from large particles on the order of a centimeter in size to small particles a fraction of a millimeter in size, called fines. As the drilling fluid returns from downhole laden with drill cuttings, it normally is first passed through primary shale shakers which remove the largest cuttings, ranging in size of approximately 1 to 5 millimeters. The drilling fluid may then be passed over secondary shale shakers to remove smaller drill cuttings. Finally, a portion or all of the drilling fluid may be passed through a centrifuge or other shale shaker with a very fine mesh screen, for the purpose of removing the fines. It is important to remove fines from the drilling fluid in order to maintain the desired flow properties of the active drilling fluid system. Thus, the cuttings wastestream normally consists of larger cuttings from the primary shale shakers and fines from a fine mesh shaker or centrifuge, and may also consist of smaller cuttings from a secondary shale shaker. Before being discharged, the larger cuttings are sometimes sent through another separation device in order to recover additional drilling fluid.

The recovery of SBF from the cuttings serves two purposes. The first is to deliver drilling fluid for reintroduction to the active drilling fluid system, and the second is to minimize the discharge of SBF. The recovery of drilling fluid from the cuttings is a conflicting concern, because as more aggressive methods are used to recover the drilling fluid from the cuttings, the cuttings tend to break down and become fines. The fines are not only more difficult to separate from the drilling fluid, but as stated above they also deteriorate the properties of the drilling fluid. Increased recovery from the cuttings is more problematic for WBF than with SBF because the WBF water-wets the cuttings which encourages the cuttings to disperse and spoil the drilling fluid properties. Therefore, compared to WBF, more aggressive methods of recovering SBF from the cuttings wastestream are practical. These more aggressive methods may be justified for cuttings associated with SBF so as to reduce the discharge of SBF. This, consequently, will reduce the potential to cause anoxia (lack of oxygen) in the receiving sediment as well as reduce the quantity of toxic organic and metallic components of the drilling fluid discharged.

Drill cuttings are typically discharged continuously as they are separated from the drilling fluid in the solids separation equipment. The drill cuttings will also carry a residual amount of adhered drilling fluid. TSS makes up the bulk of the pollutant loadings, and is comprised of two components: the drill cuttings themselves, and the solids in the adhered drilling fluid. The drill cuttings are primarily small bits of stone, clay, shale, and sand. The source of the solids in the drilling fluid is primarily the barite weighting agent, and clays which are added to modify the viscosity. Because the quantity of TSS is so high and consists of mainly large particles which settle quickly, discharge of SBF drill cuttings can cause benthic

smothering and/or sediment grain size alteration resulting in potential damage to invertebrate populations and alterations in benthic community structure.

Additionally, environmental impacts can be caused by toxic, conventional, and nonconventional pollutants adhering to the solids. The adhered SBF drilling fluid is mainly composed, on a volumetric basis, of the synthetic material, or more broadly speaking, oleaginous material. The oleaginous material may also be toxic or bioaccumulate, and it may contain priority pollutants such as polynuclear aromatic hydrocarbons (PAHs). This oleaginous material may cause hypoxia (reduction in oxygen) or anoxia in the immediate sediment, depending on bottom currents, temperature, and rate of biodegradation. Oleaginous materials which biodegrade quickly will deplete oxygen more rapidly than more slowly degrading materials. EPA, however, thinks that fast biodegradation is environmentally preferable to persistence despite the increased risk of anoxia which accompanies fast biodegradation. This is because recolonization of the area impacted by the discharge of SBF-cuttings or OBF-cuttings has been correlated with the disappearance of the base fluid in the sediment, and does not seem to be correlated with anoxic effects that may result while the base fluid is disappearing. In studies conducted in the North Sea, base fluids that biodegrade faster have been found to disappear more quickly, and recolonization at these sites has been more rapid.

As a component of the drilling fluid, the barite weighting agent is also discharged as a contaminant of the drill cuttings. Barite is a mineral principally composed of barium sulfate, and it is known to generally have trace contaminants of several toxic heavy metals such as mercury, cadmium, arsenic, chromium, copper, lead, nickel, and zinc.

B. Selection of Pollutant Parameters

1. Stock Limitations of Base Fluids

a. *General.*—EPA is proposing to establish BAT and NSPS that would require the synthetic materials and other oleaginous materials which form the base fluid of the SBFs and other non-aqueous drilling fluids to meet limitations on PAH content, sediment toxicity and biodegradation. The technology basis for meeting these limits would be product substitution, or zero discharge based on land disposal or injection if these limits are not met. These parameters are being regulated to control the discharge of certain toxic and nonconventional pollutants. A large range of synthetic, oleaginous, and water miscible materials have been developed for use as base fluids. These stock limitations on the base fluid are intended to encourage product substitution reflecting best available technology wherein only those synthetic materials and other base fluids which minimize potential loadings and toxicity may be discharged.

b. *PAH Content.*—EPA proposes to regulate PAH content of base fluids because PAHs are comprised of toxic priority pollutants. SBF base fluids typically do not contain PAHs, whereas the traditional OBF base fluids of diesel and mineral oil typically contain on the order of 5 to 10 percent PAH in diesel oil and 0.35 percent PAH in mineral oil. The PAHs typically found in diesel and mineral oil include the toxic priority pollutants fluorene, naphthalene, phenanthrene, and others, and nonconventional pollutants such as alkylated benzenes and biphenyls. Thus, this stock limitation would be one component of a rule reflecting the use of the best available technology.

c. *Sediment Toxicity.*—EPA proposes to regulate sediment toxicity in base fluids and SBFs as a nonconventional pollutant parameter, as an indicator for toxic components of base fluids or drilling fluid. Some of the toxic components of the base fluids may include enhanced mineral oils, internal olefins, linear alpha olefins, paraffinic oils, vegetable esters of 2-hexanol and palm kernel oil, and other oleaginous materials. Some of the possible toxic components of drilling fluids may include the same components as the base fluid, and in addition mercury, cadmium, arsenic, chromium, copper, lead, nickel, and zinc, formation oil contaminants, and other intended or unintended components of the drilling fluid. It has been shown, during EPA's development of the Offshore Guidelines, that establishing limits on toxicity encourages the use of less toxic drilling fluids and additives. Many of the synthetic base fluids have been shown to have lower toxicity than diesel and mineral oil, but among the synthetic and other oleaginous base fluids some are more toxic than others. Today's proposed discharge option includes a sediment toxicity limitation of the SBF's base fluid stock material, as measured by the 10-day sediment toxicity test (ASTM E1367–92) using a natural sediment and *Leptocheirus plumulosus* as the test organism.

Subsequent to this proposal and before the final rule, EPA intends to gather information to determine how to most appropriately control toxicity and solicit comment on these findings. The sediment toxicity test may be altered, for instance, in terms of test organism (other amphipods or possibly a polychaete), sediment type (formulated in place of natural), or length of test (to shorten the 10-day test period). Further, while today's proposal includes a sediment toxicity limitation of the base fluid stock material, the final discharge option to control toxicity might consist of a different option.

EPA would prefer to control sediment toxicity at the point of discharge as opposed to controlling the base fluid. EPA realizes, however, that the sediment toxicity test may be impractical to implement as a discharge requirement due to potential problems in the availability of uniform sediment and other factors affecting test variability. If EPA finds, through subsequent research, that the sediment toxicity test at the point of discharge is both practical and superior to the base fluid toxicity as an indicator of the toxicity of the SBF at the point of discharge, EPA might apply the sediment toxicity test to the SBF at the point of discharge in place of today's proposed method of the sediment toxicity test to the base fluid.

If the sediment toxicity test of neither the SBF at point of discharge nor synthetic base fluid as a stock limitation is found to be practical due to variability, lack of discriminatory power, or other problems, EPA will search for an alternative toxicity test. One candidate is modification to the current SPP toxicity test, or aquatic phase toxicity test. EPA has several concerns with applying the current SPP test to SBFs. EPA has received information from industry sources and testing laboratories that the results from the SPP test applied to SBFs are highly dependent on both the agitation when mixing the seawater with the SBF and the amount and type of emulsifiers in the SBF formulation. Further, results to date show that, compared to the aquatic toxicity test, the sediment toxicity test provides a better correlation with known toxicity effects of the various synthetic and oleaginous base fluids, and the experimental situation more closely mimics the actual fate of the drilling fluid. While EPA does not think that the current SPP test is useful for application to SBFs, modifications to either the method or limitation may render it functional. Thus, EPA intends to investigate the aquatic phase toxicity test as a possible control in the event that the sediment toxicity test of the drilling fluid is impractical and the

sediment toxicity test of the base fluid is either impractical or inadequate to control the toxicity of the SBF at the point of discharge.

EPA intends, therefore, to investigate further the most appropriate test method for controlling toxicity of SBF discharges, and to validate this method. EPA intends to publish any additional data concerning this limitation in a notice prior to publication of the final rule.

d. *Biodegradation.*—EPA proposes to limit biodegradation as an indicator of the extent, in level and duration, of the toxic effect of toxic components of nonconventional pollutants present in the base fluids, e.g., poly alpha olefins, enhanced mineral oils, internal olefins, linear alpha olefins, paraffinic oils, and vegetable ester of 2-hexanol and palm kernel oil. The various SBF base fluids vary widely in biodegradation rate, as measured by the solid phase test and simulated seabed tests. Based on results from seabed surveys at sites where various base fluids have been discharged with drill cuttings, EPA believes that the results from both measurement methods are indicative of the relative rates of biodegradation in the marine environment. In addition, EPA thinks this parameter correlates strongly with the rate of recovery of the seabed where SBF-cuttings have been discharged.

While EPA is proposing to use the solid phase test to measure compliance with the biodegradation limitation, this test is not yet an EPA validated method. In addition to validating the method for the final rule, EPA intends to gather additional data in support of the biodegradation rate limitation. EPA plans to present any additional data it collects towards this limitation in a notice subsequent to today's proposed rule and before the final rule.

e. *Bioaccumulation.*—While not a part of today's proposal, EPA is also considering establishing BAT and NSPS that would require the synthetic materials and other base fluids used in non-aqueous drilling fluids to meet limitations on bioaccumulation potential. The regulated parameters would be the nonconventional and toxic priority pollutants that bioaccumulate. Based on current information, EPA believes that the base fluid controls on PAH content, sediment toxicity, and biodegradation rate being proposed today are sufficient to control bioaccumulation. EPA intends, however, to study the bioaccumulation potential of the various synthetic base fluids for comparison, and subsequently solicit comments on the results if EPA thinks that some measure of bioaccumulation potential is needed to control adequately the SBF-cuttings wastestream.

2. Discharge Limitations

a. *Free Oil.*—Under BPT and BCT limitations for SBF-cuttings, EPA would retain the prohibition on the discharge of free oil as determined by the static sheen test. Under this prohibition, drill cuttings may not be discharged when the associated drilling fluid would fail the static sheen test defined in Appendix 1 to 40 CFR Part 435, Subpart A. The prohibition on the discharge of free oil is intended to minimize the formation of sheens on the surface of the receiving water. The regulated parameter of the no free oil limitation would be the conventional pollutants oil and grease which separate from the SBF and cause a sheen on the surface of the receiving water.

The free oil discharge prohibition does not control the discharge of oil and grease and crude oil contamination in SBFs as it would in WBFs. With WBFs, oils which may be present (such as diesel oil, mineral oil, formation oil, or other oleaginous materials) are present as the discontinuous phase. As such these oils are free to rise to the surface of the receiving water where they may appear as a film or sheen upon or discoloration of the surface. By contrast, the oleaginous matrices of SBFs do not disperse in water. In addition they are weighted with barite, which causes them to sink as a mass without releasing either the oleaginous materials which comprise the SBF or any contaminant formation oil. Thus, the test would not identify these pollutants. However, a portion of the synthetic material comprising the SBF may rise to the surface to cause a sheen. These components that rise to the surface fall under the general category of oil and grease and are considered conventional pollutants. Therefore, the purpose of the no free oil limitation of today's proposal is to control the discharge of conventional pollutants which separate from the SBF and cause a sheen on the surface of the receiving water. The limitation, however, is not intended to control formation oil contamination nor the total quantity of conventional pollutants discharged.

b. *Formation Oil Contamination.*—Formation oil contamination of the SBF associated with the cuttings would be limited under BAT and NSPS. Formation oil is an "indicator" pollutant for the many toxic and priority pollutant components present in formation (crude) oil, such as aromatic and polynuclear aromatic hydrocarbons. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. (See Development Document Chapter VII). The primary limitation is based on a fluorescence test. This test is considered an appropriately "weighted" test because crude oils containing more toxic aromatic and PAH components tend to show brighter fluorescence and hence noncompliance at a lower level of contamination. Since fluorescence is a relative brightness test, gas chromatography with mass spectroscopy detection (GC/MS) is provided as a baseline method before the drilling fluid is delivered for use, and is also available as an assurance method when the results from the fluorescence compliance method are in doubt.

c. *Retention of SBF on Cuttings.*—The retention of SBF on drill cuttings would be limited under BAT and NSPS. This limitation controls the quantity of SBF discharged with the drill cuttings. Both nonconventional and priority toxic pollutants would be controlled by this limitation. Nonconventionals include the SBF base fluids, such as vegetable esters, internal olefins, linear alpha olefins, paraffinic oils, mineral oils, and others. This limitation would also limit the toxic effect of the drilling fluid and the persistence or biodegradation of the base fluid. Several toxic and priority poliutant metals are present in the barite weighting agent, including arsenic, chromium, copper, lead, mercury, nickel, and zinc, and nonconventional pollutants such as aluminum and tin.

The emulsifying and wetting agents of the SBF would also be controlled by limiting the amount of SBF discharged. EPA solicits information concerning the composition of the wetting and emulsifying agents so that they can be classified as conventional, nonconventional, or toxic pollutants.

Today's proposed rule uses the retort method to determine compliance with the limit. The limit is expressed as percentage base fluid on wet cuttings (weight/weight), averaged over the well sections drilled with SBF. This method has not yet been validated by EPA. Further, EPA is currently researching a mass balance method as an alternative method to determine the quantity of SBF discharged. After EPA has gathered sufficient data using the two methods in a comparative analysis, EPA intends to validate the preferred method and solicit comment concerning the method to be applied for the final rule.

3. Maintenance of Current Requirements

EPA would retain the existing BAT and NSPS limitations on the stock barite of 1 mg/kg mercury and 3 mg/kg

cadmium. These limitations would control the levels of toxic pollutant metals because cleaner barite that meets the mercury and cadmium limits is also likely to have reduced concentrations of other metals. Evaluation of the relationship between cadmium and mercury and the trace metals in barite shows a correlation between the concentration of mercury with the concentration of arsenic, chromium, copper, lead, molybdenum, sodium, tin, titanium and zinc. (See the Offshore Development Document in Section VI).

EPA also would retain the BAT and NSPS limitations prohibiting the discharge of drilling wastes containing diesel oil in any amount. Diesel oil is considered an "indicator" for the control of specific toxic pollutants. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. Diesel oil may contain from 3 to 10 percent by volume PAHs, which constitute the more toxic components of petroleum products.

C. Regulatory Options Considered for SBFs Not Associated With Drill Cuttings

Today EPA proposes, under BPT, BCT, BAT, and NSPS, zero discharge for SBFs not associated with drill cuttings. This option is technically available and economically achievable with equipment commonly used. It is also current industry practice due to the value of SBFs recovered and reused. Since this option reflects current industry practice, it has no non-water quality environmental impacts.

Industry sources have indicated that at times, there may be minor drips or spills of SBFs that occur on the platform. EPA is considering whether these discharges should be governed by the zero discharge requirement, or whether to view the zero discharge requirements as being limited to discharge of whole drilling fluids, and allowing unintentional drips and spills to be treated as miscellaneous wastes. EPA solicits comment on this approach. EPA thinks that the best way to control these discharges would be through the use of BMPs and solicits comment on what types of BMPs would be effective for controlling these discharges and whether such BMPs should be part of this effluent guideline or be applied by the permit authority.

D. Regulatory Options Considered for SBFs Associated With Drill Cuttings

EPA considered two options for today's proposed rule for SBFs associated with drill cuttings, or SBF-cuttings: a discharge option and a zero discharge option. EPA has selected the discharge option as the basis for today's proposal. As detailed above, this discharge option controls under BAT and NSPS the stock base fluid through limitations on PAH content, sediment toxicity, and biodegradation rate, and controls at the point of discharge under BPT and BCT sheen formation and under BAT and NSPS formation oil content and quantity of SBF discharged. The discharge option maintains current requirements of stock limitations on barite of mercury and cadmium, and the diesel oil discharge prohibition. EPA at this time thinks that all of these components are essential for appropriate control of the SBF cuttings wastestream.

Although not the basis for today's proposal, EPA considered zero discharge as an option for BPT, BCT, BAT, and NSPS. Under zero discharge all pollutants would be controlled in SBF discharges. This option was clearly technically feasible and economically achievable because in the past SBFs did not exist, and industry was able to operate using only the traditional non-dischargeable OBFs based on diesel oil and mineral oil.

EPA presently rejects zero discharge as the preferred option because it would result in unacceptable non-water quality environmental impacts. If EPA were to choose zero discharge for SBF-cuttings, operators would not have an incentive to use SBFs since they are more expensive than OBFs. Thus, if EPA requires zero discharge, OBF-cuttings would continue to be injected or shipped to shore for land disposal. EPA's analysis shows that under this option as compared to the discharge option, for existing and new sources combined, there would be 172 million pounds annually of OBF-cuttings shipped to shore for disposal in non-hazardous oilfield waste sites and 40 million pounds annually injected, with associated fuel use of 29,000 BOE and annual air emissions of 450 tons. EPA believes these impacts far outweigh the water impacts associated with these discharges detailed in Section VIII of this preamble. EPA's current analysis shows that the impacts of these discharges to water are of limited scope and duration, particularly if EPA controls the discharges of SBFs to the best environmental performers that also meet the technical requirements needed to drill. By contrast, the landfilling of OBF-cuttings is of a longer term duration and associated pollutants may effect ambient air, soil, and groundwater quality. For these reasons, under EPA's authority to consider the non-water quality environmental impacts of its rule, EPA rejects zero discharge of SBF-cuttings.

Nonetheless, while discharge with adequate controls is preferred over zero discharge, discharge with inadequate controls is not preferred over zero discharge. EPA believes that to allow discharge of SBF-cuttings, there must be appropriate controls to ensure that EPA's discharge limitations reflect the "best available technology" or other appropriate level of technology. EPA has worked with industry to address the determination of PAH content, sediment toxicity, biodegradation, bioaccumulation, the quantity of SBF discharged, and formation oil contamination. The successful completion of these efforts is necessary for EPA to continue to reject zero discharge.

E. BPT Technology Options Considered and Selected

As previously discussed, Section 304(b)(1)(A) of the CWA requires EPA to identify effluent reductions attainable through the application of "best practicable control technology currently available for classes and categories of point sources." Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher levels of control than any currently in place if the technology to achieve those levels can be practicably applied. See *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972*, U.S. Senate Committee of Public Works, Serial No. 93–1, January 1973, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost assessment for BPT limitations. In determining the BPT limits, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are "wholly out of proportion to the costs of achieving such marginal level of reduction." See *Legislative History*, op. cit. p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See e.g. *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected

discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company* v. *Costle,* 590 F. 2d 1011 (D.C. Cir. 1978).

EPA today proposes BPT effluent limitations for the cuttings contaminated with SBF and other non-aqueous drilling fluids. The BPT effluent limitations proposed today would control free oil as a conventional pollutant. The limitation is no free oil as measured by the static sheen test, performed on SBF separated from the cuttings.

In setting the no free oil limitation, EPA considered the sheen characteristics of currently available SBFs. Since this requirement is currently met by dischargers in the Gulf of Mexico, EPA anticipates no additional costs to the industry to comply with this limitation.

EPA also considered a BPT level of control for the quantity of SBF discharged with the cuttings consisting of improved use of currently existing shale shaker equipment. However, EPA did not have enough information to establish BPT beyond current performance. Further, EPA is not setting a BPT limit based on current performance because operators already have incentive to recover as much SBFs as possible through the optimization of existing equipment due to the value of the SBFs. Therefore, a BPT limitation based on the current equipment, and as it is currently used, would not have any practical effect on the quantity of SBF discharged with the cuttings. Further, given that the BAT and NSPS limitations would be more stringent and control the conventional pollutants in addition to the non-conventional and toxic pollutants, EPA saw no reason to expend time and resources to develop a different, less restrictive BPT limit.

F. BCT Technology Options Considered and Selected

In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two-part cost test: (1) a POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29 percent).

In today's proposal, EPA is proposing to establish a BCT limitation of no free oil equivalent to the BPT limitation of no free oil as determined by the static sheen test. In developing BCT limits, EPA considered whether there are technologies (including drilling fluid formulations) that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines.

G. BAT Technology Options Considered and Selected

EPA today proposes BAT effluent limitations for the cuttings contaminated with SBFs. The BAT effluent limitations proposed today would control the stock base fluids in terms of PAH content, sediment toxicity, and biodegradation. Controls at the point of discharge include formation oil contamination and the quantity of SBF discharged. This level of control has been developed taking into consideration the availability and cost of oleaginous (SBF) base fluids in terms of PAH content, sediment toxicity, and biodegradation rate; the frequency of formation oil contamination at the control level; the performance and cost of equipment to recover SBF from the drill cuttings. The technical availability and economic achievability of today's proposed limitations is discussed below by regulated parameter.

1. Stock Base Fluid Technical Availability and Economic Achievability

a. *Introduction.*—As SBFs have developed over the past few years, the industry has come to use mainly a few primary base fluids. These include the vegetable esters, internal olefins, linear alpha olefins, and poly alpha olefins. Thus, these are the base fluids for which EPA has data and costs to develop the effluent limitations of today's proposed rule. In this document, vegetable ester means a monoester of 2-ethylhexanol and saturated fatty acids with chain lengths in the range C_8-C_{16}, internal olefin means a series of isomeric forms of C_{16} and C_{18} alkenes, linear alpha olefin means a series of isomeric forms of C_{14} and C_{16} monoenes, and poly alpha olefins means a mix mainly comprised of a hydrogenated decene dimer $C_{20}H_{62}$ (95%), with lesser amounts of $C_{30}H_{62}$ (4.8%) and $C_{10}H_{22}$ (0.2%). EPA also has data on other oleaginous base fluids, such as enhanced mineral oil, paraffinic oils, and the traditional OBF base fluids mineral oil and diesel oil.

The stock base fluid limitations presented below are based on currently available base fluids, and the limitations would be achievable through product substitution. EPA anticipates that the currently available and economically achievable base fluids meeting all requirements would include vegetable esters and internal olefins. EPA also solicits data on linear alpha olefins and certain paraffinic oils to determine whether these base fluids are comparable in terms of sediment toxicity, biodegradation, and bioaccumulation.

b. *PAH Content Technical Availability.*—Today's proposed limitation of PAH content is 0.001 percent, or 10 parts per million (ppm), weight percent PAH expressed as phenanthrene. This limitation is based on the availability of base fluids that are free of PAHs and the detection of the PAHs by EPA Method 1654A. EPA's proposed PAH content limitation is technically available. Producers of several SBF base fluids have reported to EPA that their base fluids are free of PAHs. The base fluids which suppliers have reported are free of PAHs include linear alpha olefins, internal olefins, vegetable esters, certain enhanced mineral oils, synthetic paraffins, certain non-synthetic paraffins, and others. See the Development Document, Chapter VII. Compliance with the BAT and NSPS stock limitations on PAH content may be achieved by product substitution.

c. *Sediment Toxicity Technical Availability.*—EPA is today proposing a sediment toxicity stock base fluid limitation that would allow only the discharge of SBF-cuttings using base fluids as toxic or less toxic, but not more toxic, than C_{16}-C_{18} internal olefin.

Alternatively, this limitation could be expressed as the LC_{50} of the base fluid minus the LC_{50} of the C_{16}-C_{18} internal olefin shall not be less than zero. Based on information available to EPA at this time, the only base fluids which would attain this limitation are the internal olefins and vegetable esters.

EPA finds this limit to be technically available because information in the rulemaking record supports that internal olefin SBFs and vegetable ester SBFs together have performance characteristics enabling them to be used in a wide variety of drilling situations offshore. Marketing data given to the EPA shows that, at least for certain of the major drilling fluid suppliers, internal olefin SBFs are currently the most popular SBFs used in the Gulf of Mexico.

Various researchers have performed toxicity testing of the synthetic base fluids with the 10-day sediment toxicity test (EPA/600/R–94/025) using a natural sediment and *Leptocheirus plumulosus* as the test organism. The synthetic base fluids have been shown to have lower toxicity than diesel and mineral oil, and among the synthetic and other oleaginous base fluids some are more toxic than others. For example, Still et al. reported the following 10-day LC_{50} results, expressed as mg base fluid/Kg dry sediment: diesel LC_{50} of 850, enhanced mineral oil LC_{50} of 251, internal olefin LC_{50} of 2,944, and poly alpha olefin LC_{50} of 9,636. A higher LC_{50} value means the material is less toxic. Similar results, with the same trend in toxicity in the base fluids above, have been reported by Hood et al. Candler et al. performed the 10-day sediment toxicity test with the amphipod *Ampelicsa abdita* in place of *Leptocheirus plumulosus*, and again obtained very similar results as follows: diesel LC_{50} of 879, enhanced mineral oil LC_{50} of 557, internal olefin LC_{50} of 3,121, and PAO LC_{50} of 10,680.

None of these researchers reported sediment toxicity values for vegetable esters. Recently, industry has evaluated a number of base fluids including vegetable esters. While the absolute values are not comparable because the tests were performed on the drilling fluid and not just the base fluid, the results showed the vegetable ester to be less toxic than the internal olefin.

Researchers in the United Kingdom and Norway investigating effects in the North Sea have conducted sediment toxicity tests on other organisms, namely *Corophium volutator* and *Abra alba*. Similar trends were seen in the measured toxicity, with vegetable ester having very low sediment toxicity (very high LC_{50}), poly alpha olefin having a mid range toxicity, and internal olefin having a higher toxicity, in this comparison.

While the poly alpha olefins were found to have the lowest toxicity of the measured base fluids (excludes vegetable esters), EPA did not base the toxicity limitation on poly alpha olefins because, as presented below, they biodegrade much more slowly and so are unlikely to pass the biodegradation limitation. EPA intends to generate and gather additional data comparing the toxicity of the various base fluids, especially to compare the vegetable ester toxicity with that of the olefins since, at this time, directly comparable data is not available. If vegetable esters are found to have significant reduced toxicity compared to the other base fluids, EPA may choose to base the toxicity limitation on vegetable esters. EPA has concerns, however, over the technical performance and possible non-water quality implications with the use of vegetable ester as the only technology available to meet the stock base fluid limitations, as discussed below under biodegradation.

As an alternative, EPA solicits comment on a numeric limitation of a minimum LC_{50} of 2,600 mg base fluid/Kg dry sediment as an appropriate level of control, based on the toxicity of C_{16}–C_{18} internal olefins as determined by the 10-day sediment toxicity test using *Leptocheirus plumulosus* as the test organism. If EPA pursues this approach, EPA expects that it may need to revise this numeric limitations due to the variability currently experienced with this test.

d. *Biodegradation Rate Technical Availability.*—Today's proposed limitation of biodegradation rate for the base fluid, as determined by the solid phase test, is equal to or faster than the rate of a C_{16}-C_{18} internal olefin. Alternatively, this limitation could be expressed as the percent of the base fluid degraded at 120 days minus the percent of C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero. With this limitation the base fluids currently available for use include vegetable ester, linear alpha olefin, internal olefins, and possibly certain linear paraffins. Combined with the other stock base fluid limitations of PAH content and sediment toxicity, the base fluids for which EPA has data that would attain all three limitations are internal olefins and vegetable esters.

EPA finds this limit to be technically available because information in the rulemaking record supports that internal olefin SBFs and vegetable ester SBFs together have performance characteristics to address the broad variety of drilling situations found offshore.

As an alternative to today's proposal, EPA solicits comment on a numeric limitation of a minimum biodegradation rate of 68 percent base fluid dissipation at 120 days for the standardized solid phase test. If EPA pursues this approach, EPA expects that it may need to revise this numeric limitations as additional test results are generated.

As with the sediment toxicity test presented above, due to the lack of data from the biodegradation test EPA again intends to propose a limitation based on comparative testing rather than propose a numerical limitation. Therefore, if SBFs based on fluids other than internal olefins and vegetable esters are to be discharged with drill cuttings, data showing the biodegradation of the base fluid should be presented with data, generated in the same series of tests, showing the biodegradation of the internal olefin as a standard. EPA prefers this approach rather than set a numerical limitation at this time because of the small amount of data available to EPA upon which to base a numerical limitation. EPA sees this as an interim solution to the problem of having insufficient information at the time of this proposal to provide a numerical limitation, in that it still provides a limitation based on the performance of available technologies.

Rates of biodegradation for synthetic and mineral oil base fluids have been determined by both the solid phase and the simulated seabed test, and the relative rates of biodegradation among these two tests agree. These tests have found that, the order of degradation, from fastest to slowest, is as follows: vegetable ester > linear alpha olefin > internal olefin > linear paraffin > mineral oil > poly alpha olefin.

EPA has selected the internal olefin as the basis for the biodegradation rate limitation instead of the vegetable ester for two reasons: technical performance and non-water quality environmental impacts. Industry representatives have reported that SBFs using esters currently on the market today are not adequate choices for most deepwater drilling applications. Reportedly, the available esters thicken considerably at the cold temperatures encountered in the riser in deep water. This thickening can cause excessive pressure surges when attempting to re-initiate circulation. These pressure surges can result in breakdown of exposed formations resulting in severe SBF losses to the destabilized formations. In addition to SBF losses, pressure surges can destabilize the formation to the extent of hole collapse and loss of any

drilling tools downhole. EPA solicits comment concerning the maximum depth at which vegetable ester SBFs are practical, the development on new esters with lower viscosity, and if special systems, such as subsea pumping systems, ameliorate the pumping difficulties.

Cost is a factor in encouraging the use of SBFs in place of OBFs. Industry representatives have told EPA that vegetable ester SBF costs about twice as much as internal olefin SBF. EPA believes that if the lower cost internal olefin SBFs can be discharged, then more wells currently drilled with OBF would be encouraged to convert to SBF than if only the more expensive vegetable ester SBFs were available for discharge. This conversion is preferable for the improvements in non-water quality environmental impacts (see section VII below). If future research shows that vegetable esters have a significantly reduced toxicity in addition to the proven faster rate of biodegradation, EPA may consider more stringent stock base fluid limitations to favor the use of vegetable ester SBFs for the final rule.

e. *Economic Achievability of Stock Base Fluid Controls.*—EPA finds that the proposed stock base fluid controls are economically achievable. Industry representatives have told EPA that while the synthetic base fluids are more expensive than diesel and mineral oil base fluids, the savings in discharging the SBF-cuttings versus land disposal or reinjection of OBF-cuttings more than offsets the increased cost of SBFs. Thus, it reportedly costs less for operators to invest in the more expensive SBF provided it can be discharged. The stock base fluid limitations proposed above allow use of the currently popular SBFs based on internal olefins ($195/bbl) and vegetable esters ($380/bbl). For comparison, diesel oil-based drilling fluid costs about $65/bbl, and mineral oil-based drilling fluid costs about $75/bbl. According to industry sources, currently in the Gulf of Mexico the most widely used and discharged SBFs are, in order of use, based on internal olefins, linear alpha olefins, and vegetable esters. Since the stock limitations allow the continued use of the preferred internal olefin and vegetable ester SBFs, EPA attributes no additional cost due to the stock base fluid requirements other than monitoring (testing and certification) costs. EPA expects that these monitoring costs will fall upon the base fluid suppliers as a marketing cost. As further described in Section XII, EPA anticipates that PAH monitoring would occur batchwise, and sediment toxicity and biodegradation monitoring would occur once annually per synthetic base fluid per supplier.

Pursuant to EPA's further research into sediment toxicity and biodegradation, EPA may propose limits for the final rule that are different than the limits proposed today. If the limits were to allow only more expensive SBFs, such as the vegetable ester, EPA would likely estimate a cost to comply with the stock base fluid limits for those operators who currently use and discharge the less expensive SBFs, for instance those based on internal olefins.

2. Discharge Limitations Technical Availability and Economic Achievability

a. *Formation Oil Contamination of SBF-Cuttings.*—Today's proposed formation oil contamination limitation of the SBF adhered to the drill cuttings is "weighted" to detect contamination by highly aromatic formation oils at lower concentrations than formation oils with lower aromatic contents. Under the proposed limitation approximately 5 percent of all (all meaning a large representative sampling) formation oils would fail (not comply) at 0.1 percent contamination and 95 percent of all formation oils will fail at 1.0 percent contamination. The majority of formation oils would cause failure when present in SBFs at a concentration of about 0.5 percent (vol/vol).

EPA is proposing two methods for the determination of formation oil in SBFs. Analysis by gas chromatography with mass spectroscopy detection (GC/MS) would apply to any SBF being shipped offshore for drilling to allow discharge of the associated cuttings. During drilling, the SBF would be required to comply with the limitation of formation oil contamination as determined by the reverse phase extraction (RPE) method. SBFs found to be non-compliant by the RPE method could, at the operators discretion, be confirmed by testing with the GC/MS method. Results from the GC/MS method would supersede those of the RPE method.

EPA intends that the limitation proposed on formation (crude) oil contamination in SBF is no less stringent that the limitation imposed on WBF through the static sheen test. A study concerning this issue found that in WBF, the static sheen test detected formation oil contamination in WBF down to 1 percent in most cases, and down to 0.5 percent in some cases.

Currently, only a very small percent of WBF cannot be discharged due to presence of formation oil as determined by the static sheen test. EPA solicits information regarding the frequency of formation oil contamination at this level of control. EPA has received some anecdotal information to the effect that far less than one percent of SBF cuttings would not be discharged due to formation oil contamination at this level of control. Based on the available information, EPA believes that only a very minimal amount of SBF will be non-compliant with this limitation and therefore be required to dispose of SBF-cutting onshore or by injection. EPA thus finds that this limitation is technically available. EPA also finds this option to be economically achievable because there is no reason why formation oil contamination would occur more frequently under this rule than under the current rules which industry can economically afford. For calculation purposes, EPA has determined that no costs are associated with this requirement other than monitoring and reporting costs, which are minimal costs for this test for this industry.

b. *Retention of SBF on Cuttings.*—This limitation considers the technical availability of methods to recover SBF from the cuttings wastestream. EPA evaluated the performance of several technologies to recover SBF from the cuttings wastestream and their costs, as detailed in the Development Document. EPA also considered fuel use, safety, and other considerations.

The solids control system typically consists of, at a minimum, a primary shale shaker to remove the larger cuttings. Typically, all or a portion of the drilling fluid is then passed through a secondary shale shaker or "mud cleaner" to remove the small particle cuttings, or "fines," before being recirculated to the active mud system. Greater efficiencies in the use of these currently used technologies through reduced loadings and more even flow across the screens, better maintenance of the screens, and better integration of the solids control system would help operators achieve these proposed discharge limitations. An ancillary or alternative method to reduce SBF discharges is to retain the fines for on shore disposal. Because of their small size and large surface area, the fines retain more drilling fluid than an equal amount of larger cuttings coming off the shale shakers. Therefore, while the bulk of the cuttings may be discharged, retaining the fines for on shore disposal can be used to disproportionately reduce the overall discharges of SBF.

The American Petroleum Institute (API) performed a study in 1997 which gathered data on SBF retention on drill cuttings. Data gathered in the study show the long term average retention

rate of SBF on cuttings, weighted by hole volume, is 10.6 percent from the primary shale shaker and 15.0 percent from the secondary shale shaker, expressed as weight synthetic base fluid per weight of wet cuttings. Industry representatives further estimated that the cuttings from the primary shale shaker comprise 80 percent of the total cuttings wastestream, and the remaining 20 percent is removed by either the secondary shale shaker or other devices to remove very small cuttings, or fines. EPA used this information to calculate a long term average weighted retention of 11.5 percent base fluid on wet cuttings using the current technologies employed in the Gulf of Mexico.

Recently, in the wake of the development of SBFs and discharge limitations in the North Sea, new cuttings cleaning devices have been developed which reduce SBF retained on the cuttings. An effective device consists of a conically shaped vibrating centrifuge, which removes recycle-grade SBF from the cuttings coming off the primary shale shakers. EPA selected this conical vibrating centrifuge as the model technology on which to base its performance and cost calculations. The manufacturer of the device has supplied EPA with detailed performance data and some cost information of this device. The performance has been confirmed by one operator, showing retention data for twelve wells and comparing the vibrating centrifuge with shale shaker technology. In addition, EPA was invited by an operator in the Gulf of Mexico to observe the operation of the vibrating centrifuge. EPA has learned that the operator has written a report concerning the operation of this SBF recovery device, but this report has not been made available to EPA. The operator has informed EPA as to the cost of implementing the vibrating centrifuge, and EPA used this cost information in determining the total cost of implementation. EPA is aware of at least one other company that makes a similar centrifugal device to recover SBFs from drill cuttings, although EPA has not received performance or costs for this machine.

The limitation proposed today for retention of SBF is 10.2 percent base fluid on wet cuttings (weight/weight), averaged by hole volume over the well sections drilled with SBF. Those portions of the cuttings wastestream that are retained for no discharge are factored into the weighted average with a retention value of zero. The limit assumes that SBF-cuttings processed by the vibrating centrifuge technology comprise 80 percent of the wastestream while the remaining 20 percent is comprised of SBF-cuttings from the secondary shale shaker. Thus, from the available data EPA determined that the retention attained for 95 percent of volume-weighted well averages was 7.22 for the vibrating centrifuge and 22.0 for the secondary shale shakers. Applying the assumption of an 80/20 split between the two wastestreams, EPA determined the weighted average retention regulatory limit of 10.2 percent.

Based on current performance of the vibrating centrifuge technology, 95 percent of all volume-weighted average values for retention of drilling fluids over the course of drilling a well are expected to be less than the proposed limit. Some, but not all, of the variability between wells is due to factors under the control of the operators. EPA believes that the proposed limit can be met at all times by providing better attention to the operation of the technology and by keeping track of the weighted average for retention as the well is being drilled. If the trend in weighted average retention appears to the operator as if the average retention for a particular well will exceed the limitation prior to completion of the well then EPA recommends that the operator retain some or all of the remaining cuttings for no discharge. This is feasible because retention of SBF on drill cuttings is generally low in the early stages of drilling a well and it increases as the well goes deeper.

EPA used the same statistical analysis to determine the long term average retention values. These values were used for cost and loadings calculations. For the vibrating centrifuge and the secondary shale shaker, respectively, EPA determined that the long term between-well average percent retention of SBF on cuttings was 5.14 and 15.00. Applying the assumption of an 80/20 split between the two wastestreams, the long term average value for cost and loading calculations is 7.11 percent SBF retained on wet cuttings. Cost and loadings calculations also assumed 7.5 percent washout of the well bore.

EPA finds that a well-average limit of 10.2 percent base fluid on wet cuttings is economically achievable. According to EPA's analysis, in addition to reducing the discharge of SBFs associated with the cuttings, EPA estimates that this control will result in a net savings of $5.0 MM. This savings results because the value of the SBF recovered is greater than the cost of implementation of the technology. This analysis is presented in Section IX of today's notice, and in greater detail in the Development Document.

EPA thinks that this regulatory limitation is necessary to both hasten and broaden the use of improved SBF recovery devices, even though industry may be inclined to implement the SBF recovery technology to save valuable SBF irrespective of the limitation. There could be several reasons why industry does not already use the model SBF recovery technology even though, in EPA's assessment, it saves the operator money. For one, market acceptance and market penetration of the vibrating centrifuge could be a reason. The vibrating centrifuge recovery technology is a new technology that was developed in the North Sea and has only been demonstrated a few times in the United States. Secondly, the cost and resources devoted to retrofitting might only benefit a small portion of the wells drilled by an operator. This is because only a small fraction of wells, about 13 percent in EPA's analysis, are drilled with SBFs. To counter this, however, is the fact that most SBF wells are concentrated in the deep water. EPA projects that 75 percent of all wells drilled in the deepwater would use SBFs. In addition, retrofitting costs and market forces would encourage the dedication of drill platforms equipped with improved SBF recovery technology to the drilling of SBF wells. The use of improved SBF recovery devices in the North Sea is a case in point. Operators have reported to EPA that in the North Sea they were reluctant to use improved SBF recovery devices, and eventually did so only in response to more stringent regulatory requirements. These operators report that their total cost to drill an SBF well actually went down as they implemented the improved SBF recovery devices because of the value of the SBF recovered.

H. NSPS Technology Options Considered and Selected

The general approach followed by EPA for developing NSPS options was to evaluate the best demonstrated SBFs and processes for control of priority toxic, nonconventional, and conventional pollutants. Specifically, EPA evaluated the technologies used as the basis for BPT, BCT and BAT. The Agency considered these options as a starting point when developing NSPS options because the technologies used to control pollutants at existing facilities are fully applicable to new facilities.

EPA has not identified any more stringent treatment technology option which it considered to represent NSPS level of control applicable to the SBF-cuttings wastestream. Further, EPA has made a finding of no barrier to entry based upon the establishment of this

level of control for new sources. See section X, Economic Analysis. Therefore, EPA is proposing that NSPS be established equivalent to BPT and BAT for conventional, priority, and nonconventional pollutants.

VII. Non-Water Quality Environmental Impacts of Proposed Regulations

A. Introduction and Summary

The elimination or reduction of one form of pollution has the potential to aggravate other environmental problems. Under sections 304(b) and 306 of the CWA, EPA is required to consider these non-water quality environmental impacts (including energy requirements) in developing effluent limitations guidelines and NSPS. In compliance with these provisions, EPA has evaluated the effect of this proposed regulation on air pollution, energy consumption, solid waste generation and management, consumptive water use, safety, and vessel traffic.

Based on this evaluation, EPA currently prefers the discharge option over the zero discharge option because of the non-water quality environmental impacts that would occur with zero discharge, compared to the water quality impacts that would occur with discharge as controlled by this proposed rule. Thus, non-water quality environmental impacts are a major consideration for this rule because of the nature of the wastes and where the wastes are generated and disposed.

If SBF-cuttings cannot be discharged, cuttings from SBF wells would have to be transported to shore for treatment and disposal, or made into a slurry and injected on-site. In this case, EPA assumes that most operators will not use SBF in place of OBF, because SBFs cost more than OBFs. On the other hand, if SBF-cuttings can be discharged, not only are non-water quality environmental impacts from current SBF wells drastically reduced, but EPA also estimates that some OBF wells would convert to SBF, further decreasing these impacts. EPA estimates that in the Gulf of Mexico (GOM) 20 percent of OBF wells will convert to SBF wells. EPA also estimates that these GOM OBF wells are in shallow water (less than 1000 feet). In deep water, EPA assumes that those wanting to use SBFs are already doing so and therefore these facilities are not considered to yield non-water quality environmental impacts reductions. In offshore California and Cook Inlet, Alaska, EPA assumes that all OBF wells will convert, because of the greater expense of OBF-cuttings discharge and an ever greater concern for non-water quality environmental impacts in these areas as compared to the GOM. For example, disposal of OBF-cuttings in Cook Inlet, Alaska, would likely require the barging of the waste to the lower 48 States. Air quality in California is a continuing concern and therefore there is pressure to keep air emissions from oil and gas drilling activities in the neighboring offshore waters at a minimum.

In total, for existing and new sources under the discharge option, EPA estimates that air emissions would be reduced by 72 tons per year, based on OBF facilities switching to SBF. If the zero discharge option was selected, however, air emissions would increase by 378 tons per year, based on SBF to OBF conversion. Therefore, in moving from the zero discharge option to the discharge option, air emissions would be reduced by 450 tons per year. In addition, EPA estimates than 29,359 BOE less fuel would be used.

Other favorable non-water quality environmental impacts occur with the elimination of the long term disposal of OBF-cuttings on shore, because the pollutants present in OBF-cuttings may affect ambient air, soil, and groundwater quality. EPA estimates that allowing discharge of SBF-cuttings compared to zero discharge would decrease the amount of OBF-cuttings disposed at land based facilities by 172 MM pounds annually, and the amount injected by 40 MM pounds. The methodology used to arrive at these numbers is described in the sections which follow, and the results are discussed in more detail.

In consideration of the many non-water quality benefits with SBF-discharge, EPA currently prefers to allow the controlled discharge of SBF-cuttings despite some additional SBF-cuttings discharges that may occur as a result of this rule. EPA's authority to consider the non-water quality environmental impacts of its rule, therefore, forms the primary basis in EPA's rejection of zero discharge of SBF-cuttings.

B. Method Overview

EPA estimated annual energy consumption (i.e., fuel usage), air emissions, and solid waste generation rates from information on model well characteristics and current drilling activity gathered from industry, State, and Federal agency sources. This framework is based upon the model well, well count, and control technology data that is detailed in the compliance cost and pollutant reductions discussions of today's notice (Section IX). EPA's calculations are based on the following projections: wells drilled with SBF in the Gulf of Mexico currently discharge SBF-cuttings containing an average 11 percent by weight synthetic base fluid; under the discharge option SBF-cuttings would retain an average 7 percent base fluid on cuttings; and of the wells drilled with OBF 80 percent practice zero discharge by hauling OBF-cuttings to shore for land-based disposal, and the remaining 20 percent inject on-site. In the context of the non-water quality environmental impacts analysis, SBF wells using standard solids control equipment and discharging SBF-cuttings at 11 percent retention are defined as the baseline. Increases or decreases in non-water quality environmental impacts are compared to this baseline. For example, current OBF wells that EPA projects would convert to SBF in the discharge option are assigned baseline impacts because these wells use energy consuming technologies (i.e., transportation for disposal or injection) beyond standard solids control equipment.

After establishing baseline impacts, EPA calculated impacts resulting from compliance with the proposed discharge and zero discharge options, details of which are given in the following discussions. EPA then calculated the incremental impacts by subtracting the compliance impacts from the baseline impacts.

The discussions below adopt the following acronyms for the four model well types developed for well-specific analyses: DWD (deep-water development), DWE (deep-water exploratory), SWD (shallow-water development), and SWE (shallow-water exploratory).

C. Energy Consumption and Air Emissions for Existing Sources

1. Energy Consumption

a. *Baseline Energy Consumption.*— EPA's estimated non-water quality environmental impacts for the discharge and zero discharge options, for existing sources, are presented in Table VII–1. EPA set baseline energy consumption according to SBF wells discharging SBF-cuttings at 11 percent retention of base fluid on wet cuttings. Table VII–1 shows, therefore, that the baseline energy consumption (i.e., fuel usage) is zero for existing Gulf of Mexico SBF wells, because increases or decreases in fuel use and air emissions are compared to this level.

TABLE VII–1.—SUMMARY ANNUAL BASELINE, COMPLIANCE, AND INCREMENTAL COMPLIANCE, NON-WATER QUALITY ENVIRONMENTAL IMPACTS OF SBF CUTTINGS MANAGEMENT FROM EXISTING SOURCES

Technology basis	Gulf of Mexico		Offshore California		Cook Inlet, Alaska		Total	
	Air emissions (tons/yr)	Fuel usage (BOE/yr)[a]	Air emissions (tons/yr)	Fuel usage (BOE/yr)[a]	Air emissions (tons/yr)	Fuel usage (BOE/yr)[a]	Air emissions (tons/yr)	Fuel usage (BOE/yr)[a]
Baseline Non-Water Quality Environmental Impacts:								
Currently SBF Discharge (11% reten.)	0	0	NA	NA	NA	NA	0	0
Currently OBF Zero Discharge[b]	47.92	3,433	36.61	2,121	2.08	285	86.61	5,839
Compliance Non-Water Quality Environmental Impacts:								
Discharge Option (7% reten.)	12.54	3,035	0.76	187	0.01	4	13.30	3,226
Zero Discharge Option	338.55	24,125	NA	NA	NA	NA	338.55	24,125
Incremental Non-Water Quality Environmental Impacts Reductions (Increases):								
Discharge Option (7% reten.)	35.38	398	35.86	1,934	2.07	281	73.31	2,613
Zero Discharge Option	(338.55)	(24,125)	0	0	0	0	(338.55)	(24,125)

[a] BOE (barrels of oil equivalent) is the total diesel volume required converted to equivalent oil volume (by the factor 1 BOE = 42 gal. diesel) and the volume of natural gas required converted to equivalent oil volume (by the factor 1,000 scf = 0.178 BOE).
[b] Baseline non-water quality environmental impacts from the 23 (20 percent) OBF wells that convert to SBF upon promulgation of today's proposed rule.

Baseline fuel usage rates for OBF wells in offshore California and coastal Cook Inlet, Alaska derive from activities associated with transporting waste drill cuttings to shore and land-disposing the cuttings. For this analysis, EPA used the method developed to estimate zero discharge impacts under the Offshore and Coastal Oil and Gas Rulemakings. EPA used the volumes of drilling waste requiring onshore disposal to estimate the number of supply boat trips necessary to haul the waste to shore. Projections made regarding boat use included types of boats used for waste transport, the distance traveled by the boats, allowances for maneuvering, idling and loading operations at the drill site, and in-port activities at the dock. EPA estimated fuel required to operate the cranes at the drill site and in-port based on projections of crane usage. EPA determined crane usage by considering the drilling waste volumes to be handled and estimates of crane handling capacity. EPA also used drilling waste volumes to determine the number of truck trips required. The number of truck trips, in conjunction with the distance traveled between the port and the disposal site, enabled an estimate of fuel usage. The use of land-spreading equipment at the disposal site was based on the drilling waste volumes and the projected capacity of the equipment. The annual baseline fuel usage in barrels of oil equivalents (BOE) is 2,121 BOE for offshore California, and 285 BOE for coastal Cook Inlet.

In the Gulf of Mexico analysis, EPA projected that 20 percent of OBF wells in shallow water would become SBF wells as a result of this rule, and therefore they are included in the zero discharge analysis. Baseline fuel usage rates (and all other impacts) for OBF wells in the Gulf of Mexico are based on the assumption that 80 percent of these wells use land-disposal for zero discharge and the remaining 20 percent use on-site injection to dispose of OBF-cuttings. This assumption is discussed further in Section IX of this Preamble, and in the Development Document. Baseline fuel usage rates for zero discharge via land-disposal were calculated using the same analysis used in the offshore rule for California wells and coastal rule for Cook Inlet wells. Baseline fuel usage rates for Gulf of Mexico wells that inject waste cuttings onsite were calculated as the sum of the fuel usage for the model turnkey injection system considered for the zero discharge option, which consists of transfer equipment for moving cuttings, grinding and processing equipment, and injection equipment. The per-well fuel usage rates for wells that use on-site injection are weighted averages of diesel usage rates and natural gas usage rates, according to the estimate that 85 percent use diesel and 15 percent use natural gas as primary power sources in the Gulf of Mexico. By multiplying the average per-well baseline fuel usage rates by the projected annual drilling activity for the four model wells in the Gulf of Mexico, EPA calculated an annual baseline fuel usage of 3,433 BOE for the Gulf of Mexico, and 5,839 BOE for all wells in the baseline.

b. *Compliance Energy Consumption.*—Energy consumption for the discharge option was calculated by identifying the equipment and activities associated with the operation of a vibrating centrifuge to reduce the retention of the synthetic base fluid on drill cuttings from an average 11 percent to seven percent, measured on a wet-weight basis. Details regarding the technology basis for this option are presented in Section VI of this Preamble, and in the Development Document. Using the characteristics of the four model wells (see Section IX.B), EPA calculated per-well energy consumption based on the horsepower demand specified for the vibrating centrifuge by its manufacturer. The horsepower demand was multiplied by the fuel usage rate and the hours of operation required to drill the SBF section of the well, specific to each model well type.

Since they are based on the same technology, the discharge option per-well energy consumption rates are the same for the three geographic areas, but vary based on the fuel source employed in each area. In the Gulf of Mexico, industry sources recently estimated that approximately 85 percent of drilling operations use diesel oil as the primary fuel source, and the remaining 15 percent use natural gas. Information regarding fuel sources for the offshore California area indicates a variety of sources, including diesel, natural gas, and for some platforms, submerged electrical cables connected to shore-based power supplies. For this analysis, it was determined that deep water wells in offshore California use diesel as the primary fuel source, and shallow water wells use natural gas. For coastal Cook Inlet wells, natural gas was determined to be the primary fuel source, based on information supplied by the industry both recently and submitted in the Coastal Oil and Gas Rulemaking effort. Based on these determinations and projected drilling activity estimates, EPA calculated the following annual

discharge option fuel usage rates for the three geographic areas: 3,035 BOE for the Gulf of Mexico, 187 BOE for offshore California, and 4 BOE for Cook Inlet, for a total annual fuel usage rate of 3,226 BOE for existing sources in the discharge option.

EPA calculated energy consumption for compliance with the zero discharge option for the Gulf of Mexico wells that EPA estimates currently discharge SBF cuttings, since these wells would need to convert from discharge to zero discharge under this option. EPA estimated fuel usage rates were estimated by identifying the equipment and activities associated with two zero discharge technologies currently in use in the Gulf of Mexico: 1) transporting waste cuttings to shore-based land disposal sites; and 2) on-site injection. The methods developed for calculating fuel usage for both these zero discharge technologies are described above for baseline OBF wells. While the same line-items were used to estimate impacts for the transport and land-disposal technology scenario in all three geographic areas, the per-well fuel usage rates vary between the three geographic areas due to the various distances traveled by and trip frequencies of boats and trucks in these areas. By multiplying the weighted average per-well fuel usage rates by the projected annual drilling activity for the four model wells in the Gulf of Mexico, EPA calculated a total annual fuel usage rate of 24,125 BOE for existing sources in the zero discharge option.

c. *Incremental Compliance Energy Consumption.* Incremental compliance impacts are the difference between the baseline and the compliance impacts, and indicate the amount by which baseline impacts would be reduced with implementation of the compliance technologies considered. Table VII–1 lists the total annual incremental fuel usage rates for each geographic area for both the discharge and zero discharge options. With the implementation of the discharge option, there would be a reduction in fuel use of 2,613 BOE annually for existing sources. This reduction is due to the elimination of transport and land disposal equipment used to manage waste cuttings from baseline OBF wells that switch to SBFs. Under zero discharge, there would be an increase in fuel use of 24,125 BOE per year for existing sources. This increase is due to the addition of transport and land disposal equipment to manage waste cuttings from baseline SBF wells that currently discharge cuttings.

2. Air Emissions

EPA estimated air emissions resulting from the operation of boats, cranes, trucks, and earth-moving equipment necessary to dispose of waste cuttings onshore, or the operation of on-site grinding and injection equipment, by using emission factors relating the production of air pollutants to time of equipment operation and amount of fuel consumed. The baseline emissions, emissions reductions under the discharge option, and emissions increases under the zero discharge option are presented in Table VII–1.

D. Energy Consumption and Air Emissions for New Sources

Based on current drilling activity data and information provided by industry sources, EPA projects that an estimated 19 new source SBF wells will be drilled annually in the Gulf of Mexico, consisting of 18 deep water development wells and 1 shallow water development well. No new source wells are projected for offshore California and coastal Cook Inlet because of the lack of activity in new lease blocks in these areas. New source wells are defined as those requiring substantial new infrastructure, and exclude exploratory wells by definition (EPA, 1993; EPA, 1996).

Table VII–2 lists the annual energy consumption (i.e., fuel usage) and air emissions calculated for baseline, discharge, and zero discharge option for new sources. The methods used to calculate the per-well impacts for new source wells are the same as for existing sources, described above. The analysis indicates that new source wells in the discharge option will marginally increase fuel use and air emissions above the baseline. This increase is due to implementation of the model SBF recovery device such that, instead of discharging waste SBF-cuttings at the baseline control level of 11 percent retention, would discharge at 7 percent retention. In the zero discharge option, applying zero discharge technologies increases fuel use and air emissions. Both increments represent the use of energy-consuming equipment above the baseline. However, the discharge option raises energy consumption only slightly while the zero discharge option leads to a large increase in energy consumption and corresponding air emissions.

TABLE VII–2.—SUMMARY ANNUAL BASELINE, DISCHARGE, AND ZERO DISCHARGE NON-WATER QUALITY ENVIRONMENTAL IMPACTS OF SBF CUTTINGS MANAGEMENT FROM NEW SOURCES

Technology basis	Gulf of Mexico	
	Air emissions (tons/yr)	Fuel usage (BOE/yr)*
Baseline: Discharge (11% retention)	0	0
Compliance:		
Discharge (7% retention)	1.28	311
Zero Discharge	39	2,932
Incremental Reductions (Increases):		
Discharge (7% retention)	(1.28)	(311)
Zero Discharge	(39)	(2,932)

*BOE (barrels of oil equivalent) is the total diesel volume required converted to equivalent oil volume (by the factor 1 BOE = 42 gal diesel) and the volume of natural gas required converted to equivalent oil volume (by the factor 1,000 scf = 0.178 BOE).

E. Solid Waste Generation and Management

The regulatory options considered for this rule will not cause generation of additional solids as a result of the treatment technology. However, the quantity of SBF-cuttings discharged under the discharge option will be traded for a nearly equal quantity of OBF-cuttings disposed of onshore or injected onsite to comply with the zero discharge option. Implementation of the discharge option will result in reductions of solid waste currently disposed at land-based facilities and by injection, due to the OBF wells converting to SBF wells. For existing sources currently using OBFs, under the discharge option, the annual amount of waste cuttings disposed at land-based facilities would be reduced by 30 MM pounds, and the amount injected would be reduced by 4 MM pounds, for a total of 34 MM pounds. Implementation of the zero discharge option by existing sources would result in an increase of 132 MM pounds of waste cuttings disposed onshore, and 33 MM pounds injected, for a total of 165 MM pounds. Thus, under the discharge option, for existing sources the total reductions in amount of waste cuttings disposed of at land-based facilities would be 162 MM pounds, and the total amount injected would be reduced by 37 MM pounds.

The new sources analysis considers only SBF wells that discharge waste cuttings with 11 percent retention of synthetic base fluid on cuttings, which under the discharge option would discharge at 7 percent. Therefore, under the discharge option the incremental amount of waste cuttings disposed onshore or injected is zero. Under the

zero discharge option, EPA estimated that 10 MM pounds would be transported to shore and 2.6 MM pounds would be injected, for a total of 13 MM pounds disposed annually for new sources.

Combining the reductions from the discharge option with the increases in the zero discharge option, for existing and new sources combined, shows that the total effect of discharge versus zero discharge reduces the amount of OBF-cuttings sent to shore for land disposal by 172 MM pounds annually and reduces the amount injected by 40 MM pounds annually. Thus the total reduction in zero-discharge OBF-cuttings waste is 212 MM pounds annually.

F. Consumptive Water Use

Since little or no additional water is required above that of usual consumption, no consumptive water loss is expected as a result of this rule.

G. Safety

EPA investigated the possibility of an increase in injuries and fatalities that would occur as a result of hauling additional volumes of drilling wastes to shore under the zero discharge option. EPA acknowledges that safety concerns always exist at oil and gas facilities, regardless of whether pollution control is required. EPA believes that the appropriate response to these concerns is adequate worker safety training and procedures as is practiced as part of the normal and proper operation of oil and gas facilities.

EPA believes the preferred discharge option may marginally decrease the number of accidents due to the decrease in supply vessel traffic, as well as the decrease of crane usage to load and unload cuttings boxes. However, EPA finds that these differences are not significant, in light of the analysis of the following section on vessel traffic.

H. Increased Vessel Traffic

EPA estimated the amount of additional vessel traffic that would result from the implementation of the preferred discharge option and the zero discharge option. To measure increases or decreases in vessel traffic, the current baseline level of supply boat frequency for wells currently drilled with OBF was calculated using the numbers of boat trips estimated as part of the energy consumption and air emissions impact analyses described above.

To comply with the zero discharge option, EPA estimates that the 113 existing and new source wells in the Gulf of Mexico (GOM) currently drilled with SBF would implement zero discharge technologies. Based on the assumption that 80 percent of these wells would transport waste drill cuttings to shore, an estimated total of 91 boat trips per year would be required. No additional boat trips would be required in California and Cook Inlet, Alaska, because these regions are currently at zero discharge of SBF-cuttings.

Under the discharge option, 23 (20 percent) GOM wells, the 12 California wells, and the one Cook Inlet well, currently drilled with OBF would convert to SBF usage, thereby eliminating the need for hauling OBF cuttings to shore. Baseline supply boat trips per year were estimated as follows: 18 trips for the 23 wells in the Gulf of Mexico where 18 wells transport drill cuttings to shore and the other 5 inject on-site; 12 trips for the 12 wells in offshore California; and 1 trip for the well in coastal Cook Inlet. Therefore, EPA projects that supply boat traffic would decrease by 31 boat trips per year. Compared to the zero discharge option which led to 91 additional boat trips per year in the GOM, the discharge option reduces boat traffic over the three regions by 122 boat trips per year, and in the GOM by 109 boat trips per year. As cited in the Offshore Oil and Gas Development Document, 10 percent of the total Gulf of Mexico commercial vessel traffic, or approximately 25,000 vessels, service oil and gas operations. Therefore, compared to the zero discharge option, the discharge option decreases commercial boat traffic by 0.04 percent in the GOM. EPA does not consider this decrease a significant impact.

VIII. Water Quality Impacts of Proposed Regulations

A. Introduction

EPA has evaluated the potential effects of the proposed regulation on the receiving water environment. Consistent with the scope of the rule, the analysis covers only those geographic areas where water-based drilling fluids (WBFs) may be discharged under current regulations, i.e., offshore waters beyond three miles from the shoreline, Alaska offshore waters with no three-mile restriction, and the coastal waters of Cook Inlet, Alaska.

Based on performance characteristics, SBFs are considered to be a substitute for traditional oil-based drilling fluids (OBFs) using diesel oil and mineral oil, but not for WBFs. For the water quality impacts analysis, EPA has assumed that the future use of WBFs will be in keeping with current practice, and that SBFs will replace traditional OBFs at 20 percent of the wells where OBFs would otherwise be used. EPA intends that "whole" SBFs will not be discharged, and therefore only the drill cuttings and the adherent residual fluid will be discharged. This is in contrast with the current regulation for WBF drilling wastes, which allows for the controlled discharge of both cuttings and whole fluids. Discharge of traditional OBF drilling wastes to water is not allowed by current regulations and permits. OBF drilling wastes are therefore injected into disposal wells or shipped to shore for proper disposal.

Allowing the discharge of SBF-cuttings would make them, in many cases, less expensive to use than OBFs, and thus would encourage the use of SBFs. Changing practices from traditional OBF drilling/offsite disposal to SBF drilling/onsite discharge is expected to produce significant non-water quality environmental benefits (see Section VII). However, since discharge of traditional OBFs is prohibited, switching from OBF drilling/offsite disposal to SBF drilling/onsite discharge would result in additional water quality impacts. Where SBF cuttings are currently being discharged, the proposed discharge controls would reduce the water quality impacts. EPA has evaluated the water quality impacts of SBF discharges, and has used this analysis in balancing today's proposal with non-water quality environmental impacts associated with the use of OBFs. Based on this analysis, EPA prefers to allow the controlled discharge of SBF cuttings and reduce non-water quality environmental impacts.

The chemical composition (and for the most part, toxicity testing) of various existing SBFs indicate that they are considerably less toxic and less hazardous to human health than traditional OBFs. Therefore, the water quality impacts from an accidental spill of SBFs would be expected to be lower compared to a similar spill involving traditional OBFs.

B. Types of Impacts

1. Pollutant Characterization

Although SBFs are not considered to be a replacement for WBFs, it is useful to compare the two types of fluids, since the discharge of WBFs is currently allowed. As with WBF discharges, SBF-cuttings discharges will contain total suspended solids (TSS) associated with the drill cuttings and solids of the drilling fluid, metals associated with the drilling fluid barite and the geologic formation, and priority and nonconventional pollutants associated

with potential contamination by formation (crude) oil. Some pollutants of concern from the barite include priority metals such as arsenic, chromium, copper, lead, mercury, nickel, and zinc, and nonconventional pollutants such as aluminum and tin. Formation oil contamination may include priority organics such as fluorene, naphthalene, phenanthrene, and phenol, and nonconventional pollutants such as alkylated benzenes and total biphenyls.

Compared to WBFs and associated cuttings, SBF-cuttings will have additional pollutants associated with the synthetic base fluids themselves. In general, these pollutants are long-chain hydrocarbons or esters of vegetable fatty acids which present a significant organic loading. They are considered non-conventional pollutants.

The principal water column impacts anticipated from SBF drilling wastes are increased turbidity and toxicity. Turbidity is associated with the discharged solids, and can negatively impact fish and biotic productivity. Toxicity may arise from the waste stream pollutants that leach into the water column. Previous modeling of offshore WBF discharges indicates that these effects are localized and short-term (on the order of hours). The additional organic pollutants comprising the SBFs are not expected to exacerbate water column impacts, since they generally are water non-dispersible and exhibit very low solubility in water.

Laboratory and field studies indicate that the primary impacts from SBF-cuttings discharges are associated with the benthic community. These impacts include those associated with the discharge of WBFs, i.e., smothering of sessile organisms, toxicity, and altered sediment grain size, leading to reductions in abundance and diversity of the benthic biota over a localized area. SBF-cuttings are expected to produce additional impacts associated with the base fluid pollutants, such as organic enrichment, anoxia resulting from biodegradation, and potential increased toxicity. In nutrient-poor deep sea environments, organic enrichment may alter the benthic community by increasing overall biomass density.

Toxicity potential of SBFs seems better assessed through sediment-phase tests than aqueous-phase tests, since SBFs are hydrophobic and have strong self-adherence properties. Based on the chemical composition of SBFs and on limited sediment-phase test data (five sets of test data by different scientists using various sediment-dwelling and water column-dwelling marine organisms), the potential for toxicity varies among fluid types, but generally appears to be low. However, some test results indicate that sediment toxicity of certain SBFs is not reduced compared to OBFs.

Biodegradability is an important SBF parameter, since organic enrichment and ensuing sediment oxygen depletion is expected to be a dominant impact of SBF discharges. All SBFs have high theoretical oxygen demands and are likely to produce a substantial sediment oxygen demand as they degrade in the receiving environment.

The available information on the bioaccumulation potential of SBFs is limited, consisting of six studies on octanol:water partition coefficients (P_{ow}) and two studies on tissue uptake in experimental exposures. The limited data and the chemical composition of SBFs suggest that existing SBFs do not pose a significant bioaccumulation potential.

EPA intends to generate or obtain additional data regarding the potential for toxicity, bioaccumulation, and persistence of SBFs, through laboratory studies and seabed surveys at SBF-cuttings discharge sites. The further work EPA intends to perform on laboratory testing is detailed in Section VI of today's notice. Further intended seabed surveys are discussed at the end of this section under the heading "Future Seabed Surveys."

2. Seabed Surveys

Past seabed surveys provide some insight into the fate and effects of SBF discharges. Results of several seabed surveys are described below.

a. *EPA/Industry Seabed Survey.*—In August 1997, EPA and industry jointly conducted a seabed survey in the Gulf of Mexico at three platforms on the central Louisiana continental shelf where SBF-cuttings were discharged. The purpose of the survey was to conduct a preliminary evaluation to determine the areal extent of observable impact. At the Grand Isle site (water depth = 61 meters), 1,315 bbl (167 metric tons) of internal olefin (IO) SBF were discharged on cuttings. Discharge ceased 25 months prior to the survey. At the South Marshall Island site (water depth = 39 meters), 94 bbl (12 metric tons) of linear alpha olefin (LAO) and IO SBF were discharged on cuttings. Discharge ceased 11 months prior to the survey. At the South Timbalier site (water depth = 33 meters), 2,390 bbl (304 metric tons) of IO SBF were discharged on cuttings. Discharge ceased 10 months prior to the survey.

Sediment was sampled at stations from 50 to 150 meters away from the platforms, with reference stations at 2,000 meters. Samples were collected at each station for physical and chemical analysis. Samples for biological analysis and toxicity testing were collected at selected stations. The odor of hydrogen sulfide was observed in seven of the 61 samples collected near the platforms (within 150 meters), indicating anoxic conditions. Although only a small fraction of the available seabed area was sampled, the results indicate that detectable SBF hydrocarbon (SBF-H.C.) concentrations were limited to within 50 to 150 meters of the platforms, with the highest concentrations (on the order of 10,000 ppm) being within 50 meters of the platforms. Elevated SBF-H.C. concentrations appeared to occur in a spotty, mosaic pattern rather than in a continuous unbroken pattern around the platform.

Ten-day acute sediment toxicity tests were performed by the industry coalition on six samples near the platforms. The tests were performed using the amphipods *Leptocheirus plumulosus* and *Ampelisca abdita*. With the exception of one sample, survivals of both organisms exceeded 75 percent (survival of *A. abdita* was 62 percent in a sample taken 100 meters from the Grand Isle platform). For all platforms, *L. plumulosus* survivals were greater than those observed for the control sediment (although control survival was extremely low). Average survivals over all non-reference, non-control sediments were 92 percent and 83 percent for *L. plumulosus* and *A. abdita*, respectively. Average reference station sample survivals were 95 percent and 91 percent for *L. plumulosus* and *A. abdita*, respectively. Average control sample survivals were 65 percent and 83 percent for *L. plumulosus* and *A. abdita*, respectively.

EPA also conducted sediment toxicity tests on the seabed survey samples. Sample locations include the same ones as those tested by the industry coalition, plus three additional locations around the Grand Isle platform. For all platforms, survival of *A. abdita* indicated no adverse toxicity beyond that demonstrated for the control sediment. *L. plumulosus* test results demonstrated a high degree of toxicity (0—65 percent survival) within 150 meters of the Grand Isle platform, with the higher toxicities at locations closer to the platform. Compared to the Grand Isle site, *L. plumulosus* test results indicated much lower toxicity near the South Marshall Island platform (83–92 percent survival) and the South Timbalier platform (83–85 percent survival). Average survival over all non-reference, non-control sediments were 60 percent and 85 percent for *L. plumulosus* and *A. abdita*, respectively.

Average reference station sample survivals were 88 percent and 87 percent for *L. plumulosus* and *A. abdita*, respectively. Average control sample survivals were 95 percent and 87 percent for *L. plumulosus* and *A. abdita*, respectively.

EPA also collected samples at the Grand Isle and South Marshall Island sites for macroinfaunal analysis, but the samples have not yet been analyzed.

b. *Other Seabed Surveys.*—There are limited biological assessment data from seabed surveys around platforms where SBF-cuttings have been discharged. Of the fourteen other sites where seabed surveys have been performed, only five include biological analyses. Two of the sites are in the Gulf of Mexico; the other three are in the North Sea.

One Gulf of Mexico study (1995) was performed at a platform in 39-meter deep water where 354 bbl (45 metric tons) of a poly alpha olefin (PAO) SBF was discharged on cuttings. Surveys were conducted nine days, eight months, and two years after discharge ceased. Sediment was sampled at stations from 25 to 200 meters away from the platform, with reference stations at 2,000 meters. Eight months after discharge, the total petroleum hydrocarbon (TPH) concentration in the sediment decreased substantially (60 percent–98 percent) at all but the closest, 25-meter stations. It is uncertain how much of this decrease is attributable to biodegradation, as opposed to sediment redistribution and reworking. It appears that little further reductions in TPH sediment concentration occurred between the 8th-month post-discharge survey and the second-year post-discharge survey. Limited analysis of the benthic fauna (performed in the second-year post-discharge survey only) indicate significant differences (reduced abundance and richness) at the 25-meter and 50-meter stations compared to reference stations.

Another Gulf of Mexico study (1998) was performed in a relatively deep water environment in the northern Gulf, at a platform in 565-meter deep water. Approximately 5,500 bbls (699 metric tons) of an SBF, using a blend of 90 percent linear alpha olefin and 10 percent vegetable ester as the base fluid, had been discharged on cuttings prior to the first survey, which was conducted approximately four months after discharge ceased. A second survey was performed approximately eight months after the first survey (approximately one year after the first series of discharges ceased). An additional 1,600 bbls (203 metric tons) of SBF were discharged on cuttings two days prior to the second survey.

Sediment was sampled out to 90 meters from the platform. High sediment SBF concentrations (up to 198,000 ppm) suggest that the in-situ biodegradation rate was lower than anticipated. Between the two surveys, densities of polychaetes and nematodes increased significantly, and the dominant taxon shifted from cyclopoid copepods to polychaetes and nematodes. Biomass density was highest in the area where the highest SBF concentrations were found. In the second survey, the densities of polychaetes, cyclopoid copepods, and gastropods in this area were approximately 40, 650, and 3,000 times higher than background levels for northern Gulf of Mexico reference sites at similar water depths. Fish densities in the vicinity of the platform were approximately 3–10 times higher than background levels. The analysis indicates that the SBF may be acting as a nutrient source and thereby supporting increased biomass in a typically nutrient-poor deep sea benthic environment.

One of the North Sea studies (1996) includes an impact study of the discharge of 180 metric tons of an ester SBF at a Dutch well site in 30-meter deep water. Surveys occurred one, four, and eleven months after discharge ceased. In each survey, the SBF was detected in the upper 10 cm of sediment out to a distance of 200 meters from the discharge site (the farthest distance sampled for sediment ester concentration). During the 4th-month post-discharge survey, sediment ester levels appeared to increase, apparently due to resuspension and transport of contaminated sediment. Significant decreases of 65 percent to 99 percent in sediment ester levels occurred between the 4th-month and 11th-month post-discharge surveys. Effects on benthos abundance and richness were more extensive; in the 4th-month post-discharge survey, effects were noted at 500-meter stations (the farthest distance sampled for biological assessment), with "pronounced" effects within 200 meters. Benthic analyses from the 11th-month post-discharge survey indicated significant effects only out to 200 meters. Additionally, recolonization and recovery were noted within the study area after 11 months.

Another North Sea study (1991) involved the discharge of 97 metric tons of an ester SBF at a Norwegian well site in 67-meter deep water. Surveys were conducted immediately, one year, and two years after discharge ceased. Samples were taken out to 1,000 meters from the platform. Sediment ester levels fell dramatically between sampling events, with both maximum and average values within 1,000 meters decreasing more than three orders of magnitude between the time-zero and first-year post-discharge surveys, and more than five orders of magnitude between the time-zero and second-year post discharge surveys. Benthic organism abundance and richness were severely impacted out to 100 meters in the first survey (immediately post-discharge). Evidence of minor macrobenthic community changes was seen in the second-year post-discharge survey.

Another North Sea study (1992) examined the effects of the discharge of 160 metric tons of an ether SBF at a Norwegian well site. Surveys were conducted immediately, one year, and two years after discharge ceased. Sediment samples were taken out to 200 meters from the platform. Ether levels appeared to fall continuously, with mean ether levels decreasing by factors of two-fold between the time-zero and first-year post-discharge surveys, and ten-fold between the time-zero and second-year post-discharge surveys. This degree of degradation appears to be considerably less than that noted for the ester SBF site noted above. The author interpreted this as indicating that a lag phase occurred in the biodegradation of the ether SBF. (Laboratory biodegradation testing using the solid phase test also shows that ethers have a much slower degradation rate than vegetable esters.) Benthos were analyzed at only four stations in the second-year post-discharge survey; the author reported that the observed effects were "remarkably weak".

c. *Conclusions.*—There is limited field information upon which to base broad conclusions about the potential extent of biological impacts from SBF discharges. Based on seabed surveys, it appears that significant biological impact zones may range from as little as 50 meters to as much as 500 meters from the platform initially, to as much as 200 meters a year later. Generally, severe initial effects seem likely within 200 meters of the discharge. The initiation of benthic recovery seems likely within a year after discharge has ceased, and it seems unlikely that recovery will be complete within two years (to date, no post-discharge surveys have been performed beyond a two-year period). The time scale of complete recovery from SBF discharges (and oil and gas drilling and production platform activity in general) is uncertain. Impact zones and recovery rates will be site-specific, depending on factors such as water depth, current, temperature, and

seafloor energy, all of which affect the rate of degradation and dispersion of the SBF components and drill cuttings. In nutrient-poor benthic environments such as the deep sea, SBFs may serve as a nutrient source and thereby increase overall biomass density.

C. Water Quality Modeling

To assess the water quality impacts of the regulatory options, EPA modeled incremental pollutant concentrations, in the water column and in the sediment pore water, at the edge of the 100-meter radius mixing zone established for offshore discharges by CWA Section 403, Ocean Discharge Criteria, as codified at 40 CFR Part 125 Subpart M. The modeling was performed for the Gulf of Mexico, Offshore California, and Cook Inlet, Alaska discharge regions. The modeling was performed for each model well (shallow water exploratory, shallow water development, deep water exploratory, and deep water development), as appropriate for each discharge region, for current industry practice and each of the two options:

(1) Current Practice = 11 percent base fluid retention on cuttings (by weight on wet cuttings) with 0.2 percent crude contamination (by volume in drilling fluid) .

(2) Discharge Option = seven percent retention on cuttings with 0.2 percent crude contamination.

(3) Zero Discharge.

The seven percent retention above is based on the long-term average with the control technology of today's proposal, as detailed in Section VI of today's notice. The 0.2 percent crude contamination is not based on the regulatory limit but rather a concentration EPA estimates would commonly be found in SBF discharged with cuttings.

EPA compared the modeled values to federal water quality criteria/toxic benchmark recommendations for marine acute effects, marine chronic effects, and human health effects via ingestion of organisms. For the most part, individual modeled pollutant concentrations were compared to the criteria for each pollutant. In the pore (interstitial) water analysis, potential additive toxic effects of six of the metals (cadmium, copper, lead, nickel, silver, and zinc) were accounted for by converting the pore water concentrations to toxic units and summing them. This approach is in accordance with EPA's proposed sediment guidelines for these metals, which indicate that benthic organisms should be acceptably protected if the sum of the Interstitial Water Guidelines Toxic Units (IWGTUs) for these six metals is less than or equal to one. (Alternatively, the benthic organisms should be acceptably protected if the sum of the molar concentrations of simultaneously extracted metals (SEM) for these six metals is less than or equal to the molar concentration of acid volatile sulfide (AVS) from the sediment.) The pollutant-specific IWGTU is defined as the dissolved interstitial water concentration of the pollutant divided by the water quality criterion (chronic value) for that pollutant.

EPA criteria/toxic benchmark recommendations are considered by the States in developing water quality criteria for State waters. The criteria are not steadfast standards in federal offshore waters, but EPA takes them into account in making a determination of whether a discharge will cause unreasonable degradation of the marine environment (See 40 CFR Part 125.122(a)(10)). The modeled pollutants include only those priority and nonconventional pollutants for which EPA has established numeric marine water quality criteria. Concentrations of TSS, synthetic base fluids, and some other constituents have therefore not been modeled. However, EPA emphasizes that much of the anticipated benefits of controlling SBF discharges lies in reducing discharge quantities of TSS and oil and grease (including synthetic base fluids). For example, based on model well scenarios, EPA projects that the controlled discharge option will reduce discharges of total oil and SBF-associated TSS (i.e., TSS associated with SBFs adhering to cuttings) by 43 percent compared to current industry practice where SBFs are currently being discharged. Reducing the discharge quantities of these pollutants at existing SBF discharge sites is expected to decrease the potential impact on the environment (particularly the benthos) by reducing the severity of physical habitat alteration, anoxia, and potential toxicity and bioaccumulation. Where operators switch from OBF drilling/offsite disposal to SBF drilling/onsite discharge, total pollutant loading to the aquatic environment will increase.

EPA recognizes some limitations in this analysis. Due to a lack of adequate modeling tools, the analysis does not quantify the effects of smothering, physical habitat alteration, or anoxia. Additionally, the analysis does not consider background pollutant concentrations or pollutant loadings from other potential discharges, such as WBFs or produced water. The analysis is conservative in that the pollutants are assumed to be fully leached (to the extent that they are leachable in accordance with their partitioning coefficients and leach percentages) into the medium under consideration. That is, for the water column analysis, EPA assumed that all leachable pollutant mass leaches into the water column (with none left over for leaching into the pore water). Likewise, for the pore water analysis, EPA assumed that all of the leachable pollutant mass leaches into the pore water (without any mass lost to the water column).

The modeled water column concentrations are based on existing Offshore Operators Committee modeling of OBF-cuttings discharges, since dispersion behavior of SBF cuttings is expected to be similar to that of OBF-cuttings. EPA used median estimated dilution values (specific to each discharge region) at the 100-meter mixing zone to calculate predicted water column concentrations for pollutant discharges from the model wells. Non-synthetic organic pollutants were assumed to be fully dissolved in the water column. Effluent metal concentrations were adjusted by pollutant-specific mean seawater leach percentage factors to determine water column concentrations. The modeling indicates that neither current industry practice nor the discharge option would result in exceedances of any federal water quality criteria/toxic benchmarks at the edge of the 100-meter mixing zone, for any of the modeled discharge regions.

The modeled sediment pore water concentrations for the Gulf of Mexico are based on sediment pollutant characterizations from five field surveys of 11 wells (ten in the North Sea, one in the Gulf of Mexico) where SBFs have been discharged. The California and Cook Inlet analyses are also based on this approach, but data from two shallow wells were eliminated to better represent discharge conditions in those regions. Sediment synthetic concentrations at 100 meters from the discharge point were taken or interpolated from each of the surveys. An average sediment synthetic concentration was derived for each model well, and the sediment concentration of each pollutant was calculated based on the ratio of each pollutant to the synthetic material. Pore water pollutant concentrations were then calculated based on mean seawater leach percentages (for metals) and partition coefficients (for organics). Organic pollutant partitioning was based on an average fractional organic carbon content for sediment in each discharge region.

Table VIII–1 lists the factors by which projected pore water concentrations of certain pollutants would exceed federal water quality criteria/toxic benchmarks for each regulatory scenario and model well in the modeled discharge regions. EPA notes that these pollutants are associated with the geologic formation and/or the barite used in all drilling fluids, and are not specific to SBF discharges. Modeling of current industry practice (with respect to SBF discharges only) indicates that the pore water pollutant concentrations would exceed some federal criteria/toxic benchmarks at the edge of the 100-meter mixing zone in several model well scenarios. The modeling indicates that, due to discharge limits on drilling fluid retention, the discharge option would reduce pollutant pore water concentrations by 43 percent compared to current industry practice (where SBFs are currently being discharged). The discharge option would thereby reduce the number and magnitude of projected exceedances compared to current industry practice (at existing SBF discharge sites). Zero discharge would obviously eliminate any projected exceedances.

TABLE VIII–1.—FACTORS BY WHICH PORE WATER POLLUTANT CONCENTRATIONS AT THE EDGE OF THE 100-METER MIXING ZONE WOULD EXCEED FEDERAL WATER QUALITY CRITERIA RECOMMENDATIONS FOR EACH REGULATORY OPTION AND MODEL WELL [a]

Discharge region	Pollutant	Shallow water				Deep water			
		Development well		Exploratory well		Development well		Exploratory well	
		Current practice	Discharge option	Current practice	Discharge option	Current practice	Discharge option	Current practice	Discharge option
Gulf of Mexico	Arsenic	1.3	[c]	2.7		1.9	1.1	4.3	2.5
	Chromium			1.7		1.3		2.8	1.6
	Mercury							1.2	
	Metals Composite[b]	1.1		2.3	1.3	1.7		3.7	2.1
California	Arsenic			Not applicable		1.2		Not applicable	
	Metals Composite[b]			Not applicable		1.1		Not applicable	
Cook Inlet, Alaska	Arsenic			Not applicable		Not applicable		Not applicable	
	Metals Composite[b]			Not applicable		Not applicable		Not applicable	

[a] There would be no exceedances for any pollutants with the zero discharge option.
[b] Metals composite includes cadmium, copper, lead, nickel, silver, and zinc.
[c] Blanks indicate no exceedances are predicted.

D. Human Health Effects Modeling

EPA has also evaluated the effects of the current industry practice and regulatory options on human health via consumption of finfish and shrimp from affected fisheries. Pollutant concentrations in finfish tissue (applicable to the Gulf of Mexico, offshore California, and Cook Inlet discharge regions) and shrimp tissue (applicable to the Gulf of Mexico and offshore California) were estimated based on the previously described water quality modeling techniques. As with the water column and pore water analyses, EPA considered only incremental loadings from SBF discharges, irrespective of other discharges and background concentrations. The analysis is based on water-only exposure of organisms (i.e., it does not consider organism exposure through the food web), and includes only those pollutants for which a bioconcentration factor has been established. Thus, the analysis does not project uptake of synthetic compounds or nonconventional pollutants.

In assessing human health impacts, EPA considered a seafood intake rate of 177 grams per day. This value represents the 99th percentile of daily seafood intake (fresh/estuarine and marine, uncooked basis), based on the Combined USDA 1989, 1990, and 1991 Continuing Survey of Food Intakes by Individuals. This intake rate is reflective of high-end consumers in the general population, and is also a reasonable default value for subsistence fishers. For the shrimp analysis, the intake rate was adjusted by the estimated percent of shrimp catch affected by SBF-cuttings discharges. The finfish intake rate was not adjusted, due to lack of data on affected finfish landings. The finfish intake rate is therefore much more conservative than the shrimp intake rate, as all consumed fish are assumed to be affected by SBF-cuttings discharges.

To estimate potential non-cancer (toxic) effects, EPA calculated the Hazard Quotient for each pollutant. The Hazard Quotient is the estimated pollutant intake rate divided by the pollutant-specific oral reference dose, which represents a level that is protective of human health with respect to toxic effects. A Hazard Quotient greater than one indicates that toxic effects may occur in exposed populations. For arsenic (a human carcinogen), EPA also estimated the lifetime marginal risk of developing cancer, using the EPA-developed, pollutant-specific potency slope factor. For purposes of this analysis, a risk level of 1×10^{-6} is considered to be acceptable.

The finfish exposure assessment is based on incremental pollutant exposures within 100 meters of each platform. The spatial extent of exposure within this area was derived using average dilution values (specific to each discharge region) within the mixing zone, based on existing Offshore Operators Committee modeling of OBF-cuttings discharges. Water column pollutant concentrations were projected using leach percentages and partitioning coefficients, and finfish uptake was calculated based on pollutant-specific bioconcentration factors and a catch-weighted average lipid content of 2.14 percent.

The modeling indicates that, due to discharge limits on drilling fluid retention, the discharge option would reduce pollutant tissue concentrations in finfish by 43 percent compared to current industry practice (where SBFs

are currently being discharged). Neither current industry practice nor the discharge option would result in toxic human health impacts or excess cancer risk under a 99th percentile consumption scenario, for any of the modeled discharge regions.

For the shrimp exposure assessment in the Gulf of Mexico and offshore California, EPA estimated an impact area based on field survey data and an assumed threshold concentration of 100 ppm for synthetic fluid in sediment. Sediment pollutant concentrations for each model well were calculated based on one year's worth of cuttings discharges, assuming an affected depth of 5 cm and uniform distribution of cuttings over the impact area. Pore water pollutant concentrations were projected using leach percentages and partitioning coefficients, and shrimp uptake was then calculated based on pollutant-specific bioconcentration factors and a shrimp lipid content of 1.1 percent.

The modeling indicates that, due to discharge limits on drilling fluid retention, the discharge option would reduce pollutant tissue concentrations in shrimp by 43 percent compared to current industry practice (where SBFs are currently being discharged). Neither current industry practice nor the discharge option would result in toxic human health impacts or excess cancer risk under a 99th percentile consumption scenario, for either of the modeled discharge regions.

E. Future Seabed Surveys

1. Ocean Discharge Criteria

Permits authorizing the discharge of SBF-cuttings are required to (a) meet technology-based requirements to set the control floor, and (b) meet section 403(c) of the Clean Water Act (CWA) Ocean Discharge Criteria, or, in state waters of Cook Inlet, Alaska, meet state water quality criteria. Today's notice proposes the technology-based discharge controls. While not a part of today's proposed rule, the following briefly describes the CWA 403(c) requirements and the future seabed surveys EPA thinks should occur, based on currently available information, to satisfy these permit requirements. The seabed surveys that industry has planned to conduct are also presented.

The nature, extent and duration of seabed surveys required by discharge permits may increase or decrease as further information is gathered, and any monitoring requirement shall be decided by the EPA or delegated state permitting authority. A decision that sufficient seabed survey information has been gathered in one region does not constitute grounds that further seabed surveys are no longer required in other regions.

For ocean discharges, the ambient environmental effect information needed to satisfy EPA permit requirements is specified in Clean Water Act section 403(c), Ocean Discharge Criteria, as codified at 40 CFR Part 125, subpart M. This subpart establishes guidelines for issuance of National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans. These criteria require that a determination be made whether a discharge will cause unreasonable degradation to the marine environment based on several considerations, including the quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged, and considerations relating to the importance and vulnerability of the potentially exposed biological communities and human health (see 40 CFR Part 125.122).

If there is insufficient information to determine prior to issuing the permit that there will be no unreasonable degradation to the marine environment, the Ocean Discharge Criteria require that a monitoring program be specified. This monitoring program must be sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of bioaccumulative and/or persistent impact on aquatic life (see § 125.123 (d) (2)). According to § 125.123 (c) (1) the discharge may not cause irreparable harm to the marine environment during the period in which monitoring is undertaken. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

2. EPA Suggestions for Monitoring Seabed Effects

EPA thinks that currently there is insufficient information to determine that there will be no unreasonable degradation to the marine environment. The Ocean Discharge Criteria, therefore, require that a monitoring program be specified in permits allowing the discharge of SBF-cuttings. The ambient environmental studies should monitor the rate of seabed recovery around several offshore and coastal platforms where SBF-cuttings have been discharged. Sites should be selected to include both deep water and shallow water locations, and should investigate the different types SBFs, according to base fluid, which the permits may allow.

A detailed study may investigate baseline contaminants and benthic invertebrate analysis, disappearance of SBF base materials over time, toxicity of sediment over time, and rate of recolonization by benthic organisms. Desired endpoints include impacts to benthos, sediment characterization, and contribution to hypoxia.

To characterize the seabed survey site, detailed discharge information should be gathered on the platform level. This information should include the dates, prevailing current during discharge, and amounts, for all discharges: WBF, WBF-cuttings, and SBF-cuttings. The WBF and SBF formulations should also be provided. As a detail to the SBF-cuttings discharge quantities, the determination of quantity of synthetic material discharged should also be provided.

3. Industry's Plans for Seabed Surveys

EPA understands that the industry is planning a cooperative effort to address the CWA 403(c) requirements in the GOM. Industry representatives have told EPA that their cooperative seafloor study would include a review of historical data on SBF usage on the shelf and slope, and these data would be analyzed to select a representative series of platforms. The cooperative effort plans that three cruises would be conducted to evaluate equipment and sampling strategies, delineate cuttings deposition profiles (areal extent as well as thickness profile), determine SBF concentrations with depth and distance from source, and to determine if zone of biological influence can be determined. It is anticipated that most of the study sites (e.g., 6–12) locations would be on the shelf, and one or two would be located in deepwater. However, EPA may recommend that more deepwater surveys be conducted, in proportion to the total number of SBF wells drilled in the deepwater versus the shallow water. Parameters to be considered in platform selection included type and volume of synthetics released, number of wells drilled, water depth, shunt depth, and length of time since last discharge. The cooperative effort plans that a combination of side scan sonar, via remotely operated vehicle cameras, and physical grab sampling would be used to determine cuttings deposition. Mineralogy and sediment chemistry are planned to verify cuttings and SBF presence. Oxygen measurements and relative percent difference layer determinations are planned to evaluate SBF-induced anoxia. Biological sampling would be conducted at

selected sites to evaluate ability to measure community structure changes relative to drilling discharges. The deepwater location(s) (between 500–1,200 m) would be sampled and surveyed by the remotely operated vehicle to assess deepwater deposition and effects.

IX. Cost and Pollutant Reductions Achieved by Regulatory Alternatives

A. Introduction

This section presents EPA's methodology and results for estimating the compliance costs and pollutant reductions for the discharge and zero discharge options. EPA calculated costs and loadings on a model well basis, and determined total costs and loadings by multiplying the model well values by the number of wells. Since this is a differential analysis, the only wells, pollutants, and costs considered are those that are expected to change as a result of this proposed rule were it to become a final rule. Therefore, wells currently drilled with SBF are considered in the analysis, and also OBF wells that EPA anticipates will convert to SBF upon completion of this rule. However, wells currently using OBF and not converting to SBF would not incur costs or realize savings in the analysis. EPA assumed that only those wells using SBF or OBF currently would potentially use SBF in the future, and so wells drilled exclusively with WBF are not treated as incurring any costs or realizing any cost savings in this analysis. Also, of the wells that are in the analysis because they use SBFs or OBFs, the upper sections of the well that are drilled with WBF are not associated with any costs or savings in the analysis.

B. Model Wells and Well Counts

EPA developed model well characteristics from information provided by the American Petroleum Institute (API) to estimate costs to comply with, and pollutant reductions resulting from, the proposed discharge option and the zero-discharge option. API provided well size data for four types of wells currently drilled in the Gulf of Mexico (GOM); development and exploratory in both deep water (i.e., greater or equal to than 1,000 feet) and shallow water (i.e., less than 1,000 feet). The following text refers to these wells by the acronyms DWD (deep-water development), DWE (deep-water exploratory), SWD (shallow-water development), and SWE (shallow-water exploratory).

The model well information from API provided length of hole drilled for successive hole diameters, or intervals. From this, EPA calculated the hole volume for the well intervals that reportedly used SBF or OBF. For the four model wells and assuming 7.5 percent washout of the hole, EPA determined that the volumes of these SBF (or OBF) well intervals were, in barrels, 565 for SWD, 1,184 for SWE, 855 for DWD, and 1,901 for DWE.

EPA gathered information from the Department of Interior Minerals Management Service (MMS), the Texas Railroad Commission and the Alaska Oil and Gas Commission, to estimate the number of wells drilled annually in each of the three regions where drilling is currently active and drilling wastes may be discharged. To forecast the number of wells drilled annually EPA averaged the number of wells drilled in 1995, 1996, and 1997. Based on information from the industry, MMS, and DOE, EPA then applied the following projections to determine the number of wells drilled by drilling fluid type:

(i) On a drilling performance basis SBF is equivalent to OBF.

(ii) Development and exploratory wells have equal requirements for SBF/OBF performance.

(iii) In GOM as a whole, 10 percent of all wells use SBF, 10 percent use OBF, and 80 percent use WBF exclusively. However, no OBF is used in the deepwater due to the potential of spills, and due to higher performance requirements 75 percent of all wells in GOM deep water are drilled with SBF. The remaining 25 percent are drilled exclusively with WBF.

(iv) In offshore California and coastal Cook Inlet, Alaska, OBF is used in the same frequency as SBF/OBF in the GOM (75 percent of wells in deep water and 13.2 percent of wells in shallow water). The remainder of wells use WBF exclusively and no SBF is used.

Also based on information from the industry, MMS, and DOE, EPA determined the following concerning the conversion of SBF to OBF and vice versa:

(i) For the discharge option, 20 percent of GOM OBF wells convert to SBF, and all OBF wells are in the shallow water. All offshore California and Cook Inlet, Alaska OBF wells convert to SBF.

(ii) For the zero discharge option, shallow water GOM SBF wells convert to OBF. However, deep water GOM SBF wells do not convert, because SBFs provide advantages in terms of eliminating OBF spills in the event of riser disconnect. Offshore California and Cook Inlet, Alaska OBF wells remain OBF wells.

Details of the how EPA made these determinations are provided in the Development Document.

Table IX–1 presents the total number of wells that EPA estimates will be drilled annually, by drilling fluid, for both the discharge option and the zero discharge option. EPA has distinguished wells as either "existing" sources of drill cuttings for BPT, BCT and BAT cost and pollutant reductions analysis, or "new" sources of drill cuttings for NSPS cost and reductions analysis.

TABLE IX–1.—ESTIMATED NUMBER OF WELLS DRILLED ANNUALLY PER REGULATORY OPTION BY DRILLING FLUID

Type of well	Shallow water (<1,000 ft)		Deep water (>1,000 ft)		Total
	Develop.	Explor.	Develop.	Explor.	
Gulf of Mexico:					
Baseline All Wells [1]	645	358	48	76	1127
Baseline SBF Wells	13	7	36	57	113
Discharge Option SBF Wells	[2] 28	15	[3] 36	57	136
Zero Discharge Option SBF Wells	0	0	36	57	93
Offshore California:[4]					
Baseline All Wells	11	0	15	0	26
Baseline OBF Wells	1	0	11	0	12
Discharge Option SBF Wells	1	0	11	0	12
Coastal Cook Inlet, Alaska:[4]					
Baseline All Wells	7	1	0	0	8
Baseline OBF Wells	1	0	0	0	1

TABLE IX–1.—ESTIMATED NUMBER OF WELLS DRILLED ANNUALLY PER REGULATORY OPTION BY DRILLING FLUID—Continued

Type of well	Shallow water (<1,000 ft)		Deep water (>1,000 ft)		Total
	Develop.	Explor.	Develop.	Explor.	
Discharge Option SBF Wells	1	0	0	0	1

[1] While this table lists total number of wells, the only wells included in the analysis are those affected by this rule: SBF wells or wells converting from OBF to SBF in discharge option or converting from SBF to OBF in zero discharge option.
[2] EPA assumes that 95 percent of GOM shallow water development wells of this analysis are existing sources, and 5 percent are new sources (equals one new source well).
[3] EPA assumes that 50 percent of GOM deep water development wells of this analysis are existing sources, and 50 percent are new sources (equals 18 new source wells).
[4] EPA assumes all offshore California and Cook Inlet, Alaska, wells are existing sources, and in discharge option all OBF wells convert to SBF wells.

By multiplying the compliance costs and discharge loadings determined from the model well analysis, EPA calculated the total cost to the industry and the reduction in pollutant loadings, as detailed in the following sections.

C. Method for Estimating Compliance Costs

1. Introduction and Summary

The costs considered as part of the compliance cost analysis are only those that EPA believes will be incurred as a result of today's rule. These include costs and savings associated with the discharge, disposal, and recovery of SBF and OBF, costs associated with the technologies used to control and manage waste drill cuttings under the discharge and zero discharge options, and monitoring costs.

For each option and each geographic area, EPA estimated baseline costs from current industry waste management practices. Following this, EPA estimated the cost to comply with each option of today's rule. EPA then calculated the incremental compliance costs, or the difference between baseline costs and estimated compliance costs. Table IX–2 lists the total annual baseline, compliance, and incremental compliance costs calculated in each geographic area for both the discharge and zero discharge regulatory options.

As the values in Table IX–2 show, EPA estimates that today's proposed discharge option provides a savings to the industry of over $7 MM annually. Savings occur in the GOM among wells currently using SBF because, according to information available to the EPA, the value of SBF recovered by the model solids separation technology is $8.1 MM, while the cost of implementing this technology is only $3.1 MM. Thus, this regulatory requirement leads to an annual net savings of $5.0 MM.

Savings in the GOM also occur for the OBF wells that switch to SBF, because the increased cost of SBF is less than the savings in disposal costs for OBF-cuttings. However, EPA has assumed that only 20 percent to the wells currently drilled with OBF in the GOM will switch to SBF because of the risk of losing more valuable SBF downhole. These OBF wells that convert are in the shallow water. EPA determined that any deep water well operating in the Gulf of Mexico that prefers to use SBFs has already converted to SBF. Savings also result in offshore California and Cook Inlet, Alaska when OBF wells convert to SBF wells, again because the increased cost of SBF is less than the savings in disposal cost of OBF-cuttings. In these areas, EPA assumed that all OBF wells switch to SBF because of more difficult and expensive zero discharge options for OBFs in these areas, and air quality considerations in California.

TABLE IX–2.—SUMMARY ANNUAL BASELINE, COMPLIANCE, AND INCREMENTAL COMPLIANCE COSTS FOR MANAGEMENT OF SBF CUTTINGS, EXISTING AND NEW SOURCES

[1997$/year]

Technology basis	Gulf of Mexico	Offshore California	Cook Inlet, Alaska	Total
Baseline Costs:				
Discharge with 11% retention of base fluid on cuttings	$21,315,375	(1)	(1)	$21,315,375
Zero Discharge (current OBF-drilled wells only)	2,821,816	$2,157,023	$207,733	5,186,572
Total Baseline Costs per Area	21,935,466	2,157,023	207,733	24,300,222
Compliance Costs:				
Discharge with 7% retention of base fluid on cuttings	17,582,675	1,647,883	115,467	19,346,025
Zero Discharge via land disposal or on-site injection	29,873,689	0	0	29,873,689
Incremental Compliance Costs (Savings):				
Discharge Option	(6,554,516)	(509,140)	(92,265)	(7,155,921)
Zero Discharge Option	8,558,314	0	0	8,558,314

[1] Not applicable.

To summarize the effects of today's proposed rule, the values listed in Table IX–2 above include both existing and new sources. The values for new sources alone are provided below in Table IX–3. The values for existing sources alone may be obtained by subtracting these values from the corresponding values in Table IX–2.

As shown in Table IX–1, EPA estimated that new source wells are located only in the Gulf of Mexico because of the lack of activity in new lease blocks in offshore California and coastal Cook Inlet. New source wells are defined in the offshore guidelines, 40 CFR Part 435.11(q), and exclude exploratory wells by definition (EPA, 1993; EPA, 1996).

TABLE IX–3.—SUMMARY ANNUAL BASELINE, COMPLIANCE, AND INCREMENTAL COMPLIANCE COSTS FOR MANAGEMENT OF SBF CUTTINGS FROM NEW SOURCES

[1997/year]

	Technology basis	Costs (savings)
Baseline Costs	Discharge with 11% retention of base fluid on cuttings	$2,201,725
NSPS Compliance Costs	Discharge with 7% retention of base fluid on cuttings	1,632,125
	Zero Discharge via land disposal or on-site injection	3,796,143
Incremental NSPS Compliance Costs	Discharge with 7% retention of base fluid on cuttings	(569,600)
	Zero Discharge via land disposal or on-site injection	1,594,418

The NSPS cost analysis consists of the same line-item costs as in the analysis for existing sources, with the exception that retrofit is not necessary on new platforms. The baseline for NSPS costs differs from the baseline for existing sources in that it includes only SBF wells that discharge cuttings and does not include any OBF wells practicing zero discharge.

2. Baseline Costs: Current Industry Practice

As noted above, the only cost elements included in the baseline are those that EPA anticipates will change as a result of the rule. The line items in the baseline cost analysis for those Gulf of Mexico wells that currently drill with SBF consist of the cost of SBF lost with the discharged cuttings and the cost of the currently-required SPP toxicity monitoring test. The baseline analysis for currently discharging wells assumes the cuttings are being treated by standard solids control equipment to an average 11 percent retention of synthetic material (base fluid) on the cuttings, on a wet-weight basis. As detailed in Section VI of today's notice and the Development Document, this baseline level of treatment is derived from data submitted in a report prepared for the American Petroleum Institute (API) (Annis, 1997). No baseline costs are attributed to the operation of solids control equipment that are standard in all drilling operations.

For existing sources, the unit baseline cost for wells that currently use SBF is $82/bbl. The unit baseline costs for SWD and SWE wells currently drilled with OBF are $96/bbl and $91/bbl, respectively. The development of the baseline costs for OBF wells is detailed under Section IX.C.4 "Zero Discharge Compliance Costs." Table IX–2 lists the total baseline costs for each geographic area.

The unit baseline cost for the new source wells is $82/bbl for both DWD and SWD wells, and the total baseline cost is $2.2 MM.

In offshore California and coastal Cook Inlet, Alaska, current industry practice is zero discharge of OBF-cuttings. The line-item costs of these wells include costs for transporting and disposing of waste drill cuttings at commercial land-based disposal facilities, and the cost of the drilling fluid that adheres to and is disposed with the cuttings. EPA assumes that the drilling fluid lost with OBF-cuttings is a mineral oil-based fluid. For current industry practice, transportation of OBF-cuttings in the offshore California analysis consists of hauling via supply boat followed by trucking to a land-based facility. Transportation for the Cook Inlet analysis also consists of supply boats followed by trucks that haul the waste cuttings to a land-based disposal facility. However, due to the limited availability of disposal facilities in the Cook Inlet area, costs were developed for hauling the waste to a facility in Oregon. This approach to zero-discharge cost estimating for Cook Inlet was adopted from the Coastal Oil and Gas Rulemaking effort (EPA, 1996).

The unit baseline costs in offshore California are $128/bbl for DWD wells and $131/bbl for the SWD wells. The unit baseline cost for the model Cook Inlet well is $218/bbl. Again, multiplying the unit costs by the volume of waste cuttings for each model well type and by the numbers of wells estimated to be drilled annually in each category provides the total annual baseline costs for each region. The total annual baseline costs for offshore California and Cook Inlet are $2.2 MM and $0.2 MM, respectively (see Table IX–2).

3. Discharge Option Compliance Costs

The discharge option compliance cost analysis estimates the cost to discharge SBF-cuttings following secondary treatment by a solids control device that, when added on to other standard solids control equipment, reduces the average retention from 11 percent to 7 percent base fluid on wet cuttings. Line-item costs in the discharge option analysis consist of: a) costs associated with the use of an add-on solids control device, b) cost to retrofit platform space to accommodate the device, c) the value of the SBF discharged with the cuttings, and d) the cost of performing the waste monitoring analyses of today's proposal.

The wells in the discharge analysis for the Gulf of Mexico consist of those that are currently drilled with SBF and discharging SBF-cuttings, and those currently drilled using OBF that EPA estimates will convert to SBF. The cost of the add-on technology is the daily rental cost for the vibrating centrifuge device on which the seven percent retention is based. The rental cost includes all equipment, labor and materials, and was quoted by a Gulf of Mexico operator who used the device in an offshore demonstration project (Pechan-Avanti, 1998). Retrofit costs were assigned to all existing sources but not to new sources. Analytical monitoring costs are included for the proposed crude oil contamination of drill cuttings test and retort analysis for SBF retention on cuttings.

For existing sources, based on the above line-item costs, the unit discharge option costs for DWD and DWE wells are $74/bbl and $72/bbl, respectively. The unit discharge option costs for the SWD and SWE wells are $77/bbl and $74/bbl, respectively. The total annual discharge compliance cost for existing source Gulf of Mexico wells is $16 MM (see Table IX–2). The discharge option unit costs for new source wells are $73/bbl for DWD wells and $75/bbl for SWD wells, and the total discharge option cost is $1.6 MM.

The compliance cost analyses for offshore California and coastal Cook Inlet, Alaska consist of the same line items: daily rental of the add-on vibrating centrifuge, retrofit space to accommodate the add-on equipment, cost of SBF lost with discharged cuttings, and analytical costs for proposed waste monitoring tests. The costs for these items are the same as those estimated for the Gulf of Mexico adjusted higher using geographic area cost multipliers developed in the Offshore Oil and Gas Rulemaking effort (EPA, 1993). Geographic area cost multipliers are the ratio of equipment installation costs in a particular region compared to the costs for the same equipment installation in the Gulf of

Mexico. The cost multipliers for offshore California and Cook Inlet are 1.6 and 2, respectively. The unit discharge option costs for offshore California wells are $118/bbl for DWD wells and $122 for SWD wells. The unit discharge option cost for the Cook Inlet SWD well is $147/bbl. The total annual discharge option compliance costs for offshore California and Cook Inlet are $1.6 MM and $0.1 MM, respectively, and the total annual industry-wide compliance cost for the discharge option is $17.7 MM, as shown in Table IX–2.

4. Zero Discharge Option Compliance Costs

The zero discharge compliance cost analysis includes Gulf of Mexico wells identified as currently being drilled with SBF. The method presented in this section was also applied to baseline OBF wells, as mentioned in the baseline costs section. The wells included in the offshore California and Cook Inlet analyses, and some shallow water Gulf of Mexico wells (i.e., those wells currently drilled with OBF) do not incur costs in the zero discharge option because they are at zero discharge in the baseline. Furthermore, the population of wells currently drilled with SBF is divided into those that are assumed to continue using SBF under zero discharge requirements due to other concerns (i.e., spills as a result of riser disconnect), and those that would convert to OBF under zero discharge requirements due to the economic incentive of a less costly waste management practice (i.e., all shallow water wells). This division is shown in Table IX–1.

Per-well zero discharge costs incorporate the assumption that, of all zero discharge cuttings generated in the Gulf of Mexico, 80 percent is hauled to shore for land-based disposal and 20 percent is injected on-site. Preliminary information gathered regarding the use of on-site injection in the Gulf of Mexico is inconsistent between sources, ranging from an estimated 10 percent to as much as 66 percent (Veil, 1998). Additional information indicates that, while some operators have expressed concern over uncertainties related to injection (e.g., the ultimate fate of the injected wastes and the costs associated with unsuccessful injection projects), interest in on-site injection has increased throughout the industry since the time of the Offshore Oil and Gas Rulemaking, and continues to grow. The Agency therefore solicits information regarding the number of wells that use on-site injection, the volume of drilling waste injected, the per-well and per-barrel costs, and the frequency of unsuccessful injection projects.

Line-item costs in the land disposal zero discharge analysis include commercial disposal facility costs, container rental costs, supply boat costs, and value of drilling fluid retained on cuttings. Commercial disposal facility costs were obtained from the major oil field waste management companies serving the Gulf of Mexico industry. Cuttings container size and rental rate were obtained from vendors. All wells in the analysis are assumed to have acquired the retrofit space needed to store an average of 12 cuttings boxes as part of the Offshore Oil and Gas Rulemaking effort (EPA, 1993), and therefore do not incur retrofit costs in this analysis. The value of retained drilling fluid is based on mineral oil OBF ($75/bbl) for shallow water wells (assuming they all convert to OBF under zero discharge requirements), and internal olefin SBF (at $200/bbl) for deep water wells (assuming they all still use SBF under zero discharge requirements). The unit land-disposal cost varies by model well type: $148/bbl for DWD wells, $106/bbl for DWE wells, $102/bbl for SWD wells, and $96/bbl for SWE wells. Unit disposal costs vary by well type because the amount of time it takes to fill the disposal ship varies by well type, and the cost for the disposal ship is per daily rate.

Line-item costs in the on-site injection zero discharge analysis include the day rate rental cost for a turnkey injection system, and lost drilling fluid costs. The injection system cost includes all equipment, labor, and associated services. The unit on-site injection cost is $121/bbl for deep water wells, and $71/bbl for shallow water wells.

The zero discharge compliance cost is the weighted average assuming 80 percent of wells use land disposal and 20 percent of wells use on-site injection to achieve zero discharge. For existing sources, the weighted average unit cost for zero discharge for the model wells is as follows: $143/bbl for DWD wells, $109/bbl for DWE wells, $96/bbl for SWD wells, and $91/bbl for SWE wells. The total annual zero discharge compliance cost resulting from this analysis is $26.1 MM (see Table IX–2).

For new sources, the weighted average unit costs are the same as for existing sources: $143/bbl for DWD wells and $96/bbl for SWD wells. The total zero discharge cost for new sources is $3.8 MM/year.

5. Incremental Compliance Cost

The incremental compliance cost is the difference between the baseline and the compliance cost, as presented in Table IX–2. The overriding factor in the Gulf of Mexico incremental discharge option cost is that, according to EPA analysis of SBF baseline wells, the value of the recovered SBF is greater than the cost of implementing the vibrating centrifuge model technology. This gives a net savings of $5.0 MM/year. A saving of $0.94 MM/year is also realized when existing wells currently using OBF convert to using SBF. EPA assumed for this calculation that 23 of the 112 OBF wells, or 20 percent, would convert. All of these are considered existing sources. Combining these two gives a total savings of $5.9 MM for Gulf of Mexico existing source wells in the discharge option.

Incremental discharge option costs for existing sources in offshore California and coastal Cook Inlet, Alaska include savings incurred as wells move from the zero discharge baseline to discharge, and increased cost of SBF over the baseline OBF cost. For both of these areas, the net incremental discharge compliance cost is negative, resulting in savings of $509,000/year for offshore California and $92,000/year for coastal Cook Inlet. Combined with the Gulf of Mexico savings, the total annual savings for existing sources in the discharge option is $6.6 MM.

The incremental new source compliance cost for the discharge option is $-0.57 MM/year, or a savings of $570,000.

For existing sources, the costs under the zero discharge option (total annual = $7.0 MM/year) are the costs that Gulf of Mexico baseline SBF wells incur moving from discharge to zero discharge. For new sources, the incremental cost for the zero discharge option is $1.6 MM/year.

As a sensitivity analysis, EPA performed two additional discharge option compliance cost analyses by varying the fraction of current Gulf of Mexico shallow water OBF wells that would convert to SBF after the rule. In the analysis presented above, EPA used an estimate of 20 percent, based on information provided by industry sources. Due to the uncertainty of predicting future industry activity, the Agency investigated the range of discharge option compliance costs that would result assuming that either zero percent of the OBF wells would convert to SBF use (maintain at 113 SBF wells) or 100 percent of the OBF wells would convert to SBF use (increase to 225 SBF wells). The "zero percent convert" analysis resulted in an annual incremental cost savings of $5.6 MM industry wide, and the "100 percent convert" analysis resulted in an annual incremental savings of $10.2 MM. The

savings for the "20 percent convert" analysis falls between these values, at $6.6 MM (see Table IX–2). Thus, regardless of the number of wells assumed to convert from OBF to SBF, the discharge option results in industry-wide incremental cost savings.

D. Method for Estimating Pollutant Reductions

The methodology for estimating pollutant loadings and incremental pollutant reductions effectively parallels that of the compliance cost analyses. The pollutant reduction analyses are based on the size and number of the four model wells identified in Table IX–1, as well as pollutant characteristics of the cuttings wastestream compiled from previous rulemaking efforts and from industry sources.

For wells that currently use SBFs and discharge SBF-cuttings in the Gulf of Mexico, EPA projects that the discharge option of this rule will decrease the discharges of SBFs by over 15.4 MM pounds annually due to the retention limit. However, EPA projects that certain OBF wells will convert to SBF wells, and these SBF wells would discharge 3.6 M pounds of SBFs annually. Therefore, EPA calculated that including this increased number of SBF wells, the discharge of SBF would be reduced just 11.8 MM pounds annually. Specifically, EPA projects that all OBF wells in offshore California and Cook Inlet, Alaska, and 20 percent, or 23 wells, of the OBF wells in the Gulf of Mexico, will convert to SBF. Also because of this conversion from OBF wells to SBF wells, EPA projects an increase in the annual discharge of dry drill cuttings of 25.9 MM pounds. With dry drill cuttings discharges increasing 25.9 MM pounds and SBF discharges decreasing 11.8 MM pounds, EPA projects that the discharge option of this rule would lead to an overall increase in discharges of 14.1 MM pounds annually.

Table IX–4 lists the total annual baseline pollutant loadings, compliance pollutant loadings, and incremental pollutant reductions calculated for existing and new sources.

TABLE IX–4.—SUMMARY ANNUAL POLLUTANT LOADINGS AND INCREMENTAL REDUCTIONS FOR EXISTING AND NEW SOURCES

[Lbs/year] [1]

	Gulf of Mexico	Offshore California	Cook Inlet, Alaska	Total
Baseline Technology Loadings:				
Discharge with 11% retention of base fluid on cuttings	177,390,660	0	0	177,390,660
Zero Discharge (current OBF-drilled wells only)	0	0	0	0
Compliance Option Loadings:				
Discharge with 7% retention of base fluid on cuttings	180,527,712	10,420,876	590,550	191,539,138
Zero Discharge via land disposal or on-site injection	0	0	0	0
Incremental Pollutant Loadings (Reductions):				
Discharge with 7% retention of base fluid on cuttings	3,137,028	10,420,876	590,550	[1] 14,148,454
Zero Discharge via land disposal or on-site injection	(177,390,660)	0	0	(177,390,660)

[1] Consists of 11.8 MM pounds decreased discharge of SBF, 17,366 pounds decreased discharge of formation oil, and 25.9 MM pounds increased discharge of drill cuttings.

In order to act as a summary, the values in Table IX–4 above combine the effects of both existing and new sources. The values for existing sources alone may be determined by subtracting the corresponding values for new sources that are presented in Table IX–5.

In the calculation of per-well pollutant loadings and incremental pollutant reductions, a list of pollutant characteristics was developed in the same manner as the pollutant reduction analyses performed in the Coastal Oil and Gas Rulemaking effort (EPA, 1996). The pollutant list consists of conventional, priority, and non-conventional pollutants. Conventional pollutants include total suspended solids (TSS) and oil and grease. The TSS derives from two sources: the drill cuttings and the barite in the adhering drilling fluid. The drilling fluid is assumed to contain an average 33 percent (by weight) barite and 47 percent (by weight) synthetic base fluid (drilling fluid formulation data were calculated from data provided in the 1997 API report by Annis). Metals, both priority and non-conventional, derive from the barite in the adhering drilling fluid. In the Offshore Oil and Gas Rulemaking, EPA concluded that barite is the primary source of metals in drilling fluid (EPA, 1993). The metal concentrations from the Offshore analysis were adopted for this analysis. In terms of loadings the synthetic base fluid adhering to the cuttings, plus an assumed 0.2 percent (by volume) of formation oil contamination, are considered oil and grease. EPA recognizes, however, that there are nonconventional components of the SBF base fluids and formation oil. The 0.2 percent (vol.) of formation oil in the wastestream is assumed because EPA believes that this concentration would occasionally be found in drilling fluids, and would meet the effluent limitation in today's proposal. The organic pollutants, both priority and non-conventional, derive from the formation oil contamination. The specific organic pollutant concentrations were obtained from analytical data presented in the Offshore Oil and Gas Development Document for Gulf of Mexico diesel (EPA, 1993). The SBF base fluids are considered non-conventional pollutants.

In the discharge option, for each model well two sets of calculations were developed, based on 11 percent and 7 percent retention, to determine the per-well volumes of synthetic base fluid, water, barite, dry cuttings and formation oil in the wastestream. The calculations were based upon the assumed drilling fluid formulation of 47% (wt.) synthetic base fluid, 20% (wt.) water, and 33% (wt.) solids as barite, the retention values, and the 0.2% (vol.) formation oil contamination. Details of these calculations are presented in the Development Document.

The waste volume estimates resulting from the above calculations were applied to the pollutant concentrations to determine the per-well pollutant loadings and incremental pollutant reductions. As in the compliance cost analysis, the per-well values were then multiplied by the numbers of wells in each option and each geographic area (see Table IX–1) to determine the total industry-wide pollutant loadings and reductions. For baseline SBF wells that discharge, baseline pollutant loadings were calculated at 11 percent retention, according to information gathered by

the industry using currently available technology. EPA calculated the incremental pollutant reduction as these wells move to the discharge option at an average SBF base fluid retention on cuttings of 7 percent.

For baseline OBF wells that do not discharge, the baseline loadings are zero. As baseline wells that do not discharge move to the discharge option, EPA calculated a loading increase at seven percent retention. This occurs for wells in offshore California, coastal Cook Inlet, and a fraction of OBF wells in the Gulf of Mexico that EPA assumes will convert to SBF subsequent to this rulemaking.

EPA projected that balancing the reductions in per-platform discharge due to the retention limit with the increased number of platforms discharging SBF-cuttings leads, annually, to the decrease in discharge of SBFs of 11.8 MM pounds, the decrease in formation oil discharge of 17,366 pounds, and the increase in drill cuttings discharge of 25.9 MM pounds. This yields a net increase of 14.1 MM pounds discharged annually in the discharge option.

The incremental pollutant reduction for the zero discharge option is elimination of the baseline loading of currently discharging wells at 11 percent retention. Table IX–4 shows the annual incremental pollutant reduction for the zero discharge option is 159 MM pounds.

As stated in section IX.C.4, EPA investigated the range of incremental compliance costs and pollutant reductions assuming that, in the discharge option, either zero percent or 100 percent of current OBF wells in the GOM would convert to SBF. EPA further assumed that all OBF wells in the GOM are in the shallow water. The analysis above is based on 20 percent of the OBF wells converting to SBF. The "zero percent convert" analysis resulted in an annual incremental pollutant reduction of 3 MM pounds industry wide, and the "100 percent convert" analysis resulted in an annual increase of discharges of 89.0 MM pounds per year. The increased discharges for the "20 percent convert" analysis falls between these values, at 15.8 MM pounds (see Table IX–4). In the 100 percent convert scenario, the 89 MM pounds consists of 76 MM pounds of dry cuttings and 13 MM pounds of associated SBFs.

The method of estimating pollutant loadings and reductions for new sources is the same as that for existing sources. As discussed in section IX.C.5, EPA estimated that 19 new source wells are located in the Gulf of Mexico, including one in the shallow water and 18 in the deep water (see also Table IX–1). For new sources, no OBF wells are in the baseline, because new sources would be projected to occur mainly in deep water, where operators generally prefer to use SBFs for cost, performance, and to minimize liability. In the new source analysis, there are pollutant discharge reductions for both the discharge option and the zero discharge option because all new source wells move from a baseline of discharge at an average 11 percent retention of synthetic base fluid on cuttings to discharge at seven percent retention under the discharge option or to zero discharge under the zero discharge option. The total annual NSPS incremental pollutant reductions are 1.6 MM pounds for the discharge option and 18.3 MM pounds for the zero discharge option. The discharge option reduction consists of 1.6 MM pounds of SBF, and a small amount (2,800 pounds) of formation oil.

TABLE IX–5.—SUMMARY ANNUAL POLLUTANT LOADINGS AND INCREMENTAL REDUCTIONS FOR MANAGEMENT OF SBF CUTTINGS FROM NEW SOURCES

[Lbs/year]

	Technology basis	Loadings/reductions
Baseline Loadings	Discharge with 11% retention of base fluid on cuttings	18,286,914
NSPS Pollutant Loadings	Discharge with 7% retention of base fluid on cuttings	16,676,538
	Zero Discharge via land disposal or on-site injection	0
Incremental NSPS Pollutant Reductions	Discharge with 7% retention of base fluid on cuttings	1,610,394
	Zero Discharge via land disposal or on-site injection	18,286,914

E. BCT Cost Test

The BCT cost test, described in section VI.E of today's notice, was not performed for either of the regulatory options investigated for this rulemaking. The BCT cost test evaluates the reasonableness of BCT candidate technologies as measured from BPT level compliance costs and pollutant reductions. In today's rulemaking, the proposed BCT level of regulatory control is equivalent to the BPT level of control for both the preferred discharge option and the zero discharge option. If there is no incremental difference between BPT and BCT, there is no cost to BCT and thus the option passes both BCT cost tests.

X. Economic Analysis

A. Introduction and Profile of the Affected Industry

This section presents EPA's estimates of the economic impacts that would occur under the regulatory options proposed here. The results of this analysis are described in more detail in the Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category (EPA–821–B–98–020).

Under the preferred discharge option, the proposed effluent guidelines would provide a cost savings to industry. This cost savings would be experienced by wells currently discharging cuttings contaminated with SBFs and by wells currently using OBF and switching to SBF as a result of this rule. As discussed in Section IX, the cost savings for current SBF dischargers result from the use of improved solids control equipment, allowing operators to recycle additional volumes of expensive SBFs, which more than offsets the costs of the improved solids control equipment. For wells that would have been drilled with OBF, the cost savings result from switching to SBF and discharging, thus avoiding higher disposal costs of zero discharge. Operations using and discharging WBFs would not incur costs or realize costs savings under this rule because EPA does not expect operators to convert from WBFs to SBFs, as discussed above. This section of today's notice describes the segment of the oil and gas industry that would benefit from this rule (i.e.,

the number of firms and number of wells per year that would incur costs or realize savings under the proposed rule), the financial condition of the potentially affected firms, the aggregate cost savings to that segment, and any impacts that might arise as a result of the rule. The Agency also discusses impacts on small entities, presents a cost-benefit analysis, and discusses cost-effectiveness. EPA also evaluated a zero-discharge option, which was considered but not selected for proposal, and found it would have a minor impact on a few entities (large and small) operating in the affected offshore and coastal regions. This discussion will form the basis for EPA's findings on regulatory flexibility, presented in Section XI.B.

For this profile, EPA is relying on information developed by Minerals Management Service (MMS) for EPA. This information includes wells drilled in federal waters during 1995, 1996, and 1997, along with the MMS-assigned numbers identifying the operators. These data were summarized by MMS from MMS's Technical Information Management System. MMS grouped wells by location (Pacific and Gulf drilling operations were tallied separately), water depth (up to 999 ft and 1,000 ft or more), and by type (exploratory or development). MMS also provided a list of operators by operator number. EPA linked the name of the operators to wells drilled using the operator number. Names of all operators who had drilled any well in any of the three years were then compiled. EPA used the Security and Exchange Commission's (SEC's) Edgar database, which provides access to various filings by publicly held firms, such as 8Ks and 10Ks. The former documents are useful for determining mergers and acquisitions in more detail, and 10Ks provide annual balance sheet and income statements, as well as listing corporate subsidiaries. The information in the Edgar database was used to identify parent companies or recent changes of ownership. EPA also used a database maintained by Dun & Bradstreet (D&B), which provides estimates of employment and revenue for many privately held firms, and financial data compiled by Oil and Gas Journal on publicly held firms.

Other sources of data used in the economic analysis include the Development Document for this proposed rule; EPA, 1993, Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry (EPA 821/R–93–004); and EPA, 1995, Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category (EPA 821/R95–013).

For profiling purposes in all regions, EPA divided the potentially affected firms identified using the MMS, SEC, and D&B data into two basic categories. The first category consists of the major integrated oil companies, which are characterized by a high degree of vertical integration (i.e., their activities encompass both "upstream" activities—oil exploration, development, and production—and "downstream" activities—transportation, refining, and marketing). The second category of affected firms consists of independents engaged primarily in exploration, development, and production of oil and gas and not typically involved in downstream activities. Some independents are strictly producers of oil and gas, while others maintain some service operations, such as contract drilling and well servicing. EPA used the U.S.A. Oil Industry Directory, 37th Edition, 1998, published by PennWell Publishing Co., Houston, Texas, to identify firms as majors, independents, or foreign-owned.

The two types of oil and gas firms, majors and independents, are very different types of entities, in most cases. The major integrated oil companies are generally larger than the independents, and are often among the largest corporations in the world. As a group, the majors typically produce more oil and gas, earn significantly more revenue and income, and have considerably more assets and greater financial resources than most independents. Furthermore, majors tend to be relatively homogeneous in terms of size and corporate structure. Majors do not meet the definition of small firm under the Regulatory Flexibility Act (RFA). Most majors are C corporations (i.e., the corporation pays income taxes).

Independents vary greatly by size and corporate structure. Larger independents tend to be C corporations; small firms might also pay corporate taxes, but they also can be organized as S corporations (which elect to be taxed at the shareholder level rather than the corporate level under subchapter S of the Internal Revenue Code). Small firms also might be organized as limited partnerships, or sole proprietorships, whose owners, not the firms, pay taxes.

2. Profile of the Potentially Affected Oil and Gas Regions

a. *Gulf of Mexico.*—As discussed in Sections IV and IX of this notice, the Gulf of Mexico beyond 3 miles from shore is the most active of the four oil and gas regions concerning this proposed rule. Nearly all exploration and development activities in the Gulf are taking place in the Western Gulf of Mexico, that is, the regions off the Texas and Louisiana shores. Very little drilling is occurring off Mississippi, Alabama, and Florida. The Western Gulf Region also is associated with the majority of the current use and discharge of SBF cuttings.

As stated above, the rule would apply only where WBFs and associated drill cuttings may be discharged, i.e., 3 miles or more from shore. Using the MMS, SEC, and D&B data discussed above, EPA accounted for the various corporate relationships and transactions to determine the total number of firms actively drilling in the affected regions of the Gulf. EPA counted 96 potentially affected firms at the parent company level in the Gulf of Mexico, of which 15 are considered majors. Twelve of the 96 firms are identified as foreign-owned (not including U.S. majors such as Shell Oil, which is affiliated with Royal Dutch/Shell Group), and these firms are included in the analysis. Non-foreign independents are estimated to total 69 firms.

Financially, the potentially affected operators are a healthy group of firms. Among publicly held firms, median return on assets for the group is 4.3 percent, median return on equity is 10.2 percent, and median profit margin (net income/revenues) is 6.6 percent, according to 1997 financial data. Among these publicly held firms, 60 out of 69 firms, or 87 percent, reported positive net income for 1997.

As discussed above in Section IX, EPA estimates that an average of 1,127 wells are drilled each year in the Gulf of Mexico, of which 1,108 are considered to be existing wells and 19 are considered to be new sources. EPA estimates (see Section IX) that each year 113 wells are drilled using SBFs and 112 are drilled using OBFs for at least a portion of the drilling operation. Of the 112 wells drilled with OBFs, EPA estimates that 20 percent, or 23 wells, would convert from OBF to SBF as a result of this rule. These wells are all assumed to be located in shallow water (see Table IX–1 in Section IX). The remaining 902 wells that are drilled annually in the Gulf of Mexico are assumed to be drilled exclusively using WBFs and would not incur costs or realize savings under the proposed rule.

b. *Offshore California.*—Most production activity in the Offshore California region is occurring in an area 3 to 10 miles from shore off of Santa Barbara and Long Beach, California. There are five operators actively drilling

(1995–1997) in the California Offshore Continental Shelf (OCS) region. These operators are Chevron; Aera Energy, LLC; Exxon; Torch Energy Advisors; and Nuevo Energy Co. Detailed information on Torch Energy Advisors (other than employment and revenues) and Aera Energy is not available. Among the remaining firms, median return on assets is 9.0 percent, median return on equity is 18.6 percent, and median profit margin is 5.7 percent. No operators reported negative net income among publicly held firms. Thus, the California firms, like the Gulf firms, generally appear to be financially healthy.

As discussed in Section IX, EPA estimates that an average of 26 development wells and no exploratory wells are drilled in the California OCS each year. EPA further estimates that no wells are currently drilled using SBFs and 12 wells are drilled each year using OBFs. EPA assumes that all 12 of these OBF wells convert to SBF as a result of this rule. All wells are considered existing sources. EPA assumes the remaining 14 wells are drilled exclusively using WBFs and are thus would not incur costs or realize savings under this proposed rule (see Table IX–1 in Section IX).

c. *Cook Inlet, Alaska.*—Cook Inlet, Alaska, is divided into two regions, Upper Cook Inlet, which is in state waters and is governed by the Coastal Oil and Gas Effluent Guidelines, and Lower Cook Inlet, which is considered Federal OCS waters and is governed by the Offshore Oil and Gas Effluent Guidelines. Lower Cook Inlet is discussed as part of the Alaska Offshore region in Section X.A.2.d below. All references to Cook Inlet mean Upper Cook Inlet unless otherwise identified.

Three operators are currently active in Cook Inlet: Unocal, Phillips, and Shell (as Shell Western). All three are major integrated oil firms, and all three also operate in the Gulf of Mexico. In addition, ARCO also has been involved in exploratory drilling in the Sunfish Field, but Alaska state data indicate that Phillips bought ARCO's interests in this field and will pursue any drilling from its Tyonek platform. Median return on assets for this group is 7.1 percent, median return on equity is 14.1 percent, and median profit margin is 7.3 percent. No firm reported negative net income in 1997. Again, these firms appear financially healthy.

Over the past three years (1995–1997) operators have drilled an average of about 7 wells per year (see Table IX–2 in Section IX). EPA estimates that no off-platform drilling will be undertaken in Cook Inlet. Thus for the purpose of estimating impacts for today's proposal, EPA assumes seven wells per year will be drilled in Cook Inlet, and all are considered existing sources. No operators currently use SBFs in Cook Inlet. Of the seven wells drilled in Cook Inlet, EPA estimates that one well per year might be drilled annually using OBFs, and as a result of this rule, this OBF well would convert to SBF.

d. *Offshore Alaska.* The offshore Alaska region comprises several areas, which are located both in state waters and in federal OCS areas. The most active area for exploration has been the Beaufort Sea, the northernmost offshore area on the Alaska coastline. Other areas where some exploration has occurred include Chukchi Sea to the northwest, Norton Sound to the West, Navarin Basin to the west, St. George Basin to the southwest, Lower Cook Inlet to the south, and Gulf of Alaska, along the Alaska panhandle. The only commercial production is occurring in the Beaufort Sea region.

To EPA's knowledge, no operations are discharging any drilling fluids or cuttings in the offshore Alaska region. No discharge is occurring in state waters due to state law requiring operators to meet zero discharge. In the federal offshore region, the Offshore Guidelines do not specifically prohibit discharge of SBF cuttings, but all operators historically have injected their drilling wastes. No commercial production has occurred in any federal offshore area. Some promising finds have been made in federal offshore waters in recent years, but development may be several years off. These fields include the Liberty (Tern Island) Field and the Northstar Field, both in the Beaufort Sea. Currently a draft Environmental Impact Statement (EIS) is being prepared for the Liberty Field. The Northstar Field has encountered significant resistance to development. The operator (BP) halted construction for over one year as a result of a recently resolved lawsuit and has just begun the task of preparing a final environmental impact statement, which must be finalized before any production operations can proceed.

Since the beginning of exploration in the Alaska Offshore region, 82 exploratory wells have been drilled in Federal Offshore waters, primarily in the Beaufort Sea, where nearly 40 percent of all exploratory wells in the Alaska federal offshore region have been drilled. Exploratory well drilling in federal waters has slacked off significantly in recent years. From a peak of about 20 wells per year in 1985, no wells were drilled in 1994, 1995, and 1996, and two were drilled in 1997, for an average of less than one well drilled per year. EPA assumes that no significant drilling activity will be occurring in the Federal Offshore regions of Alaska. Offshore Alaska, therefore, is within the scope of the regulation but is not expected to be associated with costs or savings as a result of the proposed effluent guidelines, either in state offshore waters (because of state law) or in federal waters (due to historic practice and lack of drilling activity). Wells drilled in this region are not included in the count of potentially affected wells.

3. Summary of Well Counts and Operators

EPA estimates that a total of 1,160 wells, on average, are drilled each year in the regions potentially affected by the SBF Guidelines. Of these, EPA estimates that 113 wells are drilled, on average, each year using SBFs in the Gulf (none in California and none in Cook Inlet). EPA further estimates that a total of 125 wells are drilled annually using OBFs, of which 112 are drilled in the Gulf, 12 in California, and 1 in Cook Inlet. EPA estimates that the remaining 922 wells drilled annually in the affected regions are drilled exclusively with WBFs and would not incur costs or realize savings under the proposed rule. EPA assumes that a total of 23 wells in shallow water locations, 12 wells in California, and 1 well in Cook Inlet, for a total of 36 wells, would switch from OBFs to SBFs if the SBF effluent guidelines allow discharge.

The number of operators currently drilling wells in the regions total 99 firms. These operators include the 96 operators in the Gulf of Mexico and 3 additional operators in the Pacific (2 Pacific operators also drill in the Gulf). All Cook Inlet operators also drill in the Gulf. These counts will be used as baseline data for the economic analysis.

B. Costs and Costs Savings of the Regulatory Options

EPA considered two options for the proposed rule for both BAT and NSPS, a discharge option and a zero discharge option. Table X–1 summarizes the costs and costs savings of each alternative considered in this rule under both BAT and NSPS. This information was presented in more detail in Section IX. For additional information, see Tables IX–2 and IX–3 in Sections IX.C.

TABLE X–1.—COSTS AND COST SAVINGS OF THE REGULATORY OPTIONS

Option	BAT	NSPS	Total
Discharge	($6,586,322)	($569,600)	($7,155,922)
Zero Discharge	$6,963,896	$1,594,418	$8,558,314

As Table X–1 shows, the preferred discharge option is associated with a cost savings of $6.6 million per year for BAT and $0.6 million per year for NSPS, for a total cost savings of $7.2 million per year. The cost estimates for the zero discharge option are $7.0 million per year under BAT and $1.6 million per year under NSPS, for a total of $8.6 million per year.

C. Impacts from BAT Options

For each regulatory option, EPA estimated the change in the cost of drilling wells, impacts on operating a production unit (typically a platform), impacts on firms, both large and small (impacts on small firms specifically are discussed in Section X.F), employment impacts in the oil and gas industry, and impacts on related industries (e.g., drilling contractors, drilling fluid companies, mud cleaning equipment rental firms, transport and disposal firms, etc.) as a result of the proposed BAT requirements. The results of these analyses are summarized below. EPA concludes that, for the preferred option, nearly all economic impacts are positive and finds the preferred option to be economically achievable in the regions analyzed, as well as for any other region where discharge would be allowed.

1. Impacts on Costs of Drilling Wells

In this section, EPA shows the impacts of the costs associated with this rule by comparing per-well costs with the total average cost to drill a well. Table X–2 shows the four model well types defined in Section IX and provides estimates of potential costs or cost savings as a percentage of total costs to drill a well associated with various subsets of these well types. Costs and cost savings vary depending on the region, the type of fluid currently used, and the operator's choice of zero discharge (under the zero discharge option only)—hauling to shore for disposal or injecting the waste (the latter, less expensive option is not technically feasible at all locations). See the Development Document for detailed information on how the numbers of wells were estimated in each category and the Economic Analysis report for how the aggregate costs of each well type were disaggregated to estimate a per well cost.

TABLE X–2.—COST SAVINGS OF THE IMPROVED DISCHARGE OPTION AS A PERCENTAGE OF BASELINE DRILLING COSTS

[$1997]

Type of well	Number of wells	Incremental cost of discharge option (per well)	Incremental cost of zero discharge option (per well)	Total baseline cost of drilling well ($MM)	Cost as a percentage of total drilling cost	
					Discharge option	Zero discharge option
Gulf of Mexico:						
Deep Water SBF Developmental (haul)	14	($29,302)	$95,507	$2.9	−1.0	3.3
Deep Water SBF Developmental (inject)	4	(29,302)	57,205	2.9	−1.0	2.0
Shallow Water SBF Developmental (haul)	10	(17,502)	19,113	2.9	−0.6	0.7
Shallow Water SBF Developmental (inject)	2	(17,502)	[1] (10,555)	2.9	−0.6	−0.4
Shallow Water OBF Developmental (haul)	12	(36,615)	0	2.9	−1.3	0.0
Shallow Water OBF Developmental (inject)	3	(6,947)	0	2.9	−0.2	0.0
Deep Water SBF Exploratory (haul)	46	(70,502)	79,813	3.9	−1.8	2.0
Deep Water SBF Exploratory (inject)	11	(70,502)	127,825	3.9	−1.8	3.3
Shallow Water SBF Exploratory (haul)	6	(41,502)	28,315	4.9	−0.8	0.6
Shallow Water SBF Exploratory (inject)	1	(41,502)	[1] (21,950)	4.9	−0.8	−0.4
Shallow Water OBF Exploratory (haul)	6	(69,817)	0	4.9	−1.4	0.0
Shallow Water OBF Exploratory (inject)	2	(19,552)	0	4.9	−0.4	0.0
California:						
Deep Water OBF Developmental	11	(43,658)	0	1.6	−2.7	0.0
Shallow Water OBF Developmental	1	(28,899)	0	1.6	−1.8	0.0
Alaska:						
Shallow Water OBF Developmental	1	(92,266)	0	2.8	−3.3	0.0

[1] See Development Document for explanation of cost savings.

Note: Negative values or values in parentheses represent a cost savings.

Table X–2 shows that most cost savings under the preferred discharge option would be about 1 to 2 percent of total well drilling costs, with a few exceptions. Deep water development wells using OBFs in California would realize cost savings of as much as 2.7 percent of total costs, and the estimated one Alaska well using OBFs in Cook Inlet would realize a cost savings of 3.3 percent of total well drilling costs. In general, these cost savings are not a large portion of costs to drill and therefore should act as no incentive to at most a small incentive on well drilling activity.

Under zero discharge, wells currently using OBFs would incur no incremental costs of compliance since they already meet zero discharge requirements. Among those currently using SBFs, the median percentage of compliance costs to the total cost of drilling wells is 2.0 percent. EPA believes these results indicate that the rule would be economically achievable, but has selected the discharge option instead in

order to mitigate non-water quality environmental impacts; see Section VI above.

2. Impacts on Platforms and Production

Neither the discharge option nor the zero discharge option would have a significant impact on production decisions on platforms. As noted above, cost savings among operations currently using SBFs are a small fraction of the overall cost to drill a well in the offshore, so the cost savings associated with the preferred discharge option would have a small effect on an operator's decisions to drill, although some small encouragement to drilling may result.

Under EPA's zero discharge option, EPA investigated potential impacts based on previous work performed as part of the offshore oil and gas effluent guidelines rule. The costs of such an option, compared to the baseline costs of drilling wells in the Gulf are presented in Table X–2. EPA previously investigated the impact of zero discharge of all drilling fluids and cuttings on platform-based production operations in the offshore regions of the Gulf and found, at that time, that "none of the options considered * * * [including zero discharge] for drilling fluids and drill cuttings has an adverse impact on hydrocarbon production." (58 FR 12,454–12,152). Furthermore, as stated in the economic impact analysis prepared for the rule (Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry, EPA 821/R–93–004), EPA estimated no change in the total production for any project analyzed under any regulatory scenario for drilling wastes (including zero discharge). EPA believes that a similar impact would occur today and thus zero discharge would be economically achievable.

3. Impacts on Firms

EPA estimated impacts on firms by assessing the costs and cost savings of the regulatory options as a percentage of revenues. The cost savings associated with the preferred discharge option would have from no impact to a very small impact on the investment decisions by the majority of the firms affected by the proposed rule. EPA assumes that the likeliest users of SBF in shallow water locations are the same operators who use SBF in deep water operations. EPA solicits comments on this assumption. In the Gulf of Mexico, a total of 18 firms (19 percent of the 96 firms considered potentially affected in the Gulf) drilled in deepwater locations over the period 1995–1997. Total cost savings among these firms would probably be at most nearly 0.3 percent of revenues.

Among the 18 firms likely to be using SBFs (the 18 deepwater drilling firms), costs of zero discharge of SBF cuttings would be at most 0.4 percent of revenues among these firms. Section X.F discusses costs for zero discharge as a percent of revenues for each potentially affected small firm currently drilling with SBFs and discharging cuttings.

4. Secondary Impacts

a. *Employment and Output.*—EPA anticipates no negative impacts on employment and output (revenues) from the preferred option because, in the aggregate, cost savings are realized. Changes in employment and output are directly proportional to costs of compliance (that is, higher costs lead to lower employment and output) thus cost savings would minimally increase employment and output in the oil and gas industry, but these gains would be offset by losses elsewhere in the economy (e.g., waste disposal firms). Under zero discharge, the costs of compliance would minimally decrease employment and output, but these decreases would be offset by gains elsewhere in the economy (e.g., waste disposal firms).

The gross effects of the preferred option (that is, without considering losses in other industries that were not quantified) would total 93 full-time equivalents (FTE) gained in the U.S. economy (1 FTE = 2,080 hours and can be equated with one full-time job) and $13.9 million in additional output per year throughout the U.S. economy as a whole. The zero discharge option is estimated to result in a loss (unadjusted for gains in other industries, which EPA did not quantify) of 111 FTEs and a loss of $16.6 million in output per year in the U.S. economy. These losses occur within the oil and gas industry as well as in other industries. The net effect of the rule (once adjustments for changes in other industries are accounted for) on the U.S. economy under either option is likely to be close to zero.

To the extent that any costs savings might be reinvested in additional drilling or otherwise encourage additional drilling, employment and output could increase in the oil and gas industry by more than that associated with the cost savings alone. EPA has not quantified this potentially positive, albeit very small, effect.

b. *Secondary Impacts on Associated Industries.*—EPA qualitatively analyzed the secondary impacts on associated industries from the preferred option. Impacts on drilling contractors should be neutral to positive, with some increase in employment in these firms occurring if they reinvest the cost savings. Impacts on firms supplying drilling fluids should be neutral to positive, since most firms supplying drilling fluids stock both OBFs and SBFs. To the extent that SBFs have, at a minimum, the same profit margin as OBFs, there would be little to no impacts on these firms, because SBFs would replace OBFs in some instances under the preferred discharge option. If drilling increases as a result of reinvestment, some positive impacts might occur.

Firms that provide rental of solids separation systems presumably would purchase and provide improved solids separation systems once demand for these systems developed with the promulgation of the rule. Because these more efficient systems would most likely be rented in addition to, rather than in place of, less efficient systems, impacts on these firms would be positive.

Firms that manufacture the improved solids separation equipment and firms that manufacture equipment or provide services needed to comply with the new testing requirements would prosper.

The firms providing transport and landfilling or injection of OBF-contaminated cuttings would sustain economic losses as a result of the rule. Under the preferred option, for wells currently using OBFs, EPA estimates that waste generated for disposal by landfill and injection would be reduced by 34 million pounds per year (see Section VII.E and Section X.E). Under a zero discharge option, these firms would experience potential economic gains, because more waste (178 million pounds per year) would be generated for land disposal or injection than is currently generated (see Section VII.E and Section X.E).

c. *Other Secondary Impacts.*—There would be no measurable impacts on the balance of trade or inflation as the result of this proposed rule. EPA projects insignificant impacts on domestic drilling and production, and therefore insignificant impacts on the U.S. demand for imported oil. Additionally, even if there were costs associated with this rule, the industry has no ability to pass on costs to consumers as price takers in the world oil market, and thus this rule would have no impact on inflation.

D. Impacts From NSPS Options

The proposed NSPS option is the same discharge option proposed for BAT. Under the definitions of new

source in the Offshore Oil and Gas Effluent Guidelines, an oil and gas operation is considered a new source only when significant site preparation work and other criteria are met (see 40 CFR Part 435.11). Individual exploratory wells, wells drilled from existing platforms and wells drilled and connected to an existing separation/treatment facility without substantial construction of additional infrastructure are not new sources.

As discussed above, the lack of negative economic impacts from allowing SBF discharge leads EPA to the conclusion that the effluent guidelines are economically achievable for both existing and new sources. Additionally, on a per-well basis, NSPS is expected to result in greater cost savings than BAT because new platforms do not require the retrofit costs to enable the improved solids control equipment to be placed on existing platforms. Because the preferred NSPS option results in cost savings and those cost savings are greater than those realized by existing operations, there are no barriers to entry. In fact, the rule might act as an small incentive to new source development (see discussion in Section X.C.4).

E. Cost-Benefit Analysis

Pursuant to E.O. 12866, EPA chose to quantitatively and qualitatively compares the costs and benefits of the preferred discharge option. The total annual cost savings of the rule in pretax dollars are $7.2 million, including the costs to both existing and new operations. Benefits also include 72.03 tons of air emissions reduced from both existing and new sources per year (including nitrogen oxides and sulfur dioxides, and other ozone precursors). These reductions arise because operators are encouraged to use SBFs and discharge cuttings rather than use OBFs and transport wastes to shore for disposal or grind and inject cuttings). SBF use also results in an energy savings of 2,302 barrels of oil equivalent per year when the cuttings are no longer hauled to shore for disposal or ground up for injection. An additional 14.1 million pounds per year of pollutants, however, would be discharged to surface waters annually, but due to pollution prevention technology, this discharge prevents 34 million pounds of wastes from being land disposed or injected each year. See Table X–3 for a summary of the costs and benefits of BAT and NSPS requirements under the discharge option.

Under the zero discharge option, costs would be $8.6 million, and 178 million pounds per year of pollutants would no longer be discharged, but an additional 34 million pounds of waste would be land disposed or injected each year. Furthermore, compared to current practice, 380 tons of air emissions would be generated annually, and energy consumption would increase by 27,000 barrels of oil equivalent per year. See Table X–3 for a summary of the costs and benefits of BAT and NSPS requirements under the zero discharge option. Note that these costs and benefits are incremental to the current baseline, not incremental to the discharge option, which is how many of these numbers are presented in the text in Section VII.

TABLE X–3.—SUMMARY OF COSTS AND BENEFITS UNDER THE DISCHARGE OPTION AND ZERO DISCHARGE OPTION

Cost or benefit category	Discharge option			Zero discharge option		
	BAT	NSPS	Total	BAT	NSPS	Total
Cost ($million) [1]	−$6.6	−$0.6	−$7.2	+$7.0	+$1.6	+$8.6
Energy (barrels of oil equivalent) [2]	−2,613	+311	−2,302	+24,125	+2,932	+27,057
Solid Waste (MM lbs) [3]	−34	0	−34	+165	+13	+178
Air Emissions (tons per year) [2]	−73.3	+1.28	−72.02	+338.55	+41	+379.55
Water Pollutants (MM lb/yr) [4]	+15.8	−1.6	+14.1	−159.1	−18.3	−177.4

Note: minus signs indicate a cost savings or benefit; plus signs indicate a cost or an impact.
[1] See Table X–1.
[2] See Tables VII–1 and VII–2.
[3] See Section VII.E.
[4] See Tables IX–4 and IX–5.

F. Small Business Analysis

Pursuant to the requirements of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA performed a small business analysis to determine if an Initial Regulatory Flexibility Analysis (IRFA) must be performed. The analysis undertaken here is used to determine if the rule would have a significant impact on a substantial number of small entities. This section discusses the number of small entities estimated to be affected by the rule and analyzes the potential magnitude of impact on these entities. Under the preferred option, no wells are expected to incur costs, thus no firms are affected in any negative way by the proposed effluent guidelines. These results will be discussed as they apply to the RFA and SBREFA requirements in Section XI.B of today's notice.

Although well drilling and platform operations have not changed significantly in the intervening years since the offshore rule was promulgated, many of the operators have changed. When the offshore rule was promulgated, EPA believed no small firms were likely to be affected by that rule. As the offshore region of the Gulf, in particular, has matured, smaller firms have begun drilling and producing. In EPA's experience (see Economic Impact Analysis for Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, EPA 821/R95–13), as an oil and gas region matures the majors can no longer earn returns meeting their requirements and sell their operations to other firms, usually smaller independents who have lower overheads, more limited access to capital, and fewer means and opportunity to take on higher risk or overseas activities. Because of this change in the size of firms operating in the offshore region, EPA re-evaluated the earlier conclusion about small firms operating in offshore regions and estimated impacts on small business.

The first step of this analysis was to separate the actively drilling firms into small and large firms. The Small Business Administration (SBA) characterizes an oil and gas production operator as small if it employs fewer than 500 employees and an oil and gas services provider as small if it generates less than $5 million per year in revenues. Because many small firms in this industry are partly or wholly owned by larger firms, EPA traced ownership of

small firms to determine whether their parent companies also were small businesses. Generally, EPA characterized a firm at the higher level of organization if it was majority owned by the larger entity (except in a few instances when the subsidiary was a large business and publicly available information was available for that level of the corporation; e.g., Vastar, which is about 80 percent owned by ARCO). This approach is consistent with SBA's definition of affiliation. Small firms that are affiliated (e.g., 51 percent owned) by firms not defined as small by SBA's standards (13 CFR Part 121) are not considered small for the purposes of regulatory flexibility analysis.

EPA determined that a total of 42 small firms might be subject to the requirements of the SBF Effluent Guidelines. These 42 small firms, although meeting SBA's definition of small for this industry, are generally larger than firms typically considered small in other industries. The median assets for this group (among publicly held firms) is about $263 million, median equity is about $127 million, median revenues are about $16 million, and median net income is about $2.8 million. Median return on assets is about 1.5 percent, median return on equity is about 3.3 percent, and net income to revenues (net profit margin) is about 6.8 percent. Although returns are not as strong as those associated with the affected industry as a whole, profit margin is generally about the same as typical margins for the affected industry, regardless of size of firm. Revenues range from a high of $383 million to a low of $160,000. Actual or Dun & Bradstreet estimated revenue figures were identified for nearly all small firms, although other financial information was available for only about half of the small firms. Employment at these small firms ranges from a high of 400 to a low of 2. Median employment is approximately 38 persons.

As noted above, under the discharge option, no wells are expected to incur costs, thus no firms would be affected in any negative way by the proposed effluent guidelines.

EPA also looked at the impacts of the zero-discharge option, or other options that would incur costs, in which case those small firms using SBFs potentially would incur compliance costs. As in the analysis of all firms discussed above in Section X.C.3, EPA has determined that the likeliest users of SBF in shallow water locations would be the same operators who use SBF in deep water operations. Thus the firms with both deep water and shallow water operations would be the potentially affected firms. Only one firm meets this definition as well as the SBA definition of small entity and thus would be an affected small firm under the zero discharge option. EPA finds that one firm is not a substantial number of small entities. Further, EPA estimated costs for zero discharge on this firm and compared these costs to the firm's revenues. The costs would be less than one percent of revenues under the zero discharge option, and EPA finds this is not a significant impact.

G. Cost-Effectiveness Analysis

Cost-effectiveness analysis evaluates the relative efficiency of options in removing toxic pollutants and nonconventional pollutants. Cost-effectiveness results are expressed in terms of the incremental and average costs per pound-equivalent removed. A pound equivalent is a measure that addresses differences in the toxicity of pollutants removed. Total pound-equivalents are derived by taking the number of pounds of a pollutant removed and multiplying this number by a toxic weighting factor. EPA calculates the toxic weighting factor using ambient water quality criteria and toxicity values. The toxic weighting factors are then standardized by relating them to a particular pollutant, in this case copper.

For the purpose of evaluating most effluent guidelines, EPA's standard procedure is to rank the options considered for each subcategory in order of increasing pounds-equivalent removed. The Agency calculates incremental cost-effectiveness as the ratio of the incremental annual costs to the incremental pounds-equivalent removed under each option, compared to the previous (less effective) option. Average cost-effectiveness is calculated for each option as a ratio of total costs to total pounds-equivalent removed.

While cost-effectiveness results are usually reported in the Notice of Proposed Rule for effluent guidelines, those results are not presented in today's notice because there are no incremental costs attributed to the proposed option, and EPA did not calculate a cost-effectiveness ratio for the proposed option. In the rulemaking record, EPA presents a more detailed discussion of cost-effectiveness analysis and reports results for the zero discharge option.

XI. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: OMB Review

Under Executive Order 12866, [58 Federal Register 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is not a "significant regulatory action," and is therefore not subject to OMB review.

B. Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* as amended by the Small Business Regulatory Enforcement Fairness Act, EPA generally is required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities as a part of rulemaking. However, under section 605(b) of the RFA, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA has prepared an analysis equivalent to an IRFA.

Using the U.S. Small Business Administration's definition for small business for this industry (i.e., firms with fewer than 500 employees for oil and gas production operators and less than $5 million per year in revenues for oil and gas services providers), EPA estimates the proposed rule would apply to 42 small firms. As explained in Sections IX and X of this notice, none of these small firms are expected to incur any costs as a result of this rule. Thus, EPA projects no adverse economic impacts to the small firms. To the contrary, if these firms use SBF, they are likely to experience cost savings.

Based on the assessment of the economic impact of regulatory options being considered for the proposed rule

as discussed in Section X, the Administrator therefore certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an IRFA.

While EPA has so certified today's proposed rule, the Agency nonetheless prepared a small business analysis, incorporating many of the features of the assessment required by the RFA. The small business analysis for the proposed rule is summarized in Section X.F of this notice.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule would impose no enforceable duty on any State, local, or tribal governments or require any expenditure of $100 million or more to the private sector. Thus today's proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements. As this rule has no effect on small governments, this rule would not significantly or uniquely affect small governments and Section 203 of the UMRA does not apply.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule would not create a mandate on State, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. As previously discussed this proposed rule does not impose any mandates on Tribal governments. Further, the only Indian communities in proximity to the activities addressed by this proposed rule are in Cook Inlet, Alaska. EPA does not project, however, that these communities would be affected by this rule. EPA projects that on average, 8 wells will be drilled in Cook Inlet annually. EPA further projects that of these 8 wells, one well would be drilled with OBF in the absence of this rule, and this one OBF well would convert to using SBF with today's proposed discharge option. EPA concludes that this effect of one well annually converting from OBF to SBF is minor, and would not significantly or uniquely affect the communities of Indian tribal governments. Further, today's proposed rule would not impose substantial direct compliance costs on such communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Paperwork Reduction Act

The proposed synthetic-based drilling fluids effluent guidelines contain no new information collection activities and, therefore, no information collection request will be submitted to OMB for review under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are

developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget (OMB), an explanation of the reasons for not using such standards. The following discussion summarizes EPA's response to the requirements of the NTTAA.

EPA performed a search of the technical literature to identify any applicable analytical test methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's proposed rulemaking. EPA's search revealed that there are consensus standards for many of the analytes specified in the tables at 40 CFR Part 136.3. Even prior to enactment of the NTTAA, EPA has traditionally included any applicable consensus test methods in its regulations. Consistent with the requirements of the CWA, those applicable consensus test methods are incorporated by reference in the tables at 40 CFR Part 136.3. The consensus test methods in these tables include American Society for Testing and Materials (ASTM) and Standard Methods.

Today's proposal would require dischargers to monitor for five additional parameters with up to six additional methods: polynuclear aromatic hydrocarbon (PAH) content of the base fluid, biodegradation rate of the base fluid, sediment toxicity, formation (crude) oil contamination in drilling fluid (two methods), and quantity of drilling fluid discharged with cuttings. EPA plans to approve use of test methods for these parameters in conjunction with the promulgation of the final rule. In addition, EPA is considering a requirement for bioaccumulation of the base fluid. EPA has identified applicable consensus methods for two parameters, ASTM Method E–1367–92 for sediment toxicity and American Petroleum Institute Retort Method (Recommended Practice 13B–2) for quantity of drilling fluid discharged with cuttings. For PAH content of the base fluid, EPA is proposing the use of EPA Method 1654A which was validated with assistance from a voluntary consensus standards body. With stakeholder support in data gathering activities, EPA intends to develop or encourage voluntary consensus standards bodies to develop appropriate methods for oil contamination in drilling fluid and biodegradation rate.

H. Executive Order 13045: Children's Health Protection

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health risk or safety risk that the Agency has reason to believe may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045, "Protection of Children from Environmental Health Risks and Safety Risks" because this is not an "economically significant" regulatory action as defined by E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory activities that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. Thus, this rule is not subject to E.O. 13045 because it is based on technology performance and not on health or safety risks.

XII. Regulatory Implementation

A. Analytical Methods

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test procedures for the analysis of pollutants. These test procedures (methods) are used to determine the presence and concentration of pollutants in wastewater, and are used for compliance monitoring and for filing applications for the NPDES program under 40 CFR Parts 122.21, 122.41, 122.44 and 123.25, and for the implementation of the pretreatment standards under 40 CFR Part 403.10 and 403.12. To date, EPA has promulgated methods for conventional pollutants, toxic pollutants, and for some nonconventional pollutants. The five conventional pollutants are defined at 40 CFR Part 401.16. Table I–B at 40 CFR Part 136 lists the analytical methods approved for these pollutants. The 65 toxic metals and organic pollutants and classes of pollutants are defined at 40 CFR Part 401.15. From the list of 65 classes of toxic pollutants EPA identified a list of 126 "Priority Pollutants." This list of Priority Pollutants is shown, for example, at 40 CFR Part 423, Appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants.

Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR Part 136.3, Table I–B. Table I–C at 40 CFR Part 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants. Dischargers must use the test methods promulgated at 40 CFR Part 136.3 or incorporated by reference in the tables, when available, to monitor pollutant discharges from the oil and gas industry, unless specified otherwise in part 435 or by the permitting authority.

As part this rulemaking, EPA is proposing to allow use of analytical methods for determining additional parameters that are specific to characterizing SBFs and other non-aqueous drilling fluids. These additional parameters include polynuclear aromatic hydrocarbon (PAH) content of the base fluid, biodegradation rate of the base fluid, sediment toxicity, formation (crude) oil contamination in drilling fluid, and quantity of drilling fluid discharged with cuttings.

EPA worked with stakeholders to identify methods for determining these parameters. For PAH content, EPA is proposing the use of EPA Method 1654A. For biodegradation rate, EPA is proposing the use a solid phase test developed in the United Kingdom. For sediment toxicity, EPA is proposing the use of American Society for Testing and Material (ASTM) Method E–1367–92 supplemented with sediment preparation procedures. For formation (crude) oil contamination in drilling fluid, EPA is proposing the use of two methods, a reverse phase fluorescence test and a gas chromatography/mass spectrometry (GC/MS) test. The reverse phase fluorescence test is a screening method that provides a quick and inexpensive determination of oil contamination for use on offshore well drilling sites, while the GC/MS test provides a definitive identification and quantitation of oil contamination for baseline analysis. For determining the quantity of drilling fluid discharged with cuttings, EPA is proposing the use of the American Petroleum Institute Retort Method (Recommended Pratice 13B–2). EPA Method 1654A and ASTM E–1367–92 are incorporated by reference into 40 CFR Part 435 because they are published methods that are widely available to the public. Supplemental sediment preparation procedures for ASTM E–1367–92 are

provided in Appendix 3 to 40 CFR Part 435. The text of the four other proposed methods are provided in Appendices 4–7 to 40 CFR Part 435. Subpart A.

EPA currently is conducting additional development and validation of the proposed methods and researching the possible inclusion of additional or alternate methods. EPA intends to publish a notice of data availability to solicit comments on the selected methods prior to publication of a final rule.

On March 28, 1997, EPA proposed a means to streamline the method development and approval process (62 FR 14975) and on October 6, 1997, EPA published a notice of intent to implement a performance-based measurement system (PBMS) in all of its programs to the extent feasible (62 FR 52098). The Agency is currently determining the specific steps necessary to implement PBMS in all of its regulatory programs and has approved a plan for implementation of PBMS in the water programs. Under PBMS, regulated entities will be able to modify methods without prior approval and will be able to use new methods without prior EPA approval provided they notify the regulatory authority to which the data will be reported. EPA expects a final rule implementing PBMS in the water programs by the end of calendar year 1998. When the final rule takes effect, regulated entities will be able to select methods for monitoring other than those approved at 40 CFR Parts 136 and 435 provided that certain validation requirements are met. Many of the details were provided at proposal (62 FR 14975) and will be finalized in the final PBMS rule.

B. Diesel Prohibition for SBF-Cuttings

Under today's proposed rule, drill cuttings that have come in contact with SBF containing any amount of diesel oil are prohibited from discharge. A certain amount of formation oil contamination, however, would be allowed under this proposed rule. Since diesel oil and formation oil have many components in common, it would be nearly impossible to analytically determine the absence, or presence, of diesel when SBFs are contaminated with allowable levels of formation oil. For this reason, operators are to certify that the SBFs in use are free of diesel oil if the SBF-cuttings are to be allowed for discharge.

C. Monitoring of Stock Base Fluid

Under today's proposed rule, SBF-cuttings would be allowed for discharge only if the base fluids used to formulate the SBFs meet requirements in terms of PAH content, sediment toxicity, and biodegradation rate. The PAH content should be determined on a batchwise basis, or production lot basis. This is due to the fact that, at least for some of the base fluid manufacturing processes, PAH contamination may occur. Also, the analytical method is rapid and relatively inexpensive. The sediment toxicity and biodegradation rate should be determined once per year per base fluid trade name. These are parameters that EPA does not expect to change on a batch to batch or lot to lot basis. Also, the methods used to determine the parameters of sediment toxicity and biodegradation are longer term and more elaborate tests to conduct.

D. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upsets" or "bypasses". The reader is referred to the Offshore Guidelines (58 FR 12501) for a discussion on upset and bypass provisions.

E. Variances and Modifications

Once this regulation is in effect, the effluent limitations must be applied in all NPDES permits thereafter issued to discharges covered under this effluent limitations guideline subcategory. Under the CWA certain variances from BAT and BCT limitations are provided for. A section 301(n) (Fundamentally Different Factors) variance is applicable to the BAT and BCT and pretreatment limits in this rule. The reader is referred to the Offshore Guidelines (58 FR 12502) for a discussion on the applicability of variances.

F. Best Management Practices

Sections 304(e) and 402 (a) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs). EPA may develop BMPs that apply to all industrial sites or to a designated industrial category and may offer guidance to permit authorities in establishing management practices required by unique circumstances at a given plant.

EPA is considering the use of BMPs as part of the final rule to address the requirement of zero discharge of SBF not associated with drill cuttings. EPA understands that there are occasional instances when spills of SBF occur, and that the location and perhaps even the timing of these spills is predictable. EPA solicites comments from industry indicating the types of BMPs that would minimize or prevent SBF spills. EPA solicites comments from all stakeholders whether the zero discharge requirement should be controlled in these guidelines using BMPs or other means, such as a specific limitation.

G. Sediment Toxicity and Biodegradation Comparative Limitations

In lieu of a numerical limitation, between the time of today's proposal and the final rule, EPA recommends that if SBFs based on fluids other than internal olefins and vegetable esters are to be discharged with drill cuttings, data showing the toxicity of the base fluid should be presented with data, generated in the same series of tests, showing the toxicity of the internal olefin and the vegetable ester as standards. Base fluids determined to have LC_{50} values greater than or equal to the LC_{50} value determined for C_{16}–C_{18} internal olefins, in the same series of test, would be acceptable for discharge.

For biodegradation testing also, in the interim period between today's proposed rule and the final rule, EPA recommends that if SBFs based on fluids other than internal olefins and vegetable esters are to be discharged with drill cuttings, data showing the biodegradation of the base fluid should be presented with data, generated in the same series of tests, showing the biodegradation of the internal olefin as a standard.

EPA prefers this approach for the sediment and biodegradation limitations rather than set numeric limitations at this time because of the small amount of data available to EPA upon which to base these numerical limits. EPA sees this as an interim solution to provide a limitation based on the performance of available technologies.

XIII. Solicitation of Data and Comments

EPA encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record supporting this proposal and that suggested revisions or corrections be supported by data. In addition, EPA requests comments on the various ways of handling the applicability of these proposed guidelines, as this relates to the definitions for water-based drilling fluids and non-aqueous drilling fluids.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. Please refer to the "For Further Information" section at the beginning of this preamble for technical contacts at EPA.

To ensure that EPA can properly respond to comments, the Agency prefers that commenters cite, where

possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Please submit an original and two copies of your comments and enclosures (including references).

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments and data will also be accepted on disks in WordPerfect format or ASCII file format.

Comments may also be filed electronically to "daly.joseph@epa.gov." Electronic comments must be submitted as an ASCII or Wordperfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–98–26 and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

List of Subjects in 40 CFR Part 435

Environmental protection, Non-aqueous drilling fluids, Oil and gas extraction, Synthetic based drilling fluids, Waste treatment and disposal, Water non-dispersible drilling fluids, Water pollution control, Pollution prevention.

Dated: December 29, 1998

Carol M. Browner,

Administrator.

Appendix A To The Preamble—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—Clean Water Act
Agency—U.S. Environmental Protection Agency
API—American Petroleum Institute
ASTM—American Society of Testing and Materials
BADCT—The best available demonstrated control technology, for new sources under section 306 of the Clean Water Act
BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Clean Water Act
bbl—barrel, 42 U.S. gallons
BCT—Best conventional pollutant control technology under section 304(b)(4)(B)
BMP—Best management practices under section 304(e) of the Clean Water Act
BOD—Biochemical oxygen demand
BOE—Barrels of oil equivalent
BPJ—Best Professional Judgement
BPT—Best practicable control technology currently available, under section 304(b)(1) of the Clean Water Act
CFR—Code of Federal Regulations
Clean Water Act—Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*)
Conventional pollutants—Constituents of wastewater as determined by section 304(a)(4) of the Act, including, but no limited to, pollutants classified as biochemical oxygen demanding, suspended solids, oil and grease, fecal coliform, and pH
CWA—Clean Water Act
Direct discharger—A facility which discharges or may discharge pollutants to waters of the United States
D&B—Dun & Bradstreet
DOE—Department of Energy
DWD—Deep-water development model well
DWE—Deep-water exploratory model well
EPA—U.S. Environmental Protection Agency
FR—Federal Register
GC—Gas Chromatography
GC/FID—Gas Chromatography with Flame Ionization Detection
GC/MS—Gas Chromatography with Mass Spectroscopy Detection
GOM—Gulf of Mexico
Indirect discharger—A facility that introduces wastewater into a publicly owned treatment works
IRFA—Initial Regulatory Flexibility Analysis
LC_{50} (or LC50)—The concentration of a test material that is lethal to 50 percent of the test organisms in a bioassay
mg/l—milligrams per liter MMS—Department of Interior Minerals Management Service Nonconventional pollutants—Pollutants that have not been designated as either conventional pollutants or priority pollutants
NOIA—National Ocean Industries Association
NOW—Nonhazardous Oilfield Waste
NPDES—The National Pollutant Discharge Elimination System
NRDC—Natural Resources Defense Council, Incorporated
NSPS—New source performance standards under section 306 of the Clean Water Act
NTTAA—National Technology Transfer and Advancement Act
OBF—Oil-Based Drilling Fluid
OCS—Offshore Continental Shelf
OMB—Office of Management and Budget
PAH—Polynuclear Aromatic Hydrocarbon
PBMS—Performance Based Measurement System
POTW—Publicly Owned Treatment Works
ppm—parts per million
PPA—Pollution Prevention Act of 1990
Priority pollutants—The 65 pollutants and classes of pollutants declared toxic under section 307(a) of the Clean Water Act
PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Act
PSNS—Pretreatment standards for new sources of indirect discharges, under sections 307(b) and (c) of the Act
RFA—Regulatory Flexibility Act
RPE—Reverse Phase Extraction
SBA—Small Business Administration
SBF—Synthetic Based Drilling Fluid
SBF Development Document—Development Document for Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category
SBF Economic Analysis—Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category
SBF Environmental Assessment—Environmental Assessment of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category
SBREFA—Small Business Regulatory Enforcement Fairness Act
SEC—Security and Exchange Commission
SIC—Standard Industrial Classification
SPP—Suspended particulate phase
SWD—Shallow-water development model well
SWE—Shallow-water exploratory model well
TSS—Total Suspended Solids
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
WBF—Water-Based Drilling Fluid

For the reasons set forth in the preamble, 40 CFR Part 435 is proposed to be amended as follows:

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

1. The authority citation for Part 435 is revised to read as follows:

Authority: (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361).

Subpart A—Offshore Subcategory

2. Section 435.11 is revised to read as follows:

§ 435.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in this section, the general definitions, abbreviations and methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) The term *average of daily values for 30 consecutive days* shall be the average of the daily values obtained during any 30 consecutive day period.

(c) The term *base fluid retained on cuttings* shall refer to American Petroleum Institute Recommended Practice 13B–2 supplemented with the specifications, sampling methods, and averaging of the retention values provided in appendix 7 of 40 CFR part 435, subpart A.

(d) The term *biodegradation rate* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the test procedure presented in appendix 4 of 40 CFR part 435, subpart A.

(e) The term *daily values* as applied to produced water effluent limitations and NSPS shall refer to the daily measurements used to assess compliance with the maximum for any one day.

(f) The term *deck drainage* shall refer to any waste resulting from deck washings, spillage, rainwater, and

runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(g) The term *percent degraded at 120 days* shall refer to the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment relative to the intial concentration of base fluid in sediment at the start of the test on day zero.

(h) The term *percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero* shall mean that the percent base fluid degraded at 120 days of any single sample of base fluid shall not be less than the percent C_{16}-C_{18} internal olefin degraded at 120 days as a control standard.

(i) The term *development facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(j) The term *diesel oil* shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975–91, that is typically used as the continuous phase in conventional oil-based drilling fluids. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(k) The term *domestic waste* shall refer to materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this subpart.

(l) The term *drill cuttings* shall refer to the particles generated by drilling into subsurface geologic formations and carried out from the wellbore with the drilling fluid.

(m) The term *drilling fluid* refers to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. Classes of drilling fluids are:

(1) A water-based drilling fluid has water or a water miscible fluid as the continuous phase and the suspending medium for solids, whether or not oil is present.

(2) A non-aqueous drilling fluid is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhanced mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).

(3) An oil-based drilling fluid has diesel oil, mineral oil, or some other oil, but neither a synthetic material nor enhanced mineral oil, as its continuous phase with water as the dispersed phase. Oil-based drilling fluids are a subset of non-aqueous drilling fluids.

(4) An enhanced mineral oil-based drilling fluid has an enhanced mineral oil as its continuous phase with water as the dispersed phase. Enhanced mineral oil-based drilling fluids are a subset of non-aqueous drilling fluids.

(5) A synthetic-based drilling fluid has a synthetic material as its continuous phase with water as the dispersed phase. Synthetic-based drilling fluids are a subset of non-aqueous drilling fluids.

(n) The term *enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

(o) The term *exploratory facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(p) The term *no discharge of formation oil* shall mean that cuttings contaminated with non-aqueous drilling fluids (NAFs) may not be discharged if the NAFs contain formation oil, as determined by the GC/MS baseline method as defined in appendix 5 to 40 CFR part 435, subpart A, to be applied before NAFs are shipped offshore for use, or the RPE method as defined in appendix 6 to 40 CFR part 435, subpart A, to be applied at the point of discharge. At the discretion of the permittee, detection of formation oil by the RPE method may be assured by the GC/MS method, and the results of the GC/MS method shall supercede those of the RPE method.

(q) The term *maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the maximum concentration allowed as measured in any single sample of the barite for determination of cadmium and mercury content, or as measured in any single sample of base fluid for determination of PAH content.

(r) The term *maximum weighted average for well* for BAT effluent limitations and NSPS for base fluid retained on cuttings shall mean the weighted average base fluid retention as determined by API RP 13B–2, using the methods and averaging calculations presented in appendix 7 of 40 CFR part 435, subpart A.

(s) The term *maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed separately. Alternatively, for BAT and NSPS the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(t) The term *minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the minimum 96-hour LC_{50} value allowed as measured in any single sample of the discharged waste stream. The term *minimum* as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes shall mean the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(u) The term *M9IM* shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(v) The term *M10* shall mean those offshore facilities continuously manned by ten (10) or more persons.

(w) The term *new source* means any facility or activity of this subcategory that meets the definition of "new source" under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(1) The term *water area* as used in the term "site" in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(2) The term *significant site preparation work* as used in 40 CFR 122.29 shall mean the process of surveying, clearing or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site. "New Source" does *not* include facilities covered by an existing NPDES

permit immediately prior to the effective date of these guidelines pending EPA issuance of a new source NPDES permit.

(x) The term *no discharge of free oil* shall mean that waste streams may not be discharged that contain free oil as evidenced by the monitoring method specified for that particular stream, e.g., deck drainage or miscellaneous discharges cannot be discharged when they would cause a film or sheen upon or discoloration of the surface of the receiving water; drilling fluids or cuttings may not be discharged when they fail the static sheen test defined in appendix 1 to 40 CFR part 435, subpart A.

(y) The term *produced sand* shall refer to slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(z) The term *produced water* shall refer to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(aa) The term *production facility* shall mean any fixed or mobile structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

(bb) The term *sanitary waste* shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(cc) The term *sediment toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in appendix 3 of 40 CFR part 435, subpart A.

(dd) The term *static sheen test* shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in appendix 1 to 40 CFR part 435, subpart A.

(ee) The term *synthetic material* as applied to synthetic-based drilling fluid means material produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAH's) but are sometimes found to contain levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Poly(alpha olefins) and vegetable esters are two examples of synthetic materials suitable for use by the oil and gas extraction industry in formulating drilling fluids. Poly(alpha olefins) are synthesized from the polymerization (dimerization, trimerization, tetramerization, and higher oligomerization) of purified straight-chain hydrocarbons such as C_6-C_{14} alpha olefins. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. The mention of these two branches of synthetic fluid base materials is to provide examples, and is not meant to exclude other synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

(ff) The term *SPP toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the bioassay test procedure presented in appendix 2 of 40 CFR part 435, subpart A.

(gg) The term *well completion fluids* shall refer to salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(hh) The term *well treatment fluids* shall refer to any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(ii) The term *workover fluids* shall refer to salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(jj) The term *10-day LC_{50}* shall refer to the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment that is lethal to 50 percent of the test organisms exposed to that concentration of the base fluids after 10-days of constant exposure.

(kk) The term *10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero* shall mean that the 10-day LC_{50} of any single sample of the base fluid shall not be less than the LC_{50} of C_{16}-C_{18} internal olefin as a control standard.

(ll) The term *96-hour LC_{50}* shall refer to the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

3. In § 435.12 the table is amended by removing the entries "Drilling muds" and "Drill cuttings" and by adding new entries (after "Deck drainage") for "Water based" and "Non-aqueous" to read as follows:

§ 435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

BPT EFFLUENT LIMITATIONS—OIL AND GREASE

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
* * * * * * *			
Water-based:			
Drilling fluids	(1)	(1)	NA
Drill cuttings	(1)	(1)	NA

BPT EFFLUENT LIMITATIONS—OIL AND GREASE—Continued

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
Non-aqueous:			
Drilling fluids	No discharge	No discharge	NA
Drill cuttings	(1)	(1)	NA

[1] No discharge of free oil.

4. In § 435.13 the table is amended by revising entry B under the entry for "Drilling fluids and drill cuttings" and by revising footnote 2 and adding footnotes 5–9 to read as follows:

§ 435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

BAT EFFLUENT LIMITATIONS

Waste source	Pollutant parameter	BAT effluent limitation
Drilling fluids and drill cuttings		
(B) For facilities located beyond 3 miles from shore		
Water-based drilling fluids and drill cuttings	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP shall be 3% by volume[2].
	Free oil	No discharge[3].
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
Non-aqueous drilling fluids		No discharge.
Cuttings associated with non-aqueous drilling fluids		
Stock Limitations	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH)	Maximum 10 ppm wt. PAH based on phenanthrene/wt. of stock base fluid[5].
	Sediment Toxicity	10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero[6].
	Biodegradation Rate	Percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero[7].
Discharge Limitations	Diesel oil	No discharge.
	Formation Oil	No discharge[8].
	Base fluid retained on cuttings	Maximum weighted average for well shall be 10.2 percent[9].

[2] As determined by the suspended particulate phase toxicity test (Appendix 2).
[3] As determined by the static sheen test (Appendix 1).
[5] As determined by EPA Method 1654A: Polynuclear Aromatic Hydrocarbon Content of Oil by High Performance Liquid Chromatography with an Ultraviolet Detector in Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA–821–R–92–008 [Incorporated by reference and available from National Technical Information Service (NTIS) (703/605–6000)].
[6] As determined by ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Incorporated by reference and available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in Appendix 3.
[7] As determined by the biodegradation test (Appendix 4).
[8] As determined by the GC/MS baseline and assurance method (Appendix 5), and by the RPE method applied to drilling fluid removed from cuttings at primary shale shakers (Appendix 6).

[9] Maximum permissible retention of base fluid on wet cuttings averaged over drill intervals using non-aqueous drilling fluids as determined by retort method (Appendix 7).

5. In § 435.14 the table is amended by revising entry B under the entry for "Drilling fluids and drill cuttings" to read as follows:

§ 435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

BCT EFFLUENT LIMITATIONS

Waste source	Pollutant parameter	BCT effluent limitation
* * * * * * *		
Drilling fluids and drill cuttings		
* * * * * * *		
(B) For facilities located beyond 3 miles from shore		
Water-based drilling fluids and drill cuttings	Free oil	No discharge [2].
Non-aqueous drilling fluids		No discharge.
Cuttings associated with non-aqueous drilling fluids	Free oil	No discharge [2].
* * * * * * *		

[2] As determined by the static sheen test (Appendix 1).

6. In § 435.15 the table is amended by revising entry B under the entry for "Drilling fluids and drill cuttings" and by revising footnote 2 and adding footnotes 5–9 to read as follows:

§ 435.15 Standards of performance for new sources (NSPS).

* * * * *

NEW SOURCE PERFORMANCE STANDARDS

Waste source	Pollutant parameter	NSPS
* * * * * * *		
Drilling fluids and drill cuttings		
* * * * * * *		
(B) For facilities located beyond 3 miles from shore		
Water-based drilling fluids and drill cuttings	SPP Toxicity	Minimum 96-hour LC50 of the SPP shall be 3% by volume [2].
	Free oil	No discharge [3].
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
Non-aqueous drilling fluids		No discharge.
Cuttings associated with non-aqueous drilling fluids		
Stock Limitations	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH)	Maximum 10 ppm wt. PAH based on phenanthrene/wt. of stock base fluid [5].
	Sediment Toxicity	10-day LC_{50} of stock base fluid minus 10-day LC_{50} of $C_{16}-C_{18}$ internal olefin shall not be less than zero [6].
	Biodegradation Rate	Percent stock base fluid degraded at 120 days minus percent $C_{16}-C_{18}$ internal olefin degraded at 120 days shall not be less than zero [7].
Discharge Limitations	Diesel oil	No discharge.
	Free oil	No discharge [3].
	Formation oil	No discharge [8].
	Base fluid retained on cuttings	Maximum weighted average for well shall be 0.2 percent [9].

NEW SOURCE PERFORMANCE STANDARDS—Continued

	Waste source	Pollutant parameter	NSPS
*	*	* * * * *	

[2] As determined by the suspended particulate phase toxicity test (Appendix 2).
[3] As determined by the static sheen test (Appendix 1).
[5] As determined by EPA Method 1654A: Polynuclear Aromatic Hydrocarbon Content of Oil by High Performance Liquid Chromatography with an Ultraviolet Detector in Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA–821–R–92–008 [Incorporated by reference and available from National Technical Information Service (NTIS) (703/605–6000)].
[6] As determined by ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Incorporated by reference and available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in Appendix 3.
[7] As determined by the biodegradation test (Appendix 4).
[8] As determined by the GC/MS baseline and assurance method (Appendix 5), and by the RPE method applied to drilling fluid removed from cuttings at primary shale shakers (Appendix 6).
[9] Maximum permissible retention of base fluid on wet cuttings averaged over drill intervals using non-aqueous drilling fluids as determined by retort method (Appendix 7).

7. Subpart A is amended by adding Appendices 3 through 7 as follows:

Appendix 3 to Subpart A of Part 435—Procedure for Mixing Base Fluids with Sediments

This procedure describes a method for amending uncontaminated and nontoxic (control) sediments with the base fluids that are used to formulate synthetic-based drilling fluids and other non-aqueous drilling fluids. Initially, control sediments shall be press-sieved through a 2000 micron mesh sieve to remove large debris. Then press-sieve the sediment through a 500 micron sieve to remove indigenous organisms that may prey on the test species or otherwise confound test results. Homogenize control sediment to limit the effects of settling that may have occurred during storage. Sediments should be homogenized before density determinations and addition of base fluid to control sediment. Because base fluids are strongly hydrophobic and do not readily mix with sediment, care must be taken to ensure base fluids are thoroughly homogenized within the sediment. All concentrations are weight-to-weight (mg of base fluid to kg of dry control sediment). Sediment and base fluid mixing should be accomplished by using the following method.

1. Determine the wet to dry ratio for the control sediment by weighing approximately 10 g subsamples of the screened and homogenized wet sediment into tared aluminum weigh pans. Dry sediment at 105°C for 18–24 h. Remove sediment and cool in a desiccator until a constant weight is achieved. Re-weigh the samples to determine the dry weight. Determine the wet/dry ratio by dividing the net wet weight by the net dry weight:

$$\frac{\text{Wet Sediment Weight (g)}}{\text{Dry Sediment Weight (g)}} = \text{Wet to Dry Ratio} \qquad [1]$$

2. Determine the density (g/mL) of the wet control or dilution sediment. This will be used to determine total volume of wet sediment needed for the various test treatments.

$$\frac{\text{Mean Wet Sediment Weight (g)}}{\text{Mean Wet Sediment Volume (mL)}} = \text{Wet Sediment Density (g/mL)} \qquad [2]$$

3. To determine the amount of base fluid needed to obtain a test concentration of 500 mg base fluid per kg dry sediment use the following formulas:
Determine the amount of wet sediment required:

$$\text{Wet Sediment Density (g/mL)} \times \text{Volume of Sediment Required per Concentration (mL)} = \text{Weight Wet Sediment Required per Conc. (g)} \qquad [3]$$

Determine the amount of dry sediment in kilograms (kg) required for each concentration:

$$\frac{\text{Wet Sediment per Concentration (g)}}{\text{(Mean Wet to Dry Ratio)}} \times \frac{1\text{kg}}{1000\text{g}} = \text{Dry Weight Sediment (kg)} \qquad [4]$$

Finally, determine the amount of base fluid required to spike the control sediment at each concentration:

$$\text{Conc. Desired (mg/kg)} \times \text{Dry Weight Sediment (kg)} = \text{Base Fluid Required (mg)} \qquad [5]$$

4. For primary mixing, place appropriate amounts of weighed base fluid into stainless mixing bowls, tare the vessel weight, then add sediment and mix with a high-shear dispersing impeller for 9 minutes. The concentration of base fluid in sediment from this mix , rather than the nominal concentration, shall be used in calculating LC50 values.
5. Tests for homogeneity of base fluid in sediment are to be performed during the procedure development phase. Because of difficulty of homogeneously mixing base fluid with sediment, it is important to demonstrate that the base fluid is evenly mixed with sediment. The sediment should be analyzed for total petroleum hydrocarbons (TPH) using EPA Methods 3550A and 8015M, with samples taken both prior to and after distribution to replicate test containers. Base-fluid content is measured as TPH. After mixing the sediment, a minimum of three replicate sediment samples should be taken prior to distribution into test containers. After the test sediment is distributed to test containers, an additional three sediment samples should be taken from three test containers to ensure proper distribution of base fluid within test containers. Base-fluid content results should be reported within 48 hours of mixing. The coefficient of variation (CV) for the replicate samples must be less than 20%. If base-fluid content results are not within the 20% CV limit, the test sediment should be remixed. Tests should not begin until the CV is determined to be below the maximum limit of 20%. During the test, a minimum of three replicate containers should be sampled to determine base-fluid content during each sampling period.

6. Mix enough sediment in this way to allow for its use in the preparation of all test concentrations and as a negative control. When commencing the sediment toxicity test, range-finding tests may be required to determine the concentrations that produce a toxic effect if these data are otherwise unavailable. The definitive test should bracket the LC50, which is the desired endpoint. The results for the base fluids will be reported in mg of base fluid per kg of dry sediment.

References

American Society for Testing and Materials (ASTM). 1996. Standard Guide for Collection, Storage, Characterization, and Manipulation of Sediments for Toxicological Testing. ASTM E 1391–94. Annual Book of ASTM Standards, Volume 11.05, pp. 805–825.

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U.S. EPA. 1994. Methods for Assessing the Toxicity of Sediment-associated Contaminants with Estuarine and Marine Amphipods. EPA/600/R–94/025. Office of Research and Development, Washington, DC.

Appendix 4 to Subpart A of Part 435—Determination of Biodegradation of Synthetic Base Fluids in a Solid-Phase Test System

Summary of Method

This analytical method determines the biodegradation potential of mineral, paraffinic, and diesel oils as well as synthetic materials that are used as base fluids in the formulation of drilling fluids. The base fluids are mixed with sediment at an initial concentration of 500 mg/kg dry sediment, and placed under flowing seawater at 12°C. Base fluid concentration measurements are made at Days 0, 14, 28, 56, and 120. This method uses two parameters, base-fluid content and redox potential in both poisoned and unpoisoned sediment, to assess the rate of biodegradation of base fluids.

Sample Requirements

1. The exposure system is a flowing seawater system providing a laminar flow over replicate test containers for a test duration of 120 days. For each base fluid there are two treatments: (1) base fluid-dosed sediment; and (2) base fluid-dosed sediment poisoned with biocide (used to measure the abiotic degradation of the base fluids).

2. To prevent cross-contamination, individual exposure tables should be used for each treatment and control. Exposure tables should be constructed of non-contaminating material and should be large enough to hold the required number of replicate test containers. Seawater should enter one end of the table, flow uniformly over test containers, and exit the opposite end of the table.

3. Sampling should be conducted on Days 0, 14, 28, 56, and 120. Sampling consists of three replicate samples taken on each sampling day for determination of redox potential and base-fluid content.

4. For Day 0 sampling, all samples should be taken from the initial batch of test treatment sediment prior to distribution into replicate exposure containers. Sufficient test treatment sediment must be made for a minimum of 30 replicate samples to be taken throughout the study (see Table 1).

TABLE 1.—REPLICATE REQUIREMENTS PER TREATMENT AND CONTROL TESTS

[Replication per sampling period]

Sampling period	Unpoisoned sediment		Poisoned sediment	
	Redox potential	Base-fluid content*	Redox potential	Base-fluid Content*
DAY 0	3	3	3	3
DAY 14	3**	3	3**	3
DAY 28	↓	3	↓	3
DAY 56	↓	3	↓	3
DAY 120	↓	3	↓	3
Totals Samples	6	15	6	15

*Sampling for base-fluid content is destructive, therefore samples must be taken from a different replicate set of three sampling containers for each sampling date.

**Sampling for redox potential is non-destructive, therefore samples may be taken from the same replicate set of three sample containers for each sampling date after Day 0.

Mixing Methods

Because base fluids are strongly hydrophobic and do not readily mix with sediments, care must be taken to ensure base fluids are thoroughly homogenized within the sediment. All concentrations are weight-to-weight (mg of base fluid to kg of dry control sediment). Sediment and base fluid mixing will be accomplished by using the following method.

1. Determine the wet to dry ratio for the control sediment by weighing approximately 10 g subsamples of the screened and homogenized wet sediment into tared aluminum weigh pans. Dry sediment at 105°C for 18–24 h. Remove sediment and cool in a desiccator until a constant weight is achieved. Re-weigh the samples to determine the dry weight. Determine the wet/dry ratio by dividing the net wet weight by the net dry weight using Formula 1. This is required to determine the weight of wet sediment needed to prepare the test concentration of 500 mg of base fluid per kg of dry sediment (500 ppm).

$$\frac{\text{Wet Sediment Weight (g)}}{\text{Dry Sediment Weight (g)}} = \text{Wet to Dry Ratio} \qquad [1]$$

2. Determine the density (g/mL) of the wet control or dilution sediment. This will be used to determine total volume of wet sediment needed for the various test treatments.

$$\frac{\text{Mean Wet Sediment Weight (g)}}{\text{Mean Wet Sediment Volume (mL)}} = \text{Wet Sediment Density (g/mL)} \qquad [2]$$

3. To determine the amount of base fluid needed to obtain a test concentration of 500 mg base fluid per kg dry sediment use the following formulas:

Determine the amount of wet sediment required:

$$\text{Wet Sediment Density (g/mL)} \times \text{Volume of Sediment Required per Concentration (mL)} = \text{Weight Wet Sediment Required per Conc. (g)} \quad [3]$$

Determine the amount of dry sediment in kilograms (kg) required for each concentration:

$$\frac{\text{Wet Sediment per Concentration (g)}}{\text{(Mean Wet to Dry Ratio)}} \times \frac{1\text{kg}}{1000\text{g}} = \text{Dry Weight Sediment (kg)} \quad [4]$$

Finally, determine the amount of base fluid to provide the initial test concentration of 500 mg/kg dry sediment:

$$(500\ \text{mg/kg}) \times \text{Dry Weight Sediment (kg)} = \text{Base Fluid Required (mg)} \quad [5]$$

4. Based on the required number (42) and size (approximately 500 mL) of samples, the approximate volume of sediment needed is 25 L. Mixing should be performed in 5 L batches, then combined and remixed. For primary mixing, place appropriate amounts of weighed base fluid into stainless mixing bowls, tare the vessel weight, then add sediment and mix with a high-shear dispersing impeller for 9 minutes.

5. Secondary mixing should be conducted in a large container (i.e., cement mixer) and mixing should be for a minimum of 10 minutes. Day 0 samples will be taken from this batch of test sediment.

6. Biocide additions are to be mixed after all other mixing is complete.

Base-Fluid Content

Because of difficulty of homogeneously mixing base fluid with sediment, it is important to demonstrate that the base fluid is evenly mixed with sediment. The sediment should be analyzed for total petroleum hydrocarbons (TPH) using EPA Methods 3550A and 8015M, with samples taken both prior to and after distribution to replicate test containers. Base-fluid content is measured as TPH. After mixing the 25L batch of sediment test concentration, a minimum of three replicate sediment samples will be taken prior to distribution into test containers. After the test sediment is distributed to test containers, an additional three sediment samples shall be taken from three test containers to ensure proper distribution of base fluid within test containers. Base-fluid content results should be reported within 48 hours of mixing. Measured and nominal concentrations should be reported for initial test concentrations. The coefficient of variation (CV) for the replicate samples must be less than 20%. If base-fluid content results are not within the 20% CV limit, the test sediment should be remixed. Tests should not begin until the CV is determined to be below the maximum limit of 20%. During the test, a minimum of three replicate containers should be sampled to determine base-fluid content during each sampling period.

Water Quality Measurements

The following water quality measurements of the overlying water should be taken daily: dissolved oxygen (DO), pH, temperature, and salinity.

Measurement of Redox Potential

1. The oxidation-reduction (redox) potential of a sediment is a quantitative expression of its oxidizing or reducing tendency. Redox potential is expressed as an E_h value, E_h being the electron motive force (in mV) of an oxidation-reduction system referred to as a standard hydrogen half-cell. Positive E_h values are characteristic of well oxygenated, coarse sediments or those with very low concentrations of organic matter. Conversely, negative E_h values occur in deoxygenated sediments rich in organic matter and largely consisting of fine particles. A redox profile follows changes in redox potential at increasing depths from the sediment surface.

2. The redox potential should be measured using a combination platinum/reference (Ag/AgCL) electrode held in an adjustable retort stand, one revolution resulting in a lowering of the probe by 5 mm. Readings should be taken after one minute and values for Zobell's solution (g L^{-1}; potassium ferrocyanide, 1.399; potassium ferricyanide, 1.087; potassium chloride, 7.456) and sea water should be monitored after each depth profile. Actual readings should be adjusted to E_h by adding 198.

Appendix 5 to Subpart A of Part 435—Determination of Crude Oil Contamination in Non-Aqueous Drilling Fluids by Gas Chromatography/Mass Spectrometry (GC/MS)

1.0 Scope and Application

1.1 This method determines crude (formation) oil contamination, or other petroleum oil contamination, in non-aqueous drilling fluids (NAFs) by comparing the gas chromatography/mass spectrometry (GC/MS) fingerprint scan and extracted ion scans of the test sample to that of an uncontaminated sample.

1.2 This method can be used for monitoring oil contamination of NAFs or monitoring oil contamination of the base fluid used in the NAF formulations.

1.3 Any modification of this method beyond those expressly permitted shall be considered as a major modification subject to application and approval of alternative test procedures.

1.4 The gas chromatography/mass spectrometry portions of this method are restricted to use by, or under the supervision of analysts experienced in the use of GC/MS and in the interpretation of gas chromatograms and extracted ion scans. Each laboratory that uses this method must generate acceptable results using the procedures described in Sections 7, 9.2, and 12 of this method.

2.0 Summary of Method

2.1 Analysis of NAF for crude oil contamination is a step-wise process. Qualitative assessment of the presence or absence of crude oil is performed first. If crude oil is detected in this qualitative assessment, quantitative analysis of the crude oil concentration is performed.

2.2 A sample of NAF is centrifuged, to obtain a solids free supernate.

2.3 The sample to be tested is prepared by removing an aliquot of the solids free supernate, spiking it with internal standard, and analyzing it using GC/MS techniques. The components are separated by the gas chromatograph and detected by the mass spectrometer.

2.4 Qualitative identification of crude oil contamination is performed by comparing the Total Ion Chromatograph (TIC) scans and Extracted Ion Profile (EIP) scans of test sample to that of uncontaminated base fluids, and examining the profiles for chromatographic signatures diagnostic of oil contamination.

2.5 The presence or absence of crude oil contamination observed in the full scan profiles and selected extracted ion profiles determines further sample quantitation and reporting.

2.6 If crude oil is detected in the qualitative analysis, quantitative analysis is performed by calibrating the GC/MS using a designated NAF spiked with known concentrations of a designated oil.

2.7 Quality is assured through reproducible calibration and testing of GC/MS system and through analysis of quality control samples.

3.0 Definitions

3.1 A NAF is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhance mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).
3.2 TIC—Total Ion Chromatograph.
3.3 EIP—Extracted Ion Profile.
3.4 TCB—1,3,5–trichlorobenzene is used as the internal standard in this method.
3.5 SPTM—System Performance Test Mix standards are used to establish retention times and monitor detection levels.

4.0 Interferences and Limitations

4.1 Solvents, reagents, glassware, and other sample processing hardware may yield artifacts and/or elevated baselines causing misinterpretation of chromatograms.
4.2 All Materials used in the analysis shall be demonstrated to be free from interferences by running method blanks. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required.
4.3 Glassware is cleaned by rinsing with solvent and baking at 400°C for a minimum of 1 hour.
4.4 Interferences may vary from source to source, depending on the diversity of the samples being tested.
4.5 Variations in and additions of base fluids and/or drilling fluid additives (emulsifiers, dispersants, fluid loss control agents, etc.) might also cause interferences and misinterpretation of chromatograms.
4.6 Difference in light crude oils, medium crude oils, and heavy crude oils will result in different responses and thus different interpretation of scans and calculated percentages.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely determined; however each chemical should be treated as a potential health hazard. Exposure to these chemicals should be reduced to the lowest possible level.
5.2 Unknown samples may contain high concentration of volatile toxic compounds. Sample containers should be opened in a hood and handled with gloves to prevent exposure. In addition, all sample preparation should be conducted in a fume hood to limit the potential exposure to harmful contaminates.
5.3 This method does not address all safety issues associated with its use. The laboratory is responsible for maintaining a safe work environment and a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) should be available to all personnel involved in these analyses. Additional references to laboratory safety can be found in References 16.1 through 16.3.
5.4 NAF base fluids may cause skin irritation, protective gloves are recommended while handling these samples.

6.0 Apparatus and Materials

Note: Brand names, suppliers, and part numbers are for illustrative purposes only. No endorsement is implied. Equivalent performance may be achieved using apparatus and materials other than those specified here, but demonstration of equivalent performance meeting the requirements of this method is the responsibility of the laboratory.
6.1 Equipment for glassware cleaning.
6.1.1 Laboratory sink with overhead fume hood.
6.1.2 Kiln—Capable of reaching 450°C within 2 hours and holding 450°C within ±10°C, with temperature controller and safety switch (Cress Manufacturing Co., Santa Fe Springs, CA B31H or X31TS or equivalent).
6.2 Equipment for sample preparation.
6.2.1 Laboratory fume hood.
6.2.2 Analytical balance—Capable of weighing 0.1 mg.
6.2.3 Glassware.
6.2.3.1 Disposable pipettes—Pasteur, 150 mm long by 5 mm ID (Fisher Scientific 13–678–6A, or equivalent) baked at 400°C for a minimum of 1 hour.
6.2.3.2 Glass volumetric pipettes or gas tight syringes—1.0-mL ±1% and 0.5-mL ±1%.
6.2.3.3 Volumetric flasks—Glass, class A, 10-mL, 50-mL and 100-mL.
6.2.3.4 Sample vials—Glass, 1- to 3-mL (baked at 400°C for a minimum of 1 hour) with PTFE-lined screw or crimp cap.
6.2.3.5 Centrifuge and centrifuge tubes—Centrifuge capable of 10,000 rpm, or better, (International Equipment Co., IEC Centra MP4 or equivalent) and 50-mL centrifuge tubes (Nalgene, Ultratube, Thin Wall 25×89 mm, #3410–2539).
6.3 Gas Chromatograph/Mass Spectrometer (GC/MS):
6.3.1 Gas Chromatograph—An analytical system complete with a temperature-programmable gas chromatograph suitable for split/splitless injection and all required accessories, including syringes, analytical columns, and gases.
6.3.1.1 Column—30 m (or 60 m) × 39 0.32 mm ID (or 0.25 mm ID) 1μm film thickness (or 0.25μm film thickness) silicone-coated fused-silica capillary column (J&W Scientific DB–5 or equivalent).
6.3.2 Mass Spectrometer—Capable of scanning from 35 to 500 amu every 1 sec or less, using 70 volts (nominal) electron energy in the electron impact ionization mode (Hewlett Packard 5970MS or comparable).
6.3.3 GC/MS interface—the interface is a capillary-direct interface from the GC to the MS.
6.3.4 Data system—A computer system must be interfaced to the mass spectrometer. The system must allow the continuous acquisition and storage on machine-readable media of all mass spectra obtained throughout the duration of the chromatographic program. The computer must have software that can search any GC/MS data file for ions of a specific mass and that can plot such ion abundance versus retention time or scan number. This type of plot is defined as an Extracted Ion Current Profile (EIP). Software must also be available that allows integrating the abundance in any total ion chromatogram (TIC) or EIP between specified retention time or scan-number limits. It is advisable that the most recent version of the EPA/NIST Mass Spectral Library be available.

7.0 Reagents and Standards

7.1 Methylene chloride—Pesticide grade or equivalent. Used when necessary for sample dilution.
7.2 Standards—Prepare from pure individual standard materials or purchased as certified solutions. If compound purity is 96% or greater, the weight may be used without correction to compute the concentration of the standard.
7.2.1 Crude Oil Reference—Obtain a sample of a crude oil with a known API gravity. This oil will be used in the calibration procedures.
7.2.2 Synthetic Base Fluid—Obtain a sample of clean internal olefin (IO) Lab drilling fluid (as sent from the supplier—has not been circulated downhole). This drilling fluid will be used in the calibration procedures.
7.2.3 Internal standard—Prepare a 0.01 g/mL solution of 1,3,5-trichlorobenzene (TCB). Dissolve 1.0 g of TCB in methylene chloride and dilute to volume in a 100-mL volumetric flask. Stopper, vortex, and transfer the solution to a 150-mL bottle with PTFE-lined cap. Label appropriately, and store at −5°C to 20°C. Mark the level of the meniscus on the bottle to detect solvent loss.

7.2.4 GC/MS system performance test mix (SPTM) standards—The SPTM standards should contain octane, decane, dodecane, tetradecane, tetradecene, toluene, ethylbenzene, 1,2,4-trimethylbenzene, 1-methylnaphthalene and 1,3-dimethylnaphthalene. These compounds can be purchased individually or obtained as a mixture (i.e. Supelco, Catalog No.4–7300). Prepare a high concentration of the SPTM standard at 62.5 mg/mL in methylene chloride. Prepare a medium concentration SPTM standard at 1.25 mg/mL by transferring 1.0 mL of the 62.5 mg/mL solution into a 50 mL volumetric flask and diluting to the mark with methylene chloride. Finally, prepare a low concentration SPTM standard at 0.125 mg/mL by transferring 1.0 mL of the 1.25 mg/mL solution into a 10-mL volumetric flask and diluting to the mark with methylene chloride.

7.2.5 Crude oil/drilling fluid calibration standards—Prepare a 4-point crude oil/drilling fluid calibration at concentrations of 0% (no spike—clean drilling fluid), 0.5%, 1.0%, and 2.0% by weight according to the procedures outlined below using the Reference Crude Oil:

7.2.5.1 Label 4 jars with the following identification: Jar 1—0%Ref-IOLab, Jar 2—0.5%Ref-IOLab, Jar 3—1%Ref-IOLab, and Jar 4—2%Ref-IOLab.

7.2.5.2 Weigh 4, 50-g aliquots of well mixed IO Lab drilling fluid into each of the 4 jars.

7.2.5.3 Add Reference Oil at 0.5%, 1.0%, and 2.0% by weight to jars 2, 3, and 4 respectively. Jar 1 will not be spiked with Reference Oil in order to retain a "0%" oil concentration.

7.2.5.4 Thoroughly mix the contents of each of the 4 jars, using clean glass stirring rods.

7.2.5.5 Transfer (weigh) a 30-g aliquot from Jar 1 to a labeled centrifuge tube. Centrifuge the aliquot for a minimum of 15 min at approximately 15,000 rpm, in order to obtain a solids free supernate. Weigh 0.5 g of the supernate directly into a tared and appropriately labeled GC straight vial. Spike the 0.5-g supernate with 500 µL of the 0.01g/mL 1,3,5-trichlorobenzene internal standard solution (see 7.2.3), cap with a Teflon lined crimp cap, and vortex for ca. 10 sec.

7.2.5.6 Repeat step 7.2.5.5 except use an aliquot from Jar 2.

7.2.5.7 Repeat step 7.2.5.5 except use an aliquot from Jar 3.

7.2.5.8 Repeat step 7.2.5.5 except use an aliquot from Jar 4.

7.2.5.9 These 4 crude/oil drilling fluid calibration standards are now used for qualitative and quantitative GC/MS analysis.

7.2.6 Precision and recovery standard (mid level crude oil/drilling fluid calibration standard)—Prepare a mid point crude oil/drilling fluid calibration using IO Lab drilling fluid and Reference Oil at a concentration of 1.0% by weight. Prepare this standard according to the procedures outlined in Section 7.2.5.1 through 7.2.5.5, with the exception that only "Jar 3" needs to be prepared. Remove and spike with internal standard, as many 0.5-g aliquots as needed to complete the GC/MS analysis (see Section 11.6—bracketing authentic samples every 12 hours with precision and recovery standard) and the initial demonstration exercise described in Section 9.2.

7.2.7 Stability of standards

7.2.7.1 When not used, standards are stored in the dark, at −5 to −20°C in screw-capped vials with PTFE-lined lids. A mark is placed on the vial at the level of the solution so that solvent loss by evaporation can be detected. The vial is brought to room temperature prior to use.

7.2.7.2 Solutions used for quantitative purposes shall be analyzed within 48 hours of preparation and on a monthly basis thereafter for signs of degradation. Standard will remain acceptable if the peak area remains within ±15% of the area obtained in the initial analysis of the standard.

8.0 Sample Collection Preservation and Storage

8.1 NAF samples and base fluid samples are collected in 100–to 200–mL glass bottles with PTFE–or aluminum foil lined caps.

8.2 Samples collected in the field will be stored refrigerated until time of preparation.

8.3 Sample and extract holding times for this method have not yet been established. However, based on tests experience samples should be analyzed within seven to ten days of collection and extracts analyzed within seven days of preparation.

8.4 After completion of GC/MS analysis, extracts should be refrigerated at ca. 4°C until further notification of sample disposal.

9.0 Quality Control

9.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 16.4). The minimum requirements of this program consist of an initial demonstration of laboratory capability, and ongoing analysis of standards, and blanks as a test of continued performance, analyses of spiked samples to assess accuracy and analysis of duplicates to assess precision. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method.

9.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in Section 9.2.

9.1.2 The analyst is permitted to modify this method to improve separations or lower the cost of measurements, provided all performance requirements are met. Each time a modification is made to the method, the analyst is required to repeat the calibration (Section 10.4) and to repeat the initial demonstration procedure described in Section 9.2.

9.1.3 Analyses of blanks are required to demonstrate freedom from contamination. The procedures and criteria for analysis of a blank are described in Section 9.3.

9.1.4 An analysis of a matrix spike sample is required to demonstrate method accuracy. The procedure and QC criteria for spiking are described in Section 9.4.

9.1.5 Analysis of a duplicate field sample is required to demonstrate method precision. The procedure and QC criteria for duplicates are described in Section 9.5.

9.1.6 Analysis of a sample of the clean NAF(s) (as sent from the supplier—has not been circulated downhole) used in the drilling operations is required.

9.1.7 The laboratory shall, on an ongoing basis, demonstrate through calibration verification and the analysis of the precision and recovery standard (Section 7.2.6) that the analysis system is in control. These procedures are described in Section 11.6.

9.1.8 The laboratory shall maintain records to define the quality of data that is generated.

9.2 Initial precision and accuracy—The initial precision and recovery test is performed using the precision and recovery standard (1% by weight Reference Oil in IO Lab drilling fluid). The laboratory shall generate acceptable precision and recovery by performing the following operations.

9.2.1 Prepare four separate aliquots of the precision and recovery standard using the procedure outlined in Section 7.2.6. Analyze these aliquots using the procedures outlined in Section 11.

9.2.2 Using the results of the set of four analyses, compute the average recovery (X) in weight percent and the standard deviation of the recovery (s) for each sample.

9.2.3 If s and X meet the acceptance criteria of 80% to 110%, system performance is acceptable and analysis of samples may begin. If, however, s exceeds the precision limit or X falls outside the range for accuracy, system performance is unacceptable. In this event, review this method, correct the problem, and repeat the test.

9.2.4 Accuracy and precision—The average percent recovery (P) and the standard deviation of the percent recovery (S_p) Express the accuracy assessment as a percent recovery interval from $P-2S_p$ to $P+2S_p$. For example, if P=90% and S_p=10% for four analyses of crude oil in NAF, the accuracy interval is expressed as 70% to 110%. Update the accuracy assessment on a regular basis.

9.3 Blanks—Rinse glassware and centrifuge tubes used in the method with ca. 30 mL of methylene chloride, remove a 0.5-g aliquot of the solvent, spike it with the 500 µL of the internal standard solution (Section 7.2.3) and analyze a 1-µL aliquot of the blank sample using the procedure in Section 11. Compute results per Section 12.

9.4 Matrix spike sample—Prepare a matrix spike sample according to procedure outlined in Section 7.2.6. Analyze the sample and calculate the concentration (% oil) in the drilling fluid and % recovery of oil from the spiked drilling fluid using the methods described in Sections 11 and 12.

9.5 Duplicates—A duplicate field sample is prepared according to procedures outlined in Section 7.3 and analyzed according to Section 11. The relative percent difference (RPD) of the calculated concentrations should be less than 15%.

9.5.1 Analyze each of the duplicates per the procedure in Section 11 and compute the results per Section 12.

9.5.2 Calculate the relative percent difference (RPD) between the two results per the following equation:

$$RPD = \frac{D_1 - D_2}{(D_1 + D_2)/2} \times 100$$

where:

D_1 = Concentration of crude oil in the sample

D_2 = Concentration of crude oil in the duplicate sample

9.5.3 If the RPD criteria are not met, the analytical system shall be judged to be out of control, and the problem must be immediately identified and corrected and the sample batch reanalyzed.

9.6 Preparation of the clean NAF sample is performed according to procedures outlined in Section 7.3 except that the clean NAF (drilling fluid that has not been circulated downhole) is used. Ultimately the oil-equivalent concentration from the TIC or EIP signal measured in the clean NAF sample will be subtracted from the corresponding authentic field samples in order to calculate the true contaminant concentration (% oil) in the field samples (see Section 12).

9.7 The specifications contained in this method can be met if the apparatus used is calibrated properly, then maintained in a calibrated state. The standards used for initial precision and recovery (Section 9.2) and ongoing precision and recovery (Section 11.6) shall be identical, so that the most precise results will be obtained. The GC/MS instrument will provide the most reproducible results if dedicated to the setting and conditions required for the analyses given in this method.

9.8 Depending on specific program requirements, field replicates and field spikes of crude oil into samples may be required when this method is used to assess the precision and accuracy of the sampling and sample transporting techniques.

10.0 Calibration

10.1 Establish gas chromatographic/mass spectrometer operating conditions given in Table 1 below. Perform the GC/MS system hardware-tune as outlined by the manufacture. The gas chromatograph is calibrated using the internal standard technique.

Note: Because each GC is slightly different, it may be necessary to adjust the operating conditions (carrier gas flow rate and column temperature and temperature program) slightly until the retention times in Table 2 are met.

TABLE 1.—GAS CHROMATOGRAPH/MASS SPECTROMETER (GC/MS) OPERATING CONDITIONS

Parameter	Setting
Injection port	280°C.
Transfer line	280°C.
Detector	280°C.
Initial Temperature	50°C.
Initial Time	5 minutes.
Ramp	50 to 300°C @ 5 C per minute.
Final Temperature	300°C.
Final Hold	20 minutes or until all peaks have eluted.
Carrier Gas	Helium.
Flow rate	As required for standard operation.
Split ratio	As required to meet performance criteria (~1:100).
Mass range	35 to 600 amu.

TABLE 2.—APPROXIMATE RETENTION TIMES FOR COMPOUNDS

Compound	Approximate Retention Time (minutes)
Toluene	5.6
Octane, n-C_8	7.2
Ethylbenzene	10.3
1,2,4-Trimethylbenzene	16.0
Decane, n-C_{10}	16.1
TCB (Internal Standard)	21.3
Dodecane, n-C_{12}	22.9
1-Methylnaphthalene	26.7
1-Tetradecene	28.4
Tetradecane, n-C_{14}	28.7
1,3-Dimethylnaphthalene	29.7

10.2 Internal standard calibration procedure—1,3,5-trichlorobenzene (TCB) has been shown to be free of interferences from diesel and crude oils and is a suitable internal standard.

10.3 The system performance test mix standards prepared in Section 7.2.4 are primarily used to establish retention times and establish qualitative detection limits.

10.3.1 Spike a 500-mL aliquot of the 1.25 mg/mL SPTM standard with 500 µL of the TCB internal standard solution.
10.3.2 Inject 1.0 µL of this spiked SPTM standard onto the GC/MS in order to demonstrate proper retention times. For the GC/MS used in the development of this method the ten compounds in the mixture had typical retention times shown in Table 2 above. Extracted ion scans for m/z 91 and 105 showed a maximum abundance of 400,000.
10.3.3 Spike a 500-mL aliquot of the 0.125 mg/mL SPTM standard with 500 µL of the TCB internal standard solution.
10.3.4 Inject 1.0 µL of this spiked SPTM standard onto the GC/MS to monitor detectable levels. For the GC/MS used in the development of this test all ten compounds showed a minimum peak height of three times signal to noise. Extracted ion scans for m/z 91 and 105 showed a maximum abundance of 40,000.
10.4 GC/MS crude oil/drilling fluid calibration —There are two methods of quantification: Total Area Integration (C_8—C_{13}) and EIP Area Integration using m/z's 91 and 105. The Total Area Integration method can be used as the primary technique for quantifying crude oil in NAFs. The EIP Area Integration method can be used as a confirmatory technique for NAFs. The EIP Area Integration method should be used as the primary method for quantifying oil in enhanced mineral oil (EMO) based drilling fluid. Inject 1.0 µL of each of the four crude oil/drilling fluid calibration standards prepared in Section 7.2.5 into the GC/MS. The internal standard should elute approximately 21–22 minutes after injection. For the GC/MS used in the development of this method, the internal standard peak was (35 to 40)% of full scale at an abundance of about 3.5e+07.
10.4.1 Total Area Integration Method—For each of the four calibration standards obtain the following: Using a straight baseline integration technique, obtain the total ion chromatogram (TIC) area from C_8 to C_{13}. Obtain the TIC area of the internal standard (TCB). Subtract the TCB area from the C_8—C_{13} area to obtain the true C_8—C_{13} area. Using the C_8—C_{13} and TCB areas, and known internal standard concentration, generate a linear regression calibration using the internal standard method. The r^2 value for the linear regression curve should be ≥ 0.998. Some synthetic fluids might have peaks that elute in the window and would interfere with the analysis. In this case the integration window can be shifted to other areas of scan where there are no interfering peaks from the synthetic base fluid.
10.4.2 EIP Area Integration—For each of the four calibration standards generate Extracted Ion Profiles (EIPs) for m/z 91 and 105. Using straight baseline integration techniques, obtain the following EIP areas:
10.4.2.1 For m/z 91 integrate the area under the curve from approximately 9 minutes to 21—22 minutes, just prior to but not including the internal standard.
10.4.2.2 For m/z 105 integrate the area under the curve from approximately 10.5 minutes to 26.5 minutes.
10.4.2.3 Obtain the internal standard area from the TCB in each of the four calibration standards, using m/z 180.
10.4.2.4 Using the EIP areas for TCB, m/z 91 and m/z105, and the known concentration of internal standard, generate linear regression calibration curves for the target ions 91 and 105 using the internal standard method. The r^2 value for the each of the EIP linear regression curves should be ≥ 0.998.
10.4.2.5 Some base fluids might produce a background level that would show up on the extracted ion profiles, but there should not be any real peaks (signal to noise ratio of 1:3) from the clean base fluids.

11.0 Procedure

11.1 Sample Preparation—
11.1.1 Mix the authentic field sample (drilling fluid) well. Transfer (weigh) a 30-g aliquot of the sample to a labeled centrifuge tube.
11.1.2 Centrifuge the aliquot for a minimum of 15 min at approximately 15,000 rpm, in order to obtain a solids free supernate.
11.1.3 Weigh 0.5 g of the supernate directly into a tared and appropriately labeled GC straight vial.
11.1.4 Spike the 0.5-g supernate with 500 µL of the 0.01g/mL 1,3,5-trichlorobenzene internal standard solution (see 7.2.3), cap with a Teflon lined crimp cap, and vortex for ca. 10 sec.
11.1.5 The sample is ready for GC/MS analysis.
11.2 Gas Chromatography.
Table 1 summarizes the recommended operating conditions for the GC/MS. Retention times for the n-alkanes obtained under these conditions are given in Table 2. Other columns, chromatographic conditions, or detectors may be used if initial precision and accuracy requirements (Section 9.2) are met. The system is calibrated according to the procedures outlined in Section 10, and verified every 12 hours according to Section 11.6.
11.2.1 Samples should be prepared (extracted) in a batch of no more than 20 samples. The batch should consist of 20 authentic samples, 1 blank (Section 9.3), 1 matrix spike sample (9.4), and 1 duplicate field sample (9.5), and a prepared sample of the corresponding clean NAF used in the drilling process.
11.2.2 An analytical sequence is run on the GC/MS where the 3 SPTM standards (Section 7.2.4) containing internal standard are analyzed first, followed by analysis of the four GC/MS crude oil/drilling fluid calibration standards (Section 7.2.5), analysis of the blank, matrix spike sample, the duplicate sample, the clean NAF sample, followed by the authentic samples.
11.2.3 Samples requiring dilution due to excessive signal should be diluted using methylene chloride.
11.2.4 Inject 1.0 µL of the test sample or standard into the GC, using the conditions in Table 1.
11.2.5 Begin data collection and the temperature program at the time of injection.
11.2.6 Obtain a TIC and EIP fingerprint scans of the sample (Table 3).
11.2.7 If the area of the C_8 to C_{13} peaks exceeds the calibration range of the system, dilute a fresh aliquot of the test sample weighing < 0.50-g and reanalyze.
11.2.8 Determine the C_8 to C_{13} TIC area, the TCB internal standard area, and the areas for the m/z 91 and 105 EIPs. These are used in the calculation of oil concentration in the samples (see Section 12).

TABLE 3.—RECOMMENDED ION MASS NUMBERS

Selected ion mass numbers	Corresponding aromatic compounds	Typical retention times (in minutes)
91	Methylbenzene	6.0
	Ethylbenzene	10.3
	1,4-Dimethylbenzene	10.9
	1,3-Dimethylbenzene	10.9
	1,2-Dimethylbenzene	11.9
105	1,3,5-Trimethylbenzene	15.1
	1,2,4-Trimethylbenzene	16.0
	1,2,3-Trimethylbenzene	17.4
156	2,6-Dimethylnaphthalene	28.9
	1,2-Dimethylnaphthalene	29.4

TABLE 3.—RECOMMENDED ION MASS NUMBERS—Continued

Selected ion mass numbers	Corresponding aromatic compounds	Typical retention times (in minutes)
	1,3-Dimethylnaphthalene	29.7

11.2.9 Observe the presence of peaks in the EIPs that would confirm the presence of any target aromatic compounds. Using the EIP areas and EIP linear regression calibrations compare the abundance of the aromatic peaks, and if appropriate, determine approximate crude oil contamination in the sample for each of the target ions.

11.3 Qualitative Identification—See Section 17 for schematic flowchart.

11.3.1 Qualitative identification is accomplished by comparison of the TIC and EIP area data from an authentic sample to the TIC and EIP area data from the calibration standards (Section 12.4). Crude oil is identified by the presence of C_{10} to C_{13} n-alkanes and corresponding target aromatics.

11.3.2 Using the calibration data, establish the identity of the C_8 to C_{13} peaks in the chromatogram of the sample. Using the calibration data, establish the identity of any target aromatics present on the extracted ion scans.

11.3.3 Crude oil is not present in a detectable amount in the sample if there are no target aromatics seen on the extracted ion scans. The experience of the analyst shall weigh heavily in the determination of the presence of peaks at a signal-to-noise ratio of 3 or greater.

11.3.4 If the chromatogram shows n-alkanes from C_8 to C_{13} and target aromatics to be present, contamination by crude oil or diesel should be suspected and quantitative analysis should be determined. If there are no n-alkanes present that are not seen on the blank, and no target aromatics are seen, the sample can be considered to be free of contamination.

11.4 Quantitative Identification—

11.4.1 Determine the area of the peaks from C_8 to C_{13} as outlined in the calibration section (10.4.1). If the area of the peaks for the sample is greater than that for the clean NAF (base fluid) use the crude oil/drilling fluid calibration TIC linear regression curve to determine approximate crude oil contamination.

11.4.2 Using the EIPs outlined in Section 10.4.2 determine the presence of any target aromatics. Using the integration techniques outlined in Section 10.4.2 to obtain the EIP areas for m/z 91 and 105. Use the crude oil/drilling fluid calibration EIP linear regression curves to determine approximate crude oil contamination.

11.5 Complex Samples—

11.5.1 The most common interferences in the determination of crude oil can be from mineral oil, diesel oil, and proprietary additives in drilling fluids.

11.5.2 Mineral oil can typically be identified by it lower target aromatic content, and narrow range of strong peaks.

11.5.3 Diesel oil can typically be identified by low amounts of n-alkanes from C_7 to C_9, and the absence of n-alkanes greater than C_{25}.

11.5.4 Crude oils can usually be distinguished by the presence of high aromatics, increased intensities of C_8 to C_{13} peaks, and/or the presence of higher hydrocarbons of C_{25} and greater (which may be difficult to see in some synthetic fluids at low contamination levels).

11.5.4.1 Oil condensates from gas wells are low in molecular weight and will normally produce strong chromatographic peaks in the C8–C_{13} range. If a sample of the gas condensate crude oil from the formation is available, the oil can be distinguished from other potential sources of contamination by using it to prepare a calibration standard.

11.5.4.2 Asphaltene crude oils with API gravity <20 may not produce chromatographic peaks strong enough to show contamination at levels of the calibration. Extracted ion peaks should be easier to see than increased intensities for the C_8 to C_{13} peaks. If a sample of asphaltene crude from the formation is available, a calibration standard should be prepared.

11.6 System and Laboratory Performance—

11.6.1 At the beginning of each 8-hour shift during which analyses are performed, GC crude oil/drilling fluid calibration and system performance test mixes are verified. For these tests, analysis of the medium-level calibration standard (1-% Reference Oil in IO Lab drilling fluid, and 1.25 mg/mL SPTM with internal standard) shall be used to verify all performance criteria. Adjustments and/or re-calibration (per Section 10) shall be performed until all performance criteria are met. Only after all performance criteria are met may samples and blanks be analyzed.

11.6.2 Inject 1.0 µL of the medium-level GC/MS crude oil/drilling fluid calibration standard into the GC instrument according to the procedures in Section 11.2. Verify that the linear regression curves for both TIC area and EIP areas are still valid using this continuing calibration standard.

11.6.3 After this analysis is complete, inject 1.0 µL of the 1.25 mg/mL SPTM (containing internal standard) into the GC instrument and verify the proper retention times are met (see Table 2).

11.6.4 Retention times—Retention time of the internal standard. The absolute retention time of the TCB internal standard should be within the range 21.0 ± 0.5 minutes. Relative retention times of the n-alkanes: The retention times of the n-alkanes relative to the TCB internal standard shall be similar to those given in Table 2.

12.0 Calculations

The concentration of oil in NAFs drilling fluids is computed relative to peak areas between C_8 and C_{13} (using the Total Area Integration method) or total peak areas from extracted ion profiles (using the Extracted Ion Profile Method). In either case, there is a measurable amount of peak area, even in clean drilling fluid samples, due to spurious peaks and electrometer "noise" that contributes to the total signal measured using either of the quantitation methods. In this procedure, a correction for this signal is applied, using the blank or clean sample correction technique described in American Society for Testing Materials (ASTM) Method D–3328–90, Comparison of Waterborne Oil by Gas Chromatography. In this method, the "oil equivalents" measured in a blank sample by total area gas chromatography are subtracted from that determined for a field sample to arrive at the most accurate measure of oil residue in the authentic sample.

12.1 Total Area Integration Method

12.1.1 Using C_8 to C_{13} TIC area, the TCB area in the clean NAF sample and the TIC linear regression curve, compute the oil equivalent concentration of the C_8 to C_{13} retention time range in the clean NAF. Note: The actual TIC area of the C_8 to C_{13} is equal to the C_8 to C_{13} area minus the area of the TCB.

12.1.2 Using the corresponding information for the authentic sample, compute the oil equivalent concentration of the C_8 to C_{13} retention time range in the authentic sample.

12.1.3 Calculate the concentration (% oil) of oil in the sample by subtracting the oil equivalent concentration (% oil) found in the clean NAF from the oil equivalent concentration (% oil) found in the authentic sample.

12.2 EIP Area Integration Method

12.2.1 Using either m/z 91 or 105 EIP areas, the TCB area in the clean NAF sample, and the appropriate EIP linear regression curve, compute the oil equivalent concentration of the in the clean NAF.

12.2.2 Using the corresponding information for the authentic sample, compute its oil equivalent concentration.
12.2.3 Calculate the concentration (% oil) of oil in the sample by subtracting the oil equivalent concentration (% oil) found in the clean NAF from the oil equivalent concentration (% oil) found in the authentic sample.

13.0 Method Performance

13.1 Specification in this method are adopted from EPA Method 1663, Differentiation of Diesel and Crude Oil by GC/FID (Reference 16.5).
13.2 Single laboratory method performance using an Internal Olefin (IO) drilling fluid fortified at 0.5% oil using a 35 API gravity oil was:

Precision and accuracy 94±4%
Accuracy interval—86.3% to 102%
Relative percent difference in duplicate analysis—6.2%

14.0 Pollution Prevention

14.1 The solvent used in this method poses little threat to the environment when recycled and managed properly.

15.0 Waste Management

15.1 It is the laboratory's responsibility to comply with all federal, state, and local regulations governing waste management, particularly the hazardous waste identification rules and land disposal restriction, and to protect the air, water, and land by minimizing and controlling all releases from fume hoods and bench operations. Compliance with all sewage discharge permits and regulations is also required.
15.2 All authentic samples (drilling fluids) failing the RPE (fluorescence) test (indicated by the presence of fluorescence) shall be retained and classified as contaminated samples. Treatment and ultimate fate of these samples is not outlined in this SOP.
15.3 For further information on waste management, consult "The Waste Management Manual for Laboratory Personnel", and "Less is Better: Laboratory Chemical Management for Waste Reduction", both available form the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street NW, Washington, D.C. 20036.

16.0 References

16.1 Carcinogens—"Working With Carcinogens." Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control [available through National Technical Information Systems, 5285 Port Royal Road, Springfield, VA 22161, document no. PB–277256]: August 1977.
16.2 "OSHA Safety and Health Standards, General Industry [29 CFR 1910], Revised." Occupational Safety and Health Administration, OSHA 2206. Washington, DC: January 1976.
16.3 "Handbook of Analytical Quality Control in Water and Wastewater Laboratories." USEPA, EMSSL–CI, EPA–600/4–79–019. Cincinnati, OH: March 1979.
16.4 "Method 1663, Differentiation of Diesel and Crude Oil by GC/FID, Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA 821–R–92–008, Office of Water Engineering and Analysis Division, Washington, DC: December 1992.

Appendix 6 to Subpart A of Part 435—Reverse Phase Extraction (RPE) Method for Detection of Oil Contamination in Non-Aqueous Drilling Fluids (NAF)

1.0 Scope and Application

1.1 This method is used for determination of crude or formation oil, or other petroleum oil contamination, in non-aqueous drilling fluids (NAFs).
1.2 This method is intended as a positive/negative test to determine a presence of crude oil in NAF prior to discharging drill cuttings from offshore production platforms.
1.3 This method is for use in the Environmental Protection Agency's (EPA's) survey and monitoring programs under the Clean Water Act, including monitoring of compliance with the Gulf of Mexico NPDES General Permit for monitoring of oil contamination in drilling fluids.
1.4 This method has been designed to show positive contamination for 5% of representative crude oils at a concentration of 0.1% in drilling fluid (vol/vol), 50% of representative crude oils at a concentration of 0.5%, and 95% of representative crude oils at a concentration of 1%.
1.5 Any modification of this method, beyond those expressly permitted, shall be considered a major modification subject to application and approval of alternate test procedures under 40 CFR Parts 136.4 and 136.5.
1.6 Each laboratory that uses this method must demonstrate the ability to generate acceptable results using the procedure in Section 9.2.

2.0 Summary of Method

2.1 An aliquot of drilling fluid is extracted using isopropyl alcohol.
2.2 The mixture is allowed to settle and then filtered to separate out residual solids.
2.3 An aliquot of the filtered extract is charged onto a reverse phase extraction (RPE) cartridge.
2.4 The cartridge is eluted with isopropyl alcohol.
2.5 Crude oil contaminates are retained on the cartridge and their presence (or absence) is detected based on observed fluorescence using a black light.

3.0 Definitions

3.1 A NAF is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhance mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).

4.0 Interferences

4.1 Solvents, reagents, glassware, and other sample-processing hardware may yield artifacts that affect results. Specific selection of reagents and purification of solvents may be required.
4.2 All materials used in the analysis shall be demonstrated to be free from interferences under the conditions of analysis by running laboratory reagent blanks as described in Section 9.5.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely determined; however, each chemical should be treated as a potential health hazard. Exposure to these chemicals should be reduced to the lowest possible level. Material Safety Data Sheets (MSDSs) should be available for all reagents.

5.2 Isopropyl alcohol is flammable and should be used in a well-ventilated area.

5.3 Unknown samples may contain high concentration of volatile toxic compounds. Sample containers should be opened in a hood and handled with gloves to prevent exposure. In addition, all sample preparation should be conducted in a well-ventilated area to limit the potential exposure to harmful contaminants. Drilling fluid samples should be handled with the same precautions used in the drilling fluid handling areas of the drilling rig.

5.4 This method does not address all safety issues associated with its use. The laboratory is responsible for maintaining a safe work environment and a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) should be available to all personnel involved in these analyses. Additional information on laboratory safety can be found in References 16.1–16.2.

6.0 Equipment and Supplies

Note: Brand names, suppliers, and part numbers are for illustrative purposes only. No endorsement is implied. Equivalent performance may be achieved using apparatus and materials other than those specified here, but demonstration of equivalent performance that meets the requirements of this method is the responsibility of the laboratory.

6.1 Sampling equipment.

6.1.1 Sample collection bottles/jars—New, pre-cleaned bottles/jars, lot-certified to be free of artifacts. Glass preferable, plastic acceptable, wide mouth approximately 1–L, with Teflon-lined screw cap.

6.2 Equipment for glassware cleaning.

6.2.1 Laboratory sink.

6.2.2 Oven—Capable of maintaining a temperature within ±5° C in the range of 100–250° C.

6.3 Equipment for sample extraction.

6.3.1 Vials—Glass, 25 mL and 4 mL, with Teflon-lined screw caps, baked at 200–250° C for 1-h minimum prior to use.

6.3.2 Gas-tight syringes—Glass, various sizes, 0.5 mL to 2.5 mL (if spiking of drilling fluids with oils is to occur).

6.3.3 Auto pipetters—various sizes, 0.1 mL, 0.5 mL, 1 to 5 mL delivery, and 10 mL delivery, with appropriate size disposable pipette tips, calibrated to within ±0.5%.

6.3.4 Glass stirring rod.

6.3.5 Vortex mixer.

6.3.6 Disposable syringes—Plastic, 5 mL.

6.3.7 Teflon syringe filter, 25-mm, 0.45μm pore size—Acrodisc® CR Teflon (or equivalent).

6.3.8 Reverse Phase Extraction C_{18} Cartridge—Waters Sep-Pak®Plus, C_{18} Cartridge, 360 mg of sorbent (or equivalent).

6.3.9 SPE vacuum manifold—Supelco Brand, 12 unit (or equivalent). Used as support for cartridge/syringe assembly only. Vacuum apparatus not required.

6.4 Equipment for fluorescence detection.

6.4.1 Black light—UV Lamp, Model UVG 11, Mineral Light Lamp, Shortwave, 254 nm, 15 volts, 60 Hz, 0.16 amps (or equivalent).

6.4.2 Black box—cartridge viewing area. A commercially available ultraviolet viewing cabinet with viewing lamp, or alternatively, a cardboard box or equivalent, approximately 14″x7.5″x7.5″ in size and painted flat black inside. Lamp positioned in fitted and sealed slot in center on top of box. Sample cartridges sit in a tray, ca. 6″ from lamp. Cardboard flaps cut on top panel and side of front panel for sample viewing and sample cartridge introduction, respectively.

6.4.3 Viewing platform for cartridges. Simple support (hand made vial tray—black in color) for cartridges so that they do not move during the fluorescence testing.

7.0 Reagents and Standards

7.1 Isopropyl alcohol—99% purity.

7.2 NAF—Appropriate NAF as sent from the supplier (has not been circulated downhole). Use the clean NAF corresponding to the NAF being used in the current drilling operation.

8.0 Sample Collection, Preservation, and Storage

8.1 Collect approximately one liter of representative sample (NAF, which has been circulated downhole) in a glass bottle or jar. Cover with a Teflon lined cap. To allow for a potential need to re-analyze and/or re-process the sample, it is recommended that a second sample aliquot be collected.

8.2 Label the sample appropriately.

8.3 All samples must be refrigerated at 0–4°C from the time of collection until extraction (40 CFR Part 136, Table II).

8.4 All samples must be analyzed within 28 days of the date and time of collection (40 CFR Part 136, Table II).

9.0 Quality Control

9.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 16.3). The minimum requirements of this program consist of an initial demonstration of laboratory capability, and ongoing analyses of blanks and spiked duplicates to assess accuracy and precision and to demonstrate continued performance. Each field sample is analyzed in duplicate to demonstrate representativeness.

9.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in Section 9.2.

9.1.2 Preparation and analysis of a set of spiked duplicate samples to document accuracy and precision. The procedure for the preparation and analysis of these samples is described in Section 9.4.

9.1.3 Analyses of laboratory reagent blanks are required to demonstrate freedom from contamination. The procedure and criteria for preparation and analysis of a reagent blank are described in Section 9.5.

9.1.4 The laboratory should maintain records to define the quality of the data that is generated.

9.1.5 Accompanying QC for the determination of oil in NAF is required per analytical batch. An analytical batch is a set of samples extracted at the same time, to a maximum of 10 samples. Each analytical batch of 10 or fewer samples must be accompanied by a laboratory reagent blank (Section 9.5), corresponding NAF reference blanks (Section 9.6), a set of spiked duplicate samples blank (Section 9.4), and duplicate analysis of each field sample. If greater than 10 samples are to be extracted at one time, the samples must be separated into analytical batches of 10 or fewer samples.

9.2 Initial demonstration of laboratory capability. To demonstrate the capability to perform the test, the analyst should analyze two representative unused drilling fluids (e.g., internal olefin-based drilling fluid, vegetable ester-based drilling fluid), each prepared separately containing 0.1%, 1%, and 2% or a representative oil. Each drilling fluid/concentration combination will be analyzed 10 times, and successful demonstration will yield the following average results for the data set:

0.1% oil	1 %oil	2 %oil
Detected in <20% of samples	Detected in >75% of samples	Detected in <90% of samples.

9.3 Sample duplicates.

9.3.1 The laboratory must prepare and analyze (Section 11.2 and 11.4) each authentic sample in duplicate, from a given sampling site or, if for compliance monitoring, from a given discharge.

9.3.2 The duplicate samples must be compared versus the prepared corresponding NAF blank.

9.3.3 Prepare and analyze the duplicate samples according to procedures outlined in Section 11.

9.3.4 The results of the duplicate analyses are acceptable if each of the results give the same response (fluorescence or no fluorescence). If the results are different, sample non-homogenicity issues may be a concern. Prepare the samples again, ensuring a well-mixed sample prior to extraction. Analyze the samples once again.

9.3.5 If different results are obtained for the duplicate a second time, the analytical system is judged to be out of control and the problem shall be identified and corrected, and the samples reanalyzed.

9.4 Spiked duplicates—Laboratory prepared spiked duplicates are analyzed to demonstrate acceptable accuracy and precision.

9.4.1 Preparation and analysis of a set of spiked duplicate samples with each set of no more than 10 field samples is required to demonstrate method accuracy and precision and to monitor matrix interferences (interferences caused by the sample matrix). A field NAF sample expected to contain less than 0.5% crude oil (and documented to not fluoresce as part of the sample batch analysis) will be spiked with 1% (by volume) of suitable reference crude oil and analyzed as field samples, as described in Section 11. If no low-level drilling fluid is available, then the unused NAF can be used as the drilling fluid sample.

9.5 Laboratory reagent blanks—Laboratory reagent blanks are analyzed to demonstrate freedom from contamination.

9.5.1 A reagent blank is prepared by passing 4 mL of the isopropyl alcohol through a Teflon syringe filter and collecting the filtrate in a 4-mL glass vial. A Sep Pak® C_{18} cartridge is then preconditioned with 3 mL of isopropyl alcohol. A 0.5-mL aliquot of the filtered isopropyl alcohol is added to the syringe barrel along with 3.0 mL of isopropyl alcohol. The solvent is passed through the preconditioned Sep Pak® cartridge. An additional 2-mL of isopropyl alcohol is eluted through the cartridge. The cartridge is now considered the "reagent blank" cartridge and is ready for viewing (analysis). Check the reagent blank cartridge under the black light for fluorescence. If the isopropyl alcohol and filter are clean, no fluorescence will be observed.

9.5.2 If fluorescence is detected in the reagent blank cartridge, analysis of the samples is halted until the source of contamination is eliminated and a prepared reagent blank shows no fluorescence under a black light. All samples must be associated with an uncontaminated method blank before the results may be reported for regulatory compliance purposes.

9.6 NAF reference blanks—NAF reference blanks are prepared from the NAFs sent from the supplier (NAF that has not been circulated downhole) and used as the reference when viewing the fluorescence of the test samples.

9.6.1 A NAF reference blank is prepared identically to the authentic samples. Place a 0.1 mL aliquot of the "clean" NAF into a 25-mL glass vial. Add 10 mL of isopropyl alcohol to the vial. Cap the vial. Vortex the vial for approximately 10 sec. Allow the solids to settle for approximately 15 minutes. Using a 5-mL syringe, draw up 4 mL of the extract and filter it through a PTFE syringe filter, collecting the filtrate in a 4-mL glass vial. Precondition a Sep Pak® C_{18} cartridge with 3 mL of isopropyl alcohol. Add a 0.5-mL aliquot of the filtered extract to the syringe barrel along with 3.0 mL of isopropyl alcohol. Pass the extract and solvent through the preconditioned Sep Pak® cartridge. Pass an additional 2-mL of isopropyl alcohol through the cartridge. The cartridge is now considered the NAF blank cartridge and is ready for viewing (analysis). This cartridge is used as the reference cartridge for determining the absence or presence of fluorescence in all authentic drilling fluid samples that originate from the same NAF. That is, the specific NAF reference blank cartridge is put under the black light along with a prepared cartridge of an authentic sample originating from the same NAF material. The fluorescence or absence of fluorescence in the authentic sample cartridge is determined relative to the NAF reference cartridge.

10.0 Calibration and Standardization

10.1 Calibration and standardization methods are not employed for this procedure.

11.0 Procedure

This method is a screening-level test. Precise and accurate results can be obtained only by strict adherence to all details.

11.1 Preparation of the analytical batch.

11.1.1 Bring the analytical batch of samples to room temperature.

11.1.2 Using a large glass stirring rod, mix the authentic sample thoroughly.

11.1.3 Using a large glass stirring rod, mix the clean NAF (sent from the supplier) thoroughly.

11.2 Extraction.

11.2.1 Using an automatic positive displacement pipetter and a disposable pipette tip transfer 0.1-mL of the authentic sample into a 25-mL vial.

11.2.2 Using an automatic pipetter and a disposable pipette tip dispense a 10-mL aliquot of solvent grade isopropyl alcohol (IPA) into the 25 mL vial.

11.2.3 Cap the vial and vortex the vial for ca. 10–15 seconds.

11.2.4 Let the sample extract stand for approximately 5 minutes, allowing the solids to separate.

11.2.5 Using a 5-mL disposable plastic syringe remove 4 mL of the extract from the 25-mL vial.

11.2.6 Filter 4 mL of extract through a Teflon syringe filter (25-mm diameter, 0.45μm pore size), collecting the filtrate in a labeled 4-mL vial.

11.2.7 Dispose of the PFTE syringe filter.

11.2.8 Using a black permanent marker, label a Sep Pak® C_{18} cartridge with the sample identification.

11.2.9 Place the labeled Sep Pak® C_{18} cartridge onto the head of a SPE vacuum manifold.

11.2.10 Using a 5-mL disposable plastic syringe, draw up exactly 3-mL (air free) of isopropyl alcohol.

11.2.11 Attach the syringe tip to the top of the C_{18} cartridge.

11.2.12 Condition the C_{18} cartridge with the 3-mL of isopropyl alcohol by depressing the plunger slowly. Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.13 Remove the syringe temporarily from the top of the cartridge, then remove the plunger, and finally reattach the syringe barrel to the top of the C_{18} cartridge.

11.2.14 Using automatic pipetters and disposable pipette tips, transfer 0.5 mL of the filtered extract into the syringe barrel, followed by a 3.0-mL transfer of isopropyl alcohol to the syringe barrel.

11.2.15 Insert the plunger and slowly depress it to pass only the extract and solvent through the preconditioned C_{18} cartridge. Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.16 Remove the syringe temporarily from the top of the cartridge, then remove the plunger, and finally reattach the syringe barrel to the top of the C_{18} cartridge.

11.2.17 Using an automatic pipetter and disposable pipette tip, transfer 2.0 mL of isopropyl alcohol to the syringe barrel.

11.2.18 Insert the plunger and slowly depress it to pass the solvent through the C_{18} cartridge. Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.19 Remove the syringe and labeled C_{18} cartridge from the top of the SPE vacuum manifold.
11.2.20 Prepare a reagent blank according to the procedures outlined in Section 9.5.
11.2.21 Prepare the necessary NAF reference blanks for each type of NAF encountered in the field samples according to the procedures outlined in Section 9.6.
11.3 Reagent blank fluorescence testing.
11.3.1 Place the reagent blank cartridge in a black box, under a black light.
11.3.2 Determine the presence or absence of fluorescence for the reagent blank cartridge. If fluorescence is detected in the blank, analysis of the samples is halted until the source of contamination is eliminated and a prepared reagent blank shows no fluorescence under a black light. All samples must be associated with an uncontaminated method blank before the results may be reported for regulatory compliance purposes.
11.4 Sample fluorescence testing.
11.4.1 Place the respective NAF reference blank (Section 9.6) onto the tray inside the black box.
11.4.2 Place the authentic field sample cartridge (derived from the same NAF as the NAF reference blank) onto the tray, adjacent and to the right of the NAF reference blank.
11.4.3 Turn on the black light.
11.4.4 Observe the presence or absence of fluorescence for the sample cartridge (in right position) relative to the NAF reference blank.
11.4.5 The presence of fluorescence indicates the detection of crude oil contamination. The absence of fluorescence in the sample cartridge indicates that the drilling fluid is "clean".

12.0 Data Analysis and Calculations

Specific data analysis techniques and calculations are not performed in this SOP.

13.0 Method Performance

This method was validated through a single laboratory study, conducted with rigorous statistical experimental design and interpretation (Reference 16.4).

14.0 Pollution Prevention

14.1 The solvent used in this method poses little threat to the environment when recycled and managed properly.

15.0 Waste Management

15.1 It is the laboratory's responsibility to comply with all Federal, State, and local regulations governing waste management, particularly the hazardous waste identification rules and land disposal restriction, and to protect the air, water, and land by minimizing and controlling all releases from bench operations. Compliance with all sewage discharge permits and regulations is also required.
15.2 All authentic samples (drilling fluids) failing the fluorescence test (indicated by the presence of fluorescence) shall be retained and classified as contaminated samples. Treatment and ultimate fate of these samples is not outlined in this SOP.
15.3 For further information on waste management, consult "The Waste Management Manual for Laboratory Personnel," and "Less is Better: Laboratory Chemical Management for Waste Reduction," both available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street, NW, Washington, DC 20036.

16.0 References

16.1 "Carcinogen—Working with Carcinogens," Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, Publication No. 77–206, August 1977.
16.2 "OSHA Safety and Health Standards, General Industry," (29 CFR 1910), Occupational Safety and Health Administration, OSHA 2206 (Revised, January 1976).
16.3 "Handbook of Analytical Quality Control in Water and Wastewater Laboratories," USEPA, EMSL-Ci, Cincinnati, OH 45268, EPA–600/4–79–019, March 1979.
16.4 Report of the Laboratory Evaluation of Static Sheen Test Replacements—Reverse Phase Extraction (RPE) Method for Detecting Oil Contamination in Synthetic Based Mud (SBM). October 1998. Available from API, 1220 L Street, NW, Washington, DC 20005–4070, 202–682–8000.

Appendix 7 to Subpart A of Part 435—API Recommended Practice 13B–2

1. Description

a. This procedure is specifically intended to measure the amount of oleaginous base fluid from cuttings generated during a drilling operation. It is a retort test which measures all oily material (base fluid) and water released from a cuttings sample when heated in a calibrated and properly operating "Retort" instrument.
b. In this retort test a known weight of cuttings is heated in the retort chamber to vaporize the liquids associated with the sample. The base fluid and water vapors are then condensed, collected, and measured in a precision graduated receiver.

Note: Obtaining a representative sample requires special attention to the details of sample handling (location, method, frequency). The sampling procedure in a given area may be specified by local or governmental rules.

2. Equipment

a. Retort instrument—The recommended retort instrument has a 50-cm^3 volume with an external heating jacket.
Retort Specifications:
1. Retort assembly—retort body, cup and lid.
(a) Material: 303 stainless steel or equivalent.
(b) Volume: Retort cup with lid.
Cup Volume: 50-cm^3
Precision: ±0.25-cm^3
2. Condenser—capable of cooling the oil and water vapors below their liquification temperature.
3. Heating jacket—nominal 350 watts.
4. Temperature control—capable of limiting temperature of retort to 930 ±70°F (500 ±38°C).
b. Liquid receiver (10-cm^3, 20-cm^3, or 50-cm^3)—the 10-cm^3 and 20-cm^3 receivers are specially designed cylindrical glassware with rounded bottom to facilitate cleaning and funnel-shaped top to catch falling drops.
1. Receiver specifications.

Total volume: 10-cm^3	20-cm^3	50-cm^3	
Precision (0 to 100%)	±0.05cm^3	±0.05cm^3	±0.05cm^3 nom.
Outside diameter	10-mm	13-mm	

Wall thickness	1.5±0.1mm	1.2±0.1mm	
Frequency of graduation marks (0 to 100%)	0.10cm³	0.10cm³	1.0cm³
Calibration	To contain "TC"	20°C	
Scale	cm³	cm³	cm³

Note: Verification of receiver volume. The receiver volume should be verified gravimetrically. The procedure and calculations are in Par. 5.

2. Material—Pyrex® or equivalent glass.
c. Toploading balance—capable of weighing 2000 g and precision of 0.1g.
d. Fine steel wool (No. 000)—for packing retort body.
e. Thread sealant lubricant: high temperature lubricant, e.g. Never-Seez® or equivalent.
f. Pipe cleaners—to clean condenser and retort stem.
g. Brush—to clean receivers.
h. Retort spatula—to clean retort cup.
i. Corkscrew—to remove spent steel wool.

3. Procedure

a. Clean and dry the retort assembly and condenser.
b. Pack the retort body with steel wool.
c. Apply lubricant/sealant to threads of retort cup and retort stem.
d. Weigh and record the total mass of the retort cup, lid, and retort body with steel wool. This is mass (A), grams.
e. Collect a representative cuttings sample. (See Note in Par. 1)
f. Partially fill the retort cup with cuttings and place the lid on the cup.
g. Screw the retort cup (with lid) onto the retort body, weigh and record the total mass. This is mass (B), grams.
h. Attach the condenser. Place the retort assembly into the heating jacket.
i. Weigh and record the mass of the clean and dry liquid receiver. This is mass (C), grams. Place the receiver below condenser outlet.
j. Turn on the retort. Allow it to run a minimum of 1 hour.

Note: If solids boil over into receiver, the test must be rerun. Pack the retort body with a greater amount of steel wool and repeat the test.

k. Remove the liquid receiver. Allow it to cool. Record the volume of water recovered. This is (V), cm³.

Note: If an emulsion interface is present between the oil and water phases, heating the interface may break the emulsion. As a suggestion, remove the retort assembly from the heating jacket by grasping the condenser. Carefully heat the receiver along the emulsion band by gently touching the receiver for short intervals with the hot retort assembly. Avoid boiling the liquids. After the emulsion interface is broken, allow the liquid receiver to cool. Read the water volume at the lowest point of the meniscus.

l. Weigh and record the mass of the receiver and its liquid contents (oil plus water). This is mass (D), grams.
m. Turn off the retort. Remove the retort assembly and condenser from the heating jacket and allow them to cool. Remove the condenser.
n. Weigh and record the mass of the cooled retort assembly without the condenser. This is mass (E), grams.
o. Clean the retort assembly and condenser.

4. Calculations

a. Calculate the mass of oil (base fluid) from the cuttings as follows:
1. Mass of the wet cuttings sample (M_D) equals the mass of the retort assembly (A).

$$M_w = B–A \quad (a)$$

2. Mass of the dry retorted cuttings (M_D) equals the mass of the cooled retort assembly (E) minus the mass of the empty retort assembly (A).

$$M_D = E–A \quad (b)$$

3. Mass of the base fluid (M_{BF}) equals the mass of the liquid receiver with its contents (D) minus the sum of the mass of the dry receiver (C) and the mass of the water (V).

$$M_{BF} = D—(C+V) \quad (c)$$

Note: Assuming the density of water is 1 g/cm³, the volume of water is equivalent to the mass of the water.

b. Mass balance requirement:
The sum of M_D, M_{BF}, and V should be within 5% of the mass of the wet sample.

$$(M_D + M_{BF} + V)/M_w = 0.95 \text{ to } 1.05$$

The procedure should be repeated if this requirement is not met.
c. Reporting oil from cuttings:
1. Assume that all oil recovered is NAF base fluid.
2. The weight percent base fluid retained on the cuttings (%BF) is equal to 100 times the mass of the base fluid (M_{BF}) divided by the mass of the wet cuttings sample (M_w).

$$\%BF = (M_{BF}/M_w) \times 100$$

3. The %BF is determined for all cuttings wastestreams, including fines, and is associated with a respective length of hole drilled (L in feet) and bit diameter (d in inches).
4. Any cuttings or fines that are retained for no discharge are included in the weighted average with a %BF value of zero.
5. Each cuttings or fines sample corresponds to a wastestream fraction X_w (unitless), and should be representative for a certain length of hole drilled L (feet), using a drill bit of a specific diameter d (inches). The wastestream fraction (X_w) is the weight of discharge in each stream calculated as a fraction of total cuttings (including fines) discharge. The weighted average of %BF for the entire wastestream is equal to the sum of %BF times the wastestream fraction (X_w) times the length of hole (L) at given diameter times the square of the diameter (d^2) divided by the sum of the wastestream fraction (X_w) times the length of the hole (L) at given a diameter times the square of the diameter (d^2).

$$\text{Weighted average of } \%BF = \Sigma\,(\%BF \times X_w \times L \times d^2)/\Sigma\,(X_w \times L \times d^2)$$

5. Verification of Liquid Receiver Volume

a. This procedure is used to verify that the liquid receiver meets specifications stated in Par. 2b.
b. Equipment:
1. Distilled water.
2. Glass thermometer—to measure ambient temperature ±0.1°F (±0.1°C).

3. Toploading balance—precision of 0.1 g.
4. Syringe or pipette—10-cm³ or larger.

c. Procedure:

1. Allow receiver and distilled water to reach ambient temperature. Record temperature.
2. Place the clean, empty receiver with its base on the balance and tare to zero.
3. While the receiver is on the balance, fill it to the various graduation marks (2, 4, 6, 8, 10-cm³ for the 10-cm³ receiver, 4, 8, 12, 16, 20-cm³ for the 20-cm³, and 10, 20, 30, 40, and 50-cm³ for the 50-cm³ receiver) with distilled water. Using a pipette or syringe, carefully fill the receiver to the desired graduation mark without leaving water droplets on the walls of the receiver.
4. Record weights for the incremental volumes, IV, of water at the specific graduation marks, W_{IV}, grams.

d. Calculation:

1. Calculate volume of the receiver at each mark, V_{MARK}, using density of water Table 1.

$$V_{MARK} = (W_{IV}, g)/(\text{Density of Water, g/cm}^3) \quad \text{(a)}$$

TABLE 1.—DENSITY OF WATER

°F	°C	Density, g/cm³
59.0	15.0	0.9991
59.9	15.5	0.9991
60.8	16.0	0.9990
61.7	16.5	0.9989
62.6	17.0	0.9988
63.5	17.5	0.9987
64.4	18.0	0.9986
65.3	18.5	0.9985
66.2	19.0	0.9984
67.1	19.5	0.9983
68.0	20.0	0.9982
68.9	20.5	0.9981
69.8	21.0	0.9980
70.7	21.5	0.9979
71.6	22.0	0.9977
72.5	22.5	0.9976
73.4	23.0	0.9975
74.3	23.5	0.9974
75.2	24.0	0.9973
76.1	24.5	0.9971
77.0	25.0	0.9970
77.9	25.5	0.9969
78.8	26.0	0.9968
79.7	26.5	0.9966
80.6	27.0	0.9965
81.5	27.5	0.9964
82.4	28.0	0.9962
83.3	28.5	0.9961
84.2	29.0	0.9959
85.1	29.5	0.9958
86.0	30.0	0.9956
86.9	30.5	0.9955
87.8	31.0	0.9953
88.7	31.5	0.9952
89.6	32.0	0.9950
90.5	32.5	0.9949
91.4	33.0	0.9947
92.3	33.5	0.9945
93.2	34.0	0.9944
94.1	34.5	0.9942
95.0	35.0	0.9940

Addendum A—Sampling of Cuttings Discharge Streams for Use With API Recommended Practice 13B–2

Sampling Locations

1. Each individual discharge stream should be sampled and tested. These may include the discharge streams from the primary shakers, the secondary shakers, and any other cuttings separation device, such as a centrifuge, whose discharge is dumped directly to the environment. The weight of discharge in each stream should be measured and calculated as a fraction of total cuttings discharge, X_w. The wastestream fraction, X_w, is used in the weighted average percent base fluid in cuttings. Each sample should report the respective linear feet of hole drilled represented by this sample (L in feet), and the drill bit diameter (d in inches).
2. It is essential that the samples be representative of the discharge stream. Sampling should be conducted to avoid the serious consequences of error, i.e., bias or inaccuracy. They should be caught near the point of origin and before the solids and liquid fractions of the stream have a chance to separate from one another. For example, shaker samples should be taken as the cuttings are coming off the shaker and not from of a holding container downstream where separation of larger particles from the liquid can take place.
3. A simple schematic diagram of the solids control system being used shall be provided indicating where the samples were taken.

Sample Size and Handling

1. The sample size should be about one quart (or liter). A viscosity cup is a suitable and usually available container for catching the sample. The sample can be transferred to a quart jar if the retort measurement is not going to be made immediately. Mark the container to clearly identify each sample.

2. Before pouring sample into retort cup, it should be made homogeneous by gentle mixing such as hand stirring or shaking of a jar. The bottom of the container should be examined to be sure that solids are not sticking to it. For best results, the sample should be run immediately after stirring and no more than two hours after catching the sample. Do not discard sample before weight percent synthetic has been calculated and results are within prescribed limits noted in the analytical method. Rerunning the retort test may be necessary.

Type of Sample and Sampling Frequency

3. Samples should represent steady state drilling operations after obtaining bottoms-up. They should be time lagged to obtain the actual depth of origin of the formation cuttings rather than the drilling depth at the time the sample was caught. Samples should not be taken at any time when there are not newly generated formation cuttings in the discharge stream.

4. During drilling operations, at least one sample per day should be caught and tested. In fast drilling, a sample should be caught for every 500 feet of hole drilled up to a maximum of three samples per day.

Subpart D—Coastal Subcategory

8. Section 435.41 is revised to read as follows:

§ 435.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in this section, the general definitions, abbreviations and methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) The term *average of daily values for 30 consecutive days* shall be the average of the daily values obtained during any 30 consecutive day period.

(c) The term *base fluid retained on cuttings* shall refer to American Petroleum Institute Recommended Practice 13B–2 supplemented with the specifications, sampling methods, and averaging of the retention values provided in Appendix 7 of 40 CFR part 435, subpart A.

(d) The term *biodegradation rate* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the test procedure presented in appendix 4 of 40 CFR part 435, subpart A.

(e) The term *Cook Inlet* refers to coastal locations north of the line between Cape Douglas on the West and Port Chatham on the east.

(f) The term *daily values* as applied to produced water effluent limitations and NSPS shall refer to the daily measurements used to assess compliance with the maximum for any one day.

(g) The term *deck drainage* shall refer to any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(h) The term *percent degraded at 120 days* shall refer to the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment relative to the initial concentration of base fluid in sediment at the start of the test on day zero.

(i) The term *percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero* shall mean that the percent base fluid degraded at 120 days of any single sample of base fluid shall not be less than the percent C_{16}-C_{18} internal olefin degraded at 120 days as a control standard.

(j) The term *development facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(k) The term *dewatering effluent* means wastewater from drilling fluids and drill cuttings dewatering activities (including but not limited to reserve pits or other tanks or vessels, and chemical or mechanical treatment occurring during the drilling solids separation/recycle/disposal process).

(l) The term *diesel oil* shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975–91, that is typically used as the continuous phase in conventional oil-based drilling fluids. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(m) The term *domestic waste* shall refer to materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this subpart.

(n) The term *drill cuttings* shall refer to the particles generated by drilling into subsurface geologic formations and carried out from the wellbore with the drilling fluid.

(o) The term *drilling fluid* refers to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. Classes of drilling fluids are:

(1) A water-based drilling fluid has water or a water miscible fluid as the continuous phase and the suspending medium for solids, whether or not oil is present.

(2) A non-aqueous drilling fluid is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhanced mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).

(3) An oil-based drilling fluid has diesel oil, mineral oil, or some other oil, but neither a synthetic material nor enhanced mineral oil, as its continuous phase with water as the dispersed phase. Oil-based drilling fluids are a subset of non-aqueous drilling fluids.

(4) An enhanced mineral oil-based drilling fluid has an enhanced mineral oil as its continuous phase with water as the dispersed phase. Enhanced mineral oil-based drilling fluids are a subset of non-aqueous drilling fluids.

(5) A synthetic-based drilling fluid has a synthetic material as its continuous phase with water as the dispersed phase. Synthetic-based drilling fluids are a subset of non-aqueous drilling fluids.

(p) The term *enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

(q) The term *exploratory facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(r) The term *no discharge of formation oil* shall mean that cuttings contaminated with non-aqueous drilling fluids (NAFs) may not be discharged if the NAFs contain formation oil, as determined by the GC/MS baseline

method as defined in appendix 5 to 40 CFR part 435, subpart A, to be applied before NAFs are shipped offshore for use, or the RPE method as defined in appendix 6 to 40 CFR part 435, subpart A, to be applied at the point of discharge. At the discretion of the permittee, detection of formation oil by the RPE method may be assured by the GC/MS method, and the results of the GC/MS method shall supercede those of the RPE method.

(s) The term *garbage* means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of coastal oil and gas facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78. A copy of MARPOL may be inspected at EPA's Water Docket; 401 M Street SW, Washington DC 20460

(t) The term *maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the maximum concentration allowed as measured in any single sample of the barite for determination of cadmium and mercury content, or as measured in any single sample of base fluid for determination of PAH content.

(u) The term *maximum weighted average for well* for BAT effluent limitations and NSPS for base fluid retained on cuttings shall mean the weighted average base fluid retention as determined by API RP 13B–2, using the methods and averaging calculations presented in appendix 7 of 40 CFR part 435, subpart A.

(v) The term *maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed separately. Alternatively, for BAT and NSPS the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(w) The term *minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the minimum 96-hour LC_{50} value allowed as measured in any single sample of the discharged waste stream. The term minimum as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes shall mean the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(x) The term *M9IM* shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(y) The term *M10* shall mean those offshore facilities continuously manned by ten (10) or more persons.

(z)(1) The term *new source* means any facility or activity of this subcategory that meets the definition of "new source" under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(i) The term *water area* as used in the term "site" in 40 CFR 122.29 and 122.2 shall mean the water area and water body floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(ii) The term *significant site preparation work* as used in 40 CFR 122.29 shall mean the process of surveying, clearing or preparing an area of the water body floor for the purpose of constructing or placing a development or production facility on or over the site.

(2) "New source" does not include facilities covered by an existing NPDES permit immediately prior to the effective date of these guidelines pending EPA issuance of a new source NPDES permit.

(aa) The term *no discharge of free oil* shall mean that waste streams may not be discharged that contain free oil as evidenced by the monitoring method specified for that particular stream, e.g., deck drainage or miscellaneous discharges cannot be discharged when they would cause a film or sheen upon or discoloration of the surface of the receiving water; drilling fluids or cuttings may not be discharged when they fail the static sheen test defined in appendix 1 to 40 CFR part 435, subpart A.

(bb) The term *produced sand* shall refer to slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(cc) The term *produced water* shall refer to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(dd) The term *production facility* shall mean any fixed or mobile structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations. It includes facilities that are engaged in hydrocarbon fluids separation even if located separately from wellheads.

(ee) The term *sanitary waste* shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(ff) The term *sediment toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in appendix 3 of 40 CFR part 435, subpart A.

(gg) The term *static sheen test* shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in appendix 1 to 40 CFR part 435, subpart A.

(hh) The term *synthetic material* as applied to synthetic-based drilling fluid means material produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAH's) but are sometimes found to contain levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Poly(alpha olefins) and vegetable esters are two examples of synthetic materials suitable for use by the oil and gas extraction industry in formulating drilling fluids. Poly(alpha olefins) are synthesized from the polymerization (dimerization, trimerization, tetramerization, and higher oligomerization) of purified straight-chain hydrocarbons such as C_6–C_{14} alpha olefins. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. The mention of

these two branches of synthetic fluid base materials is to provide examples, and is not meant to exclude other synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

(ii) The term *SPP toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the bioassay test procedure presented in appendix 2 of 40 CFR part 435, subpart A.

(jj) The term *well completion fluids* shall refer to salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(kk) The term *well treatment fluids* shall refer to any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(ll) The term *workover fluids* shall refer to salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(mm) The term *10-day LC_{50}* shall refer to the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment that is lethal to 50 percent of the test organisms exposed to that concentration of the base fluids after 10-days of constant exposure.

(nn) The term *10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero* shall mean that the 10-day LC_{50} of any single sample of the base fluid shall not be less than the LC_{50} of C_{16}-C_{18} internal olefin as a control standard.

(oo) The term *96-hour LC_{50}* shall refer to the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

9. In § 435.42 the table is amended by removing the entries "Drilling fluids" and "Drill cuttings" and by adding new entries (after "Deck drainage") for "Water based" and "Non-aqueous" to read as follows:

§ 435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

BPT EFFLUENT LIMITATIONS—OIL AND GREASE

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
* * * * * * *			
Water-Based:			
Drilling fluid	(1)	(1)	NA
Drill cuttings	(1)	(1)	NA
Non-aqueous:			
Drilling fluid	No discharge	No discharge	NA
Drill cuttings	(1)	(1)	NA
* * * * * * *			

[1] No discharge of free oil.

* * * * *

10. In § 435.43 the table is amended by revising entry B under the entry for "Drilling fluids, drill cuttings, and dewatering effluent" and by revising footnote 4 and adding footnotes 5–9 to read as follows:

§ 435.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

BAT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BAT effluent limitations
* * * * * * *		
Drilling Fluids, Drill Cuttings, and Dewatering Effluent:[1]		
* * * * * * *		
(B) Cook Inlet:		
Water-based drilling fluids, drill cuttings and dewatering effluent.	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP shall be 3 percent by volume.[4]
	Free Oil[2]	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.

BAT EFFLUENT LIMITATIONS—Continued

Stream	Pollutant parameter	BAT effluent limitations
Non-aqueous drilling fluids and dewatering effluent.	.....	No discharge.
Cuttings associated with non-aqueous drilling fluids		
Stock Limitations	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH).	Maximum 10 ppm wt. PAH based on phenanthrene/wt. of stock base fluid.[5]
	Sediment Toxicity	10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero.[6]
	Biodegradation Rate	Percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero.[7]
Discharge Limitations	Diesel oil	No discharge.
	Formation Oil	No discharge.[8]
	Base fluid retained on cuttings	Maximum weighted average for well shall be 10.2 percent.[9]

[1] BAT limitations for dewatering effluent are applicable prospectively. BAT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

[2] As determined by the static sheen test (see appendix 1 to 40 CFR part 435, subpart A).

[4] As determined by the suspended particulate phase toxicity test (see appendix 2 of 40 CFR part 435, subpart A).

[5] As determined by EPA Method 1654A: Polynuclear Aromatic Hydrocarbon Content of Oil by High Performance Liquid Chromatography with an Ultraviolet Detector in Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA–821–R–92–008 [Incorporated by reference and available from National Technical Information Service (NTIS) (703/605–6000)]

[6] As determined by ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Incorporated by reference and available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in appendix 3 of 40 CFR part 435, subpart A.

[7] As determined by the biodegradation test (see appendix 4 to 40 CFR part 435, subpart A).

[8] As determined by the GC/MS baseline and assurance method (see appendix 5 to 40 CFR part 435, subpart A), and by the RPE method applied to drilling fluid removed from cuttings at primary shale shakers (see appendix 6 to 40 CFR part 435, subpart A).

[9] Maximum permissible retention of base fluid on wet cuttings averaged over drill intervals using non-aqueous drilling fluids as determined by retort method (see appendix 7 to 40 CFR part 435, subpart A).

11. In § 435.44 the table is amended by revising the entry for "Cook Inlet" under the entry for "Drilling fluids and drill cuttings and dewatering effluent" as follows:

§ 435.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

BCT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BCT effluent limitations
Drilling Fluids and Drill Cuttings and Dewatering Effluent:[1]		
Cook Inlet:		
Water-based drilling fluid, drill cuttings, and dewatering effluent	Free oil	No discharge.[2]
Non-aqueous drilling fluids and dewatering effluent	.....	No discharge.
Cuttings associated with non-aqueous drilling fluids	Free oil	No discharge.[2]

[1] BCT limitations for dewatering effluent are applicable prospectively. BCT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

[2] As determined by the static sheen test (see Appendix 1 to 40 CFR Part 435, Subpart A).

12. In § 435.45 the table is amended by revising entry B under the entry for "Drilling fluids, drill cuttings, and dewatering effluent" and by revising footnote 4 and adding footnotes 5–9 to read as follows:

§ 435.45 Standards of performance for new sources (NSPS).

NSPS EFFLUENT LIMITATIONS

Stream	Pollutant parameter	NSPS effluent limitations
Drilling Fluids, Drill Cuttings and Dewatering Effluent:[1]		
. . . . .		
(B) Cook Inlet:		
Water-based drilling fluids, drill cuttings and dewatering effluent.	Free oil	No discharge[2]
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	SPP Toxicity	Minimum 96-hour LC50 of the SPP shall be 3% by volume.[4]
Non-aqueous drilling fluids and dewatering effluent.	.....	No discharge.
Cuttings associated with non-aqueous drilling fluids		
Stock Limitations	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH).	Maximum 10 ppm wt. PAH based on phenanthrene/wt. of stock base fluid.[5]
	Sediment Toxicity	10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero.[6]
	Biodegradation Rate	Percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero.[7]
Discharge Limitations	Diesel oil	No discharge.
	Free oil	No discharge.[2]
	Formation oil	No discharge.[8]
	Base fluid retained on cuttings	Maximum weighted average for well shall be 10.2 percent.[9]
. . . . .		

[1] NSPS limitations for dewatering effluent are applicable prospectively. NSPS limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

[2] As determined by the static sheen test (see appendix 1 to 40 CFR part 435, subpart A).

[3] . . . . . .

[4] As determined by the suspended particulate phase toxicity test (see appendix 2 of 40 CFR part 435, subpart A).

[5] As determined by EPA Method 1654A: Polynuclear Aromatic Hydrocarbon Content of Oil by High Performance Liquid Chromatography with an Ultraviolet Detector in Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA–821–R–92–008 [Incorporated by reference and available from National Technical Information Service (NTIS) (703/605–6000)].

[6] As determined by ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Incorporated by reference and available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in appendix 3 of 40 CFR part 435, subpart A.

[7] As determined by the biodegradation test (see appendix 4 to 40 CFR part 435, subpart A).

[8] As determined by the GC/MS baseline and assurance method (see appendix 5 to 40 CFR part 435, subpart A), and by the RPE method applied to drilling fluid removed from cuttings at primary shale shakers (see appendix 6 to 40 CFR part 435, subpart A).

[9] Maximum permissible retention of base fluid on wet cuttings averaged over drill intervals using non-aqueous drilling fluids as determined by retort method (see appendix 7 to 40 CFR part 435, subpart A).

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 34
Emission Standards for Turbine Engine Powered Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No. FAA–1999–5018; Amendment No. 34–3]

RIN 2120–AG68

Emission Standards for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the emission standards for turbine engine powered airplanes to incorporate the current standards of the International Civil Aviation Organization (ICAO) for gaseous emissions of oxides of nitrogen (No_x) and carbon monoxide (CO), and to adopt revised test procedures for gaseous emissions. This rule will bring the United States emissions standards into alignment with the standards of ICAO. Because, this rule is consistent with international standards, an emission certification test that meets U.S. requirements will meet ICAO requirements.

EFFECTIVE DATE: February 3, 1999.

The incorporation by reference of the publication listed in the rule is approved by the director of the Federal Register February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McQueen, Research and Engineering Branch (AEE–110), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3560.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at **http://www.faa.gov/avr/arm/nprm/nprm.htm** or the Government Printing Office's webpage at **http://www.access.gpo.gov/nara/aces/aces140.html** for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question concerning this rule, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at **http://www.faa.gov** and may send electronic inquiries to the following Internet address: 9–AWA–SBREF@faa.gov

Background

Section 232 of the Clean Air Act Amendments of 1970 (the Act), 42 U.S.C. 7401 *et. seq.*, requires the Federal Aviation Administrations (FAA) to issue regulations that ensure compliance with all aircraft emission standards promulgated by the Environmental Protection Agency (EPA) under Section 231 of the Act. The EPA has promulgated standards for engine fuel venting emissions, engine smoke emissions, and exhaust gaseous emissions of unburned hydrocarbons (HC), oxides of nitrogen NO_x, and carbon monoxide (CO). These emission standards are prescribed in 40 CFR part 87.

Since the promulgation of the initial U.S. standards in 1973 by the EPA, the FAA has worked with the International Civil Aviation Organization (ICAO) on the development of international aircraft engine exhaust emissions standards for NO_x, CO, HC, and smoke (SN). Currently, the FAA regulations governing aircraft engine exhaust emissions do not include NO_x and CO. This rule amends 14 CFR Part 34 to add the standards for NO_x and CO that were adopted by the EPA in July 1997.

Analysis of the Rule as Adopted

Section 34.1

Section 34.1 is amended by expanding the definition of Class TF so that it would apply to new engine development programs such as propfan, unducted fan, and advanced ducted propfan (ADP) engines.

Section 34.2

Section 34.2 is amended by adding the abbreviations for Carbon Monoxide (CO) and Oxides of Nitrogen (NO_x), the two emissions standards being added to the regulations.

Section 34.21(d), (d)(1), and (e)(3)

In section 34.21, paragraphs (d), (d)(1) and (e)(3) are being amended to add CO and NO_x standards for exhaust emissions as requirements for newly manufactured aircraft gas turbine engines of rated thrust greater than 26.7 Kilonewtons (kN). This change will make U.S. and international emissions standards and test procedures compatible.

Section 34.60(c)

Section 34.60(c) is amended to require a NO_x measurement as part of the test procedures for engine exhaust gaseous emissions. This change is necessary to provide the data from which compliance with the new NO_x standard may be demonstrated.

Section 34.61

Section 34.61 is amended by adjusting the allowable ranges of values in the properties of the fuel specifications to be used in aircraft turbine engine emission testing. This change will allow a wider band of test fuel acceptability without degradation in emission data quality and make U.S. and international emissions standards and test procedures compatible.

Section 34.62(a)(2)

Section 34.62(a)(2) is amended by adding CO emissions to the taxi/idle operating modes of the test procedure. This change is necessitated by the addition of the CO standard, and will make U.S. international emissions test procedures for engine exhaust gaseous emissions compatible.

Section 34.64

Section 34.64 is amended by incorporating by reference the most

recent version of ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993. Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of gaseous emissions. This change is necessitated by the addition of the CO and NO_X standards, and will make U.S. and international emissions test procedures for engine exhaust gaseous emissions compatible.

Section 34.71

Section 34.71 is amended by incorporating by reference the most recent version of ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, dated July 1993. Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of gaseous emissions. This change is necessitated by the addition of the CO and NO_X standards, and will make U.S. and international emissions test procedures for engine exhaust gaseous emissions compatible.

Section 34.82

Section 34.82 is amended by incorporating by reference the most recent version of ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, dated July 1993. Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of smoke emissions. This change will make U.S. and international emissions test procedures for engine smoke emissions compatible.

Section 34.89

Section 34.89 is amended by incorporating by reference the most recent version of ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, dated July 1993. Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of smoke emissions. This change will make U.S. and international emissions test procedures for engine smoke emissions compatible.

Paperwork Reduction Act

There are no requirements for information collection associated with this final rule; accordingly, no analysis under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) is required.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization standards and recommended practices and Joint Aviation Airworthiness Authorities requirements and has identified no differences in these amendments and the foreign regulations. These changes are intended to make the U.S. and international standards more compatible.

Regulatory Evaluation Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the final rule will generate benefits that justify its costs and is not "a significant regulatory action" as defined under section 3(f) of Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The final rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this final rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Overview

In July, 1997, the Environmental Protection Agency (EPA) amended existing United States regulations governing the exhaust emissions from new commercial gas turbine aircraft engines. Under authority of section 231 of the Clean Air Act (the Act), the EPA promulgated new emission standards for oxides of nitrogen (NO_X) and carbon monoxide (CO) for newly manufactured and newly certified commercial gas turbine aircraft engines. The EPA action codified the NO_X and CO emission standards of the United Nations International Civil Aviation Organization (ICAO). As a result, U.S. emission standards are in alignment with internationally adopted standards.

This final rule amends Part 34 of Title 14 of the Code of Federal Regulations (14 CFR Part 34) to ensure that it contains the same aircraft emission standards as those promulgated by the EPA in 40 CFR Part 87. A full regulatory evaluation of the potential monetary costs that would be imposed and benefits generated (including separate analyses for regulatory flexibility, international trade impact, and unfunded mandates) is usually prepared for FAA rulemaking actions. However, this regulation brings FAA rules into conformity with EPA rules, which have already been issued. Therefore, a full regulatory evaluation is unwarranted because the FAA is not imposing a new rule on the aviation industry, and any costs associated with these changes have been accounted for by the EPA rule (62 FR 25356, May 8, 1997). Thus, for the aforementioned reason, an abbreviated regulatory evaluation has been prepared for this final rule, which will serve as both the summary and full regulatory evaluation.

Costs

On July 7, 1997, EPA issued a final rule amending regulations governing the exhaust emissions from aircraft and aircraft engines, emission standards, and test procedures. The EPA estimated that their action will impose no additional burden on manufacturers. This final rule puts forth the FAA's responsibility to enforce the EPA's revised emission standards.

Aircraft manufacturers and affected aircraft parts manufacturers are currently meeting the NO_X and CO emission standards that EPA adopted. Therefore, the FAA has determined that because the emission test procedures are widely applied and accepted, little or no costs will be incurred by the aviation industry as a result of the FAA's action.

Benefits

This final rule will ensure that the public receives the air quality benefits established by the Clean Air Act. These certification testing rules are consistent with ICAO's standards, and emission certification test procedures. This harmonization of U.S. emission requirements with ICAO emission requirements is expected to reduce certificate testing requirements for newly manufactured aircraft engines and could help the sale of U.S. aviation products abroad.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory

issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. The rule incorporates current ICAO standards already met by the impacted aircraft manufacturers and aircraft parts manufacturers of commercial gas turbine engines, this rule does not add additional cost to the aviation industry. In addition, in July 1997, the EPA issued a final rule amending regulations governing the exhaust emissions from aircraft and aircraft engines, emission standards, and test procedures. This final rule does not add any additional costs on the aviation industry. This rule only puts forth the FAA's responsibility to enforce the EPA's emission standards. Accordingly, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will not impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. However, it could positively affect the sale of United States aviation products or services in foreign countries due to the harmonization and consistency for certification testing between United States and international emission standards and control program requirements.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. Since expenditures by the private sector will not exceed $100 million annually, as the result of little or no costs imposed by this final rule, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

Pursuant to Department of Transportation, "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D, Appendix 7, paragraph 4, Change 3, December 5, 1986), the FAA is categorically excluded from providing an environmental analysis with regard to Part 34. It is mandated by law to issue regulations to ensure compliance with the EPA aircraft emissions standards and the EPA has performed all required environmental analyses prior to the issuance of those standards.

Determination of Effective Date

This regulation is being promulgated as a final rule without notice and opportunity for prior public comment. Since the regulations adopted in this rule were adopted by the EPA in 1997 in 40 CFR part 87 and are already required for aircraft engine certification under those regulations, the FAA has determined that notice and prior public comment are necessary. The FAA does not anticipate that a request for public comment at this time would result in a receipt of useful information. Opportunity for public comment was provided by the EPA, and comments received were addressed by that agency.

For the same reason, the FAA has determined that good cause exists for making this amendment effective in less than 30 days. Compliance with these regulations has been required since their promulgation by the EPA in 1997.

List of Subjects in 14 CFR Part 34

Air pollution control, Aircraft, Incorporation by reference.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 34 of Title 14, Code of Federal Regulations (14 CFR part 34) as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

1. The authority citation for part 34 continues to read as follows:

Authority: 42 U.S.C. 4321 et seq., 7572; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44714.

2. Section 34.1 is amended by revising the definition of "Class TF", to read as follows:

§ 34.1 Definitions.

* * * * *

Class TF means all turbofan or turbojet aircraft engines or aircraft engines designed for applications that otherwise would have been fulfilled by turbojet and turbofan engines except engines of class T3, T8, and TSS.

* * * * *

3. Section 34.2 is amended by adding the following abbreviations in alphabetical order to read as follows:

§ 34.2 Abbreviations.

* * * * *

CO Carbon Monoxide

* * * * *

NO_X Oxides of Nitrogen

* * * * *

Subpart C—Exhaust Emissions (New Aircraft Gas Turbine Engines)

4. Section 34.21 is amended by revising paragraphs (d) and (e)(3) to read as follows:

§ 34.21 Standards for exhaust emissions.

* * * * *

(d) Gaseous exhaust emissions from each new aircraft gas turbine engine shall not exceed:

(1) For Classes TF, T3, T8 engines greater than 26.7 kilonewtons (6000 pounds) rated output:

(i) Engines manufactured on or after January 1, 1984:

Hydrocarbons: 19.6 grams/kilonewton r0.

(ii) Engines manufactured on or after July 7, 1997.

Carbon Monoxide: 118 grams/kilonewton r0.

(iii) Engines of a type or model of which the date of manufacture of the first individual production model was on or before December 31, 1995, and for which the date of manufacture of the individual engine was on or before December 31, 1999:

Oxides of Nitrogen: (40+2(rPR)) grams/kilonewtons r0.

(iv) Engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 1995, or for which the date of manufacture of the individual engine was after December 31, 1999:

Oxides of Nitrogen: (32+1.6 (rPR)) grams/kilonewtons r0.

(v) The emission standards prescribed in paragraphs (d)(1)(iii) and (iv) of this section apply as prescribed beginning July 7, 1997.

(2) For Class TSS Engines manufactured on or after January 1, 1984:

Hydrocarbons=140 $(0.92)^{rPR}$ grams/kilonewtons r0.

(e) * * *

(3) For Class TP of rated output equal to or greater than 1,000 kilowatts manufactured on or after January 1, 1984:

$SN=187(ro)^{-0.168}$ (ro is in kilowatts)

* * * * *

Subpart G—Test Procedures for Engine Exhaust Gaseous Emissions (Aircraft and Aircraft Gas Turbine Engines)

5. Section 34.60 is amended by revising paragraph (c) to read as follows:

§ 34.60 Introduction.

* * * * *

(c) The exhaust emission test is designed to measure concentrations of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen, and to determine mass emissions through calculations during a simulated aircraft landing-takeoff cycle (LTO). The LTO cycle is based on time in mode data during high activity periods at major airports. The test for propulsion engines consists of at least the following four modes of engine operation: taxi/idle, takeoff, climbout, and approach. The mass emission for the modes are combined to yield the reported values.

* * * * *

6. Section 34.61 is revised to read as follows:

§ 34.61 Turbine fuel specifications.

For exhaust emission testing, fuel that meets the specifications listed in this section shall be used. Additives used for the purpose of smoke suppression (such as organometallic compounds) shall not be present.

SPECIFICATION FOR FUEL TO BE USED IN AIRCRAFT TURBINE ENGINE EMISSION TESTING

Property	Allowable range of values
Density at 15°C	780–820.
Distillation Temperature, °C 10% Boiling Point.	155–201.
Final Boiling Point	235–285.
Net Heat of Combustion, MJ/Kg.	42.86–43.50.
Aromatics, Volume %	15–23.
Naphthalenes, Volume %.	1.0–3.5.
Smoke point, mm	20–28.
Hydrogen, Mass %	13.4–14.1.
Sulfur Mass %	Less than 0.3%.
Kinematic viscosity at— 20° C, mm^2 /sec.	2.5–6.5.

7. Section 34.62 is amended by revising paragraph (a)(2) to read as follows:

§ 34.62 Test procedure (propulsion engines).

(a)(1) * * *

(2) The taxi/idle operating modes shall be carried out at a power setting of 7% rated thrust unless the Administrator determines that the unique characteristics of an engine model undergoing certification testing at 7% would result in substantially different HC and CO emissions than if the engine model were tested at the manufacturers recommended idle power setting. In such cases the Administrator shall specify an alternative test condition.

* * * * *

8. Section 34.64 is revised to read as follows:

§ 34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be as specified in Appendices 3 and 5 to the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, P.O. Box 400, Succursale: Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Suite 400, Montreal, Quebec, Canada H3A 2R2. Copies may be reviewed at the FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, DC, or at the FAA New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

9. Section 34.71 is revised to read as follows:

§ 34.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle or grams/kilowatt/cycle as calculated in § 34.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, effective March 20, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from, and copies may be reviewed at, the

respective addresses listed in § 34.64. Other methods of demonstrating compliance may be approved by the FAA Administrator with the concurrence of the Administrator of the EPA.

10. Section 34.82 is revised to read as follows:

§ 34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be as specified in Appendix 2 to ICAO Annex 16, Volume II, Environmental Protection, Aircraft Engine Emissions, Second Edition, July 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from, and copies may be reviewed at, the respective addresses listed in § 34.64.

11. Section 34.89 is revised to read as follows:

§ 34.89 Compliance with smoke emission standards.

Compliance with each smoke emission standard shall be determined by comparing the plot of SN as a function of power setting with the applicable emission standard under this part. The SN at every power setting must be such that there is a high degree of confidence that the standard will not be exceeded by any engine of the model being tested. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the address listed in § 34.64. Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

Issued in Washington, DC, on January 20, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–1608 Filed 2–2–99; 8:45 am]

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Wednesday
February 3, 1999

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

National Science Foundation

Department of Energy

Office of the Secretary

Rice Genome Sequencing Project; Interagency Program Announcement; Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

NATIONAL SCIENCE FOUNDATION

DEPARTMENT OF ENERGY

Office of the Secretary

The United States Rice Genome Sequencing Project; Interagency Program Announcement; Request for Proposals and Request for Input

AGENCIES: U.S. Department of Agriculture, National Science Foundation and U.S. Department of Energy.

ACTION: Notice of request for proposals and request for input.

SUMMARY: As a collaborative, interagency effort, the Cooperative State Research, Education, and Extension Service (CSREES) of the Department of Agriculture, the National Science Foundation, and the Department of Energy are soliciting proposals for the United States Rice Genome Sequencing Projects. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of awards. By this notice, the CSREES additionally solicits stakeholder input from any interested party regarding the FY 1999 request for proposals for use in the development of the next request for proposals for The United States Rice Genome Sequencing Project.

DATES: Proposals are due May 4, 1999. Comments regarding this request for proposals are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Dr. Ed Kaleikau; Plant Genome Program; NRI Competitive Grants Program; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2241; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2241; Telephone: 202–401–1901; Fax: 202–401–6488; E-mail: ekaleikau@reeusda.gov; or Dr. David Meinke; Plant Genome Research Program; Division of Biological Infrastructure; National Science Foundation; 4201 Wilson Blvd; Arlington, VA 22230; Telephone: 703–306–1470; Fax: 703–306–0339; E-mail: dmeinke@nsf.gov; or Gregory L. Dilworth; Division of Energy Biosciences, ER–17; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874; Telephone: 301–903–2873; Fax: 301–903–1003; E-mail: Greg.dilworth@oer.doe.gov.

Written comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299, or via e-mail to: RFP-OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year request for proposals to which you are responding.

SUPPLEMENTARY INFORMATION:

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Purpose

The purpose of this interagency program announcement is to solicit proposals to initiate systematic sequencing of the genome of rice in the United States as part of an international effort that includes the Rice Genome Program of Japan. The ultimate goal of this project is to sequence the entire rice genome as a model monocot (grass) species. The target date for completion is before the year 2008. Initially, it is anticipated that up to three 3-year awards will be made through this program in fiscal year (FY) 1999 contingent upon the quality of proposals received and the availability of funds.

Background

The National Science and Technology Council (NSTC), in response to a request of Congress, established an Interagency Working Group on Plant Genomes (IWGPG) in May 1997. The IWGPG consisted of representatives from the Department of Agriculture (USDA), National Science Foundation (NSF), Department of Energy (DOE), National Institutes of Health (NIH), the Office of Science and Technology Policy (OSTP) and the Office of Management and Budget (OMB). The IWGPG was created to identify science-based priorities for a national plant genome initiative and to plan for a collaborative interagency approach to address these priorities. In January 1998, the IWGPG provided a report describing a five-year plan and rationale for a National Plant Genome Initiative. One of the Initiative's goals is to participate in an international effort to sequence the rice genome in collaboration with the Rice Genome Program of Japan, other countries and the private sector where appropriate. It is expected that through these efforts the resulting information, data, software, germplasm, and other research tools and biological materials can be made readily and openly available to the scientific community at large.

Grasses are one of the most diverse groups of plants and include the world's major food crops such as rice, corn, wheat, rye, barley, sorghum, sugarcane, and millet. While the genome size among grass species varies greatly, they share common sets of genes. There has been a strong interest among many plant biologists to sequence the rice genome, as a representative monocot to complement and extend advances made with the *Arabidopsis thaliana* (dicot) genome project. The rapid advances in sequencing technologies have now made it a feasible undertaking given the relatively small size of the rice genome (~ 430 million base pairs).

Scientists interested in the genome sequencing of rice participated in a workshop held in September 1997. An ad hoc international working group, nominated in Singapore, met in February 1998 in Tsukuba, Japan to develop a long-range plan for the International Rice Genome Sequencing Project. A follow up Workshop on Rice Genome Sequencing was held, with the support of USDA, NSF, and DOE, in Washington, D.C., April 1998, to address the U.S. response to this initiative. This program announcement is an outcome of that workshop.

Introduction

Recognizing the potential of a rice genome sequencing effort to contribute to their mission, NSF and DOE have joined with USDA to initiate a U.S. Rice Genome Sequencing Project. This project will be coordinated with other ongoing U.S. genome projects including the human genome research project supported by NIH and DOE, the microbial genome project supported by DOE, the NSF Plant Genome Research Program, and the USDA Plant Genome Program in order to minimize duplication of effort and to maximize efficient use of available resources. It is intended that the U.S. efforts to

complete the sequence of rice will be coordinated on an international level with other national and transnational programs.

As a member of the *Gramineae* and a crop plant, a wealth of fundamental information about important aspects of plant biology, including economically important characteristics, can be learned from the genome sequence of rice. Because it shares collinear genomes, rice is a key to knowledge of the genome organization of the other grasses. Comparison of the sequence of the dicot, *Arabidopsis thaliana*, with that of rice, a model monocot, will reveal what genome structures these two different groups of angiosperms have in common and how they differ.

While the goals of the International Rice Genome Project must be focused, the information provided by the International Project can be exploited by the entire research community to learn: the functions and relative map locations of all cereal genes; the use of map-based sequence information to identify and provide markers for agronomically significant genes; the molecular basis of plant growth and development so that fundamental questions in plant p hysiology, biochemistry, cell biology, and pathology can be addressed and; the relationship of genome structure to gene expression.

Authority

The authority for the USDA participation in this program is found in 7 U.S.C. 450i(b). The authority for NSF participation in this program is found in the National Science Foundation Act of 1950, as amended, 42 U.S.C. 1861, *et seq*. The authority for DOE participation in this program is found in the Atomic Energy Act of 1954, as amended, Sec. 31, Pub. L. 83–703, 68 Stat. 919, (42 U.S.C. 2051); Energy Reorganization Act of 1974, Title I, Sec. 107, Pub. L. 93–438, 88 Stat. 1240, (42 U.S.C. 5817); Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577; Department of Energy Organization Act of 1977, as amended, Pub. L. 95–91, (U.S.C. 7101).

Applicant Eligibility

Proposals are solicited from a broad community of scientists at U.S. institutions, including any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual. Consortia of eligible individuals or organizations may apply, but a single organization or individual must accept overall management responsibility. Involvement of international collaborators is encouraged, although primary support for foreign participants/activities must be secured through their own national programs.

Principal Investigator and Other Senior Staff

The Principal Investigator (PI) and other senior staff responsible for the project are expected to have expertise and experience in large-scale, high-through-put genomic DNA sequencing. If the application is submitted by a consortium of several groups from one or more institutions, the consortium must make a convincing case that it can function in an effective, efficient, timely and cost-conscious manner.

Award Information and Available Funding

The participating agencies currently have a total of approximately $4 million available for this Program in FY 1999. Subject to the availability of funds, the participating agencies anticipate that an additional $4 million in funding will be available for this program in each FY 2000 and FY 2001, for an anticipated total level of support for this Program of $12 million over three years. The program anticipates initially supporting up to three 3-year awards. These awards will be made in the form of grants and cooperative agreements which will be determined at the time of the award. The exact amount of the award will depend on the advice of reviewers and on the availability of funds. Each participating agency will obligate funds separately. However, a proposal may be funded by one or more of the participating agencies.

How To Obtain Application Materials

All participating agencies have agreed to use the USDA guidelines for proposal format (see below) and application kit. Other material may be required at the time of funding to facilitate the implementation of the award. The guidelines and application kit are available on the USDA web site at the URL: http://www.reeusda.gov/crgam/nri/howto/applkit/applkitdoc.htm.

Paper copies of these application materials may be obtained by sending an e-mail with your name, complete mailing address (not e-mail address), phone number, and materials that you are requesting to psb@reeusda.gov. Materials will be mailed to you (not e-mailed) as quickly as possible. Alternatively, paper copies may be obtained by writing or calling the Proposal Services Unit, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., S.W.; Washington, D.C. 20250–2245. Telephone: (202) 401–5048.

Proposal Format

The proposals should be prepared following the guidelines and the instructions below.

Each proposal must contain the following elements in the order indicated:

1. Application For Funding Cover Page (Form CSREES–661). All proposals must contain an Application for Funding (Form CSREES–661), which must be signed by the proposed principal investigator(s) and by the cognizant Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Principal investigators who do not sign the proposal cover sheet will not be listed on the award document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as "investigation of" or "research on" should not be used.

2. Table of Contents. For ease in locating information, each proposal must contain a detailed table of contents just after the proposal cover page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Project Summary (see next section).

3. Project Summary (Form CSREES–1232). The proposal must contain a Project Summary form (Form CSREES–1232). This form must be assembled as the third page of the proposal (immediately after the Table of Contents) and should not be numbered. The names and institutions of all principal and co-investigators should be listed on this form (if space is insufficient, please enter "see attached" in this space and provide this information on a separate sheet immediately following the Project Summary form in the proposal). The project summary itself MUST fit within the space indicated (approximately 250 words). The summary is not intended for the general reader; consequently, it may contain technical language comprehendible by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained,

specific description of the activity to be undertaken and should focus on: Overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to the systematic sequencing of the genome of rice in the United States.

4. *Project Description.* A description of the project must not exceed 20 pages inclusive of tables, diagrams and other visual material. The project description should be numbered and single-spaced with text on one side of the page using a 12 point (10 cpi) type font size and one-inch margins. The following points must be addressed in this section.

A. Sequencing Strategies—The proposal should include descriptions of: 1. DNA substrates to be sequenced: Include source of the DNA (clones), map of the chromosomal region involved, rationale for choosing the region, method of substrate preparation and all other pertinent information. The strategies proposed must be scalable and applicable to efforts to sequence the entire rice genome.

2. Sequence quality and quantity: This section should include the level of accuracy to be sought and how that will be measured, the number of bases to be sequenced per unit time, and a discussion of the finishing process and how that will be defined. Plans to fill sequence gaps and coordinate sequencing efforts within the rice community must be discussed in detail.

3. Genome sequencing technologies and strategies: Technologies/strategies that will be used should be described as well as plans for incorporating new developments and/or improvements in sequencing protocols, strategies and technologies as they become available.

4. Costs of production sequencing in relation to the product proposed: The cost-effectiveness of the sequences generated will be a very important issue. An estimate of the dollars required to produce a specific number of bases (which should include the costs of generating clones, assembly and annotation) should be given. If investigators are proposing a strategy that will yield less than the complete genome sequence, they must provide an overall vision of how this strategy will contribute to the cost-effective completion of the entire rice genome.

B. Project Management—The proposal should include descriptions of: 1. Plans for establishing coordination with the Rice Genome Program of Japan and other existing or planned rice sequencing projects, both nationally and internationally.

2. Plans for establishing a close linkage to the plant biology research community at large in order to ensure a close collaboration between the sequencing project and the ultimate user community of the sequence information.

3. Ways to assess progress of the project, including establishing milestones and measuring progress toward them. A common advisory committee will be appointed based upon suggestions from all of the participants, including the agencies, which will serve as a means of advising all participants of problems or solutions which will benefit all of the participants. Describe how such an advisory committee can be incorporated into the management strategies of the proposed project.

4. Available facilities and equipment including a statement of institutional commitment for the successful completion of the project.

C. Information Management—The proposal should include: 1. Data management plan should address both internal and external data management issues, including: (1) Mechanisms to assess validity and accuracy of data obtained which will augment or complement procedures to monitor accuracy which may be mandated by the agencies; (2) mechanisms for annotation of data and release of both raw and finished data into public databases—creative, cost-effective strategies for annotating sequences are encouraged; and (3) community access to data mechanisms of data distribution and interactions with other community databases.

2. Data release policies including how rapidly sequence data will be publicly released after production. The sponsoring agencies require the rapid release of sequence data as described in the most recent International Strategy Meeting on Human Genome Sequencing held in 1997 in Bermuda. The National Human Genome Research Institute has set forth these principles on the NIH web site at the following URL: http://www.nhgri.nih.gov/Grant__info/Funding/Statements/RFA/data__release.html

3. A statement signed by an authorized institutional official should be included which clearly describes the institutional policy for sharing information materials resulting from this work with other researchers of the community of scientists.

5. References to Project Description. All references cited should be complete, including titles and co-authors, and should conform to an accepted journal format.

6. Facilities and Equipment. All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully complete the proposed project and for which support is requested under this program should be listed in the budget narrative with the amount and justification for each item.

7. Collaborative Arrangements. If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Funding contributions by collaborators that will be used to accomplish the stated objectives should be identified. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. Note, however, that the contributions of collaborators will not be a direct factor in the awarding of any award. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

8. Vitae and Publication List(s). (A) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, or commodity production knowledge or experience with that commodity (e.g., educational, employment and professional history, and honors and awards). Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. Each vitae shall be no more than two pages in length, excluding the publication lists; and

(B) Publication List(s). A chronological list of all publications in refereed journals during the past four years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

9. Conflict of Interest List (Form CSREES–1233). A separate Conflict of Interest List Form (Form CSREES–1233) must be submitted for each investigator for whom a curriculum vitae is required (see above). This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts of interest with the project personnel in the proposal.

CSREES must be informed of additional conflicts of interest that arise after the proposal has been submitted. Instructions below are reiterated on Form CSREES–1233.

For each investigator (and other personnel as described in the program description), list ALPHABETICALLY the full names of only the individuals for each category. Other investigators working in the applicant's specific research area are deemed not to be a conflict of interest for the applicant unless those investigators fall within one of the categories listed below. Additional pages may be used as necessary. A conflict of interest list must be submitted before a proposal is considered complete. Inclusion of a curriculum vitae or publication list in lieu of Form CSREES–1233 is not sufficient.

- All collaborators on research projects within the past four years, including current and planned collaborations;
- All co-authors on publications within the past four years, including pending publications and submissions;
- All persons in your field with whom you have had a consulting, financial arrangement, or other arrangement that might give rise to a conflict of interest within the past four years; and
- All thesis or postdoctoral advisees/advisors within the past four years.

10. Budget (Form CSREES–55). A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose (Form CSREES–55), along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

11. Budget Narrative. A budget narrative should be included which discusses how the budget specifically supports the proposed project activities. It should explain how each budget item (such as salaries and wages for professional and technical staff, student workers, travel, equipment, etc.) is essential to achieving project objectives. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is sought is allowable under the enabling legislation and the applicable Federal cost principles.

The following guidelines should be used in developing your proposal budget(s):

1. *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of Funded Work Months must be shown in the spaces provided. Award funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution. Administrative and Clerical salaries are normally classified as indirect costs. (See Item 9. below.) However, if requested under A.2.e., they must be fully justified.

2. *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets, as the equipment item(s) and amount(s) may change. NOTE: If the organization has established a lower threshold, amounts less than $5,000 may be included in this category.

No funds will be awarded for the purchase or installation of fixed equipment. In the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

4. *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified. Provide the purpose of the trip, destination, mode of transportation, number of people, number of days, and cost per trip. Airfare allowances normally should not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the award.

7. *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university-or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, and fees for necessary laboratory analyses. You are encouraged to consult the "Instructions for Completing Form CSREES–55, Budget," of the Application Kit for detailed guidance relating to this budget category.

9. *Indirect Costs.* When submitting a proposal, institutions should use their current Federal negotiated rate for indirect costs. Please note that indirect costs for proposals funded by USDA will be capped at 14% of total Federal funds provided under that award. Congress, in section 711 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 1999, Sec. 101(a) of Pub. L. No. 105–277, prohibits CSREES from using the funds available for this Program for FY 1999 to pay indirect costs exceeding 14 percent of the total Federal funds provided under each award on competitively awarded research grants.

(Note: The FY 1999 Appropriations Act supercedes the limitation on indirect costs of 19 percent of the total Federal funds provided for competitively-awarded research grants in Section 230(a) of the Agricultural Research, Extension, and Education Reform

Act of 1998 (7 U.S.C. 3310). Therefore, awards made by CSREES are limited to this 14 percent indirect costs limitation. This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.)

To accommodate the differences in allowable indirect costs between USDA, NSF and DOE, the applicant may be required at the time of award to submit a separate budget with indirect cost rates appropriate to each agency.

10. *Cost-sharing.* Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any award.

12. Current and Pending Support (Form CSREES–663). All proposals must contain Form CSREES–663 listing this proposal and any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the participating agency for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program.

13. Assurance Statements (Form CSREES–662) (Research Involving Special Considerations). If it is anticipated that the research project will involve recombinant DNA or RNA research, experimental vertebrate animals, or human subjects, an Assurance Statement, Form CSREES–662, must be completed and included in the proposal. Please note that funds will not be released until the awarding agency receives and approves documentation indicating approval by the appropriate institutional committee(s) regarding DNA or RNA research, animal care, or the protection of human subjects, as applicable.

14. Certifications Regarding Debarment and Suspension, Drug-Free Work Place, and Lobbying. By signing the Application For Funding cover page (Form CSREES–661), applicants are providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace; and 7 CFR Part 3018 regarding Lobbying. Submission of the individual forms found in the application kit is not required (Forms AD–1047, –1049, –1050, and the Certification Regarding Lobbying). For additional information, refer to the certification at the bottom of Form CSREES–661.

Form AD–1048 must be completed by a subcontractor or consultant and retained by the awardee.

Questions specifically related to the completion of the above certifications should be directed to the CSREES Office of Extramural Programs, Grants Management Branch at (202) 401–5050.

15. National Environmental Policy Act Exclusions Form (Form CSREES–1234). As outlined in 7 CFR Part 3407 (CSREES's implementation of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.)), the environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The USDA and CSREES exclusions are listed in 7 CFR 1b.3 and 7 CFR 3407.6, respectively.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided in the Application Kit must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions. Form CSREES–1234 should follow Form CSREES–661, Application for Funding, in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for an activity if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

16. Additions to Project Description. The participating agencies expect each project description to be complete while meeting the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), then 14 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

Proposal Submission

What To Submit

An original and 14 copies of a proposal must be submitted. Each copy must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

When and Where To Submit Proposals

Proposals must be received by May 4, 1999. Proposals sent by First Class mail must be sent to the following address: The United States Rice Genome Sequencing Project; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245; Telephone: (202) 401–5048.

Proposals that are delivered by express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): The United States Rice Genome Sequencing Project; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024; Telephone: (202) 401–5048. Facsimile (FAX) copies will not be accepted.

Proposal Evaluation

Selection of awards will be based on merit review by experts using established peer review systems as described in these guidelines. A special emphasis panel will be formed to review the applications and site visits may be used as needed. The following evaluation factors will be used in reviewing applications:

1. Performance competence: This criterion addresses the technical merit of the proposed approach, the capabilities of the proposed personnel, including those of the Principal

Investigator and other senior staff as discussed above, the adequacy of the resources available or proposed, and the likelihood that this project will lead to a successful, timely, cost-effective completion of the rice genome sequence.

2. Project management: This criterion addresses the overall quality of the technical and managerial aspects of the proposal, including plans for the release of the data and the sharing of the information and resources resulting from the project to the scientific community as noted below, and for management oversight and long-range planning.

3. Effect of the activity on the scientific and agricultural infrastructure: This criterion addresses the potential of the proposed activity to contribute to better understanding or improvement of the quality and effectiveness of the Nation's scientific research, education, and human resources capabilities. An important issue is a likelihood of national impact and widespread, appropriate dissemination and use of results in strengthening the scientific and agricultural infrastructure of this nation.

4. Scientific collaboration and information sharing: Sequencing of the genome of a model organism is a community activity. As such, a close collaboration among the scientists and organizations involved in sequencing activities and effective dissemination to the users of the information are important components of this criterion.

5. Scientific merit of the project: This criterion addresses the conceptual adequacy of the sequencing approach including suitability and feasibility of methodology, clarity and delineation of objectives, demonstration of feasibility through preliminary data, novelty, uniqueness and originality.

6. Appropriateness of the proposed budget.

Award Administration

The U.S. Rice Genome Sequencing Project will be administered and managed as an interagency program involving all participating agencies throughout the entire process from the development of the program announcement to the review and selection. USDA, NSF and DOE will fund awards separately. The amount of each award will be determined jointly by USDA/NSF/DOE representatives after the panel review process has been completed. Other material may be required at the time of funding to facilitate the implementation of the award from participating agencies. Awards will be administered as follows:

Awards

1. General: Within the limit of funds available for such purpose, the awarding official shall make awards to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area by procedures set forth in this request for proposals. The date specified as the effective date of the award shall be no later than September 30, of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds awarded under this request for proposals shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the applicable participating agency assistance regulations.

2. Organizational Management Information: Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of an award if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the awarding agency as part of the pre-award process.

3. Award Document: The award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the funding agency has awarded an award under this program;

b. Title of Project;

c. Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

d. Award identification number assigned by the funding agency;

e. Project period, specifying the amount of time the funding agency intends to support the project without requiring recompetition for funds;

f. Total award amount approved by the funding agency during the project period;

g. Legal authority(ies) under which the award is made;

h. Approved budget plan for categorizing project funds to accomplish the stated purpose of the award; and

i. Other information or provisions deemed necessary by the funding agency to carry out its respective awarding activities or to accomplish the purpose of a particular award.

4. Notice of Award: The notice of award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the awardee that is not included in the award document.

5. The awarding agency will make awards as either grants or cooperative agreements to carry out this program.

Use of Funds; Changes

Unless otherwise stipulated in the terms and conditions of the award, the following provisions apply:

1. Delegation of Fiscal Responsibility: The awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of funds.

2. Changes in Project Plans:

a. The permissible changes by the awardee, principal investigator(s), or other key project personnel in the approved research project award shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the awardee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the awarding official prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by the awarding agency without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any

extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of an award.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal costs principles, Departmental regulations, or in the award document.

Applicable Regulations

Several other Federal statutes and regulations apply to proposals considered for review and to projects awarded under this program. These include but are not limited to regulations cited in the section entitled REGULATIONS, GUIDELINES, AND LITERATURE in the Catalog of Federal Domestic Assistance (CFDA) for each of the participating agencies. The CFDA numbers are as follows: USDA—10.206; NSF—47.074; DOE—81.049. The OMB number for NSF is OMB No. 3145–0058. The USDA component of this program is subject to the program regulations at 7 CFR 3411. Note that CSREES, consistent with those regulations, has provided other terms in this RFP to govern proposal format and evaluation.

Additional Information

Confidential Aspects of Proposals and Awards

When a proposal results in an award, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Administrator determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Proposals that do not receive an award will be released to others only with the consent of the applicant or to the extent required by law. If such a request is made, the applicant will be consulted prior to release of the proposal. A proposal may be withdrawn at any time prior to the final selection action thereon.

Potential applicants are strongly encouraged to contact project officers and discuss their plans. Inquiries regarding the announcement can be directed to any one of the agency representatives identified at the beginning of this request for proposals.

Stakeholder Input

CSREES is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for the program as needed. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185). This section requires the Secretary of Agriculture to solicit and consider input on a current request for proposals from persons who conduct or use agricultural research, education, or extension for use in formulating the next request for proposals for an agricultural research program funded on a competitive basis.

In your comments, please include the name of the program and the fiscal year request for proposals to which you are responding. Comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable.

Done at Washington, D.C., on this 27th day of January, 1999.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

Mary E. Clutter,

Assistant Director for Biological Sciences, National Science Foundation.

Patricia Dehmer,

Associate Director, Office of Sciences, Department of Energy.

[FR Doc. 99–2538 Filed 2–2–99; 8:45 am]
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federal register

Wednesday
February 3, 1999

Part VI

Department of Housing and Urban Development

24 CFR Part 990

Operating Fund Rule; Notice of Intent To Establish a Negotiated Rulemaking Committee and Notice of First Meeting; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–01]

Operating Fund Rule; Notice of Intent To Establish a Negotiated Rulemaking Committee and Notice of First Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of intent to establish a negotiated Rulemaking Advisory Committee and notice of first meeting.

SUMMARY: The Department of Housing and Urban Development (HUD) is establishing a Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act. The establishment of the committee is required by the Quality Housing and Work Opportunity Act of 1998, which requires issuance of regulations under the Negotiated Rulemaking Act of 1990. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). The Committee will consist of representatives with a definable stake in the outcome of a proposed rule. In accordance with section 564 of the Negotiated Rulemaking Act of 1990, this notice: (1) Advises the public of the establishment of the committee; (2) provides the public with information regarding the committee; (3) solicits public comment on the proposed membership of the committee; and (4) explains how persons may be nominated for membership on the committee.

DATES: Comment due date: March 5, 1999. HUD's tentative plan is to hold the first meeting of the Committee on March 23–March 25, 1999.

ADDRESSES: HUD plans to hold the first meeting at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024.

Interested persons are invited to submit comments regarding the Committee and its proposed members to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500. Comments or any other communications submitted should consist of an original and four copies and refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. The docket will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone numbers is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD currently uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to public housing agencies (PHAs). A regulatory description of the PFS can be found at 24 CFR 990. Generally, the amount of subsidy received by a PHA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. PHAs calculate their PFS eligibility annually and submit a request for funding as part of their budget process. While the amount varies, this subsidy can represent a substantial amount of revenue to a PHA. For example, in 1998, HUD distributed over $2.9 billion in operating subsidies to PHAs.

On October 21, 1998, the Congress enacted the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA). QHWRA makes sweeping changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The assistance to be made available from that fund is to be determined using a formula developed through negotiated rule-making procedures. The general effective date of the formula (the beginning date of the fiscal year for which PHAs will determine their subsidy eligibility using the new formula) is October 1, 1999. Section 519(n)(f) of QHWRA, however, permits HUD to extend the effective date for up to six months beyond the general effective date.

II. Regulatory Negotiation

Negotiated rulemaking, or "neg-reg," is a relatively new process for HUD. The basic concept of neg-reg is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems.

In anticipation of possible Congressional action, HUD entered into an interagency agreement in June 1998 with the Federal Mediation and Conciliation Service (FMCS) for convening and facilitation services associated with a negotiated rulemaking regarding a possible operating fund proposed rule. FMCS submitted its Convening Report in November 1998. The report concluded that it was feasible to assemble the committee, and provided a list of individual PHAs and organizations, representing a wide range of interests, that are willing and able to work within a consensus framework on a new Operating Fund formula. A copy of the Convening Report is available for review by contacting the Regulations Division, Office of General Counsel, at the phone number listed in the **ADDRESSES** section of this notice.

III. Committee Membership

The FMCS conveners consulted and interviewed over 40 officials of various organizations that would be affected by the operating fund rule. The goal was to develop a committee whose membership reflects a balanced representation of interested organizations and individuals. Three national PHA associations—the Council of Large Public Housing Authorities (CLPHA), the National Association of Housing and Renewal Officials (NAHRO), and the Public Housing Authority Directors Association (PHADA) worked together to suggest executive directors of PHAs for committee membership that would reflect the diversity of PHAs in terms of size, location, and special circumstances. The national associations also indicated a willingness to serve on the committee.

After reviewing the recommendations of the FMCS conveners, HUD has tentatively identified the following list of possible interests and parties. This list should be considered tentative, and the final list of participants may not include all of these parties. HUD will decide on the final list of participants, based upon comments on this Notice, as well as its own efforts to identify other entities having an interest in the outcome of this rulemaking.

- Housing Agencies

1. Oakland Housing Authority, Oakland, CA
2. Indianapolis Housing Authority, Indianapolis, IN
3. Pittsburgh Housing Authority, Pittsburgh, PA
4. New York City Housing Authority, NYC, NY
5. Reno Housing Authority, Reno, NV
6. Littleton Housing Authority, Littleton, CO
7. Akron Metro Housing Authority, Akron, OH
8. Chicago Housing Authority, Chicago, IL
9. Atlanta Housing Authority, Atlanta, GA
10. Athens Housing Authority, Athens, GA
11. Puerto Rico Public Housing Authority, San Juan, PR
12. Seattle Housing Authority, Seattle, WA
13. Wilmington Housing Authority, Wilmington, DE
14. York Housing Authority, York, NE

- Tenant Organizations

1. Massachusetts Union of Public Housing Tenants, Needham, MA
2. New Jersey Association of Public and Subsidized Housing Residents, Newark, NJ

- Public Interest Groups

1. National Low Income Housing Coalition, Washington, DC
2. Housing and Development Law Institute, Washington, DC
3. Center for Community Change, Washington, DC

- National PHA Associations

1. Public Housing Authority Directors Association (PHADA)
2. National Association of Housing and Renewal Officials (NAHRO)
3. Council of Large Public Housing Authorities (CLPHA)

- Federal Government

1. U.S. Department of Housing and Urban Development

We invite you to give us comments and suggestions on this tentative list of committee members. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we must be satisfied that the group as a whole reflects a proper balance and mix of interests. Accordingly, the composition of the final list will likely be different from this tentative list. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

IV. Neighborhood and Community Based Groups

In particular, HUD welcomes and solicits expressions of interest or nominations from any groups or individuals that operate on behalf of the communities and neighborhoods served by public housing, and organizations that represent local officials.

V. Requests for Representation

If you are interested in serving as a member of the committee or in nominating another person to serve as a member of the committee, you must submit a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice. Your nomination for membership on the committee must include:

(1) The name of your nominee and a description of the interests the nominee would represent;

(2) Evidence that your nominee is authorized to represent parties with the interests the nominee would represent;

(3) A written commitment that the nominee will actively participate in good faith in the development of the rule; and

(4) The reasons that the parties listed in this notice do not adequately represent your interests.

HUD will determine, in consultation with the FMCS conveners, whether a proposed member should be included in the makeup of the committee. HUD will make that decision based on whether a proposed member would be significantly affected by the proposed rule and whether the interest of the proposed member could be represented adequately by other members.

VI. Substantive Issues for Negotiation

The subject and scope of the proposed rule to be considered is the development of an operating fund for the purpose of making assistance available to PHAs for the operation and management of public housing in accordance with the criteria outlined in section 519 of QHWRA.

VII. Final Notice Regarding Committee Establishment

After reviewing any comments on this Notice and any requests for representation, HUD will issue a final notice. That notice will announce the final composition of the Negotiated Rulemaking Advisory Committee and the firm date, time, and place of the initial meeting.

VIII. Tentative Schedule

At this time, HUD's tentative plan is to hold the first meeting of the committee on March 23–March 25, 1999. On March 23, 1999, the meeting is expected to start at 10:00 a.m. and run until completion; on March 24, 1999, the meeting is expected to start at 9:00 a.m. and run until completion; and on March 25, 1999, the meeting will start at 9:00 a.m. and run until approximately 3:00 p.m. We plan to hold the meeting at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024. The purpose of the meeting will be to orient members to the neg-reg process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. This meeting will be open to the public. In the event that the date and times of these meetings are changed, HUD will advise the public through **Federal Register** notice.

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register**.

Dated: January 19, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–2572 Filed 1–29–99; 4:23 pm]

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federal register

Wednesday
February 3, 1999

Part VII

Environmental Protection Agency

40 CFR Part 61

National Emission Standard for Hazardous Air Pollutants: National Emission Standards for Radon Emissions From Phosphogypsum Stacks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–6229–4]

RIN 2060–AF04

National Emission Standard for Hazardous Air Pollutants; National Emission Standards for Radon Emissions From Phosphogypsum Stacks

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating revisions to the National Emission Standard for Hazardous Air Pollutants (NESHAP) that sets limits on radon emissions from phosphogypsum stacks, codified as subpart R of 40 CFR part 61. The Agency is taking today's action in response to a petition for reconsideration from The Fertilizer Institute (TFI), which critiqued the risk assessment EPA performed in support of the version of subpart R promulgated in 1992. Today's action raises the limit on the quantity of phosphogypsum that may be used for indoor research and development from 700 to 7,000 pounds, eliminates current sampling requirements for phosphogypsum used in indoor research and development, and clarifies sampling procedures for phosphogypsum removed from stacks for other purposes.

DATES: These regulations are effective April 5, 1999. Petitions for judicial review of this final action must be filed no later than April 5, 1999.

ADDRESSES: Copies of the two documents entitled "Risk Assessment for Research and Development Uses of Phosphogypsum" and "Statistical Procedures for Certifying Phosphogypsum for Entry into Commerce" may be obtained by writing to this address. A summary of comments received on the proposed rule accompanied by the Agency's responses may be obtained by requesting the response to comment document entitled "Comments and Response to Comments—NESHAPS; National Emission Standards of for Radon Emissions from Phosphogypsum Stacks on Amendments to Subpart R."

FOR FURTHER INFORMATION CONTACT: Pat Tilson; telephone number (202) 564–9762; address: Radiation Protection Division, Mail Code 6602J, U.S. Environmental Protection Agency, Washington, DC 20460; email address: tilson.pat@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket

Docket No. A–79–11 contains the public record supporting the final rule revising 40 CFR Part 61, Subpart R, which EPA issued in 1992 (57 FR 23305, June 3, 1992). It also contains the August 3, 1992, TFI petition, and the EPA response partially granting and partially denying the TFI petition (59 FR 14040, March 24, 1994). Docket No. A–94–57 contains certain documents which led to the May 8, 1996, proposal and this final rulemaking. These dockets are available for public inspection between the hours of 8 a.m. and 5 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copies of documents.

Introduction

Purpose of Today's Action and Summary of Changes to Subpart R

The Agency is promulgating revisions to those portions of Subpart R of 40 CFR part 61 which concern: (1) the distribution and use of the substance, phosphogypsum, for indoor research and development purposes; (2) the sampling and measurement of radium-226 in phosphogypsum; and (3) use of phosphogypsum for outdoor agricultural purposes. The Environmental Protection Agency is taking today's action in response to issues raised in a petition for reconsideration from The Fertilizer Institute which questioned aspects of the risk assessment EPA performed in support of the rulemaking that revised Subpart R in 1992. The risk assessment was an evaluation of the risk to persons who perform research and development activities in a laboratory using phosphogypsum. Phosphogypsum—a byproduct of the wet-acid process of producing phosphoric acid from phosphate rock—contains naturally occurring radiation emitted by uranium-238 and its decay products such as radium-226 and radon-222. Exposure to the radiation emitted by these and other radionuclides in phosphogypsum can increase an individual's probability of developing cancer. If present in quantities above certain limits, the radionuclides in phosphogypsum could cause unacceptable risks of incurring fatal cancer.

Specifically, today's action revises § 61.205 to conform to the technical findings EPA made when it re-evaluated the risk assessment used to promulgate Subpart R in 1992. *See* 57 FR 23305, June 3, 1992. EPA found that the risk assessment contained errors in the calculation of the quantity of the radioactive gas, radon-222, that would be present in a laboratory in which phosphogypsum was used for indoor research and development purposes. Today's action revises the limit set by Subpart R on the amount of phosphogypsum that may be used in indoor research and development from 700 pounds upward to 7,000 pounds. In addition, today's action provides clarification on how to determine compliance with the new, 7,000-pound limit, such as whether this limit should be applied on a facility-by-facility or on an experiment-by-experiment basis.

In addition, the Agency is removing the requirement to sample and measure the radium-226 in phosphogypsum that is used for indoor research and development activities because Subpart R does not contain a corresponding limit on the concentration of radium-226 in phosphogypsum when it is used for these activities. Sampling of radium-226 concentrations must still be performed when phosphogypsum is used for outdoor agricultural purposes, as set forth in § 61.204, and when application is made to EPA for approval to use phosphogypsum for other purposes pursuant to § 61.206. Today's action makes minor changes to §§ 61.204 and 61.205 to draw the distinction more sharply between the uses of phosphogypsum which are covered by the respective sections.

In addition, the Agency is revising section 61.207 to establish the level of statistical uncertainty that is allowed in measurements of radium-226 in phosphogypsum. These measurements are performed in connection with outdoor agricultural uses of phosphogypsum and those other uses of phosphogypsum that the Agency approves on a case-by-case basis.

History of the NESHAP for Phosphogypsum and TFI's Petition for Reconsideration

EPA first promulgated the NESHAP for phosphogypsum stacks on December 15, 1989. At that time, the standard required that all phosphogypsum be disposed of in stacks. Phosphogypsum stacks are large, on-site disposal piles composed of the excess phosphogypsum formed during the wet-acid process. Unlike subsequent versions of Subpart R, the 1989 standard did not permit alternate uses of phosphogypsum such as for indoor research and development.

EPA subsequently received several petitions requesting that it reconsider setting standards that would permit alternatives to disposal of phosphogypsum in stacks. Petitioners argued that EPA had not considered the

implications of these alternatives when it set the 1989 rule. EPA agreed to convene a rulemaking to evaluate the attendant risks of these alternatives to disposal and establish standards under which these alternatives might be permissible. *See* 55 FR 13480, April 10, 1990. EPA promulgated revisions to Subpart R after analyzing the associated risks of alternate uses and evaluating the comments received on the proposed rule. *See* 57 FR 23305, June 3, 1992. The revised Subpart R permitted uses of phosphogypsum that fall into three categories: (1) Outdoor agricultural uses, for example as a conditioner for soils containing high quantities of salt or low quantities of calcium and other nutrients; (2) indoor research and development activities, for example to study the production of road-base and building materials using phosphogypsum; and (3) other alternate uses that are approved by EPA on a case-by-case basis.

Subsequently, TFI sought judicial review of the 1992 rule in The Fertilizer Institute v. Environmental Protection Agency, No. 92–1320 (D.C. Cir.). TFI also filed a petition with EPA on August 3, 1992, requesting EPA to reconsider the 1992 rule pursuant to section 307(d)(7)(B). A second suit was brought against the Agency by ManaSota-88 in ManaSota-88 v. Browner, No. 92–1330 (D.C. Circuit). EPA entered settlement discussions with TFI and ManaSota-88, and agreed jointly to move the D.C. Circuit Court of Appeals to stay judicial review of the 1992 rule. The Court granted the motion. As part of that agreement, EPA agreed to make a final decision whether to grant or deny TFI's petition for reconsideration. EPA decided to partially deny and partially grant the petition after careful review of all the objections to the 1992 rule set forth in the petition for reconsideration. *See* 59 FR 14040, March 24, 1994. The principal purpose of the present rulemaking is to effectuate the decision by EPA to partially grant the TFI petition.

Statutory Basis and the Benzene Policy

EPA initially promulgated the NESHAP for phosphogypsum stacks on December 15, 1989 pursuant to Section 112 of the Clean Air Act (CAA). In 1990, Section 112 was amended by the Clean Air Act Amendments of 1990. Section 112(q)(2) of the CAA, as amended, specifically provides that Section 112 of the CAA shall remain in effect for, *inter alia*, radionuclide emissions from phosphogypsum stacks.

Under the CAA, as in effect prior to enactment of the Clean Air Act Amendments of 1990, the Agency, in establishing risk-based standards, must follow the method specified in the "Vinyl Chloride decision." *Natural Resources Defense Council* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987). The Vinyl Chloride decision requires that these Section 112 standards be established in two steps. In the first step, the Agency determines a "safe" or "acceptable" level of risk by considering only health-related factors. Next, the Agency may make the standard more protective considering costs and technological feasibility. The resulting standard must protect public health with an ample margin of safety.

EPA implemented the Vinyl Chloride decision in 1989 with the promulgation of the NESHAP for benzene. This rulemaking established the "Benzene Policy" by which EPA sets standards under Section 112 of the Clean Air Act, as in effect prior to enactment of the Clean Air Act Amendments of 1990. *See* 54 FR 38044 (September 14, 1989). The Benzene Policy sets forth the specific criteria EPA uses when determining the safe level of risk set by NESHAPs. Any amendments or revisions to the existing NESHAP for phosphogypsum would have to meet these criteria for the Agency to consider it adequately protective of public health with an ample margin of safety. Included among these criteria is the requirement that NESHAPs protect the individual receiving the highest lifetime risk to a level of 1 in 10,000.

Description of the Final Rule

Today's action affects those portions of Subpart R which cover the use of phosphogypsum in indoor research and development found at § 61.205 and the procedures for sampling and measurement of radium-226 in phosphogypsum found at § 61.207. In addition, today's rulemaking revises § 61.204 to clarify that agricultural uses that occur in an indoor laboratory must comply with § 61.205, while outdoor agricultural uses of phosphogypsum must comply with § 61.204.

The New 7,000 Pound Limit on Indoor Research and Development Uses

Today's action raises the limit set by § 61.205(b)(2) on the amount of phosphogypsum that may be used in indoor research and development from 700 pounds to 7,000 pounds. The Agency is revising the limit to conform to the technical findings it made when it re-evaluated the risk assessment used to promulgate Subpart R in 1992. Specifically, EPA found that the risk assessment contained errors in the calculation of the quantity of the radioactive gas, radon-222, that would be present in a laboratory in which phosphogypsum was being used for research and development purposes. EPA has revised three of the key assumptions used in these calculations. A complete discussion of the changed parameters and the effect of these changes on the presence of radon-222 are contained in the document, "Risk Assessment of Research and Development Uses of Phosphogypsum." First, EPA revised the assumption made regarding the number of drums of phosphogypsum that would be opened at any one time and from which radon-222 could therefore escape to the ambient air in the laboratory. During the 1992 rulemaking, EPA's risk assessment assumed that five such drums would be open. EPA changed this assumption to reflect that at most only one single drum would be open under actual conditions in laboratories. Public comments on the notice of proposed rulemaking noted that laboratories typically use phosphogypsum a few pounds at a time, making it unnecessary to have several drums open simultaneously.

Second, EPA changed the assumption regarding how much of the radon-222 that is present in the phosphogypsum actually emanates into the ambient air of the laboratory. When setting the 1992 rule, EPA had assumed that all the radon-222 generated by the radium-226 in phosphogypsum would be released. EPA's new risk assessment reconsiders such factors as the rate at which air is ventilated from a laboratory, the size of the laboratory and the effect of moisture on the rate of emanation of radon-222 from the phosphogypsum.

Third, EPA revised the assumption on the number of hours a researcher spends in the laboratory from 4,000 hours down to 1,000 hours per year. The value of 4,000 hours that was used in the 1992 rulemaking exceeded by 100 percent the typical occupational year of 2,000 hours. The value of 1,000 hours was judged to be a more realistic estimate.

By making these three changes and re-calculating the risk, EPA found that the use of 7,000 pounds of phosphogypsum for indoor research and development purposes would cause a risk that was just slightly higher than 1 in 100,000. It was apparent that revising the regulation so as to permit 7,000 pounds of phosphogypsum would still meet the presumptively safe risk level of 1 in 10,000 that EPA established with the Benzene Policy.

EPA requested public comment on what practical advantages a higher limit of 7,000 pounds would provide in the Notice of Proposed Rulemaking (61 FR 20775, May 8, 1996). The comments received by the Agency indicated that

the higher limit would permit larger scale experiments yielding results which can be applied more accurately to real uses of phosphogypsum. Comments also stated that the higher limit would permit a facility to keep phosphogypsum in one large, 7,000-pound storage area rather than in several smaller separate storage areas associated with each individual experiment or activity. (For more on how to apply the 7,000-pound limit, see discussion below on how regulated parties should determine if individual laboratories and experiments are in compliance.) Further comments stated that the health risk corresponding to 7,000 pounds of phosphogypsum was acceptable, especially given the view that EPA's conservative choice of parameter values (e.g., hours spent inside a laboratory) led to over-estimates of the risk to persons doing research. Other comments expressed concern, however, that doses to persons performing radium extraction might be higher than in routine handling in other indoor research and development. EPA's revised risk assessment nonetheless shows that even handling the large amounts of phosphogypsum required for extracting radium would not cause risks in excess of the 1 in 10,000 level set by the Benzene Policy, provided that the 7,000-pound limit was not exceeded. Based on the public comments received and the findings of EPA's revised risk assessment, EPA is amending the limit on the amount of phosphogypsum to 7,000 pounds. For further discussion of the revised risk assessment, see the document, "Risk Assessment of Research and Development Uses of Phosphogypsum."

How to Determine Compliance With the 7,000-Pound Limit

Today's action revises § 61.205(b)(2) to clarify how compliance is determined with the 7,000 pound limit. Both TFI's petition and many public comments on the notice of proposed rulemaking (61 FR 20775, May 8, 1996) expressed confusion over whether this limit applies to one room (i.e., a "laboratory"), an entire building, etc. In other words, is the correct method for determining compliance to add up the total pounds of phosphogypsum in use, everywhere for all experiments and rooms in a facility, and testing this total against the 7,000-pound limit? Or should compliance be determined by separately comparing the phosphogypsum used in each experiment and/or room to the 7,000-pound limit?

The Agency first evaluated the health risk implied by each of the above two methods of determining compliance. The risk assessment examined whether a person working in a facility that had several ongoing projects of 7,000 pounds would experience greater risk than a person working in a facility having only one such project. The risk breaks down to the sum of two types of radiation risks: (1) the risk from direct gamma radiation; and (2) the risk from inhaled radon which is generated by the presence of radium-226. With respect to gamma radiation, the risk assessment assumes that the researcher is exposed to 10 drums (7,000 pounds) in the same room for 1,000 hours, at a distance of one meter. A researcher might receive additional gamma radiation if any other experiments were taking place elsewhere in the building. EPA's risk assessment considered this latter possibility. The effect of gamma radiation from these additional rooms would, however, be substantially decreased the further away a person is located from the source. Hence, EPA's risk assessment found that the researcher would for the most part only be affected by the gamma radiation from the drums in the room he is standing in. The risk due to gamma radiation would effectively remain unchanged with either way of determining compliance with the 7,000-pound limit.

The second component of risk, the inhalation of radon-222, would not increase if additional experiments took place in nearby rooms within the same building. This results from the fact that the air in rooms where separate experiments occur would effectively remain isolated; the radon-222 in one room would not migrate to other rooms and increase the radon-222 concentration found within the other rooms. The combined risk from gamma radiation and inhaled radon-222 effectively would be the same whether the limit applied separately to the different projects within a facility or if it limited the total phosphogypsum from all research activities within a research complex to 7,000 pounds. A more in-depth discussion is contained in "Risk Assessment for Research and Development Uses of Phosphogypsum."

Based on the findings of the risk assessment and public comments received on the notice of proposed rulemaking, EPA revised § 61.205(b)(2) of Subpart R so that the 7,000-pound limit applies separately to each individual research and development activity. In addition, no more than 7,000 pounds may be stored in any room at a research and development facility. Thus, a particular facility may purchase or possess more than 7,000 pounds of phosphogypsum for use in multiple research activities, so long as it does not exceed this limit for any individual research activity and no one room within the facility contains more than this limit.

Difference in Applicability Between Sections 61.204 and 61.205

EPA is revising § 61.205(b)(5) to clarify that research and development activities authorized by this section must occur indoors in a controlled laboratory setting that the public cannot enter freely, except on an infrequent basis for tours of the facility. In addition, EPA is revising the title of § 61.205 to indicate that this section applies to indoor research and development. EPA is making these revisions in response to both TFI's petition and public comments. These parties expressed uncertainty as to which section of Subpart R would apply to agricultural uses of phosphogypsum that are conducted for the purpose of research and development. To this end, EPA has added clarifying language to § 61.205(b)(5) of the final rule that specifies that *outdoor* agricultural research and development must comply with § 61.204, on *outdoor agricultural uses.* As a compliment to this new language, EPA has added language to § 61.204 to specify that agricultural research and development that occurs indoors, in a laboratory, must comply with § 61.205, on *indoor research and development in a laboratory.*

To summarize, outdoor uses of phosphogypsum must comply with either § 61.204, "Distribution and use of phosphogypsum for outdoor agricultural purposes" or § 61.206, "Distribution and use of phosphogypsum for other purposes." Section 21.206 allows EPA to authorize, on a case-by-case basis, indoor and outdoor uses not covered or authorized by §§ 61.204 and 61.205. Phosphogypsum that remains in outdoor stacks must comply with the numerical limits of § 61.202.

Situations in Which Sampling of Radium-226 is Required

Today's action removes the portions of §§ 61.205(a) and 61.207(a) requiring sampling of phosphogypsum that is to be used for indoor research and development activities. TFI's petition and many public comments on the notice of proposed rulemaking noted that Subpart R does not establish any limit on the concentration of radium-226 in phosphogypsum used pursuant to § 61.205, only on the number of pounds that are used. Hence, these parties noted that the existing requirement on sampling would merely add hundreds of dollars of cost without

increasing the assurance that public health is being protected with an ample margin of safety.

By removing this requirement, EPA will not change the level of protection afforded to persons who perform indoor research and development. The risk assessment EPA performed on indoor research and development assumed that the phosphogypsum would have a very high concentration of radium-226 (equal to 26 pCi/g) and set a pound limit appropriate to this assumption. This high level of radium-226 represents the radium concentration found in the most radioactive phosphogypsum stacks, which are in Florida. The 7,000-pound limit controls the radiological cancer risk because it has the effect of limiting the total quantity of radium-226 that is present.

Sampling of radium-226 concentrations must nonetheless still be performed when phosphogypsum is used for outdoor agricultural purposes, as set forth in § 61.204, and when application is made to EPA under § 61.206 for approval of phosphogypsum use for other purposes.

Procedures for Sampling and Measurement of Radium-226

The Agency is substantially revising § 61.207, on sampling and measurement of phosphogypsum, to clarify what levels of statistical uncertainty are allowable in measurements of radium-226 in phosphogypsum. The 1992 rule established the requirement for measurement and sampling of phosphogypsum used for outdoor agricultural uses under § 61.204 and for "other uses" under § 61.206. TFI's petition and the public comments on the notice of proposed rulemaking noted that the 1992 rule did not specify the allowable uncertainties. Today's action provides clarification on the statistical method that must be followed to establish this statistical uncertainty.

The following discussion relies on several statistical terms. *Critical value* means the percentile value, α, of a probability distribution above or below which only α per cent of the probability lies. Thus there is a .05 probability that a normally distributed variable will have a value above the upper 5% critical value, which is calculated by summing the product of 1.64 times the standard deviation of the distribution to the mean of the distribution. When testing an hypothesis, α is the level of significance, and determines the critical value.

Hypothesis testing means a procedure for the statistical determination of the validity of an hypothesis. A test statistic, such as the standard normal variable, is calculated for the purpose of discriminating between a null hypothesis and an alternative.

Level of significance means the probability, α of rejecting the null hypothesis in a test of an hypothesis.

Sampling distribution means a probability distribution assumed by a statistic such as the sample mean, calculated from a sample drawn from a population.

Under this final rule, the procedure for certifying an area of a phosphogypsum stack for entry into commerce requires the collection of samples of phosphogypsum and the measurement of their radium-226 content. The samples must be collected from regularly spaced locations across the area of the stack being considered for entry into commerce. After the radium-226 concentration in each sample is measured, the mean and standard deviation of the collected samples must be calculated.

A decision rule, based on the sampling distribution for the sample mean, must be used to determine if the phosphogypsum is acceptable for entry into commerce. This rule requires the determination of the critical value for a 5% level of significance in the upper, or right hand, tail of the sampling distribution. The critical value is the 95th percentile of the sampling distribution.

The decision rule has three outcomes. If the critical value is less than or equal to 10 pico-curies per gram (pCi/g), phosphogypsum from this area of the stack can be entered into commerce. (By definition, one curie of a given radionuclide experiences 37 billion nuclear decays per second. A pico-curie (pCi) is one trillionth of one curie.) If the mean of the collected samples is greater than or equal to10 pCi/g, phosphogypsum from this area of the stack cannot be entered into commerce. If the sample mean is less than 10 pCi/g and the critical value is greater than 10 pCi/g, the phosphogypsum cannot be entered into commerce unless further testing is undertaken. The sample size must be increased, and the sample mean and standard deviation recalculated. The increased sample size reduces the standard deviation of the sampling distribution of the mean, thereby, reducing the interval between the mean of the sampling distribution and the critical value. This increases the ability of the decision rule to distinguish between the mean of the sample and the 10 pCi/g concentration limit, thereby improving the chance that the radium-226 concentration can be shown to be less than 10 pCi/g.

The reason for determining the critical value for the upper, or right hand, tail of the sampling distribution is the concern that the radium-226 concentration in the phosphogypsum not be greater than 10 pCi/g.

If a larger sample size is needed to demonstrate that the sample mean is less than 10 pCi/g, the number of additional samples required increases rapidly as the mean approaches 10 pCi/g, and can be quite large in cases where the sample mean is only slightly less than 10 pCi/g. In such cases the additional cost of certification may become a factor in the decision to continue with the attempt to enter the phosphogypsum from this area of the stack into commerce.

Any required additional samples must also be taken from regularly spaced locations across the area of the phosphogypsum stack being considered for entry into commerce. Once the required number of additional samples have been collected, the radium-226 concentrations in each additional sample must be measured. The mean and standard deviation of the radium-226 concentrations for the entire set of sample concentrations (including those previously measured) must be recalculated and a new sampling distribution established. The critical value for a 5% level of significance in the upper tail is established once again. The decision rule must then be revisited. As before, phosphogypsum from this area of the stack can be entered into commerce only if the critical value is less than or equal to 10 pCi/g.

Although acceptance for entry into commerce is the objective of increasing the sample size and establishing the new sampling distribution and critical value, and is the expected outcome of the reconsideration, it is possible the recalculated critical value will not be less than or equal 10 pCi/g. This is because random variation in the new sample concentrations, which can result from nonuniformity in the distribution of radium-226 in the phosphogypsum and the random nature of radioactive decay, may cause an increased sample mean or standard deviation. Either or both of these increases can change the critical value so that it is not less than 10 pCi/g. If this is the case, either the sample size must be increased once again, and a new sampling distribution and critical value determined, or the attempt to certify that area of the stack for entry into commerce must be abandoned.

Judicial Review

This rulemaking action promulgates revisions of a national standard issued under Clean Air Act Section 112, 42 U.S.C. 7412. Any petition for judicial review of this action must be filed no later than April 5, 1999 in the United States Court of Appeals for the District of Columbia Circuit. Under Section 307(d)(7)(B) of the Clean Air Act, only those objections to this rule which were raised with reasonable specificity during the period for public comment or at the public hearing may be raised as part of such judicial review.

Regulatory Analyses

Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b). EPA has further determined that this final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's rule will have a positive economic impact on the great majority of entities regulated by subpart R, including small businesses. Specifically, this rule will allow greater quantities of phosphogypsum to be used and reduce costs of demonstrating compliance by removing certain regulatory requirements. No new restrictions, exclusions or limitations are being added. As such, this rule will lessen the regulatory burden on regulated entities, including small entities, which existed prior to today's action.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Today's final action contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local or tribal governments or the private sector.

Paperwork Reduction Act

There are no information collection requirements in this final rule.

Review Under Executive Order 12866

Under Executive Order 12866, 58 FR 51736 (October 4, 1993), EPA must determine whether a regulation is "significant" and therefore subject to review by the Office of Management and Budget. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this action does not meet any of the criteria enumerated above, and therefore does not constitute a "significant regulatory action" under the terms of the Order.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

The National Technology Transfer and Advancement Act 2 of 1995 (NTTAA)

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Pub L. No. 104–113, is designed to encourage the

adoption of standards developed by "voluntary consensus bodies" in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs agencies to provide Congress, through OMB, explanations when a decision is made not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

The Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 5, 1999.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Phosphogypsum, Radon, Radium.

Dated: January 27, 1999.

Carol Browner,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 61 as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7416, 7601 and 7602.

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks

2. Amend § 61.204 by revising the section title, introductory text, paragraph (c), paragraph (d), and adding paragraph (e) to read as follows:

§ 61.204 Distribution and use of phosphogypsum for outdoor agricultural purposes.

Phosphogypsum may be lawfully removed from a stack and distributed in commerce for use in outdoor agricultural research and development and agricultural field use if each of the following requirements is satisfied:

* * * * *

(c) All phosphogypsum distributed in commerce for use pursuant to this section by the owner or operator of a phosphogypsum stack shall be accompanied by a certification document which conforms to the requirements of § 61.208(a).

(d) Each distributor, retailer, or reseller who distributes phosphogypsum for use pursuant to this section shall prepare certification documents which conform to the requirements of § 61.208(b).

(e) Use of phosphogypsum for indoor research and development in a laboratory must comply with § 61.205.

3. Amend § 61.205 by revising the section title and paragraphs (a) and (b) to read as follows:

§ 61.205 Distribution and use of phosphogypsum for indoor research and development.

(a) Phosphogypsum may be lawfully removed from a stack and distributed in commerce for use in indoor research and development activities, provided that it is accompanied at all times by certification documents which conform to the requirements of § 61.208. In addition, before distributing phosphogypsum to any person for use in indoor research and development activities, the owner or operator of a phosphogypsum stack shall obtain from that person written confirmation that the research facility will comply with all of the limitations set forth in § 61.206(b).

(b) Any person who purchases and uses phosphogypsum for indoor research and development purposes shall comply with all of the following limitations. Any use of phosphogypsum for indoor research and development purposes not consistent with the limitations set forth in this section shall be construed as unauthorized distribution of phosphogypsum.

(1) Each quantity of phosphogypsum purchased by a facility for a particular research and development activity shall be accompanied by certification documents which conform to the requirements of § 61.208.

(2) No facility shall purchase or possess more than 7,000 pounds of phosphogypsum for a particular indoor research and development activity. The total quantity of all phosphogypsum at a facility, as determined by summing the individual quantities purchased or possessed for each individual research and development activity conducted by that facility, may exceed 7,000 pounds, provided that no single room in which research and development activities are conducted shall contain more than 7,000 pounds.

(3) Containers of phosphogypsum used in indoor research and development activities shall be labeled with the following warning: Caution: Phosphogypsum Contains Elevated Levels of Naturally Occurring Radioactivity.

(4) For each indoor research and development activity in which phosphogypsum is used, the facility shall maintain records which conform to the requirements of § 61.209(c).

(5) Indoor research and development activities must be performed in a controlled laboratory setting which the general public cannot enter except on an infrequent basis for tours of the facility. Uses of phosphogypsum for outdoor agricultural research and development and agricultural field use must comply with § 61.204.

* * * * *

4. Section 61.207 is revised to read as follows:

§ 61.207 Radium-226 sampling and measurement procedures.

(a) Before removing phosphogypsum from a stack for distribution in commerce pursuant to § 61.204, or § 61.206, the owner or operator of a phosphogypsum stack shall measure the average radium-226 concentration at the location in the stack from which phosphogypsum will be removed. Measurements shall be performed for each such location prior to the initial distribution in commerce of phosphogypsum removed from that location and at least once during each calendar year while distribution of phosphogypsum removed from the location continues.

(1) A minimum of 30 phosphogypsum samples shall be taken at regularly spaced intervals across the surface of the location on the stack from which the phosphogypsum will be removed. Let n_1 represent the number of samples taken.

(2) Measure the radium-226 concentration of each of the n_1 samples in accordance with the analytical procedures described in 40 CFR part 61, appendix B, Method 114.

(3) Calculate the mean, $\bar{x}_1$, and the standard deviation, s_1, of the n_1 radium-226 concentrations:

$$\bar{x}_1 = \frac{\sum_{i=1}^{n_1} x_i}{n_1},$$

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (x_i - \bar{x}_1)^2}{n_1 - 1}},$$

Where $\bar{x}_1$ and s_1 are expressed in pCi/g.

(4) Calculate the 95th percentile for the distribution, $\bar{x}^*$, using the following equation:

$$\bar{x}^* = \bar{x}_1 + 1.64\left(\frac{s_1}{\sqrt{n_1}}\right),$$

Where $\bar{x}^*$ is expressed in pCi/g.

(5) If the purpose for removing phosphogypsum from a stack is for distribution to commerce pursuant to § 61.206, the owner or operator of a phosphogypsum stack shall report the mean, standard deviation, 95th percentile and sample size. If the purpose for removing phosphogypsum from a stack is for distribution to commerce pursuant to § 61.204, the additional sampling procedures set forth in paragraphs (b) and (c) of this section shall apply.

(b) Based on the values for $\bar{x}_1$ and $\bar{x}^*$ calculated in paragraphs paragraphs (a)(3) and (4) of this section, determine which of the following conditions will be met:

(1) If $\bar{x}_1 < 10$ pCi/g and $\bar{x}^* \leq 10$ pCi/g; phosphogypsum may be removed from this area of the stack for distribution in commerce pursuant to § 61.204.

(2) If $\bar{x}_1$, < 10 pCi/g and $\bar{x}^* > 10$ pCi/g, the owner or operator may elect to follow the procedures for further sampling set forth in paragraph (c) of this section:

(3) If $\bar{x}_1 \geq 10$ pCi/g; phosphogypsum shall not be removed from this area of the stack for distribution in commerce pursuant to § 61.204.

(c) If the owner or operator elects to conduct further sampling to determine if phosphogypsum can be removed from this area of the stack, the following procedure shall apply. The objective of the following procedure is to demonstrate, with a 95% probability, that the phosphogypsum from this area of the stack has a radium-226 concentration no greater than 10 pCi/g. The procedure is iterative, the sample size may have to be increased more than one time; otherwise the phosphogypsum cannot be removed from this area of the stack for distribution to commerce pursuant to § 61.204.

(1)(i) Solve the following equation for the total number of samples required:

$$n_2 = \left(\frac{1.64 s_1}{10 - \bar{x}_1}\right)^2.$$

(ii) The sample size n_2 shall be rounded upwards to the next whole number. The number of additional samples needed is $n_A = n_2 - n_1$.

(2) Obtain the necessary number of additional samples, n_A, which shall also be taken at regularly spaced intervals across the surface of the location on the stack from which phosphogypsum will be removed.

(3) Measure the radium-226 concentration of each of the n_A additional samples in accordance with the analytical procedures described in 40 CFR part 61, appendix B, Method 114.

(4) Recalculate the mean and standard deviation of the entire set of n_2 radium-226 concentrations by joining this set of n_A concentrations with the n_1 concentrations previously measured. Use the formulas in paragraph (a)(3) of this section, substituting the entire set of n_2 samples in place of the n_1 samples called for in paragraph (a)(3) of this section, thereby determining the mean, $\bar{x}_2$, and standard deviation, s_2, for the entire set of n_2 concentrations.

(5) Repeat the procedure described in paragraph (a)(4) of this section, substituting the recalculated mean, $\bar{x}_2$, for $\bar{x}_1$, the recalculated standard deviation, s_2, for s_1, and total sample size, n_2, for n_1.

(6) Repeat the procedure described in paragraph (b) of this section, substituting the recalculated mean, $\bar{x}_2$ for $\bar{x}_1$.

[FR Doc. 99–2545 Filed 2–2–99; 8:45 am]
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federal register

Wednesday
February 3, 1999

Part VIII

The President

Proclamation 7164—National Consumer Protection Week, 1999

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Wednesday, February 3, 1999

Presidential Documents

Title 3—

The President

Proclamation 7164 of January 29, 1999

National Consumer Protection Week, 1999

By the President of the United States of America

A Proclamation

Consumers are too often the target of unfair, deceptive, or fraudulent practices. Modern advances in telecommunications and marketing technology have dramatically increased both the sophistication and the potential threat of such practices. Perpetrators of fraud can reach consumers across the country through the Internet, on television, the telephone, or by direct mail, misrepresenting themselves as legitimate business people. Because their proposals appear legitimate, these unscrupulous operators frequently succeed in cheating vulnerable consumers out of hard-earned dollars.

One of the most damaging fraudulent practices is credit fraud. Credit fraud—stealing credit cards or credit identities and cheating consumers through deceptive or abusive lending practices—can be difficult to recognize. Fraudulent credit transactions are often complicated and can occur when perpetrators hide or fail to disclose essential information to consumers. By stealing consumers' credit identities, criminals can run up huge debts and ruin their victims' credit records. And credit fraud costs all of us in higher interest rates and fees.

The best defense we have against credit fraud is education. The Federal Trade Commission (FTC), the National Association of Consumer Agency Administrators, the U.S. Postal Inspection Service, the American Association of Retired Persons, the National Consumers League, the Consumer Federation of America, and the National Association of Attorneys General are working in partnership to inform Americans about the dangers of credit fraud. As part of this effort, the FTC and its partners offer information on-line, by telephone, and in writing to alert consumers about the warning signs of credit fraud and how to protect themselves against it. The FTC, in cooperation with State Attorneys General and the Internal Revenue Service, is also actively prosecuting credit fraud cases that target some of our most vulnerable citizens.

I encourage all Americans to learn more about credit fraud, to read their credit reports carefully, to protect such personal information as their bank account, credit card, and Social Security numbers, and to know how to recognize the characteristics of fraudulent proposals. By using credit wisely and remaining alert to the possibility of credit fraud, we can better protect the well-being of our families and preserve our financial health and security.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 31 through February 6, 1999, as National Consumer Protection Week. I call upon government officials, industry leaders, consumer advocates, and the American people to participate in programs that foster credit literacy and raise public awareness about the dangers of credit fraud and other deceptive and fraudulent practices.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of January, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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Title 3—

The President

Proclamation 7165 of February 1, 1999

National African American History Month, 1999

By the President of the United States of America

A Proclamation

The story of African Americans is one of strength, suffering, courage, and triumph. Arriving on these shores more than 350 years ago, African Americans have been a central element of our national identity, and their long journey from the horrors of slavery and oppression through the struggle for equality and justice informs our national experience. By observing African American History Month each year, we not only remember the tragic errors of our past, but also celebrate the achievements of African Americans and the promise they hold for our future as one America.

This year's theme, "The Legacy of African American Leadership for the Present and the Future," is a recognition that we can draw strength and inspiration to face our challenges from the vision, voices, character, and accomplishments of the many extraordinary African Americans who have gone before us. These gifted men and women, from every walk of life and every field of endeavor, were shaped but not defeated by their experience of racism, and their response was to move our Nation closer to our ideals of freedom, justice, and equality.

We remember Frederick Douglass and Sojourner Truth, whose powerful firsthand accounts of their lives as slaves and the moral strength of their argument helped create the momentum that brought an end to slavery in America. In our own century, we all have benefited from the skills, determination, and indefatigable spirit of such African American leaders as Booker T. Washington, W.E.B. Du Bois, A. Philip Randolph, Ella Baker, Thurgood Marshall, Medgar Evers, and Martin Luther King, Jr. Whether organizing peaceful demonstrations, creating educational and economic opportunities, fighting Jim Crow laws in the courts, or conducting peaceful protests, they awakened the conscience of our Nation and won signal victories for justice and human dignity. We recall the courage of the Little Rock Nine, who opened the doors of American education for so many other deserving young people. We remember the strength of Rosa Parks, who stood up for civil rights by sitting down where she belonged. We continue to draw inspiration from the leadership of Dorothy Height, who has done so much to strengthen families and communities not only in our own Nation, but also around the world.

These and so many other African American leaders have enriched our national life and shaped our national character. They have challenged us to recognize that America's racial, cultural, and ethnic diversity will be among our greatest strengths in the 21st century.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 1999 as National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs that raise awareness and appreciation of African American history.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of February, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99-2855
Filed 2-3-99; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 64, No. 23
Thursday, February 4, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–295–AD; Amendment 39–11021; AD 99–03–07]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model DHC–7 series airplanes, that requires removal of all attachment bolts and pre-load indicating (PLI) washers of the wing-to-fuselage attachment fittings; a one-time visual inspection to detect corrosion of each attachment bolt; and installation of new attachment bolts and PLI washers of the wing-to-fuselage attachment fittings. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the attachment bolts of the wing-to-fuselage attachment fittings due to stress corrosion cracking, which could result in reduced structural integrity of the airplane.

DATES: Effective March 11, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Bombardier Model DHC–7 series airplanes was published in the **Federal Register** on November 30, 1998 (63 FR 65716). That action proposed to require removal of all attachment bolts and pre-load indicating (PLI) washers of the wing-to-fuselage attachment fittings; a one-time visual inspection to detect corrosion of each attachment bolt; and installation of new attachment bolts and PLI washers of the wing-to-fuselage attachment fittings.

Conclusion

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 Model DHC–7 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 65 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,200 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $355,000, or $7,100 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–03–07 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11021. Docket 98–NM–295–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment bolts of the wing-to-fuselage attachment fittings due to stress corrosion cracking, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Bombardier Service Bulletin S.B. 7–57–37, dated August 8, 1997.

(1) Remove all attachment bolts (one at a time) and pre-load indicating (PLI) washers of the wing-to-fuselage attachment fittings.

(2) Perform a one-time visual inspection to detect corrosion of each attachment bolt. If any corrosion is detected, within 10 days after accomplishing the visual inspection, or within 10 days after the effective date of this AD, whichever occurs later, submit a report of the inspection results to Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(3) Install new attachment bolts (one at a time) and new PLI washers of the wing-to-fuselage attachment fittings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal, inspection, and installation shall be done in accordance with Bombardier Service Bulletin S.B. 7–57–37, dated August 8, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at at the FAA Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–12, dated June 24, 1998.

(e) This amendment becomes effective on March 11, 1999.

Issued in Renton, Washington, on January 28, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2497 Filed 2–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–289–AD; Amendment 39–11020; AD 99–03–06]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 SHERPA series airplanes, that requires a one-time visual inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane.

DATES: Effective March 11, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA series airplanes was published in the **Federal Register** on November 30, 1998 (63 FR 65718). That action proposed to require a one-time visual inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Additional Service Information

Since the issuance of the proposal, Short Brothers has issued Service Bulletin SD3–60 SHERPA–76–1, Revision 1, dated October 14, 1998. The FAA has determined that the technical procedures described in that revision are equivalent to the technical procedures described in SD3–60 SHERPA–76–1, dated July 1998 (which was cited in the proposal as the appropriate source of service

information for accomplishment of the actions). The only change effected by Revision 1 is to clarify certain procedures. The final rule has been revised to require accomplishment of the actions in accordance with either the original issue or Revision 1 of the service bulletin.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 15 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $25,200, or $900 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–03–06 Short Brothers, PLC: Amendment 39–11020. Docket 98–NM–289–AD.

Applicability: All Model SD3–60 SHERPA series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 1,200 flight hours after the effective date of this AD, perform a one-time visual inspection to determine the part number (P/N) of the power control cable assemblies and pulleys of the engine controls, in accordance with Part A of the Accomplishment Instructions of Shorts Service Bulletin SD3–60 SHERPA–76–1, dated July 1998, or Revision 1, dated October 14, 1998.

(1) If any power control cable assembly having P/N SD3–47–1091 or SD3–47–1094 is found, prior to further flight, replace the power control cable assembly with a new power control cable assembly in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(2) If any pulley having P/N C181605 is found, prior to further flight, replace the pulley with a new pulley in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(b) As of the effective date of this AD, no person shall install on the engine controls of any airplane a cable assembly having P/N SD3–47–1091 or SD3–47–1094, or any pulley having P/N C181605.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Shorts Service Bulletin SD3–60 SHERPA–76–1, dated July 1998, or with Shorts Service Bulletin SD3–60 SHERPA–76–1, Revision 1, dated October 14, 1998, which contains the following list of effective pages:

Page No.	Revision Level shown on page	Date shown on page
1–3, 7, 8, 10–16, 23, 29.	1	July 1998.
4–6, 9, 17–22, 24–28.	Original	Oct. 14, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–07–98.

(f) This amendment becomes effective on March 11, 1999.

Issued in Renton, Washington, on January 28, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2496 Filed 2–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–362–AD; Amendment 39–11022; AD 99–03–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700IGW, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, –700IGW, and –800 series airplanes. This action requires repetitive inspections to detect discrepancies of the quick-disconnect coupling on the fuel hose, located at the fan case firewall; corrective action, if necessary; and installation of a clamp shell on the coupling to prevent separation of the coupling halves. This amendment is prompted by a report that a quick-disconnect coupling on the fuel hose on an in-service airplane was found loose and leaking fuel. The actions specified in this AD are intended to detect and correct excessive wear of the quick-disconnect coupling on the fuel hose, which could result in major fuel leakage, fire in the engine nacelle, and consequent loss of thrust from the affected engine.

DATES: Effective February 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–362–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2682; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report indicating that the quick-disconnect coupling on the fuel hose was found loose and leaking fuel on an in-service Boeing Model 737–700 series airplane. As a result of this report, Boeing requested that all operators perform inspections to detect wear of the quick-disconnect coupling on the fuel hose on both engines of all Boeing Model 737–600, –700, –700IGW, and –800 series airplanes. During these inspections, an excessively worn coupling was found on numerous airplanes, and several of these discrepant couplings were leaking fuel. Wear of the coupling, which is located at the fan case firewall of the engines, has been attributed to resonance vibration from the engine-driven hydraulic pump.

Excessive wear of the quick-disconnect coupling on the fuel hose, if not corrected, could initially cause leakage of a small amount of fuel into the fan case fire zone of the engines. If such initial leakage is not detected and corrected, the coupling could become disconnected. Such disconnection could result in major fuel leakage, fire in the engine nacelle, and consequent loss of thrust from the affected engine.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998, which describes procedures for repetitive visual inspections to detect discrepancies (i.e., fuel leakage, wear of the lock teeth, and missing lock pins on the coupling nut) of the quick-disconnect coupling on the fuel hose; and corrective action, if necessary. If the coupling is found to be leaking, corrective actions include tightening the coupling nut; or if the coupling nut is tight, the lock teeth on the coupling are excessively worn, or one or more lock pins are missing, corrective actions include replacing the O-ring packing on the engine strut fuel fitting and replacing the fuel hose assembly. The alert service bulletin also describes procedures for installation of a clamp shell on the quick-disconnect coupling to prevent separation of the coupling halves. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct excessive wear of the quick-disconnect coupling on the fuel hose, located at the fan case firewall of the engines; which could result in major fuel leakage, fire in the engine nacelle, and consequent loss of thrust from the affected engine. This AD requires accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between This Rule and the Alert Service Bulletin

Operators should note that this AD requires, within 30 days, the installation of the clamp shell described in the alert service bulletin. Installation of the clamp shell is identified in the alert service bulletin as an option that would allow the repetitive inspection interval to be increased from 500 to 1,000 flight hours.

The FAA has determined that long-term continued operational safety will be better assured by installation of a device to prevent separation of the coupling halves and repetitive inspections at an interval not to exceed 1,000 flight hours, rather than by accomplishment of more frequent repetitive inspections (at intervals not to exceed 500 flight hours). Inspections alone (i.e., without the installation of the clamp shell) may not provide the degree of safety assurance necessary for the transport airplane fleet.

In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the availability of required parts, and the time necessary to perform the installation (2 work hours). In light of all of these factors, the FAA finds a compliance time of 30 days for accomplishing the installation to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–362–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–03–08 Boeing: Amendment 39–11022. Docket 98–NM–362–AD.

Applicability: Model 737–600, –700, –700IGW, and –800 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct excessive wear of the quick-disconnect coupling on the fuel hose, which could result in major fuel leakage, fire in the engine nacelle, and consequent loss of thrust from the affected engine, accomplish the following:

(a) Within 7 days after the effective date of this AD, perform a visual inspection to detect discrepancies (i.e., fuel leakage, wear of the lock teeth, or missing lock pins on the coupling nut) of the quick-disconnect coupling on the fuel hose, located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 500 flight hours, until the installation required by paragraph (b) of this AD is accomplished.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with TABLE 1. of the Accomplishment Instructions of the alert service bulletin, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

(b) Within 30 days after the effective date of this AD, install an Aeroquip Clamp Shell, having part number (P/N) AE20074–165, on the quick-disconnect coupling on the fuel hose, which is located at the fan case firewall, in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998. Accomplishment of such installation terminates the repetitive inspection requirements of paragraph (a)(1) and (a)(2) of this AD. Within 1,000 flight hours after installation of the clamp shell, repeat the inspection specified in paragraph (a) of this AD.

(1) If no discrepancy is detected, repeat the inspection thereafter at intervals not to exceed 1,000 flight hours.

(2) If any discrepancy is detected, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with TABLE 1. of the Accomplishment Instructions of the alert service bulletin, and repeat the inspection thereafter at the time specified in TABLE 1. of the Accomplishment Instructions of the alert service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–73A1011, dated November 25, 1998. This

incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 19, 1999.

Issued in Renton, Washington, on January 28, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2495 Filed 2–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–83–AD; Amendment 39–11023; AD 99–03–09]

RIN 2120–AA64

Airworthiness Directives; Allison Engine Company, Inc. AE 2100A, AE 2100C, and AE 2100D3 Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Allison Engine Company, Inc. AE 2100A, AE 2100C, and AE 2100D3 series turboprop engines. This action requires removing from service affected turbine wheels prior to exceeding new, reduced cyclic life limits. This amendment is prompted by the results of a refined life analysis. The actions specified in this AD are intended to prevent an uncontained turbine wheel failure, which could result in damage to the aircraft.

DATES: Effective February 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–83–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9–ad-engineprop@faa.gov." Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Allison Engine Company, Inc., P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, Office Address; telephone (847) 294–8180, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: Allison Engine Company, Inc., the manufacturer of AE 2100A, AE 2100C, and AE 2100D3 series turboprop engines, suspects that certain serial number turbine wheels may have Tungsten contamination. Additionally, the manufacturer reevaluated the effect on the service life of a wheel surface treatment, which is part of the current manufacturing process. A refined life analysis, which took both the possibility of Tungsten contamination and the surface treatment into account, revealed new maximum service lives significantly lower than those previously published. This condition, if not corrected, could result in an uncontained turbine wheel failure, which could result in damage to the aircraft.

The FAA has reviewed and approved the technical contents of Rolls-Royce Alert Service Bulletin (ASB) AE 2100A–A–72–191, AE 2100C–A–72–141, and AE 2100D3–A–72–130, all dated December 17, 1998, that list new, reduced cyclic life limits for affected turbine wheels.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent uncontained turbine wheel failure. This AD requires removing from service affected turbine wheels prior to exceeding new, reduced cyclic life limits. The actions shall be accomplished in accordance with the ASB's described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–83–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this

action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–03–09 Allison Engine Company, Inc.: Amendment 39–11023. Docket 98–ANE–83–AD.

Applicability: Allison Engine Company, Inc. AE 2100A, AE 2100C, and AE 2100D3 series turboprop engines, with turbine wheels, part numbers (P/Ns) 23053358, 23059878, 23062373, 23062376, 23063462, 23064473, 23064474, 23064822, 23065891, 23065892, 23066791, and 23068072 installed. These engines are installed on but not limited to Saab Aircraft AB 2000, Industri Pesawat Terbang Nusantara (IPTN) Model N–250–100, and Lockheed Martin Model 382J (Military C130J) series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained turbine wheel failure, which could result in damage to the aircraft, accomplish the following:

(a) Remove from service the following turbine wheels installed in AE 2100A series engines prior to exceeding new, reduced cyclic life limits and replace with serviceable parts as follows:

(1) 4th Stage Turbine Wheels, P/N 23053358, prior to 8,900 cycles since new (CSN).

(2) 1st Stage Turbine Wheels, P/N 23062373, identified by serial numbers (S/N's) in Table 9 of Rolls-Royce Alert Service Bulletin (ASB) No. AE 2100A–A–72–191, dated December 17, 1998, prior to 10,000 CSN.

(3) 1st Stage Turbine Wheels, P/N 23062376, prior to 11,600 CSN.

(4) 2nd Stage Turbine Wheels, P/N 23063462, identified by S/N's in Table 10 of Rolls-Royce ASB No. AE 2100A–A–72–191, dated December 17, 1998, prior to 10,000 CSN.

(5) 2nd Stage Turbine Wheels, P/N 23063462, not identified by S/N's in Rolls-Royce ASB No. AE 2100A–A–72–191, dated December 17, 1998, prior to 12,400 CSN.

(6) 2nd Stage Turbine Wheels, P/N 23064822, prior to 12,400 CSN.

(7) 1st Stage Turbine Wheels, P/N 23065891, identified by S/N's in Table 9 of Rolls-Royce ASB No. AE 2100A–A–72–191, dated December 17, 1998, prior to 10,000 CSN.

(8) 2nd Stage Turbine Wheels, P/N 23065892, identified by S/N's in Table 10 of Rolls-Royce ASB No. AE 2100A–A–72–191, dated December 17, 1998, prior to 10,000 CSN.

(9) 2nd Stage Turbine Wheels, P/N 23065892, not identified by S/N's in Rolls-Royce ASB No. AE 2100A–A–72–191, dated December 17,1998, prior to 12, 400 CSN.

(10) 1st Stage Turbine Wheels, P/N 23066791, prior to 11,600 CSN.

Note 2: Rolls-Royce ASB No. AE 2100A–A–72–191, dated December 17, 1998, provides information concerning specific S/N wheels and their cyclic life limits.

(b) Remove from service the following turbine wheels installed in AE 2100C series engines prior to exceeding new, reduced cyclic life limits and replace with serviceable parts as follows:

(1) 4th Stage Turbine Wheels, P/N 23053358, prior to 8,900 CSN.

(2) 1st Stage Turbine Wheels, P/N 23062373, identified by S/N's in Table 9 of Rolls-Royce ASB No. AE 2100C–A–72–141, dated December 17, 1998, prior to 10,000 CSN.

(3) 2nd Stage Turbine Wheels, P/N 23063462, identified by S/N's in Table 10 of Rolls-Royce ASB No. AE 2100C–A–72–141, dated December 17, 1998, prior to 10,000 CSN.

(4) 2nd Stage Turbine Wheels, P/N 23063462, not identified by S/N's in Rolls-Royce ASB No. AE 2100C–A–72–141, dated December 17, 1998, prior to 12,400 CSN.

(5) 1st Stage Turbine Wheels, P/N 23065891, identified by S/N's in Table 9 of Rolls-Royce ASB No. AE 2100C–A–72–141, dated December 17, 1998, prior to 10,000 CSN.

(6) 2nd Stage Turbine Wheels, P/N 23065892, identified by S/N's in Table 10 of Rolls-Royce ASB No. AE 2100C–A–72–141, dated December 17, 1998, prior to 10,000 CSN.

(7) 2nd Stage Turbine Wheels, P/N 23065892, not identified by S/N's in Rolls-Royce ASB No. AE 2100C–A–72–141, dated December 17, 1998, prior to 12,400 CSN.

Note 3: Rolls-Royce ASB No. AE 2100C–A–72–141, dated December 17, 1998, provides information concerning specific S/N wheels and their cyclic life limits.

(c) Remove from service the following turbine wheels installed in AE 2100D3 series engines prior to exceeding new, reduced cyclic life limits and replace with serviceable parts as follows:

(1) 4th Stage Turbine Wheels, P/N 23053358, identified by S/N's in Table 12 of Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 2,160 CSN.

(2) 3rd Stage Turbine Wheels, P/N 23059878, identified by S/N's in Table 11 of Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 2,160 CSN.

(3) 1st Stage Turbine Wheels, P/N 23062373, identified by S/N's in Table 9 of Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 2,160 CSN.

(4) 1st Stage Turbine Wheels, P/N 23062376, prior to 8,400 CSN.

(5) 2nd Stage Turbine Wheels, P/N 23063462, identified by S/N's in Table 10 of Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 2,160 CSN.

(6) 2nd Stage Turbine Wheels, P/N 23063462, not identified by S/N's in Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 7,500 CSN.

(7) 2nd Stage Turbine Wheels, P/N 23064473, identified by S/N's in Table 10 of Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 2,160 CSN.

(8) 2nd Stage Turbine Wheels, P/N 23064473, not identified by S/N's in Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 6,700 CSN.

(9) 2nd Stage Turbine Wheels, P/N 23064474, prior to 7,500 CSN.

(10) 1st Stage Turbine Wheels, P/N 23065891, identified by S/N's in Table 9 of Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 2,160 CSN.

(11) 2nd Stage Turbine Wheels, P/N 23065892, identified by S/N's in Table 10 of Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 2,160 CSN.

(12) 2nd Stage Turbine Wheels, P/N 23065892, not identified by S/N's in Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, prior to 7,500 CSN.

(13) 2nd Stage Turbine Wheels, P/N 23068072, prior to 7,500 CSN.

Note 4: Rolls-Royce ASB No. AE 2100D3–A–72–130, dated December 17, 1998, provides information concerning specific serial number wheels and their cyclic life limits.

(d) This AD establishes new cyclic life limits for the turbine wheels identified in paragraphs (a), (b), and (c) of this AD. Except in accordance with paragraph (e) of this AD, no alternative life limits may be approved for the turbine wheels identified in paragraphs (a), (b), and (c) of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 5: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(f) The actions required by this AD shall be done in accordance with the following Rolls-Royce ASB's:

Document No.	Pages	Date
AE 2100A–A–72–191.	1–8	Dec. 17, 1998.
AE 2100C–A–72–141.	1–8	Dec. 17, 1998.
AE 2100D3–A–72–130.	1–8	Dec. 17, 1998.

Total pages: 8.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Allison Engine Company, Inc., P.O. Box 420, Speed Code U–15, Indianapolis, IN 46206–0420, telephone (317) 230–6674. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 19, 1999.

Issued in Burlington, Massachusetts, on January 28, 1999.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–2494 Filed 2–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29454; Amdt. No. 1911]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FFA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169) (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on January 22, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25, LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 25, 1999*

Victorville, CA, Southern California Intl, VOR/DME RWY 17, Orig
Newton, IA, Newton Muni, GPS RWY 14 Orig
Newton, IA, Newton Muni, GPS RWY 32, Orig
East Hampton, NY, East Hampton, VOR OR GPS–A, Amdt 10
East Hampton, NY, East Hampton, VOR/DME RNAV OR GPS RWY 10, Amdt 6
East Hampton, NY, East Hampton, VOR/DME RNAV OR GPS RWY 28, Amdt 3
Fulton, NY, Oswego County, VOR OR GPS RWY 33, Amdt 4
Philadelphia, PA, Philadelphia Intl. VOR/DME RNAV OR GPS RWY 17, Amdt 4, CANCELLED

** * * Effective March 25, 1999*

Cold Bay, AK, Cold Bay, VOR RWY 14, Amdt 13
Cold Bay, AK, Cold Bay, VOR/DME OR TACAN OR GPS–A, Amdt 1
Cold Bay, AK, Cold Bay, LOC/DME BC RWY 32, Amdt 7
Cold Bay, AK, Cold Bay, NDB RWY 14, Amdt 11
Cold Bay, AK, Cold Bay, ILS RWY 14, Amdt 16
Cold Bay, AK, Cold Bay, MLS RWY 32, Orig
Cold Bay, AK, Cold Bay, GPS RWY 14, Orig
Cold Bay, AK, Cold Bay, GPS RWY 32, Orig
Carlsbad, CA, McClellan-Palomar, VOR OR GPS–A, Amdt 7
El Monte, CA, El Monte, VOR OR GPS–A, Amdt 7
El Monte, CA, El Monte, VOR/DME OR, GPS–B, Amdt 3
El Monte, CA, El Monte, NDB OR GPS–C, Amdt 1
Los Angeles, CA, Los Angeles Intl, ILS RWY 25R, Amdt 13
Modesto, CA, Modesto City-County-Harry Sham Field, VOR/DME RWY 28R, Orig
Modesto, CA, Modesto City-County-Harry Sham Field, VOR RWY 28R, Amdt 11
Modesto, CA, Modesto City-County-Harry Sham Field, NDG RWY 28R, Amdt 8
Modesto, CA, Modesto City-County-Harry Sham Field, ILS RWY 28R, Amdt 13
Stockton, CA, Stockton Metropolitan, GPS RWY 29R, Orig
Guthrie Center, IA, Guthrie County Regional, NDB RWY 18, Orig
Guthrie Center, IA, Guthrie County Regional, GPS RWY 36, Orig
Concordia, KS, Blosser Muni, NDB–A, Orig
Concordia, KS, Blosser Muni, NDB OR GPS RWY 17, Amdt 1A, CANCELLED
Concordia, KS, Blosser Muni, GPS RWY 17, Orig
Concordia, KS, Blosser Muni, GPS RWY 35, Orig
St. Paul, MN, ST. Paul Downtown Holman Field, ILS RWY 32, Amdt 4
Linden, NJ, Linden, VOR OR GPS–C, Orig-B, CANCELLED
Linden, NJ, Linden, VOR/DME OR GPS–D, Orig-B, CANCELLED
Linden, NJ, Linden, GPS–A, Orig
Malone, NY, Malone-Dufort, VOR/DME–A, Amdt 1
Malone, NY, Malone-Dufort, GPS RWY 5, Orig
Malone, NY, Malone-Dufort, GPS RWY 23, Orig
Roxboro, NC, Person County, LOC RWY 6, Amdt 2, CANCELLED
Roxboro, NC, Person County, NDB OR GPS RWY 6, Amdt 3
Roxboro, NC, Person County, ILS RWY 6, Orig
Roxboro, NC, Person County, GPS RWY 6, Orig
Wilmington, NC, Wilmington Intl, LOC BC RWY 17, Amdt 7
Fargo, ND, Hector Intl, VOR/DME RNAV OR GPS RWY 13, Amdt 6, CANCELLED
Carlisle, PA, Carlisle, VOR/DME OR GPS–A, Amdt 1A, CANCELLED
Carlisle, PA, Carlisle, NDB OR GPS RWY 28, Amdt 2A, CANCELLED
Carlisle, PA, Carlisle, VOR–A, Orig
Carlisle, PA, Carlisle, NDB–B, Orig
Chester, SC, Chester, SC, GPS RWY 17, Orig
Chester, SC, Chester, SC, GPS RWY 35, Orig
North Myrtle Beach, SC, Grand Strand, GPS RWY 5, Orig
North Myrtle Beach, SC, Grand Strand, GPS RWY 23, Orig
San Angelo, TX, Mathis Field, LOC BC RWY 21, Amdt 14
San Angelo, TX, Mathis Field, NDB RWY 3, Amdt 14
San Angelo, TX, Mathis Field, VOR RWY 21, Amdt 16
San Angelo, TX, Mathis Field, ILS RWY 3, Amdt 21
San Angelo, TX, Mathis Field, RADAR–1, Amdt 1
San Angelo, TX, Mathis Field, GPS RWY 3, Orig
San Angelo, TX, Mathis Field, GPS RWY 21, Orig
Seattle, WA, Boeing Field/King Country Intl, LOC CB RWY 31L, Amdt 10, CANCELLED

[FR Doc. 99–2657 Filed 2–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Florfenicol Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for subcutaneous use of florfenicol injectable solution for control of respiratory disease in cattle at high risk of developing bovine respiratory disease (BRD).

EFFECTIVE DATE: February 4, 1999.

FOR FURTHER INFORMATION CONTACT: William T. Flynn, Center for Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7570.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 1982, Union, NJ

07083–1982, is sponsor of NADA 141–063 that provides for veterinary prescription use of Nuflor® Injectable Solution (florfenicol) for treatment of cattle for BRD. The firm filed a supplemental NADA that provides for veterinary prescription use of Nuflor® Injectable Solution (florfenicol) by a single subcutaneous injection for control of respiratory disease in cattle at high risk of developing BRD associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus*. The supplemental NADA is approved as of December 17, 1998, and the regulations are amended by revising 21 CFR 522.955(d)(1) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplement may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 U.S.C. 360b(c)(2)(F)(iii), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning December 17, 1998, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant. Three years marketing exclusivity is limited to subcutaneous use of the drug for control of respiratory disease in cattle at high risk of developing BRD associated with *P. haemolytica*, *P. multocida*, and *H. somnus*.

The agency has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.955 is amended by revising paragraph (d)(1)(i), by redesignating paragraph (d)(1)(ii) as paragraph (d)(1)(i)(B), and by adding paragraphs (d)(1)(ii)(A) and (d)(1)(ii)(B) to read as follows:

§ 522.955 Florfenicol solution.

* * * * *

(d) * * *

(1) * * *

(i) *Treatment of disease*—(A) *Amount.* 20 milligrams per kilogram of body weight (3 milliliters per 100 pounds) as an intramuscular injection. A second dose should be given 48 hours later. Alternatively, 40 milligrams per kilogram of body weight (6 milliliters per 100 pounds) as a single subcutaneous injection may be used.

(B) *Indications for use.* * * *

(ii) *Control of disease*—(A) *Amount.* 40 milligrams per kilogram of body weight (6 milliliters per 100 pounds) as a single subcutaneous injection.

(B) *Indications for use.* For control of respiratory disease in cattle at high risk of developing bovine respiratory disease (BRD) associated with *Pasteurella haemolytica*, *P. multocida*, and *Haemophilus somnus*.

* * * * *

Dated: January 13, 1999.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–2686 Filed 2–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate and Roxarsone With Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma Inc. The supplemental NADA provides for using approved single ingredient bacitracin methylene disalicylate (BMD), monensin, and roxarsone Type A medicated articles to make an additional use level of BMD in Type C medicated broiler chicken feeds.

EFFECTIVE DATE: February 4, 1999.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7575.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed supplemental NADA 116–088 that provides for combining approved BMD® (10, 25, 30, 50, 60, or 75 grams per pound (g/lb) BMD), Coban® (45 or 60 g/lb monensin sodium), and 3–Nitro® (45.4, 90, 227, or 360 g/lb roxarsone) Type A medicated articles to make Type C medicated broiler chicken feeds containing 100 to 200 g/ton(t) BMD, 90 to 110 g/t monensin sodium, and 22.7 to 45.4 g/t roxarsone. The BMD, monensin, and 22.7 to 34 g/t roxarsone Type C medicated feeds are used as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to BMD; as an aid in the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; and for increased rate of weight gain and improved feed efficiency. The BMD, monensin, and 22.7 to 45.4 g/t roxarsone Type C medicated feeds are used as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to BMD; as an aid in the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*; and for increased rate of weight gain. The supplemental NADA is approved as of December 24, 1998, and the regulations are amended in 21 CFR 558.355 by revising paragraph (b)(11) and adding paragraphs (f)(1)(xxvi) and (f)(1)(xxvii) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of the application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a

type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.355 is amended in paragraph (b)(11) by deleting "and (xxv)" and adding in its place "(xxv), (xxvi), and (xxvii)" and by adding paragraphs (f)(1)(xxvi) and (f)(1)(xxvii) to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(1) * * *

(xxvi) *Amount per ton.* Monensin 90 to 110 grams plus bacitracin 100 to 200 grams and roxarsone 22.7 to 34.0 grams.

(*a*) *Indications for use.* As an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin methylene disalicylate; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati*; for increased rate of weight gain and improved feed efficiency.

(*b*) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Use as sole source of organic arsenic. Withdraw 5 days before slaughter. Do not feed to laying hens. To control necrotic enteritis, start medication at first clinical signs of disease. The dosage range permitted provides for different levels based on the severity of infection. Use continuously for 5 to 7 days or as long as clinical signs persist, then reduce dosage to prevention level. Animals should have access to drinking water at all times. Drug overdosage or lack of water may result in leg weakness. As roxarsone and bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.

(xxvii) *Amount per ton.* Monensin 90 to 110 grams plus bacitracin 100 to 200 grams and roxarsone 22.7 to 45.4 grams.

(*a*) *Indications for use.* As an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin methylene disalicylate; as an aid in the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati*; for increased rate of weight gain.

(*b*) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Use as sole source of organic arsenic. Withdraw 5 days before slaughter. Do not feed to laying hens. To control necrotic enteritis, start medication at first clinical signs of disease. The dosage range permitted provides for different levels based on the severity of infection. Use continuously for 5 to 7 days or as long as clinical signs persist, then reduce dosage to prevention level. Animals should have access to drinking water at all times. Drug overdosage or lack of water may result in leg weakness. As roxarsone and bacitracin methylene disalicylate provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: January 13, 1999.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–2687 Filed 2–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8816]

RIN 1545–AW62

Roth IRAs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to Roth IRAs under section 408A of the Internal Revenue Code (Code). Roth IRAs were created by the Taxpayer Relief Act of 1997 as a new type of IRA that individuals can use beginning in 1998. Section 408A was amended by the Internal Revenue Service Restructuring and Reform Act of 1998. On September 3, 1998, a notice of proposed rulemaking was published in the **Federal Register** (63 FR 46937) under Code section 408A. Written comments were received regarding the proposed regulations. On December 10, 1998, a public hearing was held on the proposed regulations. The final regulations affect individuals establishing Roth IRAs, beneficiaries under Roth IRAs, and trustees, custodians or issuers of Roth IRAs.

DATES: *Effective date:* The final regulations are effective on February 3, 1999.

Applicability date: The final regulations are applicable to taxable years beginning on or after January 1, 1998, the effective date for section 408A.

FOR FURTHER INFORMATION CONTACT: Cathy A. Vohs, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in §§ 1.408A–2, 1.408A–4, 1.408A–5, and 1.408A–7 of the final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1616. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Estimated average annual burden per respondent/recordkeeper: 1 minute for designating an IRA as a Roth IRA and 30 minutes for recharacterizing an IRA contribution. The estimated burdens for the other reporting/recordkeeping requirements in the these final regulations are reflected in the burden of Forms 8606, 1040, 5498, and 1099R.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 3, 1998, a notice of proposed rulemaking was published in the **Federal Register** (63 FR 46937) under section 408A of the Internal

Revenue Code (Code). The proposed regulations provide guidance on section 408A of the Code, which was added by section 302 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788), and established the Roth IRA as a new type of individual retirement plan, effective for taxable years beginning on or after January 1, 1998. The provisions of section 408A were amended by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685). In addition, Notice 98–50 (1998–44 I.R.B. 10) provides guidance on reconverting an amount that had previously been converted and recharacterized. This notice solicited public comments concerning reconversions.

Written comments were received on the proposed regulations and Notice 98–50. A public hearing was held on the proposed regulations and Notice 98–50 on December 10, 1998. After consideration of all the comments, the proposed regulations under section 408A are adopted as revised by this Treasury decision.

Explanation of Provisions

Overview

A Roth IRA generally is treated under the Code like a traditional IRA with several significant exceptions. Similar to traditional IRAs, income on undistributed amounts accumulated under Roth IRAs is exempt from Federal income tax, and contributions to Roth IRAs are subject to specific limitations. Unlike traditional IRAs, contributions to Roth IRAs cannot be deducted from gross income, but qualified distributions from Roth IRAs are excludable from gross income.

In general, comments received on the proposed regulations did not request significant changes. Thus, the final regulations retain the general structure and substance of the proposed regulations.

General Provisions and Establishment of Roth IRAs

Commentators asked for clarification regarding whether a Roth IRA may be established for the benefit of a minor child or anyone else who lacks the legal capacity to act on his or her own behalf. On this point, the IRS and Treasury intend that the rules for traditional IRAs also apply to Roth IRAs. Thus, for example, a parent or guardian of a minor child may establish a Roth IRA on behalf of the minor child. However, in the case of any contribution to a Roth IRA established for a minor child, the compensation of the child for the taxable year for which the contribution is made must satisfy the compensation requirements of section 408A(c) and § 1.408A–3.

Regular Contributions

Several commentators requested clarification of the treatment of excess Roth IRA contributions under sections 4973, 408(d)(5), and 219(f)(6). Commentators asked for clarification regarding the removal of excess Roth IRA contributions after the contributor's Federal tax return due date has passed. The final regulations clarify that, pursuant to section 4973(f), excess contributions may be applied, on a year-by-year basis, against the annual limit for regular contributions to the extent that the Roth IRA owner is eligible to make regular Roth IRA contributions for a taxable year but does not otherwise do so. However, in response to several requests for clarification, the IRS and Treasury note that the rules under section 408(d)(5) for the tax-free distribution of certain excess traditional IRA contributions after the IRA owner's Federal income tax return due date do not apply to Roth IRAs because Roth IRA contributions are always tax-free on distribution (except to the extent that they accelerate income inclusion under the 4-year spread). Similarly, section 219(f)(6), which provides for the deductibility of excess traditional IRA contributions in subsequent taxable years, has no application to Roth IRAs because contributions to Roth IRAs are never deductible.

Another commentator asked for clarification whether contributions to education IRAs are disregarded for purposes of applying the limitation on regular contributions to Roth IRAs. No change has been made to the final regulations on this point because the final regulations retain the definition of an IRA provided in the proposed regulations, which excludes an education IRA under section 530. Thus, contributions to an education IRA are disregarded in applying the Roth IRA contribution limitation (and in applying the contribution limitation for traditional IRAs).

Conversions

In response to certain comments, the final regulations clarify that conversions and recharacterizations made with the same trustee may be accomplished by redesignating the account or annuity contract, rather than by the opening of a new account or the issuance of a new annuity contract for each conversion or recharacterization.

As requested by commentators, the final regulations provide that a change in filing status or a divorce does not affect the application of the 4-year spread for 1998 conversions. Thus, if a married Roth IRA owner who is using the 4-year spread files separately or divorces before the full taxable conversion amount has been included in gross income, the remainder must be included in the Roth IRA owner's gross income over the remaining years in the 4-year period, or, if applicable, in the year for which the remainder is accelerated due to distribution or death.

Two commentators questioned why the proposed regulations require that a surviving spouse be the sole beneficiary of all a Roth IRA owner's Roth IRAs in order to elect to continue application of the 4-year spread after the Roth IRA owner's death. The IRS and Treasury view this result as compelled by the statutory language of section 408A(d)(3)(E)(ii)(II). That section provides that the surviving spouse must acquire the "entire interest" in any Roth IRA to which a conversion contribution to which the 4-year spread applies is "properly allocable." Under the aggregation and ordering rules of section 408A(d)(4), all a Roth IRA owner's Roth IRAs are treated as a single Roth IRA, and a conversion contribution is therefore allocable to all the owner's Roth IRAs. Thus, a surviving spouse must be the sole beneficiary of all a Roth IRA owner's Roth IRAs in order to acquire the entire interest in any Roth IRA to which a 1998 conversion contribution is properly allocable.

Commentators also asked the IRS and Treasury to clarify whether Roth IRA distributions that are part of a series of substantially equal periodic payments begun under a traditional IRA prior to conversion to a Roth IRA are subject to income acceleration during the 4-year spread period and the 10-percent additional tax on early distributions under section 72(t). The final regulations clarify that those distributions are subject to income acceleration to the extent allocable to a 1998 conversion contribution with respect to which the 4-year spread applies. The final regulations further clarify, however, that the additional 10-percent tax under section 72(t) will not apply, even if the distributions are not qualified distributions (as long as they are part of a series of substantially equal periodic payments).

Under the proposed regulations, if an IRA owner has reached age 70½, any amount distributed (or treated as distributed because of a conversion) from the IRA for a year consists of the required minimum distribution to the extent that an amount equal to the required minimum distribution for that year has not yet been distributed (or

treated as distributed); as a required minimum distribution, that amount cannot be converted to a Roth IRA. Although one commentator requested that this rule be retained in the final regulations, other commentators objected to it. A number of commentators asked the IRS and Treasury to adopt a rule allowing an IRA owner who wishes to convert a traditional IRA to a Roth IRA in the year he or she turns 70½ to leave the amount of his or her required minimum distribution with respect to such IRA in the IRA until April 1 of the following year, provided the conversion is accomplished by means of a trustee-to-trustee transfer. The commentators note that this rule applies in the case of trustee-to-trustee transfers between traditional IRAs. The final regulations retain the rule that the required minimum distribution amount is ineligible for rollover, including such a distribution for the year that the individual reaches age 70½, because, pursuant to section 408A(d)(3)(C), a conversion is treated as a distribution regardless of whether the conversion is accomplished by a trustee-to-trustee transfer. Accordingly, the required minimum distribution amount is ineligible for rollover, and as such, is also ineligible to be converted to a Roth IRA.

Additionally, several commentators suggested that the rule in the proposed regulations is inconsistent with section 401(a)(9), which generally requires that IRA distributions begin by April 1 of the calendar year following the calendar year in which the IRA owner reaches age 70½. These commentators argued that, under section 401(a)(9), distributions made during the calendar year in which the IRA owner reaches age 70½ should not be considered required minimum distributions under sections 401(a)(9) and 408(a)(6) and (b)(3). However, the proposed regulations under sections 401(a)(9) and 408(a)(6) and (b)(3) provide that the first year for which distributions are required under section 401(a)(9) is the year in which the IRA owner reaches age 70½, and that distributions made prior to April 1 of the following calendar year are treated as made for that first year. The regulations under section 402(c) and the proposed regulations under sections 401(a)(9) and 408(a)(6) and (b)(3) provide that the first amount distributed during a calendar year is treated as a required minimum distribution to the extent that the amount required to be distributed for that calendar year under section 401(a)(9) has not been distributed. For these reasons, the final regulations retain the rule of the proposed regulations.

Recharacterizations of IRA Contributions

The final regulations clarify that the computation of net income under § 1.408–4(c)(2)(iii) in the case of a commingled IRA may include net losses on the amount to be recharacterized.

Commentators asked the IRS and Treasury to clarify whether an amount converted from a SEP IRA or SIMPLE IRA to a Roth IRA may be recharacterized back to the SEP IRA or SIMPLE IRA from which the amount was converted. The final regulations provide that Roth IRA conversion contributions from a SEP IRA or SIMPLE IRA may be recharacterized to a SEP IRA or SIMPLE IRA (including the original SEP IRA or SIMPLE IRA). Another commentator also asked for clarification whether it is necessary to track the source of assets (i.e., as employer or employee contributions) converted from a SEP IRA or SIMPLE IRA to a Roth IRA for purposes of determining whether such assets may be recharacterized. The prohibition on recharacterizing employer contributions to a SEP IRA or SIMPLE IRA set forth in the final regulations only applies to those contributions at the time they are made to the SEP IRA or SIMPLE IRA. Once such contributions have been made to a SEP IRA or a SIMPLE IRA, the SEP IRA or SIMPLE IRA may be converted to a Roth IRA and subsequently recharacterized (provided, in the case of a SIMPLE IRA, that the two-year rule has been satisfied prior to the conversion).

Commentators asked for clarification regarding whether an election to recharacterize an IRA contribution may be made on behalf of a deceased IRA owner. The final regulations provide that the election to recharacterize an IRA contribution may be made by the executor, administrator, or other person charged with the duty of filing the decedent's final Federal income tax return.

Commentators also asked whether an excess contribution to an IRA made in a prior year, and applied against the contribution limits in the current year under section 4973, may be recharacterized. Only actual contributions may be recharacterized; thus, excess contributions actually made for a prior year and deemed to be current-year contributions for purposes of section 4973, are not contributions that are eligible to be recharacterized (unless the recharacterization would still be timely with respect to the taxable year for which the contributions were actually made). This rule applies to any excess contribution, whether made to a traditional or a Roth IRA.

Commentators asked for clarification regarding a conduit IRA that is converted to a Roth IRA and subsequently recharacterized back to a traditional IRA. The IRS and Treasury note that a conduit IRA that is converted to a Roth IRA and subsequently recharacterized back to a traditional IRA retains its status as a conduit IRA because the effect of the recharacterization is to treat the amount recharacterized as though it had been transferred directly from the original conduit IRA into another conduit IRA.

Commentators also asked whether a recharacterization is subject to withholding. A recharacterization is not a designated distribution under section 3405 and, therefore, is not subject to withholding.

The final regulations also provide rules regarding the "reconversion" of an amount that has been transferred from a Roth IRA to a traditional IRA by means of a recharacterization after having been earlier converted from a traditional IRA to a Roth IRA. After publication of the proposed regulations, the IRS and Treasury issued Notice 98–50, which provides interim rules regarding Roth IRA reconversions made during 1998 and 1999. Notice 98–50 stated that the interim rules were intended to clarify and supplement the proposed regulations and permitted taxpayers to rely on those rules as if incorporated in the proposed regulations. Notice 98–50 noted that the IRS and Treasury were considering whether the final regulations should provide that a taxpayer is not eligible to reconvert an amount before the end of the taxable year in which the amount was first converted (or the due date for that taxable year), or that a taxpayer who transfers a converted amount back to a traditional IRA in a recharacterization must wait until the passage of a fixed number of days before reconverting. Although Notice 98–50 invited interested parties to submit comments on those approaches, little comment was received on that issue. The final regulations provide reconversion rules for 2000 and subsequent years that generally differ from the interim rules of Notice 98–50. However, for 1998 and 1999, the final regulations continue the interim rules of Notice 98–50.

Effective January 1, 2000, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during any taxable year and then transfers that amount back to a traditional IRA by means of a recharacterization may not

reconvert that amount from the traditional IRA to a Roth IRA before the beginning of the taxable year following the taxable year in which the amount was converted to a Roth IRA or, if later, the end of the 30-day period beginning on the day on which the IRA owner transfers the amount from the Roth IRA back to a traditional IRA by means of a recharacterization. As under Notice 98–50, any amount previously converted is adjusted for subsequent net income in determining the amount subject to the limitation on subsequent reconversions.

A reconversion made before the later of the beginning of the next taxable year or the end of the 30-day period that begins on the day of the recharacterization is treated as a "failed conversion" (a distribution from the traditional IRA and a regular contribution to the Roth IRA), subject to correction through a recharacterization back to a traditional IRA. For these purposes, only a failed conversion resulting from a failure to satisfy the statutory requirements for a conversion (e.g., the $100,000 modified adjusted gross income limit) is treated as a conversion in determining when an IRA owner may make a reconversion. Thus, an IRA owner whose taxable year is the calendar year and who converts an amount to a Roth IRA in 2000 and then transfers that amount back to a traditional IRA on January 18, 2001 because his or her adjusted gross income for 2000 exceeds $100,000 cannot reconvert that amount until February 17, 2001 (the first day after the end of the 30-day period beginning on the day of the recharacterization transfer) because the failed conversion made in 2000 is treated as a conversion for purposes of the reconversion rules. However, if that IRA owner inadvertently attempts to reconvert that amount before February 17, 2001, the attempted reconversion is not treated as a conversion for purposes of the reconversion rules (although it is otherwise treated as a failed conversion). Therefore, the IRA owner could transfer the amount back to a traditional IRA in a recharacterization and reconvert it at any time on or after February 17, 2001. If the IRA owner does reconvert the amount on or after February 17, 2001, he or she cannot reconvert that amount again until 2002.

As indicated above, the final regulations continue the interim rules of Notice 98–50 applicable for 1998 and 1999. Therefore, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during 1998 and then transfers that amount back to a traditional IRA by means of a recharacterization may reconvert that amount once (but no more than once) on or after November 1, 1998 and on or before December 31, 1998; the IRA owner may also reconvert that amount once (but no more than once) during 1999. Similarly, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during 1999 that has not been converted before and then transfers that amount back to a traditional IRA by means of a recharacterization may reconvert that amount once (but no more than once) on or before December 31, 1999. In contrast to the rule for years after 1999, a failed conversion is not treated as a conversion for these 1998 and 1999 interim rules.

As did Notice 98–50, the final regulations provide that a reconversion made during 1998 or 1999 for which the IRA owner was not eligible is deemed to be an "excess reconversion" and does not change the IRA owner's taxable conversion amount. Instead, the excess reconversion and the last preceding recharacterization are not taken into account for purposes of determining the IRA owner's taxable conversion amount, and the IRA owner's taxable conversion amount is based on the last reconversion that was not an excess reconversion. An excess reconversion is otherwise treated as a valid reconversion. The final regulations grandfather conversions and reconversions made before November 1, 1998.

Distributions

In response to concerns raised in the comments regarding potential double taxation, the final regulations clarify that a nonqualified distribution from a Roth IRA is taxed only to the extent that the amount of the distribution, when added to all previous distributions (whether or not they were qualified distributions) and reduced by the taxable amount of such previous distributions, exceed the owner's contributions to all his or her Roth IRAs.

Commentators also asked for clarification regarding whether a beneficiary may aggregate his or her inherited Roth IRAs with other Roth IRAs maintained by such beneficiary. The final regulations provide that a beneficiary's inherited Roth IRA may not be aggregated with any other Roth IRA maintained by such beneficiary (except for other Roth IRAs that the beneficiary inherited from the same decedent), unless the beneficiary, as the spouse of the decedent and sole beneficiary of the Roth IRA, elects to treat the Roth IRA as his or her own.

In addition, commentators also asked for clarification regarding whether the 5-taxable year period for determining whether a distribution is a qualified distribution starts over for subsequent Roth IRA contributions if the entire account balance in a Roth IRA is distributed to the Roth IRA owner before he or she makes any other Roth IRA contributions. In such a case, the 5-taxable-year period does not start over. However, if an initial Roth IRA contribution is made to a Roth IRA that subsequently is revoked within 7 days, or if an initial Roth IRA contribution is recharacterized, the initial contribution does not start the 5-year period. The final regulations provide that an excess contribution that is distributed in accordance with section 408(d)(4) does not start the 5-year period.

One commentator questioned the rule in the proposed regulations providing that a distribution allocable to a conversion contribution is treated as made first from the portion (if any) that was includible in gross income as a result of the conversion. The IRS and Treasury note that this result is plainly compelled by section 408A(d)(4)(B)(ii). Another commentator inquired about the treatment of all conversions as designated distributions under section 3405; the commentator suggested that conversions effected by means of trustee-to-trustee transfers should not be treated as designated distributions subject to withholding. However, section 408A(d)(3) treats all Roth IRA conversions as distributions regardless of how they are effected.

Reporting Requirements

The final regulations retain the reporting rules set forth in the proposed regulations.

Effective Date

The final regulations are applicable to taxable years beginning on or after January 1, 1998, the effective date for section 408A.

Special Analyses

It has been determined that the final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Further, it is hereby certified, pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. The cost of the collection of information is insignificant because the primary reporting burden is on the individual

and not the small entity. Therefore the collection of information will not have a substantial economic impact. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of the final regulations is Cathy A. Vohs, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.408A–1 also issued under 26 U.S.C. 408A.
§ 1.408A–2 also issued under 26 U.S.C. 408A.
§ 1.408A–3 also issued under 26 U.S.C. 408A.
§ 1.408A–4 also issued under 26 U.S.C. 408A.
§ 1.408A–5 also issued under 26 U.S.C. 408A.
§ 1.408A–6 also issued under 26 U.S.C. 408A.
§ 1.408A–7 also issued under 26 U.S.C. 408A.
§ 1.408A–8 also issued under 26 U.S.C. 408A.
§ 1.408A–9 also issued under 26 U.S.C. 408A. * * *

Par. 2. Sections 1.408A–0 through 1.408A–9 are added to read as follows:

§ 1.408A–0 Roth IRAs; table of contents.

This table of contents lists the regulations relating to Roth IRAs under section 408A of the Internal Revenue Code as follows:

§ 1.408A–1 Roth IRAs in general.
§ 1.408A–2 Establishing Roth IRAs.
§ 1.408A–3 Contributions to Roth IRAs.
§ 1.408A–4 Converting amounts to Roth IRAs.
§ 1.408A–5 Recharacterized contributions.
§ 1.408A–6 Distributions.
§ 1.408A–7 Reporting.
§ 1.408A–8 Definitions.
§ 1.408A–9 Effective date.

§ 1.408A–1 Roth IRAs in general.

This section sets forth the following questions and answers that discuss the background and general features of Roth IRAs:

Q–1. What is a Roth IRA?

A–1. (a) A Roth IRA is a new type of individual retirement plan that individuals can use, beginning in 1998. Roth IRAs are described in section 408A, which was added by the Taxpayer Relief Act of 1997 (TRA 97), Public Law 105–34 (111 Stat. 788).

(b) Roth IRAs are treated like traditional IRAs except where the Internal Revenue Code specifies different treatment. For example, aggregate contributions (other than by a conversion or other rollover) to all an individual's Roth IRAs are not permitted to exceed $2,000 for a taxable year. Further, income earned on funds held in a Roth IRA is generally not taxable. Similarly, the rules of section 408(e), such as the loss of exemption of the account where the owner engages in a prohibited transaction, apply to Roth IRAs in the same manner as to traditional IRAs.

Q–2. What are the significant differences between traditional IRAs and Roth IRAs?

A–2. There are several significant differences between traditional IRAs and Roth IRAs under the Internal Revenue Code. For example, eligibility to contribute to a Roth IRA is subject to special modified AGI (adjusted gross income) limits; contributions to a Roth IRA are never deductible; qualified distributions from a Roth IRA are not includible in gross income; the required minimum distribution rules under section 408(a)(6) and (b)(3) (which generally incorporate the provisions of section 401(a)(9)) do not apply to a Roth IRA during the lifetime of the owner; and contributions to a Roth IRA can be made after the owner has attained age 70½.

§ 1.408A–2 Establishing Roth IRAs.

This section sets forth the following questions and answers that provide rules applicable to establishing Roth IRAs:

Q–1. Who can establish a Roth IRA?

A–1. Except as provided in A–3 of this section, only an individual can establish a Roth IRA. In addition, in order to be eligible to contribute to a Roth IRA for a particular year, an individual must satisfy certain compensation requirements and adjusted gross income limits (see § 1.408A–3 A–3).

Q–2. How is a Roth IRA established?

A–2. A Roth IRA can be established with any bank, insurance company, or other person authorized in accordance with § 1.408–2(e) to serve as a trustee with respect to IRAs. The document establishing the Roth IRA must clearly designate the IRA as a Roth IRA, and this designation cannot be changed at a later date. Thus, an IRA that is designated as a Roth IRA cannot later be treated as a traditional IRA. However, see § 1.408A–4 A–1(b)(3) for certain rules for converting a traditional IRA to a Roth IRA with the same trustee by redesignating the traditional IRA as a Roth IRA, and see § 1.408A–5 for rules for recharacterizing certain IRA contributions.

Q–3. Can an employer or an association of employees establish a Roth IRA to hold contributions of employees or members?

A–3. Yes. Pursuant to section 408(c), an employer or an association of employees can establish a trust to hold contributions of employees or members made under a Roth IRA. Each employee's or member's account in the trust is treated as a separate Roth IRA that is subject to the generally applicable Roth IRA rules. The employer or association of employees may do certain acts otherwise required by an individual, for example, establishing and designating a trust as a Roth IRA.

Q–4. What is the effect of a surviving spouse of a Roth IRA owner treating an IRA as his or her own?

A–4. If the surviving spouse of a Roth IRA owner treats a Roth IRA as his or her own as of a date, the Roth IRA is treated from that date forward as though it were established for the benefit of the surviving spouse and not the original Roth IRA owner. Thus, for example, the surviving spouse is treated as the Roth IRA owner for purposes of applying the minimum distribution requirements under section 408(a)(6) and (b)(3). Similarly, the surviving spouse is treated as the Roth IRA owner rather than a beneficiary for purposes of determining the amount of any distribution from the Roth IRA that is includible in gross income and whether the distribution is subject to the 10-percent additional tax under section 72(t).

§ 1.408A–3 Contributions to Roth IRAs.

This section sets forth the following questions and answers that provide rules regarding contributions to Roth IRAs:

Q–1. What types of contributions are permitted to be made to a Roth IRA?

A–1. There are two types of contributions that are permitted to be

made to a Roth IRA: regular contributions and qualified rollover contributions (including conversion contributions). The term regular contributions means contributions other than qualified rollover contributions.

Q–2. When are contributions permitted to be made to a Roth IRA?

A–2. (a) The provisions of section 408A are effective for taxable years beginning on or after January 1, 1998. Thus, the first taxable year for which contributions are permitted to be made to a Roth IRA by an individual is the individual's taxable year beginning in 1998.

(b) Regular contributions for a particular taxable year must generally be contributed by the due date (not including extensions) for filing a Federal income tax return for that taxable year. (See § 1.408A–5 regarding recharacterization of certain contributions.)

Q–3. What is the maximum aggregate amount of regular contributions an individual is eligible to contribute to a Roth IRA for a taxable year?

A–3. (a) The maximum aggregate amount that an individual is eligible to contribute to all his or her Roth IRAs as a regular contribution for a taxable year is the same as the maximum for traditional IRAs: $2,000 or, if less, that individual's compensation for the year.

(b) For Roth IRAs, the maximum amount described in paragraph (a) of this A–3 is phased out between certain levels of modified AGI. For an individual who is not married, the dollar amount is phased out ratably between modified AGI of $95,000 and $110,000; for a married individual filing a joint return, between modified AGI of $150,000 and $160,000; and for a married individual filing separately, between modified AGI of $0 and $10,000. For this purpose, a married individual who has lived apart from his or her spouse for the entire taxable year and who files separately is treated as not married. Under section 408A(c)(3)(A), in applying the phase-out, the maximum amount is rounded up to the next higher multiple of $10 and is not reduced below $200 until completely phased out.

(c) If an individual makes regular contributions to both traditional IRAs and Roth IRAs for a taxable year, the maximum limit for the Roth IRA is the lesser of—

(1) The amount described in paragraph (a) of this A–3 reduced by the amount contributed to traditional IRAs for the taxable year; and

(2) The amount described in paragraph (b) of this A–3. Employer contributions, including elective deferrals, made under a SEP or SIMPLE IRA Plan on behalf of an individual (including a self-employed individual) do not reduce the amount of the individual's maximum regular contribution.

(d) The rules in this A–3 are illustrated by the following examples:

Example 1. In 1998, unmarried, calendar-year taxpayer B, age 60, has modified AGI of $40,000 and compensation of $5,000. For 1998, B can contribute a maximum of $2,000 to a traditional IRA, a Roth IRA or a combination of traditional and Roth IRAs.

Example 2. The facts are the same as in *Example 1.* However, assume that B violates the maximum regular contribution limit by contributing $2,000 to a traditional IRA and $2,000 to a Roth IRA for 1998. The $2,000 to B's Roth IRA would be an excess contribution to B's Roth IRA for 1998 because an individual's contributions are applied first to a traditional IRA, then to a Roth IRA.

Example 3. The facts are the same as in *Example 1,* except that B's compensation is $900. The maximum amount B can contribute to either a traditional IRA or a Roth (or a combination of the two) for 1998 is $900.

Example 4. In 1998, unmarried, calendar-year taxpayer C, age 60, has modified AGI of $100,000 and compensation of $5,000. For 1998, C contributes $800 to a traditional IRA and $1,200 to a Roth IRA. Because C's $1,200 Roth IRA contribution does not exceed the phased-out maximum Roth IRA contribution of $1,340 and because C's total IRA contributions do not exceed $2,000, C's Roth IRA contribution does not exceed the maximum permissible contribution.

Q–4. How is compensation defined for purposes of the Roth IRA contribution limit?

A–4. For purposes of the contribution limit described in A–3 of this section, an individual's compensation is the same as that used to determine the maximum contribution an individual can make to a traditional IRA. This amount is defined in section 219(f)(1) to include wages, commissions, professional fees, tips, and other amounts received for personal services, as well as taxable alimony and separate maintenance payments received under a decree of divorce or separate maintenance. Compensation also includes earned income as defined in section 401(c)(2), but does not include any amount received as a pension or annuity or as deferred compensation. In addition, under section 219(c), a married individual filing a joint return is permitted to make an IRA contribution by treating his or her spouse's higher compensation as his or her own, but only to the extent that the spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a traditional IRA.

Q–5. What is the significance of modified AGI and how is it determined?

A–5. Modified AGI is used for purposes of the phase-out rules described in A–3 of this section and for purposes of the $100,000 modified AGI limitation described in § 1.408A–4 A–2(a) (relating to eligibility for conversion). As defined in section 408A(c)(3)(C)(i), modified AGI is the same as adjusted gross income under section 219(g)(3)(A) (used to determine the amount of deductible contributions that can be made to a traditional IRA by an individual who is an active participant in an employer-sponsored retirement plan), except that any conversion is disregarded in determining modified AGI. For example, the deduction for contributions to an IRA is not taken into account for purposes of determining adjusted gross income under section 219 and thus does not apply in determining modified AGI for Roth IRA purposes.

Q–6. Is a required minimum distribution from an IRA for a year included in income for purposes of determining modified AGI?

A–6. (a) Yes. For taxable years beginning before January 1, 2005, any required minimum distribution from an IRA under section 408(a)(6) and (b)(3) (which generally incorporate the provisions of section 401(a)(9)) is included in income for purposes of determining modified AGI.

(b) For taxable years beginning after December 31, 2004, and solely for purposes of the $100,000 limitation applicable to conversions, modified AGI does not include any required minimum distributions from an IRA under section 408(a)(6) and (b)(3).

Q–7. Does an excise tax apply if an individual exceeds the aggregate regular contribution limits for Roth IRAs?

A–7. Yes. Section 4973 imposes an annual 6-percent excise tax on aggregate amounts contributed to Roth IRAs that exceed the maximum contribution limits described in A–3 of this section. Any contribution that is distributed, together with net income, from a Roth IRA on or before the tax return due date (plus extensions) for the taxable year of the contribution is treated as not contributed. Net income described in the previous sentence is includible in gross income for the taxable year in which the contribution is made. Aggregate excess contributions that are not distributed from a Roth IRA on or before the tax return due date (with extensions) for the taxable year of the contributions are reduced as a deemed Roth IRA contribution for each

subsequent taxable year to the extent that the Roth IRA owner does not actually make regular IRA contributions for such years. Section 4973 applies separately to an individual's Roth IRAs and other types of IRAs.

§ 1.408A–4 Converting amounts to Roth IRAs.

This section sets forth the following questions and answers that provide rules applicable to Roth IRA conversions:

Q–1. Can an individual convert an amount in his or her traditional IRA to a Roth IRA?

A–1. (a) Yes. An amount in a traditional IRA may be converted to an amount in a Roth IRA if two requirements are satisfied. First, the IRA owner must satisfy the modified AGI limitation described in A–2(a) of this section and, if married, the joint filing requirement described in A–2(b) of this section. Second, the amount contributed to the Roth IRA must satisfy the definition of a qualified rollover contribution in section 408A(e) (i.e., it must satisfy the requirements for a rollover contribution as defined in section 408(d)(3), except that the one-rollover-per-year limitation in section 408(d)(3)(B) does not apply).

(b) An amount can be converted by any of three methods—

(1) An amount distributed from a traditional IRA is contributed (rolled over) to a Roth IRA within the 60-day period described in section 408(d)(3)(A)(i);

(2) An amount in a traditional IRA is transferred in a trustee-to-trustee transfer from the trustee of the traditional IRA to the trustee of the Roth IRA; or

(3) An amount in a traditional IRA is transferred to a Roth IRA maintained by the same trustee. For purposes of sections 408 and 408A, redesignating a traditional IRA as a Roth IRA is treated as a transfer of the entire account balance from a traditional IRA to a Roth IRA.

(c) Any converted amount is treated as a distribution from the traditional IRA and a qualified rollover contribution to the Roth IRA for purposes of section 408 and section 408A, even if the conversion is accomplished by means of a trustee-to-trustee transfer or a transfer between IRAs of the same trustee.

(d) A transaction that is treated as a failed conversion under § 1.408A–5 A–9(a)(1) is not a conversion.

Q–2. What are the modified AGI limitation and joint filing requirements for conversions?

A–2. (a) An individual with modified AGI in excess of $100,000 for a taxable year is not permitted to convert an amount to a Roth IRA during that taxable year. This $100,000 limitation applies to the taxable year that the funds are paid from the traditional IRA, rather than the year they are contributed to the Roth IRA.

(b) If the individual is married, he or she is permitted to convert an amount to a Roth IRA during a taxable year only if the individual and the individual's spouse file a joint return for the taxable year that the funds are paid from the traditional IRA. In this case, the modified AGI subject to the $100,000 limit is the modified AGI derived from the joint return using the couple's combined income. The only exception to this joint filing requirement is for an individual who has lived apart from his or her spouse for the entire taxable year. If the married individual has lived apart from his or her spouse for the entire taxable year, then such individual can treat himself or herself as not married for purposes of this paragraph, file a separate return and be subject to the $100,000 limit on his or her separate modified AGI. In all other cases, a married individual filing a separate return is not permitted to convert an amount to a Roth IRA, regardless of the individual's modified AGI.

Q–3. Is a remedy available to an individual who makes a failed conversion?

A–3. (a) Yes. See § 1.408A–5 for rules permitting a failed conversion amount to be recharacterized as a contribution to a traditional IRA. If the requirements in § 1.408A–5 are satisfied, the failed conversion amount will be treated as having been contributed to the traditional IRA and not to the Roth IRA.

(b) If the contribution is not recharacterized in accordance with § 1.408A–5, the contribution will be treated as a regular contribution to the Roth IRA and, thus, an excess contribution subject to the excise tax under section 4973 to the extent that it exceeds the individual's regular contribution limit. This is the result regardless of which of the three methods described in A–1(b) of this section applies to this transaction. Additionally, the distribution from the traditional IRA will not be eligible for the 4-year spread and will be subject to the additional tax under section 72(t) (unless an exception under that section applies).

Q–4. Do any special rules apply to a conversion of an amount in an individual's SEP IRA or SIMPLE IRA to a Roth IRA?

A–4. (a) An amount in an individual's SEP IRA can be converted to a Roth IRA on the same terms as an amount in any other traditional IRA.

(b) An amount in an individual's SIMPLE IRA can be converted to a Roth IRA on the same terms as a conversion from a traditional IRA, except that an amount distributed from a SIMPLE IRA during the 2-year period described in section 72(t)(6), which begins on the date that the individual first participated in any SIMPLE IRA Plan maintained by the individual's employer, cannot be converted to a Roth IRA. Pursuant to section 408(d)(3)(G), a distribution of an amount from an individual's SIMPLE IRA during this 2-year period is not eligible to be rolled over into an IRA that is not a SIMPLE IRA and thus cannot be a qualified rollover contribution. This 2-year period of section 408(d)(3)(G) applies separately to the contributions of each of an individual's employers maintaining a SIMPLE IRA Plan.

(c) Once an amount in a SEP IRA or SIMPLE IRA has been converted to a Roth IRA, it is treated as a contribution to a Roth IRA for all purposes. Future contributions under the SEP or under the SIMPLE IRA Plan may not be made to the Roth IRA.

Q–5. Can amounts in other kinds of retirement plans be converted to a Roth IRA?

A–5. No. Only amounts in another IRA can be converted to a Roth IRA. For example, amounts in a qualified plan or annuity plan described in section 401(a) or 403(a) cannot be converted directly to a Roth IRA. Also, amounts held in an annuity contract or account described in section 403(b) cannot be converted directly to a Roth IRA.

Q–6. Can an individual who has attained at least age 70½ by the end of a calendar year convert an amount distributed from a traditional IRA during that year to a Roth IRA before receiving his or her required minimum distribution with respect to the traditional IRA for the year of the conversion?

A–6. (a) No. In order to be eligible for a conversion, an amount first must be eligible to be rolled over. Section 408(d)(3) prohibits the rollover of a required minimum distribution. If a minimum distribution is required for a year with respect to an IRA, the first dollars distributed during that year are treated as consisting of the required minimum distribution until an amount equal to the required minimum distribution for that year has been distributed.

(b) As provided in A–1(c) of this section, any amount converted is treated as a distribution from a traditional IRA and a rollover contribution to a Roth

IRA and not as a trustee-to-trustee transfer for purposes of section 408 and section 408A. Thus, in a year for which a minimum distribution is required (including the calendar year in which the individual attains age 70½), an individual may not convert the assets of an IRA (or any portion of those assets) to a Roth IRA to the extent that the required minimum distribution for the traditional IRA for the year has not been distributed.

(c) If a required minimum distribution is contributed to a Roth IRA, it is treated as having been distributed, subject to the normal rules under section 408(d)(1) and (2), and then contributed as a regular contribution to a Roth IRA. The amount of the required minimum distribution is not a conversion contribution.

Q–7. What are the tax consequences when an amount is converted to a Roth IRA?

A–7. (a) Any amount that is converted to a Roth IRA is includible in gross income as a distribution according to the rules of section 408(d)(1) and (2) for the taxable year in which the amount is distributed or transferred from the traditional IRA. Thus, any portion of the distribution or transfer that is treated as a return of basis under section 408(d)(1) and (2) is not includible in gross income as a result of the conversion.

(b) The 10-percent additional tax under section 72(t) generally does not apply to the taxable conversion amount. But see § 1.408A–6 A–5 for circumstances under which the taxable conversion amount would be subject to the additional tax under section 72(t).

(c) Pursuant to section 408A(e), a conversion is not treated as a rollover for purposes of the one-rollover-per-year rule of section 408(d)(3)(B).

Q–8. Is there an exception to the income-inclusion rule described in A–7 of this section for 1998 conversions?

A–8. Yes. In the case of a distribution (including a trustee-to-trustee transfer) from a traditional IRA on or before December 31, 1998, that is converted to a Roth IRA, instead of having the entire taxable conversion amount includible in income in 1998, an individual includes in gross income for 1998 only one quarter of that amount and one quarter of that amount for each of the next 3 years. This 4-year spread also applies if the conversion amount was distributed in 1998 and contributed to the Roth IRA within the 60-day period described in section 408(d)(3)(A)(i), but after December 31, 1998. However, see § 1.408A–6 A–6 for special rules requiring acceleration of inclusion if an amount subject to the 4-year spread is distributed from the Roth IRA before 2001.

Q–9. Is the taxable conversion amount included in income for all purposes?

A–9. Except as provided below, any taxable conversion amount includible in gross income for a year as a result of the conversion (regardless of whether the individual is using a 4-year spread) is included in income for all purposes. Thus, for example, it is counted for purposes of determining the taxable portion of social security payments under section 86 and for purposes of determining the phase-out of the $25,000 exemption under section 469(i) relating to the disallowance of passive activity losses from rental real estate activities. However, as provided in § 1.408A–3 A–5, the taxable conversion amount (and any resulting change in other elements of adjusted gross income) is disregarded for purposes of determining modified AGI for section 408A.

Q–10. Can an individual who makes a 1998 conversion elect not to have the 4-year spread apply and instead have the full taxable conversion amount includible in gross income for 1998?

A–10. Yes. Instead of having the taxable conversion amount for a 1998 conversion included over 4 years as provided under A–8 of this section, an individual can elect to include the full taxable conversion amount in income for 1998. The election is made on Form 8606 and cannot be made or changed after the due date (including extensions) for filing the 1998 Federal income tax return.

Q–11. What happens when an individual who is using the 4-year spread dies, files separately, or divorces before the full taxable conversion amount has been included in gross income?

A–11. (a) If an individual who is using the 4-year spread described in A–8 of this section dies before the full taxable conversion amount has been included in gross income, then the remainder must be included in the individual's gross income for the taxable year that includes the date of death.

(b) However, if the sole beneficiary of all the decedent's Roth IRAs is the decedent's spouse, then the spouse can elect to continue the 4-year spread. Thus, the spouse can elect to include in gross income the same amount that the decedent would have included in each of the remaining years of the 4-year period. Where the spouse makes such an election, the amount includible under the 4-year spread for the taxable year that includes the date of the decedent's death remains includible in the decedent's gross income and is reported on the decedent's final Federal income tax return. The election is made on either Form 8606 or Form 1040, in accordance with the instructions to the applicable form, for the taxable year that includes the decedent's date of death and cannot be changed after the due date (including extensions) for filing the Federal income tax return for the spouse's taxable year that includes the decedent's date of death.

(c) If a Roth IRA owner who is using the 4-year spread and who was married in 1998 subsequently files separately or divorces before the full taxable conversion amount has been included in gross income, the remainder of the taxable conversion amount must be included in the Roth IRA owner's gross income over the remaining years in the 4-year period (unless accelerated because of distribution or death).

Q–12. Can an individual convert a traditional IRA to a Roth IRA if he or she is receiving substantially equal periodic payments within the meaning of section 72(t)(2)(A)(iv) from that traditional IRA?

A–12. Yes. Not only is the conversion amount itself not subject to the early distribution tax under section 72(t), but the conversion amount is also not treated as a distribution for purposes of determining whether a modification within the meaning of section 72(t)(4)(A) has occurred. Distributions from the Roth IRA that are part of the original series of substantially equal periodic payments will be nonqualified distributions from the Roth IRA until they meet the requirements for being a qualified distribution, described in § 1.408A–6 A–1(b). The additional 10-percent tax under section 72(t) will not apply to the extent that these nonqualified distributions are part of a series of substantially equal periodic payments. Nevertheless, to the extent that such distributions are allocable to a 1998 conversion contribution with respect to which the 4-year spread for the resultant income inclusion applies (see A–8 of this section) and are received during 1998, 1999, or 2000, the special acceleration rules of § 1.408A–6 A–6 apply. However, if the original series of substantially equal periodic payments does not continue to be distributed in substantially equal periodic payments from the Roth IRA after the conversion, the series of payments will have been modified and, if this modification occurs within 5 years of the first payment or prior to the individual becoming disabled or attaining age 59½, the taxpayer will be subject to the recapture tax of section 72(t)(4)(A).

Q–13. Can a 1997 distribution from a traditional IRA be converted to a Roth IRA in 1998?

A–13. No. An amount distributed from a traditional IRA in 1997 that is contributed to a Roth IRA in 1998 would not be a conversion contribution. See A–3 of this section regarding the remedy for a failed conversion.

§ 1.408A–5 Recharacterized contributions.

This section sets forth the following questions and answers that provide rules regarding recharacterizing IRA contributions:

Q–1. Can an IRA owner recharacterize certain contributions (i.e., treat a contribution made to one type of IRA as made to a different type of IRA) for a taxable year?

A–1. (a) Yes. In accordance with section 408A(d)(6), except as otherwise provided in this section, if an individual makes a contribution to an IRA (the FIRST IRA) for a taxable year and then transfers the contribution (or a portion of the contribution) in a trustee-to-trustee transfer from the trustee of the FIRST IRA to the trustee of another IRA (the SECOND IRA), the individual can elect to treat the contribution as having been made to the SECOND IRA, instead of to the FIRST IRA, for Federal tax purposes. A transfer between the FIRST IRA and the SECOND IRA will not fail to be a trustee-to-trustee transfer merely because both IRAs are maintained by the same trustee. For purposes of section 408A(d)(6), redesignating the FIRST IRA as the SECOND IRA will be treated as a transfer of the entire account balance from the FIRST IRA to the SECOND IRA.

(b) This recharacterization election can be made only if the trustee-to-trustee transfer from the FIRST IRA to the SECOND IRA is made on or before the due date (including extensions) for filing the individual's Federal income tax return for the taxable year for which the contribution was made to the FIRST IRA. For purposes of this section, a conversion that is accomplished through a rollover of a distribution from a traditional IRA in a taxable year that, 60 days after the distribution (as described in section 408(d)(3)(A)(i)), is contributed to a Roth IRA in the next taxable year is treated as a contribution for the earlier taxable year.

Q–2. What is the proper treatment of the net income attributable to the amount of a contribution that is being recharacterized?

A–2. (a) The net income attributable to the amount of a contribution that is being recharacterized must be transferred to the SECOND IRA along with the contribution.

(b) If the amount of the contribution being recharacterized was contributed to a separate IRA and no distributions or additional contributions have been made from or to that IRA at any time, then the contribution is recharacterized by the trustee of the FIRST IRA transferring the entire account balance of the FIRST IRA to the trustee of the SECOND IRA. In this case, the net income (or loss) attributable to the contribution being recharacterized is the difference between the amount of the original contribution and the amount transferred.

(c) If paragraph (b) of this A–2 does not apply, then the net income attributable to the amount of a contribution is calculated in the manner prescribed by § 1.408–4(c)(2)(ii) (disregarding the parenthetical clause in § 1.408–4(c)(2)(iii)).

Q–3. What is the effect of recharacterizing a contribution made to the FIRST IRA as a contribution made to the SECOND IRA?

A–3. The contribution that is being recharacterized as a contribution to the SECOND IRA is treated as having been originally contributed to the SECOND IRA on the same date and (in the case of a regular contribution) for the same taxable year that the contribution was made to the FIRST IRA. Thus, for example, no deduction would be allowed for a contribution to the FIRST IRA, and any net income transferred with the recharacterized contribution is treated as earned in the SECOND IRA, and not the FIRST IRA.

Q–4. Can an amount contributed to an IRA in a tax-free transfer be recharacterized under A–1 of this section?

A–4. No. If an amount is contributed to the FIRST IRA in a tax-free transfer, the amount cannot be recharacterized as a contribution to the SECOND IRA under A–1 of this section. However, if an amount is erroneously rolled over or transferred from a traditional IRA to a SIMPLE IRA, the contribution can subsequently be recharacterized as a contribution to another traditional IRA.

Q–5. Can an amount contributed by an employer under a SIMPLE IRA Plan or a SEP be recharacterized under A–1 of this section?

A–5. No. Employer contributions (including elective deferrals) under a SIMPLE IRA Plan or a SEP cannot be recharacterized as contributions to another IRA under A–1 of this section. However, an amount converted from a SEP IRA or SIMPLE IRA to a Roth IRA may be recharacterized under A–1 of this section as a contribution to a SEP IRA or SIMPLE IRA, including the original SEP IRA or SIMPLE IRA.

Q–6. How does a taxpayer make the election to recharacterize a contribution to an IRA for a taxable year?

A–6. (a) An individual makes the election described in this section by notifying, on or before the date of the transfer, both the trustee of the FIRST IRA and the trustee of the SECOND IRA, that the individual has elected to treat the contribution as having been made to the SECOND IRA, instead of the FIRST IRA, for Federal tax purposes. The notification of the election must include the following information: the type and amount of the contribution to the FIRST IRA that is to be recharacterized; the date on which the contribution was made to the FIRST IRA and the year for which it was made; a direction to the trustee of the FIRST IRA to transfer, in a trustee-to-trustee transfer, the amount of the contribution and net income allocable to the contribution to the trustee of the SECOND IRA; and the name of the trustee of the FIRST IRA and the trustee of the SECOND IRA and any additional information needed to make the transfer.

(b) The election and the trustee-to-trustee transfer must occur on or before the due date (including extensions) for filing the individual's Federal income tax return for the taxable year for which the recharacterized contribution was made to the FIRST IRA, and the election cannot be revoked after the transfer. An individual who makes this election must report the recharacterization, and must treat the contribution as having been made to the SECOND IRA, instead of the FIRST IRA, on the individual's Federal income tax return for the taxable year described in the preceding sentence in accordance with the applicable Federal tax forms and instructions.

(c) The election to recharacterize a contribution described in this A–6 may be made on behalf of a deceased IRA owner by his or her executor, administrator, or other person responsible for filing the final Federal income tax return of the decedent under section 6012(b)(1).

Q–7. If an amount is initially contributed to an IRA for a taxable year, then is moved (with net income attributable to the contribution) in a tax-free transfer to another IRA (the FIRST IRA for purposes of A–1 of this section), can the tax-free transfer be disregarded, so that the initial contribution that is transferred from the FIRST IRA to the SECOND IRA is treated as a recharacterization of that initial contribution?

A–7. Yes. In applying section 408A(d)(6), tax-free transfers between IRAs are disregarded. Thus, if a

contribution to an IRA for a year is followed by one or more tax-free transfers between IRAs prior to the recharacterization, then for purposes of section 408A(d)(6), the contribution is treated as if it remained in the initial IRA. Consequently, an individual may elect to recharacterize an initial contribution made to the initial IRA that was involved in a series of tax-free transfers by making a trustee-to-trustee transfer from the last IRA in the series to the SECOND IRA. In this case the contribution to the SECOND IRA is treated as made on the same date (and for the same taxable year) as the date the contribution being recharacterized was made to the initial IRA.

Q–8. If a contribution is recharacterized, is the recharacterization treated as a rollover for purposes of the one-rollover-per-year limitation of section 408(d)(3)(B)?

A–8. No, recharacterizing a contribution under A–1 of this section is never treated as a rollover for purposes of the one-rollover-per-year limitation of section 408(d)(3)(B), even if the contribution would have been treated as a rollover contribution by the SECOND IRA if it had been made directly to the SECOND IRA, rather than as a result of a recharacterization of a contribution to the FIRST IRA.

Q–9. If an IRA owner converts an amount from a traditional IRA to a Roth IRA and then transfers that amount back to a traditional IRA in a recharacterization, may the IRA owner subsequently reconvert that amount from the traditional IRA to a Roth IRA?

A–9. (a)(1) Except as otherwise provided in paragraph (b) of this A–9, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during any taxable year and then transfers that amount back to a traditional IRA by means of a recharacterization may not reconvert that amount from the traditional IRA to a Roth IRA before the beginning of the taxable year following the taxable year in which the amount was converted to a Roth IRA or, if later, the end of the 30-day period beginning on the day on which the IRA owner transfers the amount from the Roth IRA back to a traditional IRA by means of a recharacterization (regardless of whether the recharacterization occurs during the taxable year in which the amount was converted to a Roth IRA or the following taxable year). Thus, any attempted reconversion of an amount prior to the time permitted under this paragraph (a)(1) is a failed conversion of that amount. However, see § 1.408A–4 A–3 for a remedy available to an individual who makes a failed conversion.

(2) For purposes of paragraph (a)(1) of this A–9, a failed conversion of an amount resulting from a failure to satisfy the requirements of § 1.408A–4 A–1(a) is treated as a conversion in determining whether an IRA owner has previously converted that amount.

(b)(1) An IRA owner who converts an amount from a traditional IRA to a Roth IRA during taxable year 1998 and then transfers that amount back to a traditional IRA by means of a recharacterization may reconvert that amount once (but no more than once) on or after November 1, 1998 and on or before December 31, 1998; the IRA owner may also reconvert that amount once (but no more than once) during 1999. The rule set forth in the preceding sentence applies without regard to whether the IRA owner's initial conversion or recharacterization of the amount occurred before, on, or after November 1, 1998. An IRA owner who converts an amount from a traditional IRA to a Roth IRA during taxable year 1999 that has not been converted previously and then transfers that amount back to a traditional IRA by means of a recharacterization may reconvert that amount once (but no more than once) on or before December 31, 1999. For purposes of this paragraph (b)(1), a failed conversion of an amount resulting from a failure to satisfy the requirements of § 1.408A–4 A–1(a) is not treated as a conversion in determining whether an IRA owner has previously converted that amount.

(2) A reconversion by an IRA owner during 1998 or 1999 for which the IRA owner is not eligible under paragraph (b)(1) of this A–9 will be deemed an excess reconversion (rather than a failed conversion) and will not change the IRA owner's taxable conversion amount. Instead, the excess reconversion and the last preceding recharacterization will not be taken into account for purposes of determining the IRA owner's taxable conversion amount, and the IRA owner's taxable conversion amount will be based on the last reconversion that was not an excess reconversion (unless, after the excess reconversion, the amount is transferred back to a traditional IRA by means of a recharacterization). An excess reconversion will otherwise be treated as a valid reconversion.

(3) For purposes of this paragraph (b), any reconversion that an IRA owner made before November 1, 1998 will not be treated as an excess reconversion and will not be taken into account in determining whether any later reconversion is an excess reconversion.

(c) In determining the portion of any amount held in a Roth IRA or a traditional IRA that an IRA owner may not reconvert under this A–9, any amount previously converted (or reconverted) is adjusted for subsequent net income thereon.

Q–10. Are there examples to illustrate the rules in this section?

A–10. The rules in this section are illustrated by the following examples:

Example 1. In 1998, Individual C converts the entire amount in his traditional IRA to a Roth IRA. Individual C thereafter determines that his modified AGI for 1998 exceeded $100,000 so that he was ineligible to have made a conversion in that year. Accordingly, prior to the due date (plus extensions) for filing the individual's Federal income tax return for 1998, he decides to recharacterize the conversion contribution. He instructs the trustee of the Roth IRA (FIRST IRA) to transfer in a trustee-to-trustee transfer the amount of the contribution, plus net income, to the trustee of a new traditional IRA (SECOND IRA). The individual notifies the trustee of the FIRST IRA and the trustee of the SECOND IRA that he is recharacterizing his IRA contribution (and provides the other information described in A–6 of this section). On the individual's Federal income tax return for 1998, he treats the original amount of the conversion as having been contributed to the SECOND IRA and not the Roth IRA. As a result, for Federal tax purposes, the contribution is treated as having been made to the SECOND IRA and not to the Roth IRA. The result would be the same if the conversion amount had been transferred in a tax-free transfer to another Roth IRA prior to the recharacterization.

Example 2. In 1998, an individual makes a $2,000 regular contribution for 1998 to his traditional IRA (FIRST IRA). Prior to the due date (plus extensions) for filing the individual's Federal income tax return for 1998, he decides that he would prefer to contribute to a Roth IRA instead. The individual instructs the trustee of the FIRST IRA to transfer in a trustee-to-trustee transfer the amount of the contribution, plus attributable net income, to the trustee of a Roth IRA (SECOND IRA). The individual notifies the trustee of the FIRST IRA and the trustee of the SECOND IRA that he is recharacterizing his $2,000 contribution for 1998 (and provides the other information described in A–6 of this section). On the individual's Federal income tax return for 1998, he treats the $2,000 as having been contributed to the Roth IRA for 1998 and not to the traditional IRA. As a result, for Federal tax purposes, the contribution is treated as having been made to the Roth IRA for 1998 and not to the traditional IRA. The result would be the same if the conversion amount had been transferred in a tax-free transfer to another traditional IRA prior to the recharacterization.

Example 3. The facts are the same as in *Example 2*, except that the $2,000 regular contribution is initially made to a Roth IRA and the recharacterizing transfer is made to a traditional IRA. On the individual's Federal income tax return for 1998, he treats the

$2,000 as having been contributed to the traditional IRA for 1998 and not the Roth IRA. As a result, for Federal tax purposes, the contribution is treated as having been made to the traditional IRA for 1998 and not the Roth IRA. The result would be the same if the contribution had been transferred in a tax-free transfer to another Roth IRA prior to the recharacterization, except that the only Roth IRA trustee the individual must notify is the one actually making the recharacterization transfer.

Example 4. In 1998, an individual receives a distribution from traditional IRA 1 and contributes the entire amount to traditional IRA 2 in a rollover contribution described in section 408(d)(3). In this case, the individual cannot elect to recharacterize the contribution by transferring the contribution amount, plus net income, to a Roth IRA, because an amount contributed to an IRA in a tax-free transfer cannot be recharacterized. However, the individual may convert (other than by recharacterization) the amount in traditional IRA 2 to a Roth IRA at any time, provided the requirements of § 1.408A–4 A–1 are satisfied.

§ 1.408A–6 Distributions.

This section sets forth the following questions and answers that provide rules regarding distributions from Roth IRAs:

Q–1. How are distributions from Roth IRAs taxed?

A–1. (a) The taxability of a distribution from a Roth IRA generally depends on whether or not the distribution is a qualified distribution. This A–1 provides rules for qualified distributions and certain other nontaxable distributions. A–4 of this section provides rules for the taxability of distributions that are not qualified distributions.

(b) A distribution from a Roth IRA is not includible in the owner's gross income if it is a qualified distribution or to the extent that it is a return of the owner's contributions to the Roth IRA (determined in accordance with A–8 of this section). A qualified distribution is one that is both—

(1) Made after a 5-taxable-year period (defined in A–2 of this section); and

(2) Made on or after the date on which the owner attains age 59½, made to a beneficiary or the estate of the owner on or after the date of the owner's death, attributable to the owner's being disabled within the meaning of section 72(m)(7), or to which section 72(t)(2)(F) applies (exception for first-time home purchase).

(c) An amount distributed from a Roth IRA will not be included in gross income to the extent it is rolled over to another Roth IRA on a tax-free basis under the rules of sections 408(d)(3) and 408A(e).

(d) Contributions that are returned to the Roth IRA owner in accordance with section 408(d)(4) (corrective distributions) are not includible in gross income, but any net income required to be distributed under section 408(d)(4) together with the contributions is includible in gross income for the taxable year in which the contributions were made.

Q–2. When does the 5-taxable-year period described in A–1 of this section (relating to qualified distributions) begin and end?

A–2. The 5-taxable-year period described in A–1 of this section begins on the first day of the individual's taxable year for which the first regular contribution is made to any Roth IRA of the individual or, if earlier, the first day of the individual's taxable year in which the first conversion contribution is made to any Roth IRA of the individual. The 5-taxable-year period ends on the last day of the individual's fifth consecutive taxable year beginning with the taxable year described in the preceding sentence. For example, if an individual whose taxable year is the calendar year makes a first-time regular Roth IRA contribution any time between January 1, 1998, and April 15, 1999, for 1998, the 5-taxable-year period begins on January 1, 1998. Thus, each Roth IRA owner has only one 5-taxable-year period described in A–1 of this section for all the Roth IRAs of which he or she is the owner. Further, because of the requirement of the 5-taxable-year period, no qualified distributions can occur before taxable years beginning in 2003. For purposes of this A–2, the amount of any contribution distributed as a corrective distribution under A–1(d) of this section is treated as if it was never contributed.

Q–3. If a distribution is made to an individual who is the sole beneficiary of his or her deceased spouse's Roth IRA and the individual is treating the Roth IRA as his or her own, can the distribution be a qualified distribution based on being made to a beneficiary on or after the owner's death?

A–3. No. If a distribution is made to an individual who is the sole beneficiary of his or her deceased spouse's Roth IRA and the individual is treating the Roth IRA as his or her own, then, in accordance with § 1.408A–2 A–4, the distribution is treated as coming from the individual's own Roth IRA and not the deceased spouse's Roth IRA. Therefore, for purposes of determining whether the distribution is a qualified distribution, it is not treated as made to a beneficiary on or after the owner's death.

Q–4. How is a distribution from a Roth IRA taxed if it is not a qualified distribution?

A–4. A distribution that is not a qualified distribution, and is neither contributed to another Roth IRA in a qualified rollover contribution nor constitutes a corrective distribution, is includible in the owner's gross income to the extent that the amount of the distribution, when added to the amount of all prior distributions from the owner's Roth IRAs (whether or not they were qualified distributions) and reduced by the amount of those prior distributions previously includible in gross income, exceeds the owner's contributions to all his or her Roth IRAs. For purposes of this A–4, any amount distributed as a corrective distribution is treated as if it was never contributed.

Q–5. Will the additional tax under 72(t) apply to the amount of a distribution that is not a qualified distribution?

A–5. (a) The 10-percent additional tax under section 72(t) will apply (unless the distribution is excepted under section 72(t)) to any distribution from a Roth IRA includible in gross income.

(b) The 10-percent additional tax under section 72(t) also applies to a nonqualified distribution, even if it is not then includible in gross income, to the extent it is allocable to a conversion contribution, if the distribution is made within the 5-taxable-year period beginning with the first day of the individual's taxable year in which the conversion contribution was made. The 5-taxable-year period ends on the last day of the individual's fifth consecutive taxable year beginning with the taxable year described in the preceding sentence. For purposes of applying the tax, only the amount of the conversion contribution includible in gross income as a result of the conversion is taken into account. The exceptions under section 72(t) also apply to such a distribution.

(c) The 5-taxable-year period described in this A–5 for purposes of determining whether section 72(t) applies to a distribution allocable to a conversion contribution is separately determined for each conversion contribution, and need not be the same as the 5-taxable-year period used for purposes of determining whether a distribution is a qualified distribution under A–1(b) of this section. For example, if a calendar-year taxpayer who received a distribution from a traditional IRA on December 31, 1998, makes a conversion contribution by contributing the distributed amount to a Roth IRA on February 25, 1999 in a qualifying rollover contribution and makes a regular contribution for 1998 on the same date, the 5-taxable-year period for purposes of this A–5 begins on

January 1, 1999, while the 5-taxable-year period for purposes of A–1(b) of this section begins on January 1, 1998.

Q–6. Is there a special rule for taxing distributions allocable to a 1998 conversion?

A–6. Yes. In the case of a distribution from a Roth IRA in 1998, 1999 or 2000 of amounts allocable to a 1998 conversion with respect to which the 4-year spread for the resultant income inclusion applies (see § 1.408A–4 A–8), any income deferred as a result of the election to years after the year of the distribution is accelerated so that it is includible in gross income in the year of the distribution up to the amount of the distribution allocable to the 1998 conversion (determined under A–8 of this section). This amount is in addition to the amount otherwise includible in the owner's gross income for that taxable year as a result of the conversion. However, this rule will not require the inclusion of any amount to the extent it exceeds the total amount of income required to be included over the 4-year period. The acceleration of income inclusion described in this A–6 applies in the case of a surviving spouse who elects to continue the 4-year spread in accordance with § 1.408A–4 A–11(b).

Q–7. Is the 5-taxable-year period described in A–1 of this section redetermined when a Roth IRA owner dies?

A–7. (a) No. The beginning of the 5-taxable-year period described in A–1 of this section is not redetermined when the Roth IRA owner dies. Thus, in determining the 5-taxable-year period, the period the Roth IRA is held in the name of a beneficiary, or in the name of a surviving spouse who treats the decedent's Roth IRA as his or her own, includes the period it was held by the decedent.

(b) The 5-taxable-year period for a Roth IRA held by an individual as a beneficiary of a deceased Roth IRA owner is determined independently of the 5-taxable-year period for the beneficiary's own Roth IRA. However, if a surviving spouse treats the Roth IRA as his or her own, the 5-taxable-year period with respect to any of the surviving spouse's Roth IRAs (including the one that the surviving spouse treats as his or her own) ends at the earlier of the end of either the 5-taxable-year period for the decedent or the 5-taxable-year period applicable to the spouse's own Roth IRAs.

Q–8. How is it determined whether an amount distributed from a Roth IRA is allocated to regular contributions, conversion contributions, or earnings?

A–8. (a) Any amount distributed from an individual's Roth IRA is treated as made in the following order (determined as of the end of a taxable year and exhausting each category before moving to the following category)—

(1) From regular contributions;

(2) From conversion contributions, on a first-in-first-out basis; and

(3) From earnings.

(b) To the extent a distribution is treated as made from a particular conversion contribution, it is treated as made first from the portion, if any, that was includible in gross income as a result of the conversion.

Q–9. Are there special rules for determining the source of distributions under A–8 of this section?

A–9. Yes. For purposes of determining the source of distributions, the following rules apply:

(a) All distributions from all an individual's Roth IRAs made during a taxable year are aggregated.

(b) All regular contributions made for the same taxable year to all the individual's Roth IRAs are aggregated and added to the undistributed total regular contributions for prior taxable years. Regular contributions for a taxable year include contributions made in the following taxable year that are identified as made for the taxable year in accordance with § 1.408A–3 A–2. For example, a regular contribution made in 1999 for 1998 is aggregated with the contributions made in 1998 for 1998.

(c) All conversion contributions received during the same taxable year by all the individual's Roth IRAs are aggregated. Notwithstanding the preceding sentence, all conversion contributions made by an individual during 1999 that were distributed from a traditional IRA in 1998 and with respect to which the 4-year spread applies are treated for purposes of A–8(b) of this section as contributed to the individual's Roth IRAs prior to any other conversion contributions made by the individual during 1999.

(d) A distribution from an individual's Roth IRA that is rolled over to another Roth IRA of the individual in accordance with section 408A(e) is disregarded for purposes of determining the amount of both contributions and distributions.

(e) Any amount distributed as a corrective distribution (including net income), as described in A–1(d) of this section, is disregarded in determining the amount of contributions, earnings, and distributions.

(f) If an individual recharacterizes a contribution made to a traditional IRA (FIRST IRA) by transferring the contribution to a Roth IRA (SECOND IRA) in accordance with § 1.408A–5, then, pursuant to § 1.408A–5 A–3, the contribution to the Roth IRA is taken into account for the same taxable year for which it would have been taken into account if the contribution had originally been made to the Roth IRA and had never been contributed to the traditional IRA. Thus, the contribution to the Roth IRA is treated as contributed to the Roth IRA on the same date and for the same taxable year that the contribution was made to the traditional IRA.

(g) If an individual recharacterizes a regular or conversion contribution made to a Roth IRA (FIRST IRA) by transferring the contribution to a traditional IRA (SECOND IRA) in accordance with § 1.408A–5, then pursuant to § 1.408A–5 A–3, the contribution to the Roth IRA and the recharacterizing transfer are disregarded in determining the amount of both contributions and distributions for the taxable year with respect to which the original contribution was made to the Roth IRA.

(h) Pursuant to § 1.408A–5 A–3, the effect of income or loss (determined in accordance with § 1.408A–5 A–2) occurring after the contribution to the FIRST IRA is disregarded in determining the amounts described in paragraphs (f) and (g) of this A–9. Thus, for purposes of paragraphs (f) and (g), the amount of the contribution is determined based on the original contribution.

Q–10. Are there examples to illustrate the ordering rules described in A–8 and A–9 of this section?

A–10. Yes. The following examples illustrate these ordering rules:

Example 1. In 1998, individual B converts $80,000 in his traditional IRA to a Roth IRA. B has a basis of $20,000 in the conversion amount and so must include the remaining $60,000 in gross income. He decides to spread the $60,000 income by including $15,000 in each of the 4 years 1998–2001, under the rules of § 1.408A–4 A–8. B also makes a regular contribution of $2,000 in 1998. If a distribution of $2,000 is made to B anytime in 1998, it will be treated as made entirely from the regular contributions, so there will be no Federal income tax consequences as a result of the distribution.

Example 2. The facts are the same as in *Example 1*, except that the distribution made in 1998 is $5,000. The distribution is treated as made from $2,000 of regular contributions and $3,000 of conversion contributions that were includible in gross income. As a result, B must include $16,000 in gross income for 1998: $3,000 as a result of the acceleration of amounts that otherwise would have been included in later years under the 4-year-spread rule and $15,000 includible under the regular 4-year-spread rule. In addition, because the $3,000 is allocable to a conversion made within the previous 5

taxable years, the 10-percent additional tax under section 72(t) would apply to this $3,000 distribution for 1998, unless an exception applies. Under the 4-year-spread rule, B would now include in gross income $15,000 for 1999 and 2000, but only $12,000 for 2001, because of the accelerated inclusion of the $3,000 distribution.

Example 3. The facts are the same as in *Example 1*, except that B makes an additional $2,000 regular contribution in 1999 and he does not take a distribution in 1998. In 1999, the entire balance in the account, $90,000 ($84,000 of contributions and $6,000 of earnings), is distributed to B. The distribution is treated as made from $4,000 of regular contributions, $60,000 of conversion contributions that were includible in gross income, $20,000 of conversion contributions that were not includible in gross income, and $6,000 of earnings. Because a distribution has been made within the 4-year-spread period, B must accelerate the income inclusion under the 4-year-spread rule and must include in gross income the $45,000 remaining under the 4-year-spread rule in addition to the $6,000 of earnings. Because $60,000 of the distribution is allocable to a conversion made within the previous 5 taxable years, it is subject to the 10-percent additional tax under section 72(t) as if it were includible in gross income for 1999, unless an exception applies. The $6,000 allocable to earnings would be subject to the tax under section 72(t), unless an exception applies. Under the 4-year-spread rule, no amount would be includible in gross income for 2000 or 2001 because the entire amount of the conversion that was includible in gross income has already been included.

Example 4. The facts are the same as in *Example 1*, except that B also makes a $2,000 regular contribution in each year 1999 through 2002 and he does not take a distribution in 1998. A distribution of $85,000 is made to B in 2002. The distribution is treated as made from the $10,000 of regular contributions (the total regular contributions made in the years 1998–2002), $60,000 of conversion contributions that were includible in gross income, and $15,000 of conversion contributions that were not includible in gross income. As a result, no amount of the distribution is includible in gross income; however, because the distribution is allocable to a conversion made within the previous 5 years, the $60,000 is subject to the 10-percent additional tax under section 72(t) as if it were includible in gross income for 2002, unless an exception applies.

Example 5. The facts are the same as in *Example 4*, except no distribution occurs in 2002. In 2003, the entire balance in the account, $170,000 ($90,000 of contributions and $80,000 of earnings), is distributed to B. The distribution is treated as made from $10,000 of regular contributions, $60,000 of conversion contributions that were includible in gross income, $20,000 of conversion contributions that were not includible in gross income, and $80,000 of earnings. As a result, for 2003, B must include in gross income the $80,000 allocable to earnings, unless the distribution is a qualified distribution; and if it is not a qualified distribution, the $80,000 would be subject to the 10-percent additional tax under section 72(t), unless an exception applies.

Example 6. Individual C converts $20,000 to a Roth IRA in 1998 and $15,000 (in which amount C had a basis of $2,000) to another Roth IRA in 1999. No other contributions are made. In 2003, a $30,000 distribution, that is not a qualified distribution, is made to C. The distribution is treated as made from $20,000 of the 1998 conversion contribution and $10,000 of the 1999 conversion contribution that was includible in gross income. As a result, for 2003, no amount is includible in gross income; however, because $10,000 is allocable to a conversion contribution made within the previous 5 taxable years, that amount is subject to the 10-percent additional tax under section 72(t) as if the amount were includible in gross income for 2003, unless an exception applies. The result would be the same whichever of C's Roth IRAs made the distribution.

Example 7. The facts are the same as in *Example 6*, except that the distribution is a qualified distribution. The result is the same as in Example 6, except that no amount would be subject to the 10-percent additional tax under section 72(t), because, to be a qualified distribution, the distribution must be made on or after the date on which the owner attains age 59½, made to a beneficiary or the estate of the owner on or after the date of the owner's death, attributable to the owner's being disabled within the meaning of section 72(m)(7), or to which section 72(t)(2)(F) applies (exception for a first-time home purchase). Under section 72(t)(2), each of these conditions is also an exception to the tax under section 72(t).

Example 8. Individual D makes a $2,000 regular contribution to a traditional IRA on January 1, 1999, for 1998. On April 15, 1999, when the $2,000 has increased to $2,500, D recharacterizes the contribution by transferring the $2,500 to a Roth IRA (pursuant to § 1.408A–5 A–1). In this case, D's regular contribution to the Roth IRA for 1998 is $2,000. The $500 of earnings is not treated as a contribution to the Roth IRA. The results would be the same if the $2,000 had decreased to $1,500 prior to the recharacterization.

Example 9. In December 1998, individual E receives a distribution from his traditional IRA of $300,000 and in January 1999 he contributes the $300,000 to a Roth IRA as a conversion contribution. In April 1999, when the $300,000 has increased to $350,000, E recharacterizes the conversion contribution by transferring the $350,000 to a traditional IRA. In this case, E's conversion contribution for 1998 is $0, because the $300,000 conversion contribution and the earnings of $50,000 are disregarded. The results would be the same if the $300,000 had decreased to $250,000 prior to the recharacterization. Further, since the conversion is disregarded, the $300,000 is not includible in gross income in 1998.

Q–11. If the owner of a Roth IRA dies prior to the end of the 5-taxable-year period described in A–1 of this section (relating to qualified distributions) or prior to the end of the 5-taxable-year period described in A–5 of this section (relating to conversions), how are different types of contributions in the Roth IRA allocated to multiple beneficiaries?

A–11. Each type of contribution is allocated to each beneficiary on a pro-rata basis. Thus, for example, if a Roth IRA owner dies in 1999, when the Roth IRA contains a regular contribution of $2,000, a conversion contribution of $6,000 and earnings of $1,000, and the owner leaves his Roth IRA equally to four children, each child will receive one quarter of each type of contribution. Pursuant to the ordering rules in A–8 of this section, an immediate distribution of $2,000 to one of the children will be deemed to consist of $500 of regular contributions and $1,500 of conversion contributions. A beneficiary's inherited Roth IRA may not be aggregated with any other Roth IRA maintained by such beneficiary (except for other Roth IRAs the beneficiary inherited from the same decedent), unless the beneficiary, as the spouse of the decedent and sole beneficiary of the Roth IRA, elects to treat the Roth IRA as his or her own (see A–7 and A–14 of this section).

Q–12. How do the withholding rules under section 3405 apply to Roth IRAs?

A–12. Distributions from a Roth IRA are distributions from an individual retirement plan for purposes of section 3405 and thus are designated distributions unless one of the exceptions in section 3405(e)(1) applies. Pursuant to section 3405(a) and (b), nonperiodic distributions from a Roth IRA are subject to 10-percent withholding by the payor and periodic payments are subject to withholding as if the payments were wages. However, an individual can elect to have no amount withheld in accordance with section 3405(a)(2) and (b)(2).

Q–13. Do the withholding rules under section 3405 apply to conversions?

A–13. Yes. A conversion by any method described in § 1.408A–4 A–1 is considered a designated distribution subject to section 3405. However, a conversion occurring in 1998 by means of a trustee-to-trustee transfer of an amount from a traditional IRA to a Roth IRA established with the same or a different trustee is not required to be treated as a designated distribution for purposes of section 3405. Consequently, no withholding is required with respect to such a conversion (without regard to whether or not the individual elected to have no withholding).

Q–14. What minimum distribution rules apply to a Roth IRA?

A–14. (a) No minimum distributions are required to be made from a Roth IRA

under section 408(a)(6) and (b)(3) (which generally incorporate the provisions of section 401(a)(9)) while the owner is alive. The post-death minimum distribution rules under section 401(a)(9)(B) that apply to traditional IRAs, with the exception of the at-least-as-rapidly rule described in section 401(a)(9)(B)(i), also apply to Roth IRAs.

(b) The minimum distribution rules apply to the Roth IRA as though the Roth IRA owner died before his or her required beginning date. Thus, generally, the entire interest in the Roth IRA must be distributed by the end of the fifth calendar year after the year of the owner's death unless the interest is payable to a designated beneficiary over a period not greater than that beneficiary's life expectancy and distribution commences before the end of the calendar year following the year of death. If the sole beneficiary is the decedent's spouse, such spouse may delay distributions until the decedent would have attained age 70½ or may treat the Roth IRA as his or her own.

(c) Distributions to a beneficiary that are not qualified distributions will be includible in the beneficiary's gross income according to the rules in A–4 of this section.

Q–15. Does section 401(a)(9) apply separately to Roth IRAs and individual retirement plans that are not Roth IRAs?

A–15. Yes. An individual required to receive minimum distributions from his or her own traditional or SIMPLE IRA cannot choose to take the amount of the minimum distributions from any Roth IRA. Similarly, an individual required to receive minimum distributions from a Roth IRA cannot choose to take the amount of the minimum distributions from a traditional or SIMPLE IRA. In addition, an individual required to receive minimum distributions as a beneficiary under a Roth IRA can only satisfy the minimum distributions for one Roth IRA by distributing from another Roth IRA if the Roth IRAs were inherited from the same decedent.

Q–16. How is the basis of property distributed from a Roth IRA determined for purposes of a subsequent disposition?

A–16. The basis of property distributed from a Roth IRA is its fair market value (FMV) on the date of distribution, whether or not the distribution is a qualified distribution. Thus, for example, if a distribution consists of a share of stock in XYZ Corp. with an FMV of $40.00 on the date of distribution, for purposes of determining gain or loss on the subsequent sale of the share of XYZ Corp. stock, it has a basis of $40.00.

Q–17. What is the effect of distributing an amount from a Roth IRA and contributing it to another type of retirement plan other than a Roth IRA?

A–17. Any amount distributed from a Roth IRA and contributed to another type of retirement plan (other than a Roth IRA) is treated as a distribution from the Roth IRA that is neither a rollover contribution for purposes of section 408(d)(3) nor a qualified rollover contribution within the meaning of section 408A(e) to the other type of retirement plan. This treatment also applies to any amount transferred from a Roth IRA to any other type of retirement plan unless the transfer is a recharacterization described in § 1.408A–5.

Q–18. Can an amount be transferred directly from an education IRA to a Roth IRA (or distributed from an education IRA and rolled over to a Roth IRA)?

A–18. No amount may be transferred directly from an education IRA to a Roth IRA. A transfer of funds (or distribution and rollover) from an education IRA to a Roth IRA constitutes a distribution from the education IRA and a regular contribution to the Roth IRA (rather than a qualified rollover contribution to the Roth IRA).

Q–19. What are the Federal income tax consequences of a Roth IRA owner transferring his or her Roth IRA to another individual by gift?

A–19. A Roth IRA owner's transfer of his or her Roth IRA to another individual by gift constitutes an assignment of the owner's rights under the Roth IRA. At the time of the gift, the assets of the Roth IRA are deemed to be distributed to the owner and, accordingly, are treated as no longer held in a Roth IRA. In the case of any such gift of a Roth IRA made prior to October 1, 1998, if the entire interest in the Roth IRA is reconveyed to the Roth IRA owner prior to January 1, 1999, the Internal Revenue Service will treat the gift and reconveyance as never having occurred for estate tax, gift tax, and generation-skipping tax purposes and for purposes of this A–19.

§ 1.408A–7 Reporting.

This section sets forth the following questions and answers that relate to the reporting requirements applicable to Roth IRAs:

Q–1. What reporting requirements apply to Roth IRAs?

A–1. Generally, the reporting requirements applicable to IRAs other than Roth IRAs also apply to Roth IRAs, except that, pursuant to section 408A(d)(3)(D), the trustee of a Roth IRA must include on Forms 1099–R and 5498 additional information as described in the instructions thereto. Any conversion of amounts from an IRA other than a Roth IRA to a Roth IRA is treated as a distribution for which a Form 1099–R must be filed by the trustee maintaining the non-Roth IRA. In addition, the owner of such IRAs must report the conversion by completing Form 8606. In the case of a recharacterization described in § 1.408A–5 A–1, IRA owners must report such transactions in the manner prescribed in the instructions to the applicable Federal tax forms.

Q–2. Can a trustee rely on reasonable representations of a Roth IRA contributor or distributee for purposes of fulfilling reporting obligations?

A–2. A trustee maintaining a Roth IRA is permitted to rely on reasonable representations of a Roth IRA contributor or distributee for purposes of fulfilling reporting obligations.

§ 1.408A–6 Definitions.

This section sets forth the following question and answer that provides definitions of terms used in the provisions of §§ 1.408A–1 through 1.408A–7 and this section:

Q–1. Are there any special definitions that govern in applying the provisions of §§ 1.408A–1 through 1.408A–7 and this section?

A–1. Yes, the following definitions govern in applying the provisions of §§ 1.408A–1 through 1.408A–7 and this section. Unless the context indicates otherwise, the use of a particular term excludes the use of the other terms.

(a) *Different types of IRAs*—(1) *IRA.* Sections 408(a) and (b), respectively, describe an individual retirement account and an individual retirement annuity. The term IRA means an IRA described in either section 408(a) or (b), including each IRA described in paragraphs (a)(2) through (5) of this A–1. However, the term IRA does not include an education IRA described in section 530.

(2) *Traditional IRA.* The term traditional IRA means an individual retirement account or individual retirement annuity described in section 408(a) or (b), respectively. This term includes a SEP IRA but does not include a SIMPLE IRA or a Roth IRA.

(3) *SEP IRA.* Section 408(k) describes a simplified employee pension (SEP) as an employer-sponsored plan under which an employer can make contributions to IRAs established for its employees. The term SEP IRA means an IRA that receives contributions made under a SEP. The term SEP includes a salary reduction SEP (SARSEP) described in section 408(k)(6).

(4) *SIMPLE IRA.* Section 408(p) describes a SIMPLE IRA Plan as an employer-sponsored plan under which an employer can make contributions to SIMPLE IRAs established for its employees. The term SIMPLE IRA means an IRA to which the only contributions that can be made are contributions under a SIMPLE IRA Plan or rollovers or transfers from another SIMPLE IRA.

(5) *Roth IRA.* The term Roth IRA means an IRA that meets the requirements of section 408A.

(b) *Other defined terms or phrases*—(1) *4-year spread.* The term 4-year spread is described in § 1.408A–4 A–8.

(2) *Conversion.* The term conversion means a transaction satisfying the requirements of § 1.408A–4 A–1.

(3) *Conversion amount or conversion contribution.* The term conversion amount or conversion contribution is the amount of a distribution and contribution with respect to which a conversion described in § 1.408A–4 A–1 is made.

(4) *Failed conversion.* The term failed conversion means a transaction in which an individual contributes to a Roth IRA an amount transferred or distributed from a traditional IRA or Simple IRA (including a transfer by redesignation) in a transaction that does not constitute a conversion under § 1.408A–4 A–1.

(5) *Modified AGI.* The term modified AGI is defined in § 1.408A–3 A–5.

(6) *Recharacterization.* The term recharacterization means a transaction described in § 1.408A–5 A–1.

(7) *Recharacterized amount or recharacterized contribution.* The term recharacterized amount or recharacterized contribution means an amount or contribution treated as contributed to an IRA other than the one to which it was originally contributed pursuant to a recharacterization described in § 1.408A–5 A–1.

(8) *Taxable conversion amount.* The term taxable conversion amount means the portion of a conversion amount includible in income on account of a conversion, determined under the rules of section 408(d)(1) and (2).

(9) *Tax-free transfer.* The term tax-free transfer means a tax-free rollover described in section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), 403(b)(8), 403(b)(10) or 408(d)(3), or a tax-free trustee-to-trustee transfer.

(10) *Treat an IRA as his or her own.* The phrase treat an IRA as his or her own means to treat an IRA for which a surviving spouse is the sole beneficiary as his or her own IRA after the death of the IRA owner in accordance with the terms of the IRA instrument or in the manner provided in the regulations under section 408(a)(6) or (b)(3).

(11) *Trustee.* The term trustee includes a custodian or issuer (in the case of an annuity) of an IRA (except where the context clearly indicates otherwise).

§ 1.408A–9 Effective date.

This section contains the following question and answer providing the effective date of §§ 1.408A–1 through 1.408A–8:

Q–1. To what taxable years do §§ 1.408A–1 through 1.408A–8 apply?

A–1 Sections 1.408A–1 through 1.408A–8 apply to taxable years beginning on or after January 1, 1998.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par.10. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.408A–2	1545–1616
1.408A–4	1545–1616
1.408A–5	1545–1616
1.408A–7	1545–1616
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 25, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–2550 Filed 2–3–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule; amendments.

SUMMARY: The U.S. Parole Commission is amending the interim rules that govern the parole process for prisoners serving sentences under the District of Columbia Code. The amendments provide criteria for filing applications to reduce a prisoner's minimum sentence, provide deadlines for conducting hearings for youth offenders, expand the guidelines for attempted murder to include offenses of equivalent violence, distinguish between current and prior offenses in the case of probation violators, improve the procedures for medical and geriatric parole applications, and add a new guideline for rewarding prisoners who substantially assist law enforcement.

DATES: *Effective Date:* February 4, 1999. *Comments:* Comments must be received by March 31, 1999.

ADDRESSES: Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

SUPPLEMENTARY INFORMATION: Under Section 11231 of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33) the U.S. Parole Commission assumed, on August 5, 1998, the jurisdiction and authority of the Board of Parole of the District of Columbia to grant and deny parole, and to impose conditions upon an order of parole, in the case of any imprisoned felon who is eligible for parole or reparole under the District of Columbia Code. At 63 FR Part IV (July 21, 1998), and 63 FR 57060 (October 26, 1998), the Commission published and amended interim regulations, with a request for public comment, to govern this new function. The Commission is again amending these interim regulations with a further request for public comment. The Commission intends that final rule making be considered later this year, once it is satisfied that it has had enough experience in the application of these rules to DC Code prisoners.

These amendments are intended to provide solutions to several problems encountered in processing applications for parole and other determinations involving DC Code prisoners since August 5, 1998. In the case of medical and geriatric paroles, comments received from the University of the District of Columbia have persuaded the

Commission that some drafting improvements are in order. All comment received since August 5, 1998, will be carefully reviewed prior to the adoption of final rules.

Explanation of the Amendments

The Commission has amended the rule that implements DC Code 24–201(c), which authorizes the Commission to apply to the sentencing court for a reduction in a prisoner's minimum sentence. The present rule, adopted from the rules of the DC Board of Parole, do not provide a clear explanation of the criteria to be used by the Commission in determining whether or not to file such an application. The criteria adopted herein are intended to implement the purposes of the law by requiring that a prisoner must have shown outstanding participation in rehabilitative programs, must have fully observed prison rules, and must appear to be an acceptable risk for parole. The amended rule also specifies that the minimum term must appear to be too long in relation to the seriousness of the offense, before the Commission can justifiably recommend to the court that it be reduced. The Commission finds that, under the law, all the factors that will be considered by the sentencing court (including both rehabilitation and punishment) must be found to justify an application to reduce a minimum sentence. In the practice of the DC Board of Parole, such reductions were sought by the Board only in the most exceptional cases, and the Commission's reading of the law supports a continuation of that policy.

With respect to Youth Rehabilitation Act prisoners, the amended rule provides that the initial parole hearing must be held not later than 120 days from the prisoner's arrival at the institution that is responsible for developing his rehabilitative program. Reconsideration hearings are to be calculated from the date the initial hearing is held. The amended rule also specifies that when a youth offender whose parole has been revoked is again heard for parole, the decision is to be made pursuant to the youth guidelines, and that a new rehabilitative program be developed. However, if a "no benefit" finding has been made with regard to such a prisoner (which removes him from the youth program), the adult reparole guidelines at § 2.21 will thereafter be applied.

With respect to the Point Assignment Table at § 2.80, the guideline for "attempted murder" under Category III has been found to be too restrictive. The Commission has encountered several cases in which extremely violent conduct that should have resulted in the victim's death (*i.e.*, where death was the most likely outcome that could have been reasonably foreseen) cannot be rated as "attempted murder" because there was no specific intent to kill. The Commission's predictive judgment is that the offender who commits a crime of such a wanton and reckless nature, even though without specific intent to cause death (whether due to his intoxication or otherwise), poses a risk of future violent conduct equivalent to that of the attempted murderer. For a case to fall into this category, however, the survival of the victim must have been clearly against the odds. Pointing a firearm at a robbery victim, or discharging a firearm in the air without taking aim, would not be so rated. However, the case of an intoxicated offender aiming his speeding vehicle directly at a police officer standing in the street, or stabbing a victim multiple times and leaving the victim locked in the trunk of his car (with the victim improbably surviving), would be rated as equivalent to attempted murder, even if there was no specific intent to kill.

In the case of probation violators, the Commission adopts the same rule that applies at § 2.20(j)(2) of this Part, which is that the offense of conviction is included along with the probation violation behavior as part of the "current offense" if the offender did not serve more than six months in jail before commencing the probation that was revoked. If, however, the offender served a period of imprisonment longer than six months for the original offense, then the original offense is counted as a prior conviction (with a prior commitment) rather than as part of the "current offense." The Commission's judgment is that this policy is the best way to assess the predictive significance of the original offense and the intervening period of confinement.

In the case of medical and geriatric parole, the Commission agrees with the comment from UDC that DC Code 24–264 does not require the institution to "certify" the medical status of each applicant, and that case managers are better suited to process applications for medical or geriatric parole than the medical staff. The Commission does not believe that the current rule, however, precludes the institution medical staff from basing their report about an applicant upon outside medical expertise. If the institution medical staff does not have the expertise to evaluate a prisoner's condition, the rule permits the staff to forward to the Commission the report of the private physician or facility to which the prisoner has been referred. (Having some level of review by official staff helps to guard against the possibility of altered or fraudulent medical reports.) The Commission also disagrees with the UDC comment that, in the case of applications for medical parole on the basis of a "permanent and irreversible incapacitation," it is sufficient for the rule to repeat the statutory criterion that the prisoner "will not be a danger to himself or others." The statutory language leaves unanswered the question as to how serious the qualifying incapacitation must be, and exactly what the prisoner must be incapacitated from doing. The Commission believes that there must be a clear relationship between the qualifying incapacitation and the prisoner's asserted suitability for parole, for the incapacitation to be a legal basis for granting parole. Otherwise, there would be no limit to the types and degrees of incapacitating conditions put forward by prisoners as a reason for early parole consideration. The interim rule has, accordingly, been redrafted to make it clear that the incapacitating condition must be serious enough to require the prisoner to cease his criminal career, thus no longer presenting a danger to himself or others.

Finally, the Commission is adding an additional paragraph to § 2.63, the rule that provides a guideline for rewarding assistance by federal prisoners in the prosecution of other offenders. The rule contains criteria that are equally applicable to DC Code prisoners, but does not provide a guideline that can be applied to them. Thus, the Commission is amending the rule to permit either an application for reduction of the minimum term by up to one-third, or the deduction of one point from the Total Point Score under § 2.80, as if the cooperation had been positive program achievement. It is the Commission's intent that such rewards be limited to cases wherein the cooperation by the prisoner has produced significant results, and may signal the prisoner's eventual rehabilitation. It is never the Commission's practice, however, to grant a reward in advance of cooperation, regardless of what agreements may be made between prosecutors and prisoners.

Good Cause Finding

The Commission is making these amendments effective on the date of this publication, for good cause pursuant to 5 U.S.C. 553(d)(3). This is because the amendments are needed to address issues that frequently arise in the parole determination process for which the Commission is currently responsible.

Executive Order 12866 and Regulatory Flexibility Statement

The U.S. Parole Commission has determined that this amended interim rule is not a significant rule within the meaning of Executive Order 12866, and the amended interim rule has, accordingly, not been reviewed by the Office of Management and Budget. The amended interim rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Probation and parole, Prisoners.

The Amendments

Accordingly, the U.S. Parole Commission is adopting the following amendments to 28 CFR Part 2.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Subpart A—United States Code Prisoners and Parolees

2. 28 CFR Part 2 is amended by adding a new paragraph (c) to § 2.62 to read as follows:

§ 2.62 Rewarding Assistance in the Prosecution of Other Offenders: Criteria and Guidelines

* * * * *

(c) In the case of an eligible DC Code prisoner whose assistance meets the criteria of this section, the Commission may consider deducting a point under Category V of the Point Assignment Table at § 2.80, in addition to any other deduction for positive program achievement, when considering such prisoner for parole. In the case of a DC Code prisoner with an unserved minimum term, the Commission may consider filing an application under § 2.76 for a reduction of up to one-third of such term less applicable good time.

Supart C—District of Columbia Code Prisoners and Parolees

3. 28 CFR Part 2 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and adding the following new paragraph (c) to § 2.76 to read as follows:

§ 2.76 Reduction in minimum sentence.

* * * * *

(c) Pursuant to DC Code § 24–201c, the Commission may file an application to the sentencing court for a reduction of a prisoner's minimum term if the Commission finds that:

(1) The prisoner has completed three years of the minimum term imposed by the court;

(2) The prisoner has shown, in the opinion of the Commission, outstanding participation in the rehabilitative program(s) of the institution;

(3) The prisoner has fully observed the rules of each institution in which the prisoner has been confined;

(4) The prisoner appears to be an acceptable risk for parole based on both the prisoner's pre-and post-incarceration record; and,

(5) Service of the minimum term imposed by the court does not appear necessary to achieve appropriate punishment and deterrence.

* * * * *

4. 28 CFR Part 2 is amended by revising § 2.71(b) to read as follows:

§ 2.71 Application for parole.

* * * * *

(b) To the extent practicable, the initial hearing for an eligible prisoner who has applied for parole shall be held at least 180 days prior to an adult prisoner's date of eligibility for parole, and at least 120 days from the date a youth offender has been admitted to the institution that is responsible for developing his rehabilitative program.

* * * * *

4a. Section 2.75(a) is revised to read as follows:

§ 2.75 Reconsideration proceedings.

(a) If the Commission denies parole, it shall establish an appropriate reconsideration date in accordance with the provisions of § 2.80. The prisoner shall be given a rehearing during the month specified by the Commission, or on the docket of hearings immediately preceding that month if there be no docket of hearings scheduled for the month specified. If the prisoner's mandatory release date will occur before the reconsideration date deemed appropriate by the Commission pursuant to § 2.80, the Commission may order that the prisoner be released by the expiration of his sentence less good time ("continue to expiration"). The first reconsideration date shall be calculated from the prisoner's eligibility date, except that in the case of a youth offender or any prisoner who has waived the initial hearing, the first reconsideration date shall be calculated from the date the initial hearing is held. In all cases, any subsequent reconsideration date shall be calculated from the date of the last hearing.

* * * * *

4b. Section 2.87 is revised to read as follows:

§ 2.87 Reparole.

Each decision to grant or deny reparole shall be made by reference to the Commission's reparole guidelines at § 2.21, which shall include the establishment of a presumptive or effective release date pursuant to § 2.12(b) and interim hearings pursuant to § 2.14. However, if the prisoner is also eligible for parole on a new DC Code felony sentence that has been aggregated with the prisoner's parole violation term, or is a youth offender serving the remainder of a Youth Rehabilitation Act sentence following revocation of parole, the applicable guideline at § 2.80 (adult or youth) shall be applied in lieu of such provisions. Reparole hearings shall be conducted according to the procedures set forth in § 2.72.

5. 28 CFR Part 2 is amended by revising Category III B of the Point Assignment Table at § 2.80(f) to read as follows:

§ 2.80 Guidelines for DC Code Offenders.

* * * * *

(f) Point assignment table.

* * * * *

Category III: Death of victim or high level violence	(Salient factor score)
• • • • • • •	
B. Current Offense Involved Attempted Murder or Violence in which Death of Victim Would Have Been the Probable Result	+2
• • • • • • •	

6. 28 CFR Part 2 is amended by revising the heading of § 2.80 (g) and paragraph (g)(6) to read as follows:

§ 2.80 Guidelines for DC Code Offenders.

* * * * *

(g) Definitions and instructions for application of point assignment table.

* * * * *

(6) *Current offense* means any criminal behavior that is either:

(i) Reflected in the offense of conviction, or

(ii) Is not reflected in the offense of conviction but is found by the Commission to be related to the offense of conviction (*i.e.*, part of the same course of conduct as the offense of conviction). In probation violation cases, the current offense includes both the original offense and the violation offense, except that the original offense shall be scored as a prior conviction (with a prior commitment) if the prisoner served more than six months in prison for the original offense before commencement of probation.

* * * * *

7. 28 CFR Part 2 is amended by removing the word "certifying" from § 2.77(a), by revising the phrase "medical staff" to read "case management staff" in § 2.77(e) and by revising § 2.77(c) to read as follows:

§ 2.77 Medical parole.

* * * * *

(c) A prisoner may be granted a medical parole on the basis of permanent and irreversible incapacitation only if the Commission finds that:

(1) The prisoner will not be a danger to himself or others because his condition renders him incapable of continuing his criminal career; and,

(2) Release on parole will not be incompatible with the welfare of society.

* * * * *

7a. Section 2.78(d) is amended by revising the phrase "medical staff" to read "case management staff".

8. 28 CFR Part 2 is amended by adding the following reference to § 2.89 between the reference to 2.56 and the reference to 2.66:

§ 2.89 Miscellaneous provisions.

* * * * *

2.63 Rewarding assistance in the prosecution of other offenders: criteria and guidelines.

* * * * *

Dated: January 26, 1999.

Michael J. Gaines,

Chairman, U.S. Parole Commission.

[FR Doc. 99–2383 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–31–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 501

Reporting and Procedures Regulations: Procedure for Requests for Removal from List of Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Traffickers, and Blocked Vessels

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Treasury Department is amending the Reporting and Procedures Regulations to modify the procedures for removal of names of blocked persons or vessels from the Office of Foreign Assets Control's list of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, specially designated narcotics traffickers, and blocked vessels.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: J. Robert McBrien, Chief, International Programs Division (tel.: 202/622–2420), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Research Mall" of the FedWorld bulletin board. By modem, dial 703/321–3339, and select self–expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

On August 25, 1997, the Office of Foreign Assets Control of the Treasury Department ("OFAC") promulgated the Reporting and Procedures Regulations, 31 CFR part 501 (the "Regulations"), to simplify, by consolidating and standardizing in a single part, common provisions on collections of information in existing OFAC regulations. Section 501.807 of the Regulations described a procedure to be followed by a person seeking administrative reconsideration of its designation or that of a vessel as blocked, or who wished to assert that the circumstances resulting in the designation are no longer applicable. Section 501.807 is amended to modify the procedure set forth in that section.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553)(the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

List of Subjects in 31 CFR Part 501

Administrative practice and procedure, Banks, banking, Blocking of assets, Foreign trade, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 501 is amended as set forth below:

PART 501—REPORTING AND PROCEDURES REGULATIONS

1. The authority citation for part 501 continues to read as follows:

Authority: 22 U.S.C. 287c; 31 U.S.C. 321(b); 50 U.S.C. 1701–1706; 50 U.S.C. App. 1–44.

Subpart D -- Procedures

2. Section 501.807 is revised to read as follows:

§ 501.807. Procedures governing removal of names from appendices A, B, and C to this chapter.

A person may seek administrative reconsideration of his, her or its designation or that of a vessel as

blocked, or assert that the circumstances resulting in the designation no longer apply, and thus seek to have the designation rescinded pursuant to the following administrative procedures:

(a) A person blocked under the provisions of any part of this chapter, including a specially designated national, specially designated terrorist, or specially designated narcotics trafficker (collectively,"a blocked person"), or a person owning a majority interest in a blocked vessel may submit arguments or evidence that the person believes establishes that insufficient basis exists for the designation. The blocked person also may propose remedial steps on the person's part, such as corporate reorganization, resignation of persons from positions in a blocked entity, or similar steps, which the person believes would negate the basis for designation. A person owning a majority interest in a blocked vessel may propose the sale of the vessel, with the proceeds to be placed into a blocked interest–bearing account after deducting the costs incurred while the vessel was blocked and the costs of the sale. This submission must be made in writing and addressed to the Director, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

(b) The information submitted by the blocked person seeking unblocking or by a person seeking the unblocking of a vessel will be reviewed by the Office of Foreign Assets Control, which may request clarifying, corroborating, or other additional information.

(c) A blocked person seeking unblocking or a person seeking the unblocking of a vessel may request a meeting with the Office of Foreign Assets Control; however, such meetings are not required, and the office may, at its discretion, decline to conduct such meetings prior to completing a review pursuant to this section.

(d) After the Office of Foreign Assets Control has conducted a review of the request for reconsideration, it will provide a written decision to the blocked person or person seeking the unblocking of a vessel.

Dated: January 6, 1999.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 20, 1999.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 99–2571 Filed 1–29–99; 3:55 pm]

BILLING CODE 4810–25–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

[FPMR Amendment H–201]

RIN 3090–AG60

Utilization and Disposal of Real Property

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: The General Services Administration is amending the public benefit conveyance regulations for utilization and disposal of real property to update the Federal Property Management Regulations and to include implementation regulations for new laws. The new regulations incorporate the public benefit conveyance of surplus Federal Government real property for housing, law enforcement, and emergency management purposes. The laws that this regulation implements are Pub. L. 105–50, Pub. L. 105–119 Sec. 118, Pub. L. 98–181, 97 Stat. 1175, and Federal Property and Administrative Services Act amendments to 203(k) and 203(p).

EFFECTIVE DATE: February 4, 1999.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, Office of Real Property, at 202–501–1737.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule was published in the **Federal Register** on August 11, 1998 (63 FR 42792). All comments received were considered in the final rule. The Department of Defense provided a comment regarding the repeal of § 101–47.308–5 (Property for use as shrines, memorials, or for religious purposes) and its potential impact on current surplus real property actions. GSA agrees that actions that have begun on existing surplus real property may continue to conclusion; however, this authority will not be available to use in disposal actions on future surplus real property. A nonprofit self-help housing organization provided comments regarding the provisions for the notice period and the role of the Department of Housing and Urban Development (HUD) in the event that conveyed surplus property is reverted to the Federal Government. GSA adopted the comment to extend the notice period but not the expanded HUD role comment because HUD has not yet determined their program regulations as they relate to the reversionary clause provision. The Department of Justice also provided comments regarding the time periods for conveyance. GSA adopted an extension of the time period for the notice period but not for other time periods due to GSA programmatic issues regarding consistency with other real property public benefit conveyances.

B. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

C. Executive Order 12866

GSA has determined that this interim rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 501 *et seq.*

E. Small Business Reform Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 101–47

Government property management, Surplus Government property.

For the reasons stated in the preamble, 41 CFR part 101–47 is amended as follows:

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101–47 continues to read as follows:

Authority: 40 U.S.C. 486(c).

§ 101–47.103–4 [Reserved]

2. Section 101–47.103–4 is removed and reserved.

3. Section 101–47.203–5 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101–47.203–5 Screening of excess real property.

* * * * *

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested under the provisions of section 203(k)(1) of the Act; the Secretary of the Interior in

connection with provisions in 16 U.S.C. 667b through d, the exercise of the authority vested under the provisions of section 203(k)(2) of the Act, or a determination under the provisions of section 203(k)(3) of the Act; and the Secretary of Housing and Urban Development in connection with the exercise of the authority vested under the provisions of section 203(k)(6) of the Act will be sent to the offices designated by those officials to serve the areas in which the properties are located. Similar notices of availability for information of the Attorney General and the Director of the Federal Emergency Management Agency in connection with a possible determination under the provisions of section 203(p)(1) of the Act, and for information of the Secretary of Transportation in connection with the exercise of the authority vested under the provisions of section 203(q) of the Act, will be respectively sent to the Office of Justice Programs, Department of Justice; the Federal Emergency Management Agency; and the Maritime Administration, Department of Transportation.

(c) The Departments of Health and Human Services, Education, Interior, Housing and Urban Development, Justice, and Transportation, and the Federal Emergency Management Agency shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application. However, these Federal agencies are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

* * * * *

4. Section 101–47.204–1 is amended by revising the first sentence in paragraph (a), and paragraphs (b) and (c) to read as follows:

§ 101–47.204–1 Reported property.

* * * * *

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Secretary of Housing and Urban Development, the Attorney General, the Director of the Federal Emergency Management Agency, and the Secretary of Transportation will be notified of the date upon which determination as surplus becomes effective. * * *

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Secretary of Housing and Urban Development, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Director of the Federal Emergency Management Agency will be sent to the Federal Emergency Management Agency. The notices to the Secretary of Transportation will be sent to the Federal Aviation Administration, the Federal Highway Administration, and the Maritime Administration. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

(c) With regard to surplus property which GSA predetermines will not be available for disposal under any of the statutes cited in § 101–47.4905, or whenever the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act, the notice to the affected Federal agencies will contain advice of such determination or request for reimbursement. The affected Federal agencies shall not screen for potential applicants for such property.

5. Section 101–47.303–2 is amended by revising paragraphs (e), (f), and (g) to read as follows:

§ 101–47.303–2 Disposals to public agencies.

* * * * *

(e) In the case of property which may be made available for assignment to the Secretary of Health and Human Services (HHS), the Secretary of Education (ED), the Secretary of the Interior (DOI), or the Secretary of Housing and Urban Development (HUD) for disposal under sections 203(k)(1), (2), or (6) of the Act:

(1) The disposal agency shall inform the appropriate offices of HHS, ED, NPS, or HUD 3 workdays in advance of the date the notice will be given to public agencies, to permit similar notice to be given simultaneously by HHS, ED, NPS, or HUD to additional interested public bodies and/or nonprofit institutions.

(2) The disposal agency shall furnish the Federal agencies with a copy of the postdated transmittal letter addressed to each public agency, copies (not to exceed 25) of the postdated notice, and a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(3) As of the date of the transmittal letter and notice to public agencies, the affected Federal agencies may proceed with their screening functions for any potential applicants and thereafter may make their determinations of need and receive applications.

(f) If the disposal agency is not informed within the 20- or 30-calendar day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in § 101–47.4905, or is not notified by ED or HHS of a potential educational or public health use, or is not notified by the DOI of a potential park or recreation, historic monument, or wildlife conservation use, or is not notified by the HUD of a potential self-help housing or housing assistance requirement, or is not notified by the Department of Justice of a potential correctional facilities or law enforcement use, or is not notified by the Federal Emergency Management Agency of a potential emergency management response use; or is not notified by the Department of Transportation of a potential port facility or public airport use, it shall be assumed that no public agency or otherwise eligible organization desires to procure the property. (The requirements of this § 101–47.303–2(f) shall not apply to the procedures for making Federal surplus real property available to assist the homeless in accordance with section 501 of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11411).)

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

(1) National Park Service, Department of the Interior;
(2) Department of Health and Human Services;
(3) Department of Education;
(4) Department of Housing and Urban Development;
(5) Federal Aviation Administration, Department of Transportation;
(6) Fish and Wildlife Service, Department of the Interior;
(7) Federal Highway Administration, Department of Transportation;
(8) Office of Justice Programs, Department of Justice;
(9) Federal Emergency Management Agency; and
(10) Maritime Administration, Department of Transportation.

* * * * *

§ 101–47.308–5 [Reserved]

6. Section 101–47.308–5 is removed and reserved.

7. Section 101–47.308–6 is revised to read as follows:

§ 101–47.308–6 Property for providing self-help housing or housing assistance.

(a) Property for self-help housing or housing assistance, as defined in section 203(k)(6)(C) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C.), is property for low-income housing opportunities through the construction, rehabilitation, or refurbishment of self-help housing, under terms that require that:

(1) Any individual or family receiving housing or housing assistance constructed, rehabilitated, or refurbished through use of the property shall contribute a significant amount of labor toward the construction, rehabilitation, or refurbishment; and

(2) Dwellings constructed, rehabilitated, or refurbished through use of the property shall be quality dwellings that comply with local building and safety codes and standards and shall be available at prices below prevailing market prices.

Note to paragraph (a): This program is separate from the program under Title V of the Stewart B. McKinney Act of 1987, which is covered in 41 CFR subpart 101–47.9 (Use of Federal Real Property To Assist the Homeless).

(b) The head of the disposal agency, or his/her designee, is authorized, at his/her discretion to assign to the Secretary of the Department of Housing and Urban Development (HUD) for disposal under section 203(k)(6) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for providing self-help housing or housing assistance for low-income individuals or families.

(c) With respect to real property and related personal property which may be made available for assignment to HUD for disposal under section 203(k)(6) of the Act for self-help housing or housing assistance purposes, the disposal agency shall notify eligible public agencies, in accordance with the provisions of § 101–47.303–2, that such property has been determined to be surplus. Such notice to eligible public agencies shall state that any planning for self-help housing or housing assistance use involved in the development of the comprehensive and coordinated plan of use and procurement for the property must be coordinated with HUD and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from HUD. The requirement for self-help housing or housing assistance use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (j) of this section and a recommendation for assignment of Federal surplus real property received from HUD. Any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(6)(B) of the Act and referenced in paragraph (k) of this section.

(d) With respect to surplus real property and related personal property which may be made available for assignment to HUD for disposal under section 203(k)(6) of the Act for self-help housing or housing assistance purposes to nonprofit organizations that exist for the primary purpose of providing housing or housing assistance for low-income individuals or families, HUD may notify such eligible nonprofit organizations, in accordance with the provisions of § 101–47.303–2(e), that such property has been determined to be surplus. Any such notice to eligible nonprofit organizations shall state that any requirement for housing or housing assistance use of the property should be coordinated with the public agency declaring to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property. The requirement for self-help housing or housing assistance use of the property by an eligible nonprofit organization will be contingent upon the disposal agency's approval, under paragraph (j) of this section, of an assignment recommendation received from HUD, and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(6)(B) of the Act and referenced in paragraph (k) of this section.

(e) HUD shall notify the disposal agency within 30-calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property. Whenever HUD has notified the disposal agency within the 30-calendar day period of a potential self-help housing or housing assistance requirement for the property, HUD shall submit to the disposal agency within 25-calendar days after the expiration of the 30-calendar day period, a recommendation for assignment of the property, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property.

(f) Whenever an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement, in accordance with the provisions of § 101–47.303–2, the disposal agency shall transmit two copies of the plan to the regional office of HUD. HUD shall submit to the disposal agency, within 25-calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of HUD, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property to HUD.

(g) Any assignment recommendation submitted to the disposal agency by HUD shall set forth complete information concerning the self-help housing or housing assistance use, including:

(1) Identification of the property;
(2) Name of the applicant and the size and nature of its program;
(3) Specific use planned;
(4) Intended public benefit allowance;
(5) Estimate of the value upon which such proposed allowance is based; and
(6) If the acreage or value of the property exceeds the standards established by the Secretary, an explanation therefor.

Note to paragraph (g): HUD shall furnish to the holding agency a copy of the recommendation, unless the holding agency is also the disposal agency.

(h) Holding agencies shall cooperate to the fullest extent possible with representatives of HUD in their inspection of such property and in furnishing information relating thereto.

(i) In the absence of an assignment recommendation from HUD submitted pursuant to § 101–47.308–6(e) or (f), and

received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal actions.

(j) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from HUD, it shall assign the property by letter or other document to the Secretary of HUD. If the recommendation is disapproved, the disposal agency shall likewise notify the Secretary of HUD. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(k) Subsequent to the receipt of the disposal agency's letter of assignment, HUD shall furnish to the disposal agency a Notice of Proposed Transfer in accordance with section 203(k)(6)(B) of the Act. If the disposal agency has not disapproved the proposed transfer within 30-calendar days of the receipt of the Notice of Proposed Transfer, HUD may proceed with the transfer.

(l) HUD shall furnish the Notice of Proposed Transfer within 35-calendar days after the disposal agency's letter of assignment and shall prepare the transfer documents and take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. HUD shall furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under section 203(k)(6) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

(m) HUD has the responsibility for enforcing compliance with the terms and conditions of transfer; for the reformation, correction, or amendment of any transfer instrument; for the granting of releases; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of section 203(k)(4) of the Act. HUD maintains the same responsibility for properties previously conveyed under section 414(a) of the 1969 HUD Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by HUD of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(n) If any property previously conveyed under section 414(a) of the 1969 HUD Act, as amended, to an entity other than a public body is used for any purpose other than the purpose for which it was sold or leased within a period of 30 years of the conveyance, it shall revert to the United States (or, in the case of leased property, the lease shall terminate) unless the appropriate Secretary (HUD or the Secretary of Agriculture (USDA)) and the Administrator of General Services, after the expiration of the first 20 years of such period, approve the use of the property for such other purpose.

(o) In each case of repossession under a terminated lease or reversion of title by reason of noncompliance with the terms or conditions of sale or other cause, HUD (or USDA for property conveyed through the former Farmers Home Administration program under section 414(a) of the 1969 HUD Act) shall, at or prior to such repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from HUD (or USDA) that such property has been repossessed or title has reverted, GSA will act upon the Standard Form 118. The grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in § 101–47.4913.

8. Section 101–47.308–9 is amended by revising the section heading, paragraphs (a) through (g), and paragraphs (j) and (k) to read as follows:

§ 101–47.308–9 Property for correctional facility, law enforcement, or emergency management response purposes.

(a) Under section 203(p)(1) of the Act, the head of the disposal agency or designee may, in his/her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision or instrumentality thereof, surplus real and related personal property for:

(1) Correctional facility purposes, provided the Attorney General has determined that the property is required for such purposes and has approved an appropriate program or project for the care or rehabilitation of criminal offenders;

(2) Law enforcement purposes, provided the Attorney General has determined that the property is required for such purposes; and

(3) Emergency management response purposes, including fire and rescue services, provided the Director of the Federal Emergency Management Agency has determined that the property is required for such purposes.

(b) The disposal agency shall provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ), and the Federal Emergency Management Agency (FEMA) of the availability of surplus properties. Included in the notification to OJP and FEMA will be a copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules.

(c) With respect to real property and related personal property which may be made available for disposal under section 203(p)(1) of the Act for correctional facility, law enforcement, or emergency management response purposes, OJP or FEMA shall convey notices of availability of properties to the appropriate State and local public agencies. Such notice shall state that any planning for correctional facility, law enforcement, or emergency management response use involved in the development of a comprehensive and coordinated plan of use and procurement for the property must be coordinated and approved by the OJP or FEMA, as appropriate, and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from OJP or FEMA. OJP defines the term "law enforcement" to mean "any activity involving the control or reduction of crime and juvenile delinquency, or enforcement of the criminal law, including investigative activities such as laboratory functions as well as training." The requirement for correctional facility, law enforcement, or emergency management response use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (g) of this section of a determination:

(1) By DOJ that identifies surplus property required for correctional facility use under an appropriate program or project for the care of rehabilitation of criminal offenders, or for law enforcement use; or

(2) By FEMA that identifies surplus property required for emergency management response use.

(d) OJP or FEMA shall notify the disposal agency within 30-calendar days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever OJP or FEMA

has notified the disposal agency within the said 30-calendar day period of a potential correctional facility, law enforcement, or emergency management response requirement for the property, OJP or FEMA shall submit to the disposal agency within 25-calendar days after the expiration of the 30-calendar day period, a determination indicating a correctional facility requirement for the property and approving an appropriate program or project for the care or rehabilitation of criminal offenders, a law enforcement requirement, or an emergency management response requirement, or shall inform the disposal agency, within the 25-calendar day period, that the property will not be required for correctional facility, law enforcement, or an emergency management response use.

(e) Any determination submitted to the disposal agency by DOJ or FEMA shall set forth complete information concerning the correctional facility, law enforcement, or emergency management response use, including:

(1) Identification of the property;

(2) Certification that the property is required for correctional facility, law enforcement, or emergency management response use;

(3) A copy of the approved application which defines the proposed plan of use; and

(4) The environmental impact of the proposed correctional facility, law enforcement, or emergency management response use.

(f) Both holding and disposal agencies shall cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(g) If, after considering other uses for the property, the disposal agency approves the determination by DOJ or FEMA, it shall convey the property to the appropriate grantee. If the determination is disapproved, or in the absence of a determination from DOJ or FEMA submitted pursuant to § 101–47.308–9(d), and received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal actions. The disposal agency shall notify OJP or FEMA 10 days prior to any announcement of a determination to either approve or disapprove an application for correctional, law enforcement, or emergency management response purposes and shall furnish to OJP or FEMA a copy of the conveyance documents.

* * * * *

(j) The OJP or FEMA will notify GSA upon discovery of any information indicating a change in use and, upon request, make a redetermination of continued appropriateness of the use of a transferred property.

(k) In each case of repossession under a reversion of title by reason of noncompliance with the terms of the conveyance documents or other cause, OJP or FEMA shall, at or prior to such repossession, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from OJP or FEMA that such property has been repossessed and/or title has reverted, GSA will act upon the Standard Form 118. The grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in § 101–47.4913.

§ 101–47.4905 [Amended]

9. Section 101–47.4905 is amended as follows:

a. In the paragraphs headed "Type of property" under the listings for Statutes 40 U.S.C. 484(k)(2), 40 U.S.C. 484(k)(3), and 40 U.S.C. 484(q), remove the phrase "military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of § 101–47.308–5; and (4)" wherever it appears.

b. Add paragraphs headed "Statute", "Type of property", and "Eligible public agencies" for statute citation 40 U.S.C. 484(k)(6) in numerical order as set forth below.

c. Revise the paragraphs headed "Statute", "Type of property", and "Eligible public agencies" for statute citation 40 U.S.C. 484(p) as set forth below.

d. In the paragraph headed "Type of property" under the listing for 49 U.S.C. 47151, remove the phrase "military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101–47.308–5; and (3)"; and remove the numbers "(4)" and "(5)" and add in their place "(3)" and "(4)" respectively.

§ 101–47.4905 Extract of statutes authorizing disposal of surplus real property to public agencies.

* * * * *

Statute: 40 U.S.C. 484(k)(6). Disposals for self-help housing and housing assistance.

Type of property:* Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of the Housing and Urban Development must recommend that the property is needed for providing self-help housing or housing assistance for low-income individuals or families.

Eligible public agencies: Any State, any political subdivision or instrumentality of a State, or any nonprofit organization that exists for the primary purpose of providing self-help housing or housing assistance for low-income individuals or families.

Statute: 40 U.S.C. 484(p). Disposals for correctional facility, law enforcement, or emergency management response purposes.

Type of property:* Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Attorney General must determine that the property is required for correctional facility use under an appropriate program or project approved by the Attorney General for the care or rehabilitation of criminal offenders or for law enforcement use. Before property may be conveyed under this statute for emergency management response use, the Director of the Federal Emergency Management Agency must determine that the property is required for such use.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any political subdivision or instrumentality thereof.

* * * * *

§ 101–47.4906 [Amended]

10. Amend § 101–47.4906 as follows:

a. In the list of statutes, add the statute citation "40 U.S.C. 484(k)(6) Self-help housing and housing assistance." after "40 U.S.C. 484(k)(3) Historic monument.".

b. In the list of statutes, revise the title of 40 U.S.C. 484(p) to read as follows: "Correctional facility, law enforcement, or emergency management response.".

Dated: January 6, 1999.

David J. Barram,

Administrator of General Services.

[FR Doc. 99–2614 Filed 2–3–99; 8:45 am]

BILLING CODE 6820–23–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1807, 1808, 1813, 1816, 1819, 1827, 1832, 1833, 1836, 1844, 1852 and 1853

Miscellaneous Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This rule amends the NASA Federal Acquisition Regulation Supplement (NFS) to make editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: February 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Toole, (202) 358–0478; e-mail: *thomas.otoole@.hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

Background

A number of administrative changes are made. These changes include: (1) Revising the responsibilities for posting data of the Acquisition Forecast on the internet; (2) updating the Department of Energy (DOE) form for acquiring radioisotopes; (3) changing subpart titles, section headings, and section numbers due to changes made by Federal Acquisition Circulars (FAC) 97–09 and 97–10; (5) raising the dollar threshold for consideration of the need for surveillance of subcontracts resulting from contract modifications and change orders to a threshold equal to that for obtaining cost or pricing data; and (6) updating a reference to an internal document on records retention. None of these administrative changes has an impact outside internal Agency operating procedures.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the changes affect internal Agency procedures only. This final rule does not impose any reporting or recordkeeping requirements subject to the Paper Reduction Act.

List of Subjects in 48 CFR Parts 1804, 1807, 1808, 1813, 1816, 1819, 1827, 1832, 1833, 1836, 1844, 1852 and 1853

Government procurement.

Thomas S. Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1804, 1807, 1808, 1813, 1816, 1819, 1827, 1832, 1833, 1836, 1844, 1852 and 1853 are amended as follows:

1. The authority citation for 48 CFR Parts 1804, 1807, 1808, 1813, 1816, 1819, 1827, 1832, 1833, 1836, 1844, 1852 and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

1804.805 [Amended]

2. In section 1804.805, paragraph (a) is revised to read:

1804.805 Storage, handling, and disposal of contract files.

(a) See NPG 1441.1C, Records Retention Schedules.

1804.805–70 [Amended]

3. In paragraph (b)(2) to section 1804.805–70, the reference "NHB 1441.1, NASA Records Disposition Handbook" is revised to read "NPG 1441.1C, Records Retention Schedules".

PART 1807—ACQUISITION PLANNING

1807.7203 [Amended]

4. Section 1807.7203 is revised to read as follows:

1807.7203 Responsibilities.

(a) NASA Procurement Officers shall post the data required by 1807.7204 directly to the NASA Acquisition Internet Service not later than October 1 for the annual forecast and April 15 for the semiannual update.

(b) Code HS will manage policy and monitor compliance with the NASA Acquisition Forecast process.

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1808.002–70 [Amended]

5. Section 1808.002–70 is revised to read as follows:

1808.002–70 Acquisition of radioisotopes.

(a) U.S. Department of Energy Isotope and Technical Service Order Form CA–10–90.COM, and U.S. Nuclear Regulatory Commission Application for Material License, NRC Form 313, shall be used to acquire radioisotopes.

(b) NRC Form 313 shall be filed with the Chief, Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, United States Nuclear Regulatory Commission, Washington, DC 20555. If the application meets all regulatory requirements and applicable standards, the Radioisotopes Licensing Branch, Nuclear Regulatory Commission, will issue a license to the applicant. After receipt of the license, a completed DOE Form CA–10–90.COM (in duplicate, if the contracting office wants an accepted copy of the form back from the supplier), the license, and a Government bill of lading shall be sent to the appropriate DOE laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) NRC Form 313 and DOE Form CA–10–90.COM may be requisitioned directly from the United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety, Washington, DC 20555.

(d) Guidance is available from NRC at URL http://www.nrc.gov/NRC/contents/#top and from DOE at URL http://www.ornl.gov/isotopes/catalog.htm.

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

1813.003 [Amended]

6–7. In section 1813.003, paragraph (h) is redesignated as paragraph (g).

PART 1816—TYPES OF CONTRACTS

1816.203–4 [Amended]

8. In paragraph (d)(2) to section 1816.203–4, the reference "Code HC" is revised to read "Code HK".

PART 1819—SMALL BUSINESS PROGRAMS

Subpart 1819.3 [Amended]

9. In Subpart 1819.3, the subpart heading is revised to read "Determination of Status as a Small Business, HUBZone Small Business, or Small Disadvantaged Business Concern".

1819.506 [Amended]

10. In section 1819.506, the section heading is revised to read "Withdrawing or modifying small business set-asides (NASA supplements paragraph (b))".

Subpart 1819.7 [Amended]

11. In Subpart 1819.7, the subpart heading is revised to read "The Small Business Subcontracting Program".

1819.708 [Amended]

12. In section 1819.708, the section heading is revised to read "Contract clauses" (NASA supplements paragraph (b)).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

1827.406–70 [Amended]

13. In section 1827.406–70, paragraph (c) is revised to read as follows:

1827.406–70 Reports of work.

* * * * *

(c) A reproducible copy and a printed or reproduced copy of the reports shall be sent to the NASA Center for AeroSpace Information (CASI) in accordance with the clause at 1852.235–70, Center for AeroSpace Information (see 1835.070(a)).

PART 1832—CONTRACT FINANCING

1832.908 [Amended]

14. Section 1832.908 is revised to read as follows:

1832.908 Contract clauses. (NASA supplements paragraph (c).)

(c)(3) When the clause at FAR 52.232–25, Prompt Payment, is used in such contracts with the Canadian Commercial Corporation (CCC), insert "17th" in lieu of "30th" in paragraphs (a)(1)(i)(A), (a)(1)(i)(B), and (a)(1)(ii).

1832.970 [Removed]

15. Section 1832.970 is removed.

PART 1833—PROTESTS, DISPUTES, AND APPEALS

1833.104 [Amended]

16. In section 1833.104, paragraph (c)(2) is revised to read as follows:

1833.104 Protests to GAO.

* * * * *

(c) * * *

(2) The Associate Administrator for Procurement (Code HS) is the appproval authority for authorizing contract performance.

* * * * *

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1836.213–70 [Amended]

17. Section 1836.213–70 is redesignated as 1836.213–370.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

18. In section 1844.201–1, paragraph (a)(iii) is revised to read as follows:

1844.201–1 Consent requirements.

(a) * * *

(iii) The contracting officer shall document results of the review in the contract file. For contract modifications and change orders, the contracting officer shall make the determination required by paragraph (a)(ii) of this section whenever the value of any subcontract resulting from the change order or modification is proposed to exceed the dollar threshold for obtaining cost or pricing data (see FAR 15.403–4(a)(1)) or is one of a number of subcontracts with a single subcontractor for the same or related supplies or services that are expected cumulatively to exceed the dollar threshold for obtaining cost or pricing data.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.235–70 [Amended]

19. In the introductory language to section 1852.235–70, the reference "1827.409(i) and" is removed.

PART 1853—FORMS

1853.208–70 [Amended]

20. The section heading of 1853.208–70, is revised and paragraph (c) is revised to read as follows:

1852.208–70 Other Government sources (Standard Form 1080, Air force Form 858, Department of Energy Form CA–10–90.COM, Nuclear Regulatory Commission Form 313).

* * * * *

(c) U.S. Department of Energy Isotope and Technical Service Order Form CA–10–90.COM. Prescribed in 1808.002–70(a).

* * * * *

[FR Doc. 99–2472 Filed 2–3–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 800

Organization and Functions of the Board and Delegations of Authority

AGENCY: National Transportation Safety Board.

ACTION: Final rules; Corrections.

SUMMARY: The Board is correcting three inadvertent errors that appeared in the December 29, 1998 **Federal Register** publication of these final rules.

DATES: The corrected rules were effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 314–6080.

SUPPLEMENTARY INFORMATION: The December 29, 1998 **Federal Register**, at pages 71605–71606, contained various updates to these organizational rules. In the process, three inadvertent errors occurred, which we are now correcting.

Accordingly, the following corrections are made:

PART 800—ORGANIZATION AND FUNCTIONS OF THE BOARD

1. On page 71605 of the **Federal Register** of December 29, 1998, section 800.2(b) in the second column, the ninth line of paragraph (b), the word "considering" is corrected to read "concerning."

2. On page 71605 of the **Federal Register** of December 29, 1998, section 800.2(d) is corrected to strike the word "Administration" in the last line of the page's second column of text.

3. On page 71606 of the **Federal Register** of December 29, 1998, in the first column of text, the fifth line of section 800.2(j), the word "date" is corrected to read "data."

Issued in Washington, DC this 27th day of January, 1999.

Daniel D. Campbell,

General Counsel.

[FR Doc 99–2601 Filed 2–3–99; 8:45 am]

BILLING CODE 7533–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 835

Testimony of Board Employees

AGENCY: National Transportation Safety Board.

ACTION: Final rules; corrections.

SUMMARY: The Board is correcting two typographical errors in the December 29, 1998 publication of these final rules.

DATES: The corrected rules were effective January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall, (202) 314–6080.

SUPPLEMENTARY INFORMATION: **Federal Register**, Volume 63, No. 249, published Tuesday, December 29, 1998, at pages 71606–71608 contained revisions to these rules governing employee testimony. There were two typographical errors in that publication. In the third line of the definition of "Board accident report" in section 835.2, the word "probably" should be "probable." In the second sentence of section 835.3(c), "Board employees" should read "current Board employees."

Accordingly, the following corrections to 49 CFR Part 835 are made.

PART 835—TESTIMONY OF BOARD EMPLOYEES

1. On page 71607 of the **Federal Register** of December 29, 1998, section 835.2 in the first column, in the third line of the definition of "Board accident report," the word "probably" is corrected to read "probable."

2. On page 71607 of the **Federal Register** of December 29, 1998, section 835.3(c), line 5 of the second column, the phrase "Board employees" is corrected to read "current Board employees."

Issued in Washington, DC this 27th day of January, 1999.

Daniel D. Campbell,

General Counsel.

[FR Doc. 99–2602 Filed 2–3–99; 8:45 am]

BILLING CODE 7533–01–M

Proposed Rules

Federal Register
Vol. 64, No. 23
Thursday, February 4, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AE97

Shutdown and Low-Power Operations for Nuclear Power Reactors

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule: withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission is withdrawing a proposed rule for Shutdown and Low-Power Operations for Nuclear Power Reactors. The proposed rule would have required licensees to ensure that the following safety functions were maintained during shutdown and low-power operations. These safety functions were reactivity control, inventory control, decay heat removal, and containment integrity.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Weiss, U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, MS O–8 E23, Washington, DC 20555–0001, Telephone 301–415–3264.

SUPPLEMENTARY INFORMATION: On October 19, 1994, the Commission published the proposed rule, "Shutdown and Low-Power Operations for Nuclear Power Reactors" (59 FR 52707–52714). In this **Federal Register** document, the Commission proposed regulatory requirements that would set minimum standards for shutdown and low-power operations.

The comment period expired on February 3, 1995. The Commission received a significant number of comments from the nuclear industry and a few comments from the public on the proposed rule, the majority of which were negative.

The Commission has decided not to proceed with a final rule at this time. In view of current industry performance and the regulatory controls in the area of maintenance generally, the Commission does not believe that regulatory requirements specifically addressed to low-power and shutdown operations are needed at this time. However, the Commission will continue to monitor industry performance and may take further action if any adverse trends are identified.

Dated at Rockville, Maryland, this 29th day of January, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–2627 Filed 2–3–99; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–23, RM–9423]

Radio Broadcasting Services; Tipton, Mangum and Eldorado, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Good Government Radio seeking the allotment of Channel 249C2 to Tipton, OK, as the community's first local aural service. To accommodate the allotment at Tipton, petitioner also requests the substitution of Channel 282A for Channel 249A at Mangum, OK, the modification of Station KHIM's license accordingly, and the substitution of Channel 245A for unoccupied and unapplied for Channel 246A at Eldorado, OK. Channel 249C2 can be allotted to Tipton in compliance with the Commission's minimum distance separation requirements with a site restriction of 23.8 kilometers (14.8 miles) west, at coordinates 34–34–53 NL; 99–22–55 WL, to avoid short-spacings to Channel 248C2 at Archer City, TX, which is reserved for Station KRZB, to Station KGOK-FM, Channel 249C3, Pauls Valley, OK, and its proposed reallotment to Healdton, OK, and to Station KJMZ, Channel 251C1, Lawton, OK. Channel 282A can be allotted to Mangum, at Station KHIM's licensed transmitter site, at coordinates 34–52–27; 99–30–04. Channel 245A can be allotted to Eldorado without the imposition of a site restriction, at coordinates 34–28–24; 99–38–54.

DATES: Comments must be filed on or before March 15, 1999, and reply comments on or before March 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Ellinor Nelson, Good Government Radio, P.O. Box 478, Gonzalez, FL 32560 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making and Order to Show Cause, MM Docket No. 99–23, adopted January 13, 1999, and released January 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2617 Filed 2–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–4, RM–9429]

Radio Broadcasting Services; Cannon Ball, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by High Plains Broadcasting, Inc. to allot Channel 298C to Cannon Ball, ND, as the community's first local aural service. Channel 298C can be allotted to Cannon Ball in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 46–24–48 NL; 100–38–12 WL. Canadian concurrence in the allotment is required since Cannon Ball is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 15, 1999, and reply comments on or before March 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: F. William LeBeau, Hogan & Hartson, L.L.P., 555 Thirteenth Street, N.W., Washington, D.C. 20004–1109 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–4, adopted January 13, 1999, and released January 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2618 Filed 2–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–5, RM–9430]

Radio Broadcasting Services; Velva, ND

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by High Plains Broadcasting, Inc. to allot Channel 235C1 to Velva, ND, as the community's first local aural service. Channel 235C1 can be allotted to Velva in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 48–03–18 NL; 100–55–54 WL. Canadian concurrence in the allotment is required since Velva is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 15, 1999, and reply comments on or before March 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: F. William LeBeau, Hogan & Hartson, L.L.P., 555 Thirteenth Street, N.W., Washington, D.C. 20004–1109 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–5, adopted January 13, 1999, and released January 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2619 Filed 2–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–6, RM–9431]

Radio Broadcasting Services; St. Johnsbury, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dana Puopolo to allot Channel 262A to St. Johnsbury, VT, as the community's second local aural service. Channel 262A can be allotted to St. Johnsbury in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) east, at coordinates 44–25–50 NL; 71–57–22 WL, to avoid a short-spacing to Station WXXK, Channel 263C3, Lebanon, NH, and to the proposed allotment of Channel 264A to Hardwick, VT, and Channel 265C2 at Berlin, VT. Canadian concurrence in the allotment, as a specially negotiated short-spaced allotment, is required since St.

Johnsbury is located within 320 kilometers of the U.S.-Canadian border, and the allotment will be short-spaced to Channel 262A at Sherbrooke, Quebec.

DATES: Comments must be filed on or before March 15, 1999, and reply comments on or before March 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dana Puopolo, 37 Martin Street, Rehoboth, MA 02769–2103 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket 99–6, adopted January 13, 1999, and released January 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2621 Filed 2–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–7, RM–9432]

Radio Broadcasting Services; Delhi, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dana Puopolo to allot Channel 248A to Delhi, NY, as the community's second local aural service. Channel 248A can be allotted to Delhi in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.6 kilometers (3.5 miles) southwest, at coordinates 42–15–23 NL; 74–58–35 WL, to avoid a short-spacing to Station WMYY, Channel 247A, Schoharie, NY. Canadian concurrence in the allotment is required since Delhi is located within 320 kilometers of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 15, 1999, and reply comments on or before March 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dana Puopolo, 37 Martin Street, Rehoboth, MA 02769–2103 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–7, adopted January 13, 1999, and released January 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2622 Filed 2–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–8, RM–9434]

Radio Broadcasting Services; Lancaster, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dana Puopolo seeking the allotment of Channel 229A to Lancaster, NH, as the community's second local aural service. Channel 229A can be allotted to Lancaster with a site restriction of 10 kilometers (6.2 miles) northwest, at coordinates 44–33–55 NL; 71–37–48, to avoid a short-spacing to Station WMWV, Channel 228A, Conway, NH. Canadian concurrence in the allotment, as a specially negotiated short-spaced allotment with respect to unoccupied and unapplied for Channel 229A at East Angus, Quebec, is required since Lancaster is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 15, 1999, and reply comments on or before March 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dana Puopolo, 37 Martin St., Rehoboth, MA 02769–2103 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of

Proposed Rule Making, MM Docket No. 99–9, adopted January 13, 1999, and released January 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2624 Filed 2–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–10, RM–9435]

Radio Broadcasting Services; Walton, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dana Puopolo seeking the allotment of Channel 296A to Walton, NY, as the community's second local FM service. Channel 296A can be allotted to Walton in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.8 kilometers (3.6 miles) south, at coordinates 42–07–05 NL; 75–08–01 WL, to avoid a short-spacing to Station WRCK, Channel 297B, Utica, NY. Canadian concurrence in the allotment is required since Walton is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 15, 1999, and reply comments on or before March 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dana Puopolo, 37 Martin St., Rehoboth, MA 02769–2103 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–10, adopted January 13, 1999, and released January 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2625 Filed 2–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–8, RM–9433]

Radio Broadcasting Services; Mt. Washington, NH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dan Puopolo, to allot Channel 247A to Mt. Washington, NH, as the community's second local aural transmission service. Channel 247A can be allotted to Mt. Washington in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, with respect to all domestic allotments, at coordinates 44–16–13 NL; 78–18–13. Use of these coordinates does not negate the short-spacing to the proposed allotment of Channel 247C1 at Thetford-Mines, Quebec, Canada. Concurrence in the allotment of Channel 247A at Mt. Washington will be requested as a specially negotiated short-spaced allotment since Mt. Washington is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before March 15, 1999, and reply comments on or before March 30, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dana Puopolo, 37 Martin Street, Rehoboth, MA 02769–2103 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–8, adopted January 13, 1999, and released January 22, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2623 Filed 2–3–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 64, No. 23

Thursday, February 4, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–089–2]

Monsanto Co.; Availability of Determination of Nonregulated Status for Canola Genetically Engineered for Glyphosate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that the Monsanto Company's canola line designated as RT73, which has been genetically engineered for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Monsanto Company in its petition for a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: January 27, 1999.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, and the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8761. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; e-mail: Kay.Peterson@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1998, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 98–216–01p) from Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination that a canola (*Brassica napus* L.) line designated as Roundup Ready® canola line RT73 (canola line RT73), which has been genetically engineered for tolerance to the herbicide glyphosate, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On October 16, 1998, APHIS published a notice in the **Federal Register** (63 FR 55573–55574, Docket No. 98–089–1) announcing that the Monsanto petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject canola and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether this canola line posed a plant pest risk. The comments were to have been received by APHIS on or before December 15, 1998. APHIS received no comments on the subject petition during the designated 60-day comment period.

Analysis

Canola line RT73 has been genetically engineered to contain a CP4 EPSPS gene derived from *Agrobacterium* sp. strain CP4, and a modified *goxv247* gene derived from *Ochrobactrum anthropi* strain LBAA. The CP4 EPSPS gene encodes a 5-enolpyruvyl-shikimate-3-phosphate synthase (CP4 EPSPS) protein, and the *goxv247* gene encodes a glyphosate oxidoreductase (GOXv247) protein. The CP4 EPSPS and GOXv247 proteins confer tolerance to the herbicide glyphosate. Expression of the added genes is controlled in part by gene sequences derived from the plant pathogen figwort mosaic virus, and the *Agrobacterium tumefaciens* method was used to transfer the added genes into the parental canola Westar variety plants.

The subject canola has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of this canola conducted under APHIS permits and notifications since 1995 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of canola line RT73.

Determination

Based on its analysis of the data submitted by Monsanto, and a review of other scientific data and field tests of the subject canola, APHIS has determined that canola line RT73: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than canola developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject canola and any progeny derived from hybrid crosses with other nontransformed canola varieties will be as safe to grow as canola in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that Monsanto's canola line RT73 is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject canola or its progeny. However, importation of canola line RT73 or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C.

4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that Monsanto's canola line RT73 and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 29th day of January 1999.

Thomas E. Walton,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–2656 Filed 2–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–003N]

Notice of Public Meeting on Listeria Monocytogenes

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a public meeting on *Listeria monocytogenes*. Current industry and government procedures will be discussed such as sampling programs, monitoring programs, and recall procedures. FSIS anticipates using the information gathered at this meeting as a vehicle for developing a short- and long-term strategy for research, regulation, education, and enforcement regarding *Listeria monocytogenes*.

DATES: The meeting will be held February 10, 1999, from 9:00 a.m. to 5:00 p.m. Written comments must be received by March 8, 1999.

ADDRESSES: The meeting will be held at the Arlington Hilton—Ballston, 950 N. Stafford Street, Arlington, VA 22203, telephone number is 703–528–6000. To register for the meeting and to schedule a presentation, contact Jennifer Callahan by telephone at (202) 501–7136 or by FAX at (202) 501–7642. If a sign language interpreter or other special accommodation is necessary, contact Jennifer Callahan at the above number.

Submit one original and two copies of written comments to: FSIS Docket Clerk, Docket #99–003N, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith Riggins, Associate Deputy Administrator, Office of Policy, Program Development and Evaluation by telephone at (202) 720–2709 or by Fax at (202) 720–2025.

SUPPLEMENTARY INFORMATION: USDA believes the current nationwide listeriosis outbreaks associated with meat and poultry products, as unfortunate as they are, present an opportunity to strengthen control efforts from farm to table and to reduce the risk of human illness. In addition to coordinating with the Center for Disease Control (CDC) and the states to trace the chain of events that led to illness, FSIS is reviewing regulatory, enforcement, and educational strategies for reducing the number of foodborne illnesses associated with *Listeria monocytogenes*. FSIS is reexamining its consumer education materials, particularly those for "at risk" audiences, as well as its strategy for distributing these materials. FSIS will coordinate education and information activities with CDC and the Food and Drug Administration by means of the Partnership for Food Safety.

In light of these concerns and initiatives, FSIS will hold a public meeting on February 10, 1999. The following issues are to be discussed at the meeting:

- Protocols for sampling ready-to-eat product, recall procedures established by industry and FSIS, and the status of the FSIS sampling programs for ready-to-eat products;
- The public health implications of *Listeria monocytogenes;*
- The use of sell-by and pull-by dates on meat and poultry labels, how they are determined, and whether the factors considered in determining them adequately reflect the possibility of *Listeria monocytogenes* grow out;
- Steps industry may take to address this pathogen; and
- Education initiatives, including special materials for "at risk" audiences, FSIS and industry information dissemination procedures, consumer discussion about understanding of sell-by and pull-by dates on labels, and briefings on FoodNet, PulseNet, and DNA "fingerprinting."

Done at Washington, DC, on February 1, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–2644 Filed 2–1–99; 1:34 pm]

BILLING CODE 3410–DM–M

AMERICAN BATTLE MONUMENTS COMMISSION

Performance Review Board Appointments

AGENCY: American Battle Monuments Commission.

ACTION: Notice of performance review board appointments.

SUMMARY: This notice provides the names of individuals who have been appointed to serve as members of the American Battle Monuments Commission Performance Review Board. The publication of these appointments is required by Section 405(a) of the Civil Service Reform Act of 1978 (Pub. L. 95–454, 5 U.S.C. 4314(c)(4).

DATES: These appointments are effective as of 1 February 1999.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Theodore Gloukhoff, Director of Personnel and Administration, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia 22201, Telephone Number: (703) 696–6908.

American Battle Monuments Commission SES Performance Review Board—1999/2000

Donald Leverenz, Assistant Director, Research and Development, U.S. Army Corps of Engineers

John P. D'Aniello, P.E., Deputy Director of Civil Works, U.S. Army Corps of Engineers

William A. Brown, Sr., Deputy Director of Military Programs, U.S. Army Corps of Engineers

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. 99–2653 Filed 2–3–99; 8:45 am]

BILLING CODE 6120–01–U

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, February 12, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of January 22, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee's Follow-up to the Report "Police-Community Relations in Reno, Nevada" (May 1992)
VI. Future Agenda Items
10:15 a.m. Briefing on the 2000 Census Debate

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–2833 Filed 2–2–99; 2:41 pm]

BILLING CODE 6335–0–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

AGENCY: Bureau of the Census.

Title: Census 2000—Island Areas.

Form Number(s): Forms: D–1(F) PI, D–1(F) VI, D–2(E) AS, D–2(E) CNMI, D–2(E) G, D–2(E) VI, D–2(E) SUPP AS, D–2(E) SUPP CNMI, D–2(E) SUPP G, D–2(E) SUPP VI, D–10 AS, D–10 CNMI, D–10 G, D–10 VI, D–13 AS, D–13 CNMI, D–13 G, D–13 VI, D–20B PI, D–20B VI, D–21 PI, D–806 IA

Letters and Envelopes: D–5(L) AS, D–5(L) CNMI, D–5(L) G, D–5(L) VI, D–5 PI, D–5 VI, D–7 AS, D–7 CNMI, D–7 G, D–7 VI, D–12 AS, D–12 CNMI, D–12 G, D–12A VI, D–12B VI, D–13(L) AS, D–13 (L) CNMI, D–13(L) G, D–13 (L) VI, D–14 AS, D–14 CNMI, D–14 G, D–14A VI, D–14B VI, D–26 PI, D–26 VI, D–31 PI, D–31 VI, D–40 PI, D–40 VI.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 72,621 hours in Fiscal Year 2000.

Number of Respondents: 114,000.

Avg Hours Per Response: Interview—47 minutes; Reinterview—6 minutes.

Needs and Uses: The United States Constitution mandates that a census of the Nation's population and housing be taken every 10 years. Title 13 of the United States Code specifies that in addition to the 50 states and the District of Columbia, the census should include Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. These areas, with the exception of Puerto Rico, are collectively referred to as the Island Areas. This OMB submission covers the Island Areas only. The forms for Puerto Rico have been submitted separately. The Census Bureau's goal in Census 2000 is to take the most accurate and cost-effective census possible. The importance of an accurate decennial census cannot be overstated. Island Areas census data will be used by Federal agencies to fulfill many statutory data requirements and by the Island Areas to administer governmental programs.

Two questionnaires will be used in the Island Areas enumeration—one for the U.S. Virgin Islands, and one for the remaining Island Areas. The content of the questionnaires was developed in consultation with the Interagency Committees of the various Island Areas. Many of the questions are the same as those on the stateside questionnaires; others have been modified as recommended by the Island Areas Interagency Committees to reflect the unique social, economic, and climatic characteristics of these areas. The U.S. Virgin Islands questionnaire is more similar to the stateside forms. Only long form questionnaires will be administered in the Island Areas. A short reinterview will be administered to a small sample of respondents to assure data quality.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 and 191.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: January 29, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–2575 Filed 2–3–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

India and Pakistan Sanctions

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 5, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, Room 6881, Washington, DC 20230.

SUPPLEMENTARY INFORMATION

I. Abstract

The Bureau of Export Administration (BXA) has taken a number of sanction measures against India and Pakistan consistent with President Clinton's directive. BXA revised the Export Administration Regulations to implement sanctions by setting forth a licensing policy of denial for exports and reexports of items controlled for nuclear nonproliferation and missile technology reasons to these countries, with limited exceptions for the preservation of safety of civil aircraft. Information needs to be provided through the license application form to support such shipments.

II. Method of Collection

Submitted, as required, on form BXA 748-P.

III. Data

OMB Number: 0694–0111.

Form Number: BXA 748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 57.

Estimated Time Per Response: 40 to 45 minutes per response.

Estimated Total Annual Burden Hours: 52 hours.

Estimated Total Annual Cost: $0 (no capital expenditures).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 29, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–2576 Filed 2–3–99; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Final Result of Expedited Sunset Review: Anhydrous Sodium Metasilicate From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final result of expedited sunset review: Anhydrous sodium metasilicate from France.

SUMMARY: On October 1, 1998, the Department of Commerce ("the Department") initiated sunset review of the antidumping duty order on anhydrous sodium metasilicate from France (63 FR 52683) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the bases of the notice of intent to participate and substantive comments filed on behalf of the domestic industry, and inadequate responses (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 1999.

Statute and Regulations: This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope: The merchandise subject to this antidumping duty order is anhydrous sodium metasilicate ("ASM"), a crystallized silicate (Na2 SiO3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. The Department determined that ASM mixed with caustic soda beads or with sodium tripolyphosphate is within the scope of the order.[1] This merchandise is currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2839.11.00 and 2839.19.00. The HTSUS item numbers are provided for convenience and customs purposes only. They are not determinative of the products subject to the order. The written description remains dispositive.

This review covers all manufacturers and exporters of ASM from France.

[1] *See Anhydrous Sodium Metasilicate From France; Final Results of Administrative Review of Antidumping Duty Order*, 47 FR 15620 (April 12, 1982).

Background: On October 1, 1998, the Department initiated a sunset review of the antidumping duty order on ASM from France (63 FR 52683), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of PQ Corporation ("PQ") within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. PQ claimed interested-party status under section 771(9)(C) of the Act, section 19 U.S.C. 1677(9)(E), as a manufacturer, producer, or wholesaler in the United States of a domestic like product. On October 29, 1998, PQ Corporation requested an extension of time for submission of its substantive response to the notice of initiation and was granted an extension until November 3, 1998 (*see* October 30, 1998, letter from Acting Director, Office of Policy). On October 30, 1998, we received a Notice of Intent to Participate on behalf of Occidental Chemical Corporation ("Occidental"), which claimed interested party status under section 771(9)(C) of the Act, 19 U.S.C. 1677(9)(E), as a manufacturer, producer, or wholesaler in the United States of a domestic like product. We received a complete substantive response from PQ on November 3, 1998, within the extended deadline. PQ's substantive response contained a letter of support from Occidental. We did not receive a substantive response from any respondent interested party to this sunset proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and our regulations (19 CFR 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

Determination: In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of margin are

addressed within the respective sections below.

Continuation or Recurrence of Dumping: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc., No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

On January 7, 1981, an antidumping duty order on ASM from France was published in the **Federal Register** (46 FR 1667). Since that time, the Department has conducted a number of administrative reviews on this order.[2] The order remains in effect for all imports of the subject merchandise from France.

In its substantive response, PQ stated that following the imposition of the antidumping duty, Rhone Poulenc/Rhodia ceased exporting ASM from France. PQ noted that Rhone Poulenc/Rhodia kept its sales network in place as well as much of its distribution network and entered into an agreement with a U.S. producer to distribute U.S.-manufactured ASM to fill out its product line. PQ stated that Rhone Poulenc/Rhodia has excess ASM production capacity. PQ argued, therefore, that absent the existence of the order, Rhodia will resume exporting ASM from France. PQ asserted that because demand for ASM has been decreasing over time and there is excess production capacity in the United States as well as Europe, any market shift would most likely be due to a lower price offered by the seller of the imported product. PQ further asserted that, because of the low value-to-weight ratio, and because of the high cost of freight for ASM, all things being equal, no French producer could compete in the U.S. market without sales at less than fair value.

As noted above, the Department has conducted several administrative reviews of this order covering the only known exporter Rhone-Poulenc. In the administrative reviews of the periods spanning November 1, 1980 through December 31, 1981, January 1, 1986 through December 31, 1988, and January 1, 1990 through December 31, 1990, the Department found no shipments of ASM from France.[3] Further, because Rhone-Poulenc did not respond to questionnaires in the administrative reviews of the periods spanning January 1, 1991 through December 31, 1995, the Department has no information from the reviews with respect to whether there were any imports of ASM from France.[4] Finally, the Department terminated the administrative reviews of the periods spanning January 1, 1996 through December 31, 1997, based on the absence of entries.[5]

We find, therefore, that the cessation of imports after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Furthermore, deposit rates above de minimis levels continue to be in effect for all shipments of the subject merchandise from France. As discussed in section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if imports cease after the order is issued, we may reasonably assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. Therefore, absent argument and evidence to the contrary, given that shipments of the subject merchandise ceased after the issuance of the order, and that dumping margins continue to exist, the Department, consistent with Section II.A.3 of the *Sunset Policy Bulletin*, determines that dumping is likely to continue or recur if the antidumping duty order were revoked.

Magnitude of the Margin: In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See*

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[2] *See Anhydrous Sodium Metasilicate From France; Final Results of Administrative Review of Antidumping Duty Order*, 47 FR 15620 (April 2, 1982); *Anhydrous Sodium Metasilicate From France; Final Results of Administrative Review of Antidumping Duty Order*, 47 FR 44594 (October 8, 1982); *Anhydrous Sodium Metasilicate From France; Final Results of Administrative Review of Antidumping Duty Order*, 49 FR 43733 (October 31, 1984); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 53 FR 4195 (February 12, 1988); *Final Results of Antidumping Duty Administrative Review; Anhydrous Sodium Metasilicate From France*, 52 FR 33856 (September 8, 1987); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 53 FR 9785 (March 25, 1988); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 53 FR 43251 (October 26, 1988); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 54 FR 50788 (December 11, 1989); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 56 FR 42979 (August 30, 1991); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 57 FR 49684 (November 3, 1992); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 58 FR 51615 (October 4, 1993); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 60 FR 8631 (February 15, 1995); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 61 FR 30852 (June 18, 1996); and *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 61 FR 44038 (August 27, 1996).

[3] *See Anhydrous Sodium Metasilicate From France; Final Results of Administrative Review of Antidumping Duty Order*, 47 FR 15620 (April 12, 1982); *Anhydrous Sodium Metasilicate From France; Final Results of Administrative Review of Antidumping Duty Order*, 47 FR 44594 (October 8, 1982); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 53 FR 9785 (March 25, 1988); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 53 FR 43251 (October 26, 1988); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 54 FR 50788 (December 11, 1989); and *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 56 FR 42979 (August 30, 1991).

[4] *See Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 57 FR 49684 (November 3, 1992); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 58 FR 51615 (October 4, 1993); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 60 FR 8631 (February 15, 1995); *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 61 FR 30852 (June 18, 1996); and *Anhydrous Sodium Metasilicate From France; Final Results of Antidumping Duty Administrative Review*, 61 FR 44038 (August 27, 1996).

[5] *See Anhydrous Sodium Metasilicate From France; Notice of Termination of Antidumping Duty Administrative Review*, 62 FR 43701 (August 15, 1997); and *Anhydrous Sodium Metasilicate From France; Notice of Recission of Antidumping Duty Administrative Review*, 63 FR 31179 (June 10, 1998).

section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

In the Department's final determination of sales at less than fair value on ASM from France, the Department established an antidumping margin of 60.00 percent (*see Anhydrous Sodium Metasillicate From France—Final Determination of Sales at Less Than Fair Value*, 45 FR 77498 (November 24, 1980) and *Anhydrous Sodium Metasillicate From France; Antidumping Duty Order*, 46 FR 1667 (January 7, 1981)).

In its substantive response, PQ asserted that because of the high cost of freight for ASM, no French producer could compete in the U.S. market without having sales at less than fair value. Although PQ did not specify the magnitude of the margin likely to prevail if the order were revoked, it submitted information for "computations of export price or constructed export price and normal value, based on realistic assumption." (*See* Substantive Response of PQ, November 2, 1998, at 2 and attachment.)

The SAA at 891, House Report at 64, and section 351.218(e)(2)(i) of the *Sunset Regulations* provide that, only in the context of a full sunset review and only under the most extraordinary circumstances will the Department rely on a countervailing duty rate or dumping margin other than those it calculated and published in its prior determinations. The Department, on the basis of inadequate responses (in this case, no response), determined to conduct an expedited review of this duty order. Only in full reviews will the Department consider the calculation of new margins. Further, even if the Department had determined to conduct a full review of this order, it is not persuaded by the evidence presented by PQ that such extraordinary circumstances exist in this case as to warrant the calculation of a new dumping margin.

Therefore, consistent with the *Sunset Policy Bulletin*, we determine that the original margin we calculated, which reflects the behavior of exporters without the discipline of the order, is probative of the behavior of the French producers and exporters of ASM. The Department will report to the Commission the company-specific and "all others" rate at the levels indicated in the Final Results of Review section of this notice.

Final Results of Review: As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturers/exporters	Margin (percent)
Rhone-Poulenc	60.00
All Others	60.00

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–2676 Filed 2–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–007]

Final Results of Expedited Sunset Review: Barium Chloride From the People's Republic of China (PRC)

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Barium Chloride from the People's Republic of China (PRC).

SUMMARY: On October 1, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on barium chloride from China (PRC) (63 FR 52683) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and a complete substantive response filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section to this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 1999.

Statute and Regulations: This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63* FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope: The merchandise covered by this order is barium chloride, a chemical compound having the formula $BaCl_2$ or $BaCl_2$ $2H_2O$, currently classifiable under item 2827.38.00 of the Harmonized Tariff Schedules (HTS). The HTS item number is provided for convenience and for Customs purposes. The written descriptions remain dispositive.

This review covers all manufacturers and exporters of barium chloride from China.

Background: On October 1, 1998, the Department initiated a sunset review of the antidumping order on barium chloride from China (63 FR 52683) pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate from Chemical Products Corporation ("CPC") on October 15, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. CPC claimed interested party status under section 771(9)(C) of the Act, as a United States producer of barium chloride. In its substantive response, CPC stated that it was the petitioner in the original antidumping investigation that led to the issuance of the antidumping duty order on barium chloride from China.

Further, CPC stated that it has participated in all of the administrative reviews that have been conducted by the Department on barium chloride from China. On October 28, 1998, the Department received a substantive response from CPC, within the 30-day deadline specified in *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 C.F.R. § 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

Determination: In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

The antidumping duty order on barium chloride from China was issued on October 17,1984.[1] Since that time, the Department has conducted several administrative reviews.[2] The antidumping duty order remains in effect for all imports of barium chloride from China.

In its substantive response, CPC argued that revocation of the antidumping duty order would result in the resumption of export shipments of barium chloride from China on a large scale and at prices well below fair value. CPC based its conclusion on a number of factors, including historical experience, Chinese productive capacity, the Asian economic crisis, and Chinese export policy. CPC argued that the Department should determine that dumping will continue or resume on the basis that dumping continued at levels above de minimis while the order has been in effect and imports of the subject merchandise ceased after the issuance of the order.

With respect to continuation of dumping after the issuance of the order, CPC referred to the final results of administrative reviews issued by the Department[3] and stated that historical experience clearly demonstrates that the subject merchandise has been dumped at margins greater than de minimis since the issuance of the order. CPC stated that the 60.84 percent duty deposit margin currently in effect for Sinochem (the Chinese manufacturer/exporter reviewed) was first imposed in the final results of administrative review issued on January 3, 1989.[4] CPC suggested that, as a result of the 60.84 percent deposit rate, there was a significant decrease in exports and ultimately a cessation of exports. CPC noted that for the October 1, 1990 through September 30, 1991, review period, the Department found that there were no shipments. CPC supports its assertion that the order resulted in the decrease, and ultimate cessation, of exports of barium chloride from China with reference to import statistics.[5] CPC asserts that the Department's issuance of preliminary and final determinations of sales at less than fair value in April and August of 1984, resulted in the decrease of imports from China from 5.3 million pounds in 1983 to 3.2 million pounds in 1984. CPC also noted that with the 1989 issuance on a 60.84 percent duty deposit rate, imports decreased from 1.5 million pounds in 1988 to 0.2 million pounds in 1989, and ultimately to zero by 1991.

CPC acknowledged that imports reappeared in 1994, but at levels significantly below pre-order levels. CPC argued, therefore, that the continuation of dumping combined with the cessation of exports demonstrates that Chinese barium chloride cannot be sold in the U.S. market except through dumping. CPC also asserted that, in addition to the original three Chinese factories producing barium chloride (as identified in the ITC's report), it had obtained information that an additional seven factories (with capacity of 73,400 MT/annum) produce barium chloride in China. Noting that barium chloride is a commodity chemical product with a number of industrial uses and applications, CPC argued that as economic and industrial activity slows in China's traditional Asian markets, the demand for barium chloride will decrease and Chinese exports will decline. Therefore, asserts CPC, without an antidumping order in place, the Chinese producers of barium chloride can be expected to turn their attention to the U.S. market for their excess production. Finally, CPC argues that, as supported by statements of U.S. government officials, China has an aggressive export policy in place that, with the revocation of the order, could be expected to result in the resumption of large-scale shipments to the United States.

In conclusion, CPC stated that for each of the above discussed reasons, without an order in place, dumping from China would likely overwhelm CPC and eliminate the lone remaining U.S. producer of barium chloride.

As discussed in Section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890,

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[1] *See Barium Chloride from the People's Republic of China, Antidumping Duty Order*, 49 FR 40635 (October 17, 1984).

[2] *See Barium Chloride from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 52 FR 313 (January 5, 1987); *Barium Chloride form the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 54 FR 52 (January 3, 1989); and *Barium Chloride from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 57 FR 29467 (July 2, 1992).

[3] *Id.*

[4] The review covered the period October 1, 1985 through September 30, 1986, and set the duty deposit rates for entries on or after the publication date of the notice.

[5] CPC provided data collected from the U.S. Census Bureau and published on Form IM 145 (from 1980 through 1988 the data were reported under TSUS 417.70.00 and for 1989 through 1997 under HTSUS 287.38.0000).

and the House Report at 63–64, "Existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping." Deposit rates above *de minimis* continue in effect for exports of barium chloride from China. Additionally, exports of barium chloride from China ceased between 1991 and 1993, and although since resumed, have never reached higher than six percent of their pre-order level. Therefore, given that dumping above *de minimis* has continued over the life of the order and imports ceased at least temporarily, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin: In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation for each company because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. *See* section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. *See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.

In its substantive response, CPC urged the Department to determine that the magnitude of the margin likely to prevail if the order were revoked is 60.84 percent, the margin determined in the final results of the second administrative review and the current duty deposit rate. CPC asserted that the Department has recognized that dumping margins can increase after the issuance of an order and that a more current and higher margin, even if based on the best information available, may well be a more appropriate indicator of the magnitude of the margin likely to prevail if the order were revoked. CPC argued that the dumping margin and cash deposit rate for barium chloride from China increased significantly after the issuance of the antidumping duty order—from 14.5 percent to 60.84 percent. CPC stated that the 14.5 percent rate from the original investigation was never actually used as the basis of assessing duties, as it was replaced by a rate of 7.82 percent in the first administrative review. Given that the margin of 60.84 percent has applied to all imports since October 1, 1986, CPC argues that this is the only appropriate and realistic measure of the magnitude of dumping.

In the *Sunset Policy Bulletin*, the Department stated that "a company may choose to increase dumping in order to maintain or increase market share" and that "the Department may, in response to argument from an interested party, provide the Commission a more recently calculated margin for a particular company, where for that particular company, dumping margins increased after the issuance of the order." (*See* section II.B.2 of the *Sunset Policy Bulletin*.) As detailed in *Final Results of Expedited Sunset Review: Stainless Steel Plate From Sweden* (63 FR 67658, December 8, 1998) the Department's intent was to establish a policy of using the original investigation margin as a starting point, thus providing interested parties the opportunity and incentive to come forward with data which would support a different estimate. In this case, CPC merely argued that the margin from the original determination was never actually used to assess duties and that, by the second review, the margin had increased to a level where it remains today. The import statistics provided by CPC demonstrate that, after steadily increasing from 1980 to 1983, imports of barium chloride from China began decreasing with the issuance of the preliminary and final determinations of sales at less than fair value. We note that the margin from the original investigation served as the duty deposit rate until January 1987, when the final results of the first administrative review were issued. Further, the final results (the 60.84 percent) of the administrative review covering imports from October 1985 through September 1986, were issued in January 1989, five years after the issuance of the order and, at a time when imports had already decreased to less than 30 percent of the pre-investigation level of imports. Although the statistics provided by CPC demonstrate a slight increase in the volume of imports between 1984 and 1985, import volumes decreased every year thereafter until 1995. Therefore, because there was no increase in imports of barium chloride from China corresponding to the increase in the dumping margin, we find CPC's argument of choosing the rate from the second administrative review (and current deposit rate) unpersuasive. Therefore, we find no reason to deviate from our *Sunset Policy Bulletin* in this review. We determine that the original margin calculated by the Department, which reflects the behavior of exporters without the discipline of the order, is probative of the behavior of the Chinese producers/exporters of barium chloride. The Department will report to the Commission the company-specific and "all others" rate at the levels indicated in the Final Results of the Review section of this notice.

Final Results of Review: As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping at the margins listed below.

Manufacturer/exporter	Margin (percent)
China National Chemicals Import and Export Corporation (SINOCHEM)	14.50
All Others	14.50

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752(i)(1) of the Act.

Dated: January 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–2673 Filed 2–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–001]

Final Results of Expedited Sunset Review: Sorbitol From France

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of final results of expedited sunset review: Sorbitol from France.

SUMMARY: On October 1, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on sorbitol from France (63 FR 52683) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and a complete substantive response filed on behalf of the domestic industry, and inadequate response (in this case no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Review* section to this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 1999.

Statute and Regulations: This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope: The merchandise covered by this order is crystalline sorbitol, a polyol produced by the hydrogenation of sugars (glucose), used in the production of sugarless gum, candy, groceries, and pharmaceuticals, currently classifiable under Harmonized Tariff Schedule ("HTS") item number 2905.44.00. The HTS item number is provided for convenience and for Customs purposes. The written description remain dispositive.

This review covers all manufacturers and exporters of sorbitol from France.

Background: On October 1, 1998, the Department initiated a sunset review of the antidumping order on sorbitol from France (63 FR 52683) pursuant to section 751(c) of the Act. On October 6, 1998, we received a Notice of Intent to Participate from SPI Polyols, Inc. ("SPI"). On October 16, 1998, we received a Notice of Intent to Participate from Archer Daniels Midland Company ("ADM") and Roquette America ("RA"). Each of these notices were received within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. ADM and SPI claimed interested party status under section 771(9)(C) of the Act, as domestic producers of sorbitol. RA claimed interested party status as a domestic producer and as an importer of the subject merchandise. The Department received substantive responses on behalf of each of the three parties within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 C.F.R. § 351.218(e)(1)(ii)(C)(2)), we determined to conduct an expedited review.

Determination: In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping: Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (see section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

The Department's antidumping duty order on sorbitol from France was published in the **Federal Register** (47 FR 15391) on April 9, 1982. Since that time the Department has conducted several administrative reviews.[1] The antidumping duty order remains in effect for all imports of sorbitol from France.

In its substantive response, ADM argues that if the order on crystalline sorbitol from France were revoked dumping will continue or resume. ADM supports its conclusion by stating that after the issuance of the order, dumping of sorbitol continued at levels above de minimis, imports ceased and imports declined when they did not cease altogether. With respect to margins above de minimis, ADM notes that in five of the seven administrative reviews

[1] *See Sorbitol from France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6459 (February 12, 1982); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 51 FR 42873 (November 26, 1986); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 52 FR 20444 (June 1, 1987); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 53 FR 21506 (June 8, 1988); *Sorbitol from France; Final Results of Antidumping Duty Administrative Review*, 55 FR 6668 (February 26, 1990).

conducted by the Department since 1982, margins exceeded de minimis, and in one instance, the margin was more than four times that of the original margin.[2] With respect to the cessation of imports, ADM states that Roquette Freres ("RF"), the only known exporter of sorbitol to the U.S., previously acknowledged that its sorbitol exports ceased for at least some period of time after the issuance of the antidumping order. ADM argues that because RF requested revocation in 1988 based on no shipments for several years and no sales that contained margins during the 1987–88 administrative review period, the Department could conclude RF could not ship sorbitol to the U.S. without dumping. Finally ADM argues that aggregated import statistics for HTSUS item no. 2905.44.00, which includes crystalline sorbitol, indicates that the total volume of imports declined, thus providing a basis to infer that RF exported smaller volumes in certain periods compared to the volumes that it shipped before the antidumping petition was originally filed.[3]

In its substantive response SPI asserts that absent the order, RF will resume large volume shipments from its French plant, producing dumping margins in the range of 40 percent. SPI further asserts that in recent years RF sold to U.S. customers exclusively from its U.S. plant. However, RF has been bidding at extra-low prices to obtain additional U.S. business. If successful, the additional business would substantially exceed the capacity at RF's Illinois plant. Thus, SPI asserts, it is obvious that RF plans to serve the additional business from its French plant. Citing to the July 1998 marketing report, "Sorbitol and Related Polyols—Worldwide Supply, Demand Business Opportunities 1997/8–2005" in which the price for sorbitol 100% is given as $2.15/kg in the EU and $1.65/kg in the United States, SPI estimates dumping margins of 40 percent.

RA, in its substantive response to the notice of initiation, supported the preservation of the antidumping order. RA claimed that the EU, particularly France, is currently significantly expanding production capacity for crystalline sorbitol. Further, because market demand within the EU is growing very slowly and cannot be expected to consume the capacity increase and because exports are expected to decline drastically because of the Asian crisis, the EU industry will be seeking new export markets, with the United States being the likely target.

As discussed in section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, "[E]xistence of dumping margins after the order, or cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed." As ADM noted, dumping margins above de minimis were found to exist in five of the seven administrative reviews conducted by the Department. Further, deposit rates above de minimis continue in effect for exports of sorbitol from France. Therefore, given that dumping margins above de minimis were found to exist and continue in effect, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

Magnitude of the Margin: In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation for each company because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. For companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. *See* section II.B.1 of the *Sunset Policy Bulletin*. Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. *See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.

In the Department's final determination of sales at less than fair value of sorbitol from France, the Department established a 2.9 percent dumping margin for RF. The Department has not issued an affirmative duty absorption determination.[4]

ADM states that in compliance with the SAA, the Department should provide the original margin of 2.9 percent to the Commission because 2.9 percent reflects RF's behavior without the discipline of an order in place.[5] ADM further argues that, in this case, it is not appropriate for the Department to select a more recently calculated rate because the dumping margins calculated for the seven reviews conducted by the Department have fluctuated significantly and do not evince a pattern from which the Department could conclude that a more recently calculated rate is likely to prevail in the absence of the order.

RA argues that a dumping margin of more than 20 percent is likely to prevail if the order is revoked because the EU market, including France, is a highly protected market with a tariff structure which prohibits U.S. producers from exporting to the EU. In addition, RA claims that the EU has a system of export refunds to compensate EU producers for the high internal EU prices of grains which are the feedstock for crystalline sorbitol outside the EU.

As discussed above, SPI alleges that the margin of dumping likely to prevail if the order is revoked is 40 percent. SPI bases this allegation on an EU price of $2.15/kg and a U.S. price of $1.65.

As noted in the *Sunset Regulations* and *Sunset Policy Bulletin*, only under the most extraordinary circumstances will the Department rely on a dumping margin other than those it calculated and published in its prior determinations. Further, in antidumping sunset reviews, the Department will consider other factors, such as prices and costs, only where it determines that good cause to consider such other factors exists (*see* section 351.218(e)(2) of the *Sunset Regulations* and section II.C of the *Sunset Policy Bulletin*). Although RA and SPI assert that the dumping margin likely to prevail without the order could be 20 percent or 40 percent, they do not make any "good cause" arguments. Neither RA nor SPI offered any rationale suggesting that their estimated margins would not be more speculative and, therefore, less probative than the calculated rate from the original investigation.

The Department finds no reason to deviate from our *Policy Bulletin* in this review. Therefore, we determine that the original margin calculated by the Department which reflects the behavior of exporters without the discipline of the order, is probative of the behavior of the French producers of sorbitol. The Department will report to the Commission the company-specific and "all others" rate at the levels indicated in the *Final Results of the Review* section of this notice.

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[2] See Substantive Response of ADM (November 2, 1998) at 4.

[3] See Substantive Response of ADM (November 2, 1998) appendix B.

[4] *See Sobitol from France; Final Determination of Sales at Less Than Fair Value*, 47 FR 6549 (February 12, 1982).

Final Results of Review: As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below.

Manufacturer/Exporter	Margin (percent)
Roquette Freres	2.90
All Others	2.90

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: January 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–2675 Filed 2–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–078; A–423–077; A–428–082]

Final Results of Expedited Sunset Review: Sugar From France, Belgium and Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: Sugar from France, Belgium and Germany.

SUMMARY: On October 1, 1998, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping findings on sugar from France, Belgium and Germany (63 FR 52683) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the bases of the notices of intent to participate and substantive comments filed on behalf of the domestic industry, as well as inadequate responses (in these cases, no responses) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping findings would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: February 4, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to these antidumping findings is sugar, both raw and refined, with the exception of specialty sugars, from France, Belgium and Germany. The order on sugar from France excludes homeopathic sugar pellets meeting the following criteria: (1) composed of 85 percent sucrose and 15 percent lactose; (2) have a polished, matte appearance, and more uniformly porous than domestic sugar cubes; (3) produced in two sizes of 2 mm and 3.8 mm in diameter.[1]

The merchandise under review is currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 1701.1100, 1701.1101, 1701.1102, 1701.1103, 1701.1105, 1701.1110, 1701.1120, 1701.1150, 1701.1200, 1701.1201, 1701.1202, 1701.1205, 1701.1210, 1701.1250, 1701.9105, 1701.9110, 1701.9120, 1701.9121, 1701.9122, 1701.9130, 1701.9900, 1701.9901, 1701.9902, 1701.9905, 1701.9910, 1701.9950, 1702.9005, 1702.9010, 1702.9020, 1702.9030, 1702.9031, 1702.9032, 2106.9011, 2106.9012, 2106.9042, 2106.9044, and 2106.9046. The HTSUS item numbers are provided for convenience and customs purposes only. They are not determinative of the products subject to the orders. The written description remains dispositive.

These reviews cover all manufacturers and exporters of sugar from France, Belgium and Germany.

Background

On October 1, 1998, the Department initiated sunset reviews of the antidumping findings on sugar from France, Belgium and Germany (63 FR 52683), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate for each of these findings from The United States Beet Sugar Association and The United States Cane Sugar Refiners' Association ("the Associations") on October 16, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The Associations claimed interested party status under section 771(9)(E) of the Act as a trade association whose members produce sugar in the United States. We received a complete substantive response from the Associations on November 2, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), for each of these findings. In each of the substantive responses, the Associations claimed interested party status under subsections 771(9)(C) and 771(9)(E) & (G)(i–iii) of the Act. We did not receive a substantive response from any respondent interested party in these sunset proceedings. As a result, pursuant to section 751(c)(3)(B) of the Act and our regulations (19 CFR 351.218(e)(1)(ii)(C)(2)), the Department determined to conduct expedited reviews.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping findings would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and shall provide to the International Trade

[1] *See Sugar from France; Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Finding*, 61 FR 40609 (August 5, 1996).

Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically, the Statement of Administrative Action ("the SAA"), H.R. Doc., No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

The antidumping findings on sugar from France, Belgium, and Germany were published in the **Federal Register** as Treasury Decision 79–167 (44 FR 33878, June 13, 1979). Since that time, the Department has conducted a number of administrative reviews on each of these findings but found there were no shipments during the periods of review.[2] The findings remain in effect for all imports of the subject merchandise from France, Belgium and Germany.

In its substantive responses, the Associations argue that the actions (the cessation of exports of sugar to the U.S.) taken by French, Belgian and German producers and exporters of sugar during the life of these findings indicate that "revocation of the antidumping and countervailing duty orders on sugar would likely lead to the recurrence of dumping and of a countervailable subsidy" (*see* November 2, 1998, Substantive Responses of the Associations at 2). With respect to whether dumping continued at any level above de minimis after the issuance of these findings, the Associations assert that, as documented in the final results of reviews reached by the Department, dumping levels have remained constant throughout the life of the findings, with margins of 102 percent for French producers and exporters, 103 percent for Belgian producers and exporters and 121 percent for German producers and exporters.

With respect to whether there has been a cessation of imports of the subject merchandise, the Associations stated that, soon after the issuance of the findings, sugar imports from France, Belgium and Germany ceased. The Department confirmed that there were no shipments of subject merchandise from any of the three countries since the late 1970's.[3]

We find that the cessation of imports after the issuance of the findings is highly probative of the likelihood of continuation or recurrence of dumping. Furthermore, deposit rates above de minimis levels continue in effect for all shipments of the subject merchandise from each of the three countries. As discussed in Section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if imports cease after the order is issued, we may reasonably assume that exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping. Therefore, absent argument and evidence to the contrary, given that shipments of the subject merchandise ceased soon after the issuance of the findings, and that dumping margins continue to exist, the Department, consistent with Section II.A.3 of the *Sunset Policy Bulletin*, determines that dumping is likely to continue or recur if the findings were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

In these cases, Treasury published country-wide weighted-average dumping margins for each of the three findings. The rates established were 102 percent for all exports from France, 103 percent for all exports from Belgium and 121 percent for all exports from Germany (44 FR 8949, February 12, 1979).

In its substantive response, the Associations state that the dumping margins for each of these findings are likely to be at least as high as the first margins calculated at the time of the original investigation. In fact, the Associations project, based on current U.S. and EU pricing (which is uniform in all EU countries), a dumping margin of 263 percent *ad valorem* would prevail if the findings were revoked.[4]

The Department finds that the country-wide weighted-averaged margins calculated in the original investigations are probative of how French, Belgian and German producers and exporters of sugar would act if the findings were revoked. However, with respect to the projected dumping

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[2] *See Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 46 FR 22778 (April 21, 1981); *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 47 FR 3399 (January 25, 1982); *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 48 FR 1786 (January 14, 1983); and *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 49 FR 43738 (October 31, 1984).

[3] *See Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 46 FR 22778 (April 21, 1981); *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 47 FR 3399 (January 25, 1982); *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 48 FR 1786 (January 14, 1983); and *Sugar from France, Belgium and the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Finding*, 49 FR 43738 (October 31, 1984) in which the Department found no shipments by any of the companies reviewed.

[4] The Associations also project, on a constructed value basis, a dumping margin of 153.73 percent from France, 152.07 percent from Belgium and 220.54 percent from Germany. *See* November 2, 1998, Substantive Responses of the Associations, at 21 and 22.

margins calculated by the Associations, we note that the SAA at 890–891 provides that, only in the most extraordinary circumstances, will the Department rely on dumping margins other than those it calculated and published in its prior determinations. The *Sunset Regulations* at 19 CFR 351.218(e)(2)(i) explain that "extraordinary circumstances" may be considered by the Department in the context of a full sunset review, where the substantive responses from both domestic and respondent interested parties are adequate. In these cases, however, the Department determined to conduct expedited sunset reviews because the respondents did not submit any substantive responses to the notice of initiation. Thus, in light of the inadequate responses, the Department will not consider whether, in these sunset reviews, it should rely on margins other than the rates from the original investigations.

Therefore, consistent with the *Sunset Policy Bulletin*, we determine that the original margins calculated by Treasury are probative of the behavior of the French, Belgian and German producers and exporters of sugar if the findings were revoked. We will report to the Commission the country-wide margins contained in the *Final Results of Review* section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping findings would be likely to lead to continuation or recurrence of dumping at the levels indicated below:

Manufacturers/exporters	Margin (percent)
All French Manufacturers/Exporters	102
All Belgian Manufacturers/Exporters	103
All German Manufacturers/Exporters	121

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: January 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–2672 Filed 2–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012099A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for modifications to scientific research permits (1115, 1116, 1119); Issuance of amendments to incidental take permits (899, 901, 902, 903).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received applications for modifications to existing permits from: Public Utility District No. 1 of Chelan County, Wenatchee, WA (PUD-CC)(1115), Public Utility District No. 1 of Douglas County, East Wenatchee, WA (PUD-DC)(1116), and U.S. Fish and Wildlife Service, Leavenworth, WA (FWS)(1119); and NMFS has issued amendments to incidental take permits to: Oregon Department of Fish and Wildlife at Portland, OR (ODFW)(899), Washington Department of Fish and Wildlife at Olympia, WA (WDFW) (901, 902), and Idaho Department of Fish and Game at Boise, ID (IDFG)(903).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before March 8, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 899, 901, 902, and 903: Robert Koch, Portland, OR (503–230–5424).

For permits 1115, 1116, and 1119: Tom Lichatowich, Portland, OR (503–230–5438)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species and populations are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Upper Columbia River (UCR) spring, Snake River (SnR) spring/summer, SnR fall.

Steelhead trout (*Oncorhynchus mykiss*): UCR

To date, a listing determination for UCR spring chinook salmon under the ESA has not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues a listing determination. The initiation of a 30-day public comment period on the applications, including their proposed takes of UCR spring chinook salmon, does not presuppose a listing determination.

Modification Requests Received

PUD-CC requests modification 2 to permit 1115. Permit 1115 authorizes PUD CC to take adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with fish passage studies in the UCR Basin. For Modification 2, PUD-CC requests takes of adult and juvenile UCR spring chinook salmon in anticipation of a possible listing decision of this species by NMFS. PUD-CC also requests authorization for takes of ESA-listed juvenile salmonids associated with three new proposed studies, Studies 4, 5 and 6. In Study 4, PUD CC proposes to use new acoustic tagging technology to monitor the behavior of juvenile salmonids as they migrate through passage facilities at Rocky Reach Dam. Juvenile salmonids are proposed to be anesthetized, tagged, allowed to recover, released above the dam and tracked downstream. In Study 5, PUD CC proposes to use passive integrated transponders (PIT) and radio tagging technology to study the survival of juvenile, endangered, artificially

propagated, UCR steelhead at Rocky Reach and Rock Island Dams. ESA-listed juvenile steelhead are proposed to be anesthetized, tagged, allowed to recover, released above the dams and tracked downstream. Results from Study 4 and 5 will be used to improve the operation of fish passage facilities and evaluate the relative benefits of PIT and radio tagging technologies. For Study 6, PUD CC proposes to: (1) determine the types and numbers of adult salmonids that may be present in the Lake Chelan bypass reach after spill at the Lake Chelan hydroelectric project is curtailed, and (2) identify a mitigation strategy to protect anadromous and resident fish that may become stranded in the bypass reach after spill is curtailed. Adult salmonids are proposed to be observed during snorkel surveys. If any adult salmonids are observed in the bypass reach, the fish are proposed to be captured, handled to obtain scientific information, and released. An associated increase in ESA-listed juvenile fish indirect mortalities are also requested. Modification 2 is requested to be valid for the duration of the permit. Permit 1115 expires on December 31, 2002.

PUD-DC requests modification 2 to scientific research permit 1116. Permit 1116 authorizes PUD-DC to take adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with fish passage studies. For modification 2, PUD DC requests authorization for takes of ESA-listed juvenile steelhead associated with two new research studies, Studies 4 and 5. In Study 4, PUD DC proposes to use PIT tag technology to assess the survival of juvenile, endangered, artificially propagated, UCR steelhead as they pass through Wells Dam. In Study 5, PUD DC proposes to study the survival of juvenile, endangered, artificially propagated, UCR steelhead at Wells Dam and evaluate the relative benefits of PIT and radio tag technology. ESA-listed juvenile steelhead are proposed to be anesthetized, tagged, allowed to recover, released above the dam and tracked electronically. Results from Studies 4 and 5 will be used to improve the operation of fish passage facilities and evaluate fish tagging technology. An associated increase in ESA-listed juvenile fish indirect mortalities are also requested. Modification 2 is requested to be valid for the duration of the permit. Permit 1116 expires on December 31, 2002.

FWS requests modification 1 to permit 1119. Permit 1119 authorizes takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with scientific research studies. For modification 1, FWS requests takes of adult and juvenile UCR spring chinook salmon in anticipation of a possible listing decision of this species by NMFS. Also for modification 1, FWS requests authorization for takes of ESA-listed adult and juvenile salmonids associated with a new study designed to evaluate the feasibility of restoring endangered UCR steelhead and UCR spring chinook salmon above barriers in Icicle Creek, a tributary to the Wenatchee River. FWS proposes to capture adult, endangered, UCR steelhead and UCR spring chinook with drift nets, hook and line, or by collecting them in a fish ladder. The fish are proposed to be anesthetized, tagged with radio transmitters, allowed to recover, placed above the barriers and tracked electronically. Snorkel observations of adult and juvenile salmonids in Icicle Creek are also proposed. If successfully introduced above the barriers, endangered UCR steelhead and UCR spring chinook salmon will benefit by having access to a well managed wilderness watershed having suitable fish rearing habitat. Modification 2 is requested to be valid for the duration of the permit. Permit 1119 expires on December 31, 2002.

Amendments Issued

On December 30, 1998, NMFS issued amendments to ODFW's incidental take permit 899, to WDFW's incidental take permits 901 and 902, and to IDFG's incidental take permit 903. The amendments provide an extension of the duration of the permits through December 31, 1999. The permits were due to expire on December 31, 1998. The permits authorize incidental takes of endangered SnR sockeye salmon and threatened SnR spring/summer and fall chinook salmon associated with the operation of non-listed fish hatchery programs, educational projects, and volunteer salmon enhancement projects within the Columbia River Basin. Extension of the permits will allow ODFW, WDFW, and IDFG to continue hatchery operations in 1999 while NMFS prepares a new biological opinion.

Dated: January 29, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–2641 Filed 2–3–99; 8:45 am]
BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 18 February 1999 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C., 20001. Items of discussion will include designs for projects affecting the appearance of Washington, D.C., including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., January 28, 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–2654 Filed 2–3–99; 8:45 am]
BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD) as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Social Security Administration (SSA) and the DoD that their records are being matched by computer.

The Social Security Act requires SSA to verify, with independent or collateral sources, information provided to SSA by applicants for and recipients of Supplemental Security Income (SSI) payments. The SSI applicant or recipient provides information about eligibility factors and other relevant information. SSA obtains additional information as necessary before making

any determinations of eligibility or payment amounts or adjustments thereto. With respect to military retirement payments to SSI recipients who are retired members of the Uniformed Services or their survivors, SSA proposes to accomplish this task by computer matching with the DOD.

DATES: This proposed action will become effective March 8, 1999, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Defense Manpower Data Center (DMDC) and SSA have concluded an agreement to conduct a computer matching program. The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by the SSA.

A copy of the computer matching agreement between SSA and DoD is available upon request. Requests should be submitted to the address caption above or to the Computer Matching Program and Policy Team, Office of Disclosure Policy, Office of Program Support, Office of Disability and Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on January 21, 1999, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: January 28, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE SOCIAL SECURITY ADMINISTRATION AND THE DEPARTMENT OF DEFENSE FOR VERIFICATION OF ELIGIBILITY FOR SUPPLEMENTAL SECURITY INCOME PROGRAM

A. *Participating agencies:* Participants in this computer matching program are the Social Security Administration (SSA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The SSA is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *Purpose of the match:* The Social Security Act requires SSA to verify, with independent or collateral sources, information provided to SSA by applicants for and recipients of Supplemental Security Income (SSI) payments. The SSI applicant or recipient provides information about eligibility factors and other relevant information. SSA obtains additional information as necessary before making any determinations of eligibility or payment amounts or adjustments thereto. With respect to military retirement payments to SSI recipients who are retired members of the Uniformed Services or their survivors, SSA proposes to accomplish this task by computer matching with the DOD.

C. *Authority for conducting the match:* The legal authority for the matching program is contained in sections 1631(e)(1)(B) and (f) of the Social Security Act (42 U.S.C. 1383(e)(1)(B) and (f)).

D. *Records to be matched:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for the purpose of this computer match are as follows:

1. The SSA will use 09–60–0103, entitled 'Supplemental Security Income Record, HHS/SSA/OSR,' last published on January 6, 1995, at 60 FR 2150.

2. The DMDC will use S322.10 DMDC, entitled 'Defense Manpower Data Center Data Base', last published on September 14, 1998 at 63 FR 49095.

E. *Description of computer matching program:* SSA, as the source agency, will provide DMDC with an electronic query file which contains the name, SSN, and SSI person type. Upon receipt of the query file, DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN of the SSI file against a DMDC database. The DMDC database consists of extracts of personnel and pay records of retired members of the uniformed services or their survivors.

DMDC will furnish the matched data ('hits') to SSA in an electronic reply file. SSA is responsible for verifying and determining that the data in the DMDC reply file are consistent with the data in the source SSA query file and resolving any discrepancies or inconsistencies on an individual basis. SSA also is responsible for making final determinations as to eligibility for or amount of payments, continuation or adjustments to payments, or any recovery of overpayments as a result of the match.

The electronic SSA query file contains approximately 6.5 million records extracted from the Supplemental Security Income Record.

The electronic DMDC database contains records on approximately 2.15 million retired uniformed service members or their survivors. DMDC will match the SSN on the SSA file by computer matching against the DMDC database.

F. *Inclusive dates of the matching program:* This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time on a annual basis. By agreement between SSA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *Address for receipt of public comments or inquiries:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 99–2580 Filed 2–3–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

The following patents and patent applications are available for licensing:

Patent 5,633,960: Spatially Averaging Fiber Optic Accelerometer Sensors; filed 25 September 1996; patented 27 May 1997.//Patent 5,705,412: Method of Making Buried Gate Insulator Field Effect Transistor; filed 7 October 1996; patented 6 January 1998.//Patent 5,734,623: Fiber Optic Sound Velocity Profiler; filed 7 April 1997; patented 31 March 1998.//Patent 5,734,689: Thermal Neutron Detector; filed 29 January 1996; patented 31 March 1998.//Patent 5,735,228: Barge Linking System Using Flexible Connectors; filed 13 March 1997; patented 7 April 1998.//Patent 5,735,639: Modular Mobile Safety Structure for Containment and Handling of Hazardous Materials; filed 13 December 1996; patented 7 April 1998. //Patent 5,736,950: Sigma-Delta Modulator with Tunable Signal Passband; filed 31 January 1995; patented 7 April 1998.//Patent 5,737,067: Length and Elongation Sensor; filed 18 April 1996; patented 7 April 1998.//Patent 5,737,249: Active Sonar Range-Beam Partitioner; filed 27 January 1997; patented 7 April 1998.// Patent 5,737,279: Retractable Sensor Array System; filed 7 August 1996; patented 7 April 1998.//Patent 5,737,347: Laser with Multiple Gain Elements; filed 26 February 1996; patented 7 April 1998.//Patent 5,737,962: Steam Delivery System for Static Testing of Gas Driven Torpedoes; filed 31 July 1996; patented 14 April 1998.//Patent 5,739,738: Inflatable HI Q Toroidal Inductor; filed 18 July 1994; patented 14 April 1998.//Patent 5,740,018: Environmentally Controlled Circuit Pack and Cabinet; filed 29 February 1996; patented 14 April 1998. //Patent 5,741,167: Remotely Controllable Signal Generating Platform; filed 30 October 1995; patented 21 April 1998.//Patent 5,744,221: Flexible High-Damping Composite Structures and a Fabrication Thereof; filed 3 May 1994; patented 28 April 1998.//Patent 5,746,018: Muzzle Brake for an Underwater Gun; filed 19 May 1997; patented 5 May 1998.//Patent 5,746,905: Coating Evaluation System; filed 14 February 1996; patented 5 May 1998.// Patent 5,747,115: UV-Curable and Non-Volatile Pigmented Coatings; filed 28 February 1995; patented 5 May 1998.// Patent 5,748,102: Apparatus for Interconnecting an Underwater Vehicle and a Free Floating Communications Pod; filed 19 September 1995; patented 5 May 1998.//Patent 5,748,667: Spread Spectrum Modulation Using Time Varying Linear Filtering; filed 25 March 1996; patented 5 May 1998.//Patent 5,749,312: System for Deploying Weapons Carried in an Annular Configuration in a UUV; filed 11 October 1995; patented 12 May 1998.// Patent 5,749,959: Dark Coating with Low Solar Infrared Absorbing Properties; filed 10 February 1969; patented 12 May 1998.//Patent 5,750,057: Insensitive Binary Explosive Production Process; filed 5 June 1997; patented 12 May 1998.//Patent 5,750,195: Deposition of Diamond on Oxidizable Material; filed May 1997; patented 12 May 1998.//Patent 5,750,919: Self-Adjusting Obturator for Projectile Launching; filed 16 February 1993; patented 12 May 1998.//Patent 5,750,921: Waste-Free Method of Making Molding Powder; filed 7 July 1997; patented 12 May 1998.//Patent 5,751,006: Water Heated Panels for Simulating the Infrared Signature of a Target; filed 5 May 1997; patented 12 May 1998.//Patent 5,751,260: Sensory Integrated Data Interface; filed 3 April 1995; patented 12 May 1998.//Patent 5,751,294: Approximation Method for Workplace Layout Using Convex Polygon Envelope; filed 27 August 1996; patented 12 May 1998.//Patent 5,751,380: Optical Protection Apparatus for Use with Night Vision Devices; filed 2 October 1995; patented 12 May 1998. //Patent 5,751,609: Neural Network Based Method for Estimating Helicopter Low Airspeed; filed 24 October 1996; patented 12 May 1998.//Patent 5,751,658: Signal Processor for Narrow Band Sonar Signals; filed 1 September 1970; patented 12 May 1998.//Patent 5,751,659: Ceramic Mass Loaded Longitudinal Vibrator; filed 29 September 1969; patented 12 May 1998.//Patent 5,752,026: Early Commit Locking Computer Database Protocol; filed 28 April 1994; patented 12 May 1998.//Patent 5,752,460: Submergible Towed Body System; filed 2 February 1996; patented 19 May 1998.//Patent 5,754,318: Apparatus for Parallel Recording of Holograms in a Dynamic Volume Medium; filed 14 July 1997; patented 19 May 1998.//Patent 5,754,572: Mirrorless, Distributed-Feedback, Ultraviolet, Tunable, Narrow-Linewidth, Solid State Laser; filed 15 November 1996; patented 19 May 1998. //Patent 5,755,425: Fitting for Flexible Fuel Bladder; filed 20 June 1996; patented 26 May 1998. //Patent 5,755,947: Adhesion Enhancement for Underplating Problem; filed 31 January 1996; patented 26 May 1998.//Patent 5,756,006: Inert Simulants for Energetic Materials; filed 7 December 1994; patented 26 May 1998.//Patent 5,756,629: Method for Synthesis of Linear Inorganic-Organic Hybrid Polymers; filed 27 November 1996; patented 26 May 1998.//Patent 5,756,631: Siloxanes with Strong Hydrogen Bond Donating Functionalities; filed 27 May 1994; patented 26 May 1998.//Patent 5,756,992: Blackbody Simulating Apparatus for Calibrating an Infrared Imaging Device; filed 25 July 1996; patented 26 May 1998.//Patent 5,757,309: Spatial Frequency Feature Extraction for a Classification System Using Wavelets; filed 18 December 1996; patented 26 May 1998.//Patent 5,757,487: Methods and Apparatus for Distributed Optical Fiber Sensing of Strain or Multiple Parameters; filed 30 January 1997; patented 26 May 1998.// Patent 5,757,675: Workplace Layout Method Using Convex Polygon Envelope; filed 27 August 1996; patented 26 May 1998.//Patent 5,757,721: Inverse Method to Measure the Breathing Wave Speed in a Liquid-Filed Cylindrical Shell; filed 21 March 1997; patented 26 May 1998.// Patent 5,757,724: Zero Velocity Towed Array System; filed 12 August 1997; patented 26 May 1998.//Patent 5,757,725: Dual Zero Velocity Towed Array System; filed 12 August 1997; patented 26 May 1998.//Patent 5,757,974: System and Method for Data Compression; filed 15 April 1996; patented 26 May 1998.// Patent 5,758,122: Immersive Visual Programming System; filed 16 March 1995; patented 26 May 1998.//Patent

5,758,432: Initiator Positioning Tool; filed 13 August 1996; patented 2 June 1998.//Patent 5,758,592: Undersea Vehicle Propulsion and Attitude Control System; filed 12 August 1997; patented 2 June 1998.//Patent 5,758,691: Self-Sealing Mixing Valve; filed 17 April 1996; patented 2 June 1998.// Patent 5,759,230: Nanostructured Metallic Powders and Films via an Alcoholic Solvent Process; filed 30 November 1995; patented 2 June 1998.//Patent 5,759,620: Formation of Composite Materials by the Inward Diffusion and Precipitation of the Matrix Phase; filed 1 July 1981; patented 2 June 1998.// Patent 5,760,089: Chemical Warfare Agent Decontaminant Solution Using Quaternary Ammonium Complexes; filed 13 March 1996; patented 2 June 1998.//Patent 5,760,388: Biomedical Imaging by Optical Phase Conjugation; filed 24 May 1995; patented 2 June 1998.//Patent 5,760,590: Cable Integrity Tester; filed 20 February 1996; patented 2 June 1998.//Patent 5,760,743: Miss Distance Indicator Data Processing and Recording Apparatus; filed 25 July 1996; patented 2 June 1998.//Patent 5,761,085: Method for Monitoring Environmental Parameters at Network Sites; filed 12 November 1996; patented 2 June 1998. //Patent 5,761,154: Acoustic Exploder; filed 26 August 1969; patented 2 June 1998.//Patent 5,761,909: Breathing Gas Temperature Modification Device; filed 16 December 1996; patented 9 June 1998.//Patent 5,764,662: Solid State Ultraviolet Laser Tunable from 223 NM To 243 NM; filed 27 January 1997; patented 9 June 1998.//Patent 5,764,827: Limited Rotation Connection Device; filed 24 February 1997; patented 9 June 1998.//Patent 5,765,101: Portable VHF Receiver/Tape Recorder Calibrator; filed 23 January 1996; patented 9 June 1998. //Patent 5,765,776: Omnidirectional and Controllable Wing Using Fluid Ejection; filed 22 October 1996; patented 16 June 1998.//Patent 5,766,343: Lower Bandgap, Lower Resistivity, Silicon Carbide Heteroepitaxial Material, and Method of Making Same; filed 17 January 1995; patented 16 June 1998.// Patent 5,766,403: Apparatus for Chemical Removal of Protective Coating and Etching of Cables with Fiber-Like Substrate; filed 26 June 1995; patented 16 June 1998.//Patent 5,769,084: Method and Apparatus for Diagnosing Sleep Breathing Disorders; filed 10 July 1996; patented 23 June 1998.//Patent 5,769,153: Method and Apparatus for Casting Thin-Walled Honeycomb Structures; filed 7 November 1996; patented 23 June 1998.//Patent 5,769,677: Marker Buoy; filed 3 February 1997; patented 23 June 1998. //Patent 5,771,741: Method for Testing Gas Driven Torpedoes Using a Steam Delivery System; filed 9 July 1997; patented 30 June 1998.//Patent 5,771,847: Fuel Oxidizer Emulsion Injection System; filed 24 June 1996; patented 30 June 1998.//Patent 5,771,967: Wick-Interrupt Temperature Controlling heat pipe; filed 12 September 1996; patented 30 June 1998.//patent 5,772,907: lactic acid treatment of inp materials; filed 8 May 1996; patented 30 June 1998.//Patent 5,773,308: photoactivatable o-nitrobenzyl polyethylene glycol-silane for the production of patterned biomolecular arrays; filed 10 February 1997; patented 30 June 1998.//Patent 5,773,920: graded electron affinity semiconductor field emitter; filed 3 July 1995; patented 30 June 1998.//Patent 5,773,933: Broadband Traveling Wave Amplifier with an input stripline cathode and an output stripline anode; filed 29 March 1996; patented 30 June 1998.//Patent 5,773,934: Resistive wall Klystron Amplifier having grounded drift tube; filed 3 April 1966; patented 30 June 1998.//Patent 5,774,421: underwater measurement device; filed 4 August 1997; Patented 30 June 1998.// Patent 5,774,422: method of amplitude shading in the time domain to control side lobes in the frequency domain; filed 15 August 1997; patented 30 June 1998.//Patent 5,779,440: flow energizing system for turbo machinery; filed 6 January 1997; patented 14 July 1998.// Patent application 08/656,494: integrated circuits with immunity to single event effects; filed 31 May 1996. //Patent application 08/710,498: lightweight barrier or armor material and method of protecting a structure; filed 18 September 1996.//Patent application 08/854,033: multi-ported divester valve assembly; filed 9 May 1997.//Patent application 08/863,096: guide tube bend fluid bearing; filed 23 May 1997.//Patent application 08/911,270: homo polar transformer for conversion of electrical energy; filed 14 August 1997.//Patent application 08/933,611: Tapered Cylinder Elector-acoustic Transducer with reversed tapered driver; filed 16 September 1997.//Patent application 08/940,177: two-dimensional onto-electronic imager for millimeter and microwave electro-magnetic radiation; filed 30 September 1997.//Patent application 08/976,132: roller excitation device; filed 29 September 1997.//Patent application 08/979,922: sonar array post processor; filed 28 November 1997.//Patent application 08/990,875: underwater mine placement system; filed 15 December 1997.//Patent application 09/016,334: catalyzed preparation of amorphous chalcogenides; filed 30 January 1998.//Patent application 09/016,870: specular reflection optical bandgap thermometry; filed 17 July 1998.//Patent application 09/022,341: application of reversible crosslinking and co-treatment in stabilization and viral inactivation of erythrocytes; filed 11 February 1998.//Patent application 09/035,909: compression of hyperdata with orasis multisegment pattern sets (chomps); filed 6 March 1998.//Patent application 09/038,483: multi-tuned acoustic projector; filed 4 March 1998. //Patent application 09/045,962: nose cone and method for acoustically shielding an underwater vehicle sonar array; filed 18 March 1998.//Patent application 09/045,963: test apparatus for rotary drive; filed 18 March 1998. // Patent application 09/049,658: fluid propulsion device for use in a projectile launching system; filed 23 March 1998. //Patent application 09/050,960: efficient spatial image separator; filed 31 March 1998.//Patent application 09/053,075: method and apparatus for in situ measurement of corrosion in liquid filled tanks; filed 1 April 1998.//Patent application 09/054,313: beam pattern shaping for transmitter array; filed 31 March 1998.//Patent application 09/054,315: actuated recoil absorbing mounting system for use with an underwater gun; filed 31 March 1998. // Patent application 09/054,316: isolation mount for an acoustic device; filed 31 March 1998.//Patent application 09/054,317: isolated compensated fluid delivery system; filed 31 March 1998. // Patent application 09/058,352: chirped fiber grating beamformer for phased array antennas; filed 10 April 1998.// Patent application 09/061,256: chemical sensor pattern recognition system using a self-training neural network classifier with automated outlier detection; filed 17 April 1998.//Patent application 09/062,565: piston and cylinder actuated polymer mixing valve; filed 20 April 1998.//Patent application 09/062,567: flow control system having actuated elastomeric membrane; filed 20 April 1998.// Patent application 09/062,735: thin-film edge field emitter device; filed 20 April 1998.//Patent application 09/063,269: wavelength multiplexed, electro-optically controllable fiber optic multi-tap delay line; filed 21 April 1998.//Patent application 09/064,360: switch assembly for withstanding shock and vibration; filed 13 April 1998.// Patent application 09/064,717: recoil less and gas-free projectile propulsion; filed 23 April 1998.//Patent application 09/069,855: microwave channelized bandpass filter having two channels;

filed 30 April 1998.//Patent application 09/069,856: general fluctuation sensitive filter; filed 30 April 1998.//Patent application 09/069,932: porous materials by powder metallurgy; filed 30 April 1998.//Patent application 09/070,770: portable launcher; filed 30 April 1998.//Patent application 09/071,737: wavelet transform of super-resolutions based on radar and infrared sensor fusion; filed 1 May 1998.//Patent application 09/090,328: propeller assembly for an underwater device; filed 22 May 1998.//Patent application 09/090,329: neural network hurricane tracker; filed 27 May 1998.//Patent application 09/090,336: captive soft foam shock mount system; filed 27 May 1998.//Patent application 09/115,600: precursor warhead attachment for an anti-armor rocket; filed 15 July 1998.//

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Staff Patent Attorney, Office of Naval Research (Code OOCC), Arlington, VA 22217–5660, telephone (703) 696–4004.

Authority: 35 U.S.C. 207; 37 CFR Part 404.

Dated: January 26, 1999.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–2648 Filed 2–3–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Navy, DoD.

ACTION: Delete Record Systems Notice.

SUMMARY: The Department of the Navy proposes to delete four records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletions will be effective on March 8, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete four systems of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report.

Dated: January 29, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N04410–3

SYSTEM NAME:

Duty Free Vehicle Log (February 22, 1993, 58 FR 10743).

Reason: The need to maintain the system of records no longer exists. Activity has been disestablished and all files destroyed.

N10140–4

SYSTEM NAME:

USAREUR/USAFE Ration Card (February 22, 1993, 58 FR 10814).

Reason: The need to maintain the system of records no longer exists. Activity has been disestablished and all files destroyed.

N10140–6

SYSTEM NAME:

Gasoline Ration System (February 22, 1993, 58 FR 10814).

Reason: The need to maintain the system of records no longer exists. Activity has been disestablished and all files destroyed.

N10140–7

SYSTEM NAME:

Application for U.S. Navy Ration Permit (February 22, 1993, 58 FR 10815).

Reason: The need to maintain the system of records no longer exists. Activity has been disestablished and all files destroyed.

[FR Doc. 99–2578 Filed 2–3–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on March 8, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: January 29, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05800–1

SYSTEM NAME:

Legal Office Litigation/ Correspondence Files *(September 20, 1993, 58 FR 48852).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Associate General Counsel (Litigation), Office of the General Counsel of the Navy, 901 M Street SE, Washington Navy Yard, Washington, DC 20374–5012.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the naval activity involved in the litigation or to the Office of the General Counsel of the Navy, 901 M Street SE, Washington

Navy Yard, Washington, DC 20374–5012.

Written requests should include name and date litigation was filed.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the naval activity involved in the litigation or to the Office of the General Counsel of the Navy, 901 M Street SE, Washington Navy Yard, Washington, DC 20374–5012.

Written requests should include full name and year litigation commenced.'

* * * * *

N05800–1

SYSTEM NAME:

Legal Office Litigation/ Correspondence Files.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in litigation which requires Navy action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statements; affidavits/declarations; investigatory and administrative reports, including background investigations to determine suitability for service; personnel, financial, medical and business records; promotion/evaluation information; test or evaluation materials; hotline complaints and responses thereto; discovery and discovery responses; motions; orders; rulings; letters; messages; forms; reports; surveys; audits; summons; English translations of foreign documents; photographs; legal opinions; subpoenas; pleadings; memos; related correspondence; briefs; petitions; court records involving litigation; and, related matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To prepare correspondence and materials for litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File cabinets and computerized docket system.

RETRIEVABILITY:

Name of individual and the year litigation commenced.

SAFEGUARDS:

Manual records are maintained in file cabinets under the control of authorized personnel during working hours. The office space in which the file cabinets are located is locked outside of official working hours. Computer terminals are located in supervised areas. Access is controlled by password or other user code system.

RETENTION AND DISPOSAL:

After closure, records are sent to Federal Records Center where they are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Associate General Counsel (Litigation), Office of the General Counsel of the Navy, 901 M Street SE, Washington Navy Yard, Washington, DC 20374–5012.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the naval activity involved in the litigation or to the Office of the General Counsel of the Navy, 901 M Street SE, Washington Navy Yard, Washington, DC 20374–5012.

Written requests should include name and date litigation was filed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the naval activity involved in the litigation or to the Office of the General Counsel of the Navy, 901 M Street SE, Washington Navy Yard, Washington, DC 20374–5012.

Written requests should include full name and year litigation commenced.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Court records, records from the individual, personal interviews and statements, departmental records such as personnel files, medical records, State and Federal records, police reports and complaints, general correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and 3, (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 99–2579 Filed 2–3–99; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: Thursday, March 4, 1999, from 9:00 a.m. to 4:30 p.m.

ADDRESSES: Hilton, Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202, near the Crystal City metro stop.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685 of the individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and that their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

This FICC meeting coincides with the early intervention and preschool directors (Part C and 619 of IDEA) meetings held in the same location with overlapping times. At this meeting the Maternal and Child Health Bureau in conjunction with the FICC is sponsoring a policy forum on Thursday morning with Dr. Jack Shonkoff. The FICC members will be the policy forum respondents. During the afternoon session the FICC will attend to ongoing work including reports from a technical assistance survey, a Department of Defense Task Force, and Medicaid Benefits Task Force. To request a packet of materials or accommodations such as interpreters for persons who are hearing impaired, materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205–5507 (voice) or (202) 205–9754 (TDD) by February.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9:00 a.m. to 5:00 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–2584 Filed 2–3–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Oakland Operations Office; Financial Assistance Award (Grant)

AGENCY: U. S. Department of Energy.

ACTION: Solicitation of applications for grant awards for high-energy-density and laser-matter interaction studies.

SUMMARY: Pursuant to 10 CFR 600.8, the U.S. DOE announces that it plans to conduct a technically competitive solicitation for basic research experiments in high-energy-density and laser-matter interaction studies at the National Laser Users' Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics (UR/LLE). Grant Solicitation No. DE–PS03–99SF21812 Universities or other higher education institutions, private sector not-for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding expected to be available for the Fiscal Year 2000 (FY00) program cycle is $700,000. Multiple awards are anticipated.

FOR FURTHER INFORMATION CONTACT: James Solomon, Contracting Officer, Financial Assistance Center—FAC, DOE Oakland Operations Office, 1301 Clay Street, Room 700N, Oakland, CA 94612–5208, Telephone No.: (510) 637–1865, Facsimile No.: (510) 637–2074, e mail: james.solomon@oak.doe.gov.

SUPPLEMENTARY INFORMATION: The solicitation document contains all the information relative to this action for prospective applicants. The solicitation is targeted for release on or about March 1, 1999. The actual work to be accomplished will be determined by the experiments and diagnostic techniques that are selected for award. Proposed experiments and diagnostic techniques will be evaluated through scientific peer review against predetermined, published and available criteria. Final selection will be made by the DOE. It is anticipated that multiple grants will be awarded within the available funding. The unique resources of the NLUF are available, on a no-fee basis, to scientists for state-of-the art experiments primarily in the area of inertial confinement fusion (ICF) and related plasma physics. Other areas such as spectroscopy of high ionized atoms, laboratory astrophysics, fundamental physics, materials science and biology and chemistry will be considered on a secondary basis.

The LLE was established in 1970 to investigate the interaction of high-power lasers with matter. Available at the LLE for NLUF researchers is the upgraded Omega Laser, a 30–40 kJ UV, 60-beam laser system (at 0.35 um) suitable for direct-drive ICF implosions and other experimental configurations. This system is suitable for a variety of experiments including laser-plasma interactions and atomic spectroscopy. The NLUF program for FY00 will support experiments that can be done with the Omega Laser at the University of Rochester and development of diagnostic techniques suitable for the Omega Laser system. Measurements of the laser coupling, laser-plasma interactions, core temperature, and core density are needed to determine the characteristics of target implosions. Diagnostic techniques could include either new instrumentation, development of analysis tools, or development of targets that are applicable for 30–40 kJ implosions. Additional technical information about the available facilities and potential collaboration at the NLUF can be

obtained from: Dr. John M. Soures, Manager, National Laser Users' Facility, University of Rochester/LLE 250 East River Road, Rochester, NY 14623–1299.

Issued in Oakland, CA January 28, 1999.

Edward Knuckles,

Acting Director, Financial Assistance Center, Oakland Operations Office.

[FR Doc. 99–2659 Filed 2–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–3760–000, EC96–19–000, and ER96–1663–000 (Not Consolidated)]

California Independent System Operator Corporation; Notice of Conference

January 29, 1999.

Take notice that a conference will be convened in the subject proceedings commencing Wednesday, February 10, 1999 at 9:30 a.m. PST and will continue on Thursday, February 11, 1999. The conference will be held at the offices of Pacific Gas and Electric Company, 77 Beale Street, San Francisco, CA. The purpose of the conference is to discuss the list of unresolved issues in preparation for the report to the Commission. *See* California Independent System Operator Corp., 84 FERC ¶ 61,217 (1998). Additionally, the parties will attempt to resolve some of those issues.

Any party, as defined by 18 CFR 385.102(c) may attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to Section 385.214 of the Commission's Regulations.

For additional information, please contact David Cain at (202) 208–0917 or david.cain@ferc.fed.us, or Bill Collins at (202) 208–0248 or william.collins@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–2591 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–159–000]

Columbia Gulf Transmission Company; Notice of Request Under Blanket Authorization

January 29, 1999.

Take notice that on January 19, 1999, Columbia Gulf Transmission Company (Columbia Gulf), 2603 Augusta, Suite 125, Houston, Texas 77001, filed in Docket No. CP99–159–000 a request pursuant to Sections 157.205, 157.208 and 157.211 of the Commission's Regulations (18 CFR 157.205, 157.208 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate pipeline and delivery point facilities for deliveries to New Albany Power I, L.L.C. (New Albany) near New Albany, Mississippi, under Columbia Gulf's blanket certificate authorization issued in Docket No. CP83–496–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia Gulf proposes to construct, own and operate facilities consisting of 1,000 feet of 12-inch pipeline and appurtenances, extending from Columbia Gulf's mainline system to a new interconnection with the facilities of New Albany. Columbia Gulf proposes to use the facilities to provide backhaul transportation service for New Albany, delivering 75,032 dt equivalent of natural gas to New Albany on a firm basis under its FTS–1 rate schedule. Columbia Gulf estimates the cost of the facilities $857,000. It is stated that the deliveries will be within existing entitlements. It is asserted that the proposal will not impact Columbia Gulf's existing peak day obligations to its existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary

[FR Doc. 99–2596 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–410–004]

Koch Gateway Pipeline Company; Notice of Compliance Filing

January 29, 1999.

Take notice that on January 26, 1999, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, to become effective October 19, 1998.

3rd Sub Fourth Revised Sheet No. 1805

Koch states that the purpose of this filing is to respond to the Director of Office of Pipeline Regulation Letter Order Pursuant to 375.307 (b)(1) and (b)(3) issued on January 11, 1999, in Docket No. RP98–410–003.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2598 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1206–000]

Niagara Mohawk Power Corporation; Notice of Withdrawal

January 29, 1999.

Take notice that on January 20, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing a Notice of Withdrawal of Filing

applicable to the executed Service Agreement it filed on January 7, 1999 on behalf of Central Hudson Gas & Electric under its proposed Scheduling and Balancing Services Tariff. The Commission's Order Rejecting Scheduling And Balancing Tariff, And Accepting In Part And Rejecting In Part (As Modified) Proposed Amendment To Open Access Tariff (issued January 11, 1999) mandates the withdrawal of the Central Hudson Service Agreement.

Copies of the filing were served upon Central Hudson Gas & Electric and the New York Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 19 CFR 385.214). All such motions and protests should be filed on or before February 9, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2590 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–6–000]

PG&E Gas Transmission Teco Inc.; Notice of Petition for Rate Approval

January 29, 1999.

Take notice that on January 19, 1999, PG&E Gas Transmission Teco Inc. (Teco) filed a Petition for Approval of Restated Rates and Charges for Transportation provided under Section 311 of the NGPA. Teco states that its petition is filed pursuant to Section 284.123(b)(2) of the Commission's regulations, 18 CFR 4.123(b)(2) and an October 20, 1997 letter order issued in Docket No. PR97–2–000 and 001. 81 FERC ¶ 61,066 (1997). In its petition, Teco states that it has restated its currently-effective transportation rates and charges and requests authorization to continue to use such rates and charges for services provided pursuant to Section 311 of the NGPA.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 5, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2597 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–46–002]

PG&E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

January 29, 1999.

Take notice that on January 26, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Second Substitute Original Sheet Nos. 81A.01a and 81A.01b.

PG&E GT–NW states that these tariff sheets are filed in compliance with the Commission's January 14, 1999 Letter Order in this Docket. PG&E GT–NW requests that the above-referenced tariff sheets become effective November 2, 1998.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, interested state regulatory agencies and all parties on the Commission official service list for this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2600 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–413–002]

Questar Pipeline Company; Notice of Tariff Filing

January 29, 1999.

Take notice that on January 26, 1999, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Substitute Third Revised Sheet No. 75B, to be effective November 2, 1998.

Questar states that the filing is being made in compliance with the Commission's letter order issued January 13, 1999, in Docket No. RP98–413–001.

The January 13 order directed Questar to revise its November 13, 1998, filing that was made in compliance with the Commission's October 30, 1998, letter order. These filings revised Questar's FERC Gas Tariff, First Revised Volume No. 1 to incorporate requirements set forth in 18 CFR 284.10(c)(1)(i) by the Commission's Order No. 587–H issued July 15, 1998.

Questar stated that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2599 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–854–007, et al.]

Kentucky Utilities Company, et al.; Electric Rate and Corporate Regulation Filings

January 27, 1999.

Take notice that the following filings have been made with the Commission:

1. Kentucky Utilities Company

[Docket No. ER95–854–007]

Take notice that on January 22, 1999, Kentucky Utilities Company (KU), tendered for filing a report on refunds filed in compliance with the Commission's November 25, 1998, opinion and order in the above-referenced docket.

KU states that copies of this filing have been served on the parties to this proceeding, the Kentucky Public Service Commission, and the Virginia State Corporation Commission.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. J. W. Walker & Associates, Utility Management Corporation, CNB/ Olympic Gas Services, PowerTec International, LLC, EnergyOnline, Inc., ONEOK Power Marketing Company, Superior Electric Power Corporation, Southern Energy Marketing Corporation, Inc., d/b/a SEMCOR ENERGY, Gulfstream Energy, LLC, North American Energy, Inc., Texaco Energy Services, TransCanada Power Marketing Ltd.

[Docket Nos. ER95–1261–014, ER96–1144–000, ER95–964–010, ER96–1–013, ER96–138–007, ER98–3897–002, ER95–1747–013, ER96–1516–008, ER94–1597–015, ER98–242–005, ER95–1787–012, ER98–564–002]

Take notice that on January 19, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. Family Fiber Connection, Power Access Management, Enova Energy, Inc., Poco Petroleum, Inc., United American Energy Corp., Hinson Power Company, CMS Marketing, Services and Trading Company, GDK, MIECO Inc., SDS Petroleum Products, Inc., Energy Marketing Services, Inc.

[Docket Nos. ER96–1631–003, ER97–1084–001 thru ER97–1084–007, ER96–2372–013, ER97–2198–006, ER96–3092–010, ER95–1314–015, ER96–2350–016, ER96–1735–009 and ER96–1735–010, ER98–51–005, ER96–1724–008, ER96–734–006]

Take notice that on January 19, 1999 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. ENERGY PM, INC., ICPM, Inc., R. Hadler and Company, Inc., National Power Marketing Co. LLC, J. Aron & Company, Unicom Power Marketing, Inc., LS Power Marketing, LLC, NP Energy Inc., NESI Power Marketing, Inc., Tractebel Energy Marketing, Inc.

[Docket Nos. ER98–2918–001 and ER98–2918–002, ER95–640–014, ER97–3056–003, ER96–2942–004 and ER96–2942–005, ER95–34–018, ER97–3954–006, ER96–1947–010, ER97–1315–009, ER97–841–008, ER94–142–021]

Take notice that on January 20, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. AES NY, LLC

[Docket No. ER99–564–001]

Take notice that on January 22, 1999, AES NY, LLC, tendered for filing pursuant to § 131.51 (18 CFR 131.51) of the Commission's Regulations, notification that on January 22, 1999, AES Eastern Energy, L.P., and AES Creative Resources, L.P., each hereby adopt, ratify, and make their own, in every respect all applicable rate schedules, and supplements thereto, FERC Electric Tariff, Original Volume No. 1, Market Based Rate Tariff heretofore filed with the Federal Energy Regulatory Commission by AES NY, L.L.C., effective January 22, 1999.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER99–797–000]

Take notice that on January 21, 1999, Southwestern Public Service Company tendered for filing a request to withdraw its filing of a proposed Power Sale Agreement with e prime, Inc filed on December 3, 1998, in the above-referenced docket.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Company

[Docket No. ER99–824–000]

Take notice that on January 21, 1999, Avista Corp. (formerly Washington Water Power Company), tendered for filing pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, an executed long-term service agreement with Enron Power Marketing, Inc. (EPMI), under Avista Corp.'s FERC Electric Tariff, Volume No. 9. Avista Corp., submitted the service agreement as a replacement for the executed long-term service agreement filed by WWP on December 4, 1998, under its FERC Electric Tariff, First Revised Volume No. 9, which service agreement was withdrawn.

Pursuant to the Commission's order in Docket No. ER97–7–000, Avista Corp., filed this long-term service agreement within 30 days of the date of commencement of service, January 1, 1999.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. West Penn Power Company

[Docket No. ER99–898–000]

Take notice that on January 22, 1999, West Penn Power Company amended its filing in this docket to include a non confidential copy of its energy supply agreement with the Borough of Chambersburg.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy, Inc.

[Docket No. ER99–1141–000]

Take notice that on January 22, 1999, Allegheny Energy, Inc., tendered for filing an amendment requesting effective dates of November 20, 1998, November 25, 1998, and December 10, 1998 for its power supply agreements with New Martinsville, Philippi and Harrison Rural Electrification

Association respectively filed with the Federal Energy Regulatory Commission on December 31, 1998.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER99–1389–000]

Take notice that on January 20, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated January 19, 1999 with Alabama Electric Cooperative, Inc. (AEC), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds AEC as a customer under the Tariff.

PECO requests waiver of the Commission's notice requirement and an effective date of March 28, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to AEC and to the Pennsylvania Public Utility Commission.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER99–1398–000]

Take notice that on January 21, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service with Merrill Lynch Capital Services, Inc. (Transmission Customer), under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Non-Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of the date of January 21, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Merrill Lynch Capital Services, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Western Resources, Inc.

[Docket No. ER99–1399–000]

Take notice that on January 21, 1999, Western Resources, Inc. (Western Resources), tendered for filing a proposed change to its Rate Schedule FPC No. 127. Western Resources states that the change is to extend the term under its electric interconnection agreement with the City of McPherson, Kansas, Board of Public Utilities (McPherson).

The change is proposed to become effective February 6, 1997.

Copies of the filing were served upon McPherson and the Kansas Corporation Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Ameren Services Company

[Docket No. ER99–1400–000]

Take notice that on January 21, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Constellation Power Source, Inc., (CPS). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to CPS pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that the Service Agreement be allowed to become effective August 10, 1998, the date of said agreement.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER99–1401–000]

Take notice that on January 21, 1999, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement, dated January 15, 1999, for firm point-to-point transmission service and ancillary services, between PNM Transmission Development and Contracts (Transmission Provider) and PNM International Business Development (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. This service agreement supersedes an existing service agreement between the Transmission Provider and the Transmission Customer which expired by its own terms on December 31, 1998. Under the Service Agreement, Transmission Provider provides to Transmission Customer reserved capacity from PNM's San Juan Generating Station 345 kV Switchyard (point of receipt) to PNM's Luna 345kV Switching Station (point of Delivery) for the period beginning January 1, 1999 and ending December 31, 1999.

PNM requests an effective date of January 1, 1999, for this agreement.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Hermiston Generating Company, L.P.

[Docket No. ER99–1404–000]

Take notice that on January 20, 1999, Hermiston Generating Company, L.P. (Hermiston), tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a request for modification of an existing rate schedule.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER99–1405–000]

Take notice that on January 21, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Electric Clearinghouse, Inc.

This Transmission Service Agreement specifies that Electric Clearinghouse, Inc., has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Electric Clearinghouse, Inc., to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for Electric Clearinghouse, Inc., as the parties may mutually agree.

Niagara Mohawk requests an effective date of January 12, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Electric Clearinghouse, Inc.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER99–1406–000]

Take notice that on January 21, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Electric Clearinghouse, Inc. This Transmission Service

Agreement specifies that Electric Clearinghouse, Inc., has signed on to and has agreed to the terms and conditions of Niagara Mohawks Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Electric Clearinghouse, Inc., to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for Electric Clearinghouse, Inc., as the parties may mutually agree.

Niagara Mohawk requests an effective date of January 12, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Electric Clearinghouse, Inc.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER99–1408–000]

Take notice that on January 20, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Non-Firm Point-to-Point Transmission Service with: (1) El Paso Power Services Company, (2) NorAm Energy Services, Inc., and (3) Engage Energy Services US, L.P. (collectively, Customers). All three agreements were pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The Engage Energy Services US, L.P., agreement has an effective date of January 11, 1999 and the other two agreements have effective dates of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customers.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Spokane Energy, LLC

[Docket No. ER99–1409–000]

Take notice that on January 21, 1999, Spokane Energy, LLC (Spokane Energy), tendered for filing, pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, a new FERC Electric Tariff Volume No. 2, providing for the purchase and sale of firm capacity between Spokane Energy and Portland General Electric Company.

Spokane Energy requests an effective date of December 31, 1998, for the tariff.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Southwest Power Pool

[Docket No. ER99–1411–000]

Take notice that on January 21, 1999, Southwest Power Pool (SPP), tendered for filing executed service agreements for short-term firm point-to-point and non-firm point-to-point firm transmission service under the SPP Tariff with Kansas Municipal Energy Agency (KMEA).

SPP requests an effective date of January 5, 1999, for each of these agreements.

Copies of this filing were served upon KMEA.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Virginia Electric and Power Company

[Docket No. ER99–1412–000]

Take notice that on January 21, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Merrill Lynch Capital Services, Inc. (Transmission Customer), under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of the date of January 21, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Merrill Lynch Capital Services, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Montana Power Company

[Docket No. ER99–1415–000]

Take notice that on January 19, 1999, Montana Power Company tendered for filing with the Federal Energy Regulatory Commission a quarterly report for the quarter ending December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Kansas City Power & Light Company

[Docket No. ER99–1416–000]

Take notice that on January 19, 1999, Kansas City Power & Light Company (KCPL) tendered for filing its report of transactions under KCPL's GSS Tariff for the fourth quarter of 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Delmarva Power & Light Company

[Docket No. ER99–1417–000]

Take notice that on January 19, 1999, Delmarva Power & Light Company (Delmarva) tendered for filing a summary of short-term transactions made during the fourth quarter of calendar year 1998 under Delmarva's Market Rate Sales Tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas & Electric Corporation

[Docket No. ER99–1418–000]

Take notice that on January 20, 1999, Central Hudson Gas & Electric Corporation tendered for filing with the Federal Energy Regulatory Commission, a transaction report for the quarter ending December 31, 1998, pursuant to the Commission's order issued on June 26, 1997 in Docket No. ER97–2872–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Commonwealth Edison Company

[Docket No. ER99–1419–000]

Take notice that on January 20, 1999, Commonwealth Edison Company tendered for filing with the Federal Energy Regulatory Commission, a quarterly market-based transaction report for the calendar quarter ending December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER99–1422–000]

Take notice that on January 22, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 et seq., an Agreement dated December 31, 1998 with CMS Marketing, Services and Trading (CMS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to CMS and to the Pennsylvania Public Utility Commission.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–1423–000]

Take notice that on January 22, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and FirstEnergy Trading & Power Marketing Inc. (FirstEnergy), dated January 11, 1999. This Service Agreement specifies that FirstEnergy has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and FirstEnergy to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of January 11, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Avista Corporation

[Docket No. ER99–1424–000]

Take notice that on January 22, 1999, Avista Corporation (formerly Washington Water Power Company), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under Avista Corporation's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Public Service Company of New Mexico and Cargill-Alliant, LLC.

Avista Corporation requests the Service Agreements be given respective effective dates of December 22, 1998 and January 11, 1999.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Commonwealth Edison Company

[Docket No. ER99–1427–000]

Take notice that on January 22, 1999, Commonwealth Edison Company (ComEd), tendered for filing a service agreement establishing Central and South West Services (CSW) as a customer under ComEd's FERC Electric Market-Based Rate Schedule for power sales.

ComEd requests an effective date of December 24, 1998, for the service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of the filing was served on CSW.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Idaho Power Company

[Docket No. ER99–1428–000]

Take notice that on January 22, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Letter Amendment to the Agreement for Supply of Power and Energy between Idaho Power Company and the Utah Associated Municipal Power Systems, dated February 10, 1988.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. CET Marketing L.P.

[Docket No. ER99–1429–000]

Take notice that on January 22, 1999, CET Marketing L.P. (CET Marketing), tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, of a Partial Assignment and Assumption Agreement between Cogen Energy Technology L.P. (CETLP) and CET Marketing. Pursuant to that agreement, CET Marketing takes, from time to time, partial assignment of the rights under a Power Put and Interconnection Agreement executed in May 1998 between CETLP and Niagara Mohawk Power Corporation.

CET Marketing requests waiver of the 60 day filing requirement and an effective date of November 4, 1998.

A copy of this filing has been served on the New York Public Service Commission.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Entergy Services, Inc.

[Docket No. ER99–1431–000]

Take notice that on January 22, 1999, Entergy Services, Inc., (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing notice that effective January 22, 1999, the Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Vastar Power Marketing, Inc., Service Agreement No. 47, under FERC Electric Tariff, Original Volume No. 3, effective July 15, 1997, Entergy Services, Inc., is to be canceled.

Notice of the proposed cancellation has been served upon Vastar Power Marketing, Inc., and Southern Company Energy Marketing L.P., by Entergy Services.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Kincaid Generation, L.L.C.

[Docket No. ER99–1432–000]

Take notice that on January 22, 1999, Kincaid Generation, L.L.C. (KGL), tendered for filing proposed revisions to its FERC Electric Rate Schedule No. 1, and requested certain waivers of the Commission's Regulations. The proposed revisions would expand KGL's existing limited market-based rate authority to blanket market-based rate authority.

The reason for the proposed revisions is to expand KGL's market-based rate authority to blanket market-based rate authority.

Copies of the filing were served upon KGL's current jurisdictional customers and the Illinois Commerce Commission.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Idaho Power Company

[Docket No. ER99–1433–000]

Take notice that on January 21, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement under Idaho Power Company's FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Energy West Resources.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Bangor Hydro-Electric Company

[Docket No. ER99–1434–000]

Take notice that on January 22, 1999, Bangor Hydro-Electric Company tendered for filing the Interconnection and Transmission Facilities Agreement by and between Bangor Hydro-Electric Company and Casco Bay Energy Company, L.L.C.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. ER99–1446–000]

Take notice that on January 19, 1999, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing with the Federal Energy Regulatory Commission pursuant to the Commission's October 16, 1998 Order in this proceeding, a report of short-term transactions that occurred during the quarter ending December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Lowell Cogeneration Company Limited Partnership

[Docket No. ER99–1448–000]

Take notice that on January 19, 1999, Lowell Cogeneration Company Limited Partnership tendered for filing a summary of activity for the Quarter ending December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Howard/Avista Energy, LLC

[Docket No. ER99–1449–000]

Take notice that on January 22, 1999, Howard/Avista Energy, LLC, tendered for filing notification that effective December 31, 1998, Rate Schedule FERC No. 1, effective date December 16, 1997, and filed with the Federal Energy Regulatory Commission by Howard/Avista Energy, LLC is to be canceled.

No purchasers are affected by the cancellation of Rate Schedule FERC No. 1.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Missouri-Kansas Power Pool

[Docket No. ER99–1450–000]

Take notice that on January 22, 1999, Missouri-Kansas Power Pool (MOKAN), tendered for filing notification that effective January 22, 1999, MOKAN's Open Access Transmission Tariff effective May 13, 1997, and the General Participation Agreement of the MOKAN Power Pool, effective date March 1, 1997, and filed with the Federal Energy Regulatory Commission by MOKAN, are to be canceled.

Notice of the proposed cancellation has been served upon all of the members of MOKAN and the affected state commissions.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. MidAmerican Energy Company

[Docket No. OA97–313–007]

Take notice that on December 30, 1998, MidAmerican Energy Company filed revised standards of conduct in response to the Commission's December 18, 1998, Order on Standards of Conduct, 85 FERC ¶ 61,145 (1998).

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

42. Sierra Pacific Power Company

[Docket No. OA97–464–002 OA97–464–003]

Take notice that on December 23, 1998 and January 22, 1999, Sierra Pacific Power Company submitted revised standards of conduct in response to the Commission's October 29, 1998, Order on Standards of Conduct, 85 FERC ¶ 61,145 (1998).

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2615 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2609–013–NY]

Curtis/Palmer Hydroelectric Company L.P.; International Paper Company; Notice of Availability of Draft Environmental Assessment

January 29, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Curtis/Palmer Falls Hydroelectric Project, located in Warren and Saratoga Counties, New York, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The DEA may also be viewed on the web at www.ferc.fed.us. Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1–A, Washington, DC 20426. Please affix "Curtis/Palmer Falls Hydroelectric Project No. 2609" to the top of all comments. For further information, please call Tom Dean at (202) 219–2778.

David P. Boergers,

Secretary.

[FR Doc. 99–2594 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

J.M. Miller Enterprises, Inc.; Notice of Availability of Final Environmental Assessment

[Project No. 11060–000; Idaho]

January 29, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original, minor license for the proposed Sahko Hydroelectric Project. The project would be located on the Kastelu Drain, an irrigation return ditch also known as Southside 39 Drain, near Filer, Idaho in Twin Falls County.

On August 27, 1998, the Commission staff issued a draft environmental assessment (DEA) for the project, and requested that comments be filed with the Commission within 30 days. Comments were filed by three entities and are addressed in the final environmental assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not be a major federal action significantly affecting the quality of the human environment.

Copies of the DEA and FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426. They may be viewed on the web at www.ferc.fed.us. Call 202 208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 99–2595 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

January 29, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of Licenses.

b. *Project Nos.:* (1) 2403–013, (2) 2534–021, (3) 2666–009, (4) 2710–011, (5) 2712–015, (6) 2721–015, and (7) 2727–059.

c. *Date Filed:* December 7, 1998.
Date Amended: January 22, 1999.

d. *Applicants:* Bangor Hydro-Electric Company (Bangor) and Penobscot Hydro, LLC (Penobscot).

e. *Name and Location of Projects:* (1) Veazie, (2) Milford, (3) Medway, (4) Orono, and (5) Stillwater: Penobscot and Stillwater Rivers in Penobscot County, Maine; (6) Howland: Piscataquis River in Penobscot County, Maine; and (7) Ellsworth: Union River in Hancock County, Maine.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

g. *Applicant Contacts:*
For Bangor: Alan M. Spear, Bangor Hydro-Electric Company, 33 State Street, Bangor, ME 04402, (207) 941–6697.

For Penobscot: Robert W. Burke, Jr., Penobscot Hydro, Inc., 11350 Random Hills Road, Suite 400, Fairfax, VA 22030, (703) 293–2600.

Attorney for Applicants: John A. Whittaker, IV, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502, (202) 371–5766.

h. *FERC Contact:* James Hunter, (202) 219–2839.

i. *Comment Date:* February 24, 1999.

j. *Description of Transfer:* Transfer of the licenses for these projects to Penobscot is being sought in connection with the divestiture by Bangor of certain generation and other assets, pursuant to Maine Public Law 1997, ch. 316, 35–A § 3204, *et seq.* (An Act to Restructure the State's Electric Industry).

The transfer application was filed within five years of the expiration of the licenses for Projects Nos. 2666 and 2721, which are the subject of pending relicense applications. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318). The transfer would lead to the substitution of the transferee for the transferor as the applicant in the relicensing proceedings for Projects Nos. 2666 and 2721.

Bangor proposed to decommission the Orono Project No. 2710 (which is operating under an annual license) as part of its proposal to build the downstream Basin Mills Project No. 10981. However, by order issued April 20, 1998, the Commission denied Bangor's application for license for Project No. 10981.[1] Bangor subsequently requested rehearing of the denial and now asks that, as of the effective date of this transfer, Penobscot be substituted for it in the rehearing proceeding and as applicant for the Basin Mills Project No. 10981.

k. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–2593 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

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[1] 83 FERC ¶ 61,039.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 460]

City of Tacoma, Washington; Notice of Teleconference on Fish and Wildlife Issues in the Southern Lower North Fork Region

January 29, 1999.

On July 30, 1998, the Commission issued an order (84 FERC ¶ 61,107) relicensing the Cushman Hydroelectric Project No. 460, located on the North Fork Skokomish River in Mason County, Washington. The FERC staff, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Washington Department of Ecology will conduct a teleconference at 1:00 pm EDT, on February 16, 1999, to discuss with federal and state fish and wildlife agencies the wildlife measures proposed for the Southern Lower North Fork area of the Cushman Project. The agencies made a section 10(j) recommendation to acquire about 2000 acres of land in the area. The purpose of the conference is to explore alternatives that could adequately address the agencies' and the Commission's concerns regarding this measure.

Interested parties that want to observe the meeting may do so by calling (800) 545–4387 and informing the FERC operator that they want to be part of the Cushman Project conference call. We will start accepting conference calls at 12:45 pm EDT for the 1:00 pm EDT meeting. If you have any questions regarding this notice, please contact John McEachern at (202) 219–3056 or e-mail john.mceachern@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–2592 Filed 2–3–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, February 2, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 1, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–2712 Filed 2–1–99; 5:12 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 18, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Brian Douglas Campbell, Baton Rouge, Louisiana; to retain voting shares of Central Louisiana Capital Corporation, Vidalia, Louisiana; and thereby indirectly retain voting shares of Louisiana Central Bank, Ferriday, Louisiana, Louisiana Delta Bank, Lake Providence, Louisiana, and Community Credit Center, Lake Providence, Louisiana.

Board of Governors of the Federal Reserve System, January 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2586 Filed 2–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Century South Banks, Inc., Dahlonega, Georgia; to merge with Independent Bancorp, Inc., Oxford, Alabama, and thereby indirectly acquire Independent Bank of Oxford, Oxford, Alabama.

2. Manufacturers Bankshares, Inc., Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Manufacturers Bank of Florida, Tampa, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Ameri-National Corporation, Overland Park, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Horizon National Bank, Leawood, Kansas, a *de novo* bank.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200

North Pearl Street, Dallas, Texas 75201–2272:

1. Central Texas Bankshare Holdings, Inc., Columbus, Texas, and Colorado County Investment Holdings, Inc., Wilmington, Delaware; to acquire 35 percent of the voting shares of Hill Bancshares Holdings, Inc., Weimar, Texas, and thereby indirectly acquire Hill Bank & Trust Company, Weimar, Texas.

Board of Governors of the Federal Reserve System, January 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2588 Filed 2–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Cumberland Bancorp, Inc., Carthage, Tennessee; to engage *de novo* through its subsidiary, The Murray Bank, Murray, Kentucky (in organization), in operating a savings association, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2587 Filed 2–3–99; 8:45 am]

BILLING CODE 6210–01–F

OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request: Proposed Slightly Revised OGE Form 201 Ethics Act Access Form

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: After this first round notice and public comment period, OGE plans to submit a slightly modified OGE Form 201, which is used by persons for requesting access to executive branch public financial disclosure reports and other covered records, to the Office of Management and Budget (OMB) for three-year approval under the Paperwork Reduction Act. This modified form will replace the existing one.

DATES: Comments by the agencies and the public on this proposal are invited and should be received by April 20, 1999.

ADDRESSES: Comments should be sent to William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Comments may also be sent electronically to OGE's Internet E-mail address at usoge@oge.gov. For E-mail messages, the subject line should include the following reference—"Paperwork comment on the proposed slightly revised OGE Form 201."

FOR FURTHER INFORMATION CONTACT: Mr. Gressman at the Office of Government Ethics; telephone: 202–208–8000, ext. 1110; FAX: 202–208–8037. A copy of the proposed slightly revised OGE Form 201 may be obtained, without charge, by contacting Mr. Gressman.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is planning to submit, after this notice and comment period (with any modifications that may appear warranted), a proposed slightly modified OGE Form 201 "Request to Inspect or Receive Copies of SF 278 Executive Branch Personnel Public Financial Disclosure Report or Other Covered Record" for three-year approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Once finally approved by OMB and adopted by OGE, the modified version of this OGE form will replace the existing version (whose paperwork clearance is scheduled to expire at the end of next June).

The Office of Government Ethics, as the supervising ethics office for the executive branch of the Federal Government under the Ethics in Government Act (the Ethics Act), 5 U.S.C. appendix, is planning to modify and update the existing access form. That form, the OGE Form 201 (OMB control # 3209–0002), collects information from, and provides certain information to, persons who seek access to SF 278 reports and other covered records. The form reflects the requirements of the Ethics Act and OGE's implementing regulations that must be met by a person before access can be granted. These requirements relate to information about the identity of the requester, as well as any other person on whose behalf a record is sought, and a notification of prohibited uses of SF 278 reports. See section 105(b) and (c) of the Ethics Act, 5 U.S.C. appendix, section 105(b) and (c), and 5 CFR 2634.603(c) and (f). For many years, OGE has disseminated to executive branch departments and agencies a locally reproducible uniform form to serve as the statutorily required written application to inspect or receive copies of SF 278 reports and other covered records. Departments and agencies are encouraged to utilize the OGE Form 201, but they can, if they so choose, continue to use or develop their own forms. See the discussion below.

This proposed slightly modified version of the OGE Form 201 will add express mention (in part III of the form) in the reference to those Ethics Act-qualified blind trust and diversified trust materials that are publicly available to any trust dissolution report (and the list of trust assets at that time) and the qualification that any trust instrument provisions relating to testamentary disposition of trust assets are not publicly available. See 5 CFR 2634.408(a)(1)(i), (a)(3) and (d). Also, OGE proposes to clarify somewhat the wording regarding the sixth numbered routine use under the Privacy Act statement on the reverse side of the form. The modified wording would more closely track the wording of the underlying routine use (h) in the OGE/GOVT–1 executive branchwide system of records. See 55 FR 6327–6331 (February 22, 1990). Further, in the form's public burden statement, OGE proposes to drop the reference to OMB as a further point of contact for information collection comments on the OGE Form 201. Pursuant to current procedures, OGE will be indicated from now on as the sole contact point for

such comments for the form, on which OGE will coordinate with OMB if necessary.

Moreover, as noted on the mark-up copy of the form as proposed to be revised, OGE will adjust the referenced civil monetary penalty at the bottom of the first page for prohibited uses of an SF 278 to which access has been gained. The penalty, under section 104(a) of the Ethics Act, 5 U.S.C. appendix, section 104(a), will be raised from $10,000 to $11,000 once OGE and the Department of Justice issue their respective inflation adjustment rulemakings under the 1996 Debt Collection Improvement Act revisions to the 1990 Federal Civil Penalties Inflation Adjustment Act. See 28 U.S.C. 2461 note. The OGE rulemaking will, in pertinent part, revise 5 CFR 2634.703 of the executive branch financial disclosure regulation. The Office of Government Ethics will request permission from OMB to adjust the OGE Form 201 reference once that adjustment takes effect without further paperwork clearance, even if the adjustment occurs after reclearance of the slightly revised form (with notice to OMB at that time). Moreover, any periodic future adjustments to that civil monetary penalty, pursuant to further rulemakings by OGE and the Justice Department under the inflation adjustment laws, will also be reflected in future editions of the form.

Finally, OGE would also make a couple of minor stylistic changes to the form and show the 1999 edition date. The mark-up copy of the OGE Form 201 as proposed for slight revision, which is available from OGE (see the **FOR FURTHER INFORMATION CONTACT** section above), shows all the changes that would be made.

In light of OGE's experience over the past three years (1996–1998, with a total of 517 non-Federal access requests received), the estimate of the average number of access forms expected to be filed annually at OGE by members of the public (primarily by news media, public interest groups and private citizens) is proposed to be adjusted down from the current estimate of 275 to 172 (not counting access requests by other Federal agencies or Federal employees). The estimated average amount of time to complete the form, including review of the instructions, remains at ten minutes. Thus, the overall estimated annual public burden for the OGE Form 201 for forms filed at the Office of Government Ethics will decrease from 46 hours in the current OMB paperwork inventory listing (275 forms X 10 minutes per form—number rounded off) to 29 hours (172 forms X 10 minutes per form—number rounded off). Moreover, although OGE no longer asks executive branch departments and agencies on the annual ethics program questionnaire for their numbers of access requests, OGE estimates that the annual branchwide total is probably around 1,500 as in years past.

The Office of Government Ethics expects that the slightly revised form should be ready, after OMB clearance, for dissemination to executive branch departments and agencies next summer. The OGE Form 201 as revised will be made available free-of-charge to departments and agencies in paper form, on the ethics CD–ROM and on OGE's Internet Web site (Uniform Resource Locator address: http://www.usoge.gov). The Office of Government Ethics also will permit departments and agencies to photocopy or have copies printed of the form as well as to develop or utilize, on their own, electronic versions of the form, provided that they precisely duplicate the paper original to the extent possible. As noted above, agencies can also develop their own access forms, provided all the information required by the Ethics Act and OGE regulations is placed on the form, along with the appropriate Privacy Act and paperwork notices with any attendant clearances being obtained therefor.

Public comment is invited on each aspect of the proposed slightly modified OGE Form 201 as set forth in this notice, including specifically views on the need for and practical utility of this proposed modified collection of information, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology).

Comments received in response to this notice will be summarized for, and may be included with, the OGE request for OMB paperwork approval for this modified information collection. The comments will also become a matter of public record.

Approved: January 29, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

[FR Doc. 99–2639 Filed 2–3–99; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Mr. Thomas Philpot, R.N., B.S.N., Rush-Presbyterian-St. Luke's Medical Center and Northwestern University: Based on the report of an investigation conducted by Rush-Presbyterian-St. Luke's Medical Center (RPMC), a report of an inquiry conducted by Northwestern University, and information obtained by ORI during its oversight review, ORI finds that Mr. Philpot, former data manager for the National Surgical Adjuvant Breast and Bowel Project (NSABP) at RPMC and McNeal Cancer Center, formerly an NSABP affiliate of Northwestern University, engaged in scientific misconduct in clinical research supported by two National Cancer Institute (NCI), National Institutes of Health (NIH) cooperative agreements.

Specifically, Mr. Philpot intentionally falsified and/or fabricated follow-up data on seven separate reports related to three patients enrolled in NSABP clinical trials for breast cancer (B–09, B–12, and B–22). The falsified and/or fabricated data were submitted to the NSABP Biostatistical Center on NSABP reporting forms and were recorded in the NSABP research records maintained at the clinical sites.

ORI has implemented the following administrative actions for the three (3) year period beginning January 19, 1999:

(1) Mr. Philpot is prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) any institution that submits an application for PHS support for a research project on which Mr. Philpot's participation is proposed or which uses him in any capacity on PHS supported research, or that submits a report of PHS-funded research in which he is involved, must concurrently submit a plan for supervision of his duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Mr. Philpot's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–2616 Filed 2–3–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99024]

Prevention of Complications in Hemophilia; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Prevention of Complications in Hemophilia. This program addresses the "Healthy People 2000" priority area of Diabetes and Chronic Disabling Conditions. The purpose of this program is to assist eligible Hemophilia Treatment Centers (HTC) in determining the prospective incidence and risk factors of central venous access device (CVAD) infections in patients with Hemophilia and to assist in the design of interventions to prevent this complication in the future.

B. Eligible Applicants

Assistance will be provided only to comprehensive hemophilia treatment centers (HTCs), defined as public or private, nonprofit entities that provide directly or through contract: (1) regional services to support hemophilia comprehensive treatment centers or (2) diagnostic and treatment services to persons with Hemophilia and other congenital blood disorders. This definition of HTCs is currently used by the Health Resources Services Administration (HRSA) to fund a grant program.

Because of the low prevalence and degree of specialization required in the treatment of hemophilia, competition is limited to hemophilia treatment centers (HTCs) that routinely provide comprehensive health care to two thirds of persons with hemophilia in the United States. HTCs are the only health care facilities administering to the number of persons with hemophilia required for this study.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $500,000 is available in FY 1999 to fund approximately two awards. It is expected that the average award will be $250,000, ranging from $250,000 to $500,000. It is expected that the awards will begin on or about July 15, 1999, and will be made for a 12-month budget period within a project period of up to two years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. below, and CDC will be responsible for conducting activities under 2. below:

1. Recipient Activities

a. Develop standardized study protocols, data collection instruments, and questionnaires to be used across collaborating sites.

b. Train study coordinators and medical personnel in methods of data collection and patient assessment in the use of standard data abstraction instruments, in techniques of reviewing medical records, and in other methods of data collection as appropriate and provided for in the study protocols. It will be the responsibility of the recipient to ensure uniform training of study personnel at all data collection sites and to ensure that the data is collected in a uniform manner at all locations.

c. Develop appropriate management and evaluation systems to ensure that study personnel use data collection and interview instruments according to standard study protocols.

d. Collect and edit all data from all sites.

e. Develop clinical specimen laboratory testing for successful completion of the research.

f. Publish the results of the study.

2. CDC Activities

a. Provide consultation, scientific and technical assistance in planning and implementing the study protocol, as requested. This assistance may include the development of study protocols, data abstraction instruments, interview quesstionnaires, consent forms, support in statistical and epidemiologic methods to conduct data analysis, development of the clinical laboratory specimen testing, and in publication of the results.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Collaborate in the planning, coordination, and facilitation of initial and periodic meetings with recipients to exchange operational experiences.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Noncompeting Continuation Applications

For noncompeting continuation applications submitted within the project period need only include:

1. A brief progress report that describes the accomplishments of the previous budget period.

2. Any new or significantly revised items or information (objectives, scope of activities, operational methods, evaluation), that is, not included in year 01 or subsequent continuation applications.

3. An annual budget and justification. Existing budget items that are unchanged from the previous budget period do not need rejustification. Simply list the items in the budget and indicate that they are continuation items.

F. Submission and Deadline

Application

Submit the original and two copies of PHS–5161 (OMB Number 0937–0189). Forms are in the application kit. On or before May 3, 1999, submit the application to: Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99024, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mailstop E–18, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date.

2. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered

postmarks shall not be acceptable as proof of timely mailing).

Late applications: Applications that do not meet the criteria in (a) or (b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC (Total 100 points).

1. Background and Need

The extent to which the applicant presents data that central venous access devices (CVADs) are utilized in persons with hemophilia and risk factors identified in the literature. The extent to which the applicant compares the experience in persons with hemophilia with other persons with CVADs and the complications they experience, especially infection. The extent to which the applicant discusses the long-term consequences of CVAD and blood stream infections. Does the applicant propose an experimental rationale that would explain why persons with hemophilia would be more susceptible to develop infections with CVADs, especially those with inhibitors? (10 points)

2. Goals and Objectives

The extent to which the applicant's proposed goals and objectives meet the required activities specified under the "Recipient Activities" section of this announcement, and that are measurable, specific, time-phased, and realistic. (15 points)

3. Capacity (Total 30 Points)

a. The capacity of the applicant to accrue 380 persons with CVADs currently in place or placed during the first year of the study. Each participating HTC must be able to enroll a minimum of 20–30 patients who meet the above criteria. The capacity to accrue patients to this study will be measured by (1) the number of patients who are seen annually at each HTC, and (2) the average number of CVADs placed in each HTC 3 years prior to the start of the study. (15 points)

b. Qualifications of proposed staff to meet stated objectives and goals, and the availability of facilities to be used during the project period. The applicant should provide evidence that there is experience in collaborating in multi-site studies. (15 points)

4. Methods and Activities (Total 30 Points)

a. The quality of the applicant's plan for conducting program activities and the extent to which the study design proposed is: (1) appropriate to accomplish stated goals and objectives; (2) acceptable to the needs of the patient population (e.g., likely to produce compliance); (3) feasible within programmatic and fiscal restrictions. (20 points)

b. The recipient should demonstrate a basic knowledge and describe how they will implement their protocol at various HTCs; (1) develop progress report forms: (2) and collect and edit the data. (10 points)

5. Program Management and Evaluation

The recipient should demonstrate the ability to design information management systems to ensure that valid and reliable data are collected to achieve the proposed goals and objectives. The applicant should present specific plans to evaluate data periodically, quality assurance measures to be used and operations will be changed based on the above information. The recipient should demonstrate adequate biostatistical support for protocol design, study implementation and data management. The degree to which the applicant has met the CRC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (a) the proposed plan for the inclusion of both sexes, racial and ethnic minority populations for appropriate representation, (b) the proposed justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted, and (d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (15 points)

6. Budget

The extent to which the budget is reasonable and consistent with the intended use of the cooperative agreement funds. (Not Scored)

7. Human Subjects Requirements

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? (not scored)

_____Yes _____No

Comments: _____

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports (annual);
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mailstop E–18, Atlanta, Georgia 30341.

The following additional requirements are applicable to this program. For the complete description of each, see Attachment I, in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–8 PHS Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number (CFDA)

This program is authorized under the Public Health Service Act Sections 301(a) [42 U.S.C. 241(a)], 317(k)(1) [42 U.S.C. 247b(k)(1)], 317(k)(2) [42 U.S.C. 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99024, Centers for Disease Control and Prevention (CDC), 2929 Brandywine Road, Mailstop E–18, Atlanta, Georgia 30341, telephone (404) 842–6595, Email address 1xt1.@cdc.gov.

See also the CDC home page on the Internet: *http://www.cdc.gov*

For program technical assistance, contact Lisa Richardson, MD, MPH, Hematologic Diseases Branch, Division of AIDS, STD, and TB Laboratory Research, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–64. Atlanta, Georgia 30333, telephone (404) 639–4025, e-mail address 1fr8@cdc.gov.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2635 Filed 2–3–99; 8:45am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Grants to States for Access and Visitation—Program Data.

OMB No.: New.

Description: As required by Paragraphs 303.109(a), (b) and (c) of the PRWROA Act, States are directed to monitor and evaluate their access and visitation programs using a set of criteria aimed at providing detailed descriptions of each funded program. To that end, States will use collection techniques available to the Administration for Children and Families and the Office of Child Support Enforcement.

Specifically, paragraph (a) requires States to monitor all access and visitation programs to ensure that services funded under these programs are: (1) authorized under section 469B(a) of the Act and (2) efficiently and effectively provided while complying with reporting and evaluation requirements, as set forth in paragraphs 303.109(b) and 303.109(c). Paragraph 303.109(b) allows State programs funded by section 469B of the act to be evaluated using data gathered to measure the effectiveness of program operations. States also are required to assist in the evaluation of programs deemed significant or promising by the Department, as directed by program memorandum. Paragraph 303–109(c) requires that States provide a detailed description of each funded program by including such information as: service providers and administrators, service area, population serviced, program goals, application or referral process, referral agencies, nature of the program, activities provided, and length and features of a "completed" program. Other required information from the program also includes: number of applicants or referrals for each program, the number of program participants in the aggregate and by eligible activity, and the total number of graduates in the aggregate and by eligible activities (e.g., mediation, education, etc.).

This information is proposed in order to assess: (1) the demand for the program and effectiveness of outreach and ability of the program to meet demand, (2) the service population served and scope and size of the program, and (3) whether such recipients are completing standard program requirements. States would be required to report this information annually, collected at a date and in a form as the Secretary may prescribe in program instructions from time to time.

The Office of Child Support Enforcement will use information gathered from the data collection instrument to report on the programs to the Congress in its annual report. States may use this information to assess demand for any utilization of their programs when considering funding options and make appropriate program changes from year to year. Funded agencies will use the information to assess effectiveness of project administration and design. Public interest groups will use the information to keep apprised of services provided to constituencies.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Access and Visitation	216	1	24	5,184

Estimated Total Annual Burden Hours: 5,184.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Ms. Lori Schack.

Dated: January 29, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–2638 Filed 2–3–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Proposed Program Priorities—ACF/ACYF/RHYP 99–1]

Runaway and Homeless Youth Program: Fiscal Year (FY) 1999; Proposed Program Priorities

AGENCY: Family and Youth Services Bureau (FYSB), Administration on Children, Youth, and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of request for public comments on proposed FY 1999 Runaway and Homeless Youth (RHY) Program Priorities.

The Runaway and Homeless Youth Act requires the Secretary to publish annually, for public comment, a proposed plan specifying priorities the Department will follow in awarding grants under the Act. The public is urged to provide comments in response to this notice. Suggestions and recommendations will be taken into consideration in the development of final priorities.

The notice of the actual solicitation for grant applications will be published later during FY 1999 in the **Federal Register**. No applications for funding should be submitted at this time.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before March 22, 1999.

ADDRESSES: Written comments may be mailed or submitted in electronic form to: Karen E. Cook, Youth Development Program Specialist, Family and Youth Services Bureau, 330 C Street S.W., Washington, DC 20447; (202) 205–8087. E-mail: Kacook@acf.dhhs.gov

Introduction: The Family and Youth Services Bureau of the Administration on Children, Youth and Families awards funds to public and private agencies to provide services to youth in at-risk situations.

The Runaway and Homeless Youth Basic Center Grant Program (BCP), provides financial assistance to local agencies to develop and strengthen services to meet the immediate needs (e.g., outreach, temporary shelter, counseling, and aftercare services) of runaway and homeless youth and their families.

The Transitional Living Program for Older Homeless Youth (TLP), supports local agencies which provide long-term shelter (up to 18 months), life-skill training and support services to homeless youth to assist them in making a smooth transition to self-sufficiency and to prevent long-term dependency on social services.

The Street Outreach Program (SOP), provides street-based education and outreach, counseling information, referral services and offers emergency shelter to young people who have been, or who are at risk of being, sexually abused or exploited, with the goal of helping them leave the streets.

Central to all FYSB programs and activities is a priority that services are delivered through a comprehensive youth development approach. A developmental perspective views adolescence as the passage from the dependence of the child to the independence and self-sufficiency of the adult. The various emotional, intellectual, social and physical changes during this passage are natural, healthy responses to the challenges and opportunities of growing up.

The tasks of youth services providers are seen, thus, not as correcting the problems of troubled youth, but rather as providing for the successive developmental needs of maturing individuals: the psychological need to develop a clear self-identity; the sociological need to be an effective and contributing member of the community; the economic need to prepare for and enter into a career; and the familial needs for sharing, for trusting, for giving and receiving love and commitment. This developmental approach is fundamental to all FYSB programs and activities.

Financial assistance for programs and support efforts discussed below is contingent upon the availability of funds.

I. Proposed Grant Funding in FY 1999

A. Basic Center

Approximately 65 percent of the Basic Center grants awarded in FY 1999 will be non-competing continuation grants and approximately 35 percent will be competitive new awards.

Eligible applicants for new awards are current grantees with project periods ending in FY 1999 and otherwise eligible applicants who are not current grantees. The applications will be reviewed by State, and awards will be made during the last quarter of FY 1999 (July—September 1999). FYSB is considering making awards for five-year project periods and encourages public comments on this approach.

B. Transitional Living Program

All FY 1999 funds for Transitional Living Programs will be awarded in the form of continuation grants. There will be a competitive solicitation for new-start TLP applications in FY 1999.

However, funds for new start applications are expected to be awarded if available in FY 2000. FYSB is considering making awards for five-year project periods and encourages public comments on this approach.

C. Street Outreach Program

All FY 1999 funds for Street Outreach Programs will be awarded in the form of continuation grants. FYSB is considering making awards for five-year project periods and encourages public comments on this approach.

D. Training and Technical Assistance

In FY 1999, a national competition will be held to provide training and technical assistance services to runaway and homeless youth service providers. These services are currently provided via cooperative agreements with ten organizations across the country. FYSB is considering a range of approaches to meet the needs of programs and encourages public comment.

E. National Communications System

In the second quarter of FY 1999, FYSB expects to award a new five-year grant to the successful applicant to run the National Communications System to provide information, referral services, crisis intervention and communication services to runaway and homeless youth and their families. Applications for this grant were solicited in the FY 1998 Program Announcement for the Runaway and Homeless Youth Program.

II. Proposed Contracts in FY 1999

A. National Clearinghouse on Runaway and Homeless Youth

In FY 1997, the Family and Youth Services Bureau awarded a five-year contract to support a National Clearinghouse on Youth and Families (NCFY). The purpose of the Clearinghouse is to disseminate information to professionals and agencies involved in youth development efforts and/or the delivery of direct services to runaway, homeless and at-risk youth. The Clearinghouse collects, maintains and disseminates reports and other materials, identifies areas in which new or additional information is needed, and develops documents and materials relevant to FYSB's mission and the needs of the field. It is expected that this contract will receive continuation funding in FY 1999.

B. Runaway and Homeless Youth Management Information System (RHYMIS)

In FY 1997, the Family and Youth Services Bureau awarded a three-year contract for continued development and implementation of the Runaway and Homeless Youth Management Information System (RHYMIS). RHYMIS is used by grantees to report statistical information on client characteristics and services provided. It is expected that this contract will receive continuation funding in FY 1999.

C. Monitoring Support for FYSB Programs

A comprehensive monitoring instrument and site visit protocols, including a peer-review component, are used for monitoring runaway and homeless youth programs. In FY 1997, the Family and Youth Services Bureau awarded a three-year contract to provide logistical support for peer review

monitoring. It is expected that this contract will receive continuation funding in FY 1999.

III. Proposed Research and Demonstration Activities in FY 1999

Section 315 of the Act authorizes the Department to award funds to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway and homeless youth. These activities identify emerging issues and develop and test models which address such issues.

During FY 1999, the Family and Youth Services Bureau will continue to:

Support the nine Youth Development State Collaboration grants which were awarded in FY 1998 to facilitate the use of a youth development approach by States as they address the needs of adolescents at the State and local levels;

Support a youth development approach to the provision of services, both from theoretical and practical perspectives;

Pursue the development of youth development performance based indicators and outcome measures as a method of evaluating the effectiveness of youth services; and

Collaborate with Federal government agencies, State governments and local community based youth services organizations.

References

(*Catalog of Federal Domestic Assistance* Number 93.623, Runaway and Homeless Youth Program; Number 93.550, Transitional Living Program for Homeless Youth; and Number 93.623, Training and Technical Assistance Grants)

Dated: January 25, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–2612 Filed 2–3–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Medical Child Support Working Group

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of the first meeting of the Medical Child Support Working Group (MCSWG). The agenda for this first meeting includes swearing-in and orientation of members, program briefings, discussions, and business related to the operation of the MCSWG.

DATES AND TIME: March 3, 1999, 3:00 PM—6:00 PM, the Opening and Swearing-in Ceremony; March 4, 9:00 AM—3:00 PM, and March 5, 1999, 9:00 AM—Noon, for introductions and orientation for this new work group, program briefings, discussions, and business related to the operation of the MCSWG.

PLACE: Snow Room, room 5051, fifth floor, Wilbur Cohen Bldg., 300 Independence Ave., SW, Washington, DC for 3/3/99; room 800, eighth floor, Hubert H. Humphrey Bldg., 200 Independence Ave, SW, Washington, DC, for 3/4/99 and 3/5/99.

PURPOSE: The purpose of this first of several meetings of the MCSWG will be orientation of members regarding their roles and duties, program briefings, and initial discussion of key issues. In addition, the members will discuss business related to the operation of the MCSWG.

SUPPLEMENTARY INFORMATION: The MCSWG was authorized under section 401 of the Child Support Performance and Incentive Act of 1998 (PL 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State Child Support Enforcement agencies. The membership of the MCSWG was jointly appointed by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS). The membership includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses, and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

The MCSWG is to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address the impediments identified by the MCSWG, including: (1) recommendations based upon assessments of the form and content of the National Medical Support Notice, as issued under interim regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677; (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program (CHIP); (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for service not covered under a child's existing health coverage; (5) recommendations as to whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Over the course of the MCSWG's tenure, future meetings will be dedicated to public input. Members of the public who wish to present oral statements should contact Samara Weinstein by telephone, fax machine, or mail as shown below and as soon as possible, at least four days before the meeting. The Chair of the MCSWG will reserve time for presentations by persons requesting to speak. Oral statements will be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which the requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the MCSWG staff office at least five business days before the meeting for distribution to the MCSWG membership and inclusion in the public record. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact

MCSWG staff at the address below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447; telephone 202–401–6953; fax number 202–401–5559; email sweinstein@acf.dhhs.gov

Dated: January 28, 1999.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

[FR Doc. 99–2664 Filed 2–3–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0123]

Agency Information Collection Activities: Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the regulation requiring manufacturers, packers, and distributors of dietary supplements to notify FDA that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written comments on the collection of information by April 5, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR 101.93 (OMB Control Number 0910–0331—Extension)

Description: Section 403(r)(6) of the act (21 U.S.C. 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the act. Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act.

Description of Respondents: Businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.93		700	1	700	0.5 to 1	350 to 700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) of the act statements on

labels or labeling of dietary supplements. The agency is requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. This estimate is based on the average number of notification submissions received by the agency in the last 3 years.

Dated: January 29, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2688 Filed 2–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0022]

Agency Information Collection Activities; Announcement of OMB Approval; Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Hearing Aid Devices: Professional and Patient Package Labeling and Conditions for Sale" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 26, 1998 (63 FR 57127), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0171. The approval expires on December 31, 1999. Copies of this document are available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: January 27, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2685 Filed 2–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0266]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Disproportionate Share Hospital Payments—Institutions for Mental Disease; *Form No.:* HCFA–R–0266 (OMB# 0938–0746); *Use:* This PRA package announces the Federal share of disproportionate share hospital (DSH) allotments for Federal fiscal years (FFYs) 1998 through 2002. It also describes the methodology for calculating the Federal share DSH allotments for FFY 2003 and thereafter, and announces the FFY 1998 and FFY 1999 limitations on aggregate DSH payments States may make to institutions for mental disease (IMD) and other mental health facilities.; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 54; *Total Annual Responses:* 54; *Total Annual Hours:* 2,160.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 22, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–2650 Filed 2–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–257 & HCFA–R–71]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information

technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Medicare+Choice Disenrollment Form to original Medicare;

Form Nos.: HCFA–R–257 (OMB# 0938–0741);

Use: The primary purpose of the form is to receive and process the beneficiary's request for disenrollment from a Medicare+Choice plan and to return to original (fee-for-service) Medicare. The secondary purpose of the new form is to obtain the reason for the disenrollment, for analysis and reporting;

Frequency: On occasion;

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, and Federal Government;

Number of Respondents: 60,000;

Total Annual Responses: 60,000;

Total Annual Hours: 3,960.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Information Collection Requirements in HSQ–108F Assumption of Responsibilities and Supporting Regulations in 42 CFR 412.44, 412.46, 431.630, 466.71, 466.73, 466.74, and 466.78;

Form Nos.: HCFA–R–71 (OMB# 0938–0445);

Use: The purpose of this collection is to create the Utilization and Quality Control Peer Review Organization (PRO) program which replaces the Professional Standards Review Organization (PSRO) program and streamlines peer review activities. This rule outlines the review functions to be performed by the PRO and outlines the relationships among PROs, providers, practitioners, beneficiaries, fiscal intermediaries, and carriers;

Frequency: Other, as needed;

Affected Public: Business or other for-profit;

Number of Respondents: 6,471;

Total Annual Responses: 6,418;

Total Annual Hours: 46,834.

To request copies of the proposed paperwork collections referenced above, E-mail your request, including your address, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: January 13, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–2646 Filed 2–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1500]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 C.F.R., Part 1320. The HCFA–1500 is used to determine proper payment for certain Medicare services rendered to Medicare beneficiaries. Without this information, HCFA would not be able to obtain the information necessary to reimburse providers. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the possibility of providers not rendering services to Medicare beneficiaries due to the possibility of non-payment.

HCFA is requesting OMB review and approval of this collection within eleven working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within ten working days. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare/Medicaid Health Insurance Common Claim Form and Instructions, and Supporting Regulations in 42 CFR 414.40, 424.32 and 424.44;

Form No.: HCFA–1500 (OMB# 0938–0008);

Use: This form and instructions are standardized for use in the Medicare/Medicaid programs to apply for reimbursement for covered services. HCFA does not require exclusive use of this form for Medicaid. 42 CFR 414.40, 424.32 and 424.44 are regulations underlying the use of the form HCFA–1500 and the information captured on the form HCFA–1500, including the use of diagnostic and procedural coding systems. HCFA solicits comments on any and all aspects of the HCFA–1500, and the use of diagnostic and procedural coding systems: HCFA currently uses the most current version of the International Code of Diagnosis-Volume 9 and Common Procedural Terminology/HCFA Common Procedure Coding System;

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government;

Number of Respondents: 695,168,330;

Total Annual Responses: 695,168,330;

Total Annual Hours: 44,100,662.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call

the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within ten working days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: January 22, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–2649 Filed 2–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–0001–N]

Medicare Program; Year 2000 Readiness Letter

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

The Health Care Financing Administration (HCFA) recently mailed the following letter to over a million of its health care partners and provider related associations regarding the Y2K issue. The message is that HCFA will be ready to process and pay all acceptable claims by January 1, 2000 and that providers must take steps to ensure their own readiness in order to be paid promptly. Further, the Y2K problem has implications for patient care. Providers should take steps to assure that beneficiaries receive the same quality of care that is provided to them today. The letter includes a checklist that providers can use as a tool to assess their Y2K readiness.

Medicare providers were to begin submitting claims with 8-digit date formats no later than January 1, 1999. However, it was recognized that many providers needed additional time to modify and test their own billing systems and, therefore, claims without 8-digit date formats would continue to be accepted until further notice by HCFA. On January 13, 1999, we notified Medicare contractors that, beginning April 5, 1999, claims will be returned to providers if they are not submitted in the Y2K format. To assist providers with Y2K readiness efforts, Medicare contractors offer free or minimal cost Y2K compliant billing software. Changing formats and using appropriately modified billing software are just two of the important steps that providers must take to assure that they are ready for the Year 2000.

The letter to health care partners is part of an extensive outreach effort being conducted by HCFA to promote Y2K self-assessment and readiness among all providers engaged in delivering health care services to beneficiaries of Medicare, Medicaid and the Children's Health Insurance Programs. HCFA has assumed a lead role in addressing Y2K readiness in the health care sector and holds regular meetings and discussions with a variety of industry groups. HCFA has strongly encouraged health care industry associations to accelerate efforts to assess the readiness of their provider members and to foster remediation initiatives.

In addition to this letter to providers and the resource information on its web site, www.hcfa.gov, HCFA has established a Y2K Speakers Bureau and is prepared to make speakers available to health care provider organizations that wish more detailed information about Y2K readiness and the implications of the millennium change for the industry.

FOR FURTHER INFORMATION CONTACT: Joe Broseker 410–786–1950 or Anita Shalit 202–690–7179.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 28, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

January 12, 1999.

Dear Health Care Partner:

You have probably heard about the Year 2000 computer problem, or the "Y2K bug." As a health care practitioner or institution, you need to be aware of how Y2K affects you and your patients. We all must do our part so that Medicare and Medicaid beneficiaries continue to receive high quality care, and you or your institution continue to be paid accurately and promptly.

The Year 2000 problem appears simple on the surface. Many computers and devices use only six digits to record dates. They may read 01–01–00 as January 1, 1900, rather than January 1, 2000. Patient care services, systems, and devices that rely on dates, the age of the patient, and other calculations could be severely affected if corrections are not made in time.

Every business and organization that relies on computer systems or devices must address Y2K. For all of us in the health care industry, it is a patient care issue as well as a business and technical problem. As Administrator of the Health Care Financing Administration (HCFA), I need to make sure you are aware of some key points:

► HCFA will be ready to process acceptable claims. We have made substantial progress in correcting our own systems in recent months and, despite earlier concerns, we will be ready on time. We are confident that all Medicare claims processes will be ready and able to function come January 1, 2000, so that you can be paid promptly.

► You must also be ready if you wish to be paid promptly. We can process your claims only if your systems are also able to function in the Year 2000. It is URGENT that you act NOW so your systems will be ready. Otherwise, you may not be able to receive prompt payment from Medicare, Medicaid, and virtually any other payer.

► Your entire practice and facility must be ready. The Y2K problem could impact quality of care and patient safety. Patient management systems, clinical information systems, defibrillators and infusion pumps and other medical devices, even elevators and security systems all must be ready.

We want to help you prepare for the Year 2000. Enclosed is a "Sample Provider Y2K Readiness Checklist" which you can use to assess what you need to do. You can find additional useful information at our *www.hcfa.gov/Y2K* web site. Information on medical devices is available on the Food and Drug Administration's *www.fda.gov/cdrh/yr2000/year2000.html* web site.

We are confident that HCFA will be ready, but we are also making contingency plans so we can continue operations if unexpected problems occur. For those of you that rely on computer systems, we believe the greatest risk is that your systems will not be able to bill for services.

You need to make sure you will be ready for the Year 2000. And, like us, you need to make contingency plans for your critical operations. These should focus especially on assuring safety for your patients who are reliant on equipment and devices containing embedded chips. In addition, you need to assure your ability to generate bills and manage accounts receivables, and assure essential services and supplies are maintained. Your patients and your business may depend on this.

What can you do to avoid potential Y2K pitfalls? There are key steps you can take to become Y2K ready:

Become aware of how the Year 2000 can affect your systems. Anything that depends on a microchip or date entry could be affected. Don't forget to identify those organizations that you depend on or who depend on you. List everything and identify your mission critical items, namely, those you cannot live without.

Assess the readiness of everything on your list. You can do this by contacting your hardware or software vendors or accessing key information from various web sites. Don't forget your maintenance and service contractors. If your particular software program or form is not Y2K ready, you need to decide whether you should invest in an upgrade or replacement.

Update or replace systems, software programs, and devices you decide are critical for your business continuity.

Test your existing and newly purchased systems and software. Do not assume that a system or a program is Y2K ready just because someone said it is. Test to make sure. During this process, keep track of your test plans and outputs in case a problem surfaces later. If you are not already using compliant electronic claim formats, consider testing your electronic data interchanges (EDI) with one or more of your payers, including Medicare. This will ensure that your payer can accept your EDI transactions, especially claims. Medicare can now accept claims with eight digit date formats.

Develop business contingency (continuity) plans in the event something goes wrong. Focus on the things that would be most problematic for you and your patients.

The enclosed checklist may also be helpful. It is only meant to be a guide and should not be considered all-inclusive.

Medicare beneficiaries are counting on all of us to meet the Year 2000 challenge. We will be ready. Now you need to do your part to be sure that you will continue to be paid as beneficiaries are assured that they will continue to receive the health care they have come to depend on.

Sincerely,

Nancy-Ann Min DeParle

Enclosure

Enclosure

Sample Provider Y2K Readiness Checklist

Please note: This checklist is intended as a supplemental guide in helping you determine your Y2K readiness. Consider using this along with other diagnostic and reference tools you have obtained for this venture. The purpose of this checklist is to aid you in determining your Y2K readiness. This information is not intended to be all inclusive. The Health Care Financing Administration will not assume any responsibility for your Y2K compliance.

Item	Y2K ready	Not Y2K ready
Bank debit/credit card expiration dates.		
Banking interface.		
Building access cards.		
Claim forms and other forms.		
Clocks.		
Computer hardware (list).		
Computer software (list).		
Custom applications (list).		
Diagnostic equipment (list).		
Elevators.		
Fire alarm.		
Insurance/pharmacy coverage dates.		
Membership cards.		
Medical Devices (list).		
Monitoring equipment (list).		
Smoke alarm.		
Telephone system.		
Spreadsheets.		
Treatment equipment (list).		
Safety vaults.		

[FR Doc. 99–2632 Filed 2–3–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are Invited on

(a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Feasibility Study To Evaluate the Positive Activities Campaign (PAC)

(OMB No. 0930–0188, Revision) The Center for Substance Abuse Prevention is conducting a feasibility study of the Positive Activities Campaign (PAC), an initiative aimed at the general public to encourage adults to become more involved in positive, skill-building activities with youth. The ultimate goal of the initiative is to reduce substance abuse among young people.

To determine the likely effectiveness of the campaign, CSAP's feasibility study consists of a process evaluation and an outcomes evaluation. The

evaluation is assessing change in communities exposed to PAC, including change in adults' involvement with youth. Two treatment and two comparison communities have been selected for study. Data for the process evaluation are primarily from on-site interviews with key personnel in local youth-serving organizations (e.g, Boy Scouts, Boys and Girls Clubs); data for the outcomes evaluation are from baseline and 6-month followup telephone surveys of adults.

This revision to the currently approved information collection activities involves: (1) a third, 12-month followup telephone interview with the random sample of adults; and (2) because PAC is being expanded to serve civic membership organizations (e.g., Rotary Clubs, Lions Clubs, Kiwanis) application of the process evaluation activities with these groups, plus three telephone interviews with random samples of members of the civic organizations.

	Number of respondents	Responses/respondent	Burden/response	Total burden hrs.
Currently approved				1,350
Additional telephone interview	1,760	1	0.14	246
Interviews with local-level staff for process evaluation	140	2	1.5	420
Telephone interviews with members of civic organizations	1,760	3	.14	739
New Total				2,755

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 29, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–2662 Filed 2–3–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–08]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 8, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 28, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Survey of Low-Income Housing Tax Credit (LIHTC) Developers and Owners.

Office: Policy and Development and Research.

OMB Approval Number: 2528–xxxx.

Description of the Need for the Information and Its Proposed Use: Survey is to better understand: types and characteristics of LIHTC developers/owners; factors important to developing affordable housing, post development performance and longer term plans for continued low-income use.

Form Number: None.

Respondents: Business or Other For-Profit and Not-for-Profit Institutions.

Frequency of Submission: One-Time Submission.

Reporting Burden:

Number of Respondents	×	Frequency of response	×	Hours per response	=	Burden hours
800		1		.53		427

Total Estimated Burden Hours: 427.
Status: New Collection.
Contact: Stacy Jordan, HUD, (202) 708–0426; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 28, 1999.

[FR Doc. 99–2667 Filed 2–3–99; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–09]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 8, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 28, 1999.

David S. Cristy,

Director, IRM Policy and Management Divsion.

Title of Proposal: Community Development Work Study Program.
Office: Policy Development and Research.
OMB Approval Number: 2528–0175.
Description of the Need for the Information and its Proposed Use: The data is essential to help assure that the grantee institutions monitor and guide funded students and their work placement agencies. The information will be used to make sure that students progress academically and develop their professional career potential in community development or a related field.
Form Number: None.
Respondents: Not-For-Profit Institutions and State, Local, or Tribal Government.
Frequency of Submission: Monthly.
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Application	60		1		40		2,400
Quarterly/Semester	30		1		6		180
Final Report	30		1		8		240
Recordkeeping	30		1		5		150

Total Estimated Burden Hours: 2,970.
Status: Extension.
Contact: Jane Karadbil, HUD, (202) 708–1537; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 28, 1999.

[FR Doc. 99–2668 Filed 2–3–99; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–10]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 8, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval

number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 28, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Contract for Development A/E Services and Contract for CIAP A/E Services.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0015.

Description of the Need for the Information and Its Proposed Use: Public Housing Agencies and Indian Housing Authorities (PHA/IHA) use Forms HUD–51915 and HUD–51915–A to contract for professional architect/engineer (A/E) services and to prepare the necessary documents for construction, rehabilitation, and modernization of housing developments.

Form Number: HUD–51915 and HUD–51915–A.

Respondents: State, Local, or Tribal Government, and Not-For-Profit Institutions.

Frequency of Submission: One-Time Submission.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	2,630		1		3		7,890
Recordkeeping	2,630		1		.25		657

Total Estimated Burden Hours: 8,557.

Status: Reinstatement with changes.

Contact: Satinder Munjal, HUD, (202) 708–1640; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 28, 1999.

[FR Doc. 99–2669 Filed 2–3–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–11]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 8, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 29, 1999.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Quarterly Loan Level Reporting for the GNMA Mortgage-Backed Securities Program.

Office: Government National Mortgage Association.

OMB Approval Number: 2503–0026.

Description of the Need for the Information and Its Proposed Use: GNMA needs to collect loan level data from its more than 600 issuers to continue performing risk analyses, compliance monitoring, and cost analyses regarding its mortgage-backed securities program.

Form Number: None.

Respondents: Businesses or Other For-Profit and Federal Government.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of respondent	×	Hours per response	=	Burden hours
Information Collection	396		4		4		6,336

Total Estimated Burden Hours: 6,336.
Status: Extension with changes.
Contact: Sonya Suarez, HUD, (202) 708–2772; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 29, 1999.

[FR Doc. 99–2670 Filed 2–3–99; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4457–FA–01]

Announcement of Funding Awards of Fiscal Year 1999 Supportive Housing Assistance; Partial Funding

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with HUD's regulations implementing section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces funding decisions made by HUD for a portion of the funding available for fiscal year 1999 for the Supportive Housing Program. The notice contains the names of award recipients and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: John D. Garrity, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–4300. The TTY number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The purpose of the Supportive Housing Program is to promote the development of supportive housing and supportive services, including innovative approaches to assist homeless persons in the transition from homelessness and to promote the provision of supportive housing to homeless persons to enable them to live as independently as possible. The Supportive Housing Program is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11381–11389), and the regulations for this program are found in 24 CFR part 583.

The regulations for the Supportive Housing Program authorize an award of renewals on a non-competitive basis (24 CFR 583.235(a)). Until Federal fiscal year 1997, HUD funding awards under this program were made on a noncompetitive basis. For Federal fiscal years 1997 and 1998, awards for renewals as well as new programs were made competitively, in response to notices of funding availability (NOFA).

For fiscal year 1999, HUD determined that terminating funding to high priority Supportive Housing Program renewal projects in Continuum of Care Homeless Assistance programs that were unsuccessful in the FY 1998 Continuum of Care Homeless Assistance competition would unduly threaten past investments that HUD has made in these projects and result in unacceptable reductions in services to homeless persons. Two hundred fifty-six Supportive Housing Program projects scheduled to complete the term of their grants in 1999 were not funded under the 1998 homelessness assistance competition. These unsuccessful applicants represented over 30 percent of all of the possible renewals—a significantly higher percentage than had failed to receive funding in the previous year.

To address the potential problems caused by not funding high priority renewals in low scoring Continuums, and to avoid significantly disrupting the philosophy of the Continuum of Care, HUD has decided to fund the 65 highest ranked Supportive Housing Program renewal projects which (1) passed threshold reviews in the FY 1998 competition; (2) were part of the unsuccessful Continuum of Care programs in the FY 1998 competition; and (3) were ranked within the pro rata share of funding based on a formula for need, when measured against the need of all applicants. The noncompetitive funding announced through this notice is $20,998,934, or approximately two percent of the appropriated fiscal year 1999 funds for homeless assistance programs. The NOFA for the Continuum of Care Homeless Assistance Program (of which Supportive Housing is a part) will be included in HUD's FY 1999 SuperNOFA.

The Catalog of Federal Domestic Assistance number for the Supportive Housing Program is 14.235.

Appendix A to this notice provides the names and addressees of the award recipients and the amounts of the awards. This information is provided in accordance with HUD's regulations at 24 CFR 4.7 implementing section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545).

Dated: January 29, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

APPENDIX A.—SUPPORTIVE HOUSING PROGRAM RENEWAL AWARDS ANNOUNCED IN JANUARY 1999

Sponsor name	Project city	Dollars awarded
New Futures, Inc	Huntsville, AL	$767,443
Mental Health/ Mental Retardation Board	Tuscaloosa, AL	200,350
North Arkansas Human Services System, Inc	Batesville, AR	490,953
Turning Point of Central California	Fresno, CA	485,178
Turning Point of Central California	Fresno, CA	234,790
San Luis Obispo Nonprofit Housing Corporation	San Luis Obispo, CA	1,484,848
St. Vincent DePaul Society	Bristol, CT	108,080
Another Way, Inc.	Chiefland, FL	168,819
The Salvation Army, A Georgia Corporation	Ocala, FL	308,142
Housing Options for the Mentally Ill in Evanston	Evanston, IL	238,742
C.E.F.S. Economic Opportunity Corporation	Effingham, IL	891,795
City of Portland Social Services Division	Portland, ME	158,126
City of Portland Social Services Division	Portland, ME	68,499
City of Portland Social Services Division	Portland, ME	126,451
City of Portland Social Services Division	Portland, ME	80,255
City of Portland, Maine	Portland, ME	71,355
City of Portland Social Services Division	Portland, ME	451,440
Mental Health Association of Greater Springfield	Springfield, MA	276,268
Children's Study Home	Springfield, MA	483,426

APPENDIX A.—SUPPORTIVE HOUSING PROGRAM RENEWAL AWARDS ANNOUNCED IN JANUARY 1999—Continued

Sponsor name	Project city	Dollars awarded
Turning Point, Inc	Newburyport, MA	1,000,000
Lynn Shelter Association, Inc	Peabody, MA	275,000
YWCA	Flint, MI	71,035
Gulf Coast's Women's Center for Nonviolence	Biloxi, MS	144,726
City of Natchez	Natchez, MS	850,496
Comprehensive Mental Health Services	Independence, MO	112,106
F.A.I.T.H., Inc	Clinton, MO	130,944
Town of Taos	Taos, NM	404,985
Economic Opportunity Corporation	Ithaca, NY	270,380
Rural Ulster Preservation Company, Inc	Kingston, NY	249,004
Women's Alliance, Inc	Dickinson, ND	112,801
YWCA of Dayton	Dayton, OH	1,510,617
Miami Valley Housing Opportunity, Inc	Dayton, OH	44,427
Miami Valley Housing Opportunity, Inc	Dayton, OH	99,471
Community Action Agency	Oklahoma City, OK	154,826
Red Rock Behavioral Health Services	Oklahoma City, OK	289,049
HOPE Community Services	Oklahoma City, OK	100,243
Latino Community Development Agency	Oklahoma City, OK	118,042
HOPE Community Services	Oklahoma City, OK	75,921
CarePoint, Inc	Oklahoma City, OK	271,197
Red Rock Behavioral Health Services	Oklahoma City, OK	148,472
Red Rock Behavioral Health Services	Oklahoma City, OK	130,781
Community Action Agency	Oklahoma City, OK	326,505
Red Rock Behavioral Health Services	Oklahoma City, OK	263,594
HOPE Community Services	Oklahoma City, OK	94,483
Latino Community Development Agency	Oklahoma City, OK	128,097
HOPE Community Services	Oklahoma City, OK	71,451
CarePoint, Inc	Oklahoma City, OK	240,996
Red Rock Behavioral Health Services	Oklahoma City, OK	224,005
Youth Services Consortium	Portland, OR	206,336
Uniontown Apartments	Astoria, OR	193,326
Westmoreland Human Opportunities, Inc	Greensburg, PA	1,374,583
Fundaciòn Modesto Gotay	Trujillo Alto, PR	128,640
Fundaciòn Modesto Gotay	Trujillo Alto, PR	128,640
SAMM Housing Corporation	San Antonio, TX	96,714
The Salvation Army, A Georgia Corporation	San Antonio, TX	777,128
Seton Home	San Antonio, TX	13,924
The Salvation Army	San Antonio, TX	435,418
American GI Forum	San Antonio, TX	27,876
City of San Antonio	San Antonio, TX	764,569
San Antonio AIDS Foundation	San Antonio, TX	53,244
Community Action Services	Provo, UT	633,582
Portsmouth Area Resources Coalition	Portsmouth, VA	148,755
Rappahannock Refuge, Inc	Fredericksburg, VA	305, 043
Loudon County Housing Services	Leesburg, VA	313,202
Stop Abusive Family Environments, Inc	Welch, WV	389,340

[FR Doc. 99–2671 Filed 2–3–99; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. the accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. the utility, quality, and clarity of the information to be collected; and,

4. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Nonferrous Metals Surveys.

Current OMB approval number: 1028–0053.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonferrous and related metals. This information will be published as

monthly, quarterly, and annual reports for use by Government agencies, industry, and the general public.

Bureau form number: Various (32 forms).

Frequency: Monthly, Quarterly, and Annual.

Description of respondents: Producers and consumers of nonferrous and related metals.

Annual responses: 6,633.

Annual burden hours: 5,453.

USGS clearance officer: John E. Cordyack, Jr., 703–648–7313.

Kenneth W. Mlynarski,

Acting Chief Scientist, Minerals Information Team.

[FR Doc. 99–2645 Filed 2–3–99; 8:45am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO220–1020–01–241A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). On October 20, 1998, BLM in the **Federal Register** (63 FR 40305) requesting comment on this proposed collection. The comment period ended on December 21, 1998. BLM received no (0) comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below.

The Office of Management and Budget is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0005), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340, Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington DC 20420.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validation of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Form 4130–1, Grazing Application—Grazing Schedule.

OMB approval number: 1004–0005.

Abstract: The Bureau of Land Management is proposing to renew the approval of an existing information collection, a form called "Grazing Application—Grazing Schedule", Form 4130–1. This form is used by grazing permittees or lessees to apply for annual grazing authorization to graze livestock on the public lands to BLM. The BLM uses the information to determine if the applied-for uses are within the applicants' grazing preferences, to collect grazing fees, and for program monitoring. After the initial filing, applicants need only file the form when they want to change their grazing preference.

Bureau Form Number: Form 4130–1.

Frequency: On Occasion.

Description of respondents: Respondents are applicants requesting authorization to graze livestock on the public lands administered by the Bureau of Land Management.

Estimated completion time: 20 minutes.

Annual responses: 6,000.

Annual burden hours: 2,000.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: January 25, 1999.

Carole Smith,

Bureau of Land Management Information Clearance Officer.

[FR Doc. 99–2583 Filed 2–3–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Habitat Management Plan (HMP) for the North Bank Habitat Management Area (NBHMA), Douglas County, Oregon; and Notice of Public Scoping period. The NBHMA is approximately five miles east of Wilbur, Oregon on County Road 200 (North Bank Road).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, and 40 CFR 1501.7 the Bureau of Land Management (BLM), Roseburg District, will prepare an EIS/HMP that will evaluate the environmental impacts of management on the 6,580 acre North Bank Habitat Management Area. This plan is necessary to form a basis for the management of habitat for the Columbian white-tailed deer (a federally listed "endangered" species), as well as rare plants and other sensitive species of wildlife. The EIS/HMP will also identify recreational opportunities and habitat restoration projects. The effect of this action would be to meet criteria in the Recovery Plan required for delisting the Columbian white-tailed deer (CWTD).

DATES: Written comments will be accepted until March 8, 1999.

ADDRESSES: Comments should he sent to the District Manager, Roseburg District, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470; Attention NBHMA Project.

FOR FURTHER INFORMATION CONTACT: Ralph Klein (541) 440–4931.

SUPPLEMENTARY INFORMATION: The EIS/HMP will be written in cooperation with the Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. This agency previously developed an Environmental Analysis (EA) and HMP in 1998. These documents are available for public review at the Roseburg District Office during business hours. When the EA was written the public was provided an opportunity to provide scoping comments through four "open house" meetings, a news release and the Roseburg District Project Planning Update which is mailed out on a quarterly basis to inform the public of upcoming projects and comment opportunities. Previous comments that have been submitted will be considered in the development of the EIS. The following issues were identified in the EA:

1. Impacts to the CWTD and other special status species.

2. Degree of facility development and use.

3. Affect on adjacent landowners.

4. Affect on water quality.

The draft EIS is expected to be completed by June 1999, at which time the document will be made available for a 60 day public review and comment

period. If there is sufficient public interest, an open house meeting may be scheduled during the public comment period.

Dated: January 28, 1999.

Cary Osterhaus,

District Manager.

[FR Doc. 99–2652 Filed 2–3–99; 8:45 am]

BILLING CODE 4310–33–U

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID), is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on this information collection on or before March 5, 1999.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC, 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0506.
Form No.: AID 1420–50 (12/95).
Title: Vendor Data Base (formerly known as USAID Consultant Registry Information System (ACRIS) Instruction Books for the Organization Profile.
Type of Review: Renewal of Information Collection.

PURPOSE: USAID procuring activities are required to establish bidders mailing lists to assure access to sources and to obtain meaningful competition (41 CFR Section 1–2.205). In compliance with this requirement, USAID's Office of Small and Disadvantaged Business Utilization/Minority Resource Center has responsibility for developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by the USAID procuring activities. (AIDAR 719.271–2(b)(4)).

Annual Reporting Burden:

Respondents: 1,000 hours.
Total annual responses: 1,000.
Total annual hours requested: 1,000.

Dated: January 26, 1999.

Willette L. Smith,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 99–2582 Filed 2–3–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Buckley & Company, et al.*, Civil Action No. 98–CV–6759 was lodged with the United States District Court for the Eastern District of Pennsylvania on December 30, 1998. This Consent Decree resolves the United States' claim against Buckley & Company, Somerset Strippers of Virginia, Inc., Robert Buckley, Sr. and Joseph Martosella ("Settling Defendants"), under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607(a), for response costs incurred at the Strasburg Landfill Superfund Site in Newlin Township, PA. The Consent Decree requires the Settling Defendants to pay $7.5 million, plus certain interest, in reimbursement of response costs relating to the Strasburg Landfill cleanup.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States* v. *Buckley & Company et al.*, DOJ No. 90–11–3–962/1.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; Region III Office of EPA, 1650 Arch Street, Philadelphia, PA 19103; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of $12.00, and please reference *United States* v. *Buckley & Company, et al.* DOJ No. 90–11–3–962/1.

Joel M. Gross,

Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 99–2611 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 20 CFR 50.7, notice is hereby given that a consent decree that would resolve the liability of the Delaware Department of Transportation, the defendant in *United States* v. *State of Delaware, Department of Transportation*, Civil Action No. 98–651–RRM (D. Del.), was lodged with the United States District Court for the District of Delaware on November 23, 1998.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311 *et seq.*, as a result of the unauthorized discharge of dredged and fill material into approximately one acre of wetlands and one-third acre of open water which are alleged to constitute "waters of the United States." The subject wetlands, located in New Castle County, Delaware, are adjacent to Naaman's Creek and are impacted by defendant's project to improve and widen Naaman's Road between Marsh Road and Foulk Road.

The consent decree permanently enjoins defendant from taking any actions, or causing others to take any actions, which result in the discharge of dredged or fill materials into waters of the United States. The consent decree further requires the defendant to pay the following amounts: (1) A $25,000.00

civil penalty to the United States of America, and (2) a payment of $200,000 to the Nature Conservancy, an environmental organization, with the requirement that the money shall be dedicated by the Nature Conservancy to the purchase, preservation, and/or management of wetlands in New Castle County, Delaware. In addition, the consent decree requires that defendant provide additional environmental enhancements in the Naamans Creek watershed to further mitigate the impact of storm water runoff in the Naamans Road area.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Steven E. Rusak, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States of America* v. *State of Delaware, Department of Transportation*, DJ Reference No. 90–5–1–4–05201.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 844 King Street, Wilmington, Delaware 19801.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 99–2607 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 to 9675

Notice is hereby given that a proposed consent decree in the case of *United States* versus *David B. Fisher, et al.*, Civil Action No. S92–00636M, was lodged on January 25, 1999 with the United States District Court for the Northern District of Indiana, South Bend Division. The proposed consent decree resolves the United States' claims against defendants Akzo Coatings, Inc. and The O'Brien Corporation for past costs incurred in connection with the Fisher Calo Chemicals Superfund Site located in LaPorte County, Indiana, in return for a total payment of $925,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *David B. Fisher, et al.*, DOJ Ref. #90–11–2–549A.

The proposed consent decree may be examined at the office of the United States Attorney, 204 South Main Street, South Bend, Indiana 46601–2191; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–2610 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Settlement Agreement and Stipulated Order in In Re NVF Company Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a Second Settlement Agreement and Stipulated Order in *In re NVF Company*, No. 93–1020 (D. Del.), has been entered into by the United States on behalf of U.S. EPA and NVF Company, and was lodged with the United States Bankruptcy Court for the District of Delaware on January 21, 1999. Under the Second Settlement Agreement and Stipulated Order, the United States will receive $1.8 million plus interest with respect to the NVF Kennett Square facility in Chester County, Pennsylvania.

The Department of Justice will receive comments relating to the proposed Second Settlement Agreement and Stipulated Order for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re NVF Company*, D.J. Ref. No. 90–11–2–979.

The proposed Second Settlement Agreement and Stipulated Order may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Chemical Bank Plaza, Wilmington, DE 19899–2046; the Region 3 Office of the United States Environmental Protection Agency, 1650 Arch St., Philadelphia, PA 19103; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Second Settlement Agreement and Stipulated Order may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy of the proposed Amended Settlement Agreement, please enclose a check in the amount of $2.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–2608 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Consistent with Departmental policy, 28 C.F.R. 50.7, 38 FR 19029, and 42 U.S.C. § 9622, notice is hereby given that on January 25, 1999, a proposed consent decree in *United States* v. *Harry J. Smith, Jr., et al.*, Civil Action No. 99–21B, was lodged with the United States District Court for the District of Maine. The proposed Consent Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the U.S. Environmental Protection Agency ("EPA") against defendants Harry J. Smith, Jr., Terrell L. Lord, and Lisa J. Lord relating to the Eastern Surplus Company Superfund Site ("Site") in Meddybemps, Maine. The proposed Complaint alleges that Mr. Smith is liable as a present owner, an owner at the time of disposal, an operator, and a person who accepted hazardous substances for transport to the Site under Sections 107(a)(1), (a)(2), and (a)(4) of CERCLA, 42 U.S.C. 9607(a)(1), (a)(2), and (a)(4). The

Complaint alleges that the Lords are liable as present owners under Section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1). The State of Maine ("State") has filed a similar complaint against Smith and the Lords which also includes allegations that the United States is liable as a generator of hazardous substances at the Site pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3).

Pursuant to the Consent Decree, the Settling Defendants shall each transfer to the State virtually all of their respective property that forms a part of the Site. The United States, as a direct defendant to the State and a potential contribution defendant, will pay $11,287,000 to an Eastern Surplus Company Site Special Account within the Superfund and will also pay $2,082,000 to the State. In addition, if the United States' or the State's response costs at the Site exceed, within designated time periods, the currently anticipated United States and State response costs at the Site, the United States will pay 85 percent of the amount by which such costs exceed the anticipated amounts.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Any comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Harry J. Smith, Jr., et al.*, Civil Action No. 99–21B, D.J. Ref. 90–11–2–06059.

The proposed consent decree may be examined at the Office of the United States Attorney, District of Maine, Portland, Maine 04104, and at Region I, Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203 and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $14.25 payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–2609 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 2, 1998, Akorn Manufacturing Inc., DBA Taylor Pharmaceuticals, 150 Wyckles Road, Decatur, Illinois 62522, made application by letter to the Drug Enforcement Administration to be registered as an importer of sufentanil (9740), a basic class of controlled substance listed in Schedule II.

The firm plans to import the sufentanil for development of analytical methods and initial formulation.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 8, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1995), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–2681 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1998, and published in the **Federal Register** on October 9, 1998, (63 FR 54491), Hoffmann-LaRoche, Inc., 340 Kingsland Street, Nutley, New Jersey 07110, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of levorphanol (9220), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Hoffmann-LaRoche, Inc. to manufacture levorphanol is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–2677 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1998, and published in the **Federal Register** on October 9, 1998, (63 FR 54492), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methamphetamine (1105), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the methamphetamine in bulk for distribution to finished dosage manufacturers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Johnson Matthey, Inc. to manufacture methamphetamine is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security system, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–2678 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 29, 1998, Medeva Pharmaceuticals CA, Inc., 3501 West Gary Avenue, Santa Ana, California 92704, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to synthesize amphetamine to support reintroduction of a product.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–2682 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on December 21, 1998, Medeva Pharmaceuticals CA, Inc., 3501 West Gary Avenue, Santa Ana, California 92704, made application by letter to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the synthesis of amphetamine.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed in 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than March 8, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 F.R. 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–2683 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 13, 1998, and published in the **Federal Register** on July 29, 1998, (63 FR 40543), Novartis Pharmaceuticals Corp., Regulatory Compliance, 556 Morris Avenue, Summit, New Jersey 07901, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Novartis Pharmaceuticals Corp. to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated Novartis Pharmaceuticals Corp. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 22, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–2679 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 10, 1998, Orpharm Inc., 4815 Dacoma, Houston, Texas 77092, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacture of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Methadone-intermediate (9254)	II
levo-alphacetylmethadol (9648)	II

The firm plans to manufacture methadone and methadone-intermediate for production of LAAM.

Any other such applicant and any person who is presently registered with DEA to manufacturer such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 5, 1999.

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–2684 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 1, 1998, and published in the **Federal Register** on October 9, 1998 (63 FR 54494), Research Biochemicals, Inc., Limited Partnership, Attn: Richard Milius, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of cocaine (9041), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture small quantities of a derivative of cocaine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Biochemicals, Inc. to manufacture cocaine is consistent with the public interest at this time. DEA has investigated Research Biochemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. § 823 and 28 CFR §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 27, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–2680 Filed 2–3–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board serves as a catalyst for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships. These partnerships will have the full and balanced participation of business, industry, labor, education and other key groups.

Time and Place: The meeting will be held from 8:30 a.m. to approximately 1:00 p.m. on Friday, February 19 at the Landsdowne Conference Resort located at 44050 Woodbridge Parkway, Leesburg, VA.

Agenda: The agenda for the Board Meeting will include: an update on the Board's Strategic Plan; reports from the Board's committees; presentations from the Voluntary Partnerships—Manufacturing, Installation and Repair (Manufacturing Skill Standards Council) and Retail Trade, Wholesale Trade, Real Estate & Personal Services (Sales and Services); and reports from Convening Groups representing the following industry clusters: Business & Administrative Services; Construction; Education and Training; Finance & Training; Restaurants, Lodging, Hospitality & Tourism, and Amusement & Recreation; and Telecommunications, Computers, Arts & Entertainment, and Information.

PUBLIC PARTICIPATION: The meeting is open to the public. Seating is limited and will be available on a first-come, first-served basis. (Seats will be reserved for the media.) If special accommodations are needed contact Michele Russo at (202) 254–8628 extension 10.

FOR FURTHER INFORMATION CONTACT: Tracy Marshall, Director of Operations at (202) 254–8628 extension 13.

Signed in Washington, DC this 28th day of January, 1999.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 99–2626 Filed 2–3–99; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Request Comment

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 354, "Data Report on Spouse".

2. *Current OMB Approval Number:* 3150–0026.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC employees, contractors, licensees, applicants and others (e.g., interveners) who marry after completing NRC's Personnel Security Forms; or marry after having been granted an NRC access authorization or employment clearance.

5. *The number of annual respondents:* 60.

6. *The number of hours needed annually to complete the requirement or request:* 12 (.20 hours per response).

7. *Abstract:* Completion of the NRC Form 354 is a mandatory requirement for NRC employees, contractors, licensees, applicants and others who marry after submission of the Personnel Security Forms, or after receiving an access authorization or employment clearance, to permit the NRC to ensure there is no increased risk to the common defense and security.

Submit, by April 5, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/NRC/PUBLIC/OMB/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, by telephone at 304–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV*.

Dated at Rockville, Maryland, this 29th day of January 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–2631 Filed 2–3–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: NRC Form 741: Revision; NRC Form 740m: Extension.

2. The title of the information collection:

—DOE/NRC Forms 741 & 741A—Nuclear Material Transaction Report;

—DOE/NRC Form 740M—Concise Note;

—NUREG/BR–0006—"Instructions for Completing Nuclear Material Transaction Reports and Concise Note, Forms 741, 741A, and 740M".

3. How often the collection is required:

—DOE/NRC Form 741/741A: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria.

—DOE/NRC Form 740M: As necessary to inform the U. S. or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement.

4. Who will be required or asked to report: Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the U. S. eligible list who have been notified in writing by the Commission that they are subject to 10 CFR Part 75.

5. An estimate of the number of responses:

—DOE/NRC Form 741/741A: 36,500

—DOE/NRC Form 740M: 1,140

6. The estimated number of annual respondents:

—DOE/NRC Form 741/741A: 1,200

—DOE/NRC Form 740M: 38

7. An estimate of the total number of hours needed annually to complete the requirement or request:

—DOE/NRC Form 741/741A: 27,375 for NRC and Agreement State licensees (.75 hour per response with an annual average of 22.8 hours per respondent for 1,200 respondents)

—DOE/NRC Form 740M: 855 for NRC and Agreement State licensees (.75 hour per response with an annual average of 22.5 hours per respondent for 38 respondents)

8. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

9. Abstract: NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Form 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts of special nuclear material, or for transfer or receipt of 1 kilogram or more of source material. Licensees affected by 10 CFR Part 75 and related sections of Parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U. S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement. The use of

Forms 740M, 741, and 741A, together with NUREG/BR–0006, the instructions for completing the forms, enables NRC to collect, retrieve, analyze as necessary, and submit the data to IAEA to fulfill its reporting responsibilities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by March 8, 1999. Comments received after this date will be considered if it is practical to do so. but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0135), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 29th day of January 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–2630 Filed 2–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Consideration of License Renewal Request for Nuclear Fuel Services, Inc.

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Finding of no significant impact for the renewal of license for Nuclear Fuel Services, Inc. Facility in Erwin, Tennessee.

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Material License SNM–124 to authorize processing of highly enriched uranium (HEU) into a classified fuel product for the U.S. Naval Reactor Program, processing of HEU scrap to recover uranium, and various decommissioning activities at the Nuclear Fuel Services, Inc. (NFS) facility located in Erwin, Tennessee.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is to renew License No. SNM–124, so as to continue operations and to perform certain decommissioning activities at the NFS Erwin Plant. The principal operations expected during the renewal period include the processing of HEU into a classified fuel product and processing HEU scrap to recover uranium, as well as support operations. The principal decommissioning activities expected during the renewal period include excavation, sampling, segregation, packaging, and offsite disposal of radioactive materials from two burial areas, the North Site Radiological Burial Ground and the Southwest Burial Trenches.

Impacts from final decommissioning of the North Site to meet unrestricted release criteria are also included in the Environmental Assessment (EA). The North Site refers to all NFS property north of the manufacturing facilities and covers approximately 10 hectares (24 acres). However, NRC approval of these activities will be considered as a separate licensing action.

In addition to the Proposed Alternative, a No-action Alternative was also assessed. Under this alternative, HEU production and scrap recovery operations would not be authorized. Instead, the license for the NFS plant would be renewed to only allow ongoing decommissioning activities. Eventually NFS would be required to initiate final decommissioning of the entire site. These decommissioning operations would be conducted in accordance with an approved decommissioning plan prepared by NFS after a thorough site survey. The NRC would assess the environmental impacts of site-wide decommissioning activities during review of this plan.

Need for the Proposed Action

The NFS Erwin Plant provides unique fuel material fabrication and uranium recovery services for the United States. NFS is the sole fabricator of classified fuel material for the United States Naval Reactor Program and is also involved in U.S. Department of Energy uranium recovery projects.

Environmental Impacts of the Proposed Action

Normal Operations

Normal operations will involve discharges to the atmosphere and to surface water. Radionuclides that may be released include isotopes of the actinide elements uranium, thorium, plutonium, and americium and lesser amounts of fission products, including technicium. Sources of releases to the atmosphere are the main plant stack, secondary stacks in process buildings, and fugitive dust emissions from decommissioning/remediation activities. Sources of releases to surface water include the waste water treatment system, the secondary cooling system, and the sanitary sewer system.

A dose assessment was performed to estimate the impact from radiological releases to the air. Atmospheric release exposure pathways included inhalation, ingestion of contaminated crops and resuspended dirt, and external exposure to the airborne plume and contaminated ground. For these atmospheric releases, the largest tissue dose is to the lung from inhalation of ^{234}U, with minor contribution from the crop ingestion and external-exposure pathways. For the maximally exposed individual, the committed effective dose equivalent (CEDE) for combined releases from production operations and decommissioning/remediation activities was estimated as 2.7×10^{-5} Sv/yr (2.7 mrem/yr). Doses from remediation activities are about an order of magnitude less than doses from production activities.

A dose assessment was also performed to estimate the impact from radiological releases to surface water. Liquid effluents are released directly or indirectly into the Nolichucky River. Small creeks receiving portions of the liquid discharge, Banner Spring Branch and Martin Creek, are not used as a drinking water supply for area residents. The analysis assumes that an individual along the Nolichucky River and the surrounding population out to a distance of 80 kilometers (50 miles) use this potentially contaminated water. Liquid-release exposure pathways included ingestion of drinking water, fish, and irrigated crops and external exposure during recreational activities. The largest tissue doses are to the bone surface from ingestion of thorium-232, and external doses are a factor of 2500 smaller than internal doses. Fish, crop, and drinking-water consumption account for 49, 37, and 14 percent of the dose, respectively. The CEDE for the maximally exposed individual was estimated as 9.7×10^{-7} Sv/yr (0.10 mrem/yr).

Under the proposed action, about 2874 shipments of contaminated soil would be transported offsite to the Envirocare disposal facility in Utah. The reference value used for estimating radiological exposure to the public from transporting contaminated soil from a

uranium fuel fabrication plant is 8.00×10^{-6} person-rem per shipment. Multiplying this dose rate by the number of waste shipments yields 23 person-mrem. Thus, a small fraction of one person-rem would be received by the public from transporting waste offsite.

NRC regulations in 10 CFR 20.1301(a)(1) require that the total effective dose equivalent (TEDE) for members of the public not exceed 1.0×10^{-3} Sv (100 mrem) per year. In addition, 10 CFR 20.1101(d) requires licensees to implement a constraint on atmospheric releases other than radon such that an individual member of the public will not be expected to receive a dose in excess of 1×10^{-4} Sv (10 mrem)/yr from these releases. Although not applicable to the NFS Erwin Plant because it does not process uranium for the production of electric power, U.S. Environmental Protection Agency (EPA) regulations (40 CFR 190) require that for routine releases, the annual dose equivalent for all pathways not exceed 2.5×10^{-4} Sv (25 mrem) to the whole body, 7.5×10^{-4} Sv (75 mrem) to the thyroid, and 2.5×10^{-4} Sv (25 mrem) to any other organ. Doses related to NFS Erwin Plant operations are dominated by releases to the atmosphere. For the maximally exposed individual, the annual TEDE was estimated as 2.7×10^{-5} Sv (2.7 mrem), well within the limits established by NRC and EPA. The largest annual tissue dose was estimated as 2.1×10^{-4} Sv (21 mrem) to the lung. Although this tissue dose approaches the 40 CFR 190 limit, it is based on conservative estimates of atmospheric dispersion and of releases from process vents to bound all possible activities. The actual impacts are expected to be less than these estimates. The estimated dose from all other releases are small fractions of applicable limits.

The impact analysis considers individuals living near the plant and the surrounding population out to a distance of 80 kilometers (50 miles). The total population dose (about 0.4 per-Sv/yr) is a small addition to a background dose for the affected population of 950,000, which is approximately 1000 per-Sv/yr.

Impacts from releases of non-radiological contaminants to air, surface water, and groundwater were also assessed. Air quality is protected by enforcing emission limits and the maintenance of pollution control equipment, as required under several operating permits issued by the Tennessee Air Pollution Control Board, Department of Environment and Conservation. The primary nonradiological emissions are expected to include volatile organic compounds, carbon monoxide, and nitrogen oxides. Normal emissions of gaseous effluents from process stacks are not expected to have a significant impact on offsite nonradiological air quality, because the estimated concentrations at the nearest site boundary are two to three orders of magnitude less than the most stringent State of Tennessee primary air-quality standards. The emission rate reported for hydrogen fluoride (HF) is estimated to result in a concentration that is at least 50 to 60 percent less than the most stringent State of Tennessee standard.

Several chemical contaminants have been detected in Banner Spring Branch at levels which exceed site-specific criteria. NFS has proposed the removal of contaminated soils, sediments, and piping, which are believed to be the source of the contamination. In addition, NFS will routinely monitor Banner Spring Branch for cyanide and zinc as recommended in the Resource Conservation and Recovery Act Facility Investigation Report for Areas of Concern #2 (Building 111 boiler blowdown and backwash water) and #4 (storm sewer system). No contamination of other surface waters due to plant activities has been identified.

Surface water quality is expected to be protected from future site activities by enforcing release limits and monitoring programs, as required under the National Pollutant Discharge Elimination System (NPDES) permit. Annual average concentrations of parameters regulated by the NPDES permit have generally been below discharge limits established for outfalls 001 and 002 from 1990 to 1996 when either production operations or decommissioning activities were being performed. Therefore, these parameters are expected to remain below the discharge limits during the license renewal period. Furthermore, discharges are not expected to have significant impact on the surface water quality in the Nolichucky River because of the dilution volume in the river.

Previous operation of the plant has resulted in localized chemical and radiological contamination of groundwater. Groundwater monitoring conducted by NFS indicates that plumes of uranium, tetrachloroethylene, trichloroethylene, 1,2-dichloroethylene, and vinyl chloride could migrate offsite in the direction of the Nolichucky River. To address this contamination, NFS has removed much of the source of the contamination through extensive remediation projects including excavation of contaminated areas in the North Site. In addition, NFS is currently engaged in decommissioning of the Radiological Burial Ground and has proposed a final decommissioning plan for the entire North Site to remove more of the source term. NFS is also working with the Tennessee Department of Environment and Conservation and the Environmental Protection Agency to design remedial strategies and to investigate the offsite extent of these plumes.

Groundwater modeling conducted by NFS also indicates that contamination from the NFS site should not have an impact on local drinking water because contaminant plumes are not expected to intersect the capture zone for this water. However, NFS will be required by the NRC to continue routine groundwater monitoring to assess the nature and extent of groundwater contamination and will be required to conduct remediation, if necessary, to prevent offsite impacts to human health and safety.

If the license is renewed to allow both production operations and decommissioning/ remediation activities, approximately 39,100 cubic meters (1,380,000 cubic feet) of waste would be shipped offsite to Envirocare in Utah. Assuming that each waste shipment contains 13.6 cubic meters (480 cubic feet) of waste, 2874 shipments of soil would be transported to Envirocare. To estimate the number of fatalities from transporting waste, the fatal accident risk rate was multiplied by the distance traveled, where the distance traveled is the round trip between the facility and the disposal site. A fatal accident rate of 3.8×10^{-8} per kilometer (6.1×10^{-8} per mile) traveled was assumed. Multiplying this fatal accident rate by a round trip distance of 6560 kilometers (4100 miles) between the NFS plant in Erwin, Tennessee, and Envirocare in Clive, Utah, and the number of shipments yields a risk of less than one (0.72) fatality.

No impacts are expected on land use, biotic resources, or cultural resources. And a small positive socioeconomic impact is expected through the employment of 350 people at the site.

Accident Conditions

The handling, processing, and storage of material containing radioactive constituents at the NFS Erwin Plant could result in uncontrolled release of radioactive material to the environment from accidents. Therefore, the NRC staff conducted an accident analysis. A drop of contaminated dirt during remediation activities, failure of a high efficiency particulate air filter as a consequence of fire, and a generic criticality event were selected as representative accidents. The

TEDE to the maximally exposed individual from accidents involving a spill of contaminated soil or a facility fire were estimated to be less than 0.05 mSv (5 mrem), a small fraction of annual background exposure.

The prompt, external, and internal doses due to an inadvertent criticality were estimated to be 5.0×10^{-3}, 1.5×10^{-2}, and 2.6×10^{-1} Sv (0.5, 1.5, and 0.026 rem), respectively, for the maximally exposed nearest resident. Because two independent, concurrent failures must occur before initiation of a nuclear criticality, the possibility of such an event occurring is considered by the NRC staff to be extremely low. Therefore, the overall risk from such an accident is acceptable.

Agencies and Persons Consulted

The State of Tennessee Department of Environment and Conservation (DEC) was contacted concerning renewal of the NFS license. DEC had not identified any environmental issues associated with renewal and did not object to renewal.

Conclusion

The NRC has determined that the issuance of the renewal to allow NFS to process HEU into a classified fuel product, to process HEU scrap to recover uranium, and to conduct specified decommissioning activities will not result in significant impact to human health or the environment.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License SNM–124. On the basis of the Assessment, the Commission has concluded that the environmental impacts associated with the proposed action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding Of No Significant Impact is appropriate.

The Environmental Assessment and the documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC.

The NRC contact for this licensing action is Thomas Cox. Mr. Cox may be contacted at (301) 415–8107 or thc@nrc.gov for more information.

Dated at Rockville, Maryland, this 29th day of January 1999.

For the Nuclear Regulatory Commission.

Charles W. Emeigh,

Acting Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–2628 Filed 2–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of STP Nuclear Operating Company (the licensee) to withdraw its August 18, 1997, application for proposed amendment to Facility Operating Licenses Nos. NPF–76 and NPF–80 for the South Texas Project, Units 1 and 2, located in Matagorda County, Texas.

The proposed amendment would have revised Technical Specification 3.7.1.6, Atmospheric Steam Relief Valves, to ensure the automatic feature of the steam generator power operated relief valve remains operable during Modes 1 and 2. In addition, the proposed change would have added a surveillance requiring that a channel calibration on the steam generator power operated relief valve be performed every 18 months. Subsequently, by letter dated January 19, 1999, the licensee withdrew the amendment request.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 24, 1997 (62 FR 50007). However, by letter dated January 19, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 18, 1997, and the licensee's letter dated January 19, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 29th day of January 1999.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2629 Filed 2–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Monday, February 9, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Monday February 9

2:00 p.m.—Briefing on HLW Program Viability Assessment (Public Meeting)

3:30 p.m.—Briefing by Executive Branch—(Closed-ex. 4 & 9b)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers, if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: February 1, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–2745 Filed 2–2–99; 11:39 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed revision.

SUMMARY: This notice offers interested parties an opportunity to comment on a proposed revision to OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." Pub. L. 105–277 directs OMB to amend Section ____.36 of OMB Circular A–110 to require Federal awarding agencies "to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act" (FOIA). The Act further states that "if the agency obtaining the data does so solely" in response to a FOIA request, the agency "may authorize a reasonable user fee equaling the incremental cost of obtaining the data." Pursuant to the direction of Pub. L. 105–277, OMB is proposing to revise Circular A–110 as shown below.

DATES: Comments must be received by April 5, 1999.

ADDRESSES: Comments on this proposed revision should be addressed to: F. James Charney, Policy Analyst, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503. If possible, please include a word processing version of comments on a computer disk. Comments may also be submitted via E-mail to: fcharney@omb.eop.gov. Please include the full body of E-mail comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: F. James Charney, Policy Analyst, Office of Management and Budget, at (202) 395–3993.

SUPPLEMENTARY INFORMATION: Pub. L. 105–277 includes a provision that directs OMB to amend Section ____.36 of OMB Circular A–110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." Pub. L. 105–277 further provides that "if the agency obtaining the data does so solely at the request of a private party, the agency may authorize a reasonable user fee equaling the incremental cost of obtaining the data." According to congressional floor statements made in support of the provision, its aim is to "provide the public with access to federally funded research data" that is "used by the Federal Government in developing policy and rules." 144 Cong. Rec. S12134 (October 9, 1998) (Statement of Sen. Lott); *see id.* (Statement of Sen. Shelby) (the provision "represents a first step in ensuring that the public has access to all studies used by the Federal Government to develop Federal policy").

In describing the foregoing provisions of Pub. L. 105–277, congressional proponents stated that it requires OMB "to amend OMB Circular A–110 to require Federal awarding agencies to ensure that all research results, including underlying research data, funded by the Federal Government are made available to the public through the procedures established under the Freedom of Information Act." *Id.* (Statement of Sen. Lott). The proponents also stated that "the amended Circular shall apply to all Federally funded research, regardless of the level of funding or whether the award recipient is also using non-Federal funds." *Id.* (Statement of Sen. Campbell). They also explained that "[t]he Conferees recognize that this language covers research data not currently covered by the Freedom of Information Act. The provision applies to all Federally funded research data regardless of whether the awarding agency has the data at the time the request is made" under the FOIA. *Id.* Under the Supreme Court's decision in *Forsham* v. *Harris*, 445 U.S. 169, 179–80 (1980), data that is in the files of a recipient of a Federal award, but not in the files of a Federal agency, would not otherwise be available under FOIA.

The proposed revision to Section ____.36 of Circular A–110 implements the requirements of Pub. L. 105–277 by providing that, after publication of research findings used by the Federal government in developing policy or rules, the research results and underlying data would be available to the public in accordance with the FOIA. Pursuant to the direction of Pub. L. 105–277, the proposed revision requires Federal awarding agencies, in response to a FOIA request, to obtain the requested data from the recipient of the Federal award. Since the agency must take steps to obtain the data, the agency is afforded a reasonable time to do so. Once the agency has obtained the data, the agency will then process the FOIA request in accordance with the standard procedural and substantive rules that govern FOIA requests. These standard FOIA rules include the statutory concept of what constitutes a "record" and the statutory "exemptions" (found in 5 U.S.C. 552(b)) from the FOIA's requirement to disclose records. Accordingly, after obtaining and reviewing the requested data, the agency will have to determine whether any of the FOIA exemptions, which permit an agency to withhold requested records, would apply to some or all of the data. For example, FOIA Exemption 6, 5 U.S.C. 552(b)(6), exempts "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy". If the Federal awarding agency obtained the data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

OMB recognizes that this proposed revision required by Pub. L. 105–277 raises a number of important issues. Accordingly, OMB encourages interested parties to provide comment at this time so that any concerns may be addressed in OMB's development of the final revision to the Circular, to be published after the close of the comment period.

In conclusion, pursuant to the direction contained in Pub. L. 105–277 OMB is proposing to revise Circular A–110 as shown below.

Issued in Washington, DC, January 26, 1999.

Norwood J. Jackson,

Acting Controller.

Pursuant to the direction of Pub. L. 105–277, OMB hereby proposes to amend Section ____.36(c) of OMB Circular A–110 to read as follows:

(c) The Federal Government has the right to (1) obtain, reproduce, publish or otherwise use the data first produced under an award, and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes. In addition, in response to a Freedom of Information Act (FOIA) request for data relating to published research findings produced under an award that were used by the Federal Government in developing policy or

rules, the Federal awarding agency shall, within a reasonable time, obtain the requested data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

[FR Doc. 99–2220 Filed 2–3–99; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

[Rel No. IC–23671; File No. 812–11344]

Rydex Variable Trust, et al.

January 29, 1999.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptive relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit shares of the Rydex Variable Trust and shares of any other investment company that is designed to fund insurance products and for which PADCO Advisors II, Inc. ("PADCO"), or any of its affiliates, may serve as investment advisor, administrator, manager, principal underwriter, or sponsor (collectively, the "Trust") to be sold to and held by: (a) Variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (the "Participating Insurance Companies"); and (b) qualified pension and retirement plans outside the separate account context (the "Qualified Plans").

Applicants: Rydex Variable Trust and PADCO Advisors II, Inc.

Filing Date: The application was filed on October 7, 1998, amended and restated on December 17, 1998, and amended and restated on January 28, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on February 24, 1999, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Morgan, Lewis & Bockius LLP, Attention: John H. Grady, Jr., Esq., and C. Ronald Rubley, Esq., One Logan Square, Philadelphia, PA 19103–6993.

FOR FURTHER INFORMATION CONTACT: Martha Peterson, Attorney, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC (tel. (202) 942–8090).

Applicants' Representations

1. Rydex Variable Trust, a Delaware business trust, currently consists of 22 separate series, each for a separate portfolio (such portfolios, and additional portfolios that may be added in the future, are referred to herein individually as a "Portfolio" and collectively as "Portfolios").

2. PADCO serves as the investment advisor to Rydex Variable Trust and is registered as an investment advisor under the Investment Advisers Act of 1940.

3. Applicants state that shares of Portfolios of the Trust may be offered to variable annuity separate accounts and variable life insurance separate accounts established by Participating Insurance Companies that may or may not be affiliated with one another, and to Qualified Plans.

4. The Participating Insurance Companies will establish their own separate accounts (the "Separate Accounts") and design their own variable annuity and variable life insurance contracts ("Variable Contracts"). Applicants state that the role of the Trust under this arrangement will consist of offering shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

5. Applicants state that the Trust can increase its asset base through the sale of shares of the Trust to the Qualified Plans. The Qualified Plans may choose the Trust as the sole investment option under a Plan or as one of several investment options. Participants in the Qualified Plans may be given an investment choice depending upon the Qualified Plan. Shares of the Trust sold to a Qualified Plan will be held by the trustees of the Qualified Plans as mandated by Section 403(a) of the Employee Retirement Income Security Act ("ERISA").

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a Separate Account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions provided under Rule 6e–2(b)(15) are available only where the management investment company underlying the UIT offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to as 'mixed funding." The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as "shared funding." The relief provided under Rule 6e–2(b)(15) is not applicable to a scheduled premium variable life insurance separate account that owns shares of an underlying fund where the underlying fund offers its shares to a variable annuity separate account of the same company or of any other affiliated or unaffiliated insurance company. Therefore, Rule 6e–2(b)(15) does not provide exemptive relief for either mixed funding or shared funding.

2. Applicants state that with respect to Rule 6e–2, exemptive relief is also necessary if shares of the Trust are to be sold to Qualified Plans since the relief under Rule 6e–2 is available only where shares are offered exclusively to separate accounts of insurance companies.

3. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act

as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions provided under Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." Therefore, Rule 6e–3(T) permits mixed funding, but does not permit shared funding.

4. Applicants state that with respect to Rule 6e–3(T), exemptive relief is also necessary if shares of the Trust are to be sold to Qualified Plans since the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts of insurance companies.

5. Applicants state that changes in the tax law have created the opportunity for the Trust to increase its asset base through the sale of Trust shares to the Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on fund investments underlying variable contracts. Specifically, the Code provides that a variable contract shall not be treated as an annuity contract or life insurance contract for any period (and any subsequent period) for which the investments, in accordance with regulations prescribed by the Treasury Department, are not adequately diversified. On March ,m 1989, the Treasury Department issued regulations which established diversification requirements for the investment portfolios underlying variable contracts (Treas. Reg. § 1.817–5(1989)). The regulations provide in pertinent part, an insurance company separate account may look through to the investments of a regulated investment company in which it invests in order to meet the diversification requirements, if all of the beneficial interests in the regulated investment company are held by separate accounts of one or more insurance companies. The regulations, however, contain certain exceptions to this requirement, one of which allows shares in an investment company to be held by the trustee of a qualified pension or retirement plan without adversely affecting the ability of life insurance companies to hold shares in the same investment company in their separate accounts (Treas. Reg. § 1.817–5(f)(3)(iii)).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) under the 1940 Act preceded the issuance of these Treasury regulations. Applicants assert that, in all probability, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(15).

7. Applicants therefore request relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the Trust to be offered and sold to, and held by, Qualified Plans, as well as separate accounts.

8. Section 9(a) of the 1940 Act provides that it is unlawful for any company to serve as investment advisor to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2). Rules 6e–2(b) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. The relief provided by Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) permits a person disqualified under Section 9(a) to serve as an officer, director, or employee of the life insurer, or any of its affiliates, so long as that person does not participate directly in the management or administration of the underlying fund. The relief provided by Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permits the life insurer to serve as the underlying fund's investment advisor or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) participate in the management or administration of the fund.

9. Applicants state that the partial relief from Section 9(a) found in Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of the Section. Applicants state that those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in a large insurance company complex, most of whom will have no involvement in matters pertaining to investment companies within the organization. Applicants note that the Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert, applying the restrictions of Section 9(a) serves no regulatory purpose. The application states that the relief requested should not be affected by the proposed sale of shares of the Trust to Qualified Plans because the Plans are not investment companies and are not, therefore, subject to Section 9(a).

10. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15(iii) under the 1940 Act assume the existence of a pass-through voting requirement with respect to management investment company shares held by a separate account. Applicants state that the Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners so long as the Commission interprets the 1940 Act to require such privileges.

11. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming observance of the limitations on mixed and shared funding imposed by the 1940 Act and the rules thereunder. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between a fund and its investment advisor, when required to do so by an insurance regulatory authority. Rules 6e–2(b)(15)(iii)(B) and 6e - 3(T)(b)(15)(iii)(B) provide that the insurance company may disregard voting instructions of its contract owners if the contract owners initiate any change in the company's investment policies, principal underwriter, or any investment advisor, provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(15)(ii) and (b)(7)(ii)(B) and (C) of each rule.

12. Applicants further represent that the sale of Trust shares to Qualified Plans does not impact the relief requested in this regard. Applicants note that shares of the Trust sold to Qualified Plans would be held by the trustees of such Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustee(s) is subject to the direction of a named fiduciary who

is not a trustee, in which case the trustee(s) is subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Some Qualified Plans, however, may provide for the trustee, an investment advisor, or another named fiduciary to vote shares in accordance with instructions from plan participants. With respect to Qualified Plans whose governing documents do not provide plan participants with pass through voting, the issue of resolving any irreconcilable conflict with respect to voting is not present. With respect to Qualified Plans whose governing documents do provide plan participants with pass through voting privileges, Applicants state there is no reason to believe that plan participants will vote in a manner that would disadvantage Variable Contract owners.

13. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several, or all, states. Applicants note that where insurers are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other insurance companies are domiciled. Applicants submit that this possibility is no different and no greater than exists where a single insurer and its affiliates offer their insurance products in several states.

14. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences among state regulatory requirements. In any event, Applicants state that the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that these differences may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the relevant portfolio or fund.

15. Applicants also state that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment advisor initiated by contract owners. Potential disagreement is limited by the requirement that the Participating Insurance Company's disregard of voting instructions be both reasonable and based on specified good faith determinations. However, if a Participating Insurance Company's decision to disregard contract owner instructions represents a minority position or would preclude a majority vote approving a particular change, such Participating Insurance Company may be required, at the election of the Trust, to withdraw its investment in the Trust. No charge or penalty will be imposed as a result of such withdrawal.

16. Applicants state that there is no reason why the investment policies of the Trust would or should be materially different from what those policies would or should be if such investment company or series thereof funded only variable annuity or variable life insurance contracts. Applicants therefore argue that there is no reason to believe that conflicts of interest would result from mixed funding. Applicants represent that the Trust will not be managed to favor or disfavor any particular Participating Insurance Company or type of insurance product.

17. Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, Applicants have concluded that neither the Code, nor the Treasury regulations nor the revenue rulings thereunder present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life insurance separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, these tax consequences do not raise any conflicts of interest with respect to the use of the Trust. When distributions are made, and the separate account or the Qualified Plan is unable to net purchase payments to make the distributions, the separate account or the Qualified Plan will request redemption of shares of the Trust at their respective net asset value in conformity with Rule 22c–1 under the 1940 Act. The Qualified Plan will then make distributions in accordance with the terms of the Qualified Plan and the Participating Insurance Company will make distributions in accordance with the terms of the Variable Contract.

19. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving such voting rights to contract owners and to the trustees of Qualified Plans. Applicants represent that the transfer agent for the Trust will inform each Participating Insurance Company of its share ownership in each Separate Account, and will inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with the "pass-through" voting requirement of Rules 6e–2 and 6e–3(T).

20. Applicants contend that the ability of the Trust to sell its shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, in favor of any contract owner or any participant under a Qualified Plan. Regardless of the rights and benefits of participants and contract owners under the respective Qualified Plans and Variable Contracts, the Qualified Plans and the Separate Accounts have rights only with respect to their shares of the Trust. Such shares may be redeemed only at net asset value. No shareholder of the Trust has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

21. Finally, Applicants state that there are no conflicts between contract owners and participants under the Qualified Plans with respect to the state insurance commissioners' veto powers (direct with respect to variable life insurance and indirect with respect to variable annuities) over investment objectives. The basic premise of shareholder voting is that not all shareholders may agree that there are inherent conflicts of interest between shareholders. The state insurance commissioners have been given the veto power in recognition that insurance companies usually are unable simply to request redemption out of one fund and invest those moneys in another fund. Generally, to accomplish such redemptions and transfers, complex and

time consuming transactions must be undertaken. Conversely, trustees of Qualified Plans can make the decision quickly and implement redemption of shares from a Trust and reinvest the moneys in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should there arise issues where the interests of contract owners and the interests of Qualified Plans conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem shares out of the Trusts.

22. Applicants state that various factors have kept certain insurance companies from offering variable annuity and variable life insurance contracts. According to Applicants, these factors include: The cost of organizing and operating an investment funding medium; the lack of expertise with respect to investment management (principally with respect to stock and money market investments); and the lack of name recognition by the public of certain insurers as investment professionals. Applicants contend that use of the Trust as common investment media for the Variable Contracts would reduce these concerns. Participating Insurance Companies would benefit not only from the investment and administrative expertise of the responsible advisors and their affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Applicants state that making the Trust available for mixed and shared funding may encourage more insurance companies to offer variable contracts such as the Variable Contracts which may then increase competition with respect to both the design and the pricing of variable contracts. Applicants submit that this can be expected to result in greater product variation and lower charges. Thus, Applicants represent that contract owners would benefit because mixed and shared funding will eliminate a significant portion of the costs of establishing and administering separate funds. Moreover, Applicants assert that sales of shares of the Trust to Qualified Plans should increase the amount of assets available for investment by the Trust, thereby promoting economies of scale and increased safety through greater diversification.

23. Applicants believe that there is no significant legal impediment to permitting mixed and shared funding. Additionally, Applicants note the previous issuance of orders permitting mixed and shared funding where shares of a fund were sold directly to qualified plans such as the Qualified Plans.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Trust's Board shall consist of persons who are not "interested persons" of the Trust, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona-fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) For a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe, by order, upon application.

2. The Board will monitor the Trust for the existence of any material irreconcilable conflict between and among the interests of the variable annuity and variable life insurance contract owners investing in the Separate Accounts and in Portfolios of the Trust, and all other persons investing in the Portfolios, including Qualified Plans, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable Federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities: (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any series are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and the trustees of a Qualified Plan that does not provide voting rights to its investors (or Qualified Plan participants if they have the right to give instructions under the Qualified Plan governing documents); (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners and (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of plan participants.

3. In the event that a Qualified Plan ever should become an owner of 10 percent or more of the assets of a Portfolio of the Trust, Applicants will require the Qualified Plan to execute a participation agreement with the Trust that provides appropriate protection consistent with the representations in the Application. In connection with the initial purchase of Trust shares, the Qualified Plan shareholder will be required to acknowledge this condition in its application to purchase the shares.

4. Participating Insurance Companies, the responsible advisors, and any Qualified Plan that executes a Trust participation agreement upon becoming an owner of 10% or more of the assets of a Portfolio of the Trust (collectively, the "Participating Entities") will report any potential or existing conflicts to the Board. Participating Entities will be responsible for assisting the board in carrying out its responsibilities by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded and, if pass-through voting is applicable, an obligation by each Participating Entity to inform the Board whenever Plan Participant voting instructions are disregarded. The responsibility to report such information and any conflicts to the Board and to assist the Board will be a contractual obligation of all Participating Insurance Companies and Qualified Plans investing in the Trust; those responsibilities will be carried out with a view only to the interests of the contract owners and participants under the Qualified Plans.

5. If it is determined by a majority of the Board, or a majority of the disinterested members of the Board, that a material irreconcilable conflict exists, then the relevant Participating Insurance Companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested directors, as the case may be), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the affected Portfolio of the Trust and reinvesting such assets in a different investment medium, including another Portfolio, or submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (i.e., variable annuity contract owners or variable life insurance contract owners of one or

more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; (b) withdrawing the assets allocable to some or all of the Qualified Plans from the affected Portfolio of the Trust and reinvesting such assets in a different investment medium, including another Portfolio of the Trust; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the Trust's election, to withdraw the Participating Insurance Company's Separate Account's investment in the Trust and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies and all Qualified Plans under their agreements governing participation in the Trust and those responsibilities will be carried out with a view only to the interests of contract owners and participants in the Qualified Plans.

For purposes of this Condition 5, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will the Trust or its investment advisor be required to establish a new funding medium for any Variable Contract. No Participating Insurance Company shall be required by this Condition 5 to establish a new funding medium for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially adversely affected by the material irreconcilable conflict. No Qualified Plan will be required by this Condition 5 to establish a new funding medium for such Qualified Plan if (a) an offer to do so has been declined by vote of a majority of plan participants materially and adversely affected by the irreconcilable material conflict or (b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes such decision without a plan participant vote.

6. A Board's determination of the existence of a material irreconcilable conflict and its implications shall be made known in writing promptly to all Participating Entities.

7. Participating Insurance Companies will provide pass-through voting privileges to all owners of Variable Contracts so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable annuity and variable life insurance owners. As to variable annuity and variable life insurance contracts that participate in a Portfolio through unregistered separate accounts, pass-through voting privileges will be extended to the owners of such contracts to the extent granted by the issuing insurance company. Participating Insurance Companies will be responsible for assuring that each of their registered Separate Accounts participating in a Portfolio calculate voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other Separate Accounts investing in a Portfolio will be a contractual obligation of Participating Insurance Companies under their agreements governing participation in a Portfolio. Each Participating Insurance Company will vote Trust shares held by a Separate Account for which it has not received voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions. Each Qualified Plan will vote in accordance with applicable law and governing plan documents.

8. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which for these purposes, shall be the persons having a voting interest in the Trust) and, in particular, the Trust will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Trust is not one of the trusts described in the Section 16(c) of the 1940 Act), as well as with Section 16(a) of the 1940 Act and, if and when applicable, Section 16(b) of the 1940 Act. Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

9. The Trust will disclose in its prospectus that (a) the Trust is intended to be a funding vehicle for all types of variable annuity and variable life insurance contracts offered by various insurance companies and for certain qualified pension and retirement plans, (b) material irreconcilable conflicts possibly could arise, and (c) the Trust's Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict. The Trust will notify all Participating Insurance Companies and Qualified Plans that similar disclosure may be appropriate in Separate Account prospectuses and Qualified Plan disclosure documents.

10. If, and to the extent that, Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the Order requested in this Application, then the Trust and/or the Participating Entities, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as may be amended, and Rule 6e–3, as may be adopted, to the extent such rules are applicable.

11. All reports of potential or existing conflicts received by the Board, and all Board action with regard to (a) determining the existence of a conflict, (b) notifying Participation Entities of a conflict, and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

12. Each Participating Insurance Company will maintain at its home office available to the Commission a list of its officers, directors and employees who participate directly in the management and administration of any separate account organized as a Unit Investment Trust of any Fund. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

13. No less often than annually, each Participating Insurance Company, Qualified Plan, and/or the investment advisor will submit to the Boards such reports, materials or data as each Board may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the application. These reports, materials, and data will be submitted more frequently if deemed appropriate by the relevant Board. The obligations of a Participating Insurance Company, Qualified Plan, and/or

investment advisor to provide these reports, materials and data to the Boards will be contractual obligations of each Participating Insurance Company, Qualified Plan, and investment advisor under the participation agreements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2603 Filed 2–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23672]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 29, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 23, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, DC 20549.

Old Mutual Equity Growth Assets South Africa Fund [File No. 811–9136]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant's portfolio consisted solely of its beneficial interest in Old Mutual South Africa Equity Trust. On September 18, 1998, all remaining shareholders of applicant redeemed their shares at net asset value. Expenses incurred in connection with the liquidation totaled approximately $40,000, and were paid by Old Mutual Fund Holdings (Bermuda) Limited.

Filing Dates: The application was filed on September 29, 1998, and amended on December 17, 1998.

Applicant's Address: Washington Mall Phase II, 4th Floor, 22 Church Street, Hamilton HM11, Bermuda.

Hyperion 1997 Term Trust, Inc. [File No. 811–7072]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 1, 1997, applicant made a liquidating distribution of substantially all of its assets to shareholders at net asset value. At the time of filing the application, applicant had 151 registered shareholder accounts that had not surrendered their shares. Applicant's former custodian, State Street Bank & Trust Company, is holding funds representing the aggregate liquidation value of applicant's remaining shares. Expenses incurred in connection with the liquidation totaled approximately $1,666,650, of which applicant bore $1,614,789, and applicant's investment adviser bore the remaining $51,861.

Filing Dates: The application was filed on October 21, 1998, and amended on December 29, 1998.

Applicant's Address: One Liberty Plaza, 165 Broadway, New York, New York 10006.

New York Life Fund, Inc. [File No. 811–1998]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Except for shares issued to New York Life Insurance Company ("New York Life"), the Registrant's parent company and initial shareholder, Applicant's shares were held solely by New York Life Separate Accounts N and Q ("Separate Accounts N and Q"), as an investment vehicle for variable annuity contracts issued by New York Life. In May 1995, New York Life commenced a redemption program offering contract holders of the individual variable annuity contracts issued by New York Life, through Separate Accounts N and Q, an option to either surrender their contracts for the accumulated cash value or exchange their contracts for a fixed or variable annuity product offered by New York Life Insurance and Annuity Corporation, a wholly owned subsidiary of New York Life. As of November 17, 1997, all of the contract holders had, pursuant to the redemption offer, either surrendered or exchange their contracts. All legal, accounting and other expenses incurred in connection with the liquidation have been or will be borne by New York Life or a subsidiary thereof.

Filing Dates: The application was filed on November 10, 1998 and amended on January 15, 1998.

Appplicant's Address: 51 Madison Avenue, New York, NY 10010.

New York Life Separate Account N [File No. 811–1999]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. In May 1995, New York Life Insurance Company ("New York Life") commenced a redemption program offering contract holders of the individual variable annuity contracts issued by New York Life through the Applicant an option to either surrender their contract for the accumulated cash value or exchange their contract for a fixed or variable annuity product offered by New York Life Insurance and Annuity Corporation, a wholly owned subsidiary of New York Life. As of November 17, 1997, all of the contract holders had, pursuant to the redemption offer, either surrendered or exchanged their contracts. All legal, accounting, and other expenses incurred in connection with the liquidation have been or will be borne by New York Life or a subsidiary thereof.

Filing Date: The application was filed on November 10, 1998.

Applicant's Address: 51 Madison Avenue, New York, NY 10010.

New York Life Separate Account Q [File No. 811–2000]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. In May 1995, New York Life Insurance Company ("New York Life") commenced a redemption program offering contract holders of the individual variable annuity contracts issued by New York Life through the Applicant an option to either surrender their contract for the accumulated cash value or exchange their contract for a fixed or variable annuity product offered by New York Life Insurance and Annuity Corporation, a wholly owned subsidiary of New York Life. As of November 17, 1997, all of the contract holders had, pursuant to the redemption offer, either surrendered or exchanged their contracts. All legal, accounting, and other expenses incurred in connection with the liquidation have been or will be borne by New York Life or a subsidiary thereof.

Filing Date: The application was filed on November 10, 1998.

Applicant's Address: 51 Madison Avenue, New York, NY 10010.

Oppenheimer Adjustable Rate Preferred Fund [File No. 811–4045] Oppenheimer Global Securities Fund [File 811–6002]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Neither applicant has ever made a public offering of its securities, nor does it propose to make a public offering or engage in business of any kind.

Filing Date: Each application was filed on January 21, 1999.

Applicants' Addresses: Oppenheimer Adjustable Rate Preferred Fund, 6801 South Tucson Way, Englewood, Colorado 80112; Oppenheimer Global Securities Fund, Two World Trade Center, New York, New York 10048–0203.

The Analytic Series Fund [File No. 811–7366] and Analytic Optioned Equity Fund, Inc. [File No. 811–2807]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On July 27, 1998, The Analytic Series Fund's three portfolios transferred their assets to corresponding portfolios of PBHG Advisor Funds, Inc. ("PBHG Funds") in exchange for shares of the corresponding PBHG Fund based on net asset value. On August 31, 1998, Analytic Optioned Equity Fund, Inc. transferred its assets to the PBHG Advisor Defensive Equity Fund series of PBHG Funds in exchange for shares of the PBHG Fund series based on net asset value. Expenses of approximately $110,789 and $89,848, respectively, were incurred in connection with each reorganization. These expenses were shared by Analytic-TSA Global Assets Management, Inc., investment adviser to each applicant, and Pilgrim Baxter & Associates, Ltd., investment adviser to the PBHG Funds.

Filing Date: Each application was filed on January 6, 1999.

Applicants' Address: 700 South Flower Street, Suite 2400, Los Angeles, California 90017.

Bond Portfolio for Endowments, Inc. [File No. 811–2210]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 31, 1998, applicant transferred all of its assets and liabilities to the Bond Portfolio, a series of Endowments, in exchange for shares of the Bond Portfolio based on the relative net asset values per share. Applicant incurred approximately $35,000 in expenses in connection with the reorganization.

Filing Date: The application was filed on December 23, 1998.

Applicant's Address: P.O. Box 7650, One Market, Steuart Tower, San Francisco, California 94120.

Warburg, Pincus Strategic Value Fund, Inc. [File No. 811–7929]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 14, 1998, applicant made a liquidating distribution to its shareholders at the net asset value per share. Expenses of approximately $40,000 incurred in connection with the liquidation were paid by Warburg Pincus Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on December 11, 1998.

Applicant's Address: 300 East Lombard Street, Baltimore, Maryland 21202.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2660 Filed 2–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41003; File No. 600–31]

Self-Regulatory Organizations; Thomson Financial Technology Services, Inc.; Notice of Filing of Application for Exemption From Registration as a Clearing Agency

January 29, 1999.

I. Introduction

On January 11, 1999, Thomson Financial Technology Services, Inc. (TFTS) [1] filed with the Securities and Exchange Commission (Commission) an application on Form CA–1 for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 (Exchange Act) [2] and Rule 17Ab2–1 thereunder.[3] TFTS is requesting an exemption from clearing agency registration in connection with its proposal to offer two services: an electronic trade confirmation (ETC) service and a central matching service. The Commission is publishing this notice to solicit comments on the exemption request.[4]

II. Background

A. Confirmation and Affirmation of Institutional Securities Transactions

The confirmation/affirmation process is used to communicate the terms and acknowledgment of trades among institutional customers, broker-dealers, and custodian banks. Securities trades for institutional customers generally involve greater sums of money, greater amounts of securities, and more participants than trades for retail customers. As a result, there are more steps between order entry and final settlement in an institutional transaction than in a retail transaction.

Typically, in an institutional trade, the institution's investment manager places an order with a broker-dealer. After the broker-dealer executes the trade, it advises the institution of the execution details. The institution then informs the broker-dealer how the trade should be allocated among its accounts. The broker-dealer then sends confirmations of the allocated trades back to the institution. The institution reviews the confirmations, and if they are accurate, the institution affirms the trade with the broker-dealer by sending an affirmed confirmation. Generally, the parties involved in an institutional trade use an ETC service to transmit the messages necessary to confirm and affirm the trade.[5] The trade is then ready

[1] TFTS is a wholly owned subsidiary of Thomson Information Services, Inc., which is indirectly owned by the Thomson Corporation. The Thomson Corporation is a public company incorporated under the laws of Ontario, Canada.

[2] 15 U.S.C. 78q–1.

[3] 17 CFR 240.17Ab2–1.

[4] Copies of TFTS's Form CA–1 are available for inspection and copying at the Commission's Public Reference Room in File No. 600–31. TFTS also submitted a document entitled "Application for Exemptive Order" which we do not consider part of the Form CA–1.

[5] Currently, the rules of certain self-regulatory organizations (SROs) require their broker-dealer members to use the facilities of a registered clearing agency for the electronic confirmation and affirmation of transactions where the broker-dealer provides delivery-versus-payment (DVP) or receive-versus-payment (RVP) privileges to its customer. *See, e.g.*, Municipal Securities Rulemaking Board (MSRB) Rule G–15(d)(ii); National Association of Securities Dealers (NASD) Rule 11860(a)(5); and New York Stock Exchange (NYSE) Rule 387(a)(5). Broker-dealers generally extend DVP and RVP privileges only to their institutional customers. As a practical matter, the SROs' confirmation rules require broker-dealers to use The Depository Trust Company's (DTC) Institutional Delivery (ID) system because it is the only ETC service offered by a registered clearing agency.

The Commission has published notice of proposed rule changes by the MSRB, NASD, and NYSE under which broker-dealers would be able to use ETC services provided by an entity that has received an exemption from clearing agency registration to provide confirmation and affirmation services. *See* Securities Exchange Act Release Nos.

Continued

for the settlement process (*i.e.*, the transfer of securities and money for completion of the trade).

B. The Commission's Interpretive Release on Matching

The development of "matching services" has been a recent step in the evolution of the confirmation/affirmation process. The term matching in this context describes a process in which an intermediary compares the broker-dealer's trade data submission with the institution's allocation instructions to determine whether the two descriptions agree. If the trade data and allocation instructions match, the intermediary produces an affirmed confirmation. Matching services eliminate the separate steps of producing a confirmation from the trade data, review of the confirmation by the institution, and issuance of an affirmed confirmation by the institution.[6]

On April 6, 1998, we issued an interpretive release regarding matching services (Matching Release).[7] In the Matching Release, we concluded that an entity that provides matching services as an intermediary between broker-dealers and institutional customers is a clearing agency within the meaning of Section 3(a)(23) of the Exchange Act[8] and is subject to the registration requirements of Section 17A of the Exchange Act.[9]

III. TFTS's Request for Exemption

A. TFTS's Proposed Service

TFTS would offer two types of services under an exemption from clearing agency registration. First, TFTS would offer an ETC service that would transmit messages among broker-dealers, customers, and custodian banks regarding the terms of a trade executed for the customer. As noted above, ETC services are usually used to confirm and affirm securities trades for institutional investors. Second, TFTS would offer a central matching service under which it would act as an intermediary in the confirmation/affirmation process to compare a broker-dealer's trade data with a customer's allocation instructions to produce an affirmed confirmation.

All electronic messages that are sent through TFTS's systems will originate at the sender's (*i.e.*, the broker-dealer or the customer) computer terminal and will be routed through TFTS's data center. TFTS's data center will copy and store the data that passes through it. In its Form CA–1, TFTS represents that it will not perform other functions of a clearing agency such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market.[10]

TFTS has agreed to certain undertakings as a condition of obtaining an exemption from clearing agency registration:

(1) To make available to the Commission prior to the commercial operation of its central matching service an audit report that addresses all the areas discussed in the Commission's Automation Review Policies (ARPs);[11]

(2) To make available to the Commission on an annual basis (beginning in the central matching service's second year of operation) reports prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARPs, and field work associated therewith;

(3) To provide the Commission with twenty business days' advance notice of any material changes that TFTS makes to its matching service, provided that such changes shall not be subject to regulatory approval;

(4) To provide the Commission with prompt notification of significant systems outages, to be defined as outages lasting more than thirty minutes;

(5) To respond to the Commission's requests for additional information relating to TFTS's matching service and to provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service, provided that such requests for information shall be made and such inspections shall be conducted solely for the purpose of reviewing the matching service's operations and compliance with the federal securities laws and the terms and conditions of TFTS's exemptive order;

(6) To supply the Commission or its designee with periodic reports regarding the affirmation rates for depository-eligible transactions that settle in the United States effected by institutional investors that utilize TFTS's matching service;

(7) To preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of the matching service, for a period of not less than five years, the first two years in an easily accessible place; and

(8) To develop fair and reasonable linkages between the matching service and the Depository Trust Company and other central matching services regulated by the Commission.

B. Statutory Standards

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with us before performing any of the functions of a clearing agency.[12] However, Section 17A(b)(1) also states that, upon our own motion or upon a clearing agency's application, we may conditionally or unconditionally exempt the clearing agency from any provisions of Section 17A or the rules or regulations thereunder if we find that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A. TFTS believes that the undertakings it has proposed as a condition of obtaining an exemption from clearing agency registration will allow it to protect the public interest and strike the appropriate balance between safety and soundness and the need to foster efficiency, competition, and capital formation.

We have exercised our authority to conditionally exempt an applicant from

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39830 (April 6, 1998), 63 FR 16060 [File No. SR–NYSE–98–07]; 39831 (April 6, 1998), 63 FR 16057 [File No. SR–NASD–98–20]; and 39833 (April 6, 1998), 63 FR 16055 [File No. SR–MSRB–98–06] The Commission expects to act on the proposed rule changes in the near future.

[6] The Commission has approved a proposed rule change filed by DTC that allows DTC to provide matching services. Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 16062 [File No. SR–DTC–95–23]. Currently, only DTC offers a matching service where it acts as an intermediary between broker-dealers and institutional customers for U.S. trades.

[7] Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 [File No. S7–10–98]. The Matching Release contains a detailed description of the confirmation/affirmation process as it currently operates through DTC's ID system.

[8] 15 U.S.C. 78c(a)(23). Section 3(a)(23) defines the term clearing agency as, among other things, [A] person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.

[9] Specifically, the Commission concluded that matching constitutes "comparison of data respecting the terms of settlement of securities transactions." Exhibit S to TFTS's Form CA–1 contains a statement that it disagrees with the Matching Release's conclusion. In addition, on June 4, 1998, Thomson Information Services, Inc. (TIS), an affiliate of TFTS, filed a petition with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to review and set aside the part of the Matching Release that concludes that broker-to-customer matching is a clearing agency function under the Exchange Act.

In a settlement agreement with the Commission dated December 22, 1998, TIS stated that it would withdraw its petition before the D.C. Circuit if the Commission approved TFTS's application for exemption from clearing agency registration within 120 days of the filing of its application. Our consideration of TFTS's application is consistent with the statement in the Matching Release that matching is a clearing agency function and that we would consider granting matching services conditional exemptions from clearing agency registration. Our consideration of TFTS's application is independent of and will not be influenced by TIS's petition to the D.C. Circuit.

[10] Exhibit J to TFTS's Form CA–1.

[11] Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703; and 29185 (May 9, 1991), 56 FR 22490.

[12] 15 U.S.C. 78q–1(b)(1).

clearing agency registration on three prior occasions.[13] In those cases, the applicants requesting exemption from clearing agency registration were required to meet standards substantially similar to those required of registrants under Section 17A in order to assure that the fundamental goals of that section were furthered (*i.e.*, safety and soundness of the national clearance and settlement system).

In the Matching Release, we stated that an entity that limited its clearing agency functions to providing matching services might not have to be subject to the full range of clearing agency regulation. In addition, we stated that an entity seeking an exemption from clearing agency registration for matching would be required to: (1) provide us with information on its matching services and notice of material changes to its matching services; (2) establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades; (3) allow us to inspect its facilities and records; and (4) make periodic disclosures to us regarding its operations.

TFTS's matching service would be the only clearing agency function that it would perform under an exemptive order. While we believe that TFTS's matching services could have a significant impact on the national clearance and settlement system, we do not believe that TFTS's matching services raise all of the concerns raised by an entity that performs a wider range of clearing agency functions. TFTS represents in its Form CA–1 that as a condition of its exemption it will comply with the conditions suggested by the Commission in the Matching Release. Therefore, we believe that it may not be necessary to require TFTS to satisfy all of the standards required of registrants under Section 17A.[14]

We anticipate that in addition to considering the public interest and the protection of investors, the primary factor in our consideration of TFTS's Application will be whether TFTS is so organized and has the capacity to be able to facilitate prompt and accurate matching services subject to the specific conditions that it has proposed.[15] In particular, TFTS has represented that, among other things, it will provide us with (1) an independent audit report that addresses all the areas discussed in the Commission's ARPs prior to beginning commercial operations and annually thereafter, (2) on-site inspection rights, and (3) a current balance sheet and income statement prior to beginning operations.[16]

We expect that any exemption from clearing agency registration for TFTS would contain all of the conditions that TFTS has proposed in its Form CA–1. We request comment on whether these conditions are sufficient to promote the purposes of Section 17A and to allow us to adequately monitor the effects of TFTS's proposed activities on the national system for the clearance and settlement of securities transactions. In addition, we invite commenters to address whether granting TFTS an exemption from clearing agency registration would impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act.

IV. Solicitation of Comments

Comments are due by March 8, 1999. These comments will be considered in deciding whether to grant TFTS's application for exemption from registration as a clearing agency. Six copies of the comments should be filed with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. 600–31; this file number should be used on the subject line if E-mail is used. Copies of the application and all written comments will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2661 Filed 2–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40995; File No. SR–CBOE–99–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Listing of Options on the Dow Jones E*Commerce Index

January 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Act of 1934,[1] notice is hereby given that on January 28, 1999, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") hereby proposes to amend certain of its rules to provide for the listing and trading on the Exchange of options on the Dow Jones E*Commerce Index ("E*Commerce Index" or "Index"), a narrow-based Index designed by Dow Jones & Company, Inc. ("Dow Jones™").[2] The E*Commere Index is a modified capitalization-weighted, cash-settled index with European-style exercise.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

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[13] Securities Exchange Act Release Nos. 36573 (December 12, 1995 60 FR 65076 (order approving application for exemption from clearing agency registration for the Clearing Corporation for Options and Securities); 38328 (February 24, 1997), 62 FR 9225 (order approving application for exemption from clearing agency registration for Cedel Bank); and 39643 (February 11, 1998), 63 FR 8232 (order approving application for exemption from clearing agency registration by Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System).

[14] For example, TFTS's Form CA–1 (1) represents that TFTS will not handle funds or securities and (2) states that TFTS will not impose prohibitions or limit access to its service by potential customers but that it might terminate a subscription for failure to pay fees. In addition, TFTS will provide us with a current balance sheet and income statement before beginning operations which will enable us to assess TFTS's financial capability.

[15] *See* Section 17A(b)(3)(A) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)(A).

[16] *See* Section III.A, *supra*.

[17] 17 CFR 200.30–3(a0(16).

[1] 15 U.S.C. 78s(b)(1).

[2] Dow Jones & Company, Inc. ("Dow Jones") has licensed "Dow Jones™," and "Dow Jones E*Commerce Index" for use for certain purposes to the Chicago Board Options Exchange, Incorporated. CBOE's options based on the Dow Jones E*Commerce Index are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on the Dow Jones E*Commerce Index. The Index is a modified capitalization-weighted index of 15 of the largest, most liquid U.S. Internet commerce stocks. Internet commerce companies are involved in providing a good or service through an open network such as the Internet.

1. Purpose

Index Design

The E*Commerce Index has been designed to measure the performance of certain Internet commerce stocks. All of the stocks in the Index are U.S. securities and currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System and are reported national market system securities. In addition, all of the stocks are "reported securities" as defined in Rule 11Aa3–1 under the Exchange Act.

The Exchange represents that in all but one respect, options on the E*Commerce Index meet the generic listing criteria for options on narrow-based indexes which may be filed with the Commission under Exchange Rule 24.2(b) as a stated policy, practice, or interpretation within the meaning of paragraph (3)(A) of subsection 19(b) of the Exchange Act. The only variation is that the Index is calculated using a modified capitalization-weighting methodology.

Each of the stocks in the E*Commerce Index has a market capitalization in excess of $75 million. Specifically, the stocks comprising the Index range in capitalization from $378.9 million to $26.15 billion as of January 21, 1999. The total capitalization as of that date was $76.50 billion. The mean capitalization was $5.10 billion. The median capitalization was $1.94 billion.

The CBOE indicates that all but two of the component stocks meet the trading volume criteria set forth in paragraph (b)(3) of CBOE Rule 24.2. E-Bay, Inc. does not meet the criteria of CBOE Rule 24.2(b)(e) because it was the subject of an initial public offering on September 24, 1998. Since that time, E-Bay, Inc. has average 1.24 million shares per day and it is expected that the company will exceed the trading volume criteria in early February 1999. Additionally, Ticketmaster On-line CitySearch does not meet the volume criteria because it was the subject of a spin-off on December 3, 1998. However, the Exchange represents that the company currently satisfies the requirements of CBOE Rule 5.3 applicable to individual underlying securities and is the subject of options trading. Furthermore, since the company was spun off, it has averaged 1.5 million shares per day. The Exchange represents that each of the component stocks in the E*Commerce Index has had monthly trading volume in excess of one million shares over the six month period through January 1999. The average monthly volume over the six-month period for the stocks in the Index ranged from a low of 8.3 million shares to a high of 292.5 million shares.

Currently, two of the fifteen stocks in the Index are not eligible for options trading. However, the CBOE represents that Cyberian Outpost, Inc. will be eligible on January 28, 1999 and Geocities will be eligible on February 8, 1999. Therefore, each stock in the Index will be eligible for options trading before the anticipated start of options trading.

As the initial re-balancing on January 4, 1999, the largest stock accounted for 10.00% of the total weight of the Index, while the smallest accounted for 1.43%. The top five stocks in the Index accounted for 50.00% of the total weight of the Index. Accordingly, the Exchange's generic listing standards for narrow based indexes are more than met with respect to the criteria of market capitalization, weighting constraints and trading volume.

Calculation and Dissemination of Index Value

The E*Commerce Index is calculated on a "modified capitalization-weighted" method. This method is a hybrid between equal weighting (which may pose liquidity concerns for smaller-cap stocks) and normal-cap weighting (which may result in two or three stocks dominating the index's performance). Under this method, the maximum weight for any stock in the Index will be set to 10%, or "capped," on the quarterly rebalancing date. The weight of all the remaining stocks shall be market capitalization weighted. Thus, the weights of these remaining stocks are not "capped."

For stocks which are not "capped," index shares will equal the company's outstanding common shares. For stocks that are "capped," index shares will equal its maximum weight, multiplied by the adjusted total market capitalization of the Index, divided by the stock's closing price on the rebalancing date. The index's adjusted total market capitalization is the total outstanding market capitalization adjusted to reflect the combined weight of all of the "capped" stocks.

The level of the Index reflects the adjusted total capitalization of the component stocks divided by the Index Divisor. The Index divisor was initially calculated to yield a benchmark level of 200.00 at the close of trading on January 4, 1999. The Index divisor will be adjusted as needed to ensure continuity whenever there are additions or deletions from an index, share changes, or adjustments to a component's price to reflect rights offerings, spinoffs, special cash dividends, etc.

The values of the Index will be calculated by Dow Jones or its designee and will be disseminated to market information vendors at 15-second intervals during regular CBOE trading hours via the Options Price Reporting Authority or the Consolidated Tape Association. If a component stock is not currently being traded, the most recent price at which the stock traded will be used in the Index calculation. The Index had a closing level of 259.43 on January 21, 1999.

Index Maintenance

The CBOE represents that Dow Jones is responsible for maintenance of the E*Commerce Index. Index maintenance generally includes monitoring and completing the adjustments for company additions and deletions, stock splits, stock dividends (other than an ordinary cash dividend), and stock price adjustments due to company restructuring or spinoffs. If required, the Index Divisor will be adjusted to account for any of the above changes.

The Exchange represents that the Index will satisfy the maintenance criteria set forth in CBOE Rule 24.2(c). The Index will be re-balanced at the close of business on expiration Friday on the March quarterly cycle. In addition, the number of Index components will not increase to more than 20 nor decrease to fewer than 10.

Component changes will be made such that 90% of the Index by weight and 80% of the total number of stocks in the index are eligible for options trading under CBOE Rule 5.3.

If the Index fails at any time to satisfy the maintenance criteria, the CBOE will immediately notify the Commission and will not open for trading any additional series of options on the Index, unless the continued listing of options has been approved by the Commission under Section 19(b)(2) of the Securities Exchange Act.

Index Options Trading

In addition to regular Index options, the Exchange may provide for the listing of long-term index option shares ("LEAPS®") and reduced-value LEAPS on the Index. For reduced-value LEAPS, the underlying value would be computed at one-tenth of the Index level. The current and closing index value of any such reduced-value LEAP will, after such initial computation, be rounded to the nearest one-hundredth. Exhibit C presents proposed contract specifications for the E*Commerce Index options.

Strike prices will be set to bracket the index in a minimum of 2½ point increments for strikes below 200 and 5 point increments above 200. The minimum tick size for series trading below $3 will be 1/16th and for series trading above $3 the minimum tick will be 1/8th. The trading hours for options on the Index will be from 8:30 a.m. to 3:02 p.m. Chicago time.

Exercise and Settlement

The CBOE proposes that options on the Index will expire on the Saturday following the third Friday of the expiration month. Trading in the expiring contract month will normally cease at 3:02 p.m. (Chicago time) on the business day preceding the last day of trading in the component securities of the Index (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). The exercise settlement value of the Index at option expiration will be calculated by Dow Jones or its designee based on the opening prices of the component securities on the business day prior to expiration. If a stock fails to open for trading, the last available price on the stock will be used in the calculation of the index, as is done for currently listed indexes. When the last trading day is moved because of Exchange holidays (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday and the exercise settlement value of Index options at expiration will be determined at the opening of regular Thursday trading.

Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS.

Position Limits

Options on the E*Commerce Index would be subject to the position limits for industry index options set forth in CBOE Rule 24.4A.

Exchange Rules Applicable

The Rules of Chapter XXIV will be applicable to options on the E*Commerce Index. Narrow-based margin rules will apply to the Index as set forth in CBOE Rule 24.11.

Capacity

CBOE believes it has the necessary systems capacity to support new series that would result from the introduction of options on the E*Commerce Index. CBOE has also been informed that the Options Price Reporting Authority also has the capacity to support the new series.

2. Basis

The proposed rule change is consistent with Section 6(b)[3] of the Act in general and furthers the objectives of Section 6(b)(5)[4] in particular in that it will permit trading in options based on the E*Commerce Index pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR–CBOE–99–05 in the caption above and should be submitted by February 25, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2605 Filed 2–3–99; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40990; File No. SR–CHX–98–24]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Approving a Proposed Rule Change Relation to the Exchange's Decorum Rules, Short Sales and Minor Rule Violation Plan

January 28, 1999.

On September 29, 1998,[1] the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend: (1) Interpretation and Policy .01 of Rule 3 of Article XII relating to the Exchange's Decorum Rules regarding repetitive administrative/executive messages; (2) Rule 17 of Article IX, to codify the existing requirement for members to comply with Rule 10a–1 under the Act ("Short Sale Rule"); and (3) Rule 9(h) of Article XII, to add certain rules and policies to the Exchange's Minor Rule Violation Plan. Notice of the proposed rule change appeared in the **Federal Register** on December 22, 1998.[4] The Commission received no comment letters concerning the proposed rule change. This order approves the proposed rule change.

First, the Exchange proposed to amend the list of Class B violations set forth under Rule 3, Article XII of the Exchange's Decorum Rules to include repetitive administrative execution messages sent over the Intermarket Trading System ("ITS") or the Midwest Automated Execution System ("MAX") that are inappropriate or unnecessary. Additionally, the Exchange proposed to include these violations as Class B violations for purposes of the Minor Rule Violation Plan and proposed to retain the existing recommended fines.

Second, the Exchange proposed to codify the requirement for members to comply with the Short Sale Rule. Codifying the Short Sale Rule within the Exchange rules will allow the Exchange to assess fines for violation of this rule under its Minor Rule Violation Plan in appropriate circumstances. If the violation is inadvertent or isolated, the Exchange may assess fines pursuant to the Minor Rule Violation Plan and not pursuant to the Exchange's formal disciplinary procedures.

Finally, the Exchange proposed to add certain rules and policies to its Minor Rule Violation Plan under Article XII, Rule 9. Specifically, the Exchange proposed to add violations of its rules relating to: (1) proprietry short sales by floor members (Article IX, Rule 17)(*e.g.*, failing to properly mark a short sale a short and executing a short sale at an inappropriate tick); (2) the issuance of pre-opening responses under the ITS Rules (Article XX, Rule 39) (*e.g.*, using DOT, Post Execution Reporting ("PER"), or any method other than ITS to send a pre-opening response); and (3) the failure of a specialist to adjust limit orders to the block price when MAX automatically executes limit orders at the limit price upon a price penetration in the primary market (Article XX, Rule 37.06 and related Rule 37(b)(6) of Article XX). The Exchange proposed that the recommended fines for the above violations be $100, $500 and $1,000 for the first, second, third, and subsequent violations, respectively, except for violations of the Short Sale Rule, where the recommended fines would be $500, $1,000, and $2,500 for the first, second, and third, and subsequent violations, respectively.[5]

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[7] Specifically, the Commission believes that approval of the proposed rule change is consistent with Sections 6(b)(6)[8] and 6(b)(7)[9] of the Act. The proposal is consistent with the requirement of Sections 6(b)(6) and (b)(7) in that it provides fair procedures and guidelines that enable the Exchange to appropriately discipline its members and persons associated with members for violations of the rules of the exchange.

The Commission believes that amending the list of Class B violations set forth in the Exchange's Decorum Rules to include inappropriate messages will provide a fair procedure whereby member organizations can be properly sanctioned for these violations that are minor in nature. Moreover, the Commission believes that including the Short Sale Rule within the rules of the Exchange and imposing fines for violations of the Short Sale Rule under its Minor Rule Violation Plan provide a fair procedure for the disciplining of members and persons associated with members, which is consistent with the Act. The Commission suggests that only those violations of the Short Sale Rule which are inadvertent or isolated be handled pursuant to the Exchange's Minor Rule Violation Plan. In the event that a violation occurs involving circumstances where more severe sanctions would be warranted, the Commission believes the Exhange should address them by taking a formal disciplinary proceeding.[10]

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[1] The Exchange initially filed this proposal on September 29, 1998. However, on December 2, 1998, the Exchange filed Amendment No. 1 to provide an example of an "inadvertent" violation and to increase the recommended fines for short sale violations. *See* Letter from Patricia L. Levy, Senior Vice President and General Counsel, the Chicago Stock Exchange, Inc., to Mignon McLemore, Division of Market Regulation, SEC, dated December 1, 1998.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 40793 (December 15, 1998), 63 FR 70820 (December 22, 1998).

[5] According to the CHX, an inadvertent violation of the Short Sale Rule might occur, for example, if a specialist that is long 1,000 shares of a security sends an order to sell 1,000 shares in that security to the New York Stock Exchange ("NYSE") via an NYSE Designated Order Turnaround ("DOT") machine. Because a specialist's inventory is not automatically updated to reflect executions over a DOT machine (unlike executions on the CHX or via ITS which are automatically reflected in a specialist's inventory on a real-time basis), it is possible that a specialist may either forget about the DOT order, or may be late in manually updating his inventory position to reflect the sale via DOT. In either event, the specialist's inventory at that time would not reflect that the specialist is now "flat" rather than "long" the security. If the specialist then marks his next sale as "long" rather than properly marking the order as "short," it might be because the specialist merely looked at his inventory position and did not take the DOT order into account in determining whether he was long or short. While this would still be a violation of the Short Sale Rule, depending on the totality of the facts (*e.g.*, whether this is isolated or part of a larger fraud, or if other unusual circumstances existed, etc.) in certain circumstances, this violation might be considered an "inadvertent" violation that is appropriate for the minor rule violation plan. *See* Amendment No. 1, *supra* note 3.

[6] The Commission staff recommended that the Exhcange's fines for Short Sale Rule violations be commensurate with the fine schedules of other exchanges. Hence, the fines for violation of this rule were increased. *See* Amendment No. 1 *supra* note 1.

[7] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. By classifying certain messages as a violation of the Exchange's Decorum Rules, the proposal should enhance efficiency by eliminating unnecessary communications which could burden computer capacity. Codifying the Short Sale Rule in the Exchange's rules should enhance competition by preventing market manipulation in securities. 15 U.S.C. 78c(f).

[8] Section 6(b)(6) requires the Commission to determine that the rules of the exchange provide that its members and persons associated with members shall be appropriately disciplined for violating the federal securities laws or the rules of the exchange by fine or other fitting sanction. 15 U.S.C. 78f(b)(6).

[9] Section 6(b)(7) requires the Commission to determine that the rules of the exchange provide a fair procedure for disciplining its members and persons associated with members. 15 U.S.C. 78(b)(7).

[10] The Commission expects that the CHX would err on the side of caution in disposing of violations under the Minor Rule Violation Plan. For example, the Commission expects that the CHX would not

The Commission also finds that the additional rules and policies added to the Minor Rule Violation Plan are objective in nature and easily verifiable. Thus, these rules and policies qualify for the less labor intensive and costly disciplinary procedure. The Commission notes that inclusion of these additional rules and policies under the Minor Rule Violation Plan should make the Exchange's disciplinary system more efficient in prosecuting violations of these rules.

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Sections 6(b)(6) and 6(b)(7).

It is therefore ordered, pursuant to Section 19(b)(2)[11] of the Act, that the proposed rule change (SR–CHX–98–24), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2606 Filed 2–3–99; 8:45 am]

BILLING CODE 8010–01–M

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issue several cautionary letters before instituting the fines under the Minor Rule Violation Plan or aggregate multiple violations of the rules before instituting abbreviated disciplinary procedures, or, if necessary, a formal disciplinary proceeding.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40991; File No. SR–Phlx–98–45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Proposing To Adopt New Rule 949 Respecting Purchase, Sale, Transfer, and Posting of Membership Transactions

January 28, 1999.

I. Introduction

On November 5, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Rule 949 respecting the purchase, sale, transfer, and posting of membership transactions. On December 14, 1998, the Phlx submitted an amendment to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on December 23, 1998.[4] The Commission did not receive any comments on the proposal. This order approves the proposal, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

The Exchange proposed to adopt a new rule which codifies Exchange procedures concerning the purchase, sale, transfer and posting of membership transactions. The proposal also provides for privately negotiated sales and requests for transfer under certain specified circumstances.

If the transaction is between unrelated parties, the proposed rule provides that transactions must be posted, published, and be for monetary consideration between the posted bid and offer. The proposed rule also permits sales between related entities, but requires publication in the Secretary's bulletin. Thus, both members and non-members will have access to information regarding transfers of membership. Additionally, the proposal ensures that the Exchange will be protected by requiring that the proceeds of all sales be deposited with the Exchange to satisfy any outstanding charges owed by the member.

The proposed rule provides that bids and offers must be in writing and submitted to the Office of the Secretary of the Exchange by an approved applicant, member organization, or lessor. Bids and offers may only be made in $500 increments. Additionally, the proposed rule codifies an existing Exchange practice of requiring payment for a membership by certified or cashier's check payable to the Exchange. Furthermore, the rule specifies that the sale of a membership shall be deemed negotiated and contracted when the filed bid and offer are matched in price and confirmed by the Office of the Secretary. The sale is consummated upon receipt of payment from the purchaser for the purchase price and other associated membership initiation, transfer, and prorated dues and other fees.

The procedures for privately negotiated sales and requests for transfer are found in Section D of the proposed rule. This section provides for the posting of a deposit with the Exchange to cover potential claims that could be asserted pursuant to By-Law Article XV.[5] Only those transfers that conform with Section D will be processed for transfer and all other private sales will be void.

[3] Letter from Murray L. Ross, Vice President and Secretary, Phlx, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, SEC, dated December 14, 1998 ("Amendment No. 1"). Amendment No. 1 corrected grammatical errors in the proposed rule language.

[4] Securities Exchange Act Release No. 40798 (December 16, 1998), 63 FR 71181.

III. Discussion

The Commission believes that the proposed rule is consistent with the requirements of the Act and the rules and regulations thereunder[6] applicable to a national securities exchange. In particular, the Commission finds that the proposed rule is consistent with Section 6(b)(5)[7] of the Act. Section 6(b)(5) of the Act requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade and protect investors and the public interest.

The proposed rule codifies procedures for the transfer of membership interests. By codifying these procedures, the Exchange should ensure the prompt and orderly transfer of membership interests. All bids and offers must be filed in writing with the Office of the Secretary which shall then match the bids and offers according to price and confirm the sale. In addition, all money exchanged must be filed with the Office of the Secretary to ensure that all outstanding debts and fees are paid. By implementing these procedures, the Exchange should protect the financial interests of both buyers and sellers of memberships and provide equity and openness to all who seek to purchase or sell a membership. Buyers should be confident that all outstanding liens are paid and sellers should be confident that the potential buyers have the means to pay their offering price.

Moreover, the new procedures should ensure fairness by providing a public market in which to transfer memberships. All persons interested in purchasing membership interests will have to follow the same procedures. These procedures, in general, protect investors and the public interest by providing a fair and open market for membership transactions. Therefore, the

[5] By-Law Article XV sets forth procedures for transferring memberships. Section 15–3 provides that proceeds are to be distributed according to a provided seniority list.

[6] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should improve efficiency because it provides an orderly process by which memberships can be transferred. In addition, the proposed rule change should improve competition because the procedures provide notice to all interested parties about the current market for memberships which should improve bids and offers. 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78f(b)(5).

Commission believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[8] of the Act, that the proposed rule change, as amended, (SR–Phlx–98–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2604 Filed 2–3–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3154]

State of Arkansas

As a result of the President's major disaster declaration on January 23, 1999, I find that Independence, Pulaski, St. Francis, Saline, and White Counties in the State of Arkansas constitute a disaster area due to damages caused by severe storms, tornadoes, and high winds beginning on January 21, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 23, 1999 and for economic injury until the close of business on October 25, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Arkansas may be filed until the specified date at the above location: Cleburne, Crittenden, Cross, Faulkner, Garland, Grant, Hot Spring, Izard, Jackson, Jefferson, Lawrence, Lee, Lonoke, Monroe, Perry, Prairie, Sharp, Stone, and Woodruff.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.188
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 315412, and for economic injury the number is 9A9100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: January 26, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–2574 Filed 2–3–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2963]

Notice of Meetings; International Telecommunications Advisory Committee

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC) and its committees and Study Groups in the Telecommunication Standardization, Telecommunication Development Sectors, and CITEL ad hoc committee for February and March 1999. The purpose of the Committee and its Study Groups is to advise the Department on policy and technical issues with respect to the International Telecommunication Union and international telecommunication standardization and development. All meetings will be held at the Department of State, 2201 "C" Street, NW, Washington, DC.

The ITAC will meet from 9:30 to 1:00 on Wednesday, February 17 (Room 1105) and March 17 (Room 1207), 1999 to commence preparations for the ITU Council meeting in June 1999.

The ITAC–T National Committee will meet from 9:30 to 4:00 on February 11, 1999, March 10 and March 23, 1999 (all in Room 5951). The Telecommunication National Committee's agendas will cover continuing preparations for the ITU Telecommunication Sector Advisory Group (TSAG) meeting in April 1999.

ITAC–T Study Group A will meet from 9:30 to 4:00 on February 10, 1999 in Room 1207. The Study Group A agenda will cover debriefs from previous ITU Study Group 3 and Focus Group meetings and preparations for the next ITU Study Groups 2 & 3 meetings.

ITAC–T Study Group B will meet from 9:30 to 4:00 on February 24, 1999 in Room 5951. Study Group B will make preparations for ITU Study Group 4 meeting.

ITAC–T Study Group D will meet from 9:30 to 4:00 on March 9, 1999 to prepare for ITU Study Group 8 and 16 meetings.

The ITAC–D will meet from 2:00 to 4:00 in Room 4517 on February 25, 1999 to discuss post ITU Plenipotentiary activities for the ITU–D Sector, review progress of ITU–D Study Groups 1 and 2 activities, and prepare for the April 8–9, 1999 ITU–D Telecommunication Development Advisory Board meeting.

The ITAC ad hoc CITEL committee will meet March 24, 1999 in Room 4517 from 9:30 to 12:30 to prepare for the next Permanent Consultative Committee.I meeting.

Members of the general public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admission of public members will be limited to seating available. Entrance to the Department of State is controlled; people intending to attend ITAC, ITAC–T National Committee and Study Groups A & D meetings should send a fax to (202) 647–7403, (for Study Group B send a fax to (303) 497–5993), not later than 24 hours before the meeting. This fax should display the name of the meeting (ITAC, ITAC–T National Committee, Study Group and date of meeting), your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, U.S. passport, U.S. Government identification card. Enter from the "C" Street Main Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: January 27, 1999.

Marian R. Gordon,

Information & Telecommunication Standardization, U.S. Department of State.

[FR Doc. 99–2577 Filed 2–3–99; 8:45 am]

BILLING CODE 4710–45–P

STATE DEPARTMENT

[Public Notice #2965]

Overseas Security Advisory Council (OSAC); Notice of Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on February 23, 24, and 25, at the Harbor

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

Beach Marriott in Fort Lauderdale, Florida. Pursuant to Section 10 (d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c][1] and [4], it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, DC 20522–1003, phone: 202–663–0869.

Dated: January 21, 1999.

Peter E. Bergin,

Director of the Diplomatic Security Service.

[FR Doc. 99–2613 Filed 2–3–99; 8:45 am]

BILLING CODE 4710–24–P

TENNESSEE VALLEY AUTHORITY

Tellico Reservoir Land Management Plan, Blount, Loudon, and Monroe Counties, Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Extension of comment period on notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA previously announced (64 FR 2531–2532, January 14, 1999) that it will prepare an Environmental Impact Statement (EIS) on alternatives for management of certain TVA-owned lands surrounding Tellico Reservoir in Loudon, Monroe, and Blount Counties, Tennessee. Today TVA is announcing an extension of the comment period on the scope of the EIS.

DATES: The period for commenting on the scope of the EIS has been extended to March 5, 1999.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Specialist, Environmental Management, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (423) 632–6889 or e-mail hmdraper@tva.gov.

Dated: January 26, 1999.

Kathryn J. Jackson,

Executive Vice President, Resource Group.

[FR Doc. 99–2581 Filed 2–3–99; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (98–04–C–00–JST) To Impose and Use a Passenger Facility Charge (PFC) at Johnstown-Cambria County Airport, Johnstown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Johnstown-Cambria County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. John Carter, Project Manager, Harrisburg, Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Joseph McKelvey, Airport Manager for the Johnstown-Cambria County Airport Authority at the following address: 479 Airport Road, Suite #1, Johnstown, PA 15904.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Johnstown-Cambria County Airport authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: John Carter, Project Manager, Harrisburg, Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011. (717) 730–2832. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Johnstown-Cambria County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 27, 1999, the FAA determined that the application to impose and use a PFC submitted by the Johnstown-Cambria County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 4, 1999.

The following is a brief overview of the application.

Application number: 98–04–C–00–JST.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1999.

Proposed charge expiration date: February 1, 2004.

Total estimated PFC revenue: $496,540.00.

Brief description of proposed projects: Terminal Building Construction.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Johnstown-Cambria County Airport Authority Office.

Issued in Jamaica, New York on January 28, 1999.

Thomas Felix,

Manager, Planning & Programming Branch, AEA–610, Eastern Region.

[FR Doc. 99–2658 Filed 2–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Erie County, NY

AGENCY: Federal Highway Administration, New York State Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public of its intent to prepare an environmental impact statement for the proposed Southtowns Connector/ Buffalo Outer Harbor Project in Erie County, New York.

FOR FURTHER INFORMATION CONTACT:

Robert J. Russell, Regional Director, New York State Department of Transportation, Region 5, 125 Main Street, Buffalo, New York 14203, (716) 847–3238 or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, (518) 431–4127.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FWHA), in cooperation with the New York State Department of Transportation (NYSDOT), will prepare an environmental impact statement (EIS) for the proposed Southtowns Connector/Buffalo Outer Harbor Project (the Proposed Action) in Erie County, New York. The Proposed Action is designed to improve mobility between and through the City of Buffalo and its southern suburban areas, consisting of the City of Lackawanna, the Village of Blasdell, the Town of Hamburg, and other outlying towns and villages.

The Proposed Action is intended to support existing and projected transportation demands currently served by the following facilities:

- A portion of New York State (NYS) Route 5, consisting of a limited-access expressway and at-grade arterial road extending from the Buffalo Skyway (an elevated bridge passing over the Buffalo River) through the Buffalo Outer Harbor and the City of Lackawanna to the Town of Hamburg.
- The Mainline Section of the New York State Thruway (I–90); and
- The Niagara Section of the New York State Thruway (I–90).

A series of previous planning efforts began the process for the development of the Proposed Action. The project was originally considered by the NYSDOT through the completion of the Southtowns Connector Feasibility Study in July 1991. It was also included in the Horizons Waterfront Action Plan, prepared by the Horizons Waterfront commission in January 1992. Further aspects of the project's components are listed in the regional Metropolitan Planning Organization's Long Range Transportation Plan, prepared by the Greater Buffalo-Niagara Regional Transportation Council (GBNRTC).

Most recently in 1998, NYSDOT prepared a Major Investment Study (MIS) associated with the Proposed Action. In accordance with the requirements set forth in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) the MIS was prepared as an Option 1 MIS. Option 1 MISs involve a process for formulating a single or series of locally-preferred alternatives that are progressed into subsequent analysis and documentation in a National Environmental Policy Act (NEPA) EIS.

The MIS process was comprised of three major interrelated elements: (1) identification of deficiencies; (2) development and screening of alternatives; and (3) implementation of a pro-active public involvement program. Initially, twenty-nine alternatives were considered, each intended to meet the project's goals and objectives. Through the conducting of a major flaw analysis and further refinement the number of alternatives was reduced to fifteen. This was followed by more detailed comparative analysis, which resulted in the identification of five locally preferred alternatives remaining under consideration. These will be carried into the analysis for the EIS.

The alternatives remaining under consideration consist of the following components:

- The No Action Alternative, which would involve only implementing planned and committed transportation projects through 2020.
- Implementation of Transportation System Management (TSM) strategies within the study area, such as improved informational systems; and
- Three Major Build Alternatives, including:

—Construction of a new expressway utilizing an existing rail corridor that passes north to south through the study area, extending from Milestrip Road to I–190 near the Seneca Street Interchange in South Buffalo, and construction of a Lackawanna Connector expressway from NYS Route 5, near Smokes Creek, to I–90 near the NYS Route 219 interchange.

—Improvement of existing facilities, involving widening of I–190 from Church Street in Downtown Buffalo to the I–90 Interchange, and widening of I–90 from the I–190 Interchange to the Lackawanna Toll Plaza, as well as construction of the Lackawanna Connector; and

—Constructing a new transit way utilizing the existing rail corridor and construction of the Lackawanna Connector.

NYSDOT is initiating a scoping process for the purpose of determining the scope of issues to be addressed and for identifying significant issues related to the project. Letters describing the Proposed Action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. NYSDOT will also conduct a series of formal NEPA public scoping meetings to be held at the following locations and times:

- February 16, 1999, 7:00–9:00 PM, Lackawanna Senior Citizen Complex, 420 Martin Road, Lackawanna, New York.
- February 18, 1999, 4:30–6:30 PM, NYSDOT Public Information Office, Waterfront Village Center, 50 Lakefront Boulevard, Buffalo, New York.
- February 24, 1999, 7:00–9:00 PM, Southside Elementary School Community Room, 430 Southside Parkway, Buffalo, New York.

Each of the above locations has facilities accessible to the handicapped. Should attendees require materials for the hearing impaired associated with any of the public scoping meetings they should contact Mr. Gary Gottlieb at (716) 854–0280 at least 48 hours prior to the subject meeting.

In addition, a public hearing will be held. Public notice will be given of the time and place of the hearing. The EIS will be available for public and agency review and comment.

To ensure that the full range of issues related to the Proposed Action are addressed and all significant issues identified, comments and suggestions are invited from all agencies and interested parties. Comments or questions concerning this Proposed Action and the EIS should be directed to the NYSDOT for FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: January 26, 1999.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 99–2651 Filed 2–3–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–297 (Sub–No. 101X)]

Columbus and Greenville Railway Company—Abandonment Exemption—in Bolivar and Washington Counties, MS

Columbus and Greenville Railway Company (C&G) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 49.14 miles of rail line between milepost 109.3 near the City of Cleveland and milepost 158.44 near the City of Hollandale, in Bolivar and Washington Counties, MS. The line traverses United States Postal Service Zip Codes 38732, 38730, 38773, 38742, 38756, 38722 and 38748.

C&G has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no over head traffic on the line during the past 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 6, 1999, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] any additional formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 16, 1999. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 24, 1999, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Wm. G. Burgin, Jr., 201 North 19th Street, Columbus and Greenville Railway Company, 201 North 19th Street, P.O. Box 6000, Columbus, MS 39701.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

C&G has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by February 9, 1999. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), C&G shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by C&G's filing of a notice of consummation by February 4, 2000, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 28, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2559 Filed 2–3–99; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 64, No. 23

Thursday, February 4, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-150-000]

NorAm Gas Transmission Company; Notice of Request; Notice of Request Under Blanket Authorization

Correction

In notice document 99–1538, appearing on page 3692, in the issue of Monday, January 25, 1999, make the following correction(s):

On page 3692, in the second column, the docket number should read as set forth above.

[FR Doc. C9–1538 Filed 2–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-025-09-1430-01: G-0060]

Realty Action: Sale of Public Land in Harney County, Oregon

Correction

In notice document 98–34179, beginning on page 71500, in the issue of Monday, December 28, 1998 make the following corrections:

On page 71501, in the table, under the Legal Description:

(1) The fourth entry should read "T.26S., R.30E. (north of Harney Lake), sec. 5, SE¼ NW¼, NE¼SW¼, NW¼SE¼.

(2) The tenth entry should read "T.26S., R.31E., north of Malheur Lake, sec. 8, N½ SE¼"

[FR Doc. C8–34179 Filed 2–3–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40875; File Nos. SR-CBOE-98-25; Amex-98-22; PCX-98-33; and Phlx-98-36]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Changes by the Chicago Board Options Stock Exchange, Inc., American Stock Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.; et al.

Correction

In notice document 99–594, beginning on page 1842, in the issue of Tuesday, January 12, 1999, make the following correction(s):

On page 1845, in the first column, above the FR Doc. line, the signature was omitted and should read as set forth below:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. C9–594 Filed 2–3–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40845; File No. SR-MSRB-97-12]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Political Contributions and Prohibitions on Municipal Securities Business

Correction

In notice document 99–22, beginning on page 539, in the issue of Tuesday, January 5, 1999, make the following correction(s):

On page 539, in the first column, the Release No. is corrected to read as set forth above.

[FR Doc. C9–22 Filed 2–3–99; 8:45 am]

BILLING CODE 1505–01–D

SECURTIES AND EXCHANGE COMMISSION

[Release No. 34-40731; File No. SR-NYSE-98-39]

Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., to Increase the Administration Fee Charged for the Supervisory Analyst Examination (Series 16)

Correction

In notice document 98–32602 beginning on page 67964 in the issue of Wednesday, December 9, 1998, make the following correction(s):

On page 67965, in the first column, above the FR. Doc. line, the signature was omitted and should read as set forth below:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. C8–32602 Filed 2–3–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
February 4, 1999

Part II

Department of Education

Federal Student Financial Assistance Programs—Distance Education Demonstration Program; Notice

DEPARTMENT OF EDUCATION

Federal Student Financial Assistance Programs—Distance Education Demonstration Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for participation in the Distance Education Demonstration Program.

SUMMARY: The Secretary of Education invites institutions of higher education (institutions), systems of institutions, consortia of institutions, and Western Governors University to submit applications to participate in the Distance Education Demonstration Program authorized under section 486 of title IV of the Higher Education Act of 1965, as amended (HEA). Under the Distance Education Demonstration Program, selected institutions providing distance education programs may receive waivers of specific statutory and regulatory provisions governing the student financial assistance programs authorized under title IV of the Higher Education Act of 1965, as amended, (Title IV of the HEA programs).

INSTRUCTIONS FOR SUBMITTING AN APPLICATION: Elements to be included in an application are described in this notice. There is no application form *per se* for the program. Applications should be submitted electronically by electronic mail or in hard copy to the addresses below. All applications should clearly designate a contact person, and the telephone number and the e-mail address of the contact person. Applications submitted by electronic mail should be submitted in Microsoft Word version 6.1 or lower or WordPerfect version 6.0 or lower. Applicants need only submit one original application. No copies are necessary.

DATES: Applications must be postmarked or submitted electronically on or before April 1, 1999.

ADDRESSES: DistanceDemo@ed.gov is the address for electronic submission. For submission of an application in hard copy: mail hard copy to Marianne R. Phelps, U.S. Department of Education, 600 Maryland Avenue, S.W., (Room 4082, ROB–3), Washington, D.C. 20202 or hand deliver to Marianne Phelps, U.S. Department of Education, Room 4082, ROB–3, 7th and D Streets, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Marianne R. Phelps at (202) 708–5547 or at DistanceDemo@ed.gov if e-mailed. Information concerning the program can also be found on the Web site of the Department (http://www.ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background and Purpose of the Distance Education Demonstration Program

Over the past few years, there has been rapid growth in the number of institutions providing courses and degree programs in various modes of "distance education." For purposes of the Distance Education Demonstration Program and this notice, "distance education" is defined as an educational process that is characterized by the separation, in time or place, between instructor and student. Such term may include courses offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, microwave, or satellite transmission; audio or computer conferencing; video cassettes or discs; or correspondence.

This growth in distance education has occurred in response to increasing demand from students who are restricted in their ability to enroll in more traditional programs, including working adults, parents, people who live in rural communities, and students with disabilities. Another reason for this growth is the potential for cost control. Distance education is attractive to institutions that seek to avoid large investments in new facilities to meet student demand and to students who can complete their educational programs more economically using distance education for all or part of their studies. Additionally, through consortia and other agreements among institutions that provide distance education, many students are able to take advantage of a richer selection of course offerings tailored to their individual needs than are available at the institutions where they are enrolled.

Distance education has been available to postsecondary education students for many years. More recently, advancements in technology have provided additional instructional opportunities through the incorporation of print, telephone, fax, television, radio, video and audio conference, the Internet, electronic mail and computer-based integrated telecommunication systems. The richness of the available technology has made the delivery of high quality distance education possible and desirable for many more postsecondary education programs and students.

Currently, some statutory provisions defining institutional eligibility for the Title IV, HEA programs may limit the circumstances in which Title IV, HEA program funds can be provided to students enrolled in distance education. For example, institutions that offer more than 50 percent of their courses via distance education or enroll more than 50 percent of their students in distance education programs [hereafter referred to as "the 50 percent rules"] are not eligible to participate in the Title IV, HEA programs.

Other statutory provisions, such as those dealing with the length of an academic year and the minimum length of an eligible vocational program, are based on the patterns and structure of "traditional" on-campus education. As such, they can be burdensome and difficult to apply to distance education programs. They may also limit institutions from structuring programs that may best meet the needs of distance education students, institutions, and systems and consortia of such institutions. Similar problems may arise with regard to regulatory provisions implementing part G of title IV of the HEA.

Many of these requirements were put in place to address abuses in the Title IV, HEA programs and until recently did not have much effect on institutions offering distance education programs or courses or their students' eligibility for aid. However, at this point in the evolution of distance education programs, changes to student aid requirements may be necessary to allow students to take full advantage of the opportunities distance education provides and to make it possible for institutions to fully utilize the potential technology now offers to enhance distance education courses and programs. On the other hand, restructuring aid to fit these new patterns presents some risks as well as opportunities, and care in designing alternatives to the current student aid requirements is necessary to assure continued integrity in the Title IV, HEA programs.

In response to these dual concerns, Congress enacted the Distance Education Demonstration Program. As described in section 486(a) of the HEA, the purpose of the program is to—

(1) Allow demonstration programs that are strictly monitored by the Department of Education to test the quality and viability of expanded

distance education programs currently restricted under this Act;

(2) Provide for increased student access to higher education through distance education programs; and

(3) Help determine the—

(A) Most effective means of delivering quality education via distance education course offerings;

(B) Specific statutory and regulatory requirements which should be altered to provide greater access to high quality distance education programs; and

(C) Appropriate level of federal assistance for students enrolled in distance education programs.

Under the Distance Demonstration Program, participants may offer Title IV, HEA program funds to students enrolled in educational programs utilizing distance education delivery methods for all or a portion of their classes without being subject to certain statutory and regulatory provisions, which the Secretary may waive, upon their request. The purpose of these waivers is to test new ways of administering the Federal student assistance programs and to consider how the law and regulations might be altered to allow for expansion of aid to distance students and still ensure program integrity. In the first year of the program, the Secretary is authorized to select from among eligible applicants, up to a total of 15 institutions, systems of institutions, or consortia of institutions to participate in the program. (For these purposes, a system of institutions could be a group of institutions with a common governing board. An example would be a community college system or a group of private institutions owned by the same corporation. A consortia of institutions could be two or more institutions that have agreed to collaborate on a common effort such as sharing distance education courses or a two-year and four-year institution cooperating to offer a bachelor's degree completion program.)

The Secretary anticipates that the institutions, systems or consortia selected will continue to participate for five years. Participation, of course, will be conditioned upon their meeting the requirements of the Distance Education Demonstration Program and continued participation in Title IV, HEA programs. Institutions desiring to withdraw from the Distance Education Demonstration Program may do so without jeopardy to their participation in Title IV HEA programs. Also, the scope of the participation, such as the specific distance education programs included and waivers provided, may be modified as agreed upon by the Secretary and the participant, to allow for changes in the programs offered, the modes of delivery used, the size of participants' distance programs, or other changes desired by the Secretary or the participant as experience is gained in the program.

The Department plans to administer this program through an implementation team consisting of staff from various offices within the Department. The Department recognizes the importance of identifying and addressing any problems that arise during the course of the demonstrations. It will facilitate communication among participants and will work with institutions to provide technical assistance throughout the demonstrations, beginning with the application process. Departmental staff with responsibility for monitoring compliance with Title IV program requirements will be well represented on the implementation team and will monitor compliance with the requirements of the Distance Education Demonstration Program.

The Department also anticipates working closely with accrediting agencies and States to determine how their respective roles contribute to assuring quality and integrity. Accrediting agencies will play a substantial role in monitoring the demonstration programs, consistent with their responsibilities. Where State requirements are relevant to distance education programs, the Department will work with States to determine how their monitoring role assists in insuring program integrity.

The participants must agree to provide data and information that will assist the Secretary in evaluating the Distance Education Demonstration Program and in reporting to Congress as required by the statute. The data and information provided by participants will assist the Secretary in determining whether statutory and regulatory changes might be needed to support the growth of quality distance education courses and programs and the appropriate level of Federal assistance for students enrolled in distance education program, two of the purposes of the program that are specified in the statute. The Department will publish a separate notice in the **Federal Register** that will specify the data collection requirements for participants and request comment on the paperwork burden associated with these requirements. To the maximum extent possible, the Department will make the data requirements of this program consistent with already existing data collection requirements, thereby minimizing the burden on participants.

The program is also designed to examine ways to assure the integrity of Title IV, HEA programs in the context of distance education. This examination will be accomplished principally through the close monitoring of participants' administration of Title IV, HEA programs.

Eligible applicants

The following institutions are eligible to apply to participate in the Distance Education Demonstration Program:

(1) Institutions located in the United States that participate in the Title IV, HEA programs;

(2) Institutions located in the United States that provide a two-year program that leads to an associate degree or a four-year program that leads to a baccalaureate or higher degree and would be eligible to participate in the Title IV HEA programs but for the fact that they do not meet one or both of the 50 percent rules; or

(3) Western Governors University.

In addition, systems and consortia of these institutions are eligible to participate in the program.

Statutory and Regulatory Provisions That May Be Waived

The Secretary may waive statutory and regulatory provisions. To obtain a waiver, an institution must request the waiver in its application to participate in the program and must provide reasons for the waiver. Where possible, the applicant should suggest an alternative that is designed to meet the same objectives as those achieved by the waived statutory or regulatory provision. For example, if an applicant seeks to waive the requirement that students must achieve satisfactory academic progress as defined in the regulations, the applicant should suggest an alternative means to ensure that Federal student aid funds are provided only to students who are making progress towards a degree or certificate. An applicant need not include an alternative approach with regard to a request to waive one or both of the 50 percent rules.

Statutory Provisions

The Secretary may waive the following HEA statutory provisions:

- *Section 102(a)(3)(A).* This section makes an otherwise eligible institution ineligible if more than 50 percent of its courses are offered by correspondence and telecommunication.
- *Section 102(a)(3)(B).* This section makes an otherwise eligible institution ineligible if 50 percent or more of its students are enrolled in correspondence or telecommunications courses.

• *Section 484(l)(1).* This section defines a telecommunications student at an institution as a correspondence student if 50 percent or more of the institution's courses are offered by correspondence or telecommunication.

• *The required minimum number of weeks of instruction contained in section 481(a).* This section provides that an academic year must require at least 30 weeks of instructional time.

• The required minimum number of weeks of instruction contained in section 481(b). This section provides that an eligible vocational program must be provided during a minimum of 15 weeks, or in limited circumstances, 10 weeks.

Regulatory Provisions

In addition to the aforementioned statutory provisions, the Secretary may waive the regulatory provisions implementing part G of the HEA which inhibit the operation of quality distance education programs. Part G consists of sections 481 through 493B of the HEA. These sections contain numerous provisions dealing with the Title IV, HEA programs. In general, the regulations implementing these provisions are contained in 34 CFR part 668.

(Under the Distance Education Demonstration Program, the Secretary is authorized to waive any regulations governing part F of title IV, which deals with need analysis and costs of attendance. However, the Secretary is not authorized to issue regulations implementing part F; therefore, there are no regulations to waive.)

Special Waivers for Western Governors University

In addition to the waivers described above, upon the request of Western Governors University, the Secretary may waive statutory provisions contained in title I and parts G and H of title IV of the HEA that the Secretary determines to be appropriate because of the unique characteristics of Western Governors University. If the Secretary grants such a waiver, the Secretary will require the university to undertake actions that are necessary to ensure the integrity of the Title IV, HEA programs and the accountability of Title IV, HEA program funds.

Application Requirements

Each application to participate in this program shall include—

1. The name, address, and web site address, if any, of the institution, system, or members of the consortium seeking to participate, and the name, title, mailing and E-mail addresses, and telephone number of a contact person for the institution, system, or consortium;

2. A description of the distance education programs offered or to be offered for which the institution is seeking a waiver or waivers. An institution may request a waiver or waivers for one, several, or all of its distance education courses or programs. The description should include the types of programs, degrees or certificates offered, program goals, and the methods used or proposed to be used to deliver distance education;

3. A description of the applicant's consultation with a recognized accrediting agency or agencies with respect to quality assurances for the distance education programs to be offered;

4. A description of the types of students that the distance education programs are intended to serve, (e.g., adult learners, rural populations, individuals with disabilities);

5. The Title IV, HEA programs under which distance education students will receive funds;

6. The statutory and regulatory provisions to be waived, the scope of each waiver, and the reason for each waiver. The applicant should propose an alternative to the provision(s) or explain why no alternative is necessary;

7. An assurance that the institution, system, or consortium will fully cooperate with the ongoing evaluations of the program; and

8. A statement of the goals of the institution, system, or consortium for participation along with the method the institution will use to evaluate achievement of the goals.

In addition to the information described above, systems and consortia must provide the following additional information—

1. A description of the system or consortium and the relationship among the members of the system or consortium, a copy of any agreement governing the relationship of institutions that are members of the system or consortium, and a list of the institutions which are members;

2. A description of the manner in which the distance education programs are or will be conducted among the system and consortium members particularly as that manner is related to the waiver request; and

3. The manner in which Title IV, HEA program funds will be administered to the students in the distance education programs.

Selection of Participants

In selecting applicants to participate in the program, the Secretary will take into account the—

1. Number and quality of applications received;

2. Department of Education's capacity to oversee and monitor the applicant's participation;

3. Applicant's financial responsibility; administrative capability; and the program or programs being offered via distance education; and

4. Necessity of including a diverse group of participating institutions *vis-a-vis* size, mission, and geographic distribution.

As part of the selection process, the Department of Education will screen the applications to ensure that applicants are eligible. Then, outside reviewers will recommend the best applications given the statutory criteria. The Secretary will make final selections, based on the recommendations of the outside reviewers and the criteria listed in statute.

Evaluations

The HEA requires the Secretary to submit reports to Congress evaluating the Distance Education Demonstration Program annually and eighteen months after the initiation of the program. As specified in the Act, the evaluations are to include the following:

1. The extent to which the institution, system or consortium has met the goals set forth in its application to the Secretary, including the measures of program quality assurance.

2. The number and types of students participating in the programs offered, including the progress of participating students toward recognized certificates or degrees and the extent to which participation in such programs increased.

3. Issues related to student financial assistance for distance education.

4. Effective technologies for delivering distance education course offerings.

5. The extent to which statutory or regulatory requirements not waived under the program present difficulties for students or institutions.

To assist the Secretary in conducting such evaluations, participants in the distance education demonstration programs will be required to provide information to the Secretary, such as: course level detail regarding their offerings, the degrees or certificates awarded for successful completion, data on persistence and completion, data regarding student demographics, information regarding tuition and fees charged by the participant, program

design and use of technology, information regarding the educational environment and student support, student satisfaction surveys, and average development costs for each field of study.

Based upon the results of the evaluations during the first year of the program, the Secretary may select up to an additional 35 institutions, systems of institutions, and consortia of institutions to participate in the third year of the program.

Guidance

The guidance provided below is intended to assist applicants in determining information they may wish to include in their applications. This guidance is non-binding and does not constitute criteria for selection. Applications which do not include the information suggested in the guidance will be considered on the same basis as applications which include all or part of that information.

1. Applicants should consider describing the ways that they think their proposals will assist the Department in determining new ways of administering Federal student assistance programs that better meet the needs of distance students.

2. It is important that the accrediting and State authorizing agencies of the institution, or institutions that comprise a consortium or system, are willing to collaborate with the Department to determine how their complementary roles can best be structured to assure quality and integrity in institutions' distance education programs. To this end, applicants for the program should provide documentation that their accrediting agencies and States are willing to work with the Department to examine the respective roles of the agencies as they relate to institutions' distance education programs. In that documentation, accrediting agencies should certify that the individual distance programs that the institution includes in its application are within the scope of the institution's accreditation, and that the agency will review the program at an appropriate time. To the extent that accrediting agencies evaluate a particular consortial or system relationship, the consortium or system's application should include similar information.

3. While the Department will evaluate applications using the statutory criteria, to the extent possible, the Department will view those criteria in the context of the delivery of student aid to distance students and any changes that are needed to facilitate that process. Because the delivery of student aid is so critical to improving access to distance education, a good application would fully describe the applicant's ability to fully execute its plans and specify waivers requested and substitutions and address fully the need for the waivers and substitutions.

4. Applicants should consider establishing both quantitative and qualitative objectives for their participation and include in the application a description of how they intend to measure goal attainment, including measures of program quality. The Department notes that quantitative measures are essential for understanding goal attainment.

5. A major concern of the Department is to insure that Federal funds in the Distance Education Demonstration Program are used appropriately. A good application will address how the applicant plans to document student eligibility, including documentation of attendance.

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David A. Longanecker,

Assistant Secretary for Postsecondary Education.

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(Closed Session)

AGENDA ITEM 6

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Rules and Regulations

Federal Register
Vol. 64, No. 24
Friday, February 5, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209–AA07

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: The Office of Government Ethics is issuing this rule to designate a departmental component, to correct the name of an existing component, and to revoke an existing component designation for purposes of a statutory post-employment conflict of interest restriction.

EFFECTIVE DATES: The amendments to appendix B to part 2641, as set forth in amendatory instruction 2, are effective February 5, 1999. The removal of a component designation from appendix B to part 2641, as set forth in amendatory instruction 3, is effective May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Julia Loring Eirinberg, Office of General Counsel and Legal Policy, Office of Government Ethics; telephone: 202–208–8000, extension 1108; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

The Director of OGE is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, eligible senior employees may be permitted to communicate to or appear before parts of their former department or agency if one or more components of the department or agency have been designated as separate agencies or bureaus by OGE.

As specified in 5 CFR 2641.201(e)(3)(iii), the Director of OGE "shall by rule make or revoke a component designation after considering the recommendation of the designated agency ethics official." Component designations are listed in appendix B of this part 2641. Pursuant to the procedures prescribed in 5 CFR 2641.201(e), two departments have forwarded letters to OGE requesting the amendment of appendix B since it was last revised in 1997 (62 FR 26915–26918 (May 16, 1997), as corrected at 62 FR 31865 (June 11, 1997)). After carefully reviewing these requests in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.201(e)(6), I have determined to revise appendix B as requested.

As requested by the Department of Defense (DOD), I am revoking the designation of the Defense Special Weapons Agency as a distinct and separate component of DOD because the agency has recently been disestablished. I am replacing the designation with a component which is, in large part, the successor component to that agency. The new component, the Defense Threat Reduction Agency, has replaced selected elements of the Office of the Secretary of Defense, the Defense Special Weapons Agency, the On-Site Inspection Agency, and the Defense Technology Security Administration. In addition, I am revising the listing for the Department of the Treasury to correct the name of the Financial Management Service. That entry has incorrectly referred to the Financial Management Center.

As indicated in 5 CFR 2641.201(e)(4), a designation "shall be effective as of the effective date of the rule that creates the designation, but shall not be effective as to employees who terminated senior service prior to that date." Initial designations were effective as of January 1, 1991. The effective date of subsequent designations is indicated by means of parenthetical entries in appendix B. The new component designation and the correction made by this rulemaking document are effective February 5, 1999. As also provided in 5 CFR 2641.201(e)(4), a revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocation made in this rulemaking will take effect May 6, 1999. Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

B. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, as the Director of OGE, I find that good cause exists for waiving the general requirements for notice of proposed rulemaking, opportunity for public comment, and a 30-day delayed effective date. It is important that the designation or revocation by OGE of separate departmental or agency components be published in the **Federal Register** as promptly as possible. Furthermore, since this rule is interpretive in nature, it is exempt from the notice, comment, and delayed effectiveness requirements of 5 U.S.C. 553.

Executive Order 12866

In promulgating this final rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive order since it deals with agency organization, management, and personnel matters and is not "significant" under the order.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rule will not have a significant economic impact on a substantial number of entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this rule because it does not contain information collection requirements that

require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: January 29, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2641 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2641—[AMENDED]

1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Effective February 5, 1999, appendix B to part 2641 is amended by revising the listings for the Department of Defense and the Department of the Treasury to read as follows:

Appendix B to Part 2641—Agency Components for Purposes of 18 U.S.C. 207(c)

* * * * *

Parent: Department of Defense

Components:
- Department of the Air Force
- Department of the Army
- Department of the Navy
- Defense Information Systems Agency
- Defense Intelligence Agency
- Defense Logistics Agency
- Defense Special Weapons Agency (effective May 16, 1997; expiring May 6, 1999)
- Defense Threat Reduction Agency (effective February 5, 1999)
- National Imagery and Mapping Agency (effective May 16, 1997)
- National Security Agency

* * * * *

Parent: Department of the Treasury

Components:
- Bureau of Alcohol, Tobacco and Firearms
- Bureau of Engraving and Printing
- Bureau of the Mint
- Bureau of the Public Debt
- Comptroller of the Currency
- Federal Law Enforcement Training Center
- Financial Management Service
- Internal Revenue Service
- Office of Thrift Supervision
- United States Customs Service
- United States Secret Service

3. Effective May 6, 1999, appendix B to part 2641 is further amended by removing the Defense Special Weapons Agency from the listing for the Department of Defense.

[FR Doc. 99–2711 Filed 2–4–99; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–126–AD; Amendment 39–11024; AD 99–03–11]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Model 60 airplanes. This AD requires modifying the aircraft cabin heat control wiring. This AD is the result of an incident on one of the affected airplanes where the circuit control that operates the aircraft cabin heater overheated and caused the cabin heater to shut down during in-flight operation. The actions specified by this AD are intended to prevent this circuit from overheating because of the current wiring design, which could result in possible smoke/fire if the heating system continued to operate in an "over-temperature" condition.

DATES: *Effective:* March 4, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–126–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–126–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Dixon, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4152; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report of the aircraft cabin heater shutting down on a Raytheon Beech Model 60 airplane during in-flight operation. Raytheon incorporated a design change to the cabin heater circuit on the following airplanes: serial numbers P–159, and P–166 through P–596. A reconfiguration of the circuit protection that wires the 5-amp fuses in parallel instead of in series was part of this design change. Investigation of the above-referenced incident reveals that the incident airplane incorporated the design change and that the parallel-wired fuses caused the electrical resistor to overheat and eventually caused the heater system to shut down.

However, prior to shutting down, the heater system can operate in an "over-temperature" condition where it is possible for smoke or fire to occur due to the wiring and the resistor overheating.

Relevant Service Information

Raytheon has issued Mandatory Service Bulletin SB 24–3097, Issued: December, 1998, which specifies procedures for modifying the aircraft cabin heat control wiring.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent the above-referenced condition from occurring.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Beech Model 60 airplanes of the same type design, the FAA is issuing an AD. This AD requires modifying the aircraft cabin heat control wiring in accordance with the

instructions in Raytheon Mandatory Service Bulletin SB 24–3097, Issued: December, 1998.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–126–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–03–11 Raytheon Aircraft Company (Type Certificate No. A12CE previously held by the Beech Aircraft Corporation): Amendment 39–11024; Docket No. 98–CE–126–AD.

Applicability: Beech Model 60 airplanes, serial numbers P–159, and P166 through P–596; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent the circuit that operates the aircraft cabin heater from overheating because of the current wiring design, which could result in possible smoke/fire if the heating system continued to operate in an "over-temperature" condition, accomplish the following:

(a) Modify the aircraft cabin heat control wiring in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Mandatory Service Bulletin SB 24–3097, Issued: December, 1998.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) The modification required by this AD shall be done in accordance with Raytheon Mandatory Service Bulletin SB 24–3097, Issued: December, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on March 4, 1999.

Issued in Kansas City, Missouri, on January 29, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2633 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–23]

Revision of Class D Airspace; Anchorage, Elmendorf Air Force Base (AFB) Airport, AK Establishment of Class E Airspace; Anchorage, Elmendorf AFB Airport, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class D airspace operational times and establishes Class E airspace at Elmendorf AFB, AK. The United States Air Force (USAF) requested this action in response to a critical Air Traffic Control (ATC) controller shortage at Elmendorf AFB, AK. This action will allow the USAF to provide part time operation of the Class D airspace and establishment of Class E airspace for Instrument Flight Rules (IFR) and Special Visual Flight Rules (VFR) operations at Elmendorf AFB, AK.

EFFECTIVE DATE: 0901 UTC, March 8, 1999.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, Operations Branch, AAL–535, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: Derril.Bergt@faa.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

History

On October 27, 1998, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to allow the USAF to provide Class D airspace operational times and establish Class E airspace for IFR and Special VFR operations when the Class D airspace is inactive at Elmendorf AFB, AK, was published in the **Federal Register** (63 FR 57268). The proposal was necessary to provide the flexibility to the USAF to adjust the Elmendorf Tower operational times during times of a critical ATC controller shortage at Elmendorf AFB, AK.

The physical dimensions of the Class D airspace will not change. Currently, the Class D airspace is operational 24 hours a day, seven days a week. The following phraseology is added to the end of the Class D airspace description: "This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory." During any closure, the Class D airspace will convert to Class E airspace for IFR and Special VFR operations.

The FAA received two letters objecting to this proposal. The Aircraft Owners and Pilots Association (AOPA) letter, dated November 24, 1998, dealt with AOPA concerns over the unavailability of air traffic services that have been historically available for civilian operators in the area, specifically real-time weather, use as an alternate, and use of the instrument approach facilities. The Alaskan Aviation Safety Foundation (AASF) letter, dated November 18, 1998, dealt with AASF concerns over the economic effect and adverse safety influence on civilian air services to Anchorage and those cargo airlines using the Anchorage International Airport for refueling and cargo distribution. AASF concerns included losing the instrument approach facilities, fire, crash and rescue facilities, along with real-time weather information and use as an alternate when flights are diverted from Anchorage due to fog or other factors. Losing Elmendorf AFB, AK, as a divert alternate, would limit payloads by as much as 20,000 pounds if a divert B747 aircraft had to go to Fairbanks or Kenai. Both AOPA and AASF suggested FAA augment the controllers at Elmendorf Tower.

The USAF responded to the AOPA and AASF concerns in a letter to the FAA, dated January 15, 1999, wherein they stated that the action to reduce the hours of operation for the Elmendorf Tower is a contingency, not a plan for normal operation. It is one of several courses of action that the USAF may take to reduce the requirements on their tower controllers. The USAF's intent is to maintain a 24-hour operation at the tower with the flexibility to reduce the hours if required. Any closure of the tower would only occur during periods of minimum usage, and would be fully coordinated with adjacent FAA Air Traffic Control facilities. The USAF stated that the airfield itself will remain open 24 hours per day, with the normal exceptions of snow removal or other maintenance. Base operations and support functions, such as the fire department and weather, will also remain in service 24 hours per day. Anchorage Approach Control will still have access to the instrument approach facilities. With the airfield open, heavy jets could file and plan fuel reserves with Elmendorf AFB as an alternate. During periods of tower closure, the airfield will operate as a Class E airspace non-tower controlled airfield, the same as many other Alaskan airfields. On short notice, the tower could be staffed to handle an influx of traffic due to weather or an in-flight emergency.

The FAA determined that augmenting Elmendorf Tower was not necessary because the USAF intends currently to maintain a 24-hour operational tower. If the USAF were to shorten tower hours of operation, the airport would remain open, USAF air traffic controllers would be on-call, and the times of any closure would be selected to have minimum impact.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class D airspace areas are published in paragraph 5000 and Class E airspace areas designated as a surface area are published in paragraph 6002 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class D and Class E airspace listed in this document would be revised and published in the Order.

The Rule

This amendment to 14 CFR part 71 allows the USAF to revise the Class D airspace operational times at Elmendorf AFB, AK, and establishes Class E airspace for IFR and Special VFR operations when the Class D airspace is inactive. The intended effect of this action is to provide the USAF the flexibility to adjust the operational times of the Elmendorf Tower.

The FAA has determined that these proposed regulations only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AAL AK D Anchorage, Elmendorf AFB Airport, AK [Revised]

Anchorage, Elmendorf AFB Airport, AK
(Lat. 61° 15′ 11″ N., long. 149° 47′ 38″ W)
Elmendorf Localizer
(Lat. 61° 15′ 14″ N., long. 149° 46′ 48″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.7-mile radius of Elmendorf AFB Airport and within 2 miles each side of the Elmendorf Localizer front course extending from the 4.7-mile radius to a point 5.5 miles from Elmendorf AFB Airport; excluding that airspace east of long. 149°43′ W, and that airspace within the Anchorage International Airport, AK, Class C airspace area and the Anchorage Merrill Field, AK, Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas

* * * * *

AAL AK E2 Anchorage, Elmendorf AFB Airport, AK [New]

Anchorage, Elmendorf AFB Airport, AK
(Lat. 61°15′11″ N., long. 149°47′38″ W)
Elmendorf Localizer
(Lat. 61°15′14″ N, long. 149°46′48″ W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.7-mile radius of Elmendorf AFB Airport and within 2 miles each side of the Elmendorf Localizer front course extending from the 4.7-mile radius to a point 5.5 miles from Elmendorf AFB Airport; excluding that airspace east of long. 149°43′ W, and that airspace within the Anchorage International Airport, AK, Class C airspace area and the Anchorage Merrill Field, AK, Class D airspace area.

* * * * *

Issued in Anchorage, AK, on January 27, 1999.

Trent S. Cummings,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–2830 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8817]

RIN 1545–AV70

Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6038B relating to information reporting requirements for certain transfers by United States persons to foreign partnerships. The regulations implement amendments made by the Taxpayer Relief Act of 1997 that require a United States person who transfers property to a foreign partnership to furnish certain information with respect to such transfer. This document also contains final regulations that require certain cash transfers to foreign corporations to be reported. The regulations provide guidance needed to comply with the reporting requirements with respect to transfers of cash to foreign corporations and transfers of property to foreign partnerships.

DATES: *Effective Dates:* These regulations are effective January 1, 1998, except that the amendments to § 1.6038B–1 are effective February 5, 1999.

Dates of Applicability: For dates of applicability of the amendments to § 1.6038B–1, see § 1.6038B–1(g). For dates of applicability of § 1.6038B–2, see § 1.6038B–2(j).

FOR FURTHER INFORMATION CONTACT: Eliana Dolgoff, 202–622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1615. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information contained in these final regulations are in §§ 1.6038B–1(b) and 1.6038B–2. The burden of complying with the collection of information required to be reported on Form 8865 is reflected in the burden for Form 8865. The burden of complying with the collection of information required to be reported on Form 926 is reflected in the burden for Form 926.

Comments concerning the accuracy of the burden estimates and suggestions for reducing the burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 9, 1998, the IRS published in the **Federal Register** proposed regulations relating to the reporting of certain transfers to foreign corporations and foreign partnerships under section 6038B. A public hearing was held on November 10, 1998, even though no requests to speak at the hearing were received. Written comments regarding the proposed regulations, however, were received. After consideration of all of the comments received, the proposed regulations under section 6038B are adopted as revised by this Treasury decision. The revisions are discussed below.

Public Comments

Some commentators suggested that the final regulations provide that state and local government employee retirement plans be exempt from the section 6038B reporting requirements, asserting that contributions from such plans to foreign partnerships will not have federal income tax consequences. The final regulations provide that trusts relating to state and local government employee retirement plans are not required to report transfers to foreign partnerships under section 6038B, unless required to do so in the instructions to Form 8865.

One commentator noted that under the proposed regulations, if a United States person transfers property other than cash with a value in excess of $100,000 to a foreign partnership, such person must report the names and addresses of all the other partners of the partnership, regardless of the size of the person's ownership interest in the foreign partnership after the transfer. The commentator requested that the final regulations provide that if a United States person owns less than a 10 percent interest in the foreign partnership after the transfer, regardless of the type of property transferred, such person does not have to report the names and addresses of all the other partners. Alternatively, the commentator requested that it be recognized that a person that makes a good faith effort to obtain such information will have reasonable cause preventing the imposition of any penalties under section 6038B if such person fails to obtain and submit the information.

The final regulations do not adopt the commentator's recommendations. As in the proposed regulations, the final regulations contain a reasonable cause exception that, if satisfied, prevents the IRS from imposing penalties under section 6038B. Whether reasonable cause exists for a failure to comply with the requirements of section 6038B is determined by the district director under all the facts and circumstances. Although the final regulations do not explicitly say so, a failure to submit the names and addresses of the other partners will constitute a failure to comply with the requirements of section 6038B and therefore will always be subject to the reasonable cause exception.

Commentators also questioned whether United States persons must report indirect transfers from a foreign partnership to another foreign partnership. The final regulations reserve on such reporting. If a foreign partnership transfers property to another foreign partnership, a United States person that is a partner of the transferor partnership is not required to report that transfer until such time as the IRS and Treasury implement rules requiring such reporting. However, the IRS remains concerned about transfers from one foreign partnership to another. In conjunction with its study of section 721(c), the IRS is evaluating whether there is a need for the reporting of transfers from foreign partnerships to foreign partnerships.

The final regulations also clarify that if a domestic partnership contributes property to a foreign partnership, the partners of the domestic partnership will be considered to have contributed a proportionate share of the property transferred. Therefore, the partners of the transferor domestic partnership may be required to report under section 6038B transfers made by the transferor partnership. The proposed regulations provide, however, that an indirect transferor does not have to report the contribution on Form 8865 if certain conditions are satisfied, including the filing by the indirect transferor of a statement with the IRS. In an attempt to reduce the burden imposed on taxpayers, the final regulations eliminate the requirement that indirect transferors must file a statement. If the domestic transferor partnership properly reports the transfer of property to a foreign partnership, a United States person that is an indirect transferor need not report the transfer.

The final regulations also modify the reporting requirements with respect to deemed contributions. The proposed regulations provided that if by reason of an adjustment under section 482 a contribution required to be reported under section 6038B is deemed to have been made, the information required to be reported will be furnished timely if filed by the due date (including extensions) of the income tax return for the taxable year during which the adjustment is made. The final regulations provide that deemed contributions resulting from IRS-initiated section 482 adjustments are not required to be reported under section 6038B. However, taxpayers must report deemed contributions resulting from taxpayer-initiated adjustments. Such information will be furnished timely if filed by the due date, including extensions, for filing the taxpayer's income tax return for the year in which the taxpayer makes the section 482 adjustment.

Additionally, the final regulations clarify that a transfer to a foreign partnership made on or after January 1, 1998, but before January 1, 1999, will be considered timely reported either if it is reported on a Form 8865 attached to the taxpayer's income tax return for the first taxable year beginning on or after January 1, 1999, or it is reported on a Form 926 attached to the taxpayer's income tax return for the taxable year in which the transfer occurred.

The final regulations also clarify that transfers that were made between August 5, 1997, and January 1, 1998, may be reported in accordance with the provisions of the final section 6038B regulations or in accordance with Notice 98–17(1998–11 IRB 6).

Special Analyses

It has been determined that this regulation is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these final regulations reduce or eliminate the reporting requirements for certain United States persons. Moreover, in general, only a United States person that owns a significant interest in a foreign partnership, or transfers a substantial amount to a foreign partnership, will be subject to these regulations. Thus, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the proposed regulations on small business.

Drafting information. The principal authors of these regulations are Eliana Dolgoff and Philip Tretiak of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6038B–1 also issued under 26 U.S.C. 6038B.

Section 1.6038B–2 also issued under 26 U.S.C. 6038B. * * *

Par. 2. Section 1.6038B–1 is amended as follows:

1. The section heading is revised.

2. Paragraph (b)(1)(i), first sentence, is revised.

3. The text of paragraph (b)(3) is added.

4. Paragraph (c), first sentence, is revised

5. Paragraph (g) is revised.

The additions and revisions read as follows:

§ 1.6038B–1 Reporting of certain transfers to foreign corporations.

* * * * *

(b) *Time and manner of reporting*—(1) *In general*—(i) *Reporting procedure.* Except for stock or securities qualifying under the special reporting rule of paragraph (b)(2) of this section, or cash, which is subject to special rules contained in paragraph (b)(3) of this section, any U.S. person that makes a transfer described in section 6038B(a)(1)(A), 367(d) or (e)(1), is required to report pursuant to section 6038B and the rules of this section and must attach the required information to Form 926, "Return by Transferor of Property to a Foreign Corporation."

* * *

* * * * *

(3) *Special rule for transfers of cash.* A U.S. person that transfers cash to a foreign corporation must report the transfer if—

(i) Immediately after the transfer such person holds directly, indirectly, or by attribution (determined under the rules of section 318(a), as modified by section 6038(e)(2)) at least 10 percent of the total voting power or the total value of the foreign corporation; or

(ii) The amount of cash transferred by such person or any related person (determined under section 267(b)(1) through (3) and (10) through (12)) to such foreign corporation during the 12-month period ending on the date of the transfer exceeds $100,000.

* * * * *

(c) *Information required with respect to transfers described in section 6038B(a)(1)(A).* A United States person that transfers property to a foreign corporation in an exchange described in section 6038B(a)(1)(A) (including cash and other unappreciated property) must provide the following information, in paragraphs labeled to correspond with the number or letter set forth in this paragraph (c) and § 1.6038B–1T(c)(1) through (5). * * *

* * * * *

(g) *Effective dates.* This section applies to transfers occurring on or after July 20, 1998, except that the first sentence of paragraph (b)(1)(i), paragraph (b)(3), and the first sentence of paragraph (c) apply to transfers occurring in taxable years beginning after February 5, 1999. See § 1.6038B–1T for transfers occurring prior to July 20, 1998.

Par. 3. Section 1.6038B–2 is added to read as follows:

§ 1.6038B–2 Reporting of certain transfers to foreign partnerships.

(a) *Reporting requirements*—(1) *Requirement to report transfers.* A United States person that transfers property to a foreign partnership in a contribution described in section 721 (including section 721(b)) must report that transfer on Form 8865 "Information Return of U.S. Persons With Respect to Certain Foreign Partnerships" pursuant to section 6038B and the rules of this section, if—

(i) Immediately after the transfer, the United States person owns, directly, indirectly, or by attribution, at least a 10-percent interest in the partnership, as defined in section 6038(e)(3)(C) and the regulations thereunder; or

(ii) The value of the property transferred, when added to the value of any other property transferred in a section 721 contribution by such person (or any related person) to such partnership during the 12-month period ending on the date of the transfer, exceeds $100,000.

(2) *Indirect transfer through a domestic partnership*—For purposes of this section, if a domestic partnership transfers property to a foreign partnership in a section 721 transaction, the domestic partnership's partners shall be considered to have transferred a proportionate share of the property to the foreign partnership. However, if the domestic partnership properly reports all of the information required under this section with respect to the contribution, no partner of the transferor partnership, whether direct or indirect (through tiers of partnerships), is also required to report under this section. For illustrations of this rule, see *Examples 4* and *5* of paragraph (a)(7) of this section.

(3) *Indirect transfer through a foreign partnership.* [Reserved]

(4) *Requirement to report dispositions*—(i) *In general.* If a United States person was required to report a transfer to a foreign partnership of appreciated property under paragraph (a)(1) or (2) of this section, and the foreign partnership disposes of the property while such United States person remains a direct or indirect partner, that United States person must report the disposition by filing Form 8865. The form must be attached to, and filed by the due date (including extensions) of, the United States person's income tax return for the year in which the disposition occurred.

(ii) *Disposition of contributed property in nonrecognition transaction.* If a foreign partnership disposes of contributed appreciated property in a nonrecognition transaction and substituted basis property is received in exchange, and the substituted basis property has built-in gain under § 1.704-3(a)(8), the original transferor is not required to report the disposition. However, the transferor must report the disposition of the substituted basis property in the same manner as provided for the contributed property.

(5) *Time for filing Form 8865*—(i) *General rule.* The Form 8865 on which a transfer is reported must be attached to the transferor's timely filed (including extensions) income tax return (including a partnership return of income) for the tax year that includes the date of the transfer.

(ii) *Time for filing when transferor also required to report information about the partnership under section 6038.* If the United States person required to file under this section is also required to file a Form 8865 under section 6038 for the period in which the transfer occurs, then the United States person must report under this section on the Form 8865 for the foreign partnership's annual accounting period in which the transfer occurred (not its own taxable year) and file with its income tax return for that year as provided in Section 6038 and the regulations thereunder.

(6) *Returns to be made*—(i) *Separate returns for each partnership.* If a United States person transfers property reportable under this section to more than one foreign partnership in a taxable year, the United States person must submit a separate Form 8865 for each partnership.

(ii) *Duplicate form to be filed.* If required by the instructions

accompanying Form 8865, a duplicate Form 8865 (including attachments and schedules) must also be filed by the due date for submitting the original Form 8865 under paragraph (a)(5)(i) or (ii) of this section, as applicable.

(7) *Examples.* The application of this paragraph (a) may be illustrated by the following examples:

Example 1. On November 1, 2001, *US*, a United States person that uses the calendar year as its taxable year, contributes $200,000 to *FP*, a foreign partnership, in a transaction subject to section 721. After the contribution, *US* owns a 5% interest in *FP*. *US* must report the contribution by filing Form 8865 for its taxable year ending December 31, 2001. On March 1, 2002, *US* makes a $40,000 section 721 contribution to *FP*, after which *US* owns a 6% interest in *FP*. *US* must report the $40,000 contribution by filing Form 8865 for its taxable year ending December 31, 2002, because the contribution, when added to the value of the other property contributed by *US* to *FP* during the 12-month period ending on the date of the transfer, exceeds $100,000.

Example 2. F, a nonresident alien, is the brother of *US*, a United States person. *F* owns a 15% interest in *FP*, a foreign partnership. *US* contributes $99,000 to *FP*, in exchange for a 1-percent partnership interest. Under sections 6038(e)(3)(C) and 267(c)(2), *US* is considered to own at least a 10-percent interest in *FP* and, therefore, *US* must report the $99,000 contribution under this section.

Example 3. US, a United States person, owns 40 percent of *FC*, a foreign corporation. *FC* owns a 20-percent interest in *FP*, a foreign partnership. Under section 267(c)(1), *US* is considered to own 8 percent of *FP* due to its ownership of *FC*. *US* contributes $50,000 to *FP* in exchange for a 5-percent partnership interest. Immediately after the contribution, *US* is considered to own at least a 10-percent interest in *FP* and, therefore, must report the $50,000 contribution under this section.

Example 4. US, a United States person, owns a 60-percent interest in *USP*, a domestic partnership. On March 1, 2001, *USP* contributes $200,000 to *FP*, a foreign partnership, in exchange for a 5-percent partnership interest. Under paragraph (a)(2) of this section, *US* is considered as having contributed $120,000 to *FP* ($200,000 × 60%). However, under paragraph (a)(2), if *USP* properly reports the contribution to *FP*, *US* is not required to report its $120,000 contribution. If *US* directly contributes $5,000 to *FP* on June 10, 2001, *US* must report the $5,000 contribution because *US* is considered to have contributed more than $100,000 to *FP* in the 12-month period ending on the date of the $5,000 contribution.

Example 5. US, a United States person, owns an 80-percent interest in *USP*, a domestic partnership. *USP* owns an 80-percent interest in *USP1*, a domestic partnership. On March 1, 2001, *USP1* contributes $200,000 to *FP*, a foreign partnership, in exchange for a 3-percent partnership interest. Under paragraph (a)(2) of this section, *USP* is considered to have contributed $160,000 ($200,000 × 80%) to *FP*. *US* is considered to have contributed $128,000 to *FP* ($200,000 × 80% × 80%). However, if *USP1* reports the transfer of the $200,000 to *FP*, neither *US* nor *USP* are required to report under this section the amounts they are considered to have contributed. Additionally, regardless of whether *USP1* reports the $200,000 contribution, if *USP* reports the $160,000 contribution it is considered to have made, *US* does not have to report under this section the $128,000 contribution *US* is considered to have made.

(b) *Transfers by trusts relating to state and local government employee retirement plans.* Trusts relating to state and local government employee retirement plans are not required to report transfers under this section, unless otherwise specified in the instructions to Form 8865.

(c) *Information required with respect to transfers of property.* With respect to transfers required to be reported under paragraph (a)(1) or (2) of this section, the return must contain information in such form or manner as Form 8865 (and its accompanying instructions) prescribes with respect to reportable events, including—

(1) The name, address, and U.S. taxpayer identification number of the United States person making the transfer;

(2) The name, U.S. taxpayer identification number (if any), and address of the transferee foreign partnership, and the type of entity and country under whose laws the partnership was created or organized;

(3) A general description of the transfer, and of any wider transaction of which it forms a part, including the date of transfer;

(4) The names and addresses of the other partners in the foreign partnership, unless the transfer is solely of cash and the transferor holds less than a 10-percent interest in the transferee foreign partnership immediately after the transfer;

(5) A description of the partnership interest received by the United States person, including a change in partnership interest;

(6) A separate description of each item of contributed property that is appreciated property subject to the allocation rules of section 704(c)(except to the extent that the property is permitted to be aggregated in making allocations under section 704(c)), or is intangible property, including its estimated fair market value and adjusted basis.

(7) A description of other contributed property, not specified in paragraph (c)(6) of this section, aggregated by the following categories (with, in each case, a brief description of the property)—

(i) Stock in trade of the transferor (inventory);

(ii) Tangible property (other than stock in trade) used in a trade or business of the transferor;

(iii) Cash;

(iv) Stock, notes receivable and payable, and other securities; and

(v) Other property.

(d) *Information required with respect to dispositions of property.* In respect of dispositions required to be reported under paragraph (a)(4) of this section, the return must contain information in such form or manner as Form 8865 (and its accompanying instructions) prescribes with respect to reportable events, including—

(1) The date and manner of disposition;

(2) The gain and depreciation recapture amounts, if any, realized by the partnership; and

(3) Any such amounts allocated to the United States person.

(e) *Method of reporting.* Except as otherwise provided on Form 8865, or the accompanying instructions, all amounts reported as required under this section must be expressed in United States currency, with a statement of the exchange rates used. All statements required on or with Form 8865 pursuant to this section must be in the English language.

(f) *Reporting under this section not required of partnerships excluded from the application of subchapter K*—(1) *Election to be wholly excluded.* The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in § 1.761–2(a), if such partnership has validly elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified in § 1.761–2(b)(2)(i).

(2) *Deemed excluded.* The reporting requirements of this section will not apply to any United States person in respect of an eligible partnership as described in § 1.761–2(a), if such partnership is validly deemed to have elected to be excluded from all of the provisions of subchapter K of chapter 1 of the Internal Revenue Code in accordance with the provisions of § 1.761–2(b)(2)(ii).

(g) *Deemed contributions.* Deemed contributions resulting from IRS-initiated section 482 adjustments are not required to be reported under section 6038B. However, taxpayers must report deemed contributions resulting from taxpayer-initiated adjustments. Such information will be furnished timely if filed by the due date, including extensions, for filing the taxpayer's

income tax return for the year in which the adjustment is made.

(h) *Failure to comply with reporting requirements*—(1) *Consequences of failure.* If a United States person is required to file a return under paragraph (a) of this section and fails to comply with the reporting requirements of section 6038B and this section, then such person is subject to the following penalties:

(i) The United States person is subject to a penalty equal to 10 percent of the fair market value of the property at the time of the contribution. Such penalty with respect to a particular transfer is limited to $100,000, unless the failure to comply with respect to such transfer was due to intentional disregard.

(ii) The United States person must recognize gain (reduced by the amount of any gain recognized, with respect to that property, by the transferor after the transfer) as if the contributed property had been sold for fair market value at the time of the contribution. Adjustments to the basis of the partnership's assets and any relevant partner's interest as a result of gain being recognized under this provision will be made as though the gain was recognized in the year in which the failure to report was finally determined.

(2) *Failure to comply.* A failure to comply with the requirements of section 6038B includes—

(i) The failure to report at the proper time and in the proper manner any information required to be reported under the rules of this section; and

(ii) The provision of false or inaccurate information in purported compliance with the requirements of this section.

(3) *Reasonable cause exception.* Under section 6038B(c)(2) and this section, the provisions of paragraph (h)(1) of this section will not apply if the transferor shows that a failure to comply was due to reasonable cause and not willful neglect. The transferor may attempt to do so by providing a written statement to the district director having jurisdiction of the taxpayer's return for the year of the transfer, setting forth the reasons for the failure to comply. Whether a failure to comply was due to reasonable cause will be determined by the district director under all the facts and circumstances.

(4) *Statute of limitations.* For exceptions to the limitations on assessment in the event of a failure to provide information under section 6038B, see section 6501(c)(8).

(i) *Definitions*—(1) *Appreciated property.* Appreciated property is property that has a fair market value in excess of basis.

(2) *Domestic partnership.* A domestic partnership is a partnership described in section 7701(a)(4).

(3) *Foreign partnership.* A foreign partnership is a partnership described in section 7701(a)(5).

(4) *Related person.* Persons are related persons if they bear a relationship described in section 267(b)(1) through (3) or (10) through (12), after application of section 267(c) (except for (c)(3)), or in section 707(b)(1)(B).

(5) *Substituted basis property.* Substituted basis property is property described in section 7701(a)(42).

(6) *Taxpayer-initiated adjustment.* A taxpayer-initiated adjustment is a section 482 adjustment that is made by the taxpayer pursuant to § 1.482–1(a)(3).

(7) *United States person.* A United States person is a person described in section 7701(a)(30).

(j) *Effective dates*—(1) *In general.* This section applies to transfers made on or after January 1, 1998. However, for a transfer made on or after January 1, 1998, but before January 1, 1999, the filing requirements of this section may be satisfied by—

(i) Filing a Form 8865 with the taxpayer's income tax return (including a partnership return of income) for the first taxable year beginning on or after January 1, 1999; or

(ii) Filing a Form 926 with the taxpayer's income tax return (including a partnership return of income) for the taxable year in which the transfer occurred.

(2) *Transfers made between August 5, 1997 and January 1, 1998.* A United States person that made a transfer of property between August 5, 1997, and January 1, 1998, that is required to be reported under section 6038B may satisfy its reporting requirement by reporting in accordance with the provisions of this section or in accordance with the provisions of Notice 98–17 (1998–11 IRB 6)(see § 601.601(d)(2) of this chapter).

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB Control No.
. . . . .	.
1.6038B–1	1545–1615
. . . . .	.
1.6038B–2	1545–1615

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved: January 29, 1999.

Donald C. Lubick,
Assistant Secretary of the Treasury.

[FR Doc. 99–2798 Filed 2–4–99; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–002]

Drawbridge Operation Regulation; Missouri River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the A–S–B Railroad and Hannibal Railroad Drawbridges at Miles 365.6 and 366.1, across the Missouri River, respectively. This deviation allows the bridges to open upon receipt of 48-hour advance notice from 12:01 a.m. on January 17, 1999, to 11:59 p.m. on February 15, 1999. This action will facilitate maintenance work on the bridge.

DATES: The deviation is effective from 12:01 a.m. on January 17, 1999 to 11:59 p.m. on February 15, 1999.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, at Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone number (314) 539–3900, ext. 378.

SUPPLEMENTARY INFORMATION: The A–S–B Railroad Drawbridge is a lift bridge that provides a vertical clearance of 49.7 feet above zero on the Kansas City gauge in the closed-to-navigation position. The Hannibal Railroad Drawbridge is a wing bridge that provides a vertical clearance of 56.0 feet above zero on the Kansas City gauge in the closed-to-navigation position. Navigation on the waterway is a mixture of commercial tows and recreational boats. A temporary deviation has been requested from the

normal operation of the bridge in order to accommodate maintenance work. The work is essential for the continued safe operation of the drawbridges. This change in drawbridge operation has been coordinated with waterway users and no objections to the deviation have been made.

This deviation allows the A–S–B railroad Drawbridge and the Hannibal Drawbridge across the Missouri River at miles 365.6 and 366.1 respectively, at Kansas City, Missouri to remain closed to navigation from 12:01 a.m. on January 17, 1999 until 11:59 p.m. on February 15, 1999, with openings provided upon receipt of 48 hours advance notice.

This deviation will be effective from 12:01 a.m. on January 17, 1999 until 11:59 p.m. on February 15, 1999. During this period, the draw is required to open upon receipt of 24 hours advance notice when drawbridge operation regulations are not amended by a deviation.

Dated: January 17, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 99–2829 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–245; RM–9202]

Radio Broadcasting Services; St. Marys, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Seven Ranges Radio Company, Inc., allots Channel 287A at St. Marys, West Virginia, as the community's second local FM transmission service. *See* 63 FR 193, January 5, 1998. Channel 287A can be allotted to St. Marys in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.8 kilometers (6.7 miles) southeast to avoid a short-spacing to the licensed site of Station WZNW(FM), Channel 288B1, Bethlehem, West Virginia. The coordinates for Channel 287A at St. Marys are 39–18–03 North Latitude and 81–15–19 West Longitude. Since St. Marys is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: *Effective:* March 15, 1999. The window period for filing applications for Channel 287A at St. Marys, West Virginia, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–245, adopted January 20, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Channel 287A at St. Marys.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2731 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–19; RM–9219]

Radio Broadcasting Services; Smith Mills, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Henry G. Lackey, allots Channel 233A at Smith Mills, Kentucky, as the community's first local aural transmission service. *See* 63 FR 10355, March 3, 1998. Channel 233A can be allotted to Smith Mills in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.2 kilometers (8.9 miles) west to avoid a short-spacing to the licensed site of Station WTRI–FM, Channel 235B, Mount Carmel, Illinois. The coordinates for Channel 233A at Smith Mills are 37–47–26 North Latitude and 87–55–23 West Longitude. With this action, this proceeding is terminated.

DATES: *Effective:* March 15, 1999. The window period for filing applications for Channel 233A at Smith Mills, Kentucky, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–19, adopted January 20, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by adding Smith Mills, Channel 233A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2730 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–3; RM–9218]

Radio Broadcasting Services; Manson, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Manson Broadcasting, allots Channel 234C3 at Manson, Washington, as the community's first local aural transmission service. *See* 63 FR 4206, January 28, 1998. Channel 234C3 can be allotted to Manson in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 234C3 at Manson are 47–53–18 North Latitude and 120–09–18 West Longitude. Since Manson is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: *Effective:* March 15, 1999. The window period for filing applications for Channel 234C3 at Manson, Washington, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–3, adopted January 20, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Manson, Channel 234C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2729 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–58; RM–9252]

Radio Broadcasting Services; Brewster, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 232A to Brewster, Massachusetts, in response to a petition filed by Brewster Broadcast Company. *See* 63 FR 24517, May 4, 1998. The coordinates for Channel 232A at Brewster are 41–46–31 NL and 70–00–38 WL. With this action, this proceeding is terminated. A filing window for Channel 232A at Brewster will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addresed by the Commission in a subsequent order.

DATES: *Effective:* March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–58, adopted January 20, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is adding Brewster, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2728 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–174; RM–9356]

Radio Broadcasting Services; Spencer & Webster, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 255A from Webster to Spencer, Massachusetts, and modifies the license for Station WXXW at Webster to specify operation on Channel 255A at Spencer, in response to a petition filed by Chowder Broadcast Group LLC. See 63 FR 53009, October 2, 1998. The coordinates for Channel 255A at Spencer are 42–11–00 and 72–02–30. Canadian concurrence has been obtained for the allotment of Channel 255A at Spencer, Massachusetts. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–174, adopted January 20, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by removing Webster and Channel 255A and adding Spencer and Channel 255A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2759 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–104, RM–9048]

Radio Broadcasting Services; Wellington, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a Petition for Reconsideration filed by Hunt Broadcasting, Inc. directed to the *Report and Order* in this proceeding. The *Report and Order* had determined that a counterproposal filed by Hunt Broadcasting proposing the modification of its Station KIKM license to specify operation on Channel 269C at Azle, Texas, was unacceptable. See 63 FR 11379, published March 9, 1995. With this action the proceeding is terminated.

EFFECTIVE DATE: February 5, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 97–104, adopted December 2, 1998, and released January 8, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3805, 1231 M Street, NW, Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles W. Logan,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2760 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 020199A]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish by Vessels Using Non-pelagic Trawl Gear in the Red King Crab Savings Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for groundfish with non-pelagic trawl gear in the red king crab savings subarea (RKCSS) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to utilize the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 1, 1999, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The amount of the interim 1999 red king crab bycatch limit specified for the RKCSS was established as 10,000 animals by the Interim 1999 Harvest Specifications of Groundfish (64 FR 50, January 4, 1999). The directed fishery for groundfish with non-pelagic trawl gear was closed effective 1200 hrs, A.l.t. January 25, 1999 in accordance with § 679.21(e)(7)(ii)(B)(64 FR 4602, January 29, 1999) because it was expected that the interim 1999 red king crab bycatch limit specified for the RKCSS would be caught.

NMFS has determined that as of January 25, 1999, 3,000 red king crab remain in the interim 1999 red king crab bycatch limit specified for the RKCSS. Therefore, NMFS is terminating the previous closure and is opening directed fishing for groundfish with non-pelagic trawl gear in the RKCSS.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the amount of the interim 1999 red king crab bycatch limit specified for the RKCSS remaining. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2691 Filed 2–1–99; 3:43 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 24
Friday, February 5, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

Medical Use of Byproduct Material; Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of workshop.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is continuing the process of developing a proposed revision of its regulations governing the medical use of byproduct material in 10 CFR part 35, "Medical Use of Byproduct Material." Throughout the development of the proposed rule the Commission solicited input from the various interests that may be affected by these proposed revisions. The proposed rule was published in the **Federal Register** on August 13, 1998 (63 FR 43516), for a 90-day comment period, which was later reopened to December 16, 1998. During the public comment period, several public meetings were held to discuss major issues, such as training and experience requirements, that are being addressed during the rulemaking. The Commission is now soliciting specific information on the implementation issues associated with the proposed revisions to the training and experience requirements. To that end, a public workshop is being convened to obtain comments and recommendations on implementation issues from affected parties. Francis X. Cameron, Special Counsel for Public Liaison, in the Commission's Office of the General Counsel, will be the convener and facilitator for the workshops.

DATES: The workshop will be held on February 17, 1999, from 9 a.m. to 4:30 p.m. and on February 18, 1999, from 9 a.m. to 12 noon.

ADDRESSES: This workshop will be held at the NRC Headquarters Office, 11555 Rockville Pike, Rockville, Maryland

Members of the public who are unable to attend the workshop can send comments to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of the General Counsel, U. S. Nuclear Regulatory Commission, Washington DC 20555, Telephone: 301–415–1642, e-mail fxc@nrc.gov.

SUPPLEMENTARY INFORMATION: After a comprehensive review of its medical use program, the Commission directed the staff to revise 10 CFR part 35, associated guidance documents, and, if necessary, the Commission's 1979 Medical Policy Statement (Staff Requirements Memorandum (SRM)—COMSECY–96–057, "Materials/Medical Oversight" (DSI–7), dated March 20, 1997). The Commission specifically directed the restructuring of Part 35 into a risk-informed, more performance-based regulation by June 1999. The revision is intended to:

(1) Focus the regulations on those medical procedures that pose the highest risk, from a radiation safety aspect, with a subsequent decrease in the oversight of low-risk activities;

(2) Focus on those requirements that are essential for patient safety;

(3) Initiate improvements in NRC's medical program, by implementing recommendations from internal staff audits, other rulemaking activities, and results of analyses in medical issues papers;

(4) Incorporate regulatory requirements for new treatment modalities; and

(5) Reference, as appropriate, available industry guidance and standards.

The program for revising part 35, associated guidance documents, and the Medical Policy Statement has provided more opportunity for input from potentially affected parties (the medical community and the public) than is provided by the typical notice and comment rulemaking process. Based on the worthwhile public input received earlier in the rulemaking process, the Commission is now soliciting additional comments on implementation issues associated with the proposed revisions to the training and experience requirements. The proposed training and experience requirements appear in subparts B, D–F, and H, and Appendix A of the proposed rulemaking (63 FR 43516; August 13, 1998). The Commission is specifically interested in information on the process and criteria for approving boards and examining organizations or entities. Such information includes how the boards would implement the training and experience requirements; how the boards would implement the requirements in Appendix A for examining organizations and entities; and what are the resource implications of these proposed actions? Accordingly, the Commission is convening a public workshop where representatives of the interests that may be affected by the proposed changes in the training and experience requirements will have an opportunity to discuss implementation of these requirements. Although the meeting is intended to foster a clearer understanding of the positions and concerns of the affected interests, as well as to identify areas of agreement or disagreement, it is not the intent of the meeting to develop a consensus agreement of the participants on the rulemaking issues.

To have a manageable discussion, the number of participants at the workshop will be limited. The Commission, through the facilitator for the meeting, will attempt to ensure participation by the broad spectrum of interests that may be affected by the rulemaking. Other members of the public are welcome to attend, and the public will have the opportunity to comment on the issues and the meeting discussions at periodic intervals during the workshop. Questions about participation may be directed to the facilitator, Francis X. Cameron. The agenda for the workshop will focus on:

(1) The impact, on the medical community, of the proposed revisions to the training and experience criteria; and

(2) The process and criteria used by NRC to approve certifying boards and examining organizations.

Dated at Rockville, Maryland this 28th day of January, 1999.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–2749 Filed 2–4–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–1787; File No. S7–2–99]

RIN 3235–AH60

Transition Rule for Ohio Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing for comment a proposed rule under the Investment Advisers Act of 1940 to assist investment advisers that will be subject to a new Ohio investment adviser statute. The proposed rule would provide a transition process for these investment advisers to change from Commission to state registration.

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–2–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W. Washington, D.C. 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jeffrey O. Himstreet, Attorney, or Arthur B. Laby, Special Counsel, at (202) 942–0716, Task Force on Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed rule 203A–6 [17 CFR 275.203A–6] and a proposed amendment to Schedule I of Form ADV [17 CFR 279.1], both under the Investment Advisers Act of 1940 [15 U.S.C. 80b] ("Advisers Act" or "Act").

I. Background

Under the Advisers Act, as amended by the Investment Advisers Supervision Coordination Act ("Coordination Act"),[1] the Commission has regulatory responsibility for investment advisers that have at least $25 million of assets under management or advise a registered investment company.[2] The Commission also has regulatory responsibility for advisers that have less than $25 million of assets under management and have their principal place of business in a state that has not enacted an investment adviser statute.[3] At the time the Coordination Act was adopted, Ohio was one of four states that did not have an investment adviser statute.[4] Recently, Ohio enacted investment adviser legislation that will become effective by March 31, 1999.[5]

The Commissioner of the Ohio Division of Securities has requested that we create a transition process to assist in the implementation of the Ohio law.[6] The transition process would primarily affect investment advisers that have their principal place of business in Ohio and are eligible for Commission registration only because of the location of their principal office and place of business ("smaller Ohio advisers"). Absent a transition rule, the preemptive provisions of the Coordination Act would prevent the Ohio Division of Securities (and other state securities authorities) from requiring the registration of smaller Ohio advisers until the advisers withdrew from Commission registration or we canceled their registrations.[7] To assist the Ohio Division of Securities and to facilitate the transition of regulatory responsibilities for smaller Ohio advisers, we are proposing for public comment new rule 203A–6.

II. Discussion

Under the proposed rule, new Ohio advisers (i.e., those advisers that are not currently registered with the Commission) that would not be eligible for Commission registration would register with the Ohio Division of Securities on or after the effective date of Ohio's implementing rules.[8] Smaller Ohio advisers that are currently registered with the Commission would switch over to registration with the Ohio Division of Securities during a one year transition period.[9] These advisers could withdraw their Commission registration at the time they register with the Ohio Division of Securities, or by the end of the transition period.[10]

With the enactment of the Ohio law, smaller Ohio advisers may no longer rely on the location of their principal office and place of business as a basis for Commission registration. The Commission therefore is proposing to amend Schedule I by deleting the references to Ohio from both Schedule I and the Instructions to Schedule I. As a result of the proposed amendments to Schedule I, advisers would no longer be able to claim eligibility for Commission registration based on the location of their principal office and place of business in Ohio and must withdraw from Commission registration, unless otherwise eligible.[11] The amendments to Schedule I would become effective on December 31, 1999.

III. General Request for Comment

Any interested persons wishing to submit written comments on the proposed rule and form changes that are the subject of this release, to suggest additional changes or submit comments on other matters that might have an effect on the proposals described above, are requested to do so. Commenters

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[1] Title III of the National Securities Markets Improvement Act of 1996, Pub. L. No. 104–290, 110 Stat. 3416 (1996) (codified in scattered sections of the United States Code).

[2] *Id.*

[3] *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)] at II.E.1 ("Implementing Release").

[4] Colorado, Iowa and Wyoming also did not have investment adviser statutes at the time Congress enacted the Coordination Act. The Commission recently amended Schedule I to Form ADV necessitated by the enactment of investment adviser statutes in both Colorado and Iowa. Technical Changes to Schedule I to Form ADV, Investment Advisers Act Release No. 1733A (Jan. 7, 1999).

[5] H.B. 695, 122d Gen. Ass., Reg. Sess. (Ohio 1997–1998).

[6] *See* Letter from Thomas E. Geyer, Commissioner, Ohio Division of Securities, dated September 25, 1998 (available in File No. S7–2–99).

[7] Section 203A(b) of the Act [15 U.S.C. 80b–3a(b)] preempts state laws that would require the registration, qualification and licensing of investment advisers registered with the Commission. *See* Implementing Release, *supra* note 3 at II.H.1.

[8] The Ohio Division of Securities estimates that its implementing rules would be effective by March 31, 1999.

[9] In addition, advisers ineligible for Commission registration may be required to register with other state securities authorities. *See* Section 222(d) of the Advisers Act [15 U.S.C. 80b–22(d)] (the national de minimis standard). The timing of an investment adviser's state registration obligations would be governed by state law.

[10] Proposed rule 203A–6(b). We recognize that Ohio investment advisers may be registered with, and regulated by, both the Ohio Division of Securities and the Commission until the advisers withdraw from Commission registration. During this time, Ohio investment advisers may be subject to both federal and state regulatory requirements. Ohio investment advisers no longer eligible for Commission registration may withdraw from Commission registration at any time and thus avoid dual regulation.

[11] The Commission is proposing to require smaller Ohio advisers to withdraw from Commission registration by March 30, 2000. Proposed rule 203A–6(b).

suggesting alternative approaches are encouraged to submit proposed rule text.

For purposes of making determinations required by the Small Business Regulatory Enforcement Fairness Act of 1996, discussed below, the Commission also is requesting information regarding the potential impact of the proposed rule and Schedule I amendment on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Cost-Benefit Analysis

The proposed rule and form amendment are designed to facilitate the transition of certain advisers from Commission to state registration. This transition would further implement congressional intent to reallocate regulatory responsibilities for investment advisers between the Commission and state securities authorities.

Proposed rule 203A–6 would not have a significant effect on the regulatory burden borne by investment advisers. The Coordination Act imposes certain costs on advisers as a consequence of no longer being registered with the Commission, and, at the same time, confers benefits on these advisers, such as no longer requiring them to file amendments to Form ADV with the Commission. The proposed rule does not alter these burdens and benefits, but merely establishes a time by which advisers are required to switch registrations from the Commission to the Ohio Division of Securities.[12] Advisers may withdraw from Commission registration at any time and avoid any potential burdens associated with the proposed rule.

Comment is requested on any costs that may be imposed by the proposed rule and form amendment. Commenters should submit data indicating the cost of filing Schedule I to Form ADV and Form ADV–W. Commenters also should submit data on the expected effects of the proposed rule and form amendment on the customers of investment advisers (such as the amount of fees paid).

Comment is requested on this cost-benefit analysis. Commenters are requested to provide views and empirical data relating to any costs and benefits associated with the proposed rule and form amendment.

[12] Under current rules, advisers that are no longer eligible for Commission registration under section 203A(a) of the Act [15 U.S.C. 80b–3a(a)] must withdraw from registration within 90 days after the date the adviser is required by rule 204–1(a) [17 CFR 275.204–1(a)]. *See* 17 CFR 279.1 (Schedule I, instruction 6).

V. Paperwork Reduction Act

The proposed amendments to Schedule I to Form ADV contains a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 35 to 3520], and the Commission has submitted them to the Office of Management and Budget in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Schedule I to Form ADV," under the Advisers Act. Schedule I to Form ADV contains a currently approved collection of information under OMB control number 3235–0490. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

Each investment adviser must declare on Schedule I to Form ADV whether it is eligible for Commission registration. The rules imposing this collection of information are found at 17 CFR 275.203–1 and 17 CFR 279.1. Rule 204–1 [17 CFR 275.204–1] requires an investment adviser registered with the Commission to file an amended Schedule I to Form ADV annually within 90 days after the end of the investment adviser's fiscal year. The Commission is proposing amendments to Schedule I only, and not to Form ADV. The burdens associated with this filing are the same as the burdens Form ADV–W imposes on all advisers withdrawing from registration. The proposed withdrawal procedures impose no additional paperwork burdens on advisers. The rule would create a March 30, 2000 deadline by which smaller Ohio advisers must withdraw from Commission registration. Additionally, smaller Ohio advisers may withdraw from Commission registration at any time prior to March 30, 2000 and not be subject to the proposed rule.

Approximately 899 investment advisers with their principal office in Ohio that are registered with the Commission would respond annually to the information requirements of Schedule I. In addition, an estimated 760 new advisers will file Schedule I to Form ADV annually, approximately 83 of which are estimated to have their principal office in Ohio. Of these 83 advisers, an estimated 72 will file Schedule I to Form ADV an average of once a year, and the remaining 11 that rely on the exemption provided by rule 203A–2(d) [17 CFR 275.203A–d] will file Schedule I to Form ADV an average of twice each year. The Commission would receive an estimated 993 total responses from investment advisers with their principal office in Ohio.

The proposed form amendment will not materially alter the number of burden hours for investment advisers with their principal office in Ohio. An estimated 889 advisers with their principal office in Ohio (90.5% of respondents, excluding the estimated ten advisers nationwide expected to rely on the multi-state exemption) either do not need to calculate assets under management to complete Schedule I or calculate assets under management as part of their normal business operations. The burden for these advisers would be 0.75 of an hour (unchanged from previous estimate). For the estimated 93 investment advisers with their principal office in Ohio that must calculate assets under management to complete Schedule I (9.5% of respondents, excluding the estimated ten advisers nationwide expected to rely on the multi-state exemption provided by rule 203A–2(e) [17 CFR 275.203A–2(e)]), compliance with the requirement to file an amended Schedule I would impose a total annual burden for each investment adviser of approximately two hours (unchanged from previous estimate). Schedule I to Form ADV therefore is estimated to impose 852.75 total burden hours on advisers with their principal office in Ohio. This estimate would likely remain constant absent the proposed rule and form amendment.

The collection of information required by Schedule I is mandatory, and responses are not kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and also should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Stop

6–9, Washington, D.C. 20549 with reference to File No. S7–2–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding proposed rule 203A–6 and amendment to Schedule I to Form ADV. The following summarizes the IRFA.

The IRFA sets forth the statutory authority for the proposed rule and amendment to Schedule I. The IRFA also discusses the effect of the proposed rule and form amendment on small entities. For the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser, under Commission rules, generally is a small entity if (i) it has assets under management of $25 million or less reported on its most recent Schedule I to Form ADV [17 CFR 279.1]; (ii) it does not have total assets of $5 million or more on the last day of the most recent fiscal year; and (iii) it is not in a control relationship with another investment adviser that is not a small entity.[13]

The Commission estimates that approximately 1,000 Commission-registered advisers are small entities. Approximately 540 of these small entities have their principal office in Ohio. As explained in the IRFA, the majority of these advisers are smaller Ohio advisers that will be required by the Coordination Act to withdraw from Commission registration and register with the various state securities authorities. Absent Commission rulemaking, the Coordination Act will require smaller Ohio advisers to withdraw from Commission registration after the Ohio law is effective. Relatively few small entities thus would be affected by the proposed rule.

The IRFA states that the proposed rule amendments would impose no new reporting or recordkeeping requirements and would eliminate certain other requirements. The proposed rule would, however, create a deadline for complying with an existing requirement. Smaller Ohio advisers no longer eligible for Commission registration would be required to withdraw from Commission registration by March 30, 2000. These advisers will no longer be required to file an amended Schedule I with the Commission each year, or the other annual updates to Form ADV.

The proposed rule and rule amendment will not materially alter the time required for investment advisers to comply with these rules.[14] The proposed rule and form amendment also are necessary to implement the Coordination Act with respect to smaller Ohio advisers. The IRFA states that the burden to investment advisers subject to the rule should be outweighed by the benefits to the investment advisers subject to the proposed rule and form amendment.

There are no rules that duplicate, overlap, or conflict with, the proposed rule amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed rule and form amendment that might minimize the effect on small entities, including (a) the establishment of differing compliance or reporting requirements or timetables that take into account resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed rule, or any part of the proposed rule, for small entities.

As stated in the IRFA, it would be inconsistent with the Coordination Act to exempt small entities from the proposed rule and form amendment. This determination was made after taking into account the resources available to small entities and the potential burden that could be placed on investment advisers that may no longer be eligible for Commission registration. It does not appear feasible to establish different reporting or compliance requirements or to further clarify, consolidate or simplify the reporting or compliance requirements. The proposed rule and form amendment, as proposed, would not adversely affect small entities. The proposed rule and form amendment, instead, include regulatory alternatives that minimize the effect on small entities.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rule and form amendment. A copy of the IRFA may be obtained by contacting Jeffrey O. Himstreet, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 5–6, Washington, D.C. 20549.

VII. Statutory Authority

The Commission is proposing new rule 203A–6 pursuant to the authority set forth in section 203(h) [15 U.S.C. 80b–3(h)]; section 203A(c) [15 U.S.C. 80b–3a(c)]; and section 211(a) [15 U.S.C. 80b–11(a)] of the Investment Advisers Act of 1940.

The Commission is proposing amendments to Form ADV pursuant to the authority set forth in section 203(c)(1) [15 U.S.C. 80b–3(c)(1)]; and section 204 [15 U.S.C. 80b–4] of the Investment Advisers Act of 1940.

Text of Proposed Rule and Form Amendments

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements; Securities.

For the reasons discussed in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Regulations as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

2. Section 275.203A–6 is added to read as follows:

§ 275.203A–6 Transition period for Ohio investment advisers.

(a) *Ohio authority.* Notwithstanding section 203A(b) of the Act [15 U.S.C. 80b–3a(b)], the Ohio Revised Code, sections 1707.01 to 1707.99, is effective with respect to an investment adviser registered with the Commission that, but for having its principal office and place of business in Ohio, would be prohibited from registering with the Commission under section 203A of the Act [15 U.S.C. 80b–3a].

(b) *Withdrawal required.* Every investment adviser that is registered with the Commission solely because its principal office and place of business is located in Ohio must withdraw from Commission registration by March 30, 2000.

[13] Rule 0–7 [17 CFR 275.0–7].

[14] Currently, investment advisers that are required to withdraw from Commission registration because they are no longer eligible under section 203A(a) of the Act [15 U.S.C. 80b–3a(a)] are required to withdraw from registration within 90 days after the date the adviser's Schedule I was required by rule 204–1(a) [17 CFR 275.204–1(a)] to have been filed with the Commission. *See* Schedule I, instruction 6 [17 CFR 279.1].

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

3. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

4. By amending Schedule I to Form ADV (referenced in § 279.1) to remove all references to "Ohio" and by amending the Instructions to Schedule I to Form ADV (referenced in § 279.1) to remove all references to "Ohio".

Note: The text of Schedule I to Form ADV [§ 279.1] does not and the amendments will not appear in the Code of Federal Regulations.

Dated: January 29, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2703 Filed 2–4–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

RIN 1215–AB09

Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models; Labor Certification Process for Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor, in concurrence with the Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of proposed rulemaking; Extension of comment period.

SUMMARY: This document extends the period for filing comments regarding a proposed rule to implement recent legislation and clarify existing Departmental rules relating to the temporary employment in the United States of nonimmigrants under H–1B visas (20 CFR part 655), and provides an opportunity for additional comments to implement an ACWIA provision which modifies the methodology for the determination of the prevailing wage under the Permanent Labor Certification program (20 CFR part 656).

DATES: Comments must be received on or before February 19, 1999.

ADDRESSES: Submit written comments concerning Part 655 to Deputy Administrator, Wage and Hour Division, ATTN: Immigration Team, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW, Washington, DC 20210. If you want to receive notification that we received your comments, you should include a self-addressed stamped post card. You may submit your comments by facsimile ("FAX") machine to (202) 693–1432. This is not a toll free number.

Submit written comments concerning Part 656 to the Assistant Secretary for Employment and Training, ATTN: Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW, Washington, DC 20210. If you want to receive notification that we received your comments, you should include a self-addressed stamped post card. You may submit your comments by facsimile ("FAX") machine to (202) 208–5844. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: On part 655, contact either of the following:

Michael Ginley, Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3510, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 693–0745 (this is not a toll-free number).

James Norris, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

On Part 656, contact James Norris, Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–5263 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 5, 1999 (64 FR 628), the Department of Labor published a proposed rule intended to revise 20 CFR parts 655 and 656 which concern Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas in Specialty Occupations and as Fashion Models, and the Labor Certification Process for Permanent Employment of Aliens in the United States.

Specifically, the Department published this notice of proposed rulemaking to obtain public comment on issues to be addressed in regulations to implement changes made to the Immigration and Nationality Act (INA) by the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). In addition, the Department is providing an opportunity for additional comments on certain provisions which were previously published for comment as a Proposed Rule in 1995 (60 FR 55339).

The Department also proposed to modify regulations to implement an ACWIA provision which modifies the methodology for the determination of the prevailing wage under the Permanent Labor Certification program (20 CFR part 656). This methodology is also applicable to prevailing wages for the H–1B program. After receiving public comments on this notice of proposed rulemaking, the Department plans to publish an Interim Final Rule (inviting further comment) and a Final Rule (after reviewing all the comments received).

Because of the continuing interest in this proposal, the agency believes that it is desirable to extend the comment period for all interested persons. Therefore, the comment period for the proposed rule, revising 20 CFR parts 655 and 656, is extended to February 19, 1999.

Signed at Washington, DC, this 2nd day of February, 1999.

Raymond J. Uhalde,

Deputy Assistant Secretary for Employment and Training, Employment and Training Administration.

John R. Fraser,

Deputy Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 99–2747 Filed 2–4–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Parts 50 and 51

[Public Notice 2961]

Nationality Procedures—Report of Birth Regulation; Passport Procedures—Revocation or Restriction of Passports Regulation

AGENCY: Bureau of Consular Affairs, State.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations to add new grounds for denying, revoking or canceling a passport, and for canceling a Consular Report of Birth. The proposed rule

would authorize the cancellation of a Consular Report of Birth, or a certification thereof, if it appears that such document was illegally, fraudulently, or erroneously obtained, or was created through illegality or fraud. It also would amend the existing regulation to authorize the cancellation of a United States passport when a person has obtained a United States passport illegally or erroneously, or when the Department of State has been notified that a naturalized person whose order of admission to citizenship and certificate of naturalization, on the basis of which the passport was issued, have been canceled or set aside as the result of a judicial denaturalization procedure.

The proposed rule also amends regulations to replace the procedures for appeal of adverse passport action. Other agency regulations contain provisions for the organization and operation of the Board of Appellate Appeal of the Department of State. Under the proposed rule, the Board of Appellate Review would no longer have jurisdiction to consider appeals from adverse passport actions. The decision of the Deputy Assistant Secretary of State for Passport Services would be final.

DATES: Written comments must be received no later than March 8, 1999.

ADDRESSES: Written comments should be addressed to: Chief, Legal Division, Office of Passport Policy, Planning and Advisory Services, 1111 19th Street, N.W., Suite 260, Washington, D.C. 20524.

FOR FURTHER INFORMATION CONTACT: Sharon Palmer-Royston, Office of Passport Policy and Advisory Services, Bureau of Consular Affairs, Department of State (202) 955–0231.

SUPPLEMENTARY INFORMATION: A passport when issued for its full validity period and a "Report of Birth Abroad of a Citizen of the United States", issued by a consular officer to document a citizen born abroad, are documents established as proof of United States citizenship by the provisions of section 33 of the Department of State Basic Authorities Act of 1956, as amended (22 U.S.C. 2705). 8 U.S.C. 1504 (108 Stat. 4309, October 25, 1994) authorizes the Secretary of State to cancel either of these documents if it appears that they were obtained illegally, fraudulently or erroneously. The proposed rule would amend the regulations to provide for a post-cancellation hearing when a Consular Report of Birth, or certification thereof, is canceled. The provisions of 22 CFR 51.75 already provide for notification in writing of the reasons for the revocation and of the procedures for review to any person who is the subject of a passport cancellation and revocation on the grounds, among others, that the passport was obtained illegally, fraudulently or erroneously. Procedures for review include a hearing available under subsections 51.80 through 51.89 of the passport regulations in 22 CFR part 51. Such a hearing concerns only the extent to which the passport was illegally, fraudulently or erroneously obtained and not the citizenship status of the person in whose name the document was issued.

A district court of the United States may denaturalize an individual in a judicial proceeding on the grounds that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation. Any person who is the subject of a passport revocation due to judicial denaturalization, *i.e.*, by reason of noncitizenship, is not entitled to a hearing by the Department of State, pursuant to the provisions in 22 CFR 51.80(a).

The Board of Appellate Review of the Department of State has had jurisdiction to consider appeals from decisions of the Office of Passport Services that constitute adverse action affecting a passport: denial, revocation, or limitation. This jurisdiction has been infrequently utilized, and an adverse action can be reviewed fairly and efficiently without the same kind of administrative hearing that the Board conducts in loss of nationality cases. Changes in the applicable laws, their interpretation, and practice thereunder now make it even more unlikely that administrative appeals will be taken. Accordingly, 22 CFR Part 7 is being amended to eliminate this particular administrative appeal jurisdiction. This amendment to 22 CFR part 51, subpart F, reflects that change and replaces an appeal with a request for reconsideration.

In current practice, the most common adverse passport action is denial or revocation based upon grounds set forth in 22 CFR section 51.70(a), such as being subject to a Federal warrant of arrest or being under court ordered restraint. In these cases, the Board of Appellate Review or other appellate body within the Department of State has no authority to affect the underlying ground for adverse passport action, so that this rule would result in no change in existing practice. Similarly, passport denial or revocation as set forth in 22 CFR subsection 51.70(b)(4), the Secretary of State's determination that activities of the affected national abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States, has not been delegated by the Secretary and is not subject to subordinate review.

Accordingly, the findings of fact and recommendations resulting from a hearing before a hearing officer are proposed to be referred to the Deputy Assistant Secretary for Passport Services for decision instead of to the Assistant Secretary for Consular Affairs. The rule would permit the adversely affected person to request reconsideration by the Deputy Assistant Secretary, but the initial decision or the decision based upon request for reconsideration, as the case may be, is final.

The rule would also amend 22 CFR section 51.84 to substitute a more general statement of legal qualifications for representatives for the current reference to the qualification set by the Board of Appellate Review.

Finally, the rule would make clear that nothing in revised 22 CFR section 51.89 bars an adversely affected person from submitting a new passport application as provided for in 22 CFR part 51, subparts B through D.

These proposed changes to the regulations are hereby certified as not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 605(b). In addition, they will not impose information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C., Chapter 35. Nor do these rules have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12988. These rules are exempt from review under E.O. 12988 but have been reviewed and found to be consistent with its objectives.

List of Subjects

22 CFR Part 50

Citizenship and Naturalization

22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, 22 CFR Parts 50 and 51 are proposed to be amended as follows:

PART 50—NATIONALITY PROCEDURES

1. The authority citation for Part 50 is revised to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104, 1502, 1503 and 1504.

2. Section 50.7 is amended by adding a new paragraph (d) as follows:

§ 50.7 Consular Report of Birth Abroad of a Citizen of the United States of America.

* * * * *

(d) A consular report of birth, or a certification thereof, may be canceled if it appears that such document was illegally, fraudulently, or erroneously obtained, or was created through illegality or fraud. The cancellation under this paragraph of such a document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued. A person for or to whom such document has been issued or made shall be given at such person's last known address, written notice of the cancellation of such document, together with the specific reasons for the cancellation and the procedures for review available under the provisions in 22 CFR 51.81 through 51.89.

PART 51—PASSPORTS

1. The authority citation for Part 51 is revised to read as follows:

Authority: 22 U.S.C. 211a; 22 U.S.C. 2651a, 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p 570; sec. 129, Pub. L. 102–138, 105 Stat. 661; 8 U.S.C. 1504.

2. Section 51.72 is amended by revising paragraph (b) and adding paragraph (c) as follows:

§ 51.72 Revocation or restriction of passports.

* * * * *

(b) The passport has been obtained illegally, by fraud, or has been fraudulently altered, or has been fraudulently misused, or has been issued in error; or

(c) The Department of State is notified that a certificate of naturalization issued to the applicant for or bearer of the passport has been canceled by a federal court.

3. Section 51.80 is revised to read as follows:

§ 51.80 Applicability of §§ 51.81 through 51.89.

(a) The provisions of §§ 51.81 through 51.89 apply to any action of the Secretary taken on an individual basis in denying, restricting, revoking or invalidating a passport or a Consular Report of Birth, or in any other way adversely affecting the ability of a person to receive or use a passport except action taken by reason of:

(1) Noncitizenship,

(2) Refusal under the provisions of § 51.70(a)(8),

(3) Refusal to grant a discretionary exception under the emergency or humanitarian relief provisions of § 51.71(c), or

(4) Refusal to grant a discretionary exception from geographical limitations of general applicability.

(b) The provisions of this subpart shall otherwise constitute the administrative remedies provided by the Department to persons who are the subject of adverse action under §§ 51.70, 51.71 or 51.72.

5. Section 51.83 is amended by revising the phrase "Administrator of" to read "Deputy Assistant Secretary for Passport Services in" and by removing "Security and".

6. Section 51.84 is amended by revising the phrase "must possess the qualifications prescribed for practice before the Board of Appellate Review" to read "must be admitted to practice in any State of the United States, the District of Columbia, or any territory or possession of the United States".

7. Section 51.89 is revised to read as follows:

§ 51.89 Decision of Deputy Assistant Secretary for Passport Services.

The person adversely affected shall be promptly notified in writing of the decision of the Deputy Assistant Secretary for Passport Services, and, if the decision is adverse to that person, the notification shall state the reasons for the decision. The notification shall also state that the adversely affected person may request reconsideration within 60 days from the date of the notice of the adverse action. If no request is made within that period, the decision is considered final and not subject to further administrative review; a decision on a request for reconsideration is also administratively final. Nothing in this section, however, shall be considered to bar the adversely affected person from submitting a new passport application as provided for in subparts B through D of this part.

Dated: December 29, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 99–2698 Filed 2–4–99; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[REG–246256–96]

RIN 1545–AV60

Failure by Certain Charitable Organizations To Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code (Code). In addition, this document announces that persons wishing to testify in the Los Angeles, California, area will be able to make their presentations at an IRS remote videoconference site.

DATES: The public hearing will be held on Tuesday, March 16, 1999, at 1 p.m. (EDT), and will continue Wednesday, March 17, 1999, at 1 p.m., if necessary. Requests to speak and outlines of oral comments must be received by Wednesday, February 24, 1999.

ADDRESSES: The public hearing will be held in the auditorium of the New Carrollton Federal Building (Building A), 5000 Ellin Street, New Carrollton, Maryland. The videoconference site for persons testifying in Los Angeles is room 5003 in the Federal Building, 300 N. Los Angeles Street, Los Angeles, California.

Mail requests to speak and outlines to: CC:DOM:CORP:R (REG–246256–96), room 5226, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–246256–96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations issued under section 4958 of the Code. These regulations (REG–246256–96) appeared in the **Federal Register** (63 FR 41486), August 4, 1998, and in the Internal Revenue Bulletin (1998–34 IRB 9), August 24, 1998. No hearing was scheduled at the time of publication of the proposed regulations.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing, except that persons who did not file written comments within the time prescribed by the notice of proposed rulemaking (*i.e.*, November 2, 1998) will be permitted to make oral comments at the public hearing by submitting their requests to speak and outlines in a timely manner. Any persons who wish to present oral comments at the hearing on the proposed regulations should submit an outline of the oral comments/testimony to be presented at the hearing, as well as the time they wish to devote to each subject (signed original and eight (8) copies). Submissions must be received no later than February 24, 1999.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation, exclusive of the time consumed by the government panel in asking questions of the speaker and answers to those questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Federal Building more than 15 minutes before the hearing starts. Hearing times at the Los Angeles, California, videoconference site will be concurrent with the hearing in New Carrollton, Maryland (*i.e.*, 10 a.m. PDT).

Due to a limited seating capacity at the Los Angeles site, no more than 12 people may be accommodated at any one time in the videoconference room. Seating in the videoconference room will be made available based on the order of presentations. IRS personnel will be available at the Los Angeles videoconference site to assist speakers in using the videoconference equipment.

The IRS will prepare and provide at the hearing, free of charge, an agenda showing the scheduling of speakers. Testimony will begin with the speakers at the Los Angeles videoconference site and conclude with presentations by the speakers in New Carrollton.

Cynthia Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–2585 Filed 2–4–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6231–2]

RIN 2060–AE94

Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions From the Synthetic Organic Chemical Manufacturing Industry Wastewater; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The EPA is extending the public comment period on the supplement to the proposed rule for the Standards of Performance for New Stationary Sources: Volatile Organic Compound Emissions from the Synthetic Organic Chemical Manufacturing Industry Wastewater, which was published in the **Federal Register** on December 9, 1998 (63 FR 67988). The purpose of this notice is to extend the public comment period from February 9, 1999, to March 5, 1999, in order to provide commenters additional time to review the proposed rule.

DATES: Comments must be received on or before March 5, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention, Docket No. A–94–32, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460. The docket is available for public inspection and for copying between 8:00 a.m. and 5:30 p.m. Monday through Friday at the above address, or by calling (202) 260–7548 or 260–7549. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed rule, contact Ms. Mary Tom Kissell, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, N.C., 27711. Her telephone number is (919) 541–4516. Her e-mail address is kissell.mary@epa.gov.

Dated: January 29, 1999.

Robert Perciasepe,

Assistant Administrator, OAR.

[FR Doc. 99–2789 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1641

Debarment, Suspension and Removal of Recipient Auditors

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule implements a provision in the Legal Services Corporation's ("Corporation" or "LSC") fiscal year 1996 and subsequent fiscal year appropriations acts which authorized the Office of Inspector General ("OIG") to "remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services. * * * after notice to the auditor and an opportunity for hearing." This rule sets out the debarment, suspension and removal authority of the OIG and informs independent public accountants performing audit services for LSC recipients of their rights, and the standards that will apply, in connection with debarment, suspension and removal actions. The Corporation solicits public comment on the rule in anticipation of adoption of a final rule.

DATES: Comments must be submitted on or before April 6, 1999.

ADDRESSES: Comments should be submitted to the Office of Inspector General, Legal Services Corporation, 750 First St. NE., 11th Floor, Washington, DC 20002–4250. Comments may be submitted by electronic mail (e-mail) to LTarantowicz@oig.lsc.gov.

FOR FURTHER INFORMATION CONTACT: Laurie Tarantowicz, Counsel, Office of Inspector General, (202) 336–8830, LTarantowicz@oig.lsc.gov.

SUPPLEMENTARY INFORMATION: The Corporation's fiscal year 1996 appropriations act authorized the LSC Inspector General ("IG") to "remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services. * * * after notice to the auditor and an opportunity for hearing." Public Law 104–134, 110 Stat. 1321, § 509(d) (1996). This provision has continuing effect in fiscal years 1997, Public Law 104–208, 110 Stat. 3009, § 503(a) (1996) and 1998, Public Law 105–119, 111 Stat. 2440 (1997), and 1999, Public Law 105–277 (1998). In accordance with the statutory

direction to "develop and issue rules of practice," 110 Stat. 1321, § 509(d), the OIG issues this proposed rule.

Pursuant to Executive Order, the Federal government has a government wide system of suspension and debarment. The Executive Office of the President, Office of Management and Budget, has issued guidance setting forth procedures for agencies to follow in establishing procedures for making suspension and debarment decisions. Policy Letter 82–1. Based on this guidance, agencies have promulgated regulations, all substantially similar, implementing suspension and debarment. These regulations have been developed after extensive public comment and have withstood considerable judicial scrutiny. This proposed rule is based on the government wide system, but includes some modifications based on the OIG's specific statutory authorization to debar, suspend and remove, and on the particular circumstances of independent public accountants and their relationship to LSC recipients.

Section-by-Section Analysis

Subpart A—General

Section 1641.1 Purpose/Applicability

Recipients are required by statute to have an annual audit conducted by an independent public accountant (IPA). In order to assist in ensuring that recipients receive acceptable audits, the OIG is authorized to debar, suspend and remove IPAs from performing audit services for recipients. This proposed rule sets out that authority and informs IPAs of their rights, and the standards that will apply, in connection with debarment, suspension and removal actions. This proposed rule applies to IPAs performing audit services for entities which receive LSC funds. LSC recipients and subrecipients are required to have an audit performed in accordance with guidance promulgated by the OIG. This is consistent with LSC's general policy extending the requirements and restrictions which apply to recipients to entities which receive transfers of LSC funds from recipients, *see* 45 CFR 1610.7, and with LSC's regulation governing subgrants, 45 CFR Part 1627, which requires subrecipients to obtain an audit in accordance with LSC's audit policy, 45 CFR 1627.3(c).

Section 1641.2 Definitions

This section defines the key terms used in the proposed rule. Many of the terms are defined in the proposed rule as they are defined in the government wide system.

Paragraph (a) defines "adequate evidence," which is the standard of proof for imposing a suspension, as information sufficient to support the reasonable belief that a particular act or omission has occurred. This is a less stringent standard than "preponderance of the evidence," the standard applicable to debarment and removal actions.

Paragraph (b) defines "audit services" as the annual financial statement audit of a recipient. This is the audit required by section 509(a) of LSC's fiscal year 1996 appropriations act. (As discussed above, section 509 of the fiscal year 1996 appropriations act has been incorporated by reference in subsequent fiscal year appropriations acts and continues to be effective, see, e.g., Public Law 105–277 (1998). For ease of reference, this provision of law is hereinafter referred to as "section 509."

Paragraph (c) defines "contract" as an agreement between a recipient and an IPA for an IPA to provide audit services to the recipient. Debarment and suspension affects future contracts between a recipient and an IPA; removal affects existing contracts.

Paragraph (d) defines "conviction" as a judgment or conviction of a criminal offense by any court, whether entered upon a verdict or plea, including pleas of nolo contendere. An IPA may be debarred, suspended or removed if convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same, by any court, whether federal, state, county or municipal. For examples of such offenses, see the discussion under section 1641.7(d) of this section-by-section analysis.

Paragraph (e) defines "debarment." Debarment is a decision by the debarring official to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s). Debarment does not affect existing contracts between a recipient and an IPA. A debarment must be based on a finding, by a preponderance of the evidence, that any of the causes for debarment exist. Debarment may cover an IPA's contracts with all recipients or with one or more specific recipients.

Paragraph (f) defines "debarring official." This is the official responsible for debarment, suspension and removal actions. Under the proposed rule, the debarring official is the OIG legal counsel or person performing that function regardless of title or his or her designee. The IG may designate another staff person as the debarring official if the OIG legal counsel is unavailable.

Because the debarring official may be called upon to render judgment on compliance with applicable auditing standards, some consideration was given to changing the debarring official from the OIG legal counsel to an OIG employee with professional experience in government auditing. Specifically, consideration was given to identifying the Assistant Inspector General for Audit (AIGA), a CPA, as the debarring official. The AIGA, however, will likely be the OIG official who initially identifies the facts giving rise to a possible cause for debarment and recommends that a debarment, suspension or removal action be pursued. The proposed rule identifies the OIG legal counsel as the debarring official because, weighing the two concerns, it was determined that fundamental fairness would require that the process allow for more reflection and some separation of the debarring official from the immediate audit work. Comments on this issue are specifically requested.

Paragraph (g) defines "indictment" for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment. An IPA may be suspended if indicted for any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same.

Paragraph (h) defines "IPA," an independent public accountant.

Paragraph (i) defines "knowingly" to mean that an act was done voluntarily and intentionally and not because of mistake or accident. This term is used in the proposed rule in the context of prohibiting recipients from knowingly awarding contracts to, extending or modifying existing contracts with, or soliciting proposals from IPAs that have been debarred or suspended.

Paragraph (j) defines "material fact" as one which is necessary to determine the outcome of an issue or case and without which the case could not be supported. In certain respects, whether material facts are in dispute determines the extent of the procedures afforded the IPA under the proposed rule. For example, if the debarring official determines that the IPA's response to the notice of proposed debarment does not raise a genuine issue of material fact, the debarment proceeding will be conducted entirely by written submissions.

Paragraph (k) defines "preponderance of the evidence," which is the standard of proof for imposing a debarment or removal, as proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not. This is a more stringent standard than "adequate

evidence," the standard applicable to suspension actions.

Paragraph (l) defines "removal." Removal is a decision by the debarring official to prohibit an IPA from performing audit services in subsequent years of an existing contract. Suppose, for example, that a recipient has entered into a contract with an IPA under which the IPA will perform an audit of the recipient for years 1, 2 and 3. If the IPA is conducting the year-1 audit of the recipient when the IPA is removed by the OIG, removal of the IPA will not prohibit the IPA from completing the year-1 audit. Removal will prohibit the IPA from conducting the year-2 and year-3 audits. Removal must be based on a finding, by a preponderance of the evidence, that any of the causes for debarment exist. Removal may cover an IPA's contracts with one or more recipients.

Paragraph (m) defines "suspension." Suspension is a decision by the debarring official prohibiting an IPA from soliciting or entering into new contracts to perform audit services for recipient(s). Suspension does not affect existing contracts between recipients and IPAs. A suspension must be based on a finding, by adequate evidence, that any of the causes for debarment may exist. Suspension may cover an IPAs contracts with all recipients or with one or more specific recipients.

Section 1641.3 Scope of debarment, suspension and removal

This section sets out the scope of debarment, suspension or removal; that is, the effect of such action on the IPA and, for example, the IPA's divisions and affiliates.

Debarment, suspension or removal of an individual IPA prohibits that IPA from performing audit services as an individual or as an employee, independent contractor, agent or other representative of an IPA firm.

Unless the decision is limited by its terms to specifically identified divisions or other organizational elements, debarment, suspension or removal of an IPA firm prohibits that firm and all its divisions and other organizational elements from performing audit services. The OIG intends to issue decisions which have an impact on only those organizational elements of an IPA firm which were materially involved in the relevant engagement because extending the debarment to other organization elements would go beyond what is necessary to achieve the purposes of debarment, suspension or removal.

In addition, the OIG may include in its debarment, suspension or removal of an IPA firm any firm that is an affiliate, subcontractor, joint venturer, agent or representative of the IPA firm. Such affiliates, etc., may be included in the decision only if such firm was materially involved in the relevant engagement and only if such affiliate, etc., was specifically named and given notice of the proposed action and an opportunity to respond.

Similarly, the OIG may include in its debarment, suspension or removal of an IPA firm an individual officer director or partner responsible for the engagement, or an individual employee, independent contractor, agent, representative or other individual associated with the IPA firm. Such individuals may be included in the decision only if specifically named and given notice of the proposed action and an opportunity to respond. If not named in the decision, such individuals would be prohibited from performing audit services only as a representative of the debarred firm. Otherwise, such individuals are not prohibited from performing audit services.

Section 1641.4 Duration of debarment, suspension and removal

This section provides that a debarment, suspension or removal only becomes effective after the IPA has been provided the opportunity to avail itself of the procedures outlined in this rule (notice and an opportunity to be heard) and a decision is issued by the debarring official.

Subsection (a) sets out the length of time that a debarment will be effective. Generally, a debarment should not exceed three years. Debarment may be effective for less than three years if appropriate after consideration of the evidence presented by the IPA. Debarment may exceed three years in extraordinary circumstances. A longer period may be appropriate, for example, if an IPA has been debarred by a Federal agency for a longer period, see section 1641.7(b), or if an IPA has been convicted of an offense referred to in section 1641.7(d) and will be incarcerated for a period exceeding three years. If a suspension precedes a debarment, the suspension period will be considered in determining the debarment period and the debarment may be effective for less than three years.

After debarment for a specified period has been instituted, the debarring official may extend the debarment for an additional period if necessary to protect LSC funds. The debarment period may not be extended based solely on the facts and circumstances upon which the initial debarment was based, but must be based on new facts, not previously in the record, and will be effective only after the procedures outlined in the proposed rule have been followed.

Subsection (b) defines the duration of suspension. A suspension is a temporary measure, which may be instituted while debarment proceedings are being conducted. In addition, an IPA may be suspended in anticipation of the initiation of debarment proceedings, for example, upon conclusion of an investigation conducted by either the OIG or other authority, upon completion of a debarment proceeding conducted by a Federal agency, pending the outcome of a criminal prosecution, or pending the outcome of proceedings conducted by a sanctioning or licensing body with authority over IPAs, such as the American Institute of Certified Public Accountants (AICPA) or a State Board of Accountancy. If debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated. However, if a law enforcement official, including the police or a prosecuting authority, an official from another OIG, a state licensing body or other organization with authority over IPAs, or a government agency requests an extension of the suspension in writing, the suspension may be extended. Unless a debarment has been initiated, a suspension may not be imposed for more than 18 months.

Subsection (c) defines the duration of removal. A removal is effective for the years remaining on the existing contract between the IPA and the recipient. Because removal affects existing contracts, there is an obvious concern that removal not cause financial harm to the recipient. Although current contracts between recipients and their IPAs may vary, the sample contract included as an appendix to the Audit Guide for Recipients and Auditors (Audit Guide) contains a provision which may be interpreted to allow the recipient to end its relationship with the IPA in the event of removal, see Audit Guide, Appendix B. To clearly address removal (and recognize debarment and suspension), the OIG intends to publish an amendment to the sample agreement. The OIG also believes it would be advisable to send out a notice to recipients when this rule becomes final suggesting that recipients attempt to modify existing contracts if possible, to specifically address removal. Such a term would be required in future contracts between recipients and their IPAs. In the meantime, if a removal action is considered against an IPA with a current contract that does not include

such a term, the OIG will consider this when contemplating removal of the IPA.

Subpart B—Debarment

Section 1641.5 Debarment

The OIG may debar an IPA from performing audit services to all recipients or may debar an IPA from performing audit services for one or more specific recipients. This section informs the IPA and recipients of the effect of both types of debarment. Recipients are prohibited from knowingly awarding contracts to, extending or modifying existing contracts with, or soliciting proposals from debarred IPAs. Although IPAs debarred from providing audit services to selected recipients may contract with other recipients, the IPA must give prior written notice to the debarring official before providing such services to other recipients. In addition, the debarred IPA is required to provide prior written notice of the debarment to any recipient seeking its services.

Section 1641.6 Procedures for Debarment

This section sets out the general procedures for debarment. The specific procedures are set out more fully in subsequent sections. The OIG shall provide an IPA with an opportunity to be heard prior to debarring the IPA. Such hearing will be held entirely by written submissions unless the debarring official finds that there is a genuine dispute of material fact. In addition, an informal meeting may be held between the debarring official and the IPA.

Section 1641.7 Causes for Debarment

The subsections in this section set out the causes for debarment. The causes are based on those set out in the government wide system, but have been modified to recognize the particular circumstances of IPAs performing audits of LSC recipients. The existence of a cause for debarment does not necessarily require that the IPA be debarred; the seriousness of the IPA's acts or omissions and any mitigating circumstances shall be considered in making any debarment decisions.

Subsection (a) allows the OIG to debar an IPA that has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance. Under section 509, LSC recipients are required to have audits conducted in accordance with guidance established by the OIG. Such guidance appears in the OIG Audit Guide and audit bulletins issued by the OIG. The OIG audit guidance incorporates government auditing standards. Under the IG Act, the OIG is required to ensure that audits are conducted in accordance with government auditing standards (established by the Comptroller General).

Subsection (b) allows debarment when an IPA is currently debarred or suspended from contracting with any Federal agency or entity receiving Federal funds. This would include, for example, where the IPA has been debarred consistent with the government wide system for debarment.

Subsection (c) allows debarment if the IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs.

Subsection (d) allows debarment if the IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same. Offenses indicating a breach of trust, dishonesty or lack of integrity include, for example, fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, making false claims, or receiving stolen property.

Subsection (e) allows debarment if the IPA has been found subject to a civil judgement for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same.

Section 1641.8 Notice of Proposed Debarment

This section sets out the information which must be included in the notice of proposed debarment sent to the IPA. Because the IPA will have a specified time from receipt of the notice to respond, see section 1641.18, notice will be sent in such a way as to ensure that the OIG receives evidence of the IPA's receipt of the notice. Under this section, a copy of the notice is sent to any affected recipient and the recipient may comment on the proposed action within the time that the IPA has to respond under section 1641.9.

Section 1641.9 Response to Notice of Proposed Debarment

This section gives the IPA 30 days from receipt of the notice within which to respond. Such response must be in writing and should include information and argument in opposition to the proposed debarment. The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed debarment or to otherwise resolve the matter. Although the meeting shall take such form as the debarring official deems appropriate, if requested, the meeting shall be an in person meeting at LSC headquarters. The meeting must be held within 20 days of the response.

Under subsection (d), if the IPA fails to respond to the notice, this shall be deemed an admission of the existence of the cause(s) for debarment set out in the notice and an acceptance of the period of debarment, and the debarring official may enter a final decision without further proceedings.

Section 1641.10 Additional Proceedings as to Disputed Material Facts

If the debarring official finds that the IPA's submission raises a genuine dispute of material fact and the action is not based on a conviction or civil judgment under section 1641.7(d) or (e), the IPA will be afforded an opportunity to appear (with counsel), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. Where there is no genuine dispute of material fact, an evidentiary hearing is not warranted. In the case of a conviction or civil judgment, the facts underlying the conviction or civil judgment would have been fully adjudicated in another forum and a hearing on those facts would be inappropriate. In addition, there should be no dispute about the existence of the conviction or civil judgment.

If, on the other hand, the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, no such additional proceedings will be provided and the hearing shall be held entirely by written submissions (except to the extent a meeting is held under section 1641.9(c)).

If additional proceedings are to be held, the IPA shall be notified, and such notice shall identify the procedures under which the proceeding will be conducted. A transcribed record of such proceedings shall be prepared, with a copy provided to the IPA without cost. At the debarring official's discretion, disputed material facts may be referred to a fact finder for analysis and recommendation. Such fact finder need not be a member of the OIG staff.

Subpart C—Suspension

The sections in this subpart set out the causes, procedures and effect of a suspension. Suspension procedures are similar to those for debarment. However, the procedures have been streamlined by shortening the time

periods and providing for a strictly show cause procedure, entirely by written submissions, except that an informal meeting may be held.

Section 1641.11 Suspension

A suspension is for a temporary period pending the completion of an investigation or other legal, administrative or debarment proceedings. This section applies section 1641.5, regarding debarment, to suspension. The OIG may suspend an IPA from performing audit services to all recipients or may suspend an IPA from performing audit services for one or more specific recipients. This section informs the IPA and recipients of the effect of both types of suspension.

Section 1641.12 Procedures for Suspension

Before suspending an IPA, the OIG will provide a show cause hearing held entirely by written submissions (except that a meeting between the IPA and the debarring official may be held). The specific procedures are set out more fully in subsequent sections.

Section 1641.13 Causes for Suspension

The causes for suspension are the same as those for debarment. In a suspension, however, there must be adequate evidence that the cause(s) may exist, rather than a preponderance of the evidence that the cause(s) exist as in debarment. In addition, an indictment for the listed types of offenses, rather than a conviction, is sufficient cause for suspension.

Section 1641.14 Notice of Proposed Suspension

The notice for suspension is the same as that for debarment, except a suspension notice includes a directive, returnable in 10 days, to show cause why a suspension should not be instituted.

Section 1641.15 Response to Notice of Proposed Suspension

The IPA's response to the notice of suspension must be received within 10 days of receipt of the notice. The response should contain information similar to that discussed under section 1641.9 relating to debarment. Similar provisions allow for a meeting between the IPA and the debarring official and describe the effect of not responding.

Subpart D—Removal

Section 1641.16 Removal

The OIG may remove an IPA from performing audit services for one or more recipients. This section informs the IPA and recipients of the effect of a removal. Recipients are prohibited from extending existing contracts with removed IPAs. It is likely that the OIG would simultaneously debar (or prohibit the IPA from entering into future contracts with recipients) and remove the IPA, see section 1641.17(b). Absent complete debarment, IPAs removed from providing audit services to selected recipients may contract with other recipients. The IPA, however, must give prior written notice to the debarring official before providing such services to other recipients. In addition, the removed IPA is required to provide prior written notice of the removal to any recipient seeking its services.

Section 1641.17 Notice of Proposed Removal; Response to Notice; Additional Proceedings

The notice, response and limited availability of additional proceedings are the same for removal as they are for debarment.

Subpart E—Decisions

Section 1641.18 Decisions of Debarring Official

Subsection (a) sets out the standard of proof for debarment and removal (preponderance of the evidence) and for suspension (adequate evidence).

Subsection (b) sets out the information that will be included in the administrative record, which will form the basis for the decision.

Subsection (c) notifies IPAs that the failure of the OIG to meet a time requirement does not preclude the OIG from taking the debarment, suspension or removal action.

Subsection (d) sets forth the information that will be contained in the debarring official's decision. Among other things, this includes notifying the IPA that the decision will become a matter of public record. In the government wide system for suspension and debarment, the General Services Administration (GSA) is required to maintain and distribute a current list of all entities debarred or suspended by Federal agencies or by the General Accounting Office (GAO). Although we cannot include IPAs which the OIG debars on this GSA list, the OIG plans to maintain a list of debarred, suspended and removed IPAs, to distribute the list to recipients, and to maintain the list on the OIG website.

Subsection (e) sets out the debarring official's authority to withdraw the notice of debarment, suspension or removal, where appropriate, or to terminate the proceedings, and subsection (f) sets out the debarring official's authority to settle the action and to place appropriate conditions on the IPA.

Section 1641.19 Exceptions to Debarment, Suspension and Removal

In unique circumstances, where there are compelling reasons to use a particular IPA for a specific task, the recipient requiring such services may submit to the OIG a request to except the IPA from the effects of the debarment, suspension or removal. The Inspector General may provide an exception for a particular contract upon a written determination that a compelling reason exists for using the IPA in a particular instance. Under certain circumstances, a compelling reason may be that the recipient is in a rural area and there are no other IPAs within a reasonable distance from the recipient.

Section 1641.20 Appeal and Reconsideration of Debarring Official Decisions

This section allows for appeal or reconsideration of the debarring official's decision to debar, suspend or remove an IPA.

Appeals are decided by the Inspector General, who may uphold, reverse or modify the debarring official's decision. A written appeal may be filed by a debarred or removed IPA within 30 days of receipt of the decision and by a suspended IPA within 15 days of receipt. At his discretion, the Inspector General may stay the effect of the debarring official's decision pending the conclusion of review, after determining that a compelling reason to do so exists.

Requests for reconsideration are decided by the debarring official. Such requests must be in writing and supported by documentation justifying the action on reconsideration. Modification of the decision on reconsideration is appropriate only in the circumstances set out in the proposed rule.

List of Subjects in 45 CFR Part 1641

Accounting, Grant programs, Hearing and appeal procedures, Legal services.

For reasons set forth in the preamble, LSC proposes to amend Chapter XVI of Title 45 by adding part 1641 as follows:

PART 1641—DEBARMENT, SUSPENSION AND REMOVAL OF RECIPIENT AUDITORS

Subpart A—General

Sec.

1641.1 Purpose/Applicability.
1641.2 Definitions.
1641.3 Scope of debarment, suspension and removal.

1641.4 Duration of debarment, suspension and removal.

Subpart B—Debarment

1641.5 Debarment.
1641.6 Procedures for debarment.
1641.7 Causes for debarment.
1641.8 Notice of proposed debarment.
1641.9 Response to notice of proposed debarment.
1641.10 Additional proceedings as to disputed material facts.

Subpart C—Suspension

1641.11 Suspension.
1641.12 Procedures for suspension.
1641.13 Causes for suspension.
1641.14 Notice of proposed suspension.
1641.15 Response to notice of proposed suspension.

Subpart D—Removal

1641.16 Removal.
1641.17 Notice of proposed removal; response to notice; additional procedures.

Subpart E—Decisions

1641.18 Decisions of debarring official.
1641.19 Exceptions to debarment, suspension and removal.
1641.20 Appeal and reconsideration of debarring official decisions.

Authority: 42 U.S.C. 2996e(g); Pub. L. No. 105–277 (1998), incorporating by reference Pub. L. No. 104–208, § 503(a), 110 Stat. 1321, § 509(d) (1996).

Subpart A—General

§ 1641.1 Purpose/Applicability.

In order to assist in ensuring that recipients receive acceptable audits, this rule sets out the authority of the Legal Services Corporation ("LSC") Office of Inspector General ("OIG") to debar, suspend and remove independent public accountants ("IPAs") from performing audit services for recipients. This rule informs IPAs of their rights to notice and an opportunity to be heard on actions involving debarment, suspension and removal, and the standards upon which such actions will be taken. This part applies to IPAs performing audit services for recipients, subrecipients or other entities which receive LSC funds and are required to have an audit performed in accordance with guidance promulgated by the OIG.

§ 1641.2 Definitions.

(a) *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Audit services* means the annual financial statement audit of a recipient.

(c) *Contract* means agreement between a recipient and an IPA for an IPA to provide audit services to the recipient.

(d) *Conviction* means a judgment or conviction of a criminal offense by any court, whether entered upon a verdict or plea including pleas of *nolo contendere*.

(e) *Debarment* means a decision by the debarring official to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s) based upon a finding by preponderance of the evidence that any of the causes for debarment set out in § 1641.7 exist. Debarment may cover an IPA's contracts with all recipients or with one or more specific recipients.

(f) *Debarring official* is the official responsible for debarment, suspension and removal actions under this part. The OIG staff person performing the function of legal counsel or his or her designee is the debarring official. In the absence of an OIG legal counsel, the debarring official shall be the OIG staff person designated by the Inspector General.

(g) *Indictment* means an indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(h) *IPA* means an independent public accountant.

(i) *Knowingly* means that an act was done voluntarily and intentionally and not because of mistake or accident.

(j) *Material fact* means one which is necessary to determine the outcome of an issue or case and without which the case could not be supported.

(k) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(l) *Removal* means a decision by the debarring official to prohibit an IPA from performing audit services in subsequent years of an existing contract with one or more specific recipients based upon a finding by a preponderance of the evidence that any of the causes referred to in § 1641.17 exist.

(m) *Suspension* means a decision by the debarring official, in anticipation of a debarment, to prohibit an IPA from soliciting or entering into new contracts to perform audit services for recipient(s) based upon a finding of adequate evidence that any of the causes referred to in § 1641.13 exist. Suspension may cover an IPA's contracts with all recipients or with one or more specific recipients.

§ 1641.3 Scope of debarment, suspension and removal.

An IPA may be debarred, suspended or removed under this part only if the IPA is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

(a) *Actions against individual IPAs.* Debarment, suspension or removal of an individual IPA, debars, suspends or removes that individual from performing audit services as an individual or as an employee, independent contractor, agent or other representative of an IPA firm.

(b) *Actions against IPA firms.* (1) Debarment, suspension or removal of an IPA firm under this rule constitutes debarment, suspension or removal of all its divisions and other organizational elements, unless the decision is limited by its terms to one or more specifically identified divisions or other organizational elements.

(2) The debarment, suspension or removal action contemplated in paragraph (b)(1) of this section may include any firm that is an affiliate, subcontractor, joint venturer, agent or representative of the IPA firm only if such firm was materially involved in the relevant engagement and is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

(3) The debarment, suspension or removal action contemplated in paragraph (b)(1) of this section may include an individual officer, director, or, partner responsible for the engagement, or an individual employee, independent contractor, agent, representative or other individual associated with an IPA firm only if such individual is specifically named and given notice of the proposed action and an opportunity to respond in accordance with this part.

§ 1641.4 Duration of debarment, suspension and removal.

A debarment, suspension or removal is effective as set out in the debarring official's decision to debar, suspend or remove, issued pursuant to § 1641.18.

(a) *Debarment.* (1) Debarment generally should not exceed three years, but may be for a shorter period based on a consideration of the evidence presented by the IPA. Debarment may exceed three years in extraordinary circumstances.

(2) If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(3) The debarring official may extend an existing debarment for an additional period if the debarring official determines, based on additional facts not previously in the record, that an extension is necessary to protect LSC funds. The standards and procedures in

this part shall be applied in any proceeding to extend a debarment.

(b) *Suspension.* (1) Suspension shall be for a temporary period pending the completion of an investigation or other legal or debarment proceedings, including a proceeding conducted by a state licensing body or other organization with authority over IPAs.

(2) If debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless a law enforcement official, an investigative or audit official from another OIG, a state licensing body or other organization with authority over IPAs, or a government agency requests its extension in writing. In such cases, the suspension may be extended for an additional six months. In no event may a suspension be imposed for more than 18 months, unless debarment proceedings have been initiated within that period.

(3) OIG shall notify the appropriate official, state licensing body or other organization with authority over IPAs, or appropriate government agency, if any, of an impending termination of a suspension at least 30 days before the 12-month period expires to allow an opportunity to request an extension. Providing such notification follows Federal policy.

(4) The limit on the duration of a suspension in paragraph (b)(2) of this section may be waived by the affected IPA.

(c) *Removal.* Removal shall be effective for the years remaining on the existing contract(s) between the IPA and the recipient(s).

Subpart B—Debarment

§ 1641.5 Debarment.

(a) IPAs debarred from providing audit services for all recipients are prohibited from soliciting or entering into any new contracts for audit services with recipients for the duration of the specified period of debarment. Recipients shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to recipients as agents or representatives of other IPAs.

(b) IPAs debarred from providing audit services for one or more specific recipient(s) are prohibited from soliciting or entering into any new contracts for audit services with such recipient(s) for the duration of the period of debarment as determined pursuant to this part. The affected recipient(s) shall not knowingly award contracts to, extend or modify existing contracts with, or solicit proposals from, such IPAs. Debarred IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients Debarred IPAs also must provide prior written notice of the debarment to any such recipient.

§ 1641.6 Procedures for debarment.

Before debarring an IPA, the OIG shall provide the IPA with a hearing in accordance with the procedures set out in §§ 1641.7 through 1641.9. Such hearing shall be held entirely by written submissions, except:

(a) Additional proceedings shall be held under § 1641.10 if the debarring official finds there is a genuine dispute of material fact; and/or

(b) A meeting may be held under § 1641.9(c).

§ 1641.7 Causes for debarment.

The debarring official may debar an IPA from performing audit services in accordance with the procedures set forth in this part upon a finding by a preponderance of the evidence that:

(a) The IPA has failed significantly to comply with government auditing standards established by the Comptroller General of the United States, generally accepted auditing standards and/or OIG audit guidance;

(b) The IPA is currently debarred or suspended from contracting with any Federal agency or entity receiving Federal funds, including where the IPA has stipulated to such debarment or suspension;

(c) The IPA's license to practice accounting has been revoked, terminated or suspended by a state licensing body or other organization with authority over IPAs;

(d) The IPA has been convicted of any offense indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same; or

(e) The IPA has been found subject to a civil judgment for any action indicating a breach of trust, dishonesty or lack of integrity, or conspiracy to do the same.

§ 1641.8 Notice of proposed debarment.

(a) Before debarring an IPA, the OIG shall send it written notice of the proposed debarment. Such notice shall:

(1) State that debarment is being considered;

(2) Identify the reasons for the proposed debarment sufficient to put the IPA on notice of the conduct or transaction(s) upon which a debarment proceeding is based;

(3) Identify the regulatory provisions governing the debarment proceeding; and

(4) State that debarment may be for a period of up to three years or longer under extraordinary circumstances. If the OIG has determined that extraordinary circumstances warranting debarment in excess of three years may exist, the notice shall so state.

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, which may comment on the proposed action in the time frame set out in § 1641.9.

§ 1641.9 Response to notice of proposed debarment.

(a) The IPA shall have 30 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed debarment, including any additional specific information pertaining to the possible causes for debarment, and information and argument in mitigation of the proposed period of debarment.

(c) The response may request a meeting with the debarring official to permit the IPA to discuss issues of fact or law relating to the proposed debarment, or to otherwise resolve the pending matters. Any such meeting shall take such form as the debarring official deems appropriate and shall be held within 20 days of the response. If requested by the IPA, such meeting shall be an in person meeting at LSC headquarters.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for debarment set forth in the notice and an acceptance of the period of debarment. In such circumstances, without further proceedings, the debarring official may enter a final decision stating the period of debarment.

§ 1641.10 Additional proceedings as to disputed material facts.

(a) In actions not based upon a conviction or civil judgment under § 1641.7(d) or (e), if the debarring official finds that the IPA's submission raises a genuine dispute of material fact, the IPA shall be afforded an opportunity to appear (with counsel, if desired), submit documentary evidence, present witnesses, and confront any witnesses the OIG presents. If the debarring official finds that the IPA's submission does not raise a genuine issue of material fact, additional proceedings will not be provided. In such case, the

hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.9(c).

(b) If the debarring official determines additional proceedings to be warranted, OIG shall notify the IPA. Such notice shall include notice of the procedures under which such proceedings shall be conducted.

(c) A transcribed record of any additional proceedings shall be prepared and a copy shall be made available to the IPA without cost.

(d) The debarring official may refer disputed material facts to a fact finder, who need not be a member of the OIG staff, for analysis and recommendation.

Subpart C—Suspension

§ 1641.11 Suspension.

(a) A suspension shall be for a temporary period pending the completion of an investigation or such other legal, administrative or debarment proceedings as may ensue.

(b) Section 1641.5 applies to a suspension action, except that the term "suspension" shall be substituted for the term "debarment."

§ 1641.12 Procedures for suspension.

Before suspending an IPA, the OIG shall provide the IPA with a show cause hearing in accordance with the procedures set out in §§ 1641.13 through 1641.15. Such hearing shall be held entirely by written submissions, except that a meeting may be held under § 1641.15(c).

§ 1641.13 Causes for suspension

The debarring official may suspend an IPA in accordance with the procedures set forth in this part upon adequate evidence that:

(a) A cause for debarment under § 1641.7 may exist; or

(b) The IPA has been indicted for any offense described in § 1641.7.

§ 1641.14 Notice of proposed suspension.

(a) Before suspending an IPA, OIG shall send it written notice of cause to suspend. Such notice shall:

(1) Include the information set out in § 1641.8, except the term "suspension" shall be substituted for the term "debarment"; and

(2) Include a directive to show cause, signed by the debarring official, which shall inform the IPA that unless the IPA responds within 10 days as provided in § 1641.15, a suspension will be imposed.

(b) A copy of the notice also shall be sent to the affected recipient(s), if any, who may comment on the proposed action in the time frame set out in § 1641.15.

§ 1641.15 Response to notice of proposed suspension.

(a) The IPA shall have 10 days from receipt of the notice within which to respond.

(b) The response shall be in writing and may include information and argument in opposition to the proposed suspension, including any additional specific information pertaining to the possible causes for suspension, and information and argument in mitigation of the proposed period of suspension.

(c) The response may request a meeting with the OIG official identified in the notice to permit the IPA to discuss issues of fact or law relating to the proposed suspension, or to otherwise resolve the pending matters.

(1) Any such meeting shall take such form as the debarring official deems appropriate and shall be held within 10 days of the response.

(2) No meeting will be held if a law enforcement official, an investigative or audit official from another OIG, a state licensing body or other organization with authority over IPAs, or a governmental agency has advised in writing that the substantial interest of a governmental unit would be prejudiced by such a meeting and the debarring official determines that the suspension is based on the same facts as pending or contemplated legal proceedings referenced by the law enforcement official.

(d) Failure to respond to the notice shall be deemed an admission of the existence of the cause(s) for suspension set forth in the notice and an acceptance of the period of suspension. In such circumstances, the OIG may proceed to a final decision without further proceedings.

Subpart D—Removal

§ 1641.16 Removal.

Removed IPAs are prohibited from performing audit services in subsequent years under an existing contract(s) with one or more specific recipients. The affected recipient(s) shall not extend existing contracts with such IPAs. Removed IPAs also are prohibited from providing audit services to the affected recipient(s) as agents or representatives of other IPAs, and are required to provide prior written notice to the debarring official before providing such services to other recipients. Debarred IPAs also must provide prior written notice of the removal to any such recipient.

§ 1641.17 Notice of proposed removal; response to notice; additional procedures.

(a) Sections 1641.6 through 1641.10 apply in the case of a removal action, except the term "removal" shall be substituted for the term "debarment."

(b) A Notice of Proposed Removal normally will be accompanied by a Notice of Proposed Debarment, and the proceedings may be consolidated.

Subpart E—Decisions

§ 1641.18 Decisions of debarring official.

(a) *Standard of proof.* (1) A debarment or removal must be based on a finding that the cause or causes for debarment or removal are established by a preponderance of the evidence in the administrative record of the case.

(2) A suspension must be based on a finding that the cause or causes are established by adequate evidence in the administrative record of the case.

(b) The administrative record consists of the portion of any information, reports, documents or other evidence identified and relied upon in the Notice of Proposed Debarment, the Notice of Proposed Suspension, or the Notice of Proposed Removal, together with any material portions of the IPA's response and any relevant material submitted by an affected recipient. In the case of debarment, when additional proceedings are necessary to determine disputed material facts, the debarring official shall base the decision on the facts as found, together with consideration of any information and argument submitted by the IPA or an affected recipient and any other information in the administrative record.

(c) Failure of the OIG to meet a time requirement of this part does not preclude the OIG from debarring, suspending or removing an IPA.

(d) *Notice of decisions.* IPAs shall be given prompt notice of the debarring official's decision. A copy of the decision also will be sent to the affected recipient. If the debarring official debars, suspends or removes an IPA, the decision shall:

(1) Set forth the finding(s) upon which the decision is based;

(2) Set forth the effect of the debarment, suspension or removal action and the effective dates of the action;

(3) Refer the IPA to its procedural rights of appeal and reconsideration under § 1641.20; and

(4) Inform the IPA that a copy of the debarring official's decision will be a public document and the fact of debarment or suspension will be a matter of public record.

(e) If the debarring official decides that a debarment, suspension, or removal is not warranted, the Notice may be withdrawn or the proceeding may be otherwise terminated.

(f) If the debarring official deems it appropriate, the debarring official may, at any time, settle by agreement with the IPA a debarment, suspension, or removal action. Such a negotiated settlement may include the imposition of appropriate conditions on the IPA.

§ 1641.19 Exceptions to debarment, suspension and removal.

Exceptions to the effects of debarment, suspension or removal may be available in unique circumstances, where there are compelling reasons to use a particular IPA for a specific task. Requests for such exceptions may be submitted only by the recipient requiring audit services. The Inspector General may except a contract from the effects of debarment, suspension or removal upon a written determination that a compelling reason exists for using the IPA in the particular instance.

§ 1641.20 Appeal and reconsideration of debarring official decisions.

(a) A debarred, suspended or removed IPA may submit the debarring official's decision for appeal or reconsideration in accordance with this section. Within 60 days, IPAs shall be given notice of decisions on appeal and reconsideration.

(b) *Appeal.* (1) A debarred, suspended or removed IPA may appeal the decision to the Inspector General, who may uphold, reverse or modify the debarring official's decision.

(2) The appeal shall be filed in writing:

(i) By a debarred or removed IPA, within 30 days of receipt of the decision;

(ii) By a suspended IPA, within 15 days of receipt of the decision.

(3) The Inspector General, at his or her discretion and after determining that a compelling reason exists, may stay the effect of the debarment, suspension or removal pending conclusion of his or her review of the matter.

(c) *Reconsideration.* (1) A debarred, suspended or removed IPA may submit a request to the debarring official to reconsider the debarment, suspension or removal decision, reduce the period of debarment or removal or terminate the suspension.

(2) Such requests shall be in writing and supported by documentation that the requested action is justified by:

(i) Reversal of the conviction or civil judgment upon which the debarment, suspension or removal was based;

(ii) Newly discovered material evidence;

(iii) Bona fide change in ownership or management;

(iv) Elimination of other causes for which the debarment, suspension or removal was imposed; or

(v) Other reasons the debarring official deems appropriate.

(3) A request for reconsideration based on the reversal of the conviction, civil judgment, or sanction may be filed at any time.

(4) Requests for reconsideration based on other grounds may only be filed during the period commencing 60 days after the debarring official's decision imposing the debarment or suspension. Only one such request may be filed in any twelve month period.

(5) The debarring official's decision on a request for reconsideration is subject to the appeal procedure set forth in paragraph (b) of this section.

Dated: February 2, 1999.

Victor M. Fortuno,

General Counsel.

[FR Doc. 99–2762 Filed 2–4–99; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–15, RM–9440]

Radio Broadcasting Services; Neihart, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 246C2 to Neihart, Montana, as that community's first local broadcast service. The channel can be allotted to Neihart without a site restriction at coordinates 46–56–18 NL and 110–44–18 WL. Canadian concurrence will be requested for the allotment of Channel 246C2 at Neihart.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–15, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2755 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–14, RM–9442]

Radio Broadcasting Services; Columbia Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 276C3 to Columbia Falls, Montana, as that community's second FM broadcast service. The channel can be allotted to Columbia Falls without a site restriction at coordinates 48–22–30 NL and 114–10–54 WL. Canadian concurrence will be requested for the allotment of Channel 276C3 at Columbia Falls.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–14, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2756 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–13, RM–9423]

Radio Broadcasting Services; Palacios, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Prawn Broadcasting Company proposing the allotment of Channel 252A to Palacios, Texas, as that community's second FM broadcast service. The channel can be allotted to Palacios with a site restriction 8.3 kilometers (5.2 miles) northeast at coordinates 28–44–10 NL and 96–08–18 WL.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Henry E. Crawford, Law Offices of Henry E. Crawford, 1150 Connecticut Avenue, N.W., Suite 900, Washington, DC 20036–4192.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–13, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2757 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–12, RM–9441]

Radio Broadcasting Services; Joliet, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 259C3 to Joliet, Montana, as that community's first commercial FM broadcast service. The channel can be allotted to Joliet without a site restriction at coordinates 45–29–06 NL and 108–58–18 WL.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, WY 82209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–12, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2758 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–21, RM–9389]

Radio Broadcasting Services; Perry, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Albert L. Brooks proposing the allotment of Channel 299C3 to Perry, Florida, as that community's third FM broadcast service. The channel can be allotted to Perry at coordinates 29–59–47 NL and 83–39–33 WL. There is a site restriction 14.9 kilometers (9.3 miles) southwest of the community.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John S. Neely, Miller & Miller, P.C., P. O. Box 33003, Washington, DC 20033.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–21, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2767 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–20, RM–9413]

Radio Broadcasting Services; Florence, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Florence Broadcasting Company proposing the allotment of Channel 278A to Florence, Montana, as that community's first local broadcast service. The channel can be allotted to Florence without a site restriction at coordinates 46–37–42 NL and 114–04–48 WL. Canadian concurrence will be requested for the allotment of Channel 278A at Florence.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Andrew S. Kersting, Fletcher, Heald & Hildreth, P.L.C., 1300 N. Seventeenth Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–20, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2768 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–19, RM–9397]

Radio Broadcasting Services; Lockwood, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lockwood Broadcasting Company proposing the allotment of Channel 294A to Lockwood, Montana, as that community's first local broadcast service. The channel can be allotted to Lockwood without a site restriction at coordinates 45–49–09 NL and 108–24–51 WL.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve

the petitioner's counsel, as follows: Frank R. Jazzo, Andrew S. Kersting, Fletcher, Heald & Hildreth, P.L.C., 1300 N. Seventeenth Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–19, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2769 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–16, RM–9403]

Radio Broadcasting Services; Eden, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Kent S. Foster proposing the allotment of Channel 283A to Eden, Texas, as that community's first local broadcast service. The channel can be allotted to Eden without a site restriction at coordinates 31–13–06 NLand 99–50–36 WL. Mexican concurrence will be requested for the allotment of Channel 283A at Eden.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lawrence N. Cohn, Joseph M. di Scipio, Cohn and Marks, 1920 N Street, N.W., Suite 300, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–16, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2770 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–17, RM–9409]

Radio Broadcasting Services; Belt, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Belt Broadcasting Company proposing the allotment of Channel 269A to Belt, Montana, as that community's first local broadcast service. The channel can be allotted to Belt without a site restriction at coordinates 47–23–12 NL and 110–55–18 WL. Canadian concurrence will be requested for the allotment of Channel 269A at Belt.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Frank R. Jazzo, Andrew S. Kersting, Fletcher, Heald & Hildreth, P.L.C., 1300 N. Seventeenth Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–17, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2771 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–18, RM–9414]

Radio Broadcasting Services; Washburn, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by The State of Wisconsin Educational Communications Board proposing the allotment of Channel 284A to Washburn, Wisconsin, and reservation of the channel for noncommercial educational use. The channel can be allotted to Washburn without a site restriction at coordinates 46–40–12 NL and 90–53–36 WL. Canadian concurrence will be requested for the allotment of Channel *284A at Washburn.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow Lohnes & Albertson, pllc, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–18, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2772 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 990128036–9036–01; I.D. 033198A]

RIN 0648–AG49

Designated Critical Habitat: Proposed Critical Habitat for Nine Evolutionarily Significant Units of Steelhead in Washington, Oregon, Idaho, and California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to designate critical habitat for nine evolutionarily significant units (ESUs) of steelhead (*Oncorhynchus mykiss*) previously listed and currently proposed for listing under the Endangered Species Act (ESA). Proposed critical habitat occurs in the States of Washington, Oregon, Idaho, and California. The areas described in this proposed rule represent the current freshwater and estuarine range inhabited by the ESU. Freshwater critical habitat includes all waterways and substrates below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and several dams that block access to former anadromous habitats. The economic and other impacts resulting from this critical habitat designation are expected to be minimal.

DATES: Comments must be received by May 6, 1999. Requests for public hearings must be received by March 22, 1999.

ADDRESSES: Comments on this proposed rule or requests for reference materials should be sent to Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737; telefax (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231–2005, Craig Wingert, (562) 980–4021, or Chris Mobley, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1993, NMFS announced its intent to conduct a status review to identify all coastal steelhead ESU(s) within California, Oregon, and Washington and to determine whether any identified ESU(s) warranted listing under the ESA. Subsequently, on February 16, 1994, NMFS received a petition from the Oregon Natural Resources Council and from 15 co-petitioners to list all steelhead (or specific ESUs, races, or stocks) within the states of California, Oregon, Washington, and Idaho. In response to this petition, NMFS announced the expansion of its status review to include inland steelhead populations occurring in eastern Washington and Oregon and the State of Idaho (59 FR 27527, May 27, 1994).

On August 9, 1996, NMFS published a proposed rule to list 10 ESUs of west coast steelhead as threatened or endangered under the ESA; NMFS solicited comments on the proposal (61 FR 41541, August 9, 1996). In this document, NMFS concluded that the Middle Columbia River ESU warranted classification as a candidate species since NMFS was concerned about the status of steelhead in this area, but lacked sufficient information to merit a proposed listing, and that the Upper Willamette River steelhead ESU did not warrant listing, based on available scientific information.

On August 18, 1997, NMFS published a final rule listing five ESUs as threatened and endangered under the ESA (62 FR 43937). In a separate document published on the same day,

NMFS determined that substantial scientific disagreement remained for five proposed ESUs (62 FR 43974, August 18, 1997). In accordance with section 4(b)(6)(B)(i) of the ESA, NMFS deferred its decision on these remaining steelhead ESUs for 6 months, until February 9, 1998, for the purpose of soliciting additional data. By court order, NMFS' deadline for issuing determinations on these five remaining ESUs was extended to March 13, 1998.

On March 10, 1998, NMFS published a proposed rule to list the Upper Willamette River and Middle Columbia River ESUs as threatened species (63 FR 11798). On March 19, 1998, NMFS published a final rule to list the Lower Columbia River and Central Valley, California, ESUs as threatened species (63 FR 13347). NMFS now proposes critical habitat for all nine currently listed and proposed steelhead ESUs.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. NMFS has determined that sufficient information exists to propose designating critical habitat for the nine ESUs of steelhead previously listed and currently proposed for listing under the ESA. NMFS will consider all available information and data in finalizing this proposal.

The use of the term "essential habitat" within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Definition of Critical Habitat

"Critical habitat" is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the ESA, means " * * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

In designating critical habitat, NMFS considers the following requirements of the species: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (50 CFR 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (50 CFR 424.12(b)).

Consideration of Economic and Other Factors

The economic and other impacts of a critical habitat designation have been considered and evaluated in this proposed rulemaking. NMFS identified present and anticipated activities that may adversely modify the area(s) being considered or that may be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts resulting specifically from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to a species' habitat, in many cases, the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal. In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the "take" prohibitions contained in section 9 of the ESA and associated regulations. "Take," as defined in the ESA means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors, including breeding, feeding, rearing or migration (63 FR 24148, May 1, 1998).

Significance of Designating Critical Habitat

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. The only regulatory impact of a critical habitat designation is through the provisions of section 7 of the ESA. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, or conducted by a Federal agency) and does not affect exclusively state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' current range have been designated. Federal agencies are required to consult with NMFS under section 7 (50 CFR 402.14(a)), when these designated areas

may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides Federal agencies with a clear indication as to when consultation under section 7 of the ESA is required, particularly in cases where the proposed action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when a migratory species is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 (i.e., activities outside critical habitat that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in an agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations that restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time regulations are proposed and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local authorities, such as zoning or wetlands and riparian lands protection, may also benefit critical habitat areas.

Process for Designating Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated, and essential habitat areas and features are identified. If alternative areas exist that would provide for the conservation of the species, such alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features identified are evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, a notification of the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation is promulgated after considering all comments and any new information received on the proposal. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the essential habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections.

Critical Habitat of Steelhead ESUs

Biological information for steelhead can be found in NMFS species status reviews (Busby *et al.*, 1996), species life history summaries (Shapavalov and Taft, 1954; Barnhart, 1986; Pauley *et al.*, 1986; Groot and Margolis, 1991), and in **Federal Register** announcements of proposed and final listing determinations (61 FR 41541, August 9, 1996; 62 FR 43937, August 18, 1997; 63 FR 11798, March 10, 1998; 63 FR 13347, March 19, 1998). Historically, steelhead were distributed throughout the North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula. Presently, the species distribution extends from the Kamchatka Peninsula, east and south along the Pacific coast of North America, to at least Malibu Creek in southern California. There are infrequent anecdotal reports of steelhead occurring as far south as the Santa Margarita River in San Diego County (McEwan and Jackson, 1996). The species' marine distribution south of Punta Gorda, California, appears to encompass a relatively narrow, nearshore strip less than 100 kilometers (km) wide (NOAA, 1990). North of Punta Gorda, the distribution widens to encompass nearly all marine areas north of 42° N latitude in the North Pacific Ocean and Gulf of Alaska (NOAA, 1990). Any attempt to describe the current distribution of steelhead must take into account the fact that many extant populations and densities are a small fraction of historical levels. Hence, some populations considered extinct could in fact exist but be represented by only a few individuals that could escape detection during surveys.

In the Central California Coast ESU, the major populations are found in the Russian and San Lorenzo Rivers. In the South-Central California Coast ESU, major rivers include the Big Sur, Carmel, Little Sur, Pajaro, and Salinas Rivers. In the Southern California Coast ESU, major rivers include Malibu Creek and the Santa Clara, Santa Ynez, and Ventura Rivers. Within the range of the California Central Valley ESU, major tributaries supporting steelhead in the Sacramento-San Joaquin River Basins include the American, Feather, Merced, Mokelumne, Tuolumne, and Yuba Rivers, as well as numerous smaller tributaries.

The Columbia River serves as a migration corridor as well as an important estuary for all of the listed or proposed steelhead ESUs in Washington, Oregon, and Idaho. Major tributaries known to support steelhead in the Upper Columbia River ESU include the Entiat, Methow, Okanogan, and Wenatchee Rivers. In the Snake River Basin ESU, major tributaries include the Clearwater, Grande Ronde, Salmon, Selway, and Tucannon Rivers. In the Middle Columbia River ESU, major tributaries include the Deschutes, John Day, Klickitat, Umatilla, and Yakima Rivers. In the Lower Columbia River ESU, major tributaries include the Clackamas, Cowlitz, Hood, Kalama, Lewis, Sandy, Washougal, and Wind Rivers. Finally, in the Upper Willamette River ESU, major tributaries known to support steelhead include the Molalla and Santiam Rivers.

In addition to the rivers identified, many smaller rivers and streams in each ESU also provide important habitat for steelhead, but access is often constrained by seasonal fluctuations in hydrological conditions.

Defining specific river reaches that are critical for steelhead is difficult because of the current low abundance of the species and of our imperfect understanding of the species' freshwater distribution, both current and historical. The latter is due, in large part, to the lack of comprehensive sampling effort dedicated to monitoring the species. Based on consideration of the best available information regarding the species' current distribution, NMFS believes that the preferred approach to identifying critical habitat for steelhead is to designate all areas accessible to the species within the range of specified river basins in each ESU. NMFS believes that adopting a more inclusive, watershed-based description of critical habitat is appropriate because it (1) recognizes the species' extensive use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages; (2) takes into account the natural variability in habitat use that makes precise mapping problematic (e.g., some streams may have fish present only in years with

plentiful rainfall); and (3) reinforces the important linkage between aquatic areas and adjacent riparian/upslope areas.

While NMFS is proposing to focus on accessible (i.e., fish bearing) river reaches, it is important to note that habitat quality is intrinsically related to the quality of upland areas and upstream areas (including headwater or intermittent streams) which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for steelhead in downstream reaches. NMFS recognizes that estuarine habitats are critical for steelhead and has included them in this designation. Marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of coastal rivers) are also vital to the species, and ocean conditions may have a major influence on steelhead survival. However, NMFS is still evaluating whether these areas currently warrant consideration as critical habitat, particularly whether marine areas require special management consideration or protection. Therefore, NMFS is not proposing to designate critical habitat in marine areas at this time. If additional information becomes available that supports the inclusion of such areas, NMFS may revise this designation.

Introductions of non-native species and habitat modifications have resulted in increased predator populations in numerous river systems, thereby increasing the level of predation experienced by salmonids. Predation by marine mammals is also of concern in areas experiencing dwindling steelhead run sizes. NMFS recently published a report describing the impacts of California sea lions and Pacific harbor seals upon salmonids and on the coastal ecosystems of Washington, Oregon, and California (NMFS, 1997). This report concludes that, in certain cases where pinniped populations co-occur with depressed salmonid populations, salmon populations may experience severe impacts due to predation. An example of such a situation is Ballard Locks, Washington, where sea lions are known to consume significant numbers of adult winter steelhead. This study further concludes that data regarding pinniped predation is quite limited and that substantial additional research is needed to fully address this issue. Existing information on the seriously depressed status of many salmonid stocks is sufficient to warrant actions to remove pinnipeds in areas of co-occurrence where pinnipeds prey on depressed salmonid populations (NMFS, 1997).

Essential features of steelhead critical habitat include adequate (1) substrate; (2) water quality; (3) water quantity; (4) water temperature; (5) water velocity; (6) cover/shelter; (7) food; (8) riparian vegetation; (9) space; and (10) safe passage conditions. Given the vast geographic range occupied by each of these steelhead ESUs and the diverse habitat types used by the various life stages, it is not practical to describe specific values or conditions for each of these essential habitat features. However, good summaries of these environmental parameters and freshwater factors that have contributed to the decline of this and other salmonids can be found in reviews by Barnhart (1986), Pauley *et al.* (1986), California Advisory Committee on Salmon and Steelhead Trout (CACSST) (1988), Bjornn and Reiser (1991), Nehlsen *et al.* (1991), California State Lands Commission (1993), Reynolds *et al.* (1993), Botkin *et al.* (1995), McEwan and Jackson (1996), NMFS (1996), and Spence *et al.* (1996).

An array of management issues encompasses these habitats and their features, and special management considerations will be needed, especially on lands and streams under Federal ownership (see Activities That May Affect Critical Habitat and Need for Special Management Considerations or Protection). While marine areas are also a critical link in the species' life cycle, NMFS has not yet concluded that special management considerations are needed to conserve the habitat features in these areas. Hence, only the freshwater and estuarine areas (and their adjacent riparian zones) are being proposed for critical habitat at this time.

Adjacent Riparian Zones

NMFS' past critical habitat designations for listed anadromous salmonids have included the adjacent riparian zone as part of the designation. In the final designations for Snake River spring/summer chinook, fall chinook, and sockeye (58 FR 68543, December 28, 1993), NMFS included the adjacent riparian zone as part of critical habitat and defined it in the regulation as those areas within a horizontal distance of 300 feet (91.4 meters) from the normal high water line. In the critical habitat designation for Sacramento River winter run chinook (58 FR 33212, June 16, 1993), NMFS included "adjacent riparian zones" as part of the critical habitat but did not define the extent of that zone in the regulation. The preamble to that rule stated that the adjacent riparian zone was limited to "those areas that provide cover and shade."

Streams and stream functioning are inextricably linked to adjacent riparian and upland (or upslope) areas. Streams regularly submerge portions of the riparian zone via floods and channel migration, and portions of the riparian zone may contain off-channel rearing habitats used by juvenile salmonids during periods of high flow. The riparian zone also provides an array of important watershed functions that directly benefit salmonids. Vegetation in the zone shades the stream, stabilizes banks, and provides organic litter and large woody debris. The riparian zone stores sediment, recycles nutrients and chemicals, mediates stream hydraulics, and controls microclimate. Healthy riparian zones help ensure water quality essential to salmonids as well as the forage species they depend on (Reiser and Bjornn, 1979; Meehan, 1991; FEMAT, 1993; and Spence *et al.*, 1996). Human activities in the adjacent riparian zone, or in upslope areas, can harm stream function and can harm salmonids, both directly and indirectly, by interfering with the watershed functions described here. For example, timber harvest, road-building, grazing, cultivation, and other activities can increase sediment, destabilize banks, reduce organic litter and woody debris, increase water temperatures, simplify stream channels, and increase peak flows. These adverse modifications reduce the value of habitat for salmon and, in many instances, may result in injury or mortality of fish. Because human activity may adversely affect these watershed functions and habitat features, NMFS concluded the adjacent riparian zone could require special management consideration, and, therefore, was appropriate for inclusion in critical habitat.

The Snake River salmon critical habitat designation relied on analyses and conclusions reached by the Forest Ecosystem Management Assessment Team (FEMAT, 1993) regarding interim riparian reserves for fish-bearing streams on Federal lands within the range of the northern spotted owl. The interim riparian reserve recommendations in the FEMAT report were based on a systematic review of the available literature, primarily for forested habitats, concerning riparian processes as a function of distance from stream channels. The interim riparian reserves identified in the FEMAT report for fish-bearing streams on Federal forest lands are intended to (1) provide protection to salmonids, as well as riparian-dependent and associated species, through the protection of riparian processes that influence stream function, and (2) provide a high level of fish habitat and riparian protection until

site-specific watershed and project analyses can be completed. The FEMAT report identified several alternative ways that interim riparian reserves providing a high level of protection could be defined, including the 300-foot (91.4 meter) slope distance, a distance equivalent to two site potential tree heights, the outer edges of riparian vegetation, the 100-year flood plain, or the area between the edge of the active stream channel to the top of the inner gorge, whichever is greatest. The U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM) ultimately adopted these riparian reserve criteria as part of an Aquatic Conservation Strategy aimed at conserving fish, amphibians, and other aquatic- and riparian-dependent species in the Record of Decision for the Northwest Forest Plan (FEMAT ROD, 1994).

While NMFS has used the findings of the FEMAT report to guide its analyses in ESA section 7 consultations with the USFS and BLM regarding management of Federal lands, NMFS recognizes that the interim riparian reserves may be conservative with regard to the protection of adjacent riparian habitat for salmonids since they are designed to protect salmonids as well as terrestrial species that are riparian dependent or associated. Moreover, NMFS' analyses have focused more on the stream functions important to salmonids and on how proposed activities will affect the riparian area's contribution to properly functioning conditions for salmonid habitat.

Since the adoption of the Northwest Forest Plan, NMFS has gained experience working with Federal and non-Federal landowners to determine the likely effects of proposed land management actions on stream functions. In freshwater and estuarine areas, these activities include, but are not limited to agriculture; forestry; grazing; bank stabilization; construction/urbanization; dam construction/operation; dredging and dredged spoil disposal; habitat restoration projects; irrigation withdrawal, storage, and management; mineral mining; road building and maintenance; sand and gravel mining; wastewater/pollutant discharge; wetland and floodplain alteration; and woody debris/structure removal from rivers and estuaries. NMFS has developed numerous tools to assist Federal agencies in analyzing the likely impacts of their activities on anadromous fish habitat. With these tools, Federal agencies are better able to judge the impacts of their actions on salmonid habitat, taking into account the location and nature of their actions. NMFS' primary tool guiding Federal agencies is a document titled "Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" (NMFS, 1996a). This document presents guidelines to facilitate and standardize determinations of "effect" under the ESA and includes a matrix for determining the condition of various habitat parameters. This matrix is being implemented in several northern California and Oregon coastal watersheds and is expected to help guide efforts to define salmonid risk factors and conservation strategies throughout the West Coast.

Several recent literature reviews have addressed the effectiveness of various riparian zone widths for maintaining specific riparian functions (e.g., sediment control, large woody debris recruitment) and overall watershed processes. These reviews provide additional useful information about riparian processes as a function of distance from stream channels. For example, Castelle *et al.* (1994) conducted a literature review of riparian zone functions and concluded that riparian widths in the range of 30 meters (98 feet) appear to be the minimum needed to maintain biological elements of streams. They also noted that site-specific conditions may warrant substantially larger or smaller riparian management zones. Similarly, Johnson and Reba (1992) summarized the technical literature and found that available information supported a minimum 30-meter riparian management zone for salmonid protection.

A recent assessment funded by NMFS and several other Federal agencies reviewed the technical basis for various riparian functions as they pertain to salmonid conservation (Spence *et al.*, 1996). These authors suggest that a functional approach to riparian protection requires a consistent definition of riparian ecosystems based on "zones of influence" for specific riparian processes. They noted that in constrained reaches where the active channel remains relatively stable through time, riparian zones of influences may be defined based on site-potential tree heights and distance from the active channel. In contrast, they note that, in unconstrained reaches (e.g., streams in broad valley floors) with braided or shifting channels, the riparian zone of influence is more difficult to define, but recommend that it is more appropriate to define the riparian zone based on some measure of the extent of the flood plain.

Spence *et al.* (1996) reviewed the functions of riparian zones that are essential to the development and maintenance of aquatic habitats favorable to salmonids and the available literature concerning the riparian distances that would protect these functional processes. Many of the studies reviewed indicate that riparian management widths designed to protect one function in particular, recruitment of large woody debris, are likely to be adequate to protect other key riparian functions. The reviewed studies concluded that the vast majority of large woody debris is obtained within one site-potential tree height from the stream channel (Murphy and Koski, 1989; McDade *et al.*, 1990; Robison and Beschta, 1990; Van Sickle and Gregory, 1990; FEMAT, 1993; and Cederholm, 1994). Based on the available literature, Spence *et al.* (1996) concluded that fully protected riparian management zones of one site potential tree would adequately maintain 90 to 100 percent of most key riparian functions of Pacific Northwest forests if the goal was to maintain instream processes over a time frame of years to decades.

Based on experience gained since the designation of critical habitat for Snake River salmon and after considering public comments and reviewing additional scientific information regarding riparian habitats, NMFS defines steelhead critical habitat based on key riparian functions. Specifically, the adjacent riparian area is defined as the area adjacent to a stream that provides the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. Specific guidance on assessing the potential impacts of land use activities on riparian functions can be obtained by consulting with NMFS (see **ADDRESSES**), local foresters, conservation officers, fisheries biologists, or county extension agents.

The physical and biological features that create properly functioning salmonid habitat vary throughout the range of steelhead and the extent of the adjacent riparian zone may change accordingly depending on the landscape under consideration. While a site-potential tree height can serve as a reasonable benchmark in some cases, site-specific analyses provide the best means to characterize the adjacent riparian zone because such analyses are more likely to accurately capture the unique attributes of a particular landscape. Knowing what may be a limiting factor to the properly functioning condition of a stream channel on a land use or land type basis

and how that may or may not affect the function of the riparian zone will significantly assist Federal agencies in assessing the potential for impacts to listed steelhead. On Federal lands within the range of the northern spotted owl, Federal agencies should continue to rely on the Aquatic Conservation Strategy of the Northwest Forest Plan to guide their consultations with NMFS. Where there is a Federal action on non-Federal lands, Federal agencies should consider the potential effects of the activities they fund, permit, or authorize on the riparian zone adjacent to a stream that may influence the following functions: shade, sediment delivery to the stream, nutrient or chemical regulation, streambank stability, and the input of large woody debris or organic matter. In areas where the existing riparian zone is seriously diminished (e.g., in many urban settings and agricultural settings where flood control structures are prevalent), Federal agencies should focus on maintaining any existing riparian functions and restoring others where appropriate, for example, by cooperating with local watershed groups and landowners. NMFS acknowledges in its description of riparian habitat function that different land use types (e.g., timber, urban, and agricultural) will have varying degrees of impact and that activities requiring a Federal permit will be evaluated on the basis of disturbance to the riparian zone. In many cases the evaluation of an activity may focus on a particular limiting factor for a water course (e.g., temperature, stream bank erosion, sediment transport) and whether that activity may or may not contribute to improving or degrading the riparian habitat.

Finally, NMFS emphasizes that a designation of critical habitat does not prohibit landowners from conducting actions that modify streams or the adjacent terrestrial habitat. Critical habitat designation serves to identify important areas and essential features within those areas, thus alerting both Federal and non-Federal entities to the importance of the area for listed salmonids. Federal agencies are required by the ESA to consult with NMFS to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat in a way that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species. The designation of critical habitat will assist Federal agencies in evaluating how their actions on Federal or non-Federal lands may affect listed steelhead and determining when they should consult with NMFS on the impacts of their actions. When a private landowner requires a Federal permit that may result in the modification of steelhead habitat, Federal permitting agencies will be required to ensure that the permitted action, regardless of whether it occurs in the stream channel, adjacent riparian zone, or upland areas, does not appreciably diminish the value of critical habitat for both the survival and recovery of the listed species or jeopardize the species' continued existence. For other actions, landowners should consider the needs of the listed fish and NMFS will assist them in assessing the impacts of actions.

Barriers Within the Species' Range

Within the range of all threatened or endangered ESUs, steelhead face a multitude of barriers that limit the access of juvenile and adult fish to essential freshwater habitats. In some cases these are natural barriers (e.g., waterfalls or high-gradient velocity barriers) that have been in existence for hundreds or thousands of years. Some pose an obvious physical barrier to any anadromous salmonids (e.g., Palouse Falls on the Palouse River, Washington) while others may only be surmountable during years when extreme river conditions (e.g., floods) provide passage.

An example of the latter has recently been brought to NMFS' attention via a petition from Meridian Gold Company (Meridian) to revise critical habitat for Snake River spring/summer chinook salmon in Napias Creek, a tributary to the Salmon River, located near Salmon, Idaho (U.S. Geological Survey Hydrologic Unit "Middle Salmon-Panther, 17060203"). Like chinook salmon, steelhead do not presently occur in Napias Creek; therefore, conclusions regarding the nature of this barrier are difficult since such conclusions must rely on indirect modeling efforts and surveys, as well as historical sources on the presence of anadromous fish. While NMFS believes it is likely steelhead could migrate above the falls at certain streamflows (NMFS, 1998), it is difficult to determine the frequency that steelhead would migrate above the falls or whether steelhead would recolonize habitat areas above the falls. The presence of relict indicator species above the falls (e.g., rainbow trout) tends to indicate steelhead may have occurred above the falls over evolutionary time periods; however, recent historical information indicates steelhead have not occurred in this area in recent times.

After analyzing new information and analyses submitted by Meridian, NMFS concludes Napias Creek Falls may constitute a naturally impassable barrier for steelhead. While the falls may be passable to steelhead at certain flows, available evidence suggests this species would not do so with any regularity. Given the scientific uncertainty associated with this conclusion, NMFS specifically requests data and analyses concerning this and other potentially impassable natural barriers (see Public Comments Solicited).

Manmade barriers created in the past several decades can create significant problems for anadromous salmonids (California Department of Fish and Game (CDFG), 1965; CACSST, 1988; Forest Ecosystem Management Assessment Team (FEMAT), 1993; Botkin *et al.*, 1995; and Nuclear Regulatory Commission, 1996). The extent of such barriers as culverts and road crossing structures that impede or block fish passage appears to be substantial. For example, of 532 fish presence surveys conducted in Oregon coastal basins during the 1995 survey season, nearly 15 percent of the confirmed "end of fish use" were due to human barriers, principally road culverts (Oregon Coastal Salmon Restoration Initiative, 1997). Pushup dams/diversions and irrigation withdrawals also present significant barriers or lethal conditions (e.g., high water temperatures) to steelhead in nearly all ESUs. However, because these manmade barriers can, under certain flow conditions, be surmounted by fish or present only a temporary/seasonal barrier, NMFS does not consider them to delineate the upstream extent of critical habitat.

Since man-made impassable barriers are widely distributed throughout the range of each ESU, they can have a major downstream influence on steelhead. Such impacts may include (1) depletion and storage of natural flows which can drastically alter natural hydrological cycles; (2) increased juvenile and adult mortality due to migration delays resulting from insufficient flows or habitat blockages; (3) loss of sufficient habitat due to deterring and blockage; (4) stranding of fish resulting from rapid flow fluctuations; (5) entrainment of juveniles into poorly screened or unscreened diversions; and (6) increased mortality resulting from increased water temperatures (CACSST, 1988; Bergren and Filardo, 1991; CDFG, 1991; Reynolds *et al.*, 1993; Chapman *et al.*, 1994; Cramer *et al.*, 1995; and NMFS, 1996b). In addition to these factors, reduced flows negatively affect

fish habitats due to increased deposition of fine sediments in spawning gravels, decreased recruitment of large woody debris and spawning gravels, and encroachment of riparian and non-endemic vegetation into spawning and rearing areas resulting in reduced available habitat (CACSST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; and NMFS, 1996b). These dam-related factors will be effectively addressed through ESA section 7 consultations and the recovery planning process.

Numerous hydropower and water storage projects have been built which either block access to areas used historically by steelhead or alter the hydrograph of downstream river reaches. NMFS has identified numerous dams within the range of steelhead ESUs listed or proposed for listing that currently have no fish passage facilities to allow steelhead access to former spawning and rearing habitats (Tables 18 through 26). In some ESUs, blocked habitat constitutes up to 95 percent of the historical range (CACSST, 1988; and Reynolds *et al.*, 1993). While these blocked areas are significant in certain basins (e.g., areas in California's Central Valley), NMFS believes that currently accessible habitat may be sufficient for the conservation of affected steelhead ESUs. NMFS has concluded that the potential for restoring access to former spawning and rearing habitat above currently impassable man-made barriers is a significant factor to be considered in determining whether such habitat is essential for the conservation of species. NMFS solicits comments and scientific information on this issue and will consider such information prior to issuing any final critical habitat designation. This may result in the inclusion of areas above some man-made impassable barriers in a future critical habitat designation.

Throughout the range of west coast steelhead, numerous hydropower dams are undergoing, or are scheduled for, relicensing by the Federal Energy Regulatory Commission (FERC). NMFS will evaluate information developed during the process of relicensing to determine whether fish passage facilities are needed at such dams to restore access to historically available habitat. Even though habitat above such barriers is not currently designated as critical, this conclusion does not foreclose the potential importance of restoring access to these areas. Therefore, NMFS will determine on a case-by-case basis during FERC relicensing proceedings whether fish passage facilities will be required to provide access to habitat that is essential for the conservation of affected steelhead ESUs.

Critical Habitat and Indian Lands

The unique and distinctive political relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights.

Indian lands (Indian lands are defined in the Secretarial Order of June 5, 1997, as "any lands title to which is either: (1) held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation") were retained by tribes or have been set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders, or agreements. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

As a means of recognizing the responsibilities and relationship described here and implementing the Presidential Memorandum of April 24, 1994, Government-to-Government Relations with Native American Tribal Governments, the Secretary of Commerce, and the Secretary of the Interior issued the Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" on June 5, 1997. The Secretarial Order clarifies the responsibilities of NMFS and the U.S. Fish and Wildlife Service (Services) when carrying out authorities under the ESA and requires that they consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable. The Secretarial Order further provides that the Services "shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species."

NMFS has determined that the Indian Reservations containing Indian lands most likely to be affected by a critical habitat designation of listed or proposed steelhead ESUs are the Colville Indian Reservation (Upper Columbia River ESU); Nez Perce Indian Reservation (Snake River ESU); and the Umatilla, Warm Springs, and Yakama Indian Reservations (Middle Columbia River ESU). The major river basins containing reservation lands and listed or proposed steelhead ESUs are identified in Tables 24 through 26. NMFS has not yet identified tribally owned fee lands or other areas where designation of critical habitat may impact tribal trust resources or the exercise of tribal rights. NMFS will identify any such lands during government-to-government consultation with affected tribes.

Although NMFS notified the affected tribes of the proposed critical habitat designation, insufficient time was allotted for meaningful government-to-government consultation. NMFS will continue to consult with the tribes in accordance with the agency's trust responsibilities and the Secretarial Order concerning critical habitat designation in these ESUs. Therefore, NMFS is not proposing to designate critical habitat on the described reservation lands at this time. In addition, tribally owned fee lands and other areas where critical habitat designation may impact the exercise of tribal rights or trust resources may be identified and included or excluded from critical habitat designation in a subsequent action. If any such lands are determined to be essential to conserve listed steelhead, such lands may be designated critical habitat in a subsequent action.

Need for Special Management Considerations or Protection

In order to ensure that the essential habitat areas and features are maintained or restored, special management measures may be needed. Federal activities that may require special management considerations for freshwater and estuarine life stages of listed steelhead include, but are not limited to (1) land management; (2) timber harvest; (3) point and non-point water pollution; (4) livestock grazing; (5) habitat restoration; (6) irrigation water withdrawals and returns; (7) mining; (8) road construction; (9) dam operation and maintenance; and (10) dredge and fill activities. Not all of these activities are necessarily of current concern within every ESU; however, they indicate the potential types of activities that will require consultation in the future. Activities that are conducted on private or state lands that are not federally permitted or funded are not subject to any additional regulations under this rule. However, non-Federal

landowners should be aware that any significant habitat modifications that could adversely affect listed fish, could result in a "taking" (i.e., harming or killing) of the listed species, which is prohibited under section 9 of the ESA. No special management considerations have been identified for steelhead while they are residing in the ocean environment.

Activities That May Affect Critical Habitat

A wide range of activities may affect the essential habitat requirements of steelhead. More in-depth discussions are contained in the **Federal Register** documents announcing the listing determinations for each ESU (61 FR 41541, August 9, 1996; 62 FR 43937, August 18, 1997; 63 FR 11798, March 10, 1998; 63 FR 13347, March 19, 1998) as well as NMFS' document entitled "Steelhead Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead" (NMFS, 1996b). These activities include water and land management actions of Federal agencies (i.e., U.S. Forest Service (USFS), U.S. Bureau of Land Management (BLM), U.S. Army Corps of Engineers (Corps), U.S. Bureau of Reclamation (BOR), Federal Highway Administration (FHA), U.S. Environmental Protection Agency (EPA), Natural Resource Conservation Service (NRCS), National Park Service (NPS), and FERC) and related or similar actions of other federally regulated projects and lands including livestock grazing allocations by USFS and BLM; hydropower sites licensed by FERC; dams built or operated by the Corps or BOR; timber sales conducted by the USFS and BLM; road building activities authorized by the FHA, USFS, BLM, and NPS; and mining and road building activities authorized by the states of Washington, Oregon, Idaho, and California. Other actions of concern include dredge and fill, mining, and bank stabilization activities authorized or conducted by the Corps and habitat modifications authorized by the Federal Emergency Management Agency (FEMA). Additionally, actions of concern could include approval of water quality standards and pesticide labeling and use restrictions administered by EPA.

The Federal agencies that will most likely be affected by this critical habitat designation include the USFS, BLM, BOR, Corps, FHA, NRCS, NPS, FEMA, and FERC. This designation will provide clear notification to these agencies, private entities, and the public of critical habitat designated for steelhead and of the boundaries of the habitat and protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on steelhead and their critical habitat and in determining when consultation with NMFS is appropriate.

Expected Economic Impacts

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see Consideration of Economic and Other Factors). Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential to the conservation of the species. For these steelhead ESUs, NMFS has determined that the present geographic extent of their freshwater and estuarine range is likely sufficient to provide for conservation of the species, although the quality of that habitat needs improvement on many fronts. Because NMFS is not designating any areas beyond the current range of these steelhead ESUs as critical habitat, the designation will result in few, if any, additional economic effects beyond those that may have been caused by listing and by other statutes.

USFS, BLM, BOR, and the Corps manage areas of proposed critical habitat for the steelhead ESUs. The Corps and other Federal agencies that may be involved with funding or permits for projects in critical habitat areas may also be affected by this designation. Because NMFS believes that virtually all "adverse modification" determinations pertaining to critical habitat would also result in "jeopardy" conclusions under ESA Section 7 consultations (i.e., as a result of the species being listed), the designation of critical habitat is not expected to result in significant incremental restrictions on Federal agency activities. Critical habitat designation will, therefore, result in few, if any, additional economic effects beyond those that may have been caused by the ESA listing and by other statutes.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties.

NMFS requests quantitative evaluations describing the quality and extent of marine, estuarine, and freshwater habitats (including adjacent riparian zones) for juvenile and adult steelhead as well as information on areas that may qualify as critical habitat in Washington, Oregon, Idaho, and California. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited to (1) habitat for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. NMFS is also requesting information regarding steelhead distribution and habitat requirements within the range of Indian lands identified in this proposal and whether these lands should be considered essential for the conservation of the listed species or whether recovery can be achieved by limiting the designation to other lands.

NMFS recognizes that there are areas within the proposed boundaries of these ESUs that historically constituted steelhead habitat but may not be currently occupied by steelhead. NMFS requests information about steelhead in these currently unoccupied areas and whether these habitats should be considered essential to the recovery of the species or excluded from designation.

For areas where natural barriers are believed to pose a migration barrier for steelhead (e.g., the Napias Creek Falls issue described earlier in this document), NMFS specifically requests data and analyses concerning the following: (1) Historic accounts indicating steelhead or other anadromous salmonids occurred above the barrier; (2) data or reports analyzing the likelihood steelhead or other anadromous salmonids would migrate above the barrier; and (3) other information indicating that a particular barrier is or is not naturally impassable to anadromous salmonid migration. NMFS will evaluate all new information received concerning this issue and will reconsider this issue in its final steelhead critical habitat designation.

For areas potentially qualifying as critical habitat, NMFS is requesting the following information: (1) The activities that affect the area or could be affected by the designation and (2) the economic

costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs resulting specifically from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

NMFS will review all public comments and any additional information regarding the status and critical habitat of the steelhead ESUs described herein and complete a final rule as soon as practicable. The availability of new information may cause NMFS to reassess the proposed critical habitat designation of steelhead ESUs.

Public Hearings

Joint Departments of Commerce and Interior ESA implementing regulations state that the Secretaries shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list species or to designate critical habitat (50 CFR 424.16(c)(3)). NMFS will schedule public hearings on this proposed rule in the range of affected communities in a subsequent **Federal Register** document. Requests for specific locations or additional public hearings must be received by March 22, 1999. NMFS encourages the public's involvement in such ESA matters.

References

A complete list of all references cited herein and maps describing the range of listed or proposed steelhead ESUs are available upon request (see **ADDRESSES**).

Classification

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

NMFS proposes to designate only the current range of these steelhead ESUs as critical habitat. Areas excluded from this proposed designation include marine habitats in the Pacific Ocean and any historically occupied areas above impassable natural barriers (e.g., long-standing, natural waterfalls). NMFS concludes that the currently inhabited areas within the range of each ESU are the minimum habitat necessary to ensure the species' conservation and recovery.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure that their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Accordingly, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

The Assistant Administrator for Fisheries, NOAA, has determined this rule is not significant for purposes of E.O. 12866.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: January 29, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Section 226.29 is added to subpart C to read as follows:

§ 226.29 Lower Columbia River steelhead (Oncorhynchus mykiss), Upper Willamette River steelhead (Oncorhynchus mykiss), Central California Coast steelhead (Oncorhynchus mykiss), South-Central California Coast steelhead (Oncorhynchus mykiss), Southern California steelhead (Oncorhynchus mykiss), Central Valley steelhead (Oncorhynchus mykiss), Middle Columbia River steelhead (Oncorhynchus mykiss), Upper Columbia River steelhead (Oncorhynchus mykiss), Snake River Basin steelhead (Oncorhynchus mykiss).

Critical habitat is designated to include all river reaches accessible to listed steelhead within the range of the ESUs listed, except for reaches on Indian lands within Indian Reservations defined in Tables 24 through 26 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 18 through 26 to this part for all of the steelhead ESUs listed in this section. Accessible reaches are those within the historical range of the ESUs that can still be occupied by any life stage of steelhead. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of each ESU identified in Tables 18 through 26 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps, Water Supply Paper 2294, 1986, and by the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of California (1978), State of Idaho (1981), State of Oregon (1974), and State of Washington (1974) which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C.

552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(a) *Lower Columbia River steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to listed steelhead in Columbia River tributaries between the Cowlitz and Wind Rivers in Washington and the Willamette and Hood Rivers in Oregon, inclusive. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to the Hood River in Oregon. Excluded are areas above specific dams identified in Table 18 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) *Upper Willamette River steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to listed steelhead in the Willamette River and its tributaries above Willamette Falls. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to, and including, the Willamette River in Oregon. Excluded are areas above specific dams identified in Table 19 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(c) *Central California Coast steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches and estuarine areas accessible to listed steelhead in coastal river basins from the Russian River to Soquel Creek, California (inclusive), and the drainages of San Francisco and San Pablo Bays. Also included are all waters of San Pablo Bay westward of the Carquinez Bridge and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge. Excluded is the Sacramento-San Joaquin River Basin of the California Central Valley as well as areas above specific dams identified in Table 20 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(d) *South-Central California Coast steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches and estuarine areas accessible to listed steelhead in coastal river basins from the Pajaro River (inclusive) to, but not including, the Santa Maria River, California. Excluded are areas above specific dams identified in Table 21 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(e) *Southern California steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches and estuarine areas accessible to listed steelhead in coastal river basins from the Santa Maria River to Malibu Creek, California (inclusive). Excluded are areas above specific dams identified in Table 22 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(f) *Central Valley steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to listed steelhead in the Sacramento and San Joaquin Rivers and their tributaries in California. Also included are river reaches and estuarine areas of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay (north of the San Francisco/Oakland Bay Bridge) from San Pablo Bay to the Golden Gate Bridge. Excluded are areas of the San Joaquin River upstream of the Merced River confluence and areas above specific dams identified in Table 23 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(g) *Middle Columbia River steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to listed steelhead in Columbia River tributaries (except the Snake River) between Mosier Creek in Oregon and the Yakima River in Washington (inclusive). Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to the Yakima River in Washington. Excluded are areas above specific dams identified in Table 24 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(h) *Upper Columbia River steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to listed steelhead in Columbia River tributaries upstream of the Yakima River, Washington, and downstream of Chief Joseph Dam. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington. Excluded are areas above specific dams identified in Table 25 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(i) *Snake River Basin steelhead (Oncorhynchus mykiss) geographic boundaries.* Critical habitat is designated to include all river reaches accessible to listed steelhead in the Snake River and its tributaries in Idaho, Oregon, and Washington. Also included are river reaches and estuarine areas in the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to the confluence with the Snake River. Excluded are areas above specific dams identified in Table 26 to this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

3. Tables 5 through 17 are added and reserved, and tables 18 through 26 are added to part 226 to read as follows:

TABLE 18 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR LOWER COLUMBIA RIVER STEELHEAD, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU [1]	Dams
Middle Columbia-Hood	17070105	Hood River (OR), Skamania (WA).	
Lower Columbia-Sandy	17080001	Clackamas (OR), Multnomah (OR), Clark (WA), Skamania (WA)	Bull Run Dam #2.
Lewis	17080002	Clark (WA), Cowlitz (WA), Skamania (WA)	Merwin Dam.
Lower Columbia-Clatskanie	17080003	Clatsop (OR), Columbia (OR), Cowlitz (WA), Skamania (WA), Wahkiakum (WA).	
Lower Cowlitz	17080005	Cowlitz (WA), Lewis (WA)	Mayfield Dam.
Lower Columbia	17080006	Clatsop (OR), Pacific (WA), Wahkiakum (WA).	
Clackamas	17090011	Clackamas (OR), Marion (OR).	
Lower Willamette	17090012	Clackamas (OR), Columbia (OR), Multnomah (OR), Washington (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Reserved.

TABLE 19 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR UPPER WILLAMETTE RIVER STEELHEAD, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU [1]	Dams
Lower Columbia-Sandy	17080001	Clark (WA)	Bull Run Dam.
Lower Columbia-Clatskanie	17080003	Clatsop (OR), Columbia (WA), Cowlitz (WA), Wahkiakum (WA).	
Lower Columbia	17080006	Clatsop (OR), Pacific (WA), Wahkiakum (WA).	
Middle Fork Willamette	17090001	Lane (OR)	Dexter Dam.
Coast Fork Willamette	17090002	Douglas (OR), Lane (OR)	Dorena Dam.
Upper Willamette	17090003	Benton (OR), Lane (OR), Lincoln (OR), Linn (OR), Polk (OR)	Cougar Dam.
McKenzie	17090004	Lane (OR), Linn (OR)	Big Cliff Dam.
North Santiam	17090005	Linn (OR), Marion (OR).	
South Santiam	17090006	Linn (OR)	Green Peter Dam.
Middle Willamette	17090007	Clackamas (OR), Marion (OR), Polk (OR), Washington (OR), Yamhill (OR).	
Yamhill	17090008	Lincoln (OR), Polk (OR), Tillamook (OR), Washington (OR), Yamhill (OR).	
Molalla-Pudding	17090009	Clackamas (OR), Marion (OR).	
Tualatin	17090010	Clackamas (OR), Columbia (OR), Multnomah (OR), Tillamook (OR), Washington (OR), Yamhill (OR).	
Lower Willamette	17090012	Clackamas (OR), Columbia (OR), Multnomah (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Reserved.

TABLE 20 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL CALIFORNIA COAST STEELHEAD, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU [1]	Dams
Russian	18010110	Mendocino (CA), Sonoma (CA)	Coyote Dam, Warm Springs Dam.
Bodega Bay	18010111	Marin (CA), Sonoma (CA).	
Suisun Bay	18050001	Contra Costa (CA), Napa (CA), Solano (CA).	
San Pablo Bay	18050002	Marin (CA), Napa (CA)	San Pablo Reservoir.
Coyote	18050003	Alameda (CA), San Mateo (CA), Santa Clara (CA)	Calavera Reservoir.
San Francisco Bay	18050004	Alameda (CA), Contra Costa (CA), San Mateo (CA), Santa Clara (CA).	
Tomales-Drake Bays	18050005	Marin (CA), Sonoma (CA)	Nicasio Dam, Seeger Dam.
San Francisco Coastal South	18050006	San Mateo (CA).	
San Lorenzo-Soquel	18060001	San Mateo (CA), Santa Cruz (CA)	Newell Dam.

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Reserved.

TABLE 21 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SOUTH-CENTRAL CALIFORNIA COAST STEELHEAD, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU [1]	Dams
Pajaro	18060002	Monterey (CA), San Benito (CA), Santa Clara (CA), Santa Cruz (CA).	
Estrella	18060004	Monterey (CA), San Luis Obispo (CA).	
Salinas	18060005	Monterey (CA), San Benito (CA), San Luis Obispo (CA)	Salinas Dam.
Central Coastal	18060006	Monterey (CA), San Luis Obispo (CA).	
Alisal-Elkhorn Sloughs	18060011		
Carmel	18060012		Los Padres Dam.

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Reserved.

TABLE 22 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SOUTHERN CALIFORNIA STEELHEAD, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU [1]	Dams
Cuyama	18060007	San Luis Obispo (CA), Santa Barbara (CA)	Vaquero Dam.
Santa Maria	18060008	San Luis Obispo (CA), Santa Barbara (CA).	
San Antonio	18060009	Santa Barbara (CA).	
Santa Ynez	18060010	Santa Barbara (CA)	Bradbury Dam.
Santa Barbara Coastal	18060013	Santa Barbara (CA), Ventura (CA).	
Ventura	18070101	Santa Barbara (CA), Ventura (CA)	Casitas Dam, Robles Dam, Matilija Dam, Vern Freeman Diversion Dam.
Santa Clara	18070102	Los Angeles (CA), Santa Barbara (CA), Ventura (CA)	Santa Felicia Dam.
Calleguas	18070103	Los Angeles (CA), Ventura (CA).	
Santa Monica Bay	18070103	Los Angeles (CA), Ventura (CA)	Rindge Dam.

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Reserved.

TABLE 23 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL VALLEY STEELHEAD, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU [1]	Dams
Sacramento-Lower Cow-Lower Clear.	18020101	Shasta (CA), Tehama (CA).	
Lower Cottonwood	18020102	Shasta (CA), Tehama (CA).	
Sacramento-Lower Thomes	18020103	Butte (CA), Glenn (CA), Tehama (CA)	Black Butte Dam.
Sacramento-Stone Corral	18020104	Butte (CA), Colusa (CA), Glenn (CA), Sutter (CA), Yolo (CA).	
Lower Butte	18020105	Butte (CA), Colusa (CA), Glenn (CA), Sutter (CA).	
Lower Feather	18020106	Butte (CA), Sutter (CA), Yuba (CA)	Oroville Dam.
Lower Yuba	18020107	Yuba (CA).	
Lower Bear	18020108	Placer (CA), Sutter (CA), Yuba (CA)	Camp Far West Dam.
Lower Sacramento	18020109	Placer (CA), Sacramento (CA), Solano (CA), Sutter (CA), Yolo (CA).	
Lower American	18020111	Placer (CA), Sacramento (CA), Sutter (CA)	Nimbus Dam.
Sacramento-Upper Clear	18020112	Shasta (CA)	Keswick Dam.
Cottonwood Headwaters	18020113	Shasta (CA), Tehama (CA).	
Upper Elder-Upper Thomes	18020114	Tehama (CA).	
Upper Cow-Battle	18020118	Shasta (CA), Tehama (CA)	Whiskeytown Dam.
Mill-Big Chico	18020119	Butte (CA), Shasta (CA), Tehama (CA).	
Upper Butte	18020120	Butte (CA), Tehama (CA).	
Honcut Headwaters	18020124	Butte (CA), Yuba (CA).	
Upper Yuba	18020125	Yuba (CA), Nevada (CA)	Englebright Dam.
Upper Coon-Upper Auburn	18020127	Placer (CA).	
Middle San Joaquin-Lower Merced-Lower Stanislaus.	18040002	Calaveras (CA), Merced (CA), San Joaquin (CA), Stanislaus (CA)	Crocker Diversion Dam, La Grange Dam.
San Joaquin Delta	18040003	Alameda (CA), Contra Costa (CA), Sacramento (CA), San Joaquin (CA).	
Lower Calaveras-Mormon Slough.	18040004	Calaveras (CA), San Joaquin (CA), Stanislaus (CA).	
Lower Consumnes-Lower Mokelumne.	18040005	Amador (CA), Sacramento (CA), San Joaquin (CA)	Comanche Dam.
Upper Stanislaus	18040010	Calaveras (CA), San Joaquin (CA), Tuolumne (CA)	Goodwin Dam.

TABLE 23 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR CENTRAL VALLEY STEELHEAD, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT—Continued

Hydrologic unit name	Hydrologic unit No.	Counties contained in hydrologic unit and within range of ESU[1]	Dams
Upper Calaveras	18040011	Calaveras (CA)	New Hogan Dam.
Panoche-San Luis Reservoir	18040014	San Joaquin (CA), Stanislaus (CA).	
Suisun Bay	18050001	Contra Costa (CA), Solano (CA).	
San Pablo Bay	18050002	Contra Costa (CA), Marin (CA), San Francisco (CA), Solano (CA), Sonoma (CA).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Reserved.

TABLE 24 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR MIDDLE COLUMBIA RIVER STEELHEAD, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within range of ESU[1,2]	Dams
Upper Columbia-Priest Rapids	17020016	Benton (WA), Franklin (WA).	
Upper Yakima	17030001	Kittitas (WA), Yakima (WA).	
Naches	17030002	Kittitas (WA), Yakima (WA).	
Lower Yakima	17030003	Benton (WA), Klickitat (WA), Yakima (WA), Yakima Indian Reservation.	
Middle Columbia-Lake Wallula	17070101	Gilliam (OR), Morrow (OR), Umatilla (OR), Benton (WA), Klickitat (WA), Walla Walla (WA), Yakima (WA).	
Walla Walla	17070102	Umatilla (OR), Wallowa (OR), Columbia (WA), Walla Walla (WA).	
Umatilla	17070103	Morrow (OR), Umatilla (OR), Union (OR), Umatilla Indian Reservation.	
Willow	17070104	Morrow (OR), Gilliam (OR).	
Middle Columbia-Hood	17070105	Hood River (OR), Sherman (OR), Wasco (OR), Klickitat (WA), Skamania (WA).	Condit Dam.
Klickitat	17070106	Klickitat (WA), Yakima (WA), Yakama Indian Reservation.	
Upper John Day	17070201	Crook (OR), Grant (OR), Harney (OR), Wheeler (OR).	
North Fork John Day	17070202	Grant (OR), Morrow (OR), Umatilla (OR), Union (OR), Wheeler (OR).	
Middle Fork John Day	17070203	Grant (OR).	
Lower John Day	17070204	Crook (OR), Gilliam (OR), Grant (OR), Jefferson (OR), Morrow (OR), Sherman (OR), Wasco (OR), Wheeler (OR).	
Lower Deschutes	17070306	Jefferson (OR), Sherman (OR), Wasco (OR), Warm Springs Indian Reservation.	Pelton Dam.
Trout	17070307	Crook (OR), Jefferson (OR), Wasco (OR).	
Lower Columbia-Sandy	17080001	Multnomah (OR), Clark (WA), Skamania (WA).	
Lower Columbia-Clatskanie	17080003	Clatsop (OR), Columbia (WA), Cowlitz (WA), Wahkiakum (WA).	
Lower Columbia	17080006	Clatsop (OR), Pacific (WA), Wahkiakum (WA).	
Lower Willamette	17090012	Columbia (OR), Multnomah (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Tribal lands are specifically excluded from critical habitat for this ESU.

TABLE 25 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR UPPER COLUMBIA RIVER STEELHEAD, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within range of ESU[1,2]	Dams
Chief Joseph	17020005	Chelan (WA), Douglas (WA), Okanogan (WA), Colville Indian Reservation.	Chief Joseph Dam.
Okanogan	17020006	Okanogan (WA), Colville Indian Reservation.	
Similkameen	17020007	Okanogan (WA).	
Methow	17020008	Okanogan (WA).	
Upper Columbia-Entiat	17020010	Chelan (WA), Douglas (WA), Grant (WA), Kittitas (WA).	
Wenatchee	17020011	Chelan (WA).	
Moses Coulee	17020012	Douglas (WA), Grant (WA).	
Upper Columbia-Priest Rapids	17020016	Benton (WA), Franklin (WA), Grant (WA), Kittitas (WA), Yakima (WA).	
Middle Columbia-Lake Wallula	17070101	Gilliam (OR), Morrow (OR), Sherman (OR), Umatilla (OR), Benton (WA), Klickitat (WA), Walla Walla (WA).	
Middle Columbia-Hood	17070105	Hood River (OR), Sherman (OR), Wasco (OR), Klickitat (WA), Skamania (WA).	
Lower Columbia-Sandy	17080001	Multnomah (OR), Clark (WA), Skamania (WA).	
Lower Columbia-Clatskanie	17080003	Clatsop (OR), Columbia (WA), Cowlitz (WA), Wahkiakum (WA).	

TABLE 25 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR UPPER COLUMBIA RIVER STEELHEAD, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT—Continued

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within range of ESU [1,2]	Dams
Lower Columbia	17080006	Clatsop (OR), Pacific (WA), Wahkiakum (WA).	
Lower Willamette	17090012	Columbia (OR), Multnomah (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Tribal lands are specifically excluded from critical habitat for this ESU.

TABLE 26 TO PART 226.—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR SNAKE RIVER BASIN STEELHEAD, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within range of ESU [1,2]	Dams
Hells Canyon	17060101	Adams (ID), Idaho (ID), Wallowa (OR)	Hells Canyon Dam.
Imnaha	17060102	Baker (OR), Union (OR), Wallowa (OR).	
Lower Snake-Asotin	17060103	Nez Perce (ID), Wallowa (OR), Asotin (WA), Garfield (WA).	
Upper Grande Ronde	17060104	Grant (OR), Umatilla (OR), Union (OR).	
Wallowa	17060105	Union (OR), Wallowa (OR).	
Lower Grande Ronde	17060106	Union (OR), Wallowa (OR), Asotin (WA), Columbia (WA), Garfield (WA).	
Lower Snake-Tucannon	17060107	Asotin (WA), Columbia (WA), Garfield (WA), Whitman (WA).	
Palouse	17060108	Benewah (ID), Latah (ID), Nez Perce (ID), Franklin (WA), Lincoln (WA), Spokane (WA), Whitman (WA) Nez Perce Indian Reservation.	
Lower Snake	17060110	Columbia (WA), Franklin (WA), Walla Walla (WA).	
Upper Salmon	17060201	Blaine (ID), Custer (ID), Lemhi (ID).	
Pahsimeroi	17060202	Custer (ID), Lemhi (ID).	
Middle Salmon-Panther	17060203	Custer (ID), Lemhi (ID).	
Lemhi	17060204	Lemhi (ID).	
Upper Middle Fork Salmon	17060205	Boise (ID), Custer (ID), Lemhi (ID), Valley (ID).	
Lower Middle Fork Salmon	17060206	Idaho (ID), Lemhi (ID), Valley (ID).	
Middle Salmon-Chamberlain	17060207	Idaho (ID), Lemhi (ID), Valley (ID).	
South Fork Salmon	17060208	Idaho (ID), Valley (ID).	
Lower Salmon	17060209	Idaho (ID), Lewis (ID), Nez Perce (ID).	
Little Salmon	17060210	Adams (ID), Idaho (ID).	
Upper Selway	17060301	Idaho (ID).	
Lower Selway	17060302	Idaho (ID).	
Lochsa	17060303	Clearwater (ID), Idaho (ID).	
Middle Fork Clearwater	17060304	Idaho (ID), Nez Perce Indian Reservation.	
South Fork Clearwater	17060305	Idaho (ID), Nez Perce Indian Reservation.	
Clearwater	17060306	Clearwater (ID), Idaho (ID), Latah (ID), Lewis (ID), Nez Perce (ID), Nez Perce Indian Reservation.	
Lower North Fork Clearwater	17060308	Clearwater (ID), Latah (ID), Shoshone (ID), Nez Perce Indian Reservation.	Dworshak Dam.
Middle Columbia-Lake Wallula	17070101	Gilliam (OR), Morrow (OR), Sherman (OR), Umatilla (OR), Benton (WA), Klickitat (WA), Walla Walla (WA).	
Middle Columbia-Hood	17070105	Hood River (OR), Sherman (OR), Wasco (OR), Klickitat (WA), Skamania (WA).	
Lower Columbia-Sandy	17080001	Multnomah (OR), Clark (WA), Skamania (WA).	
Lower Columbia-Clatskanie	17080003	Clatsop (OR), Columbia (WA), Cowlitz (WA), Wahkiakum (WA).	
Lower Columbia	17080006	Clatsop (OR), Pacific (WA), Wahkiakum (WA).	
Lower Willamette	17090012	Columbia (OR), Multnomah (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Tribal lands are specifically excluded from critical habitat for this ESU.

[FR Doc. 99–2642 Filed 2–4–99; 8:45 am]
BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990119022–9022–01; I.D. 111998B]

RIN 0648–AM13

Fisheries of the Northeastern United States; Amendment 1 to the Atlantic Salmon Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 1 to the Atlantic Salmon Fishery Management Plan (FMP). Specifically, this proposed rule would establish a framework process to add or adjust Atlantic salmon aquaculture management measures, if necessary, to meet the goals and objectives of the Atlantic Salmon FMP. Amendment 1 to the FMP also proposes to add an Atlantic salmon overfishing definition.

DATES: Comments must be received on or before March 22, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Proposed Rule for Amendment 1 to the Atlantic Salmon FMP."

Copies of the Amendment, its regulatory impact review (RIR), environmental assessment (EA), and supporting documents are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Van Pelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Sustainable Fisheries Act of 1996 (SFA) requires the Regional Fishery Management Councils to identify and describe essential fish habitat (EFH) for the species managed. NMFS issued a notice of availability that invited public comments on Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP in the **Federal Register** on December 1, 1998 (63 FR 66110), with a comment period ending date for these amendments of February 1, 1999. These amendments are part of a larger document (omnibus amendment) submitted by the New England Fishery Management Council (NEFMC) for Secretarial review that includes Amendment 1 to the Monkfish FMP prepared jointly by NEFMC and the Mid-Atlantic Fishery Management Council (MAFMC). Because the MAFMC had not yet adopted Monkfish Amendment 1 at the time of the NEFMC's submission of the omnibus amendment to NMFS, the notice of availability published on December 1, 1998 did not invite public comments on Amendment 1 to the Monkfish FMP. Also, the omnibus amendment also includes the EFH components of the Atlantic Herring FMP that is being developed by the NEFMC. The EFH information for Atlantic Herring will be incorporated by reference into the Atlantic Herring FMP when that FMP is submitted for Secretarial approval; therefore, public comments were not invited on the EFH components for Atlantic herring in the aforementioned notice of availability published on December 1, 1998. On December 7, 1998, NMFS issued an amendment to the notice of availability (NOA) published on December 1, 1998, in the **Federal Register** (63 FR 67450), notifying the public that in addition to EFH components, Amendment 1 to the Atlantic Salmon FMP also contains a discussion of an overfishing definition and an aquaculture framework adjustment process for Atlantic salmon. The comment period ending date for those components for Amendment 1 to the Atlantic Salmon FMP is also February 1, 1999. Finally, NMFS issued another amendment to the notice of availability published on December 1, 1998, advising the public that a proposed rule would be published in the **Federal Register** soon, inviting public comments on the proposed framework adjustment process for possible aquaculture operations for Atlantic salmon. The only proposed implementing regulations contained in this omnibus amendment are those related to the Atlantic Salmon FMP.

Proposed Management Measures

Amendment 1 to the Atlantic Salmon FMP proposes to add a definition for Atlantic salmon overfishing and to add a mechanism to allow Atlantic salmon aquaculture management measures to be added or adjusted through a framework adjustment process.

Although salmon is overfished, no additional management measures are proposed by this amendment. Management measures currently in place prohibit harvesting of salmon from Federal waters. As a result, NMFS sent a letter to the NEFMC informing it that since everything within the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) has been done to rebuild this overfished stock, no further action was required to comply with the rebuilding provision of the Magnuson-Stevens Act (Section 304(c)).

This amendment includes a definition of overfishing which was certified with reservation by the Northeast Fisheries Science Center as follows:

> The overfishing definition is based on the assumption that the number of spawning salmon corresponding to MSY is 54,000 (a proxy for B_{MSY}), and that fishing mortality on the current stock of 200 fish should be zero. The stock size is currently well below ½ B_{msy} and B_{limit} (the biomass [or number of spawners] from which the stock could be rebuilt to B_{msy} in 10 years). The amendment does not specify a fishing mortality limit or threshold appropriate for a rebuilt stock, or the stock size above which the fishing mortality rate could be greater than zero. However, given the current status of the stock and protracted rebuilding period, we are unlikely to achieve these thresholds in the near future.
>
> We will continue to monitor stock conditions for Atlantic salmon and study life history. We will recommend adjustments if and when necessary.

In order to allow Atlantic salmon aquaculture projects to be conducted in the EEZ consistent with the goals and objectives of the Atlantic Salmon FMP, it may be necessary to add or adjust Atlantic salmon aquaculture management measures. For the sake of efficiency, this proposed rule would establish a framework process for adding or adjusting Atlantic salmon management measures which is consistent with the processes proposed under Amendment 9 to the Northeast Multispecies FMP and Amendment 7 for the Atlantic Sea Scallop FMP both of which were developed by the NEFMC to bring the applicable FMPs into compliance with the SFA requirements. Amendments 9 and 7, respectively, are currently under Secretarial review.

This action would allow the Council and NMFS to adjust or add one or more of the Atlantic salmon aquaculture management measures identified in Amendment 1, including, but not limited to: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area

closures, and establishment of special management areas or zones.

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the Magnuson-Stevens Act and with other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This rulemaking establishes a framework adjustment mechanism or process, but has no immediate economic or social impacts. Future actions taken to initiate Atlantic salmon aquaculture through this framework process would have their own supporting analyses of economic and social impacts. As a result, an initial regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 1, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 648.41 is added to read as follows:

§ 648.41 Framework specifications.

(a) *Within season management action.* The Council may, at any time, initiate action to add or adjust Atlantic salmon aquaculture management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Atlantic Salmon FMP.

(b) *Adjustment process.* The Council shall develop and analyze appropriate aquaculture management measures over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analysis and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to aquaculture management measures, must come from one or more of the following categories: minimum fish sizes, gear restrictions, minimum mesh sizes, possession limits, tagging requirements, monitoring requirements, reporting requirements, permit restrictions, area closures, establishment of special management areas or zones and any other management measures currently included in the FMP.

(c) *NEFMC recommendation.* After developing aquaculture management actions and receiving public testimony, the NEFMC shall make a recommendation to the Regional Administrator. The NEFMC's recommendation must include supporting rationale and, if aquaculture management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the aquaculture management measures as a final rule. If the NEFMC recommends that the aquaculture management measures should be issued as a final rule, the NEFMC must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended aquaculture management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the NEFMC's recommended aquaculture management measures.

(3) Whether there is an immediate need to protect the resource.

(4) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(d) *Regional Administrator action.* If the NEFMC's recommendation includes adjustments or additions to aquaculture management measures and, after reviewing the NEFMC's recommendation and supporting information:

(1) If the Regional Administrator concurs with the NEFMC's recommended aquaculture management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(2) If the Regional Administrator concurs with the NEFMC's recommendation and determines that the recommended aquaculture management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Administrator concurs with the NEFMC recommendation, the measures will be issued as a final rule in the **Federal Register**.

(3) If the Regional Administrator does not concur, the NEFMC will be notified in writing of the reasons for the non-concurrence.

(e) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson Act.

[FR Doc. 99–2797 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 24
Friday, February 5, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notice of FY 1999 Emerging Markets Program and Solicitation of Private Sector Proposals

AGENCY: Foreign Agricultural Service, USDA.

SUMMARY: The Foreign Agricultural Service (FAS) invites proposals for using technical assistance to promote the export of, and improve the market access for, U.S. agricultural products to emerging markets in fiscal year (FY) 1999 under the Emerging Markets Program (the Program). The Program is authorized by the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (the Act). Proposals will be considered under this announcement from any U.S. private agricultural or agribusiness organization, with certain restrictions as indicated below. Under the Act, up to $10 million are available to fund the Program. All agricultural products except tobacco are eligible for consideration. This notice complements a notice published February 1 announcing the Unified Export Strategy (UES) of FAS.

FAS published on February 1, a **Federal Register** notice on its FY 1999 UES. The UES will provide a means for interested applicants to apply for Program funds. Some applicants may wish to use the UES process and apply under that announcement or to apply under this announcement. The Program will consider all requests whether based on this announcement or the UES announcement. However, the deadline for all applications to the Program is the close of business Friday, March 26, without exception.

FOR FURTHER INFORMATION CONTACT: To ensure that proposals submitted to the Program under this announcement qualify for funding, it is strongly recommended that any organization considering applying to the Program for FY 1999 funding assistance first obtain a copy of the 1999 Program Guidelines. The Guidelines contain additional information, including eligibility for funding under the Program, details of project budgets, and certain funding limitations that must be taken into account in the preparation of proposals. Requests for Program Guidelines and additional information may be obtained from and applications submitted to: Emerging Markets Office, Foreign Agricultural Service, Room 6506 South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1032, Fax: (202) 690–4369. The Guidelines are also available on the FAS Home Page on the Internet: http://www.fas.usda.gov/excredits/em-markets/em-markets.html.

SUPPLEMENTARY INFORMATION:

Program Definitions: The purpose of the Program is to assist U.S. organizations, public and private, to improve market access and to develop and promote U.S. agricultural products and/or processes in low- to middle-income countries that offer promise of emerging market opportunities in the near- to medium-term. This is to be accomplished by providing U.S. technical assistance through projects and activities in those emerging markets.

The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(1) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(2) Has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.

Because funds are limited and the range of potential emerging market countries is worldwide, proposals will be considered which focus on those countries with (1) per capita income less than $9,655 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators 1998]); and (2) population greater than 1 million (may encompass suitable regional groupings, e.g., the islands of the Caribbean Basin).

Program Priorities and Determining Factors: The underlying premise of the Program is that there are distinctive characteristics of emerging agricultural markets that necessitate or benefit significantly from U.S. governmental assistance before the private sector moves to develop these markets through normal corporate or trade promotional activities. The emphasis is on marketing opportunities where there are risks that the private sector would not normally undertake alone, with funding provided for successful activities on a project-by-project basis. The Program complements the efforts of other FAS marketing programs. Once a market access issue has been addressed by this Program, further market development activities may be considered under other programs such as GSM–102 or GSM–103 credit guarantee programs, the Facilities Guarantee Program, the Suppliers' Guarantee Program, the Market Access Program (MAP), or the Foreign Market Development Program (FMD).

In general, priority consideration will be given to those proposals that identify and seek to address specific problems and/or constraints in rural business systems and/or food and agribusiness systems in emerging markets through technical assistance to expand or maintain U.S. agricultural exports.

The following will be used to determine the suitability of projects for funding by the Program:

1. Low U.S. market share and significant market potential.

- Is there a significant lag in U.S. market share of a specific commodity in a given country or countries?
- Is there an identifiable obstacle or competitive disadvantage facing U.S. exporters (e.g., competitor financing, subsidy, competitor market development activity) or systemic obstacle to imports of U.S. products (e.g., inadequate distribution, infrastructure impediments, insufficient information, lack of financing options or resources)?
- What is the potential of a project to generate a significant increase in U.S. agricultural exports in the near-to medium-term? (Estimates or projections of trade benefits to commodity exports, and the basis for evaluating such, must be included in proposals submitted to the Program.)

2. Recent change in a market.

- Is there, for example, a change in a sanitary or phytosanitary trade barrier; a change in an import regime or the lifting of a trade embargo; a shift in the

political or financial situation in a country?

In order to qualify for Program funding, proposals must also include cost-sharing, the willingness of private agribusiness to commit its own funds along with those of the Program to seek export business in an emerging market. No proposal will be considered without the element of cost-sharing. The Program is intended to complement, not supplant, the efforts of the U.S. private sector. The percentage of private funding proposed for a project will therefore be a critical factor in determining which proposals are funded under the Program. While no minimum or maximum is specified, the absolute amount of private sector funding proposed may also affect the decision to fund a proposal. The type of cost-sharing provided by private industry is also not specified; it may be professional time of staff assigned to the project or actual cash invested in the proposed project. However, proposals in which private industry is willing to commit actual funds, rather than contributing such in-kind items as staff resources, will be given priority consideration.

Subject areas for technical assistance activities which promote markets for U.S. agricultural product exports which will be given priority consideration for funding under the Program are:

—Projects and activities which use technical assistance designed specifically to improve market access in emerging foreign markets. Examples: activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share; responses to time-sensitive market opportunities;

—Marketing and distribution of more value-added products, including new products or uses. Examples: food service development; market research on potential for consumer-ready foods or new uses of a product;

—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies may include cross-commodity activities which focus on problems, e.g., distribution, which affect more than one industry. Examples: grain storage handling and inventory systems development; distribution infrastructure development;

—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. Examples: seminars on U.S. food safety standards and regulations; assessing and addressing pest and disease problems that inhibit U.S. product exports;

—Assessments and follow up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, and to determine the potential use for general export credit guarantees, including especially the Facilities Guarantee Program, for commodities, facilities and services. Examples: product needs assessments and market analysis; assessments for using facilities credits to address infrastructural impediments;

—Projects that help foreign governments to collect and use market information and to develop free trade policies that benefit American exporters as well as the target country or countries. Examples: agricultural statistical analysis; development of market information systems; policy analysis;

—Short-term training in broad aspects of agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system. Examples: marketing seminars; transportation seminars; training keyed to opening new or expanding existing markets.

Ineligible activities include in-store promotions, restaurant promotions, branded product promotions (including labeling), advertising for any of these activities and for the preparation and printing of brochures, flyers, posters, etc. Administrative and operational expenses for trade shows are also ineligible. There are other, related items precluded from Program funding detailed in the FY 1999 Program Guidelines.

All agricultural products except tobacco, but including multi-commodities, are eligible for consideration.

Additional criteria to be considered in approving projects are outlined under "Applications" below.

Funding of Proposals: Funding for technical assistance projects is made on the basis of proposals to the Emerging Markets Office. In general, each proposal submitted in response to this announcement will compete against all such proposals received under the same announcement. Proposals will be judged not only on their ability to provide benefits to the organization receiving Program funds, but which also represent the broader interests of the industry which that organization represents.

The limited funds of the Program and the range of emerging markets worldwide in which the funds may be used preclude EMO from approving large budgets for single projects. The Program is intended to provide appropriate USDA assistance to projects which also have a significant amount of financial contributions from other sources, especially U.S. private industry. There is no minimum or maximum amount set for EMO-funded projects; however, most are funded at the level of less than $500,000 and for a duration of one year or less. Funding is normally made available on a cost-reimbursable basis. The EMO may consider proposals on an accelerated basis depending on the technical and time requirements of the proposal. These would be covered through the Technical Issues Resolution Fund, and the Quick Response Market Fund. For details concerning these funds, see the Program Guidelines.

Multi-year Proposals. These may be considered in the context of a strategic plan and detailed plan of implementation. Funding in such cases is normally provided one year at a time, with commitments beyond the first year subject to interim evaluations.

Projects Already in Progress. Funding may be considered for technical assistance projects that have already begun with the support and financial assistance of a private entity, and for which government funding for continuation of the project is requested. Such proposals must meet the criteria of the Program, including cost-sharing for the portion of the project for which government funding is requested.

Project Reports: Results of all projects supported financially by the Program must be reported in a performance report to EMO. Because public funds are used to support the project, these reports will be made available to the public by the EMO.

Eligible Organizations, Activities: Any United States agricultural and/or agribusiness organization, university, or state department of agriculture, is eligible to participate in the Program. Priority will be given to those proposals that include significant support and involvement by private industry.

Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation by U.S. industry.

U.S. market development cooperators may seek funding to address priority, market-specific issues and to undertake activities not already serviced by or

unsuitable for funding under other FAS marketing programs, e.g., FMD and MAP.

Applications: To assist FAS in making determinations under the Program, FAS recommends that all applications contain complete information about the proposed project and that the applications not be longer than ten (10) pages. The recommended information includes: name of person/organization submitting proposal; date of proposal; organization affiliation and address; telephone and fax numbers; full title of proposal; precis of the proposal, including objectives, proposed activities, benefits to U.S. agricultural exports, target country/countries for proposed activities, projected starting date for project, and funding amount requested; summary and detailed description of proposed project; statement of problem (specific trade constraint) to be addressed through the proposed project; benefits to U.S. agricultural exports as a result of the proposed project; supporting market analysis of the target market(s)—brief economic analysis for each commodity and country, including current market conditions and relevant trade data—and existing percentage of U.S. export market share, and the basis or source(s) for this data; information on whether similar activities are or have previously been funded in target country/countries (e.g., under MAP and/or FMD programs); a clearly stated explanation as to why participating organization(s) are unlikely to carry out activities without Federal financial assistance; time line(s) for project implementation; detailed project budget, including other sources of funding for the project and contributions from participating organizations (additional requirements are contained in the Program Guidelines); and Federal tax ID number of the responsible organization. Qualifications of applicant(s) should be included, as an attachment. Applications must be submitted in both printed form and on computer diskette, preferably using Word or WordPerfect, or a compatible format.

Signed at Washington, D.C. on February 2, 1999.

Tim Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 99–2914 Filed 2–4–99; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Utah Northern Goshawk Habitat Management

AGENCY: Forest Service, USDA.

ACTION: Proposal to prepare management direction for Northern Goshawk Habitat Management on the Ashley, Dixie, Fishlake, Manti-LaSal, Uinta and Wasatch-Cache National Forests in the Intermountain Region (R4), USDA Forest Service.

SUMMARY: Notice is hereby given that the Intermountain Region is proposing to amend management direction in specific Forest Plans and/or the Intermountain Regional Guide.

This notice describes the proposed management direction (in the form of goals, standards and guidelines, and monitoring requirements), a desired habitat condition statement giving a portrayal of land conditions expected to result from the implementation of the proposed management direction over time, information concerning public participation, and the name and address of the agency official who can provide additional information. The purpose of this notice is to begin the scoping phase of public involvement in this process.

DATES: Written comments should be sent to the Utah Northern Goshawk Project by March 8, 1999.

ADDRESSES: Send written comments to: USDA Forest Service, Utah Northen Goshawk Project Team, c/o Uinta NF, PO Box 1428, Provo, UT, 84601, *or* on-line at: www.fs.fed.us/r4/goshawk, *or* e-mail to: goshawk3/r4__uinta@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Randall Hayman, 801/342–5100 or 435/865–3700; e-mail: goshawk3/r4__uinta@fs.fed.us.

RESPONSIBLE OFFICIAL: Jack Blackwell, Intermountain Region Forester, 324 25th Street, Ogden, UT 84401.

SUPPLEMENTARY INFORMATION: The Intermountain Region of the Forest Service filed a notice in the **Federal Register** (Vol. 63, No. 172, pages 47224–47225) on September 4, 1998 stating that the Forest Service, in cooperation with the Bureau of Land Management and the USDI, Fish and Wildlife Service (FWS), was reviewing the latest Utah state-wide information relating to the sustainability of habitat for the northern goshawk (Northern Goshawk in Utah: Habitat Assessment and Recommendations (Graham et al. 1999, in press)) and the USDI, FWS 12-month finding on a petition to list the northern goshawk (FR, June 29, 1998, Vol. 63, No. 124, pages 35183–35184). This notice stated that the Intermountain Region was proposing to amend regional direction, Regional Guide, and/or Forest Plans to incorporate interim direction in the form of goals and objectives, desired habitat conditions, standards and guidelines, and monitoring requirements developed in response to new scientific information concerning the management of forested habitat for the northern goshawk and its prey in Utah. At that time, the Forest Service expected the determination of proposed management direction to be completed and available for public review by November 30, 1998. Due to unforeseen delays in the development of this direction, the determination of proposed management direction was not completed until now. The comments received in response to the prior **Federal Register** notice were considered in the development of the proposed management direction that follows.

The Forest Service, in accordance with 36 CFR § 219.19, develops land and resource management plans that, in part, manage fish and wildlife habitat to maintain viable populations of existing native and desired non-native vertebrate species in the particular planning area. Forest Plans describe the long-term direction for managing National Forests. Among other things, decisions in Forest Plans establish multiple-use goals and objectives and establish forest-wide management requirements (standards and guidelines). In compliance with their own laws and regulations, and in accordance with the Council on Environmental Quality (CEQ) regulations, the Forest Service proposes to amend specific Forest Plans and/or Intermountain Regional Guide.

The purpose and need for this new or revised management direction is:

Purpose

The purpose of this action is to provide management direction that maintains or restores functioning forested habitats for the northern goshawk and its prey on National Forest system lands within the Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, and Wasatch-Cache National Forests. Functioning forested habitats are important in sustaining viable populations of northern goshawk in Utah.

Need

A habitat assessment and management recommendations for the northern goshawk and subsequent habitat conservation strategy were developed for the State of Utah in response to suspected downward trends

in goshawk habitat and/or populations. Because of the important role National Forest System lands will play in restoring or maintaining forested habitat for the northern goshawk, there is an immediate need to incorporate the principles and recommendations in these documents into management direction, for the reasons described below.

Changes in forest structure, especially large tree removal, and other forest management activities singly or in combination may negatively affect goshawk populations (Crocker-Bedford 1990). Perhaps one of the greatest influences on habitat is fire exclusion from forest and woodland ecosystems. Successful fire exclusion has altered native successional pathways, resulting in the ingrowth of shade-tolerant tree species throughout Utah. With these changes in habitat came suspected declines in goshawk populations in much of the western United States (Bloom and others 1986, Herron and others 1985, Kennedy 1989). [Graham et al. 1999, in press]

In 1991, the goshawk was designated as a sensitive species in the USDA Forest Service Intermountain Region (Region 4). In March 1997, the Utah Division of Wildlife Resources classified the goshawk as a sensitive species. This designation identifies species in the State that are most vulnerable to population declines or habitat loss and stimulates management actions for the conservation of the species. To address the issue of declining goshawk habitat in Utah, a Northern Goshawk Interagency Technical Team was created. This team was charged with completing an assessment for the State of Utah.

The habitat assessment (Graham et al. 1999, in press) provided a detailed description of current habitat conditions and capabilities and found them adequate to support nesting goshawks at the current time and at the scale analyzed. However, the scientists were not able to predict future habitat conditions because of the great latitude in management allowed by current land management plans and policies on state and federal lands. Current management plans and policies are flexible enough to both permit activities that address habitat needs for the goshawk as well as allow those that do not.

In response to the findings in the habitat assessment, a team of Forest Service biologists, supported by Utah Division of Wildlife Resources, USDI, Fish and Wildlife Service and USDI, Bureau of Land Management biologists, began the development of a Habitat Conservation Strategy (HCS) for the northern goshawk. This strategy, completed in September 1998, recommends additional site specific measures that, if implemented, will ensure that habitat for the goshawk is managed consistently across federal and state lands in Utah. By incorporating the principles recommended in the HCS "agencies will contribute to sustaining short and long term habitat for goshawks which is important to their overall viability across the state. * * * Consistency in management of habitat is key to providing a reasonable probability of goshawk persistence." [HCS, 1998]

All forested habitats in Utah are potentially suitable habitat for the goshawk. This includes coniferous and aspen forests, but does not include woodlands (e.g., pinyon/juniper). The assessment (Graham et al. 1999, in press) found that 84 percent of the medium and high valued nesting habitat, and 81 percent of the optimum and high valued habitat for the northern goshawk in Utah are found on National Forest System lands. Due to the important role National Forest System lands will play in restoring or maintaining habitat for the northern goshawk in Utah, the Forest Service elected to take immediate action to determine how to incorporate principles recommended in the HCS into management actions proposed in the future.

To aid in this determination, each of the six National Forests in Utah completed Supplemental Information Reports (SIRs). The SIRs analyzed if the HCS represented significant new information or changed conditions bearing on their current Land and Resource Management Plan (Forest Plan) management direction or effects identified in the accompanying Final Environment Impact Statement. Preliminary findings in the SIRs indicated that amendments to current Forest Plans and/or the Intermountain Regional Guide will be required to implement some elements of the strategy.

This action will amend management direction in Forest Plans and/or the Intermountain Regional Guide. When forest plans for the affected National Forests are revised or suitably amended (estimated to be 2–4 years out), the management direction will be reviewed and updated as needed. This immediate action will maintain habitat quantity, quality, and distribution on National Forest System lands important to supporting viable populations of goshawks in Utah for the remainder of the current planning period. It will also provide consistency in project design, implementation and monitoring where habitat for the goshawk and its prey is involved within the Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, and Wasatch-Cache National Forests. By taking action now, options for future management direction that these National Forests may want to consider during forest plan revision or amendment efforts will be retained.

It is recognized that the northern goshawk ranges throughout much of the western United States; however, this project only addresses National Forest System lands for the six National Forests stated above. The scope of this project is limited to this area because the Conservation Strategy and Agreement, and the scientific assessment supporting the strategy, only addressed northern goshawk habitat in the State of Utah, "Utah was the largest geographic area used for assessing goshawk habitat. It would have been useful to look at a regional scale to set the Utah assessment in context to explore how the habitat in Utah is related to habitat in adjacent states. But, time, budget, and personnel constraints, did not permit the wider analysis. Only recommendations and inferences on the status of goshawk habitat within Utah were requested by the involved and cooperating agencies." (Graham et al. 1999 (in press)).

Benefits of viewing habitat at larger scales were recognized. However, the biologists involved in the development of the assessment and strategy stated "It is our belief that the use of the state scale (i.e., its aggregation of landscapes) to conduct a habitat based analysis for PVA" [population viability analysis] "will provide us with the information needed to understand the different ecological processes that influence the life histories of this far ranging, broadly distributed species." [HCS]

The Intermountain Regional Forester (Region 4) assembled an interdisciplinary team in October 1998 to begin the development of proposed management direction that responded to the identified purpose and need. The Team Leader is Peter Karp, Forest Supervisor, Uinta National Forest. To help guide the development of the proposed management direction, the team first generated a desired habitat condition statement (DHC). The DHC is a portrayal of land conditions expected to result from implementing the proposed management direction. It describes the desired habitat quantity, quality and distribution for the northern goshawk and its prey that the agency intends to continuously strive for over time.

Desired Habitat Condition

The habitat assessment by Graham et al. (1999, in press) states that all forested landscapes in Utah are potentially suitable as goshawk habitat for some portion of their life cycle (Conservation Strategy and Agreement for the Management of Northern Goshawk Habitat in Utah (HCS), page 4). Forested landscapes include those areas dominated by coniferous and aspen forest; but not woodlands such as pinyon-juniper.

In general, when forested landscapes of Utah are in a properly functioning condition they will provide excellent habitat for the goshawk and its prey (Graham et al. 1999, in press). Desired habitat attributes important to the home range of the goshawk and its prey, as stated in the HCS, include:

1. Diverse forest cover types with strong representation of early seral tree species dominate the landscape.
2. High quality habitat patches that are no more than 60 miles apart, preferably less than 20 miles apart, exist throughout landscapes (connected habitat).
3. Forested landscapes have 40% of the coniferous land area and 30% of the aspen land area dominated by large trees, well distributed. Large trees are defined based on the average size of trees found in the area and by the site potential.
4. Habitats for prey and other associated species are present to meet their needs as described by Reynolds et al. 1992 and Graham et al. 1999, in press (i.e., snags, down woody, cover, etc).
5. A variety of structural stages as recommended by Reynolds et al. (1992) are present.

A balance of structural stages across the landscape is needed to ensure that the larger structural stages are sustained over time. Trees densities in the smaller structural stages should promote accelerated tree growth into the larger structural stages and maintain crown development important to meeting desired canopy closures in the larger stages. Outside of nest areas, it is desired to have open understories in the larger structural stages with trees irregularly spaced (Reynolds et al. 1992; Graham et al. 1999, in press).

An essential component of goshawk home range is goshawk nesting habitat. Nesting habitat and the associated post-fledgling family are an important component in contributing to habitat connectivity across landscapes. This habitat is also important for the continuous recruitment of individuals (goshawks) into the population. Both habitat connectivity and continuous recruitment are important components for sustaining viable populations of the northern goshawk in Utah. Thus, it is desirable to have nesting habitat and the associated post-fledgling areas well-distributed within and across forested landscapes. Desired nest area habitat varies from the overall home range habitat in that it typically occurs in older-aged stands that have a higher density of large trees, high tree canopy cover, and higher understory tree density.

To understand relationships of these desired habitat conditions they must be viewed in scales at tens of thousands of acres or larger. Scales greater than hundreds of thousands of acres are too large to ensure that desired habitat connectivity attributes are sufficiently distributed.

Achieving desired habitat conditions requires the restoration and protection of degraded habitats, protection of native processes (Graham et al. 1999, in press), and maintenance of habitats already in desired conditions. Vegetative management should emphasize managing forest landscapes within their bio-physical limits and understanding how disturbances influence the resulting stand composition and structures (Graham et al. 1999, in press). Native species should be emphasized in forest management activities. Their persistence in landscapes gives the best indication of ecosystem sustainability because native species evolved with the disturbance events of the preceding several thousand years (USDA Forest Service, PFC, 1997).

The habitat outlook should be favorable for the goshawk and its prey when forest management emphasizes properly functioning condition, importance of large trees, maintenance and restoration of native processes, adaptive management, and the role of fire (Graham et al, 1999, in press).

Where the Proposed Management Direction Will and Will Not Be Applied

The proposed management direction will apply to National Forest System lands within the Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, and Wasatch-Cache National Forests found in Utah, Wyoming and Colorado. This direction will apply to forested habitats across these National Forests except in the following areas:

(1) Designated wilderness areas;

(2) Administratively or Congressionally designated areas with a defined purpose (e.g., Research Natural Areas, National Recreation Areas, etc.);

(3) Areas currently managed or allocated for concentrated recreation use and development;

(4) National Forest System lands that are significantly influenced by lands in other ownership (e.g., high use urban interface areas); or,

(5) Areas currently managed or allocated for mining, special use permits allowing vegetative disturbance or treatments (vegetation will be managed to meet the intent of the permit), or administrative site uses and development.

In these areas, current forest plan direction will still apply. In addition, any valid, prior existing rights on National Forest System lands will not be affected by this proposal.

The proposed direction will not apply in areas described above because:

(a) The forested habitats in these areas are managed for other purposes as defined by current policy and regulations; or,

(b) The use permitted under the existing forest plan would not allow for the management of habitat as outlined in the proposed management direction; or

(c) The degree of influence resulting from adjacent lands in other ownership precludes application of this direction.

The agency believes that managing these areas consistent with current management direction is important to meeting other goals and objectives in the forest plan and that doing so would not result in the loss of habitat needed to maintain viable populations of goshawks in the State of Utah. A full disclosure of the effects of these exclusions will be clearly articulated and documented during the environmental analysis process.

While the proposed direction will not apply in these areas, their contribution to sustaining habitat components for the goshawk and its prey is still important and will need to be analyzed through the landscape assessment process, and their influence evaluated. For example, areas such as wilderness may provide suitable goshawk habitat which may influence how habitat attributes in areas outside the wilderness are managed through time. However, vegetation in the wilderness is managed to meet the goals of the wilderness resource which may or may not be contrary to suitable goshawk habitat.

Proposed Management Direction for Habitat of the Northern Goshawk (Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, Wassatch-Cache National Forests)

Note: (S)=Standard; (G)=Guideline

Home Range (Foraging, Nest and Post-Fledgling Areas)

Native Processes

Goal: Restore or emulate natural disturbance regimes and other

ecological processes to maintain or restore ecosystem integrity within landscapes important to sustaining habitat for the northern goshawk and its prey.

(G) Management actions should be designed to encourage conditions that are within the historic range of variation (HRV), remaining within the variability of size, intensity, and frequency of native disturbance regimes characteristic of the subject landscape and ecological processes.

(G) Within disturbed ecosystems, management action should be designed to be consistent with restoration objectives.

Composition

Goal: Maintain or restore the native characteristics of ecosystem composition important to sustaining habitat for the northern goshawk and its prey.

(G) Native plant species from locally adapted seed sources are preferred for use in all management activities. Non-native plant species have the potential to cause systems to move outside of historic range of variation (HRV), therefore the use of non-native species should be justified to indicate how their use is important to maintain or restore a cover type to functioning conditions.

(G) When initiating vegetative management treatments in forested cover types, provide for a full range of seral stages, by forested cover type, that achieve a mosaic of habitat conditions and diversity. Each seral stage should contain a strong representation of early seral tree species. Recruitment and sustainability of early seral tree species in the landscape is needed to maintain ecosystem resilience to perturbations. While species composition may vary by location, an expected species mix is as follows:

Cover type	Early seral	Mid seral	Late seral
Ponderosa Pine	PP=AS	PP>AS	PP>AS
Mixed Conifer (montane)	PP=AS>DF>BS>TF	PP=AS=DF>BS>TF	DF>BS>TF=PP>AS
Mixed Conifer (boreal)	LP>ES≥TF	LP=ES>TF	ES>LP>TF
Spruce/Fir	AS>ES>TF	AS>ES>TF	ES=TF>AS
Aspen	AS	AS	AS
Lodgepole Pine	LP	LP	LP>TF
Aspen/Lodgepole	AS>LP	LP=AS	LP>AS=TF

PP = ponderosa pine; AS = aspen; DF = Douglas-fir, TF = white or subalpine fir; LP = lodgepole pine; BS = blue spruce; ES = Engelmann spruce.

Equal sign (=): both species may be expected to be found within the cover type. Depending on site, either species may dominate or both may co-dominate the site.

Greater than (>): the first species would normally be expected to be more prevalent than the second species.

Structure

Goal: Maintain or restore the mix of forest vegetative structural stages needed to sustain the desired mature and old forest stages in a landscape. The desired amount of mature and of is 40% in the portion of the landscape covered by conifers and 30% in the portion covered by aspen, well distributed. This is necessary to sustain habitat and habitat connectively for the goshawk and its prey.

(G) Assess landscapes at the 5th-6th order Hydrologic Unit Code (HUC) or equivalent ecological scale (tens of, hundreds of thousands of acres), to determine distribution of forest vegetative structural classes. Use the best existing available information to complete this assessment. These assessments should be used to describe the existing structural conditions and then determine opportunities to move the existing conditions toward the desired structural habitat conditions.

(G) Planned vegetative management treatments (excluding unplanned and unwanted wildland fire) in the mature and/or old structural stages in a landscape that is at or below the desired percentage of land area in mature and old structural stages (40% conifer, 30% aspen), should be designed to maintain or enhance the characteristics of these structural stages. The percentage of land area in mature and old structural stages treated should not move out of the mature and old structural stage. Planned treatments may vary from this guideline if the action was assessed through the biological evaluation (BE) process, and the BE concluded that the action is consistent with the intent of the Conservation Strategy and Agreement for Management of the Northern Goshawk in Utah.

Goal: Manage forested cover types within landscapes to retain, and sustain over time, standing dead trees (snags) and their distribution important to the habitat needs of goshawk prey species and characteristic of healthy, functioning ecosystems.

(G) When initiating vegetative management treatments in forested cover types, leave the following minimum number and size of snags. If the minimum number of snags is unavailable, green trees should be substituted. If the minimum size is unavailable, then use largest trees available on site. It is desirable to have snags represented in all size classes above the minimum available on the site. The number of snags should be present at the stand level on average and, where they are available, distributed over each treated 100 acres. This distribution is needed to meet the needs of prey species that utilize this habitat.

Cover type	Minimum snags (per 100 acres)	Minimum preferred size
Ponderosa Pine	200	18″dbh/30′ht.
Mixed Conifer	300	18″dbh/30′ht.
Spruce/Fir	300	18″dbh/30′ht.
Aspen	200	8″dbh/15′ht.
Lodgepole Pine and Aspen/Lodgepole Pine	300	8″dbh/15′ht.

Goal: Manage cover types within landscapes to retain down logs and woody debris and their distribution characteristic of healthy, functioning ecosystems. These habitat components are important to the habitat needs of goshawk prey species.

(G) When initiating vegetative management treatments, prescriptions should be designed to retain the following minimum amount and size of down logs and woody debris. These habitat components should be present at the stand level on average and, where they are available, distributed over each treated 10 acres. This distribution is needed to meet the needs of prey species that utilize this habitat.

Cover type	Minimum down logs (per 10 acres) (down logs take precedence over tons of coarse woody debris)	Minimum log size (diameter/length) (midpoint diameter; or if minimum size not available, largest available on the site)	Minimum coarse woody debris, ≥3″ diameter (tons per 10 acres, inclusive of down logs)
Ponderosa Pine	30	12″/8′	50
Mixed Conifer	50	12″/8′	100
Spruce/Fir	50	12′/8′	100
Aspen	50	6′/8′	30
Lodgepole Pine and Aspen/Lodgepole Pine	50	8″/8′	50

Goal: In land areas dominated by mid-aged, mature, and old structural stages (VSS 4,5,6) within a landscape, maintain or restore canopy closure to provide habitat for the goshawk and its prey.

(G) When initiating vegetative management treatments in land areas dominated by mid-aged, mature, and old structural stages (VSS 4,5,6) within a landscape, treatments should be designed to maintain or restore an average of ≥40% canopy closure. If 40% canopy closure is not within the historic range of variation, manage for canopy closures that are consistent with HRV.

Home Range (Nest and Post-Fledgling Areas Only)

Goal: Provide well distributed habitat for successful goshawk nesting and brood rearing (post-fledgling area) within and across landscapes (5th–6th order HUC or equivalent ecological scale). This will provide for habitat connectivity across the state and continuous recruitment of individuals into the population, both of which are important to sustaining viable populations of goshawks.

(G) If a historic nest is not associated with an active nest area, management direction for home range habitat should be applied.

(S) When an active nest area has been identified, identify 2 alternate nest areas and 3 replacement nest areas. The next two guidelines provide recommended direction for implementation of this standard.

(G) Each nest area (active, alternate and replacement) should be approximately 30 acres (total of approximately 180 acres) in size when sufficient suitable habitat exists. If sufficient amounts of suitable habitat are not present, use existing suitable habitat that is available.

(G) Alternate nest areas should be identified in suitable habitat with similar vegetative structures as the active nest areas. Replacement nest areas should be identified in habitat which will develop similar vegetative structures as the active nest area at the time the active and alternate nest areas are projected to no longer provide adequate nesting habitat.

(S) Prohibit forest vegetative manipulation within active nest areas during the active nesting period. The active nesting period will normally occur between March 1st and September 30th.

(G) Restrict management activities and permitted human use (i.e., those activities for which a written permit is issued) in active nest areas during the active nesting period unless it is determined that the disturbance is not likely to result in nest abandonment. If the disturbance is likely to result in abandonment, a biological evaluation (BE) must be completed. To implement the action the BE must conclude that the action is consistent with the intent of the Conservation Strategy and Agreement for Management of the Northern Goshawk in Utah.

(G) Forest vegetative manipulation within active, alternate and replacement nest areas should be designed to maintain or improve desired nest area habitat. Use the active nest area habitat characteristics as an indicator of the desired nest area habitat, and as the best available information for nest area habitat for that cover type.

(G) Identify a Post-Fledgling Area (PFA) which encompasses the active, alternate and replacement nest areas and additional habitat needed to raise fledglings. A PFA should be approximately 420 acres in size (exclusive of nest area acres) when sufficient suitable habitat exists. If sufficient amounts of suitable habitat are not present, use existing suitable habitat that is available.

(G) Forest vegetative manipulation within the PFAs should be designed to maintain or improve the same habitat features as discussed for the goshawk home range (i.e., stand structure, snags, down logs, nest trees important in the life histories of the goshawk and its prey species common to the geographic location), except:

(a) In VSS 4,5,6, provide canopy closure in excess of 50% when available. If 50% canopy closure is not within the historic range of variation, manage for canopy closures that are consistent with HRV.

(b) Openings created as a result of mechanical vegetative treatments should not exceed the following by cover type:

Cover type	Maximum created opening size
Ponderosa pine and Mixed conifer	2 acres.
Spruce/fir	1 acre.
Aspen and Lodgepole pine.	Follow current management direction.

(c) Management activities should be restricted during the active nesting period. The active nesting period will normally occur between March 1st and September 30th.

(d) Where timber harvest is prescribed, plan a transportation system to minimize disturbance.

PROPOSED MONITORING REQUIREMENTS

Activities, effects and resources to be measured	Monitoring method	Precision/reliability	Measurement frequency	Reporting period	Variation which would cause further evaluation and/or change in management direction
Goshawk territory occupancy	Forest Level: Whichever is greater: Random sample of at least 20 territories or 50% of all known territories	Moderate/High	Annually	Every 3 years	If monitoring reveals a 20% decline in territory occupancy over a 3 year period.
Goshawk habitat connectivity and Habitat diversity	Forest Scale: Use GIS to track the spatial location and size of the mature and old forest structure	Moderate/High	Completion or update of a landscape assessment	5 years	Forest Scale: If a landscape scale assessment finds that less than 40% of the coniferous or 30% aspen forested area are dominated by mature and old structure patches.
Goshawk habitat diversity Snag Management	Project Scale: Monitor snag requirements for timber harvest and prescribed fire projects affecting forested habitat. Random sampling of 100 acres blocks which cover 10% or more of a project area	Moderate/Moderate	Annually sample 25% of completed projects	5 years	If 25% of the blocks sampled do not meet guideline requirements.
Goshawk habitat diversity Down Woody Material	Project Scale: Monitor down woody requirements for timber harvest and prescribed fire projects affecting forested habitat. Random sampling of 10 acres blocks which cover 5% or more of the project area	Moderate/Moderate	Annually sample 10% of complete projects	5 years	If 25% of the blocks sampled do not meet guideline requirements.

Alternatives

A range of alternatives will be considered. One of these will be the "no-action" alternative, which would continue current management under the current forest plans. Other alternatives will examine the effects of varying approaches that would maintain or restore functioning forested habitats across the aforementioned National Forests that are important to sustaining a viable population of the northern goshawk in Utah.

Scope and Longevity

The proposed management direction will only apply to National Forest System lands within the Ashley, Dixie, Fishlake, Manti-LaSal, Uinta, and Wasatch-Cache National Forests. New or revised management direction will apply until forest plans for the aforementioned National Forests are revised or suitably amended (projected to be 2–4 years). The proposed direction will not apply to projects that have been approved prior to the effective date of the amendments.

Involving the Public

During the scoping process, the Forest Service is seeking information and comments from Tribal Governments, Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. Please note, comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR § 1.27(d), any person may request the agency to withhold submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted only in limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and when the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

A series of open houses will be held across Utah in February, 1999, to gain a better understanding of public issues and concerns, as follows:

2/16/99	Provo	12:00–2:00 pm	Historic County Courthouse, Room 319, 51 S. University Ave.
2/16/99	Richfield	6:00–8:00 pm	Quality Inn, 540 South Main.
2/17/99	Panguitch	12:00–2:00 pm	Courthouse, Jeep Posse Room, 55 East Center.
2/17/99	Cedar City	6:00–8:00 pm	Sharwan Smith Ctr, Cedar Breaks Room, Southern Utah University.
2/23/99	Vernal	12:00–2:00 pm	Forest Supervisor's Office, 355 N. Vernal Ave.
2/24/99	Moab	12:00–2:00 pm	Moab Information Center, Center and Main.
2/24/99	Price	6:00–8:00 pm	Prehistoric Museum, Classroom, 155 East Main.
2/25/99	Salt Lake City	12:00–2:00 pm 6:00–8:00 pm	Dept. of Natural Resources, Conference Room A–B, 1594 West North Temple.

Release and Review of Environmental Document

It is anticipated that the environmental analysis will be completed and available for public comment in May, 1999. The Forest Service will publish a legal notice in the Utah papers of record announcing its availability as well as a Notice of Availability in the **Federal Register**. The comment period is expected to be 30 days. A final decision is expected by late July, 1999. The decision on what management direction will be implemented, and reasons for the decision, will be documented in the decision document.

Information and updates concerning this proposal will be available electronically on the Project's website at www.fs.fed.us/r4/goshawk.

Dated: January 28, 1999.

Jack G. Troyer,

Deputy Regional Forester, Intermountain Region.

[FR Doc. 99–2634 Filed 2–4–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 8, 1999.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed

Commodities

Cap, Combat Camouflage

8415–01–134–3175
8415–01–134–3176
8415–01–134–3177
8415–01–134–3178
8415–01–134–3179
8415–01–134–3180
8415–01–084–1683
8415–01–084–1684
8415–01–084–1685
8415–01–084–1686
8415–01–084–1687
8415–01–084–1688

(Remaining Government Requirements)

NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, Kentucky.

Services

Janitorial/Custodial

Department of Veterans Affairs Lompoc Clinic, 1111 East Ocean Avenue, Lompoc, California, *NPA:* Life Options, Vocational and Resource Center, Lompoc, California.

Janitorial/Custodial

Veterans Affairs Primary Care Clinic, 145 Falmouth Road, Hyannis, Massachusetts, *NPA:* Nauset, Inc., Hyannis, Massachusetts.

Janitorial/Grounds Maintenance

VA Northern California Health Care System, Mare Island Outpatient Clinic, Vallejo, California, *NPA:* Easter Seal Society of Superior California, Sacramento, California.

G. John Heyer,

General Counsel.

[FR Doc. 99–2810 Filed 2–4–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Addition to the Procurement List; Correction

In the document appearing on page 47227, F.R. 98–23956, in the issue of September 4, 1998, in the first column, the listing for Battleboard Kit, ID, NSN 2590–01–399–1935 should have been 2590–01–399–2935.

G. John Heyer,

General Counsel.

[FR Doc. 99–2811 Filed 2–4–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1017]

Termination of Foreign-Trade Subzone 18 A; San Jose, California

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following order:

Whereas, on October 13, 1983, the Foreign-Trade Zones Board issued a grant of authority to the City of San Jose, California, authorizing the establishment of Foreign-Trade Subzone 18A at the Olympus America plant in San Jose, California (Board Order 228, 48 FR 48486, 10/19/83);

Whereas, the City advised the Board on May 1, 1998 (FTZ Docket 26–98), that zone procedures were no longer needed at the facility and requested voluntary termination of Subzone 18A;

Whereas, the request has been reviewed by the FTZ Staff and the Customs Service, and approval has been recommended;

Now, therefore, the Foreign-Trade Zones Board terminates the subzone status of Subzone No. 18A, effective this date.

Signed at Washington, DC, this 20th day of January 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–2819 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1018]

Approval for Manufacturing Authority (Industrial and Commercial Pumps) Within Foreign-Trade Zone 226, Grundfos Manufacturing Corporation (Inc.), Fresno, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board of Commissioners of the County of Merced, California, grantee of FTZ 226, has requested authority on behalf of Grundfos Manufacturing Corporation (Inc.) (GMC), to manufacture industrial and commercial pumps under FTZ procedures within FTZ 226, subject to restriction on stainless and alloy steel products (FTZ Doc. 21–98, filed 4–14–98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 19707, 4–21–98);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to a restriction requiring that all foreign-origin stainless and alloy steel products must be admitted to FTZ 226 for the GMC activity in domestic (duty paid) status (19 CFR § 146.43).

Signed at Washington, DC, this 20th day of January 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–2820 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1014]

Approval for Expanded Manufacturing Authority (Small, Internal-Combustion Engines) Within Foreign—Trade Subzone 15E; Kawasaki Motors Manufacturing Corp., U.S.A., Maryville, MO

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, has requested authority on behalf of Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), operator of FTZ Subzone 15E, located in Maryville, Missouri, to expand the scope of FTZ authority to include the manufacture of certain small, internal-combustion engines under FTZ procedures (FTZ Doc. 41–97, filed 5–14–97);

Whereas, notice inviting public comment was given in the **Federal Register** (62 FR 29103, 5–29–97);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now Therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 20th day of January 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–2818 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1020]

Expansion of Foreign-Trade Zone 7; Puerto Rico

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Puerto Rico Industrial Development Company, grantee of Foreign-Trade Zone 7, submitted an application to the Board for authority to expand FTZ 7 to include multiple sites in Puerto Rico (FTZ Docket 18–98; filed 4/3/98);

Whereas, notice inviting public comment was given in **Federal Register** (63 FR 17982, 4/13/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 7 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of January 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–2822 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1019]

Expansion of Foreign-Trade Zone 68; El Paso, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of El Paso, Texas, grantee of Foreign-Trade Zone No. 68, submitted an application to the Board

for authority to expand FTZ 68-Sites 2 and 3 in El Paso, Texas, within the El Paso Customs port of entry (FTZ Docket 4–98, filed 1/20/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 6891, 2/11/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 68-Sites 2 and 3 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 20th day of January 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–2821 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–701]

Brass Sheet and Strip From The Netherlands: Notice of Extension of Time Limits for Sixth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 5, 1999.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–1784 and (202) 482–5288, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Results

On September 29, 1998, the Department initiated the sixth administrative review of the antidumping duty order on brass sheet and strip from The Netherlands, covering the period August 1, 1997 through July 31, 1998 (63 FR 51893). The current deadline for the preliminary results of this review is May 3, 1999. Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("the Act"), requires the Department to make a preliminary determination in an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to up to 365 days. Because of several complex issues unique to this review, it is not practicable to complete the review within the current time frame. Therefore, the Department is extending the time limit for completion of the preliminary results of this administrative review by 120 days, or until August 31, 1999. We plan to issue the final results of this administrative review within 120 days after publication of the preliminary results.

Submission of New Factual Information

In response to OBV's request for revocation of this order, the Department is allowing parties to submit information regarding the likelihood of future dumping. Pursuant to section 351.222(b)(2) of the Department's regulations (1998), the Department may revoke an order in part "if the Secretary concludes that: (1) One or more exporters or producers covered by the order have sold the merchandise at not less than normal value for a period of at least three consecutive years; (2) It is not likely that those persons will in the future sell the subject merchandise at less than normal value; and (3) The exporter or producer agrees to immediate reinstatement of the order if the Secretary concludes that dumping has resumed.

In past reviews the Department has established a process for the submission of factual information on the issue of whether likelihood of future dumping exists (see Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order: Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea, 62 FR 12794 (March 18, 1997)). Thus, at this time, we are providing all interested parties the opportunity to submit any such information which they believe the Department should consider when determining the likelihood of future dumping.

The deadline for submission of this information for consideration in the preliminary results is April 1, 1999. Additionally, parties will be allowed until April 15, 1999, to submit rebuttal comments.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: February 2, 1999.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 99–2816 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–808]

Chrome-Plated Lug Nuts From the People's Republic of China: Notice of Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of recission of antidumping duty administrative review.

EFFECTIVE DATE: February 5, 1999.

SUMMARY: On October 29, 1998, the Department of Commerce (the Department) published in the **Federal Register** (63 FR 58009) a notice announcing the initiation of an administrative review of the antidumping duty order on chrome-plated lug nuts (lug nuts) from the People's Republic of China (PRC), covering the period September 1, 1997 through August 30, 1998. This review has now been rescinded as a result of the withdrawal of request for an administrative review by Jiangsu Su Huanghai Auto Parts Co., Ltd. (Rudong).

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn, Office of AD/CVD Enforcement, Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–0648.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1998, Rudong, a manufacturer/exporter of the subject merchandise, requested an administrative review of the antidumping duty order on lug nuts from the PRC in accordance with 19 CFR 351.213(b). On October 29, 1998, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an

administrative review of this order for the period September 1, 1997 through August 31, 1998. On November 30, 1998, Rudong withdrew its request for this review.

Recission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that a party may withdraw its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or at a later date if the Department determines that such an extended time is reasonable. Rudong withdrew its request for review within the 90-day period. No other party requested a review for the September 1, 1997 through August 31, 1998 period. Therefore, we are rescinding this review. This determination is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.213(d)(4).

Dated: January 27, 1999.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–2817 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–605]

Frozen Concentrated Orange Juice From Brazil; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on frozen concentrated orange juice from Brazil in response to a timely request from the petitioners to review six manufacturers/exporters of the subject merchandise. This review covers the U.S. sales and/or entries of only four manufacturers/exporters because we are rescinding this review with respect to two companies. This is the eleventh period of review, covering May 1, 1997, through April 30, 1998.

We have preliminarily determined that sales have been made below normal value by each of the companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: February 5, 1999.

FOR FURTHER INFORMATION CONTACT: Sergio Gonzalez or Shawn Thompson, Office of AD/CVD Enforcement, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1779 or (202) 482–1776, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1998, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on frozen concentrated orange juice (FCOJ) from Brazil (63 FR 26143).

In accordance with 19 CFR 351.213(b)(1), on May 29, 1998, Florida Citrus Mutual, Caulkins Indiantown Citrus Co., Citrus Belle, Citrus World, Inc., Orange-Co of Florida, Inc., Peace River Citrus Products, Inc., and Southern Gardens Citrus Processors Corp. (collectively "the petitioners") requested an administrative review of the antidumping order covering the period May 1, 1997, through April 30, 1998, for the following producers and exporters of FCOJ: Branco Peres Citrus, S.A. (Branco Peres), Cambuhy Citrus Comercial e Exportadora Ltd. (Cambuhy), Citrovita Agro Industrial S.A. (Citrovita), CTM Citrus S.A. (CTM), Frutax Industria e Comercio Ltda. (Frutax), and Sucorrico S.A. (Sucorrico). On June 12, 1998, the Department issued questionnaires to each of these companies. On June 29, 1998, the Department published in the **Federal Register** a notice of initiation of administrative review for Branco Peres, Cambuhy, Citrovita, CTM, Frutax, and Sucorrico (63 FR 35188).

In July 1998, Cambuhy, CTM, and Sucorrico informed the Department that they had no shipments of subject merchandise to the United States during the period of review (POR). We have confirmed this with information from the Customs Service with regard to CTM and Sucorrico. Therefore, in accordance with § 351.213(d)(3) of the Department's regulations and consistent with the Department's practice, we are rescinding our review for CTM and Sucorrico. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

Regarding Cambuhy, we were informed by the Customs Service that this company exported FCOJ to Puerto Rico during the POR. Consequently, on August 17, 1998, we issued a supplemental questionnaire to Cambuhy in which we again requested that it provide sales information. On September 2, 1998, Cambuhy acknowledged that it had exported to Puerto Rico, but declined to participate further in the administrative review. Because Cambuhy did not respond to the questionnaire, we have preliminarily assigned it a margin based on adverse facts available. For further discussion, see the "Facts Available" section of this notice, below.

In August 1998, we received responses from Branco Peres and Citrovita. We received no response from Frutax. Because Frutax did not respond to the questionnaire, we have also preliminarily assigned a margin to this company based on adverse facts available. For further discussion, see the "Facts Available" section, below.

Also in August 1998, we issued a supplemental questionnaire to Branco Peres. We received a response to this questionnaire in September 1998.

In August and September 1998, the petitioners alleged that Branco Peres and Citrovita were selling at prices below the cost of production (COP) in their third country and home markets, respectively. Based on information submitted by the petitioners, the Department found reasonable grounds to believe or suspect that sales in the foreign markets were made at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated investigations to determine whether Branco Peres and Citrovita made foreign market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act. For further discussion, see the memorandum to Louis Apple from the team entitled

"Initiation of Sales Below the Cost of Production Investigations in the Antidumping Duty Administrative Review of Frozen Concentrated Orange Juice from Brazil," dated October 14, 1998.

In October 1998, we issued a supplemental sales questionnaire to Citrovita.

In November 1998, both Branco Peres and Citrovita informed the Department that they did not intend to submit additional sales or cost information. Consequently, because these companies did not respond to the COP questionnaires, and in the case of Citrovita the supplemental sales questionnaire, we have also assigned them a margin based on adverse facts available. For further discussion, see the "Facts Available" section, below.

Scope of the Review

The merchandise covered by this review is FCOJ from Brazil. The merchandise is currently classifiable under item 2009.11.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and for U.S. Customs purposes. The Department's written description remains dispositive.

Partial Rescission of Review

As noted above, in July 1998, CTM and Sucorrico informed the Department that they had no shipments of subject merchandise to the United States during the POR. We have confirmed this with information received from the Customs Service. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to CTM and Sucorrico (see, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review, 63 FR 35190, 35191 (June 29, 1998); and Certain Fresh Cut Flowers From Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 62 FR 53287, 53288 (Oct. 14, 1997)).

Facts Available

A. Use of Facts Available for Branco Peres, Cambuhy, Citrovita, and Frutax

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for the dumping margin for Branco Peres, Cambuhy, Citrovita, and Frutax. Section 776(a)(2) of the Act provides that if an interested party: (1) Withholds information that has been requested by the Department; (2) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (3) significantly impedes a determination under the antidumping statute; or (4) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Specifically, both Cambuhy and Frutax failed to respond to the Department's questionnaire, issued in June 1998, while Branco Peres and Citrovita failed to respond to the COP questionnaire. Moreover, Citrovita also failed to respond to a supplemental questionnaire regarding sales information.

Because all four respondents have failed to respond to certain questionnaires and have refused to participate fully in this administrative review, we preliminarily determine that, in accordance with sections 776(a) and 782(e) of the Act, the use of total facts available is appropriate. See, e.g., Certain Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Duty Administrative Review, 62 FR 2655 (Jan. 17, 1997).

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. See Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, 103rd Cong., 2d Sess. at 870. The failure of each of the four respondents to participate in the review and to respond to the Department's questionnaires demonstrates that each has failed to act to the best of its ability in this review and, therefore, an adverse inference is warranted. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars From Turkey, 62 FR 9737 (Mar. 4, 1997); and Extruded Rubber Thread From Malaysia; Final Results of Antidumping Duty Administrative Review, 63 FR 12752 (Mar. 16, 1998).

In situations involving non-cooperating respondents of this type, it is the Department's normal practice to select as adverse facts available the highest margin from the current or any prior segment of the same proceeding. (See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada; Final Results of Antidumping Duty Administrative Review and Determination to Revoke in Part, 64 FR 2173, 2175 (Jan. 13, 1999); and Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review, 63 FR 42823 (Aug. 11, 1998).) In this case, however, use of this margin, 2.52 percent, would not be appropriate because it is apparent that the respondents would benefit from their lack of cooperation, given that 2.52 percent is much lower than the margins actually calculated based on information submitted by respondents in this segment of the proceeding (*see* below). Therefore, we do not believe this rate is high enough to encourage participation in future segments of this proceeding.

Consequently, in accordance with section 776(b)(4) of the Act, we have used the data on the record of this proceeding as adverse facts available. Specifically, we used the data supplied by the petitioners in the cost allegation, as well as the sales data provided by the two respondents that submitted partial questionnaire responses (*i.e.*, Branco Peres and Citrovita), to calculate sales-specific dumping margins. We then selected as the facts available rate for each of the four non-cooperating respondents the highest transaction-specific margin calculated in this manner. This rate is 65.20 percent. For the procedures used to determine this rate, see the "Calculation of the Facts Available Rate" section, below.

We find that the methodology described above is appropriate given the particular facts of this case. Specifically, we note that, unlike in many cases, the publicly available cost data submitted by the petitioners in the cost allegation was complete. The petitioners provided cost data for 100 percent of the products sold by Branco Peres and Citrovita. Moreover, this data was contemporaneous with the POR and specific to Brazil. Finally, this methodology results in a facts available rate that is sufficiently high to effectuate the purpose of the facts available rule—which is to encourage the participation of these companies in future segments of this proceeding.

B. Calculation of the Facts Available Rate

As noted above, we used the data in the cost allegation to perform the cost test for Branco Peres and Citrovita. The COP information in the cost allegation was obtained from two sources: (1) A U.S. Department of Agriculture Attache Report, dated November 1997, which showed the price and quantity of oranges needed to produce one metric ton of FCOJ; and (2) a study by a University of Florida professor

published in Citrus & Vegetable Magazine in December 1997, which showed FCOJ processing and general and administrative costs.

We compared the COP figures derived from the cost allegation to home market/third country prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. We compared product-specific COPs to product-specific foreign market prices, less any applicable movement charges.

In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. See section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that product were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales.

We found that more than 20 percent of Branco Peres' and Citrovita's foreign market sales within an extended period of time were at prices less than COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and, where available, used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of FCOJ for which there were no comparable foreign market sales in the ordinary course of trade, we compared export price (EP) and constructed export price (CEP) to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV using the COP data referenced above. In accordance with section 773(e)(2)(A) of the Act, we based profit for Branco Peres on the amounts incurred and realized by this company in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Regarding Citrovita, because: (1) This company made no sales at prices above the COP; and (2) there was no publicly available profit rate on the record of this proceeding, we used a profit rate which was derived from the public financial statements of the sole respondent who participated in the most recent prior administrative review. For further discussion, see the memorandum to the file from Sergio Gonzalez entitled "Calculations Performed for Citrovita for the Preliminary Results," dated February 1, 1999 (the Citrovita Calculation Memorandum).

In accordance with the results of the cost test, we disregarded all foreign market sales made at prices below the COP.

We made currency conversions into U.S. dollars, in accordance with section 773A of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Company-specific calculations are discussed below.

1. Branco Peres

We calculated EP using the data submitted by Branco Peres in its September 18, 1998, supplemental questionnaire response. We based EP on the gross unit price to the first unaffiliated purchaser in the United States. We made deductions from gross unit price, where appropriate, for foreign inland freight, foreign inland insurance, warehousing costs, and port charges, in accordance with section 772(c)(2)(A) of the Act.

We also calculated NV using the data submitted on September 18, 1998. Based on the results of the cost test described above, we found that Branco Peres made certain third country sales during the POR at prices above the COP. Consequently, where a contemporaneous comparison existed, we based NV on these above-cost sales. Where no contemporaneous comparison existed, we based NV on CV.

Where NV was based on third country sales, we based NV on the gross unit price to unaffiliated customers. We made deductions, where appropriate, for foreign inland freight, foreign inland insurance, warehousing costs, and port charges, in accordance with section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we made circumstance-of-sale adjustments, where appropriate, for differences in commissions and credit expenses.

Where NV was based on CV, we made circumstance-of-sale adjustments, where appropriate, for commissions and credit expenses, in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act.

2. Citrovita

We calculated CEP using the data submitted by Citrovita on August 17, 1998. We calculated CEP based on the gross unit price to the first unaffiliated customer in the United States. We made deductions from gross unit price, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling expenses, U.S. customs duties, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act. We made additional deductions, where appropriate, for commissions, credit, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Because Citrovita did not respond to the supplemental sales questionnaire, we adjusted its U.S. sales data to account for certain discrepancies in its response. Specifically, where the data shown on Citrovita's calculation worksheets differed from the data contained in the U.S. sales listing, we used the highest figure reported as facts available. See the Citrovita Calculation Memorandum.

Pursuant to section 772(d)(3) of the Act, we further reduced gross unit price by an amount for profit, to arrive at CEP. Because there was no publicly available profit rate on the record of this proceeding, we used a profit rate which was derived from the public financial statements of the sole respondent who participated in the most recent prior administrative review. See the Citrovita Calculation Memorandum.

Based on the results of the cost test described above, we found that Citrovita made no home market sales during the POR at prices above the COP. Consequently, we based NV on CV.

For CEP-to-CV comparisons, we made circumstance-of-sale adjustments, where appropriate, for commissions and credit expenses (offset by interest revenue received by Citrovita), in accordance with section 773(a)(6)(C)(iii) and (a)(8) of the Act. We computed the CV profit rate using the same financial statements referenced above. Furthermore, we recalculated home market credit expenses on the basis of home market price net of Brazilian taxes, in accordance with our practice. See, e.g., Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative

Review, 61 FR 59407 (Nov. 22, 1996). For further discussion, see the Citrovita Calculation Memorandum.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period May 1, 1997, through April 30, 1998:

Manufacturer/exporter	Margin percent
Branco Peres Citrus, S.A	65.20
Cambuhy Citrus Comercial e Exportadora Ltda	65.20
Citrovita Agro Industrial S.A	65.20
Frutax Industria e Comercio Ltda	65.20

Interested parties may request a hearing within 30 days of the publication of this notice. Any hearing, if requested, will be held 37 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days from the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The duty assessment rates for importers of subject merchandise will be those rates listed above. These rates will be assessed uniformly on all entries of FCOJ made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of FCOJ from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for Branco Peres, Cambuhy, Citrovita, and Frutax will be the rates established in the final results of this review; (2) for any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 1.96 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213.

Dated: February 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–2823 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Preliminary Results and Partial Recission of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and partial recission of antidumping duty administrative reviews.

SUMMARY: We preliminarily determine that sales of heavy forged hand tools, finished or unfinished, with or without handles, from the People's Republic of China were made below normal value during the period February 1, 1997 through January 31, 1998. Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 5, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or James Terpstra, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–4474 or 482–3965, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR Part 351 (1998).

Background

On February 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 6622) the antidumping duty orders on heavy forged hand tools, finished or unfinished, with or without handles (certain heavy forged hand tools or HFHTs), from the People's Republic of China (PRC). On February 5, 1998, the Department published in the **Federal Register** (63 FR 5929) a notice of opportunity to request administrative reviews of these antidumping duty orders. On February 24, 1998, three exporters of the subject merchandise requested that the Department conduct administrative reviews of their exports of the subject merchandise. Specifically, Fujian Machinery & Equipment Import & Export Corporation (FMEC) requested that the Department conduct an administrative review of its exports of axes/adzes; hammers/sledges; and picks/mattocks. Shandong Huarong General Group Corporation (Shandong Huarong) and Liaoning Machinery Import & Export Corporation (LMC) requested that the Department conduct administrative reviews of their exports of bars/wedges. On February 27, 1998, another exporter, Shandong Machinery Import & Export Corporation (SMC), requested that the Department conduct an administrative review of its exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks. Also on February 27, 1998, the petitioner, O. Ames Co., requested administrative reviews of FMEC's, Shandong Huarong's, LMC's, SMC's, and Tianjin Machinery Import & Export Corporation's (TMC's) exports of axes/adzes; bars/wedges; hammers/sledges; and picks/mattocks.

We published the notice of initiation of these reviews on March 23, 1998 (63 FR 13837). In its June 23, 1998, Sections C and D questionnaire response,

Shandong Huarong stated that, of the subject merchandise, it exported only bars/wedges during the POR and requested that the Department terminate its review with respect to other HFHTs. Pending confirmation of this claim from the Customs Service, we are thus preliminarily rescinding our review of other HFHTs with respect to Shandong Huarong. In its June 23, 1998, Sections C and D questionnaire response, LMC stated that, of the subject merchandise, it exported only bars/wedges during the POR and requested that the Department terminate its review with respect to other HFHTs. Pending confirmation of this claim from the Customs Service, we are thus preliminarily rescinding our review of other HFHTs with respect to LMC. In its September 3, 1998, response to the Department's supplemental questionnaire, TMC stated that, of the subject merchandise, it exported only hammers and picks during the POR. Pending confirmation of this claim from the Customs Service, we are thus preliminarily rescinding our review of other HFHTs with respect to TMC. In its June 24, 1998, Sections C and D questionnaire response, FMEC stated that, of the subject merchandise, it exported only axes/adzes; hammers/sledges; and picks/mattocks, and requested that the Department terminate its review with respect to bars/wedges. Pending confirmation of this claim from the Customs Service, we are thus preliminarily rescinding our review of bars/wedges with respect to FMEC. In its June 25, 1998, Sections C and D questionnaire response, SMC stated that, of the subject merchandise, it exported only axes/adzes; hammers/sledges; and picks/mattocks, and requested that the Department terminate its review with respect to bars/wedges. Pending confirmation of this claim from the Customs Service, we are thus preliminarily rescinding our review of bars/wedges with respect to SMC.

On September 28, 1998, the Department extended the time limits for completion of the preliminary results in these proceedings until January 29, 1999 (See 63 FR 51563). The Department is conducting these administrative reviews in accordance with Section 751 of the Act.

Scope of Reviews

Imports covered by these reviews are shipments of HFHTs from the PRC comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds) (hammers/sledges); (2) bars over 18 inches in length, track tools and wedges (bars/wedges); (3) picks/mattocks; and (4) axes/adzes.

HFHTs include heads for drilling, hammers, sledges, axes, mauls, picks, and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars and tampers; and steel wood splitting wedges. HFHTs are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot-blasting, grinding, polishing and painting, and the insertion of handles for handled products. HFHTs are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded are hammers and sledges with heads 1.5 kg (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted a verification of information provided by SMC and its supplying factories, and by FMEC and its supplying factories by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. The findings at verification are detailed in the verification reports dated January 6, 1999, the public versions of which are on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU-Public File).

Verification Failures of SMC and FMEC

On October 5 and 6, 1998, the Department conducted a verification of SMC's questionnaire response at its sales offices, and on October 12 and 13 at its suppliers' factories in the PRC. At SMC, we encountered serious problems such that we could not confirm that U.S. sales were properly reported. Because no accounting records were available as to one of SMC's departments that handles subject merchandise, we were unable to determine the sales volume from that Department. Additionally, with respect to another department for which accounting records were available, these records could not be reconciled with the company's overall financial statements. Finally, SMC was unable to provide substantiating documentation in response to several other requests by the Department. For further explanation of verification failures, see Determination of Adverse Facts Available Based on Verification Failure in the Administrative Review of Heavy Forged Hand Tools from the People's Republic of China (Adverse Facts Available Memorandum), dated January 29, 1999. Taken together, these failures resulted in our inability to determine whether U.S. sales were properly reported.

We also encountered serious difficulties when attempting to verify SMC's supplier factories' information. Specifically, one factory was unable to provide any documentary link between the factor utilization figures reported and the overall company accounting records. Moreover, the incomplete records that were available revealed that: (1) The reported figures were often inaccurate (in varying degrees); and (2) other factors of production existed that were not reported in the original questionnaire response. Based upon these significant failures, we find that the reported factors of production ("FOP") information is unreliable. Taken together, the problems are in fact so significant as to constitute a total failure of verification.

On October 8 and 9, 1999, the Department conducted a verification of FMEC's questionnaire response at its sales offices. Additionally, on October 14 and 15 the Department conducted verification of FMEC's supplier factories in the PRC. At FMEC, we encountered serious problems such that we could not confirm that U.S. sales were properly reported. FMEC failed to provide accounting records for a large portion of the POR, which made it impossible to determine whether U.S. sales for that period, and possibly earlier or later periods, were properly reported. FMEC also failed to produce the financial records of two of its branches, which precluded us from verifying the volume of U.S. sales, if any, by those branches. Additionally, FMEC was unable to provide substantiating documentation in response to several other requests by the Department. For a further explanation of specific verification failures, see the Adverse Facts Available Memorandum, January 29, 1999. Taken together, these problems resulted in our inability to establish that U.S. sales were properly reported.

We also encountered serious problems when verifying information at one of FMEC's supplier's factory. For

certain products, the factory was unable to reconcile the factor utilization figures reported with company accounting records. Moreover, with respect to the data that we were able to examine, the reported figures contained many errors. We also found that certain factor inputs had not been reported in the original response. These problems indicate that the reported FOP information is unreliable, and are so significant as to constitute a total failure of verification.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified by the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Under this policy, exporters in non-market economies (NMEs) are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and, (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and, (4) whether each exporter has autonomy from the government regarding the selection of management. See Silicon Carbide, 59 FR at 22587 and Sparklers, 56 FR at 20589.

In the final results of the 1996–1997 reviews of HFHTs, the Department granted separate rates to FMEC, Shandong Huarong, LMC, SMC and TMC. See Heavy Forged Hand Tools From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews (63 FR 16758, April 6, 1998). While all five companies have received separate rates in several previous segments of these proceedings, it is the Department's policy that separate rates questionnaire responses must be evaluated each time a respondent makes a separate rate claim, regardless of any separate rate the respondent received in the past. See Manganese Metal from the People's Republic of China, Final Results and Partial Recission of Antidumping Duty Administrative Review, 63 FR 12441 (March 13, 1998). In the instant reviews, these companies submitted complete responses to the separate rates section of the Department's questionnaire. The evidence submitted in these reviews by Shandong Huarong, LMC, and TMC, which is consistent with the Department's findings in previous reviews, is sufficient on its own merits in demonstrating independence from the government entity. We therefore preliminarily determine that these companies continue to be entitled to separate rates.

With respect to SMC and FMEC, we preliminarily determine that, due to the nature of the verification failures of both companies and the inadequacy of their cooperation, the integrity of these companies' reported data on the whole is compromised. See Verification Failures of SMC and FMEC above. Therefore, we determine that SMC and FMEC did not adequately establish entitlement to rates separate from the government entity.

Adverse Facts Available

On April 23, 1998, the Department sent a questionnaire to the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") in order to collect information relevant to the calculation of the PRC-wide rate. MOFTEC did not respond. SMC and FMEC likewise did not provide a consolidated response representing all non-independent exporters of HFHTs. In addition, as discussed above in the section entitled "Verification Failures," the accuracy of SMC's and FMEC's individual responses could not be substantiated at verification. The verification failures resulted from these companies' repeated failure to supply a wide variety of requested information. Therefore, the Department finds that, pursuant to sections 776(a)(2)(D) and 776(b), the use of an adverse inference is appropriate in determining a dumping margin, as the PRC entity has not acted "to the best of its ability to comply with [our] request for information." As explained in the section entitled "Separate Rates," the PRC entity includes both SMC and FMEC.

Furthermore, section 776(b) of the Act authorizes the Department to use adverse facts available (FA) whenever it finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Because MOFTEC did not respond and because SMC and FMEC failed to substantiate large portions of their questionnaire responses, we determine that the PRC-wide entity did not cooperate to the best of its ability with our requests for information. See the Adverse Facts Available Memorandum, January 29, 1999. Therefore, pursuant to section 776(b) of the Act, we are relying on adverse FA to determine the margin for the PRC-wide entity, which includes SMC and FMEC. As outlined in section 776(b) of the Act, adverse facts available may include reliance on information derived from: (1) The petition, (2) a final determination in the investigation, (3) any previous review under section 751 of the Act or determination under section 753 of the Act, or (4) any other information placed on the record.

For each of these proceedings, we have used as adverse FA for the PRC-wide rate the highest rate from this or previous segments of the proceeding. In this case, we have used the PRC-wide rates from the most recent review, which are also the highest rates from any segment of the respective proceedings. Specifically, the PRC-wide rates are: 21.93 percent for axes/adzes; 66.32 percent for bars/wedges; 44.41 percent for hammers/sledges; and 108.2 percent for picks/mattocks. The margins selected are calculated rates that have been used consistently in recent segments of these proceedings. See Adverse Facts Available Memorandum, January 29, 1999. We have determined that these margins are appropriate to use as FA.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994) (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. See Statement of Administrative Action, at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as surrogate values,

there are no independent sources for calculated dumping margins. The only source for calculated margins is an administrative determination. Thus, in an administrative review, if the Department chooses as adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the margin and determine an appropriate margin. See, e.g., Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review, 60 FR 49567, 49568 (September 26, 1995) (the Department disregarded the highest margin as best information available because that margin was based on an extraordinarily high business expense resulting from uncharacteristic investment activities, which resulted in the high margin). Because the selected margin has been consistently applied in previous segments of these proceedings, and because there is no evidence to suggest that the margin is not relevant, the Department finds no need to disregard such information as appropriate FA.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an export price (EP) on sales to the United States, because use of constructed export price was not warranted. We made deductions from the selling price to unaffiliated parties, where appropriate, for ocean freight, marine insurance, foreign brokerage and handling, and foreign inland freight. Each of these services, with one exception, was either provided by a NME vendor or paid for using a NME currency. Thus, we based the deduction for these movement charges on surrogate values. See the discussion regarding companies located in NME countries and the Department's surrogate country selection in the *Normal Value* section of this notice. The one exception concerns Shandong Huarong, which reported ocean freight that was provided by a market economy vendor and paid for using a market economy currency. The affected transactions accounted for a small portion of its U.S. sales. Therefore, we used the market economy ocean freight rate only for those sales.

For Shandong Huarong's other sales and for the other respondents, we valued ocean freight using the official tariff rates published for hand tools by the Federal Maritime Commission. Where possible we used the rates for 20 and 40 foot container shipments between the ports reported in the respondents' Bills of Lading. If port-specific rates were not available, we used the regional rates calculated in the Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors From the People's Republic of China (Brake Drums and Brake Rotors), 62 FR 9160 (February 28, 1997). We converted per container rates by dividing the container rate by 18 metric tons. This conversion was used in the previous two HFHTs reviews. We valued marine insurance using the average rate in effect during the period of review. This rate was reported in the public version of the questionnaire response placed on the record in Stainless Steel Wire Rod From India, 63 FR 48184 (September 9,1998).

For foreign brokerage and handling, we used the average of the rates reported in the questionnaire response in the antidumping duty investigation of Stainless Steel Wire Rod From India, 63 FR 48184 (September 9, 1998). These rates were in effect between February 1997 and January 1998.

The sources used to value foreign inland freight are identified below in the *Normal Value* section of this notice. To account for price changes between the time period that the freight, brokerage, and insurance rates were in effect and the period of review (POR), we inflated the rates using the wholesale price indices (WPI) for India as published in the International Monetary Fund's (IMF) publication, International Financial Statistics. For further discussion of the surrogate values used in these reviews see the File Memorandum From the Team, Surrogate Values Used for the Preliminary Results of the Seventh Administrative Reviews of Certain Heavy Forged Hand Tools From the People's Republic of China ("Surrogate Value Memorandum"), (January 29, 1999), which is on file in the CRU—Public File.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors of production methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value, in accordance with section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Since none of the parties to these proceedings contested such treatment in these reviews, we calculated NV in accordance with section 773(c) of the Act and § 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the FOP utilized in producing HFHTs include, but are not limited to—(A) hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the cost of the FOP in a market economy that is—(A) at a level of economic development comparable to the PRC, and (B) a significant producer of comparable merchandise. We determined that India is comparable to the PRC in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, India is a significant producer of comparable merchandise. For a further discussion of the Department's selection of India as the surrogate country, see the Memorandum From Jeff May, Director, Office of Policy, to Holly Kuga, Senior Office Director, AD/CVD Enforcement Group II, dated June 23, 1998, "Certain Heavy Forged Hand Tools ("Hand Tools") from the People's Republic of China: Nonmarket Economy Status and Surrogate Country Selection" which is on file in the CRU—Public File.

In accordance with section 773(c)(1) of the Act, for purposes of calculating NV, we valued PRC FOP based on data for the POR. Surrogate values that were in effect during periods other than the POR were inflated or deflated, as appropriate, to account for price changes between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices for India that were reported in the IMF's publication, International Financial Statistics. We valued PRC FOP as follows:

(1) We valued direct materials used to produce HFHTs (*i.e.*, steel, steel scrap, wood, paint, paint thinner (dilution), and anti-rust oil) and the steel scrap

generated from the production of HFHT's using the rupee per metric ton, per kilogram, or per cubic meter value of India imports between February 1997 through September 1997. We used imports into India between April 1995 and March 1996 to value steel bars used to produce HFHTs because the HTS subheading that we selected for the steel surrogate value, HTS 7214.50, does not appear in the Indian import statistics for February 1997 and September 1997.

In the prior reviews of HFHTs, the Department used the HTS category 7214.50 as a surrogate value for steel. This category was for "Forged Bars and Rods Containing 0.25% or Greater But Less Than 0.6% Carbon." The use of this category was based on the fact that it was the closest HTS category known to the Department in terms of carbon content and other input material. However, this HTS category is for steel purchased in finished rod and bars. In our search for the best possible surrogate value in this review we uncovered an HTS category for unfinished steel, 7207.20.09. We found that this steel has the same carbon content as 7214.50, but is unfinished. For further discussion regarding the HTS category used to value steel, see Decision Memorandum to Holly A. Kuga, Senior Director, Enforcement Group II, dated January 29, 1999, "Issues Concerning Surrogate Values for Steel: 1997/1998 Antidumping Duty Administrative Review of Certain Heavy Forged Hand Tools From the People's Republic of China," which is on file in the CRU. We used import statistics in our valuations that were published in the Monthly Statistics of the Foreign Trade of India, Volume II—Imports (Indian Import Statistics).

(2) We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

(3) We derived ratios for factory overhead, selling, general and administrative (SG&A) expenses, and profit using information reported for 1995–1996 in the Reserve Bank of India Bulletin. From this information, we were able to calculate factory overhead as a percentage of direct material, labor, and energy expenses; SG&A as a percentage of the total cost of manufacturing; and profit as a percentage of the sum of the total cost of manufacturing and SG&A.

(4) We valued packing materials, including cartons, pallets, anti-rust paper, anti-damp paper, plastic straps, plastic bags, iron buttons and knots, and iron wire, using the rupee per metric ton, per kilogram, or per cubic meter value of imports into India between February 1997 and September 1997. The import values were sourced from the Monthly Statistics of the Foreign Trade of India, Volume II—Imports (Indian Import Statistics). We used the Indian Import data for February 1995 to value pallets because the HTS subheading that we selected for pallets, HTS 4415.20, was not available in kilograms.

(5) We valued coal using the price of steam coal in India in 1996 as reported in the International Atomic Energy Agency's publication, Energy Prices and Taxes, Second Quarter 1998 (EPT).

(6) We valued electricity using the 1995 Indian electricity prices for industrial use as reported in the EPT.

(7) We used the following sources to value truck and rail freight services incurred to transport direct materials, packing materials, and coal from the suppliers of the inputs to the factories producing HFHTs:

Truck Freight—If a respondent used its own trucks to transport material or subject merchandise, we valued freight services using the average cost of operating a truck, which we calculated from information published in the Times of India on April 24, 1994. If a respondent did not use its own trucks or the respondent did not state that it used its own trucks, we valued freight services using the rates reported in an August 1993 cable from the U.S. Embassy in India to the Department. See Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China, 58 FR 48833 (September 20, 1993).

Rail Freight—We valued rail freight services using the April 1, 1995 rates published by the Indian Railway Conference Association. These rates were recently used in Brake Drums and Brake Rotors. For further discussion of the surrogate values used in these reviews, see the Surrogate Value Memorandum, January 29, 1999, which is on file in the CRU—Public File.

Preliminary Results of the Reviews

As a result of our reviews, we preliminarily determine that the following margins exist for the period February 1, 1997 through January 31, 1998:

Manufacturer/exporter	Time period	Margin (percent)
Shandong Huarong General Group Corporation, Bars/Wedges	2/1/97–1/31/98	3.48
Liaoning Machinery Import & Export Corporation, Bars/Wedges	2/1/97–1/31/98	0.00
Tianjin Machinery Import & Export Corporation:		
Hammers/Sledges	2/1/97–1/31/98	2.78
Picks/Mattocks	2/1/97–1/31/98	0.00
PRC-wide rates:		
Axes/Adzes	2/1/97–1/31/98	21.93
Bars/Wedges	2/1/97–1/31/98	66.32
Hammers/Sledges	2/1/97–1/31/98	44.41
Picks/Mattocks	2/1/97–1/31/98	108.2

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice, in accordance with 19 CFR 351.224. Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of the final results of these administrative reviews, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results.

The final results of these reviews shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

Duty Assessment Rates

The Department shall determine, and the Customs Service shall assess,

antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. This rate will be assessed uniformly on all entries of that specific importer made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis, i.e.*, less than 0.5 percent. The Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the final results of these administrative reviews for all shipments of HFHTs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies named above which have separate rates (Shandong Huarong, LMC, and TMC) will be the rates for those firms established in the final results of these administrative reviews for the classes or kinds listed above; (2) for any previously reviewed PRC and non-PRC exporter with a separate rate, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rates will be the PRC-wide rates established in the final results of these reviews; and (4) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under § 351.402 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: January 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–2815 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 012299C]

Notice of Intent to Prepare an Environmental Impact Statement Regarding Proposed Issuance of an Incidental Take Permit to Crown Pacific for Forest Management and Timber Harvest in Whatcom and Skagit Counties, Washington

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act, this notice advises the public that NMFS and FWS (the Services) intend to prepare an Environmental Impact Statement (EIS) related to the proposed approval of a Habitat Conservation Plan (Plan) and an issuance of an incidental take permit (Permit) to take endangered and threatened species in accordance with the Endangered Species Act of 1973, as amended (Act). The Permit applicant is Crown Pacific, Ltd., and the application is related to forest management and timber harvest on a portion of the Hamilton Tree Farm located in Whatcom and Skagit Counties, Washington.

Crown Pacific intends to request a Permit for the northern spotted owl (*Strix occidentalis*), marbled murrelet (*Brachyramphus marmoratus*), gray wolf (*Canis lupus*), peregrine falcon (*Falco peregrinus*), bald eagle (*Haliaeetus leucocephalus*), and the grizzly bear (*Ursus arctos*). It may also request a permit for 22 currently unlisted species of concern (including anadromous and resident fish), should these species be listed under the Act in the future.

The Services are furnishing this notice in order to advise other agencies and the public of our intentions and to announce that a draft EIS is expected to be available for public review and comment during the first quarter of 1999.

ADDRESSES: Address comments and requests for information to: Brian Bogaczyk, Fish and Wildlife Service, 510 Desmond Drive, SE, Suite 102, Lacey, Washington 98503, telephone (360) 753–5824; or Matt Longenbaugh, National Marine Fisheries Service, 510 Desmond Drive, SE, Suite 103, Lacey, Washington 98503, telephone (360) 753–7761.

SUPPLEMENTARY INFORMATION: Crown Pacific, Ltd., owns and manages the Hamilton Tree Farm, located in Whatcom and Skagit Counties, Washington. The proposed Plan area is composed of several parcels of the Hamilton Tree Farm, totaling 84,664 acres, and is located north and south of State Highway 20, roughly between Sedro-Woolley and Marblemount, Washington. Management activities on the tree farm include forest management and timber harvest. A portion of the proposed Plan area, Arlecho Creek, is in the process of being transferred to the Nature Conservancy and the Lummi Indian Nation, with the understanding that the property will be managed indefinitely as a natural and cultural area. The transfer is expected to be completed in late 1999.

Some timber management activities have the potential to impact species subject to protection under the Act. Section 10 of the Act contains provisions for the issuance of Permits to non-Federal land owners for the take of endangered and threatened species, provided the take is incidental to otherwise lawful activities and will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. In order to receive a Permit, the applicant must prepare and submit to the Services for approval a Plan containing a strategy for minimizing, monitoring, and mitigating all take associated with the proposed activities to the maximum extent practicable. The applicant must also ensure that adequate funding for the Plan will be provided. If approved, the Permit and Plan would be in effect for 100 years.

Activities proposed for Permit coverage include the following: Tree site preparation; tree planting; harvesting and yarding of timber; construction, maintenance and use of logging roads and landings; quarrying of stone and

gravel for use in those roads and landings; and cellular phone and radio repeater tower sites.

Previous announcements relating to this project indicated that an environmental review (EIS or Environmental Assessment) would be conducted. The Services have now concluded that an EIS should be prepared. The EIS will analyze the proposal and the reasonable alternatives, as well as the associated impacts of each. Development of initial alternatives involved internal and public scoping. Public input into the environmental review of this proposal was obtained during a public scoping period conducted from August 20 to September 21, 1998, and was announced in a previous **Federal Register** notice (63 FR 44634, August 20, 1998). That public scoping period will be used to fulfill scoping requirements under 40 CFR 1501.7, consistent with 46 FR 18026 (March 23, 1981), as amended by 51 FR 15618 (April 25, 1985).

Four alternatives have been proposed thus far and will be considered for detailed analysis in the EIS. Under Alternative A (no-action alternative) no Permit would be issued and take would be avoided for any and all threatened and endangered species on the property. Alternative B (preferred alternative) involves issuing a Permit for six threatened and endangered species on the property with provisions for approximately 22 unlisted species (covered species). The Plan would have minimization and mitigation measures for each of the covered species on the property. Alternative C involves issuing a Permit for northern spotted owl and marbled murrelet only, with provisions for approximately 9 unlisted species (covered species). The Plan would have minimization and mitigation measures for each covered species. Alternative D involves a Candidate Conservation Agreement with minimization and mitigation measures for anadromous salmonids and bull trout and take avoidance for all threatened and endangered species.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and implementing regulations (40 CFR parts 1500 through 1508), other appropriate Federal laws and regulations, and policies and procedures of the Services for compliance with those regulations. It is estimated that the draft EIS will be available for public review and comment during the first quarter of 1999.

Date: January 19, 1999.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Fish and Wildlife Service, Portland, Oregon.

Date: February 1, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–2795 Filed 2–4–99; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew information collection 3038–0007: Rules Related to Risk Disclosure Concerning Exchange Traded Commodity Futures and Options.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0007, Rules Related to Risk Disclosure Concerning Exchange Traded Commodity Futures and Options, which is due to expire June 30, 1999. The rules require futures commission merchants and introducing brokers to provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

DATES: Comments must be received on or before April 6, 1999.

ADDRESSES: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Rules Related to Risk Disclosure Concerning Exchange Traded Commodity Futures and Options.

Control Number: 3038–0007.

Action: Extension.

Respondents: Futures commission merchants and introducing brokers.

Estimated Annual Burden: 40,897.

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Est. avg. hours per response
Futures commission merchants and introducing brokers.	33.7, 190.10(c), and 30.6	190,422	224,659	50.57

Issued in Washington, D.C. on February 1, 1999.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–2753 Filed 2–4–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to the Chicago Board of Trade Soybean Oil Futures Contract; Extension of Comment Period

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of extension of public comment period for the proposed amendments.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has proposed amendments to the Chicago Board of Trade soybean oil futures contract. On January 11, 1999, the Commission published a request for public comment on the proposed amendments for a 30-day comment period ending on February 10, 1999. The Acting Director of the Division of Economic Analysis (Division), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that extension of the comment period for an additional fifteen (15) days is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 25, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CBT soybean oil futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The Acting Director, acting on behalf of the Commission, has determined to extend the public comment period for the subject notice. The Division believes that an extension of the comment period until February 25, 1999 would permit interested parties to fully evaluate the proposal and to submit comments thereon to the Commission.

Issued in Washington, DC, on January 29, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–2754 Filed 2–4–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for the Pope Air Force Base Runway Extension

The United States Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) assessing the potential environmental impacts of extending the runway at Pope Air Force Base, North Carolina. The present runway is too short to accommodate fully loaded, fully fueled C–5, C–17, and C–141 aircraft. An extended runway will accommodate fully loaded and fueled planes and increase the efficiency of Pope's operations. The Air Mobility Command (AMC) proposes lengthening the runway in order to support Pope's strategic airlift mission better. Four alternatives are being considered—extending the northeast end, extending the southwest end, extending both ends, and leaving the runway as is ("no action"). All alternatives but the "no action" alternative involve extending the runway and adjacent taxiways, constructing a satellite fire station and various air navigation structures, rerouting of various utilities, and obtaining additional property for an end of runway clear zone and to mitigate potentially impacted wetlands.

The Air Force will hold a public scoping meeting, in compliance with the National Environmental Policy Act, to request public involvement to identify environmental concerns that need to be addressed in the EIS. The schedule for the scoping meeting follows:

Date	Location	Time
25 February 1999	Spring Lake Town Hall Assembly Room, 300 Ruth St., Spring Lake, NC 28390.	7:00–10:00 p.m.

This meeting is the first step in soliciting public and government agency comments on the proposed action. Comments provided at this meeting and throughout the scoping process should focus on the nature and scope of the environmental issues and other concerns that need to be assessed in the EIS. During the meeting the Air Force will describe the proposed action and alternatives, define the process involved in preparing an EIS, and outline the opportunities for public involvement in the process. AMC will evaluate any reasonable alternatives identified during the scoping process and address them in the Draft EIS. The Draft EIS will be made available to the public and comments on it will be addressed during a public hearing. The information presented in the Draft EIS along with public comments will be included in the Final EIS. The Final EIS together with economic and technical data will be considered in making a final decision regarding the proposed runway extension. The final decision will then be documented in a Record of Decision that will be made public by the Air Force. To assure the Air Force will have sufficient time to fully consider public inputs on the proposed action and alternatives, written comments should be mailed no later than March 11, 1999.

Please direct written comments or requests for further information concerning the Pope AFB Runway Extension EIS to: Mr. Jonathan D. Farthing, HQ AFCEE/ECA, 3207 North Road, Brooks AFB, TX 78235–5363, (210) 536–4203.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–2857 Filed 2–4–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement To Consider Policies, Guidance, and Processes To Minimize the Environmental Impacts of Mountaintop Mining and Valley Fills in the Appalachian Coalfields

AGENCIES: Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare an environmental impact statement.

PURPOSE: The U.S. Army Corps of Engineers (Corps), U.S. Environmental Protection Agency (EPA), Office of Surface Mining (OSM), and U.S. Fish and Wildlife Service (FWS), in accordance with section 102(2)(c) of the National Environmental Policy Act, with the State of West Virginia, will prepare an Environmental Impact Statement (EIS) on a proposal to consider developing agency policies, guidance, and coordinated agency decision-making processes to minimize, to the maximum extent practicable, the adverse environmental effects to waters of the United States and to fish and wildlife resources from mountaintop mining operations, and to environmental resources that could be affected by the size and location of fill material in valley fill sites.

DATES: The agencies invite comments and suggestions on the scope of the analysis, including the regulatory issues and significant environmental effects to be addressed in the EIS. Written comments from the public regarding the environmental and regulatory issues and alternatives to be addressed in the EIS should be received in writing by March 31, 1999. The agencies will hold public meetings on February 23, 1999, in Summersville, West Virginia; February 24, 1999, in Charleston, West Virginia; and February 25, 1999, in Logan, West Virginia, to receive public input, either verbal or written, on relevant environmental and regulatory issues that should be addressed in the EIS. The locations and starting times of the public meetings are as follows: in Summersville, the meeting will be held at the Nicholas County Veteran's Memorial Park beginning at 6:30 p.m.; in Charleston, the meeting will be held at the rotunda at Riggleman Hall, University of Charleston in the afternoon from 2 to 4 p.m. and in the evening beginning at 6:30 p.m.; and in Logan, the meeting will be held at the Chief Logan State Park beginning at 6:30 p.m. Other public meetings may also be held and will be announced at a later date.

ADDRESSES: Send written comments and suggestions concerning this proposal to William Hoffman, Environmental Protection Agency, 3ES30, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029; e-mail address, hoffman.william@ epamail.epa.gov; telephone: 215–814–2995. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS are to be directed to William Hoffman, Environmental Protection Agency, 215–814–2995. Coordinators for each of the Federal and State agencies are as follows:

William Hoffman, U.S. Environmental Protection Agency, 215–814–2995
David G. Hartos, Office of Surface Mining, 412–937–2909
Andy Gallagher, WV Division of Environmental Protection, 304–759–0515
Michael D. Gheen, U.S. Army Corps of Engineers, 304–529–5487
David Densmore, U.S. Fish and Wildlife Service, 814–234–4090

SUPPLEMENTARY INFORMATION: The agencies undertaking preparation of this voluntary EIS implement Federal and State laws with which mountaintop mining operations and associated discharges to waters of the United States must comply. OSM is responsible for national administration of the Surface Mining Control and Reclamation Act (SMCRA); it has delegated the authority for the SMCRA programs for surface mining operations in West Virginia to the State of West Virginia. Other Appalachian coalfield states (except Tennessee) also implement delegated SMCRA authority. Discharge of fill material into United States waters is regulated under section 404 of the Clean Water Act, with permit responsibility administered by the Corps and applicable 404 regulations issued by the Corps and EPA. Other discharges to United States waters are subject to section 402 of the Clean Water Act, which is administered nationally by EPA with authority for the program delegated to West Virginia and other Appalachian coalfield States. Mountaintop mining operations must also comply with the Endangered Species Act, which is administered by FWS. In addition, the Fish and Wildlife Coordination Act (FWCA) pertains to federally-permitted, constructed, or licensed water development projects and land development projects that affect any water body. Whenever OSM, Corps, or EPA authorize an action within the scope of the FWCA, they are required to consult with the FWS, and similar State agencies, to obtain recommendations on ways to mitigate adverse effects on fish and wildlife resources.

The number of mountaintop mining operations that utilize valley fills, as well as the scale of individual operations, have increased in recent years in West Virginia. This EIS will evaluate significant environmental impacts associated with these operations on water quality, streams, aquatic and terrestrial habitat, habitat fragmentation, the hydrological balance, and other individual and cumulative effects. Federal and state agencies are increasingly concerned over the lack of comprehensive data regarding valley fill operations, and have initiated a number of studies to address these data gaps. Accurately describing and quantifying the extent and nature of direct, secondary, and cumulative impacts related to valley fills and associated mining practices is difficult.

This EIS will complement recent efforts to address the issues of mountaintop mining and valley fills. The OSM recently completed and issued a draft oversight report entitled "An Evaluation of Approximate Original Contour and Postmining Land Use in West Virginia". During 1998, the Governor of West Virginia established a Governor's Task Force, which held public inquiries and evaluated the impacts of mountaintop mining operations on the economy, the environment, and the people of that State. Its report was issued in December 1998.

To address the concerns about mountaintop mining and valley fills, the agencies will consider potential revisions to relevant regulations, policies, and guidance that would minimize the potential for adverse individual and cumulative impacts of mining operations. The EIS will provide information that will help the agencies improve the permitting process to protect water quality and minimize impacts to other environmental resources. The EIS will also examine how regulations of the agencies can be better coordinated. The EIS may consider information on the following: The cumulative environmental impacts of mountaintop mining; the efficacy of stream restoration; the viability of reclaimed streams compared to natural waters; the impact that filled valleys have on aquatic life, wildlife and nearby residents; biological and habitat analyses that should be done before mining begins; practicable alternatives for in-stream placement of excess

overburden; measures to minimize stream filling to the maximum extent practicable; and the effectiveness of mitigation and reclamation measures. The EIS is expected to take two years to complete.

Dated: February 2, 1999.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 99–2825 Filed 2–4–99; 8:45 am]

BILLING CODE 3710–62–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–03

Environmental Meteorology Program—Vertical Transport and Mixing; Correction

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of extension of application due date; correction.

In the **Federal Register** notice of February 1, 1999, in FR Doc. 99–2309, on page 4850, in the second column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read: "Peter Lunn, telephone (301) 903–4819."

Dated: February 2, 1999.

Clara R. Barley,

Federal Register Liaison Officer, Department of Energy.

[FR Doc. 99–2761 Filed 2–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–24–000]

Minnesota Power Inc., Notice of Application

February 1, 1999.

Take notice that on January 22, 1999, Minnesota Power Inc. submitted an application, under Section 204 of the Federal Power Act, for authorization to issue additional shares of common stock, in connection with a two-for-one common stock split.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before February 11, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2802 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–67–003]

Mississippi River Transmission Corporation; Notice of Compliance Filing

February 1, 1999.

Take notice that on January 27, 1999, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, First Substitute Original Sheet No. 120B and Substitute First revised Sheet No. 144 to become effective November 1, 1998.

MRT states that the purpose of this filng is to comply with the Commission's letter order, issued January 12, 1999 in Docket No. RP99–67–002. Such letter order accepted certain tariff sheets, subject to MRT making certain corrections to typographical errors in its Order 587–H compliance filing of November 16, 1998.

MRT states that a copy of this filing is being mailed to each of MRT's customers, active parties to the proceeding and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2808 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–160–000]

National Fuel Gas Supply Corporation; Notice of Application

February 1, 1999.

Take notice that on January 19, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed an application pursuant to sections 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing National Fuel to uprate a compressor unit at its Ellisburg Compressor Station to provide additional firm transportation service from Ellisburg, Pennsylvania to Leidy, Pennsylvania (1999 Ellisburg to Leidy Expansion Project), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, National Fuel proposes to uprate compressor unit 1A, which was authorized as part of National Fuel's 1997 Niagara Expansion Project—Phase II in Docket No. CP98–94–000, from 3,200 horsepower (hp) to 4,445 hp, an increase of 1,245 hp. National Fuel states that the expansion of unit 1A will be accomplished through software modifications to the engine control panel, which will be performed by the engine manufacture. National Fuel estimates the cost of the uprating to be approximately $101,600.

National Fuel states that its 1999 Ellisburg to Leidy Expansion Project will provide an additional 60,919 Dth per day of firm capacity from Ellisburg, Pennsylvania to the interconnection between the facilities of National Fuel and Transcontinental Gas Pipe Line Corporation (Transco) at Leidy, Pennsylvania. National Fuel explains that it conducted an open season from September 9, 1998, to October 16, 1998, for the additional Ellisburg to Leidy capacity. National Fuel claims that of the additional capacity, 55,919 Dth per day is subscribed by three shippers, El Paso Energy Marketing Co., Florida Power & Light Company, and Aquila Energy Marketing Corporation. National Fuel indicates that it is currently soliciting service requests for the

remaining 5,000 per day of firm transportation capacity.

Naitonal Fuel states that it does not seek a pre-determination of rolled-in rate treatment in this application, but intends to seek rolled-in rate treatment of the cost associated with this project in its next general rate case.

National Fuel requests that the Commission issue all necessary authorizations for its 1999 Ellisburg to Leidy Expansion by June 1, 1999, in order for National Fuel to meet the firm transportation requirements of the project shipper.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should be on or before February 22, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–2799 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–180–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

February 1, 1999.

Take notice that on January 19, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Sub. First Revised Sheet No. 389 and Alt. Sub. First Revised Sheet No. 389, with an effective date of January 1, 1999.

National Fuel states that this filing is being made in compliance with the Commission's letter order issued on December 30, 1998, in the above-reference docket. National Fuel further states that the revised tariff language on its primary tariff sheet provides that cash-out of imbalance volumes will be accomplished by using the index price for the month in which the imbalance was incurred. National Fuel's filing also includes an alternate tariff sheet that provides that cash-out of imbalance volumes will be accomplished by using the index price applicable to the month that includes the time period for which the Shipper last made a nomination for service.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2809 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–173–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

February 1, 1999.

Take notice that on January 25, 1999, Northern Natural Gas Company (Northern), 111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP99–173–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations for authorization to convert an existing receipt point to a delivery point, to accommodate interruptible gas deliveries to GPM Gas Corporation (GPM) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern states that it requests authority to abandon certain receipt point facilities and operate the existing tap as a new delivery point to accommodate interruptible gas service to GPM under Northern's currently effective throughput service agreement(s). Northern explains that the delivery point was requested by GPM in order to provide compressor fuel to its facilities in Hemphill County, Texas.

Northern estimates that the peak day and annual volumes that would be delivered at the subject delivery point would be 800 MMBtu and 292,000 MMBtu, respectively. Northern states that the conversion would be accomplished at no cost to Northern.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–2801 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–171–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

February 1, 1999.

Take notice that on January 22, 1999, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP99–171–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations (18 CFR 157.205 and 157.216) under the Natural Gas Act (NGA) for authorization to abandon a farm tap in Douglas County, Oregon, under Northwest's blanket certificate authorized in Docket No. CP82–433–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to abandon the Markillie No. 2 Farm Tap located on Northwest's Grants Pass Lateral. It is stated that the tap was installed in 1964 for service to a single end-user, the predecessor of the Avista Corporation. It is asserted that Northwest has no current contractual obligations to provide service through the tap, which has not been used since 1976. It is further asserted that the end-user has consented to the abandonment. Northwest estimates the cost of abandoning the tap at $2,300.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–2800 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–415–002]

Overthrust Pipeline Company; Notice of Compliance Filing

February 1, 1999.

Take notice that on January 27, 1999, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Second Substitute Third Revised Sheet No. 67B, to be effective November 2, 1998.

Overthrust states that the filing is being filed in compliance with the Commission's letter order issued January 15, 1999, (January 15 Order) in Docket No. RP98–415–001.

The January 15 Order directed Overthrust to revise its November 13,1998, filing that was made in compliance with the Commission's October 30, 1998, letter order. These filings revised Overthrust's FERC Gas Tariff, First Revised Volume No. 1–A to incorporate requirements set forth in 18 CFR 284.10(c)(1)(i) by the Commission's Order No. 587–H issued July 15, 1998.

Overthrust stated that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2807 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–5–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Change in FERC Gas Tariff

February 1, 1999.

Take notice that on January 21, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective February 20, 1999:

Second Revised Sheet No. 342
First Revised Sheet No. 343
Seventh Revised Sheet No. 344

Transco states that the purpose of the filing is to update Transco's tariff to reflect changes that have occurred with respect to the listing of Transco's marketing affiliates and shared officers and directors, and to update Transco's tariff regarding the limited sharing of facilities with certain of Transco's marketing affiliates and regarding the identity of the responsible individual under Transco's internal procedures to examine third party complaints concerning conduct involving Transco and its marketing affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission's in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2803 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–69–000, et al.]

Elwood Energy LLC, et al.; Electric Rate and Corporate Regulation Filings

January 28, 1999.

Take notice that the following filings have been made with the Commission:

1. Elwood Energy LLC

[Docket No. EG99–69–000]

Take notice that on January 26, 1999, Elwood Energy LLC (Elwood) filed with the Federal Energy Regulatory Commission, an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

Elwood is owned by Dominion Elwood, Inc., a Delaware corporation, and Peoples Elwood LLC, a Delaware limited liability company. Dominion Elwood, Inc., is a wholly-owned subsidiary of Dominion Energy, Inc., which in turn is a wholly-owned subsidiary of Dominion Resources, Inc. Peoples Elwood, LLC is a wholly-owned subsidiary of PERC Power, Inc., which in turn is a wholly-owned subsidiary of Peoples Energy Resources, Corp.

Elwood will own and operate a generating facility with a nominal capacity of 600 MW located near Elwood Illinois, consisting of four 150 GE turbine generator sets, an approximately 0.3 mile long 345 kV transmission line, four 18/345 kV step up transformers, four 18kV/4160v auxiliary transformers, and associated circuit breakers. The facility will be interconnected with the transmission system of Commonwealth Edison Company.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. JPower Inc.; Northeast Energy Services, Inc.; Tennessee Power Company; Equitable Power Services Co.; Brooklyn Navy Yard Cogeneration Partners, L.P.; Illinova Energy Partners, Inc.; Power-Link Systems, Ltd.

[Docket Nos. ER95–1421–011; ER97–4347–005; ER95–581–015; ER94–1539–019; ER97–886–004; ER94–1475–015; and ER98–2181–001]

Take notice that on January 21, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. MEG Marketing, LLC; TexPar Energy, Inc.; Wolverine Power Supply Cooperative, Inc.; Rainbow Energy Marketing Corporation; Peak Energy, Inc.; Yankee Energy Marketing Company; Howard/Avista Energy, LLC

[Docket Nos. ER98–2284–002; ER95–62–016; ER98–411–007; ER94–1061–019; ER95–379–014 and ER95–379–015; ER96–146–009; and ER98–181–004]

Take notice that on January 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. Equitable Energy, LLC

[Docket No. ER99–682–000]

Take notice that on January 25, 1999, Equitable Energy, L.L.C., tendered for filing an amendment to its "Notice of Succession In Ownership Or Operation By Equitable Energy, LLC," filed on November 23, 1998. The amendment provides additional information sought by Commission Staff.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Indiana Gas and Electric Company

[Docket No. ER99–1402–000]

Take notice that on January 19, 1999, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing summary information on transactions that occurred during the period October 1, 1998 through December 31, 1998, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Strategy, Inc.

[Docket No. ER99–1410–000]

Take notice that on January 21, 1999, Strategy, Inc., a power marketer organized under the laws of Massachusetts, petitioned the Commission for acceptance of its market-based rate schedule, waiver of the 60-day notice requirement, and waiver of certain requirements under Subparts B and C of Part 35 of the Commission's Regulations.

Comment date: February 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER99–1420–000]

Take notice that on January 21, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois, 61602, tendered for filing with the Commission, a report for the quarter ending December 31, 1998 for sales under its Market Rate Power Sales Tariff.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Atlantic City Electric Company

[Docket No. ER99–1421–000]

Take notice that on January 21, 1999, Atlantic City Electric Company (Atlantic) submitted a quarterly report under Atlantic's Market-Based Sales Tariff. The report is for the period October 1, 1998 through December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Rochester Gas and Electric Corporation

[Docket No. ER99–1425–000]

Take notice that on January 22, 1999, Rochester Gas and Electric Corporation (RG&E) tendered for filing a summary of their quarterly report of transactions under their market-based rate tariff for the period of October 1, 1998 to December 31, 1998, pursuant to the Commission's Order issued September 12, 1997, in Docket No. ER97–3553–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Electric Power Company

[Docket No. ER99–1430–000]

Take notice that on January 22, 1999, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing pursuant to the Federal Energy Regulatory Commission's January 29,1998 Order issued in Docket No. ER98–855–000 accepting Wisconsin Electric's tariff for market-based power sales and reassignment of transmission capacity, FERC Electric Tariff, Original Volume No. 8, is the quarterly transaction report for the calendar quarter ending December 31, 1998.

Comment Date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Avista Corporation

[Docket No. ER99–1435–000]

Take notice that on January 25, 1999, Avista Corporation, tendered for filing a Notice of Succession pursuant to 18 CFR 35.16 of the Federal Energy Regulatory Commission's Regulations in order to reflect its name change from Washington Water Power Company.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–1436–000]

Take notice that on January 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–1437–000]

Take notice that on January 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Select Energy, Inc., (SE).

Con Edison states that a copy of this filing has been served by mail upon SE.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–1438–000]

Take notice that on January 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Co., (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of New Mexico

[Docket No. ER99–1439–000]

Take notice that on January 25, 1999, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff with British Columbia Power Exchange Corporation (dated January 7, 1999). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to British Columbia Power Exchange Corporation and to the New Mexico Public Regulation Commission.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Ameren Services Company

[Docket No. ER99–1440–000]

Take notice that on January 25, 1999, Ameren Services Company (ASC) as Agent for Union Electric Company (UE), tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and the City of Linneus (the City), Missouri. ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to the City pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

ASC requests that as directed to the Commission's Order No. 888, the Service Agreement be allowed to become effective on January 1, 1999.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Services Company

[Docket No. ER99–1441–000]

Take notice that on January 25, 1999, Ameren Services Company (Ameren Services), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of Linneus, Missouri (the City). Ameren Services asserts that the purpose of the Agreement is to permit Ameren Services to provide transmission service to the City pursuant to Ameren's Open Access Tariff.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Orange and Rockland Utilities, Inc.

[Docket No. ER99–1442–000]

Take notice that on January 25, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, proposed amendments to the Form of Service Agreement of its Open Access Transmission Tariff on file in Docket No. OA96–210–000 to implement retail access to its system as required by orders of the New York Public Service Commission. The details of the proposed amendments are more fully described in Orange and Rockland's filing.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of May 1, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the parties to Docket No. OA96–210–000.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER99–1443–000]

Take notice that on January 25, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Metromedia Energy Inc. (Metromedia), under the NU System Companies' Sale for Resale Tariff No. 7, Market Based Rates.

NUSCO states that a copy of this filing has been mailed to Metromedia.

NUSCO requests that the Service Agreement become effective January 1, 1999.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Southern California Edison Company

[Docket No. ER99–1444–000]

Take notice that on January 25, 1999, Southern California Edison Company (SCE), tendered for filing the Eldorado

Substation Additional Facilities and Interconnection Agreement (Agreement) between SCE and El Dorado Energy, L.L.C. (EDE).

The Agreement specifies the terms and conditions under which SCE will interconnect EDE's 492W generating facility with the Eldorado 230kV Substation located in southern Nevada pursuant to SCE's Transmission Owners Tariff.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. PacifiCorp

[Docket No. ER99–1445–000]

Take notice that on January 25, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Mutual Netting/Closeout Agreements between PacifiCorp and Arizona Public Service Company, Colorado Springs Utilities, Electrical District #2, Pinal County, Eugene Water & Electric Board, Morgan Stanley Capital Group Inc., Nebraska Public Power District, PECO Energy Company, Portland General Electric Company, Sacramento Municipal Utility District, Sierra Pacific Power Company, Texas-New Mexico Power Company and UtiliCorp West Plains Energy.

Copies of this filing were supplied the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Minnesota Power, Inc.

[Docket No. ER99–1447–000]

Take notice that on January 21, 1999, Minnesota Power, Inc. (MP) tendered for filing a report of short-term transactions that occurred during the quarter ending December 31, 1998, under MP's WCS–2 Tariff which was accepted for filing by the Commission in Docket No. ER96–1823–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Doswell Limited Partnership

[Docket No. ER99–1451–000]

Take notice that on January 25, 1999, Doswell Limited Partnership (Doswell), tendered for filing with the Federal Energy Regulatory Commission a Letter Agreement and accompanying Term Sheet, which supplements the Power Purchase and Operating Agreement between Doswell and Virginia Electric and Power Company.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Electric Power Company

[Docket No. ER99–1452–000]

Take notice that on January 25, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a short-term firm and a non-firm transmission service agreement between itself and New Centuries Energies. The agreement allows New Century Energies to become a point-to-point customer under Wisconsin Energy Corporation Operating Companies' transmission service tariff (FERC Electric Tariff, Original Volume No. 1).

Wisconsin Electric respectfully requests an effective date sixty days after filing. Wisconsin Electric is authorized to state that New Centuries Energies joins in the requested effective date.

Copies of the filing have been served on New Century Energies, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. San Diego Gas & Electric Company

[Docket No. ER99–1453–000]

Take notice that on January 25, 1999, San Diego Gas and Electric Company (SDG&E), tendered for filing an unexecuted Service Agreement between SDG&E and the City of San Diego (the City) for service under SDG&E Open Access Distribution Tariff (OATD). SDG&E states that the City has been unable to sign this Service Agreement due to the required approval process not having been completed. SDG&E further states that it tenders the Service Agreement to assure that service under the OATD is available to the City should it be needed, after March 15, 1999.

Copies of this filing have been served upon the California Public Utilities Commission and the City.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Pacific Northwest Generating

[Docket No. ER99–1454–000]

Take notice that on January 25, 1999, Pacific Northwest Generating Cooperative tendered for filing with the Federal Energy Regulatory Commission a Transaction Report for quarter ending December 31, 1998, pursuant to the Commission's order issued January 13, 1997 in Docket Nos. ER97–504–000 and OA97–32–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Southwood 2000, Inc.

[Docket No. ER99–1455–000]

Take notice that on January 25, 1999, Southwood 2000, Inc. tendered for filing with the Federal Energy Regulatory Commission, a transaction report for quarter ending December 31, 1998, pursuant to the Commission's order issued June 12, 1998 in Docket No. ER98–2603–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Northeast Empire Limited Partnership #2

[Docket No. ER99–1456–000]

Take notice that on January 25, 1999, Northeast Empire Limited Partnership #2 tendered for filing with the Federal Energy Regulatory Commission a summary of activity for quarter ending December 31, 1998 pursuant to the Commission's order issued February 12, 1998 in Docket No. ER98–1125–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Northern Indiana Public Service Company

[Docket No. ER99–1457–000]

Take notice that on January 25, 1999, Northern Indiana Public Service Company tendered for filing its Transaction Report for short-term transactions for the fourth quarter of 1998 pursuant to the Commission's order issued January 10, 1997 in *Northern Indiana Public Service Company*, 78 FERC ¶ 61,015 (1997).

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Niagara Mohawk Power Corporation

[Docket No. ER99–1458–000]

Take notice that January 25, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing Service Agreements for transmission and wholesale requirements services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreements for transmission services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3; as modified by an Order of the Commission in this proceeding dated November 7, 1997. The Service Agreements for wholesale requirements

services are under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4; as modified by an Order of the Commission in this proceeding dated November 7, 1997. Niagara Mohawk's customer is Select Energy, Inc.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Tampa Electric Company

[Docket No. ER99–1460–000]

Take notice that on January 26, 1999, Tampa Electric Company (Tampa Electric), tendered for filing service agreements with the Reedy Creek Improvement District (RCID) and Florida Power Corporation (FPC) for firm point-to-point transmission service, and a service agreement with FPC for non-firm point-to-point transmission service, under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of January 1, 1999, for the service agreements, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on RCID, FPC, and the Florida Public Service Commission.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Indeck Pepperell Power Associates, Inc.

[Docket No. ER99–1462–000]

Take notice that on January 16, 1999, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement (Service Agreement) between Indeck Pepperell and Great Bay Power Corporation (Great Bay), dated December 11, 1998, for service under Indeck Pepperell's Rate Schedule FERC No. 1. Indeck Pepperell requests that the Service Agreement be made effective as of December 11, 1998.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. New Century Services, Inc.

[Docket No. ER99–1463–000]

Take notice that on January 25, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Cielo Power Market, LP.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2705 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 1, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11660–000.

c. Date Filed: January 14, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Union City Dam Hydroelectric Project.

f. Location: On the French River near Union City, Erie County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would be located at the existing U.S. Army Corps of Engineers Union City Dam and would consist of the following proposed facilities: (1) a penstock and discharge works; (2) a powerhouse on the tailrace side of the dam with a total installed capacity of 360 kW; (3) a transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 1,200 MWh and that the cost of the studies under the permit would be $250,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a

specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–2804 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 1, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11661–000.

c. Date Filed: January 14, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Gathright Dam Hydroelecrtric Project.

f. Location: On the Jackson River near the town of Covington, Alleghany County, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would be located at the existing U.S. Army Corps of Engineers Gathright Dam and would consist of the following proposed facilities: (1) a penstock and discharge works; (2) a powerhouse on the tailrace side of the dam with a total installed capacity of 4,540 kW; (3) a transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 17,000 MWh and that the cost of the studies under the permit would be $1,250,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing

development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent— A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests of other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–2805 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

February 1, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11662–000.

c. Date Filed: January 14, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Shenango Dam Hydroelectric Project.

f. Location: On the Shenango River near the town of Sharpsville, Mercer County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Tom Dean, E-mail address, thomas.dean@ferc.fed.us, or telephone 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of the Project: The project would be located at the existing U.S. Army Corps of Engineers Shenango Dam and would consist of the following proposed facilities: (1) a penstock and discharge works; (2) a powerhouse on the tailrace side of the dam with a total installed capacity of 1,510 kW; (3) a transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 5,800 MWh and that the cost of the studies under the permit would be $650,000.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–2806 Filed 2–4–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6230–9]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology, New Standing Committee on Sectors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The Environmental Protection Agency (EPA) is inviting nominations for membership on its National Advisory Council for Environmental Policy and Technology (NACEPT), new Standing Committee on Sectors. The Agency is seeking qualified senior level decision makers from diverse stakeholder groups throughout the U.S. to be considered for appointments. Nominations will be accepted until close of business February 12, 1999, and must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

DATES: Nominations will be accepted until close of business on February 12, 1999.

ADDRESSES: Submit nominations to Ms. Kathleen Bailey, Designated Federal Officer, Office of Reinvention, U.S. Environmental Protection Agency, MC 1802, 401 M Street, SW, Washington, D.C. 20460. You may also E-mail nominations to bailey.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Pub. L. 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. Maintaining a balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members.

In follow-up to completion of work by EPA's Common Sense Initiative (CSI) Council, the Administrator has asked NACEPT to create a new Standing Committee on Sectors. This will provide a continuing Federal Advisory Committee forum from which the Agency can continue to receive valuable multi-stakeholder advise and recommendations on sector approaches.

Based on the lessons learned in CSI and many other sector based programs, the Agency has developed a Sector Based Environmental Protection Action Plan to reinforce and expand sector based approaches to achieving environmental results. The Standing Committee on Sectors will, through NACEPT (the Council): (1) continue to support the on-going CSI work, (2) support the implementation of the Action Plan, as noted above, and (3) serve as a vehicle to get stakeholder reaction and input on sector based issues in a timely way. (The Sector Based Environmental Protection Action Plan and draft Charge for the Standing Committee on Sectors is available on EPA's web site at http://www.epa.gov/sectors)

We are accepting nominations for approximately15–18 members. Criteria for selection of nominees will include the following:

—Representation from the former CSI Council and three CSI Sector Subcommittees that are continuing as

workgroups, i.e. Printing, Petroleum, and Metal Finishing.
—Representation from our partners in actions outlined in the Sector Based Environmental Protection Action Plan.
—Representation from a broad range of EPA stakeholder groups which have interest and experience in dealing with sector issues, including but not limited to business/industry, state/local/tribal governments, national and local environmental, environmental justice, and labor groups.
—Senior level representatives with decision-making authority for their organization.
—Representatives with experience working collaboratively with stakeholder groups in addition to their own.

Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number. Nominees invited to participate will receive an invitation from EPA's Deputy Administrator.

For further information, please contact Ms. Kathleen Bailey, Designated Federal Officer, Office of Reinvention, U.S. Environmental Protection Agency, MC 1802, 401 M Street, SW, Washington, DC 20460. Phone: 202/260–3413 E-mail: bailey.kathleen@epa.gov.

Dated: January 25, 1999.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 99–2693 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed January 25, 1999 Through January 29, 1999 Pursuant to 40 CFR 1506.9

EIS No. 990027, Draft EIS, BLM, NM, Bisti/De-Na-Zin Wilderness Oil and Gas Development, To Drill 13 Oil and Gas Wells on Two Leases, Permit to Drill and Right-of-Way Permit, San Juan Counties, MN, Due: April 30, 1999, Contact: Lee C. Otteni (505) 599–8990.

EIS No. 990028, Draft EIS, COE, NB, Platte West Water Production Facilities, Construct a Drinking Supply and Treatment Facility, Metropolitan Utilities District of Omaha, Douglas, Saunders and Sarpy Counties, NB, Due: March 26, 1999, Contact: Mike Neuzil (402) 221–4606.

EIS No. 990029, Draft EIS, FAA, OH, Toledo Express Airport (TOL), Proposed Noise Compatibility Plan Air Traffic Actions and Proposed Aviation Related Industrial Development, Airport Layout Plan, Funding, Lucas County, OH, Due: March 22, 1999, Contact: Wally Welter (847) 294–8091.

EIS No. 990030, Final EIS, IBR, CA, San Joaquin River Agreement Project, Implementation of the Meeting Flow Objectives for 1999–2010, Vernalis Adaptive Management Plan, San Joaquin, Stanislaus, Madera, Merced, Fresno and Tuolume Counties, CA, Due: March 08, 1999, Contact: Michael Delamore (209) 487–5039.

EIS No. 990031, Draft Supplement, FHW, WV, WV–9 Transportation Corridor, Improvements from Martinsburg to Charles Town, Updated and Additional Information, Berkeley, Jefferson and Morgan Counties, WV, Due: March 31, 1999, Contact: David A. Leighow (304) 346–5928.

EIS No. 990032, Final EIS, USA, GA, U.S. Army/Fort Benning and The Consolidated Government of Columbus Proposed Land Exchange, Muscogee and Chattahoochee Counties, GA, Due: March 08, 1999, Contact: John Brent, (706) 545–4766.

EIS No. 990033, Draft EIS, FHW, FL, St. Augustine Bride of Lions (SR–AIA) Rehabilitating or Replacing the Existing Two Lane Bridge, Crossing of the Matanzas River/Intracoastal Waterway, US Coast Guard Permit, NPDES and COE Nationwide Permits, St. Augustine, St. John County, FL, Due: March 22, 1999, Contact: Mark P. Bartlett (850) 942–9598.

EIS No. 990034, Final EIS, USN, HI, Barbers Point Naval Air Station, Disposal and Reuse of Land Facilities, HI, Due: March 08, 1999, Contact: Lon (808) 471–9338.

EIS No. 990035, Final EIS, AFS, UT, Pine Tract Project, Implementation, Coal Lease Tract (UTU–76195); Modification to Federal Coal Lease (U–63214) Quitchupah Lease) and Permit Amendment Application to Subside Box Canyon, Manti-La Sal National Forest, Ferron/Price Ranger District, Emergy and Sevier Counties, UT, Due: March 8, 1999, Contact: Liane Mattson (435) 637–2817.

EIS No. 990036, Final EIS, COE, AK, Beaufort Sea Oil and Gas Development Northstar Project, Implementation, NPDES Permit, Sea Island, Alaskan Beaufort Sea, Offshore Marine Environment and Onshore Northslope of Alaskan Coastal Plain, AK, Due: March 08, 1999, Contact: Timothy R. Jennings (907) 753–2716.

Amended Notices

EIS No. 990015, Final EIS, FAA, NY, Terminal Doppler Weather Radar (TDWR) Installation and Operation, Serve the John F. Kennedy International Airports (JFK) and La Guardia (LGA), Site Specific, Air Station Brooklyn, Kings County, NY, Due: March 01, 1999, Contact: Jerome D. Schwartz (202) 267–9841.
Published FR 1–29–99—Due Date correction.

EIS No. 990016, Final EIS, IBR, WA, programmatic EIS—Yakima River Basin Water Enhancement (Phase 2) Project, Implementation, Benton, Yakima and Kittitas Counties, WA, Due: March 01, 1999, Contact: Ms. Lola Sept (208) 378–5032.
Published FR 1–29–99—Due Date correction.

EIS No. 990018, Legislative Final EIS, USN, NV, Fallon Naval Air Station, Renewal of the B–20 Land Withdrawal, City of Fallon, Churchill County, NV, Due: March 01, 1999, Contact: Sam Dennis (650) 244–3007.
Published FR 1–29–99—Due Date correction.

EIS No. 990019, Final Supplement, BLM, Co, Glenwood Springs Resource Area, Resource Management Plan and Wilderness Recommendations, Implementation and Recommendations, Garfield, Mesa, Routt, Eagle, and Pitkin Counties, CO, Due: March 01, 1999, Contact: Steve Moore (970) 947–2800.
Published FR 1–29–99—Due Date correction.

EIS No. 9990020, Draft EIS, TVA, TN, GA, Peaking Capacity Additions, Construction and Operation of Natural Gas-Fired Combustion Turbines, NPDES and COE Section 404 Permits; Three Sites Proposed: Colbert Fossil Plant, Colbert County, AL, Gallatin Fossil Plant, Sumner County, TN and Johnsonville Fossil Plant, Humphreys County, TN, Due: March 15, 1999, Contact: Gregory L. Askew, P.E. (423) 632–6418.
Published FR 1–29–99—Due Date correction.

EIS No. 990022, Final EIS, BLM, AK, Squirrel River Wild and Scenic River Suitability Study, Designation and Non-Designation, National Wild and Scenic Rivers System, AK, Due:

March 01, 1999, Contact: Lon Kelly (907) 474–2368.

Published FR 01–29–99—Due Date correction.

EIS No. 990024, Final EIS, GSA, VA, U.S. Patent and Trademark Office (PTO) Consolidation, Acquisition of 2.4 million Rentable Square Feet with a 20-year Lease Term, Three Possible Sites: Crystal City, Carlyle and Eisenhower Avenue, VA, Due: March 01, 1999, Contact: Carl Witners (202) 401–1025.

Published FR 1–29–99—Due Date correction.

EIS No. 990025, Draft EIS, UMC, AZ, Yuma Marine Corps Air Station (MCAS), To Improve Ordnance Handling and Storage, Construct a new Combat Aircraft Loading Area (CALA); New Station Ordnance Area and Relocation of MCAS Yuma, AZ, Due: March 15, 1999, Contact: Richard Samrah (520) 341–3163.

Published FR 1–29–99—Due Date correction.

EIS No. 990026, Draft EIS, AFS, ID, WA, Douglas-fir Bettle Project, Proposal To Harvest Tree, Regenerated Forest, Aquatic Restoration and Fuels Reduction, Idaho Panhandle National Forest, Coeur d'Alene River and Priest Lake Ranger District and Colville National Forest, Newport Ranger District, Kootenai, Shoshone and Bonner Counties, ID and Pend Orielle County, Wa, Due: March 16, 1999, Contact: David J. Wright (208) 664–2318.

Published FR 1–29–99—Due Date correction.

EIS No. 908468, Draft EIS, AFS, OR, Pelican Butte Ski Area Master Development Plan, Implementation, Winema National Forest, Klamath Ranger District, Klamath County, OR, Due: February 26, 1999, Contact: Edward Sheldal (202) 523–0163.

Published FR 11–20–98—Review period extended.

Dated: February 2, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–2846 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6231–4]

Issuance of an Emergency Ocean Dumping Permit to the National Science Foundation for Disposal of an Ice Pier From Its Base at McMurdo Station, Antarctica

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of permit issuance.

SUMMARY: On February 1, 1999, EPA issued an emergency ocean dumping permit to the National Science Foundation (NSF) to transport an existing ice pier from its base at McMurdo Station, Antarctica, and dispose of it in the waters of McMurdo Sound. The emergency permit was issued to allow NSF to remove the existing pier and to build a new one. The existing pier poses a substantial and unacceptable safety hazard to human life. Minimal adverse environmental impact from the disposal of the ice pier is expected. EPA is publishing the emergency permit for the public's information.

DATES: The permit was effective on February 1, 1999.

ADDRESSES: Written correspondence may be sent to: Dave Redford, Acting Chief, Marine Pollution Control Branch, Oceans and Coastal Protection Division, (4504F), Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Dave Redford, Acting Chief, Marine Pollution Control Branch, 202/260–9179.

SUPPLEMENTARY INFORMATION: The EPA issued the emergency permit pursuant to its authority under the Marine Protection, Research, and Sanctuaries Act of 1972. The terms and conditions of the emergency permit follow.

Dated: February 1, 1999.

J. Charles Fox,

Assistant Administrator for Water.

U.S. Environmental Protection Agency, Marine Protection, Research, and Sanctuaries ACT (Ocean Dumping) Permit

Permit Type: Emergency.
Effective Date: February 1, 1999.
Expiration Date: March 1, 2000.
Applicant: National Science Foundation.
Transporter: U.S. Coast Guard.

I. Action

This is an emergency ocean dumping permit that allows the National Science Foundation (NSF) to transport an existing ice pier from its base at McMurdo Station, Antarctica, and dispose of it in the waters of McMurdo Sound. The pier poses a substantial and unacceptable safety hazard to human life. Minimal adverse environmental impacts from the disposal of this ice pier are expected.

II. Background

The National Science Foundation currently operates three major bases in Antarctica: McMurdo Station on Ross Island, adjacent to McMurdo Sound; Palmer Station, near the western terminus of the Antarctic Peninsula; and Amundsen-Scott South Pole Station, at the geographic South Pole. McMurdo Station is the largest of the three stations, and is the primary logistics base for the United States Antarctic Program (USAP). To permit vessels to dock and unload at McMurdo Station, construction and use of an ice pier is necessary. This ice pier, which is approximately 800 feet long, 300 feet wide, and 22 feet thick, is constructed during the winter season by freezing successive layers of ice until the required thickness is achieved. Several times in the process long lengths of steel cable are frozen in the pier to provide torsional stability. Short lengths of steel pipe are implanted in the ice layers to allow the lengths of cable to be wrapped around the pipes. In the final stage of the process, lengths of wooden poles are implanted in the ice to provide support for lighting, power, and telephone service to buildings on the pier. When the construction of the ice segment of the pier is completed, a 6–8≥ layer of pumice is applied to the pier, to provide a non-slip surface.

In summary, the following types and approximate quantities of materials would normally be used in the construction of an ice pier at McMurdo Station:

1″ steel cable: 21,000 feet
2″ steel pipe: 650 feet
Wooden utility poles: Up to 6
Pumice: 5,000 cubic yards

At the end of each austral summer season, the ice pier is inspected, and as much as possible of the pumice surface is removed and stored for use the following season; small amounts of pumice surface will remain frozen in the pier and cannot be removed. If the pier has deteriorated to the point that it is not capable of being used the following season, the wooden poles are cut off just above the surface of the ice, the pumice is scraped off, all equipment, materials, and debris are removed, and the pier is physically

removed from McMurdo Station. NSF seeks authorization to tow the ice pier out to McMurdo Sound to float free amidst the ice pack, where it will mix with the sea ice, and eventually melt naturally. Transportation of the ice pier for ocean disposal in McMurdo Sound is dumping subject to the Marine Protection, Research, and Sanctuaries Act (MPRSA). MPRSA Sec. 101(a), 33 U.S.C. 1411(a).

Of potential environmental concern are any operational discharges, leaks, or spills that may have contaminated the surface of the pier over its lifetime. Examples of possible releases include aircraft fuel, gasoline, engine lubricating oils, hydraulic fluids, or ethylene glycol (antifreeze). Such releases could result in contamination of portions of the pier with compounds of concern to the marine environment. To assess this potential, the NSF has analyzed ice samples taken from the ice pier. Tests were done in two successive years for ethylene glycol, total extractable hydrocarbons, and total petroleum hydrocarbons (TPH). In over 40 analyses, there were only two cases where any contaminants were detected. In the first case, the sample collected beneath a 55-gallon fuel drum revealed leakage from the drum; in the second case, a single detection of TPH of unknown origin occurred. Subsequently, the NSF issued a directive that all locations where fuel drums were used or stored shall be underlain with a containment measure, such as large metal pans or impermeable liners, beneath the potential contaminant source. Drip pans were installed under all fuel drums providing heat to structures on the pier.

The NSF has a Spill Prevention, Control, and Countermeasures Plan for all the stations and bases under its jurisdiction in Antarctica. The Plan includes a specific section for McMurdo Station that addresses fuel storage and transfer systems, the annual unloading of drummed lubricants, solvents, and hazardous materials, and the loading of contaminated solvents and materials for removal from Antarctica. For example, if NSF personnel observe discoloration of the pumice layer, or a spill or leak, the affected pumice is removed along with any contaminated ice, and stored off the pier. In addition, there is considerable vehicular traffic on the ice pier during vessel offload operations, and the possibility of leaks from engine blocks cannot be totally excluded. However, the NSF has informed EPA that the vehicles are parked on the pier for only brief periods of time, ranging from minutes to less than an hour, and that no vehicles are ever parked on the pier overnight.

As a result of the analyses described above and the protective measures that have been instituted by the NSF, EPA has concluded that no contaminants of concern in greater than trace amounts will be contained in the pier when it is disposed, and further, that the release of the ice pier into McMurdo Sound would cause only minimal adverse environmental impacts. The long lengths of cable and the shorter lengths of steel pipe will sink to the ocean floor during the melting process, and the short lengths of wooden poles will float in the ocean for several months before becoming waterlogged and eventually sinking to the ocean floor.

Although precise information is not available on the time required for melting and disintegration of an ice pier, NSF scientists have estimated that such processes will take place over several years. NSF believes that the ice pier will drift from the release point in McMurdo Sound, into the Antarctic Sea, and eventually into the Southern Ocean, where it will be subject to the currents of the Southern Ocean. However, since it is not known how long the ice pier will float before its eventual disintegration and melting, EPA believes it is important to know the direction of the pier's path, prior to its final disintegration. Satellite tracking of large, slowly moving, objects is a well-established technology, especially since estimates of course, speed, and location need only be made several times a month.

As a result, the NSF is directed, as a condition of this permit, to utilize a methodology to track the ice pier for a period of one year from the date of release of the pier. Such methodologies may include the use of satellite-tracked pingers placed on the ice pier, or any other methodology that will allow data to be collected on the course, speed, and location of the ice pier. The results of these tracking efforts are to be included in the reports that the NSF is required to submit to EPA. The NSF has informed EPA that disposal of the ice pier is expected to be completed by March 1, 1999; however, the term of the permit extends to March 1, 2000, because of the tracking and reporting requirements stipulated in this permit.

III. Justification for the Emergency Permit

The NSF initially raised the matter of a permit for the disposal of ice piers from McMurdo Station with EPA in late 1992. At that time, it was not clear that immediate action to issue the permit was necessary, and EPA's preferred approach was to amend the ocean dumping regulations to add a new general permit at 40 CFR Part 229, authorizing the dumping of ice piers from the NSF base at McMurdo Station on a cycle of up to seven years. Work on the regulation had proceeded to the point that a general permit had been drafted in November 1998, and the internal Agency review process had begun. However, in late December 1998, the NSF determined that the pier had become unsafe for future operations, and that the unloading of vessels and deposition of heavy materials on the pier would pose a substantial and unacceptable hazard to human life. The pier has eroded from underneath, and has developed internal cracks that cannot be repaired. The NSF informed EPA that a permit to allow the dumping of the existing ice pier would be required by early February 1999.

At that point, completion of the process to grant a general permit to the NSF through rulemaking by early February was impossible, due to the time required for Agency review and approval of the proposed regulation, publication in the **Federal Register**, a public comment period, drafting of a final rule that takes into account the public comments, Agency review and approval, and publication of the final rule in the **Federal Register**. Issuance of this emergency permit allows for immediate disposal of the current deteriorating ice pier; work on the rule providing for a general permit for the NSF will continue.

Emergency permits are addressed in the ocean dumping regulations at 40 CFR 220.3(c), which provides:

1. A permit may be issued to dump materials where substances prohibited as other than trace contaminants are present in greater than trace amounts,

(a) After consultation with the Department of State, to determine if any of the signatories to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention of 1972) are likely to be affected by the emergency dumping; and

(b) When an emergency has been demonstrated to exist that requires such dumping. The emergency must pose an unacceptable risk relating to human health, and admit of no other feasible solution. As used in 40 CFR 220.3(c), "emergency" refers to situations requiring action with a marked degree of urgency, but is not limited to circumstances that require immediate action.

2. Emergency permits may be issued for other materials, except those prohibited by 40 CFR 227.5, without

consultation with the Department of State, when EPA determines that there exists an emergency requiring the dumping of such materials, which poses an unacceptable risk to human health and admits of no other feasible solution.

EPA has determined that continued use of the existing ice pier would pose an unacceptable risk to human health, and that disposal of the pier admits of no other feasible solution. To continue operations in Antarctica, the NSF must have a permit that will allow removal of the existing ice pier and its subsequent disposal at sea. NSF must have this permit by early February 1999, so that the U.S. Coast Guard icebreaker (the transporter) can tow the deteriorating pier out to McMurdo Sound before the harbor and the Sound freeze solid. There are no other disposal options, and there is no other method, other than towing by the icebreaker, to remove the pier from McMurdo Station. Failure to remove the existing pier and construct a new one presents a serious risk to human health and safety, and will jeopardize the USAP's ability to continue its research mission. Without a safe platform for offloading vessels, materials cannot be delivered to resupply the station; without the resupply of McMurdo Station, activities in Antarctica would have to be halted, resulting in a severe impact to NSF's scientific objectives, including a significant environmental research program.

Further, there are no materials present on, or in, the ice pier that are prohibited by either 40 CFR 227.5 or 40 CFR 227.6. Thus, the Agency has determined that all necessary conditions for issuance of an emergency permit, pursuant to 40 CFR 220.3(c), have been met, and further, EPA has concluded that this emergency dumping action will have minimal adverse environmental effects. EPA also believes that, because of the urgency of the situation, and the risk to human health discussed above, notice and public comment on this emergency permit are impracticable, unnecessary, and not in the public interest. Further, EPA believes that the public interest requires the issuance of an emergency permit as soon as possible.

With regard to notification of the State Department, 40 CFR 220.3(c) implements the provisions of Article V(2) of the London Convention 1972 (LC 72). That article allows the issuance of emergency permits as an exception to LC 72 Article IV(1)(a) and Annex I prohibitions against the dumping of certain substances. Consistent with LC 72 Article V(2), 40 CFR 220.3(c) is intended to assure that necessary consultation with the International Maritime Organization and potentially affected states take place if the material to be dumped contains greater than trace contaminants of LC 72 Annex I substances. Because the ice pier to be dumped does not contain such materials, the consultation provisions of 40 CFR 220.3(c) are not relevant.

IV. Terms and Conditions of Permit

1. This permit authorizes the transportation and dumping into ocean waters of an ice pier, pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.*, ("MPRSA"), subject to the terms and conditions set forth herein. All transportation and dumping authorized herein shall at all times be undertaken in a manner consistent with this permit.

2. The applicant designated above is the permittee, and is responsible for compliance with this permit.

3. The permittee and the U.S. Coast Guard are authorized to transport the following ice pier for ocean disposal and to dump it into ocean waters, by releasing it into McMurdo Sound:

The ice pier is currently attached to the National Science Foundation base at McMurdo Station, Antarctica. This ice pier is approximately 800 feet long, 300 feet wide, and 22 feet thick, and is composed of frozen seawater. Enclosed in the pier are approximately: 21,000 feet of one-inch steel cable in several layers used for torsional stability of the pier; 650 feet of two-inch steel pipe used for securing the cable; and 6 stump ends of wooden poles, each approximately four feet long, used for light, power, and telephone connections to structures that have been removed from the pier.

4. The ice pier shall not be altered in its content from the above description by the addition of wastes from any other sources. The layer of pumice shall be removed from the surface of the pier to the extent feasible.

5. A methodology to track the ice pier released from McMurdo Station shall be established and utilized for a period of one year from the date of release of the ice pier. The permittee shall submit a full report on the tracking efforts required by this permit and the results of such tracking to the Oceans and Coastal Protection Division (OCPD), in the Office of Water in the U.S. Environmental Protection Agency (address below), within 30 days following the termination of the permit on March 1, 2000.

6. Transportation to, and dumping at, any location other than that authorized by this permit shall constitute a violation of the MPRSA and of this permit.

7. Transportation and dumping of any materials not specifically identified, or in excess of that identified, in this permit shall constitute a violation of the MPRSA and this permit.

8. If any dumping or transporting is performed by an entity other than the identified applicant or transporter, all reports required hereunder shall be jointly executed by both the permittee and an officer of that entity.

9. Any dumping or transporting authorized by this permit by any entity other than the identified applicant or transporter shall not relieve the identified applicant from full responsibility for compliance with the terms of this permit, or the MPRSA, or both; nor shall the issuance of this permit relieve any other applicant or transporter from responsibility for compliance with the terms of this permit, or the MPRSA, or both.

10. The permittee shall submit a full report on the dumping activities authorized by this permit to OCPD within 30 days after the dumping. This report shall include:

A. A description (by latitude and longitude) of the precise location where the ice pier was released;

B. The name and title of the person in charge of the vessel that transported the ice pier and conducted the operation;

C. The time of the dumping activities, including departure from McMurdo Station, and release time and date.

11. The permittee shall immediately notify OCPD of any violation of any condition of this permit.

12. All reports and notifications to OCPD required under this permit shall be submitted to: Suzanne Schwartz, Acting Director, Oceans and Coastal Protection Division (4504F), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

13. The reporting requirements contained in this permit are in addition to any reporting requirements imposed by any other agency.

14. The transporter shall place a copy of this permit in a conspicuous place in the vessel used for the transportation and dumping operations authorized herein.

15. The terms used in this permit which are defined in Section 3 of the MPRSA shall have the same meaning herein.

16. This permit may be modified or revoked, in whole or in part, for causes including, but not limited to, the following:

A. Violation of any term or condition of the permit;

B. Misrepresentation, inaccuracy, or failure by the applicant to disclose all relevant facts;

C. A change in any condition or material fact upon which this permit is based that requires either a temporary or permanent reduction or elimination of the authorized transportation or dumping including, but not limited to, newly discovered scientific data relative to the granting of this permit;

D. A determination by EPA that the dumping has resulted, is resulting, or may result, in imminent and substantial harm to human health or welfare, or to the marine environment; and

E. Failure to notify appropriate EPA officials of dumping activities.

Signed by J. Charles Fox.

January 29, 1999.

[FR Doc. 99–2785 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6231–3]

Science Advisory Board; Notification of Three Public Meetings; February 24, February 25–26, and March 16, 1999

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of the following three Federal Advisory Committee meetings: (a) The Science Advisory Board's (SAB) Environmental Engineering Committee (EEC), will meet Wednesday February 24, 1999; (b) the EEC's Wet Weather Flows and Urban Infrastructure Subcommittee will meet Thursday and Friday, February 25–26, 1999 (both meetings will be held in Room 3709 of the Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460); and (c) the EEC's Statistical Consultation Subcommittee will meet Tuesday March 16, 1999 (in Conference room A on the eleventh floor of Crystal Gateway One, 1235 Jefferson Davis Highway, Arlington, VA). These meetings will begin no earlier than 8:00 am and adjourn no later than 6:30 pm Eastern Time and are open to the public. Due to limited space, seating will be on a first-come basis. For further information concerning this meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office.

1. Environmental Engineering Committee (EEC)

No reviews are being conducted on February 24. At this meeting the Committee expects to discuss a preliminary draft commentary on sources of particulate matter (PM2.5). The Committee will discuss several potential future actions including: (a) Invited presentations on barriers to pollution prevention at the June meeting; (b) invited presentations on sediments; (c) the pros and cons of holding a quality colloquium; and (d) evolving opportunities for possible collaboration with other advisory groups. If the opportunity arises, there may also be briefings by and discussions with the Agency on various topics of mutual interest.

2. EEC's Wet Weather Flows and Urban Infrastructure Subcommittee

The Wet Weather Flows and Urban Infrastructure Subcommittee will meet February 25–26 to review the 1996 Risk Management Plan for Wet Weather Flows and the 1997 Urban Infrastructure Research Plan—Water and Wastewater Issues with special emphasis on the state of the science writeups, research questions, and research needs. The Subcommittee will evaluate both the scientific directions and scientific quality taking into account research others are doing and what the Office of Water's needs are. The Wet Weather Flows research areas are: (a) Characterization and problem assessment; (b) watershed management; (c) toxic substance impacts and control; (d) control technologies; and (e) infrastructure improvement. Copies of the materials to be reviewed can be obtained from Diana Meola, Branch Secretary, at TEL: (732) 321–6635, FAX: (732) 321–6640, e-mail: <meola.diana@epa.gov> or Daniel Sullivan, P.E., Chief of the Urban Watershed Management Branch at TEL: (732) 321–6677, e-mail: <sullivan.daniel@epa.gov>. Copies of any hand-outs distributed at the meeting in the course of these briefings will be available subsequently through Ms. Mary Winston, address below.

3. EEC's Statistical Consultation Subcommittee

The purpose of the March 16 meeting is to provide a consultation for the Office of Solid Waste and Emergency Response on the advantages and disadvantages of various approaches for the development of cleanup goals at waste sites, emphasizing those of average or "not to exceed" concentrations.

A "Consultation" is the SAB's means of conferring—in public session—with the Agency on a technical matter before the Agency has begun substantive work on that issue. The goal is to leaven EPA's thinking on an issue by brainstorming a variety of approaches to the problem very early in the development process. There is no attempt or intent to express an SAB consensus or to generate an SAB report. The Board, via a brief letter simply notifies the Administrator that a Consultation has taken place. The Board hopes this consultation will be of help to OSWER when it later develops guidance for risk managers on the appropriate application of "risk-based" cleanup levels. Because this is a consultation, there are no review documents. However, for background purposes, some brief descriptive documents can be obtained from Janine Dinan at TEL: (703) 603–8824, FAX: (703) 603–9133, or via e-mail <dinan.janine@epa.gov>. Copies of any hand-outs distributed at the meeting in the course of these briefings will be available subsequently through Ms. Mary Winston, address below.

Members of the public desiring additional information about the meetings should contact Kathleen White Conway, Designated Federal Officer (DFO), Environmental Engineering Committee, Science Advisory Board (1400), Room 3702L, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–2558; fax at (202) 260–7118; or via e-mail at: <conway.kathleen@epa.gov>. A copy of the draft Agenda is available from Ms. Mary Winston at TEL: (202) 260–2554; FAX: (202) 260–7118; or via e-Mail at: <winston.mary@epa.gov>.

Members of the public who wish to make a brief oral presentation at the February 24 meeting or the February 25–26 meeting must contact Ms. Conway in writing (by letter, fax or e-mail—see previously stated information) no later than 12 noon Eastern Time, Wednesday, February 17, 1998 in order to be included on the Agenda. Those wishing to do so at the March 16 meeting should contact Ms. Conway by 12 noon Eastern time Wednesday March 10. Public comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889. Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: January 28, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–2784 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6300–2]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that one Committee of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. The meeting is open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Drinking Water Committee (DWC)

The Drinking Water Committee (DWC) of the Science Advisory Board (SAB) will hold a public meeting beginning at 9:00 am Wednesday, February 17, 1999 and ending not later than 5:00 pm Thursday, February 18, 1999. The meeting will be held at the Drawbridge Estate hotel, 2477 Royal Drive, Ft. Mitchell, Kentucky, 41017; telephone (606) 341–2800. At this meeting, the Committee will complete its review of the US EPA ORD comparative risk framework method (an approach for balancing the chemical and microbial risks from drinking water) and receive a briefing on the status of the EPA's water consumption project.

On December 10–11, 1998, the Drinking Water Committee held its first meeting at which comparative risk framework review was initiated. At that time, the Agency briefed the Committee on the various components of the framework and a case study, after which, members and Agency representatives discussed specific topics. These interactions are captured in the minutes of the December, 1998 meeting which includes, as attachments, the written comments of the individual review panel members. The DWC engaged in a consultation with the Agency on the water consumption project at its June 18, 1998 meeting.

Background—(a) Comparative Risk Framework Methodology: The Safe Drinking Water Act (SDWA) requires EPA to provide for the maximum control of exposures to pathogenic organisms in water while minimizing concomitant exposures to the disinfection byproducts (DBPs) that might be generated by control measures. SDWA also requires EPA to conduct cost-benefit analyses of the regulatory impacts in order to identify cost-effective drinking water treatment options.

The National Center for Environmental Assessment-Cincinnati Office (NCEA-Cin) has developed a methodology for risk analysis and comparison that could help to inform the Agency while it is considering SDWA regulatory and implementation actions. The Agency's draft document, *Comparative Risk Framework Methodology and Case Study (Framework Document)*, presents a method for such comparisons that applies the prevention-effectiveness approach developed by the Centers for Disease Control for structuring and analyzing complex risk trade-off problems. Prevention-effectiveness research combines tools of decision and economic analysis to look at the cost-effectiveness of different public health interventions and employs decision trees to explicitly and graphically structure the problem. The document consists of a Comparative Risk Framework Methodology (CRFM) and a Case Study. The application of this approach explicitly recognizes disinfection and treatment of drinking water to be primary public health intervention and prevention measures designed to minimize the transmission of microbial pathogens in drinking water.

Charge—Comparative Risk Framework Methodology: The Drinking Water Committee was requested to review the strategy proposed for structuring and analyzing this comparative risk/risk tradeoff problem, including the overall concept, the use of population-based probabilities for expressing both cancer and noncancer health risks and mechanisms for arriving at these numbers, and the pros and cons of the different common metrics/weights proposed for comparing qualitatively and quantitatively different health risks. Specific charge questions are available by contacting the Office of the Science Advisory Board at the address noted below. Charge questions are included for the following areas: overall approach; the comparative risk framework methodology; the case study; engineering and water treatment issues; risk characterization; microbial risks; chemical dose-response assessment; exposure; health conditions; the common health metric; the results of the methods application; and research needs.

(b) Water Consumption Estimates for the United States: EPA is now developing estimates of water intake for the United States. Included in the final report will be estimates of water intake (municipal tap and bottled water) with percentile distributions by age, gender, race, socioeconomic status, and geographic region and separately for pregnant and lactating women. The estimates will be derived using a method developed by EPA which will be applied to data contained in the United States Department of Agriculture's 1994–1996 Continuing Survey of Food Intake by Individuals (CSFII). EPA anticipates wide use of the estimates in future drinking water rule-making activities. This will be one of two briefings for standing Science Advisory Board committees in preparation for a formal SAB review of the EPA water consumption report during the Spring of 1999. The other briefing will occur during the March

1999 meeting of the SAB's Integrated Human Exposure Committee.

For Further Information Contact: Single copies of the background information for the review of the risk comparison framework can be obtained by contacting Mr. Glenn Rice, US EPA National Center for Environmental Assessment, 26 Martin Luther King Drive, Cincinnati, Ohio 45268; or by telephone at (513) 569–7813. No background documents are expected to be provided to the Committee for the water consumption briefing. Additional information for this meeting, or the meeting agenda, can be obtained by contacting Mr. Thomas O. Miller, Designated Federal Officer (DFO) for the Drinking Water Committee, Science Advisory Board (1400), U.S. EPA, 401 M Street, SW, Washington, DC 20460; by telephone at (202) 260–5886; by fax at (202) 260–7118 or via the E-Mail at: miller.tom@epa.gov, or by contacting Ms. Dorothy Clark at (202) 260–6555, by fax at (202) 260–7118, and by E-Mail at: clark.dorothy@epa.gov. Anyone wishing to make an oral presentation to the Committee must contact Mr. Miller, in writing (by letter, fax, or E-mail) no later than 12 noon, Thursday, February 11, 1999, in order to be included on the Agenda. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 35 copies of any written comments to the Committee are to be given to Mr. Miller no later than the time of the presentation for distribution to the Committee and the interested public.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency. Written comments may be provided to the Drinking Water Committee up until the time of the meeting, however, for this meeting only, delayed comments received up to 15 days after the meeting will be provided to the Committee for consideration and will be made part of the permanent Committee record.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889. Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: February 3, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–2952 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00569A; FRL–6061–8]

Pesticides: Science Policy Issues Related to the Food Quality Protection Act; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On December 4, 1998, EPA issued a notice of availability for the draft science policy paper "Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance." The comment period would have ended February 4, 1999. In response to several requests, EPA has decided to extend the comment period two weeks.

DATES: Written comments must be submitted to EPA by February 18, 1999.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given in this unit, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Kempter (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 713D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5448, e-mail: kempter.carlton@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency has issued the draft document listed in the SUMMARY at the beginning of this document and solicited comments on it. The background on this document can be found in the previous **Federal Register** notice published on December 4, 1998 (63 FR 67063) (FRL–6048–2). In response to several requests, a time extension of two weeks is being provided such that the comment period will now end on February 18, 1999.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPP–00569 for "Proposed Threshold of Regulation Policy When a Food Use Does Not Require a Tolerance." A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, except legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the

use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00569. Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: February 3, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–2951 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00542B; FRL–6060–7]

Pesticides; Science Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the revised version of the pesticide science policy document originally entitled "Guidance for Identifying Pesticide Chemicals That Have a Common Mechanism of Toxicity, for Use in Assessing the Cumulative Toxic Effects of Pesticides." This document was made available as a draft document on August 6, 1998, for public comment (63 FR 42031) (FRL–5797–7). The title of the document has been changed to "Guidance for Identifying Pesticide Chemicals and Other Substances That Have a Common Mechanism of Toxicity." The revised guidance document describes the approach that EPA will use for identifying and categorizing pesticide chemicals and other substances that cause a common toxic effect by a common mechanism, for purposes of assessing the cumulative toxic effects of such substances. Interested parties may request a copy of the Agency's revised guidance document and responses to public comments as set forth in Unit I. of this document. This notice is the fifth in a series of science policy issues related to the Tolerance Reassessment Advisory Committee (TRAC).

FOR FURTHER INFORMATION CONTACT: For questions concerning the revised document "Guidance for Identifying Pesticide Chemicals and Other Substances That Have a Common Mechanism of Toxicity," contact by mail: Dr. Stephen C. DeVito, Office of Pesticide Programs, Health Effects Division (7509C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460; telephone number: (703) 308-9584; fax number (703) 308-7157; e-mail: devito.steve@epamail.epa.gov .

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and the science policy paper at http://www.epa.gov/pesticides/. On the Office of Pesticide Program Home Page select "TRAC" and then look up the entry for this document. You can also go directly to the listings at the EPA Home page at the **Federal Register** — Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/) to obtain this notice and the science policy paper.

2. *Fax on Demand.* You may request to receive a faxed copy of this document, as well as supporting information, by using a faxphone to call (202) 401–0527 and selecting item 6055 for "Guidance for Identifying Pesticide Chemicals and Other Substances That Have a Common Mechanism of Toxicity." You may also follow the automated menu.

3. *In person or by phone.* If you have any questions or need additional information about this action, you may contact the appropriate technical person identified in the "FOR FURTHER INFORMATION CONTACT" section of this document. In addition, the official record for the science policy paper listed in the SUMMARY section of this document, including the public versions, has been established under the docket control number OPP-00542. A detailed summary of the comments and of the Agency's response to the comments is available in the same docket file. A public version of each record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

II. Background

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to EPA's Office of Pesticide Programs (OPP).

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC

comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met five times as a full committee from May 27 through September 16, 1998.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believe were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In addition to comments received in response to these **Federal Register** notices, EPA will consider comments received during the TRAC meetings. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP.

In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038) (FRL–6041–5), EPA is issuing a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA.

III. Summary of Revised Science Policy Guidance Document

This **Federal Register** notice announces the availability of a revised version of the EPA pesticide science policy guidance document that has been retitled "Guidance for Identifying Pesticide Chemicals and Other Substances That Have a Common Mechanism of Toxicity." The guidance document describes the approach that EPA will use for identifying and categorizing pesticide chemicals and other substances that cause a common toxic effect by a common mechanism, for purposes of assessing the cumulative toxic effects of such substances. Specifically, the guidance document describes:

1. EPA's interpretation of common mechanism of toxicity with respect to making a determination of safety under FFDCA as amended by FQPA.

2. The specific steps that need to be taken for identifying mechanisms of toxicity of pesticides and other substances that cause a common toxic effect.

3. The types of data (and their sources) that are needed for doing so.

4. How these data are to be used in reaching conclusions regarding commonality of mechanisms of toxicity.

5. Criteria the Agency will use for categorizing pesticides and other substances for purposes of conducting cumulative risk assessments.

The Agency plans to use this guidance as the initial step in its process to assess the possibility of cumulative toxicity to human health that may be caused by pesticides and other substances that are toxic from a common mechanism. The Agency is currently developing guidance for conducting cumulative risk assessments that it will use to characterize the potential for cumulative toxicity to human health that may result from exposure to pesticides and other substances that have a common mechanism of toxicity. That guidance will be made available for public comment in June, 1999.

IV. Summary of Agency's Response to Public Comments

In the **Federal Register** of August 6, 1998 (63 FR 42031)(FRL-5797-7), EPA announced the availability of a draft version of the document described in Unit III. of this document and solicited public comment. The original public comment period ended on September 6, 1998, but was extended to October 8, 1998, at 63 FR 47290, September 4, 1998 (FRL–6028–7). The Agency received comments from 16 different organizations. The Agency would like to thank these organizations for critically reviewing the document, and for providing recommendations to improve the science policy described therein. All comments were considered by the Agency in revising the document. The comments and the Agency's responses to these comments are briefly summarized below.

Many of the public comments were similar in content, and pertained to general issues dealing with grouping chemicals for purposes of cumulative risk assessment, or specific sections within the draft document. To facilitate review and consideration of the comments for purposes of revising the document, the Agency grouped the comments in accordance to nature of the comment, or issue or section of the document with which they addressed. Hence, comments were grouped as follows: Purpose and introduction of the guidance document; exposure issues; consideration of substances other than pesticides; definitions of terms; and assessing cumulative toxicity. Following is a brief summary of the more significant comments received in these areas, along with EPA's general responses. A more detailed summary of the comments and the Agency's response to the comments is available as described in Unit I. of this document.

A. Purpose and Introduction of the Guidance Document

Several commentors appear to have misunderstood the purpose of the document. These commentors were of the impression that the primary purpose of the document is to describe the approach EPA will use to assess cumulative toxicity and risk from pesticides that have a common mechanism of toxicity. However, the purpose of the document, as stated in the draft version, is to describe the process that EPA will use for identifying pesticides and other substances that cause a common toxic effect by a common mechanism of toxicity.

B. Exposure Issues

A number of commentors raised the issue of exposure. One commentor suggested that grouping of chemicals should be based only on causing a common toxic effect by a common mechanism, excluding exposure as a criterion for grouping. Other commentors suggested that EPA should do an exposure assessment first and use exposure as a basis for grouping. The Agency will not use exposure as a criterion for grouping chemicals that cause a common toxic effect by a common mechanism. Exposure will be considered, however, during the assessment and characterization of cumulative effects of pesticides that have a common mechanism of toxicity.

Several commentors stated that there is a lack of detail or discussion on how the Agency plans to assess exposure when conducting cumulative risk assessments on chemicals that have been grouped by common mechanism of toxicity. Some commentors stated that the document needs to be expanded to include more detail on how the Agency will conduct cumulative risk assessments on pesticides that have a common mechanism of toxicity. Two commentors suggested that the guidance document should be revised to include examples on how the Agency will: Apply the common mechanism guidelines; assess cumulative toxicity; and conduct cumulative risk

assessments. The Agency's response to these comments is as follows. First, the Agency will make available in the near future specific examples of how it will apply its guidance for identifying pesticide chemicals that have a common mechanism of toxicity. Secondly, the primary purpose of the document is to describe the approach that EPA will use to identify pesticides that have a common mechanism of toxicity, and not how the Agency will assess exposure to such pesticides and the cumulative risks that they may pose. The Agency is currently preparing a document that will describe the approach it will use to conduct cumulative risk assessments. That document will provide details on exposure analyses.

Some commentors stated that EPA should not restrict cumulative risk assessments to only those pesticides within a common mechanism group for which there is concomitant (i.e., simultaneous) exposure (as stated in the draft version), whereas other commentors stated that the Agency should restrict cumulative risk assessments to only those pesticides within a group for which there is concomitant exposure. The Agency agrees that cumulative toxicity may result from exposures that are not concomitant, and cumulative risk assessments performed by the Agency on pesticides within a common mechanism group should not be restricted to only those for which there is concomitant exposure. In addition to concomitant exposure, the Agency will also consider other factors that may affect the potential for two or more chemicals that cause a common toxic effect by a common mechanism to cause cumulative toxicity.

C. Consideration of Substances Other than Pesticides

One commentor suggested that the guidance document needs to be expanded to include guidance on how the Agency will conduct cumulative risk assessments on pesticides that are not toxic via a common mechanism of toxicity. The Agency did not include such guidance because it is beyond the scope of the document. Some commentors pointed out that the focus of the guidance document is only on identifying pesticides that have a common mechanism of toxicity, and not on identifying other (i.e., non-pesticide) substances that have a mechanism of toxicity common with that of a given pesticide or pesticides. The Agency agrees that the focus of the draft document is on identifying and grouping pesticide substances that have a common mechanism of toxicity. Although the Agency intends to use the approach described in the document to identify pesticide substances and other substances that cause a common toxic effect by a common mechanism, this intent was not made clear in the draft version. The Agency has changed the title of the document and has made other editorial changes throughout the document that broaden its scope to include substances not used as pesticides. The Agency wishes to make clear that it will include other substances that are toxic from a mechanism common with that of a given pesticide or pesticides in a cumulative risk assessment.

D. Definitions of Terms

A number of commentors questioned the Agency's definitions of certain terms used in the document, and had opposing opinions on how these terms should be defined. For example, several commentors questioned the Agency's definitions of "mechanism of toxicity" and "common mechanism of toxicity." Some commentors believe that the Agency's definitions for these terms are either too broad, unclear, or need to be made more simple and rigorous. Other commentors believe that the Agency's definitions are too narrow. Another commentor believes that the Agency's definition is clear and appropriate. The Agency reviewed its definitions of the terms listed in Section II ("Definitions of Specific Terms...") of the document, and believes that its definitions of the terms "mechanism of toxicity" and "common mechanism of toxicity" are clear and consistent with the intent of FQPA. However, the Agency has included additional discussion in the revised version in Section III that adds further clarification to these terms. One commentor disagreed with the Agency's definition of "cumulative toxic effect." This commentor stated that there does not need to be an overall increase in toxicity to be cumulative, and suggested that the Agency remove the part of its definition that states there is an overall increase in toxicity. The Agency agrees with the commentor, and has clarified its original definition of "cumulative toxic effect" in the revised version of the document.

E. Assessing Cumulative Toxicity.

Some of the commentors had comments pertaining to Section IV of the document: "Policies for Assessing the Cumulative Toxic Effects Posed by Two or More Pesticides That Are Toxic By a Common Mechanism." One commentor wanted the Agency to clarify this section. Several commentors questioned the example that poses a hypothetical pharmacokinetic interaction between two substances and describes how EPA will consider such an interaction in its evaluation of cumulative toxicity. The Agency has revised this section of the document. As mentioned above, the Agency is currently developing a document that will describe in detail and provide examples of how the Agency will accumulate toxicity and assess cumulative risks posed by pesticides that are toxic from a common mechanism. The document will discuss the policies, practices and factors the Agency will use or consider in the assessment of cumulative toxicity.

V. Policies Not Rules

The draft science policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA pesticide risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

The "revised" guidance is not an unalterable document. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance.

VI. Contents of Docket

Document that are referenced in this notice will be inserted in the docket under the docket control number OPP–00542. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) have also been inserted in the docket under docket control number OPP–00557.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: January 29, 1999.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–2781 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3230–6]

Proposed Agreement Pursuant to 122(g)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the MacGillis & Gibbs / Bell Lumber & Pole Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice; Request for public comment.

SUMMARY: In accordance with 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), notification is hereby given of a proposed administrative agreement concerning the MacGillis & Gibbs / Bell Lumber & Pole Superfund Site at 440 Fifth Avenue N.W. in New Brighton, Minnesota (the "Site"). EPA proposes to enter into this agreement under the authority of 122(g)(1)(B) of CERCLA. The proposed agreement has been executed by Hypro Corporation ("Hypro").

EPA listed the Site on the National Priorities List in 1984 after initial investigations revealed the presence of hazardous substances, including wastes associated with pentachlorophenol and creosote-based wood treating processes at the Site. EPA selected a final remedy for the Site in 1994, which included a groundwater extraction and treatment phase. Since then, EPA has incurred response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at or near the Site, including hazardous substances migrating with an aquifer to the east of the Site. Hypro owns real property to the east of the Site and situated above an aquifer contaminated with hazardous substances associated with the Site. Hypro has represented to EPA that it did not generate, treat, store or dispose of any hazardous substances at the Site and did not transport any hazardous substances to the Site, and has not permitted the contamination or contributed to it. Under the proposed agreement, Hypro will grant access to its real property to the EPA and, upon assignment, the State of Minnesota, for the purpose of installing, operating and maintaining an extraction well cluster and related equipment for use in connection with the groundwater phase remedy at the Site. Hypro waives any claims against the Superfund for reimbursement of costs and for any potential claims under the Constitution for diminution of its property value resulting from the presence of the groundwater extraction equipment. EPA agrees to give Hypro protection from third-party claims under CERCLA for contribution and a covenant not to sue, subject to standard reopeners.

For thirty days following the date of publication of this notice, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before March 8, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Hypro Corporation, New Brighton, Minnesota, U.S. EPA Docket No. V–W–99–C–524.

FOR FURTHER INFORMATION CONTACT: Thomas M. Williams, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–0814.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Sections 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–2790 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6226–9]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Northeast Public Sewer District, Fenton, Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Northeast Public Sewer District, Fenton, Missouri.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On December 31, 1998, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following complaint:

In the Matter of, the Northeast Public Sewer District, City of Fenton, Missouri; EPA Docket No. CWA–VII–99–0003.

The Complaint proposes a penalty of Five Thousand Dollars ($5,000) for discharge of sludge to Saline Creek in violation of the National Pollutant Discharge Elimination System (NPDES) permit and Sections 301(a) and 402 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or

otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the Northeast Public Sewer District is available as part of the administrative record subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: January 15, 1999.

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 99–2451 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6226–8]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding Klein Products of Kansas, Inc., Fort Scott, KS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding Klein Products of Kansas, Inc., Fort Scott, Kansas.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On December 30, 1998, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following complaint:

In the Matter of, Klein Products of Kansas, Inc., Fort Scott, Kansas; EPA Docket No. CWA–7–99–0002.

The Complaint proposes a penalty of Eleven Thousand Dollars ($11,000) for discharge of a xylene mixture to waters of the United States without a permit in violation of Sections 301(a) and 402 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the Klein Products of Kansas, Inc., is available as part of the administrative record subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: January 15, 1999.

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 99–2452 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–5]

Intent To Prepare an Environmental Impact Statement To Consider Policies, Guidance, and Processes to Minimize the Environmental Impacts of Mountaintop Mining and Valley Fills in the Appalachian Coalfields

AGENCIES: Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (Corps), Office of Surface Mining (OSM), and U.S. Fish and Wildlife Service (FWS).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

PURPOSE: The EPA, Corps, OSM, and FWS, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), with the State of West Virginia, will prepare an Environmental Impact Statement (EIS) on a proposal to consider developing agency policies, guidance, and coordinated agency decision-making processes to minimize, to the maximum extent practicable, the adverse environmental effects to waters of the United States and to fish and wildlife resources from mountaintop mining operations, and to environmental resources that could be affected by the size and location of fill material in valley fill sites.

DATES: The agencies invite comments and suggestions on the scope of the analysis, including the regulatory issues and significant environmental effects to be addressed in the EIS. Written comments from the public regarding the environmental and regulatory issues and alternatives to be addressed in the EIS should be received in writing by March 31, 1999. The agencies will hold public meetings on February 23, 1999, in Summersville, West Virginia; February 24, 1999, in Charleston, West Virginia; and February 25, 1999, in Logan, West Virginia, to receive public input, either verbal or written, on relevant environmental and regulatory issues that should be addressed in the EIS. The locations and starting times of the public meetings are as follows: in Summersville, the meeting will be held at the Nicholas County Veteran's Memorial Park beginning at 6:30 p.m.; in Charleston, the meeting will be held at the rotunda at Riggleman Hall, University of Charleston in the afternoon from 2–4 p.m. and in the evening beginning at 6:30 p.m.; and in Logan, the meeting will be held at the Chief Logan State Park beginning at 6:30 p.m. Other public meetings may also be held and will be announced at a later date.

ADDRESSES: Send written comments and suggestions concerning this proposal to William Hoffman, Environmental Protection Agency, 3ES30, 1650 Arch Street, Philadelphia, Pennsylvania, 19103–2029; e-mail address, hoffman.william@epamail.epa.gov; telephone: 215–814–2995. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action

and EIS are to be directed to William Hoffman, Environmental Protection Agency, 215–814–2995. Coordinators for each of the federal and state agencies are as follows:

William Hoffman, U.S. Environmental Protection Agency, 215–814–2995
David G. Hartos, Office of Surface Mining, 412–937–2909
Andy Gallagher, WV Division of Environmental Protection, 304–759–0515
Michael D. Gheen, U.S. Army Corps of Engineers, 304–529–5487
David Densmore, U.S. Fish and Wildlife Service, 814–234–4090

SUPPLEMENTARY INFORMATION: The agencies undertaking preparation of this voluntary EIS implement federal and state laws with which mountaintop mining operations and associated discharges to waters of the U.S. must comply. OSM is responsible for national administration of the Surface Mining Control and Reclamation Act (SMCRA); it has delegated the authority for the SMCRA programs for surface mining operations in West Virginia to the State of West Virginia. Other Appalachian coalfield states (except Tennessee) also implement delegated SMCRA authority. Discharge of fill material into U.S. waters is regulated under Sec. 404 of the Clean Water Act, with permit responsibility administered by the U.S. Army Corps of Engineers and applicable 404 regulations issued by the Corps and EPA. Other discharges to U.S. waters are subject to Sec. 402 of the Clean Water Act, which is administered nationally by EPA with authority for the program delegated to West Virginia and other Appalachian coalfield states. Mountaintop mining operations must also comply with the Endangered Species Act, which is administered by FWS. In addition, the Fish and Wildlife Coordination Act (FWCA) pertains to federally-permitted, constructed, or licensed water development projects and land development projects that affect any water body. Whenever OSM, COE, or EPA authorize an action within the scope of the FWCA, they are required to consult with the FWS, and similar State agencies, to obtain recommendations on ways to mitigate adverse effects on fish and wildlife resources.

The number of mountaintop mining operations that utilize valley fills, as well as the scale of individual operations, have increased in recent years in West Virginia. This EIS will evaluate significant environmental impacts associated with these operations on water quality, streams, aquatic and terrestrial habitat, habitat fragmentation, the hydrological balance, and other individual and cumulative effects. Federal and state agencies are increasingly concerned over the lack of comprehensive data regarding valley fill operations, and have initiated a number of studies to address these data gaps. Accurately describing and quantifying the extent and nature of direct, secondary, and cumulative impacts related to valley fills and associated mining practices is difficult.

This EIS will complement recent efforts to address the issues of mountaintop mining and valley fills. The OSM recently completed and issued a draft oversight report entitled "An Evaluation of Approximate Original Contour and Postmining Land Use in West Virginia". During 1998, the Governor of West Virginia established a Governor's Task Force, which held public inquiries and evaluated the impacts of mountaintop mining operations on the economy, the environment, and the people of that State. Its report was issued in December 1998.

To address the concerns about mountaintop mining and valley fills, the agencies will consider potential revisions to relevant regulations, policies, and guidance that would minimize the potential for adverse individual and cumulative impacts of mining operations. The EIS will provide information that will help the agencies improve the permitting process to protect water quality and minimize impacts to other environmental resources. The EIS will also examine how regulations of the agencies can be better coordinated. The EIS may consider information on the following: the cumulative environmental impacts of mountaintop mining; the efficacy of stream restoration; the viability of reclaimed streams compared to natural waters; the impact that filled valleys have on aquatic life, wildlife and nearby residents; biological and habitat analyses that should be done before mining begins; practicable alternatives for in-stream placement of excess overburden; measures to minimize stream filling to the maximum extent practicable; and the effectiveness of mitigation and reclamation measures. The EIS is expected to take two years to complete.

Dated: January 29, 1999.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 99–2845 Filed 2–4–99; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: February 22, 1999, Washington, DC. This meeting will take place in the Truman Room (Third Floor) of the White House Conference Center, 726 Jackson Place, NW, Washington, DC.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The President's Committee of Advisors on Science and Technology (PCAST) is tentatively scheduled to meet in open session on Monday, February 22, 1999, at approximately 1:00 p.m. to discuss (1) the Science and Technology budget, (2) the report of the President's Information Technology Advisory Committee, and (3) work of PCAST panels. This session will end at approximately 4:30 p.m.

PUBLIC COMMENTS: There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. Written comments are welcome anytime prior to or following the meeting. Please notify Joan P. Porter, PCAST Executive Secretary, at (202) 456–6101 or fax your requests/comments to (202) 456–6026.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place, and agenda, please call Joan P. Porter, PCAST Executive Secretary, at (202) 456–6101, prior to 3:00 p.m. on Friday, February 19, 1999. Please note that public seating for this meeting is limited, and is available on a first-come first served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished

individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by the Assistant to the President for Science and Technology, and by John Young, former President and CEO of the Hewlett-Packard Company.

Dated: February 1, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–2858 Filed 2–4–99; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 13, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0686.

Title: Report and Order, Streamlining the International Section 214 Authorization Process and Tariff Requirements, IB Docket No. 95–118.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 18.

Estimated Time Per Response: 2 to 20 hours.

Frequency of Response: Annually; Semi-annually; Quarterly; and On Occasion reporting requirements; Third Party disclosure.

Total Annual Burden: 90 hours.

Total Annual Costs: $9,000.

Needs and Uses: Under § 63.19, carriers will be required to notify their customers and provide the Commission with a copy of the notification, at least 60 days prior to discontinuation of international telecommunications service. The information will enable the Commission to confirm that international service providers wishing to discontinue service give sufficient notice to allow consumers to obtain alternative service. We estimate that 15 respondents will submit this information to their customers and the Commission, and it should take two hours per response, for a total of 30 burden hours for this rule section.

Under § 63.53(c), applicants filing information or documents in a foreign language in a § 214 proceeding are required to submit a certified English translation of the information. The translation will eliminate the time and resources needed to translate documents, and enable the Commission to make documents readily available for the public. We estimate that three respondents will submit this information, and it should take 20 hours per response, for a total of 60 burden hours for this rule section.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2774 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

January 19, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0695.

Title: Proposed 87.219 Automatic Operation.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 50.

Estimated Time Per Response: 0.7 hour.

Total Annual Burden: 35 hours.

Total Annual Cost: $0.

Needs and Uses: The rule requires that if airports have control towers or FAA flight service stations, and more than one licensee and want to have an automated aeronautical advisory station (unicom), they must write an agreement outlining who will be responsible for the unicom's operation, sign the agreement, and keep a copy of the authorization. The information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating unicoms.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2775 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

January 28, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 8, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,550.

Estimated Time Per Response: 2—4 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 3,120 hours.

Total Annual Cost: $17,217,350.

Needs and Uses: The Report and Order in MM Dockets 98–43 and 94–149 substantially revised the FCC Form 301 to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical block. The Commission also deleted and narrowed overly burdensome questions. The FCC 301 will be supplemented with detailed worksheets and instructions to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes will reduce applicant filing burdens in the preparation and submission of exhibits in support of applications. The Commission has also adopted a formal program of pre-and post-application grant random audits to preserve the integrity of our streamlined application process.

In Report and Order, MM Docket 97–234, implemented provision of the Balanced Budget Act of 1997 which expanded the Commission's competitive bidding authority under Section 309(j) of the Communications Act of 1934. This R&O adopted competitive bidding procedures to award construction permits in the commercial broadcast and secondary broadcast services and amended application filing procedures for the broadcast services to complement the competitive bidding process including adopting filing windows for new and major changes in the commercial broadcast services. This R&O eliminated the site and financial certification questions on the FCC 301. It also added a question which, if applicable, requires an exhibit setting forth the terms and conditions, and the parties involved in any bidding consortia; demonstrating eligibility for designated entity status; and relevant ownership information related to the competitive bidding process.

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License.

Form Number: FCC Form 314.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 1,375.

Estimated Time Per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 2,220 hours.

Total Annual Cost: $9,567,250.

Needs and Uses: The Report and Order in MM Dockets 98–43 and 94–149 substantially revised the FCC Form 314 to facilitate electronic filing by replacing narrative exhibits with the use of certifications. The Commission also deleted and narrowed overly burdensome questions. The FCC 314 will be supplemented with detailed worksheets and instructions to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes will reduce applicant filing burdens in the preparation and submission of exhibits in support of applications. The Commission has also adopted a formal program of pre- and post-application grant random audits to preserve the integrity of our streamlined application process.

In Report and Order, MM Docket 97–234, implemented provision of the Balanced Budget Act of 1997 which expanded the Commission's competitive bidding authority under Section 309(j) of the Communications Act of 1934 and imposed reporting requirements concerning the transfer or assignment of authorizations obtained through the competitive bidding to the FCC 314. This collection also includes third party disclosure requirement contained in Section 73.3580. This section requires local public notice in a newspaper of general circulation of the filing of all applications for assignment of license/permit. This notice must be completed

within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be placed in the public inspection file along with the application. Additionally, an applicant for assignment of license must broadcast the same notice over the station at least once daily on four days in the second week immediately following the tendering for filing of the application.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2700 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval.

January 27, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 8, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Direct Broadcast Satellite Public Interest Obligations.

Form Number: N/A.

Type of Review: New collection.

Respondents: Businesses or other for-profit entities; Individuals or households.

Number of Respondents: 8.

Estimated Time per Response: 12 hours.

Frequency of Response: Recordkeeping.

Total Annual Burden: 96 hours.

Total Annual Costs: $1,440.

Needs and Uses: The Commission imposes public interest obligations upon providers of Direct Broadcast Satellite (DBS) Services, to grant access for political candidate advertising and to reserve four per cent of channel capacity for educational and informational programming. Once the Report and Order comes into effect, every DBS licensee will be required to maintain a public file at its headquarters that contains: (i) annual measurements of channel capacity and average calculations on which it bases its four percent reservation; (ii) a record of entities to which educational and informational programming capacity is provided, the amount of capacity provided to each entity, the conditions under which it is being provided, and the rates, if any, being paid by each entity; (iii) a record of the entities that have requested capacity and the disposition of those requests; and (iv) a record of all requests for channel time made by political candidates and the disposition of those requests.

Statutory authority for collection of this information is contained in 47 U.S.C. Sections 335, 315, and 312 (a)(7).

The information will be used by the FCC and interested members of the public to monitor DBS providers' compliance with public interest obligations. Without such information, the FCC could not determine whether DBS providers have compiled with their obligations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2776 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 90–119; DA 98–2616]

Private Land Mobile Radio Service Rules, Florida Area Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice inviting comments on the Florida Public Safety Regional Plan (Region 9 Plan) that proposes to revise the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the Florida area. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[1]

DATES: December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Ghassan Khalek, Federal Communications Commission, Washington, DC, (202) 418–2771.

SUPPLEMENTARY INFORMATION: On December 9, 1998, Region 9 submitted a proposed amendment to its Public Safety Plan that would revise the current channel allotments to reflect changes made as a result of its fourth window application process. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[2] The Public Safety Plan for Region 9, which was adopted by the Commission on May 10, 1990, governs the use of frequency assignments in the 821–824/866–869 MHz within the Florida.[3]

The Commission is soliciting comments from the public before taking action on this proposed plan amendment. Interested parties may file comments to the proposed amendment on or before January 28, 1999, and reply comments on or before February 15, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), [*See Electronic Filing of Documents in Rulemaking*

[1] *Report and Order*, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Id.

[3] Id.

Proceedings, 63 FR 24,121 (1998)], or by filing paper copies. Commenters who submit by paper should send original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554. Commenters should clearly identify all comments and reply comments, whether submitted electronically or as paper copies, as submissions to General Docket 90–119 Florida Public Safety Region 9. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number.

Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Questions regarding this public notice may be directed to Ghassan Khalek, Wireless Telecommunications Bureau (202) 418–2771.

The original Region 9 Public Safety Plan is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, NW, Washington, DC The original Region 9 Public Safety Plan may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2777 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2314]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 28, 1999.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by February 3, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Fees for ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996 (MM Docket No. 97–247).

Number of Petitions Filed: 2.

Subject: Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz to Use by the Mobile-Satellite Service (ET Docket No. 95–18, RM–7927, PP–28).

Number of Petitions Filed: 4.

Subject: 1998 Biennial Regulatory Review Streamlining of Mass Media Applications Rules and Process.

Number of Petitions Filed: 38.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2773 Filed 2–4–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, February 2, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory, resolution, and corporate activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than February 1, 1999, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: February 2, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–2913 Filed 2–3–99; 12:38 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266–DR]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1999:

Clay and Lonoke Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2742 Filed 2–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3134–EM]

Illinois; Amendment No. 3 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Illinois, (FEMA–3134–EM), dated January 8, 1999, and related determinations.

EFFECTIVE DATE: January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Illinois, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 8, 1999:

The county of McHenry for reimbursement for emergency protective measures, Category B, under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2740 Filed 2–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3135–EM]

Indiana; Amendment No. 2 to the Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Indiana, (FEMA–3135-EM), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Indiana, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1999:

Boone, Carroll, Elkhart, Fayette, Howard, Morgan, Parke, Putnam, Vigo, and Wells Counties for reimbursement for emergency protective measures, Category B, under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2739 Filed 2–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1194–DR]

Commonwealth of the Northern Mariana Islands; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for Commonwealth of the Northern Mariana Islands (FEMA–1194-DR), dated December 24, 1997, and related determinations.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the cost share arrangement under FEMA–1194-DR is adjusted at 100 percent Federal funding for eligible costs for the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2744 Filed 2–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1262–DR]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1262–DR), dated January 19, 1999, and related determinations.

EFFECTIVE DATE: January 23, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among the areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 19, 1999:

Benton and Humphreys Counties for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2741 Filed 2–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1262–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1262–DR), dated January 19, 1999, and related determinations.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include Categories C through G under the Public Assistance program in the following areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 19, 1999:

Crockett, Decatur, Hardeman, Haywood, Henderson, Lauderdale, Madison, Maury, and Montgomery Counties for Categories C through G under the Public Assistance program (already designated for Individual Assistance and Categories A and B under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2743 Filed 2–4–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 207–011649

Title: Joint Operating Agreement Between Interocean Lines, Inc. and Trinity Shipping Line, S.A.

Parties:

Interocean Lines, Inc.

Trinity Shipping Line, S.A.

Synopsis: The proposed Agreement would permit the parties to share space equally aboard three vessels in the trade between United States ports in Florida and ports in Panama, Ecuador, and Peru.

Dated: February 1, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–2695 Filed 2–4–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to the section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Giorgio Gori USA Inc., 80 River Street, Hoboken, NJ 07030, Officers: Ivano, Reali, President, Cornelia Reali, Vice President

Unitrans Worldwide, Inc., 57 Teed Drive, Randolph, MA 02368, Officer: Lindsay P. Barich, President

Indus Shipping Company Ltd., 27 Park Place, New York, NY 10007, Officers: Parveen A. Din, President Philip A. Din, Vice President

Dated: February 1, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–2765 Filed 2–4–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. PCB Limited Partnership, Largo, Florida; to acquire 25 percent of the voting shares of PCB Bancorp, Inc., Largo, Florida, and thereby indirectly acquire Premier Community Bank of Florida, Largo, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Peter N. Horne, Sr., Harlan, Iowa; to acquire 34.86 percent; Frederick R. Horne III, Sloan, Iowa, to acquire 34.86 percent; and Todd K. Plumb, Harlan, Iowa, to acquire 26.21 percent of the voting shares of Midstates Bancshares, Inc., Harlan, Iowa, and thereby indirectly acquire Midstates Bank, N.A., Harlan, Iowa.

Board of Governors of the Federal Reserve System, February 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2719 Filed 2–4–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. C-B-G, Inc., Wilton, Iowa; to acquire 24.36 percent of the voting shares of Peoples National Corporation, Columbus Junction, Iowa, and thereby indirectly acquire Community Bank, Muscatine, Iowa.

2. Schonath Family Partnership, a Limited Partnership, Oconomowoc, Wisconsin; to acquire an additional 8.46 percent, for a total of 33 percent of the voting shares of InvestorsBancorp, Inc., Pewaukee, Wisconsin, and thereby indirectly acquire InvestorsBank, Pewaukee, Wisconsin.

Board of Governors of the Federal Reserve System, February 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2718 Filed 2–4–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Premerger Notification: Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of adoption of formal interpretation.

SUMMARY: The Premerger Notification Office ("PNO") of the Federal Trade Commission ("FTC"), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("DOJ"), is adopting a Formal Interpretation of the Hart-Scott-Rodino Act, which requires persons planning certain mergers, consolidations, or other acquisitions to report information about the proposed transactions to the FTC and DOJ. The Interpretation concerns the reportability of certain transactions involving the formation of a Limited Liability Company ("LLC"), a relatively new form of entity authorized by state statutes, resulting in the combination of business into the new LLC.

This Formal Interpretation was first published on October 13, 1998, together with a request for comments, to become effective on December 14, 1998. 63 FR 54713 (October 13, 1998). The PNO received six comments which were placed on the public record. On December 2, 1998, the effective date of this Interpretation was postponed until February 1, 1999, to give the PNO staff more time to analyze and respond to the comments. 63 FR 66546 (December 2, 1998).

Formal Interpretation 15 as republished here has been modified in response to the comments. Under the revised Interpretation, the formation of an LLC which combines under common control in the LLC two or more pre-existing businesses will be treated as subject to the requirements of the HSR act under § 801.2(d) of the HSR rules, 16 CFR § 801.2(d), which governs mergers and consolidations. Because Formal Interpretation 15 has been modified substantially, the effective date of the Interpretation is postponed until March 1, 1999.

DATES: The effective date is March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard B. Smith, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2850. Thomas F. Hancock, Attorney, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–2946.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation Number 15 is set out below.

Formal Interpretation Number 15

Formal Interpretation Pursuant to § 803.30 of the Premerger Notification Rules, 16 CFR § 803.30, Concerning the Reporting Requirements for the Formation of Certain Limited Liability Companies ("LLCs").

This is a Formal Interpretation pursuant § 803.30 of the Premerger Notification Rules ("the rules"), 16 CFR § 803.30. The rules implement Section 7A of the Clayton Act, 15 U.S.C. § 18a, which was added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("the act"). This Formal Interpretation and a request for comments were originally published on October 13, 1998, to become effective on December 14, 1998. See 63 FR 54713 (October 13, 1998). The PNO staff received six comments. The staff postponed the effective date until February 1, 1999, in order to have more time to analyze these comments. 63 FR 66546 (December 2, 1998). Formal Interpretation 15, published here, has been modified substantially in response to the comments received and postpones the effective date until March 1, 1999.

The act requires the parties to certain acquisitions of voting securities or assets to notify the FTC and the DOJ and to wait a specified period of time before consummating the transaction. The purpose of the act and the rules is to ensure that such transactions receive meaningful scrutiny under the antitrust laws, with the possibility of an effective remedy for violations, prior to consummation. Under the rules, certain types of transactions, such as mergers, consolidations, and the formation of corporate joint ventures, are treated as acquisitions of voting securities potentially subject to the act, while other transactions, such as the formation of partnerships, are deemed non-reportable. See §§ 801.2(d) and 801.40 of the rules, 16 CFR §§ 801.2(d) and 801.40.

The LLC [1] is a relatively new form of business organization that is neither a partnership nor a corporation but a hybrid legal entity that combines certain desirable features of both partnerships and corporations. Specifically, an LLC is taxed as a partnership but shields its members from liability as a corporation shields its shareholders. The first LLC statute was passed in 1977 by Wyoming [2] and a trickle of other states followed. The use of LLCs expanded significantly after 1988 when the Internal Revenue Service ("IRS") concluded that an LLC organized under the Wyoming statute was taxable as a partnership.[3] By 1993 all 51

[1] This Formal Interpretation applies only to the reportability of the formation of certain LLCs. The position of the FTC staff on the status and treatment under the act of other non-corporate entities such as partnerships remains unchanged.

[2] Wyo. Stat. §§ 17–15–101 to –135 (Supp. 1989).

[3] Rev. Rul. 88–76, 1988–2 C. B. 360, 361.

jurisdictions had LLC laws of one form or another.

When it first encountered these types of organizational structures, the PNO concluded that as "companies" LLCs are "entities" within the meaning of § 801.1(a)(2), 16 CFR § 801.1(a)(2), and that, until it had more experience with them, the PNO would treat LLCs like corporations. Initially, therefore, § 801.40 of the rules, 16 CFR § 801.40, "Formation of joint venture or other corporations," governed the formation of LLCs and an interest in an LLC was treated as a voting security for HSR purposes.

On further analysis, the PNO concluded that this initial approach was too inclusive. LLCs at the time were primarily used as vehicles for the creation of start-up businesses. The PNO's treatment of LLCs resulted in requiring HSR filings in a large number of transactions that did not raise antitrust concerns. Furthermore, the PNO believed that in most LLCs the interest held by the members of the LLC was more like a partnership interest than a voting security interest. Consequently, in 1994, the PNO began to informally advise parties that the treatment of LLCs for reporting purposes would depend on a determination of whether the interest acquired in the LLC was more like a voting security interest or more like a partnership interest.[4]

This treatment of LLCs has not been completely satisfactory. The use of LLCs has evolved, and while LLCs continue to be used as vehicles for start-up enterprises, they are now often used to combine competing businesses under common control. Indeed, the Commission's litigation staff has investigated several transactions raising potential antitrust concerns involving the formation of LLCs. In these transactions, previously separate businesses were combined under common control when they were both contributed to a single, newly-formed LLC. Nevertheless, the creation of the LLC to combine competing businesses under common control was typically not treated as reportable under the PNO's then-current treatment. However, the union of competing businesses under common control is of obvious potential antitrust concern. Since the past treatments of LLCs have not been satisfactory at singling out those transactions that were the most likely to have anticompetitive effects, the PNO staff has decided to revise its approach to LLCs in order to better carry out the purposes of the act.

The formation of an LLC into which two or more businesses are contributed, like other unions of businesses under common control, is a kind of merger or consolidation.[5] Section 801.2(d)(1)(i) of the rules, 16 CFR § 801.2(d)(1)(i), states that "[m]ergers and consolidations are transactions subject to the act * * *."[6] A filing requirement for those LLC formations that involve the combination of businesses is appropriate and advances the purposes of the act and the rules, namely, to ensure that the antitrust enforcement agencies have advance notice of, and a timely opportunity to challenge, transactions which may violate the antitrust laws.

This Formal Interpretation, therefore, changes the PNO's treatment of LLC's as follows: The PNO will henceforth treat as reportable the formation of an LLC if (1) two or more preexisting, separately controlled businesses will be contributed, and (2) at least one of the members will control the LLC (i.e., have an interest entitling it to 50 percent of the profits of the LLC or 50 percent of the assets of the LLC upon dissolution).[7] The formation of all other LLCs will be treated similar to the formation of a partnership which, under the PNO's longstanding position on partnership formations, will not be reportable.

Post-formation acquisitions of membership interests in LLCs will not be reportable except in two situations: (1) when the acquisition of the membership interest results in the acquiring person, who had not previously filed for and consummated the acquisition of control of that LLC, holding 100 percent of the membership interests of the LLC (similar to the PNO's treatment of the acquisition of a partnership interest), and (2) when the acquiring person contributes a business to the LLC in exchange for the LLC membership interest. The PNO will treat this contribution of an additional business to the business(es) already in the LLC as a formation of a new LLC under this Interpretation.

In determining what is a "business" for purposes of this Interpretation, the PNO will look to the definition of "operating unit" for purposes of § 802.1(a) of the rules, 16 CFR § 802.1(a), namely, "* * * assets that are operated * * * as a business undertaking in a particular location or for particular products or services, even though those assets may not be organized as a separate legal entity." In addition, for purposes of this Formal Interpretation, the contribution to an LLC of an interest in intellectual property, such as a patent, a patent license, know-how, and so forth, which is exclusive against all parties including the grantor, is the contribution of a business, whether or not the intellectual property has generated any revenues.

Under this Interpretation, the approach of § 801.2(d) will be used to determine the acquiring person(s) and acquired person(s) for potentially reportable LLC formations.[8] Section 801.2(d)(2)(i) states that "[a]ny person party to a merger or consolidation is an acquiring person if as a result of the transaction such person will hold any assets or voting securities which it did not hold prior to the transaction" (emphasis added). In the context of the formation of a new LLC, this means that any person that will control an LLC in which two or more previously separate businesses will be combined will be an acquiring person. Thus, if "A" and "B"

[4] Specifically, the formation of an LLC was treated as potentially reportable only if the LLC had a group that functioned like a board of directors and the LLC ownership interest resulted in the holders appointing person(s) other than their employees, officers, or directors (or those of entities controlled by such holder or its ultimate parent entity) to that group. In such cases, the LLC interest was treated as a voting security interest. In all other instances, LLC interests were treated as partnership interests and the acquisition of these interests was not reportable (unless the acquiring person would hold 100 percent of the interests as a result of the acquisition).

[5] While combining businesses in an LLC may not be a "merger" or "consolidation" in the strictest sense because they do not involve corporations, the rationale of this interpretation is similar to that used by the PNO under § 801.2(d) to require filing for acquisitions of non-profit corporations which, like LLCs, typically do not issue voting securities. (See ABA, The Premerger Notification Practice Manual, 1991 ed., Interp. #109.)

[6] In fact, as it was originally promulgated in 1978, § 801.2(d)(1)(i), 16 CFR § 801.2(d)(1)(i) stated that "[a] merger, consolidation, or *other transaction combining all or any part of the business of two or more persons* shall be an acquisition subject to the act * * *." (emphasis added) 43 Fed Reg 33539, July 31, 1978. In 1983, this section was changed to clarify the treatment of mergers and consolidations under the rules, and the italicized wording was eliminated. However, there is no indication that this change was intended to narrow the scope of § 801.2(d). Rather, according to the Statement of Basis and Purpose to the 1983 changes, 48 Fed Reg 34430, July 29, 1983, the Commission simply sought to make clear that mergers and consolidations are treated as acquisitions of voting securities and to aid the parties to a merger in determining which is the acquiring person and which is the acquired person.

[7] Of course, as with all transactions, the HSR size of person and size of transaction requirements need to be met as well, and exemptions may apply.

[8] The Formal Interpretation as published in October described a method to determine reportability that was based on concepts found in § 801.40 of the HSR rules, 16 CFR § 801.40. Certain comments suggested that such an approach was confusing and would increase the likelihood that parties would make erroneous conclusions on their reporting obligations. In light of those comments, and the change in approach this Formal Interpretation adopts, there will no longer be any need to look to § 801.40 to determine reporting obligations.

form a 60–40 LLC, the 60 percent member, "A" will be an acquiring person with respect to the contributions of "B." Section 801.2(d)(2)(ii) states that "[a]ny person party to a merger or consolidation is an acquired person if as a result of the transaction the assets or voting securities of any entity included within such person will be held by any other person" (emphasis added). In the above example of the formation of a 60–40 LLC, "B" would therefore be an acquired person.

If "A" and "B" were to form a 50–50 LLC to which both were to contribute businesses, both would be both acquiring and acquired persons because both would control the LLC and thus hold assets or voting securities it did not hold prior to the transaction. "A" and "B" would file in both capacities, assuming the relevant size criteria were met. Thus, both the acquiring and acquired persons will be required to file notification and, in accordance with § 803.10 of the rules, the 30-day waiting period will begin when both persons have substantially complied with the notification requirements.

Under this Interpretation, the nature of the acquisition(s) taking place when an LLC is formed, that is, whether it is an acquisition of assets or of voting securities, depends on what is being contributed by the other member(s) of the LLC.[9] In the 50–50 LLC described above, suppose that "A" contributes a group of assets constituting a business and "B" contributes 50 or more percent of the voting securities of a corporate subsidiary, S. Under this Interpretation, "B" will have made an acquisition of assets and "A" will have made an acquisition of voting securities.

In addition, any exemption in the act or rules that would make any other acquisition non-reportable may make the acquisition by one or more of the contributors to an LLC non-reportable. If, for example, "A's" asset contribution consists of hotel properties the acquisition of which would be exempt under § 802.2(e), "B's" acquisition in the formation of this LLC would not be reportable. Similarly, if S has sales and assets of less than $25 million and the value of the S stock that will be held by "A" as a result of the acquisition is $15 million or less, then "A's" acquisition in the formation would be exempted by § 802.20(b).

To determine whether a filing is required, the parties to potentially reportable formation transactions also must determine the size-of-person and size-of-transaction, which should be done just as in any other asset or voting securities acquisition in accordance with §§ 801.10 and 801.11 of the HSR rules. Since these transactions are similar to asset exchanges, for most such transactions there will not be a determined acquisition price for the acquired assets or voting securities to use in applying the size-of-transaction test. For such transactions, parties should use the market price or fair market value where another contributor contributes 50 or more percent of the voting securities of an issuer (see § 801.10(a)), or the fair market value where another contributor puts assets constituting a business into the LLC (see § 801.10(b)).

This Formal Interpretation will not require reporting regarding some LLC formations and some acquisitions of existing LLC interests that would have required reporting under the Interpretation announced by the PNO in October of 1998. Unlike the October version, this Formal Interpretation requires reporting of the formation of an LLC only if the formation brings together within the LLC two formerly separately controlled businesses. Comments received suggested that the treatment announced in the October version would have covered a substantial number of LLCs that are not likely to raise competitive concerns. For example, the October Formal Interpretation would have viewed LLCs that are created solely as financing vehicles as reportable. In these transactions, a financial institution (or other party providing financing) in the ordinary course of its business contributes only cash or other financial assets and one other party contributes one or more operating units to a new LLC that the financial institution may control for HSR purposes, at least for a period of time. Under this revised Interpretation, so long as such financing transactions do not result in the contribution of a business to the LLC by two or more members, it will not be treated as reportable.[10]

As described above, except for situations where a new business is contributed in exchange for an interest in existing LLC or where, as a result of an acquisition, the acquiring person would hold 100 percent of the interests in an existing LLC, no acquisition of an interest in an existing LLC is reportable under this Interpretation. Several comments indicated that LLC agreements are sometimes entered into in which the right to receive more than 50 percent of the LLC's profits shifts from one member to another upon the happening of some event outside the control—or even the knowledge—of the members. Under the definition of control applicable to LLCs (i.e. § 801.1(b)(ii)), under the October Interpretation, such a shift in the right to receive profits might have created a reporting obligation. The commenters argued that it would be unduly burdensome to require the beneficiaries of such shifts to file and that no substantive law enforcement interest would be served. The PNO does not intend that such shifts be reportable under this Formal Interpretation. Since such a shift would be the post-formation acquisition of an interest in an existing LLC without the contribution of another business, it will not be treated as subject to the reporting requirements of the act.

Some of the reasons for concluding that the formation of certain LLCs should be treated as reportable may apply equally well to partnerships. The position of the PNO, however, is that the formation of a partnership is not reportable and acquisitions of partnership interests that do not result in one person's holding 100 percent of the interests in a partnership are non-reportable. Several comments received on the Formal Interpretation published in October suggested that no change to the treatment of partnerships was necessary at this time. The treatment of partnerships was originally adopted, in part, because of the difficulty of monitoring compliance with HSR reporting obligations since many partnerships can be formed informally or by implication in many typical business arrangements. Furthermore, there has been no suggestion in any of the comments that partnerships are being used with any greater frequency now to combine competing businesses. Consequently, the PNO has decided not to change its treatment of partnerships at this time, but it may re-visit this issue in the future as developments require.

The following examples are an integral part of this Formal Interpretation:

1. "A" and "B" both plan to contribute businesses to a new LLC in which each will acquire a 50 percent interest. This LLC formation would involve both "A" and "B" making reportable acquisitions if the size-of-person and size-of-transaction tests are met. Each acquisition would be reportable unless exempted by Section

[9] In this respect, the Interpretation necessarily departs from the text of § 801.2(d)(1)(i), which provides that all mergers and consolidations shall be treated as acquisitions of voting securities.

[10] There is no evidence to suggest now that LLC formations where only one business is contributed are being used to accomplish a merger or consolidation of two businesses. However, the PNO will look carefully at these transactions in the future and, if they begin to be used to accomplish a merger or consolidation, will re-visit this issue.

7A(c) of the act or Part 802 of the HSR rules. "A" would file as an acquiring person and "B" as an acquired person for "A's" acquisition of the assets being contributed by "B," and "B" would file as an acquiring person and "A" as an acquired person for "B's" acquisition of the assets contributed by "A." If "A" or "B" (or both) contributed 50 percent or more of the voting securities of a corporation, the acquisition(s) would be treated as an acquisition of voting securities of the issuer whose shares are contributed.

2. "A," "B," and "C" form an LLC in year 1 in which each receives a one-third interest and to which each contributes a business valued at approximately $20 million. "A," "B," and "C" are $100 million persons. This formation would not be reportable because no member controls the LLC. In year 2, "X," also a $100 million person, acquires the membership interests of "A" and "B" for cash. This would not be reportable because two or more separate businesses are not being united in the LLC even though "X" is gaining control of it. Note, however, that the result would be different if "X" also contributed a business to the LLC in exchange for the LLC membership interests it receives. In the latter case, the transaction will be treated as the formation of a new LLC. Note also that in the example where "X" contributed only cash and did not file under HSR, if "X" were subsequently also to acquire "C's" membership interest it would then hold 100 percent of the interests in this LLC and would therefore have to file for the acquisition of all of the assets of the LLC.

3. "A" and "B" form a new LLC, to which "A" will contribute its widget business and "B" will contribute cash for operating capital. This formation would not be reportable because two previously separate businesses are not being contributed to the LLC.

4. "A," "B," and "C" form a 60–20–20 LLC to which "A" contributes cash and receives a 60 percent membership interest and "B" and "C" each contribute an operating unit for a 20 percent interest. This is a kind of consolidation of "B's" and "C's" operating units into the new LLC and "A" will control the LLC. There are two reportable transactions (assuming the size criteria are met and no exemption applies): "A" acquiring the operating unit contributed by "B," and "A"" acquiring the operating unit contributed by "C".

5. "A" proposes to consolidate its weighted business, which it has conducted in two subsidiaries and a division, into a newly-formed LLC in which it will hold a 60 percent membership interest. This would not be reportable because, although separate businesses are being combined, they were not under separate control prior to the transaction.

6. "A," "B," and "C" form a new LLC in which "A" will have a 60 percent interest and "B" and "C" each will have 20 percent interests. "A," a large, international pharmaceutical company, contributes $100 million in cash and the assets of a pharmaceutical product which is currently on the market. This pharmaceutical product lines constitutes a business. "B" contributes licenses to several patents which it will also continue to use to manufacture various drugs. "C" will contribute licenses which are exclusive even against itself for several drugs which are still at the testing stage and which have never been marketed. With a 60 percent interest, "A" will control the LLC. Since the licenses "B" will contribute are not exclusive as against it, they do not constitute a business. However, the licenses being contributed by "C" do constitute a business, even though they have not generated any revenue. "A" has a potential reporting obligation for the formation of this LLC for acquiring assets from "C." This formation combines two pre-existing, separately controlled businesses in an LLC which "A" will control.

7. "A" and "B" are both regional grocery store chains which do their data processing in-house. "A's" data processing unit does work only for "A" and "B's" only for "B." "A" and "B" decide to contribute the assets used in their data processing operations to a new jointly-controlled LLC which will provide data processing services to "A" and "B." Assume the size tests are met. This would not be reportable because the assets used to provide such management and administrative support services do not constitute businesses. Cf § 802.1(d)(4) of the rules and Examples 10 and 11, 16 CFR § 802.1(d)(4). This would be the case even if the new LLC intends to begin offering data processing services to third parties, since this would be beginning a new business rather than uniting existing businesses. Note, however, that the result would be different if "A" and "B" had used their equipment to provide any data processing services to others prior to contributing it to the new LLC, for then each would be contributing an existing business.

8. In year 1, "A," "B," and "C" form a new LLC to which each contributes a business in exchange for a one-third interest. This formation is not reportable because no member controls the LLC. Suppose that in year 2 "A" sells additional assets to the LLC for cash. This transaction is not covered by this Formal Interpretation. However, the LLC has a potential filing obligation as the acquiring person of those assets and "A" as the acquired person. Note that it is irrelevant whether the assets sold by "A" in year 2 constitute a business.

Donald S. Clark,

Secretary.

[FR Doc. 99–2640 Filed 2–4–99; 8:45 am]

BILLING CODE 6750–01–M

GENERAL ACCOUNTING OFFICE

[Document No. JFMIP–SR–98–6]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft titled, "Travel System Requirements," dated January 29, 1999. The draft is being issued to update a January 1991 document. The draft incorporates: (1) statutory and regulatory changes; (2) technological changes, including electronic signature capability; and (3) JFMIP documentation changes. The document is designed to provide financial managers with Governmentwide mandatory requirements for financial systems in order to process and record financial events effectively and efficiently, and to provide complete, timely, reliable, and consistent information for decision makers and the public.

DATES: Comments are due by April 9, 1999.

ADDRESSES: Copies of the exposure draft have been mailed to Agency Senior Financial Officials and are available on the JFMIP website: hhtp:www.financenet.gov/financenet/fed/jfmip/jfmipexp.htm.

Comments should be addressed to JFMIP, 441 G Street NW., Room 3111, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Dennis Mitchell, 202–512–5994 or via Internet:mitchelld.jfmip@gao.gov

SUPPLEMENTARY INFORMATION: The Federal Financial Management Improvement Act (FFMIA) of 1996 mandated that agencies implement and maintain systems that comply substantially with the Federal financial management systems requirements,

applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial systems requirements documents as a key benchmark that agency systems must meet in order to be substantially in compliance with systems requirements provisions under FFMIA. To support the requirements outlined in the FFMIA, we are updating requirements documents that are obsolete and publishing additional requirements documents.

Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 99–2702 Filed 2–4–99; 8:45 am]

BILLING CODE 1810–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–07–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National CDC AIDS And STD Hotline Callers Survey—Reinstatement—(0920–0295)—The National Center For HIV, STD, and TB Prevention (NCHSTP)is requesting clearance to gather information for management and evaluation purposes. The information gathered will assist NCHSTP in the improvement of HIV/STD services to high risk populations. Every 25th caller to the National AIDS Hotline (NAH) and every 10th caller to the National STD Hotline (NSTDH) will be surveyed. Only callers to the AIDS and STD Hotlines will be affected. Respondents (callers) will be the general public. The total annual burden hours are 754.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
On Going Data Collection			
NAH English	14,800	1	.0208
NAH Spanish	4,200	1	.0208
NSTDH	12,380	1	.0208
Additional Surveys for Special Event Data Collection			
NAH English	2,700	1	.025
NAH Spanish	300	1	.025
NSTDH	1,000	1	.025

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2721 Filed 2–4–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Conference on Health Statistics Meeting

The National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting:

Name: National Conference on Health Statistics.

Times and Dates: 9 a.m.–5 p.m., August 2, 1999. 8:30 a.m.–5 p.m., August 3, 1999. 8:30 a.m.–5 p.m., August 4, 1999.

Place: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008.

Status: Open to the public, limited only by the space available. Pre-registration is recommended, and there is no registration fee. Please obtain registration information from the contact person listed below.

Purpose: The theme of the conference is Health in the New Millennium: Making Choices, Measuring Impact. The conference will feature sessions on information technology; State and local initiatives and relationships; data standards and methods; data applications; and future date needs. Presentations will be made by a wide range of speakers from the public and private sector. The conference will also include exhibits and poster sessions that complement the presentations.

Contact Person for More Information: Substantive program and registration information for the meeting may be obtained from Barbara Hetzler, National Conference on Health Statistics, Office of Data Standards, Program Development, and Extramural Programs, NCHS, CDC, 6525 Belcrest Road, Room 1100, Hyattsville, Maryland 20782. Telephone: 301/436–7122 ext. 148, e-mail biw1@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: January 29, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2727 Filed 2–4–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Our office moved to a different building on May 18, 1998. Please use the above address for all regular mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063, (Formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000, (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652 / 417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 800–661–9876 / 403–451–3702

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 800–752–1835 / 309–671–5199 (Formerly: Methodist Medical Center Toxicology Laboratory)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive Research Triangle Park, NC 27709, 919–672–6900 / 800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (Formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927 / 800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (Formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 651–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department

of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512, 800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361 / 801–268–2431
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400 / 800–541–7891
PharmChem Laboratories, Inc., 1505-A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200 / 800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372 / 800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600 / 800–882–7272
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 / 800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947 / 972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474 / 412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293 / 314–991–1311 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728 / 619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788 / 254–771–8379
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/ 800–999–5227
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484 / 610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520 / 800–877–2520
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800 / 818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851 / 888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do. Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (FR, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 FR, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–2766 Filed 2–4–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Administration

Notice of Intent To Make Funds Available for School Violence Prevention and Early Childhood Development Activities Under the Safe Schools/Healthy Students Initiative

AGENCIES: U.S. Department of Education, Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program; U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS); U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP); U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

ACTION: Notice of intent to make funds available to enhance and implement comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development.

SUMMARY: The Departments of Education, Health and Human Services, and Justice are collaborating to provide students with enhanced comprehensive educational, mental health, law enforcement, and as appropriate, juvenile justice system services and activities designed to ensure the development of the social skills and emotional resilience necessary to avoid drug use and violent behavior and the creation of safe, disciplined, and drug-free schools.

Through a single application process, successful applicants will receive support for up to three years. Awards will be made to approximately 50 sites, ranging from up to $3 million per year for urban school districts, up to $2 million per year for suburban school districts, and up to $1 million per year for rural school districts and tribal schools designated as local education agencies by their states.

DATES: It is anticipated that the program solicitation and application will be available no later than March 15, 1999.

CONTACT: Detailed information regarding the Safe Schools Healthy/ Students Initiative is available at:

Internet: http://www.ed.gov/offices/OESE/SDFS

Fax-on-Demand: Juvenile Justice Clearinghouse (800) 638–8736

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Pub. L. 105–277 and the Public Health Service Act Section 501(d)(5).

Background

The purpose of the Safe Schools/ Healthy Students Initiative is to assist schools and communities to enhance and implement comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development. Eligible activities may include, but are not limited to, programs such as mentoring, conflict resolution, after school, multisystemic therapy, functional family therapy, social skills building, school-based probation, student assistance, teen courts, truancy prevention, alternative education, developing information sharing systems, staff professional development, hiring additional school resource officers, and treatment efforts that involve the juvenile justice system and schools. Interventions selected must have evidence of effectiveness and developmentally appropriate.

To be eligible for funding, applicants will be required to demonstrate evidence of a comprehensive community-wide strategy that at minimum consists of six general topic areas: (1) School safety, (2) drug and violence prevention and early intervention programs, (3) school and community mental health preventive and treatment intervention services, (4) early childhood psychosocial and emotional development programs, (5) education reform, and (6) safe school policies. The plan must be developed by a partnership comprising the local education agency, local public mental health authority, local law enforcement agency, family members, students, and juvenile justice officials. The local education agency will be required to submit formal written agreements signed by the school superintendent, the head of the local public mental health authority, and the chief law enforcement executive to be certified as an eligible applicant. Applicants will be strongly encouraged to demonstrate partnerships with businesses, social services, faith communities, and other community-based organizations that support the educational, emotional and health needs of students in the school district.

Applicants will be required to conduct a basic assessment of the community risks and assets related to children and adolescents and have a plan for continual updating of this assessment. Assessments shall include, but are not limited to, rates of the following: students engaged in alcohol and drug use and violent behavior, firearms brought to school, incidents of serious and violent crime in schools, suicide attempts, students suspended and/or expelled from school, students receiving probation services, and students in juvenile justice placements. Applicants will be required to provide an assessment of the community resources available for children and adolescents, including number of after school programs, percentage of youth served by programs to build social skills, and number and quality of community mental health and social service organizations available to provide services to children and adolescents.

Applicants will be required to develop a plan for assessing the community-wide strategy and agree to participate in a national evaluation of this initiative. Applicants that do not have the capability to collect data or develop a plan for assessing their strategy will be encouraged to join with a local university, research organization, or other appropriate entity to assist with these activities.

Dated: February 1, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–2853 Filed 2–4–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–05]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholdings agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the

homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitablility should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426, GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065 (202) 685–9200 (These are not toll-free numbers).

Dated: January 28, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V. FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 2/5/99

Suitable/Available Properties

Buildings (by State)

California

Bldg. 105QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830002
Status: Excess
Comment: 1000 sq. ft., needs repair, most recent use—water treatment facility, off-site use only.
Bldg. 102QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830003
Status: Excess
Comment: 6138 sq. ft., needs repair, most recent use—pro shop, off-site use only
Bldg. 118QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830004
Status: Excess
Comment: 5635 sq. ft., needs repair, most recent use—coffee shop—grille, off-site use only
Bldg. 119QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830005
Status: Excess
Comment: 1277 sq. ft., needs repair, most recent use—lockers, off-site use only
Bldg. 129QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830006
Status: Excess
Comment: 2832 sq. ft., needs repair, most recent use—patio cover, off-site use only
Bldg. 140QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830007
Status: Excess
Comment: 1648 sq. ft., needs repair, most recent use—golf cart battery shop, off-site use only
Bldg. 176QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830008
Status: Excess
Comment: 5200 sq. ft., needs repair, most recent use—golf cart shelter, off-site use only
Bldg. 193
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830112
Status: Excess
Comment: 780 sq. ft., needs major repair, most recent use—utility plant, off-site use only
Bldg. 203
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830113
Status: Excess
Comment: 360 sq. ft., needs major repair, most recent use—valve house, off-site use only
Bldg. 228
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830114
Status: Excess
Comment: 6142 sq. ft., needs major repairs, most recent use—workshop, off-site use only
Bldg. 286
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830115
Status: Excess
Comment: 23,760 sq. ft., needs major repairs, most recent use—shop, off-site use only
Bldg. 308
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830116
Status: Excess
Comment: 3,400 sq. ft., needs major repairs, most recent use—workshop, off-site use only
Bldg. 314
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830117
Status: Excess

Comment: 160 sq. ft., most recent use—water treatment facility, off-site use only
Bldg. 315
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830118
Status: Excess
Comment: 160 sq. ft., needs major repairs, most recent use—water treatment facility, off-site use only
Bldg. 335
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830119
Status: Excess
Comment: 14,000 sq. ft., needs major repairs, most recent use—workshop, off-site use only
Bldg. 398
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830120
Status: Excess
Comment: 1,530 sq. ft., needs major repairs, most recent use—admin., off-site use only
Bldg. 3201
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830121
Status: Excess
Comment: 1,750 sq. ft., needs major repairs, most recent use—workshop, off-site use only

Connecticut

Pier 7
Naval Undersea Warfare Center
New London Co: New London CT 06320–5594
Landholding Agency: Navy
Property Number: 77199710063
Status: Excess
Comment: 700' long by 30' wide, rectangular shaped reinforced concrete pier
Bldg. 84, Anx. of Gilmore Hall
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199830009
Status: Excess
Comment: 5400 sq. ft., 2-story, presence of asbestos/lead paint, needs rehab, off-site use only
Bldg. 150, McNeil Hall
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199830010
Status: Excess
Comment: 27,120 sq. ft., 4-story, presence of asbestos/lead paint, needs rehab, off-site use only
Bldg. 437, Fife Hall
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199830011
Status: Excess
Comment: 51,790 sq. ft., 3-story, presence of asbestos/lead paint, needs rehab, off-site use only
Bldg. 295
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199830012
Status: Excess
Comment: presence of asbestos/lead paint, needs rehab, off-site use only
Facility CH–901
Naval Submarine Base
Co: New London CT
Landholding Agency: Navy
Property Number: 77199830045
Status: Excess
Comment: 6161 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—community center, off-site use only
3 Bldgs
Naval Submarine Base
R121444, R121458, R121469
Ledyard Co: New London CT 06335–
Landholding Agency: Navy
Property Number: 77199910019
Status: Unutilized
Comment: various sq. ft., wood, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station,
Eastern Pacific
Wahiawa Co: Honolulu HI 96786–2050
Landholding Agency: Navy
Property Number: 77199240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. 64, Radio Trans Facility
Naval Computer &
Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only
Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only
Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible
Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible
Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible
Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible
Bldg. 222
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640043
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible
Bldg. 160
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640002
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only

Maine

Bldg. 22
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840008
Status: Excess
Comment: 2687 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 36
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840009
Status: Excess
Comment: 8840 sq. ft., most recent use—storage, off-site use only
Bldg. 38
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840010
Status: Excess
Comment: 19,612 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Maine

Bldg. 234
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840011
Status: Excess
Comment: 768 sq. ft., presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Maryland

Cheltenham Naval Comm. Dtchmt.
9190 Commo Rd., AKA 7700 Redman Rd.
Clinton Co: Prince Georges MD 20397–5520
Landholding Agency: GSA
Property Number: 77199330010
Status: Excess

Comment: 32 bldgs., various sq. ft., most recent use—admin/comm, & 39 family housing units on 230.35 acres, presence of lead paint/asbestos, 20.09 acres leased to County w/improvements
GSA Number: 4–N–MD–544A

Minnesota

GAP Filler Radar Site
St. Paul Co: Rice MN 55101–
Landholding Agency: GSA
Property Number: 54199910009
Status: Excess
Comment: 1266 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage, zoning requirements
GSA Number: 1–GR(1)–MN–475

New Hampshire

Bldg. 246
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199820028
Status: Unutilized
Comment: metal frame structure, off-site use only
Bldg. 335
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199820029
Status: Unutilized
Comment: 1000 sq. ft., brick, off-site use only
Bldg. 128
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830015
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. 185
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830016
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only
Bldg. 314
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830017
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. 336
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830018
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only

New York

101 Housing Units
Mitchel Complex
82B Mitchel Avenue
East Meadow Co: Nassau NY 11554–
Landholding Agency: Navy
Property Number: 77199810093
Status: Unutilized
Comment: 422 sq. ft., frame, 2-story, presence of asbestos/lead paint, most recent use—residential, off-site use only
36 Garages
Mitchel Complex
82B Mitchel Avenue
East Meadow Co: Nassau NY 11554–
Landholding Agency: Navy
Property Number: 77199810094
Status: Unutilized
Comment: 350 sq. ft., masonary, most recent use—garage, off-site use only
Naval Reserve Center
201 Third Avenue
Frankfort NY 13340–1419
Landholding Agency: Navy
Property Number: 7719980017
Status: Unutilized
Comment: 10,000 sq. ft., most recent use—training facility

Pennsylvania

Bldg. 76
Naval Inventory Control
Point
Philadelphia Co; Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730075
Status: Excess
Comment: 3475 sq. ft., cinder block/metal, most recent use—child care, needs repair, off-site use only
Bldg. 44
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 7719980093
Status: Excess
Comment: 2154 sq. ft., needs repair, presence of asbestos, most recent use—medical clinic, off-site use only
Bldg. 48
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830094
Status: Excess
Comment: 2737 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only
Bldg. 49
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830095
Status: Excess
Comment: 3263 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only
Bldg. 64
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830096
Status: Excess
Comment: 3157 sq. ft., needs major repairs, presence of asbestos, most recent use—office, off-site use only
Bldg. 65 U/V
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830097
Status: Excess
Comment: 4829 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only
Bldg. 133
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830098
Status: Excess
Comment: 27,600 sq. ft., needs repair, presence of asbestos, most recent use—admin., offsite use only
Bldg. 337
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830099
Status: Excess
Comment: 1025 sq. ft., needs major repairs, presence of asbestos, most recent use—garage, offsite use only
Bldg. 418
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830100
Status: Excess
Comment: 2578 sq. ft., needs repair, presence of asbestos, most recent use—quarters, offsite use only
Bldg. 570
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830101
Status: Unutilized
Comment: 9123 sq. ft., needs repair, presence of asbestos, most recent use—tool room, offsite use only
Bldg. 605
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830102
Status: Excess
Comment: 1118 sq. ft., needs repair, presence of asbestos, most recent use—garage offsite use only

Rhode Island

Bldg. 69
Naval Education and Training
Center
Newport Co: Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199810052
Status: Unutilized
Comment: 600 sq. ft., concrete, presence of asbestos, most recent use—storage, off-site use only
Bldg. A33
Naval Hospital Gate 5
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199810083
Status: Underutilized
Comment: 1512 sq. ft., detached 5 stall garage, needs repair, presence of asbestos, off-site use only
Facility T
Naval Education and Training
Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810175
Status: Unutilized

Comment: 1610 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only
Facility U
Naval Education and Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810176
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Facility V
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810177
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Facility W
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810178
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—training/office, off-site use only
Facility X
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810179
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only
Facility Y
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810180
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin., off-site use only
Facility 322
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810181
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Facility 323
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810182
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Facility 324
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810183
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint shop, off-site use only
Facility 325
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810184
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only
Facility 326
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810185
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only
Facility 327
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810186
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Bldg. 342
Coddington Point
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810259
Status: Unutilized
Comment: 646 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 340
Coddington Point
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810260
Status: Unutilized
Comment: 96 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—heating plant bldg., off-site use only
Bldg. 697
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810262
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use—self help shop, off-site use only
Bldg. 696
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810263
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use—elec/comm maint. shop, off-site use only
Bldg. 35
Coddington Cove
Naval Education & Training Center
Newport RI 02841—1711
Landholding Agency: Navy
Property Number: 77199810264
Status: Unutilized
Comment: 2880 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—auto storage, off-site use only
Bldg. 70
Naval Station, Newport
Middletown Co: Newport RI 02842–
Landholding Agency: Navy
Property Number: 77199840018
Status: Unutilized
Comment: 1900 sq ft., most recent use—storage, off-site use only
Bldg. 111
Naval Station, Newport
Middletown Co: Newport RI 02842–
Landholding Agency: Navy
Property Number 771998840019
Status: Unutilized
Comment: 560 sq. ft., most recent use—storage, off-site use only
Facility 700
Naval Station
Newport RI 02841—
Landholding Agency: Navy
Property Number: 77199840029
Unutilized
Comment: 6230 sq. ft., recent use—wastewater treatment plant, off-site use only
Facility 994
Naval Station
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199840030
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only
Facility 449
Naval Station
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199840031
Status: Unutilized
Comment: 140 sq. ft., most recent use—chlorination shed, off-site use only
Facility 1324
Naval Station
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199840032
Status: Unutilized
Comment: 107 sq. ft., most recent use—lift station controls shed, off-site use only

Washington

149 Duplexes
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 002–148, 150, 152–153, 157
Landholding Agency: Navy
Property Number: 77199820118
Status: Excess
Comment: 1286 sq. ft./1580 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only

9 Fourplexes
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 151, 155–156, 158–163
Landholding Agency: Navy
Property Number: 77199820119
Status: Excess
Comment: 3082 sq. ft./3192 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
2 Sixplexes
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 154, 189
Landholding Agency: Navy
Property Number: 77199820120
Status: Excess
Comment: 4618 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
1 Single Unit
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structure 149
Landholding Agency: Navy
Property Number: 77199820121
Status: Excess
Comment: 790 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
Storage Building
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820122
Status: Excess
Comment: 2160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
Admin. Building, Structure 001
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820123
Status: Excess
Comment: 9550 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
Bldg. 376, Naval Air Station
Topsham Annex
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 77199320011
Status: Unutilized
Comment: 4530 sq. ft., 2-story, most recent use—quarters, needs rehab
Bldg. 383
Topsham Annex, Naval Air
Station
Bruswick ME 04011–
Landholding Agency: Navy
Property Number: 77199720025
Status: Unutilized
Comment: 4431 Sq. ft., 1-story
Bldg. 382
Topsham Annex, Naval Air
Station
Brunswick ME 04011–
Landholding Agency: Navy
Property Number: 77199720026
Status: Unutilized
Comment: 14855 sq. ft., 1-story, subject to contamination
Bldg. 381
Topsham Annex, Naval Air
Station
Brunswick ME 04011–
Landholding Agency: Navy
Property Number: 77199720027
Status: Unutilized
Comment: 14057 sq. ft., 1-story

Ohio

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 77199320012
Status: Unutilized
Comment: 3067 sq. ft. 2-story, possible asbestos.

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter
Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 77199530007
Status: Underutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 77199010109
Status: Unutilized
Comment: 3665 sq ft., 1-story, possible asbestos, most recent use—laundry.

Land (by State)

Florida

13.358 acres
Naval Air Station
Hwy 98 & Perimeter Drive
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820141
Status: Unutilized
Comment: paved, abandoned runway, reroute security fencing

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 77199010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.
Land—CD area
Naval Base Norfolk
Norfolk VA 23511–2797
Landholding Agency: Navy
Property Number: 77199830022
Status: Unutilized
Comment: 2 acres, open space

New Hampshire

Naval & Marine Corp. Rsv. Ctr.
199 North Main St.
Manchester NH 03102–
Landholding Agency: Navy
Property Number: 77199530005
Status: Excess
Comment: 3 bldgs. on 2.53 acres of land, limited utilities, limited use prior to environmental cleanup

Puerto Rico

Bldg. 561
Former Ramey AFB
Aguadilla PR 00604–
Landholding Agency: Navy
Property Number: 77199630001
Status: Unutilized
Comment: 102666 sq. ft. bldg. on 5.006 acres, most recent use—manufacturing, office and freight distribution center, presence of asbestos

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 77199010073
Status: Unutilized
Comment: 114 acres; possible radiation hazard; existing FAA use license.

California

Bldg. 366
Naval Air Weapons Station,
China Lake
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199520026
Status: Unutilized
Reason: Secured Area
Bldgs. 27, 30, 33, 36
Naval Command, Control &
Ocean Surv. Center
San Diego CA
Landholding Agency: Navy
Property Number: 77199740045
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 89, Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199810001
Status: Excess
Reason: unsound
Bldg. 164
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199810046
Status: Excess
Reason: Extensive deterioration
Bldg. 439
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199810048
Status: Excess
Reason: Extensive deterioration
Bldg. 173
Naval Station
San Diego CA 92136–
Landholding Agency: Navy

Property Number: 77199810050
Status: Excess
Reason: Extensive deterioration
Bldg. 547
Naval Station, San Diego
San Diego, CA 92136–
Landholding Agency: Navy
Property Number: 77199810172
Status: Excess
Reason: Extensive deterioration
Bldgs. 3300–3309
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820064
Status: Excess
Reason: Extensive deterioration
Bldgs. 3310–3319
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820065
Status: Excess
Reason: Extensive deterioration
Bldgs. 3320–3329
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820066
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 3330–3339
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820067
Status: Excess
Reason: Extensive deterioration
Bldgs. 3340–3349
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820068
Status: Excess
Reason: Extensive deterioration
Bldgs. 3350–3359
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820069
Status: Excess
Reason: Extensive deterioration
Bldgs. 3360–3369
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820070
Status: Excess
Reason: Extensive deterioration
Bldgs. 3370–3379
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820071
Status: Excess
Reason: Extensive deterioration
Bldgs. 3380–3389
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820072
Status: Excess
Reason: Extensive deterioration
Bldgs. 3390–3399
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820073
Status: Excess
Reason: Extensive deterioration
Bldgs. 3400–3409
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820074
Status: Excess
Reason: Extensive deterioration
Bldgs. 3410–3419
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820075
Status: Excess
Reason: Extensive deterioration
Bldgs. 3420–3429
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820076
Status: Excess
Reason: Extensive deterioration
Bldgs. 3420–3439
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820077
Status: Excess
Reason: Extensive deterioration
Bldgs. 3440–3449
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820078
Status: Excess
Reason: Extensive deterioration
Bldgs. 3450–3459
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820079
Status: Excess
Reason: Extensive deterioration
Bldgs. 3460–3469
Capehart Housing
China Lake Naval Weapon Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820080
Status: Excess
Reason: Extensive deterioration
Bldgs. 3470–3479
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820081
Status: Excess
Reason: Extensive deterioration
Bldgs. 3480–3489
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820082
Status: Excess
Reason: Extensive deterioration
Bldgs. 3490–3499
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820083
Status: Excess
Reason: Extensive deterioration
Bldgs. 3500–3509
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820084
Status: Excess
Reason: Extensive deterioration
Bldgs. 3510–3519
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820085
Status: Excess
Reason: Extensive deterioration
Bldgs. 3520–3529
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820086
Status: Excess
Reason: Extensive deterioration
Bldgs. 3530–3539
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820087
Status: Excess
Reason: Extensive deterioration
Bldgs. 3540–3549
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820088
Status: Excess
Reason: Extensive deterioration
Bldgs. 3550–3559
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820089
Status: Excess
Reason: Extensive deterioration
Bldgs. 3560–3569
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820090
Status: Excess
Reason: Extensive deterioration
Bldgs. 3570–3579

Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820091
Status: Excess
Reason: Extensive deterioration
Bldgs. 3580–3589
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820092
Status: Excess
Reason: Extensive deterioration
Bldgs. 3590–3599
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820093
Status: Excess
Reason: Extensive deterioration
Bldgs. 3600–3609
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820094
Status: Excess
Reason: Extensive deterioration
Bldgs. 3610–3619
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820095
Status: Excess
Reason: Extensive deterioration
Bldgs. 3620–3629
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820096
Status: Excess
Reason: Extensive deterioration
Bldgs. 3630–3639
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820097
Status: Excess
Reason: Extensive deterioration
Bldg. 210
Naval Station, San Diego
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830001
Status: Excess
Reason: Extensive deterioration
Bldg. 444
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830122
Status: Excess
Reason: Extensive deterioration
Bldg. 209
Naval Station, San Diego
San Diego CA 92136–5065
Landholding Agency: Navy
Property Number: 77199840001
Status: Excess
Reason: Extensive deterioration

Colorado

Bldg. 727
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 729
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 779
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 780
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 780A
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 780B
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 782
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 783
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 784 (A–D)
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 785
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 786
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 787 (A–D)
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 875
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 880
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 886
Rocky Flats Environmental
Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Connecticut

Naval Housing—7 Bldgs.
Naval Submarine Base
New London Co: Groton-CT
Landholding Agency: Navy
Property Number: 77199510001
Status: Unutilized
Reasons: Secured Area
Bldgs. DG–8, DG–9
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199720046
Status: Excess
Reason: Extensive deterioration
Dolphin Gardens, DG–8, DG–9

Naval Submarine Base
Groton CT 06349–
Landholding Agency: Navy
Property Number: 77199810084
Status: Underutilized
Reason: Extensive deterioration

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199010101
Status: Excess
Reason: Within airport runway clear zone
Bldg. 139
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820098
Status: Unutilized
Reason: Secured Area
Bldg. 221
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820099
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 226
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820100
Status: Unutilized
Reason: Secured Area
Bldg. 654
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820101
Status: Unutilized
Reason: Secured Area
Bldg. 701
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820102
Status: Unutilized
Reason: Secured Area
Bldg. 1805
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820103
Status: Unutilized
Reason: Secured Area
Bldg. 1806
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820104
Status: Unutilized
Reason: Secured Area
Bldg. 1971
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820105
Status: Unutilized
Reason: Secured Area
Bldg. 1994
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820106
Status: Unutilized
Reason: Secured Area
Bldg. 2657
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820107
Status: Unutilized
Reason: Secured Area
Bldg. 3213
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820108
Status: Unutilized
Reason: Secured Area
Bldg. 3443
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820109
Status: Unutilized
Reason: Secured Area
Quarters 9
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820124
Status: Unutilized
Reason: Secured Area, Extensive deterioration
Quarters 10
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820125
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230012
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Extensive Deterioration, Secured Area
Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230013
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area
Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230014
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area
Bldg. 6, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410003
Status: Unutilized
Reason: Extensive Deterioration
Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410004
Status: Unutilized
Reason: Extensive Deterioration
Bldg. 9
Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured Area
Bldg. SX30
Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured Area
Bldg. 98
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199620032
Status: Excess
Reason: Extensive deterioration
Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration
Bldg. 40
Naval Magazine
Lualualei Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration
Bldg. 50
Naval Magazine
Lualualei Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q76
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q334
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration
Bldg. S380

Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830032
Status: Unutilized
Reason: Extensive deterioration
Bldg. S381
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830033
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration
Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration
Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037
Status: Unutilized
Reason: Extensive deterioration
Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration
Facility S–721
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840042
Status: Excess
Reason: Secured Area
Facility S–897
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840043
Status: Excess
Reason: Secured Area
Facility S–937
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840044
Status: Excess
Reason: Secured Area
Facility S–19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured Area
Facility S–173
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840046
Status: Excess
Reason: Secured Area
Bldg. 665
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199910020
Status: Excess
Reason: Extensive deterioration
Bldg. 693
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199910021
Status: Excess
Reason: Extensive deterioration
Bldg. S–196
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199910022
Status: Excess
Reason: Extensive deterioration
Facility Bldg. 225
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199910023
Status: Excess
Reason: Extensive deterioration
Bldg. 640
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199910024
Status: Excess
Reason: Extensive deterioration

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured Area
Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840024
Status: Unutilized
Reason: Secured Area
Bldg. 1016
Naval Training Center
201 Decater Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025
Status: Unutilized
Reason: Secured Area

Indiana

5 Bldgs.
Naval Surface Warfare
Center, Crane Div.
#54, 2530, 2812, 2929, 3031
Crane Co: Martin IN 41522–
Landholding Agency: Navy
Property Number: 77199830046
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199240015
Status: Excess
Reason: Secured area
Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 77199340001
Status: Unutilized
Reason: Extensive deterioration
Aircraft Hangar #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199810015
Status: Excess
Reason: Extensive deterioration
Bldg. 13
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840005
Status: Excess
Reason: Extensive deterioration
Bldg. 15
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840006
Status: Excess
Reason: Extensive deterioration
Bldg. 16
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840007
Status: Excess
Reason: Extensive deterioration

Maryland

15 Bldgs.
Naval Air Warfare Center
Patuxent River Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 77199730062
Status: Unutilized
Reason: Extensive deterioration
Bldg. 510, Indian Head Div.
Naval Surface Warfare Center
Indian Head Co: Charles MD 20640–
Landholding Agency: Navy
Property Number: 77199740083
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Mississippi

Bldg. 170
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199820110
Status: Unutilized
Reason: Secured area, Extensive deterioration
Bldg. 78
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy

Property Number: 7719983004
Status: Unutilized
Reasons: Secured area, Extensive deterioration
Bldg. 113
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830048
Status: Unutilized
Reasons: Secured area, Extensive deterioration
Bldg. 147
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830049
Status: Unutilized
Reasons: Secured area, Extensive deterioration
Bldg. 187
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830050
Status: Unutilized
Reasons: Secured area, Extensive deterioration

New Hampshire

Bldg. 89
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830086
Status: Unutilized
Reason: Secured Area
Bldg. 93
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830087
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 99
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830088
Status: Unutilized
Reasons: Secured Area
Bldg. 115
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830089
Status: Unutilized
Reasons: Secured Area
Bldg. 178
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830090
Status: Unutilized
Reasons: Secured Area
Bldg. 298
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830091
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. H–21
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Dry Dock 1
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840012
Status: Underutilized
Reasons: Secured Area
Dry Dock 3
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 771998040013
Status: Underutilized
Reasons: Secured Area
Berth 2
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840014
Status: Underutilized
Reason: Secured Area
Berth 11
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840015
Status: Underutilized
Reason: Secured Area

New Jersey

Bldg. 329
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199740008
Status: Unutilized
Reason: Extensive deterioration
Bldg. 116
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199740009
Status: Unutilized
Reason: Extensive deterioration
Bldg. 188
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199830065
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. M509
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199810223
Status: Unutilized
Reason: Secured Area
Bldg. 96
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820111
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 97
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820112
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 169
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820113
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 196
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820114
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 477
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
Bldg. 3422
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820116
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 899
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 900
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830040
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1300
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 1607
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830042
Status: Unutilized

Reasons: Secured Area; Extensive deterioration
Bldg. AS–822
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. BA115
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830044
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 908
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199840021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Pennsylvania

Bldg. 22
Willow Grove Naval Air Station
Willow Grove Co: Montgomery PA 19090–
Landholding Agency: Navy
Property Number: 77199720028
Status: Excess
Reason: Extensive deterioration
Bldg. 11
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730071
Status: Excess
Reason: Extensive deterioration
Bldg. 30
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730072
Status: Excess
Reason: Extensive deterioration
Bldg. 31
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730073
Status: Excess
Reason: Extensive deterioration
Bldg. 39
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730074
Status: Excess
Reason: Extensive deterioration
Bldg. 022
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 77199740062
Status: Unutilized
Reason: Extensive deterioration
Bldg. 913
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 77199740063
Status: Unutilized
Reason: Extensive deterioration
Bldg. 610
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 77199820140
Status: Unutilized
Reason: Extensive deterioration
Bldg. 524
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830023
Status: Unutilized
Reason: Extensive deterioration
Bldg. 616
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830024
Status: Unutilized
Reason: Extensive deterioration
Bldg. 707
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830025
Status: Unutilized
Reason: Extensive deterioration
Bldg. 790
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830026
Status: Unutilized
Reason: Extensive deterioration
Bldg. 879
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830027
Status: Unutilized
Reason: Extensive deterioration
Bldg. 434
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830103
Status: Excess
Reason: Extensive deterioration
Bldg. 528
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830104
Status: Excess
Reason: Extensive deterioration
Bldg. 534
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830105
Status: Excess
Reason: Extensive deterioration
Bldg. 637
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830106
Status: Excess
Reason: Extensive deterioration
Bldg. 662
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830107
Status: Excess
Reason: Extensive deterioration
Bldg. 672
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830108
Status: Excess
Reason: Extensive deterioration

Puerto Rico

Bldg. 433
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830066
Status: Unutilized
Reason: Extensive deterioration
Bldg. 434
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830067
Status: Unutilized
Reason: Extensive deterioration
Bldg. 464
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830068
Status: Unutilized
Reason: Extensive deterioration
Bldg. 762
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830069
Status: Unutilized
Reason: Extensive deterioration
Bldg. 763
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830070
Status: Unutilized
Reason: Extensive deterioration
Bldg. 1927
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830071
Status: Unutilized
Reason: Extensive deterioration
Bldg. 175
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830072
Status: Unutilized
Reason: Extensive deterioration
Former No. 2091
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830073
Status: Unutilized
Reason: Extensive deterioration
Bldg. 261/1692
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830074
Status: Unutilized
Reason: Extensive deterioration

B–38
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830075
Status: Unutilized
Reason: Extensive deterioration

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 77199010273
Status: Excess
Reason: Secured Area
Bldg. W–31
Coddington Point
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810261
Status: Unutilized
Reason: Extensive deterioration
Bldg. 121
Coasters Harbor Island
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810265
Status: Unutilized
Reason: Extensive deterioration
Bldg. 33
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910025
Status: Unutilized
Reason: Inaccessible
Bldg. 53
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910026
Status: Unutilized
Reason: Inaccessible
Bldg. 54
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910027
Status: Unutilized
Reason: Inaccessible
Bldg. 56
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910028
Status: Unutilized
Reason: Inaccessible
Bldg. 58
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910029
Status: Unutilized
Reason: Inaccessible
Bldg. 59
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910030
Status: Unutilized
Reason: Inaccessible
Bldg. 60
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910031
Status: Unutilized
Reason: Inaccessible
Bldg. 70
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910032
Status: Unutilized
Reason: Inaccessible
Bldg. 91G
Naval Station, Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910033
Status: Unutilized
Reason: Inaccessible

Tennessee

15 Bldgs.
Naval Support Activity,
Memphis
Millington Co: Shelby TN 38054–
Location: 329, 400–408, 1585, S–159, S–160, S–163, 1278
Landholding Agency: Navy
Property Number: 77199820126
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
18 Bldgs.
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Location: 2001–2002, 2048–2051, 2064–2070, 2107–2111
Landholding Agency: Navy
Property Number: 77199820127
Status: Unutilized
Reason: Secured Area
P–348 (Bldgs. 409–417)
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy
Property Number: 77199830109
Status: Excess
Reasons: Secured Area, Extensive deterioration
P–349 (12 Bldgs.)
Naval Support Activity Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy
Property Number: 77199830110
Status: Excess
Reasons: Secured Area Extensive deterioration
P–350 (16 Bldgs.)
Naval Support Activity Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy
Property Number: 77199830111
Status: Excess
Reasons: Secured Area Extensive deterioration
11 Bldgs.
Naval Surface Warfare Center
Carderock Division,
Detachment Memphis
Memphis Co: Shelby TN 38113–
Landholding Agency: Navy
Property Number: 7719984022
Status: Unutilized
Reason: Secured Area

Texas

Bldgs. 1561, 1562, 1563
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820050
Status: Unutilized
Reasons: Secured Area Extensive deterioration
Bldg. 1190
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820053
Status: Unutilized
Reason: Secured Area
Bldg. 1820
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820054
Status: Unutilized
Reasons: Secured Area Extensive deterioration
Bldg. 700
Naval Air Station Kingsville
Kingsville Co: Klebert TX 78363–
Landholding Agency: Navy
Property Number: 77199830077
Status: Unutilized
Reason: Extensive deterioration
Bldg. 701
Navy Air Station Kingsville
Kingsville Co: Kleberg TX 78363–
Landholding Agency: Navy
Property Number: 77199830078
Status: Unutilized
Reason: Extensive deterioration
Bldg. 704
Navy Air Station Kingsville
Kingsville Co: Kleberg TX 78363–
Landholding Agency: Navy
Property Number: 77199830079
Status: Unutilized
Reason: Extensive deterioration

Virginia

Fleet Training Center
Fire Fighting Training
Facility
SDA–323, SDA–324, SDA–325, SDA–326
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 77199740010
Status: Unutilized
Reason: Extensive deterioration
Bldg. 02
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration
Bldg. 2208
Naval Medical Clinic
Quantico VA
Landholding Agency: Navy
Property Number: 77199820001
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 358, 359
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820023
Status: Excess
Reason: Extensive deterioration
Bldg. CAD–43

Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820024
Status: Excess
Reason: Extensive deterioration
Bldg. CAD–102
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820025
Status: Excess
Reason: Extensive deterioration
Bldg. CAD–102A
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820026
Status: Excess
Reason: Extensive deterioration
Bldg. CAD–127
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820027
Status: Excess
Reason: Extensive deterioration
8 Bldgs.
Naval Base Norfolk
Norfolk VA
Location: #NH–A, NH–A1, NH–B, NH–C, NH–C1, NH–D, NH–D1 , NH–B1
Landholding Agency: Navy
Property Number: 77199830052
Status: Unutilized
Reason: Extensive deterioration
CAD–40
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199830084
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
13 Garages
Naval Base Norfolk Complex
Norfolk VA
Location: A–39A, F–32A, F–33E/W, G–31E, G–31W, G–35A, H–7A, SP–18A, SP–19A, SP–20A, SP–21A, SP–24A, SP–26A
Landholding Agency: Navy
Property Number: 77199840016
Status: Excess
Reason: Extensive deterioration

Washington

Bldg. 913
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199720014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilized
Reason: Secured Area
Bldg. 1635
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199730040
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 7457
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199730041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 4446
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199740082
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 604, Pier 91
Naval Station Everett
Seattle Co: King WA
Landholding Agency: Navy
Property Number: 77199810011
Status: Excess
Reason: Extensive deterioration
Bldg. 1008
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199810012
Status: Unutilized
Reason: Extensive deterioration
Bldg. 1010
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199810013
Status: Unutilized
Reason: Extensive deterioration
Bldg. 6460
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199810014
Status: Unutilized
Reason: Extensive deterioration
Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reasons: Within 2,000 ft. of flammable or explosive material, Secured Area
Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reasons: Within 2,000 ft. of flammable or explosive material, Secured Area
Bldg. 332
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77199810217
Status: Excess
Reason: Secured Area
Bldg. 2512
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77199810218
Status: Excess
Reason: Secured Area
Bldg. 2536
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77199810219
Status: Excess
Reason: Secured Area
Bldg. 2591
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77199810220
Status: Excess
Reason: Secured Area
Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reasons: Secured Area Extensive deterioration
Coal Handling Facilities
Puget Sound Naval Shipyard
#908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: Contamination
Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration
Bldg 2669
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration
Bldg. 2559
Naval Air Station, Whidbey Island
Oak Harbor WA 98278–

Landholding Agency: Navy
Property Number: 77199830063
Status: Excess
Reason: Extensive deterioration
Bldgs. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration
Bldg. 21
Naval Undersea Warfare Center Div.
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199830083
Status: Excess
Reasons: Secured Area Extensive deterioration
Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive materials, Secured Area

Land (by State)

California

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 77199010097
Status: Unutilized
Reason: Floodway

Maine

37 Acres, Topsham Annex
Naval Air Station
Brunswick ME 04011–
Landholding Agency: Navy
Property Number: 77199720001
Status: Unutilized
Reason: Secured Area
Land—Triangular Area
NAS Brunswick, Wildwood
Subd. Encroachment
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199820117
Status: Excess
Reason: Landlocked

Maryland

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 77199230001
Status: Excess
Reason: Drainage Ditch
Govt. Railroad
Naval Surface Warfare Center
Indian Head Div.
Indian Head Co: Charles MD 20640–
Landholding Agency: Navy
Property Number: 77199740084
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Floodway

North Carolina

0.85 parcel of land
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured Area

Washington

Land—Port Hadlock Detachment
Naval Ordnance Center
Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

[FR Doc. 99–2499 Filed 2–4–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–00; N–61466 and N–63104]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/conveyance.

SUMMARY: The following described public land in Nye County, Nevada, near Pahrump, Nevada, has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*). The Town of Pahrump proposes to use the land for development of a community fairground and rodeo complex, recreational complex, visitor information center, and municipal golf course. Section 125 of Public Law 105–277, dated October 22, 1998, directs conveyance of the lands located south of the centerline of Highway 160 within T. 20 S., R.54 E., sections 32 and 33 to the Town of Pahrump immediately upon completion of the requirements of the Act. The rodeo and fairground complex, recreational complex and visitor information center have been proposed to be located on these lands. The lands within T. 20 S., R.54 E., section 19, will be leased with the option to patent and subject to the requirements of the R&PP Act. The municipal golf course is proposed for this site.

Mount Diablo Meridian, Nevada

T. 20 S., R.54 E.,
Section 32, portions of the NE¼ and the N½SE¼ south of the centerline of Highway 160
Section 33, portions of lots 5,6,9,11,14 and 16, NE¼SW¼, NW¼SW¼ south of the centerline of Highway 160
Section 19, NE¼, N½SE¼

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

3. All valid and existing rights.

4. Subject To: Those rights for highway purposes which have been granted to Nevada Department of Transportation, by right-of-way No. Nev–01849 pursuant to the Act of November 9, 1921 (42 Stat. 216).

5. Those rights for utility purposes (water pipeline) which have been granted to Central Nevada Utilities, by right-of-way No. N–46681 pursuant to the Act of October 21, 1976 (FLPMA) as follows:

6. Those rights for utility purposes (communications line) which have been granted to Nevada Bell, by right-of-way No. N–5689 pursuant to the Act of March 4, 1911 (36 Stat. 1253).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada, 89108.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws. For a period of 45 days from the date of publication of this

notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for the proposed facilities. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposed facilities.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: January 27, 1999.

Rex Wells,

Acting Field Manager, Las Vegas District.

[FR Doc. 99–2699 Filed 2–4–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Intent To Prepare an Environmental Impact Statement To Consider Policies, Guidance, and Processes To Minimize the Environmental Impacts of Mountaintop Mining and Valley Fills in the Appalachian Coalfields

AGENCY: U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (Corps), Office of Surface Mining (OSM), and U.S. Fish and Wildlife Service (FWS).

ACTION: Notice of intent to prepare an environmental impact statement.

PURPOSE: The EPA, Corps, OSM, and FWS, in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), with the State of West Virginia, will prepare an Environmental Impact Statement (EIS) on a proposal to consider developing agency policies, guidance, and coordinated agency decision-making processes to minimize, to the maximum extent practicable, the adverse environmental effects to waters of the United States and to fish and wildlife resources from mountaintop mining operations, and to environmental resources that could be affected by the size and location of fill material in valley fill sites.

DATES: The agencies invite comments and suggestions on the scope of the analysis, including the regulatory issues and significant environmental effects to be addressed in the EIS. Written comments from the public regarding the environmental and regulatory issues and alternatives to be addressed in the EIS should be received in writing by March 31, 1999. The agencies will hold public meetings on February 23, 1999, in Summersville, West Virginia; February 24, 1999, in Charleston, West Virginia; and February 25, 1999, in Logan, West Virginia, to receive public input, either verbal or written, on relevant environmental and regulatory issues that should be addressed in the EIS. The locations and starting times of the public meetings are as follows: In Summersville, the meeting will be held at the Nicholas County Veteran's Memorial Park beginning at 6:30 p.m.; in Charleston, the meeting will be held at the rotunda at Riggleman Hall, University of Charleston in the afternoon from 2–4 p.m. and in the evening beginning at 6:30 p.m.; and in Logan, the meeting will be held at the Chief Logan State Park beginning at 6:30 p.m. Other public meetings may also be held and will be announced at a later date.

ADDRESSES: Send written comments and suggestions concerning this proposal to William Hoffman, Environmental Protection Agency, 3ES30, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; e-mail address, hoffman.william@epamail.epa.gov; telephone: 215–814–2995. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION AND CONTACTS: Questions about the proposed action and EIS are to be directed to William Hoffman, Environmental Protection Agency, 215–814–2995. Coordinators for each of the federal and state agencies are as follows:

William Hoffman, U.S. Environmental Protection Agency, 215–814–2995
David G. Hartos, Office of Surface Mining, 412–937–2909
Andy Gallagher, WV Division of Environmental Protection, 304–759–0515
Michael D. Gheen, U.S. Army Corps of Engineers 304–529–5487
David Densmore, U.S. Fish and Wildlife Service, 814–234–4090

SUPPLEMENTARY INFORMATION: The agencies undertaking preparation of this voluntary EIS implement federal and state laws with which mountaintop mining operations and associated discharges to waters of the U.S. must comply. OSM is responsible for national administration of the Surface Mining Control and Reclamation Act (SMCRA); it has delegated the authority for the SMCRA programs for surface mining operations in West Virginia to the State of West Virginia. Other Appalachian coal field states (except Tennessee) also implement delegated SMCRA authority. Discharge of fill material into U.S. waters is regulated under Sec. 404 of the Clean Water Act, with permit responsibility administered by the U.S. Army Corps of Engineers and applicable 404 regulations issued by the Corps and EPA. Other discharges to U.S. waters are subject to Sec. 402 of the Clean Water Act, which is administered nationally by EPA with authority for the program delegated to West Virginia and other Appalachian coalfield states. Mountaintop mining operations must also comply with the Endangered Species Act, which is administered by FWS. In addition, the Fish and Wildlife Coordination act (FWCA) pertains to federally-permitted, constructed, or licensed water development projects and land development projects that affect any water body. Whenever OSM, COE, or EPA authorize an action within the scope of the FWCA, they are required to consult with the FWS, and similar State agencies, to obtain recommendations on ways to mitigate adverse effects on fish and wildlife resources.

The number of mountaintop mining operations that utilize valley fills, as well as the scale of individual operations, have increased in recent years in West Virginia. This EIS will evaluate significant environmental impacts associated with these operations on water quality, streams, aquatic and terrestrial habitat, habitat fragmentation, the hydrological balance, and other individual and cumulative effects. Federal and state agencies are increasingly concerned over the lack of comprehensive data regarding valley fill operations, and have initiated a number of studies to address these data gaps. Accurately describing and quantifying the extent and nature of direct,

secondary, and cumulative impacts related to valley fills and associated mining practices is difficult.

This EIS will complement recent efforts to address the issues of mountaintop mining and valley fills. The OSM recently completed and issued a draft oversight report entitled "An Evaluation of Approximate Original Contour and Postmining Land Use in West Virginia". During 1998, the Governor of West Virginia established a Governor's Task Force, which held public inquiries and evaluated the impacts of mountaintop mining operations on the economy, the environment, and the people of that State. Its report was issued in December 1998.

To address the concerns about mountaintop mining and valley fills, the agencies will consider potential revisions to relevant regulations, policies, and guidance that would minimize the potential for adverse individual and cumulative impacts of mining operations. The EIS will provide information that will help the agencies improve the permitting process to protect water quality and minimize impacts to other environmental resources. The EIS will also examine how regulations of the agencies can be better coordinated. The EIS may consider information on the following: the cumulative environmental impacts of mountaintop mining; the efficacy of stream restoration; the viability of reclaimed streams compared to natural waters; the impact that filled valleys have on aquatic life, wildlife and nearby residents; biological and habitat analyses that should be done before mining begins; practicable alternatives for in-stream placement of excess overburden; measures to minimize stream filling to the meximum extent practicable; and the effectiveness of mitigation and reclamation measures. The EIS is expected to take two years to complete.

Dated: February 2, 1999.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 99–2814 Filed 2–4–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed partial consent decree in the consolidated action entitled *United States of America* v. *Western Publishing Co., Inc., et al.*, Civil Action No. 94–CV–1247 (LEK/DNH) and *State of New York* v. *F.I.C.A. a/k/a Dutchess Sanitation Services, Inc., et al.*, Civil Action No. 86–CV–1136 (LEK/DNH) (N.D.N.Y.), was lodged on January 22, 1999, with the United States District Court for the Northern District of New York. The proposed partial consent decree resolves claims of the United States, on behalf of the U.S. Environmental Protection Agency, and the State of New York against defendants Golden Books Publishing Co., Inc. (formerly known as Western Publishing Co., Inc.), Hudson Valley Environmental Services, Inc., third-party defendant and fourth-party plaintiff Ford Motor Company, and fourth-party defendants Alfa Laval, Inc., Frye Tech, Inc., International Business Machines Corp., Kem Plastic Playing Cards, Inc. (who is participating in the settlement based upon a documented limited ability to pay), Poughkeepsie Newspaper Division of Gannett Satellite Information Network, Inc., the City of Poughkeepsie, and tesa tape inc., under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C 9601–9675 ("CERCLA"). These claims are for recovery of response costs incurred and to be incurred by the United States in connection with the Hertel Landfill Superfund Site ("Site"), located in the Hamlet of Clintondale, Town of Plattekill, Ulster County, New York.

Under the terms of the proposed partial consent decree, the settling defendants will pay to the United States $453,500 in reimbursement of past response costs and $125,000 in reimbursement of interim response costs incurred by the United States, and up to $300,000 in future oversight and all future non-oversight costs to be incurred by the United States with respect to the Site. Settling defendants also will pay to the State $3,814 toward reimbursement of the State's response costs. Pursuant to the proposed partial consent decree, the settling defendants also are required to implement the remedial design and remedial action set forth in the September 27, 1991 Record of Decision for the Site, including construction and operation and maintenance of a multi-layer cap over the landfill. The proposed partial consent decree provides the settling defendants with releases for civil liability under Sections 106 and 107(a) of CERCLA relating to the Site as consideration for the payments to be made and the work to be performed.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States of America* v. *Western Publishing Co., Inc., et al.*, Civil Action No. 94–CV–1247 (LEK/DNH) and *State of New York* v. *F.I.C.A. a/k/a Dutchess Sanitation Services, Inc., et al.*, Civil Action No. 86–CV–1136 (LEK/DNH) (N.D.N.Y.), DOJ Ref. No. 90–11–2–767A.

The proposed partial consent decree may be examined at the Office of the United States Attorney, 445 Broadway, Room 231, Albany, New York 12207; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866; and the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, telephone (202) 624–0892. A copy of the proposed partial consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $36.75 (25 cents per page reproduction costs) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–2716 Filed 2–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 99–167–CIV–T–17F]

United States of America v. Federation of Certified Surgeons and Specialists, Incorporated and Pershing Yoakley & Associates, P.C.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulations, and a Competitive Impact Statement have been filed with the United States District Court for the Middle District of Florida, Tampa Division, in *United States of America* v. *Federation of Certified Surgeons and Specialists, Inc., and Pershing Yoakley & Associates, P.C.*

The Complaint alleges that defendants entered into an agreement with the

purpose and effect of restraining price competition, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, by limiting competition among general vascular surgeons in Tampa. The proposed Final Judgment enjoins the continuance or resumption of this practice. Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspections in Room 215, 325 Seventh Street, N.W., United States Department of Justice, Washington, D.C. and at the Office of the Clerk of the United States District Court for the Middle District of Florida, Tampa Division, Tampa, Florida.

Public comment on the proposed Final Judgment is invited within 60 days of the date of this notice. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gail Kursh, Chief, Health Care Task Force, United States Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Room 400, Washington, D.C. 20530 (telephone: (202) 307–5799).

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement, Antitrust Division.

Notice of Filing a Proposed Final Judgment Pursuant to the Antitrust Procedures and Penalties Act

The United States submits this Notice summarizing the procedures regarding the Court's entry of the proposed Final Judgment. The proposed Final Judgment would settle this case pursuant to the Antitrust Procedures and Penalties Act ("Act"), 15 U.S.C. 16(b)–(h), which applies to civil antitrust cases brought and settled by the United States. Under the Act, the Final Judgment is not to be entered until the United States certifies compliance with the requirements of the Act and the Court concludes that entry of the Final Judgment is in the public interest.

Today, the United States has filed a civil antitrust Complaint charging the Federation of Certified Surgeons and Specialists, Inc., and Pershing Yoakley & Associates, P.C., with violating Section 1 of the Sherman Act. Also filed with the Complaint are a proposed Final Judgment, a Competitive Impact Statement, and Stipulations between the parties by which the defendants agree to the Court's entry of the proposed Final Judgment following compliance with the Act. The Competitive Impact Statement reflects the Act's requirement of filing a competitive impact statement explaining the nature of the case and the proposed relief.

Under the Act, the United States must publish the proposed Final Judgment and the Competitive Impact Statement in the **Federal Register** and publish for 7 days over a period of 2 weeks a summary of these pleadings in newspapers of general circulation in the Middle District of Florida and the District of Columbia. The Act provides for a 60-day period after publication for the public to submit comments to the Department of Justice regarding the proposed Final Judgment. The Act provides that the Department shall publish in the **Federal Register**, and file with the Court, any comments received and the Department's response to such comments. The defendants are required to file a description of certain communications with the government within 10 days after a proposed final judgment is filed. *See* 15 U.S.C. § 16(g).

Once all of the Act's requirements have been met, the United States will promptly file with the Court a Certificate of Compliance with the Act and a Motion for Entry of the Final Judgment (unless the United States decides to withdraw its consent to entry of the Final Judgment, as permitted by Paragraph 2 of the Stipulations). At that time, pursuant to Section 16(e)–(f) of the Act, the Court may enter the Final Judgment without a hearing, if it finds the Final Judgment is in the public interest.

Dated January 26, 1999.

For Plaintiff
United States of America
Charles R. Wilson,
United States Attorney.

By:

Whitney Schmidt,
Affirmative Civil Enforcement Coordinator, Assistant United States Attorney, Florida Bar No. 285706, 400 North Tampa Street, Suite 3200, Tampa, FL 33602, Tel: (813) 274–6332, Facsimile: (813) 274–6198

Denise E. Biehn,
Trial Counsel.
Steven Kramer,
Edward D. Eliasberg, Jr.,
Florida Bar No. 005725, Attorneys, Antitrust Division, U.S. Dept. of Justice, 325 Seventh St. N.W., Room 409, Washington, D.C. 20530, Tel: (202) 307–0808, Facsimile: (202) 514–1517.

Stipulation as to Defendant Federation of Certified Surgeons and Specialists, Inc.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the undersigned parties hereto, and venue of this action is proper in the Middle District of Florida;

2. The undersigned parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party, or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to either party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court;

3. Federation of Certified Surgeons and Specialists, Inc. ("FCSSI") agrees to be bound by the provisions of this proposed Final Judgment pending its approval by the Court. Within ten days from the execution of this Stipulation, defendant FCSSI agrees to provide to all FCSSI physicians, as that term is defined in the proposed Final Judgment, copies of the proposed Final Judgment; and

4. If plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of this Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to any party in this or in any other proceeding.

Dated: January 15, 1998.

For Plaintiff
United States of America:
Joel I. Klein,
Assistant Attorney General.

Donna Patterson,
Deputy Assistant Attorney General.

Rebecca P. Dick,
Director of Civil, Non-Merger Enforcement.

Gail Kursh,
Chief,
Health Care Task Force.

David C. Jordan,
Ass't Chief, Health Care Task Force.
Denise E. Biehn,
Steven Kramer,
Edward D. Eliasberg, Jr.,
Attorneys, U.S. Dept. of Justice, 325 7th Street, N.W., Room 400, Liberty Place Bldg., Washington, D.C. 20530, (202) 305–2738.

For Defendant Federation of Certified Surgeons and Specialists, Inc.:
David A. Ettinger, Esquire,
Honigman, Miller, Schwartz and Cohen, 2290 First National Building, Detroit, MI 48226.
Emil Marquardt, Jr., Esquire,
MacFarlane Ferguson & McMullen, P.A., 625 Court Street, Clearwater, FL 33757.

Stipulation as to Defendant Pershing, Yoakley & Associates, P.C.

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the undersigned parties hereto, and venue of this action is proper in the Middle District of Florida;

2. The undersigned parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party, or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust . Procedures and Penalties Act, 15 U.S.C. § 16, and without further motive to either party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court; and

3. Pershing, Yoakley & Associates, P.C. ("PYA"), agrees to be bound by the provisions of this proposed Final Judgment pending its approval by the Court. Within ten days from the execution for this Stipulation, defendant PYA agrees to provide to all of its shareholders, its agents, representatives, employees, officers, and directors (in such capacities only) who provides, or supervises the provision of, services to competing physicians with offices in Hillsborough, Pinellas or Pasco County, Florida, copies of the proposed Final Judgment; and

4. If plaintiff withdraws its consent, or if the proposed Final Judgment is not entered pursuant to the terms of the Stipulation, this Stipulation shall be of no effect whatsoever, and the making of this Stipulation shall be without prejudice to either party in this or in any other proceeding.

Dated: January 21, 1999.

For Plaintiff
United States of America:
Joel I. Klein,
Assistant Attorney General.
Donna Patterson,
Deputy Assistant Attorney General.
Rebecca P. Dick,
Deputy Director of Civil, Non-Merger Enforcement.
Gail Kursh,
Chief, Health Care Task Force.
David C. Jordan,
Ass't Chief, Health Care Task Force.
Denise E. Biehn,
Steven Kramer,
Edward D. Eliasberg,
Attorneys, U.S. Dept. of Justice, 325 7th Street, N.W., Room 400, Liberty Place Bldg., Washington, D.C. 20530, (202) 305–2738.

For Defendant Pershing, Yoakley & Associates, P.C.:
John J. Miles,
E. John Steren,
Ober, Kaler, Grimes & Shriver, 1401 H Street, N.W., 5th Floor, Washington, D.C. 20005–2110.

Final Judgment

Plaintiff, the United States of America, having filed its Complaint on _____ 1999, and plaintiff and defendant Federation of Certified Surgeons and Specialists, Inc., ("FCSSI") and defendant Pershing Yoakley & Associates, P.C. ("PYA"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of fact or law;

And whereas defendants have agreed to be bound by the provisions of this Final Judgment;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law, and upon consent of the plaintiff and defendants, it is hereby **ordered, adjudged, and decreed:**

I. Jurisdiction

This Court has jurisdiction over the subject matter of and over the plaintiff and defendants to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. Definitions

As used in this Final Judgment:

(A) "Communicate" means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, in any manner;

(B) "Competing physicians" means two or more physicians in separate medical practices in the same county in the same specialty;

(C) "Competitively sensitive information" means

(1) Any participating physician's actual or possible view, intention, or position concerning the negotiation or acceptability of any proposed or existing payer contract or contract term, including the physician's negotiating or contracting status with any payer or the physician's response to a payer contract or contract term; or

(2) Any proposed or existing term of a payer contract that affects:

(a) The amount of fees or payment, however determined, that a participating physician charges, contracts for, or accepts from or considers charging, contracting for, or accepting from any payer for providing physician services;

(b) The duration, amendment, or termination of the payer contract;

(c) Utilization review; or

(d) The manner of resolving fee disputes between the participating physician and the payer,

(D) "FCSSI" means the Federation of Certified Surgeons and Specialists, Inc., located in Tampa, Florida; each of its present and former members, shareholders, directors, officers, agents, representatives, and employees (all such persons only in such capacities with FCSSI or with any successors or assigns of FCSSI); its successors and assigns, including any group organized directly or indirectly by two or more competing physicians (who serve or have served as a director or officer of FCSSI) for the purpose of negotiating with payers; and each entity over which it has control;

(E) "FCSSI physician" means all present and former physician shareholders and physician members of FCSSI;

(F) "Messenger" means a person that communicates to a payer any competitively sensitive information it obtains, individually, from a

participating physician or communicates, individually, to a participating physician any competitively sensitive information it obtains from a payer;

(G) "Objective information" or "objective comparison" means empirical data that are capable of being verified or a comparison of such data;

(H) "Participating physician" means a physician who is either in solo practice or a group practice, and who participates in a messenger arrangement, and any employee of such physician or group practice acting on the physician's or group practice's behalf in connection with a messenger arrangement.

(I) "Payer" means any person that purchases or pays for all or part of a physician's services for itself or any other person and includes but is not limited to independent practice associations, individuals, health insurance companies, health maintenance organizations, preferred provider organizations, and employers;

(J) "Payer contract" means a contract between a payer and a physician by which that physician agrees to provide physician services to persons designated by the payer;

(K) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity; and

(L) "PYA" means Pershing Yoakley & Associates, P.C. with offices in Clearwater Florida; each of its shareholders, its agents, representatives, employees, officers, and directors (in such capacities only); its successors and assigns; and each entity it controls.

III. Applicability

Except where expressly limited to one defendant, this Final Judgment applies to:

(A) FCSSI;

(B) PYA, when providing, or supervising the provision of, services to any competing physicians in Hillsborough, Pinellas, or Pasco County, Florida; and

(C) All other persons who receive actual notice of this Final Judgment by personal service or otherwise and then act or participate in active concert with any of the above persons.

IV. Injunctive Relief

(A) FCSSI is enjoined, directly or indirectly, from:

(1) Participating in, encouraging, or facilitating any agreement or understanding between competing physicians about any competitively sensitive information;

(2) Acting as, or facilitating the use of, a messenger or any other agent or representative for any FCSSI physician for the purpose of negotiating or communicating with any payer on behalf of such FCSSI physician;

(3) Participating in, encouraging, or facilitating any agreement or understanding among competing physicians about using a messenger;

(4) Negotiating with any payer on behalf of any FCSSI physician;

(5) Communicating or facilitating the communication of any competitively sensitive information to, or in the presence of, competing physicians; and

(5) Participating in, encouraging, or facilitating any agreement or understanding among any competing physicians that FCSSI physicians will deal with a payer only through a messenger or other agent or representative.

(B) PYA is enjoined, directly or indirectly, from:

(1) Participating in, encouraging, or facilitating any agreement or understanding between competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida, about any competitively sensitive information;

(2) Participating in, encouraging, or facilitating any agreement or understanding between competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida, to deal with any payer exclusively through a messenger rather than individually or through other channels;

(3) Negotiating, collectively or individually, on behalf of competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida, any actual or proposed payer contract or contract term with any payer;

(4) Making any recommendation to competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida, about any actual or proposed payer contract or contract term or whether to accept or reject any such payer contract or contract term;

(5) Communicating competitively sensitive information in the presence of competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida;

(6) Communicating to competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida, any subjective opinion or subjective analysis, evaluation, or assessment about competitively sensitive information;

(7) Precluding or discouraging any competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida, from exercising his, her, or their own independent business judgment in determining whether to negotiate, contract, or deal directly with any payer;

(8) Acting as, or using, a messenger on behalf of defendant FCSSI or any other group or groups of competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida if present or former members of FCSSI constitute more than twenty percent of any individual group's membership or of all groups' total membership; and

(9) Acting as, or using, a messenger for any competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida, unless:

(a) At the outset of its involvement with any payer as a messenger (or within 30 days of the entry of this Final Judgment for any ongoing involvement with a payer), and annually thereafter, it informs the payer in writing that, at any time, (i) the payer is free to decline to communicate with any participating physician through it, and (ii) any participating physician is free to communicate with the payer individually without its involvement;

(b) When first designated by any participating physician as a messenger (or within 30 days of the entry of this Final Judgment for any ongoing involvement, on behalf of a participating physician, with a payer), and annually thereafter, it informs the participating physician in writing that he or she is free at any time to communicate with any payer individually without its involvement;

(c) When first designated by any participating physician as a messenger and at the outset of its involvement with any payer as a messenger (or within 30 days of the entry of this Final Judgment for any ongoing involvement, on behalf of a participating physician, with a payer), and annually thereafter, it informs the participating physician and any payer with whom it communicates as a messenger on behalf of the participating physician in writing that it cannot negotiate, collectively or individually, for any participating physician any payer contract or contract term but can act only as a messenger as permitted by this Final Judgment;

(d) It informs the participating physician of any payer's decision not to communicate or to discontinue communicating with any participating physician through PYA;

(e) It communicates all competitively sensitive information that it receives from any payer separately to each participating physician designated by the payer;

(f) It does not communicate any competitively sensitive information obtained from any participating physician to anyone other than to payers;

(g) It ensures that (i) any oral communications between it and any payer or any participating physician is contemporaneously memorialized in writing and shows the date, participants to, and substance of the communication, and the person making the record; (ii) such memorialization and any written communications between it and any payer or participating physician are preserved for two years; (iii) any correspondence between it and a participating physician is addressed individually to that participating physician only; and (iv) no correspondence between it and a payer that includes the competitively sensitive information of a participating physician is sent to any other competing physician; and

(h) It does not violate any of the provisions of Section IV (B)(1)–(8) of this Final Judgment.

V. Notifications

(A) Within 30 days from the entry of this Final Judgment, FCSSI shall notify, in writing, each payer (1) with which FCSSI negotiated any contract or currently is attempting to negotiate any contract or (2) that FCSSI approaches on behalf of any FCSSI physician, that FCSSI will no longer represent any FCSSI physician in any manner relating to payer contracts or contract terms.

(B) Within 30 days from the entry of this Final Judgment, FCSSI shall notify, in writing, each payer with which FCSSI has negotiated a contract that any contract between FCSSI and the payer may be terminated by the payer upon written notice to FCSSI given within 30 days following FCSSI's written notification.

(C) After entry of this Final Judgment, FCSSI shall notify each payer that inquires about contracting through or with FCSSI that FCSSI does not represent any FCSSI physician in any manner relating to payer contracts or contract terms.

(D) FCSSI shall notify plaintiff at least 30 days prior to any proposed (1) dissolution of FCSSI, (2) sale or assignment of claims or assets of FCSSI resulting in the emergence of a successor corporation, or (3) change in corporate structure of FCSSI that may affect compliance obligations arising out of Section VII of this Final Judgment.

VI. Permitted Conduct

Notwithstanding any other provision of this Final Judgment, PYA may:

(A) At a participating physician's request, communicate to the participating physician accurate, factual, and objective information about a proposed payer contract offer or contract terms, including, if requested, objective comparisons with terms offered to that participating physician by other payers; and

(B) Engage in activities reasonably necessary to facilitate lawful activities by physician network joint ventures and muliprovider networks as those terms are used in Statements 8 and 9 of the 1996 Statements of Antitrust Enforcement Policy in Health Care, 4 Trade Reg. Rep. (CCH) ¶ 13,153.

VII. Compliance Program

(A) FCSSI shall maintain an antitrust compliance program (unless FCSSI dissolves without any successors or assigns) that shall include:

(1) Distributing, within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all FCSSI physicians and distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any physician who subsequently joins FCSSI;

(2) Obtaining, within 120 days from the entry of this Final Judgment, and annually thereafter, and retaining for the duration of this Final Judgment, a certificate from each then current FCSSI physician that he or she has received, read, understands, and agrees to comply with the Final Judgment and understands that he or she may be held in civil or criminal contempt for failing to do so.

(B) PYA shall maintain an antitrust compliance program, which shall include:

(1) Distributing within 60 days from the entry of this Final Judgment, a copy of the Final Judgment and Competitive Impact Statement to all of its shareholders, agents, representatives, employees, officers, and directors (in such capacity only) who provide, or supervise the provision of, services to competing physicians;

(2) Distributing in a timely manner a copy of the Final Judgment and Competitive Impact Statement to any person who succeeds to a position described in Paragraph VII (B)(1);

(3) Holding an annual seminar explaining to all of its shareholders, agents, representatives, employees, officers, and directors (in such capacity only) who provide, or supervise the provision of, services to competing physicians, the antitrust principles applicable to their work, the restrictions contained in this Final Judgment, and the implications of violating the Final Judgment;

(4) Maintaining an internal mechanism by which questions from any of its shareholders, agents, representatives, employees, officers, and directors (in such capacity only) about the application of the antitrust laws to the presentation of competing physicians, whether as a messenger or as some other representative, can be answered by counsel as the need arises;

(5) Obtaining, within 120 days from the entry of this Final Judgment, and retaining for the duration of this Final Judgment a certificate from each of its shareholders, agents, representatives, employees, officers, and directors (in such capacity only) who provide, or supervise the provision of, services to competing physicians with offices in Hillsborough, Pinellas, or Pasco County, Florida, that he or she has received, read, and understands this Final Judgment, and that he or she has been advised and understands that he or she must comply with the Final Judgment and may be held in civil or criminal contempt for failing to do so.

(C) FCSSI and PYA shall maintain for inspection by plaintiff a record of recipients to whom this Final Judgment and Competitive Impact Statement have been distributed and from whom annual written certifications have been received.

VIII. Certification

(A) Within 75 days after entry of this Final Judgment, FCSSI and PYA shall certify to plaintiff that it has distributed the Final Judgment and Competitive Impact Statement as respectively required by Paragraph VII (A)(1) and VII (B)(1);

(B) For a period of ten years following the date of entry of this Final Judgment, unless they dissolve without any successors or assigns, FCSSI and PYA shall certify annually to plaintiff that they have complied with the provisions of this Final Judgment; and

(C) Within 75 days after entry of this Final Judgment, FCSSI shall certify to plaintiff that it has made the notifications required by Section V.

IX. Plaintiff's Access

(A) For the purposes of determining or securing compliance with this Final Judgment or determining whether this Final Judgment should be modified or terminated, and subject to any legally recognized privilege, authorized representatives of the Antitrust Division of the United States Department of Justice, shall upon written request of the Assistant Attorney General in charge of

the Antitrust Division and on reasonable notice to FCSSI or PYA, be permitted:

(1) Access during regular business hours to inspect and copy all records and documents in the possession, custody, or under the control of FCSSI or PYA, which may have counsel present, relating to any matters contained in this Final Judgment;

(2) To interview FCSSI's or PYA's members, shareholders, partners, officers, directors, employees, agents, and representatives, who may have counsel present, concerning such matters; and

(3) To obtain written reports from FCSSI or PYA under oath if requested, relating to any matters contained in this Final Judgment.

(B) FCSSI and PYA shall have the right to be represented by counsel in any process under this Section.

(C) No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If, at the time information or documents are furnished by defendant to plaintiff, defendant represents and identifies, in writing, the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendant will mark each pertinent page of such material, "subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10-days notice shall be given by plaintiff to defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which defendant is not a party.

X. Jurisdiction Retained

This Court retains jurisdiction to enable any party to this Final Judgment, but no other person, to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

XI. Expiration of Final Judgment

This Final Judgment shall expire ten (10) years from the date of entry.

XII. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Court approval subject to procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Competitive Impact Statement

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b) ("APPA"), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On _____, the United States filed a civil antitrust Complaint alleging that defendants, the Federation of Certified Surgeons and Specialists, Inc. ("FCSSI") and Pershing Yoakley & Associates, P.C. ("PYA"), participated in an agreement to negotiate jointly with managed care plans ("MCPs") to obtain higher fees for FSSI's otherwise competing general and vascular surgeons in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint seeks injunctive relief to enjoin continuance or resumption of the violation.

The United States filed with the Complaint a proposed Final Judgment intended to resolve this matter. The Court's entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction over the matter for any further proceedings that may be required to interpret, enforce, or modify the Final Judgment, or to punish violations of any of its provisions.

Plaintiff and defendants have stipulated that the Court may enter the proposed Final Judgment after compliance with the APPA unless, prior to entry, plaintiff withdraws its consent. In the Stipulations to the proposed Final Judgment, defendants have agreed to be bound by the provisions of the proposed Final Judgment pending its entry by the Court. The proposed Final Judgment provides that its entry does not constitute any evidence against, or admission by, any party concerning any issue of fact of law. The present proceeding is designed to ensure full compliance with the public notice and other requirements of the APPA.

II. Practices Giving Rise to the Alleged Violations

A. Defendants

Defendant FCSSI is a Florida corporation with its principal place of business in Tampa, Florida. FCSSI comprises 29 competing general and vascular surgeons in Tampa and is controlled by its member surgeons. In 1997, FCSSI's surgeons performed 87% of all general and vascular surgeries, and constituted over 83% of all general and vascular surgeons having operating privileges, at five of the seven hospitals in Tampa that provide general and vascular surgery services.

Defendant PYA, an accounting and consulting firm, is a Tennessee professional corporation with its principal place of business in Knoxville, Tennessee and with additional offices in Chattanooga and Nashville, Tennessee; Atlanta, Georgia; Washington, D.C.; and Clearwater, Florida

B. Defendants' Unlawful Activities

In May, 1997, FCSSI was formed to negotiate jointly on behalf of its member physicians with MCPs and to use their collective strength to improve "overall managed care reimbursement" to FCSSI surgeons, including "[o]btaining contract terms more favorable than if each physician contracted separately." FCSSI retained PYA to coordinate FCSSI surgeons' MCP contracting activities. For these services, each FCSSI surgeon paid PYA $75 per month as a retainer and a set amount per MCP contract negotiated by PYA, providing for higher payments to PYA for higher contractual fee levels.

In July, 1997, PYA contacted United HealthCare ("United") and made clear to United that it was representing FCSSI surgeons "as a group." United made an offer to FCSSI surgeons through PYA. PYA recommended to FCSSI's board that it not accept United's contract offer and either make a counter offer or "have all members terminate their [United contracts]." FCSSI's board instructed PYA to make a counteroffer to United. PYA then informed United that unless United agreed to its demands, it would recommend that FCSSI surgeons terminate their United contracts. United agreed to PYA's contract demands, and FCSSI's board voted to accepted the revised contract. The jointly negotiated contracts paid FCSSI surgeons 30% more than United's first offer and represented an average annual increase in revenue of $5,013 for each FCSSI physician.

In September, 1997, PYA attempted to renegotiate FCSSI surgeons' existing contracts with Aetna US Healthcare ("Aetna"). PYA advised Aetna that if Aetna met PYA's proposed financial and contractual terms, PYA would recommend that FCSSI surgeons accept the Aetna contract. Aetna subsequently offered FCSSI surgeons a contract that

PYA viewed as "no improvement" and without "concessions." PYA recommended that all FCSSI surgeons notify Aetna of their intent to terminate their contracts in order to allow PYA to negotiate higher fees. FCSSI's board of directors voted to accept PYA's recommendation and, on September 26, 1997, PYA notified each FCSSI surgeon of the board's decision and directed the surgeon to write a termination letter to Aetna. Twenty-eight of the twenty-nine FCSSI surgeons terminated their Aetna contracts. As a result of this group boycott, Aetna proposed increased payment levels for FCSSI surgeons.

By December 8, 1997, PYA had contacted four other MCPs on behalf of FCSSI surgeons. Upon learning of the Department of Justice's investigation of FCSSI's activities in December, 1997, however, FCSSI and PYA ceased negotiating contracts with those MCPs. Without the proposed relief, these negotiations would likely resume.

By contracting on behalf of all of its member surgeons or none at all, FCSSI forced some MCPs to pay FCSSI surgeons substantially higher fees and to contract with a greater number of general and vascular surgeons than the MCP had previously contracted with to service its members. According to the President of FCSSI, FCSSI's joint negotiating efforts "produced extraordinary results," amounting to an increase in revenues of $14,097 on average for each FCSSI surgeon. As a result of FCSSI's and PYA's concerted actions, MCPs, employees, and individual consumers faced significantly higher healthcare costs and were deprived of the benefits of free and open competition among Tampa general and vascular surgeons in the purchase of their services.

C. FCSSI's and PYA's Improper Use of the "Messenger Model"

While engaging in the unlawful conduct outlined above, FCSSI and PYA representatives attempted to cloak their illegal activities as those of a legitimate "third-party messenger," which are described in the *Department of Justice and Federal Trade Commission Statements of Antitrust Enforcement Policy in Healthcare*, 4 Trade Reg. Rep. (CCH) ¶13,153 at 20,831 (August 28, 1996). However, defendant's illegal conduct is inconsonant with that of a legitimate messenger model. A legitimate messenger does not coordinate or engage in collective pricing activity for competing independent physicians, enhance their bargaining power, or facilitate the sharing of price and other competitively sensitive information among them.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment is intended to prevent FCSSI and PYA from restraining competition in the future among general and vascular surgeons in Tampa.

A. Scope of the Proposed Final Judgment

Section III of the proposed Final Judgment provides that the Final Judgment shall apply to FCSSI, including its member physicians; to PYA, when providing, or supervising the provision of, services to any competing physicians in Hillsborough, Pinellas, or Pasco County, Florida; and to all other persons who receive actual notice of the proposed Final Judgment by personal service or otherwise and then act or participate in active concert with any of the above persons.

B. Prohibitions and Obligations

Section IV of the proposed Final Judgment sets forth the substantive injunctive provisions. Section IV(A) is designed to prevent FCSSI from collectively negotiating or acting as a messenger or agent with any payer on behalf of any FCSSI or other competing physicians or in any way enhancing their bargaining power.[1] Thus, Sections IV(A)(1) and (5) prohibit FCSSI from facilitating an agreement between competing physicians about "competitively sensitive information" (as that term is defined in the Final Judgment) or communicating or facilitating the communication of "competitively sensitive information" to, or in the presence of, competing physicians. Sections IV(A)(2) and (3) prohibit FCSSI from acting as or using a messenger or agent to represent FCSSI surgeons in negotiations or communications with payers or from facilitating an agreement among competing physicians about the use of a messenger or about dealing only through a messenger. In addition, Section IV(A)(4) enjoins FCSSI from negotiating with any payer on behalf of any FCSSI physicians. Finally, Section IV(A)(6) prohibits FCSSI from facilitating any agreement among competing physicians that FCSSI will deal with a payer only through a particular agent.

Section IV(B) is designed to ensure that PYA does not engage in joint negotiations on behalf of competing physicians in the three counties around Tampa, Hillsborough, Pinellas, or Pasco Counties (the "Tampa area"), where PYA has been active in seeking physician clients, and does not act as a messenger or agent for more than twenty percent of FCSSI's surgeons. Accordingly, Sections IV(B)(1) and (2) prohibit PYA from facilitating any agreement between competing physicians in the Tampa area about any competitively sensitive information or exclusively using a messenger. Sections IV(B)(3) and (4) prohibit PYA, in the Tampa area, from negotiating payer contracts on behalf of competing physicians and from making any recommendations to competing physicians about any payer contract or contract term. Moreover, pursuant to Sections IV(B)(5)–(7), PYA may not communicate competitively sensitive information in the presence of competing physicians in the Tampa area or communicate to competing Tampa area physicians any subjective opinion or analysis about competitively sensitive information or discourage any competing physician in the Tampa area from exercising his or her own business judgment in determining whether to negotiate, contract, or deal directly with any payer.

Section IV(B)(8) enjoins PYA from acting as or using a messenger on behalf of FCSSI or any group of competing physicians in the Tampa area if past or present members of FCSSI constitute more than twenty percent of any individual group's membership or all groups' total membership. Further, PYA may act as a messenger only if it complies with the provisions of Section IV(B)(9). Pursuant to Sections IV(B)(9)(a)–(c), PYA must (a) notify all payers with which it communicates as a messenger that the payer may communicate directly with the physicians; (b) inform all physicians for whom it acts as a messenger that he or she may communicate with any payer (without PYA) at any time; and (c) inform each physician and payer involved that it cannot negotiate collectively or individually for any physician who uses PYA as a messenger. Section IV(B)(9)(d) requires PYA to inform physicians of a payer's decision not to communicate through PYA. Under Sections IV(B)(9)(e) and (f), PYA must communicate all competitively sensitive information from a payer separately to each individual physician, and if a physician discloses competitively sensitive information to PYA, then PYA may disclose that information to payers only.

[1] Section II(F) defines a messenger to mean a person that communicates to a payer any competitively sensitive information it obtains, individually, from a participating physician or communicates, individually, to a participating physician any competitively sensitive information it obtains from a payer.

Finally, Section IV(B)(9)(g) requires PYA to memorialize in writing all oral communications between it and any payer and physician, preserve such records for two years, address all physician correspondence individually, and not send any correspondence that contains a physician's competitively sensitive information to any other physician.

Sections V(A)–(C) require FCSSI to notify each payer with which FCSSI negotiated or is negotiating a contract, that FCSSI approached on behalf of any FCSSI physician, or that inquires about contracting through FCSSI, that FCSSI will no longer represent any FCSSI physician in any manner relating to MCP contracts or contract terms. FCSSI shall also notify, in writing, each MCP with which FCSSI has negotiated a contract that any contract between FCSSI and that MCP may be terminated by the MCP upon written notice to FCSSI. Section V(D) obligates FCSSI to notify plaintiff at least 30 days before any dissolution of FCSSI, sale or assignment of its claims or assets, or change in corporate structure that may affect its compliance obligations under the proposed Final Judgment.

Section VI makes clear that PYA may, at a physician's request, communicate to the physician accurate, factual, and objective information about a proposed payer contract offer or terms and engage in activities reasonably necessary to facilitate lawful activities by physician network joint ventures and multiprovider networks.

Section VII of the Final Judgment sets forth various compliance measures. Sections VII(A) (1) and (2) and (C) require FCSSI to distribute a copy of the Final Judgment and Competitive Impact Statement to all current and future FCSSI physicians and to obtain and maintain records of written certifications that they have read, will abide by, and understand the consequences of their failure to comply with the terms of the Final Judgment.

Sections VII(B)(1), (2), and (5) and (C) requires PYA to distribute a copy of the Final Judgment and Competitive Impact Statement to all of its shareholders, agents, representatives, employees, officers, and directors who provide, or supervise the provision of, services to competing physicians, and to any of their successors, and to obtain and maintain records of written certifications that they have read, will abide by, and understand the consequences of their failure to comply with the terms of the Final Judgment.

Section VII(B)(3) requires PYA to hold an annual seminar for all of its shareholders, agents, representatives, employees, officers, and directors who provide, or supervise the provision of, services to competing physicians, explaining the antitrust principles applicable to their work, the Final Judgment's restrictions, and the implications of violating the Final Judgment. Section VII(B)(4) ensures that PYA maintains an internal mechanism of addressing questions from its personnel regarding the application of antitrust laws to the representation of competing physicians.

Section VII obligates FCSSI and PYA to certify that they have distributed the Final Judgment and Competitive Impact Statement as required by the Judgment and annually to certify their compliance with the Judgment's provisions. FCSSI is also required to certify that it has made the notifications required by Section V of the Judgment.

Finally, Section IX sets forth a series of measures by which Plaintiff may have access to information needed to determine or secure FCSSI's and PYA's compliance with the Final Judgment or to determine whether the Final Judgment should be modified or terminated. Section XI limits the term of the Final Judgment to ten years.

IV. Effect of the Proposed Final Judgment on Competition

The relief in the proposed Final Judgment is designed to remedy the violation alleged in the Complaint and prevent its recurrence. The Complaint alleges that FCSSI and PYA violated Section 1 of the Sherman Act by negotiating with MCPs jointly on behalf of otherwise competing FCSSI surgeons to obtain higher fees for their services and by boycotting MCPs that did not provide payments for FCSSI surgeons at a level substantially higher than those provided in individually negotiated contracts.

The proposed Final Judgment eliminates that restraint on competition among general and vascular surgeons in Tampa by enjoining (1) FCSSI from acting for FCSSI physicians as a negotiator, messenger, or agent or using PYA or any other agent as a negotiator; and (2) PYA from acting as a negotiator for FCSSI or any other competing physicians in the Tampa area. Moreover, PYA is not permitted to act as a messenger for more than twenty percent of FCSSI's physicians or for any competing physicians in the Tampa area if it does not comply with certain provisions designed to ensure that it does not facilitate any agreement between competing physicians about competitively sensitive information or in any way enhance their bargaining power.

The proposed Final Judgment contains provisions adequate to prevent further violations of the type upon which the Complaint is based and to remedy the effects of the alleged conspiracy. The proposed Final Judgment's injunctions should restore the benefits of free and open competition among general and vascular surgeons in the sale of their services in Tampa.

V. Alternative to the Proposed Final Judgment

The alternative to the proposed Final Judgment would be a full trial on the merits of the case. In the view of the Department of Justice, such a trial would involve substantial costs to the United States and defendants and is not warranted because the proposed Final Judgment provides all of the relief necessary to remedy the violation of the Sherman Act alleged in the Complaint.

VI. Remedies Available to Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and a reasonable attorney's fee. Entry of the proposed Final Judgment will neither impair nor assist in the bringing of such actions. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent lawsuit that may be brought against defendants in this matter.

VII. Procedures Available for Modification of the Proposed Final Judgment

As provided by Sections 2 (b) and (d) of the APPA, 15 U.S.C. 16 (b) and (d), any person believing that the proposed Final Judgment should be modified may submit written comments to Gail Kursh, Chief; Health Care Task Force; United States Department of Justice; Antitrust Division; 325 Seventh Street, N.W.; Room 400; Washington, D.C. 20530, within the 60-day period provided by the Act. All comments received, and the Government's responses to them, will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free, pursuant to Paragraph 2 of the Stipulation with each defendant, to withdraw its consent to the proposed Final Judgment at any time before its entry, if the Department should determine that some modification of the

Final Judgment is necessary to protect the public interest. Moreover, Section X of the proposed Final Judgment provides that the Court will retain jurisdiction over this action, and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the proposed Final Judgment.

VIII. Determinative Documents

No materials and documents of the type described in Section 2(b) of the APPA, 15 U.S.C. § 16(b), were considered in formulating the proposed Final Judgment. Consequently, none are filed herewith.

Dated: January 26, 1999.

Respectfully submitted,

Denise E. Biehn,
Edward D. Eliasberg, Jr.,
Steven Kramer,
Attorneys, Antitrust Division, U.S. Dept. of Justice, 325 Seventh Street, N.W., Room 409, Washington, D.C. 20530, Tel: (202) 307–0808, Facsimile: (202) 514–1517.

[FR Doc. 99–2714 Filed 2–4–99; 8:45 am]
BILLING CODE 4401–11–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Office of Community Oriented Policing Services

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

[OJP(OJJDP)–1208]

RIN 1121–ZB44

Notice of Intent To Make Funds Available for School Violence Prevention and Early Childhood Development Activities Under the Safe Schools/Healthy Students Initiative

AGENCIES: Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP); Department of Justice, Office of Community Oriented Policing Services (COPS); Department of Education, Office of Elementary and Secondary Education, Safe and Drug-Free Schools Program; Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS).

ACTION: Notice of intent to make funds available to enhance and implement comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development.

SUMMARY: The Departments of Justice, Education, and Health and Human Services are collaborating to provide students with enhanced comprehensive educational, mental health, law enforcement, and as appropriate, juvenile justice system services and activities designed to ensure the development of the social skills and emotional resilience necessary to avoid drug use and violent behavior and the creation of safe, disciplined, and drug-free schools.

Through a single application process, successful applicants will receive support for up to three years. Awards will be made to approximately 50 sites, ranging from up to $3 million per year for urban school districts, up to $2 million per year for suburban school districts, and up to $1 million per year for rural school districts and tribal schools designated as local education agencies by their states.

DATES: It is anticipated that the program solicitation and application will be available no later than March 15, 1999.

CONTACT: Detailed information regarding the Safe Schools Healthy/Students Initiative is available at: Internet:http://www.ed.gov/offices/OESE/SDFS Fax-on-Demand: Juvenile Justice Clearinghouse (800) 638–8736

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Public Law 105–277.

Background

The purpose of the Safe Schools/Healthy Students Initiative is to assist schools and communities to enhance and implement comprehensive community-wide strategies for creating safe and drug-free schools and promoting healthy childhood development. Eligible activities may include, but are not limited to, programs such as mentoring, conflict resolution, after school, multisystemic therapy, functional family therapy, social skills building, school-based probation, student assistance, teen courts, truancy prevention, alternative education, developing information sharing systems, staff professional development, hiring additional school resource officers, and treatment efforts that involve the juvenile justice system and schools. Interventions selected must have evidence of effectiveness.

To be eligible for funding, applicants must demonstrate evidence of a comprehensive community-wide strategy that at minimum consists of six general topic areas: (1) School safety, (2) drug and violence prevention and early intervention programs, (3) school and community mental health prevention and intervention services, (4) early childhood psychosocial and emotional development programs, (5) education reform, and (6) safe school policies. The plan must be developed by a partnership comprising the local education agency, local public mental health authority, local law enforcement agency, family members, students, and juvenile justice officials. The local education agency will be required to submit formal written agreements signed by the school superintendent, the head of the local public mental health authority, and the chief law enforcement executive to be certified as an eligible applicant. Applicants will be strongly encouraged to demonstrate partnerships with businesses, social services, faith communities, and other community-based organizations that support the educational, emotional and health needs of students in the school district.

Applicants must conduct a basic assessment of the community risks and assets related to children and adolescents and have a plan for continual updating of this assessment. Assessments shall include, but are not limited to, numbers or percentages of the following: Students engaged in alcohol and drug use and violent behavior, firearms brought to school, incidents of serious and violent crime in schools, suicide attempts, students suspended and/or expelled from school, students receiving probation services, and students in juvenile justice placements. Applicants must also provide an assessment of the community resources available for children and adolescents, including number of after school programs, percentage of youth served by programs to build social skills, and number and quality of community mental health and social service organizations available to provide services to children and adolescents.

Applicants must develop a plan for assessing the community-wide strategy and agree to participate in a national evaluation of this initiative. Applicants that do not have the capability to collect

data or develop a plan for assessing their strategy will be encouraged to join with a local university, research organization, or other appropriate entity to assist with these activities.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Joseph E. Brann,

Director, Office of Community Oriented Policing Services.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–2824 Filed 2–4–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY990013 (Feb. 05, 1999)

Volume II

None

Volume III

None

Volume IV

Michigan
MI990002 (Feb. 05, 1999)
MI990003 (Feb. 05, 1999)
MI990005 (Feb. 05, 1999)
MI990012 (Feb. 05, 1999)
MI990030 (Feb. 05, 1999)
MI990031 (Feb. 05, 1999)
MI990046 (Feb. 05, 1999)
MI990047 (Feb. 05, 1999)
MI990049 (Feb. 05, 1999)
MI990060 (Feb. 05, 1999)
MI990062 (Feb. 05, 1999)
MI990063 (Feb. 05, 1999)
MI990069 (Feb. 05, 1999)
MI990071 (Feb. 05, 1999)
MI990074 (Feb. 05, 1999)
MI990078 (Feb. 05, 1999)
MI990081 (Feb. 05, 1999)
MI990082 (Feb. 05, 1999)
MI990084 (Feb. 05, 1999)

Volume V

None

Volume VI

None

Volume VII

California
CA990004 (Feb. 05, 1999)
CA990009 (Feb. 05, 1999)
CA990028 (Feb. 05, 1999)
CA990029 (Feb. 05, 1999)
CA990030 (Feb. 05, 1999)
CA990041 (Feb. 05, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and Related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and Related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 28th day of January 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–2498 Filed 2–4–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

101st Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 105th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Wednesday, February 24, 1999, in Room S2508, U.S. Department of Labor Building, Third and Constitution Avenue, NW, Washington, DC 20210.

The purpose of the meeting, which will begin at 1:30 p.m. and end at approximately 3:00 p.m., is to consider the items listed below:

I. Welcome and Introduction and Swearing In of New Council Members
II. Assistant Secretary's Report
  A. PWBA Priorities for 1999
  B. Announcement of Council Chair and Vice Chair
III. Introduction of PWBA Senior Staff
IV. Summary of the Final Reports made by Advisory Council Working Groups for the 1998 Term
V. Determination of Topics to Be Addressed by Council Working Groups for 1999
VI. Statements from the General Public
VII. Adjourn

Members of the public are encouraged to file a written statement pertaining to any topics the Council may wish to study for the year concerning ERISA by submitting 20 copies on or before February 20, 1999 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department Labor, Suite N–5677, 2000 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by February 20 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before February 20, 1999.

Signed at Washington, DC this 2nd day of February, 1999.

Leslie Kramerich,

Deputy Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 99–2746 Filed 2–4–99; 8:45 am]

BILLING CODE 4510–29–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company, Pilgrim Nuclear Power Station; Supplemental Notice

On January 26, 1999, the NRC published (64 FR 3984) a Notice of Consideration of Approval of Transfer of Facility Operating License and Materials License and Issuance of Conforming Amendment, and Opportunity for a Hearing, with regard to Boston Edison Company and the Pilgrim Nuclear Power Station. Although the notice stated that the Commission is considering approving the transfer of a materials license, in addition to Facility Operating License No. DPR–35, and approving a conforming amendment, the materials license inadvertently was not specifically identified and discussed further in the notice. This supplemental notice clarifies that the Commission is considering approving the transfer of NRC Materials License No. 20–07626–04, which authorizes the possession of materials in the form of contamination on reactor components, from Boston Edison Company to Entergy Nuclear Generation Company. The Commission is also considering issuing a conforming amendment to this license. Both Materials License No. 20–07626–04 and Facility Operating License No. DPR–35 are the subject of the underlying application for approval dated December 21, 1998, which is referenced in the original notice.

This supplemental notice does not extend the notice period of the original notice. The dates established in the original notice by which hearing requests, petitions for intervention, and written comments must be filed concerning the application for approval dated December 21, 1998, are unchanged.

Dated at Rockville, Maryland this 29th day of January 1999.

For the Nuclear Regulatory Commission.

William M. Dean,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2748 Filed 2–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Environmental Assessment: Finding of No Significant Impact Related to Amendment to Materials License No. Sub–908, BP Chemicals, Inc., Lima, OH

The U.S. Nuclear Regulatory Commission is considering issuing an amendment to Materials License No. SUB–908, held by BP Chemicals, Inc. (BPC), to authorize the construction of Closure Cell No. 2 for onsite disposal of waste contaminated with depleted uranium (DU) and the remediation of the contaminated areas of the facility in Lima, Ohio.

Environmental Assessment Summary

Proposed Action

In connection with decontaminating and decommissioning its Lima, Ohio facility, the licensee is proposing to construct and use an onsite disposal cell, under 10 CFR Part 20.2002, at its facility in Lima, Ohio, for disposal of the wastes with DU concentrations up to the Option 2 limit in NRC's 1981 Branch Technical Position (1981 BTP): "Disposal or Onsite Storage of Thorium or Uranium Wastes from Past Operations" (46 FR 52061). The licensee will dispose of soils, debris, and sludge currently located in SWMU 102 (Solid Waste Management Unit 102), and AN–1 (Acrylo Nitrile-1) and containerized areas in the onsite disposal cell. The disposal will be in lined Closure Cell No. 2, designed and constructed according to the Resource Conservation and Recovery Act (RCRA) criteria.

Need for Proposed Action

The proposed action is necessary to complete disposal of existing DU contaminated materials from the pond

areas and for the disposal of wastes generated during remediation of SWMU 102, AN–1, and containerized areas.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the levels of contamination, the proposed remediation and decommissioning methods, the licensee's preferred disposal option, and the radiological and environmental controls that will be used during the remediation and decommissioning. These controls include the as low as is reasonably achievable (ALARA) program, worker dosimetry, a bioassayed program for workers, air monitoring, routine surveys, and routine monitoring of both airborne and liquid effluent releases to meet 10 CFR part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed 10 CFR part 20 requirements.

The licensee proposed to perform decommissioning in accordance with "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, and Special Nuclear Materials," dated August 1987. The licensee also proposed disposal of the wastes contaminated with DU in the RCRA-designed onsite closure cells, in accordance with the 1981 BTP. Based on uranium solubility testing of the mixed wastes, the maximum depleted uranium concentration that is acceptable for disposal in the closure cells is 11.1 Bq/gm (300 pCi/gm) total DU.

The staff analyzed the radiological impacts to the public from the disposal of sludge, soils, and debris contaminated with DU in the proposed onsite closure cells. Radiological impacts on members of the public could result from inhalation and ingestion of releases of radioactivity in air and in water during the remediation operations, and direct exposure to radiation from radioactive materials at the site during remediation operations. The public could also be exposed to radiation as a result of the onsite disposals in the closure cells. Decommissioning workers will receive doses primarily by ingestion, inhalation, and direct exposure during the remediation activities. In addition to impacts from routine remediation activities, the potential radiological consequences of accidents were considered.

The licensee provided an estimate of the dose to the public from airborne effluents generated during the remediation activities and onsite disposal. During normal remediation activities, the licensee and the NRC staff expect airborne concentrations to be minimal, because the sludges and soils will be handled in a moist state.

Liquids discharged to the US Environmental Protection Agency (EPA) permitted deep well injection system will have concentrations less than the US EPA's proposed drinking water limits for uranium, and would result in doses less than 0.057 mSv/yr (5.7 mrem/yr) to individuals hypothetically consuming 2 liters of this water each day.

The licensee performed dose assessments for Closure Cell No. 2 using RESRAD computer code, Version 5.62. The RESRAD computer code estimates radiation dose impacts assuming a resident-farmer scenario, where an individual would live in a residence on the site, grow food, and consume all their drinking water from an onsite water well. The NRC staff verified the licensee's analyses. These dose assessments include the scenario with the proposed cover over the closure cells assumed to have been removed. The predicted doses are less than NRC's limit of 1 mSv/yr (100 mrem/yr) for radiation doses to the public in 10 CFR Part 20.

During the remediation and placement of the waste into Closure Cell No. 2, workers will receive doses from direct exposure and from the inhalation of airborne depleted uranium. The maximum estimated direct exposure is for workers standing on the contaminated soil from the ponds. The estimated exposure is 4.0E–05 mSv/hr (4.0E–03 mrem/hr). Based on a project schedule of approximately 52 weeks, the maximally exposed worker would receive an annual dose of 0.08 mSv/yr (8 mrem/yr). The resulting dose is a small fraction of the 50 mSv/yr (5000 mrem/yr) limit for workers (routine occupational exposure) in 10 CFR part 20.

Based on the above evaluations, radiation exposure of persons living or traveling near the site will be well within limits contained in NRC's regulations and will be small in comparison to natural background radiation.

The licensee and the NRC staff also evaluated the radiological impacts from potential accidents. The predicted maximum exposure to a member of the public (licensee employee not involved in the remediation project) from an accident scenario would be 0.07 mSv (7 mrem) internal exposure. This potential exposure would result when a truck, transporting contaminated soil, tipped over, spread fuel over the spilled soil, and caught fire. The exposed individual was assumed to be standing downwind of the accident at the controlled access area boundary. The calculated dose is a small fraction of the annual dose limit to the public of 1.0 mSv/yr (100 mrem/yr) in 10 CFR part 20. The NRC staff verified these calculations used by the licensee.

The predicted maximum exposure to a worker from an accident scenario, other than the above truck accident, would be 7.7E–04 mSv (7.7E–02 mrem). This is based on an explosion of the pug mill mixer, where the worker was immersed in a "contaminated" cloud of suspended sludge for 10 seconds while leaving the immediate area of the explosion. This resultant exposure is a small fraction of the 50 mSv/yr (5000 mrem/yr) annual exposure limit for radiation workers and would not significantly add to the worker's annual exposure. The NRC staff verified calculations used by the licensee.

Because no waste is expected to be shipped offsite to a licensed low-level waste disposal site, there are no expected impacts from the transportation or offsite disposal of radioactive materials.

The NRC staff also considered nonradiological impacts such as chemical, socioeconomic, air quality, land use, and water quality, and concluded that all such impacts are negligible.

The NRC staff examined the distribution of minority and low-income communities near the BPC site in accordance with NRC internal guidance. Based on the data and the NRC's internal guidance, there is no potential for environmental justice issues based on race, or income level because the percentage of minorities or low-income households in the study area does not exceed the State or County percentage by 20 percent or more. Because the site represents an insignificant risk to the public health and safety, and the human environment, any residual radioactivity left at the site is not expected to disproportionately impact minority or low-income populations near the licensee's site. The staff concludes that there are no environmental justice issues at the licensee's site.

Alternatives to the Proposed Action

Six alternatives were investigated that resulted in the selection of onsite disposal as the recommended and preferred option by BPC. They are:

- No action;
- On-site closure (with caps);
- Disposal at a commercial disposal site without treatment;

• Disposal at a commercial disposal site with treatment;
• On-site temporary storage followed by off-site permanent disposal at a future, commercial disposal site;
• On-site permanent disposal under 10 CFR Part 20.2002 (BPC's preferred option).

The advantages and disadvantages of these alternatives, are described in the Environmental Assessment available in the Public Document Room.

Conclusions

The onsite permanent disposal under 10 CFR Part 20.2002 (the licensee's preferred option) consists of removing the contaminated material, and disposing of the materials in Closure Cell No. 2 designed and constructed according to the RCRA criteria. This disposal option complies with the provisions of 10 CFR Part 20.2002.

The environmental and public health impacts will be insignificant. No additional lands are required. There will be no adverse impacts caused by off-site waste transportation because no off-site waste transport is involved. Also, occupational exposures will be minimized. The estimated cost for the decommissioning and on-site disposal project is $18.26 million.

The NRC staff concludes that there are no reasonably available alternatives to the licensee's preferred action that are obviously superior.

Agencies and Persons Consulted, and Sources Used

This environmental assessment was prepared entirely by NRC's Office of Nuclear Material Safety and Safeguards staff in Rockville, Maryland, and Region III staff in Lisle, Illinois. Review comments were solicited on the draft EA from the Ohio Department of Health, the Ohio Environmental Protection Agency, and the Allen County Combined Health District, Lima, Ohio.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly the Commission has determined not to prepare an environmental impact statement for the proposed action.

Additional Information

For further details with respect to the proposed action, see: (1) BPC's license amendment application dated August 2, 1996, and BPC's responses dated September 17, 1996, February 2, 1998, and June 19, 1998, to the NRC comments; and (2) the complete Environmental Assessment. The documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 29th day of January 1999.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–2750 Filed 2–4–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 101, SEC File No. 270–408, OMB Control No. 3235–0464
Rule 102, SEC File No. 270–409, OMB Control No. 3235–0467
Rule 103, SEC File No. 270–410, OMB Control No. 3235–0466
Rule 104, SEC File No. 270–411, OMB Control No. 3235–0465
Rule 17a–2, SEC File No. 270–189, OMB Control No. 3235–0201

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rules 101 and 102 prohibit distribution participants, issuers, and selling security holders from purchasing activities at specified times during a distribution of securities. Persons otherwise covered by these rules may seek to use several applicable exceptions such as a calculation of the average daily trading volume of the securities in distribution, the maintenance of policies regarding information barriers between their affiliates, and the maintenance of a written policy regarding general compliance with Regulation M for de minimis transactions. The Commission estimates that 1,761 respondents collect information under rule 101 and that approximately 40,641 hours in the aggregate are required annually for these collections. In addition, the Commission estimates that 791 respondents collect information under rule 102 and that approximately 1,691 hours in the aggregate are required annually for these collections.

Rule 103 permits passive market making in Nasdaq securities during a distribution. A distribution participant that seeks use of this exception would be required to disclose to third parties its intention to engage in passive market making. The Commission estimates that 227 respondents collect information under Rule 103 and that approximately 227 hours in the aggregate are required annually for these collections.

Rule 104 permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (i.e. the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids and disclose such information to the SRO. The Commission estimates that 641 respondents collect information under Rule 104 and that approximately 64.1 hours in the aggregate are required annually for these collections.

Rule 17a–2 requires underwriters to maintain information regarding stabilizing activities, syndicate covering transactions, and penalty bids. The Commission estimates that 641 respondents collect information under Rule 17a–2 and that approximately 3,205 hours in the aggregate are required annually for these collections.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of

Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: January 27, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2737 Filed 2–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40998; File No. SR–CHX–98–27]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Crossing Orders of 25,000 Shares or More

January 29, 1999.

I. Introduction

On November 5, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to crossing orders of 25,000 shares or more.

The proposed rule change was published for comment in the **Federal Register** on December 15, 1998.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange's general auction market procedures are codified in CHX Article XX, Rule 16, which provides for the manner in which bids and offers at the same price will be sequenced for execution. A member who makes the first bid or offer at a particular price has "priority" at that price, which means that the member is the first one in the market to be entitled to receive an execution at that price. If no member can claim priority, all members who are bidding or offering at a particular price are deemed to be on "parity" with each other, or equivalent in status.[4] Unlike the rules of certain other exchanges,[5] however, the CHX does not currently permit bids and offers that have parity to obtain precedence based on size (a so-called "size-out" rule).[6] In addition, unlike some other exchanges,[7] the CHX does not currently have a "clean cross" rule (as an exception to the normal priority rules) that would permit a member to cross a large block of stock, without the cross being broken up, by permitting the cross to obtain priority over all other existing bids and offers at the same price, regardless of the size of such bids or offers.[8]

The purpose of the proposed rule filing is to add new interpretation and policy .02 to Article XX, Rule 23, to allow a member or member organization that has an order to buy and an order to sell 25,000 shares or more of the same security to cross those orders at a price that is at or within the prevailing quotation, without the transaction being broken up at the cross price so long as (i) the size of the proposed cross transaction is of a size that is greater than the aggregate size of all interest communicated on the Exchange floor at that price at the time of the proposed cross, and (ii) neither side of the cross is for the account of the executing member or member organization.

As is the case for cross transactions that are permitted under existing CHX rules, prior to effecting the cross under the new proposal, the member will be required to make a public bid and offer on behalf of both sides of the cross.[9] The offer must be made at a price which is higher than the bid by the minimum trading variation permitted for the security. Under the Proposal, another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of the bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction.

Because the proposal provides that the bid or offer of the member desiring to execute the cross would be entitled to priority at such price (over pre-existing bids and offers at that price) only if the size of the cross is greater than the aggregate size of all interest communicated on the Exchange floor (which includes the specialist's bid or offer—including any limit order reflected in such quote—and any communicated interest of floor brokers or market makers standing in the crowd), the proposed rule is more akin to a size-out rule than a special priority rule.

The difference between the CHX proposal and the size-out rules contained on other exchanges is that the priority of earlier bids and offers will not have to be removed, by means of a sale, before effecting the cross. In addition, a cross transaction effected in accord with the CHX proposal does not affect the priority of existing orders in a specialist's book, and once the cross is executed, the priority (based on time rather than size) shall remain as it was before the execution of the cross transaction. In this sense, the proposal does have some attributes of a special priority rule. However, unlike the special priority afforded certain crosses on other exchanges, which are reported to the tape as "stopped stock," cross transactions effected under the proposed rule will be reported to the tape without a "tape designator."

The CHX proposal limits the types of orders eligible to be crossed. Specifically, as stated above, no part of the cross can include an order for the account of the executing member or member organization. Under the proposal, only customer orders of a floor broker (*i.e.*, orders in which the floor broker acts as agent) can be included in the cross. For purposes of this proposal, the term customer order includes professional orders not for the account of the executing member (*i.e.*, orders for the accounts of broker-dealers and other members or member organizations communicated from off the floor).

The proposal is intended to facilitate the execution of certain cross

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 40758 (December 8, 1998), 63 FR 69125

[4] Members are on parity with each other when two or more bids or offers are announced simultaneously, or after a trade takes place leaving several bids or offers unfilled at the same price as the executed trade. *See* CHX Art. XX, Rule 16 (b) and (c).

[5] *See* New York Stock Exchange ("NYSE") Rule 72 and similar Philadelphia Stock Exchange and Boston Stock Exchange rules. The American Stock Exchange ("Amex") has a modified version of a "size out" rule for crosses of 25,000 shares or more. *See* Amex Rule 126(g), commentary .01 and .02.

[6] Under a typical size-out rule, the priority of existing bids and offers are first removed by means of a sale so that all bids and offers are on parity. Then, a person desiring to execute a cross can usually do so by claiming precedence based on size, so long as the size of the cross is greater than any other single bid or offer at that price.

[7] *See, e.g.*, NYSE Rule 72(g) which gives priority to an agency cross transaction of 25,000 shares or more that is executed at or within the prevailing quotation, without regard to the size or price of existing bids or offers on the floor. Other members can typically interact with the cross only by bettering one side of the cross, and even then, can only do so after satisfying all other existing bids or offers at that price. The Pacific Exchange, Inc. ("PCX") and Amex have similar crossing rules.

[8] While the CHX does have a crossing rule, Article XX, Rule 23, this rule only permits crosses *between* (and not at) the CHX disseminated market. Thus, under current rules, assuming a specialist has properly reflected all limit orders from his book in his quote, the crossing rule does not have any effect on the Exchange's general priority, parity and precedence rules because all crosses must be at a better price than the disseminated market. Therefore, they are entitled to priority because of price (and not because of a special priority rule giving certain crosses priority over other bids and offers).

[9] *See* CHX Art. XX, Rule 23.

transactions on the CHX. The Exchange asserts that confining the proposed size threshold to block size orders of 25,000 shares or more will limit the effects of the rule primarily to actively traded, liquid securities.

The CHX further believes that the proposal, as drafted, furthers the important auction market principle of price improvement by allowing another member, under certain conditions, to trade with either the bid or offer side of the cross transaction to provide a price that is better than the proposed cross price.

Finally, the Exchange believes that limiting the proposal to crosses not involving principal transactions of the executing broker (*i.e.*, limiting the proposal to orders in which the floor broker is acting as agent), is consistent with Section 11(a)(1)(G) of the Act [10] as well as portions of other crossing rules at other exchanges. For example, in approving a crossing rule for the PCX, the Commission stated that it "believes that the [PCX] proposal would not grant priority, parity or precedence to the order of a member in a manner inconsistent with Section 11(a)(1)(G) of the Act or Rule 11a1–1(T)(a)(3) thereunder." [11] The PCX proposal defined customer to include any order that the broker represents in an agency capacity, including a professional order that is not for an account associated with the executing broker. The Commission concluded that because "this definition of customer order excludes, and thus does not grant priority to, an order for an account over which the broker or an associated person of the broker exercises investment discretion, the Commission is satisfied that the proposed rule change complies with Section 11(a)." [12]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act [13] and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b) and 11A of the Act.[14] Specifically, the Commission believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the Act and is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[15] The Commission also believes that the proposed rule change is consistent with Section 11A of the Act,[16] in that it will enable the CHX to better compete with the other exchanges markets.

The Commission believes that the proposed rule change should enhance CHX's ability to compete for block business and could enhance the depth and liquidity of CHX's market. That said, the Commission also believes that limiting the proposed size threshold to block-size orders of 25,000 shares or more should limit the effects of the rule primarily to actively traded, liquid securities.

The Commission believes that the proposed rule change should increase the opportunities for the efficient execution of block-sized agency cross transactions. Specifically, the proposed rule change should facilitate the ability of CHX members to execute block agency transactions on the CHX by giving such orders priority over orders at or within the prevailing quotation.

The Commission notes that the proposed rule change also preserves the auction market principle of price improvement by prohibiting the cross transaction from being broken up unless a member is willing to provide price improvement to the cross price (either all or part of such bid or offer). The proposal also preserves the principle of priority by requiring that a member who breaks up a cross by providing a better price must first satisfy all existing market interest having priority at that better price before trading with any part of the cross.

The Commission recognizes that approval of the clean cross proposal could disadvantage smaller orders with time priority which are on the book, or in the trading crowd, as the same price as the cross transaction. The Commission, however, believes that the proposal restricts sufficiently the circumstances in which members may execute clean cross transactions on the Exchange. In particular, the Commission believes that the share size threshold of 25,000 shares or more should help ensure that the clean cross proposal will apply primarily to large block-sized orders where the depth of the prevailing bid or offer may be less likely to satisfy either side of the clean cross. In addition, the proposal is limited to agency orders only and, therefore, it should not give any special advantage to members, member organizations, and non-member broker-dealers in their proprietary trading.

The Commission notes that similar rules are in place at the Amex, NYSE, and PCX.[17] The rules of the Amex, NYSE, and PCX, like the CHX proposal, give priority to agency cross transactions of 25,000 shares or more and permit such crosses to be broken up only if price improvement will result therefrom. The Commission notes, however, that the CHX's proposed rule is more restrictive than the rules of the Amex, NYSE, or PCX in that it allows for an agency block-sized cross transaction to occur without being broken up at the cross price as long as the size of the proposed cross transaction is of a size greater than the aggregate size of all interest communicated on the Exchange Floor at that price at the time of the cross.

Finally, the Commission believes that because the CHX proposal is limited to crosses not involving principal transactions of the executing broker (*i.e.*, limited to orders in which the floor broker acts as agent) it would not grant priority, parity or precedence to the order of a member inconsistent with Section 11(a)(1)(G) of the Act [18] or Exchange Act Rule 11a1–1(T)(a)(3) thereunder.[19] For purposes of the proposed rule change, the CHX has defined the term "customer order" as an order that a broker represents in an agency capacity, including a professional order that is not for an account associated with the executing broker. Because the definition of "customer order" excludes (and, thus does not grant priority to) an order for an account over which the broker or an associated person of the broker exercises investment discretion, the Commission is satisfied that the proposed rule change complies with Section 11(a) of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–CHX–98–27) is approved.

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[10] 15 U.S.C. 78k(a)(1)(G).

[11] *See* Exchange Act Release No. 33391 (December 28, 1993), 59 FR 336 (January 4, 1994) (order approving SR–PSE–91–11). The PCX changed its name in 1997 from Pacific Stock Exchange to Pacific Exchange.

[12] *Id.*

[13] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b) and 78k–1.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[17] *See* Amex Rule 126(g), Commentary .02; NYSE Rule 72(b)(Priority of Agency Cross Transactions); PCX Rule 5.14(b), Commentary .05.

[18] 15 U.S.C. 78k(a)(1)(G).

[19] 17 C.F.R. 240.11a1–1(T)(a)(3).

[20] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2736 Filed 2–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41004; File No. SR–MBSCC–98–03]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Approval of a Proposed Rule Change Increasing the Number of Directors

January 29, 1999.

On November 5, 1998, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange ("Commission") the proposed rule change (File No. SR–MBSCC–98–03) pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on November 30, 1998.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends Article 3, Section 3.1 of MBSCC's By-laws to increase the number of directors on its board from thirteen to fifteen.[3] Currently, MBSCC has thirteen directors divided into three classes. Classes I and II each consist of four directors, and Class III consists of five directors. Under the rule change, each class will now consist of five directors.

MBSCC's shareholders agreement provides that one director represents management, one director represents the National Securities Clearing Corporation, and the remaining directors represent MBSCC's participants. Under the rule change, the two additional directors will represent MBSCC's participants.

II. Discussion

Section 17A(b)(3)(C)[4] provides that the rules of a clearing agency must provide for the fair representation of its shareholders or members and participants in the selection of directors. The Commission believes that the increase in the size of MBSCC's board is consistent with the Act's fair representation requirements because the addition of two directors will increase the opportunity for participants to be represented on MBSCC's board and should allow the board to more accurately reflect its membership.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. MBSCC–98–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2735 Filed 2–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40992; File No. SR–NASD–98–94]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adjudication of Clearly Erroneous Transactions

January 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rule 11890 ("Rule") to conform the time frame for requesting a clearly erroneous adjudication for pre-opening transactions to the 30-minute time frame that applies to trades that occur after 10:00 a.m. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

11890. Clearly Erroneous Transactions

(a) No Change

(b) Procedures for Reviewing Transactions

(1) Any member or person associated with a member that seeks to have a transaction reviewed pursuant to paragraph (a) hereof, shall submit a written complaint, via facsimile or otherwise, to Nasdaq Market Operations in accordance with the following time parameters:

(A) For transactions occurring *at or after 9:30 a.m., Eastern Time, but* prior to 10:00 a.m., Eastern Time, complaints must be submitted by 10:30 a.m., Eastern Time; and

(B) For transactions occurring [on] *prior to 9:30 a.m., Eastern Time and those occurring at* or after 10:00 a.m., Eastern Time, complaints must be submitted within thirty minutes.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Rule sets forth the process through which The Nasdaq Stock Market, Inc. ("Nasdaq") may review certain transactions and declare them null and void or otherwise modify their terms. In early 1998, the Commission approved changes to the rule to make this process more efficient and fair ("Amendments").[3] Among other things, the rule was amended to shorten the

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities and Exchange Act Release No. 34–40702 (November 23, 1998) 63 FR 65831.

[3] Article 3, Section 3.1 governs the number, election, and term of office of directors.

[4] 15 U.S.C. 78q–1(b)(3)(C).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39550 (January 14, 1998), 63 FR 4333 (January 28, 1998) (approving SR–NASD–96–51).

time period to submit erroneous transaction complaints—from any time during the trading day to within 30 minutes of the erroneous transaction. This was done to reduce the potential for firms to wait until the end of the day to decide whether an erroneous trade became unprofitable, and to ensure that firms give the counterparty adequate notice in close proximity to the time of execution.

Because of the high volume of trading commencing at the 9:30 a.m. opening, however, the NASD intended to provide additional time to submit adjudication requests for trades occurring between 9:30 a.m. and 10:00 a.m. Specifically, the NASD intended that members have until 10:30 a.m. to request an adjudication for trades occurring between the 9:30 a.m. open and 10:00 a.m. The rule, however, currently only references trades that occur between 10:00 a.m., and is silent as to trades that occur before the 9:30 a.m. opening. Consequently, a literal reading of the Rule accords additional time to pre-9:30 a.m. transactions as well as those that occur between 9:30 and 10:00.

The NASD staff identified this issue at the time the Commission approved the Amendments, but agreed, in consultation with Commission staff, to wait and observe the operation of the amended Rule. After administering the Rule for eight months under the new time parameters, the NASD has confirmed its original belief that this additional time is not necessary with respect to pre-opening transactions, and reiterates its view that it is in fact inconsistent with the original intent of the Amendments.

In particular, the NASD notes that of 27 requests for adjudication pre-opening trades received to date since the Amendments, more than half were submitted by members within 30 minutes (in several instances within ten minutes) even though they had as long as 90 minutes to do so in some cases. More importantly, virtually all of these requests (23 of 27) were made after the market opened and thus after the requesting party had an opportunity to observe the direction of the market. While the NASD still believes that it is appropriate to provide additional time to request an adjudication for erroneous trades that occur following the opening, the NASD does not believe members should be provided with this additional time for pre-opening transactions. Such additional time is inconsistent with the intent of the Amendment, and leaves the potential for the same abuses and risks that the Amendments sought to address.

Accordingly, this proposed rule change merely conforms the pre-opening time frame to the same 30-minute standard that applies to trades occurring on or after 10:00 a.m.

2. Statutory Basis

NASD Regulation believes the proposed rule change, by helping to ensure that clearly erroneous transactions are quickly corrected or nullified and properly reported to the public, is consistent with the Act and in particular with Sections 15A(b)(6)[4] and 11A(a)(1)(C)[5] of the Act. Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(6) also provides that the rules of the association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C) provides that, among other things, it is in the public interest to assure the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors.

In the proposed rule change, NASD Regulation provides greater specificity in the procedures for resolving pre-opening clearly erroneous transactions. NASD Regulation believes that the proposed amendments to the NASD's procedures to review these transactions should benefit market participants by promoting fair and efficient resolution of disputes involving clearly erroneous transactions. In addition, the proposed rule change addresses concerns raised by the Commission in its August 8, 1996, Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market regarding the fairness of the clearly erroneous review process. NASD Regulation believes that the proposed rule change will make the process for resolving clearly erroneous transaction complaints more fair and more efficient. In this regard, the proposal is consistent with Section 15A(b)(6) of the Act because it helps to ensure that the Rule does not permit unfair discrimination between customers, issuers, brokers, or dealers.

Further, it is important for the proper functioning of the securities markets that investors be able to rely on reported transactions as accurately reflecting the current state of the market and actual executions. When clearly erroneous transactions are publicly reported, it is important that, whenever possible, Nasdaq correct these errors and the inaccurate information that was disseminated in the market about these transactions as quickly as possible.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD Regulation did not solicit or receive written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Secretaries and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for

[4] 15 U.S.C. 78o–3(b)(6).

[5] 15 U.S.C. 78k–1(a)(1)(C).

inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–94 and should be submitted by February 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2733 Filed 2–4–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40994; File No. SR–PCX–98–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the OptiMark System and Stop Orders

January 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 24, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rules 5.8(j) and 5.32(a) to clarify the responsibilities of PCX members regarding the handling of stop orders relative to executions resulting from the PCX Application of the OptiMark System.

The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 5.8(j) and 5.32(a) to clarify the responsibilities of PCX members regarding the handling of stop orders relative to executions resulting from the PCX Application of the OptiMark System. The proposed amendments clarify that all round-lot stop orders in dually-traded securities that are afforded primary market protection ("PMP") will not be elected and executed based on transactions that emanate from the OptiMark System. The Exchange believes that the proposed rule change will clarify the treatment of stop orders under PCX's rules, thereby promoting a more effective and orderly market operation.

The Exchange proposes changes to Rules 5.8(j) and 5.32(a) for the following reasons:

First, stop orders are not eligible for entry as profiles in the OptiMark System. Consequently, a specialist or floor broker cannot interact with the trade results that are generated from a single call cycle in order to comply with the execution requirements for stop orders (prints resulting from an OptiMark call cycle occur in an uninterrupted batch).

Second, a stop order is contingent on its election and execution occurring in a continuous sequence of trades in an auction market. OptiMark is a call market in which executions occur on a periodic basis and, as a result, it is not conducive to the election and execution of such orders.

Third, since an OptiMark match cycle generates trades at a range of prices, the election of a stop order by including OptiMark prints may result in a customer receiving an unfavorable execution, particularly if the traditional primary market (New York Stock Exchange ("NYSE") or American Stock Exchange ("AMEX")) would not reach the election price.

Fourth, given PCX technology in the current trading environment, the Specialists are unable to distinguish between OptiMark and non-OptiMark prints that occur on the PCX.

Finally, the proposal is consistent with the interpretation of PCX Rule 5.8(j) in that stop orders have, in practice, been elected and executed based on transactions emanated from the primary markets (NYSE and AMEX).

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[2] of the Act in general and further objectives of Section 6(b)(5)[3] in particular, because it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.[4]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and therefore, has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[5] and subparagraph (e)(1) of Rule 19b–4 thereunder.[6]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change is consistent with the Act.

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78s(b)(3)(A)(i).

[6] 17 CFR 240.19b–4(e)(1).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–98–63 and should be submitted by February 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2734 Filed 2–4–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3153]

State of Tennessee

As a result of the President's major disaster declaration on January 19, 1999, and an amendment thereto on January 23, I find that Benton, Carroll, Crockett, Decatur, Dickson, Hardeman, Haywood, Henderson, Humphreys, Lauderdale, Madison, Maury, Montgomery, and Perry Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms, tornadoes, and high winds beginning on January 18, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 19, 1999 and for economic injury until the close of business on October 19, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cheatham, Chester, Dyer, Fayette, Gibson, Giles, Hardin, Henry, Hickman, Houston, Lawrence, Lewis, Marshall, McNairy, Robertson, Stewart, Tipton, Wayne, Weakley, and Williamson Counties in Tennessee; Mississippi County, Arkansas; Christian and Todd Counties in Kentucky; and Alcorn, Benton, and Tippah Counties in Mississippi.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.375
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.188
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000%

The number assigned to this disaster for physical damage is 315311. For economic injury the numbers are 9A8300 for Tennessee, 9A8400 for Arkansas, 9A8500 for Kentucky, and 9A8600 for Mississippi.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 27, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–2708 Filed 2–4–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3155]

State of Washington (and a Contiguous County in Oregon, #3156)

Pacific County and the contiguous counties of Grays Harbor, Lewis, and Wahkiakum in the State of Washington, and Clatsop County in the State of Oregon constitute a disaster area as a result of a hotel fire which occurred on November 5, 1998 in the Town of Raymond. Applications for loans for physical damage from this disaster may be filed until the close of business on March 29, 1999 and for economic injury until the close of business on October 27, 1999 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.750
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.375
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damages are 315505 for Washington and 315605 for Oregon. For economic injury the numbers are 9A9600 for Washington and 9A9700 for Oregon.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 27, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–2709 Filed 2–4–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

SBA Equity Partners, Inc. (License No. 05/05–0233), Notice of Surrender of License

Notice is hereby given that SBC Equity Partners, Inc. One South Wacker Drive, Chicago, Illinois 60606, has surrendered their license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). SBC Equity Partners, Inc. was licensed by Small Business Administration on February 26, 1998.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on this date, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No.59.11, Small Business Investment Companies)

[7] 17 CFR 200,30–3(a)(12).

Dated: January 28, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–2707 Filed 2–4–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Chairs-Regional Fairness Boards 1–10 Meeting

The Small Business Administration Chairs-Regional Fairness Board 1–10 Meeting Located in the geographical area of Chicago, IL, will hold a strategy meeting at 8:30 a.m. on Saturday, February 9, 1999 at SBA National Ombudsman's Office, 500 W Madison St., Suite 1240, Chicago, IL 60661, to collect Fairness Board Chairs' comments on the 1999 draft Report To Congress, as well as to obtain recommendations and other input for the annual Report to Congress.

For further information, contact, Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–2779 Filed 2–4–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region VI—Houston District Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration—Region VI—Houston Advisory Council, located in the geographical area of Houston, Texas will hold a public meeting at 1:00 p.m. on Tuesday, March 2, 1999. The meeting will be conducted in the Conference Room at the Small Business Administration, 9301 Southwest Freeway, Suite 550, Houston, Texas 77074. This meeting will be conducted to discuss such business as may be presented by members of the District Advisory Council, the staff of the U.S. Small Business Administration, and other attending.

For further information, write to Milton Wilson, Jr. District Director, at the Small Business Administration, 9301 Southwest Freeway, Suite 550, Houston, Texas 77074–1591 or call (713) 773–6500.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–2778 Filed 2–4–99; 8:45 am]

BILLING CODE 8025–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with PL. 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collection packages that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding these information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of the notices.

1. Application for Benefits Under a U.S. International Social Security Agreement—0960–0448. The information collected on form SSA–2490 is used by the Social Security Administration to determine a claimant's eligibility for U.S. Social Security benefits under the provisions of an international social security agreement. It is also used to take an application for benefits from a foreign country under an agreement. The respondents are individuals who are applying for benefits from either the United States and/or a foreign country with which the United States has an agreement. The United States currently has 17 such agreements.

Number of Respondents: 20,000.

Frequency of response: 1.

Average Burden per response: 30 minutes.

Estimated Annual Burden: 10,000 hours.

2. 0960–NEW. Public Law 105–277 authorizes SSA to conduct a Medicare buy-in demonstration project to evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act. A lack of awareness about the Medicare buy-in programs appears to be one of the major obstacles to enrollments. Other obstacles to enrollment include the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local Medicaid offices.

SSA will screen respondents voluntarily for potential Medicare Part B buy-in eligibility using a screening guide developed for this purpose. The screening guide will collect information from SSA beneficiaries regarding income, resources, marital status and living arrangements and also ask questions about their awareness of Medicare Part B buy-in programs. SSA will gather this information to identify and overcome obstacles to Medicare Part B buy-in enrollments and to screen for potential eligibility for Medicare Part B benefits. The demonstration project ends on December 31, 1999.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 43,334 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on these information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed after these notices.

1. Authorization to Obtain Earnings Data from the Social Security Administration—0960–NEW. SSA collects this information when a wage earner or a third party requests detailed earnings information pertaining to the wage earner from the Social Security Administration. The information provided on form SSA–581 is used by SSA to verify the authorization to access earnings record data and to produce an itemized statement for release to the third party named on the form. The information is provided by the wage earner and/or the third party.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 2,000 hours.

2. Organization Profile—0960–NEW. The Social Security Administration (SSA) will use the information collected on the Organization Profile questionnaire to create a database of third party stakeholders. This database will support the delivery of information about Social Security programs to these interested parties, and enable SSA to target relevant information to those organizations while restricting unwanted material. The respondents are community organizations, State and

local government agencies, advocacy groups and community service organizations.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 1,167 hours.

You can obtain a copy of the collection instruments or the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145 or by writing to him at the address below.

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235

(OMB)

Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

Dated: February 1, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–2738 Filed 2–4–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending January 29, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5052

Date Filed: January 27, 1999

Parties: Members of the International Air Transport Association

Subject:

PTC23 EUR–SEA 0064 dated December 18, 1998

Europe-South East Asia Expedited Resos

r–1—002q, r–3—071hh, r–5—078o

r–2—015v, r–4—076tt, r–6—084cc

Intended effective date: February 1, 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–2724 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5042]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, the Coast Guard intends to request the Office of Management and Budget's (OMB) approval for the renewal of five Information Collection Requests (ICR). These ICRs include: (1) The Tank Vessel Examination Letter (CG–840S–1&2), Certificate of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers; (2) Self-propelled Liquefied Gas Vessels; (3) Alternate Compliance Program—Record of Inspections; (4) Requirements for Lightering of Oil and Hazardous Materials Cargoes; and (5) Instructional Material for Lifesaving, Fire Protection and Emergency Equipment. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

DATES: Comments must reach the Coast Guard on or before April 6, 1999.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–199–), U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this document. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete Information Collection Request are available through this docket on the Internet at http:dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106, (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. Should there be questions on the docket, contact Pat Chesley, Coast Guard Dockets Team Leader, or Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330.

Request for Comments

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document (USCG–1999–) and the specific Information Collection Request (ICR) to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Information Collection Requests

1. *Title:* Tank Vessel Examination Letter (CG–840S–1 & 2), Certificate of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 2115–0504.

Summary: The information in this report is collected to ensure compliance with U.S. regulations as part of the Coast Guard's Marine Safety Program.

Need: Title 46 United States Code (USC) 3301, 3305, 3306, 3702, 3703, 3711, and 3714 authorizes the Coast Guard to establish marine safety regulations to protect life, property, and the environment. Title 46 Code of Federal Regulations (CFR) prescribe these Coast Guard regulations.

The requirements for reporting Boiler/Pressure Valve Repairs, maintaining Cargo Gear Records, maintaining Shipping Papers, issuance of Certificates of Compliance and Tank Vessel Examination Letters (CG–840S–1/CG–840S–2, as appropriate) provide the marine inspector with available information as to the condition of a vessel and its equipment. It also contains information on the vessel owner and lists the type and amount of cargo that has been or is being transported. These requirements all relate to the promotion of safety of life at sea and protection of the marine environment.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Burden: The estimated burden is 21,531 hours annually.

2. *Title:* Self-propelled Liquefied Gas Vessels.

OMB Control Number: 2115–0113.

Summary: The information in this report is needed to ensure compliance with U.S. regulations for the design and operation of liquefied gas carriers.

Need: Title 46 U.S.C. 3703 and 9101 authorizes the Coast Guard to establish regulations to protect life, property, and the environment from the hazards associated with the carriage of bulk liquid dangerous cargoes. Title 46 CFR, part 154 prescribes the Coast Guard regulations for the carriage of liquefied gases in bulk on self-propelled vessels by establishing rules for the design, construction, equipment, personnel safety, and operation of these vessels.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Burden: the estimated burden is 4,070 hours annually.

3. *Title:* Alternate Compliance Program—Record of Inspections.

Summary: The information for this report is only collected when an owner/operator of an inspected vessel voluntarily decides to participate in the U.S. Coast Guard's Alternate Compliance Program (ACP). The information collected will be used to assess compliance prior to issuance of a Certificate of Inspection.

Need: Title 46 U.S.C. 3306, 3316, and 3703 authorizes the Coast Guard to establish vessel inspection regulations and inspection alternatives. Title 46 CFR, part 8 prescribes the Coast Guard regulations for recognizing classification societies and enrollment of U.S. flag vessels in ACP.

Respondents: Classification societies.

Frequency: On Occasion.

Burden: The estimated burden is 190 hours annually.

4. *Title:* Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 2115–0539.

Summary: The information for this report allows the U.S. Coast Guard to provide timely response to an emergency and minimize the environmental damage from an oil or hazardous material spill. The information also allows the Coast Guard to control the location and procedures for lightering activities.

Need: Title 46 U.S.C. 3715 authorizes the Coast Guard to establish lightering regulations. Title 33 CFR 156.200 to 156.330 prescribes the Coast Guard regulations for lightering, including pre-arrival notice, reporting of incidents and operating conditions.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Burden: The estimated burden is 315 hours annually.

5. *Title:* Instructional material for Lifesaving, Fire Protection and Emergency Equipment.

OMB Control Number: 2115–0576.

Summary: The information for this report allows crew members of U.S. vessels to provide proper and timely response to an emergency, to minimize personnel injuries or deaths and to prevent environmental damage from an oil or hazardous material spill. The information is used during training sessions and during emergencies.

Need: Title 46 U.S.C. 3306 authorizes the Coast Guard to establish regulations concerning lifesaving, fire protection and other equipment. Title 46 CFR, subchapters Q and W prescribes regulations that include the instructional materials needed to ensure a vessel's crew has the necessary information on the proper use of lifesaving, fire protection and emergency equipment.

Respondents: Equipment manufacturers.

Frequency: On occasion.

Burden: The estimated burden is 8,512.

Dated: January 28, 1999.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 99–2828 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Governmental/Industry Free Flight Steering Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held February 19, 1999, starting at 1:00 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591 in the Bessie Coleman Conference Center, Second Floor.

The agenda will include: (1) Welcome and Opening Remarks; (2) Review Summary of the Previous Meeting; (3) Discuss GPS/WAAS Sole Means Risk Assessment final report from John Hopkins University Applied Physics Laboratory; (4) Schedule Update for the GPS WAAS Program; (5) Report on Free Flight Phase 1 Technology Schedules; (6) Other Business; (7) Date and Location of Next Meeting; (8) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statement or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile), or *dclarke@rtca.org* (e-mail).

Members of the public may present a written statement at any time.

Issued in Washington, DC, on January 26, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–2832 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on PFC Application 99–04–C–00–OTH To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at North Bend Municipal Airport, Submitted by the City of North Bend, North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use, the revenue from a PFC at North Bend Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 8, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary LeTellier, Airport Manager, at the following address: North Bend Municipal Airport, P.O. Box B, North Bend, OR 97459.

Air carriers and foreign air carriers may submit copies of written comments previously provided to North Bend Muncipal under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 99–04–C–00–OTH to impose and use, the revenue from a PFC at North Bend Municipal Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 29, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of North Bend, North Bend, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 5, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2001.

Proposed charge expiration date: December 1, 2003.

Total estimated net PFC revenue: $103,610.

Brief description of proposed project(s): Impose and Use: Construction of hangar access, taxiway, and taxilanes; Rehabilitation of main PCC apron; Airport rescue and fire fighting equipment purchase.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/commercial operators utilizing aircraft having a seating capacity of less than twenty passenger, emergency medical flights, and other nonscheduled air taxi/commercial operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Regional, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at North Bend Municipal Airport,

Issued in Renton, Washington on January 29, 1999.

Carolyn T. Reed,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–2831 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–98–5021]

Notice of Request for Clearance of a New Information Collection: Motor Carrier Scheduling Practices and Their Influence on Driver Fatigue

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to approve a new information collection related to the research project "Motor Carrier Scheduling Practices and Their Influence on Driver Fatigue." This information collection will be in the form of a survey comprised of multiple parts designed to collect information from interstate motor carrier executives, dispatchers, safety directors, and drivers of commercial motor vehicles carrying passengers and property.

DATES: Comments must be submitted on or before April 6, 1999.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Philip J. Roke, Project Manager, (202) 366–5884, Federal Highway Administration, Office of Motor Carrier Research and Standards, 400 7th Street S.W., Room 3107, Washington, D.C. 20590. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Motor Carrier Scheduling Practices and Their Influence on Driver Fatigue.

Background: The Office of Motor Carriers (OMC) is endeavoring to develop and implement a commercial motor vehicle safety program that is consistent with the direction and intent of the Congress, as specified in the Conference Report 104–286 to accompany House Report 2002 to the Department of Transportation's Appropriations Bill (Public Law 104–50). In this Conference Report, the Congress directed the FHWA to contract during FY1996 with the American Trucking Associations Foundation's (ATAF) Transportation Research Institute (TRI), to perform applied research in an amount not less than $4 million to address a number of safety issues of concern, such as: driver fatigue and alertness; the application of emerging technologies to ensure safety, productivity and regulatory compliance; commercial driver licensing, training and education. Within this legislative authority, the FHWA awarded a cooperative agreement to the ATAF's TRI on a noncompetitive basis.

The TRI has participated in several research partnerships with the FHWA's OMC designed to identify causes of commercial motor vehicle driver fatigue and to develop effective countermeasures. Such research has indicated that developing an understanding of current operational scheduling requirements is fundamental to any attempt to facilitate change toward better shift systems that take into account the needs of drivers, while at the same time account for the economic realities of their employers and their customers—shippers and receivers. Therefore, this study of key participants in motor carriage by TRI's subcontractor Iowa State University has two objectives: (1) To assess the operational scheduling requirements of interstate motor carriers of passengers and property; and (2) to identify motor carrier scheduling requirements that have a positive effect on safety performance.

The research methodology employed includes the use of a comprehensive literature review in conjunction with first-hand knowledge obtained from industry focus groups. Together, the information, insights, and other input derived from these carefully selected focus groups are essential to the development of meaningful, comprehensive and logical survey instruments specific to motor carrier upper-level management, safety directors, dispatchers, and drivers of passengers and property. The surveying

by mail method of research is necessary to generate the data that allows the Iowa State University of Science and Technology researchers to determine the actual extent of various scheduling and other safety-related practices and the operational requirements in the various industry segments.

Additionally, the data generated from representative samples of the interstate motor carrier industry will be analyzed to develop causal inferences about or relationships between scheduling and related practices and safety performance.

Respondents: The respondents to the planned survey will include selected interstate motor carrier executives, dispatchers, safety directors, and drivers of commercial motor vehicles carrying passengers and property.

Estimated Average Burden Per Response: The estimated average burden per response is 19 minutes. This includes the time needed for reviewing the survey instructions, searching existing data sources, completing the appropriate survey instrument, reviewing the collection of information, and returning the information to the FHWA in the prepaid mailer.

Estimated Total Annual Burden: The estimated total annual burden is 1,225 hours. This total is based on the respective burdens that will be imposed on the following categories of survey respondents:

Organizational Executives; 500 entities at 7 minutes each = 3,500 minutes
Safety Directors; 500 entities at 15 minutes each = 7,500 minutes
Dispatchers; 800 entities at 15 minutes each = 12,000 minutes
Drivers (Long Version); 1,500 entities at 29 minutes each = 43,500 minutes
Drivers (Short Version); 500 entities at 14 minutes each = 7,000 minutes

Frequency: The survey will be conducted once.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Electronic Access: Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at telephone number 202–512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Authority: 23 U.S.C. Section 504.

Issued on: January 27, 1999.

George S. Moore, Jr.,

Associate Administrator for Administration.

[FR Doc. 99–2725 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Cooperative Agreements With National Organizations To Support the Buckle Up America Campaign

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary cooperative agreement program in conjunction with the Buckle Up America Campaign.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to solicit highly visible support for mobilizing America to buckle up children during special emphasis periods of the Buckle Up America Campaign. The Campaign is a nationwide call to action in response to the Presidential Initiative to Increase Seat Belt Use Nationwide. High priority is given to education and enforcement efforts to buckle up children.

NHTSA seeks the participation and support of national organizations and their state and local affiliates to take a leadership role in the Campaign by speaking out in support of the Campaign initiatives, and mobilizing community level activity. This notice solicits applications from for-profit or not-for-profit national organizations. In addition, NHTSA is particularly interested in gaining the interest and involvement of organizations that represent constituencies who are hard to reach through mainstream delivery channels and/or have low seat belt use rates. Only applications submitted by the national office representing the organization will be considered.

DATES: Applications must be received at the office designated below on or before March 26, 1999, at 2:00 P.M., Eastern Standard Time.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, S.W., Room 5301, Washington, D.C. 20590. All applications submitted must include a reference to NHTSA Program No. NTS–01–9–05068.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Rose Watson, Office of Contracts and Procurement at (202–366–9557). Programmatic questions relating to this grant program should be directed to Ann Mitchell, National Outreach Division (NTS–22), NHTSA, 400 7th Street, SW., Washington, DC 20590 by e-mail at amitchell@nhtsa.dot.gov or by phone (202–366–2690). Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

SUPPLEMENTARY INFORMATION:

Background

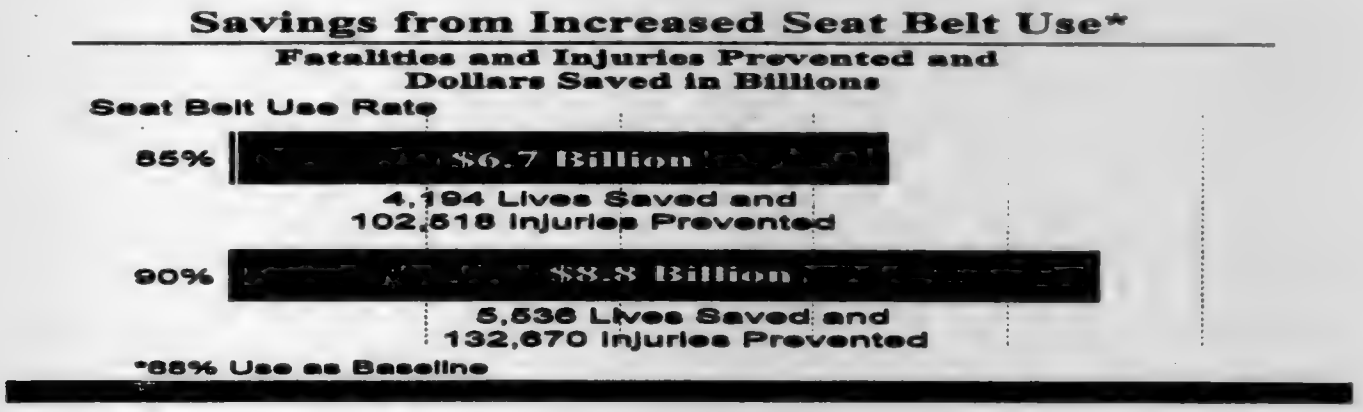
For the last three years, seat belt use has leveled off in the upper 60's percentile. According to state-reported observational surveys, seat belt use moved from 68 percent in 1995–96 to 69 percent as of the end of 1997. In 1996, the President directed the Secretary of the U.S. Department of Transportation to prepare a plan to increase the use of seat belts nationwide. In response, the Presidential Initiative to Increase Seat Belt Use Nationwide was issued and the Buckle Up America Campaign set into action.

The Buckle Up America Campaign places high priority on the need to buckle up children. Our children are America's most valuable investment, therefore it is every American's responsibility to protect them. Unbuckled drivers endanger kids by setting bad examples for them to follow. When a driver is unbuckled, 70 percent of the time children riding in that vehicle are also unbuckled. We all have a stake in this problem and we are all part of the solution. We must all buckle ourselves, buckle our children and call upon others to do the same.

The goals of NHTSA's Buckle Up America Campaign are to increase seat belt use to 85 percent by the year 2000 and 90 percent by 2005; and to reduce child occupant fatalities (0–4 years) by 15 percent in 2000 and by 25 percent in

2005. These aggressive goals can have tremendous payoffs, if achieved.

To achieve these goals will require an increase in visible support coming from the community for buckling up and the need to enforce occupant protection laws before social change can occur. This will take the collective efforts of many people and organizations speaking out from various sectors in the community in a unified voice to help create a public attitude that "unbelted is unacceptable" in our society.



The Presidential Initiative to Increase Seat Belt Use Nationwide calls on all Americans to take an active role—It's everyone's problem and everyone is a part of the solution. Individuals must take responsibility for themselves and for their child passengers by making certain everyone in the vehicle is properly buckled up—every time and on every trip. This is the bottom line.

The President's Initiative focuses on a strategy composed of four elements proven to be effective in increasing seat belt use. These are: (1) Building public-private partnerships of organizations and individuals committed to taking action, (2) enacting strong legislation including primary/standard enforcement provisions for seat belt laws and "closing the gaps" in child passenger safety laws, (3) embracing active, high visibility law enforcement, and (4) conducting well-coordinated, effective public education. These strategies work and NHTSA's Buckle Up America Campaign is committed to and focused on activities that support these proven strategies.

Buckle Up America proposes to harness the efforts of the public, private, cultural, and ethnic sectors to reach into each State, community, and household, and to touch each individual. Every new person buckling up is an important step towards reaching our goal. It takes approximately two million new users to raise the national average one percentage point.

Now, the task becomes persuading groups with lower seat belt and child safety seat usage rates to buckle up. Since teens, young males, pickup truck drivers, rural residents, low income populations, Hispanics, African Americans, and Native Americans could protect themselves and their families better, efforts need to be targeted to these groups to persuade them to develop a simple habit for life. The needs and safety of our children are not to be ignored. Although child safety seat use for infants and toddlers is high overall, low income populations still have very low use use rates. Misuse of these devices is a huge problem as well, and use rates drop sharply as children get older. Many people are unaware that when children outgrow their toddler seat, they should be riding a booster seat if they are between 40–80 lbs. and under 4'9" tall. Many are either prematurely using an adult seat belt or not buckled up at all.

Messages and programs designed for "mainstream America" often are not effective for those populations most at risk or hardest to reach. Language, cultural, and other barriers need to be considered if we are to make a significant impact in increasing usage among low use groups through the development of targeted messages and alternate delivery channels. This will require the support and cooperation of organizations that represent these populations to influence their members and constituencies to buckle up.

Buckle Up America Campaign

The Buckle Up America Campaign is designed to energize, mobilize, and recognize active participants in the effort to increase seat belt use nationwide. First, we need to energize ourselves and everyone else to embrace three simple concepts: (1) this is a problem that touches the lives of every American, because we all pay the enormous health care and other societal costs of transportation deaths and injuries; (2) we all can be part of the solution because we touch the lives of so many fellow Americans, and we can reach out to energize them, too; and, (3) in America, we need to change the social norm to make riding unbuckled socially unacceptable. Next, we need to mobilize ourselves and everyone else, by informing other Americans of the risks they run by not buckling up, and also by lending our strong support for more effective seat belt and child passenger safety laws and aggressive enforcement. And finally, we have to recognize the good work that others are doing to increase seat belt use and publicly praise that good so others will emulate it.

In view of these concepts, Buckle Up America participants are asked to establish programs and conduct activities that fulfill these needs. Many public and private sector organizations and agencies have signed on to the campaign both formally and informally and are already busy conducting various types of activities. However, much of the activity to date has centered on isolated public information and education efforts that have little potential for increasing seat belt usage. Organizations respected and influential in specific cultures are needed to take an active role in supporting the campaign and directing activity towards the hard-to-reach populations and targeting those who are not buckling up.

To heighten visibility of all the activities associated with the Buckle Up America Campaign, NHTSA has identified four quarterly emphasis periods to mobilize coordinated, concentrated activity synchronized nationwide. Based on the tremendous success of highly visible enforcement programs conducted during 1998 to increase seat belt use, two of these emphasis periods will include

enforcement mobilization efforts (Operation ABC: America Buckles Up Children) and concentrated Buckle Up America Campaign support by participating organizations. The critical activity needed from organizations during these two periods is "endorsement for enforcement" to create public awareness and support for the enforcement efforts which will be conducted nationwide. The two alternate emphasis periods are more focused on high visibility public awareness/education activity throughout the quarter, with concentration on the specific issue/age groups identified for that particular period. The four Buckle Up America emphasis periods are:

Buckle Up America (April, May, June) focuses on getting everyone to wear their seat belt. It peaks with National Buckle Up America! Week, May 24–31, 1999, and puts an emphasis on enforcement of all occupant protection laws. (The first of the two Operation ABC enforcement mobilization periods.)

School Days (July, August, September) targets school aged children from kindergarten through college. For them, this is the beginning of a new year and programs are designed to encourage their use of seat belts and to become advocates for seat belt use. Let's help them graduate safely by making sure they are always buckled up.

Safe Holiday Travel (October, November, December) concentrates on the time of year when so many Americans travel to spend time with family and friends. Enforcement efforts to see that all children are buckled up will be conducted nationwide. (Operation ABC mobilization takes place during Thanksgiving Holiday Week, November 22–28, 1999.)

Child Passenger Safety (January, February, March) centers on the needs of children, ages 0–12 and peaks with National Child Passenger Safety Week, February 14–20, 1999. Special emphasis will be given to education about the need to use booster seats for children 50 to 80 lbs. and under 4'9" tall. These children often ride either unrestrained because they are no longer covered under the state's child passenger safety law, or they are placed in an adult seat belt, which could cause injuries because of improper fit.

As noted above, two of the emphasis periods focus on the Operation ABC Mobilization America Buckles Up Children—which is organized by the Air Bag and Seat Belt Safety Campaign in partnership with NHTSA. In addition to participation by law enforcement agencies, we hope to engage at least 1,000 organizations across the country to extend their "endorsement for enforcement" during these mobilization periods. High-visibility enforcement occurs during designated periods of time (waves), and combines intensive enforcement with aggressive publicity and media outreach efforts. This combination allows law enforcement to notify the community that officers are stepping up enforcement of the state's laws and will be issuing tickets to everyone who doesn't comply: no exceptions, no excuses.

High-visibility enforcement has been used successfully in Canada, in states like North Carolina, Georgia, Maryland, and Washington, and in numerous communities throughout the country. Publicizing community support for the enforcement effort through earned media activities (i.e., news stories) builds momentum and a sense of urgency among the community, the media, opinion leaders and policy makers. The effects of high-visibility campaigns are not short-lived. This proven formula of highly publicized, aggressive enforcement backed by visible community support produces higher seat belt and child seat use by the motoring public. Each mobilization gives law enforcement a better base upon which to build the next time the model is implemented—and decreases the overall number of part-time users and non-users of seat belts. The 1998 May mobilization is testament that this approach can be effective in moving the needle on a national scale. In May 1998, more than 4,200 law enforcement agencies in all 50 states and the District of Columbia united in a week-long, high visibility enforcement drive to buckle up children. The combined nationwide media outreach efforts of law enforcement agencies, organizations and the national Campaign produced tremendous results and reached an estimated audience of more than 200 million people throughout the week. In one week, these efforts increased seat belt use by three percentage points nationwide and moved six million additional drivers to buckle up. Such an increase will translate into an annual savings of more than 600 lives, both children and adults. These gains did not dissipate after the mobilization. By Thanksgiving, national usage had increased by another five percentage points.

Operation ABC Mobilization is the only nationally coordinated effort by law enforcement to conduct high-visibility enforcement of child passenger safety and seat belt use laws. The effort continues to grow bigger and more effective with each wave. Coordination among partners is key to this success. Prior to the 1998 May mobilization, NHTSA's Regional Offices conducted law enforcement summits to solicit their support and participation in the mobilization. This resulted in 2,700 more law enforcement agencies signing on to participate in 1998 compared to the first mobilization in 1997. Preceding the November 1998 mobilization, NHTSA Regional Offices again held a series of partnership summits in 23 States. These summits were expanded to include not only high-ranking law enforcement executives but also business and industry leaders, local and state government officials, safety advocates, educators, media spokespersons, state affiliates of national organizations, prominent members of the clergy and other influential community leaders. Two national Buckle Up America leadership conferences were held in Washington, DC as well, where national organizations were encouraged to lend their support for law enforcement during the mobilization periods. As a result of these and other efforts to gain new partners in the Campaign, more than 1,000 organizations submitted endorsements supporting the 1998 Thanksgiving Week Mobilization. Similar partnership summits and leadership conferences will be held for upcoming mobilizations. Grantees and their participating state and local representatives are encouraged to attend these regional and national meetings and to work with their State Highway Safety Offices to coordinate their activities with other groups in their state supporting the Buckle Up America Campaign.

The goal of this cooperative agreement program is to further expand participation in and media exposure of the next series of mobilizations and educational emphasis periods. We are seeking organizations that will take a leadership role in mobilizing their members and constituency to provide visible support for law enforcement and to conduct media outreach activities. The two educational emphasis periods in between the enforcement mobilizations will help keep the issue in the forefront of the American public as a reminder and reinforcement of the importance of buckling up.

Purpose

The primary purpose of this cooperative agreement program is to generate highly visible support for the Buckle Up America Campaign from national organizations and their local affiliates in conjunction with quarterly emphasis periods. The program is designed to generate specific support for

Buckle Up America Campaign initiatives, primarily for law enforcement efforts during the two Operation ABC mobilizations and/or media and educational initiatives during the Campaign's Child Passenger Safety and School Days emphasis periods. The objective of this initiative is to organize and deliver public statements of support from national and local leaders of respected organizations and community sector representatives that will provide the support needed by law enforcement and elected officials and other local leaders to aggressively enforce occupant protection laws. Concentrated activity in the six identified opportunity states is encouraged.

One way to stimulate support for efforts to increase seat belt and child safety seat usage is to stimulate the development of sustained traffic safety efforts at the local level. For the past three years, NHTSA has been promoting a community-based motor vehicle injury prevention program known as Safe Communities. This model encourages communities to analyze data, consult with citizens and collaborate with a multi-disciplinary set of partners to prioritize problems and identify solutions. Applicants are encouraged to coordinate any proposed Buckle Up America efforts with any existing Safe Communities programs and use this as the basis for long-term involvement. In those locations where no Safe Communities exist, applicants are encouraged to participate in the Buckle Up America program and its enforcement efforts as an initial activity in the formation of a sustained Safe Communities program.

Eligibility Requirements

Applications may be submitted by public and private, non-profit and for-profit organizations. An eligible organization must be national in scope and have established and effective affiliate relationships at the state and local level capable of carrying out the effort. Organizations can satisfy this criterion by showing that they will work through their own state and local affiliates (i.e., units or chapters specifically organized to carry out the organization's mission) and/or with other affiliates participating the Buckle Up America Campaign (i.e. State Highway Safety Agencies, other national organization(s), law enforcement associations, etc.), NHTSA is particularly interested in engaging organizations that represent target populations who have typically lower seat belt use and/or special needs relative to message delivery, cultural issues, or other factors. Organizations that assume a leadership and respected role by hard-to-reach, high risk, and predominately low belt use constituencies are sought to participate in this effort. Target organization applications will be competed separate from other national organization applications. In essence, the applications will be divided into two categories—(1) target population and (2) all others, and will be evaluated within the appropriate category. Therefore, it is important that organizations identify the category for which they are to be considered on their application. Interested applicants are advised that no fee or profit will be allowed under this cooperative agreement program.

Eligible projects will also be limited to specific activity areas outlined below. The grantee shall design and implement specific activities throughout its national and affiliate chapters to gain public awareness of, publicize support for, and generate participation in 2–4 of the Buckle Up America emphasis periods during 1999, described in the Buckle Up America section of this Notice, above. Specifically, the activity shall focus on four key elements:

1. Public statements of support for Operation ABC enforcement efforts and/or the child passenger safety and school days emphasis periods. This can include, but is not limited to: writing letters in support of enforcement and/or educational emphasis efforts to elected officials, such as, Governors, mayors, and other local leaders, and heads of law enforcement; publishing editorials and articles in newspapers, newsletters, and other publications; issuing resolutions and proclamations in support of Operation ABC and Buckle Up America Campaign, participating in meetings and conferences on mobilization efforts. It can also include efforts to make the public *aware* of planned enforcement efforts and the rationale for them. This may be particularly appropriate for target groups whose constituency may be sensitive to enforcement-related issues.

2. Media Outreach. This can include, but is not limited to: distribution of sample news releases regarding mobilization/emphasis period efforts, letters to the Editor/Op Ed pieces, talking points, etc. to national and local representatives and encouraging their use to gain national and local media attention and public awareness for the issues involved.

3. Community action activities and events by local representatives. This can include, but is not limited to: support to local chapters to conduct local dialogues or to organize/participate in media events with law enforcement representatives and/or other community leaders; conducting/participating in educational initiatives to complement enforcement efforts, such as participating in checkpoints, conducting/participating in community educational activities, posting information, etc.; taking a leadership role in gathering community support and partners, attending and/or sponsoring meetings to organize mobilization/emphasis activity.

4. Project Evaluation. The grantee shall also evaluate the quantity and quality/scope of participation of the national organization and local affiliates, including: national outreach/support initiatives, number of editorials and opinion/editorial features published, information/materials developed/distributed; number of local affiliates participating and activities conducted in the three areas listed above; and participation in and promotion of the Safe Communities Program in conjunction with this effort.

Additional Resources

The following is a list of resources for information on the Buckle Up America Campaign. All items may be ordered either directly from the NHTSA web site at: *www.nhtsa.dot.gov* by E-Mail to Webmaster (see bottom of home page) or by sending a fax request to: Media and Marketing Division at 202–493–6062. All requests should include the name, address, and telephone number of the person to receive the materials.

1. *Item* # 1P1049 Presidential Initiative to Increase Seat Belt Use Nationwide, Recommendations from the Secretary of Transportation.* NHTSA. April 1997. DOT HS 808 576. The Secretary's plan for implementing President Clinton's directive and attaining seat belt and child safety seat use goals for years 2000 and 2005.

2. *Item* # 1P1084 Buckle Up America, The Presidential Initiative for Increasing Seat Belt Use Nationwide, First Report to Congress. NHTSA. January 1998. DOT HS 808 667. First Biannual Report to the House and Senate Appropriations Committees on the progress of the activities which have been conducted in pursuit of the national goals outlined in the Presidential Initiative to Increase Seat Belt Use Nationwide.

3. *Item* # 1P1063 Buckle Up America Campaign Action Kit.* NHTSA. September 1997. DOT HS 808 628. Information and resource portfolio to solicit participation in the Buckle Up America Campaign.

4. *Item* # 1P0837 Operation ABC Mobilization Organizational Action Kit

(OAK)*. NHTSA. September 1998. Information, resources, and sample materials for organizations participating in and supporting November 23–29, 1998, Operation ABC Mobilization: *A*merica *B*uckles *U*p *C*hildren.

5. Safe Communities Service Center, c/o NHTSA Region VI, 819 Taylor Street, Room 8A38, Fort Worth, Texas 76102, Phone: 817–978–3633, Fax: 817–978–8339, or E-Mail: Safe.Communities@nhtsa..dot.gov. Also visit the Safe Communities web site on the Internet (*http://www.nhtsa.dot.gov/safecommunities*). These resources provide information on best practices, Safe Communities and traffic safety materials, and access to technical assistance sources.

6. *Item #* 5P0026 Safe Communities folio package. NHTSA. 1997. DOT HS 808 578. Contains technical assistance materials on various topics including getting started, coalition building, partnering with traffic safety specialists and evaluation and monitoring tips.

Application Procedures

Each applicant must submit one original and two copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Rose Watson, 400 7th Street, S.W., Room 5301, Washington, DC 20590. An additional three copies will facilitate the review process, but are not required. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Program #NTS–01–9–05068, and identify if you are applying as a general or target population applicant.

Only complete packages received on or before March 26, 1999 at 2:00 P.M. Eastern Standard Time will be considered.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4–88), Application for Federal Assistance, including 424A, Budget Information—Nonconstruction Programs, and 424B, Assurances—Nonconstruction Programs with the required information filled in and the certified assurances included. The OMB Standard Forms SF–424, SF–424A, and SF–424B may be downloaded directly from the OMB Internet web site, *http://www.whitehouse.gov/WH/EOP/OMB/Grants/*. While the Form 424–A deals with budget information, and section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed costs. A supplemental sheet should be provided which presents a detailed, itemized breakdown by cost category (such as hourly rates, unit purchase costs, overhead rates, etc.) of the proposed costs, as well as any costs which the applicant proposes to contribute in support of this effort.

2. Applications shall include a program narrative statement which:

A. Identifies the organizational membership, purpose, and structure; defines the constituency the organization represents and services; demonstrates the organization's commitment to supporting the initiatives of the Buckle Up America Campaign, provides examples of how the organization is involved community outreach activities, and states how this assistance will enable the organization to augment state and local affiliate involvement in this effort. Supporting documentation from concerned interests, partner organizations, and/or affiliates can be used to show level of commitment and interest.

B. Outlines a plan of action pertaining to the scope and detail on how the proposed work will be accomplished, noting how many and which emphasis periods will be targeted, strategies for marketing to state and local affiliates, seeking participation, and gaining high visibility public awareness of the effort. The Action Plan should include a time line of projected activity and milestones including dissemination of information, product development, targeted event schedules, reporting dates, and/or other major tasks associated with the project.

C. Specifies deliverables and due dates including products and reports. The organization should also identify any specific NHTSA materials and quantities which will be requested to support the project and how these will be used and distributed.

D. Describes an Evaluation Plan for determining and documenting activity conducted. This should include a system or mechanism for obtaining timely feedback from participating affiliates on their activities conducted and media coverage obtained during the emphasis period(s).

Project Review Procedures and Criteria

Upon receipt, applications will be screened to ensure that they meet the eligibility requirements. Applications meeting the requirements will be reviewed by a panel using the criteria outlined below. In preparing the application package, applicants should organize the package to follow the outline provided by the review criteria.

Application Review Process and Evaluation Factors

Each application package will initially be reviewed to confirm that the applicant is an eligible recipient and that the application contains all of the items specified in the Application Contents section of this announcement. Each complete application from an eligible recipient will then be evaluated by an evaluation committee. The applications will be evaluated using the following criteria:

1. Understanding of the Buckle Up America Campaign and the role of the organization as a partner in the Campaign (20 %)

The degree to which the applicant has demonstrated an understanding of the Buckle Up America campaign and has described its role as a partner in the campaign.

2. The organization's ability to disseminate the Campaign nationwide and influence participation of its membership (20%)

The status of the applicant as a national organization with a regional, state and/or local chapter structure that covers the nation; the degree to which the proposed effort is designed to actively engage regional, state and/or local chapters of the organization in the proposed effort.

3. Commitment to support the four Buckle Up America emphasis periods (35%)

The degree to which the proposal describes activities by the national organization and its field structure for at least two and up to four emphasis periods that focus on the following key elements:

- Public statements of support for Operation ABC mobilization efforts and/or the child passenger safety and school days emphasis periods;
- Media outreach in support of the mobilizations and the child passenger safety and school days emphasis periods;
- Community action activities and events by local representatives designed to support and complement law enforcement efforts, and draw attention to the child passenger safety and school days emphasis periods.

4. Documentation and Process Evaluation (15%)

The proposal includes a process evaluation design and plans for how the effort will be documented to facilitate NHTSA efforts to provide information to other organizations interested in replicating the proposed activity and to compile Buckle Up America Campaign activity for required Reports to Congress and the President.

*These items may be found directly on NHTSA's web site at: www.nhtsa.dot.gov.

5. Safe Communities (10%)

The degree to which this project promotes the Safe Communities model to members of the national organization and encourages them to utilize this effort as an opportunity to join existing Safe Communities program, integrate this effort into an existing program, or build a new Safe Communities program.

Availability of Funds and Period of Support

Contingent on the availability of funds and satisfactory performance, cooperative agreements will be awarded for a project period of 12 to 15 months. A total of $590,000 is anticipated to be awarded. It is anticipated that individual award amounts, based upon demonstrated need, may range between $10,000 and $50,000. This stated range does not establish minimum or maximum funding levels.

In each project, some portion of the funding requested must be dedicated to evaluation activities. Given the amount of funds available for this effort, applicants are strongly encouraged to seek other funding opportunities to supplement the federal funds. Preference will be given to applicants with cost-sharing proposals from within or outside their organization.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the cooperative agreement program and will:

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of this Cooperative Agreement and to coordinate activities between the Grantee and NHTSA.
2. Provide information and technical assistance from government sources within available resources and as determined appropriate by the COTR.
3. Serve as a liaison between NHTSA Headquarters, Regional Offices and others (Federal, state and local) interested in Buckle Up America Campaign and the activities of the grantee as appropriate.
4. Stimulate the transfer of information among Cooperative Agreement recipients and others engaged in Buckle Up America activities.
5. Provide campaign information and materials to support activities.

Special Award Selection Factors

While not a requirement of this announcement, applicants are strongly urged to seek funds from other federal, state, local and private sources to augment those available under this announcement. For those applications that are evaluated as meritorious for consideration for award, preference may be given to those that have proposed cost-sharing strategies and/or have other proposed funding sources in addition to those in this announcement. In-kind services provided by the applicant organization may be included as a contribution.

Terms and Conditions of Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants).
2. Reporting Requirements and Deliverables:

A. Quarterly Progress Reports should include a summary of the previous quarter's activities and accomplishments, as well as the proposed activities for the upcoming quarter. Any decisions and actions required in the upcoming quarter should be included in the report. The grantee shall supply the progress report to the Contracting Officer's Technical Representative (COTR) every ninety (90) days following date of award.

B. Program Implementation and Evaluation Plan: The grantee shall submit a revised program implementation and evaluation plan, incorporating comments received from the NHTSA COTR, no more than 1 month after award of this agreement. The NHTSA COTR will review and comment, if necessary.

C. Draft Final Report: The grantee shall prepare a Draft Final Report that includes a description of the project, media outreach initiatives, and local affiliate participation and activity, results and findings from the program evaluation. In terms of information transfer, it is important to know what worked and did not work, under what circumstances, and what can be done to avoid potential problems in future projects. The grantee shall submit the Draft Final Report to the COTR 60 days prior to the end of the performance period. The COTR will review the draft report and provide comments to the grantee within 30 days of receipt of the document.

D. Final Report: The grantee shall revise the Draft Final Report to reflect the COTR's comments. The revised final report shall be delivered to the COTR 15 days before the end of the performance period. The grantee shall supply the COTR:

—Four hard copies of the final document.

E. A Briefing to NHTSA and a presentation to at least one national meeting (e.g., Lifesavers * * *).

F. Preparation and submission of a paper for publication in a professional journal. This paper will be submitted to NHTSA initially in draft format and will be circulated for review and comment to NHTSA and others, as appropriate.

3. During the effective performance period of cooperative agreements awarded as a result of this announcement, the agreement as applicable to the grantee, shall be subject to the NHTSA's General Provisions for Assistance Agreements, dated July 1995.

Issued on: February 2, 1999.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs.

[FR Doc. 99–2827 Filed 2–4–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20919]

Greyhound Lines, Inc., et al.—Acquisition—Autobus Turismos Rapidos, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance application

SUMMARY: Greyhound Lines, Inc. (Greyhound), a motor carrier of passengers, Sistema Internacional de Transporte de Autobuses, Inc. (SITA), a wholly owned, non-carrier subsidiary of Greyhound, and Americanos U.S.A., L.L.C. (Americanos), a motor carrier controlled by SITA, jointly seek approval under 49 U.S.C. 14303 for the acquisition of the operating authority and certain other properties of Autobus Turismos Rapidos, Inc. (ATR), a motor carrier of passengers. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182 (effective October 1, 1998). The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by March 22, 1999. Applicants may file a reply by April 6, 1999. If no comments are filed by March 22, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20919 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to applicants' representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW., Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Greyhound holds nationwide, motor passenger carrier operating authority under Docket No. MC–1515.[1] SITA holds no operating authority, but controls Americanos (MC–309813)[2] and proposes to acquire ATR through Americanos. SITA also controls three other motor passenger carriers: Gonzalez, Inc., d/b/a Golden State Transportation Company (Gonzalez) (MC–173837), operating in the Southwest; Los Rapidos, Inc. (MC–293638), operating in California, Nevada, and Arizona; and Autobuses Amigos, L.L.C. (Amigos) (MC–340462), operating between Mexican border crossing points in Texas and points throughout the United States. ATR holds authority in Docket No. MC–181016, to conduct scheduled, regular-route, passenger operations in California, Colorado, New Mexico, Arizona, and Texas. According to applicants, their purchase of ATR has already been consummated, but SITA has placed all of its "membership interests" in Americanos into a voting trust established pursuant to 49 CFR part 1013.

Applicants state that the aggregate gross operating revenues for Greyhound and its affiliates exceeded $2 million during the 12 months preceding the filing of this application. They assert that access to applicants' financial resources will permit ATR's business, specializing in transportation markets addressing Spanish speaking passengers, to grow and will strengthen its competitive position. They state that this will improve service to the traveling public, integrate ATR's services with those of Greyhound, permit both carriers to offer reasonable and reduced fares, and enhance competition.[3] They indicate that the transaction will have little or no effect on Greyhound's total fixed charges, and that ATR's drivers and other employees will be offered the opportunity to apply for positions with Americanos.

Applicants certify that: (1) Greyhound and its affiliates hold "satisfactory" safety ratings (except for Americanos and Amigos, which have not yet been rated, and Gonzalez, which has a "conditional" rating); (2) Americanos and Greyhound have appointed appropriate agents for service of process in each state in which they operate, in accordance with 49 U.S.C. 13303 and 13304 and 49 CFR part 366.1 *et seq.*, and maintain sufficient liability insurance as required by 49 U.S.C. 13906 and 40 CFR part 387.1, *et seq.*; (3) Greyhound, SITA, Americanos, and ATR are not domiciled in Mexico and are not owned or controlled by a person of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction that we find consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result from the proposed transaction; and (3) the interest of carrier employees affected by the proposed transaction.

On the basis of the application, we find that the proposed acquisition is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed to be vacated, and unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed to be vacated.

3. This decision will be effective on March 22, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (2) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024.

Decided: February 1, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2812 Filed 2–4–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33699 (Sub–No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33699[1] to permit the trackage rights to

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[1] *In Laidlaw, Inc. and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.*, STB Docket No. MC–F–20940 (STB served Dec. 17, 1998) (63 FR 69710), we tentatively approved the merger of Greyhound with Laidlaw Transit Acquisition Corp., a wholly owned subsidiary of Laidlaw Inc.

Greyhound also controls several regional motor passenger carriers: Valley Transit Company, Inc. (MC–74), operating in Texas; Carolina Coach Company, Inc. (MC–13300), operating in Delaware, Virginia, and North Carolina; Texas, New Mexico & Oklahoma Coaches, Inc. (MC–61120), operating in Texas, New Mexico, Colorado, Kansas, and Oklahoma; Continental Panhandle Lines, Inc. (MC–8742), operating in Oklahoma and Texas; Vermont Transit Co., Inc. (MC–45626), operating in Maine, Vermont, Massachusetts, and New York; and PRB Acquisition, LLC, doing business as Peoria Rockford Bus Co. (MC–66810), operating in Illinois.

[2] Americanos is authorized to conduct scheduled, regular-route, passenger operations between border crossing points such as San Ysidro/Tijuana, Calexico/Mexicali, and Nogales/Nogales, and such cities as Los Angeles, Seattle, Dallas, Houston, Chicago, Atlanta, and Miami, but it did not conduct any passenger transportation operations before consummation of the purchase of ATR's properties.

[3] According to applicants, SITA has minority ownership interests in two Mexican motorbus operators that connect with Americanos at the Mexican/U.S. border crossing points and this transaction will permit SITA, through Americanos, to use the operating authority and other property of ATR to ease and simplify Mexico/U.S. transborder passenger transportation.

[1] On January 5, 1999, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company over UP's rail line between (1) Kern Junction, CA, in the vicinity of UP's milepost 313.6 (Fresno Subdivision), and Calwa, CA, in the vicinity of UP's milepost 209.1

expire on February 12, 1999, in accordance with the agreement of the parties.

DATES: This exemption is effective on February 12, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33699 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioners' representatives (1) Yolanda M. Grimes, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039, and (2) Joseph D. Anthofer, Esq., Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

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Decided: February 1, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2813 Filed 2–4–99; 8:45 am]

BILLING CODE 4915–00–P

(Fresno Subdivision); and (2) Los Angeles, CA, in the vicinity of UP's milepost 485.0 (Wilmington Subdivision), and San Jose, CA, in the vicinity of milepost 45.7 (Coast Subdivision). *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 33699 (STB served Jan. 21, 1999). The trackage rights operations under the exemption became effective and were scheduled to be consummated on January 12, 1999.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33686]

Dallas, Garland & Northeastern Railroad, Inc.—Lease Exemption—Union Pacific Railroad Company

Dallas, Garland & Northeastern Railroad, Inc. (DGNO), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease from Union Pacific Railroad Company (UP) approximately 54.74 miles of rail lines located in the State of Texas: [1] (i) between milepost 741.3, at Carrollton, and milepost 729.5, at Lake Dallas; (ii) between milepost 285.1, near Spring Creek Parkway, and milepost 324.84, at South Sherman Junction; and (iii) the industrial lead between UP's Mockingbird Yard and the Brookhollow Industrial Park, in Dallas.

In conjunction with the lease of these rail lines, DGNO will acquire approximately 117.76 miles of incidental trackage rights over rail lines located in the State of Texas as follows: (1) local trackage rights over rail lines owned by Dallas Area Rapid Transit: (a) between milepost 758.04, at Dallas, and milepost 741.3, at Carrollton; (b) between milepost 603.5, at Carrollton, and milepost 580.19, at Wylie; and (c) between milepost 281.1, at Plano, and milepost 285.1, at Spring Creek Parkway; (2) overhead trackage rights over a rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF) between BNSF milepost 646.39, at Sherman, and BNSF milepost 711.0, at Irving; and (3) overhead trackage rights over a rail line owned by RAILTRAN between milepost 634.7, at Irving, and milepost 643.8, at North Junction.

Because the projected revenues of the rail lines to be operated will exceed $5 million, DGNO certified to the Board, on December 1, 1998, that the required notice of its rail line acquisition was sent to the national offices of all labor unions representing employees on the lines and was posted at the workplace of the employees on the affected lines on December 1, 1998. *See* 49 CFR 1150.42(e). The transaction is expected to be consummated on January 30, 1999.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

[1] DGNO will be the operator of the property.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33686, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 29, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2665 Filed 2–4–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 27, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 8, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0203.
Form Number: IRS Form 5329.
Type of Review: Extension.
Title: Additional Taxes Attributable to IRAs, Other Qualified Retirement Plans, Annuities, Modified Endowment Contract, and MSAs.

Description: This form is used to compute and collect taxes related to early distributions from individual retirement arrangements (IRAs) and other qualified retirement plans; distributions from education (ED) IRAs not used for educational expenses; excess contributions to traditional IRAs, ED IRAs, and medical savings accounts (MSAs); and excess accumulations in qualified retirement plans.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 59 min.
Learning about the law or the form—42 min.
Preparing the form—1 hr., 0 min.
Copying, assembling and sending the form to the IRS—14 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,042,400 hours.

OMB Number: 1545–1552.

Form Number: IRS Form 8839.

Type of Review: Extension.

Title: Qualified Adoption Expenses.

Description: Section 23 of the Internal Revenue Code allows taxpayers to claim a nonrefundable tax credit for qualified adoption expenses paid or incurred by the taxpayer. Code section 137 allows taxpayers to exclude amounts paid or expenses incurred by an employer for the qualified adoption expenses of the employee which are paid under an adoption assistance program. Form 8839 is used to figure the credit and/or exclusion.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—46 min.
Learning about the law or the form—20 min.
Preparing the form—1 hr., 31 min.
Copying, assembling, and sending the form to the IRS—35 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 159,500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–2704 Filed 2–4–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–13

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–13, Section 403(b) Plan Corrections and Closing Agreements.

DATES: Written comments should be received on or before April 6, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Section 403(b) Plan Corrections and Closing Agreements.

OMB Number: 1545–1645.

Revenue Procedure Number: Revenue Procedure 99–13.

Abstract: This revenue procedure provides a comprehensive system of correction programs and procedures for an employer that offers an employee retirement plan that is intended to satisfy the requirements of Internal Revenue Code section 403(b), but has failed to satisfy those requirements because of operational, demographic, or eligibility failures. This system permits an employer to correct these failures, and thereby provide its employees with retirement benefits on a tax-favored basis.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 3 hrs., 48 mins.

Estimated Total Annual Burden Hours: 1,899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 26, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–2696 Filed 2–4–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, New Routine Use Statement

AGENCY: Department of Veterans Affairs.

ACTION: Notice; New routine use statement.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is adding a new routine use to the system of records entitled "Veterans and Beneficiaries Identification and Records Location Subsystem—VA" 38VA23.

DATES: Interested persons are invited to submit written comments, suggestions, or objections regarding the new routine use. All relevant material received

before March 8, 1999, will be considered. All written comments received will be available for public inspection at the Office of Regulations Management (02D), 810 Vermont Ave., NW., Room 1158, Washington, DC 20420, only, between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). If no public comment is received during the 30 day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the routine use included herein is effective 30 days after publication in the **Federal Register**.

ADDRESSES: Written comments concerning the new routine use may be mailed to the Director, Office of Regulations Management (O2D), 810 Vermont Avenue, NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Bill Lanson, Legal Consultant, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7267. The Internet e-mail address for Mr. Lanson is capblans@vba.va.gov.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs (VA) has decided, as a matter of policy, to provide to National and State Veterans Service Organizations access to information contained in the Benefits Delivery Network (BDN) concerning which organization or individual holds a Power of Attorney to represent a claimant even though the service organization accessing the information does not hold a Power of Attorney for the claimant in question. VA will also provide access to information that a claimant does not have a recognized power of attorney, when such is the case.

Currently, a veteran may ask a veterans' service organization for assistance with a claim for benefits by executing a power of attorney naming the organization as the veteran's representative for purposes of prosecuting his or her claim. Some veterans represent themselves in claim matters. If a veteran names a service organization as his or her representative, the service organization may obtain information concerning the claimant from the BDN in order to assist the veteran with the veteran's claim.

At present, unless a claimant has provided a service organization with a power of attorney, that organization cannot obtain any information concerning the claimant from the Benefits Delivery Network (BDN) because of the restrictions of the Privacy Act. This includes information that the claimant does not have an appointed power of attorney or the name of the organization or individual who has been given a power of attorney for the claimant.

Sometimes, a veteran may later ask another service organization either for information on the status of the claim or for assistance. Also, a veteran who is not represented by a service organization may ask one for information about his or her claim. In either case, the service organization that the veteran has asked for help cannot access information on the veteran's claim on the BDN, and, therefore, cannot tell the veteran anything about the veteran's claim or its status or assist the veteran with the claim.

If the service organization is provided information through BDN as to who has been provided a power of attorney, it will permit the service organization being contacted to direct the claimant to his or her appointed representative. Alternatively, if the claimant does not have an appointed power of attorney, it will enable the service organization to inform the claimant what he or she must do to obtain representation or to direct the claimant to seek assistance from regional office employees.

VA has determined that the release of information under the circumstances described above is a necessary and proper use of the information in this system of records and that the specific routine use proposed for the transfer of this information is appropriate.

An altered system of records report and a copy of the revised system notice have been sent to the House of Representatives Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) and guidelines issued by OMB (59 FR 37906, 37916–18 (7–25–94)).

The proposed routine Use will be added to the system of records entitled "Veterans and Beneficiaries Identification and Records Location Subsystem—VA." 38VA23 published at 49 FR 38095, August 26, 1975, and amended at 41 FR 11631, March 19, 1976, 43 FR 23798, June 1, 1978, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 48 FR 45491, October 5, 1983, 50 FR 13448, April 4, 1985, 60 FR 32210, June 20, 1995, and 63 FR 7196, February 12, 1998, is amended by adding the information as shown below:

* * * * *

20. The power of attorney of a claimant for VA benefits or the information that a power of attorney has not been appointed by the claimant may be disclosed from the Benefits Delivery Network to any recognized veterans service organization even though the service organization does not hold a current power of attorney for the claimant.

Approved: January 11, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Report of Intention To Alter Federal Notice of System of Records for "Veterans and Beneficiaries Identification and Records Location Subsystem—VA" (38VA23)

Purpose

Amending this system of records will provide National and State Veterans Service Organizations with access to information contained in the Benefits Delivery Network (BDN) concerning which organization or individual holds a power of attorney to represent a claimant even though the service organization accessing the information does not hold a power of attorney for the claimant in question. VA will also provide the service organizations with access to information contained in the BDN that a claimant does not have a power of attorney, when such is the case.

Authority

"Veterans and Beneficiaries Identification and Records Location Subsystem—38VA23"

Probable Privacy Impact

This routine use will have minimal effect on the privacy rights of individuals. The change will provide information to the service organization contacted to enable it to direct the claimant to his or her appointed power of attorney. Alternatively, if the claimant does not have an appointed power of attorney, it will enable the service organization to inform the claimant what he or she must do to obtain representation or to direct the claimant to seek assistance from regional office employees. No other information concerning the claimant or his or her claim will be provided to the service organization unless that organization obtains a power of attorney from the claimant.

Risk Assessment

VA will safeguard individual records as required by the Privacy Act of 1974. Physical access to the computer rooms with the VA facility (VA regional office or medical facility) is generally limited to appropriate locking devices and restricted to authorized VA employees

and vendor personnel. Access to the VA Automation Center (VAC) in Austin, Texas is restricted to VAC employees, custodial personnel, Federal Protective Service, and other security personnel. Access to the automated VA records by VA employees and authorized representatives of claimants requires clearance by the site security officer. Electronic access to data is controlled by a series of individually unique passwords/codes as a part of each data message, and employees and service organization personnel are limited to only that information in the file(s) that is needed in the performance of their official duties.

Routine Uses

This new routine use enables VA to provide National and State Veterans Service Organizations with access to information contained in the Benefits Delivery Network (BDN) concerning which organization or individual holds a power of attorney to represent a claimant even though the service organization accessing the information does not hold a power of attorney for the claimant in question. VA will also provide access to information contained in the BDN that a claimant does not have a power of attorney, when such is the case.

Information Collection Requirements

This amendment requires no new information collection requirements.

[FR Doc. 99–2726 Filed 2–4–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 64, No. 24
Friday, February 5, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-445 and 50-446]

TU Electric; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

Correction

In notice document 99–1847 beginning on page 4148 in the issue of Wednesday, January 27, 1999, make the following correction(s):

On page 4151, in the second column, in the third line, "February 28, 1999" should read "February 26, 1999".

[FR Doc. C9–1847 Filed 2–4–99; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release Nos. 34-40934; IC-23640; File No. S7-18-97]

RIN 3235-AG97

Rulemaking for EDGAR System

Correction

In rule document 99–1043 beginning on page 2843 in the issue of Tuesday, January 19, 1999, make the following correction(s):

PART 249–[CORRECTED]

On page 2853, beginning in the second column, Form 13F is reprinted in its entirety.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Form 13F Cover Page

Report for the Calendar Year or Quarter Ended: _____

Check here if Amendment [ ]; Amendment Number: ____

This Amendment (Check only one.):

☐ is a restatement.

☐ adds new holdings entries.

Institutional Investment Manager Filing this Report:

Name: _____

Address: _____

_____

_____

Form 13F File Number: 28-_____

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: _____

Title: _____

Phone: _____

Signature, Place, and Date of Signing:

_____

[Signature]

_____

[City, State]

_____

[Date]

Report Type (Check only one.):

☐ 13F HOLDINGS REPORT. (Check here if all holdings of this reporting manager are reported in this report.)

☐ 13F NOTICE. (Check here if no holdings reported are in this report, and all holdings are reported by other reporting manager(s).)

☐ 13F COMBINATION REPORT. (Check here if a portion of the holdings for this reporting manager are reported in this report and a portion are reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager: [If there are no entries in this list, omit this section.]

Form 13F File Number 28– _____

Name _____

[Repeat as necessary.]

Form 13F Summary Page

Report Summary:

Number of Other Included Managers:

_____

Form 13F Information Table Entry Total:

_____

Form 13F Information Table Value Total:

$_____ (thousands)

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this report is filed, other than the manager filing this report. [If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No. _____

Form 13F File Number 28– _____

Name _____

[Repeat as necessary.]

FORM 13F INFORMATION TABLE

Column 1	Column 2	Column 3	Column 4	Column 5			Column 6	Column 7	Column 8		
Name of issuer	Title of class	CUSIP	Value (x$1000)	Shrs or prn amt	SH/PRN	Put/Call	Investment discretion	Other managers	Voting authority		
									Sole	Shared	None

FORM 13F INFORMATION TABLE—Continued

Column 1	Column 2	Column 3	Column 4	Column 5			Column 6	Column 7	Column 8		
Name of issuer	Title of class	CUSIP	Value (x$1000)	Shrs or prn amt	SH/PRN	Put/Call	Investment discretion	Other managers	Voting authority		
									Sole	Shared	None

[Repeat as necessary]

§ 249.326 Including Form 13F–E [Removed]

8. Section 249.326 including Form 13F–E is removed.

By the Commission.

Dated: January 12, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. C9–1043 Filed 2–4–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 555

[Docket No. NHTSA-99-4993]

RIN 2127–AH51

Temporary Exemption From Motor Vehicle Safety Standards; Bumper Standard

Correction

In rule document 99–933 beginning on page 2858 in the issue of Tuesday, January 19, 1999, make the following correction(s):

§ 555.6 [Corrected]

On page 2861, in the third column, amendatory instruction 9. should read:

"9. Sections 555.6(a), introductory text, 555.6(a)(2)(v), last sentence in parenthesis, 555.6(b), introductory text, 555.6(b)(1), 555.6(b)(2), introductory text, 555.6(b)(2)(i), 555.6(b)(2)(iii), 555.6(b)(4), 555.6(c), introductory text, 555.6(c)(1), 555.6(c)(2), introductory text, 555.6(c)(2)(iv), 555.6(d), introductory text, 555.6(d)(1), introductory text, 555.6(d)(1)(ii), 555.6(d)(1)(iv), and 555.6(d)(1)(v) are revised to read as follows:"

[FR Doc. C9–933 Filed 2–4–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
February 5, 1999

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981224323–8323–01; I.D. 120198B]

RIN 0648–AL23

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is proposing revisions to several sections of regulations that pertain to permits, recordkeeping, and reporting requirements for groundfish fisheries of the Exclusive Economic Zone (EEZ) off Alaska. The proposed changes are necessary to clarify and simplify existing text, facilitate management of the fisheries, promote compliance with regulations, and facilitate enforcement efforts. This action is intended to further the goals and objectives of the fishery management plans (FMPs) for Groundfish of the Gulf of Alaska (GOA) and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area.

DATES: Comments must be received by February 22, 1999.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Copies of the Regulatory Impact Review (RIR) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the EEZ off Alaska under authority of the FMPs. These FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H to 50 CFR part 600. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act.

With this rulemaking, NMFS proposes revisions to several sections of the implementing regulations for these FMPs that pertain to permits, recordkeeping, and reporting. The proposed changes are intended to clarify existing regulatory text, facilitate management of the fisheries, promote compliance with regulations, and facilitate enforcement efforts. Most of the proposed revisions address technical edits and clarifications to existing recordkeeping and reporting (R&R) requirements and are described under the section-by-section analysis. Those proposed revisions that are more substantial, in that they would alter current recordkeeping and reporting procedures, are highlighted in this document.

NMFS/ADF&G Integrated Species List

All retained fish, not just NMFS-managed groundfish, would be recorded in the logbooks and in the weekly production reports (WPRs) using an expanded and combined Alaska Department of Fish & Game (ADF&G)/NMFS species code list. This change would facilitate the U.S. Coast Guard's and NMFS Enforcement's compliance monitoring of maximum retainable incidental catch percentages being used on all retained catch, not just catch of federally managed species, and would facilitate agreement of a fisherman's harvest records between NMFS reports and ADF&G fish tickets that are required for species managed by the State of Alaska.

NMFS/International Pacific Halibut Commission (IPHC) Combined Logbooks

NMFS, in cooperation with the IPHC, ADF&G, the fishing industry, and the Alaska Fisheries Science Center (AFSC), Auke Bay Laboratory, would develop separate logbook formats for nontrawl catcher vessels equal to or greater than 60 ft (18.3 m) length overall and nontrawl catcher processors that are participating in both groundfish and Individual Fishing Quota (IFQ) fisheries. Operators of these vessels currently maintain two logbooks, one for NMFS and one for the IPHC, often duplicating data entries. NMFS is providing this combined logbook partially at the request of the fishing industry to decrease the burden on the fishing industry, and to improve data collection on sablefish and halibut. The revised format would allow the vessel operator to maintain just one logbook rather than two separate logbooks when fishing for both groundfish and Pacific halibut. The combined logbook also would collect additional information for NMFS scientists to augment sablefish stock assessment work.

To implement this change, § 679.5(a)(1)(v) would be added to define logbook requirements for participants in IFQ fisheries. The new combined NMFS/IPHC logbook format would be introduced for use by catcher vessels and catcher/processors that participate in both the groundfish fisheries of the GOA or BSAI, and sablefish or halibut IFQ fisheries during the same fishing year.

To accommodate this rulemaking and printing and distribution schedules, the Administrator, Alaska Region, NMFS (Regional Administrator) would revise sections 679.5(c)(3) and would issue standard groundfish logbooks to all catcher vessels and catcher/processors, including those that will participate in 1999 sablefish or halibut IFQ fisheries. Prior to the start of the 1999 IFQ fishery, the Regional Administrator would send a combined groundfish/IFQ logbook to all catcher vessels over 60 ft (18.3 m) LOA that reported groundfish and IFQ harvest in 1998 and to all catcher/processors that reported groundfish and IFQ harvest in 1998. The operator of a vessel that plans to participate in 1999 IFQ fisheries would use the standard groundfish logbook until the combined groundfish/IFQ logbook was received. Once the combined groundfish/IFQ logbook is received, the operator would be required to use the combined logbook for the remainder of the fishing year.

DCPL Zeroed-out Cumulative Totals

Section 679.5(a)(9)(ii)(B) and (a)(9)(iii) would be revised to require that in addition to the beginning of each weekly reporting period, the cumulative totals be "zeroed out" in the catcher/processor and mothership daily cumulative production logbooks (DCPL) after offload or transfer of all fish or fish product onboard if such offload occurs prior to the end of a weekly reporting period.

End of Year WPR

Section 679.5(i)(2) would be redesignated as section 679.5(i)(2)(i) and a new section 679.5(i)(2)(ii) would be added to require the submittal of a year-end WPR by December 31 regardless of where that date falls in the weekly

reporting period. This change is designed to provide a clear distinction in the data base between the old fishing year and the new fishing year.

Mothership Check-in/Check-out Report

Sections 679.5(h)(2)(ii)(B)(*1*) and (h)(3)(i)(A)(*3*) would be revised to require motherships to record the reporting areas where groundfish were harvested to replace the current requirement to record the reporting area where the mothership begins to receive groundfish.

Weekly Cumulative Mothership ADF&G Fish Ticket Distribution

Section 679.5(m)(3)(ii)(A) through (C) would be added to present additional information on distribution of the mothership weekly cumulative multi-copy ADF&G fish ticket.

Removal of Sunset Date From Pacific Cod Reserve Release and Removal of In-text Table

Section 679.20(b)(1)(v) would be revised by removing the date from the paragraph title and extending it indefinitely. This provision was originally added in January 1994 to implement Amendment 24 to the BSAI FMP. Amendment 24 contained a sunset date of December 31, 1996, and was replaced by Amendment 46 in 1996, which permanently extended the management measures established by Amendment 24. Through an oversight caused by the recent consolidation of the groundfish fishery regulations, section 679.5(b)(1)(v) was not included in either the proposed or final rulemaking for Amendment 46. In order to correct this oversight and implement the Council's intent when it adopted Amendment 46, the sunset date would be removed from section 679.5 (b)(1)(v). Additionally, the in-text table at section 679(g)(3) would be removed. The information within the in-text table is found at Table 3.

Community Development Quota (CDQ) Fisheries and Buying Stations

Section 679.5(n) would be revised to incorporate the changes made under the multi-species CDQ program and to reformat regulatory text to be more uniform with the rest of this section. Sections 679.5(n)(1)(i); 679.30(a)(5)(i)(B); and 679.32(c), (c)(3), (d)(1), (e)(3), and (e)(5) would be revised by removing reference to a buying station, because a buying station is not required to submit CDQ delivery reports or CDQ catch reports.

Section-by-Section Analysis

NMFS proposes to alter the format of the regulatory text in several places to provide a more logical flow of information, to clarify text, and to add paragraph titles and cross references where needed.

Definitions (§ 679.2)

Added Definitions

The following additions to the definitions in § 679.2 are proposed:

ADF&G fish ticket number. The term "ADF&G fish ticket number" would be added because this term is used extensively in § 679.5.

CDQ Delivery number. The term "CDQ Delivery number" would be added to mean a sequential number assigned by the catcher vessel operator during a calendar year, that uniquely identifies each CDQ delivery. The sequence of CDQ delivery numbers begins with the first fishing activity during a year under a multispecies CDQ, and the number would be incrementally adjusted with each delivery of fish during that year.

Fish product. The term "fish product" would be added as a cross reference to "groundfish product."

Haul. The term "haul" would be added as a cross reference to gear retrieval.

Non-chinook salmon. The term "non-chinook salmon" would be added to mean coho salmon, pink salmon, sockeye salmon, or chum salmon.

Other gear. The term "other gear" would be added to mean any gear other than "authorized fishing gear."

Revised Definitions

The following revisions to the definitions in § 679.2 are proposed:

Authorized fishing gear. The term "authorized fishing gear" would be amended by renumbering the terms of this definition; revising the introductory paragraph; revising the definition of longline to include free-floating line with hooks attached and to include handline; adding definitions for troll, handline, and pot; and revising the definition of longline to include anchored and unanchored gear types. These proposed revisions are intended to standardize the use of gear terms throughout the regulations at 50 CFR part 679.

Buying station. The term "buying station" would be revised by adding the words "land-based" before the word "person."

CDQ number. The term "CDQ number" would be revised to include an additional requirement to record this information in logbooks.

Chinook Salmon Savings Area of the BSAI. The term "Chinook Salmon Savings Area of the BSAI" would be revised by updating the cross reference and by adding a cross reference to Figure 8 to this part.

Chum Salmon Savings Area of the BSAI CVOA. The term "Chum Salmon Savings Area of the BSAI CVOA" would be revised by updating the cross reference and by adding a cross reference to Figure 9 to this part.

Forage fish. The term "forage fish" would be revised by adding a cross reference to Table 2 to this part.

Gear deployment. The term "gear deployment" would be revised to conform with the revised definition of "authorized fishing gear," specifically to change the terms "jig/troll, hook-and-line, or longline gear" to read "longline gear" and to change the term "pot-and-line gear" to read "pot gear."

Nearshore Bristol Bay Trawl Closure Area of the BSAI. The term "Nearshore Bristol Bay Trawl Closure Area of the BSAI" would be revised by adding a cross reference to Figure 12 to this part.

Person. The term "person" would be clarified by adding titles to paragraphs (1) through (3) to read: *IFQ and CDQ Programs and General Usage, High Seas Salmon Fishery permits, and Vessel moratorium (Applicable through December 31, 1998.*

Set. The term "set" would be clarified to include a test set, unsuccessful harvest, or improperly working gear hauled in empty. A cross reference to the definition of "gear deployment" would be added.

Steller Sea Lion Protection Areas. The term "Steller Sea Lion Protection Areas" would be revised to provide a cross reference to new Figure 16 to this part. Cross references to Tables 4, 5, and 6 would be removed, and several cross references to regulatory text would be changed.

Stem. The term "stem" would be revised by adding a cross reference to Figure 6.

Stern. The term "stern" would be revised by adding a cross reference to Figure 6.

Tender vessel. The term "tender vessel" would be corrected by removing the words "or buying station" from the end of the sentence. A tender vessel is a buying station, and buying stations do not deliver to other buying stations; they deliver only to motherships and shoreside processors. A cross reference is added to the definition of buying station, since a tender vessel is defined as a buying station.

U.S. citizen. The term "U.S. citizen" would be revised by adding a new paragraph (1) *General Usage* and by

redesignating existing paragraphs (1) and (2) to read as paragraphs (2)(a) and (2)(b), and by adding a title to new paragraph (2) *IFQ program*, as this definition applies only to the IFQ Program.

Permits (§ 679.4).

Paragraph (b)(2) would be revised to clarify that a Federal fisheries permit must be obtained by a catcher vessel owner or operator participating in a non-groundfish fishery when retention of incidentally caught groundfish is required by regulations.

If a permit is surrendered, current regulations require the permit to be submitted to the NMFS Enforcement Office. Paragraph (b)(4)(ii) would be revised such that a permit would be submitted to the Assistant Administrator of the NMFS Restricted Access Management (RAM) Program when surrendered.

Paragraph (b)(5)(iv)(D) would be revised to require that a mothership or catcher/processor operating in the GOA must indicate on the permit application whether it will be participating in the inshore or offshore component.

Paragraphs (b)(5)(v) and (f)(2)(vi) would be revised to allow an agent of a vessel owner or shoreside processor owner to sign the permit application for the owner.

Cross references to the halibut/sablefish CDQ permits and CDQ cards in paragraph (e) would be revised to read § 679.32(f)(3) and (4).

Recordingkeeping and Reporting (§ 679.5)

Paragraph (a)(1)(vi) would be added to provide instructions on which logbook to use when participating in a CDQ fishery.

Paragraph (a)(3)(iii) would be revised by removing the requirement to sign the logbook within a certain time limit and adding that requirement within paragraphs (c)(2)(i)(C), (c)(2)(ii)(D), (d)(2)(iv), (e)(2)(v), and (f)(2)(v).

Paragraphs (a)(4)(ii) and (iii) would be added to clarify the recordkeeping and reporting requirements for reinstatement of a surrendered Federal fisheries permit or a Federal processor permit within the same fishing year. The operator or manager would be required to ensure that maintenance of all recordkeeping and reporting requirements is continuous throughout that year, without interruption of records.

Paragraph (a)(6)(iii)(B)(*1*) would be revised to clarify the requirements for recording date information in the new combined NMFS/IPHC catcher vessel daily fishing logbook (DFL).

Paragraph (a)(6)(iii)(B)(*2*) would be redesignated as paragraph (a)(6)(iii)(B)(*3*) and a new paragraph (a)(6)(iii)(B)(*2*) would be added to clarify the requirements for recording date information in the groundfish catcher vessel DFL.

Paragraphs (a)(7)(ii)(B), (a)(7)(iii)(A), (a)(7)(v)(A)(*2*)(*i*), (a)(7)(v)(A)(*3*)(*i*), (a)(7)(v)(B)(*2*)(*i*), and (a)(7)(v)(E)(*5*) would be revised by replacing the words "logbook page" with "logsheet."

The introductory text to paragraph (a)(7)(v)(A) and paragraphs (a)(7)(v)(A)(*4*) and (a)(7)(v)(A)(*5*) would be removed. Paragraphs (a)(7)(v)(A)(*1*) through (a)(7)(v)(A)(*3*) would be revised to reorganize paragraph (a)(7)(v)(A), to include gear type requirements for a buying station, and to remove the gear type "PTR TRANSFER" from recordkeeping and reporting.

Paragraph (a)(7)(v)(B) would be revised to clarify the requirements for recording reporting area on logbooks and forms.

Paragraph (a)(7)(v)(C) would be redesignated as (a)(7)(v)(C)(*1*) and revised to clarify the requirements for recording numbers of observers on logbooks. In addition to recording the number of observers, paragraph (a)(7)(v)(C)(*2*) would add a requirement to record the name of the observer and the observer cruise number in the new combined groundfish/IFQ logbook.

Paragraph (a)(7)(v)(D) would be revised to clarify the requirements for recording the number of crew on logbooks and forms.

Paragraph (a)(7)(v)(E) would be revised to clarify the requirements for recording CDQ program information on logbooks and forms in response to the new multi-species CDQ program and to add a new requirement to record CDQ delivery number on logbooks and forms.

Paragraph (a)(7)(v)(F) would be added to clarify requirements for recording the experimental fisheries number in the CDQ number block on logbooks and forms.

Paragraph (a)(14)(i)(B) would be revised to add the option of submitting a data file to NMFS by e-mail.

Paragraph (a)(14)(iii)(A), (a)(14)(iii)(B), and (a)(14)(iv)(B)(*1*) would be revised to add the logsheet distribution of the new combined groundfish/IFQ logbooks, to instruct on submittal of the yellow logsheets from both groundfish and groundfish/IFQ logbooks to NMFS in 1999 so that each fishing day of the year is accounted for without duplication.

Paragraph (a)(14)(iv)(E) would be added to provide instructions on the submittal of the green copy of the combined groundfish/IFQ logbooks.

Introductory paragraph (c)(2)(i) would be redesignated as (c)(2)(i)(A), paragraphs (c)(2)(i)(A) through (C) would be redesignated as (c)(2)(i)(A)(1) through (3), respectively, and paragraph (c)(2)(i)(D) would be redesignated as paragraph (c)(2)(i)(B).

Paragraph (c)(3) would be revised by adding a new paragraph (c)(3)(i) on requirements of the combined groundfish/IFQ catcher vessel and catcher/processor logbooks for use by vessel operators who participate in both the IFQ and groundfish fisheries. A new paragraph (c)(3)(ii) would be added that would include requirements from former paragraphs (c)(3)(i) through (vi) on groundfish logbook requirements to be used by operators of catcher vessels and catcher/processors who participate only in the groundfish fisheries. The requirement at current paragraph (c)(3)(vii) for a catcher vessel operator to record pollock and Pacific cod would be removed; and paragraphs (c)(3)(viii) through (x) that formerly described IFQ fields would be removed.

Paragraphs (e)(1)(iii) and (f)(1)(ii)(C) would be revised to clarify that motherships and shoreside processors should not record in the DCPL those discards that occur during processing of groundfish received from another processor through a processor transfer report (PTR).

Paragraph (f)(1)(iii) would be added to require that when groundfish product is received by a shoreside processor and subsequently transferred offsite before processing, the manager of a shoreside processor must record those groundfish in both the landings and productions sections of the DCPL. This procedure would ensure that the NMFS data comparisons between landings and product will be more accurate; otherwise estimated values for product would be less than estimated values for landings.

Paragraph (h) would be amended as follows. First, paragraph (h)(1)(iii) would be added and (h)(2)(i)(C) would be revised to clarify the requirements for CDQ fishery check-in/check-out reports for each CDQ group. Second, a new paragraph (h)(2)(ii)(D) would be added and paragraph (h)(2)(i)(B)(*1*) would be revised to indicate that a buying station check-in/check-out report is required specifically from a vessel buying station and not a land-based buying station. Third, paragraph (h)(2)(i)(B)(*2*) and (h)(3)(i)(A)(*3*) would be revised to change the requirement for mothership check-in. With these changes, a mothership would check-in to each reporting area from which harvest is received from catcher vessels. Fourth, (h)(2)(ii)(D) would be removed because

the requirement for land-based buying stations to submit check-in and check-out reports is unnecessary because many land-based buying stations are trucks or small shacks temporarily set up to receive groundfish from catcher vessels. The check-in/check-out reports from the associated shoreside processor are considered adequate for data collection purposes. Fifth, the heading for paragraph (h)(2)(ii)(F) would be revised. Finally, paragraph (h)(3)(i)(D)(*1*) would be revised to specify requirements for a vessel buying station and paragraphs (h)(3)(i)(D)(*2*) and (h)(3)(ii)(D) would be removed.

Paragraph (k)(2)(ii)(A) would be revised to change the words "Table 8" to read "Table 5."

Paragraph (l)(5)(vi) would be revised and the in-text table removed and placed as Table 9 to this part, to allow this table of ports to be more easily accessible.

Experimental fisheries (§ 679.6). Paragraph (g) would be added to include the requirement that recordkeeping and reporting requirements at § 679.5(a) through (k) would also be required for participants in experimental fisheries.

Prohibited species bycatch management (§ 679.21). Paragraph (b)(5) would be added to include a cross reference to § 679.24. Paragraph (e)(7)(vi)(A) would be revised to correct a cross reference.

Closures (§ 679.22). Paragraphs (a)(7), (a)(8), and (b)(2), which describe Steller Sea Lion Protection Areas of the Bering Sea Subarea and Bogoslof District, Aleutian Islands Subarea, and GOA, would be removed and combined into a new paragraph (g) to present these areas in one section. Paragraphs (a)(9) and (a)(10) would be redesignated to read (a)(7) and (a)(8), respectively; and newly redesignated paragraph (a)(8) would be revised to correct a cross reference. Paragraph (b)(2) would be added to include an existing provision that prohibits the use of gear other than nontrawl gear in the Southeast Outside District of the GOA. Finally, the heading to paragraph (h) would be revised to add the word "closures."

Gear limitations (§ 679.24). Paragraphs (b)(1)(i) and (ii) would be removed and would be redesignated as subparagraphs (7)(a) and (b) to the definition for the term "pot" under the term "authorized fishing gear" in § 679.2. This proposed change is necessary in order to have all of the paragraphs describing "pot" gear in one place. As a result of this proposed change, paragraph (b)(1)(iii) would be redesignated as (b)(1) and paragraphs (b)(1)(iii)(A) and (B) would be redesignated as (b)(1)(i) and (ii).

Equipment and operational requirements for catch weight measurement (§ 679.28). Paragraph (b)(5)(i) would be revised by replacing the words "daily cumulative production logbook" with "DCPL" for consistency of regulatory text, and the last line of the sentence would be removed, because the same requirement is duplicated in the first line of the following paragraph (b)(5)(ii).

General CDQ regulations (§ 679.30). Paragraph (a)(1)(iv) would be revised to change the words "Table 7" to read "Table 4." Paragraph (a)(5)(i)(B) would be corrected to remove "buying station" from regulatory text. Section 679.30(a)(5)(i) contains requirements for listing eligible vessels and processors within a CDQ group's fishing plan. The buying station was incorrectly included in this paragraph because it does not process fish and is not required to have a Federal processor permit.

CDQ reserves (§ 679.31). Paragraph (b)(3), which provides for the halibut CDQ reserves from halibut regulatory areas, would be revised by adding a cross reference to Figure 15, IPHC halibut regulatory areas.

CDQ catch monitoring (§ 679.32). Paragraphs (c) and (e)(4) would be revised by replacing the outdated term "shoreside processing plant" with "shoreside processor." Paragraph (c)(1)(i) would be revised to add a cross reference to § 679.5(n). Paragraph (c)(1)(ii) would be corrected to remove the words "trawl catcher/processors or" and "catcher/processor or" because catcher vessel deliveries are not made to catcher/processors as defined at § 679.2.

Paragraphs (d)(1), (e)(3) through (e)(5), and (f)(3) would be revised by removing references to buying stations. As stated earlier, the buying station was incorrectly included in these paragraphs. Paragraph (f)(3) would be further revised by replacing the words "for the duration of the CDP" with "for the fishing year" because the CDQ permits are issued annually.

Paragraph (f)(7) would be revised by replacing the words "logbooks and weekly production reports" with the words "DFLs, DCPLS, and WPRs" for consistency of regulatory text.

Paragraph (f)(8) would be added to add a cross reference to § 679.23, and (f)(9) would be added to add a cross reference to § 679.43.

Limitations on use of QS and IFQ (§ 679.42). Paragraphs (c)(2)(i), (ii), (iii), and the in-text table would be removed.

Tables

Table 1, which describes product codes, would be revised. Product code 96 would be revised to read: "Flea-infested fish, parasite-infested fish, decomposed, or previously discarded fish." Also, a new discard code 93 "Whole fish/damaged" would be added to read: "Whole fish discarded due to damage caused by observer's sampling procedures."

Table 2, which describes species codes, would be revised to incorporate the ADF&G species codes with the NMFS species codes. As a result of this integration, the species code for Pacific sand fish would be changed from 210 to 206, and code 210 would read "eels or eel-like fish."

Table 3, which describes product recovery rates, would be revised to remove two incorrect values for octopus and squid under product code 37. New values will be added when available.

Tables 4, 5, and 6, which describe Steller Sea Lion protection areas in the BSAI and GOA, would be removed and combined into a new table of coordinates for new Figure 16 to this part.

Tables 7 through 11 would be redesignated as Tables 4 through 8.

Table 9 would be added to present the list of primary IFQ ports formerly found at § 679.5(l)(3)(viii).

Table 10 would be added to present the IFQ/CDQ gear codes and descriptions needed for electronic submittal of IFQ reports.

Figures

Figures 1 through 5 and 7 through 13 would be reissued with an improved format. The title of Figure 9 would be corrected.

A new Figure 16 would be added to present the Steller Sea Lion Protection Areas in the EEZ off Alaska and the combined coordinates from existing Tables 4, 5, and 6. Regulations would be revised by removing paragraphs § 679.22(a)(7), (a)(8), and (b)(2) and by adding a new paragraph (g). This change is intended to consolidate Steller Sea Lion information within one location. The action proposed in 63 FR 60288 (November 11, 1998) would be incorporated into Figure 16 to extend the seaward 20-nm no-trawl zone around the Seguam Island and Agligadak Island rookeries in the Eastern District of the Aleutian Islands into a year-round closure. Changes that are proposed for Figure 16 to this part are affected by other emergency interim rulemaking (64 FR 3437, January 22, 1999) and may be revised by NMFS prior to the final rule for recordkeeping and reporting.

Finally, new Figures 17 and 18 would be added presenting the BSAI *C. opilio* and *C. bairdi* tanner crab and the BSAI king crab endorsement areas.

respectively. This change is necessary to implement requirements of the upcoming License Limitation Program.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB approval for the majority of information collected under 50 CFR 679.5 has been obtained under OMB control numbers 0648–0206, –0213, –0269, and –0272. Proposed additions and revisions to the collection under 0648–0213 with this rulemaking have been submitted to OMB for review and approval.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

Approved under 0648–0206—Alaska Permits: No new forms are proposed with this rulemaking. The regulatory text at 679.4(b)(5)(iv)(D) would be revised to require that all motherships and catcher/processors indicate whether they are participating in the inshore or offshore component, regardless of target fishery; originally inshore/offshore indication was required only if the vessel operator planned to target pollock and Pacific cod. This change does not require revision of the forms.

Two questions are removed from the Federal fisheries permit application form that determine the size of logbook to be sent to a catcher vessel; in 1999 only one size logbook is available for catcher vessels.

Approved under 0648–0213—Alaska Region Logbook Family of Forms. A summary of logbook and form requirements approved under 0648–0213 is presented in two categories: (1) Those that have changes in requirements that may or may not result in new response times and (2) those that have no changes in requirements with existing response times.

Requirements With Changes

Buying Station Check-in/Check-out Report (0.08 hr or 5 minutes per response; no change in response time, change is in number of respondents from 100 to 217); Shoreside Processor Check-in/Check-out Report (0.13 hr or 8 minutes per response; no change in response time, change is in number of respondents from 176 to 142); Product transfer report (0.18 hr or 11 minutes per response; no change in response time, change is in number of respondents from 170 to 310); Catcher vessel daily fishing logbook (change is in format; instead of one logbook format (0.30 hr or 18 minutes per response), now there are two—one for groundfish (0.28 hr or 17 minutes per response) and one for groundfish/IFQ (0.47 hr or 28 minutes per response); Catcher/processor daily cumulative production logbook (change is in format; instead of one logbook format (0.50 hr or 30 minutes per response), now there are two—one for groundfish (0.52 hr or 31 minutes per response) and one for groundfish/IFQ (0.68 hr or 41 minutes per response); Shoreside processor DCPL (change in response time from 0.40 hr or 24 minutes per response to 0.52 hr or 31 minutes per response and in number of respondents, from 176 to 142); and Buying Station Daily Cumulative Logbook (no change in response time 0.38 hr or 23 minutes per response; change is in number of respondents from 100 to 217).

Requirements Without Changes

Weekly Production Report (0.28 hr or 17 minutes per response); Daily Production Report (0.18 hr or 11 minutes per response); Mothership or Catcher/processor Check-in/Check-out Report (0.12 hr or 7 minutes per response); U.S. Vessel Activity Report (0.23 hr or 14 minutes per response); Weekly Cumulative Mothership ADF&G Fish Tickets (0.58 hr or 35 minutes per response); and Mothership DCPL (0.52 hr or 31 minutes per response).

Approved under 0648–0269—Multispecies CDQ program. No new forms or revisions to forms are proposed with this rulemaking.

Approved under 0648–0272—IFQs for Pacific halibut and sablefish. No new forms are proposed with this rulemaking. The IFQ registered buyer's permit (not considered a form) would be revised to remove recordkeeping and reporting requirements from the back of the permit, since these requirements would be added to the regulations. Two proposed combined groundfish/IFQ logbooks under 0648–0213 would require recording of IFQ information in those logbooks by the catcher vessel operator or the catcher/processor operator participating in both groundfish and IFQ fisheries.

The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows.

Recordkeeping and reporting requirements apply to almost all of the vessels currently participating in Alaska groundfish fisheries. This is a "substantial number" of small entities, as NMFS has interpreted this term to mean 20 percent of the total universe of small entities affected by the regulation. However, the proposed action would not impose any additional compliance costs on small entities. This conclusion is demonstrated in several ways. First, the large majority of proposed changes are minor technical changes designed to clarify and simplify existing regulatory text by providing a more logical flow of information. Second, this proposed rule makes no changes to the general recordkeeping and reporting logbooks and forms used in the 1998 groundfish fisheries that would increase reporting requirements for small entities. The only changes proposed for the general logbooks and forms for the 1999 fishing year are removals of fields that have been determined to be unnecessary collections of information. Third, the new combined groundfish/IFQ logbooks are designed to reduce compliance costs by eliminating the duplication of some recordkeeping data, thereby reducing the burden on IFQ fishermen, many of whom are considered small entities under the Regulatory Flexibility Act. Fishermen that participate in both the groundfish and IFQ fisheries are currently required to maintain two logbooks, one for NMFS and one for the IPHC. The combined groundfish/IFQ logbook is being proposed partially at the request of the fishing industry to reduce the current reporting burden and allow the operator to maintain one logbook. Fourth, the integrated species code list would not increase compliance costs for small entities in that fishermen currently keep track of all the fish harvested regardless of whether it is managed by the State of Alaska or NMFS, and the proposed change would allow fishermen to record all of this data in one logbook. NMFS had prohibited the entry of State of Alaska

species codes into Federal groundfish logbooks because the NMFS data entry computer system was not programmed to recognize species codes other than Federal species codes. The data entry system has been updated to recognize State species codes.

Based on the above description, NMFS has determined that this action would not have a "significant impact" as NMFS has interpreted that term to mean: (1) More than a 5-percent decrease in annual gross revenues; (2) annual compliance costs (e.g., annualized capital, operating, reporting) that increase total costs of production by more than 5 percent; (3) compliance costs as a percent of sales that are 10 or more percent higher for small entities than compliance costs for large entities; (4) capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or (5) the regulation is likely to result in 2 or more percent of the small entities affected being forced to cease business operations. Therefore, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language when communicating with the public, through regulation or otherwise. Therefore, NMFS seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 25, 1999.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In 50 CFR part 679, change the words "of this part" following a figure number or table number to read "to this part", as follows: in the definitions, "Aleutian Islands Subarea (AI)," "Bering Sea and Aleutian Islands Management Area (BSAI)," "Bering Sea Subarea," "Bogoslof District," "Bycatch limitation zone 1 (Zone 1)," "Bycatch limitation zone 2 (Zone 2)," "Catcher Vessel Operational Area (CVOA)," "Central Aleutian District," "Eastern Aleutian District," "Gulf of Alaska (GOA)," "Length overall (LOA)," "PRR," "Regulatory area," "Round-weight equivalent," "Southeast Outside District," "Statistical area," "Steller Sea Lion Protection Areas," "Trawl test areas," "U.S.-Russian boundary," "West Yakutat District," "Western Aleutian District," and at paragraphs 679.20(h)(1), (h)(2), (h)(2)(i), and (h)(2)(ii); paragraphs 679.22(a)(7)(i), (a)(7)(ii), (a)(8)(i), (a)(8)(ii), (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii); and paragraph 679.24(d)(4).

3. In § 679.2, the definitions for "ADF&G fish ticket number," "CDQ delivery number," "Fish product," "Haul," "Non-chinook salmon," and "other gear" are added in alphabetical order; the definitions for "Authorized fishing," "Buying station," "CDQ number," "Chinook Salmon Savings Area of BSAI," "Chum Salmon Savings Area of the BSAI CVOA," Gear deployment," "Nearshore Bristol Bay trawl closure area of the BSAI," "Set," "Steller Sea Lion Protection Areas," "Stem," "Stern," "Tender vessel," and "U.S. citizen" are revised; the definition of "Person" is amended by revising paragraph (1) and by adding headings to paragraphs (2) and (3) and the definition for "Forage fish" is amended by inserting the phrase "(see also Table 2 of this part)" to read as follows:

§ 679.2 Definitions.

* * * * *

ADF&G fish ticket number means a nine-digit number of the groundfish series of fish tickets designated by one alpha letter (i.e., G), two numbers that identify the year (i.e., 98), and 6 numbers.

* * * * *

Authorized fishing gear (see also paragraph 679.24 for gear limitations) means trawl gear, fixed gear, longline gear, pot gear, and nontrawl gear as follows:

(1) *Fixed gear* means:

(i) For sablefish harvested from any GOA reporting area, all hook-and-line gear and, for purposes of determining initial IFQ allocation; all pot gear used to make a legal landing.

(ii) For sablefish harvested from any BSAI reporting area, all hook-and-line gear and all pot gear.

(iii) For halibut harvested from any IFQ regulatory area, all fishing gear comprised of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.

(2) *Hand troll gear* means one or more lines with lures or hooks attached, drawn through the water behind a moving vessel, and retrieved by hand or hand-cranked reels or gurdies and not by any electrically, hydraulically, or mechanically-powered device or attachment.

(3) *Handline gear* means a hand-held line, with one or more hooks attached, that may only be operated manually.

(4) *Hook-and-line gear* means a stationary, buoyed, and anchored line with hooks attached, or the taking of fish by means of such a device.

(5) *Jig gear* means a single, non-buoyed, non-anchored line with hooks attached, or the taking of fish by means of such a device.

(6) *Longline gear* means hook-and-line, jig, troll, and handline or the taking of fish by means of such a device.

(7) *Longline pot* means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

(8) *Nonpelagic trawl* means a trawl other than a pelagic trawl.

(9) *Nontrawl gear* means pot and longline gear.

(10) *Pelagic trawl gear* means a trawl that:

(i) Has no discs, bobbins, or rollers;

(ii) Has no chafe protection gear attached to the footrope or fishing line;

(iii) Except for the small mesh allowed under paragraph (10)(ix) of this definition:

(A) Has no mesh tied to the fishing line, headrope, and breast lines with less than 20 inches (50.8 cm) between knots and has no stretched mesh size of less than 60 inches (152.4 cm) aft from all points on the fishing line, headrope, and breast lines and extending past the fishing circle for a distance equal to or greater than one half the vessel's LOA; or

(B) Has no parallel lines spaced closer than 64 inches (162.6 cm) from all points on the fishing line, headrope, and breast lines and extending aft to a section of mesh, with no stretched mesh size of less than 60 inches (152.4 cm) extending aft for a distance equal to or greater than one half the vessel's LOA;

(iv) Has no stretched mesh size less than 15 inches (38.1 cm) aft of the mesh described in paragraph (10)(iii) of this definition for a distance equal to or greater than one half the vessel's LOA;

(v) Contains no configuration intended to reduce the stretched mesh sizes described in paragraphs (10) (iii) and (iv) of this definition;

(vi) Has no flotation other than floats capable of providing up to 200 lb (90.7 kg) of buoyancy to accommodate the use of a net-sounder device;

(vii) Has no more than one fishing line and one footrope for a total of no more than two weighted lines on the bottom of the trawl between the wing tip and the fishing circle;

(viii) Has no metallic component except for connectors (e.g., hammerlocks or swivels) or a net-

sounder device aft of the fishing circle and forward of any mesh greater than 5.5 inches (14.0 cm) stretched measure;

(ix) May have small mesh within 32 ft (9.8 m) of the center of the headrope as needed for attaching instrumentation (e.g., net-sounder device); and

(x) May have weights on the wing tips.

(11) *Pot gear* means a portable structure designed and constructed to capture and retain fish alive in the water. This gear type includes longline pot and pot-and-line gear. Each groundfish pot must comply with the following:

(i) *Biodegradable panel.* Each pot used to fish for groundfish must be equipped with a biodegradable panel at least 18 inches (45.72 cm) in length that is parallel to, and within 6 inches (15.24 cm) of, the bottom of the pot, and that is sewn up with untreated cotton thread of no larger size than No. 30.

(ii) *Tunnel opening.* Each pot used to fish for groundfish must be equipped with rigid tunnel openings that are no wider than 9 inches (22.86 cm) and no higher than 9 inches (22.86 cm), or soft tunnel openings with dimensions that are no wider than 9 inches (22.86 cm).

(12) *Pot-and-line gear* means a stationary, buoyed line with a single pot attached, or the taking of fish by means of such a device.

(13) *Power troll gear means* one or more lines, with hooks or lures attached, drawn through the water behind a moving vessel, and originating from a power gurdy or power-driven spool fastened to the vessel, the extension or retraction of which is directly to the gurdy or spool.

(14) *Trawl gear* means a cone or funnel-shaped net that is towed through the water by one or more vessels. For purposes of this part, this definition includes, but is not limited to, beam trawls (trawl with a fixed net opening utilizing a wood or metal beam), otter trawls (trawl with a net opening controlled by devices commonly called otter doors), and pair trawls (trawl dragged between 2 vessels) and is further described as pelagic and nonpelagic trawl.

(15) *Troll gear* means one or more lines with hooks or lures attached drawn through the water behind a moving vessel. This gear type includes hand troll and power troll gear.

* * * * *

Buying station means a tender vessel or land-based entity that receives unprocessed groundfish from a vessel for delivery to a shoreside processor or mothership and that does not process those fish.

* * * * *

CDQ delivery number means a sequential number assigned by the catcher vessel operator that uniquely identifies each CDQ delivery. The sequence of CDQ delivery numbers begins with the first fishing activity under a multispecies CDQ, and the number is incrementally adjusted by one with each delivery of fish.

* * * * *

CDQ number or group number means a number assigned to a CDQ group by NMFS that must be recorded in all logbooks and all reports submitted by the CDQ group or by vessels and processors catching CDQ or PSQ under an approved CDP.

* * * * *

Chinook Salmon Savings Area of the BSAI (see § 679.21(e)(7)(viii) and Figure 8 to this part).

Chum Salmon Savings Area of the BSAI CVOA (see § 679.21(e)(7)(vii) and Figure 9 to this part).

* * * * *

Fish product (see groundfish product).

* * * * *

Forage fish means all species of the following families (see also Table 2 to this part): * * *

Gear deployment means:

(1) For trawl gear: Where the trawl gear reaches the fishing level and begins to fish.

(2) For longline gear: Where the gear enters the water.

(3) For pot gear: Where the first pot enters the water.

* * * * *

Haul (see gear retrieval).

* * * * *

Nearshore Bristol Bay Trawl Closure Area of the BSAI (see § 679.22(a)(9) and Figure 12 to this part).

* * * * *

Non-chinook salmon means coho, pink, chum or sockeye salmon.

* * * * *

Other gear means gear other than authorized fishing gear.

* * * * *

Person means:

(1) *IFQ and CDQ Programs and General Usage* means any individual who is a citizen of the United States or any corporation, partnership, association, or other entity (or its successor-in-interest), regardless of whether organized or existing under the laws of any state, who is a U.S. citizen.

(2) *High Seas Salmon Fishery permits* * * *

(3) *Vessel Moratorium (Applicable through December 31, 1998)* * * *

* * * * *

Set means a string of pots or hook-and-line gear or a group of pots that is deployed in the water in a similar location with similar soak time. A set begins when gear is deployed into the water and includes a test set, unsuccessful harvest, or when gear is not working and is pulled in, even if no fish are harvested. (see also "gear deployment").

* * * * *

Steller Sea Lion Protection Areas (see Figure 16 to this part, § 679.22(g) of this part, and § 227.12 of this title).

Stem means the forward part of a vessel (see Figure 6 to this part)—that portion of the vessel where the sides are united at the fore end with the lower end attached to the keel and the bowsprit, if one is present, resting on the upper end.

Stern means the aft part of the vessel (see Figure 6 to this part).

* * * * *

Tender vessel means a vessel that is used to transport unprocessed fish received from another vessel to a shoreside processor or mothership (see also "buying station").

* * * * *

U.S. citizen means:

(1) *General usage.* Any individual who is a citizen of the United States.

(2) *IFQ program.* (a) Any individual who is a citizen of the United States at the time of application for QS; or

(b) Any corporation, partnership, association, or other entity that would have qualified to document a fishing vessel as a vessel of the United States during the QS qualifying years of 1988, 1989, and 1990.

* * * * *

4. In § 679.4, paragraphs (b)(2), (b)(4)(ii), (b)(5)(iv)(D), (b)(5)(v), (e), (f)(2)(vi), (f)(4)(ii) are revised; the heading of paragraph (h)(2) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(2) *Non-groundfish.* A vessel of the United States that fishes in the GOA or BSAI for any non-groundfish species, including but not limited to halibut, crab, salmon, scallops, and herring, and that is required to retain any bycatch of groundfish under this part must obtain a Federal fisheries permit under this part.

* * * * *

(4) * * *

(ii) A Federal fisheries permit is surrendered when the original permit is submitted to and received by the Administrator, RAM, Juneau, AK.

(5) * * *

(iv) * * *

(D) If a mothership or catcher/processor operating in the GOA,

indicate whether inshore or offshore component.

(v) *Signature.* The owner or agent of the owner of the vessel must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

* * * * *

(e) *Halibut/sablefish CDQ permits and CDQ cards.* See § 679.32(f)(3) and (f)(4).

* * * * *

(f) * * *

(2) * * *

(vi) *Signature.* The owner or agent of the owner of the shoreside processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

* * * * *

(4) * * *

(ii) A Federal processor permit is surrendered when the original permit is submitted to and received by the Administrator, RAM, Juneau, AK.

* * * * *

(h) * * *

(2) *Crew members and other persons not the operator of a commercial fishing vessel using power troll gear.* * * *

* * * * *

5. In § 679.5, paragraphs (a)(1)(i) and (ii), (a)(3)(iii), (a)(4), (a)(6)(iii)(B), (a)(7), (a)(9)(ii)(B), (a)(9)(iii), (a)(14)(i) through (iv), (c)(2), (c)(3), (e)(1)(iii), (f)(1)(ii)(C), (g)(3)(ii)(A), (g)(3)(iii)(A), (h)(2)(i)(B) and (C), (h)(2)(ii)(B) through (F), (h)(3)(i)(A)(*3*), (h)(3)(i)(D)(*1*), (h)(3)(ii)(D), (i)(2), (k)(2)(ii)(A), (l)(5)(vi), (m)(3)(ii), and (n) are revised; paragraphs (c)(4), (c)(5), and (c)(6) are removed; and paragraphs (a)(1)(v), (a)(1)(vi), (d)(2)(iv), (e)(2)(v), (f)(1)(iii), (f)(2)(v), and (h)(1)(iii) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

(a) *General requirements*—(1) *Applicability, Federal fisheries permit.* (i) Except as provided in paragraphs (a)(1)(iii) and (iv) of this section, the following participants must comply with the recordkeeping and reporting requirements of this section:

(A) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(B) Any shoreside processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4.

(C) Any buying station that receives or delivers groundfish in association with a mothership issued a Federal fisheries permit under § 679.4(b) or with a shoreside processor or vessel operating solely as a mothership in Alaska State waters issued a Federal processor permit under § 679.4(f).

(ii) A shoreside processor, mothership, or buying station subject to recordkeeping and reporting requirements must report all groundfish and prohibited species received, including:

(A) Fish received from vessels not required to have a Federal fisheries permit.

(B) Fish received under contract for handling or processing for another processor.

* * * * *

(v) *IFQ sablefish or halibut fisheries.* Any catcher vessel or catcher/processor that participates in an IFQ fishery in addition to the groundfish fisheries of the GOA or BSAI and that is required to maintain a logbook under this section, must use a combined groundfish/IFQ logbook.

(vi) *CDQ fisheries.* (A) Any catcher vessel or catcher/processor that participates in a CDQ fishery and does not retain any halibut must use a groundfish logbook.

(B) Any catcher vessel or catcher/processor that participates in a CDQ fishery, including halibut, and that is required to maintain a logbook under this section must use a groundfish/IFQ logbook.

* * * * *

(3) * * *

(iii) The signature of the owner, operator, or manager on the DFL, DCL, or DCPL is verification of acceptance of the responsibility required in paragraphs (a)(3)(i) and (ii).

* * * * *

(4) *Groundfish logbooks and forms.* (i) The Regional Administrator will prescribe and provide groundfish logbooks and forms required under this section as shown in Table 6 to this part. The operator or manager must use these logbooks and forms or obtain approval from the Regional Administrator to use electronic versions of the logbooks and forms.

(ii) If a vessel owner or operator is granted reinstatement of a Federal fisheries permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section must be continuous throughout that year, without interruption of records.

(iii) If a shoreside processor owner or manager is granted reinstatement of a Federal processor permit after having surrendered it within the same fishing year, recordkeeping and reporting requirements as defined in this section must be continuous throughout that year, without interruption of records.

* * * * *

(6) * * *

(iii) * * *

(B) *Date,* presented as month-day-year.

(*1*) If a catcher vessel harvesting sablefish or halibut under the IFQ Program (see subpart D of this part) in addition to groundfish and recording more than one day on the DFL logsheet, the operator must enter the first day of the harvest at the top of the logsheet and the date of each day in the "record by set" and "discard" sections of the DFL.

(*2*) If a catcher vessel harvesting groundfish and recording more than one day on the DFL logsheet, the operator must enter the first day of the harvest at the top of the logsheet and the date of each day in the "catch" and "discard/donate" sections of the DFL.

(*3*) If a shoreside processor, the manager must enter the week-ending date of the weekly reporting period at the top of the logsheet and the date of each day of the week in the "landings" and "discard/donate" sections of the DCPL.

* * * * *

(7) *Active and inactive periods*—(i) *Each day of fishing year.* Account for each day of the fishing year in the DFL, DCL, or DCPL by checking the appropriate box to indicate active and inactive periods as defined under § 679.2.

(ii) *Separate logsheet.* (A) If a mothership, catcher/processor, or buying station, use a separate logbook page for each day of an active period.

(B) If a catcher vessel or shoreside processor, use a separate logsheet for each day or use one logsheet for up to 7 days.

(iii) *Inactive period.* (A) Indicate in the DFL, DCL, or DCPL on one logsheet the first and last day of an inactive period.

(B) During an inactive period that extends across two or more successive quarters, the operator or manager must complete two logsheets: The one to indicate the last day of the first inactive quarter and the next page to indicate the first day of the second inactive quarter.

(iv) *Fishing activity.* Indicate in the DFL, DCL, or DCPL all fishing activity, which is defined for each type of vessel as follows:

(A) If a catcher vessel—harvest or discard of groundfish.

(B) If a catcher/processor—harvest, discard, or processing of groundfish.

(C) If a mothership or shoreside processor—receipt, discard, or processing of groundfish.

(D) If a buying station—receipt, discard, or delivery of groundfish.

(v) *Active and conducting fishing activity.* If in an active period and conducting fishing activity, the operator of a catcher vessel must record in the DFL, the operator or manager of a buying station must record in the DCL, and the operator or manager of a catcher/processor, mothership, or shoreside processor must record in the DCPL, WPR, DPR, and mothership or catcher/processor check-in/check-out report as follows:

(A) *Gear type.* (*1*) The gear type used to harvest the groundfish. If gear type is not an authorized fishing gear as defined at § 679.2 to this part, circle OTHER.

(*2*) If a mothership or shoreside processor and groundfish are received from the same reporting area but were harvested with more than one gear type, or if a catcher/processor and groundfish were caught in the same reporting area using more than one gear type, the operator or manager must:

(*i*) Use a separate logsheet in the DCPL to record each gear type.

(*ii*) Submit a separate check-in/check-out report, DPR (if required), and WPR for each gear type.

(*3*) If a buying station and groundfish are received from the same reporting area but were harvested with more than one gear type, the operator or manager must:

(*i*) Use a separate logsheet in the DCL to record each gear type.

(*ii*) If a vessel buying station, submit a separate check-in/check-out report for each gear type. Land-based buying stations are not required to submit a check-in/check-out report. Note to paragraph (a)(*7*)(v)(A)(*3*)(*ii*):

(B) *Reporting area.* In the DFL, DCL, DCPL, WPR, DPR, mothership or catcher/processor check-in/check-out report, the reporting area code (see Figures 1 and 3 to this part) where gear retrieval, as defined at § 679.2 to this part, was completed.

(*1*) If a haul or set occurs in more than one reporting area, record the reporting area code where gear retrieval was completed, regardless of where the majority of the haul or set took place.

(*2*) If a catcher vessel or catcher/processor using trawl gear, record whether catch was harvested in the COBLZ or in the RKCSA.

(*i*) If recording in DFL or DCPL, use two separate logsheets, the first to record the information from the reporting area that includes the COBLZ or RKCSA and the second to record the information from the reporting area that does not include the COBLZ or RKCSA.

(*ii*) If recording on a WPR, use two separate columns to record the part of the same reporting area that includes the COBLZ or RKCSA and the part that does not include the COBLZ or RKCSA.

(*3*) If a catcher/processor using trawl gear and recording on a check-in/check-out report, the operator must submit a separate check-in/check-out report to record the part of the same reporting area that includes the COBLZ or RKCSA and the part that does not include the COBLZ or RKCSA area.

(C) *Observers.* (*1*) If a mothership or shoreside processor DCPL, a catcher/processor groundfish DCPL, or a catcher vessel groundfish DFL, the number of observers aboard or on site.

(*2*) If a groundfish/IFQ catcher vessel DFL or groundfish/IFQ catcher/processor DCPL, the number of observers aboard, the name of observer, and the observer cruise number.

(D) *Number of crew or crew size.* In a DFL, DCL, DCPL (except shoreside processor), mothership or catcher/processor WPR, and buying station check-in/check-out report, the number of crew, excluding certified observer(s), on the last day of the weekly reporting period.

(E) *CDQ.* In a DFL, DCL, DCPL, WPR, DPR, or check-in/check-out report:

(*1*) If harvest is under a CDQ program, record the CDQ number.

(*2*) If harvest is not under a CDQ program, leave blank.

(*3*) If a catcher vessel delivering to a shoreside processor and using a groundfish/IFQ DFL, record the CDQ delivery number in the appropriate box. If using a groundfish DFL, record the CDQ delivery number under "vessel name" at the top of the logsheet.

(*4*) If a shoreside processor or buying station delivering to a shoreside processor, record CDQ delivery number under the catcher vessel's name in the delivery information section of the DCPL or DCL, respectively.

(*5*) If harvest is under more than one CDQ number, use a separate logsheet for each CDQ number.

(F) *Experimental fisheries.* If harvest is under an experimental fisheries program, record the experimental fisheries number (e.g., EXP 9801) in the CDQ number block.

(8) *Landings information.* * * *

(9) *Product information.* * * *

(ii) * * *

(B) *Weekly production.* At the end of each weekly reporting period or prior to the offload or transfer of all fish or fish product from a catcher/processor or mothership if offload or transfer occurs before the end of a weekly reporting period, enter for each species and product code the cumulative total fish product weight for each groundfish product to the nearest lb or to at least the nearest 0.001 mt, summarized separately by reporting area, gear type, COBLZ or RKCSA area if applicable under paragraph (a)(7)(v)(B) of this section, and CDQ number. The cumulative total fish product weight is calculated by adding the daily totals and total carried forward (except for a Shoreside Processor DCPL) for that week.

(iii) *Zero amount carried forward.* At the beginning of each weekly reporting period or after the offload or transfer of all fish or fish product onboard if such offload occurs prior to the end of a weekly reporting period, from a catcher/processor or mothership, the amount is zero, and nothing shall be carried forward from the previous weekly reporting period.

* * * * *

(14) *Submittal, retention, and distribution of logbooks and forms*—(i) *Submittal of forms.* Forms other than logbooks and mothership fish tickets may be submitted by the operator or manager by:

(A) Using the NMFS printed form and faxing it to the fax number on the form; or

(B) Transmitting a data file with required information and forms to NMFS by modem, satellite (specifically INMARSAT standards A, B, or C), or e-mail.

(ii) *Submittal of logbooks.* (A) For recordkeeping and reporting in the groundfish fisheries of the EEZ off Alaska, the operator of a catcher vessel, mothership, catcher/processor, or of a buying station delivering to a mothership, or the manager of a shoreside processor or of a buying station delivering to a shoreside processor is required to use the logbooks issued per paragraph (a)(4) of this section, retain the logbooks per paragraph (a)(14)(vii) of this section, and submit the logbooks and logsheets to NMFS per paragraphs (a)(14)(iv), (v), and (vi) of this section.

(B) The operator or manager of a buying station must maintain a separate DCL for each mothership or shoreside processor to which the buying station delivers groundfish during a fishing year.

(iii) *Logbook descriptions.* The copy sets of each logbook are described below:

(A) *Catcher vessel DFL—*(*1*) *Groundfish/IFQ.* White, blue, green, and yellow copies.

(*2*) *Groundfish.* White, blue, and yellow copies.

(B) *Catcher/processor DCPL*—(*1*) *Groundfish/IFQ.* White, green, and yellow copies.

(*2*) *Groundfish.* White and yellow copies.

(C) *Mothership DCPL.* White and yellow copies.

(D) *Shoreside processor DCPL.* White and yellow copies.

(E) *Buying station DCL.* White, pink, and yellow copies.

(iv) *Logsheet distribution and retention.* The operator or manager must distribute or retain the multiple copies of each logsheet as follows:

(A) *White, original logsheet.* The white copy remains permanently in the logbook.

(B) *Yellow logsheet*—(*1*) *DFL or DCPL.* The yellow DFL or DCPL copy is submitted to NMFS per paragraphs(a)(14)(v) and (vi) of this section.

(*i*) *Groundfish only.* The yellow DFL or DCPL copy is submitted to NMFS per paragraphs(a)(14)(v) and (vi) of this section.

(*ii*) *Catcher vessel and catcher/processor groundfish and groundfish/IFQ logbooks (Effective through December 31, 1999).* Record all information in the groundfish DFL or catcher/processor DCPL received at the beginning of 1999. Upon receipt of the groundfish/IFQ DFL or catcher/processor DCPL, stop recording in the groundfish logbook. Complete the date of receipt, page number, and participant identification information (see paragraph (a)(5) of this section), then write "transfer to groundfish/IFQ logbook" across the logsheet. On the first page of the groundfish/IFQ logbook, enter the next consecutive page number, date of receipt, and participant identification (see paragraph (a)(5) of this section), then write "transferred from groundfish logbook" across the logsheet. Combine and submit the first quarter, yellow logsheets from the groundfish logbook and from the groundfish/IFQ logbook to NMFS per paragraphs (a)(14)(v) and (vi) of this section.

(*2*) *DCL*—(*i*) *Buying station.* The operator or manager of a buying station must submit upon delivery of catch the yellow DCL copy to the associated mothership or shoreside processor, along with the ADF&G fish tickets for that delivery.

(*ii*) *Mothership or shoreside processor.* The operator or manager of the associated mothership or shoreside processor receiving a delivery from a buying station must submit the yellow DCL copy to NMFS per paragraphs (a)(14)(v) and (vi) of this section after photocopying each DCL yellow copy. The manager or operator of the associated mothership or shoreside processor must retain these photocopies until the original DCL is received from the associated buying station at the conclusion of fishing or no later than February 1 of the following fishing year.

(C) *Blue discard logsheet, DFL*—(*1*) *Catcher vessel.* Except when delivering an unsorted codend (see paragraph (c)(6)(i) of this section), the operator of a catcher vessel must submit the blue DFL copy to the buying station, mothership, or shoreside processor that receives the groundfish harvest.

(*2*) *Buying station.* The operator or manager of a buying station must submit upon delivery of catch to an associated mothership or shoreside processor any blue DFL copies received from catcher vessels delivering groundfish to the buying station.

(*3*) *Mothership or shoreside processor.* The operator of a mothership or the manager of a shoreside processor must retain the blue DFL copies submitted by operators of catcher vessels through the last day of the fishing year during which the records were made.

(D) *Pink logsheet, DCL.* The operator or manager of a buying station must retain the pink DCL copies for each associated mothership or shoreside processor for 3 years after the end of the fishing year during which the records were made.

(E) *Green logsheet, groundfish/IFQ DFL and catcher/processor DCPL.* The green copies in the groundfish/IFQ DFL and catcher/processor DCPL are to support a separate data collection by the IPHC under the joint NMFS/IPHC logbook program.

* * * * *

(c) * * *

(2) *Time limit and submittal*—(i) *Catcher vessel DFL.*

(A) The operator of a catcher vessel must record in the DFL:

(*1*) The time, position, and estimated total catch weight of groundfish for each haul or set within 2 hours after gear retrieval.

(*2*) Discard or donation information as described at paragraph (a)(10) of this section each day on the day they occur; all other information required in the DFL by noon of the day following gear retrieval.

(*3*) Notwithstanding other time limits, all information required in the DFL within 2 hours after the vessel's catch is offloaded.

(B) Except as provided at paragraph (c)(3)(iii)(B)(*1*) of this section, within 2 hours of completion of catch delivery information, the operator of a catcher vessel must submit the blue DFL copies with delivery of the harvest to the operator of a mothership or a buying station delivering to a mothership, or to the manager of a shoreside processor or buying station delivering to a shoreside processor.

(C) The operator must sign the completed DFL logsheets by noon of the day following the week-ending date of the weekly reporting period (see paragraph (a)(3)(iii) to this part).

(ii) *Catcher/processor DCPL.* The operator of a catcher/processor must record in the DCPL:

(A) The time, position, and estimated total catch weight of groundfish for each haul or set within 2 hours after gear retrieval.

(B) Product and discard or donation information as described at paragraphs (a)(9) and (a)(10) of this section each day on the day they occur; all other information required in the DCPL by noon of the day following completion of production.

(C) Notwithstanding other time limits, record all information required in the DCPL within 2 hours after the vessel's catch is offloaded.

(D) The operator must sign the completed DCPL logsheets by noon of the day following the week-ending date of the weekly reporting period (see paragraph (a)(3)(iii) of this part).

(3) *Logbook formats*—(i) *Groundfish/IFQ format.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor harvesting sablefish or halibut under the IFQ program (see subpart D of this part) in addition to groundfish must record the operator's name and the following information in the groundfish/IFQ DFL or DCPL, respectively:

(A) *Observer information.*

(*1*) Name of observer. (Optional, but may be required by the International Pacific Halibut Commission at 50 CFR chapter III (IPHC regulations)).

(*2*) Observer cruise number. (Optional, but may be required by IPHC regulations).

(B) *Gear type.*

(*1*) Check the appropriate box to indicate gear type and enter appropriate gear ID. If gear information is the same as the previous page, check the appropriate box instead of re-entering the information.

(*2*) If gear type is pot, enter the number of pots set.

(*3*) If gear type is pot, enter the number of pots lost (if applicable); (optional, but may be required by International Pacific Halibut Commission at 50 CFR chapter III (IPHC regulations)).

(*4*) If gear type is hook-and-line, check the appropriate box to indicate whether gear is fixed hook (conventional or tub), autoline, or snap. (Optional, but may be required by IPHC regulations).

(*i*) If gear type is fixed hook (conventional or tub), autoline, or snap, enter the length of skate to the nearest foot. (Optional, but may be required by IPHC regulations).

(*ii*) If gear type is fixed hook (conventional or tub), autoline, or snap, enter the size of hooks, hook spacing in feet, and number of hooks per skate. (Optional, but may be required by IPHC regulations).

(*iii*) If gear type is fixed hook (conventional or tub), autoline, or snap, enter the number of skates set.

(*A*) [Reserved]

(*B*) If gear type is fixed hook (conventional or tub), autoline, or snap, enter the number of skates lost (if applicable). (Optional, but may be required by IPHC regulations).

(C) *IFQ permit numbers* of operator and each IFQ holder aboard.

(D) *CDQ information.* The groundfish CDQ number, the groundfish CDQ delivery number, and the halibut CDQ permit number (see § 679.5(n)).

(E) *Set and haul information.*

(*1*) The number of set or haul, sequentially by year;

(*2*) The date set (month-day-year), time set (to the nearest hour), and latitude and longitude (to the nearest minute) of gear deployment (begin position);

(*3*) Begin and end buoy or bag numbers. (Optional, but may be required by International Pacific Halibut Commission at 50 CFR chapter III (IPHC regulations)).

(*4*) The date hauled (month-day-year), time hauled (to the nearest hour), and latitude and longitude (to the nearest minute) of gear retrieval (end position);

(*5*) The begin and end gear depths, recorded to the nearest fathom; (optional, but may be required by IPHC regulations).

(*6*) Species code for target species;

(*7*) Estimated catch weight of IFQ halibut to the nearest pound. (Optional, but may be required by IPHC regulations).

(*8*) Estimated round weight of IFQ sablefish to the nearest pound.

(*9*) Check appropriate box to indicate whether sablefish is recorded in weight or in numbers. If weight is recorded, circle appropriate term to indicate whether IFQ sablefish product is recorded as Western cut or Eastern cut. (Optional, but may be required by IPHC regulations).

(*10*) If a catcher vessel, enter the estimated total round catch weight of all species, except sablefish or halibut, to the nearest pound.

(*11*) If a catcher/processor, enter:

(*i*) The round catch weight of pollock and Pacific cod to the nearest pound or metric ton.

(*ii*) Estimated total round catch weight of all species, except sablefish, halibut, Pacific cod, or pollock, to the nearest pound.

(*iii*) When fishing in an IFQ fishery and the fishery for Pacific cod or rockfish is closed to directed fishing in that reporting area as described in § 679.20, the operator must record up to and including the maximum retainable bycatch amount for Pacific cod or rockfish as defined in Table 7 or 8 to this part; quantities over this amount must be recorded in the discard or donation section.

(ii) *Groundfish format.* In addition to requirements described in paragraphs (a) and (b) of this section, the operator of a catcher vessel or a catcher/processor harvesting groundfish must record average number of hooks, if using longline gear, and the following information for each haul or set in the groundfish DFL or DCPL, respectively:

(A) The number of set or haul, sequentially by year;

(B) If the vessel is using hook-and-line gear, the number of skates set. If the vessel is using longline pot or single pot gear, the total number of pots set;

(C) The date (month-day-year), begin time (to the nearest hour) and position coordinates (to the nearest minute) of gear deployment;

(D) The date (month-day-year), end time (to the nearest hour), and position coordinates (to the nearest minute) of gear retrieval;

(E) The average sea depth and average gear depth, recorded to the nearest meter or fathom;

(F) If a catcher/processor, the total round catch weight of pollock and Pacific cod, to the nearest pound or metric ton.

(G) If a catcher vessel, the estimated total round catch weight of all species, to the nearest pound or metric ton.

(H) If a catcher/processor, the estimated total round catch weight of all species except Pacific cod and pollock, to the nearest pound or metric ton.

(iii) *Discard or donation species information.*

(A) *Catcher/processor.* The operator of a catcher/processor must record discard or donation information as described in paragraph (a)(10) of this section.

(B) *Catcher vessel.* In addition to the requirements in paragraph (a)(10) of this section, the operator of a catcher vessel must record in the DFL:

(*1*) *Unsorted codends.* If a catcher vessel is using trawl gear and deliveries to a mothership or shoreside processor are unsorted codends, the catcher vessel is exempt from recording discards in the DFL and from submittal of the blue DFL copy (discards copy) for that delivery (see paragraph (a)(14)(iv)(C) of this section). The operator must check the box entitled "unsorted codend" and must remove and discard the blue DFL copy.

(*2*) *Presorted delivery.* Except as provided at § 679.27(d), if a catcher vessel is using trawl gear and deliveries to a mothership or shoreside processor are presorted at sea or if the catcher vessel has "bled" a codend prior to delivery to a mothership, shoreside processor, or buying station, the operator must check the "presorted delivery" box, and enter the estimated amount of discards by species in the DFL.

(iv) *Catcher vessel delivery information.* If a catcher vessel, the operator must record in the DFL:

(A) The landing or delivery date (month-day-year).

(B) The ADF&G fish ticket number(s) provided by the operator of the mothership or buying station delivering to a mothership, or the manager of a shoreside processor or buying station delivering to a shoreside processor.

(C) Recipient's name or IFQ registered buyer receiving delivery.

(D) Name of unloading port. If an IFQ landing, see § 679.5(l)(5)(vi) of this part and Table 9 to this part for names of primary ports.

(v) *Catcher/processor product information.* If a catcher/processor, the operator must record product information in the DCPL as set forth in paragraph (a)(9) of this section.

(v) (Optional) *Comments.*

(d) * * *

(2) * * *

(iv) The operator or manager must sign the completed DCL logsheets by noon of the day following the week-ending date of the weekly reporting period (see § 679.5(a)(3)(iii) to this part).

(e) * * *

(1) * * *

(iii) Occurs during processing of groundfish received from a catcher vessel or buying station.

(2) * * *

(v) The operator must sign the completed DCPL logsheets by noon of the day following the week-ending date of the weekly reporting period (see § 679.5(a)(3)(iii) of this part).

(f) * * *

(1) * * *

(ii) * * *

(C) Occurs during processing of groundfish received from a catcher vessel or buying station.

(iii) If the manager of a shoreside processor receives groundfish and records them as landings in Part IB of the DCPL, and transfers these fish to another processor, the manager must also record these fish in Part II of the DCPL prior to transfer.

(2) * * *

(v) The manager must sign the completed DCPL logsheets by noon of the day following the week-ending date of the weekly reporting period (see § 679.5(a)(3)(iii) of this part).

(g) * * *

(3) * * *

(ii) * * *

(A) *Name.* (*1*) If another vessel is involved with the transfer, the name and call sign of the vessel receiving or delivering groundfish or groundfish products.

(*2*) If transfer is from other than a vessel, record name of processor receiving or delivering groundfish or groundfish products.

* * * * *

(iii) * * *

(A) If a catcher/processor or mothership, the harvest zone code of the area in which groundfish were harvested as defined in Table 5 to this part.

* * * * *

(h) * * *

(1) * * *

(iii) *Fishing for groundfish CDQ species.* The operator of a catcher/processor, mothership, or vessel buying station or the manager of a shoreside processor must submit a separate check-in report (BEGIN message) and a separate check-out report (CEASE message) for each CDQ group.

(2) * * *

(i) * * *

(B) *Mothership, shoreside processor, or vessel buying station.* (*1*) Before a mothership, shoreside processor, or vessel buying station commences receipt of groundfish from any reporting area except 300, 400, 550, or 690, the operator or manager must submit by fax a check-in report (BEGIN message) to the Regional Administrator.

(*2*) If a mothership, the operator must check-in to the reporting area(s) where groundfish were harvested. A mothership may be checked into more than one area simultaneously.

(C) *Fishing for groundfish CDQ species.* The operator of a catcher/processor, mothership, or vessel buying station or the manager of a shoreside processor must submit by fax a check-in report to the Regional Administrator prior to fishing for any CDQ species.

(ii) * * *

(B) *Mothership.* (*1*) If a mothership completes receipt of groundfish from a reporting area, the operator must submit by fax a check-out report to the Regional Administrator within 24 hours after production of fish from that reporting area is complete.

(C) *Shoreside processor.* If a shoreside processor, the manager:

(*1*) Must submit a check-out report by fax to the Regional Administrator within 48 hours after the end of the applicable weekly reporting period that a shoreside processor ceases to process groundfish for the fishing year.

(*2*) May submit a check-out report by fax to the Regional Administrator when receipt or processing of groundfish is temporarily halted during the fishing year for a period of at least two weekly reporting periods.

(D) *Vessel Buying station.* If a buying station completes receipt of groundfish in a reporting area, the operator must submit by fax a check-out report to the Regional Administrator within 24 hrs after departing a reporting area.

(E) *End of fishing year.* If a check-out report has not previously been submitted during a fishing year, the operator or manager must submit a check-out report at the end of that fishing year, December 31.

(F) *Fishing for groundfish CDQ species.* The operator must submit a check-out report by fax to the Regional Administrator within 24 hours after directed fishing for each species under each CDQ allocation has ceased.

(3) * * *

(i) * * *

(A) * * *

(*3*) Reporting area where groundfish were harvested and whether groundfish were harvested in the COBLZ or RKCSA area.

* * * * *

(D) *Vessel buying station.* (*1*) Reporting area code where groundfish receipt begins.

* * * * *

(ii) * * *

(D) *Vessel buying station.* Date (month-day-year), time (to the nearest hour, A.l.t.), and latitude and longitude of position in degrees and minutes where the vessel departed the reporting area.

* * * * *

(i) * * *

(2) *Time limits and submittal.* (i) The operator or manager must submit a WPR by fax to the Regional Administrator by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period.

(ii) If still fishing or processing, the operator or manager must submit a WPR at the end of each fishing year (midnight, December 31) regardless of where this date falls within the weekly reporting period. If still fishing or processing, the operator or manager must submit a WPR starting January 1 through the end of the weekly reporting period.

* * * * *

(k) * * *

(2) * * *

(ii) * * *

(A) The harvest zone code of the area in which groundfish were harvested as defined in Table 5 to this part.

* * * * *

(l) * * *

(5) * * *

(vi) *Primary ports.* Unless specifically authorized on a case-by-case basis, vessel clearances will be issued only by clearing officers at the primary ports listed in Table 9 to this part.

* * * * *

(m) * * *

(3) * * *

(ii) The operator of a mothership must ensure copy distribution of each multi-sheet, consolidated weekly ADF&G groundfish fish ticket (G series) as follows. A fax copy is not acceptable.

(A) *Yellow copy.* Submit the yellow copy to Alaska Commercial Fisheries Management & Development Division, Department of Fish and Game, 211 Mission Road, Kodiak, AK, 99615–6399, within 30 days after landings are received.

(B) *White copy.* Submit the white, original copy per paragraphs 679.5(a)(14)(vii)(D) and (E).

(C) *Pink copy.* Submit the pink copy to the catcher vessel delivering groundfish to the mothership.

(n) *Groundfish CDQ fisheries*—(1) *CDQ delivery report*—(i) *Applicability.*

(ii) *Time limitation and submittal.* The manager of each shoreside processor receiving CDQ or PSQ species from a catcher vessel must submit a CDQ delivery report to the Regional Administrator within 24 hours of each delivery of groundfish CDQ species to the shoreside processor.

(iii) *Information required.* The manager of each shoreside processor must record the following information on each CDQ delivery report:

(A) *CDQ group information.* CDQ group number as defined at 679.2 to this part and CDQ group name or acronym.

(B) *Processor information.*

(*1*) Name and Federal processor permit number of the shoreside processor taking delivery of the CDQ catch.

(*2*) Date delivery report submitted.

(C) *Vessel and catch information.*

(*1*) *Vessel.* Enter the name, Federal Fisheries Permit number if applicable,

and ADF&G number of the vessel delivering CDQ catch. Write "unnamed" if the vessel has no name.

(*2*) *CDQ catch.* Enter the delivery date, CDQ delivery number, harvest gear type, and reporting area of CDQ harvest for each CDQ delivery. If caught with trawl gear, check appropriate box(es) to indicate if catch was made in the CVOA or the COBLZ.

(D) *Groundfish CDQ species and halibut CDQ.*

(*1*) *Retained.* Enter groundfish CDQ species that were delivered and retained for processing by product codes and species codes as defined in Tables 1 and 2 to this part, respectively.

(*2*) *Discarded.* Enter groundfish CDQ species by species codes as defined in Table 2 to this part that were delivered to and discarded from the shoreside processor. Catcher vessels with a CDQ observer do not report estimates of at-sea discards on the CDQ delivery report.

(*3*) *Weight.* Report the weight of each CDQ species in metric tons to at least the nearest 0.001 mt.

(E) *PSQ delivered by observed catcher vessels.*

(*1*) For each prohibited species other than salmon or crab, enter the species codes as defined in Table 2 to this part and the weight to the nearest 0.001 mt.

(*2*) For salmon or crab, enter the species codes as defined in Table 2 to this part and the number of animals.

(F) *At-sea discards of PSQ by vessels without observers.*

(*1*) For each prohibited species other than salmon or crab, enter the species codes as defined in Table 2 to this part and the weight to the nearest 0.001 mt.

(*2*) For salmon or crab, enter the species codes as defined in Table 2 to this part and the number of animals.

(2) *CDQ catch report*—(i) *Time limitation and submittal.* The CDQ representative must submit a CDQ catch report for all catch made by vessels groundfish CDQ fishing as defined at § 679.2 to the Regional Administrator within 7 days of the date CDQ catch was delivered by a catcher vessel to a shoreside processor or mothership, or within 7 days of the date gear used to catch CDQ was retrieved by catcher/processors.

(ii) *Information required, all CDQ catch reports.* The CDQ representative must record the following information on each CDQ catch report:

(A) *Vessel type.* Select appropriate vessel/gear/delivery type. Based on the type selected, complete each of the specified blocks.

(B) *Vessel and catch information.*

(*1*) *Vessel.* Enter the name, Federal Fisheries Permit number if applicable, and ADF&G number of the vessel delivering CDQ catch. Write "unnamed" if the vessel has no name.

(*2*) *Gear type.* Indicate gear type used to harvest CDQ catch. If using trawl gear, check the appropriate box(es) to indicate whether the catch was from the CVOA or COBLZ.

(*3*) *Reporting area.* Enter Federal reporting area in which CDQ catch occurred.

(C) *CDQ group information.*

(*1*) CDQ number as defined at 679.2 to this part and CDQ group name or acronym.

(*2*) Date report submitted.

(iii) *Information required for Option 1 in the CDP.* The CDQ representative must record the following information on each CDQ catch report for catcher vessels retaining all groundfish CDQ and delivering it to a shoreside processor (Option 1 in the CDP):

(A) *Delivery information.*

(*1*) Name and Federal processor permit number of the shoreside processor taking delivery of the CDQ catch.

(*2*) Date catch delivered.

(*3*) Catcher vessel CDQ delivery number.

(B) *Catch information, Groundfish CDQ species*—(1) *Retained.* Report the weight in metric tons to at least the nearest 0.001 mt for each groundfish CDQ species delivered and retained for processing by product codes and species codes as defined in Tables 1 and 2 to this part, respectively.

(*2*) *Discarded.* Report the weight in metric tons to at least the nearest 0.001 mt for each groundfish CDQ species delivered to and discarded from the shoreside processor by product codes and species codes as defined in Tables 1 and 2 to this part, respectively.

(C) *Catch information, Halibut IFQ/CDQ.* The CDQ representative must report the weight of all CDQ and IFQ halibut in metric tons to at least the nearest 0.001 mt for each fixed-gear vessel delivery reported to NMFS on an IFQ/CDQ landing report by product codes and species codes (code 200) as defined in Tables 1 and 2 to this part, respectively.

(D) *Mortality information, prohibited species other than halibut.*

(*1*) For each prohibited species other than salmon or crab, enter the species codes as defined in Table 2 to this part and the weight to the nearest 0.001 mt.

(*2*) For salmon or crab, enter the species codes as defined in Table 2 to this part and the number of animals.

(E) *Mortality information, halibut PSQ.*

(*1*) For halibut PSQ catch, enter the round weight to the nearest 0.001 mt, mortality rate, and overall halibut mortality in metric tons to the nearest 0.001 mt.

(iv) *Information required for Option 2 in the CDP.* The CDQ representative must record the following information on each applicable CDQ catch report under Option 2 in the CDP for catcher/processors, catcher vessels delivering to motherships, and catcher vessels (with observers) using hook-and-line gear and discarding groundfish CDQ at sea.

(A) *Delivery information.*

(*1*) If a mothership, name, Federal fisheries permit number, ADF&G number.

(*2*) If a catcher/processor or catcher vessel, name, Federal fisheries permit number, ADF&G number, CDQ observer's haul or set number, and date gear retrieved as determined by the CDQ observer.

(B) *Groundfish CDQ species* (see § 679.5(n)(2)(iii)(B)).

(C) *Catch information, Halibut IFQ/CDQ* (see § 679.5(n)(2)(iii)(C)).

(D) *Mortality information, prohibited species other than halibut* (see § 679.5(n)(2)(iii)(D)).

(E) *Mortality information, halibut PSQ* (see § 679.5(n)(2)(iii)(E)).

6. In § 679.6, paragraph (g) is added to read as follows:

§ 679.6 Experimental fisheries.

* * * * *

(g) *Recordkeeping and reporting requirements.* In addition to the recordkeeping and reporting requirements in this section, the operator or manager must comply with requirements at § 679.5(a) through (k).

* * * * *

7. In § 679.20, paragraph (b)(1)(v) heading is amended by removing the sunset date; paragraphs (e)(1), (e)(2)(ii), and (f)(2) are amended by removing "Table 10" and adding in its place "Table 7" and by removing "Table 11" and adding in its place "Table 8;" and the in-text table is removed in paragraph (g)(3).

8. In § 679.21, paragraph (b)(5) is added and paragraph (e)(7)(vi)(A) is amended by removing "(e)(7)(v)(B)" and adding in its place "(e)(7)(vi)(B)" to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(b) * * *

(5) *Sablefish as a prohibited species* (see § 679.24(c)(2)(ii)).

* * * * *

9. In § 679.22, paragraphs (a)(7), (a)(8), and (b)(2) are removed, new paragraphs (b)(2) and (g) are added; paragraphs (a)(9) and (a)(10) are redesignated to read (a)(7) and (a)(8), respectively;

newly redesignated paragraph (a)(8) is revised; and the heading to paragraph (h) is revised to read as follows:

§ 679.22 Closures.

(a) * * *

(8) *Chum Salmon Savings Area.* Trawling is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(e)(7)(vii)).

* * * * *

(b) * * *

(2) *Southeast Outside District, gear other than nontrawl.* Use of any gear other than nontrawl gear is prohibited at all times in Southeast Outside District defined at Figure 3 to this part.

* * * * *

(g) *Steller sea lion protection areas*—(1) *10-nm year-round trawl closures.* Trawling is prohibited within 10 nm of each of the Steller sea lion rookeries shown in Figure 16(b)(2) to this part.

(2) *20-nm year-round trawl closures.* Trawling is prohibited within 20 nm of each of the Steller sea lion rookeries shown in Figure 16(b)(3) to this part.

(3) *20-nm Seasonal trawl closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the Steller sea lion rookeries shown in Figure 16(b)(4) to this part.

(4) *Western and Central Aleutian Islands critical habitat closures*—(i) *General.* Trawling is prohibited within areas designated as Steller sea lion critical habitat in the Western or Central Districts of the AI (see Table 1, Table 2, and Figure 4 of 50 CFR part 226) when the Regional Administrator announces by notification in the **Federal Register** that the criteria for a trawl closure in a district set out in paragraph (g)(4)(ii) of this section has been met.

(ii) *Criteria for closure.* The trawl closures identified in paragraph (g)(4)(i) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of Atka mackerel specified under § 679.20(a)(8)(ii)(A) reaches the following percentage identified for each year and district:

Year	Western (543) (percent)	Central (542) (percent)
1999	65	80
2000	57	67
2001	48	46
2002 and after	40	40

(iii) *Duration of closure.* A Steller sea lion critical habitat area trawl closure within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

(iv) *CDQ fishing.* Harvesting groundfish CDQ with trawl gear is prohibited within areas designated as Steller sea lion critical habitat in the Western and/or Central Districts of the AI (see Table 1, Table 2, and Figure 4 of 50 CFR part 226) for an eligible vessel listed on an approved CDP after the CDQ group has harvested the percent of the annual Atka mackerel CDQ specified for the year and district at paragraph (g)(4)(ii) of this section.

(h) *CDQ fisheries closures* * * *

* * * * *

10. In § 679.24, paragraph (b)(1)(i) and (ii) are removed; (b)(1)(iii) is redesignated as (b)(1); (b)(1)(iii)(A) and (B) are redesignated as (b)(1)(i) and (ii).

11. In § 679.28, paragraph (b)(5)(i) is revised; and paragraph (c)(3) is amended by removing "§ 679.5(a)(15)" and adding it its place "§ 679.5(a)(14)(vii)(D)" to read as follows:

§ 679.28 Equipment and operational requirements for catch weight measurement.

* * * * *

(b) * * *

(5) * * *

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once each 24-hour period in which the scale is being used to weigh catch or before any information stored in the scale computer memory is replaced. The haul or set number recorded on the scale print-out must correspond with haul or set numbers recorded in the processor's DCPL (see § 679.5). Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials.

* * * * *

12. In § 679.30, paragraph (a)(1)(iv), is amended by removing "Table 7" and adding in its place "Table 4," and paragraph (a)(5)(i)(B) is revised to read as follows:

§ 679.30 General CDQ regulations.

(a) * * *

(5) * * *

(i) * * *

(B) *Shoreside processors.* A list of the name, Federal processor permit number, and location of each shoreside processor that is required to have a Federal processor permit under § 679.4(f) and will take deliveries of, or process, CDQ catch.

* * * * *

13. In § 679.31, paragraph (b)(3) introductory text, is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(b) * * *

(3) The proportions of the halibut catch limit annually withheld for the halibut CDQ program, exclusive of issued QS, and the eligible communities for which they shall be made available are as follows for each IPHC regulatory area (see Figure 15 to this part:

* * * * *

14. In § 679.32, paragraphs (c) introductory text, (c)(1), (c)(3) introductory text, (d)(1), (e)(3) through (e)(5), (f)(3), and (f)(7) are revised; and paragraphs (f)(8) and (f)(9) are added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(c) *Requirements for vessels and processors.* In addition to complying with the minimum observer coverage requirements at § 679.50(c)(4), operators of vessels groundfish CDQ fishing and managers of shoreside processors taking deliveries from vessels groundfish CDQ fishing must comply with the following requirements:

(1) *Catcher vessels without an observer.* (i) Operators of catcher vessels less than 60 ft (18.29 m) LOA must retain all groundfish CDQ, halibut CDQ, and salmon PSQ until it is delivered to a processor that meets the requirements of paragraph (c)(3) or (c)(4) of this section. All halibut PSQ and crab PSQ must be discarded at sea. Operators of catcher vessels using trawl gear must report the at-sea discards of halibut PSQ or crab PSQ on the CDQ delivery report (see paragraph 679.5(n)(1)). Operators of catcher vessels using nontrawl gear must report the at-sea discards of halibut PSQ on the CDQ delivery report, unless exempted from accounting for halibut PSQ under paragraph (b) of this section.

(ii) *Catcher vessels delivering unsorted codends.* Operators of catcher vessels delivering unsorted codends to motherships must retain all CDQ and PSQ species and deliver them to a mothership that meets the requirements of paragraph (c)(4) of this section.

* * * * *

(3) *Shoreside processors.* The manager of a shoreside processor must comply with all of the following requirements:

* * * * *

(d) *Recordkeeping and reporting*—(1) *Catch record.* The manager of a shoreside processor must submit to NMFS the CDQ delivery report required

in § 679.5(n)(1). The CDQ representative must submit to NMFS the CDQ catch report required in § 679.5(n)(2). Additionally, all other applicable requirements in § 679.5 for groundfish fishing must be met.

* * * * *

(e) * * *

(3) *Recordkeeping and reporting.* The CDQ representative, the operator of a vessel, and the manager of a shoreside processor must submit all applicable reports in § 679.5, including the CDQ delivery report and the CDQ catch report. Catch from the pollock CDQ fisheries must be identified separately from catch in other CDQ fisheries on the CDQ catch report. Harvest of species other than pollock in the pollock CDQ fisheries must not be reported on the CDQ catch report.

(4) *Observer coverage.* Two observers are required on all catcher/processors and motherships harvesting, processing, or taking deliveries of pollock CDQ; one observer is required on all catcher vessels harvesting pollock CDQ; and one observer is required in a shoreside processor while pollock CDQ is being delivered, sorted, or processed.

(5) *Estimation of the weight of pollock CDQ*—(i) *Shoreside processors.* All pollock CDQ delivered to a shoreside processor must be weighed on a scale approved by the State of Alaska under § 679.28(c). The manager of each shoreside processor must notify the observer of the offloading schedule of each pollock CDQ delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) *Motherships and catcher/processors.* Operators of motherships and catcher/processors must provide holding bins and comply with the operational requirements at § 679.28(e) in order for volumetric estimates of total catch weight to be made.

(f) * * *

(3) *Permits.* The managing organization responsible for carrying out an approved CDP must have a halibut and/or sablefish CDQ permit issued by the Regional Administrator. A copy of the halibut and/or sablefish CDQ permit must be carried on any fishing vessel operated by, or for, the managing organization and be made available for inspection by an authorized officer. Such halibut and/or sablefish CDQ permit is non-transferable and is effective for the fishing year or until revoked, suspended, or modified.

* * * * *

(7) *Recordkeeping and reporting.* Catcher vessels, catcher/processors, and motherships with a Federal fisheries permit or shoreside processors with a Federal processor permit required under § 679.4 must record all catch of groundfish, including sablefish CDQ, and prohibited species from the fixed gear sablefish and halibut CDQ fisheries in a catcher vessel DFL or catcher/processor, mothership, or shoreside processor DCPL. The catcher/processor, mothership, or shoreside processor must report this same information on a WPR required under § 679.5.

(8) *CDQ fishing seasons.* (see 679.23(e)(3)).

(9) *CDQ halibut and sablefish determinations and appeals.* Section 679.43 describes the procedure for appealing initial administrative determinations for the halibut and sablefish CDQ program made under this subpart C of this part.

15. Section 679.42 is amended by removing paragraphs (c)(2)(i) through (c)(2)(iii), including the in-text table of paragraph (c)(2)(iii).

16. In Part 679, Figures 1 through 5, and 7 through 13, Tables 1 and 2 are revised, Figures 16, 17, and 18 are added, Tables 4, 5, and 6 are removed, Tables 7 through 11 are redesignated as Tables 4 through 8, respectively, and Tables 9 and 10 are added to read as follows:)

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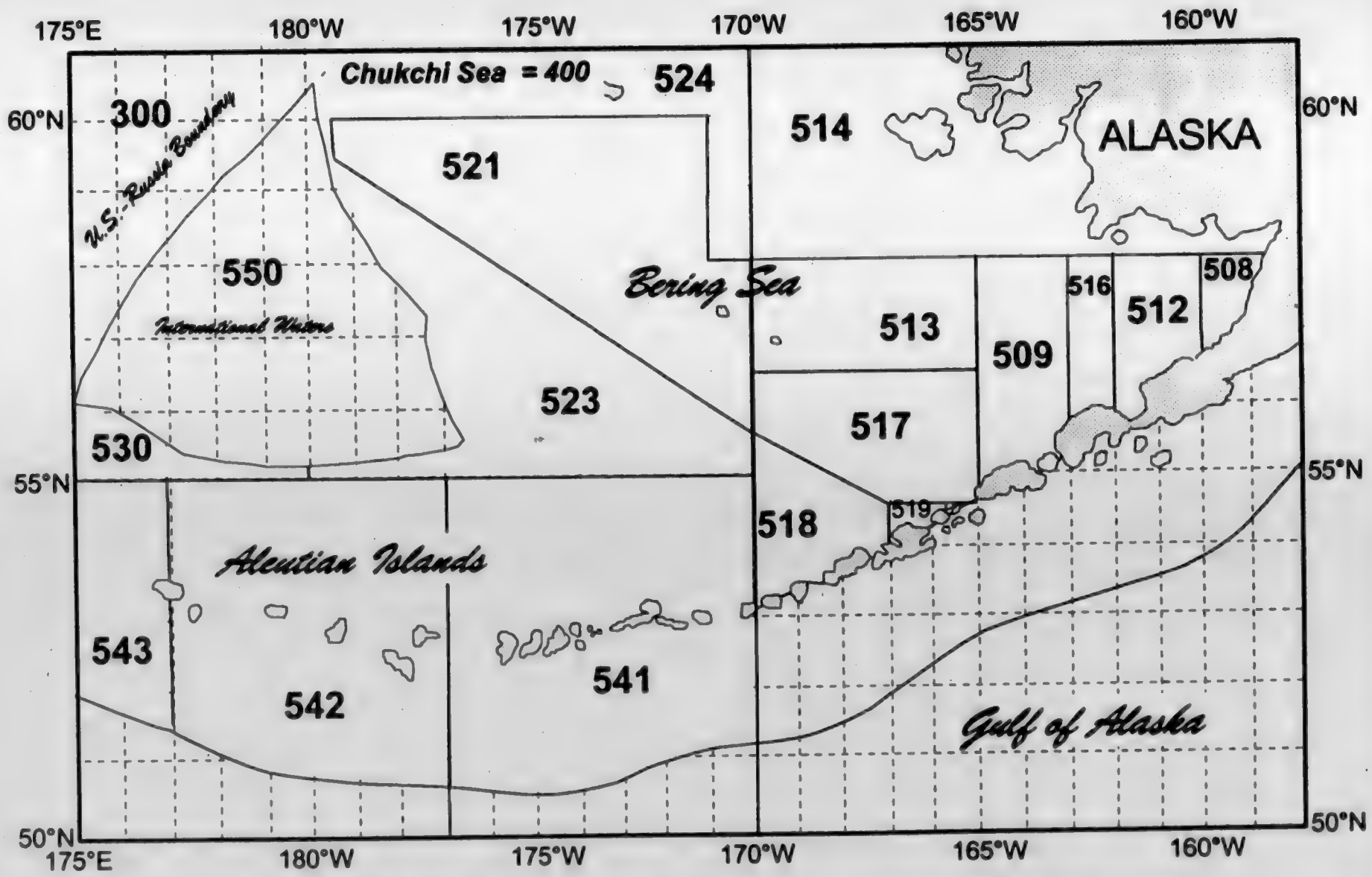


Figure 1 to Part 679. Bering Sea and Aleutian Islands statistical and reporting areas

a. Map

Figure 1 to Part 679. BSAI Statistical and Reporting Areas
b. Coordinates

Code	Description
300	Russian waters. Those waters inside the Russian 200 mile limit as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart INT 814 Bering Sea (Northern Part).
400	Chukchi Sea. North of a diagonal line between 66°00' N, 169° 42.5' W (Cape Dezhneva, Russia); and 65°37.5' N, 168°7. 5' W (Cape Prince of Wales, Alaska) and to the limits of the U.S. EEZ as described in the current edition of NOAA chart INT 814 Bering Sea (Northern Part).
508	South of 58° 00' N between the intersection of 58° 00' N lat with the Alaska Peninsula and 160°00' W long
509	South of 58°00' N lat between 163°00' W long and 165°00' W long
512	South of 58°00' N lat, north of the Alaska Peninsula between 160°00' W long and 162°00' W long
513	Between 58°00' N lat and 56°30' N lat, and between 165°00' W long and 170°00' W long
514	North of 58°00' N to the southern boundary of the Chukchi Sea, area 400, and east of 170°00' W long.
516	South of 58°00' N lat, north of the Alaska Peninsula, and between 162°00' and 163°00' W long
517	South of 56°30' N lat, between 165°00' W long and 170°00' W long; and north of straight lines between 54°30' N lat, 165°00' W long, 54°30' N lat, 167°00' W long, and 55°46' N lat, 170°00' W long
518	Bogoslof District: South of a straight line between 55°46' N lat, 170°00' W long and 54°30' N lat, 167°00' W long, and between 167°00' W long and 170°00' W long, and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 52°49.2' N, 169°40.4' W 52°49.8' N, 169°06.3' W 53°23.8' N, 167°50.1' W 53°18.7' N, 167°51.4' W
519	South of a straight line between 54°30' N lat, 167°00' W long and 54°30' N lat, 164°54' W long; east of 167°00' W long; west of Unimak Island; and north of the Aleutian Islands and straight lines between the islands connecting the following coordinates in the order listed: 53°59.0' N, 166°17.2' W 54°02.9' N, 166°03.0' W 54°07.7' N, 165°40.6' W 54°08.9' N, 165°38.8' W 54°11.9' N, 165°23.3' W 54°23.9' N, 164°44.0' W
521	The area bounded by straight lines connecting the following coordinates in the order listed: 55°46' N, 170°00' W, 59°25' N, 179°20' W, 60°00' N, 179°20' W, 60°00' N, 171°00' W, 58°00' N, 171°00' W, 58°00' N, 170°00' W, 55°46' N, 170°00' W
523	The area bounded by straight lines connecting the following coordinates in the order listed: 59°25' N, 179°20' W; 55°46' N, 170°00' W; 55°00' N, 170°00' W; 55°00' N, 180°00' W; and north to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
524	The area west of 170°00' W bounded south by straight lines connecting the following coordinates in the order listed: 58°00' N, 170°00' W 58°00' N, 171°00' W; 60°00' N, 171°00' W; 60°00' N, 179°20' W; 59°25' N, 179°20' W and to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
530	The area north of 55°00 N lat and west of 180°00 W long to the limits of the US EEZ as described in the current edition of NOAA chart INT 813 Bering Sea (Southern Part).
541	Eastern Aleutian District. The area south of 55°00' N lat, west of 170°00' W long, and east of 177°00' W long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands).
542	Central Aleutian District. The area south of 55°00' N lat, west of 177°00' W long, and east of 177°00' E long and bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands)
543	Western Aleutian District. The area south of 55°00' N lat and west of 177°00' E long, and bounded on the south and west by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands)
550	Donut Hole. International waters of the Bering Sea outside the limits of the EEZ and Russian economic zone as depicted on the current edition of NOAA chart INT 813 Bering Sea (Southern Part).

NOTE: A statistical area is the part of a reporting area contained in the EEZ.

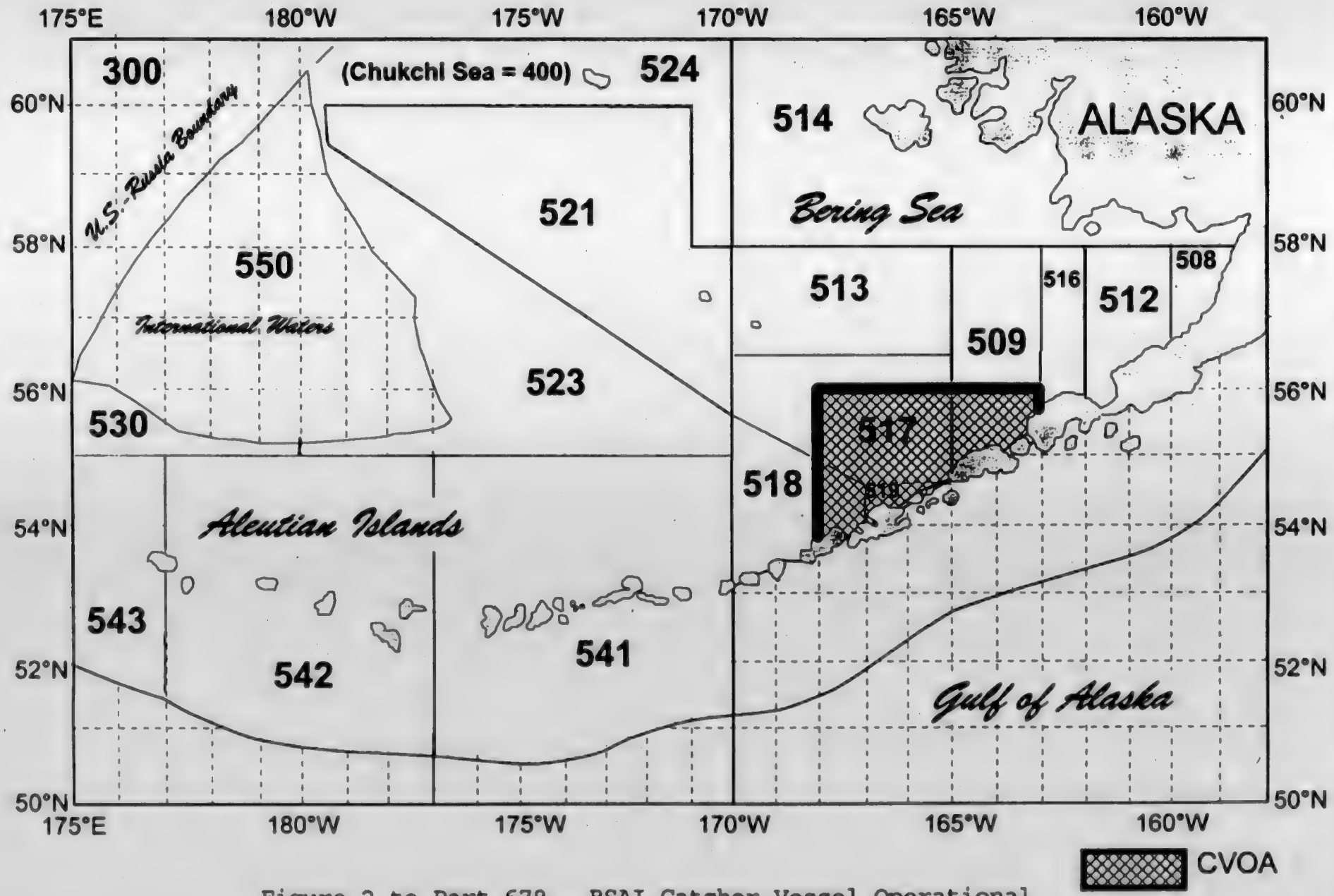


Figure 2 to Part 679. BSAI Catcher Vessel Operational Area (CVOA) (South of 56°00' N lat between 163°00' W and 167°30' W long)

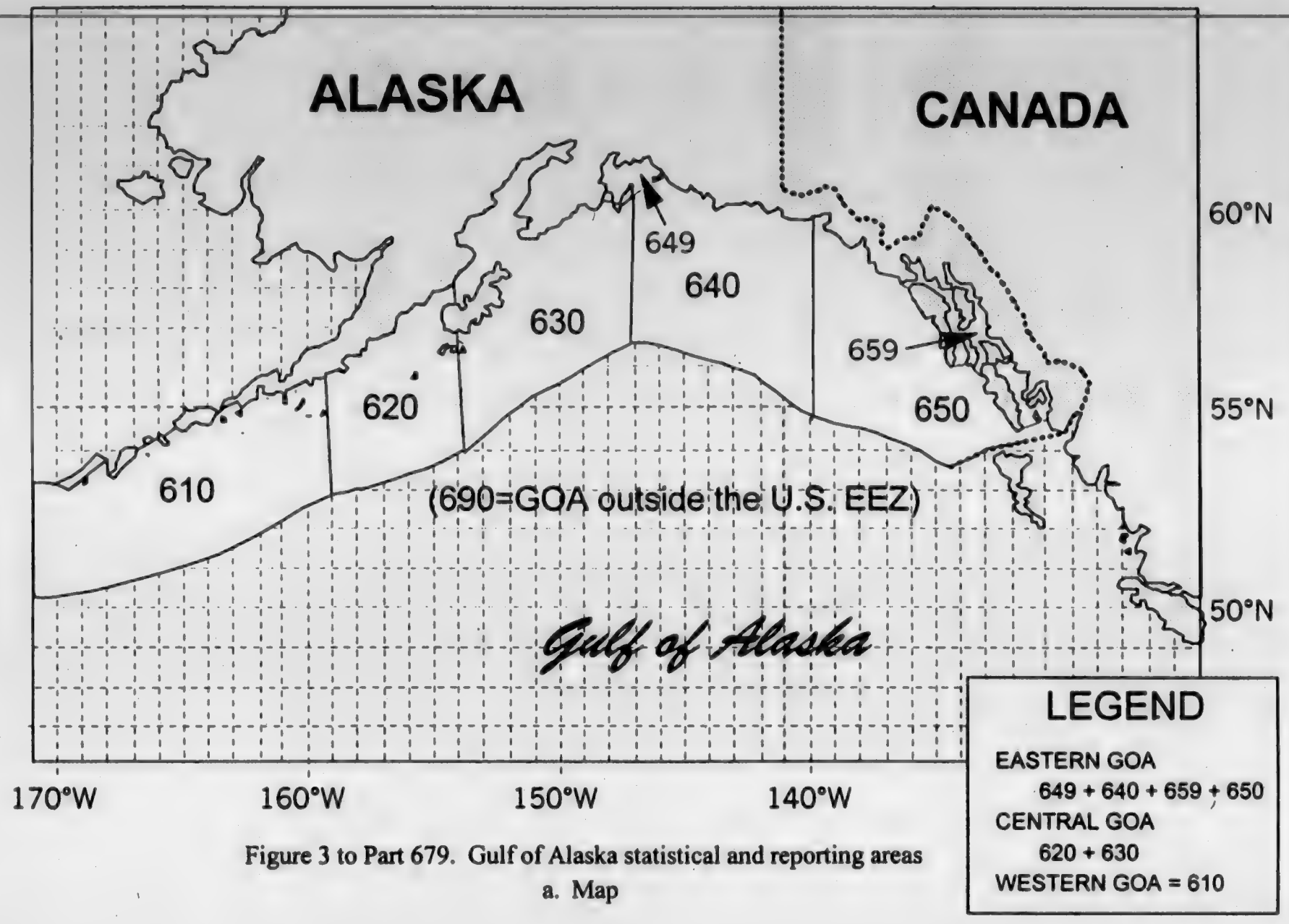


Figure 3 to Part 679. Gulf of Alaska statistical and reporting areas

a. Map

Figure 3 to Part 679. Gulf of Alaska Statistical and Reporting Areas
b. Coordinates

Code	Description
610	Western Regulatory Area, Shumagin District. Along the south side of the Aleutian Islands and straight lines between the islands and the Alaska Peninsula connecting the following coordinates in the order listed: 52°49.2' N, 169°40.4' W; 52°49.8' N, 169°06.3' W; 53°23.8' N, 167°50.1' W; 53°8.7' N, 167°51.4' W; 53°59.0' N, 166°17.2' W; 54°02.9' N, 166°03.0' W; 54°07.7' N, 165°40.6' W; 54°08.9' N, 165°38.8' W; 54°11.9' N, 165°23.3' W; 54°23.9' N, 164°44.0' W; and southward to the limits of the US EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass), between 170°00' W long and 159°00' W long.
620	Central Regulatory Area, Chirikof District. Along the south side of the Alaska Peninsula, between 159°00' W long and 154°00' W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).
630	Central Regulatory Area, Kodiak District. Along the south side of continental Alaska, between 154°00' W long and 147°00' W long, and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
640	Eastern Regulatory Area, West Yakutat District. Along the south side of continental Alaska, between 147°00' W long and 140°00' W long, and southward to the limits of the US EEZ, as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 649.
649	Prince William Sound. Includes those waters of the State of Alaska inside the base line as specified in Alaska State regulations at 5 AAC 28.200.
650	Eastern Regulatory Area, Southeast Outside District. East of 140°00' W long and southward to the limits of the US EEZ as described in the current edition of NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass). Excluding area 659.
659	Southeast Inside District. As specified in Alaska State regulations at 5 AAC 28.105 (a)(1) and (2).
690	Gulf of Alaska outside the U.S. EEZ as described in the current editions of NOAA chart INT 813 (Bering Sea, Southern Part) and NOAA chart 500 (West Coast of North America, Dixon Entrance to Unimak Pass).

NOTE: A statistical area is the part of a reporting area contained in the EEZ.

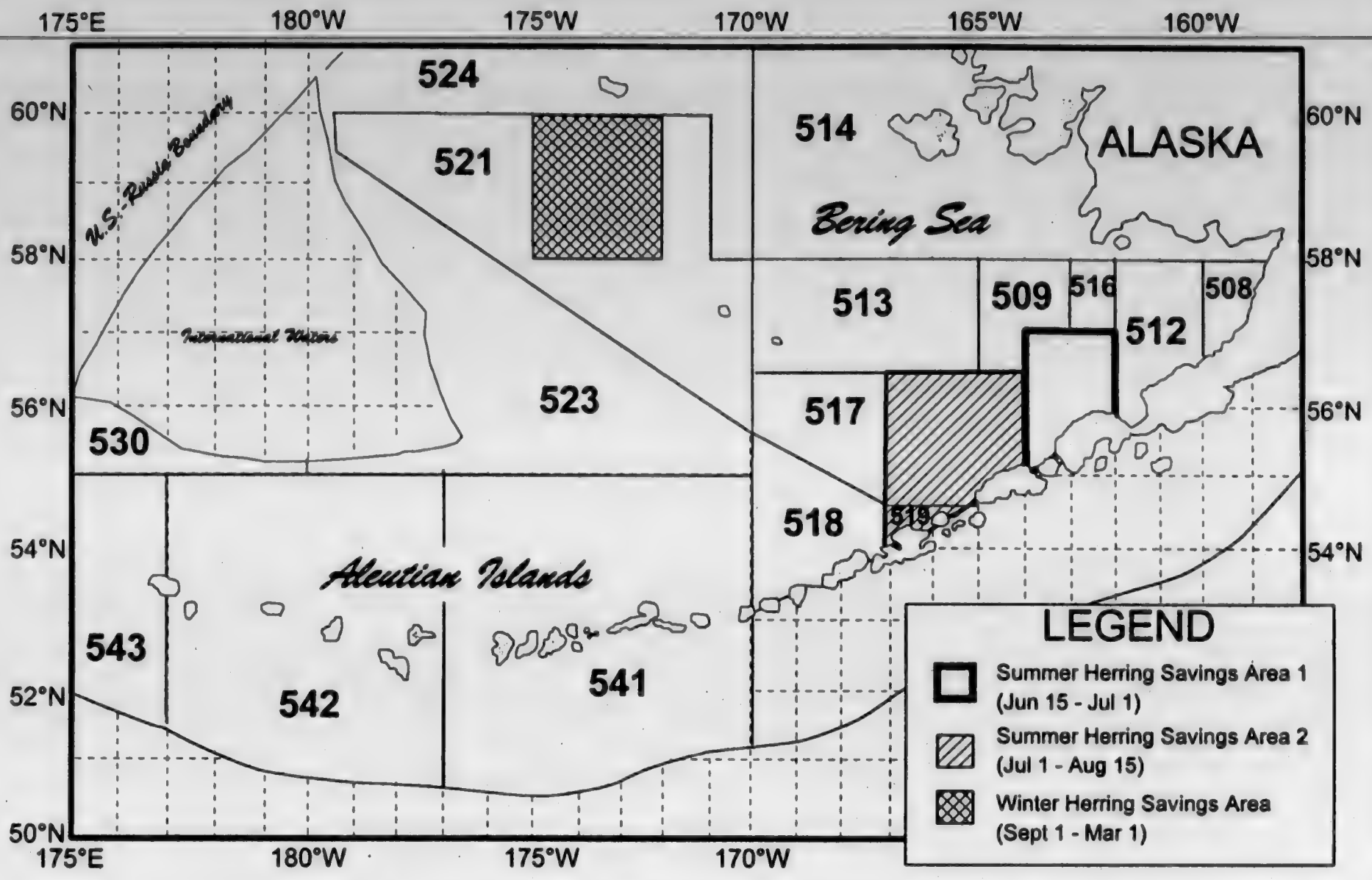


Figure 4 to Part 679. BSAI Herring Savings Areas

a. Map.

Figure 4 to Part 679. Herring Savings Areas in the BSAI
b. Coordinates

Name	Description and Effective Date
Summer Herring Savings Area 1	That part of the Bering Sea subarea that is south of 57°N lat and between 162° and 164°W long from 1200 hours, A.l.t., June 15 through 1200 hours, A.l.t. July 1 of a fishing year.
Summer Herring Savings Area 2	That part of the Bering Sea subarea that is south of 56°30' N lat and between 164° and 167°W long from 1200 hours, A.l.t., July 1 through 1200 hours, A.l.t. August 15 of a fishing year.
Winter Herring Savings Area	That part of the Bering Sea subarea that is between 58° and 60°N lat and between 172° and 175°W long from 1200 hours, A.l.t. September 1 of the current fishing year through 1200 hours, A.l.t. March 1 of the succeeding fishing year.

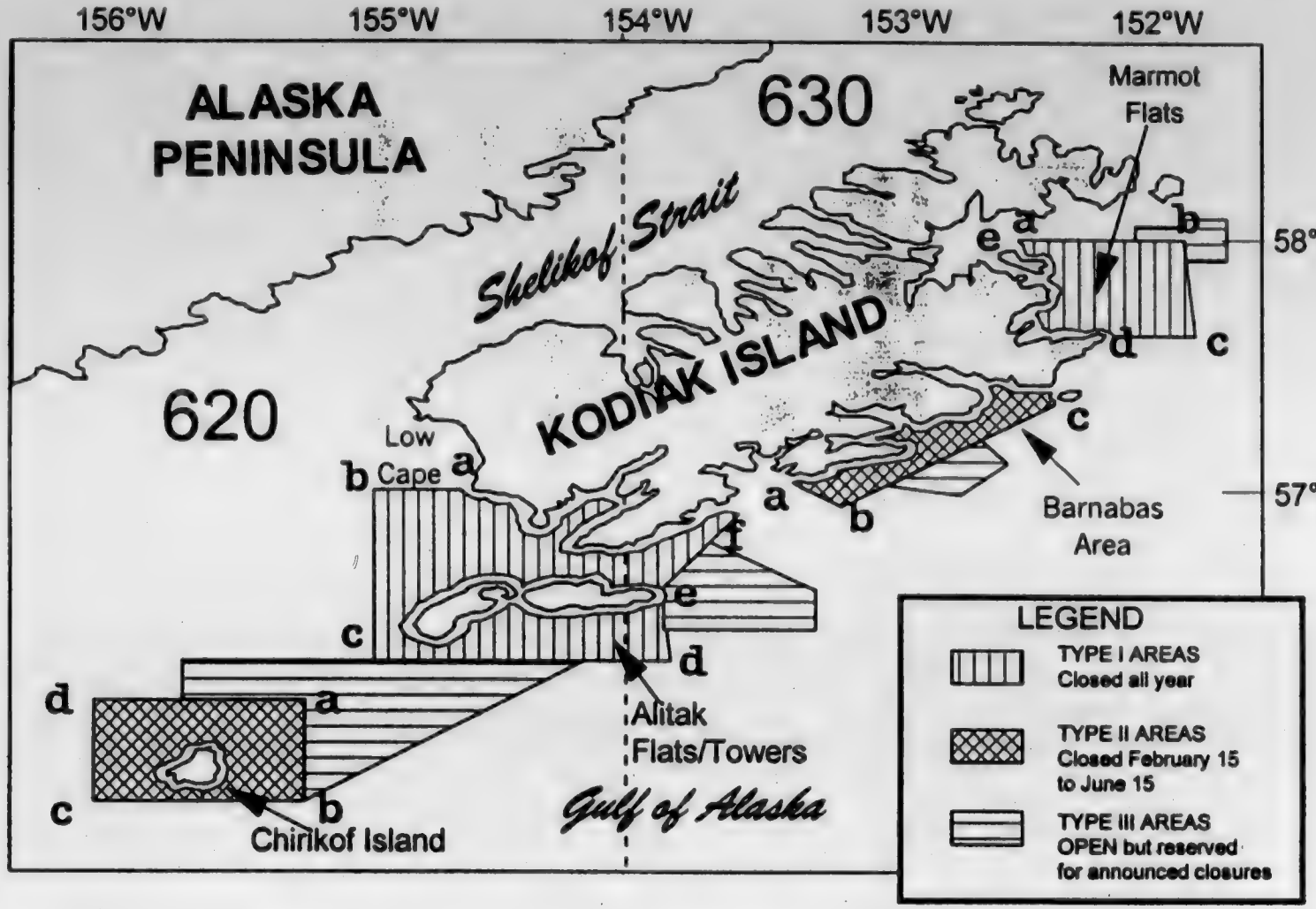


Figure 5 to Part 679. Areas closed to non-pelagic trawl gear in the Gulf of Alaska near Kodiak Island

a. Map

Figure 5 to Part 679. Kodiak Island Areas Closed to Non-pelagic Trawl Gear
b. Coordinates

Name and Description of Reference Area	North Latitude / West Longitude	Reference Point
Alitak Flats and Towers Areas	All waters of Alitak Flats and the Towers Areas enclosed by a line connecting the following 7 points in the order listed:	
a	56° 59' 4" 154° 31' 1"	Low Cape
b	57° 00' 0" 155° 00' 0"	
c	56° 17' 0" 155° 00' 0"	
d	56° 17' 0" 153° 52' 0"	
e	56° 33' 5" 153° 52' 0"	Cape Sitkinak
f	56° 54' 5" 153° 32' 5"	East point of Twoheaded Island
g	56° 56' 0" 153° 35' 5"	Kodiak Island, thence, along the coastline of Kodiak Island until intersection of Low Cape.
a	56° 59' 4" 154° 31' 1"	Low Cape
Marmot Flats Area	All waters enclosed by a line connecting the following five points in the clockwise order listed:	
a	58° 00' 0" 152° 30' 0"	
b	58° 00' 0" 151° 47' 0"	
c	57° 37' 0" 151° 47' 0"	
d	57° 37' 0" 152° 10' 1"	Cape Chiniak, then along the coastline of Kodiak Island to
e	57° 54' 5" 152° 30' 0"	North Cape.
a	58° 00' 0" 152° 30' 0"	
Chirikof Island Area	All waters surrounding Chirikof Island enclosed by a line connecting the following four points in the counter-clockwise order listed:	
a	56° 07' 0" 155° 13' 0"	
b	56° 07' 0" 156° 00' 0"	
c	55° 41' 0" 156° 00' 0"	
d	55° 41' 0" 155° 13' 0"	
a	56° 07' 0" 155° 13' 0"	
Barnabas Area	All waters enclosed by a line connecting the following six points in the counter clockwise order listed:	
a	57° 00' 0" 153° 18' 0"	Black Point.
b	56° 56' 0" 153° 09' 0"	
c	57° 22' 0" 152° 18' 5"	South Tip of Ugak Island
d	57° 23' 5" 152° 17' 5"	North Tip of Ugak Island
e	57° 25' 3" 152° 20' 0"	Narrow Cape, thence, along the coastline of Kodiak Island
f	57° 04' 2" 153° 30' 0"	Cape Kasick to
a	57° 00' 0" 153° 18' 0"	Black Point, including inshore waters

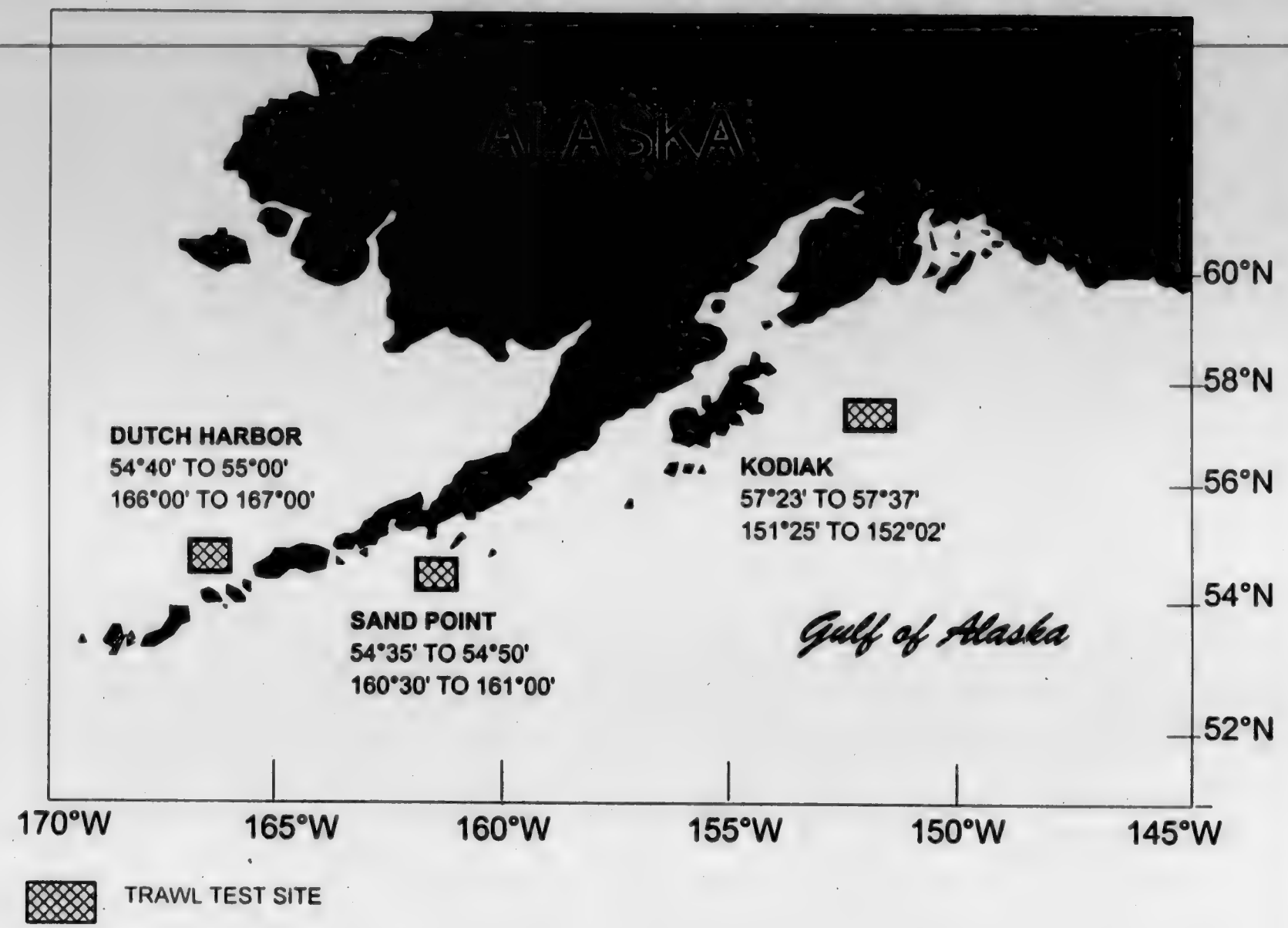


Figure 7 to Part 679. Location of Trawl Gear Test Areas in the GOA and the BSAI

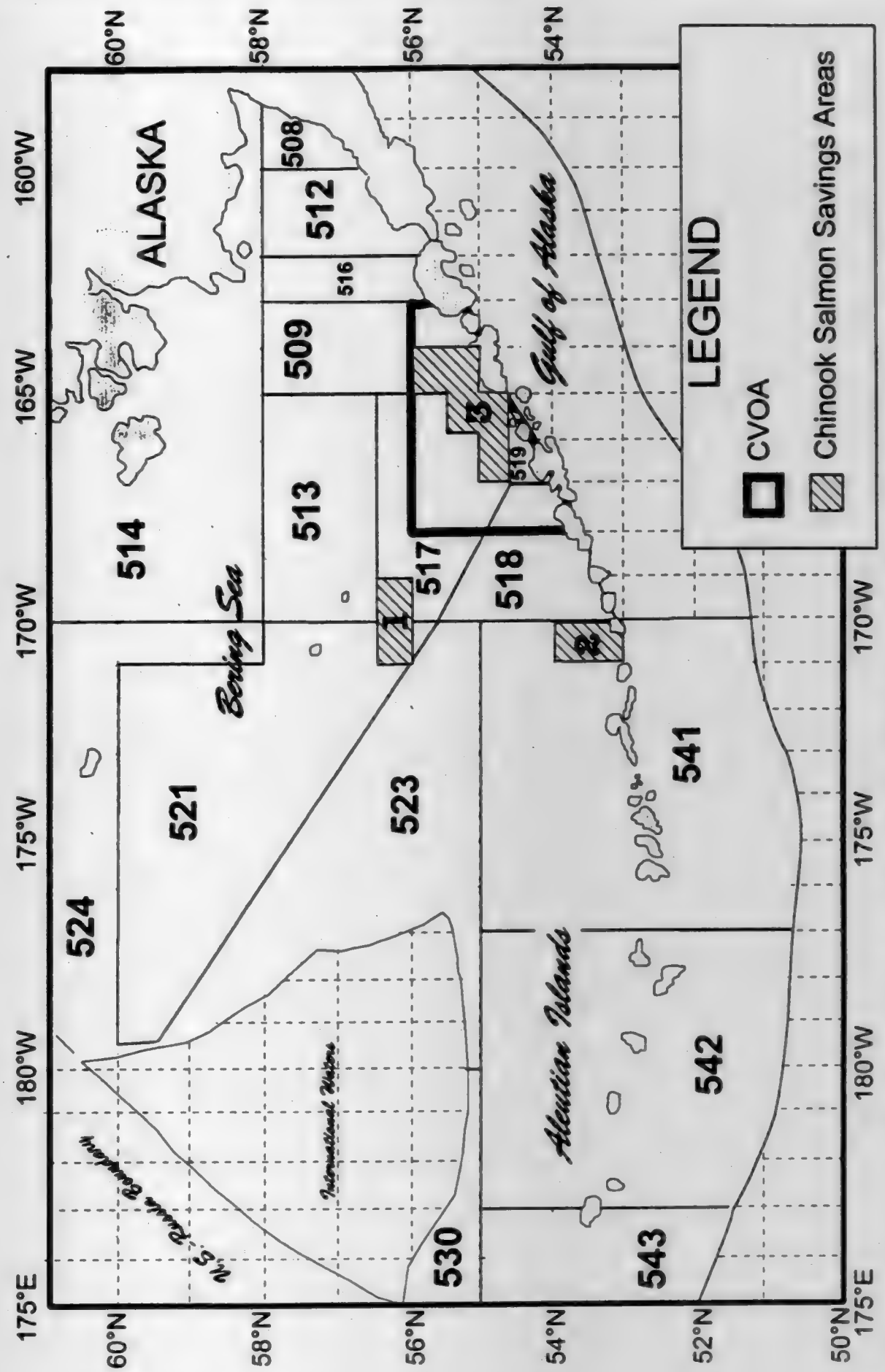


Figure 8 to Part 679. Chinook Salmon Savings Area of the BSAI.

a. Map

Figure 8 to Part 679. Chinook Salmon Savings Areas of the BSAI
b. Coordinates

The Chinook Salmon Savings Area is defined in the following three areas of the BSAI:

(1) The area defined by straight lines connecting the following coordinates in the order listed:

56°30' N. lat., 171°00' W. long.
56°30' N. lat., 169°00' W. long.
56°00' N. lat., 169°00' W. long.
56°00' N. lat., 171°00' W. long.
56°30' N. lat., 171°00' W. long.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

54°00' N. lat., 171°00' W. long.
54°00' N. lat., 170°00' W. long.
53°00' N. lat., 170°00' W. long.
53°00' N. lat., 171°00' W. long.
54°00' N. lat., 171°00' W. long.

(3) The area defined by straight lines connecting the following coordinates in the order listed:

56°00' N. lat., 165°00' W. long.
56°00' N. lat., 164°00' W. long.
55°00' N. lat., 164°00' W. long.
55°00' N. lat., 165°00' W. long.
54°30' N. lat., 165°00' W. long.
54°30' N. lat., 167°00' W. long.
55°00' N. lat., 167°00' W. long.
55°00' N. lat., 166°00' W. long.
55°30' N. lat., 166°00' W. long.
55°30' N. lat., 165°00' W. long.
56°00' N. lat., 165°00' W. long.

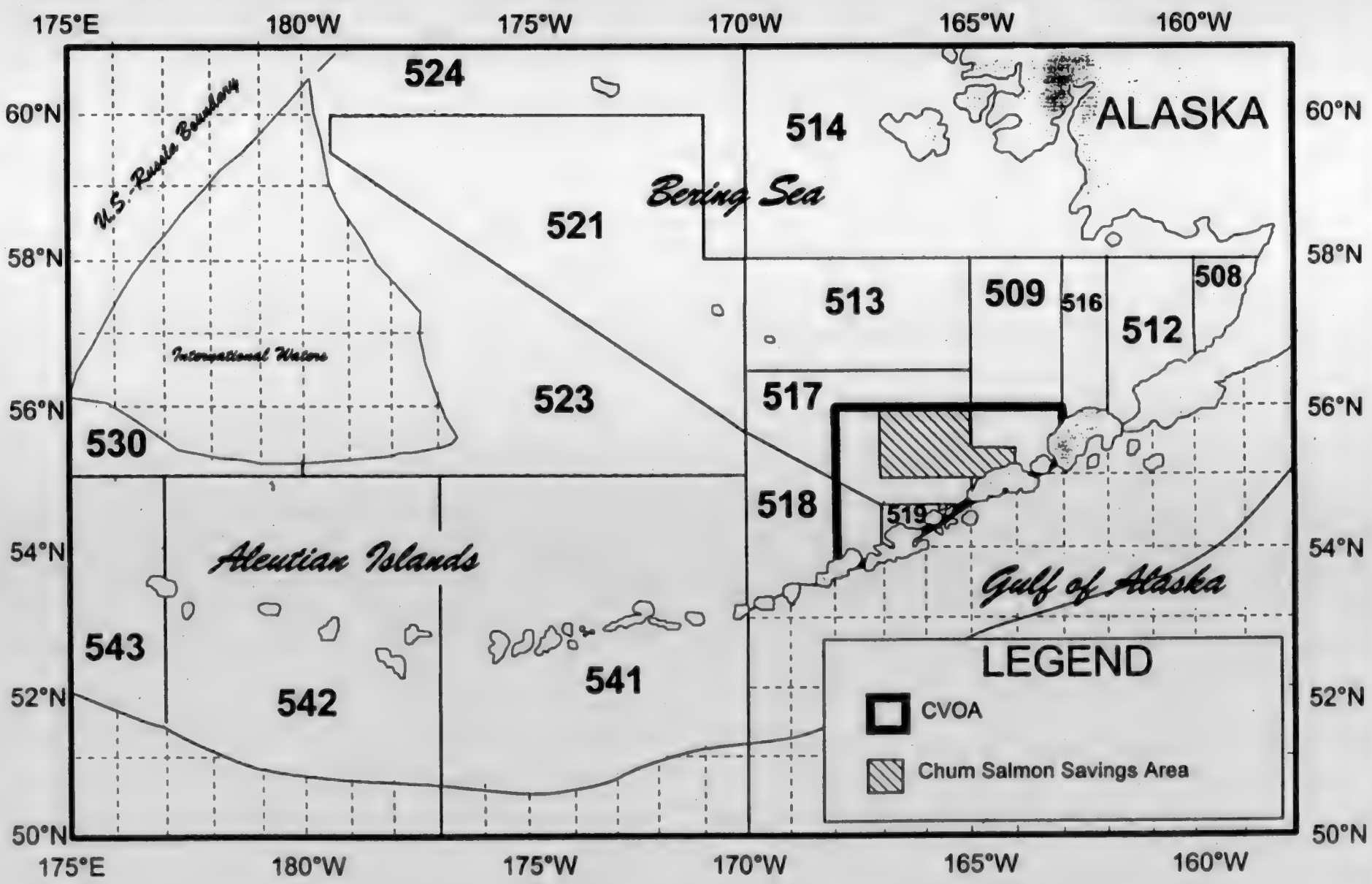


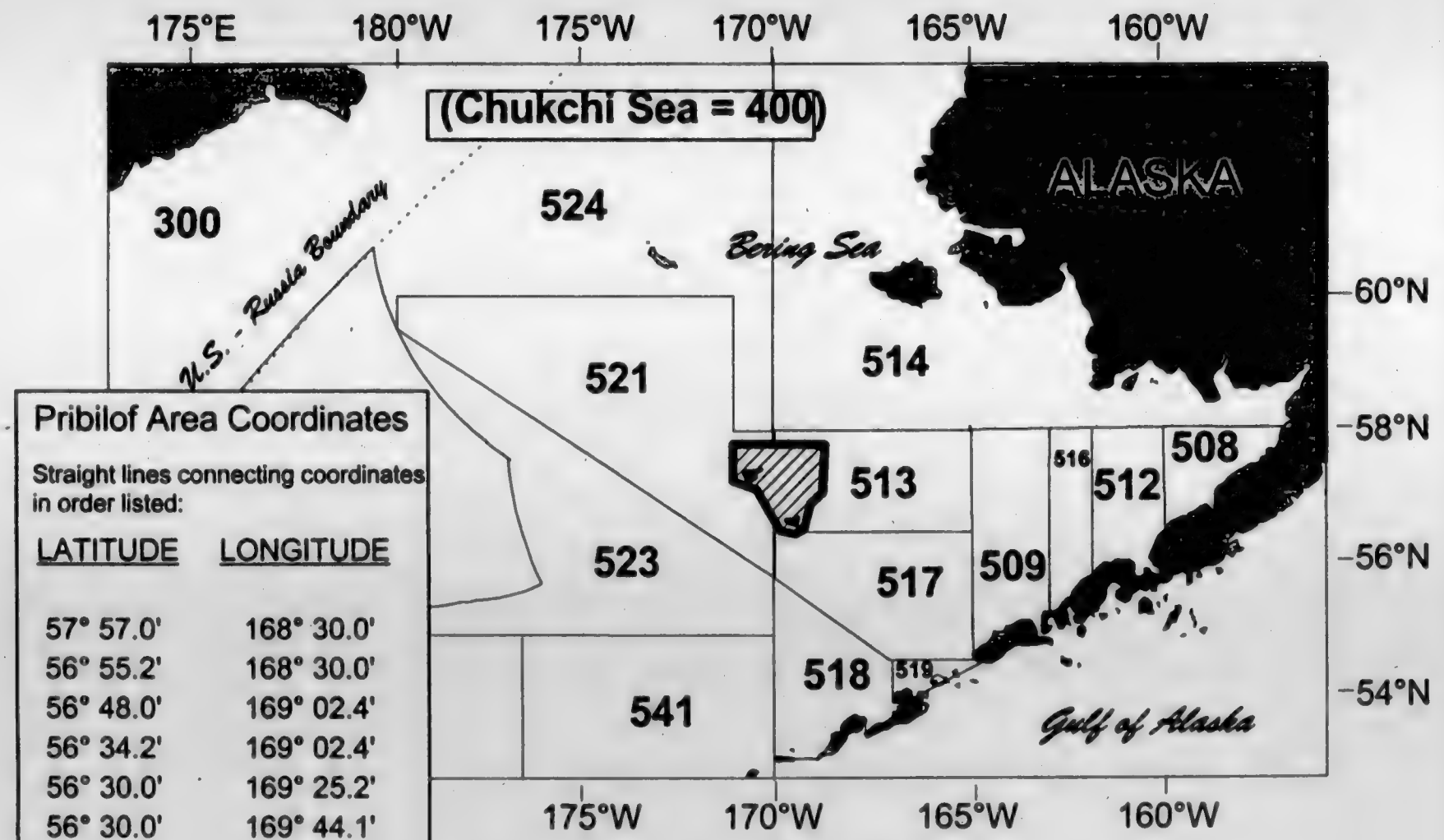
Figure 9 to Part 679. Chum Salmon Savings Area of the BSAI CVOA

a. Map

Figure 9 to Part 679. Chum Salmon Savings Area (CSSA) of the BSAI CVOA
b. Coordinates

The CSSA is an area defined as that portion of the Bering Sea Subarea described by straight lines connecting the following coordinates in the order listed:

56° 00' N. lat.	167° 00' W. long.
56° 00' N. lat.	165° 00' W. long.
55° 30' N. lat.	165° 00' W. long.
55° 30' N. lat.	164° 00' W. long.
55° 00' N. lat.	164° 00' W. long.
55° 00' N. lat.	167° 00' W. long.
56° 00' N. lat.	167° 00' W. long.



Pribilof Area Coordinates

Straight lines connecting coordinates in order listed:

LATITUDE	LONGITUDE
57° 57.0'	168° 30.0'
56° 55.2'	168° 30.0'
56° 48.0'	169° 02.4'
56° 34.2'	169° 02.4'
56° 30.0'	169° 25.2'
56° 30.0'	169° 44.1'
56° 55.8'	170° 21.6'
57° 13.8'	171° 00.0'
57° 57.0'	171° 00.0'
57° 57.0'	168° 30.0'

Figure 10 to Part 679. Pribilof Islands Area Habitat Conservation Zone in the Bering Sea

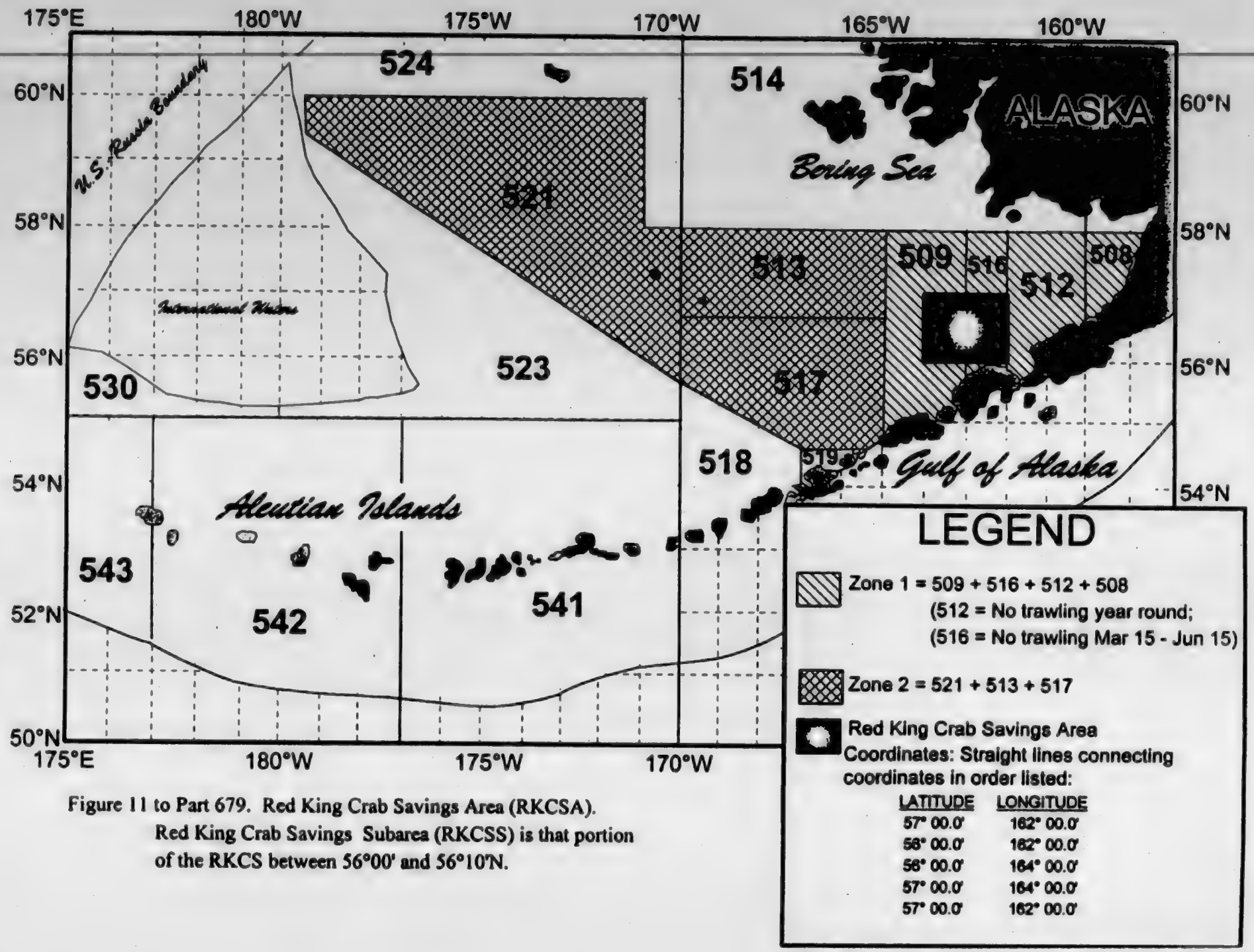


Figure 11 to Part 679. Red King Crab Savings Area (RKCSA).
Red King Crab Savings Subarea (RKCSS) is that portion of the RKCS between 56°00' and 56°10'N.

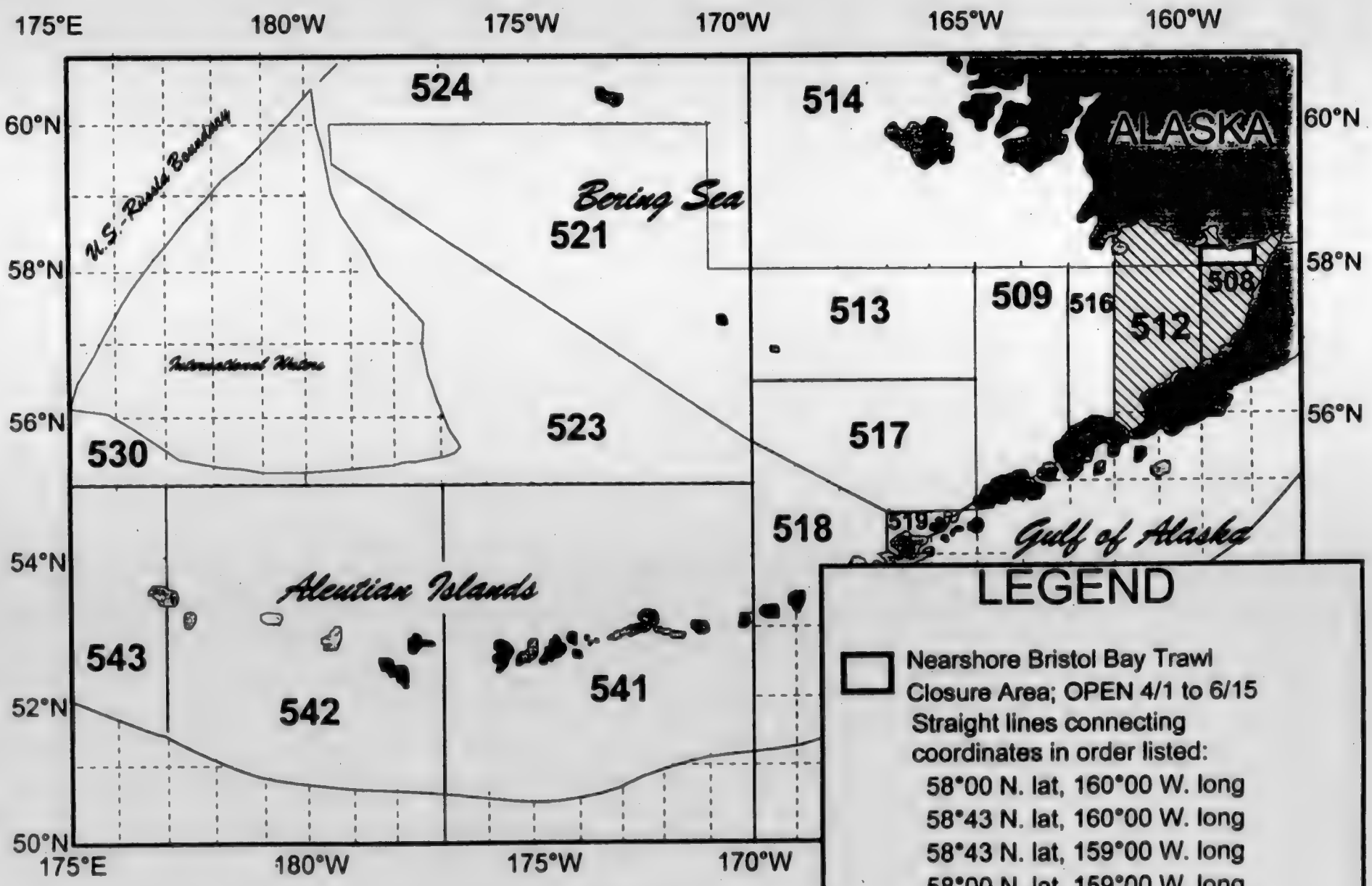


Figure 12 to Part 679. Nearshore Bristol Bay Trawl Closure Area

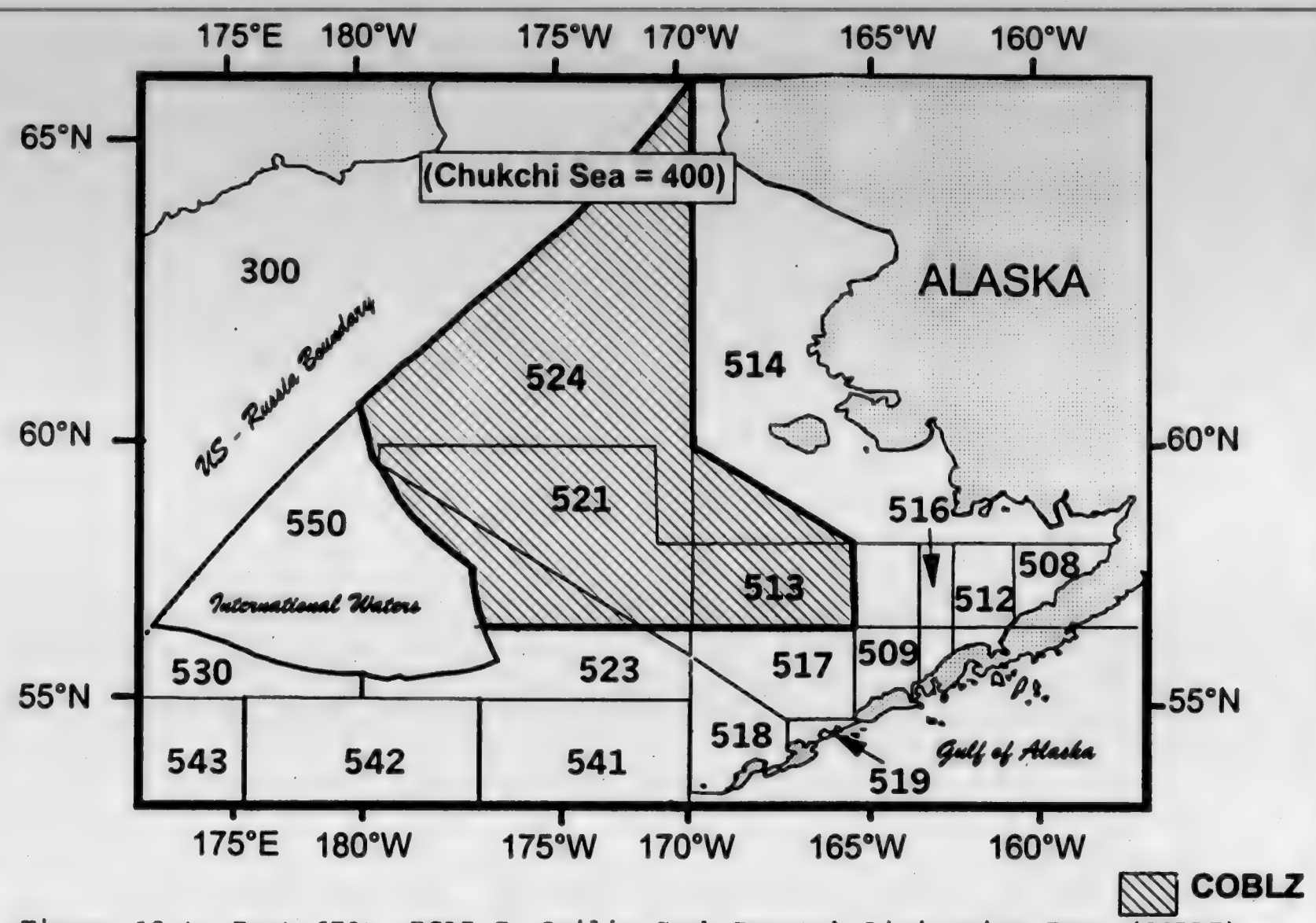


Figure 13 to Part 679. BSAI C. Opilio Crab Bycatch Limitation Zone (COBLZ)

a. Map

Figure 13 to Part 679. BSAI C. Opilio Crab Bycatch Limitation Zone (COBLZ)
b. Coordinates

The COBLZ is an area defined as that portion of the Bering Sea Subarea north of 56°30' N. lat. that is west of a line connecting the following coordinates in the order listed:

56° 30' N. lat.	165° 00' W. long.
58° 00' N. lat.	165° 00' W. long.
59° 30' N. lat.	170° 00' W. long.

and north along 170° 00' W. long. to its intersection with the U.S.-Russia Boundary.

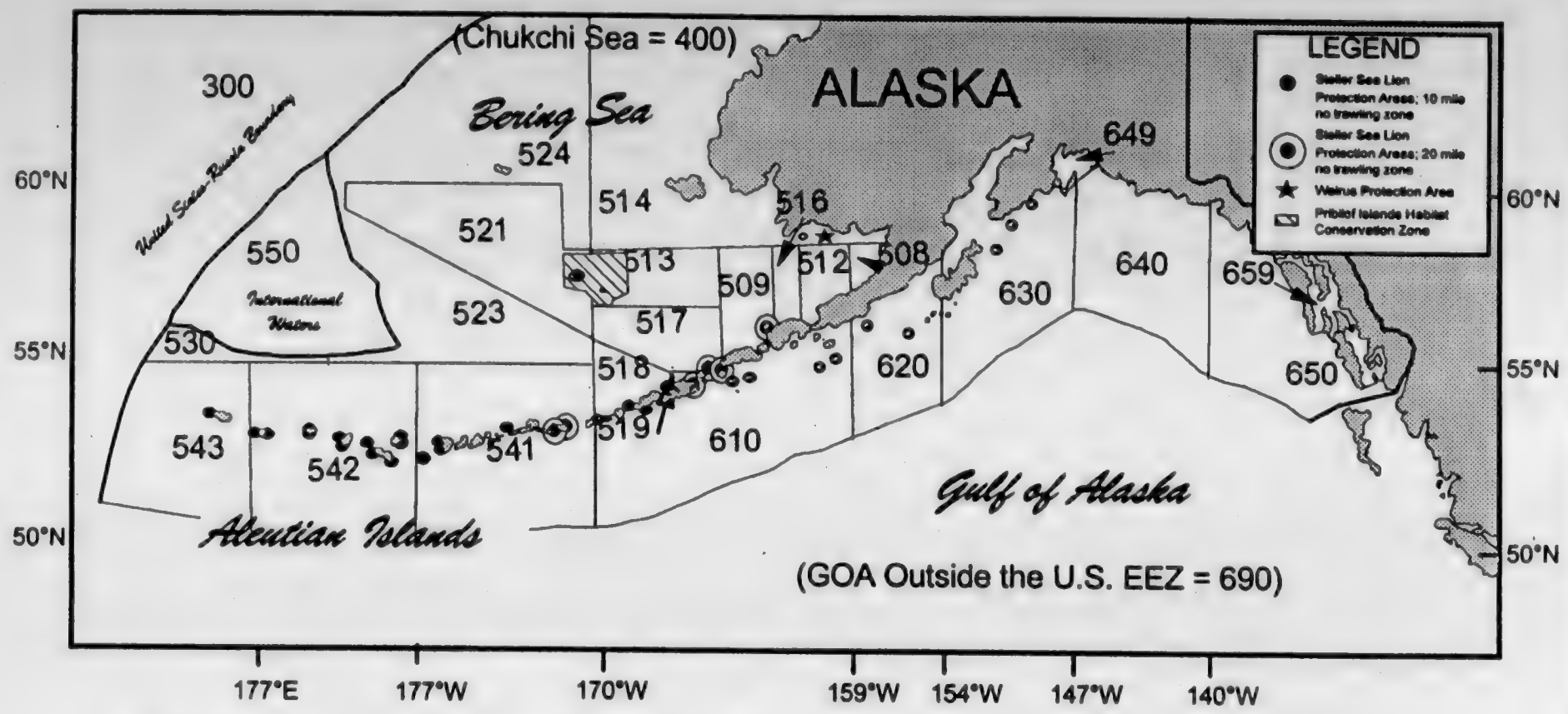


Figure 16 to Part 679. BSAI and GOA Steller Sea Lion Protection Areas

a. Map

Figure 16 to Part 679. BSAI and GOA Steller Sea Lion Protection Areas
b. Coordinates (page 1 of 2)

Island	From Latitude	From Longitude	To Latitude	To Longitude
1. 3-nm NO TRANSIT ZONES described at § 227.12(a)(2) of this title				
2. Trawling Prohibited Year-round Within 10 nm				
Outer Island	59°20.5' N	150°23.0' W	59°21.0' N	150°24.5' W
Marmot Island	58°14.5' N	151°47.5' W	58°10.0' N	151°51.0' W
Sugarloaf Island	58°53.0' N	152°02.0' W		
Chirikof Island	55°46.5' N	155°39.5' W	55°46.5' W	155°43.0' W
Chowiet Island	56°00.5' N	156°41.5' W	56°00.5' N	156°42.0' W
Atkins Island	55°03.5' N	159°18.5' W		
Chernabura Island	54°47.5' N	159°31.0' W	54°45.5' N	159°33.5' W
Pinnacle Rock	54°46.0' N	161°46.0' W		
Clubbing Rocks-S	54°42.0' N	162°26.5' W		
Clubbing Rocks-N	54°43.0' N	162°26.5' W		
Sea Lion Rocks	55°28.0' N	163°12.0' W		
Ugamak Island	54°14.0' N	164°48.0' W	54°13.0' N	164°48.0' W
Akun Island	54°18.0' N	165°32.5' W	54°18.0' N	165°31.5' W
Akutan Island	54°03.5' N	166°00.0' W	54°05.5' N	166°05.0' W
Bogoslof Island	53°56.0' N	168°02.0' W		
Ogchul Island	53°00.0' N	168°24.0' W		
Adugak Island	52°55.0' N	169°10.5' W		
Walrus Island	57°11.0' N	169°56.0' W		
Yunaska Island	52°42.0' N	170°38.5' W	52°41.0' N	170°34.5' W
Kasatochi Island	52°10.0' N	175°31.0' W	52°10.5' N	175°29.0' W
Adak Island	51°36.5' N	176°59.0' W	51°38.0' N	176°59.5' W
Gramp Rock	51°29.0' N	178°20.5' W		
Tag Island	51°33.5' N	178°34.5' W		
Ulak Island	51°20.0' N	178°57.0' W	51°18.5' N	178°59.5' W
Semisopochnoi	51°58.5' N	179°45.5' E	51°57.0' N	179°46.0' E
Semisopochnoi	52°01.5' N	179°37.5' E	52°01.5' N	179°39.0' E
Amchitka Island	51°22.5' N	179°28.0' E	51°21.5' N	179°25.0' E

Figure 16 to Part 679. BSAI and GOA Steller Sea Lion Protection Areas
b. Coordinates (page 2 of 2)

Island	From Latitude	From Longitude	To Latitude	To Longitude
2. Trawling Prohibited Year-round Within 10 nm (CONTD)				
Amchitka Island/ Column Rocks	51°32.5' N	178°49.5' E		
Ayugadak Point	51°45.5' N	178°24.5' E		
Kiska Island	51°57.5' N	177°21.0' E	51°56.5' N	177°20.0' E
Kiska Island	51°52.5' N	177°13.0' E	51°53.5' N	177°12.0' E
Buldir Island	52°20.5' N	175°57.0' E	52°23.5' N	175°51.0' E
Agattu Island	52°23.5' N	173°43.5' E	52°22.0' N	173°41.0' E
Agattu Is./Gillion Pt	52°24.0' N	173°21.5' E		
Attu Island	52°54.5' N	172°28.5' E	52°57.5' N	172°31.5' E
3. Trawling Prohibited Year-round Within 20 nm				
Seguam Island	52°21.0' N	172°35.0' W	52°21.0' N	172°33.0' W
Agligadak Island	52°06.5' N	172°54.0' W		
4. Trawling Prohibited Seasonally Within 20 nm (During January 1 through April 15, or a date earlier than April 15, if adjusted under part 679.20).				
Sea Lion Rocks	55°28.0' N	163°12.0' W		
Ugamak Island	54°14.0' N	164°48.0' W	54°13.0' N	164°48.0' W
Akun Island	54°18.0' N	165°32.5' W	54°18.0' N	165°31.5' W
Akutan Island	54°03.5' N	166°00.0' W	54°05.5' N	166°05.0' W
5. Critical Habitat (see Table 1, Table 2, and Figure 4 of 50 CFR part 226)				

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

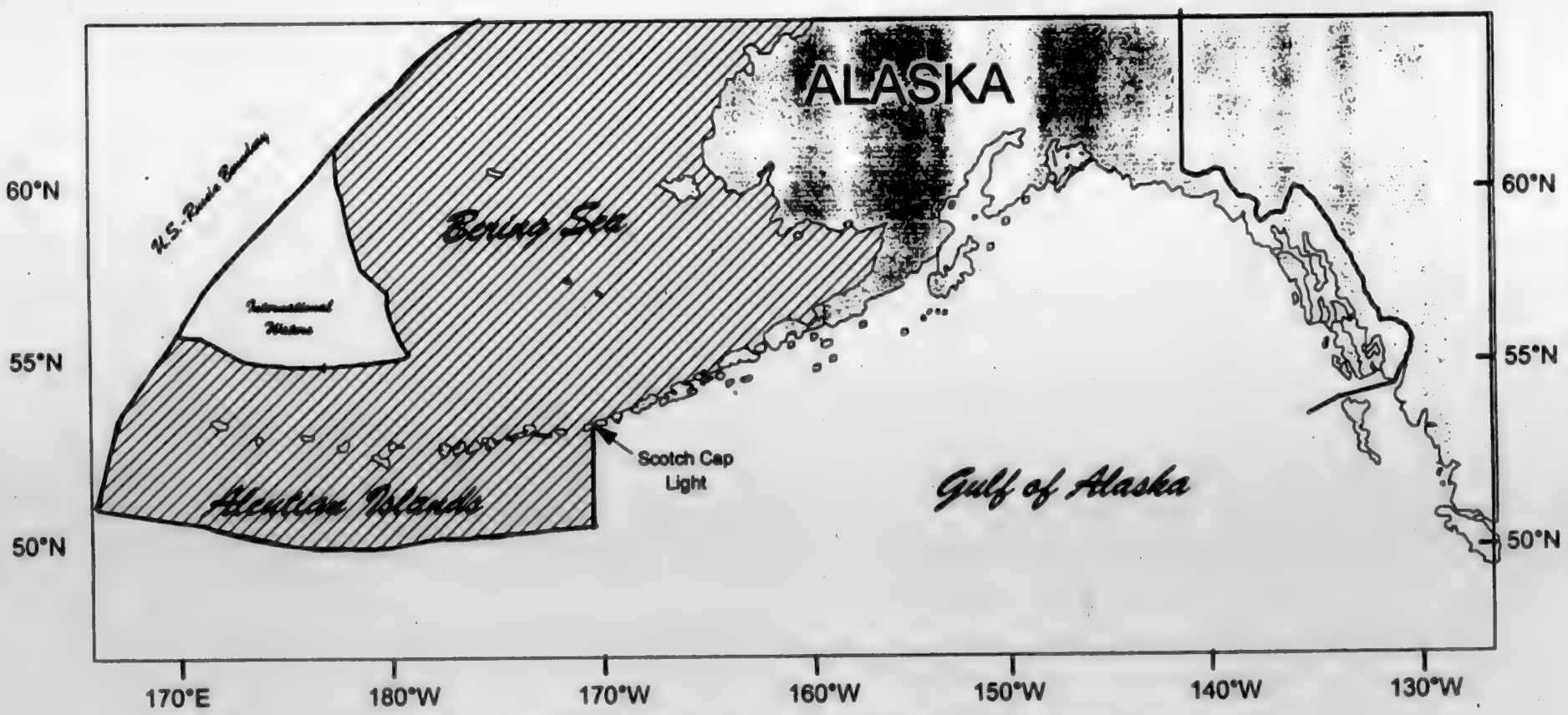


Figure 17 to Part 679. BSAI C. opilio and C. bairdi tanner crab endorsement areas. Waters east of the U.S.-Russian Convention Line of 1867 excluding all GOA waters east of a boundary extending south from Scotch Cap Light (54°36' N. lat., 164°44' W. long.).

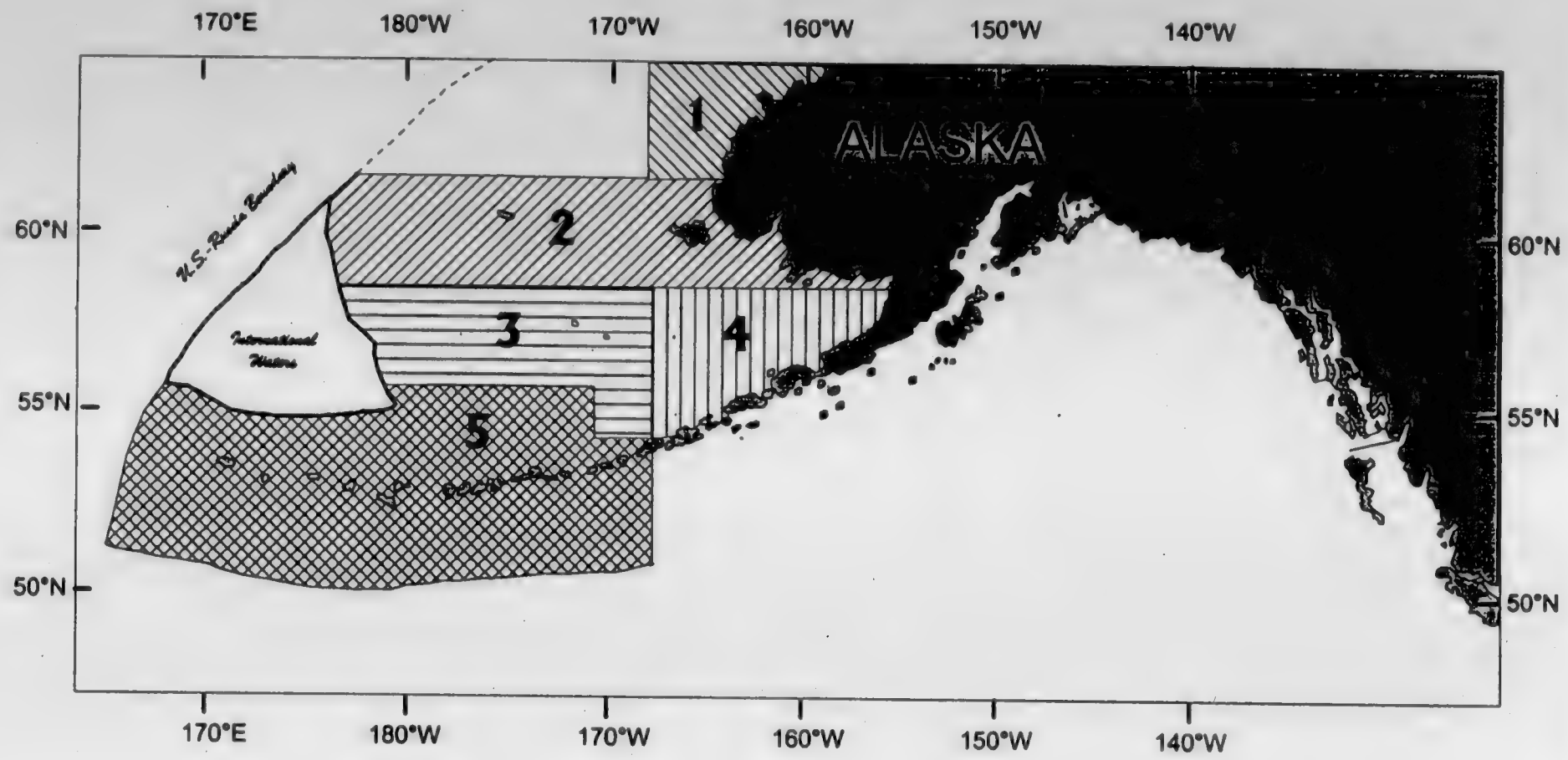


Figure 18 to Part 679. BSAI King crab endorsement areas
a. Map

Figure 18 to Part 679. BSAI King Crab Endorsement Areas
b. Coordinates

1. Norton Sound Red King Crab and Blue King Crab Area
   Area defined by a northern boundary of 65°36' N. lat., along the east side of continental Alaska, a southern boundary of 61°49' N. lat., and a western boundary of 168° W. long.

2. St. Matthew Blue King Crab Area
   Area defined by a northern boundary of 61°49' N. lat., along the east side of continental Alaska, a southern boundary of 58°39' N. lat., and a western boundary of the U.S.-Russian Convention Line of 1867.

3. Pribilof Red King Crab and Blue King Crab Area
   Area defined by a northern boundary of 58°39' N. lat., an eastern boundary of 168° W. long. south to 54°36' N. lat., then westward to (54°36' N. lat., 171° W. long.), then north to (55°30' N. lat., 171° W. long.), then westward to the western boundary of the U.S.-Russian Convention Line of 1867.

4. Bristol Bay Red King Crab Area
   Area defined by a northern boundary of 58°39' N. lat., along the east side of continental Alaska, a southern boundary of 54°36' N. lat., and a western boundary of 168° W. long. and including all waters of Bristol Bay.

5. Aleutian Islands Brown King Crab and Red King Crab Area
   Area defined by a northern boundary of 55°30' N. lat. eastward to 171° W. long., then south to Cape Sarichef (54°36' N. lat., 171° W. long.), then east to Scotch Cap Light (54°36' N. lat., 164°44' W. long.), bounded on the south by the limits of the US EEZ as described in the current editions of NOAA chart INT 813 Bering Sea (Southern Part) and NOAA chart 530 (San Diego to Aleutian Islands and Hawaiian Islands), and a western boundary of the U.S.-Russian Convention Line of 1867.

Table 1 to Part 679--Product Codes

Fish Product Code/Description	Fish Product Code/Description
03. Bled only. Throat, or isthmus, slit to allow blood to drain.	54. Gutted, head on, with ice and slime. Belly slit and viscera removed. IFQ Pacific halibut and sablefish only.
04. Gutted, head on. Belly slit and viscera removed.	55. Gutted, head off, with ice and slime. IFQ Pacific halibut only.
05. Gutted, head off. IFQ Pacific halibut only.	57. Headed and gutted, Western cut, with ice and slime. IFQ sablefish only.
06. Head and gutted, with roe.	58. Headed and gutted, Eastern cut, with ice and slime. IFQ sablefish only.
07. Headed and gutted, Western cut. Head removed just in front of the collar bone, and viscera removed.	86. Donated prohibited species. Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program.
08. Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed.	97. Other retained product
10. Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed.	WHOLE FISH CODES
11. Kirimi. Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak.	When using the following codes, log round weights and not product weights, even if the whole fish is not used.
12. Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted.	01. Whole fish/food fish.
13. Wings. On skates, side fins are cut off next to body.	02. Whole fish/bait. Processed for bait. Sold
14. Roe. Eggs, either loose or in sacs, or skeins.	41. Whole fish/destined for offsite fish meal production.
15. Pectoral girdle. Collar bone and associated bones, cartilage and flesh.	51. Whole fish/food fish with ice and slime. IFQ sablefish only.
16. Heads. Heads only, regardless where severed from body.	92. Whole fish/onboard bait. Whole fish used as bait on board vessel. Not sold.
17. Cheeks. Muscles on sides of head.	93. Whole fish/damaged. Whole fish damaged by observer's sampling procedures.
18. Chins. Lower jaw (mandible), muscles, and flesh.	95. Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait
19. Belly. Flesh in region of pelvic and pectoral fins and behind head.	DISCARD PRODUCT CODES
20. Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail.	96. Discard, decomposed. Flea-infested fish, parasite-infested fish, decomposed, or previously discarded fish.
21. Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail.	98. Discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Buying Stations delivering to Motherships.
22. Fillets with ribs and no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail.	99. Discard, onshore. Discard after delivery and before processing by Shoreside Processors and Buying Stations delivering to Shoreside Processors and in-plant discard of whole groundfish and prohibited species during processing.
23. Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail.	PRODUCT DESIGNATION (see 679.2)
24. Deep-skin fillet. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets.	A Ancillary.
30. Surimi. Paste from fish flesh and additives.	P Primary.
31. Minced. Ground flesh.	R Reprocessed or rehandled.
32. Fish meal. Meal from whole fish or fish parts; includes bone meal.	
33. Fish oil. Rendered oil from whole fish or fish parts.	
34. Milt. (in sacs, or testes).	
35. Stomachs. Includes all internal organs.	
36. Octopus/squid mantles. Flesh after removal of viscera and arms.	
37. Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached.	
39. Bones (if meal, report as 32).	

Table 2 to Part 679--Species Codes

Code	Species Description
110	Cod, Pacific
121	Flounder, Arrowtooth and/or Kamchatka
122	Sole, flathead
123	Sole, rock
124	Sole, Dover
125	Sole, Rex
126	Sole, butter
127	Sole, yellowfin
128	Sole, English
129	Flounder starry
130	Lingcod
131	Sole, Petrale
132	Sole, sand
133	Flounder, Alaska Plaice
134	Turbot, Greenland
135	Rockfish greenstriped
136	Rockfish, northern
137	Rockfish, Bocaccio
138	Rockfish, copper
141	Perch, Pacific Ocean (S. aiutus only)
142	Rockfish, black
143	Rockfish thornyhead (all Sebastolobus species)
145	Rockfish yelloweye
146	Rockfish, canary
147	Rockfish, quillback
148	Rockfish, tiger
149	Rockfish, China
150	Rockfish, rosethorn
151	Rockfish, rougheye
152	Rockfish, shortraker
153	Rockfish, redbanded
154	Rockfish, dusky
155	Rockfish, yellowtail
156	Rockfish, widow
157	Rockfish silvergray
158	Rockfish, redstripe
159	Rockfish, darkblotched
160	Sculpins
166	Rockfish, sharpchin
167	Rockfish, blue
170	Sardine, Pacific (pilchard)
175	Rockfish, yellowmouth
176	Rock, Harlequin
177	Rockfish, blackgill
178	Rockfish, chilipepper
179	Rockfish, pygmy
180	Shad
181	Rockfish, shortbelly
182	Rockfish, splitnose
183	Rockfish, stripetail
184	Rockfish, vermilion
185	Rockfish, Aurora
190	Greenling, general
191	Greenling, rock
192	Greenling, whitespot
193	Atka mackerel (greenling)
194	Greenling, kelp
206	Pacific Sand fish (family Trichodontidae)
207	Gunnels (family Pholidae)
208	Pricklebacks, warbonnets, eelblennys, cockscombs and Shannys (family Stichaeidae)
209	Bristlemouths, lightfishes, and anglemouths (family Gonostomatidae)
210	Eels or eel-like fish
211	Wrymouths
212	Pacific hagfish
213	Grenadier (rattail)
214	Giant grenadier
220	Pacific saury
250	Pacific tomcod
260	Cod, longfin
270	Pollock
510	Smelt, general
511	Eulachon smelt (family Osmeridae)
516	Capelin smelt (family Osmeridae)
521	Arctic char, anadromous
531	Dolly varden, anadromous
600	Lamprey, pacific
689	Sharks, general
690	Shark, salmon
691	Shark, spiny dogfish
692	Shark, Pacific sleeper
700	Skates, general
710	Sablefish (blackcod)
720	Tuna, albacore
772	Lanternfishes (family Myctophidae)
773	Deep-sea smelts (family Bathylagidae)
774	Pacific Sand lance (family Ammodytidae)
800	Krill (order Euphausiacea)
810	Clam, butter
812	Clam, surf
815	Clam, geoduck
820	Clam, cockle
830	Clam, razor
840	Clam, little-neck
842	Clam, eastern softshell
850	Scallop, weathervane
851	Scallop, pink (or calico)
855	Mussel, blue
860	Abalone
870	Octopus
875	Squid
880	Oysters
890	Snails
895	Sea cucumber
896	Sea urchin
899	Coral
900	Crab, box
910	Crab, dungeness
940	Crab, Korean horsehair
960	Shrimp, general
961	Shrimp, pink
962	Shrimp, sidestripe
963	Shrimp, humpy
964	Shrimp, coonstripe
965	Shrimp, spot

GROUP CODES. These group codes may be used only as authorized.

Code	Species Description
120	Miscellaneous flatfish (all flatfish without separate codes)
144	Slope rockfish (aurora, blackgill, Bocaccio, redstripe, silvergray, chilipepper, darkblotched, greenstriped, harlequin, pygmy, shortbelly, splitnose, stripetail, vermillion, yellowmouth, sharpchin)
168	Demersal shelf rockfish (china, copper, quillback, rosethorn, tiger, yelloweye, canary)
169	Pelagic shelf rockfish (dusky, yellowtail, widow)
171	Shortraker/rougheye rockfish
888	Mixed species tote (for use only on Product Transfer Report)

PROHIBITED SPECIES CODES

Code	Species Description
200	Pacific halibut
235	Pacific herring (Family of Clupeidae)
410	Salmon, Chinook
420	Salmon. Sockeye
430	Salmon, Coho
440	Salmon, Pink
450	Salmon, Chum
540	Steelhead trout
921	Crab, red king
922	Crab, blue king
923	Crab, gold/brown king
924	Crab, scarlet king
931	Crab, bairdi tanner
932	Crab, opilio tanner

Table 3 to Part 679--Product Recovery Rates* for groundfish species and conversion rates* for Pacific halibut

FMP SPECIES	Species Code	PRODUCT CODE 1, 2, 41, 92, 94 WHOLE FISH	3 BLED	4 GUTTED HEAD ON	5 GUTTED HEAD OFF	6 H&G WITH ROE	7 H&G WESTERN CUT	8 H&G EASTERN CUT	10 H&G W/O TAIL	11 KIRIMI	12 SALTED & SPLIT	13 WINGS
PACIFIC COD	110	1.00	0.98	0.85	—	0.63	0.57	0.47	0.44	....	0.45	....
ARROWTOOTH FLOUNDER	121	1.00	0.98	0.90	—	0.80	0.72	0.65	0.62	0.48	....	....
ROCKFISH		1.00	0.98	0.88	....	—	0.60	0.50	....	....	....	....
SCULPINS	160	1.00	0.98	0.87	....	—	0.50	0.40	....	....	....	....
ATKA MACKEREL	193	1.00	0.98	0.87	—	0.67	0.64	0.61	....	....	....	....
POLLOCK	270	1.00	0.98	0.80	—	0.70	0.65	0.56	0.50	....	....	....
SMELTS	510	1.00	0.98	0.82	....	—	0.71	....	....	....	....	....
EULACHON	511	1.00	0.98	0.82	....	—	0.71	....	....	....	....	....
CAPELIN	516	1.00	0.98	0.89	....	—	0.78	....	....	....	....	....
SHARKS	689	1.00	0.98	0.83	....	—	0.72	....	....	....	....	....
SKATES	700	1.00	0.98	0.90	....	....	....	0.32	....	....	....	0.32
SABLEFISH	710	1.00	0.98	0.89	....	—	0.68	0.63	0.50	....	....	....
IFQ SABLEFISH	710	1.00	0.98	0.89	....	—	0.68	0.63	0.50	....	....	....
OCTOPUS	870	1.00	0.98	0.69	....	...	....	....	....	....	....	....
Target species categories GOA only												
DEEP WATER FLATFISH	118	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
FLATHEAD SOLE	122	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
REX SOLE	125	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
SHALLOW WATER FLATFISH	119	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
THORNYHEAD ROCKFISH	143	1.00	0.98	0.88	...	0.55	0.60	0.50	....	....	....	....
Target species categories BSAI only												
OTHER FLATFISH	120	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
ROCK SOLE	123	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
YELLOWFIN SOLE	127	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	....
GREENLAND TURBOT	134	1.00	0.98	0.90	...	0.80	0.72	0.65	0.62	0.48	....	
SQUID	875	1.00	0.98	0.69	....	...	....	....	....	....	....	....
Conversion rates for Pacific halibut												
PACIFIC HALIBUT	200	—	—	0.90	1.0	—	—	—	—	—	—	—

(continued)

Table 3 to Part 679 (continued)--Product Recovery Rates* for groundfish species and conversion rates* for Pacific halibut

FMP SPECIES	Species Code	PRODUCT CODE 14 ROE	15 PECTORAL GIRDLE	16 HEADS	17 CHEEKS	18 CHINS	19 BELLY	20 FILLETS W/SKIN & RIBS	21 FILLETS SKIN ON NO RIBS	22 FILLETS W/RIBS NO SKIN	23 FILLETS SKNLESS/ BONELESS	24 FILLETS DEEP SKIN	30 SURIMI	31 MINCE
PACIFIC COD	110	0.05	0.05	....	0.05	....	0.01	0.45	0.35	0.25	0.25	....	0.15	0.5
ARROWTOOTH FLOUNDER	121	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
ROCKFISH	....	...	....	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	....	....	....
SCULPINS	160	...	....	....	....	....	....	....	....	....	....	....	....	....
ATKA MACKEREL	193	...	....	....	....	....	....	....	....	....	....	....	0.15	....
POLLOCK	270	0.07	....	0.15	....	....	....	0.35	0.30	0.30	0.21	0.16	0.16[1] 0.17[2]	0.22
SMELTS	510	...	....	....	....	....	....	....	0.38	....	....	....	....	....
EULACHON	511	...	....	....	....	....	....	....	0.38	....	....	....	....	....
CAPELIN	516	...	....	....	....	....	....	....	....	....	....	....	....	....
SHARKS	689	...	....	....	....	....	....	....	0.30	0.30	0.25	....	....	....
SKATES	700	...	....	....	....	....	....	....	....	....	....	....	....	....
SABLEFISH	710	...	....	....	0.05	....	....	0.35	0.30	0.30	0.25	....	....	....
IFQ SABLEFISH	710	...	....	....	0.05	....	....	0.35	0.30	0.30	0.25	....	....	....
OCTOPUS	870	...	....	....	....	....	....	....	....	....	....	....	....	....
Target species categories at GOA only														
DEEP WATER FLATFISH	118	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
FLATHEAD SOLE	122	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
REX SOLE	125	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
SHALLOW WATER FLATFISH	119	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
THORNYHEAD ROCKFISH	143	...	....	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	....	....	....
Target species categories at BSAI only														
OTHER FLATFISH	120	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
ROCK SOLE	123	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
YELLOWFIN SOLE	127	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	0.18	....
GREENLAND TURBOT	134	0.08	....	....	....	....	....	0.32	0.27	0.27	0.22	....	....	....
SQUID	875	...	....	....	....	....	....	....	....	....	....	....	....	....
Conversion rates for Pacific halibut														
PACIFIC HALIBUT (continued)	200	—	—	—	—	—	—	—	—	—	—	—	—	

Table 3 to Part 679 (continued)--Product Recovery Rates* for groundfish species and conversion rates* for Pacific halibut

FMP SPECIES	Species Code	PRODUCT CODE 32 MEAL	33 OIL	34 MILT	35 STOMACHS	36 MANTLES	37 BUTTERFLY BACKBONE REMOVED	51 WHOLE FISH W/H&S	54 GUTTED HEAD ON W/H&S	55 GUTTED HEAD OFF W/H&S	57 H&G WESTERN W/H&S	58 H&G EASTERN W/H&S	96 DECOMPOSED FISH	98, 99 DISCARDS
PACIFIC COD	110	0.17	....	....	....	....	0.43	—	—	—	—	—	0.00	1.00
ARROWTOOTH FLOUNDER	121	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
ROCKFISH		....	....	....	....	....	—	—	—	—	—	—	0.00	1.00
SCULPINS	160	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
ATKA MACKEREL	193	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
POLLOCK	270	0.17	....	....	....	....	0.43	—	—	—	—	—	0.00	1.00
SMELTS	510	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
EULACHON	511	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
CAPELIN	516	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
SHARKS	689	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
SKATES	700	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
SABLEFISH	710	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
IFQ SABLEFISH	710	0.17	....	....	....	....	....	1.02	0.91	—	0.70	0.65	0.00	1.00
OCTOPUS	870	0.17	....	....	....	0.85	—	—	—	—	—	—	0.00	1.00
Target species categories at GOA only														
DEEP WATER FLATFISH	118	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
FLATHEAD SOLE	122	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
REX SOLE	125	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
SHALLOW WATER FLATFISH	119	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
THORNYHEAD ROCKFISH	143	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
Target species categories at BSAI only														
OTHER FLATFISH	120	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
ROCK SOLE	123	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
YELLOWFIN SOLE	127	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
GREENLAND TURBOT	134	0.17	....	....	....	....	....	—	—	—	—	—	0.00	1.00
SQUID	875	0.17	....	....	....	0.75	—	—	—	—	—	—	0.00	1.00
Conversion rates for Pacific halibut														
PACIFIC HALIBUT	200	—	—	—	—	—	—	—	0.88	0.98	—	—	—	—

[1]Standard pollock surimi rate during January through June.
[2]Standard pollock surimi rate during July through December
*To obtain round weight of groundfish, divide the product weight of groundfish by a PRR. To obtain product weight of Pacific halibut, multiply the round weight of halibut by a conversion rate.

Table 9 to Part 679. IFQ Primary Ports

PORT	NORTH LATITUDE	WEST LONGITUDE
Akutan	54°08'05"	165°46'20"
Bellingham	48°45'04"	122°30'02"
Cordova	60°33'00"	145°45'00"
Craig	55°28'30"	133°09'00"
Dutch Harbor/ Unalaska	53°53'27"	166°32'05"
Excursion Inlet	58°25'00"	135°26'30"
Homer	59°38'40"	151°33'00"
Ketchikan	55°20'30"	131°38'45"
King Cove	55°03'20"	162°19'00"
Kodiak	57°47'20"	152°24'10"
Pelican	57°57'30"	136°13'30"
Petersburg	56°48'10"	132°58'00"
St. Paul	57°07'20"	170°16'30"
Sand Point	55°20'15"	160°30'00"
Seward	60°06'30"	149°26'30"
Sitka	57°03'	135°20'
Yakutat	59°33'	139°44'

Table 10 to Part 679--IFQ/CDQ Gear codes and descriptions

IFQ/CDQ Gear Code	IFQ/CDQ Gear Description
05	Hand troll
06	Hook-and-line, vessel LOA less than 60 ft
09	Pot, vessel LOA less than 60 ft
15	Power gurdy troll
25	Dinglebar troll
26	Jigs
61	Hook-and-line, vessel LOA greater than or equal to 60 ft
91	Pot, vessel LOA greater than or equal to 60 ft

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Part III

Environmental Protection Agency

Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6230–8]

Final guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Final guidelines.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is finalizing the "Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems." The Safe Drinking Water Act (SDWA) Amendments of 1996 require that these final guidelines be published in the **Federal Register** by February 6, 1999. These guidelines provide States with the minimum standards for the development, implementation and enforcement of operator certification programs for community and nontransient noncommunity public water systems. Beginning two years after publication, EPA must withhold 20% of a State's Drinking Water State Revolving Fund capitalization grant funds unless the State has adopted and is implementing an operator certification program that meets the requirements of these guidelines or submits its existing program that is substantially equivalent to these guidelines. The final guidelines are published in Appendix A of this document.

DATES: *Effective Date:* February 5, 1999. *Compliance Date:* Beginning February 5, 2001.

ADDRESSES: Public comments and the comment response document on the draft guidelines are available for review at Water Docket (docket #W–98–07), Environmental Protection Agency, Room EB57, 401 M Street, S.W., Washington DC 20460. For access to the Docket materials, call 202–260–3027 between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment and reference Docket #W–98–07.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791, can be contacted for general information about and copies of this document. For technical inquiries, contact Jenny Jacobs, Implementation and Assistance Division, Office of Ground Water and Drinking Water (4606), U.S. EPA, 401 M Street, S.W., Washington, DC, 20460. The telephone number is (202) 260–2939 and the e-mail address is jacobs.jenny@epamail.epa.gov. For Regional contacts, see **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

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Background

1. Statutory Requirements

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182) direct the Administrator of the United States Environmental Protection Agency (EPA), in cooperation with the States, to publish guidelines in the **Federal Register** specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity public water systems. The final guidelines are required to be published by February 6, 1999. States then have two years after publication to adopt and be implementing an operator certification program that meets the requirements of these guidelines. After that date, unless a State has adopted and is implementing an approved program, the Administrator must withhold 20 percent of the funds a State is otherwise entitled to receive in its Drinking Water State Revolving Fund (DWSRF) capitalization grants under section 1452 of SDWA.

All of the requirements contained in these guidelines are to avoid DWSRF capitalization grant withholding. There are no other sanctions for States with operator certification programs that do not meet the requirements of these guidelines.

2. Guideline Development Process

These guidelines are the result of a thorough stakeholder consultation process under which EPA utilized the combined knowledge and expertise of two work groups that it appointed on operator certification. One work group, the State-EPA Work Group, was appointed to fulfill EPA's responsibility under section 1419(a) to publish guidelines on operator certification "in cooperation with States." This work group was composed of seven State and ten EPA representatives. The other work group, the Operator Certification Work Group of the National Drinking Water Advisory Council (NDWAC), also referred to as the Partnership, was formed to provide EPA with views in addition to those of States. This group was composed of 23 members representing public water systems, environmental and public interest advocacy groups, State drinking water program representatives, EPA, U.S. Department of Agriculture, U.S. Public Health Service, Indian Health Service, and other interest groups.

Procedurally, the two groups worked closely together. The Partnership identified potential categories for which minimum standards would be developed. The State-EPA Work Group then developed draft issue papers for these categories. The Partnership and the State-EPA Work Group exchanged reviews of the proposed language on what both groups referred to as "baseline standards," and worked toward achieving consensus on these standards. The baseline standards were then forwarded by the Partnership to the NDWAC. In October 1997, the NDWAC formally transmitted its recommended baseline standards to the EPA. The EPA incorporated the recommendations of the NDWAC into the "Draft Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems." The draft guidelines were published for public comment in the **Federal Register** on March 27, 1998.

The comment period extended for 90 days during which over 90 parties submitted public comments. During the 90-day public comment period, EPA held public stakeholder meetings in San Francisco, CA, Dallas, TX, and Washington, DC, to brief interested parties on the draft guidelines and to accept public comments. The complete response to comments document is available for review at Water Docket (docket #W–98–07), Environmental Protection Agency, Room EB57, 401 M Street, S.W., Washington DC 20460. For access to the Docket materials, call 202–260–3027 between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment and reference Docket #W–98–07.

In August 1998, both workgroups met to consider the public comments and to make recommendations for finalizing the guidelines based on the public comments. The resulting recommendations were forwarded to the NDWAC for consideration. In November 1998, the NDWAC formally transmitted its recommendations to EPA. The EPA made changes based on the public comments and on the recommendations of its work groups and the NDWAC. These guidelines set the minimum baseline standards for an operator certification program to meet the provisions of the 1996 Amendments to the SDWA. These guidelines were developed to enable states to have flexibility in the implementation and enforcement of program details necessary to administer a successful operator certification program while ensuring the protection of public health.

Response to Comments on Key Certification Issues

1. Public Health Objectives

EPA received a large number of comments in support of the public health objectives as stated in the draft guidelines.

EPA intends to use the public health objectives in its review and evaluation of State operator certification programs and in its determination as to whether the State programs meet the requirements of the guidelines.

2. Operator Testing/Exams

EPA received a number of comments on the type of operator certification exam (e.g., written, oral, performance-based) that should be required by the guidelines. Some commenters felt that written exams should be required to ensure that an operator could read and write. Some commenters felt that other types of exams (e.g., oral, performance-based) may be more appropriate, and therefore, the type of exam should be left up to the State.

EPA believes that the type of test that best measures the knowledge, skills, ability, and judgement of an operator for a particular classification level should be left up to the State that is responsible for the design and administration of the test.

EPA received several comments on the requirement that exams be State-validated. Some commenters asked for clarification.

In the final guidelines, EPA eliminated the word "State" from the above phrase. For clarification, EPA included a definition of "validated exam" in the final guidelines.

3. Operator Training

Some comments were received supporting the inclusion of specific training requirements in the guidelines while some commenters supported the draft guidelines which allow States to decide what type and amount of training are appropriate for each level of classification.

EPA believes that the type of operator training necessary for each classification level in each State is best determined by the State. The final guidelines do not include specific training requirements; however, EPA will evaluate State training programs as part of its initial and annual review and approval of State operator certification programs.

4. Classification of Operators

A number of comments were received requesting clarification as to which water system personnel must be certified under the guidelines.

The final guidelines require that "all operating personnel making process control/system integrity decisions about water quality or quantity that affect public health be certified." EPA believes that this guideline requirement provides a framework within which States can decide which system personnel must be certified.

5. Grandparenting of Operators

Grandparenting of operators was one of the most heavily commented upon issues. The majority of commenters supported grandparenting in some fashion while several commenters opposed the inclusion of grandparenting in the guidelines. Also, some commenters requested clarification as to whether grandparented operators at renewal had to meet the initial certification requirements or the renewal requirements.

EPA believes that grandparenting may be necessary to allow the many competent operators who have been successfully operating water systems but who can not meet the initial certification requirements to continue to work. Accordingly, grandparenting has been included as an option for States. For States that choose to allow grandparenting, the guidelines specify the following restrictions:

- Grandparenting is permitted only to existing operator(s) in responsible charge of existing systems which, because of State law changes to meet these guidelines, must for the first time have a certified operator.
- The system owner must apply for grandparenting for the operator(s) in responsible charge within two years of the effective date of the State's regulation.
- The certification for the grandparented operator must be site specific and non-transferable to other operators.
- After an operator is grandparented, he or she must, within some time period specified by the State, meet all requirements to obtain certification renewal, including the payment of any necessary fees, acquiring necessary training to meet the renewal requirements, and demonstrating the skills, knowledge, ability and judgement for that classification.
- If the classification of the plant or distribution system changes to a higher level, then the grandparented certification will no longer be valid.
- If a grandparented operator chooses to work for a different water system, he or she must meet the initial certification requirements for that system.

Also, EPA added language that requires States to pay special attention to identify specific certification renewal requirements for grandparented operators to ensure they have the knowledge, skills, ability and judgement to operate the system for which they were grandparented.

A couple of commenters asked that the guidelines be changed to make it the operator's responsibility to apply for grandparenting and not the system's responsibility.

In States which choose to allow a grandparenting provision, application for grandparenting is the responsibility of the system owner because grandparenting is site-specific and non-transferable. Only existing systems which must for the first time have a certified operator because of State law changes to meet these guidelines can apply for grandparenting for existing operators in responsible charge.

6. Renewal Period

EPA received a large number of comments supporting the establishment

of a specific renewal period in the guidelines. Comments were mixed, however, as to the maximum length of time that should be required for renewal.

EPA, in reviewing existing State programs, found that most States already require a certification renewal cycle of three years or less. EPA believes that three years is the maximum amount of time that the guidelines should permit an operator to go before having to take more training as part of the renewal requirements in order to remain current in the field.

7. Categories of Systems

EPA received numerous comments on categorizing/classifying systems. Many of the commenters made recommendations as to the specific criteria that they felt should be used to classify systems. Several commenters suggested that EPA develop a national classification system for water systems while a similar number of commenters suggested EPA allow States to develop their own classification system.

Because all of the States currently have a method for categorizing the water systems within the State, EPA believes that establishing a nationally uniform classification system would be very disruptive with little benefit. The guidelines give the States the responsibility to define the categories of systems. The language in the final guidelines was revised to clarify that the criteria in the guidelines are examples for States to use in classifying systems [i.e., (a) complexity, size, source water for treatment systems, and, (b) complexity, size, for distribution systems].

8. Antibacksliding

EPA received mixed comments on the antibacksliding provision. Several commenters supported antibacksliding while several commenters opposed the provision. For example, one commenter questioned EPA's authority to prevent a State from lessening its existing standards to meet the minimum EPA standards. This commenter felt that EPA has no authority to require a State to do anything else except meet the minimum standard. Also, a couple of commenters felt that the antibacksliding provision enables States to keep their programs intact without undue pressure to lessen standards based on the minimum standards set forth in the guidelines which may not be as stringent.

EPA believes that Congress did not intend for States to weaken their existing operator certification programs if those programs go beyond the minimum federal standards. An antibacksliding provision is, therefore, essential to help these States maintain the kind of operator certification programs that they believe best ensure public health protection. EPA does recognize that there may be situations where it is desirable to lessen a specific standard while making overall improvements to a program and has included a provision to allow States to do this if they can justify the change and get approval from EPA. Finally, EPA believes this provision is authorized by Section 1419(a) of the SDWA which states that EPA must take existing programs into account in developing these guidelines.

9. Exemptions and Certified Operator Availability

EPA received a number of comments both for and against exemptions from the requirement of a certified operator for small water systems. On a related issue, EPA received many comments on the requirement that a designated certified operator be available for each operating shift. A number of commenters expressed the concern that this requirement would be cost prohibitive for small systems and that small systems should be exempt from the requirement to have a certified operator. Some commenters requested clarification as to the meaning of "available".

EPA believes that one of the most important benefits of these guidelines will be better training for operators of small systems and consequently, better public health protection for the consumers served by these systems. Historically, compliance problems are much more widespread in smaller systems and .. is these systems that may benefit most by training. Congress also recognized this when it established the operator certification provisions. As discussed in the legislative history of these provisions (S. Rep. 104–169, 104th Cong., 1st Sess at 61), Congress was aware that most States already had operator certification programs and that many exempted small systems. Congress was particularly concerned that the lack of operator training and certification for small systems could create compliance problems. In addition, monitoring and sampling done by a trained operator are more likely to produce accurate results and be correctly interpreted. These concerns were central to the enactment of the operator certification provisions. At the same time, Congress also established a provision for reimbursing small system operators for training and certification costs. Considering this, the guidelines do not allow exemptions. EPA does recognize, however, that some small systems provide little or no treatment and that some nontransient noncommunity systems (e.g., schools) may not have distribution systems and that operators of these systems do not need the same type and amount of training that operators of larger systems may need. The guidelines, therefore, provide States with discretion to tailor training requirements consistent with the level of complexity of systems.

The guidelines do not require these systems to have a certified operator on-site full time. States can implement a program that would allow for a circuit rider to be the certified operator for a number of small systems. This flexibility is provided for in the definition of "available" that is included in the guidelines. EPA believes that this language will reduce the financial burden on small systems, and allow for the sharing of certified operators in areas with a scarcity of qualified personnel. States have been provided with flexibility in defining "available" since its meaning may differ due to the geographic and demographic differences among States.

Some commenters felt that clarification is needed concerning whether or not people who program or maintain telemetry/SCADA systems are required to be certified.

EPA believes that people who program or maintain telemetry/SCADA systems are not operators of water systems and are not required to be certified. However, if anyone who programs or maintains these types of systems is also making process control/system integrity decisions, that person would be required to be certified.

10. Flexible vs. Prescriptive Guidelines

Many of the comments that EPA received supported flexibility for States in implementing the guidelines while many of the comments asked that the guideline requirements be prescribed in greater detail.

EPA believes that these guidelines reflect its efforts to balance the intent for State flexibility with the need for national program accountability.

Submittal Schedule and Withholding Process

EPA is developing a revised submittal schedule and withholding process for State programs and will solicit public comments on the revised approach in the **Federal Register** within the next few months.

Source Water Protection

A fully trained operator, as the on-site professional, should understand the benefits of multiple barriers to prevent

contamination of the sources of public drinking water supplies and should be able to provide important insights into the risks to public water supplies from different, potential sources of contamination. EPA encourages States to include an understanding of drinking water source protection in the training for operators.

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), EPA must obtain approval from the Office of Management and Budget (OMB) to collect the information from the States required under these guidelines. EPA plans to prepare and obtain approval of an Information Collection Request (ICR) for this information. Advance notice of the ICR will be published in the **Federal Register** for public comment before it is submitted to OMB. EPA may not conduct, or sponsor, and a person is not required to submit to a collection of information unless the Agency has OMB approval for collection of the information.

Dated: January 29, 1999.

J. Charles Fox,

Assistant Administrator, Office of Water.

Appendix A: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems

I. Introduction
II. Operator Certification Guidelines
A. Public Health Objectives
B. Antibacksliding
C. Baseline Standards
1. Authorization
2. Classification of Systems, Facilities, and Operators
3. Operator Qualifications
4. Enforcement
5. Certification Renewal
6. Resources Needed to Implement the Program
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9. Program Review
III. Program Submittal Process
A. Submittal Schedule and Withholding Process
1. New Programs.
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B. Submittal Contents
1. Initial Submittal
2. Subsequent Years
IV. Definitions
V. Acronyms

I. Introduction

These guidelines were developed to meet Section 1419(a) of the Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182). This section directs the United States Environmental Protection Agency (EPA) to develop guidelines specifying minimum standards for certification and recertification of operators of community and nontransient noncommunity public water systems and to publish final guidelines by February 6, 1999. States have two years after publication to adopt and be implementing an operator certification program that meets the requirements of these guidelines. After that date, unless a State has adopted and is implementing an approved program, the Administrator must withhold 20 percent of the funds a State is otherwise entitled to receive in its Drinking Water State Revolving Fund (DWSRF) capitalization grants under section 1452 of SDWA.

II. Operator Certification Guidelines

A. Public Health Objectives

The public health objectives of the guidelines are to ensure that:

- Customers of any public water system be provided with an adequate supply of safe, potable drinking water.
- Consumers are confident that their water is safe to drink.
- Public water system operators are trained and certified and that they have knowledge and understanding of the public health reasons for drinking water standards.

Ongoing training is necessary to the public health objectives of this program.

B. Antibacksliding

Because these guidelines represent only minimum standards, it is expected that States whose current operator certification program requirements go beyond or exceed these minimum standards not lower their operator certification program requirements. EPA will not approve the operator certification program of any State that reduces its standards below the level that existed 12 months prior to the effective date of these guidelines unless the reduction can be justified by the State and is approved by EPA.

C. Baseline Standards

Each State operator certification program must include as a minimum the essential elements of the nine baseline standards described below. Essential elements to avoid DWSRF withholding are introduced by words such as "the States must." For each essential element, the State must describe how its operator certification program complies with the requirement. Additionally, several of the baseline standards include highly recommended elements that are intended to complement, improve, and expand the parameters of essential elements of an operator certification program. These highly recommended elements are introduced by words such as "the States should."

1. Authorization

As evidenced by an Attorney General's certification, or certification from delegated counsel, the State must have the legal authority to implement the program requiring the certification of operators of all community and nontransient noncommunity water systems and to require that the systems comply with the appropriate requirements of the program.

2. Classification of Systems, Facilities, and Operators

A State's program must meet the following requirements:

- It must classify all community and nontransient noncommunity water systems based on indicators of potential health risk, which for example may include: (a) complexity, size, source water for treatment facilities, and (b) complexity, size for distribution systems. It must develop specific operator certification and renewal requirements for each level of classification.
- It must require owners of all community and nontransient noncommunity water systems to place the direct supervision of their water system, including each treatment facility and/or distribution system, under the responsible charge of an operator(s) holding a valid certification equal to or greater than the classification of the treatment facility and/or distribution system.
- It must require, at a minimum, that the operator(s) in responsible charge or equivalent must hold a valid certification equal to or greater than the classification of their water system, including each treatment facility and distribution system, as determined by the State.
- It must require that all operating personnel making process control/system integrity decisions about water quality or quantity that affect public health be certified.
- It must require that a designated certified operator be available for each operating shift.

3. Operator Qualifications

States must require the following for an operator to become certified:

- Take and pass an exam that demonstrates that the operator has the necessary skills, knowledge, ability and judgement as appropriate for the classification. All exam questions must be validated.

• Have a high school diploma or a general equivalency diploma (GED). States may allow experience and/or relevant training to be substituted for a high school diploma or GED. Education, training, or experience that is used to meet this requirement for any class of certification may not be used to meet the experience requirement.

• Have the defined minimum amount of on-the-job experience for each appropriate level of certification. The amount of experience required increases with each classification level. Post high school education may be substituted for experience. Credit may be given for experience in a related field (e.g., wastewater). Experience that is used to meet the experience requirement for any class of certification may not be used to meet the education requirement.

Grandparenting

EPA recognizes that there are many competent small system operators that may not meet the initial requirements to become certified. EPA believes that States may need a transition period to allow these operators to continue to operate the system through "grandparenting". It is recommended that grandparenting determinations be based on factors such as system compliance history, operator experience and knowledge, system complexity, and lack of treatment.

If States choose to include a grandparenting provision in their programs, they must include the following requirements:

• Grandparenting is permitted only to existing operator(s) in responsible charge of existing systems which, because of State law changes to meet these guidelines, must for the first time have a certified operator.

• The system owner must apply for grandparenting for the operator(s) in responsible charge within two years of the effective date of the State's regulation.

• The certification for the grandparented operator must be site specific and non-transferable to other operators.

• After an operator is grandparented, he or she must, within some time period specified by the State, meet all requirements to obtain certification renewal, including the payment of any necessary fees, acquiring necessary training to meet the renewal requirements, and demonstrating the skills, knowledge, ability and judgement for that classification.

• If the classification of the plant or distribution system changes to a higher level, then the grandparented certification will no longer be valid.

• If a grandparented operator chooses to work for a different water system, he or she must meet the initial certification requirements for that system.

4. Enforcement

The State agency with primary enforcement responsibility for the Public Water System Supervision (PWSS) Program must have regulations that meet the requirements of these guidelines and require community water systems and nontransient noncommunity water systems to comply with State operator certification requirements. In nonprimacy States, the Governor must determine which State Agency will have this responsibility. States must have appropriate enforcement capabilities, for example: administrative orders, bilateral compliance agreements, criminal or civil administrative penalties, and/or stipulated penalties.

States must have the ability to revoke operator certifications.

States must also have the ability to suspend operator certifications or take other appropriate enforcement action for operator misconduct. Examples of operator misconduct may include: fraud, falsification of application, falsification of operating records, gross negligence in operation, incompetence, and/or failure to use reasonable care or judgement in the performance of duties.

5. Certification Renewal

A State's program must meet the following requirements:

• The State must establish training requirements for renewal based on the level of certification held by the operator.

• States must require all operators including grandparented operators to acquire necessary amounts and types of State approved training. States may determine other requirements as deemed necessary.

• States must have a fixed cycle of renewal not to exceed three years.

• The State must require an individual to recertify if the individual fails to renew or qualify for renewal within two years of the date that the certificate expired.

• States must pay special attention to identify specific renewal requirements for grandparented operators to ensure that they possess the knowledge, skills, ability and judgement to properly operate the system. This must be done by one or more of the following approaches or by an alternative approach approved by EPA.

• States may specify renewal requirements for grandparented operators on a case-by-case basis, taking into consideration factors such as a system's compliance history and operator experience and knowledge. For systems that have a history of being out of compliance, any certification renewal decision should consider whether non-compliance is the result of actions or inactions by the system's owner or the system's operator.

• States may require specific training requirements for certification renewal at the first renewal cycle for grandparented operators. This training should include all of the information covered by the initial certification exam for the system classification level for which the operator was grandparented even though an initial certification exam may not be required for certification renewal.

• States may require operators with grandparented certificates to meet all of the initial certification requirements for the classification level for which the operator was grandparented, and thereby obtain certification within a reasonable time period specified by the State.

6. Resources Needed To Implement the Program

States must provide sufficient resources to adequately fund and sustain the operator certification program (components include, but are not limited to: staff, data management, testing, enforcement, administration, and training approval). EPA recommends that States establish a dedicated fund that is self-sufficient.

7. Recertification

The States must have a process for recertification of individuals whose certification has expired for a period exceeding two years. This process must include: review of the individual's experience and training, and reexamination. An individual is not certified with an expired certificate. The State may develop more stringent requirements for recertification for individuals whose certificates have expired, been revoked, or been suspended.

8. Stakeholder Involvement

Stakeholder involvement is important to the public health objectives of the program. It helps to ensure the relevancy and validity of the program, and the confidence of all interested parties.

States must include ongoing stakeholder involvement in the revision and operations of State operator certification programs. Public comment on rule revisions is not adequate stakeholder involvement. A stakeholder

board or advisory committee is strongly recommended.

Examples of stakeholders may include: operators, environmental/public health groups, the general public, consumer groups, technical assistance providers, utility managers, trainers, etc.

9. Program Review

States must perform reviews of their operator certification programs. EPA recommends that States perform periodic internal reviews and occasional external/peer reviews. Examples of items to review include: regulations, exam items for relevancy and validity, compliance, enforcement, budget and staffing, training relevancy, training needs through examination performance, and data management system.

III. Program Submittal Process

A. Submittal Schedule and Withholding Process

1. New Programs

[Reserved]

2. Equivalent Programs

[Reserved]

B. Submittal Contents

The submittal of operator certification programs to EPA by States must include the following:

1. Initial Submittal

The submittal of operator certification programs to EPA by States must include the following:

- The State Attorney General's certification, or certification from delegated counsel, that the State has the legal authority to implement the program requiring the certification of operators of all community and nontransient noncommunity water systems and to require that the systems comply with the appropriate requirements of the program;
- A full description and explanation of how the State's operator certification program complies with or is substantially equivalent to the requirements of these guidelines; and
- A copy of the State operator certification regulations.

2. Subsequent Years

- All annual program submittals subsequent to the initial submittal must include documentation and evaluation of ongoing program implementation; and
- A new State Attorney General's certification, or certification from delegated counsel, if changes were made to the regulations or statutes and a copy of the revised regulations or statutes.

IV. Definitions

Administrator—Means the Administrator of the United States Environmental Protection Agency.

Available—Based on system size, complexity, and source water quality, a certified operator must be on site or able to be contacted as needed to initiate the appropriate action in a timely manner.

Community Water System (CWS)—A public water system providing water to at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

Distribution System—Any combination of pipes, tanks, pumps, etc. which delivers water from the source(s) and/or treatment facility(ies) to the consumer.

Distribution System Complexity—Examples include: pressure zones, booster stations, storage tanks, fire protection, chlorination, non-residential consumers, cross connection potential, and/or demand variations.

Distribution System Size—Examples include: population served, number of service connections, size of pipes, total distance of pipe, and quantity of water distributed.

Grandparenting—The exemption for the existing operator(s) in responsible charge, as of the effective date of the State's regulation, from meeting the initial education and/or examination requirements for the class of certification the system has been assigned.

Nontransient Noncommunity (NTNC) Water Systems—Is a public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year. Common types of NTNC water systems are those serving schools, day care centers, factories, restaurants, and hospitals.

Operating Shift—That period of time during which operator decisions that affect public health are necessary for proper operation of the system.

Primacy—Primary responsibility for administration and enforcement of the primary drinking water regulations and related requirements applicable to public water systems within a State.

Responsible Charge—The Operator(s) in Responsible Charge is defined as the person(s) designated by the owner to be the certified operator(s) who makes decisions regarding the daily operational activities of a public water system, water treatment facility and/or distribution system, that will directly impact the quality and/or quantity of drinking water.

Source Water—Examples include: type (surface water, groundwater, groundwater under the influence of surface water, purchased water), quality (variability), and/or protection (e.g., wellhead protection).

Treatment Facility—Any place(s) where a community water system or nontransient non-community water system alters the physical or chemical characteristics of the drinking water. Chlorination may be considered as a function of a distribution system.

Treatment Facility Complexity—Examples include: difficulty in controlling water quality, potential effect to the consumer and/or safety of the operator.

Treatment Facility Size (capacity)—Examples include: population served, number of service connections, and/or plant flow.

Validated Exam—An exam that is independently reviewed by subject matter experts to ensure that the exam is based on a job analysis and related to the classification of the system or facility.

V. Acronyms

CWS—Community Water System
DWSRF—Drinking Water State Revolving Fund
EPA—United States Environmental Protection Agency
GED—General Equivalency Diploma
NDWAC—National Drinking Water Advisory Council
NTNCWS or NTNC—Nontransient Noncommunity Water System
PWSS—Program Public Water System Supervision Program
SDWA—Safe Drinking Water Act

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The President

Presidential Determination No. 99–10 of January 25, 1999—Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

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Title 3—

The President

Presidential Determination No. 99–10 of January 25, 1999

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $25 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet the urgent and unexpected needs of refugees and migrants.

These funds may be used to meet the urgent and unexpected needs of refugees, displaced persons, victims of conflict, and other persons at risk due to the Kosovo crisis. These funds may be used, as appropriate, to provide contributions to international and nongovernmental organizations.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the use of funds under this authority, and to arrange for the publication of this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 25, 1999.

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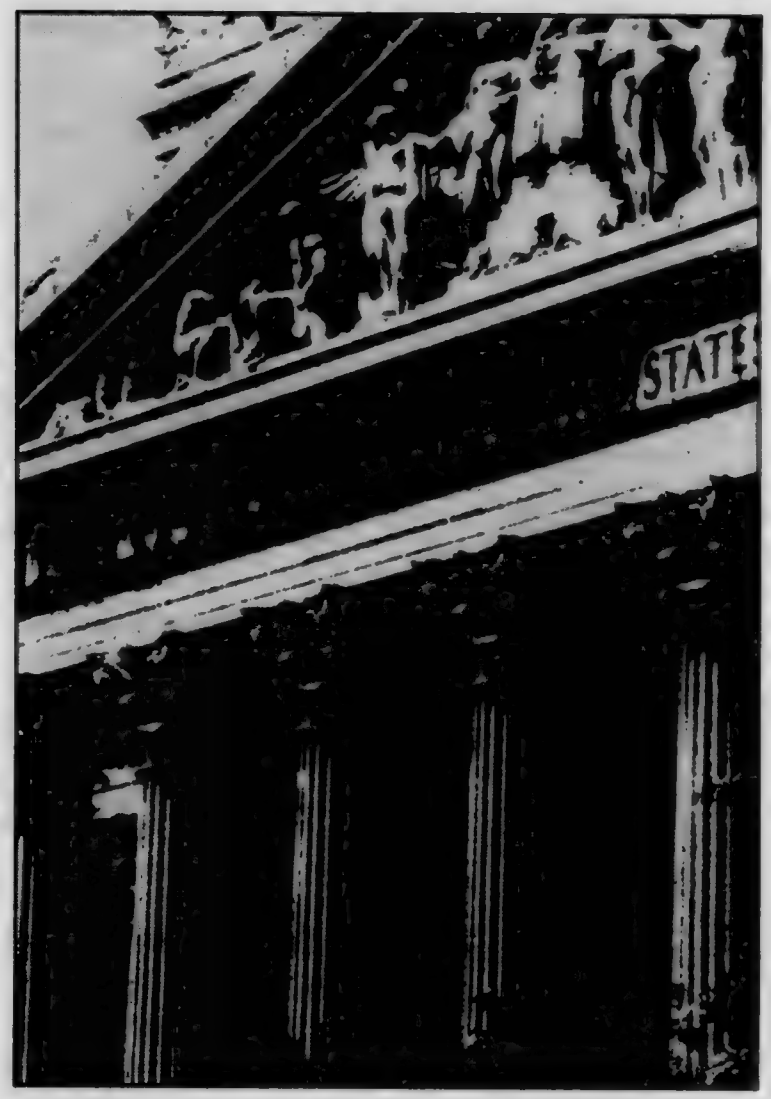

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Rules and Regulations

Federal Register
Vol. 64, No. 25
Monday, February 8, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Loan Interest Rates

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The current 18 percent per year federal credit union loan rate ceiling is scheduled to revert to 15 percent on March 9, 1999, unless otherwise provided by the NCUA Board (Board). A 15 percent ceiling would restrict certain categories of credit and adversely affect the financial condition of a number of federal credit unions. At the same time, prevailing market rates and economic conditions do not justify a rate higher than the current 18 percent ceiling. Accordingly, the Board hereby continues an 18 percent federal credit union loan rate ceiling for the period from March 9, 1999 through September 8, 2000. Loans and lines of credit balances existing prior to May 18, 1987 may continue to bear their contractual rate of interest, not to exceed 21 percent. The Board is prepared to reconsider the 18 percent ceiling at any time should changes in economic conditions warrant.

EFFECTIVE DATE: March 9, 1999.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314–3428.

FOR FURTHER INFORMATION CONTACT: Dan Gordon, Senior Investment Officer, Office of Investment Services, at the above address or telephone: (703) 518–6620.

SUPPLEMENTARY INFORMATION:

Background

Public Law 96–221, enacted in 1979, raised the loan interest rate ceiling for federal credit unions from 1 percent per month (12 percent per year) to 15 percent per year. It also authorized the Board to set a higher limit, after consulting with the Congress, the Department of Treasury and other federal financial agencies, for a period not to exceed 18 months, if the Board determined that: (1) money market interest rates have risen over the preceding 6 months; and (2) prevailing interest rate levels threaten the safety and soundness of individual credit unions as evidenced by adverse trends in growth, liquidity, capital, and earnings.

On December 3, 1980, the Board determined that the foregoing conditions had been met. Accordingly, the Board raised the loan ceiling for 9 months to 21 percent in the unstable environment of the first-half of the 1980s. The Board lowered the loan rate ceiling form 21 percent to 18 percent effective May 18, 1987. This action was taken in an environment of falling market interest rates from 1980 to early 1987. The ceiling has remained at 18 percent to the present.

The Board believes that the 18 percent ceiling will permit credit unions to continue to meet their current lending programs, permit flexibility so that credit unions can react to any adverse economic developments, and ensure that any increase in the cost of funds would not affect the safety and soundness of federal credit unions.

The Board would prefer not to set loan interest rate ceilings for federal credit unions. Credit unions are cooperatives that balance loan and share rates consistent with the needs of their members and prevailing market interest rates.

The Board supports free lending markets and the ability of federal credit unions boards of directors to establish loan rates that reflect current market conditions and the interests of their members. Congress has, however, imposed loan rate ceilings since 1934. In 1979, Congress set the ceiling at 15 percent but authorized the Board to set a ceiling in excess of 15 percent, if conditions warrant.

The following analysis justifies a ceiling above 15 percent, but at the same time does not support a ceiling above the current 18 percent. The Board is prepared to reconsider this actions at any time should changes in economic conditions warrant.

Money Market Interest Rates

Interest rates and the expectations about the future level of economic activity have recently been dominated by concerns in worldwide financial markets. The downfall of many Asian economies and the unprecedented recession in Japan required the Federal Reserve, as the central bank most capable of preventing a world-wide economic downturn, to substantially lower interest rates in early October of last year. There are now indications that the actions taken at that time had the intended effect. Several of the Asian economics have recently shown signs of recovery and Japan, recognizing its vulnerability, has undertaken a massive fiscal stimulus package.

The result is that inflation fears in the United States, which only recently were overshadowed by the Asian economic crisis, are reemerging. With the economy still growing in excess of 3.5 percent per annum, and recovery now underway in foreign economies, there are concerns that conditions exist for further inflationary pressures. The recent credit squeeze in financial markets, reflected by tighter bank credit standards and wider credit spreads, has reduced capital expenditures, and thus future productivity gains. Yet the strong productivity gains were a primary factor preventing price increase in the last few years.

The potential scarcity of capital, the prospective improvement in the world economies, and the expectation that oil prices could recover from their now 12-year lows and commodity prices from their 22-year lows will increase inflationary expectations. In addition, strong consumer confidence, a strong housing market and continued expansion in consumer spending will continue to put pressure on the economy. With unemployment remaining in the 4.5 percent range, and the continued strong demand for workers, wage pressures will increase. In addition, as less skilled workers are employed and firms are required to use more scarce resources, the pressures on costs, and thus on prices, will intensify. The result may well be further increases in interest rates.

Reinforcing the expectation of higher rates, the Federal Reserve has strongly suggested it will not lower rates again in the near term. The result has been an expectation in financial markets that

interest rates could rise above current levels. Already there have been substantial increases in yields since lows reached in early October. For example, on October 1, 1998, the rate on the 6-month Treasury was 4.36 percent, and on January 5, 1999, it was 4.54 percent. The 5-year Treasury rate was 4.55 percent on January 4, 1999. This was 48 basis points above the rate on October 1, 1998, while the 10-year Treasury rate increased 39 basis points in the same interval. Therefore, although the current rates are below the rates of six months ago, there is every indication that by March 9, 1999, rates will be higher than they were on October 1.

TABLE 1.—TREASURY RATES

Maturity	Yields as of October 1, 1998 (percent)	Yields as of January 4, 1999 (percent)	Change in basis points
3-month	4.22	4.67	25
6-month	4.36	4.54	18
1-year	4.27	4.57	30
2-year	4.15	4.56	41
5-year	4.07	4.55	48
10-year	4.29	4.67	38
30-year	4.88	5.15	27

The fact that long-term rates exceed short-term rates (for example, the 30-year rate is 61 basis points above the 6-month rate) is more evidence that the market expects rates to rise in the months ahead. Investors are unwilling to hold longer term investments unless they are compensated for these potentially higher future rates.

Further declines in the unemployment rate, rising consumer confidence, continued income growth and a strong equity market have led many to be concerned that consumer demand may rise at a faster pace in the months ahead. We need to be aware of these potential inflationary pressures which could result in higher interest rates. Therefore, it is important to maintain the 18 percent ceiling. Lowering the interest rate ceiling at this time could cause an unnecessary burden on credit unions.

Financial Implications for Credit Unions

For at least 873 credit unions, representing 28 percent [1] of the reporting federal credit unions, the most common rate on unsecured loans was above 15 percent. While the bulk of credit union lending is below 15 percent, small credit unions and credit unions that have instituted risk-based lending programs require interest rates above 15 percent to maintain liquidity, capital, earnings, and growth. Loans to members who have not yet established a credit history or have weak credit histories have more credit risk. Credit unions must charge rates to cover the potential of higher than usual losses for such loans. There are undoubtedly more than 873 credit unions charging over 15 percent for unsecured loans to such members. Many credit unions have "Credit Builder" or "Credit Rebuilder" loans but only report the "most common" rate on the Call Report for unsecured loans. Lowering the interest rate ceiling for credit unions would discourage credit unions from making these loans. Credit seekers' options would be reduced and most of the affected members would have no alternative but to turn to other lenders who will charge much higher rates.

Small credit unions would be particularly affected by a lower loan ceiling since they tend to have a higher level of unsecured loans, typically with lower loan balances. Thus, small credit unions making small loans to members with poor or no credit histories are struggling with far higher costs than the typical credit union. Both young people and lower income households have limited access to credit and, absent a credit union, often pay rates of 24 to 30 percent to other lenders. Rates between 15 and 18 percent are attractive to such members.

Table 2 shows the number of credit unions in each asset group where the most common rate is more than 15 percent for unsecured loans.

TABLE 2.—FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT

[June 1998]

Peer group by asset size	Total all FCUs	Number FCUs w/ loan rates >15%
$0–2 mil	1,940	214
$2–10 mil	2,390	334
$10–50 mil	1,735	214
$50 mil+	842	111
Total [1]	6,907	873

[1] Of this total, 4,083 had either a zero balance or did not report rate balances 15 percent and above.

Among the 871 credit unions where the most common rate is more than 15 percent for unsecured loans, 242 have 20 percent or more of their assets (Table 3) in this category. For these credit unions, lowering the rates would damage their liquidity, capital, earnings, and growth.

TABLE 3.—FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT AND MORE THAN 20 PERCENT OF ASSETS IN UNSECURED LOANS

[June 1998]

Peer group by asset size	Avg. percentage of loan rates >15% to assets	Number FCUs meeting both criteria
$0–2 mil	38.31	95
$2–10 mil	28.46	61
$10–50 mil	25.62	22
$50 mil+	23.34	7

[1] Of the 6,907 FCUs, 4,083 had zero balances in the 15 percent and above category or did not report a balance for the June 1998 reporting period.

TABLE 3.—FEDERAL CREDIT UNIONS WITH MOST COMMON UNSECURED LOAN RATES GREATER THAN 15 PERCENT AND MORE THAN 20 PERCENT OF ASSETS IN UNSECURED LOANS—Continued

[June 1998]

Peer group by asset size	Avg. percentage of loan rates >15% to assets	Number FCUs meeting both criteria
Total	32.99	185

In conclusion, the Board has continued the federal credit union loan interest rate ceiling of 18 percent per year for the period from March 9, 1999, through September 9, 2000. Loans and line of credit balances existing on May 16, 1987 may continue to bear interest at their contractual rate, not to exceed 21 percent. Finally, the Board is prepared to reconsider the 18 percent ceiling at any time during the extension period, should changes in economic conditions warrant.

Regulatory Procedures

Administrative Procedure Act

The Board has determined that notice and public comment on this rule are impractical and not in the public interest. 5 U.S.C. 553(b)(3)(B). Due to the need for a planning period prior to the March 9, 1999, expiration date of the current rule, and the threat to the safety and soundness of individual credit unions with insufficient flexibility to determine loan rates, final action of the loan rate ceiling is necessary.

Regulatory Flexibility Act

For the same reasons, a regulatory flexibility analysis is not required. 5 U.S.C. 604(a). However, the Board has considered the need for this rule, and the alternatives, as set forth above.

Paperwork Reduction Act

There are no paperwork requirements.

Executive Order 12612

This final rule does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act applying only to federal credit unions.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Loan interest rates.

By the National Credit Union Administration Board on January 28, 1999.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR ch. VII as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Section 701.21(c)(7)(ii)(C) is revised to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(7) * * *

(ii) * * *

(C) *Expiration.* After September 9, 2000, or as otherwise ordered by the NCUA Board, the maximum rate on federal credit union extensions of credit to members shall revert to 15 percent per year. Higher rates may, however, be charged, in accordance with paragraph (c)(7)(ii)(A) and (B) of this section, on loans and line of credit balances existing on or before May 16, 1987.

* * * * *

[FR Doc. 99–2843 Filed 2–5–99; 8:45 am]

BILLING CODE 7535–01–U

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 904

[No. 99–7]

RIN 3069–AA71

Revisions to the Freedom of Information Act Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting the interim final rule that revised its Freedom of Information Act (FOIA) regulation to comply with new statutory requirements and to clarify the Finance Board's practices and procedures in responding to requests for information as a final rule with one minor procedural change. The change makes clear that the Office of Resource Management is the agency component responsible for collecting FOIA fees.

EFFECTIVE DATE: The final rule will become effective on March 10, 1999.

FOR FURTHER INFORMATION CONTACT: Elaine L. Baker, Secretary to the Board and Associate Director, Executive Secretariat, Office of the Managing Director, by telephone at 202/408–2837 or by electronic mail at bakere@fhfb.gov, or Janice A. Kaye, Attorney-Advisor, Office of General Counsel, by telephone at 202/408–2505 or by electronic mail at kayej@fhfb.gov, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Congress amended the FOIA by enacting the Electronic Freedom of Information Act Amendments of 1996 (EFOIA). *See* 5 U.S.C. 552, *as amended by* Pub. L. 104–231, 110 Stat. 3048 (Oct. 2, 1996). Among other procedural changes, the EFOIA increases the time for responding to a FOIA request from 10 to 20 days, specifically applies the FOIA disclosure requirements to electronic records, and adds frequently requested records as a category of reading room records. The EFOIA also requires an agency to promulgate regulations that provide for the expedited processing of FOIA requests.

In July 1998, the Finance Board published an interim final rule with request for comments that amended its FOIA regulation to comply with these statutory changes. *See* 63 FR 37483 (July 13, 1998), *codified at* 12 CFR part 904. The interim final rule also reorganized and streamlined the FOIA regulation to clarify the Finance Board's practices and procedures in responding to requests for information. The 60-day public comment period closed on September 11, 1998. *See id.*

II. Analysis of Public Comments and the Final Rule

The Finance Board received no comments in response to the interim final rule. Thus, for the reasons set forth in detail in the interim final rulemaking, the Finance Board is adopting the interim final rule amending its FOIA regulation to comply with new statutory requirements and to clarify the Finance Board's practices and procedures in responding to requests for information with one minor procedural change. The procedural change makes clear that the Office of Resource Management is the agency component responsible for collecting FOIA fees. More specifically, in § 904.9(f), which concerns the collection of FOIA fees, the Finance

Board is replacing the reference to the Secretary to the Board with a reference to the Office of Resource Management.

III. Regulatory Flexibility Act

The Finance Board adopted this amendment to part 904 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. *See* 5 U.S.C. 601(2), 603(a).

IV. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 904

Confidential business information, Federal home loan banks, Freedom of information.

For the reasons stated in the preamble, the Finance Board hereby adopts the interim final rule amending 12 CFR part 904 that was published at 63 FR 37483 on July 13, 1998, as a final rule with the following change:

PART 904—FREEDOM OF INFORMATION ACT REGULATION

1. The authority citation for part 904 continues to read as follows:

Authority: 5 U.S.C. 552, 52 FR 10012 (Mar. 27, 1987).

2. Amend § 904.9 by revising paragraph (f)(2) to read as follows:

§ 904.9 Fees.

(f) * * *

(2) To pay fees and interest assessed under this section, a requester shall deliver to the Office of Resource Management, located at the Federal Housing Finance Board, 1777 F Street N.W., Washington, D.C. 20006, a check or money order made payable to the "Federal Housing Finance Board."

* * * * *

Dated: January 27, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 99–2589 Filed 2–5–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–2]

Amendment of Class D Airspace; Hunter Army Airfield (AAF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment modifies the Hunter AAF Class D surface airspace description by excluding that airspace within a 10-mile radius of Savannah International Airport extending upward from 1,300 feet MSL that underlies the Savannah, GA, Class C airspace area. By definition, Class D surface area airspace extends upward from the surface of the earth to a designated altitude, or to the adjacent or overlying controlled airspace of a higher classification. Since a portion of the Savannah Class C airspace area overlying Hunter AAF extends upward from 1,300 feet MSL, the portion of the Hunter AAF Class D surface area airspace that underlies the Class C airspace area should be without the incorrectly specified upper limit, such as that improperly contained in the current description. Therefore, the Hunter AAF Class D surface area airspace extends upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of the Hunter AAF, excluding that portion within the Savannah, GA, Class C airspace area extending upward from 1,300 feet MSL, and that airspace north of lat. 32°02'30"N. This action corrects that technical discrepancy.

DATES: *Effective Date:* 0901 UTC, May 20, 1999.

Comments Date: Comments must be received on or before March 10, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–2, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, which involves amending the Class D airspace description for Hunter AAF, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments and, if the FAA finds further changes are appropriate, it will initiate rulemaking procedures to extend the effective date or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace description for Hunter AAF by excluding that portion within the Savannah, GA, Class C airspace area. Class D airspace designations for surface areas are published in paragraph 5000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

Since this action only makes a technical amendment to the Class D surface area description and should have no impact on the users of the airspace in the vicinity of Hunter AAF the notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[Amended]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000—Class D Airspace

* * * * *

ASO GA D Savannah, GA [Revised]

Hunter AAF
(lat. 32°00′35″N, long. 81°08′44″W)
Savannah International Airport
(lat. 32°07′39″N, long. 81°12′08″W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.5-mile radius of Hunter AAF; excluding that portion of the overlying Savannah, GA, Class C airspace area and that airspace north of lat. 32°02′30″N. This Class D airspace is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on January 21, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–2933 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 772 and 774

RIN 0694–AB75

[Docket No. 990112008–9008–01]

Revisions to the Commerce Control List: Changes in Missile Technology Controls

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export controls. This interim rule amends the CCL by revising a number of items subject to control for missile technology reasons. These changes to the CCL are the result of the decisions taken by the Missile Technology Control Regime (MTCR), in November 1997.

The changes made by this rule are intended to conform the list of missile technology related items controlled by the United States to the list agreed and adopted by the countries participating in the MTCR.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 17, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

DATES: This rule is effective February 8, 1999. Comments must be received by April 9, 1999.

ADDRESSES: Written comments (six copies) should be sent to Patricia Muldonian, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Vince Chin, Office of Nuclear and Missile Technology Controls, Bureau of Export Administration, Telephone: (202) 482–0998.

SUPPLEMENTARY INFORMATION:

Background

At the November, 1997, meeting of the Missile Technology Control Regime (MTCR), the member countries made certain technical revisions in the MTCR's missile technology list. The changes agreed at the November, 1997 meeting have been adopted by the member countries and are contained in this interim rule. Many of the changes redefine the scope of the technical parameters describing missile technology items controlled for export or reexport.

Specifically, this rule makes the following revisions:

(1) Clarifies controls on metal powder production equipment and also includes certain plasma generators and electroburst equipment usable for making spherical metallic powder. These revisions are described in a new entry (ECCN 1B117), which also includes mixers and fluid energy mills previously controlled under ECCN 1B115. ECCN 1B115 will now control liquid propellant production equipment only. All solid propellant production equipment have been consolidated into the new entry (ECCN 1B117).

(2) Clarifies the control text for metal powder described under ECCN 1C111.

(3) Adds a new control for Titanium-stabilized duplex stainless steel (ECCN 1C118). This control has been added to prevent the proliferation of these materials to missile projects of concern.

(4) Broadens controls on certain test, calibration and alignment equipment described in Category 7B for gyroscopes, accelerometers, inertial and navigation equipment described in Category 7A, by replacing the term "specially designed" with the term "designed or modified" as the equipment modifier and by further defining some specific types of equipment to be controlled. These specific types of equipment include certain balancing machines, indicator heads, motion simulators, positioning/rate tables and centrifuges that are specified in a new entry (ECCN 7B104). In addition, ECCN 7B101 was added to control other production equipment not specified in ECCN 7B104 that are "designed or modified" to be used with certain equipment described in Category 7A.

Savings Clause

This rule revises the numbering and structure of certain entries on the Commerce Control List. For items under such entries, BXA will accept either the entries described before February 8, 1999 or the entries described by this rule until May 10, 1999. In addition, this rule imposes new controls on certain items. Shipments of items removed from eligibility under a particular License Exception authorization or the designator NLR, may continue to be exported or

reexported under that License Exception authorization or designator until May 10, 1999, except for shipments of such items to the People's Republic of China. In light of recently enacted Presidential certification requirements involving the export to the People's Republic of China of items controlled for missile technology reasons, contained in section 1512 of the Strom Thurmond Defense Authorization Act for Fiscal Year 1999 (P.L. 105–261), shipments of such items to the People's Republic of China are subject to the licensing requirements of the regulation as of the effective date of publication.

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Not withstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. The provisions of the Administrative Procedure Act, (5 U.S.C. 553), requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close April 9, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects in 15 CFR Parts 772 and 774

Exports, Foreign trade.

Accordingly, parts 772 and 774 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*, 1701 *et seq.*, app. 5; 10 U.S.C. 7420, 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 3201 *et seq.*, 6004; Sec. 201, Pub. L. 104–58, 109 Stat. 557 (30 U.S.C. 185(s), 185(u)); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 12924, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

3. Part 772 is amended by revising the definition for "production" and by adding a definition for "production equipment" to read as follows:

PART 772—DEFINITION OF TERMS

* * * * *

"Production". (General Technology Note) (Cat. 1 and 7)—Means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

"Production equipment". (MTCR context)—Tooling, templates, jigs, mandrels, moulds, dies, fixtures, alignment mechanisms, test equipment, other machinery and components therefor, limited to those specially designed or modified for "development" or for one or more phases of "production".

* * * * *

PART 774—[AMENDED]

Supplement No. 1 to part 774—the Commerce Control List

4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms", and Toxins, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the entry heading and the List of Items Controlled section for ECCN 1B115;

b. By adding ECCN 1B117;

c. By revising the List of Items Controlled section for ECCN 1C111;

d. By adding ECCN 1C118;

e. By revising the Reason for Control section for ECCN 1E001; and

f. By revising the entry heading for ECCN 1E101; to read as follows:

1B115 "Production equipment" for the production, handling or acceptance testing of liquid propellants or propellant constituents controlled by 1C011, 1C111 or on the U.S. Munitions List, and specially designed components therefor.

* * * * *

List of Items Controlled

Unit: Equipment in number; components in $ value

Related Controls: (1) For equipment specially designed for the production of military propellants or propellant constituents, see the U.S. Munitions List. (2) Items when specifically designed, developed, configured, adapted or modified to produce an item on the USML are subject to the export licensing authority of the U.S. State Department, Office of Defense Trade Controls (see 22 CFR Part 121).

Related Definitions: N/A.

Items: The list of items controlled is contained in the ECCN heading.

* * * * *

1B117 "Production equipment", as follows (see List of Items Controlled), for the production, handling or acceptance testing of solid propellants or propellant constituents controlled by 1C011, 1C111 or on the U.S. Munitions List.

License Requirements

Reason for Control: MT, AT.

Control(s)	Country chart
MT applies to entire entry ..	MT Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Equipment in number; components in $ value

Related Controls: (1) See also 1B115. (2) For equipment specially designed for the production of military propellants or propellant constituents, see the U.S. Munitions List. (3) This entry does not control equipment for the "production", handling and acceptance testing of boron carbide. (4) Items when specifically designed, developed, configured, adapted or modified to produce an item on the USML are subject to the export licensing authority of the U.S. State Department, Office of Defense Trade Controls (see 22 CFR Part 121.).

Related Definitions: (1) The only batch mixers, continuous mixers, and fluid energy mills controlled in 1B117, are those controlled in 1B117.a through d. (2) Forms of metal powder "production equipment" not specified in 1B117.d. are to be evaluated in accordance with 1B117.e.

Items: a. Batch mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa, and with temperature control capability of the mixing chamber and having:

a.1. A total volumetric capacity of 110 liters (30 gallons) or more; and

a.2 At least one mixing/kneading shaft mounted off center;

b. Continuous mixers with provision for mixing under vacuum in the range from zero to 13.326 kPa, and with temperature control capability of the mixing chamber and having:

b.1. Two or more mixing/kneading shafts; and

b.2. Capability to open the mixing chamber.

c. Fluid energy mills usable for grinding or milling propellant or propellant constituents specified in 1C011 or 1C111, or on the U.S. Munitions List.

d. Metal powder "production equipment" usable for the "production", in a controlled environment, of spherical or atomized materials specified in 1C011 or 1C111 a.1. or a.2., or on the U.S. Munitions List including:

d.1. Plasma generators (high frequency arc-jet) usable for obtaining sputtered or spherical metallic powders with organization of the process in an argon-water environment;

d.2. Electroburst equipment usable for obtaining sputtered or spherical metallic powders with organization of the process in an argon-water environment;

d.3. Equipment usable for the "production" of spherical aluminium powders by powdering a melt in an inert medium (e.g. nitrogen).

e. "Production equipment" for the production, handling, mixing, curing, casting, pressing, machining, extruding or acceptance testing of solid propellants or propellant constituents described in 1C011 or 1C111, or on the U.S. Munitions List, other than those described in 1B117.a through d.

f. Specially designed components for the equipment controlled in 1B117.a through e.

* * * * *

1C111 Propellants and constituent chemicals for propellants, other than those controlled by 1C011, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: Kilograms.

Related Controls: (1) The following materials, whether or not encapsulated in aluminum, beryllium, magnesium, or zirconium are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls: (See 22 CFR part 121): (a) Spherical aluminum powder with particles of uniform diameter 60 x 10^{-6} m (60 micrometers) or less and an aluminum content of 99 percent or greater; (b) Zirconium, beryllium, boron, magnesium and alloys of these, in particle sizes of less than 60 x 10^{-6} m (60 micrometers), whether spherical, atomized, spheroidal, flaked or ground, consisting 99% or more by weight of any of the above mentioned metals; (c) iron powder with average particle size of 3 x 10^{-6} m (3 microns) or less produced by hydrogen reduction of iron oxide. (2) For propellants and constituent chemicals for propellants not controlled by 1C111, see the U.S. Munitions List.

Related Definitions: N/A.

Items: a. Propulsive substances:

a.1. Spherical aluminum powder, other than that specified on the U.S. Munitions List, with particles of uniform diameter of less than 500 micrometer and an aluminum content of 97% by weight or greater;

a.2. Zirconium, beryllium, boron, magnesium and alloys of these, other than that controlled by the U.S. Munitions List, in particle sizes of less than 500 x 10^{-6} m (500 micrometers), whether spherical, atomized, spheroidal, flaked or ground, consisting 97% or more by weight of any of the above mentioned metals.

a.3. Liquid oxidizers, as follows:

a.3.a. Dinitrogen trioxide;

a.3.b. Nitrogen dioxide/dinitrogen tetroxide;

a.3.c. Dinitrogen pentoxide;

b. Polymeric substances:

b.1. Carboxy-terminated polybutadiene (CTPB);

b.2. Hydroxy-terminated polybutadiene (HTPB), other than that controlled by the U.S. Munitions List;

b.3. Polybutadiene-acrylic acid (PBAA);

b.4. Polybutadiene-acrylic acid-acrylonitrile (PBAN);

c. Other propellant additives and agents:

c.1. Butacene;

c.2. Triethylene glycol dinitrate (TEGDN);

c.3. 2-Nitrodiphenylamine;

c.4. Trimethylolethane trinitrate (TMETN);

c.5. Diethylene glycol dinitrate (DEGDN).

* * * * *

1C118 Titanium-stabilized duplex stainless steel (Ti-DSS):

License Requirements

Reason for Control: MT, AT.

Control(s)	Country chart
MT applies to entire entry.	MT Column 1.
1AT applies to entire entry.	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: Kilograms.
Related Controls: N/A.
Related Definitions: N/A.
Items: a. Titanium-stabilized duplex stainless steel (Ti-DSS) having:

a.1. All of the following characteristics:

a.1.a. Containing 17.0–23.0 weight percent chromium and 4.5–7.0 weight percent nickel, and

a.1.b. A ferritic-austenitic microstructure (also referred to as a two-phase microstructure) of which at least 10 percent is austenite by volume (according to ASTM E–1181-87 or national equivalents), and

a.2. Any of the following forms:

a.2.a. Ingots or bars having a size of 100 mm or more in each dimension;

a.2.b. Sheets having a width of 600 mm or more and a thickness of 3 mm or less;

or

a.2.c. Tubes having an outer diameter of 600 mm or more and a wall thickness of 3 mm or less.

* * * * *

1E001 "Technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A004, 1A005, 1A102, 1B or 1C (except 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, 1C994 and 1C995).

License Requirements

Reason for Control: NS, MT, NP, CB, AT.

Control(s)	Country chart
NS applies to "technology" for items controlled by 1A001.b and .c, 1A002, 1A003, 1B001 to 1B003, 1B018, 1B225, 1C001 to 1C010, 1C018, 1C230, 1C231, 1C233, or 1C234.	NS Column 1.
MT applies to "technology" for items controlled by 1B001, 1B101, 1B115, 1B116, 1B117, 1C001, 1C007, 1C101, 1C107, 1C011, 1C111, 1C116, 1C117, or 1C118 for MT reasons.	MT Column 1.
NP applies to "technology" for items controlled by 1A002, 1B001, 1B101, 1B201, 1B225 to 1B232, 1C001, 1C010, 1C202, 1C210, 1C216, 1C225 to 1C234, 1C236 to 1C238 for NP reasons.	NP Column 1.
CB applies to "technology" for items controlled by 1C351, 1C352, 1C353, or 1C354.	CB Column 1.
CB applies to "technology" for materials controlled by 1C350.	CB Column 2.
AT applies to entire entry ..	AT Column 1.

* * * * *

1E101 "Technology" according to the General Technology Note for the "use" of goods controlled by 1A102, 1B001, 1B101, 1B115, 1B116, 1B117, 1C001, 1C007, 1C011, 1C101, 1C107, 1C111, 1C116, 1C117, 1C118, 1D101 or 1D103.

* * * * *

5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 7—Navigation and Avionics, the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the List of Items Controlled section for ECCN 7B003;

b. By adding ECCN 7B101;

c. By revising the entry heading and List of Items Controlled section for ECCN 7B102;

d. By adding ECCN 7B104;

e. By revising the entry heading for ECCN 7D101; and

f. By revising the entry heading for ECCN 7E101, to read as follows:

7B003 Equipment specially designed for the "production" of equipment controlled by 7A (except 7A994).

* * * * *

List of Items Controlled

Unit: $ value.
Related Controls: (1) See also 7B103, (this entry is subject to the licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121) 7B101 and 7B994. (2) This entry includes: inertial measurement unit tester (IMU module); IMU platform tester; IMU stable element handling fixture; IMU platform balance fixture; gyro tuning test station; gyro dynamic balance station; gyro run-in/motor test station; gyro evacuation and filling station; centrifuge fixtures for gyro bearings; accelerometer axis align station; and accelerometer test station.
Related Definitions: N/A.
Items: The list of items controlled is contained in the ECCN heading.

7B101 "Production equipment", and other test, calibration, and alignment equipment, other than that described in 7B003, 7B102 and 7B104, designed or modified to be used with equipment controlled by 7A001–7A004 or 7A101–7A104.

License Requirements

Reason for Control: MT, AT.

Control(s)	Country chart
MT applies to entire entry ..	MT Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: (1) See also 7B003, 7B102, 7B104 and 7B994. (2) This entry includes: inertial measurement unit tester (IMU module); IMU platform tester; IMU stable element handling fixture; IMU platform balance fixture; gyro tuning test station; gyro dynamic balance station; gyro run-in/motor test station; gyro evacuation and filling station; centrifuge fixtures for gyro bearings; accelerometer axis align station; and accelerometer test station.
Related Definitions: N/A.
Items: The list of items controlled is contained in the ECCN heading.

7B102 Equipment, other than those controlled by 7B002, designed or modified to characterize mirrors, for laser gyro equipment, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: $ value.
Related Controls: N/A.
Related Definitions: N/A.
Items: a. Scatterometers having a measurement accuracy of 10 ppm or less (better).

b. Reflectometers having a measurement accuracy of 50 ppm or less (better).

c. Profilometers having a measurement accuracy of 0.5nm (5 Angstroms) or less (better).

* * * * *

7B104 Equipment, designed or modified to be used with equipment controlled by 7A001–7A004, or 7A101–

7A104, as follows (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT.

Control(s)	Country chart
MT applies to entire entry ..	MT Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: (1) See also 7B101 and 7B994.

Related Definitions: (1) 7B104.a. does not control balancing machines designed or modified for dental or other medical equipment. (2) 7B104.c. and 7B104.d. do not control rotary tables designed or modified for machine tools or for medical equipment. (3) Rate tables not controlled by 7B104.c. and providing the characteristics of a positioning table are to be evaluated according to 7B104.d. (4) Equipment that has the characteristics specified in 7B104.d. which also meets the characteristics of 7B104.c. will be treated as equipment specified in 7B104.c.

Items: a. Balancing machines having all the following characteristics:

a.1. Not capable of balancing rotors/assemblies having a mass greater than 3 Kgm;

a.2. Capable of balancing rotors/assemblies at speeds greater than 12,500 rpm;

a.3. Capable of correcting unbalance in two planes or more; and

a.4. Capable of balancing to a residual specific unbalance of 0.2 gram-mm per kg of rotor mass;

b. Indicator heads (sometimes known as balancing instrumentation) designed or modified for use with machines specified in 7B104.a.

c. Motion simulators/rate tables (equipment capable of simulating motion) having all of the following characteristics:

c.1. Two axes or more;

c.2. Slip rings capable of transmitting electrical power and/or signal information; and

c.3. Having any of the following characteristics:

c.3.a. For any single axis:

c.3.a.1. Capable of rates of rotation of 400 degrees/sec or more, or 30 degrees/sec or less, and

c.3.a.2. A rate resolution equal to or less than 6 degrees/sec and an accuracy equal to or less than 0.6 degrees/sec; or

c.3.b. Having a worst case rate stability equal to or better (less) than plus or minus 0.05% averaged over 10 degrees or more; or

c.3.c. A positioning accuracy equal to or better than 5 arc-second.

d. Positioning tables (equipment capable of precise rotary position in any axis) having the following characteristics:

d.1. Two axes or more; and

d.2. A positioning accuracy equal to or better than 5 arc-second;

e. Centrifuges able to impart accelerations above 100 g and having slip rings capable of transmitting electrical power and signal information.

* * * * *

7D101 "Software" specially designed for the "use" of equipment controlled by 7A001 to 7A006, 7A101 to 7A106, 7A115, 7B001, 7B002, 7B003, 7B101, 7B102, 7B103 or 7B104.

* * * * *

7E101 "Technology", other than "technology" controlled by 7E003, according to the General Technology Note for the "use" of equipment controlled by 7A001 to 7A006, 7A101 to 7A106, 7A115 to 7A117, 7B001, 7B002, 7B003, 7B101, 7B102, 7B103, 7B104, 7D101 to 7D103.

* * * * *

Dated: February 1, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–2975 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–99–006]

RIN 2115–AA97

Safety Zone; Explosive Loads and Detonations Bath Iron Works, Bath, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone to close a portion of the Kennebec River to waterway traffic in a 400 foot radius around Bath Iron Works, Bath, Maine for explosive loads and explosives detonations, from 6 a.m. January 30, 1999 through 12 p.m. March 1, 1999. This safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling, detonation and transportation of explosives. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 6 a.m. Saturday January 30 until 12 p.m. Monday March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.D. Gafkjen, Chief of Response and Planning, Captain of the Port, Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing a NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Due to the complex planning and coordination involved, final details for the closure were not provided to the Coast Guard until January 20, 1999, making it impossible to publish a NPRM or a final rule 30 days in advance. Publishing an NPRM and delaying its effective date would be contrary to public interest since this safety zone is needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling and detonation of explosives.

Background and Purpose

The Explosive Loads and Detonations will occur from 6 a.m Saturday Janaury 30 until 12 p.m. Monday March 1, 1999. The safety zone covers the waters of the Kennebec River, Bath, ME, in a 400 foot radius around Bath Iron Works, Bath, ME. This safety zone is required to protect the maritime community from the hazards associated with the loading, detonation and transportation of explosives. Entry into this zone will be prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This safety zone involves only a portion

of the Kennebec River. Due to the limited duration of the safety zone, the fact that the safety zone will not restrict the entire channel of the Kennebec River, allowing traffic to continue without obstruction, and that advance maritime advisories will be made, the Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this regulation to be minimal and certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under section 2.B.2.e. of Commandant Instruction M16475.1B, (as revised by 59 FR 38654, July 29, 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and an Environmental Analysis Checklist is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary section, 165.T01–CGD1–183 to read as follows:

§ 165.T01–CGD1–183 Explosive Load, Bath Iron Works, Bath, ME.

(a) *Location.* The safety zone covers the waters of the Kennebec River, Bath, ME, in a 400 foot radius around Bath Iron Works, Bath, ME.

(b) *Effective date.* The Explosive Loads and Detonations will occur from 6 a.m. Saturday January 30 until 12 p.m. Monday March 1, 1999. The safety zone covers the waters of the Kennebec River, Bath, ME.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed.

(3) In accordance with the general regulations in section 165.23 of this part, entry or movement within this zone is prohibited unless authorized by the Captain of the Port, Portland, ME.

Dated: January 29, 1999.

R.A. Nash,

Commander, U.S. Coast Guard, Captain of the Port Portland, Maine.

[FR Doc. 99–2974 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN55–01–7280a; MN56–01–7281a; MN57–01–7282a; FRL–6230–3]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves three State Implementation Plan (SIP) revisions for the State of Minnesota which were submitted on October 17, 1997. These SIP revisions modify Administrative Orders for North Star Steel Company and LaFarge Corporation (North Star Steel and LaFarge) located in St. Paul, Minnesota, and GAF Building Materials (GAF) located in Minneapolis, Minnesota. The Orders to these facilities are included as part of Minnesota's SIP to attain and maintain the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM) and sulfur dioxide (SO_2).

In the proposed rules section of this **Federal Register**, the Environmental Protection Agency (EPA) is proposing approval of, and soliciting comments on, these SIP revisions. If adverse comments are received on this action, EPA will withdraw this final rule and address the comments received in response to this action in a final rule based on the related proposed rule, which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

DATES: This "direct final" rule is effective April 9, 1999, unless EPA receives adverse or critical comments by March 10, 1999. If adverse comment is received, EPA with publish a timely withdrawal in the **Federal Register**, informing the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

A Copy of these SIP revisions are available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION:

I. Background

PM SIP. The State submitted SIP revisions intended to demonstrate

attainment and maintenance of the PM NAAQS on November 26, 1991, August 31, 1992, and November 13, 1992. Included in these submittals were Administrative Orders for North Star Steel and LaFarge. On February 15, 1994, at 59 FR 7218, EPA took final action to approve these PM SIP revisions. This final rulemaking also took into consideration three new submittals, provided by the State on February 3, 1993, April 30, 1993, and October 15, 1993. A revised Administrative Order for North Star Steel was included in the April 30, 1993, submittal.

On December 22, 1994, the State submitted amendments to the administrative orders for Lafarge and North Star Steel. EPA took final action to approve these amendments into the Minnesota PM SIP on June 13, 1995, at 60 FR 31088.

SO_2 SIP. On May 29, 1992, the State submitted a revision to the SO_2 SIP for Minneapolis-St. Paul, which included a demonstration of attainment and maintenance of the NAAQS for SO_2. Included in the attainment demonstration was an Administrative Order for GAF. The State submitted a supplemental SIP revision on July 12, 1993. A revised Administrative Order for GAF was included in this submittal and, on April 14, 1994, at 59 FR 17703, EPA took final action to approve the SO_2 SIP revisions for the Minneapolis-St. Paul area.

II. Review of Minnesota's Plan

LaFarge Corporation, Childs Road Facility

The revision submitted on October 17, 1997, consists of applying a chemical dust suppressant to the unpaved roads at the facility. The old Order required daily watering of these roads with the following exceptions: (1) if there was a 0.1 inch rainfall in the preceding 24 hours, (2) if the temperature fell below 32 degrees, or (3) on any day there was no traffic on the road. The revised Order requires LaFarge to apply a chemical dust suppressant on all unpaved roadways, except when the ground is frozen (November–March). Calcium chloride (CaCl) will be applied to all unpaved roads each April. Daily inspections of these roads will be performed to determine if additional dust suppressant is necessary and re-application of CaCl is required to those areas where fugitive dust is observed. These inspections do not need to be performed if there is no traffic on the roads or if the facility is closed for the entire day. The Company is required to keep records of: (1) the day in April every year of initial application of dust suppressant, (2) daily observations of the unpaved roads or if there was no traffic on the roads, and (3) if needed, where and how much additional dust suppressant was applied. The revision also allows the Company to use a dust suppressant other than CaCl only after written approval from the State is obtained.

North Star Steel Company

The revision submitted on October 17, 1997, would allow the Company to add equipment as long as they adhere to the State's insignificant modifications guidelines. The old Order allowed the Company to make changes to their facility without obtaining a modification to the Order as long as the changes did not increase, from any emission point, the Facility's PM emission rate or overall PM emissions, or alter equipment or parameters described in Exhibit 1 of the Order which formed the basis for the PM modeling. The new Order will allow the Company to make changes to their facility without obtaining a modification to the Order as long as the changes do not increase, from any emission point in Exhibit 1, the Facility's PM emission rate, or alter equipment or parameters described in Exhibit 1 of the Order which formed the basis for the PM modeling. The new Order will also allow North Star Steel to install, modify, and operate process or control equipment not listed in Exhibit 1 without obtaining a modification to the Order as long as the installation, modification, and operation of the equipment is an insignificant modification as described in Minn. R. 7007.1250, subp. 1, item A or B, and the Company complies with the requirements of Minn. R. 7007.1250 (previously approved into the SIP on May 24, 1995 at 60 FR 27411).

GAF Building Materials Corporation

The revision submitted on October 17, 1997, consists of the removal of the requirement to use asphalt sulfur content as an indication of the sulfur content of the fuel being burned, and a new process, when oil is being used as a fuel, for sampling and analyzing the mixture of No. 6 fuel oil and knockout oil. The old Order required the Company to sample and analyze the mixture of No. 6 fuel oil and knockout oil on a weekly basis at the burner inlet in order to determine the sulfur content and the heating value of the fuel. The revised Order requires GAF to sample and analyze the mixture of No. 6 fuel oil and knockout oil on a daily basis to determine the percent sulfur content of the blend and on a weekly basis to determine the heating value of the fuel mixture, at a point between the fuel oil storage tank and the combustion units. The new Order also revises all references made to any applicable ASTM Method or another EPA approved ASTM method (as listed in 40 CFR part 60, Appendix A, Method 19, Section 5.2.2).

III. Final Action

Based on the rationale set forth above, EPA is approving the Administrative Order revisions for LaFarge Corporation and North Star Steel Company, located in St. Paul, Minnesota, and GAF Building Materials, located in Minneapolis, Minnesota, as submitted by the State on October 17, 1997. These Orders are included as part of Minnesota's SIP to attain and maintain the NAAQS for PM, and SO_2. EPA has evaluated these SIP revisions and determined that the changes to operations at each facility, as described above, will not result in an increase of emissions and do not jeopardize the PM and SO_2 attainment demonstrations that had previously been submitted by the State and approved by EPA on February 15, 1994, at 59 FR 7218, and April 14, 1994, at 59 FR 17703, respectively.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by March 10, 1999. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 9, 1999.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides

the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act (Act) preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 9, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Sulfur dioxide, Reporting and recordkeeping requirements.

Dated: January 19, 1999.

JoLynn Traub,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart Y—Minnesota

2. Section 52.1220 is amended by adding paragraph (c)(47) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(47) On October 17, 1997, the State of Minnesota submitted amendments to three previously approved Administrative Orders for North Star Steel Company, LaFarge Corporation, and GAF Building Materials, all located in the Minneapolis-St. Paul area.

(i) Incorporation by reference.

(A) Amendments, both dated and effective September 23, 1997, to administrative orders and amendments approved in paragraphs (c)(29) and (c)(41) of this section, respectively, of this section for: LaFarge Corporation (Childs Road facility) and North Star Steel Company.

(B) Amendment Two, dated and effective September 18, 1997, to administrative order and amendment approved in paragraph (c)(30) of this section for GAF Building Materials.

[FR Doc. 99–2787 Filed 2–5–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1309

RIN 0970–AB31

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: The Administration on Children, Youth and Families is issuing this final rule to implement the statutory provision that authorizes Head Start grantees to use grant funds to purchase facilities in which to operate Head Start programs.

EFFECTIVE DATES: March 10, 1999. The information collection requirements of §§ 1309.10, 1309.40 and 1309.41 shall be effective on the day they are approved by the Office of Management and Budget (OMB). The OMB approval numbers and date of approval of the information collection requirements will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013; (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. Also, section 645A of the Head Start Act provides authority to fund programs for families with infants and toddlers. Programs receiving funds under the authority of this section are referred to as early Head Start programs.

Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1997 Head Start served approximately 794,000 children through a network of over 2,000 grantee and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start regulations permit up to ten percent of the children in local programs to be from families who do not meet these low-income criteria. Tribal grantees can exceed this limit under certain conditions. The Act also requires that a minimum of ten percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Purpose of the Rule

The Administration for Children and Families (ACF) is establishing a final rule governing the purchase of facilities by Head Start grantees. The purpose of this Rule is to implement the statutory authority of Head Start grantees to use grant funds to purchase facilities in which to operate Head Start programs. This authority, found in section 644(f) of the Head Start Act (42 U.S.C. 9839), was granted in October 1992. The Act allows grantees to apply for grant funds to purchase facilities to carry out Head Start programs and directs the Secretary to establish uniform procedures for Head Start agencies to request such funds. Additional authority for this Rule is found in section 644(c) of the Head Start Act, which mandates the Secretary to prescribe rules or regulations to supplement section 644(f). In March 1994 Congress added provisions to section 644(f) allowing grantees to apply for approval of facility purchases made after December 31, 1986.

III. Summary of the Major Provisions of the Final Rule

A summary the major provisions of the final rule is as follows. The rule:

- Specifies what information must be included in the written application grantees must submit to request to use grant funds to purchase a facility, including what must be included in the cost comparison which grantees must submit as part of their application;
- Requires certain measures to be taken to protect the Federal interest in facilities purchased in whole or in part with ACF grant funds;
- Requires that grantees which acquire facilities with grant funds obtain specified types of insurance and maintain the property acquired in a manner consistent with the purpose for which funds were provided and in compliance with applicable building codes and standards; and
- Includes within the definition of "facility" modular units, and requires grantees which seek funding to purchase a modular unit to comply with these regulations, which include provisions applicable only to the purchase of modular units.

IV. Rulemaking History

On December 1, 1994, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (59 FR 61575), proposing to establish a rule to implement the

statutory provision authorizing the use of Head Start grant funds for the purchase of facilities to be used to operate Head Start programs. Copies of the proposed rule were mailed to all Head Start grantees and delegate agencies. Interested persons were given 60 days in which to comment on the proposed rule. During the sixty day comment period the Department received comments from twelve respondents. The respondents included seven Head Start grantees and five public and private agencies interested in Head Start facility matters.

Prior to publication of the NPRM Congress amended the Head Start Act to authorize Head Start grantees to use grant funds to construct and make major renovations to their facilities. This amendment to the Head Start Act, section 644(g), became effective in 1994. Proposed procedures to implement this new authority are set out in a Notice of Proposed Rulemaking published elsewhere today in this **Federal Register**. The procedures on construction and major renovation when made final will amend this final rule so that 45 CFR part 1309 will cover, in one single rule, the use of grant funds to purchase, construct and make major renovations to Head Start facilities.

Section-by-Section Discussion of the Comments Received

Of the twelve parties who submitted comments to the NPRM, three were general expressions of support for the proposed rule. Only those sections for which comments were made or to which technical changes were made are discussed below. The discussion of the sections follow the order of the NPRM table of contents and a notation is made wherever the section designations have been changed or deleted in the final rule.

Section 1309.2—Approval of Previously Purchased Facilities

Comment: We received one comment on the application of these procedures to facilities purchased prior to the enactment of the statute authorizing the use of grant funds to purchase facilities. The respondent states that the wording on previous purchases is confusing and the provision itself unfair and should not be included in the rule because all previous purchases should have met the requirements in place at the time the facilities were purchased.

Response: In March 1994, Congress added to the Head Start Act the provision allowing grantees to apply for facility purchases made after December 31, 1986. This requires that the rule refer to both prospective purchases and purchases already made, which results in wording that is necessarily somewhat awkward in places. To address this we have changed the definition of "Purchase" § 1309.3 by adding at the end "Purchase also refers to an approved purchase of a facility which commenced between December 31, 1986, and October 7, 1992, as permitted by the Head Start Act and § 1309.2 of this part". This has allowed the deletion of most of the references to previously purchased facilities in the rule. Where clarity of a particular provision of the rule required explicit reference to previously purchased facilities, that phrase was left in the provision in question.

Section 1309.3—Definitions

Comment: One comment to this section, asking for further definition of the phrase "modular units," was received. The comment states that in the past many trailers, mobile classrooms, and modular units have been used by Head Start grantees, and questions have arisen as to when they were to be considered "equipment" and when they were considered "real property subject to the full facility purchase requirements."

Response: Section 644(f) of the Head Start Act, which this rule implements, states that the "Secretary shall establish uniform procedures for Head Start agencies to request approval to purchase facilities * * * to be used to carry out Head Start programs." The Act makes no distinction between "equipment" and "real property," or between temporary and permanent facilities. The policy of this rule, which we believe is consistent with the meaning of the Act, is that the purchase of modular units is subject to the provisions of the rule if they will be used to operate a Head Start program.

The definition of "useful life" as defined in the NPRM is vague and has been deleted.

For clarification purposes, we have added a definition of "*Head Start center or a direct support facility for a Head Start program*" and made minor edits to several definitions. We revised the definition of "grantee" to include reference to "for-profit" agency in accordance with the Head Act Reauthorization Amendments in the Coats Human Services Amendments of 1998, Pub. L 105–285.

Section 1309.10—Application

Comments—General: Several respondents to this section expressed concern that grantees might lose a facility they propose to purchase because of delays in securing ACF approval of their application. Two suggestions were received for dealing with this concern. One respondent proposes that there be an expedited approval process for facilities which are defined, according to established criteria, as "at risk of being sold." The same respondent suggests that we establish "parameters" in making grant awards for facility purchases and allow a replacement property meeting these "parameters" to be purchased within 90 days if the original site is no longer available. Another respondent proposes that the application process be divided into two stages. The first stage would involve general approval of a facility purchase for a particular grantee as a policy matter. At this stage, the Department would determine whether the grantee's current space is inadequate and whether a waiver of non-federal share would be approved if requested, but would not be asked to approve the purchase of an actual facility the grantee is proposing to buy. The second stage would be a "deal-specific" approval, designed to allow decisions on a proposed purchase to be made relatively quickly and predictably. In this stage, requests for purchase of particular buildings would be reviewed, based on cost comparisons, environmental impact studies, and the condition of the proposed facility.

Response: We do not agree that it would be advisable to apply any special circumstances for the review of an application for a property "at risk of being sold" as suggested by one respondent. The decisions made by the responsible HHS approving official should not be hastened by the pressure of another buyer's interest in a property, but should be made based upon the merits of the application.

However, the concern expressed by the respondents that the review of applications for facility purchases be conducted expeditiously is understandable. In response to these concerns, a new § 1309.12 entitled "Timely decisions" has been added to the final rule. Section 1309.12 states that "The responsible HHS official shall promptly review and make final decisions regarding completed applications under this part."

In order to expedite the application review process, we strongly encourage all grantees considering the purchase of a facility to discuss their facility needs with the responsible HHS official prior to submitting the formal application or beginning negotiation for the purchase of the facility. As part of these discussions, the grantee and HHS approving official would consider whether the grantee's current space is

adequate and whether funds to complete the purchase and meet any ongoing financing commitments are available, or would be available at the time purchase is made. We believe that as a result of these early discussions, the grantee would be in a better position to submit a complete application which could receive prompt review.

Once a formal application is received by ACF, under these final rules, ACF would complete the review of the application within 60 days of receipt of the application. To the extent that the grantee works closely with ACF in this process, the review may be completed in less than 60 days. Applicants may contact their Regional Administrator to request a review of their initial determination.

Grantees are cautioned that they should not take any irrevocable action, such as entering into a purchase contract, until they have received a written confirmation of the Department's final decision that Head Start funds may be used to purchase the facility.

Comment—Section 1309.10(g): We received one comment on paragraph (g) of § 1309.10, which concerns grantees which apply for grant funds to purchase a facility based on the fact that a lack of alternative facilities will prevent the operation of the program. The respondent expresses a concern that this criterion is too strict and should be changed to allow a purchase if the purchase of the facility will improve program operation.

Response: This respondent's suggestion cannot be adopted. Section 644(f)(2)(C) of the Head Start Act mandates that a grantee seeking approval to use grant funds to purchase a facility demonstrate either that the proposed purchase will result in savings when compared to the costs that would be incurred to acquire the use of an alternative facility to carry out the program, or that there are no alternative facilities and the lack of alternative facilities will prevent the operation of the program. These two criteria are specific and we are thus unable to disregard the language of the statute in favor of the much broader criterion suggested in the comment. However, a clarification was added to this paragraph which requires that the statement explaining how it was determined that there is or was a lack of alternative facilities, be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's area.

Comments—Section 1309.10(i): Paragraph (i) of § 1309.10, which requires facility purchase applications to include information on the effect the purchase would have on the grantee's ability to meet the non-Federal share requirement, received one comment, which proposes that the non-Federal share requirement be waived for up to three years for programs which lose non-Federal contributions as a result of buying a facility, and that programs be allowed to use the full amount of non-federal contributions received in one year for a facility toward meeting the requirement for non-Federal share in future years.

Response: Non-Federal contributions, which are required by section 640(b) of the Head Start Act, are provided on a budget period basis. The commentor is suggesting that grantees who are relying heavily on accruing non-Federal share by occupying a building free of cost or at below market cost would lose this non-Federal share when purchasing a facility and may require several years to establish their required non-Federal match. However, there is no provision for providing blanket waiver requests across budget periods. Waiver requests must be submitted annually and are considered on a case-by-case basis against the statutory criteria.

Comment—Section 1309.10(j): A comment on paragraph (j) of § 1309.10 asks that we allow the requirement of certification by a licensed engineer to be fulfilled by the state official who reviews the plans and inspects child care facilities for licensing. The respondent states that in rural areas it is sometimes difficult to obtain professional services such as those of an engineer.

Response: The requirement of this paragraph is not that a private engineer make the certification, but that a person qualified to do so certifies that the building is structurally sound. With this in mind we have made a change in the language of this section to allow, in addition to licensed engineers, licensed architects to make the certification. While this change does not specifically address the suggestion made in the comment, it does broaden the categories of professionals who may make the certification, which should alleviate the difficulty some grantees might have experienced in obtaining this service. And, we reiterate that any engineer or architect qualified to judge the structural soundness of buildings of this type may make the certification. This in no way restricts grantees to using engineers or architects from the private sector.

Comment—Section 1309.10(k): The provision in paragraph (k) of § 1309.10 on one-time fees and expenses which are not subject to the limit on administrative costs received two comments. One respondent suggests that the words "loan fees and related expenses" be added to the illustrative list of one-time expenses in this paragraph. The other respondent states that expenses related to ownership, such as mortgage payments and maintenance costs, should be considered program costs not subject to the administrative costs limitation. If this cannot be done, the respondent states, the Department should recognize that waivers of the administrative cost limitation will have to be granted in these cases.

Response: We have adopted the first respondent's suggestion to add the words "loan fees and related expenses" to the illustrative list of one-time expenses in this paragraph. The suggestion of the second respondent has not been adopted. Grantees must analyze and categorize their costs as either development and administrative or program, depending on the nature and function of the expense, but may categorize costs as dual benefit costs if they are both administrative and programmatic in nature (see 45 CFR 1301.32). Space and related costs are frequently dual benefit costs, but categorization of costs must be done by each grantee based on the circumstances involved. The granting of waivers of the limitation on administrative costs is governed by 45 CFR 1301.32(g), which limits the granting of such waivers to situations in which development and administrative costs are being incurred but the provision of program services has not begun or has been suspended.

Comments—Section 1309.10(n): We received two comments on paragraph (n) of § 1309.10, which requires the application to include an assessment of the impact of the proposed acquisition on the human environment pursuant to the National Environmental Policy Act (NEPA) if the acquisition involves significant renovation or a significant change in land use. One respondent requested that we define more clearly "significant change in land use" and "human environment," and a second respondent asked that we define as clearly as possible when the NEPA applies.

Response: We recognize that Head Start grantees may have little or no experience with the NEPA and that more information and guidance is needed to help provide an understanding of the law and its implementing regulations. This guidance will be furnished to grantees and will include a discussion of such terms as "significant change in land use" and "human environment."

Since publication of the NPRM a draft report of the Office of Inspector General of the Department of Health and Human Services on Head Start facility purchases has pointed out that ACF needs to have, as part of the information submitted by a grantee seeking approval of the use of grant funds to purchase a facility, information concerning possible environmental hazards present in the facility and land. The draft report states that "The presence of environmental hazards can result in facilities that are unusable because the facilities cannot be licensed as safe for children" and "cleanup of hazards may be too costly and cause delays in using the Head Start facility." We agree with these statements and have added the phrase "and a report showing the results of tests for environmental hazards present in the facility, ground water and soil, (or justification why such testing is not necessary)" to paragraph (n) of § 1309.10 of the final rule.

Clarifying language was added to paragraph (h) in order to require the disclosure of information about "balloon" or other unconventional mortgage arrangements to ensure that future mortgage obligations can be met.

Section 1309.11—Cost Comparison

Comment—General: A comment was received which proposes that grantees which purchase facilities be required to take training in facilities management and preventive maintenance, and establish a funded reserve of up to five to ten percent of project cost for major repairs, with the unexpended balance of the fund from each year carried over to the next year.

Response: We will encourage grantees which purchase facilities to use their training and technical assistance funds to purchase needed training. The use of grant funds to establish or pay into a reserve or contingency fund is prohibited by the Office of Management and Budget Circular A–122.

Comment—Section 1309.11(c): A comment was received proposing to add a provision to paragraph (c) of § 1309.11 to increase the operating budgets of programs that have spent little or nothing on their current facilities. The same respondent suggests that, to increase the funds available to pay for facilities, a predictable federal source of funds be established to provide equity grants in the range of 20 to 25 percent of total project costs.

Response: Congress, when it amended the Head Start Act to authorize the purchase of facilities with Head Start grant funds, did not separately appropriate or earmark funds for this purpose. The legislative history of this section indicates that it was not the intent of Congress to fund facility purchases at the expense of enrollment or the provision of services to Head Start children and families.

Comment—Section 1309.11(d): One respondent expressed a concern that the cost comparison section does not include any discussion of the capitalization of mortgage payments for a facility.

Response: Paragraph (d)(2) of § 1309.11 specifies mortgage payments as an ongoing cost which must be separately delineated in the application. Nothing in the cost comparison section or any other part of the final rule is meant to discourage grantees from obtaining bank or other financing and from using grant funds to pay mortgages (both principal and interest). In fact, grantees are encouraged to obtain loans to finance facility purchases, since in most cases ACF will be unable to provide more than a part of the funds needed to purchase a facility unless the debt is amortized.

Comment—Section 1309.11(e): The ten year period for the cost comparison in the case of the proposed purchase of modular units drew a comment from one respondent, who states that it is arbitrary to allow a twenty year comparison for other-than-modular buildings and only a ten year comparison for modular units.

Response: ACF believes it is reasonable to impose a shorter comparison period for the purchase of modular units because they are on average less durable than traditional buildings. As was said in the preamble to the NPRM, the time periods for the comparison were chosen to achieve simplicity and consistency in the preparation and review of the applications, taking into account several factors, including the expected useful life of the facility and the period of the loan which may be needed to make the purchase.

Comment—Section 1309.11(f): There was one comment to paragraph (f) of § 1309.11 which states that if the facility is to be used for purposes in addition to the operation of the Head Start program, charges for use of the facility must be made by the grantee. The Preamble to the NPRM states that this paragraph prohibits shared ownership of facilities purchased with Head Start grant funds, and the respondent expresses the view that shared ownership should be allowed where costs are shared proportionately between the Head Start program and other entities.

Response: As a result of the comments in response to the NPRM, we have reconsidered our previous statement that we would not consider requests for funding which involved co-ownership of a facility. We will consider such proposals under the following circumstances where: the federal interest in the property can be fully protected; co-ownership will not impair the use of the property for Head Start purposes either now or in the future; and co-ownership does not create a prospect that the Federal government will be called on to undertake extensive or burdensome action to protect its interest in the property. One way to meet the first test is for a grantee to propose to purchase ownership of a unit in a project organized as condominium. Commercial as well as residential facilities can be organized as condominiums. The Head Start grantee would own a separate interest in the portion of the facility it uses to conduct its program, and a share in the undivided interest in the common elements of the project. The separation of the grantee's interest in the space which is used for its programs from that of other co-owners will limit the difficulties raised by the entanglement of the Federal interest with those of the facility's non-grantee owner.

While we continue to have these concerns about co-ownership, here in the final rule we are taking a more flexible approach to this question and will allow co-ownership, subject to approval of the responsible HHS official. This approval may be withheld if the official has reason to question the financial capability of the proposed co-owner to meet debt obligations it assumes to pay for the purchase.

Section 1309.21—Recording of Federal Interest and Other Protection of Federal Interest

Two comments were received on § 1309.21 of the NPRM. This section of the NPRM has been redesignated as §§1309.21 and 1309.22 in the final rule to separate and clarify the provisions dealing with protection of the Federal interest (§ 1309.21 of the final rule) and those concerning the rights and responsibilities of various parties in the case of a grantee's default on a mortgage (§ 1309.22 of the final rule). Section 1309.22 of the NPRM has been renumbered § 1309.23 of the final rule.

Comment—Section 1309.21(a): There was one comment on paragraph (a) of § 1309.21 of the NPRM (redesignated as paragraph (d) in the final rule), which concerns the protection of the Federal interest in facilities purchased with grant funds. The respondent states that the exact nature of the federal interest should be specified in the final rule.

Presumably, the respondent states, the interest will take the form of a restrictive covenant running with the land, which would generally not affect the lien priority of a lender's acquisition loan, as opposed to a lien instrument which could affect the lien priority of a lender's loan.

One respondent states that the final rule should, to the extent possible, standardize and describe the procedures ACF will use to authorize facility purchases which involve mortgages, provide a projected time frame for approval by ACF, and identify the criteria (i.e., loan structure and terms) ACF will employ in approving a mortgage. The respondent also suggests that the final rule expressly state that any lien priorities of HHS are subordinate to those of a lender providing an acquisition loan.

Response: In response to the first comment existing regulations and case law establish that the Federal Government has a beneficial ownership interest in all funds on hand with the grantee and property purchased with grant funds. The Federal Government's beneficial ownership interest can affect the lender's priority unless the Federal Government subordinates its interest. There has been a practice in other grant programs to allow banks to take a first lien position on property acquired by a grantee using a blend of grant and mortgage funds where necessary to obtain mortgage financing. If ACF and the mortgagee or creditor agree to subordinate ACF's Federal interest to the mortgagee's or creditor's interest in the property, that agreement must be set forth in a written subordination agreement that is signed by the responsible HHS official and that complies with 45 CFR 1309.21 and any other applicable Federal law.

A new paragraph (a) in § 1309.21 allows for a subordination of interest subject to several qualifications. Paragraph (b) of this section imposes restrictions on the use and disposition of the property and paragraph (c) prohibits the use of the facility for other than the purpose for which the facility was funded without the written approval of the responsible HHS official. The provisions contained in paragraphs (b) and (c) of section 1309.21 are based on the provisions found in 45 CFR parts 74 and 92 and respond to the comment suggesting that ACF explain the requirements for mortgage loan agreements. The new § 1309.22 was added to state the requirements for loan agreements in assigning rights and responsibilities in the event of grantee's default on mortgage, withdrawal or termination.

In § 1309.21, a new paragraph (f) describes certain provisions that must be included in subordination agreements in which the interest of the Federal Government in the subject facility has been subordinated. (A "subordination agreement" is an agreement by which one party agrees that its interest in real property should have a lower priority than the interest of another party.) The regulations provide that, in the event of a default under a mortgage in which the Federal Government has subordinated its interest, the lender must notify the Department as provided in the regulation, and that the notification must include a statement prominently displayed at the top of its first page that "The Federal Interest in certain real property or equipment used for the Head Start program may be at risk, immediately give this notice to the appropriate government official." This notification is necessary to ensure that the Federal Government will receive adequate notice that the Federal interest in the property is at risk.

Comment—Section 1309.21(d)—(Section 1309.31(b) and (c) of the final rule): One comment was received on this paragraph, which concerns protection of the Federal interest in modular units which are purchased with grant funds and which are not permanently affixed to the land, or which are affixed to land which is not owned by the grantee. The respondent states that the final rule should more clearly define "not permanently affixed to the land," and should clarify what approvals would be needed in the event the modular unit must be moved to another location.

Response: Paragraph (d) of § 1309.21 of the NPRM has been redesignated paragraph (b) of § 1309.31 of the final rule with the paragraph that comprised § 1309.31 in the NPRM designated as paragraph (a). This rule is not the appropriate place to try to precisely state when modular units are or are not "permanently affixed to the land." For our purposes, the plain meaning of these words will suffice. The respondent's second point, concerning the moving of modular units to another location, raises a valid question and has been addressed by the addition of the sentence "A modular unit which has been approved for installation in one location may not be moved to another location without the written permission of the responsible HHS official" to new paragraph (c) in this section.

Comment—Section 1309.21(e)—(Section 1309.22 in final rule): One respondent states that the final rule should, to the extent possible, standardize and describe the procedures ACF will use to authorize facility purchases which involve mortgages, provide a projected time frame for approval by ACF, and identify the criteria (i.e., loan structure and terms) ACF will employ in approving a mortgage.

Response: Section 1309.21(e) of the NPRM has been substantially revised. This section of the final rule reflects suggestions made in the comment and our experience dealing with lenders who have loaned money to Head Start grantees to finance the purchase of facilities. Section 1309.22(a) of the final rule contains provisions required in a mortgage agreement, signed by a grantee which is borrowing money to finance the purchase of a facility, regarding circumstances in which the grantee defaults on the loan or ceases to be the designated Head Start agency. The purpose of this section is to make sure that Head Start facilities continue to be available to provide services to children and families in the community and are not lost to Head Start because of the failure of a grantee to meet its mortgage commitments, or because the grantee leaves the program. In carrying out this purpose we have sought to be reasonable and fair to all parties involved, including the lender, while protecting HHS's interest in the property.

The final rule includes a description of the terms which must be included in the mortgage agreement for a facility purchased with Head Start grant funds. These are agreements which must be followed if the grantee defaults or the grantee agency ceases to be the designated Head Start agency. While no attempt is made to specify all the terms which such agreements must contain, § 1309.22(a) does establish certain required provisions of these agreements. For example, such agreements must provide that in the case of a default by the grantee ACF has the right to ensure the default is cured by the grantee or another agency designated by ACF. The successor grantee would assume obligations and rights under the loan and mortgage agreements with the lender. The assumption of obligations under the loan is subject to the approval of the mortgagee or creditor, which may not be unreasonably withheld. ACF is requiring that the agreement provides ACF 60 days upon notification by the grantee of default to ensure the default is cured. The 60 day period is an increase over the 30 day period required in the NPRM. ACF is lengthening the required period before foreclosure because it is likely that the agency will need the full 60 days in some instances

to intervene. The Head Start program's response will require determining why the grantee did not fulfill its obligations under the mortgage, whether it has the capacity to resolve the problem without the intervention of the Head Start program, whether additional assistance is needed, and whether the grantee's failure is grounds for summary suspension. If the grantee is suspended, an interim grantee will have to be identified which will continue to operate the Head Start program.

ACF has revised the language in paragraph (c) to provide that the mortgagee or creditor shall pay ACF that percentage of the proceeds from the foreclosure sale of the property attributable to the Federal share in the value of the property. The new language more clearly states the requirement for calculating the amount of the sale proceeds due the Federal Government. The Federal share of a facility purchased with Head Start grant funds and sold after foreclosure by a lender is calculated based on the amount of the Federal contribution to the cost of acquiring the facility. For a facility purchased through use of a mortgage the amount of the Federal contribution includes grant funds used for the down payment on the facility, payments on the principal and interest on the mortgage and the cost of any renovations.

Section 1309.22—Insurance, Bonding and Maintenance (§ 1309.23 of Final Rule)

Comments: One comment to § 1309.22(a)(i) of the NPRM (now § 1309.23 of the final rule) states that it is assumed that this provision is not intended to prevent lenders from obtaining standard mortgagee title insurance coverage to safeguard their interests in the facility. A second respondent suggests that, in addition to title insurance and physical destruction insurance, other insurance, such as general liability and builder's risk insurance, will be needed to reflect ownership and contractual obligations. This comment states that physical destruction insurance should cover the "replacement value" rather than the "full appraised value of the facility," since an appraisal may not reflect the actual cost of the facility and its contents.

Response: The assumption of the first respondent is correct. With respect to the second comment, we have changed § 1309.22(a) of the NPRM (§ 1309.23(a) of the final rule) to require grantees to provide the same insurance coverage as they provide to other property owned by them, but not less than the coverage delineated in this rule, and physical destruction insurance for the full replacement value of the facility. General liability insurance is covered by 45 CFR 1301.11(a), which requires private Head Start grantees and delegate agencies to carry reasonable amounts of student accident insurance, liability insurance for accidents on their premises, and transportation liability insurance.

Section 1309.33—Inspection

Comment: This section, which concerns the inspection of modular unit installations, received one comment, which suggests that we allow state officials to do these inspections. The reason is the same as the reason for the comment made to § 1309.10(j), above, that in rural areas it may be difficult to obtain engineers to do the inspections.

Response: Our response here is the same as it for the similar comment to § 1309.10(j): We have changed the language of the NPRM to allow architects as well as engineers to make the inspections, but have not otherwise altered the NPRM. As with § 1309.10(j), we wish to make it clear that any engineer or architect qualified to judge the soundness of the modular unit and its installation—whether working in the private or public sector—may make the certification.

Section 1309.41—Record Retention

Comment: A comment was received stating that it should be explicitly stated that the record-keeping requirements of this section are not meant to apply to lenders.

Response: The NPRM states that all records pertinent to the purchase must be maintained *by the grantee* for the period stated. Since this is clear by itself, we state here only that this requirement applies to Head Start grantees only and has no application to lenders.

Section 1309.42—Audit of Mortgage; Five Year Appraisal—(Reference to Five Year Appraisal Has Been Deleted From the Final Rule)

Comment: A comment on this section, which requires an appraisal of the value of a facility purchased with grant funds at least once every five years, states that the appraisal will be unnecessary and a poor use of program money.

Response: Upon reconsideration, we agree with the respondent that the requirement of an appraisal of the property at least once every five years is unnecessary and not the best use of scarce grant funds. We have deleted this requirement.

Section 1309.43—Use of Grant Funds to Pay Fees

We received no comments on this section and made no technical changes.

Section 1309.44—Program Income (Deleted From the Final Rule)

Comments: Two comments on this section disagree with the mandate of this section that program income, other than income from the sale of equipment or real property purchased with grant funds, be deducted from the total allowable costs of the budget period in which the income was produced.

Response: Generally, grantees are authorized to use program income under the additional costs alternative (which allows the use of the income to further eligible program objectives) unless there are persuasive reasons not to allow this alternative. The NPRM, however, limits the use of income derived from a facility purchased with grant funds to the deductive alternative, which requires the income to be deducted from the grantee's total costs for the budget period. Upon reflection, we are no longer convinced that there are persuasive reasons to limit grantees' flexibility on the use of this program income as a general rule, and this section has been deleted to reflect this change. Questions regarding program income from the sale or rental of real property purchased with grant funds will be answered by reference to the applicable provisions of 45 CFR part 74 or part 92. We wish to encourage grantees to collocate services with other service providers in the community and to use the facility, and program income generated from it, to further the goals and objectives of the program.

Section 1309.45—Independent Analysis (Redesignated § 1309.44 in This Final Rule)

Comment: One comment to this section was received, which proposed that this analysis should be conducted within 45 days to avoid the risk of grantees losing lenders and facilities.

Response: We appreciate that the independent analysis should not unduly delay a decision on the application. On the other hand if there were an unusually complicated transaction presented it would not be advisable to abandon the analysis because the 45 day period had expired. We therefore view this 45 day period as a goal which we expect to achieve in the future except under unusual circumstances.

This section has been redesignated § 1309.44 as a result of the deletion of the NPRM section on program income.

V. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Final Rule implements the statutory authority for Head Start grantees to apply to use grant funds to purchase facilities. Congress made no additional appropriation to fund this new authority, however, and so any money spent toward the purchase of facilities for Head Start programs is money that would have been spent otherwise by the program or other programs from the same appropriation amount.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. CH. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities.

Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. Furthermore, the cost of the application process and other activities undertaken as a result of these regulations will not have a significant economic impact because the Head Start program covers 80% of the allowable costs of grantees under the program. The remaining costs associated with compliance are part of the share of costs grantees agree to meet from their own resources when they enter the Head Start program. For these reasons, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or record-keeping requirement inherent in a proposed or final rule. This final rule contains information collection and record-keeping requirements in §§ 1309.10 (application), 1309.40 (copies of documents), and 1309.41 (record retention) which have been submitted to OMB for review and approval in accordance with the Paperwork Reduction Act.

The respondents to the information collection requirements in the rule are Head Start grantees who may be State or local non-profit agencies or organizations. The Department needs to require this collection of information in order to assure that grantees who apply for approval to purchase a facility with Head Start funds have followed certain necessary legal and administrative procedures. Also these collection of information requirements are necessary for monitoring purposes.

The grantees who will be affected by these requirements will be those who request approval and are approved to purchase facilities for the purpose of operating a Head Start program. Based on the average number of grantees who have requested approval from the Department since the statutory authority became effective, October 7, 1992, the estimated annual number of grantees that will be affected is 200.

The actual submittal of an application (§ 1309.10) from a grantee to purchase a facility is a one time activity which is preceded by a number of preparatory activities. We estimate the time it will take to prepare the application in accordance with the requirements of this rule is 40 hours per grantee, calculated over a period of time. On an annual basis, the total hours estimated for submittal of applications from grantees are 8,000.

For copies of documents (§ 1309.40) and record retention (§ 1309.41) activities, we estimate the number of hours to be 1 hour per grantee and the total annual hours for all grantees who submit applications to be 200.

The Administration for Children and Families (ACF) will consider comments by the public on these proposed collections of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond.

OMB is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Wendy Taylor.

List of Subjects in 45 CFR Part 1309

Acquisition, Facilities Purchase, Head Start, Real Property, Modular Units.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: August 3, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: October 28, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR Chapter XIII is amended by adding Part 1309 as follows:

PART 1309—HEAD START FACILITIES PURCHASE

Subpart A—General

Sec.
1309.1 Purpose and application.
1309.2 Approval of previously purchased facilities.
1309.3. Definitions.

Subpart B—Application Procedures

1309.10 Application.
1309.11 Cost comparison.
1309.12 Timely decisions.

Subpart C—Protection of Federal Interest

1309.20 Title.
1309.21 Recording of Federal interest and other protection of Federal interest.
1309.22 Rights and responsibilities in the event of grantee's default on mortgage, or withdrawal or termination.
1309.23 Insurance, bonding, and maintenance.

Subpart D—Modular Units

1309.30 General.
1309.31 Site description.
1309.32 Statement of procurement procedure for modular units.
1309.33 Inspection.
1309.34 Costs of installation of modular unit.

Subpart E—Other Administrative Provisions

1309.40 Copies of documents.
1309.41 Record retention.
1309.42 Audit of mortgage.
1309.43 Use of grant funds to pay fees.
1309.44 Independent analysis.

Authority: 42 U.S.C. 9801 *et seq.*

Subpart A—General

§ 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c) and 644(f)

of the Head Start Act, 42 U.S.C. 9801 *et seq.*, as it applies to grantees operating Head Start programs under the Act. It describes the procedures for applying for Head Start grant funds to purchase facilities in which to operate Head Start programs, and the conditions under which grant funds may be awarded to purchase facilities. It also specifies the measures which must be taken to protect the Federal interest in facilities purchased with Head Start grant funds.

§ 1309.2 Approval of previously purchased facilities.

Head Start grantees which purchased facilities after December 31, 1986, and before October 7, 1992, may request retroactive approval of the purchase by submitting an application which conforms to the requirements of this Part and the Act. Grant funds may be used to pay facility purchase costs incurred only after the responsible HHS official approves an application for a previously purchased facility.

§ 1309.3 Definitions.

As used in this part,

ACF means the Administration for Children and Families in the Department of Health and Human Services, and includes the Regional Offices.

Acquire means to purchase in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, for professional fees, for closing costs, and for any other costs associated with the purchase of the property that are usual and customary for the locality.

Act means the Head Start Act, 42 U.S.C. section 9801, *et seq.*

ACYF means the Administration on Children, Youth and Families, a component of the Administration for Children and Families in the Department of Health and Human Services.

Facility means a structure such as a building or modular unit appropriate for use by a Head Start grantee to carry out a Head Start program.

Grant funds means Federal financial assistance received by a grantee from ACF to administer a Head Start program pursuant to the Head Start Act.

Grantee means the local public, private non-profit or for-profit agency designated to operate a program pursuant to 42 U.S.C. 9836 or 42 U.S.C. 9840a.

Head Start center or a direct support facility for a Head Start program means a facility used primarily to provide Head Start services to children and their families, or for administrative or other activities necessary to the conduct of the Head Start program.

Modular unit means a portable prefabricated structure made at another location and moved to a site for use by a Head Start grantee to carry out a Head Start program.

Purchase means to buy an existing facility, either outright or through a mortgage. Purchase also refers to an approved purchase of a facility, commenced between December 31, 1986 and October 7, 1992, as permitted by the Head Start Act, and by § 1309.2 of this part.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Responsible HHS official means the official who is authorized to make the grant of financial assistance to operate a Head Start program, or such official's designee.

Subpart B—Application Procedures

§ 1309.10 Application.

A grantee which proposes to use grant funds to purchase a facility must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that purchase of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility, including information on the size and type of structure, the number and a description of the rooms and the lot on which the building is located (including the space available for a playground and for parking).

(c) The cost comparison described in § 1309.11 of this part.

(d) If minor renovations are necessary to make the facility suitable to carry out the Head Start program, a description of the renovations, and the plans and specifications required by paragraph (b) of this section for the facility as it will be after renovations are complete.

(e) The intended uses of the facility, including information demonstrating that the facility will be used principally as a Head Start center or a direct support facility for a Head Start program. If the facility is to be used for purposes in addition to the operation of the Head Start program, the grantee must state what portion of the facility is to be used for such other purposes.

(f) Assurance that the facility complies (or will comply after completion of the renovations described in paragraph (d) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee also will assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(g) If the grantee is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the previous purchase of a facility is unable to provide such statements based on circumstances which existed at the time of the purchase, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(h) The terms of any proposed or existing loan(s) related to the purchase of the facility and the repayment plans (detailing balloon payments or other unconventional terms, if any) and information on all other sources of funding of the purchase, including any restrictions or conditions imposed by other funding sources.

(i) A statement of the effect that the purchase of the facility would have on the grantee's meeting of the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(j) Certification by a licensed engineer or architect that the building is structurally sound and safe for use as a Head Start facility. If minor renovations are necessary to make the facility suitable for use to carry out a Head Start program, the application must include a certification by a licensed engineer or architect as to the cost and technical appropriateness of the proposed renovations.

(k) A statement of the effect that the purchase of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the purchase, such as the down payment, the cost of necessary minor renovations, loan fees and related

expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(l) A proposed schedule for acquisition, renovation and occupancy of the facility.

(m) Reasonable assurances that the applicant will obtain, or in the case of a previously purchased facility, has obtained a fee simple or such other estate or interest in the site sufficient to assure undisturbed use and possession for the purpose of operating the Head Start program. If the grantee proposes to purchase a facility without also purchasing the land on which the facility is situated, the application must describe the easement, right of way or land rental it will obtain or has obtained to allow it sufficient access to the facility.

(n) An assessment of the impact of the proposed acquisition on the human environment if it involves significant renovation or a significant change in land use, including substantial increases in traffic in the surrounding area due to the provision of Head Start transportation services, pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) and its implementing regulations (40 CFR parts 1500–1508), and a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(o) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.* and 49 CFR part 24), and information about the costs that may be incurred due to compliance with this Act.

(p) A statement of the share of the cost of purchase that will be paid with grant funds.

(q) For a grantee seeking approval of a previous purchase, a statement of the extent to which it has attempted to comply and will be able to comply with the provisions of § 1309.22(a) of this part.

(r) Such additional information as the responsible HHS official may require.

§ 1309.11 Cost comparison.

(a) A grantee proposing to purchase a facility with grant funds must submit a detailed estimate of the cost of the proposed purchase, including the cost of any necessary minor renovations, and must compare the cost of purchasing the proposed facility to the cost of renting an alternative facility.

(b) All costs of purchase and ownership must be identified, including, but not limited to, professional fees, minor renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased or previously purchased, made by a professional appraiser, must be included.

(c) The comparison described in paragraph (a) of this section must compare the cost of the proposed facility to the cost of the facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and which are usable as a Head Start facility (meaning a facility large enough to meet the foreseeable needs of the Head Start grantee, and which complies with local licensing and code requirements and the access requirements of the Americans With Disabilities Act, if applicable, and section 504 of the Rehabilitation Act of 1973) or which can be made useable through minor renovation, the cost of which shall be included in the cost comparison. In the case of an application for approval of the previous purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was deemed inadequate by the responsible HHS official, the grantee had no previous facility, or if the grantee continued to use its previous facility after the current facility was purchased the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service area at the time of its purchase of the current facility.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including, but not limited to, the down payment, professional fees, moving expenses, the cost of site preparation and installation of a modular unit, and the costs of necessary minor renovations; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

(e) The period of comparison is twenty years, except that for the purchase of a modular unit the period of comparison is ten years. For a proposed purchase the period of comparison begins on the date on which the proposal is made. For approvals of previous purchases, the period of comparison begins on the date the purchase of the facility took place.

(f) If the facility is to be used for purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of Management and Budget cost principles.

§ 1309.12 Timely decisions.

The responsible HHS official shall promptly review and make final decisions regarding completed applications under this part.

Subpart C—Protection of Federal Interest

§ 1309.20 Title.

Title to facilities acquired with grant funds vests with the grantee upon acquisition, subject to the provisions of this part.

§ 1309.21 Recording of Federal interest and other protection of Federal interest.

(a) The Federal Government has an interest in all real property and equipment purchased with grant funds for use as a Head Start facility. The responsible HHS official may agree to subordinate the Federal interest in such property to that of a lender which finances the purchase of the property subject to the conditions set forth in paragraph (f) of this section.

(b) Facilities acquired with grant funds may not be mortgaged or used as collateral, or sold or otherwise transferred to another party, without the written permission of the responsible HHS official.

(c) Use of the facility for other than the purpose for which the facility was funded, without the express written approval of the responsible HHS official, is prohibited.

(d) Immediately upon purchasing a facility with grant funds, or receiving permission to use funds for a previously purchased facility, the grantee shall

record a Notice of Federal Interest in the appropriate official records for the jurisdiction in which the facility is located. The Notice shall include the following information:

(1) The date of the award of grant funds for the purchase of the property to be used as a Head Start facility, and the address and legal description of the property to be purchased;

(2) That the grant incorporated conditions which include restriction on the use of the property and provide for a Federal interest in the property;

(3) That the property may not be used for any purpose inconsistent with that authorized by the Head Start Act and applicable regulations;

(4) That the property may not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of the responsible HHS official;

(5) That these grant conditions and requirements cannot be altered or nullified through a transfer of ownership; and

(6) The name (including signature) and title of the person who completed the Notice for the grantee agency, and the date of the Notice.

(e) Grantees must meet all of the requirements in 45 CFR parts 74 or 92 pertaining to the purchase and disposition of real property, or the use and disposal of equipment, as appropriate.

(f) In subordinating its interest in a facility purchased with grant funds, the responsible HHS official does not waive application of paragraph (d) of this section and § 1309.22. A written agreement by the responsible HHS official to subordinate the Federal interest must provide:

(1)(i) The lender shall notify the Office of the Regional Administrator, Administration for Children and Families, the Office of the Commissioner, Administration on Children, Youth and Families, Washington, D.C., and the Office of the General Counsel, Department of Health and Human Services, Washington, DC, or their successor agencies, immediately, both telephonically and in writing of any default by the Head Start grantee;

(ii) Written notice of default must be sent by registered mail return receipt requested; and,

(iii) The lender will not foreclose on the property until at least 60 days after the required notice by the lender has been sent.

(2) Such notice will include:

(i) The full names, addresses, and telephone numbers of the lender and the Head Start grantee;

(ii) The following statement prominently displayed at the top of the first page of the notice: "The Federal Interest in certain real property or equipment used for the Head Start Program may be at risk. Immediately give this notice to the appropriate government official";

(iii) The date and nature of the default and the manner in which the default may be cured; and

(iv) In the event that the lender will be exercising its remedy of foreclosure or other remedies, the date or expected date of the foreclosure or other remedies.

(3) Head Start grantees which purchase facilities with respect to which the responsible HHS official has subordinated the Federal Interest to that of the lender must keep the lender informed of the current addresses and telephone numbers of the agencies to which the lender is obligated under paragraph (b) of this section to give notice in the event of a default.

§ 1309.22 Rights and responsibilities in the event of grantee's default on mortgage, or withdrawal or termination.

(a) The mortgage agreement, or security agreement in the case of a modular unit which is proposed to be purchased under a chattel mortgage, shall provide in the case of default by the grantee or the withdrawal or termination of the grantee from the Head Start program that ACF may intervene. In the case of a default, the mortgage agreement or security agreement must provide that ACF may intervene to ensure that the default is cured by the grantee or another agency designated by ACF and that the lender shall accept the payment of money or performance of any other obligation by ACF's designee, for the grantee, as if such payment of money or performance had been made by the grantee. The agreement shall also provide that ACF will have a period of 60 days after notification by the grantee of default in which to intervene to attempt to cure the default. The agreement shall further provide that in the event of a default, or the withdrawal or termination of the grantee the mortgage may be assumed by an organization designated by ACF. The mortgagee or creditor will have the right to approve the organization designated to assume the mortgage, but such approval will not be withheld except for good reason. The provisions required for inclusion in mortgages must be included in the mortgages of previously purchased facilities unless a convincing justification for not doing so is shown by the Head Start grantee.

(b) The grantee must immediately provide the responsible HHS official with both telephonic and written notification of a default of any description on the part of the grantee under a real property or chattel mortgage.

(c) In the event that a default is not cured and foreclosure takes place, the mortgagee or creditor shall pay ACF that percentage of the proceeds from the foreclosure sale of the property attributable to the Federal share as defined in 45 CFR 74.2, or, if part 92 is applicable, to ACF's share as defined in 45 CFR 92.3. If ACF and the mortgagee or creditor have agreed that ACF's Federal interest will be subordinated to the mortgagee's or creditor's interest in the property, that agreement must be set forth in a written subordination agreement that is signed by the responsible HHS official and that complies with § 1309.21 and any other applicable Federal law.

§ 1309.23 Insurance, bonding and maintenance.

(a) At the time of acquiring a facility or receiving approval for the previous purchase of a facility, the grantee shall obtain insurance coverage for the facility which is of the same type as the coverage it has obtained for other real property it owns, which includes student liability insurance and which at least meets the requirements of the coverage specified in paragraphs (a)(1) and (2) of this section as follows:

(1) A title insurance policy which insures the fee interest in the facility for an amount not less than the full appraised value as approved by ACF, or the amount of the purchase price, whichever is greater, and which contains an endorsement identifying ACF as a loss payee to be reimbursed if the title fails. If no endorsement naming ACF as loss payee is made, the grantee is required to pay ACF the title insurance proceeds it receives in the event of title failure; and

(2) A physical destruction insurance policy, including flood insurance where appropriate, which insures the full replacement value of the facility from risk of partial and total physical destruction. The insurance policy is to be maintained for the period of time the facility is owned by the grantee.

(b) The grantee shall submit copies of such insurance policies to ACF within five days of acquiring the facility or receiving approval for the previous purchase of a facility. If the grantee has not received the policies in time to submit copies within this period, it shall submit evidence that it has obtained the appropriate insurance

policies within five days of acquiring the facility or receiving approval for the previous purchase of a facility, and it shall submit copies of the policies within five days of its receipt of them.

(c) The grantee must maintain facilities acquired with grant funds in a manner consistent with the purposes for which the funds were provided and in compliance with State and local government property standards and building codes.

Subpart D—Modular Units

§ 1309.30 General.

In addition to the special requirements of §§ 1309.31-1309.34 of this part, the proposed purchase or request for approval of a previous purchase of a modular unit is subject to all of the requirements of this part with the following exceptions:

(a) Section 1309.10(j) of this part, which requires a certification by a licensed engineer or architect of the structural soundness of a facility prior to approval of an application for grant funds, is replaced by § 1309.33; and

(b) Section 1309.21(d) of this part does not apply to the proposed purchase of modular units if the land on which the unit is installed is not owned by the grantee.

§ 1309.31 Site description.

(a) An application for the purchase or approval of a previous purchase of a modular unit must state specifically where the modular unit will be installed, and whether the land on which the modular unit will be installed will be purchased by the grantee. If the grantee does not propose to purchase land on which to install the modular unit or if the previously purchased modular unit is located on land not owned by the grantee, the application must state who owns the land on which the modular unit is or will be situated and describe the easement, right-of-way or land rental it will obtain or has obtained to allow it sufficient access to the modular unit.

(b) Modular units which are purchased with grant funds and which are not permanently affixed to land, or which are affixed to land which is not owned by the grantee, must have posted in a conspicuous place the following notice: "On (date), the Department of Health and Human Services (DHHS) awarded (grant number) to (Name of grantee). The grant provided Federal funds for conduct of a Head Start program, including purchase of this modular unit. The grant incorporated conditions which included restrictions on the use and disposition of this property, and provided for a continuing Federal interest in the property. Specifically, the property may not be used for any purpose other than the purpose for which the facility was funded, without the express written approval of the responsible DHHS official, or sold or transferred to another party without the written permission of the responsible DHHS official. These conditions are in accordance with the statutory provisions set forth in 42 U.S.C. 9839; the regulatory provisions set forth in 45 CFR part 1309, 45 CFR part 74 and 45 CFR part 92; and Administration for Children and Families' grants policy."

(c) A modular unit which has been approved for purchase and installation in one location may not be moved to another location without the written permission of the responsible HHS official.

§ 1309.32 Statement of procurement procedure for modular units.

(a) An application for the purchase of a modular unit must include a statement describing the procedures which will be used by the grantee to purchase the modular unit.

(b) This statement must include a copy of the specifications for the unit which is proposed to be purchased and assurance that the grantee will comply with procurement procedures in 45 CFR parts 74 and 92, including assurance that all transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. A grantee requesting approval of a previous purchase of a modular unit also must include a copy of the specifications for its unit.

§ 1309.33 Inspection.

A grantee which purchases a modular unit with grant funds or receives approval of a previous purchase must have the modular unit inspected by a licensed engineer or architect within 15 calendar days of its installation or approval of a previous purchase, and must submit to the responsible HHS official the engineer's or architect's inspection report within 30 calendar days of the inspection.

§ 1309.34 Costs of installation of modular unit.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, all reasonable costs necessary to the installation of a modular unit the purchase of which has been approved by the responsible HHS official are payable with grant funds. Such costs include, but are not limited to, payments for public utility hook-ups, site surveys and soil investigations.

Subpart E—Other Administrative Provisions

§ 1309.40 Copies of documents.

Certified copies of the deed, loan instrument, mortgage, and any other legal documents related to the purchase of the facility or to the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

§ 1309.41 Record retention.

All records pertinent to the purchase of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership of the facility plus three years.

§ 1309.42 Audit of mortgage.

Any audit of a grantee which has purchased a facility with grant funds shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit are payable with grant funds.

§ 1309.43 Use of grant funds to pay fees.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, reasonable fees and costs associated with and necessary to the purchase of a facility (including reasonable and necessary fees and costs incurred prior to the submission of an application under § 1309.10 of this part or prior to the purchase of the facility) are payable with grant funds, but require prior, written approval of the responsible HHS official.

§ 1309.44 Independent analysis.

(a) The responsible HHS official may direct the grantee applying for funds to purchase a facility to obtain an independent analysis of the cost comparison submitted by the grantee pursuant to § 1309.11 of this part, or the statement under § 1309.10(g) of this part, or both, if, in the judgment of the official, such an analysis is necessary to adequately review a proposal submitted under this part.

(b) The analysis shall be in writing and shall be made by a qualified, disinterested real estate professional in the community in which the property proposed to be purchased is situated.

(c) Section 1309.43 of this part applies to payment of the cost of the analysis.

[FR Doc. 99–2860 Filed 2–5–99; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 98–136]

Rules To Reflect the Elimination of the Competition Division

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to reflect: the elimination of the Competition Division within the Office of General Counsel; changes in the functions of the Office of General Counsel and Office of Plans and Policy; and a delegation of authority to the Common Carrier Bureau to act on applications for determinations of exempt telecommunications company status.

EFFECTIVE DATE: February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Rebecca Dorch, Office of Engineering and Technology, (202) 418–1868.

SUPPLEMENTARY INFORMATION:

1. Through this *Order*, FCC 98–136, adopted June 23, 1998, and released June 29, 1998, the Commission eliminates the Competition Division of the Office of General Counsel. We conclude that this action, and reassignment of the personnel involved, will make more effective and efficient use of the Commission's scarce resources.

2. The implementation of this decision requires amendment of part 0 of the Commission's rules and regulations. This *Order* makes the necessary revisions and other minor editorial changes in part 0 of the Commission's rules. To ensure continuity in the dispatch of the duties and functions performed by the Competition Division, certain responsibilities and delegations of authority are being reassigned. In particular, 47 CFR 0.21 and 0.41 are amended by revising the duties and responsibilities of the Office of General Counsel by eliminating paragraph (g) of section 0.41 and by transferring from the Office of General Counsel to the Office of Plans and Policy the responsibility to help ensure that FCC policy encourages and promotes competitive market structures by providing bureaus and offices with the necessary support to identify, evaluate, and effectively and consistently resolve competitiveness issues.

3. The General Counsel currently has delegated authority, pursuant to 47 CFR 0.251(g), to act upon any application for a determination of exempt telecommunications company status filed pursuant to section 34(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 103 of the Telecommunications Act of 1996. *See Amendment of Part 0 of the Commission's Rules to Delegate Authority to the General Counsel to Act Upon Applications for Determination of Exempt Telecommunications Company Status,* 11 FCC Rcd 22166 (1996) 61 FR 26464, May 28, 1996. The Commission has concluded that the effective and efficient dispatch of these duties and responsibilities is best ensured by delegating such authority to the Common Carrier Bureau.

4. The amendments adopted herein pertain to agency organization. The notice and comment and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, are therefore inapplicable. Authority for the amendments adopted herein is contained in Sections 4(i), 5(b) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b) and 155(c).

5. Accordingly, it is ordered, pursuant to authority delegated by Commission Order, FCC 98–136, released June 29, 1998, and effective upon publication in the **Federal Register**, that part 0 of the Commission's rules and regulations is amended as set forth in the rule changes.

List of Subjects in 47 CFR Part 0

Organization and functions (government agencies).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 0 as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.21 is amended by adding a new paragraph (j) to read as follows:

§ 0.21 Functions of the Office.

* * * * *

(j) To help ensure that FCC policy encourages and promotes competitive market structures by providing bureaus and offices with the necessary support to identify, evaluate, and effectively and consistently resolve competitiveness issues.

§ 0.41 [Amended]

3. Section 0.41 is amended by removing paragraph (g) and redesignating paragraphs (h) through (o) as (g) through (n).

§ 0.251 [Amended]

4. Section 0.251 is amended by removing paragraph (g) and redesignating paragraphs (h) and (i) as (g) and (h).

5. Section 0.304 is added to read as follows:

§ 0.304 Authority for determinations of exempt telecommunications company status.

Authority is delegated to the Chief, Common Carrier Bureau to act upon any application for a determination of exempt telecommunications company status filed pursuant to section 34(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 103 of the Telecommunications Act of 1996.

[FR Doc. 99–2864 Filed 2–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 11 and 76

[FO Docket No. 91–171, 91–301; FCC 98–329]

Emergency Alert System

AGENCY: Federal Communications Commission.

ACTION: Termination of rulemaking.

SUMMARY: In this *Third Report and Order* the FCC determined that cable systems should not be required to install channel override equipment in order to prevent EAS messages from appearing on specific channels on a cable system. In the *Second Further Notice and Proposed Rule Making* 63 FR 29660, June 1, 1998, the Commission requested comment regarding the effectiveness of proposed rule amendments that would require cable systems to purchase and install equipment to prevent EAS messages from overriding broadcast stations programming carried on a cable system. Commission rules allow broadcast stations and cable system operators to enter into voluntary written agreements that prevent broadcast program interruption. After review of the record it was determined that the Commission should not mandate rules to require broadcast channel overrides.

FOR FURTHER INFORMATION CONTACT: Frank Lucia, Compliance and Information Bureau, (202) 418–1220.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Third Report and Order* in FO Dockets 91–171/91–301, adopted December 14, 1998, and released December 23, 1998.

The full text of this Federal Communications Commission's (FCC) *Third Report and Order* is available for inspection and copying during normal business hours in the FCC's Public Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, D.C. 20336; phone: (202) 857–3800, facsimile: (202) 857–3805.

Synopsis of Third Report and Order

The FCC adopted a *Third Report and Order* which declined to mandate rules that require the installation of selective channel switching equipment at cable systems. This equipment prevents program interruption on broadcast channels carried on cable systems during cable initiated EAS activations. The FCC has not changed or amended the rules that provide for cable and broadcast stations entering into voluntary written agreements that prevent EAS interruption to a broadcast station. Finally, the *Third Report and Order* also rejected arguments to preempt provisions of local franchise agreements that require local emergency messages. The record indicates that many local municipalities use cable franchise agreements as a primary means of alerting residents to non-weather related local emergencies.

Background

EAS replaced the Emergency Broadcast System (EBS), and uses various communications technologies, such as broadcast stations and cable systems, to alert the public regarding national, state and local emergencies. EAS, compared to EBS, includes more sources capable of alerting the public and specifies new equipment standards and procedures to improve alerting capabilities.

In 1994 the Commission issued a *Report and Order and Further Notice of Proposed Rulemaking* 59 FR 67090, December 28, 1994. This proceeding directed broadcast stations and cable system participation in EAS. In our *Memorandum Opinion and Order*, 10 FCC Rcd 11494 (1995), we responded to petitions for reconsideration filed regarding the *Report and Order and Further Notice of Proposed Rulemaking*. We found no merit in arguments asserting that the statutory language exempts local broadcast station programming from interruption by cable system EAS requirements. The *Memorandum Opinion and Order* also rejected NAB's arguments that EAS interruptions violate provisions set forth in the Copyright Act and the Commissions must carry rules.

The *Second Report and Order*, which was released in September of 1997, modified some of the requirements in the *Report and Order* and addressed issues raised in the *FNPRM* that applied to wired and wireless cable systems. The *Second Report and Order* also declined to exercise preemption of local cable franchise agreements unless a jurisdiction takes action that interferes with the national warning functions of EAS.

Legal Basis

Authority for issuance of this Third Report and Order is contained in Sections 4(i), 257, 303(b), 303(g), 303(r), 309(j), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 257, 303(b), 303(g), 303(r), 309(j), and 332(a).

List of Subjects

47 CFR Part 11

Emergency alert system.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–2863 Filed 2–5–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 100

[MM Docket 93–25; FCC 98–307]

Direct Broadcast Satellite Public Interest Obligations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission imposes requirements on Direct Broadcast Satellite Service (DBS) providers to comply with the political broadcast rules of the Communications Act of 1934, as amended, and mandates that DBS providers reserve between 4 percent and 7 percent of their channel capacity exclusively for "noncommercial programming of an educational or informational nature." These rules will provide for the carriage on DBS systems of qualified political candidates for national office and will make DBS channel capacity available to "national educational programming suppliers," upon reasonable prices, terms, and conditions.

DATES: Effective June 15, 1999 except for § 100.5(c)(6) which contains information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for that section. Written Comments regarding the Paperwork Reduction Act requirements in § 100.5(c)(6) should be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding the paperwork reduction act requirements in § 100.5(c)(6) should be submitted to Les Smith at 445 12th Street S.W., Rm. 1–A804, Washington D.C. 20554 or via internet at lesmith@fcc.gov; phone 202–418–0217.

FOR FURTHER INFORMATION CONTACT: For more information regarding the *Report and Order* contact Rosalee Chiara (202) 418–0754 or James Taylor (202) 418–2113 of the International Bureau. For more information regarding the information collections and to submit comments, contact Les Smith at 202–418–0217; 445 12th Street S.W., Rm. 1–A804, Washington D.C. 20554 or via internet at lesmith@fcc.gov, and Timothy Fain, OMB Desk Officer, Rm. 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503 or fain__t@al.eop.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in MM Docket No. 93–25; FCC 98–307, adopted November 19, 1998 and released on November 25, 1998. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room), 445 12th Street, S.W. Washington, D.C. 20554, and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036, telephone: 202–857–3800, facsimile: 202–857–3805.

Summary of Report and Order

1. On March 2, 1993 the Commission released a Notice of Proposed Rulemaking to implement Section 25 of the 1992 Cable Television Consumer Protection and Competition Act of 1992

("1992 Cable Act").[1] Specifically, Section 25 of the 1992 Cable Act, which added new Section 335 to the Communications Act of 1934, as amended, (the Act) required the Commission to impose on providers of Direct Broadcast Satellite Service (DBS), the political programming requirements of Sections 312(a)(7) and 315 of the Act and adopt rules requiring the set aside of channels for noncommercial educational and informational programming. In addition, Section 25 also directed the Commission to examine the opportunities for localism.

2. On September 16, 1993 the United States District Court for the District of Columbia held that Section 25 of the 1992 Cable Act was unconstitutional.[2] On August 30, 1996, the United States Court of Appeals for the District of Columbia Circuit reversed the District Court.[3] In light of the interval between the original Notice of Proposed Rulemaking and the appellate court decision, the Commission released a Public Notice on January 31, 1997 seeking to update and refresh the record.[4] Following review of the comments provided, the Commission released the Report and Order summarized here.

3. *Entities responsible for complying with DBS public interest obligations.* The Commission will hold part 100 and part 25 DBS licensees ultimately responsible for compliance with these rules. Licensees will, however, be able to demonstrate compliance with the public service obligations by relying on certifications from distributors that expressly state that they have complied with the public service obligations. Satellites licensed under Part 25, but operating in the C-band, are not covered by these rules because the statute specifies only Ku-band licensees. In the case of Part 25 licensees, the Commission has imposed a threshold for inclusion under the rules that requires an entity control at least enough programming channels so that 4 percent of the total programming channels available for video yields a set-aside of at least one noncommercial, educational or informational programming channel.

4. *Application of public service obligations to foreign satellites entering the U.S. Market.* Section 25.137 of the Commission's rules requires that earth stations operating with non-U.S. licensed satellites be licensed by the Commission. As a condition of its license, the Commission will require the earth station licensee communicating with a non-U.S. licensed satellite to comply with Section 335 public interest rules.

5. *Application of the political broadcasting provisions of Section 335(a).* Section 335(a) of the Act states, among other things, that any regulations shall, at a minimum, impose the political broadcast rules of Sections 312 and 315 of the Act.

6. *Access for Federal Candidates.* Section 312(a)(7) of the Act requires broadcasters to allow legally qualified candidates for federal office reasonable access to their facilities. Access can be provided on a free or paid basis. Since the passage of Section 312(a)(7), the Commission's policy has generally been to defer to the reasonable, good faith judgment of licensees as to what constitutes "reasonable access" under the circumstances present in a particular case. Factors the Commission would consider in reviewing such a case include the number of candidates requesting time, the technical difficulties in satisfying the request, and the availability of reasonable alternatives.

7. The Commission will monitor DBS providers' performance in this area so that it can modify the Commission's rules if necessary and as experience dictates. The Commission will require DBS providers to maintain a file available to the public at the providers' headquarters containing requests for political advertising time and disposition of those requests. Where DBS providers carry the programming of a terrestrial broadcast television station, it is the responsibility of the terrestrial broadcaster and not the DBS provider to satisfy the political broadcasting requirements of Sections 312(a)(7).

8. *Equal Opportunities.* In conformance with statutory mandate, the Commission will apply the equal opportunities provisions of Section 315(a) of the Act, Section 73.1940 of the Commission's rules, and the policies delineated in prior Commission orders to DBS providers. DBS providers will be required to ensure, by contractual means or otherwise, that these rules are followed. If one legally qualified candidate is afforded access to a DBS system, all other candidates for the same office who make timely requests must be afforded that same opportunity.[5] To ensure that competing candidates will be able to ascertain what equal opportunities they are entitled to, we will require the DBS provider to maintain a political file similar to the one maintained by broadcasters.[6] The *Report and Order* retains the definitions of "use" and "legally qualified candidate" in current rules and policies. The Commission will resolve issues involving DBS providers' equal opportunities obligations in the context of particular cases.

9. *Lowest Unit Charge.* If advertising is sold on DBS systems, legally qualified candidates must be afforded the benefit of the lowest unit charge (LUC) during the pre-election periods prescribed by Section 315 of the Act. Section 315(b) of the Act and Section 73.1942 of the Commission's rules provide that broadcasters may not charge any legally qualified candidate more than the LUC for advertising on the station during certain periods preceding the election. Although DBS providers do not currently have commercial rates on which to base a LUC determination, they can set a reasonable rate, based on consideration of marketplace factors such as what other media charge to reach a similar audience if they sell time to candidates pursuant to Sections 312 or 315 of the Act or otherwise choose to do so. DBS providers, like broadcasters and cable operators, must disclose to candidates information about rates and discount privileges and give any discount privileges to candidates. A DBS provider may make time available without charge on a nondiscriminatory basis.

10. *Opportunities for Localism.* Section 335(a) also requires the Commission "to examine the opportunities that the establishment of direct broadcast satellite service provides for the principle of localism under [the] Act, and the methods by which such principle may be served through technological and other developments in, or regulation of, such service." Although there have been significant technological developments in the DBS industry since the Commission first developed rules for DBS, and some DBS providers are providing limited local service, no DBS provider has the technical capability to provide local service to all markets in the country. If legal and technical issues regarding localized programming are resolved, the Commission may consider

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[1] *In the Matter of Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992,* Direct Broadcast Satellite Public Service Obligations, 8 FCC Rcd. 1589 (1993).

[2] *Daniels Cablevision, Inc. v. United States,* 835 F. Supp. 1 (D.D.C. 1993).

[3] *Time Warner Entertainment Co., L.P. v. FCC,* 93 F.3d 957 (D.C. Cir. 1996).

[4] Public Notice (No. 72078, rel. January 31, 1997).

[5] 47 CFR 73.1941(c) (a request must be made within one week of the day on which the first prior use giving rise to the right of equal opportunities occurred).

[6] See 47 CFR 73.1943 (requiring the licensee to keep and permit public inspection of a complete record of all requests for broadcast time made and a notation showing the disposition, charges, etc.).

requiring DBS providers to offer some amount of locally-oriented programming.

11. *Public Interest or Other Obligations.* The *Report and Order* does not impose upon the DBS industry additional programming requirements. The Commission found that DBS is a relatively new entrant attempting to compete with an established, financially stable cable industry. Although the DBS industry has grown significantly since 1992, it still claims just under eight million subscribers in contrast to cable's 64 million customers. Additional obligations on DBS providers might hinder the development of DBS as a viable competitor to cable. The Commission concluded that, although Section 335(a) provides ample authority to impose other public interest programming requirements upon DBS providers, it would not exercise its authority at this time. If it becomes evident that there is a need, the Commission will reconsider this conclusion.

12. *Carriage Obligations for Educational and Informational Programming.* The 1992 Cable Act requires the Commission to adopt rules requiring DBS providers to make available channel capacity for programming of an educational or informational nature. The Commission concluded that discrete channels should be reserved to fulfill the noncommercial reservation requirements of Section 335(b) to assure continuity, predictability and easier monitoring and enforcement. Requiring the set aside of discrete channels will make it easier for consumers to locate such programming on one or more particular channels.

13. *Determination of Total Channel Capacity.* For the purpose of applying Section 335(b), channel capacity should be based on the total channel capacity that is being, or could be, used to provide video programming. Barker and other informational guide channels will be included as available channels for determining the required set aside, as they are video channels supplied to the customers. In addition, unused channels that could be used to provide DBS service will be included in the set aside calculation. Channels used for audio or other non-video services will not be included.

14. Because advances in digital compression technology will continue to expand the number of programming channels that can be offered to customers in a given amount of spectrum and the number of available channels will change depending on the complexity of the type of programming transmitted, the total number of programming channels offered by a DBS licensee on all its satellites can vary on a weekly or even a daily basis. To address these fluctuations, each DBS licensee will have to calculate on a quarterly basis the number of channels available for video programming on all its satellites. Each DBS licensee will then use the average of these quarterly measurements during the year to ascertain the total number of channels for purposes of determining the number of reserved channels. DBS providers will be required to record these quarterly channel measurements and average calculations as well as their response to any capacity changes in logs kept at their main offices and available to the Commission and to the public.

15. *Reservation Percentage.* The Commission concluded that DBS providers will be required to reserve four percent of their channel capacity exclusively for noncommercial educational and informational programming. In the event that the four percent calculation creates any fraction of a channel, the DBS provider will round the calculation upward.[7] The public interest programming provided for in this order must be made available to all of a DBS provider's subscribers without additional charge.

16. *Impact on Existing Programming Contracts.* The Commission concluded that the reservation requirement applies notwithstanding existing programming contracts and DBS providers will have to make available sufficient channel capacity to fulfill the reservation requirement, regardless of existing programming contracts.

17. *National Educational Programming Supplier.* Pursuant to Section 335(b)(3), DBS providers must make the reserved channels available to "national educational programming suppliers" upon certain terms. Section 335(b)(5)(B) provides that the term national educational programming supplier "includes any qualified noncommercial educational television station, other public telecommunications entities, and public or private educational institutions." Neither this section of the statute nor the legislative history define "noncommercial educational broadcast station," "public broadcasting entity" or "public telecommunications entity." In the absence of any other Congressional guidance the Commission looked to other provisions of the Act in which those terms are defined such as Section 397 of the Act.

18. Section 397(6) of the Act defines a "noncommercial educational broadcast station" as a television or radio broadcast station that (i) "is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association," or (ii) "is owned and operated by a municipality and which transmits only noncommercial programs for educational purposes." The Commission found it appropriate to use the definition of noncommercial educational television station and public telecommunication entity used in the noncommercial broadcast context and noted that Section 615(1) of the Act further defines such a station to include any television broadcast station that has as its licensee an entity eligible to receive a community service grant from the Corporation for Public Broadcasting.

19. Section 397(12) of the Act defines "public telecommunications entity" as any enterprise which (i) "is a public broadcast station or a noncommercial telecommunications entity" and (ii) "disseminates public telecommunications services to the public." A "noncommercial telecommunications entity" is defined as "any enterprise which is owned and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation or association, and has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station."[8] These entities are required to disseminate "public telecommunications services," which are defined as noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material.[9]

20. Section 397 of the Act does not define the term "public or private educational institutions." The Commission looked elsewhere for guidance in defining that term including incorporating the eligibility criteria established by the rules for instructional

[7] For example, if a DBS provider supplies 120 video channels to customers, the provider will have to reserve initially five channels for noncommercial programming of an educational or informational nature. Four percent of 120 channels amounts to 4.8 channels. Under the rule this figure would be rounded up to 5 channels.

[8] 47 U.S.C. 397(7). The means of dissemination include, but are not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, microwave, or laser transmission through the atmosphere.

[9] 47 U.S.C. 397(14).

television fixed stations ("ITFS") contained in Section 74.932 of the Commission's rules because the types of services provided by educational institutions and ITFS are analogous.[10] Section 74.932(a) provides that a license for an ITFS will be issued only to an accredited institution or to a governmental organization engaged in the formal education of enrolled students or to a nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations. The Commission adopted the ITFS criteria in interpreting "public and private educational institutions."

21. *Additional Entities.* The Commission determined that the list of entities in Section 335(b)(5)(B) was not intended to be an exclusive list of entities that can qualify as national educational programming suppliers but a nonexclusive list that may be enlarged upon. Although the Commission did not interpret Section 335(b)(5)(B) as an exclusive list of eligible program suppliers, the Commission found that Congress intended to limit eligibility to entities that share the same essential characteristics as those listed.

22. *The Report and Order* states that the term "national educational programming supplier" in Section 335(b)(5)(B) includes only noncommercial entities with an educational mission. The term should not be interpreted as including "commercial" entities organized for profit-making purposes. The Commission found that the eligibility of a programming supplier under the statute should depend on its noncommercial character, not merely whether its programming contains commercials.

23. The Commission also found that the tax code definition of non-profit will apply to qualify an entity as an eligible national educational programming supplier.[11] Thus, an entity with an educational mission that is organized under the tax code as a nonprofit corporation will be eligible as a national educational programming supplier. An entity that is not organized as a nonprofit corporation may also qualify if it shows to the Commission's satisfaction that it is organized for a noncommercial purpose and has an educational mission. The *Report and Order* permits joint ventures as long as participants demonstrate that the joint venture is noncommercial within the meaning of Section 335 and that the venture's mission is educational.

24. *Definition of the Term "National".* The Commission interpreted the term "national" broadly so as to include local, regional, or national domestic nonprofit entities that qualify under the definitions listed above and produce noncommercial programming designed for a national audience. The Commission also found that the definition should include international nonprofit programmers that satisfy the terms of the definitions in Section 397 of the Act and the Commission's ITFS rules.

25. *Noncommercial Programming of an Educational or Informational Nature.* Section 335(b)(1) requires that the reserved channels be used "exclusively for noncommercial programming of an educational or informational nature." The Commission concluded that the rules need not elaborate on the term "educational and informational" programming and that a DBS provider can comply with the reservation requirement by affording access to programming supplied by specific categories of noncommercial entities. The Commission will reconsider this conclusion, however, if it appears that more specific guidance on the definition of this term is necessary.

26. *Implementation of Section 335(b)(3); Editorial Control.* Section 335(b)(3) requires DBS providers to make channel capacity available to national educational programming suppliers but prohibits the DBS provider from exercising any editorial control over any video programming provided on the reserved channels. The Commission concluded that the best reading of the editorial control language is that it prohibits DBS providers from controlling the selection of, or in any way editing or censoring, individual programs that will be carried on the reserved channels. The *Report and Order* does not, however, prohibit DBS operators from selecting among national educational programming suppliers so long as the DBS provider does not refuse to make unused reserved capacity available to qualified suppliers. Nor does it prohibit DBS providers from refusing to carry non-qualifying programming or ineligible programmers.

27. The Commission rejected arguments that the interpretation of Section 335 is constrained by similar language in the cable leased access provision. Section 335 only prohibits DBS providers from exercising "editorial control over programming," while the cable leased access provision, Section 612, also prohibits cable operators from "in any other way consider[ing] the content of such programming." The Commission found that omission of this last clause from the DBS provision suggests that DBS providers are not necessarily barred from considering certain factors relating to programming in selecting programmers, but are prohibited from exercising control over such programming. Thus, DBS providers might consider a variety of factors in deciding which programmers to select, including the broad genres of programming they plan to provide (*e.g.*, cultural, documentary, children's educational), the programmers' experience, reliability, and reputation for quality programming, and the quality of programming they may have produced in the past. They may not, however, require the programmers they select to include particular series or programs on their channels as a condition of carriage. If in the future, it appears that DBS operators seek to use the selection process as a means of improperly influencing programming provided on the reserved channels, the Commission will take appropriate action.

28. The *Report and Order* does not prohibit the operators from electing to use a consortium or clearinghouse of educators and public interest specialists to choose among qualifying programs that would be aired on the set-aside capacity. With regard to qualifications, the *Report and Order* recognizes that someone must make the determination that programmers who wish to use the reserved channels are eligible under the statute to do so and that the programming carried on the reserved channels qualifies under the statute as noncommercial programming of an educational or informational nature. The Commission found that DBS providers should be responsible for ensuring that the obligations imposed by the statute are fulfilled. In order to avoid undue intrusion into the programming decisions of qualified programmers, however, the Commission does not believe that it would be appropriate for DBS providers to pre-screen all programming carried on the reserved channels. Rather, if an abuse of the reserved channels by a particular programmer comes to the DBS provider's attention, it can then take action to ensure that only qualified programs are carried on the reserved channels by that programmer in the future.

29. DBS providers may not alter or censor the content of the programming or otherwise exercise any control over the programming. To aid in monitoring and enforcing the obligations of DBS

[10] 47 CFR 74.932(a). ITFS are intended primarily to provide formal educational or cultural development to students enrolled in accredited public or private institutions or colleges or universities.

[11] 26 U.S.C. 501(c)(3).

providers, we will require them to maintain files available for public inspection concerning use of the reserved capacity. These files should identify the entities that request access, the entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity, and, when access is denied, a brief description of the reason or reasons why access was denied.

30. *Non-commercial channel limitation.* In order to ensure that access to non-commercial channels is not dominated by a few national educational program suppliers, the *Report and Order* limits to one the number of channels that can be initially allocated to a single qualified program provider on each DBS system. The Commission found this will make a greater variety of educational and informational programs available to the U.S. viewing public and will provide an opportunity for carriage of programming that might not otherwise be shown.

31. In order to ensure that a particular programmer will be allowed access to only one channel, the Commission will require that individual programmers be separate entities. If two national educational programming suppliers are directly or indirectly under common control or ownership, the will be treated as one entity for purposes of obtaining access to the reserved channels. In applying this provision, the Commission will define cognizable ownership and other interests according to the Commission's broadcast attribution rules.[12] Those rules seek to identify those interests in, or relationships with, an entity that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of the entity or other core operating functions. If, after all qualified entities that have sought access have been offered access on at least one channel, a provider may allocate an additional channel to a qualified programmer without having to make additional efforts to secure other qualified programmers.

32. *Liability for Violations.* Because Section 335 prohibits DBS providers from exercising any editorial control over programming utilizing the reserved channels, the Commission interpreted the statute in accordance with the Supreme Court's holding in *Farmers Educational and Cooperative Union of America* v. *WDAY*,[13] as immunizing the DBS providers from liability under state and local laws as a result of the content of the programming. Section 335(b) prohibits DBS providers from exercising "any editorial control" over noncommercial programming using the set-aside capacity, and thus implicitly grants them immunity from liability under state and local law for distributing such programming. By the same token, the Commission will enforce any requirements imposed by the Act or our rules, other than these public interest obligations, against the programmers who supply such programming, rather than the DBS providers who carry it under Section 335.

33. *Applicability of Political Broadcasting Rules to the Noncommercial Set Aside Capacity.* The statutory language makes clear that noncommercial programming suppliers are not considered DBS providers for purpose of either Section 335(a) or Section 335(b) and are not subject to those requirements.

34. *Refusal to Carry Programming Supplier.* Section 335 does not appear to allow DBS operators to refuse to carry any particular program. This does not, however, mean that a DBS provider is prevented from making an initial threshold determination as to whether a programmer is qualified for carriage or whether the programming proposed is noncommercial, educational, or informational. The Commission found this approach consistent with judicial interpretation of the editorial control prohibition for public, educational, and governmental set-aside channels provided by cable operators. In addition, a DBS provider can set technical quality standards for programming carried on its satellite system and these standards can be applied to programming on the set-aside channels.

35. *Unused Channel Capacity.* Section 335(b)(2) of the Communications Act permits a DBS provider to utilize for any purpose any unused channel capacity required to be reserved under this subsection pending the actual use of such channel capacity for noncommercial programming of an educational or informational nature. A DBS provider will however, be required to vacate reserved capacity, regardless of contractual obligations, within a reasonable time after a qualified programmer's request for access has been received.

36. *Reasonable Prices, Terms, and Conditions.* The Commission concluded that costs that can be specifically allocated to noncommercial programmers are those that are directly related to making the capacity available to noncommercial programmers. These include, incremental labor required for traffic management at the uplink facility, incremental compression equipment, incremental labor required to authorize viewers to receive particular programming, and any backhaul costs actually incurred by the DBS provider in order to transmit the noncommercial educational or informational programming. If a DBS provider has an authorization center or procedure used solely for the provision of noncommercial channels, such costs may be allocated to noncommercial programmers as well.

37. With regard to rates that are appropriate for the set aside channels under Section 335(b), the statute gives certain guidelines for the Commission to apply. First, Section 335(b)(4) says the Commission should take into account the nonprofit character of the programmer and any federal funds used to support programming. Second, the statute provides that the Commission shall not allow rates to exceed 50 percent of the direct costs, which we have discussed above.

38. The Commission thinks that it should not be involved in setting rates for noncommercial programmers because the Commission does not set rates for satellite capacity in any other context. The Commission will address any disputes with respect to rates in the context of a complaint proceeding. Because the statute does not give the Commission any basis upon which to differentiate among noncommercial educational and informational programming based on the availability of outside financing, the Commission concluded that the 50 percent cap applies to all qualified programmers and not just those who receive no outside funding for their programs.

39. *Effective Date.* The Commission concluded that a long phase-in period is unnecessary. The Commission recognized, however, that DBS providers and programmers need some amount of time in which to solidify plans and execute contracts. The Commission will require each DBS provider make available the channel capacity for educational and informational programming of a noncommercial nature as soon as the rules become effective. DBS providers must open a window at that time to allow interested programming suppliers to enter into discussions with the DBS providers regarding program carriage. Programming intended to fulfill the

[12] 47 CFR 73.3555 note 1 & 2.

[13] 360 US 525 (1959) (*Farmers Union*).

provisions of this section must be made available to the public no later than six months after these rules are effective. Until the four percent of capacity is filled with qualified programming, DBS providers may not assert that capacity is unavailable if there are qualified entities seeking carriage who are ready to meet the prices, terms and conditions established by the DBS provider.

Ordering Clauses

40. Accordingly, *it is ordered* that Part 100 of the Commission's rules is hereby amended as set out.

41. *It is further ordered* that the Commission's Office of Managing Director *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

42. *It is further ordered* that the amendments to part 100 of the Commission's rules, 47 CFR part 100, and the Commission's policies, rules and requirements established in this *Report and Order* shall take effect 60 days after publication of the amendments in the **Federal Register**, or in accordance with the requirements of 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507, whichever occurs later. The Commission will publish a notice announcing the effective date of this *Report and Order*.

43. *It is further ordered* that the Commission *shall send* a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

44. This *Report and Order* is issued under § 0.261 of the Commission's rules, 47 CFR 0.261 (1996). Petitions for reconsideration under § 1.429 of the Commission's rules, 47 CFR 1.429 (1996), or applications for review under Section 1.115 of the Commission's rules, 47 CFR 1.115 (1996), may be filed within 30 days of the date of this *Report and Order* in the **Federal Register** (See 47 CFR 1.4(b)(1)).

Paperwork Reduction Act

The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarify of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: New.

Title: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations.

Form No.: NA.

Type of Collection: New Collection.

Respondents: Business or other for-profit.

Number of Respondents: 8.

Estimated Time for Response: 12 hours.

Total Annual Burden: 96 hours.

Needs and Uses: The information will be used by the Federal Communications Commission (FCC) and interested members of the public to monitor DBS providers' compliance with public interest obligations. Without such information, the FCC could not determine whether DBS providers have complied with their obligations.

List of Subjects in 47 CFR Part 100

Satellite.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 100 as follows:

PART 100—DIRECT BROADCAST SATELLITE SERVICE

1. The authority citation for part 100 is amended to read as follows:

Authority: 47 U.S.C. 154, 303, 335, 309 and 554.

2. Add § 100.5 to read as follows:

Subpart A—General Information

§ 100.5 Public interest obligations.

(a) DBS providers are subject to the public interest obligations set forth in paragraphs (b) and (c) of this section. For purposes of this rule, DBS providers are any of the following:

(1) Entities licensed pursuant to 47 CFR part 100; or

(2) Entities licensed pursuant to part 25 of this chapter that operate satellites in the Ku-band fixed satellite service and that sell or lease capacity to a video programming distributor that offers service directly to consumers providing a sufficient number of channels so that four percent of the total applicable programming channels yields a set-aside of at least one channel of non-commercial programming pursuant to paragraph (c) of this section, or

(3) Non-U.S. licensed satellite operators in the Ku-band that offer video programming directly to consumers in the United States pursuant to an earth station license issued under part 25 of this title and that offer in a sufficient number of channels to consumers so that four percent of the total applicable programming channels yields a set-aside of one channel of non-commercial programming pursuant to paragraph (c) of this section,

(b) *Political broadcasting requirements*—(1) *Reasonable access.* DBS providers must comply with § 312(a)(7) of the Communications Act of 1934, as amended, by allowing reasonable access to, or permitting purchase of reasonable amounts of time for, the use of their facilities by a legally qualified candidate for federal elective office on behalf of his or her candidacy.

(2) *Use of facilities.* DBS providers must comply with § 315 of the Communications Act of 1934, as amended, by providing equal opportunities to legally qualified candidates.

(c) *Carriage obligation for noncommercial programming*—(1) *Reservation requirement.* DBS providers shall reserve four percent of their channel capacity exclusively for use by qualified programmers for noncommercial programming of an educational or informational nature. Channel capacity shall be determined annually by calculating, based on measurements taken on a quarterly basis, the average number of channels available for video programming on all satellites licensed to the provider during the previous year. DBS providers may use this reserved capacity for any purpose until such time as it is used for noncommercial educational or informational programming.

(2) *Qualified programmer.* For purposes of these rules, a qualified programmer is:

(i) A noncommercial educational broadcast station as defined in § 397(6)

of the Communications Act of 1934, as amended,

(ii) A public telecommunications entity as defined in § 397(12) of the Communications Act of 1934, as amended,

(iii) An accredited nonprofit educational institution or a governmental organization engaged in the formal education of enrolled students (A publicly supported educational institution must be accredited by the appropriate state department of education; a privately controlled educational institution must be accredited by the appropriate state department of education or the recognized regional and national accrediting organizations.), or

(iv) A nonprofit organization whose purposes are educational and include providing educational and instructional television material to such accredited institutions and governmental organizations.

(v) Other noncommercial entities with an educational mission.

(3) *Editorial control.*

(i) A DBS operator will be required to make capacity available only to qualified programmers and may select among such programmers when demand exceeds the capacity of their reserved channels.

(ii) A DBS operator may not require the programmers it selects to include particular programming on its channels.

(iii) A DBS operator may not alter or censor the content of the programming provided by the qualified programmer using the channels reserved pursuant to this section.

(4) *Non-commercial channel limitation.* A DBS operator cannot initially select a qualified programmer to fill more than one of its reserved channels except that, after all qualified entities that have sought access have been offered access on at least one channel, a provider may allocate additional channels to qualified programmers without having to make additional efforts to secure other qualified programmers.

(5) *Rates, terms and conditions.* (i) In making the required reserved capacity available, DBS providers cannot charge rates that exceed costs that are directly related to making the capacity available to qualified programmers. Direct costs include only the cost of transmitting the signal to the uplink facility and uplinking the signal to the satellite.

(ii) Rates for capacity reserved under paragraph (c)(1) of this section shall not exceed 50 percent of the direct costs as defined in this section.

(iii) Nothing in this section shall be construed to prohibit DBS providers from negotiating rates with qualified programmers that are less than 50 percent of direct costs or from paying qualified programmers for the use of their programming.

(iv) DBS providers shall reserve discrete channels and offer these to qualifying programmers at consistent times to fulfill the reservation requirement described in these rules.

(6) *Public file.* (i) Each DBS provider shall keep and permit public inspection of a complete and orderly record of:

(A) Quarterly measurements of channel capacity and yearly average calculations on which it bases its four percent reservation, as well as its response to any capacity changes;

(B) A record of entities to whom noncommercial capacity is being provided, the amount of capacity being provided to each entity, the conditions under which it is being provided and the rates, if any, being paid by the entity;

(C) A record of entities that have requested capacity, disposition of those requests and reasons for the disposition; and

(D) A record of all requests for political advertising time and the disposition of those requests.

(ii) All records required by this paragraph shall be placed in a file available to the public as soon as possible and shall be retained for a period of two years.

(7) *Effective date.* DBS providers are required to make channel capacity available pursuant to paragraph (c) of this section upon the effective date. Programming provided pursuant to this rule must be available to the public no later than six months after the effective date.

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[FR Doc. 99–1346 Filed 2–5–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC88

Endangered and Threatened Wildlife and Plants; Determination of Whether Designation of Critical Habitat for the Coastal California Gnatcatcher is Prudent

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of determination.

SUMMARY: We, the U.S. Fish and Wildlife Service, have reconsidered our prudency finding for designating critical habitat for the coastal California gnatcatcher (*Polioptila californica californica*). We listed the coastal California gnatcatcher as a threatened species under the Endangered Species Act of 1973, as amended (Act) on March 30, 1993. At that time, we determined that designation of critical habitat was not prudent because designation would not benefit the coastal California gnatcatcher and would increase the degree of threat to the species. On May 21, 1997, the United States Court of Appeals for the Ninth Circuit issued an opinion that required us to issue a new decision regarding the prudency of designating critical habitat for the coastal California gnatcatcher. This notice of determination responds to that court order.

DATES: We made the finding announced in this document on January 21, 1999.

ADDRESSES: The complete file for this prudency reconsideration is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Field Supervisor, at the above address (telephone: 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

We listed the coastal California gnatcatcher (*Polioptila californica californica*) (gnatcatcher) as a threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) on March 30, 1993 (58 FR 16742). This small, insectivorous songbird typically occurs in several distinctive subassociations of the coastal sage scrub plant community. Coastal sage scrub vegetation is composed of relatively low-growing, dry-season deciduous, and succulent plants. Characteristic plants of this community include coastal sagebrush (*Artemisia californica*), various species of sage (*Salvia* spp.), California buckwheat (*Eriogonum fasciculatum*), lemonadeberry (*Rhus integrifolia*), California encelia (*Encelia californica*), prickly pear and cholla cactus (*Opuntia* spp.), and various species of *Haplopappus*. The gnatcatcher exhibits a strong affinity to coastal sage scrub vegetation dominated by coastal sagebrush, although in some portions of its range (e.g., western Riverside County) other plant species may be more abundant. The species occurs below about 912 meters (m) (3,000 feet (ft)) in elevation. The species remains

threatened by habitat loss and fragmentation resulting from urban and agricultural development, and the synergistic effects of cowbird parasitism and predation (58 FR 16742).

The precarious status of the gnatcatcher and the importance of habitat protection are well known to the general public and to land planning agencies. We are working with Federal, State, and local agencies and private landowners throughout the historic range of the gnatcatcher to implement or develop conservation plans for this species and the large array of other listed or sensitive species also found in its coastal sage scrub habitats.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and, (ii) specific areas outside the geographical area occupied by a species at the time it was listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. According to our regulations (50 CFR 424.12(a)(1)), designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

In general, critical habitat designation contributes to species conservation primarily by highlighting habitat areas in need of special management considerations or protection, and by describing the features within those areas that are essential to the conservation of the species. Critical habitat designation may provide additional protection under section 7 of the Act with regard to activities that are funded, authorized, or carried out by a Federal agency on either Federal or non-Federal land. Section 7(a)(2) of the Act requires Federal agencies, in consultation with us, to ensure that any action they carry out, fund, or authorize does not jeopardize the continued existence of a federally listed species or result in the destruction or adverse modification of designated critical habitat. This requirement of Federal agencies is the only mandatory legal consequence of a critical habitat designation. We refer to areas where a Federal agency may be involved as having a "Federal nexus."

Regulations in 50 CFR part 402 define "jeopardize the continued existence of" and "destruction or adverse modification of" in similar terms. To jeopardize the continued existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect on both the survival and recovery of a listed species. Thus, actions that would adversely modify critical habitat generally also jeopardize the continued existence of the species.

At the time of the listing, we concluded that designation of critical habitat for the gnatcatcher was not prudent because such designation would not benefit the species and would make the species more vulnerable to activities prohibited under section 9 of the Act. We were aware of several instances of apparently intentional habitat destruction that had occurred during the listing process. In addition, most land occupied by the gnatcatcher was in private ownership and a designation of critical habitat was not believed to be of benefit because of a lack of a Federal nexus.

On May 21, 1997, the United States Court of Appeals for the Ninth Circuit (Court), issued an opinion (No. 95–56075; D.C. No. CV–93–999–LHM) that required us to issue a new decision regarding the prudency of determining critical habitat for the gnatcatcher. In this opinion, the Court held that the "increased threat" criterion in the regulations may justify a not prudent finding only when we have weighed the benefits of designation against the risks of designation. Secondly, with respect to the "not beneficial" criterion explicit in the regulations, the Court ruled that our conclusion that designation of critical habitat was not prudent because it would fail to control the majority of land-use activities within critical habitat was inconsistent with Congressional intent that the imprudence exception to designation should apply "only in rare circumstances." The Court noted that a substantial portion of gnatcatcher habitat would be subject to a future nexus sufficient to trigger section 7 consultation requirements regarding critical habitat. Third, the Court determined that our conclusion that designation of critical habitat would be less beneficial to the species than another type of protection (i.e., State of California Natural Community Conservation Planning efforts) did not absolve us from the requirement to designate critical habitat. The Court was also critical of our lack of specificity in our analysis.

Prudency Redetermination Process

We have reevaluated our previous not prudent finding regarding critical habitat designation for the gnatcatcher as instructed by the Court. Initially, we inventoried all lands within the known range of the gnatcatcher containing coastal sage scrub habitats. These lands included coastal and inland areas—(1) that may support sage scrub or similar habitat within San Diego, Orange, Los Angeles, Riverside, San Bernardino, and Ventura counties, California, and (2) that are below 912 m (3,000 ft) in elevation (the approximate maximum elevation occupied by gnatcatchers). Once we defined the study area, we categorized lands by ownership within each County using Geographic Information System (GIS) theme coverages, and estimated approximate acreages for each category. We used Federal and non-Federal (i.e., Tribal, local/State jurisdiction, and private) land ownership categories for the purposes of this prudency determination. We also considered the likelihood of a Federal nexus through land ownership, project funding or activity jurisdiction (Table 1).

We considered all Federal and Tribal trust lands to have a Federal nexus. Because of its Tribal trust responsibilities, the Bureau of Indian Affairs (BIA) represents the Federal nexus on Tribal trust lands; the BIA does not represent a Federal nexus on Tribal fee-owned land. We evaluated State, local government, and private lands that contain gnatcatcher habitat for a potential Federal nexus. We expect some projects on State, local government, or private lands in Orange, San Diego and Ventura counties to have a Federal nexus.

Table 1.—Geographic Distribution, Ownership, and Size of Areas Evaluated in the Critical Habitat Prudency Redetermination for the Coastal California Gnatcatcher

Land ownership and county	Total area within gnatcatcher study area hectares (acres)	Gnatcatcher habitat hectares (acres) [a]	Gnatcatcher habitat with federal nexus hectares (acres) [b]	Gnatcatcher habitat with a Federal nexus where critical habitat is determined to be prudent hectares (acres)
Federal:				
Los Angeles	186,004(459,625)	11,470(28,343)	11,470(28,343)	11,470(28,343)
Orange	26,948(66,590)	991(2,448)	991(2,448)	991(2,448)
Riverside	88,072(217,631)	5,616(13,877)	5,616(13,877)	5,616(13,877)
San Bernardino	22,890(56,562)	1,256(3,104)	1,256(3,104)	1,256(3,104)
San Diego	178,285(440,550)	24,650(60,911)	24,650(60,911)	24,650(60,911)
Ventura	77,287(190,980)	4,381(10,825)	4,381(10,825)	4,381(10,825)
Total Federal	579,486(1,431,938)	48,364(119,508)	48,364(119,508)	48,364(119,508)
Non-Federal:				
Los Angeles	466,149(1,151,873)	53,058(131,108)	54(133)	0
Orange	178,040(439,944)	23,572(58,247)	[d]8,428(20,826)	473(1,169)
Riverside	380,789(940,946)	62,248(153,817)	[d]750(1,854)	83(205)
San Bernardino	128,953(318,649)	15,697(38,789)	[c]0	0
San Diego	510,191(1,260,706)	673,684(167,250)	[d]32,627(80,622)	1,095(2,706)
Ventura	221,167(546,514)	79,070(195,385)	[d]243(600)	243(600)
Total Non-Federal	1,885,289(4,658,632)	301,328(744,596)	42,102(104,035)	1,894(4,680)
Grand Totals	2,464,775(6,090,570)	349,691(864,104)	90,465(223,543)	50,257(124,188)

[a]Total amount of coastal sage scrub habitats within designated category.
[b]Extent of habitat where a Federal nexus exists.
[c]There are no known proposed projects or likely future activities with an established Federal nexus on lands within category.
[d]See text for individual Federal project action areas contributing to totals; action areas in these categories may include small amounts of State and local lands.

Of the approximately 2,464,775 hectares (ha) (6,090,570 acres (ac)) of land within the study area, 77 percent is non-Federal land and 23 percent is Federal (Table 1). The GIS-based analysis of the study area landscape further revealed that only about 349,691 ha (864,104 ac) or 14 percent of these lands support sage scrub habitat, with the majority of the habitat occurring on privately or federally owned lands (Table 1). This estimate of habitat availability is more precise than our previous efforts and may differ with some published estimates.

We followed existing statutes and regulations, the Court order, and our policy, to identify those lands for which a designation of critical habitat might be prudent. In general, we carried out the analytical steps for determining prudency sequentially—(1) we determined whether Federal lands were involved, (2) if lands were non-Federal, we determined whether a Federal nexus existed, (3) we determined whether any threats associated with designation as critical habitat of Federal lands and those non-Federal lands having a Federal nexus outweigh the benefits of such designation, and (4) we determined whether any threats associated with designation of non-Federal lands that lack a Federal nexus outweigh the benefits of such designation.

The potential threats associated with designation include an increased likelihood of intentional acts of vandalism due to widespread public misunderstanding of critical habitat. The benefits of designating critical habitat include the section 7 consultation benefit and the benefit of highlighting areas needing special management considerations or protections. We describe several instances of vandalism and intentional destruction of endangered species habitat in the "Prudency Finding" section of this notice.

In addition to determining whether designation of an area as critical habitat is prudent, we must also evaluate, in accordance with section 3(5)(A) of the Act, whether the area is essential to the conservation of the species and whether the area may require special management considerations or protection before designating the area as critical habitat. Section 4(b)(2) of the Act requires us to evaluate economic and other impacts, and exclude any area from the designation if the benefits of excluding the area outweigh the benefits of including the area. However, we can not exclude an area if the exclusion would result in the extinction of the species. These additional evaluations required to designate critical habitat are not a part of the prudency determination ordered by the Court, and, for the most part, have been deferred consistent with the current listing priority guidance published on May 8, 1998 (63 FR 10931).

Prudency Finding

The only regulatory impact of a critical habitat designation is through the consultation provisions of section 7. Section 7 applies only to activities having a Federal nexus, not to activities that are exclusively State or private. Thus, the existence or lack of a Federal nexus is a key consideration in determining whether designating critical habitat is prudent. A Federal nexus exists when a Federal agency carries out, funds, or authorizes an activity or project on Federal or non-Federal lands. As we previously stated, the designation of non-Federal lands that lack a Federal nexus may not be prudent because the limited benefit may be outweighed by the threat of destruction of these areas. On the other hand, the designation of non-Federal lands where a Federal nexus exists or may exist in the future could prove to be beneficial to the species. However, even for non-Federal lands where there may be a future Federal nexus, we must weigh the benefits of designation as

critical habitat against any threat associated with designation. We discuss our prudency findings, arranged by land ownership, below.

Tribal Lands. Tribal lands include Tribal fee-owned and Tribal trust lands. Tribal fee-owned lands are treated as private lands and thus have no inherent Federal nexus. However, activities on such lands are subject to section 7 consultation if a Federal action is involved. Tribal trust lands have a Federal nexus in light of the trust responsibility of the BIA. However, given the extremely small proportion of coastal sage scrub habitat on Tribal lands (2 percent of the 349,691 ha (864,104 ac) of total existing habitat) (Table 1), and because no significant gnatcatcher populations are known to occur on Tribal lands, we conclude that such lands are not essential to the conservation of the species and do not meet the definition of critical habitat.

Federal Lands. Federal lands are generally those administered by the Department of Defense (DOD) (including the Army Corps of Engineers (COE), Department of Navy, Marine Corps, and Air Force), Bureau of Land Management (BLM), Federal Aviation Administration (FAA), Forest Service, National Park Service, Fish and Wildlife Service, and Bureau of Reclamation. For convenience, we included Tribal trust lands in the Federal lands category in Table 1 due to the inherent BIA nexus; however, for the reasons stated above in the discussion under "Tribal Lands," we conclude that Tribal trust lands are not essential to the conservation of the species and do not meet the definition of critical habitat. Approximately 579,486 ha (1,431,938 ac) of land within the study area are in this Federal land category. Of this total, an estimated 48,363 ha (119,508 ac), or 8 percent, support sage scrub habitat (Table 1). We have determined that it is prudent to designate critical habitat for the gnatcatcher on all Federal lands (not including Tribal trust lands) containing coastal sage scrub within the defined study area. We will further evaluate these lands during our development of a proposed critical habitat rule. That evaluation may indicate that not all of such habitat is essential for the conservation of the species or requires special management. We may also exclude some of these areas from designation as critical habitat because of economic impacts of such designation.

Non-Federal Lands. Non-Federal lands include lands owned by local and State jurisdictions and private entities. This category includes Tribal fee-owned lands. A Federal nexus exists on non-Federal lands when there is Federal authorization or funding of, or participation in, a project or activity. In such cases, a Federal action agency is required to consult with us under section 7(a)(2) of the Act if the proposed activity or project may affect a listed species or any designated critical habitat.

Several types of activities on non-Federal lands supporting sage scrub habitat could potentially involve a Federal nexus. We have evaluated all habitat within the range of the gnatcatcher and all types of projects for a potential Federal nexus. For each Federal agency, we describe below the agency's potential involvement in activities on non-Federal lands and identify those areas for which designation of critical habitat is prudent.

- The BIA may provide funding, logistical support, and technical assistance to Indian Tribes for activities that may involve Tribal fee-owned lands. In some cases these actions require the BIA to consult with us pursuant to section 7 of the Act. However, for the reasons stated above in the discussion under "Tribal Lands," we conclude that Tribal fee-owned lands, as well as Tribal trust lands, are not essential to the conservation of the species and do not meet the definition of critical habitat.
- The Federal Highway Administration (FHWA) provides funding for transportation projects and approves linkages with the Federal highway system. These activities require section 7 consultation. Two regional transportation plans identify potential transportation alignments and alternatives with potential FHWA involvement in southern California. The 1998 Regional Transportation Plan authored by the Southern California Association of Governments addresses Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties, while the Regional Transportation Plan 1996–2020 authored by the San Diego Association of Governments covers San Diego County. We have identified several projects having a Federal nexus through FHWA involvement that may affect gnatcatcher habitat. In Orange County, the action area of the Foothill Transportation Corridor, which is under the jurisdiction of FWHA, contains 461 ha (1,140 ac) of coastal sage scrub, and the action area of the State Route 133/ Laguna Canyon Road Realignment project, which is also under the jurisdiction of FHWA, contains approximately 12 ha (29 ac) of habitat. In San Diego County, State Route 125 Project contains about 42 ha (105 ac) of habitat; State Route 905 Project contains about 8 ha (20 ac); State Route 78 Project contains about 0.25 ha (0.65 ac) of habitat; and State Route 76 Project contains about 7 ha (17 ac). The Moorpark Specific Plan 12/Highway 118 Extension Project, which is a Ventura County project under the jurisdiction of the FHWA, contains 243 ha (600 ac) of coastal sage scrub habitat. We conclude that designation of critical habitat in these areas is prudent.
- The Fish and Wildlife Service conducts internal section 7 consultations when our actions may affect a listed species. Our activities on non-Federal lands include issuance of permits for incidental take of listed species under section 10 of the Act. Because the decision to apply for an incidental take permit, thereby creating a Federal nexus for consultation, rests solely with the potential non-Federal permit applicant, we do not consider the section 10 permit process as providing a reliable future Federal nexus for activities on non-Federal lands.
- The COE and the Environmental Protection Agency (EPA) administer the Clean Water Act Section 404 permit program. Under Section 404 of the Clean Water Act, a Department of the Army permit is required for projects on non-Federal and Federal lands involving a discharge of dredged or fill material into waters of the United States, including wetlands. The COE and EPA do not generally have jurisdiction over upland areas where gnatcatchers are found unless upland development is dependent upon an activity requiring a Section 404 permit. For this reason, Section 404 of the Clean Water Act would not ordinarily provide a Federal nexus for activities on non-Federal lands where gnatcatchers occur. However, the COE has exercised jurisdiction on the SilverHawk project in Riverside County which contains 83 ha (205 ac) of coastal sage scrub. We conclude that it is prudent to designate these 83 ha (205 ac) of coastal sage scrub as critical habitat. We do not know of any other projects in gnatcatcher habitat under the jurisdiction of the COE.

By delegation of authority from the Department of Defense through the Department of the Army, the COE also has responsibility to address all ordnance and explosive wastes concerns and environmental restoration activities at former defense sites. As a result, the COE has jurisdiction over the East Elliot Ordnance Removal, a project that would affect 243 ha (600 ac) of habitat in San Diego County. We conclude that it is prudent to designate these 243 ha (600 ac) of coastal sage scrub as critical habitat.

• The BLM and Forest Service occasionally exchange their lands for non-Federal lands. These land exchanges generally result in more manageable landownership configurations for these agencies. These agencies mostly try to acquire private inholdings within larger Federal holdings in exchange for isolated Federal parcels that are surrounded by non-Federal land. The BLM and Forest Service have already completed most such land exchanges in southern California, and we do not anticipate any future land exchange efforts that would affect the gnatcatcher. Occasionally, projects such as roads or utility rights-of-way will cross both private and Forest Service or BLM property. In these instances, both Federal and non-Federal lands will be considered during the section 7 consultation process. Because private lands in the vicinity of Forest Service or BLM land generally do not contain gnatcatcher habitat, the potential of utility projects on Federal land also affecting gnatcatcher habitat on private land is speculative and likely remote.

• The Immigration and Naturalization Service (INS) conducts activities along the United States/Mexico border and at immigration check stations on major highways north of the border. Current anticipated projects along the border include fences and roads to increase interdiction of illegal immigrants. These projects are generally located within 400 m (0.25 mile) of the international border. Within this area, there are approximately 786 ha (1941 ac) of non-Federal lands containing gnatcatcher habitat that may be affected by these projects. We conclude that the designation of critical habitat in these areas is prudent.

• The Department of Housing and Urban Development (HUD) conducts programs to assist private landowners in the purchase, sale, and development of their properties. However, these programs generally involve rehabilitation or redevelopment of previously disturbed areas that do not contain gnatcatcher habitat.

• The Federal Emergency Management Agency (FEMA) is involved with non-Federal lands following natural disasters and other emergencies such as floods, earthquakes, and other natural events. FEMA's involvement in the projects typically does not occur during an "emergency" situation, but rather after the disaster has occurred, so that any impact to gnatcatcher habitat from such natural disasters would also likely have already occurred prior to FEMA involvement. For example, actions taken on private lands during a flood event, placing riprap for example, do not involve FEMA funds since private landowners are taking actions immediately. FEMA may provide financial assistance for the repair of culverts, roads, etc. after a disaster. In these cases, FEMA consults with us to avoid or minimize impacts to gnatcatchers. Additionally under the Hazard Mitigation Grant Program, FEMA funds programs, including vegetation management activities to reduce the likelihood of wildfires. FEMA is currently consulting with us on these actions. The existence of a Federal nexus from future FEMA disaster relief or other actions cannot be predicted and is at best speculative.

• The Federal Aviation Administration (FAA) oversees activities at existing airports and evaluates proposed airport expansion and new airport construction. Construction of new airports and expansion of existing airports have already been planned in southern California, and we considered these projects in the development of this determination. The Ramona Airport expansion project contains 9 ha (22 ac) of habitat. The designation of critical habitat on this parcel is prudent. We do not know of any other FAA projects proposed in gnatcatcher habitat.

As discussed above, FHWA, FAA, INS, and COE may carry out, fund, or authorize projects in gnatcatcher habitat on non-Federal lands in San Diego, Orange, and Ventura counties. We evaluated these lands to determine whether a designation of critical habitat would be prudent. We found that a Federal nexus exists for projects covering a total of 1,894 ha (4,680 ac), and determined that a designation of critical habitat would be prudent for these lands.

Approved NCCP Efforts

Several multi-species planning efforts and habitat conservation planning efforts have been undertaken within the southern California range of the gnatcatcher to conserve the species and its coastal sage scrub habitat. Principal among these are State of California Natural Community Conservation Planning (NCCP) efforts in Orange and San Diego counties. NCCP plans completed and permitted to date have resulted in the conservation of 40,208 ha (99,310 ac) of gnatcatcher habitat.

In southern San Diego County, the development of the NCCP Multiple Species Conservation Program (MSCP) has resulted in our approval of three southern County subarea plans under section 10(a)(1)(B) of the Act. These three southern subarea plans account for approximately 95 percent of the gnatcatcher habitat in southern San Diego County. Approval is pending for four other subarea plans within southern San Diego County's MSCP. This planning effort has resulted in the establishment of conservation areas that collectively contain 28,844 ha (71,274 ac) of coastal scrub habitat within a 69,573–ha (171,917–ac) preserve area.

In addition, we have approved the Orange County NCCP Central/Coastal Plan and issued an incidental take permit under section 10(a)(1)(B) of the Act. This planning effort has resulted in the conservation of 15,677 ha (38,738 ac) of reserve lands, which contain 7,621 ha (18,831 ac) of coastal sage scrub habitat.

We have also approved several smaller multiple species habitat conservation plans (HCPs) in San Diego Riverside, Los Angeles, and Orange counties. These include, Bennett Property, Meadowlark Estates, Fieldstone, and Poway Subarea Plan in San Diego County; Coyote Hills East and Shell Oil in Orange County; Ocean Trails in Los Angeles County; and Lake Mathews in Riverside County. These efforts have resulted in the protection of 3,743 (9,250 ac) of gnatcatcher habitat.

The gnatcatcher habitat in the approved NCCPs in San Diego and Orange counties was selected for permanent preservation and configuration into a biologically viable interlocking system of reserves by the local jurisdictions with our technical assistance and that of the California Department of Fish and Game. The reserve system established under the approved NCCP plans includes the coastal sage scrub habitat subject to the jurisdiction of those plans that we consider essential to the long-term survival and recovery of the gnatcatcher. In addition, the plans provide for management of the reserve lands to protect, restore, and enhance their value as gnatcatcher habitat. Because the essential gnatcatcher habitat that is subject to the jurisdiction of the approved plans is permanently protected in the habitat reserves, no additional private lands covered by the plans warrant designation as critical habitat. In addition, because the gnatcatcher habitat preserved in the plan is managed for the benefit of the gnatcatcher as required under the plans, there are no "additional management considerations or protections" within the meaning of "critical habitat" under section 3(5)(A)(ii) of the Act required for those lands. Therefore, we have determined that private lands subject to the approved NCCPs do not meet the

definition of critical habitat in the Act and that designation of such lands would not benefit the gnatcatcher.

Private Lands Without a Federal Nexus

We conclude that the designation of critical habitat on the 259,226 ha (640,560 ac) of coastal sage scrub on non-Federal lands that either lack a Federal nexus or are covered by approved HCPs under the NCCP program is not prudent. Threats and acts of vandalism toward coastal sage scrub habitats were most acute at the time of the publication of the final listing for the gnatcatcher in 1993 (58 FR 16742). The destruction of coastal scrub habitat in apparent attempts to circumvent potential land use restrictions resulting from Endangered Species Act prohibitions continues. Our Law Enforcement Division has received information on six incidents of land clearing that cumulatively resulted in the destruction of about 243 ha (600 ac) of coastal sage habitat and the possible take of up to eight pairs of gnatcatchers. These actions involved clearing of coastal sage scrub, in some instances without County grading permits, in San Diego, Riverside and San Bernardino counties. We also have recently initiated investigation into activities that apparently affected two endangered species, the Quino checkerspot butterfly and the Delhi Sands flower-loving fly.

As has been documented by a series of recent newspaper articles, some members of the public believe that—(1) critical habitat can be "* * *put off limits for development* * *" (San Diego Union Tribune, May 22, 1997), and (2) the presence of listed species on a land parcel can create "* * *a lot of uncertainty among developers* * *" and complicate land sales (Riverside Press-Enterprise, January 7, 1998).

The vast majority of private lands lack a Federal nexus that would invoke the section 7 prohibition against adverse modification of critical habitat. Also, considering the common misunderstandings about the effects of designation, we believe that designating such lands as critical habitat would increase the instances of habitat destruction and exacerbate threats to the gnatcatcher. Therefore, we conclude that the threats that would result from designating these lands as critical habitat outweigh the benefit that would be provided.

We will continue to investigate all instances of coastal sage scrub clearing that may result in an unauthorized "take" of gnatcatchers in violation of section 9 of the Act. Also, we are continuing extensive outreach efforts to address public misunderstandings about the gnatcatcher and its habitat. We are continuing to encourage local jurisdictions to pursue comprehensive multi-species conservation plans (e.g., NCCP plans) to conserve the gnatcatcher and other sensitive species. Our cooperative approach is intended to ameliorate the circumstances that may have led private landowners to destroy coastal sage scrub habitat and to correct the misinformation presented by some media accounts.

We acknowledge that in some cases a designation of critical habitat on private lands may provide some benefit to a species by highlighting areas where the species may occur or areas that are important to the species' recovery. However, as discussed above, the status of the gnatcatcher, its coastal sage scrub habitat requirements, and the location of that habitat are already well known, and this information is readily available. County planning agencies inform members of the public about sensitive resources, including the gnatcatcher and its habitat, that may potentially occur on their lands. For example, the County of San Diego informs applicants for grading permits of the status of gnatcatchers and may require them to survey for the birds prior to receiving a permit. Numerous newspaper articles have also appeared describing the gnatcatcher and its habitat. The plight of this species and coastal sage scrub habitat is well known to the public, and a designation of critical habitat on private lands will not appreciably increase landowners' knowledge of areas important for gnatcatcher conservation.

We, therefore, conclude that no benefit would arise from designating critical habitat on private lands that do not have a Federal nexus. To the contrary, we believe it is likely that a designation of critical habitat on private lands may incite some members of the public and increase incidences of habitat destruction through acts of vandalism above current levels. Because, in this case, no benefit can be identified, and because of increased threats to the gnatcatcher and its habitat likely to result from designation, we conclude that designation of critical habitat on private lands that lack a Federal nexus is not prudent.

Summary and Conclusion

We conclude that designation of critical habitat totaling 50,257 ha (124,188 ac) on lands within the United States portion of the range of the gnatcatcher is prudent (Table 1). This total includes all Federal lands within the range of the gnatcatcher (48,364 ha (119,508 ac)) and 1,894 ha (4,680 ac) of non-Federal lands where a Federal nexus exists.

In addition to determining whether designation of an area as critical habitat is prudent, we must also evaluate, in accordance with section 3(5)(A) of the Act, whether the area is essential to the conservation of the species and whether the area may require special management considerations or protection before designating the area as critical habitat. Also, section 4(b)(2) of the Act requires us to evaluate economic and other impacts, and exclude any area from the designation if the benefits of excluding the area outweigh the benefits of including the area, unless the exclusion would result in the extinction of the species. These additional determinations required to designate critical habitat are not a part of the prudency determination ordered by the Court. We are deferring these additional determinations consistent with the current listing priority guidance published (63 FR 10931) described below.

Listing Priority Guidance

We published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings, giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. Upon completion of higher priority listing actions in accordance with the listing priority guidance, we intend to go forward with the critical habitat designation process for the gnatcatcher.

References Cited

Riverside Press-Enterprise. January 7, 1998. Rats! Irked developers frustrated by butterfly. Page 22.

San Diego Union Tribune. May 22, 1997. Court says gnatcatcher must have safe habitat. Page A–3.

Authors

The primary authors of this document are Loren R. Hays, Doug Krofta, Art Davenport, Clark Roberts, and Jim

Bartel, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 21, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–2866 Filed 2–5–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC26

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Sacramento Splittail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened status for the Sacramento splittail (*Pogonichthys macrolepidotus*) pursuant to the Endangered Species Act of 1973, as amended (Act). Sacramento splittail occur in Suisun Bay and the San Francisco Bay-Sacramento-San Joaquin River Estuary (Estuary) in California. The Sacramento splittail has declined by 62 percent over the last 15 years. This species is primarily threatened by changes in water flows and water quality resulting from the export of water from the Sacramento and San Joaquin rivers, periodic prolonged drought, loss of shallow-water habitat, introduced aquatic species, and agricultural and industrial pollutants. Designation of critical habitat is not prudent at this time. This rule implements the protection and recovery provisions afforded by the Act for Sacramento splittail.

EFFECTIVE DATE: March 10, 1999.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, CA 95821–6340.

FOR FURTHER INFORMATION CONTACT: Michael Thabault, Deputy Assistant Field Supervisor, U.S. Fish and Wildlife Service (see **ADDRESSES** section) (telephone 916–979–2710).

SUPPLEMENTARY INFORMATION:

Background

As used in this rule, the term "Delta" refers to all tidal waters contained within the legal definition of the San Francisco Bay-Sacramento-San Joaquin River Delta, as delineated by section 12220 of the State of California's Water Code. Generally, the Delta is contained within a triangular area that extends south from the City of Sacramento to the confluence of the Stanislaus and San Joaquin rivers at the southeast corner and Chipps Island in Suisun Bay. The term "Estuary," as used in this rule, refers to tidal waters contained in the Sacramento and San Joaquin rivers, the Delta, and San Pablo and San Francisco bays. "Export facilities," as used in this rule, refer to the Central Valley Project and State Water Project water export facilities in the South Delta.

Sacramento splittail were first described in 1854 by W.O. Ayres as *Leuciscus macrolepidotus* and by S.F. Baird and C. Girard as *Pogonichthys inaeqilobus*. Although Ayres' species description is accepted, the species was assigned to the genus *Pogonichthys* in recognition of the distinctive characteristics exhibited by the two California splittail species *P. ciscoides* and *P. macrolepidotus* (Hopkirk 1973). *Pogonichthys ciscoides*, endemic to Clear Lake, Lake County, California, has been extinct since the early 1970s. The Sacramento splittail (hereafter splittail) represents the only existing species in its genus in California.

The name splittail refers to the distinctive tail of the fish. Pogon-ichthys means bearded fish, referring to the small barbels (whisker-like sensory organs) on the mouth of the fish, unusual in North American cyprinids. Macro-lepidotus means large-scaled. The splittail is a large cyprinid fish that can exceed 40 centimeters (cm) (16 inches (in)) in length (Moyle 1976). Adults are characterized by an elongated body, distinct nuchal hump (on the back of the neck), and small, blunt head, usually with barbels at the corners of the slightly subterminal mouth. The enlarged dorsal lobe of the caudal fin distinguishes the splittail from other minnows in the Central Valley of California. Splittail are dull, silvery-gold on the sides and olive-gray dorsally. During spawning season, pectoral, pelvic, and caudal (tail) fins are tinged with an orange-red color. Males develop small white nuptial tubercles on the head. Breeding tubercles (nodules) also appear on the base of the fins (Moyle in prep).

Splittail are native to California's Central Valley, where they were once widely distributed (Moyle 1976). Historically, splittail were found as far north as Redding on the Sacramento River (at the Battle Creek Fish Hatchery in Shasta County), as far south as the present-day site of Friant Dam on the San Joaquin River, and up the tributaries of the Sacramento River as far as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908). Recreational anglers in Sacramento reported catches of 50 or more splittail per day prior to the damming of these rivers (Caywood 1974). Splittail were captured in the past in southern San Francisco Bay and at the mouth of Coyote Creek in Santa Clara County, but they are no longer present there (Moyle in prep). The species was part of the Central Valley Native American diet (Caywood 1974).

In recent times, dams and diversions have increasingly prevented splittail from upstream access to the large rivers, and the species is now restricted to a small portion of its former range (Moyle and Yoshiyama 1992). However, during wet years, they migrate up the Sacramento River as far as the Red Bluff diversion dam in Tehama County, and into the lowermost reaches of the Feather and American rivers (Moyle in prep, Jones and Stokes 1993, Charles Hanson, State Water Contractors, *in litt.* 1993). Small numbers of splittail have recently been found in the upper Sacramento and San Joaquin rivers and their tributaries (Baxter 1995). Recent surveys of San Joaquin Valley streams found splittail in the San Joaquin River below its confluence with the Merced River, mainly following wet winters (Moyle in prep). Splittail have also been recorded using the Sutter and Yolo bypasses for spawning areas during wet winters (Sommer *et al.* 1997). Successful spawning has been recorded in the lower Tuolumne River during wet years in the 1980s, as well as in 1995. Both adults and juveniles were observed at Modesto, 11 kilometers (km) (6.6 miles (mi)) upriver from the mouth of the river (Moyle in prep). However, all of the sightings reported above were during wet years when splittail were able to exploit more spawning habitat. Except for very wet years, the species is for the most part now confined to the Delta, Suisun Bay, Suisun Marsh, and Napa Marsh. In the Delta, they are most abundant in the north and west portions when populations are low, but are more evenly distributed throughout the Delta following years of successful reproduction (Sommer *et al.* 1997).

Splittail are relatively long-lived, frequently reaching 5 to 7 years of age. An analysis of hard parts of the splittail indicate that larger fish may be 8 to 10

years old (Moyle in prep). Females are highly fecund, with the largest females producing over 250,000 eggs (Daniels and Moyle 1983). Populations fluctuate annually depending on spawning success, which is highly correlated with freshwater outflow and the availability of shallow-water habitat with submerged vegetation (Daniels and Moyle 1983). Fish usually reach sexual maturity by the end of their second year. The onset of spawning is associated with rising water levels, increasing water temperatures, and increasing day length. Peak spawning occurs from the months of March through May, although records of spawning exist for late January to early July (Wang 1986). In some years, most spawning may take place within a limited period of time. For instance, in 1995, a year of extraordinarily successful spawning, most splittail spawned over a short period in April, even though larval splittail were captured from February through early July (Moyle in prep). Within each spawning season older fish reproduce first, followed by younger individuals (Caywood 1974). Spawning occurs over flooded vegetation in tidal freshwater and euryhaline habitats of estuarine marshes and sloughs and slow-moving reaches of large rivers. Larvae remain in shallow, weedy areas close to spawning sites for 10 to 14 days and move into deeper water as they mature and swimming ability increases (Wang 1986 and Sommer *et al.* 1997).

Splittail are benthic (bottom) foragers. In Suisun Marsh, they feed primarily on opossum shrimp (*Neomysis mercedis*, and presumably, the exotic *Acanthomysis* spp. as well), benthic amphipods (Corophium), and harpactacoid copepods, although detrital (non-living and detached organic) material makes up a large percentage of their stomach contents (Daniels and Moyle 1983). In the Delta, clams, crustaceans, insect larvae, and other invertebrates also are found in the diet. Predators include striped bass (*Morone saxatilis*) and other piscivores (Moyle 1976).

In recent years, splittail have been found most often in slow moving sections of rivers and sloughs and dead-end sloughs (Moyle *et al.* 1982, Daniels and Moyle 1983). Reports from the 1950s, however, mention Sacramento River spawning migrations and catches of splittail during fast tides in Suisun Bay (Caywood 1974). Because they require flooded vegetation for spawning and rearing, splittail are frequently found in areas subject to flooding. Historically, the major flood basins distributed throughout the Sacramento and San Joaquin valleys provided spawning and rearing habitat. These flood basins have all been reclaimed or modified for flood control purposes (e.g., Yolo and Sutter bypasses). Although primarily a freshwater species, splittail can tolerate salinities as high as 10 to 18 parts per thousand (ppt) (Moyle 1976, Moyle and Yoshiyama 1992). California Department of Fish and Game (CDFG) survey data from 1979 through 1994 indicate that the highest abundances occurred in shallow areas of Suisun and Grizzly bays.

Recent research indicates that splittail will use the Yolo and Sutter bypasses during the winter and spring months for foraging and spawning (Sommer *et al.* 1997). However, the Yolo Bypass may only be used by splittail during wet winters, when water from the Sacramento River over-tops the Fremont Weir and spills over the Sacramento Weir into the Bypass. In 1998, the Yolo and Sutter bypasses provided good habitat for fish, particularly splittail, when they were flooded for several weeks in March and April. In order to provide spawning habitat for splittail, water must remain on the bypasses until fish have completed spawning, and larvae are able to swim out on their own, during the draining process.

The decline in splittail abundance has taken place during a period of increased human-induced changes to the seasonal hydrology of the Delta, especially the increased exports of freshwater. These changes include alterations in the temporal, spatial, and relative ratios of water diverted from the system. These hydrological effects, coupled with severe drought years, introduced aquatic species, the loss of shallow-water habitat to reclamation activities, and other human-caused actions, have reduced the species' capacity to recover from natural seasonal fluctuations in hydrology for which it was adapted.

Analyses of survey data collected from 1967 to 1993 (Meng 1993, Meng and Moyle 1995) and data from 1967 to 1997 by Service, CDFG, and University of California at Davis biologists from several different studies indicate the following results—(1) Overall, splittail abundance indices have declined. Meng and Moyle (1995) demonstrated that on average, splittail have declined in abundance by 60 percent through 1993. The CDFG updated these data to include the most current data available and provided to the Service. The CDFG calculated the data using the updated information. The results were similar. These updated data demonstrate that on average, splittail have declined significantly in abundance by 50 percent since 1984. The greatest declines (over 80 percent) were found from studies that sampled the shallow Suisun Bay area, the center of the range of the species (Meng and Moyle 1995). The updated information also show a significant decline (43 percent) for the studies that sampled the shallow Suisun Bay area. A study that began in 1980 in the lower Estuary, at the outermost edge of splittail range, found the lowest percent decline (20 percent) (CDFG unpublished data) through 1993. The analysis completed on the updated data also showed the smallest decline for this study (6 percent). The number of splittail young taken at State and Federal pumping facilities (measured as number of individuals per acre-foot of water pumped), as of 1993, had declined 64 percent since 1984. With the updated data, the number of splittail young taken at State and Federal pumping facilities demonstrated a 97 percent increase. This percent increase is due to the unusually high salvage that occurred during 1995.

We estimate splittail populations to be 35 to 60 percent of what they were in the 1940s, and these estimates may be conservative (Moyle in prep). CDFG midwater trawl data indicate a decline from the mid-1960s to the late 1970s, followed by a resurgence, with yearly fluctuations, through the mid-1980s. From the mid-1980s through 1994, splittail numbers have declined in the Delta, with some small increases in various years. This decline is also demonstrated in the updated CDFG data.

(2) Overall splittail abundances vary widely among years. Sommer *et al.* 1997 also found that splittail recruitment success fluctuates widely from year to year and over long periods of time. During dry years abundance is typically low. During the dry years of 1980, 1984, 1987, and 1988 through 1992, splittail abundance indices for young-of-the-year were low, indicating poor spawning success. Additionally, all year class abundances were low during these years. In 1994, the fourth driest year on record, all splittail indices were extremely low.

We believe wet years provide essential habitat for splittail and allow populations to rebound from dry years. Successful reproduction in splittail is often highly correlated with wet years. Large pulses of young fish were observed in wet years 1982, 1983, 1986, and 1995. In 1995, one of the wettest years in recent history, an increase in all indices was recorded, as in 1986, which was another wet year following a dry year. However, young of the year taken per unit effort (for example, either the number of fish per net that is towed or

the number of fish per volume of water sampled) has actually declined in wet years, steadily from a high of 12.3 in 1978 to 0.3 in 1993. The updated data from CDFG demonstrate this same decline in wet years, from 37.3 in 1978 to 0.6 in 1993. The abundance indices of splittail during the years of 1995, 1996, and 1997 were 44.5, 2.1, and 2.6, respectively. Year 1995 was a very wet year and splittail abundances were high. Years 1996 and 1997 were wet years, yet abundance indices were low. However, overall splittail declines remain high (82 percent/43 percent with updated data) in the shallow-water Suisun Bay area, the center of its distribution.

We believe high abundance indices in 1995 are an artifact of the highly unusual hydrological conditions that occurred. Therefore, we also calculated all of the percent declines, as stated above, without the 1995 abundance indices in the analysis. The overall decline is 67 percent. The decline from the studies in the shallow Suisun Bay area without 1995 is 80 percent. For the study in the lower Estuary, the decline is 39 percent. The salvage data collected at both the State and Federal pumping facilities demonstrate a 22 percent decline. Other than 1995, the salvage data include 1996 and 1997.

(3) A strong relationship exists between young-of-the-year abundance and outflow (i.e., river outflow into San Francisco Bay after water exports are removed). As outflow increases, annual abundance of young-of-the-year splittail increases. Changes in outflow explain 55 to 72 percent of the changes seen in young-of-the-year splittail abundance, depending on which survey data are analyzed.

(4) Splittail are most abundant in shallow areas of Suisun and Grizzly bays where they generally prefer low-salinity habitats. Salinities in Suisun and Grizzly bays increase when, as a result of water exports or drought conditions, the mixing zone (the freshwater-saltwater interface) shifts upstream.

(5) Concentration of splittail in shallow areas suggests that they are particularly vulnerable to reclamation activities, such as dredging, diking, and filling of wetlands.

The above data indicate that splittail abundances vary widely in response to environmental conditions, but the general population numbers are declining. The following are some reasons why the species is in decline. The splittail is primarily threatened by the altered hydraulics and reduced Delta outflow caused by the export of freshwater from the Sacramento and San Joaquin rivers through operation of the State and Federal water projects. These operations include not only the export of water from the Delta but also diversion of water to storage during periods of high run-off, which reduce instream flows and available submerged aquatic habitat for spawning and rearing. Additional threats to this species include—

(1) Direct and indirect mortality at power plants and in-Delta water diversion sites;

(2) Reduced river flows and changes in the seasonal patterns of flows in the Sacramento and San Joaquin rivers and their tributaries;

(3) The loss of spawning and nursery habitat as a consequence of draining and diking for agriculture;

(4) The loss of shallow-water habitat due to levee slope protection, marina construction, and other bank oriented construction activities;

(5) The reduction in the availability of highly productive brackish-water habitat;

(6) The presence of toxic substances, especially agricultural and industrial chemicals and heavy metals in their aquatic habitat;

(7) Human and natural disturbance of the food web through altered hydrology and introduction of exotic species;

(8) Flood control operations that strand eggs, larvae, juveniles, and adults;

(9) The increase in severity of these effects by six years of drought; and

(10) Entrainment (pulling) of fish through unscreened or inadequately screened municipal and agricultural diversions.

Previous Federal Action

We included the Sacramento splittail as a category 2 candidate species for possible future listing as endangered or threatened in the January 6, 1989, Animal Notice of Review (54 FR 554). Category 2 candidates were defined as those species for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. We discontinued the use of multiple candidate categories on February 28, 1996 (61 FR 7596), and species meeting the definition of the former category 2 are no longer considered candidates.

On November 5, 1992, we received a petition from Mr. Gregory A. Thomas of the Natural Heritage Institute to add the Sacramento splittail to the List of Endangered and Threatened Wildlife and to designate critical habitat for this species in the Sacramento and San Joaquin rivers and associated estuary. Mr. Thomas identified eight organizations as co-petitioners, including the American Fisheries Society, the Bay Institute of San Francisco, the Natural Heritage Institute, the Planning and Conservation League, Save San Francisco Bay Association, Friends of the River, the San Francisco Baykeeper, and the Sierra Club. We published a 90-day finding on July 6, 1993 (58 FR 36184), that the petition presented substantial information indicating that the requested action may be warranted. We initiated a status review and analyzed available data on this species (Meng 1993).

On January 6, 1994, we published a proposed rule to list the splittail as a threatened species and requested public comment (59 FR 862). The proposed rule constituted a 12-month finding that the petitioned action was warranted, in accordance with section 4(b)(3)(B) of the Act.

On January 10, 1995, we published in the **Federal Register** (60 FR 2638) a notice of a 6-month extension to make a final listing determination and reopened a 45-day public comment period on the proposed rule to list the splittail. The basis for this extension was to address differences of scientific opinion concerning the status of splittail upstream of the Delta, especially the existence of a resident population upstream of the Delta. In April 1995, subsequent to the close of the extension period, a moratorium on the processing of all final listing proposals was established by Congress in Public Law 104–6. The moratorium was lifted on April 26, 1996. As mandated by the moratorium, we conducted no actions to finalize the proposed rule during the period April 1995 to April 1996.

As described in detail below, we reopened the comment period on May 18, 1998. We solicited the latest information regarding the abundance and distribution of the species. Additionally, we requested comments concerning the publication, "Resilience of Splittail in the Sacramento-San Joaquin Estuary" (Sommer *et al.* 1997).

The processing of this final rule follows our final listing priority guidance for fiscal years 1998 and 1999 published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add

species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. Processing of this final rule is a Tier 2 action.

Summary of Comments and Recommendations

In the January 6, 1994, proposed rule (59 FR 862), we requested all interested parties to submit factual reports or information, that might contribute to the development of a final rule. We contacted State agencies, county governments, Federal agencies, scientific organizations, and other interested parties and requested comments. We held public hearings on the proposed splittail listing in conjunction with hearings on two other proposed Federal actions, the designation of critical habitat for delta smelt (*Hypomesus transpacificus*) (59 FR 852), and the United States Environmental Protection Agency's (USEPA's) water quality standards for the Estuary (59 FR 810). We published newspaper notices of the public hearings on February 4, 1994, in the *Sacramento Bee, Fresno Bee, Los Angeles Times*, and *San Francisco Chronicle*, all of which invited general public comment. We held public hearings on February 23, 1994, in Fresno; on February 24, 1994, in Sacramento; on February 25, 1994, in San Francisco; and on February 28, 1994, in Irvine. At each meeting, we took testimony from 1 p.m. to 4 p.m. and 6 p.m. to 8 p.m.

During the 3-month comment period from January 6 to March 7, 1994, we received comments (i.e., letters and oral testimony) from 133 individuals, organizations, or government agencies. Many of these comments were given at joint public hearings for the combined Federal rulemaking package for the Sacramento-San Joaquin Delta (including the proposal to list the Sacramento splittail, the proposal to designate critical habitat for the delta smelt, and final water quality standards for the Delta being proposed by the USEPA). Only 13 of the 133 commenters addressed the proposed rule to list the Sacramento splittail. Four of the 13 commenters that specifically addressed the proposed rule to list the Sacramento splittail provided oral testimony at the public hearings. Of the 13 commenters mentioned above, nine supported the listing of the splittail, two opposed the listing, and others provided comments considered as neutral. Five conservation organizations (or branches thereof), one sport fishing organization, two interested parties, and a Federal agency (the Bureau of Reclamation (BOR)) supported the proposed listing. The California Department of Water Resources (DWR) and the State Water Contractors opposed the proposed listing. We received no additional expert opinions from independent specialists concerning pertinent scientific or commercial data about the splittail.

On August 4, 1994, we received a letter dated August 3, 1994, from the State Water Contractors requesting a 6-month extension on the listing determination. The reasons provided in the request for extension were the same as those submitted during the public comment period, addressed below.

We granted a 6-month extension to address the status of splittail upstream of the Delta, and the importance of any such splittail to the population as a whole. Therefore, we reopened the public comment period for 45 days, beginning January 10, 1995, and ending February 24, 1995. During this second comment period we received one additional comment letter that opposed the listing of the splittail. The comment letter addressed this issue in part.

On March 19 and March 20, 1998, the DWR and the State Water Contractors, respectively, requested the comment period be reopened. The basis of this request was that substantial data had been collected since 1995 regarding the abundance and distribution of the splittail. We believe that consideration of this and any new information is significant to the final determination of the status of the Sacramento splittail. For this reason, we sought information concerning abundance and distribution data for this species from 1995–1997. Specifically, we sought comments regarding information presented in the publication, "Resilience of Splittail in the Sacramento-San Joaquin Estuary" (Sommer *et al.* 1997), and how the results affect our recommendation for listing the Sacramento splittail as a threatened species. The comment period was opened on May 18, 1998, and closed on July 17, 1998. We received comments from eight respondents, whose comments are summarized below.

The written comments and oral statements, questioning or opposing the listing of the splittail, or otherwise providing information, obtained during the public hearings and comment periods are combined into general issues that are summarized, discussed and responded to below. Most of the comments supporting the listing did not provide any additional information, so we have not prepared a discussion or response to these comments.

Issue 1: A respondent commented that our statement about splittail decline was based on data regarding splittail juveniles. The respondent argued that adult splittail are abundant and that our reliance on a limited portion of the year classes for a listing determination is inappropriate.

Service Response: We have reviewed the seven data sets used in the status review (Meng 1993). These data sets include—(1) a fall midwater trawl survey in the upper Estuary by CDFG; (2) a monthly midwater and otter trawl in the lower Estuary by CDFG (San Francisco Bay-Outflow Study, hereafter Bay Study); (3) a monthly otter trawl survey of Suisun Marsh (a tidal marsh next to Suisun Bay) by the University of California; (4) a midwater trawl survey that we conducted at Chipps Island in Suisun Bay; (5) a midwater trawl survey that we conducted in the Sacramento River; (6) a beach seine survey that we conducted in the Delta and Sacramento River; and (7) fish salvage data collected by CDFG and the BOR at the State and Federal pumping facilities located in the south Delta. The beach seine survey and Sacramento River midwater trawl were not used in the analysis of abundance trends because several years of data were missing. (See next comment for criteria used to identify data sets suitable for inclusion in abundance trend analysis.) Of the surveys that were used to establish abundance trends, ratios of young-of-the-year to adults were approximately equal for three out of five surveys (fall midwater trawl, Bay Study, and Suisun Marsh). Of the remaining surveys, the Chipps Island trawl was dominated by young-of-the-year, and fish salvage sampled five times as many young as adults. We calculated percent declines independently for each survey. When the two surveys dominated by young-of-the-year are removed from the analysis, overall average percent decline remains the same. Therefore, the contention that splittail adults are abundant, and that our analysis relied on a particular age-class of the species, is unfounded.

Issue 2: One respondent maintained that the studies we relied on were limited geographically (i.e., to the Estuary) and that splittail may occupy a wider range. Conversely, another respondent commented that the Estuary is the principal habitat of splittail and virtually all splittail are found in the Estuary for the first 2 years of their lives.

There was also disagreement about the gear types used for sampling. One respondent held that they were not appropriate, whereas another respondent stated that gear used by the studies, (i.e., bottom and midwater trawls) captured all sizes of splittail. The respondent that questioned gear suitability also commented that studies used in the listing determination were designed to capture striped bass, were limited in their ability to sample shallow and inshore habitats, and that the use of the CDFG abundance index was inappropriate.

Service Response: We used several criteria to determine if a data set could be incorporated into the analysis of trends in splittail abundance and distribution. Data had to be collected for at least 10 consecutive years and effort had to be relatively constant or a core data set had to be available to extract for analysis. A core data set of at least 10 consecutive years provides the necessary information to conduct an analysis of long term trends in abundance. One respondent referred to the use of two data sets that sampled upstream of the Estuary. These data sets were not included in the analysis of abundance trends because time of year of sampling varied, sampling sites varied, and some years of sampling were missing. These data sets were examined however, for trends in distribution, and showed that capture of splittail decreased as sampling was conducted further upstream from the Estuary. One of the surveys referred to by the respondent consists of samples taken upstream of the Delta and catches young-of-the-year almost exclusively. Because splittail migrate upriver to spawn in the spring (Meng and Moyle 1995), it is likely that these catches are the offspring of splittail that reside further downstream for the remainder of the year.

Regarding gear suitability, a respondent suggested that certain gear used, especially tow nets and trawls, were not appropriate for sampling splittail because of their benthic habits and preference for shallow water. The respondent also referred to gillnetting as an effective method for capturing splittail.

We agree that the summer townet survey is inefficient in sampling splittail and therefore, was not included in the analysis of abundance. However, several trawling methods were included. Meng (1993) compared the effectiveness of three types of gear from one survey—bottom (otter) trawls, midwater trawls, and beach seines. Bottom and midwater trawls sampled equal proportions of all splittail year classes (i.e., young-of-the-year, fish 1 year or older, and fish 2 years or older). The beach seine was selective for young-of-the-year. High catches of young-of-the-year in midwater trawls are thought to reflect movement of young out of near shore areas when water recedes. They are frequently captured in channels, presumably as they move downstream (Meng and Moyle 1995). The information outlined above suggests that regularly repeated bottom and midwater trawls are reasonably effective for sampling splittail and examining trends through time.

There are no long-term gillnetting data sets that meet the criteria above for inclusion in the analysis of abundance. Furthermore, gillnetting results in high fish mortality, and long-term sampling by gillnet is not feasible in waters with sensitive species. Almost all sampling techniques have biases. For the data used in the abundance analysis, the sampling remained constant. Therefore, the biases remained constant through time, and there was a consistent downward trend in splittail abundance.

Most of the sampling programs in the Estuary were initiated to track changes in striped bass or salmon (*Oncorhynchus tshawytscha*) populations. These long term data sets can be used to assess changes in abundance of other species as long as assumptions of sampling design are considered. Limitations of surveys designed for striped bass or salmon have been consistent through time. Problems with sampling shallow and inshore habitats have not changed and should not affect relative abundance trends. Therefore, trends or changes in splittail abundance reflected by these surveys should be unaffected by the various weaknesses identified by the respondent. The high correlation between the CDFG abundance index and numbers of fish (83 percent of the variability is explained) suggests that the index is a reasonable estimator of population trends.

Issue 3: One respondent commented that three separate data sets, including a gillnet survey, suggest that splittail are abundant throughout the Delta. Another respondent countered that gillnetting surveys cited as evidence of abundance were based on a single night of sampling in the American River when splittail were presumably concentrated for spawning. This respondent added that the 60 percent decline cited in the proposed rule is remarkable because one strong year class (such as occurred in 1983) can mask an overall decline in this long-lived species.

Service Response: The Act requires us to base listing determinations upon best available scientific and commercial data. The three data sets referred to by the respondent are limited temporally and geographically. One of the data sets referred to by the respondent covers one night of gillnet sampling in one location. The other two data sets refer to 2 years of sampling, separated by more than 10 years, at the Pacific Gas and Electric plant in Antioch. We considered all available data but determined that incorporation of sporadic or isolated sampling events was not appropriate because of problems associated with drawing conclusions from limited or sporadic data.

Issue 4: A respondent commented that no data were provided to support the conclusion that successful reproduction is highly correlated with wet years.

Service Response: Regression analyses of splittail young abundance versus spring outflow (February-May) show strong relationships. As spring outflow increases, abundance of splittail young increases. Changes in spring outflow explained varying percentages of changes in abundance of splittail young and ranged from 55 to 72 percent, depending on which survey data were analyzed (Meng and Moyle 1995). All of the regression analyses were significant (probability values ranged from less than 0.0001 to 0.0025) (Meng and Moyle 1995). This is a strong correlation between successful reproduction and wet years. The low and high abundance indices of juvenile abundance from 1994 and 1995, respectively, is consistent with this analysis.

Issue 5: One respondent commented that the data we used to determine the decline of splittail was biased by the fact that the time period used to determine pre-decline and post-decline was heavily weighted with wet years in the pre-decline period, thereby biasing the analysis.

Service Response: We analyzed only wet years to determine if there had been a decline within that year type. That analysis indicated that even in wet years, when one would anticipate substantially higher recruitment, there had been an overall decline in splittail abundance. Young-of-the-year abundance declined steadily in the annual Chipps Island trawl in wet years from 1978 to 1993. Abundance in 1993 was less than 3 percent of what it was in 1978. Abundance per unit effort was approximately 12.3 in 1978, 8.1 in 1982, 2.0 in 1983, 1.3 in 1986 and less than 0.3 in 1993. This first analysis was done using a catch-per-tow analysis. The second analysis of splittail abundance using a different analytical method that was based on a catch-per-volume of

water sampled yields a similar result. The volumetric methodology yields a catch per unit effort (CPUE) at the Chipps Island trawl site of 2.6 in 1978, 0.97 in 1982, 0.77 in 1983, 0.73 in 1986, and 0.21 in 1993. These two analyses show that there is an overall reduction in abundance that is not solely a result of drought conditions. Using the second analytical method yields a CPUE for 1995 and 1996 of 2.1 and 0.63 respectively, which were both wet years. If there were a stable number of sexually mature fish throughout the period of decline, one would expect similar reproduction in both years. However, there was a substantial decline from 1995 to 1996, which may indicate that there were not as many adult fish, reflected by the lower CPUE in 1996.

Issue 6: One respondent commented that there is no evidence to support the statement that lower numbers of splittail young-of-the-year during the drought may affect the stock's ability to recover.

Service Response: Our status report (Meng 1993) and the proposed rule (59 FR 862) indicated that wet years are required for splittail recruitment. However, as previously discussed in the analysis of only wet years, young-of-the-year abundance has declined during these years. Because splittail live 5 to 7 years and rely on wet years for strong year classes, a prolonged drought, such as the recent 6-year drought, may provide little recruitment opportunities. The steady decline in young-of-the-year abundance in the Chipps Island trawl, combined with a 5 to 7 year life span and reliance on wet years for strong year classes, suggests that lower numbers of splittail young during the drought will reduce the number of adult fish in subsequent wet years. This overall decline in splittail abundance, even during wet years, may affect the ability of the species to recover.

Issue 7: A respondent commented that the drought, not exports, was responsible for the recent decline in splittail abundance indices.

Service Response: Water exports at the State and Federal pumping facilities are not the only threat to the species related to the State Water Project and the Central Valley Project. The State and Federal water projects are interbasin water delivery systems that include 34 reservoirs, thousands of miles of aqueducts and canals, and large pumping facilities in the south Delta. Storage in reservoirs and conveyance components of the projects also have substantial effects on the splittail. Outflow conditions that inundate large vegetated areas are affected by pumping because increases in pumping must be supported, at some point, by increases in diversions to State and Federal reservoirs. Most rainfall occurs during winter and spring in California, and high spring flows are augmented by snow melt. Historically, high spring flows provided flooded areas and shallows for fish spawning and rearing. Construction of upstream reservoirs allowed large amounts of these high spring flows to be diverted to storage for later release. Diversion of water to storage dampens peak spring flows beneficial to splittail spawning success and provides water for pumping when flows to the Estuary decrease.

Since 1983, the proportion of water exported from the Delta during October through March has been higher than in earlier years (Moyle *et al.* 1992). Changes in timing and amounts of exports, as well as operations of upstream water storage facilities, affect fish migration and spawning habits. Dampening of peak spring flows by springtime diversions to storage to replenish depleted reservoirs has deleterious effects on estuarine species such as splittail, which evolved in a system with periodic spring flooding.

As previously discussed, in wet years when fish production is generally high, large segments of the juvenile population are vulnerable to export facilities both directly and indirectly through entrainment and altered Delta hydrology. This vulnerability is reflected in wet year abundance indices. The adverse effects of the pumps in wet years combined with poor recruitment during dry years exacerbates the population demographic outlook for the splittail.

Issue 8: A respondent commented that calculations in the status report were incorrect. This comment targeted a reference in the proposed rule regarding the abundance of splittail in the Suisun Bay area.

Service Response: This comment was apparently based on a misinterpretation of data included in the status report. The respondent incorrectly assumed that the top half of Figure 13 in the status report supported statements in the text regarding abundance of splittail in Suisun Bay. However, this portion of Figure 13 was intended to indicate the approximate locations and effort of the different surveys used for the status report. The bottom half of Figure 13 was intended to support statements about abundance of splittail in the Suisun Bay area. The respondent acknowledged the high catches in Suisun and Grizzly bays represented in the bottom of Figure 13. Furthermore, two CDFG surveys indicate that abundance of splittail captured by each survey, comprising 72 and 56 percent of the catch, respectively, was taken in those areas (Meng and Moyle 1995).

The respondent also stated that values used to construct the top half of Figure 13 were incorrect. The respondent recalculated the values, but used incomplete data sets (Chipps Island trawl) or incorrect data sets (Suisun Marsh). Furthermore, the respondent referred to Bay Study beach seine data that were not included in the analysis and constructed a table of values without using the appropriate scale included on the original figure. The respondent stated that adding ratios, as in Figure 13, violates basic laws of algebra. However, the figure was not intended to show the sums of catches in different areas. The figure was intended to illustrate the relative contributions of different surveys in different areas. The top half of Figure 13 has been removed from the status report because it was confusing and did not contribute to the analysis.

Issue 9: Two respondents commented that outflow conditions that inundate large vegetated areas and result in favorable spawning conditions are largely unaffected by diversion and export capabilities of the State and Federal water projects.

Service Response: Evidence offered to support this comment is a correlation analysis performed by DWR indicating that there is a positive relationship between the number of days that the Yolo and Sutter bypasses are flooded and splittail young abundance. The Yolo and Sutter bypasses are flood control structures that bypass flows 96 and 128 km (60 and 79 mi) upstream of the confluence of the Sacramento and San Joaquin rivers respectively. Because high outflows and number of days the bypasses are flooded are strongly correlated, it is difficult to isolate flooding of these specific areas as the most important factor influencing splittail abundance. Although flooding of the bypasses may result in favorable spawning conditions, young located in the bypasses are likely to experience high mortality because they become trapped in depressions and agricultural drainage canals when water recedes (Jones and Stokes 1993).

Issue 10: One respondent commented that the effects of entrainment on splittail are questionable. The respondent questioned statements in the proposed rule that splittail may be more vulnerable to the effects of entrainment in water project facilities in dry years. The respondent based the argument on strong relationships between splittail abundance and losses to project operations.

Service Response: An entrainment index was developed (a ratio of indices from two surveys, i.e., salvage of entrained fish at water project facilities divided by the fall midwater trawl index) that demonstrated entrainment of splittail young was higher in wet years. We acknowledge that based on the two surveys comprising the entrainment index, entrainment of splittail appears to occur in proportion to abundance, that is, entrainment is higher in wet years. Because splittail abundance relies on high levels of recruitment in wet years, taking more splittail in wet years does not remove the threat of entrainment in water project facilities from the population. In the early 1980s, hundreds of thousands of splittail young were salvaged monthly by the State export facility alone (this number has decreased as abundance has decreased). Since splittail abundance relies on strong year classes in wet years to support the population during poor environmental conditions, entrainment of large numbers of young, even in proportion to abundance, remains a threat.

With the exception of the Bay Study, all 1995 indices were less than historic wet year indices or, in the case of the Fall-midwater Trawl survey, not as high as pre-decline wet-year indices. However, the combined CVP/SWP salvage was more than double any previous year's salvage index, wet or dry (approximately 8 million young-of-the-year fish for the entire year versus less than 4 million young-of-the-year fish in 1986, which was the next highest entrainment index on record). This suggests that during 1995, the CVP/SWP export facilities in the Delta may have actually entrained fish in greater proportion to abundance than in past years.

Issue 11: One respondent questioned the mechanism by which shallow water habitat has been lost in recent years. The respondent stated that a significant amount of marsh habitat was diked and drained in the first part of this century, but relatively little reclamation of wetlands occurred within the last decade.

Service Response: We acknowledge that most wetland losses in the Estuary occurred in the first part of this century. The recent loss of shallow water habitat in the Estuary is due to increasing salinities in Suisun Bay, a shallow area. Suisun Bay was historically fresh to brackish much of the year and important for the rearing of Delta fishes. Increasing salinities in the Suisun Bay area due to decreases in outflow have reduced available shallow water habitat for splittail, primarily a freshwater species. Increasing salinities in this area have also decreased *Neomysis mercedis* production, a primary splittail food and a factor cited by the respondent as being a possible cause of decline.

Issue 12: One respondent commented that the possible effects of predators and competitors deserves greater consideration. The respondent referred to three introduced species that have experienced population explosions during the same period that splittail declined, two gobies and one atherinid, the inland silverside (*Menidia beryllina*).

Service Response: We acknowledge that the three introduced species and the splittail may occupy similar habitats. However, these introduced species rarely exceed 8 cm (3.4 in) in length as adults, one-fifth the size of splittail. Thus, direct predation by the introduced species on splittail is unlikely. It is also unlikely that adults of the introduced species consume splittail young because of differences in spawning sites, that is, many splittail spawn upstream of and in the upper portions of the Estuary. Furthermore, competition for food or resources (such as spawning sites) is unlikely and would be difficult to extract from the wide array of factors that may affect splittail. The introduced species most likely to affect splittail is striped bass, which is known to favor splittail for food (see Factor C in the "Summary of Factors Affecting the Species" section). Splittail and striped bass, however, have coexisted for decades in the Estuary. Recent declines in splittail have occurred in concert with striped bass declines.

Issue 13: A respondent stated that the reason for our decision not to designate critical habitat is not entirely clear from the proposed rule. Further, the respondent expressed concern that we provide splittail with a level of protection afforded by listing the species as threatened pursuant to the Act rather than addressing threats to the species in recovery work that is already being undertaken for Delta fisheries in general.

Service Response: We clarify the decision not to designate critical habitat in the "Critical Habitat" section of this rule. Based on our analysis of threats, including the lack of recovery efforts implemented and regulatory controls, we determined threatened status for the splittail in this rule. The Sacramento San-Joaquin Delta Native Fishes Recovery Plan (U.S. Fish and Wildlife Service 1996) discusses threats and needed restoration actions in detail.

Issue 14: One respondent questioned the need to list splittail with current protections in place for delta smelt and proposed USEPA water quality standards for the Estuary (59 FR 810). The respondent stated that increases in water demand for splittail would affect the predictability of water supplies for other users.

Service Response: In determining to list the splittail, we considered the effects of the listing of delta smelt and designation of critical habitat for the delta smelt (60 FR 4664) as well as implementation of the State's Water Quality Control Plan (WQCP). We believe that the life history and habitat requirements of splittail will not be satisfied by these actions.

The life history characteristics and habitat usage of splittail differ from those of delta smelt. Splittail migrate farther upstream to spawn in the Sacramento and San Joaquin rivers and their tributaries than do delta smelt. Consequently, protections for this species will not overlap completely with those needed for splittail. Splittail also differ from the already listed species in their habitat usage. Because splittail prefer shallow water, with emergent vegetation, they are particularly threatened by reclamation, dredging, and development activities in those habitat types. Finally, because splittail are long-lived and spend much of their lives in the Estuary, contaminants pose a greater threat to this species than to delta smelt.

As described in detail under Factor D of the "Summary of Factors Affecting the Species" section, water quality objectives developed by the SWRCB could benefit splittail. In 1995, the SWRCB adopted a WQCP for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (95–1WR, May 1995) to protect water quality and to control water resources that affect the beneficial uses of the Bay-Delta Estuary. As an interim implementation measure, the SWRCB adopted Water Rights Order 95–6, which relies on the CVP and SWP to comply with the new standards. The flows identified in the water rights decision 95–6 that were implemented through section 7 of the Act with the BOR and USEPA were intended to benefit splittail as well as delta smelt. These flows would provide spawning flows in tributaries as well as habitat and transport flows in and through the Delta if the WQCP is fully implemented. However, this WQCP has not proven entirely adequate to protect against the effects of entrainment both at the CVP/SWP export facilities and other agricultural and municipal water diversions. For example, operations of the CVP and SWP facilities were altered only slightly for a 3-day period of time

in June of 1995 to reduce the effects of salvage on out-migrating juvenile splittail. This action was taken after almost 6 million juvenile splittail were entrained and salvaged at the State and Federal export facilities in the spring of 1995. Between the middle of April and the end of June, over 6.3 million juvenile fish were salvaged at these facilities. Based on data that we received from ongoing monitoring programs during 1995, the vast majority of the fish were probably of San Joaquin River origin, where substantial spawning has not occurred in over a decade. The monitoring programs showed little juvenile production and out migration from the Sacramento River. Even if a population exists upstream of the Delta, State and Federal project operations have done little, even in this new regulatory environment, to protect against entrainment of those fish. Additionally, exports during the out migration period change the behavioral cues and hydrology that may affect the ability of juveniles to move out of the Delta.

Moreover, the SWRCB has not completed the development of a long term implementation plan for the 1995 WQCP. The SWRCB has prepared a draft Environmental Impact Statement that evaluates a range of potential alternative actions so that responsibility to meet the water quality objectives in the 1995 WQCP can be allocated. The SWRCB is currently holding hearings to obtain all necessary information so that an implementation plan can be developed. An experimental proposal has been developed by stakeholders on the San Joaquin River along with the Service and other State and Federal agencies. The proposal, known as the Vernalis Adaptive Management Plan (VAMP), would evaluate the effects of flow and exports on salmon, along with a barrier at the head of Old River, for the next 12 years. It may be accepted by the SWRCB and may provide some benefit to splittail, but full evaluation of the benefits and impacts to the species will not occur until the experiment is complete. We will participate in the implementation of VAMP.

Issue 15: Several respondents questioned our reliance on the entrapment zone (the area of the Estuary where saltwater and freshwater meet) and its importance to splittail. Another respondent questioned our reliance on changes in salinity and shifts in the distribution of splittail upstream concurrent with shifts in the salinity.

Service Response: We agree that there is little if any correlation between splittail abundance and the entrapment zone. However, the entrapment zone is an important ecological indicator. It provides an area in the estuary that is highly productive. However, when located upstream, the mixing zone is not as productive because it is confined to deep river channels where the total surface area is smaller, fewer shoal areas exist, water currents are swifter and more turbulent, and zooplankton productivity is low.

Issue 16: One respondent commented that we could not support the conclusion that all size classes of splittail suffer near total loss at the export facilities due to entrainment.

Service Response: According to salvage facility personnel, juvenile splittail may suffer up to 50 percent mortality due to salvage at the facilities (Scott Barrow, CDFG, pers. comm. 1995). Other forms of mortality exist due to screen efficiency, predation, and impingement that are not quantifiable at this time. We have modified the rule accordingly.

Issue 17: Several commenters raised the issue of peer review of the data and conclusions. One commenter also stated that there was no public access to the data.

Service Response: The proposed rule to list the splittail was published on January 6, 1994, prior to the time that the interagency policy on peer review (59 FR 126) was made effective on July 1, 1994. Despite this, we sent data used in the proposed rule to Dr. Bruce Herbold, USEPA; Dr. Peter Moyle, University of California at Davis; and Dr. Larry Brown, U.S. Geological Survey (USGS) for their review. None of these reviewers provided written comments concerning the data. Additionally, several meetings were held between the Service and CDFG's Bay-Delta Division during the comment period to discuss the data and methodologies used to establish trends in abundance. The CDFG did not disagree with the data used or the methodology used in the analysis.

As described above, we reopened the comment period twice, once in 1995 and again in 1998. During the reopened comment period beginning in January 1995, we considered a substantive issue that CDFG and others raised during the original comment period. The subject of the significant scientific disagreement, that resulted in reopening the comment period, was whether a resident population of Sacramento splittail existed in the upper rivers that was not being detected by the current sampling methodologies. The CDFG conducted a study in the Fall of 1994 to address this question. The results of the study were available in February of 1995 and largely supported our listing. This study was conducted by the CDFG under the review of an interagency science committee (the Interagency Ecological Program). The re-opening of the comment period in 1998 was based, in part, on information in the peer-reviewed publication "Resilience of Splittail in the Sacramento-San Joaquin Estuary" (Sommer *et al.* 1997).

Moreover, the status report that Meng prepared was peer reviewed for its scientific basis. That status report was the basis of an article in the Transactions of the American Fisheries Society, which was again peer reviewed (Meng L. and P. Moyle, 1995). Additionally, the final Sacramento-San Joaquin Delta Native Fishes Recovery Plan (U.S. Fish and Wildlife Service 1996) that discussed the status of the splittail was subject to public comment and review.

Although obtaining raw data from various agencies may have been delayed due to quality assurance and quality control, all data was available between the closing of the first comment period, and during both of the reopened comment periods. Although there may be minor differences in the final analysis contained in this final rule, these differences do not change our conclusion regarding the status of the species and the threats to the species.

Issue 18: The one comment received during the second comment period suggests that there may be a resident splittail population upstream of the Delta in the upper reaches of the mainstem rivers or their tributaries.

Service Response: We agree that splittail do occur in the upper reaches of the Sacramento and San Joaquin rivers in some years. While we excluded the beach seine data sets from the analysis of abundance (for the reasons stated in our response to Issue 2), we never eliminated these, or other data sets, from our analysis of distribution. The beach seine sampling collects relatively fewer fish, on a catch-per-unit-effort basis, than do the surveys further down the Estuary, such as the Chipps Island trawl. This sampling indicates that the splittail, although utilizing these upstream areas, are not utilizing them in substantial numbers, and certainly not in sufficient numbers to constitute a population. The CDFG sponsored a special study to try and determine if there were substantial resident populations upstream of the Delta in 1994 (Baxter 1994). The results of this study indicated that in 1994, the bulk of the population resided in and around Suisun Bay, Big Break, and Grizzly Bay, which correlates to the distribution of shallow water wetlands throughout this region.

Issue 19: Below we summarize comments from several respondents concerning the Sommer *et al.* (1997) paper. The respondents state the following reasons for not listing the splittail—(1) The splittail is more widely distributed and abundant than previously thought; (2) The splittail is a highly fecund, resilient, and long-lived species with more than one year class spawning at one time; therefore, it can rebound because of its high reproductive capacity; (3) The splittail's range has not decreased dramatically; (4) The splittail is able to endure drought conditions and rebound in wet years; (5) Splittail are robust and can handle stress at the export facilities; and (6) Splittail are not at risk from pumping; they are taken in relative proportion to their abundance.

Service Response: Item 1—We disagree with the statement that the splittail is more widely distributed and abundant than previously thought. However, we have always asserted that in some years splittail are found in the upper Sacramento and San Joaquin rivers. During wet years, splittail are more widely distributed and may be abundant, due to more available spawning habitat. For instance, the wet year of 1995 enabled splittail to use habitats that are normally unavailable to them during normal to dry years. During 1995, the Yolo Bypass provided good habitat for spawning splittail and splittail abundance increased. The Bypass provided suitable spawning habitat only because it was a wet year and the Bypass held water later in the year and for a longer duration than is typical. Therefore, when sampling was conducted during 1995, splittail seemed to be abundant and were found in areas, like the Yolo Bypass, that they may not normally be able to use. These managed habitats cannot be relied upon during normal or dry years to provide spawning habitat unless they are consistently managed for the spawning and rearing needs of splittail. During dry years, splittail abundance is restricted by the availability of spawning habitat.

Item 2—We agree that the data demonstrate that splittail are a fecund (fertile) species. However, even fecund species can become low in abundance due to poor habitat conditions for spawning, which may occur during normal or dry years. Young-of-the-year and juvenile survivability recruitment is important to the splittail's recovery. Even though splittail spawn several thousand eggs, not all will reach adulthood. Splittail need good habitat for survivability to spawning age. Long-lived is a relative term. Compared to an annual species such as the delta smelt, splittail, which live for an average of 5 to 10 years, are long-lived. However, if compared to the green sturgeon, which lives to 20 to 40 years of age, the splittail has a short life span.

The term resilience is also a relative term. Due to the larger body size, splittail may be more resilient than delta smelt to entrainment or impingement, for example, but they are less resilient than larger fish such as salmon. We agree with the statement that more than one year class of splittail may spawn at one time. However, spawning is not always successful. Spawning success is correlated with several factors, including wet years, high Delta outflow, and the presence of flooded vegetation. If these parameters are not present, then the splittail may have low recruitment to the population during that year or years.

Item 3—We disagree with the statement that the splittail range has not decreased dramatically. Historically, splittail were found as far north as Redding on the Sacramento River (at the Battle Creek Fish Hatchery in Shasta County), as far south as the present-day site of Friant Dam on the San Joaquin River, and up the tributaries of the Sacramento River as far as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River. Splittail were captured in southern San Francisco Bay and at the mouth of Coyote Creek in Santa Clara County, but they are no longer present there. The species is, for the most part, now confined to the Delta, Suisun Bay, Suisun Marsh, and the Napa River, reflecting a significant decrease in their historical range. Splittail are able to use the Sutter and Yolo bypasses only in wet years. In addition, these bypasses are managed artificially.

Item 4—We disagree with the statement that splittail are able to endure drought conditions and rebound in wet years. The years 1987 through 1992 were consecutive dry years and demonstrated low abundance indices for splittail. During dry years, splittail abundance is restricted by the availability of spawning habitat. However, 1993 was an above normal water year and splittail abundance indices remained low. During 1993, after the end of the dry and critically dry years of 1987 through 1992, water was diverted to fill up the reservoirs that had been depleted during the drought. Therefore, even though 1993 was an above normal year, the additional water was unavailable for the fish to use.

During the wet years of 1982, 1983, 1986, and 1995, splittail abundance indices were high for all age classes, as sampled in the fall mid-water trawl. During the wet years of 1984, 1996, and 1997, splittail indices were low. Therefore, if wet or above normal year types were the controlling factor, essential habitat for splittail would have been provided and splittail numbers should have been higher in 1984, 1996, and 1997. These data show that splittail do not necessarily have high abundance indices during all wet years. Even though 1984, 1996, and 1997 were wet years, they may not have had the appropriate hydrology, water quality, etc., to support a large spawning class. The timing and magnitude of flow events are likely significant parameters affecting splittail spawning success. Spring flows also have to be of adequate duration and timing to provide the fish with flooded vegetation for escape cover, foraging areas, etc. Weather patterns are too unpredictable to rely on wet years for the recovery of splittail; extended periods of drought would result in low reproduction and population declines. (Also see the response to Issue 6).

Item 5—We agree that splittail are a robust fish. They can obtain a size of over 40 cm total length. However, even though they are a relatively large fish, they are still subject to stress at the water export facilities. Eggs and larvae are still subject to entrainment and impingement at the facilities. The largest losses at the pumping plants occur in wet years when up to millions of splittail young are lost during the spring months. Although splittail salvage better than the delta smelt, which cannot be salvaged at all, recent problems at the export facilities have reduced the salvage of all fish. New species such as the exotic mitten crab have recently posed problems at the export facilities. Salvage of fish was requested to be stopped until the crab problem can be resolved.

Item 6—We disagree with the comment that splittail are not at risk from pumping and that they are taken in proportion to their relative abundance. Although it may appear that splittail are able to handle the stress of salvage at the export facilities, they may not necessarily survive after release. Better studies are needed to determine the extent of latent mortality.

Splittail are more likely to be at risk during pumping, depending on the water year and where the fish are distributed during spawning. During dry years, splittail are concentrated in the few areas that have flooded vegetation that can support spawning. Therefore,

most of the population may be concentrated in one part of the Delta, potentially resulting in more take at the pumps in proportion to the amount of fish in the system. Conversely, more splittail are taken at the pumps during wet years because there is more habitat available for spawning, which may result in more recruitment to that year class. Depending on the distribution of spawning, fish may be taken in disproportion to their overall abundance.

Issue 20: Several respondents stated that programs and agreements like the Bay/Delta Accord, CALFED (a consortium of State and Federal agencies convened to address water issues in California), and VAMP will result in recovery of splittail. Therefore, there is no need to list the species.

Service Response: We agree that the threats associated with the degradation of the Delta may be lessened by the successful implementation of the Bay/Delta Accord, CALFED, Central valley Project Improvement Act (CVPIA), and VAMP. However, to date, the results of these agreements and programs have not been quantified due to subsequent wet years that did not require regulatory intervention for delivery of water for fish species. At this time, it cannot be determined whether these actions have been implemented to an extent that will prevent the splittail from becoming endangered within the foreseeable future.

Issue 21: A respondent stated that we failed to comply with the Regulatory Flexibility Act and Executive Order 12630.

Service Response: The Endangered Species Act requires that listing decisions be made solely on the basis of biological information. The legislative history to the Endangered Species Act amendments of 1982 states:

"The Committee of Conference * * * adopted the House language which requires the Secretary to base determinations regarding the listing or delisting of species 'solely' on the basis of the best scientific and commercial data available to him. As noted in the House Report, economic considerations have no relevance to determinations regarding the status of species and the economic analysis requirements of Executive Order 12291, and such statutes as the Regulatory Flexibility Act and the Paperwork Reduction Act, will not apply to any phase of the listing process." (H.R. Conf. Rep. No. 567, 97th Cong., 2d Sess. 12, 19–20 (1982); S. Rep. No. 418, 97th Cong., 2d Sess. 4 (1982)).

In consultation with our Solicitor's Office, we have concluded that the analyses required by the Regulatory Flexibility Act are not applicable to listing determinations.

Regarding Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, the Attorney General has issued guidelines to the Department of Interior (DOI) on implementation of this Executive Order. Under these guidelines, a special rule applies when an agency within the DOI is required by law to act without exercising its usual discretion—that is, to act solely upon specified criteria that leave the agency no discretion.

In this rulemaking context, we might be subject to legal challenge if we considered or acted upon economic data. In these cases, the Attorney General's guidelines state that Takings Implications Assessments (TIAs) shall be prepared after, rather than before, the agency makes the decision upon which its discretion is restricted. The purpose of TIAs in these special circumstances is to inform policy makers of areas where unavoidable fifth amendment taking exposures might exist. Such TIAs shall not be considered in the making of administrative decisions that must, by law, be made without regard to their economic impact.

As described above, Congress required us to list species based solely upon scientific and commercial data indicating whether or not they are in danger of extinction. The Act does not allow us to withhold a listing based on concerns regarding economic impact. The provisions of the guidelines relating to nondiscretionary actions clearly are applicable to the determination of threatened status for the Sacramento splittail.

Summary of Factors Affecting the Species

After thorough review and consideration of all the best scientific and commercial information available, we have determined that the Sacramento splittail should be classified as a threatened species. Procedures found at section 4 of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be endangered or threatened because of one or more of the five factors described in section 4(a)(1). These factors and their application to the Sacramento splittail (*Pogonichthys macrolepidotus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Sacramento splittail, once widely distributed in the Central Valley of California from Redding to the modern-day site of Friant Dam near Fresno, is now primarily restricted to the Estuary due to dams, diversions, dredging, and the diking and filling of historic flood basins. Within this constricted range, splittail have declined by about 62 percent since 1984. However, overall percentage decline over its historical range is much greater. Populations have fluctuated somewhat in the past, with most recruitment taking place in wet years. In wet years since 1978, however, splittail recruitment has declined consistently with catch-per-unit-effort of 12.3, 8.1, 2.0, 1.3, and 0.3 for 1978, 1982, 1983, 1986, and 1993, respectively. The updated data from CDFG demonstrate the same decline by wet years, with 37.3, 15.5, 8.9, 7.3, and 0.6 in 1993. Other wet year data include 1995, 1996, and 1997. These indices are 44.5, 2.1, and 2.6, respectively. However, as stated before, 1995 was a very wet year and there was suitable spawning habitat for splittail in the Estuary. The 1995 data point does not represent a reversal in the decline of the species. Splittail declines are highest (82 percent/83 percent with updated data) in the shallow water Suisun Bay area, the center of its distribution. Therefore, as stated above, wet years are not always indicative of high abundance indices. However, the current data do not indicate a change in this trend.

Delta water diversions and exports currently total about 9 million acre-feet per year, but plans now being prepared could increase exports and diversions in the future. The Federal and State water projects presently export about 6 million acre-feet per year from the Delta when sufficient water is available, and in-Delta agricultural uses result in diversion of about 3 million additional acre-feet per year. We know of 21 major Central Valley Project, State Water Project, or private organization proposals that would result in increased water exports from the Delta, reduced water inflow to the Delta, changes in timing and volume of Delta inflow, or increases in heavy metal contamination of the Delta. These proposed projects or actions include but are not limited to revisions to the Central Valley Project Operations Criteria and Plan, Los Banos Grandes Reservoir, Los Vaqueros Reservoir, South Delta Water Management Program, North Delta Water Management Project, West Delta Water Management Project, Delta Wetlands Corporation Water Storage Project, Folsom Dam Reoperation, Oroville Dam Reoperation, Auburn Dam, Central Valley Project contract renewals and amendments such as those on the American River that include the

Sacramento County water contracts, East Bay Municipal Utilities District water contract, as well as other increases in diversions resulting from the American River Water Forum process. Other water contracts renewals include the Solano County Water District. Contra Costa Water District is currently proposing to increase their diversions for future water supply. The Central Valley Project and State Water Project wheeling purchase agreement, reactivation of the San Luis Drain, Stanislaus-Calaveras River Basin Water Use Program, Suisun Marsh Project Phase Three and Four, Federal Water Project change in diversion point, and State Water Project Pump additions. All of these projects would impact the habitat of the splittail.

Changes in water diversions are most likely at the State Water Project. For the most part, the Federal pumping plant has operated at capacity for many years (pumping at rates up to 4,600 cubic feet per second (cfs)), so increased exports at this plant are unlikely. However, the State Water Project pumping plant and capacity of the State Aqueduct have considerable unused capacity. The State Water Project currently pumps at rates up to 6,400 cfs and plans to increase pumping rates by more than 50 percent. Local private diverters are relatively stable and export up to 5,000 cfs from about 1,800 diversions scattered throughout the Delta. The DWR (1992) reported past and projected State Water Project deliveries from Delta sources during the years of 1962 to 2035. In the 1980s, deliveries ranged from 1.5 million acre-feet to 2.8 million acre-feet. By 2010, deliveries of up to 4.2 million acre-feet are planned.

Since 1983, the proportion of water exported from the Delta during October through March has been higher than in earlier years (Moyle *et al.* 1992). Changes in timing and amounts of exports affect fish migration and spawning habits, as well as operations of upstream water storage facilities. Dampening of peak spring flows by springtime diversions to storage facilities to replenish depleted reservoirs has deleterious effects on estuarine species such as the splittail, which have evolved in a system with periodic spring flooding.

Federal and State water diversion projects in the southern Delta export, by absolute volume, mostly Sacramento River water with some San Joaquin River water. During periods of high export pumping and low to moderate river flows, reaches of the San Joaquin River reverse direction and flow upstream to the pumping plants located in the southern Delta. When total diversion rates are high relative to Delta outflow, the lower San Joaquin River and other channels have a net upstream (i.e., reverse or negative) flow. Out-migrating larval and juvenile fish of many species become disoriented due to reverse flows. Fish, including Sacramento splittail, delta smelt, longfin smelt (*Spirinchus thaleichthys*), and all runs of salmon and steelhead are lost at pumps and to predation at various water facilities and other diversion sites. Because data from State and Federal pumping facilities indicate that splittail migrate upstream to spawn, positive outflows are also important to transport splittail young downstream (Meng 1993).

In recent years, the number of days of reversed San Joaquin River flow have increased (Moyle *et al.* 1992), particularly during the February-June spawning months for splittail. Reverse flows in the San Joaquin River may transport more splittail young towards pumping facilities in the south Delta where the splittail are entrained by pumps and diversions. The survival rate of splittail salvaged from entrainment is unknown. However, salvage operations have been shown to result in 50 percent losses of salvaged fish (Scott Barrow, DFG, pers. comm. 1995) (see factors C and E of this section for more discussion about entrainment and salvage).

With full implementation of the WQCP for the Sacramento-San Joaquin Estuary (described below) we anticipate an overall reduction of the number of days of reverse flow in the lower San Joaquin River during the spring period. Pumping will shift from the spring period to later in the year. This pumping will likely have to be supported by reservoir withdrawals. Reservoir releases in the spring may not be as frequent depending on how much space is available in the reservoirs carried over from the previous year. Increasing demand will also require more support from reservoirs for export, which will alter the flow patterns. Changes in reservoir operations and ramping rates for flood control may affect shallow water spawning habitat along river corridors and exacerbate stranding of splittail.

Estuaries are ecosystems where the mixing zone and salinity levels are determined by interaction of river outflow and tidal action. Splittail are most abundant in the shallow water of Suisun Bay, which is historically associated with the entrapment zone. The young of this species require high zooplankton densities, which are common in the entrapment zone. Production of zooplankton increases when the entrapment zone occupies a large geographic area with extensive shoal regions within the euphotic zone (depths less than 4 meters), such as Suisun and Grizzly bays. Fall mid-water trawl survey data collected by CDFG indicate that 72 percent of the splittail captured from 1967 to 1992 in the Estuary were taken in the shallow water areas of Suisun and Grizzly bays (Meng 1993).

During periods of drought and increased water diversions, the entrapment zone and associated fish populations are shifted farther upstream in the Estuary. During years prior to 1984, the entrapment zone was located in Suisun Bay from October through March (except in months with exceptionally high outflows or during years of extreme drought). From April through September, the entrapment zone usually was located upstream in the river channels. Since 1984, with the exception of the record 1986 flood outflows, the entrapment zone has been located primarily in the river channels during the entire year because of drought and increased water exports and diversions. When located upstream, the entrapment zone is confined to deep river channels where the total surface area is smaller, fewer shoal areas exist, water currents are swifter and more turbulent, and zooplankton productivity is low. In all respects, the upstream river channels are much less favorable for rearing of splittail. Splittail declines since 1984 have been concurrent with an increasing amount and proportion of freshwater diversions that confine the mixing zone to narrow, deep, and less productive channels in the lower rivers.

Recent research indicates that splittail will use the Yolo and Sutter bypasses during the winter and spring months for foraging and spawning (Sommer *et al.* 1997). The bypasses are two extensive floodplain areas used for flood control, agriculture, and wildlife habitat. The bypasses serve as a control outlet for the Sacramento River, which historically flooded large areas of the adjacent valley during high water events in the winter and spring. The water from the Sacramento River is diverted to the bypasses through a passive system of weirs. Water enters the Yolo Bypass from the Sacramento River via the Fremont and Sacramento Weirs. The Sutter Bypass is inundated through the Tisdale Weir.

In 1995, the bypasses provided good habitat for fish, particularly splittail because it was an extremely wet year and the bypasses were flooded for several weeks in March and April. However, the bypasses do not get flooded at all in dry and critically dry years. Therefore, during those years,

when splittail would need the habitat the most, it is not provided by the bypasses.

The Yolo Bypass is inundated whenever the Sacramento River stage at Fremont Weir exceeds 33.5 feet. About 3/4 of the years going back to the mid-1930s have had overflows into the Yolo Bypass. Even though the water was high enough to overtop the Fremont Weir, the water may not have stayed on the Bypass consistently nor long enough to benefit splittail.

Under current water management practices, the bypasses cannot be relied upon throughout any given spawning season to provide habitat for splittail. As mentioned above, water is placed onto the bypasses by overtopping of weirs along the Sacramento River. The flooding of the bypasses is sporadic at best. The volume of water varies from year to year as well as does the time of year when the bypasses are inundated. The water may be placed intermittently on the bypasses, depending on how much rainfall occurs at any given time. For instance, water has been placed onto the Yolo Bypass as early as December and has remained on the Bypass as late as May. Water has also been placed on the Bypass for a short time and drained off. The water could be drained off at some point during the season and then with more heavy rainfall, the bypasses could become flooded again. Therefore, these systems would not provide suitable spawning habitat consistently for splittail. Also, the bypasses do not drain at consistent levels. There are pockets and holes that form which may trap and strand fish as the water drains. During some years, the bypasses do not have enough water or retain water long enough to allow fish to enter the bypasses, spawn, and then grow to a size that will allow them to out-migrate. The artificial systems of the Yolo and Sutter bypasses, as currently managed, cannot be relied upon to recover the splittail. The bypasses provide accessible and suitable splittail spawning habitat only during wet years where the water consistently remains on the bypasses for an extended period of time, as in 1995.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting this species. Some scientific collecting is conducted for splittail but these activities do not adversely affect this species. Striped bass anglers report occasional use of splittail as bait, but this usage is thought to have little effect on the species. A small fishery for splittail used to exist in the Sacramento River (Daniels and Moyle 1983, Caywood 1974). However, no recent records of splittail harvest exist, probably because little or no harvest now occurs due to its declines. Records of splittail harvest are also sketchy because identification of this species is often confused with other nongame species. No other recreational or educational uses of this species exist that may affect its abundance.

C. *Disease or predation.* Predation is thought to be a relatively minor factor affecting the Sacramento splittail, especially compared to the other factors discussed in this final rule. Striped bass and other predatory fish are attracted to concentrated prey at fish salvage release sites, such as occur at Clifton Court Forebay. The salvaged fish, including splittail, are collected from holding wells of the salvage facilities, placed in the salvage trucks, transported to the release sites, and deposited in bulk from a pipe running from the truck to a near-shore area, thus resulting in predator attraction. Fifty percent of the released fish are lost (Scott Barrow, CDFG, pers. comm. 1995). These losses are largely due to attraction of predatory fish to the release site of the salvage operations. Splittail and striped bass, however, coexisted for decades in the Estuary and recent declines in splittail have occurred in conjunction with striped bass population declines. Increases in striped bass populations could threaten reduced numbers of splittail. Recently, the CDFG has foregone striped bass stocking or modified their striped bass management because of potential harm to federally listed Sacramento River winter-run chinook salmon and delta smelt.

Susceptibility to disease, due to poor water quality, may be a factor in the decline of splittail. Workers at State and Federal water project facilities in the south Delta have reported high incidences of adult splittail in poor health. The south Delta is dominated by San Joaquin River flow, a large part of which is made up of agricultural drainage. Pesticides (e.g., chlorpyrifos, carbofuran, and diazinon), salts (e.g., sulfates, selenium), and total dissolved solids from this drainage are concentrated by reverse San Joaquin River flows and result in poor water quality (Dennis Westcot, Central Valley Regional Water Quality Control Board, pers. comm.).

D. *The inadequacy of existing regulatory mechanisms.* Regulatory mechanisms currently in effect do not adequately protect the splittail or its habitat. This species is not listed by the State of California.

We are analyzing the potential effects on splittail and other fish and wildlife resources in California as a result of enactment of the CVPIA (Pub. L. 102–575) under the National Environmental Policy Act (NEPA) and the Programmatic Environmental Impact Statement currently under development. The CVPIA may benefit the splittail, but does not adequately protect the species at this time. Two of the stated purposes of the CVPIA are to "protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California" and "to contribute to the State of California's interim and long term efforts to protect the San Francisco Bay-Sacramento-San Joaquin Delta Estuary." Section 3406(b)(2) dedicates 800,000 acre-feet of Central Valley Project yield annually to implement fish, wildlife, and habitat restoration, and to help federally listed species. The 800,000 acre-feet identified in the CVPIA may be used to meet the DOI's obligations under the Bay-Delta Accord (discussed below). The rest of the water can be used for instream flows, additional Delta outflow, and the other purposes of the CVPIA. Because of the multiple purposes of the CVPIA, flows may be provided at times of the year that may not benefit splittail, such as spawning flows in the fall for salmon. Additionally, because of the need to balance these flows for all uses under the CVPIA, certain spring flows may be less than what is fully needed for spring spawning of splittail. We anticipate that splittail will benefit from implementation of the CVPIA, although the magnitude and timeliness of these protections may be inadequate to prevent further decline of splittail. On November 20, 1997, the DOI announced its decision regarding use of the 800,000 acre-feet of water identified in the CVPIA. The decision is to be implemented for the next 5 years and involves not only upstream actions but also actions in the Delta which may benefit splittail. However, since the Central Valley Project represents only a portion of the water development projects in the Central Valley, the CVPIA is likely insufficient to fully protect splittail at this time.

Protective measures currently being implemented to benefit the delta smelt may benefit the splittail, such as restrictions on pumping under certain conditions. However, the ecological requirements of these species differ, especially with respect to timing of important development stages and habitat uses. Unlike delta smelt, splittail require flooded lowland habitat for spawning and are particularly vulnerable to disturbance or destruction of marshy habitat.

The Suisun Bay area, including Suisun Marsh, is the best known habitat for splittail, but this habitat has been adversely altered by higher salinities in the spring. These higher salinities are caused by operations of reservoirs that divert water to storage as well as exports from the Delta that allow seawater to intrude farther upstream in Suisun Marsh. Prior to the Bay-Delta Accord/WQCP, there were relatively few periods when freshwater outflows of any significance were mandated to be released through the Delta and Suisun Bay for wildlife or fisheries. State and Federal agencies had planned to increase 1991 and 1992 water supplies for out-of-stream uses at the expense of environmental protection of estuarine fish and wildlife resources in the fifth and potentially sixth years of drought (Morat 1991). Because of significantly higher than normal precipitation and subsequent higher instream flows after March 1991, a State agency request for relaxation of Delta water quality standards was withdrawn.

Subsequently, on December 15, 1994, the Federal government, the State of California, and urban, agricultural and environmental interests agreed to the Principles for Agreement on a comprehensive, coordinated package of actions designed to provide interim protection to the San Francisco Bay and Sacramento-San Joaquin River Delta Estuary. That agreement is referred to as the 1994 Bay-Delta Accord (Accord). The Accord was recently extended to December 15, 1999. The Accord established parameters to protect the beneficial uses of the Bay-Delta Estuary. Among these beneficial uses are objectives to ensure adequate Delta outflow for the maintenance of suitable habitat for various life stages of aquatic organisms and objectives for export limits to protect the habitat of estuarine-dependent species and reduce their entrainment at the major export pumps in the southern Delta.

The X2 standard provides outflows to maintain low salinity (2 parts per thousand) habitat at three distinct areas in the Bay-Delta: 1) the confluence of the Sacramento and San Joaquin rivers, 2) Chipps Island, and 3) Roe Island. Compliance of this standard will provide variability for aquatic organisms and aid in their recovery. The E/I ratio establishes a combined export rate (Clifton Court Forebay inflow plus export at the Tracy Pumping Plant) based on the best available estimate of the Eight River Index. When the estimate of the Eight River Index is ultimately made, the export facilities may then pump a set percentage of Delta inflow. Although these parameters will likely protect fish and wildlife, they have not been adequately tested over the past 4 years due to the extreme wet conditions.

Present regulatory processes do not ensure that water inflows to Suisun Bay and the western Estuary will be adequate to maintain the mixing zone near or in Suisun Bay to benefit splittail. The SWRCB has the authority to condition or require changes in the amount of water inflow and the amount of water exported or diverted from the Delta. In testimony given before the SWRCB's Water Quality/Water Rights Hearings in 1987, one of our biologists expressed concern for several Delta species, including splittail (Lorentzen 1987). The SWRCB did not take regulatory or legal action to protect this fish or its habitat during the following 4 years. On May 1, 1991, the SWRCB adopted the WQCP for Salinity for the San Francisco Bay-Sacramento-San Joaquin Delta Estuary (1991 Bay/Delta Plan). On September 3, 1991, under provisions of the Clean Water Act, the USEPA disapproved certain water quality standards due to the SWRCB's failure to adopt criteria to protect estuarine habitat. In April 1992, the Governor of California announced a new water policy that included a directive to the SWRCB to establish "interim measures" to reverse the decline of fishes in the Bay and Delta. Accordingly, the SWRCB released an interim water quality plan (Draft Decision 1630) in December 1992 that immediately was suspended by the Governor. In 1993, the USEPA began the process of forming replacement standards for those portions of the 1991 Bay/Delta Plan that were disapproved.

Before USEPA's final rule on Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta became effective on December 14, 1994, and as a result of Bay-Delta Accord that was signed on December 15, 1994, the SWRCB issued and adopted Water Rights Order 95–6. The protections contained in this Water Rights Order were determined to be roughly equivalent to the protections in USEPA's final rule on water quality standards, and USEPA's rule was withdrawn. Although the SWRCB has issued a draft Environmental Impact Report (EIR), no long term implementation plan has been developed or actually implemented for the new water quality plan. Substantial opposition exists to certain implementation measures identified in EIR. Institutional guarantees of compliance have been lacking in the past and are needed in the future before existing mechanisms can contribute to protection of this species. Records show that the previous salinity standards contained in the SWRCB's Water Rights Decision 1485 were inconsistently implemented and frequently violated.

Among other things, the Bay-Delta Accord was intended to provide for increased flexibility in the water project operations to respond to ecological needs. Appropriate use of this increased flexibility may have demonstrated that the established regulatory mechanisms were sufficient to protect splittail. However, even though splittail were proposed for listing before the Bay-Delta Accord was signed, water project operations have rarely been changed to provide protection for splittail. In 1995, for example, a wet year that afforded opportunities to significantly reverse the decline of splittail while maintaining water supply, more than 6.3 million juvenile splittail were entrained at the CVP and SWP facilities in 2 months from late April to late June. Of these fish, at least 50 percent were lost due to transport and release. Predation in Clifton Court Forebay, inefficiency in screening fish from diversion facilities, and handling most likely increased this percentage. Despite the availability of the mechanism for increased flexibility in project operations provided by the Bay-Delta Accord, operations of the CVP and SWP were changed for only one 3-day period in late June of 1995 to minimize entrainment of splittail. Thus, an opportunity to significantly increase abundance and distribution of splittail, and the opportunity to reverse the decline of the species was lost.

As a direct result of a Framework Agreement, the Federal and State governments established the CALFED Bay-Delta Program (Program). This Program is a cooperative effort of the DOI, the U.S. Department of Commerce, the USEPA, the California Environmental Protection Agency, and the California Resources Agency, with the involved public formally participating through the Bay-Delta Advisory Council. The mission of the Program is to develop a long term comprehensive plan that will restore ecological health and improve water management for all beneficial uses of the Bay-Delta system. The plan will specifically address fish and wildlife protection, water supply reliability, levee stability, and water quality issues in the Delta. We are an active participant in the Program and we believe that the eventual implementation of the plan will contribute to the protection and recovery of the Sacramento splittail. However, the plan is not yet developed;

we cannot evaluate specific conservation measures until they have been identified, described, and committed to in an approved final plan.

As a result of the Bay-Delta Accord, a program was established to implement non-flow related actions to benefit fish and wildlife resources. This program is known as Category III. The Category III program is funded by Federal, State, and non-governmental organizations and was funded with $60 million annually for the first 3 years of the Bay-Delta Accord. There was approximately $10 million dollars funded in the first year by the Metropolitan Water District (MWD). The MWD contributed the same amount in the second year, with approximately $2–4 million contributed by other water districts and agencies. In November 1996, California voters passed Proposition 204, which provided State funds for the Category III activities as well as other CALFED activities. In 1997 the Federal government passed an $85 million appropriation for Category III activities and CALFED functions. In the Fall of 1997, CALFED awarded $60.6 million dollars toward proposals under the Category III program. Some of these proposals will benefit splittail through habitat enhancement or restoration. Some of these projects have been implemented. However, due to the time frame required to see if the project has met its objective, that is, to provide suitable spawning habitat for splittail, we cannot determine if these projects will be successful. However, because Category III projects are not intended to enhance flow conditions in the Delta or its tributaries, it cannot provide needed flows.

E. *Other natural or manmade factors affecting its continued existence.* Splittail are vulnerable to natural events, such as drought, because of the consistent decline in population indices and severely constricted range and distribution. Drought will reduce the available spawning area for the splittail because of reduced instream flows. Because the range is already restricted and the population has declined, a prolonged natural event such as drought (compounded by exports and diversions described in Factor A) could endanger the splittail.

Unscreened or inefficiently screened municipal, agricultural, and industrial water diversions and other water facilities are a significant problem for the splittail. It is estimated that there are currently over 1800 unscreened diversions in the Delta. Screens are currently designed for striped bass and salmonids. Approach velocities and mesh sizes are therefore not appropriate for splittail. Behavioral barriers (louver screens) at the State and Federal salvage facilities that were designed using striped bass and salmonid criteria, also are not appropriate for splittail. Release sites for salvaged fish attract predators, likely resulting in low survivorship overall (Lloyd Hess, BOR, pers. comm. 1995). Also, it is likely that few young survive salvaging at the Federal and State pumping plants because juveniles of most fish species are more delicate than adults.

Poor water quality also may adversely affect splittail, through direct exposure to toxins, which increases vulnerability to disease as described above in Factor C, and depletion of zooplankton and invertebrate food sources. All major rivers that are tributary to the Estuary are exposed to large volumes of agricultural and industrial chemicals that are applied in the Central Valley watershed (Nichols *et al.* 1986). Agricultural chemicals and their residues, as well as chemicals originating in urban runoff, find their way into the rivers and Estuary. Approximately 10 percent of the total pesticide use in the United States occurs in the Sacramento and San Joaquin River watersheds (Kuivila and Foe 1995). Recently, high concentrations of organophosphate and carbamate pesticides from agricultural uses have been documented entering the Estuary. These pesticides are acutely and chronically toxic to zooplankton and fishes as far west as Martinez in Suisun Bay and as far south as Vernalis on the San Joaquin River (Foe 1995, Bailey *et al.* unknown date). The periods of pesticide use coincide with the timing of migration, spawning, and early development of splittail. During rainfall runoff events, acutely toxic pulses of pesticides move down the rivers and through the Estuary with remarkable persistence and relatively little dilution (Kuivila and Foe 1995).

Toxicology studies of rice field irrigation drain water of the Colusa Basin Drainage Canal have documented significant toxicity of drain water to striped bass embryos and larvae, *Oryzias latipes* larvae (in the Cyprinodontidae family), and opossum shrimp, which is the major food organism of striped bass larvae and juveniles (Bailey *et al.* 1991), as well as all age classes of splittail. This drainage canal flows into the Sacramento River just north of the City of Sacramento. The majority of drain water samples collected during April and May 1990 were acutely toxic to striped bass larvae (96-hour exposures); this was the third consecutive year rice irrigation drain water from the Colusa Basin was acutely toxic (Bailey *et al.* 1991). Splittail may be similarly affected by agricultural and industrial chemical runoff, particularly because, like striped bass, adults migrate upriver to spawn and young rear upriver until waters recede in late spring.

Some heavy metal contaminants have been released into the Estuary from industrial, urban, and mining enterprises. While the effects of these contaminating compounds on splittail larvae and their zooplankton food resources are not well known, the compounds could adversely affect survival. In addition, increases in urban development in the Sacramento Valley will continue to result in concurrent increases in urban runoff. Selenium has been found in aquatic organisms (Saiki and Lowe 1987, Henderson *et al.* 1995) and fish species in the San Joaquin River watershed (Nakamoto and Hassler 1992). Selenium has been shown to cause reproductive failure, developmental defects, and mortality of fish species (Hermanutz 1992, Skorupa *et al.* 1996).

In recent years, untreated discharges of ship ballast water has introduced exotic aquatic species to the Estuary ecosystem (Carlton *et al.* 1990). Several exotic species may adversely affect the splittail. An Asian clam (*Potamocorbula amurensis*), introduced as veliger larvae in 1986, was first discovered in Suisun Bay during October 1986. By June 1987, the Asian clam was widespread in Suisun, San Pablo, and San Francisco bays irrespective of salinity, water depth, and sediment type at densities greater than 10,000 individuals per square meter. Asian clam densities declined to 4,000 individuals per square meter as the population aged during the year (Carlton *et al.* 1990). Persistently low river outflow and concomitant elevated salinity levels may have contributed to this species' population explosion (Carlton *et al.* 1990). The Asian clam could potentially play an important role in affecting the phytoplankton dynamics in the Estuary. The clam may have an effect on higher trophic levels by decreasing phytoplankton biomass.

The Chinese mitten crab (*Eriocheir sinensis*), has also been recently introduced to the Delta, either by deliberate release to establish a fishery or through accidental release via ballast water. The Chinese mitten crab has interfered with the ability to effectively salvage fish at the export facilities by clogging the internal piping.

Historically, *Eurytemora affinis*, the native euryhaline copepod, has been the most important food for larval fishes in the Estuary. Three non-native species of euryhaline copepods (*Sinocalanus*

doerrii, *Pseudodiaptomus forbesi*, and *P. marinus*) became established in the Delta between 1978 and 1987 (Carlton *et al.* 1990), while *E. affinis* populations have declined since 1980. It is not known if the exotic species have displaced *E.* affinis or whether changes in the estuarine ecosystem now favor *S. doerrii* and the two *Pseudodiaptomus* species (Moyle *et al.* 1989). *Sinocalanus doerrii* is difficult for larval fishes to catch because of its fast swimming and effective escape response (Meng and Orsi 1991). Reduced feeding efficiency and ingestion rates weaken and slow the growth of splittail young and make them more vulnerable to starvation or predation.

We have carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by this species in this listing determination. Sacramento splittail have declined by 62 percent over the last 15 years. This species has been effectively extirpated from the majority of its range and is now vulnerable to numerous threats in the Estuary as discussed above. Because Sacramento splittail are long-lived, their decline has been gradual, and extinction is not imminent, listing the splittail as endangered would not be appropriate. Although this species is not in imminent danger of extinction, it is likely to become endangered in the foreseeable future if present threats and current population trends continue. Therefore, based on the evaluation of all available information on abundance, present distribution, and threats to this species, we have determined that listing the Sacramento splittail as threatened is appropriate at this time. Critical habitat is not designated for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" as defined in section 3(3) of the Act means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is listed. The regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We have determined that designation of critical habitat for the Sacramento splittail is not prudent.

Critical habitat receives consideration under section 7 of the Act. Section 7(a)(2) requires Federal agencies to consult with the Service to ensure that any action they carry out, authorize, or fund does not jeopardize the continued existence of a federally listed species or destroy or adversely modify designated critical habitat. The Service's implementing regulations (50 CFR part 402) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species by reducing the reproduction, numbers, or distribution of that species." Destruction or adverse modification of habitat means a "direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild." Common to both definitions is an appreciable detrimental effect to both the survival and recovery of a listed species.

For any listed species, an analysis to determine jeopardy under section 7(a)(2) would consider impacts to the species resulting from impacts to habitat. Therefore, an analysis to determine jeopardy would include an analysis closely parallel to or, for the splittail, equivalent to an analysis to determine adverse modification of critical habitat. For the Sacramento splittail, any modification to suitable habitat within the species' range has the potential to affect the species. Actions that may affect the habitat of the splittail include, but are not limited to—(1) reduction of fresh water flows, (2) degradation of water quality, (3) reduction in the quality or quantity of flooded vegetation, (4) alteration of shallow water areas containing submergent (under water) and/or emergent (above the water surface) vegetation, and (5) construction of structures that interfere with migration patterns or block free access to spawning or rearing areas. Although the splittail is a wide ranging species, actions affecting habitat can have relatively large impacts to the population. For example, an activity that destroys or degrades, or blocks access to, an important spawning site could result in reproductive failure of a significant portion of the population affecting population size and age structure in following years. For the Sacramento splittail, we have determined that, were critical habitat designated, it would include no areas that would not be subject to consultation under the jeopardy standard. Moreover, we have determined that the level of habitat impact necessary to result in a determination of destruction or adverse modification of critical habitat (were we to designate critical habitat for the splittail) would also result in a determination of jeopardy to the species. Therefore, were critical habitat to be designated for the splittail, no additional section 7 consultations beyond those caused by the listing itself would take place, nor would the practical result of any such consultations differ.

To date, we have prepared 284 conference reports for the Sacramento splittail for projects involving changes in hydrology, availability of spawning habitat, migratory cues, and other behavioral patterns as well as potential increase in entrainment. Three of these conferences resulted in initial draft jeopardy determinations. These draft jeopardy determinations provide evidence that, by their very nature, impacts to splittail habitat that would result in a determination of adverse modification would result in a determination of jeopardy to the species. For these projects, the habitat impacts were the primary basis for the jeopardy determinations.

The three projects that resulted in initial draft jeopardy conference reports included the proposed Delta Wetlands Project (March 1996) (this project has since been modified to avoid jeopardy), proposed modifications to the south Delta Temporary Barrier Program (January 1997), and the proposed Interim South Delta Program (April 1998). The consultations and conferences for these projects addressed the adverse effects on the delta smelt, its critical habitat, and the Sacramento

splittail. With respect to each project, we concluded that it was likely to jeopardize the continued existence of both species, and to cause the destruction or adverse modification of the delta smelt's critical habitat. In each of these examples, we expressly found that an activity that would destroy or adversely modify critical habitat for the delta smelt would also jeopardize its continued existence. In each case, the project's primary impacts to the splittail, and the primary bases for our conclusion that the splittail would be jeopardized by the project, were habitat impacts. Moreover, had critical habitat been proposed for the splittail, neither these conferences nor any of the others regarding the splittail would have resulted in a finding of adverse modification without a complementary finding of jeopardy.

Apart from section 7, the Act provides no additional protection to lands designated as critical habitat. Designating critical habitat does not create a management plan for the areas where the species occurs; does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat); and does not have a direct effect on areas not designated as critical habitat.

A designation of critical habitat that includes private lands would only affect actions where a Federal nexus is present and would not confer any additional benefit beyond that already provided through section 7 consultation under the jeopardy standard. Designation of critical habitat on private lands could, however, result in a detriment to the species. The regulatory effect of critical habitat designation is often misunderstood by private landowners, particularly those whose property boundaries are included within a general description of critical habitat for a species. In the past, landowners have mistakenly believed that critical habitat designation will be an obstacle to development and impose restrictions on the use of their property. In some cases, landowners have believed that critical habitat designation is an attempt by the government to confiscate their private property. As a result of this misunderstanding, critical habitat designation has sometimes reduced private landowner cooperation in efforts to conserve species listed in California. Because the splittail is found in some rivers and tributaries flowing through private lands, the cooperation of private landowners is imperative to conserve the splittail. Controversy resulting from critical habitat designation has been known to reduce private landowner cooperation in the management of other listed species (e.g., the northern spotted owl (*Strix occidentalis caurina*) in Oregon, Washington, and California).

We are concerned that designating critical habitat increases the likelihood of intentional acts of vandalism and habitat destruction due to widespread public misunderstanding of critical habitat. Within the general area where splittail occur, we have documented a number of cases where habitat for listed species was deliberately vandalized or destroyed to avoid dealing with endangered species regulatory issues. Vernal pools, which provide habitat for several listed and candidate species, including the giant garter snake (*Thamnophis gigas*), have been affected negatively by landowners rerouting stream courses in order to eliminate potential endangered species regulatory effects (F. Muth, Fish and Wildlife Service, pers. comm.). We have documented the deliberate destruction of habitat for giant garter snakes (K. Hornaday, Fish and Wildlife Service, pers. comm.) and valley elderberry longhorn beetles (*Desmocerus californicus dimorphus*) (B. Cordone, Fish and Wildlife Service, pers. comm.; S. Pearson, Fish and Wildlife Service, pers. comm.; D. Weinrich, Fish and Wildlife Service, pers. comm.; B. Twedt, Fish and Wildlife Service, pers. comm.) along irrigation canals within the same general areas where the splittail occurs. We are concerned that designation of critical habitat for the splittail may precipitate further habitat destruction affecting splittail and the other species in these habitats.

We acknowledge that in some situations critical habitat designation may provide some value to the species by notifying the public about areas important for the species' conservation and calling attention to those areas in special need of protection. However, in the case of the splittail, we have already spent enormous effort on public outreach and education and believe that critical habitat designation for the splittail would not provide any further notification or education benefit. Subsequent to the publication of the proposed rule to list the splittail, we initiated an extensive public outreach strategy to inform and educate the general public and interested parties within the range of the species. We sent out press releases to local newspapers, contacted elected officials, Federal, State, and county agencies, and interested parties, including private landowners. We also provided the Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes that addresses eight fish species including the splittail to these same interested parties. We will continue to inform and educate the public and private landowners within the range of the species through the dissemination of additional information including copies of the final rule, fact sheets, and question and answer sheets explaining relevant parts of the Act to the parties listed above.

In addition, up-to-date information about the splittail and its habitat, as well as detailed information about the Bay-Delta ecosystem and other areas critical to conserving species that utilize the Bay-Delta, is already widely disseminated to private landowners and to entities or individuals that may propose projects that could affect splittail. As discussed above in Factor E in the "Summary of Factors Affecting the Species" section, the CALFED Program is a cooperative effort to develop a long term comprehensive plan to restore ecological health and improve water management for all beneficial uses of the Bay-Delta system. In the process of developing a long term plan, CALFED has held numerous public meetings, workshops, and hearings throughout the State to receive information from the public, as well as to inform the public about the program's goals and ecological needs of the species, including splittail. CALFED maintains an extensive mailing list in order to keep landowners, local, State, and Federal entities, as well as the interested public, apprised of CALFED's actions and the ecological needs of the species that utilize the Bay-Delta ecosystem and other areas necessary for the conservation of species, including splittail.

Regarding any potential benefit provided by informing other Federal and State agencies about the splittail, the knowledge of the range and habitat requirements for this species is well known by Federal agencies, as is evidenced by the 284 conference reports we have prepared addressing the splittail. The Service's Sacramento Field Office stores information about the ranges of listed and other sensitive species by USGS 7½ quad maps in a database. When a Federal agency notifies the Service about a potential project they may authorize, fund, or carry out, the Service does a database search and provides a list of species that may be affected by the proposed action. The plants and animals that are included on the species list are those that may be affected, either directly or indirectly, by the proposed project. Fish and other aquatic species including the splittail appear on the species list if they are in the same watershed as the proposed action. In other words,

splittail appear on a species list if the action occurs anywhere in the Central Valley of California, including all rivers and the tributaries that drain to these rivers. This database is updated if new information about a species is made available. Use of this database provides a superior means of providing information about a species' location to a Federal agency.

Because of the sensitivity of the water community in California, State, Federal, and private water users are also very aware of the species range and habitat requirements. This knowledge extends to local reclamation boards, county boards of supervisors, individual water districts as well as a large number of private individuals. Private consultants, who provide the biological expertise for all of the above mentioned publics, have developed extensive knowledge of the current range, habitat requirements, and potential effects of project proposals on the splittail. Designation of critical habitat would not cause us to provide different or additional information to these entities for the purposes of preserving and/or recovering the species.

We have evaluated the potential notification and education benefit offered by critical habitat designation and find that, for the splittail, there would be no additional benefit over the current outreach and interagency coordination process currently in place. Notification and education can be conducted more effectively by working directly with landowners and communities through the recovery implementation process and, where a Federal nexus exists, through section 7 consultation and coordination. Critical habitat designation for the splittail would provide no further notification or education benefit. In addition, these existing processes preclude problems and potential risks associated with confusion and misunderstanding that may accompany a critical habitat designation.

Critical habitat designation can also aid in the development of a species' recovery plan by identifying the areas needing protection or requiring special management considerations. However, we have already developed the Recovery Plan for the Sacramento/San Joaquin Delta Native Fishes that addresses eight fish species, including the Sacramento splittail. The Recovery Plan identifies the important habitat areas for the splittail.

In summary, we have determined that the designation of critical habitat for the splittail would not be beneficial to the species. For the splittail, the section 7 consultation process will produce a jeopardy analysis that has results equivalent to a critical habitat adverse modification analysis. We already provide private landowners and agencies with up-to-date information on important areas for the splittail. Federal agencies are already engaged in splittail conservation efforts, and we will continue to provide them with up-to-date information on areas important for splittail conservation. We have completed recovery planning for the species, and we will review the information in the recovery plan periodically to determine if updates and revisions are needed. Finally, even if designation of critical habitat for the splittail would provide some small, incremental benefit to the species, that benefit is outweighed by the increased risk of (1) controversy that would hamper recovery efforts or (2) vandalism. Based on this analysis, we conclude that designation of critical habitat for the Sacramento splittail is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. We initiate such actions following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Federal actions that may affect the splittail include, but may not be limited to, those actions authorized, carried out, or funded by the Corps, BOR, National Marine Fisheries Service (NMFS), FERC, and USEPA. The Corps funds projects and issues permits for water pumping and diversion facilities, levee construction or repair, bank protection activities, deep-water navigation channel dredging and dredge spoil disposal projects, sand and gravel extraction, marina and bridge construction, diking of wetlands for conversion to farmland, and tidal gate or barrier installation. The BOR and DWR construct, operate, and manage water storage and delivery facilities. The FERC licenses and re-licenses hydroelectric power facilities, that manipulate instream flows, in the tributaries to the Sacramento and San Joaquin rivers. The USEPA reviews State water quality standards and promulgates replacement standards pursuant to the Clean Water Act if State standards are found to be inadequate. In 1991, USEPA disapproved portions of the SWRCB's WQCP for salinity in the Estuary. Subsequent to that decision, the USEPA developed new water quality standards to replace those that were disapproved. The USEPA published a proposed rule in December of 1993 requesting comments. Prior to finalizing the final rule, the State developed new water quality standards and proposed a new WQCP, 95–1WR, which was implemented, in-part, through Water Rights Order 95–6. The USEPA determined that the State's standards provided equivalent or better protection and has withdrawn the Federal proposal. The State is in the process of developing an implementation plan to fully achieve the goals of the WQCP, and is hearing testimony on many issues.

The Sacramento splittail proposed rule was published January 6, 1994. During the last 4 years, 284 conference opinions have been developed for projects proposed by various Federal agencies. We are prepared to adopt all conference opinions as final biological opinions for the Sacramento splittail, provided that the respective agencies request the adoption in writing and the reinitiation criteria listed under 50 CFR 402.16 do not apply. If there have been no significant changes in an action as planned or in the information used during the conference, we will confirm the conference opinion as the biological opinion on the project, and no further section 7 consultation will be necessary.

However, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been maintained (or is authorized by law) and if—(1) the amount or extent of incidental take is exceeded; (2) new information reveals that the agency action may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

Under section 4 of the Act, listing the splittail provides additional impetus for development and implementation of a recovery plan to bring together Federal, State, and private efforts to develop conservation strategies for this species. We convened the Delta Native Fishes Recovery Team to prepare a recovery plan for declining native fishes in the Estuary. The draft recovery plan developed a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. It also set recovery priorities and estimated costs of various tasks necessary to accomplish recovery goals. Site-specific management actions necessary to achieve survival and recovery of splittail and other fishes native to the Estuary ecosystem were also described in this draft plan. The draft recovery plan was released for public review and comment on January 8, 1995 (60 FR 2155). Notice of availability of the final plan was published in the **Federal Register** on November 26, 1996 (U.S. Fish and Wildlife Service 1996).

The Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act if a species is listed. Section 9 of the Act prohibits certain activities that directly or indirectly affect listed species. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within a species' range. We believe that, based on the best available information, the following actions will not result in a violation of section 9, provided these actions are carried out in accordance with any existing regulations and permit requirements:

(1) Routine levee road maintenance;

(2) Weed and brush control on levees above the mean higher high water mark or the ordinary high water mark;

(3) Aquatic recreational activities;

(4) Actions that may affect splittail that are authorized, funded or carried out by a Federal agency, when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 7 of the Act, and;

(5) Actions that may affect splittail that are not authorized, funded or carried out by a Federal agency, when the action is conducted in accordance with an incidental take permit issued by the Service pursuant to section 10(a)(1)(B) of the Act.

Activities that we believe could potentially harm the Sacramento splittail and result in "take" include, but are not limited to:

(1) Diversion of water from any river or stream or other water course that results in the entrainment, injury or death of splittail, including stranding of eggs, larvae, juveniles or adults; or diversions that result in the degradation of waters containing splittail;

(2) Levee slope and bank protection that occurs below the mean higher high water mark or the ordinary high water mark of a water body that results in the loss of shallow water habitat used by splittail for spawning and rearing;

(3) Dredging in any river or stream or other water body that contains Sacramento splittail including dredging in flooded areas where splittail may be spawning, or dredging that results in the degradation of waters containing splittail;

(4) Discharge of fill material into a water body supporting splittail that results in the destruction or degradation of spawning and rearing habitat, substrate composition, water salinity, water quality, channel stability, or migratory corridors;

(5) Discharge or dumping of toxic chemicals, pesticides, organic wastes or other pollutants into a water body supporting splittail, or discharge or dumping of pollutants that results in the degradation of a water body containing splittail; and

(6) Unauthorized collection of splittail.

Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Office (see **ADDRESSES** section).

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits for threatened species are codified at 50 CFR 17.32. Permits for threatened species are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are available for zoological exhibition, educational purposes, or special functions consistent with the purposes of the Act. Requests for copies of the regulations on listed species and inquiries regarding permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–6241; facsimilie 503–231–6243).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined in the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act.

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning

permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited in this rule are available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Authors

The primary author of this rule is Michael G. Thabault, U.S. Fish and Wildlife Service, Sacramento Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h) add the following to the List of Endangered and Threatened Wildlife in alphabetical order under "FISHES:'

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	
Splittail, Sacramento	*Pogonichthys macrolepidotus.*	U.S.A. (CA)	Entire	T	656	NA	NA
*	*	*	*	*	*	*	

Dated: February 1, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–2867 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 64, No. 25
Monday, February 8, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[No. 99–4]

RIN 1550–AB26

Regulated Activities; Exempt Savings and Loan Holding Companies

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations to clarify the circumstances under which certain multiple savings and loan holding companies are able to engage in the same activities as unitary holding companies. In accordance with the governing statute and regulations, multiple holding companies are exempt from restrictions on the types of business activities in which they and their non-thrift subsidiaries may engage, if all (or all but one) of their thrift subsidiaries were acquired in certain types of supervisory transactions and if all their respective savings association subsidiaries are qualified thrift lenders. To retain the focus of the multiple holding company exemption on the statutory purpose, the proposal would establish certain standards by which the OTS would determine whether a multiple holding company would be entitled to exempt treatment. This proposal is intended to channel the benefits of the multiple holding company activities exemption to companies that actually participate in the resolution of failing or failed thrifts and clarify OTS regulatory policy in an area that has been unsettled.

DATES: Comments must be received on or before April 9, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552, Attention Docket No. 99–4. Hand deliver comments to 1700 G Street, N.W., lower level, from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX Number (202) 906–7755, or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Manager, Supervision Policy, Office of Thrift Supervision (202/906–7488); Richard L. Little, Senior Counsel (Banking and Finance) (202/906–6447); or Kevin A. Corcoran, Assistant Chief Counsel for Business Transactions (202/906–6962), Business Transactions Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Over the past year, OTS has received inquiries from several different savings and loan holding companies about their eligibility for exempt multiple status under section 10(c)(3) of the Home Owners' Loan Act ("HOLA").[1] Because these inquiries have involved complex factual issues, including the details of transactions that occurred several years ago, and because OTS precedent exists only in the form of legal opinions, OTS is undertaking this proposed rulemaking in order to provide clearer guidance to the industry in a manner faithful to Congressional intent.

Section 10(c) of the HOLA[2] limits the types of business activities that savings and loan holding companies and their non-thrift subsidiaries may conduct generally to activities and services historically related to the thrift business and to activities approved by the Federal Reserve Board for bank holding companies under section 4(c) of the Bank Holding Company Act.[3] Exempt from these restrictions are all unitary savings and loan holding companies, *i.e.*, holding companies that control only one savings association ("unitary holding companies"), provided that the subsidiary savings association meets the qualified thrift lender test.[4] The HOLA also provides that the activities restrictions do not apply to any multiple savings and loan holding company ("multiple holding company"), *i.e.*, a holding company that controls more than one savings association, if

(i) All, or all but 1, of the savings association subsidiaries of such company were initially acquired by the company or by an individual who would be deemed to control such company if such individual were a company—

(I) Pursuant to an acquisition under section 13(c) or (k) of the Federal Deposit Insurance Act [12 U.S.C. 1823(c) or (k)], or section 408 (m) of the National Housing Act [12 U.S.C. 1730a (m)]; or

(II) Pursuant to an acquisition in which assistance was continued to a savings association under section 13(i) of the Federal Deposit Insurance Act [12 U.S.C. 1823(i)]; and

(III) All of the savings association subsidiaries of such company are qualified thrift lenders * * *.[5]

This so-called "exempt multiple" treatment in section 10(c) of the HOLA has been implemented by the OTS at 12 CFR 584.2a(a)(1)(ii). So long as all of its savings association subsidiaries are qualified thrift lenders, an exempt multiple holding company may engage in the same activities as any unitary holding company under the HOLA.

The exempt multiple structure proved to be a valuable incentive for attracting acquirors to resolve a number of ailing or failed institutions during the thrift crisis of the late 1980s and early 1990s. Many unitary holding companies were reluctant to acquire failed associations if their only options were to combine a failed association with a healthy subsidiary or to hold the failed association separately and be forced to limit their activities. The exempt multiple structure enabled these holding companies to segregate their failed institutions while they resolved the problems associated with these failed institutions and to continue conducting the same range of activities as unitary holding companies.

Despite its obvious supervisory benefits, the exempt multiple structure has been difficult for the OTS to

[1] 12 U.S.C. 1467a(c)(3).

[2] 12 U.S.C. 1467a(c).

[3] 12 U.S.C. 1843(c).

[4] 12 U.S.C. 1467a(c)(3)(A).

[5] 12 U.S.C. 1467a (c) (3). Section 408(m) of the National Housing Act was repealed by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Title IV, § 407, Pub. L. No. 101–73, 103 Stat. 363 (1989).

administer. In large part, this problem has arisen because the statute does not state how mergers and acquisitions after a supervisory acquisition should affect exempt multiple holding company status. For instance, section 10(c) of the HOLA does not mandate or prohibit exempt multiple treatment in any of the following situations:

- An exempt multiple holding company merges a subsidiary supervisory association, *i.e.*, a subsidiary acquired in a supervisory transaction, with its non-supervisory savings association subsidiary.
- An exempt multiple holding company merges or consolidates with other companies, including other savings and loan holding companies.
- An exempt multiple holding company acquires additional savings association subsidiaries by merger with the company's existing supervisory association subsidiary.
- A unitary holding company, the savings association subsidiary of which is composed almost entirely of assets and liabilities acquired in supervisory transactions, seeks to establish a *de novo* thrift subsidiary and become an exempt multiple holding company.

OTS believes that the exempt multiple provision in section 10(c) of the HOLA serves a limited but important purpose: to facilitate unitary holding company acquisitions of troubled thrifts that could not otherwise be accomplished without loss of the holding company's unitary status. Accordingly, the OTS is proposing to amend 12 CFR 584.2a(a)(1)(ii) to delineate more precisely the circumstances under which exempt multiple status will be recognized. In general, exempt multiple status will be available only where a qualifying supervisory acquisition otherwise would threaten existing unitary status. However, because the language of section 10(c)(3) does not restrict the relative timing of supervisory and non-supervisory acquisitions, a unitary holding company that acquired its sole subsidiary savings association in a supervisory transaction and then acquires an additional association in a non-supervisory transaction will be entitled to exempt multiple status. When exempt multiple status is relinquished (for example, where a holding company acquires a savings association in a supervisory transaction, but does not continue to hold it separately,[6] or where a holding company qualifies as an exempt multiple, but acquires another non-supervisory association and holds it separately), the OTS believes that exempt multiple treatment should not be reactivated by later reorganizing the subsidiary associations.

Under the proposal, a holding company will be entitled to exempt multiple status, if (1) the holding company controls directly or indirectly multiple savings associations after a supervisory acquisition, and the subsidiary association that the holding company acquired in the supervisory acquisition continues to exist as an identifiable savings association subsidiary of the holding company; or (2) the holding company controls a savings association continuously after acquiring it in a supervisory acquisition and later acquires an additional association (including by establishing a *de novo* association) as a separate subsidiary in a non-supervisory acquisition.

In cases where an exempt multiple holding company controls a subsidiary supervisory association and later causes the association to engage in a merger, consolidation, or acquisition, the OTS will determine whether the supervisory association has existed continuously since the supervisory acquisition. If the later combination causes the supervisory association to lose its essential character, the OTS no longer will consider the holding company to be an exempt multiple. In making this determination, the OTS, as appropriate, will take into account the corporate identity of the surviving savings association as specified in its charter; the relative sizes of the savings associations or other depository institutions involved in terms of assets or liabilities, or both; and such other factors on a case-by-case basis as the Director considers appropriate. The OTS is interested in comments on whether the agency should apply different or additional criteria.

The merger criteria would apply only to mergers, consolidations, or acquisitions by existing exempt multiple holding companies and not to such transactions by unitary holding companies (except where a unitary holding company seeks to preserve the supervisory status of its subsidiary association). The reason is that a unitary holding company (other than one whose sole thrift subsidiary was acquired in a supervisory transaction) cannot achieve exempt multiple status through later mergers, consolidations, or non-supervisory acquisitions.

The proposed rule would have these practical consequences:

- An exempt multiple that merged its savings association subsidiaries to become a unitary would thereafter become eligible for exempt multiple status only if it later made a qualifying supervisory acquisition, unless all the savings association subsidiaries merged were acquired in supervisory transactions.
- The qualifying supervisory status of a savings association would not transfer from the initial acquiring holding company to a succeeding acquiror, with two exceptions. In general, once a savings association in supervisory status has been restored to health, a new holding company may not acquire it from the original acquiror and still claim supervisory status for the savings association.
- The first exception to the general rule against transferability of supervisory status is that a succeeding acquisition may itself qualify as a supervisory acquisition under section 10(c).
- The second exception is that if an existing exempt multiple holding company reorganizes internally and inserts a newly formed holding company into its structure, then the newly formed company may claim exempt multiple status.

The proposed rule would apply to all existing multiple holding companies, as well as all companies that may seek exempt multiple status on the basis of supervisory acquisitions that occurred before the effectiveness of the final rule. The OTS believes that efforts to grandfather particular classes of holding companies would be cumbersome and likely to lead to inconsistent results. However, it is important that holding companies have certainty as to whether they may exercise unitary powers. Therefore, OTS proposes to open a sixty-day "window" following the effective date of the final rule, during which holding companies that believe they may be entitled to exempt status based on past acquisitions and on earlier rulings or opinions by OTS may seek confirmation of that status from OTS. After the 60-day window closes, OTS will review all later requests for exempt multiple treatment against the criteria set forth in the regulation, even where the supervisory acquisitions that support the exempt multiple request occurred before the effective date of the regulation.

A multiple holding company that does not receive confirmation of exempt status and that does not qualify for exempt status under the regulation will have two years after the effective date of the final rule to cease or divest any activities that are not permissible for

[6] If an exempt multiple holding company with two supervisory savings association subsidiaries were to merge the two subsidiaries, OTS would not treat the holding company as having relinquished its exempt status.

multiple holding companies under section 10(c).

II. Solicitation of Comments

The OTS is asking for comment on the proposal. Specifically, the OTS seeks comment on:

- Whether the proposed amendment will accomplish its stated purposes?
- Whether a different approach would better accomplish the stated purposes?
- Whether, in applying the merger criteria to mergers, consolidations, or acquisitions by existing exempt multiple holding companies, OTS should take into account specific factors in addition to the corporate identity of the surviving savings association and the relative sizes of the savings associations or other depository institutions involved?

III. Executive Order 12866

The Director of the OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this proposal will not have a significant economic impact on a substantial number of small entities. The proposal clarifies the rules governing exempt multiple status and is designed to reduce the burden on multiple holding companies to determine whether they are entitled to exempt status. Moreover, the proposed rule would provide a procedure permitting multiple holding companies that may be relying on past rulings or opinions of the OTS to claim exempt status, to confirm that status after the effective date of the final rule.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year. If a budgetary impact statement is required, Section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. The proposed rule is directed solely to thrift holding companies. It clarifies the rules governing exempt multiple status and is designed to reduce the burden on holding companies to determine whether they are entitled to exempt status. Accordingly, this rulemaking is not subject to Section 202 of the Unfunded Mandates Act.

VI. Paperwork Reduction Act

OTS invites comment on:

(1) Whether the proposed information collection contained in this proposal is necessary for the proper performance of OTS's functions, including whether the information has practical utility;

(2) The accuracy of OTS's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital and start-up costs of operation, maintenance and purchases of services to provide information.

Respondents are not required to respond to this collection of information unless it displays a currently valid OMB control number.

The collection of information requirements contained in this proposal have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550), Washington, D.C. 20503, with copies to the Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

The collection of information requirements in this proposed rule are found in 12 CFR 584.2a(a)(3). OTS requires this information in order to determine whether certain holding companies are or may be eligible for exempt multiple holding company status. The likely respondents are savings and loan holding companies.

Estimated average annual burden hours per respondent: 20.

Estimated number of respondents: 30.

Estimated total annual reporting burden: 600.

Start up costs to respondents: none.

List of Subjects in 12 CFR Part 584

Administrative practice and procedure, Exempt savings and loan holding companies, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations, as set forth below.

PART 584—REGULATED ACTIVITIES

1. The authority citation for part 584 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1468.

2. Section 584.2a is amended by revising paragraph (a)(1) introductory text and paragraph (a)(1)(ii), redesignating paragraph (a)(2) as paragraph (a)(3), and adding new paragraph (a)(2) to read as follows:

§ 584.2a Exempt savings and loan holding companies and grandfathered activities.

(a) *Exempt savings and loan holding companies.* (1) The following savings and loan holding companies are exempt from the limitations of § 584.2(b):

* * * * *

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one savings association if all, or all but one of the savings association subsidiaries of such holding company were initially acquired pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act or section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("supervisory acquisition"), and all of the savings association subsidiaries of such holding company are qualified thrift lenders as defined in § 583.17 of this chapter, provided that the Director determines that—

(A) Except in the case of a multiple holding company that has been formed in connection with an internal reorganization, such holding company has continuously controlled a savings association acquired pursuant to a supervisory acquisition at all times since such supervisory acquisition; and

(B) The savings association acquired through a supervisory acquisition on which the exemption contained in this subparagraph is based has continuously existed as an identifiable savings association subsidiary of such holding company at all times since such supervisory acquisition, provided that if

an exempt multiple savings and loan holding company merges its savings association subsidiaries to become a unitary savings and loan holding company, the resulting savings association subsidiary will be considered to have been acquired in a non-supervisory transaction, unless all the savings associations merged were acquired by the holding company in supervisory transactions.

(2)(i) For purposes of paragraph (a)(1)(ii)(B) of this section and subject to the restrictions therein, if any savings association subsidiary that was acquired in a supervisory acquisition engages in any acquisition, merger, or consolidation after the subsidiary's own supervisory acquisition, the Director, in determining whether that savings association has existed continuously since such supervisory acquisition, will consider the following factors, as appropriate:

(A) The corporate identity of the surviving savings association as specified in its charter;

(B) The relative sizes of the holding companies, savings associations or other depository institutions involved in terms of assets or liabilities, or both; and

(C) Such other factors on a case-by-case basis as the Director considers appropriate.

(ii) The supervisory status of a savings association may not be transferred from the initial acquiring holding company to a succeeding acquiror, unless the succeeding acquisition itself qualifies as a supervisory acquisition under section 10(e) of the Home Owners' Loan Act, or unless an internal reorganization of the initial acquiror causes an acquisition by a newly formed holding company.

(iii) A holding company that believes it is or may become entitled to exempt multiple status based on rulings or opinions that the OTS issued prior to [insert effective date of regulation] may request confirmation of that status from the OTS prior to [insert date 60 days after effective date of regulation]. Such requests must contain a detailed explanation of the basis for exempt multiple status. After [insert date 60 days after effective date of regulation], the OTS will apply only the provisions in paragraphs (a)(1)(ii) and (a)(2) of this section to requests for exempt multiple status. A multiple holding company that does not receive confirmation of exempt multiple status from the OTS and that does not qualify for exempt status under the regulation, will have two years after the effective date of the final rule to cease or divest any activities that are not permissible for multiple holding companies under section 10(c).

* * * * *

Dated: February 1, 1999.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 99–2834 Filed 2–5–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–80–AD]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Avions Pierre Robin Model R2160 airplanes. The proposed AD would require repetitively inspecting the aileron/flap common support bracket for cracks, loose rivets, or separation of the bracket from the skin, and reinforcing the bracket either immediately or at a certain time period depending on whether discrepancies are found during the inspections. Reinforcing the aileron/flap common support bracket terminates the repetitive inspection requirement. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to detect defects in the aileron/flap common support bracket (cracks, loose rivets, or separation of the bracket from the skin), which could result in reduced or loss of control of the airplane.

DATES: Comments must be received on or before March 11, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–80–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–80–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–80–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Avions Pierre Robin Model R2160 airplanes. The DGAC reports cracks found in the area of the attachment points of the aileron/flap common support brackets and corresponding wing skin areas.

This condition, if not corrected, could result in these brackets separating from the wing skin with possible reduced or loss of control of the airplane.

Relevant Service Information

Avions Pierre Robin has issued Service Bulletin No. 90, dated May 3, 1982, which specifies procedures for inspecting the aileron/flap common support bracket. In addition, Avions Pierre Robin has developed repair kits that include all the parts and procedures for reinforcing the aileron/flap common support bracket.

The DGAC classified this service bulletin as mandatory and issued French AD 82-70-(A), dated May 19, 1982, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Avions Pierre Robin Model R2160 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the aileron/flap common support bracket for cracks, loose rivets, or separation of the bracket from the skin, and reinforcing the bracket either immediately or at a certain time period depending on whether discrepancies are found during the inspections.

Accomplishment of the proposed inspections would be required in accordance with Avions Pierre Robin Service Bulletin No. 90, dated May 3, 1982. The reinforcement specified in this proposed AD would be accomplished in accordance with Avions Pierre Robin Repair Kit No. 97.40.16, as specified in Avions Pierre Robin Service Bulletin No. 90, dated May 3, 1982.

Cost Impact

The FAA estimates that 10 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 per work hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,400, or $340 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Avions Pierre Robin: Docket No. 98-CE-80-AD.

Applicability: Model R2160 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect defects in the aileron/flap common support bracket (cracks, loose rivets, or separation of the bracket from the skin), which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 50 hours TIS until the reinforcement required by paragraph (b) of this AD is accomplished, inspect the aileron/flap common support brackets for cracks, loose rivets, or separation of the bracket from the skin. Accomplish this inspection in accordance with Avions Pierre Robin Service Bulletin No. 90, dated May 3, 1982.

(b) At whichever of the compliance times in paragraphs (b)(1) and (b)(2) of this AD that occurs first, reinforce the left-hand and right-hand aileron/flap common support bracket in accordance with the instructions in Avions Pierre Robin Repair Kit No. 97.40.16 , as specified in Avions Pierre Robin Service Bulletin No. 90, dated May 3, 1982.

(1) Prior to further flight if any crack(s), loose rivet(s), and/or separation of the bracket from the skin are/is found during any inspection required by paragraph (a) of this AD; or

(2) Within the next 12 calendar months after the effective date of this AD.

(c) Reinforcing the aileron/flap common support bracket as specified in paragraph (b) of this AD is considered terminating action for the repetitive inspection requirement of this AD.

(d) As of the effective date of this AD, no person may install, on any affected airplane, an aileron/flap common support bracket that has not been reinforced as specified in paragraph (b) of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to the service information referenced in this AD should be directed to Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in issued French AD 82–70–(A), dated May 19, 1982.

Issued in Kansas City, Missouri, on February 2, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–2902 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 98N–1134]

Gastroenterology and Urology Devices; Reclassification of the Extracorporeal Shock Wave Lithotripter

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing for public comment its proposal to reclassify from class III to class II the extracorporeal shock wave lithotripter, when intended for use to fragment kidney and ureteral calculi, and the recommendation of the Gastroenterology and Urology Devices Advisory Panel (the Panel) regarding this reclassification. The Panel made this recommendation after reviewing the relevant publicly available information and the proposed reclassification. FDA is also issuing for public comment its tentative findings on the Panel's recommendation. After considering any public comments on the Panel's recommendation and FDA's tentative findings, FDA will reclassify the device or retain it in class III. FDA's decision on the proposed reclassification will be announced in the **Federal Register**.

DATES: Written comments by May 10, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et. seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (the FDAMA) (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act (21 U.S.C. 360c(f))) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act (21 U.S.C. 360c(i)), to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C.360e(b)) requiring premarket approval.

Reclassification of classified postamendments devices is governed by section 513(f)(2) of the act (21 U.S.C. 360c(f)(2)). This section provides that FDA may initiate the reclassification of a device classified into class III under section 513(f)(1) of the act, or the manufacturer or importer of a device may petition the Secretary of Health and Human Services (the Secretary) for the issuance of an order classifying the device in class I or class II. FDA's regulations in 21 CFR 860.134 set forth the procedures for the filing and review of a petition for reclassification of such class III devices. In order to change the classification of the device, it is necessary that the proposed new class have sufficient regulatory controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use.

Section 216 of FDAMA replaced the "four of a kind" rule in the old section 520(h)(4) of the act (21 U.S.C. 360j(h)(4)) with a provision that frees agency use of data in PMA's approved 6 or more years before FDA undertakes certain regulatory actions, including device reclassifications. Under section 520(h)(4) of the act, as amended by FDAMA, the agency has supplemented other sources of information that support reclassification of the extracorporeal shock wave lithotripter with data contained in PMA's approved 6 or more years before the date of this proposal. In this instance, FDA has only used data that would have been available to the agency under the superseded four of a kind rule.

Under section 513(f)(2)(B)(i) of the act (21 U.S.C. 360c(f)(2)(B)(i)), the Secretary, for good cause shown, may refer a proposed reclassification to a

device classification panel. The Panel shall make a recommendation to the Secretary respecting approval or denial of the proposed reclassification. Any such recommendation shall contain: (1) A summary of the reasons for the recommendation, (2) a summary of the data upon which the recommendation is based, and (3) an identification of the risks to health (if any) presented by the device with respect to which the proposed reclassification was initiated.

II. Regulatory History of the Device

The extracorporeal shock wave lithotripter intended for the fragmentation of kidney and ureteral calculi is a postamendments device classified into class III under section 513(f)(1) of the act. Therefore, this generic type of device cannot be placed in commercial distribution unless it is reclassified under section 513(f)(2), or is the subject of a PMA or notice of completion of a product development protocol (PDP) under section 515 of the act (21 U.S.C. 360e).

In accordance with section 513(f)(2) of the act, FDA, on its own initiative, is proposing to reclassify this device from class III to class II when intended to fragment kidney and ureteral calculi. FDA referred the proposed reclassification to the Panel for its recommendation on the requested change in classification. This panel meeting was held on July 30, 1998, and is summarized further in Section VI.

III. Device Description

An extracorporeal shock wave lithotripter is a device that focuses ultrasonic shock waves into the body to noninvasively fragment urinary calculi within the kidney and ureter. The primary components of the device are a shock wave generator, high voltage generator, control console, imaging/localization system, and patient table. Prior to treatment, the urinary stone is targeted using either an integral or stand-alone localization/imaging system. Shock waves are typically generated using electrostatic spark discharge (spark gap), electromagnetically repelled membranes, or piezoelectric crystal arrays, and focused onto the stone with either a specially designed reflector, dish, or acoustic lens. The shock waves are created under water within the shock wave generator, and are transferred to the patient's body through a water-filled rubber cushion or by direct contact of the patient's skin with the water. After the stone has been fragmented by the focused shock waves, the fragments pass out of the body with the patient's urine.

IV. Recommendations of the Panel

At a public meeting on July 30, 1998, the Panel unanimously recommended that the extracorporeal shock wave lithotripter indicated for the fragmentation of kidney and ureteral calculi be reclassified from class III to class II. The Panel believed that the special controls of consensus standards, clinical performance testing, labeling restrictions, and physician training restrictions would provide reasonable assurance of the safety and effectiveness of the device.

V. Risks to Health

After considering the information discussed by the Panel during the reclassification proceedings, the published literature, data in PMA applications available to FDA under section 520(h)(4) of the act, as amended by FDAMA, and the Medical Device Reports, FDA believes the following risks are associated with the use of the extracorporeal shock wave lithotripter in the fragmentation of kidney and ureteral calculi.

A. Bleeding

Interaction between the shock waves and internal tissues can result in bleeding within the urinary tract. Lithotripsy-induced bleeding typically presents as either hematuria (blood in the urine) or renal hematoma. Hematuria occurs following most treatments (Refs. 4, 69, and 85), is believed to be secondary to trauma to the renal parenchyma (Ref. 7), and usually resolves spontaneously within 24 to 48 hours of treatment (Refs. 8 and 69). Small, asymptomatic renal hematomas occur with 20 to 25 percent of treatments, which resolve without intervention (Ref. 52). In less than 1 percent of treatments, however, clinically significant intrarenal, subcapsular, or perirenal hematomas occur (Refs. 20 and 50). These patients typically present with severe, chronic flank pain (Refs. 4, 50, 52, and 84), and anuria secondary to renal compression has also been reported (Refs. 62 and 95). Although clinically significant hematomas often resolve with conservative management (Refs. 50, 52, and 84), severe hemorrhage (Refs. 4, 85, and 92) or death (Refs. 66 and 92) has been reported. Management of severe renal hemorrhage includes the administration of blood transfusions (Refs. 50, 52, 81, 85, and 92), percutaneous drainage (Ref. 72), or surgical intervention, which may include nephrectomy (Refs. 4, 50, and 62).

Lithotripsy-induced bleeding is believed to be caused by vessel damage secondary to the collapse of cavitation bubbles at the shock wave focus (Refs. 17 and 65). The risk of serious bleeding is minimized by the use of conservative treatment parameters (Ref. 17) and careful evaluation of the patient post-treatment (Ref. 50).

Patient characteristics associated with increased risk for the development of life threatening hemorrhage include the presence of coagulopathy or the use of anticoagulant therapy (including aspirin) (Refs. 45, 73, 85, and 91), presence of an arterial calcification or vascular aneurysm (Refs. 9, 19, and 91), and poorly-controlled hypertension (Refs. 49 and 50). For some of these high risk patients, however, lithotripsy can still be delivered safely as long as certain precautions are taken. Specifically, patients on anticoagulant therapy can undergo lithotripsy provided that their anticoagulation is temporarily reversed (Refs. 73 and 91). Furthermore, patients with an arterial calcification or vascular aneurysm have been treated without complication provided that the calcification or aneurysm is sufficiently outside of the shock wave path, treatment is limited to a minimum number of low-power shock waves, and the patient is carefully monitored (Refs. 9 and 19).

B. Renal Injury

The focused shock waves delivered by all extracorporeal shock wave lithotripters cause some degree of acute trauma to the treated kidney with associated functional impairment (Refs. 1, 7, 41, and 101). As with bleeding, renal injury is probably secondary to the effects of cavitation at the shock wave focus (Refs. 16, 17, and 82).

It is believed that renal trauma, with associated nephron loss and/or tubule damage, occurs during nearly all lithotripsy treatments (Refs. 1 and 82), is dependent upon the applied shock wave dose (Refs. 74, 82, and 86), and is typically limited to the size of the shock wave focal volume (Ref. 83). While a small region of renal scarring persists at the treated site (Refs. 74 and 86), any associated changes in renal function resolve within 30 days (Refs. 3, 6, 32, and 86). Although infrequently reported and of questionable clinical significance, permanent morphological changes to the kidney have been observed following lithotripsy (Refs. 6 and 74). The risk of renal injury is minimized by delivering fewer, less powerful shock waves (Refs. 70 and 74), and using a lower shock wave repetition rate (Refs. 17 and 86).

Patients with solitary kidneys or pre-existing impairment of renal function may be at increased risk for long-term changes (Refs. 74 and 100). Additionally, although many short-term studies have been published regarding the safe use of extracorporeal shock wave lithotripsy in children (Refs. 53, 55, 69, and 70), questions still exist regarding the long-term effects of shock waves upon the function and growth of the immature kidney (Refs. 15, 27, 70, and 74).

C. Hypertension

Early investigators reported new onset of hypertension in as many as 8 percent of patients between 1 and 2 years following extracorporeal shock wave lithotripsy to the kidney (Refs. 58 and 99). The physiological basis of this finding was theorized to be caused by the Page effect, secondary to the renal fibrosis that occurs following resolution of lithotripsy-induced intraparenchymal hemorrhage (Refs. 52 and 99). Despite the hypertension incidence rates reported by these early studies, however, subsequent research indicates that hypertension is not a risk of lithotripsy. Lingeman et al. noted no difference at 2 years in the rates of new onset of hypertension between patients who received lithotripsy and those who received alternative stone removal therapies, although a small but statistically significant increase in diastolic blood pressure was seen in the lithotripsy group (Ref. 61). In a subsequent report describing 3- and 4-year followup on the same patients, similar outcomes were observed (Ref. 60). In a similar investigation, Vaughan et al. observed no difference in either new onset of hypertension or blood pressure between lithotripsy and nonlithotripsy treated patients 2 years post-treatment (Ref. 98). The results of these controlled studies demonstrate that the development of hypertension is not an actual risk of lithotripsy among normal, healthy patients. However, due to the unknown effects of lithotripsy-induced damage to the growing kidney, concern has been raised that pediatric patients may be at increased risk of developing chronic hypertension (Ref. 74).

D. Cardiac Arrhythmia

Cardiac arrhythmias, most commonly premature ventricular contractions, are generally reported during extracorporeal shock wave lithotripsy at fixed shock wave delivery in 2 to 20 percent of patients (Refs. 14 and 30). While the specific cause of lithotripsy-induced arrhythmias is not fully understood, researchers have postulated several causes, including irritation or mechanical stimulation of the myocardium by the shock wave, autonomic nerve stimulation, or the effects of the intravenous sedatives (Refs. 14 and 43). Arrhythmias resolve spontaneously upon synchronizing the shock waves with the refractory period of the ventricular cycle (i.e., electrocadiograph (ECG) gating) or terminating treatment (Refs. 14, 30, and 102). Although these cardiac disturbances rarely pose a serious risk to the healthy patient, there is the potential for life threatening events to occur in those with a pre-existing history of cardiac disease (Ref. 43). Furthermore, patients with either cardiac pacemakers or implantable defibrillators may be at additional risk due to the possibility of the lithotripter interfering with the function of the pulse generator (Refs. 2, 91, and 97).

The risk of serious cardiac events during lithotripsy can be minimized by monitoring the cardiac activity of all patients during treatment to detect any arrhythmias, and either terminating treatment or switching to an ECG-gated mode of shock wave delivery should an arrhythmia occur (Refs. 59 and 102). Additionally, the risks of lithotripter interference with cardiac pacemakers and implantable defibrillators can be minimized by temporarily reprogramming the pulse generator prior to treatment, verifying the correct function of the pulse generator during and after shock wave delivery, and maintaining sufficient distance between the shock wave path and the pulse generator (Refs. 2, 5, 91, and 97).

E. Urinary Obstruction

Urinary obstruction occurs in up to 6 percent of patients following lithotripsy due to stone fragments becoming lodged in the ureter, and may be the result of either a single stone fragment or the accumulation of multiple small stone particles (i.e., Steinstrasse) (Refs. 24, 48, and 84). Patients with urinary obstruction typically present with persistent pain, and may be at risk of developing hydronephrosis with subsequent renal failure if the obstruction is not promptly treated (Ref. 29). Often, the obstructing fragments pass spontaneously and intervention is not necessary (Refs. 48 and 84). Intervention is indicated in the presence of severe pain, fever, sepsis, or failure of the obstruction to spontaneously resolve, and usually includes ureteroscopic manipulation or retrieval, electrohydraulic or laser lithotripsy, percutaneous nephrostomy drainage, open surgery, or repeat extracorporeal shock wave lithotripsy (Refs. 22, 48, 84, and 93).

F. Infection

Urinary tract infection (UTI) occurs in 1 to 7 percent of patients following extracorporeal shock wave lithotripsy as a result of the release of bacteria from the fragmentation of infected calculi (Refs. 18, 77, 80, and 84). Rarely, pyelonephritis secondary to lithotripsy has been reported (Refs. 77 and 84). Additionally, lithotripsy shock waves can cause local tissue trauma sufficient to permit bacteria to enter the bloodstream from the urinary tract, resulting in sepsis (Refs. 29 and 84). Although the incidence of sepsis following lithotripsy is not common, typically occurring in less than 1 percent of cases (Ref. 31), this complication has the potential for serious consequences (Ref. 84). Patients at greatest risk of developing severe infectious complications include those with pre-existing UTI and infected stones, as well as those who experience urinary obstruction due to the passage of stone fragments (Refs. 29, 38, and 84). Additionally, patients with cardiac disease, including valvular disease and implanted heart valves, and immunocompromised patients are at increased risk for developing bacterial endocarditis following lithotripsy (Ref. 68).

The risk of infectious complications secondary to extracorporeal shock wave lithotripsy can be effectively minimized through the use of prophylactic antibiotics in patients with pre-existing UTI, infected stones, cardiac disease, and compromised immune systems (Refs. 18, 38, 68, and 84).

G. Injury to Adjacent Organs

Because multiple shock waves pass through the patient's body during treatment, extracorporeal shock wave lithotripsy has the potential to cause injury to nontarget organs. Examples of injury to adjacent organs include splenic rupture requiring splenectomy (Refs. 63 and 78), liver hematoma (Ref. 84), and pancreatitis (Ref. 84). In addition, the interaction of shock waves with air-filled organs, such as the lung or bowel, results in hemorrhage secondary to tissue damage (Refs. 36, 65, and 84). Serious injury to adjacent organs is rare, and is minimized through proper patient selection, careful targeting of the shock wave focus, and the use of conservative treatment parameters and retreatment intervals (Refs. 36, 76, and 84).

In addition to the documented risks to adjacent organs described previously, extracorporeal shock wave lithotripsy

potentially represents significant hazards to other nontarget tissues. First, the administration of shock waves to pregnant animals at specific gestational stages has been shown to cause growth disturbances, serious injury, or death to the fetus (Refs. 33 and 71). As a result of these findings, pregnancy is regarded as an absolute contraindication of lithotripsy (Refs. 12, 74, 76, and 91). The medical community has raised the concern that lithotripsy for stones in the lower ureter in women of childbearing potential may cause irreversible damage to the ovary (Ref. 12). Although several investigators have failed to detect ovarian damage in women receiving extracorporeal shock wave lithotripsy to the lower ureter (Refs. 25 and 91), this potential risk has not been fully assessed (Ref. 12). Lastly, Yeaman et al. observed growth plate disturbances in the epiphyses of developing long bones in rats subjected to shock waves, indicating that extracorporeal shock wave lithotripsy may cause growth disturbances in children (Ref. 103). Although these same growth disturbances were not duplicated in a subsequent animal study (Ref. 96), the long-term effects of lithotripsy shock waves upon nontarget pediatric tissues remain unknown.

H. Other Complications

Other reported complications of extracorporeal shock wave lithotripsy include pain/renal colic, skin irritation/bruising, nausea/vomiting, fever, vasovagal syncope, autonomic dysreflexia, embedded stone fragments, and increased stone recurrence rate.

Pain/renal colic and skin irritation/bruising commonly occur during and immediately after treatment (Refs. 22, 24, 47, and 84), are less severe with lithotripters that have less powerful shock waves and larger shock wave generator apertures (Refs. 22, 47, and 79), and typically resolve spontaneously (Ref. 22). Temporary pain/renal colic may also occur secondary to the passage of stone fragments, which is often managed with medication. Chronic pain may be indicative of ureteral obstruction or renal hematoma (Refs. 4, 84, and 92).

Transient nausea and vomiting are occasionally reported immediately after lithotripsy (Refs. 22, 24, and 37), and may be associated with either pain or the administration of sedatives or analgesia.

Fever has been reported after lithotripsy (Refs. 24, 31, 47, and 77), and may be secondary to infection (Ref. 23).

Vasovagal syncope (heart rate suppression concurrent with hypotension) has been reported during lithotripsy, although its incidence is rare (Ref. 44). Researchers attribute this serious condition to either patient anxiety or shock wave stimulation of renal peripheral autonomic nerve fibers, and conclude that the risks of this condition can be minimized by closely monitoring cardiac activity during treatment.

Kabalin et al. demonstrated that while autonomic dysreflexia may occur in spinal cord injured patients during lithotripsy, this condition is effectively treated by terminating shock wave delivery and administering medical therapy (Ref. 42).

Although infrequently noted, stone fragments have the potential to become embedded in the ureteral wall during lithotripsy (Ref. 28). Obstructing submucosal calculi may necessitate endoscopic removal.

Some investigators have observed higher stone recurrence rates following extracorporeal shock wave lithotripsy as compared to alternative stone removal therapies, indicating that retained stone particles may act as a nidus for new stone formation (Ref. 10). However, the magnitude and significance of this finding are unclear and continue to undergo investigation.

VI. Summary of Reasons for Recommendation

After reviewing the data provided by FDA, and after consideration of the open discussions during the Panel meeting and the Panel members' personal knowledge of and clinical experience with the device, the Panel gave the following reasons in support of its recommendation to reclassify the generic type extracorporeal shock wave lithotripter for use in fragmenting kidney and ureteral calculi from class III into class II: (1) The safety and effectiveness of the extracorporeal shock wave lithotripter in the fragmentation of kidney and ureteral calculi has become well-established since approval of the first device in 1984; (2) extracorporeal shock wave lithotripsy is effective in treating most kidney and ureteral calculi, with a typical stone-free rate of 75 percent; and (3) the rates of serious complications from extracorporeal shock wave lithotripsy are low, and can be effectively minimized by: (a) Consensus standards regarding shock wave characterization measurements and general mechanical and electrical safety, (b) clinical performance testing, (c) labeling restrictions, and (d) physician training restrictions (Ref. 94). Based on information presented by FDA, along with the Panel members' personal knowledge and clinical experience, the Panel identified the following risks to health regarding the use of extracorporeal shock wave lithotripsy for the fragmentation of kidney and ureteral calculi: Bleeding and hematoma, renal injury and scarring, cardiac arrhythmia, urinary obstruction, urinary tract infection, and injury to adjacent organs. In addition, the Panel stated that the safety of lithotripsy among certain subgroups is unknown, such as pregnant women, children, and women of childbearing potential with lower ureteral stones. Although hypertension has historically been listed as a potential risk of extracorporeal shock wave lithotripsy, the Panel stated that sufficient evidence now exists to conclude that this condition should not be listed as an actual risk to health.

The Panel believes that the extracorporeal shock wave lithotripter should be reclassified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Panel Recommendation Is Based

Based on the information discussed by the Panel during the reclassification proceedings, the published literature, and data in premarket approval (PMA) applications available to FDA under section 520(h)(4) of the act, as amended by FDAMA, FDA believes that there is reasonable knowledge of the benefits of the device when used for the fragmentation of kidney and ureteral calculi. Extracorporeal shock wave lithotripsy successfully fragments most urinary calculi. Effectiveness, expressed as the percentage of patients rendered stone-free within 3 months, ranges between 55 to 98 percentage with a typical retreatment rate of 1 to 25 percentage (Refs. 11, 20, 22 to 24, 47, 51, 75, 84, 87, 89, and 93). Successful treatment outcome has been achieved despite the use of different shock wave generator designs (i.e., electrostatic spark discharge, electromagnetically repelled membranes, piezoelectric crystal arrays) and wide range of shock wave characteristics. Similarly, extracorporeal shock wave lithotripter effectiveness is comparable among the different anatomical sites of the upper urinary tract. Specifically, similar stone-free rates are reported for stones in the kidney and the upper, middle, and lower ureter, making extracorporeal shock wave lithotripsy the first-line therapy for most upper urinary calculi (Refs. 11, 13, 21, 46, 66, and 90).

Despite being capable of effectively fragmenting most urinary stones, there

are several limitations to the success of extracorporeal shock wave lithotripsy. Many studies have observed poor effectiveness with both staghorn and large (i.e., greater than 2 centimeters in largest dimension) stones, leading to the recommendation that alternative stone removal therapies should be considered for these cases (Refs. 57, 64, 75, 84, and 88). Furthermore, some stone compositions, particularly cystine calculi, are more resistant to fragmentation than others, and, therefore, may require more shocks than other stone types (Refs. 34 and 91). Because the effectiveness of lithotripsy is predicated on the resulting stone fragments passing from the urinary tract, patients with an obstruction distal to the stone cannot be successfully treated until resolution of the obstruction (Refs. 8, 29, and 57). Stones that are embedded or impacted within the tissue of the kidney or ureter are also not effectively treated with lithotripsy, due to the inability of the stone fragments to pass out of the body (Refs. 29 and 46). Lastly, lithotripsy is not effective in patients with anatomical conditions that prevent targeting of the shock wave focus at the stone, such as severe obesity (Refs. 29 and 91) or orthopedic deformity (Ref. 53).

Although extracorporeal shock wave lithotripsy is effective for the treatment of most ureteral calculi, in some specific instances it is not effective as a first-line therapy. Many authors report poor localization of ureteral stones using ultrasound imaging, making lithotripsy difficult or impossible if the lithotripter does not incorporate or use an x-ray imaging system (Refs. 35, 47, and 90). Additionally, small stones in the middle or lower ureter (i.e., 4 to 6 mm in largest dimension) have a high probability of passing spontaneously (Ref. 67), making the use of lithotripsy unnecessary unless immediate intervention is required.

Since its introduction in the United States in 1984, extracorporeal shock wave lithotripsy has become the preferred treatment for kidney and ureteral calculi (Refs. 56 and 91). Not only is lithotripsy extremely effective, but the overall rate of serious risks from extracorporeal shock wave lithotripsy, primarily clinically significant renal hematoma, severe hemorrhage, chronic renal injury, and sepsis, is low and can be effectively minimized. Treatment is noninvasive, often delivered in an outpatient setting, and can be performed without general or regional anesthesia with many systems (Refs. 37, 56, and 104). Compared to alternative therapies for the removal of urinary calculi, extracorporeal shock wave lithotripsy is either associated with less morbidity (e.g., open surgery, percutaneous nephrolithotomy, ureteroscopy) (Refs. 8, 54, 57, and 84) or increased success (e.g., watchful waiting) (Ref. 67).

Based on the available information, FDA believes that the special controls discussed in section VIII of this document are capable of providing reasonable assurance of the safety and effectiveness of the extracorporeal shock wave lithotripter with regard to the identified risks to health of this device.

VIII. Special Controls

In addition to general controls, FDA believes that the extracorporeal shock wave lithotripter should be subject to the special controls of labeling restrictions and a FDA guidance document to minimize the risks to health identified for this device.

A. Labeling Restrictions

Labeling restrictions can control the risks of bleeding, renal injury, cardiac arrhythmia, urinary obstruction, infection, injury to adjacent organs, and other reported complications by providing information on patient selection, treatment practices, post-treatment followup, and potential adverse events. Specifically, FDA is proposing that extracorporeal shock wave lithotripters be subject to the labeling statements listed in the appendix as a special control, in addition to other required labeling information.

Under 21 CFR 801.109(b)(ii) and section 520(e) of the act, FDA also proposes as described in the guidance document entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi" to require the following statement: "CAUTION: Federal law restricts this device to sale by or on the order of a physician trained and/or experienced in the use of this device as outlined in an appropriate training program."

B. FDA Guidance Document

Adherence to the FDA guidance document entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi" (Ref. 26) can control the risks of bleeding, renal injury, cardiac arrhythmia, urinary obstruction, infection, injury to adjacent organs, and other reported complications by recommending: (1) Conformance to consensus standards, (2) shock wave characterization measurements, (3) assessment of localization accuracy, (4) clinical performance testing, and (5) physician training restrictions for premarket notifications for extracorporeal shock wave lithotripters. These sections of the guidance document correspond to the controls recommended by the Panel.

1. Conformance to consensus standards

The FDA guidance document recommends conformance to the following consensus standards: (1) International Electrotechnical Commission (IEC) 60601–2–36 Medical electrical equipment—Part 2: Particular requirements for the safety of equipment for extracorporeally induced lithotripsy; (Ref. 39) and (2) IEC 61846 Ultrasonics—Pressure pulse lithotripters—Characteristics of fields (Ref. 40).

Conformance with IEC 60601–2–36 can control the risks of bleeding, renal injury, and injury to adjacent organs by requiring that the device accurately localize stones at the shock wave focus and be designed to guard against unintentional shock wave delivery.

Conformance with IEC 61846 can control the risks of bleeding, renal injury, and injury to adjacent organs by providing a standard method for characterizing the lithotripter's acoustic output for the purpose of determining whether its shock wave characteristics are within the range provided by existing systems.

2. Shock wave characterization measurements

Shock wave characterization measurements can control the risks of bleeding, renal injury, and injury to adjacent organs by having each manufacturer assess whether the shock wave characteristics of its lithotripter are within the range provided by existing systems.

3. Assessment of localization accuracy

Assessment of localization accuracy can control the risks of bleeding, renal injury, and injury to adjacent organs by having each manufacturer verify that its device accurately positions stones at the shock wave focus.

4. Clinical performance testing

Clinical performance testing can control the risks of bleeding, renal injury, cardiac arrhythmia, and injury to adjacent organs by verifying that the device accurately locates the target stone, delivers shock waves in accordance with the parameters set by the operator, and does not present an unreasonable risk of injury to the patient. As recommended by the Panel, this testing can take the form of either a small, confirmatory clinical study or a larger clinical investigation of safety and

effectiveness, depending upon the technological characteristics of the particular device (Ref. 94). For extracorporeal shock wave lithotripters that generate shock waves using a similar method to that of legally marketed systems and have comparable shock wave characteristics, a small, confirmatory clinical study should be performed. However, for systems that use a novel method of shock wave generation or have shock wave characteristics that are outside of the range of current devices, a larger clinical investigation is necessary to assess safety and effectiveness.

5. Physician training restrictions

Physician training restrictions can control the risks of bleeding, renal injury, cardiac arrhythmia, urinary obstruction, infection, injury to adjacent organs, and other reported complications by having each manufacturer develop a training program to instruct users of their device on both the operation of the particular lithotripsy system and the general practices for the safe and effective use of extracorporeal shock wave lithotripters (Ref. 76). Manufacturers should inform device users of this physician training restriction with the following labeling statement: "CAUTION: Federal law restricts this device to sale by or on the order of a physician trained and/or experienced in the use of this device as outlined in a training program."

IX. FDA's Tentative Findings

The Panel and FDA believe that the extracorporeal shock wave lithotripter should be classified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

X. References

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XI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts and equity). The agency believes that this reclassification action is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the reclassification action is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of the device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this reclassification action, if finalized, will

not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XIII. Request for Comments

Interested persons may, on or before May 10, 1999 submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 876 be amended as follows:

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. § 876.5990 is added to subpart F to read as follows:

§ 876.5990 Extracorporeal shock wave lithotripter.

(a) *Identification.* An extracorporeal shock wave lithotripter is a device that focuses ultrasonic shock waves into the body to noninvasively fragment urinary calculi within the kidney and ureter. The primary components of the device are a shock wave generator, high voltage generator, control console, imaging/localization system, and patient table. Prior to treatment, the urinary stone is targeted using either an integral or stand-alone localization/imaging system. Shock waves are typically generated using electrostatic spark discharge (spark gap), electromagnetically repelled membranes, or piezoelectric crystal arrays, and focused onto the stone with either a specially designed reflector, dish, or acoustic lens. The shock waves are created under water within the shock wave generator, and are transferred to the patient's body through a water-filled rubber cushion or by direct contact of the patient's skin with the water. After the stone has been fragmented by the focused shock waves, the fragments pass out of the body with the patient's urine.

(b) *Classification.* Class II (special controls).

(1) Labeling that contains the statements listed in the appendix in addition to other required labeling information.

(2) FDA guidance document entitled "Guidance for the Content of Premarket Notifications (510(k)'s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi."

APPENDIX TO § 876.5990: Labeling Restrictions

a. Contraindications:

Do not use the device in patients with:

Anatomy which precludes focusing the device at the target stone, such as severe obesity or excessive spinal curvature.

Arterial calcification or vascular aneurysm in the lithotripter's shock wave path.

Coagulation abnormalities (as indicated by abnormal prothrombin time, partial thromboplastin time, or bleeding time) or those currently receiving anticoagulants (including aspirin).

Confirmed or suspected pregnancy.

Urinary tract obstruction distal to the stone.

b. Warnings:

Air-filled interfaces in shock wave path: Do not apply shock waves to air-filled areas of the body, i.e., intestines or lungs. Shock waves are rapidly dispersed by passage through an air-filled interface, which can cause bleeding and other harmful side effects.

Anticoagulants: Patients receiving anticoagulants (including aspirin) should temporarily discontinue such medication prior to extracorporeal shock wave lithotripsy to prevent severe hemorrhage.

Bilateral stones: Do not perform bilateral treatment of kidney stones in a single treatment session, because either bilateral renal injury or total urinary tract obstruction by stone fragments may result. Patients with bilateral kidney stones should be treated using a separate treatment session for each side. In the event of total urinary obstruction, corrective procedures may be needed to ensure drainage of urine.

Cardiac arrhythmia during treatment: If a patient experiences cardiac arrhythmia during treatment at a fixed shock wave repetition rate, shock wave delivery should either be terminated or switched to an ECG-gated mode (i.e., delivery of the shock wave during the refractory period of the patient's cardiac cycle). As a general practice, patients with a history of cardiac arrhythmia should be treated in the ECG-gated mode. (If the system is capable of delivering shock waves at a fixed frequency.)

Cardiac disease, immunosuppression, and diabetes mellitus: Prophylactic antibiotics should be administered prior to extracorporeal shock wave lithotripsy treatment to patients with cardiac disease (including valvular disease), immunosuppression, and diabetes mellitus, to prevent bacterial and/or subacute endocarditis.

Cardiac monitoring: Always perform cardiac monitoring during lithotripsy treatment, because the use of extracorporeal shock wave lithotripsy has been reported to cause ventricular cardiac arrhythmias in some individuals. This warning is especially important for patients who may be at risk of cardiac arrhythmia due to a history of cardiac irregularities or heart failure.

Infected stones: Prophylactic antibiotics should be administered prior to treatment whenever the possibility of stone infection exists. Extracorporeal shock wave lithotripsy treatment of pathogen-harboring calculi could result in systemic infection.

Pacemaker or implantable defibrillator: To reduce the incidence of malfunction to a pacemaker or implantable defibrillator, the pulse generator should be programmed to a single chamber, non-rate responsive mode (pacemakers) or an inactive mode (implantable defibrillators) prior to lithotripsy, and evaluated for proper function post-treatment. Do not focus the lithotripter's shock wave through or near the pulse generator.

c. Precautions:

Impacted or embedded stones: The effectiveness of extracorporeal shock wave lithotripsy may be limited in patients with impacted or embedded stones. Alternative procedures are recommended for these patients.

Radiographic followup: All patients should be followed radiographically after treatment until stone-free or there are no remaining stone fragments which are likely to cause silent obstruction and loss of renal function.

Renal injury: To reduce the risk of injury to the kidney and surrounding tissues, it is recommended that: (1) The number of shock waves administered during each treatment session be minimized; (2) retreatment to the same

kidney/anatomical site occur no sooner than 1 month after the initial treatment; and (3) each kidney/anatomical site be limited to a total of three treatment sessions.

Small ureteral stones: Small middle and lower ureteral stones, 4 to 6 mm in largest dimension, are likely to pass spontaneously. Therefore, the risks and benefits of extracorporeal shock wave lithotripsy should be carefully assessed in this patient population.

Staghorn stones: The effectiveness of extracorporeal shock wave lithotripsy may be limited in patients with either staghorn or large (≤ 20 mm in largest dimension) stones. Alternative procedures are recommended for these patients.

d. Patient Selection and Treatment:

Children: The safety and effectiveness of this device in the treatment of urolithiasis in children have not been demonstrated. Although children have been treated with shock wave therapy for upper urinary tract stones, experience with lithotripsy in such cases is limited. Studies indicate that there are growth plate disturbances in the epiphyses of developing long bones in rats subjected to shock waves. The significance of this finding to human experience is unknown.

Women of childbearing potential: The treatment of lower ureteral stones should be avoided in women of childbearing potential. The application of shock wave lithotripsy to this patient population could possibly result in irreversible damage to the female reproductive system and to the unborn fetus in the undiagnosed pregnancy.

e. Adverse Events:

Potential adverse events associated with the use of extracorporeal shock wave lithotripsy include those listed below, categorized by frequency and individually described:

1. *Potential Adverse Events of Extracorporeal Shock Wave Lithotripsy Categorized by Frequency*:

a. Commonly reported (> 20 percentage of patients): Hematuria, pain/renal colic, skin redness at shock wave entry site.

b. Occasionally reported (1 to 20 percentage of patients): Cardiac arrhythmia, urinary tract infection, urinary obstruction/steinstrasse, skin bruising at shock wave entry site, fever (> 38EC), nausea/vomiting.

c. Infrequently reported (< 1 percentage of patients): Hematoma (perirenal/intrarenal), renal injury.

2. *Description of Adverse Events of Extracorporeal Shock Wave Lithotripsy*:

Cardiac arrhythmia: Cardiac arrhythmias, most commonly premature ventricular contractions, are generally reported during extracorporeal shock wave lithotripsy at fixed shock wave delivery in 2 to 20 percentage of patients. These cardiac disturbances rarely pose a serious risk to the healthy patient, and typically resolve spontaneously upon synchronizing the shock waves with the refractory period of the ventricular cycle (i.e., ECG gating) or terminating treatment.

Fever (> 38 C): Fever is occasionally reported after lithotripsy, and may be secondary to infection.

Hematoma (perirenal/intrarenal): Clinically significant intrarenal or perirenal hematomas occur in < 1 percentage of lithotripsy treatments. Typically patients who experience this complication present with severe flank pain. Although clinically significant hematomas often resolve with conservative management, severe hemorrhage and death have been reported. Management of severe renal hemorrhage includes the administration of blood transfusions, percutaneous drainage, or surgical intervention.

Hematuria: Hematuria occurs following most treatments, is believed to be secondary to trauma to the renal parenchyma, and usually resolves spontaneously within 24 to 48 hours of treatment.

Nausea/vomiting: Transient nausea and vomiting are occasionally reported immediately after lithotripsy, and may be associated with either pain or the administration of sedatives or analgesia.

Pain/renal colic: Pain/renal colic commonly occurs during and immediately after treatment, and typically resolves spontaneously. Temporary pain/renal colic may also occur secondary to the passage of stone fragments, and can be managed with medication.

Renal injury: Extracorporeal shock wave lithotripsy procedures have been known to cause damage to the treated kidney. The potential for injury, its long-term significance, and its duration are unknown.

Skin bruising at shock wave entry site: Skin bruising at the shock wave entry site occasionally occurs after treatment, and it typically resolves spontaneously.

Skin redness at shock wave entry site: Skin redness at the shock wave entry site commonly occurs during and immediately after treatment, and typically resolves spontaneously.

Urinary obstruction/steinstrasse: Urinary obstruction occurs in up to 6 percent of patients following lithotripsy due to stone fragments becoming lodged in the ureter, and may be the result of either a single stone fragment or the accumulation of multiple small stone particles (i.e., steinstrasse). Patients with urinary obstruction typically present with persistent pain, and may be at risk of developing hydronephrosis with subsequent renal failure if the obstruction is not promptly treated. Intervention is necessary if the obstructing fragments do not pass spontaneously.

Urinary tract infection: Urinary tract infection (UTI) occurs in 1 to 7 percent of patients following extracorporeal shock wave lithotripsy as a result of the release of bacteria from the fragmentation of infected calculi, and infrequently results in pyelonephritis or sepsis. The risk of infectious complications secondary to extracorporeal shock wave lithotripsy can be minimized through the use of prophylactic antibiotics in patients with UTI and infection stones.

Dated: January 21, 1999.

Linda S. Kahn,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

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BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 180

Federal Railroad Administration

49 CFR Part 261

Federal Transit Administration

49 CFR Part 640

[FHWA Docket No. FHWA–98–47–15]

RIN 2125–AE49

Credit Assistance for Surface Transportation Projects

AGENCY: Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to implement a new program enacted under the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), to provide credit assistance to surface transportation projects. The TIFIA authorizes the DOT to provide secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Projects will be evaluated and selected by the Secretary of Transportation. Following selections,

individual credit agreements will be developed through negotiations between the project sponsors and the DOT. This document solicits comments on a proposed regulation to establish a new credit assistance program for surface transportation projects; and the process by which the DOT, through the FHWA, the FRA, and the FTA, will administer such credit assistance.

DATES: Comments must be submitted on or before March 10, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: *FHWA:* Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673. *FRA:* Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390. *FTA:* Mr. Paul Marx, Office of Policy Development, (202) 366–1734. Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL) **http://dms.dot.gov**. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at **http://www.access.gpo.gov/nara**.

Additional information on the TIFIA program and credit assistance for surface transportation projects generally is available at the TIFIA web site at http://tifia.fhwa.dot.gov. Among other information, the DOT will provide responses to commonly asked questions and information on program participation.

Background

The Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107, created two new Federal credit programs: The Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and the Railroad Rehabilitation and Improvement Financing Program (RRIF). RRIF will be addressed in a separate notice of proposed rulemaking. TIFIA, as amended by section 9007, Pub. L. 105–206, 112 Stat. 685, 849, and codified at 23 U.S.C. 181–189, establishes a new Federal credit program for surface transportation projects. Funding for this program is limited, meaning that projects obtaining assistance under TIFIA will be selected on a competitive basis. Final selections of projects will be made by the Secretary of Transportation.

Credit assistance programs such as TIFIA are designed to help financial markets develop the capability to supplement the role of the Federal Government in helping finance the costs of large projects of national significance. Developing, implementing, and evaluating financial assistance programs such as TIFIA is a crucial mission of the DOT. To help ensure financial and programmatic success, the DOT is establishing a multi-agency Credit Program Steering Committee and Working Group. The Steering Committee and Working Group are comprised of representatives from the Office of the Secretary, the Office of Intermodalism, the FHWA, the FRA, and the FTA, as well as other DOT agencies and offices. The Steering Committee and Working Group will coordinate and monitor all policy decisions and implementation actions associated with this Federal credit assistance program.

Outreach efforts have already been made to facilitate the implementation of TIFIA. At a July 13, 1998, meeting sponsored by the American Association of State Highway and Transportation Officials, DOT representatives met with over 100 State transportation officials to discuss implementation of provisions of TEA–21, including the Act's Federal credit assistance programs. On September 14, 1998, a public focus group meeting of about 70 Federal and State officials, project sponsors, and members of the financial community was held in New York City to discuss the provision of credit assistance under TEA–21 programs. Another public focus group meeting of about 60 governmental and private sector officials was held on December 8, 1998, near San Diego, California. On-going DOT activities include meeting with capital markets financial experts and disseminating program information to the public for their comments.

Program Information

Funding

The TIFIA authorizes annual funding levels for both total annual credit amounts (i.e., the total principal amounts that may be disbursed in the form of direct loans, loan guarantees, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of default losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund, other than the Mass Transit Account. As a practical example, for fiscal year 1999, TIFIA provides $80 million in budget authority to fund the subsidy costs associated with a total nominal amount of direct loans, loan guarantees, and lines of credit that is limited to $1.6 billion. Depending on the individual risk assessments made for each of the projects receiving assistance, the total amount of credit assistance provided in fiscal year 1999 may be less than the $1.6 billion limitation.

Total Federal credit assistance authorized under TIFIA is limited to $1.6 billion in fiscal year 1999; $1.8 billion in fiscal year 2000; $2.2 billion in fiscal year 2001; $2.4 billion in fiscal year 2002; and $2.6 billion in fiscal year 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support this assistance by funding the required subsidy amounts, TIFIA provides budget authority of $80 million in fiscal year 1999; $90 million in fiscal year 2000; $110 million in fiscal year 2001; $120 million in fiscal year 2002; and $130 million in fiscal year 2003. This budget authority is subject to annual obligation limitations that may be established in appropriations law. Of the amounts made available, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Unobligated budget authority remains available for obligation in subsequent years.

Credit Instruments

Three types of credit instruments are permitted under TIFIA: secured (direct) loans, loan guarantees, and lines of credit. General rules concerning the terms governing these credit instruments appear at 23 U.S.C. 183 and 184. More specific terms will be determined on a project-specific basis during negotiations between the DOT and successful applicants.

Eligibility

Sections 181 and 182 of title 23, U.S.C., describe the conditions that govern a project's eligibility for assistance under TIFIA. Projects shall have eligible costs of at least $100 million or an amount equal to 50 percent of Federal-aid highway funds apportioned to the State in which the project is located for the most recently completed fiscal year, whichever is lesser. Projects principally involving the installation of an intelligent transportation system (ITS) must cost at least $30 million. To be eligible for assistance, projects must be classified within the following categories:

1. Surface transportation projects as defined under title 23 or chapter 53 of title 49 of the United States Code;
2. International bridge or tunnel projects for which an international entity authorized under Federal or State law is responsible;
3. Intercity passenger bus or rail facilities and vehicles, including those owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; or
4. Publicly-owned intermodal surface freight transfer facilities, provided that the facilities:

(a) are located on or adjacent to National Highway System routes or connections to the National Highway System, and (b) are not seaports or airports.

Application Process

Public or private applicants for credit assistance will be required to submit applications to the DOT in order to be considered for approval. Each fiscal year for which credit assistance is available, the DOT will publish a **Federal Register** notice to solicit applications for credit assistance. This notice will also be posted on the TIFIA web site, at the address cited above. The notice will specify the relevant due dates for that year's application submissions and funding approvals, as well as the address to which applications should be sent. It will also advise potential applicants of the estimated amount of funding available to support TIFIA credit instruments in the current and future fiscal years. An application checklist is appended to this NPRM. Respondents are encouraged to comment on the content of this checklist, which will serve as the basis for a standard application form. Detailed application information will be contained in a handbook of program guidelines that is currently being developed by the DOT and will be posted on the TIFIA web site and made available to the public at the time a solicitation for applications is published.

Charges

The DOT will require a non-refundable initiation charge for each project applying for credit assistance under TIFIA. The DOT may also require an additional credit processing charge for projects selected to receive assistance. The proceeds of any such charges will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For fiscal year 1999, the DOT proposes an application initiation charge of $5,000 for each project applying for credit assistance under TIFIA. The DOT does not propose any credit processing charges for fiscal year 1999. For fiscal years 2000 and beyond, the DOT may adjust the amount of the application initiation charge, and will determine the appropriate amount of the credit processing charge based on early program implementation experience in fiscal year 1999. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

The Secretary cannot accept or compel from borrowers the subsidy costs of TIFIA credit instruments. However, the Secretary does have the authority to establish fees at a level sufficient to cover all or a portion of the subsidy costs to the Federal Government of providing credit assistance under TIFIA. Therefore, such fees could potentially reduce the subsidy cost of a TIFIA credit instrument to zero. That is to say, if in a given year there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive TIFIA assistance, the DOT may increase the application initiation charge or the credit processing charge on the approved applicant to reduce the subsidy cost of that project. Note that any such fees or charges may not be included among total project costs for the purpose of calculating the maximum 33 percent credit amount of TIFIA assistance.

Limitations on Assistance

The amount of credit assistance that may be provided to a project under TIFIA is limited to not more than 33 percent of eligible project costs. Costs incurred prior to a project sponsor's submission of an application for credit assistance may be considered in calculating eligible project costs only upon approval by the DOT. In addition, applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter, as discussed below) in the total project cost. No costs financed internally or with interim funding may be reimbursed later than a year following substantial completion of the project.

Within the overall credit assistance limitation of 33 percent of eligible project costs, the DOT may consider making multi-year contingent commitments of budget authority and associated credit assistance for especially large projects with extended construction periods and financing needs. In this instance, any reservation of future-year funding shall be made through a letter of intent and shall be contingent on the project's demonstrating satisfactory progress to the DOT. Depending on the overall demand for credit assistance under TIFIA, the DOT may limit such contingent commitments to 50 percent of the budget authority becoming available in applicable future years. If such a multi-year commitment is made, each year's loan will be tied to distinct, clearly identified project segments or stages.

Rating Requirement

The TIFIA allows the DOT to partially fund a credit instrument up to the estimated subsidy amount based on a preliminary rating opinion letter. However, the DOT proposes to provide credit assistance only after a formal credit agreement has been executed and the project's senior obligations have obtained a formal investment-grade rating.

In administering this provision, the DOT will require each applicant to furnish a preliminary rating opinion letter as part of the application process. The applicant is responsible for identifying and approaching one or more rating agencies to obtain such letter. This letter is to indicate that the applicant project's senior obligations have the potential of attaining an

investment-grade rating. This letter will allow the DOT to evaluate the application and potentially select the project and execute a term sheet upon which funds are obligated. The disbursement of any funds will be contingent upon the execution of a formal credit agreement between the DOT and the project sponsor and the receipt of a formal investment-grade rating on the project's senior obligations. This rating must apply to all project obligations with claims senior to that of the Federal credit instrument on the security pledged to the Federal credit instrument.

As suggested by the preceding paragraphs, the DOT's Federal credit instrument may have a junior claim to other debt issued for the project in terms of its priority interest in the project's pledged security. However, the DOT's claim on assets should not be subordinated to the claims of other creditors in the event of a default leading to bankruptcy, insolvency, or liquidation of the obligor. The DOT's interest may include collateral other than pledged revenues.

Threshold Criteria

To be eligible to receive Federal credit assistance under TIFIA, a project shall meet the following five threshold criteria:

(1) The project shall be included in a State transportation plan and, at such time as an agreement to make a Federal credit instrument is entered into under this Act, in an approved State Transportation Improvement Program.

(2) A State, local servicer, or other entity undertaking the project shall submit a project application to the Secretary of Transportation;

(3) A project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State in which the project is located (in the case of a project principally involving the installation of Intelligent Transportation Systems (ITS), eligible project costs shall be reasonably anticipated to equal or exceed $30 million);

(4) Project financing shall be repayable, in whole or in part, from tolls, user fees or other dedicated revenue sources; and

(5) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be included in the State transportation plan and an approved State Transportation Improvement Program.

With this rulemaking, the DOT elaborates on criterion 4 (repayment of project financing from user fees or other dedicated revenue sources). In applying this threshold criterion, the DOT will not consider current or future Federal funds, regardless of source, to be a dedicated revenue source. This interpretation is consistent with congressional intent that the Federal Government position itself as a minority-share investor in the context of this credit program.

Selection Criteria

The Secretary shall consider the following eight criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system;

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment;

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment;

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed;

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhances the efficiency of the project;

(6) The amount of budget authority required to fund the Federal credit instrument made available;

(7) The extent to which the project helps maintain or protect the environment; and

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project.

With this rulemaking, the DOT requests comments on whether criterion 3 (the extent to which assistance under TIFIA would foster innovative public-private partnerships and attract private debt or equity investment) and criterion 8 (the extent to which assistance under TIFIA would reduce the contribution of Federal grant assistance to the project) should be elaborated. The DOT also requests comments on whether preference should be given to projects based on the total Federal contribution (including both credit and grant assistance from any source) and/or type of transportation project.

Tax Status of Loan Guarantees

The TIFIA did not amend the provisions in section 149(b) of the Internal Revenue Code that prohibit the use of direct or indirect Federal guarantees of tax-exempt obligations. Accordingly, the interest income on any project loan that is directly or indirectly federally guaranteed under TIFIA, shall not be exempt from Federal income taxation.

Rulemaking Analysis and Notices

The 30-day comment period is necessary to help ensure that this new program can be implemented before the credit amount authorized for fiscal year 1999 ($1.6 billion) lapses. Given the need for the DOT to solicit and evaluate applications, make selections, negotiate agreements with project sponsors, and obligate funds before the end of fiscal year 1999, the usual 60-day comment period would be both impracticable and contrary to public interest and congressional intent.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The DOT will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The DOT may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the DOT will also continue to file, in the docket, relevant information becoming available after the comment closing date. Interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The DOT has determined that issuance of a rule is necessary to implement TIFIA, and has concluded that this action represents a "significant regulatory action" within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866. This determination is based on a finding that the rule may have an annual effect on the economy of $100 million or more. The NPRM was reviewed by the Office of Management and Budget under E.O. 12866.

This section summarizes the estimated economic impact of the

proposed rule. This regulation would affect only those entities that voluntarily elected to apply for TIFIA assistance and were selected to receive a Federal credit instrument. It would not impose any direct involuntary costs on non-participants.

The DOT has undertaken a preliminary evaluation of the economic impact of this proposed regulatory action. However, because the number, nature, and size of projects to be assisted will not be known until specific applicants come forward, this analysis is by necessity an estimate. Congress recognized this by including a provision in TIFIA (23 U.S.C. 189) requiring the Secretary to submit a report summarizing the effectiveness of the program within four years of the date of enactment of the legislation (June 9, 2002).

DOT and industry research has indicated that there are substantial economic productivity gains to be derived from capital investment in surface transportation facilities. One study estimates that in the four-decade period from 1950 to 1989, U.S. firms realized annual production cost savings of 18 percent from general highway investment (yearly return of 18 cents per dollar invested in all roads) and 24 percent from investment in non-local roads.[1] In addition to these direct returns, transportation capital investment typically generates significant spillover benefits, which may be of a non-financial nature, such as reduced pollution, increased safety, improved international competitiveness, and enhanced accessibility. Market imperfections often prevent these intangible but nonetheless important public benefits from being monetized and captured.

Just as transportation investment produces benefits, failure to invest results in cost increases. Another recent study estimates that congestion costs the average U.S. citizen $370 annually, in terms of time lost and fuel wasted.[2] These costs are expected to increase as growing investment needs—both in terms of system renewal and capacity expansion—and limited availability of public funding contribute to declining performance.

Growth in both freight movement and passenger travel has grown dramatically in recent years, and is expected to continue growing. For example, since 1980, total ton-miles and intercity passenger miles have grown by 30 percent and 60 percent respectively, according to a recent study by the American Association of State Highway and Transportation Officials. Despite substantial increases in authorized Federal funding levels for surface transportation under the Transportation Equity Act for the 21st Century, current resources are not expected to be able to keep pace with maintenance and preservation needs, let alone the additional demands resulting from growth in population and goods movement. Funding shortfalls can be particularly acute for large infrastructure projects (costing $100 million or more) which, due to their scale, often cannot be readily accommodated in ongoing State and local capital renewal programs.

The economic drag created by under-investment in the nation's transportation network is substantial, as shippers and motorists incur increased vehicle maintenance and fuel costs, shipping delays, safety hazards, and time delays associated with congestion and poorly maintained roads.

The TIFIA was established to provide fractional credit assistance to major transportation infrastructure projects—such as border crossings, trade corridors, and intermodal transfer facilities—that have the potential of generating substantial economic benefits both regionally and nationally. In many cases, such projects are capable of being supported through direct user charges or dedicated revenue streams that can be used to access private capital and other non-Federal funding sources. The TIFIA is designed to fill market gaps through providing supplemental and/or subordinate capital to such projects. It should facilitate their ability to access the capital markets or other financing sources for the majority of their funding needs. Through TIFIA's leverage of limited Federal funds with private capital, these capital-intensive projects can be advanced without displacing smaller, more traditional grant-supported projects. Federal risk exposure should be mitigated by substantial co-investment from non-Federal parties and the use of objective, market-based credit evaluation criteria.

The TIFIA is authorized to receive $530 million of budget authority to support up to $10.6 billion in nominal amounts of credit (or such lesser amounts of credit as can be supported by the budget authority). Under the terms of the legislation, the Federal share is limited to not more than 33 percent of total eligible project costs. In many cases, the actual share of TIFIA assistance may be considerably less. For example, prior to TIFIA, three major surface transportation projects in southern California obtained Federal credit instruments pursuant to special appropriations from Congress. Between 1993 and 1996, the Congress approved a $120 million standby Federal line of credit for the San Joaquin Hills Toll Road; two standby lines of credit totaling $145 million for the Foothill-Eastern Toll Road; and a $400 million direct Federal loan for the Alameda Corridor project. Each of these projects would have met the threshold eligibility criteria under the terms of TIFIA. The Federal credit assistance as a percent of total project costs for these three investments is approximately 8.5 percent, 11.5 percent, and 17.5 percent, respectively.

Under the Federal Credit Reform Act of 1990 (FCRA), the amount of budget authority necessary to support a Federal credit instrument depends upon the subsidy cost (i.e., the estimated present value cost of estimated losses that will be incurred as a result of defaults, net of any fee income). Each project will be assigned a subsidy cost based upon an evaluation of its credit-worthiness.

Since the actual projects under TIFIA have yet to be identified, it is not possible at this stage to ascertain the appropriate subsidy amounts. If, for example, the assumed average subsidy rate under TIFIA were 10 percent, the $530 million of budget authority could support $5.3 billion in nominal amount of Federal credit instruments, and (assuming a 33 percent TIFIA share of project costs) an aggregate of $15.9 billion in capital investment. This would represent a benefit:cost ratio (total capital investment compared to federal budgetary cost) of 30:1. If the subsidy rate averaged 5 percent, the budget authority could support $31.8 billion in aggregate investment; and if the subsidy rate averaged 15 percent, the budget authority could support approximately $10.6 billion in aggregate investment. The only costs imposed on the participants are the repayment of credit at the U.S. Treasury rate (which in certain instances may be significantly less than their own marginal cost of capital), a credit processing charge, and an application charge based upon direct costs incurred by the DOT in processing applications.

On this basis, the DOT has concluded that TIFIA will promote the efficient functioning of project delivery and the private markets, and will generate both direct and indirect benefits, including reduced congestion, greater mobility, improved safety, an enhanced environment, and greater economic growth. These benefits are anticipated to

[1] Contribution of Highway Capital to Industry and National Productivity Growth—Executive Summary, Ishaq Nadirir, New York, FHWA, 1996.

[2] Measuring and Monitoring Urban Mobility, Texas Transportation Institute, November 1996.

far surpass the combined direct costs to the Federal Government ($530 million) and to the entities that elect to participate in the program. Because of the voluntary nature of participation in TIFIA, this regulatory action is not anticipated to impose any costs upon non-participants. The DOT requests comments, information, and data from the public and potential users concerning the economic impact of implementing this rule and the TIFIA program.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601–612) requires an assessment of the extent to which proposed rules will have an impact on small business or other small entities. Consistent with the Regulatory Flexibility Act, the DOT has evaluated the effects of this rule on small business or other small entities. The NPRM proposes to implement a Federal Credit assistance program for surface transportation projects. There will be a substantial economic impact on the projects funded. However, the DOT anticipates that few, if any, of the applicants for assistance, will be small entities as defined by the Small Business Administration. For example, applicants are likely to include States and large public, or quasi-public entities. In addition, although it is difficult to judge how many applications will be received, we anticipate that the DOT will offer credit assistance to no more than a handful of projects each year. Based on that evaluation, the DOT hereby certifies that this action would not have significant economic impact on a substantial number of small entities. The DOT invites public comment on this determination.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The rule simply implements a Federal credit assistance program.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The DOT has determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. The bases for this determination are that a) eligibility for assistance under this program extends to both private and public entities; and b) the recipients of credit under this voluntary program will receive a benefit, rather than incur costs, through participation. The DOT invites public comment on this determination.

Executive Order 12372 (Intergovernmental Review)

Given that projects receiving assistance under TIFIA may fall under the programmatic jurisdiction of the FHWA, the FRA, or the FTA, the relevant Catalog of Federal Domestic Assistance Program Numbers are: 20.205 highway planning and construction; 20.310 Rail rehabilitation and improvement; and 20.500 transit capital improvement grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*); specifically, that fewer than ten respondents, as defined in 5 CFR 1320.3, are anticipated. Based upon preliminary assessments, research reports, meetings with focus groups and discussions with potential respondents, the DOT anticipates approximately six respondents to the application annually. If in the future, the DOT anticipates ten or more respondents annually, immediate steps will be taken to seek approval from OMB for an information collection, as required under the Paperwork Reduction Act.

National Environmental Policy Act

As specified under § 1503 of TIFIA, and codified under § 182(c)(2) of title 23, U.S.C., each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). This rulemaking simply provides the procedure to apply for credit assistance; therefore, by itself, this rulemaking will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda. The agency-specific proposed common rule appears at the end of this common preamble.

List of Subjects in 23 CFR Part 180 and 49 CFR Parts 261 and 640

Credit programs—transportation, Highways and roads, Mass transit, Railroads, Investments, Reporting and recordkeeping requirements.

Text of the Common Proposed Rule

The text of the common proposed rule appears below:

PART __—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.

____.1 Purpose.
____.3 Definitions.
____.5 Limitations on assistance.
____.7 Application process.
____.9 Federal requirements.
____.11 Investment-grade ratings.
____.13 Threshold criteria.
____.15 Selection criteria.
____.17 Charges.
____.19 Reporting requirements.

Authority: 23 U.S.C. 180–189 and 315; secs. 1501 *et seq.*, Public Law 105–178, 112 stat. 107, 241, as amended, 49 CFR 1.48.

§ ____.1 Purpose.

This rule implements a Federal credit assistance program for surface transportation projects.

§ ____.3 Definitions.

Eligible project costs means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of:

(1) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;

(2) Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(3) Capitalized interest necessary to meet market requirements, reasonably

required reserve funds, capital issuance expenses, and other carrying costs during construction.

Federal credit instrument means a secured loan, loan guarantee, or line of credit authorized to be made available under this subchapter with respect to a project.

Investment-grade rating means a rating category of BBB minus, Baa3, or higher assigned by a rating agency to project obligations offered into the capital markets.

Lender means any non-Federal qualified institutional buyer as defined in § 230.144A(a) of title 17, Code of Federal Regulations, known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), including:

(1) A qualified retirement plan (as defined in § 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

(2) A governmental plan (as defined in § 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

Line of credit means an agreement entered into by the Secretary with an obligor under § 184 of title 23, United States Code, to provide a direct loan at a future date upon the occurrence of certain events.

Loan guarantee means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

Local servicer means:

(1) A State infrastructure bank established under title 23; or

(2) A State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.

Obligor means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

Project means:

(1) Any surface transportation project eligible for Federal assistance under title 23 or chapter 53 of title 49, United States Code.

(2) A project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

(3) A project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation, and components of magnetic levitation transportation systems; and

(4) A project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.

Project obligation means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

Rating agency means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

Secured loan means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under § 183 of title 23, United States Code.

State means any one of the fifty states, the District of Columbia, or Puerto Rico.

Subsidy amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*).

Substantial completion means the opening of a project to vehicular or passenger traffic.

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998.

§ ____.5 Limitations on assistance.

(a) The total amount of Federal credit offered to any project receiving credit assistance under this part shall not exceed 33 percent of the anticipated eligible project costs.

(b) Costs incurred prior to a project sponsor's submission of an application for credit assistance may be considered in calculating eligible project costs only upon approval of the Secretary. In addition, applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among the eligible project costs.

(c) No costs financed internally or with interim funding may be refinanced under this part later than a year following substantial completion of the project.

(d) Within the overall credit assistance limitation of 33 percent of eligible project costs, the DOT may consider making multi-year contingent commitments of budget authority and associated credit assistance for especially large projects with extended construction periods and financing needs. In this instance, any reservation of future-year funding shall be made through a letter of intent and shall be contingent on the project's demonstrating satisfactory progress to the DOT. Depending on the overall demand for credit assistance under this part, the DOT may limit such contingent commitments to 50 percent of the budget authority becoming available in the applicable future years. If such a multi-year commitment is made, each year's loan will be tied to distinct, clearly identified project segments or stages.

§ ____.7 Application process.

(a) Public and private applicants for credit assistance under this part will be required to submit applications to the DOT in order to be considered for approval by the Secretary of Transportation.

(b) At a minimum, such applications shall provide:

(1) Documentation sufficient to demonstrate that the project satisfies each of the threshold criteria in § ____.13 and describe the extent to which the project satisfies each of the selection criteria in § ____.15.

(2) Background information on the project for which assistance is sought, such as the project's description, status of the environmental permitting process, and construction schedule;

(3) Background information on the applicant and/or project sponsor;

(4) Historical information, if applicable, concerning the applicant's financial condition, including, for example, independently audited financial statements and certifications concerning bankruptcies or delinquencies on other debt; and

(5) Current financial information concerning both the project and the applicant, such as sources and uses of funds for the project and a forecast of cash flows available to service all debt instruments.

(c) An application for a project located in or sponsored by more than one State or other entity shall be submitted to the DOT by just one State or entity. The sponsoring States or entities shall designate a single obligor for purposes of applying for, receiving, and repaying TIFIA credit assistance.

(d) Each fiscal year for which Federal assistance is available under this part, the DOT will publish a **Federal Register** notice to solicit applications for credit assistance. Such notice will specify the relevant due dates, the estimated amount of funding available to support TIFIA credit instruments for the current and future fiscal years, contact name(s), and other details for that year's application submissions and funding approvals. The DOT will also maintain a centralized mailing list for sending notices to prospective applicants.

§ ___.9 Federal requirements.

All projects receiving credit assistance under this part shall comply with:

(a) the relevant requirements of title 23 of the United States Code for highway projects, chapter 53 of title 49, United States Code, for transit projects, and § 5333(a) of title 49, United States Code, for rail projects, as appropriate;

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*);

(c) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(d) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*); and

(e) other Federal and compliance requirements as may be applicable.

§ ___.11 Investment-grade ratings.

(a) The full funding of a secured (direct) loan, loan guarantee, or line of credit shall be contingent on the assignment of an investment-grade rating by a recognized bond rating agency to all project obligations that have a lien senior to that of the Federal credit instrument on the pledged security.

(b) An investment-grade rating must be received before the DOT will disburse any funds.

§ ___.13 Threshold criteria.

(a) To be eligible to receive Federal credit assistance under this part, a project shall meet the following five threshold criteria:

(1) The project shall be included in a State transportation plan and, at such time as the DOT and project sponsor initially execute a credit agreement, in an approved State Transportation Improvement Program.

(2) The State, local servicer, or other entity undertaking the project shall submit a project application to the Secretary of Transportation;

(3) A project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State in which the project is located (in the case of a project principally involving the installation of Intelligent Transportation Systems (ITS), eligible project costs shall be reasonably anticipated to equal or exceed $30 million);

(4) Project financing shall be repayable, in whole or in part, from tolls, user fees or other dedicated revenue sources; and

(5) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be included in the State transportation plan and an approved State Transportation Improvement Program as provided in paragraph (a)(1) of this section.

(b) With respect to paragraph (a)(3), for a project located in more than one State, the minimum cost threshold size shall be the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the participating State that receives the least amount of such funds.

(c) With respect to paragraph (a)(4), the DOT will not consider current or future Federal funds, regardless of source, to be a dedicated revenue source.

§ ___.15 Selection criteria.

(a) The Secretary shall consider the following eight criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system;

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment;

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment;

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed;

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhances the efficiency of the project;

(6) The amount of budget authority required to fund the Federal credit instrument made available;

(7) The extent to which the project helps maintain or protect the environment;

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project.

(b) In addition, section 182(b)(2)(B) of title 23, United States Code, conditions a project's approval for credit assistance on receipt of a preliminary rating opinion letter indicating that the project's senior obligations have the potential to attain an investment-grade rating.

(c) The DOT shall evaluate each project's distinct public benefits (including personal and freight mobility, economic development, and impact on international competitiveness) and contribution to program goals (including leverage of the Federal contribution and increased private investment in surface transportation infrastructure).

(d) The DOT may give preference to those projects for which the total Federal contribution (including both credit and grant assistance from any Federal source) requested is small. This preference supports the policy goal of the DOT to position itself as a minority-share investor in any project receiving credit assistance under TIFIA to induce significant private co-investment.

(e) The DOT may also give preference to applications for loan guarantees rather than other forms of Federal credit assistance. This preference is consistent with Federal policy that, when Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990, deeper than can be provided by a loan guarantee.

§ ___.17 Charges.

(a) The DOT will require a non-refundable application initiation charge for each project applying for credit assistance under TIFIA. The DOT may also require an additional credit processing charge for projects selected to receive assistance. The proceeds of any such charges will cover a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For fiscal year 1999, the DOT will require an application initiation charge of $5,000 for each project applying for credit assistance under TIFIA. The DOT will not require any credit processing charges for fiscal year 1999. For fiscal years 2000 and beyond, the DOT may

adjust the amount of the application initiation charge, and will determine the appropriate amount of the credit processing charge, based on early program implementation experience in fiscal year 1999.

(b) Applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) in the total project cost for the purposes of calculating the 33 percent credit limitation referenced in § ____.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the Secretary may increase the application initiation charge or the credit processing charge on the approved applicant to reduce the subsidy cost of that project. No such fees or charges may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount of TIFIA assistance under § ____.5.

§ ____.19 Reporting requirements.

At a minimum, any recipient of Federal credit under this part shall submit an annual project performance report and audited financial statements to the DOT within 120 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the DOT. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

1. The Federal Highway Administration proposes to add part 180 to 23 CFR Chapter I as set forth at the end of the common preamble.

2. The Federal Railroad Administration proposes to add part 261 to 49 CFR Chapter II as set forth at the end of the common preamble.

3. The Federal Transit Administration proposes to add part 640 to 49 CFR Chapter VI as set forth at the end of the common preamble.

Appendix ____—Application Checklist

Note: This appendix will not appear in the Code of Federal Regulations.

The DOT is in the process of developing a standard application form for credit assistance for surface transportation projects. This appendix specifies the documentary materials that the DOT is considering for inclusion in the standard application form. The following list of information items derives, in part, from the DOT's research concerning State and Federal credit assistance programs, as well as internal DOT guidance. The following list of items potentially to be included in a standard application form is being provided for public comment.

a. Summary of how the proposed project satisfies each of the threshold criteria in § ____.13 and the extent to which it satisfies each of the selection criteria in § ____.15 of this part. (Each criterion should be addressed separately by the applicant).

b. Project information.

1. Detailed description of the project, including type of project, geographic location, economic impact, public benefits, and purpose or purposes.

2. Documentation sufficient to demonstrate the project's current inclusion in the long-range State transportation plan and anticipated inclusion in the State Transportation Improvement Program (STIP).

3. Copies of permits and approvals required by local, regional, State, and Federal agencies, including environmental and other permits and approvals, and other documentation sufficient to demonstrate compliance with other statutory and regulatory requirements.

4. Documentation specifying the project's status with regard to conformance with the National Environmental Policy Act of 1969 (NEPA).

5. Description of project construction phases and timeline.

6. Description of the current condition of all facilities relating to the project.

7. Description of the maintenance and operation plan for the project.

c. Applicant information.

1. Legal applicant's name, headquarters address, mailing address, phone and fax numbers.

2. Primary contact person's name, title, address, phone and fax numbers.

3. Full description of type of sponsoring entity (general partnership, limited partnership, corporation, other), the parties forming the entity, and the date on which the entity was established.

4. Applicant's tax identification number.

5. Name of the entity that will exercise ownership control of project.

6. Names of the entities charged with planning, developing, and operating the project.

7. Names of various other parties involved in the project with description of responsibilities and evidence of agreements or commitments.

8. Disclosure of current or past litigation involving the parties that will own, plan, develop and/or operate the project.

d. Historical financial information relating to the applicant.

1. Signed, audited financial statements.

2. Credit references or release forms.

3. Federal income tax returns.

4. Certification and/or resolution of any delinquency or default on Federal debt.

5. Bankruptcy history.

e. Initial financial plan for the project.

1. Initial total cost estimate.

i. Costs of feasibility studies.

ii. Costs of preliminary engineering.

iii. Costs of environmental assessment.

iv. Costs of right of way.

v. Costs of construction.

vi. Costs of construction engineering/inspection.

vii. Costs of project management.

viii. Costs relating to financing.

ix. Proposed cost containment strategies (e.g., design-build, use of cost control teams, management cost control strategies, and value engineering).

2. Implementation plan for the project.

i. Schedule, presented in annual increments, for completing and operating the project based on initial base year costs adjusted for inflation and any cost escalation.

ii. Methodology for all cost assumptions.

iii. Sources of potential future cost estimates (e.g., environmental costs, litigation costs, overtime costs, and value engineering savings).

3. Funding sources: all proposed sources and uses of project funds presented as annual amounts.

i. Supporting documentation to verify the availability of all sources of public and private funding.

ii. Comparison of annual amounts available for project obligations versus annual obligation needs.

4. Cash flows: Long-term pro-forma cash flow projection clearly delineating all cash flows by category (revenues and expenses) and subcategory (e.g., operations and maintenance, debt service to senior bondholders, debt service to the Federal Government, reserves) and specifying coverage ratios for each year.

5. Type of Federal credit assistance that the applicant is requesting and proposed terms (e.g., amount, maturity, allowances for prepayment and deferral).

6. Proposed timing and use of disbursements of requested Federal credit assistance.

7. Proposed collateral/security for Federal credit assistance.

8. Copy of preliminary rating opinion letter on senior debt obligations from at least one nationally recognized rating agency.

9. Copy of narrative financial analysis and/or feasibility study, including documentation to support revenue projections, such as traffic studies and regional economic projections, as applicable.

10. For loan guarantees, additional documentation including copies of the obligation agreement between the proposed guaranteed lender and borrower, background information on the proposed guaranteed lender, and other data specifically pertaining to a loan guarantee.

f. Any other information which the DOT may deem necessary for project evaluation and selection.

Issued in Washington, DC on January 28, 1999.

Kenneth R. Wykle,

Federal Highway Administration Administrator.

Jolene M. Molitoris,

Federal Railroad Administration Administrator.

Gordon J. Linton,

Federal Transit Administration Administrator.

[FR Doc. 99–2637 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–244–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Ohio regulatory program (Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio is proposing revisions to section 1513–3–21 of the Ohio Administrative Code (OAC) as it relates to awards of costs and expenses, including attorney's fees, arising in connection with appeals heard by the Reclamation Commission. The amendment is intended to revise the Ohio program to be consistent with its statute at Ohio Revised Code (ORC) § 1513.13(E) as well as the corresponding Federal regulations.

DATES: If you submit written comments, they must be received by 4:00 p.m., [E.D.T.] March 10, 1999. If requested, a public hearing on the proposed amendment will be held on March 5, 1999. Requests to speak at the hearing must be received by 4:00 p.m., on February 23, 1999.

ADDRESSES: Mail or hand-deliver your written comments and requests to speak at the hearing to George Rieger, Field Branch Chief, at the address listed below.

You may review copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh PA 15220, Telephone: (412) 937–2153.

Ohio Division of Mines and Reclamation, 1855 Fountain Square Court, Columbus, Ohio 43244, Telephone: (614) 265–1076.

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153. Internet: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the August 10, 1982, **Federal Register** (47 FR 34688). You can find later actions on conditions of approval and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated January 21, 1999 (Administrative Record No.OH–2177–00) Ohio submitted proposed amendments to its program concerning award of costs and fees in connection with appeals heard by the Reclamation Commission. Ohio submitted the proposed amendments at its own initiative. The changes proposed by Ohio in the amendment are discussed briefly below:

OAC 1513–3–21 Award of costs and expenses.

(a) Paragraphs (A) and (B) are amended by changing the reference from the "board of review" to the "Reclamation Commission" and specifically requiring that a petition for costs and expenses including attorney's fees be submitted in accordance with Section 1513.13(E) and (E)(1)(c) of the ORC.

(b) New paragraph (C) is added to specify that a decision by the Chief of the Division of Mines and Reclamation granting or denying in whole or in part a request for an award of costs and expenses including attorney's fees made under Section 1513.13(E)(1)(a) or 1513.13(E)(1)(b) of the ORC shall be appealable to the commission under Section 1513.13(A) of the ORC.

(c) Existing Paragraph (C) pertaining to the contents of a petition is re-numbered as (D) and further amended by including the specific references to the ORC included in (a) and (b) above.

(d) Existing Paragraphs (D),(E) and (F) are re-numbered as (E), (F), and (G) and are further amended by changing the references from the board to the Reclamation Commission.

III. Public Comment Procedures

According to the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we determine the amendment to be adequate, it will become part of the Ohio program.

Written Comments

Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. Comments received after the time indicated under "DATES" or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

If you wish to speak at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., [E.D.T.] on February 23, 1999. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

Filing a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will also allow us to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to speak have been heard. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

List of Subjects in 30 CFR 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 29, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–2899 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 05–98–043]

RIN 2115–AA97

Safety Zone; Atlantic Ocean, Vicinity of Cape Henlopen State Park, DE

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Delaware Aerospace Education Foundation plans to launch a Super Loki Meteorological Rocket from Cape Henlopen State Park on the second Saturday of May each year. The Coast Guard proposes to establish a Safety Zone in the Atlantic Ocean near Cape Henlopen State Park, Delaware to protect spectators and vessels from the potential hazards associated with this launch.

DATES: Comments must be received on or before March 25, 1999.

ADDRESSES: Comments may be mailed to Commanding Officer, USCG MSO/Group Office, 1 Washington Avenue, Philadelphia, Pennsylvania 19147–4395, Attention: Chief Petty Officer Ward, or hand-delivered to the same address between 8 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (215) 271–4888. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Fallacy or Chief Petty Officer Ward, Project Managers, Waterways and Waterfront Facilities Branch, at (215) 271–4888.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05–98–043) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Delaware Aerospace Education Foundation plans to launch a Super Loki Meteorological Rocket from Cape Henlopen State Park each year on the second Saturday in May for the purpose of collecting meteorological data. If the Saturday launch is canceled due to inclement weather, it will be scheduled

for the next day. The rocket motor is expected to splash down within 2 nautical miles of the launch point. This proposed safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch and the subsequent splashdown of the rocket motor.

Although the exact launch time is subject to change due to weather, the entire launch/splashdown process is expected to occur between 2 p.m. and 4:30 p.m. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated day (either Saturday or Sunday) and time of the launch and will grant general permission to enter the safety zone during those times in which the launch and spent rocket motor do not pose a hazard to mariners. Because the hazardous condition is expected to last for only 2½ hours of one day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

The rocket payload, assisted by parachute, is expected to splash down in the Atlantic Ocean approximately 22 nautical miles southeast of the launch point, which is an area outside of the proposed safety zone. The Coast Guard advises all marine traffic to exercise caution when transiting that area during launch times.

Discussion of Proposed Rule

The proposed safety zone would include an 8 square mile section of the Atlantic Ocean adjacent to the launch site at Cape Henlopen State Park in Delaware. Specifically, the proposed safety zone would include the waters of the Atlantic Ocean that are within the area bounded by a line drawn north from the tip of Cape Henlopen located latitude 38°48.2′ North, longitude 75°05.5′ West, to a point located at latitude 38°49.4′ North, longitude 75°05.5′ West; then east to a point located at latitude 38°49.4′ North, longitude 75°01.4′ West; then south to a point located at latitude 38°43.0′ North, longitude 75°01.4′ West; then west to a point on the shoreline located at latitude 38°43.0′ North, longitude 75°04.5′ West.

The proposed safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch of the Super Loki Meteorological Rocket and the subsequent spashdown of the rocket motor. The safety zone would be in effect on the second Saturday in May and the following day. Vessels would be prohibited from transiting through the safety zone without first obtaining permission from the Captain of the Port of Philadelphia. The Captain of the Port would announce via Broadcast Notice to Mariners the anticipated day and time of the launch and grant general permission to enter the safety zone during all non-hazardous times.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The regulated area would be limited to 8 square miles and permission to enter the area would be denied only during the 2½ hours in which the rocket launch poses a hazard. Therefore, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The proposed regulated area would be limited to 8 square miles and permission to enter it would be withheld for about 2½ hours each year. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no Collection of Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under figure 2–1, paragraph (34)(g), of COMDTINST M16475.1C, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new Section 165.535 is added to read as follows:

§ 165.535 Safety Zone: Atlantic Ocean, Vicinity of Cape Henlopen State Park, Delaware.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean that are within the area bounded by a line drawn north from the tip of Cape Henlopen located at latitude 38°48.2′ North, longitude 75°05.5′ West, to a point located at latitude 38°49.4′ North, longitude 75°05.5′, West; thence east to a point located at latitude 38°49.4′ North, longitude 75°01.4′ West; thence south to a point located at latitude 38°43.0′ North, longitude 75°01.4′ West; thence west to a point on the shoreline located at latitude 38°43.0′ North, longitude 75°04.5′ West. All coordinates reference Datum: NAD 1983.

(b) *Regulation.* The general regulations governing safety zones contained in § 165.23 apply. Vessels may not enter the safety zone without first obtaining permission from the Captain of the Port (COTP) Philadelphia.

(c) *Effective Dates.* This rule is effective annually on the second Saturday in May and the following day.

(d) *General Information.*

(1) Those times during which hazardous conditions exist inside the safety zone will be announced via Broadcast Notice to Mariners. General permission to enter the safety zone will be broadcast during non-hazardous times.

(2) The COTP Philadelphia and the Duty Officer at the Marine Safety Office, Philadelphia, Pennsylvania, can be contacted at telephone number (215) 271–4940 and on VHF channels 13 and 16.

(3) The COTP Philadelphia may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing this safety zone.

Dated: January 25, 1999.

T.E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 99–2973 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN55–01–7280b; MN56–01–7281b; MN57–01–7282b; FRL–6230–4]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, the EPA is proposing to approve revisions to Minnesota's State Implementation Plan (SIP) for particulate matter and sulfur dioxide in the Minneapolis-St. Paul area. This revision amends State Administrative Orders for North Star Steel Company, LaFarge Corporation, and GAF Building Materials.

In the final rules section of this **Federal Register**, EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action within 30 days of this publication. Should the Agency receive such comment, it will publish a document informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before March 10, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Christos Panos at (312) 353–8328.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the documents relevant to this action are available for public inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Sulfur dioxide.

Dated: January 19, 1999.

JoLynn Traub,

Acting Regional Administrator, Region 5.

[FR Doc. 99–2786 Filed 2–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 83

[FRL–6230–7]

RIN 2060–AI11

Control of Emissions From New Nonroad Spark-Ignition Engines Rated Above 19 Kilowatts and New Land-Based Recreational Spark-Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Finding.

SUMMARY: EPA proposes a finding that nonroad spark-ignition engines rated above 19 kilowatts, as well as all land-based recreational nonroad spark-ignition engines, cause or contribute to air quality nonattainment in more than one ozone or carbon monoxide nonattainment area. EPA also proposes a finding that particulate matter emissions from these engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. This proposal does not address marine propulsion engines.

DATES: EPA requests comment on this proposal no later than April 12, 1999. EPA will hold a public hearing on this proposed finding on March 11, 1999 if one is requested on or before February 23, 1999.

ADDRESSES: Materials related to this action are contained in Public Docket A–98–01, located at room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. Anyone may inspect the docket from 8:00 a.m. until 5:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

Send comments on this notice to Public Docket A–98–01 at the above address. EPA requests that you also send a copy of any comments to Alan Stout, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105.

FOR FURTHER INFORMATION CONTACT: Alan Stout (734) 214–4805.

SUPPLEMENTARY INFORMATION: EPA has established emission standards for several nonroad engine categories. The categories of nonroad engines for which standards currently exist cover a variety of applications, including farm and construction equipment, marine vessels, locomotives, and lawn and garden equipment. Lawn and garden equipment uses nonroad spark-ignition engines, but these engines are generally rated below 19 kW. Emission standards targeting lawn and garden engines therefore apply only to engines rated at or below 19 kW.

In contrast, nonroad spark-ignition engines rated above 19 kW (25 hp) and all spark-ignition engines used in land-based recreational applications are not currently subject to federal emission standards.[1] With this document, EPA is beginning the process leading to eventual emission standards for these engines.

I. Statutory Authority

Section 213(a)(1) of the Clean Air Act, 42 U.S.C. 7547(a), requires that the Agency study the emissions from all categories of nonroad engines and equipment (other than locomotives) to determine, among other things, whether these emissions "cause or significantly contribute to air pollution which may reasonably be anticipated to endanger public health and welfare." Section 213(a)(2) further requires EPA to determine, through notice and comment, whether the emissions of

[1] For the purposes of this document, all references to spark-ignition engines rated above 19 kW includes marine auxiliary engines, but excludes marine propulsion engines.

carbon monoxide (CO), volatile organic compounds (VOCs), and oxides of nitrogen (NO_X) found in the above study significantly contributes to ozone or CO concentrations in more than one ozone or CO nonattainment area. With such a determination of significance, section 213(a)(3) requires the Agency to establish emission standards applicable to CO, VOC, and NO_X emissions from classes or categories of new nonroad engines and vehicles that cause or contribute to such air pollution. Moreover, if EPA determines that any other emissions from new nonroad engines contribute significantly to air pollution, EPA may promulgate emission standards under section 213(a)(4) regulating emissions from classes or categories of new nonroad engines that EPA finds contribute to such air pollution.

As directed by the Clean Air Act, EPA conducted a study of emissions from nonroad engines, vehicles, and equipment in 1991.[2] Based on the results of that study, referred to as NEVES, EPA determined that emissions of NO_X, HC, and CO from nonroad engines and equipment contribute significantly to ozone and CO concentrations in more than one nonattainment area (see 59 FR 31306, June 17, 1994).[3] Given this determination, section 213(a)(3) of the Act requires EPA to promulgate emissions standards for those classes or categories of new nonroad engines, vehicles, and equipment that in EPA's judgment cause or contribute to such air pollution. EPA is proposing in this document that nonroad SI engines rated above 19 kW and all land-based recreational nonroad SI engines "cause or contribute" to such air pollution.

Where EPA determines that other emissions from nonroad engines, vehicles, or equipment significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, section 213(a)(4) authorizes EPA to establish (and from time to time revise) emission standards from those classes or categories of new nonroad engines, vehicles, and equipment that EPA determines cause or contribute to such air pollution, taking into account cost, noise, safety and energy factors associated with the application of technology used to meet the standards. EPA has made this determination for emissions of particulate matter (PM) and smoke from nonroad engines (see 59 FR 31306, June 17, 1994). In that rulemaking, EPA found that smoke emissions from nonroad engines significantly contribute to such air pollution based on smoke's relationship to the particulate matter that makes up smoke. Particulate matter can be inhaled into the lower lung cavity, posing a potential health threat. EPA cited recent studies associating PM with increased mortality. EPA also noted smoke's impact on visibility and soiling of urban buildings and other property.[4] EPA also promulgated standards for emissions of PM and smoke from nonroad diesel engines in that rulemaking. With this document, EPA is proposing to find that emissions of PM from nonroad SI engines rated above 19 kW and all land-based recreational nonroad SI engines "cause or contribute" to such air pollution, taking cost, noise, safety and energy factors into account.

II. Emission Modeling

EPA is in the process of developing its updated Nonroad Emissions Model, which computes nationwide emission levels for a wide variety of nonroad engines. The model incorporates information on emission rates, operating data, and population to determine annual emission levels of various pollutants. Population and operating data, including load factor and operating rate, are determined separately for dozens of different applications. Load factor refers to the degree to which an engine is loaded, with full-power operation indicated by a load factor of 1.0. In addition to gasoline, Large SI engines can operate on liquefied petroleum gas (LPG) or compressed natural gas (CNG). An EPA memorandum describes the detailed inputs and methodology for this modeling.[5] Some of the key operating parameters from the model are reproduced in Tables 1 and 2.

TABLE 1—OPERATING PARAMETERS AND POPULATION ESTIMATES FOR VARIOUS APPLICATIONS OF ENGINES RATED ABOVE 19 KW

Application	Load factor	Hours per year	1996 population	2010 population	Percent LPG/CNG
Forklift	0.30	1500	442,000	547,063	95
Generator	0.68	115	205,990	202,177	50
Welder	0.51	208	55,495	67,872	50
Commercial turf	0.60	733	41,440	55,074	0
Pump	0.69	221	41,104	44,830	50
Air compressor	0.56	484	24,182	28,633	50
Baler	0.62	68	21,937	27,597	0
Irrigation set	0.60	716	17,800	9,724	50
Aerial lift	0.46	361	15,734	15,555	50
Scrubber/sweeper	0.71	516	14,154	13,955	50
Chipper/grinder	0.78	488	12,218	16,262	50
Leaf blower/vacuum	0.75	56	10,823	14,384	0
Oil field equipment	0.90	1104	8,792	8,924	100
Sprayer	0.65	80	8,635	10,863	0
Trencher	0.66	402	8,168	9,604	50
Specialty vehicle/cart	0.58	65	7,833	8,726	50
Skid/steer loader	0.58	310	7,795	9,164	50
Other general industrial	0.54	713	3,987	3,942	50
Rubber-tired loader	0.71	512	3,476	4,088	50

[2] "Nonroad Engine and Vehicle Emission Study—Report and Appendices," EPA–21A–201, November 1991 (available in Air docket A–96–40).

[3] The terms HC (hydrocarbon) and VOC (volatile organic carbon) refer to similar sets of chemicals and are generally used interchangeably.

[4] The nonroad study (NEVES) found that nonroad sources are responsible for approximately 5.55% of the total anthropogenic inventory of PM emissions and over one percent of total PM emissions in six to ten of the thirteen nonattainment areas surveyed.

[5] "Emission Modeling for Large SI Engines," EPA memorandum from Alan Stout to Docket A–98–01 (document II–B–01), January 28, 1999.

TABLE 1.—OPERATING PARAMETERS AND POPULATION ESTIMATES FOR VARIOUS APPLICATIONS OF ENGINES RATED ABOVE 19 kW—Continued

Application	Load factor	Hours per year	1996 population	2010 population	Percent LPG/CNG
Gas compressor	0.60	8500	3,023	1,620	100
Paving equipment	0.59	175	2,996	3,524	50
Terminal tractor	0.78	827	2,905	2,872	50
Bore/drill rig	0.79	107	2,618	3,080	50
Ag. tractor	0.62	550	2,152	2,707	0
Concrete/industrial saw	0.78	610	2,133	2,509	50
Rough terrain forklift	0.63	413	1,933	2,273	50
Roller	0.62	621	1,596	1,878	50
Crane	0.47	415	1,584	1,864	50
Other material handling	0.53	386	1,535	1,518	50
Paver	0.66	392	1,337	1,573	50
Other agriculture equipment	0.55	124	1,234	1,552	0
Other construction	0.48	371	1,222	1,436	50
Pressure washer	0.85	115	1,207	2,271	50
Aircraft support	0.56	681	840	1,238	50
Crushing/processing equip	0.85	241	532	628	50
Surfacing equipment	0.49	488	481	567	50
Tractor/loader/backhoe	0.48	870	416	489	50
Hydraulic power unit	0.56	450	339	384	50
Other lawn & garden	0.58	61	333	443	0
Refrigeration/AC	0.46	605	163	226	100

TABLE 2.—OPERATING PARAMETERS AND POPULATION ESTIMATES FOR LAND-BASED RECREATIONAL ENGINES

Application	Load factor	Hours per year	1996 population	2010 population	Percent 2-stroke
ATV/Nonroad Motorcycle*	0.72	135	1,743,801	1,880,196	19
Snowmobile	0.81	121	1,289,302	1,390,148	100
Specialty vehicle	0.58	65	413,492	445,853	43

* Including mini-bikes, mopeds, and go-carts.

Emission modeling runs for the years 2000 and 2010 are summarized in Tables 3 and 4. These tables show relative contributions of the different mobile source categories to the overall emissions inventory. Of the total emissions from mobile sources, nonroad SI engines rated above 19 kW contribute 1 percent, 2 percent, 3 percent, and 0.4 percent of HC, NO_X, CO, and PM emissions in the year 2000. The results for land-based recreational engines reflect the much different emissions profile from two-stroke engines. These engines are estimated to contribute 15 percent of mobile source HC emissions, 9 percent of CO emissions, and 0.2 percent of NO_X emissions. PM emissions from land-based recreational engines amount to 2 percent of total mobile source emissions. Since highway engines account for a large fraction of mobile source emissions, as shown in Tables 3 and 4, the contribution of these engines as a percentage of total nonroad emissions will be significantly higher than that from total mobile sources emissions.

These emission figures are projected to change somewhat by 2010. The contribution of CO emissions from SI engines above 19 kW increases to 4 percent and the contribution of HC and CO emissions from land-based recreational engines increases to 19 percent and 11 percent. Population growth and the effects of regulatory control programs are factored into these later emissions estimates. Table 4 shows that the relative importance of uncontrolled engines grows over time as other engines reduce their emission levels. The effectiveness of all control programs is offset by the anticipated growth in engine populations.

TABLE 3.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2000

[Thousand short tons.]

Category	NO_X		HC		CO		PM	
	tons	percent	tons	percent	tons	percent	tons	percent
Nonroad SI > 19 kW	227	2	57	1	2,060	3	3	0.4
Recreational SI equip.	25	0.2	1,100	15	6,652	9	16	2
Nonroad SI < 19 kW	82	0.7	623	8	13,859	19	14	2
Marine SI	39	0.4	609	8	2,177	3	30	4
Nonroad diesel	2,803	25	371	5	1,002	1	306	44
Marine diesel	206	2	45	1	76	0.1	30	4
Locomotive	1,075	10	46	1	104	0.1	27	4
Aircraft	178	2	183	2	1,017	1	39	6

TABLE 3.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2000—Continued

[Thousand short tons.]

Category	NO_X		HC		CO		PM	
	tons	percent	tons	percent	tons	percent	tons	percent
Total Nonroad	4,635	42	3,034	40	26,947	38	465	66
Total Highway	6,397	58	4,482	60	44,244	62	238	34
Total Mobile Source	11,032	100	7,516	100	71,191	100	703	100

TABLE 4.—MODELED ANNUAL EMISSION LEVELS FOR MOBILE SOURCE CATEGORIES IN 2010

[Thousand short tons.]

Category	NO_X		HC		CO		PM	
	tons	percent	tons	percent	tons	percent	tons	percent
Nonroad SI > 19 kW	288	3	46	1	2,427	4	3	0.4
Recreational SI equip.	26	0.3	1,174	19	6,900	11	18	2
Nonroad SI < 19 kW	73	0.8	293	5	11,528	18	15	2
Marine SI	49	0.5	363	6	2,221	3	22	3
Nonroad diesel	2,248	24	249	4	699	1	375	51
Marine diesel	211	2	46	1	78	0.1	31	4
Locomotive	1,075	11	46	1	104	0.2	27	4
Aircraft	209	2	215	4	1,279	2	42	6
Total Nonroad	4,179	44	2,432	40	25,236	39	533	73
Total Highway	5,354	56	3,683	60	40,201	61	200	27
Total Mobile Source	9,533	100	6,115	100	65,437	100	733	100

In presenting this analysis, EPA has estimated national emissions as a proxy for emissions within nonattainment areas. This should be a reasonable approximation due to the fact that the equipment listed in the above tables is generally not isolated to individual areas. However, EPA recognizes that some applications may not contribute equally to emissions in both attainment and nonattainment areas. EPA would like to include current data on the contribution of these sources to nonattainment area emissions when it finalizes a finding based on this proposal and the associated public comments. Accordingly, EPA seeks comments and data that address the degree to which emissions from these engines and equipment contribute to air pollution in nonattainment areas.

EPA's 1991 study analyzed emissions from nonroad engines in several nonattainment areas.[6] The analysis showed that Large SI equipment and SI recreational vehicles contribute to emissions of VOCs, NO_X, CO and PM in the vast majority of the nonattainment areas surveyed. The 1991 study does not provide total inventories for Large SI equipment because equipment categories were aggregated using different criteria than are used in this notice. However, a review of, for example, spark-ignited forklifts in the New York City Consolidated Metropolitan Statistical Area area indicated contributions of 4868, 84 853, 5148 and 27 tons per year of VOCs, CO, NO_X, and PM, respectively. According to the study, spark-ignited recreational vehicles (mini-bikes and mopeds, and others vehicle types) in the New York City Consolidated Metropolitan Statistical Area contributed 11 280, 19 054, 82 and 217 tons of these pollutants per year.[7] In the South Coast (Los Angeles) area, spark-ignited forklifts contributed 4612, 80 649, 4893 and 25 tons of VOCs, CO, NO_X and PM, respectively, while SI recreational vehicles contributed 8066, 28 465, 53 and 80 tons of these pollutants per year. Many of the factors that EPA used in creating the emission estimates for the 1991 study have been revised in the current modeling as EPA gathers more complete information regarding, for example, emission factors and population estimates. These revisions do not, however, change the central analysis of contribution in the 1991 study.

III. General Approach for an Emission Control Program

EPA has made an extensive effort to coordinate EPA's anticipated regulatory program for spark-ignited engines rated above 19 kW with the requirements adopted by the California Air Resources Board (California ARB). The California ARB finalized emission standards for these engines on October 22, 1998. An EPA memorandum provides additional information about the requirements approved by the California ARB and highlights a few issues that will warrant further attention in the EPA rulemaking.[8]

EPA believes that equipment in the large nonroad SI category generally use engines of similar design. The same is true of engines in the recreational vehicle category. Manufacturers will generally be able to produce engine models with the projected control technologies that can be used in most applications in a category without significant modification. EPA seeks additional information on relevant similarities and distinctions between engines used in these categories.

[6] See "Nonroad Engine and Vehicle Emission Study—Report and Appendices" and "Nonroad Inventory Tables: Inventories A and B," in EPA Air Docket A–91–24.

[7] The New York City CMSA includes New York City, Long Island, parts of New York north of New York City, parts of Northern New Jersey and parts of Connecticut.

[8] "California Requirements for Large SI Engines and Possible EPA Approaches," EPA memorandum from Alan Stout to Docket A–98–01 (Document II–B–02), January 28, 1999.

IV. Conclusion

Based on the analysis described in this document, EPA proposes that emissions of HC, NO_X, and CO from nonroad spark-ignition engines rated above 19 kW and from nonroad land-based spark-ignition recreational engines contribute to ozone or carbon monoxide concentrations in more than one ozone or CO nonattainment area, and emissions of PM from such engines cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

V. Public Participation

Publication of this document opens a formal comment period for this proposal. EPA will accept comments for the period indicated under **DATES** above. The Agency encourages all parties that have an interest in the program described in this document to offer comment on all aspects of this rulemaking, including the memoranda referenced in this document. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket Section, Docket No. A–97–50 before the date specified above. The Agency will hold a public hearing if one is requested, as noted under **DATES** above.

Commenters wishing to submit proprietary information for consideration should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it will be made available to the public without further notice to the commenter.

VI. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866, the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order (58 FR 51735, Oct. 4, 1993). The order defines "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or, (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has submitted this proposed finding to the Office of Management and Budget pursuant to Executive Order 12866.

B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

The Agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. This proposal involves no requirements that would impose any burden on industry or other segments of society. A finding that Large SI engines cause or contribute to air pollution in at least two nonattainment areas, however, will lead EPA to initiate a rulemaking to set emission standards for these engines. In that separate rulemaking, EPA will review whether the proposed regulations would have a significant economic impact on a substantial number of small entities. The subsequent rulemaking will provide ample opportunity for notice and comment.

C. Paperwork Reduction Act

This proposal contains no requirements for collecting, storing, or reporting information.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub .L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed finding does not contain federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The rule does not impose any enforceable duties on State, local, or tribal governments. This rule also contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, there will be no economic effects resulting from this proposed rule Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed finding involves no technical standards.

F. Protection of Children

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to a rule that is determined to be "economically significant," as defined under Executive Order 12866, if the environmental health or safety risk addressed by the rule has a disproportionate effect on children. For these rules, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed finding is not subject to Executive Order 13045, because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

G. Enhancing the Intergovernmental Partnership under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule would not create a mandate on State, local or tribal governments. The rule would not impose any enforceable duties on these entities. This rule would be implemented at the federal level and would impose no compliance obligations on any party. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule would not significantly or uniquely affect the communities of Indian tribal governments. This rule would be implemented at the federal level and would impose no compliance obligations on any party. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 83

Environmental protection, Administrative practice and procedure, Confidential business information, Gasoline, Imports, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

Dated: January 29, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–2694 Filed 2–5–99; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1309

RIN 0970—AB54

Head Start Program

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), HHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Administration on Children, Youth and Families is issuing this Notice of Proposed Rulemaking to implement a statutory provision that authorizes Head Start grantees to use grant funds to finance the construction and major renovation of Head Start facilities.

DATES: In order to be considered, comments on this proposed rule must be received on or before April 9, 1999.

ADDRESSES: Please address comments to the Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013. Beginning 14 days after close of the comment period, comments will be available for public inspection in Room 2219, 330 C Street, SW., Washington, DC 20201, Monday through Friday, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas Klafehn, Deputy Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013; (202) 205–8572.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start is authorized under the Head Start Act (42 U.S.C. 9801 *et seq.*). It is a national program providing comprehensive developmental services to low-income preschool children, primarily age three to the age of compulsory school attendance, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive

health, nutritional, educational, social and other services. In addition, Section 645A of the Head Start Act provides authority to fund programs serving infants and toddlers. Programs receiving funds under the authority of this section are referred to as Early Head Start programs.

Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Parents also receive training and education to foster their understanding of and involvement in the development of their children. In fiscal year 1997, Head Start served 794,000 children through a network of over 2,000 grantees and delegate agencies.

While Head Start is intended to serve primarily children whose families have incomes at or below the poverty line, or who receive public assistance, Head Start policy permits up to 10 percent of the children in local programs to be from families who do not meet these low-income criteria. Tribal grantees can exceed this limit under certain conditions. The Act also requires that a minimum of 10 percent of the enrollment opportunities in each program be made available to children with disabilities. Such children are expected to participate in the full range of Head Start services and activities with their non-disabled peers and to receive needed special education and related services.

II. Summary of the Proposed Regulation

The authority for this Notice of Proposed Rulemaking (NPRM) is section 644(g) of the Head Start Act (42 U.S.C. 9839). Paragraph (g) was added by Public Law 103–252, Title I of the Human Services Amendments of 1994. Section 644(g) states that the Secretary may authorize the use of federal financial assistance to make payments for capital expenditures, such as expenditures for the construction and major renovation of facilities. Authorization for the use of grant funds in this manner requires a determination by the Secretary that suitable facilities are not otherwise available to Indian tribes, rural communities, and other low-income communities to carry out Head Start programs, that the lack of suitable facilities (including public school facilities) will inhibit the operation of such programs, and that construction of such facilities is more cost effective than the purchase or renovation of available facilities. The Act also provides that grant funds may be used to pay the cost of amortizing the principal and paying interest on loans. It directs the Secretary to establish uniform procedures for Head Start agencies to request approval to use grant funds to construct new facilities or make major renovations to existing facilities.

A Notice of Proposed Rulemaking (NPRM) on Purchase of Head Start Facilities was published in the **Federal Register** on December 1, 1994 (59 FR 61575). The Final Rule on Purchase of Head Start Facilities, published elsewhere in this issue of the **Federal Register**, does not address construction or major renovation since the statutory change concerning construction and major renovation occurred too close to publication of that NPRM to permit the inclusion of procedures covering construction and major renovation. We recognize, however, that procedures covering the purchase, construction and major renovation of facilities using Head Start grant funds should be consistent and should be brought together in one place. Therefore, the procedures on construction and major renovation when made final will amend the final rule on purchase of Head Start facilities so that 45 CFR part 1309 will cover, in one single rule, the use of grant funds to purchase, construct and make minor renovations to Head Start facilities.

The proposed rule:

- Defines major renovation to mean structural changes to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or the extension of a facility to increase its floor area. Major renovation also means extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility.
- Specifies what information the grantee must provide to establish eligibility to be awarded grant funds to construct or make a major renovation to a Head Start facility.
- Requires that a grantee receive approval from HHS of the final working drawings and specifications for construction or major renovation before it advertises for bids.
- Requires that all construction and major renovation contracts be on a lump sum fixed-price basis.

III. Section by Section Discussion of the NPRM

We propose to revise the heading of Part 1309 to reflect the addition of major renovation and construction requirements in this part. The revised heading is "Head Start Facilities Purchase, Major Renovation and Construction."

Section 1309.1—Purpose and application

We propose to revise § 1309.1 to include reference to the applicability of part 1309 to the construction or major renovation of Head Start facilities in addition to the purchase of such facilities.

Section 1309.3—Definitions

We propose to revise § 1309.3 by adding five definitions. The definition for "construction," a new definition, is based on the statutory language found in section 644(g)(2)(A) of the Head Start Act, which states that grant funds may be used to pay for "construction of facilities that are not in existence on the date" the Secretary determines the grantee meets the statutory criteria for eligibility. In addition, we revised the definition of "acquire" to encompass construction in whole or part.

The second definition we propose is "incidental alterations and renovations." This definition is added to distinguish such alterations and renovations from major renovations which are defined also in this proposed rule. Alterations and renovations are considered "incidental" if they readily modify a facility to meet program requirements, if the cost of the alterations and renovations do not exceed the lesser of $150,000 or 25 percent of total direct costs expected to be approved for the grantee's budget period, and the renovations or alterations do not meet the definition for major renovations described below. A third new definition is for "major renovation," which has two parts. Major renovation means structural changes to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or the extension of an existing facility to increase its floor area, or extensive alteration of a facility such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility.

Classification as a major renovation will have two consequences: the grantee will be able to pay the principal and interest on a loan to finance the work, and the grantee will be required to meet the preliminary eligibility and other criteria found in this regulation.

The fourth and fifth new definitions we propose are for the terms "suitable facility" and "useable facility." The terms are necessary because section 644(g) of the Head Start Act requires that a determination be made that no "suitable" facility is available within a community before a grantee can be permitted to use grant funds for the

construction or renovation of a facility. The term "suitable" means a facility in the grantee's service area that is owned by the grantee or is available for lease or purchase, is useable as a Head Start facility, and is not more expensive to purchase, own or lease than other comparable facilities. The term "useable" is included and intended to describe a facility not in need of renovation to increase its size or to bring it into compliance with local licensing and code requirements and the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.

Section 1309.10—Application

We propose to revise the heading of § 1309.10 to read "Applications for the purchase, construction and major renovation of facilities." We also propose to revise § 1309.10, which appears in the final rule on purchase of Head Start facilities which is published today, to include requirements for application for the construction and major renovation of facilities with Head Start funds. The proposed provision will establish requirements for applications from Head Start grantees who wish to obtain funds to: (1) Purchase existing facilities; (2) continue to pay costs of purchases begun during the period from December 21, 1986 to October 7, 1992; (3) construct new facilities; (4) renovate facilities which they own or lease; or (5) purchase facilities for the purpose of renovating them to make them usable for their Head Start programs. With the exception of existing paragraphs (f) and (r) which we have redesignated (e) and (q), we propose modifications in all of the existing provisions of § 1309.10 to apply to applications for construction and major renovation as well as for purchase of existing facilities. We propose to incorporate the existing paragraph (d) into a new paragraph (b). In addition, a proposed amendment to the newly redesignated paragraph (l) requires that a grantee proposing to undertake a major renovation of a leased facility must have a lease with a duration of at least five years from the date the renovation is completed. We propose to add to the newly redesignated paragraph (m) a requirement for an assessment of the impact of proposed construction or major renovation under the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). We propose further that before submitting an application under proposed section 1309.10, grantees seeking funds for construction or for major renovations must establish their eligibility under one of two new provisions proposed as §§ 1309.49 and 1309.50.

Section 1309.11—Cost comparisons for purchase, construction and major renovation of facilities

We are proposing to amend § 1309.11, which appears as a final rule published today, to apply to cost comparisons for construction and major renovation of facilities. We are proposing to amend the heading of this section to read "Cost comparisons for purchase, construction and major renovation of facilities" to apply the proposed provisions of § 1309.11 to cost comparisons for construction and major renovation of facilities. Paragraph (a) of the proposed rule requires that a cost comparison be conducted subject to the proposed paragraph (c) which is expanded to include not only purchase of facilities but also comparisons required for construction and major renovations of facilities. In conformance with section 644(g)(1) of the Head Start Act, paragraph (c)(2) of the proposed rule will require Head Start grantees requesting funding for the construction of a new facility to compare the cost of constructing to the cost of owning, purchasing or leasing an alternative facility which may be made useable as a Head Start facility by means of renovation of the facility. Paragraph (c)(3) proposes that grantees applying for funding to undertake a major renovation of a facility must compare the cost of the proposed renovation, including the cost of purchasing the facility to be renovated (if the grantee is proposing to purchase the facility) to the cost of constructing a facility of similar size. ACF proposes to request grantees to furnish this information in order that it may properly exercise discretion in selecting grantees to receive funding under section 644(g) of the Head Start Act. We are proposing that paragraph (e) include clarification that the period of comparison for renovations of leased facilities is the period of the lease remaining after the major renovation is completed. Paragraph (f) is identical to the final rule.

Section 1309.21 Recording of Federal interest and other protection of federal interest

We propose to apply the same provisions for the subordination of Federal interest for construction and major renovation of Head Start facilities as are found in the final rule for the purchase of facilities. We propose to revise paragraph (a) of this section to read "The Federal government has an interest in all real property and equipment acquired or upon which major renovations have been undertaken with grant funds for use as a Head Start facility. The responsible HHS official may subordinate the federal interest in such property to that of a lender which finances the acquisition or major renovation costs subject to the conditions set forth in paragraph (f) of this section." We are proposing some technical changes in paragraph (d) of this section by inserting the words "or at the commencement of major renovation or construction of a facility" after the word purchasing, and in (d)(1) we propose to substitute the words "acquisition or major renovation" for the word "purchase" and finally we propose to revise paragraph (f) by substituting the word "purchased" with the words "acquired or upon which major renovations have been undertaken."

Section 1309.23 Insurance, bonding and maintenance

In this section we propose to add a sentence clarifying that for facilities which have been constructed or renovated, insurance coverage must begin at the commencement of the expenditure of costs in fulfillment of construction or renovation work.

Sections 1309.40 through 1309.43

The proposed revisions to §§ 1309.40, 1309.41, 1309.42, and 1309.43 replace the word "purchase" with "acquisition or major renovation." Sections 1309.41, 1309.42 and 1309.43 contain technical edits also.

A new subpart F has been added to cover very specific requirements on construction and major renovation of Head Start Facilities.

Section 1309.49—Eligibility—construction

Section 1309.50—Eligibility—major renovation

These two sections conform to section 644 (g)(1) in requiring applicants to demonstrate that the Head Start program serves an Indian Tribe or is available in a low-income or rural community and that the lack of a suitable facility in the grantee's service area will inhibit the operation of the program.

Applicants requesting funding for construction of facilities must demonstrate that there are no facilities available for lease or purchase or facilities that are available are not suitable for use by a Head Start program.

Grantees requesting funds for major renovations must demonstrate that there are no facilities available for lease or purchase or that facilities available are not suitable for use without major

renovations. Applicants for funding for major renovations and who are leasing the facilities must have a lease guaranteeing the use of the facility for a minimum period of five years from the time the renovations are completed.

We are proposing further in this rule that all applicants support, whenever possible, the determination that there are no suitable facilities with a written statement by a licensed real estate professional in the grantee's service area.

Section 1309.51—Approval of drawings and specifications

In this section we propose to require that grantees receive approval from the responsible HHS official of the final drawings and specifications for the proposed construction or major renovation before soliciting bids or awarding a contract for the work. The architect or engineer shall make a certification to the responsible HHS official of whether in his or her professional opinion the plans and specifications conform to Head Start programmatic requirements and are appropriate from a cost and technical point of view.

Section 1309.52—Procurement procedures

Paragraph (a) of this section refers to the Department's procurement policy, found in 45 CFR parts 74 and 92, and reiterates the basic rule that all facility transactions be conducted in a manner to provide, to the maximum extent practicable, open and free competition. Paragraph (b) provides that all construction and major renovation contracts shall be on a lump sum fixed-price basis, and prohibits the grantee from entering into a contract without prior written approval of the responsible HHS official. Paragraph (c) requires prior written approval of the responsible HHS official for unsolicited modifications that would change the scope or objective of the project. In paragraph (d) we propose that all contracts for HHS-funded construction or major renovation of Head Start facilities contain a clause stating that the responsible HHS official or his or her designee shall have access at all reasonable times to the work being performed pursuant to the contract, at any stage of preparation or progress, and requiring the contractor to facilitate such access and inspection.

The intent of these provisions is to protect the grantee and the Department against substandard work and cost overruns.

Section 1309.53—Inspection of work

This section proposes that the grantee shall provide competent and adequate architectural or engineering inspection at the work site to insure that the completed work conforms to the approved plans and specifications. Also, a final architectural or engineering inspection report of the facility must be submitted to the responsible HHS official within 30 calendar days of substantial completion of the construction or major renovation. This is intended to insure that the project is being properly managed and that any problems or unusual circumstances are identified and dealt with as early as possible.

Section 1309.54—Davis-Bacon Act

Construction and major renovation contracts and subcontracts are subject to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*). In this section we propose that the grantee must provide an assurance that all laborers and mechanics employed by contractors or subcontractors in the construction or renovation of Head Start facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor. Grantees are required to comply with the requirements found in the Davis-Bacon Act and the regulations of the Department of Labor which implement that Act. Those regulations are found in Title 29 of the Code of Federal Regulations.

IV. Impact Analysis

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This Notice of Proposed Rulemaking implements the statutory authority for Head Start grantees to apply to use grant funds to construct or make major renovations to facilities. Congress made no additional appropriation to fund this new authority, however, and so any money spent toward the construction or renovation of Head Start facilities is money that would have been spent otherwise by the program or other programs from the same appropriation amount.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. CH. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations and small governmental entities. While these regulations would affect small entities, they would not affect a substantial number. Furthermore, the cost of the application process and other activities undertaken as a result of these regulations will not have a significant economic impact because the Head Start program covers 80% of the allowable costs of grantees under the program. The remaining costs associated with compliance are part of the share of costs grantees agree to meet from their own resources when they enter the Head Start program. For these reasons, the Secretary certifies that this rule will not have a significant impact on substantial numbers of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement inherent in a proposed or final rule. This NPRM contains information collection and record-keeping requirements in § 1309.10 (application), 1309.49 (eligibility construction), and 1309.50 (major renovation) which will be submitted to OMB for review and approval in accordance with the Paperwork Reduction Act.

The respondents to the information collection requirements in the rule are Head Start grantees who may be State or local non-profit agencies or organizations. The Department needs to require this collection of information in order to assure that grantees who apply for approval to construct or make major renovations to a facility with Head Start funds have followed certain necessary legal and administrative procedures. Also, these collection of information requirements are necessary for monitoring purposes.

The grantees who will be affected by these requirements will be those who request approval and are approved to construct or make major renovations to a facility for the purpose of operating a Head Start program. Based on the average number of grantees who requested approval from the Department since the statutory authority became effective, the estimated annual number of grantees that will be affected is 200.

The actual submittal of an application under § 1309.10 from a grantee to construct or make a major renovation to a facility is a one time activity which is preceded by a number of preparatory activities. We estimate the time it will take to prepare the application in accordance with the requirements of this rule is 40 hours per grantee, calculated over a period of time. On an annual basis, the total hours estimated for submittal of applications from grantees are 8,000.

The Administration for Children and Families (ACF) will consider comments by the public on these proposed collection of information in:

- Evaluating whether the proposed collections are necessary for the proper performance of the functions of ACF, including whether the information will have practical utility;
- Evaluating the accuracy of ACF's estimate of the burden of the proposed collections of information;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond.

OMB is required to make a decision concerning the collections of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Wendy Taylor.

List of Subjects in 45 CFR Part 1309

Acquisition, Construction, Facilities, Head Start, Real property, Renovation

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: August 3, 1998.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: September 15, 1998.

Donna E. Shalala,

Secretary.

For the reasons set forth in the Preamble, 45 CFR part 1309 is proposed to be amended as follows:

1. The authority citation for part 1309 continues to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

2. The heading of part 1309 is revised to read as follows:

PART 1309—HEAD START FACILITIES PURCHASE, MAJOR RENOVATION AND CONSTRUCTION

3. Section 1309.1 is revised to read as follows:

§ 1309.1 Purpose and application.

This part prescribes regulations implementing sections 644(c), (f) and (g) of the Head Start Act, 42 U.S.C. 9801 *et seq.*, as they apply to grantees operating Head Start programs under the Act. It prescribes the procedures for applying for Head Start grant funds to purchase, construct, or make major renovations to facilities in which to operate Head Start programs. It also details the measures which must be taken to protect the Federal interest in facilities purchased, constructed or renovated with Head Start grant funds.

4. Section 1309.3 is amended by revising the definition "acquire" and adding five new definitions to read as follows:

§ 1309.3 Definitions.

* * * * *

Acquire means purchased or constructed in whole or in part with Head Start grant funds through payments made in satisfaction of a mortgage agreement (both principal and interest), as a down payment, for professional fees, closing costs and any other costs associated with the purchase or construction of the property that are usual and customary for the locality.

* * * * *

Construction means new building, and excludes renovations, alterations, additions, or work of any kind to existing buildings.

* * * * *

Incidental alterations and renovations means improvements to a facility which can be readily made, which are not considered major or structural renovations as defined in this section and the total costs of which do not exceed the lesser of $150,000 or 25 percent of total direct costs approved for a budget period.

Major renovation means structural changes to the foundation, roof, floor, or exterior or load-bearing walls of a facility, or the extension of an existing facility to increase its floor area. Major renovation also means extensive alteration of an existing facility such as to significantly change its function and purpose, even if such renovation does not include any structural change to the facility.

* * * * *

Suitable Facility means a facility that is owned by the grantee or is available for lease or purchase, is useable as a Head Start facility and is not more expensive to purchase, own or lease than other comparable facilities in the grantee's service area.

Useable facility means a facility which is large enough to meet the foreseeable needs of the Head Start program and which complies with local licensing and code requirements and the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973.

5. Section 1309.10 is revised to read as follows:

§ 1309.10 Applications for the purchase, construction and major renovation of facilities.

A grantee which proposes to use grant funds to purchase a facility, or a grantee found eligible under section § 1309.49 to apply for funds to construct a facility, or section § 1309.50 to undertake major renovation of a facility, including facilities purchased for that purpose, must submit a written application to the responsible HHS official. The application must include the following information:

(a) A legal description of the site of the facility, and an explanation of the appropriateness of the location to the grantee's service area, including a statement of the effect that acquisition or major renovation of the facility has had or will have on the transportation of children to the program, on the grantee's ability to collaborate with other child care, social services and health providers, and on all other program activities and services.

(b) Plans and specifications of the facility to be purchased, including information on the size and type of structure, the number and a description of the rooms, and the lot on which the building is located (including the space available for a playground and for parking). If incidental alterations and renovations or major renovations are being proposed to make a facility useable to carry out the Head Start program, a description of the renovations, and the plans and specifications submitted must also describe the facility as it will be after renovations are complete. In the case of a proposed major renovation, a certification by a licensed engineer or architect as to the cost and technical appropriateness of the proposed renovation must be included.

(c) The cost comparison described in § 1309.11 of this part.

(d) The intended uses of the facility proposed for acquisition or major renovation, including information demonstrating that the facility will be

used principally as a Head Start center or a direct support facility for a Head Start program. If the facility is to be used for purposes in addition to the operation of the Head Start program, the grantee must state what portion of the facility is to be used for such other purposes.

(e) An assurance that the facility complies (or will comply when constructed or after completion of the renovations described in paragraph (b) of this section) with local licensing and code requirements, the access requirements of the Americans with Disabilities Act (ADA), if applicable, and section 504 of the Rehabilitation Act of 1973. The grantee also will assure that it has met the requirements of the Flood Disaster Protection Act of 1973, if applicable.

(f) If the grantee proposing to purchase a facility without undertaking major renovations is claiming that the lack of alternative facilities will prevent or would have prevented operation of the program, a statement of how it was determined that there is or was a lack of alternative facilities. This statement must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area. If a grantee requesting approval of the previous purchase of a facility is unable to provide such statements based on circumstances which existed at the time of the purchase, the grantee and the licensed real estate professional may use present conditions as a basis for making the determination.

(g) The terms of any proposed or existing loan(s) related to acquisition or major renovation of the facility and the repayment plans (detailing balloon payments or other unconventional terms, if any), and information on all other sources of funding of the acquisition or major renovation, including any restrictions or conditions imposed by other funding sources.

(h) A statement of the effect that the acquisition or major renovation of the facility would have on the grantee's meeting of the non-Federal share requirement of section 640(b) of the Head Start Act, including whether the grantee is seeking a waiver of its non-Federal share obligation under that section of the Act.

(i) Certification by a licensed engineer or architect that the building proposed to be purchased or previously purchase is structurally sound and safe for use as a Head Start facility. The applicant must certify that upon the completion of major renovation to a facility or construction of a facility that inspection by a licensed engineer or architect will be conducted to determine that the facility is structurally sound and safe for use as a Head Start facility.

(j) A statement of the effect that the acquisition or major renovation of a facility would have on the grantee's ability to meet the limitation on development and administrative costs in section 644(b) of the Head Start Act. One-time fees and expenses necessary to the acquisition or major renovation, such as the down payment, the cost of necessary renovation, loan fees and related expenses, and fees paid to attorneys, engineers, and appraisers, are not considered to be administrative costs.

(k) A proposed schedule for acquisition, renovation and occupancy of the facility.

(l) Reasonable assurances that the applicant will obtain a fee simple or such other estate or interest in the site of the facility to be acquired sufficient to assure undisturbed use and possession for the purpose of operating the Head Start program. If the grantee proposes to acquire a facility without also purchasing the land on which the facility is situated, the application must describe the easement, right of way or land rental it will obtain or has obtained to allow it sufficient access to the facility. If the grantee proposes to undertake a major renovation of a leased facility, the grantee must have a lease of at least five years duration from the date the renovation is completed.

(m) An assessment of the impact of the proposed purchase on the human environment if it involves more than a simple incidental alteration and renovation or any significant change in land use, including substantial increases in traffic in the surrounding area due to the provision of Head Start transportation services and an assessment of all proposed construction and major renovation pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C) and its implementing regulations (40 CFR parts 1500–1508), as well as a report showing the results of tests for environmental hazards present in the facility, ground water, and soil (or justification why such testing is not necessary). In addition, such information as may be necessary to comply with the National Historic Preservation Act of 1966 (16 U.S.C. 470f) must be included.

(n) Assurance that the grantee will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.* and 49 CFR Part 24), and information about the costs that may be incurred due to compliance with this Act.

(o) A statement of the share of the cost of acquisition or major renovation that will be paid with grant funds.

(p) For a grantee seeking approval of a previous purchase, a statement of the extent to which it has attempted to comply and will be able to comply with the provisions of § 1309.22 of this part.

(q) Such additional information as the responsible HHS official may require.

6. Section 1309.11 is revised to read as follows:

§ 1309.11 Cost comparisons for purchase, construction and major renovation of facilities.

(a) A grantee proposing to acquire or undertake a major renovation of a facility must submit a detailed estimate of the costs of the proposed activity and compare the cost of the proposed activity as provided under paragraph (c) of this section.

(b) All costs of acquisition, renovation and ownership must be identified, including, but not limited to, professional fees, purchase of the facility to be renovated, renovation costs, moving expenses, additional transportation costs, maintenance, taxes, insurance, and easements, rights of way or land rentals. An independent appraisal of the current value of the facility proposed to be purchased, previously purchased or renovated, made by a professional appraiser, must be included.

(c)(1) Grantees proposing to purchase a facility, without requesting funds for major renovations to the facility, must compare the cost of the proposed facility to the cost of the facility currently used by the grantee, unless the grantee has no current facility, will lose the use of its current facility, intends to continue to use its current facility after it purchases the new facility, or has shown to the satisfaction of the responsible HHS official that its existing facility is inadequate. Where the grantee's current facility is not used as the alternate facility, the grantee must use for comparison a facility (or facilities) available for lease in the grantee's service area and useable as a Head Start facility or which can be made useable through incidental alteration or renovation, the cost of which shall be included in the cost comparison. In the case of an application for approval of the previous purchase of a facility, the cost of the present facility must be compared to the cost of the facility used by the grantee before purchase of its current facility. If the facility used by the grantee before the purchase of its present facility was

deemed inadequate by the responsible HHS official, the grantee had no previous facility, or if the grantee continued to use its previous facility after it purchased the current facility, the alternative facility shall be an available, appropriate facility (or facilities) of comparable size that was available for rent in the grantee's service area at the time of its purchase of the current facility.

(2) Grantees proposing to construct a facility must compare the costs of constructing the proposed facility to the costs of owning, purchasing or leasing an alternative facility which can be made useable through incidental alterations and renovations or major renovations. The alternative facility is one now owned by the grantee or available for lease or purchase in the grantee's service area. If no such facility is available, this statement must explain how this fact was determined and the claim must be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area.

(3) A grantee proposing to undertake a major renovation of a facility must compare the cost of the proposed renovation (including the cost of purchasing the facility to be renovated, if the grantee is proposing to purchase the facility) to the cost of constructing a facility of comparable size.

(d) The grantee must separately delineate the following expenses in the application:

(1) One-time costs, including, but not limited to, cost of purchasing the facility to be renovated, the down payment, professional fees, moving expenses, the cost of site preparation; and

(2) Ongoing costs, including, but not limited to, mortgage payments, insurance premiums, maintenance costs, and property taxes. If the grantee is exempt from the payment of property taxes, this fact must be stated.

(e) The period of comparison for purchase, construction or renovation of a facility is twenty years, except that for the purchase of a modular unit the period of comparison is ten years and the period of comparison for major renovation of a leased facility is the period of the lease remaining after the renovations are completed. For approvals of previous purchases the period of comparison begins on the date the purchase took place.

(f) If the facility is to be used for purposes in addition to the operation of the Head Start program, the cost of use of that part of the facility used for such other purposes must be allocated in accordance with applicable Office of Management and Budget cost principles.

7. Section 1309.21 is amended by revising paragraphs (a), (d), introductory text, (d)(1), and (f), introductory text to read as follows:

§ 1309.21 Recording of Federal interest and other protection of Federal interest.

(a) The Federal government has an interest in all real property and equipment acquired or upon which major renovations have been undertaken with grant funds for use as a Head Start facility. The responsible HHS official may subordinate the federal interest in such property to that of a lender which finances the acquisition or major renovation costs subject to the conditions set forth in paragraph (f) of this section.

* * * * *

(d) Immediately upon purchasing or at the commencement of major renovation or construction of a facility, or receiving permission to use funds for a previously purchased facility the grantee shall record the Notice of Federal Interest in the appropriate official records for the jurisdiction is located. The Notice shall include the following information:

(1) The date of the award of grant funds for the acquisition or major renovation of the property to be used as a Head Start facility, and the address and legal description of the property to be acquired or renovated;

* * * * *

(f) In subordinating its interest in a facility acquired or upon which major renovations have been undertaken with grant funds, the responsible HHS official does not waive application of paragraph (d) of this section and § 1309.22. A written agreement by the responsible HHS official to subordinate the Federal interest must provide:

* * * * *

8. Section 1309.23 is amended by revising paragraph (a) to read as follows:

§ 1309.23 Insurance, bonding and maintenance.

(a) At the time of acquiring or undertaking a major renovation of a facility or receiving approval for the previous purchase of a facility the grantee shall obtain insurance coverage for the facility which is not lower in value than coverage it has obtained for other real property it owns, and which at least meets the requirements of the coverage specified in paragraphs (a)(1) and (2) of this section. For facilities which have been constructed or renovated, insurance coverage must begin at the commencement of the expenditure of costs in fulfillment of construction or renovation work.

* * * * *

9. Section 1309.40 is revised to read as follows:

§ 1309.40 Copies of documents.

Certified copies of the deed, lease, loan instrument, mortgage, and any other legal documents related to the acquisition or major renovation of the facility or to the discharge of any debt secured by the facility must be submitted to the responsible HHS official within ten days of their execution.

10. Section 1309.41 is revised to read as follows:

§ 1309.41 Record retention.

All records pertinent to the acquisition or major renovation of a facility must be retained by the grantee for a period equal to the period of the grantee's ownership (or occupancy, in the case of leased facilities) of the facility plus three years.

11. Section 1309.42 is revised to read as follows:

§ 1309.42 Audit of mortgage.

Any audit of a grantee which has acquired or made major renovations to a facility with grant funds shall include an audit of any mortgage or encumbrance on the facility. Reasonable and necessary fees for this audit are payable with grant funds.

12. Section 1309.43 is revised to read as follows:

§ 1309.43 Use of grant funds to pay fees.

Consistent with the cost principles referred to in 45 CFR part 74 and 45 CFR part 92, reasonable fees and costs associated with and necessary to the acquisition or major renovation of a facility (including reasonable and necessary fees and costs incurred to establish preliminary eligibility under § 1309.50 of this part, or otherwise prior to the submission of an application under § 1309.10 of this Part or acquisition of the facility) are payable with grant funds, but require prior, written approval of the responsible HHS official.

13. A new subpart F is added to read as follows:

Subpart F—Construction and Major Renovation

Sec.

1309.49 Eligibility—Construction.
1309.50 Eligibility—Major renovation.
1309.51 Approval of drawings and specifications.
1309.52 Procurement procedures.
1309.53 Inspection of work.
1309.54 Davis-Bacon Act.

Subpart F—Construction and Major Renovation

§ 1309.49 Eligibility—Construction.

Before submitting an application under section 1309.10 for construction of a facility, the grantee must establish that:

(a) The Head Start program serves an Indian Tribe; or is located in a rural or other low-income community; and

(b) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable for use by a Head Start program. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported whenever possible by a written statement from a licensed real estate professional in the grantee's service area.

§ 1309.50 Eligibility—Major renovation.

(a) Before submitting an application under § 1309.10, the grantee must establish that:

(1) The Head Start program serves an Indian Tribe, or is available in a rural or other low-income community; and

(2) There is a lack of suitable facilities (including public school facilities) in the grantee's service area which will inhibit the operation of the program, as demonstrated by a statement that neither the grantee's current facility nor any facility available for lease or purchase in the service area is suitable or could be made suitable without major renovation. This statement must explain the factors considered, how it was determined that there is a lack of suitable facilities and be supported, whenever possible, by a written statement from a licensed real estate professional in the grantee's service area.

(b) In order to receive funding for major renovation of a leased facility, the grantee must have a lease that provides the Head Start program with a term of occupancy of at least five years from the time the renovation will be complete.

§ 1309.51 Approval of drawings and specifications.

(a) The grantee may not advertise for bids or award a contract for any part of construction or major renovation funded by grant funds until final working drawings and specifications have been approved by the responsible HHS official.

(b) Approval by the responsible HHS official shall be based on the certification by a licensed engineer or architect as to the cost and technical appropriateness of the proposed construction or renovation, and on a determination that the drawings and specifications conform to Head Start programmatic requirements.

§ 1309.52 Procurement procedures.

(a) All facility construction and major renovation transactions must comply with the procurement procedures in 45 CFR parts 74 and 92, and must be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) All construction and major renovation contracts for facilities acquired with grant funds require the prior, written approval of the responsible HHS official, and shall be on a lump sum fixed-price basis.

(c) Prior written approval of the responsible HHS official is required for unsolicited modifications that would change the scope or objective of the project, including proposed modifications that would materially alter the costs of the project or increase the amount of grant funds needed to complete the project.

(d) All construction and major renovation contracts for facilities acquired with grant funds shall contain a clause stating that the responsible HHS official or his or her designee shall have access at all reasonable times to the work being performed pursuant to the contract, at any stage of preparation or progress, and requiring that the contractor shall facilitate such access and inspection.

§ 1309.53 Inspection of work.

(a) The grantee must provide and maintain competent and adequate architectural or engineering inspection at the work site to insure that the completed work conforms to the approved plans and specifications.

(b) The grantee must submit a final architectural or engineering inspection report of the facility to the responsible HHS official within 30 calendar days of substantial completion of the construction or renovation.

§ 1309.54 Davis-Bacon Act.

Construction and renovation projects and subcontracts financed with funds awarded under the Head Start program are subject to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) and the regulations of the Department of Labor, 29 CFR part 5. The grantee must provide an assurance that all laborers and mechanics employed by contractors or subcontractors in the construction or renovation of affected Head Start facilities shall be paid wages at not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor.

[FR Doc. 99–2861 Filed 2–5–99; 8:45 am]
BILLING CODE 4184–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–22, RM–9426]

Radio Broadcasting Services; Ashland, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by The State of Wisconsin Educational Communications Board proposing the allotment of Channel 275A to Ashland, Wisconsin, and reservation of the channel for noncommercial educational use. The channel can be allotted to Ashland without a site restriction at coordinates 46–35–24 NL and 90–53–00 WL. Canadian concurrence will be requested for the allotment of Channel *275A at Ashland.

DATES: Comments must be filed on or before March 22, 1999, and reply comments on or before April 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Todd D. Gray, Margaret L. Miller, Christine J. Newcomb, Dow Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, NW, Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–22, adopted January 13, 1999, and released January 29, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–2732 Filed 2–5–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–4673, Notice 2]

RIN 2127–AG87

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Extension of comment period for a notice of proposed rulemaking.

SUMMARY: This notice grants a request to extend the comment period on an agency proposal to reorganize the sections of Standard No. 108, Lamps, Reflective Devices and Associated Equipment, relating to headlighting (63 FR 63258, November 12, 1998). The comment closing date is changed from February 10, 1999 to April 11, 1999.

DATES: Comments on docket NHTSA 98–4673, Notice 1 must be received on or before April 11, 1999.

ADDRESSES: Comments should refer to the Docket NHTSA 98–4673, Notice 1 and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 10 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Safety Standards, NHTSA, telephone (202) 366–6346.

SUPPLEMENTARY INFORMATION: NHTSA's proposed rewrite of the headlighting sections of FMVSS No. 108 is intended to remove inconsistencies and to facilitate easy reference to the standard. A proposed rewrite of the signal lamp sections of the standard will follow.

DaimlerChrysler, Ford and General Motors requested a 60 day extension of the comment period because they wanted to provide a response coordinated through the newly formed Alliance of Automobile Manufacturers (AAM). Formerly, the American Automobile Manufacturers Association (AAMA) provided such coordinated responses to notices of proposed rulemaking, but it disbanded during the comment period.

After reviewing the situation, NHTSA agrees with the petitioners that additional time is desirable to obtain a coordinated response. The amended text is lengthy, but the amendments are intended primarily to improve clarity. Accordingly, the agency believes that there is good cause for the extension and that the extension is consistent with the public interest. Based on the above considerations, the agency has decided to extend the comment period until April 11, 1999.

Issued on: February 2, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–2937 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. NHTSA–98–5064]

RIN 2127–AH33

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the regulation NHTSA issued to implement the American Automobile Labeling Act. That Act requires passenger motor vehicles to be labeled with information about their domestic and foreign parts content. Congress recently amended that Act to make a number of changes in the labeling requirement. This proposal would make the regulation consistent with those changes.

DATES: Comments must be received by April 9, 1999.

ADDRESSES: Comments should refer to the docket number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590 (Docket hours are from 10 a.m. to 5 p.m.)

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Henrietta Spinner, Office of Planning and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–4802).

For legal issues: Edward Glancy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

Background

On July 21, 1994, NHTSA published in the **Federal Register** (59 FR 37294) a new regulation, 49 CFR part 583, Automobile Parts Content Labeling, to implement the American Automobile Labeling Act (AALA). That Act, which is codified at 49 U.S.C. 32304, requires passenger motor vehicles to be labeled with information about their domestic and foreign parts content. We encourage interested persons to read the July 1994 notice, as well as the various subsequent notices published by the agency in response to petitions for reconsideration, for a detailed explanation of this program.

As part of the NHTSA Reauthorization Act of 1998,[1] Congress amended the AALA to make a number of changes in the labeling requirement. The changes are set forth in section 7106(d) of the NHTSA Reauthorization Act.

In this notice, the agency is proposing to amend Part 583 to conform it to the amended AALA. We will discuss each of the changes made by the Congress, and any conforming amendments being proposed for part 583, in the order set forth in section 7106(d).

Changes to the AALA; Proposed Conforming Amendments

Determination of Origin of Engine and Transmission (Subparagraph (1)(A) of Section 7106(d))

The original AALA specified, among other things, that vehicles were to be

[1] This Act was part of the Transportation Equity Act for the 21st Century (TEA–21). The full text of TEA–21 and the conference report is available on the Web at http://www.fhwa.dot.gov/tea21/.

labeled with the names of the countries of origin of the engine and transmission. The Act provided that these origin determinations were to be based on the purchase price of materials received at individual engine/transmission plants and were not to include engine/transmission assembly costs.

To reflect the fact these origin determinations did not include engine/transmission assembly costs and to ensure that accurate information was provided to the public, we specified that the label refer to "Engine Parts" and "Transmission Parts" instead of "Engines" and "Transmissions':

Country of Origin:
Engine Parts: (name of country)
Transmission Parts: (name of country)

Section 7106(d)(1)(A) amended the AALA to specify that assembly and labor costs incurred for the final assembly of engines and transmissions are now to be included in making these country of origin determinations. This means that the terms "Engine Parts" and "Transmission Parts" will no longer be appropriate for the vehicle content label.

In order to conform part 583 to subparagraph (1)(A), we are proposing to amend the calculation procedures set forth in § 583.8. We are also proposing to amend § 583.5, so that the wording of the vehicle content label would no longer use the terms "Engine Parts" and "Transmission Parts." It would instead use the terms "Engine" and "Transmission."

Definition of Final Assembly Place (Subparagraph (1)(B) of Section 7106(d)

Subparagraph (1)(B) amends the definition of "final assembly place." The Conference Report notes that this amendment "codifies certain regulations which permit labor costs of parts manufactured at the same location as final vehicle assembly to be included in the vehicle's overall content calculation * * *" Congressional Record H3929 (May 22, 1998).

We note that subparagraph (1)(B) simply codifies an existing provision of part 583, i.e., the definition of final assembly set forth in § 583.4(b)(4). Therefore, we do not need to make conforming amendments.

Determination of U.S./Canadian Percentage of the Value of Items of Equipment by Outside Suppliers (Subparagraph (1)(C) of Section 7106(d)

The AALA specifies, among other things, that the vehicle content labels must indicate the percentage U.S./Canadian parts content, determined on a carline basis. To enable vehicle manufacturers to calculate this information, the statute requires suppliers of equipment to provide information about the origin of the equipment they supply.

The original AALA specified that, for equipment received from outside suppliers, the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the U.S./Canada. Thus, any equipment that was at least 70 percent U.S./Canadian was valued at 100 percent U.S./Canadian. Any equipment under 70 percent was valued at zero percent. This provision was sometimes referred to as the "roll-up, roll-down" provision. It is reflected in § 583.6(c) of the current regulation.

Subparagraph (1)(C) amended the AALA to eliminate the "roll-down" portion of this provision. While equipment from an outside supplier that is at least 70 percent U.S./Canadian is still to be valued at 100 percent U.S./Canadian, any equipment under 70 percent is now valued, and must be reported, to the nearest five percent. As the Conference Report stated:

> Under this subparagraph, suppliers would report [U.S./Canadian] content to the nearest five percent. For instance, 38 percent would be reported to the manufacturer as 40 percent, rather than zero as under current law.

Congressional Record H3929 (May 22, 1998).

In order to conform part 583 to subparagraph (1)(C), we are proposing to amend the procedures for calculating U.S./Canadian parts content set forth in § 583.6 and the requirements for outside suppliers set forth in § 583.10.

We note that the proposed amendments would increase the costs of compliance with part 583 for some outside suppliers. The original AALA did not require outside suppliers to provide specific estimates of the U.S./Canada value added of their equipment. Instead, it only required them to indicate whether the U.S./Canada value added was at least 70 percent.[2] Under the amended AALA, however, outside suppliers which provide equipment with U.S./Canada value added of less than 70 percent are required to provide specific estimates (i.e., to the nearest five percent) of the U.S./Canada value added of their equipment.

Identification of Country of Assembly (Paragraph (2) of Section 7106(d))

Paragraph (2) amends section 32304(d) of the AALA to provide that a manufacturer's vehicle content label may include a line identifying the country in which the vehicle assembly was completed. We note, however, that section 32304(b)(1)(B) of the AALA already provides that the label must identify the final assembly place for the vehicle by city, State (where appropriate) and country. This requirement is reflected in § 583.5(b) of the current regulation.

Since, pursuant to another section of the AALA, Part 583 already requires the vehicle content label to state the country in which the vehicle assembly was completed, we believe that it is unnecessary to amend the regulation in light of paragraph (2).

U.S./Canadian Parts Content of a Vehicle Based on the Assembly Plant (Paragraph (3) of Section 7106(d))

Paragraph (3) amended the AALA to provide that a manufacturer's vehicle content label may display separately the domestic content of a vehicle based on the assembly plant. We note that, in enacting the original AALA, Congress decided that U.S./Canadian parts content should be calculated for groups of vehicles rather than for each individual vehicle. It also decided to adopt the concept of "carline" and its definition from the Corporate Average Fuel Economy Program, as the basis for determining the relevant groups of vehicles.

We also note that carline determinations are based on degree of commonality in construction, instead of commonality of assembly plant. Thus, it is possible that some vehicles in a carline may be manufactured at one assembly plant, while other vehicles in the same carline may be manufactured at another assembly plant, even one in another country.

If a carline is manufactured at more than one assembly plant, the U.S./Canadian content for the portion of the carline manufactured at one assembly plant may differ substantially from that for the portions manufactured at other assembly plants. Paragraph (3) permits a manufacturer to voluntarily display separately on the vehicle content label the U.S./Canadian parts content for the portion of the carline assembled at the plant where the vehicle was assembled. As noted by the Conference Report, this information would be reported in addition to the carline average percentage. Congressional Record H3929–30 (May 22, 1998).

We note that this provision appears to represent a variation of an option currently included in part 583 at § 583.5(e). That option applies to carlines consisting of vehicles some of which are assembled in the U.S./Canada

[2] NHTSA discussed in some detail the compliance burdens associated with the now superseded requirements for outside suppliers at 60 FR 47883–87 (September 15, 1995).

and others of which are assembled in one or more other countries. It permits manufacturers to voluntarily identify U.S./Canadian parts content for the portion of the carline assembled in the country in which the vehicle is actually assembled. If this information is provided, it must be included in an explanatory note at the end of the label.

In order to conform part 583 to paragraph (3), we are proposing to add to § 583.5 an additional option permitting manufacturers to voluntarily identify U.S./Canadian parts content based on the assembly plant in which the vehicle was assembled. The details of the option are generally patterned after the option included at § 583.5(e), which would be retained. We seek comment on whether § 583.5(e) will still be needed with this additional provision.

Outside Suppliers Failing To Report (Paragraph (4) of Section 7106(d)

For the past several years, we have provided a limited, temporary provision in the part 583 content calculation procedures to give a vehicle manufacturer added flexibility in making content determinations in those instances in which outside suppliers have not responded to the manufacturer's requests for content information.[3] This provision is set forth at § 583.6(c)(6). Paragraph (4) amended the AALA to codify this regulatory provision and make it permanent.

In order to conform part 583 to paragraph (4), we are proposing to remove the time limitation included in § 583.6(c)(6). We are also proposing conforming changes to make that section consistent with subparagraph (1)(C) of section 7106(d) which, as discussed above, changed the procedures for calculating the U.S./Canadian content of equipment supplied by outside suppliers.

Accounting for the Value of Small Parts (Paragraph (5) of Section 7106(d)

The original AALA excluded small parts such as nuts, bolts, clips, screws and pins from the definition of "passenger motor vehicle equipment." This reduced the burdens associated with obtaining content information about these minor items. However, it also meant that they were not considered at all in determining parts content. Paragraph (5) amends the AALA to provide that the value of small parts is to be defaulted to the country of final assembly. In other words, these small parts are now considered to be passenger motor vehicle equipment and to represent value added in the country where final assembly takes place, regardless of actual country of origin of those small parts.

In order to conform part 583 to paragraph (5), we are proposing to amend the definition of passenger motor vehicle equipment set forth at § 583.4(b) and the calculation procedures set forth at § 583.6 and § 583.7.

Other Changes to the Label

We are proposing a change in the format of the label to make it easier to understand. Part 583 currently requires a brief explanatory note concerning parts content to be provided at the end of the label. We are proposing to move this note to the middle of the label, directly below the items of information for which the note is relevant, i.e., below the specified U.S./Canadian Parts Content and Major Sources of Foreign Parts Content. We request comments on whether any other changes to the label, e.g., wording changes or format changes, are appropriate in light of the amendments to the AALA.

Effective Date

The NHTSA Reauthorization Act was signed by the President on June 9, 1998. While the provisions amending the AALA changed the existing labeling requirement and content calculation procedures, they did not specify when those changes are to become effective for vehicle manufacturers and suppliers.

Given the leadtime needed to change labels and make calculations based on the new calculation procedures, it would not have been possible for the vehicle manufacturers to comply with the new requirements for their model year 1999 vehicles. However, we believe that manufacturers can comply with the new requirements with respect to all model year 2000 vehicles, with the possible exception of those introduced during the early part of 1999. Since the changes are relatively straightforward and leave us little discretion, the vehicle manufacturers can implement the changes needed to comply with the new requirements. They need not await the final rule to do so.

Accordingly, we are proposing to apply the new requirements to all model year 2000 carlines that are first offered for sale to ultimate purchasers on or after June 1, 1999. This would affect the vast majority of model year 2000 carlines, since most will be introduced in the fall of 1999. For model year 2000 carlines that are first offered for sale before June 1, 1999, manufacturers would have the option of following the new requirements or the old ones.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has been determined not to be significant under the Department's regulatory policies and procedures.

This document proposes to amend 49 CFR Part 583 to conform the agency's content labeling requirements and calculation procedures to recent statutory changes. The changes are so minor that they would not have any measurable effect on vehicle prices.

The change most likely to result in cost impacts is the one requiring outside suppliers to make calculations of U.S./Canadian content, to the nearest five percent, for equipment with U.S./Canadian content below 70 percent. This will increase compliance costs for some outside suppliers. The agency notes that there are about 15,000 suppliers to vehicle manufacturers. However, many small suppliers procure all their inputs from the same country, and will experience negligible costs. NHTSA believes that cost impacts for other suppliers will be small and will diminish over time. Somewhat higher costs are likely to be experienced the first year as suppliers become familiar with the new calculation procedures and incorporate them into their programming or other systems.

While the agency believes that the cost impacts will be small, it does not have sufficient information to quantify such costs. Comments are requested concerning this issue. Because the economic impacts of this proposal are so minimal, preparation of a full regulatory evaluation is not necessary.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, are affected by the regulation, the effect on them is minor. The requirements are strictly

[3] For an explanation of this provision, see 62 FR 33756 (June 23, 1997).

informational and, as discussed above, cost impacts small.

C. National Environmental Policy Act

We have analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

We have analyzed this proposed amendment in accordance with the principles and criteria set forth in Executive Order 12612. We have determined that the proposed amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

Information collection requirements proposed in this notice differ from those approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act (Pub. L. 96–511) and assigned OMB Control Number 2127–0573. The current approval will expire on June 30, 2001. Since NHTSA believes that the changes proposed in this notice will result in a small increase in the paperwork burden of this reporting requirement, if the changes proposed in this NPRM are made final, NHTSA will ask OMB for approval to amend OMB Control Number 2127–0573 to account for any additional information collection burdens imposed on the public.

Request for Comments

We invite interested persons to submit comments on this proposal. Two copies should be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

We will consider all comments received before the close of business on the comment closing date indicated above. The comments will be available for examination in the docket at the above address both before and after that date. To the extent possible, we will consider comments filed after the closing date. We will consider comments received too late for consideration in regard to this action as suggestions for further rulemaking action. Comments will be available for inspection in the docket. We will continue to file relevant information as it becomes available in the docket after the closing date, and recommend that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 583

Imports, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR part 583 as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

1. The authority citation for part 583 would continue to read as follows:

Authority: 49 U.S.C. 32304, 40 CFR 1.50, 501.2(f).

2. Section 583.4 would be amended by revising paragraph (b)(7) to read as follows:

§ 583.4 Definitions.

* * * * *

(b) * * *

(7) *Passenger motor vehicle equipment* means any system, subassembly, or component received at the final assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. Passenger motor vehicle equipment also includes any system, subassembly, or component received by an allied supplier from an outside supplier for incorporation into equipment supplied by the allied supplier to the manufacturer with which it is allied.

* * * * *

3. Section 583.5 would be amended by revising paragraph (a)(4), (a)(5), (b), and (i) to read as follows:

§ 583.5 Label requirements.

(a) * * *

(4) *Country of origin for the engine.* The country of origin of the passenger motor vehicle's engine (the procedure for making this country of origin determination is set forth in § 583.8);

(5) *Country of origin for the transmission.* The country of origin of the passenger motor vehicle's transmission (the procedure for making this country of origin determination is set forth in § 583.8);

* * * * *

(b) Except as provided in paragraphs (e), (f) and (g) of this section, the label required under paragraph (a) of this section shall read as follows, with the specified information inserted in the places indicated (except that if there are no major sources of foreign parts content, omit the section "Major Sources of Foreign Parts Content"):

Parts Content Information

For vehicles in this carline:
U.S./Canadian Parts Content: (insert number) %
Major Sources of Foreign Parts Content:
(name of country with highest percentage): (insert number) %
(name of country with second highest percentage): (insert number) %

Note: Parts content does not include final assembly, distribution, or other non-parts costs.

For this vehicle:
Final Assembly Point: (city, state, country)
Country of Origin:
Engine: (name of country)
Transmission: (name of country)

* * * * *

(i) *Carlines assembled in more than one assembly plant.* (1) If a carline is assembled in more than one assembly plant, the manufacturer may, at its option, add the following additional information at the end of the explanatory note specified in paragraph (a)(6) of this section, with the specified information inserted in the places indicated:

Two or more assembly plants produce the vehicles in this carline. The vehicles assembled at the plant where this vehicle was assembled have a U.S./Canadian parts content of [__]%.

(2) A manufacturer selecting this option shall divide the carline for purposes of this additional information into portions representing each assembly plant.

(3) A manufacturer selecting this option for a particular carline shall provide the specified additional information on the labels of all vehicles within the carline.

4. Section 583.6 would be amended by revising paragraphs (a), (c)(1)(ii), (c)(3)(ii), and (c)(6) to read as follows:

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis. This determination shall be made before the beginning of each model year. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. All value otherwise added at the final assembly point and beyond, including all final assembly costs, is excluded from the calculation of U.S./Canadian parts content. The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights, used in final assembly of the vehicle, is considered to be the country where final assembly of the vehicle takes place.

* * * * *

(c) * * *

(1) * * *

(ii) To otherwise have the actual percent of its value added in the United States and/or Canada, rounded to the nearest five percent.

* * * * *

(3) * * *

(ii) To otherwise have the actual percent of its value added in the United States and/or Canada, rounded to the nearest five percent.

* * * * *

(6) If a manufacturer or allied supplier requests information in a timely manner from one or more of its outside suppliers concerning the U.S./Canadian content of particular equipment, but does not receive that information despite a good faith effort to obtain it, the manufacturer or allied supplier may make its own good faith value added determinations, subject to the following provisions:

(i) The manufacturer or allied supplier shall make the same value added determinations as would be made by the outside supplier;

(ii) The manufacturer or allied supplier shall consider the amount of value added and the location in which the value was added for all of the stages that the outside supplier would be required to consider;

(iii) The manufacturer or allied supplier may determine that particular value is added in the United States and/or Canada only if it has a good faith basis to make that determination;

(iv) A manufacturer and its allied suppliers may, on a combined basis, make value added determinations for no more than 10 percent, by value, of a carline's total parts content from outside suppliers;

(v) Value added determinations made by a manufacturer or allied supplier under this paragraph shall have the same effect as if they were made by the outside supplier;

(vi) This provision does not affect the obligation of outside suppliers to provide the requested information.

* * * * *

5. Section 583.7 would be amended by revising paragraph (a) to read as follows:

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the countries, if any, which are major foreign sources of passenger motor vehicle equipment and the percentages attributable to each such country for each carline on a model year basis, before the beginning of each model year. The manufacturer need only determine this information for the two such countries with the highest percentages. Items of equipment produced at the final assembly point (but not as part of final assembly) are treated in the same manner as if they were supplied by an allied supplier. In making determinations under this section, the U.S. and Canada are treated together as if they were one (non-foreign) country. The country of origin of nuts, bolts, clips, screws, pins, braces, gasoline, oil, blackout, phosphate rinse, windshield washer fluid, fasteners, tire assembly fluid, rivets, adhesives, grommets, and wheel weights, used in final assembly of the vehicle, is considered to be the country where final assembly of the vehicle takes place.

* * * * *

6. Section 583.8 would be amended by revising paragraphs (b) and (d) to read as follows:

§ 583.8 Procedure for determining country of origin for engines and transmissions (for purposes of determining the information specified by §§ 583.5(a)(4) and 583.5(a)(5) only).

* * * * *

(b) The value of an engine or transmission is determined by first adding the prices paid by the manufacturer of the engine/transmission for each component comprising the engine/transmission, as delivered to the assembly plant of the engine/transmission, and the fair market value of each individual part produced at the plant. The assembly and labor costs incurred for the final assembly of the engine/transmission are then added to determine the value of the engine or transmission.

* * * * *

(d) Determination of the total value of an engine/transmission which is attributable to individual countries. The value of an engine/transmission that is attributable to each country is determined by adding the total value of all of the components installed in that engine/transmission which originated in that country. For the country where final assembly of the engine/transmission takes place, the assembly and labor costs incurred for such final assembly are also added.

* * * * *

7. Section 583.10 would be amended by revising paragraph (a)(5) to read as follows:

§ 583.10 Outside suppliers of passenger motor vehicle equipment.

(a) * * *

(5) For equipment which has less than 70 percent of its value added in the United States and Canada,

(i) The country of origin of the equipment, determined under § 583.7(c); and

(ii) The percent of its value added in the United States and Canada, to the nearest 5 percent, determined under § 583.6(c).

* * * * *

Issued on: January 29, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–2970 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981221311–8311–01; I.D. 113098C]

RIN 0648–AL21

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes amendments to the regulations governing the Western Alaska Community Development Quota (CDQ) Program. The proposed amendments would define how halibut CDQ fishing would be managed in 1999 and thereafter; remove or revise regulations governing groundfish and halibut CDQ fishing consistent with the combination of the management regimes for the fixed gear halibut and sablefish CDQ fisheries, the pollock CDQ fisheries, and the multispecies (MS) groundfish CDQ fisheries starting in fishing year 1999; and make miscellaneous technical and editorial revisions. This proposed action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Comments must be received at the following address by March 10, 1999.

ADDRESSES: Comments should be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of-information requirements to the above address and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels and implementing the FMP appear at 50 CFR parts 600 and 679.

For the 1998 fishing year, four separate CDQ fisheries existed under current regulations: (1) The fixed gear halibut and sablefish CDQ fisheries; (2) the pollock CDQ fisheries; (3) the multispecies (MS) groundfish CDQ fisheries; and (4) the crab CDQ fisheries.

NMFS published a final rule implementing the administrative and catch monitoring requirements for the MS groundfish CDQ fisheries under Amendment 39 to the BSAI FMP in the **Federal Register** on June 4, 1998 (63 FR 30381). That rule establishes a single management program for the fixed gear sablefish CDQ fisheries, the pollock CDQ fisheries, and the MS groundfish CDQ starting in 1999. Regulatory amendments are necessary to remove or revise sections of the regulations that govern the separate CDQ fisheries in 1998, and to further define how the halibut CDQ fisheries will be managed in 1999 and thereafter. The crab CDQ fisheries will continue to be managed as separate CDQ fisheries by the State of Alaska.

The proposed regulatory amendments fall into three categories: (1) Those governing vessels used to harvest halibut CDQ and the processors or registered buyers taking deliveries from these vessels; (2) those removing or revising sections of the regulations governing the fixed gear sablefish CDQ fishery in 1998; and (3) those executing other miscellaneous technical or editorial revisions to the MS groundfish CDQ regulations.

Management of the Halibut CDQ Fisheries

NMFS established the fixed gear halibut and sablefish CDQ fisheries with the fixed gear halibut and sablefish Individual Fishing Quota (IFQ) Program. The IFQ regulations provide for the reporting of halibut and sablefish CDQ caught with fixed gear through the end of 1998. As the recipients of annual allocations, CDQ groups were required to obtain a CDQ permit from NMFS. Each individual who landed fixed gear halibut or sablefish CDQ was required to have a NMFS-issued CDQ card and to telephone NMFS to provide 6 hours prior notice of landing. Registered buyers were required to report CDQ landings to NMFS using the electronic reporting system and transaction terminals.

In the proposed rule to implement Amendment 39 to the FMP, NMFS proposed to consolidate all of the CDQ fisheries under one set of monitoring and catch accounting regulations to implement the Council's and NMFS's intent that all catch in the groundfish and halibut CDQ fisheries be accounted for by CDQ allocations (62 FR 43865, August 15, 1997). Although NMFS proposed different observer coverage, equipment, and reporting requirements for different size and gear type vessels, no distinction was made between the requirements for vessels of the same size fishing in the halibut CDQ fisheries versus fishing in the groundfish CDQ fisheries.

Public comment on the proposed rule stated that the proposed regulations combining vessels and processors participating in the groundfish and halibut CDQ fisheries under one set of regulations were burdensome for participants in the halibut CDQ fishery, did not consider the differences between the groundfish fisheries and the halibut fisheries, and had information collection requirements not worth the additional effort and cost to the CDQ participants or NMFS. Specifically, requirements for CDQ observers in shoreside processors taking deliveries of halibut CDQ, retention and delivery of all groundfish CDQ species by small vessels, CDQ check-in/check-out reports for all vessels, and weekly summaries of the catch by all vessels were not considered necessary for the halibut CDQ fisheries.

Due to the large number of persuasive public comments that halibut CDQ fisheries are inherently different from other CDQ fisheries, NMFS did not implement many of the MS CDQ requirements for the halibut CDQ fisheries in the final rule. NMFS agreed that differences exist between the small vessel halibut CDQ fisheries and the other groundfish CDQ fisheries, including fixed gear sablefish. In 1997, 1,884,000 lb (854 mt) of halibut CDQ was allocated to six CDQ groups. At least 75 percent of the 1997 catch was landed by small boats and skiffs under 32 ft (9.73 m) length overall (LOA) at about 10 small shoreside processors or at buying stations in Western Alaska villages. These processors did not submit other landing reports to NMFS and were not required to have observer coverage. In contrast, NMFS expects that most of the groundfish CDQ will be harvested by catcher/processors or large catcher vessels delivering to groundfish shoreside processing plants located in relatively large ports.

Based on the public comment on the proposed rule, and on recommendations made by the Council at its October 1998 meeting, NMFS is proposing the following revisions for management of halibut CDQ in 1999 and thereafter:

A. Remove the definition of "fixed gear sablefish and halibut CDQ fishing."

B. Add a new definition for "halibut CDQ fishing" to mean fishing that results in the landing of halibut CDQ in a delivery by a catcher vessel or a set by

a catcher/processor in which the following conditions are met:

(1) Retained halibut CDQ represents the largest proportion of the catch by weight, and

(2) The weight of other retained groundfish does not exceed the maximum retainable bycatch amounts for each groundfish species or species group.

C. Remove the requirement at § 679.30(a)(5) to list in the Community Development Plan (CDP), halibut CDQ cardholders, vessels less than 60 ft (18.3 m) LOA that land groundfish harvested while halibut CDQ fishing, and processors or registered buyers who purchase halibut CDQ or groundfish harvested while halibut CDQ fishing from vessels less than 60 ft (18.3 m) LOA. Listing these entities in the CDP is not necessary because this information is available from the Restricted Access Management Division.

D. Revise the prohibition at § 679.7(d)(11) to clarify that catcher vessels less than 60 ft (18.3 m) LOA are not prohibited from discarding groundfish while halibut CDQ fishing, unless they are required to retain these fish under improved retention/utilization requirements. NMFS notes that § 679.7(f)(8), prohibits discarding Pacific cod and rockfish while IFQ halibut or IFQ sablefish are onboard, but does not prohibit this discard when CDQ halibut or CDQ sablefish are onboard.

E. Maintain a separate paragraph (f) in § 679.32 for halibut CDQ fishing that would:

(1) Require that the IFQ regulations would continue to govern the permitting, harvesting and landing of halibut CDQ.

(2) Require vessels harvesting halibut CDQ while groundfish CDQ fishing, as defined at § 679.2, to comply with all requirements for the MS groundfish CDQ fisheries with respect to their catch of groundfish CDQ.

(3) Require the shoreside processor to report on the CDQ delivery report and the CDQ group to report on the CDQ catch report, all groundfish CDQ harvested by vessels equal to or greater than 60 ft (18.3 m) LOA while halibut CDQ fishing. This groundfish CDQ would be subtracted from the CDQ groups' CDQ amounts for these species.

Shoreside processors would be required to report all groundfish, landed by vessels halibut CDQ fishing, to NMFS on logbooks and weekly production reports. They also would be required to report these landings to the State of Alaska on fish tickets. However, groundfish retained by catcher vessels less than 60 ft (18.3 m) LOA that are halibut CDQ fishing would not accrue against the CDQ groups' groundfish CDQs. Accounting for this incidental groundfish catch under the MS groundfish CDQs would require that shoreside processors or registered buyers taking deliveries of incidentally caught groundfish with a halibut CDQ delivery, fill out the IFQ/CDQ landings report (for the halibut CDQ) and a CDQ delivery report (for the groundfish CDQ). NMFS believes that the cost of requiring the submission of CDQ delivery reports from deliveries by catcher vessels less than 60 ft (18.3 m) LOA, to both the industry and NMFS, would exceed the benefits that would be gained by tracking what is expected to be small amounts of retained groundfish. In addition, allowing this incidental catch of groundfish to accrue against the non-CDQ total allowable catch (TAC) specifications is not expected to reduce the non-CDQ directed fisheries for the bycatch species.

F. Shoreside processors taking deliveries from catcher vessels less than 60 ft (18.3 m) LOA that met the definition of halibut CDQ fishing would not be required to have a CDQ observer to monitor those halibut CDQ deliveries. However, these shoreside processors would be required to comply with the general groundfish observer coverage requirements in § 679.50 that apply to all shoreside processors with a Federal processor permit.

This action proposes catch accounting regulations for operators of vessels less than 60 ft (18.3 m) LOA and halibut CDQ fishing, that are distinct from the catch accounting regulations for the same vessels if they are groundfish CDQ fishing. Specifically, if these vessel operators are halibut CDQ fishing they would not be required to retain all groundfish and deliver it to a shoreside processor, and their groundfish bycatch would not accrue against the groundfish CDQs. Shoreside processors taking deliveries from these vessels would not be required to have CDQ observers to monitor CDQ deliveries.

Under this proposed rule, the same catch accounting requirements would apply to operators of catcher vessels equal to or greater than 60 ft (18.3 m) LOA and catcher/processors while halibut CDQ fishing as would apply to the operators of the same vessels while groundfish CDQ fishing. This would include the accrual of all groundfish CDQ catch against the CDQ group's groundfish CDQ allocations, and the requirement to carry CDQ observers (one for catcher vessels and two for catcher/processors) in order to monitor and verify their catch of groundfish CDQ species that accrue to the MS groundfish CDQs. In addition, catcher vessels equal to or greater than 60 ft (18.3 m) LOA would be required to notify NMFS in the CDP whether they were going to (1) retain and deliver all groundfish CDQ species to a shoreside processor (Option 1 under § 679.32(c)(2)(ii)(A)), or (2) discard some groundfish CDQ species at sea (Option 2 under § 679.32(c)(2)(ii)(B)), in which case the owner or operator of the catcher vessel must provide an observer sampling station that complies with the requirements of § 679.28(d). Finally, shoreside processors would be required to have deliveries by catcher vessels equal to or greater than 60 ft (18.3 m) LOA monitored by a CDQ observer at the shoreside processor.

The proposed rule would revise § 679.32(a) and (c) to require vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing to comply with requirements necessary to account for their bycatch of groundfish CDQ.

Management of the Sablefish CDQ Fisheries in 1999 and Thereafter

No significant changes are proposed to the regulations for management of the catch of sablefish CDQ using fixed gear. However, NMFS is proposing to remove regulations that expired on December 31, 1998, and to add a prohibition against discarding sablefish caught with fixed gear (discussed below under Proposed Technical and Editorial Revisions).

The following description of the management of the sablefish CDQ fisheries in 1999 and thereafter is presented for clarification for CDQ groups, vessel operators, and processors who will be making a transition from the fixed gear halibut and sablefish CDQ fisheries managed under the IFQ regulations in 1998.

Under the final rule implementing Amendment 39 to the FMP (63 FR 30381, June 4, 1998), all operators of vessels harvesting sablefish CDQ and all processors taking deliveries of sablefish CDQ after December 31, 1998, are required to comply with the MS groundfish CDQ requirements in § 679.32. Sablefish CDQ will no longer be reported under the IFQ program requirements. CDQ groups will no longer be required to obtain sablefish CDQ permits, and individuals will no longer be required to obtain sablefish CDQ cards to harvest sablefish CDQ or to deliver sablefish CDQ to registered buyers. No prior notice of landings, or landings report will be submitted to NMFS. There will no longer be a requirement to report sablefish CDQ on

Shipment Reports. Vessels harvesting sablefish CDQ will be required to carry CDQ observers if they are catcher/processors or catcher vessels equal to or greater than 60 ft (18.3 m) LOA. Shoreside processors will be required to have deliveries from vessels groundfish CDQ fishing observed by a CDQ observer. All groundfish CDQ catch, including sablefish CDQ, must be reported on the CDQ delivery report and CDQ catch report and will accrue against a CDQ group's allocation. Estimates based on observer data will be used to determine the catch of all CDQ and prohibited species quota (PSQ) species (including sablefish CDQ) on all catcher/processors and on any catcher vessel using non-trawl gear and electing to discard groundfish CDQ species at sea (see § 679.32(d)(2)(iv)(B), Option 2).

Two sablefish CDQ reserves currently exist. The "fixed gear sablefish CDQ reserve", established in 1995 under Amendment 15 to the FMP, consists of 20 percent of the fixed gear allocation of the sablefish TAC (see § 679.20(b)(1)(iii)(B)) and may be harvested only with fixed gear. With implementation of the MS groundfish CDQ reserves in 1998, 7.5 percent of the trawl allocation of the sablefish TAC also was allocated to the CDQ program as the "sablefish CDQ reserve"; however, no gear restriction was implemented for this CDQ reserve. Therefore, while only fixed gear may be used to harvest the fixed gear sablefish CDQ reserve, any legal gear may be used to harvest the sablefish CDQ reserve.

Current regulations at § 679.23(e)(3) specify that fishing for halibut and sablefish CDQ with fixed gear may occur only during the IFQ fishing season, which in 1998, was between March 15 and November 15. This requirement was implemented under the fixed gear halibut and sablefish IFQ and CDQ programs, and no changes to these seasons were implemented under the MS groundfish CDQ program or are proposed to be implemented in this proposed rule.

Between January 1 and the start of the IFQ fishing season, and between the end of the IFQ fishing season and December 31, sablefish CDQ may be retained, but the retained catch weight of sablefish CDQ must not exceed the maximum retainable bycatch amounts specified under § 679.20(d)(1)(iii). In addition, under current regulations governing the annual establishment of groundfish specifications, no sablefish is allocated to the fixed gear sablefish CDQ reserve until the BSAI specifications are final. Therefore, under current regulations, any sablefish harvested with fixed gear prior to the date the BSAI groundfish specifications become final will accrue against the sablefish CDQ reserve (non-gear specific reserve). After the BSAI specifications become final, any catch of sablefish with fixed gear first accrues against the CDQ group's fixed gear sablefish reserve. Once the fixed gear sablefish CDQ reserve has been harvested, any catch of sablefish CDQ with fixed gear will accrue against the non-gear specific sablefish CDQ reserve. Catch of sablefish CDQ with trawl gear will accrue only to the non-gear specific sablefish CDQ reserve.

Fishing IFQ and CDQ Together

NMFS proposes to revise § 679.7(d)(15) to remove the prohibition against catching IFQ and CDQ species together in the same set. NMFS has revised observer data collection forms and procedures to allow the harvest of IFQ and CDQ together in the same set. Therefore, this prohibition is no longer necessary. This proposed rule would require that IFQ species and halibut CDQ be reported to NMFS under the IFQ regulations, as discussed in a previous section.

Other Proposed Technical and Editorial Revisions

In addition to the regulatory amendments discussed in the preceeding text, the proposed rule would also:

A. Correct a cross reference error in the definition of "Prohibited species quota PSQ".

B. Remove the reference in § 679.7(d)(4) to "halibut CDQ" so that vessels less than 60 ft (18.3 m) LOA harvesting only halibut CDQ are not required to be listed in the CDP.

C. Clarify that the prohibition at § 679.7(d)(11) against discarding groundfish CDQ species applies only to vessels groundfish CDQ fishing and not to vessels halibut CDQ fishing.

D. Consolidate the prohibitions at § 679.7(d)(19) and (d)(20) addressing requirements for catcher/processors using trawl gear and motherships to weigh total catch and to conduct daily tests of the scale used to weigh catch at sea.

E. Remove the prohibition at § 679.7(d)(22), which addresses the use of certified bins in the pollock CDQ fisheries. This prohibition is not necessary in 1999 and thereafter because all catcher/processors and motherships harvesting pollock CDQ will be required to weigh all CDQ catch on a scale. Volumetric estimates made by observers using certified bins will no longer be allowed.

F. Remove the prohibition in paragraph § 679.7(d)(26), which addresses legal gear for halibut, because this prohibition is redundant. Regulations issued by the International Pacific Halibut Commission define legal gear for halibut fishing.

G. Add a prohibition at newly redesignated § 679.7(d)(24) against discarding sablefish CDQ harvested with fixed gear. This prohibition is required under the FMP for both IFQ and CDQ sablefish, but had not been previously included in the CDQ prohibitions.

H. Revise § 679.7(f), the prohibitions for the IFQ fisheries, to clarify which of these prohibitions also apply to halibut CDQ. NMFS is proposing to require that the prohibitions in paragraphs (f)(3), (f)(5), (f)(6), and (f)(10) apply to halibut CDQ as well as to halibut and sablefish IFQ. This proposed rule would revise paragraph (f)(3) to clarify that sablefish CDQ may be retained without an IFQ or CDQ permit or card by vessels fishing for a CDQ group with available sablefish CDQ.

I. Correct a cross reference error in § 679.21(e)(2)(ii).

J. Correct a paragraph numbering error in § 679.23(e)(3). The final rule published on June 4, 1998 (63 FR 30381), added paragraph (e)(3)(iv); however, there is no paragraph (e)(3)(iii), so the paragraph (e)(3)(iv) would be redesignated as paragraph (e)(3)(iii). In addition, a portion of the last sentence of this paragraph that addressed the season starting date for the 1998 MS groundfish fisheries would be removed.

K. Correct an error in § 679.30(a)(5)(i)(A)(*2*)(*ii*) by removing pots as a gear that is included under "hook-and-line" gear.

L. Remove § 679.31(d)(3) that referenced the 1998 crab CDQ reserve allocation that states "(3) For calendar year 1998 (applicable through December 31, 1998), 3.5 percent".

M. Remove § 679.31(f) that provided the authority to reallocate CDQ and PSQ in 1998. This paragraph expired on December 31, 1998.

N. In § 679.32, remove paragraphs (a)(2) and (a)(3) which expired on December 31, 1998.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). OMB approved the proposed collection of information about halibut CDQ (50 CFR 679.32(e)) under OMB control number 0648–0272 (the halibut and sablefish IFQ program).

OMB has approved the collection of information associated with the Community Development Plans (50 CFR

§ 679.30) under OMB control numbers 0648–0269. This proposed rule would reduce some of the approved requirements for vessels less than 60 ft LOA while halibut CDQ fishing and for shoreside processors taking deliveries from these vessels.

Additions to the collection of information approved under OMB control number 0648–0269 (the CDQ program) that would be made by this rulemaking have been submitted to OMB for review and approval. No new forms are proposed with this rulemaking.

This proposed rule would require vessels equal to or greater than 60 ft (18.3 m) LOA to comply with the reporting requirements for the groundfish CDQ program while they are halibut CDQ fishing. The only new information collection that would apply to the owners or operators of the catcher vessels would be the requirement to provide an observer sampling station if they elected in their CDP to discard groundfish CDQ species at sea. Shoreside processors taking deliveries of groundfish CDQ from catcher vessels equal to or greater than 60 ft (18.3 m) LOA that had been halibut CDQ fishing would be required to notify the CDQ observer in the plant prior to delivery of CDQ groundfish, to print and retain the scale print-outs, and to report all groundfish CDQ in a CDQ delivery report. The CDQ group would be required to report any groundfish CDQ caught by vessels equal to or greater than 60 ft (18.3 m) LOA on a CDQ catch report.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The estimated time for the owner of a catcher vessel to submit a request for an observer sampling station inspection and to maintain a copy of the observer sampling station inspection report on the vessel is 2 hours; the estimated time for the shoreside processor to print and retain the scale print-out is 15 minutes; the estimated time for the shoreside processor to notify the CDQ observer prior to the delivery of CDQ catch is 2 minutes; the estimated time for a shoreside processor to complete the CDQ delivery report is one hour; and the estimated time for the CDQ group to complete the CDQ catch report is 15 minutes.

The estimated response times include the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Public comment is sought regarding whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology.

Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS and to OIRA, OMB (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). The preamble to this proposed rule supplements that IRFA. The analysis made the following conclusions with respect to impacts on small entities.

All of the participants in the halibut CDQ fisheries are small entities, including the approximately 250 fishing vessel owners or operators who harvest halibut CDQ, the approximately 20 registered buyers who purchase halibut CDQ, the six CDQ groups who are allocated halibut CDQ, and the 56 western Alaska communities that are eligible for the CDQ program. All of these small entities incur some economic impact due to an increase in annual compliance costs as a result of recordkeeping and reporting requirements. For example, this proposed rule would require the CDQ groups to incur costs associated with obtaining CDQ permits and submitting the CDQ catch reports. It would also require vessel operators and registered buyers to incur costs associated with CDQ landings reports as well as the requirement that owners or operators of vessel equal to or greater than 60 ft (18.3 m) LOA incur costs associated with the requirement to carry a CDQ observer.

NMFS has determined that a regulation has a significant economic impact for the purposes of the Regulatory Flexibility Act (RFA) if it is likely to result in more than a 5–percent decrease in annual gross revenues; annual compliance costs (e.g., annualized capital, operating, reporting) that increase total costs of production by more than 5 percent; compliance costs as a percent of sales that are 10 or more percent higher for small entities than compliance costs for large entities; capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or is likely to result in 2 or more percent of the small entities affected being forced to cease business operations.

NMFS believes that the proposed action will not reach these thresholds. However, the agency does not currently have sufficient information about the operating and production costs of the potentially affected small entities. Therefore, NMFS determines that the preferred alternative may have a significant impact on a substantial number of small entities and has provided the requisite analytical information required for an IRFA.

NMFS considered the alternative of allowing current regulations to expire on December 31, 1998, which would result in no regulations governing the permitting, catching, recordkeeping, reporting, and monitoring of halibut CDQ catch. While this alternative may appear to minimize the economic impact of the proposed rule on small entities, it is not consistent with NMFS's fisheries management objectives and obligations under the Magnuson-Stevens Act and the North Pacific Halibut Act. Furthermore, it would not be supported by the fishing industry, the CDQ groups, the State of Alaska, or the International Pacific Halibut Commission, all of whom have an interest in the collection of catch data to manage the halibut CDQ fisheries.

The proposed rule would satisfy NMFS's fisheries management obligations in a manner consistent with the RFA by removing some requirements and compliance costs for small entities. Specifically, it would remove the requirement that the CDQ groups (1) list vessels less than 60 ft (18.3 m) LOA that conduct halibut CDQ fishing only, and the processors taking deliveries of CDQ only from these vessels in their CDPs, and (2) submit technical amendments to their CDPs to add or remove these vessels and processors. It would also remove the requirement for observers in shoreside processing plants that take deliveries from vessels less than 60 feet (18.3 m) LOA who have been halibut CDQ fishing.

The President has directed Federal agencies to use plain language in their communications with the public,

including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 1, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In § 679.2, the definition for "Fixed gear sablefish and halibut CDQ fishing (applicable through December 31, 1998)" is removed; the definition for "Prohibited species quota (PSQ)" is revised; and the definition for "Halibut CDQ fishing" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Halibut CDQ fishing means fishing that results in a delivery by a catcher vessel or a set by a catcher/processor in which the following conditions are met:

(1) Retained halibut CDQ represents the largest proportion of the retained catch in round weight equivalent, and

(2) The round weight equivalent of other retained groundfish does not exceed the maximum retainable bycatch amounts for these species or species groups as established in § 679.20(e) and (f).

* * * * *

Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e)(1) and (e)(2) that is allocated to the groundfish CDQ program under § 679.21(e)(1)(i) and (e)(2)(ii).

* * * * *

3. In § 679.7, paragraphs (d)(4), (d)(11), (d)(15), (d)(19) through (d)(24), and paragraphs (f)(3), (f)(5), (f)(6), and (f)(10) are revised; paragraphs (d)(25) and (d)(26) are removed; paragraphs (d)(27) and (d)(28) are redesignated as (d)(25) and (d)(26) respectively.

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(4) Harvest groundfish CDQ on behalf of a CDQ group with a vessel that is not listed as an eligible vessel on an approved CDP for that CDQ group.

* * * * *

(11) For the operator of a catcher vessel using trawl gear or any vessel less than 60 ft (18.3 m) LOA that is groundfish CDQ fishing as defined at § 679.2, discard any groundfish CDQ species or salmon PSQ before it is delivered to an eligible processor listed on an approved CDP.

* * * * *

(15) For the operator of a catcher/processor or a catcher vessel required to carry a CDQ observer, combine catch from two or more CDQ groups in the same haul or set.

* * * * *

(19) For the operator of a catcher/processor using trawl gear or a mothership, sort, process, or discard CDQ or PSQ species before the total catch is weighed on a scale that meets the requirements of § 679.28(b), including the daily test requirements described at § 679.28(b)(3).

(20) For the manager of a shoreside processor or the manager or operator of a buying station that is required elsewhere in this part to weigh catch on a scale approved by the State of Alaska under § 679.28(b), fail to weigh catch on a scale that meets the requirements of § 679.28(b).

(21) For a CDQ representative, use methods other than those approved in the CDP to determine the catch of CDQ and PSQ reported to NMFS on the CDQ catch report.

(22) For the operator of a vessel using trawl gear, harvest pollock CDQ in 1998 with trawl gear other than pelagic trawl gear.

(23) For a CDQ group, report catch of sablefish CDQ for accrual against the fixed gear sablefish CDQ reserve if that sablefish CDQ was caught with fishing gear other than fixed gear.

(24) For any person on a vessel using fixed gear that is fishing for a CDQ group with an allocation of fixed gear sablefish CDQ, discard sablefish harvested with fixed gear.

* * * * *

(f) * * *

(3)(i) *Halibut.* Retain halibut caught with fixed gear without a valid IFQ or CDQ permit and without an IFQ or CDQ card in the name of an individual aboard.

(ii) *Sablefish.* Retain sablefish caught with fixed gear without a valid IFQ permit and without an IFQ card in the name of an individual aboard, except as provided under an approved CDP.

* * * * *

(5) Possess, buy, sell, or transport IFQ or CDQ halibut or IFQ sablefish harvested or landed in violation of any provision of this part.

(6) Make a IFQ halibut, IFQ sablefish, or CDQ halibut landing without an IFQ or CDQ card in the name of the individual making the landing.

* * * * *

(10) Make an IFQ halibut, IFQ sablefish, or CDQ halibut landing other than directly to (or by) a registered buyer.

* * * * *

4. In § 679.21, paragraph (e)(2)(ii) is revised to read as follows.

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(2) * * *

(ii) The amount of 7.5 percent of the non-trawl gear halibut PSC limit set forth in paragraph (e)(2)(i) of this section is allocated to the groundfish CDQ program as PSQ reserve. The PSQ reserve is not apportioned by gear or fishery.

* * * * *

5. In § 679.23, paragraph (e)(4)(iii) is removed; and paragraph (e)(4)(iv) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * * * *

(4) * * *

(iii) *Groundfish CDQ.* Fishing for groundfish CDQ species, other than fixed gear sablefish CDQ under subpart C of this part, is authorized from 0001 hours, A.l.t., January 1, through the end of each fishing year, except as provided in paragraph (c) of this section.

* * * * *

6. In § 679.30, paragraph (a)(5)(i)(C) is removed, paragraphs (a)(5) introductory text, paragraphs (a)(5)(i)(A)(*1*), (a)(5)(i)(A)(*2*)(*ii*), (a)(5)(i)(B) are revised to read as follows:

§ 679.30 General CDQ regulations.

(a) * * *

(5) *Fishing plan for groundfish and halibut CDQ fisheries.* The following information must be provided for all vessels that will be groundfish CDQ fishing, all vessels equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing, and for all shoreside processors that will take delivery of any groundfish CDQ species from vessels that will be groundfish CDQ fishing or vessels equal to or greater than 60 ft (18.3 m) LOA that will be halibut CDQ fishing.

(i) *List of eligible vessels and processors*—(A) *Vessels*— (*1*)

Information required for all vessels. A list of the name, Federal fisheries permit number (if applicable), ADF&G vessel number, LOA, gear type, and vessel type (catcher vessel, catcher/processor, or mothership). For each vessel, report only the gear types and vessel types that will be used while CDQ fishing. Any CDQ vessel that is exempt from the moratorium under § 679.4(c)(3)(v) must be identified as such.

(*2*) * * *

(*ii*) Average and maximum number of hauls or sets that will be retrieved on any given fishing day while groundfish CDQ fishing.

* * * * *

(B) *Shoreside processors.* A list of the name, Federal processor permit number, and location of each shoreside processor that is required to have a Federal processor permit under § 679.4(f) and will take deliveries of, or process, groundfish CDQ catch from any vessel groundfish CDQ fishing or from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing.

* * * * *

7. In § 679.31, paragraphs (d)(1) and (d)(2) are revised; paragraphs (d)(3) and (f) are removed, and paragraph (g) is redesignated as paragraph (f) as follows:

§ 679.31 CDQ reserves.

* * * * *

(d) * * *

(1) For calendar year 2000, and thereafter, 7.5 percent; and

(2) For calendar year 1999 (applicable through December 31, 1999), 5 percent.

* * * * *

8. In § 679.32, paragraphs (a), (c) introductory text, (c)(3)(i), (c)(3)(v), and (f) are revised to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) *Applicability.* The CDQ group, the operator or manager of a buying station, the operator of a vessel groundfish CDQ fishing as defined at § 679.2, the operator of a vessels equal to or greater than 60 ft (18.3 m) LOA halibut CDQ fishing as defined at § 679.2, and the manager of a shoreside processor taking deliveries of groundfish CDQ from these vessels must comply with the requirements of paragraphs (b) through (d) of this section for all groundfish CDQ and PSQ, The CDQ group, the operator of a vessel harvesting halibut CDQ, the shoreside processor, and the registered buyer must comply with the requirements of paragraph (f). In addition, the CDQ group is responsible for ensuring that vessels and processors listed as eligible on the CDQ group's approved CDP comply with all requirements of this section while harvesting or processing CDQ species.

* * * * *

(c) *Requirements for vessels and processors.* In addition to complying with the minimum observer coverage requirements at § 679.50(c)(4), vessel operators and shoreside processors meeting the requirements of paragraph (a) of this section must comply with the following requirements:

* * * * *

(3) * * *

(i) *Prior notice to observer of offloading schedule.* Notify the CDQ observer of the offloading schedule of each CDQ delivery at least 1 hour prior to offloading to provide the CDQ observer an opportunity to monitor the sorting and weighing of the entire delivery.

* * * * *

(v) *CDQ delivery report.* Submit a CDQ delivery report described at § 679.5(n)(1) for each delivery of groundfish CDQ.

* * * * *

(f) *Halibut CDQ*—(1) *Applicability.* The CDQ group, the operator of a vessel harvesting halibut CDQ, the shoreside processor, and the registered buyer must comply with the requirements of this paragraph for halibut CDQ.

(2) *Accounting for halibut CDQ catch.* The CDQ group, vessel owner, registered buyer, and shoreside processor must comply with the following requirements for the catch of halibut CDQ.

(i) *Permits.* The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, or modified.

(ii) *CDQ cards.* A person must have a valid halibut CDQ card issued by the Regional Administrator before landing any halibut CDQ. Each halibut CDQ card will identify a CDQ permit number and the person authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

(iii) *Alteration.* No person may alter, erase, mutilate, or forge a halibut CDQ permit, landing card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(iv) *Landings.* A person may land halibut CDQ only if he or she has a valid halibut CDQ card, and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the registered buyer must comply with the requirements of § 679.5(l)(1) and (l)(2).

(v) The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at § 679.7(f).

(3) *Accounting for catch of groundfish CDQ while halibut CDQ fishing.* The shoreside processor must report on a CDQ delivery report described at § 679.5(n)(1), all groundfish CDQ landed from vessels equal to or greater than 60 ft (18.3 m) LOA while halibut CDQ fishing. The CDQ group must report on a CDQ catch report described at § 679.5(n)(2), all groundfish CDQ landed from vessels equal to or greater than 60 ft (18.3 m) LOA while halibut CDQ fishing. This groundfish CDQ will accrue to the CDQ group's groundfish CDQ allocations. The shoreside processor is not required to report on the CDQ delivery report and the CDQ group is not required to report on the CDQ catch report, groundfish caught by vessels less than 60 ft (18.3 m) LOA while halibut CDQ fishing, and this catch will not accrue against the CDQ group's groundfish CDQ allocations.

(4) *Groundfish CDQ retention requirements.* Operators of vessels less than 60 ft (18.3 m) LOA are not required to retain and deliver groundfish CDQ species while halibut CDQ fishing. Operators of vessels equal to or greater than 60 ft (18.3 m) LOA are required to comply with all groundfish CDQ and PSQ catch accounting requirements in paragraphs (b) through (d) of this section, including the retention of all groundfish CDQ, if option 1 under § 679.32(c)(2)(ii) is selected in the CDP.

(5) *Observer coverage requirements.* The owner or operator of a vessel equal to or greater than 60 ft (18.3 m) LOA halibut CDQ fishing as defined at § 679.2 or shoreside processors taking deliveries from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing must comply with observer coverage requirements at § 679.50(c)(4) and (d)(4).

9. In § 679.50, paragraphs (c)(4) and (d)(4) are revised to read as follows

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

* * * * *

(c) * * *

(4) *Groundfish and halibut CDQ fisheries.* The owner or operator of a vessel groundfish CDQ fishing or

halibut CDQ fishing as defined at § 679.2 must comply with the following minimum observer coverage requirements each day that the vessel is used to harvest, transport, process, deliver, or take deliveries of CDQ or PSQ species. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24–hour period and the CDQ observer is required to sample no more than 9 hours in each 24–hour period.

* * * * *

(d) * * *

(4) *Groundfish and halibut CDQ fisheries.* Each shoreside processor required to have a Federal processor permit under § 679.4(f) and taking deliveries of CDQ or PSQ from all vessels groundfish CDQ fishing as defined at § 679.2 or taking deliveries from vessels equal to or greater than 60 ft (18.3 m) LOA that are halibut CDQ fishing must have at least one lead CDQ observer as described at paragraph (h)(1)(i)(E) of this section present at all times while CDQ is being received or processed. The time required for the CDQ observer to complete sampling, data recording, and data communication duties shall not exceed 12 hours in each 24–hour period, and the CDQ observer is required to sample no more than 9 hours in each 24–hour period.

* * * * *

[FR Doc. 99–2796 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 25
Monday, February 8, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[S&T 99002]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides (7 CFR Part 110).

DATES: Comments on this notice must be received by April 9, 1999, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Bonnie Poli, Chief, Pesticide Records Branch, Science and Technology, AMS, 8700 Centreville Road, Suite 202, Manassas, VA 20110, Telephone (703) 330–7826; Fax (703) 330–6110.

SUPPLEMENTARY INFORMATION:

Title: Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides.

OMB Number: 0581–0164.

Expiration Date of Approval: September 30, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The regulations, "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides," require certified pesticide applicators to maintain records of federally restricted use pesticide applications for a period of two years. The regulations also provide for access to pesticide records or record information by Federal or State officials, or by licensed health care professionals when needed to treat an individual who may have been exposed to restricted use pesticides, and penalties for enforcement of the recordkeeping and access provisions.

The Food, Agriculture, Conservation, and Trade Act of 1990, (Pub. L. 101–624; 7 U.S.C. 136i–1), referred to as the FACT Act, directs and authorizes the Department to develop regulations which establish requirements for recordkeeping by all certified applicators of federally restricted use pesticides. A certified applicator is an individual who is certified by the Environmental Protection Agency (EPA) or a State under cooperative agreement with EPA to use or supervise the use of restricted use pesticides.

Section 1491 of the FACT Act directs and authorizes the Secretary of Agriculture to ensure compliance with regulations as the Secretary may prescribe, including levying penalties, for failure to comply with such regulations.

Because this is a regulatory program with enforcement responsibility, USDA must ensure that certified applicators are maintaining restricted use pesticide application records for the two year period required by the FACT Act. To accomplish this, USDA must collect information through personal inspections of certified applicator's restricted use pesticide application records.

The information collected is used only by authorized representatives of the USDA (AMS, Science and Technology national staff, other designated Federal employees, and designated State supervisors and their staffs), which are designated access to the record information through section 1491, subsection (b) of the FACT Act. The information is used to administer the Federal Pesticide Recordkeeping Program. The Agency is the primary user of the information, and the secondary user is each designated State agency which has a cooperative agreement with AMS.

Estimate of Burden: Public reporting burden for this collection of information is estimated as follows:

(a) Approximately 705,192 certified private applicators (recordkeepers) apply restricted use pesticides. It is estimated that on an average certified private applicators have a total annual burden of .35 hours per record keeper. Of the 705,192 certified private applicators, approximately 4,800 are selected annually for recordkeeping inspections. It is estimated that a private applicator that is subject to a pesticide record inspection has an annual burden of .85 hours, which contributes to a total annual burden of 4,080 hours.

(b) There are approximately 308,583 certified commercial applicators nationally who are required to provide copies of restricted use pesticide application records to their clients. It is estimated that certified commercial applicators have a total annual burden of 1,520,697 hours.

(c) It is estimated that State agency personnel who work through cooperative agreements with AMS, to inspect certified private applicator's records have a total annual burden of 11,020 hours.

Respondents: Certified private and commercial applicators, State governments or employees, and Federal agencies or employees.

Estimated Number of Respondents: 1,018,651—The total number of respondents includes approximately 308,583 certified commercial applicators, 705,192 certified private applicators (recordkeepers) and designated state agency personnel utilized to inspect certified private applicator's records.

Estimated Number of Responses per Respondent: The estimated number of responses per respondent is as follows:

(a) It is estimated that certified private applicators (recordkeepers), record on an average 5 restricted use pesticide application records annually.

(b) It is estimated that certified commercial applicators provide 616 copies of restricted use pesticide records to their clients annually.

(c) State agency personnel, who work under cooperative agreements with AMS to conduct restricted use pesticide record inspections have approximately 4,951 responses annually.

Estimated Total Annual Burden on Respondents: 1,782,614 hours.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have

practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to Bonnie Poli, Chief, Pesticide Records Branch, Science and Technology, AMS, 8700 Centreville Road, Suite 202, Manassas, VA 20110. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 2, 1999.

William J. Franks, Jr.,

Deputy Administrator, Science and Technology.

[FR Doc. 99–2947 Filed 2–5–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–118–1]

Availability of an Environmental Assessment and Strategy: Risk Reduction in the Florida Medfly Eradication Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that a final environmental assessment has been prepared by the Animal and Plant Health Inspection Service (APHIS) to explore risk reduction strategies relative to Medfly program activities in the State of Florida. Additionally, APHIS has prepared a strategy regarding risk reduction in the Florida Medfly eradication program. This notice announces the availability of both documents for public inspection.

ADDRESSES: The environmental assessment and the strategy are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. To request copies of the environmental assessment or the strategy, write to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment or strategy when requesting copies.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION: The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), (Medfly) is one of the world's most destructive pests of fruit and vegetables. The Medfly has been introduced into Florida a total of 13 times, including its first introduction in 1929. Because of the Medfly's potential for rapid range expansion, Medfly outbreaks in Florida represent major threats to agriculture, the environment, and the quality of life in Florida and other U.S. mainland States. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture cooperates with the Florida State Department of Agriculture to eradicate Medfly and to prevent future infestations. All Medfly outbreaks in Florida have been successfully eradicated using a combination of nonchemical and chemical control methods.

Consistent with our continued goal of preventing and eradicating Medfly infestations, we are committed to reexamining the Florida Medfly program for the purpose of achieving maximum risk reduction, including minimizing risks to the environment and human health. As part of that commitment, we have prepared environmental analyses and risk assessments, held a number of public meetings, and analyzed comments from the public regarding the Florida Medfly program in order to establish a final Florida Medfly program risk reduction strategy. This notice announces the availability of two documents that identify various means to potentially reduce risk in the Florida Medfly program:

- Risk Reduction Strategy, Florida Medfly Program, Environmental Assessment, June 1998.
- Strategy: Risk Reduction in Florida Medfly Eradication Programs, January 1999.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 2nd day of February 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–2939 Filed 2–5–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Threatened and Endangered Species Management on the Allegheny National Forest, Warren, McKean, Elk and Forest Counties, Pennsylvania

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a Draft and a Final Environmental Impact Statement to disclose the environmental consequences of amending the Forest Plan to include various strategies for managing federally listed threatened and endangered species on the Allegheny National Forest. Species to be considered include the Indiana bat (Myotis sodalis), the clubshell mussel (Pleurobema clava) and the northern riffleshell mussel (Epioblasma torulosa rangiana), which are federally listed as endangered, and the small whorled pogonia (Isotria medeoloides) and the bald eagle (Haliaeetus leucocephalus) which are federally listed as threatened. The proposed action is to amend and supplement the standards and guides in the Allegheny Land and Resource Management Plan (Forest Plan).

The purpose and need for this proposal is to maintain and enhance habitat to ensure the continued existence of the aforementioned threatened and endangered species in light of new information recently acquired. There is a need to adjust some of the existing standards and guides and provide some additional direction in the Forest Plan to ensure their conservation. Based on a review of the regulations (36 CFR 219.10f) and of the Forest Service Manual and Handbook direction (FSM 1922.51 and FSH Chapter 5.32) the proposed action is a non-significant amendment to the Forest Plan. The

proposed action does not significantly alter the long term goals and objectives nor management area designations of the current plan. The decision to amend the plan will extend until the Forest Plan is revised, which is planned for the year 2001.

The Allegheny National Forest Land and Resource Management Plan, at the time it was completed in 1986, considered pertinent threatened and endangered species and appropriate mitigation measures. This amendment will consider the new information which has come out since 1986. Forest Plan direction will be amended, where necessary, to ensure standards and guidelines incorporate currently available knowledge concerning these species.

Any modification required will be based on the range of site-specific conditions that exist on the Allegheny National Forest and will be designed to mitigate impacts from the ongoing and future projects and to enhance the recovery of the threatened and endangered Species.

As an initial step in completing this new Draft and Final Environmental Impact Statement, Allegheny National Forest personnel have completed a biological assessment which has been submitted to the USDI-Fish and Wildlife Service for their consideration in preparing the biological opinion. This biological assessment contains suggested terms and conditions which relate to managing these threatened and endangered Species. Many of these are already part of the standards and guidelines in the Forest Plan.

Allegheny National Forest personnel invite written comments and suggestions on the scope of this analysis and environmental impact statement. That is, the Allegheny National Forest would like comments on what issues and possible alternatives should be considered and analyzed. In addition, the agency gives notice that the environmental impact statement preparation process will be conducted so that interested and affected people are aware of how they may participate in and contribute to the final decision. This environmental impact statement will result in an amendment to the Allegheny National Forest Land and Resource Management Plan.

DATES: Comments and suggestions concerning the scope of the analysis should be submitted in writing and postmarked by March 10, 1999, to ensure timely consideration.

ADDRESSES: Send written comments to Endangered Species Management, Allegheny National Forest, P. O. Box 847, Warren PA 16365.

FOR FURTHER INFORMATION, CONTACT: Brad Nelson, Allegheny National Forest at 814/723–5150.

SUPPLEMENTARY INFORMATION:

Forest Plan Background

The Allegheny National Forest Land and Resource Management Plan (Forest Plan), approved in 1986, provides for the management of forest resources. The Forest Plan was developed to maintain or enhance the species composition, structure, and functioning of Allegheny plateau ecosystems on the Allegheny National Forest, while providing a variety of goods and services to the American people.

Analysis documented in the Final Environmental Impact Statement evaluated potential effects on threatened and endangered species inhabiting the Allegheny National Forest and determined actions Allegheny National Forest personnel should implement which would contribute toward their recovery.

As part of the planning process, Federal agencies are required to comply with provisions of the Endangered Species Act of 1973, as amended. This includes a requirement to consult with the U. S. Department of Interior, Fish and Wildlife Service on proposals which may affect species federally listed as threatened, endangered, or proposed. In February 1986, consultation was completed for the newly-developed Forest Plan.

Since then, the Fish and Wildlife Service and the Allegheny National Forest have continued consulting when three different Environmental Impact Statements proposed amendments to the Forest Plan, when new issues have arisen, and when new species were added to the endangered species list.

New Information Related to Threatened and Endangered Species

In July 1998, based on additional new information, Allegheny National Forest personnel began informal consultation again with the Fish and Wildlife Service. That information included the following: Bald eagle populations have increased, with three new nests located on or near the Allegheny National Forest; the Indiana bat was found on the Allegheny National Forest; and two species of fresh water mussels had been added to the Federal list of threatened and endangered species.

Continuing research and inventory of threatened and endangered species populations on the Allegheny National Forest, as well as refinement of our knowledge of these species' habitat requirements, prompts us to update the potential effects of continued implementation of the existing Forest Plan, as amended, on these five Federally listed species.

Allegheny National Forest personnel completed a biological assessment for the five species and transmitted it to the Fish and Wildlife Service on December 17, 1998. The Biological Assessment includes proposed terms and conditions, and any modifications issued by the Fish and Wildlife Service in the bioligical opinion, would provide the basis for the Forest Plan amendment. These terms and conditions consititute the proposed action.

Proposed Action: Measures to Minimize Potential Adverse Effects to Threatened And Endangered Species

Indiana Bat

Current Forest Plan standards and guidelines provide protection to Indiana bat habitat and populations. The following measures are proposed to strengthen the Allegheny National Forest's ability to protect and manage habitat for this species. To understand these measures, distinctions are made between green units and salvage units. Green units are stands consisting primarily of live trees. Salvage units are where conditions such as insect and disease infestations or other catastrophic events have created a stand where the amount of dead and dying trees predominate (<40% of relative stand density in live trees).

The Allegheny National Forest standard of retaining 5–10 snags per acre will remain in effect for all salvage units, while most snags will be retained in green units. The modified standards would add a size requirement for some of the retained snags. Retention of clumps of existing trees in stands to be final harvested remains an important component of bat habitat.

Caves

1. Continue working with universities, Pennsylvania Game Commission, and local Allegheny National Forest users to locate and survey caves that may contain Indiana bats. If an Indiana bat hibernaculum is found on the Allegheny National Forest, consult with the Fish and Wildlife Service to determine standards and guidelines necessary to protect and manage the hibernaculum.

Potential Roosting/Foraging Habitat

1. Retain shagbark and shellbark hickories regardless of size in partial and final harvest cutting units.

2. For green units (both partial and final harvests) retain snags that do not pose a safety hazard to the sawyer or the public. Retain at least 8–15 live trees per acre greater than 9 inches diameter at breast height in all final harvest units and retain at least 16 live trees per acre greater than 9 inches diameter at breast height in partial cuts.

3. For salvage units in partial cuts retain at least 5–10 snags per acre greater than or equal to 9″ diameter at breast height and of these 1 tree for each 2 acres greater than or equal to 20″ diameter at breast height. Retain at least 16 live trees per acre greater than or equal to 9″ diameter at breast height and 3 live trees for each acre greater than or equal to 20″ diameter at breast height as recommended by the Indiana Bat Recovery Team.

4. When planning partial cuts, strive to reduce canopy closure to 60–80 percent.

5. For salvage units in final harvest cuts and clearcuts, retain at least an average of 3 snags for each acre greater than or equal to 9″ diameter at breast height, of these snags retain 1 for each 10 acres greater than or equal to 12″ diameter at breast height. Retain at least 8–15 live trees/acre greater than or equal to 9″ diameter at breast height and at least 1 tree for each acre greater than or equal to 20″ diameter at breast height.

6. Avoid removal of known roost trees. In the unlikely event that a known roost tree must be removed, such removal will be conducted through consultation with the Fish and Wildlife Service.

7. Known maternity roosts may be removed at any time, after consultation with Fish and Wildlife Service, if they constitute an immediate threat to public safety. However, such removal will be as a last resort, after other alternatives (such as fencing the area, etc.) have been considered and deemed unacceptable.

8. Demolition or removal of buildings or other man-made structures that harbor bats should occur while the bats are hibernating and a bat box should be installed in a proper location to provide an alternate roosting site. If public safety is threatened and the building must be removed while bats are present, a bat expert should examine the building to determine if Indiana bats are present. If Indiana bats are present, consultation with Fish and Wildlife Service is required before removal. If none are present, demolition can proceed.

9. If new planned road and trail construction, wildlife opening construction, gravel pit development, federally owned oil and gas development, or other non-forest uses create conditions where the amount of forested acres drop below 30 percent of the watershed, consultation with the Fish and Wildlife Service will be initiated to determine how best to provide habitat for the Indiana bat.

Water Sources

1. Create or renovate bat drinking water sources where none are currently available (a minimum of one per square mile).

2. Allow water filled road ruts to remain where they do not compromise soil and water quality.

Inventory, Monitoring, and Research

1. Follow interagency working group and/or Indiana Bat Recovery Plan recommendations for research, inventory and monitoring habitat and populations across the Allegheny National Forest.

2. Pursue additional funding and partnership opportunities to complete needed research, inventory, and monitoring work.

3. Monitor snags, den trees, and reserve live trees on 10 final harvest units and 10 partial cuts annually across the Allegheny National Forest.

4. Where opportunities arise, work with land owners, general public, and other agencies to promote education and information about endangered bats and their conservation.

Clubshell And Northern Riffleshell Mussels

Current Forest Plan standards and guidelines provide protection to clubshell and northern riffleshell populations and habitat. The following measures are proposed to strengthen the Allegheny National Forest's ability to correct erosion and sedimentation problems that may result from past road and trail problems:

Continue to identify erosion and sedimentation problems associated with Forest Service activities (primarily old roads and trails) with particular attention to the 13 percent of the Allegheny National Forest that drains directly into the Allegheny River. Where necessary implement practices such as: (1) Using less erosive road surfacing material (limestone) along sections of roads, and/or stream crossings to the first cross-drain on either side of the crossing; (2) placing rip rap at the outlet of those cross-drains on steep fill-slopes; (3) placing additional cross-drains to dissipate runoff more frequently to avoid concentrating more flow which could lead to formation of a new channel to a stream, (4) placing additional cross-drains before a stream crossing, (5) restricting use on problem roads (change from "open" to "restricted", and (6) obliterate roads no longer needed for management activities that have potential for sediment input into a stream course.

Bald Eagle

The following measures are proposed to strengthen the Allegheny National Forest's ability to protect and manage habitat for this species.

1. Change the seasonal restriction from February 1 to January 15 and re-write the Forest Plan standards and guidelines to be compatible with the Bald Eagle Recovery Plan.

2. For any new access sites on Allegheny National Forest land within the Allegheny Wild and Scenic River corridor, or requiring federal funding or authorization, bald eagle use will be assessed within the section of river corridor where human use will likely increase.

3. The Forest Service will consult with Fish and Wildlife Service on any Forest Service activities within the buffer zones around each nest.

4. The Forest Service will collect data necessary to determine the level of potential effects to nesting eagles on the Allegheny Reservoir by determining the level of boating activity and the behavior of the nesting pair while foraging and nesting before and after Memorial Day. If any harrassment is noted or suspected, the Fish and Wildlife Service will be contacted.

5. Continue discussions with the Pennsylvania Game Commission, U.S. Army Corps of Engineers and USDI-Fish and Wildlife Service to determine if boat access needs to be restricted in Cornplanter Bay.

6. The new contract for operating recreation areas and boat launches on the Allegheny Reservoir will stipulate that discarded fishing line along the shoreline developed for access will be cleaned up monthly during the summer.

7. Signing and/or news releases to educate hunters not to shoot eagles will be developed and distributed by Allegheny National Forest personnel.

Small Whorled Pogonia

1. The survey of potential habitat within 227,000 acres of the Allegheny National Forest has not found the small whorled pogonia. Since no small whorled pogonias have been found, a new survey approach is worth testing. The new proposed survey strategy would identify the habitat with the highest potential for finding small whorled pogonia and survey those areas each year. This would substitute for the current practice of surveying for each individual project. By surveying the highest potential habitat, the likelihood

of finding the species on the Allegheny National Forest will be increased. If found, a better understanding of its habitat needs can be assessed.

2. If a small whorled pogonia is found on the Allegheny National Forest, consultation with the Fish and Wildlife Service will be re-initiated.

The Allegheny National Forest entered into formal consultation with the Fish and Wildlife Service on December 18, 1998. During formal consultation, the Fish and Wildlife Service may elect to change or delete some of these proposed terms and conditions, or they may add new terms and conditions. We expect the Fish and Wildlife Service to issue a biological opinion with the final terms and conditions early in the first half of 1999.

Proposed Forest Plan Amendment and Draft Environmental Impact Statement

Once the biological opinion is issued, Allegheny National Forest personnel will complete the Draft Environmental Impact Statement and send it out for review and comment.

The analysis documented in Draft Environmental Impact Statement will consider a range of alternatives. One of these alternatives will evaluate no change to the current Forest Plan (No Action). A second alternative would be the proposed action which is to amend the Forest Plan to incorporate the terms and conditions proposed in the Biological Assessment, as modified by the Biological Opinion to be issued. Issues which are generated through the scoping process may generate additional alternatives.

Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes the following: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues, those outside the scope of this analysis, or those which have been covered by a previous environmental review. At this point in the process, we would appreciate your comments on what issues and possible alternatives should be considered and analyzed. Comments directed toward the substance of the project, as opposed to the scope of the analysis, are more appropriately submitted during the comment period following release of the draft environmental impact statement.

Preliminary issues identified include the following:

1. What are the effects of implementing current Forest Plan direction on threatened and endangered species known to exist on or near the Allegheny National Forest (and their habitat), given current knowledge?

2. Are there additional actions Allegheny National Forest personnel should implement that would contribute toward the recovery of these species?

3. What are the changes to the current Forest Plan activities, outputs, and environmental effects from implementing any additional actions?

The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and to be available for public review during April or May of 1999. At that time, the Environmental Protection Agency (EPA) will publish in the **Federal Register** a notice of availability of the draft environmental impact statement. The comment period on the draft will be 45 days from the date the EPA notice appears in the **Federal Register**.

Related Court Rulings

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposals so that it is meaningful and alerts an agency to the reviewers position and contentions, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived if not raised until after completion of the final environmental impact statement, City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir .1988), and Wisconsin Heritages, Inc. v. Harris, 490 F. supp. 1334, 1338 (E. D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Comments and Decision

Comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to CEQ Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points). After the comment period ends on the draft environmental impact statement, the comments received will be analyzed and considered by the Forest Service in preparing the final environmental impact statement.

The final environmental impact statement is scheduled to be completed in August of 1999. In the final Environmental Impact Statement, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the environmental impact statement, and applicable laws, regulations and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in a Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

The responsible official is John E. Palmer, Forest Supervisor, Allegheny National Forest, 222 Liberty Street, P.O. Box 847, Warren PA 16365.

Dated: February 2, 1999.

John E. Palmer,

Forest Supervisor.

[FR Doc. 99–2907 Filed 2–5–99; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 5:30 p.m. on February 26, 1999, at the Newark City Council Chambers, 920 Broad Street, Newark, New Jersey 07102. The Committee will (1) discuss a project on "Civil Rights Enforcement in New Jersey: An Evaluation of the State's Division of Civil Rights", (2) review subcommittee work on employment discrimination against Asian American State government employees, (3) conduct planning for upcoming activity, and (4) listen to invited speakers give their views on significant civil rights issues affecting the Newark area and New Jersey.

Persons desiring additional information, or planning a presentation

to the Committee, should contact Committee Chairperson Irene Hill-Smith, 609–468–5546, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 29, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–2941 Filed 2–5–99; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on Thursday, February 25, 1999, at the Metropolitan Campus of Cuyahoga Community College, 2900 Community College Avenue, Student Center Building, United Room—3rd Floor, Cleveland Ohio 44115. The purpose of the meeting is to: (1) discuss civil rights issues, (2) plan future activities, and (3) review and approve the Committee's report, "Employment Opportunities for Minorities in Montgomery County, Ohio."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Grace Ramos, 614–466–6715, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 27, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–2940 Filed 2–5–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 7:30 p.m. on March 2, 1999, at the Pawtucket City Hall, City Council Chamber, 137 Roosevelt Avenue, Pawtucket, Rhode Island 02860. The purpose of the meeting is to be briefed by invited civil rights advocates on the status of civil issues in Rhode Island. The Committee will plan for future events and review a draft of the Committee's statement of concern, The Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Olga Noguers, 401–464–1876, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 29, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–2942 Filed 2–5–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, and A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Notice of Extension of Time Limits for Preliminary Results of Antidumping Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative reviews.

EFFECTIVE DATE: February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4477.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results

The Department of Commerce (the Department) has received requests to conduct administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. On June 29, 1998, the Department initiated these administrative reviews covering the period May 1, 1997, through April 30, 1998.

Another matter has recently placed unanticipated heavy burdens on the Department's limited resources. These burdens are short term; however, they have made it so that it is not practicable to complete the AFBs reviews within the time limits mandated by section 751(a)(3)(A) of the Act. The Department, therefore, is extending the due date for the preliminary results to February 16, 1999. The Department intends to issue the final results of reviews 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 29, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–2997 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–122–601]

Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review, Intent Not To Revoke Order in Part, and Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review, intent not to revoke order in part, and extension of time limit.

SUMMARY: In response to separate requests by Wolverine Tube (Canada), Inc. (Wolverine), the respondent, and by Hussey Copper, Ltd,; The Miller Company; Olin Corporation; Revere Copper Products, Inc,; International Association of Machinists and Aerospace Workers; International Union, Allied Industrial Workers of America (AFL–CIO); Mechanics Educational Society of America, and United Steelworkers of America (AFL–CIO), collectively, the petitioner, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Wolverine. The period covered is January 1, 1997 through December 31, 1997. As a result of the review, the Department has preliminarily determined that no dumping margins exist for his respondent for the covered period. However, we do not intend to revoke the order with respect to brass sheet and strip from Canada manufactured by Wolverine, since we found in our final results covering the 1996 period of review that sales made during that period were made below normal value.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or James Terpstra, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4474 or 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Background

The Department published an antidumping duty order on brass sheet and strip from Canada on January 12, 1987 (52 FR 1217). On January 12, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on brass sheet and strip from Canada (63 FR 1820). On January 30, 1998, a manufacturer/exporter, Wolverine, requested an administrative review of its exports of the subject merchandise to the United States for the period of review (POR), January 1, 1997, through December 31, 1997. In accordance with 19 CFR 351.213 we published a notice of initiation of administrative review on February 27, 1998 (63 FR 10002). The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of brass sheet and strip (BSS), other than leaded and tinned BSS. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse would), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.00. Although the HTS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive. Pursuant to the final affirmative determination of circumvention of the antidumping duty order, covering the period September 1, 1990, through September 30, 1991, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. *See Brass Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order*, 58 FR 33610 (June 18, 1993).

The POR is January 1, 1997 through December 31, 1997. The review involves one manufacturer/exporter, Wolverine.

Export Price

We used export price (EP), as defined in section 772 of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and because no other circumstances indicated that constructed export price was appropriate. We calculated EP based on delivered prices. In accordance with section 772(c)(1) of the Act, we adjusted EP for brokerage and handling, foreign and U.S. inland freight, and customs duty. We also recalculated imputed credit expenses for U.S. sales based on the U.S. prime interest rate. *See* "Further Developments" as described below. No other adjustments to EP were claimed or allowed.

Normal Value (NV)

A. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Wolverine's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because of Wolverine's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Wolverine.

B. Below Cost of Production Test

Because we disregarded sales below the cost of production in the 1996 POR, the most-recently completed segment of this proceeding, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the cost of production (COP), within the meaning of section

773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Wolverine (*see* Memorandum to the File, dated March 31, 1998, available in Room B–099 of the Main Commerce Building). In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information Wolverine provided in its questionnaire responses. After calculating COP, we tested whether home market sales of subject BSS were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted the recovery of all costs within a reasonable period to time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, direct selling expenses, and packing expenses.

Pursuant to section 773(b)(2)(C) of the Act, where less than twenty percent of Wolverine's home market sales for a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where twenty percent or more of Wolverine's home market sales were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2) (B) and (C) of the Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, we compared home market prices to the weighted-average COPs for the POR. The results of our cost test for Wolverine indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost test for Wolverine also indicated that for certain other home market models more than twenty percent of the home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Model-Matching

We calculated NV using prices of BSS products having the same characteristics as to form, gauge, width, and alloy. We used the same gauge and width groupings and the same model-match methodology in this review as in the last completed administrative review (1996). As in the 1995 and 1996 reviews, we did not rely on "source" designations in the product codes for model matching purposes since the "source" (*i.e.*, whether reroll or nonreroll brass is used to make the product) does not appear to describe physical characteristics of the resulting subject merchandise itself; nor has Wolverine demonstrated that this is an appropriate matching criterion. Wolverine claimed in its response that the grain density of the reroll material obtained from outside suppliers was higher than that of its own cast material. Although this may be the case, respondent's claim has not been substantiated on the record of this review.

In addition, we noted in this review that the coding Wolverine reported for the "temper" matching characteristic included a secondary characteristic for "finish." This characteristic had not previously been identified by the Department, nor has Wolverine adequately demonstrated that it is appropriate to use in model matching. Moreover, it is no longer clear whether Wolverine's reported temper codes are correct. Therefore, for the preliminary results of this review we are not considering "finish" or reported temper codes as matching characteristics and have adjusted our computer program accordingly. We will seek additional information on these issues following the preliminary results of this administrative review and will incorporate our findings into our analysis for the final results of this review. *See* "Further Developments" as described below.

We calculated NV using monthly weighted-average prices of BSS having the same characteristics as to form, gauge, width, and alloy. We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same level of trade as the export price, in accordance with section 773(a)(1)(B)(i) of the Act.

We reduced NV for home market credit and warranty expenses, and increased NV for U.S. credit expenses and U.S. warranty expenses in accordance with section 773(a)(6)(C)(iii), due to differences in circumstances of sale. We reduced NV for home market movement expenses, in accordance with section 773(a)(6)(B)(ii); and for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i); and increased NV to account for U.S. packing expenses. Wolverine reported "quantity adders" as a circumstance of sale adjustment. However, we have not made corresponding adjustments in this review. Wolverine failed to provide sufficient information to determine whether this adjustment should be made. Moreover, in the event that the Department determines that an adjustment is appropriate, it is not clear that Wolverine has properly quantified sales in both the home and U.S. markets. Accordingly, we have determined that the administrative record is incomplete with respect to this item and have made no corresponding adjustments. *See* "Further Developments" as described below.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to an unaffiliated U.S. customer. For CEP, it is the level of the constructed sale from the exporter to an affiliated importer, after the deductions required under section 772(d) of the Act. To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and

there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In this review, Wolverine stated in its questionnaire response that it was not requesting a LOT adjustment and therefore did not include the corresponding field "LOTADJH" in its reported home market sales list. Although Wolverine claimed that one of its two customer categories required a higher level of support than the other, it did not place information on the record in order to detail or quantify any possible resulting differences in selling functions which could potentially constitute different LOTs. Nor did we request additional information with respect to this issue.

Because the record does not show that Wolverine performed different selling functions with respect to different channels of distribution, we have preliminarily determined that there is only one LOT in the home market. Furthermore, since the record does not indicate differences in selling functions between the home market and the U.S. market, we have preliminarily determined that no level of trade adjustments under section 773(a)(7)(A) of the Act are warranted. However, we will reexamine this issue for the final results.

Further Developments

Both petitioner and respondent have submitted comments regarding the calculation of the preliminary results of this review. Submissions by both parties included untimely submitted new factual information. Therefore, the Department has required deletion of this information. However, in reaching its preliminary results, the Department has taken note of the portions of these submissions which contained relevant argument not based on new factual information. As a result, the Department has decided not to make adjustments in these preliminary results to the submitted prices for "adders" (surcharges on certain small quantity orders) and to disregard "temper" and "finish" as a matching characteristics, as described above. In addition, the Department has recalculated imputed credit expenses reported for U.S. sales. This recalculation was done since Wolverine reported imputed credit expenses for U.S. sales based on its home market interest rate. Sales to the U.S. market had been made in U.S. dollars, and therefore, in accordance with Department policy, imputed credit expenses for these sales should have been reported based on the company's U.S. interest rate or other applicable U.S. interest rate.

Moreover, petitioner has requested that we resort to facts available with respect to certain portions of the submitted data. However, there is insufficient basis on which to make such a determination at this time. In order to resolve these issues and certain other issues raised by petitioner's and respondent's comments, and to determine whether the application of facts available is appropriate, the Department has decided that additional information and further analysis is necessary. Therefore, following publication of these preliminary results, the Department will request additional information on "interest", "general and administrative expenses", "finish", "temper", "packing", and "adders" for use in its analysis for the final results of this review. Moreover, since the Department will collect and analyze additional information, the Department has determined that it is not practicable to complete the final results of this administrative review within the original time limit, and is therefore extending the due date for the final results of this review, pursuant to section 351.213(h)(2) of the Department's regulations, until 180 days from publication of these preliminary results.

Revocation

On January 30, 1998, Wolverine submitted its request for an administrative review covering the 1997 POR and, pursuant to 19 CFR 351.222(b), requested revocation of the antidumping duty order with respect to Wolverine. In its request, Wolverine stated that it expected to receive a *de minimis* margin in the final results of the 1996 and 1997 POR reviews. Wolverine noted that these would be the third and fourth consecutive *de minimis* margins received, and thus Wolverine would be eligible for revocation in accordance with 19 CFR 351.222(b)(2), which among other requirements stipulates that the respondent requesting revocation has sold the subject merchandise at not less than NV for at least three consecutive administrative reviews and is not likely to do so in the future. This request was accompanied by certifications from the firm that it had not sold the relevant class or kind of merchandise at less than NV for a two-year period and anticipated receiving a *de minimis* dumping margin in the 1996 POR and in the 1997 POR, and would not sell the relevant class or kind of merchandise at less than NV in the future. Wolverine also agreed to its immediate reinstatement in the relevant antidumping duty order, as long as any firm is subject to this order, if the Department concludes under 19 CFR 351.222(b)(2)(iii) that, subsequent to revocation, it sold the subject merchandise at less than NV.

However, with respect to the 1996 POR, we found in our final results of that review that sales had been made below NV and, therefore, the Department's requirements for revocation had not been met. *See Final Results of Administrative Review and Notice of Intent Not To Revoke Order in Part, Brass Sheet and Strip from Canada,* 63 FR 33037 (June 17, 1998). Previously, the Department had found that Wolverine's sales reviewed during the eighth (1994) and ninth (1995) reviews and under this order were made at not less than NV. The Department has also preliminarily determined in this administrative review, as described below, that sales under this order were not made at less than NV. Nonetheless, in light of the final results of the tenth (1996) administrative review, Wolverine is not entitled to revocation pursuant to 19 CFR 351.222(b).

Preliminary Results of the Review

As a result of our comparison of EP to NV, we preliminarily determine that a *de minimis* of (0.39 percent) exists for Wolverine for the period January 1, 1997 through December 31, 1997, and we determine, preliminarily, not to revoke the antidumping duty order with respect to imports of subject merchandise from Wolverine.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice. Any hearing will be held 44 days after the date of publication or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs or at a hearing, within 180 days from publication of these preliminary results.

The following deposit requirements will be effective for all shipments of the subject merchandise that are entered, or

withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Wolverine will be the rate established in the final results of this review (except that no deposit rate will be required for zero or *de minimis* margins, i.e., margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LFTV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) if neither the manufacturer nor the exporter is a firm covered in this or any previous review, the cash deposit rate will be 8.10 percent, the "all others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Furthermore, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For Wolverine, for duty assessment purposes, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total entered value of those same sales. This specific rate calculated for each importer will be used for the assessment of antidumping duties on the relevant entries of subject merchandise during the POR. If for the final results of this review we calculate an assessment rate for Wolverine of less than 0.5 percent *ad valorem*, we will instruct Customs to liquidate Wolverine's entries of subject merchandise during the relevant POR without regard to antidumping duties.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213, 351.221.

Dated: February 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–2999 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–824]

Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, Air Products and Chemicals, Inc., and by two manufacturers/exporters of subject merchandise, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on polyvinyl alcohol ("PVA") from Taiwan. The period of review is May 1, 1997, through April 30, 1998.

We have preliminarily found that no sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service not to assess antidumping duties on entries subject to this review. Interested parties are invited to comment on these preliminary results. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statues, regulations, and case cited.

EFFECTIVE DATE: February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Everett Kelly, at (202) 482–4194; or Brian Smith, at (202) 482–1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all references are made to the Department's final regulations at 19 CFR Part 351 (1998).

Case History

On May 14, 1996, the Department published in the **Federal Register** an antidumping duty order on polyvinyl alcohol from Taiwan. *See* 61 FR 24286. On May 12, 1997, the Department published a notice providing an opportunity to request an administrative review of this order for the period May 1, 1997, through April 30, 1998 (63 FR 26143). On May 27, 1998, we received a request for an administrative review from E.I. du Pont de Nemours & Co. ("DuPont"). On May 29, 1998, we received a request for a review from Chang Chun Petrochemical ("Chang Chun"). On May 29, 1998, the petitioner also requested reviews of Chang Chun and DuPont, and an additional review of Perry Chemical Corporation ("Perry"). On June 29, 1998, we published a notice of initiation of this review for Chang Chun and Dupont (63 FR 35188). We did not initiate a review of the importer Perry because we do not consider Perry to be a manufacturer or exporter of the subject merchandise based on the factors set forth in section 351.401(h) of the Department's regulations (*see Final Results of Antidumping Duty Administrative Review: Polyvinyl Alcohol from Taiwan*, 63 FR 32810, 32813 (June 16, 1998)).

On June 17, 1998, we issued an antidumping questionnaire to Chang Chun and Dupont. The Department received responses from the two companies in September and December 1998. We issued supplemental questionnaires to these companies in October 1998 and January 1999. Responses to these questionnaires were received in November 1998 and January 1999.

On July 24, 1998, Chang Chun requested that the Department clarify and confirm that the scope of the merchandise includes PVA "hydrolyzed in excess of 85 percent whether or not mixed or diluted with defoamer or boric acid." In addition, Chang Chun requested that the Department confirm that the language in the scope of the order is still effective. Chang Chun contended that the language describing

the scope of subject merchandise covered by the antidumping order still controls the scope of review in this proceeding. Pursuant to Chang Chun's request, we confirmed that the scope of the merchandise includes PVA "hydrolyzed in excess of 85 percent whether or not mixed or diluted with defoamer or boric acid." *See* "Scope of Review" section of this notice for confirmation of the scope of subject merchandise covered by the antidumping duty order and this review.

On August 26, 1998, DuPont requested that the Department apply the special rule set forth in 19 CFR 351.402(c) with respect to its further-manufactured sales in the United States. DuPont claimed that sales of non-further-manufactured subject merchandise should be used as "proxy" sales if the Department deems that there are a sufficient number of such sales to provide a reasonable basis for an accurate dumping margin calculation. Otherwise, DuPont stated that if the Department were to include the further-manufactured sales in its calculations, the results would be unreliable and inaccurate (*see* "Further Manufactured Sales" section below for further discussion).

On September 25, 1998, DuPont submitted further analysis in support of its contention that the Department should exclude its further-manufactured sales in the preliminary results.

On November 10, 1998, the Department preliminarily determined that the application of the special rule to DuPont's further-manufactured sales was not appropriate. (*See* Memorandum from the Team to Louis Apple dated November 10 , 1998 ("Special Rule Memo").)

Scope of Review

The product covered by this review is PVA. PVA is a dry, white to cream-colored, water-soluble synthetic polymer. This product consists of polyvinyl alcohols hydrolyzed in excess of 85 percent, whether or not mixed or diluted with defoamer or boric acid. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Period of Review

The period of review ("POR") covers the period May 1, 1997, through April 30, 1998.

Fair Value Comparisons

To determine whether sales of the subject merchandise by the respondents to the United States were made at prices below normal value, we compared, where appropriate, the export price ("EP") or constructed export price ("CEP") to the normal value ("NV") as described below. In accordance with section 777A(d)(2) of the Act, we compared, where appropriate, the EPs and CEPs of individual transactions to the monthly weighted-average price of sales of the foreign like product made in the ordinary course of trade.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Chang Chun and Dupont covered by the description in the "Scope of the Review" section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market or third country, where appropriate, within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale through two months after the month of the U.S. sale. Where there were no sales of identical merchandise in the home market or third country made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: viscosity, hydrolysis, particle size, tackifier, defoamer, ash, color, volatiles, and visual impurities.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in sections 772(a) and 772(b) of the Act, as appropriate.

We made company-specific adjustments as follows.

Chang Chun

In accordance with sections 772(a) and (c) of the Act, we calculated an EP for all of Chang Chun's sales, since the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed CIF price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act; these expenses included domestic inland freight, foreign brokerage and handling, international freight, and marine insurance.

DuPont

We calculated CEP for all sales of subject merchandise, which were made in the United States after importation. We based CEP on packed FOB or delivered prices to unaffiliated purchasers in the United States. As appropriate, we made deductions for discounts and rebates. We also made deductions, where appropriate, for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included U.S. brokerage and handling expenses, U.S. Customs duties (which include harbor maintenance and merchandise processing fees), U.S. warehousing expenses, and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, we deducted from CEP selling expenses associated with DuPont's economic activities occurring in the United States, including direct selling expenses and indirect selling expenses. We also deducted from CEP an amount for profit and further manufacturing costs in accordance with section 772(d)(3) and section 772(d)(2) of the Act, respectively.

DuPont's Further-Manufactured Sales

Dupont claims that the special rule set forth in section 772(e) of the Act should apply to its further-manufactured sales because the value added is above the Department's 65 percent threshold, and there are a sufficient number of sales of the subject merchandise with no value-added to use as "proxy sales." Further, DuPont states that because of the way in which it reports costs associated with further manufacturing the subject merchandise, including its further-manufactured sales in the Department's dumping analysis would produce unreliable and inaccurate results.

Moreover, the exclusion of its further-manufactured sales from the Department's analysis would not appreciably affect the accuracy of the margin results, and that the burdens of preparing, reporting, and analyzing information for its further-manufactured sales would outweigh any gains from such an analysis. Therefore, DuPont requests that the Department exclude these further-manufactured sales and apply the "Special Rule" set forth in 19 CFR 351.402(c). Finally, Dupont notes in its Section E questionnaire response dated December 7, 1998, that if the Department finds that it must include the selling prices of the further-manufactured product in its margin calculation, it should compare the U.S. price of the further-manufactured product to the CV of that product. According to Dupont, this methodology would result in a more accurate and reliable margin calculation.

For the reasons stated in the November 10, 1998, Special Rule Memo, we disagree with DuPont that including the sales of the subject merchandise that is further-manufactured would necessarily produce unreliable or inaccurate results, or present a burden for the Department to calculate a margin using its normal methodology (*see* Special Rule Memo for further discussion). Because the purpose of section 772(e) is to reduce the administrative burden on the Department, the Department has the discretion to refrain from applying the special rule in circumstances where, as here, the value-added, while above the 65 percent threshold, is simple to calculate and does not present an administrative burden. Moreover, we do not agree with Dupont that applying our standard methodology will result in inaccurate and distortive results. However, we may revisit our preliminary decision to include the further-manufactured sales in our analysis based on our findings at verification.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C)(ii) of the Act. For Chang Chun, we determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States because Chang Chun had sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1)(C) of the Act, we based NV on sales in Taiwan.

For DuPont, in accordance with section 773(a)(1)(B)(ii) and 773(a)(1)(C) of the Act and consistent with our practice, we based NV on the prices at which the foreign like products were first sold for consumption in the respondent's largest third-country market (*i.e.*, Australia) because DuPont did not have sales of the foreign like product in the exporting country during the POR and because Australia was a viable market with respect to DuPont's sales of PVA.

We made company-specific adjustments as follows.

Chang Chun

We calculated NV based on packed, FOB or delivered prices to unaffiliated purchasers in Taiwan. We made adjustments for differences in packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We also made adjustments, where appropriate, for movement expenses consistent with section 773(a)(6)(B) of the Act; these expenses included inland freight from plant to customer. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 C.F.R. 351.410. We made COS adjustments by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expenses) and adding U.S. direct selling expenses (*i.e.*, credit expenses and bank charges).

DuPont

We calculated NV based on packed, delivered prices to unaffiliated purchasers in Australia. We made adjustments for movement expenses (*i.e.*, brokerage and handling fees, ocean freight, and inland freight) in accordance with section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in COS in accordance with section 773(a)(6)(C)(iii) of the Act and 19 C.F.R. 351.410. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales (*i.e.*, credit expenses) and adding U.S. direct selling expenses (*i.e.*, credit expenses), where appropriate. Since DuPont was unable to separate packing expenses from its variable cost of manufacture, we made no adjustment for differences in packing expenses. As discussed below in the "Level of Trade" section, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted from NV the third-country market indirect selling expenses (including inventory carrying costs), capped by the amount of the indirect selling expenses deducted in calculating the CEP under section 772(d)(1)(D) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed export sale from the exporter to the affiliated importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

Chang Chun reported one channel of distribution for its U.S. and home market sales. Based on our analysis of the selling functions, we found that the selling activities performed in both the home market and the United States were similar. Therefore, we have found that sales in both markets are at the same

LOT and consequently no LOT adjustment is warranted.

DuPont reported one customer category and one channel of distribution for its third-country market sales. For its CEP sales to the United States, it reported three customer categories and three channels of distribution corresponding to each customer category. Based on our analysis, we found that all of its CEP sales comprise a single level of trade.

For Dupont's CEP sales, after making the appropriate deductions under the section 772(d) of the Act, we found that there are no selling expenses or functions associated with selling activities performed by Dupont that are reflected in the CEP price. In contrast, the NV LOT is more remote from the factory than the CEP LOT, and NV prices include the indirect selling expenses attributable to selling activities performed by DuPont for the third-country market such as sales support functions. Accordingly, we have concluded that CEP is at a different LOT from the third-country market LOT.

We then examined whether a LOT adjustment or CEP offset may be appropriate. In this case, DuPont only sold at one LOT in the third-country market; therefore, there is no information available to determine a LOT adjustment between LOTs with respect to the foreign like product. Further, we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the third-country is at a more advanced stage of distribution than the LOT of the CEP, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

Cost of Production Analysis ("COP")

For Chang Chun, because we disregarded sales below the COP in the last completed segment of the proceeding (*i.e.*, the first administrative review), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. For DuPont, because DuPont had no sales below the COP in the last review, we did not initiate a COP investigation (*see* Policy Bulletin No. 94.1, Cost of Production—Standards for Initiation of Inquiry (March 25, 1994)). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Chang Chun in the home market.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by grade, based on the sum of the cost of materials and fabrication, selling, general and administrative ("SG&A") expenses, and packing costs. For Chang Chun, we relied on the submitted COPs.

Chang Chun purchased a major input (*i.e.*, vinyl acetate monomer ("VAM")) for PVA from an affiliated party. Section 773(f)(3) of the Act indicates that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under section 773(f)(2) of the Act. Section 773(f)(3) of the Act applies if the Department "has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input." The Department generally finds that such "reasonable grounds" exist where it has initiated a COP investigation of the subject merchandise. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40454 (July 29, 1998) (Comment 1).

Because a COP investigation is being conducted in this case, the Department requested in its Section D questionnaire that Chang Chun provide COP information for VAM. That cost information was provided by Chang Chun in its Section D response. For purposes of our analysis, we used the per-unit costs as reported by Chang Chun, which included the cost of VAM based on the transfer price, which is a higher price than the market price or its affiliate's COP.

B. Test of Home Market Prices

We compared the weighted-average COP for Chang Chun, adjusted where appropriate, to the comparison market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a grade-specific basis, we compared the COP to the comparison market prices, less any applicable movement charges, discounts, rebates, commissions and other direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act, and because the below cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

For Chang Chun, we found that certain comparison-market sales of PVA products were made at below-COP prices in substantial quantities within an extended period of time and at prices which would not permit recovery of costs within a reasonable period of time.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 1997, through April 30, 1998:

Manufacturer/exporter	Margin (percent)
Chang Chun Petrochemical Corporation	0.00
E.I. du Pont de Nemours & Co	0.00

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a

brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

Cash Deposit and Assessment Requirements

The following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of PVA from Taiwan, entered or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) the cash deposit rates for the reviewed companies will be those established in the final results of this review; (2) for exporters not covered in this review, but covered in the LTFV investigation or prior reviews, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation or the prior review; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.21 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*. For Chang Chun, for duty assessment purposes, we will calculate importer-specific assessment rates by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total entered value of the same sales. In order to estimate the entered value, we will subtract international movement expenses from the gross sales value. For DuPont, we will calculate an assessment rate by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total entered value of the sales examined

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 351.213.

Dated: February 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–2996 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Notice of Preliminary Results of the Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from India. This review covers one manufacturer/exporter, Rajinder Pipes Ltd. The period of review is May 1, 1997, through April 30, 1998.

We have preliminarily determined that respondent's margin should be based on total adverse facts available. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the selected adverse facts-available rate.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tabash at (202) 482–5047 or Robin Gray at (202) 482–4023, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commere's (the Department's) regulations are to 19 CFR Part 351 (1998).

Case History

On June 29, 1998, the Department published in the **Federal Register** (63 FR 35188) the antidumping duty order on certain welded carbon steel pipes and tubes from India. In accordance with 19 CFR 351.213, we published a notice of initiation of administrative review of this antidumping duty order for the period May 1, 1997, through April 30, 1998. This review covers one manufacturer/exporter, Rajinder Pipes Ltd. (Rajinder). The Department is conducting this administrative review in accordance with section 751(a) of the Act.

On September 17, 1998, the petitioners alleged that Rajinder made home-market sales of subject merchandise at prices below the cost of production (COP). On October 19, 1998, we concluded that petitioners' allegation provided us with reasonable grounds to believe or suspect that Rajinder made below-cost sales in the home market within the meaning of section 773(2)(a)(i) of the Act. Therefore, we initiated a COP investigation of Rajinder's home-market sales. On

October 21, 1998, we instructed Rajinder to respond to section D of the original questionnaire, which requests cost information for the period currently under review. Despite numerous extensions, Rajinder did not provide the requested cost information.

Scope of Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches or more but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of the products covered by this review are currently classifiable under the following Harmonized Tariff Schedule subheadings: 61032, 61049, 7306.30.10, and 7306.30.50. Although, the HTS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this proceeding remains dispositive.

Use of Facts Otherwise Available

Because Rajinder has not provided the requested cost information and has not provided record evidence substantiating its reasons for not responding to our questionnaire, Rajinder has precluded us from conducting an analysis to determine whether its comparison-market (India) sales prices were below their respective COP in substantial quantities and over an extended period of time. Accordingly, we believe that we must resort to total facts available.

Section 776(a) of the Act provides that, if an interested party fails to provide information requested by the Department by the deadlines for submission of the information or in the form and manner requested, the Department shall use the facts otherwise available in reaching the applicable determination under this title. In this review, as described below, Rajinder failed to provide a response to our COP questionnaire by the established deadline.

Section 782(e) of the Act provides that the Department shall not decline to consider whether the information submitted by the respondent that is already on the record is usable. The information that Rajinder failed to provide would have been the first comprehensive cost information to be used in the Department's cost investigation. Thus, the information currently on the record is so incomplete that it cannot serve as a reliable basis for reaching preliminary results (*see Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 969 (January 7, 1997)). Therefore, in accordance with section 776(a) of the Act and 19 CFR 351.308 (a), we must use facts otherwise available.

In selecting facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with requests for information. In the instant review, Rajinder submitted five extension requests in response to the original deadline issued for submission of its section D questionnaire response. The reasons cited for the extension requests changed over time. Initially, the company cited several reasons for not submitting its section D response including preparation of year-end reports, problems with the telephone lines, and insufficient staff. In the last two extension requests, Rajinder cited a claim of labor unrest which Rajinder failed to substantiate. Even in light of these extensions, Rajinder ultimately failed to submit the relevant cost information for the record of this review. Therefore, we have determined that Rajinder has failed to cooperate by not acting to the best of its ability to comply with our request for information for this review. Consequently, pursuant to section 776(b) of the Act, the Department may use adverse inferences when selecting from among the facts otherwise available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department will also consider the extent to which a party may benefit from its own lack of cooperation in selecting a rate. *See Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review*, 62 FR 69,472, 60477 (November 10, 1997), and *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Administrative Review*, 62 FR 53808, 53820–21 (October 16, 1997).

In order to ensure that the rate is sufficiently adverse so as to induce Rajinder's cooperation, we have assigned to Rajinder as adverse facts available a rate of 87.39 percent, the highest rate calculated for any respondent for any segment of this proceeding. This rate was calculated for the 88/89 administrative review of this order. Although Rajinder asked that we use old cost data as facts available for this review, because we do not have any information concerning Rajinder's current costs, we cannot determine if its old cost data would be sufficiently adverse for use as facts available. Therefore, we have not used it.

Section 776(c) of the Act directs the Department to corroborate, to the extent practicable, secondary information used as facts available. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period. *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997), and *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from*

France, et al, 62 FR 2801 (January 15, 1997).

As to the relevance of the margin used for adverse facts available, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 47454 (September 9, 1997), that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See also, Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995). We have determined that there is no evidence which would indicate that the rate is irrelevant or inappropriate as an adverse facts available rate for Rajinder in the instant review. Therefore, we have applied, as total adverse facts available, the 87.39 percent margin from the 1988/89 administrative review.

For more detailed information on the use, selection, and corroboration of facts available, please see the January 28, 1999, decision memorandum from Laurie Parkhill to Richard W. Moreland, which is available in the Central Records Unit, Import Administration, B–099, Main Commerce Building, Washington, DC, 20230.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the weighted-average dumping margin (in percent) for the period May 1, 1997, through April 30, 1998, to be as follows.

Company

Rajinder Pipes Ltd.—87.39

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. The Department will publish the final results of this administrative review subsequently, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash-deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 7.08 percent, the "All Others" rate made effective by the final determination of sales at LTFV, as explained in the 1995/96 new shipper review of this order. *See Certain Welded Carbon Standard Steel Pipes and Tubes From India; Final Results of New Shipper Antidumping Duty Administrative Review*, 62 FR 47632, 47644 (September 10, 1997).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–2998 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020299E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee (SSC) in February, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, February 23, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held in Peabody, MA. See **SUPPLEMENTARY INFORMATION** for specific location.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, February 23, 1999, 9:30 a.m.—Scientific and

Statistical Committee Meeting

Location: Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Agenda: The SSC will evaluate the adequacy of scallop biomass and yield estimates, data on groundfish bycatch, and habitat information for developing management options to allow fishing for scallops in the groundfish closed areas.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject for formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 3, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2994 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020299A]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Council (Council) will hold separate meetings of its Ecosystem and Habitat Advisory Panel (EHAP) and its Coral Reef Ecosystem Plan Team (CREPT) in Honolulu, Hawaii.

DATES: The EHAP meeting will be held on February 22–23, 1999, from 9:00 a.m. to 5:00 p.m., on February 22, and from 8:00 a.m. to 12:00 noon on February 23. The CREPT meeting will be held on February 24–26, 1999, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: Both meetings will be held at the Council's conference room, 1164 Bishop St., Suite 1400, Honolulu, Hawaii; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: The EHAP and CREPT will discuss and may make recommendations to the Council on the agenda items below; however, the order in which agenda items will be addressed may change.

Monday, February 22, 1999, 9:00 a.m.

A. Summary of recent activities

(1) Hawaii Humpback Whale National Marine Sanctuary
(2) Marine & Coastal Zone Management Advisory Group (MACZMAG)
(3) President's Ocean Initiative (NOAA priorities)

B. Refinement of Essential Fish Habitat (EFH)

(1) Summary of EFH designations for Bottomfish, Crustaceans, Pelagics and Precious Corals FMPs
(2) EFH needs of developing Coral Reef Ecosystem FMP
(3) Fishing gear impacts to EFH
(4) Non-fishing impacts to EFH
(5) Habitat Areas of Particular Concern (HACPs)
(6) EFH consultation process
(7) Mapping of EFH, including the Global Information System
(8) Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens) reauthorization of EFH mandate
(9) Council's EFH-related funding needs

C. Marine debris from fisheries impacting habitat

Review of problem

D. Fishery interactions with monk seals

(1) Northwestern Hawaiian Islands (NWHI) lobster fishery
(2) NWHI precious coral fishery
(3) Hawaii bottomfish fishery

E. Program Plan (Milestones)

Review of revised version

Tuesday, February 23, 1999, 8:00 a.m.

Draft coral reef ecosystem FMP

Review of preliminary draft

Wednesday, February 24, 1999, 8:30 a.m.

(1) Reports on recent meetings
(2) Draft Coral Reef Ecosystem FMP

Fishery management program (section outlines are in parentheses, below)

(1) Problems for resolution (2.1)
(2) Management objectives (2.2)
(3) Management unit (2.3)
(4) Habitat issues (2.4)
(5) Management alternatives (2.5)
(6) Reef resource development (2.6)
(7) Impact of management options (2.7)
(8) Recommended management measures (2.8)

Thursday, February 25, 1999, 8:30 a.m.

Cost/benefit analysis of proposed measures

(1) Ecological impacts of management options (3.1)
(2) Economic impacts of management options (3.2)
(3) Social impacts of management options (3.3)

Friday, February 26, 1999, 8:30 a.m.

A. Supporting information

(1) Description of management unit "stocks" (4.1)
(2) Description of habitat of management unit "stocks" (4.2)
(3) Description of fishing affecting management unit "stocks" (4.3)
(4) Description of economic characteristics (4.4)
(5) Description of socioeconomic aspects of fishing industries/ communities (4.5)
(6) Description of social and cultural framework of fishing industries/ communities (4.6)

B. Possible refinements of FMP outline

(1) Assignments for next iteration of draft FMP
(2) Timetable for completion of next iteration

C. Coral reef funding priorities

(1) Assessment and monitoring
(2) Research

D. Scheduling of next meeting

Although other issues not contained in this agenda may come before the EHAP and CREPT for discussion, in accordance with the Magnuson-Stevens Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: February 2, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2995 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 980529140–9024–02]

Cooperation Between the Technology Administration of the United States Department of Commerce and the Ministry of Science and Technology of the People's Republic of China; Civil Industrial Technology Coordinating Committee

AGENCY: Technology Administration, U.S. Department of Commerce.

ACTION: Notice: Re-opening of time for requests for nominations for the coordinating committee.

SUMMARY: The Technology Administration invites nominations of individuals for appointment to the Civil Industrial Technology Coordinating Committee established under the Implementing Arrangement Concerning Cooperation in Civil Industrial Technology between the U.S. Department of Commerce and the Peoples' Republic of China's Ministry of Science and Technology. The Technology Administration will consider all nominations received in response to this notice of appointment to the Committee.

DATES: Please submit nominations on or before March 19, 1999.

ADDRESSES: Please submit nominations for the United States-China Civil Industrial Technology Coordinating Committee to Phyllis Yoshida, Office of Technology Policy, Technology Administration, Department of Commerce, Room 4411, Washington, DC 20230. Nominations may also be submitted by fax to 202–219–3310.

FOR FURTHER INFORMATION CONTACT: Phyllis Yoshida, telephone 202–482–1287; fax 202–219–3310; e-mail Phyllis__Yoshida@ta.doc.gov.

SUPPLEMENTARY INFORMATION: On November 12, 1998, the Department of Commerce published a notice in the **Federal Register** requesting nominations for Committee created under a memorandum of understanding with China. This **Federal Register** notice was published on November 12, 1998 (63 FR 63294). The notice provides additional information on the goal of the agreement, the scope of the proposed activities, and relevant information on the Committee, including the functions of the members of the bodies and membership criteria and requirements. Nominations were requested on or before January 8, 1999. Because this notice was published shortly before a major U.S. holiday and extended through other holidays, the time for submission of nominations is being extended through March 19, 1999 to allow for further public dissemination and consideration.

Kelly H. Carnes,

Deputy Assistant Secretary for Technology Policy.

[FR Doc. 99–2763 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 980529139–9025–02]

The United States-Greek Initiative for Technology Cooperation with the Balkans; Joint Science and Technology Cooperation Council; Cooperation Between the Technology Administration of the United States Department of Commerce and the Industrial Research and Technology Unit of the Northern Ireland Department of Economic Development Joint Board on Scientific and Technological Cooperation

AGENCY: Technology Administration, U.S. Department of Commerce.

ACTION: Notice: Re-opening of time for requests for nominations for the Joint Council and the Joint Board.

SUMMARY: The Technology Administration invites nominations of individuals to appointment to the Joint Science and Technology Cooperation Council established under a Memorandum of Understanding on technology cooperation between the United States Department of Commerce and the Greek Ministry of National Economy concerning technology cooperation with the Balkans and the appointment to the Joint Board on Scientific and Technological Cooperation established under a Memorandum of Understanding on technology cooperation between the Technology Administration of the Department of Commerce and the Northern Ireland Industrial Research and Technology Unit. The Technology Administration will consider all nominations received in response to this notice of appointment to the two joint bodies.

DATES: Please submit nominations on or before February 26, 1999.

ADDRESSES: Please submit nominations for the United States-Greece Joint Council and the United States-Northern Ireland Joint Board to Cathy Campbell, Director, Office of International Technology Policy and Programs, Office of Technology Policy, Technology Administration, Department of Commerce, Room 4821, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Cathy Campbell, telephone 202–482–6351; fax 202–501–6849; e-mail Cathy__Campbell@ta.doc.gov.

SUPPLEMENTARY INFORMATION: On November 12, 1998, the Department of Commerce published two notices in the **Federal Register** requesting nominations for two joint bodies created under various memorandums of understanding or other agreements with Greece and Northern Ireland. This **Federal Register** notice was published on November 12, 1998 (63 FR 63294). The notices provide additional information on the goals of the agreements, the scope of the activities contemplated under them, and relevant information on the joint bodies, including the functions of the members of the bodies and membership criteria and requirements. Nominations were requested on or before January 8, 1998. Because the notices were published shortly before a major U.S. holiday and extended through other holidays, the time for submission of nominations is being extended through February 26, 1999 to allow for further public dissemination and consideration.

Kelly H. Carnes,

Deputy Assistant Secretary for Technology Policy.

[FR Doc. 99–2764 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–18–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

February 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202)

927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to the bilateral textile agreement of January 20, 1999, the Governments of the United States and Cambodia agreed to limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported to the United States during three one-year periods beginning on January 1, 1999 and extending through December 31, 2001. This directive cancels and supersedes the previous limits for Categories 331/631 set forth in **Federal Register** notice 63 FR 57666 published on October 28, 1998; and 338/339 and 345 set forth in **Federal Register** notice 63 FR 71620 published on December 29, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

These limits may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia. limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 1, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of January 20, 1999 between the Governments of the United States and Cambodia. This directive cancels and supersedes the directives issued to you on October 22, 1998 and December 22, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. These directives concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Cambodia and exported during the period which began on October 29, 1998 and extends through October 28, 1999 (Categories 331/631) and the period which began on October 28, 1998 and extends through October 27, 1999 (Categories 338/339 and 345).

Furthermore, you are directed to prohibit, effective on February 10, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit [1]
331/631	1,550,000 dozen pairs.
334/634	170,000 dozen.
335/635	65,000 dozen.
338/339	2,500,000 dozen.
340/640	750,000 dozen.
345	94,000 dozen.
347/348/647/648	3,000,000 dozen.
352/652	600,000 dozen.
438	90,000 dozen.
445/446	110,000 dozen.
638/639	900,000 dozen.
645/646	250,000 dozen.

[1] These limits have not been adjusted to account for any imports exported after December 31, 1998.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and Cambodia.

Textile products in the above categories which have been exported to the United States prior to January 1, 1999 shall not be subject to this directive.

Textile products in those same categories which have been released from the custody of the U.S. Customs Service nunder the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

These limits may be revised if Cambodia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Cambodia.

Import charges will be provided at a later date.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–2879 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

February 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: February 10, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 342/642 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 70108, published on December 18, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 1, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the period which began on January 1, 1999 and extends through March 28, 1999.

Effective on February 10, 1999, you are directed to increase the current limit for

Categories 342/642 to 99,427 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The guaranteed access level for Categories 342/642 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–3000 Filed 2–5–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Identification of Purchasers of Certain Products; Public Forum

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public forum.

SUMMARY: On March 23, 1999, the Consumer Product Safety Commission ("CPSC") staff will convene a public forum to explore how recall effectiveness could be enhanced by increased efforts to identify purchasers of consumer products through product registration, warranty cards or other means. The staff seeks written comments and oral presentations from individuals, associations, firms, and government agencies with information relevant to this topic. In addition, the staff is setting up panels of presenters made up of representatives of federal agencies that use product registration for recalls, industry members that use product registration cards, and consumer organizations.

DATES: The forum will commence at 9:30 a.m. on March 23, 1999. Requests to make oral presentations, and the text of the presentations, must be received by the Office of the Secretary no later than February 26, 1999. Persons planning to make presentations at the forum should submit 10 copies of the text of their prepared remarks to the Office of the Secretary no later than February 26 1999, and provide an additional 50 copies for dissemination on the date of the forum. Written comments that are in place of, or in addition to, oral presentations must be received by the Office of the Secretary no later than March 5, 1999. Written comments must include the author's affiliation with, or employment or sponsorship by, any professional organization, government agency, or business firm. The staff reserves the right to limit the number of persons who participate and the duration of their presentations.

ADDRESSES: The forum will be in Room 420, CPSC's Hearing Room of the East-West Towers Building, 4330 East-West Highway, Bethesda, MD. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned "Purchaser Identification" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207, or delivered to that office, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments, requests, and texts of oral presentations may also be filed by telefacsimile to (301) 504–0127 or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: Lawrence Hershman, Compliance Officer, Recalls and Compliance Division, U.S. Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0608, extension 1356; fax (301) 504–0359; or Melissa Hampshire, Attorney, Office of the General Counsel, U.S. Consumer Product Safety Commission, Washington, D.C.; telephone (301) 504–0980, extension 2208; fax (301) 504–0403. For information about the schedule for submission of written comments, requests to make oral presentations, and submission of texts of oral presentations, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, extension 1232; fax (301) 504–0127.

SUPPLEMENTARY INFORMATION: The staff believes that recall notification could be facilitated if manufacturers were better able to identify the purchasers of their products. More effective recall notification could lead to a higher proportion of products returned for refund, repair or replacement. This, in turn, would enhance the safety of American consumers.

The staff has identified a number of issues:

- What products might be best-suited for such a proposal? Should lines be drawn, and, if so, would they be based on product cost; durability; historic injury experience; intended users, such as children; or other factors?
- How could purchaser identification information be assembled in a cost-effective and comprehensive manner?
- What is the scope and extent of the Commission's legal authority to require manufacturers to ascertain and maintain the identities of the purchasers of their products?

The staff expects to explore these and other related issues during the forum.

Some companies have been highly successful in assembling purchaser information through use of warranty cards or other means. These companies have been able to use this information to achieve commendable return rates in the event of a recall. The staff particularly solicits participation from such companies.

The staff also is aware that in certain instances, companies are required by law to collect purchaser information. For example, by regulation the Department of Transportation has facilitated the collection of such information pertaining to car seats. 49 CFR Part 588. The staff solicits participation of car seat manufacturers, who could provide pertinent information about their experience with registration cards. Similarly, by law, certain manufacturers of medical devices must track their purchasers. 21 U.S.C. 360i(e). We solicit input from such manufacturers, as well as from any manufacturer required by federal, state or local law to identify product purchasers and maintain that information for some period of time. The Commission is conducting this inquiry under Section 27(a) of the CPSA, 15 U.S.C. 2076(a).

Dated: February 2, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–2844 Filed 2–5–99; 8:45 am]

BILLING CODE 6355–01–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0053]

Proposed Collection; Comment Request Entitled Permits, Authorities, or Franchises Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal

[1] The limit has not been adjusted to account for any imports exported after December 31, 1998.

Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Permits, Authorities, or Franchises Certification. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes for the first completion, *1* minute for subsequent completions, or an average of *5.7* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,106*; responses per respondent, *3*; total annual responses, *3,318*; preparation hours per response, *.094*; and total response burden hours, 312.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2875 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0055]

Proposed Collections; Comment Request Entitled Freight Classification Description

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Freight Classification Description. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

When the Government purchases supplies that are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, offerors are requested to indicate the full Uniform Freight Classification or National Motor Freight Classification. The information is used to determine the proper freight rate for the supplies.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,640*; responses per respondent, *3*; total annual responses, *7,920*; preparation hours per response, *.167*; and total response burden hours, *1,323*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0055, Freight Classification Description, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2877 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0057]

Proposed Collection; Comment Request Entitled Evaluation of Export Offers

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Evaluation of Export Offers. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Offers submitted in response to Government solicitations must be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Offers are evaluated on the basis of shipment through the port resulting in the lowest cost to the Government. This provision collects information regarding the vendor's preference for delivery ports. The information is used to evaluate offers and award a contract based on the lowest cost to the Government.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes for the first completion, *10* minutes for subsequent completions, or an average of *15* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *100;* responses per respondent, *4;* total annual responses, *400;* preparation hours per response, *.25;* and total response burden hours, *100.*

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0057, Evaluation of Export Offers, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2878 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061]

Proposed Collection; Comment Request Entitled Transportation Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Transportation Requirements. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Part 47 and related clauses contain policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies and acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. This information is required to ensure proper and timely shipment of Government supplies.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *.23* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *65,000*; responses per respondent, *4.4*; total annual responses, *286,000*; preparation hours per response, *.23*; and total response burden hours, *65,780.*

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2882 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0054]

Proposed Collection; Comment Request Entitled U.S.-Flag Air Carriers Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning U.S.-Flag Air Carriers

Certification. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag carrier is available to provide such services. In the event that the contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the contractor shall include a certification on vouchers involving such transportation. The contracting officer uses the information furnished in the certification to determine whether adequate justification exists for the contractor's use of other than a U.S.-flag air carrier.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *150*; responses per respondent, *2*; total annual responses, *300*; preparation hours per response, *.25*; and total response burden hours, *75*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0054, U.S.-Flag Air Carriers Certification, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2876 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0068]

Proposed Collection; Comment Request Entitled Economic Price Adjustment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Economic Price Adjustment. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *7,200*; responses per respondent, *1*; total annual responses, *7,200*; preparation hours per response, *.25*; and total response burden hours, *1,800*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2883 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0069]

Proposed Collection; Comment Request Entitled Indirect Cost Rates

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0069).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Indirect Cost Rates. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The contractor's proposal of final indirect cost rates is necessary for the establishment of rates used to reimburse the contractor for the costs of performing under the contract. The supporting cost data are the cost accounting information normally prepared by organizations under sound management and accounting practices.

The proposal and supporting data is used by the contracting official and auditor to verify and analyze the indirect costs and to determine the final indirect cost rates or to prepare the Government negotiating position if negotiation of the rates is required under the contract terms.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *9,770*; responses per respondent, *1*; total annual responses, *9,770*; preparation hours per response, *1*; and total response burden hours, *9,770*.

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0069, Indirect Cost Rates, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2885 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0071]

Proposed Collection; Comment Request Entitled Price Redetermination

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0071).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Price Redetermination. The clearance currently expires on May 31, 1999.

DATES: Comments may be submitted on or before April 9, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Fixed-price contracts with prospective price redetermination provide for firm fixed prices for an initial period of the contract with prospective redetermination at stated times during performance. Fixed price contracts with retroactive price redetermination provide for a fixed ceiling price and retroactive price redetermination within the ceiling after completion of the contract. In order for the amounts of price adjustments to be determined, the firms performing under these contracts must provide information to the Government regarding their expenditures and anticipated costs. The information is used to establish fair price adjustments to Federal contracts.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,500;* responses per respondent, *2;* total annual responses, *7,000;* preparation hours per response, *1;* and total response burden hours, *7,000.*

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0071, Price Redetermination, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2886 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035]

Submission for OMB Review; Comment Request Entitled Claims and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Claims and Appeals. A request for public comments was published at 63 FR 65759, November 30, 1998. No comments were received.

DATES: Comments may be submitted on or before March 10, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $100,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *4,500;* responses per respondent, *3;* total annual responses, *13,500;* preparation hours per response *1;* and total response burden hours, *13,500.*

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2887 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0038]

Submission for OMB Review; Comment Request Entitled Mistake in Bid

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Mistake in Bid. A request for public comments was published at 63 FR 65756, November 30, 1998. No comments were received.

DATES: Comments may be submitted on or before March 10, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a mistake in bid is discovered by the contracting officer (CO) after bid opening but before award, the CO obtains verification of the bid intended. This verification is needed to establish the bidder's correct bid. If the bidder requests permission to correct the bid, the bidder must submit clear and convincing evidence that a mistake was made. If the bidder requests permission to correct the bid and submits evidence that a mistake was made, the evidence is analyzed by the CO to determine whether or not the bidder should be allowed to correct the bid. The data (evidence) submitted by the bidder is attached to bidder's bid and placed in the contract file along with the CO's determination.

The verification of the correct bid is attached to the original bid and a copy of the verification is attached to the duplicate bid and placed in the contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *4,673*; responses per respondent, *1*; total annual responses, *4,673*; preparation hours per response, *.5*; and total response burden hours, *2,337.*

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telelphone (202) 208–7312. Please cite OMB Control No. 9000–0038, Mistake in Bid, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2888 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0004]

Submission for OMB Review; Comment Request Entitled Architect-Engineer and Related Services Questionnaire (SF 254)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire (SF 254). A request for public comments was published at 63 FR 65758, November 30, 1998. No comments were received.

DATES: Comments may be submitted on or before March 10, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A–E) projects. The form is submitted annually as required by 40 U.S.C. 541–544 by firms wishing to be considered for Government A–E contracts. The information obtained on this form is used to determine if a firm should be solicited for A–E projects.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *5,000*; responses per respondent, *7*; total annual responses, *35,000*; preparation hours per response, *1*; and total response burden hours, *35,000*.

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2889 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043]

Submission for OMB Review; Comment Request Entitled Delivery Schedules

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Delivery Schedules. A request for public comments was published at 63 FR 65757, November 30, 1998. No comments were received.

DATES: Comments may be submitted on or before March 10, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,440*; responses per respondent, *5*; total annual responses, *17,200*; preparation hours per response, *.167*; and total response burden hours, *2,872*.

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2890 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0039]

Submission for OMB Review; Comment Request Entitled Descriptive Literature

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Descriptive Literature. A request for public comments was published at 63 FR 65756, November 30, 1998. No comments were received.

DATES: Comments may be submitted on or before March 10, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Descriptive literature means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,663*; responses per respondent, *3*; total annual responses, *7,989*; preparation hours per response, *.167*; and total response burden hours, *1,334*.

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0039, Descriptive Literature, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2891 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0047]

Submission for OMB Review; Comment Request Entitled Place of Performance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Place of Performance. A request for public comments was published at 63 FR 65759, November 30, 1998. No comments were received.

DATES: Comments may be submitted on or before March 10, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (a) determine bidder responsibility; (b) determine price reasonableness; (c) conduct plant or source inspections; and (d) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *4* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *79,397*; responses per respondent, *14*; total annual responses, *1,111,558*; preparation hours per response, *.07*; and total response burden hours, *77,810*.

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2896 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048]

Submission for OMB Review; Comment Request Entitled Authorized Negotiators

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Authorized Negotiators. A request for public comments was published at 63 FR 65757, November 30, 1998. No comments were received.

DATES: Comments may be submitted on or before March 10, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minute per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *61,875*; responses per respondent, *8*; total annual responses, *495,000*; preparation hours per response, *.017*; and total response burden hours, *8,415*.

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2897 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0065]

Submission for OMB Review; Comment Request Entitled Overtime

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Overtime. A request for public comments was published at 63 FR 65758, November 30, 1998. No comments were received.

DATES: Comments may be submitted on or before March 10, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal solicitations normally do not specify delivery schedules that will require overtime at the Government's expense. However, when overtime is required under a contract and it exceeds the dollar ceiling established during negotiations, the contractor must request approval from the contracting officer for overtime. With the request, the contractor must provide information regarding the need for overtime.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,270*; responses per respondent, *1*; total annual responses, *1,270*; preparation hours per response, *.25*; and total response burden hours, *318*.

Obtaining copies of proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0065, Overtime, in all correspondence.

Dated: February 2, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–2898 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Final Environmental Impact Statement (FEIS) for the Land Exchange Between Fort Benning and the City of Columbus, GA

AGENCY: U.S. Army Infantry Center and Fort Benning, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Final Environmental Impact Statement (FEIS) which assesses the potential environmental impacts of the exchange of tracts of land between Fort Benning and the City of Columbus (hereafter referred to as the City.) Section 2829 of Public Law 101–510, enacted November 5, 1990, authorized a land exchange between the City and Fort Benning. The proposed action is to transfer the North Tract (ranging in size from 2,113 acres to 2,760 acres) to the City in exchange for the South Tract (ranging in size from 2,156 to 2,848 acres). The City intends to use the North Tract land for economic development and passive recreation. Fort Benning would use the land it receives for dismounted light infantry training.

DATES: Written comment received on or before March 10, 1999 for this action will be considered by the Army during final decision making.

ADDRESSES: To obtain copies of the FEIS contact: U.S. Army Infantry Center, Directorate of Public Works, Environmental Management Division, (ATTN: Mr. John Brent), Fort Benning, Georgia 31905–5122, or send e-mail to BrentJ@benning.army.mil.

FOR FURTHER INFORMATION CONTACT: U.S. Army Infantry Center, Directorate of Public Works, Environmental Management Division, (ATTN: Mr. John Brent), Fort Benning, Georgia 31905–5122; telephone (706) 545–4766; e-mail BrentJ@benning.army.mil.

SUPPLEMENTARY INFORMATION: The Department of the Army prepared a Draft Environmental Impact Statement (DEIS) which assessed the potential health and environmental impacts of each of five alternatives, including a "No Action" alternative, of this proposed action. A Notice of Availability was published on October 30, 1998 (63 FR 58380) outlining the five alternatives, and also providing notice that the DEIS was available for comment. Public information meetings were held on November 18 and 19 and December 8, 1998. Comments from the DEIS and public meetings have been considered and responses are included in this FEIS.

On June 26, 1996, Fort Benning conveyed 346 acres to the City for landfill development in exchange for 380 acres, as authorized under the same enabling legislation as the currently proposed exchange. An Environmental Assessment was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, and a Finding of No Significant Impact was prepared for the landfill land exchange. This notice of availability pertains only to the remaining acreage of the proposed North-South Tract land exchange FEIS, which involves the remaining 2,760 acres of Fort Benning land (the North Tract) and 2,848 acres of the City land (the South Tract). The FEIS includes an analysis of the cumulative environmental impacts from both the proposed North-South Tract exchange and the complete landfill land exchange.

The preferred alternative considered with the other four alternatives in this FEIS is Alternative V: Development of Reduced North Tract Without the Habitat Conservation Area (HCA). This alternative would reduce the North Tract to 2,113 acres in exchange for a South Tract of 2,156 acres. Most of the area identified for an HCA would remain with Fort Benning. Approximately a 690 acres Parks and Recreation Area would be established on the North Tract and may be used for wetlands protection, leaving approximately 1,423 acres of developable land. The Army would use the South Tract for dismounted light infantry training. The City would continue timber production on the portion that it would retain from the South Tract (692 acres).

The FEIS concludes that the proposed land exchange as presented in the preferred alternative (Development of Reduced North Tract Without the HCA) meets the needs and purposes of the action while minimizing the potential environmental impacts through mitigation.

The FEIS is available for public review at the following locations: W.C. Bradley Memorial Library, 1120 Bradley Drive, Columbus, Georgia; South Lumpkin Library, 2034 South Lumpkin Road, Columbus, Georgia; Sawyers Library, Building 93, Fort Benning, Georgia; Simon Schwob Memorial Library, Columbus State University, 4225 University Avenue, Columbus, Georgia; Columbus Chamber Commerce, 901 Front Street, Columbus, Georgia; and Columbus Government Center Tower, Columbus, Georgia.

Dated: January 29, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 99–2901 Filed 2–5–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent to Enter Into a Cooperative Research and Development Agreement Concerning CAST™

AGENCY: U.S. Army Research Laboratory, Department of Defense.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Research Laboratory (ARL), Weapons and Materials Research Directorate and the University of Delaware Center for Composite Materials, are actively seeking a Cooperative Research and Development Agreement (CRADA) partner for the further development and commercialization of the Composite Analysis Software Tools (CAST™) technology. CAST™ is a suite of computer codes designed to predict the behavior of composite materials both during and after manufacturing. A brief description of each of the codes within the CAST™ suite and their capabilities can be found at *http://www.federallabs.org/flc/ma/pl.*

The software is already utilized in the composites research and development community, and enhancements could greatly broaden its utility for the academic and commercial sectors. The CRADA partner will assist in enhancing, documenting, distributing, maintaining, and providing user support for the software. A meeting will be held at the University of Delaware Center for Composites Manufacturing, 14 April 1999, to discuss the specifics of the proposed CRADA. The meeting will be held at the Composites Manufacturing Science Laboratory from 1000–1200. Please register for this conference at *http://wee.federallabs.org/flc/ma/pl.* If you do not have Internet access, you may register by contacting the U.S. Army Research Laboratory, Technology Transfer Office at 410–278–5028.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–CS–TT/Bldg. 433, Aberdeen Proving Ground, Marvland 21005–5425, telephone: 410–278–5028 or e-mail *mrausa@arl.mil.*

SUPPLEMENTARY INFORMATION: None.

Mary V. Yonts,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 99–2946 Filed 2–5–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 10, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 2, 1999.

William E. Burrow,

Acting Leader Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Annual Performance Report for the Student Support Services (SSS) Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Burden:
Responses: 800
Burden Hours: 3,600
Abstract: SSS grantees must submit the report annually so the Department can evaluate the performance of grantees prior to awarding continuation grants and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information and analyze program impact.

[FR Doc. 99–2884 Filed 2–5–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Student Financial Assistance Programs—Distance Education Demonstration Program

AGENCY: Department of Education.

ACTION: Notice of regional meetings to provide advice and technical assistance to institutions of higher education (institutions), systems of institutions, and consortia of institutions that are (1) interested in applying to participate in the Distance Education Demonstration Program authorized under section 486 of title IV of the Higher Education Act of 1965, as amended, or (2) interested in providing Federal financial aid to students enrolled in distance education programs.

SUMMARY: The Secretary of Education (Secretary) will conduct three regional meetings in the District of Columbia, San Francisco, and Denver to provide advice and technical assistance to potential applicants of the Distance Education Demonstration Program and to other institutions interested in providing Federal financial aid to students enrolled in distance education programs.

DATES: The regional meetings will be held on February 11, 1999 in the District of Columbia, February 17, 1999 in San Francisco, California, and February 19, 1999 in Denver, Colorado.

ADDRESSES: Marianne R. Phelps, U.S. Department of Education, 400 Maryland Avenue, SW (ROB–3, Room 4082), Washington, DC 20202–5257. Telephone: (202) 708–5547.

FOR FURTHER INFORMATION CONTACT: Marianne R. Phelps at (202) 708–5547 or E-Mail to DistanceDemo@ed.gov. Information regarding the program can also be found on the Web site of the Department of Education (http://www.ed.gov). If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1998, President Clinton signed into law Pub. L. 105–244, the Higher Education Amendments of 1998, amending the Higher Education Act of 1965 (HEA). This legislation established the Distance Education Demonstration Program. Under this program, up to a total of 15 institutions, systems of institutions, or consortia of institutions may offer Title IV, HEA financial assistance to students enrolled in distance education programs without being subject to certain statutory and regulatory provisions, which the Secretary may waive, upon their request. As described in section 486(a) of the HEA, the purpose of the program is to—

(1) Allow demonstration programs that are strictly monitored by the Department of Education to test the quality and viability of expanded distance education programs currently restricted under this Act;

(2) Provide for increased student access to higher education through distance education programs; and

(3) Help determine the—

(A) Most effective means of delivering quality education via distance education course offerings;

(B) Specific statutory and regulatory requirements which should be altered to provide greater access to high quality distance education programs; and

(C) Appropriate level of federal assistance for students enrolled in distance education programs.

The Secretary anticipates publishing a notice inviting applications for participation in the Distance Education Demonstration Program in the **Federal Register** during the first week of February, 1999. This notice will specify the eligibility requirements for participation in the Distance Education Demonstration Program, the statutory and regulatory provisions that may be waived, the application requirements, and the criteria that will be used to select participants.

Regional Hearings

Interested parties are invited to attend three regional meetings that will provide advice and technical assistance about applying to participate in the Distance Education Demonstration Program and providing Federal financial aid to students enrolled in distance education programs. The regional meetings will begin with a brief description of eligibility requirements for the Distance Education Demonstration Program and the application and selection processes for this program. Then, individuals will be provided an opportunity to ask questions regarding the application process and other matters relating to the Distance Education Demonstration Program. Department of Education staff with expertise on various issues relating to the Distance Education Demonstration Program will be available to answer these questions.

Questions regarding eligibility and administration of Title IV, HEA student financial assistance programs may be relevant to institutions' interest in applying for the Distance Education Demonstration Program. Accordingly, during the course of the meeting, Department staff will also address questions that relate generally to the administration of aid in distance education programs.

The Department of Education has reserved a limited number of hotel rooms at each of the following hotels at a special government per diem room rate. To reserve these rates, be certain to inform the hotel that you are attending the regional hearings with the Department of Education.

The hearing sites are accessible to individuals with disabilities. The Department will provide a sign language interpreter at each of the scheduled hearings. An individual with a disability who will need an auxiliary aid or service other than an interpreter to participate in the meeting (e.g., assistive listening device, or materials in an alternative format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it. Dates, Times, and Locations of Regional Hearings.

1. February 11, 1999, 9 a.m. to 1 p.m., Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005. Call (202) 842–1300 for hotel reservations. Sleeping room rate: $115 plus taxes. Reservations must be made by January 28th.

2. February 17, 1999, 9 a.m. to 1 p.m., The Holiday Inn Golden Gateway, 1500 Van Ness Avenue, San Francisco, California 94109. Call 1–800–Holiday or (415) 441–4000 for hotel reservations. Sleeping room rates: $129 plus taxes. Reservations must be made by February 3rd.

3. February 19, 1999, 9 a.m. to 1 p.m., The Adams Marc Hotel, 1550 Court Place, Denver, Colorado 80202. Call 1–303–893–3333 for hotel reservations. Sleeping room rate: $80 plus taxes. Reservations must be made by February 5th.

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Authority: Sec. 488 of Pub. L. 105–244, enacted October 7, 1998.

Dated: February 2, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–2917 Filed 2–5–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–169–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

February 2, 1999.

Take notice that on January 21, 1999, ANR Pipeline Company (ANR, 500 Renaissance Center, Detroit, Michigan 48243, filed pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an interconnection between ANR and Associated Electric Cooperative, Inc. (AECI) in Nodaway County, Missouri, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, ANR would construct and operate two 10-inch tap valve assemblies and osolating flanges, one each on ANR's 24-inch mainline and loopline; one 4-inch and one 6-inch turbine meter; a 2-inch positive displacement meter; an electronic measurement system; regulation and heater equipment; and approximately 400 feet of 10-inch pipe at an estimated cost of $659,000. ANR proposes to tie the proposed interconnection in with a 0.5-mile 10-inch line that AECI's would construct to connect to its power plant. ANR contends that the interconnection would provide a maximum daily volume of 57 Mmcf (through firm and interruptible services) to AECI's proposed power plant in Nodaway County. ANR indicates that these deliveries would be within the certificated entitlements of the customer.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–2921 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. OA97–97–004; OA97–467–004; OA97–452–004; OA97–402–004; and OA97–460–004]

Atlantic City Electric Company; Delmarva Power and Light Company; Rochester Gas and Electric Corp.; Louisville Gas and Electric Company; Kentucky Utilities Company; Notice of Filing

January 27, 1999.

Take notice that above-named companies each filed revised standards of conduct on January 19, 1999 in response to the Commission's December 18, 1998 Order on Rehearing and Clarification. 85 FERC ¶61, 382 (1998).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 11, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2873 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–211–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1999.

Take notice that on January 29, 1999, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective March 1, 1999.

CIG states that the purpose of this filing is to set forth the pro forma service agreements contained in its tariff the specific types of discounts that CIG may agree to enter into with its shippers.

CIG further states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2927 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2921–012]

Duke Energy Trading and Marketing, L.L.C.; Notice of Filing

February 2, 1999.

Take notice that on January 14, 1999, Duke Energy Trading and Marketing, L.L.C., tendered for filing Notification of Change in Status. Duke Energy Trading and Marketing, L.L.C., seeks to notify the Commission that it has agreed to acquire NP Energy Inc., a power marketer.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 12, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2930 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–212–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1999.

Take notice that on January 29, 1999, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following revised tariff sheets to become effective March 1, 1999:

Second Revised Sheet No. 289
Fourth Revised Sheet No. 290

El Paso states that the tariff sheets are being filed to revise El Paso's right-of-first-refusal (ROFR) provisions to shorten the process and make it more practical. The modified ROFR provisions conform to El Paso's capacity release program, making it easier for shippers to use.

El Paso states that copies of the filing were served upon all shippers on El Paso's system and interested regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2928 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–182–000]

Koch Gateway Pipeline Company; Notice of Application for Abandonment

February 2, 1999.

Take notice that on January 28, 1999, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251 filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations requesting permission and approval to abandon in place by sale to Creole Gas Pipeline Corporation (Creole), a Louisiana intrastate gas pipeline company, certain pipeline transmission, gathering and related compression and appurtenant facilities (commonly known as the Gloria Facilities) located in Lafourche, St. Bernard, Plaquemines, St. Charles, Jefferson and Terrebonne Parishes, Louisiana. The application is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 23, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Koch to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–2923 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–27–000]

Maine Public Service Company and Energy Atlantic, LLC; Notice of Filing

January 28, 1999.

Take notice that on January 20, 1999, Maine Public Service Company (MPS) and Energy Atlantic, LLC (Energy Atlantic), a wholly-owned subsidiary of MPS, tendered for filing an application under section 203 of the Federal Power Act for MPS to dispose, by transfer to Energy Atlantic, of MPS's FERC Rate Schedule No. 29, a power sales agreement for the sale of energy and capacity by MPS to Houlton Water Company.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 19, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2872 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–003]

Mississippi River Transmission Corporation; Notice of Filing

February 2, 1999.

Take notice that on January 29, 1999, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective March 17, 1999:

Substitute Second Revised Sheet No. 98
Substitute Third Revised Sheet No. 99
2nd Substitute Original Sheet No. 99A
2nd Substitute Original Sheet No. 99B
2nd Substitute Original Sheet No. 99C
2nd Substitute Original Sheet No. 99D
2nd Substitute Original Sheet No. 99E
Original Sheet No. 99F
Original Sheet No. 99G
Substitute Second Revised Sheet No. 185

MRT states that the purpose of this filing is to set forth the method MRT will use to allocate firm capacity that becomes available for subscription on MRT's system. MRT states that the revised tariff sheets are in response to concerns and suggestions made at the Technical Conference and the concerns noted in the Commission order of October 14, 1998.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2924 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–68–002]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1999.

Take notice that on January 28, 1999, NorAm Gas Transmission Company (ANGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to be effective November 1, 1998:

Substitute First Revised Sheet No. 208A

ANGT states that the purpose of this filing is to comply with the Commissions Letter Order issued January 15, 1999 in Docket No. RP99–68–001.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2926 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–177–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

February 2, 1999.

Take notice that on January 27, 1999, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP98–177–000 a request pursuant to Sections 157.205 and 157.216 and 211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 211) for authorization to abandon certain existing undersized facilities and to construct and operate upgraded replacement facilities, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that as a result of the proposed upgrade, the maximum design capacity of the meter station would increase from approximately 8,300 Dth per day to approximately 10,650 Dth per day. Northwest also estimates the cost of the proposed upgrade to be approximately $2,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and-not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–2922 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–540–000]

Transcontinental Gas Pipe Line Corporation; Notice of Meeting

February 2, 1999.

At the request of U.S. Representative Bill Pascrell, Jr., of New Jersey, Commission staff will attend a meeting on February 8, 1999, to describe the Commission's environmental processes and procedures. The meeting will be held at the former Assembly of God Church in Nutley, New Jersey, located at the corner of Bloomfield and Milton Avenues. The meeting will begin at 8:00 PM and adjourn no later than 10:00 PM.

Additional information about the meeting is available from Paul McKee in the Commission's Office of External Affairs at (202) 208–1088.

David P. Boegers,

Secretary.

[FR Doc. 99–2874 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–4–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1999.

Take notice that on January 27, 1999 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets, which tariff sheets are enumerated in Appendix A attached to the filing, to be effective December 1, 1998, January 1, 1999 and February 1, 1999.

Transco states that the purpose of the instant filing is to track rate changes attributable to transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT, and storage service purchased from CNG Transmission Corporation (CNG) under its Rate Schedule GSS the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS.

Transco states that the filing is being made pursuant to tracking provisions under Section 4 of Transco's Rate Schedule FT, Section 3 of Transco's Rate Schedule GSS and Section 4 of Transco's Rate Schedule LSS.

Transco states that included in Appendices B and C attached to the filing are the explanations of the rate changes and details regarding the computation of the revised Rate Schedule FT–NT, GSS and LSS rates.

Transco states that copies of the filing are being mailed to each of its FT–NT, GSS and LSS customers and interested State Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2929 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–210–000]

Viking Gas Transmission Company; Notice of Filing

February 2, 1999.

Take notice that on January 29, 1999, Viking Gas Transmission Company (Viking) tendered for filing a report of penalty revenues and credits for the period of November 1, 1997 through October 31, 1998.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–2925 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1503–011, et al.]

Eagle Gas Marketing Company, et al.; Electric Rate and Corporate Regulation Filings

January 29, 1999.

Take notice that the following filings have been made with the Commission:

1. Eagle Gas Marketing Company

[Docket No. ER96–1503–011]

Take notice that on January 15, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

2. InterCoast Power Marketing Co.; Atlanta Gas Light Services, Inc.; CU Power Canada Limited; North American Energy Conservation Inc.; The Green Power Connection, Inc.; Electrade Corporation; NYSEG Solutions, Inc.

[Docket Nos. ER94–6–012; ER97–542–006; ER98–4582–001; ER94–152–020 and EL94–9–000; ER97–3888–006; ER94–1478–014; and ER99–220–000]

Take notice that on January 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. The Furst Group, Inc.; Advantage Energy, Inc.; Mid American Natural Resources, Inc.; Cook Inlet Energy Supply; Keystone Energy Services, Inc.; Astra Power, LLC; FirstEnergy Trading and Power Marketing, Inc.; Niagara Energy & Steam Co., Inc.; Seagull Power Services Inc.; Alpena Power Marketing, L.L.C.; Central Hudson Enterprises Corporation

[Docket Nos. ER98–2423–001; ER97–2758–004; ER95–1423–000; ER96–1410–012; ER97–3053–005; ER98–3378–003; ER95–1295–011; ER97–1414–004; ER96–342–011; ER97–4745–005; and ER97–2869–006]

Take notice that on January 25, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. Hafslund Energy Trading LLC; TECO EnergySource, Inc.; Golden Valley Power Company; Granger Energy, L.L.C.; Sparc, L.L.C.; Rocky Mountain Natural Gas & Electric L.L.C.; Black Hills Energy Resources, Inc.; WPS Energy Services, Inc.; ProLiance Energy, LLC; COM/Energy Marketing, Inc.; Cogentrix Energy Power Marketing, Inc.; AYP Energy, Inc.; CSW Energy Services, Inc.

[Docket Nos. ER98–2535–001; ER96–1563–012; ER98–4334–001; ER97–4240–002; ER98–2671–001; ER98–3108–001; ER95–1415–006; ER96–1088–021; ER97–420–008; ER98–449–004; ER95–1739–014; ER96–2673–009; and ER98–2075–004]

Take notice that on January 25, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. FPL Energy Power Marketing, Inc.; FPL Energy Maine Hydro, Inc.; FPL Energy Mason, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPL Energy AVEC, LLC

[Docket Nos. ER98–3566–000 and ER98–3566–001; ER98–3511–000 and ER98–3511–001; ER98–3562–000 and ER98–3562–001; ER98–3563–001; ER98–3564–001 and ER98–3565–001]

Take notice that on January 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. Yadkin, Inc.

[Docket No. ER99–1461–000]

Take notice that on January 26, 1999, Yadkin, Inc. tendered for filing a summary of activity for the quarter ending December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. PECO Energy Company

[Docket No. ER99–1464–000]

Take notice that on January 26, 1999, PECO Energy Company (PECO) filed a summary of transactions made during the fourth quarter of calendar year 1998 under PECO's Electric Tariff Original Volume No. 1 accepted by the

Commission in Docket No. ER95–770–000, as subsequently amended and accepted by the Commission in Docket No. ER97–316–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Elwood Marketing, LLC

[Docket No. ER99–1465–000]

Take notice that on January 26, 1999, Elwood Marketing, LLC tendered for filing its proposed FERC Electric Rate Schedule No. 1 and requested certain waivers of the Commission Regulations.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Baltimore Gas and Electric Company

[Docket No. ER99–1466–000]

Take notice that on January 26, 1999, Baltimore Gas and Electric Company (BGE), tendered for filing a Service Agreement with Citizens Power Sales, dated November 30, 1998 under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to Citizens Power Sales under the provisions of the Tariff.

BGE requests an effective date of November 30, 1998, for the Service Agreement. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Baltimore Gas and Electric Company

[Docket No. ER99–1467–000]

Take notice that on January 26, 1999, Baltimore Gas and Electric Company (BGE), tendered for filing a Service Agreement with Exelon Energy, dated January 4, 1999 under BGE's FERC Electric Tariff Original Volume No. 3 (Tariff). Under the tendered Service Agreement, BGE agrees to provide services to Exelon Energy under the provisions of the Tariff.

BGE requests an effective date of January 4, 1999, for the Service Agreement. BGE states that a copy of the filing was served upon the Public Service Commission of Maryland.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER99–1469–000]

Take notice that on January 26, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and PG&E Energy Services Corporation (PG&E). This Transmission Service Agreement specifies that PG&E has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and PG&E to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for PG&E as the parties may mutually agree.

Niagara Mohawk requests an effective date of January 8, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and PG&E.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Sempra Energy Trading Corp.

[Docket No. ER99–1473–000]

Take notice that on January 26, 1999, Sempra Energy Trading Corp. (SET), tendered for filing pursuant to Rule 205, 18 CFR 285.205, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 12 (Ancillary Services—Arizona and Nevada) to be effective without suspension.

SET intends to sell certain ancillary services at wholesale to four transmission providers—Arizona Public Service Company, Tucson Electric Power Company, Salt River Project, and Nevada Power Company—and to their transmission customers who opt to self-procure. The ancillary services that SET proposes to sell are Regulation and Frequency Control, Spinning Reserve Service, and Supplemental Reserve Service. SET proposes to sell these services subject to rates, terms and conditions to be negotiated with the buyer. Rate Schedule No. 12 provides for the sale of the foregoing ancillary services at market-based rates.

SET states that it has served copies of its filing on the Nevada Public Utilities Commission and on the Arizona Corporation Commission.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Indeck-Pepperell Power Associates, Inc.

[Docket No. ER99–1474–000]

Take notice that on January 26, 1999, Indeck-Pepperell Power Associates, Inc. (Indeck-Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement between Indeck Pepperell and Select Energy, Inc. (Select), dated December 10, 1998, for service under Indeck Pepperell's Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of December 10, 1998.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Company

[Docket No. ER99–1476–000]

Take notice that on January 26, 1999, New England Power Company submitted for filing its response to the Commission's order in North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998).

Comment date: February 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Industrial Energy Applications, Inc.

[Docket No. ER99–1477–000]

Take notice that on January 26, 1999, Industrial Energy Applications, Inc. (IEA), filed with the Commission a Notice of Cancellation of IEA's Rate Schedule FERC No. 1, which authorizes IEA to sell electricity at market-based rates.

IEA requests that the cancellation be made effective as of January 1, 1999, and seeks waiver of the Commission's notice requirements. IEA states that there are no current purchasers under Rate Schedule No. 1, who would be affected by the cancellation.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Central Vermont Public Service Corporation

[Docket No. ER99–1489–000]

Take notice that on January 26, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement for Market Rate Power Sales with PP&L, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on January 27, 1999.

Comment date: February 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Lyndell E. Maddox; Mark C. Cowan; J. Stephen Gilbert

[Docket Nos. ID–3137–002; ID–3141–002; and ID–3147–001]

Take notice that on January 19, 1999, PG&E Energy Trading—Power Holdings Corporation (PGET), with its principal place of business at 1100 Louisiana, Suite 1000, Houston, Texas 77002 filed with the Federal Energy Regulatory Commission a Notice of Changes with respect to interlocking positions held by the above-named individuals.

Comment date: February 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power Service Corporation; Monongahela Power Company; The Potomac Edison Company; West Penn Power Company; American Electric Power Service Corporation; Appalachian Power Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company; Commonwealth Edison Company; Commonwealth Edison Company of Indiana, Inc.; Consolidated Edison Company of New York, Inc.; Illinois Power Company; Wisconsin Electric Power Company

[Docket Nos. OA97–117–008; OA97–408–007; OA97–459–008; OA97–279–007; OA97–126–007; and OA97–216–007]

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct and/or revised the organizational charts and job descriptions posted on OASIS in response to the Commission's December 18, 1998 order on standards of conduct.[1]

The December 18, 1998 order accepted the standards of conduct submitted by Illinois Power Company and Wisconsin Electric Power Company but required them to revise their organizational charts and job descriptions posted on OASIS within 30 days. These companies did not make any filings with the Commission (nor were they required to). However, by this notice, the public is invited to intervene, protest or comment regarding their revised organizational charts and job descriptions.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

[1] Allegheny Power Service Corporation, 85 FERC ¶61,390 (1998).

19. Western Resources, Inc.

[Docket No. OA97–312–003]

Take notice that Western Resources, Inc., submitted revised standards of conduct on January 7 and 19, 1999 in response to the Commission's September 29, 1998 Order on Standards of Conduct, 85 FERC ¶61,382 (1998).

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2919 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1493–000, et al.]

Indeck-Pepperell Power Associates, Inc., et al.; Electric Rate and Corporate Regulation Filings

February 1, 1999.

Take notice that the following filings have been made with the Commission:

1. Indeck-Pepperell Power Associates, Inc.

[Docket No. ER99–1493–000]

Take notice that on January 21, 1999, Indeck-Pepperell Power Associates, Inc. (IPA) tendered for filing a summary of activity for the quarter ending December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corporation

[Docket No. ER99–1494–000]

Take notice that on January 26, 1999, New York State Electric & Gas Corporation filed the Summary of Quarterly Activity for the calendar year quarter ending December 31, 1998 pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR Part 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's December 14, 1998 order in Docket No. ER99–221–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Mountainview Power Company

[Docket No. ER99–1495–000]

Take notice that on January 26, 1999, Mountainview Power Company (Mountainview) tendered for filing pursuant to the Commission's October 16, 1998 Order issued in Docket ER98–4301-000, Mountainview's quarterly transaction report for the calendar quarter ending December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Riverside Canal Power Company

[Docket No. ER99–1496–000]

Take notice that on January 26, 1999, Riverside Canal Power Company (Riverside) tendered for filing pursuant to the Commission's October 16, 1998 Order issued in Docket ER98–4302-000, Riverside's quarterly transaction report for the calendar quarter ending December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. NGE Generation, Inc.

[Docket No. ER99–1502–000]

Take notice that on January 27, 1999, NGE Generation, Inc. filed the Summary of Quarterly Activity for the calendar year quarter ending December 31, 1998, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Regulations, 18 CFR Part 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997 order in Docket No. ER97–2518–000.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Tucson Electric Power Company

[Docket No. ER99–1503–000]

Take notice that on January 27, 1999, Tucson Electric Power Company (Tucson), tendered for filing a Transaction Report regarding power purchases and sales under its Market-Based Power Sales Tariff for Affiliate Sales for quarter ended December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Tucson Electric Power Company

[Docket No. ER99–1504–000]

Take notice that on January 27, 1999, Tucson Electric Power Company (Tucson), tendered for filing a Transaction Report regarding power purchases and sales under its Market-Based Power Sales Tariff for quarter ended December 31, 1998.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Niagara Mohawk Power Corporation

[Docket No. ER99–1505–000]

Take notice that on January 27, 1999, Niagara Mohawk Power Corporation tendered for filing its Quarterly Sales and Services Summary for the quarters ending September 30, 1998 and December 31, 1998 as required by the Commission's Order dated September 25, 1996 in Docket No. ER96–2585–000.

A copy of the filing has been served upon the New York Public Service Commission.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER99–1506–000]

Take notice that on January 27, 1999, PacifiCorp tendered for filing in accordance with the Commission's June 26, 1997 Order under FERC Docket No. ER97–2801–000, a Report showing PacifiCorp's transactions under PacifiCorp's FERC Electric Tariff, Original Volume No. 12 for the quarter ending on December 31, 1999.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Unitil Power Corp.

[Docket No. ER99–1511–000]

Take notice that on January 28, 1999, Unitil Power Corp. tendered for filing a summary of activity for the quarter ending December 31, 1998.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Fitchburg Gas and Electric Light Company

[Docket No. ER99–1512–000]

Take notice that on January 28, 1999, Fitchburg Gas and Electric Light Company tendered for filing a summary of activity for the quarter ending December 31, 1998

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Great Bay Power Corporation

[Docket No. ER99–1517–000]

Take notice that on January 28, 1999 Great Bay Power Corporation tendered for filing a revised summary of activity for the quarter ending December 31, 1998.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Medical Area Total Energy Plant Plant, Inc.

[Docket No. ER99–1518–000]

Take notice that on January 28, 1999, Medical Area Total Energy Plant, Inc. (MATEP) tendered for filing a summary of activity for the quarter ending December 31, 1998.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. CLECO Corporation

[Docket No. ER99–1519–000]

Take notice that on January 28, 1999, CLECO Corporation, tendered for filing CLECO Corporation Market Based Rate Tariff MR–1, the quarterly report for transactions undertaken by CLECO Corporation for the quarter ending December 31, 1998.

CLECO Corporation states that a copy of the filing has been served on the Louisiana Public Service Commission.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. California Power Exchange

[Docket No. ER99–1521–000]

Take notice that on January 28, 1999, the California Power Exchange Corporation (PX) tendered for filing its quarterly indices of customers subject to PX Participation Agreements and Meter Services Agreements. The indices cover the period ending December 31, 1998.

The PX states that it has served copies of its filing on the affected customers and on the California Public Utilities Commission.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power Corporation

[Docket No. ER99–1524–000]

Take notice that on January 28, 1999, Florida Power Corporation submitted a report of short-term transactions that occurred under its Market-Based Rate Wholesale Power Sales Tariff (FERC Electric Tariff, First Revised Volume No. 8) during the quarter ending December 31, 1999.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Avista Corporation

[Docket No. ER99–1531–000]

Take notice that on January 28, 1999, Avista Corporation, formerly The Washington Water Power Company, tendered for filing its summary of activity for the quarter ending December 31, 1998 under its FERC Electric Tariff Original Volume No. 9.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. GEN-SYS Energy

[Docket No. ER99–1532–000]

Take notice that on January 28, 1999, GEN-SYS Energy (GSE) tendered for filing with the Federal Energy Regulatory Commission, a market summary activity for GSE for the quarter ending December 31, 1998.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Western Resources, Inc.

[Docket No. ER99–1535–000]

Take notice on January 28, 1999, Western Resources, Inc., tendered for filing a summary of sales under its Market-Based Power Sales Tariff for the quarter ending December 31, 1998.

Comment date: February 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–2920 Filed 2–5–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 3, 1999.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 10, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro

713th Meeting—February 10, 1999, Regular Meeting (10:00 A.M.)

CAH–1. Docket# P–9951, 051, Township of Van Buren, Michigan and Sts Hydropower Ltd.

CAH–2.
- Docket# P–2311, 016, Crown Vantage—New Hampshire Electric, Inc.
- Other#S P–2311, 024, Crown Vantage—New Hampshire Electric, Inc.

CAH–3. Docket# P–10813, 040, City of Summersville, West Virginia

CAH–4. Docket# P–2113, 091, Wisconsin Valley Improvement Company

CAH–5. Docket# P–10813, 041, City of Summersville, West Virginia

Consent Agenda—Electric

CAE–1. Docket# ER99–993, 000, Mid-Continent Area Power Pool

CAE–2.
- Docket# ER99–35, 000, Boston Edison Company
- Other#S EL99–7, 000, Boston Edison Company
- EL99–8, 000, Boston Edison Company

CAE–3.
- Docket# ER99–694, 000, Southern Energy Canal, L.L.C.
- Other# ER99–1024, 000, Southern Energy Canal, L.L.C.

CAE–4. Docket# ER99–1001, 000, CH Resources, Inc.

CAE–5. Docket# ER99–967, 000, Wisvest—Connecticut, L.L.C.

CAE–6.
- Docket# ER99–978, 000, Boston Edison Company
- Other#S EL99–31, 000, Boston Edison Company

CAE–7. Docket# ER99–1035, 000, Pacific Gas and Electric Company
- Other#S EL99–34, 000, Pacific Gas and Electric Company

CAE–8. Docket# ER99–970, 000, Rockgen Energy, LLC

CAE–9. Docket# ER99–1004, 000, Entergy Nuclear Generation Company

CAE–10. Docket# ER99–933, 000, California Power Exchange Corporation

CAE–11. Docket# TX97–1, 000, The Montana Power Company

CAE–12.
- Docket# ER90–373, 006, Northeast Utilities Service Company
- Other#S EL90–39, 003, Connecticut Light & Power Company V. Western Massachusetts Electric Company
- ER90–390, 006, Northeast Utilities Service Company

CAE–13. Docket# TX96–2, 000, City of College Station, Texas

CAE–14. Omitted

CAE–15. Docket# ER99–353, 001, Firstenergy Operating Companies

CAE–16. Omitted

CAE–17.
- Docket# ER98–3549, 001, Southern Company Energy Marketing, L.P.
- Other#S ER98–3551, 001, Conagra Energy Services, Inc.
- ER98–3552, 001, Southern Indiana Gas and Electric Company
- ER98–3556, 001, New Energy Ventures, L.L.C.
- ER98–3819, 001, Illinova Energy Partners, Inc.
- ER98–3885, 001, Firstenergy Trading & Power Marketing, Inc.
- ER98–3927, 001, Midcon Power Services Corporation
- ER98–3949, 001, Griffin Energy Marketing, L.L.C.
- ER98–3965, 001, Coral Power, L.L.C.
- ER98–3966, 001, Enron Power Marketing, Inc.
- ER98–3968, 001, Coral Power, L.L.C.
- ER98–3984, 001, British Columbia Power Exchange Corporation
- ER98–3986, 001, Entergy Power Marketing Corporation
- ER98–3992, 001, LG&E Energy Marketing, Inc.
- ER98–4015, 001, Washington Water Power Company
- ER98–4018, 001, Idaho Power Company
- ER98–4040, 001, PG&E Energy Trading-Power, L.P.
- ER98–4068, 001, AES Power, Inc.
- ER98–4078, 001, North American Energy Conservation, Inc.
- ER98–4100, 001, Duke/Louis Dreyfus, L.L.C.
- ER98–4101, 001, Duke Energy Trading and Marketing, L.L.C.
- ER98–4128, 001, Questar Energy Trading Company
- ER98–4131, 001, South Jersey Energy Company
- ER98–4132, 001, Portland General Electric Company
- ER98–4175, 001, NGE Generation, Inc.
- ER98–4176, 001, El Paso Energy Marketing Company

CAE–18. Docket# EL99–12, 000, Wisconsin Electric Power Company v. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

CAE–19. Docket# RM95–9, 006, Open Access Same-Time Information System and Standards of Conduct

CAE–20. Docket# RM95–9, 003, Open Access Same-Time Information System (Oasis) and Standards of Conduct

CAE–21.
- Docket# NJ98–5, 001, Big Rivers Electric Corporation
- Other#s NJ97–7, 001, Department of Energy—Bonneville Power Administration
- NJ98–2, 002, Department of Energy—Southwestern Power Administration
- NJ98–3, 002, Salt River Project Agricultural Improvement and Power District
- NJ98–3, 003, Salt River Project Agricultural Improvement and Power District

CAE–22.
- Docket# OA97–105, 002, Carolina Power & Light Company
- Other#s OA97–184, 003, The Detroit Edison Company
- OA97–280, 003, Kansas City Power & Light Company
- OA97–287, 002, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company
- OA97–407, 002, Duquesne Light Company
- OA97–422, 002, Central Maine Power Company
- OA97–432, 002, Central Louisiana Electric Company, Inc.
- OA97–433, 002, Public Service Company of New Mexico
- OA97–440, 002, Peco Energy Company
- OA97–446, 002, Utilicorp United, Inc.
- OA97–458, 002, Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc. and Entergy Mississippi, Inc., et al.
- OA97–462, 002, Maine Electric Power Company
- OA97–720, 002, Public Service Company of New Mexico

CAE–23.
- Docket# EC96–19, 046, California Power Exchange Corporation

Other#s EL98–51, 001, Eric C. Woychik, et al. v. California Independent System Operator Corporation and California Electricity Oversight Board
ER96–1663, 048, California Power Exchange Corporation

CAE–24.
Docket# ER98–1581, 000, Atlantic City Electric Company, Baltimore Gas and Electric Company and Delmarva Power & Light Company, et al.
Other#s ER97–3189 014, PJM Interconnection, L.L.C.

Consent Agenda—Gas and Oil

CAG–1. Docket# RP99–202, 000. Northwest Alaskan Pipeline Company
CAG–2. Docket# RP98–206, 003, Atlanta Gas Light Company
CAG–3. Docket# RP99–167, 000, Tennessee Gas Pipeline Company
CAG–4. Docket# RP99–186, 000, Florida Gas Transmission Company
CAG–5.
Docket# TM99–1–20, 001, Algonquin Gas Transmission Company
Other#s TM99–1–20, 000, Algonquin Gas Transmission Company
CAG–6. Docket# RP99–7, 001, Paiute Pipeline Company
CAG–7. Docket# RP99–176, 001, Natural Gas Pipeline Company of America
CAG–8.
Docket# RP98–248, 003 Northwest Pipeline Corporation
Other#s RP98–248, 001, Northwest Pipeline Corporation
RP98–248, 002, Northwest Pipeline Corporation
CAG–9. Docket# RP98–158, 004, Noram Gas Transmission Company
CAG–10. Docket# RP97–406, 020, CNG Transmission Corporation
CAG–11.
Docket# RP97–369, 007, Public Service Company of Colorado, et al.
Other#s RP98–39, 015, Northern Natural Gas Company
RP98–40, 018, Panhandle Eastern Pipe Line Company
RP98–42, 011, ANR Pipeline Company
RP98–43, 010, Anadarko Gathering Company
RP98–52, 024, Williams Natural Gas Company
RP98–53, 017, K N Interstate Gas Transmission Company
RP98–54, 017, Colorado Interstate Gas Company
CAG–12.
Docket# RP98–52, 025, Williams Gas Pipelines Central, Inc.
Other#s GP98–3, 003, Oxy USA, Inc.
GP98–4, 003, Amoco Production Company
GP98–13, 003, Mobil Oil Corporation
GP98–16, 003, Union Pacific Resources Company
GP98–18, 003, Anadarko Petroleum Corporation
CAG–13.
Docket# RP98–310, 002, Natural Gas Pipeline Company of America
Other#s RP98–310, 001, Natural Gas Pipeline Company of America
CAG–14. Docket# RP99–69, 001, National Fuel Gas Supply Corporation
CAG–15. Docket# MG99–10, 000, Portland Natural Gas Transmission System
CAG–16. Docket# CP96–153, 005, Southern Natural Gas Company
CAG–17.
Docket# CP98–569, 001, Columbia Gas Transmission Corporation
Other#s CP98–568, 001, Norse Pipeline, LLC
CAG–18. Docket# CP98–596, 000, Columbia Gulf Transmission Company
CAG–19. Docket# CP97–549, 000, CNG Transmission Corporation
CAG–20. Docket# CP99–64, 000, Tristate Pipeline, L.L.C.
CAG–21. Docket# RP99–190, 000, National Fuel Gas Distribution Corporation

Hydro Agenda

H–1. Reserved

Electric Agenda

E–1. Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters
PR–1. Reserved
II. Pipeline Certificate Matters
PC–1. Omitted
PC–2. Omitted
PC–3. Omitted

David P. Boergers,
Secretary.
[FR Doc. 99–3105 Filed 2–4–99; 12:19 pm]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6300–1]

Water Programs Gap Analysis Public Meeting

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: The Environmental Protection Agency has initiated a study to identify annual funding needs at the local level for carrying out drinking water and wastewater programs, to compare these needs to current expenditures for these programs, and to identify alternative approaches for addressing the anticipated gap between needs and current expenditures. All local level programs and activities eligible for financial support from EPA's Clean Water and Drinking Water State Revolving Funds as well as other Federal, State and local assistance programs will be covered in this study. This would include municipal/community wastewater treatment facilities, sanitary sewers, combined sewer overflows, stormwater sewers and treatment facilities, nonpoint source needs, estuary program needs, and drinking water treatment facilities and distribution lines. The study will address both capital and operating costs.

The Agency will hold a public meeting on March 18, 1999, to present its approach to preparing estimates and the preliminary results, and to take comments and suggestions from interested parties. The meeting is open and all interested persons are invited to attend on a space-available basis. Persons interested in attending the meeting are requested to register by calling Debra Renwick no later than Friday, March 12, 1999.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on Thursday, March 18, 1999.

ADDRESSES: The meeting will be held in Cavalier Rooms C and D at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, VA 22204.

FOR FURTHER INFORMATION CONTACT: For information concerning this meeting or the Agency's effort to estimate public infrastructure costs, please contact Sandra L. Perrin at (202) 260–7382, or via e-mail at "perrin.sandra@epamail.epa.gov." EPA expects to make informational materials available both before and after the meeting. Persons wishing to be included in the distribution list should contact Debra A. Renwick at (202) 260–5859, or via e-mail at "renwick.debra@epamail.epa.gov." The materials will also be posted on the Internet at: "http://161.80.11.87/water/formula.nsf/?Open." Click on "Gap Analyses" and then on "Local Level Costs."

In particular, EPA expects to make available a draft of the report on funding needs and gaps at the local level, together with a summary of major issues, before the public meeting. These materials will be posted on the Internet site (address above) on or about March 12, 1999. Interested persons are requested to consult the web page for a copy of these materials.

Dated: February 2, 1999.

Michael B. Cook,
Director, Office of Wastewater Management.
[FR Doc. 99–2990 Filed 2–5–99; 8:45 am]
BILLING CODE 0560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6300–3]

Notice of Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Gulf of Mexico Program will hold its Management Committee Meeting.

DATES: The meeting will be held on Tuesday, March 2 and Wednesday, March 3, 1999.

ADDRESSES: The meeting will be held at the Magnolia Plantation Hotel, 16391 Robinson Road, Gulfport, MS. (228) 832–8400. .

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–1172.

SUPPLEMENTARY INFORMATION: The meeting is from 1:00 p.m. until 5:00 p.m. on March 2 and from 8 a.m. until 12:15 p.m. on March 3. Agenda items will include: Report on Coastal Sewage Initiative, Nutrient Enrichment Focus Team Progress Discussion, Update on Gulf Hypoxia, Report on Communications Committee, Nonindigenous Species Regional Panel Discussion, Coastal Wetlands and Submerged Aquatic Vegetation Baseline Characterization and Overview of Draft Gulf Coastal Monitoring Strategy and Gulf Research Needs Assessment.

The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 99–2992 Filed 2–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00263; FRL–6061–6]

Round Table Discussion of the Upcoming Lead Renovation and Remodeling Rulemaking; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a round table discussion meeting on the forthcoming rulemaking under section 402(c)(3) of the Toxic Substances Control Act (TSCA). Section 402(c)(3) directs the Agency to revise the regulations, codified at 40 CFR part 745, subpart L "Lead-Based Paint Activities," to apply to renovation or remodeling activities that create lead-based paint hazards in target housing. The purpose of this discussion is to provide a forum where interested parties can contribute information and give individual perspectives on specific policy questions related to the forthcoming rulemaking. Agency staff may also ask participants to give their individual reactions to specific proposals and questions.

DATES: The meeting will be held on March 8, 1999, from 8 a.m. to 5 p.m. Written and electronic comments must be submitted on or before April 16, 1999.

ADDRESSES: The meeting will be held at: The Doubletree Hotel, 300 Army Navy Drive, Arlington, VA.

All comments, identified by docket control number "OPPTS–00263," should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@.epa.gov. Follow the instructions under Unit III. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this action. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: For general information, please contact: Mike Wilson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–4664, e-mail: wilson.mike@epa.gov.

To register to attend the meeting, call the National Lead Information Center at 1–800–424–LEAD.

SUPPLEMENTARY INFORMATION:

I. Background

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. Several sections of Title X direct EPA to promulgate regulations to fulfill the purposes of Title X. These include TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and to establish standards for conducting lead-based paint activities. Section 404 of TSCA requires that EPA establish procedures for States seeking to establish their own lead-based paint activities programs. On August 29, 1996 (61 FR 45778) (FRL–5389–9), EPA promulgated final rules that implemented sections 402 and 404 of TSCA titled "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities." These rules are codified at 40 CFR part 745, subpart L. Section 402(c)(3) of TSCA directs the Agency to revise these regulations so they apply to renovation or remodeling activities which create lead-based paint hazards in target housing.

II. Round Table Discussion

The purpose of the meeting being announced today is to obtain individual input and comment on the regulatory options for modification of existing lead-based paint activities regulations. The existing regulations are codified at 40 CFR part 745, subpart L "Lead-Based Paint Activities."

The round table discussion will examine the following issues: applicability, accreditation of training providers, certification of individuals, and work practice standards (setup, occupant protection, clean-up, clearance, and restricted practices). This meeting is open to the public. For registration information please contact the National Lead Information Center at 1–800–424–LEAD.

Individuals wishing to provide comments to EPA, but who cannot attend the round table discussion may submit written or electronic comments to EPA at the address listed in the "ADDRESSES" unit of this notice. In order to be included in the synopsis of comments, written and electronic comments must be received by close of business on April 16, 1999.

III. Public Docket and Electronic Submissions

A record has been established for this action under docket control number "OPPTS–00263" (including comments submitted electronically as described below). A public version of this record, including printed, paper versions of the electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to

4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Non-confidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Lead.

Dated: February 2, 1999.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–2986 Filed 2–5–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400139; FRL–6061–3]

Emergency Planning and Community Right-to-Know/Toxic Release Inventory Training Workshop Schedules for Section 313 Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will conduct EPCRA/TRI training workshops across the country during the spring of 1999. These workshops are intended to assist persons preparing their annual reports on release and other waste management activities as required under sections 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These reports must be submitted to EPA and designated state officials on or before July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Hart, (202) 260–1576, e-mail hart.michael@epa.gov, for specific information on this notice, or to register for training, Tascon, Inc., (301) 315–9000 ext. 505, fax: (301) 738–9786, or e-mail: epcra@tascon.com.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may find this notice applicable if you manufacture, process, or otherwise use any EPCRA section 313 listed toxic chemical. Potentially applicable categories and entities may include, but are not limited to:

Category	Examples of regulated entities
Industry; facilities that manufacture, process, or otherwise use certain chemicals	Metal mining, Coal mining, Manufacturing, Electricity generating facilities, Hazardous waste treatment/TSDF, Chemicals and allied products-wholesale, Petroleum bulk plants and terminals, and Solvent recovery services
Federal Government	Federal facilities

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to find this notice of training course offerings applicable. Other types of entities not listed in the table may also find this notice applicable. To determine whether your facility could find this notice applicable, you should carefully examine the applicability criteria in part 372, subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

You may be able to take advantage of the training courses if:

- Your facility is a facility covered under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA)
- Your facility is a Federal facility that maufactures, processes, or otherwise uses section 313 listed toxic chemicals
- You prepare annual release and other waste management activity reports (i.e., Form R or Form A)
- You are a consultant who assists in the preparation of these reports; or you would like information on recent changes to EPCRA/TRI regulations

EPA conducts annual training courses to assist you with your reporting requirements under section 313 of EPCRA and section 6607 of the Pollution Prevention Act of 1990 (PPA) or Executive Order 12856 (for Federal facilities). You must submit your annual release and other waste management activity reports (i.e., Form R or Form A) if your facility meets the descriptions for the following Standard Industrial Classification (SIC) codes and qualifiers:

- Metal Mining (SIC Code 10, except 1011, 1081, and 1094)
- Coal Mining (SIC Code 12, except 1241)
- Manufacturing (SIC Codes 20–39)
- Electricity Generating Facilities (SIC Codes 4911, 4931, and 4939--limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce)
- Hazardous Waste Treatment/TSDF (SIC Code 4953--limited to facilities regulated under RCRA subtitle C, 42 U.S.C. section 6921 *et seq.*)
- Chemicals and Allied Products (SIC Code 5169)
- Petroleum Bulk Plants and Terminals (SIC Code 5171)
- Solvent Recovery (SIC Code 7389--limited to facilities primarily engaged in solvents recovery services on a contract or fee basis)
- Federal Facilities (by Executive Order 12856)

B. What Is Presented At These Training Courses?

The training courses present reporting requirements of EPCRA section 313 and PPA section 6607. A variety of hands-on exercises using the reporting forms (i.e., Form R or Form A) along with supporting materials will be used to help you understand any reporting obligations you might have under EPCRA section 313. The training courses are scheduled in the spring so that you can prepare and submit your report(s) for the 1998 Reporting Year on or before July 1, 1999.

C. How Much Time Is Required for the Training?

The full training course runs 3 days. The first day and a half is devoted to a general discussion of EPCRA section 313 reporting requirements with exercises used to reinforce key concepts. Beginning the afternoon of the second day, the half-day industry-specific modules begin. Assuming sufficient interest in all five industry-specific modules, the first two modules will begin concurrently on the afternoon of the second day, while the next additional and different modules will be held concurrently on the morning of the

third day, and the fifth and final module will be held on the afternoon of the third day. The five different modules are:

- Metal mining facilities and coal mining facilities (combination module)
- Electricity generating facilities
- TSD/solvent recovery facilities (combination module)
- Petroleum bulk plants and terminals facilities and chemical and allied products facilities (combination module)
- Manufacturing facilities

Scheduling for modules will be based on participant interest with the two most popular modules beginning during the afternoon of the second day. Again, assuming sufficient interest in all five modules, the third and fourth most popular modules will be offered during the morning of the third day and the last module will be held in the afternoon. You should be aware that the schedule for modules will be determined during the first day of training and that there may be a gap between the general 1½–day course and your preferred industry-specific module. Every effort will be taken during the scheduling process to accommodate as many participants as possible within the shortest time frame. EPA workshops also will include industry-specific training to provide information to further assist facilities with the reporting obligations they may have for the 1998 reporting year with reports due on or before July 1, 1999. EPA intends to present all five modules at each 3–day training course for the newly added industries, but this may be modified for each 3–day training course based on sufficient interest. Table 1 (see section D. of this unit) contains a list of the 3–day courses currently scheduled.

In addition, EPA is conducting abbreviated training courses. These courses are ½, 1, or 2 days in duration and, in some cases, are focused for a particular industry sector(s). Table 2 (see section D. of this unit) contains a list of these courses currently scheduled.

D. When Are These Training Courses Offered and How Do I Register?

The schedules for training courses are provided below in Tables 1 and 2 below. You should note, however, that changes to the schedules may occur without further notice so it is important to check your registration materials and confirmation notice. Also, you may access current training course schedule information via the TRI Home Page (http://www.epa.gov/opptintr/tri).

You should direct your requests for training course registration materials, including schedules of dates and locations, to Tascon, Inc., (301) 315–9000 ext. 505, fax: (301) 738–9786, or e-mail: epcra@tascon.com.

Table 1.—Full 3–Day Workshop Schedule

Date	Location	Intended Audience
February 23–25	Oklahoma City, OK	All industries
March 1–3	Minneapolis, MN	All industries
March 16–18	New York, NY	All industries
March 23–25	Washington, DC	All industries
March 23–25	Columbia, SC	All industries
March 30–April 1	Ann Arbor, MI	All industries
April 6–8	Boston, MA	All industries
April 6–8	Nashville, TN	All industries
April 13–15	Edison, NJ	All industries
April 13–15	Kansas City, MO	All industries
April 20–22	Dallas, TX	All industries
May 11–13	Philadelphia, PA	All industries
May 11–13	Denver, CO	All industries
May 17–19	Portland, OR	All industries
May 24–26	San Francisco, CA	All industries

Table 2.— Abbreviated or Focused (½–, 1–, and 2–Day) Workshop Schedule

Date	Region	Location	Intended Audience
March 9	8	Salt Lake City, UT	Mfg. only
March 10	8	Salt Lake City, UT	New industries only
March 29–30	9	Los Angeles, CA	Day 1: All industries Day 2: Mfg., EGF, TSD only
March 31–April 1	9	San Diego, CA	Day 1: All industries Day 2: Mfg., EGF, TSD only
April 1–2	9	Reno, NV	All industries
April 6 (½ day)	3	Baltimore, MD	All industries
April 8 (½ day)	3	Hagerstown, MD	All industries
April 8–9	2	Puerto Rico, PR	All industries
April 16	2	Atlantic City, NJ	All industries
April 20 (½ day)	3	Richmond, VA	All industries
April 20	7	Overland Park, KS	All industries*
April 22 (½ day)	3	Roanoke, VA	All industries
April 22	7	St. Louis, MO	All industries*
April 26–27	4	Atlanta, GA	Mfg. petro/chem only
April 27	5	Michigan City, IN	All industries
April 27	7	Des Moines, IA	All industries
April 28–29	4	Atlanta, GA	New industries only
April 29	5	Columbus, OH	All industries
April 29	7	Lincoln, NE	All industries*
May 17	9	Fresno, CA	All industries
May 18	5	Bloomington, MN	All industries
May 18–19	9	Phoenix, AZ	Mining and mfg. only*

Table 2.— Abbreviated or Focused (½–, 1–, and 2–Day) Workshop Schedule—Continued

Date	Region	Location	Intended Audience
May 19 (½ day)	3	Reading, PA	All industries
May 20	9	Reno, NV	Mining only
May 20	5	Brookfield, WI	All industries
May 21	9	Sacramento, CA	All industries
May 20–21	10	Eugene, OR	All industries
May 24–25	9	Las Vegas, NV	All industries
May 24–25	10	Seattle, WA	All industries
May 26	10	Boise, ID	All industries
May 27	5	Champaign, IL	All industries
May 27–28	9	Carson City, NV	All industries
June 9	5	Detroit, MI	All industries

Notes:
* = Registration fee will be required for these workshops
All Industries = Manufacturing and New Industries
EGF = Electricity Generating Facilities
Mfg. = Manufacturing (SIC Codes 20-39)
Mining only = Metal Mining and Coal Mining
New Industries only = Metal Mining (SIC Code 10, except 1011, 1081, and 1094), Coal Mining (12, except 1241), Electricity Generating Facilities (4911, 4931, and 4939–limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce), TSD (4953, limited to facilities regulated under RCRA subtitle C, 42 U.S.C. section 6921 *et seq.*), Chemical and Allied Products (5169), Petroleum Bulk Plants and Terminals (5171), and Solvent Recovery (7389–limited to facilities primarily engaged in solvents recovery services on a contract or fee basis)
Petro/Chem = Petroleum Bulk Plants and Terminals Chemical and Allied Products facilities
TSD = Treatment, Storage, and Disposal facilities

To register for the full 3-day training courses (Table 1), you must send a completed registration application, including your name, your company's name and SIC code, your postal address, your telephone number, your fax number, your e-mail address, and your preferred training location(s) to Tascon, Inc. via telephone ((301) 315–9000 extension 505), fax ((301) 738–9783), or e-mail (epcra@tascon.com). Requests for applications for abbreviated or focused training courses should be directed to Tascon, Inc. unless the training course is listed below with a separate workshop contact (see Table 3 below).

Table 3.—Workshop Contacts

Date	Location	Audience Workshop	Contact
April 1–2	Reno, NV	All industries	Scott Alquist Truckee Meadows Community College alquist@tmcc.edu or 775-829-9000
April 20	Overland Park, KS	All industries	Judy Luce Dynamac luce.judy@epamail.epa.gov (913) 551-7680 or (913) 551-7680 (fax)
April 22	St. Louis, MO	All industries	Do.
April 27	Des Moines, IA	All industries	Do.
April 29	Lincoln, NE	All industries	Do.

You will receive an acknowledgment of application receipt via fax or e-mail. If your application is accepted, a confirmation notice will be sent to you that will contain important information regarding date, location, directions, etc. If the training course you applied for is filled or canceled, alternate training courses will be suggested. Since space is limited, you are encouraged to submit your registration application as early as possible, but not less than 1 week before your preferred training course.

E. How Much Will the Training Course Cost?

There is no registration fee for the full 3–day training courses listed in Table 1; there may be a registration fee for the Table 2 workshops. You may access information regarding registration fees via the TRI Home Page at http://www.epa.gov/opptintr/tri or by contacting the respective Regional Workshop Contact listed in Table 3. If there is insufficient interest at any of the training course locations, those courses may be canceled. The Agency bears no responsibility for your decision to purchase non-refundable transportation tickets or accommodation reservations.

List of Subjects

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxics Release Inventory.

Dated: January 28, 1999.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–2985 Filed 2–5–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6231–5a]

Caldwell Systems, Inc., Superfund Site; Notice of Proposed De Minimis Settlements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed de minimis settlements.

SUMMARY: Under section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has offered approximately 500 de minimis parties at the Caldwell Systems, Inc. Site located in Lenoir, North Carolina, an opportunity to enter into an Administrative Order on Consent (AOC) to settle claims for past and future response costs at the Site. The original settlement offer contained a cost matrix with a weight assigned to each party along with a payment amount for each party. The original cost matrix is no longer accurate because of volumetric challenges. These challenges were reviewed and it was determined that the volumes attributed to some of these parties were incorrect. These parties received letters indicating their new weight and payment amounts, if any, and these letters are attached to the original cost matrix. Additionally, the State of North Carolina has a separate AOC. The following list of 359 parties have returned signature pages accepting EPA's settlement offer:

A.E.P. Industries, Inc., A.G. Industries, AVX, Acme Printing, Acme Transformer, Aeroquip, Alcatel Telecommunications Cable aka Alcatel/Celwave, Alexvale Furniture Company, Allied Colloids, Inc., Allied Towing Corporation, Amerada Hess Corporation, American Can Company, American Cyanamid fka Cyanamid c/o Margaret Tribble, American National Can Company fka Stroh Container Division, American Roller Bearing of North Carolina, Ametek, Inc-Lamb Electric Division, Amoco Oil, Amoco Oil Co. aka Southeast Terminals, Andrex Industries, Inc., Arrow Automotive Industries, Asplundh Manufacturing, Aus-Ben Industries, Austex Corp. fka Diamond G. Printed Sportswear, Auto Alignment, Inc., B&W Metal Fabrication, BP Oil, Inc.-Gulf Products Division, Babcock & Wilcox, Baker Furniture, Baker Furniture Company, Balcrank Products, Ball Glass Container Corporation, Bassett Furniture Industries, Inc., aka Bassett Furniture aka Bassett Upholstery, Belding Corticelli Thread Company, Betz Labs, Binswanger Southern, Black & Decker, Blackman-Uhler Chemical, Borden Chemical Company, Bowater, Bowman Gray School of Medicine, Bradington-Young, Inc., Bristol Myers Products, Burlington Industries, CM Furniture, Inc., Cabinet Makers, Inc., Capitol Ford, Inc., Cardinal Steel Drum, Caribbean Gulf Refining Company, Carolina Enterprises, Carolina Mirror Corporation, Cellu Products aka Sealed Air Corp., Champion Parts Rebuilders, Inc., Champion Products, Inc., S.E., Channel Master, Charlotte Orthopedic Hospital, Chemical Coatings Corporation, Chemical Leaman Tank Lines, Chemprene, Inc. aka Hercules Products, Cheaspeake Finished Metals, Chevron USA, Ciba-Geigy Corporation, Citgo Petroleum, City Chevrolet, City Motors, City of Lincolnton, City of Raleigh, City of Raleigh-Transportation Dept., Clark Hurth Components aka Clark Equipment Company, Clayton Marcus Company, Coats North America fka American Thread, Collins & Aikman, Comm Scope Company, Inc., Conoco, Inc., Controls Corporation aka Fasco Industries, Converters Ink Company, Conwed Fibers aka Conwed Corporation, Cooper Industries Energy Services aka Cooper Energy Service, Cooper Lighting aka Metalux Lighting, Cornell Dublier Electronics, Corning, Inc. fka Corning Glass Works, Council Business Furniture, Inc., Crain Industries aka Crain Carolina, Crawford Door Company, Crown Central Petroleum, Crown Cork & Seal Co., Cryovac Division, Curtiss-Wright Flight Systems, Dale Electronics, Damon Clinical Laboratories-WCBS, Dana Corporation, Dar-Ran Furniture Industries, Data General, Dexter Packaging Products aka Dexter Corp.-Midland Division, DuPont Spruance Fibers Plant, Duff Norton Company, Duracell, Durham County General Hospital, EZ Painter Corporation aka EZ Painter (A Newell Company), E-Z Go Textron, Eagle-Pontiac-GMC aka Royal Pontiac-GMC-Isuzu, East Carolina Heat Treat aka East Carolina Metal Treating, Eaton Corporation, Eaton Cutler Hammer, Ecusta Corporation, Emerson Electric Company, Emhart Packaging Group, Empak, Inc., Empire Furniture Co., Encas Labs, Environmental Enterprises, Inc., Environmental Wastewater Services, Ericsson Radio Systems, Inc. fka Anaconda Wire and Cable, Esstar Corporation aka Amstar Corporation, Ethan Allen, Excello Corporation-Micromatic Operation, Exide Electronics, F.M.C. Corporation, Fairfield Chair Company, Farval aka Farval Cleveland Gear, Federal Paper Board, Fermenta Animal Health, Fiber Controls, Fieldcrest Mills, Fina Oil and Chemical Company, Firetrol, Inc., First National Bank, Flint Ink aka Flin Ink, Forest City Tool, GSX Services, Inc., Gage Carolina Metals, George A. Goulston Company, Inc., Georgia Bonded Fibers, Gilbarco, Inc., Glaxo, Inc., Glenoit Mills, Inc., Glidden Co. aka Glidden Coatings & Resins, Goodman Conveyor Company, Inc., Goodyear Tire & Rubber Co., Great Lakes Chemical Corp., Great Lakes Research Corp., Green Ford Isuzu, Greenwood Mills, Greet Laboratories, Inc., Grinnell Sales & Supplies aka I.T.T. Grinnell, Gulf State Paper Company, HBD Industries aka Carolina Rubber Hose Co., Halliston Mills, Inc., Hanes Knitwear, Hanes Printables, Inc., Harley Corporation, Hastings Company, Hekman Furniture Company, Henry-Link Corporation, Hickory Springs, Hickory Vinyl, Highway Transport, Inc., Holtrachem, Inc., Hooker Furniture Co., Hunt Mfg., Hydro-Agra North America, Inc. aka Transnitro, Inc., Ingersoll Dresser Pump Company aka Dresser Industrial-Worthington Pump Division, Ingersoll Rand, Intercraft Industries, International Flavors & Fragrances, International Paper aka Masonite Corporation, Ivac Corporation, J.H. Craver & Sons, Inc., J.P. Stevens & Company, Inc., aka West Point Stevens, James River Dixie Products aka James River Dixie Northern, Jepson Burns Corporation, John Boyle Company, Johnson Controls, Inc. aka Hoover Universal, Inc., Jordan Oil Company aka Union Oil Company, Kendrick Paint & Body, Kewaunee Scientific, Klingspor Abrasives, Koch Refining aka Koch Fuel, Kohler Company, Kollmorgen Corp.-Industrial Drive Division, Koopers Company, Kramer Chemicals, Inc. aka Kramer Environmental, Lackawanna Leather Co., Lancaster Synthesis aka Fairfield Chemical Company, Inc., Leathercraft, Lenoir Mirror Company, Liggett Group, Inc. aka Liggett Meyers Tobacco Co., Liquid Air Company aka Air Liquide America, Lockheed Missiles & Space Co., Lyon Shaw, Inc., M.A. Bruder & Sons, Inc., M.P.I. Labels of Charlotte, Maintenance Supply Company, Inc. aka Maintenance Supply Service Corp., Mallinckrodt, Inc., Manville Packaging Division, Marsh Furniture Company, Mayes Brothers Tool Mfg. Co., Merck Sharpe & Dohme, Metro Machine Company, Microm Corp., Midland Brake, Inc., Miller Brewing Company, Miller Desk Company, Inc., Miller Oil Company, Milliken Chemicals Corporation, Mine Safety Appliance Company, Mitsubishi Semiconductor of America, Modern Chevrolet Company, Monarch Color Corporation, Morganite, Inc., Morganton Chair, Mr. Frank Bell, Mueller Company, NCNB, NI-Industries, Nap Consumer Electronics, Neptco, Inc., New Jersey Department of Environmental Protection-Division of Waste Management, News & Observer, Niemand Industries, Inc., North Carolina Department of Corrections, North Carolina Department of Transportation, North East Solvents Reclamation Corp., Northern Telecom, Norton Company, Nova Enterprises aka Nova Kitchen & Bath, OH Materials, Occidental Chemical, Ohio Electric Motors, Onan Power Electronics-ADC Magnetics, Onedia Molded Plactics Corporation, Overnite Transportation, PPG Industries, Inc., Pac-Fab, Inc., Package Prodcuts Specialty aka Package Products Co., Pampco, Inc., Paramount Packaging, Parker Hannifin Corporation, Pelton and Crane, Penn Engineering, Pennsylvania House Furniture, Phillips Petroleum Company, Piedmont Airlines, Plastic Packaging Company, Pneumafil Corp., Polymer Industries, Primary Oil & Energy Corp., Printpack, Inc., Prodelin, Prodelin, Inc. aka M/A Com Prodelin, Inc., Progressive Furniture Co., Purolator Products Co., RR Donnelly and Sons, R.J. Reynolds Tobacco Company, Radiator Specialty, Raleigh Community Hospital, Ranbar Technology, Inc. aka BBT, Inc. c/o Ball Chemical Company, Raychem, Rea Magnet Wire, Reliance Electric aka Reliance Universal, Rental Uniform Service, Rex Rosenlaw, Reynolds Metal Company, Rheem

Manufacturing Company, Rice's Toyota, Robert Bosch Power Tool Corp., Rospatch, SAFT Americas, Inc., Sam Moore Furniture, Sandoz Chemicals aka Sodyeco, Inc., Sandvik, Inc., Schlage Lock, Schwitzer Turbocharger, Sealed Air Corporation, Seaman Corporation-shelter Rite, Shell Oil Company, Sherwin Williams Co., Shuford Mills, Inc., Sicpa fka Strahan Ink Pacquer Co., Siemans-Allis, Simpson Industries, South Carolina Department of Corrections, Southchem, Inc., Sherrill Furniture Company, Southeastern Transformer Co., Inc., Southern Facilities, Southern Furnitire, Southern Resin, Spindale Mills Inc. aka New Cherokee, Sprague Electric Co., Square D Company, St. Regis Paper Company, Stabilus aka Gas Spring Company, Stanadyne-Washington, Stanadyne-Sanford, Standard Products Co., Standex, Stanley Furniture aka Raleigh Road Furniture, Star Enterprises, State Industries, Inc.-Water Systems, Stauffer Chemical Company-Furnace Plant, Stockhausen, Stroh Brewing Company, Style Upholstery, Sulzer Ruti, Inc., Sun Chemical Corporation aka Sun Chemical Corporation aka Gen. Printing Ink, Sun Refining & Marketing Company, Superior Cable Company, Superpac, Inc., T&S Brass & Bronze, T.I. Industries-Indiana Marketing, Technibilt Division of Whittaker Co., Technographics Decotone U.S., Inc., Ted Nelson Company, Teledyne-Lewisburg, Tenneco Oil Company, Terrell Machine Company, Texaco, Texas City Refining, Thayer Coggins, Inc., Therm-o-disc, Inc., Thomasville Furniture, Thonet Industries, Tidewater Regional Transit, Tietex Corporation, Timken Company, Tracor Aerospace, Inc., Transcontinental Gas Pipeline, Triad Terminal Oil Company, Trion, Inc., Tritac, Union Oil Company-Southeast Terminals, Unitex Chemical Company, Unocal, VME Americas, Inc., Varco Pruden, Vaughan Furniture Company, Vaughn Bassett-Elkin Division, Vermont American Corporation, Vic Bailey, Virginia Department of Highways & Transportation, W.P. Hickman Company, Wake Medical Center, Walter Kidde Company, Warlick Paint Company, Washington Post, Waster Resources of Tennessee, Wayne Dalton Corporation, Weber USA, Wellington Hall, Ltd., Wells Aluminum S.E., Inc., West Vaco-Chemical Division, St. John's Department, Westclox, Western Branch Diesel, Inc., Western Publishing Co., Weyerhaeuser, Whittaker Corporation, William M. Wilson's Sons, Inc., Winston Container Co., and Yieldhouse.

EPA will consider public comments on the proposed settlements for thirty days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlements are inappropriate, improper, or inadequate. Copies of the proposed settlements are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Program Services Branch, Waste Management Division, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Annette Hill at the above address within thirty (30) days of the date of publication.

Dated: January 22, 1999.

Franklin E. Hill,

Chief, Programs Services Branch, Waste Management Division.

[FR Doc. 99–2987 Filed 2–5–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6231–5]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the City of Homestead Village, MO

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment regarding the city of Homestead Village, Missouri.

SUMMARY: EPA is providing notice of opportunity to comment on the proposed assessment of an administrative penalty against the city of Homestead Village, Missouri. Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR part 22. The procedures by which the public may submit written comments on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty (30) days after issuance of public notice.

On September 30, 1998, EPA commenced the following Class II proceeding for the assessment of penalties by filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551–7630, the following complaint: In the Matter of the city of Homestead Village, Missouri; EPA Docket No. VII–98–W–0044.

The Complaint proposes a penalty of One Hundred Thirty Thousand Dollars ($130,000) for the discharge of pollutants to an unnamed tributary of Fishing River in violation of the facility's National Pollutant Discharge Elimination System (NPDES) permit and sections 301 and 402 of the Clean Water Act.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above.

The administrative record for the proceeding is located in the EPA Regional Office at the address stated above, and the file will be open for public inspection during normal business hours. All information submitted by the city of Homestead Village is available as part of the administrative record subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in this proceeding prior to thirty (30) days from the date of this document.

Dated: January 26, 1999.

Dennis Grams,

Regional Administrator, Region 7.

[FR Doc. 99–2788 Filed 2–5–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

January 28, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0774.
Expiration Date: 01/31/2002.

Title: Federal-State Joint Board on Universal Service—CC Docket No. 96–45, 47 CFR 36.611–36.612 and 47 CFR Part 54

Form No.: N/A.

Respondents: Business or other for-profit, individuals or households; not-for-profit institutions; state, local or tribal government.

Estimated Annual Burden: 5,565,451 respondents; .32 hours per response (avg.); 1,785,570 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually; one-time; every five years; recordkeeping requirements; third party disclosures.

Description: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in Section 254 of the Telecommunications Act of 1996 and such other principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. In the various Orders issued in CC Docket No. 96–45, the Commission adopted rules that are designed to implement the universal service provisions of section 254. Specifically, the Orders address: (1) Universal service principles; (2) services eligible for support; (3) affordability; (4) carriers eligible for universal service support; (5) support mechanisms for rural, insular, and high cost areas; (6) support for low-income consumers; (7) support for schools, libraries, and health care providers; (8) interstate subscriber for schools, libraries, and health care providers; (8) interstate subscriber line charge and common line cost recovery; and (9) administration of support mechanisms. The reporting and recordkeeping requirements contained in CC Docket No. 96–45 are designed to implement Section 254. The requirements are necessary to ensure the integrity of the program. All the collections are necessary to implement the congressional mandate for universal service. The reporting and recordkeeping requirements are necessary to verify that the carriers and other respondents are eligible to receive universal service support. Obligation to respond: Mandatory.

Rule section/title (47 CFR)	Hours per response	Total annual burden
a. 36.611(a) & 36.612—Submission and Updating information to NECA	20	26,800
b. 54.101(c)—Demonstration of exceptional circumstances for toll-limitation grace period	50	100
c. 54.201(a)(2)—Submission of eligibility criteria	4	400
d. 54.201(b)(c)—Submission of eligibility criteria	1	3,400
e. 54.201(d)(2)—Advertisement of services & charges	50	65,000
f. 54.205(a)—Advance notice of relinquishment of universal service	.5	50
g. 54.207(c)(1)—Submission of proposal for redefining a rural service area	125	6,250
h. 54.307(b)—Reporting of expenses & number of lines served.	2.5 (avg.)	4,100
i. 54.401(b)(1)–(2)—Submission of disconnection waiver request	2	100
j. 54.401(d)—Lifeline certification to the Administrator	1	1,300
k. 54.407(c)—Lifeline recordkeeping	80	104,000
l. 54.409(a)–(b)—Consumer qualification for Lifeline	5 min.	440,000
m. 54.409(b)—Consumer notification of Lifeline discontinuance	5 min.	44,000
n. 54.413(b)—Link Up recordkeeping	80	104,000
o. 54.501(d)(4) & 54.516—Schools & Libraries recordkeeping	41(avg.)	372,000
p. 54.504(b)–(c), 54.507(d) & 54.509(a)—Description of services requested & certification	2	100,000
q. 54.519—State telecommunications networks	4	200
r. 54.601(b)(4) & 54.609(b)—Calculating support for health care providers	100	340,000
s. 54.601(b)(3) & 54.619—Shared facility record-keeping	21 (avg.)	160,000
t. 54.607(b)(1)–(2)—Submission of proposed rural rate	3	150
u. 54.603(b)(1), 54.615(c)–(d) & 54.623(d)—Description of services requested and certification	1	11,000
v. 54.619(d)—Submission of rural health care report	40	40
w. 54.701(f)(1) & (f)(2)—Submission of annual report & CAM	40	40
x. 54.701(g)—Submission of quarterly report	10	40
y. 54.707—Submission of state commission designation	.25	850
z. Obligation to notify underlying carrier	1	1,700
aa. Demonstration of reasonable steps	1	50
Total Annual Burden Hours		1,785,570

All the collections are necessary to implement the congressional mandate for universal service. The reporting and recordkeeping requirements are necessary to verify that the carriers and other respondents are eligible to receive universal service support.

OMB Control No.: 3060–0760.

Expiration Date: 12/31/2001.

Title: Access Charge Reform—CC Docket No. 96–262 (First Report and Order), Second Order on Reconsideration and Memorandum Opinion and Order, and Third Report and Order.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 13–14 respondents; 2–300 hours per response (avg.); 1,796,916 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $23,400 ($600 filing fee).

Frequency of Response: On occasion; third party disclosure.

Description: In the First Report and Order, CC Docket No. 96–262, Access Charge Reform and the Second Report on Reconsideration and Memorandum Opinion and Order, the FCC adopts, that, consistent with principles of cost-causation and economic efficiency, nontraffic sensitive (NTS) costs associated with local switching should be recovered on an NTS basis, through flat-rated, per month charges. a. Showings under the Market-Based Approach: as competition develops in the market, the FCC will gradually relax and ultimately remove existing Part 69 Federal access rate structure requirements and Part 61 price caps restrictions on rate level changes.

Regulatory reform will take place in two phases. The first phase of regulatory reform will take place when an incumbent Local Exchange Carrier's (LEC's) network has been opened to competition for interstate access services. The second phase of rate structure reforms will take place when an actual competitive presence has developed in the marketplace. LECs may have to submit certain information to demonstrate that they have met the standards. (No. of respondents: 13; hours per response: 137,986 hours; total annual burden: 1,793,818 hours). b. Cost Study of Interstate Access Service that Remain Subject to Price Cap Regulation: To implement our backstop to market-based access charge reform, we require each incumbent price cap LEC to file a cost study no later than February 8, 2001, demonstrating the cost of providing those interstate access services that remain subject to price cap regulation because they do not face substantial competition. (No. of respondents: 13; hours per response: 8 hours; total annual burden: 104 hours). c. Tariff Filings: The Commission requires the filing of various tariffs. (No. of respondents: 13; hours per response: 58; total annual burden: 754 hours). d. Third-Party disclosure: In the Second Order on Reconsideration, the Commission requires LECs to provide IXCs with customer-specific information about how many and what types of presubscribed interexchange carrier charges (PICCs) they are assessing for each of the IXCs presubscribed customers. (No. of respondents: 14; hours per response: 160 hours; total annual burden: 2240 hours). One of the primary goals of the First Report and Order was to develop a cost-recovery mechanism that permits carriers to recover their costs in a manner that reflects the way in which those costs are incurred. Without access to information that indicates whether the LEC is assessing a primary or nonprimary residential PICC, or about how many local business lines are presubscribed to a particular IXC, the IXCs will be unable to develop rates that accurately reflect the underlying costs. The information required under these orders would be used in determining whether the incumbent LECs should receive the regulatory relief proposed in the Orders. The information collected under the Orders would be submitted by the LECs to the interexchange carriers (IXCs) for use in developing the most cost-efficient rates and rate structures. Obligation to respond: Mandatory.

OMB Control No.: 3060–0519.

Expiration Date: 12/31/2001.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991—CC Docket No. 92–60.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 30,000 respondents; 31.2 hours per response (avg.); 936,000 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In CC Docket No. 92–60, the FCC implemented final rules pursuant to the requirements of the Telephone Consumer Protection Act of 1991, Public Law 102–243, Dec. 20, 1991 (TCPA) which added Section 227 to the Communications Act of 1934, as amended, to restrict the use of automatic telephone dialing systems, artificial or prerecorded messages, facsimile machines or other devices to send unsolicited advertisements. The rules require that telephone solicitors maintain and use company-specific lists of residential subscribers who request not to receive further telephone calls (company-specific do-not-call lists), thereby affording consumers the choice of which solicitors also are required to have a written policy for maintaining do-not-call lists, and are responsible for informing and training their personnel the existence and use of such lists. The rules require that those making telephone solicitations identify themselves to called parties, and that basis identifying information also be included in telephone facsimile transactions. The Commission believes that these rules are the best means of preventing unwanted telephone solicitations.

OMB Control No.: 3060–0536.

Expiration Date: 01/31/2000.

Title: Rules and Requirements for Telecommunications Relay Services (TRS) Interstate Cost Recovery.

Form No.: FCC Form 431.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5000 respondents; 3.1 hours per response (avg.); 15,593 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually; third party disclosure.

Description: Title IV of the Americans with Disabilities Act, Public Law 101–336, Section 401, 104 Stat. 327, 366–69 (codified at 47 U.S.C. Section 225 requires the Federal Communications Commission to ensure that telecommunications relay services are available to persons with hearing and speech disabilities in the United States. Among other things, the Commission is required by 47 U.S.C. 225(d)(3) to enact and oversee a shared-funding mechanism (TRS Fund) for recovering the costs of providing TRS. The Commission's regulations concerning the TRS fund are codified at 47 CFR 64.604(c)(4). Pursuant to these regulations, the National Exchange Carrier Association (NECA) has been appointed Administrator of the TRS Fund. The Commission's rules require all carriers providing interstate telecommunication services to contribute to the TRS Fund on an annual basis. Contributions are the product of the carrier's gross interstate revenues for the previous year and a contribution factor determined annually by the Commission. The collected contributions are used to compensate TRS providers for the costs of providing interstate TRS service. The Commission releases an order each year approving the contribution factor, payment rate, and TRS Fund Worksheet for the following year. Accordingly, on December 2, 1998, the Commission's Common Carrier Bureau, acting under delegated authority, released an order approving the contribution factor for the April 1999 through March 2000 contribution period and the 1999 TRS Fund worksheet (FCC Form 431). All carriers providing interstate telecommunications service must file this worksheet. A public notice will be issued to announce the availability of the 1999 FCC Form 431. (No. of respondents: 5000; hours per response: 2 hours; total annual burden: 10,000 hours). Section 64.604(c)(2) requires that carriers publicize the availability and use of TRS in their service areas. Publications may be made through the carriers' directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and through incorporation of TTY numbers in telephone directories. (No. of respondents: 5000; hours per response: 1 hour; total annual burden: 5000 hours). c. TRS providers must provide the administrator with true and accurate data to be used to compute payments. According to Section 64.604(c)(4)(iii)(C), the providers must submit the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with 47 CFR Part 32, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and

revenue requirements. (No. of respondents: 13; hours per response: 3 hours; total annual response: 39 hours). d. TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. TRS providers receiving payments shall file a form prescribed by the administrator. (No. of respondents: 13; hours per response 4; total annual burden: 52 hours). e. Section 64.604(c)(4)(iii)(F) lists TRS providers who are eligible for receiving payments from the TRS Fund. These providers must notify the administrator of their intent to participate in the TRS Fund thirty days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS. (No. of respondents: 13; hours per response: .166 hours; total annual burden: 2.16 hours). Section 64.604(c)(4)(iii)(H)) specifies the reporting, monitoring and filing requirements placed upon the Administrator. (No. of respondents: 1; hours per response: 500; total annual burden: 500 hours). Information submitted in response to the attached rules and requirements is used to administer the TRS Fund. Information is used to calculate a national average rate to recover the total interstate TRS revenue requirements and to determine the appropriate payment due to the TRS providers participating in the shared-funding plan. Obligation to respond: Mandatory.

OMB Control No.: 3060–0391.

Expiration Date: 12/31/2001.

Title: Program to Monitor the Impacts of the Universal Service Support Mechanisms, CC Docket Nos. 98–202 and 96–45.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 859 respondents; 2 hours per response (avg.); 1718 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: The Commission has a program to monitor the impact of the universal service support mechanisms. Among other things, the program requires the reporting of information on network usage and growth. This information is generally maintained by all companies that settle their accounts with NECA on a cost basis. This information is collected by NECA. The data collected are: local dial equipment minutes, intrastate toll dial equipment minutes, interstate toll dial equipment minutes, total dial equipment minutes, interstate dial equipment minute factors, originating premium interstate access minutes, terminating premium interstate access minutes, total premium interstate access minutes, originating non-premium interstate access minutes, terminating non-premium interstate access minutes, and total non-premium interstate access minutes. The monitoring program is necessary for the Commission, the Joint Board, Congress, and the general public to assess the impact of the new universal service support mechanisms. Obligation to respond: Mandatory.

OMB Control No.: 3060–0168.

Expiration Date: 12/31/2001.

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 11 respondents; 6000 hours per response 66,000 (avg.); total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 220(b) of the Communications Act of 1934 (the Act), as amended, (47 U.S.C. Section 220(b)), states that the Commission may prescribe depreciation charges for the subject carriers. Section 219 of the Act requires annual and other reports from the carriers. Section 43.43 of the Commission's Rules (47 CFR Section 43.43) establishes the reporting requirements for depreciation prescription purposes. Communication common carriers with annual operating revenues of $112 million or more that the Commission has found to be dominant must file information specified in Section 43.43 before making any change in the depreciation rates applicable to their operating plant. Section 220 also allows the Commission, in its discretion, to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the Act, including the accounts, records and memoranda of the movement of traffic, as well as receipts and expenditures of moneys. The Communications Act, as amended, seeks to develop efficient competition by opening all telecommunications markets through a pro-competitive, deregulatory national policy framework. To that end, Section 11 of the Act requires the Commission, in every even-numbered year beginning in 1998, to review its regulations applicable to providers of telecommunications service to determine whether the regulations are no longer necessary in the public interest as a result of meaningful economic competition between providers of such service and whether such regulations should be repealed or modified. In the CC Docket No. 137, adopted 7/22/98; released 10/14/98, the Commission proposes to reduce or streamline further our depreciation prescription process by permitting, among other things, summary filings and eliminating the prescription of depreciation rates for incumbent LECs, provided that the carrier uses depreciation factors that are within the ranges adopted by the Commission, expanding the prescribed range for the digital switching plant account, and eliminating salvage from the depreciation process. These proposed modifications are designed to minimize the reporting burden on carriers and to provide incumbent LECs with a greater flexibility to adjust their depreciation rates while allowing the Commission to maintain adequate oversight. If we remove net salvage from the depreciation process, we should create a new account 6566, Net cost of removal, to record both salvage receipts and removal costs incurred. We also tentatively conclude that we should revise Sections 32.3100, Accumulated depreciation, and 32.2000, Instructions for telecommunications plant accounts, to eliminate the provisions that salvage and cost of removal be recorded in the depreciation reserve account. We also requested comment on whether we should require carriers to keep subsidiary record categories in Account 6566 for salvage and cost of removal. The information filed will be used by the Commission to establish proper depreciation rates to be charged by the carriers, pursuant to Section 220(b) of the Act. The information serves as the basis for depreciation analyses made by the Common Carrier Bureau in establishing the aforementioned rates. Without this information, the validity of the carriers' depreciation policies could not be ascertained. The proposals contained in CC Docket No. 98–137 have been approved by OMB. Obligation to respond: required to obtain or retain benefits.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–2862 Filed 2–5–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Certification of Compliance with Mandatory Bars to Employment."

DATES: Comments must be submitted on or before April 9, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Certification of Compliance with Mandatory Bars to Employment." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [Fax number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Officeof Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposed to renew the following currently approved collection of information:

Title: Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Frequency of Response: Occasional.

Affected Public: Persons interested in being employed or providing services to the FDIC.

Estimated Number of Respondents: 200.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden: 66.6 hours.

General Description of Collection: Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit persons from becoming employed by or providing services to the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 2nd day of February, 1999.

Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 99–2847 Filed 2–5–99; 8:45 am]
BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1261–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1261-DR), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from severe winter storms, ice, and freezing rain on December 23–29, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Colbert, Cullman, Franklin, Lauderdale, Lawrence, Limestone, Madison, Marion and Morgan Counties for Public Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment

Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2954 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266–DR]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: January 23, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 23, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Arkansas, resulting from severe storms, tornadoes, and high winds on January 21, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Graham L. Nance of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arkansas to have been affected adversely by this declared major disaster:

Independence, Pulaski, St. Francis, Saline, and White Counties for Individual Assistance and Categories A and B under the Public Assistance program.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2960 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1266–DR]

Arkansas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas, (FEMA–1266–DR), dated January 23, 1999, and related determinations.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 23, 1999:

Faulkner, Greene, Jefferson, Miller, Monroe, and Poinsett Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–2961 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3134–EM]

Illinois; Amendment No. 2 to the Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an Emergency for the State of Illinois (FEMA–3134–EM), dated January 8, 1999, and related determinations.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 15, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2962 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3135–EM]

Indiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Indiana (FEMA–3135–EM), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the impact in certain areas of the State of Indiana, resulting from the record/near record snow on January 1, 1999, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lawrence L. Bailey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this emergency.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this emergency:

Adams, Allen, Benton, Blackford, Cass, Clay, Clinton, DeKalb, Delaware, Fountain, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Huntington, Jasper, Jay, Johnson, Kosciusko, Lake, Lagrange, LaPorte, Madison, Marion, Marshall, Miami, Montgomery, Newton, Noble, Porter, Pulaski, Randolph, Rush, St. Joseph, Shelby, Starke, Steuben, Tipton, Tippecanoe, Vermillion, Wabash, Warren, Wayne, White, and Whitley counties for reimbursement for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2963 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3135–EM]

Indiana; Amendment No. 1 to the Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a emergency for the State of Indiana (FEMA–3135–EM), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 15, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2964 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1264–DR]

Louisiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–1264–DR), dated January 21, 1999, and related determinations.

EFFECTIVE DATE: January 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 21, 1999 the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Louisiana, resulting from a severe ice storm on December 22–28, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance

or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert E. Hendrix of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared major disaster:

Bienville, Catahoula, Claiborne, Desoto, East Carroll, Franklin, Grant, Lincoln, Morehouse, Natchitoches, Ouachita, Red River, Richland, Sabine, Union, Webster, West Carroll, and Winn Parishes for Public Assistance.

All counties within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2958 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1263–DR]

Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1263–DR), dated January 21, 1999, and related determinations.

EFFECTIVE DATE: January 21, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 21, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from severe storms, heavy rains, high winds, and inland and coastal flooding and erosion on October 8–11, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Kevin Merli of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

Cumberland and York Counties for Public Assistance.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2957 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3137–EM]

Michigan; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Michigan (FEMA–3137–EM), dated January 27, 1999, and related determinations.

EFFECTIVE DATE: January 27, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 27, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the impact in certain areas of the State of Michigan, resulting from the near record snow on January 2, 1999, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lawrence L. Bailey of the Federal Emergency Management Agency to act as the Federal

Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared emergency:

Wayne County for reimbursement for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2968 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1265–DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1265–DR), dated January 25, 1999, and related determinations.

EFFECTIVE DATE: January 25, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 25, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from severe winter storms, ice, and freezing rain on December 22–26, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster:

Attala, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Grenada, Humphreys, Issaquena, Itawamba, Kemper, Leake, Lee, Leflore, Monroe, Montgomery, Neshoba, Noxubee, Oktibbeha, Pontotoc, Prentiss, Sharkey, Sunflower, Tallahatchie, Tishomingo, Union, Warren, Washington, Webster, Winston, Yalobusha, and Yazoo Counties for Public Assistance.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2959 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3136–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3136–EM), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: January 15, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1999, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the impact in certain areas of the State of New York, resulting from the near record snow on January 1, 1999, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Marianne C. Jackson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

The counties of Chautauqua, Erie, and Niagara for reimbursement for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora

Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2965 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3136–EM]

New York; Amendment No. 1 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York (FEMA–3136–EM), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 15, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2966 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3136–EM]

New York; Amendment No. 2 to the Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New York, (FEMA–3136–EM), dated January 15, 1999, and related determinations.

EFFECTIVE DATE: January 28, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1999:

Cattaraugus, Genesee, Jefferson, Orleans, and Wyoming Counties for reimbursement for emergency protective measures under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–2967 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1260–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1260–DR), dated January 15, 1999 and related determinations.

EFFECTIVE DATE: January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe winter storms, ice, and freezing rain on December 23–29, 1998 is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

The counties of Anderson, Bedford, Bledsoe, Campbell, Cannon, Claiborne, Coffee, Cumberland, DeKalb, Fentress, Franklin, Giles, Grundy, Hamilton, Hancock, Lawrence, Lewis, Lincoln, Loudon, Marion, Marshall, Monroe, Moore, Morgan, Roane, Scott, Sequatchie, Sevier, Union, Van Buren, Warren, Wayne, and White for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2953 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1262–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1262-DR), dated January 19, 1999 and related determinations.

EFFECTIVE DATE: January 19, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 19, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms, tornadoes, and high winds on January 17, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts, as you find necessary for Federal assistance and administrative expenses.

You are authorized to provide Individual Assistance, debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, and Hazard Mitigation in the designated areas. Further, you are authorized to provide other categories of assistance under the Public Assistance program, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul W. Fay, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

The counties of Carroll, Crockett, Decatur, Dickson, Hardeman, Haywood, Henderson, Lauderdale, Madison, Maury, Montgomery, and Perry for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–2955 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1262–DR]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1262–DR), dated January 19, 1999, and related determinations.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among the areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 19, 1999:

Fayette and Houston Counties for Individual Assistance.

Giles, Jackson, Lawrence, Lewis, Stewart, and Wayne Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 99–2956 Filed 2–5–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-2237) published on page 4873 of the issue for Monday, February 1, 1999.

Under the Federal Reserve Bank of Atlanta heading, the entry for First Banking Company of Southeast Georgia, Statesboro, Georgia, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First Banking Company of Southeast Georgia, Statesboro, Georgia; to merge with Wayne Bancorp, Inc., Jesup, Georgia, and thereby indirectly acquire Wayne National Bank, Jesup, Georgia.

Comments on this application must be received by February 25, 1999.

Board of Governors of the Federal Reserve System, February 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2908 Filed 2–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 1999.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Millennium Bankshares Corporation, Reston, Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Millennium Bank, N.A., Reston, Virginia (in organization).

Board of Governors of the Federal Reserve System, February 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2909 Filed 2–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 22, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California, and Norwest Insurance, Inc., Minneapolis, Minnesota; to acquire through a joint venture, ATI Title Agency of Ohio, Inc., Cleveland, Ohio, and thereby engage in title insurance agency, escrow and other real estate closing services, pursuant to §§ 225.28(b)(2)(i),(v), and (viii) of Regulation Y.

Board of Governors of the Federal Reserve System, February 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–2910 Filed 2–5–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Public Building Service; Record of Decision, Proposed Disposal of Governors Island, New York Harbor, New York, NY

I. Introduction

The United States General Services Administration (GSA) announces its decision, in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the regulations issued by the Council on Environmental Quality (40 CFR Parts 1500–1508), for the proposed disposal of federally-owned real property known as Governors Island, New York Harbor, New York, New York. The purpose of this Record of Decision (ROD) is to clearly communicate GSA's decision on implementing the Preferred Alternative identified in the Final Environmental Impact Statement dated November 4, 1998 (the FEIS) and the basis for that decision, and to identify any mitigation measures to be implemented as part of that decision. This ROD describes the alternatives considered and the rationale for selecting the chosen alternative and documents my decision regarding this proposal.

Public scoping meetings for the Draft Environmental Impact Statement (the DEIS) were held on December 16 and 17, 1997. The period for comments on the proposed disposal action was open from December 1, 1997 and ended on January 19, 1998. GSA released the DEIS for a 45-day public comment period on June 5, 1998. Public hearings were held during the comment period on June 24 and 25, 1998. The FEIS was released for a 30-day public comment period which closed on December 14, 1998. GSA provided written Notices of Availability for these documents in the **Federal Register**, local newspapers and direct mailings to interested parties.

The purpose and need for the proposed action is for GSA to comply with a legislative directive with respect to approximately 172 acres of Federally-owned property known as Governors Island, New York, as provided in the Balanced Budget Act of 1997 (Item 373:[17], Sec. 9101) as signed by President Clinton, described below:

(a) In General—Notwithstanding any other provision of law, the administrator of General Services shall, no earlier than fiscal year 2002, dispose of by sale at fair market value all rights, title, and interests of the United States in and to the land of, and improvements to, Governors Island, New York.

(b) Right of First Offer—Before a sale is made under subsection (a) to any other parties, the State of New York and the City of New York shall be given the right of first offer to purchase all or part at fair market value as determined by the Administrator of General Services, such right may be exercised by either the State of New York or the City of New York or by both the parties acting jointly.

(c) Proceeds—Proceeds from the disposal of Governors Island under subsection (a) shall be deposited in the general fund of the Treasury and credited as miscellaneous receipts.

In accordance with NEPA, GSA disclosed information concerning the potential environmental effects associated with the disposition of this property. GSA examined a range of reasonably foreseeable land use options that might be implemented on the island by another party after disposal. GSA has no authority to implement a reuse on Governors Island. Potential future reuses on Governors Island would be subject to their own environmental and land use review

processes upon implementation. The ultimate reuse scheme for the island will be determined by the future owners and will be subject to all applicable Federal, State and local regulations.

II. Alternatives Considered

Through the environmental review process, GSA identified a preferred alternative, the Action Alternative (disposition of Governors Island), as well as the No Action Alternative (retention of Governors Island). In conjunction with the disposition alternative, and in order to disclose any potential impacts and/or benefits that could result from the island's reuse by a party other than GSA after disposition, a number of potential Land Use Options were reviewed for Governors Island. These options were developed during the preparation of the Governors Island Land Use Study, commissioned by GSA. The land use options are illustrative of a range of reasonably foreseeable reuses that might be implemented on the island by another party or parties. The options were developed based on a year-long effort that included input from local, State and Federal agencies as well as the public at large. The options are not reflective of any GSA plans for the future of the island. The land use options encompass what GSA believes to be a range of reasonable and likely land uses, given the island's opportunities and constraints. Before the implementation of any future reuse of the island the sponsoring party would need to comply with all of the applicable local, State, and Federal laws and regulations. This may include the preparation of a project-specific Environmental Assessment or Environmental Impact Statement and the provision of a specific mitigation plan.

A. No Action Alternative

The No-Action Alternative assumes that the island is not disposed of by GSA after the fiscal year (FY) 2002. Under this alternative, the Federal government would retain ownership of Governors Island. The annual appropriation of monies for the on-island caretaking effort are assumed to continue.

B. Action Alternative

The Action Alternative involves the disposition of Governors Island by GSA. As directed by the Balanced Budget Act of 1997, GSA has been limited to two distinct means by which to dispose of Governors Island; disposition to New York State or New York City for fair market value; and, disposition to another or entities for fair market value.

Because of GSA's mandate under the Balanced Budget Act to dispose of the island to another party, as well as GSA's inability to specify or control the land uses that may be developed on disposed property in the future, a precise statement of the specific land use-related environmental and socioeconomic effects that could result from reuse would be largely hypothetical. In response to the lack of certainty concerning a future reuse for the island, GSA has developed a range of reasonably foreseeable land use options that might result upon disposition of the island. These land use options were developed through a planning effort undertaken by the United States Coast Guard (USCG) and GSA, with input from New York State and New York City officials as well as the public, which culminated in the Governors Island Land Use Study.

The specific purpose of the land use options was to describe a range of reasonable uses that could be implemented on the Island upon disposition. The FEIS generically disclosed the potential impacts pertaining to the short and long term, direct and indirect, beneficial and adverse significant regional cumulative impacts associated with these land use options.

This analysis was provided in order to explore the issues associated with the reuse of the island by a party other than GSA. GSA has no intention of implementing any of the Land Use Options. The potential land use options that resulted from the Governors Island Land Use Study analyzed in conjunction with the Action Alternative, disposition of Governors Island, are as follows:

1. *Reuse Option.* This option reuses as many buildings as is feasible, while expanding open space. There is a strong residential focus.

2A. *Academic Option.* This option assumes use of the Island by an academic institution of approximately 4,000 students. There is a large open and recreational space component.

2B. *Academic Option with New York City Proposal for a Casino.* This option is similar to the Academic Option, with the inclusion of a gambling casino and its necessary ancillary facilities. Review of this option was requested by New York City during the environmental scoping period.

3. *Recreation Option.* This option's predominant use is a 70-acre public park. Some residential units and a conference center are also included.

4. *Mixed Use Option.* This option strikes a balance between new development and a public park. Major components of this option include a 42-acre park and approximately 2,400 housing units.

5. *Maximum Development Option.* This option features the highest residential density (4,450 units in apartments and townhouses) of all the land use options. It also includes a 20-acre park, hotel, golf course and retail uses.

6. *Phase-In Option.* This option is intended for transitional use of existing facilities prior to implementation of any of the land use options. Residential and hotel or hostel use is emphasized.

The FEIS provides a narrative description and a tabular summary of the potential environmental consequences of each of the land use options. Recommended mitigation for any adverse environmental consequences is also set forth in the narrative description and tabular summary. GSA itself has no intention of implementing any of the land use options, and only intends to transfer the property to another party who would determine the island's ultimate land use. Mitigation for any future adverse impacts identified in association with the land use options or other specific development plans would be the responsibility of the future owner of Governors Island. A specific development plan for the island would be subject to Federal, State and local regulations that would ensure proper mitigation of adverse impacts associated with any future development.

III. Decision

Based upon review of the written materials associated with the environmental review process, including the transcripts of the scoping and public hearings and the comments received from those who reviewed the DEIS and FEIS, I have decided to proceed with the disposal of Governors Island under the Action Alternative as summarized above. This ROD is in keeping with the statutory mission of GSA to dispose of Federally-owned real property, as well as the Balanced Budget Act of 1997 that mandates disposal of Governor Island. My decision is based on the following factors:

A. On October 16, 1995, the USCG announced that it would close Governors Island by the end of Summer 1997. This decision was made in response to the Presidential mandate to meet the goals of the National Performance and Results Act, and the challenge of reducing the Federal budget deficit. The USCG developed a five-part Integrated Business Decision Package, of which closing Support

Center New York on Governors Island was a key element.

An Environmental Assessment (EA) was prepared under the guidance of Coast Guard direction COMDTINST M16475.1B (Final Environmental Assessment for the Closure of Support Center New York, Governors Island, May 1995), pursuant to NEPA. This EA evaluated the closure of Governors Island for potential environmental impacts. The EA concluded that no significant environmental impacts would result from the closure of Governors Island and relocation of USCG commands under the preferred alternative of standard maintenance.

B. Governors Island is subject to special legislation incorporated as part of the Balanced Budget Act of 1997 (Item 373:[17], Sec. 9101), as signed by President Clinton. The act directs GSA to dispose of Governors Island at fair market value no earlier than FY 2002. The State and city of New York have the right of first offer to purchase all or part of the island at fair market value. Disposition of the island under the Action Alternative is in compliance with this legislation.

C. Since closure of the USCG facility, the island and its structures have been maintained by a caretaker detachment of Federal and contract personnel at an approximate annual cost of $6 million in FY 1998 and $7 million in FY 1999, respectively. The responsibility of continuing maintenance of Governors Island would be transferred to the owner of the island upon disposition, thus alleviating the Federal Government of the annual expenditure for maintenance of the island.

D. The island is acknowledged to contain resources of historic merit. In fulfillment of its consultation responsibilities under Section 106 of the National Historic Preservation Act, GSA was a signatory to a Programmatic Agreement between the USCG, the Advisory Council on Historic Preservation, the New York State Historic Preservation Officer, the city of New York, and the National Trust for Historic Preservation. This agreement provides for the preservation of the Governors Island National Historic Landmark District (GINHL) and continuing covenants which will be binding upon the new owner of the property. GSA is presently preparing the Governors Island Preservation and Design Manual, which will become the governing document for all future preservation and maintenance activities within the GINHL. The obligation for adherence to the provisions of this document will be transferred along with the island's title upon disposition. This guarantees the future preservation of the GINHL after disposition.

E. Disposal of Governors Island by GSA does not have any direct effect on the physical, biological or manmade environment. Any future reuse of the island would need to comply with any and all Federal, State, and local regulations. If there were project-specific impacts at that time, they would need to be disclosed and mitigated by the future owner of the island.

F. The USCG is currently completing all environmental closure and clean-up operations in compliance with Federal, State and local regulatory standards prior to disposal of the island. Full remediation will have occurred by the time of transfer of the island, or the USCG will continue such remediation after transfer as necessary.

G. The FEIS provided recommended mitigation for any adverse environmental impacts identified in association with the land use options. However, mitigation for any such adverse environmental impacts would be the responsibility of the future owner of Governors Island. A specific development plan for the island would be subject to Federal, State and local regulations that would ensure proper mitigation of any associated impacts.

IV. Environmentally Preferred Alternative

As required by NEPA, a lead agency must identify its environmentally preferred alternative. The environmentally preferred alternative is the alternative which best satisfies and promotes the national environmental policies incorporated in Section 101 of NEPA. The Action Alternative, disposition of Governors Island, is both the preferred and the environmentally preferred alternative. By disposing of Governors Island to another party, the Balanced Budget Act would be adhered to, the property could begin to generate tax revenue (if disposed of to a private entity) that might offset any maintenance costs associated with the island, and the public could potentially gain access to this previously secured facility. Disposal will also allow for reuse of the GINHL in compliance with the Programmatic Agreement and the *Governors Island Preservation and Design Manual*, ensuring the appropriate maintenance and preservation of this resource. Disposal of Governors Island would not have any direct adverse effect on the physical, biological, or man-made environment, but rather beneficial impacts could be realized as cited above. Any specific development plan for the island would be subject to Federal, State and local regulations that would ensure proper mitigation of any associated impacts.

V. Environmental Impacts and Mitigation Measures

In terms of environmental harm and degradation, the Action Alternative, disposition of Governors Island, would have minimal or no adverse impacts to physical and natural resources, biological resources, and man-made or socioeconomic characteristics. All practical means to alleviate, minimize and/or compensate environmental harm were considered.

Under the first scenario of the Action Alternative, Governors Island would be disposed of to New York State or New York City (NYS and/or NYC) for fair market value no earlier than FY 2002. The responsibility of continued preservation and maintenance of the National Register Landmark District would be transferred to NYS and/or NYC along with the island's title. Generally, properties owned by NYS or NYC do not generate tax revenue. Under this Action Alternative scenario, the change in public ownership would not necessarily constitute an increase in tax revenue for the city or state. The possibility does exist, however, that NYS and/or NYC would create an arrangement on the island where some land uses would be privately sponsored and would pay taxes. Similarly, if the island is disposed of to NYS and/or NYC the burden of providing services on the island would fall to local government. Transfer of the island to NYS and/or NYC could enable public access to a portion of the city previously unavailable to visitors and possibly create additional open space for the city. It is not anticipated that the addition of Governors Island to the NYC real estate market would adversely affect prices for comparable properties, as the current real estate market is strong and Governors Island possesses unique characteristics (size, location, existing facilities). Under the Action Alternative, the sale of Governors Island for fair market value would result in the Federal government realizing a monetary gain. Additionally, the Federal government's responsibility for caretaking on the island would cease and the annual recurring expense for caretaking would end. Disposal of Governors Island to NYS and/or NYC does not have any direct effect on the physical, biological or man-made environment. Any future development of the island by NYS and/or NYC would be subject to all applicable Federal, State, and local regulations.

Under the second scenario associated with the Action Alternative, Governors Island would be disposed of to an entity other than NYS and/or NYC for fair market value. The continued preservation and maintenance of the GINHL district would be an obligation transferred along with the island's title. Disposition to an entity other than NYS and/or NYC under the Action Alternative could be beneficial in terms of the creation of new tax ratables within NYC. Additionally, if profit-generating uses occur on the island, these uses would generate sales or corporate taxes, which would accrue to NYS and/or NYC. Provision of police, fire and other municipal services to Governors Island would be necessary, the cost of which could be offset to some degree by taxes. The possibility exists that the island could be disposed of to a not-for-profit institution at fair market value, or some combination of not-for-profit entity. In this case the not-for-profit institution would be exempt from paying taxes. This could result in a burden to local services without commensurate tax relief. A Payment in Lieu of Taxes (PILOT) could offset this burden. Under this scenario, the Federal Government would realize the financial gains generated from sale of the island, as well as the annual savings of the costs associated with maintaining the island. Disposal of Governors Island to an entity or entities other than NYS and/or NYC does not have any direct effect on the physical, biological or man-made environment. Any future development of the island by the new owner would be subject to all applicable Federal, State, and local regulations.

VI. Supporting Information

GSA has received a limited number of comments concerning the FEIS. Upon review of these comments, I am satisfied that they have already been sufficiently addressed in both the DEIS and FEIS. In support of this, GSA has received notification from the Environmental Protection Agency (EPA) that "In light of the covenants that will be set forth in the transfer deed, we have concluded that the proposed project would not result in significant adverse environmental impacts; therefore, EPA has not objections to the implementation of the proposed project".

The Port Authority of the State of New York and New Jersey has requested that in reference to the Hazardous Materials Sections of the "Re-Use Options", GSA "forbear from characterization of dredged material absent actual sampling and testing". The FEIS disclosed that if dredging were determined to be necessary adjacent to the island in connection with the construction of docks or piers, "and the spoil is contaminated, or is ocean-dumped, this may constitute an impact under Section 103 of the Marine Protection, Research, and Sanctuaries Act" (Governors Island Disposition FEIS, November 1998, pp. IV.E–9, IV.R–52, IV.E–90, IV.E–109, IV.E–131). Because of the conceptual nature of the land use options, it is not clear if dredging is actually necessary. GSA did not intend to indicate that spoil material *is* contaminated, rather that *if* the spoil were contaminated the potential for impact could exist. In order to determine the nature of any spoil material associated with dredging activities an actual sampling and testing program would need to be undertaken.

The Port Authority also indicated that the * * * disposition to New York City or New York State is preferable to a private disposition and should be evaluated as such in the decision-making process." As indicated earlier, GSA has undertaken the disposition of Governors Island as directed by the Balanced Budget Act of 1997. While the Balanced Budget Act does provide the city and State of New York with the right of first offer (at fair market value), it does not designate a preference as to the purchaser of the island. In keeping with the directive offered in this Act, GSA has employed a similar two-tiered approach to the environmental review of the disposition of the island. The potential benefits and impacts associated with disposition to New York City and/or New York State as well as to a private/institutional party have been fully disclosed in the FEIS. The selection of the disposition alternative as the preferred alternative does not indicate a preference as to the purchaser of the island yet it still allows the State and or city of New York the right of first offer. I believe that sufficient background information concerning the effects of disposition to a public or private entity has been provided to the appropriate parties in the decision-making process.

Finally, a letter received from the Regional Plan Association (RPA) indicates that "[t]he DEIS does not adequately examine the consequences of its action alternatives". I disagree with this assessment and am confident that the analysis of the action alternative has been conducted and the impacts and benefits disclosed as required by NEPA. As I indicated above, GSA has disclosed the impacts and benefits associated with the disposition of the island to either New York City/New York State or another entity. Additionally, in conjunction with the action alternative, GSA has identified and analyzed a range of reasonably foreseeable reuse options that could occur on the island. In total, GSA has provided a sufficient level of review of the consequences associated with the disposition of the island.

VII. Conclusion

Environmental and other relevant concerns presented by interested agencies and private citizens have been fully addressed within the FEIS. GSA believes there are no outstanding environmental issues to be resolved with respect to the proposed project which are within the mission capabilities of this agency.

After consulting with GSA staff, reviewing the FEIS and all of its related materials, it is my decision GSA will proceed with the disposal of Federally-owned real property known as Governors Island, New York Harbor, New York.

Dated: January 27, 1999.

Robert W. Martin,

Acting Regional Administrator.

[FR Doc. 99–2722 Filed 2–5–99; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 63 FR 71143, December 23, 1998) is amended to reflect changes in Chapter PB within Part P, Program Support Center, Department of Health and Human Services. The Human Resources Service (HRS) is reorganizing and realigning its divisions which perform personnel activities by consolidating the personnel operations and employee/labor relations functions into two newly established Divisions: The Division of Personnel Operations—Parklawn and the Division of Personnel Operations—Switzer. The proposed organizational structure will better support the HRS in its role as a multi-customer, competitive, service-for-fee cost center. The HRS is also clarifying the statement describing the Board for Correction of PHS Commissioned Corps Records to reflect that its operations are overseen by an Executive Director who is located in the immediate Office of the Director, Program Support Center.

Program Support Center

Under *Part P, Section P–20, Functions,* change the following:

Under *Chapter PB, Human Resources Service (PB)* delete the titles and functional statements for the *Personnel Policy, Programs and Organizational Development Division (PBN); Personnel Operations Division (PBP)* and the *Employee and Labor Relations Division (PBR)* in their entirety.

Establish the *Division of Personnel Operations—Parklawn (PBS)* and enter the functional statement as follows:

Division of Personnel Operations—Parklawn (PBS) (1) Administers comprehensive human resources management and employee/labor relations programs for headquarters and field components of the Program Support Center (PSC), other Health and Human Services (HHS) components, and external customers; (2) Develops and implements strategies and processes to ensure the progression of the Division of Personnel Operations—Parklawn in its role as a multi-customer, competitive, service-for-fee cost center; (3) Formulates and implements marketing strategies to promote the utilization of the Division of Personnel Operations—Parklawn services by other HHS components and external customers; (4) Provides consultation and assistance on employee relations services including adverse actions, employee performance deficiencies, discipline, grievances and appeals, reductions-in-force, incentive awards programs, leave regulations, standards of conduct, fitness for duty, violence in the workplace, worker's compensation, conflict of interest such as outside activities, and financial disclosures; (5) Provides advice and assistance concerning the interpretation and application of term and other agreements negotiated with labor organizations, the duty to bargain, other obligations to unions and employees under the Federal Labor-Management Relations Statute, and other applicable laws and governmentwide regulations. Provides managerial advisory services on contract dispute resolution and National Partnership Council; (6) Provides full range of personnel operations services and consultations on human resources activities including recruitment, staffing, position classification, pay administration, performance management, awards, security, special and executive recruitment, retirement and benefits counseling, maintenance of official personnel records, and Commissioned Corps liaison activities; (7) Provides expert managerial advisory services including analyzing employee resources, forecasting future requirements, and coordinating policy to meet departmental mission and public interest needs; and (8) Administers special initiative programs including special incentives, honor awards programs, and special leave programs.

Establish the *Division of Personnel Operations—Switzer (PBT)* and enter the functional statement as follows:

Division of Personnel Operations—Switzer (PBT)

(1) Administers comprehensive human resources management and employee/labor relations programs for headquarters and field components of the Office of the Secretary (0S), the Office of the Inspector General (OIG), the Administration on Aging (AoA), other Health and Human Services (HHS) components, and external customers; (2) Develops and implements strategies and processes to ensure the progression of the Division of Personnel Operations—Switzer in its role as a multi-customer, competitive, service-for-fee cost center; (3) Formulates and implements marketing strategies to promote the utilization of the Division of Personnel Operations—Switzer services by other HHS components and external customers; (4) Provides consultation and assistance on employee relations services including adverse actions, employee performance deficiencies, discipline, grievances and appeals, reductions-in-force, incentive awards programs, leave regulations, standards of conduct, fitness for duty, violence in the workplace, retirement, worker's compensation, conflict of interest such as outside activities, and financial disclosures; (5) Provides full range of personnel operations services and consultations on human resources activities including recruitment, staffing, position classification, pay administration, performance management, awards, security, special and executive recruitment, retirement and benefits counseling, maintenance of official personnel records, and Commissioned Corps liaison activities; (6) Provides advice and assistance concerning the interpretation and application of term and other agreements negotiated with labor organizations, the duty to bargain, other obligations to unions and employees under the Federal Labor-Management Relations Statute, and other applicable laws and governmentwide regulations. Provides managerial advisory services on contract dispute resolution and National Partnership Council; (7) Provides expert managerial advisory services including analyzing employee resources, forecasting future requirements, and coordinating policy to meet departmental mission and public interest needs; (8) Provides consultative service and expert advice to organizations effecting change management activities. Specialized services include restructuring, streamlining, employee empowerment, quality management, team building, program evaluation, and other organizational improvement efforts; (9) Oversees the operation of the Career Management Center and provides individual consultative services and expert advice to employees on career related activities; (10) Oversees the operation of the Employee Assistance Program (EAP) for the OS and other HHS components. Services include intake, assessment, referral of employees, and education of employees and management about EAP services; and (11) Administers special initiative programs including special incentives, honor awards programs, and special leave programs.

Under *Chapter PB, Human Resources Service, (PB),* after the heading *Human Resources Service (PB),* delete item (7) in its entirety and insert a new item (7) as follows: "(7) Provides Executive Secretariat services for the Board for Correction of PHS Commissioned Corps Records. The Board is overseen by an Executive Director who is located in the immediate Office of the Director, PSC."

Dated: February 1, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–2935 Filed 2–5–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99033]

State and Local Childhood Lead Poisoning Prevention Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for new and competing continuation state and local programs to develop and improve childhood lead poisoning prevention activities and build statewide capacity to conduct surveillance of blood lead levels in children. This announcement is related

to the priority area of Environmental Health.

This grant program is to provide the impetus for the development, implementation, expansion, and evaluation of state and local childhood lead poisoning prevention programs which include statewide surveillance capacity to determine areas at high risk for lead exposure. In particular, this grant program is to carry out the core public health functions in childhood lead poisoning prevention programs (CLPPP). More specifically, this grant program is to bring about: (1) Screening of children who are potentially exposed to lead and follow-up care for children who are identified with elevated blood lead levels (BLLs); (2) awareness and action among the general public and affected professionals in relation to preventing childhood lead poisoning; and (3) primary prevention of childhood lead poisoning in high-risk areas in collaboration with other government and community-based organizations. As State and local programs shift emphasis from providing direct screening and follow-up services to the core public health functions, grant funds may be used to support and emphasize health department responsibilities in screening and follow-up services of children at risk for lead poisoning. This includes improving coalitions and partnerships, conducting better and more sophisticated assessments, developing and evaluating policies and program performance and effectiveness based on established goals and objectives.

B. Eligible Applicants

Applicant eligibility is divided into Parts A (New Applicants), B (Competing Continuation), and C (Alternative Surveillance Assessment) defined as follows:

1. Part A applies to State and local health departments or other State and local health agencies or departments not currently funded by CDC.

a. Also eligible are agencies or units of local government that serve jurisdictional populations greater than 500,000. In addition, eligible applicants include health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and all Indian tribes.

b. Applicants for local CLPP program grants from eligible units of local jurisdictions must either apply directly to CDC or apply as part of a statewide grant application. Local jurisdictions cannot submit applications directly to CDC and also apply as part of a statewide grant application.

c. Applicants encouraged to apply under Part A include, but are not limited to; Arkansas, Georgia, Idaho, Kansas, Mississippi, Nevada, North Dakota, South Dakota, Tennessee, and Kentucky.

2. Part B applies to applicants currently funded by Centers for Disease Control and Prevention whose project period is expiring in 1999. Part B applicants are as follows: Colorado; Connecticut; Illinois; Jefferson County, Kentucky; Maryland; Minnesota; Nebraska; New York; Utah; Washington, D.C.; and Wisconsin.

3. Part C applies to: (1) Applicants who apply under Part B, however funding will only be considered if their Part B application is successful and chosen for funding and, (2) applicants currently holding funded CDC Childhood Lead Poisoning Prevention Program and Childhood Blood Lead Surveillance grants that successfully report data to CDC's national surveillance database as of March 31st.

Additional Information for All State Applicants

If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided.

C. Availability of Funds

Part A: New Applicants

Up to $3,000,000 will be available in FY 1999 to fund up to 5 new grants. CDC anticipates that awards for the first budget year will range from $75,000 to $800,000.

Part B: Competing Continuations

Up to $7,700,000 will be available in FY 1999 to fund up to 11 competing continuation grants. CDC anticipates that awards for the first budget year will range from $75,000 to $1,500,000.

Part C: Alternative Surveillance Assessments

Up to $400,000 will be available in FY 1999 to fund up to 4 supplemental awards to support the development of alternative surveillance assessments. Alternative surveillance assessment awards are expected to range from $85,000 to $100,000, with the average award being approximately $95,000.

Awards for State Applicants

To determine the suggested level of funding for which an individual State applicant for Part A or Part B is eligible, State applicants should refer to the table entitled "State CLPPP's Only: Suggested Funding Categories Based on Projected Level of Effort Required to Provide Prevention and Surveillance activities to a State Population" (included in the application package). Applicants are encouraged to use the funding category that is suggested for the applicant's State; however, note these are suggested funding guidelines and should not be regarded as absolute funding limits.

Awards for Local Applicants

The suggested range of awards for local applicants is $250,000 to $800,000.

Additional Information on Funding for All Applicants for Part A, Part B and Part C

New awards are expected to begin on or about July 1, 1999, and are made for 12-month budget periods within project periods not to exceed 3 years. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. Grant awards cannot supplant existing funding for CLPP or Alternative Surveillance programs. Grant funds should be used to enhance the level of expenditures from State, local, and other funding sources. Awards made under Parts A and B will be made with the expectation that program activities will continue when grant funds are terminated.

Note:

1. Grant funds may not be expended for medical care and treatment or for environmental remediation of sources of lead exposure. However, the applicant must provide a plan to ensure that these program activities are carried out.

2. Not more than 10 percent (exclusive of Direct Assistance) of any grant or contract through the grant may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

D. Program Requirements

Part A and Part B: New and Competing Continuations

The following are requirements for CLPP Programs:

1. A director/manager with authority and responsibility to carry out the requirements of the program and/or a full time coordinator for surveillance activities.

2. Provide qualified staff, other resources, and knowledge to implement the provisions of the program. Applicants requesting grant supported positions must provide assurances that such positions will be authorized to be filled by the applicant's personnel system.

3. For State applicants, develop a statewide surveillance system in accordance with CDC guidance and submit data annually to CDC. Revise, refine, and carry out the proposed surveillance methodology. For local applicants, develop a data-management system that links with the State's surveillance system or develop an automated data-management system to collect and maintain laboratory data on the results of blood lead analyses and data on follow-up care for children with elevated BLLs. For both State and local applicants, use these systems to monitor timeliness and completeness of screening of high-risk children and of follow-up care for children with elevated BLLs.

4. For State applicants, commitment to develop and implement a statewide childhood blood lead screening plan consistent with CDC guidance provided in Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials. For local applicants, commitment to participate in the statewide planning process.

5. Establish effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (e.g.: Housing authorities; environmental agencies; maternal and child health programs; State Medicaid Early Periodic Screening, Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under section 340A of the Public Health Service (PHS) Act; State and local epidemiology programs; State and local housing rehabilitation programs; schools of public health and medical schools; and environmental interest groups).

6. Written assurance that income earned by the CLPP program will be returned to the program for its use.

7. For State CLPP Programs, provide managerial, technical, analytical, and program evaluation assistance to local agencies and organizations in developing or strengthening their CLPP programs.

8. Establish a system to monitor the notification and follow-up of children who are confirmed with elevated BLLs and who are referred for environmental services.

9. SPECIAL REQUIREMENT regarding Medicaid provider-status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1), as amended by Sec. 303 of the "Preventive Health Amendments of 1992" (Pub. L. 102–531), applicants AND current grantees must meet the following requirements: For CLPP program services which are Medicaid-reimbursable in the applicant's State:

a. Applicants who directly provide these services must be enrolled with their state Medicaid agency as Medicaid providers.

b. Providers who enter into agreements with the applicant to provide such services must be enrolled with their state Medicaid agency as providers. An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

Part C: Alternative Surveillance Assessments

The following are requirements for Alternative Surveillance Assessments:

1. A coordinator in collaboration with the principal investigator with authority and responsibility to carry out the requirements of the assessment activities.

2. Develop and implement a study protocol to include the following: Methodology, sample selection, field operation, and statistical analysis. Applicants must provide a means of assuring that the results of the study will be published.

3. Revise, refine, and carry out the proposed methodology for conducting Alternative Surveillance Assessments.

4. Monitor and evaluate all aspects of the assessment activities.

5. Conduct and evaluate public health programs or have access to professionals who are knowledgeable in conducting such activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan:

1. Applications must be developed in accordance with PHS Form 5161–1.

2. Part B applicants also competing for Part C funds must submit a separate application.

3. Application pages must be clearly numbered, and a complete index to the application and its appendices must be included.

4. The original and two copies of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, printed on one side only, with un-reduced font (10 or 12 point font only) on 8½" by 11" paper, and at least 1" margins and heading and footers. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.

5. A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director, telephone number, facsimile number, and e-mail address.

6. The main body of the CLPP program application must include the following understanding the problem, surveillance or data-management activities, statewide/jurisdiction-wide planning and collaboration, core public health functions, goals and objectives, program management and staffing, and program evaluation. The main body of the alternative surveillance assessments application must include the following study protocol, project personnel, and project management. Each should not exceed 75 pages. The abstract, budget narrative, and budget justification pages are not included in the 75 page limit. Supplemental information may be placed in appendices and should not exceed 25 pages.

7. Part B applicants must submit a progress report no longer than 10 pages.

F. Application

Applicants must submit the original and two copies of the PHS 5161–1 (OMB Number 0937–0189) on or before April 7, 1999. Submit the application to: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 99033, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, MS–E13, Atlanta, GA 30341

Applications shall be considered as meeting the deadline if they are either: (1) Received on or before the deadline date, or (2) sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications which do not meet the criteria above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

G. Evaluation Criteria

The review of applications will be conducted by an independent review committee approved by CDC as they relate to the applicant's response to either Part A, Part B, or Part C. Applications will be reviewed for the quality, strength and completeness of the plan against the following criteria. The maximum rating score of an application is 100 points.

Part A: New Applicants

1. Understanding of the Problem (15 points)

The applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in their jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators. Specifically include a description of the prevalence of elevated blood lead levels in the Medicaid population. The extent to which the applicant reflects an understanding of prevention activities, including need, available resources, gaps, and use of this award to address gaps.

2. Surveillance Activity (20 points)

For State Applicants: The applicant's description of plans to develop a childhood blood lead surveillance system that includes tracking lead screening services to children, especially Medicaid children and reports data annually to the CDC's national surveillance database. The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which the proposed time table for accomplishing each activity and methods for evaluating each activity are appropriate and clearly defined. The following elements will be specifically evaluated:

a. How laboratories report BLLs.

b. How data will be collected and managed.

c. How quality of data and completeness of reporting will be ensured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated.

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating Childhood Blood Lead Surveillance (CBLS) approach.

For Local Applicants: The applicant's description of plans to develop a data management system, including the approach to participate in the State CBLS, where applicable. The clarity, feasibility, and scientific soundness of the approach to data management. Also, the extent to which a proposed schedule for accomplishing each activity and method for evaluating each activity are clearly defined and appropriate. The following elements will be specifically evaluated:

a. How laboratory reports will be received.

b. How data will be collected and managed.

c. How quality of data and completeness of reporting will be assured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated.

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating data-collection approach.

3. Statewide/Jurisdiction-wide Planning and Collaboration (20 points)

Applicants should describe a planning process to develop statewide/jurisdiction-wide screening recommendations with appropriate local strategies. The following elements will be specifically evaluated:

a. The proposed approach to developing and carrying out an inclusive state- or jurisdiction-wide screening plan as outlined in Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials.

b. The extent to which the applicant plans to utilize surveillance and program data to produce a statewide/jurisdiction-wide screening recommendation, with specific attention given to the Medicaid population.

c. Description of how collaborations are expected to facilitate the development of a screening plan and strengthen childhood lead poisoning prevention strategies.

d. Evidence of collaboration with principal partners, including managed-care organizations, state Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real-estate, and property-owner interests, must be demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships with important collaborators.

4. Capacity To Carry Out Public-health Core Functions (15 points)

The description of the approach and activities necessary to achieve a balance among health-department roles in CLPP, including assessment, program and policy development, and monitoring, evaluating, and ensuring the provision of all necessary components of a comprehensive CLPP. Specifically, include a description of the capacity in place or plans to address:

a. Epidemiologic structure to perform assessment of lead exposure and program response.

c. Health education and communication strategies designed to reach actual and potential collaborators and partners and achieve program goals.

d. Gaps in service provision, where gaps have been demonstrated.

e. Evaluation approaches to examine basic data on CLPP burden and program activities and make course corrections.

5. Goals and Objectives (10 points)

The extent to which the applicant's goals and objectives relate to the six (6) components of a comprehensive CLPP program. Objectives must be relevant, specific, measurable, achievable, and time-framed. There must be a formal work plan with a description of methods, a timetable for accomplishment of each objective, and the evaluation of each proposed objective.

6. Project Management and Staffing (10 points)

The extent to which the applicant has the skills and ability to develop and carry out a comprehensive CLLP program. Specifically the applicant should:

a. Describe the proposed health department staff roles in CLPP, their specific responsibilities, and their level of effort and time. Include a plan to expedite filling of all positions and assure that requested positions have been or will be approved by applicant's personnel system.

b. Describe the plan to provide training and technical assistance to health department personnel and consultation to collaborators outside the health department, including proposed design of information-sharing systems.

7. Program Evaluation (10 points)

The extent to which the applicant proposes to measure the overall impact of health department CLPP activities. Specific criteria should include:

a. The plan for evaluating the impact or outcome of CLPP activities, including evaluation design, methods, and activities.

b. Description of how the project will assess changes in public policy and measure the effectiveness of collaborative activities.

c. Progress made in childhood lead poisoning prevention which resulted from planned health department strategies.

8. Budget Justification (not scored)

Evaluation will be based on the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Part B: Competing Continuations

1. Understanding of the Problem (15 points)

The applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in the jurisdiction, using evidence of incidence and/or prevalence and demographic indicators. Specifically include a description of the prevalence of elevated blood lead levels in the Medicaid population. The extent to which the applicant reflects an understanding of prevention activities, including need, available resources, gaps, and use of this award to address gaps.

2. Surveillance Activity (20 points)

For State Applicants: The applicant's description of plans to expand their childhood blood lead surveillance system that includes tracking lead screening for Medicaid children, evaluate the existing system, and report data to the CDC's national surveillance database. The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which the proposed time table for accomplishing each activity are appropriate and clearly defined. The following elements will be specifically evaluated:

a. How laboratories report BLLs.

b. How data will be collected and managed.

c. How quality of data and completeness of reporting will be ensured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated.

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating Childhood Blood Lead Surveillance (CBLS) approach.

For local applicants: The applicant's description of plans to expand their data management system, including the approach to participating in the state CBLS, where applicable. The clarity, feasibility, and scientific soundness of the approach to data management. Also, the extent to which the proposed schedule for accomplishing each activity and method for evaluating each activity are clearly defined and appropriate. The following elements will be specifically evaluated:

a. How laboratory reports will be received.

b. How data will be collected and managed.

c. How quality of data and completeness of reporting will be assured.

d. How and when data will be analyzed.

e. How summary data will be reported and disseminated.

f. Protocols for follow-up of individuals with elevated BLLs.

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level).

h. Time line and methods for evaluating data-collection approach.

3. Statewide/Jurisdiction-wide Planning and Collaboration (20 points)

Applicants should describe the planning process that has been taken to develop statewide/jurisdiction-wide screening recommendations with appropriate local strategies. The following elements should be specifically evaluated:

a. The approach to developing and carrying out an inclusive state- or jurisdiction-wide screening plan as outlined in Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials.

b. The extent to which the applicant utilized surveillance and program data to produce statewide/jurisdiction-wide screening recommendations and target the Medicaid population.

c. Description of how collaborations facilitated the development of a screening plan and strengthened childhood lead poisoning prevention strategies.

d. Evidence of collaboration with principal partners, including managed-care organizations, state Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real-estate, and property-owner interests, must be demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships with important collaborators.

Note: For applicants under Part B, describe progress in developing and implementing the screening plan based upon each of the elements listed above.

4. Capacity To Carry Out Public-Health Core Functions (15 points)

The description of the approach and activities taken to achieve a balance among health-department roles in CLPP, including assessment, program and policy development, and monitoring, evaluating, and ensuring the provision of all necessary components of a comprehensive CLPP. Specifically include a description of the steps that were taken to develop capacity to address:

a. Epidemiologic structure to perform assessment of lead exposure and program response.

b. Health education and communication strategies designed to reach actual and potential collaborators and partners and achieve program goals.

c. Gaps in service provision where gaps have been demonstrated.

d. Evaluation approaches to examine basic data on CLPP burden and program activities and make course corrections.

5. Goals and Objectives (10 points)

The extent to which the applicant's goals and objectives relate to the six (6) components of a comprehensive CLPP program. Objectives must be relevant, specific, measurable, achievable, and time-framed. There must be a formal work plan with a description of methods and a timetable for accomplishment of each objective.

6. Project Management and Staffing (10 points)

The extent to which the applicant has the skills and ability to develop and carry out a comprehensive CLLP program. Specifically the applicant should:

a. Describe the proposed health department staff roles in CLPP, their specific responsibilities, and their level of effort and time. Include a plan to expedite filling of all positions and assure that requested positions have been or will be approved by the applicant's personnel system.

b. Describe the plan to provide training and technical assistance to health department personnel and consultation to collaborators outside the health department, including proposed design of information-sharing systems.

7. Program Evaluation (10 points)

The extent to which the applicant proposes to measure the overall impact of health department CLPP activities. Specific criteria should include:

a. The plan for evaluating the impact and outcome of CLPP activities,

including the evaluation design, methods, and activities.

b. Description of how the project will assess changes in the effectiveness of collaborative activities.

c. Progress made in childhood lead poisoning prevention which resulted from planned health department strategies.

8. Budget Justification (not scored)

Evaluation will be based on the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

PART C: Alternative Surveillance Assessments—Factors to be Considered

1. Study Protocol (45 points)

The protocol's scientific soundness (including adequate sample size with power calculations), quality, feasibility, consistency with project goals, and soundness of the evaluation plan (which should provide sufficient detail regarding the way in which the protocol will be implemented). The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan to include of both sexes and racial and ethnic minority populations for appropriate representation; (b) the proposed justification when representation is limited or absent; (c) a statement as to whether the design of the study is adequate to measure differences when warranted; and (d) a statement as to whether the plans for recruitment and outreach for study participants includes establishing partnerships with community-based agencies and organizations. Benefits of the partnerships should be described.

2. Project Personnel (20 points)

The qualifications, experience (including experience in conducting relevant studies), and time commitment of the staff needed to carry out the study.

3. Project Management (35 points)

The schedule for implementing and monitoring the proposed study also should be provided. The extent to which the application documents specific, attainable, and realistic goals and objectives, and describes the evaluation plan.

4. Budget Justification (not scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

5. Human Subjects (not scored)

The extent to which the applicant complies with the Department of Health and Human Services regulations (45 CFR part 46) on the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Quarterly progress reports which are required of all grantees. The quarterly report should not exceed 25 pages. Time lines for the quarterly reports will be established at the time of award, but are typically due 30 days after the end of each quarter.

2. Calendar year surveillance data should be reported annually to CDC in the approved OMB format. Time lines for the annual report will be established at the time of award, however are typically due 90 days after the end of the year. Also submit a written surveillance report annually to CDC.

3. Financial Status Reports, are due within 90 days of the end of the budget period.

4. Final financial reports and performance reports are due within 90 days after the end of the project period. Send all reports to: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mailstop E–13, Atlanta, GA 30341

5. Data collection initiated under this cooperative agreement program has been approved by the Office of Management and Budget under OMB number (0920–0337), "National Childhood Blood Lead Surveillance System", Expiration Date: March 31, 2000.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum 1 in the application kit.

AR–1 Human Subjects Requirement
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority

This program is authorized under sections 301(a), 317A and 317B of the Public Health Service Act (42 U.S.C. 247(a), 247b–1, and 247b–3), as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, part 51b. The Catalog of Federal Domestic Assistance number is 93.197.

J. Pre-Application Workshop for New and Competing Continuation Applicants

1. A pre-application technical assistance workshop will be held to assist all prospective applicants in understanding CDC application requirements and program priorities. During the workshop, information will be presented on application and business management requirements, programmatic priorities, and other essential information for preparing applications.

2. The workshop will be held Sunday, January 31, 1999 from, 2 p.m. to 5 p.m., prior to the annual CDC supported grantee meeting. Applicants interested in attending the workshop should make reservations at the Holiday Inn SunSpree Conference Center, Clearwater Beach, Florida, by calling 727–447–9566.

In addition, for interested applicants, a telephone conference call for pre-application technical assistance will be held on Wednesday, February 17, 1999, from 1:30 p.m. to 3:30 p.m, Eastern Standard Time. The bridge number for the conference call is 1-800–311–3437, and the pass code is 669241. For further information about all workshops, please contact Claudette Grant-Joseph at 770–488–7330.

K. Where To Obtain Additional Information

To receive additional written information, call 1–888–472-6874. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 99033. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from:

Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Mailstop E–13, Atlanta, GA 30341, telephone (404) 842–6564
Internet address mij3.@cdc.gov

This and other CDC announcements are also available through the CDC

homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

For programmatic technical assistance, contact:

Claudette A. Grant-Joseph, Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop F–42, Atlanta, GA 30341–3724, telephone (770) 488–7330, Internet address cag4@cdc.gov

Dated: February 2, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2905 Filed 2–5–99; 8:45 am]

BILLING CODE 4160–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Time and Date: 1:30 p.m.–3:30 p.m., February 24, 1999.

Place: National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1006, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85.)

Status: Open: 1:30 p.m.–1:45 p.m., February 24, 1999. Closed: 1:45 p.m.–3:30 p.m., February 24, 1999.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

Matters to be Discussed: Agenda items include announcements; discussion of review procedures; future meeting dates; and review of grant applications.

Beginning at 1:45 p.m., through 3:30 p.m., February 24, the Committee will meet to conduct a review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: John F. Finklea, M.D., Acting Executive Secretary, IRGRC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724. Telephone 770/488–4330.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 2, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–2900 Filed 2–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Child Welfare Demonstrations Pursuant to Section 1130 of the Social Security Act (the Act); Parts B and E of title IV of the Act; Public Law 103–432 and Public Law 105–89

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Public notice.

SUMMARY: This public notice announces that the Department of Health and Human Services (Department) is seeking proposals on child welfare demonstration projects and has published Information Memorandum ACYF–CB–IM–99–03 dated 1–21–99, January 21, 1999, entitled Child Welfare Demonstration Projects. This memorandum informs interested parties of: (1) The principles, goals and objectives the Department will consider in exercising its discretion to approve or disapprove demonstration projects which would require waivers of certain sections of the Act under the authority in section 1130 (b) (of Part A of title XI) of the Social Security Act (the Act), added by Pub. L. 103–432 and amended by Pub. L. 105–89; (2) the procedures the Department expects the States to employ in involving the public in the development of proposed demonstration projects under section 1130; and (3) the procedures the Department will follow in receiving and reviewing the demonstration proposals.

The Information Memorandum: (1) Contains guidelines and procedures for submitting a proposal; and (2) identifies limitations on demonstration projects and provisions of titles IV–B and IV–E of the Act that are not subject to waiver. The Department will give preference to proposals that test policy and service program alternatives that are unique in their approach to serving children and families, that differ significantly from other approved child welfare demonstrations, and that are from States that have not previously been approved for a Child Welfare Demonstration project. The Department will give first consideration to proposals that reflect the topical priorities outlined in Appendix I of the Information Memorandum.

FOR FURTHER INFORMATION CONTACT: Copies of the Information Memorandum containing the guidelines, and topical priorities can be found at the ACF Website at: http://www.acf.dhhs.gov/programs/cb/demonstrations or may be obtained from the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW, Washington, DC 20447, (800) 394–3366, INTERNET address: nccanch@calib.com. For further information, contact the Children's Bureau, Administration on Children, Youth and Families, DHHS at (202) 205–8618.

DATES: Proposals for a Child Welfare Demonstration project will be accepted at any time. States that are interested in a project to be considered for approval in fiscal year 1999 are strongly encouraged to submit a Letter of Intent before April 5, 1999.

ADDRESSES: All Letters of Intent and complete proposals should be submitted to Laura Oliven, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Room 2068, Washington, DC 20447. Facsimile transmission of a Letter of Intent ONLY will be accepted providing it is followed by an original copy. The FAX number is (202) 260–9345.

SUPPLEMENTARY INFORMATION: This announcement and the Information Memorandum Number ACYF–CB–IM–99–03 do not create any right or benefit, substantive or procedural, enforceable at law or equity, by any person, or entity, against the United States, its agencies or instrumentalities, the States, or any other person.

Dated: February 1, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–3006 Filed 2–5–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0187]

Monsanto Co.: Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Monsanto Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of L-Phenylalanine, *N*-[*N*-(3,3-dimethylbutyl)-*L*-α-aspartyl]-,1-methyl ester as a general use sweetener. Monsanto proposes that this additive be identified as neotame.

DATES: Written comments on the petitioner's environmental assessment by April 10, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3106.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4643) has been filed by Monsanto Co., 5200 Old Orchard Rd., Skokie, IL 60077. The petition proposes to amend the food additive regulations in part 172 *Food Additives Permitted for Direct Addition to Food for Human Consumption* to provide for the safe use of *N*-[*N*-(3,3-dimethylbutyl)-*L*-α-aspartyl]-*L*-phenylalanine 1-methyl ester as a general use sweetener. Monsanto proposes the sweetener be identified as neotame.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before April 10, 1999, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 28, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–2851 Filed 2–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting is open to the public.

Name of Committee: Endocrinologic and Metabolic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 26, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12536. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss experience since approval for marketing, benefits, and risks of Rezulin™ (troglitazone, Parke-Davis Pharmaceutical Research, a Division of Warner-Lambert) in the treatment of type 2 diabetes mellitus.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 23, 1999. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 23, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. In addition, an open public session will be conducted after the scientific presentations.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 26, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–2852 Filed 2–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1165]

Draft Guidance for the Content of Premarket Notifications (510(k)'s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Guidance for the Content of

Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi." This guidance is neither final nor is it in effect at this time. This draft guidance describes the types of information that should be submitted in a premarket notification to support a decision of substantial equivalence for an extracorporeal shock wave lithotripter indicated for the fragmentation of kidney and ureteral calculi, including potential special controls. Although renal and ureteral extracorporeal shock wave lithotripters are currently classified into class III (premarket approval), elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify these devices to class II (special controls). It is anticipated that this draft guidance will become effective if/when a final rule regarding this reclassification has been issued.

DATES: Written comments concerning this draft guidance must be received by May 10, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Written comments concerning this draft guidance must be submitted to the Dockets Management Branch, (HFA–305), Food and Drug Administration, rm. 1061, 5630 Fishers Lane, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John H. Baxley, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

Extracorporeal shock wave lithotripters for the fragmentation of kidney and ureteral calculi are currently postamendments class III devices, requiring either an approved premarket approval (PMA) application or declared complete product development protocol (PDP) prior to commercial distribution in the United States. Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify extracorporeal shock wave lithotripters from class III into class II (special controls). To facilitate the proposed reclassification, FDA has prepared the draft guidance entitled "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi." This draft guidance describes the special controls that FDA is including in the proposed rule, and it also provides general guidance to industry on the content of premarket notifications for these devices.

A meeting of the Gastroenterology and Urology Devices Advisory Panel of the Medical Devices Advisory Committee was held on July 30, 1998, to seek its recommendations on this proposed reclassification, including advice on special controls and the content of premarket notifications. The panel unanimously voted to reclassify the extracorporeal shock wave lithotripter for the fragmentation of renal and ureteral stones into class II. Comments from the panel have been incorporated into this draft guidance document.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on the reclassification of extracorporeal shock wave lithotripters indicated for the fragmentation of kidney and ureteral calculi. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1226) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes "Guidance for the Content of Premarket Notifications (510(k)s) for Extracorporeal Shock Wave Lithotripters Indicated for the Fragmentation of Kidney and Ureteral Calculi," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information.

IV. Comments

Interested persons may, on or before May 10, 1999, submit to Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 21, 1999.

Linda S. Kahn,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–2690 Filed 2–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2014–N]

RIN 0938–AI64

State Children's Health Insurance Program; Reserved Allotments to States for Fiscal Year 1999 and Revised Reserved Allotments to States for Fiscal Year 1998

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice provides notification of the reserved fiscal year (FY) 1999 State allotments available to provide Federal funding to individual States, Commonwealths, and Territories for expenditures in the new State Children's Health Insurance Program (CHIP) established under title XXI of the Social Security Act (the Act). This notice also provides revised reserved State CHIP FY 1998 allotments, which were originally published in the **Federal Register** on September 12, 1997. The notice describes the methodology and process that HCFA uses to determine the reserved State CHIP allotments in accordance with section 2104 of the Act. These reserved State CHIP allotments are estimates of States' FY 1998 and FY 1999 title XXI allotments, assuming that each State were to submit, and receive approval for, a State child health plan. Under title XXI the amount of State's allotments for a fiscal year is available for 3 years for States with approved child health plans.

Established by section 4901 of the Balanced Budget Act of 1997 (Pub. L. 105–33), the State Children's Health Insurance Program provides Federal matching funds to States to initiate and expand health insurance coverage to uninsured, low-income children.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 37194, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. General Background on New Legislation

Section 4901 of the Balanced Budget Act of 1997 (BBA), Pub. L. 105–33, as amended by Pub. L. 105–100, added title XXI to the Social Security Act (the Act), which was further amended by Pub. L. 105–174. Title XXI authorized a new State Children's Health Insurance Program (CHIP) to assist State efforts to initiate and expand child health assistance to uninsured, low-income children. Child health assistance is provided primarily for obtaining health benefits coverage through (1) obtaining coverage that meets requirements specified in the law under section 2103 of the Act; or (2) expanding coverage under the State's Medicaid plan under title XIX of the Act; or (3) a combination of both.

In order to be eligible for Federal matching funds under the CHIP, States must submit to the Secretary, and receive approval for, a State child health plan that describes how the State intends to use the funds provided under title XXI. The plan must meet certain criteria specified in the statute, which include benefit packages, eligibility standards and methodologies, coverage requirements, basic and additional services offered, strategic objectives and performance goals, plan administration, and evaluations.

The law limits the total amount of Federal funds for the State Children's Health Insurance Program and specifies the formula that is to be used to determine an allotment for each State from this total amount, as described under section III of this notice.

II. Purpose of This Notice

We are issuing this notice to provide notification to States, Commonwealths, and Territories of the reserved allotments that will be available to them for FY 1999, and also to provide notification of revised State CHIP reserved allotments for FY 1998 (that were originally published in the **Federal Register** on September 12, 1997), for child health insurance expenditures if they have an approved State child health plan under title XXI of the Act, or to claim an enhanced Federal medical assistance percentage (FMAP) rate for certain CHIP-related Medicaid expenditures under title XIX of the Act. States, Commonwealths, and Territories may submit State child health plans to HCFA for approval, to be effective as early as October 1, 1997. We believe that this notification at the beginning of a fiscal year is necessary to enable States, Commonwealths, and Territories to conduct advance planning and budgeting for title XXI and CHIP-related title XIX programs.

Section 2104(b) of the Act indicates that "the Secretary shall allot to each State * * * with a State child health plan approved under this title." This language requires States to have an approved State child health plan for the fiscal year in order for the Secretary to provide an allotment to that State for that fiscal year. If a State does not have an approved State child health plan for that fiscal year, the amount of that State's reserved allotment could be unavailable to that State and could be allotted to States with approved child health plans.

Pub. L. 105–174, enacted on May 1, 1998, provides that for purposes of the calculation of allotments, a State child health plan approved by HCFA on or after October 1, 1998, and before October 1, 1999, must be treated as having been approved for both FY 1998 and FY 1999. However, a State's allotment for a fiscal year may only be used for CHIP and CHIP-related Medicaid expenditures that are allowable under the approved State child health plan or the Medicaid State plan. Federal financial participation (FFP) would not be available for expenditures made in and claimed for periods before the effective date of the approved State child health plan or the Medicaid State plan.

The reserved allotments for FY 1998 and FY 1999 in this notice were determined by application of the formula specified in title XXI of the Act and described in detail in section III of this notice. Section 707 of the Act Making Appropriations for the

Departments of Labor, Health and Human Services and Education, and Related Agencies for the Fiscal Year ending September 30, 1999, and For Other Purposes ("1999 Appropriations Act"), as enacted by section 101(f) of Pub. L. 105–277, requires that the FY 1999 reserved State CHIP allotments be determined using the same data used in determining the revised FY 1998 State CHIP allotments. The effect of this statutory change is to distribute the total funds available for FY 1999 among the 50 States and the District of Columbia in the same proportions as the total funds were distributed for FY 1998. However, because the total funds available nationally for allotment to the States and the District of Columbia for FY 1999 is $19,950,000 million lower than the total funds available nationally for FY 1998, the actual FY 1999 reserved allotments for each State and the District of Columbia is slightly lower than each State's FY 1998 reserved allotment. Final allotments for each State will be determined in accordance with statutory requirements. We plan to issue a notice of proposed rulemaking as soon as possible on the requirements for the allotment and payment process under title XXI. Although final allotments have not been determined, under section 2105(e) of the Act, we have authority to make ongoing payments based on advance estimates of allowable expenditures. At this time, we intend to make advance payments to States with approved child health plans based on these reserved allotments. Issues related to the allotment and payment process, however, will be open for public comment as part of the rulemaking process.

III. Methodology for Determining Reserved Allotments for States, Commonwealths, and Territories

This notice specifies in Tables I and II under section IV the revised reserved FY 1998 allotments, and the reserved FY 1999 allotments, respectively, that would be available to individual States, Commonwealths, and Territories for child health assistance expenditures under approved State child health plans, assuming that each State, Commonwealth, or Territory qualifies for such an allotment. The reserved FY 1998 allotments were originally published in the **Federal Register** on September 12, 1997. As discussed below, the FY 1998 reserved allotments have been recalculated to reflect the way the Bureau of the Census compiles reported data on the number of low-income children in each State who have no health insurance in the March supplements to the Current Population Survey (CPS), and to incorporate an increase in the title XXI appropriation, applicable only to FY 1998, as enacted by Pub. L. 105–100 on November 19, 1997.

In accordance with section 707 of the 1999 Appropriations Act, as enacted by section 101(f) of Pub. L. 105–277, the FY 1999 allotments contained in this notice were determined using the same data that were used in determining the revised reserved FY 1998 State CHIP allotments.

We have applied the statutory formula specified in section 2104 of the Act in determining the reserved allotments for FY 1998 and FY 1999, as discussed below.

Section 2104(a) of title XXI provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4.295 billion for FY 1998; $4.275 billion for each FY 1999 through 2001; $3.150 billion for each FY 2002 through 2004; $4.050 billion for each FY 2005 through 2006 and $5 billion for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. Furthermore, for FY 1999, an additional $32 million was appropriated for allotment only to the Territories and Commonwealths under section 706 of the 1999 Appropriations Act, as enacted by section 101(f) of Pub. L. 105–277. This newly appropriated $32 million for the Commonwealths and Territories for FY 1999 does not reduce the previous FY 1999 CHIP appropriation ($4.275 billion) and is in addition to 0.25 percent of the total annual appropriated discussed above. The total amounts are allotted to the Commonwealths and the Territories according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Further, under sections 4921 and 4922 of Public Law 105–33, the total allotment available to the 50 States and the District of Columbia is reduced by an additional total of $60,000,000; $30,000,000 each for a special diabetes research program for Type I diabetes and special diabetes programs for Indians. The diabetes programs are funded from FYs 1998 through 2002 only.

Therefore, the total amount of the allotment available for the 50 States and the District of Columbia for FY 1998 and FY 1999 was determined in accordance with the following formula:

$A_{TA} = S_{2104(a)} - T_{2104(c)} - D_{4921} - D_{4922}$

A_{TA} = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in section 2104(a)of the Act. For FY 1998, this is $4,295,000,000. For FY 1999, this is $4,275,000,000.

$T_{2104(c)}$ = Total amount available for allotment for the Commonwealths and Territories; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia.

For FY 1998, this is:

$.0025 \times \$4,295,000,000 = \$10,737,500$

For FY 1999, this is:

$.0025 \times \$4,275,000,000 = \$10,687,500$

D_{4921} = Amount of grant for research regarding Type I Diabetes under section 4921 of Pub. L. 105–33. This is $30,000,000 for FYs 1998 through 2002.

D_{4922} = Amount of grant for diabetes programs for Indians under section 4922 of Pub. L. 105–33. This is $30,000,000 for FYs 1998 through 2002.

For FY 1998, the total amount available for allotment to the 50 States and the District of Columbia is $4,224,262,500. This was determined as follows:

$A_{TA}(\$4,224,262,500) = S_{2104(a)}(\$4,295,000,000) - T_{2104(c)}(\$10,737,500) - D_{4921}(\$30,000,000) - D_{4922}(\$30,000,000)$

For FY 1999, the total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500. This was determined as follows:

$A_{TA}(\$4,204,312,500) = S_{2104(a)}(\$4,275,000,000) - T_{2104(c)}(\$10,687,500) - D_{4921}(\$30,000,000) - D_{4922}(\$30,000,000)$

The total amount available for allotment to the 50 States and the District of Columbia is allotted to each State with a child health plan approved under title XXI based on the formula indicated at section 2104(b)(1) of the Act. The fiscal year allotment for each State with an approved child health plan is determined on the basis of the product of two factors, the Number of Children and the State Cost Factor, for each State divided by the sum of these products over all States.

For FYs 1998 through 2000, the first factor, the Number of Children, is based

only on the total number of low-income, uninsured children in the State with FY 1999 being the only exception, as discussed above. For FY 2001 only, the Number of Children is calculated as the sum of 75 percent of the low-income, uninsured children in the State, and 25 percent of the number of low-income children in the State. For FY 2002 and succeeding years through FY 2007, the Number of Children is calculated as the sum of 50 percent of the low-income, uninsured children in the State, and 50 percent of the number of low-income in the State.

The Number of Children for each State is developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual CPS on these topics. As part of a continuing formal process between HCFA and the Bureau of the Census, each fiscal year HCFA obtains the Number of Children data officially from the Bureau of the Census.

In determining the FY 1998 reserved allotments, as were originally published in the **Federal Register** on September 12, 1997, the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS before the beginning of FY 1998. That is, we used the most recent official data that were available from the Bureau of the Census and Bureau of Labor Statistics, respectively, before September 1, 1997 (that is, through August 31, 1997).

In particular, through August 31, 1997, the only official data available from the Bureau of the Census on the numbers of children were data from the 3 March CPSs conducted in March 1994, 1995, and 1996 that reflected data for the 3 calendar years 1993, 1994, and 1995. In calculating the FY 1998 reserved allotments, we did not use the Bureau of the Census data from the March 1997 CPS because those data were not official and available until a later date, after September 1, 1997. If we waited for the official data available from the Bureau of the Census through September 30, 1997, we would have had to delay publication of the FY 1998 reserved CHIP allotments until after the beginning of FY 1998. Since this was a new program, we believed that for the first year States needed to be able to plan in advance.

HCFA did not modify or adjust the Bureau of Census compilation of CPS data on the number of children. However, HCFA is incorporating a correction made by the Bureau of Census to more accurately reflect underlying reported CPS data. The Bureau of Census recognized that the data collected and reported on the numbers of children in the March Supplements to the CPS were not accurately reflected in the compilation provided to HCFA for the September 12, 1997, calculation of the FY 1998 reserved allotments. In particular, children who had access to services through the Indian Health Service (IHS), but no other health insurance coverage, were identified in the compiled number of children as having health insurance coverage. The Bureau of Census has adjusted the compiled numbers of children to reflect the fact that the data shows that these children do not actually have health insurance coverage. In light of this adjustment to more accurately reflect reported CPS data, we have recalculated and are republishing in this notice the FY 1998 reserved allotments. This is consistent with the express incorporation of this Bureau of Census adjustment into the fiscal year 1999 allotment calculation under Public Law 105–277.

In accordance with section 707 of the 1999 Appropriations Act, as enacted by section 101(f) of Pub. L. 105–277, the FY 1999 reserved allotments are based on the same data as the revised FY 1998 reserved allotments. Specifically, for FY 1999, the Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the 1994, 1995, and 1996 March supplements to the CPS, as adjusted in August 1998. Since the FY 1999 reserved allotments are based on the same data as the revised FY 1998 reserved allotments, the data reflect the updated method for accounting for individuals' access to IHS facilities and services.

The second factor, the State Cost Factor, is based on annual average wages in the health services industry in the State. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such wage data for each State as reported, determined, and provided to HCFA by the Bureau of Labor Statistics (BLS) in the Department of Labor. For the FY 1998 reserved allotments, we used the final State Cost Factor data for each of the most recent 3 years before the beginning of the fiscal year, through August 31, 1997 available from BLS. For the FY 1999 reserved allotments, we used the same final State Cost Factor data available from BLS for 1993, 1994, and 1995, as used in calculating the FY 1998 reserved allotments.

The average of wages per employee for the 50 States and the District of Columbia was calculated by HCFA directly from the State-specific data for each State provided by the BLS. This was necessary because BLS suppressed certain State-specific data in providing HCFA with the State-specific average wages per health services industry employee. BLS is required to suppress such data under the Privacy Act. The State Cost Factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the National average annual wages in the health care industry. In order for such National average to appropriately reflect the State-specific suppressed data, HCFA calculated the National average wages directly from the State-specific data provided by BLS. As part of a continuing formal process between HCFA and the BLS, each fiscal year HCFA will obtain these wage data officially from the BLS.

Under section 2104(b)(4) of the Act each of the 50 States and the District of Columbia will receive a minimum allotment of $2 million. Under this provision, to the extent any State's allotment is increased to $2,000,000 from a lower amount that would otherwise have been allotted to the State, the allotments to other States and the District and Columbia must be reduced in a "pro rata manner" (but not below $2,000,000) so that the total amount available for allotment to all States does not exceed the amount previously available. For FY 1998 and FY 1999, no State's reserved allotment is below $2,000,000; therefore, no pro-rata adjustment was necessary.

Following is an explanation of how HCFA applied the two State-related factors specified in the statute to determine the States' child health plan reserved allotments for FY 1998 and FY 1999. The formula for determining each State's reserved allotment for FY 1998 and FY 1999 of the total available allotment is:

$$SA_i = \frac{(C_i \times SCF_i)}{\sum (C_i \times SCF_i)} \times A_{TA}$$

SA_i = Allotment for a State.

C_i = Number of Children. This is the number of certain low-income children in a State as officially reported, defined, and provided to HCFA by the Bureau of the Census. For FY 1998 and FY 1999, this is the number of children under age 19 with no health insurance whose family income is at or below 200 percent of the poverty line for a family of the same size. (section 2104(b)(2)(B))

SCF_i = The State cost factor for a State (section 2104(b)(1)(A)(ii)). This is equal to:

$.15 + .85 \times (W_i/W_N)$ (section 2104(b)(3)(A)).

W_i = Certain annual average wages per health industry employee for a State.

W_N = Certain annual wages per health industry employee for the 50 States and the District of Columbia.

The annual wages per employee for a State or for all States for a fiscal year is equal to the average of such wages for employees in the health industry, *as reported* by the *Bureau of Labor Statistics* of the Department of Labor.

$\Sigma(C_i \times SCF_i)$ = The sum of the products of $C_i \times SCF_i$ for each State (section 2104(b)(1)(B)).

A_{TA} = Total amount available for allotment to all States for the fiscal year. For FY 1998, this is $4,224,262,500. For FY 1999, this is $4,204,312,500.

Section 2104(e) of the Act requires that the amount of a State's allotment for a fiscal year be available to the State for a total of 3 years, the fiscal year for which the State child health plan is approved and 2 years following. Section 2104(f) of the Act requires the Secretary to establish a process for redistribution of the amounts of States' allotments that are not expended during the 3-year period to States that have fully expended their allotments. HCFA will soon issue a proposed rule that will address the redistribution process and propose to incorporate the process in Federal regulations.

In accordance with section 2104(b) and (c) of the Act, the total allotment for all States for each fiscal year is available to the 50 States and District of Columbia, the Commonwealths, and the Territories. Although the statute precludes the Secretary from making an allotment to a specific State until it has an approved State child health plan, because of the statutory provisions for redistribution of unused amounts of allotments, the availability of allotments for 3 years, and the potential for retroactive effective dates of State child health plans back to October 1, 1997, we believe it is necessary to establish and publish these reserved allotment amounts for each fiscal year so that States can plan appropriately for the operation of their State children's health insurance programs under title XXI, effective as early as October 1, 1997. No payments may be made from these allotments until a State has an approved State child health plan under title XXI.

In developing the reserved allotment amounts for FY 1998 and FY 1999, we applied the following principles, for which we will be inviting public comment during the rulemaking process.

- For each fiscal year for FYs 1998 through 2007, an allotment amount will be reserved for all 50 States and the District of Columbia and for the Commonwealths and Territories, regardless of whether every State, Commonwealth, or Territory has submitted and the Secretary has approved a State child health plan. This will provide States with the flexibility and time to develop their programs and submit their State child health plans.

- The formula for "reserving" an allotment amount for each State will be the same as the formula contained at section 2104(b) of the Act (with the only qualification being for FY 1999, as discussed above). The reserved amount is an estimate of the State's title XXI allotment upon submission and approval of the State's child health plan.

- Under sections 2101(b)(2) and 2105(a) of the Act, no payment of Federal funds from a State's allotment is available for expenditures under a State's title XXI program unless the State has an approved State child health plan. Therefore, States may be at risk for expenditures made under a title XXI child health plan that is submitted, but not yet approved.

Section 706 of the 1999 Appropriations Act, as enacted by section 101(f) of Pub. L. 105–277, provided for FY 1999 only, an additional $32 million available for allotment only to the Commonwealths and Territories. Therefore, the total available allotment to the Commonwealths and Territories in FY 1999 is $42,687,500 (that is, $32,000,000 plus $10,687,500 (.25 percent of the FY 1999 appropriation of $4,275,000,000)).

IV. Table of Reserved State Children's Health Insurance Program Allotments for FY 1998 and FY 1999

KEY TO TABLES I AND II

Column	Description
Column A =	Name of State, Commonwealth, or Territory.
Column B =	Number of Children. The Number of Children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the 1994, 1995, and 1996 March supplements to the Current Population Survey, as adjusted in August 1998. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be not covered by health insurance. The Number of Children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in their annual Current Population Surveys on these topics. For FYs 1998 through 2000, the Number of Children is equal to the number of low-income children in each State with no health insurance for the fiscal year. For FY 2001, the Number of Children is equal to the sum of 75 percent of the number of low-income children in the State with no health insurance and 25 percent of the number of low-income children in the State. This is also based on a 3-year average of Census data. For FY 2002 and succeeding years, the Number of Children is equal to the sum of 50 percent of the number of low-income children in the State with no health insurance and 50 percent of the number of low-income children in the State. This is also based on a 3-year average of Census data.
Column C =	State Cost Factor. The State Cost Factor for a State is equal to the sum of: .15, and .85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State Cost Factor for each State was calculated based on such wage data for each State as reported, determined, and provided to HCFA by the BLS in the Department of Labor for 1993, 1994, and 1995.

KEY TO TABLES I AND II—Continued

Column	Description
Column D =	Product. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States.
Column E =	Percent Share of Total. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the products for all 50 States and the District of Columbia below the Products for each State in Column D.
Column F =	Allotment. This is the State Child Health Program allotment for each State, Commonwealth, or Territory. For each of the 50 States and the District of Columbia, this is determined as the Percent Share of Total in Column E for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year. For each of the Commonwealths and Territories, the allotment is determined as the Percent Share of Total in Column E multiplied by the total amount available for allotment to the Commonwealths and Territories. For the Commonwealths and Territories, the Percent Share of Total in Column E is specified in section 2104(c) of the Act. For FY 1999, the Commonwealth and Territories were allotted an additional $32 million, which is added to the total allotment available to the territories for FY 1999 determined by the formula described above. The total amount is then allotted to the Commonwealths and Territories according to the percentages specified in section 2104 of the Act.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM RESERVED ALLOTMENTS FOR FISCAL YEAR: 1998

State	Number of children (000)	State cost factor	Product	Percent share of totals [3]	Allotment [1]
(A)	(B)	(C)	(D)	(E)	(F)
ALABAMA	154	0.9510	146.46	2.04	$85,975,213
ALASKA	11	1.0669	11.74	0.16	6,889,296
ARIZONA	190	1.0472	198.97	2.76	116,797,799
ARKANSAS	92	0.8871	81.61	1.13	47,907,958
CALIFORNIA	1,281	1.1365	1,455.92	20.23	854,644,807
COLORADO	72	0.9888	71.19	0.99	41,790,547
CONNECTICUT	53	1,1237	59.55	0.83	34,959,075
DELAWARE	13	1.0553	13.72	0.19	8,053,463
DISTRICT OF COLUMBIA	16	1.2857	20.57	0.29	12,076,002
FLORIDA	444	1.0368	460.32	6.40	270,214,724
GEORGIA	214	0.9923	212.36	2.95	124,660,136
HAWAII	13	1.1722	15.24	0.21	8,945,304
IDAHO	31	0.8726	27.05	0.38	15,879,707
ILLINOIS	211	0.9892	208.73	2.90	122,528,573
INDIANA	131	0.9169	120.12	1.67	70,512,432
IOWA	67	0.8253	55.30	0.77	32,460,463
KANSAS	60	0.8704	52.22	0.73	30,656,520
KENTUCKY	93	0.9146	85.06	1.18	49,932,527
LOUISIANA	194	0.8934	173.31	2.41	101,736,841
MAINE	24	0.8863	21.27	0.30	12,486,977
MARYLAND	100	1.0498	104.98	1.46	61,627,358
MASSACHSETTS	69	1.0576	72.97	1.01	42,836,231
MICHIGAN	156	1.0001	156.02	2.17	91,585,508
MINNESOTA	50	0.9675	48.37	0.67	28,395,980
MISSISSIPPI	110	0.8675	95.43	1.33	56,017,103
MISSOURI	97	0.9075	88.03	1.22	51,673,123
MONTANA	24	0.8333	20.00	0.28	11,740,395
NEBRASKA	30	0.8440	25.32	0.35	14,862,926
NEVADA	43	1.2046	51.80	0.72	30,407,067
NEW HAMPSHIRE	20	0.9760	19.52	0.27	11,458,404
NEW JERSEY	134	1.1241	150.62	2.09	88,417,899
NEW MEXICO	117	0.9169	107.28	1.49	62,972,705
NEW YORK	399	1.0914	435.47	6.05	255,626,409
NORTH CAROLINA	138	0.9815	135.45	1.88	79,508,462
NORTH DAKOTA	10	0.8587	8.59	0.12	5,040,741
OHIO	205	0.9617	197.16	2.74	115,734,364
OKLAHOMA	170	0.8588	145.99	2.03	85,699,061
OREGON	67	0.9947	66.65	0.93	39,121,663
PENNSYLVANIA	200	1.0005	200.9	2.78	117,456,521
RHODE ISLAND	19	0.9580	18.20	0.25	10,684,422
SOUTH CAROLINA	110	0.9843	108.27	1.50	63,557,819
SOUTH DAKOTA	17	0.8559	14.55	0.20	8,541,224
TENNESSEE	115	0.9799	112.69	1.57	66,153,082
TEXAS	1,031	0.9275	956.25	13.29	561,331,521

STATE CHILDREN'S HEALTH INSURANCE PROGRAM RESERVED ALLOTMENTS FOR FISCAL YEAR: 1998—Continued

State (A)	Number of children (000) (B)	State cost factor (C)	Product (D)	Percent share of totals [3] (E)	Allotment [1] (F)
UTAH	46	0.8977	41.30	0.57	24,241,159
VERMONT	7	0.8604	6.02	0.08	3,535,445
VIRGINIA	118	0.9862	116.38	1.62	68,314,915
WASHINGTON	85	0.9352	79.49	1.10	46,661,213
WEST VIRGINIA	45	0.8937	40.21	0.56	23,606,744
WISCONSIN	75	0.9229	69.22	0.96	40,633,039
WYOMING	15	0.9858	13.14	0.18	7,711,638
TOTAL STATES ONLY	.....	.....	7,196.17	100.00	4,224,262,500
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES [2]					
PUERTO RICO	.....	.....	.....	91.60	9,835,550
GUAM	.....	.....	.....	3.50	375,813
VIRGIN ISLANDS	.....	.....	.....	2.60	279,175
AMERICA SAMOA	.....	.....	.....	1.20	128,850
N. MARIANA ISLANDS	.....	.....	.....	1.10	118.113
TOTAL COMMONWEALTHS AND TERRITORIES ONLY	.....	.....	.....	100.00	10,737,500
TOTAL STATES AND COMMONWEALTH AND TERRITORIES	.....	.....	.....	.....	4,235,000,000

Footnotes:

(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,224,262,500; determined as the fiscal year appropriation ($4,295,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories ($10,737,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA.

(2) Total amount available for allotment to the Commonwealths and Territories is $10,737,500; determined as .25 percent of the fiscal year appropriation ($4,295,000,000).

(3) Percent share of total amount for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act.

STATE CHILDREN'S HEALTH INSURANCE PROGRAM RESERVED ALLOTMENTS FOR FISCAL YEAR: 1999

State (A)	Number of children (000) (B)	State cost factor (C)	Product (D)	Percent share of total [3] (E)	Allotment [1] (F)
ALABAMA	154	0.9510	146.46	2.04	$85,569,176
ALASKA	11	1.0669	11.74	0.16	6,856,760
ARIZONA	190	1.0472	198.97	2.76	116,246,196
ARKANSAS	92	0.8871	81.61	1.13	47,681,702
CALIFORNIA	1,281	1.1365	1,455.92	20.23	850,608,561
COLORADO	72	0.9888	71.19	0.99	41,593,182
CONNECTICUT	53	1.1237	59.55	0.83	34,793,973
DELAWARE	13	1.0553	13.72	0.19	8,015,429
DISTRICT OF COLUMBIA	16	1.2857	20.57	0.29	12,018,971
FLORIDA	444	1.0368	460.32	6.40	268,938,576
GEORGIA	214	0.9923	212.36	2.95	124,071,402
HAWAII	13	1.1722	15.24	0.21	8,903,057
IDAHO	31	0.8726	27.05	0.38	15,804,712
ILLINOIS	211	0.9892	208.73	2.90	121,949,905
INDIANA	131	0.9169	120.12	1.67	70,179,422
IOWA	67	0.8253	55.30	0.77	32,307,161
KANSAS	60	0.8704	52.22	0.73	30,511,738
KENTUCKY	93	0.9146	85.06	1.18	49,696,709
LOUISIANA	194	0.8934	173.31	2.41	101,256,366
MAINE	24	0.8863	21.27	0.30	12,428,004
MARYLAND	100	1.0498	104.98	1.46	61,363,309
MASSACHUSETTS	69	1.0576	72.97	1.01	42,633,928
MICHIGAN	156	1.0001	156.02	2.17	91,152,976
MINNESOTA	50	0.9675	48.37	0.67	28,261,873
MISSISSIPPI	110	0.8675	95.43	1.33	55,752,550
MISSOURI	97	0.9075	88.03	1.22	51,429,086
MONTANA	24	0.8333	20.00	0.28	11,684,948
NEBRASKA	30	0.8440	25.32	0.35	14,792,733
NEVADA	43	1.2046	51.80	0.72	30,263,463
NEW HAMPSHIRE	20	0.9760	19.52	0.27	11,404,289
NEW JERSEY	134	1.1241	150.62	2.09	88,000,326

STATE CHILDREN'S HEALTH INSURANCE PROGRAM RESERVED ALLOTMENTS FOR FISCAL YEAR: 1999—Continued

State	Number of children (000)	State cost factor	Product	Percent share of total [3]	Allotment [1]
(A)	(B)	(C)	(D)	(E)	(F)
NEW MEXICO	117	0.9169	107.28	1.49	62,675,303
NEW YORK	399	1.0914	435.47	6.05	254,419,158
NORTH CAROLINA	138	0.9815	135.45	1.88	79,132,966
NORTH DAKOTA	10	0.8587	8.59	0.12	5,016,935
OHIO	205	0.9617	197.16	2.74	115,187,783
OKLAHOMA	170	0.8588	145.99	2.03	85,294,328
OREGON	67	0.9947	66.65	0.93	38,936,902
PENNSYLVANIA	200	1.0005	200.09	2.78	116,901,807
RHODE ISLAND	19	0.9580	18.20	0.25	10,633,962
SOUTH CAROLINA	110	0.9843	108.27	1.50	63,257,653
SOUTH DAKOTA	17	0.8559	14.55	0.20	8,500,886
TENNESSEE	115	0.9799	112.69	1.57	65,840,660
TEXAS	1,031	0.9275	956.25	13.29	558,680,510
UTAH	46	0.8977	41.30	0.57	24,126,675
VERMONT	7	0.8604	6.02	0.08	3,518,748
VIRGINIA	118	0.9862	116.38	1.62	67,992,282
WASHINGTON	85	0.9352	79.49	1.10	46,440,845
WEST VIRGINIA	45	0.8937	40.21	0.56	23,495,256
WISCONSIN	75	0.9229	69.22	0.96	40,441,141
WYOMING	15	0.8758	13.14	0.18	7,675,218
TOTAL STATES ONLY	.....	.....	7,196.17	100.00	4,204,312,500
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES: [2]					
PUERTO RICO	.....	.....	.....	91.60	39,101,750
GUAM	.....	.....	.....	3.50	1,494,063
VIRGIN ISLANDS	.....	.....	.....	2.60	1,109,875
AMERICAN SAMOA	.....	.....	.....	1.20	512,250
N. MARIANA ISLANDS	.....	.....	.....	1.10	469,563
TOTAL COMMONWEALTHS AND TERRITORIES ONLY	.....	.....	.....	100.00	42,687,500
TOTAL STATES AND COMMONWEALTH AND TERRITORIES	.....	.....	.....	.....	4,247,000,000

Footnotes:

(1) Total amount available for allotment to the 50 States and the District of Columbia is $4,204,312,500; determined as the fiscal year appropriation ($4,275,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories ($10,687,500) and amounts for Special Diabetes Grants ($60,000,000) under sections 4921 and 4922 of BBA.

(2) Total amount available for allotment to the Commonwealths and Territories is $42,687,500; determined as $10,687,500 (.25 percent of $4,275,000,000, the fiscal year appropriation) plus $32,000,000.

(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Social Security Act.

V. Impact Statement

HCFA has examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order.

This notice merely provides notification of the reserved FY 1998 and FY 1999 State CHIP allotments available to provide Federal funding to individual States, Commonwealths, and Territories for expenditures in the new Children's Health Insurance Program and the assumption and methodology that HCFA used to determine these reserved allotments. The formula for State allotments is specified in the statute. This notice by itself has no economic impact. Final State CHIP allotments for each State will be calculated using the statutory formula and may vary from these reserved amounts depending upon the number of States that submit approved State plans under title XXI. (As noted above, the allotment process will be set forth in more detail in future rulemaking.)

We believe this notice will have an overall positive impact by informing States of the extent to which they will be permitted to expend funds under approved State child health plans in FY 1998 and FY 1999. States will be able to conduct advance planning necessary for implementation of the State Child Health Insurance Program if they choose, beginning October 1, 1997.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302)

(Catalog of Federal Domestic Assistance Program No. 00.000, State Children's Health Insurance Program)

Dated: December 18, 1998.

Nancy Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: January 5, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–2859 Filed 2–5–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b)(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular Sciences Initial Review Group Hematology Subcommittee 1.
Date: February 11–12, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, Bethesda, MD 20814.
Contact Person: Robert Su, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Tropical Medicine and Parasitology Study Section.
Date: February 11–12, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.
Contact Person: Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Health Promotion and Disease Prevention Initial Review Group, Alcohol and Toxicology Subcommittee 1.
Date: February 11–12, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Washington Monarch Hotel, 2401 M Street, NW, Washington, DC 20037.
Contact Person: Christine Melchior, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, (301) 435–1713.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Human Embryology and Development Subcommittee 2.
Date: February 11–12, 1999.
Time: 8:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Sherry L. Dupere, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5136, MSC 7840, Bethesda, MD 20892, (301) 435–1021.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Development and Function Initial Review Group, Molecular Biology Study Section.
Date: Febuary 11–12, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: St. James Hotel, 950 24th Street N.W., Washington, DC 20037.
Contact Person: Anthony Cater, Scientific Review Administrartor, Center for Scientific Review, National Insititutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 435–1024.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genetic Sciences Initial Review Group, Mammalian Genetics Study Section.
Date: February 11–12, 1999.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.
Contact Person: Camilla Day, Scientific Review Administrator, Center or Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037, dayc@drg.nih.gov
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Social Sciences Initial Review Group, Human Development and Aging Subcommittee 1.
Date: February 11–12, 1999.
Time: 9:00 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Chevy Chase Pavilion, 4300 Military Road, NW, Washinton, DC 20015.
Contact Person: Anita Miller-Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room, 5202, MSC 7848, Bethesda, MD 20892, (301) 435–1260.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 11, 1999.
Time: 10:00 am to 12:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel B. Berch, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Initial Review Group, Bacteriology and Mycology Subcommittee 2.
Date: February 11–12, 1999.
Time: 8:30 am to 5:00 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chevy Chase, MD 20815.
Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, (301) 435–1148.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 11, 1999.
Time: 12:30 pm to 1:30 pm.
Agenda: To review and evaluate grant applications.
Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.
Contact Person: Carole L. Jelsema, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsema@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: February 15, 1999.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Lee Rosen, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93–846–93.878, 93–892, 93.893, National Institutes of Health, HHS)

Dated: February 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3002 Filed 2–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 16, 1999.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate contract proposals.

Place: 7550 Wisconsin Avenue, Federal Building, Room 9C10, Bethesda, MD 20814–9692 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes, of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 18, 1999.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20814–9692 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: February 25, 1999.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate contract proposals.

Place: 7550 Wisconsin Avenue, Federal Building, Room 9C10, Bethesda, MD 20814–9692 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NINDS, National Institutes of Health, PHS, DHHS, Federal Building, Room 9C10, 7550 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: February 2, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3001 Filed 2–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, NIEHS Special Emphasis Panel—Environmental Justice: Partnerships for Communication.

Date: February 17–19, 1999.

Time: February 17, 1999, 7:00 p.m to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

Time: February 18, 1999, 8:30 am to 5:00 p.m.

Agenda: to review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

Time: February 19, 1999, 8:30 am to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27712.

Contact Person: David Brown, MPH, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazards Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: February 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3003 Filed 2–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.

Date: March 4–5, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Kesinee Nimit, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857 (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

Date: March 4, 1999.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Marina L. Volkov, Special Assistant, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–22, Rockville, MD 20857, (301) 443–9042.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Training and Career Development.

Date: March 16–18, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gathersburg Marriott Washington Center, 9751 Washingtonian Boulevard, Gaithersburgh, MD 20878.

Contact Person: Mark Swieter, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientists Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–3004 Filed 2–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Services

National Toxicology Program; Meeting of the Advisory Committee on Alternative Toxicological Methods

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to a meeting of the National Toxicology Program (NTP) Advisory Committee on Alternative Toxicological Methods, U.S. Public Health Service. The meeting will be held from 8:45 a.m. to 4:00 p.m. on March 4, 1999 in the Conference Center, Building 101, South Campus, NIEHS, 111 Alexander Drive, Research Triangle Park, North Carolina 27709. The meeting will be entirely open to the public from 8:45 a.m. to adjournment with attendance limited only by space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations should notify the contact person listed below in advance of the meeting.

Background

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services has established an Advisory Committee on Alternative Toxicological Methods. The Committee functions to provide advice on the activities and priorities of the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (Center) and the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), and to provide advice on ways to foster partnership activities and productive interactions among all stakeholders. The Advisory Committee is composed of knowledgeable representatives drawn from academia, industry, public interest organizations, other state and Federal agencies, and the international community.

The National Toxicology Program established the Center and ICCVAM to fulfill specific mandates provided to the National Institute of Environmental Health Sciences by Public Law 103–43, Section 1301. The NIEHS was directed to (1) develop and validate toxicological testing methods, including alternative methods that can reduce or eliminate the use of animals in acute or chronic toxicity testing, (2) establish criteria for the validation and regulatory acceptance of alternative testing methods, and (3) recommend a process through which scientifically validated alternative methods can be accepted for regulatory use. Criteria and processes for validation and regulatory acceptance were developed in conjunction with 14 other Federal agencies and programs with broad input from the public. These are described in the document "Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the Ad Hoc Interagency Coordinating Committee on the Validation of Alternative Methods" NIH publication 97–3981, March 1997, which is available on the internet at http://ntp-server.niehs.nih.gov /htdocs/ICCVAM/ICCVAM/html. or by request to the Center at the address provided below.

A standing Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) was subsequently established as a collaborative effort by NIEHS and 13 other Federal regulatory and research agencies and programs. The ICCVAM facilitates cross-agency communication and coordination on issues relating to validation, acceptance, and national/international harmonization of toxicological test methods. The ICCVAM works with the Center to carry out the scientific review of proposed methods of multi-agency interest, and provides recommendations regarding their usefulness to appropriate agencies. The ICCVAM also provides a mechanism for interagency communication with stakeholders throughout the process of test method development and validation. The following Federal regulatory and research agencies and organizations are participating in this effort:

Consumer Product Safety Commission
Department of Defense
Department of Energy
Department of Health and Human Services
- Agency for Toxic Substances and Disease Registry
- Food and Drug Administration
- National Institute for Occupational Safety and Health/CDC
- National Institutes of Health
- National Cancer Institute
- National Institute of Environmental Health Sciences
- National Library of Medicine

Department of the Interior
Department of Labor
- Occupational Safety and Health Administration

Department of Transportation
- Research and Special Programs Administration

Environmental Protection Agency

The Center was established to provide operational support for the ICCVAM

and to assist Federal Agencies by coordinating and facilitating (1) the interagency review and adoption of toxicological test methods of multi-agency interest and (2) the participation and communication with other stakeholders throughout the process of test method development and validation. The Center organizes, in collaboration with ICCVAM, independent scientific peer reviews and workshops for test methods of interest to Federal agencies. Peer review panels are convened to develop scientific consensus on the usefulness of test methods to generate information for specific human health and/or ecological risk assessment purposes. Expert workshops are convened to evaluate the adequacy of current test methods for assessing specific toxicities, to identify areas in need of improved or new methods, to evaluate proposed validation studies, and to evaluate the validation status of methods. The center provides an opportunity for partnerships with other agencies and organizations to facilitate the development, validation, and review of alternative testing methods. The Center and ICCVAM seek to promote the scientific validation and regulatory acceptance of toxicological test methods that will enhance agencies' ability to assess risks and make decisions, and that will refine, reduce, and replace animal use whenever possible. The Center Office is located at NIEHS and can be contacted by telephone 919–541–3398, fax 919–541–0947, or email, iccvam@niehs.nih.gov.

Agenda

The primary agenda topics are concerned with presentations and discussions relating to processes, priorities, and recent and proposed activities of the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods and the Interagency Coordinating Committee on the Validation of Alternative Methods. Specific agenda topics will include discussion of the outcome of the Corrositex® test method peer review meeting previously convened on January 21, 1999; an update and discussion of the peer review meeting report and regulatory acceptance process for the murine local lymph node assay (LLNA) test method; an update on the status of the EPA and OECD plans for validation of endocrine disruptor screening and testing methods; and plans for future test method workshops and reviews.

The Executive Secretary, Dr. Larry Hart, Environmental Toxicology Program, P.O. Box 12233, NIEHS, Research Triangle Park, North Carolina 27709, telephone (919) 541–3971, FAX (919) 541–0295, will have available an agenda with times and a roster of Committee members prior to the meeting and summary minutes subsequent to the meeting.

Dated: January 29, 1999.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 99–3005 Filed 2–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

Applicant: Mr. John Paul D. Atkins, Baltimore, Maryland, PRT–TE007663–0

The applicant requests authorization to take (live capture and handle) two federally listed bats: the Indiana bat (*Myotis sodalis*), and the gray bat (*Myotis grisescens*), throughout the State of Maryland.

Written data or comments should be submitted to the Regional Permits Coordinator, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035 and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice. U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Permits Coordinator. Telephone: 413–253–8628; Fax: 413–253–8482.

Dated: February 2, 1999.

Ralph C. Pisapia,

Assistant Regional Director, Ecological Services.

[FR Doc. 99–2903 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Omaha Tribe of Nebraska and the State of Iowa Gaming Compact, which was executed on December 10, 1998.

DATES: This action is effective on February 8, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 27, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–2912 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–060–09–3800–00, UTU–72499]

Notice of Final Decision; Lisbon Valley Copper Project, San Juan County, UT

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of final decision prepared for Summo USA Corporations's Lisbon Valley Open Pit Copper Mine in San Juan County, Utah.

SUMMARY: Interior Board of Land Appeals (Board) decision dated September 23, 1998 (*National Wildlife Federation, et. al.*, 145 IBLA 348), affirmed in part the Bureau of Land Management's (BLM) Record of Decision (ROD) of March 26, 1997, approving the Lisbon Valley Copper Project, but set aside and remanded in part a section of that decision dealing with analysis of a backfill alternative for that project.

In that decision, the Board concluded that the record did not support BLM's rejection of the Open Pit Backfilling

Alternative in the ROD based on concerns for impacts on water quality from acid generating material. The Board further recognized that while concerns regarding impacts from alkaline conditions may be legitimate, those concerns were not sufficiently stated in the ROD or the Final Environmental Impact Statement (FEIS) so as to serve as the principal basis for complete rejection of the alternative (145 IBLA at 374). The Board remanded that portion of the ROD and directed BLM to reconsider the backfill alternative.

The BLM has conducted the analysis directed by the Board, summarized in a memorandum dated January 25, 1999, from the Moab Field Office to the Utah State Director. While the FEIS and ROD contained analyses of multiple complex geochemical and geohydrologic technical issues, the re-analysis of data summarized in this memorandum confirmed BLM's concerns expressed in the FEIS and ROD that potential alkaline conditions in the post-mining pit lakes could mobilize and transport metal oxyanions from mine waste material utilized as pit backfill material into underlying groundwater at the mine site. The data indicates that such mobilization and transport has a significant likelihood of adversely impacting groundwater quality and violating acceptable water quality standards.

As reflected in the FEIS and ROD, the BLM retains the authority to further analyze backfilling if the results of required life-of-the-mine waste rock sampling and hydrologic testing reveals additional adverse impacts not foreseen or predicted in the EIS, and/or indicates that the potential impact of metal oxyanion mobilization and transport associated with backfilling is overestimated. Any additional consideration of backfilling, and potential changes in environmental consequences resulting from such action, would be subject to additional analysis under provisions of the National Environmental Policy Act.

Based on the re-analysis of data as directed by IBLA and the conclusion that BLM's rationale for rejecting the backfill alternative was sound and reasoned, BLM has determined that no modifications or changes are required in the ROD. Furthermore, since none of the data or additional analyses performed to date identify environmental impacts not previously identified in the FEIS, no additional analysis is warranted under provisions of the National Environmental Policy Act.

This Notice of Final Decision is BLM's final decision regarding the approval of the Lisbon Valley Copper Project pursuant to direction given by the Board in its September 23, 1998, decision, to reconsider the Backfill Alternative. The Moab Field Office memorandum of January 25, 1999, is available at the Moab Field Office of the BLM at 82 East Dogwood, Moab, Utah 84532, (435–259–6111).

DATES: Parties adversely affected by this Notice of Final Decision have until March 10, 1999, to file a Notice of Appeal (43 CFR 4.411 and 4.413). The decision to approve the mining operation in relation to the original decision regarding rejection of the Open Pit Backfill Alternative is in full force and effect, effective on the date of this publication of the Notice of Availability of the Record of Decision (43 CFR 3809.4(f). A petition for a stay of the decision may be filed in accordance with the above cited regulations.

ADDRESSES: A Notice of Appeal should be addressed to: Bill Lamb, Utah State Director, Bureau of Land Management, PO Box 45155, 324 South State Street, Room 301, Salt Lake City, Utah, 84111.

FOR FURTHER INFORMATION CONTACT: Lynn Jackson, Project Coordinator, Moab Field Office, Bureau of Land Management, 82 East Dogwood Avenue, Moab, Utah, 84532, (435) 259–6111.

Dated: February 1, 1999.

Brad Palmer,

Associate Moab Field Office Manager, Bureau of Land Management.

[FR Doc. 99–2856 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–09–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet at Ridgway State Park, Colorado.

DATES: The meeting will be held on Thursday, March 11, 1999.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov.

SUPPLEMENTARY INFORMATION: The March 11, 1999, meeting will begin at 9:00 a.m. at Ridgway State Park Headquarters (Dutch Charlie entrance)approximately 21 miles south of Montrose or five miles north of Ridgway on U.S. Highway 550. The agenda will include discussions on Colorado water rights and the Black Canyon National Monument's reserved water right, and an update on the North Fork Coal EIS. Public comment is scheduled for 1:00 p.m.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Southwest Center Manager.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the Internet at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: January 29, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–2943 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–200–09–1020–00]

Science Advisory Board; Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Land Management (BLM) announces a public meeting of the Science Advisory Board to examine the use of science for improving the management of the Nation's public land and resources. Topics of discussion will include the BLM's National Applied Resource Sciences Center, research needs for integrated weed management, and research associated with population management of wild horses and burros.

DATES: BLM will hold the public meeting on Thursday, March 4, 1999, from 11 am to 5 pm, local time.

ADDRESSES: BLM will hold the public meeting in the Nevada Room C–204 of the Bureau of Land Management's National Training Center (NTC), 9828 N

31st Avenue, Phoenix, Arizona. Receptionist, (602) 906–5500.

FOR FURTHER INFORMATION CONTACT: Christine Jauhola, Bureau of Land Management, 1849 C Street, NW, LSB–204, Washington, DC 20240, (202) 452–7761.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463).

I. The Agenda for the Public Meeting Is as Follows

11:00 am Welcome, introductions
Review Minutes of Previous Meeting
Report from Deputy Assistant Secretary for Land and Minerals Management (Acting)
11:30 am Report from the Bureau of Land Management
12:00 Noon Wild Horse and Burro Advisory Committee
Immuno-contraceptive Study
Population modeling for genetic viability
1:00 pm Lunch
1:30 pm National Applied Resource Sciences Center
2:30 pm Research Needs Review and Budget Process
3:30 pm Science Needs for Integrated Weeds Management
4:30 pm Public Comments
4:45 pm Next Meeting and Other Items
5:00 pm Adjourn

II. Public Comment Procedures

Participation in the public meeting is not a prerequisite for submittal of written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. BLM appreciates any and all comments, but those most useful and likely to influence decisions on BLM's use of science are those that are either supported by quantitative information or studies or those that include citations to and analyses of applicable laws and regulations. Except for comments provided in electronic format, commenters should submit two copies of their written comments, where practicable. BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information ACT (FOIA) for a copy of your comments, we intend to make them available in their entirety, including your name and address (or your e-mail address if you file electronically]. However, if you do not want us to release your name and address (or e-mail address) in response to a FOIA request, you must state this prominently at the beginning of your comment. We will honor your wish to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations of businesses, will be released in their entirety, including names and addresses (or e-mail addresses).

Electronic Access and Filing Address: Commenters may transmit comments electronically via the Internet to: cjauhola@wo.blm.gov. Please include the identifier "Science3" in the subject of your message and your name and address in the body of your message.

III. Accessibility

The meeting sites are accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the hearing, such as interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled hearing date. Although BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dated: February 2, 1999.

Christine A. Jauhola,

Group Manager, Fish, Wildlife and Forest Group.

[FR Doc. 99–2871 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–00; NMNM 96531 & NMNM 98501]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action; R&PP Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico, has been examined and found suitable for classification for conveyance to the City of Sunland Park, New Mexico, and the Catholic Diocese of Las Cruces, New Mexico, under the provisions of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). Sunland Park has made application to acquire 138.88 acres (Parcel 1) of public land to be used for recreational purposes. The Catholic Diocese of Las Cruces has made application to acquire 67.10 acres (Parcel 2) of public land to maintain an existing path that leads to a religious shrine, develop rest stops and picnic areas, add shrines/prayer stops, and preserve the remaining pristine qualities of the area.

Parcel 1

T. 29 S., R. 4 E., NMPM
Sec. 17, Lots 6 to 9, inclusive, W½E½NE¼, SW¼NE¼.
Containing 138.88 acres, more or less.

Parcel 2

T. 29 S., R. 4 E., NMPM
Sec. 16, S½NW¼NW¼;
Sec. 17, Lot 7, E½E½NE¼.
Containing 67.60 acres, more or less.

The land is difficult and uneconomic to manage and is not required for any other Federal purpose. The classification and subsequent conveyance is consistent with the Las Cruces Field Office's Mimbres Resource Management Plan of December, 1993, and would be in the public interest.

DATES: Comments regarding the proposed lease/conveyance or classification must be submitted on or before March 29, 1999.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Juan Padilla, at the address above or at (505) 525–4376.

SUPPLEMENTARY INFORMATION: The patents when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under application of law and such regulations as the Secretary may prescribe.

4. The conveyance will be subject to all valid rights and reservations of record. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act and leasing under the mineral

leasing laws. The segregative effect will terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever comes first.

Detailed information concerning this action is available for review at the BLM, Las Cruces Field Office. On or before March 29, 1999, interested persons may submit comments regarding the proposed classification or conveyance of the land to the Field Office Manager, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico, 88005. The land would not be offered for conveyance for at least 60 days after the date of publication of this Notice in the **Federal Register**.

Classification Comments.

Interested parties may submit comments involving the suitability of the land for the purposes described above. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the purposes described above. Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right to appeal to the Interior Board of Land Appeals.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Dated: February 2, 1999.

Linda S.C. Rundell,

Field Manager, Las Cruces.

[FR Doc. 99–2906 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Extension for the Spruce Creek Access Proposal, Draft Environmental Impact Statement, Denali National Park and Preserve, Alaska

SUMMARY: The National Park Service (NPS) is preparing an environmental impact statement (EIS) to evaluate an application for access to a private inholding on Spruce Creek in the Kantishna Hills of Denali National Park and Preserve, as announced in the **Federal Register**/Vol. 63, No. 53/ Thursday, March 19, 1998. The owner of the inholding submitted an application for the right-of-way pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), Title XI, Section 1110(b) and the implementing regulations at 43 CFR Part 36. The application states that the right-of-way would provide access in the form of a road and airstrip for the inholder to construct and operate a remote backcountry lodge. On January 7, 1998, the NPS accepted an application for access to a 20-acre parcel on Spruce Creek. The applicants amended the request for access on January 26, 1998, to request a revised location of an airstrip.

The NPS provided notice on Tuesday, October 6, 1998 (FR/ Vol. 63, No. 193) stating an additional three months was needed to complete the draft EIS, and extended the release date from October 26, 1998 to January 26, 1999. The applicants continue to modify and clarify the project proposal. The NPS needs additional time to analyze these modifications and clarifications. The NPS also requires an extension to otherwise complete the EIS. For these reasons, the NPS is extending the previous proposed dates of publication and distribution of the draft EIS by approximately three months.

DATES: The draft EIS will be available for public review on or about April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen P. Martin, Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, Alaska 99755. Telephone (907) 683–2294.

Robert D. Barbee,

Regional Director, Alaska Region.

[FR Doc. 99–2881 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Denali National Park and Preserve and the Chairperson of the Denali Subsistence Resource Commission announce a forthcoming meeting of the Denali National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order by the Chair.
(2) Roll call and confirmation of quorum.
(3) Superintendent's welcome and introductions.
(4) Approval of minutes of last meeting.
(5) Additions and corrections to the agenda.
(6) New Business:
  a. Annual SRC Chair's meeting update.
  b. Federal subsistence program update.
  c. Review hunting regulation proposals, FY99–00
  d. Temporary snowmachine closure; former Mt. McKinley Park.
  e. Agency reports and wildlife updates.
(7) Old Business:
  a. Final draft Subsistence User Guide.
  b. Draft Denali Subsistence Management Plan.
  c. Spruce Four access EIS, subsistence review.
(8) Public and other agency comments.
(9) Set time and place of next SRC meeting.
(10) Adjournment.

DATES: The meeting date is: Friday, February 26, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting location is: North Star Inn, Conference Room, Healy, Alaska.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence Coordinator, Denali National Park, P.O. Box 9, Denali Park, Alaska 99755. Phone (907) 683–9544.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Deputy Regional Director.

[FR Doc. 99–2880 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Adaptive Management Work Group (AMWG) on September 10, 1997. The TWG members were named by the members of the AMWG and provide advice and information to the AMWG to act upon. The AMWG uses this information to form recommendations to the Secretary of the Interior (Secretary) for guidance of the Grand Canyon Monitoring and Research Center science program and other direction as requested by the Secretary. All meetings are open to the public; however, seating is limited and is available on a first come, first served basis.

Dates and Location: The TWG public meeting will be held on the following dates and location:

Phoenix, Arizona—February 23–24, 1999. The meeting will begin at 10:00 a.m. and conclude at 4:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 4:00 p.m. on the second day. The two-day meeting will be held at the Arizona Department of Water Resources, 500 North 3rd Street, Phoenix, Arizona.

Agenda: The purpose of the meeting is to review the Fiscal Year 2000 Annual Plan for the Grand Canyon Monitoring and Research Center.

Time will be allowed on the agenda for any organization or individual wishing to make formal oral comments (limited to 10 minutes) at the meeting, but written notice must be provided to Mr.. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the TWG members at the meeting.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, telephone (801) 524–3702, faxogram (801) 524–5499, E-mail at: bmoore@uc.usbr.gov.

Dated: February 3, 1999.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 99–2969 Filed 2–5–99; 8:45 am]

BILLING CODE 4310–94–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–026]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that GeoTech Chemical Company, Inc. of Tallmadge, Ohio has requested an exclusive license to practice the invention described and claimed in NASA Case No. KSC–11940, entitled "Conducting Compositions of Matter," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this notice must be received by April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Beth A. Vrioni, Patent Counsel, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899; telephone (407) 867–6225.

Dated: February 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–2849 Filed 2–5–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–025]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that GeoTech Chemical Company, Inc. of Tallmadge, Ohio has requested an exclusive license to practice the invention described and claimed in U.S. Patent No. 5,658,649, entitled "Corrosion Resistant Coating," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to John F. Kennedy Space Center.

DATES: Responses to this notice must be received by April 9, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Beth A. Vrioni, Patent Counsel, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899; telephone (407) 867–6225.

Dated: February 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–2850 Filed 2–5–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (No. 1189).

Date and Time: February 23, 1999; 8:00 am–5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 370 & 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Janice M. Jenkins and Sohi Rastegar, Program Directors, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–2841 Filed 2–5–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194).

Date and Time: February 18 and 19, 1999, 8:30 a.m.–5:00 p.m.

Place: Room #320 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: G. Patrick Johnson, Program Manager, Small Business Office, (703) 306–1395; National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation's SBIR Program.

Agenda: To review and evaluate SBIR Phase II proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–2836 Filed 2–5–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacturing, and Industrial Innovation, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Design, Manufacturing, and Industrial Innovation (1194).

Date and Time: February 16 and 22, 1999.

Place: Room 360, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Darryl Gorman, Program Manager, Small Business Innovation Research and Small Business Technology Transfer Programs, Room 550, Division of Design, Manufacturing, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, VA 22230, Telephone (703) 306–1395.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–2840 Filed 2–5–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: February 22, 1999, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. A. James Hicks & Dr. Victor Santiago, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1632.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for Continuation of financial support.

Agenda: Review for the Louis Stokes Alliances for Minority Participation Reverse Site Visit.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1999.

Linda Allen-Benton,

Acting Division Director, Division of Human Resource Management.

[FR Doc. 99–2837 Filed 2–5–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panels in Materials Research (1203).

Date & Time: February 15, 16, 17, and 19; 8:00 am–5:00 pm.

Place: Room 1060, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Liselotte J. Schioler, Program Director, Division of Materials Research, Room 1065.41, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1836.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Ceramics Programs as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the government in the Sunshine Act.

Dated: February 2, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–2835 Filed 2–5–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: February 22–24, 1999; 8:30 am—5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Rm. 1020.

Type of Meeting: Closed.

Contact Person: Dr. Winston Roberts, Program Director for Theoretical Physics, Division of Physics, Rm. 1015; Telephone: 306–1890.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Theoretical Physics Mathematics Program at NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt

under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–2839 Filed 2–5–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1160).

Date and Time: February 17–19, 1999.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22330, Room 340.

Type of Meeting: Part-Open.

Contact Persons: Dr. Zoe Eppley or Dr. Kim Williams, Program Directors, Ecological and Evoluationary Physiology, or Dr. Penny Kukuk, Program Director, Animal Behavior, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open Session: February 19, 1999, 10 am–11 am—discussion on research trends, opportunities and assessment procedures in Physiology and Ethology.

Closed Session: February 17, 1999, 8:30 am–5:00 pm, February 18, 1999, 8:30 am–6:00 pm, February 19, 1999, 8:30 am–10am and 11 am–5:00 pm.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under the 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–2838 Filed 2–5–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Systematic and Population Biology

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings.

Name: Advisory for Systematic and Population Biology (1753).

Date and Time: February 17–19, 1999, 8:30 am–5 pm.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1483.

Agenda: To review and evaluate Biotic Survey and Inventory proposals as part of the selection process for awards.

Type of Meetings: Closed.

Contact Person: Dr. Douglas Siegal Causey, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1483.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–2842 Filed 2–5–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of South Carolina Electric & Gas Company (the licensee) to withdraw its March 19, 1996, application for proposed amendment to Facility Operating License No. NPF–12 for Virgil C. Summer Nuclear Station, Unit No. 1 located in Fairfield County, South Carolina.

The proposed amendment would have revised the quadrant power tilt ratio technical specification format.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 10, 1996 (61 FR 15995). However, by letter dated May 11, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 19, 1996, and the licensee's letter dated May 11, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Dated at Rockville, Maryland, this 29th day of January 1999.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2948 Filed 2–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Southern Nuclear Operating Company, Inc., et al.; Notice of Partial Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Southern Nuclear Operating Company, Inc., et al., (the licensee) for amendments to Facility Operating License Nos. NPF–68 and NPF–81 issued to the licensee for operation of the Vogtle Electric Generating Plant, Unit Nos. 1 and 2, located in Burke County, Georgia. Notice of Consideration of Issuance of the amendments was published in the **Federal Register** on October 7, 1998 (63 FR 53955).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to: (1) eliminate the requirement for operability of system level manual initiation, and automatic initiation, for closure of the containment purge supply and exhaust isolation valves during core alteration and/or movement or irradiated fuel assemblies within containment; (2) allow the equipment hatch and emergency air lock to be open during core alterations, and/or movement of irradiated fuel assemblies inside containment; and (3) eliminate the requirements associated with nonredundant condensate storage tanks.

The NRC staff has concluded that the licensee's request, with regard to those changes to the TS that would allow the

equipment hatch to be open during core alterations, and/or movement of irradiated fuel inside containment, cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated January 29, 1999.

By March 10, 1999, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated June 26, 1998, as supplemented by letters dated September 18 and November 30, 1998, and (2) the Commission's letter to the licensee dated January 29, 1999.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia.

Dated at Rockville, Maryland, this 29th day of January, 1999.

For the Nuclear Regulatory Commission.

David Jaffe,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 99–2950 Filed 2–5–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation, Wolf Creek Generating Station; Correction to Notice of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing

On January 25, 1999, the Commission issued a Notice of Approval of Transfer of Facility Operating License and Issuance of Conforming Amendment, and Opportunity for a Hearing for the Wolf Creek Generating Station. The Notice was published in the **Federal Register** on January 29, 1999 (64 FR 4726). Column 2, Line 47 incorrectly stated March 1, 1999, as the date by which hearing requests and intervention petitions must be filed. The correct date is February 18, 1999, in accordance with 10 CFR 2.1306(c). In addition, the correct date by which written comments must be filed is March 1, 1999, which was incorrectly published in Column 3, Line 31, as "1999".

Dated at Rockville, Maryland, this 2nd day of February 1999.

For the Nuclear Regulatory Commission.

Chester Poslusny,

Senior Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2949 Filed 2–5–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From. Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:

Rule 17a–13, SEC File No. 270–27, OMB Control No. 3235–0035

Rule 11Ab2–1 and Form SIP, SEC File No. 270–23, OMB Control No. 3235–0043

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission (Commission) is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 17a–13(b) generally requires that at least once each calendar quarter, all registered brokers and dealers physically examine and count all securities held and account for all other securities not in their possession, but subject to the broker-dealer's control or direction. Any discrepancies between the broker-dealer's securities count and the firm's records must be noted and, within seven days, the unaccounted for difference must be recorded in the firm's records. Rule 17a–13(c) provides that under specified conditions, the securities count, examination and verification of the broker-dealer's entire list of securities may be conducted on a cyclical basis rather than on a certain date. Although Rule 17a–13 does not require filing a report with the Commission, security count discrepancies must be reported on Form X–17a–5 as required by Rule 17a–5. Rule 17a–13 exempts broker-dealers that limit their business to the sale and redemption of securities of registered investment companies and interests or participation in an insurance company separate account and those who solicit accounts for federally insured savings and loan associations, provided that such persons, promptly transmit all funds and securities and hold no customer funds and securities.

The information obtained from Rule 17a–13 is used as an inventory control device to monitor a broker-dealers' ability to account for all securities held, in transfer, in transit, pledged, loaned, borrowed, deposited or otherwise subject to the firm's control or direction. Discrepancies between the securities counts and the broker-dealer's records alert the Commission and the Self Regulatory Organizations (SROs) to those firms having problems in the their back offices.

Because of the many variations in the amount of securities that broker-dealers are accountable for, it is difficult to develop a meaningful figure for the cost of compliance with Rule 17a–13. Approximately 92% of all registered broker-dealers are subject to Rule 17a–13. Accordingly, approximately 7,156 broker-dealer to comply with the Rule is 100 hours per year, for a total estimated annualized burden of 715,600 hours. It should be noted that a significant number of firms subject to Rule 17a–13 have minimal obligations under the Rule because they do not hold securities. It should further be noted that most broker-dealers would engage in the activities required by Rule 17a–13 even if they were not required to do so.

Rule 11Ab2–1 and Form SIP establish the procedures by which a Securities

Information Processor (SIP) files and amends its SIP registration form. The information filed with the Commission pursuant to Rule 11Ab2–1 and Form SIP is designed to provide the Commission with the information necessary to make the required findings under the Securities Exchange Act of 1934 (Act) before granting the SIP's application for registration. In addition, the requirement that a SIP file an amendment to correct any inaccurate information is designed to assure that the Commission has current, accurate information will respect to the SIP. This information is also made available to members of the public.

Only exclusive SIPs are required to register with the Commission. An exclusive SIP is an SIP that engages on an exclusive basis on behalf of any national securities exchange or registered securities association, or any national securities exchange or registered securities association which engages on an exclusive basis on its own behalf, in collecting, processing, or preparing for distribution or publication, any information with respect to (i) transactions or quotations on or effective or made by means of any facility of such exchange or (ii) quotations distributed or published by means of any electronic quotation system operated by such association. The Federal securities laws require that before the Commission may approve the registration of an exclusive SIP, it must make certain mandatory findings. It takes a SIP applicant approximately 400 hours to prepare documents which include sufficient information to enable the Commission to make those findings. Currently, there are only two exclusive SIPs registered with the Commission. The Securities Information Automation Corporation (SIAC) and the Nasdaq Stock Market, Inc. (Nasdaq). SIAC and Nasdaq are required to keep the information on file with the Commission current, which entails filing a form SIP annually to update information. Accordingly, the annual reporting and recordkeeping burden for Rule 11Ab2–1 and Form SIP is 400 hours. This annual reporting and recordkeeping burden does not include the burden hours or cost of amending a Form SIP because the Commission has already overstated the compliance burdens by assuming that the Commission will receive one initial registration pursuant to Rule 11Ab2–1 on Form SIP a year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W. Washington, DC 20549.

Dated: January 28, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2892 Filed 2–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23674; 812–11484]

Gradison Growth Trust, et al.; Notice of Application February 2, 1999

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act.

SUMMARY OF THE APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of a new investment subadvisory agreement ("New Agreement") for a period commencing on the later of the date on which the sale of a controlling interest of the subadviser is consummated or the date the requested order is issued and continuing until the New Agreement is approved or disapproved by shareholders of the investment company (but in no event later than March 22, 1999) ("Interim Period"). The order also would permit, following shareholder approval, the payment to the subadviser of all fees it earns under the New Agreement during the Interim Period.

APPLICANTS: Gradison Growth Trust ("Trust"), McDonald Investments, Inc. ("Adviser"), and Blairlogie Capital Management ("Subadviser").

FILING DATES: The application was filed on January 27, 1999. Applicants have agreed to file an amendment, the substance of which is included in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing.

Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail, Hearing requests should be received by the SEC by 5:30 p.m. on February 25,1999 and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Kirkpatrick & Lockhart, Attn: Robert J. Zutz, Esq. or Francine J. Rosenberger, Esq., 1800 Massachusetts Avenue, NW, Suite 200, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is an Ohio business trust that is registered under the Act as an open-end management investment company. The Trust currently offers four portfolios, one of which is the International Fund ("Fund").

2. The Adviser is registered under the Investment Advisers Act of 1940 ("Advisers Act") and serves an investment adviser to the Fund pursuant to an investment advisory agreement. The Adviser is a wholly-owned subsidiary of KeyCorp.

3. The Subadviser, which is organized as a Scottish limited partnership, is registered under the Advisers Act. The Subadviser serves as a subadviser to the Fund pursuant to an investment subadvisory agreement with the Adviser. The Adviser pays the Subadviser out of the fee that the Adviser receives from the Fund.

4. On October 24, 1998, PIMCO Advisors LP ("PIMCO"), a general partner of the Subadviser, and certain of

PIMCO's affiliates entered into an agreement pursuant to which they will sell 75% general partner interest in the Subadviser to Alleghany Asset Management, Inc. ("AAM") and certain of its affiliates (the "Transaction"). Upon consummation of the Transaction, the Subadviser will become a subsidiary of AAM, which in turn is the investment management of Alleghany Corporation. Applicants expect consummation of the Transaction on or about March 1, 1999.

5. Applicants state that the Transaction may result in an assignment, and thus termination, of the existing subadvisory agreement between the Adviser and the Subadviser. Applicants request an exemption to permit the implementation, during the Interim Period and prior to obtaining shareholder approval, of the New Agreement. The requested exemption would cover an Interim Period commencing on the later of the date the Transaction is consummated or the date the requested order is issued [1] and continuing until the New Agreement is approved or disapproved by Fund shareholders (but in no event later than March 22, 1999).[2] The requested order also would permit the Subadviser to receive all fees earned under the New Agreement during the Interim Period, subject to approval of the New Agreement by Fund shareholders. Applicants state that the New Agreement will contain substantially the same terms and conditions as the subadvisory agreement most recently approved by the Fund's shareholders, except for changes to the commencement and termination dates.

6. On September 14 and November 6, 1998, the Trust's Board of Trustees ("Board") met to evaluate whether the terms of the New Agreement are in the best interests of the Fund and its shareholders. The Board, including a majority of the trustees who are not "interested persons" of the Fund, as that term is defined in section 2(a)(19) of the Act ("Independent Trustees"), approved the New Agreement and voted to recommend that the Fund's shareholders approve the New Agreement. Proxy materials for the shareholders meeting were mailed on February 1, 1999.

7. Fees earned by the Subadviser under the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated financial institution. The escrow agent will release the amounts held in the escrow account (Including any interest earned): (i) to the Subadviser upon approval of the New Agreement by the Fund's shareholders; or (ii) to the Fund, if the Interim Period has ended and the Fund's shareholders have not approved the New Agreement. Before any such release is made, the Board will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company, and beneficial ownership of more than 25% of the voting securities of a company is presumed under Section 2(a)(9) to reflect control. Applicants state that the Transaction may result in an assignment of the existing subadvisory agreement and that such agreement will terminate according to its terms.

2. Rule 15a–4 under the Act provides, in relevant part, that if an investment advisory contract with a registered investment company is terminated by an assignment, an investment adviser may act as such for the company for 120 days under a written contract that has not been approved by the company's shareholders, provided that; (i) the new contract is approved by that company's board of directors,including a majority of the non-interested directors; (ii) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (iii) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that they may not be entitled to rely on rule 15a–4 because the Subadviser may be deemed to receive a benefit in connection with the Transaction.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act or any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with both the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

4. Applicants state that the terms and timing of the Transaction were determined in response to a number of business factors beyond the scope of the Act and substantially unrelated to the Fund. Applicants assert that there is insufficient time to obtain shareholder approval of the New Agreement before the Transaction is consummated. Applicants further assert that the requested relief would prevent any disruption in the delivery of investment subadvisory services to the Fund during the period following consummation of the Transaction.

5. Applicants represent that, under the New Agreement during the Interim Period, the Fund will receive substantially identical investment subadvisory services, provided in substantially the same manner, as it received prior to the consummation of the Transaction. Applicants state that, in the event of any material change in personnel of the Subadviser providing services pursuant to the New Agreement during the Interim Period, the Subadviser will apprise and consult the Board to assure that the Board, including a majority of the independent Trustees,is satisfied that the services provided by the Subadviser will not be diminished in scope and quality.

6. Applicants note that the fees payable to the Subadviser under the New Agreement during the Interim Period will be at the same rate as the fees paid under the subadvisory agreement most recently approved by the Fund's shareholders.

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[1] Applicants state that if the consummation of the Transaction precedes the issuance of the requested order, the Subadviser will serve after the consummation of the Transaction and prior to the issuance of the order in a manner consistent with its fiduciary duty to provide investment subadvisory services to the Fund even though approval of the New Agreement has not yet been secured from the Fund's shareholders. Applicants submit that, in such an event, the Subadviser will be entitled to receive from the Adviser, from the date of the consummation of the Transaction until the issuance of the order, no more than the actual out-of-pocket cost to the Subadviser for providing investment subadvisory services to the Fund.

[2] On October 23 1998, the Adviser's parent company was acquired by KeyCorp. In anticipation of that acquisition, Applicants obtained an order from the Commission to permit the implementation, without shareholder approval, of new investment advisory and subadvisory agreements with the Fund for a period of up to 150 days. *See* Gradison-McDonald Cash Reserve Trust, Investment Company Act Rel. Nos. 23442 (Sept. 22, 1998) (notice) and 23484 (Oct. 14, 1998) (order) ("Prior Order"). Under the Prior Order, the Fund must hold a shareholder meeting no later than March 22, 1999.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Agreement will have substantially the same terms and conditions as the subadvisory agreement most recently approved by the Fund's shareholders, except for the commencement and termination dates.

2. Fees earned by the Subadviser under the New Agreement during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated financial institution. The escrow agent will release those fees (including any interest earned on those fees): (i) to the Subadviser upon approval of the New Agreement by the Fund's shareholders; or (ii) to the Fund, if the Interim Period has ended and the Fund's shareholders have not approved the New Agreement.

3. The Fund will promptly schedule a meeting of its shareholders to vote on approval of the New Agreement, which will be held within the Interim Period (but in no event later than March 22, 1999).

4. The Adviser and/or one or more of its affiliates or subsidiaries or the Subadviser, but not the Fund, will pay the cost of preparing and filing the application. The Adviser and/or one or more of its affiliates or subsidiaries, but not the Fund, will pay the costs relating to the solicitation of shareholder approval of the New Agreement.

5. The Subadviser will take all appropriate actions to ensure that the scope and quality of subadvisory and other services provided to the Fund during the Interim Period under the New Agreement will be at least equivalent, in the judgment of the Board, including a majority of the Independent Trustees, to the scope and quality of services provided under the subadvisory agreement most recently approved by the Fund's shareholders. In the event of any material change in personnel providing services pursuant to the New Agreement during the Interim Period, the Subadviser will apprise and consult the Board to assure that the Board, including a majority of the Independent Trustees, is satisfied that the services provided by the Subadviser will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2932 Filed 2–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23673; 812–11406]

Horace Mann Mutual Funds et al.; Notice of Application

February 1, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants, Horace Mann Mutual Funds (the "Company") and Wilshire Associates Incorporated (the "Adviser"), request an order that would (a) permit applicants to enter into and materially amend subadvisory agreements without shareholder approval and (b) grant relief from certain disclosure requirements.

FILING DATE: The application was filed on November 18, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 24, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Christine A. Scheel, Esq., Vedder, Price, Kaufman & Kammholz, 222 North LaSalle Street, Chicago, Illinois 60601–1003.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicant's Representations

1. The Company, a Delaware business trust, is registered under the Act as an open-end management investment company. The Company is currently comprised of seven series (each a "Fund" and collectively, the "Funds"), each of which has its own investment objective, policies and restrictions.[1] The shares of the Funds serve as funding vehicles for variable annuity contracts offered through separate accounts of the Horace Mann Life Insurance Company ("Horace Mann Life"). Horace Mann Life is a wholly-owned indirect subsidiary of Horace Mann Educators Corporation. The Adviser, a California corporation, will serve as investment adviser to the Funds beginning on March 1, 1999.[2] The Adviser is registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Adviser will serve as investment adviser to the Company pursuant to an investment advisory agreement between the Company and the Adviser that was approved by the Board of Trustees of the Company ("Board"), including a majority of the Trustees who are not "interested persons," as defined in section 2(a)(19) of the 1940 Act ("Independent Trustees"), and the shareholders of the Funds ("Investment Advisory Agreement"). Under the Investment Advisory Agreement, the Adviser has overall general supervisory responsibility for the investment program of the Funds and, subject to the general supervision of the Board, has authority to select and contract with one or more subadvisers (each a "Portfolio Manager" and collectively, "Portfolio Managers") to provide one or more Funds with portfolio management services. Each Portfolio Manager will be an investment adviser registered under the Advisers Act and will perform services pursuant to a written agreement with the Adviser (the "Sub-Advisory

[1] Applicants also request relief with respect to future series of the Company and all future registered open-end management investment companies that are (a) advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser, and (b) operate in substantially the same manner as the Funds and comply with the terms and conditions contained in the application ("Future Funds"). The Company is the only existing investment company that currently intends to rely on the order.

[2] The Funds currently are advised by Horace Mann Investors, Inc., an investment adviser registered under the Investment Advisers Act of 1940.

Agreement"). Portfolio managers' fees will be paid by the Adviser out of its fees from the Funds at rates negotiated with the Portfolio Managers by the Adviser.

3. Applicants represent that the Adviser has over 25 years of experience in the selection and supervision of investment managers for investment programs. These programs include insurance company assets, mutual funds, non-registered institutional funds, and pension funds. The Adviser primarily advises its clients regarding customized asset allocation/multi-manager structures and facilitates the implementation of such structures and the selection of various investment management organizations. Through the use of its state-of-the-art proprietary performance analytics system, the Adviser monitors managers and investment performance. The Adviser will employ its expertise to evaluate and select Portfolio Managers that have shown the ability to effectuate the Adviser's investment policies and add the most value to shareholders of the Funds. The Adviser will select those Portfolio Managers that have distinguished themselves through successful performance in the market sectors in which the respective Funds invest. The Adviser will review, monitor and report to the Board regarding the performance and procedures of the Portfolio Managers and, subject to Board oversight, take responsibility for selecting and terminating Portfolio Managers.

4. Applicants request relief to permit the Adviser to enter into and amend Sub-Advisory Agreements without shareholder approval. The requested relief will not extend to a Portfolio Manager that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Company or the Adviser, other than by reason of serving as a Portfolio Manager to one or more of the Funds (an "Affiliated Portfolio Manager").

5. Applicants also request an exemption from the various disclosure provisions described below that may require each Fund to disclose fees paid by the Adviser to the Portfolio Managers. The Company will disclose for each Fund (both as a dollar amount and as a percentage of a Fund's net assets): (i) the aggregate fees paid to the Adviser and Affiliated Portfolio Managers; and (ii) aggregate fees paid to Portfolio Managers other than Affiliated Portfolio Managers ("Aggregate Fee Disclosure"). For any Fund that employs an Affiliated Portfolio Manager, the Fund will provide separate disclosure of any fees paid to the Affiliated Portfolio Manager.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Forum N–1A is the registration statement used by open-end investment companies. Items 3, 6(a)(1)(ii), and 15(a)(3) of Form N–1A require disclosure of the method and amount of the investment adviser's compensation.

3. Form N–14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N–14 requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction."

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22c(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fee," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

5. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Portfolio Managers.

6. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

8. Applicants assert that the Funds' investors will rely on the Adviser to select one or more Portfolio Managers best suited to achieve a Fund's investment objectives. Therefore, applicants assert that, from the perspective of the investor, the role of the Portfolio Managers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants note that the Investment Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

9. Applicants further assert that some Portfolio Managers use a "posted" rate schedule to set their fees. Applicants believe that some organizations may be unwilling to serve as Portfolio Managers at any fee other than their "posted" fee rates, unless the rates negotiated for the Funds are not publicly disclosed. Applicants believe that requiring disclosure of Portfolio Manager's fees may deprive the Adviser of its bargaining power while producing no benefit to shareholders, since the total advisory fee they pay would not be affected.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before an existing Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the outstanding voting securities (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a Future Fund whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of that Future Fund to

the public (or the variable contract owners through a separate account).

2. The Company will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Portfolio Managers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of any new Portfolio Manager, shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) will be furnished all information about the new Portfolio Manager of Sub-Advisory Agreement that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Portfolio Manager. The Adviser will meet this condition by providing these shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified to permit Aggregate Fee Disclosure.

4. The Adviser will not enter into a Sub-Advisory Agreement with an Affiliated Portfolio Manager without that Sub-Advisory Agreement, including the compensation to be paid thereunder, being approved by the Fund's shareholders (or if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholder of the sub-account.

5. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

6. When a Portfolio Manager change is proposed for a Fund with an Affiliated Portfolio Manager, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders, (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, in the best interests of the Fund and the unitholders of any sub-account) and does not involve a conflict of interest from which the Adviser or the Affiliated Portfolio Manager derives an inappropriate advantage.

7. The Adviser will provide the Board, no less frequently than quarterly, will information about the Adviser's profitability on a per Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Portfolio Manager during the applicable quarter.

8. Whenever a Portfolio Manager is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

9. The Adviser will provide general management services to the Company and the Funds, including overall supervisory responsibility for the general management and investment of each Fund, and, subject to review and approval by the Board will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Portfolio Managers to manage all or a part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Portfolio Managers; (iv) monitor and evaluate the investment performance of Portfolio Managers; and (v) implement procedures reasonably designed to ensure that the Portfolio Managers comply with the relevant Fund's investment objective, policies, and restrictions.

10. No director, trustee or officer of the Company or the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in any Portfolio Manager except for (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Portfolio Manager or an entity that controls, is controlled by, or is under common control with a Portfolio Manager.

11. The Company will disclose in its registration statement the Aggregate Fee Disclosure.

12. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Company. The selection of such counsel will remain within the discretion of the Independent Trustees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2893 Filed 2–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26970]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 29, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 22, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will received a copy of any notice or order issued in the matter. After February 22, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation

[70–9423]

Ameren Corporation ("Ameren"), a registered holding company, Union Electric Company ("UE"), an electric and gas public utility subsidiary of Ameren, and Ameren Services Company ("Ameren Services"), a service company subsidiary of Ameren, all located at 1901 Chouteau Avenue, St. Louis, Missouri 63103, and Central Illinois Public Service Company ("CIPS"), and electric and gas public utility subsidiary of Ameren, located at 607 East Adams,

Springfield, Illinois 62953, have filed an application-declaration under sections 6(a), 7, 9(a), 10, and 12(b) of the Act and rules 43 and 54 under the Act.

Applicants propose to establish and participate in a money pool (the "Money Pool") through February 27, 2003. The specific terms and provisions of the Money Pool will be forth in a money pool agreement ("Agreement") among all of the applicants. The applicants are proposing to establish the Money Pool in order to coordinate and provide for the short-term cash and working capital requirements of UE, CIPS and Ameren Services.

UE's aggregate principal amount of borrowings outstanding at any one time from the Money Pool will be limited to $500 million. Borrowings by CIPS and Ameren Services under the Money Pool will be exempt under rule 52. Ameren will not borrow funds from the Money Pool. In accordance with the Agreement, funds for the Money Pool will be available from surplus funds in the treasuries of UE, CIPS, Ameren Services and Ameren ("Internal Funds"), and proceeds from bank borrowings and the sale of commercial paper by Ameren, UE, and CIPS ("External Funds").[1]

No party will be required to borrow through the Money Pool if it is determined that it could borrow at a lower cost directly from banks or through the sale of its own commercial paper in an existing commercial paper program. Each participate will, in its sole discretion, make the determination of whether it will lend funds to the Money Pool.

The loans will be made through open-account advances and will be repayable no later than one year after the date of the advance. In addition, the loans may be repaid in whole at any time or in part from time to time, without premium or penalty. Ameren Services will administer the Money Pool on an "at cost" basis.

Funds provided to the Money Pool that are not used to make loans will ordinarily be invested in one or more short-term investments or any other investments that are permitted by section 9(c) of the Act and rule 40 under the Act.

[1] By order dated March 13, 1998 (HCAR No. 26841), Ameren is authorized, through February 27, 2003, to obtain debt financing from third parties up to a maximum of $300 million. Under the terms of that order, UE and CIPS are authorized, through February 27, 2003, to obtain debt financing up to a maximum of $1 billion for UE and $250 million for CIPS.

Rochester Gas and Electric HoldCo

[70–9355]

Rochester Gas and Electric HoldCo ("HoldCo"), 89 East Avenue, Rochester, New York 14649, a wholly owned subsidiary of Rochester Gas and Electric Corporation ("RG&E"), a gas and electric public utility company, has filed an application under section 3(a)(1) of the Act for an order exempting it from regulation under all of the provisions of the Act, except section 9(a)(2).

RG&E is a combination gas and electric public utility company operating in the state of New York. It owns and operates electric generation, transmission and distribution facilities and natural gas distribution facilities serving approximately one million retail customers in and around Rochester, New York.

HoldCo proposes to acquire all of the outstanding common stock of RG&E. The acquisition will be accomplished through an exchange ("Exchange") of each outstanding share of RG&E common stock for one share of HoldCo common stock. As a result of the Exchange, RG&E will become a subsidiary of HoldCo. The Exchange requires the affirmative vote of two-thirds of the votes of the outstanding shares of RG&E common stock at RG&E annual stockholder meeting, expected to be held on April 29, 1999.

In addition, Holdco would become the direct parent of RG&E's nonutility subsidiaries, through a capital contribution by RG&E to Holdco of RG&E's interests in those subsidiaries prior to Holdco's acquisition of RG&E. These subsidiaries include Energetix, Inc., which sells electric capacity and energy at market rates, and RGS Development Corporation, which pursues unregulated energy business opportunities.[2]

For the period ending on June 30, 1998, RG&E had annual operating revenues of $493.2 million. RG&E is subject to the regulatory authority of the New York Public Service Commission.

HoldCo states that the proposed restructuring plan is intended to permit the financial and regulatory flexibility necessary to compete more effectively in an increasingly competitive energy industry by providing a structure that can accommodate both regulated and unregulated businesses.

HoldCo asserts that following the Exchange, it will be a public utility holding company entitled to an exemption under section 3(a)(1) of the Act, because it and RG&E will be predominantly intrastate in character and will carry on their business substantially in the state of New York.

[2] Another nonutility subsidiary, Energyline Corporation, is currently inactive and is expected to be dissolved prior to the proposed restructuring.

Potomac Edison Company

[70–9373]

Potomac Edison Company ("Potomac Edison"), a public utility subsidiary of Allegheny Energy Inc. ("Allegheny"), a registered holding company, located at 10435 Downsville Pike, Hagerstown, Maryland, has filed an application under section 9(c)(3) of the Act.

Potomac Edison proposes, through December 31, 2001, to invest up to $250,000 to engage in preliminary development activities in connection with a joint venture project to develop a business and technology park. Preliminary development activities may include negotiations with real estate developers, preliminary engineering and licensing activities, contract drafting, consultations with tax, legal and other professionals, and other necessary activities.

Potomac Edison represents that the activities of the joint venture would be limited to the development, lease and or sale of a parcel of land located adjacent to Potomac Edison's and Allegheny's headquarters in Hagerstown, Maryland ("Property"). It is anticipated that once the joint venture is formed, the real estate developer would manage its day-to-day operations, Potomac Edison would transfer the Property to the joint venture, and the developer would provide capital for and oversee the development and market the Property as a business and technology park.[3]

Potomac Edison states that it will not enter into the joint venture arrangement without prior Commission approval.

New Century Energies, Inc., et al.

[70–9397]

New Century Energies, Inc. ("NCE"), a registered holding company; NCE's utility subsidiaries, Public Service Company of Colorado ("PSCo") and Cheyenne Light, Fuel and Power Company ("Cheyenne"); NCE's nonutility subsidiaries, New Century Services, Inc. ("NCS"), West Gas Interstate, Inc., NC Enterprises, Inc. ("Enterprises"), New Century International, Inc., e prime, inc. ("e prime"), PS Colorado Credit Corporation ("PSCCC"), Natural Fuels Corporation, P.S.R. Investments, Inc., Green and Clear Lakes Company; 1480 Welton, Inc., The Planergy Group, Inc.,

[3] Development activities are intended to include installation of the infrastructure (water, sewer and other utilities), roads and other amenities, and subdivision of the Property as necessary to create buildable and saleable lots.

and New Century-Cadence, Inc., each located at 1225 17th Street, Denver, Colorado 80202–5533; NCE's utility subsidiary, Southwestern Public Service Company (together with PSCo and Cheyenne, "Utility Subsidiaries"); and NCE's nonutility subsidiaries, Quixx Corporation ("Quixx") and Utility Engineering Corporation ("UEC"), each located at Tyler at Sixth, Amarillo, Texas 79101 (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), and 13(b) of the Act and rules 43, 45, 46, 54 and 87 under the Act.[4]

As described more fully below, Applicants seek authority through December 31, 2001 (the "Authorization Period"), except as otherwise noted, for: (i) external financings by NCE and Cheyenne; (ii) intrasystem financing, including guarantees, between NCE and certain of the Subsidiaries, and among certain of the Subsidiaries; (iii) NCE and, to the extent not exempt under rule 52, the Subsidiaries to enter into hedging transactions for existing and anticipated debt in order to manage interest rate costs; (iv) the issuance by the Subsidiaries of types of securities not exempt under rules 45 and 52; (v) NCE and the Subsidiaries to establish, guarantee the obligations of, and borrow the proceeds of the debt and equity issued by, one or more financing entities ("Financing Subsidiaries"); (vi) NCE, Enterprises and any direct or indirect subsidiary of Enterprises to acquire the equity securities of one or more intermediate subsidiaries organized for the purpose of acquiring, financing, and holding the securities of one or more Nonutility Subsidiaries; (vii) Enterprises and any direct or indirect subsidiary of Enterprises to pay dividends out of capital and unearned surplus; and (viii) the Nonutility Subsidiaries to sell goods and services to certain nonutility associates at fair market prices, under an exemption from section 13(b) of the Act.

The proceeds from the financings will be used for general corporate purposes, including: (i) capital expenditures of NCE and the Subsidiaries, (ii) repayment, redemption, refunding or purchase of securities of NCE or the Subsidiaries in transactions exempt under rule 42, (iii) working capital requirements of NCE and the Subsidiaries, and (iv) other lawful general purposes.[5] Applicants represent that no financing proceeds will be used to acquire the equity securities of any new subsidiary, unless that acquisition has been approved by the Commission or is under an available exemption under the Act or rules under the Act. In addition, Applicants represent that any use of proceeds to make investments in any of the Subsidiaries formed under rule 58 will be subject to the investment limitation of the rule, and any use of proceeds to make investments in any exempt wholesale generator ("EWG") or foreign utility company ("FUCO") will be subject to the investment limitation of rule 53, as it may be modified by order of the Commission in file no. 70–9341.[6]

By orders dated August 1, 1997 and May 14, 1998 (HCAR Nos. 26750 and 26872, respectively), NCE and certain Subsidiaries were authorized to engage in, among other things, various external and intrasystem financing transactions through December 31, 1999. These companies will relinquish the authority granted in those orders on the effective date of an order by the Commission in this proceeding approving the proposed transactions.

1. NCE External Financings

a. Common Stock

NCE requests authority to issue and sell from time to time up to $1.25 billion of its common stock, $1 par value per share. In addition, NCE requests authority to issue an additional 30 million shares of common stock (subject to adjustment to reflect any stock split) from time to time through December 31, 2008 under its benefit and dividend reinvestment plans. NCE also proposes to issue options exercisable for Common Stock and issue Common Stock upon the exercise of those options.

b. Debt

NCE requests authority to issue and sell from time to time debt securities to nonassociates in an aggregate principal amount of up to $600 million outstanding at any one time ("NCE Debt Limitation"). These debt securities will consist of short-term debt having a maturity from the date of issue of not more than one year and unsecured debentures ("Debentures") having a maturity of up to 40 years. The aggregate principal amount of Debentures at any time outstanding will not exceed $300 million. In addition, NCE proposes that the NCE Debt Limitation be increased to $975 million, of which $450 million will consist of Debentures, if and when PSCCC[7] becomes a direct subsidiary of NCE.

Short-term debt may consist of bank borrowings which would mature in no more than one year from the date of the borrowing, or commercial paper issued to dealers. In addition, NCE may engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

Interest rates on the Debentures of one or more series may be fixed, floating or "multi-modal", i.e., interest rates that are periodically reset, alternating between fixed and floating interest rates for each reset period. NCE represents that it will not issue any Debentures that are not rated at least investment grade at the time of original issuance by a nationally recognized statistical rating organization, without further Commission authorization.

c. Other Securities

NCE also request authority to issue and sell other securities not specifically identified above. NCE requests that the Commission reserve jurisdiction over the issuance of securities other than common stock, short-term debt and Debentures, and represents that it will file a post-effective amendment in this proceeding to supplement the record for any other securities.

2. Utility Subsidiary External Financing

a. Cheyenne Short-Term Debt

Cheyenne requests authority to issue and sell from time to time up to $40 million of short-term debt to nonassociates. The short-term financing could include, without limitation, commercial paper sold in established domestic or European commercial paper markets, bank lines and debt securities issued under Cheyenne's indentures and note programs. Maturities of short-term borrowings will not be greater than one year from the date of each loan.

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[4] Except as otherwise noted, the term "Nonutility Subsidiaries" means each of the direct and indirect nonutility subsidiaries of NCE, including those identified above, and their respective subsidiaries, and the term "Subsidiaries" means the Utility Subsidiaries and the Nonutility Subsidiaries. In addition, the term "Nonutility Subsidiaries" refers to any future direct or indirect nonutility subsidiaries of NCE whose equity securities may be acquired in accordance with the Commission's authorization or in accordance with an exemption provided under the Act or rules under the Act.

[5] This includes the refinancing of interests held by Enterprises in Yorkshire Power Group Limited ("Yorkshire"), which indirectly owns a foreign utility company in the United Kingdom, Yorkshire Electricity Group plc. NCE plans to make advances or cash capital contributions to Enterprises to enable Enterprises to prepay in whole or in part a note issued to PSC to finance Enterprises' acquisition from PSCo of a 50% interest in Yorkshire.

[6] In that filing, NCE is requesting authority to invest in EWGs and FUCOs the proceeds of securities it issues in amounts aggregating up to 100% of its consolidated retained earnings.

[7] PSCCC, currently a subsidiary of PSCo, is engaged in financing and factoring fuel inventories and accounts receivable.

b. Other Securities

The Utility Subsidiaries also proposed to issue and sell other types of securities to nonassociates which do not qualify for exemption under rule 52 but which are considered appropriate during the Authorization Period. Accordingly, the Utility Subsidiaries request that the Commission reserve jurisdiction over the issuance of these additional types of securities. The Utility Subsidiaries state they will file a post-effective amendment in this proceeding which will describe the general terms and amounts of each security and request a supplemental order of the Commission authorizing the issuance of that security.

3. Nonutility Subsidiary External Financings

Applicants believe that, in almost all cases, borrowings by the Nonutility Subsidiaries will be exempt from prior Commission authorization under rule 52(b). However, the Nonutility Subsidiaries request that the Commission reserve jurisdiction over the issuance of any other securities to nonassociates where the exemption under rule 52(b) would not apply. The Nonutility Subsidiaries state they will file a post-effective amendment in this proceeding which will describe the general terms and amounts of each security and requet a supplemental order authorizing the issuance of that security.

4. Intrasystem Financing

a. General

NCE requests authority to provide financing to the Subsidiaries and the Subsidiaries propose to provide financing to other Subsidiaries in aggregate principal amount of up to $500 million outstanding at any one time, exclusive of financing that is exempt under rule 45(b) or rule 52. These financings will generally be in the form of cash capital contributions, open account advances, inter-company loans, and/or capital stock purchases. Intrasystem financing will provide funds for general corporate purposes and other working capital requirements, investments and capital expenditures. NCE or the lending Subsidiary will determine, at its discretion, how much financing to give each borrowing Subsidiary as its needs dictate during the Authorization Period.

b. Guarantees

NCE requests auhtority to enter into guarantees and provide other forms of credit support ("NCE Guarantees") for obligations of any Subsidiary in an aggregate principal amount not to exceed $800 million at any one time outstanding, exclusive of any guarantees or other forms of credit support that are exempt under rule 45(b); provided, however, that if and when PSCCC becomes a direct subsidiary of NCE, NCE may provide guarantees and other forms of credit support in an aggregate amount not to exceed $850 million ("NCE Guarantee Limitation").

In addition, the Subsidiaries request authority to issue guarantees and other forms of credit support ("Subsidiary Guarantees," and together with NCE Guarantees, "Guarantees") for obligations of other Subsidiaries in an aggregate principal amount not to exceed $100 million at any one time outstanding, exclusive of guarantees that are exempt under rule 45(b) and rule 52 ("Subsidiary Guarantee Limitation"). Applicants propose that the amount of NCE Guarantees and Subisidiary Guarantees outstanding at any one time not be counted against the aggregate limits proposed in this filing for external financings or intrasystem financing.

5. Hedge Transactions

NCE and, to the extent not exempt under rule 52, the Subsidiaries request authority to enter into hedging transactions (Interest Rate Hedges") with respect to existing indebtedness of these companies in order to manage and minimize interest rate costs. Interest Rate Hedges would only be entered into with counterparties which either have senior debt ratings, or are owned by companies that have senior debt ratings, equal to or greater than BBB, as published by Standard and Poor's Rating Group, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff & Phelps. Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars floors, and structured notes (i.e., debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury securities.

NCE and the Subsidiaries also request authority to enter into Interest Rate Hedges with respect to anticipated debt issuances in order to lock-In current interest rates and/or manage interest rate risk exposure. These transactions would use: (i) a forward sale of U.S. Treasury futures contracts, U.S. Treasury securities and/or a forward swap (each a "Forward Sale"), (ii) the purchase of put options on U.S. Treasury securities (a "Put Options Purchase"), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities (a "Zero Cost Collar"), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including structured notes, caps and collars.

6. Financing Subsidiaries

NCE and the Subsidiaries request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities created specifically for the purpose of facilitating the financing of the activities of NCE and the Subsidiaries. The Financing Subsidiaries would issue long term debt or equity to third parties and transfer the proceeds of these financings to NCE or associate companies in the NCE holding company system. If the direct parent of a Financing Subsidiary is authorized in this or nay subsequent proceeding to issue long term debt or equity securities of a type similar to that issued by the Financing Subsidiary, then the amount of those securities issued by that Financing Subsidiary would count against the limitation applicable to its parent for those securities. In these cases, however, Guarantees entered into by the parent with respect to those securities would not count against the NCE Guarantee Limitation or the Subsidiary Guarantee Limitation, as the case may be. If the parent is not authorized in this or in a subsequent proceeding to issue long term debt or an equity security similar in type to the security issued by its Financing Subsidiary, then any Guarantee not exempt under rule 45 or 52 that is entered into by the parent for those securities would count against the NCE Guarantee Limitation or Subsidiary Guarantee Limitation, as the case may be.

7. Intermediate Subsidiaries

NCE, Enterprises [8] and Enterprises' subsidiaries request authority to acquire the equity securities of one or more intermediate subsidiaries ("Intermediate Subsidiaries") organized for the purpose of acquiring, financing, and holding the securities of one or more Nonutility Subsidiaries. The Intermediate Subsidiaries may also provide management, administrative, project

[8] Enterprises serves as an intermediate holding company for certain of NCE's nonutility subsidiaries and investments.

development, and operating services to these Nonutility Subsidiaries.

8. Payment Of Dividends Out of Capital and Unearned Surplus

Enterprises and any direct or indirect subsidiary of Enterprises request authority to pay dividends out of capital and unearned surplus to the extent allowed under applicable law and under the terms of any credit or security instruments to which they may be parties.

9. Exemption From Section 13(b)

Certain Nonutility Subsidiaries [9] are currently authorized, by order dated August 1, 1997 (HCAR No. 26748), to provide services and goods at fair market prices to associate companies that are EWGs, FUCOs or qualifying facilities ("QFs"), subject to certain restrictions. NCE and the Nonutility Subsidiaries now wish to expand the scope of this exemption in two respects. First, those Subsidiaries which may sell services or goods under an exemption from the cost standard of section 13(b) to associate nonutility companies would be expanded to also include all Nonutility Subsidiaries. Second, NCE wishes to expand the categories of Nonutility Subsidiaries to which services and goods may be sold to also include exempt telecommunications companies ("ETCs"), subsidiaries formed under rule 58 ("Rule 58 Subsidiaries"), and other Nonutility Subsidiaries that do not derive any part of their income from sales of goods or services to any of the Utility Subsidiaries.

Accordingly, NCS and the Nonutility Subsidiaries request an exemption under section 13(b) of the Act to provide goods and services to any associate company (a "Client Company") at fair market prices, if:

(i) The Client Company is a FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) The Client Company is an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not a Utility Subsidiary;

(iii) The Client Company is a QF within the meaning of the Public Utility Regulatory Policy Act of 1978 ("PURPA") that sells electricity exclusively (a) at rates negotiated at arms' length to one or more industrial or commercial customers purchasing that electricity for their own use and not for resale, and/or (b) to an electric utility company other than a Utility Subsidiary at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

(iv) The Client Company is a domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not a Utility Subsidiary; or

(v) The Client Company is an ETC, a Rule 58 Subsidiary, or a Nonutility Subsidiary that does not derive any part of its income from sales of goods, services or other property to a Utility Subsidiary.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2894 Filed 2–5–99; 8:45 am]

BILLING CODE 8010–01–M

[9] These include NCS, UEC, Quixx, Quixx Power Services, Inc., Universal Utility Services Company, Precision Resource Company, e prime, e prime Operating, Inc. and ep3, L.P.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26972]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 1, 1999.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 5, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 5, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation, et al.

[70–9133]

Ameren Corporation ("Ameren"), a registered holding company, Union Electric Company ("UE"), an electric and gas utility subsidiary company of Ameren, Union Electric Development Company, a wholly owned nonutility subsidiary company of UE, and Ameren Services Company ("AMS"), Ameren's service company, all located at 1901 Chouteau Avenue, St. Louis, Missouri 63103, Central Illinois Public Service Company, an electric and gas utility subsidiary company of Ameren and CIPSCO Investment Company, a nonutility subsidiary company of Ameren, both located at 607 East Adams, Springfield, Illinois 62739, and Electric Energy Incorporated, an indirect electric utility generating subsidiary of Ameren, located at 2100 Portland Road, Joppa, Illinois 62953 have filed a post-effective amendment under sections 6(a), 7, 12(b), 32 and 33 of the Act and rules 42, 45, 53 and 54 thereunder.

By order dated March 13, 1998 (HCAR No. 26841) ("Financing Order"), among other things, Ameren was authorized, through February 27, 2003 ("Authorization Period") to: (1) issue and sell up to 15 million shares of common stock ("Common Stock"); (2) issue commercial paper and/or other short-term debt ("Short-Term Debt") in an aggregate amount not to exceed $300 million at any one time outstanding; and (3) provide guarantees and similar credit support ("Guarantees") to its nonutility subsidiaries in an aggregate amount not to exceed $300 million at any one time outstanding. The Commission also reserved jurisdiction over the issuance and amount of other types of securities pending completion of the record. Ameren now proposes, through the Authorization Period, to: (1) increase the issuance and sale of common stock to 25 million shares; (2) increase its Short-Term Debt up to an aggregate amount not to exceed $1.5 billion at any one time outstanding; and (3) increase its Guarantees on behalf of nonutility subsidiaries up to an aggregate amount not to exceed $1 billion at any one time outstanding. All other terms, conditions and restrictions applicable to the Common Stock, Short-Term Debt and Guarantees, as set forth

in the Financing Order, remain unchanged.

In addition, Ameren requests that the Commission release jurisdiction reserved in the Financing Order to issue and sell unsecured debentures ("Debentures"), through the Authorization Period, in an amount not to exceed $300 million.[1] Ameren represents that the aggregate principle amount of Debentures and Short-Term debt outstanding will not at any time exceed $1.5 billion.

The Debentures will be issued under an indenture ("Indenture") to be entered into between Ameren and a national bank, as trustee, including any successor trustee appointed under the Indenture, with a supplemental indenture ("Supplemental Indenture") to be executed in respect of each separate offering of one or more series of Debentures.

Ameren contemplates that the Debentures would be issued and sold directly to one or more purchasers in privately negotiated transactions; or, to one or more investment banking or underwriting firms or other entities who would resell the Debentures; or, to the public through underwriters selected by negotiation or competitive bidding or through selling-agents acting either as agent or as principal for resale to the public either directly or through dealers.

The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Debentures of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions or discounts, if any, will be established by negotiation or competitive bidding and reflected in the applicable Supplemental Indenture and purchase agreement or underwriting agreement setting forth the terms. Ameren, however, will not issue and sell any Debenture at interest rates in excess of those generally obtainable at the time of pricing or repricing of Debentures for securities having the same or reasonably similar maturities and having reasonably similar terms, conditions and features issued by utility companies or utility holding companies of the same or reasonably comparable credit quality, as determined by the competitive capital markets.[2]

Ameren also seeks modification of the use of proceeds authorized in the Financing Order to permit the acquisition of one or more exempt wholesale generators ("EWG") or foreign utility companies ("FUCO"). Ameren represents that "aggregate investment" used to acquire EWGs or FUCOs will not exceed 50% of Ameren's "consolidated retained earnings."[3] At September 30, 1998, Ameren's consolidated retained earnings were approximately $1.53 billion.

Ameren further represents that it will not seek to recover, through the rates of the utility subsidiaries, any losses that it may sustain in respect of any investment in an EWG or FUCO.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2895 Filed 2–5–99; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

The following form, to be used only in the event that inductions into the armed services are resumed, has been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–9

Title: Registrant Claim Form.

Purpose: Form is used to submit a claim for postponement of induction or reclassification.

Respondents: Registrants filing claims for either postponement or reclassification.

Frequency: One-time.

Burden: The reporting burden is five minutes or less per individual.

Copies of the above identified form can be obtained upon written request to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia, 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Dated: January 29, 1999.

Gil Coronado,

Director.

[FR Doc. 99–2944 Filed 2–5–99; 8:45 am]

BILLING CODE 8015–01–M

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS Form No. and Title

SSS Form 152, Alternative Service Employment Agreement
SSS Form 153, Employer Data Sheet
SSS Form 156, Skills Questionnaire
SSS Form 157, Alternative Service Job Data Form
SSS Form 160, Request for Overseas Job Assignment
SSS Form 163, Employment Verification Form
SSS Form 164, Alternative Service Worker Travel Reimbursement Request
SSS Form 166, Claim for Reimbursement for Emergency Medical Care

Copies of the above identified forms can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

No changes have been made to the above identified forms. OMB clearance is limited to requesting a three-year extension of the current expiration dates.

Written comments should be sent within 60 days after the publication of this notice to: Selective Service System,

[1] The Debentures (a) may be convertible into any other securities of Ameren, (b) will have maturities ranging from one to 40 years, (c) may be subject to optional and/or mandatory redemption in whole or in part, at par or at various premiums above the principle amount, (d) may be entitled to mandatory or optional sinking fund provisions, (e) may provide for reset of the coupon under a remarketing arrangement, and (f) may be called from existing investors by a third party. In addition, Ameren may, from time to time, defer the payment of interest on the Debentures of one or more series (which may be fixed or floating or "multi-modal" debentures, i.e., debentures where the interest is periodically reset, alternating between fixed and floating interest rates for each rest period).

[2] Ameren represents that it will not, without prior Commission approval, issue any Debentures that are not at the time of original issuance rated at least investment grade by a nationally recognized statistical rating organization.

[3] Both "aggregate investment" and "consolidated retained earnings" are defined in Rule 53(a) of the Act.

Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20435.

Dated: January 29, 1999.

Gil Coronado,

Director.

[FR Doc. 99–2945 Filed 2–5–99; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

Notice of District Office Name Changes

AGENCY: U.S. Small Business Administration.

ACTION: Notice of district office name changes.

SUMMARY: The U.S. Small Business Administration has changed the names of the following district offices in order to more accurately reflect the broad geographic areas that they serve.

Old Name	New Name
Casper District: 100 E. B Street, Rm. 4001, Casper, WY 82601	Wyoming District: 100 E. B Street, Rm. 4001, Casper, WY 82601
Denver District: 721 19th Street, Suite 426 Denver, CO 80202	Colorado District: 721 19th Street, Suite 426 Denver, CO 80202
Fargo District: 657 2nd Avenue, N., Room 219 Fargo, ND 58102	North Dakota District: 657 2nd Avenue, N., Room 219 Fargo, ND 58102
Helena District: 301 S. Park, Room 334 Helena, MT 59626	Montana District: 301 S. Park, Room 334 Helena, MT 59626
Salt Lake City District: 125 S. State Street, Room 2237 Salt Lake City, UT 84138.	Utah District: 125 S. State Street, Room 2237 Salt Lake City, UT 84138
Sioux Falls District: 110 South Phillips Avenue Sioux Falls, SD 57102	South Dakota District: 110 South Phillips Avenue Sioux Falls, SD 57102

EFFECTIVE DATE: February 8, 1999.

FOR FURTHER INFORMATION CONTACT: Jo Ann Van Vechten, 202–205–6808.

Dated: January 29, 1999.

Jo Ann Van Vechten,

Acting Associate Administrator for Field Operations.

[FR Doc. 99–2916 Filed 2–5–99; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Termination of Environmental Impact Statement Process: Proposed Exercise of Option Purchase Agreement With LSP Energy Limited Partnership for Supply of Electric Energy

AGENCY: Tennessee Valley Authority.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority is announcing that it is terminating the environmental impact statement (EIS) for the Proposed Exercise of Option Purchase Agreement With LSP Energy Limited Partnership for Supply of Electric Energy.

FOR FURTHER INFORMATION CONTACT: Greg Askew, NEPA Administration, Tennessee Valley Authority, 400 West Summit Hill Drive, Mail Stop WT 8C–K, Knoxville, Tennessee 37902, 423–632–6418 or gaskew@tva.gov.

SUPPLEMENTARY INFORMATION: The Tennessee Valley Authority (TVA) no longer holds an option to purchase electric power from the proposed power plant to be constructed by L.S. Power and located at Batesville, Mississippi. As a consequence, TVA is terminating the environmental impact statement associated with L.S. Power's proposed power plant at Batesville. A Notice of Intent to prepare this EIS was published in the **Federal Register** on August 14, 1996, pages 42299–42300. A Notice of Availability of a draft EIS (EIS No. 970181) was published by the Environmental Protection Agency in the **Federal Register** on May 23, 1997 page 28469–28470.

Dated: January 28, 1999.

Kathryn J. Jackson,

Executive Vice President, Resource Group.

[FR Doc. 99–2854 Filed 2–5–99; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Sun Jet International, Inc., for Fitness Redetermination

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 99–2–17) Docket OST–98–3957.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Sun Jet International, Inc., fit, willing, and able, to resume interstate passenger charter air transportation operations.

DATES: Persons wishing to file objections should do so no later than February 12, 1999.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–98–3957 and addressed to the Department of Transportation Dockets (SVC–124.3, Room PL–401), 400 Seventh Street, SW, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: February 2, 1999.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–2848 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–3584]

Proposed Modernization of the Coast Guard National Distress System

AGENCY: Coast Guard, DOT.

ACTION: Notice of the availability of the finding of no significant impact (FONSI) for the National Distress System Modernization Project (NDSMP).

SUMMARY: In accordance with the National Environmental Policy Act and the Council of Environmental Quality Regulations, the Coast Guard has approved its Programmatic Environmental Assessment (PEA) for the National Distress System Modernization Project (NDSMP). Based

on the final PEA, the Coast Guard makes a finding of no significant impact (FONSI) for the proposed NDSMP Action.

ADDRESSES: The FONSI and final PEA are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL 401, 400 Seventh Street SW., Washington DC. between the hours of 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. The telephone number to the Docket Management Facility is (202) 366–9329. You may also access the final PEA and FONSI on the Internet at the Web Sites: *http://dms.dot.gov* and *http://ndsmp.spawar.navy.mil.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Gerald Busch, Commandant (G–AIR), U.S. Coast Guard, 2100 Second Street SW, Washington, DC. 20593–0001; telephone: (202) 267–2643. For questions on viewing this docket contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone (202) 366–9329.

SUPPLEMENTARY INFORMATION: The final PEA is based on the draft PEA, which was published in the **Federal Register** on June 5, 1998 (63 FR 30803), and reflects, as appropriate, comments received on the draft PEA.

Dated: January 11, 1999.

R.J. Casto,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Acquisition.

[FR Doc. 99–2972 Filed 2–5–99; 8:45 am]

BILLING CODE 4810–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare a Supplemental Environmental Assessment for the Proposed Actions Related to the Grand Canyon National Park and To Conduct Scoping

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent; request for comment.

SUMMARY: The FAA, in cooperation with the Department of the Interior (DOI), announces its intent to prepare a Supplemental Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended and applicable environmental laws, regulations and orders. This supplemental EA will address the following proposed actions: 1) new and modifications to existing air tour routes for commercial aircraft operating in the Special Flight Rules Area (SFRA) in the vicinity of Grand Canyon National Park (GCNP), identified as Special Federal Aviation Regulation Number 50–2 (SFAR 50–2); 2) new and modifications to the airspace in the SFRA; and, 3) a limitation on the number of operations by commercial air tour aircraft in the SFRA. These actions represent concepts that are presently under consideration by the FAA. Any changes to the airspace or the air tour routes will be subject to the public notice and comment procedures.

DATES: Written comments must be received on or before March 5, 1999. Questions concerning the supplemental EA or the process being applied by the FAA should be directed to William J. Marx at the address listed below or at (202) 267–3075.

ADDRESSES: Comments on this Notice of Intent may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Attention; William J. Marx, Air Traffic Airspace Management, Environmental Programs Division, ATA–300, 800 Independence Avenue, SW., Washington, DC 20591. Comments my be examined at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William J. Marx in writing at the above address or via telephone at (202) 267–3075.

SUPPLEMENTARY INFORMATION: Based upon further discussions with interested parties and consultation with Native American tribal representatives, the FAA and DOI are specifically considering new commercial air tour routes in the Sanup area and expanding the Desert View Flight Free Zone further east. To a greater degree than existing and prior proposed commercial air tour routes, these proposed actions would minimize impact on traditional cultural properties that were identified during consultation with Native American tribal representatives pursuant to Section 106 of the National Historic Preservation Act. The scoping process will consist of a public comment period for involved and interested agencies and persons to submit written comments representing the concerns and issues they believe should be addressed in the supplemental EA.

Background

On May 12, 1997 (62 FR 38233; May 15, 1997) the FAA issued a Notice proposing to modify two flight free zones (FFZ) within GCNP with two corridors through the FFZ. On July 10, 1998 (63 FR 38233; July 15, 1998) the FAA, in consultation with DOI, withdrew this NPRM because the agencies determined not to proceed with an air tour route in the vicinity of National Canyon and were considering alternatives to this route. In addition, a companion document to 63 FR 38233 was published in the **Federal Register** that amended the Notice No. 96–15 (Noise Limitations NPRM), by removing two sections, which first proposed a National Canyon Corridor (63 FR 38232; July 10, 1998). For a comprehensive history of actions taken and proposed between December 1996 and May 1997, please see the NPRM to extend SFAR 50–2 (63 FR 67544; December 7, 1998).

The Supplemental EA

Information, data, opinions, and comments obtained throughout the course of the scoping process may be used in the preparation of the supplemental EA. The purpose of this Notice of Intent is to inform the public and local, State, and Federal government agencies that a supplemental EA will be prepared. Also to provide those interested with an opportunity to present their opinions, comments, information, or other relevant observations concerning alternatives and potential environmental impacts relating to implementation of these proposals, particularly in the Sanup area. The proposed actions are concepts presently under consideration by the FAA and DOI.

There is currently a cap on the number of commercial sightseeing aircraft that can operate in the SFRA (61 FR 69317; December 31, 1996). The FAA is also considering rulemaking to establish a cap on the number of flights that these sightseeing aircraft can operate.

To maximize the opportunities for public participation in this environmental process, the FAA will mail copies of this Notice and a graphic (labeled for planning purposes only) showing the proposed changes to the air tour routes and proposed modifications to the airspace to those parties listed in Appendix A of the October 17, 1997 Written Reevaluation. The graphic containing the proposed air tour route changes and airspace modifications is not being published in today's **Federal Register** due to the detail on the charts. Again these proposed actions represent a concept presently under consideration by the FAA and DOI. Any changes to the airspace configuration or the air tour routes will be subject to public notice and comment procedures.

In addition, the FAA will utilize for scoping the public comments on the

Grand Canyon Final Rule, the Notice of Availability of Proposed Commercial Air Tour Routes, and the Notice of Proposed Rulemaking (NPRM), each dated December 31, 1996, the Notice of Proposed Rulemaking for Establishment of Corridors in the GCNP SFRA and the Notice of Availability of Commercial Air Tour Routes, both dated May 15, 1997, the Notice of Clarification dated October 31, 1997, the Notice of Meeting [Flagstaff] dated April 10, 1998 (63 FR 18964; April 15, 1998) and the final Environmental Assessment and written reevaluations prepared in support of these Notices and rulemaking documents.

The commercial air tour routes will be issued for public comment in a Notice of Availability of Proposed Air Tour Routes concurrently with Notices of Proposed Rulemaking for the airspace modification and limitation on operations.

The FAA expects to issue the supplemental EA in the summer of 1999, concurrently for public comment with these documents. The FAA plans to provide a period of sixty days for public comment on the supplemental EA. The public will be notified about the availability of the supplemental EA for comment through the **Federal Register** and other appropriate media.

Any person may have their name added to the mailing list, receive a copy of the graphic containing the proposed changes and modifications, and/or obtain a copy of the supplemental EA when it becomes available, by submitting a request to the FAA contact identified above.

Issued in Washington, D.C. on February 3, 1999.

William J. Marx,

Manager, Environmental Programs Division, Office of Air Traffic Airspace Management.

[FR Doc. 99–2934 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–99–5020]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal Agency can collect certain information from the public, it must receive approval from the Office of Management and the Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal Agencies must solicit public comment on proposed information collections, including extensions and reinstatements of previously approved collections. This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 9, 1999.

ADDRESSES: Direct all written comments to U.S. Department of Transportation Dockets, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590. Docket No. NHTSA–99–5020.

FOR FURTHER INFORMATION CONTACT: Paul J. Tremont, Ph.D., Contracting Officer's Technical Representative, Office of Research and Traffic Records (NTS–31), Washington, DC 20290, telephone 202–366–5587.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing for a 60-day comment period and to allow for consultation with affected agencies and members of the public concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methods and assumptions;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In response to these requirements, NHTSA asks for public comment on the following proposed collection of information:

National Survey of Drinking and Driving Attitudes and Behavior: 1999

Type of Request—New information collection requirement.

OMB Clearance Number—None.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—February 28, 2000

Summary of the Collection of Information

In 1991, NHTSA conducted the first in a series of biennial surveys of the driving-aged public (aged 16 or older) to identify patterns and trends in public attitudes and behaviors towards drinking and driving. The proposed study, to be administered in the 3rd quarter of 1999, and the fifth in this series of biennial surveys, will collect data on topics included in the first four studies (and several additional topics), including: frequency of drinking and driving and of riding with an impaired driver, ways to prevent drinking and driving, enforcement of drinking driving laws including the use of sobriety checkpoints, understanding of BAC levels and legal limits, and crash and injury experience.

The survey will be administered by telephone to a national probability sample of the driving age public (aged 16 years or older as of their last birthday). Participation by respondents is voluntary. The interview is anticipated to average 20–25 minutes; for non-drinkers and non-drivers the interview will average below 20 minutes, while for drinker-drivers it will average slightly over 20 minutes.

Interviewers will use computer assisted telephone interviewing to reduce survey administration time and to minimize data collection errors. A Spanish-language questionnaire and bi-lingual interviewers will be used to reduce language barriers to participation. All respondent's results will remain anonymous and completely confidential. Participant names are not collected during the interview and the telephone number used to reach the respondent is separated from the data record prior to its entry into the analytical database.

Description of the Need for the Information and Proposed Use of the Information

More than 327,000 persons were reported injured and more than 16,000 persons died in alcohol-related motor vehicle crashes in 1997, (Traffic Safety Facts: 1997, NHTSA-National Center for Statistics and Analysis). NHTSA is committed to the development of

effective programs to reduce the incidence of these crashes. In order to properly plan and evaluate programs directed at reducing alcohol-impaired driving, the agency needs to periodically update its knowledge and understanding of the public's attitudes and behaviors with respect to drinking and driving.

The findings from this proposed collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus current programs and activities to achieve the greatest benefit, to develop new programs to decrease the likelihood of drinking and driving behaviors, and to provide informational support to states, localities, and law enforcement agencies that will aid them in their efforts to reduce drinking and driving crashes and injuries.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

Under this proposed collection, a telephone interview averaging approximately 20 minutes in length would be administered to each of 6,000 randomly selected members of the general public age 16 and older. The respondent sample would be selected from all 50 states plus the District of Columbia. Interviews would be conducted with persons at residential phone numbers selected using random digit dialing. No more than one respondent per household would be selected, and each sample member would complete just one interview. Businesses are ineligible for the sample and would be not be interviewed.

Estimate of the Total Annual reporting and Record Keeping Burden Resulting From the Collection of Information

NHTSA estimates that respondents in the sample would require an average of 20 minutes to complete the telephone interview. Thus, the number of estimated reporting burden on the general public would be a total of 2000 hours for the proposed survey. The respondents would not incur any reporting or record keeping cost from the information collection.

Rose A. McMurray,

Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration.

[FR Doc. 99–3008 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33707]

Albany Bridge Company, Inc., Georgia & Florida Railroad Co., Inc., and Live Oak, Perry & Georgia Railroad Company, Inc.—Corporate Family Transaction Exemption—Gulf & Ohio Railways, Inc.

Albany Bridge Company, Inc., Georgia & Florida Railroad Co., Inc., and Live Oak, Perry & Georgia Railroad Company, Inc. (Railroad Companies), and Gulf & Ohio Railways, Inc. (G&O), have jointly filed a notice of exemption. The Railroad Companies and G&O are wholly owned by Gulf & Ohio Railways Holding Co., Inc. (Holding Company), and the Holding Company is wholly owned by H. Peter Claussen and Linda C. Claussen.[1] The Railroad Companies will be merged into G&O, with G&O as the surviving corporation.

The transaction was scheduled to be consummated on or shortly after January 21, 1999.

The proposed merger is intended to consolidate the operations of the Railroad Companies and G&O, and to eliminate administrative and operating inefficiencies, improve service, and to improve the financial viability of the surviving corporation.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

[1] *See Abany Bridge Company, Inc., Georgia & Florida Railroad Co., Inc., Gulf & Ohio Railways, Inc., Lexington & Ohio Railroad Co., Inc,, Live Oak, Perry & Georgia Railroad Company, Inc., Piedmont & Atlantic Railroad Co., Inc., Rocky Mount & Western Railroad Co., Inc., Wiregrass Central Railroad Company, Inc.—Corporate Family Transaction Exemption—Gulf & Ohio Railways Holding Co., Inc.*, STB Finance Docket No. 33576 (STB served Apr. 10, 1998).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to reopen will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33707, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: January 29, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2666 Filed 2–5–99; 8:45 am]

BILLING CODE 4910–00–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15–29]

Delegation of Authority to the Commissioner, United States Customs Service, To Investigate Violations of 18 U.S.C. § § 1956 and 1957

January 21, 1999.

1. *Purpose.* This Directive delegates to the Commissioner, United States Customs Service, authority to investigate violations of 18 U.S.C. §§ 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. § § 981, 1956(e) and 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Commissioner, United States Customs Service:

a. Investigatory authority over violations of 18 U.S.C. § 1956 or 1957 involving 18 U.S.C. § § 542, 545, 549, 659, 1461–63, 1465, 2251–52, 2314, 2320, and 2321; 19 U.S.C. § 1590; 21 U.S.C. § 863; offenses under § 11 of the Export Administration Act of 1979 (50 U.S.C. App. § 2410); offenses under § 206 of the International Emergency Economic Powers Act (50 U.S.C. § 1705); offenses under § 16 of the Trading With the Enemy Act (50 U.S.C. App. § 16); and offenses under § 38 of the Arms Export Control Act (22 U.S.C.

§ 2778) (relating to the exportation, intrasit, temporary import, or temporary export transactions).

b. Investigatory authority over violations of 18 U.S.C. § 1956(a)(2)(B)(ii), involving a reporting violation under 31 U.S.C. § 5316;

c. Investigatory authority over violations of 18 U.S.C. § 1956(a)(3) relating to violations within the investigatory jurisdiction of the U.S. Customs Service under paragraphs 2.a. and b.; and

d. Seizure and forfeiture authority and related authority under 18 U.S.C. § 981 relating to violations of 18 U.S.C. § 1956 or 1957 within the investigatory jurisdiction of the Customs Service under paragraphs 2.a., 2.b., and 2.c., and seizure authority under 18 U.S.C. § 981 relating to any other violation 18 U.S.C. § 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. § 981 where investigatory jurisdiction is with another bureau not present at the time of the seizure shall be turned over that bureau.

3. *Forfeiture Remission.* The Commissioner, United States Customs Service, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.d.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. *Coordination:*

a. If at any time during an investigation of a violation of 18 U.S.C. § 1956 or 1957, the U.S. Customs Service discovers evidence of a matter within the jurisdiction of another Treasury bureau or office, the U.S. Customs Service shall immediately notify that bureau or office with investigatory jurisdiction of the investigation and invite that bureau or office to participate in the investigation. The Commissioner, U.S. Customs Service, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level or, in the case of the Office of Foreign Assets Control, at the headquarters level.

b. The Under Secretary (Enforcement) shall settle dispute that cannot be resolved by the bureaus. The Under Secretary (Enforcement) shall settle disputes over investigatory jurisdiction with the Internal Revenue Service in consultation with the Commissioner, Internal Revenue Service.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, the U.S. Customs Service shall adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. § 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, U.S. Customs Service shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Ratification.* To the extent that any action heretofore taken consistent with this Directive may require ratification, it is hereby approved and ratified.

7. *Authorities:*

a. 18 U.S.C. §§ 542, 545, 659, 981, 1461–1463, 1465, 1956, 1957, 2251–52, 2314, 2320 and 2321.

b. 19 U.S.C. § 1590.

c. 21 U.S.C. § 863.

d. 22 U.S.C. § 2778.

e. 31 U.S.C. § 5316.

f. 50 U.S.C. App. § 16, 50 U.S.C. 1705, and App. 2410.

g. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated October 29, 1998 or successor documents.

h. TO 102–14, " Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992," dated January 10, 1995 or successor documents.

8. *Cancellation.* Treasury Directive 15–29, "Delegation of Authority to the Commissioner, United States Customs Service to Investigate Violations of 18 U.S.C. §§ 1956 and 1957," dated September 11, 1995, is superseded.

9. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or canceled prior to that date.

10. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

James E. Johnson,

Under Secretary (Enforcement).

[FR Doc. 99–2868 Filed 2–5–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 15–42]

Delegation of Authority to the Commissioner, Internal Revenue Service, To Investigate Violations of 18 U.S.C. 1956 and 1957

January 21, 1999.

1. *Purpose.* This Directive delegates to the Commissioner, Internal Revenue Service (IRS), authority to investigate violations of 18 U.S.C. 1956 and 1957.

2. *Delegation.* By virtue of the authority vested in the Secretary of the Treasury by 18 U.S.C. 981, 1956(e), 1957(e) and the authority delegated to the Under Secretary (Enforcement) by Treasury Order (TO) 101–05, there is hereby delegated to the Commissioner, IRS:

a. Investigatory authority over violations of 18 U.S.C. 1956 and 1957 where the underlying conduct is subject to investigation under Title 26 or under the Bank Secrecy Act, as amended; or 31 U.S.C. 5311–5328 (other than violations of 31 U.S.C. 5316);

b. Seizure and forfeiture authority over violations of 18 U.S.C. 981 relating to violations of:

(1) 31 U.S.C. 5313 and 5324; and

(2) 18 U.S.C. 1956 and 1957 which are within the investigatory jurisdiction of IRS pursuant to paragraph 2.a.; and

c. Seizure authority relating to any other violation of 18 U.S.C. 1956 or 1957 if the bureau with investigatory authority is not present to make the seizure. Property seized under 18 U.S.C. 981 where investigatory jurisdiction is solely with another bureau not present at the time of the seizure shall be turned over to that bureau.

3. *Forfeiture Remission.* The Commissioner, IRS, is authorized to remit or mitigate forfeitures of property valued at not more than $500,000 seized pursuant to paragraph 2.b.

4. *Redelegation.* The authority delegated by this directive may be redelegated.

5. *Coordination.*

a. If at any time during an investigation of a violation of 18 U.S.C. 1956 or 1957, IRS discovers evidence of a matter within the jurisdiction of another Treasury bureau, to the extent authorized by law, IRS shall immediately notify that bureau of the investigation and invite that bureau to participate in the investigation. The Commissioner, IRS, shall attempt to resolve disputes over investigatory jurisdiction with other Treasury bureaus at the field level.

b. The Under Secretary (Enforcement) shall settle disputes that cannot be

resolved by the bureaus in consultation with the Commissioner, IRS.

c. With respect to matters discovered within the investigatory jurisdiction of a Department of Justice bureau or the Postal Service, IRS shall adhere to the provisions on notice and coordination in the "Memorandum of Understanding Among the Secretary of the Treasury, the Attorney General and the Postmaster General Regarding Money Laundering Investigations," dated August 16, 1990, or any such subsequent memorandum of understanding entered pursuant to 18 U.S.C. 1956(e) or 1957(e).

d. With respect to seizure and forfeiture operations and activities within its investigative jurisdiction, IRS shall comply with the policy, procedures, and directives developed and maintained by the Treasury Executive Office for Asset Forfeiture. Compliance will include adhering to the oversight, reporting, and administrative requirements relating to seizure and forfeiture contained in such policy, procedures, and directives.

6. *Ratification.* To the extent that any action heretofore taken consistent with this Directive may require ratification, it is hereby approved and ratified.

7. *Authorities.*

a. 18 U.S.C. 981, 1956 and 1957.

b. 31 U.S.C. 5311–5328 (other than violations of 31 U.S.C. 5316).

c. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated October 29, 1998, or successor documents.

d. TO 102–14, "Delegation of Authority with Respect to the Treasury Forfeiture Fund Act of 1992," dated January 10, 1995, or successor documents.

8. *Cancellation.* Treasury Directive 15–42, "Delegation of Authority to the Commissioner, Internal Revenue Service to Perform Functions Under the Money Laundering Control Act of 1986, as amended," dated September 11, 1995, is superseded.

9. *Expiration Date.* This Directive shall expire three years from the date of issuance unless superseded or canceled prior to that date.

10. *Office of Primary Interest.* Office of the Under Secretary (Enforcement).

James E. Johnson,

Under Secretary (Enforcement).

[FR Doc. 99–2869 Filed 2–5–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 101–05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

January 7, 1999.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), and Executive Order (E.O.) 11822, dated December 10, 1974, it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Chief of Staff shall report directly to the Secretary and shall exercise supervision over the Director, Secretary's Scheduling Office, and the Executive Secretary.

3. The Executive Secretary shall report directly to the Chief of Staff and shall exercise supervision over the functions of the Executive Secretariat Correspondence Unit; the Office of Public Correspondence; and, for purposes of administrative and managerial control, over the Special Assistant to the Secretary (National Security). The Special Assistant to the Secretary (National Security) shall report to the Secretary and the Deputy Secretary.

4. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Domestic Finance)
Under Secretary (Enforcement)
General Counsel
Assistant Secretary (Legislative Affairs and Public Liaison)
Assistant Secretary (Public Affairs)
Assistant Secretary (Economic Policy)
Assistant Secretary (Tax Policy)
Assistant Secretary (Management) and Chief Financial Officer
Commissioner of Internal Revenue
Comptroller of the Currency
Director, Office of Thrift Supervision

5. The Inspector General and the Treasury Inspector General for Tax Administration shall report to and be under the general supervision of the Secretary and the Deputy Secretary.

6. The Assistant Secretary (Management) serves as the Department's Chief Financial Officer pursuant to Chapter 9 of Title 31, U.S.C., and serves as the Department's Chief Operating Officer for purposes of the Presidential Memorandum, "Implementing Management Reform in the Executive Branch," dated October 1, 1993.

7. The Deputy Assistant Secretary (Information Systems) reporting to the Assistant Secretary (Management) and Chief Financial Officer is designated as the Department's Chief Information Officer pursuant to Division E of the Clinger-Cohen Act of 1996, and E.O. 13011, dated July 16, 1996, and shall have direct access to the Secretary to the extent required by that Act and related statutes.

8. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary in that official's own title is hereby affirmed and ratified as the action of the Secretary.

9. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in the official's own capacity and the official's own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by any of these officials in that official's own title is hereby affirmed and ratified as the action of the Secretary.

10. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. The following individuals, in the order of the date on which they were first appointed to a position within the Department requiring appointment by the President by and with the advice and consent of the Senate:

- Under Secretary (International Affairs);
- Under Secretary (Domestic Finance); and
- Under Secretary (Enforcement);

c. General Counsel; and

d. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

11. *Cancellation.* Treasury Order 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated October 29, 1998, is superseded as of this date.

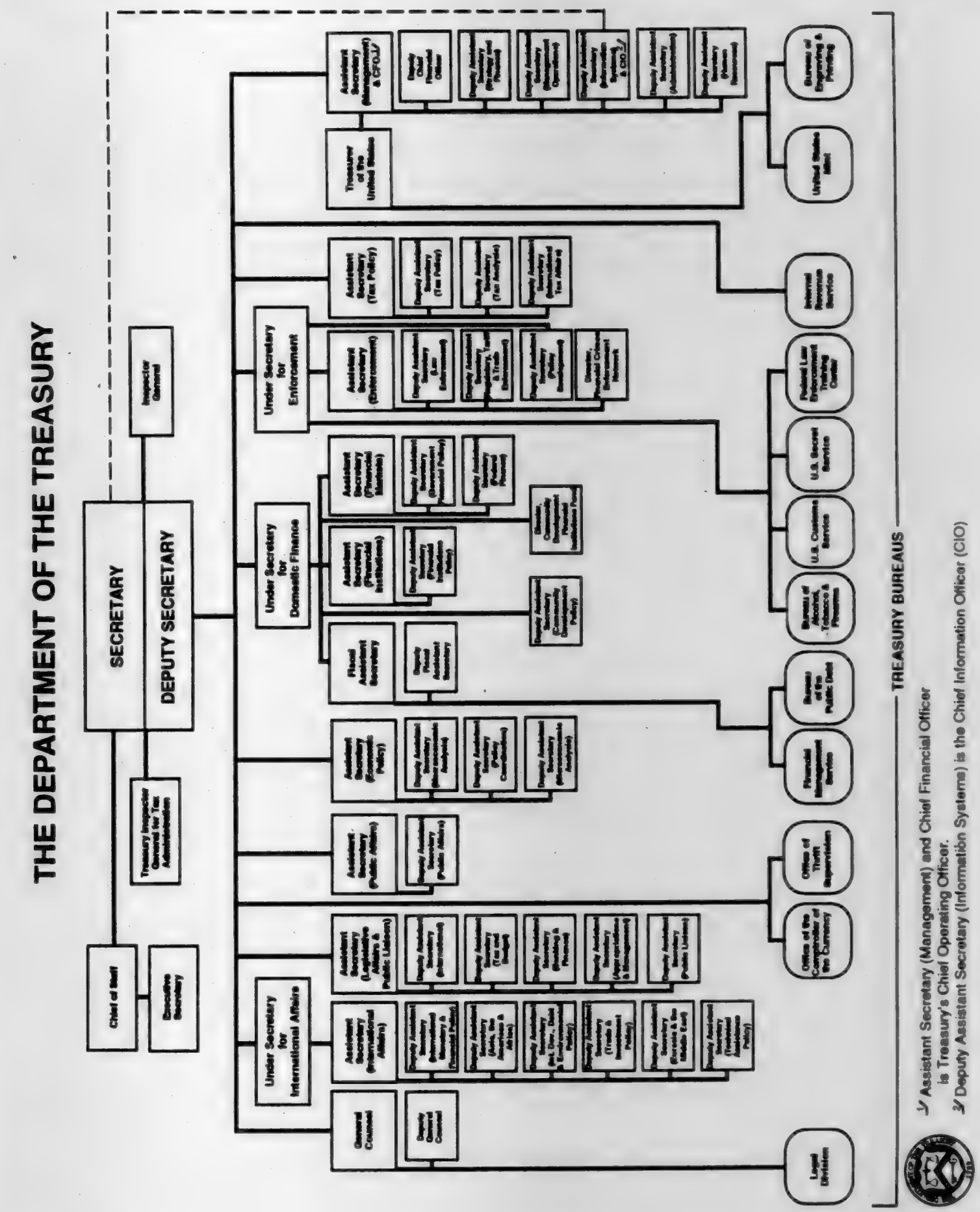
12. *Office of Primary Interest.* Office of Organizational Improvement.

Robert E. Rubin,

Secretary of the Treasury.

Attachment

BILLING CODE 4810-25-P



[FR Doc. 99–2870 Filed 2–5–99; 8:45 am]

BILLING CODE 4810–25–C

Corrections

Federal Register
Vol. 64, No. 25
Monday, February 8, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[IB Docket No. 97-95; FCC 98-336]

Allocation and Designation of Spectrum for Fixed-Satellite and Wireless Services in the 36.0-51.4 GHz Frequency Band, and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz Band for Government Operations

Correction

In rule document 99–974 beginning on page 2585 in the issue of Friday, January 15, 1999, make the following corrections:

§ 2.106 [Corrected]

1. On page 2588, in the table, in the first column, under 40.0–40.5 GHz, in the third and fourth lines, "space–to–Earth" should read "Earth–to–space".

2. On page 2589, in the table, in the fifth column, under 40.5–41.0 GHz, "Mobile" should be added under "Fixed".

3. On the same page, in the table, in the fifth column, under 41.0–42.5 GHz, "Fixed" should read "FIXED" and "mobile" should read "MOBILE".

4. On page 2590, in the table, in the first column, under 46.9–47.0 GHz, "FIXED" should be removed.

5. On the same page, in the table, in the fourth column, under 47.0–47.2 GHz, "AMATEUR–SATELLITE" should be removed.

6. On the same page, in the table, in the same column, under 50.4–51.4 GHz, "Mobile–Satellite" should read "MOBILE–SATELLITE".

7. On the same page, in the table, in the fifth column, under 46.9–47.0 GHz, "FIXED" should be added above "MOBILE".

8. On the same page, in the table, in the same column, under 47.0–47.2 GHz, "AMATEUR–SATELLITE" should be added under "AMATEUR".

9. On the same page, in the table, in the same column, under 50.4–51.4 GHz, "Mobile–Satellite" should read "MOBILE–SATELLITE".

[FR Doc. C9–974 Filed 2–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR-4425-N-01]

Operating a Fund Rule; Notice of Intent to Establish a Negotiated Rulemaking Committee and Notice of First Meeting

Correction

Proposed rule document 99-2572 was inadvertently published in the Rules and Regulations section of the issue of Wednesday, February 3, 1999, beginning on page 5570. It should have appeared in the Proposed Rules section.

[FR Doc. C9–2572 Filed 2–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ACE-55]

Amendment to Class E Airspace; Des Moines, IA

Correction

In rule document 99–1096 beginning on page 2823 in the issue of Tuesday, January 19, 1999, make the following correction(s):

§ 71.1 [Corrected]

On page 2824, in the second column, in § 71.1, in the first paragraph of the airspace description, in the eighth line, after "each" add "side".

[FR Doc. C9–1096 Filed 2–5–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Monday
February 8, 1999

Part II

Department of Education

Office of Postsecondary Education; Notice Inviting Applications for New Awards and Final Procedures and Requirements for Fiscal Year (FY) 1999 Competitions Under the Teacher Quality Enhancement Grant Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA NO: 84.336]

Office of Postsecondary Education; Notice Inviting Applications for New Awards and Final Procedures and Requirements for Fiscal Year (FY) 1999 Competitions Under the Teacher Quality Enhancement Grant Programs

SUMMARY: The Assistant Secretary for Postsecondary Education (Assistant Secretary) invites applications for new awards for Fiscal Year (FY) 1999 for the Teacher Quality Enhancement Grant Programs for States and Partnerships authorized by sections 201–205 of the Higher Education Act (HEA), as amended by the Higher Education Amendments of 1998. The Assistant Secretary also announces final procedures and requirements to govern the competitions and FY 1999 awards.

PURPOSE OF PROGRAM: See the **SUPPLEMENTARY INFORMATION** section of this notice for a description of the Teacher Quality Enhancement Grant Programs.

FOR FURTHER INFORMATION CONTACT: Louis J. Venuto, Higher Education Programs, Office of Postsecondary Education, 400 Maryland Ave. SW., Portals Building, Suite 600, Washington, D.C. 20202–5131: Telephone: (202) 708–8596. Inquiries also may be sent by e-mail to: Louis_Venuto@ed.gov or by FAX to: (202) 260–9272.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternative format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Eligible Applicants: The Secretary invites applications from States and from eligible partnerships comprised, at minimum, of an institution of higher education with an eligible teacher preparation program, a school of arts and sciences, and a high-need local educational agency (LEA). These terms are defined in section 203 of the HEA.

Applicability of Regulations: The following provisions of EDGAR contained Title 34 of the Code of Federal Regulations (CFR) apply to the Teacher Quality Enhancement Grant Programs: 34 CFR Parts 74, 75, 77, 79, 80, 82, 85, and 86. However, section 75.590, regarding a project evaluation to be submitted at the end of the final year of the grant, does not apply to recipients of State Program grants.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed rulemaking documents. However, in accordance with section 437(d)(1) of the General Education Provisions Act, the Secretary has determined that because it is not possible to offer the public an opportunity for comment on proposed rulemaking under the Teacher Quality grant programs and still make awards by September 30, 1999, as required by law, it is desirable to waive public comment for the first year competition of this new discretionary grant program. This waiver will apply only to the criteria, procedures, and requirements included in this notice for awarding FY 1999 Teacher Quality Enhancement Program grants. Any criteria and procedures that the Department establishes for the award of grants under these programs in future years will be based on experiences with this FY 1999 award process, and will be published in proposed form in the **Federal Register** with an opportunity for interested parties to comment.

Applications Available: On or before February 11, 1999. The Department also expects that application packages will be available electronically through the internet on February 11, 1999, at the Department's website: http://www.ed.gov/offices/OPE/heatqp/index.html

BILLING CODE 4000–01–P

CFDA No. and Name	Pre-Applications	Application Deadline Date	Deadline for Intergovernmental Review	Available Funds	Estimated Range of Awards (per year)	Project Period	Estimated Average Size of Award (per year)	Estimated Number of Awards
Teacher Quality Enhancement Grant Programs								
1. State Grants Program	N/A	4/16/99	6/15/99	33,300,000	Up to 5,000,000	36 mos	$700,000 to 2,500,000	15-20
2. Teacher Recruitment Grants Program	N/A	4/16/99	6/15/99	9,600,000	Up to 500,000	36 mos	495,000	25
3. Partnership Grants Program	4/2/99	7/9/99	6/15/99	33,300,000	Up to 3,500,000	60 mos	1,000,000 to 2,800,000	15-20

NOTE: The Department is not bound by any estimates in this notice.

BILLING CODE 4000-01-C

Note: Information about six regional workshops the Department has scheduled between February 17 and March 2, 1999, to answer questions about the Teacher Quality Programs and to provide general assistance in preparing applications for each of the programs, is included in an appendix to this notice.

SUPPLEMENTARY INFORMATION: On October 8, 1998, the President signed into law the Higher Education Amendments of 1998. Title II of this law addresses the Nation's need to ensure that new teachers enter the classroom prepared to teach all students to high standards by authorizing, as Title II of the Higher Education Act, Teacher Quality Enhancement Grants for States and Partnerships. The new Teacher Quality programs provide an historic opportunity to effect positive change in the recruitment, preparation, licensing, and on-going support of teachers in America. The programs are designed to increase student achievement by implementing comprehensive approaches to improving teacher quality.

More specifically, the Teacher Quality Enhancement Grant Programs include three new competitive grant programs:

State Grants Program: Competitive grants to States will support the implementation of comprehensive statewide reforms to improve the quality of a State's teaching force. By law, State activities must include one or more of the following activities: reforming teacher certification or licensure standards; implementing reforms to hold institutions of higher education accountable for preparing teachers who are highly competent in their subject areas; providing prospective teachers with alternative pathways into teaching; implementing programs of support for teachers during their initial periods of teaching and establishing, expanding, or improving alternative routes to State certification; developing effective methods of recruiting and rewarding highly competent teachers and removing incompetent or unqualified teachers; recruiting teachers for high-poverty urban and rural areas; and developing ways teachers can address the problem of social promotion.

Partnership Grants For Improving Teacher Preparation Program: The purpose of the Partnership program is to bring teacher preparation programs, schools of arts and sciences, and high-need school districts and schools together (as appropriate with other stakeholders) to create fundamental change and improvement in traditional teacher education programs—thereby increasing teachers' capacity to help *all* students learn to high standards. Designed to support highly committed partnerships that will accelerate the change process in teacher education, the program will (1) strengthen the vital role of K–12 educators in the design and implementation of effective teacher education programs, and (2) increase collaboration between departments of arts and sciences and schools of education.

The program is designed to make an important impact on teacher education and thereby to increase significantly the number of new teachers emerging from programs that have been redesigned to ensure that new teachers have the content knowledge and teaching skills to be effective.

Teacher Recruitment Grants Program: In addition, there is a great need, especially in high-poverty communities, to recruit and prepare more people to become teachers. The Teacher Recruitment Grants—awarded either to States or to partnerships among high-need LEAs, teacher preparation institutions, and schools of arts and sciences—are designed to reduce shortages of highly qualified teachers in high-need school districts.

Local partnerships between school districts and teacher preparation institutions have been found to be very effective at providing teachers for communities where they are most needed. The "grow your own" approach is also effective for these communities because individuals who are already members of a community are likely to remain there after they become teachers. The recruitment grants will allow individual communities to determine their needs for teachers and to recruit and prepare teachers who meet those needs. States can also play an important role in ensuring that high-need school districts are able to recruit highly qualified teachers, and they can use the recruitment grants to develop and implement effective mechanisms to do so.

Rules Applicable to These Programs for FY 1999 Competitions

In order to administer the program fairly and properly, the following rules apply to these competitions:

State Grants Program

The Department will use provisions contained in 34 CFR 75.209–75.210 to establish selection criteria that reviewers will use to make recommendations on which applicants to recommend for award. However, rather than include "Quality of project personnel" (75.210(e)) as a separate criterion, the Department will use, as an additional element under the criterion "Quality of the management plan" (section 75.210(g)), the following: The qualifications, including training and experience, of key project personnel (including consultants, if any) that are relevant to implementing the proposed project.

In addition, consistent with section 205(b)(2) of the HEA, which established priorities for projects awarded grants under the State Grants program, the Secretary includes in the selection criteria the following competitive preference:

Competitive Preference: The Secretary reviews each application to determine the extent to which the State's proposed activities in any one or more of the following statutory priorities are likely to yield successful and sustained results.

1. Projects that propose initiatives to reform State teacher certification requirements that are designed to ensure that current and future teachers possess the necessary teaching skills and academic content knowledge in the subject areas in which the teachers are certified or licensed to teach.

2. Projects that proposes innovative reforms to hold institutions of higher education with teacher preparation programs accountable for preparing teachers who are highly competent in academic content area in which the teachers plan to teach and have strong teaching skills.

3. Projects that propose the development of innovative efforts aimed at reducing the shortage of highly qualified teachers in high poverty urban and rural areas.

The Secretary awards up to ten (10) additional points on the basis of how well the application addresses this preference.

Note: *Evaluation.* In view of the public accountability required by section 206(a) of the HEA, States receiving grant awards under this program will not need to submit the end-of-project evaluation report otherwise required by 34 CFR 75.590 of the Education Department's General Administrative Regulations (EDGAR).

Partnership Grants Program

Pre-Application Process: So that all applicants have as much time as possible to design activities and develop new relationships that are needed for applications that will address these challenges, the Department will use a two-phase peer review process to select applicants for awards. All applicants must submit pre-applications by April 2, 1999 that include a narrative of no more than 10 double-spaced pages.

Peer reviewers will rate each application on its response to these topics:

1. What is the partnership's vision to produce significant and sustainable improvements in teacher education?

2. Explain what your partnership can accomplish by working together that could not be accomplished by working separately.

3. Describe key components of the change process to realize your vision. What are the components? How do they reflect best research and practice? What will the partnership do to implement these components of change?

4. Discuss the specific outcomes of the proposed project. What will change? How will you know that the project is successful?

Each of these topics (i.e., the pre-application selection criteria) is critical to the design and implementation of high-quality partnership grants for improving teacher education. Peer reviewers will rate each pre-application by assigning up to 25 points for each of these four responses. Only those applicants whose pre-applications are rated very highly in this competitive peer review process will be invited and eligible to submit full Partnership Grant applications.

Other Pre-Application Requirements: Pre-applications also will need to contain the following information:

1. Application face sheet, as well as information on whether key LEAs are in urban/rural areas and in either Empowerment Zones or Enterprise Communities.

2. An Addendum that includes—

a. The identity of each of the application's partners, and sufficient information to permit the Department to determine that the partnership meets the minimum eligibility definitions included in the "General Program Information" (Part C) of the application package; and

b. Relevant Budgetary Information: For the pre-application, this information is limited to—

i. An estimated budget that includes—for each year of the project—the total amount of Title II, HEA funds projected to be requested, and the projected amount or of cash or in-kind contribution from each contributing partner; and

ii. A budget narrative of no more than two double-spaced pages that addresses generally, for each year of the project, how federal grant funds and the non-federal contribution will be used.

Peer reviewers will use this budget information to gauge the scale and scope of the proposed project, and to help clarify information contained in the application narrative. Those invited to submit a full application may modify this projected budget to reflect the plan of work in the full proposal. They also will be required to submit more complete budget information in the full application.

Full Partnership Application: The Secretary will select for funding under the Partnership Program those applications that are of highest overall quality. In determining which applications to recommend for award as having the highest overall quality, reviewers will assign each application up to 110 points using the following selection criteria and competitive preference. The relative weights for each criterion are indicated in parentheses. Applicants are free to respond to these criteria in any way they choose.

These selection criteria have been designed to ensure that those partnership applications selected for funding have addressed elements that the Secretary believes are key to a successful teacher preparation partnership, and have the greatest promise of meeting the broad purposes of the program.

Each of these three broad criteria includes one or more key questions that peer reviewers will consider as they examine an application, as well as a number of key elements that are critical to a well-developed response to these questions and to the partnership's overall success. Peer reviewers will consider what the partnership will accomplish—from whatever point the partners are in implementing reform—to enable teachers to have the knowledge and teaching skills they need to teach all of their students to high standards.

To be recommended for award, peer reviewers must either—

1. Find that the application satisfactorily addresses each of the key elements that follow each question, or

2. Be satisfied that an inadequate response to an element would prevent an award to an applicant that otherwise addressed, in outstanding ways, all Selection Criteria. (Reviewers will still need to find that the applicant submitted all information required by section 203 of the HEA.

Note: Section 203(b)(1) of the HEA requires that all partnerships include at least one high-need LEA (which by definition must have one or more high-need school). The definitions of a high-need LEA (and of a high-need school) are contained in the section of this notice entitled "Program Requirements Applicable to More Than One Program".

These definitions present a minimum standard that any partnership application must meet to be eligible to be considered. (As noted in "Other Important Application Information" in the application package, all applications must include information that confirms that the partnerships are comprised of the required components—including one or more school district that is a "high-need" LEA.) However, while the Partnership Program needs to have the greatest possible benefit for all participating LEAs and schools, the Nation faces a particular need to address the needs of those LEAs and schools whose students are most at-risk of failure. Given the particular challenges faced by these districts and schools, the highest-quality applications are likely to be those that not only are able to provide outstanding responses to the three selection criteria, but also focus on LEAs and schools that greatly exceed the definitions of high need.

Selection Criteria and Competitive Preference

a. Significance of Project Activities: (34 points)

In assessing how well the application meets this criterion, reviewers will determine how well it responds to the following question:

How does the partnership plan to meet its objectives and ensure that, once they begin work in the classroom, new teachers have the content knowledge and teaching skills they need to enable their students to succeed?

In responding to this question, applicants should be sure to address the following key elements:

- The existence of institution-wide commitments to high-quality teacher preparation programs that integrate pedagogy and subject-area content, and that include—

1. Strong connections between teacher preparation program(s) and the school(s) of arts and sciences;

2. Permanent institutional mechanisms that reward effective collaboration with the teacher preparation programs; and

3. Significant involvement of tenured and tenure-track faculty of the teacher preparation program(s) and the school(s) of arts and sciences.

- The responsiveness of teacher preparation programs to the needs of K–12 educators in high-need LEAs through, among other things:

1. Joint activities with high-need LEAs that increase the involvement of classroom teachers and school administrators in the design, improvement, and implementation of the teacher preparation and induction programs;

2. Demonstrable evidence of an increased presence of university faculty and preservice students in participating LEA schools;

3. Revamped teacher preparation curriculum and related organizational changes within the institution for higher education; and

4. Strong organizational linkages between each participating institution of higher education and the participating LEA's.

• The partnership's commitment to using evidence of how well graduates of the teacher preparation program(s) are teaching (including evidence of how well their students are achieving) to make regular adjustments and improvements in those programs.

• The partners' commitment to share effective practices and provide technical assistance about ways to improve teacher education at each teacher preparation institution that participates in the partnership.

• The quality of the partnership activities which—

1. Must include the following mandatory activities—

a. Carrying out reform of teacher preparation programs to hold those programs accountable for producing highly competent teachers, including teachers competent to use technology effectively in their classrooms;

b. Providing good clinical experiences and mentoring for new teachers and substantially increasing the interaction between teachers, principals, and administrators and an higher education faculty; and

c. Creating opportunities for enhanced and ongoing professional development that improves the academic content knowledge of teachers in fields they are or will be certified to teach.

2. And may also include activities such as—

a. Activities to prepare teachers to work with diverse populations and parents;

b. Broad dissemination of information on effective practices used by the partnership, and coordination of partnership activities with State governors, boards of education and State agencies;

c. Developing and implementing proven methods for enhancing the managerial and leadership skills of superintendents and principals (including those of master teachers and teacher-mentors); and

d. Teacher recruitment activities that may be conducted under the Teacher Recruitment Grant Program (see section 204 of the HEA).

Note: See section 203(d) and (e) of the HEA, which identifies with greater detail the three mandatory and four permissive activities, included in Part G of the Partnership Program's application package.

• A well-considered statement, for each year of the grant, of annual goals, benchmarks, and time lines that the partnership will use to determine whether project activities are effective in meeting the partnership's objectives.

• The commitment and ability of the partnership to:

(1) Integrate its activities with other educational reform activities underway in the State(s) and communities in which the partners are located; and (2) coordinate its activities with other local, State, or federally-supported teacher training or professional development programs and with appropriate activities of the Governor, State board of education and State educational agency and agency for higher education.

b. Extent to Which the Partnership's Objectives Are Built Around the Needs of High-Need LEAs and Their High-Need Schools. (33 Points)

1. *Does the application demonstrate that the partnership has developed strong measurable objectives, including measurable objectives for—*

• Improving teacher preparation programs in the partnership; and

• Improving the quality and number of teacher education program graduates who (1) meet the teacher preparation needs of high-need school districts in the partnership, and (2) take teaching positions in high-need schools in those districts?

2. *Does the application demonstrate that the partnership's objectives build upon a clear and thorough needs assessment performed by and of all K–12 and higher education partners that—*

• Was developed with the active participation of school and district administrators and classroom teachers of all types of students?

• Focuses on what all new teachers must know and be able to do once they begin teaching in the classroom—particularly in teaching reading, mathematics, science and other core subjects?

• Includes an assessment performed by the partner institution(s) of higher education that—

Examines the state of collaboration on the campus between arts and sciences faculty and the education faculty in teacher preparation activities, and between higher education faculty and K–12 teachers and administrators;

Examines the adequacy of the clinical experiences afforded to preservice students;

Examines the adequacy of content preparation for prospective teachers; and

Explains the need to improve the overall quality of teacher preparation to better respond to the needs of LEAs, and in particular of high-need LEAs?

c. Feasibility of Achieving Project Objectives: Quality of Project Management, Governance Structure, and the Availability and Use of Resources: (33 Points)

In assessing how well the application meets this criterion, reviewers will determine how well it responds to the following question:

How well does the application demonstrate that the partnership will be able to achieve its objectives, and that all members of the partnership will work collaboratively to sustain, improve, and enhance project activities during and beyond the period of the project?

In addressing this question, applicants should be sure to address the following elements:

• The extent to which the partnership has an effective, inclusive, and responsive governance and decision-making structure—

1. That will permit all members of the partnership (including teachers of the high-need LEA(s)) to plan, implement, and assess the adequacy of partnership activities; and

2. Through which the fiscal agent will provide project funds, as appropriate, to other partners to permit them to implement program activities.

• The extent to which the application demonstrates that the partnership will sustain itself during and beyond the period of the grant (which may include evidence that members of the partnership have succeeded—with each other or other entities—in other significant and sustained partnering efforts).

• The extent to which members of the partnership will provide technical assistance to each other to further project objectives.

• A resource assessment that describes—

1. The (federal and non-federal) resources available to the partnership;

2. The intended uses of grant funds (including financial support, faculty participation, and time commitments), whether awarded by the Department or provided by the partners, including how grant funds will be fairly distributed among the partners with no partner retaining more than 50 percent of grant funds that the Secretary awards; and

3. The commitment of the partnership's own resources to project activities, including non-federal financial support, faculty participation, time commitments, and other in-kind services, as well as continuation of activities when the grant ends.

Note: As required by 34 CFR 75.117, all applications must include, among other

things, a multi-year budget reflecting Federal and non-Federal resources.

• The qualifications and relevant experience of the overall project director and key personnel of each partner who have responsibility for implementing project activities.

• How well the application describes how the partnership Will—

1. Regularly assess whether it is meeting its program objectives;

2. Take steps to modify project plans and activities if the partnership finds that it is not meeting its objectives; and

3. Prepare the evaluation and annual progress report that include strong performance objectives, and measures and reporting information as required by section 206(b) and (c) of the HEA.

Competitive Preference: Consistent with section 205(b)(2)(B) of the HEA, the Secretary reviews each application to determine the extent to which the partnership proposes to meet the following statutory priority: a significant role for private business in the design and implementation of the partnership. The Secretary awards up to ten (10) additional points for applications that address this preference.

Teacher Recruitment Grants Program

The Department will use provisions contained in 34 CFR 75.209–75.210 to establish selection criteria that reviewers will use to make recommendations on which applicants to recommend for award. However, rather than include "Quality of project personnel" (34 CFR 75.210(e)) as a separate criterion, the Department will use, as an additional element under the criterion "Quality of the management plan "(34 CFR 75.210(g)), the following: The qualifications, including training and experience, of key project personnel (including consultants, if any) that are relevant to implementing the proposed project.

Finally, section 204 of the HEA requires partnership and State grant recipients under the Teacher Recruitment Program to work with high-need LEAs to recruit and prepare teachers who will work in those districts and thereby help to address their teacher shortages. To ensure that program funds are used to meet the purposes of this program, States and partnerships receiving grant awards under this program (as well as any high-need LEAs participating in their projects) must ensure that teachers who have received scholarship assistance and other services under the Teacher Recruitment Program are placed, to the extent possible, in high-need schools within the high-need LEAs that participate in the partnership or State project.

Invitational Priorities: The Secretary is particularly interested in receiving applications from States and partnerships that propose to focus their efforts on recruiting members of minority or historically disadvantaged groups to become teachers in high-need LEAs and schools because of the growing gap between the diveristy of the student population and the composition of the teaching force.

In addition, in order to recruit highly competent individuals to become teachers in high-need LEAs and schools, section 204(d)(1) permits States and partnerships to use grant funds for the costs of scholarship assistance that teaching candidates need to enable them to pay the costs of completing a teacher preparation program in addition to other support services and follow-up services after they begin teaching. Alternatively, section 204(d)(2) permits States and partnerships, more generally, to use grant funds to design and implement effective mechanisms to ensure that high-need LEAs and schools are able to effectively recruit highly qualified teachers. The availability of scholarship assistance is likely to be a very useful tool in attracting well-qualified individuals to become teachers in these high-need LEAs and schools. For this reason, regardless of which approach States and partnerships take in designing their projects, the Secretary is particularly interested in receiving proposals that would provide scholarship support for prospective teachers.

Program Requirements Applicable to More Than One Program

The Department is establishing a number of requirements that, in addition to the statutory requirements in the HEA, govern two or more of the Teacher Quality Programs. These include the following:

1. Section 201(a)(2) provides a definition of "high-need" LEA as a public school district that serves an elementary or secondary school located in an area in which there is—

a. A high percentage of individuals from families with incomes below the poverty line;

b. A high percentage of secondary school teachers not teaching in the content area in which the teachers were trained to teach; or

c. A high teacher turnover rate.

None of the three alternative meanings can be applied equally and fairly to all applicants without further definition. Therefore, for purposes of these Teacher Quality Enhancements Grant Programs—

1. An LEA with at least one school located in an area in which there is "a high percentage of individuals from families with incomes below the poverty line" is a "high-need LEA" if—the LEA has at least one school in which 40 percent or more of the enrolled students are eligible for free (not "free and reduced") lunch subsidies.

2. An LEA that has one school with a "high percentage of secondary school teachers not teaching in the content area in which the teachers were trained to teach" is a "high-need LEA" if either of the following conditions holds true:

• More than 34 percent of academic classroom teachers overall (across all academic subjects) do not have a major, minor, or significant course work in their main assignment field; or

• More than 34 percent of the main assignment faculty in two of the academic departments do not have a major, minor, or significant work in their main assigned field.

For purposes of the definition above—

"*Main assignment field*" means—the academic field in which teachers have the largest percentage of their classes.

"*Significant course work*" means—four or more college-or graduate-level courses in the content area.

3. An LEA that serves an elementary or secondary school located in an area in which there is a high turnover rate is a "high-need LEA" if the LEA has an elementary or secondary school whose attrition rate is 15 percent or more in the last three school years.

Note: The Department believes that use of the percentage of teachers in high-poverty schools who do not return in the following year is a better source of data than the percentage of teachers in schools with high percentages of minority students who do not return to teach the following year—a factor proposed in the draft application package. In addition, for this third definition of high-need LEA, data is not readily available on the teacher turnover rate in schools in which the students are eligible for free lunch subsidies. Therefore, the data source for this definition and the first definition of high-need LEA (high-poverty) cannot be the same.

4. Section 205(c)(1) requires that any State that receives either a State Grant or a Teacher Recruitment Grant provide, from non-Federal sources, an amount equal to 50 percent of the amount of the grant (in cash or in kind) to carry out grant activities. This 50 percent match must be made annually, with respect to each grant award of the project period.

5. For purposes of indirect costs that may be charged to the Teacher Recruitment Program and to the Partnership Program, all funded projects

are treated as "educational training grants." Therefore, consistent with 34 CFR 75.562, except for costs that may be incurred by State agencies or LEAs, a recipient's indirect cost rate is limited to the maximum of eight percent or the amount permitted by its negotiated indirect cost rate agreement, whichever is less. In addition, this same eight percent maximum indirect cost rate applies for any funds that institutions of higher education or nonprofit organizations may receive from States under the State Program.

6. The Government Performance and Results Act of 1993 (GPRA) requires all Federal programs to use performance indicators to measure their quality and effectiveness. GPRA further requires that the Department provide Annual Performance Plans to Congress that provide data on how all of the programs are performing with respect to the program performance indicators. Therefore, the Department submits an Annual Plan to Congress that provides the most recent data on the Department's five-year Strategic Plan, as well as the latest data on the performance of each program with respect to the program indicators.

7. In the event that the peer reviewers' use of these selection criteria results in an equal ranking among two or more applicants for the last available award under any of the three Teacher Quality Programs, the Department will select the applicant whose activities will focus (or have most impact) on LEAs and schools located in one (or more) of the Nation's Empowerment Zones and Enterprise Communities.

8. In the case of any application or pre-application whose narrative exceeds the 50-page double-spaced limitation for all Teacher Quality Program applications and ten-page double-spaced limitation for Partnership Program pre-applications, the Department will provide to the peer reviewers only the first 50 pages of narrative and ten pages of narrative, respectively.

9. The Title II Teacher Quality programs have a set of *draft* performance objectives and indicators that appear in Part G, "Supplementary Information," in the application package. Although these performance objectives and indicators are still draft, the objectives and indicators will be finalized by February of 1999 and will look much like the draft performance indicators. All State and partnership grantees must collect data and report to the Department on their progress with respect to each of the performance indicators on all of the *final* performance indicators.

In addition, there may be a few indicators for which data will be collected by the contractor hired to conduct the national evaluation of the Title II programs. All grantees also are required to cooperate with the contractor for the national evaluation as the contractor collects data from grantees related to these indicators.

Paperwork Reduction Act Considerations

The procedures and requirements contained in this notice relate to application packages that the Department has developed under the three Teacher Quality Enhancement Grant Programs. The public may obtain copies of these packages by calling or writing the individuals identified at the beginning of this notice as the Department's contact, or through the Department's website: http://www.ed.gov/offices/OPE/heatqp/index.html

As required by the Paperwork Reduction Act, the Office of Management and Budget has approved the use of these application packages under the following OMB control number 1840–0007, expires February, 2002. As noted earlier in this notice, these application packages will be available on or before February 11, 1999.

Electronic Access to This Document.

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of the document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: February 1, 1999.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education.

Appendix

Technical Assistance Workshops on Implementation of Teacher Quality Enhancement Grant Programs

The Department of Education has scheduled six regional technical assistance workshops between February 17 and March 2, 1999, to help prospective applicants to better understand the Department's approach to implementing the competitive grant competitions to be held this spring under the Teacher Quality Enhancement Grant Programs, authorized by sections 201–204 of the Higher Education Act of 1965, as amended. Under the Teacher Quality Programs, States must submit applications for the State Program by April 16, 1999, eligible partnerships must submit pre-applications for the Partnership Program for Improving Teacher Education by April 2, 1999, and States and eligible partnerships must submit applications for the Teacher Recruitment Program by April 16, 1999. At these workshops, the public will be able to learn more about the purposes and requirements of these programs, how to apply for funds, program eligibility requirements, the application selection process, and considerations that might help them to improve the quality of their grant applications. Department of Education staff with expertise on these and other issues related to the Teacher Quality Programs will be available to answer any questions on these topics.

The locations and dates of these workshops are: February 17 B Washington, DC; February 19 B San Diego, California; February 22 B Seattle, Washington; February 25 B St. Louis, Missouri; February 26 B Dallas, Texas; and March 2, Atlanta, Georgia. Any interested parties are invited to attend these workshops.

The Department of Education has reserved a limited number of hotel rooms, at a special government per diem room rate, at each of the following hotels that will host the workshops. To reserve these rates, be certain to inform the hotel that you are attending the workshops with the Department of Education.

The meeting sites are accessible to individuals with disabilities. The Department will provide a sign language interpreter at each of the scheduled workshops. An individual with a disability who will need an auxiliary aid or service other than an interpreter to participate in the meeting (e.g., assistive listening device, or materials in an alternative format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Dates, Times, and Locations of Technical Assistance Workshops

Workshop #1: Wednesday, February 17, 1999, Washington, DC, Washington Hilton

Hotel, 1919 Connecticut Avenue NW, Washington, DC 20005; Phone: (202) 483–3000. Rate: $115.00 plus tax.

Workshop #2: Friday, February 19, 1999, San Diego, California, Marriott Hotel—Mission Valley, 8757 Rio San Diego Drive, San Diego, CA 92108, Phone: (619) 692–3800. Rate: $93.00 plus tax.

Workshop #3: Monday, February 22, 1999, Seattle, Washington, Renaissance Madison Hotel, 515 Madison & Sixth Avenue, Seattle, WA 98104, Phone: 1–800–278–4159. Rate: $104.00 plus tax.

Workshop #4: Thursday, February 25, 1999, St. Louis, Missouri, Radisson Hotel & Suites, 600 North Fourth Street, St. Louis, MO 63102, Phone: (314) 621–8200. Rate: $66.00 plus tax.

Workshop #5: Friday, February 26, 1999, Dallas, Texas, Wyndham Garden Hotel/Dallas, Park Central, 8051 LB. Johnson Freeway, Dallas, TX 75251, Phone: (972) 680–3000. Rate: $89.00 plus tax.

Workshop #6: Tuesday, March 2, 1999, Atlanta, Georgia, Sheraton Gateway Hotel, 1900 Sullivan Road, College Park, GA 30337, Phone: (770) 997–1100. Rate: $90.00 plus tax.

For further information about these workshops, please call or write the Department contact identified at the beginning of this notice.

[FR Doc. 99–2720 Filed 2–5–99; 8:45 am]

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Monday
February 8, 1999

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Surface Coal Mining and Reclamation Operations on Federal Lands; State-Federal Cooperative Agreements; Indiana; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[IN–142–FOR]

Surface Coal Mining and Reclamation Operations on Federal Lands; State-Federal Cooperative Agreements; Indiana

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is proposing to adopt a cooperative agreement between the Department of the Interior and the State of Indiana. This agreement will allow Indiana, under the permanent regulatory program, to regulate surface coal mining and reclamation operations on Federal lands in Indiana. The Surface Mining Control and Reclamation Act of 1977 (SMCRA) provides for this type of agreement. This notice of proposed rulemaking gives you information on the terms of the proposed cooperative agreement.

DATES: *Written Comments.* We must receive written comments by 4:00 p.m., E.S.T., April 9, 1999.

Public Hearings. If requested, we will hold a public hearing on the proposed rule on March 25, 1999. We must receive your requests to speak at the hearing by 4:00 p.m., E.S.T., on March 1, 1999. If you wish to attend a hearing but not testify, you should contact the person identified under **FOR FURTHER INFORMATION CONTACT** before the hearing date to verify that we will hold a hearing.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand carry your comments to Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204–1521. You may also comment via the Internet to OSM's Administrative Record at: agilmore@mcrgw.osmre.gov.

You may submit a request for a public hearing orally or in writing to the person and address specified under **FOR FURTHER INFORMATION CONTACT**. We will announce the address, date and time for any public hearing if one is held. If you are disabled and require special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Copies of the Indiana program, the proposed cooperative agreement, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204–1521, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, 402 West Washington Street, Room C256, Indianapolis, Indiana 46204, Telephone: (317) 232–1547.

You may receive one free copy of the proposed agreement by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Telephone: 317–226–6700. E-mail: agilmore@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background of the Indiana Program
III. Description of the Proposed Cooperative Agreement
IV. Procedural Determinations

I. Public Comment Procedures

Written Comments

If you are submitting written comments on the proposed rule, please be specific, limit your comments to issues pertinent to the proposed rule, and explain the reason for your recommendations. Except for comments provided electronically, please submit three copies of your comments, if possible, to our Administrative Record (see **ADDRESSES**). All comments sent to the Administrative Record will be logged into the administrative record for the rulemaking. However, we will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to addresses other than those listed in **ADDRESSES** may not be logged in.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: IN–142–FOR" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us by telephone at 317–226–6700. We will make comments, including names and addresses of respondents, available for public review during regular business hours. You may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., E.S.T. on March 1, 1999. We will arrange, with you, the location and time of the hearing. If no one requests an opportunity to speak at a public hearing, we will not hold one.

We request that you file a written statement at the time of the hearing. It will greatly assist the transcriber. If you submit written statements in advance of the hearing, this will allow us to prepare adequate responses and appropriate questions.

We will continue the public hearing on the specified date until all persons scheduled to speak have spoken. Persons in the audience who have not been scheduled to speak, and who wish to do so, will be allowed to speak following those who have been scheduled. The hearing will end after all persons scheduled to speak and persons present in the audience who wish to speak have spoken.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed agreement, you may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

II. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find

background information on the Indiana program including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32071). Later actions concerning the conditions of approval and program amendments are found at 30 CFR 914.10, 914.15, and 914.16.

III. Description of the Proposed Cooperative Agreement

By a letter dated March 10, 1998 (Administrative Record No. IND–1598), from the Indiana Department of Natural Resources, Indiana submitted a request for a State-Federal cooperative agreement under the provisions of 30 CFR 745.11. The purpose of the proposed cooperative agreement (Agreement), is to give Indiana the primary authority to administer its approved permanent regulatory program on Federal lands.

Section 523(c) of SMCRA, 30 U.S.C. 1201 *et seq.*, and the regulations at 30 CFR Part 745 allow a State and the Secretary of the Interior to enter into a permanent program Agreement if the State has an approved State program for regulating surface coal mining and reclamation operations on non-Federal and non-Indian lands. SMCRA authorizes permanent program Agreements under section 523(c) which provides that "[a]ny State with an approved State program may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State, provided the Secretary determines in writing that such State has the necessary personnel and funding to implement such a cooperative agreement in accordance with the provision of this Act."

Section 745.11(b)(1) through (8) of our regulations require States to submit certain information with a request for a permanent program cooperative agreement, if the information has not been previously submitted in the State program. Indiana previously submitted much of the information relating to the budget, staffing, and equipment necessary for performing inspections at surface coal mining and reclamation operations on Federal lands. In addition, Indiana submitted a written certification from the Chief Legal Counsel of the Indiana Department of Natural Resources stating that the State does not have statutory, regulatory, or other legal constraint which would limit the ability of the Indiana Department of Natural Resources to fully comply with the terms of the proposed Agreement, section 523(c) of SMCRA, and 30 CFR Part 745.

We have included the full text of the proposed agreement as part of this proposed rulemaking. The proposed cooperative agreement may change as a result of public comment and/or further discussion with the State of Indiana. The proposed agreement, as submitted by Indiana, has sixteen articles. A brief summary of the articles appears below.

Article I: Introduction, Purpose and Responsible Agencies. This article explains the legal authority for the Agreement and states that the Agreement allows Indiana to regulate surface coal mining and reclamation operations on Federal lands in Indiana. The article designates the Natural Resource Commission (NRC) and the Division of Reclamation (DOR) of the Indiana Department of Natural Resources as the agencies responsible for administering the Agreement on behalf of the Governor of Indiana (Governor). It also designates OSM as the agency responsible for administering the Agreement on behalf of the Secretary of the Department of the Interior (Secretary). Indiana designated NRC and DOR as the administrative bodies for the approved Regulatory Program in Indiana.

Article II: Effective Date. This article provides that after signature by the Secretary and the Governor, the Agreement will become effective 30 days after publication in the **Federal Register** as a final rule.

Article III: Definitions. This article provides that the terms and phrases used in the Agreement will have the same meaning as those in SMCRA, the OSM approved State Act (Indiana Code (I.C.) 14–34), and the rules and regulations set forth as a result of those acts. The article also specifies that the State will use the definitions in its approved State program if State and Federal definitions conflict.

Article IV: Applicability. This article states that the laws, regulations, terms and conditions of Indiana's approved State program are applicable to Federal lands in Indiana except as otherwise stated in the Agreement, SMCRA, 30 CFR 740.4, 740.11(a), 745.13, and other applicable laws, Executive Orders, or regulations.

Article V: General Requirements. This article certifies that DOR and NRC have the authority under State law to carry out the terms of the Agreement. It also establishes the procedures for funding DOR's and NRC's responsibilities under the Agreement and the right of DOR or OSM to terminate the agreement if OSM cannot adequately fund the program. This article provides for DOR and OSM to exchange information and for DOR to report annually to OSM. It also requires DOR to have adequate personnel with sufficient equipment and facilities to carry out the requirements of the program. Finally, this article discusses how DOR will determine the amount of the permit application fee and how DOR will handle funds generated from permit application fees, civil penalties, and fines collected from operations on Federal lands.

Article VI: Review of Permit Application Packages. Paragraphs A through C of Article VI generally describe the procedures that the State and OSM will follow in the review and analysis of a permit application package (PAP) for operations on Federal lands. The term "permit application package" is defined under 30 CFR 740.5. DOR will assume primary responsibility for the review of a PAP. Where leased Federal coal is involved, OSM will prepare a mine plan decision document and obtain the Secretary's approval for the document.

The article also establishes guidelines for material to be submitted in the PAP and the procedures that OSM and DOR will use in reviewing the PAP. The article further spells out the coordination between DOR, OSM, and other Federal Agencies in conducting the reviews. Finally, the article provides guidelines for making a decision on the permit application and informing the applicable parties of the decision. The review procedures for permit revisions, renewals and the transfer, assignment or sale of permit rights are also discussed.

Article VII. Inspections. This article specifies that DOR will conduct inspections of the operations on Federal lands and will prepare and file inspection reports documenting the inspection according to the State program. DOR will also be the point of contact and the primary inspection authority in dealing with these operators. However, authorized Federal or State agencies will be allowed to conduct necessary inspections for purposes other than those covered by the Agreement. Finally, the article discusses procedures that OSM will follow when handling citizen complaints that it receives pertaining to imminent danger to the public health and safety or to significant imminent environmental harm to land, air or water resources.

Article VIII: Enforcement. This article deals with DOR's responsibility for issuing enforcement actions resulting from violations on surface coal mining and reclamation sites on Federal lands. DOR will have the lead in issuing enforcement actions except in cases

where Federal laws and Executive Orders reserve these rights to the Secretary. The article provides for DOR and OSM to exchange information concerning enforcement actions and to be mutually available to serve as witnesses in enforcement actions taken by either party.

Article IX: Bonds. This article specifies the procedures that a permittee must follow to get a performance bond to cover the operator's liability under the Act and the State program. The article discusses the assignment of the bond if the Agreement is terminated and the procedures for releasing and forfeiting bond. Finally the article states that if the operator submits a performance bond, this bond does not satisfy the requirements for the operator to also submit a Federal lease bond or lessee protection bond in certain circumstances.

Article X. Designating Areas Unsuitable for All or Certain Types of Surface Coal Mining and Reclamation Operations and Activities, Valid Existing Rights (VER), and Compatibility Determinations. The unsuitably petitions portion of the article only allows the Secretary to designate Federal lands as unsuitable for mining. The article further states the procedures DOR or OSM must follow if they receive a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could affect adjacent Federal or non-Federal lands. The VER and Compatibility Determinations portion of the article requires OSM to make VER determinations on Federal lands where proposed operations are not allowed or are limited by Section 522(e)(1) of the Act. This article also requires OSM to make determinations of compatibility under the provisions of section 522(e)(2) of the Act.

Article XI: Termination of Cooperative Agreement. This article allows the Governor or the Secretary to terminate the Agreement under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement. This article allows the Governor and the Secretary to reinstate the Agreement, under the provisions of 30 CFR 745.16, if it is terminated in whole or part.

Article XIII: Amendment of Cooperative Agreement. This article provides that the Governor and the Secretary, under the provisions of 30 CFR 745.14, may amend the Agreement by mutual consent.

Article XIV: Changes in State or Federal Standards. This article describes the procedures the Governor or the Secretary must follow when they declare new or revised performance or reclamation requirements or enforcement and administrative procedures.

Article XV: Changes in Personnel and Organization. Under the terms of this article, each party to the Agreement must notify the other of changes in personnel, organization and funding, or other changes that may affect the implementation of the Agreement.

Article XVI: Reservation of Rights. This article provides that the agreement does not cause the State or the Secretary to waive any rights they may have under laws other than SMCRA or their regulations, including but not limited to those listed in Appendix A to the Agreement.

IV. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will establish an Agreement between the Department of the Interior and the State of Indiana. The Agreement does not impose any new substantive requirements on the coal industry; it merely authorizes the State to regulate surface coal mining and reclamation activities on Federal lands in Indiana in lieu of the Federal government.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The rule affects only the State of Indiana and the costs of carrying out the functions under the Agreement are offset by grants from the Federal government.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule does not impose any new requirements on the coal mining industry or consumers. The functions being performed by the State under the Agreement are offset by grants from the Federal government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The rule establishes a cooperative agreement at the request of the State of Indiana and will result in the delegation of authority to the State. The cost to the State of performing the duties being delegated are offset by a grant from the Federal government. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required.

5. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule establishes an Agreement at the request of the State of Indiana and will result in the delegation of authority to the State. A takings implication assessment is not required.

6. Executive Order 12612—Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. The rule establishes an Agreement at the request of the State of Indiana and will result in the delegation of authority to the State. Therefore, a Federalism assessment is not required.

7. Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

9. National Environmental Policy Act

An environmental impact statement is not required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that the implementation of a Federal lands program under the provision of section 523 of SMCRA does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

10. Author

The principal author of this rule is Andrew R. Gilmore, Director, Office of Surface Mining, Indianapolis Field Office, Minton-Capehart Federal Building, 575 N. Pennsylvania Street, Indianapolis, Indiana 46204–1521.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 20, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, OSM proposes to amend 30 CFR part 914 as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.30 is added to read as follows:

§ 914.30 State-Federal Cooperative Agreement.

State-Federal Cooperative Agreement

The Governor of the State of Indiana (Governor) and the Secretary of the Department of the Interior (Secretary) enter into a Cooperative Agreement (Agreement) to read as follows:

Article I: Introduction, Purposes and Responsibile Agencies

A. *Authority:* This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (SMCRA), 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved by the Secretary under section 503 of SMCRA, 30 U.S.C. 1253, to elect to enter into an Agreement for the State regulation of surface coal mining and reclamation operations (including surface operations and surface impacts incident to underground mining operations) on Federal lands. This Agreement provides for State regulation of coal exploration operations not subject to 43 CFR Part 3400 and surface coal mining and reclamation operations in Indiana on Federal lands (30 CFR Chapter VII Subchapter D), consistent with SMCRA and State and Federal laws governing such activities and the Indiana State Program (Program).

B. *Purposes:* The purposes of this Agreement are to (a) foster Federal-State cooperation in the regulation of surface coal mining and reclamation operations and coal exploration operations not subject to 43 CFR Part 3400; (b) minimize intergovernmental overlap and duplication; and (c) provide uniform and effective application of the Program on all lands in Indiana in accordance with SMCRA, the Program, and this Agreement.

C. *Responsible Administrative Agencies:* The Natural Resource Commission (NRC) and the Division of Reclamation (DOR) of the Indiana Department of Natural Resources will be responsible for administering this Agreement on behalf of the Governor under the approved Indiana Regulatory Program. The Office of Surface and Mining Reclamation and Enforcement (OSM) will administer this Agreement on behalf of the Secretary.

Article II: Effective Date

After being signed by the Secretary and the Governor, this Agreement will take effect 30 days after publication in the **Federal Register** as a final rule: This Agreement will remain in effect until terminated as provided in Article XI.

Article III: Definitions

The terms and phrases used in this Agreement which are defined in SMCRA, 30 CFR Parts 700, 701 and 740, the Program, including the OSM approved State Act (I.C. 14–34), and the rules and regulations promulgated pursuant to those Acts, will be given the meanings set forth in said definitions. Where there is a conflict between the above referenced State and Federal definitions, the definitions used in the Program will apply.

Article IV: Applicability

In accordance with the Federal lands program, the laws, regulations, terms and conditions of the Program are applicable to Federal lands in Indiana except as otherwise stated in this Agreement, SMCRA, 30 CFR 740.4, 740.11(a) and 745.13, and other applicable laws, Executive Orders, or regulations.

Article V: General Requirements

The Governor and the Secretary affirm that they will comply with all the provisions of this Agreement.

A. *Authority of State Agency:* DOR and NRC have and will continue to have the authority under State law to carry out this Agreement.

B. Funds:

1. Upon application by DOR and subject to appropriations, OSM will provide the State with the funds to defray the costs associated with carrying out its responsibilities under this Agreement as provided in section 705(c) of SMCRA, the grant agreement, and 30 CFR 735.16. Such funds will cover the full cost incurred by DOR and NRC in carrying out these responsibilities, provided that such cost does not exceed the estimated cost the Federal government would have expended on such responsibilities in the absence of this Agreement.

2. OSM's Indianapolis Field Office and OSM's Mid-Continent Region Coordinating Center office will work with DOR to estimate the amount the Federal government would have expended for regulation of Federal lands in Indiana in the absence of this Agreement.

3. OSM and the State will discuss the OSM Federal lands cost estimate. After resolution of any issues, DOR will include the Federal lands cost estimate in the State's annual regulatory grant application submitted to OSM's Indianapolis Field Office.

The State may use the existing year's budget totals, adjusted for inflation and workload considerations in estimated regulatory costs for the following grant year. OSM will notify DOR as soon as possible if such projections are not acceptable.

4. If DOR applies for a grant but sufficient funds have not been appropriated to OSM, OSM and DOR will promptly meet to decide on appropriate measures that will insure that surface coal mining and reclamation operations on Federal lands in Indiana are regulated in accordance with the Program. If agreement cannot be reached, either party may terminate the Agreement in accordance with Article XI of this Agreement.

5. Funds provided to the DOR under this Agreement will be adjusted in accordance with Office of Management and Budget Common Rule for Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments.

C. *Reports and Records:* DOR will make annual reports to OSM containing information with respect to compliance with the terms of this Agreement pursuant to 30 CFR 745.12(d). Upon request, DOR and OSM will exchange information developed under this Agreement, except where prohibited by Federal or State law.

OSM will provide DOR with a copy of any final evaluation report prepared concerning State administration and enforcement of this Agreement. DOR comments on the report will be appended before transmission to the Congress, unless necessary to respond to a request by a date certain, or to other interested parties.

D. *Personnel:* Subject to adequate appropriations and grant awards, the DOR will maintain the necessary personnel to fully implement this Agreement in accordance with the provisions of SMCRA, the Federal lands program, and the Program.

E. *Equipment and Laboratories:* Subject to adequate appropriations and grant awards, the DOR will assure itself access to equipment, laboratories, and facilities with which all inspections, investigations, studies,

tests, and analyses can be performed which are necessary to carry out the requirements of the Agreement.

F. *Permit Application Fees and Civil Penalties:* The amount of the fee accompanying an application for a permit for surface coal mining and reclamation operations on Federal lands in Indiana will be determined in accordance with the approved Indiana Program. All permit fees, civil penalties and fines collected from operations on Federal lands will be retained by the State and will be deposited within the Natural Resources Reclamation Division Fund. Permit fees will be considered program income. Civil penalties and fines will not be considered program income. The financial status report submitted pursuant to 30 CFR 735.26 will include a report of the amount of fees, penalties, and fines collected on such permits during the State's prior fiscal year.

Article VI: Review of Permit Application Package

A. Submission of Permit Application Package

1. DOR and the Secretary require an applicant proposing to conduct surface coal mining and reclamation operations on Federal lands covered by this Agreement to submit a permit application package (PAP) in an appropriate number of copies to DOR. DOR will furnish OSM and other Federal agencies with an appropriate number of copies of the PAP. The PAP will be in the form required by DOR and will include any supplemental information required by OSM, the Federal land management agency, and other agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP.

At a minimum, the PAP will satisfy the requirements of 30 CFR 740.13(b) and include the information necessary for DOR to make a determination of compliance with the Program and for OSM and the appropriate Federal agencies to make determinations of compliance with applicable requirements of SMCRA, the Federal lands program, and other Federal laws, Executive Orders, and regulations for which they are responsible.

2. For any outstanding or pending permit applications on Federal lands being processed by OSM prior to the effective date of this Agreement, OSM will maintain sole permit decision responsibility. After the final decision, all additional responsibilities shall pass to DOR pursuant to the terms of this Agreement along with any attendant fees, fines, or civil penalties therefrom.

B. Review Procedures Where There Is No Leased Federal Coal Involved

1. DOR will assume the responsibilities for review of PAPs where there is no leased Federal coal to the extent authorized in 30 CFR 740.4(c)(1), (2), (4), (6) and (7). In addition to consultation with the Federal land management agency pursuant to 30 CFR 740.4(c)(2), DOR will be responsible for obtaining, except for non-significant revisions, the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOR will request such Federal agencies to furnish their findings or any requests for additional information to DOR within 45 calendar days of the date of receipt of the PAP. OSM will assist DOR in obtaining this information, upon request.

Responsibilities and decisions which can be delegated to DOR under other applicable Federal laws may be specified in working agreements between OSM and the State, with the concurrence of any Federal agency involved, and without amendment to this Agreement.

2. DOR will assume responsibility for the analysis, review and approval, disapproval, or conditional approval of the permit application component of the PAP required by 30 CFR 740.13 for surface coal mining and reclamation operations in Indiana on Federal lands not requiring a mining plan pursuant to the Mineral Leasing Act (MLA). DOR will review the PAP for compliance with the Program and the OSM approved State Act and regulations. DOR will be the primary point of contact for applicants regarding decisions on the PAP and will be responsible for informing the applicant of determinations.

3. The Secretary will make his determinations under SMCRA that cannot be delegated to the State. Some of which have been delegated to OSM.

4. OSM and DOR will coordinate with each other during the review process as needed. OSM will provide technical assistance to DOR when requested, if available resources allow. DOR will keep OSM informed of findings made during the review process which bear on the responsibilities of OSM or other Federal agencies. OSM may provide assistance to DOR in resolving conflicts with Federal land management agencies. OSM will be responsible for ensuring that any information OSM receives from an applicant is promptly sent to DOR. OSM will have access to DOR files concerning operations on Federal lands. OSM will send to DOR copies of all resulting correspondence between OSM and the applicant that may have a bearing on decisions regarding the PAP. The Secretary reserves the right to act independently of DOR to carry out his responsibilities under laws other than SMCRA.

5. DOR will make a decision on approval, disapproval or conditional approval of the permit on Federal lands.

(a) Any permit issued by DOR will incorporate any lawful terms or conditions imposed by the Federal land management agency, including conditions relating to post-mining land use, and will be conducted in compliance with the requirements of the Federal land management agency.

(b) The permit will include lawful terms and conditions required by other applicable Federal laws and regulations.

(c) After making its decision on the PAP, DOR will send a notice to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. A copy of the permit and written findings will be submitted to OSM upon request.

C. Review Procedures Where Leased Federal Coal Is Involved

1. DOR will assume the responsibilities listed in 30 CFR 740.4(c)(1), (2), (3), (4), (6) and (7), to the extent authorized.

In accordance with 30 CFR 740.4(c)(1), DOR will assume responsibility for the analysis, review and approval, disapproval, or conditional approval of the permit application component of the PAP for surface coal mining and reclamation operations in Indiana where a mining plan is required, including applications for revisions, renewals and transfer sale and assignment of such permits. OSM will, at the request of the State, assist to the extent possible in this analysis and review.

DOR will be the primary point of contact for applicants regarding the review of the PAP for compliance with the Program and State law and regulations. DOR will be responsible for informing the applicant of all joint State-Federal determinations.

DOR will to the extent authorized, consult with the Federal land management agency and the Bureau of Land Management (BLM) pursuant to 30 CFR 740.4(c)(2) and (3), respectively. On matters concerned exclusively with regulations under 43 CFR part 3480, Subparts 3480 through 3487, BLM will be the primary contact with the applicant. BLM will inform DOR of its actions and provide DOR with a copy of documentation on all decisions.

DOR will send the OSM copies of any correspondence with the applicant and any information received from the applicant regarding the PAP. OSM will send to DOR copies of all correspondence with the applicant which may have a bearing on the PAP. As a matter of practice, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of the PAP with respect to matters covered by the Program.

DOR will also be responsible for obtaining the comments and determinations of other Federal agencies with jurisdiction or responsibility over Federal lands affected by the operations proposed in the PAP. DOR will request all Federal agencies to furnish their findings or any requests for additional information to DOR within 45 days of the date of receipt of the PAP. OSM will assist DOR in obtaining this information, upon request of DOR.

DOR will be responsible for approval and release of performance bonds under 30 CFR 740.4(c)(4) in accordance with Article IX of this Agreement, and for review and approval under 30 CFR 740.4(c)(6) of exploration operations not subject to 43 CFR Part 3480, Subparts 3480–3487.

DOR will prepare documentation to comply with the requirements of NEPA under 30 CFR 740.4(c)(7); however, OSM will retain the responsibility for the exceptions in 30 CFR 740.4(c)(7) (i)–(vii).

2. The Secretary will concurrently carry out his responsibilities under 30 CFR 740.4(a) that cannot be delegated to DOR under the Federal lands program, MLA, the National Environmental Policy Act (NEPA), this Agreement, and other applicable Federal laws. The Secretary will carry out these responsibilities in a timely manner and will

avoid to the extent possible, duplication of the responsibilities of the State as set forth in this Agreement and the Program. The Secretary will consider the information in the PAP and, where appropriate, make decisions required by SMCRA, MLA, NEPA, and other Federal laws.

Responsibilities and decisions which can be delegated to the State under other applicable Federal laws may be specified in working agreements between OSM and DOR, with concurrence of any Federal agency involved, and without amendment to this Agreement.

Where necessary to make the determination to recommend that the Secretary approve the mining plan, OSM will consult with and obtain the concurrences of the BLM, the Federal land management agency and other Federal agencies as required.

The Secretary reserves the right to act independently of DOR to carry out his responsibilities under laws other than SMCRA or provisions of SMCRA not covered by the Program, and in instances of disagreement over SMCRA and the Federal lands program.

3. OSM will assist DOR in carrying out DOR's responsibilities by:

(a) Coordinating resolution of conflicts and difficulties between DOR and other Federal agencies in a timely manner.

(b) Assisting in scheduling joint meetings, upon request, between State and Federal agencies.

(c) Where OSM is assisting DOR in reviewing the PAP, furnishing to DOR the work product within 50 calendar days of receipt of the State's request for such assistance, unless a different time is agreed upon by OSM and DOR.

(d) Exercising its responsibilities in a timely manner, governed to the extent possible by the deadlines established in the Program.

4. Review of the PAP:

(a) OSM and DOR will coordinate with each other during the review process as needed. DOR will keep OSM informed of findings and technical analyses made during the review process which bear on the responsibilities of OSM or other Federal agencies. OSM will ensure that any information it receives which has a bearing on decisions regarding the PAP is promptly sent to DOR.

(b) DOR will review the PAP for compliance with the Program and State law and regulations.

(c) OSM will review the operation and reclamation plan portion of the permit application, and any other appropriate portions of the PAP for compliance with the non-delegable responsibilities of SMCRA and for compliance with the requirements of other Federal laws and regulations.

(d) OSM and DOR will develop a work plan and schedule for PAP review and each will identify a person as the project leader. The project leaders will serve as the primary points of contact between OSM and DOR throughout the review process. Not later than 50 days after receipt of the PAP, unless a different time is agreed upon, OSM will furnish DOR with its review comments on the PAP and specify any requirements for additional data. To the extent practicable, DOR will provide OSM all available information that may aid OSM in preparing any findings.

(e) DOR will prepare a State decision package, including written findings and supporting documentation, indicating whether the PAP is in compliance with the Program. The review and finalization of the State decision package will be conducted in accordance with procedures for processing PAPs agreed upon by DOR and OSM.

(f) DOR may make a decision on approval or disapproval of the permit on Federal lands in accordance with the Program prior to the necessary Secretarial decision on the mining plan, provided that DOR advises the operator in the permit that Secretarial approval of the mining plan must be obtained before the operator may conduct coal development or mining operations on the Federal lease. DOR will reserve the right to amend or rescind any requirements of the permit to conform with any terms or conditions imposed by the Secretary in his approval of the mining plan.

(g) The permit will include, as applicable, terms and conditions required by the lease issued pursuant to the MLA and by any other applicable Federal laws and regulations, including conditions imposed by the Federal land management agency relating to post-mining land use, and those of other affected agencies, and will be conditioned on compliance with the requirements of the Federal land management agency with jurisdiction.

(h) After making its decision on the PAP, DOR will send a notice to the applicant, OSM, the Federal land management agency, and any agency with jurisdiction or responsibility over Federal land affected by operations proposed in the PAP. A copy of the written findings and the permit will also be submitted to OSM.

5. OSM will provide technical assistance to DOR when requested, if available resources allow. OSM will have access to DOR files concerning operations on Federal lands.

D. Review Procedures for Permit Revisions; Renewals; and Transfer Assignment or Sate of Permit Rights

1. Any permit revision or renewal for an operation on Federal lands will be reviewed and approved or disapproved by DOR after consultation with OSM on whether such revision or renewal constitutes a mining plan modification pursuant to 30 CFR 746.18. OSM will inform DOR within 30 days of receiving a copy of a proposed revision or renewal, whether the permit revision, or renewal constitutes a mining plan modification. Where approval of a mining plan modification is required, OSM and DOR will follow the procedures outlined in paragraphs C. 1. through C.5. of this Article.

2. OSM may establish criteria consistent with 30 CFR 746.18 to determine which permit revisions and renewals clearly do not constitute mining plan modifications.

3. Permit revisions or renewals on Federal lands which are determined by OSM not to constitute mining plan modifications under paragraph D. 1. of this Article or that meet the criteria for not being mining plan modifications as established under paragraph D.2. of this Article will be reviewed and approved following the procedures set forth under Indiana law and the State Program and paragraphs B.1. through B.5. of this Article.

4. Transfer, assignment or sale of permit rights on Federal lands shall be processed in accordance with Indiana law and the State Program and 30 CFR 740.13(e).

Article VII: Inspections

A. DOR will conduct inspections on Federal lands in accordance with 30 CFR 740.4(c)(5) and prepare and file inspection reports in accordance with the Program.

B. DOR will, subsequent to conducting any inspection pursuant to 30 CFR 740.4(c)(5), and on a timely basis, file with OSM a legible copy of the completed State inspection report.

C. DOR will be the point of contact and primary inspection authority in dealing with the operator concerning operations and compliance with the requirements covered by the Agreement, except as described hereinafter. Nothing in this Agreement will prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement. The Department may conduct any inspections necessary to comply with 30 CFR parts 842 and 843 and its obligations under laws other than SMCRA.

D. OSM will give DOR reasonable notice of its intent to conduct an inspection under 30 CFR 842.11 in order to provide State inspectors with an opportunity to join in the inspection.

When OSM is responding to a citizen complaint of an imminent danger to the public health and safety, or of significant, imminent environmental harm to land, air or water resources, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact DOR no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. All citizen complaints which do not involve an imminent danger or significant, imminent environmental harm will be referred to DOR for action. The Secretary reserves the right to conduct inspections without prior notice to DOR to carry out his responsibilities under SMCRA.

Article VIII: Enforcement

A. DOR will have primary enforcement authority under SMCRA concerning compliance with the requirements of the Agreement and the Program in accordance with 30 CFR 740.4(c)(5). Enforcement authority given to the Secretary under other Federal laws and Executive orders including, but not limited to, those listed in Appendix A (attached) is reserved to the Secretary.

B. During any joint inspection by OSM and DOR, DOR will have primary responsibility for enforcement procedures, including issuance of orders of cessation, notices of violation, and assessment of penalties. DOR will inform OSM prior to issuance of any decision to suspend or revoke a permit on Federal lands.

C. During any inspection made solely by OSM or any joint inspection where DOR and OSM fail to agree regarding the propriety of any particular enforcement action, OSM may take any enforcement action necessary to

comply with 30 CFR parts 843, 845, and 846. Such enforcement action will be based on the standards in the Program, SMCRA, or both, and will be taken using the procedures and penalty system contained in 30 CFR parts 843, 845, and 846.

D. DOR and OSM will promptly notify each other of all violations of applicable laws, regulations, orders, or approved mining permits subject to this Agreement, and of all actions taken with respect to such violations.

E. Personnel of DOR and the Department of the Interior, including OSM, will be mutually available to serve as witness in enforcement actions taken by either party.

F. This Agreement does not affect or limit the Secretary's authority to enforce violations of Federal laws other than SMCRA.

Article IX: Bonds

A. DOR and the Secretary will require each operator who conducts operations on Federal lands to submit a performance bond payable to the State of Indiana and the United States to cover the operator's responsibilities under SMCRA and the Program. Such performance bond will be conditioned upon compliance with all requirements of the SMCRA, the Program, State rules and regulations, and any other requirements imposed by the Secretary or the Federal land management agency. Such bond will provide that if this Agreement is terminated, the portion of the bond covering the Federal lands will be payable only to the United States. DOR will advise OSM of annual adjustments to the performance bond pursuant to the Program.

B. Performance bonds will be subject to release and forfeiture in accordance with the procedures and requirements of the Program. Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the State after the release is concurred in by OSM.

C. Submission of a performance bond does not satisfy the requirements for a Federal lease bond required by 43 CFR Subpart 3474 or lessee protection bond required in addition to a performance bond, in certain circumstances, by section 715 of SMCRA.

Article X: Designating Land Areas Unsuitable for all or Certain Types of Surface Coal Mining and Reclamation Operations and Activities and Valid Existing Rights (VER) and Compatibility Determinations

A. Unsuitability Petitions

1. Authority to designate Federal lands as unsuitable for mining pursuant to a petition, including the authority to make substantial legal and financial commitment determinations pursuant to section 522(a)(6) of SMCRA, is reserved to the Secretary.

2. When either DOR or OSM receives a petition to designate land areas unsuitable for all or certain types of surface coal mining operations that could impact adjacent Federal or non-Federal lands pursuant to section 522(c) of SMCRA, the agency receiving the petition will notify the other of its receipt and the anticipated schedule for reaching a decision, and request and fully consider data, information and recommendations of the other. OSM will coordinate with the Federal land management agency with jurisdiction over the petition area, and will solicit comments from the agency.

B. Valid Existing Rights and Compatibility Determinations

The following actions will be taken when requests for determinations of VER pursuant to section 522(e) of SMCRA or for determinations of compatibility pursuant to section 522(e)(2) of SMCRA, and received prior to or at the time of submission of a PAP that involves surface coal mining and reclamation operations and activities:

1. For Federal lands within the boundaries of any areas specified under section 522(e)(1) of SMCRA, OSM will determine whether VER exists for such areas.

For private in holdings within section 522(e)(1) areas, DOR, with the consultation and concurrence of OSM, will determine whether surface coal mining operations on such lands will or will not affect the Federal interest (Federal lands as defined in section 701(4) of SMCRA). OSM will process VER determination requests on private in holdings within the boundaries of section 522(e)(1) areas where surface coal mining operations affects the Federal interest.

2. For Federal lands within the boundaries of any national forest where proposed operations are prohibited or limited by section 522(e)(2) of SMCRA and 30 CFR 761.11(b), OSM will make the VER determinations. OSM will process requests for determinations of compatibility under section 522(e)(2) of SMCRA.

3. For Federal lands, DOR will determine whether any proposed operation will adversely affect any publicly owned park and, in consultation with the State Historic Preservation Officer, places listed in the National Register of Historic Sites, with respect to the prohibitions or limitations of section 522(e)(3) of SMCRA. DOR will make the VER determination for such lands using the State Program. DOR will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operations.

In the case that VER is determined not to exist under section 522(e)(3) of SMCRA or 30 CFR 761.11(c), no surface coal mining operations will be permitted unless jointly approved by DOR and the Federal, State or local agency with jurisdiction over the publicly owned park or historic place.

4. DOR will process and make determinations of VER on Federal lands, using the State Program, for all areas limited or prohibited by section 522(e)(4) and (5) of SMCRA as unsuitable for mining. For operations on Federal lands, DOR will coordinate with any affected agency or agency with jurisdiction over the proposed surface coal mining and reclamation operation.

Article XI: Termination of Cooperative Agreement

This Agreement may be terminated by the Governor or the Secretary under the provisions of 30 CFR 745.15.

Article XII: Reinstatement of Cooperative Agreement

If this Agreement has been terminated in whole or in part it may be reinstated under the provisions of 30 CFR 745.16.

Article XIII: Amendment of Cooperative Agreement

This Agreement may be amended by mutual agreement of the Governor and the Secretary in accordance with 30 CFR 745.14.

Article XIV: Changes in State or Federal Standards

A. The Secretary or the Governor may from time to time promulgate new or revised performance or reclamation requirements or enforcement and administration procedures. Each party will, if it determines it to be necessary to keep this Agreement in force, change or revise its regulations or request necessary legislative action. Such changes will be made under the procedures of 30 CFR part 732 for changes to the Program and under the procedures of section 501 of SMCRA for changes to the Federal lands program.

B. DOR and the Secretary will provide each other with copies of any changes to their respective laws, rules, regulations or standards pertaining to the enforcement and administration of this Agreement.

Article XV: Changes in Personnel and Organization

Each party to this Agreement will notify the other, when necessary, of any changes in personnel, organization and funding, or other changes that may affect the implementation of this Agreement to ensure coordination of responsibilities and facilitate cooperation.

Article XVI: Reservation of Rights

This Agreement will not be construed as waiving or preventing the assertion of any rights in this Agreement that the state or the Secretary may have under laws other than SMCRA or their regulations including but not limited to those listed in Appendix A.

Bruce Babbitt,
Secretary of the Interior.

Date

Frank O'Bannon,
Governor of Indiana.

Date

Appendix A

1. The Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and implementing regulations.

2. The Mineral Leasing Act of 1920, 30 U.S.C. 181 *et seq.*, and implementing regulations, including 43 CFR part 3480.

3. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and implementing regulations, including 40 CFR part 1500.

4. The Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*, and implementing regulations, including 50 CFR part 402.

5. The Fish and Wildlife Coordination Act, as amended, 16 U.S.C. 661 *et seq.*; 48 Stat. 401.

6. The National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, and implementing regulations, including 36 CFR part 800.

7. The Clean Air Act, 42 U.S.C. 7401 *et seq.*, and implementing regulations.

8. The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, and implementing regulations.

9. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*, and implementing regulations.

10. The Reservoir Salvage Act of 1960, amended by the Preservation of Historical and Archaeological Data Act of 1974, 16 U.S.C. *et seq.*

11. Executive Order 11593 (May 13, 1971), Cultural Resource Inventories on Federal Lands.

12. Executive Order 11988 (May 24, 1977), for flood plain protection.

13. Executive Order 11990 (May 24, 1977), for wetlands protection.

14. The Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351 *et seq.*, and implementing regulations.

15. The Stock Raising Homestead Act of 1916, 43 U.S.C. 291 *et seq.*

16. The Constitution of the United States.

17. Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*

18. 30 CFR Chapter VII.

19. The Constitution of the State of Indiana.

20. Indiana Surface Coal Mining and Reclamation Act (P.L. 1—1995, SEC. 27) at Ind. Code 14–34 *et seq.*

21. Indiana Department of Natural Resources, Coal Mining and Reclamation Operations, Rules and Regulations, 310 Ind. Admin. Code 12.

[FR Doc. 99–2911 Filed 2–5–99; 8:45 am]

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federal register

Monday
February 8, 1999

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Revision of Gate Requirements for High-Lift Device Controls; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. 28930; Amdt. No. 25–98]

RIN 2120–AF82

Revision of Gate Requirements for High-Lift Device Controls

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This action amends the airworthiness standards for transport category airplanes to revise the requirements concerning gated positions on the control used by the pilot to select the position of an airplane's high-lift devices. The FAA is taking this action to update the current standards to take into account the multiple configurations of the high-lift devices provided on current airplanes to perform landings and go-around maneuvers. This final rule also harmonizes these standards with those being adopted by the European Joint Aviation Authorities (JAA).

EFFECTIVE DATE: March 10, 1999.

FOR FURTHER INFORMATION CONTACT: Don Stimson, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1129; facsimile (425) 227–1320, e-mail Don.Stimson@faa.gov.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin aboard service (telephone: 703–321–3339), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone: 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must reference the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future notices of proposed rulemaking and final rules should request from the above office a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

The FAA's definitions of small entities may be accessed through the FAA's web page (http://www.faa.gov/avr/arm/sbrefa.htm), by contacting a local FAA official or by contacting the FAA's Small Entity Contact listed below.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

Section 25.145(c) of 14 CFR part 25 of the Federal Aviation Regulations prescribes conditions under which it must be possible for the pilot, without using exceptional piloting skill, to prevent losing altitude while retracting the airplane's high-lift devices (e.g., wing flaps and slats). The intent of this requirement is to ensure that during a go-around from an approach to landing, the high-lift devices can be retracted at a rate that prevents altitude loss if the pilot applies maximum available power to the engines at the same time the control lever is moved to begin retracting the high-lift devices.

Prior to Amendment 25–23 to part 25, the § 25.145(c) requirement applied to retractions of the high-lift devices from any initial position to any ending position, including a continuous retraction from the fully extended position to the fully retracted position. In Amendment 25–23 to part 25, the FAA revised this requirement to allow the use of segmented retractions if gates are provided on the control the pilot uses to select the high-lift device position.

Gates are devices that require a separate and distinct motion of the control before the control can be moved through a gated position. The purpose of the gates is to prevent pilots from inadvertently moving the high-lift device control through the gated position. Gate design requirements were introduced into part 25 with Amendment 25–23, which revised § 25.145(c) to allow the no altitude loss requirement to be met by segmented retractions of the high-lift devices between gated positions of the high lift devices. As amended by Amendment 25–23, § 25.145(c) specifies that the no altitude loss requirement applies to retractions of the high-lift devices between the gated positions and between the gates and the fully extended and fully retracted positions. In addition, the first gated control position from the landing position must correspond to the position used to establish the go-around procedure from the landing configuration.

In Notice of Proposed Rulemaking 97–9, which was published in the **Federal Register** on June 9, 1997 (62 FR 31482), the FAA proposed to update the gate design standards to clarify which positions of the high-lift device control should be gated and to harmonize these standards with those being proposed for the European Joint Airworthiness Requirements (JAR–25). The proposal contained in Notice 97–9 was originally developed by the Aviation Rulemaking Advisory Committee (ARAC) and presented to the FAA as a recommendation for rulemaking.

The Aviation Rulemaking Advisory Committee

The ARAC was formally established by the FAA on January 22, 1991 (56 FR 2190), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. This advice was sought to develop better rules in less overall time using fewer FAA resources than are currently needed. The committee provides the opportunity for the FAA to obtain firsthand information and insight from interested parties regarding proposed new rules or revisions of existing rules.

There are over 60 member organizations on the committee,

representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop proposals to recommend to the FAA for resolving specific issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, all interested parties are invited to participate as working group members. Working groups report directly to the ARAC, and the ARAC must concur with a working group proposal before that proposal can be presented to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures. After an ARAC recommendation is received and found acceptable by the FAA, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package will be fully disclosed in the public docket.

Discussion of the Proposals

In Notice 97–9, the FAA proposed to update the gate design standards to clarify which positions of the high-lift device control should be gated and to harmonize these standards with those being proposed for the European Joint Airworthiness Requirements. First, the FAA proposed to re-codify the gate requirements of § 25.145(c) as a new § 25.145(d). Second, the FAA proposed to update and clarify the requirement that the first gated control position from the landing position corresponds to the configuration used to execute a go-around from an approach to landing. Third, the FAA proposed to clarify that performing a go-around maneuver beginning from any approved landing configuration should not result in a loss of altitude, regardless of the location of gated control positions. Fourth, the FAA proposed to add a statement to clarify that the "separate and distinct motion" required to move the high-lift device control through a gated position must be made at that gated position.

The existing gate requirements are contained in a separate, but undesignated paragraph at the end of § 25.145(c). To be consistent with current codification practices, the FAA proposed to re-codify these requirements as a new § 25.145(d). Re-codification would not affect the content or intent of the requirement.

Currently, § 24.145(c) requires the first gated control position from the landing position to "correspond with the high-lift devices configuration used to establish the go-around procedure from the landing configuration." The wording of this requirement implies that airplanes have only one configuration that can be used for landing and one configuration that can be used to perform a go-around maneuver. Modern transport category airplanes, however, typically have multiple configurations that can be used for performing a landing or a go-around. Airplane manufacturers provide multiple landing and go-around configurations to optimize airplane performance for different environmental conditions (e.g., field elevation and temperature) and for non-normal situations (e.g., inoperative engines or systems).

To provide for airplanes with multiple landing and go-around configurations, the FAA proposed to revise the portion of the gate requirements relating to the placement of the first gated control position from the landing position by inserting the word "maximum" preceding "landing position" and by replacing "the high-lift devices configuration" and the go-around procedure" with "a configuration of the high-lift devices" and "a go-around procedure," respectively. The FAA considered allowing the location of the flap gates to be made independent of the go-around position; however, from a human factors standpoint, providing a gate at a go-around position assists the pilot in selecting the proper configuration for a maneuver that is usually unexpected and entails a high workload. The FAA considers that requiring a gate at every approved go-around position would also be undesirable. Too many gates would make it difficult for the pilot to move the control through high-lift device positions that might not be used during normal operations. For go-around maneuvers using a different high-lift device position than the position that is gated, the gate can still serve as a guide for selecting the proper configuration (e.g., the pilot could move the control to the gate and either forward or backward one or more positions).

The FAA also proposed a revision to Advisory Circular (AC) 25–7, "Flight Test Guide for Certification of Transport Category Airplanes" (June 17, 1997, 62 FR 32852) to provide additional guidance regarding criteria for locating the gate when the airplane has multiple go-around configurations.

Regardless of the location of any gates, initiating a go-around from any of the approved landing configurations should not result in a loss of altitude. Therefore, the FAA proposed to further revise the existing gate standards to require applicants to demonstrate that no less altitude will result from retracting the high-lift devices from each approved landing position to the position(s) corresponding with the high-lift device configuration(s) used to establish the go-around procedure(s) from that landing configuration.

The existing § 25.145(c) also requires that a separate and distinct movement of the high-lift device control must be made to pass through a gated position. The FAA proposed to further clarify the gate design criteria in the proposed § 25.145(d) to specify that this separate and distinct movement can occur only at the gated position. This provision would ensure that the pilot receives tactile feedback when the control reaches a gated position. Although the FAA has always interpreted the current requirements in a manner consistent with this provision, this proposal will assist applicants by clarifying the part 25 design requirements for gated high-lift device control positions.

The amendments proposed in Notice 97–9 were harmonized with proposed amendments to JAR–25. The Joint Aviation Authorities published Notice of Proposed Amendment (NPA) 25B–238 on June 20, 1997, which, in combination with the proposed part 25 changes, would achieve complete harmonization of the affected positions of part 25 and JAR–25.

Discussion of Comments

Very few comments were received on the part 25 rule changes proposed by the FAA in Notice 97–9, Three of the commenters, which were organizations represented in the ARAC process that developed these proposals, expressed their support for the proposals. One of these commenters noted that the ARAC process was highly successful in developing a better proposal than what was envisaged at the beginning of the process, did so in a very short period of time, and ended up with a proposal that was unanimously supported by all the participants. This commenter expressed hope that the FAA will continue to make improvements in the process to develop rules in less overall time.

One commenter, whose organization was also represented in the ARAC deliberations, expressed support for the proposals, but also suggested several changes be made. First, the commenter notes that § 25.145 uses both terms "wing flaps" and "high lift devices." The commenter suggests standardizing on the single term "high lift devices" throughout.

Second, the commenter alleges that the FAA proposal differs from the JAA proposal relative to the position of the first gated position from the maximum landing position. The commenter claims that the FAA proposal would require the gate to correspond with the configuration used to establish a go-around procedure from "the" landing position, implying that the landing position is the maximum position. The commenter notes that the JAA proposal refers to "a" landing position, which the commenter believes allows the optimum gate position to be chosen when there are multiple landing configurations.

Third, the commenter notes that there is no reference within part 25 regarding the relationship between the configuration for the missed approach (§§ 25.101(g) and 25.121(d)) and the configuration used for go-around (proposed § 25.145(d)). Since these configurations can be different, the commenter believes that the definitions and procedures should be clarified. The commenter did not fully explain why such clarification is needed, nor were any specific suggestions provided.

Last, the commenter notes that there could be a landing flap position at a lesser flap angle than the gated go-around position. Under the proposed rules, there would not be a requirement to have any gates between that position and the clean configuration. This could lead to an inadvertent retraction of the high lift leading edge devices (e.g., slats) during a go-around, which the commenter believes may be a hazardous event even if the "don't sink" requirement is met.

Although the FAA agrees in principle with the commenter's first suggestion, to standardize on a single term, this issue is outside the scope of the proposed rulemaking. The terms "flaps," "wing flaps," and "high lift devices" are used in other part 25 sections in addition to § 25.145, and any attempt to standardize these terms should include a thorough review of these other sections. The objective of this rulemaking is to clarify and harmonize the requirements regarding gates on the high lift device control, taking into account current airplane designs.

Regarding the commenter's second suggestion, the commenter is incorrect in stating that the FAA and JAA proposals are different. The FAA and JAA proposals are exactly the same; they both contain the wording that the commenter prefers. In fact, it is the existing § 25.145(c) and JAR 25.145 that contain the wording the commenter is objecting to, which the FAA and JAA proposed to revise due to the issue raised by the commenter.

The commenter is correct in stating that there is no reference within part 25 regarding the relationship between the configuration for the missed approach (used to comply with §§ 25.101(g) and 25.121(d)) and the configuration used for go-around (used to comply with § 25.145(d)). Although a single configuration is typically specified by the applicant for both situations, the commenter points out that this is not a part 25 requirement. The FAA disagrees that further clarification of the definitions and procedures associated with the missed approach and go-around configurations is necessary. The configuration associated with a missed approach is specifically defined in § 25.121(d), which refers to an approach configuration prior to selection of the landing configuration. The go-around configuration, which is used to show compliance with § 25.145(d), is the climb configuration referenced in the procedures for a balked landing from the landing configuration. The references to and relationships between these configurations have not been changed by this rulemaking.

The issue brought up by the commenter's last suggestion was considered during the development of the proposed rule. However, a specific requirement to place a gate at the position preceding the one at which the wing's leading edge high lift devices (e.g., slats) retract was considered to be too prescriptive. The performance effect of retracting the wing's leading edge high lift devices can vary significantly, depending on the design of the high lift system on the particular airplane. Other than the "no loss of altitude" provision of § 25.145(c), it is difficult to quantify a minimum performance requirement that would appropriately address any safety concerns with an inadvertent leading edge device retraction. The FAA considers the "no loss of altitude" criterion, coupled with industry design practice, to adequately address this issue.

A commenter who was not involved in the ARAC process leading to the proposed amendment suggests that a gate should be required at all approved go-around positions of the high lift devices, rather than at "a" go-around position. This commenter believes that from a human factors standpoint the benefits of maintaining a consistent procedure for selecting the go-around configuration outweigh any drawbacks associated with having too many gates.

The FAA addressed this issue in the preamble of the proposed amendment (which is repeated in the background discussion above). The FAA considers that requiring a gate at every approved go-around position would be undesirable. Too many gates would make it difficult for the pilot to move the control through high-lift device positions that might not be used during normal operations. For go-around maneuvers using a different high-lift device position than the position that is gated, the gate can still serve as a guide for selecting the proper configuration (e.g., the pilot could move the control to the gate and either forward or backward one or more positions).

Although the FAA generally agrees that from a human factors standpoint a consistent operational procedure is desirable, this objective would not necessarily be achieved even if the commenter's suggestion were adopted. For a typical transport category airplane with multiple go-around positions requiring multiple gates, the procedure for selecting the desired go-around configuration may involve moving the selector to the first gate, through a gate to another gate, or through multiple gates to the gate corresponding to the desired configuration. Such a procedure is roughly equivalent to moving the control to the gate and either forward or backward one or more positions to select the desired configuration. The FAA does not consider the presence of multiple gates to provide enough of an enhancement to the flightcrew's ability in selecting the proper configuration to outweigh the potential drawbacks associated with the need to negotiate the control through multiple gates during normal operations.

In light of the foregoing discussion, the amendment is adopted as proposed.

Final Regulatory Evaluation, Initial Regulatory Flexibility Determination, and Trade Impact Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of

$100 million or more annually (adjusted for inflation). In conducting these analyses, the FAA has determined that this rule: (1) will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will lessen restraints on international trade; and (5) does not contain a significant intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

Regulatory Evaluation Summary

U.S. manufacturers currently design high-lift device controls in compliance with the final rule. Industry representatives indicate that U.S. manufacturers will not have to redesign high-lift device controls on either newly certificated airplanes or derivatives of currently certificated models. The costs of the rule, therefore, will be negligible. The FAA solicited information from manufacturers of transport category airplanes concerning any possible design changes and associated costs that would result from the proposed amendment. No comments were received concerning these matters.

The primary benefit of the rule is the clarification of gate design standards of high-lift device controls. A second benefit is the harmonization of FAR certification requirements for controls of high-lift devices with JAR certification requirements, and this benefit may result in cost savings to manufacturers of transport category airplanes in the United States and in JAA countries. Although the FAA is unable to quantify these benefits, the FAA has determined that these benefits exceed the negligible costs of the final rule.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposal or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. For manufacturers, a small entity is one with 1,500 or fewer employees. No transport category airplane manufacturer has 1,500 or fewer employees, thus there are no affected small entities. In addition, the rule has negligible costs. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small transport category airplane manufacturers.

International Trade Impact Assessment

Consistent with the Administration's belief in the general superiority, desirability, and efficacy of free trade, it is the policy of the Administrator to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries, and those affecting the import of foreign goods and services into the United States.

In accordance with that policy, the FAA is committed to develop, as much as possible, its aviation standards and practices in harmony with its trading partners. Significant cost savings can result from this, both to American companies doing business in foreign markets, and foreign companies doing business in the United States.

This rule is a direct action to respond to this policy by increasing the harmonization of the U.S. Federal Aviation Regulations with the European Joint Aviation Requirements. The result will be a positive step toward removing impediments to international trade.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that this rule does not conflict with any international agreement of the United States.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by

transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this final rule applies to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. The Administrator has considered the extent to which Alaska is not served by transportation modes other than aviation, and how the final rule could have been applied differently to intrastate operations in Alaska. However, the Administrator has determined that airplanes operated solely in Alaska would present the same safety concerns as all other affected airplanes; therefore, it would be inappropriate to establish a regulatory distinction for the intrastate operation of affected airplanes in Alaska.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Administration (FAA) amends part 25 of Title 14, Code of Federal Regulations (14 CFR part 25) as follows:

PART 25—AIRWORTHINESS STANDARDS—TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

2. Section 25.145 is amended by revising paragraph (c) introductory text, revising the text following paragraph (c)(3), and designating the text as paragraph (d) to read as follows:

§ 25.145 Longitudinal control.

* * * * *

(c) It must be possible, without exceptional piloting skill, to prevent loss of altitude when complete retraction of the high-lift devices from any position is begun during steady, straight, level flight at 1.1 V_{S1} for propeller powered airplanes, or 1.2V_{S1} for turbojet powered airplanes, with—

(1) * * *

(2) * * *

(3) * * *

(d) if gated high-lift device control positions are provided, paragraph (c) of this section applies to retractions of the high-lift devices from any position from the maximum landing position to the first gated position, between gated positions, and from the last gated position to the fully retracted position. The requirements of paragraph (c) of this section also apply to retractions from each approved landing position to the control position(s) associated with the high-lift device configuration(s) used to establish the go-around procedure(s) from that landing position. In addition, the first gated control position from the maximum landing position must correspond with a configuration of the high-lift devices used to establish a go-around procedure from a landing configuration. Each gated control position must require a separate and distinct motion of the control to pass through the gated position and must have features to prevent inadvertent movement of the control through the gated position. It must only be possible to make this separate and distinct motion once the control has reached the gated position.

Issued in Washington, DC, on February 3, 1999.

Jane F. Garvey,

Administrator.

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February 8, 1999

Part V

Department of Transportation

Federal Transit Administration

Over-the-Road Bus Accessibility Program Grants; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of funds; solicitation of grant applications.

SUMMARY: The U.S. Department of Transportation (DOT) Federal Transit Administration (FTA) announces the availability of funds for the Over-the-road Bus (OTRB) Accessibility Program, authorized by Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). The OTRB Accessibility Program makes funds available to private operators of over-the-road buses to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility final rule, published in a **Federal Register** Notice on September 24, 1998. The OTRB Accessibility Program calls for national solicitation of applications, with grantees to be selected on a competitive basis. Federal funds are available for up to 50 percent of the project cost.

A total of $24.3 million is available for the program over the life of TEA–21. The guaranteed level of funding available for intercity fixed-route service is $2 million in fiscal year (FY) 1999 and FY 2000, $3 million in FY 2001, and $5.3 million in FY 2002 and FY 2003, for a total of $17.5 million. The guaranteed level of funding for other over-the-road bus services, including charter and tour bus, is $1.7 million per year from FY 2000 to FY 2003, for a total of $6.8 million.

For FY 1999, $2 million was appropriated for intercity fixed-route service providers.

This announcement describes application procedures for the OTRB Accessibility Program and the procedures FTA will use to determine which projects it will fund. It includes all of the information needed to apply for an OTRB Accessibility Program grant.

This announcement is available on the Internet on the FTA website at *http://www.fta.dot.gov/library/legal/otrbap.htm*. This website will also have commonly asked questions and answers. FTA will announce final project selections on the website and in the **Federal Register**.

DATES: Complete applications for OTRB Accessibility Program grants must be submitted to the appropriate FTA regional office (see Appendix A) by the close of business April 16, 1999. The appropriate FTA regional office is that office which serves the state in which an applicant's headquarters office is located. FTA will announce grant selections in June 1999, and we expect that grants will be made by September 30, 1999, the end of the Federal fiscal year. Applicants should not incur costs prior to grant approval by FTA. FTA will accept comments on this notice until March 10, 1999. Based on input, FTA may provide amending or clarifying program information.

ADDRESSES: Comments and questions related to this notice can be made at FTA's website, *http://www.fta.dot.gov/library/legal/otrbap.htm*, or can be mailed or faxed to the following address: Sue Masselink, Federal Transit Administration, Room 9315, 400 7th Street, S.W., Washington, D.C. 20590 (FAX (202) 366–7951).

FOR FURTHER INFORMATION: Contact the appropriate FTA Regional Administrator (Appendix A) for application-specific information and issues. For general program information, contact Sue Masselink, Office of Program Management, (202) 366–2053, e-mail: **sue.masselink@fta.dot.gov.** A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION

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I. General Program Information

A. Authority

The program is authorized under Section 3038 of the Transportation Equity Act for the 21st Century (TEA–21). Funds have been appropriated for this program under the Omnibus Consolidated and Emergency Supplemental Appropriations Act, Fiscal Year 1999, which includes Appropriations for Department of Transportation and Related Agencies.

B. Background

Over-the-road buses are used predominantly in intercity service as well as charter and tour bus services. These services are an important element of the U.S. transportation system. TEA–21 authorizes FTA's new Over-the-road Bus Accessibility Program to assist over-the-road bus operators in complying with the Department's Over-the-road Bus Accessibility rule, "Transportation for Individuals with Disabilities" (49 CFR Part 37) published in a **Federal Register** notice on September 24, 1998.

Summary of DOT's Over-the-Road Bus Accessibility Rule

Under the over-the-road bus accessibility rule, all new buses obtained by large (Class I carriers, i.e., those with gross annual operating revenues of $5.3 million or more), fixed-route carriers, starting in 2000, must be accessible, with wheelchair lifts and tie-downs that allow passengers to ride in their own wheelchairs. The rule requires the fixed-route carriers' fleets to be completely accessible by 2012. The buses acquired by small (gross operating revenues of less than $5.3 million annually) fixed-route providers also are required to be lift-equipped, although they do not have a deadline for total fleet accessibility. Small providers also can provide equivalent service in lieu of obtaining accessible buses. Starting in 2001, charter and tour companies will have to provide service in an accessible bus on 48 hours' advance notice. Fixed-route companies must also provide this kind of service on an interim basis until their fleets are completely accessible.

Small carriers who provide mostly charter or tour service and also provide a small amount of fixed-route service can meet all requirements through 48-hour advance-reservation service.

Small carriers have an extra year to begin complying with the requirements that apply to them starting in October 2001, compared to October 2000 for large carriers.

Specifications describing the design features that an over-the-road bus must have to be readily accessible to and usable by persons who use wheelchairs or other mobility aids required by the "Americans with Disabilities Act Accessibility Guidelines for Transportation Vehicles: Over-the-Road Buses" rule (36 CFR Part 1192) were published in another **Federal Register** Notice on September 28, 1998.

C. Scope

Improving mobility and shaping America's future by ensuring that the transportation system is accessible, integrated, efficient and offers flexibility of choices is a key strategic goal of the Department of Transportation. Over-the-road Bus Accessibility projects will improve mobility for individuals with disabilities by providing financial assistance to help make vehicles accessible and provide training to ensure that drivers and others understand how to use accessibility

features as well as how to treat patrons with disabilities.

D. Eligible Applicants

Grants will be made directly to operators of over-the-road buses. Only intercity, fixed-route over-the-road bus service providers may apply for OTRB Accessibility program funds in fiscal year 1999. Thereafter, other over-the-road bus service providers, including operators of local fixed-route service, commuter service, and charter or tour service may apply for funds appropriated for these providers. Private for-profit operators of over-the-road buses are eligible to be direct applicants for this program. This is a departure from the other FTA programs in which the direct applicant must be a state or local public body.

E. Vehicle and Service Definitions

An "over-the-road bus" is a bus characterized by an elevated passenger deck located over a baggage compartment.

Intercity, fixed-route over-the-road bus service is regularly scheduled bus service for the general public, using an over-the-road bus that: operates with limited stops over fixed routes connecting two or more urban areas not in close proximity or connecting one or more rural communities with an urban area not in close proximity; has the capacity for transporting baggage carried by passengers; and makes meaningful connections with scheduled intercity bus service to more distant points.

Other over-the-road bus service means any other transportation using over-the-road buses, including local fixed-route service, commuter service, and charter or tour service (including tour or excursion service that includes features in addition to bus transportation such as means, lodging, admission to points of interest or special attractions).

F. Eligible Projects

Projects to finance the incremental capital and training costs of complying with DOT's over-the-road bus accessibility rule (49 CFR Part 37) are eligible for funding. Capital projects eligible for funding include adding lifts and other accessibility components to new vehicle purchases, and purchasing lifts to retrofit existing vehicles.

Eligible training costs are those required by the final accessibility rule as described in 49 CFR 37.209. These activities were required under the interim OTRB accessibility rule and include training in proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, and handling and storage of mobility devices. The costs associated with developing training materials or providing training for local providers of over-the-road bus services for these purposes are eligible expenses.

FTA has sponsored the development of accessibility training materials for public transit operators. FTA-funded Project Action is a national technical assistance program to promote cooperation between the disability community and transportation industry. Project Action provides training, resources and technical assistance to thousands of disability organizations, consumers with disabilities, and transportation operators. It maintains a resource center with the most up-to-date information on transportation accessibility. Project Action may be contacted at: Project Action, 700 Thirteenth Street, N.W., Suite 200, Washington, DC 20590, Phone: 1–800–659–6428, Internet address: *http://www.projectaction.org/*.

G. Grant Criteria

FTA will award grants based on:

a. The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant;

b. The extent to which the applicant demonstrates innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities;

c. The extent to which the over-the-road bus operator requires equipment required by DOT's over-the-road bus accessibility rule prior to the required timeframe in the rule;

d. The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant; and

e. The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

H. Funding Availability

TEA–21 authorizes the OTRB Accessibility program for intercity fixed-route service at a guaranteed level of $2 million in FY 1999 and FY 2000, $3 million in FY 2001, and $5.3 million in FY 2002 and FY 2003. The guaranteed level of funding for other over-the-road bus services is $1.7 million per year from FY 2000 through FY 2003. FTA funds are available for up to 50 percent of the cost of a project. There is no restriction on how much of each year's apportionment can be used for either capital or training projects.

For FY 1999, $2 million has been appropriated for the intercity fixed-route service providers.

I. Grant Requirements

The grant application must include documentation necessary to meet the requirements of FTA's Nonurbanized Area Formula program (Section 5311 under Title 49, United States Code). Technical assistance regarding these requirements is available in each FTA regional office. For incremental capital costs, applicants must comply with all of the Federal requirements described in this section, either when purchasing wheelchair lifts and securement devices to retrofit existing vehicles, or when purchasing new wheelchair accessible vehicles. When purchasing new wheelchair accessible buses, these Federal requirements apply to the purchase of the vehicle itself, not just the wheelchair lift or securement devices. As lifts are normally purchased as part of a bus procurement, Federal requirements that apply to the lift also apply to the purchase of the bus. In particular, Buy America, labor protections, pre-award and post-delivery reviews and bus testing will apply to the total vehicle purchase, not just the lift.

Training costs are not subject to all requirements. For example, labor protections, Buy America, pre-award and post-delivery reviews, bus testing, and school transportation are not applicable to training assistance.

1. *Buy America.* Federal funds may not be obligated for projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Recipients of the OTRB Accessibility program funds must conform with the FTA regulations, 49 CFR Part 661, and any amendments thereto. There are four exceptions to the basic requirement that may be the basis for a waiver. First, the requirement will not apply if its application is not in the public interest. Second, the requirement will not apply if materials and products being procured are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality. Third, the requirement will not apply in a case involving the procurement of buses and other rolling stock if the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components and subcomponents of the vehicles or equipment, and if final assembly takes place in the United States. The meaning of final assembly is

further described in the FTA Guidance on Buy America Requirements, dated March 18, 1997, which applies to all buses purchased with FTA funds. Fourth, the requirement will not apply if the inclusion of domestic material will increase the overall project contract by more than 25 percent. Buy America waivers under the non-availability, price differential, and public interest exceptions require FTA approval, but the waiver for rolling stock meeting the domestic content and final assembly requirements does not. FTA has issued a general waiver for selected items, including all purchases under the Federal small purchase threshold, which is $100,000.

2. *Labor Protection.* Before FTA may award a grant for capital assistance, 49 U.S.C. 5333(b) requires that fair and equitable arrangements must be made to protect the interests of transit employees affected by FTA assistance. Those arrangements must be certified by the Secretary of Labor as meeting the requirements of the statute. When a labor organization represents a group of affected employees in the service area of an FTA project, the employee protective arrangement is usually the product of negotiations or discussions with the union. The grant applicant can facilitate Department of Labor (DOL) certification by identifying in the application any previously certified protective arrangements that have been applied to similar projects undertaken by the grant applicant. Upon receipt of a grant application requiring employee protective arrangements, FTA will transmit the application to DOL and request certification of the employee protective arrangements. In accordance with DOL guidelines, DOL notifies the relevant unions in the area of the project that a grant for assistance is pending and affords the grant applicant and union the opportunity to agree to an arrangement establishing the terms and conditions of the employee protections. If necessary, DOL furnishes technical and mediation assistance to the parties during their negotiations. The Secretary of Labor may determine the protections to be certified if the parties do not reach an agreement after good faith bargaining and mediation efforts have been exhausted. DOL will also set the protective conditions when affected employees in the service area are not represented by a union. When DOL determines that employee protective arrangements comply with labor protection requirements, DOL will provide a certification to FTA. The grant agreement between FTA and the grant applicant incorporates by reference the employee protective arrangements certified by DOL.

Questions concerning employee protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Department of Labor, 200 Constitution Avenue, NW, Room N–5411, Washington, DC 20210; telephone (202) 693–0126, fax (202) 219–5338.

3. *Competitive Procurement.* Federal procurement requirements apply to FTA funds awarded to state and local governments and private nonprofit agencies under 49 CFR Parts 18 and 19. To the extent a direct recipient of FTA funds under this program is a private for-profit entity, the Federal procurement requirements do not apply.

4. *Debarment, Suspension and Other Responsibility matters.* Pursuant to Executive Order 12549; 41 U.S.C. 701; and 49 CFR Part 29, grantees must ensure that FTA funds are not given to anyone who has been debarred, suspended, or declared ineligible or voluntarily excluded from participation in federally assisted transactions. The burden of disclosure is on those debarred or suspended. The U.S. General Services Administration (GSA) issues a document titled "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" monthly. The list is available on the GSA website (*http//www.gsa.gov/index*). If at any time the grantee or other covered entity learns that a certification it made or received was erroneous when submitted or if circumstances have changed, disclosure to FTA is required.

5. *Drug-Free Workplace.* Grantees must maintain a drug-free workplace for all employees and have an anti-drug policy and awareness program. The grant applicant must certify to FTA that it will provide a drug-free workplace and comply with all requirements of the Drug-Free Workplace Act of 1988 (Public Law 100–690) and U.S. DOT's implementing regulations, 49 CFR Part 29, Subpart F. The grantee is required to provide a written Drug-Free Workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations. The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace. An employee of an FTA grantee is required to report in any conviction for a violation of criminal drug statute occurring in the workplace, and the grantee/employer is required to provide written notice to FTA within 10 days of having received the notice. Within 30 days of receiving the notice of a conviction, the grantee/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

6. *Nondiscrimination requirements.* 49 U.S.C. section 5332 states that "a person (defined broadly) may not be excluded from participating in, denied a benefit of, or discriminated against, under a project, program, or actively receiving financial assistance (from FTA) because of race, color, creed, national origin, sex, or age."

7. *Title VI.* Grantees must assure FTA that transit services and benefits obtained with FTA assistance will be provided in a nondiscriminatory manner, without regard to race, color, or national origin.

8. *Disadvantaged Business Enterprise.* Grantees must assure FTA that disadvantaged business enterprises (DBEs) are provided the maximum opportunity to compete for FTA-assistance contracts and procurements.

9. *Equal Employment Opportunity (EEO).* The grantee must assure that it will notdiscriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age or national origin. The grantee agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin.

10. *Americans with Disabilities Act and Section 504.* Compliance with the Americans with Disabilities Act of 1990 (ADA) (Public Law 101–336) and Section 504 of the Rehabilitation Act of 1973, as amended, are eligibility requirements for Federal financial assistance. Section 504 prohibits discrimination on the basis of handicap by recipients of Federal financial assistance. The ADA prohibits discrimination against persons with disabilities in the provision of transportation services.

11. *Restrictions on Lobbying.* Federal financial assistance may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any Federal contract, grant, or cooperative agreement. The state, subrecipients, and third party contractors at any tier

awarded FTA assistance exceeding $100,000 must sign a certification so stating and also must disclose the expenditure of non-Federal funds for such purposes (49 CFR Part 20). Other Federal laws also govern lobbying activities. For example, Federal funds may not be used for lobbying congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. Section 1352). General advocacy for over-the-road bus transportation and providing information to legislators about the services a recipient provides are not prohibited, nor is using non-Federal funds for lobbying, so long as the required disclosures are made.

12. *Pre-award and Post-delivery reviews.* Pursuant to 49 USC 5323(l), procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 CFR Part 663. Additional guidance is available in a manual, "Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement," published May 1, 1995. The regulation requires that any recipient who purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, conduct a pre-award and post-delivery review to assurance compliance with its bid specifications, Buy America requirements, and Federal Motor Vehicle Safety requirements, and to complete certifications. Purchase of more than ten vehicles, other than unmodified vans or sedans, requires in-plant inspection.

13. *Bus Testing.* Pursuant to 49 USC 5323(c), all new bus models purchased with FTA funds must be tested in accordance with 49 USC 5318 and 49 CFR part 665, before FTA funds can be expended to acquire them. Purchasers of new model buses should ensure that the manufacturer has complied with the testing requirements by requesting a copy of the bus testing report from the Altoona Bus Testing Center, 6th Avenue and 45th Street, Altoona, Pennsylvania 16602. The telephone number is (814) 949–7944.

14. *School Transportation.* 49 USC 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 603) does permit regular service to be modified to accommodate school students along with the general public.

15. *Environmental Protection.* Neither capital costs associated with making vehicles wheelchair accessible nor training costs involve significant environmental impacts. Projects that do not involve significant environmental impacts are considered "categorical exclusions" in FTA's procedures because they have been categorically excluded from FTA's requirements to prepare environmental documentation. (49 USC part 622, incorporating 23 CFR part 771).

16. *Planning.* Applicants are encouraged to notify the appropriate state departments of transportation and metropolitan planning organizations (MPO) in areas likely to be served by equipment made accessible through funds made available in this program. Those organizations, in turn, should take appropriate steps to inform the public and individuals requiring fully accessible services in particular, of operators' intentions to expand the accessibility of their services. Incorporation of funded projects in the plans and transportation improvement programs of states and metropolitan areas by States and MPOs also is encouraged, but is not required.

II. Guidelines for Preparing Grant Application

FTA is conducting a national solicitation for applications under the OTRB Accessibility program. Grant awards will be made on a competitive basis. Although most FTA grant applications are now submitted electronically, paper applications for the OTRB Accessibility program will be accepted. An original and two copies of the application must be submitted to the appropriate FTA Regional Office. The OTRB operators should submit the application to the office in the region in which its headquarters office is located. The application should provide information on all items for which you are requesting funding in FY 1999. The application must include the following elements:

1. Transmittal Letter

This addresses basic identifying information including:

a. Grant applicant
b. Contact name and phone number
c. Amount of grant request

2. Project Eligibility

Every application must:

a. Described the applicant's technical, legal, and financial capacity to implement the proposed projects.

b. Document matching funds, including amount and source.

c. Include OMB Standard Form 424, "Federal Assistance," which is a multi-purpose form that must be completed in its entirety. The forms are available from the FTA regional offices.

3. Project Information

Provide a summary of project activities for which you are requesting funds. The summary should include:

a. Each project's time line, including significant milestones such as date of contract for purchase of vehicle(s), and expected delivery of vehicle(s).

b. Project budget (see Appendix B).

4. Project Narrative

Provide the information identified below to support your application. Grants will be awarded competitively based upon the following criteria:

a. The identified need for over-the-road bus accessibility for persons with disabilities in the areas served by the applicant;

b. The extent to which the applicant demonstrates innovative strategies and financial commitment to providing access to over-the-road buses to persons with disabilities;

c. The extent to which the over-the-road bus operators acquires equipment required by DOT's over-the-road bus accessibility rule prior to the required timeframe in the rule;

d. The extent to which financing the costs of complying with DOT's rule presents a financial hardship for the applicant; and

e. The impact of accessibility requirements on the continuation of over-the-road bus service, with particular consideration of the impact of the requirements on service to rural areas and for low-income individuals.

III. Grant Review Process

Applications are to be submitted to the appropriate FTA Regional Office by the close of business on April 16, 1999. FTA will screen all applications to determine whether all required eligibility elements, as described in Section 2 of the application, are present. An FTA task force will evaluate each application according to the criteria described in this announcement.

A. Notification

FTA will notify all applicants for funding in June 1999. Grants are expected to be made by September 30, 1999, the end of Federal fiscal year 1999. FTA is committed to obligating FY 1999 OTRB Accessibility program funds expeditiously. Therefore, FTA urges applicants to develop and submit with their applications complete documentation necessary to meet the

applicable FTA Section 5311 requirements.

Issued on February 2, 1999.

Gordon J. Linton,

Administrator.

Appendix A—FTA Regional Offices

Region I—Massachusetts, Rhode Island, Connecticut, New Hampshire, Vermont and Maine

Richard H. Doyle, FTA Regional Administrator, Volpe National Transportation Systems Center, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, (617) 494–2055

Region II—New York, New Jersey, Virgin Islands

Letitia Thompson, FTA Regional Administrator, 26 Federal Plaza, Suite 2940, New York, NY 10278–0194, (212) 264–8162

Region III—Pennsylvania, Maryland, Virginia, West Virginia, Delaware, Washington, DC

Sheldon Kinbar, FTA Regional Administrator, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, (215) 656–7100

Region IV—Georgia, North Carolina, South Carolina, Florida, Mississippi, Tennessee, Kentucky, Alabama, Puerto Rico

Susan Schruth, FTA Regional Administrator, 61 Forsyth Street, S.W., Suite 17T50, Atlanta, GA 30303, (404) 562–3500

Region V—Illinois, Indiana, Ohio, Wisconsin, Minnesota, Michigan

Joel Ettinger, FTA Regional Administrator, 200 West Adams Street, Suite 2410, Chicago, IL 60606–5232, (312) 353–2789

Region VI—Texas, New Mexico, Louisiana, Arkansas, Oklahoma

Lee Waddleton, FTA Regional Administrator, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, (817) 978–0550

Region VII—Iowa, Nebraska, Kansas, Missouri

Mokhtee Ahmad, FTA Regional Administrator, 6301 Rockhill Road, Suite 303; Kansas City, MO 64131–1117, (816) 523–0204

Region VIII—Colorado, North Dakota, South Dakota, Montana, Wyoming, Utah

Louis Mraz, FTA Regional Administrator, Columbine Place, 216 16th Street, Suite 650, Denver, CO 80202–5120, (303) 844–3242

Region IX—California, Arizona, Nevada, Hawaii, American Samoa, Guam

Leslie Rogers, FTA Regional Administrator, 201 Mission Street, Suite 2210, San Francisco, CA 94105–1831, (415) 744–3133

Region X—Washington, Oregon, Idaho, Alaska

Helen Knoll, FTA Regional Administrator, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, (206) 220–7954

GRANTEE: Hillsdale Bus Company
PROJECT: OR–38–0001

Scope	Activity	Federal share	Eligible project cost
111–01	BUS ROLLING STOCK.		
	11.42.43 INCREMENTAL COST OF LIFT QUANTITY: 1	$15,000	$30,000
	11.44.43 RETROFIT VEHICLE WITH LIFT QUANTITY 1	22,000	44,000
117–00	BUS—OTHER.		
	11.7E.01 TRAINING	10,000	20,000
	ELIGIBLE PROJECT COST	94,000	
	FEDERAL SHARE	47,000	
	APPLICANT SHARE	47,000	

Appendix C—Certifications and Assurances for Over-the-Road Bus Accessibility Program Grants

Before FTA may aware a Federal grant agreement, the applicant must provide to FTA all certifications and assurances required by Federal laws and regulations for the applicant or its project. This Appendix provides the text of certifications and assurances required by Federal law, regulations, or directives for the Over-the-road Bus Accessibility Program.

Included at the end of this document is a single signature page on which the applicant and its attorney certify compliance with all certifications and assurances applicable to each project for which the applicant is applying.

An applicant's Annual Certifications and Assurances applicable to a specific grant generally remain in effect for the life of the grant to closeout, or the life of the project or project property when a useful life or standard industry life is in effect. If in a later year, however, the Applicant provides certifications and assurances that differ from the certifications and assurances previously made, the later certifications and assurances will apply to the grant, project, or project property, except as FTA otherwise permits.

Procedures

Following is a detailed compilation of Certifications and Assurances and the Signature Page. The Signature Page is to be signed by the applicant's authorized representative and its attorney. It is to be submitted to the appropriate regional office along with the applicant's grant application.

All applicants are advised to read the entire list of Certifications and Assurances to be confident of their responsibilities and commitments. The applicant may signify compliance with all Categories by placing a single "X" in the appropriate space at the top of the Signature Selection Page.

The Signature Page, once properly signed and submitted to FTA, assures FTA that the applicant intends to comply with the requirements for the Over-the-road Bus Accessibility Program. All applicants must read the selection portion and the signature portion of this document and signify compliance by marking, where appropriate, with an "X" on the category selection side, and then signifying compliance as indicated. The applicant should not hesitate to consult with the appropriate FTA Regional Office before submitting its certifications and assurances.

References

The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act 105–206, 112 Stat. 685, July 22, 1998, 49 U.S.C. chapter 53, Title 23 U.S.C., U.S. DOT and FTA regulations under 49 CFR, and FTA Circulars.

Over-the-road Bus Accessibility Program Certifications and Assurances

In accordance with 49 U.S.C.5323(n), the following certifications and assurances have been compiled for the Over-the-road Bus Accessibility program. FTA requests each Applicant provide as many of the following certifications and assurances as needed to cover the types of projects for which the Applicant is seeking FTA assistance. The categories of certifications and assurances are listed by Roman numerals I through V on one side of the Signature Page of this document. Categories II through V will apply to some, but not necessarily all, applicants. The designation of the categories corresponds to the circumstances mandating submission of specific certifications, assurances, or agreements.

I. Certifications and Assurances Required of Each Applicant

Each Applicant for Over-the-road Bus Accessibility funding assistance awarded by FTA must provide all certifications and assurances in this Category I. Accordingly, FTA may not award any Federal assistance until the Applicant provides assurance of

compliance by selecting Category I on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements attest that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant,

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and

(3) Execute grants with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by an FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

(1) The Applicant (Primary Participant) certifies, to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not, within a three-year period preceding this certification, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction, violation of Federal or state antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in subparagraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that, if it later becomes aware of any information contradicting the statements of paragraph (1) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to the statements in paragraphs (1) and (2) above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

D. Drug-Free Workplace Agreement

As required by U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 CFR Part 29, Subpart F, as modified by 41 U.S.C. 702, the Applicant agrees that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about:

(a) The dangers of drug abuse in the workplace,

(b) Its policy of maintaining a drug-free workplace,

(c) Any available drug counseling, rehabilitation, and employee assistance programs, and

(d) The penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will be required to:

(a) Abide by the terms of the statement, and

(b) Notify the employer (Applicant) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after that conviction;

(5) Notifying FTA in writing, within 10 calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction. The Applicant, as employer of any convicted employee, must provide notice, including position title, to every project officer or other designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.

(6) Taking one of the following actions within 30 calendar days of receiving notice under paragraph (4)(b) above with respect to any employee who is so convicted:

(a) Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or

(b) Requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above.

The Applicant agrees to maintain a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted, and make that list readily accessible to FTA.

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each State, for intergovernmental review to the appropriate State and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act," 40 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients", and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

(1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.

(3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination

in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance wit these requirements.

(4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

(5) As required by 49 CFR 21.7(a)(2), the Applicant will include in each third party contract or subagreement appropriate provisions to impose the requirements of 49 U.S.C. 5332 and 49 CFR part 21, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The applicant assure that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 et seq. at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

I. Certifications Prescribed by the Office of Management and Budget (SF–424B and SF–424D)

The Applicant certifies that it:

(1) Has the legal authority to apply for Federal assistance and the institutional, managerial, and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in its application.

(2) Will give FTA, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

(3) Will establish safeguards to prohibit employees form using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval.

(5) Will comply with all statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681, 1683, and 1685 through 1687, which prohibits discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicaps;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 et seq., relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited to section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) The requirements of any other nondiscrimination statute(s) that may apply to the project.

(6) Will comply, or has complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 et seq., which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases. As required by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally assisted Programs," at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply or has complied with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 et seq., and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR 24 including, but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, but the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will participate in the Applicant's costs of providing those payments and that assistance for the project as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein, and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions,

(7) Will comply, as applicable, with provisions of the Hatch Act, 5 U.S.C. 1501 through 1508, and 7324 through 7326, which limit the political activities of state and local agencies and their officers and employees whose principal employment activities are financed in whole or part with Federal funds including a Federal loan, grant, or cooperative agreement, but does not apply to

a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the Hatch Act does not otherwise apply.

(8) To the extent applicable will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 276a through 276a(7), the Copeland Act, as amended, 18 U.S.C. 874 and 40 U.S.C. 276c, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 333, regarding labor standards for federally-assisted subagreements.

(9) To the extent applicable, will comply with flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

(10) Will comply with environmental standards that may be prescribed to implement the following Federal laws and executive orders.

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq. and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards of floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451 et seq.;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401 et seq.;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300h et seq.;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 et seq.; and

(i) Environmental protections for Federal transit programs, including, but no limited to protections for a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance or any land from a historic site of a national, state, or local significance used in a transit project as required by 49 U.S.C. 303.

(11) Will comply with the Wild and Scenic Rivers Act of 1968, as amended, 15 U.S.C. 1271 et seq. relating to protecting components of the national wild and scenic rivers systems.

(12) Will assist FTA in assuring compliance with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f, Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–I et seq.

(13) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

(14) Will not dispose of, modify the use of, or change the terms of the real property title. or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instruction from the awarding agency. Will record the Federal interest in the title of real property in accordance with FTA directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project.

(15) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

(16) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by FTA or the State.

(17) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, regarding the protection of human subjects involved in research, development, and related activities supported by the FTA assistance.

(18) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 et seq. pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by FTA assistance.

(19) Will have performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 et seq. and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

(20) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

II. Lobbying Certification for an Application Exceeding $100,000

An Applicant that submits an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding $100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

III. Certification of Pre-Award and Post-Delivery Reviews Required for Acquisition of Rolling Stock

An Applicant seeking FTA assistance to purchase rolling stock must provide the following certification. FTA may not provide assistance for any rolling stock acquisition until the Applicant provides this certification by selecting Category III on the Signature Page.

As required by 49 U.S.C. 5323(m), and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663, in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and post-delivery reviews, and will maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

IV. Bus Testing Certification Required for New Bus Acquisitions

An Applicant seeking FTA assistance to acquire new buses must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category IV on the Signature Page.

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant

certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

A. The model of the bus will have been tested at a bus testing facility approved by FTA; and

B. It will have received a copy of the test report prepared on the bus model.

V. School Transportation Agreement

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment acquired with Federal assistance authorized by 49 U.S.C. chapter 53 must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category V on the Signature Page.

A. As required by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(f), and implementing regulations, and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance awarded by FTA and authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

Over-the-Road Bus Accessibility Program Certifications and Assurances for FTA Assistance

NAME OF APPLICANT: _____

The Applicant agrees to comply with applicable requirements of Categories I–V

_____

(The Applicant may make this selection in lieu of individual selections below.)

OR

The applicant agrees to comply with the applicable requirements of the following categories it has selected:

I. Certifications and Assurances Required of Each Applicant ..... _____
II. Lobbying Certification ..... _____
III. Certification for the Purchase of Rolling Stock ..... _____
IV. Bus Testing Certification ..... _____
V. School Transportation Agreement ..... _____

Over-the-Road Bus Accessibility Certifications and Assurances

Name of Applicant: _____

Name and relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____(name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA).

FTA intends that the certifications and assurances the Applicant selects on the other side of this document should apply, as required, to each project for which the applicant seeks FTA assistance.

The applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 et seq., as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Application are true and correct.

Signature _____

Date _____

Name _____

Authorized Representative of Applicant

Affirmation of Applicant's Attorney

For _____

(Name of Applicant)

As the undersigned legal counsel for the above name applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligstions on the applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the applicant promptly, which may so inform FTA.

Signature _____

Date _____

Name _____

Applicant's Attorney

Each Applicant for FTA financial assistance and each FTA grantee with an active capital project must provide an attorney's affirmation of the Applicant's legal capacity.

Appendix D—Grant Application Checklist

1. Transmittal letter
2. SF–424
3. Project Eligibility
   a. Organizational Capacity
   b. 50 percent non-Federal match
4. Project Budget
5. Project Description
   —Project Milestones
6. Project Narrative

BILLING CODE 4910–57–M

APPENDIX E

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐–☐☐☐☐☐☐☐	**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify) _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es) ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other *(specify)*: _____	**9. NAME OF FEDERAL AGENCY:**
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐–☐☐☐ TITLE:	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:	

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?** a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
a. Federal	$ .00	
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

[FR Doc. 99–2826 Filed 2–5–99; 8:45 am]
BILLING CODE 4910–57–C

federal register

Monday
February 8, 1999

Part VI

Department of Education

Receipt of Applications for Designation as an Eligible Institution for Fiscal Year 1999 for the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions, and Hispanic-Serving Institutions Programs; Closing Date Extension; Notice

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Notice of Extension of Closing Date for Receipt of Applications for Designation as an Eligible Institution for Fiscal Year 1999 for the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions, and Hispanic-Serving Institutions Programs

Purpose: On January 4, 1999, the Department of Education published in the **Federal Register** (64 FR 347–349) a closing date notice for applications from institutions that wish to be designated as an eligible institution under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions and Hispanic-Serving Institutions (HSI) Programs. The first three programs are authorized under Title III of the Higher Education Act of 1965, as amended (HEA). The HSI program is authorized under Title V of the HEA. The purpose of this notice is to extend the closing date for transmittal of institutional eligibility applications from institutions who wish to compete for new grants under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions and HSI Programs. This action is needed due to unforeseen administrative delays.

The closing date for eligibility applications is extended from February 15, 1999 to March 17, 1999 for institutions that wish to apply for new grant awards under the Title III and Title V programs. The Department plans to announce a closing date of April 12, 1999 for applications for new grant awards under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions and HSI Programs, to be published in a future **Federal Register** notice. Because of time constraints, the Department does not guarantee that it will be able to notify an applicant for designation as an eligible Institution before the new grant award closing date of April 12, 1999.

However, the closing date of May 28, 1999 has not changed for applicants who wish to apply only for purposes of obtaining a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work Study (FWS), and Undergraduate International Studies and Foreign Language (UISFL) programs.

Deadline for Transmittal of Applications: March 17, 1999 for Institutions of higher education that with to compete for new awards under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions and HSI Programs. May 28, 1999 for institutions of higher education that plan to obtain a waiver of certain non-Federal share requirements under the FSEOG, FWS, and UISFL programs.

Applications Available: February 10, 1999.

For Applications or Information Contact: Ellen M. Sealey, Margaret A. Wheeler or Anne S. Young, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 400 Maryland Avenue, SW., (Portals CY–80) Washington, DC 20202–5335. Telephone (202) 708–8866, 708–9926 and 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg/htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: February 2, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–2918 Filed 2–5–99; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
February 8, 1999

Part VII

The President

Proclamation 7166—American Heart Month, 1999

Executive Order 13112—Invasive Species

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Federal Register
Vol. 64, No. 25
Monday, February 8, 1999

Presidential Documents

Title 3—

The President

Proclamation 7166 of February 3, 1999

American Heart Month, 1999

By the President of the United States of America

A Proclamation

Thanks to the dedicated efforts of scientists and researchers and the strong support of the American public, today we stand at the threshold of a new frontier in the prevention and treatment of heart disease. And in coming years, Americans will reap even greater benefits from our ongoing commitment to heart research.

Already, research has profoundly altered scientists' understanding of heart disease, revealing that the likelihood of heart disease is increased by risk factors such as smoking, high blood pressure, high blood cholesterol, diabetes, obesity, physical inactivity, and a family history of early heart disease. Armed with this knowledge, millions of Americans have been able to take steps to reduce their risk of illness. Thanks to scientific discoveries, those already afflicted with heart disease now have access to lifesaving therapies and procedures such as clot-dissolving drugs, cardiopulmonary resuscitation, defibrillation, and balloon angioplasty.

Even greater advances lie ahead. Fields on the verge of delivering major innovations include molecular genetics, gene therapy, biotechnology, immunology, and epidemiology. The next breakthroughs will include better noninvasive diagnostic tools that can help physicians examine the heart and blood vessels without surgery; an implantable mechanical device that can restore heart function to those suffering heart failure; and a drug that can promote the growth of new blood vessels to body tissues and organs with poor circulation.

But technology is not a panacea. Despite the great gains we have made, heart disease remains the leading cause of death in the United States, and millions of Americans have at least one risk factor for heart disease. Moreover, recent data have shown a slight rise in the death rate for stroke and a slowing in the decline of the death rate for coronary heart disease. Some cardiovascular conditions, such as heart failure, as well as two key heart disease risk factors, obesity and physical inactivity, are on the increase among Americans.

We must work together to make all Americans aware of the information science has given us regarding controllable risk factors for cardiovascular disease. It is particularly important that we reach out to African Americans, Hispanic Americans, other minority communities, and women, who often are at high risk for heart disease and stroke, and ensure that they have access to the resources and information they need to guard against these afflictions. We must also encourage families to teach their children the importance of adopting healthy lifestyle practices early and maintaining them into and throughout adulthood.

The Federal Government continues to play a vital role in improving the cardiovascular health of Americans by supporting research and public education through the National Heart, Lung, and Blood Institute of the National Institutes of Health. The American Heart Association, through its research and education programs and its broad network of dedicated volunteers, also plays a crucial part in bringing about much-needed advances.

As Americans look ahead to a new century and a new millennium, we should use the momentum of past heart research as a springboard to even greater gains. In recognition of the importance of the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested that the President issue an annual proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim February 1999 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular disease and stroke.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99-3183
Filed 2-5-99; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Executive Order 13112 of February 3, 1999

Invasive Species

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16 U.S.C. 4701 *et seq.*), Lacey Act, as amended (18 U.S.C. 42), Federal Plant Pest Act (7 U.S.C. 150aa *et seq.*), Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 *et seq.*), Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and other pertinent statutes, to prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health impacts that invasive species cause, it is ordered as follows:

Section 1. *Definitions.*

(a) "Alien species" means, with respect to a particular ecosystem, any species, including its seeds, eggs, spores, or other biological material capable of propagating that species, that is not native to that ecosystem.

(b) "Control" means, as appropriate, eradicating, suppressing, reducing, or managing invasive species populations, preventing spread of invasive species from areas where they are present, and taking steps such as restoration of native species and habitats to reduce the effects of invasive species and to prevent further invasions.

(c) "Ecosystem" means the complex of a community of organisms and its environment.

(d) "Federal agency" means an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

(e) "Introduction" means the intentional or unintentional escape, release, dissemination, or placement of a species into an ecosystem as a result of human activity.

(f) "Invasive species" means an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.

(g) "Native species" means, with respect to a particular ecosystem, a species that, other than as a result of an introduction, historically occurred or currently occurs in that ecosystem.

(h) "Species" means a group of organisms all of which have a high degree of physical and genetic similarity, generally interbreed only among themselves, and show persistent differences from members of allied groups of organisms.

(i) "Stakeholders" means, but is not limited to, State, tribal, and local government agencies, academic institutions, the scientific community, non-governmental entities including environmental, agricultural, and conservation organizations, trade groups, commercial interests, and private landowners.

(j) "United States" means the 50 States, the District of Columbia, Puerto Rico, Guam, and all possessions, territories, and the territorial sea of the United States.

Sec. 2. *Federal Agency Duties.* (a) Each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law,

(1) identify such actions;

(2) subject to the availability of appropriations, and within Administration budgetary limits, use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them; and

(3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk of harm will be taken in conjunction with the actions.

(b) Federal agencies shall pursue the duties set forth in this section in consultation with the Invasive Species Council, consistent with the Invasive Species Management Plan and in cooperation with stakeholders, as appropriate, and, as approved by the Department of State, when Federal agencies are working with international organizations and foreign nations.

Sec. 3. *Invasive Species Council.* (a) An Invasive Species Council (Council) is hereby established whose members shall include the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Transportation, and the Administrator of the Environmental Protection Agency. The Council shall be Co-Chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The Council may invite additional Federal agency representatives to be members, including representatives from subcabinet bureaus or offices with significant responsibilities concerning invasive species, and may prescribe special procedures for their participation. The Secretary of the Interior shall, with concurrence of the Co-Chairs, appoint an Executive Director of the Council and shall provide the staff and administrative support for the Council.

(b) The Secretary of the Interior shall establish an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App., to provide information and advice for consideration by the Council, and shall, after consultation with other members of the Council, appoint members of the advisory committee representing stakeholders. Among other things, the advisory committee shall recommend plans and actions at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order. The advisory committee shall act in cooperation with stakeholders and existing organizations addressing invasive species. The Department of the Interior shall provide the administrative and financial support for the advisory committee.

Sec. 4. *Duties of the Invasive Species Council.* The Invasive Species Council shall provide national leadership regarding invasive species, and shall:

(a) oversee the implementation of this order and see that the Federal agency activities concerning invasive species are coordinated, complementary, cost-efficient, and effective, relying to the extent feasible and appropriate on existing organizations addressing invasive species, such as the Aquatic Nuisance Species Task Force, the Federal Interagency Committee for the Management of Noxious and Exotic Weeds, and the Committee on Environment and Natural Resources;

(b) encourage planning and action at local, tribal, State, regional, and ecosystem-based levels to achieve the goals and objectives of the Management Plan in section 5 of this order, in cooperation with stakeholders and existing organizations addressing invasive species;

(c) develop recommendations for international cooperation in addressing invasive species;

(d) develop, in consultation with the Council on Environmental Quality, guidance to Federal agencies pursuant to the National Environmental Policy Act on prevention and control of invasive species, including the procurement, use, and maintenance of native species as they affect invasive species;

(e) facilitate development of a coordinated network among Federal agencies to document, evaluate, and monitor impacts from invasive species on the economy, the environment, and human health;

(f) facilitate establishment of a coordinated, up-to-date information-sharing system that utilizes, to the greatest extent practicable, the Internet; this system shall facilitate access to and exchange of information concerning invasive species, including, but not limited to, information on distribution and abundance of invasive species; life histories of such species and invasive characteristics; economic, environmental, and human health impacts; management techniques, and laws and programs for management, research, and public education; and

(g) prepare and issue a national Invasive Species Management Plan as set forth in section 5 of this order.

Sec. 5. *Invasive Species Management Plan.* (a) Within 18 months after issuance of this order, the Council shall prepare and issue the first edition of a National Invasive Species Management Plan (Management Plan), which shall detail and recommend performance-oriented goals and objectives and specific measures of success for Federal agency efforts concerning invasive species. The Management Plan shall recommend specific objectives and measures for carrying out each of the Federal agency duties established in section 2(a) of this order and shall set forth steps to be taken by the Council to carry out the duties assigned to it under section 4 of this order. The Management Plan shall be developed through a public process and in consultation with Federal agencies and stakeholders.

(b) The first edition of the Management Plan shall include a review of existing and prospective approaches and authorities for preventing the introduction and spread of invasive species, including those for identifying pathways by which invasive species are introduced and for minimizing the risk of introductions via those pathways, and shall identify research needs and recommend measures to minimize the risk that introductions will occur. Such recommended measures shall provide for a science-based process to evaluate risks associated with introduction and spread of invasive species and a coordinated and systematic risk-based process to identify, monitor, and interdict pathways that may be involved in the introduction of invasive species. If recommended measures are not authorized by current law, the Council shall develop and recommend to the President through its Co-Chairs legislative proposals for necessary changes in authority.

(c) The Council shall update the Management Plan biennially and shall concurrently evaluate and report on success in achieving the goals and objectives set forth in the Management Plan. The Management Plan shall identify the personnel, other resources, and additional levels of coordination needed to achieve the Management Plan's identified goals and objectives, and the Council shall provide each edition of the Management Plan and each report on it to the Office of Management and Budget. Within 18 months after measures have been recommended by the Council in any edition of the Management Plan, each Federal agency whose action is required to implement such measures shall either take the action recommended or shall provide the Council with an explanation of why the action is not feasible. The Council shall assess the effectiveness of this order no

less than once each 5 years after the order is issued and shall report to the Office of Management and Budget on whether the order should be revised.

Sec. 6. *Judicial Review and Administration.* (a) This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

(b) Executive Order 11987 of May 24, 1977, is hereby revoked.

(c) The requirements of this order do not affect the obligations of Federal agencies under 16 U.S.C. 4713 with respect to ballast water programs.

(d) The requirements of section 2(a)(3) of this order shall not apply to any action of the Department of State or Department of Defense if the Secretary of State or the Secretary of Defense finds that exemption from such requirements is necessary for foreign policy or national security reasons.

William J. Clinton

THE WHITE HOUSE,
February 3, 1999.

[FR Doc. 99–3184
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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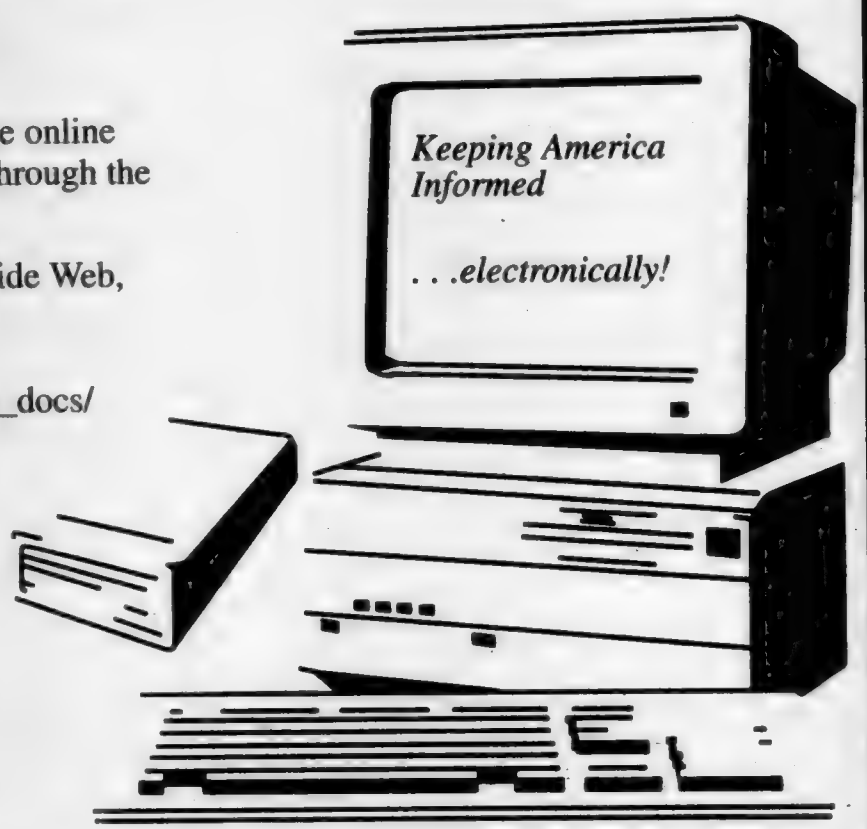

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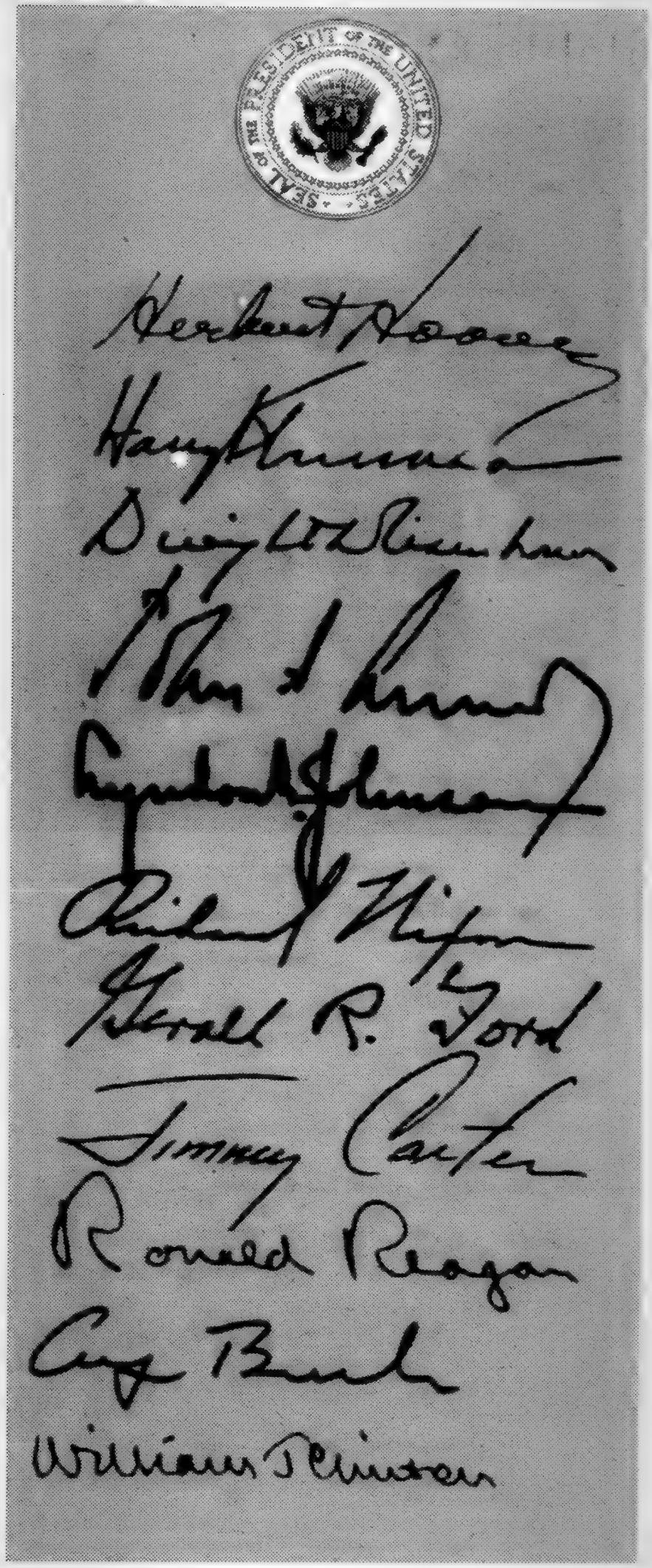

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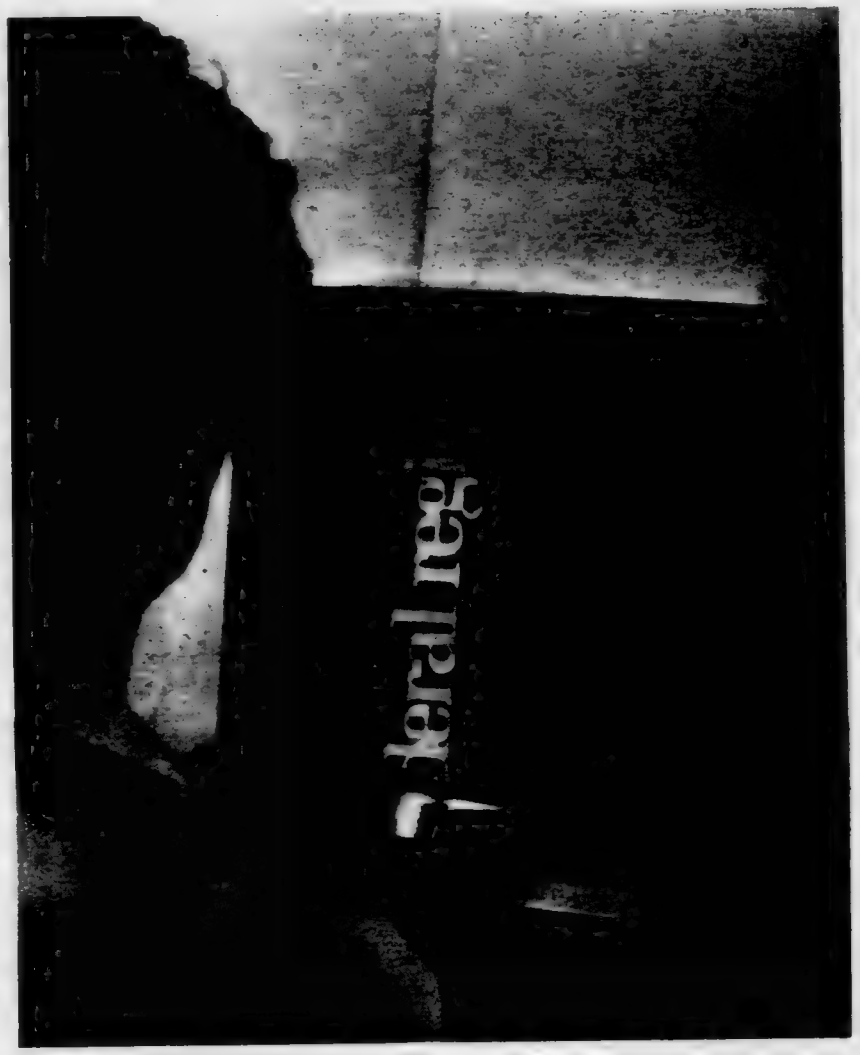

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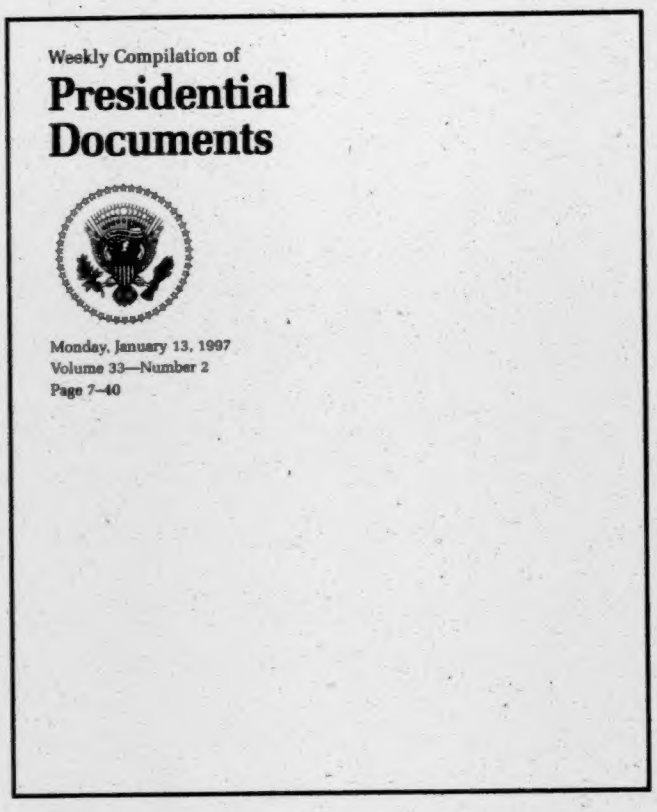

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